

**BEFORE THE WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD**

CLARK COUNTY NATURAL RESOURCES)	
COUNCIL, and VANCOUVER AUDUBON SOCIETY,)	No. 96-2-0017
and LOO-WIT GROUP SIERRA CLUB, Non-Profit)	
Corporations, COALITION FOR ENVIRONMENTAL)	FINAL DECISION
RESPONSIBILITY AND ECONOMIC)	AND ORDER
SUSTAINABILITY, an unincorporated association,)	
RURAL CLARK COUNTY PRESERVATION)	
ASSOCIATION, a non-profit corporation,)	
)	
Petitioners,)	
)	
v.)	
)	
CLARK COUNTY, CITY OF VANCOUVER, and)	
CITY OF CAMAS,)	
)	
Respondents.)	
_____)	

On May 15, 1996, we received a petition for review from Clark County Natural Resources Council and others (CCNRC) that challenged the archeological preservation ordinances of Vancouver, Camas and Clark County, and the critical areas ordinances of Vancouver and Clark County. Also challenged was the Clark County stormwater drainage development regulations (DRs) as allegedly effected by the provisions of RCW 36.70A.172 (best available science). A second petition was filed by Rural Clark County Preservation Association on July 10, 1996, and was assigned case #96-2-0019. The 0019 petition raised many of the same issues as the 0017 petition and by Order dated July 19, 1996, the two cases were consolidated under the above heading.

On July 19, 1996, a Prehearing Order was also entered which set forth the nine issues in the case. Subsequent to the Order, the City of Vancouver filed a dispositive motion as to four of the issues and Clark County filed a dispositive motion as to one.

On September 12, 1996, we entered an Order which granted Vancouver's motion and denied Clark County's motion. Vancouver readopted its 1992 ordinance to facilitate public participation for the issue of determining consistency of the ordinance with the comprehensive plan (CP). We determined that readoption alone did not revive jurisdiction to review the substance of the 1992 sensitive lands (critical areas) ordinance. We further determined that Clark County's adoption of a new ordinance for aquifer recharge areas during the remand portion of *Achen v. Clark County (Achen)*, #95-2-0067, did not preclude review of the substance of that ordinance. The ordinance was initially adopted during the remand at a time longer than 60-days prior to the filing of the instant petition. The specific holdings and rationale for those decisions are found in the September 12, 1996, Order.

In the *Achen* Compliance Order entered October 1, 1996, we held, *inter alia*, that Vancouver's sensitive lands ordinance was consistent with its CP. In a motion for reconsideration the parties indicated that an agreement had been reached between them to handle that issue in this case. We granted reconsideration by Order dated November 20th, 1996. We did so notwithstanding the fact that prior to October 10, 1996, the parties had not advised us of that agreement and despite the following language contained in the September 12, 1996, dispositive motions Order:

"The consistency issue for critical areas for Vancouver is being addressed in the remand portion of *Achen*."

We listened to the arguments presented in this case on the consistency issue, re-reviewed the record and now make the same decision that the 1992 ordinance is consistent with the CP of Vancouver.

One of the issues in this case challenged the stormwater ordinance of Clark County because of its alleged failure to adhere to the best available science provisions of RCW 36.70A.172(1). That section of the statute, in part, provides that:

"[C]ounties....shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas."

Reviewing the definition of critical areas under RCW 36.70A.030(5) it is clear that stormwater is not included within the definition. Therefore, the provisions of RCW 36.70A.172 do not apply to purely stormwater issues.

ARCHEOLOGICAL RESOURCES

In our September 20, 1995, Final Order in *Achen* we discussed the lack of compliance by Clark County, Vancouver and Camas relating to archeological and historic preservation issues. We remanded those issues for compliance. We noted that Clark County and Vancouver had adopted a "historic, archeological and cultural preservation" element in their respective CPs. Camas did not reference the issue during its GMA process. We also noted that Clark County and each of the cities had jointly adopted the Community Framework Plan (CFP). Policies 13.2.3 and 13.2.4 of the CFP required the establishment of criteria and programs (1) to identify archeological and historic resources, (2) to protect those resources and (3) to establish a process for resolving conflicts between preservation and development activities.

Clark County, Vancouver and Camas each took action in response to the remand order. Petitioners' challenged the substance of each of those actions by means of a new petition. With the agreement of the parties we folded the compliance and substantive issues into this case.

RCW 36.70A.020(13) provides:

"Identify and encourage the preservation of lands, sites, and structures, that have historical or archeological significance."

The parties agreed that the historic preservation issues were complied with, leaving only archeological issues for decision.

Goal 13 provides a two-prong direction to local governments, (1) identification and (2) encouragement of preservation. CFP 13.2.3 similarly requires identification, protection and a resolution process for conflicts between preservation and development activities.

In response to the archeological issues the County developed a "predictive model map" (Ex. 443). The map established five probability areas rated in 20 percentile increments, in which the likelihood of finding archeological resources was established. The adoption of the predictive model map complies with the identification aspect of goal 13.

Additionally the County adopted a State Environmental Policy Act (SEPA) policy which included a decision matrix for determining when an archeological survey would be required. The decision matrix interrelated the probability map with the potential impact of the proposed use. Examples of low potential impacts included no ground disturbance, single family home construction, etc. High potential impact activities included disturbances of more than twelve inches below ground surface and more than 10,000 sq. ft. The decision matrix did not require a survey where a project with a high impact potential was situated in a low probability of cultural resources area. A survey would be required when a low potential impact would occur in either a moderate to high or high probability resource area. Surveys would be required for high potential impact projects within a quarter mile of a recorded site, moderate through high potential impact projects within 500 feet of a known unrecorded site, and any time archeological resources were discovered on site during development. Appropriate mitigation measures would be required when potentially significant cultural resources were found by a survey.

Petitioners contended that the SEPA policy did not provide sufficient protection. Goal 13 only provides for the *encouragement* of preservation. The substantive effect of goal 13 is satisfied with the SEPA policies adopted by Clark County. Likewise the provisions of the CFP and Clark County's CP have been followed and the actions are consistent. Clark County is in compliance with the Act regarding archeological issues.

At the time of the hearing on this matter Vancouver was considering a proposed ordinance to incorporate the predictive model map. The City had already entered into an agreement with Clark County to share the database involved in the mapping project. Additionally the City had entered into a memorandum of understanding with the Washington State Office of Archeological and Historic Preservation to have access to information concerning archeological sites within the City. The City has complied with the identification prong of goal 13, the CFP and its own CP policies.

Recognizing that much, if not most, of the high probability sites in the Vancouver UGA would be in the shoreline areas, including the Columbia River and Burnt Bridge Creek, the City revised its Shoreline Master Program (SMP) to include a cultural and historic resources element. The elements, goals, policies and regulations of the SMP were designed to protect and

preserve archeological resources. They mirror the language and intent of CP policy 3. The regulations directed that any development activities within 1/4 mile of recorded archeological site or 500 feet of an unrecorded site required a survey evaluation and recommendation from a qualified professional archeologist. Avoidance, mitigations or recovery of resources would be required. The City retained authority to halt development upon discovery of archeological resources, even for an unrecorded site. Similar goals and regulations were included within the SEPA development review process. Vancouver has complied with both the identification and preservation aspects of these archeological issues. The actions are consistent with its CP and the CFP.

Camas adopted new CP provisions (Ordinance #2071) and regulations (Ordinance #2072). These policies and regulations require the City to assess the probable effect of an impact on known or suspected sites as part of the development process, the use of a qualified archeologist as necessary, notification to the State Archeological and Historic Preservation Office, to impose conditions on or deny a development project if necessary to preserve archeological resources. Camas retained the authority to issue stop-work orders to prevent the destruction of archeological resources. These two ordinances comply with the preservation prong of the GMA and CFP.

Camas pointed out that it had not adopted the predictive model developed by Clark County primarily because neither petitioners nor anyone else made the City aware of the model. We note a disturbing historical trend by petitioners to criticize the City of Camas in its attempts to comply with the Act with very little, if any, public participation from petitioners during the Camas processes. Nonetheless, the CP and regulations adopted by Camas do not satisfy the identification prong of either goal 13 or the CFP. We do not require that the City adopt the Clark County predictive model, but we are not able to find compliance unless some type of more specific identification of archeological resources is adopted by Camas.

BEST AVAILABLE SCIENCE

We are called upon in this case to make our initial determination of the intent of the Legislature and the scope of the statutory language relating to best available science (BAS) found in RCW 36.70.172. That statute provides:

- (1) 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.

(2) If it determines that advice from scientific or other experts is necessary or will be of substantial assistance in reaching its decision, a growth management hearings board may retain scientific or other expert advice to assist in reviewing a petition under RCW 36.70A.290 that involves critical areas.

The part of subsection (1) that relates to BAS can be broken down into the following components:

- (A) When designating and protecting critical areas under the Act;
- (B) Local governments *shall* include BAS;
- (C) In developing policies and development regulations;
- (D) To protect the *functions and values* of critical areas.

Components A (designation and protection) and D (functions and values) are fairly straightforward. The function and values component direction from the Legislature does add more requirements than the sterile designation and protection language found under Sections .170 and .060. Under the function and values component, a local government must go beyond mere designation and protection mechanisms and ensure that the real reason for identification and protection of critical areas (their functions and values) is being accomplished.

The ambiguity contained in subsection (1) relating to BAS comes within the interplay of components B and C. The County cited the recent case of *HEAL v. Seattle*, CPSGMHB #96-3-0012 in support of its argument that the emphasis should be on component C (developing) which leads to the conclusion that BAS is essentially a process issue. Petitioners' argued that the emphasis in the statute was intended by the Legislature to be on component B (shall include) which leads to the conclusion that in addition to a process issue, a substantive result is required. For the reasons set forth below we agree with petitioners' contention that section .172(1) requires a substantive outcome.

There is not much legislative history relevant to this issue. It is, however, appropriate to review the legislative bill reports and analyses to determine legislative intent. *Jacques v. Sharp*, 83 Wn. App. 532 (1996). Both the Senate and the House contain the same language in the section of

each report summarizing the bill:

"Counties and cities are required to include the "best available science" in designating and protecting critical areas under the GMA."

The plain language contained in these bill reports directs a requirement to include BAS in a substantive way in both the designation and the protection components of critical areas.

Secondly, the use of the words "shall include" involves a more substantive outcome than the process-oriented "shall consider" language contained in RCW 36.70A.170(2). All three boards have interpreted a substantive result from the language in section .020 that the goals of the Act are to "guide the development and adoption of" plans and regulations. The language of .172(1) is much more directive than the .020 language.

Finally, subsection .172(2) directs that a Board may hire independent experts in situations involving petitions relating to critical areas. The purpose of the independent expert is the same as the test for supplemental evidence, i.e., "necessary or of substantial assistance". If the Legislature intended Boards to only review process issues involving BAS, there would be no need for authorization to hire "experts". Rather, the interpretation which gives full consideration to all portions of the statute is that experts are available to assist a Board in reviewing the *substance* of an issue concerning BAS.

Since the Legislature did not define "best available science" we must determine the scope and meaning of that term. As the Legislature was fully capable of directing that local governments only "consider" BAS, it was likewise capable of establishing mandatory statewide minimums based *solely* upon best available science. We conclude, as we have in all our cases, that local discretion is available for choices within the parameters of the Act as set forth by the Legislature. The adoption of section .172 by the Legislature shrinks the discretion parameters available to local governments but does not eliminate them. Because of that local discretion, it is not possible for us to establish a "bright-line" definition of BAS for critical areas. Rather, in keeping with one of the basic tenants of the Act, regional and local diversity, we will decide each case individually, based upon the record. We will base our decision upon the following factors:

- (1) The scientific evidence contained in the record;
- (2) Whether the analysis by the local decision-maker of the scientific evidence and other

factors involved a reasoned process; and

(3) Whether the decision made by the local government was within the parameters of the Act as directed by the provisions of RCW 36.70A.172(1).

Local diversity has an impact in determining what is the "best" science. The goals of the Act, the practicality of the "science" and the fiscal impact, relating to the availability of information and to the ultimate decision, must be balanced by a local government in determining how to designate and how to protect critical areas. "Available" means not only that the evidence must be contained within the record, but also that the science must be practically and economically feasible. "Best" means that within the evidence contained in the record a local government must make choices based upon the scientific information presented to it. The wider the dispute of the scientific evidence, the broader the range of discretion allowed to local governments. Ultimately, a local government must take into account the practical and economic application of the science to determine if it is the "best available".

The second part of section .172(1) imposes a further additional requirement upon local governments. With regard to anadromous fisheries, local governments must include conservation or protection measures "necessary to preserve or enhance" such fisheries. This part of the statute directs measures for both preservation and enhancement. It therefore limits the discretion available to local governments when dealing with anadromous fish. In balancing the scientific evidence against issues of practicality and economics the result must be more heavily weighted towards science when dealing with anadromous fish. The "special consideration" language directs that local governments must go beyond what might otherwise be done in designating and protecting other kinds of critical areas.

CRITICAL AREAS

As the major thrust of its requirement to adopt designations and protections for critical areas, Clark County substantially revised its "Vegetation Management Clearing Ordinance" now codified as CCC 13.50. Some of petitioners' complaints involved changes to the original ordinance that restricted its applicability to critical areas. We only review the portions of CCC 13.50 that deal with critical areas. We note, however, that the amalgamation of all the critical and non-critical areas into one ordinance combined with the failure of the ordinance to

distinguish between designations and protections makes the ordinance very difficult to understand. The County often claimed that petitioners were misinterpreting and/or misunderstanding the impact of the Ordinance. Given the structure of CCC 13.50, that misunderstanding and misinterpretation is not surprising.

Critical Aquifer Recharge Areas

The GMA requires local governments to engage in a two-step process of designating and then protecting critical areas. Although the Act and accompanying regulations (WAC 365-190-080) often use the terms designation and classification interchangeably, classification is really a component of the overall designation scheme, WAC 365-190-040 (1). The designation of a critical area should include a classification scheme and a general location determination or performance standards for specific locations. Clark County has not yet adopted a designation of critical aquifer recharge areas.

WAC 365-190-080 (2) recommends that where aquifer recharge areas have been studied that information should be used as the basis for designation. In Clark County a great deal of study of water and recharge areas, supported by numerous grants from the State of Washington and the Federal Government, has been done. The comprehensive ground water study (Ex. 912) has been completed. As noted in the *Achen* Final Order of September 21, 1995, to date none of the implementation strategies contained in that study have been adopted by Clark County. Additionally, the Final Supplemental Environmental Impact Statement (FSEIS) (Ex. 79) noted that virtually the entire county was a "sole source aquifer" area. The recently completed Voesle study (Ex. 462) provided detailed mapping of recharge areas for public wellheads. Although the County is correct in its argument that sole source aquifer recharge areas are designated by the Federal Safe Drinking Water Act, the lack of such designation does not excuse Clark County's failure to use the extensive information available to designate aquifer recharge areas.

Clark County argued that the designation process was insignificant because the important issues relating to critical areas involved protection. The simple answer to that argument is that the Act requires designation. Beyond that, however, the important answer is that the public is entitled to know, and local governments are entitled to be reminded of, the significance of critical aquifer recharge areas by knowing the size of area encompassed. Clark County is not in compliance with

the Act by its failure to designate critical aquifer recharge areas.

While we could rest our decisions for the aquifer recharge issue upon the failure to designate alone, the record is clear that a significant portion of Clark County (up to 95%) is a sole source aquifer and is subject to moderate to high impact vulnerability. Since the protection DRs were to be adopted by September 1, 1991, we review the ones relied upon by Clark County in order to help speed the adoption of DRs that comply with the Act. The protections relied upon by Clark County are contained in its SEPA policies. This is insufficient to comply with the Act given the significant aquifer recharge areas in Clark County and the mandatory direction of RCW 36.7A.060(2) to adopt DRs that protect critical areas. Under the evidence shown by the record in this case, mere SEPA policies do not comply with the Act.

Additionally, the SEPA policies only apply to one year, five year and ten year zones of contribution to governmentally owned wellhead areas. Such limited protection does not comply with the Act. Given the large aquifer recharge areas in the County and the degree of degradation that has already occurred, much greater protection is needed. Finally, this lack of protection is inconsistent with CP policy 2.4.9 (b) which directs that the County will "... implement a comprehensive critical drinking water protection area ordinance." It is also inconsistent with CFP 11.2.3 which provides that vulnerable aquifer recharge areas "are to be regulated to protect the quality and quantity of groundwater in the County." The County's reliance upon studies from which no implementation has occurred and/or a stormwater ordinance which we have previously found does not comply with the Act (Compliance Order, October 1, 1996) is unavailing.

Frequently Flooded Areas

WAC 365-190-080 (3) observes that areas subject to flooding "perform important hydrologic functions". Designation of frequently flooded areas "should include at a minimum, the 100-year flood plain designations of the Federal Emergency Management Agency (FEMA) and the National Flood Insurance Program (NFIP). Clark County has done this in its frequently flooded areas designation. According to the FSEIS, flooding is not a major issue in Clark County, although petitioners point out that recent events may call that conclusion into question. Clark County prohibits development in the floodway area and restricts development in the flood fringe. These protections combined with the minimal flooding issues in Clark County distinguish this

case from *Diehl v. Mason County*, #95-2-0073, relied upon by petitioners. While petitioners claimed that the ordinance was nothing more than a "bolt it down" ordinance, they have failed to sustain their burden of proof from evidence in this record that Clark County does not comply with the Act.

We disagree with petitioners' reading of CCC 18.327.070 (b)(1) that the planning director has the authority to "deregulate" the ordinance. The ordinance is also consistent with CP policy 2.4.10 (d).

Geologically Hazardous Areas

WAC 365-190-080 (4) provides recommendations for geologically hazardous areas. Erosion hazard areas and landslide hazard areas reference the USDA Soil Conservation Service maps, Department of Ecology coastal zone atlas, United States Geological Survey and Department of Natural Resources (DNR) maps, independent standards including a combination of slopes greater than 15% and hillsides intersecting contact with permeable sediment overlying impermeable sediment and spring or groundwater seepage. Additional standards are also included to identify potential landslide hazard areas. Clark County has taken only one of the examples (slopes over 40%) and has incorporated only the DNR maps entitled "Slope Stability of Clark County". No other geological hazard designations were made. No designations for seismic hazards were made in spite of the determination in the FSEIS that such areas exist in Clark County. Clark County did not classify those areas into known or suspected risk areas, no risk areas, and/or risk unknown areas as recommended by subsection .080(4)(b).

The FSEIS pointed out that similar prior ordinances relied upon by Clark County did not comply with the WAC 365-190-080 guidelines. The FSEIS also noted the presence of a number of geologically unstable areas that had not been considered by Clark County. The record does not contain any rationale or scientific evidence for the County's failure to designate these areas. The County's failure to designate geologically hazardous areas other than those involving 40% plus slopes and/or DNR maps does not comply with the Act.

The only protections incorporated by Clark County involved a SEPA checklist reference to allow measures for additional engineering studies and/or modification or prohibition of proposed uses.

Vegetation removal in areas involving 40% plus slopes was limited.

The County has failed to protect these areas by its lack of DRs that establish standards for geologically hazardous areas. A SEPA policy which provides protection only on an *ad hoc* basis and without defining standards that protect those critical areas does not comply with the Act. The action and lack of action by Clark County also is inconsistent with CP 2.4.10 (a).

Fish and Wildlife Habitat

In the designation of fish and wildlife habitat (FWH) the County focused on the "priority habitat and species" (PHS) areas defined and mapped by the Washington Department Fish and Wildlife (DFW). Although petitioners contended that use of only the current maps was insufficient, reference to CCC 13.50.065(3) refutes that claim. That subsection provides that if the definitions under the ordinance are inconsistent with mapping, the definitions shall prevail and the County "shall follow" DFW's recommendations of site-specific conditions relating to PHS.

While reliance upon DFW priority habitat and species designations is one of the strong points of the ordinance, the failure of the County to also include species of local importance results in non-compliance with the Act. WAC 365-190-080(5)(a)(ii) and (c) (ii) discusses the advisability and necessity for designating fish and wildlife habitat conservation areas of local importance. In this record scientific evidence, as opposed to general opinion evidence, was submitted in support of designations of FWHs of local importance. The County submitted that evidence to DFW only for the purpose of determining whether the designations fell within the definitions and criteria of "priority" areas. The fact that the local areas did not qualify under PHS definitions and criteria does not absolve the County of providing for their designations, particularly because of the BAS in this record. There was no scientific evidence in the record to refute the need for designation of these areas. There was no reasoned analysis for their omission. Clark County has not complied with the Act because of the failure to include FWHs of local importance designations.

While Clark County did establish a 1,000 ft. radius around "Fish and Wildlife Habitat Area Point Sitings", it did not provide a designation area around the PHS areas generally. A March 15, 1996, letter from DFW (Ex. 177) provided strong scientific evidence that activities adjacent to critical areas have negative impacts and that a broader "review trigger" in the applicability section

of the ordinance was necessary. WFD recommended a 300 ft. range. Whether that is the appropriate range is up to Clark County to determine on remand within the parameters of RCW 36.70A.172.

The double negative exemption provisions of subsection (2)(b) of the ordinance allows the exemption of "conversion of forest land to pasture" if covered by farm management or animal waste management plan. The scientific evidence in this record showed that such farm and waste management plans have not typically included provisions for protection of habitat and that the exemption should not apply when PHS areas were involved (Ex. 177). No scientific evidence was found and no reasoned analysis for exempting these areas from designation was contained in the record. Clark County is not in compliance with the Act as it relates to the exemption for conversion of forest to pasture in PHS areas.

The record contains scientific evidence that the exemptions from the exemptions found in subsection (2)(a)(c) and (d) for routine and nuisance vegetation clearing and diseased trees clearing unless located in the *Riparian* PHS areas were too limited. The non-exempt provisions of this section should not have been limited to only riparian areas but should have included all priority habitats.

In the sections of the ordinances dealing with buffers, the County was presented with two separate recommendations for appropriate buffering of Type 1 through Type 5 watercourses. DFW's 1993 document concerning recommendations for "riparian habitat" provided recommendations for Type 1 water courses of 325 ft., Type 2, 3 and 4 of 100 ft. and Type 5 of 50 Ft. The current recommended widths (1995) were presented to the County indicating that Type 1 and 2 streams should have 250 ft. buffers, Type 3, 150 to 200 ft., and Type 4 and 5, 150 to 225 ft. Ranges were provided because of the variations in stream widths, slope stability etc. The scientific evidence in the record was best summarized by Ex. 177 as follows:

"Overwhelming evidence exists to support the use of riparian buffers of adequate size to maintain healthy, production fish and wildlife habitat. Although riparian areas comprise only a small portion of the surface landscape, approximately 90 percent of Washington's land-based vertebrate species prefer, or are dependent on, riparian habitat for essential life activities...."

The County significantly decreased the riparian habitat buffer recommendations and provided for no buffering on rural Type 5 watercourses. No scientific evidence nor reasoned analysis was found in this record for such a deviation from BAS. The inadequate buffering of riparian habitat does not comply with the Act. Additionally, the ordinance further fails to protect FWH because of the failure to adopt a standard for how the riparian habitat areas would be measured. On remand Clark County must address and decide what available science is best suited to protect FWH and adopt buffers accordingly.

ORDER

Clark County and Vancouver are each in compliance with the Act relating to archeological identification and preservation. Clark County is also in compliance with the Act with regard to the frequently flooded critical area designations and protections.

Camas is in compliance with the Act with regard to preservation of archeological resources. Camas is not in compliance with the Act with regard to identification of archeological resources. In order to comply with the Act, Camas must adopt an identification process for known and potential archeological sites. Camas must take action to come into compliance within 120 days of the date of this Order.

Clark County is not in compliance with the Act with regard to designation and protection of critical aquifer recharge areas. The existing protections are not consistent with Clark County's CP and or CFP. In order to comply with the Act, Clark County must adequately identify critical aquifer recharge areas and adopt development regulations that protect those identified areas.

Clark County is not in compliance with the Act with regard to geological hazard area designations and has not adopted development regulations to protect those areas. In order to comply with the Act, Clark County must designate geological hazardous areas and adopt appropriate development regulations for their protection.

Clark County is not in compliance with the Act because of its failure to designate fish and wildlife habitat conservation areas of local importance, its failure to establish a "review trigger" area surrounding priority habitat and species areas, its failure to apply development regulations to

all priority habitat and species areas involved in conversion of forest lands to pasture lands, the exemption of subsection 2(a)(c) and (d) application to all priority habitat and species areas and its failure to provide adequate buffers for Type 1 through 5 waterways including Type 5 waterways in rural areas and its failure to provide a specific measuring standard for establishment of those buffer areas. In order to comply with the Act the County must make the appropriate FWH designations and adopt DRs that protect FWH.

Clark County must complete the necessary actions to come into compliance within 150 days of the date of this Order.

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

SO ORDERED this 6th day of December, 1996.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

William H. Nielsen
Board Member

Les Eldridge
Board Member

Nan A. Henriksen
Board Member