

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

FRIENDS OF SKAGIT COUNTY, et al.,)	
)	No. 96-2-0025
Petitioners,)	
)	ORDER ON
v.)	RECONSIDERATION
)	
SKAGIT COUNTY,)	
)	
Respondent,)	
)	
and)	
)	
SKAGIT COUNTY DIKING DISTRICTS, et al.,)	
)	
Intervenors.)	
_____)	

PROCEDURAL BACKGROUND

We issued a compliance hearing order in this case on September 16, 1998. On September 28, 1998, we received motions for reconsideration from Friends of Skagit County (FOSC) and Skagit County (County). On October 1, 1998, we sent a letter to the parties acknowledging the receipt of the motions. We also stated that due to our October schedule we would not be able to issue a written decision within the 20-day time frame provided in WAC 242-02, but would issue the order the first week of November 1998. On October 12, 1998, we received a letter from the County regarding two typos in the decision. On October 23, 1998, we received a letter from FOSC pointing out another typo.

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DISCUSSION

1. County's Motion for Reconsideration

The County requested the following changes:

- (a) With respect to Item (1) on page 39, the Order be modified to give the County 120 days to accomplish this task. The County explained that in light of public participation requirements, and the statutory requirement to afford 60 days notice to the Department of Community, Trade, and Economic Development of amendments to development regulations, the County could not accomplish this task by December 1, 1998, and comply with other procedures required by law.
- (b) With respect to Item (2) on page 39, the order be modified to give the County 360 days to comply. The County explained that the State of Washington is currently in the process of developing an Agricultural Strategy through the Governor's Salmon Office. This "strategy" is not expected to be ready within 180 days of the Compliance Order. The County intends to adopt regulations that are consistent with the State process. Without being able to coordinate with the State process, the County could end up with inconsistent or conflicting regulations. The County considers the ongoing State process to be Best Available Science and wishes to consider and perhaps use that final product.
- (c) With respect to Item (4) on page 39, the order be modified to give the County 120 days to comply. The County listed the same reasons as in (a).

The above motions are granted.

The County also requested that we find compliance on Item (5) on page 40 of the Order. The County supplied Exhibit 1424A to show that the County has provided permanent protection for designated species/habitats of local importance through SCC 14.06.510 through .530.

After consideration of Exhibit 1424A, we hold that the County's request is supported by the record.

The County's motion is granted.

2. FOSC's Motion for Reconsideration

FOSC asked us to reverse our decision as to Issue 4 on pages 31-32 of the final decision and order

(FDO). Issue 4 in the January 3, 1997, FDO required:

“Include a clear statement that no alterations that adversely affect CAs or their standard buffers’ functions and values can occur without County approval whether or not a development permit is required.”

FOSC argued that the critical areas ordinance does not provide “clear regulations” for a person who seeks “county approval” to make “alterations that adversely affect CAs or their standard buffers’ functions and values” when a development permit is not required.

Although the changes recommended by FOSC would make this a much stronger ordinance, they go beyond the scope of the above requirement of the FDO. We considered these same arguments of FOSC before issuing our Compliance Order.

FOSC’s motion is denied.

ORDER

We make the following modifications to pages 39-40 of the Compliance Hearing Order dated September 16, 1998:

The Planning Commission put an incredible amount of work into Ordinance ~~16857~~16851. We have found compliance in the great majority of the remanded issues. However, in order to achieve total compliance, the County must:

(1) By ~~December 1, 1998~~ January 15, 1999, amend the definition of agricultural land and ongoing agriculture to make it perfectly clear that the agricultural exemption only applies to ongoing activities on designated agricultural lands. If the County does not take such action by that date, an order of invalidity on the agricultural land exemption will be issued without further hearings.

(2) Within ~~180~~ 360 days, adopt required benchmarks, timelines and monitoring to ensure that the County’s voluntary BMPs are actually protecting CAs. Also adopt a regulatory approach that will be implemented if the voluntary approach does not achieve required results. The County must use ~~BAs~~ BAS in formulating these added safeguards.

(3) Within 360 days, implement .096 adopting a strategic plan consistent with the State Wild Salmonid Policy including any necessary additional controls on ongoing agriculture. This strategic plan must use BAS to protect anadromous fish.

(4) Within ~~60~~ 120 days, clarify exemption [9] ongoing operation of Diking and Drainage systems so it is clear to whom, what, and where the exemption applies.

~~(5) Within 180 days, adopt permanent protection for designated species/habitats of local importance including use of BAS.~~

We also correct the following typos in the September 16, 1998, Compliance Hearing Order:

Page 2, line 24: Ordinance ~~16857-16851~~.

Page 28, line 9: ~~riverward to~~ between the river and.

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

So ORDERED this 30TH day of October, 1998.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Nan A. Henriksen
Board Member

Les Eldridge
Board Member

William H. Nielsen
Board Member