

State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

Ridge,)	
)	
Petitioner)	Case NO. 94-1-0017
)	
vs.)	ORDER OF NON-COMPLIANCE
)	
KITTITAS COUNTY)	
)	
Respondent)	
)	
PLUM CREEK TIMBER COMPANY)	
And S. F. HILL LUMBER COMPANY,)	
)	
Intervenor,)	
_____)	

Compliance Hearing Finding:

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Although the Board has no desire to nit-pick, the interim conservation of resource lands prior to final resource land designation at adoption of the comprehensive plan is an important policy concern to be upheld. Upon review the Board finds the County has not met the Growth Management Act's minimum designation requirements for the majority of disputed lands. For this reason, the Board enters a finding that the County is not in compliance.

The Board finds the County misapplied the relevant designation test. The County should be given another opportunity to comply. If after a reasonable time, the County has not come into

compliance, sanctions are warranted.

Procedural History.

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On July 28, 1994, the Board issued a Final Decision and Order on Ridge v. Kittitas County, EWGMHB No. 94-1-0017.

On November 2, 1994, the Board of Kittitas County Commissioners adopted Resolution 94-134, Regarding the Kittitas County Comprehensive Plan and Zoning Code—Forest Lands of long-term Commercial Significance.

On February 15, 1995, Ridge filed a motion for Compliance Hearing.

On February 27, 1995, the Board held a compliance hearing in the Board's office. Present were the three Board members; Graham Tollefson, Presiding Officer, Judy Wall and Tom Williams; the Board's Administrative Assistant Barbara Hill; as well as David Bricklin, attorney for Ridge; Grey Zempel, Prosecuting Attorney, and Philip A. Lamb, Special Deputy Prosecutor, for Kittitas County; and John Hempelmann and Janet Garrow, attorneys for Plumb Creek Timber Company.

Discussion and Analysis.

The primary issue is whether the interim "forest resource land" designation must attach to the disputed lands. The Board will review the Growth Management Act (the Act) in light of the record for the properties in question.

At the outset, the Board finds that the disputed lands have the growing capacity, productivity, and soil composition to qualify as forest resource lands. These lands historically were, and continue to be, for the most part, productive forest lands.^[1] None of these parties dispute this. The relevant question is whether the Act exempts some or all of these lands from the “forest resource lands” classification. If not, these lands must be designated.

Requirements of the Act.

The Act requires local governments to designate where appropriate “forest lands that are not already characterized by urban growth and that have long-term significance for the commercial production of timber” RCW 36.70A.170(b). The requirement to designate forest resource lands can be divided into three component test: (1) the lands must be “forest lands”, (2) the lands “are not already characterized by urban growth”, and (3) the lands “have long-term significance for the commercial production of timber”. Lands encompassed within the “forest resource lands” definition are to be designated. Lands

falling outside this definition are not designated. Each definition component is addressed as a sub-section. An additional sub-section concerns Issue No. 1, “If forest land meets the criteria for interim designation under RCW 36.70A.170, is Kittitas County required to designate all such land or does the County have discretion to make a smaller designation?”

Within each sub-section, the Board will apply the definition requirements to the disputed lands. For this discussion, the Board divides these lands into four groupings as follows: (1) the Cle Elum River Property^[2] (the River Property); (2) the Ridge Properties^[3]; (3) the Ridge lands adjacent to Cle Clum and Roslyn^[4]; and (4) the lands west of the River Property.^[5]

Forest Land.

The “forest land” definition used in the Final Decision and Order in this case was amended in 1994 by the Legislature. The current definition provides:

“Forest Land” means land primarily ~~(useful for)~~ devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production,...~~(for commercial purposes)~~, and that has long-term commercial significance ~~(for growing trees commercially)~~. In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factor shall be considered: (a) The proximity of the land to urban, suburban, and rural settlement; (b)

surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses; (c) long-term local economic conditions that affect the ability to manage for timber production; and (d) the availability of public facilities and services conducive to conversion of forest land to other uses. RCW 36.70A.030(9).

Emphases denotes additional language. Language with strikethrough was deleted.

The Legislature expressly stated the amendment was “to clarify legislative intent regarding the designation of forest lands” and was not a modification of existing law. Laws of 1994,

Chapter 307, Section 1.

The amendment does two things. First, it clarifies the meaning of the definition. If land cannot be economically or practically managed for commercial forest production, it may be excluded from the “forest resource land” classification. Secondly, the amendment added four factors to be considered in making this determination.

These four factors were and continue to be factors for consideration provided in the

minimum guidelines for forest resource land designation. WAC 365-190-060^[6].

Qualifying land not influenced by the four factors should be designated. But, since forest resource lands may in some situations exist inside urban growth areas, the Board held, “It is the level of impact placed on the property, rather than its location that is determinative.” EQGMHB No. 94-10017 at 543. The test is whether the influence of these factors or possible others preclude the land from being economically and practically managed for timber production.

[7]

Interpreting the Act to allow the four factors alone to exempt qualifying land from designation fails to make sense. First, the Act specifically allows forest resource land designations inside urban growth areas. Under this interpretation, this type of designation would never happen. Second, a primary aim of RCW 36.70A.020(8) would be severely hindered. This interpretation would encourage low density sprawl—conversion that the Act was adopted to avoid. If the Legislature had intended this result, it would have done more than “clarify the forest land definition.

The record fails to show that these lands should not be designated. The record supports additional costs on the River Property, the expense for patrolling and cleaning the property^[8], additional logging and slash treatment costs, and some extra management costs. But other costs are not explained, for instance, the additional liability costs or loss of revenue from reduced harvest. There is nothing to indicate that the liability cost is unique to this land. Similarly, while harvest revenues were lower because “of unique harvest constraints” more timber was left in the forest, these trees still exist, are an asset, and presumably are growing. Also, the protections afforded designated forest lands may lessen the “harvest constraints”.

Kittitas County has adopted 80 acres as the minimum lot size for commercial forest lands. The River property is over 85 times this size, is relatively flat, and has harvest roads in place. The record fails to substantiate that additional costs weighed against economies of scale and other benefits except these lands from designation. Maybe this case can be made ^[9], but the record does not show it. Gross assertions of cost, not tied to the size of the property in question, make determination of whether a property can be economically and practically managed for timber production, difficult, if not, impossible. The record also fails to show that other disputed lands are uneconomic or impractical for commercial forest production and, thus, should be excluded from designation.

Characterized by Urban Growth.

The Board, in its Final Decision and Order, found that the disputed lands were not “characterized by urban growth”. The record and the “guides” for the vast majority of these lands do not make this showing. There is an except in the relatively small area adjacent to Roslyn and Cle Elum. This is true for both the Ridge property adjacent to the towns and the very eastern edge of the River property where it abuts the City of Roslyn. The Boards finds this is a limited exception.

Lands Having Long-term Significance For the Commercial Production of Timber.

The third component test of forest resource land, the definition of long-term commercial significance, itself contains three elements: (1) the growing capacity and productivity of the land, (2) the land's proximity to population areas, and (3) the possibility of more intense uses of the land.

These are not independent factors. The definition requires their evaluation in relation to each other. [\[10\]](#)

The Board considered the first two components earlier in this opinion. First, it found that the disputed lands were highly productive forest lands, possessing substantial growing capacity. Second, the relevant factor is not physical proximity, but rather the effect of population areas on the land. [\[11\]](#) This is the same test found in the "forest land" definition, does the influence of population areas make the land unsuitable because it is no longer economic or practical for commercial forest production. The record fails to make this showing.

Guide 3 considering analysis area 3, the large majority of which is comprised of the River Property, found that "no alternative uses were reviewed" and "There was a lack of information on which alternative land uses could be judged..." Guide 3 at 8, Findings E and

F. Guide 1 considering analysis area 1, the majority of which is comprised of the Ridge Property, found “There are no public services into Area # 1” and “There is a lack of information to determine suitability for other lands uses for Area #1”. Guide 1 at 4, Findings A and C. Guide 2, considering the area near Roslyn and Cle Elum, found the area contains recreational uses and “The closer the area is to urban, suburban and rural areas, the closer you are to urban services and facilities and the more suitable alternative uses become.” Guide 2 at 7, Findings C and D.

With the exception of the are immediately adjacent to Roslyn and Cle Elum, there is no showing of the possibility of alternative uses. Indeed Guide 3, specifically finds that a Master Planned Resort, a subject of concern at the hearing on the merits, was not considered in the context of this test. Guide 3 at 8, Finding E.

The record shows these lands fall inside the definition of “long-term commercial significance”, since the possibility of alternative uses was not established. The Board need not address the weighting or evaluation of these factors together.

Review of the Property Groups

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The Board divided the properties into four groups as defined above. Having reviewed the record the Board make the following findings, (1) the River property meets the definition

for forest resource land and should have been so designated, (2) the Ridge property meets the definition for forest resource land and should have been so designated, (3) the Ridge property adjacent to Roslyn and Cle Elum contains lands that may or may not be designated, and (4) the lands to the west of the River property contain lands that may or