

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

JOHN E. DIEHL, KERRY HOLM, GORDON)	
JACOBSON, and VERN RUTTER, individually,)	No. 95-2-0073 (HCAs)
and as members of the MASON COUNTY)	
COMMUNITY DEVELOPMENT COUNCIL)	ORDER ON
(MCCDC),)	MOTION FOR
)	RECONSIDERATION
Petitioners,)	
)	(Compliance Hearing #13)
v.)	
)	
MASON COUNTY,)	
)	
Respondent,)	
)	
and)	
)	
PETER OVERTON, DONALD B. PAYNE,)	
McDONALD LAND COMPANY, HUNTER)	
CHRISTMAS TREES, HUNTER FARMS,)	
SKOOKUM LUMBER COMPANY, MANKE)	
LUMBER COMPANY and MASON COUNTY)	
PRIVATE PROPERTY ALLIANCE (MCPPA),)	
)	
Intervenors.)	
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On December 11, 2000, we received a motion to reconsider from Petitioner John Diehl regarding our invalidity order of December 1, 2000, on fish and wildlife habitat conservation areas (HCAs). We required the parties to this portion of the case (Petitioners MCCDC and Mason County) to supply an answer by January 12, 2001. We received a response from MCCDC on January 11, 2001.

We have received to date no response from the County.
Petitioner Diehl moved that we reconsider what he characterized as our failure to recognize that

limiting habitat protection to those locations either specifically prescribed in the ordinance, or identified as having a priority species present, failed to protect other sites offering suitable feeding and breeding habitat. He maintained this was true in particular for great blue herons. Department of Fish and Wildlife (WDFW) Priority Habitat and Species maps, contended Diehl and MCCDC, cannot be the exclusive means of making determinations where the record demonstrates they are likely to be updated or inaccurate. They suggested an ordinance that provides for consultation with experts to ensure that habitat protection is not limited improperly to previously delineated HCAs.

Petitioner Diehl also moved for reconsideration of our removal of invalidity regarding Sections B (HCA categories); Section C (HCA Designation); old Section H (formerly Section I) (Habitat and Species of Local Importance, listing and delisting important habitats and species); Section I (Application Review Process); and Section K.3. Mr. Diehl does not dispute removal of determination of invalidity for old Section K.3 (now J.3) (Review by a WDFW Habitat Biologist).

MCCDC asked that we reconsider our invalidity order regarding 1) mitigation and protection; 2) economic development as a factor in considering delisting of species of local importance; and 3) wetland HCA protection.

WDFW did not comment adversely regarding priority species' and local importance species' habitats, designation, riparian HCA functions, opportunity to comment on the need for HMP review, mitigation definition, PHS maps, consultation, delisting habitat of local importance by, in part, considering economic development, and wetland HCA protection. Absent adverse comments on these aspects of our invalidity order from an agency with expertise, we decline to reinstate invalidity and deny the motion for reconsideration of our removal of invalidity. We address noncompliant aspects of these questions in our order regarding previous findings of noncompliance entered today.

Petitioner Diehl took issue with our statement that we found comments of Petitioners, Participants, and the WDF to be persuasive, when, he maintained, that statement contradicted our recision of invalidity.

The following are comments we found persuasive in our decision to rescind invalidity:

Participant Skokomish Indian Tribe did not brief or participate in this compliance hearing because it declared that “Mason County has substantively addressed most of the major concerns raised by the Tribe in these proceedings.” Only marine shorelines and lakes protection remain concerns of the Tribe.

Petitioner Diehl said that Mason County appeared to have made significant progress toward compliance on HCAs, and had expanded its list of designated species and enlarging riparian buffers. He criticized what he characterized as the County’s extensive number of loopholes which, he said, removed the reasonable certainty of protection.

Amicus Curiae WDFW noted with favor that the County has:

- extended the comment period on HMPs;
- revised designation of HCAs to include areas associated with or inhabited by threatened, endangered, and sensitive species in Mason County, as well as State Candidate and Monitor species;
- combined aquatic and terrestrial management areas;
- clarified the role of the Priority Habitat and Species Program Database;
- used channel migration zones in determining riparian buffers; and,
- made significant improvements on riparian buffer requirements by bringing them within the ranges of distances reported in the scientific literature.

These are the arguments of Petitioners, Participant, and *Amicus* WDFW that we found to be persuasive. Petitioner Diehl’s criticisms fail to rise to the level of substantial interference. Nothing in the motion to reconsider has altered our view of the persuasiveness of Petitioners, Participants, and WDFW regarding these arguments as they pertain to findings of invalidity.

The motion to reconsider is denied. This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

So ORDERED this 14th day of March, 2001.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Board Member

William H. Nielsen
Board Member