

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

JOHN E. DIEHL, KERRY HOLM, GORDON)	
JACOBSON, and VERN RUTTER, individually,)	
and as members of the MASON COUNTY)	No. 95-2-0073
COMMUNITY DEVELOPMENT COUNCIL,)	
a non-profit association,)	ORDER RE:
)	MOTIONS TO
Petitioners,)	RECONSIDER
)	
vs.)	
)	
MASON COUNTY,)	
)	
Respondent,)	
)	
and)	
)	
PETER OVERTON, DONALD B. PAYNE,)	
McDONALD LAND COMPANY, ET.AL, SKOOKUM)	
LUMBER COMPANY, MANKE LUMBER)	
COMPANY and MASON COUNTY PRIVATE)	
PROPERTY ALLIANCE (MCPPA),)	
)	
Intervenors.)	
_____)	

On January 18, 1996, we received two Motions for Reconsideration, from Petitioner and from Mason County, of our Final Order dated January 8, 1996, regarding Mason County's Interim Resource Ordinance (IRO). We heard argument on these motions on February 7, 1996, in conjunction with a hearing on compliance regarding the IUGA Ordinance in this case. Also presenting materials and argument on the motions were Intervenors Manke Lumber Company and Overton and Associates. All three members of the Board were present, as well as Mr. Eric Valley, representing the County, and Mr. John Diehl, representing Petitioners. Mr. Peter Overton represented Overton and Associates, and Mr. William T. Lynn represented Manke Lumber Company.

Petitioners' Motion to Reconsider Administrative Discretion

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Petitioners contended that the January 8, 1996 Order had not specifically addressed some issues concerning the discretion of the County Director of Community Development and the failure to provide clear and specific guidelines by which the Director might exercise that discretion. Petitioners also asked us to review the aquatic management area section of the Mason County Code (17.01.110), which they contended failed to provide clear and detailed criteria to curb “unbridled administrative discretion.” Petitioners expressed concern over what they characterized as a similar lack of criteria and clarity in application of administrative discretion as it applied to resource redesignation and lot sizes in landslide prone areas. They further wished us to reconsider the question of seismic hazard area development standards being set by reference to certain existing regulations. Petitioners were concerned that the Board’s silence on these issues might be interpreted as approval of the corresponding elements in the Ordinance.

The County characterized Petitioners’ concerns as lacking specificity over what guidelines were absent. It asserted that the Ordinance contained many specific criteria, and called for reports and analyses on the part of the administrators with discretion, and that therefore the discretion was objective rather than subjective.

Conclusion - Administrative Discretion

In the Final Order, we noted that the IRO contained no specific floodplain development regulations, and that these regulations were “necessary to comply with the requirements of the Act.” Specificity may, at the discretion of the local government, occur in guidelines for administrators with discretion or in specific requirements within the Ordinance itself. Our Order, therefore, sufficiently addressed the question of administrative discretion.

Further, with regard to redesignation of forest lands and the vagueness of the elements in Section .130, we pointed out that Petitioners’ concerns over the redesignation criteria were well founded and that the opportunity to redesignate was much too readily available. The Order reflects the need for specific criteria and compliance with the Act. Petitioners’ Motion to Reconsider is denied.

County Motion to Reconsider

Mason County

The County contended that Petitioners had failed to establish the existence of any agricultural lands of long-term commercial significance. Therefore, they maintained, the Board must defer to the County absent a showing by a preponderance of evidence that such lands were excluded. With regard to forest lands, the County asserted that Hartstene Island had the only specific parcels mentioned by Petitioners as ones that should have been designated.. The County pointed out that Petitioners did not dispute the procedure regarding public participation or the internal consistency of the IRO.

Overton and Associates

Peter Overton asserted that the Petitioners presented no evidence of forest land that was inappropriately excluded and that the Board had ruled improperly. He pointed to the fact that two-thirds of the County was designated as forest land and concluded that the County was therefore in compliance with the Act.

Manke Lumber

Manke Lumber contended that the Order placed the burden of proof on the wrong party, and that there was no evidence of land actually excluded under any exclusionary criteria. Manke Lumber alleged that criteria were not developed to fit the IRO map but only developed subsequent to the development of the map. Mr. Lynn asserted that the development of the map was an iterative process, “back and forth,” and that the criteria and the map were being developed at the same time.

Conclusion - IRO

The Petitioners showed by a preponderance of evidence that exclusionary criteria existed which allowed land, required by the Act to be designated, to fail to be designated. These agriculture and forestry designation criteria do not comply with the Act. The fact that the process by which these conclusions was reached complied with the Act is only the first determination. There is a substantive threshold of compliance that must be met. Petitioners demonstrated by a

preponderance of evidence that such compliance was not achieved in this case.

Once a preponderance of evidence overcomes the presumption of validity, *Berschauer v. City of Tumwater*, #94-2-0002, the burden of coming forward shifts from the Petitioner to the Respondent. Mason County was not able to show from the record that valid reasons for the deviation existed. As we said in *Whatcom Environmental Council v. Whatcom County*, #94-2-0009, “Regardless of who has the burden of proof and no matter how presumptively valid an action is, if the record does not contain evidence to refute claims which have validity, the preponderance will be met.”

The evidence showed that, because of exclusionary criteria, land which required designation under the Act had not been designated. The best example of this was that in all of Mason County no agricultural land had been designated. Yet it was clear from the record that agricultural lands of long-term commercial significance existed. The County’s Motion to Reconsider is denied.

SO ORDERED this 22nd day of February, 1996.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Presiding Officer

Nan A. Henriksen
Board Member

W^m H. Nielsen
Board Member