

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

JOHN E. DIEHL, KERRY HOLM, GORDON)	
JACOBSON, and VERN RUTTER, individually,)	No. 95-2-0073
and as members of the MASON COUNTY)	
COMMUNITY DEVELOPMENT COUNCIL)	ORDER REGARDING
(MCCDC),)	FOREST LANDS
)	COMPLIANCE
Petitioners,)	(MANKE REMAND)
)	
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 January 8, 1996, we entered a final decision and order (FDO) in the above-captioned case which in part addressed the question of whether Mason County failed to properly classify, designate, and protect forest lands. We held that some forest lands of long-term commercial significance were unjustifiably excluded. We held that use of the property tax classification was an exclusionary criterion, that the County first established a desired outcome and then developed data or criteria to support that outcome, that blocks of parcels smaller than 5,000 acres were commercially significant forest land in productivity and so the threshold of 5,000 acres of contiguous parcels or blocks did not comply with the Growth Management Act (GMA, Act). Our conclusion regarding block size included our finding that blocks of parcels smaller than 5,000

acres might well be commercially significant forest land in productivity and might need the same kinds of protection afforded the larger blocks of parcels. We therefore held that Mason County's designation of long-term commercially significant forest land failed to comply with the Act.

On July 31, 1998, Division II of the Court of Appeals of the State of Washington decided Cause #21438-5-II, *Manke Lumber Company, Inc., v. Diehl, et al.* That opinion vacated a portion of our January 8, 1996 FDO. *Manke Lumber Company v. Diehl*, 91 Wn.App 793 (1998) (*Manke*)

Manke set forth the criteria for designating long-term commercial forest land under RCW 36.70A.170:

“The GMA sets forth objectives and minimum guidelines that local governments must follow when classifying land. “Forest Land” is defined as “land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production...and that has long-term commercial significance.” RCW 36.70A.030(8). “Long-term commercial significance” includes “the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land’s proximity to population areas, and the possibility of more intense uses of the land.” RCW 36.70A.030(10).

In determining whether forest land is “primarily devoted to growing trees for long-term commercial timber production,” local governments “shall” consider:

- (a) The proximity of the land to urban, suburban, and rural settlements;
- (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(8).

Guidelines for further classification of forest lands are codified at WAC 365-195-060. The GMA provides that these “*minimum* guidelines” apply to all jurisdictions, but also “shall allow for regional differences that exist in Washington state. The intent of these guidelines is to assist counties and cities in designating the classification of ... forest lands...” RCW 36.70A.050 (emphasis added).

The WAC guidelines for designating forest lands provide:

In classifying forest land, counties and cities should use the private forest land grades of the department of revenue (WAC 458-40-530). This system incorporates consideration of growing capacity, productivity and soil composition of the land. Forest land of long-term commercial significance will generally have a predominance of the higher private forest land grades. However, the presence of lower private forest land grades within the areas of predominantly higher grades need not preclude designation as forest land.

Each county and city shall determine which land grade constitutes forest land of long-term commercial significance, based on local and regional physical, biological, economic, and land use considerations.

Counties and cities shall also consider the effects of proximity to population areas and the possibility of more intense uses of the land as indicated by:

- (1) The availability of public services and facilities conducive to the conversion of forest land.
- (2) The proximity of forest land to urban and suburban areas and rural settlements.
- (3) *The size of parcels: Forest lands consist of predominantly large parcels.*
- (4) The compatibility and intensity of adjacent and nearby land use and settlement patterns with forest lands of long-term commercial significance.
- (5) *Property tax classification: Property is assessed as open space or forest land pursuant to chapter 84.33 or 84.34 RCW.*
- (6) Local economic conditions which affect the ability to manage timberlands for long-term commercial production.
- (7) History of land development permits issued nearby.

WAC 365-190-060 (emphasis added).”

Focusing on this language the Court continued at 806:

“The Board determined that certain criteria used to designate LTCFL under the County’s IRO did not comply with the GMA or the WAC minimum guidelines

because: (1) the County mapped land ownership before promulgating criteria for designating forest land of long-term commercial significance; (2) the County limited designation as LTCFL to parcels (*sic*)[blocks] over 5,000 acres; and (3) the County made tax classification a criteria (*sic*) for designating LTCFL. The Board concluded that application of these criteria resulted in improper exclusion of forest land from LTCFL designation. We apply the above WAC guidelines to Mason County's IRO and conclude that the record does not support the Board's finding of non-compliance."

The Court stated at 807:

"The Board misapplied the GMA when it determined that the County could not limit LTCFL designations to parcels (*sic*)[blocks] greater than 5,000 acres. Because circumstances vary from county to county, minimum guidelines provide simply that counties may consider the "size of the parcels." The guidelines also note the expectation that "[f]orest lands consist of predominantly large parcels." WAC 365-190-060(3).

The County did not violate these minimum guidelines when it specified a threshold size for determining what parcels were large enough to be considered LTCFL lands. We hold that the Board misinterpreted the GMA in concluding that Mason County could not establish a minimum parcel (*sic*)[block] size of 5,000 acres when designating forest land of long-term commercial significance."

We infer from the language at 806 and 807 that the Court extended the WAC guidelines regarding *parcel* size, WAC 365-190-060(3), to *blocks of parcels*.

The Court also held that we could not find that land had been unjustifiably excluded when petitioners had not identified specific parcels of land improperly excluded from designation.

Manke held that local governments have a great deal of discretion in choosing threshold criteria for forest land designation under RCW 36.70A.170.

Upon remand to us for further proceedings consistent with the Court's opinion, we declared we intended to proceed, and issued a call to any party wishing to submit additional briefing (April

23, 1999). In May we received briefs from Petitioner Diehl, Petitioner Mason County Community Development Council (MCCDC), and Petitioners Holm, Rutter, and Jacobson, and Manke Lumber Company. We also received a motion for supplemental evidence from Petitioner Diehl, a response to that motion from Manke Lumber Company, and a joinder from Intervenor Overton in opposition to that motion, as well as a response from MCCDC to Manke Lumber Company's response.

DISCUSSION

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Petitioner Diehl's distinction was that while Mason County's long-term commercially significant designation was not noncompliant as a matter of law, it could be examined for noncompliance as a matter of fact. He maintained we did not evaluate the factual record because we determined noncompliance as a matter of law. This, he pointed out, led to his motion to supplement the record. He noted out that Intervenor Overton and Simpson Timber Company argued for a 2,000 acre minimum block and he wondered how the Mason Board of County Commissioners arrived at the 5,000 acre figure.

MCCDC's contention was that our decision had been reversed regarding Ordinance #77-93. Later, Mason County adopted Ordinance #81-96 amending Ordinance #77-93. As we found Ordinance #81-96 in continuing noncompliance in September 1996, regarding long-term commercially significant forest land designation, MCCDC maintained that Ordinance #77-93 and findings regarding it were moot, while Ordinance #81-96 remained in noncompliance, our finding regarding #81-96 never having been challenged.

Manke Lumber Company contended that, in light of the Court's decision, the Board had no authority except to enter a finding that the County's IRO complied with the GMA in its designation of long-term commercially-significant forest land.

In June 1999, we entered a FDO in Case #98-2-0023c, *Island County Citizens' Growth Management Coalition (ICCGMC), et al. v. Island County*, in which we relied heavily on the Court of Appeal's reversal of our Mason County decision. In particular, in that decision we acknowledged the Court's strong emphasis on discretion in parcel (*read* "block") size found in WAC 365-190 and also its requirement that identification of specific parcels of land was central

to a showing of improper exclusion from designation.

CONCLUSION

Subsequent to the Court of Appeal's remand we have relied upon its decision in findings in a FDO in another case (ICCGMC) regarding forest lands designations. The Court's decision appears unequivocal. Accordingly, and consistent with the Court's opinion, we enter a finding that the County's IRO complied with the GMA in its designation of long-term commercially-significant forest lands.

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

Pursuant to WAC 242-02-832(1), a motion for reconsideration may be filed within ten days of issuance of this final decision.

So ORDERED this 18th day of February, 2000.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Board Member

Nan A. Henriksen
Board Member