

to be compliant for the Belfair UGA (FDO December 5, 1996, order #3), and questions concerning the capital facilities plan and urban densities must be answered. The open-space and recreation map, which was not submitted by the County until December 15, 1998, needs to be found in compliance (FDO December 5, 1996, order #8).

The Final Supplemental Environmental Impact Statement (FSEIS) must be brought into compliance.

Commercial/industrial activity in the rural area must be minimized and contained pursuant to RCW 36.70A.070(5)(d)(i). We have found Mason County Code (MCC) Section 1.03.020 invalid.

Logical outer boundaries delineated by the built environment for rural activity centers (RACs) must be established, and questions regarding maximum density and population allocation must be answered. Clustering in rural areas must preclude demand for urban services.

To deal with a question of sequence, the critical areas ordinance (CAO), Case #95-2-0073, must first be brought into compliance with regard to agriculture, critical aquifer recharge areas, frequently flooded areas, and aquatic management before the CP can be found compliant.

We allow the County 180 days from the date of this order to respond. If further time is needed we would consider a motion under RCW 36.70A.300(3)(b).

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Appended Findings of Fact and Conclusions of Law

Procedural History

Originally this case consolidated four petitions challenging the Mason County CP (Ordinance #49-96) and some implementing DRs adopted April 2, 1996. The final decision and order (FDO) remanding the CP and DRs was entered December 5, 1996. The order called upon the County to respond to the remand in the following areas in order to achieve to compliance:

1. Rural Center classifications were to be reassessed to preclude expansion of urban development in rural areas.
2. The population projection was to be no greater than the high range of the Office of Financial Management (OFM) projection.
3. The population was to be allocated to accommodate urban growth in properly

sized UGAs, thus promoting a variety of affordable housing.

4. Rural population centers were to accommodate only commercial enterprises which served neighborhood needs and only industrial enterprises which were resource-based.
5. Critical aquifer recharge areas in UGAs were to be adequately protected.
6. The County was to consider adoption of mechanisms to preclude new urban development in rural areas.
7. Maximum densities were not to be so high and minimum lot sizes so small as to promote urban density in rural areas.
8. Open space and recreation areas and transportation and utility corridors were to be identified and mapped.
9. The FSEIS was to provide an analysis of environmental impacts of the CP and DRs adopted in response to the remand.
10. The population allocated to the oversized rural centers was to be reallocated to the UGAs and the UGAs properly sized to accommodate it.
11. The bonus densities in the rural areas were to be limited.

We found that the following portions of the Mason County CP and DRs substantially interfered with the goals of the Act, pursuant to RCW 36.70A.330(2).

1. CP Section III-3-Rural Lands.
2. Ordinance #82-96: Development Regulations:
 - a) Section 1.03.032 - Minimum Lot Sizes.
 - b) Section 1.02-042 - General Rural Areas.
 - c) Section 1.02.044 - Rural Activity Centers.

d) Section 1.02.047 - Resource Conservation Master Plan.

e) Section 1.02.048 - Working Rural Areas.

3. Ordinance #82-96: Amendments to Title 16, Plats and Subdivisions. Section 16.22.039 (Mixed Uses) only as they applied to RACs and Rural Community Centers.

On January 31, 1997, the Mason County Superior Court entered an order staying administrative proceedings pending its judicial review of an appeal from Mason County. The Court upheld our decision in September, 1997. We then scheduled this compliance hearing for early 1998. We next granted a continuance to accommodate a new schedule provided by the County which declared that it would have a final decision on the CP amendments by June, 1998. The CP and DR amendments were adopted in August, 1998. Subsequent to the CP's adoption, we granted another extension request from the County to allow it more time to make additions to the record and to file County briefs.

The first compliance hearing in this case was finally held October 21, 1998. Present for the County was Mike Clift. Petitioners Mason County Community Development Council (MCCDC) were represented by Michael Gendler. Petitioner John Diehl (Diehl) was present, as was John McCullough representing Intervenor Overton (Overton). All three Board Members were present.

Post-Brief Exhibits

Exhibits #1280 and #1290 were submitted by the County at the hearing. We allowed petitioners 15 days for post-hearing briefs as they had not had the opportunity to review these exhibits. We admitted the following exhibits:

Orthophoto Maps:

- 1404 Union North Map
- 1405 Union South Map
- 1406 Taylor Town Map
- 1407 Hoodsport Map
- 1408 Allyn South Map

1409 Belfair South, Allyn North Maps

1415 Belfair Map

We then requested further exhibits which the County had failed to submit. These included a bound copy of the CP, which we received October 26, 1998, and assigned Ex. #1309. We received 15 maps on December 15, 1998, intended to be published in the CP but not available prior to that date. We have assigned these maps Ex. #1313. They include Future Land Use, Watershed Boundaries, Critical Areas-Land Slide Hazards, Critical Areas-Seismic Hazard Areas, Critical Areas-Generalized Wetlands Inventory, Critical Areas-Stream Types, Critical Areas-Acquifer Recharge Areas, Long-Term Commercial Forest and Inholding Lands, Long-Term Commercial Mineral Lands-1992, Existing Open Space, Future Land Use Open Space, Public and Historic Lands and Facilities, Utilities, Mason County Transportation Element Functional Classification, and Mason County Transportation Element Recommended Plan.

Further exhibits received from the County subsequent to the hearing included Mason County revisions to Ordinance #82-96, dated August 1998, to which we have assigned Ex. #1311, and MCC, Title 16, Plats and Subdivisions, revised August 18, 1998, received on October 26, 1998, and assigned Ex. #1312.

On October 26, 1998, we received a copy of Ex. #1283, the FEIS for amendments to the Mason County CP and DRs, dated June 1998.

The County has included many indexed items in this case as part of the index in *Diehl v. Mason County*, #95-2-0073 (Critical Areas Ordinance) with identical numbers. In instances where indexed items are peculiar to only one of the two cases, we have avoided duplication of the index numbers.

Presumption of Validity, Burden of Proof, and Standard of Review

Regarding challenges of petitioners to elements of the CP and DRs previously found noncompliant but not invalid, the CP and DR amendments are presumed valid upon adoption. RCW 36.70A.320(1). The burden is on petitioners to demonstrate that the action taken by Mason

County is not in compliance with the goals and requirements of the GMA. RCW 36.70A.320(2). Pursuant to RCW 36.70A.323 a Board “shall find compliance unless it determines that the action by (Mason County) is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of (the GMA).” For us to find the County’s action clearly erroneous, we must be “left with the firm and definite conviction that a mistake has been made.” *Department of Ecology v. PUD #1*, 121 Wn.2d 179 (1993).

For those elements of the CP and DRs previously found invalid we will modify or rescind the determination of invalidity only if the amended plan or regulation no longer substantially interferes with the fulfillment of the goals of RCW 30.70A.

For those elements of the CP and DRs previously subject to a determination of invalidity, the County has the burden of demonstrating that the ordinance or resolution it has enacted in response to the determination of invalidity will no longer substantially interfere with the fulfillment of the goals of the GMA. RCW 36.70A.320(4).

At the compliance hearing, the County declared that some CP and DR amendments were made in response to our 1996 findings of invalidity in this case. In regard to these, the County acknowledged that it bore the burden of showing that substantial interference had been removed in order that findings of invalidity could be lifted. The County confirmed that we, and not the County, had called for the compliance hearing.

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Elements of the FEIS, CP and DRs Found Noncompliant but not Invalid

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Shelton UGA

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On January 26, 1998, we received a copy of the stipulation and order of dismissal the City of Shelton filed with Mason County Superior Court on September 22, 1997. Under this agreement Shelton and Mason County resolved their differences subject to a potential further appeal to us. Petitioners presented no argument regarding the Shelton UGA. Therefore, we make no ruling as this time.

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Belfair UGA

MCCDC argued that the new Belfair UGA still failed to comply with goals and requirements of the Act. MCCDC asserted that Table III.3-19 of the CP indicated the Belfair UGA population should grow by 3,300 in 1998, but allowed 901 urban residential acres at 4 units to the acre and 2.3 persons per house. This, MCCDC noted, would accommodate 8,290 additional people.

The County responded that instead of using the figure of 2.3 people per household found in its consultant's report, it had used 1.44 people because that figure was the average per household in the watershed area which included Belfair. Using that figure, the County noted the population used up the available land.

MCCDC and Diehl replied that using the 1.44 persons per household figure was unrealistic as it reflected the entire watershed and was skewed by the large number of summer-only occupied homes and homes along the waterfront in the watershed. They observed that the Belfair UGA contained no waterfront and therefore the 2.3 figure was more realistic for the UGA.

Petitioners noted that there were no plans for public sewers in the UGA. At a density that would accommodate septic systems, they asserted that the Belfair UGA would be characterized by urban sprawl. MCCDC also complained that the Summary Land Capacity Analysis presented in Table III.3-19 of the CP was not made available to the public until the day the Board of County Commissioners (BOCC) adopted the amendments to the CP, long after the public hearing.

As a result of the County's submission of several inches of exhibits on the day of the hearing, we offered a post-hearing brief opportunity to Petitioners after they had the opportunity to review those exhibits. MCCDC responded on November 5, 1998. It pointed out that the BOCC had deleted the Davis farm from the proposed UGA pursuant to the request of Irene Davis. MCCDC asserted that this would answer a previous question from us regarding the reason for the irregular shape of the revised Belfair UGA boundary.

MCCDC contended that Block B-4, an undeveloped area in the Union River Valley, was not removed and should have been. It pointed out that the Union River Basin Protection Association

had written to the BOCC stating that “this area has steep hillsides, springs feeding tributaries to the river, a floodplain, wetlands, prime agricultural land, and residences that are primarily rural in nature.” MCCDC maintained that this letter confirmed that the Union River Valley portion included in the UGA was not now characterized by urban growth and had inherent limitations which make it unsuitable for urban growth designation. The County did not respond to the supplemental brief of MCCDC. We encourage the County to examine this question during its review.

Conclusion: Belfair

Overton argued that the CP created the potential for development of a small-scale village environment in Belfair, one that goes a long way to making urban development patterns attractive in largely rural Mason County. We agree. Given Mason County’s limited resources and predominantly rural configuration, the County must be given latitude to implement new UGAs in a way that reflects its unique character. Several questions must be answered, however, before compliance can be achieved:

1. Can individual private septic systems evolve into the public facility and service capacity as required for UGAs by RCW 36.70A?
2. What is the timetable for accomplishing this?
3. What is a reasonable and realistic person-per-dwelling unit (du) figure to begin with? How shall it increase as capacity for public sewer systems and other public services evolves?
4. Where is a clear delineation in the capital facilities plan of the UGA’s unique problems and solutions?

Nothing in the record indicates that a typical urban density of four du per acre can be achieved without a public sewage system. It is unclear whether the entire watershed’s persons-per-du figure used by the County (1.44) is a reasonable figure to use only in the portion of the watershed designated as UGA.

In remanding this portion to the County we require that it clarify the questions of urban sewage and persons-per-du in its response. Further, compliance cannot be achieved without DRs being in place for the Belfair UGA. Overton acknowledged that DRs to implement the UGA were at least

six months away. This portion of the CP, therefore, remains in noncompliance.

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Recreation and Open Space Map

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The FDO called upon the County to bring itself into compliance regarding identification and mapping of open space and recreation areas (page 16, No. 8). As we noted in the section under post-brief exhibits, the County did not provide its map until December 15, 1998, almost two months subsequent to the compliance hearing (Ex. #1310). The County remains in noncompliance regarding this aspect until all parties have had an opportunity to review the map and respond. This issue will be addressed in the next compliance hearing.

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Final Supplemental Environmental Impact Statement (FSEIS)

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Petitioners Diehl and MCCDC both argued that the FSEIS still failed to comply with the requirements of the State Environmental Policy Act (SEPA), RCW 43.21C, and its implementing rule WAC 197-11, because it failed to examine an adequate range of alternatives. Further, they asserted that the FSEIS failed to give appropriate consideration to unquantified environmental amenities, RCW 43.21c.030(2)(b), and that alternatives were not analyzed in sufficient detail to evaluate their comparable merits. WAC 197-11-442.

Petitioner Diehl cited the 25,242 pre-existing vacation rural parcels as an example of failure to analyze indirect and cumulative impacts of the CP. He stated that “despite this enormous overhanging inventory of land available for development which might accommodate future growth, the County proposed a plan that permits and encourages creation of many added thousands of parcels.” He contended that the impacts of proceeding to develop the overhanging inventory while simultaneously creating UGAs and one fully contained community amount to cumulative impacts which were not analyzed.

Petitioners pointed out that, with the exception of the 1998 May Alternative, all the alternatives set forth in the FSEIS were premised on a population projection which we had previously held noncompliant because it exceeded the OFM high range.

They alleged that no change to the FSEIS was made to correct this error. Therefore, all the

alternatives, save one, were premised on “unlawful” alternatives. MCCDC noted that the new CP did not prevent continued rural sprawl, continued to propose oversized areas for urban growth, and did not contain measures which would encourage and direct new growth to the proposed urban areas. There was no proposal for an aggregation ordinance which would mitigate the 25,000-plus existing parcels in the rural area. They contended that the FSEIS continued the flaw of its predecessor document by neglecting to analyze the adverse environmental consequences of the new plan and did not analyze infrastructure needs and costs.

Petitioners maintained that the FSEIS continued to be deficient for all the reasons presented two years ago. How, they ask, can GMA be implemented if the decision-maker has no information on any alternatives which achieve the Act’s purposes?

The County maintained that the FSEIS was adequate. The County called upon the petitioners to propose alternatives and describe them.

Conclusion – FSEIS

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We have a firm and definite conviction that the County has erred in not proposing and analyzing alternatives based on a compliant population projection. We remand the FSEIS to the County to be resubmitted with compliant elements of the CP and DRs and a set of alternatives in response to this remand.

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“Does the Land Speak First?” – A Sequential Consideration

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Petitioner Diehl argued that it would be premature to find UGAs or RACs in compliance until the County achieved compliance regarding critical areas and resource lands. He asserted that RCW 36.70A.040, .110, .210 called for a sequence of events to precede the adoption of a CP and cited the Central Board’s conclusion in *Twin Falls, Inc., v. Snohomish County*, #93-3-0003, that:

“In determining where growth is to occur, the first order of business is determining where growth should not occur and/or where growth would be subject to natural resource use considerations and critical areas constraints.”

He further pointed out that in our *City of Port Townsend v. Jefferson County*, #94-2-0006, case

we said:

“This board disapproved that County’s action in setting UGA boundaries during a time when the designations and development regulations for the resource land and critical areas was ongoing.”

He noted that we further concluded:

“The clear legislative direction is that these steps including designations and development regulations for critical areas and resource lands be completed sequentially. We agree that it would be very difficult to find compliance outside that sequence.”

The County argued that whether or not this Board found compliance with critical areas and resource lands it should find compliance with present County UGAs and RACs.

Conclusion: Sequence of CAO, CP, & DRs

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This question should be resolved in the sequence of remands from the two compliance hearings held October 21, 1998, on the CAO 95-2-0073 and this case. Agricultural lands are required to be in compliance by April 19, 1999, (120 days from December 18, 1998). Remaining critical areas issues; aquatic lands, frequently-flooded areas, and critical aquifer recharge areas, will be the subject of a compliance hearing to be held in late February or early March. Thus, those two compliance hearings will be held before the remand in this case. The County has 180 days from the date of this order to bring its CP and DRs into compliance.

Population Projection

The FDO called for the population projection to be no greater than the high range of the OFM projection.

Conclusion – Population

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The County is now in compliance with that requirement.

Request for Finding of Invalidity Regarding the Matrix of Permitted Uses Allowed in Rural Areas, Resource Centers, and RACs

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Petitioner Diehl asserted that the County's interpretation of our FDO regarding commercial enterprises in rural areas and urban development in rural areas was "pernicious" in that it allowed inappropriate conversion of undeveloped land to sprawling low-density development and allowed commercial development in rural areas which were neither small scale nor isolated. Diehl cited the matrix of commercial land uses allowed in resource areas, rural areas, RACs, and rural community centers (Section 1.03.020 of the DRs) as resulting in the "promiscuous seeding of commercial development throughout the rural areas of Mason County." He asserted that "commercial development much more than residential development foreshadows further development especially along arterial roads." He cited 1.03.020, pages 11-18, as allowing "a plethora of commercial development including bakeries, banks, bowling alleys, drug stores and dry cleaners, hardware stores and hotels, liquor stores, light industry and lumber yards, mobile home sales facilities and mortuaries, paint shops and plumbing shops, radio and television repair shops and restaurants, taverns and theaters, video stores and vocational schools." He contended that the County erred in allowing businesses with up to 50 employees to meet its definition of small-scale. He requested that we impose a finding of invalidity regarding the matrix.

The County replied that current regulations did limit nonresidential development in rural areas but were intended to "keep such development small scale and consistent with rural character." The County cited CP policy RU-531, which stated that "existing industrial and commercial uses should be allowed to expand in the rural areas provided that they do not require urban levels of government service, conflict with natural resource base uses, and are compatible with surrounding rural uses." The County asserted that this policy and the implementing regulations met the requirements of the Act because they constrained or otherwise controlled rural development by limiting it to resource-based uses that do not require urban levels of government service.

Conclusion: Matrix Invalidity

In the FDO we called for limitations on activities permitted in the RACs and rural areas (page 7, page 16). The GMA calls for limited areas of more intensive rural development to be subject to minimization and containment. The GMA calls for rural areas to accommodate appropriate rural

uses not characterized by urban growth and consistent with rural character. Here the matrix of permitted uses in rural areas includes fuel storage tanks above ground, kennels, recreational vehicle parks, personal storage facilities, and trailer mix concrete plants. The matrix in the RACs allows a range of uses from auction houses to auto sales to banks and bowling alleys, distribution facilities, dry cleaners, drugstores, group homes, hotels, motor vehicle sales, mortuaries, medical/dental clinics, light industries, libraries, locksmiths, and lumber yards.

We cannot discern from this record how County policies and implementing regulations limit rural development to resource-based uses. The matrix of permitted uses within rural lands, RACs, and rural community centers goes far beyond resource-based uses. The County is not in compliance regarding allowed uses outside UGAs.

The range and number of uses allowed in RACs and rural areas do not limit, in size and density, development to preclude future need for urban services. We have a firm and definite conviction that the County has erred when it defines businesses with as many as 50 employees as “small scale.” The Act calls for adoption of measures to minimize and contain more intensive rural development.

Ordinance 82-96, Section 1.03.020 also substantially interferes with Goal 8 (natural resource industries), Goal 2 (reduce sprawl), and Goal 1 (encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner), and is declared invalid.

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Elements of the CP and DRs Previously Found Invalid

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The County submitted an opening brief on these issues but opted not to submit a brief in reply to petitioners’ response. During argument at the hearing on the merits, the County opted not to present argument, but instead rested on its brief.

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Sizing of Rural Activity Centers (RACs)

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The County noted that each of the RACs was reduced in size during the review process. The

County stated that the changes were explained in the Board of County Commissioners' Findings of Fact (F of F). It maintained that the boundaries of the RACs were based primarily on the built environment.

MCCDC asserted that the RACs continued to be substantially oversized. Citing CP table IV-3.19 and providing a population calculation established by taking the available land (2,783 acres) less the commercial demand (219 acres) it arrived at a result of 2,564 acres available for residential development. At the RAC maximum residential density of 4 du per acre and the County average of 2.3 people per du, the resulting figure allowed growth of 23,589 people, 13 times the 1,850 allocated by the CP.

MCCDC further argued that the RACs allowed urban development beyond the outer logical boundaries delineated by the built environment, in violation of RCW 36.70A.070(5)(d)(iv). It cited the Union RAC as shown in Ex. #7404 and #1405 as examples.

Petitioner Diehl asserted that the County actually increased the population allocated to the RACs, citing Table IV-3.19 showing Allyn, Hoodsport, Taylor Town, and Union. He noted that the CP "continues to designate large areas surrounding presently-limited rural residential and commercial development as RACs." This, he argued, was in violation of RCW 36.70A.070(5)(d)(iv).

Further, Diehl argued that the RACs, although somewhat reduced in size, still did not comply with the requirement in .070 for limitation to logical outer boundaries. He cited the Union RAC as characterized by very little intensive rural development surrounded by large areas of undeveloped land. He asserted this was also the case with Hoodsport and Allyn. Allyn he characterized as having two areas with more intensive development separated by a large area of undeveloped land.

Conclusion: RAC Sizing

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Petitioners overcame the presumption of validity and proved that the RACs did not comply with the Act. The County failed to meet its burden of demonstrating that substantial interference with

the goals of the Act had been removed regarding the RACs. We cannot conclude from this record that Ordinance 82-96, Section 01.02.044 no longer substantially interferes with the goals of the Act. The Allyn RAC (Ex. #1408 and #1279c) extends beyond logical outer boundaries characterized by the built environment, particularly in the southern portion. The Union RAC (Ex. #1404 and #1405) similarly extends, in its southeast, southwest, and northeast quadrants, beyond the logical outer boundaries characterized by the built environment. The Hoodspout RAC, particularly in its northwest quadrant, violates the Act in the same manner (RCW 36.70A.070(5)(d)(iv)).

Ex. #1279c and #1290 page 6 of 6, both prove Diehl's contention that the Taylor Town RAC is composed of three tracts separated by significant non-built areas beyond the logical outer boundary of each tract as characterized by the built environment. Ex. #1406 (Taylor Town orthomap) shows the center tract as essentially unbuilt.

Page 6 of the F of F stated that areas of more intense rural activity did not need to be "determined by a land needs analysis." We disagree. RAC's, which are areas of more intense rural activity, have population allotted to them in the CP. Thus, a land capacity analysis of some type must be used to size them properly.

On page 6 of the F of F, the County maintained that even if it determined that the area constrained within the bounds delineated by the built environment is 5% or even 200% of the 20-year projected demand for land, it only means that the rate of infill is different, not that infill should be prohibited. We disagree. Infill is the intensification of density under the GMA within a constrained area. Logical outer boundaries as delineated by the built environment can be only so large as to accommodate the population properly allocated to it in the 20-year plan by the County. RCW 36.70A.070(5)(d)(iv) requires that the logical outer boundary of such areas preclude "allowing a new pattern of low-density sprawl." Additionally, the GMA requires that public facilities and public services shall only be provided in a manner that does not permit low-density sprawl. Limited areas of more intensive rural development are subject to this section of the Act. The County is incorrect when it maintains that the Act gives them license to set the boundaries of the RACs so as to accommodate more than the 20-year population growth assigned to them. Inappropriate low-density sprawl would be the result.

The County recognized, in F of F #3, that RACs must be constrained by the built environment. We agree. The record shows the County has drawn its RAC boundaries beyond the logical outer boundaries as delineated by the built environment.

We find that the County has failed to demonstrate that substantial interference has been removed and decline to lift our earlier finding of invalidity regarding Ordinance 82-96, Section 1.02.044.

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Density in Rural Areas

The County asserted that the amendments to the CP changed the rural elements, policies, and regulation so the type of development allowed complied with the requirements of the GMA and its 1997 amendments. The County's brief noted that F of F #3 (which extends from page 1 to page 7 of the F of F – Ex. #1291) explained in more detail and context the affect and intent of the changes made by the County, but did not elaborate. The County presented no further argument at the hearing.

MCCDC argued that the CP established no maximum densities in rural areas and rural community centers. Without a maximum density, it contended, there could be no assurance that the allowed densities would be in the range of rural densities authorized by RCW 36.70A.070(5). MCCDC went on to point out that the DRs established maximum densities of 1 du per 2.5 acres throughout the rural areas, rural community centers, and inholding lands. It asserted that we have previously found in *Achen v. Clark*, #95-2-0067 and *Whatcom Environmental Council v. Whatcom County*, #95-2-0071, that a minimum lot size greater than 5 acres constituted rural growth especially when there were an excessive number of rural parcels. MCCDC contended that subdivisions at 1 du per 4 acres or 1 du per 2 acres did not comply with the Act.

Petitioner Diehl pointed out that the County had not changed the provisions of its plats and subdivisions ordinance that allowed lots in rural areas as small as could accommodate septic systems, theoretically 12,500 square feet. Section 16.28.170(3). Diehl noted that this promoted urban density in rural areas. We had instructed the County to address this in our FDO, page 16.

In response, the County averred that on page 5 of Finding #3 the BOCC stated that “a variety of

rural densities are provided by the standard and maximum densities contained in the DRs.” Section 1.03.032. That section provided a standard residential density of 2 du per acre for RACs. In rural lands the standard residential density was 1 du per 5 acres. The ordinance further allowed for an existing lot smaller than 5 acres to accommodate 1 du. Figure 1.03.032 included a category of maximum residential density which allowed 1 du per 2.5 acres and 4 du per acre in the rural area and RACs respectively.

Conclusion: Densities in Rural Areas

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Petitioners have overcome the presumption of validity and have proven that allowable densities do not comply with the Act. The County has failed to demonstrate that its amendments to the CP and DRs adopted in response to our prior determination of invalidity have eliminated substantial interference with the Act. The ordinance continues to allow non-rural densities in rural areas. The failure to preclude minimum lot sizes as small as 12,500 square feet still substantially interferes with the goals of the Act.

Bonus Densities and Clustering

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Petitioner Diehl pointed out that we had ruled that the bonus densities in rural areas must be limited, page 16, FDO. He contended that the County continued the same bonus densities for rural areas under the revised CP as for the original and that it continued to allow a doubling of development as a bonus for cluster development in rural areas leading to rural densities of 1 du per 2.5 acres.

MCCDC pointed out that the so called “separation between clusters” of 50 feet proposed but not implemented for rural subdivisions by MCC 16.08.014 was not sufficient to assure that “open space, the natural landscape, and vegetation predominates over the built environment.” RCW 36.70A.030(14)(a).

The County maintained that MCC 16.22.039, Mixed Uses, was amended so that bonus provisions applied only within UGAs.

Conclusion: Bonus Densities

MCC 1.03.032 still allows bonus densities through an approved subdivision or performance subdivision because it allows a maximum residential density of 1 du per 2.5 acres in a standard residential density for rural areas of 1 du per 5 acres. The mixed uses section of Title 16 applies only to UGAs and does not reference the difference between standard residential density and maximum residential density portrayed in 1.03.032. We are unable to discern from the record how bonus densities in the rural areas are more limited than previously.

There is no cap to the number of clusters of 10 lots separated by 50 feet of “open space.” A 100-acre tract could have 4 clusters totaling 40 houses at a density of 1 du per 2.5 acres. This clearly allows non-rural densities in rural areas at a magnitude that demands urban services, and does not remove substantial interference with the goals of the Act. Once again petitioners proved these sections do not comply with the Act.

Resource Conservation Master Plan (RCMP)

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MCC 1.02.047, RCMP, found invalid in the FDO, has been deleted by the amendments to Ordinance 82-96.

Conclusion: RCMP

The County is now in compliance and substantial interference to the Act in this section has been removed.

Working Rural Areas (WRA)

Section 1.02.048, Working Rural Areas, found invalid in the FDO, has been deleted by the amendments to Ordinance 82-96, although the term “working rural areas” still appears in MCC 16.23.010 (page 11, title 16) and should be deleted.

Conclusion: WRA

The County is now in compliance and substantial interference to the Act in this section has been removed.

ORDER

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Compliance Findings

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We find the use of OFM's population projection to be in compliance with the Act.

Findings of Continued Noncompliance

The Belfair UGA is not yet in compliance and is remanded to the County.

Pertinent sections of the CP and the forthcoming DRs should address the following:

- Capital facilities plan for public sewerage system.
- Projected population characterized by urban density.
- Inclusion of the Union River Valley in the UGA.

The FSEIS is remanded to the County. A range of alternatives based on current population projection that provide the required analysis must be prepared.

Compliance of the open space and recreation areas shown by the map provided after the hearing will be considered at the next compliance hearing.

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Findings of Continued Invalidity

We decline to remove our previous findings of invalidity regarding CP Section III-3, Rural Lands, and Ordinance 82-96. In order to remove substantial interference the County must:

- delineate a rural maximum residential density in the RACs and rural areas,
- more closely match capacity with RAC population allocation,
- set the logical outer boundaries of the RAC as delineated by the built environment,

- cap the clustering in the rural areas so as to preclude sets of clusters of such magnitude that they demand urban services.

New Finding of Invalidity

We find that the range and types of permitted uses in the rural area and the RACs substantially interfere with Goals 1, 2, and 8 of the Act. Ordinance 82-96, Section 1.03.020 is declared invalid.

We direct Mason County to comply with the goals and requirements of the Act, as set forth herein, no later than 180 days from the date of this order.

Findings of Fact and Conclusions of Law pursuant to RCW 36.70A.302(1)(b) are adopted and appended as Appendix I.

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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 14th day of January, 1999.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Board Member

William H. Nielsen
Board Member

APPENDIX I

Case #96-2-0023

Findings of Fact

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1. In the final decision and order for this case we called for limitations on activities permitted in the rural activity centers (RACs) and rural areas.
2. The Growth Management Act (GMA, Act) calls for limited areas of more intensive rural development to be subject to minimization and containment.
3. The GMA calls for rural areas to accommodate appropriate rural uses not characterized by urban growth and consistent with rural character.
4. The matrix of permitted uses allowed in rural areas, resource centers, and RACs (Section 1.03.020, Ordinance #82-96) allows a range of permitted uses far beyond resource-based uses which do not limit in size and intensity development which precludes future need for urban services.
5. The County defines businesses with as many as 50 employees as “small scale.”

Conclusions of Law

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Ordinance #82-96, Section 1.03.02 substantially interferes with Goal 1 of the Act (encouraging development in urban areas where adequate public facilities and services exist or can be provided in efficient manner), Goal 2 (reduce sprawl), and Goal 8 (encourage natural resource industries).