

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

WARREN DAWES, JOHN E. DIEHL, GORDON JACOBSON,	)	
JUTTA RIEDIGER, VERN RUTTER, and KERRY HOLM,	)	No. 96-2-0023c
individually and as members of the MASON COUNTY	)	
COMMUNITY DEVELOPMENT COUNCIL (MCCDC), a non-	)	COMPLIANCE
profit association,	)	ORDER RE:
	)	PREVIOUS FINDINGS
Petitioners,	)	OF INVALIDITY
	)	
v.	)	
	)	
MASON COUNTY,	)	
	)	
Respondent,	)	
	)	
and	)	
	)	
PETER E. OVERTON, et al., McDONALD LAND COMPANY,	)	
HUNTER CHRISTMAS TREES, HUNTER FARMS, SOUTH	)	
101 CORRIDOR GROUP, Inc., and MANKE LUMBER	)	
COMPANY,	)	
	)	
Intervenors.	)	
	)	

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**SYNOPSIS OF THE ORDER**

With regard to only those sections of the Mason County Comprehensive Plan (CP) and Development Regulations (DRs) previously found invalid, we find as follows:

1. We decline to rescind our previous finding of invalidity regarding Figure 01.03.020, Interim Matrix of Permitted Uses for Mason County, concerning resource areas, rural areas, agricultural resource lands, rural activity centers (RACs), and hamlets.

2. We rescind our previous findings of invalidity regarding CP, Section III-3 Rural Lands and Ordinance #82-96 (except Figure 1.03.020). We find that the County's actions delineating a rural maximum residential density in RACs and rural areas, revising RAC population allocations, setting logical outer boundaries for RACs, reducing the number of employees for small businesses, and capping clustering in rural areas has removed substantial interference with the fulfillment of the goals of the Growth Management Act (GMA, Act).

### **INTRODUCTION**

Notwithstanding the fact that the compliance hearing for the CP was set by our order rather than through a request for rescission of invalidity by the County, we choose to impose the timeline of 30 days from the date of the compliance hearing for the entry of this order pursuant to the legislative intent expressed in RCW 36.70A.302(6). We also recognize the effect of the 30-day time constraint on our ability to review thoroughly questions of both invalidity and noncompliance. Accordingly, we will bifurcate the CP compliance order into this order on issues previously found invalid, and a subsequent order regarding issues previously found noncompliant but not invalid.

On November 15, 2000, the second compliance hearing in this case was held at the Tumwater Best Western Hotel, Tumwater, Washington. Present for the Board were Les Eldridge, William H. Nielsen, and Nan Henriksen. Petitioner John Diehl opted not to appear. Mr. Michael Gendler represented Petitioners MCCDC. The County was represented by consultants Mary Lynne Evans, Michael Davolio, and Michael McCormick, and by County Planner Bob Fink. Chief Deputy Prosecutor Michael Clift and Special Deputy Prosecutor Robert Sauerlender were also present for the County. John McCullough represented Intervenor Overton and Sarah Smyth McIntosh represented Intervenor South 101 Corridor Group.

We recognize the participant status of Sheldon Industries. Mr. Tim Sheldon, the principal of the firm, was present but opted not to submit a brief nor present argument.

The very recent motions of Voice Stream, Inc. and SBA Towers to intervene in the case were denied. Their intervention at this late date would have been an obstacle to the prompt and orderly conduct of the proceedings.

## **BURDEN OF PROOF**

Pursuant to RCW 36.70A.320(4), a County subject to a determination of invalidity has the burden of demonstrating that the ordinance it has enacted in response to the determination of invalidity will no longer substantially interfere with the fulfillment of the goals of this Chapter under the standards in RCW 36.70A.302(1).

## **PREVIOUS FINDINGS OF INVALIDITY IN THE COMPLIANCE ORDER ENTERED**

**JANUARY 14, 1999**

### Findings of Continued Invalidity

We declined 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 was required to:

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

## **CONTENTIONS**

The County submitted an opening brief on August 23, 2000, but did not submit a reply brief to the responses from Petitioner Diehl (September 6, 2000) or MCCDC (September 7, 2000).

The County emphasized that it had substantially revised the matrix of permitted uses, had

downsized the RACs, had revised its population allocations, and had changed the status of the Allyn RAC to a non-municipal urban growth area (NMUGA). Further, the County pointed to its establishment of a variety of rural densities, (1 unit per 5, per 10, and per 20 acres) and its establishment of a rural maximum residential density for both RACs and rural areas. The County maintained that it had capped clustering in the rural areas so as to preclude demand for urban services and had set the logical boundaries of the RACs as delineated by the built environment. The County pointed out that it had reduced the requirement for maximum number of employees in small businesses from 50 to 20.

The County noted its reduction of the number of permitted uses in the matrix in both rural areas and RACs and claimed that it had limited home occupations.

The County outlined its elimination of cluster bonuses in densities of 1 unit per 5 acres. It noted that it had increased buffers and established a minimum 20,000 square foot lot size, up from the previous 12,500 square feet figure.

South 101 Corridor Group claimed that Taylor Towne RACs #I and II had been reduced in area by 50%. The Group noted the division of the old Taylor Towne RAC into these two separate RACs dedicated to commercial purposes.

Petitioner Diehl's brief maintained that the County's actions still allowed low density sprawl and intense commercial development outside the logical outer boundaries of RACs. He lamented the absence of any incentives for urban growth and also claimed that forest land conversions could preclude the urban development and infill called for in the Act. He maintained that the development regulations (DRs) allowed urban development within UGAs but do not encourage the same.

Petitioners MCCDC contended that the matrix of uses allowed commercial industrial (C/I) development throughout rural areas. Petitioners called for the confinement of C/I to a much more narrow and identifiable area. MCCDC insisted that the County must further limit the matrix of uses in order to protect rural neighborhoods outside of RACs. MCCDC claimed that the

accessory building provisions could double density in the rural area and that the RACs were still too broadly drawn, including too much undeveloped land. They maintained that the RAC logical outer boundaries were not delineated by the built environment as of July 1, 1990.

### **CONCLUSION and ORDER**

With regard to the invalidity of the matrix of permitted uses, the County has reduced permitted uses in RACs by 15%, and in the rural area, by 26%. While we commend the County for moving in the right direction, we note that the uses still permitted in RACs which are not principally designed to serve the rural population (e.g., mobile home sales, mortuaries, furniture repair, health clubs, light industry, upholstery, ambulance service, animal hospitals, pet shops, plumbing shops, auction houses, second hand stores, self service storage facilities, small engine repair, stationery stores, and studios for recording, artists and dancing) are still three times the number of similar uses permitted in the rural area. Those uses are allowed throughout RACs and do not meet the exemption requirement in RCW 36.70A.070(5)(d)(i).

General Land Use Policy 19 stipulates that RACs are “limited areas of more intense rural development with little or no residential growth directed towards them.” This record reveals no mechanisms by which residential growth is directed to UGAs. Absent such DRs, a residential growth mechanism vacuum exists. In such a vacuum, this overgenerous list of permitted uses acts as a magnet for RAC residential growth, diminishing the likelihood of anticipated UGA residential growth.

The rural area permitted uses still include many that do not protect the rural character of the area. RCW 36.70A.070(5)(c). **We decline to rescind our previous finding of invalidity regarding the matrix of permitted uses for areas other than urban (Figure 1.03.020).**

The County has downsized its RACs, established a maximum rural density in the RACs and rural areas, and matched capacity with RAC population allocation. It has set the logical outer boundaries of RACs and has capped clustering. We find that the substantial interference with the goals of the Act which existed regarding bonus densities and clustering, RAC sizing, and density in rural areas has been removed by the County’s efforts. **Our previous findings of invalidity**

**regarding CP Section III-3, Rural Lands, and in Ordinance #82-96 (except the matrix of permitted uses for areas other than urban) are rescinded.**

Previous Findings of Fact and Conclusions of Law pursuant to RCW 36.70A.302(1)(b) which pertain to the matrix of permitted uses are readopted and incorporated herein by reference.

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.

Questions of compliance for the issues addressed herein and for other noncompliant aspects of the CP and DRs will be the subject of a subsequent order in this case.

So ORDERED this 15<sup>th</sup> day of December, 2000.

**WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD**

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Les Eldridge  
Board Member

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Nan A. Henriksen  
Board Member

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William H. Nielsen  
Board Member

