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

DANIEL SMITH, et al., VINCE PANESKO, and)	
JOHN T. MUDGE,)	No. 98-2-0011c
Petitioners,)	
)	FINAL
)	DECISION
v.)	AND ORDER
)	
LEWIS COUNTY,)	
)	
Respondent,)	
)	
and)	
)	
CITY OF CHEHALIS, CITY OF NAPAVINE, and)	
PORT OF CHEHALIS,)	
)	
Intervenors.)	
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SYNOPSIS OF THE ORDER

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We congratulate Lewis County on the adoption of its interim urban growth area (IUGA) and rural lands ordinance. The County has taken a giant step toward compliance with the Growth Management Act (GMA, Act) and in laying the foundation for a comprehensive plan (CP) which will benefit the economy and quality of life of Lewis County for generations to come. There is a great deal in this Ordinance of which the County may be proud.

We find the County to be in compliance with the GMA regarding lands currently being farmed within IUGAs. We also find in compliance the section of the Ordinance regarding nonconforming uses. Sections regarding concurrency and roads and affordable housing may be deferred until adoption of the CP.

Several adjustments need to be made, however, before we can find the County in total compliance with the Act. The County must provide for a variety of rural densities in the rural area which reflect the traditional visual rural landscape and not limit itself to an unvariegated, countywide 1 dwelling unit (du) per 5-acre density. A limitation on clustering provisions must be established so as to preclude demand for urban governmental services in rural areas. The County must preclude creation of hitherto-unidentified new small towns by adjustment of its section on lot size exceptions (Section 5.2). Language in Section 5.7 must be clarified and Section 5.2 (to which it refers) brought into compliance before we can find Section 5.7 in compliance with the Act. Section 5.7 defines urban growth that is prohibited in rural lands.

The Curtis “industrial” IUGA fails to comply with the Act. Additionally, it substantially interferes with the goals of the Act. Ordinance #1159 does not restrict Curtis IUGA uses to rail-dependent or resource-based industry and associated commercial and retail, nor does it preclude residential development.

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PROCEDURAL HISTORY

This case consolidates three cases which challenged Lewis County’s Ordinance #1159. The Ordinance designated IUGAs for each city in the County and adopted rules for rural area development to apply outside of the IUGAs. Petitioners included Kodie and Jenny Baker, Daniel Smith and Tammy Baker, Virginia Breen, Vince Panesko, and John T. Mudge. A motions hearing was held December 3, 1998, and a subsequent order on motions to add to or supplement the record was entered. Intervenor status was granted for the City of Chehalis, City of Napavine, and the Port of Chehalis.

The Hearing on the Merits was held February 11, 1999, at Centralia Community College, Centralia, Washington. Petitioners participating were Vince Panesko, Daniel Smith, Tammy Baker, and John T. Mudge. Alexander Mackie appeared for the County, William T. Hillier appeared for the Cities of Napavine and Chehalis, and Alison Moss appeared for the Port of Chehalis. Present for the Board were Les Eldridge, Nan Henriksen, and William Nielsen.

Ex. #225 through #240 submitted by the County were admitted to the index. The motion of the City of Chehalis to reconsider our order regarding supplementing the index was granted and the draft utilities element dated June 30, 1997, was admitted as Ex. #241. We officially noted the court consent decree and the Lewis County Board of Health Sewage System Rules and Regulations. An additional period of time was granted Petitioners to respond to Ex. #225 through #240 (also marked as the “LE” exhibits, large maps from the County). We received supplemental briefs from Petitioners Panesko and Smith regarding their responses to these exhibits.

ISSUES OF RURAL DENSITIES AND USES

Issue 1: Density of 1 to 5

Petitioner Panesko argued that a uniform density of 1 du per 5 acres (1 to 5, 1/5) throughout all of the Lewis County rural areas failed to comply with RCW 36.70A.030(14)(c) defining rural patterns as providing “visual landscapes that are traditionally found in rural areas and communities.” Panesko contended that aerial photos of Lewis County demonstrated the traditional visual landscape as 1 house per 40 or 1 house per 80 acres or larger. The aerial photo landscape (Attachment 1) showed 140 aerial photos for 140 square miles of Lewis County. The Washington State Department of Community, Trade, and Economic Development (CTED) Rural Element Guide states that densities of “less than 1 unit per 10 or 20 acres...should predominate in rural areas.”

In response, the county cited proposed Ex. 225 (marked LE “or large exhibit”-1), demonstrating a number of smaller lots and uses also existing. The county contended that we have generally accepted 5-acre tracts as appropriate rural zoning, *Hudson & Huber v. Clallam County (Hudson)*, WWGMHB #96-2-0031 unless petitioners demonstrated that potential interference to resource or critical areas was of significant risk or that bonus clustering or other lot-size-reducing techniques created the specter of urban growth in rural areas. The County observed that we have held that 5-acre tracts, *per se*, are compliant, citing *Hudson*.

Conclusion

Lewis County is correct when it asserts that 5-acre lots in the rural area are not, *per se*, a violation of the GMA. In relying upon *Hudson* the County argument misses the mark. In *Hudson*, we accepted 5-acre lots because the subdivision which had taken place in the county up to that time left no larger lots available in the 2,300-acre “developed” agricultural designated area. Still, in the “undeveloped” agricultural areas outside the 2,300 acres, we welcomed 1 du/16 acre densities.

RCW 36.70A.070(5)(b), moreover, requires that “the rural element shall provide for a variety of rural densities.” (emphasis added) As we noted in *Cotton Corporation v. Jefferson County (Cotton)*, WWGMHB #98-2-0017, the requirement for a variety of rural densities was met by densities of from 1 to 5 acres to 1 to 10 and 1 to 20. Variegated densities are particularly appropriate in counties whose rural characteristics accommodate these varieties. CTED’s Rural Element Guide admonishes counties to “keep average rural densities low.” Without the balance

of lower, 1 to 10 and 1 to 20 densities, the extensive use of 1 to 5 and allowance of higher densities in areas of more intensive rural development (AMIRDs) creates high average densities that do not comply with RCW 36.70A.070(5) and .030(14).

We have previously found, where a record demonstrated that a greater variety of rural densities would decrease low-density sprawl and increase resource lands buffering, that a 5-acre minimum lot size throughout the county did not comply with the GMA and substantially interfered with the goals of the GMA. *Achen v. Clark County*, WWGMHB #95-2-0067c (Compliance Order 2-5-98).

Regarding inherent difficulties with unvariegated rural densities, Lewis County Special Deputy Prosecuting Attorney Mackie himself noted that “Thurston County is going to choke over the 1,000 five-acre tracts that were created right after it did its urban growth boundary, because when it goes to move, it is going to be very hard to move through those.” He characterized 1 to 5 as “one of the most wasteful land use patterns you can find.” Ex. 7, pg. 11, response brief.

As Petitioner pointed out, this unvariegated 1 to 5 density in all rural areas is exacerbated by the “incidental additional development at a 1 to 5 density permitted on 15 percent of resource lands.” Lewis County response brief at 5, Ordinance #1151. This exceptionally liberal conversion provision in Ordinance #1151, the Resource Lands Ordinance, apparently agreed-to in negotiations between the State and Lewis County, underscores the noncompliant nature of the uniform 1 to 5 density found in Ordinance #1159. It is clear that, if converted, the resource lands at 1 to 5 would no longer be of a lot size to accommodate resource lands of long-term commercial significance, particularly in forest lands. *See Diehl v. Mason County*, WWGMHB #95-2-0073. They would therefore become rural lands which would add to the magnitude of unvariegated density in rural lands.

We conclude that “a variety of rural densities” was intended by the Legislature to include densities less than 1 du to 5 acres as well as densities greater. Densities greater than 1 to 5, e.g., 1 to 2.5, 1 to 2, are not typically rural in character and exist in the rural environment in the main as part of AMIRDs. Thus, in *Cotton*, Jefferson County responded to 36.70A.070(5)(b) by designating a variety of rural densities (1/5, 1/10, 1/20), and was therefore compliant with that section of the Act.

It is clear from the record that Lewis County can accommodate the required variety of rural densities. We have a firm and definite conviction that Lewis County has erred in adopting a uniform rural density. An argument that the requisite variety can be provided by lots more dense than 1 to 5 (which we have typically found to be non-rural densities) is without merit, particularly when a county's rural characteristics accommodate a variety of less-dense lot sizes.

Issue 3: Nonconforming Uses

Petitioner Mudge argued that Section 5.8 of the Ordinance (Rural Lands- Nonconforming Uses) failed to comply with RCW 36.70A.020(2) by allowing expanding nonconforming uses in rural areas. He contended that this failed to reduce sprawl. He cited *Friends of Skagit v. Skagit County (Friends)*, WWGMHB #95-2-0065, where we found Skagit County noncompliant because its ordinance allowed expansion to the legal parcel limits of uses other than neighborhood business or resource-based businesses. He quoted as follows:

“As such it allows urban growth in rural areas and substantially interferes with RCW Section .0201 and 2.”

The County pointed out in its brief at p. 13, that *Friends* predated the amendments to RCW 36.70A.030(14) (15) and .070(5) “which recognized that uses in rural areas were not limited to serving the local areas and could legitimately provide core economic value to the community.”

Conclusion

In *Friends* we noted that noncompliance was present in Section 7(2) of Ordinance #16559 of the Skagit County Code because the intent section explicitly discouraged the survival of nonconforming uses while its amendment under Section 7(2) allowed them to expand. In that case we noted the noncompliance was in the failure of the intent section to be consistent with the implementation section.

Changes in the Act subsequent to *Friends* now allow commercial intensification of isolated small-scale businesses and isolated cottage industries, RCW 36.70A.070(5)(d)(iii). Commercial use is also constrained by the requirements of RCW 36.70A.070(5)(d)(iv) which establish logical outer

boundaries to AMIRDs. Expansion of nonconforming uses within existing parcels does not necessarily fail to comply with the Act. Petitioner has failed to carry his burden of proof that the action of the County in allowing expansion of nonconforming uses within parcel limits is clearly erroneous.

Issue 4: Clusters

Petitioner Mudge argued that Ordinance #1159, Section 5.2, (Clustering Provisions) did not provide enough detail to avoid clustering to a magnitude which would require “urban-type services,” Petitioner’s reply brief p. 3. In his opening brief he cited *Kitsap Citizens for Rural Preservation v. Kitsap County*, CPSGMHB #94-3-0005, in which the Central Board commented:

“there is no upper limit on the acreage or unit count that the ordinance would permit to occur in rural areas. As the size of a rural development project increases the demand for urban governmental service inevitably increases. Likewise, as the size of a project site increases, the more likely it is that it will exhibit the characteristics of urban growth.”

The County responded that, in its view, “Petitioners argue small lots in clustering without specific caps are unlawful, *per se*.” The County went on to point out that “schools, fire districts, water systems, and small town road maintenance are already common rural services permitted under RCW 36.70A.030(15) (16).” The County maintained that “the fact that such rural land services are required does not make the system urban.” The County ended by stating that it “believes so long as the utilities and facilities used to serve a new rural area are those commonly found in rural small towns, the decision to permit clustering on this scale is within the range of discretion granted in the 1997 amendments.”

Conclusion

We disagree with the County. Respondent is equating the extent of demand for utility and facilities serving new rural areas with those found in rural small towns or in AMIRDs. We do not find anything in the Act which allows clustering to the degree that it creates new AMIRDs. The Act is clear that AMIRDs must be provided logical outer boundaries delineated by the built environment as it existed on July 1, 1990, or as otherwise provided for in RCW 36.70A.070(5)(d) (v). These AMIRDs must be identified in the CP. Allowing new AMIRDs to spring up willy-nilly across the rural landscape as a result of clustering would do irreparable damage to the rural

character. We agree with the Central Board in its conclusions that uncapped clusters characteristically lead to a demand for urban governmental services. We stated in *Dawes v. Mason County*, WWGMHB #96-2-0023, that a 100-acre tract with a cluster totaling 40 houses at a density of 1 du per 2.5 acres clearly allowed nonrural densities in rural areas at a magnitude would that demand urban services. As a result we remanded to Mason County “to cap the clustering in rural areas so as to preclude sets of clusters of such magnitude that they demand urban services.” The same requirement applies here.

Issue 7: Lot Size Exceptions

Petitioner Panesko argued that Section 5.2 of the Ordinance (Rural Lands- Residential Uses) allowed city-sized lots, as small as 12,500 square feet, to be placed in rural areas. He argued that 10 houses clustered on quarter-acre lots was clearly neither traditional nor rural. He maintained that 10 houses on quarter-acre lots could each have 2 out-buildings and that 30 buildings in a cluster of 2.5 acres would be urban in nature.

The County responded that the Ordinance specifically prohibits urban development in Section 5.7 and that Section 5.2 requires a residential density of 1 du per 5 acres. It further argued that nothing in the Act prohibits the County from permitting a single small rural town which would support a school, fire district, or other services.

Conclusion

Again, we disagree with the County. The GMA does not envision the creation of new small towns at the IUGA stage of planning. It provides for rural development of existing residential or mixed use areas, intensification of developments on recreational or tourists lots, intensification of development on lots with isolated nonresidential uses, and minimization and containment of existing areas or uses of more intense rural development. All of these sections of RCW 36.70A.070(5) address changes to existing areas at the CP stage. The concept in the County’s brief that the Act allows the creation of hitherto-unidentified new small towns with schools, fire service, etc., can be found nowhere in the GMA. We conclude that the absence of a clustering cap (Issue 4) together with Ordinance #1159, Section 5.2(A, B, C), which allows increase of density on a parcel by exception under the conditions delineated therein (Issue 7), combines to render Section 5.2 not in compliance with the Act. Petitioners have demonstrated a clear error by the County.

Issue 9: Section 5.7 Rural Lands-Urban Growth Prohibited

Petitioner Panesko cited the sentence in this Ordinance, Section 5.7 which stated “the uses allowed on rural lands under this ordinance *per se* are not considered ‘urban growth’ prohibited by RCW 36.70A.110.” He cited issues 1, 3, 4, and 7, which in his view allow urban growth in rural areas, and concluded that the sentence quoted above “redefines all the uses allowed by Ordinance #1159 on rural lands as not urban growth.” He inferred that this sentence redefined urban growth differently than RCW 36.70A.030(17).

The County asserted, in response, that the sentence merely referred to allowed rural development and growth outlined in RCW 36.70A.030 (14), (15), and (16), and further asserted that the sentence only called upon the reviewing authority to ensure that urban growth as defined in RCW 36.70A.030(17) (requiring urban governmental services) did not occur.

Conclusion

We can understand the inference drawn by Petitioner Panesko in light of the noncompliant nature of the Ordinance’s provisions on density, clustering, and lot size exceptions which we have addressed above, and the ambiguity of the Ordinance’s language. One could read the section as requiring the review authority to declare any project not “urban growth,” regardless of its characteristics. The County response to our remand regarding those provisions should bring them into compliance. With clarification, the language found in Section 5.7 would then not constitute a redefinition of urban growth. It would instead carry out the intent of the County that the reviewing authority should ensure that urban growth as described in RCW 36.70A.030(17) would not occur. Until these corrections occur, we find Section 5.7 of the Ordinance to be noncompliant.

IUGA ISSUES

Issue 2: Agricultural Lands in IUGAs

Petitioner Smith argued that the IUGAs of the cities of Chehalis and Napavine include agricultural lands, including acreage belonging personally to Petitioners. He stated that “Both the Cities of Chehalis, and Napavine continue to include the Petitioners’ agricultural lands, approximately 200 acres, in their IUGA’s. This land is all prime agricultural land, and very

significant to our existence.” Petitioner Smith quotes Clyde Stricklin (Napavine City planning consultant) in a letter to Bill Hillier (City Attorney), “the Critical Area Report finds that agricultural lands do exist within the city and urban area but that they have urban characteristics which preclude there (sic) use for agricultural purposes, Code Section 14.07.010.”

Petitioner Smith primarily expressed concern over the drainage basins within the IUGAs being adversely affected by urban development. He asserted that the alleged failure of the cities to address how, when, and where the infrastructure for the IUGAs would be “handled” fails to comply with RCW 36.70A.172 of the Act which called for special consideration necessary to preserve or enhance anadromous fisheries. Petitioner Smith named as problem areas the drainage basins of Dillinbach, Berwick, and Allen creeks and the Newaukum River. He alleged that the cities have not addressed critical areas issues, including aquifer recharge areas, to the extent necessary.

In response, the County pointed out that the existing County resource land and critical area ordinances, #1151 and #1150, respectively, were not challenged after adoption in 1996. The County expressed its belief that Petitioner Smith was objecting that some of the land within the IUGA was presently being farmed. The County then noted that nothing in the GMA prohibits the development of IUGAs which may include property presently being farmed. The County argued that this challenge was an attempt to take a “second bite” out of the critical areas and natural resource land ordinances.

The County further noted that the agricultural lands within the IUGAs had not been designated as agricultural land of long-term commercial significance. These lands were adjacent to extensive development at Rush Road, Hamilton Road, and the Industrial Park, all served by both water and sewer. Thus, the County contended, these lands met the definitions of an IUGA in RCW 36.70A.110. The County further observed that IUGA lands adjacent to farmed lands east of I-5 are owned by the Port of Chehalis or the Chehalis Industrial Commission, both public agencies dedicated to industrial development. It asserted that these lands were presently served by sewer and water. As such, the County contended these too were “areas characterized by urban growth (RCW 36.70A.110) as well as areas abutting urban growth, particularly...well served by arterial roads, sewer, and water. The mere fact that people continue to farm on lands which have major

urban municipal services is not *per se* grounds for excluding property from IUGA designation.” The County further noted that a City of Napavine review of Mr. Smith’s farm was under way and removal of the Smith land from the IUGA was probable.

Conclusion

Our review of this challenge centers on the fact that no land within the Napavine and Chehalis IUGAs was designated as agricultural land of long-term commercial significance at the adoption of the natural resource lands ordinance in 1996. Petitioner’s challenge is partially based on the contention that, because agricultural land exists in the IUGA and is being farmed, the IUGA does not comply with the Act. We conclude that nothing in the Act prevents the County from approving an IUGA adjacent to lands with urban characteristics solely because land within the IUGA is being farmed. The Act provides that land designated as agricultural land of long-term commercial significance cannot be included in an IUGA unless transfer of development rights have been provided. That is not the case here.

Petitioner’s expressed concerns regarding critical areas likewise are ill-timed. The critical areas ordinance was also adopted in 1996. It is possible that the Petitioner’s concerns regarding special consideration for anadromous fish runs may need to be addressed by the County if any of four basins cited by Petitioner contain anadromous runs in light of the listing of certain species under the Endangered Species Act. The time for those considerations occurs with adoption of the CP and the continuing review of critical areas within the CP.

We conclude that Petitioner has failed to meet his burden of demonstrating that the County’s decision regarding IUGA boundaries and inclusion of land currently being farmed was clearly erroneous.

Issue 5: Analysis of Levels of Service, Omission of Roads from the Concurrency

Requirement

Petitioner Mudge argued that “road concurrency is required” in Ordinance #1159 and he cited RCW 36.70A.070(6) which “provides that a comprehensive plan must contain a transportation element that implements and is consistent with the land use element.” He noted that the GMA further provides that “transportation improvements or strategies to accommodate the impacts of

development are made concurrent with the development.”

The County responded that “the duty to create a specific level of service and other requirements of RCW 36.70A.070(6) is a task for the comprehensive plan.” It argued that the statutory provisions of a transportation element of a CP are not part of the IUGA process but rather an element of the CP to follow.

Conclusion

We concur with the position of the County that the transportation concurrency requirement and levels of service are tasks for the CP process. The very section quoted by Petitioner Mudge plainly states that the CP and not the IUGA is required to contain such an element. Petitioner has failed to meet his burden of proof. We do not find the County noncompliant in regard to this issue.

Issue 6: Affordable Housing

Petitioner Mudge argued that “no significant consideration is given to housing issues and where some 8,000 would live.” He argued that the goal expressed in RCW 36.70A.020(4), which encourages affordable housing, cannot be achieved without consideration of affordable housing in the earliest stages of the IUGA process.

The County responded that WAC 365-195-825(3)(a) does not make reference to adoption or development of affordable housing as a prerequisite to development of the IUGA. The County stated that “Petitioner’s concern for affordable housing is to be dealt with in the comprehensive plan.” The County asserted that, as there is no specific RCW or WAC requirement for the affordable housing element to be included in the IUGA, the requirement does not exist.

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Conclusion

We concur with the County’s position that affordable housing element is not a requirement of the Act in regard to IUGAs. Petitioners have failed to point to any section of the Act which explicitly requires this and have failed to demonstrate that the County’s actions in this regard are clearly erroneous. We do not find this IUGA Ordinance noncompliant in regard to affordable housing.

Issue 10: Capital Facilities Analysis

Petitioner Smith argued that the absence of a capital facilities analysis in the ordinance caused the Chehalis and Napavine IUGAs to fail to comply with RCW 36.70A.110(5). Petitioner cited a July 11, 1997, Chehalis IUGA analysis by Buckner, Willis, and Ratliff (BWR) and other studies which noted the City of Chehalis' lack of planning and identifying financing of public facilities needed to serve the proposed IUGA. In the report cited BWR made similar comments regarding the City of Napavine. Petitioner maintained that Ordinance #1159 had insufficient capital facilities documentation and was not in compliance with the GMA.

The County responded that Petitioner's arguments were based on 1997 reports and "are out of date and do not reflect the record made by the cities and considered by the County in making its decision." The County referenced briefs and exhibits from the cities of Chehalis and Napavine regarding materials submitted in April 1998 by the cities "to demonstrate that a need exists and that plans and funding for adequate public facilities do in fact exist." The Napavine exhibits included water improvement and sewer funding to the year 2008 (Napavine). The Chehalis brief cited a wastewater facilities plan study, a stormwater plan, a proposed sewer area, a capital improvement plan referenced in April 1998, a Chehalis Wastewater Treatment Capacity Evaluation, and an annexation study. The Chehalis brief stated that each of these documents contained a future fiscal analysis relating to cost of capital improvements. For example, in City of Chehalis Ex. 82, executive summary from Economic Consulting Services' (ECS) study, July 1997, ECS noted that "estimates of the potential revenues from city tax sources and expenditures for current levels of city services extended into the annexation area...based on historical and statistical relationships..... showed a net fiscal surplus"

Conclusion

It appears that the County and the cities made decisions after reviewing conflicting studies and data. The jurisdictions had before them considerable information regarding capital facilities analysis. We conclude that the jurisdictions reviewed the materials and made reasoned decisions within the scope of their discretion. We do not find noncompliance regarding this issue.

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Issue 8: Curtis IUGA

Petitioner Panesko argued that the “Curtis Industrial Park” failed to comply with the criteria in RCW 36.70A.110(1) which state “an urban growth area may include territory that is located outside of the city only if such territory is already characterized by urban growth, whether or not the urban growth area includes a city or is adjacent to territory already characterized by urban growth.” He maintained that the Curtis IUGA failed to meet this test because it is characterized by forestland, agriculture, and a pole-sorting yard. He also contended that the IUGA was partially in the floodplain of the Chehalis River and contained hydric soils. He pointed out that the former Weyerhauser mill site, 317 acres of this 357-acre IUGA, was abandoned 15 years ago.

Panesko asserted that it would be inappropriate to designate this area an industrial IUGA because it was not planned under RCW 36.70A.365 or .367. He maintained that the IUGA did not fit the criteria for RCW 36.70A.365 because there was no specific major industrial development identified. Nor, he maintained, did it fit the criteria under RCW 36.70A.367 for master planned locations because new infrastructure was not provided for, transit-oriented site planning and traffic demand management programs were not implemented, nor were any of the other provisions of RCW 36.70A.367 carried out. He also claimed that the Hovee Study upon which the County and the Port based their industrial land needs assumptions was uncertain regarding the acreage needed in Lewis County. He criticized the County for failing to produce a definitive inventory of industrial land within the IUGAs.

Port of Chehalis responded, on behalf of the County, with an extensive brief and evidence from the record supporting the IUGA designation. The Port noted the consistency of the Curtis IUGA with the countywide planning policies calling for greater prosperity and diversification. The Port identified a range of needed acreage depending on whether need was based on continuation of historic trends or generated by an effort to diversify the urban economy. It asserted that the Hovee Study identified a strong need for large parcels with convenient access to major transportation services, especially rail. The Port claimed uses would be restricted to those outlined (but not mandated) in Port Finding #20, i.e., resource-based or rail-dependent industry and associated commercial and retail, with no residential development. In response to questions from the Board, the Port acknowledged that the County had placed none of these restrictions on the Weyerhauser portion of the property.

Conclusion

In this case, the clearly erroneous standard of review applies, and the burden of meeting that standard is on petitioners. Under RCW 36.70A.3201, local governments have discretion to find ways to comply with the GMA and may use local conditions as a cornerstone of such compliance. The record reflects that the County and the Port are committed to the use of the property within this IUGA for industrial purposes to meet the needs of as-yet- unidentified industrial developers in order to improve the faltering economy of Lewis County. On p. 18 of the Hovee Study the industrial land demand historic trend is identified, after applying a 50 percent market factor, as 687 acres over the next 20 years. Likewise, the study acknowledges the inadequacy of prime industrial site supply.

Under this record, the County has demonstrated its need to attract industrial users needing the unique features of the Curtis IUGA. These features are not available within the proposed municipal IUGAs. The portion of the IUGA under the jurisdiction of the Port could be construed as “characterized by urban growth.” Prohibition of residential development is an essential element of this industrial IUGA, as are restrictions of use to resource-based or rail-dependent industry and associated and supportive commercial development. Under Port Finding #20, adopted by reference by the Board of County Commissioners on May 4, 1998, however, none of these restrictions is mandatory. Nor do the suggested constraints in Finding #20, absent agreement with the owners, apply to the portion of the IUGA beyond the jurisdiction of the Port (approximately 317 acres of the 367-acre cite). We have a firm and definite conviction that the County has erred in failing to include those mandatory constraints in its IUGA Ordinance. That failure substantially interferes with Goal 2 (reduce sprawl) and Goal 12 (public facilities and services). The Curtis IUGA is remanded the County.

REQUEST FOR FINDINGS OF INVALIDITY

Petitioner Panesko had requested that the Board declare invalid Section 5.2, and 5.7 of Ordinance #1159 as well as Section 3, which includes the Curtis IUGA portion of the IUGAs. We find that only in the case of the portion of Section 3 delineating the Curtis IUGA has Petitioner met his burden of demonstrating substantial interference with the goals of the Act.

ORDER

Ordinance #1159 is remanded to Lewis County to be brought into compliance within 180 days of the date of this order. On or before that date the County will provide us a statement of compliance in which it addresses its response to the following areas of noncompliance and invalidity:

In order to comply with the GMA:

1. The County must adopt a variegated set of rural densities to comply with RCW 36.70A.070(5)(b).
2. The County must cap the clustering provision for rural areas so as to preclude sets of clusters of such magnitude that they demand urban services and contribute to low-density sprawl.
3. The County must adjust Ordinance #1159, Section 5.2 (A, B, C) to control increases in density on parcels by exceptions delineated therein so as to preclude new rural small towns.
4. The Curtis IUGA must be controlled by an agreement with all owners of the property to limit development within it to resource-based or rail-dependent industrial uses, and to commercial and retail uses supporting these industrial uses. It must prohibit residential development.
5. The County must clarify the language of Section 5.7 regarding review discretion and guidelines.

Findings of Fact pursuant to RCW 36.70A.270(6) are adopted and appended as Appendix I. Findings of Fact and Conclusions of Law pursuant to RCW 36.70A.302(1)(b) are adopted and appended as Appendix II.

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 5th day of April, 1999.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Board Member

William H. Nielsen
Board Member

Nan A. Henriksen
Board Member