

County from its previous unzoned status to now, is as large as any County in our jurisdiction has ever had to make.

We also recognize the depressed economy prevailing in Lewis County as it moves from resource-based industries to a new economic foundation which would allow its residents to enjoy at least some of the economic prosperity enjoyed by other Puget Sound communities. It is not our desire to interfere in any way with the achievement of that laudable goal.

Unfortunately, as we reviewed the CP and DRs we came to the inescapable conclusion that many of the hard decisions that were made missed the mark of the legislative mandates embodied in the Act, some decisions missing by a large margin. There are opportunities within the goals and requirements of the GMA for economic development to begin and to ultimately flourish. The Legislature has determined the policy parameters that best allow economic growth while at the same time avoiding the inefficiencies, ultimately paid for by the taxpayer, that result from uncoordinated and poorly-planned authorizations for future growth. It is our hope that Lewis County will use the matters contained in this final decision and order (FDO) as a springboard for achieving compliance, rather than a cursing pole for bemoaning perceived unrealistic legislatively-imposed duties.

PROCEDURAL HISTORY

We have included both a table of contents and a glossary of acronyms at the end of the FDO to assist in understanding the complex issues in this case.

Because of sufficiency of time concerns expressed in Lewis County's responding brief, a detailed procedural history is necessary. The final CP and final environmental impact statement (FEIS) were adopted as one document by the BOCC by resolution on June 1, 1999. Contemporaneously, the BOCC adopted Ordinance #1159A which amended Ordinance #1159. Ordinance #1159

adopted the County's interim urban growth areas (IUGAs) and rural zoning policies which were the subject matter of a finding of noncompliance and partial invalidity in *Smith v. Lewis County* #98-2-0011c (*Smith*).

Petitions for Review (PFRs)

On August 2, 1999, a joint PFR was filed by Eugene Butler, Dorothy Smith, Michael Vinatieri, Ed Smethers, Douglas Hayden, Robert Schanz, Annette Yanisch, Richard Burris, Deanna Zieske, Dan Smith, Tammy Baker, Debra Burris, and Brenda Boardman (Butler). On August 3, 1999, Petitioner Panesko filed his PFR. On August 6, 1999, Petitioner Mudge filed a PFR and on August 10, 1999, Petitioners Evaline Community Association (ECA) filed a PFR. The PFRs challenged compliance of the CP and Ordinance #1159A with the GMA.

Immediately preceding the filings of the PFRs the County adopted Ordinance #1159B, which amended Ordinance #1159A. Ordinance #1159B was a partial set of interim implementing DRs for the CP. Notice of the DR adoption was published on August 1, 1999, and August 11, 1999.

Thereafter, Eugene Butler, Douglas Hayden, Robert Schanz, Annette Yanisch, Richard Burris, Deanna Zieske, Dan Smith, Tammy Baker, and Susan Lamoreaux (Butler) filed another joint petition on September 10, 1999, challenging Ordinance #1159B. On October 7, 1999, Petitioner Panesko filed a PFR challenging the DRs. On October 8, 1999, Petitioners ECA filed a PFR challenging the DRs.

Pursuant to motions by Lewis County and Petitioner Panesko the first prehearing conference was rescheduled to September 22, 1999. At that conference a variety of issues were discussed and the hearing on the merits (HOM) was set to begin February 15, 2000. Mr. Mackie also indicated that the County planned to challenge the standing of all of the Petitioners for an alleged lack of participation by Petitioners as to certain issues. The specifics of the standing challenge would not be set forth until the County's responding brief. At the September 22, 1999, prehearing the

briefing schedule was also established.

Intervention and Consolidation

On September 10, 1999, the Port of Chehalis (Port) filed a motion to intervene. On September 15, 1999, the Lewis County Economic Development Council and the Lewis County Industrial Lands Advisory Task Force (EDC) filed motions to intervene. On October 7, 1999, a motion for intervention was filed by the Cities of Chehalis, Napavine, Winlock, Vader, Toledo, and Morton (Intervenors). On October 19, 1999, a motion to intervene was filed by the City of Centralia.

On October 28, 1999, we issued an order granting intervention to all of the parties who had requested the same. That same day we issued an order consolidating all of the PFRs into the above-entitled case.

Record Problems and Index

The dates referred to hereafter are dates that the materials were received in our office.

Preparation of the record presented significant problems to Lewis County. A “preliminary index” to the record was filed September 14, 1999. On October 11, 1999, a purported “final” index to the record (dated October 6, 1999) was filed. On October 21, 1999, Lewis County filed an update to its previously filed “final” index to the record. The update concerned additions to the index requested by ECA, EDC, and the cities. Another update was filed on October 28, 1999. A further update on November 4, 1999, relating only to Lewis County additions, was filed. Then again, on November 24, 1999, another “final” index and two subsequent updates were once again filed, but this time Lewis County entitled the update “interim.” Then on December 3, 1999, a “final index update” for listing all documents that were contained in the record was filed. On January 27, 2000, further additions to the index were filed and on January 31, 2000, the final “corrected index” list was received.

Updates to the Lewis County index were as follows:

September 14, 2000 (Preliminary)

October 11, 1999 (Final)

October 21, 1999 (Update)

October 28, 1999 (Update)

November 4, 1999 (Update)

November 24, 1999 (Interim Update)

December 3, 1999 (Final)

January 27, 2000 (Update)

January 31, 2000 (Correction to Final)

Petitioners faced many other obstacles to accessing the record. During the prehearing conference, Mr. Mackie, representing Lewis County, stated that a separate room for citizen review of the record in this case would be established at the Lewis County courthouse and would be available at least two weeks prior to the October 18, 1999, deadline for motions. On October 18, 1999, Petitioner Panesko filed a motion to supplement the record, a motion to “improve use of the record room,” and a separate motion stating that the promised two weeks prior to October 18th record availability had been unfulfilled. Panesko complained that access to the room, when it finally was available, was restricted by County staff. Planning Director Mike Zengel was required to be consulted prior to any Petitioners entering the room and prior to any copies (at 25 cents per page) being made by staff. Petitioners were not allowed to remove documents for copying.

On October 25, 1999, ECA filed a motion to supplement the record. On October 26, 1999, Mr. Mackie’s Legal Assistant (Doreen Milward) sent a letter to the parties notifying them that the records room location was to be moved and would not be available until November 1, 1999. On October 26, 1999, ECA filed a motion to amend the schedule for briefing and hearing. An

attached affidavit by Susie Seip stated that Lewis County staff had made access to records room difficult. Specifically, staff had required a drivers license identification and demanded a membership list of ECA prior to entry to review the record. Further, the affidavit stated that staff refused to make copies unless first approved by Planning Director Mike Zengel. Finally, ECA stated that the numerous changes and delay in preparation of the record index had interfered with their ability to orderly present their case. Petitioners Butler also filed a motion to supplement the record and to strike certain defenses of Lewis County. Once again, the affidavits attached to the motion alleged interference with access to the record and/or to the record room.

On October 27, 1999, we received a copy of a letter from Petitioners Butler to Mr. Mackie discussing the long delays for all Petitioners because of restricted access to the record. The letter noted that Mr. Mackie had been employed by the County for years and had total and complete access to the record from day one.

On October 29, 1999, we received a letter from ECA complaining about problems with the index and again complaining about access to the record, specifically portions of the BOCC file which were missing documents known by ECA to have been sent to the County.

On November 5, 1999, Lewis County filed a response to the Butler motion to strike defenses. As part of that motion the County noted that the II series of exhibits related to the *Smith* case noted above concerning the IUGA were part of the BOCC consideration in reaching its determination on the final urban growth areas (UGAs).

However, in its responding brief (p. 6) the County claimed the *Smith* case was mooted by adoption of CP UGAs which were fixed by the BOCC without regard to the IUGAs. It was often difficult in this case to discern exactly what Lewis County's position was.

On November 12, 1999, we held a motions hearing regarding the record requests. The parties stated that the problem of access to the record room had finally been resolved. Rulings were made concerning the various motions to supplement the record. On December 2, 1999, a series

of orders were issued. The parties were issued formal notice of the new HOM hearing dates March 21 – 23, 2000. The prehearing order (PHO) was entered that day, as was an order concerning the various motions to supplement the record.

Petitioners Butler filed a motion on January 24, 2000, for a one-week delay for filing their brief. In the attached affidavits Petitioners set forth that on January 7, 2000, they sought tapes of both the PC and BOCC hearings. The tapes were to be available January 11, 2000, but a check with County staff on January 21, 2000, revealed that the tapes were not available and would not be available until the following Monday. Petitioners Butler contended that the variety of problems with missing tapes, and missing sections of the tapes that were available, significantly interfered with their ability to complete the opening brief on time. A one-week extension and adjustment to the briefing schedule was agreed to by the County and granted during a telephonic conference hearing.

The major reasons for granting Petitioners' request for extension were because of the various problems with the index and access to the record, the relative inexperience of Petitioners (all of whom are *pro se*) as opposed to the County and Intervenor representatives who are all attorneys (two of whom have extensive GMA experience), and because of the holiday schedule during December.

During January 2000, the parties were able to agree that the briefing schedule would again be altered so petitioners' briefs would not be due until February 11, 2000. The County and Intervenors' briefs' due date was adjusted accordingly. On February 4, 2000, we received a copy of a letter from Petitioners Butler to Mr. Mackie concerning the "significant error" on the final index list which had been filed December 3, 1999, which caused the January 31, 2000, index "update" filing. A request to further extend Petitioners' deadline until Monday, February 14, 2000, was opposed by the County and denied.

The next series of motions began March 1, 2000, when the EDC and the Port moved to supplement the record to include Ordinance #1170. EDC and the Port also requested allowance of other supplemental evidence. Lewis County also moved to supplement the record or have us take official notice of Ordinances #1168, #1169, #1170, and #1170A. Since Petitioners had

already filed their briefs in this matter which included the issues concerning Ordinance #1159B, not surprisingly they objected to consideration of the newly adopted ordinances at the HOM. Petitioners Butler moved to strike a portion of the County brief and the entire brief of the City of Centralia.

By order dated March 23, 2000, we denied the motions to supplement or take official notice of the new ordinances. We noted that Lewis County had engaged in similar adoption of new ordinances immediately preceding a hearing in the *Smith* case. We also noted that the PFRs filed in this case challenged the ordinance adopted by Lewis County in July 1999, and that basic fairness, as well as legislative direction, required that we address the issues concerning that ordinance. The time for appealing any of the new ordinances had not yet passed. Any determination we might make concerning the new ordinances would be a violation of the legislative directive found in RCW 36.70A.290(1) for us not to issue “advisory opinions.” Finally, if we determined the County had not complied with the Act with respect to Ordinance #1159B and the County believed that the subsequent ordinances resolved those issues, a quick compliance hearing could be held. The order also dealt with the various requests for supplementation of the record. We did not grant the County’s motion for reconsideration filed on April 3, 2000.

On March 1, 2000, we also received a motion from Petitioner Mudge to “stay” certain portions of Ordinance #1170 adopted by the County, without a public hearing, on February 14, 2000. In its response the Port pointed out that no PFR challenging the February 14, 2000, ordinance had been filed and that even if we had the authority to issue a stay (which we determined we did not) no jurisdiction could attach until a PFR had been filed. Lewis County also responded that there was no authority to issue such a “stay.” We agreed that no jurisdiction existed over Ordinance #1170 and denied the Mudge motion by order dated March 23, 2000.

On March 14, 2000, Petitioners Butler filed yet another request to supplement the record. An order regarding that request was entered March 31, 2000.

Extensions of HOM Date

On October 11, 1999, we received a motion from Lewis County to extend the deadline for the FDO to April 15, 2000.

While all the record, index, and access problems were being addressed, on October 28, 1999, the County filed another motion for extension of the FDO due date. In that motion the County requested that the other scheduling matters be adjusted “accordingly.” At the November 12, 1999, motions hearing the parties stipulated to an extension of the FDO due date to June 30, 2000. An order was entered on December 2, 1999.

The dust had barely settled on that order when, on December 7, 1999, Lewis County filed yet another motion to continue the hearing and to amend the briefing schedule set up in the PHO, which schedule had previously been agreed to by the County. On December 8, 1999, Petitioners Butler filed a motion to correct the issues set forth in the PHO. Another order was entered December 20, 1999. The County’s motion to continue the hearing and adjust the briefing schedule was denied. The Butler motion was granted in part and denied in part.

On February 4, 2000, Lewis County filed another motion for continuance. This time the County alleged that the DRs contained in Ordinance #1159B were soon to be made permanent in accordance with our previous order in *Panesko v. Lewis County* Case #98-2-0004 (FDO 6-12-98) (*Panesko*) which allowed the County until April 15, 2000, to adopt final DRs. The motion indicated that a “final draft” comprehensive zoning code had been prepared and was scheduled for the first public hearing on February 8, 2000. The County asserted that environmental review on the ordinance was expected “shortly thereafter.” Petitioners Butler countered with another request for delay by motion filed February 7, 2000. The gravamen of the Butler motion concerned continuing problems in accessing the record as shown by affidavits attached to the motions. Those affidavits engendered a counter affidavit from Mr. Mackie’s office concerning the “Rose Mary Woods” response to significant missing portions of tapes for PC and BOCC meetings.

On February 17, 2000, we issued an order denying the County's request for continuance. We noted in that order that RCW 36.70A.300(2)(a) requires that an FDO be entered within 180 days of the last PFR filed in a consolidated case. Extensions for purposes of negotiating a resolution of all or some of the issues in the case are authorized, but no other extension or delay is permitted under the GMA.

The wisdom of that denial was demonstrated by the County's subsequent actions regarding DRs. In the County's response brief at p. 43 the ordinances adopted subsequent to the June 1st CP adoption are listed and quoted as follows:

- “1. Ordinance #1159A, June 1, 1999, emergency.
2. Ordinance #1159B, July 26, 1999, interim.
3. Ordinance #1166, December 27, 1999, master plans for non city UGAs, including industrial reserve areas.
4. Ordinance #1167, December 28, 1999, incorporating specific city regulations.
5. Ordinance #1168, February 14, 2000, special use process for mineral resources.
6. Ordinance #1169, February 7, 2000, Subdivision code amendment, including definition of lot of record as platted, surveyed, or deeded, but not assessor segregations, creating a large lot review process for lots from 5-20 acres to assure a lot is buildable before subdivision approval is granted, including critical areas, septic, and rural service issues, Ordinance #1169 § V, pp. 42-51 (Chapter 16.05 LCC).
7. Ordinance #1170, Title 17, Zoning, Chapter 17.05-17.200. Emergency ordinance adopted February 14, 2000. Final regulations scheduled for adoption by April 15, 2000.”

We were recently notified that these “final” DRs were adopted on April 16, 2000, but not before adoption of another “interim” ordinance (#1170A) on February 28, 2000.

Had we acceded to the County's request for continuance we probably would not yet have reached the HOM stage in the CP review process. Many of the ordinances were adopted as “emergencies” and/or interim measures without the benefit of a public hearing. While the County certainly has the legal authority to do so, we question the wisdom of adopting such a series of piecemeal ordinances, having them in place for a period of months, and then essentially readopting the same ordinances after the “public hearing” portion has been completed. If it was the County's desire to remain a “moving target” where no effective review of these ordinances could take place, particularly in conjunction with the CP, that goal was accomplished. The

allowance of “early and continuous public participation” would seem to be lacking in the methodology adopted here.

Additionally, it is impossible for us to consider the recurring theme first set forth at p. 11 of the County’s brief that we “must consider the comprehensive plan and development regulations *in pari materia* as the two work so closely together” because of the way the County scheduled and adopted its DRs. P. 11 of the County’s brief acknowledges that the manner in which these materials were addressed by the County puts us in a “nearly impossible position” under RCW 36.70A.290(1) prohibiting any expression on the “compliance of Title 16 and 17.” The County goes on to contend that under *Citizens v. Mount Vernon*, 133 Wn.2d 861, 873 (1997) (*Citizens*), review of DRs is important because “it is the specific regulation *and not the plan* which controls development.” (Emphasis supplied).

We received a motion from Mr. Mackie on March 15, 2000, to continue the HOM because of a family medical emergency. We granted that request by order dated March 23, 2000, and rescheduled the hearing to April 10-12, 2000.

Beginning at p. 22 of the County’s brief, Mr. Mackie complained that Petitioners had more than six months from the time the PFRs were filed and nearly three months from the PHO to file their briefs and exhibits. Mr. Mackie noted the County had been given three weeks to respond and in his opinion such a limited time period “worked a significant injustice on Lewis County.” He complained that adequate opportunity to prepare a brief was absent, particularly with the extensive Petitioners’ briefs. He noted that attorneys Moss, Hillier, and Murphy did relieve some of the responsibility of Mr. Mackie briefing all of the issues. He also noted that the record was extensive and complained that finding a particular reference was similar to an “Easter egg hunt.” The complaint about the lack of time (summarized at br. p. 23) was that Mr. Mackie did not have “an opportunity to do his best work” and that the brief was more in the nature of an “advanced rough draft.”

While it is true that the County and Intervenors had three weeks to reply, it is not true that only Petitioners had three months from the PHO, since the issues were clearly stated, not challenged in any way by the County, detailed rather than “overly broad,” and afforded the County as much

time as Petitioners for research into the record and preparation of an initial draft response. Additionally, Mr. Mackie has been hired by Lewis County as counsel for GMA purposes for many years and was instrumental in the preparation of the record, attended virtually all of the hearings, and has more experience with GMA issues in our jurisdiction than any other attorney who practices before us. Ms. Moss has extensive experience in practice before us. None of the Petitioners are members of the Washington State Bar and only a few have previous experience regarding GMA appeals. As detailed earlier, Petitioners' access to the record and the huge number of changes to the index made it very difficult for Petitioners, who did not have anywhere near the personal knowledge of the record that Mr. Mackie had, to prepare their briefs. Much of the early three months from filing of the PFRs involved extensions for settlement negotiations rather than additional time for Petitioners to review the record and prepare their briefs. The fact that this order is issued on the last day of its due date, because of its extensiveness and because of scheduling conflicts, indicates a certain amount of stress and time-consuming preparation. If Mr. Mackie's theme is to the effect that the County was singled out to endure extraordinary stresses because of a short period of time to prepare his response brief, we note that the time stresses for Petitioners, Respondents, Intervenors, and for us were very similar.

Finally, a three-week extension was granted to Mr. Mackie for a family medical emergency. Most of that time was taken because of rescheduling difficulties for the HOM. Mr. Mackie did not request any additional or supplemental briefing during that three-week delay. Ultimately, his concern expressed in the brief was that he would have written a better and shorter brief. After three days of oral argument on the issues of this case, which all parties appeared to feel was more than adequate, it is difficult for us to understand what more the County could have said or done if given more time.

STANDING

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Participation

On September 29, 1999, Lewis County filed a generalized notice stating that the standing of Petitioners to raise certain issues would be challenged.

On October 7, 1999, Petitioner Panesko responded to the notice of standing challenge issued by Lewis County. Among Panesko's items of response was an allegation that changes to the draft CPs were often unavailable or virtually unavailable to the public prior to adoption by the BOCC.

Lewis County, the Port, and EDC challenged various petitioners' standing to bring forth certain issues. The challenges related to the purported failure of individual petitioners to generate "issue-specific" comments during the County's public participation process. Respondent's and Intervenors' claims were based upon a Whatcom County Superior Court ruling favorable to that position. The issue was briefed by all parties for the HOM.

On the first day of the HOM, April 10, 2000, the Court of Appeals issued its decision in *Wells v. WWGMHB* 100 Wa. App. 657 (2000) (*Wells*). The parties were given an opportunity to present post-hearing briefing on the standing issue in light of the *Wells* case. Lewis County's motion to strike portions of the Panesko post-hearing brief not related to the standing issue is granted.

In addressing the issue of what "participation" a petitioner must demonstrate to achieve standing to raise issues before a GMHB, the *Wells* Court specifically rejected the issue-specific position of respondent and intervenors. The Court, referencing RCW 36.70A.280(2)(b), noted that the statute required that a person must have participated during the local government process "regarding the matter on which a review is being requested" to acquire GMHB standing. *Wells* specifically held that the term "matter" was not equivalent to the term "issue." The Court also rejected the claim of appellant and amicus that the word "matter" was equivalent to the term "enactment." Rather, legislative intent led to the conclusion that the word "matter" referred to "a subject or topic of concern or controversy."

Wells then went on to adopt the Central Puget Sound Board's analysis in its case of *Alpine v. Kitsap County* #98-3-0032c (*Alpine*). Quoting from *Alpine* the Court specifically adopted the test that a petitioner's participation must be "reasonably related" to a petitioner's issue presented to a GMHB. The *Wells* Court refined the *Alpine* analysis to:

"Require a showing of *some nexus* between the petitioner's participation in the county process and the issues it raises before the growth management hearings board. We recognize this approach *leaves each growth management hearings board considerable discretion* to determine whether the facts support the necessary connection in each

case....” (Italics supplied)

Finally, the *Wells* Court concluded that the *Alpine* approach would further GMA’s goals of encouraging meaningful public participation in the local government planning process, helping to achieve local government compliance with the Act. The Court pointed out that persons wishing to raise issues before a GMHB “should participate actively in the planning process for the *geographic areas or subjects of interest* to them” (italics supplied). In a cautionary note the Court also said:

“It would be unrealistic given the time and resource constraints inherent in the planning process to require each individual petitioner to demonstrate to the growth management hearings board that he or she raised a specific legal issue before the board can consider it. The growth management hearings board, with their expertise in these matters and their role as finders of fact, are best suited to decide whether, under the facts presented in a particular circumstance, a petitioner has established participation in a ‘matter’.”

Finally, the Court rejected a claim under RCW 34.05.554 (issue must be raised to an agency before Superior Court can consider it) by pointing out that GMHBs “are not courts and are not designed for the same formal judicial review of agency decisions.”

We look then to the record relating to the standing claims. Lewis County claimed that two situations were identifiable:

Group 1: where petitioners raised matters of “limited comment” and thus standing is “limited to the matter raised” and;

Group 2: where no comment was made and thus no standing was achieved.

The Group 1 claims of “limited” standing relating specifically to the claim of “limited comment” is nothing more than the “issue-specific” claims raised by the County prior to the *Wells* decision. This is not surprising since Mr. Mackie was counsel for Whatcom County during its CP process and subsequent appeals. This “issue-specific” claim, however cleverly phrased, was specifically rejected by *Wells*. Die it must and die it will.

The County contended that a “brief” mention by petitioners disagreeing with a UGA or a limited

area of more intensive rural development (LAMIRD) “concept or boundary” was insufficient to grant standing. This is a clear misreading of both *Wells* and *Alpine*. Under this record it is clear that Petitioners continually, over a period of years, argued to the County that the UGAs were too big and failed to take into account soil and water discrepancies, and failed to adequately achieve the GMA requirement of compact urban development. The same matters were raised with regard to the LAMIRDs, including the multitudinous number of “suburban enclaves/shoreline areas.” This also included “global” references to all the LAMIRDs listed on the County brief on standing at p. 3. We specifically reject, under the record in this case, the claim set forth at p. 2 of Ex. A to Lewis County’s brief that:

“Respondent Lewis County does not contest that during the comprehensive plan process, petitioners raised concerns with the general concepts of clustering, lot sizes, suburban enclaves, crossroads commercial, the criteria for what should be a small town, overall land uses, and densities in rural areas; however, a brief mention in a comment letter, or questioning of a community’s utilities or potential water/sewerage capabilities does not entitle petitioners to now hold standing to bring a (*sic*) entire small town or AMIRD location to the board on appeal.”

The *Wells* case holds the exact opposite of Lewis County’s contention. *Wells* states that petitioners should participate in the planning process for the “geographic areas or subjects of interest to them.” There is clearly more than “some nexus” between Petitioners’ participation in this record on those issues during Lewis County’s public participation process and the issues raised in this hearing. See Ex. III-82, III-9, III-53, III-67, III-397, III-15, and III-424.

We find that the County’s claim that the “Group 2” Petitioners did not participate because of a lack of any comment is not sustained when the record is reviewed. It is Petitioners’ burden to establish standing and in this case that has been done. There is more than sufficient nexus between the comments of the various Petitioners demonstrated in this record and the issues presented in this case.

Three additional matters concerning standing are of significance to us. The County conceded that it never adopted a public participation program as required by RCW 36.70A.140. We find it particularly incongruous for the County to contend Petitioners did not adequately participate when the County, after all these years, has yet to provide a process to inform its citizens of how and what to do to participate. The County acknowledged that the Petitioners here have actively

participated over many years on many planning issues (see public participation section). The Petitioners here included the group of Petitioners who participated in two previous Lewis County cases before us, #98-2-0011c and #98-2-0004.

A second area of concern regarding standing is the fact that there are missing tapes of public hearings and within the tapes that are available there are often significant missing or inaudible sections. Reference to the minutes of those meetings is unavailing since the minutes are replete with summary statements such as “general discussion followed.” In spite of the somewhat spotty record in this case, the County contended that Petitioners did not achieve standing because there were no specific comments on certain boundaries that were established during the CP LAMIRD process. Once again this argument is difficult to comprehend since the County did not even produce reasonably accurate maps of LAMIRD boundaries until July 13, 1999. Those maps were adopted as part of Ordinance #1159B less than two weeks after first appearing on the scene.

Third, we find that the County’s claim that it was “blindsided” by the lack of comment, and that the County’s work would have been better had some of these issues been known, a very difficult argument to understand. Even without the many times Petitioners pointed out the County’s deficiencies, two Department of Community, Trade, and Economic Development (CTED) (now two Departments called the Office of Trade and Economic Development and the Office of Community Development) letters (Ex. III-55, III-13) pointed out almost all of the same deficiencies claimed by Petitioners. The County took no action in response to the CTED suggestions and went so far as to adopt the CP without complying with the notice requirements of RCW 36.70A.106. This record shows that the County was well aware of Petitioners’ issues but basically chose to ignore them.

An example of the standing challenges weaknesses is shown by the Curtis area and industrial land bank (ILB) process. EDC claimed that Petitioner Panesko did not have standing to challenge the Curtis LAMIRD. EDC misread *Wells* and attempted to impose an “issue-specific” requirement where none exists. EDC claimed the County was “blindsided” by Petitioner Panesko’s challenges to the Curtis designation. It is a difficult argument for us to understand since by the time of adoption of the CP the Curtis location had gone through three different designations, all of which were challenged by Panesko and others.

First, the County, in its IUGA ordinance, designated the Curtis 357-acre location as an IUGA. Panesko challenged that designation in *Smith*. We found noncompliance and, except for a 67-acre portion of the area, invalidity. The County promptly appealed that determination to Superior Court where it has languished since.

Subsequently, in its initial draft CP, the County designated the area as an ILB. Petitioner Panesko submitted a letter dated March 30, 1999, pointing out that neither the Curtis site nor the Centralia Steam Plant ILB designation complied with the requirements of RCW 36.70A.365 and .367. (Ex. III-9). The letter pointed out that much more analysis of current and future information was needed prior to the designations. That is the exact issue presented in this case.

Counsel for the Port and EDC nonetheless contended that since the County later changed the Curtis location designation to that of a LAMIRD, Panesko did not have standing to complain about that designation since no specific comment was received. What the Port and EDC failed to point out was that this new designation first appeared in the May 10, 1999, draft CP which had been available to the public for only a few days prior to a May 24, 1999, PC hearing. Despite Panesko's attempts to obtain a copy of that draft CP, the County did not have enough copies available for him until the week of June 16, 1999, long after the CP was adopted. On July 25, 1999, Petitioner Panesko sent a letter to the County pointing out that proposed Ordinance #1159B, to implement the CP designation, allowed new industrial activity at the Curtis site in violation of the GMA.

In the March 1, 1999, draft CP the County stated that “the Chehalis (*sic*) Steam Plant site is designated a Major Industrial Development area pursuant to RCW 36.70A.365 (*sic*).” Actually, the CP meant to say that the “Centralia Steam Plant site” had been designated pursuant to RCW 36.70A.367 dealing with ILBs. In spite of the “mix-up” the March 30, 1999, letter from Petitioner Panesko challenged whether the Centralia Steam Plant (aka “mining” site) site designation complied with the GMA.

The Port and EDC argued that Petitioner Panesko had not achieved standing as to the I-5/US 12 ILB. The record reveals that the US 12 designation was not even included in the March 1, 1999,

draft CP. Rather, that location was recommended for designation at a meeting of a subcommittee of the PC, which may not have been advertised (see discussion under public participation). Petitioner Panesko attended the May 24, 1999, PC hearing. Although the record does not demonstrate that the PC as a full body previously considered or discussed the I-5/US 12 ILB designation, it had been included in the May 10, 1999, draft CP. That was the one that was unavailable to Petitioner Panesko until mid-June. Nonetheless, Petitioner Panesko was able to obtain (on a short-term basis) a copy of a draft CP from a friend and testified impromptu at the May 24, 1999, PC hearing.

Subsequent to that hearing Petitioner Panesko wrote a letter to the County (Ex. III-15) on May 25, 1999, outlining his various concerns about the two ILB designations. With the participation history of Petitioner Panesko and the record in this particular case it is clear that sufficient nexus between his concerns, as set forth in this proceeding, were adequately expressed to the County in a manner that was reasonably related to the issues presented in this case.

The County's "sleight of hand" in changing the Curtis ILB designation to a LAMIRD designation at the last minute, severely limiting the knowledge or ability of the public to participate, did not deprive Petitioner Panesko, with his extensive participation history, of standing to raise claims of noncompliance with regard to the Curtis site or the ILB designations. He did all that could be expected in participating regarding the ILB designations.

We also reject the City of Centralia's challenge to Petitioners Butler on the basis of lack of participation in the City process. The Butler claims of UGA over-sizing and noncompliance of LAMIRDs generally, raised during the County process, provided sufficient nexus to raise those issues in this proceeding. It is the County that ultimately decides the location and size of a UGA. It is not necessary for a petitioner to participate in the City's process leading to a recommendation or request for a particular UGA designation.

State Environmental Policy Act (SEPA)

The County continued its quasi-issue-specific argument regarding SEPA standing in spite of the clear direction found in the *Wells* case. Among the Petitioners here, at one juncture or another, the County was most clearly informed about the claimed inadequacy of the draft and FEIS.

The County's claim that "had it known it could have fixed" is particularly difficult to understand when the record demonstrated that as early as April 8, 1999, (Ex. III-55) CTED presented exactly these concerns in a letter to the County regarding its draft CP. On May 25, 1999, CTED sent another letter (Ex. III-13) commenting on the May 10, 1999, CP draft. CTED pointed out that proposals needed to be more accurately defined and a more refined analysis and a "broader range of reasonable alternatives" needed to be identified. In response (attached to Ex. 9) the County told CTED:

"...Given the time constraints imposed by the Growth Management Hearings Board and the limited funding provided by the State to comply with the requirements of the Growth Management Act, no further non-project environmental reviews will be conducted at this time... Lewis County would welcome additional State funding to conduct additional environmental studies associated with the adoption of this plan."

It is disingenuous for the County to flatly turn down an opportunity to correct deficiencies under the SEPA portion of the GMA and then contend that no petitioner has the right to request review of that decision because the County might be "blindsided."

The County also contended that an additional standing requirement must be met as to SEPA challenges under the theory embossed in *Trepanier v. Everett* 64 Wa. App. 380 (1992) (*Trepanier*). Recently in *ICCGMC v. Island County* #98-2-0023c (*ICCGMC*) (Order 3-1-99) we reaffirmed our long-standing and consistently imposed holding that:

"The Legislature has the sole authority to impose conditions for standing to file a PFR. There is no authority in the GMA for a GMHB to engraft a different and more rigorous standing requirement for SEPA challenges than that which is set forth in the plain language of the statute."

This rule is particularly applicable here where the SEPA document is fully contained and integrated into the GMA document and relies upon GMA standards and requirements and involves a non-project action analysis. This case is totally contrary to the factual situation

involved in *Trepanier*.

After our review of the initial drafts of the procedural history and standing sections, we would be remiss in not observing that if Lewis County had spent as much time, effort, and money trying to achieve compliance as was spent in trying to block participation by these Petitioners, both at the local level and in our proceeding, perhaps the ultimate goal of compliance would have been much easier to achieve.

**PRESUMPTION OF VALIDITY, BURDEN OF PROOF,
AND STANDARD OF REVIEW**

Pursuant to RCW 36.70A.320(1), the CP and Ordinance #1159B are presumed valid upon adoption. The burden is on Petitioners to demonstrate that the actions taken by County are not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), a Board “shall find compliance unless it determines that the action by [Lewis 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 a Board to find the County’s action clearly erroneous, a Board 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, 201 (1993).

SEPA

Petitioners challenged the FEIS both because it did not contain sufficient alternatives in its analysis to comply with WAC 197-11-442 and/or –440 (5)(b), and further because the types of impacts that were analyzed were overly broad and vague, not clearly stated, or did not even address significant impacts at all. The County’s response was first to challenge the standing of

the Petitioners and then to contend that the CP, which integrated both GMA and SEPA, sufficiently set forth alternatives and impacts for a non-project action. The County further contended that many of the impacts asserted by Petitioners to be insufficient had been discussed at various workshops or PC meetings or were included in position papers.

As set forth in *Reading v. Thurston County* #94-2-0019 (FDO 5-23-95) we examine the FEIS *de novo*, but restrict examination to the record submitted.

The decision of the local government to accept an EIS is entitled to substantial weight. The adequacy of an EIS is determined by the “rule of reason.”

Recently, the Supreme Court defined the term “rule of reason” as that which requires the EIS to contain a “reasonably thorough discussion of the significant aspects of the probable environmental consequences.” *King County v. Cent. Puget Sound Bd.* 138 Wn. 2d. 161 (1999).

After review of the EIS and the record in this case we find that it is inadequate and does not comply with the SEPA requirements of the GMA.

There are two primary reasons for determining EIS inadequacy. First, it only analyzed a one-size-fits-all, 1 du/5 acre rural density requirement, rather than reviewing at least one other alternative that “could feasibly attain or approximate the proposal’s objectives.” WAC 197-11-786. Secondly, the EIS did not adequately analyze the environmental impacts of the numerous LAMIRD designations, nor was there any reference in the water quality section to the Chehalis River Basin Action Plan (Ex. IV-73) or the TMDL Study (Ex. IV-72) prepared by the Department of Ecology. The EIS did not adequately analyze flooding impacts nor the limitations on development in western Lewis County stemming from the closure of the Chehalis River Basin to new water rights (Ex. III-3, p. 4-65). It did not adequately analyze open space or recreational areas, nor contain an analysis of the impacts of the ILB designations. A more adequate and thorough discussion as required by WAC 197-11-448 and by the CTED recommendations noted above, is necessary for issuing an adequate EIS.

The County noted that the proposed City UGAs should have contained “environmental review” but that it was not appropriate for the County to “conduct its environmental analysis of city

plans.” The County did not explain why that was so in light of SEPA review of UGAs being a county duty.

The County claimed that since the EIS was based upon a non-project, phased action it was adequate. As noted in WAC 365-195-760(3) during an integrated approach to GMA/SEPA the: “Major emphasis should be placed on the quality on SEPA analysis at the front end of the GMA process.”

The “phased” approach to an EIS is not to be used, as this record reveals, as a mechanism for merely postponing, addressing, or determining adverse environmental impacts from different courses of action. It appears that during the subsequent DR adoption process, the County routinely issued declarations of nonsignificance for the various DRs. This record reveals a disturbing tendency to not address environmental impacts.

We have also been requested to make a determination of invalidity as to the EIS. An EIS is a document designed to ensure awareness of potential environmental impacts by the decision-maker. It does not dictate a particular legislative action. Thus, it is an inappropriate document or determination on which to impose a finding of substantial interference with the goals of the Act. We remand for the County to comply with SEPA in its CP and DR adoption.

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PUBLIC PARTICIPATION

On June 1, 1999, the BOCC adopted Resolution #99-257 which adopted the CP recommended by the PC “with modifications.” Petitioners complained that examination of Resolution #99-257 failed to show any “modifications” that were attached to it. The County asserted that Ex. III-6 contained the amended CP within the 24 pages of underlined and stricken text and that Ex. III-7 contained the amended maps adopted as part of the Resolution. Petitioners complained that the amended maps contained 64 pages of maps that had not previously appeared in any of the draft CPs. Petitioners further complained that these maps were not signed or dated, casting doubt upon whether the documents were legally or effectively adopted. Many of Petitioners complaints related to claims of failure to comply with the Planning Enabling Act, RCW 36.70.

We do not have jurisdiction to determine whether violations of RCW 36.70 existed. Nor do we have any implied authority to do so. Rather, Petitioners must take their claim that the documents were not adopted according to law and therefore, legally insufficient, to a different forum. Likewise, there are agencies and forums to specifically deal with Petitioners' contentions that the rooms used for public hearings were inaccessible to persons of disability in violation of RCW 70.84.010. We do not have jurisdiction to consider or rule on that claim. If true, the claim is disturbing, but is insufficient to find a lack of compliance with the public participation goals and requirements of the GMA under this record.

Petitioners Butler do have cognizable complaints under the GMA as to whether the County provided "effective" notice and whether early and continuous public participation was accomplished. Clearly, as evidenced in the August 11, 1998, PC meeting (Ex. III-171 – 172) there was serious reluctance by the leadership of Lewis County to accept, or even listen to, public comments that questioned any particular recommendation or action. In that meeting, a member of the PC referred to Petitioner Panesko in a colloquialism for anus which the Planning Commissioner repeated a number of times. We reach that conclusion from evidence in affidavits, since the portion of the PC tape covering that meeting was blank. It is difficult to determine whether negligence or deliberate action occurred. It is clear that in this record a number of tapes have serious gaps and/or unintelligible portions within them.

Petitioners Butler contended that notices and availability of documents used both in the CP and DR adoption process, were different and apparently based on the whim of whoever was in charge at the time. Many of those complaints are shown by this record to be accurate. The County vigorously claimed Petitioners lack standing because these particular petitioners did not specifically articulate concerns. This argument is particularly distressing in light of so many garbled or missing tapes, missing documents, and meetings where the public did not have an opportunity to comment. The County cannot on one hand obscure the record and make public comment difficult, and on the other hand complain that the public failed to articulate concerns.

Petitioners claimed that Ex. III-98 and III-99 contained different versions of the March 1, 1999, CP. Apparently, an initial set of 40 copies of the draft CP were distributed on March 1st and additional but different copies of the supposedly same CP were distributed on March 18, 1999.

Petitioners claimed that 85 differences existed between the two versions. A specific request was made by Petitioner Zieske for additional time to submit written comments to the PC and BOCC because of the use of two different versions. No response to that request was ever given.

Petitioners Butler noted that on May 23, 1999, for the first time, the public was advised about and given an opportunity to obtain the Southwest Washington Regional Transportation Plan (SWRTP). The plan had been used by the staff and PC for months, if not years. No additional time for the public to review and comment on this document was given. Petitioners Butler also complained that at both the CP and DR BOCC hearings significant changes were made without an opportunity for the public to comment. BOCC public hearings regarding changes to Ordinance #1159A (adopted as #1159B on July 27, 1999) occurred on July 13 and 15, 1999. In spite of requests, no material was made available to the public until the morning of July 13, 1999.

Petitioners Butler also accurately pointed out that notices of public hearings would be changed at the last minute, including information as to whether or not the public could comment.

The County acknowledged that it did not comply with the requirements of RCW 36.70A.140 to adopt a public participation program. The County's brief noted that "nearly all meetings had opportunities for oral or written comment" (p. 34) and stated the County's belief that there was no requirement to index every document submitted during the GMA process.

Specifically, the County claimed that the PC public hearings of March 16 and 18, 1999, and the BOCC public hearings of May 24 and 26, 1999, and June 1, 1999, (Ex. III-15, III-527, III-424, and III-425) showed that no substantial changes were made and that the County complied with the spirit of the GMA public participation.

The County claimed it did not have a requirement to notify a specific group (ECA) of proposed DRs as requested by them, even though that provision is found in RCW 36.70A.035.

The County pointed to the variety of meetings and hearings that were held over the last several years. We appreciate that many resource land (RL) and critical area hearings were held over the years. What is important to this case is the CP process that began in earnest in 1997. The County pointed out that many of the Petitioners participated intensively and continuously over that timeframe. It also inexplicably claimed that they acquired no participation standing. The County relied on the public hearing exhibits noted above as well as Ex. III-41 to substantiate its claim that while changes were made at the BOCC adoption hearings for the CP and DRs, they were not “substantive” or significant changes. At the HOM the County also claimed that the March 1, 1999, and March 18, 1999, versions of the draft CP contained identical text but were printed on different computer programs.

Finally, in response to Petitioners’ claims that the Birchfield fully contained community (FCC) violated public participation goals and requirements, the County pointed to Ex. I-127, 28, 29, and 30 for discussions of Birchfield in 1995 and Ex. III-216 and 217 for the discussion of the Birchfield FCC on March 10, 1998. Thus, the County concluded the Birchfield FCC was a matter of discussion before it first appeared in the March 1, 1999, CP draft. It was also then discussed at the March 18, 1999, PC public hearing as shown in Appendix J. The 1995 “discussions” involved a determination of nonsignificance letters and a plat application, not any GMA issues.

As discussed in other parts of this FDO the County has not complied with the requirements necessary for CP compliance. We assume many of the County’s failures to comply with public participation requirements will not likely be repeated during the remand period. However, we note that Ex. III-9 contained this observation by the County’s own consultant, Bucher Willis Ratliffe (BWR), as follows:

“Poor public participation procedures were followed, such as two versions of Comp. Plan were being circulated, minutes were rarely available, and notices for meetings were rarely given.”

We agree that the County did not adopt any consistent methodology to encourage early and continuous public participation. Since much of the text and many of the maps that constitute the record in this case will need revision upon remand, we need not and do not determine whether effective notice in a reasonable manner was given as required by the GMA prior to their

adoption. Likewise, we do not decide whether the last-minute changes were minor or significant. We would certainly expect the County to have a great deal more clarity in its public participation process during the remand period in adoption of text, maps, and adoption of revised DRs. We do not believe under this record that it would be possible for Lewis County to comply with the public participation goals and requirements of the Act without, as its first task, adopting a public participation program.

Petitioners Butler contended that the County violated RCW 36.70A.140 in its failure regarding “consideration of and response to public comments.” We agree with the County and with the Central Puget Sound Board in its case of *Bremerton v. Kitsap County* #98-3-0032 (Order 2-8-99), that “respond to” in this GMA context does not require individual specific responses, but is more closely aligned to “consideration and reaction where appropriate.” In its reply brief Petitioners Butler asserted that the County’s failure to “respond to” was not intended to be a claim of requiring specific responses but to at least take into account and consider public comments. We observe that in that context, the alleged failure to do so is ultimately a ballot box issue, not a GMA issue.

Finally, Petitioners Butler pointed out that at the last PC meeting prior to adoption of Ordinance #1159A (subsequently corrected and readopted as #1159B) the PC “deputized” two members to work with counsel for the County on textual changes which ultimately became Ex. III-97K. As noted by Petitioners Butler there is a serious question as to whether that sub-exhibit was even in existence at the time the “deputization” was made and a serious question of whether the first mention and/or mapping of the newly designated Class B agricultural lands was even reviewed by the full PC. The record is clear that the PC recommended CP did not contain any references to flooding or stormwater issues. That material was added during the short BOCC process.

We find that Lewis County did not comply with the public participation goals and requirements of the Act in adoption of its CP and implementing ordinances. The County must adopt a public participation program as required by RCW 36.70A.140.

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RESOURCE LANDS (RLs)

Mineral Lands

ECA complained loud and long (many years) about the designation contained in the CP for two specific gravel pits in the Evaline Community area known as the Good Pit and the Johnson Pit. In addition to the SEPA contentions discussed in that section and the public participation contentions discussed in that section, ECA contended that the designations did not meet GMA criteria and that the CP maps did not accurately reflect the purported action of the BOCC.

This is a classic case of sloppy work and poor communication leading to a great deal of time, effort, and frustration on the part of all the people involved. At the HOM, after extensive briefing by both ECA and the County, it finally appeared that the Good Pit was not designated as a mineral resource area. It is easy to understand, based on this record, why ECA believed that the Good Pit had been designated. Particularly frustrating to Petitioners was the fact that Figure 4.20a, the map of mineral RL, generally located two parcels, each of less than 25 acres and one parcel of 25 to 100 acres. The County contended that the Johnson parcel (apparently the 25-100 acre site) was actually more limited by provisions found in Ordinance #1159B. As Petitioners accurately pointed out, it is hard to reconcile that ordinance and the map attached to it with the CP map because the maps have been changed at least three times during the 1999 CP and DR adoption process.

We specifically find that the CP is inconsistent with the DR, particularly in the mapping location, and remand the issue to the County to specify exactly what mineral RLs have been designated in the Evaline Community area and the criteria upon which that or those designations were made. Simply relying upon a purported designation in a previously-adopted “interim” resource ordinance does not satisfy the GMA requirements of appropriately designating RLs in the CP. RCW 36.70A.070(1).

As with many of the issues in these cases the County contended that all would be resolved by the adoption of final DRs. In this particular case the County contended that Ordinance #1159B solved the issues but that further standards and criteria had been adopted in Ordinance #1168

which would then be incorporated into Ordinance #1170 which would then be incorporated into Title 17 “as part of the final adoption process.” The County’s optimism was unwarranted since upon notice of publication of adoption of Ordinance #1168, ECA filed a PFR under Case #00-2-0007. The HOM on that case was held June 28, 2000.

We hope that the maps to be submitted on remand will not have to include the present maps’ caveat that “the accuracy of the map has not been verified, and it should be used for informational purposes only.” GMA requires maps that are verifiable and define specific locations and designations.

Agricultural Resource Land (ARL)

Petitioners Butler challenged the ARL designations and protections on a number of grounds. Primary among those were 1) the fact that the maps designate only 11,835 acres of Class A ARL; 2) the first mention of a Class B designation was contained in CP tab 4.1, which did not contain any mapping; and 3) that allowable densities from Title 17.30 exceeded GMA allowances to conserve ARLs. Petitioners Butler also pointed to Section .620(3), which allowed a single-family residence plus “housing for farm employees” plus “farm housing for the immediate family” and Section .640(2)(a) all allowed for “residential subdivision” which all allowed greater densities than allowable in the CP’s rural remote designation. Finally, Section .690 permitted landowners to opt out “when it was not reasonable to expect a reasonable rate of return” based on some undefined chain of circumstances.

Lewis County responded that all the matters were taken care of in new Ordinance #1170, that since Title 17.30 was adopted in 1996 no jurisdiction for review existed, and that the Class B agricultural land designation maps were “readily available.”

The County is incorrect in its claim that review of Title 17.30 was not permissible because that interim resource ordinance was unchallenged in 1996 and merely referenced in the CP. Rather the GMA, RCW 36.70A.070(1), requires the County to readopt its RLs designations and DRs. Either the County has failed to do that by merely referencing the interim resource ordinance (IRO) or it intended the IRO to be made permanent and become part of the RLs’ action. The CP

and the DRs are unclear. In either event, we have jurisdiction to review the County's compliance with RL requirements.

As we have previously noted, whatever may have occurred from Ordinance #1170 is not before us. During the HOM, counsel for the County conceded that if there was a requirement for new and updated permanent designations and DRs, Lewis County had not complied. There is, and it did not.

Certainly the designation of only 11,835 acres of ARL as Class A land was not guided by the "minimum guidelines" established by CTED and WAC 365-190. At CP p. 4-94 the following statement is made under the existing conditions section:

"Lewis County also contains approximately 60,000 acres of cultivated farmland."

The classification of only 11,835 is particularly incongruent with the notation in the CP that in 1992 the value of agricultural production in Lewis County was approximately \$62 million generated by 1,067 farms, over half of which were operated by part-time farmers. Finally at p. 4-95 the CP noted that today "Lewis County ranks first in the state in the number of broiler chickens produced."

Our review of the maps contained in the CP do not reveal where any Class B agricultural lands are located, nor what criteria were used in determining inclusion or definition of Class B agricultural lands. Neither Ordinance #1159A nor #1159B suggest any type of regulation for conservation of Class B agricultural lands.

The allowable densities found in Title 17.30.620(3), .640(2)(a), and the opt out provision of .690 do not comply with GMA requirements for conservation of RLs. *ICCGMC* (FDO 6-2-99).

The provisions which allow or purport to allow densities more intense than one dwelling unit (du) per 10 acres and the provision that allows "opt out" contained in LCC 17.30.690 all substantially interfere with the goals of the Act, particularly Goal 8. We enter a declaration of invalidity for

those sections and any other sections of the CP or DRs which allow similar avoidance of RL conservation.

UGAs

Petitioners presented three issues with regard to the challenges to CP adoption of UGAs. The contentions were defended by counsel for the cities.

Petitioners Butler contended that six of the nine UGA designations involved oversizing. Briefing and argument related to the three cities Centralia, Chehalis, and Napavine. Counsel for the City of Napavine asserted that the UGA had already been annexed to the City. We need discuss this no further as City limits are definitional UGAs under RCW 36.70A.110.

Petitioners Butler contended that the County's own consultant, BWR, criticized the proposed Centralia and Chehalis boundaries as being significantly oversized given the population allocation and the needs of the two cities (Ex. III-232, III-9).

The City of Centralia made the claim, as did the Port and EDC in the industrial section of this FDO, that the needs assessment information contained at CP p. 4-19/20 was not challenged and therefore became a "verity" because of the "presumption of validity" attaching to that document. RCW 36.70A.320(1) provides that:

"...[C]omprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption."

There is no presumption of validity attaching to documents used by a local government to reach its legislative action, which is *then* subject to the presumption of validity. Additionally, the PFR process of RCW 36.70A.290 and WAC 242-02 do not provide petitioners an opportunity or an ability to directly challenge a particular document contained in the record. We specifically reject Intervenors' claims that unchallenged documents were "verities on appeal."

Based on the record and the arguments in this case we find that Petitioners have not carried their

burden of demonstrating the County did not comply with the Act under the clearly erroneous standard, for sizing of UGAs. The boundary lines drawn for the cities of Centralia and Chehalis, while large, are not so excessive as to overcome the presumption of validity. There certainly is a spate of evidence in the record to justify many of the market factor and deduction items used by the cities in reaching their recommended boundaries, which were adopted by the County thereafter. Nonetheless, the boundaries are logical in many respects and generally meet the locational criteria found in RCW 36.70A.110. Any proposed reduction of the boundaries, under the record here, is not necessary to achieve compliance.

Petitioners Butler also challenged the County's failure to include the Cooks Hill area in the Centralia UGA and the Jackson Highway area in the Chehalis UGA. We deal with the County's ultimate designation of those two areas in other sections of this FDO. Petitioners have not sustained their burden of showing that the County was clearly erroneous when it failed to designate those two areas as part of the UGAs of the respective cities.

Petitioners have, however, carried their burden of showing that the UGAs established in the CP do not comply with the "encourage urban growth" requirements of RCW 36.70A.020(1) and .110. At the HOM the County conceded that it had not complied with the GMA because of the failure to adhere to its own countywide planning policies (CPP) (Ex. III-210) directing that a majority of the population allocation would be directed to the UGAs. Rather, as demonstrated by CP Table 3.3, a majority of the new population projected to arrive in Lewis County has been allocated and directed to rural areas. In addition to the County's noncompliance for failure to adhere to its CPP, the County also has not complied with the GMA. There was significant disputes between Petitioners and the County as to the ultimate densities achieved within the UGAs, often because the record was unclear. We conclude that urban densities were woefully inadequate to satisfy the GMA requirement to achieve urban growth within UGAs. The failure of the County to properly allocate population to the cities is a major factor in this noncompliance. Policies like the one contained in the CP p. 4-19 for the City of Centralia's future land use that:

"The preferred alternative UGA would substantially increase the percentage of residential use within the city *for low density residential, of which there is currently a deficit of acres....*" (Italics added).

do not comply with the Act. We recognize, and have always recognized, that urban densities in rural counties such as Lewis may well be significantly different than more urbanized communities. We have even recognized that within counties urbanization may well be different for different portions of the County. *WEC and C.U.S.T.E.R. v. Whatcom County*, Case #94-2-0008 and Case #96-2-0009. Nonetheless, the Legislature requires communities like Lewis County to encourage urban growth, RCW 36.70A.030(17), to be directed to UGAs. We certainly do not have the authority to exempt Lewis County from this requirement.

The County's noncompliance is also directly attributable to the lack of specific policy direction in the CP and particularly the absence of any policies that actually "encourage development in urban areas" (RCW 36.70A.020(1), .110) or "reduce sprawl" (RCW 36.70A.020(2)). The policies that were adopted throughout the CP are so ambiguous and nondirective as to often be meaningless. The maps in the CP designating the UGAs were acknowledged by the County to be generalized and in many cases inaccurate. The County contended that Ordinance #1159B and subsequently adopted ordinances had and would cure that deficiency. Simply put, the GMA does not allow such delayed action. Accurate maps of the UGAs and other designated areas must be adopted and included in the CP, RCW 36.70A.070. The reason for this is quite evident. Accurate maps reflecting the action that has been taken in the CP are subject to the requirements of RCW 36.70A.130 for an annual cumulative review of amendments. The County is quite candid in its assertion that many, if not most, of the real decisions that will direct Lewis County development over the next 20 years will be adopted in subsequently developed DRs, which, according to the County, are not subject to annual review requirements and can be changed at any time. This methodology does not comply with the GMA

Ordinance #1159B provides that any DR is considered to be automatically amended when any master plan approval is given or any special-use permit is issued. DRs are required to be consistent with the CP and to implement CP policies. As such they are to provide appropriate standards and criteria to determine whether any development application, including master plan approvals or special-use permits are consistent with the DR and CP and are to be approved or denied on that basis. Lewis County's approach in this context appears to be to postpone any decision as to standards or criteria until the permit process is complete. This is totally antithetical

to the requirements of the GMA. This approach is also particularly disturbing given the significant number of subsequently adopted DRs, which are not properly before us, and the County's reading of the *Citizens* case that a specific DR "trumps" any inconsistent CP. The GMA is clear, RCW 36.70A.070 that the CP is to include "objectives, principals, and standards" in the specific policies that are to be directive. DRs are to be consistent with and *implement* the CP, not be used as a mechanism to amend the CP, especially in violation of RCW 36.70A.130, or to render the CP meaningless. Additionally, as appears to have been done in Ordinance #1159B, and suggested by the County in subsequent ordinances, expansions of locations from those designated in the CP were contained in the new DRs. Any changes from the CP to the DRs renders the DRs inconsistent and therefore noncompliant. The DRs adopted in Ordinance #1159B do not comply with the Act.

In reviewing our finding of compliance with the locational criteria of RCW 36.70A.110, but noncompliance with the urbanization and anti-sprawl goals and requirements of the Act, we do not find that, as to the UGA issues, the Petitioners have sustained their burden of showing substantial interference with the goals of the Act.

OPEN SPACE

RCW 36.70A.160 requires that a County in its CP:

"...Shall identify open space corridors within and between urban growth areas. They shall include lands useful for recreation, wildlife habitat, trails, and connection of critical areas as defined in RCW 36.70A.030...."

RCW 36.70A.070(1) requires designation, location, and extent of uses for "open spaces." RCW 36.70A.020(9) requires that a County:

"Encourage the retention of open space and development of recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks."

In spite of this clear legislative directive the Lewis County CP contains absolutely no analysis of

existing and future needs, no identification of locations of open spaces or open space corridors, and no text with regard to policies encouraging and retaining recreational and open space opportunities as described in the GMA sections above.

In response to Petitioners' claimed lack of compliance regarding these issues, the County acknowledged that a remand was appropriate to develop maps to identify, prioritize, and designate open space areas. The County contended that it would develop these in DRs. We remind the County that the Act requires that such information and policies be contained in the CP.

At p. 143 of the County's brief, in response to the claim that the CP failed to encourage development of recreational opportunities, the County asserted that the claim "is simply wrong, CP at 4-125 to 129." CP 4-125 to 129 is nothing more than a sectionalized map of Lewis County showing existing park and recreational facilities in the County. These existing identifications were made in only the most general and cursory manner and contained no information as to size, specific location, use or any of the other items necessary for compliance with the GMA. The County did not in any way respond to a staff recommendation (Ex. III-125) that the current parks and recreation plan be updated. There is not even a reference in the CP to such a plan, current or otherwise. Much more work than simply producing better maps is needed for the County to comply with GMA requirements regarding open spaces.

BIRCHFIELD

At CP p. 4-12 and 4-42 Lewis County established a 920-acre "planned community" designation in the Birchfield area under the specific authority of RCW 36.70A.350. At CP 4-42 the 920-acre area was designated as a "provisional UGA," with the observation that the County would establish applicable criteria to conform with RCW 36.70A.350 during the "applicant's review process." Back at CP p. 4-12 the County stated that "DRs shall provide an appropriate master planning process to adopt development criteria." The CP preliminary designation stated that the current owner would be "required to complete master plans within five years to vest this designation permanently."

Petitioner Mudge contended that none of the criteria established by the Legislature in RCW 36.70A.350(1) for designation of new FCCs were met under the record in this case. Additionally, the CPPs (Resolution #95-389, Ex. III-210) required that any FCC must meet the .350 criteria prior to designation. Petitioners Butler contended that section .350(2) did not allow any type of “provisional” designation and required that the criteria and appropriate DRs be adopted prior to actual designation of a FCC.

The County was further well aware of concerns that the Birchfield designation did not comply with the Act as early as the CTED letter of April 8, 1999, (Ex. III-55) which comments were reiterated on May 25, 1999, (Ex. III-13) for the updated draft CP.

The County claimed that because of existing expansion to the original subdivision by the current owner, a provisional designation was appropriate for a five-year period and that subsequently adopted DRs would complete the process for establishing the appropriate criteria and restrictions for the property. The County noted that Ordinance #1159B allocated some 600 people to the Birchfield and Skye Village designations and referred to a future adopted master plan process as completing the cycle.

We note initially that at CP p. 4-12 the population allocation assigned to the Birchfield (as opposed to Skye Village) area is 400, which would lead to something approximating 150 dus over the 20-year period at an average intensity of approximately 1 du per 6 acres. Figure 4.12 is a preliminary architectural drawing done apparently in January 1996 for the proposed EIS. The purported map designates possible or potential locations for housing and commercial areas. The record is devoid of any attempt to determine if the infrastructure requirements of section .350 or any of the other criteria are met, or even could be met in the foreseeable future. Rather, Lewis County has put the proverbial cart before the horse. A FCC, by definition, must include the infrastructure and commercial and housing elements necessary to be “contained” as well as DRs that prevent and prohibit expansion to adjacent rural areas. The CP must show how the criteria for a FCC are met and the DRs must establish a system to ensure that this “urban” designation is appropriately self-sufficient and contained. An average density of 1 du per 6 acres is not an

urban designation. A FCC is, by its terms, an alternative to a UGA designation and requires all of the urbanization goals and requirements of the Act to be met. It is not an alternative to allow low-density sprawling rural subdivisions.

There is no authority in the GMA to apply a “provisional” or “preliminary” FCC designation, certainly not one that purports to vest an entire 920-acre tract subject to some sort of divesting if the plans are not complete in five years. This record does not reveal that any of the criteria for FCC designation were met or that any appropriate DRs have been adopted. The ambiguities between CP p. 4-12 and 4-42 must be resolved before compliance can be achieved.

The designation of Birchfield as a provisional FCC does not comply with the Act.

In light of the total failure of this designation to meet any of the criteria set forth in the Act and the very significant potential for inappropriate sprawl at this location, we find that the designation also substantially interferes with Goals 1, 2, and 12 of the Act and is invalid.

SKYE VILLAGE

Once again at CP p. 4-12 and at 4-45 the County designated a “provisional” or an “anticipated” master plan resort (MPR) under the authority of RCW 36.70A.360. The CP allocates a population of 200 to the 445-acre development. The general location as shown by Figure 4-13A is the intersection of I-5/Hwy 505. Figure 13B is a 1996 preliminary architectural drawing showing “possible” condos and commercial areas established for the 1996 EIS.

In responding to the challenge of Petitioners, the County pointed to the 1993 SEPA analysis found in Ex. II-285 and the July 19, 1997, master plan demonstrated by Ex. II-28. The County contended that fishing the Cowlitz and providing a gateway to Mount St. Helens recreational area sufficiently qualified this designation. CP p. 4-45 indicated that it was “anticipated” that a golf course and other natural amenities “may be included” during the five-year period in which the developer was to establish the master plan.

Clearly there is no adherence to the criteria established in Section .360(2) contained in the CP or

in this record. As with the section on Birchfield, there is nothing in the Act that gives a local government authority to circumvent the clear requirements of this section by some “provisional” designation. There has not been any compliance with Section .360(4) that states the MPR “may be authorized by a County only if” the requirements are met. In addition to the ambiguities found in the CP, which are the same as the ones concerning Birchfield (see above), there is absolutely no showing in this record that the I-5/Hwy 505 location is “a setting of significant natural amenities,” with any kind of focus on destination resort facilities. Fishing the Cowlitz and having an opportunity to go to Mount St. Helens some 40 miles away, with an anticipated golf course, simply does not and cannot comply with the Act. A population allocation of 200 for 445-acre site with no provisions for housing infrastructure or commercial development for an urbanized alternative outside of a UGA not only does not comply, but also substantially interferes with Goals 1, 2, and 12, of the Act.

INDUSTRIAL LANDS

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In dealing with designations of industrial land areas outside UGAs in Lewis County, the CP beginning at p. 4-73 provided two separate approaches. First, it designated the Curtis pole yard area and the Toledo airport area as LAMIRDs under the provisions of RCW 36.70A.070(5)(d). Secondly, it designated two ILB areas located at the intersection of I-5/US 12 and at the Centralia Steam Plant area. We will cover those categories separately.

Industrial LAMIRDs Designations

The Port responded to the challenges to the Curtis pole yard LAMIRD designation in its brief. Lewis County noted that both Curtis and Toledo airport were designated under .070(5)(d) and contended therefore the provisions of RCW 36.70A.365 did not apply. Otherwise the County

deferred argument to the Port. The EDC brief had limited response to the Toledo airport designation. Both the Port and EDC joined the County's contention that the provisions of RCW 36.70A.365 did not apply to these two designations. Petitioners claimed that Section .365 did apply and that, in addition, the noncompliance set forth in the County's LAMIRD designations section also attached to the Curtis and Toledo airport designations. The areas are described in the CP beginning at page 4-73:

“The Curtis area designation consists of a 357-acre location, 67 acres of which is owned by the Port of Chehalis and the remainder by Weyerhaeuser.”

As noted in the CP:

“The Curtis Railyard is an historic log and forest practice site located westerly of I-5. Use of the site predates GMA. The Railyard has an existing rail siding and water from the Boistfort Water District. The Curtis Railyard serves a need for large rail-oriented or resource parcels which do not require municipal sewer. The site has been changed from a UGA to a rural industrial area of more intensive use to avoid creating a demand for sewer in the area. Development regulations shall limit the Curtis Railyard to resource and rail related large lot uses which cannot be served in the UGA. A master plan process shall be created to enforce these rules.”

In that same section the CP described the airport location as follows:

“Toledo airport is a municipally-owned airport. Use of the site predates GMA. The general aviation facility is outside city UGAs, but may make arrangements with nearby cities to provide urban services. At such time the County will consider UGA designation for the site. In the meantime, the public interest is best served by retaining the use of the airport and its ability to grow. As airports and residential uses are not compatible, an area one-quarter mile on either side of the centerline of the runway and one half mile on either end of the runway shall be designated for commercial and industrial uses, not retail. Such uses are limited to industrial well and septic.”

Although specific references in the record regarding the Toledo airport property are difficult to find, it does appear that immediately prior to the adoption of the CP the airport property contained approximately 170 acres, while the ultimate map designation adopted in Ordinance #1159B expanded the designation to some 800 -900 acres. Other than the use of the airport there

is nothing in this record that any historical or current industrial use has ever occurred on the property.

Neither the record nor the briefing and argument of the Port, EDC, and/or the County provides any explanation of the expansion of 600 to 700 acres surrounding the Toledo airport as a LAMIRD.

Similarly, the record reveals that at the very most some 67 acres of the 357-acre designation of the Curtis LAMIRD has ever been used at any time historically as a resource-based “industry.”

As part of its argument the Port observed that the Curtis LAMIRD was a necessary designation because of the need Lewis County had to attract industries that “require large parcels with convenient access to major transportation services, especially rail services.” Noting that the Curtis LAMIRD met those siting criteria, the Port stated that the area was “comprised of large parcels with convenient access to major transportation services, both state routes and rail service, which will attract large industries...”

RCW 36.70A.365(1) defines a “major industrial development” as:

“...A master planned location for a specific manufacturing, industrial, or commercial business that:

- (a) Requires a parcel of land so large that no suitable parcels are available within an urban growth area; or
- (b) Is a natural resource-based industry requiring a location near agricultural land, forest land, or mineral resource land upon which it is dependent. The major industrial development shall not be for the purpose of retail commercial development or multitenant office parks.”

RCW 36.70A.070(5)(e) states:

“This subsection (meaning (5)) shall not be interpreted to permit in the rural area a major industrial development... unless otherwise specifically permitted under RCW... 36.70A.365.”

In recognizing this provision the Port made the argument that somehow LAMIRDS are distinguished from major industrial areas outside UGAs. We are frankly at a loss to understand

this argument. What the plain language of .070(5)(e) says is that a County may not, under the guise of some other label, designate what is defined to be a major industrial development without complying with the criteria listed in RCW 36.70A.365(2). In this record it is abundantly clear that the County did not even make an attempt to comply with those statutory criteria. The definitional standards of RCW 36.70A.365 fit exactly the designation of the Curtis LAMIRD and the Toledo airport LAMIRD.

Even if we found that the LAMIRD designation in these two areas was allowable under the GMA, neither designation complies with the requirements of RCW 36.70A.070(5)(d) for the reasons listed in the LAMIRDS section. Primarily, the County did not limit the LAMIRD designation to the built environment existing on January 1, 1993, as required by .070(5)(d)(i)(iv), but rather expanded that by factors of four or five times into areas that the record reveals had never had any “intensive” rural development.

There is nothing in this record to suggest that the LAMIRD-designated area outside of the previously-used pole yard in the Curtis LAMIRD, or outside of the existing Toledo airport property, have ever had a use other than passive rural. As noted in the next section under ILBs, the foundational study (*Batch*) upon which the County considered ILB designations recommended the designation of the Curtis area as an ILB and did not even include any reference to the Toledo airport.

Industrial Land Banks

The Lewis County CP at p. 4-12 designated two “Major Industrial Development” areas not associated with UGAs. The first was “the Centralia Steam Plant 1,000-acre site is designated a Major Industrial Development Area pursuant to RCW 36.70A.367.” The second area that was designated “industrial development area” was a 1,063-acre site located at the I-5/US 12 intersection. Additionally, “2,000 adjoining acres have been designated as an Industrial Land Bank Reserve, pursuant to HB 3099, (Chapter 289, Laws 1998), to meet projected 50 year needs,” in addition to the “Centralia Steam Plant Industrial Urban Growth Area.” The 2,000-acre reserve area specifically references the E.D. Hovee, November 1997 Industrial Needs

Analysis and the Batch, February 1999, Prime Industrial Lands Analysis. The CP also directed that DRs would later be adopted to “provide an appropriate master planning process.” The I-5/US 12 location was often referred to as the Napavine area.

The Hovee analysis (Ex. III-133) concluded at p. 18 that over the next 20 years, with a market factor of 50%, approximately 700 acres of “total industrial land demand” would exist. The Hovee analysis only covered the IUGAs of Centralia and Chehalis and concluded that some 573 acres of industrial land were actually available and usable. In May 1999, EDC staff updated the Hovee inventory to include the UGAs of all the cities. The (first) May 25, 1999, report (Ex. III-15) observed that in the intervening two years “considerable land suitable for industrial uses had been absorbed, *primarily for housing.*” (Italics supplied). The number of acres within all UGAs at that time totaled 410.

We note as an aside that local governments are often incredibly optimistic about designating industrial lands, then do nothing to protect that designation and allow those lands to convert into housing developments rather than be saved for the future benefit of the community. See *Achen v. Clark County* #95-2-0067 (FDO 9-20-95).

It is clear that the CP intended both designations to fall under the umbrella of RCW 36.70A.367. That statute started as Chapter 167, Laws of 1996 (colloquially known as the Clark County bill). The Legislature recognized in Section 1 that allowance of more industrial siting flexibility than that found under RCW 36.70A.365 was appropriate. Section 2 of .367 allowed a County with certain attributes to establish a process for designating a “bank of no more than two master planned locations for major industrial activity” outside of a UGA. A “master planned location” for such major industrial developments to be included in the “urban industrial land bank,” was allowed if all criteria set forth in the statute were met. Those criteria are presently located in RCW 36.70A.367(2)(a) – (h). Under subsection (4) “final approval of inclusion” of a “master plan location” in the “urban industrial land bank” was to be considered an amendment to the CP, but not subject to RCW 36.70A.130(2). Under subsection (5) once the location or locations were finalized “manufacturing and industrial businesses that qualify as major industrial development under RCW 36.70A.365 may be located there.” The definition of “major industrial development” under section .367(8) corresponded with the definition set forth in RCW 36.70A.365(1).

In Chapter 402, Laws of 1997, the Legislature amended .367 by adding additional qualifications for a County to be included (colloquially known as the Whatcom County amendment) and added an additional definition of “major industrial development.” Under subsection (8)(c) the new definition added an area of land that “requires a location with characteristics such as proximity to transportation facilities or related industries such that there is no suitable location in an urban growth area.” There was no corresponding change to the RCW 36.70A.365(1) definition.

Finally, in Chapter 289, Laws of 1998, the Legislature extended the time for such designations to December 31, 1999, and added additional criteria for county qualification that now included Lewis County. The date of that legislation was April 2, 1998.

In January 1999, the *Batch* Study (Ex. III-111) was published. After evaluation of a number of criteria in addition to review of RCW 36.70A.367, the *Batch* Study recommended inclusion of approximately 3,000 acres of the Centralia Steam Plant site. The study concluded that 1,200 acres would satisfy the current *20-year* needs and the remaining 1,800 acres would meet the longer term *20/50-year* requirements. The *Batch* Study also reviewed two other unnamed areas in its evaluation and concluded at p. 11 that:

“Although Lewis County has the option of designating up to two locations and a projected need of nearly 4,500 acres of additional industrial property, *a second choice is not apparent from the evaluation.*” (Emphasis supplied).

On January 21, 1998, (Ex. II-19) current counsel for EDC, who then represented one of the principal owners of the I-5/US 12 properties, directed a letter to the County asking for consideration of that property for an industrial use designation. Although the *Batch* Study did not specifically identify that site, it was noted to be one of the two not recommended for ILB designation. Nonetheless, subsequent to the March 1, 1999, CP draft, a *subcommittee* of the PC requested the EDC executive director and counsel for the property owner to attend a meeting on March 30, 1999, concerning ILB designation for the I-5/US 12 site.

The record does not reveal that any reasonable notice of that meeting was given, nor that the public attended. There is no evidence that the public was excluded from the meeting.

Subsequent to the *subcommittee* meeting, the PC discussed the matter at its meeting on April 8, 1999. At that meeting, EDC requested the PC to also designate the 2,000-acre industrial reserve area adjacent to the Centralia Steam Plant ILB. The Centralia and I-5/US 12 ILBs and the reserve area were included in the May 10, 1999, CP draft which was adopted by the BOCC on June 1, 1999. As noted earlier, only a limited number of copies of that draft were available to the public prior to mid-June 1999. The CP was not sent to CTED until after its adoption, contrary to RCW 36.70A.106. The March 1, 1999, draft CP (Ex. III-98) designated the Centralia Steam Plant as a major industrial development under RCW 36.70A.365 and the Curtis area as ILB under RCW 36.70A.367.

We find the Centralia Steam Plant and I-5/US 12 ILB designations do not comply with the Act. The Centralia ILB designation does not comply with the criteria and the other requirements of RCW 36.70A.367(2). As noted above, that section requires that a “master planned location” could be included in the urban ILB only if the statutory criteria are met. It is sufficient to find noncompliance by review of the CP itself. RCW 36.70A.367 requires that evaluation, support and decision-making must occur within the CP and not through later DRs. Certainly an ILB designation does not require the specificity of detail required under RCW 36.70A.365. Nonetheless, there are requirements that “must be provided for” (2)(a), “implemented” (2)(b), “subsequent adoption of DRs to prohibit urban growth and adjacent nonurban areas” (2)(e), etc. As noted in subsection (4) approval of inclusion is to be treated as an amendment to the CP but the requirements of RCW 36.70A.130(2) (annual review) do not apply. We will wait for another day to decide, what, if any, impact the subsection (5) requirement that a major industrial development under RCW 36.70A.365 can be located in an ILB when that definition does not include the 36.70A.367(8)(c) definition of additional characteristics.

EDC contended that Ordinance #1166 (adopted December 1999) and later repealed by Ordinance #1170 (adopted February 14, 2000) resolved all the issues of establishing criteria. As noted above, we do not have jurisdiction over either of those ordinances. Nor did we accept the request of EDC in its responding brief to take official notice of those ordinances and essentially disregard Petitioners’ opening brief and revise the entire set of issues upon which this case began.

The ILB designation for the I-5/US 12 location does not comply with the GMA for the same reasons noted in the Centralia Steam Plant analysis. Although once again EDC has claimed that the CP noncompliance has been cured by adoption of Ordinance #1170, we do not have jurisdiction over that ordinance nor are we willing, under these conditions, to take official notice of it. In *Panesko v. Lewis County*, Case #00-2-0015, the County has agreed that Ordinance #1170 was only interim and a permanent ordinance was not adopted until April 16, 2000.

Further, we specifically find that the I-5/US 12 ILB designation did not comply with the public participation goals and requirements of the GMA. The PC subcommittee meeting of March 30, 1999, did not give “reasonable notice” to allow early and continuous public participation. The inclusion of the I-5/US 12 site for the first time in the May 10, 1999, draft, which was not readily available to the public, did not comply with RCW 36.70A.140 in addition to its noncompliance with RCW 36.70A.035 and .020(11).

One additional reason for finding noncompliance with the I-5/US 12 ILB designation is its inclusion, without any analysis, of 263 acres of designated ARL. This is particularly egregious because the entire ARL designation included less than 12,000 acres for Lewis County. The *Batch* Study did not recommend inclusion of this site as an ILB.

We find that the designation of 263 acres of ARL, substantially interferes with the goals of the Act, particularly Goal 8, and make a determination of invalidity as to that 263-acre designation.

We note that the 1997 Hovee analysis is, at best, ambiguous with regards to the amount of industrial land needed over the next 20 or even 50 years in Lewis County. We trust that the public participation problems will be resolved during the remand period and that Lewis County will engage in a thorough analysis, supported by the record, to determine the need for additional industrial designations, better protect the designations that are already in place through appropriate restrictions against conversions of industrially designated land, and do a thorough analysis of whether this site or any other meets the criteria of RCW 36.70A.367.

As to the challenged Centralia Steam Plant site ILB *reserve area* we find absolutely no authority in the GMA for such a designation. The Legislature was clear that only two sites could be

designated under section .367 and the purported avoidance of that requirement by denominating the area as a “reserve” clearly does not comply with the GMA. The County must recognize that properly planned and designated major industrial developments and ILBs provide a great deal more chance of successfully reversing Lewis County’s present economic difficulties than does simply opening up the entire County for any purported industrial or manufacturing use regardless of ultimate infrastructure costs to the taxpayers.

We find the Centralia reserve ILB substantially interferes with the goals of the Act.

RURAL

General

In order to adequately address the issues concerning the rural actions of Lewis County, it is instructive to first review the requirements of the GMA, particularly with regard to the 1997 amendments which gave legislative flesh to the otherwise left-over bare bones rural lands skeleton prior to 1997. That flesh is found in RCW 36.70A.070(5) and for convenience of addressing the issues in this case will be broken into two parts: general rural lands requirements found in (a), (b), and (c) and the more specific provisions of (5)(d) dealing with LAMIRDs.

The general provisions regarding the rural element are found in RCW 36.70A.070(5) as follows:

“Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.

(b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. In order to achieve a variety of rural densities and uses,

counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

- (i) Containing or otherwise controlling rural development;
- (ii) Assuring visual compatibility of rural development with the surrounding rural area;
- (iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;
- (iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and groundwater resources; and
- (v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.”

It is clear from the directive contained in (5) that the rural element includes lands that are not otherwise designated as UGAs and not otherwise designated as RL. This requirement was reiterated at CP p. 4-58. In contradiction, on the very next page, the CP stated:

“Lands outside the Urban Growth Areas *are considered Rural* and consist of four special use areas:

- (1) Resource lands: timber, mineral, and agricultural designated for long-term commercial use.
- (2) Rural lands: limited areas of more intense rural development.
- (3) Rural lands: remote rural lands outside “1” and “2” above.
- (4) State and federal lands.” (Emphasis supplied).

Inclusion of (1) and (4) is obviously noncompliant with the Act. We are concerned that the record indicates that this error was made to rationalize adoption of a “one-size-fits-all” 1 du per 5

acres (1/5, 5-acre lot) in the rural area and to portray that choice as insignificant. For instance, at CP p. 4-61 the CP defines rural character as “the predominance of resource and governmental lands, rather than lot size, is the primary ‘rural’ characteristic.” This noncompliant reliance upon land areas not defined as rural in the GMA to rationalize noncompliance with GMA requirements is a fundamental flaw in the County’s approach or at least a flawed foundation upon which a number of noncompliant decisions were made. There is no possible way this CP could achieve compliance with the GMA until it first addresses *rural* lands in the *rural* element unadorned by improper incorporation of other lands into the analysis.

RCW 36.70A.070(5)(a) requires that in establishing a pattern of rural densities and uses the County may consider local circumstances, but shall develop a written record as to how the rural element harmonize the goals of the Act and meets the requirements of the GMA. There is no analysis contained in the CP, or anywhere else in this record, that defines what local circumstances are, except for reliance upon anecdotal reminiscence of PC members and occasional audience comments. There is no “written” record of harmonization of the goals and meeting of the requirements of the Act. We have held in *Vines v. Jefferson County* #98-2-0018 (FDO 5-5-99) that creation of a separate document or report is not always necessary. Yet here, in light of the lack of clear policy direction in the CP, often inconsistent treatment of the same issues, and a continual reliance on yet to be developed DRs, a separate discreet document would have been of special assistance to us and to Lewis County in analyzing GMA requirements.

RCW 36.70A.070(5)(b) requires that a county permit rural development, (as defined in .030(15)), forestry, and agricultural activities on rural lands. Since there is no issue in this case concerning allowance of forestry and agricultural activities, we will not include further reference to them.

RCW 36.70A.030(15) defines the term rural development as involving land areas outside of UGAs and RL designations, where a variety of uses and residential densities, including clustering residential development, are allowed. The variety of uses and residential densities are to be established at a level that is consistent with the preservation of rural character and the requirements of .070(5).

Rural character is defined in .030(14) as a pattern of land use and development established in the

CP in which open space, natural landscape and vegetation predominate over the built environment; in a manner that fosters traditional rural lifestyles in a rural based economy and that provides an opportunity to live and work in a rural area; that provides an opportunity for traditional rural visual landscape; that also is compatible with uses by wildlife and for fish and wildlife habitat; that *reduces* inappropriate conversion of undeveloped land into sprawling low-density development; that does not generally require extension of urban governmental services (.030(19)); and that is consistent with protections of natural surface water flows and groundwater and surface water recharge and discharge areas.

RCW 36.70A.070(5)(b) further requires that the rural element must provide for a variety of *rural* densities, uses, essential public facilities and *rural* governmental services (.030(16)) needed to serve the permitted densities and uses. The definition of rural governmental services found in .030(16) specifically excludes “storm or sanitary sewers” except as allowed by RCW 36.70A.110(4).

In order to achieve the required variety of densities and uses a County may provide for clustering, density transfers, etc., all of which are termed “innovative techniques” to accommodate an appropriate level of “*rural* densities and uses that are not characterized by urban growth and that are consistent with rural character” (.030(14)).

RCW 36.70A.070(5)(c) requires measures that apply to all rural development in order to “protect the rural character of the area” by: (1) containing or controlling rural development; and (2) assuring visual compatibility; and (3) reducing inappropriate conversion of undeveloped land into sprawling low-density development in the rural area; and (4) protecting critical areas and surface water and groundwater resources; and (5) protecting against conflicts with the use of RLs designated under RCW 36.70A.170.

Petitioners Butler, Panesko and Mudge assailed the 1/5 lot size of the rural remote designations on the grounds of the failure to comply with RCW 36.70A.070(5)(a), (b), and/or (c). The CP does not address, through its default “one-size-fits-all” 1/5 designation, how such rural development is contained, assures visual compatibility, reduces sprawling low-density development, protects critical areas and surface water and groundwater resources, and protects

against conflicting uses with designated RLs. The County's brief and argument acknowledged that Lewis County has significant, if not severe, water quantity and water quality issues and "severe development limitations" (p. 37) but asserted that the 1996 critical areas ordinance (CAO) and 1998 stormwater ordinance as well as future developed DRs would eventually comply with these requirements. The County's answer to Petitioners' challenges essentially consisted of the claim that use of 5-acre lots would be constrained by topographical conditions and by environmental and health department regulations (not clearly set forth in the CP) that would restrict most lots from developing at such densities. The County maintained that its unvarigated 1/5 density would be lowered by the abundance of steep slopes and other topographical constraints present in Lewis County's rural area. The record contains no demonstration of the actual density change which would result from this theory nor any density-based requirement that it occur.

There is nothing in the CP, where the information and policies belong, that analyzes or addresses wildlife and fish and wildlife habitat, critical area protection, surface water and groundwater resource protection, protection against land use conflicts with RL designated areas, containment, variety, visual compatibility, limitations of government services, prohibition against extension of sewer and stormwater line extension, maps clearly defining rural areas, a preservation of open space or a fostering of the traditional rural lifestyle, including a *rural*-based economy.

The CP/Lewis County approach is essentially reaction planning by permit. There is no planning for the rural element, other than the designation of LAMIRDs, 5-acre parcels, and some to-be-adopted DRs. This lack of planning guidance is one of the very foundational evils that GMA was adopted to overcome. The County's approach does not comply with the GMA.

The CP also allowed unlimited clusters within any 5-acre parcel. Once again subsequently adopted DRs are proposed to be the answer, but there are no policy directions set forth in the CP to ensure that subsequently adopted DRs would be consistent with and implement the CP. In fact clustering is allowable under the CP for the sole and specific purpose of increasing densities on the 5-acre parcels under the provision of Ordinance #1159B. The clear intent of the CP and the County's approach is to make sure that clustering is available to overcome the "severe development limitations" of the CAO or individual septic systems or water constraints. Used

properly, clustering can conserve land useful for resource production and open space while allowing responsible growth in the rural area. In this case the County’s approach is not innovative but regressive. The allowance of inappropriate conversion of undeveloped property in rural Lewis County to low-density sprawl as allowed by the CP, is exacerbated greatly by the type of clustering allowed on those lands. In many cases the allowable clustering would result in urban, not rural, growth.

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LAMIRDs

RCW 36.70A.070(5)(d) provides authority for a county to include within its rural element “*Limited Areas of More Intensive Rural Development.*” These LAMIRDs are subject to the provisions (5)(a), (b), and (c) except for (c)(ii) and (iii). Additionally, (d) imposes other limitations. Fundamental to the establishment of a LAMIRD is the requirement that it be based upon “existing areas and uses” as established (in Lewis County’s case) by the built environment on July 1, 1993, .070(5)(d)(v)(c). Once that area and use determination has been made, then a logical outer boundary is to be established which *contains and limits expansion* of those areas and uses to appropriate infill within the logical outer boundary. LAMIRDs are to be established as a *limited* exception to allow greater densities and uses for *rural* development as needed to accomplish the goals of the Act and the goals of each counties’ CP. LAMIRDs are not authorized to provide Lewis County a vehicle to circumvent the Act’s goals regarding anti-sprawl, protection of the environment, conservation of RLs, and protection of water quality and quantity. The protection of some undefined “property right” or opportunity for development without any constraints whatsoever cannot be used as an excuse to remove the “limited” from LAMIRDs.

We were astonished to see the LAMIRD authority section used to establish a panoply of sprawl in a myriad of areas which include 10 small town LAMIRDs (CP p. 4-68 to 4-70), 7 crossroads commercial LAMIRDs (CP p. 4-71/72), rural freeway interchange commercial areas on every

freeway interchange in the County (CP 4-72), 2 industrial LAMIRDs, one a 357-acre area encompassing some 67 acres of historical pole yard use, and one a 920-acre designation for a preexisting airport of approximately 170 acres (CP p. 4-73), 5 lake area and 4 river area shoreline LAMIRD designations (CP p. 4-73), a “floating” LAMIRD for tourist services (CP p. 4-73/74), and 12 suburban enclaves (CP p. 4-74), which are said to consist of “preexisting nonrural development.” Acreage devoted to these LAMIRDs far exceeds acreage devoted to UGAs outside of municipal boundaries.

The CP, and the record, is devoid of any analysis as to why any of these areas were designated, except for a claim that the designations would assist the County to further its economic goals. While we do not doubt the BOCC believes that to be true, there is no evidence in this record to substantiate that claim.

There is no analysis or identification in the CP, or in the record, of what the built environment and existing areas and uses were on July 1, 1993. While some of the designations have a small core that might be identified as existing uses and areas, the boundary lines drawn for each and every LAMIRD are not only excessive, they are wildly excessive. We specifically adopt the detailed description of the LAMIRDs contained in Petitioners Butler’s brief beginning at p. 48 through 50, and p. 52 through the middle of p. 58.

We have already found that the Curtis LAMIRD does not comply with the GMA because it has no information concerning the built environment as of July 1, 1993, and its failure to comply under RCW 36.70A.070(5)(e). Even assuming the current pole yard use might be considered a LAMIRD, the 357-acre boundary could not, under any reading of RCW 36.70A.070(5)(d). Similarly, the Toledo airport designation fails to comply with the requirements of .070(5)(d).

None of the LAMIRDs as presently configured comply with the provisions of .070(5)(a), (b), and (c) as noted in the analysis of the rural remote designations above.

The record reveals that in many of the LAMIRD designations no criteria were established prior to the County’s actions. In those cases where criteria was stated, it was often ignored in the final legislative action. Even Lewis County at p. 81 of its responding brief observed that there were no criteria adopted for some of the LAMIRDs and for others the criteria was “not articulated in the CP.”

We are also surprised that the CP, in discussing these LAMIRDs, frequently talks about “new” and expanded uses within the established boundary, contrary to the GMA requirement that they be limited to existing uses and areas as of July 1, 1993. It is ironic that Lewis County contended Petitioners had no standing to contest these boundaries because they did not specify where compliant boundaries might be located. The irony comes from the fact that the CP contains no maps for many of the LAMIRDs, and as Lewis County admits in its brief, the ones that were available were “generalized in nature.”

Reference to Ordinance #1159B, as requested by Lewis County to show containment of these LAMIRDs, leads to exactly the opposite conclusion. As pointed out by Petitioners Butler, the maps that were adopted as part of #1159B often expanded the areas beyond that described in the CP to larger outer boundaries and new authorized, but not prior existing, uses. We hope (and require) that the subsequently adopted DRs, which the County continually refers to as necessary to fully understand the CP, do not continue this error.

Petitioners have requested a finding of invalidity concerning the rural element of the CP and the provisions of Ordinance #1159B which allegedly implemented the CP. In support of that request Petitioners Butler have submitted charts and tables demonstrating the current and future abuses that will naturally evolve from Chapter 4 of the CP. Petitioner Panesko has submitted tables including a compilation of the increase in individual septic system permits authorized over the last five years by Lewis County. This evidence demonstrates substantial interference with the goals of the Act, specifically 1, 2, 8, and 10. Rather than encourage urban development, the CP and DR discourage it. Rather than reduce inappropriate low-density sprawling development, the CP and DR encourage it. Rather than protect open spaces, wildlife habitat, and the natural environment, uncontrolled development in rural Lewis County continues to threaten their survival. We therefore determine that the entire rural element of the CP, Chapter 4, and any and all provisions of Ordinance #1159B dealing with rural items, substantially interfere with the goals of the Act and are declared invalid under RCW 36.70A.302.

TRANSPORTATION

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Petitioners Butler and Petitioner Mudge challenged the transportation element of the CP. The challenges related to a claimed inadequate inventory, inconsistencies with the SWRTP and the State-wide Multi-modal Transportation Plan (STP), inconsistencies within the CP because of the lack of information, and the use of two different levels of service (LOS) measuring methodologies.

The County responded that the changes in LOS measuring methodologies from the January 1999 draft CP to the final CP came about because the initial methodology adopted by the County's public works department would have established that every road in Lewis County was deficient, leading to a moratorium on development and a requirement for funding that would have "bankrupted the County." That CP draft (Ex. III-112, p. 16) stated, however, that only "8 roadway segments are found to be deficient."

In a remarkably candid discussion with the PC on February 23, 1999, (Appendix P) Mr. Mackie, consultant and attorney for Lewis County, stated that if the County did not pick the "right" LOS level under the "right" methodology, the requirements of the GMA would prohibit development until the deficiencies were funded either by public or private sources. He suggested the use of the corridor approach for measuring LOS and adoption of a LOS D standard to ensure that development would not be restrained. Nothing else in this record objectively supports the use of the corridor method or the establishment of a LOS D standard. It is clear from the record that the sole purpose of adopting this methodology was to avoid the concurrency requirements of the GMA. As pointed out by Petitioner Mudge there is a point at which the desire to avoid GMA consequences becomes, in fact, a decision to evade GMA requirements.

Petitioner Mudge pointed out that as part of Lewis County's decision to avoid/evade GMA requirements, roads that should have been classified as arterials were omitted. Petitioners Butler pointed out that a \$12 million funding deficiency contained in the County's traffic improvement program (TIP) (Ex. V-53) is nowhere to be found either in the transportation element or in the capital facilities plan. Petitioners Butler also pointed out that the CP adopted a level D standard while the SWRTP adopted level C for approximately 265 miles of the same roadway.

The CP and RCW 36.70A.070(6) require consistency and coordination between the local plans, regional plans, and statewide plans. Compliance with such requirement is notably absent in this CP.

In review of the transportation element of the CP we note that there are no maps regarding the “corridor approach” and no clear definition nor any specific criteria to define what is meant by that approach. While we have in other cases approved the use of the corridor approach, we are unable to do so here because of the lack of clarity in the County’s adoption and use of that methodology. The same analysis applies to the County’s use of a “two-hour peak” measuring system.

The most telling fact showing noncompliance with the GMA is found in comparison between the TIP and the transportation element. While the transportation element used the corridor methodology to ensure that no deficiencies nor concurrency requirements could or needed to be imposed, the TIP program (used for grant funding applications) used the more standard measuring system for deficiencies that were identified in the January 19, 1999, draft CP. Obviously the TIP methodology results was adopted to report deficiencies in the transportation system that would be used to obtain state and federal funding money.

As noted in the CP, the TIP provides a foundation for implementation of the CP and for its budget process. In effect the County is using the TIP deficiencies for budgetary planning while simultaneously claiming there are no deficiencies in the road system. RCW 36.70A.070(6)(a)(vi)(C) requires consistency. The GMA does not allow manipulation of standards in the face of evidence that deficiencies exist, in order to allow continued unrestrained and uncoordinated development anywhere in the County.

CP Policy T 13.3 states that it is Lewis County’s policy to make “efficient use of existing facilities and assure that transportation LOS not be so narrowly defined, that single or isolated network problems result in significant disruption, when reasonable alternatives are available or necessary.” The County does not explain what those “reasonable alternatives” are or could be, except apparently to ensure that no development could ever be constrained by GMA concurrency

requirements.

Policy T 13.5 identified that “for purposes for identifying both need and priority for county funding and construction” a standard measuring system would be used. Policy 13.7 adopted the two-hour peak methodology and the “concurrency” measure on a corridor basis, and adopted an “overall average” LOS D standard. That policy also provided that any project under which the corridor would fall below the measured LOS standard but that met “County objectives” for housing or economic development “shall be considered consistent with these goals and policies and may be approved.”

Policy 13.7 is totally inconsistent with Policy 13.5. Resolution of that inconsistency is required by the GMA. Additionally Policy 13.7 does not comply with the Act in and of itself because it adopts a nondefined ambiguous standard to avoid GMA concurrency requirements.

Policy T 13.8 declared that even if local impacts “caused by state facility deficiencies” reduce the measurement below LOS D, the standards of Policy T 13.7 would be used (in other words deficiencies not recognized). Policy T 13.9 provided that Lewis County would not “permit state funding priorities to otherwise prevent development in Lewis County in accordance with the overall adopted plan.” Once again this is a noncompliant approach, allowing avoidance or evasion of GMA requirements.

The transportation element does not comply with GMA. We had been requested by Petitioners to determine that the transportation element substantially interferes with the goals of the Act. While we are very close to being persuaded that to be the case, we will wait to see what actions, if any, Lewis County takes to resolve this noncompliance, before deciding invalidity on this issue.

WATER

Groundwater

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RCW 36.70A.070(1) requires that the land use element “shall provide for *protection* of the *quality* and *quantity* of groundwater used for public water supplies.” (Emphasis supplied). Petitioners Butler contended that the CP did not comply with this requirement. Butler pointed out that many industrial and other LAMIRD designations were found within the Chehalis River Basin, which is “closed” to further water rights. While such status was acknowledged in the CP, there were no adopted policies to deal with it. The policies relating to groundwater quality and quantity protection are found in the natural environment subelement, which relied heavily on the 1996 CAO and nondirective words such as “encourage” and “should.” Petitioners Butler pointed out that there is no textual analysis concerning the impact of current and future development requiring rural water wells or systems on the Chehalis River Basin or on groundwater supplies outside of that area.

The County relied on the CP policies and DRs subsequently to be adopted. The County claimed that acknowledged water quality and quantity issues would be resolved during the permit process.

Petitioners Butler pointed out that the County was aware of a DOE TDML Study (Ex. IV-72) which made major recommendations for best management practices to assist in protecting groundwater quality and quantity. None of these policies, nor any of the ones contained in the Chehalis River Basin Plan (Ex. IV-73) were found in the CP.

Petitioners have sustained their burden on these issues. There is no analysis concerning groundwater quality and quantity contained in the CP as required by RCW 36.70A.070(1). There are no protections contained in the CP. NE Policy 3.5 which “encourages” development in areas with few soil limitations was expressly violated by the designation of small towns and suburban enclave LAMIRDs (Ex. III-15, III-67). The actual practice, as shown by the rural element section, is to ignore water quality and quantity for any planning purposes. Reaction planning through permit decisions is fundamentally contrary to GMA, and does not comply with the Act.

Stormwater/Flooding

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RCW 36.70A.070(1) provides:

“Where applicable, the land use element *shall* review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and *provide guidance for corrective actions* to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.” (Emphasis supplied).

The County has previously adopted a comprehensive flood hazard management plan (Ex. IV-77) but does not refer to or analyze its provisions in the CP. In fact, no analysis of stormwater or flooding issues is contained in the CP. What the CP does contain in describing frequently flooded areas are references to outdated FEMA maps. There are essentially no maps for stormwater and flooding analysis contained in the CP, nor is there an analysis of the impact of stormwater and flooding relating to development, particularly in rural Lewis County. As shown by Ex. IV-74 Lewis County has encountered more than \$60 million in flood damage since 1990. In spite of that there are no policies adopted in the CP that are recommended by the flood hazard management plan. This \$60 million damage concern is ignored in the CP, although development is allowed and LAMIRDs are designated within areas that will undoubtedly lead to increased flood damage and increased cost to taxpayers. The GMA requires that information to be contained in the CP. The County’s assertion that its subsequently adopted DRs resolve the issue is unavailing.

Finally, there are significant differences in policies concerning the floodplain and stormwater issues between Lewis County, Centralia, and Chehalis. It is the responsibility of Lewis County, in conjunction with the cities, to resolve those differences and make the CP policies consistent as required by RCW 36.70A.070(1).

The requirements for protection of water that are contained, but are mostly not contained, in the CP do not comply with the requirements of the GMA.

ORDER

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In order to comply with the GMA Lewis County must (within the timeframes from the date of this FDO):

1. Adopt a public participation program within 90 days.
2. Comply with the requirements of SEPA in presenting sufficient alternatives and analyzing the impacts to the environment of the alternatives within 120 days.
3. Reallocate population projections within 120 days so that CPPs are complied with and adequate densities to constitute urban growth within UGAs are encouraged.
4. Limit the type and amount of clustering allowed in rural areas to encourage growth into urban areas and discourage new urban or low-density sprawl in rural areas within 60 days.
5. Discourage, with appropriate CP policies and DRs, new low-density sprawling growth in rural areas within 150 days.
6. Remove the FCC designation of Birchfield within 30 days. Do not designate a FCC until a process is adopted to allow designation of a FCC and until the criteria and requirements of RCW 36.70A.350 are met.
7. Remove the MPR designation of Skye Village within 30 days. Do not designate a MPR until appropriate criteria are adopted and requirements of RCW 36.70A.360 are met.
8. Locate and adequately map mineral RL designations in the Evaline area within 90 days.
9. Reevaluate the designations of ARL with adequate consideration of the guidelines found in WAC 365-190 within 150 days.
10. Adopt criteria for designation of Class B ARL and adequately identify locations of Class B designations in the CP text and maps within 150 days.
11. Appropriately define rural areas within 30 days to exclude UGAs, RLs, and federal and state properties.
12. Reanalyze the requirements for complying with RCW 36.70A.070(5) within 180 days.
13. Include a written analysis of how the new rural designations are harmonized with the goals and requirements of the Act within 180 days.
14. Reduce the significant amount of low-density sprawl allowed in the rural area within 180 days.
15. Remove all LAMIRD designations within 30 days. If any new LAMIRD designations are to be allowed, begin with a thorough analysis in the CP as to the existing areas and uses as of July 1, 1993.
16. If new LAMIRD designations are to be made, establish a logical outer boundary which contains and limits the intensive rural development as required by the GMA.

17. Establish a variety of rural densities that are consistent with the rural character of Lewis County within 180 days.
18. Analyze and plan for appropriate areas for rural development based upon water quality and quantity, stormwater, flooding, and septic system restraints on development within 180 days.
19. Restrict development in the rural areas to those with adequate water and stormwater provisions, adequate individual septic tank soils, and that involve minimal risk of flooding within 180 days.
20. Adopt a realistic, consistent LOS measurement to be used both for budgetary (TIP) planning and concurrency planning within 120 days.
21. Revise policy T 13.3 to comply with the Act within 120 days.
22. Revise policy T 13.5 to comply with the Act and to be consistent with policy T 13.7 within 120 days.
23. Revise policy T 13.7 to comply with the Act and be consistent with policy T 13.5 within 120 days.
24. Revise policy T 13.8 and T 13.9 to comply with the Act within 120 days.
25. Make the transportation element of the CP and the SWRTP and the STP consistent within 120 days.
26. Resolve the inconsistencies for flooding and stormwater policies between the County, Centralia, and Chehalis within 180 days.
27. Identify and comply with RCW 36.70A.160 for open space corridors and with RCW 36.70A.070(1) for open spaces within 180 days.
28. Change “should/would” phrasing in the CP to be more directive within 180 days.
29. Delete the section or sections of Ordinance #1159B that allow automatic DR amendment through approval of master plan applications or special-use permits within 30 days.
30. Any findings of noncompliance and/or invalidity in previous sections of the FDO are incorporated by reference.

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

So ORDERED this 30th day of June, 2000.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

William H. Nielsen
Board Member

Les Eldridge
Board Member

Nan A. Henriksen
Board Member

FINDINGS OF FACT – NONCOMPLIANCE

APPENDIX I

1. A final CP and FEIS were adopted as one document by the County on June 1, 1999.
2. Ordinance #1159A was adopted June 1, 1999, as an emergency ordinance. It amended

Ordinance #1159 which had been subject to a finding of noncompliance in *Smith*.

3. Petitions challenging the CP and Ordinance #1159A were filed on August 2, 3, 6, and 10, 1999.
4. Ordinance #1159B, amending Ordinance #1159A, was adopted on July 27, 1999, as a partial set of interim implementing DRs for the CP.
5. Petitions challenging Ordinance #1159B were filed on September 10, 1999, October 7, 1999, and October 8, 1999.
6. A prehearing conference was held September 22, 1999, and a briefing schedule for the HOM was established.
7. On October 28, 1999, an order of consolidation was entered. On that same day an order allowing the intervention of EDC and the cities of Centralia, Chehalis, and Napavine was entered.
8. Access to the record was constantly subject to changing rules. Preparation of an accurate index (normally due 30 days after filing of a PFR) was repeatedly changed after the deadline.
9. Because of inadequate opportunity provided by the County for, and constantly changing rules concerning, access to the record, several extensions had to be granted to allow Petitioners an adequate opportunity to prepare their case.
10. The final record contained many missing portions of tapes and minutes. Minutes were almost always summarized in one sentence. Materials that should have been easily accessed and available were difficult to find and poorly indexed.
11. Two separate requests for extensions of the FDO in order to allow negotiation were granted. Adjustments to the briefing schedule were made in accordance with the change in the HOM date, with the full agreement of Lewis County.

12. On December 2, 1999, an order fixing the HOM for March 21 –23, 2000, and a PHO were entered. No request for clarification of the issues in the PHO was made by Lewis County. No objection to the briefing schedule set forth in the PHO made by Lewis County.

13. On January 24, 2000, Petitioners Butler filed a motion for a one-week extension of the due date for filing its brief because of missing and/or unavailable tapes. A one-week extension and corresponding adjustment of the briefing schedule was agreed to by the County and the motion was granted.

14. Counsel for Lewis County and counsel for EDC are among attorneys with the most experience practicing before us. Counsel for the cities were both experienced with city matters including preparation of the UGA boundary recommendations. Counsel for the County had been hired many years before and had worked in a dual capacity of attorney and planner. Virtually every major procedural and policy decision was made at the direction of, or with the concurrence of, counsel for Lewis County.

15. None of the Petitioners are members of the Washington State Bar Association. A few of the Petitioners have prior experience before us. The majority of Petitioners had never before been involved with a GMA appeal.

16. On March 15, 2000, we received a motion from Lewis County to continue the hearing because of a family medical emergency. The request was granted and the hearing was rescheduled to April 10-12, 2000. No request to allow additional briefing by the County was received during that three-week period.

17. The Petitioners did not have as much opportunity to prepare during the delays granted for extension as the County did because of the difficulty in accessing and/or discovering the record. Each side had equal ability to begin preparation of its arguments from the date of the prehearing order December 2, 1999. Counsel for Lewis County had much more access and historical knowledge about the actions taken and the materials in the record because of attendance at virtually all meetings and intimate direction of the CP and DR process. The length and date of issuance of this FDO shows that a great deal of time and effort by us was also necessitated in this case. There is no basis to believe that the timeframes and stresses for Lewis County were any greater than those for Petitioners or for us.
18. There was no evidence in this record that any argument or citation to the record by the County was missing. The quality of work by counsel for Lewis County was excellent. All parties made very good presentations of their positions in their briefing and in their arguments at the HOM.
19. It would not have been appropriate for us to take official notice of Ordinances #1168, #1169, #1170, and #1170A when such requests were made after receipt of briefing from Petitioners. Additionally, the ordinances were not relevant to the issues in this case over which we had jurisdiction, i.e., Ordinance #1159B. Even if they had been considered the ordinances were at best interim (the same status as Ordinance #1159B) because “final” DRs were not adopted until April 16, 2000.
20. Because the GMA requires a FDO within 180 days of the filing of the last PFR in a consolidated case, in addition to any extensions granted for settlement negotiation, it was impossible to grant Lewis County’s motions for continuance to allow adoption of “final” DRs.
21. Under the test articulated in *Wells*, all of the Petitioners here raised issues during the County’s process which were reasonably related to the issues raised during this appeal. There was a sufficient nexus between the comments articulated by Petitioners at the local

level, when an adequate opportunity was made available to do so, and the articulation of issues and arguments presented in this case.

22. The record is often missing important portions many of which may have given a clearer picture of Petitioners' participation.
23. The County's claim that it could have been or was "blindsided" is weakened by the fact that many of the shortcomings in the CP and Ordinance #1159B were set forth in letters from CTED dated April 8, 1999, and May 24, 1999. Those suggestions and recommendations were either rejected or ignored by the County.
24. The County has not adopted a public participation program as required by RCW 36.70A.140. Failure to do so makes it very difficult for the public generally and Petitioners specifically to know what is expected of them to appropriately participate in the County's process.
25. The record shows that certain members of the PC and certain staff made it clear that comments from some of the Petitioners here (ECA and Panesko as examples) were not welcome.
26. The County's notification procedures were inadequate in many cases and were changed with no apparent reason other than the whim of a staff member to fit the circumstances of the current situation.
27. Many last-minute changes were made to both the CP, Ordinance #1159A and Ordinance #1159B. Maps sufficiently, or even closely, identifying rural designations, including LAMIRDs, were not produced in the CP but were first available to the public less than two weeks from the time of their adoption in Ordinance #1159B. Significant changes to the CP between the March 1, 1999, and May 10, 1999, drafts occurred, often without any adequate notice to the public or reasonable opportunity for the public to participate.
28. The County's public participation process in adopting its CP and Ordinance #1159B did

not comply with the goals and requirements of the GMA.

29. The FEIS did not comply with SEPA requirements and thus did not comply with GMA. The EIS did not present sufficient alternatives to be analyzed. It did not adequately analyze the impacts to the environment of the alternatives that were presented.
30. The CP fails to comply with the Act because it is routinely couched in nondirective terms such as “should” and “would” and “may.” The GMA requires directive policies that comply with the goals and requirements of the Act. These policies are missing in virtually every section of the CP reviewed in this case. The GMA does not allow those policy decisions to be reserved for subsequently adopted DRs. DRs are to be adopted to implement the policy directives of the CP.
31. The GMA requires that growth be directed towards urban areas. The County has acknowledged that it violated its own CPPs in directing less than 50% of the new growth outside of established UGAs.
32. The sizing and boundaries of the UGAs has not been shown to fail to comply with the GMA. Density allowances and the lack of policies directing new growth to urban areas does fail to comply with the GMA.
33. The Centralia Steam Plant site ILB designation does not comply with the requirements of RCW 36.70A.367. There is nothing in this record that even suggests that the statutory criteria, or any analyses of those criteria, were met prior to the designation.
34. The I-5/US 12 ILB location does not comply with the requirements of RCW 36.70A.367. Additionally the designation did not comply with the public participation goals and requirements of the GMA. Within the I-5/US 12 ILB designation there are 263 acres of designated ARL.

35. There is no legislative authority to designate acreage outside the Centralia Steam Plant site as an ILB reserve area. Such designation does not comply with the GMA.
36. The Birchfield FCC designation does not meet the criteria and requirements established in RCW 36.70A.350. The County did not establish a process and adopt appropriate criteria prior to the designation as required by the GMA. The assignment of 400 people from the population projection would not allow the Birchfield area to be urban as required of a FCC. Additionally, the designation does not comply with the CPPs.
37. The Skye Village designation as the MPR does not comply with the requirements and criteria of RCW 36.70A.360.
38. The CP and DR (#1159B) mapping of mineral resource designated lands are inconsistent with each other and do not identify designation criteria to satisfy GMA requirements.
39. RCW 36.70A.070(1) requires the County to readopt RLs designations and DRs. The County did not do so in adopting its CP and therefore has not complied with the Act.
40. The purported designation of only 11,835 acres of ARL was not guided by the minimum guidelines established in WAC 365-90 and does not comply with the Act.
41. The CP does not reveal where any Class B agricultural lands were located nor what criteria were used in designating such lands. That failure does not comply with the Act.
42. Allowable densities in ARLs found in Title 17.30.620(3), .640(2)(a) and the provisions of .690 do not comply with the GMA.
43. The CP does not identify open-space corridors within and between UGAs as required by RCW 36.70A.160.
44. The CP does not comply with the requirements of RCW 36.70A.070(1) requiring designation, location, and extent of uses for open spaces.

45. No maps were adopted in the CP to identify open-space corridors or open spaces in general.
46. The CP does not comply with the requirements of RCW 36.70A.070(5)(a), (b), (c), and (d).
47. The CP and DR failed to confine and contain any of the rural area designations, to allow a variety of rural densities, or to maintain Lewis County's rural character. There also failed to maintain a traditional rural visual landscape with uses that were compatible with wildlife and for fish and wildlife habitat and that reduced inappropriate conversion of undeveloped land into sprawling low-density development.
48. The use of unlimited clustering exacerbated what few land originated restrictions were imposed on rural development by allowing those restrictions to be circumvented. Full clustering allowances would allow urban growth in rural areas.
49. The use of two different LOS methodology systems for budgetary and concurrency decisions does not comply with the Act.
50. There is not a sufficient identifiable definition of the corridor method or two-hour peak program methodology established in the CP to comply with the GMA. According to the record the sole purpose of adoption of these methodologies was to avoid concurrency requirements and allow unrestricted low-density sprawl in the rural areas.
51. The CP transportation element is not consistent with the SWRTP and STP as required by GMA.
52. Policies T 13.3, T 13.5, T 13.7, T 13.8, and T 13.9 do not comply with the GMA.
53. The CP does not contain policies that protect the quality and quantity of groundwater used for public water supplies and therefore does not comply with the GMA.

54. The CP does not contain policies reviewing drainage, flooding, and stormwater runoff and does not provide corrective actions to mitigate or cleanse those discharges as required by the GMA.
55. The CP is inconsistent with the CPs adopted by the City of Chehalis and City of Centralia with regard to flooding and stormwater policies.

FINDINGS OF FACT – INVALIDITY

APPENDIX II

We incorporate findings 1 through 55 above as though fully set forth herein.

56. In *Smith* the majority of the acreage in the Curtis pole yard designation was found to be subject to a determination of invalidity. Lewis County has never requested that the designation be rescinded or altered.
57. Designation of the Curtis 357-acre location as a LAMIRD under RCW 36.70A.070(5)(d) is expressly prohibited by .070(5)(e). The Curtis pole yard location does not comply with the requirements of RCW 36.70A.365.
58. The Curtis pole yard designation does not even comply with the requirements of RCW 36.70A.070(5)(d) because there is no establishment of uses and areas existing on July 1, 1993, and no restrictions or policies contained in either the CP or Ordinance #1159B constraining the outer boundary of the LAMIRD to uses and areas in existence prior to July 1, 1993.
59. The designation of the entire 357-acre Curtis pole yard property as a LAMIRD substantially interferes with the goals of the Act, specifically Goal 1 and 2.
60. There is a prior finding of invalidity as to a portion of the Curtis pole yard property that

was not removed by its designation as a LAMIRD in the new CP.

61. There is nothing in the record to sustain designation of the Toledo airport LAMIRD to areas outside its existing status on July 1, 1993. The designation of the Toledo airport as an 800 to 900-acre LAMIRD also violates the provisions of RCW 36.70A.070(5)(e). There is nothing in the record to demonstrate that the excess acreage meets the requirements of RCW 36.70A.365.
62. The additional acreage added to the Toledo airport property as an industrial LAMIRD substantially interferes with Goals 1 and 2 of the Act.
63. The ARL designation of 263 acres that is contained within the I-5/US 12 ILB was done without any analysis of the impact of redesignation. The redesignation of the 263 acres substantially interferes with Goal 8 of the Act.
64. The Centralia Steam Plant site ILB reserve area substantially interferes with Goals 1 and 2 of the Act and is therefore invalid.
65. The Birchfield FCC, with a population allocation of only 400 for a 920-acre tract allows sprawling low-density development and substantially interferes with Goals 1, 2, and 12 of the Act.
66. The designation of Skye Village as a MPR substantially interferes with Goals 1, 2, and 12 of the Act.
67. Chapter 4 of rural sections of Ordinance #1159B for all rural areas, including LAMIRDs, substantially interferes with Goals 1, 2, 8, 10, and 12. The shoreline designations additionally substantially interfere with Goal 14 (Shoreline Management Act).
68. Provisions in Lewis County DRs that allow RL densities more intensive than 1 du per 10 acres and any provisions that allow an opt out by the landowner from the ARL designation substantially interfere with Goal 8 of the Act.

69. Any finding which is more correctly a conclusion of law shall be so deemed.

CONCLUSIONS OF LAW

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1. The rural element of the CP (Chapter 4) is determined to be invalid.
2. The rural sections of Ordinance #1159B are determined to be invalid.
3. The 263-acre ARL portion of the I-5/US 12 ILB is determined to be invalid.
4. The Birchfield area designation is determined to be invalid.
5. The Skye Village designation is determined to be invalid.
6. The Curtis LAMIRD designation is determined to be invalid.
7. The Toledo airport LAMIRD designation is determined to be invalid.
8. Provisions in Lewis County DRs that allow densities greater than 1 du per 10 acres in ARL and any provisions that allow an opt out by the landowner from the ARL designation are determined to be invalid.
9. The Centralia reserve ILB is determined to be invalid.

GLOSSARY OF ACRONYMS

Abbreviation**Definition**

ARL	Agricultural Resource Land
BOCC	Board of County Commissioners
CAO	Critical Areas Ordinance
CP	Comprehensive Plan
CPPs	Countywide Planning Policies
CTED	Community, Trade, & Economic Development
DRs	Development Regulations
du	Dwelling Unit
ECA	Evaline Community Association
EDC	Economic Development Council
EIS	Environmental Impact Statement
FCC	Fully Contained Community
FDO	Final Decision and Order
FEIS	Final Environmental Impact Statement
GMA, Act	Growth Management Act
GMHB	Growth Management Hearings Board
HOM	Hearing on the Merits
ILB	Industrial Land Bank
IRO	Interim Resource Ordinance
IUGAs	Interim Urban Growth Areas
LAMIRDs	Limited Area of More Intensive Rural Development
LOS	Levels of Service
MPR	Master Planned Resort
PC	Planning Commission
PFR	Petition for Review
PHO	Prehearing Order
RL	Resource Land
SEPA	State Environmental Policy Act
STP	State Transportation Plan
SWRTP	Southwest Washington Regional Transportation Plan
TIP	Transportation Improvement Plan
UGAs	Urban Growth Area

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