

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

VINCE PANESKO et al.,) No. 00-2-0031c
)
Petitioners,) FINAL DECISION
) AND ORDER
v.)
)
LEWIS)
COUNTY,)
)
Respondent)
)
and)
)
LEWIS COUNTY ECONOMIC DEVELOPMENT)
COUNCIL & INDUSTRIAL LANDS ADVISORY TASK)
FORCE,)
)
Intervenors.)
_____)

EUGENE BUTLER, et al.,) No. 99-2-0027c
) COMPLIANCE
Petitioners,) ORDER
)
v.)
)
LEWIS COUNTY,)
)
Respondent.)
)
and)
)
CITY OF CENTRALIA, et al.,)
)
Intervenors.)
_____)

DANIEL SMITH, et al., VINCE PANESKO, and)
JOHN T. MUDGE,)
Petitioners,)
v.)
LEWIS COUNTY,)
Respondent,)
and)
CITY OF CHEHALIS, CITY OF NAPAVINE, and)
PORT OF CHEHALIS,)
Intervenors.)
_____)

No. 98-2-0011c
COMPLIANCE
ORDER

In the final decision and order (FDO) in *Butler, et al., v. Lewis County, 99-2-0027c (Butler)* we recognized the significant achievements by Lewis County since it became subject to the Growth Management Act (GMA, Act) on July 1, 1993, under RCW 36.70A.040(5). In reviewing the record for the three cases contained in this order we note that many parts of Lewis County’s comprehensive plan (CP) and development regulations (DRs) fulfill the legislative purpose set forth in RCW 36.70A.010 to eliminate “uncoordinated and unplanned growth.” Other sections clearly demonstrate that there is work yet to be done. In order to fully understand the current status of GMA planning in Lewis County, a more-thorough-than-usual review of the County’s GMA planning actions and history of Growth Management Hearing Board (GMHB) appeals is necessary.

On March 2, 1998, a petition for review (PFR) was filed in the case ultimately entitled *Panesko v. Lewis County, 98-2-0004 (Panesko I)*. The PFR alleged a failure to timely adopt interim urban growth areas (IUGAs), a CP and implementing DRs. On March 23, 1998, Petitioners filed a dispositive motion for a finding of noncompliance and invalidity. A motions hearing was scheduled for May 7, 1998. On May 4, 1998, the County adopted Ordinance #1159 relating to

IUGAs. The next day it filed a motion to dismiss the case. We held a hearing on May 7, 1998, and allowed post-hearing briefing because of the recent adoption of Ordinance #1159. In the FDO dated June 12, 1998, which contains a thorough discussion of the procedural maneuverings of that case, we held that since an IUGA ordinance had finally been adopted and that the time frame for filing PFRs had not yet expired, subsequent review of Ordinance #1159 would proceed in accordance with the usual PFR process.

In the Ordinance #1159 FDO, ultimately embodied in the case of *Smith, et al., v. Lewis County*, 98-2-0011c (*Smith*), we allowed post-hearing briefing from Petitioners to review the late submission of a number of exhibits from Lewis County.

The County and the Petitioners had previously requested an extension of time for settlement purposes. On August 12, 1998, we granted a 60-day extension and on October 28, 1998, we granted a 90-day extension.

In the April 5, 1999, *Smith* FDO we first addressed the issue of Lewis County's decision to apply a uniform density of one dwelling unit (du) per five acres (1:5), the lack of any cap on clustering allowances and the expansive exemptions from lot definition. We found all three items failed to comply with the Act. We also found that the County had failed to comply with the Act by including in its ordinance a definition of rural growth as any growth not found in an IUGA. We determined that the IUGA designation for the Curtis pole yard area also substantially interfered with Goals 1 and 2.

On June 1, 1999, Lewis County adopted its CP and final environmental impact statement (FEIS). That same day the County adopted Ordinance #1159A amending portions of Ordinance #1159. Ordinance #1159A was adopted as an emergency, without any public participation. On July 27, 1999, after a public hearing the County adopted Ordinance #1159B denominated as an "interim" ordinance, further amending Ordinance #1159. Various PFRs were filed challenging the June 1, 1999, and July 27, 1999, adoptions. Those PFRs were ultimately consolidated into the *Butler* case.

During the extensive preparation time in *Butler*, because of the difficulty of Lewis County in

preparing an accurate record and pursuant to a stipulation to continue settlement talks, we entered an order on December 2, 1999, extending the FDO due date to June 30, 2000. The lengthy preparation time problems are set forth in detail in the June 30, 2000, FDO in *Butler* beginning at p. 5 and concluding at p. 15.

P. 12 of the *Butler* FDO sets forth the numerous ordinances adopted after the PFRs were filed. Ordinance #1166 was adopted December 27, 1999, #1167 adopted December 28, 1999, #1169 adopted February 7, 2000, #1168 adopted February 14, 2000, #1170 adopted February 14, 2000, as an emergency (no public hearing), and #1170A adopted February 28, 2000. For the reasons set forth in the *Butler* FDO it was impossible for us to review these recently adopted ordinances, many of which were “emergency” and/or “interim,” in reviewing the challenges to Ordinances #1159A and B and to the CP. A “final” package of DRs was thereafter adopted May 16, 2000, under Ordinance #1170B. The *Butler* FDO was issued June 30, 2000.

A flurry of PFRs were filed in response to the County’s adoption of Ordinances #1170 and #1170B. On March 31, 2000, we received a PFR from Vince Panesko. On July 11, 2000, we received a PFR from Evaline Community Association (ECA), and on July 11, 2000, we received a PFR from Eugene Butler, Dan Smith, Debra Ertel Burris, Annette Yanisch, Tammy G. Baker, Brenda Boardman, Deanna M. Zieske, Dorothy L. Smith, Edward G. Smethers, Michael T. Vinatieri, Richard K. Burris and Douglas H. Hayden (Butler). On July 13, 2000, we received a PFR from Dan Smith and Tammy Baker. On July 24, 2000, we received a PFR from Vince Panesko.

On August 21, 2000, an order of consolidation of the above cases was entered. Additionally, we granted a 90-day extension for purposes of settlement on October 10, 2000. We requested the assistance of Edward McGuire from the Central Puget Sound Board who mediated at least two meetings with the parties. On November 20, 2000, we received notice that the parties decided to conclude settlement negotiations.

The hearing on the merits (HOM) on this case (*Panesko II*) and the compliance hearing on *Butler* and *Smith* were all scheduled to commence January 9, 2001. Petitioners’ briefs were filed on November 20, 2000. Lewis County’s brief was due and was filed on December 18, 2000. It

included a motion to supplement the record. The supplemental requests were for Ordinances #1175 and #1176 and Resolutions #00-434 adopting CP amendments and #00-435 purportedly adopting a public process. Both Ordinances and both Resolutions were adopted the day the brief was filed (December 18, 2000) and were set forth and fully argued in the County's brief with regard to the issues in the prehearing order and the compliance hearings.

The County has always had a reason every time an emergency, interim or adopting ordinance or resolution became official at the last minute. To our knowledge no settlement discussion in any of the three cases has ever reached a conclusion other than non-agreement. The County's adoption of Ordinances #1175 and #1176 and Resolutions #00-434 and #00-435 on the day that its brief was filed after giving notice on November 20, 2000, that the parties were unable to reach any agreement, must be more than coincidental.

At the compliance hearing in *Smith* the County argued that Ordinance #1159 (IUGA) did not require compliance because it was superceded by the CP and Ordinance #1159A and #1159B. In any event the County asserted that the CP and the new ordinances solved all the compliance issues. We rejected those arguments and found continuing noncompliance in the *Smith* compliance order of July 13, 2000. In the *Butler* FDO the County argued that Ordinances #1170A and B along with the recently adopted #1166, #1167, #1168, and #1169 solved whatever shortcomings might be found in the CP and made review of Ordinances #1159A and B unnecessary. We rejected that contention in the *Butler* FDO for the reasons set forth therein and incorporated herein by reference.

In this order we now have the opportunity, so far as we know, to review the CP and all of the implementing DRs adopted by Lewis County. At the HOM on January 9, 2001, we granted the County's December 18, 2000, motion to supplement the record even though Petitioners accurately claimed to have been sand-bagged once again.

Lewis County has the right to make whatever legal arguments it sees fit, to us and to the courts. It has the legal ability to obfuscate and delay ultimate resolution of these issues by adopting piecemeal, emergency, interim and amending ordinances even if action often occurs immediately preceding or subsequent to the filing of Petitioners' opening briefs. The County's "legal

maneuverings” do not affect the burden of proof set forth in the Act, nor have they affected our review of this or the previous cases. We point out these matters in hope that the elected officials of Lewis County will reflect on the impact of this course of conduct. Certainly supporters of this approach must see it as appropriate indignation over the GMA, and their concern for protection of local rights. Certainly the Petitioners in these and the prior cases see it as a tremendous source of frustration and mistrust of County motives.

What is perhaps more important is how the heretofore non-participating citizens of Lewis County view the County’s GMA exercise. How could they see it as anything but a game between County officials and their supporters and Petitioners and their supporters? What motivation does the other 90% (or whatever number) of the people in Lewis County have to participate in and help establish how growth will be managed over the next 20 years, when everything that has been done is perceived as a battle of wills between the opposing parties in these cases? Ultimately it matters little how these issues come before us, but it must certainly matter a great deal to those unwilling to participate in the GMA process that is so dominated by maneuverings and rhetoric from the existing protagonists.

Prior to the January 9, 2001, HOM we notified the parties that all three of the above- entitled cases would be argued contemporaneously at the HOM hearing. We appreciate the work and the cooperation we received from Petitioners, participants, the County and Intervenors in making the hearing run smoothly and presenting the arguments succinctly. While there were certainly a variety of issues involved in the hearing, as the County expressed it; “the ultimate question is whether Lewis County is now in compliance with the Act.” We recognize, and appreciate that the parties recognized, that all of the issues from the PFRs and compliance questions are interrelated. We will generally structure this order by topic, but will maintain division between the three cases as appropriate.

In addition to granting the County’s December 18, 2000, motion to supplement the record during the HOM, we also admitted additional exhibits submitted without objection. The Southwest Washington Regional Transportation Organization minutes of June 14, 1995, was admitted as

Ex. VIII-361 and the Washington State Department of Transportation letter of January 3, 2001, was admitted as Ex. VIII-362. Additionally, a series of maps identified as Ex. IX-6, IX-7, IX-8, IX-9 were admitted during the HOM.

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

Pursuant to RCW 36.70A.320(1), Ordinance #1170B is presumed valid upon adoption. The burden is on Petitioners to demonstrate that the action taken by Lewis County is not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), we “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].” In order to find the County’s action clearly erroneous, we must be “left with the firm and definite conviction that a mistake has been made.” *Department of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

Both *Smith* and *Butler* involved determinations of invalidity findings. RCW 36.70A.320(4) provides that the County has the burden, in a compliance hearing, to show that “the ordinance or resolution it has enacted *in response* to the determination of invalidity will no longer substantially interfere with fulfillment of the goals of the Act.” (emphasis supplied).

Obviously all the County’s ordinances subsequent to #1159A and B, through and including #1170B, having been adopted prior to the FDO in *Butler*, were not adopted “in response” to the determination of invalidity. Nonetheless, the County and Intervenor Economic Development Council (EDC) (the County’s economic arm) accepted that it was their burden to convince us to rescind or modify the previous determinations of invalidity. Their argument generally was that the ordinances adopted after #1159A and B were sufficient to carry that burden. Both the County and EDC specifically stated that they had not filed any motion to rescind or modify the previous determinations of invalidity such that the 45-day time limit provisions of RCW 36.70A.330(2) would apply. Lewis County did file, on January 12, 2001, a “motion on compliance” requesting an immediate finding of compliance on alleged non-contested issues. We entered a memo on January 24, 2001, denying a separate finding of limited compliance as requested by the County,

but indicating that the County's request for rescission of invalidity as to those areas contained in the motion would be dealt with within the 45-day limitation. That order was issued on February 26, 2001. It is incorporated herein by reference.

We presume all the ordinances to be valid and assign the burden of proof for matters other than rescission of invalidity to the Petitioners under the clearly erroneous standard in accordance with the provisions of RCW 36.70A.320. In some cases, the boundaries of the LAMIRDs established in the CP were reduced in Ordinance #1170B. We assigned the burden to prove invalidity to Petitioners for those changes (although not requested to do so by the County).

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General Standing

Both the County and EDC challenged the general standing qualifications of Petitioners as to some of the issues presented in *Panesko II*. We set forth our analysis of the standing requirements of the GMA in the *Butler* FDO and incorporate that reasoning into this order by reference. **We have reviewed the record and find that each of the Petitioners in *Panesko II* sufficiently apprized the County of their concerns with GMA noncompliance of the County's action to provide a sufficient nexus to the issues raised at the HOM.**

Additionally, as to the compliance aspects of the *Butler* and *Smith* cases the standing requirements are set forth in RCW 36.70A.330(2). The statute allows standing to any petitioner in the previous case, as well as anyone to participate who has standing to challenge the "legislation enacted in response to the" FDO. The only legislation in response to the *Butler* FDO were the resolutions and ordinances enacted on December 18, 2000.

State Environmental Policy Act (SEPA) Standing

The County challenged the standing of Petitioners to raise SEPA issues in the *Panesko II* case. The arguments were the same as presented and decided in the *Butler* FDO and we incorporate that analysis and decision into this one. We also agree with Petitioners *Butler* that adopting the

second prong of the *Trepanier* requirements would make a SEPA challenge under the GMA impossible. We observe that we had adopted our SEPA standing holding in *Mahr, et al. v. Thurston County* 94-2-0007, before the Legislature adopted the 1995 amendment to the standing provisions of the Act.

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Public Participation

Petitioners Butler contended that the County failed to adequately adopt and identify the “official maps” when it incorporated them into Ordinance #1170B. At the HOM the County presented maps which contained “official” identification. We accept the County’s representation of the maps at the HOM as the official maps for GMA purposes. We do not have jurisdiction to decide, as Petitioners Butler contended, whether the County appropriately complied with provisions of RCW 36.70.

Petitioners have demonstrated that the County’s public participation process in adopting Ordinances #1170, #1170A, and #1170B, did not comply with the Act. The record is clear that after the public hearings, substantial and significant changes were made to the maps. RCW 36.70A.035(2)(a) requires that significant changes to a CP or a DR that arise after the “opportunity for review and comment has passed” must be resubmitted for public review. The exemption allowable in .035(2)(b)(ii) is not available to Lewis County under the record in this case.

Section .035(1) requiring “reasonable notice” did not receive compliance. The County’s brief on this issue only pointed out that Petitioners here attended each and every meeting scheduled, often *en masse* and “circling like a hawk looking for dinner.” County brief, p. 57, 59.

The County’s defense misses the point. As we noted many years ago, a “don’t tell, won’t attend” policy fails to comply with the Act because of the unknown citizens who would have participated with proper reasonable notice. *Moore-Clark v. La Conner* 94-2-0021 (5-11-95). This type of hit and miss notification approach also fails to comply with the Act’s requirements under .140 for early and continuous public participation.

In *Butler*, we found noncompliance for the CP and Ordinances #1159A and B because of the failure to adopt a public participation plan required by RCW 36.70A.140. All of those reasons apply equally for the adoption of Ordinances #1170, #1170A and #1170B. Those reasons are incorporated herein by reference.

In response to the finding of noncompliance, Lewis County adopted Resolution #00-435 on December 18, 2000, the same day its brief was filed. The Resolution is not a DR, as pointedly noted by the County during the HOM. It is limited to methods of providing notice and a very general procedural context for future amendments to the CP and DRs. It also states the intent of the Board of County Commissioners (BOCC). It does not, however, adequately establish a public participation program.

Petitioners have sustained their burden of showing the County continues to be noncompliant with the Act regarding public participation.

A word of understanding. For a County with no zoning requirements as recently as five years ago, the awesome number of meetings and mountain of information to be digested and applied must have seemed overwhelming. While we note that the County has been less than precise in its public process and record keeping, we do not find evidence in this record of deliberate interference with the public participation goals and requirements of the Act, except for the “maneuverings” discussed earlier. Now that a large part of the foundation of GMA planning has been completed, it is our hope that the County will, after catching its breath, quickly adopt a detailed public participation program and follow those dictates. It should be noted that the excessive use of emergency and interim ordinance adoptions, designed to avoid effective review and frustrate citizens with opposing views, needs to end.

There is not sufficient evidence presented by Petitioners for us to make a determination of invalidity as to public participation.

SEPA

In *Butler* we determined that the FEIS was inadequate because it did not consider alternatives and

because the items that were considered had been insufficiently set forth and analyzed. The County took no specific action to address those deficiencies and noncompliance.

The County continues to contend that the “phased review” portions of SEPA allows delaying environmental review up to and including the time a specific project application is submitted. The County misreads the SEPA requirements of GMA. We addressed those issues in *Butler* and incorporate that discussion herein by reference.

On February 14, 2000, the County adopted “emergency” Ordinance #1170. It issued a determination of nonsignificance (DNS) which included the statement “there is no comment period for this DNS.” (Ex. VIII-107). The notice of adoption which was published on February 17, 2000, provided, in effect, a one day period for appeal. The notice published in the County’s official newspaper, was published February 23, 2000, but still used the February 14-21, 2000, period for filing an appeal. The record reveals that complete copies of the SEPA documents were not available to the public until the end of February or the early part of March 2000.

The County noted that it had adopted Ordinance #1166, #1167, #1168 and #1169 each of which contained a DNS. Ordinance #1168 was appealed and found compliant in *Evaline v. Lewis County* 00-2-0007 (FDO 7-20-00) (*Evaline*). The other three ordinances were not appealed. The County also contended that after adoption of Ordinance #1170 as an emergency and without any opportunity for environmental review, the adoption of Ordinance #1170B on May 16, 2000, involved no “material changes from Ordinance #1170.” Thus, the DNS for #1170B was somehow compliant because it was based on the February 2000 DNS. The County also contended that the emergency (without public hearing or environmental review) adoption of Ordinance #1176 and amendments to the CP in Resolution #00-434, both adopted December 18, 2000, (the date the County’s brief was filed) satisfied the SEPA requirements of the GMA.

The efforts of the County to avoid any effective SEPA review and particularly in those instances where the public, and agencies with expertise have been precluded from comment on the SEPA analysis, fail to comply with the Act.

We will address the substance of Resolution #00-434 and Ordinance #1176 later in this order.

We find, for purposes of SEPA, that an emergency did not exist on December 18, 2000, justifying the SEPA action taken. The County's citation to two cases that pre-date the GMA by 10 and 16 years is unpersuasive.

Even with the deference and “substantial weight” afforded to the County’s SEPA actions, we find that Petitioners have sustained, under the clearly erroneous standard, their burden of showing the County has failed to comply with the Act regarding proper SEPA analysis of both the CP and subsequent DRs as to the ordinances appealed in the various PFRs.

In *Butler* we declined to make a finding of invalidity as a result of SEPA noncompliance. We make that same determination here for the same reasons.

Jurisdiction

As the County noted, Ordinances #1166, #1167 and #1169 were not appealed by any party. The appeal period for those Ordinances has, according to this record, passed. Those three ordinances may not now be found noncompliant. However, as the County has requested we reviewed those ordinances within the context of the *Butler* remand to determine if they lead to a finding of compliance with the Act.

Annual Amendments

RCW 36.70A.130(2)(a) requires each county to adopt a process for proposed amendments for provisions of the CP that are to be considered “no more frequently than once every year,” with certain exceptions. The purpose for that requirement is set forth in subsection (d) so that all proposals “shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained.” Under RCW 36.70A.040(3) and (5) a local government is required to adopt its CP and DRs contemporaneously. A local government may receive a six-month waiver of the time limit for adopting initial implementing DRs by submitting a letter to the Office of Community Development.

Section .130(1) requires any amendment or revision to a CP to conform to the GMA and any change to a DR to be “consistent with and implement” the CP. Petitioners contended that Lewis

County Code (LCC) 17.165 failed to comply with these requirements because the code did not include a process to schedule amendments or review on an annual basis and did not require CP and DR proposed amendments to be reviewed together.

The County's response was limited to one sentence at p. 74 of its brief. Referencing the provisions of .130(2) for annual CP amendments the County claimed that: "by not including development regulations in the provision the legislature intended a difference..." The County did not explain what that difference was or its rationale for reaching that conclusion. Nor did it claim that the provisions of .130 were otherwise complied with, except to reference the September 1999 schedule of work for the planning commission contained in Ex VIII-9, -11.

The legislative scheme set forth in the Act, particularly with regard to .040 and .130, leads us to the opposite conclusion of the one contended by the County. It is antithetical to all of the precepts of the GMA to assume that amendments to DRs can be adopted at any time while the policies they are designed to implement can only be amended annually. This is particularly true where the County continues to insist in these cases, as it did in *Butler*, that the DRs "trump" the CP under *Citizens v. Mount Vernon* 133 Wn.2d 861 (1997). **The failure to include DR amendments for annual review does not comply with the Act.**

LCC 17.165 is merely a scheduling process. It does not comply with the process required by RCW 36.70A.130.

There are provisions in the LCC that allow "automatic" amendments to the DRs upon approval of a specific permit application. Those provisions do not comply with the Act.

It is most certainly *now* time for Lewis County to institute a program to cumulatively review all amendment proposals at one time, with full public participation under the Act, as its highest priority of business. The GMA is legislatively directed in two ways: results and process. While it is possible to obtain a compliant result without a compliant process, often a faulty process leads to a faulty result.

In planning under the GMA, Lewis County has reached, if not passed, the point where it cannot reasonably expect a compliant result without first establishing a definitive, compliant process to review the remand issues established in this and prior orders. Lewis County does not have to disregard the information it has already covered, but it does have to provide a better analysis of that information, a more open and encompassing public process and make decisions that comply with the Act.

We do not find sufficient evidence in this record to find those provisions of the LCC to substantially interfere with the goals of the Act.

Critical Areas (CAs)

It is important to note the issues developed by Petitioners in their challenge to the critical areas ordinance (CAO) now codified LCC 17.35. The issue presented by Petitioners was whether Ordinance #1170B failed to protect CAs. Ordinance #1170B incorporated the 1996 adopted Ordinances #1150 and #1150A without change and merely eliminated the previously (incorrect) denomination of those ordinances as “interim.”

We have previously held in *North Cascades v. Whatcom County* 94-2-0001 (FDO 6-30-94) that CAOs under RCW 36.70A.060(2) are not “interim” because under subsection (3) a local government is not required to readopt such DRs, but only to “review” them for consistency with the CP and implementing DRs. We have also held in *CCNRC v. Clark County* 96-20017 (9-12-96) that a readoption of exactly the same CAO after such consistency review does not invest jurisdiction for us to review the substance of the readopted CAO. The PFRs did not challenge a lack of “consistency review,” but whether the readopted CAO complied with the Act. **We have no jurisdiction to rule on that issue.**

Resource Lands (RLs)

Petitioners challenged the provisions of Ordinance #1170B relating to allowed uses in RLs, including residential subdivision and clustering. The County relied upon the DRs adopted in 1996 and claimed no jurisdiction existed.

A local government's subsequent duty with regard to initial adopted RLs is vastly different than with regard to CAs. RCW 36.70A.060(3) providing for a consistency review applies only to CAs designated and protected under .060(2). RLs are covered within the language of .060(1). That subsection mandates that a county, as one of its first acts, must adopt DRs "to assure the conservation of RLs." The subsection goes on to state that regulations adopted at the initial stage of planning under GMA "shall remain in effect until the county or city adopts [implementing] development regulations pursuant to RCW 36.70A.040." Reference to the .040 implementing DRs is to those adopted at the time, or subsequent to, adoption of a CP. **We have consistently determined that at the time of adopting a CP and/or DRs, the RL designations and DRs must be adopted anew. Therefore jurisdiction exists to review the County's action. We so held in *Butler* and adopt that reasoning by reference.**

Recently, the Supreme Court has issued its pronouncements on a proper interpretation of the agricultural RL (ARL) provisions of the Act in *Redmond v. Hearings Board* 136 Wn.2d 38 (1996) (*Redmond*) and *King County v. Hearings Board* 142 Wn.2d 543 (2000) (*Soccer Fields*). The types of allowed uses and clustering provisions in RLs adopted by Lewis County do not comply with those pronouncements.

LCC 17.30 allows a 15% residential subdivision of designated RLs. .460 and .470 allow RV parks, boat launches, etc. in forest RLs (FRLs). Section .640 allows parks, golf courses, accessory, restaurant, and commercial services, etc. in ARLs. **These provisions do not comply with the Act and substantially interfere with Goal 8 under the reasoning providing in *Soccer Fields*.**

The argument that residential subdivision and/or separate clustering provisions of Ordinance #1170B require a special use permit, does not save the County from a finding of noncompliance. Only a prohibition of such uses in RLs would comply with the Act under the interpretations of the Supreme Court in *Redmond* and *Soccer Fields*.

Lewis County contended that adoption of emergency Ordinance #1176 requiring clustering subdivision residential densities at no greater intensity than 1:10 in ARL and 1:20 in FRLs along with a 100-acre total limitation, complied with the Act. Initially, we reiterate the statements

above dealing with public participation that an emergency ordinance, involving no public input, can rarely comply with the public participation goals and requirements of the Act. Secondly, even if the provisions of #1176 did apply to these cases its minimal restrictions do not comply with the Act.

In *Butler* we found that provisions of the CP and Ordinance #1159 which allowed densities more intense than 1:10 in ARLs, substantially interfered with Goal 8 of the Act. The provisions of Ordinance #1170B and #1176 do not sustain the County's burden of removing substantial interference. **We also find that if the Petitioners had the burden of showing that Ordinance #1170B and #1176 substantially interfered with Goal 8 of the Act in any allowance of densities greater than 1:10 in ARLs or allowable uses not directly resource related, it was met. We further find that if the Petitioners had the burden of showing that the allowance of any densities of more intensity than 1:20 or allowable uses not directly resource related for FRLs substantially interfered with Goal 8, it was sustained.**

Finally, allowance of any clustering in any RLs, under the record here and the Supreme Court decisions, fails to comply with the Act and substantially interferes with Goal 8.

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RURAL ISSUES
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.070(5) Framework Analysis

Recently we have had extensive hearings in Skagit, Mason, and Lewis Counties relating, in whole or in part, to compliance with RCW 36.70A.070(5). The following is an analytical framework setting forth the standards established by the Legislature for the rural element of the CP and/or DRs. We will hereinafter refer to RCW 36.70A.070(5) simply as (5) along with appropriate subsections as (a), (b), (c), (d), and (e). We will refer to the definitions in RCW 36.70A.030 solely by their subsection number.

In analyzing (5) we start with the definitions established by the Legislature.

“(15) “Rural development” refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands (RLs) designated pursuant to RCW

36.70A.170. Rural development *can* consist of a *variety* of *uses* and *residential densities*, including clustered residential development, at levels that are consistent with the preservation of *rural character* and the *requirements* of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas. (Emphasis supplied).

We note that (5)(b) *requires* a variety of densities and uses rather than *allows* them. Some essential standards are shown by this definition.

1. No UGA nor designated RL is to be included as part of the rural element. Additionally, agriculture or forest activities conducted in rural areas are not considered to be a part of rural development.
2. Development in the rural area can allow a variety of uses and residential densities including clusters. However, such uses and densities must be only at levels that are:
 - a. consistent with rural character (as defined in (14)) preservation; AND
 - b. consistent with the requirements of (5).

“(14) “Rural character” refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

- (a) In which open space, natural landscape, and vegetation predominate over the built environment;
- (b) That foster *traditional* rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;
- (c) That provide *visual landscapes* that are *traditionally* found in rural areas and communities;
- (d) That are *compatible* with the *use* of the land by wildlife and for fish and wildlife habitat;
- (e) That *reduce* the inappropriate conversion of undeveloped land into *sprawling, low-density development*;
- (f) That generally do not require the extension of urban governmental services; and
- (g) That are consistent with the *protection* of natural surface water flows and ground water and surface water recharge and discharge areas.”
(Emphasis supplied).

Several characteristics and standards are set forth in this definition. The patterns of land use and

development ultimately developed by a County in its CP must involve certain characteristics.

1. The natural environment must *predominate* over the built or manmade environment (See WAC 197-11-718).
2. Traditional rural lifestyles including *rural-based* economies and opportunities are to be fostered.
3. Visual landscapes, those *traditionally* found in rural areas, must be provided.
4. The patterns of land use and development must be *compatible* with the use of the land by wildlife and *compatible* for fish and wildlife habitat.
5. Sprawling, low-density development must be *reduced*.
6. Generally the extension of urban governmental services are prohibited.
7. The land use patterns must be consistent with the *protection* of surface water flows and ground water and surface water recharge and discharge areas.

“(16) “Rural governmental services” or “rural services” include those public services and public facilities *historically* and *typically* delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with *rural development* and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).” (Emphasis supplied).

Certain characteristics are shown in this definition.

1. Storm and sanitary services are prohibited, except to alleviate an existing health or environmental hazard.
2. This definition and the definition of urban services found in (19) both include domestic water systems, fire and police protection, and transportation and public transit services. The distinguishing characteristic is that rural services must be “historically and typically delivered at an intensity usually found in rural areas.” Urban services are those that are provided “at an intensity historically and typically provided in cities,....”

The Legislative often uses the terms “historical” and “traditional” to define the essence of rural. As noted later such terms are intended to encompass more than what was present in the rural

areas of a county before GMA.

Subject to the definitions, the Legislature requires counties to include a rural element in the CP outside of UGAs and RLs. The Legislature recognized in (5)(a) that local circumstances are an important consideration “in establishing patterns of rural densities and uses.” This provision is consistent with the wide discretion allowed to local governments under the GMA. RCW 36.70A.3201.

However, that discretion was not intended by the Legislature to be unbridled. RCW 36.70A.3201 involves discretion that is “consistent” with the goals and requirements of the Act. (5)(a) requires a county (through a written record) to “harmonize the goals” and “meet the requirements” of the GMA. The language of (14), (15), and (16), emphasize that the patterns of uses and densities must be those which are “historical” and “typical” to rural areas. The Legislature did not say that whatever existed in a particular county on June 30, 1990, automatically became the existing rural character of that county. The Legislature has clearly said that the rural element must have parameters involving generalized historical and traditional “lifestyles” and “visual compatibility,” as well as the predominance of the natural environment, compatibility with wildlife and fish, protection of waters and the reduction of “sprawling, low-density development.”

(5)(b) requires that the rural element include rural development (15), forestry and agriculture in rural areas. A variety of “rural densities, uses, essential public facilities and rural governmental services” must be provided. To achieve such “a variety of rural densities and uses” clustering and other “innovative” techniques may be included. Those innovative techniques, however, must involve “appropriate rural densities and uses” that are *not* characterized by urban growth (17) **and** that are “consistent with rural character” (14).

Additionally, (5)(c) includes other requirements that must be included in the rural element “that apply to rural development [15] and protect rural character [14]” of the area” established by a county. In the rural element a county must:

- (i) contain or otherwise control rural development,
- (ii) assure visual compatibility with the “surrounding rural area,”
- (iii) reduce sprawling low-density development,

- (iv) protect critical areas and surface water and ground water resources, and
- (v) protect against conflicts with RLs.

The requirements of (c)(iv) and (v) require that a county review its current policies and regulations to determine if they are sufficient to comply with subsections (c)(iv) and (v). If existing policies and regulations do not meet these requirements then a county has the duty to adopt new ones. If existing policies and regulations in place at the time of adoption of the rural element are adequate, no new ones are necessary.

To summarize, a county may allow and shall provide a variety of *rural uses and rural densities* that are consistent with the definition of rural character (14) and also comply with the requirements of (5)(a), (b), and (c). UGAs and RL designations are excluded, as are agricultural or farming activities in the rural areas (15). A variety of rural uses and rural densities, essential public facilities, and rural services are both allowed and required (15), (5)(b). Rural services must be “historically and typically” at an intensity not found in urban areas but found in rural areas. Traditional rural lifestyles, including rural-based economies are to be fostered. The natural environment is to predominate and rural visual landscape compatibility must be assured. Protection of critical areas and natural water flows and recharge and discharge areas, as well as compatibility of the uses and densities with wildlife and their habitat is required. Clusters and other innovative techniques may be allowed but must “accommodate appropriate rural densities and uses not characterized by urban growth” and be consistent with rural character (14). Rural uses and densities must be contained or otherwise controlled and must reduce existing sprawling low-density development in the rural area.

We turn then to the provisions of (5)(d) entitled “limited areas of more intensive rural development” (LAMIRD). It is clear that such areas are not “rural growth” because of the intensification element. Under the definition in (17) such areas are not urban growth.

Three different types of LAMIRDs are allowed under (d)(i), (ii), and (iii). The first sentence of (d) which subjects the LAMIRD to the “requirements of this subsection” means that except as noted in (d)(i) all the provisions of (5)(a), (b), and (c) apply to LAMIRDs. There are also additional specific requirements in subsection (5)(d) that apply to the three types of LAMIRDs.

The provisions of (c)(ii) (visual compatibility) and (iii) (reduce low-density development) do not apply to those LAMIRDS designated under (d)(i). This section does not allow increased low-density development, but merely removes the reduction requirement. The logical outer boundary (LOB) provisions of (d)(iv) apply only to LAMIRDS designated under (d)(i). The Legislature clearly stated that (d)(iv) provisions apply to (d)(i) LAMIRDS. LAMIRDS designated under (d)(ii) or (iii) are defined and bounded by “lots” and thus LOB requirements are irrelevant.

(d)(ii) and (iii) both allow “new development” and “intensification of development.” (d)(i) LAMIRDS do not allow “new development” except as it may be part of “infill, development, or redevelopment.”

(d)(i) LAMIRDS consist of certain “existing areas” defined in (d)(v). The allowed uses and areas include commercial, industrial, residential or mixed-use areas “whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.” An “industrial area” is not required to be principally designed to serve the “existing and projected rural population.” Thus, all other (d)(i) LAMIRDS (commercial, residential, or mixed-use) must be principally designed to serve the “existing and projected rural population.” In designating and establishing LAMIRDS under (d)(i) a county must “minimize and contain” ((d)(iv)) the existing area or existing use. Prohibitions against including lands within the LOB that allow a “new pattern of low-density sprawl” for the existing area or existing use must be adopted ((d)(iv)).

In establishing the LOB for an “existing area” (but not for existing uses) under (d)(iv) a county is required to “clearly” identify and contain the LOB. That identification and containment must be “delineated predominately by the built environment,” but may include “limited” undeveloped lands. WAC 197-11-718 provides some guidance as to a proper definition of “built environment.” Nonetheless, we recognize that the reasons for including the term “built environment” in SEPA and in GMA are not necessarily co-extensive. We conclude that legislative intent, as determined from reading all parts the GMA with particular emphasis on (5) (d), means the “built environment” only includes those facilities which are “manmade,” whether they are above or below ground. To comply with the restrictions found in (d), particularly (d)(v), the area included within the LOB must have manmade structures in place (built) on July 1, 1990.

(d) (i) LAMIRDs, being neither rural nor urban, that allow existing areas or existing uses, must always be “limited” i.e., minimized and contained.

The provisions of (d)(v) (existing area or existing use as of July 1, 1990) apply to all LAMIRDs whether designed under (d)(i), (ii), or (iii). Thus, for any “intensification” allowed under (d)(ii) or (d)(iii) the designated use or area must have been in existence on July 1, 1990 (or later date under the provisions of (5)(B) or (C)). This restriction does not apply to “new development” authorized under (d)(ii) or (d)(iii). Anytime the phrase “existing” is used to define an area or use, the provisions of (v) (7-1-90) modify that phrase.

Once the existing area has been clearly identified and contained, a county must then, in drawing the LOB, address (A) the need to preserve “existing” (7-1-90) natural neighborhoods and communities, (B) physical boundaries, (C) prevent abnormally irregular boundaries and, (D) ensure that the public facilities and public services necessary to serve the LOB do not “permit low-density sprawl.”

Under (d)(ii) small-scale recreation or small-scale tourist LAMIRDs are authorized. Commercial facilities to serve those LAMIRDs are allowed. The intensification or creation of small-scale recreational or small-scale tourists uses must rely on a rural location and setting. Such LAMIRDs cannot include new residential development. The uses need not be principally designed to serve the “existing and projected rural population.” “Public services and public facilities” (12)(13) must be limited to those “necessary to serve” only the LAMIRD. Such public services and public facilities must be provided “in a manner that does not permit low-density sprawl.”

The LAMIRDs allowed under (d)(iii) authorize intensification or creation of “isolated cottage industries and isolated small-scale businesses.” Again, these need not be principally designed to serve the “existing and projected rural population” and non-residential uses. They must provide job opportunities for rural residents. Public services and public facilities have the same constraints as those provided under (d)(ii).

The allowance of small-scale recreational and small-scale tourist uses, isolated cottage industries and isolated small-scale businesses are also subject to the provisions of (5)(a), (b), and (c), as well as the definitions contained in (14) and (15).

Finally, in designating its LAMIRDs a county must always be aware of the prohibition contained in (5)(e):

“Exception. This subsection shall not be interpreted to permit in the rural area a major industrial development or a master planned resort unless otherwise specifically permitted under RCW 36.70A.360 and 36.70A.365.”

The definition of a master-planned resort is found in .360 and the definition of a major industrial development is found in .365(1).

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Variety of Densities

Ordinance #1170B continues Lewis County’s previously noncompliant and invalid decision that directs a 1:5 uniform rural density under LCC 17.100. Petitioners claimed that the specific provisions of Ordinance #1170B violated the rural element requirements of .070(5) and the definitions contained in .030(14)(15)(16).

This record reveals that Petitioners are correct. The purported physical restrictions to provide a variety of rural densities, relied upon by the County (steep slopes, soil, floodplains and CAs) are only conclusions and are not documented or supported in this record. In fact, Ordinance #1169 (not challenged) does not prohibit building on these “physical restrictions” if the administrator finds that the applicant has “achieved methods to overcome” those constraints. Petitioners pointed out that the County’s CAO does not designate any rivers or adjacent land areas as CAs. The County allows buildings on floodplains with height of foundation restrictions only.

Petitioners have sustained their burden of showing that the uniform 1:5 density in rural areas does not comply with the Act and that it substantially interferes with Goals 1, 2, 8, and 10. The allowance of a uniform 1:5 density does nothing to meet the requirements for reducing low-density sprawl, maintaining rural character, assuring visual compatibility, and containing rural development. It allows incompatible uses adjacent to RLs that interfere with conservation of RLs. Inclusion of areas of less dense *rural uses* is necessary to comply with the

Act and to not substantially interfere with the Act's goals.

The County's reliance on Ordinance #1176 and #1169 as well as the "caps" provisions of Ordinance #1170B simply are not sufficient to comply with the Act. The requirements of Ordinance #1169 to eliminate assessor-created lots and require "subdivision-type approval" for any lots less than 20 acres is headed in the right direction. Including standards for stormwater, flood hazard areas, and road standards is significant. While such regulations are a good first step, **the failure to contain rural uses appropriately does not comply with the goals and requirements of the Act and substantially interferes with Goals 1, 2, 10 and 12.**

Additionally, the Petitioners' challenges regarding rural character and visual compatibility are proven. The record is clear that Lewis County used whatever existed on July 1, 1993, and any development that occurred thereafter as its definition of rural character. As noted in the framework analysis section, a more global approach than merely that which was there before GMA is required. The same requirement applies to assuring that the natural landscape predominates over the built environment. A uniform 1:5 does not comply with these requirements.

The County defines "typical" rural public utilities and services at LCC 17.150.030. That definition, however, specifically refers to the necessary services and facilities for a LAMIRD, which is supposed to be much more intensive use than that allowed as *rural* development under .030(15). **Use of such a definition does not minimize and contain and does not reduce low-density sprawl as required by (c)(ii) and (iii).**

The County defines "rural density" in LCC 17.100.100 as any rural development outside a LAMIRD that has less intensity than 4:1. As Petitioners accurately point out, there are very few areas, if any, within UGAs or municipal boundaries that have densities more intense than 4:1. **LCC 17.100.100 and 17.150.030 are not proper definitions under the GMA and do not comply with the Act.**

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LCC 17.150.030(3)(k) partially defines the term "urban growth" as one where there is an extension of municipal water or sewer outside UGAs. Setting aside for the moment that such

“extension” is prohibited by RCW 36.70A.110(4), the provision appears to attempt to involve an urban growth definition that is contrary to that provided in the GMA. **The provisions of LCC 17.150.030(3)(k) substantially interfere with Goals 1, 2, 9, and 12 and are determined to be invalid.**

Clusters

Clusters for rural areas outside LAMIRDs involving more than eight dwellings are subject to a special use permit process. There was a great deal of discussion, and even a concession by the County, of whether the hearing examiner merely reviewed, or could condition approval of, a cluster subdivision greater than eight dwelling units under LCC. Even if the LCC provisions were interpreted, or corrected, to require approval by the hearing examiner. **Under the record here the allowance of greater than eight dwelling units in a cluster does not comply with the Act and substantially interferes with Goals 1, 2, 8, and 10.**

Lewis County contended that imposing conditions by the hearing examiner provided “sufficient controls” on rural development and reduced low-density sprawl. The Ordinance allows LAMIRD-intensity public facilities throughout rural areas. Even a requirement that adequate rural facilities exist, which is questionable under the language of Ordinance #1170B, would not satisfy the goals and requirements of the Act. The requirement in the ordinance to assure no urban growth in rural areas is in compliance with the Act. It is not, however, when urban growth is defined by the County as anything not more intense than four units per acre under LCC 100.100.

Ordinances #1170B and #1176 merely prohibit clusters that would require a connection to “publicly owned” water or sewer pipe lines under LCC 17.150.030(3)(k). The Ordinances do not address the very many non-publicly-owned water line and sewer facilities that exist in Lewis County.

The Ordinances do not require or impose any restrictions on the residual parcel.

The clustering provisions of Ordinances #1170B and #1176 do not minimize and contain rural development and most assuredly do not reduce low-density sprawl. The clustering

provisions do not comply with the Act and do substantially interfere with Goals 1, 2, and 10 of the Act.

The unappealed valid provisions of Ordinance #1169 provide further allowable exceptions to what few restrictions are imposed, and thus cannot be used by the County as demonstrating compliance with the Act.

Clusters involving eight dwellings or less are a permitted use throughout the rural area. While some of the restrictions noted above may or may not be applicable under the language of the ordinance, even assuming they are, this unlimited clustering allowance does not comply with the Act and substantially interferes with Goals 1, 2, and 10. Clustering allowed in the rural area under .070(5)(b) must be minimized and contained and must further the County's duty to reduce low-density sprawl. There are undoubtedly areas in rural Lewis County where clustering on a small-scale is appropriate. The County, however, has not seen fit to do the analysis necessary to identify those areas and ensure that adopted DRs comply with the Act.

All the clustering provisions in the rural area substantially interfere with Goals 1, 2, 10, and 12.

LAMIRDS

The GMA requires that an “existing” area or use must have buildings or infrastructure on or below ground as of July 1, 1993, (in Lewis County's case). (Petitioners pointed out that in the *Butler* order we inadvertently referenced January 1, 1993. That is a typographical error and should be read as July 1, 1993). LAMIRD is a designation for the rural element, and RL lands are not properly included. While the County has discretion to use the four criteria set forth in (d)(iv)(A, B, C and D) to make minor adjustments to the LOB, the reason to include undeveloped property in a LAMIRD is for “infill” under (d)(i) and not for expanding the LOB to include large and/or undeveloped properties.

In the establishment of a LOB under (d)(iv), a county “shall...minimize and contain the existing

areas or uses...of a LAMIRD.” Once that is done, then the county must address the A, B, C, and D requirements. In establishing the LOBs for the County emphasized (iv) B and C but did not properly take into account the D requirement of having the ability to provide public facilities and public services that do not permit “low-density sprawl.”

LAMIRD AREAS

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In Ordinance #1170B Lewis County established boundaries for the various LAMIRDs designated initially in the CP and Ordinance #1159B. Once again it is important to note that the boundaries established in Ordinance #1170B were done so prior to the FDO in *Butler*. In establishing its unusually large number of LAMIRDs the County adopted a number of types of uses/categories. We will individually address those LAMIRDs designations. We will first examine the LOB and then address the challenges to allowable uses in a different section.

At the HOM, the County presented large posterboard exhibits containing maps of various sections of the individual LAMIRD as well as a sketch map of the LAMIRD as it existed under Ordinance #1159B. We will refer to the LAMIRDs by the exhibit number given to the posterboard compilation, rather than reference the various exhibit numbers contained for the individual maps on the posterboard.

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Rural Industrial

Because of scheduling conflicts, Nan Henriksen was only able to participate fully in the Curtis section of this order.

In *Smith* the Port of Chehalis (Port), on behalf of Lewis County intervened and argued that the Curtis site was properly designated an “industrial IUGA.” In *Butler* the Port, the Lewis County Economic Development Council and the Lewis County Industrial Lands Advisory Task Force (collectively EDC), represented by the same attorney, intervened in support of Lewis County. The EDC also intervened in *Panesko II*, represented by the same counsel, in support of Lewis County. The record throughout the three cases is clear that EDC is the economic development

arm of Lewis County. The BOCC has consistently relied upon the experience and expertise of this group in adopting the County's economic development policies and regulations. It has deferred totally to EDC for representation on economic issues.

In *Butler* we found that the industrial LAMIRD designation of the CP for the Curtis area did not comply with the Act. Two grounds were set forth for that determination of noncompliance; failure to comply with .070(5)(d) and with .070(5)(e).

In its defense of the designation as modified by the requirements of Ordinance #1170B, EDC contended that the provisions of (5)(d)(iii) provided a "separate basis" for the LAMIRD. We note that Lewis County did not use this subsection as an identification for the LAMIRD designation. In any event the subsection is inapplicable as it allows only "small-scale" industrial uses. The 357-acre Curtis area is not "small-scale." The subsection is also subject to the requirements of .070(5)(e).

The County designated the Curtis "industrial" LAMIRD under (5)(d)(i) as "infill... or redevelopment of existing...industrial...areas." While the potential development of the site in the 1970s as a Weyerhaeuser mill site is historically correct, it does not provide any adequate analysis under the GMA. What is important under the GMA for purposes of determining "existing areas or uses," is what was built on or below the ground and what the use of the property was on July 1, 1993. See *Anacortes v. Skagit County*, 00-2-0049c.

What this record reveals is as of July 1, 1993, parts of the Curtis LAMIRD were being used as a "rail reload and pole manufacturing facility." While we agree with EDC that the regulations adopted in Ordinance #1170B will protect the surrounding rural areas, that does not address the issue of the proper LOB or the uses to be allowed under (5)(d)(iv). **As it is presently constituted, even with the restrictions imposed in Ordinance #1170B, the designation does not comply with the Act and continues to be in noncompliance under *Butler*. The County has not sustained its burden of showing the removal of substantial interference from the goals of the Act for the Curtis pole yard LAMIRD.**

Even if we evaluated the area, the designation and the DRs anew, we would find

noncompliance and substantial interference because the area and uses were not properly minimized and contained and not in existence on July 1, 1993. Further, as we noted in *Butler*, the designation does not comply with .070(5)(e).

The Legislature clearly limited the use of the (5)(d) LAMIRDs in .070(5)(e) as follows:

“This subsection shall not be interpreted to *permit* in the *rural area a major industrial development* or a master planned resort unless otherwise specifically permitted under RCW 36.70A.360 and 36.70A.365.” (emphasis supplied).

The definition of a major industrial development under .365(1) is as follows:

“Major industrial” development means 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.”

The “master plan” that the Port prepared for the Curtis LAMIRD falls squarely within the definition of major industrial development. The plan designated blocks of 40-100 acres for primary use “emphasizing attracting companies that will utilize larger particles.” We note that neither EDC nor the County addressed this provision of the Act in spite of our reliance upon it in *Butler*.

We are surprised that the County continues to refuse to use the provisions of RCW 36.70A.365. Our review of the record, which contains the Port of Chehalis master plan application as well as other documents, shows that much of the planning work involved in compliance with .365 is being, or has been done. Yet apparently the County believes that the “criteria” listed under .365 (2) must be in place prior to accepting a permit. The County may wish to re-evaluate that thinking. It appears to us that the Legislature could not have intended that sort of requirement, which would be impossible for any small, and probably any large, county to achieve prior to a

major industrial customer.

We understand the frustration set forth in Mrs. Henriksen's dissenting opinion. Nonetheless, the statute is clear that the methodology Lewis County continues to use is noncompliant under the GMA. There appears to be no other answer.

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Toledo Airport

The LOB area expanded from an approximate 8-acre concentrations of buildings on July 1, 1993, (as shown by the 1994 aerial photo) to a 93-acre industrial park which does not have any development existing even as today except for the 8 acres. **Such action does not comply with the Act. Outside the initial 8 acres, the LAMIRD substantially interferes with Goals 1, 2, and 12.**

Packwood

Packwood (Ex VIII-314) is the first small-town LAMIRD we will address. At the easterly portion of Lewis County, Packwood is located along Highway 12, close to the border with Yakima County. It is situated in the easterly half of the Pinchot National Forest, just south of Mt. Rainier National Park. The town has existed for a number of years.

As noted by the County, the Ordinance #1170B LOB was significantly reduced from the original designation found in Ordinance #1159B. Approximately 250 acres of the original LOB was eliminated.

The Packwood LAMIRD does not comply with the Act because it includes a significant undeveloped area designated as "industrial" that is in fact a mineral RL area. There is no authority in the GMA for including such an area (with no development in existence as of July 1, 1993) that would allow eventual conversion of this RL area. The inclusion of this RL area as a base to further expand and include totally undeveloped property to the west and to the south also fails to comply with the GMA.

The inclusion of the RL substantially interferes with Goal 8 of the Act. The inclusion of undeveloped properties substantially interfere with Goals 1 and 2.

The County generally used the river as a westerly boundary for the LAMIRD. While that decision relied upon (d)(iv)(B), it is clear that “addressing” the statutory criteria for a LOB cannot be used *to establish* a LAMIRD, where the other statutory criteria in (d)(v) and (iv) do not exist. It must always be recalled that the establishment of a LAMIRD is foundationally based upon the built environment that existed as of July 1, 1993.

The Packwood LAMIRD also includes the area surrounding and including the local airport. While there is some dispute in the record as to the built environment as of July 1, 1993 (as opposed to mere platting lines), the record is clear that large single ownership undeveloped lots exist between the airport portion and the northwest corner and the main body of the town of Packwood bounded on the north generally by Snyder Road. To the east of the main body of development in the Town, south of Snyder Road and east of Huntington Avenue large single ownership undeveloped lots predominate. A small group of developed properties exists in the Francis Street area south of Snyder and west of Robb Road. Even if there was a built environment as of July 1, 1993, the area to the east and the area to the west to Huntington Avenue could not comply with the criteria established in (5)(d)(iv).

The southern boundary of existing development in Packwood appears to generally be located north of Edmonds Road or where it would exist if it were a through street to Huntington Avenue. The western boundary of actual intense rural development existing July 1, 1993, is generally the property line at the easterly terminus of Edmonds Road. Between that locale and the river LOB established by the County there was no “intensive” rural development on July 1, 1993, nor any evidence of development today.

Inclusion of any area outside the northerly boundary of Snyder Road, the easterly boundary of Huntington Avenue, the southern boundary of Edmonds Road and the easterly boundary as the lot line at the terminus of Edmonds Road substantially interferes with Goals 1, 2, 8 and 10 of the Act and such area is determined to be invalid under the criteria

established in RCW 36.70A.302.

We recognize that the town of Packwood at its easterly location may have only marginal impact on encouraging growth in urban areas under RCW 36.70A.020(1). In spite of that, the sprawl capacity is significant. It may well be that after a period of infill, Lewis County will need to consider an UGA designation for Packwood, with all the infrastructure requirements attendant thereto. It may be that the airport or the small development area in the Robb Road vicinity are appropriate for LAMIRD designations. Lewis County has a variety of options on remand, but it cannot continue including large inappropriate areas in LAMIRDs, an action which encourages sprawl, interferes with RLs and makes necessary infrastructure costs prohibitive.

Randle

The next challenged small-town LAMIRD involves the Randle area (Ex. VIII-312), west of Packwood. Initially, the easterly portion of the town lying north of Highway 12 appears from the record to have intense rural development that was in existence on July 1, 1993. The areas denominated in the LAMIRD that are south of Highway 12 consist entirely of undeveloped large acreage single-ownership lots. At the westerly edge of the town another intensely developed area is located. Between the two intensely developed locales is a lengthy, virtually undeveloped, large lot area. **The inclusion of these undeveloped large lot areas within the Randle LAMIRD fails to comply with the Act.**

Additionally, designation of the areas in the easterly section north of Highway 12, east of Young Road, north of Silverbrook, and west of First Avenue and development outside a circular area involving a northerly boundary in the vicinity of Boyd Road and easterly boundary within a lot east of SR 181, a southerly boundary involving 1 or 2 lots south of Lewis Street and a westerly boundary generally in the area of McKay Street failed to meet the criteria of (d)(i), and (iv) and substantially interfere with Goals 1, 2, and 10 of the Act. The GMA does not allow the inclusion of vast amounts of large lots to provide allowable “infill.” Addressing the issues in (d)(iv)A, B, C, and D cannot be used to include significant areas that do not otherwise qualify as LAMIRDs.

We recognize the practical and perhaps psychological difficulties in establishing two LAMIRDs

or omitting the smaller of a intensely developed area from the overall inclusion of both areas when the residents undoubtedly all consider themselves a part of the Town of Randle.

Nonetheless, the criteria and the restrictions found in (d)(i) and (iv) do not allow inclusion of such a large connecting, but otherwise undeveloped rural area in a LAMIRD.

The LAMIRD also includes an industrial designation south of Highway 12 consisting of five large undeveloped lots. This is not a proper designation under (d)(i) because the area had no industrial uses in place on July 1, 1993, much less any “intense rural industrial development.” No part of the designated area was an existing industrial area as of July 1, 1993.

Glenoma

The next small-town LAMIRD west of Randle is Glenoma (Ex. VIII-311). In reviewing the exhibit it is difficult to discern any “intense” rural development in existence on July 1, 1993. The record does not show any intense rural development on July 1, 1993, or even May 16, 2000. The LAMIRD boundaries of Glenoma were not changed over those established in *Butler* as noncompliant and invalid.

The County has not sustained its burden of removing the substantial interference with the goals of the Act. Petitioners have proven continued noncompliance for Glenoma and even if we assigned the burden of proof to Petitioners to establish substantial interference with the goals of the Act, this record demonstrates achievement of that burden by Petitioners.

Onalaska

The last of the small towns displayed on the exhibits presented at the HOM is Onalaska (Ex. VIII-313). **As with Randle, this LAMIRD contains an industrial area that does not comply with the Act and substantially interferes with the goals of the Act.** Additionally, the mixed-use or residential areas of the LAMIRD contains a LOB that includes large undeveloped lots that do not and cannot qualify as a compliant LAMIRD. South of SR 508 and east of Leonard Road a series of intensely developed lots along main street to approximately the easterly end of Sixth Avenue (or where it would exist if it was in existence) is compliant. However, east of that location there are a series of four, five, or six lots which are large and undeveloped which did not contain a built

environment in existence on July 1, 1993. North of SR 508 a core area is clearly discerned perhaps as far north as 7th Street west. The easterly boundary from Leonard Road where existing development has occurred cannot reasonably be extended beyond the two lot boundary lines.

Westerly of Leonard Road there is intense development shown to Central Avenue. Less clear is the intensity of development as far west as Kerr Road bounded on the north by 2nd Street west. There is an indication of development west of Central Avenue between 4th Street west and 5th street west as far west as Pennel Avenue. It could reasonably be argued that the undeveloped portion west of Leonard Road between 5th Street and 6th Street would be appropriate for infill, at least as far west as Central Avenue. **Outside of those boundaries the inclusion of the many large undeveloped lots within the LAMIRD substantially interferes with Goals 1 and 2 of the Act. The County has not sustained its burden of showing removal of substantial interference. Even if we assigned the burden to Petitioners because of the adoption of Ordinance #1170B we would reach the same result.**

The boundaries of the other small towns of Adna, Doty, Galvin, Mineral, Salkum, and Silver Creek are identical to the boundaries found noncompliant and invalid in the *Butler* FDO. We incorporate the reasoning therein by reference. **The County has not sustained its burden of removing substantial interference.**

Freeway/Commercial (F/C)

The County also designated a category of LAMIRDs as F/C.

The County in many of its boundaries included areas that were built after July 1, 1993, but before the IUGA ordinance was established in 1996. This does not comply with the Act.

The first of these designations, all of which were challenged by Petitioners, is found in Ex. VIII-307 east of the intersection of I-5 and SR 508. The exhibit plainly shows inclusions of significant areas of undeveloped acreage outside of not only existing areas and uses as of July 1, 1993, but even as they exist today. The County's rationale was to provide an opportunity for expansion and growth of these businesses. That is directly contrary to the requirements and the intent of a LAMIRD. **The legislative purpose is clear. Existing built areas on July 1, 1993, that involve**

“intense” rural development can be established, but must be minimized and contained.

The County also included in the northern portion of this LAMIRD an area that would have otherwise been categorized as a nonconforming use. Again, the County does not have authority or discretion to include such areas within a LAMIRD under the criteria established in (d)(i) and (iv).

We find inclusion of all areas outside of the acreage actually involved in the built environment as of July 1, 1993, to substantially interfere with Goals 1, 2, and 12 of the Act.

The next designated LAMIRD is found in Ex. VIII-308 at the location of I-5, south of Highway 12. The LAMIRD includes an extensive amount of undeveloped area outside of the existing built environment as of July 1, 1993. Within the area where commercial uses did exist on July 1, 1993, are large “connecting” areas of undeveloped property. **Once again neither the expansiveness outside the built environment as of July 1, 1993, nor the “connecting” areas of significant undeveloped acreage comply with the Act.** The inclusion of property west of the northbound exit of I-5 to Highway 12 cannot meet the criteria established in the Act as part of this particular F/C designation.

We also find substantial interference with the goals of the Act for the area west of the northbound exit to Highway 12 and outside of intensely developed areas as they existed on July 1, 1993. While we would like to be more definitive on the location, the record is at best unclear as to exactly what was in existence on July 1, 1993, at this location.

The next F/C area shown by Ex. VIII-309 is located north of the river on both sides of I-5 and includes the connecting of SR 506 with I-5. The record demonstrated that a very limited and spotty built environment and uses existed on July 1, 1993. The LAMIRD, however, includes vast areas of acreage that are not even “intense rural development” today. **The LAMIRD as designated does not comply with the Act. Additionally, the entire area substantially interferes with Goals 1, 2, and 12 of the Act.** There is very little and very unconnected commercial rural development that existed on July 1, 1993. There may be other alternatives the County can employ in its goal to protect these businesses, but drawing this particular LAMIRD

does not comply with the Act and does substantially interfere with the Act's goals.

The final F/C area is located west of I-5 in the Jackson Highway South area. Once again the County has included large undeveloped acreages within the boundary of the LAMIRD. These acreages include areas outside of any existing area or commercial use and large undeveloped acreages designed to connect the spotty commercial areas and existing uses as of July 1, 1993. **As noted above, the inclusion of these acreages, fails to comply with the requirements of (d) (i) and (iv).**

There are some indications of existing built environment as of July 1, 1993, in the northeast corner and southerly/southwest corner of the LAMIRD. **Outside of those specifically limited areas that existed on July 1, 1993, the balance of the LAMIRD substantially interferes with Goals 1, 2, and 12.**

Cross-Road Commercial Areas (CR/C)

Another category of LAMIRDs designated by Lewis County is entitled CR/C. These are found in Ex. VIII-305 and VIII-306.

The areas designated for Marys Corner at the intersection of SR 12 and Jackson Highway contains significant amounts of undeveloped large acreages even today. There is no evidence that any "intense" rural development has ever occurred in that location. The natural gas storage areas of LAMIRD may or may not have existed on July 1, 1993. **The LAMIRD substantially interferes with Goals 1, 2, and 12.**

The exact same situation exists with regard to the designation of Leonard Road and SR 12. Significant amounts of undeveloped acreage around what little development even exists today is included within the LAMIRD. There is no evidence that "intensive" rural development has ever occurred at this location. **The LAMIRD substantially interferes with Goals 1, 2, and 12.**

There is some indication that the CR/C LAMIRD designation for Klaus generally located west of Jackson Highway at the intersection of SR 508 involved intensive rural development as of July 1,

1993. There is some “intensive” rural development in the LAMIRD designated area immediately north of SR 508. The northern 1/3 of the LAMIRD and all the areas south of SR 508 do not show any “intensive” rural development even today.

The area does not comply with the requirements of (5)(d)(i) and (iv). Additionally, the portion south of SR 508 and the north 1/3 of the portion north of SR 508 substantially interfere with Goals 1, 2, and 12.

The LOBs for Cinebar, Curtis, and Ethel were not challenged. The extent of allowable uses as set forth later were challenged.

The rural industrial LAMIRD designation for Curtis and for the Toledo Airport are dealt with at p. 36. The one rural industrial as shown on Ex. VIII-304 is the Klein bicycle designation located south of Highway 12 in the south Prairie Road area. The easterly lot and the extreme northerly lot found within the LAMIRD boundary do not contain, even today, any development, much less any intensive rural development. **Therefore, the LAMIRD fails to meet the criteria of (5)(d)(i) and (iv) and does not comply with the Act.** Because of the very isolated nature of this LAMIRD and the very limited potential for uses that substantially interfere with the goals of Act we do not find substantial interference has been proven and do not impose a determination of invalidity.

Suburban Enclaves

The County also adopted a category of LAMIRD entitled suburban enclaves. As a subset of that category the County designated certain LAMIRDs as “shoreline residential.” Ex. VIII-322 dealing with the Riffe Lake area is entitled “tourist service areas” as provided in Resolution #00-435. The three areas encompass the west end of Riffe Lake, the east end, and the east end at the 108 Bridge area. The areas encompass lands which are subject to a Bonneville Power Administration (BPA) recreational area to be developed under a not yet adopted master plan as part of the BPA’s federal licensing conditions. There was no development on July 1, 1993, nor is there any today.

The lack of any built environment as of July 1, 1993, means that the designations do not comply with the Act. The designation allows .5 acre, 1 acre, and 2 acre or 10,000 sq. ft. lots to be approved. This is a noncompliant use of a (d)(i) LAMIRD.

We do not address the issue of whether the LAMIRD designation might comply with (d)(ii) if that was the intent of Resolution #00-435. We note, however, that (d)(ii) small-scale recreational or small-scale tourist uses prohibit residential development.

The County however sustained its burden of removing substantial interference of the goals of the Act as to these three LAMIRDs. The areas are controlled by BPA and not subject to County permitting.

The first subcategory of shoreline residential of the suburban enclave category is in the Mayfield Lake area. One LAMIRD is entitled Mt. View Drive Addition and the other Lake Mayfield Estates. Both areas are shown on Ex. VIII-321. The Mt. View Drive area encompasses a platted area northwest of SR 122 and bounded on the west by Lake Way. The northern boundary of the developed portion of the properties involves a lot line generally passing through the terminus points of Zola Road at the east end and Lake Way at the west end. A remaining portion of the LAMIRD between SR 122 and Mayfield Lake consists of two large undeveloped lots. North and northwest of the developed portion of the subdivision is found large undeveloped lots.

The LAMIRD fails to be based upon “intense rural development” existing as of July 1, 1993. The remaining portions, especially the undeveloped area between the plat and Mayfield Lake substantially interfere with the goals of the Act particularly Goals 1, 2, 10, and 12.

The Lake Mayfield Estates area involves a developed subdivision north of SR 122. It also includes a large undeveloped area both north and south of SR 122. The southerly portion abuts Mayfield Lake.

By including large undeveloped properties within the LAMIRD and failing to base the

LAMIRD on the built environment existing as of July 1, 1993, the County has failed to comply with the Act. The County did not minimize and contain the previously-existing “intense rural development.”

The undeveloped portion of the LAMIRD lying outside the boundaries of the subdivision substantially interfere with Goals 1, 2, 10, and 12.

At the southerly end of Mayfield Lake two additional LAMIRDs were designated (Ex. VIII-319). The first, entitled Lake Mayfield County Park area, involves two small previously-developed areas north of Highway 12. The two small previously-developed areas are connected by large undeveloped lots and bounded by large undeveloped lots as well. **As such there is no “intense rural development” as of July 1, 1993, and the County has failed to minimize and contain the LAMIRD area. The LAMIRD fails to comply with the Act.**

Additionally, the areas outside the two developed subdivisions at the south end and the north end of the LAMIRD, substantially interfere with Goals 1, 2, 10, and 12 and are determined to be invalid.

A LAMIRD was also designated for an area entitled Mayfield Village. There two LAMIRDs are shown on Ex. VIII-319. The developed feature involves a substantial subdivision found at the southeasterly portion of the Lake and indicated on Map 99 in yellow. Included within the LOB is undeveloped acreages abutting the lake. Also included are large areas to the south and to the north all of which are undeveloped. The northerly portion of the LAMIRD also abuts the lake. That portion likewise includes primarily large undeveloped lots, although it appears a plat does exist.

The evidence in the record is that little, or perhaps no, development occurred in this plat as of July 1, 1993. The LAMIRD by including significant areas outside that which was in existence on July 1, 1993, fails to comply with the Act. Additionally, all the undeveloped portions (which would be allowed to develop at 1/2-acre lots under current zoning provisions), as well as the undeveloped portion generally in the Hadaller Road area that abuts the southern boundary of the lake, substantially interfere with Goals 1, 2, 10, and 12.

Another group of shoreline residential suburban enclaves is shown on Ex. VIII-320 in the Brockway Road and Cooks Hill areas. The Brockway area consists of three small portions in the southeast, northeast, and westerly portions of the LAMIRD. These areas at least arguably involve a built environment as of July 1, 1993. Except for the three small residentially-developed areas the remaining approximately 80% of the LAMIRD involves large undeveloped lots with no built environment as of July 1, 1993. **As such, the LAMIRD does not comply with the Act. The County has failed to tightly draw the LAMIRD boundaries to minimize and contain this intensive rural development.**

The areas outside of the existing (as of July 1, 1993) built environment shown on Map 93 substantially interferes with Goals 1, 2, and 12.

The other part of this exhibit involves suburban enclaves for the Cooks Hill area lying adjacent to and immediately south of Salzer Creek. The LAMIRD consists of large lots which even today are sparsely developed. The designation would allow these sparsely developed large lots to subdivide to 1/2-acre lots.

Because the LAMIRD did not contain any “intense rural development” in existence on July 1, 1993, it fails to comply with the Act. It also substantially interferes with Goals 1, 2, 10, and 12.

Two other LAMIRDs are shown on VIII-318. The first is entitled Valley Meadows and the second is entitled Salzer/Centralia Alpha.

Valley Meadows is located west of Jackson Highway. It involves small widely dispersed areas of built environment as of July 1, 1993. A plat has apparently been approved in the area but has remained essentially undeveloped. Something in the range of 80% of the LAMIRD is undeveloped, most of which is contained in large lot ownership. **For the reasons noted above, this LAMIRD fails to comply with the Act. The entire LAMIRD substantially interferes with Goals 1, 2, and 12 of the Act.**

The Salzer/Centralia LAMIRD lies west of Centralia Alpha Road and abuts a small creek. The

northeast 1/3 bounded by Nix Lane and Nancy Lane has some built environment as of July 1, 1993. The area abutting the creek and another large undeveloped area (apparently a trailer park) as well as the area outside the Nancy/Nix Lane local consists totally of large undeveloped lots. **The LAMIRD fails to comply with the Act for the reasons given above. Additionally, areas outside the boundary of Nancy/Nix Lane, the area abutting the creek and the vacant lot identified as a trailer park, substantially interfere with Goals 1, 2, 10, and 12.**

Curtis Hill and Newaukum Hill are also designated LAMIRD and shown on Ex. VIII-317. The Curtis Hill LAMIRD includes areas on both sides of Curtis Hill Road. The record reveals some “intensive rural development” existing as of July 1, 1993, surrounding Brook Drive. Development around Penrose Lane and Ralph Road are isolated and sparse. The remaining sections of the LAMIRD do not contain any, much less intensive, development as of July 1, 1993.

The LAMIRD fails to comply with the Act because it includes areas not in existence on July 1, 1993, and fails to minimize and contain the “intense rural development.” The areas outside the existing development (as July 1, 1993) surrounding Brook Drive substantially interfere with Goals 1, 2, and 12.

The Newaukum Hill LAMIRD consists of one subdivision in the area of Galaxie Road. The subdivision does not have any, or very little, built environment as of July 1, 1993. The remaining (approximately) 95% of the LAMIRD does not contain any “intense rural development” as of July 1, 1993. **The entire LAMIRD fails to comply with the Act and substantially interferes with Goals 1, 2, and 12.**

Ex. VIII-316 describes the shoreline residential suburban enclaves of High Valley Park and Timberline Village. The High Valley Park LAMIRD shows three large subdivision areas that do not appear to have any “intense rural development” existing on July 1, 1993. The remaining portions involve large areas of large undeveloped lots, many of which abut the river. **The LAMIRD does not comply with the requirements of a built environment on July 1, 1993, nor does it minimize and contain. The entire LAMIRD substantially interferes with Goals 1, 2, 10, and, 12 with regard to the river area.**

The Timberline LAMIRD abuts the river and is further located south of the river on both sides of Highway 12. **The record shows that the built environment, as opposed to the subdivision plats, that existed on July 1, 1993, was sparse and not an “intense rural development.” The LAMIRD contains significant areas of totally undeveloped large lots. It does not comply with the Act and substantially interferes with Goals 1, 2, 10, and 12.**

A final shoreline residential suburban enclave is found in Ex. VIII-315 and includes the Harmony Area and Big Creek-Paradise Estates. The Harmony Area LAMIRD is found on both sides of the Cowlitz River and encompasses portions of SR 122. There is some residential development existing as of July 1, 1993, immediately north of Del Ray Road and some residential development in the northwest corner, north of the river and west of SR 122. The remaining portions of the LAMIRD are large undeveloped lots. **The LAMIRD does not comply with the Act for the reasons set forth above. Outside of the developed areas found in the vicinity of: 1) Del Ray Road and, 2) north of the river west of SR 122 that were in existence on July 1, 1993, the LAMIRD substantially interferes with Goals 1, 2, 10, and 12.**

The Big Creek-Paradise Estates LAMIRD is located generally along State Creek Road near the Thurston County border. The area lying west of where State Creek Road turns north involves some sparsely developed but apparently platted areas. **Most of the LAMIRD does not consist of development existing on July 1, 1993. Large undeveloped lots are also included. The LAMIRD does not comply with the Act and substantially interferes with Goals 1, 2, and 12.**

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LAMIRD USES

Rural Industrial

The uses created by Ordinance #1170B for industrial uses in the Curtis and Toledo Airport LAMIRDs substantially expand the allowable containment of uses required by (5)(d)(iv). As noted above with regard to LOBs, the uses in a LAMIRD must also be “minimized and contained” and must be in existence on July 1, 1993. The LOB restrictions apply to the limits of

allowable uses under (5)(d)(iv).

Nonetheless, LCC 17.75 greatly expands the existing uses as of July 1, 1993. In the Curtis Industrial Park, which on July 1, 1993, consisted of 70-80 acres of pole yard, the County now purposes to include the entire 357 acres for large site development of industrial uses under LCC 17.75.020(2) with a maximum of 10% of the area to be used for “associated supporting uses” of commercial, office, and retail uses. **This fails to comply with the constraints found in (5)(d)(iv) and substantially interferes with Goals 1, 2, and 12 of the Act.**

The Toledo Airport industrial LAMIRD uses are found in LCC 17.75.030. Under LCC 17.75.030 (2) the LAMIRD includes uses for “light industrial and warehouse, storage, and transportation facilities.” Under .030(4) allowable uses are limited to “industrial and/or residential and associated uses.” **There is absolutely no evidence that any of these kinds of uses were in existence on July 1, 1993. As such the Toledo LAMIRD fails to comply with the Act and substantially interferes with Goals 1, 2, and 12. Petitioners have sustained their burden of proving noncompliance and invalidity.**

The industrial land bank changes were adopted as part of Resolution #00-434 on December 18, 2000. We now have a PFR filed challenging that Resolution. We will proceed with that PFR process.

Petitioners have not sustained their burden of showing that the vesting provisions of Ordinance #1170B fail to comply with the GMA.

Small-Town

The uses allowed in small-town LAMIRDs under LCC 17.45 involve up to 6:1 single-family residences; and up to 12:1 multi-family residences. These types of intense residential development were not in existence in any designated LAMIRD as of July 1, 1993. LCC 17.45.040 allows RV parks in all small-town LAMIRDs. This record contains no evidence that any RV park was in existence on July 1, 1993. Section .040(2) allows automobile service stations, car washes, and garages in all small towns.

While some such uses may have occurred in some small towns as of July 1, 1993 (the record is unclear) the outright use in all small towns does not comply with (5)(d)(iv).

The County has relied solely on the provisions of (5)(d)(i) that LAMIRDs can consist of “the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas,” What the County has failed to take into account is that such authorization is limited by the provisions of (d)(iv) to “minimize and contain the existing....uses....” and not include extension beyond the “existing” use i.e., July 1, 1993. (See framework analysis above).

Cross-Roads Commercial

The allowance of uses not existing on July 1, 1993, shown in the small-town LAMIRDs is continued in the cross-roads commercial LAMIRDs. The County characterized its existing uses boundaries as those found in the 1996 aerial photographs as well as any uses that were “customarily” uses in cross-roads commercial areas (such as schools, fire halls, service stations, etc.) The County at least prohibited industrial uses within this classification. **The allowable uses in all CR/C LAMIRDs do not comply with the Act because those areas are limited to uses (or similar uses) in existence at each LAMIRD on July 1, 1993.**

It is not the purpose of the LAMIRD provisions of (5)(d) to make or allow 30 or so “mini-UGAs” in Lewis County without UGA infrastructure. Rather, the clear legislative purpose is to establish those areas and uses in existence on July 1, 1993, and minimize and contain the LOB and direct this type of urban growth to UGAs.

The County’s reliance on allowing uses that came into existence between July 1, 1993, and the 1996 adoption of the IUGA as set forth in the County’s brief at p. 21, f. 4, simply is contrary to the very explicit direction established by the Legislature in the GMA that the only date that is significant in Lewis County’s case is July 1, 1993. **All the uses allowable under LCC 17.45 that were not in existence at the specific LAMIRD designation on July 1, 1993, substantially interferes with Goals 1, 2, and 12 of the Act.**

Freeway Commercial

F/C uses are set forth in LCC 17.65. Essentially this section is designed to allow “new commercial development” that was not in existence on July 1, 1993. This is completely contrary to the Act. The infill and redevelopment provisions of (d)(i) do not allow the kind of blanket new intensely developed commercial uses established in the Ordinance. Additionally, the F/C uses allow for potential residential uses under LCC 17.65.060 and certain industrial uses under .020. The industrial uses particularly are inconsistent with Lewis County county-wide Policy 5.00 and 5.09. The County’s avowed purpose was to create “new industry” that was not in existence on July 1, 1993.

The provisions of LCC 17.65 do not comply with the Act and substantially interfere with Goals 1, 2, and 12.

The County included in the Cowlitz Crossing F/C a “diesel facility” that it acknowledged was not in existence on July 1, 1993. This fails to comply with the Act and substantially interferes with Goals 1 and 2.

Suburban Enclaves

The uses for the suburban enclave LAMIRDs are found in LCC 17.95. Residences, parks, public facilities, churches, community clubs, and “similar uses” are authorized. No resource uses are allowed.

The LAMIRDs routinely allow ½- to 2-acre lots even though most of the LAMIRDs did not have such sized lots on July 1, 1993, nor did most of them have any of the allowed uses on that date.

The allowable uses under LCC 17.95 fail to comply with the Act and substantially interfere with Goals 1, 2 and 12.

The provisions of .070(5)(b) indicate that the rural element must include forest and agricultural uses. While that is true, it does not necessarily mean that such uses “must” be available within LAMIRDs as contended by Petitioners.

Likewise, we find that Petitioners have not sustained their burden of showing that the allowance of mining uses in the rural area is prohibited by the GMA. While mining uses are not specifically mentioned in .070(5)(b) such use is not necessarily prohibited. RL designation is

not the only methodology of establishing mining uses.

RURAL DEVELOPMENT DISTRICT (RDD) USES

LCC 17.100 contains the permitted uses in the RDD. Section .115 contains the uses allowable by special use permit. RDD is defined as every rural area in Lewis County that is not a LAMIRD.

In some instances the uses allowed by LCC 17.100 exceed those allowed in LAMIRDS. The uses allowed include schools, churches, retirement centers, boarding homes, convalescent homes, rehabilitation centers, adult care centers, and bread and breakfast as outright uses. Resorts, recreational facilities, sports facilities, equestrian and golf facilities, shooting facilities, private aviation, animal hospitals, home-based industries, etc. are allowed after special use permit approval under .115.

Blanket allowance of all of these uses does not comply with the Act. While occasional specialized, local, identifiable areas might well be appropriate for some of the allowed uses, the blanket (throughout the rural area) authorization is too broad, fails to minimize and contain rural development, fails to protect rural character, fails to provide visual compatibility, and does not reduce low-density sprawl. **The allowable uses further substantially interfere with Goals 1, 2, 10, and 12 and are determined to be invalid.**

LCC 17.45.090 allows junk yards, salvage yards, etc. in RDD and in RLs. Once again the blanket allowance throughout the rural area is too broad, does not comply, and substantially interferes with Goals 1, 2, 10, and 12. Additionally, allowance of such uses and such RLs does not comply and substantially interferes with Goal 8 of the Act. See *Soccer Fields* case.

NONCONFORMING USES

LCC 17.160.030 allows a particular nonconforming use to convert to a different nonconforming use. **Such allowance does not comply with the Act because it fails to protect rural character, ensure visual compatibility, reduce low-density sprawl and minimize and contain**

rural development. The provision substantially interferes with Goals 1, 2, and 12.

LCC 17.155.050 allows a rebuilding application for a destroyed nonconforming use to be accepted up to three years. .530(4) directs that rebuilding in critical areas of a destroyed nonconforming use must commence within two years. **Petitioners have not shown that the two provisions are inconsistent, nor have they shown that the provisions do not comply with the GMA.**

COMPLIANCE FOR PREVIOUS CASES

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In the June 30, 2000, FDO in *Butler* and in the July 13, 2000, compliance order in *Panesko I*, we set forth findings of noncompliance and invalidity. Most, if not all, of the noncompliant and invalid provisions in the two orders overlap. Many of the issues regarding compliance had been discussed in the FDO portion of this order. We will specifically address those issues not otherwise covered in other portions of this order.

Once again the County has put itself in an untenable position by adopting Resolutions #00-434 and #00-435, Ordinances #1175 and #1176 on December 18, 2000, in the middle of this process. During the week of February 19, 2000, we received a number of new PFRs challenging the two Resolutions and the two Ordinances. Because we do not intend to preclude consideration of the issues presented by those PFRs, we will limit, as much as possible, consideration of the Resolutions and Ordinances to whether they established compliance with *Butler* and *Panesko I*, with two exceptions. The traffic issues contained in the *Butler* order starting with number 20 and concluding with number 25 will be postponed until the PFR process. There is no finding of invalidity as to any of the transportation issues. We will not allow the County to take the precipitous action of adopting these Resolutions and Ordinances with a very short timeframe for response from Petitioners, and consideration by us, for these very important issues. We will consider the briefing and argument of the parties previously set forth in this case at the time of the HOM for the new PFRs.

Candidly, we believe that all the issues raised by the two Resolutions and two Ordinances should be handled in the same manner. However, because there is at least some connection with previously imposed findings of invalidity, we will consider most of the remainder of the

compliance issues in conjunction with the Resolutions and Ordinances without prejudice to any party during the PFR process.

Resolution #00-434 is entitled “Year 2000 Comprehensive Plan and Development Regulation Review.” It is a Resolution “amending the Lewis County Comprehensive Plan (June 1, 1999 Addition).” As noted by the County in its brief the Resolution was adopted to conform Ordinance #1170B with the CP. This is entirely backwards to an appropriate GMA-process.

The Resolution was adopted after PC public hearings at the end of June 2000 and a BOCC public hearing on September 11, 2000. Petitioners claimed that significant portions of the Resolution differed from the material submitted to the BOCC some 100 days prior to adoption, when the last vestige of public participation occurred.

Within the limited scope of review the County has allowed because of its adoption of this Resolution at the time of filing its brief, we find that Petitioners have sustained their burden of proving continued noncompliance and that the County has not sustained its burden of removing substantial interference. This is particularly relevant to the purported “co-existence” between the proposed industrial uses and the inclusion of designated ARL found noncompliant and invalid in *Butler*. Under the reasoning by the Supreme Court in *Soccer Fields*, the ARL designation must remain inviolate and cannot include encroaching industrial uses.

We have reviewed the Resolution to determine if it brings the County into compliance with any parts of the *Butler* and *Panesko I* orders. It does not. **Petitioners have sustained their burden of proving, at this point, under the clearly erroneous standard, that the County continues to be not in compliance with the Act.**

Resolution #00-435 concerning a public participation program was dealt with earlier in this order. **Petitioners have sustained their burden of proof as to continuing noncompliance.**

Ordinance #1175 was passed on December 18, 2000, with the last public participation hearing being held September 11, 2000. It deals with RV park divisions. It is hard to understand how adoption of this Ordinance would affect the County’s compliance with the previous orders in *Butler* and *Panesko I*. We will defer this issue for the PFR proceedings.

Ordinance #1176 was adopted as an “emergency” (without public hearing) and its contents are covered in other parts of this order. It is virtually impossible for an emergency, non-public hearing ordinance to comply with the Act. Lewis County pointed out that full hearings were required within 60 days of December 18, 2000. Apparently those were held February 6 and 12, 2001. No permanent ordinance has been adopted to our knowledge.

Ordinance #1176 also includes a provision entitled “Section Three” which says:

“This provisions shall be a part of the County development code, and shall remain in full force and effect unless and until the provisions amended are determined to be in compliance with Chapter 36.70A.RCW by the Western Washington Growth Management Hearings Board without the changes imposed here, and the County has amended these provisions to comply with any final resolution of the pending appeals and proceedings. This ordinance supercedes only those provisions of Title 17, the remainder of which shall remain in full force and effect.”

Even if we understood what this meant and how it applied (and we do not), it does not achieve compliance with *Butler* or *Panesko I*.

Both Ordinances #1175 and #1176 contain a “savings clause” stating that if any portion of the ordinance is found invalid the corresponding provision of the repealed ordinance shall be reinstated . In answer to a direct question at the HOM, the County’s representative stated that it was not the County’s intent to use these savings clause provisions to reinstate ordinance sections subject to a declaration of invalidity by us. The County specifically stated that it was not necessary, nor appropriate for us to make a ruling on the previous “policy or regulation” under RCW 36.70A.302(4). If the County changes its mind it must advise us through a motion for reconsideration at which time we will address the issue.

We find Petitioners have sustained their burden of proving continuing noncompliance in both the *Butler* and *Panesko I* orders except as to the following:

Item 8 of the *Butler* order requires location and accurate mapping of the mineral RL designation and the Evaline area within 90 days. Once again, the County promised to do this, and Petitioners

ECA have agreed to stipulate to the County's accomplishment of this requirement. We will find compliance as soon as we are notified by the both the County and ECA that the mapping has occurred.

Item 26 required the County to resolve inconsistent flooding and stormwater policies between it and the Cities of Centralia and Chehalis. The County adopted the policies and regulations of those two cities within their respective UGAs. Petitioners pointed out that a city's policies and regulations were perhaps even less stringent than those of the County. Since the policies and regulations of the two cities were not appealed, the County is not required to find a way to bring those policies up to County standards. **The action taken by the County is all that is required by the GMA.**

As to all other matters in the *Butler* and *Panesko* orders basically the County took no action. Most of its argument was that the provisions of Ordinance #1170 and #1170B, as well as the unappealed ordinances, all adopted before the FDO in *Butler* resolved all the noncompliant and invalidity issues. Such a conclusion by the County was unfounded. There remains much work to be done for Lewis County to comply with the Act.

As we noted in *Butler* we once again hold that findings of the BOCC are not "verities" on appeal to a GMHB. We adopt the analysis on that issue contained in *Butler*.

ORDER

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In order to comply with the Act Lewis County must take the following actions:

1. Comply with RCW 36.70A.035 and .140 and .020(11).
2. Comply with the SEPA requirements of the GMA by submitting a proper analysis of appropriate alternatives for the CP and the DRs that are part of these cases.
3. Adopt a public process that complies with the annual review requirements of .130 for both proposed CP and proposed DR amendments.
4. Eliminate clustering provisions in RLs.
5. Adopt DRs for the rural area that comply with the requirement to guarantee no urban services become necessary and that the rural development can operate at rural levels of

facilities and services.

6. Restrict the size of any clustering allowances in the rural areas.
7. Appropriately minimize and contain rural development and reduce lower-density sprawl.
8. Adopt definitions of urban growth, rural density and rural facilities and services that are the same as set forth in the GMA.
9. Eliminate all non-resource uses in RLs.
10. Eliminate all densities more intense than 1:10 in ARL and 1:20 in FRL.
11. Reduce the allowable uses in RDD to ones that are truly rural.
12. Provide a variety of rural densities.
13. Assure visual compatibility and rural character in rural areas.
14. Reduce all LAMIRD areas to correspond with the built environment that existed on July 1, 1993. Do not include RL areas in any LAMIRD.
15. Reduce allowable uses in LAMIRDS to those that were in existence on July 1, 1993.
16. Comply with the provisions in *Butler* with the exception of number 8 and number 26.

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 5th day of March, 2001.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

William H. Nielsen
Board Member

Les Eldridge
Board Member

MINORITY OPINION ON CURTIS LAMIRD

In 1998, when Lewis County adopted its IUGAs, it designated the Curtis site as an IUGA. Petitioner Panesko challenged that designation, emphasizing the lack of need for more industrial land in the County, inappropriateness of the location, and the development pressures it would put on surrounding rural lands.

The Port presented evidence that municipal IUGAs contained no available sites larger than 5 acres on the rail line. Chehalis and Centralia provided letters supporting that evidence. In the FDO, we recognized the County's need to attract industrial users needing the unique features of the Curtis Industrial Area. However, we found that Ordinance #1159, adopting the IUGA designation, did not comply with the GMA, because the County's regulations did not limit uses to resource-based or rail-dependent industrial uses and to limited commercial and retail uses supporting these industrial uses. In *Smith, et al., v. Lewis County*, #98-2-0011c, FDO at p. 20 we stated:

“Under this record, the County has demonstrated its need to attract industrial users needing the unique features of the Curtis IUGA. These features are not available within the proposed municipal IUGAs. The portion of the IUGA under the jurisdiction of the Port could be construed as ‘characterized by urban growth.’ Prohibition of residential development is an essential element of this industrial IUGA, as are restrictions of use to resource-based or rail-dependent industry and associated and supportive commercial development. Under Port finding #20, adopted by reference by the Board of County Commissioners on May 4, 1998, however, none of these restrictions is mandatory. Nor do the suggested constraints in Finding #20, absent agreement with the owners, apply to the portion of the IUGA beyond the jurisdiction of the Port (approximately 317 acres of the [357]-acre cite). We have a firm and definite conviction that the County has erred in failing to include those mandatory constraints in its IUGA Ordinance. That failure substantially interferes with Goal 2 (reduce sprawl) and Goal 12 (public facilities and services). The Curtis IUGA is remanded [to] the County. (Emphasis added)”

When the County adopted its CP, it designated the Curtis site as an industrial LAMIRD rather than keeping it a UGA to preclude development pressure on surrounding rural areas. The CP at 4-73 stated:

“Curtis Railyard: 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 Boisfort 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. (Emphasis added).”

Ordinance #1170 implemented that CP designation, limiting its use to rail based or resource based industry, prohibiting residential use, and requiring a master plan process to enforce these rules. Exhibit A to the Environmental checklist for Ordinance #1170 provided a summary of the County’s consideration of the Curtis site:

“17.75 Rural Area Industrial

Rural area industrial areas are authorized under RCW 36.70A.070(5) for areas outside UGAs, which have previously supported industrial activity. Lewis County identified two key areas which met the requisite qualifications: the Curtis area site owned by Weyerhaeuser and the Port of Chehalis, and the Toledo-Winlock Airport site, jointly owned and managed by the County, Toledo and Winlock. The chapter provides a mechanism for regulating development of the two areas to protect the essential nature of the uses.

The chapter requires as a condition of any development, the approval of a master plan which will (1) assure review of the entire site and proposed uses prior to development, and (2) impose conditions that the planning assure preservation of the essential attributes for the rural industrial area through the identification of large planning blocks which may only be developed in concert with primary users.

In the Curtis area, the County mapped the properties of the Port of Chehalis and Weyerhaeuser, currently the site of a log yard and formerly proposed as the site of a major new mill. The site is one of the few potential mill sites in western Lewis County with convenient access to rail and I-5, and with water available in quantity through a local water company. The site is also the Port of Chehalis’ only rail access site which can accommodate users needing 40 acres or more.

Project specific environmental review, including development standards, and provisions for protecting critical areas will provide a mechanism for identification and mitigation of impacts related to specific development. The master plan process is designed to look at project-specific impacts and assure that the cumulative impacts of development are reviewed.

The planning blocks within the master plan assure the preservation of the unique quality of the sites, large scale and rail use in Curtis.

Large-scale or rail-oriented uses in Curtis will increase truck and rail traffic to the site, as well as employee and customer traffic. Recent upgrades to local roads will help mitigate the impacts of traffic. Noise may increase, due to shift work or exterior work, and air quality or water quality could be affected if not properly protected. The master planning process is designed to incorporate the state standards for air, noise, and water quality protection. The site was intentionally designed with a large size, first because the site only involves two ownerships, both devoted to industrial uses, and second to provide noise and air sheds where intensive uses could be centrally located and less intense uses be located in a buffering pattern around the outside to further mitigate the potential for adverse impacts. Curtis also specifically prohibits extension of the municipal POTW sewer lines to assure it will not be a magnet for sprawl.”

Ordinance #1170 also provided protection for surrounding rural areas:

- (1) No use will require or cause the need for municipal sewers or storm sewers.
- (2) Public facilities and services are not sized to serve development outside the LAMIRD.
- (3) Conditions are imposed to assure that the project does not cause urban growth to occur.
- (4) Provision of services must not create a demand for urban levels of public facilities or services.

Consistent with the CP and Ordinance #1170, the Port prepared a Master Plan for the entire Curtis Industrial LAMIRD. The Master Plan designated planning blocks of 40-100 acres for primary uses, emphasizing attracting companies that will need larger parcels. The Master Plan also shows that rail spurs will be located to efficiently serve planning blocks for rail-oriented uses.

In *Butler* we found the industrial LAMIRD designation of the CP for the Curtis area did not

comply with .070(5)(d) and (e). Since that time we have reassessed our previous understandings of the requirements of .070(5)(d) in general and built environment and logical outer boundaries in particular. We have outlined our current interpretation in this Order.

The record shows that the entire Curtis site was originally developed in the 1970's by Weyerhaeuser to be a large mill site. At that time, the entire site was cleared and grubbed and improved for drainage and stormwater at a cost of several million dollars. After deciding to construct the proposed mill in Everett, Weyerhaeuser or Oeser Company (leasee) have used it as a rail reload and/or pole manufacturing facility ever since. They also relied on the internal infrastructure running throughout the 357-acre property to operate those uses. On the ground infrastructure included rail, roads, power and extensive stormwater facilities. These "manmade" facilities comply with the definition of "built environment" in 5(d).

The Curtis site was a developed industrial area. It can therefore be redeveloped pursuant to RCW 36.70A.070(5)(d)(i).

As to determining the compliance of the logical outer boundary, we look to see if the outer boundary is "logical" and to ensure that it does not allow low-density sprawl. Petitioners presented absolutely no evidence that the boundary will allow sprawl. The only evidence and code requirements are to the contrary. The existing use requires the infrastructure which runs throughout the property (rail, drainage and roads). It makes no logical sense to sever or fail to efficiently use this existing infrastructure. The boundaries are defined primarily by roads and include only three lots and two ownerships and the lots have been historically used for resource, rail-related uses. The County drew logical outer boundaries based on the unique facts presented in the record.

Petitioners cited no convincing evidence to support their claim that the Curtis LAMIRD substantially interferes with Goals 1, 2, 9, 10, and/or 12 of the Act.

- (1) Goal 1 – No evidence that it will pull growth from urban areas: the evidence shows that Curtis will service users who cannot be accommodated in the UGAs.
- (2) Goals 1 and 12 – The evidence shows that the County has already dealt with petitioners' goal 1 and 12 service concerns. Further, CTED advised the County that it particularly liked

the provision limiting on-site public facilities and service to the LAMIRD itself.

(3) Goal 2 – There is no evidence in the record that it would cause sprawl. The evidence shows that the Curtis site was designated as a LAMIRD rather than a UGA or ILB to preclude extension of municipal sewer service which could put development pressure on the surrounding rural area.

(4) Goals 9 and 10 – There is no evidence in the record that the Curtis Industrial LAMIRD removes open space and wildlife habitat or the quality of life.

Invalidity from the *Smith* decision should also be removed since the County did exactly what we required them to do in the FDO.

The majority's interpretation of (5)(e) puts a nail in the coffin of any rural County's hopes of attracting major industrial users and family wage paying jobs, since they will not be able to afford to meet the requirements of RCW 36.70A.365. The amount of money, time and energy the Port and EDC have already spent trying to plan well and bring into compliance the Curtis site is onerous for a small, rural County.

Date

Nan Henriksen
Board Member

APPENDIX I
Findings of Fact Pursuant to RCW 36.70A.270(6)

1. We incorporate the findings in the *Butler* FDO by reference.
2. Petitioners were assigned the burden of proof as to finding noncompliance, continuing noncompliance, and the establishment of substantial interference of the goals of the Act for all provisions of Ordinance #1170B that involved any issues different than found invalid in *Butler*.

3. The County was assigned the burden of removing substantial interference where no action was taken from the determination of invalidity originally found in *Butler*.
4. No challenges to Ordinances #1166, #1167, and #1169 were filed.
5. Ordinance #1170, #1170A, and #1170B, were adopted prior to the FDO in *Butler*.
6. Petitioners established a sufficient nexus between the matter presented to the County during the public participation process (when they were given an opportunity to do so) to establish standing under the test set forth by the COA in *Wells*. The SEPA standing requirements of the Act are the same as the general standing requirements.
7. Lewis County did not have a public participation process in place at the time of adopting Ordinances #1170, #1170A, and #1170B.
8. Substantial and significant changes were made to the ordinances after the period for review and comment had passed in violation of RCW 36.70A.035(2)(a).
9. The County did not provide “reasonable notice” during the adoption of the ordinances.
10. The County’s continued insistence on establishing a DNS for each and every ordinance does not comply with the SEPA provisions of the GMA.
11. The County has never adopted an adequate SEPA analysis that complies with the GMA.
12. The County’s failure to require annual amendments of its DRs to be reviewed at the same time as CP amendments does not comply with the Act.
13. Provisions in LCC that allow “automatic” amendments to DRs upon approval of a specific permit do not comply with the Act.
14. LCC 17.165 does not comply with the Act.
15. Jurisdiction does not exist under this record for independent review of the County’s previously adopted CAO.
16. Jurisdiction does exist to review the County’s RL provisions. Those that allow residential subdivision and/or clustering and those that allow non-resource uses such as RV parks, golf courses, commercial establishments, etc. in RLs do not comply with the Act.
17. Allowance of any density more intense than 1:10 or any use (including industrial conversion) in a RL does not comply with the Act.
18. Allowance of any density more intense than 1:20 or any use (including industrial conversion) in FRLs does not comply with the Act.
19. A 1:5 uniform density does not (a) provide a variety of rural densities, (b) maintain rural character, (c) assure visual compatibility or, (d) reduce low-density sprawl.

20. The uses allowed in the RDD under LCC 17.115 do not minimize and contain rural development.
21. The definition set forth in LCC 17.150.030 does not comply with the Act.
22. The definition set forth in LCC 17.100.100 and 17.150.030 do not comply with the Act.
23. The definition of urban growth contained in LCC 17.150.030(3)(k) does not comply with the Act.
24. The RDD clustering provisions of Ordinance #1170B and #1176 do not comply with the Act.
25. None of the LAMIRDs established by Lewis County in Ordinance #1170B comply with the Act.
26. The rural industrial parks established at the Curtis log yard and the Toledo Airport do not comply with RCW 36.70A.070(5)(e).
27. The Curtis Industrial Park uses allowable under LCC 17.75 does not comply with the Act.
28. The Toledo Airport Industrial LAMIRD allowable uses found in LCC 17.75.030 does not comply with the Act.
29. The industrial land bank provisions continue to be noncompliant under the reasoning in *Butler*.
30. The rural industrial uses allowable under LCC 17.75 do not comply with the Act.
31. The uses allowed for a small-town LAMIRDs under LCC 17.45 do not comply with the Act.
32. The uses allowed for cross-roads commercial LAMIRDs under LCC 17.45 uses do not comply with the Act.
33. The allowable uses for freeway commercial found in LCC 17.65 do not comply with the Act.
34. The allowable uses for suburban enclaves under LCC 17.95 fail to comply with the Act.
35. The allowable uses under LCC 17.100 and .115 do not comply with the Act.
36. The provisions of LCC 17.45.090 in RDD and RL areas do not comply with the Act.
37. LCC 17.160.030 does not comply with the Act.
38. LCC 17.155.050 does comply with the Act.
39. The adoptions of Resolutions #00-434 and #00-435 and Ordinances #1175 and #1176 on December 18, 2000, does not resolve any compliance issues established in *Butler*.

APPENDIX II

Findings of Fact and Conclusions of Law pursuant to RCW 36.70A.302(1)(b)

Findings of Fact

1. We incorporate the invalidity findings in the *Butler* FDO by reference.
2. Allowance of any density more intense than 1:10 or any non-resource use (including industrial conversion) in a RL substantially interferes with Goal 8 of the Act.
3. Allowance of any density more intense than 1:20 or any non-resource use (including industrial conversion in FRLs) substantially interferes with Goal 8 of the Act.
4. The provisions of LCC 17.30.460, .470 and .640 substantially interfere with Goal 8 of the Act.
5. The uniform 1:5 density in rural areas substantially interferes with Goals 1 and 2 of the Act.
6. The uses allowed in the RDD under LCC 17.115 substantially interferes with Goals 1, 2, 8, and 10.
7. The provisions of LCC 17.150.030(3)(k) substantially interfere with Goals 1, 2, 9, and 12 of the Act.
8. The RDD clustering provisions substantially interfere with Goals 1, 2, and 10.
9. The County has not sustained its burden of removing the substantial interference established in *Butler* for the Curtis pole yard or the Toledo Airport outside the previously existing 8 acres.
10. The Packwood LAMIRD substantially interferes with Goals 1, 2, and 8 as set forth beginning at p. 37 of this order.
11. The Randle LAMIRD substantially interferes with Goals 1, 2, and 10 as set forth beginning at p. 39 of this order.
12. The Glenoma LAMIRD continues to substantially interfere with Goals 1, 2, and 12 as set forth at p. 41 of this order.
13. The Onalaska LAMIRD substantially interferes with Goals 1, 2, 8, and 12 of the Act as set forth beginning at p.41 of this order.
14. The Adna, Doty, Galvin, Mineral, Salkum, and Silver Creek LAMIRDS continue to substantially interfere with the goals of the Act as set forth in *Butler*.
15. The I-5/SR 508 LAMIRD substantially interferes with Goals 1, 2, and 12 of the Act as set

- forth at p. 42 of this order.
16. The I-5/Highway 12 LAMIRD substantially interferes with Goals 1, 2, and 12 of the Act as set forth at p. 43 of this order.
 17. The I-5/SR 506 LAMIRD substantially interferes with Goals 1, 2, and 12 of the Act as set forth at p. 44 of the this order.
 18. The I-5/Jackson Highway south LAMIRD substantially interferes with Goals 1, 2, and 12 of the Act as set forth at p.44 of this order.
 19. The Marys Corner LAMIRD substantially interferes with Goals 1, 2, and 12 of the Act as set forth at p. 45 of this order.
 20. The Leonard Road/SR 12 LAMIRD substantially interferes with Goals 1, 2, and 12 of the Act as set forth at p. 45 of this order.
 21. The Klaus LAMIRD south of SR 508 and the north 1/3 of the area north of SR 508 substantially interferes with Goals 1, 2, and 12 of the Act.
 22. The Mt. View Drive LAMIRD substantially interferes with Goals 1, 2, and 12 as set forth at p. 47 of this order.
 23. The Lake Mayfield Estates LAMIRD substantially interferes with Goals 1, 2, 10, and 12 as set forth at p. 48 of this order.
 24. The Lake Mayfield County Park LAMIRD substantially interferes with Goals 1, 2, 10, and 12 as set forth at p. 48 of this order.
 25. The Mayfield Village LAMIRD substantially interferes with Goals 1, 2, 10, and 12 as set forth beginning at p. 48 of this order.
 26. The Brockway LAMIRD substantially interferes with Goals 1, 2, and 12 as set forth beginning at p. 49 of this order.
 27. The Cooks Hill LAMIRD substantially interferes with Goals 1, 2, 10, and 12 as set forth beginning at p. 49 of this order.
 28. The Valley Meadows LAMIRD substantially interferes with Goals 1, 2, and 12 of the Act as set forth at p. 50 of this order.
 29. The Salzer/Centralia LAMIRD substantially interferes with Goals 1, 2, 10- and 12 of the Act as set forth at p. 50 of this order.
 30. The Curtis Hill LAMIRD substantially interferes with Goals 1, 2, and 12 of the Act as set forth at p. 51 of this order.
 31. The Newaukum Hill LAMIRD substantially interferes with Goals 1, 2, and 12 of the Act

- as set forth at p. 51 of this order.
32. The High Valley Park LAMIRD substantially interferes with Goals 1, 2, 10, and 12 of the Act as set forth at p. 51 of this order.
 33. The Timberline LAMIRD substantially interferes with Goals 1, 2, 10, and 12 of the Act as set forth at p. 52 of this order.
 34. The Harmony LAMIRD substantially interferes with Goals 1, 2, 10, and 12 of the Act as set forth at p. 52 of this order.
 35. The Big Creek/Paradise Estates LAMIRD substantially interferes with Goals 1, 2, and 12 of the Act as set forth at p. 52 of this order.
 36. The Toledo Airport Industrial LAMIRD allowable uses found in LCC 17.75.030 substantially interfere with Goals 1 and 2 of the Act.
 37. The Curtis Industrial Park uses allowable under LCC 17.75 substantially interfere with Goals 1, 2, and 12 of the Act.
 38. The uses allowable under LCC 17.45 that were not in existence within the specific LAMIRD designation on July 1, 1993, substantially interfere with Goals 1, 2, and 12 of the Act.
 39. The allowable uses under LCC 17.65 substantially interfere with Goals 1, 2, and 12 of the Act.
 40. The allowable uses under LCC 17.95 substantially interfere with Goals 1, 2, and 12 of the Act.
 41. The allowable uses under LCC 17.100 and .115 substantially interfere with Goals 1, 2, 10 and 12 of the Act.
 42. The provisions of LCC 17.45.090 in RDD and RL substantially interfere with Goals 1, 2, 8, 10, and 12 of the Act.
 43. LCC 17.160.030 substantially interferes with Goals 1, 2, and 12 of the Act.

Conclusions of Law

1. Jurisdiction exists for all substantial interference findings.
2. A determination of invalidity is entered for the above findings.