





order covers the compliance aspects of the above cases. There have been new petitions for review filed regarding the County's actions, but they are not part of these cases.

As part of its process, Lewis County hired three separate consultants. A new draft environmental impact statement (EIS) was prepared. Extensive analysis and meetings were held. Substantial revisions were made to the rural element. A new transportation element of the CP was adopted.

As a general proposition, we find that Lewis County has complied with the Act regarding those topics and our previous determinations of invalidity are rescinded. This finding of compliance does not, however, apply to the actions and failure to act regarding natural resource lands (RLs). Much work remains for Lewis County in the RL arena in order to comply and remove the previous finding of substantial interference with goal 8.

We will cover the issues in this CO by topic in order to facilitate a clear understanding of the issues.

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

Pursuant to RCW 36.70A.320(1), Ordinance 1179 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).

Under RCW 36.70A.320(4) the County bears the burden of demonstrating that an ordinance adopted in response to previous determinations of invalidity (as was done in all actions considered here) “will no longer substantially interfere with the fulfillment of the goals of the Act.”

The ultimate determination in these cases is whether the County has now achieved compliance with the Act.

## SEPA

Previous orders in these cases found that the County's attempted integration of the State Environmental Policy Act (SEPA) with the GMA did not comply with SEPA requirements under RCW 43.21C as they related to the GMA actions undertaken. In response to these findings of noncompliance, the County, with financial and technical assistance from the Department of Community Trade and Economic Development (DCTED), undertook an entirely new SEPA process. A consultant was hired and the County, in conjunction with DCTED, established a proper scoping process for an EIS. The draft EIS was issued contemporaneously with the Citizen's Advisory Commission (CAC) work, prior to hearings and workshops by the Planning Commission (PC). An extended comment period coincided with the public hearings process of the PC. A FEIS was issued March 27, 2002, prior to the action of the Board of County Commissioners (BOCC) adopting the plan and regulation amendments on April 5, 2002. Petitioners complained that the EIS was inadequate because of insufficient data, lack of alternatives, and failure to discuss cumulative impacts.

Recently, the Court of Appeals in *Moss v. Bellingham*, 109 Wn. App. 6 (2001), reiterated the long-standing rule that the purpose of SEPA is to function "as an environmental full disclosure law." When an EIS has been adopted, it is our role to review that document under the "rule of reason," affording substantial weight to the County's determination of adequacy. The EIS may be flexible. Our review is concentrated on the accuracy of the discussion of impacts and alternatives appropriate to this non-project proposal. *Reading v. Thurston County*, #94-2-0019 (FDO 3-23-95). Put another way, the EIS must contain a "reasonably thorough discussion of the significant aspects of the probable environmental consequences." *King County v. CPSB*, 138 Wn.2d 161 (1999). Alternatives to the proposed action must be included under RCW 43.21C.030(c)(iii). WAC 197-11-76 defines those "reasonable alternatives" as ones that are less environmentally costly, while still feasibly attaining or approximating the proposal's objectives.

Petitioners correctly point out that, as noted in the EIS, there was not conclusive information available concerning water and flooding impacts. In a project EIS, a conservative approach from this lack of information is required. That is not the rule in a non-project proposal. As long as the County is aware of the environmental risk of its proposed action, and reasonably considers the available alternatives that would still attain the proposal's objectives, acceptance of some environmental risk does not render the EIS inadequate.

Our review of the FEIS leads us to conclude that it complies with the GMA. Reasonable alternatives are discussed and the cumulative impacts of the alternatives are discussed and analyzed within the record as required by SEPA and GMA.

## **PUBLIC PARTICIPATION**

In response to earlier findings of failure to comply with the Act because of a lack of a public participation program, Lewis County adopted a process codified as LCC 17.15.010-.060. We find that program complies with the Act.

Although not formally adopted until later, the County used its public participation program at all times during the remand period leading to adoption of the amendments to the CP and DRs presently before us. The County appointed a CAC who held numerous workshops and public hearings and authored recommendations to the PC who then again held numerous public hearings and workshops and forwarded recommendations to the BOCC. The BOCC held more public hearings prior to its adoptive actions on April 5, 2002. The record reveals that these meetings, workshops, and hearings, were held at morning, afternoon, and evening hours and at various locations throughout the County with complete and updated materials supplied at each of the sessions. The BOCC attended each of the PC hearings and workshops. Extensive staff reports and other materials were provided, maps were drawn and re-drawn, and all members of the public were given a number of opportunities to participate and comment. Lewis County, and its consultant, should be justifiably proud of the public participation process involved in this compliance proceeding. We specifically find that the County has complied with the public participation goals and requirements of the Act.

## **RESOURCE LANDS**

### ***Designations***

In *Butler v. Lewis County*, #99-2-0027c (FDO 6-30-00) (*Butler*), we addressed the challenges to both the agricultural resource land (ARL) designations and protections. We noted that counsel for Lewis County contended that jurisdiction for ARL designations did not exist because the “interim” resource

ordinance was adopted in 1996 and was not challenged. We specifically held that under RCW 36.70A.070(1) a county must readopt its ARL designations and DRs and thus jurisdiction existed to review those issues. At the hearing on the merits in the *Butler* case, counsel for the County conceded that if a requirement for “new and updated permanent designations and DRs” existed, Lewis County had not complied. We observed that while the County noted there were “approximately 60,000 acres of cultivated farmland,” only 11,835 acres of ARL were designated.

In the compliance hearing in *Butler*, consolidated with *Panesko v. Lewis County*, #00-2-0031c (FDO 3-5-01), the County once again contended that no jurisdiction existed based upon the 1996 interim designations. We again found jurisdiction and noncompliance in the ARL designations and protections or lack thereof. We specifically referenced two recent Supreme Court cases of *Redmond v. Growth Hearings Bd.*, 136 Wn.2d 38 (1996) (*Redmond*) and *King County v. Growth Hearings Bd.*, 142 Wn.2d 543 (2000) (*Soccer Fields*).

In its May 30, 2002 response brief, the County, for the first time, contended a lack of jurisdiction over the RL designation issue because of the language of the prehearing order in *Butler*. That order was entered some 2½ years ago.

In both the *Butler* and *Panesko* cases we detailed the legal “maneuverings” engaged in by Lewis County as an obvious approach to avoid GMA requirements. Sadly, while this record reflects an acceptance of the requirements of GMA by County officials, at least as to this issue the legal “maneuverings” are alive and well. We will not countenance the failure of Lewis County to raise this issue 2 years ago when it was appropriate to do so, and allow the County to avoid the GMA RL requirements.

In any event, as pointed out by petitioners, in addition to Issue #60 in the *Butler* prehearing order, we also entered Issue #53 relating to the failure of the County to “consider productive forest and/or agricultural lands”. The issues presented in the *Butler* prehearing order are sufficient to adequately raise and address the issue of the County’s failure to designate and protect RLs subsequent to the 1996 interim adoption. Additionally, the County has acknowledged that it intends to comprehensively review its RL designations during the annual CP amendment process. This is particularly important to the County since the record is unclear as to what areas have been designated ARL. In the County’s brief referred to above, p. 45 states that the designations include “nearly 60,000 acres of long-term commercially significant farmland.” At p. 76 of that same brief, the County claims the designations for both Class A and B agricultural lands composed “nearly 47,000 acres.”

Nowhere in the record does there exist any evidence that the County examined the criteria of WAC 360-195 or the *Redmond* case. We remind the County of the Supreme Court's statement at p. 53 of *Redmond* that: "a stated legislative intent of the GMA is to *maintain and enhance* agricultural land (emphasis supplied). The court held that such land is "devoted to" agricultural use "if it is in an area where the land is actually used or *capable of being used* for agricultural production" (emphasis supplied). Neither current use nor landowner intent is conclusive, although they may be considered. The Supreme Court further noted at pp. 54, 55 that the term "long-term commercial significance for agricultural production" included evaluation of growing capacity, productivity and soil composition, proximity to population areas, and the possibility of more intense uses and specifically cited WAC 365-190-050 as factors providing "ready guidance" in determining if land has "long-term significance" for agricultural production.

We have recently held that the language of the GMA and the *Redmond* and *Soccer Fields* cases provides the county with a requirement for a "conservation imperative". *Town of Friday Harbor, et al., v. San Juan County, #99-2-0010c* (CO 3-28-02). During the HOM in this case, Petitioner Panesko provided compelling examples of numerous areas where ARL designations have not occurred.

LCC 17.30.570 and .580 provide the criteria that Lewis County has adopted in its ARL classification and identification system. This record reveals that Lewis County has not used these criteria in any systematic review of its RL designations.

LCC 17.30.590, entitled designation, includes a requirement in (1)(d) that land may not be identified as ARL unless it is "currently devoted to agricultural activities." Rather than being a consideration, the phraseology of this DR excludes areas that are not currently engaged in agricultural activity from consideration. This criterion is in direct opposition to the Supreme Court holding in *Redmond* and does not comply with the Act.

We find that petitioners have sustained their burden of showing that the County has not complied with the GMA in its designations of ARL. Since the County has acknowledged that it intends to review its entire ARL designations, a finding that it has failed to comply by not taking such action at the time of adopting the original CP and DRs will not impose any additional burdens.

### ***Allowable Uses in RLs***

Lewis County's allowable uses in ARLs commences at LCC 17.30.610 and concludes at .670. LCC

17.30.680 provides for notification of agricultural activities in adjoining areas and .710 provides for non-regulatory incentives. These two sections comply with the Act. Additionally, the former .690 calling for landowner “opt out” has been repealed and the previous finding of invalidity relating to that section is rescinded. The County acknowledges that a reference at CP p. 4-6, is in conflict with the repeal of .690 and will be stricken.

LCC 17.30.620 and .450 provides the primary uses on RLs. Included under subsection .620(3) are a single-family dwelling, farm employee housing, and farm housing for immediate family members.

Accessory uses are set forth in .630. Allowed outright are activities which are “directly connected with and in aid of agricultural activity.” Included are such things as storage of fuels and chemicals used for ARL and FRL, structures accessory to farming and growing and harvesting of timber, RL resource research, aircraft landing fields, and watershed management facilities, etc.

LCC 17.30.640 entitled “incidental” uses allows “uses which may provide supplementary income without detracting from the overall productivity of the farming activity.” In order to qualify for such incidental use, it must not “adversely affect” the “overall productivity of the farm,” nor effect more than 5% of the prime soils, except up to 15% set forth in another section. Such use is secondary to the principal activity of agriculture and is sited “to avoid prime lands where feasible” and otherwise minimize impact on farmlands of commercial significance. A similar system for FRL is found at .470.

Subsection (2) specifies the types of uses allowed as “incidental activities” and includes (a) residential subdivisions, (b) telecommunication facilities, (c) public and semi-public building structures and uses, including “recreation fields, fire stations, utility substations, pump stations, wells, and transmission lines”, (d) sawmills, (e) public and private recreational facilities including “parks, playgrounds, campgrounds, lodges, cabins, destination resorts, golf courses, and youth camps.” Also included are accessory uses such as restaurants, lounges, recreational facilities, and commercial services,” sanitary landfills, explosive manufacture and storage, home-based industries, agribusiness and regulated treatment of wastewater.

Subsection .650 specifies that essential public facilities such as “roads, bridges, pipelines, utility facilities, schools, shops, prisons, and airports” are allowed when identified in the CP from a “public agency or regulated utility” and the potential impact on farmed lands and minimization steps are “specifically considered in the deciding process.” A similar allowance in FRL is found at .480.

Subsection .660 provides that the “minimum lot area” for any new subdivision, short subdivision, or segregation of property will be as set forth in that section, except for uses and activities provided in LCC 17.30.610 through .650. Since all of the allowable uses provided by the County are set forth in

those sections, it is unclear to what subsection .660 might apply. Essentially what .660 appears to say, is that any subdivision must adhere to these requirements except for any new subdivision which is already authorized by earlier sections.

The standards set forth in .660 include subdivision of commercial farmland where “residential development” on the contiguous ownership, including existing dwellings, results in not more than 1 dwelling unit per 10 acres (1:10), or clustered on lot sizes of one acre or less, that provide adequate water and septic capacity, affects 15% or less of the prime soils, sets aside the balance of “prime farmlands” in a designated agricultural tract and contains the protections of LCC 17.30.680. Subsection .490(3) applies similar allowances to FRL.

Where a special use permit is required under LCC 17.115.030(7) such “residential, recreational, and other non-resource uses” must demonstrate that the use “does not adversely affect with the overall productivity of the total resource parcel for the intended resource use” resulting from the non-resource activity.

In *Butler*, we determined that substantial interference with the goals of the Act occurred in the allowable densities found in LCC 17.30.620(3) and .640(2)(a). The allowance of residential densities more intense than 1:10 was also found invalid in *Butler*. In *Panesko*, we found that LCC 17.30 allowing a 15% residential subdivision in designated RLs, subsections .460 and .470 allowing RV parks, boat launches, etc., in FRLs and the corresponding section .640 allowing parks, golf courses, restaurants, and commercial services in ARLs did not comply with the Act and substantially interfered with goal 8 under the reasoning of the *Soccer Fields* case. We determined that all of the provisions in question allowed in RLs substantially interfered with goal 8. Thus, the County has the burden of showing removal of substantial interference as to these previous determinations of invalidity.

A very thoughtful public participation process and analysis of the ever-increasing changes in agricultural uses in Lewis County and western Washington in general, is part of this record. As a part of the County’s overall strategy to conserve RLs, the various uses set forth above were provided to increase the ability of RL owners to have “nonfarm, on-farm income.” The County contended that in order to make RLs economically sustainable such nonfarm income for on-farm properties must be available. In response to the Supreme Court holding in the *Soccer Fields* case, the County contended that case was limited to the factual use of soccer fields on ARL designated property.

We agree that it is appropriate and necessary to further the “conservation imperative” of RLs for non-traditional income opportunities to be made available. Nonetheless, the Supreme Court has severely limited the usage of “innovative zoning techniques” under RCW 36.70A.177 and the nonresource use

of RL in the *Soccer Fields* case.

Petitioners contended that any nonresource use in designated RLs must be limited to “lands with poor soils.” The County disputed this interpretation.

The Supreme Court answered this issue at p.560 where it said:

“The word ‘should’ applies to ‘encourage nonagricultural uses’. The phrase ‘limited to lands with poor soils’ is a qualifying phrase for ‘nonagricultural uses.’ The discretion is applied to ‘encouraging nonagricultural uses,’ not to the land eligible for such encouraged uses. Read logically, this phrase means that the County may encourage nonagricultural uses where the soils are poor or the land is unsuitable for agriculture. It should not be read that the County may encourage nonagricultural uses whether or not the soils are poor or unsuitable for agriculture.”

The Court went on to say at p. 561 that:

“After properly designating agricultural lands in the APD, the County may not then undermine the Act’s agricultural conservation mandate by adopting ‘innovative’ amendments that allow the conversion of entire parcels of prime agricultural soils to an unrelated use.”

The Court further noted that there were “thousands of acres suitable for athletic fields outside the APDs.” The Court recognized that the increased deference to local governments under RCW 36.70A.3021 was bounded by the requirement that such action be “consistent with the requirements and goals” of the Act.

The *Soccer Fields* case also reiterated a previous holding from *Redmond* at p.559 as follows:

“Natural resource lands are protected not for the sake of their ecological role but to ensure the viability of the resource-based industries that depend on them. Allowing conversion of resource lands to other uses, or allowing incompatible uses nearby, impairs the viability of the resource industry.”

Petitioners have sustained their burden of showing noncompliance and substantial interference relating to LCC 17.30.640-.670, LCC 17.30.440-.500, and LCC 17.115.030(7) as applied to RLs. Additionally, the County has failed to remove substantial interference from LCC 17.30.460, .470, .480, .490, .500, .510, .620, .630(4), (5), and (8), .640, .650, .660, and .670. Insofar as the County may believe that all or some of these sections are new findings of invalidity, we specifically find that petitioners have sustained their burden of showing that these sections substantially interfere with goal 8 of the Act, particularly in light of the Supreme Court’s interpretation of the conservation imperative found in the *Soccer Fields* case.

As noted in the *Soccer Fields* case, there are thousands of acres of land outside of UGAs and outside of designated RLs that are suitable for the kinds of uses allowed here. As noted later in this order those uses are all allowed in rural areas. The County must also direct allowable nonresource uses to areas of poor or unsuitable soils as directed by the *Soccer Fields* case.

Clustering of existing homes, farm related housing, and resource-related income opportunities do not necessarily substantially interfere with the goals of the Act, but the virtually unlimited scope of allowable uses under both the CP and the DRs here would have the effect of severely impairing resource uses in Lewis County. Lewis County needs to thoroughly review and analyzing both its RL designations and its DRs designed to conserve RLs and ensure that the use of lands adjacent to RLs does not interfere with their resource use.

## **RURAL LANDS**

### ***Variety, Rural Character, and Visual Compatibility***

In both *Butler* and *Panesko* we held that a uniform 1:5 density and the allowable uses and their lack of location specificity failed to comply with the GMA. Additionally, determinations of invalidity were made as to the rural element.

In response, Lewis County completed an exhaustive public participation process and analysis regarding these rural issues. The County adopted a series of 1:5, 1:10, and 1:20 rural designations for residential use. The action of the County resulted in approximately 95,000 acres designated as 1:5, 105,000 acres designated as 1:10, and 150,000 acres designated as 1:20.

Amendments to the CP addressed the selected variety of densities at pp. 4-42 and 4-43, the concepts embodied in the definition of rural character in RCW 36.70A.030(14)(c) and CP at pp. 4-56 and 4-57, and the resulting historic “visual character” of the rural areas at CP p. 4-58. The County’s acknowledged goal was to balance “rural” economic growth while still retaining rural character and the limitations of rural development identified in RCW 36.70A.030(14) and RCW 36.70A.070(5). Key to that balancing was to identify the size, scale, and intensity of activities that were both common to rural areas and appropriate for potential future “rural development.”

The County adopted a 4-tier zoning summary table in LCC 17.42.040 to identify the size and scale of uses that were considered appropriate in different rural settings. The County also adopted LCC 17.150.030(3)(k) that identifies a number of factors that are indicators of potential urban growth.

Urban growth in the rural areas is not allowed under the provisions of LCC 17.100.100 which includes prohibitions against allowance of urbanization of existing public facilities or facilities to be created in rural areas.

Petitioners challenged the County's efforts on a number of grounds primarily found in the *Butler* brief, pp. 39-45 and *Panesko* brief, pp. 9-11. Many of the ideas expressed in the challenges could well have strengthened the County's CP and DRs. Some of petitioners' specific objections to the uses allowed in rural areas is misplaced because they are the types of uses that are not allowed in UGAs or in RLs.

Ultimately, the decision as to what are appropriate rural sizes and uses, including their scale and location, is a function of the BOCC as long as the goals and requirements of the Act are met. The BOCC is free to adopt the very minimum restrictions and designations that comply with the Act. After our review of the record in this case, the arguments of the County and the contentions of petitioners, we find the County has complied in its determination of a variety of rural densities, the establishment of rural character, and visual compatibility. The previous determination of invalidity as to the lack of a variety of rural densities and the virtually unlimited uses allowed in the rural zone, is rescinded.

### *Clusters*

In the rural district, clustering is allowed and the standards are established in LCC 17.100.060. A cluster design of 6 units or less may be created through the subdivision or short-subdivision process. The criteria listed include: location of designated open space to preserve such areas, location away from RLs or provisions of adequate buffers, and limitations on the size and density of the "built area" to prevent the need for urban levels of services. The use of the reserve tract is controlled by LCC 17.100.070 and provides it may not be changed until, and unless, the CP is amended to allow for further densification. Petitioners complained generally that such clustering was antithetical to Lewis County's rural character.

RCW 36.70A.070(5)(b) directs that a county "shall permit rural development" in rural areas and "shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services" to serve the permitted densities and uses. The statute goes on to state that counties may use clustering to "accommodate appropriate rural densities and uses that are not characterized by urban growth" and

are consistent with rural character. We find nothing in the County's allowance of 6 unit or less clusters in rural areas under the provisions of LCC 17.100.060 and .070 that fails to comply with the Act. We rescind any previous determination of invalidity that apply to the 6 unit or less subdivision cluster.

More troubling are the provisions of LCC 17.42.040 which authorize cluster subdivisions of up to 24 new units within any ½ mile radius unless there is a physical barrier visually separating the clusters. Such rural cluster of greater than 6, but not more than 24 units, requires a special use permit under the provisions of LCC 17.115.030(10). Such clusters are not available on properties less than 40 acres, can not have more than 24 subdivision units, and must be approved by the hearing examiner. The hearing examiner must examine the existing and proposed development within a one-mile radius of the perimeter of the proposed site and determine the nature of existing development and availability of adequate facilities, the likelihood of probable future cluster development, and the cumulative effects of such existing and probable clustering. Additionally, the hearing examiner must make written findings that the proposed cluster is located within rural population targets and must identify necessary conditions, including caps and other limitations, to assure that urban development does not occur and the rural character identified in the CP and in RCW 36.70A.030(16) and .070(5)(b) and (c) are protected.

Frankly, we have serious doubts as to whether any 24 unit clustering on 40 or more acres could ever avoid becoming urban growth or set the stage for demands for urban facilities and services. Nonetheless, because of the restrictions imposed under LCC 17.100 for such clusters, we find that petitioners have not sustained their burden of proof that Lewis County has failed to comply with the Act in this regard. Any previous determination of invalidity as to clustering in the rural (as opposed to resource) areas is rescinded.

### ***LAMIRDS***

In its reanalysis of the finding of noncompliance and determination of invalidity relating to the various limited areas of more intensive rural development (LAMIRD) designations in *Butler* and *Panesko*, the County initially started the reanalyzation of what were characterized as Type (i) LAMIRDS under RCW 36.70A.070(5)(d)(i). The County spent considerable time establishing maps and reviewing aerial photographs of the boundaries and uses that were in existence on July 1, 1993 pursuant to .070(5)(d) (iv) and (v). See particularly exhibit Box 120 containing the aerial photographs. In all instances of Type (i) LAMIRDS the County substantially reduced the areas contained within the logical outer boundary (LOB) and made a thorough determination, including receipt of comments from local

residents, in conjunction with the aerial photographs and other written evidence. Uses that were in existence on July 1, 1993, were established. Under our ruling in *Anacortes v. Skagit County*, #00-2-0049c (FDO 2-6-01), the County reviewed infrastructure that was in place as of July 1, 1993, as part of the “built environment.” See also *Panesko*.

Petitioner Panesko challenged the Curtis LAMIRD designation as being excessive in size. The 1993 aerial photograph shows that the LOB was drawn with respect to the developed area including existing rail sidings. While we disregard the Port of Chehalis’ contention that the County could have established a Type (iii) LAMIRD, we do find that it established a compliant Type (i) LAMIRD with an appropriate LOB.

LCC 17.75.020 allows uses within the Curtis LOB to be rail-oriented, industrial uses and/or resource uses, and associated supporting uses and further allows general uses identified in LCC 17.75.035. That section allows for “general purpose industrial, transportation, and associated activities, including warehousing and storage.”

As with area establishment criteria, (d)(iv) restricts uses “to those that were in existence” on July 1, 1993. It is clear that the Legislature intended the restriction of such existing uses to be one of a generic nature, rather than one of strictly limiting the Type (i) LAMIRD to exactly the uses in existence on July 1, 1993.

Petitioners have failed to sustain their burden of showing that the designation of the Curtis Type (i) LAMIRD uses allowed by LCC 17.75 do not comply with the Act. The County has appropriately adopted the Curtis LAMIRD and previous determinations of invalidity are hereafter rescinded.

The County also addressed the previous finding of noncompliance and determination of invalidity relating to the “Ed Carlson Memorial Field” (formerly the Toledo Airport) which is now operated by Lewis County. As required by the GMA, the actual airport property is an EFP. Within that area, the County has designated 8 acres as a Type (i) LAMIRD for development as the area that was in existence on July 1, 1993. LCC 17.75.030(2) authorizes all aviation-related uses, as well as, light industrial and warehouse storage and transportation facilities that are consistent with the airport obstruction zone found in LCC 17.85. No use is permitted which would require municipal sewers for operation. No new development may occur within the 8-acre designated area unless a Master Plan process is approved. Uses are restricted to those that are consistent with RCW 36.70A.547 that discourages the siting of incompatible uses adjacent to a public aviation airport.

Contrary to petitioners’ assertion, the designated LAMIRD falls within the areas and uses that were in existence on July 1, 1993. We rescind the previous determination of invalidity as to the Ed Carlson

Memorial Field (Toledo Airport) and find that the County is in compliance with the Act as to that location.

The other Type (i) LAMIRDs designated by Lewis County all involve substantial revisions of the areas contained within the LOBs. While petitioners have questioned some of the specific boundaries, they have not met their burden of showing the County's action as to the Type (i) LAMIRDs fails to comply with the Act. The County has met its burden of showing that the areas and uses within the revised LOBs no longer substantially interfere with the goals of the Act.

As part of its rural development zoning, the County adopted designated and potential Type (ii) and (iii) LAMIRDs. The County has placed particular emphasis in its rural area zoning summary found in LCC 17.42 on reaching appropriate size and scale limitations. The County established a 4-tier identification process for uses within rural lands. Tier 1 constitutes permitted uses, Tier 2 requires administrative review or special use permits, Tier 3 involves uses that must be limited in number, and Tier 4 established uses which require CP amendments such as Master Planned Resorts (MPR), fully contained communities (FCCs), and major industrial sites. Unfortunately, the summary includes areas designated as rural within the rural development district as well as areas which are designated as either Type (i), (ii), or (iii) LAMIRDs. Obviously, there is a vast distinction between LAMIRDs which provide for "intensive rural developments" and regular rural development under the provisions of RCW 36.70A.070 (5)(b). Petitioners made general claims of over-sizing and excessive allowable uses, but ultimately, did not meet their burden of showing that the adoption of Chapter 17.42 fails to comply with the Act. We rescind any determinations of invalidity as they apply to the newly adopted LAMIRDs and rural development district uses.

### ***Other Rural Issues***

In *Butler* and *Panesko*, we discussed the County's designations concerning industrial land banks (ILBs) under the provisions of RCW 36.70A.365 and .367.

We found lack of compliance and invalidity with regard to the I-5/US12 ILB, in part because of the inclusion of 263 acres of ARL. The County has now removed that acreage from the ILB and zoned the parcel as ARL. This action removed the determination of invalidity as to that 263 acres.

As to the remaining ILB, petitioner Panesko argued that since there were now three separate parcels when the ARL was removed from the designation, the County had in fact designated 4 ILBs rather than

the 2 allowed. We reject this argument and determine that the I-5/US12 ILB will be reviewed as a single designated area. The County and the Economic Development Council concede that planning required by RCW 36.70A.367 has not yet been accomplished and the area remains in noncompliance.

The County has also removed the “industrial reserve” area adjacent to the Centralia Steam Plant ILB. The action is in compliance with the GMA.

Petitioner Panesko also argued that the area outside the Curtis LAMIRD has a potential for major industrial development under RCW 36.70A.365 and thus violates the GMA. Section .367 provides that a county may designate up to 2 ILBs in addition to designations for major industrial developments under .365.

The County has noted that if areas outside the Curtis LAMIRD are to be designated as a major industrial development, the requirements of RCW 36.70A.365 and LCC 17.20 would have to be met. If such Master Plan is approved, it is established by LCC 17.20.050(4) as the area’s DRs. This is not the type of “automatic” amendment to the DRs that we found noncompliant in *Butler*. The BOCC makes the final decision on such approval for a Master Plan, which is then subject to appeal under LCC 17.20.050(5).

In response to the finding of noncompliance and determination of invalidity for the Birchfield FCC, the County adopted LCC 17.20 which specifically included the statutory criteria of RCW 36.70A.350 and a process for review, approval, and designation of the FCC. The County observed that the current application has not been approved as an FCC nor designated as an UGA.

The County has made it clear that the standards contained in section .350 are the requirements that must be met prior to any designation of the Birchfield FCC. That was the concern enumerated in the *Butler* order. We rescind the determination of invalidity as to the previous action concerning the Birchfield FCC with the clear understanding enumerated by the County that any “vesting” or approval must take place within the context of RCW 36.70A.350 criteria and standards.

The Skye Village MPR designation was deleted and thus the previous determination of invalidity is rescinded.

## **TRANSPORTATION ELEMENT**

In both *Butler* and *Panesko*, we discussed a variety of noncompliant actions concerning the transportation element of the CP. In response to that, as well as changes in state laws, Lewis County engaged a transportation consultant to re-draft the entire transportation element.

Included within this new transportation element, is an adopted corridor-average approach to the County's level of service (LOS) standard. The transportation element recognized that the Transportation Improvement Program involves capacity related improvements and safety and maintenance requirements. There is a recognition that LOS addresses only capacity issues and consistency between the two is not always exact. Transportation Policy 13.9 was removed from the new transportation element.

At the HOM the County submitted a document dated June 6, 2002, entitled Consistency and Certification Report. As part of its ongoing plan to frustrate the parties and us with last minute submissions, the County did not explain why this document could not have been submitted on or about June 6, 2002, when it was generated. The document is identified in the lower portion as originating from the Southwest Washington Regional Transportation Planning Office (SWRTPO). The proposed exhibit was not signed or specifically identified. As a ruling concerning the obvious objection of petitioners to its inclusion, we directed the County to submit evidence by June 17, 2002, as to the authenticity and source of the proposed exhibit. We admitted a statement from petitioners dated May 31, 2002, and allowed petitioners until June 20, 2002, to submit written comment on the exhibit.

Petitioners continued to object to inclusion of this exhibit and the accompanying letter dated June 6-7, 2002, from Siipola, who is the Transportation Planner/Manager for the SWRTPO. The objections are based on timeliness, authenticity, and lack of certification. While we fully understand petitioners' problems with this exhibit, we overrule the objection and admit the exhibit and the accompanying letter as part of our record. It seems that we will never be able to depend on Lewis County not to submit last-minute exhibits that clearly could have been provided in a more orderly manner. Nonetheless, it is our job to determine compliance, and not to penalize recalcitrant parties.

We have approved the corridor-approach as an appropriate LOS methodology in other cases. Petitioners complained that such approach is useful in urban areas but not in rural Lewis County. The corridor-approach has been approved both by the SWRTPO and the Washington State Department of Transportation (WSDOT) as it relates to consistency with WSDOT requirements.

We have reviewed the new transportation element and the "conditional" certification report from the SWRTPO. While there are some requirements Lewis County must complete in order to remove the "conditional" approval of the report, those are not issues which have been raised in these proceedings.

We find that petitioners have not sustained their burden of showing that the transportation element fails to comply with the GMA.

**ORDER**

In order to comply with the GMA, Lewis County must complete its duty to designate appropriate ARLs under DCTED guidelines and GMA requirements. Lewis County must also revise its DRs to eliminate nonresource uses allowable in RL designated areas. The current RL use allowances as identified in this order substantially interfere with goal 8 of the Act. The County must complete the requirements of RCW 36.70A.367 for the I-5/US 12 ILB to comply.

Lewis County must complete compliance action within 180 days of the date of this order.

Findings of Fact and Conclusions of Law pursuant to RCW 36.70A.270(6) and RCW 36.70A.302(1)(b) are adopted and attached as Appendix I 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 10<sup>th</sup> day of July, 2002.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

---

William H. Nielsen  
Board Member

---

Nan A. Henriksen  
Board Member

---

Les Eldridge  
Board Member

## Appendix I

1. The final EIS discusses reasonable alternatives and cumulative impacts.
2. The public participation program involves early and continuous opportunity for the public to participate in GMA decisions.
3. As part of the compliance work, significant meetings and workshops occurred. Accurate and extensive information was provided at each meeting and workshop. The public had numerous opportunities to participate.
4. RL designations have not been updated nor readopted since the interim ordinance of 1996.
5. RL protections have not been updated nor readopted since the interim ordinance of 1996.
6. LCC 17.30 provides for significant nonresource uses in designated RLs.
7. Allowable uses such as recreational activities, EPFs and other nonresource related commercial uses does not comply with the GMA and substantially interfere with goal 8.
8. Allowable residential clustering provisions in RLs must restrict such residential uses to areas involving “poor soils” or areas otherwise unsuitable for RL usage.
9. LCC 17.30 criteria have not been used for RL designations.
10. LCC 17.30.690 (opt-out) has been repealed.
11. Petitioners have sustained their burden of showing a failure to comply with RL designations.
12. Petitioners have sustained the burden of showing nonresource related allowable uses in RLs fail to comply with the Act and substantially interfere with goal 8 of the Act.
13. Lewis County has failed to remove substantial interference with goal 8 in its allowable uses in RLs.
14. Lewis County has designated approximately 95,000 acres of land with a 1:5 density,

approximately 105,000 acres of 1:10 and approximately 150,000 acres of 1:20 in the rural area.

15. Lewis County has adopted appropriate size and scale limitations in the rural areas.

16. LCC 17.100.100 prohibits urban growth in rural areas.

17. Lewis county has sustained its burden of removing substantial interference with regard to the rural areas of the county.

18. Petitioners have failed their burden of showing residential clustering provisions in rural areas fails to comply with the Act.

19. LAMIRD LOBs, and allowable uses comply with the Act. Lewis County has shown the LAMIRD provisions no longer substantially interfere.

20. The removal of 263 acres (and designation as ARL) from the I-5/US12 ILB removes substantial interference.

21. The I-5/US12 ILB does not comply with the Act.

22. The removal of the “industrial reserve” area of the Centralia ILB complies with the Act.

23. There is no current FCC designation for Birchfield. The previous determination of invalidity is rescinded.

24. There is no current MPR designation for Skye Village. The previous determination of invalidity is rescinded.

25. Petitioners have not sustained their burden of showing the new transportation element fails to comply with the Act.

26. Areas outside the Curtis LAMIRD will not be designated under RCW 36.70A.365 until those requirements and the requirements of LCC 17.20 are complete.

## **Conclusions of Law**

Allowable nonresource uses under LCC 17.30 substantially interfere with goal 8 of the Act and are declared invalid.

The I-5/US12 ILB does not comply with the Act.