

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

PEOPLE FOR A LIVEABLE COMMUNITY, JIM
LINDSAY, et al.

Petitioners,

v.

JEFFERSON COUNTY,

Respondent.

No. 03-2-0009c

**FINAL DECISION
AND ORDER**

I. SUMMARY OF DECISION

We commend Jefferson County (County) officials for working with the City of Port Townsend (City) to find compliant solutions to the difficult challenge of designating preexisting areas of industrial development just outside Port Townsend city limits. Because of the special circumstances in this case (where provision was made in the Comprehensive Plan for reevaluation of the “tightline” Limited Area of More Intensive Rural Development (LAMIRD) boundaries when special studies were completed), it is now appropriate for the County to reassess these LAMIRD boundaries.

We find that, given the current circumstances, the County complied with the Act when it chose not to expand the Port Townsend UGA into the Glen Cove industrial area, nor to designate the Glen Cove industrial area as a nonmunicipal UGA.

The County has done an excellent job of showing its work. That diligence has made it difficult for the Petitioners to overcome their burden of showing that the County’s choices are clearly erroneous. When reviewing the County’s choices of LAMIRD boundary lines, it is not our role to determine if there might be better options than

what the County has enacted; rather, we are to determine if the County's chosen action complies with the Act.

We find that the expansion of the logical outer boundaries, uses, and intensity of development allowed in the Glen Cove Industrial LAMIRD comply with the Act. We further find that the County's designation of the Eastview industrial plat as a light industrial LAMIRD and uses and intensity of development allowed there comply with the Act. Lastly, we find that the readoption of the Paper Mill Heavy Industrial LAMIRD complies with the Act.

Our only finding of noncompliance deals with language in the comprehensive plan which provides for ongoing changes to boundaries of commercial/industrial LAMIRDs. LAMIRDs are intended to be a one-time recognition of existing areas and uses and are not intended to be used continuously to meet needs (real or perceived) for additional commercial and industrial lands.

II. PROCEDURAL HISTORY

On February 14, 2002, we received a Petition for Review from People for a Liveable Community (PLC) (Case No. 02-2-0003). Petitioners challenged adoption of Ordinance 08-1224-01 and 07-1224-01 on December 24, 2001, affecting the mixed-use Glen Cove Light Industrial/Commercial LAMIRD. After a Prehearing Conference, we issued a Prehearing Order on March 26, 2002, laying out the issues and setting a July 10, 2002, hearing date. Subsequently, we received a series of joint requests for extension for purposes of settlement. Jefferson County adopted Ordinances 15-1213-02 and 18-1213-02 on December 13, 2002, and Ordinance 21-1220-02, which amended 18-1213-02, on December 20, 2002.

On January 10, 2003, Petitioners filed a new Petition for Review challenging these ordinances as they applied to the Glen Cove LAMIRD. We held a Prehearing Conference on February 12, 2003. The parties agreed that consolidation of these cases was appropriate. On February 21, 2003, we issued an Order of Consolidation for these cases. We numbered the consolidated case number 03-2-0001c.

On February 20, 2003, we received a Petition for Review from Jim Lindsay, Mill Road LLC, JAL Associates, Twin Cedar Associates, Andy Barber, and Jon Evans. Petitioners challenged Jefferson County's adoption of Ordinances 15-1213-02 and 18-1213-02 affecting the Glen Cove Light Industrial/Commercial LAMIRD. Petitioners also challenged the portions of Ordinance 19-1213-02 which relate to the Eastview Industrial Plat, Port Townsend Paper Mill Heavy Industrial Area and the Glen Cove Industrial Area. We assigned the matter Case No. 03-2-0005.

On February 24, 2003, we received another Petition for Review from PLC. We assigned the matter Case No. 03-2-0009. Petitioners challenged Jefferson County's adoption of Ordinances 15-1213-02, 18-1213-02, and 19-1213-02 adopted on December 13, 2002; Ordinance 21-1220-02 adopted on December 20, 2002, which amended Ordinance 18-1213-02; and Ordinance 02-0210-03 adopted on February 10, 2003. Petitioners challenged these ordinances as they relate to the Glen Cove LAMIRD, Eastview Light Industrial Area, storm water protection, mapping, and the provision for ongoing designation of commercial and industrial lands in rural areas.

On March 13, 2003, we issued an Order of Consolidation on all of the above cases. We numbered the consolidated case number 03-2-0009c.

We held a telephonic Prehearing Conference on March 19, 2003.

We held a motions hearing on May 2, 2003. After the hearing, we notified the parties that we were not going to grant any of the County's dispositive motions and were carrying those issues forward to the Hearing on the Merits. We also heard PLC's dispositive motion on Issue 13 regarding the County's postponement of implementation of the 2001 Storm Water Management Manual until July 1, 2003. At the motions hearing, the County assured PLC and us that it would implement the Manual by July 1, 2003 and would not delay its implementation again. The County kept its word and is now implementing the Manual. Thus the County is now in compliance as to Issue 13.

The Hearing on the Merits was held on June 16, 2003, at the Pope Marine Building in Port Townsend, Washington. David Alvarez and Randy Kline represented Jefferson County; Richard Hill represented Jim Lindsay, Mill Road LLC, JAL Associates, Twin Cedar Association, Andy Barber and John Evans; Gerald Steel represented PLC. Board Members Nan Henriksen and Margery Hite were present. Board Member Holly Gadbaw was not present having previously recused herself.

III. PRESUMPTION OF VALIDITY, BURDEN OF PROOF, AND STANDARD OF REVIEW

Pursuant to RCW 36.70A.320(1), Ordinances 15-1213-02, 18-1213-02, 19-1213-02, 21-1220-02, and 02-0210-03 are presumed valid upon adoption. The burden is on Petitioners to demonstrate that the actions taken by Jefferson County are not in compliance with the requirements of the Growth Management Act (GMA, Act). RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3) we "shall find compliance unless [we] determine that the action by [Jefferson 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. Public Utility Dist. 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

IV. ISSUES PRESENTED

Issue 1: Whether the development regulations in Ordinance Nos. 18-1213-02 and 21-1220-02 comply with RCW 36.70A.020(11), -.035, -.040, -.070(preamble), -.130(1)(b), and -.140 regarding the processing and adoption of these ordinances from the time of formal docketing until adoption?

Issue 2: Whether the County’s action of establishing a permanent 120 acre Glen Cove LAMIRD boundary in Ordinance No. 15-1213-02 complies with RCW 36.70A.020(1), (2), (5), (6), (9), (10), and with -.130(1)(b) regarding -.070(preamble) (for inconsistency with the CP at x, CP Chapter 2, 3-27 to 3-31, 3-34 to 3-63, LNG 1.0, LNG 9.0, LNP 9.1, LNP 9.2, LNG 10.0, LNP 11.3 and subpolicies, LNP [sic LNG] 18.0, LNP 18.1, LNP 18.2, LNP 18.4, LNP [sic LNG] 22.0, LNP 22.2, LNP 22.5, OSP 1.2, OSP 2.4, and ENG 13.0), -.070(1), -.070(5), -.100, -.110, and -.210 (regarding CPP 7.3, CPP 7.4, CPP 8.1, CPP 8.3, CPP 8.4, CPP 8.5, CPP 8.6 and CPP 10.1)?

Issue 3: Whether establishment of a permanent 120 acre LAMIRD at Glen Cove in Ordinance No. 15-1213-02 fails to comply with 36.70A.130(1)(b) and .070(preamble), .070(1), and .070(5) by failing to provide descriptive text in the Comprehensive Plan to minimize, contain, limit, and control uses and intensities of uses in the permanent Light Industrial (Glen Cove) and Light Industrial/Commercial (Glen Cove) designations to protect rural character, avoid urban growth, and avoid a new pattern of more intense rural development?

Issue 4: Whether the County's actions in establishing Glen Cove development regulations for the LI/C and LI zoning districts in Table 3-1 and Table 6-1 including Notes in Ordinance Nos. 18-1213-02 and 21-1220-02 comply with RCW 36.70A.020(1), (2), (5), (6), (9), (10), and with -.130(1)(b) (for internal inconsistency and inconsistency and failure to implement the CP at x, LNG 1.0 (including addressing items identified in consideration of Issue 3.2 and 3.3 above), LNP 1.6, LNG 9.0, LNP 9.1, LNP 9.2, LNG 10.0, LNP [sic LNG] 18.0, LNP 18.1, LNP 18.2, LNP 18.4, LNG 19.0, LNP 19.3, LNP [sic LNG] 22.0, LNP 22.2, LNP 22.5, OSP 1.2, OSP 2.4, and ENG 13.0), -.070(5), and -110?

Issue 5: Whether the County's action in Section 7 of Ordinance No. 19-1213-02 amending page 1-19 and 3-10 to allow continuous identification and allocation of commercial and industrial lands in rural areas complies with the Growth Management Act requirements including RCW 36.70A.070(5)(d)?

Issue 6: Whether Section 1 of Ordinance No. 19-1213-02 complies with RCW 36.70A.130(1)(b) and -.070(preamble) and with -.020(11), -.035, and -.140 by failing to provide specific and consistent changes in maps and text to accomplish the amendment?

Issue 7: Whether Section 1 of Ordinance No. 19-1213-02 fails to comply with 36.70A.130(1)(b) and -.070 (preamble), -.070(1), and -.070(5) by failing to provide descriptive text in the Comprehensive Plan to minimize, contain, limit, and control uses and intensities of uses in the Eastview Light Industrial designation to protect rural character, avoid urban growth, and avoid a new pattern of more intense rural development?

Issue 8: Whether the proposed boundaries of the Eastview Light Industrial designation established by Section 1 of Ordinance No. 19-1213-02 comply with RCW 36.70A.020(1), (2), (5), (6), (9), (10), and with -.130(1)(b) regarding -.070(preamble) (for inconsistency with the CP at x, CP Chapter 2, 3-27 to 3-31, 3-34, 3-35 to 3-63, LNG 1.0, LNP 1.4 and subpolicies, LNG 9.0, LNP 9.1, LNP 9.2, LNG 10.0, LNP [sic LNG] 18.0, LNP 18.1, LNP 18.2, LNP 18.4, LNP [sic LNG] 22.0, LNP 22.2, LNP 22.5, OSP 1.2, OSP 2.4, and ENG 13.0), -.070(1), -.070(5), -.100, -.110, and -.210 (regarding CPP 7.3, CPP 7.4, CPP 8.1, CPP 8.3, CPP 8.4, CPP 8.5, CPP 8.6 and CPP 10.1)?

Issue 9: Whether the County's actions in establishing Eastview development regulations for the LI/M zoning district in Table 3-1 and Table 6-1 including Notes in Ordinance Nos. 19-1213-02, 18-1213-02 and 21-1220-02 comply with RCW 36.70A.020(1), (2), (5), (6), (9), (10), and with -.130(1)(b) (for internal inconsistency and inconsistency and failure to implement the CP at x, LNG 1.0 (including addressing items identified in consideration of Issue 3.6.1 to 3.6.3 above), LNP 1.6, LNG 9.0, LNP 9.1, LNP 9.2, LNG 10.0, LNP [sic LNG] 18.0, LNP 18.1, LNP 18.2, LNP 18.4, LNG 19.0, LNP 19.3, LNP [sic LNG] 22.0, LNP 22.2, LNP 22.5, OSP 1.2, OSP 2.4, and ENG 13.0), -.070(5), and -.110?

Issue 10: Whether retaining the Glen Cove Special Study Area including the FUGA boundary and the Tri Area/Glen Cove Special Study Area Boundary on the Land Use Map is in compliance with RCW 36.70A.100, and -.070 and is internally consistent with the changes made to the Comprehensive Plan by Section 7 of Ordinance No. 19-1213-02 as required by -.130(1)(b) and -.070 (preamble)?

Issue 11: Whether retaining such policies as LNP 5.8 and other policies and text that indicate rural commercial and industrial designations remain interim is in

compliance with RCW 36.70A.100, and -.070 and is internally consistent with the changes made to the Comprehensive Plan by Section 7 of Ordinance No. 19-1213-02 as required by -.130(1)(b) and -.070 (preamble)?

Issue 12: Whether any County failure to adopt implementing regulations to implement the Comprehensive Plan amendments adopted by the Ordinances fails to comply with the requirements of RCW 36.70A.130(1)(b) and -.040?

Issue 13: Whether the repeal by Ordinance No. 02–0210-03 of the implementation of the Storm Water Management Manual for Western Washington and the related portions of Exhibit “C” of Ordinance No. 21-1220-02 complies with RCW 36.70A.130(1)(b) and -.070(preamble) (for inconsistency and failure to implement Comprehensive Plan Policy LNP 26.1)?

Issue 14: Whether any portion of the Ordinances found not to comply with the Act in Issues 1 - 9 above should also be found invalid under RCW 36.70A.302 for substantial interference with the fulfillment of Goals 1, 2, 5, 6, 9, 10, and/or 11?

Issue 15: In adopting Ordinances 08-1224-01 and 07-1224-01 did the County fail to comply with RCW 36.70Z.040, .120 and .130 requiring consistent development regulations implementing its comprehensive plan? (At the request of the County, Petitioners also supplied several pages of CP subsections and policy statements which are much too extensive to include in this issue statement, but may be helpful to the County in understanding the potential scope of this issue.)

Issue 16: Do Ordinances 08-1224-01 and 07-1224-01 allow development in rural areas of a size and character incompatible with rural character, contrary to RCW 36.70A.070(5)?

Issue 17: Do Ordinances 08-1224-01 and 07-1224-01 allow urban development in non-urban areas, contrary to RCW 36.70A.110(1)?

Issue 18: Do Ordinances 08-1224-01 and 07-1224-01 substantially interfere with GMA goals by failing to encourage development in urban areas where adequate public facilities and services exist or can be provided efficiently, by failing to encourage the retention of open space, and by failing to protect water quality contrary to RCW 36.70A.020(1)(9)(10)?

Issue 19: Are Ordinances 08-1224-01 and 07-01 inconsistent with Countywide Planning Policy #8, contrary to RCW 36.70A.210?

Issue 20: Whether the County failed to comply with RCW 36.70A.110 and RCW 36.70A.070(5) when it adopted Ordinances 15-1213-02 and 18-1213-02 designating a portion of the GCIA as a LAMIRD rather than a UGA and limiting commercial development in the LAMIRD despite the projected demand for additional land to accommodate commercial and industrial development?

Issue 21: Whether the County failed to comply with RCW 36.70A.070(5)(d)(iv) and (v), relating the logical outer boundaries of a LAMIRD, when it adopted Ordinance 15-1213-02 designating the GCIA LAMIRD?

Issue 22: Whether the County violated RCW 36.70A.110 and RCW 36.70A(5)(e) when it adopted Ordinance 19-1213-02 creating an island of industrial zoning outside the UGA and outside the LAMIRD?

Issue 23: Whether the County's adoption of Ordinances 15-1213-02 and 19-1213-02 causes inconsistencies between the County's Comprehensive Plan and the Countywide Planning Policies, in violation of RCW 36.70A.210?

V. DISCUSSION AND ANALYSIS

Issue 20 Raised by Petitioners, Jim Lindsay, et al.

Whether the County failed to comply with RCW 36.70A.110 and RCW 36.70A.070(5) when it adopted Ordinances 15-1213-02 and 18-1213-02 designating a portion of the GCIA as a LAMIRD rather than a UGA and limiting commercial development in the LAMIRD despite the projected demand for additional land to accommodate commercial and industrial development?

Positions of the Parties

Issue 20 focuses on Petitioner Lindsay's primary position that under the GMA, the Glen Cove area must be included in a UGA and, therefore, the County's action of designating a portion of the area as three distinct LAMIRDs with limited uses was clearly erroneous. Lindsay's opening brief supports that position with many arguments, including the following:

(1) A previous decision of this Board held that it is improper to designate a LAMIRD in close proximity to a UGA. *City of Anacortes v. Skagit County*, WWGMHB #00-2-0049C (Final Decision and Order, February 6, 2001). Yet the Paper Mill and Eastview Industrial LAMIRDs are immediately adjacent to the Port Townsend UGA and to each other. The Glen Cove LAMIRD is only 2,300 feet away from the Port Townsend UGA and 400 feet from the Paper Mill LAMIRD.

(2) Between the Glen Cove LAMIRD to the south, the Port Townsend UGA to the north, SR20 to the west, and the Paper Mill LAMIRD to the east, is an area of rural

residential zoning. This area includes the Lindsay property. Lindsay's property is designated rural residential 1:20 despite the fact that, in many ways, this property could be described as characterized by urban growth.

(3) GMA requires that industrial and commercial urban growth which is projected to occur in the County within the next 20 years must be accommodated within UGAs.

(4) The County has accommodated a portion of its projected urban industrial and commercial growth in LAMIRDs located just outside the City of Port Townsend.

(5) The Glen Cove LAMIRD serves, in effect, as Port Townsend's industrial area. Under the GMA, these areas outside the UGA cannot serve this urban function while remaining rural in name only. Instead, they must be included in the UGA.

(6) The County's own documents show that the Glen Cove, Paper Mill, and Eastview Plat areas are characterized by urban growth because they contain: (a) platted and developed streets; (b) a traffic light at SR20 and Mill Road; (c) urban level electrical service; (d) urban level water service; and (e) considerable urban industrial and commercial development. Therefore, under GMA, these areas must be included in a UGA.

(7) The County also erred by adopting development regulations that prohibit commercial uses in the expanded portion of the Glen Cove LAMIRD. Instead, the record demonstrates a demand for additional commercial acreage that must be accommodated, not ignored.

(8) In 1998, the County adopted a Comprehensive Plan (CP) under GMA. The 1998 CP designated a portion of the Glen Cove industrial area as an "interim"

LAMIRD, drawing a conservative “tightline” boundary that included only approximately 69 acres of the Glen Cove industrial area in the interim LAMIRD. The remaining 227 acres of the Glen Cove industrial area were down-zoned to rural residential despite the fact that urban infrastructure exists to serve the down-zoned area. However, the 1998 CP expressly called for the revisitation and reexamination of the interim LAMIRD designation upon the completion of further study. The Comprehensive Plan Map was also amended to indicate a Special Study Area and a coextensive Potential Final Urban Growth Area (PFUGA) in the Glen Cove industrial area, reflecting the expectation that the Glen Cove area would be designated as a UGA in the future.

(9) Lindsay requests that the Board direct the County that designation of the Glen Cove industrial area (extending to the Port Townsend UGA) and the Paper Mill and Eastview Industrial Plat LAMIRDs as UGAs would comply with GMA, particularly those provisions relating to the designation of urban growth areas and accommodation of projected urban growth.

(10) The Trottier Report analyzed the projected demand for industrial and commercial land over the 20-year planning horizon. The report concluded that up to 212 additional acres of industrial and commercial land would be required (this was later adjusted to 280 acres). This conclusion was based in part on employment growth rates of 3.2% to 4.0%. The County adopted a growth rate of 3.6%. A decision to adopt this growth rate without providing sufficient land area to accommodate the resulting employment takes the plan out of compliance with the GMA.

(11) After all the initial studies were done, the Board of County Commissioners approved a Provisional Urban Growth Area (PUGA) boundary for Glen Cove

industrial area, indicating the County's intent to designate this area as a UGA in the future.

The County stated in The Glen Cove/Tri-Area Special Study Final Decision Document:

The Board is now comfortable that designation of an Urban Growth Boundary to include existing businesses in Glen Cove is consistent with the GMA and the Comprehensive Plan. It will provide a secure environment for business growth and will help to meet the commercial and industrial land supply needs outlined in the Special Study.

Ex. 21-38, at 14-15

It was not until the City of Port Townsend opposed the designation of a UGA that the County determined that it would not designate the Glen Cove industrial area as a UGA.

(12) In addition to opposing the County's UGA designation, during its 2002 CP amendment cycle, the City of Port Townsend deleted the designation of the Glen Cove industrial area as a Future Urban Growth Area from its own CP.

(13) The Paper Mill LAMIRD improperly permits a major industrial development outside a UGA. RCW 36.70a.365(3).

(14) The Eastview Industrial Plat is characterized by urban growth since it's been an industrial plat since 1978, comprised of six urban-sized lots, including one occupied by a marine lamination building. The other lots are fenced and some are lighted.

(15) GMA grants the County, not the City, the ultimate authority to designate UGAs. However, the County abrogated that right to the City when it made the

following statements in its Final Supplemental Environmental Impact Statement (FSEIS): “The decision of whether to annex or provide services to Glen Cove is clearly that of the City. A statement of its position will be a decisive factor in the final BOCC decision on UGA expansion to Glen Cove” (Ex. 2-37, at 1-6) and “In the case of Glen Cove, a decision to form a UGA will be directly tied to the willingness, ability, or desire by the City of Port Townsend to eventually serve it with sewer services. ... A Glen Cove UGA should only be created if the City of Port Townsend believes the utility extensions are desirable.” *Id.* at 2-3 to 2-4. The City’s opposition did not change the character of the Glen Cove area, which remains urban.

People for a Liveable Community’s (PLC) Response to Lindsay Issue 20

Petitioner PLC responded to Lindsay’s contention that the GMA requires a UGA designation:

(1) Lindsay’s concept of having such a large industrial area designated as an expanded UGA is not consistent with current GMA goals and requirements. The action taken by the County to not include any of the Glen Cove industrial area in a UGA at this time should be found to comply with the GMA.

(2) PLC agrees with Lindsay that the area immediately south of the Port Townsend municipal boundary should receive urban development, but PLC disagrees with Lindsay regarding the timing of that urban development. Lindsay wants expansion now to increase his property values. PLC wants UGA expansion when the County, in consultation with Port Townsend, properly decides that Port Townsend needs more vacant urban land. At this time, no need for a UGA expansion for Port Townsend has been established.

(3) Lindsay's theory, that Glen Cove industrial area is characterized by urban growth and thus must be included in a UGA, is the wrong theory. UGAs are sized to "include areas and densities sufficient to permit the urban growth projected to occur in the county or city" during the 20-year life of the CP. RCW 36.70a.110(1). Just because an area outside a UGA has urban growth does not require the area to be designated as a UGA. This Board said exactly that in *Whidbey Environmental Action Network v. Island County*, WWGMHB No. 95-2-0063 (Second Compliance Hearing Order and Finding of Invalidity, April 10, 1996.) At pages 2-3, this Board quoted the Central Puget Sound Board: "As the CPS Board noted at p. 11 of *Tacoma v. Pierce County*, the consequences of existing urbanized areas outside cities not being included in an IUGA is simply that new urban development will not be permitted."

(4) The GMA does not require that all projected new commercial/industrial development be in UGAs. Some types and intensities of commercial/industrial development are appropriate in the rural-area LAMIRDs. PLC's calculations demonstrate that Jefferson County, in its established UGAs and LAMIRDs, has more than sufficient land to accommodate the projected growth for commercial and industrial activities. Because the County has sufficient capacity countywide to accommodate commercial and industrial growth, there is no established need for UGA expansion.

(5) The Trottier Report, which Lindsay relies on, overstates the need for additional industrial/commercial land by:

- (a) using assumptions which double-count need
- (b) math errors

When these math areas and erroneous assumptions are removed, there is no showing of unmet need to justify additional commercial/industrial UGA lands outside of the municipal boundaries of Port Townsend.

(6) Lindsay Petitioners have failed to meet their burden of showing that the County was clearly erroneous when it chose not to designate the Glen Cove industrial area as a UGA.

County's Response to Lindsay Issue 20

The County's Response Brief also countered Lindsay's assertions:

(1) Lindsay petitioners misstate the definition of "characterized by urban growth". Lindsay asserts that "characterized by urban services" equals "characterized by urban growth". However, RCW 36.70A.030(17), the GMA definition of "characterized by urban growth", states no such thing. The presence of urban services at a site, pursuant to the GMA definition, does not provide that site with the status of "characterized by urban growth". Instead, one must prove that urban growth is present, or that it is in the vicinity of urban growth. Although urban services are usually a precursor to urban growth, they do not constitute urban growth under the provisions of RCW 36.70A.110(3) regarding UGAs.

(2) By the definitions of the Act, the Lindsay property has neither urban growth nor is it characterized by urban growth.

(3) The RR 1:20 designation serves to preserve an "urban reserve" around the edges of the County's only UGA.

(4) Even if the 176 acres in the Provisional Urban Growth Area which were not included in the LAMIRDs were "characterized by urban growth", there is nothing in the law that requires such land to be placed inside a UGA. In fact, this Board has come to precisely the opposite conclusion. All of the relevant language in the UGA

section is permissive rather than mandatory. This Board reflected the local government's discretion in a recent San Juan County case:

All these factors support the claim that Petitioner's property is located in relationship to an area with urban growth on it as to be appropriate for urban growth, thus constituting property "characterized by urban growth". However, even if we were to find that Petitioner's property could be characterized by urban growth, it does not follow that Petitioner's property must be included in the UGA. Petitioner correctly asserts that property characterized by urban growth must be included in a UGA before property that is not characterized by urban growth is included. We have concluded that the County did not comply with the GMA when it included property west of the sewer district (EWSD) ULID boundaries in the UGA. We have also directed the County to complete the capital facilities analysis as to drainage and sewer services. It is now up to the County to reconsider the Eastsound UGA boundaries in light of this decision. The County has discretion to determine how it will channel growth so long as those decisions comply with the GMA. As the County has not had an opportunity to reconsider its boundary choices, we cannot determine whether Petitioner's property must be included in them. (emphasis supplied)

Klein v. San Juan County, WWGMHB 02-2-0008 (Final Decision and Order, October 15, 2002)

(5) The County proposed that close scrutiny of the nonmunicipal UGA would reveal the following:

- That such designation would be *premature* since the City of Port Townsend has stated that "[d]uring 2003/2004 [it] should conduct an analysis of vacant commercial, industrial and residential lands and determine if additional land is needed..." (Ex. 22-4, 1st page.) Recall, of course, that all urban growth first must be directed to incorporated cities pursuant to RCW 36.70a.110(1);

- That such a UGA that would have approximately 235 vacant acres of commercial or industrial land ($296 + 8 - 69 = 235$) and, in conjunction with the 91 acres in the Port Hadlock/Irondale UGA, *the County would have established in 'one fell swoop' all the vacant industrial and commercial land it might need for the entire CP planning horizon* (which will extend to 2024, once the CP is reviewed and readopted in its entirety in 2004) in the absence of there being any firm proof that it was needed.
- That the Trottier numbers are extremely malleable and that if the annual job growth rate is pegged at 3.1%, then only 70.3 acres of additional commercial or industrial land are needed according to the express language of Trottier, meaning that the Port Hadlock/Irondale UGA alone cures that deficit (Ex. 21-37d, p. 32, Table 18);
- That such a UGA would be vulnerable to an appeal from the City of Port Townsend, which has an important part to play in the creation of any nonmunicipal UGA pursuant to RCW 36.70A.100 (CP of adjacent government must be coordinated) and the applicable County Wide Planning Policies and has stated its opposition to an adjacent nonmunicipal UGA; and
- that creating a second nonmunicipal UGAs in the far northeast corner of the county may or may not be represent (sic) good transportation planning since there is only one highway into Glen Cove, SR 19.

Jefferson County Response Brief at 42-43 (June 3, 2003)

(6) There is no applicable case law on the proximity of a LAMIRD and a UGA. RCW 36.70A.070(5)(d) does not mandate that a LAMIRD cannot be in close proximity to a UGA and recognizes the historical nature of LAMIRDs.

(7) Lindsay Petitioners mistake the law when they argue that the law remains the same no matter who the plaintiff is. In *Anacortes*, it was only the City of Anacortes that made the adjacency argument in its Petition for Review (PFR), complaining about

a “heavy marine industry” district and claiming this intense development should be included in Anacortes’ UGA. In the current case, the disputed light industry zone is close to the City of Port Townsend, which opposed a Port Townsend UGA expansion and acceded to the LAMIRD expansion.

Board Discussion on Lindsay UGA Arguments

There is no way, from this record, that we could determine that Lindsay Petitioners’ property and the rest of the Glen Cove industrial area should be included in a UGA. No adequate analysis has been done to show a need for such an addition to the Port Townsend UGA; no analysis shows that providing sewer infrastructure would be efficient and affordable; and the City, the only supplier of sewer and water service in the Glen Cove area, says it will not serve a Glen Cove UGA.

There is nothing in the GMA that requires land “characterized by urban growth” to be placed inside a UGA. Existing urbanization does not always dictate inclusion of the area within a UGA. *Achen v. Clark County*, WWGMHB No. 95-2-00067 (Final Decision and Order, September 20, 1995).

Availability of public facilities does not in and of itself define an area as characterized by urban growth. *Id.*

Even if Petitioner’s property were to be found to be characterized by urban growth, it does not follow that Petitioner’s property must be included in a UGA. *Klein v. San Juan County*, WWGMHB No. 02-2-0008 (Final Decision and Order, October 15, 2002). The County has discretion to determine how it will channel growth so long as those decisions comply with the GMA. *Id.* Although Lindsay might consider a UGA designation a better choice, the choice the County made is given deference, particularly taking into account the added deference directed by RCW 36.70A.3201.

We agree with the County that this case is very different from the *Anacortes* case. In that case, it was the City who objected to new urban level industrial development just outside its Urban Growth Area. The City of Anacortes contended that if new urban type industrial development was to be allowed, it should be included in the Anacortes UGA. In the current case, Port Townsend, the city within whose UGA the challenged industrially developed property would be included, opposed the expansion of its UGA and the formation of a nonmunicipal UGA just outside its city limits. That puts Jefferson County in a very different position as to its viable options than what Skagit County had in the *Anacortes* case.

The Trottier Report is not adequate proof that the Glen Cove industrial area should be made a UGA at this time. As Petitioners PLC pointed out, many of the assumptions upon which the report was based tended to magnify the number of acres needed for the projected commercial/industrial growth.

Even though it appears that the County chose to assume a 3.6% commercial/industrial growth rate, which called for additional land designation in the Trottier Report, this becomes moot since the County did not choose to adopt a UGA expansion. The LAMIRD designation approach that the County chose is based on acknowledging preexisting industrially developed areas within logical outer boundaries as predominantly delineated by the built environment in 1990 and not on need for additional industrial development. RCW 36.70A.070(5)(d).

We empathize with the Lindsay Petitioners whose investment expectations have been thwarted by the County's decision. However, there is also no showing in the record that the Lindsay Petitioners were singled out for unfair treatment. The Comprehensive Plan Land Use Map, Ex. 17-1, shows that 38 parcels surround the Port Townsend city limits. All of those parcels were zoned RR 1:20 to provide a rural reserve for future

UGA designation and urban-level development. This sound planning technique will assure that, in the future, when the City and the County agree and can show a need for the UGA to be expanded, they will not be faced with a plethora of five-acre lots to frustrate truly urban development in the expanded area.

We agree with both Petitioners' contentions that due to its close proximity to the Port Townsend UGA, according to the long-term vision of the GMA, the Glen Cove industrial area is likely to eventually be made part of the Port Townsend UGA. However, the record shows that currently the Port Townsend UGA is more than ample in size and the City has no interest in having that area included in its UGA, annexing it, and/or providing it with sewer services. That leaves the County in the difficult position of how to deal with this pre-GMA, partially developed industrial area.

The County and the City have agreed that the best they can do at this time is to settle upon fairly conservatively drawn industrial LAMIRDs which, both concur, comply with the requirements of the Act and Board's interpretation of "built environment" handed down in *City of Anacortes v. Skagit County*, WWGMHB No. 00-2-0049c.

We find that the County, given the current circumstances, complied with the Act when it chose not to expand the Port Townsend UGA into the Glen Cove industrial area, nor to designate the Glen Cove industrial area as a nonmunicipal UGA.

Later we will deal with Lindsay's claim that the County erred by adopting development regulations that prohibit commercial uses in the expanded portion of the Glen Cove LAMIRD. That claim pertains to our LAMIRD discussion rather than the current UGA discussion.

We will also deal with Lindsay Issues 21 through 23 in combination with PLC's issues regarding the LAMIRD designations.

All Issues Pertaining to LAMIRDS

We have dealt with Issue 20 regarding UGAs separately. However, the LAMIRD-related issues are so numerous, complex and intertwined, we will deal with them together under the overarching topic "LAMIRDS." If we tried to deal with all of these issues separately, a very long and redundant decision would result.

Positions of the Parties

The Lindsay Petitioners believe strongly that their property should be made part of a UGA. They contended that if we disagreed with their position on that issue, they wished to argue an alternative position: that the county violated GMA when it failed to draw the northern logical outer boundary of the Glen Cove LAMIRD at the southern boundary of the Port Townsend UGA. Lindsay supported this argument in part with the following:

(1) The provisions of RCW 36.70A.070(5)(d)(i) do not focus on characteristics of individual lots. Instead, the statute provides for LAMIRD designation for existing industrial areas. An existing area is one that is "clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands" with measures to minimize and contain the existing area. RCW 36.70A.070(5)(d)(iv).

(2) This Board has stated that the built environment that predominately delineates the logical outer boundaries of LAMIRD "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.” *City of Anacortes v. Skagit County*, WWGMHB No. 02-2-0049c, Final Decision and Order (February 6, 2001) at 8. Also, lands that will allow a “new pattern of low-density sprawl” may not be included in the logical outer boundary. *Id.* Further, in the compliance order in *Anacortes*, the Board clarified that a LAMIRD may contain lots on which no development existed as of July 1990 if these lots are contained in a logical outer boundary. *Anacortes*, Compliance Order (January 31, 2002) at 11. In that same order the Board held that the manmade infrastructure existing as of July 1990 need not be located on every parcel of property within the LAMIRD boundary so long as the infrastructure was constructed to serve the property rather than another area beyond it. *Id.* at 13.

(3) The County’s analysis of the logical outer boundary requirement is fundamentally flawed because it focuses on individual lots and whether they contain manmade improvements. This parcel-by-parcel approach is contrary to the plain language of the GMA, which provides that an existing industrial area including undeveloped parcels within this area, may be designated as a LAMIRD. RCW 36.70a.070.(5)(d)(i) and (iv).

(4) The County fails to recognize that the intent of the logical outer boundary requirement is to prevent a new pattern of low-density sprawl.

(5) The County admits, and the record supports, the conclusion that significant infrastructure, including roads, water lines sufficient for industrial uses and fire flow, and three-phase power, was constructed prior to July 1, 1990, for the specific purpose of serving the entire Glen Cove industrial area. These infrastructure improvements define the east and west boundaries of an existing area of industrial development extending north to the Port Townsend UGA.

(6) The County's sole justification for terminating the LAMIRD some 2,300 feet south of the Port Townsend UGA, is that the 10-12" water line and three-phase power were not extended to the northern parcels prior to July 1, 1990. This makes no sense, since this infrastructure passes in close proximity to the nondesignated parcels and was indisputably intended to serve them along with the rest of the Glen Cove industrial area. Further, the extension of the LAMIRD boundary north to the UGA would not encourage a new pattern of low-density sprawling development but would instead permit industrial uses in an area physically improved and suitably located for them.

(7) The County violated the GMA when it limited commercial development in the Glen Cove LAMIRD despite the projected demand for additional land to accommodate commercial and industrial development.

(8) The County's designation of a "permanent" LAMIRD while retaining the "Glen Cove Special Study Area Potential Final Urban Growth Area" designation on its Comprehensive Plan Land Use Map creates an internal inconsistency in the CP in violation of the GMA.

(9) The County's designation of the Glen Cove, Paper Mill, and Eastview Industrial LAMIRDs resulted in inconsistencies between the CP and Countywide Planning Policies 1.3, 7.2 and 8.1 in violation of RCW 36.70A.210 and WAC 365-195-335(3)(a).

Petitioners PLC, on the other hand, claim that the LAMIRD boundaries are too large and that this oversizing will discourage growth in the Port Townsend UGA. They specifically challenge the designation of the new Eastview Industrial LAMIRD and

the expansion of the Glen Cove LAMIRD. Some of the key claims and arguments in their opening brief include:

(1) Every commercial-industrial building that existed inside the Provisional Urban Growth Area on July 1, 1990, except one, was included in the original Glen Cove LAMIRD.

(2) Since both the Eastview and Glen Cove LAMIRDs are located close to municipal limits, the requirement of RCW 36.70A.070(5)(d) that LAMIRDs be “limited” should be applied very strictly by this Board and the requirements of subsection (d)(iv) to “minimize and contain” should preclude vacant land suitable for a UGA reserve from being placed in a LAMIRD.

(3) The County may not expand LAMIRDs. This Board ruled in *Olympic Environmental Council v. Jefferson County*, WWGMHB No. 00-2-0019, Final Decision and Order (November 22, 2000) at 7, that LAMIRD expansion is not allowed by the GMA. There is no provision in the Act for interim LAMIRD outer boundaries. *Id.*

(4) PLC is not challenging the readoption as permanent of the “tightline” Light Industrial/Commercial LAMIRD designated as interim in the 1998 CP. However, PLC is challenging all of the expansion areas around that original LAMIRD designated Light Industrial.

(5) All five of these expansion areas are “outfill” not “infill” and should be rejected as this Board did in *Olympic Environmental*.

(6) PLC carefully discussed each of the five expansion areas separately and pointed out why PLC believes they do not qualify for LAMIRD designation. Additionally, PLC pointed out that:

(a) Only one area had industrial buildings on July 1, 1990. Ex. 11-20, at 1.

(b) All the commercial and industrial properties inside the Provisional Urban Growth Area that had water hookups from the water system that served the industrial area were inside the original “tightline” Glen Cove LAMIRD.

(c) All the area outside the original LAMIRD boundary could be best characterized as having the roads, power lines and water lines “simply sitting next to the property but built to serve an area beyond the property”. *City of Anacortes v. Skagit County*, WWGMHB No. 00-2-0049c (Compliance Order, January 31, 2002).

(d) The Glen Cove LAMIRD expansion should be rejected because of the impact on the aquifer recharge area. The 1998 CP designated much of the Glen Cove area as a “Hydro-geologically susceptible” aquifer recharge critical area. Ex. 17-1 at 8-13. Two of these expansion areas are within that aquifer recharge critical area. There is a higher level of risk of aquifer contamination when the density and intensity of commercial/industrial development increases over an aquifer recharge area.

(7) The Eastview Industrial LAMIRD is located on the boundary of the Paper Mill LAMIRD and the municipal limits of Port Townsend. The designation of Eastview as a LAMIRD is in effect an expansion of the Paper Mill LAMIRD. This Board should reject it because:

(a) The time for designation of industrial LAMIRDS has passed and the County erred when it adopted a new industrial LAMIRD.

(b) Because it is in effect an expansion of the Paper Mill Industrial LAMIRD and expansion of LAMIRDs is inappropriate, Eastview LAMIRD does not comply with the Act.

(c) Of the seven lots in the Eastview Plat, only one contained building development in 1990. Therefore, Eastview was not delineated predominantly by the built environment.

(d) At most, this Board should find that only Lot 1 of Eastview could be designated as a LAMIRD.

(e) At a minimum, Lot 7 (the open space lot) should be excluded from any industrial LAMIRD because there is no development allowed on this lot and no built environment on any of its boundaries.

(8) The County should be found not in compliance with the Act for continuing to plan for expansion of commercial and industrial LAMIRDs. The County amended its CP text by Section 7 of Ordinance No. 19-1213-02. Ex. 13-7. The amendment adopted at page 1-19 of the CP states:

Through this plan, Jefferson County ~~has~~will ~~continuously~~continuously ~~identified~~identify and ~~allocated~~allocate sufficient commercial and industrial land to meet future needs based on the 1997 amendments to the GMA allowing rural counties to recognize “existing areas and uses.

Ex. 3-16 at 2-72

Similar language was adopted to amend page 3-10 of the CP. Ex. 3-16. This CP amendment changes CP language to “commercial land in rural Jefferson County will be continuously assessed” apparently to continuously add more commercial and industrial LAMIRD area to the County to meet commercial and industrial needs. As this Board found in *Olympic Environmental* at 9-10, LAMIRDs are not intended to be used continuously to meet needs for additional commercial and industrial lands.

(9) LNP 5.8 still refers to revisiting interim commercial LAMIRD boundaries at the completion of the “special study”. Ex. 17-1 at 3-72. The County should be

directed to amend LNP 5.8 to reflect that final LAMIRD boundaries have been permanently designated.

(10) Based on all of the above, the Glen Cove LAMIRD expansion area should be found invalid under RCW 36.70A.302 for substantially interfering with Goal 1 of the Act to “encourage development in urban areas” and with Goal 2 to “Reduce Sprawl” and, considering impacts to aquifer recharge area, with Goal 10 to “Protect the Environment [and] water quality and the availability of water.”

(11) The CP does not provide all information required for the Glen Cove and Eastview LAMIRDS. RCW 36.70A.070(1) provides that the Land Use Element must provide “the extent of the uses of land” allowed in all designations and guidance on allowed “building intensities”. The CP gives an explanation of uses allowed in the Glen Cove Industrial Area, but gives no parameters regarding “building intensity”. There is no text in the CP to describe the new Eastview LAMIRD.

(12) The County has set standards for the intensity of development and the range of uses allowed in its industrial zoning categories that does not comply with the Act. The County is required by RCW 36.70A.070(5)(b) to allow only appropriate rural uses that are consistent with rural character. Subsection (5)(d)(i) allows LAMIRD designation subject to subsections (iv) and (v) which require LAMIRD development to be minimized and contained and to not create a new pattern of low-density development relative to the pattern that existed on July 1, 1990. The intent of the LAMIRD provisions is to allow infill development or redevelopment at the same intensity and character that existed in a LAMIRD on July 1, 1990. *Anacortes v. Skagit County*, WWGMHB No. 00-2-0049c, Final Decision and Order (February 6, 2001) at 11. PLC has analyzed 1990 intensities of development and pattern of uses

and found that intensities and uses allowed by the County for the challenged industrial LAMIRDs go well beyond that which existed on July 1, 1990:

(a) Glen Cove intensities – PLC members did extensive research on intensity of uses in the Glen Cove LAMIRD, including a 201-page study of the 1990 intensity and use parameters for the Glen Cove LC zone. Ex. 20-5. This study shows that in 1990, there was no building over 9,600 square feet in the area and the tallest building was 28 feet. *Id.* The highest building coverage was 38.9%. The maximum impervious surface coverage allowed was 45% in all rural commercial and industrial zones. Ex. 5-74.

Comparing these historic building intensities to the ones now allowed by Ex. 13-5, Table 6-1 shows that the allowed intensities are not typical of the existing pattern but are far beyond those historic levels.

(b) Glen Cove’s allowed uses are also much broader than historical uses. Ex.17-2 at 3-53 to 3-63.

(c) Quilcene, Eastview, and Paper Mill LAMIRDS all allow intensity, impervious surface coverage, building coverage, building height and building size well beyond historic development in those LAMIRDs. The allowed intensity of development allowed would create a new pattern of growth contrary to the GMA.

The County began its June 2, 2003 Respondent’s Brief with the following:

“How big is Glen Cove?” a Hearings Board member recently asked. You have been presented with 3 different answers to that question. The narrowest version of Glen Cove’s size has been offered by the citizens group known as People for a Livable Community (“PLC”). PLC insists Glen Cove is nothing more than a LAMIRD of 69 acres, as established in 1998 when the Jefferson County Comprehensive Plan (“CP”) was enacted. The elected County Commissioners, based upon their consideration of the careful reasoning and research by County staff as well as input from the adjacent incorporated City and citizens,

have determined that Glen Cove is properly a LAMIRD of 120 acres. A group of landowners known here as the Lindsay Petitioners assert that Glen Cove should be (or is) an UGA of at least 587 acres. Such a UGA would give this County two nonmunicipal UGA's, since one of 1,245 acres has been created in Port Hadlock/Irondale. Together they would constitute nearly three square miles of UGAs in the unincorporated County, a region populated by less than 18,000 persons.

Faced with a size factor difference of 850% between the smallest and largest opinions as to Glen Cove's size and a dispute as to which GMA category is appropriate, the County asserts that it has taken the proper middle path. The challenged decision was arrived at after substantial city-county discussion and debate, much public debate before the governing bodies of the city and the county, extensive public participation and comment before the County's Planning Commission, and numerous iterations before the final enactments. All items listed here are required by GMA. (Footnote deleted.)

The Respondent's Brief of the County also included the following key facts, assertions and arguments:

(1) Glen Cove is in close proximity to the City of Port Townsend not through good planning, bad planning or lack of planning. Instead, that proximity is a HISTORICAL FACT.

(2) The Glen Cove LAMIRD has two subsets, the 69-acre "tightlined" Light Industrial Commercial (GCLIC) zone and a 51-acre Light Industrial Only (GCLI) zone. Glen Cove has been a LAMIRD since 1998. The Paper Mill has been in place for at least 75 years and its designation as Heavy Industrial (HI) since 1998 was merely recognition of the obvious. It is the only HI land in the entire county. The property owned by the Lindsay Petitioners has been designated rural residential since 1998. The concept of industry in Glen Cove has at least a 25-year history.

(3) After the City expressed great concerns to the county commission at the March 18, 2002 public hearing regarding the LAMIRD boundaries recommended by county staff, the City and County agreed they should work towards a mutually acceptable Glen Cove LAMIRD boundary. The City-County agreement was memorialized in the April 8, 2002 Memorandum of Understanding (Ex. 19-3). Both City and County wished to know what Glen Cove boundary would be GMA compliant given the new definition of “built environment” handed down by the Board in the *City of Anacortes v. Skagit County*, WWGMHB No. 00-2-0049c (Final Decision and Order, February 6, 2001). The City and County hired an expert. The end result of the hiring of that expert has been specifically excluded from the record upon request of Petitioner PLC.

(4) The subsequent amendment to the Comprehensive Plan Land Use Map that reflected a proposed 2002 Glen Cove boundary is dated April 30, 2002 and therefore timely for the May 1 deadline for plan amendments laid out in UDC §9.9.1. (Ex. 1-2).

(5) Between April 30, 2002 and December 13, 2002, the date when the Glen Cove LAMIRD boundary was adopted via Ordinance 15-1213-02, the proposed boundary went through various iterations reflecting ongoing comment from the public and the City.

(6) After public hearings on June 19, 2002 and July 10, 2002, the Planning Commission recommended a larger Glen Cove LAMIRD than was eventually adopted. (Ex. 2-12, at 1).

(7) The Respondent’s Brief pointed out innumerable ways it complied with the Public Participation requirements of the Act.

(8) The development regulations for Glen Cove were amended during the 2001 Comprehensive Plan amendment cycle via Ordinance 07-1224-01, which PLC

appealed in PFR 02-2-0003 [which was eventually consolidated into the current case]. However, most, if not all, of Ordinance 07-1224-01 was repealed and/or altered by Ordinance 18-1213-02, Ex. 13-4.

(9) Regarding the sizing of the Glen Cove LAMIRD, Jefferson County relies upon the Boundary Analysis (Ex. 2-8) and the Findings numbered 34 through 120 made part of Ordinance 15-1213-02 (Ex. 13-3). Those documents reflect the “thought process” that it underwent before adopting the permanent Glen Cove LAMIRD boundary in December 2002.

Because the underlying zoning designation for the 69-acre “Glen Cove Light Industrial with Associated Commercial” zone was not changed as part of this County’s 2002 CP amendment cycle, all that is in dispute in this PFR is the 51-acre “Glen Cove Light Industrial Only” zone.

(10) This is the first time that Jefferson County has adopted a LAMIRD boundary for Glen Cove since this Board provided a more precise definition of the GMA term “built environment” in *Anacortes v. Skagit County*, WWGMHB 00-2-0049c (Final Decision and Order, February 6, 2001). Further, not until June 1999, well after the County adopted its CP with the interim LAMIRD boundaries included, did the Office of Community Development come out with its guidance document on LAMIRDS.

(11) RCW 36.70A.100 and Countywide Planning Policy #3 require intergovernmental cooperation. The county is proud of the city and county cooperation and concurrence during this difficult process.

(12) The State Office of Community Development, the state agency with expertise in the GMA, had only high praise for both the results (the 120-acre LAMIRD) and the process, including “interjurisdictional cooperation, that led to that result for Glen Cove. Ex. 4-23 and 4-25. OCD wrote in December 2002:

‘[t]he supporting documentation of the factors considered, the discussions held, and the reasoning behind the changes are evidence of a thorough analysis of all the planning issues associated with this [CP] amendment and associated changes to the ... County [DR]. We appreciate the concerted efforts of both county and city staff and elected officials to work on these complex issues in a spirit of cooperation.’ (Ex. 4-25.)

(13) As to the standards for bulk and dimension and allowed uses in the LAMIRDS:

(a) The sizes given by PLC are available to an applicant only if that applicant can meet the twelve tough criteria in UDC §8.8.5 (Ex. 17-2 at 8-23 and 8-24) and thereby obtain a conditional use permit. A conditional use permit can only be obtained after a public hearing before an impartial Hearing Examiner. The criteria basically require the applicant to prove that the bulkier building will be consistent with what is already there.

(b) The uses in the Glen Cove Light Industrial Only zone are the same as those permitted in the Quilcene/Eastview Light Industrial Zone except that two uses allowed in Quilcene are prohibited: 1) mini storage facilities and 2) automobile wrecking or junk yards. All other uses in all other rural industrial zones were not altered by any of the challenged ordinances.

(14) The County was fully aware that any LAMIRD, including Glen Cove, cannot be a target for economic growth and thus the Trottier report is totally irrelevant to this LAMIRD designation process.

(15) The presence of a susceptible critical aquifer recharge area in the vicinity of Glen Cove, does not mean the area must be either a “no build” zone or even a zone where building is done at a lesser density. Instead, what occurs within such an area is that a prudent local government (such as this one) prohibits certain uses and applies other stringent rules to what is developed there, including application of the 2001

Storm Water Management Manual. The UDC §3.6.5 (Ex. 17-2 at 3-14 to 3-17b) provides sufficient protection for the critical aquifer recharge area.

(16) When reviewing the County's choices as to the challenged LAMIRDs, it is not the Board's role to determine if there are better options out there than what was enacted; rather, the Board is to determine if what was enacted passes GMA muster. *Evergreen Islands v. Skagit County*, WWGMHB No. 00-2-0046c (Final Decision and Order, February 6, 2001).

(17) The County described in detail the requirements of RCW 36.70A.070(5) and explained how its choices comply with those LAMIRD requirements. The County pointed out that the roads, water lines, and an adjacent and accessible three-phase power line that were in place before July 1, 1990, always were intended to serve Glen Cove and not other distant areas.

(18) The only question properly before this Board regarding the 120-acre Glen Cove LAMIRD is whether it meets the criteria laid out in the statute and the *Anacortes* case. Figure 7 of Ex. 2-8 generated in March 2002 shows that the boundary proposed was much different and larger than the one that the County adopted nine months later. The northerly line was moved substantially south, immediately above Glen Cove Road where the water line turns east to serve the grid of streets in the Glen Cove LAMIRD. The southerly line of the LAMIRD was moved north to coincide with the southerly end of the 10" water main. The County also squared off the eastern edge of the LAMIRD.

(19) PLC's argument that the 51-acre GCLI zone is, in reality, five separate zones, each of which must individually pass muster, ignores the fact that the GCLI zone is a subset of a single LAMIRD that happens to have two zones in it. The area in question

here is not the five little slices, but all of the Glen Cove LAMIRD. Even if each piece is considered separately, all satisfy the *Anacortes* test.

(20) Lindsay Petitioners have argued that the County's action of dropping the word "interim" from the title for the GCLIC zone (the original 69 acres) and from the title of the Paper Mill HI zone constitutes a sufficient amendment to make those zones vulnerable to a Petition for Review. This assertion makes no good GMA sense, since the Petition for Review system exists so that a person can challenge a policy decision made pursuant to GMA. Since the size of the GCLIC zone, the rural residential zoning for the Lindsay parcel and the size and rules for the Paper Mill HI zone have not changed, no policy change was made.

(21) Even if we were to assume that the rural residential parcels are vulnerable to an appeal, the County made the considered decision that these parcels do not belong inside the LAMIRD because:

(a) RCW 36.70A.070(5)(d)(iv) requires that the "more intensive rural development" area be contained and minimized. To include the lands in question in the Lindsay Petition the County would have to include 176 acres of completely vacant land.

(b) Those 176 acres also lack the underground infrastructure of the 10" water main and close proximity to the three-phase power line.

(c) Finally, those 176 acres contained no infrastructure above or below ground that was in place on the measuring date of July 1, 1990.

(22) Because PLC never commented in the record below regarding the issues now asserted in Issues 3, 5, 8, and 11, they lack standing to raise these issues:

(a) Comments from PLC are nowhere to be found in the record created by the County's decision makers regarding Issue 3 (failure to provide CP narrative

language for the GCLI zone); Issue 5 (challenging amendments to CP language on industrial lands); and Issue 11 (lack of internal consistency within the CP). If PLC is found to have standing with regard to Issues 5 and 11, the County will revise the language on pages 1-19 and 3-10 of its CP to reflect the current status of LAMIRD law. Even if PLC is found to have standing as to Issue 3, nothing in RCW 36.70A.070(1) requires that there must be distinct narrative for each distinct zone. Careful reading of the 2002 development regulation amendments have made it clear what narrative language in the CP would apply to the GCLI and the Eastview LAMIRD. PLC's claim is without merit.

(b) Regarding Issue 8 (designating the Eastview LAMIRD), the County found only one PLC comment, Ex. 20-22. The County did exactly what PLC requested in that comment and dropped the "mapping error" application regarding the Eastview area.

(23) Eastview is six lots and a reserve area platted as an industrial plat in 1978. Eastview easily met all of the requirements of a LAMIRD. The Eastview LAMIRD does about a UGA, but the City has made a conscious decision not to expand its UGA. Petitioners Lindsay have failed to show that it is urban and/or must be included in a UGA and Petitioners PLC have failed to show that it does not meet the LAMIRD criteria of the Act.

(24) Petitioners PLC cannot satisfy their burden of proof with respect to the six issues dealing with the intensities and uses allowed in the rural industrial districts. The County was well within its discretion when it adopted the intensity of development allowed. In light of this Board's decision in *Panesko v. Lewis County*, WWGMHB #01-2-0010c (Compliance Order, July 10, 2002), the county's choice to replicate the Light Industrial uses found in the GCLIC zone (and never challenged) and making them applicable to the new GCLI zone is GMA compliant.

(25) Given the historical makeup of the Glen Cove industrial area and the LAMIRD requirements to limit the development to existing type uses, commercial uses would not be appropriate in the Glen Cove LAMIRD.

(26) Petitioner PLC has provided no legal argument in support of Issues 6, 12, 13, and 17. Furthermore, PLC insisted that their legal issues include numerous CP provisions, none of which are argued in their opening brief. Therefore, all of Issues 6, 12, 13, and 17, and any CP provision not argued with respect to other issues have been abandoned by PLC and cannot be revived. *Whatcom Environmental Council v. Whatcom County*, WWGMHB No. 95-2-0071 (Final Decision and Order, December 20, 1995).

Board Discussion on LAMIRD Topic

In this case, we have two different groups of Petitioners. One group, PLC, contends that Jefferson County has included too much land in the recent LAMIRD changes and should not be allowed to expand the Glen Cove 1998 “tightline” “interim” LAMIRD at all. On the other hand, the Lindsay Petitioners contend that the Glen Cove LAMIRD expansion did not include additional acreage that qualifies under the Act for LAMIRD designation and should have been included. The record reflects that the County was in a very difficult position when it made the tough choices of which areas to include and which not to include.

We commend the County for working closely with the City of Port Townsend, outside experts, landowners, and other citizens through several iterations of the Glen Cove LAMIRD boundary before deciding on a final boundary. We also commend the County for doing an excellent job of “showing its work” throughout this difficult and thankless process.

With so many assertions and counter-assertions from all sides on this complex topic, it is difficult to figure out how to frame a coherent and comprehensible discussion regarding the LAMIRD challenges. We have attempted to lay out a fairly complete list of the key points made by various parties to give the reader a background on the topic we are discussing here. We will not repeat many of those points in this discussion, so a thorough reading of the parties' position is advised.

Lindsay Petitioners were frustrated and disappointed with the outcome of the Glen Cove designation process because even though the planning commission recommended adoption of a much larger LAMIRD that included Lindsay's property, the Board of County Commissioners adopted the smaller version agreed upon earlier by the County and the City. What the Lindsay Petitioners fail to understand is that the City and the County pledged to each other that they would agree upon designations that comply with the Act. The County has the legal obligation to minimize and contain LAMIRDs. In this situation, the County had the very difficult task of reconciling preexisting realities while still complying with the Act. The Lindsay Petitioners are correct that the provisions of RCW 36.70A.070(5)(d)(i) focus on areas rather than individual lots. However, if we were to look at the LAMIRD logical outer boundaries as loosely as Lindsay petitioners have requested, we might well end up condoning GMA zoning that merely legalizes all the pre-GMA sprawling rural commercial/industrial zoning that the GMA legislation was designed to stop, or at least lessen. We have long held that previous zoning in and of itself does not qualify property for being included in a LAMIRD.

LAMIRDs must not be sized on the basis of need for additional industrial acreage. The key with LAMIRDs is that they allow infill development and redevelopment within the logical outer boundary as predominantly delineated by the built environment in 1990. We made this point clear in *Olympic Environmental Council v.*

Jefferson County, WWGMHB No. 00-2-0019 (Final Decision and Order, November 22, 2000) regarding commercial development when we said:

LAMIRDs were never designed to be used as a safety valve for commercial growth and expansion. LAMIRD commercial activity is limited to infill development and redevelopment within the logical outer boundary as predominately delineated by the built environment in 1990. In and of itself, need for additional acreage is not a justification for expanding LAMIRDs beyond their logical outer boundaries.

The area that Lindsay wants included in the Glen Cove LAMIRD was totally empty of anything but trees in 1990. Urban level utilities were in the general area in 1990, but the 176-acre contested area contained no manmade infrastructure in place above or below the ground on July 1, 1990. **The Lindsay Petitioners have failed to show that the County was clearly erroneous when it left the 176 acres, including the Lindsay property, out of the Glen Cove Industrial LAMIRD.**

The PLC Petitioners were also displeased with the County's ultimate choice of an outer boundary for the Glen Cove Industrial LAMIRD. These Petitioners make many good points about the reasons why they believe the additions to the 1998 "tightline" Glen Cove Industrial LAMIRD do not comply with 36.70A.070(5)(d)(i). PLC argues that since both the Glen Cove and Eastview LAMIRDs are located close to the Port Townsend city limits, the requirement of RCW 36.70A.070(5)(d) that LAMIRDs be "limited" should be applied very strictly and the requirements of subsection (d)(iv) to "minimize and contain" should preclude vacant land suitable for a UGA reserve from being placed in a LAMIRD. PLC Petitioners also argued strongly against allowing any expansion at all of the "interim tightline" boundary.

PLC Petitioners rely on the Final Decision and Order in *Olympic Environmental* and argue that the Glen Cove LAMIRD, once established, may not be expanded. In *Olympic Environmental*, petitioners challenged the expansion of three LAMIRDs,

charging that the expansions went beyond logical outer boundaries, were inconsistent with the Growth Management Indicators called for by the comprehensive plan and were untimely, in that the CP called for a reevaluation of boundaries only after the Tri-Area Special Study was completed. *Olympic Environmental* Final Decision and Order at 2-3. Olympic Environmental Council (OEC) maintained that since the object of LAMIRDs is to limit more intensive rural development, they are not expandable except under certain conditions of the comprehensive plan. Petitioners noted that the comprehensive plan provided for changes to LAMIRDs after special studies regarding urban growth areas were complete. Petitioners further noted that this Board had insisted on this condition since the very first Jefferson County case in 1994 and that the County had still not completed the study. *Id.* at 4.

In the current case, the special studies referred to in *Olympic Environmental* have now been completed. Because of the special circumstances in this case (where specific provision was made in the CP for reevaluation of the boundaries when the special studies were completed), it is now appropriate for the County to reassess those LAMIRD boundaries. This must not lead to an ongoing reassessment of LAMIRD boundaries as PLC fear. However, if the provisions of the Act pertaining to LAMIRDs were to be changed in the future, additional adjustments could be appropriate.

PLC Petitioners contend that the Glen Gove LAMIRD expansion should be rejected because of the potential impact on a susceptible critical aquifer recharge area. The 1998 CP designated much of the Glen Cove area as a “Hydro-geologically susceptible” aquifer recharge critical area. Ex. 17-1 at 8-13. Two of these expansion areas are within that critical area. There is a higher level of risk of aquifer contamination when the density and intensity of industrial development increases over an aquifer recharge area.

The County responds that the presence of a susceptible critical aquifer recharge area in the vicinity of Glen Cove does not mean the area must be a “no build” zone, or even a zone where building must be done at a lesser density. Instead, what occurs within such an area is that a prudent local government such as Jefferson County prohibits certain uses and applies other stringent rules to what is developed there, including application of the 2001 Storm Water Management Manual. UDC §3.6.5 (Ex. 17-2, at 3-14 to 3-17b) provides sufficient protection for the critical aquifer recharge area. After careful consideration of Exhibit 17-2 and county and petitioners’ arguments, we are not convinced that the new boundary should be rejected by us solely due to the presence of a susceptible aquifer recharge area.

When reviewing the County’s choices of LAMIRD boundary lines, it is not our role to determine if there might be better options than what was enacted; rather, we are to determine if what was enacted complies with the Act. *Evergreen Islands v. Skagit County*, WWGMHB No. 00-2-0046c (Final Decision and Order, February 6, 2001).

After careful review of the Boundary Analysis (Ex. 2-8), Findings 34 through 120 of Ordinance #15-1213-02 (Ex. 13-3), exhibits presented by Petitioners and arguments of the parties, we are not convinced that the County’s designation of Glen Cove Industrial LAMIRD boundaries was clearly erroneous.

Designation of the Eastview Industrial LAMIRD

Regarding designation of the Eastview Industrial plat as a LAMIRD, we note that:

- (a) The record reflects that no one from PLC expressed concerns about this designation during the current comprehensive plan amendment process.
- (b) Lindsay Petitioners only contended that the plat was urban and should be included in a UGA.

(c) Thus, the Jefferson County Commissioners had no warning that the Eastview Plat would be challenged for not meeting the LAMIRD criteria as clarified in *Anacortes*.

(d) The record shows that the Eastview Plat does meet those requirements for a LAMIRD designation.

(e) The Eastview LAMIRD does abut a UGA, but the City of Port Townsend has decided it is inappropriate to expand its UGA at this time.

(f) PLC's choice of an urban reserve designation might be appropriate for large undeveloped parcels; however, with the six one-and-a-half-acre preplatted lots which make up the Eastview LAMIRD, that argument is not persuasive.

(g) PLC has provided no legal support for its assertion that the Eastview LAMIRD is really only an extension of the Paper Mill LAMIRD and should be analyzed as such.

Petitioner Lindsay has failed to show that the Eastview Plat must be included in a UGA. Petitioners PLC have failed to convince us that Eastview does not meet the LAMIRD criteria under the Act. **We therefore find that, given the current circumstances, the County was not clearly erroneous when it designated the Eastview Industrial LAMIRD.**

Paper Mill Heavy Industrial LAMIRD

The Paper Mill Heavy Industrial LAMIRD redesignation was not mentioned in any of the 23 issues raised by petitioners in their petitions for review and therefore was not listed in the prehearing order issues to be determined. Lindsay Petitioners discussed it only to argue that its intense development must be included in an UGA. However, there was some discussion presented by PLC Petitioners at the hearing on the merits regarding that LAMIRD boundary, topography and uses. **We wish to clarify that since the Paper Mill permanent LAMIRD boundary designation was not timely challenged, it is considered to be in compliance with the Act.**

Intensity of Development and Uses Allowed in the Glen Cove Industrial LAMIRD

We now turn to the range of uses and intensity of development allowed in the Glen Cove Industrial LAMIRD. Petitioners PLC argue that the County is required by RCW 36.70A.070(5)(b) to allow only appropriate rural uses that are consistent with rural character. Subsection (5)(d)(i) allows LAMIRD designations subject to subsections (iv) and (v) which require LAMIRD development to be minimized and contained and to not create a new pattern of low-density development relative to the pattern that existed in that area on July 1, 1990. PLC Petitioners further argue that the intent of the LAMIRD provision is to allow infill development or redevelopment at the same intensity and character that existed in that LAMIRD on July 1, 1990. *City of Anacortes v. Skagit County*, WWGMHB No. 00-2-0049c, Final Decision and Order at 1 (February 6, 2001). PLC members spent countless hours and energy analyzing 1990 intensities of development and patterns of uses and found that intensities and uses allowed by the County for the challenged Glen Cove LAMIRD go well beyond that which existed on July 1, 1990. Ex. 20-5. This study shows that in 1990, there was no building over 9,600 square feet, and the tallest building was 28 feet. *Id.* The highest building coverage was 38.9%. *Id.* Maximum impervious surface coverage allowed was 45%. Ex. 5-74.

The County responded that the allowed uses are similar in type or category to those which existed on July 1, 1990. That is one reason why commercial uses are not permitted in the new Light Industrial Only zone. The County points out that the Office of Community Development praised the County for choices made, including uses and intensity allowed, for Glen Cove:

The Glen Cove Light Industrial zone boundary revision reflects a thorough analysis of the existing interim boundary, and a good example of interjurisdictional cooperation with the City of Port Townsend in analyzing the information and in obtaining expert assistance. The

boundary revision will occur pursuant to RCW 36.70A.390 and will utilize optional provisions contained in the Growth Management Act related to Limited Areas of More Intensive Rural Development (LAMIRD) in RCW 70.36A.070(5). The adoption of the revised boundary for the area is consistent with the process in your comprehensive plan (LNP 1.4 and LNP 11.3.2).

We also fully support the staff report's proposed changes to the current proposal, which request unified development code (UDC) requirements for a maximum building height of 35 feet and building footprint of 20,000 square feet, and a return to the maximum lot coverage of 60 percent for all impervious surfaces. We think these provisions reflect the rural character of the area better than what has been proposed and better implement the intent of the LAMIRD provisions of the GMA. (Ex. 4-23, p. 1 and 2)

Further, on Dec. 6, 2002, OCD supported the further changes made in intensity of development allowed:

This letter is to convey our support for the proposed minor changes to the Glen Cove LAMIRD boundary and concurrent changes to the Unified Development Code on building size and lot coverage maximums within this area. We received notice of these proposed staff recommendations in the November 6, 2002, staff report.

The supporting documentation of the factors considered, the discussions held, and the reasoning behind the changes are evidence of a thorough analysis of all the planning issues associated with this comprehensive plan amendment and associated changes to the Jefferson County development regulations. We appreciate the concerted efforts of both county and city staff and elected officials to work on these complex issues in a spirit of cooperation. (Ex. 4-25, p. 1)

The County further responds that the allowed sizes PLC compares to existing development require a special use permit. The conditional use permit ensures that the bulkier buildings, if allowed, will be consistent with buildings already in place. The

process of subjecting these proposals to tough criteria and a public hearing before an independent hearings examiner will be less conducive to sprawl than allowing a number of 10,000 square-foot buildings on each parcel. Under this Board's ruling in *Panesko v. Lewis County*, WWGMHB No. 01-2-0010c (Compliance Order, July 10, 2002), the County's choice to replicate the Light Industrial intensities found in the "tightline" GCLIC zone complies with the Act.

After careful consideration of the County's record and argument, and exhibits and argument presented by Petitioners, we are not convinced that the County was clearly erroneous in its choices regarding uses and development intensity allowed in the Glen Cove industrial LAMIRD.

Uses and Intensity of Development Allowed in Eastview Industrial LAMIRD

PLC points out that the maximum building size in Eastview in 1990 was 6500 sq. ft. with impervious surface of about 36% of the site. The only use was candle-making and boat storage. Petitioners contend that the intensity allowed in Ex. 13-2, Table 6-1 and uses allowed in Ex. 17-2 at 3-53 to 3-63 are excessive for this LAMIRD.

The County responds that the County commission was well within its legislative discretion when it determined allowable intensity and uses in the Eastview LAMIRD. When it comes to uses allowed, the permitted uses in a LAMIRD do not have to be precisely those that were present on July 1, 1990. *See Panesko v. Lewis County*, WWHMHB 01-2-0010c (Compliance Order, July ;10, 2002).

PLC Petitioners have not met their burden of proof regarding allowed uses and intensity of development in the Eastview Industrial LAMIRD.

Intensity of Development Allowed in Other Industrial Zones

PLC's total argument on this issue can be found in four lines in its opening brief at 24:

For Quilcene and the Port Townsend Paper Mill the 1990 aerial photos show small ratios of impervious surface and relatively large areas of undeveloped land. Ex 16-184b, 16-184c, and Attachment 4. The allowed intensity of development for these sites would create a new pattern of growth contrary to the GMA.

This cursory argument is not adequate for Petitioners to meet their burden of proof regarding allowed uses and intensity of development in other industrial zones.

Provisions for Continuing Expansion of Commercial and Industrial LAMIRDs

PLC Petitioners contend that the County should be found not in compliance with the Act for continuing to plan for expansion of commercial and industrial LAMIRDs. The County amended its CP text by Section 7 of Ordinance No. 19-1213-02. Ex. 13-7.

The amendment adopted at page 1-19 of the CP states:

Through this plan, Jefferson County ~~has~~ will continuously ~~identify~~ ied and ~~allocated~~ sufficient commercial and industrial land to meet future needs based on the 1997 amendments to the GMA allowing rural counties to recognize "existing areas and uses.

Ex. 3-16 at 2-72

PLC further pointed out that similar language was adopted to amend page 3-10 of the CP. Ex. 3-16. This CP amendment changes CP language to "commercial land in rural Jefferson County will be continuously assessed" apparently to continuously add more commercial and industrial LAMIRD area to the County to meet commercial and industrial needs. As this Board found in *Olympic Environmental* at 9-10, LAMIRDs are not intended to be used continuously to meet needs for additional commercial and industrial lands. Also, LNP 5.8 still refers to revisiting interim commercial LAMIRD boundaries at the completion of the "special study". Ex. 17-1 at 3-72. The County

should be directed to amend LNP 5.8 to reflect that final LAMIRD boundaries have been permanently designated.

The County responds that it does not believe that PLC Petitioners have participation standing for issues related to this PLC contention. If we find that PLC does have standing, the County will revise the language on pages 1-19 and 3-10 of its CP to reflect the current status of LAMIRD law.

We note that PLC Petitioners argued in the record below that expansion of LAMIRDS is not appropriate even if a need is shown for commercial/industrial development. We find that these comments give PLC participation standing to argue these closely related issues. As we stated earlier in this decision, LAMIRDS must not be sized or expanded to accommodate need for additional commercial or industrial acreage. We quoted the *Olympic Environmental* FDO to support the ruling that LAMIRDS were intended to be a one-time recognition of existing areas and uses and not intended to be used continuously to meet needs (real or perceived) for additional commercial and industrial lands.

County 7/22/02 Staff Report, Ex 2-11, states at 1:

The County legislators should again acknowledge on the public record that these proposed revisions would be the final revisions to the Glen Cove LAMIRD boundary, making these boundaries permanent unless state law changed or there was a collective City-County decision that Glen Cove should become an urban growth area (UGA).

We agree with County staff and believe that this should also be reflected as to other LAMIRDS. LAMIRDS are to acknowledge historical reality and not to provide a safety valve for needed or desired additional commercial/industrial development.

In order to comply with the Act, the County must revise the language of pages 1-19 and 3-10 and LNP 5.8 of its C-P (Ex. 17-2 at 3-72) to reflect that final LAMIRD boundaries have been permanently designated. Only if the GMA legislation were to be changed would further expansion of LAMIRDs be appropriate.

Abandoned Issues

The County is correct in its assertion that the Petition for Review, as is reflected in the Revised Prehearing Order, raised a number of issues that were abandoned or treated in only a cursory fashion in Petitioners' briefing. A review of Petitioners' briefing indicates that PLC Petitioners have abandoned Issues 6, 12, and 17 in their entirety. Most of PLC's other Issues contained portions which were not briefed or only referred to in a general, cursory manner.

We consider issues 6, 12, and 17 and the parts of other PLC issues that were mentioned only in passing or not briefed at all, to be abandoned.

VI. FINDINGS OF FACT

- 1) Jefferson County is a county located west of the crest of the Cascade Mountains that has chosen to or is required to plan under RCW36.70A.040.
- 2) Petitioners are a landowner group and an organization that, through their members and representatives, participated in writing or through oral comments in the process at the County level.
- 3) Petitioners timely filed their petitions for review.
- 4) Case 03-2-0009c is a consolidation of cases 02-2-0003, 03-2-0001c, 03-2-0005 and 03-2-0009. All of these cases involved the Glen Cove industrial area designations.

- 5) The property of the Lindsay Petitioners was not included in a UGA or the Glen Cove Industrial LAMIRD. The PLC Petitioners oppose the expansion of the Glen Cove Industrial LAMIRD and the designation of the Eastview Industrial LAMIRD in the same vicinity.
- 6) Even though one might argue that some portions of the Glen Cove area are characterized by urban growth, there is nothing in the GMA that requires land “characterized by urban growth” to be placed inside a UGA. Existing urbanization does not always dictate inclusion of the area within a UGA. *Achen v. Clark County*, WWGMHB No 95-2-0067 (Final Decision and Order, September 20, 1995).
- 7) The LAMIRD designation approach that the County chose is based on acknowledging preexisting industrially developed areas within logical outer boundaries as predominantly delineated by the built environment on July 1, 1990, and not on need for additional industrial development. RCW 36.70A.070(5)(d).
- 8) There is no showing in the record that the Lindsay Petitioners were singled out for unfair treatment. The Comprehensive Plan Land Use Map, Ex. 17-1, shows that 38 parcels surround the Port Townsend city limits. All of those parcels were zoned RR 1:20 to provide a rural reserve for future UGA expansion and eventual urban development within that area.
- 9) Currently, the Port Townsend UGA is more than ample in size and the City has no interest in having that additional area included in its UGA.
- 10) LAMIRDs must not be sized by need for additional industrial acreage. The key with LAMIRDs is that they allow infill development and redevelopment within logical outer boundaries based on the built environment on July 1, 1990. RCW 36.70A.070(5)(d). This Board made this point clearly in *Olympic Environmental Council v. Jefferson County*, WWGMHB #00-2-0019 (Final Decision and Order, November 22, 2000).

- 11) The 176 acres Lindsay Petitioners want included in the Glen Cove LAMIRD contained no manmade urban infrastructure above or below the ground on July 1, 1990.
- 12) Because of the special circumstances in this case (where special provision was made in the Comprehensive Plan for reevaluation of the “tight line” LAMIRD boundaries when the special studies were completed), it is now appropriate for the County to reassess these LAMIRD boundaries.
- 13) The Eastview Plat meets the criteria for type (d)(i) LAMIRD designation. In 1990 the eight-acre plat contained six lots which were all served by a cul-de-sac street and an industrially sized waterline. A septic system was also in place. Above the ground manmade infrastructure included a candle manufacturing facility, fenced lots and boat storage. No one, including the PLC Petitioners presented anything to refute these findings at the local level. . The Eastview LAMIRD does abut a municipal UGA, but the City of Port Townsend has decided that it is inappropriate to expand its UGA at this time.
- 14) The County has done an excellent job of showing its work. “The supporting documentation of the factors considered, the discussions held, and the reasoning behind the changes are evidence of a thorough analysis of all the planning issues associated with the comprehensive plan amendment and associated changes to the Jefferson County development regulations.” Ex 4-25, Office of Community Development 12/6/2002 letter to the County at 1.
- 15) LAMIRDs were intended to be a recognition of existing areas and uses, and were not intended to be expanded on a continuing basis to meet real or perceived needs for additional commercial and/or industrial lands.

VII. CONCLUSIONS OF LAW

- 1) This Board has jurisdiction over the parties and subject matter of these petitions.

- 2) Petitioners have standing to bring these appeals on the basis of their participation in the proceedings below, and their petitions were timely filed.
- 3) The County, given its current circumstances, complied with the Act when it chose neither to expand the Port Townsend UGA into the Glen Cove industrial area, nor to designate the Glen Cove industrial area as a nonmunicipal UGA at this time.
- 4) The Lindsay Petitioners have failed to show that the County was clearly erroneous when it left the contested 176 acres, including the Lindsay property, out of the Glen Cove Industrial LAMIRD.
- 5) The County's expansion of the logical outer boundaries for the Glen Cove LAMIRD complies with the Growth Management Act, RCW36.70A.070(5)(d).
- 6) The County's designation of the Eastview industrial plat as a light industrial LAMIRD complies with the Growth Management Act, RCW36.70A.070(5)(d).
- 7) The County's readoption of the interim Paper Mill Heavy Industrial LAMIRD as permanent complies with the Growth Management Act, RCW36.70A.070(5)(d).
- 8) Petitioners have failed to show that the County was clearly erroneous when it adopted intensity and use regulations for the above LAMIRDS.
- 9) The language in the Comprehensive Plan (Ex. 17-2) at 1-19, 3-10 and 3-72 regarding ongoing changes in Commercial/Industrial LAMIRDS does not comply with the Act.

VIII. ORDER

We find the County in compliance as to all issues raised except one.

Within 180 days of this order, the County must bring the language in its comprehensive plan regarding ongoing changes to commercial/industrial LAMIRDS into compliance with the Act.

Jefferson County shall submit a report on compliance to this Board and to Petitioners in this case by February 27, 2004.

A compliance hearing is set for April 13, 2004, at a time and location to be set by subsequent order. Any party wishing to contest the County's compliance with the Act must submit written objection and reasons to us no later than March 19, 2004. The County's response to any written objections shall be due no later than April 8, 2004.

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 22nd day of August 2003.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Nan A. Henriksen, Board Member

Margery Hite, Board Member