

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON**

STATE OF WASHINGTON,)	
DEPARTMENT OF CORRECTIONS)	Case No. 05-3-0043c
(DOC))	
)	<i>(DOC III / IV)</i>
)	
Petitioner,)	
)	
v.)	
)	FINAL DECISION AND ORDER
CITY OF LAKEWOOD, WASHINGTON)	
)	
Respondent.)	
)	

SYNOPSIS

The Department of Corrections (DOC) proposes to locate a correctional facility in an existing building on the Western State Hospital campus, within a Public Institutional Zoning District (PI) in the City of Lakewood (Lakewood or City). Upon learning of DOC's intent, Lakewood adopted Ordinance 376 and Resolution 2005-13 establishing a moratorium on applications for licenses, permits and approvals related to correctional facilities in PI districts¹. The City subsequently adopted Ordinance 390 establishing a new moratorium on applications for correctional facilities in PI districts. DOC appealed each moratorium and the two appeals were consolidated as CPSGMHB Consolidated Case No. 05-3-0043c.

DOC claims Lakewood's moratorium precludes the siting of a state essential public facility and does not comply with provisions of the Growth Management Act (GMA or ACT). Lakewood claims the moratorium is necessary to allow legislative review and amendment of comprehensive plan policies and development regulations for essential public facilities and for public and semi-public institutional land uses.

The Board found that Lakewood's existing plan policies and development regulations permit the siting of state essential public facilities in the PI district, subject to a conditional use permit (CUP). The Board found that Lakewood's existing CUP process is an appropriate vehicle for addressing mitigating measures associated with the siting of a state essential public facility. The Board concluded that the moratorium causes an unpredictable and unreasonable delay in siting a state essential public facility. The

¹ Ordinance 376 included a moratorium on approvals of permits for group homes, in-patient facilities and mental health facilities within PI districts.

Board found the City's enactment of the moratorium to be non-compliant with RCW 36.70A.200, RCW 36.70A.020(7), and (11); and to be clearly erroneous. The Board remanded Ordinance 390 to the City, declared the ordinance invalid and set a schedule for the City to comply with the requirements of the GMA.

I. BACKGROUND²

On June 30, 2005, the Central Puget Sound Growth Management Hearings Board (**CPSGMHB** or the **Board**) received a Petition for Review (**PFR**) from State of Washington, Department of Corrections (**DOC** or **Petitioner**). The matter was assigned Case No. 05-3-0037, and is hereafter referred to as *DOC III v. City of Lakewood*. Board member Bruce Laing is the Presiding Officer for this matter. Petitioner challenges the City of Lakewood (**City** or **Lakewood** or **Respondent**) adoption of Resolution No. 2005-13, continuing a moratorium on the filing of applications for licenses and permits and approvals for group homes, correctional facilities, in-patient facilities and mental health facilities located within Public Institutional Zoning Districts. The basis for the challenge is noncompliance with the Growth Management Act (**GMA** or **Act**).

On October 14, 2005, the Board received a PFR from State of Washington, Department of Corrections. The matter was assigned CPSGMHB Case No. 05-3-0043, and is hereafter referred to as *DOC IV*. Board member Bruce Laing is the Presiding Officer for this matter. Petitioner challenges Lakewood's adoption of Ordinance No. 390, establishing a moratorium on the filing of applications for licenses and permits and approvals related to correctional facilities located within Public Institutional Zoning Districts. The basis for the challenge is noncompliance with the GMA.

On October 21, 2005, the Board issued a Notice of Hearing and Order of Consolidation, consolidating CPSGMHB Case No. 05-3-0037 *DOC III* and CPSGMHB Case No. 05-3-0043 *DOC IV* as CPSGMHB Consolidated Case No. 05-3-0043c (*DOC III / IV*), and scheduling a Prehearing Conference for *DOC III / IV*.

The Board conducted a prehearing conference and issued its prehearing order (**PHO**) setting forth the schedule and Legal Issues to be decided. The PHO set the deadlines for filing motions and responses, both dispositive and supplementation, concurrent with the filing of Petitioner's and Respondent's briefs. The PHO stated that the Board's decisions on motions would be included in the Final Decision and Order. Lakewood submitted a dispositive motion and there were no motions to supplement the record.

During November and December 2005, the Board received timely briefing from all the parties. Hereafter, the briefs are noted as follows: November 16, 2005, Lakewood Motion to Dismiss (**Lakewood Motion**); December 7, 2005, DOC Response to Lakewood' Motion to Dismiss (**DOC Response to Motion**); November 23, 2005, DOC

² For more complete details see Appendix – A, Procedural History – CPSGMHB Case No. 05-3-0037 and CPSGMHB Case No. 05-3-0043c.

Prehearing Brief (**DOC PHB**); December 8, 2005, Lakewood Response and Prehearing Brief (**Lakewood Response**); December 16, 2005, DOC Reply Brief (**DOC Reply**).

On December 22, 2005, the Board opened the Hearing on the Merits (**HOM**) at 10:00 a.m. in Suite 2430, Union Bank of California Building, 900 Fourth Avenue, Seattle, Washington. Board Members present were Margaret Pageler, Edward McGuire and Bruce Laing, Presiding Officer. Deborah L. Cade, Assistant Attorney General, represented DOC. Doug Shaftel accompanied Ms Cade. Michael McKenzie, Assistant City Attorney, represented Lakewood. The Court Reporter was Judy Steenbergen-Webb, Byers & Anderson, Inc.

During the HOM, the Presiding Officer distributed copies of the Board's file logs for CPSGMHB Case No. 05-3-0037 and CPSGMHB Consolidated Case No. 05-3-0043c with instructions to the parties to notify the Board and the other party by 4:00 p.m., Thursday December 29, 2005 if any documents had been omitted from the log. The Presiding Officer distributed copies of Lakewood Municipal Code (**LMC**) Chapter 18A.10 Discretionary Permits, which had been copied from the Municipal research and Services Center of Washington web page. The Presiding Officer advised the parties the Board takes official notice of the chapter and directed the City to review the copy of LCM 18A.10 and advise the Board by 4:00 p.m. December 29, 2005 if it was the current version of LCM 18A.10. The City submitted the following exhibits: 1. Aerial photograph entitled Western State Hospital, dated December 20, 2005 (**HOM Exhibit No.1**); 2. An untitled and undated map of the Western State Hospital campus (**HOM Exhibit No. 2**). The hearing was adjourned at 11:55 a.m. The Board ordered a transcript of the HOM.

On December 22, 2005, the Board received from the City an e-mail message, with copy to Petitioner, stating that the copy of Lakewood Municipal Code section 18A.10 distributed at the HOM is accurate and current. The e-mail message also stated that the contents of the two case logs distributed at the hearing accurately reflect all filings made in the two cause numbers and noted that the log is complete only when the two logs are considered together.

On December 28, 2005, the Board received the transcript of the Hearing on the Merits (**HOM Transcript**).

II. THE CONTESTED ACTION

DOC proposes to site a work release program in a building on the grounds of Western State Hospital in which DOC operated a pre-release program until April, 2005. The Western State Hospital campus is located in the City of Lakewood within a Public Institutional zoning district, which allows correctional facilities as a conditional use. When DOC approached the City to discuss an application for a conditional use permit, Lakewood enacted a moratorium on applications for permits for correctional facilities within Public Institutional zoning districts. DOC appealed both the City's action³

³ Lakewood Ordinance 376 and Resolution 2005-13.

adopting the moratorium and a subsequent action⁴ adopting a new moratorium. The two appeals have been consolidated in the present case.

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

Comprehensive plans and development regulations, and amendments thereto, adopted by the City of Lakewood pursuant to the Act, are **presumed valid** upon adoption. RCW 36.70A.320(1).

The **burden is on the Petitioners** to demonstrate that any inaction or action taken by the City is not in compliance with the Act. RCW 36.70A.320(2).

The Board shall find the City in compliance with the Act, unless it determines that the jurisdiction's action was **clearly erroneous** in view of the entire record before the Board and in light of the goals and requirements of the Act. RCW 36.70A.320(3). For the Board to find the City action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

Pursuant to RCW 36.70A.3201 the Board will grant deference to the City of Lakewood in how it plans for growth, consistent with the goals and requirements of the GMA. The State Supreme Court's most recent delineation of this required deference states: "We hold that deference to county planning actions that are consistent with the goals and requirements of the GMA ... cedes only when it is shown that a county's planning action is in fact a 'clearly erroneous' application of the GMA." *Quadrant Corporation, et al., v. State of Washington Growth Management Hearings Board*, 154 Wn.2d 224, 248, 110 P.3d 1132 (2005). The *Quadrant* decision affirms prior State Supreme Court rulings that "[L]ocal discretion is bounded, however, by the goals and requirements of the GMA." *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561, 14 P.3d 133 (2000). Division II of the Court of Appeals further clarified, "Consistent with *King County*, and notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a county's plan that is not 'consistent with the requirements and goals of the GMA.'" *Cooper Point Association v. Thurston County*, 108 Wn.App. 429, 444, 31 P.3d 28 (2001); *affirmed Thurston County v. Western Washington Growth Management Hearings Board*, 148 Wn.2d 1, 15, 57 P.3d 1156 (2002) and cited with approval in *Quadrant, supra*, at fn. 7.

In affirming the *Cooper Point* court, the Supreme Court stated:

Although we review questions of law de novo, we give substantial weight to the Board's interpretation of the statute it administers. *See Redmond*, 136 Wn.2d at 46. Indeed "(I)t is well settled that deference [to the Board]

⁴ Lakewood Ordinance 390.

is appropriate where an administrative agency's construction of the statutes is within the agency's field of expertise."

Thurston County v. Western Washington Growth Management Hearings Board, 148 Wn. 2d 1, 14, 57 P.3d 1156 (2002).

IV. BOARD JURISDICTION

The Board finds that the Petitioner's PFR was timely filed, pursuant to RCW 36.70A.290(2); Petitioner has standing to appear before the Board, pursuant to RCW 36.70A.280(2); and the Board has subject matter jurisdiction over the challenged ordinance pursuant to RCW 36.70A.280(1)(a).

V. DISPOSITIVE MOTION

Discussion

Lakewood's Motion to Dismiss requests the Board to find that the moratorium enacted by Ordinance No. 390 was adopted in compliance with the procedural requirements of RCW 36.70A.390. Consequently, the City urges the Board to dismiss DOC's entire challenge as set forth in the PFR and PHO. Lakewood Motion at 1. The City cites the Board's Order on Motions in *Senior Housing Assistance Group, Lynnwood RM Investors LLC, Sunquist Homes Inc. and Carlyle Condominiums LLC v. City of Lynnwood (SHAG)*, CPSGMHB Case No. 01-3-0014), Order on Motions, (Aug. 3, 2001), as precedent and binding authority for its motion to dismiss. *Id.* at 5, 7 and HOM Transcript, at 11.

The PHO set forth four legal issues to be briefed by the parties and addressed by the Board.⁵ Compliance with the requirements of RCW 36.70A.390 is not among the issues raised by DOC and posed for the Board to decide. Further, at the HOM, DOC indicated that it did not take issue with whether the City had adopted Ordinance No. 390 in compliance with the procedural requirements of RCW 36.70A.390. HOM Transcript, at 12.

The crux of DOC's challenge pertains to the substance and effect of Ordinance No. 390, and its alleged preclusion of the siting of a work release facility – an undisputed essential public facility – in violation of RCW 36.70A.200. Compliance with RCW 36.70A.390 is simply a non-issue in this case and the *SHAG* case is irrelevant to the pending matter. Compliance with .390 or this Board's prior decision in *SHAG* provides no basis for a motion to dismiss here. Therefore, the City's Motion to Dismiss is **denied**.

Conclusion

The City of Lakewood's Motion to Dismiss is **denied**.

⁵ See Appendix B *infra* for the legal issues from the PHO.

VI. LEGAL ISSUES AND DISCUSSION

Prefatory Note:

The Board will first address the Legal Issues in the following order: Legal Issue 4, 3 and 1. Legal Issue 2 is discussed in Section VII – Invalidity.

Legal Issue No. 4

Does the Lakewood moratorium fail to serve the purpose generally served by enacting a moratorium in that Lakewood does not have authority to enact the regulations that it claims are needed to govern the work release facility?

Position of the Parties

DOC argues that the City's moratorium fails in its general purpose, inasmuch as the City does not have the authority to enact the regulations it claims are needed to govern the work release facility. DOC PHB at 8. As the DOC argued in response to Legal Issue Number 3, *infra*, only state agencies have the authority to enact regulations related to the internal staffing and security plans of work release facilities. The DOC maintains that when a state agency has been given specific statutory authority to operate a particular program, local agencies may not enact regulations that interfere with that agency's management of its program. *Id.* At 8-13.

Citing RCW 72.65.020 (operation of program) and RCW 72.65.220 (siting of facilities), the DOC says that regarding work release facilities, the legislature has directed DOC have sole authority in siting and operating these facilities, and has set out specific statutory requirements on how the agency will do so. DOC PHB at 9. Thus the DOC argues that where this duty to site and operate these facilities conflicts with the local agency's desire to have them located in some other community other than their own, the local interest must yield to the state interest. The DOC points to the language of RCW 36.70A.200, which prohibits local agencies from enacting regulations that preclude the siting of essential public facilities, as a legislative recognition of the fact that (1) these facilities need to be located somewhere, and (2) the authority for siting them rests with the State, rather than any other local agency attempting to regulate them. DOC Reply, at 11.

The City of Lakewood contends the GMA gives the City authority to plan, zone and adopt development regulations governing development during a moratorium. Lakewood Response, at 12-14.

In reply, DOC cites various case law and reiterates that the City does not have authority to impose control over state programs at correction facilities. DOC Reply, at 2-4.

Board Discussion

The essence of Legal Issue 4 is a request to this Board to interpret whether RCW 72.65.020 and .220 bestow exclusive authority upon the Department of Corrections in the siting and operation of work release facilities. The City never directly responds to this assertion by DOC. *See* Lakewood Response, at 1-15.

Notwithstanding Lakewood's lack of response to this issue, the Board has limited jurisdiction as prescribed by RCW 36.70A.290. The Board has no authority or jurisdiction to resolve disputes emanating from Chapter 72.65 RCW; neither interpretation of, nor compliance with, this Chapter of the RCW is within the Board's limited jurisdiction. Therefore, the Board dismisses Legal Issue 4 *sua sponte*.

Conclusions

Legal Issue 4 poses an issue that is beyond the Board's jurisdiction to resolve – Chapter 72.65 RCW. Legal Issue 4 is **dismissed**.

Legal Issue No. 3

Did the City of Lakewood preclude the siting of essential public facilities in violation of RCW 36.70A.200 when it enacted the moratorium and stated its intention to impose requirements relating to the internal staffing and security plans of work release facilities in a manner that directly interferes with the State's duty and authority to set policy and management standards for such facilities?

Applicable Law

The relevant provision of RCW 36.70A.200 provides:

No local comprehensive plan or development regulation may preclude the siting of essential public facilities.

RCW 36.70A.200(5)

Position of the Parties

DOC asserts that Lakewood precluded the siting of essential public facilities in violation of RCW 36.70A.200 when it enacted the moratorium because the City's stated intention—to impose requirements related to the internal staffing and security plans of work release facilities—directly interferes with the State's authority to set the policy and management standards for such facilities. DOC Reply at 2. The City now asserts an overriding concern for the safety and security of patients and staff at Western State Hospital (WSH). However, the State explains that both WSH and the work release program are beyond the jurisdiction or control of the City. It argues that only state agencies have been given the sole authority to administer the programs at WSH, including the work release program.

The DOC argues that the State's authority, as delegated to DOC, extends to the siting of a new work release facility, or the relocation of an existing facility, as outlined in RCW 72.65.020(1). DOC PHB at 8. They point out that nowhere in that section of the RCW is it required that DOC obtain local approval for its work release facilities. DOC PHB at 9. They explain that similarly, the Secretary of the Department of Health and Human Services (DHS) has been given the statutory authority to operate WSH. RCW 72.01.050(1). Additionally, the WSH superintendent has statutory authority for the day-to-day operation of that facility. RCW 72.23.030. Therefore, because the City's stated intention in enacting the moratorium would interfere with the State's exercise of its proper authority, DOC contends that the City has precluded the siting of essential public facilities in violation of RCW 36.70A.200.

The City's stated intention in enacting the moratorium was to allow time for the consideration of permissible legislative changes, such as possibly amending the City's comprehensive plan, particularly relating to Section 3.8 (Public and Semi-Public Land Uses) or Section 9.7 (Essential Facilities Siting). Lakewood Response, at 12. The City claims that it may also legislatively enact development regulations or zoning amendments to support or expand the City of Lakewood Comprehensive Plan Policy LU-41.1, which requires a five year master plan for Western State Hospital. The City states that it intends to review its plan for the purpose of possibly amending land-use designations.

The City believes the moratorium will also allow consideration of the possibility of adding optional elements to the City's comprehensive plan, possibly including a special zoning district. The City claims that its intent is to craft development regulations that take into account the unique nature of the community, while also maintaining compliance with the GMA. According to the City, the issue of co-locating a work release program at WSH is one of distinctly local concern, and worthy of local study, planning, and discretion.

In its Response to the City's Prehearing Brief, the DOC notes that the property it is seeking to use is already zoned "public/institutional," and has been the site of a state institution since 1875. DOC Reply, at 1. DOC contends that there are no comprehensive plan changes, zoning changes, or development regulations that could be applied to this property without infringing on the authority of DOC and DSHS to administer programs located on the site. According to DOC, the City's moratorium can only be an attempt to delay the siting of an essential public facility in the hope that the facility might go "elsewhere." As such, they believe it to be in violation of the GMA. *Id.* at 1-6.

At the HOM, DOC referenced *DOC/DSHS v. City of Tacoma (DOC/DSHS), CPSGMHB Case No. 00-3-0007, Final Decision and Order* (Nov. 20, 2000), at 10, to support its assertion that the Board itself has previously held that a local agency has no authority to impose conditions on work release facilities such as bed limitations, internal staffing requirements, and provisions to demonstrate need. HOM Transcript at 25.

Board Discussion

Although Legal Issue 3 contains reference to the GMA's requirement that local governments cannot preclude the siting of essential public facilities, the basis for the issue is the contention that the City intends to impose requirements on the internal staffing requirements and security plans that are needed for work release facilities. DOC's contention is that imposing regulations that venture into these program operational areas is beyond the City's authority and contradicts the states duty and authority for managing such programs at Western State Hospital. This duty and authority arises from Chapter 72.01 RCW and Chapter 72.23 RCW.

Just as the Board noted in Legal Issue 4 that it lacks jurisdiction to interpret or determine compliance with Chapter 72.65 RCW, it likewise lacks jurisdiction to interpret or determine compliance with the provisions of Chapter 72.01 RCW or Chapter 72.23 RCW. Therefore, the Board will **dismiss** Legal Issue 3, *sua sponte*.

The Board notes that in the *DOC/DSHS v. City of Tacoma* matter, the City of Tacoma acknowledged existing case law and conceded that it was preempted by the state in the regulation of internal staffing and internal security requirements. The Board did not independently determine the scope and applicability of any RCW beyond its jurisdiction. See *DOC/DSHS*, at 5-11.

The question of whether the City of Lakewood has violated the requirements of RCW 36.70A.200 by allegedly precluding the siting of an undisputed essential public facility (a work release facility on the grounds of Western State Hospital) is directly addressed in Legal Issue 1, *infra*.

Conclusions

The essence of Legal Issue 3 involves a question that is beyond the Board's jurisdiction to resolve – Chapter 72.01 RCW and Chapter 72.23 RCW. Legal Issue 3 is **dismissed**.

Legal Issue No. 1

Did the City of Lakewood violate RCW 36.70A.200 by enacting a moratorium that will preclude DOC from siting essential public facilities within the City's limits?

Applicable Law

RCW 36.70A.200 provides in part:

(1) The comprehensive plan of each county and city that is planning under RCW 36.70A.040 shall include a process for identifying and siting essential public facilities. Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW

47.06.140, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020.

(2) Each county and city planning under RCW 36.70A.040 shall, not later than September 1, 2002, establish a process, or amend its existing process, for identifying and siting essential public facilities and adopt or amend its development regulations as necessary to provide for the siting of secure community transition facilities consistent with statutory requirements applicable to these facilities.

...

(5) No local comprehensive plan or development regulation may preclude the siting of essential public facilities.

RCW 36.70A.020 provides in part:

The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040. The following goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations:

...

(7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.

...

(11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

...

Position of the Parties

DOC contends that the City of Lakewood violated RCW 36.70A.200 when it enacted a moratorium that will preclude DOC from siting essential public facilities within the City's limits. They note that the City agrees the work release facility is a "correctional facility" as defined by the Act under its examples of essential public services. They contend that such facilities are allowed in public/industrial zones when they are issued conditional use permits. The DOC argues that the moratorium precludes the siting of an essential public facility because it does not allow applications for a conditional use permit for a DOC work release facility. DOC PHB, at 1.

DOC states that the Act also prohibits cities from excluding essential public facilities based upon unsupported community fears. *Id.*, at 6. This principle was applied in *DOC v. Kennewick*, where the Court of Appeals upheld the State's ability to site and operate a work release facility in Pasco, Washington. *DOC v. Kennewick*, 86 Wn.App. 521, 937 P.2d 1119 (1997). Citing precedent and the legislative purpose of RCW 36.70A.200(2), the Court of Appeals found that the City of Pasco was prohibited from relying on unsubstantiated neighborhood fears to preclude the siting of the DOC's work release facility. *Id.* at 533-34.

Lakewood contends that since the moratorium has not precluded the siting of an essential public facility, it has not violated the GMA. The DOC's arguments are directed towards possible future actions, ignoring the authority of the City to study and plan before it zones and legislates. The issue of co-locating a work release facility amidst the vulnerable population of children and adults who rely upon WSH for treatment and services is surely an issue that demands attention, study, and careful planning. The City believes it is well within its role, as the impacted government agency, to study and plan for such co-located uses. Lakewood Response, at 8.

The City asserts that the moratorium does not constitute a development regulation or planning activity. Rather, they argue that it allows the City to be doing what it should be doing under the GMA—coordinating and planning for growth and sustained economic development, while protecting the interests of the health, safety, and high quality of life for its citizens. *See* RCW 36.70A.010. Such a process will comply with the planning goals stated in RCW 36.70A.020. Moratoriums are not planning or development actions, and are in fact specifically authorized under RCW 36.70A.390. Lakewood Response, at 9.

The City argues that DOC has not shown how the City has failed to comply with the provisions of the GMA. The City has neither amended its comprehensive plan nor drafted development regulations as a result of the study it intends to commence during the term of the moratorium. The CPSGMHB has itself ruled previously that adoption of a moratorium does not rise to the level of a “planning activity.” *Shag v. City of Lynnwood*, CPSGMHB Case No. 01-3-0014, Order on Motions, August 3, 2001, at 7. *Id.*

Lakewood contends the Board has taken the position that a moratorium with no end in sight might eventually constitute a *de facto* planning activity. *See Shag*, Order on Motion at 8, and *Master Builder's Association v. City of Sammamish*, CPSGMHB Case No. 05-3-0027, Final Decision and Order (August 4, 2005) (moratorium extended twelve times for six years found to constitute a *de facto*, and no longer interim, planning regulation). In contrast, the City's moratorium is only in its second six-month term (as of December 8th, 2005.). The moratorium was based upon written findings of fact at its time of enactment, thus following the requirements of RCW 36.70A.390. Thus, the Respondent argues, the moratorium serves its proper purpose—to allow a period of study prior to the creation of zoning or planning regulations. Lakewood Response, at 9-10.

Finally, the City urges that the moratorium has not precluded the locating of an essential public facility. Mere delay in locating a facility in a specific area does not establish a preclusion. The DOC has not yet even submitted an application for a conditional use permit; it is only speculating that one will be denied. In addition, the City says that there are other areas within the City of Lakewood where a work release facility may be located, such as the C1, C2, I1, and I2 zoning districts. *Id.* at 10-11.

DOC argues that when it attempted to start the conditional use permit process the City enacted the first emergency moratorium, at which point there would have been no point in the DOC continuing to pursue the process. DOC Reply, at 5. DOC asserts Lakewood's contention that other zoning designations are available for the siting of a work release facility also does not make their action less preclusive. The State currently owns the building that the DOC wants to use for the work release facility; that area is currently zoned not only for work release, but also for other state institutional uses. DOC believes that attempting to find a commercial building elsewhere in the City would almost certainly raise an even greater public uproar. *Id.* at 5-6. DOC notes that, as was made clear in the Brightwater decision under the GMA the City does not have the authority to reject the site chosen by the State. HOM Transcript, p. 21 at lines 5-17.

Board Discussion

DOC proposes to locate a work release facility in an existing building on the campus of Western State Hospital (**WSH**) in Lakewood. DOC PHB, at 2. It is undisputed that the proposed work release facility is an essential public facility under the GMA. RCW 36.70A.200(1). The GMA requires Lakewood to include in its comprehensive plan a process for identifying and siting essential public facilities. *Id.* The Act requires the City to adopt development regulations that are consistent with and implement its comprehensive plan. RCW 36.70A.040(4)⁶. The Act mandates that no local comprehensive plan or development regulation may preclude the siting of essential public facilities. 36.70A.200(5). GMA goals state that the City should process permit applications in a fair and timely manner and ensure coordination between jurisdictions. RCW 36.70A.020(7) and (11).

Is the moratorium a development regulation as defined in the GMA [RCW 36.70A.030(7)]? **YES.**

The Board looks to the GMA definition of development regulations in RCW 36.70A.030(7):

"Development regulations" or "regulation" means the *controls placed on development* or land use activities by a county or city, *including, but not*

⁶ The GMA also requires Pierce County to adopt countywide planning policies, including policies for siting public capital facilities of a countywide or statewide nature. RCW 36.70A.210(3). The countywide planning policies provide a framework to ensure that the county and city comprehensive plans are consistent as required by RCW 36.70A.100. RCW 36.70A.210(1). Pierce County has adopted countywide planning policies, including policies for siting essential public facilities. Index No. 4, Policy CF – 8.3.

limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto.

Lakewood Ordinance No. 390 imposes a moratorium on the filing with the City or the Courts of any applications for licenses, permits, or approvals for correctional facilities located within Public Institutional zoning districts in the City. Ordinance No. 390, at 3. By its explicit terms,⁷ the Ordinance imposes a moratorium, or freeze, on the filing of an application for the siting of a correctional facility in the Public Institutional zone. As such, it is clearly a “control placed on development.” Therefore Ordinance No. 390 – the moratorium - is a development regulation as defined in RCW 36.70A.030(7).

Does the moratorium preclude the siting of an essential public facility? *Yes.*

Lakewood’s existing comprehensive plan includes a process for identifying and siting essential public facilities and policies for the Public and Semi-public Institutional Land Uses. *See* Appendix – C for applicable comprehensive plan policies.

Likewise, Lakewood’s existing Municipal Code (LMC) includes development regulations which implement the comprehensive plan process for essential public facilities. The Western State Hospital campus is within the Public/Institutional (PI) zoning district. LMC 18A.30.820. Essential public facilities are permitted uses within the PI zoning district, subject to approval of a conditional use permit and all applicable development permits. LMC 18.A.30.830. The LMC definition of essential public facilities includes state correctional facilities, *i.e.* work release facilities. LMC 18A.20.400(D). The Comprehensive Plan calls for the City to review the Western State Hospital Master Plan at five year intervals. Index No. 4, Policy LU-41.1. Review of the Western State Hospital Master Plan is conducted through a conditional use permit process. Index No. 68, Resolution 2005-13, Finding 7. The procedures and decision criteria for conditional use permits are set forth in LMC 18A.10.050 through LMC 18A.10.180. *See* Appendix – D for applicable LMC provisions.

DOC operated a pre-release program for female offenders on the WSH campus until April, 2005, at which time the pre-release program was moved to a new facility in another county. DOC PHB, at 2. DOC intends to relocate an existing work release facility [Progress House] in Tacoma, which is predominantly male, to the building on the WSH campus which previously housed the prerelease program. *Id.*

Prior to the enactment of the challenged moratorium, and its predecessor, the City was clearly in compliance with the EPF provisions of the GMA. The City’s Plan contains

⁷ Section 1 of Ordinance No. 390 provides:

Moratorium established. That a moratorium is hereby *imposed on the filing* with the City or the Courts of any applications for licenses, permits, or approvals for correctional facilities located within the Public Institutional zoning districts in the City.

Ordinance No. 390, at 3, (emphasis supplied).

policies that provide for the siting of essential public facilities and the City's development regulations are consistent with and implement those Plan provisions. Lakewood's Plan and development regulations did not, and do not, preclude the siting of essential public facilities. However, with the enactment of the moratorium, the City has chosen to deny access to its EPF process.

When DOC approached the City to apply for a conditional use permit under the City's *existing* policies and regulations, Lakewood immediately enacted a moratorium through Ordinance No 376 and subsequently through Ordinance No. 390. HOM transcript, at 44 – 46. The moratorium forestalls the City's review of any application for siting of a correctional facility on WSH campus while the City conducts a legislative process of reviewing and amending its public participation process, comprehensive plan and implementing regulations related to essential public facilities and to public and semi-public institutional land uses. Index No. 68 and Supplemental Index No. 4, Attachment-A.

The original moratorium was enacted by Ordinance 376 on February 28, 2005 for a period of six months. The current moratorium was enacted by Ordinance No. 390 on August 15, 2005 for a period of an additional six months, unless repealed, extended or modified by the City Council. The City has adopted a public participation plan as the first step in the legislative review process described above. Supplemental Index, No. 6. The plan does not include a schedule for completion of the work program in the plan. *Id.* The City has not identified work plans, beyond the public participation plan, necessary to completing the legislative review process, nor established the time within which the legislative review process will be completed. HOM Transcript, at 46 – 55.

Lakewood points to the findings of fact stated in Resolution 2005-13 and the further findings of fact in Ordinance 390 as a basis for the moratorium. *See Appendix – E infra* for the Lakewood City Council's Findings of Fact.

Findings of fact No. 4, 5, 7, 9, 15, 17, 18 and 20 state the City's reasons for asserting that a review and update of the WSH master plan⁸ is a necessary prerequisite to City consideration of the siting and mitigation of a DOC correctional facility on the WSH campus. Findings of fact No. 10, 11, 15, 16 and further finding of fact No. 3 address potential negative impacts on public health, safety and welfare, property values and the City's costs of providing services. Further findings of fact No. 5 and 8 address the need for a public participation program. Findings of fact No. 8, 12, 13 and further finding of fact No. 4 address DOC's obligations under RCW 72.65 and WAC 137-57. *Id.*

But each of these elements is already addressed by the City's existing CUP process. The City uses its CUP process for review of applications for siting essential public facilities and for periodic review of the WSH master plan. LMC 18A.10.150(H) and Index No. 68,

⁸ Under Lakewood's comprehensive plan goals and policies, the Department of Social and Health Services (DSHS) is responsible for initiating a review of the WSH master plan. Index No. 68, Finding 7. Lakewood's dispute with DSHS have been resolved and its facilities on the WSH campus are no longer subject to the moratorium. Supplemental Index No. 4, Finding 6 – 8.

finding 7. Lakewood's CUP regulations provide a process for addressing potential negative impacts on public health, safety and welfare, property values and the costs of providing services. LMC 18A.10.050 - 18A.10.180. The CUP regulations require a public participation process. LMC 18.10.140. And LMC 18A.2.725 authorizes the City to combine its public hearing on a CUP with any public hearing that may be held by the state.

The Board has previously found that the state has the authority to determine the location of a state EPF and the local jurisdiction has the authority to impose reasonable conditions to mitigate the impacts of the state EPF. *King County v. Snohomish County (King County I)* CPSGMHB Case No. 03-3-0011 (*03311*), Final Decision and Order, at 10, 14, October 13, 2003. The Board has previously found the conditional use permit process to be appropriate for a local jurisdiction's determination of reasonable conditions and mitigating measures for state and regional EPFs. *King County I, 0331*, Order on Court Remand, at 10, July 29, 2005. The Board has previously determined that unpredictable delay in the review of an EPF is equivalent to precluding the EPF. *King County I, 03331*, FDO, at 13, October 13, 2003.

The Board finds that the City's existing comprehensive plan policies, land use plan designations and implementing development regulations and zoning designations governing the location and siting a state EPF enable the City to address the concerns the City has expressed in the findings of fact. The City has clearly identified areas where EPFs should be located, including the WSH campus. It has plan policies and criteria enumerated in its development regulations, specifically the conditional use permit process, that allow reasonable conditions to be imposed to mitigate likely impacts of such an EPF. The moratorium precludes access to the City's existing EPF procedures. Consequently, the moratorium causes an unpredictable delay in the siting of the state EPF which is equivalent to precluding the EPF.

Lakewood has identified appropriate EPF locations and designated them as Public Institutional zones; however, actual development of these permitted uses at these locations is stymied by the moratorium on filing applications for such uses in the PI zones. The City suggests that DOC should pursue siting a work release facility within some of its commercial and industrial zoning designations, since certain group homes – work release facilities – are permitted in alternate locations, and these areas are not affected by the moratorium. Lakewood Response, at 10 – 11. Assuming the City's suggestion is not disingenuous, the Board reminds the City that it is the State which has the authority to determine the location of a State EPF. And, in this case, the State owns and operates the building within the Public Institutional zoning district at which DOC proposes to locate the correctional facility. Siting the correctional facility in an alternative zoning district would cause delays related to finding and acquiring a site and physically establishing a facility.

Conclusion.

Lakewood's enactment of a moratorium on applications for correctional facilities in PI districts causes an unpredictable and unreasonable delay in the siting of a state EPF. Lakewood Ordinance No. 390 is *clearly erroneous* and *does not comply* with RCW 36.70A. 200(5), nor with RCW 36.70A.020(7) and (11).

VII. INVALIDITY

The Board has previously held that a request for invalidity is a prayer for relief and, as such, does not need to be framed in the PFR as a legal issue. *See King County v. Snohomish County*, CPSGMHB Case No. 03-3-0011, Final Decision and Order, (Oct. 13, 2003) at 18. Nevertheless DOC has framed the request for invalidity as a Legal Issue:

Legal Issue No. 2

Should the moratorium be invalidated under RCW 36.70A.302 because it substantially interferes with the fulfillment of the GMA's goals, reflected in RCW 36.70A.020(1), (7), (11) and (12), and in RCW 36.70A.200, which call for the efficient, fair and coordinated siting of essential public facilities?

The Board found noncompliance in relation to DOC's Legal Issue 1, pertaining to the preclusion of the siting of an essential public facility. Therefore the Board will consider DOC's prayer for invalidity.

Applicable Law

RCW 36.70A.020 provides in part:

The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040. The following goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations:

...

(7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.

...

(11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

...

RCW 36.70A.302 provides:

- (1) A board may determine that part or all of a comprehensive plan or development regulation are invalid if the board:
 - (a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;
 - (b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and
 - (c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.

- (2) A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or City. The determination of invalidity does not apply to a completed development permit application for a project that vested under state or local law before receipt of the board's order by the City or city or to related construction permits for that project.

Findings of Fact and Conclusions of Law

In its discussion of Legal Issue 1, *supra*, the Board found and concluded that the Moratorium (Ordinance No. 390) *was clearly erroneous and did not comply* with RCW 36.70A.200(5). The Board is also **remanding** Ordinance No. 390, with direction to the City to rescind the Ordinance and comply with the requirements of the GMA.

The Board found Lakewood's moratorium under Ordinance 390 causes unreasonable delay in the siting of a state essential public facility. Legal Issue No 1, *supra*. Therefore the Board finds and concludes that Lakewood *was not guided by*, and *does not comply* with RCW 36.70A.020(7) (**Goal 7**) which provides that state and local government permits should be processed in a timely and fair manner to ensure predictability. The Board also finds and concludes that Lakewood *was not guided by*, and *does not comply* with the provision of RCW 36.70A.020(11) (**Goal 11**) to ensure coordination between jurisdictions to reconcile conflicts.

The Board further finds and concludes that the continued validity of the Moratorium under Ordinance No. 390 *substantially interferes* with the fulfillment of Goals 7 and 11 of the Growth Management Act. Therefore the Board enters an *order of invalidity*.

VIII. ORDER

Based upon review of the GMA, case law, prior Orders of this Board and the other Boards, the PFRs, the briefs and exhibits submitted by the parties, having considered the arguments of the parties, and having deliberated on the matter the Board ORDERS:

1. The City of Lakewood's adoption of Ordinance 390 was **clearly erroneous** and **does not comply** with the requirements of RCW 36.70A.020 and RCW 36.70A.200.
2. Therefore the Board **remands** Ordinance 390 to the City of Lakewood with direction to the City to repeal the Ordinance or allow it to expire without reauthorization in order to comply with the requirements of the GMA as set forth in this Order.
3. The Board also found and concluded that the continued validity of Ordinance 390 would **substantially interfere** with the goals of the GMA at RCW 36.70A.020(7) and (11). Therefore the Board enters an order of **invalidity**, and sets the following schedule for the City's compliance⁹.
 - The Board establishes **May 1, 2006**, as the deadline for the City of Lakewood to act to achieve compliance.
 - By no later than **May 15, 2006**, the City of Lakewood shall file with the Board a statement of how their conduct complies with this Order (**Statement of Actions Taken to Comply - SATC**). The City shall simultaneously serve a copy of the compliance statement, with attachments if any, on Petitioner. By this same date, the City shall also file a "**Compliance Index**," listing the procedures (meetings, hearings etc.) occurring during the compliance period and materials (documents, reports, analysis, testimony, etc.) considered during the compliance period in taking the compliance action.
 - By no later than **May 22, 2006**,¹⁰ the Petitioner may file with the Board an original and four copies of Response to the City's SATC. Petitioner shall simultaneously serve a copy of its Response to the City's SATC on the City.
 - Pursuant to RCW 36.70A.330(1), the Board hereby schedules the Compliance Hearing in this matter for **10:00 a.m. May 30, 2006**, at the Board's offices. If the

⁹ Invalidity means the ordinance is ineffective as of the date this order is received by the City of Lakewood. *Master Builders Association of King and Snohomish Counties, et al. v. City of Sammamish*, CPSGMHB Case No. 05-3-0027, Order Clarifying Effective Date of Invalidity, August 11, 2005, at 2.

¹⁰ May 22, 2006 is also the deadline for a person to file a request to participate as a "participant" in the compliance proceeding. See RCW 36.70A.330(2). The Compliance Hearing is limited to determining whether the City's remand actions comply with the Legal Issues addressed and remanded in this FDO.

parties so stipulate, the Board will consider conducting the Compliance Hearing telephonically. If the City of Lakewood acts to achieve compliance prior to the May 1, 2006, deadline set forth in this Order, the City may file a motion with the Board requesting an adjustment to this compliance schedule.

So ORDERED this 31st day of January, 2006.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Bruce C. Laing, FAICP
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.¹¹

¹¹ Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)

APPENDIX – A

Procedural History – CPSGMHB Case No. 05-3-0037 and CPSGMHB Case No. 05-3-0043c

CPSGMHB Case No. 05-3-0037

On June 30, 2005, the Central Puget Sound Growth Management Hearings Board (**CPSGMHB** or the **Board**) received a Petition for Review (**PFR**) from State of Washington, Department of Corrections (**DOC** or **Petitioner**). The matter was assigned Case No. 05-3-0037, and is hereafter referred to as *DOC III v. City of Lakewood*. Board member Bruce Laing is the Presiding Officer for this matter. Petitioner challenges the City of Lakewood (**City** or **Lakewood** or **Respondent**) adoption of Resolution No. 2005-13, continuing a moratorium on the filing of applications for licenses and permits and approvals for group homes, correctional facilities, in-patient facilities and mental health facilities located within Public Institutional Zoning Districts. The basis for the challenge is noncompliance with the Growth Management Act (**GMA** or **Act**).

On July 6, 2005, the Board issued its Notice of Hearing and Order of Consolidation. The Board consolidated Case No. 05-3-0036 *DSHS V* and Case No. 05-3-0037 *DOC III* as Consolidated Case No. 05-3-0037c, hereafter referred to as *DSHS/DOC v. Lakewood (DSHS/DOC)*. The Notice of Hearing (**NOH**) set a Prehearing Conference (**PHC**) date of August 1, 2005 and established a tentative schedule for proceedings in the case.

On July 12, 2005, the Board received Notices of Appearance from Lakewood for both Case No. 05-3-0036 and Case No. 05-3-0037.

On July 29, 2005, the Board received Lakewood's Index of Materials and Notice of Availability of Tape Recordings.

On July 29, 2005, the Board received DOC's Prehearing Statement.

On August 1, 2005, the Board conducted the PHC at Room 2430, Union Bank of California Building, 900 Fourth Avenue, Seattle. Board member Bruce Laing conducted the conference with Board member Margaret Pageler. Board externs Heather Bowman and Brad Paul were in attendance. Michael McKenzie represented Respondent City of Lakewood, Carrie L. Bashaw represented Petitioner DSHS and Deborah L. Cade, representing DOC, participated by telephone. The Board discussed with the parties the possibility of a settlement extension. The City indicated it had conversed with DSHS, but not with DOC, about the subject of settlement. The Board indicated that if one petitioner and the City decided to request a settlement extension, the Board would have the option of dividing the consolidated case in order to accommodate settlement discussions. The Board then reviewed its procedures for the hearing, including the composition and filing of the Index to the record below; core documents, exhibit lists and supplemental exhibits, dispositive motions, the legal issues to be decided, and a Final Schedule.

On August 2, 2005, the Board issued the “Prehearing Order” (**PHO**) in *DSHS/DOC*. The PHO established the schedule for the consolidated matter and set the Legal Issues to be decided by the Board.

On August 4, 2005, the Board received “Agreed Motion and Order for Extension to Pursue Settlement” signed by representatives of Petitioner DSHS and the City of Lakewood.

On August 8, 2005, the Board issued its Order Dividing Consolidated Case No. 05-3-0037c into Case No. 05-3-0036 and Case No. 05-3-0037, and granting a Ninety Day Settlement Extension in Case No. 05-3-0036.

On August 11, 2005, the Board received Lakewood’s Identification and Presentation of Core Documents (**Core Docs**).

On August 11, 2005, the Board received Lakewood’s Motion to Dismiss for Lack of Jurisdiction and Standing.

On August 18, 2005, the Board received Lakewood’s Notice of Legislative Action Affecting Pending Petitions for Review.

On August 30, 2005, the Board received DOC’s Response to City of Lakewood’s Motion to Dismiss for Lack of Jurisdiction and Standing.

On September 6, 2005, the deadline for Rebuttal to Response to Motion to Dismiss expired. No rebuttal was received by the Board. The Board did not hold a hearing on the motion to dismiss.

On September 21, 2005, the Board issued its Order on Motion Dismiss, denying City of Lakewood’s Motion to Dismiss.

On October 5, 2005, the Board received DOC’s Prehearing Brief.

On October 19, 2005, the Board received City of Lakewood’s Prehearing Brief and Response.

CPSGMHB Case No. 05-3-0043c

On October 14, 2005, the Board received a PFR from State of Washington, Department of Corrections. The matter was assigned CPSGMHB Case No. 05-3-0043, and is hereafter referred to as **DOC IV**. Board member Bruce Laing is the Presiding Officer for this matter. Petitioner challenges Lakewood’s adoption of Ordinance No. 390, establishing a moratorium on the filing of applications for licenses and permits and approvals related to correctional facilities located within Public Institutional Zoning Districts. The basis for the challenge is noncompliance with the GMA.

On October 21, 2005, the Board issued a Notice of Hearing and Order of Consolidation, consolidating CPSGMHB Case No. 05-3-0037 *DOC III* and CPSGMHB Case No. 05-3-

0043 *DOC IV* as CPSGMHB Consolidated Case No. 05-3-0043c (*DOC III / IV*), and scheduling a Prehearing Conference for *DOC III / IV*.

On November 2, 2005, the Board conducted the PHC at Suite 2430, Union Bank of California Building, 900 Fourth Avenue, Seattle. Board member Bruce Laing, Presiding Officer in this matter, conducted the conference, with Board members Margaret Pageler and Ed McGuire in attendance. Deborah L. Cade represented Petitioner DOC and Michael McKenzie represented Respondent City of Lakewood. The Board discussed with the parties the possibility of settling or mediating their dispute to eliminate or narrow the issues. The Board then reviewed its procedures for the hearing, including the composition of the Index to the record below; filing of core documents, exhibit lists and supplemental exhibits; possible dispositive motions; the Legal Issues to be decided; and a Final Schedule.

On November 2, 2005, the Board received the following items: 1) Lakewood's Supplemental Index of Materials and Notice of Availability of Tape Recordings and 2) Lakewood's Identification and Presentation of Core Documents.

On November 3, 2005, the Board issued its Prehearing Order (**PHO**) in *DOC III / IV*. The PHO established the schedule for the consolidated matter and set the Legal Issues to be decided by the Board.

On November 4, 2005, the Board received Lakewood's Supplemental Index of Materials And Notice of Availability of Tape Recordings.

On November 4, 2005, the Board received Lakewood's Identification And Presentation of Core Documents as follows: 1. Lakewood City Council Resolution No. 2005-26; 2. Lakewood City Council Ordinance No. 390; 3. Affidavit of Publication of Ordinance No. 390.

On November 16, 2005, the Board received Respondent's Motion to Dismiss with nine exhibits attached.

On November 23, 2005, the Board received DOC's Prehearing Brief with three exhibits attached.

On December 7, 2005, the Board received DOC's Response to City of Lakewood's Motion to Dismiss.

On December 8, 2005, the Board received City of Lakewood's Response and Prehearing Brief with three exhibits attached.

On December 16, 2005, the Board received DOC's Reply Brief.

On December 22, 2005, the Board opened the Hearing on the Merits (**HOM**) at 10:00 a.m. in Suite 2430, Union Bank of California Building, 900 Fourth Avenue, Seattle, Washington. Board Members present were Margaret Pageler, Edward McGuire and Bruce Laing, Presiding Officer. Deborah L. Cade, Assistant Attorney General,

represented DOC. Doug Shaftel accompanied Ms Cade. Michael McKenzie, Assistant City Attorney, represented Lakewood. The Court Reporter was Judy Steenbergen-Webb, Byers & Anderson, Inc.

During the HOM, the Presiding Officer distributed copies of the Boards file logs CPSGMHB Case No. 05-3-0037 and CPSGMHB Consolidated Case No. 05-3-0043c with instructions to the parties to notify the Board and the other party by 4:00 p.m., Thursday December 29, 2005 if any documents had been omitted from the log. The Presiding Officer distributed copies of Lakewood Municipal Code (**LMC**) Chapter 18A.10 Discretionary Permits, which had been copied from the Municipal research and Services Center of Washington web page. The Presiding Officer advised the parties the Board takes official notice of the chapter and directed the City to review the copy of LCM 18A.10 and advise the Board by 4:00 p.m. December 29, 2005 if it was the current version of LCM 18A.10. The City submitted the following exhibits: 1. Aerial photograph entitled Western State Hospital, dated December 20, 2005 (**HOM Exhibit No.1**); 2. An untitled and undated map of the Western State Hospital campus (**HOM Exhibit No. 2**). The hearing was adjourned at 11:55 a.m. The Board ordered a transcript of the HOM.

On December 22, 2005, the Board received from the City an e-mail message, with copy to Petitioner, stating that the copy of Lakewood Municipal Code section 18A.10 distributed at the HOM is accurate and current. The e-mail message also stated that the contents of the two case logs distributed at the hearing accurately reflect all filings made in the two cause numbers and noted that the log is complete only when the two logs are considered together.

On December 28, 2005, the Board received the transcript of the Hearing on the Merits (**HOM Transcript**).

APPENDIX – B

Statement of Legal Issues

RCW 36.70A.290(1) provides in relevant part: “The Board shall not issue advisory opinions on issues not presented to the board in the statement of the issue, as modified by any prehearing order.” Consequently, the Legal Issues as stated below, will be the issues the Board addresses in Consolidated Case No. 05-3-0043c. The legal issues stated below were presented both in the PFR for Case No. 05-3-0037, challenging Lakewood Resolution No. 2005 – 13, and in the PFR for Case No. 05-3-0043, challenging Lakewood Ordinance No. 390.

Legal Issue No. 1

Did the City of Lakewood violate RCW 36.70A.200 by enacting a moratorium that will preclude DOC from siting essential public facilities within the City’s limits?

Legal Issue No. 2

Should the moratorium be invalidated under RCW 36.70A.302 because it substantially interferes with the fulfillment of the GMA’s goals, reflected in RCW 36.70A.020(1), (7), (11) and (12), and in RCW 36.70A.200, which call for the efficient, fair and coordinated siting of essential public facilities?

Legal Issue No. 3

Did the City of Lakewood preclude the siting of essential public facilities in violation of RCW 36.70A.200 when it enacted the moratorium and stated its intention to impose requirements relating to the internal staffing and security plans of work release facilities in a manner that directly interferes with the State’s duty and authority to set policy and management standards for such facilities?

Legal Issue No. 4

Does the Lakewood moratorium fail to serve the purpose generally served by enacting a moratorium in that Lakewood does not have authority to enact the regulations that it claims are needed to govern the work release facility?

APPENDIX – C

Lakewood Comprehensive Plan Policies

Section 9.7 of the Lakewood Comprehensive Plan contains the following goals and policies for siting essential public facilities:

GOAL CF-8: provide for the siting of identified essential public facilities.

Policies:

- CF-8.1: Identify and classify a list of statewide, countywide, and citywide essential public facilities.
- CF-8.2: Identify facilities of a statewide nature consistent with those of the Washington State Office of Financial Management or successor agency.
- CF-8.3: Identify countywide essential public facilities following a cooperative inter-jurisdictional agreement pursuant to GMA requirements and consistent with the guidance of the CWPP.
- CF-8.4: Identify city essential public facilities pursuant to the requirements of GMA.

GOAL CF-9: Administer a process, through design and development regulations, to site essential public facilities that adequately consider impacts of specific uses.

Policy:

- CF-9.1: The proposal process for siting an essential public facility is as follows:
- The proposal must be identified on the City's essential public facilities list.
 - In the siting of a statewide or countywide essential public facility, the applicant is required to provide a justifiable need for the public facility and for its location in Lakewood based upon forecasted needs and logical service area, including an analysis of alternative sites within and outside of the city.
 - In the siting of a statewide or countywide essential public facility, the applicant is required to establish

a public process by which the residents of the city and the affected neighborhoods have a reasonable opportunity to participate in the site selection process.

- Proposals must be consistent with this comprehensive plan and the City's design and development regulations.
- If a proposal is not specifically addressed by use (or intensity of the use) in the comprehensive plan or design and development regulations, the City will make an administrative use determination in accordance with City regulations. In such cases, proposals requesting siting as an essential public facility shall be subject to a conditional use permit or public facilities permit unless otherwise determined by the City.
- The proposal will be analyzed for impacts and mitigation in accordance with City design and development regulations.
- Analysis and mitigation may include fiscal impacts of the proposal to the City.

Index No. 4 – Lakewood Comprehensive Plan, Section 9.7

Section 3.8 Public and Semi-Public Institutional Land Uses, Lakewood Comprehensive Plan, which provides:

Lakewood is home to numerous large institutions including public and private colleges and hospitals, as well as a large number of school district properties. These resources offer citizens from Lakewood and surrounding areas vital medical and educational services, adding to the quality of life for the community. In addition, the facilities maintained by these institutions contribute to the public landscape, offering visual and usable open space, significant tree stands, educational historic resources, and a substantial architectural presence. The unique physical scale and public purpose of these institutions warrant a unique land use designation and policy framework.

GOAL LU-40: Provide for the harmonious operation of public and semi-public institutional uses within the city.

Policies:

- LU-40.1: Limit the application of the Public and Semi-Public Institutional land use designation to municipal, county, regional, state, and non-military federal uses; special districts; schools; and major semi-public institutions such as hospitals with a significant land area and employment characteristics as determined by the City.
- LU-40.2: Establish administrative processes to accommodate the need for growth and change of major institutions as they respond to changing community needs and the unique operational and locational needs of large public and institutional uses while maintaining a harmonious relationship with affected neighborhoods.
- LU-40.3: Establish an administrative process that addresses the development, phasing, and cumulative impacts of institutional uses and allows for the phasing of development and mitigation roughly proportionate to the impacts of the use.

GOAL LU-41.1: Recognize the unique nature of federal patent lands at Western State Hospital and Fort Steilacoom Golf Course.

Policy:

- LU-41.1: At five-year intervals, review the Western State Hospital Master Plan and the appropriateness of the Public & Semi-Public Institutional and Open Space & Recreation land-use designations for the hospital property and Fort Steilacoom Golf Course, respectively. The purpose of the review will be to determine the need for amending land-use designations to expand hospital facilities in light of its clients' changing needs.

Index No. 4 – Lakewood Comprehensive Plan, Section 3.8

APPENDIX – D

Lakewood Municipal Code - Conditional Use Permits

18A.10.050 - Purpose - Discretionary Permits

The purpose of this section is to establish the procedures and decision criteria for a variety of permits that involve discretion or require a subjective recommendation or decision made by the Community Development Director, Hearing Examiner, or other hearing body as appropriate.

18A.10.100 - Conditional Use Permit

18A.10.110 - Purpose - Conditional Use Permit

The purpose of this section is to establish procedures and decision criteria for uses that possess unique characteristics and are of such a nature that they may not be appropriate for every location within a given zoning district. Conditional uses are those uses deemed unique due to factors such as size, technological processes, equipment, the associated impacts of the use, or the location with respect to surroundings, streets, existing improvements, or demands upon public facilities. Such uses require a special degree of review and control to assure compatibility with the comprehensive plan and adjacent uses.

18A.10.120 - Existing Uses - Conditional Use Permit

A. Any use existing at the time of adoption of this title which is within the scope of uses requiring a conditional use permit (CUP) in the zoning district in which the property is situated shall be deemed a conforming use without necessity of obtaining a CUP.

B. Any expansion of an existing conditional use shall be required to apply for a new CUP if the Community Development Director finds that there is a change in the nature of the use or a significant change in the intensity of the use created by such an expansion.

C. Any use operating under the provisions of an existing conditional use permit at the time of adoption of this title which is within the scope of uses requiring a CUP in the zoning district in which the property is situated shall be deemed a conforming use without necessity of a new CUP, unless a proposed expansion would result in a change in the nature of the use or a significant change in the intensity of the use created by such an expansion.

D. Any use operating under the provisions of an existing CUP at the time of adoption of this title which is within the scope of primary permitted uses within the applicable zoning district shall be deemed a conforming use, provided that all conditions of approval and development standards are being met.

18A.10.130 - Application for a Conditional Use Permit

A. A CUP is a Process III application type and subject to all the procedural requirements applicable to this application type.

B. Conditional use permit applications shall be on the form prescribed by the Community Development Department and shall include all of the information and materials required by the application form. An applicant shall provide sufficient facts and evidence to enable the hearing examiner to make a decision. The established fee shall be submitted at time of application.

C. Applications for a CUP shall be filed with the Community Development Department. The CUP application shall be reviewed and circulated for comment by City staff.

D. Notice of application shall be provided pursuant to LMC 18A.02.670.

18A.10.140 - Public Hearing - Conditional Use Permit¹²

A. The Hearing Examiner shall hold an open record public hearing on any proposed conditional use and shall give notice thereof in accordance with the procedures established pursuant to LMC 18A.02.700.

B. The hearing shall be conducted in accordance to the requirements of LMC 18A.02.720.

18A.10.150 - Required Findings - Conditional Use Permit

A CUP shall only be granted after the Hearing Examiner has reviewed the proposed use and has made written findings that all of the standards and criteria set forth below have been met or can be met subject to conditions of approval:

¹² LMC 18A.2.725 provides for joint public hearings as follows:

A. The Community Development Director may combine any public hearing on a project permit application with any hearing that may be held by another local, state, regional, federal, or other agency, on the proposed action, as long as:

1. The other agency consents to the joint hearing;
2. The other agency is not expressly prohibited by statute from doing so;
3. Sufficient notice of the hearing is given to meet each of the agencies' adopted notice requirements as set forth in statute, ordinance, or rule;
4. The agency has received the necessary information about the proposed project from the applicant in enough time to hold its hearing at the same time as the local government hearing; and
5. The hearing is held within the Lakewood city limits.

B. An applicant may request that the public hearing on a permit application be combined as long as the joint hearing can be held within the time periods set forth in LMC 18A.02.530.D and 18A.02.730.B.. In the alternative, the applicant may agree to a particular schedule if additional time is needed in order to complete the hearings.

A. The size and physical characteristics of the site are appropriate for the proposed use including all facilities and amenities that are required by this title or desired by the applicant.

B. The proposed use will not be detrimental to the public health, safety, and general welfare of the community and will not introduce hazardous conditions at the site that cannot be mitigated to protect adjacent properties and the vicinity.

C. The proposed use will not be injurious to, or adversely affect the uses, property, or improvements adjacent to, or in the vicinity of, the site upon which the proposed use is to be located. The proposed use will be compatible with adjacent land uses and consistent with the character of the surrounding area.

D. The proposed use will be supported by adequate water, sewer, storm drainage, schools, electrical, police, and fire protection facilities and services. The use will not overburden or adversely affect said public facilities and services.

E. The traffic generated by the proposed use will not unduly burden the traffic circulation system in the vicinity.

F. An adequate site layout is proposed for on-site circulation and transportation activities, considering the potential impacts of the proposed use on traffic flow and control, emergency vehicle movements and safety associated with the suitability of access points, on-site drives, parking, loading and unloading areas, refuse collection and disposal points, sidewalks, bike paths, or other transportation facilities required by this title or desired by the applicant. All conditions necessary to lessen any impacts of the proposed use have been included in the project design or will be required as conditions of approval pursuant to LMC 18A.10.160, Action of Hearing Examiner. Buffering devices such as fencing, landscaping or topographic characteristics may be required to adequately protect adjacent properties from adverse effects of the proposed use, including adverse visual or auditory effects.

G. The proposed use will cause no unreasonably adverse effects to wetlands, shorelands, wildlife habitat, and other sensitive areas.

H. That the granting of the proposed conditional use is consistent and compatible with the intent of the goals, objectives and policies of the comprehensive plan. For essential public facilities, the Hearing Examiner shall balance the goals and policies of the comprehensive plan, the intent of this code, and the public need for the proposed facility.

I. The proposed use complies with the appropriate development and performance standards and all other applicable provisions of the City of Lakewood Land Use and Development Code.

18A.10.160 - Action of Hearing Examiner - Conditional Use Permit

A. In addition to demonstrating compliance with the criteria as determined by the Hearing Examiner, the applicant shall accept those conditions that the Hearing Examiner finds are appropriate to obtain compliance with the criteria.

B. In permitting a conditional use, the Hearing Examiner may impose any or all of the following conditions:

1. Limit the manner in which the use is conducted, including restricting the time an activity may take place and restraints to minimize such environmental effects as noise, vibration, air pollution, glare and odor.
2. Establish a special yard or other open space or lot area or dimension.
3. Limit the height, size or location of a building or other structure.
4. Designate the size, number, location or nature of vehicle access points.
5. Increase the amount of street dedication, roadway width or improvements within the street right-of-way.
6. Designate the size, location, screening, drainage, surfacing or other improvement of a parking or truck loading areas.
7. Limit or otherwise designate the number, size, location, and height of lighting of signs.
8. Limit the location and intensity of outdoor lighting or require its shielding.
9. Require screening, landscaping or another facility to protect adjacent or nearby property and designate standards for installation or maintenance of the facility.
10. Design the size, height, location or materials for a fence.
11. Protect existing trees, vegetation, water resources, wildlife habitat or other significant natural resources.
12. Require provisions for public access, physical and visual, to natural, scenic and recreational resources.
13. Require provisions for stormwater drainage including designating the size, location, screening, or other improvements of detention ponds and other facilities
14. Impose special conditions on the proposed development to ensure that development is in conformance with the surrounding neighborhood and the intent and purpose of the zoning district classification.
15. Require such financial guarantees and evidence that any applied conditions will be complied with.

18A.10.170 - Appeals - Conditional Use Permit

The decision of the Hearing Examiner shall be final, unless an appeal is made to the City Council within fourteen (14) calendar days pursuant to LMC 18A.02.740.

18A.10.180 - Period of Validity - Conditional Use Permit

Authorization of a conditional use shall be void after a period of one (1) year unless the use is begun within that time or substantial construction or action pursuant thereto has

taken place. However, the City may, at the discretion of the Community Development Director, extend authorization for one (1) additional year upon request, provided such request is submitted in writing at least thirty (30) days and not more than sixty (60) days prior to expiration of the permit.

APPENDIX – E

Lakewood City Council’s Findings of Fact

Resolution 2005-13 contains the following findings of fact upon which the moratorium created in Ordinance No. 376 was based:

1. In conformity with the state Growth Management Act (GMA), the City of Lakewood has prepared and adopted a comprehensive plan and development regulations pursuant to and in support of that plan. The development regulations of the City of Lakewood are found in Lakewood Municipal Code Title 18A.
2. The GMA, at RCW 36.70A.200, requires that local jurisdictions plan for the siting of essential public facilities, such as Western State Hospital (WSH). The City of Lakewood’s comprehensive plan was adopted in July of 2000 and, as subsequently amended, is responsive to the GMA’s essential public facilities requirements and creates a land-use designation of Public & Semi-Public Institutional, which is applicable to the WSH campus as well as other sites throughout the city.
3. The official zoning map adopted by reference in Section 18A.02.320 of the Lakewood Municipal Code correspondingly zones the WSH campus Public/Institutional (PI).
4. The comprehensive plan specifically addresses the WSH campus in Goal LU-41.1, as follows: “Recognize the unique nature of federal patent lands at Western State Hospital and Fort Steilacoom Golf Course,” and in Policy LU-41.1, as follows: “At five-year intervals, review the Western State Hospital Master Plan and the appropriateness of the Public & Semi-Public Institutional and Open Space & Recreation land-use designations for the hospital property and Fort Steilacoom Golf Course, respectively. The purpose of the review will be to determine the need for amending land-use designations to expand hospital facilities in light of its clients’ changing needs.”
5. Prior to the comprehensive plan’s adoption, the Washington State Department of Social and Health Services (DSHS) applied for and received a public facilities permit from the City to formally acknowledge a master plan for the WSH campus that it had commissioned prior to Lakewood’s incorporation, which was completed shortly after the City’s incorporation in 1996. The scope of work under the public facilities permit formed a basis upon which DSHS could then seek capital appropriations for its projects upon the WSH campus.
6. Multiple administrations within DSHS, as well as the Washington State Department of Corrections (DOC), have facilities and/or provide services upon the WSH campus.

7. Under the comprehensive plan's goals and policies, DSHS would be asked to initiate a review of its master plan for the WSH campus in 2005. The City's land-use regulations currently require the master plan for WSH to be submitted through a conditional use permit (CUP) process.

8. Pursuant to RCW 36.70A.103, state agencies shall comply with local comprehensive plans and development regulations; and pursuant to RCW 72.65.220, and Washington Administrative Code sections 137-57-030 and 050, the DOC must undertake specific activities relative to siting its facilities, specifically work release/training facilities.

9. In late 2004 and early 2005, compelling evidence began to emerge, by virtue of newspaper articles and inquiries to City staff, whereby the City believed that it would soon receive applications for the siting, relocating, renovating, and/or making of other changes to both DSHS and DOC facilities located upon the WSH campus, either in a physical or functional manner, that were not addressed in the scope of the existing WSH master plan and public facilities permit.

10. Progress House is a work release facility located in Tacoma whose specific operations were described at the public hearing. The testimony and evidence showed that DOC intends to replace the existing women's pre-release facility upon the WSH campus with a work release facility that is described as co-ed; however, hosts in its current location predominately males. The DOC, however, has not provided the City with any information as to Progress House's functional similarities to and/or differences from the current women's pre-release facility. The City is unable to accurately evaluate, and thereby require appropriate mitigation of, any increased impacts or safety risks related to this change in use.

11. A finding is hereby made that Progress House will create a greater risk to the security of the patients at WSH and the citizens of the City of Lakewood. This finding is based upon testimony that illustrates the difference between the pre-release facility and the proposed work release facility. In the pre-release facility the inmates were separated and locked away from the hospital and community. The proposed work release facility will allow convicted felons to travel onto the premises of WSH and into the Lakewood community. Based upon the severity of the work release participants' previous crimes and the high rate of recidivism amongst work release participants, the change in use will negatively impact the safety and welfare of the public within the City of Lakewood.

12. Further, the Lakewood City Council hereby finds that DOC sought to relocate the Progress House work release facility from its existing site to the WSH campus without first undertaking the siting and public hearing process set forth in RCW 72.65.220 and WAC 137-57-030 and 050. This fact is illustrated by an email from James G. Blodgett, a previous DOC regional administrator in the DOC's Office of Correctional Operations in Tacoma, to Eldon W. Vail, the DOC

deputy secretary directly responsible for the operational management of correctional operations.

13. Mr. Blodgett's successor, Kevin Bovenkamp, in his testimony at the public hearing conducted on April 18, 2005, provided contradictory information on the point of whether DOC had met its responsibilities under the law. On one hand, he insisted that the Department intended to comply with its siting responsibilities; on the other, he clearly confused the requirements imposed upon DOC by the cited RCW and WAC with the City's own CUP process. He stated that the DOC had intended to initiate public participation prior to the enactment of the moratorium, but he also stated that such action was forestalled by the moratorium's adoption. In fact, it was the DOC's application for a CUP, about which DOC staff had recently initiated conversations with City staff, that was forestalled by this action. The moratorium in no way precludes the DOC's exploration of siting options as prescribed by the RCW and WAC.

14. Had DOC sought to meet the requirements of RCW 72.65.220 and WAC 137-57-030 and 050, some sort of record would have been formed, such as but not limited to a list of members of any search committee or advisory committee appointed, records of those committees' work such as meeting minutes or written recommendations, and public notice of site consideration. Nevertheless, the DOC failed to submit any evidence showing that any such effort was ever undertaken.

15. The relocation of Progress House, and potentially any other projects upon the WSH campus that are outside of the scope of the current master plan, may pose negative impacts to neighbors living in the area of the WSH campus, at-risk populations residing at or otherwise using the WSH campus, the general public using the adjacent Ft. Steilacoom Golf Course and park recreationally, and/or the City of Lakewood's ability to provide police services.

16. The siting of additional or amended services or programs upon the WSH site may, cumulatively or individually, pose the potential for diminution of real estate property values in the area, physical risk to campus and/or area users and residents, and/or heightened reliance upon public services provided by the City, resulting in higher costs to Lakewood in subsidizing the presence of WSH in its community.

17. It is in the best interests of the public for the City of Lakewood to examine the functionality and impacts of the entire scope of services provided upon, and/or facilities sited within, the WSH campus, including their relationship and functionality with respect to one another, such as is accomplished through a master planning process. It is appropriate for the City to legislatively create a process whereby all necessary information must be provided so that the City of Lakewood may evaluate and regulate proposed projects and uses upon the WSH campus and within PI zoning areas.

18. It is in the public interest to preclude additional development upon the WSH campus until a master plan review and update is completed which thoroughly examines, at minimum, future growth upon the site including anticipated phasing, the full slate of services to be provided and/or sited upon the campus either by DSHS or other agencies or parties as well as a plan for their functional integration, a plan for dealing with security both in terms of exposure of the general public and at-risk populations residing at or using the WSH campus, and a financial component to serve state agency needs in pursuing capital appropriations.

19. If the current moratorium was applied only to the WSH campus, it could provoke unintended consequences should those seeking to site public facilities addressed by the moratorium look to other areas within the city having PI zoning.

20. Protection of the public health, safety and welfare supports continuation of a moratorium on applications for permits and approvals for selected uses within the PI zoning districts until such time as an updated master plan for the WSH campus addresses these issues.

21. In 2004, as part of the City's required comprehensive plan review, DOC submitted comments relative to siting of work release facilities within Lakewood. Subsequent discussions between staff and DOC's consultant revealed that draft siting guidelines were being developed, but they would not be complete in time for the City to respond as part of its 2004 review and amendments. Therefore, the City acknowledged this in its compliance report and left the door open to subsequent review. The DOC consultant has twice been scheduled to present the draft siting guidelines to the Growth Management Coordinating Committee, which advises the Pierce County Regional Council, but the presentation has been cancelled at DOC's request. The City has had no opportunity to examine its plan and/or development regulations for potential amendments to be responsive to the guidelines, if appropriate.

Index No. 68, Resolution No 2005-13, Section 2.

Ordinance No. 390 adopts the findings of fact in Resolution No. 2005-13 and the following Further Findings of Fact:

1. The findings of fact contained in Resolution No. 2005-13 are hereby affirmed and cited in support of the moratorium commenced in Ordinance No. 390. It is the finding of the City Council for the City of Lakewood that a moratorium shall be placed upon land uses in the Public Institutional zoning districts within the City. The circumstances that lead to the adoption of a moratorium through Ordinance No. 376 have not changed, although the City Council has conducted additional study of the issues and consequences involved in such a moratorium.
2. The City Council for the City of Lakewood does hereby find that substantial

evidence exists to suggest that the Washington State Department of Corrections (DOC) may attempt to locate a work release facility upon the grounds of Western State Hospital, which is contained within the Public Institutional zoning district of the City.

3. The City Council for the City of Lakewood does hereby find that locating of a correctional work release facility, where once was located a women's pre-release correctional center, will negatively impact the safety and security of citizens of the City of Lakewood. Locating a correctional facility upon the grounds of Western State Hospital may endanger the hospital's staff, clients, patients and families of patients, as well as the users of Fort Steilacoom Park.
4. The City Council for the City of Lakewood reiterates its previous finding of fact that locating a work release facility upon the grounds of Western State Hospital would require a facility siting process as outlined in RCW 72.65.220. The previous moratorium would not have precluded the Department of Corrections from commencing such a siting process or holding public hearings regarding the need or location for a work release facility. However, the City lacks any credible evidence to show that DOC has commenced or intends to undertake such a public process related to the locating of a work release facility within the City of Lakewood.
5. The City Council for the City of Lakewood does hereby find that a public participation process is necessary to study uses within the Public Institutional zoning district, particularly correctional facilities, to gain knowledge of how such uses may impact the city, to plan and produce procedures to mitigate such impacts, and to determine appropriate and necessary legislative measures to respond to such land uses.
6. The City Council for the City of Lakewood does hereby find, based upon information the Department of Social and Health Services (DSHS) submitted in a letter to Lakewood Mayor Douglas G. Richardson on or about April 18, 2005, that the moratorium created through Ordinance No. 376 can be narrowed in focus.
7. The City Council for the City of Lakewood has carefully reviewed and considered the impact of the moratorium commenced under Ordinance No. 376 and finds that it may have the unintended consequence of limiting Western State Hospital (WSH) from operating, renovating and maintaining essential public facilities. Specifically, the terms of Ordinance No. 376 could preclude DSHS from making emergency repairs, infrastructure improvements, conducting roofing and facilities maintenance projects, and installing fire-safety-related equipment scheduled to be completed within the next two years.
8. The City Council for the City of Lakewood does hereby find that narrowing the focus of the moratorium to correctional facilities within the Public Institutional zone is appropriate and necessary, will serve the safety and health of the public,

and allow for a period of public participation necessary to orderly plan, regulate and mitigate negative impacts related to such used.

Supplemental Index No.4, Ordinance No 390, Attachment A.