

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2  
3 MICHAEL T. VINATIERI, EDWARD G. SMETHERS,  
4 and KAREN KNUTSEN, et al,

Case No. 03-2-0020c

5  
6 Petitioners,

7 v.

**ORDER FINDING  
COMPLIANCE**

8  
9 LEWIS COUNTY,

10 Respondent.

11  
12 ROTH, et al.,

13 Petitioners,

Case No. 04-2-0014c

14 v.

**ORDER FINDING  
COMPLIANCE**

15 LEWIS COUNTY,

16 Respondent,

17  
18 And

19 CARDINAL FG COMPANY,

20 Intervenor.  
21

22  
23 THESE Matters came before the Board upon the County's compliance report. The County  
24 filed its compliance report in *Vinatieri v. Lewis County*, WWGMHB Case No. 03-2-0020c  
25 (*Vinatieri*) on August 19, 2005. The County also filed its compliance report in *Roth v. Lewis*  
26 *County*, WWGMHB Case No. 04-2-0014c (*Roth*) on August 19, 2005. Petitioners filed their  
27 objections to a finding of compliance in both cases on September 12, 2005. Petitioners'  
28 Objections to Lewis County's Compliance Report.  
29

30 *Vinatieri* concerns the County's development regulations establishing the process for  
31 reviewing and approving applications for industrial land banks pursuant to RCW  
32

1 36.70A.367. The County's development regulations concerning the process for siting major  
2 industrial developments pursuant to RCW 36.70A.365 are the subject of the *Roth* case.  
3 Both were found noncompliant with the Growth Management Act in prior Board decisions  
4 based on the County's failure to consult with the cities within its boundaries in establishing  
5 its process, and defects in the County's public participation procedures.<sup>1</sup>  
6

7  
8 In this decision, we determine that the County's procedures for establishing industrial land  
9 banks and siting major industrial developments embodied in Ordinance 1179J now comply  
10 with the requirement for consultation with cities of RCW 36.70A.365 and 36.70A.367. We  
11 also find that these procedures comply with the public participation requirements of the  
12 GMA.  
13

#### 14 **PROCEDURAL HISTORY**

15  
16 The *Vinatieri* case was originally filed in 2003. Ordinance 1179B, Section 2, and Lewis  
17 County Code 17.20.015 were found to be out of compliance with the public participation  
18 requirements of the GMA by this Board in its Final Decision and Order in this case number,  
19 dated May 6, 2004. Conclusion of Law F states:  
20

21 County Ordinance 1179B, Section 2 and LCC 17.20.015 is not in compliance with the  
22 Growth Management Act (Ch. 36.70A RCW) due to failure to include a public  
23 participation process in adopting a master planned location for an industrial land  
24 bank.  
25

26 At the time of the original board decision in *Vinatieri*, the County anticipated that it would  
27 amend its code to provide that the public participation program for siting major industrial  
28 developments outside urban growth areas (RCW 36.70A.365) and for designating a bank of  
29

30 <sup>1</sup> The Board also entered a determination of invalidity as to the industrial land bank establishment procedures  
31 in *Vinatieri* based on a concern that permit applications within the land banks could vest during the compliance  
32 remand period. However, invalidity was rescinded in the Order Rescinding Invalidity – 2005, November 18,  
2005.

1 no more than two master planned locations for major industrial activity outside urban growth  
2 areas (RCW 36.70A.367) would be the same as the County's existing public participation  
3 program for comprehensive plan amendments generally (Ch. 17.15 LCC). However, the  
4 County elected not to pursue this course and instead adopted Ordinance 1179G, explicitly  
5 removing proposed amendments to the comprehensive plan pursuant to RCW 36.70A.365  
6 and RCW 36.70A.367 from the County's regular comprehensive plan amendment process.  
7 In *Vinatieri*, we found that the procedures for establishing industrial land banks did not  
8 comply with RCW 36.70A.367 and 36.70A.140. The County was ordered to achieve  
9 compliance in this case by April 4, 2005. Final Decision and Order, December 10, 2005.  
10 Three extensions of time were granted upon the County's motions. 2005 Order Extending  
11 Period for Compliance, April 22, 2005; Second 2005 Order Extending Period for  
12 Compliance, June 15, 2005; Third 2005 Order Extending Period for Compliance, July 27,  
13 2005.  
14  
15

16  
17 In *Roth*, we found that the public participation procedures for reviewing and approving  
18 applications for major industrial developments pursuant to RCW 36.70A.365 failed to  
19 comply with the GMA's requirements for "early and continuous" public participation as set  
20 forth in RCW 36.70A.140; and that the County had failed to consult with the cities in  
21 establishing a procedure for reviewing applications for major industrial developments  
22 pursuant to RCW 36.70A.365. (Final Decision and Order, December 9, 2004). The *Roth*  
23 decision referenced the challenges to compliance with RCW 36.70A.367 but focused on the  
24 challenges to compliance with RCW 36.70A.365 (major industrial developments). Three  
25 requests by the County to extend the period for compliance were granted. Order Extending  
26 Period for Compliance, April 22, 2005; Second Order Extending Period for Compliance,  
27 June 15, 2005; Third Order Extending Period for Compliance, July 27, 2005.  
28  
29

30 The County filed Lewis County's Compliance Report and Request to Rescind Invalidity on  
31 August 19, 2005. Petitioners filed their objection to a finding of compliance and rescission  
32

1 of invalidity on September 12, 2005. Petitioners Objections to Lewis County's Compliance  
2 Report. The County filed its response on October 3, 2005. Lewis County's Response to  
3 Petitioners Objections (Corrected).

4  
5 The compliance hearing was held on October 19, 2005 in Chehalis, Washington. Eugene  
6 Butler spoke for the Petitioners. Douglas Jensen, chief civil deputy prosecutor, and Bob  
7 Johnson, director of Community Development, represented Lewis County. All three board  
8 members attended. After the hearing, the County provided an electronic version of a  
9 portion of the July 7, 2005, Planning Commission meeting. Letter of Douglas E. Jensen to  
10 Patricia Davis, November 7, 2005. This will be given exhibit number 150. On November 8,  
11 2005, the Petitioners provided a chart of public participation in the adoption of Ordinance  
12 1179J for illustrative purposes. This will be given exhibit number 151. The County objects  
13 to this illustrative exhibit as argumentative. Lewis County's Continuing Objection to  
14 Petitioners' Illustrative Exhibit, November 14, 2005. At argument, the County agreed to  
15 provide an exhibit indicating the membership of the Planned Growth Committee. On  
16 November 15, 2005, the County submitted a list of the members of the Planned Growth  
17 Committee, that includes representatives from all the cities in Lewis County. This will be  
18 given exhibit number 152. The Board admits exhibits 150, 151 and 152, giving them the  
19 appropriate weight.  
20  
21  
22

## 23 **BURDEN OF PROOF**

24 Amendments to development regulations are presumed valid upon adoption:

25  
26 Except as provided in subsection (5) of this section, comprehensive plans and  
27 development regulations, and amendments thereto, adopted under this chapter are  
28 presumed valid upon adoption.

29 RCW 36.70A.320(1).

30 The burden is on the Petitioners to demonstrate that the adoption of Ordinance 1179J by  
31 the County in this case is not in compliance with Ch. 36.70A RCW. RCW 36.70A.320(2). The  
32

1 board “shall find compliance unless it determines that the action by the state agency,  
2 county, or city is clearly erroneous in view of the entire record before the board and in light  
3 of the goals and requirements of this chapter.” RCW 36.70A.320(3). In order to find the  
4 County’s action clearly erroneous, the board must be “left with the firm and definite  
5 conviction that a mistake has been made.” *Department of Ecology v. PUD1*, 121 Wn.2d  
6 179, 201, 849 P.2d 646 (1993).  
7

8  
9 **ISSUES FOR COMPLIANCE**

- 10  
11 1. Did the County consult with the cities of Lewis County in establishing the process for  
12 reviewing and approving major industrial developments and industrial land banks as  
13 required by RCW 36.70A.365 and 36.70A.367.  
14 2. Does Ordinance 1179J provide for early and continuous public participation as required  
15 by RCW 36.70A.140 and RCW 36.70A.035 in reviewing and approving major industrial  
16 developments and industrial lands banks.  
17 3. Did the County follow the public participation requirements of RCW 36.70A.140 and Ch.  
18 17.12 LCC in adopting Ordinance 1179J.  
19

20 **DISCUSSION**

21 **Issue 1:** Did the County consult with the cities of Lewis County in establishing the process  
22 for reviewing and approving major industrial developments and industrial land banks as  
23 required by RCW 36.70A.365 and 36.70A.367.  
24

25 **Positions of the Parties:**

26 Petitioners state that the only documentation pertaining to consultation with the cities is  
27 contained in Exhibit 68 – concerning the July 14, 2005, meeting of the Planned Growth  
28 Committee. Petitioners Objections to Lewis County Compliance Report at 2. Petitioners  
29 argue that the requirement to consult with cities in RCW 36.70A.365 and 36.70A.367  
30 includes a requirement that the public be notified of the County’s intent to consult with the  
31 cities. *Ibid.*  
32

1 The County responds that the County consulted with the cities through the Planned Growth  
2 Committee. Exhibit 23, the County asserts, shows that this body approved the revisions to  
3 Ch. 17.20 LCC.<sup>2</sup> The County argues that the consultation with the cities pursuant to RCW  
4 36.70A.365 and 36.70A.367 is to be consistent with the provisions of RCW 36.70A.210 and  
5 does not require public notice.  
6

7  
8 **Board Discussion:**

9 Both RCW 36.70A.365 and 36.70A.367 require the County to consult with the cities within  
10 its borders when establishing procedures to review and approve major industrial  
11 developments:

12       A county required or choosing to plan under RCW 36.70A.040 may establish, in  
13       consultation with cities consistent with provisions of RCW 36.70A.210, a process for  
14       reviewing and approving proposals to authorize siting of specific major industrial  
15       developments outside urban growth areas.

16 RCW 36.70A.365.

17       In addition to the major industrial development allowed under RCW 36.70A.365, a  
18       county planning under RCW 36.70A.040 that meets the criteria in subsection (10) or  
19       (11) of this section may establish, in consultation with cities consistent with provisions  
20       of RCW 36.70A.210, a process for designating a bank of no more than two master  
21       planned locations for major industrial activity outside urban growth areas.

22 RCW 36.70A.367(1).

23 The provisions of RCW 36.70A.210 require the establishment of a collaborative process  
24 between a county and its cities in developing county-wide planning policies. RCW  
25 36.70A.210(2). The County represents through Exhibit 152 that the Planned Growth  
26 Committee includes representatives of all the cities in Lewis County. The minutes of the  
27 July 14, 2005, Planned Growth Committee show that the committee considered the  
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30  
31 <sup>2</sup> At argument, the County agreed to provide an exhibit indicating the membership of the Planned Growth  
32 Committee. On November 15, 2005, the County submitted a list of the members of the Planned Growth  
Committee, that includes representatives from all the cities in Lewis County. Exhibit 152.

1 changes to Ch. 17.20 LCC and approved them. Exhibit 23. This meets the requirements of  
2 RCW 36.70A.365 and 36.70A.367 for consultation with the cities.

3  
4 Petitioners argue that public notice of the consultation with the cities should have been  
5 given. However, Petitioners cite to no authority for this proposition and we do not read such  
6 a requirement into the statute.  
7

8  
9 Petitioners also argue that the cities must be consulted in the approval and review of each  
10 application for a major industrial development or industrial land bank. Therefore, they argue  
11 that the procedures in Ch. 17.20 LCC lack a required consultative step with the cities.

12 Petitioners Objections to Lewis County Compliance Report at 2. We do not agree that the  
13 consultation requirements of RCW 36.70A.365 and 36.70A.367 require continuous  
14 consultation with the cities on individual applications. In the course of the mandated  
15 consultation on the process to be used, the County and cities could have agreed upon a  
16 process that provided for such continuous consultation, but they did not. RCW 36.70A.365  
17 and 36.70A.367 by their terms only require consultation in the *establishment of the process*  
18 for reviewing and approving applications; those provisions of the GMA do not require that  
19 there be consultation on each application.  
20  
21

22  
23 **Conclusion:** The County complied with RCW 36.70A.365 and 36.70A.367 in consulting  
24 with the cities in Lewis County in establishing the process for reviewing major industrial  
25 development applications and applications for industrial land banks in Ch. 17.20 LCC.  
26

27 **Issue 2:** Does Ordinance 1179J provide for early and continuous public participation as  
28 required by RCW 36.70A.140 and RCW 36.70A.035 in reviewing and approving major  
29 industrial developments and industrial lands banks.  
30

31 ///

32 ///

1 **Positions of the Parties:**

2 Petitioners argue that the public participation procedures of Ch. 17.20 LCC do not provide  
3 for public participation before the consolidated hearing before the Hearing Examiner and the  
4 Planning Commission. Petitioners Objections to Lewis County Compliance Report at 3.  
5 Petitioners object that the term “workshop” is not defined, and workshops do not require  
6 public notice of the right to participate in the workshops. *Ibid.* Petitioners assert that Ch.  
7 17.20 LCC does not provide any right of public participation prior to the public hearing. *Ibid*  
8 at 4. Petitioners also argue that the procedures should provide that cities will be notified  
9 upon receipt of the completed application and prior to the completion of environmental  
10 documents. *Ibid* at 6.  
11

12  
13 In addition, Petitioners challenge the notice provisions of Ch. 17.20 LCC. *Ibid* at 7.  
14 Petitioners argue that notice should be provided to all property owners within one-half mile  
15 of the proposed site because such a major development affects those lands; instead of  
16 notice to property owners within one-half mile, the hearing notice provision of LCC  
17 17.20.050(5) requires mailing of notice only to those property owners of record within 1000  
18 feet of the site. *Ibid.*  
19

20  
21 The County responds that it developed the public participation procedures of Ch. 17.20 LCC  
22 based on what worked well in the approval of the Cardinal Glass major industrial  
23 development application. The revisions to Ch. 17.20 LCC now require that the inventory of  
24 developable land be presented by the applicant as part of the completed application. The  
25 inventory therefore becomes part of the SEPA (State Environmental Policy Act) review  
26 process set out in Ch. 17.110 LCC. This process has significant opportunities for public  
27 participation, the County notes.  
28  
29

30  
31 The County also points out that the Planning Commission meetings are noticed generally  
32 and have an opportunity for public comment. The cities receive specific notice of the

1 application through the SEPA review process. One workshop is provided but the Planning  
2 Commission may also determine to hold additional workshops, the County points out.

3  
4 **Board Discussion:**

5 The County excludes the review of applications for major industrial developments and  
6 industrial land banks from its usual public participation program because these applications  
7 are handled in a consolidated process also involving hearing examiner review of the master  
8 site plan:

9  
10 This chapter [public participation program] applies to long-range planning issues,  
11 including changes to the County comprehensive plan and development regulations,  
12 in proceedings not involving a hearing examiner.  
13 LCC 17.12.030.

14  
15 The provisions of Ch. 17.20 LCC establish a specific public participation program for  
16 consideration of the comprehensive plan amendments and development regulations  
17 adopted pursuant to RCW 36.70A.365 and 36.70A.367. These must conform to RCW  
18 36.70A.140:

19 Each county and city that is required or chooses to plan under RCW 36.70A.040 shall  
20 establish and broadly disseminate to the public a public participation program  
21 identifying procedures providing for early and continuous public participation in the  
22 development and amendments of comprehensive land use plans and development  
23 regulations implementing such plans. The procedures shall provide for broad  
24 dissemination of proposals and alternatives, opportunity for written comments, public  
25 meetings after effective notice, provision for open discussion, communications  
26 programs, information services, and consideration of and response to public  
27 comments.

28 RCW 36.70A.140 (in pertinent part).

29 To provide adequate opportunities for public participation in the consideration of these  
30 applications, the County has made a proposed inventory of developable land a part of the  
31 application itself. LCC 17.20.030(6). The applicant must present a proposed inventory of  
32

1 developable land in the application. This means that the proposed inventory is available  
2 upon the filing of the application, and notice of the application is published when it is  
3 complete. LCC 17.20.040. It also places the inventory within the purview of the SEPA  
4 review, a process which includes opportunity for public comment. LCC 17.20.050(1).  
5

6  
7 The public participation procedures for the review and approval of applications for major  
8 industrial developments and applications for industrial land banks are found at LCC  
9 17.20.050 of the amended County code. At least one background workshop is provided  
10 including an introduction to matters for Planning Commission consideration under RCW  
11 36.70A.367. LCC 17.20.050(3). After the workshop is held, the Planning Commission  
12 publishes notice of a public hearing and draft proposals for public hearing and comment.  
13 LCC 17.20.050(4). The Planning Commission hearing is consolidated with the Hearing  
14 Examiner review of the master site plan. As needed, more workshops to respond to public  
15 comment may be held by the Planning Commission. LCC 17.20.050(6). Notice of the  
16 public hearing before the Board of County Commissioners is published based on the  
17 recommendations of the Planning Commission. LCC 17.20.050(7)(a). Public comment may  
18 be written or oral before the Board of County Commissioners. LCC 17.20.050(7)(b).  
19  
20

21  
22 Petitioners argue that public participation is not necessarily available in the workshop(s)  
23 before the Planning Commission. Petitioners Objections to Lewis County Compliance  
24 Report at 3-4. However, the County points out that there is a general opportunity for public  
25 comment at all Planning Commission meetings. We also note that the provision for  
26 workshops in the County public participation program in Ch. 17.12 LCC is similar. Those  
27 workshops are for public observation but the Planning Commission “will endeavor to provide  
28 adequate time at the end of the meeting for public comment or input” and written comments  
29 may be submitted at any time. LCC 17.12.050(1)(b). The workshop provisions of LCC  
30 17.20.050 follow the same model.  
31  
32

1 Petitioners also challenge the sufficiency of the notice provided to property owners and  
2 cities of the application and hearings under LCC 17.20.050. Petitioners Objections to Lewis  
3 County Compliance Report at 7. LCC 17.20.050(5) requires mailing notice to property  
4 owners within 1000 feet of the proposed site. Since LCC 17.20.030(3)(d) requires  
5 identification of existing roads, highways and driveways within one-half mile of the site.  
6 Petitioners argue that property owners within one-half mile of the site should also receive  
7 mailed notice of the hearing. *Ibid.* The County argues that it is a substantial burden to  
8 provide mailed notice to property owners within one-half mile of the proposed site.  
9

10  
11 Mailed notice is not the only acceptable notice provided by RCW 36.70A.035. Posting the  
12 property (RCW 36.70A.035(1)(a)) and publishing notice in a newspaper of general  
13 circulation (RCW 36.70A.035(1)(b)) are examples of acceptable public notice specifically  
14 listed in the statute. LCC 17.20.050 provides for publication of notice of the Planning  
15 Commission public hearing (LCC 17.20.050(4)), providing copies of the proposal for public  
16 review at named libraries and senior centers (LCC 17.20.050(4)(a)), and mailed notice to all  
17 property owners within 1,000 feet of the site. LCC 17.20.050(5). Notice is also published of  
18 the public hearing before the Board of County Commissioners. LCC 17.20.050(7)(a).  
19 These notice procedures comply with the requirements of RCW 36.70A.035.  
20  
21

22  
23 Petitioners suggest a public participation process that would engage the public in discussion  
24 of the merits of the proposed industrial development. The Petitioners' proposed process  
25 would also involve the cities in a determination of the sufficiency of the inventory of  
26 developable land to ensure that there was no suitable land within existing urban growth  
27 areas. Petitioners Objections to Lewis County Compliance Report at 5-6.  
28

29  
30 Petitioners' proposal is a good one and would clearly comply with the public participation  
31 requirements of RCW 36.70A.140. However, it is not the only public participation program  
32 that would comply. The County has chosen a program that allows the public to participate

1 through the SEPA review process (which now encompasses the inventory of developable  
2 land) as well as in the Planning Commission hearings and the public hearing before the  
3 Board of County Commissioners.  
4

5 In large measure, Petitioners base their arguments on a claim that greater public  
6 participation opportunities are required for applications for major industrial developments  
7 and industrial land banks because “the effect compromises the rights of cities to have urban  
8 development occur within their urban growth areas and because citizens in rural areas are  
9 entitled to protection from arbitrary and discriminatory actions from zoning hostile to their  
10 environment.” Petitioners Objections to Lewis County Compliance Report at 7-8.  
11  
12

13 However, the additional public participation requirements Petitioners propose on major  
14 industrial developments under RCW 36.70A.365 and industrial land banks under RCW  
15 36.70A.367 go beyond those already established by statute. By their terms, major industrial  
16 developments under RCW 36.70A.365 and industrial land banks under RCW 36.70A.367  
17 involve development outside of urban growth areas; the Legislature did not add to public  
18 participation requirements as a result but it did require consultation with cities in establishing  
19 the process for reviewing and approving such applications. This has been done here.  
20 Since major industrial developments under RCW 36.70A.365 and industrial land banks  
21 under RCW 36.70A.367 by definition occur outside of urban growth areas, the Legislature  
22 also requires specific undertakings to mitigate their impacts: buffers, environmental  
23 protection, development regulations to ensure urban growth will not occur outside their  
24 boundaries, mitigation of adverse impacts on designated natural resource lands, and  
25 protections for critical areas. RCW 36.70A.365(2)(c), (d), (e), (f), (g); RCW  
26 36.70A.367(2)(a) and (b), (3)(c), (d), (e). However, the GMA does not subject these  
27 proposals to a greater degree of public participation than any other GMA action and  
28 Petitioners fail to cite to any authority that suggests such a higher standard has been  
29 imposed.  
30  
31  
32

1  
2 **Conclusion:** The public participation provisions for the review and approval of applications  
3 for major industrial developments under RCW 36.70A.365 and industrial land banks under  
4 RCW 36.70A.367 comply with RCW 36.70A.140 and 36.70A.035.  
5

6  
7 **Issue 3:** Did the County follow the public participation requirements of RCW 36.70A.140  
8 and Ch. 17.12 LCC in adopting Ordinance 1179J.

9 **Positions of the Parties:**

10 Petitioners have offered Exhibit 151 to illustrate the public participation process followed by  
11 the County in the adoption of Ordinance 1179J. The County objects to this exhibit as  
12 argumentative and not for illustrative purposes only. Lewis County's Continuing Objection  
13 to Petitioners' Illustrative Exhibit.  
14

15  
16 **Board Discussion:**

17 Petitioners did not clearly allege that the County failed to follow RCW 36.70A.140 and Ch.  
18 17.12 in its adoption of Ordinance 1179J in its objections to a finding of compliance in these  
19 cases. See Petitioners Objections to Lewis County Compliance Report. However, the  
20 Petitioners' arguments concerning public participation in Exhibit 151 apply only to the  
21 "participation events" that occurred relative to the adoption of Ordinance 1179J and thus  
22 appear to challenge the sufficiency of the public participation program followed for that  
23 adoption.  
24

25  
26 Even though it is the Petitioners' exhibit, Exhibit 151 demonstrates that sufficient public  
27 participation opportunities were provided for the adoption of Ordinance 1179J. It describes  
28 opportunities for oral and written comments and the Petitioners' submission of such  
29 comments from April 12, 2005, through the Board of County Commissioners' public hearing  
30 on August 8, 2005. The County's compliance report goes into much greater detail and  
31 includes letters, minutes of meetings, notices of publication, sign-in sheets, CDs of Planning  
32

1 Commission hearings and even a press release. In the absence of a specific challenge to a  
2 failure to follow some aspect of Ch. 17.12 LCC, the Board concludes that the County's  
3 approved public participation program was followed.  
4

5 The County also submitted an electronic version of the July 7, 2005, Planning Commission  
6 hearing. Exhibit 150. This exhibit records the very thoughtful consideration the Planning  
7 Commission gave to the involvement of the public in the review and approval processes for  
8 major industrial developments under RCW 36.70A.365 and industrial land banks under  
9 RCW 36.70A.367. It is evident from this exhibit that the Planning Commissioners probed  
10 the rationale for the language of LCC 17.20.050 until satisfied that it addressed the public  
11 comments on this subject. Not only does this show that the Planning Commissioners  
12 appropriately considered the concerns of the public, it also shows an admirable  
13 understanding of the importance of public participation in GMA matters.  
14  
15

16  
17 **Conclusion:** The Petitioners have failed to establish that the County did not follow the  
18 public participation requirements of RCW 36.70A.140 and Ch. 17.12 LCC in adopting  
19 Ordinance 1179J.  
20

## 21 FINDINGS OF FACT

- 22
- 23 1. Lewis County is located west of the crest of the Cascade Mountains and is required  
24 to plan pursuant to RCW 36.70A.040.
  - 25 2. In *Vinatieri v. Lewis County*, WWGMHB Case No. 03-2-0020c, the Board found that  
26 the procedures for establishing industrial land banks did not to comply with RCW  
27 36.70A.367 and 36.70A.140. The finding of noncompliance was based on the  
28 County's failure to consult with the cities within its boundaries in establishing its  
29 process, and defects in the County's public participation procedures.
  - 30 3. In *Roth v. Lewis County*, WWGMHB Case No. 04-2-0014c, the Board found that the  
31 public participation procedures for reviewing and approving applications for major  
32 industrial developments pursuant to RCW 36.70A.365 failed to comply with the

1 GMA's requirements for "early and continuous" public participation as set forth in  
2 RCW 36.70A.140; and that the County had failed to consult with the cities in  
3 establishing a procedure for reviewing applications for major industrial developments  
4 pursuant to RCW 36.70A.365.

5 4. The Petitioners were parties to both these cases in the original proceedings and have  
6 participated in person or in writing in the legislative adoption proceedings in Lewis  
7 County with respect to the issues raised in the Petitions for Review.

8 5. Petitioners filed their objection to a finding of compliance and rescission of invalidity  
9 on September 12, 2005. Petitioners Objections to Lewis County's Compliance  
10 Report.

11 6. The County adopted Ordinance 1179J, on August 8, 2005. Ordinance 1179J recites  
12 that it was adopted to "clarify the public participation portions of Ch. 17.20 LCC to  
13 respond to the Hearings Board's compliance and invalidity directives."

14 7. The minutes of the July 14, 2005, Planned Growth Committee show that the  
15 committee considered the changes to Ch. 17.20 LCC and approved them.

16 8. The Planned Growth Committee includes representatives from all the cities in Lewis  
17 County.

18 9. The County's development regulations in LCC 17.20.050 now create a procedure  
19 where the inventory of developable land must be prepared and presented by the  
20 applicant at the time of application.

21 10. The proposed inventory is available upon the filing of the application, and notice of  
22 the application is published when it is complete. LCC 17.20.040.

23 11. This provision places the inventory within the purview of the SEPA review, a process  
24 which includes opportunity for public comment. LCC 17.20.050(1).

25 12. Subsequently, at least one background workshop is provided including an  
26 introduction to matters for Commission consideration under RCW 36.70A.367.

27 13. After the workshop is held, the Planning Commission publishes notice of a public  
28 hearing and draft proposals for public hearing and comment.

29 14. The Planning Commission hearing is consolidated with the Hearing Examiner review  
30 of the master site plan. As needed, more workshops to respond to public comment  
31 may be held by the Planning Commission.  
32

- 1 15. Notice of the public hearing before the Board of County Commissioners is published  
2 based on the recommendations of the Planning Commission.
- 3 16. Public comment may be written or oral in the public hearing held before the Board of  
4 County Commissioners.
- 5 17. LCC 17.20.050 provides for publication of notice of the Planning Commission public  
6 hearing (LCC 17.20.050(4)), providing copies of the proposal for public review at  
7 named libraries and senior centers (LCC 17.20.050(4)(a)), and mailed notice to all  
8 property owners within 1,000 feet of the site.
- 9 18. Notice is also published of the public hearing before the Board of County  
10 Commissioners.
- 11 19. Exhibit 151 describes opportunities for oral and written comments and the Petitioners'  
12 submission of such comments from April 12, 2005, through the Board of County  
13 Commissioners' public hearing on August 8, 2005, concerning the amendments to  
14 Ch. 17.20 LCC.
- 15 20. The Planning Commission gave careful consideration to the involvement of the public  
16 in the review and approval processes for major industrial developments under RCW  
17 36.70A.365 and industrial land banks under RCW 36.70A.367.
- 18 21. The Planning Commissioners probed the rationale for the language of LCC  
19 17.20.050 until satisfied that it addressed the public comments on this subject.

## 20 21 **CONCLUSIONS OF LAW**

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- 23 A. The Board has jurisdiction over the parties and subject matter of this case.
- 24 B. Petitioners have standing to challenge the request for a finding of compliance by the  
25 County.
- 26 C. The County complied with RCW 36.70A.365 and 36.70A.367 in consulting with the  
27 cities in Lewis County in establishing the process for reviewing major industrial  
28 development applications and applications for industrial land banks in Ch. 17.20  
29 LCC.
- 30 D. The public participation provisions for the review and approval of applications for  
31 major industrial developments under RCW 36.70A.365 and industrial land banks  
32 under RCW 36.70A.367 comply with RCW 36.70A.140 and 36.70A.035.

1 E. The County's public participation process in the adoption of Ordinance 1179J was  
2 not clearly erroneous and complied with RCW 36.70A.140 and Ch. 17.12 LCC.  
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4  
5 **ORDER**

6 Based on the foregoing, Ordinance 1179J complies with the requirements for consultation  
7 with cities of RCW 36.70A.365 and 36.70A.367, and the public participation (and notice)  
8 requirements of 36.70A.140 and 36.70A.035 for major industrial developments under RCW  
9 36.70A.365 and industrial land banks under RCW 36.70A.367. Therefore, both of these  
10 cases are hereby **CLOSED**.  
11

12  
13 **Pursuant to RCW 36.70A.300 this is a final order of the Board.**

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

23 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the  
24 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for  
25 judicial review may be instituted by filing a petition in superior court according to the  
26 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil  
27 Enforcement. The petition for judicial review of this Order shall be filed with the  
28 appropriate court and served on the Board, the Office of the Attorney General, and all  
29 parties within thirty days after service of the final order, as provided in RCW  
30 34.05.542. Service on the Board may be accomplished in person or by mail, but  
31 service on the Board means **actual receipt of the document at the Board office** within  
32 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.

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

3 ENTERED this 23rd day of November 2005.  
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Margery Hite, Board Member

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11 Holly Gadbow, Board Member  
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15 Gayle Rothrock, Board Member  
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