

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2  
3 OBCT, et al.,

4  
5 Petitioners,

6 v.

**CASE NO. 04-2-0041c**

7  
8 LEWIS COUNTY,

9 Respondent,

**FINAL DECISION AND  
ORDER**

10  
11 And

12  
13 CARDINAL FG COMPANY,

14 Intervenor.

15  
16 **I. SYNOPSIS OF DECISION**

17 In this case, we are asked to determine whether the County’s approval of a major industrial  
18 development (“MID”) urban growth area (“UGA”) for a float glass manufacturing facility  
19 complies with the Growth Management Act, Ch. 36.70A RCW (the “GMA”). With the  
20 exception of the challenges to the adequacy of arterial road service to the MID, we find that  
21 the County’s legislative enactments adopting the MID UGA designation and its  
22 implementing development regulations are compliant with the requirements of the GMA.  
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25 In reviewing the arguments and record in this case, we are persuaded that this is precisely  
26 the kind of situation that the Legislature intended to address when it enacted RCW  
27 36.70A.365. The unique siting requirements for the industrial use proposed here mean that  
28 the facility could not be located within existing urban growth areas in Lewis County. Without  
29 the ability to create an MID UGA on this site, the industry would likely have to be located  
30 outside of Lewis County. Under these circumstances, the statute provides a mechanism  
31 where a contained and buffered UGA may be located in such a way that any impacts on the  
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1 surrounding community are minimized. Our inquiry here is whether the statutory  
2 requirements for this purpose have been met and we find, in large part, that they have been.

3  
4 Petitioners raise several challenges to the County's compliance with RCW 36.70A.365. We  
5 find that water and sewer service have been adequately "provided for" at the planning level.  
6 The range of alternatives available to the industry, Cardinal FG Company ("Cardinal"), is  
7 underwritten by the commitment of the City of Winlock to provide water service as needed.  
8 Cardinal also has agreed to pay for the extension of water service by Winlock. Further,  
9 because the project permits are conditioned upon actual service being present, the industry  
10 will not be able to occupy its facility until those conditions are met.  
11

12  
13 On the other hand, we find that the infrastructure requirements for road service to the MID  
14 have not been met. The County's own plan and regulations require arterial level service to  
15 the industrial site and the Hearing Examiner recommended that improvement to arterial  
16 design standards be required. The failure to do this creates an inconsistency in County  
17 planning policies and insufficient infrastructure needed because of the MID.  
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19  
20 Petitioners also challenge the sufficiency of the County's development regulations to ensure  
21 urban growth will not occur in adjacent *nonurban* areas. In this regard, a major concern is  
22 that the provision of urban levels of service to the MID UGA will create pressure to extend  
23 those services and densities outside the MID UGA. The County's development regulations  
24 for the MID UGA expressly prohibit such an extension of urban services. Petitioners have  
25 failed to meet their burden of proof on this challenge.  
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28 The statute also requires that an inventory of developable land be prepared so that the  
29 County may determine whether "land suitable to site the major industrial development" is  
30 available in existing urban growth areas. RCW 36.70A.365(2)(h). We find that the *bona*  
31 *fide* operational requirements of the industry determine what land is suitable and therefore  
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1 must be included in the inventory. Given the unique siting requirements of the float glass  
2 factory, the inventory of sites considered here meets the requirements of the GMA. We also  
3 find that the public was involved in suggesting potential sites and commenting on the sites  
4 under consideration.  
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6  
7 Petitioners have mounted a vigorous challenge to the County's decision to adopt an MID  
8 UGA. Their public-spirited involvement has been evident in every aspect of this process.  
9 However, we must remember that the decision to approve the MID UGA ultimately lies with  
10 the County Commissioners. That decision was based on a thorough review of the statutory  
11 criteria and an active program of public participation. With the one exception we have  
12 described, we find their decision is compliant with the GMA requirements.  
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## 14 II. PROCEDURAL HISTORY

15  
16 This case arises against a complicated backdrop of related legal challenges. The  
17 designation of the land which is the subject of this MID UGA designation was subjected to  
18 an invalidity finding in *Butler v. Lewis County*, WWGMHB Case No. 99-2-0027c and  
19 *Panesko v. Lewis County*, WWGMHB Case No. 00-2-0031c. Order Finding NonCompliance  
20 and Imposing Invalidity, February 13, 2004. The code provisions adopted by the County for  
21 processing applications for a major industrial development pursuant to RCW 36.70A.365  
22 were found noncompliant with the GMA in *Roth v. Lewis County*, WWGMHB Case No.  
23 04-2-0014c. Final Decision and Order, December 10, 2004.  
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25  
26 However, the Board rescinded invalidity as to the Cardinal MID site upon motion of the  
27 County in the *Butler* and *Panesko* cases upon finding that the subject lands do not have  
28 long-term commercial significance for agricultural production and that the new designation  
29 will not interfere with agricultural activity on adjacent lands. Order Rescinding Invalidity,  
30 May 12, 2005. In *Roth*, the Board also decided to consider whether this MID UGA adoption  
31 met the requirements of the GMA under the particular facts of this case, where it had been  
32

1 approved before the Board found the process noncompliant. *Roth v. Lewis County*,  
2 WWGMHB Case No. 04-2-0014c. Final Decision and Order, December 10, 2004.

3  
4 Petitioners challenge Ordinance 1179H, Resolution 3-322 and Resolution 3-323.  
5 Resolution 04-322 amends the Lewis County comprehensive plan to create a major  
6 industrial development (“MID”) urban growth area (“UGA”) for the Cardinal FG Company  
7 float glass facility. Resolution 04-323 approves the Cardinal FG Major Industrial  
8 Development Master Plan. Ordinance 1179H adopts development regulations to implement  
9 MID UGA. All three of these enactments were adopted on September 23, 2004, and  
10 published September 29, 2004.  
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14 This case is a consolidation of four petitions for review filed with the Board. The first petition  
15 was filed by Petitioner Panesko on November 22, 2004, and was originally assigned  
16 WWGMHB Case No. 04-2-0027. Petitioner Heikkila filed her petition for review on  
17 November 24, 2004, and it was assigned WWGMHB Case No. 04-2-0039. Petitioners  
18 Battin, Butler, Harader, Ikerd, and Morris (collectively, the “Battin Petitioners”) filed their  
19 petition for review on November 24, 2004, and it was assigned WWGMHB Case No.  
20 04-2-0040. Olympia and Vicinity Building and Construction Trades Council and Affiliated  
21 Unions (“OBCT”) also filed a petition for review on November 24, 2004, which was assigned  
22 WWGMHB Case No. 04-2-0041. Cardinal was granted leave to intervene and these  
23 petitions were consolidated into WWGMHB Case No. 04-2-0041c on December 2, 2004.  
24 Order Consolidating Case.  
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27  
28 Cardinal, OBCT, and Petitioner Panesko filed substantive motions prior to the Hearing on  
29 the Merits. Cardinal FG Company’s Motion to Dismiss, January 13, 2005; OBCT’s Motion  
30 on Issues 1 and 2, January 13, 2005; Dispositive Motion for Ruling on Issue 22, January 7,  
31 2004. The Board declined to decide the issues on motions and held them over to a full  
32 hearing on the merits. Decision and Order on Motions, February 8, 2005.

1 Petitioners OBCT and Panesko also filed motions to supplement the record. Petitioner  
2 Motion to Supplement the Record (Panesko), January 17, 2005; OBCT's Motion to  
3 Supplement the Record, January 18, 2005. There was no opposition to these motions,  
4 although Cardinal requested that the entirety of the Memorandum of Understanding  
5 between Cardinal and the County be included in proposed Exhibit 3001. Cardinal FG  
6 Company's Response to Petitioner Panesko's Motion to Supplement the Record,  
7 January 26, 2005. These motions were granted. Order on Motions to Supplement the  
8 Record, February 9, 2005.

10  
11 The Hearing on the Merits was held in Chehalis, Washington in the Historic Lewis County  
12 Courthouse on April 12, 2005, following the Board's hearing on the County's Motion to  
13 Rescind Invalidity as to the Cardinal MID in the related cases of *Butler v. Lewis County*,  
14 WWGMHB Case No. 99-2-0027c and *Panesko v. Lewis County*, WWGMHB Case No.  
15 00-2-0031c. OBCT notified the Board in advance that it would not participate in the Hearing  
16 on the Merits. Eugene Butler spoke for the Battin Petitioners. Vince Panesko and Kathleen  
17 Heikkila appeared *pro se*. The County was represented by Chief Civil Deputy Prosecuting  
18 Attorney, Douglas Jensen, and Director of Community Development, Bob Johnson.  
19 Cardinal was represented by attorneys John Hempelmann and Andrew Lane. All three  
20 board members attended.  
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### 23 24 III. ISSUES PRESENTED

25 The following are the issues set out for resolution in the Amended Prehearing Order,  
26 December 21, 2004:

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1. Whether Lewis County failed to comply with RCW 36.70A.300 and .302 when it made Resolution No. 04-322 "effective immediately upon adoption" because Resolution No. 04-322 and the comprehensive plan designation on the subject site are subject to an invalidity order issued by this Board.
  2. Whether Lewis County failed to comply with RCW 36.70A.300 and .302 when it made Ordinance No. 1179H "take effect immediately upon adoption" because Ordinance

1 No. 1179H and the zoning regulations for the subject site are subject to an invalidity  
2 order issued by this Board.

3  
4 3. Whether Lewis County failed to comply with RCW 36.70A.300 and .302 when in  
5 adopting Resolution No. 04-322 and Ordinance No. 1179H, it failed to provide that  
6 the Master Plan application could not vest or be approved until and unless this Board  
7 lifted invalidity on the comprehensive plan designation and zoning on the subject site.

8 4. Whether Lewis County failed to comply with the public participation requirements of  
9 the GMA including RCW 36.70A.020(11), .035, .070, .106, .130, and .140 in the  
10 adoption of Resolution No. 04-322 and Ordinance No. 1179H.

11 5. Whether Lewis County failed to comply with the requirements of RCW 36.70A.365  
12 and local implementing policies and regulations when it adopted Resolution No.  
13 04-322 and Ordinance No. 1179H.

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15 6. Whether Resolution No. 04-322 is consistent with the comprehensive plan as  
16 required by RCW 36.70A.130(1)(b) and .070(preamble).

17 7. Whether Resolution No. 04-322 and Ordinance No. 1179H fail to comply with the  
18 GMA because of the failure of the County to use a process established in  
19 consultation with the cities, consistent with RCW 36.70A.210, as required by RCW  
20 36.70A.365 (preamble).

21  
22 8. Whether Resolution No. 04-322 and Ordinance No. 1179H fail to comply with the  
23 GMA because the County failed to conduct an adequate inventory of developable  
24 lands so that it could validly give priority to sites that are all or partially inside or are in  
25 close proximity to urban growth areas as required by RCW 36.70A.365(2)(h).

26 9. Whether Resolution No. 04-322, Ordinance No. 1179H and Resolution No. 04-323  
27 fail to comply with RCW 36.70A.365(2)(a) and local implementing policies and  
28 regulations in that there is no evidence of water rights and/or there is no binding  
29 agreement for providing water supply or waste water disposal.

30 10. Whether Resolution No. 04-322 and Ordinance No. 1179H fail to comply with RCW  
31 36.70A.020(12), .130(1)(b), .070, and .110 in that urban level of service standards  
32 and concurrency requirements have not been established by Lewis County and such

1 standards are not implemented in the new non-municipal UGA and there is no  
2 adequate plan for transformance of governance.

- 3  
4 11. Whether Resolution No. 04-322 and Ordinance No. 1179H fail to comply with RCW  
5 36.70A.365(2)(a) and CP Policies including LU 7.3 and 8.1 and local development  
6 regulations by failing to provide for adequate new infrastructure for the project's  
7 access road to the freeway.
- 8 12. Whether Resolution No. 04-322 and Ordinance No. 1179H fail to comply with RCW  
9 36.70A.365(2)(e) in that development regulations have not been established to  
10 ensure that urban growth will not occur in adjacent currently nonurban areas.
- 11 13. Whether Lewis County failed to comply with RCW 36.70A.130(1)(b) and RCW  
12 36.70A.070(1) and .040(3) in that it failed to address maximum building intensities in  
13 the float glass Major Industrial Development in Resolution No. 04-322 and Ordinance  
14 No. 1179H.
- 15 14. Whether Resolution No. 04-322 and Ordinance No. 1179H are inconsistent as to the  
16 land designated and zoned for the float glass Major Industrial Development in  
17 violation of RCW 36.70A.130(1)(b) and .070(preamble).
- 18 15. Whether Lewis County failed to comply with the requirements of SEPA as they apply  
19 to the adoption of Resolution No. 04-322 and Ordinance No. 1179H.
- 20 16. Whether Lewis County violated SEPA requirements in WAC 197-11-440(5)(b), RCW  
21 43.21C, and local SEPA regulations in that it failed to include in the EIS adequate  
22 analysis of reasonable alternatives.
- 23 17. Whether Lewis County violated SEPA requirements by not adequately analyzing the  
24 project's impact to pedestrian safety on Avery Road, by not finding this impact  
25 significant, and by not identifying mitigation measures such as widening Avery Road  
26 to meet collector or arterial standards.
- 27 18. Whether amendments to the Lewis County Comprehensive Plan and the  
28 Development Regulations which allow urban governmental services to be extended  
29 outside of UGAs to a Major Industrial Development are inconsistent with the Lewis  
30 County Comprehensive Plan Land Use Element, page 4-28 (f), which states, "The  
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1 County plan prohibits the extension of the urban services defined below, outside of  
2 the urban growth area, except where already in existence, or where necessary and  
3 available to resolve existing or imminent health hazards,” and, therefore,  
4 noncompliant with RCW 36.70A.070, RCW 36.70A.120, and RCW 36.70A.130(1)(b).

- 5 19. Whether the provisions in the amendments to the Lewis County Comprehensive  
6 Plan and the amendments to Lewis County Code, specifically LCC 17.21.030 and  
7 LCC 17.21.070, fail to comply with RCW 36.70A.110(4) for failure to contain urban  
8 governmental services within the boundaries of existing urban growth areas (UGAs),  
9 and for allowing extension of water and wastewater facilities to cross nonurban  
10 areas.
- 11 20. Whether the amendments to the Lewis County Comprehensive Plan and the  
12 Development Regulations are noncompliant with RCW 36.70A.110(4) by providing  
13 for urban governmental services to a Major Industrial Development UGA.
- 14 21. Whether the revision to the Land Use Map is non-compliant with RCW  
15 36.70A.110(4).
- 16
- 17 22. Whether amendments to the Lewis County Comprehensive Plan and Lewis County  
18 Code (LCC 17.21.030) are noncompliant with RCW 36.70A.365 for allowing urban  
19 governmental services from outside service providers, including municipalities, and  
20 special purpose districts, which were authorized by the Legislature for Master  
21 Planned Resorts in RCW 36.70A.360 but which were not authorized by the  
22 Legislature for Major Industrial Developments in RCW 36.70A.365.
- 23 23. Whether amendments to the Lewis County Comprehensive Plan and Lewis County  
24 Code (LCC 17.21.070) that allow extension of water and wastewater facilities to  
25 cross nonurban areas are inconsistent with Lewis County Code 17.150.030(3)(k)  
26 and, are therefore, noncompliant with RCW 36.70A.070, RCW 36.70A.120, and RCW  
27 36.70A.130(1)(b).
- 28 24. Without an order of the WWGMHB removing the determination of invalidity as to rural  
29 lands within and adjacent to the approved major industrial development that have  
30 been or should have been designated Agricultural Resource Lands, do the  
31 amendments to the Lewis County Comprehensive Plan and the Development  
32 Regulations fail to comply with RCW 36.70A.302(7).

- 1 25. Whether an inventory of developable land was not conducted in time for citizen  
2 comment prior to enactment of the amendments to the Lewis County Comprehensive  
3 Plan and Development Regulations establishing a major industrial development, and  
4 thereby fails to comply with RCW 36.70A.140.
- 5 26. Whether the change in zoning from RDD 1-10 to an industrial UGA implemented by  
6 the Lewis County CP and DR amendments on September 23, 2004, violate the  
7 February 13, 2004, WWGMHB Order in Case Nos. 00-2-0031c and 99-2-0027c  
8 which imposed invalidity on RDD lands (especially land such as Cardinal's which  
9 was removed from an ARL designation to accommodate industrial development), and  
10 is noncompliant with RCW 36.70A.060, RCW 36.70A.170, and RCW 36.70A.302(1).
- 11 27. Whether the rezone of the Cardinal property implemented by the September 23,  
12 2004, Lewis County CP and DR amendments was in violation of the March 5, 2001,  
13 FDO in Case No. 00-2-0031c which required that RDD lands including land now  
14 owned by Cardinal to be reconsidered for ARL designations.
- 15 28. Whether the comp plan amendment which allows water, natural gas pipelines,  
16 electric power lines, and railroad tracks to cross nonurban areas including farmlands  
17 with prime soils to serve this major industrial development is noncompliant with RCW  
18 36.70A.170 and RCW 36.70A.060 for failing to conserve agricultural land, and  
19 noncompliant with RCW 36.70A.300 and .320 for failing to comply with the  
20 February 13, 2004, Order which ruled LCC 17.30.640(2)(a), (c), (e)---incidental uses-  
21 and LCC 17.30.650---pipelines on ag lands---invalid.
- 22 29. Whether Resolution No. 04-322, Ordinance No. 1179H or Resolution No. 04-323 and  
23 any provisions reinstated by a savings clause, should be found invalid or in  
24 continuing invalidity for substantial interference with the fulfillment of the goals of the  
25 GMA including RCW 36.70A.020(1), (2), (3), (5), (6), (7), (8), (10), (11), and (12).

#### 26 IV. BURDEN OF PROOF

27 In determining the issues presented in this case, the Petitioners bear the burden of proof.  
28 Comprehensive plan amendments and development regulations, and amendments to them  
29 are presumed valid upon adoption. RCW 36.70A.320(1). To meet their burden, the  
30 Petitioners must show that the challenged amendments are clearly erroneous:  
31  
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1 The board shall find compliance unless it determines that the action by the state  
2 agency, county, or city is clearly erroneous in view of the entire record before the  
3 board and in light of the goals and requirements of this chapter.  
4 RCW 36.70A.320(3).

5  
6 In order to find the County's action clearly erroneous, the board must be "left with the firm  
7 and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*,  
8 121 Wn.2d 179, 201, 849 P.2d 646 (1993). We review the challenges under the clearly  
9 erroneous standard.

## 10 11 V. DECISION

### 12 A. Abandoned Issues – Issues Nos. 10, 13, 15, 16, and 17

13 An issue is deemed abandoned by this Board when it is not addressed by any petitioner in  
14 the opening briefing. We have held that an issue that is not briefed by a petitioner is  
15 deemed abandoned. *WEC v. Whatcom County*, WWGMHB Case No. 95-2-0071 (Final  
16 Decision and Order, December 20, 1995); *OEC v. Jefferson County*, WWGMHB Case No.  
17 94-2-0017, Final Decision and Order, February 16, 1995. Fairness requires that an issue  
18 must be addressed in the petitioner's opening briefing or the respondent will not have an  
19 opportunity to respond to it.  
20  
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22  
23 In the opening briefing submitted in this case, the Petitioners carefully laid out the issues  
24 that were addressed in each brief. The Board appreciates this clarity. Issues Nos. 10, 13,  
25 14, 15, 16, and 17 were not addressed.

26  
27 *Conclusion:* The Petitioners elected not to address the following issues so they are deemed  
28 to be abandoned:

29  
30 Issues 10, 13, 14, 15, 16 and 17  
31  
32

1 B. Issues Related to Provision of Urban Governmental Services – Issues Nos. 6, 18, 19,  
2 20, 21 and 23.

3 Petitioners argue that both RCW 36.70A.110(4) and the County comprehensive plan  
4 prohibit the extension of urban levels of services to the Cardinal MID UGA. The argument  
5 that RCW 36.70A.110(4) prohibits the provision of urban services across rural and resource  
6 lands to the new MID UGA is made as to Issues Nos. 19, 20, and 21. Some of the  
7 petitioners made essentially the same argument in the related case of *Heikkila v. Winlock*,  
8 WWGMHB Case No. 04-2-0020c. The arguments that the extension of urban services to  
9 the Cardinal MID UGA is inconsistent with the County comprehensive plan and  
10 development regulations are made in Issues 6, 18, and 23.  
11

12  
13 **Urban governmental services to the MID UGA.** The County<sup>1</sup> and Cardinal point out that  
14 the Board has already ruled on the issue of the provision of urban services to the new  
15 Cardinal MID UGA. This is correct. In *Heikkila v. Winlock*, this Board ruled on motions that  
16 RCW 36.70A.110(4) does not prohibit the extension of urban levels of service from one  
17 UGA to another, nor does it prohibit the crossing of rural or resource lands to extend those  
18 services. We incorporate the same reasoning here:  
19

20       The prohibition in RCW 36.70A.110(4) does not apply to urban services in urban  
21 growth areas. Urban growth areas by definition are allowed to have urban levels of  
22 growth and should have the urban services to support that growth. See RCW  
23 36.70A.030(17), (18), and (19). Nor can the statute be read to mean that water  
24 service lines cannot pass through rural lands. The reason for the prohibition in RCW  
25 36.70A.110(4) against providing urban services to rural areas is that urban services  
26 in the rural areas would create pressure to urbanize the rural areas and create  
27 sprawl. *Thurston County v. Cooper Point Association*, 148 Wn. 2d 1, 57 P. 3d 1156  
28 (2002). If the Winlock water lines just traverse the rural areas and do not serve them,  
it will not violate RCW 36.70A.110(4).

29       The Petitioner does not point to any statutory prohibition against providing water  
30 services from one UGA to another. The burden is on the Petitioner(s) to demonstrate  
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<sup>1</sup> The County joined in the arguments of Cardinal. Lewis County's Joinder of Cardinal FG Company Response Brief, March 22, 2005.

1 why the challenged amendments violate the GMA. The legislature has directed the  
2 boards to grant deference to counties and cities in how they plan for growth,  
3 consistent with the goals and requirements of the GMA. RCW 36.70A.320.  
4 Comprehensive plan amendments are presumed valid upon adoption. RCW  
5 36.70A.320. Here, as the Central Board stated in *Gain v. Pierce County*, CPSGMHB  
6 Case No. 99-3-0019, Final Decision and Order, April 18, 2000, "Petitioners offer no  
7 statutory provisions to support their assertion that sewer [or water] lines must be  
8 confined within the boundaries of UGAs and cannot pass through rural areas." RCW  
9 36.70A.110(4) does not preclude municipalities from providing water service from  
10 one UGA to another.

11 *Heikkila v. Winlock*, WWGMHB Case No. 04-2-0020c, Order on Motions, December 14,  
12 2004.

13 **Inconsistency.** Petitioners also challenge the County's comprehensive plan amendments  
14 and the new development regulations at issue here as being inconsistent with other  
15 provisions of the County's comprehensive plan, development regulations, and the  
16 Countywide Planning Policies. Petitioner's (Heikkila) Opening Brief.

17 Internal consistency among the provisions of the comprehensive plan is required by RCW  
18 36.70A.070: "The plan shall be an internally consistent document and all elements shall be  
19 consistent with the future land use map." Consistency between the plan and the  
20 development regulations that implement it is required by RCW 36.70A.040 and  
21 36.70A.130(1)(b). This Board has held that consistency means that no feature of the plan  
22 or regulation is incompatible with any other feature of the plan or regulation. *CMV v. Mount*  
23 *Vernon*, WWGMHB Case No. 98-2-0006, Final Decision and Order, July 23, 1998. See  
24 also, WAC 365-195-210. In addition, it means no feature of one plan may preclude  
25 achievement of any other feature of that plan or any other plan. *Carlson v. San Juan*  
26 *County*, WWGMHB Case No. 00-2-0016, Final Decision and Order, September 15, 2000.

27  
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29  
30 Petitioners allege inconsistency in three places: in the County comprehensive plan at 4-28;  
31 in Countywide Planning Policy 2.5; and in the County's development regulation, LCC  
32 17.150.070(3)(k). We will consider each of these.

1  
2 First, Petitioners cite to 4-28(f) of the Lewis County Comprehensive plan. For  
3 completeness, we include the language from 4-27 that introduces the subsection:

4 "Rural character" refers to the patterns of land use and development established by a  
5 county in the rural element of its comprehensive plan. Lewis County adopts the  
6 following narrative guidelines to identify and protect the rural character of the County.

7 ...

8 (f) *That generally do not require the extension of urban governmental services.*  
9 RCW 36.70A.030(14)(f). The County plan prohibits the extension of the urban  
10 services, defined below, outside of the urban growth area, except where  
11 already in existence, or where necessary and available to resolve existing or  
12 imminent health hazards. The rural area development contemplated in this  
13 plan is to be accomplished by rural governmental services as defined below,  
which permits the County to take advantage of a significant base of existing

14 Lewis County Comprehensive Plan, Land Use Element 4-27-8, Approved Plan:  
15 June 1, 1999, amended April 4, 2002.

16 Petitioners argue that the new provisions that allow the extension of sanitary sewer and  
17 water to the Cardinal MID UGA are inconsistent with this provision of the comprehensive  
18 plan. We do not agree. This section of the plan deals with development in the County's  
19 rural areas, not in its special purpose industrial UGA. In fact, the comprehensive plan itself  
20 defines urban governmental services as including the municipal public water and sanitary  
21 sewer systems of "planned industrial areas" as well as of the nine cities and towns and  
22 master planned communities. Comprehensive Plan, Land Use Element 4-5. These plan  
23 provisions distinguish between growth in urban areas such as in this MID UGA and growth  
24 in rural areas. Since the Cardinal MID UGA is not a rural area, there is no inconsistency.  
25  
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27  
28 Second, Petitioners cite to Countywide Planning Policy 2.5:

29 Urban water system extension should not be permitted in rural areas and resource  
30 lands except to solve immediate health or safety problems threatening existing  
31 residents. If urban water systems are extended, the number of hookups shall be  
32 limited to that which is consistent with the adopted rural element of the adopted  
Comprehensive Plan.

1 Again, this provision applies to extension of urban water systems to rural and resource  
2 lands. It does not prohibit extension of urban services from one UGA to another, nor does it  
3 prohibit crossing rural and resource lands to provide those services as long as such  
4 services are not extended to residents of rural and resource lands.  
5

6  
7 Finally, Petitioners argue that LCC 17.150.070(3)(k) clarifies that prohibited urban growth  
8 includes the extension of publicly owned sewer or water facilities. Petitioner's (Heikkila)  
9 Opening Brief at 6. Again this regulation applies to urban growth in the rural area, not to  
10 urban services to a UGA. We find no inconsistency.  
11

12 *Conclusion:* The challenged plan amendments and development regulations comply with  
13 RCW 36.70A.110(4) and are consistent with the rest of the County comprehensive plan and  
14 development regulations.  
15

16  
17 C. Issues Alleging Failure to Meet Requirements of RCW 36.70A.365 – Issues Nos. 8, 9,  
18 11, 12 and 22

19 These issues challenge the compliance of Ordinance 1179H and Resolution 04-322 with  
20 RCW 36.70A.365, the provision of the GMA that applies to major industrial developments.  
21 There are a variety of challenges to compliance with RCW 36.70A.365: challenges to the  
22 adequacy of the inventory of developable land required by RCW 36.70A.365(2)(h) (Issue  
23 No. 8); challenges to the infrastructure requirements (Issues Nos. 9 and 11); and challenges  
24 related to urban growth and services (Issues Nos. 12 and 22).  
25

26  
27 There are eight specific criteria that must be met to approve an MID UGA pursuant to RCW  
28 36.70A.365(2):  
29

30 A major industrial development may be approved outside an urban growth area in a  
31 county planning under this chapter if criteria including, but not limited to the following,  
32 are met:

- (a) New infrastructure is provided for and/or applicable impact fees are paid;

- 1 (b) Transit-oriented site planning and traffic demand management programs are  
2 implemented;  
3 (c) Buffers are provided between the major industrial development and adjacent  
4 *nonurban* areas;  
5 (d) Environmental protection including air and water quality has been addressed and  
6 provided for;  
7 (e) Development regulations are established to ensure that urban growth will not  
8 occur in adjacent nonurban areas;  
9 (f) Provision is made to mitigate adverse impacts on designated agricultural lands,  
10 forest lands, and mineral resource lands;  
11 (g) The plan for the major industrial development is consistent with the county's  
12 development regulations established for protection of critical areas; and  
13 (h) An inventory of developable land has been conducted and the county has  
14 determined and entered findings that land suitable to site the major industrial  
15 development is unavailable within the urban growth area. Priority shall be given to  
16 applications for sites that are adjacent to or in close proximity to the urban growth  
17 area.

18 RCW 36.70A.365(2)

19  
20 Petitioners argue that the adoption of Resolution 04-322 and Ordinance 1179H fails to  
21 comply with (2)(a) (infrastructure); (2)(e) (protections against urban growth in adjacent  
22 areas); and (2)(h) (the inventory of developable land) of RCW 36.70A.365.

23 **Infrastructure.** Petitioners challenge the sufficiency of the provision of water and roads to  
24 the MID UGA.<sup>2</sup> Petitioners' greatest concern appears to be with respect to water. Ex. 23,  
25 August 23, 2004, Letter from Petitioner Gabriel Morris to the Board of County  
26 Commissioners, the Hearing Examiner, and the Lewis County Planning Commission.  
27 Petitioners argue that the plan for obtaining water has not yet been approved and so does  
28 not meet the statutory criterion. Petitioners Battin, et al., Hearing Brief at 16. Petitioner  
29 Panesko asserts that it was erroneous to determine that there had been adequate provision

30 \_\_\_\_\_  
31 <sup>2</sup> Issue No. 17 also addresses the issue of roads but does so in the context of the DEIS and FEIS: "Whether  
32 Lewis County violated SEPA requirements by not adequately analyzing the project's impact to pedestrian  
safety on Avery Road, by not finding this impact significant, and by not identifying mitigation measures such as  
widening Avery Road to meet collector or arterial standards."

1 for water at the site when “Cardinal did not actually have industrial water rights and might  
2 never get them.” Petitioner Opening Brief at 5.

3  
4 Cardinal and the County respond that it would be unreasonable and “absurd” to require that  
5 the applicant for an MID UGA actually produce the new infrastructure before the application  
6 could be approved. Cardinal FG Company’s Response Brief at 21. Such new infrastructure  
7 could potentially cost millions of dollars with “absolutely no guarantee that the County would  
8 approve the proposed use.” *Ibid.*

9  
10  
11 We do not understand the Petitioners to be arguing that the applicant must actually install  
12 new infrastructure before an application can be approved. Rather, Petitioners argue that  
13 the promise by Cardinal to provide infrastructure here is not sufficient. They are particularly  
14 concerned that Cardinal does not have a commitment from either the Department of  
15 Ecology to approve a groundwater source or from the City of Winlock to provide pipeline  
16 water. See Findings of Fact and Conclusions of Law on Appeals of Final Environmental  
17 Impact Statement (FEIS), Hearing No. 04-2-001, 04-2-002 and 04-2-003, Lewis County  
18 Hearing Examiner, Finding No. 42.

19  
20  
21 Cardinal admits that “any groundwater source must first be approved by Ecology” but points  
22 out that Winlock has offered pipeline water as an alternative. Cardinal FG Company’s  
23 Response Brief at 22. Exhibit 23 to the Cardinal response brief includes three documents  
24 from the City of Winlock concerning the City’s provision of water service to the Cardinal MID  
25 UGA, including the statement of Mayor Pro Tem Cy Meyers that “The City is ready, willing  
26 and able to meet the water service needs of Cardinal.” Ex. 37; Ex. 55 and 57. See also the  
27 Hearing Examiner’s conclusion that the City of Winlock represents that it has sufficient water  
28 and is willing to enter into an agreement with Cardinal. Decision on Appeals of Final  
29 Environmental Impact Statement, In Re: Cardinal FG Company Float Glass Manufacturing  
30 Plan and OBCT (Hearing No. 04-2-001), and Vinatieri and Butler (Hearing No. 04-2-002),  
31  
32

1 and Battin (Hearing No. 04-2-003), at 3-4. Engineers retained by Winlock determined that a  
2 production well “could be developed on the property that will supply the required amount of  
3  
4 water.” Ex. 3003. This, in turn, would offset the drain on the City’s own water supplies in  
5 providing service to the Cardinal facility. *Ibid*; Ex. 55, Ex. 57.  
6  
7

8 As Petitioners point out, the issue of water rights is complex and it may take some time for  
9 Cardinal to acquire water rights, if it is ever able to do so. Without the support of the City of  
10 Winlock, it is questionable whether we could find that the needed water service  
11 infrastructure had been “provided for” as required by RCW 36.70A.365(2)(a). However, the  
12 support of the City of Winlock is not insignificant. The City’s commitment to provide water  
13 service is conditional but based on a serious effort to upgrade its water services to supply  
14 non-municipal users. Ex. 55 and 57. Cardinal has committed to paying for whatever water  
15 service it requires. See Ex. 84 at 73. We also note that at the permit level, the conditions  
16 upon construction and occupancy of the Cardinal facility will require that water service  
17 actually be provided to the site.  
18  
19

20 We do not denigrate in any way the Petitioners’ concerns about the adequacy of the water  
21 supply. However, we must grant deference to the County Commissioners’ determination  
22 that the alternatives available to Cardinal ensure that there is provision for water services at  
23 the site. Ex. 84, Final Environmental Impact Statement, Cardinal FG Company at 67-73;  
24 Ex. 86, Staff Report, August 11, 2004, at 10. We find that the County was not clearly  
25 erroneous in determining that there is adequate provision of water service for the Cardinal  
26 MID UGA at the planning level.  
27  
28

29 As to the road requirements, Petitioners argue that the access road to the MID UGA is not  
30 an arterial as required by Lewis County planning policy LU 7.3. Petitioner Brief – Heikkila  
31 at 4. Land Use Policy LU 7.3 provides:  
32

1 New industrial sites should be located and designed to facilitate safe access and  
2 circulation and reduce traffic impediments.

3  
4 Petitioners also argue that Land Use Policy 8.1 is even more specific:

5 Designate and preserve sites for industrial use at locations that will be accessible from  
6 roadways of arterial classification or higher, potentially served with utilities, and free of  
7 major environmental constraints such as unsuitable soils, floodplains and wetlands.

8 Petitioners Battin, et al., Hearing Brief at 16.

9 Cardinal and the County respond that although Avery Road is not an arterial, this  
10 classification is not a function of the construction or location of the roadway but of the  
11 volume of traffic that travels that section of the road. LCC 12.60.240(3)(a)(i); Cardinal FG  
12 Company's Response Brief at 23. Cardinal argues that Avery Road is a designated truck  
13 route and that there is no evidence that there will be any significant increase in accidents as  
14 a result of the Cardinal MID. *Ibid.*

15  
16  
17 However, the classification of "arterial" is not merely an indication of volume of traffic.  
18 Arterials must conform to the design standards for that classification as well, in this case  
19 "Rural Area Design Standards 3-2." Ch. 17.60 LCC. Those standards include a minimum  
20 road width of 30 feet. The Hearing Examiner recommended that Avery Road be improved  
21 to a surface width of 30 feet "to meet present standards." Hearing Examiner Master Plan  
22 Findings, Conclusions and Recommendations at 5. He states that improving only the  
23 project's frontage on both sides of Avery Road "will offer no real benefit and could prove to  
24 be misleading to pedestrians and cyclists." *Ibid.* Since the Board of County Commissioners  
25 elected not to adopt this recommendation of the Hearing Examiner, there is a clear  
26 inconsistency between LUP 8.1 and 7.3 and the adopted MID UGA infrastructure  
27 development regulations. Because RCW 36.70A.365(2)(a) requires that new infrastructure  
28 be "provided for," this gap between the County's road requirements for new industrial  
29 development and the regulations imposed on the Cardinal MID UGA is also not compliant  
30 with RCW 36.70A.365(2)(a).  
31  
32

1 **Protections against urban growth in adjacent areas.** RCW 36.70A.365(2)(e) requires  
2 that development regulations be adopted to protect against the spread of urban growth to  
3 areas adjacent to the MID UGA. Issue No. 12 claims that the County has failed to adopt  
4 such development regulations; Issue No. 22 claims that allowing outside service providers,  
5 including municipalities, and special purpose districts to provide service to the new MID  
6 UGA violates RCW 36.70A.365.  
7

8  
9 Petitioners first argue that the County has taken no action to ensure that urban growth will  
10 not occur in adjacent currently nonurban areas. Petitioners Battin, et al., Hearing Brief at  
11 15. Petitioners particularly point to a pending application for a major industrial land bank on  
12 adjoining acreage as a substantial risk for expanding urban development around the MID  
13 UGA. *Ibid*; Ex. 29, Attachment 3. They argue that no development regulations have been  
14 adopted to ensure that urban growth will not occur in adjacent *nonurban* areas as required  
15 by RCW 36.70A.365(2)(e).  
16

17  
18 Cardinal and the County respond that the development regulations applicable to adjacent  
19 lands do ensure that urban growth will not occur. Cardinal FG Company's Response Brief  
20 at 24. They point out that those lands are designated Rural Development District – 10, a  
21 designation that allows single family homes at a density of 1 dwelling unit per 10 acres, and  
22 other agricultural and resource uses. *Ibid*. The County also adopted LCC 17.21.070 when  
23 it approved the Cardinal MID UGA. This regulation, Cardinal argues, prohibits water and  
24 sewer extensions from the MID UGA to uses outside its boundaries. *Ibid* at 25. In addition,  
25 the County's project approval requires that, prior to issuance of building permits, Cardinal  
26 enter into a covenant "stating that urban governmental services cannot be extended to  
27 adjacent nonurban areas unless such extensions are consistent with state law and the  
28 Lewis County Comprehensive Plan, and the uses have first been approved and authorized  
29 by Lewis County." Ex. 25, Index 211, Resolution 04-323, Attachment B thereto, Approval  
30 and Conditions 18.  
31  
32

1 Petitioners reiterate their concern about the pending application for an industrial land bank  
2 adjacent to the Cardinal MID UGA. Petitioners Battin, et al., Reply Brief at 12-13. While we  
3 agree that the requirement to contain the MID UGA may affect the industrial land bank  
4 application, we do not read RCW 36.70A.365(2)(e) as requiring the County to adopt  
5 regulations addressing specific applications for a land use designation change as part of the  
6 MID UGA approval. Also, as Petitioners point out, the rural designation of the adjacent  
7 lands is subject to a finding of invalidity and that invalidity finding must be lifted before a new  
8 designation can take effect. RCW 36.70A.302(7). The County is working on a  
9 comprehensive approach to the designation and protection of agricultural resource lands  
10 and these adjacent lands must be considered in the course of that review. Under these  
11 circumstances, we believe that the development regulations currently in place provide  
12 sufficient assurance that urban growth will not occur on adjacent lands. We note, too, that  
13 any designation change will require a comprehensive plan amendment which is subject to  
14 challenge under Ch. 36.70A. RCW; and that the regulations for processing an industrial land  
15 bank application are themselves presently under a finding of invalidity. See *Vinatieri v.*  
16 *Lewis County*, WWGMHB Case No. 03-2-0020, Compliance Order – 2005, January 7, 2005.  
17  
18  
19

20 Under the circumstances here, the Petitioners have not met their burden of proof that the  
21 development regulations adopted by the County to assure that urban growth will not occur  
22 on adjacent lands are non-compliant with the GMA.  
23

24  
25 **Inventory of Developable Land.** RCW 36.70A.365(2)(h) requires that “[A]n inventory of  
26 developable land has been conducted and the county has determined and entered findings  
27 that land suitable to site the major industrial development is unavailable within the urban  
28 growth area. Priority shall be given to applications for sites that are adjacent to or in close  
29 proximity to the urban growth area .”  
30

31  
32 ///

1 Petitioners claim that the County failed to conduct an adequate inventory of developable  
2 lands so that it could validly give priority to sites that are all or partially inside or are in close  
3 proximity to urban growth areas as required by RCW 36.70A.365(2)(h). Issue No. 8. They  
4 point out that “[n]o document entitled inventory was presented until after all testimony had  
5 been closed.” Petitioners Battin, et al., Hearing Brief at 13. They further urge that the  
6 inventory was defective in that it did not purport to list the developable lands of the County.  
7 *Ibid.* OBCT argues that the County did not perform any actual inventory of developable  
8 land outside the UGA. OBCT’s Opening Brief at 3. OBCT prepared a list of potential sites  
9 for the Cardinal facility that are of suitable parcel size and close to rail and the natural gas  
10 pipeline. Exhibit 2001. OBCT urges that the County should have reviewed those sites  
11 because they are closer to a UGA than the proposed Cardinal site. OBCT also asks this  
12 Board to find that major industrial development UGAs should be adjacent or as close as  
13 possible to a municipal UGA. OBCT’s Opening Brief at 4.  
14  
15

16  
17 Cardinal responds that it provided an inventory of suitable sites in its October 31, 2003,  
18 application. Cardinal FG Company’s Response Brief at 15. This inventory was made  
19 available to the public immediately and public notice was provided on November 21, 2003.  
20 *Ibid.* However, Cardinal takes issue with the argument that the County must conduct an  
21 inventory of developable land generally when there are unique siting requirements such as  
22 those necessary for the Cardinal float glass facility. *Ibid* at 14. Cardinal asks the Board to  
23 find that once an industrial development is proposed, the inventory of developable land  
24 should be based on the unique siting requirements of the proposed MID. *Ibid* at 15.  
25  
26

27 The inventory of developable land required by RCW 36.70A.365 is clearly designed to  
28 ensure that potential sites for the major industrial development within the existing urban  
29 growth areas are considered before any additional UGAs are created. The “developable  
30 land” to be inventoried is therefore land that meets the requirements for the industrial  
31 purpose. The County has an obligation to assure itself that those criteria are *bona fide*  
32

1 operational requirements. However, provided they are *bona fide* operational requirements,  
2 the inventory of developable land may be limited to lands that meet those siting  
3 requirements.  
4

5 In this case, no one challenges that the Cardinal requirements are not *bona fide* operational  
6 requirements. These include: an eighty-acre parcel size; a water table at least 35 feet  
7 below ground; location outside a flood plain; uninterruptible natural gas supply; dependable  
8 electricity supply; on-site rail access for materials; access to raw materials at a reasonable  
9 cost; interstate highway access; and an adequate water supply. October 31, 2003, Cardinal  
10 Application, Ex.3. Mr. Nelson, the plant manager of Cardinal's Tumwater plant, testified at  
11 length about the reasons for its siting requirements. Ex. 33. The need for a deep basement  
12 is driven by the need to house the facility's glass furnace regenerators. Adequate  
13 separation of groundwater is necessary to protect the furnace. *Ibid* at 46.  
14  
15

16  
17 While OBCT listed a number of other potential sites, those sites only meet a few of the  
18 Cardinal requirements: parcel size; access to rail; and availability of the natural gas pipeline.  
19 Ex. 2001. As Cardinal points out, despite all the public meetings and opportunities for  
20 comment, no one has brought forward another site that would meet Cardinal's unique siting  
21 requirements. Cardinal FG Company's Response Brief at 18-19.  
22

23  
24 Cardinal itself produced a list of eleven possible sites. Ex. 3. The FEIS considered 16  
25 possible sites. Ex. 32. These included sites within the County's municipal UGAs, as well as  
26 sites outside the UGAs. *Ibid*. Even so, only the Avery Road site met all the *bona fide*  
27 operational requirements that Cardinal has for a float glass manufacturing facility. *Ibid*.  
28

29  
30 *Conclusion:* In sum, the Board finds that the requirements of RCW 36.70A.365 have been  
31 met in this application, with the exception of the failure of the County to meet its road design  
32 standards for arterial service to the new industrial development. The County was not clearly

1 erroneous in determining that there is adequate provision of water service for the Cardinal  
2 MID UGA at the planning level.

3  
4 Under the facts presented, the Petitioners have not met their burden of proof that the  
5 development regulations adopted by the County to assure that urban growth will not occur  
6 on adjacent lands are non-compliant with the GMA. Further, in light of all the circumstances,  
7 the inventory of developable land was compliant with the requirements of RCW  
8 36.70A.365(2)(h).  
9

10  
11 However, the failure to adopt arterial road design requirements for Avery Road fails to  
12 comply with both the consistency requirements of RCW 36.70A.040, 36.70A.070, and  
13 36.70A.130(1)(b) and the infrastructure requirements of RCW 36.70A.365(2)(a).  
14

15  
16 D. Procedural Challenges – Issues Nos. 5 and 7

17 Petitioners argue that the County failed to follow LCC 17.20.030 in processing the Cardinal  
18 application:

19       The proponent of any specific proposal shall submit an application with the  
20 information required below. The application must be signed by the owners of at least  
21 50% of the property subject to the plan.

22 Petitioners Battin, et al., Hearing Brief at 10.

23  
24 Cardinal and the County point out that the sufficiency of the application under LCC  
25 17.20.030 is a project issue subject to the Land Use Petition Act rather than the GMA.  
26 Cardinal FG Company's Response Brief at 12.  
27

28 We agree. Petitioners' arguments regarding the local implementing policies and regulations  
29 fail to meet the burden of proof.

30  
31 ///

1 Petitioners also argue that Resolution 04-322 and Ordinance 1179H fail to comply with the  
2 GMA because the County did not use a process established in consultation with the cities  
3 as required by RCW 36.70A.365. Petitioners point to the Board's decision in *Roth, et al., v.*  
4 *Lewis County*, WWGMHB Case No. 04-2-0041c, Final Decision and Order, December 10,  
5 2004, in which we found that the County's process was not established in consultation with  
6 the cities as required by RCW 36.70A.365. Petitioners Battin, et al., Hearing Brief at 12.  
7

8  
9 Cardinal and the County respond that the Board's decision in *Roth* related to the process  
10 established by the County rather than to the particular application for a comprehensive plan  
11 amendment here. Petitioners Battin, et al., Hearing Brief at 10. Cardinal states that there is  
12 un rebutted testimony in the record that the County and cities did discuss the MID process  
13 and approval of the Cardinal MID. *Ibid*; Ex. 23 (Index 176). Cardinal also points to various  
14 letters from the cities. Index 37, 55, 57, 87, and 122. *Ibid*.  
15

16  
17 The Board did determine that the process the County established to consider applications  
18 for major industrial developments failed to comply with RCW 36.70A.365 because the  
19 County failed to consult with the cities in establishing that process. *Roth, et al., v. Lewis*  
20 *County*, WWGMHB Case No. 04-2-0041c, Final Decision and Order, December 10, 2004.  
21 However, because the Cardinal application had already been processed under that  
22 (noncompliant) process, the Board left open the question whether that *particular* application  
23 met the requirements of RCW 36.70A.365, whether or not the process required it. *Ibid*.  
24

25  
26 Here we find that because the cities were consulted and involved in the approval of the  
27 Cardinal MID UGA, this particular application met the requirements for consultation with the  
28 cities. We hasten to add that this finding does not affect the County's obligation to establish  
29 its process under RCW 36.70A.365 in consultation with the cities. That obligation continues  
30 through the non-compliance findings in the *Roth* case. We also wish to make it clear that  
31 this specific case should not be viewed as precedent to avoid the requirements of creating a  
32

1 compliant process before processing an application pursuant to RCW 36.70A.365. We  
2 simply find that in this case, under its unique facts and where the application was processed  
3 before a finding of noncompliance was entered, the involvement of the cities in processing  
4 the application meets the consultation requirements of RCW 36.70A.365.  
5

6  
7 *Conclusion:* Compliance with LCC 17.20.030 is a project-level requirement, not subject to  
8 Board review. Petitioners have not met their burden of proving Lewis County failed to  
9 comply with the requirements of RCW 36.70A.365 and local implementing policies and  
10 regulations when it adopted Resolution No. 04-322 and Ordinance No. 1179H. In addition,  
11 because the cities were consulted and involved in the approval of the Cardinal MID UGA,  
12 this particular application met the requirements for consultation with the cities.  
13

14 E. Issues Related to the Board's Prior Findings of Invalidity – Issues Nos. 1, 2, 3, 24, 26,  
15 27, and 28  
16

17 On prehearing motion, Petitioner OBCT moved for judgment on Issues 1 and 2. OBCT's  
18 Motion on Issues 1 and 2. The Board declined to decide those issues on motion:

19 We also find that these issues are not ripe because they rest, at least in part, on the  
20 County's failure to request that the Board lift its invalidity finding as to the designation  
21 of the lands which have been re-designated as the Cardinal MID UGA in the  
22 comprehensive plan amendment challenged here.

23 Decision and Order on Motions, February 8, 2005.

24 Subsequently, on February 28, 2005, the County moved to rescind the invalidity finding  
25 imposed on the designation of the lands now designated as the Cardinal MID UGA. *Butler*  
26 *v. Lewis County*, WWGMHB Case No. 99-2-0027c and *Panesko v. Lewis County*,  
27 WWGMHB Case No. 00-2-0031c, Motion of Lewis County To Rescind Invalidity on Cardinal  
28 MID. We determined to rescind the finding of invalidity as to the Cardinal MID UGA site in  
29 our Order Rescinding Invalidity as to Cardinal MID UGA Site, May 12, 2005. Because we  
30 have rescinded our finding of invalidity as to the designation of the Cardinal MID UGA site,  
31  
32 Issues Nos. 1, 2, 3, 24, 26, and 27 are now moot. However, we point out that a process

1 that makes a designation change to the comprehensive plan and approves a master site  
2 plan for a major industrial development contemporaneously would not be compliant if it  
3 provides that the designation change takes effect immediately. The reason for this is that  
4 such a process would effectively remove the ability of the public to obtain review of the  
5 compliance of the designation change (and accompanying development regulations). As  
6 the County moves forward to achieve compliance in the *Roth v. Lewis County*, WWGMHB  
7 Case No. 04-2-0041c case (the case in which the County is establishing the County's  
8 process for reviewing applications for major industrial development), this consideration  
9 should be addressed.  
10

11  
12 The remaining issue, Issue No. 28, argues that "the comp plan amendment which allows  
13 water, natural gas pipelines, electric power lines, and railroad tracks to cross nonurban  
14 areas including farmlands with prime soils to serve this major industrial development is  
15 noncompliant with RCW 36.70A.170 and RCW 36.70A.060 for failing to conserve  
16 agricultural land, and noncompliant with RCW 36.70A.300 and .320 for failing to comply with  
17 the February 13, 2004, Order which ruled "LCC 17.30.640(2)(a), (c), (e)---incidental uses---  
18 and LCC 17.30.650---pipelines on ag lands---invalid." This challenge is directed to  
19 conservation of adjacent agricultural resource lands.  
20  
21

22  
23 Petitioner Panesko points to the following language of the comprehensive amendment  
24 adopted as part of approval of the Cardinal MID UGA:

25 Water and natural gas pipelines and electric power lines and facilities, and railroad  
26 tracks may cross non-urban areas to serve this specific Major Industrial  
27 Development.

28 Resolution 04-322, Land Use Element 4-1.

29 He also points to the new development regulation (adopted by Ordinance 1179H) which  
30 provides:

31 Urban governmental services may be provided to this Major Industrial Development  
32 so long as such services are not connected to uses in non-urban areas unless such  
connections are consistent with state law and the Lewis County Comprehensive Plan

1 and have been approved by Lewis County. Consistent with existing local, state and  
2 federal laws, water and natural gas pipelines and electric power lines and facilities,  
3 and railroad tracks may cross non-urban areas to serve this specific Major Industrial  
4 Development.

5 LCC 17.21.030 (in pertinent part).

6 Petitioner Panesko argues that the Board has found such utilities across agricultural lands  
7 are "unrelated to agriculture and do not need to be placed on agricultural lands when there  
8 is so much rural lands [sic] in Lewis County where there is no prohibition for such facilities."  
9 Petitioner Opening Brief (Panesko) at 27.<sup>3</sup>

10  
11  
12 Cardinal and the County respond that the Petitioner has misstated the Board's earlier  
13 finding; the Board did not prohibit such utility lines on agricultural lands but required that  
14 they be located such that they do not interfere with resource uses. Cardinal FG Company's  
15 Response Brief at 27. In this case, Cardinal argues, the utility routes have been determined  
16 and are shown on the FEIS. Ex. 41 (Index 84.01, FEIS Figures 6, 25). According to  
17 Cardinal, all the routes follow road rights-of-way and will be buried. There is, Cardinal and  
18 the County argue, no evidence that there will be any interference with agricultural activity.

19  
20 *Ibid.*

21  
22 The Board's ruling with respect to uses on agricultural resource lands found LCC 17.30.650  
23 invalid and noncompliant with the GMA. The Board found noncompliant and invalid that  
24 provision of the County code which allowed essential public facilities, including utility  
25 facilities, to be located in resource lands without restriction on any potential interference with  
26 resource uses. *Butler v. Lewis County*, WWGMHB Case No. 99-2-0027c and *Panesko v.*  
27 *Lewis County*, WWGMHB Case No. 00-2-0031c, Order Finding NonCompliance and  
28 Imposing Invalidity, February 13, 2004. Cardinal and the County are correct, however, that  
29  
30

31  
32 <sup>3</sup> Petitioner references the Board's February 13, 2004, decision in *Butler v. Lewis County*, WWGMHB Case  
No. 99-2-0027c and *Panesko v. Lewis County*, WWGMHB Case No. 00-2-0031c, Order Finding  
NonCompliance and Imposing Invalidity.

1 the Board indicated that public facilities such as utility lines and pipelines would likely need  
2 to cross resource lands of necessity in some areas, and that the Board's concern was the  
3 lack of a provision indicating that such utility lines would be located so as not to interfere  
4 with resource activity. *Ibid.* The Board did not find them an incompatible use *per se* in  
5 resource lands.  
6

7  
8 In the instant case, there is no evidence that the approved utility lines to the Cardinal MID  
9 UGA will interfere with agricultural activity. Ex. 41 to the Cardinal Response Brief shows  
10 the path of the natural gas and water pipeline routes. Those routes follow existing roads,  
11 Antrim Road and Hawkins Road, and then appear to cross one parcel of land to the  
12 Cardinal site. No one disputes Cardinal's claim that these lines will be buried and will not  
13 interfere with agricultural activity.  
14

15  
16 While it is true that the comprehensive plan amendment does not prohibit interference by  
17 the utility lines with resource activity, the implementing development regulation requires that  
18 they be "[C]onsistent with existing local, state and federal laws." LCC 17.21.030. In its  
19 compliance efforts with respect to development regulations governing uses in resource  
20 lands in the *Butler* and *Panesko* cases, the County will need to address that question in  
21 general and thus create a "local law." Until that time, the specific project limitations are part  
22 and parcel of the County's regulations of the MID UGA and do ensure that the utility lines  
23 crossing resource lands will not interfere with agricultural activity.  
24

25  
26 *Conclusion:* Because we have rescinded our finding of invalidity as to the designation of  
27 the Cardinal MID UGA site, Issues Nos. 1, 2, 3, 24, 26, and 27 are now moot. As to Issue  
28 No. 28, the Petitioners have failed to show that the development regulations fail to conserve  
29 resource lands or mitigate any adverse impacts on resource lands.  
30  
31  
32

1 F. Public Participation Issues – Issues Nos. 4 and 25

2 Petitioners argue that the enactment of Resolution 04-322, Ordinance 1179H and  
3 Resolution 04-323 “constituted a study in the art of thwarting true public participation.”  
4 Petitioners Battin, et al., Hearing Brief at 7. The County did not follow its public participation  
5 procedures for comprehensive plan amendments in Ch. 17.12 LCC, Petitioners point out,  
6 and did not hold the background workshops that are required by that part of the county  
7 code. *Ibid* at 10. Petitioners particularly focus on the inventory of developable land and  
8 claim that it was not provided to the public until the public was effectively precluded from  
9 rebutting the County’s evidence. *Ibid*.

10  
11  
12 Cardinal and the County respond that the test is whether the adoption of the Cardinal MID  
13 satisfied the requirements of RCW 36.70A.140. Cardinal FG Company’s Response Brief at  
14 5. Cardinal notes that the Board’s decision in *Roth v. Lewis County*, WWGMHB Case No.  
15 04-2-0021c, Final Decision and Order, December 10, 2004, found noncompliant the  
16 County’s development regulations establishing a *process* for reviewing of major industrial  
17 development applications. The Board reserved the question whether the actual public  
18 participation procedures followed relative to the Cardinal MID application complies with the  
19 GMA. *Ibid*. Cardinal and the County argue that the requirements of RCW 36.70A.140 for  
20 early and continuous public participation were more than met in this case. Lewis County’s  
21 Joinder of Cardinal FG Company Response Brief.  
22  
23

24  
25 In *Roth*, we found that “[T]he County could, in practice, follow proper public participation  
26 procedures in the approval of an application for a major industrial development even if its  
27 written ordinance did not require them.” Therefore, we agreed that the test in this case  
28 would be whether proper public participation procedures were followed under RCW  
29 36.70A.140.

30  
31 ///

32 ///

1 In pertinent part, RCW 36.70A.140 provides:

2 The procedures shall provide for broad dissemination of proposals and  
3 alternatives, opportunity for written comments, public meetings after effective  
4 notice, provision for open discussion, communication programs, information  
5 services, and consideration of and response to public comments.

6  
7 Cardinal provides a chart listing the actions taken to involve the public in the Cardinal  
8 application on pp. 6-7 of its response brief. After the application was filed on October 31,  
9 2003, notice of the application was published. Ex. 70.02. The SEPA DS scoping notice  
10 was mailed on November 25, 2003. Ex. 70.06. The County published and periodically  
11 updated a fact sheet on its website, giving information about the Cardinal proposal and  
12 opportunities for comment. Ex. 16 (Index 213.02). A list of interested parties who wished to  
13 receive mailed notice concerning the application was developed. Ex. 71.01. After the DEIS  
14 was issued, written comments were received by April 7, 2004. Exhibit 81. Written  
15 comments were received from many members of the public. Ex. 7 to the Cardinal response  
16 brief. The comments were incorporated and addressed in the FEIS issued in July 2004.  
17 Ex. 18 (Index 84.01). The Planning Commission hearing on the application was held on  
18 August 23 and 24, 2004, with written comments accepted through August 27, 2004. Ex. 21  
19 (Index 176). A Planning Commission workshop was held on August 31, 2004, and on  
20 September 2, 2004. The Planning Commission adopted its recommendations. These  
21 recommendations were forwarded to the Board of County Commissioners who held a public  
22 hearing on September 22 and 23, 2004.

23  
24  
25  
26 Petitioners urge that the public was not given sufficient opportunity to respond to the  
27 inventory of developable land because it was not issued until the Staff Report was prepared  
28 on August 11, 2004. Ex. 86. At the Hearing on the Merits, Cardinal and the County  
29 responded that the other potential sites were published first in the Cardinal application, then  
30 in the environmental impact statements. The Staff Report responded to the many  
31 comments submitted in response to the list of potential sites and formalized the inventory of  
32

1 developable lands. The public then had the opportunity to respond to this final list of sites at  
2 the Planning Commission hearing and before the Board of County Commissioners.

3  
4 Petitioners describe an ideal situation for public participation. The question for the Board is  
5 whether the procedure for public participation followed by the County in this case was  
6 clearly erroneous. We find that the public was notified and included in the consideration of  
7 this application. The many written comments received and addressed in the process, dating  
8 from January 2004, are evidence of this fact. We find that the process by which the  
9 inventory of developable lands was created was inclusive and properly responded to  
10 suggestions from the public.  
11

12  
13 *Conclusion:* Petitioners have not met their burden of proof in showing that the public  
14 participation procedure followed in this case did not comply with RCW 36.70A.140.  
15

16  
17 **VI. FINDINGS OF FACT**

- 18 1. Lewis County is a county located west of the crest of the Cascade Mountains that is  
19 required to plan pursuant to RCW 36.70A.040.  
20  
21 2. The Petitioners have participated in person or in writing in the legislative adoption  
22 proceedings of Resolution 04-322, 04-323 and Ordinance 1179H.  
23  
24 3. This case is a consolidation of four petitions for review: WWGMHB Case No. 04-2-  
25 0027 filed on November 22, 2004, and WWGMHB Case Nos. 04-2-0039, 04-2-0040  
26 and 04-2-0041, filed on November 24, 2004.  
27  
28 4. Resolution 04-322 amends the Lewis County comprehensive plan to create a major  
29 industrial development (“MID”) urban growth area (“UGA”) for the Cardinal FG  
30 Company float glass facility.  
31  
32 5. Resolution 04-323 approves the Cardinal FG Major Industrial Development Master  
Plan.  
6. Ordinance 1179H adopts development regulations to implement MID UGA.

- 1 7. All three of these enactments were adopted on September 23, 2004, and published  
2 September 29, 2004.
- 3 8. Cardinal FG Company has an interest in the adoption of the MID UGA and  
4 implementing development regulations and was granted leave to participate in these  
5 proceedings as an Intervenor.
- 6 9. The Petitioners elected not to address Issues 10, 13, 14, 15, 16, and 17 of the issues  
7 in the prehearing order in their briefing.
- 8 10. Resolution 04-322 and Ordinance 1179H allow urban governmental services to be  
9 provided to the Cardinal MID UGA but does not allow those services to be extended  
10 to rural or resource lands.
- 11 11. Urban growth areas by definition are allowed to have urban levels of growth and  
12 should have the urban services to support that growth.
- 13 12. The County's comprehensive plan prohibits the extension of urban services into the  
14 County's rural areas, not into a special purpose industrial UGA.
- 15 13. Countywide Planning Policy 2.5 does not prohibit extension of urban services from  
16 one UGA to another, nor does it prohibit crossing rural and resource lands to provide  
17 those services as long as such services are not extended to residents of rural and  
18 resource lands.
- 19 20 14. LCC 17.150.070(3)(k) applies to urban growth in the rural area, not to urban services  
21 to a UGA.
- 22 15. Any groundwater source for the Cardinal MID UGA must first be approved by  
23 Ecology.
- 24 16. The City of Winlock has offered pipeline water as an alternative source of water  
25 needed by the Cardinal MID UGA.
- 26 17. The City's commitment to provide water service is conditional but based on a serious  
27 effort to upgrade its water services to supply non-municipal users.
- 28 18. Cardinal has committed to paying for whatever water service it requires.
- 29 19. At the permit level, the conditions upon construction and occupancy of the Cardinal  
30  
31  
32

- 1 facility will require that water service actually be provided to the site before Cardinal  
2 can occupy its facility.
- 3 20. The access road to the MID UGA does not meet the design standards for an arterial.  
4  
5 21. Land Use Policy 8.1 of the County's comprehensive plan requires that sites for  
6 industrial use must be accessible from roadways of arterial classification or higher.  
7  
8 22. Arterials must conform to the design standards for that classification as well, in this  
9 case "Rural Area Design Standards 3-2." Ch. 17.60 LCC. Those standards include a  
10 minimum road width of 30 feet.  
11  
12 23. Arterials must conform to the design standards for that classification as well, in this  
13 case "Rural Area Design Standards 3-2." Ch. 17.60 LCC. Those standards include a  
14 minimum road width of 30 feet.  
15  
16 24. The Hearing Examiner recommended that Avery Road be improved to a surface  
17 width of 30 feet "to meet present standards."  
18  
19 25. The Board of County Commissioners elected not to adopt this recommendation of the  
20 Hearing Examiner.  
21  
22 26. LCC 17.21.070 prohibits water and sewer extensions from the MID UGA to uses  
23 outside its boundaries.  
24  
25 27. The rural designation of the lands adjacent to the Cardinal MID UGA is subject to a  
26 finding of invalidity and that invalidity finding must be lifted before a new designation  
27 can take effect.  
28  
29 28. Cardinal's *bona fide* operational requirements include: an eighty acre parcel size; a  
30 water table at least 35 feet below ground; location outside a flood plain;  
31 uninterrupted natural gas supply; dependable electricity supply; on-site rail access  
32 for materials; access to raw materials at a reasonable cost; interstate highway  
access; and an adequate water supply.
29. The need for a deep basement is driven by the need to house the facility's glass  
furnace regenerators. Adequate separation of groundwater is necessary to protect  
the furnace.

- 1 30. Cardinal produced a list of eleven possible sites. Ex. 3. The FEIS considered 16  
2 possible sites. Ex. 32. These included sites within the County's municipal UGAs, as  
3 well as sites outside the UGAs. Only the Avery Road site met all the *bona fide*  
4 operational requirements that Cardinal has for a float glass manufacturing facility.  
5  
6 31. The cities of Lewis County were consulted and involved in the approval of the  
7 Cardinal MID UGA.  
8  
9 32. The Board rescinded the finding of invalidity as to the designation of the Cardinal MID  
10 UGA site. Order Rescinding Invalidity as To Cardinal MID UGA Site, May 12, 2005.  
11  
12 33. The path of the natural gas and water pipeline routes follow existing roads and then  
13 cross one parcel of land to the Cardinal site.  
14  
15 34. These utility lines will be buried and will not interfere with agricultural activity.  
16  
17 35. The public was involved in the consideration of the Cardinal application in the  
18 following ways. Notice of the application was published in November 2003. A list of  
19 interested parties who wished to receive mailed notice concerning the application  
20 was developed. Ex. 71.01. After the DEIS was issued, written comments were  
21 received by April 7, 2004. Exhibit 81. Written comments were received from many  
22 members of the public. Ex. 7 to the Cardinal response brief. The comments were  
23 incorporated and addressed in the FEIS issued in July 2004. Ex. 18 (Index 84.01).  
24 The Planning Commission hearing on the application was held on August 23 and 24,  
25 2004, with written comments accepted through August 27, 2004. Ex. 21 (Index 176).  
26 A Planning Commission workshop was held on August 31, 2004, and on  
27 September 2, 2004. The Planning Commission adopted its recommendations. These  
28 recommendations were forwarded to the Board of County Commissioners who held a  
29 public hearing on September 22 and 23, 2004.  
30  
31 36. Other potential sites were published first in the Cardinal application (11 sites), then in  
32 the environmental impact statements (16 sites).

1 37. The Staff Report of August 11, 2004, responded to the many comments submitted in  
2 response to the list of potential sites and formalized the inventory of developable  
3 lands.  
4

5  
6 **VII. CONCLUSIONS OF LAW**

- 7 A. This Board has jurisdiction over the parties and subject matter of the issues related  
8 to the enactment of Resolution 04-322 and Ordinance 1179H.  
9 B. The Board lacks subject-matter jurisdiction over Resolution 04-323, which is a  
10 project action.  
11 C. The Petitioners have standing to bring their claims and raised them in a timely  
12 manner.  
13 D. The failure to adequately provide improvements to Avery Road to arterial road  
14 design standards fails to comply with RCW 36.70A.365(2)(a) and RCW 36.70A.040  
15 and 36.70A.130(1)(b).  
16 E. Other than the failure to include improvements to Avery Road, Resolution 04-322  
17 and Ordinance 1179H comply with Ch. 36.70A RCW.  
18  
19

20  
21 **VIII. ORDER**

22 The County is ordered to achieve compliance in accordance with this decision no later than  
23 150 days from the date of this final decision and order. The following schedule shall apply:

24 Compliance Due	October 11, 2005
25 Report of Compliance Actions Due	October 18, 2005
26 Objections to a Finding of Compliance Due	November 2, 2005.
27 County Response Due	November 14, 2005
28 Compliance Hearing	November 22, 2005

30  
31 The location of the compliance hearing will be set at a subsequent time. The period of  
32 remand shall extend until the Board issues its next order on compliance.

1 This is a final order for purposes of appeal pursuant to RCW 36.70A.300(5) and for a motion  
2 for reconsideration pursuant to WAC 242-02-832. A motion for reconsideration must be  
3 filed within 10 days of service of this final decision.  
4

5 Entered this 13<sup>th</sup> day of May 2005.  
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Margery Hite, Board Member

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14 \_\_\_\_\_  
Holly Gadbow, Board Member

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Gayle Rothrock, Board Member  
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