

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 Wristen-Mooney, et al.,

4
5 Petitioners,

Case No. 05-2-0020

6 v.

FINAL DECISION AND ORDER

7
8 Lewis County,

9 Respondent.

10
11 I. SYNOPSIS OF DECISION

12 Lewis County has elected to establish procedures for consideration of a variety of special
13 purpose urban growth areas (UGAs). The procedures for handling applications for major
14 industrial developments pursuant to RCW 36.70A.365 were reviewed and found compliant
15 with the Growth Management Act (GMA) (Ch.36.70A RCW) in *Roth v. Lewis County*,
16 WWGMHB Case No. 04-2-0014c. The procedures for handling applications for industrial
17 land banks under RCW 36.70A.367 were reviewed and found compliant in *Vinatieri v. Lewis*
18 *County*, WWGMHB Case No. 03-2-0020c. The present case challenges the procedures
19 adopted for processing applications for fully contained communities pursuant to RCW
20 36.70A.350 and new master planned resorts pursuant to RCW 36.70A.360.
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24 In the main, the County's procedures continue the strategy of combining the consideration
25 of needed comprehensive plan amendments and development regulations with the project-
26 level review of the site plan. We find that the Petitioners have not demonstrated that this
27 combined process fails to comply with the GMA for either fully contained communities or
28 master planned resorts.
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31 However, the County relies upon but has not included its annual comprehensive plan
32 amendment and development regulation adoption processes in its review of applications

1 under LCC 17.20.051 and 17.20.052. This creates some inconsistencies within the County
2 code and some confusion with respect to public participation. While it appears that the
3 County's intended process will address these, the present language of the code fails to
4 comply with the GMA on those grounds. Confusion is also caused by inconsistencies in the
5 designation of the master plan as a subarea plan. Since the subarea plan includes the site
6 plan as well as the comprehensive plan policies and development regulations, it mixes two
7 types of adoptions with differing procedural requirements.
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10 In the case of applications for fully contained communities, the statute requires an allocation
11 of population be made to the new urban growth area. RCW 36.70A.350(2). The County
12 has reserved population for that purpose. However, the absence of a provision making an
13 allocation from this reserved population to a new fully contained community as part of the
14 approval of a fully contained community fails to comply with the statutory requirement. This
15 requirement does not apply to new master planned resorts, however.
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18 As to master planned resorts, RCW 36.70A.360(4)(a) requires the adoption of
19 comprehensive plan policies to guide the development of master planned resorts prior to the
20 consideration of a specific application. Here, the County has adopted its guidance policies
21 in its development regulations but the GMA requires them to be included in the
22 comprehensive plan. The absence of such guidance in the comprehensive plan fails to
23 comply with RCW 36.70A.360(4)(a).
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25 26 **II. PROCEDURAL HISTORY**

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28 The Petition for Review in this case challenges Lewis County Ordinance No. 1179J (the
29 Ordinance), adopted on August 8, 2005. Notice of adoption of the Ordinance was published
30 on August 16, 2005. The Petition for Review was filed on October 4, 2005. On
31 November 2, 2005, Petitioners filed an Amended Petition for Review. On November 3,
32 2005, a Prehearing Order was issued setting out the issues in the case. On November 3,

1 2005, the County filed its Motion To Clarify or To Make More Definite and Certain or In the
2 Alternative Motion To Strike Amended and Additional Issues. In conjunction with this
3 motion, the County proposed a restatement of the issues in the Prehearing Order. Lewis
4 County's Proposed Amendments to Issues in Prehearing Order, November 3, 2005.¹ On
5 November 14, 2005, Petitioners responded to the County's motion and also filed a motion to
6 change the issue statement in the Prehearing Order. Wristen-Mooney et al., Response to
7 County Motion To Make More Definite and Certain or Alternative Motion To Strike and
8 Motion to Change Issue Statement, November 14, 2005. Also on November 14th, the
9 County filed its Motion to Strike Amended Petition and Additional Issues. Petitioners'
10 response to this motion was filed on November 29, 2005. Response to County Motion to
11 Strike Amended Petition. Based on the motions and responses, the issues were clarified in
12 the Amended Prehearing Order and Revised Statement of Issues on November 30, 2005.
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16 On November 15, 2005, the County filed a motion to dismiss the issues in this case. Motion
17 to Dismiss, November 15, 2005; Motion to Dismiss [Corrected], November 16, 2005. Based
18 on the Board's decision in the related cases of *Vinatieri v. Lewis County*, WWGMHB Case
19 No. 03-2-0020c and *Roth v. Lewis County*, WWGMHB Case No. 04-2-0014c issued
20 November 23, 2005, Petitioners withdrew Issues 1, 2, 8, 9, and 18. Response to County
21 Motion to Dismiss at 7. The Board then determined that Issues 3-7 should be dismissed.
22 Order on Motion to Dismiss, December 7, 2005. The Board determined that Issues 3 – 5
23 were either raised and decided in *Roth* and *Vinatieri* or addressed unchanged provisions of
24 LCC 17.20.050 and were untimely. Issue 6 was dismissed as not having been included in
25 the original petition for review and not added until after the statutory deadline for filing a
26 petition with a detailed statement of issues (RCW 36.70A.290(1)). Issue 7 requested an
27 invalidity determination as to LCC 17.20.050 but since the issues alleging noncompliance of
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31 _____
32 ¹ Since the issue statement was in dispute, the County requested and was granted additional time in which to
file its Index to the Record. Letter to Parties and Counsel from Presiding Officer, November 4, 2005.

1 LCC 17.20.050 were dismissed, invalidity was not an available remedy. RCW
2 36.70A.302(1)(a). The remaining issues - Issues 10 - 17, 19 - 25 were forwarded to the
3 hearing on the merits in this case, on January 31, 2006. Order on Motion to Dismiss,
4 December 7, 2005.
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7 The hearing on the merits was held in Chehalis at the Historic County Courthouse on
8 January 31, 2005. Eugene Butler spoke for the Petitioners. Douglas Jensen represented
9 the County, assisted by Planning Director Bob Johnson. All three board members attended.
10

11 III. ISSUES PRESENTED

- 12
- 13 10. Whether LCC 17.20.051 fails to comply with the annual consideration requirements
14 and consolidation of proposals requirements of RCW 36.70A.130(2) (a and b)?
 - 15 11. Whether LCC 17.20.051(1) fails to comply with the requirement of RCW
16 36.70A.350(2) that any application for a fully contained community must be for an
17 allocation of a community reserve established by Comprehensive Plan.
 - 18 12. Whether the provisions of LCC 17.20.051 and LCC 17.20.051(1) should be found
19 invalid for substantial interference with RCW 36.70A.020(1), (2), (3), (4) and (12).
 - 20 13. Whether provisions of LCC 17.20.051(2), (3), and (4) calling for a consolidated
21 hearing create inconsistent and contradictory requirements both procedurally and
22 substantively and fail to comply with consistency requirements of RCW 36.70A.040,
23 and -.070, participation procedure requirements of RCW 36.70A.140, and the
24 requirements of RCW 36.70A.350 that final approval constitutes an adopted
25 amendment to the comprehensive plan.
 - 26 14. Whether LCC 17.20.051(10) fails to comply with the requirement of RCW
27 36.70A.350(2) that final approval of a fully contained community shall be considered
28 an adopted amendment to the comprehensive plan prepared pursuant to RCW
29 36.70A.070 designating the new fully contained community as an urban growth area.
 - 30 15. Whether LCC 17.20.051(10) fails to comply with RCW 36.70A.280(1)(a) and RCW
31 36.70A.020(10) by purporting to assign jurisdiction for appeals of GMA, shoreline and
32 environmental issues to the courts and not to the Growth Management Hearings
Board.

- 1 16. Whether provisions of LCC 17.20.051(10) providing that the FCC plan is adjudicative
2 under Ch. 36.70B RCW is inconsistent with LCC 17.20.020(2) providing that a master
3 plan shall become a subarea plan; with RCW 36.70A.080(2) providing that subarea
4 plans are elements of the Comprehensive Plan; with RCW 36.70A.350(2) providing
5 that approvals under that section is considered adopted amendments to the
6 Comprehensive Plan and thereby fails to comply with RCW 36.70A.070(preamble)
7 and -.040(5) requiring internally consistent documents and consistency with the
8 comprehensive plan and with RCW 36.70A.040(1) requiring the County to comply
9 with all of the requirements of Ch. 36.70A RCW cited in this paragraph.
- 10 17. Whether the provisions of LCC 17.20.051(2), (3), (4), and (10) should be found
11 invalid for substantial interference with RCW 36.70A.020(1), (6), (7), and (11).
- 12 19. Whether provisions of LCC 17.20.052(2), (3), and (4) calling for a consolidated
13 hearing creates inconsistent and contradictory requirements both procedurally and
14 substantively and fails to comply with consistency requirements of RCW 36.70A.040,
15 and -.070, and participation procedure requirements of RCW 36.70A.140.
- 16 20. Whether LCC 17.20.052(10) fails to comply with RCW 36.70A.020(10), -.280(1)(a)
17 and -.250(2) because it purports to assign the appeal of GMA, Shoreline and
18 Environmental issues to the courts rather than to a Growth Management Hearings
19 Board.
- 20 21. Whether provisions of LCC 17.20.052(10) providing that the MPR plan is adjudicative
21 under Ch. 36.70B RCW is inconsistent with LCC 17.20.020(2) providing that a master
22 plan shall become a subarea plan; with RCW 36.70A.080(2) providing that subarea
23 plans are elements of the Comprehensive Plan; and thereby fails to comply with
24 RCW 36.70A.070 (preamble) and -.040(5) requiring internally consistent documents
25 and consistency with the comprehensive plan and with RCW 36.70A.040(1) requiring
26 the County to comply with all of the requirements of Ch. 36.70A RCW cited in this
27 paragraph.
- 28 22. Whether provisions of LCC 17.20.052(2), (3), (4), and (10) should be found invalid for
29 substantial interference with RCW 36.70A.020(1), (6), (7), and (11).
- 30 23. Whether LCC 17.20.052 fails to comply with RCW 36.70A.360 -.040(1), (5), -.070
31 (preamble), .130(1), (2), and -.020(9) because the County has failed to enact
32 compliant comprehensive plan policies to guide the development of master planned
resorts.

1 24. Whether LCC 17.20.052 fails to comply with RCW 36.70A.362(5) by failing to provide
2 for the allocation of community reserve population projections to accommodate any
3 permanent residents for any such master planned resort.

4 25. Whether provisions of LCC 17.20.052 should be found invalid for substantial
5 interference with RCW 36.70A.020(6), (8), (9), (10), (11), and (12).
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7 IV. BURDEN OF PROOF

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9 For purposes of board review of the comprehensive plans and development regulations
10 adopted by local government, the GMA establishes three major precepts: a presumption of
11 validity; a “clearly erroneous” standard of review; and a requirement of deference to the
12 decisions of local government.
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14 Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and
15 amendments to them are presumed valid upon adoption:

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

19 RCW 36.70A.320(1).
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21 The statute further provides that the standard of review shall be whether the challenged
22 enactments are clearly erroneous:

23 The board shall find compliance unless it determines that the action by the state
24 agency, county, or city is clearly erroneous in view of the entire record before the
25 board and in light of the goals and requirements of this chapter.

26 RCW 36.70A.320(3).
27

28 In order to find the County’s action clearly erroneous, the Board must be “left with the firm
29 and definite conviction that a mistake has been made.” *Department of Ecology v. PUD1*,
30 121 Wn.2d 179, 201, 849 P.2d 646 (1993).
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1 Within the framework of state goals and requirements, the boards must grant deference to
2 local government in how they plan for growth:

3 In recognition of the broad range of discretion that may be exercised by counties and
4 cities in how they plan for growth, consistent with the requirements and goals of this
5 chapter, the legislature intends for the boards to grant deference to the counties and
6 cities in how they plan for growth, consistent with the requirements and goals of this
7 chapter. Local comprehensive plans and development regulations require counties
8 and cities to balance priorities and options for action in full consideration of local
9 circumstances. The legislature finds that while this chapter requires local planning to
10 take place within a framework of state goals and requirements, the ultimate burden
11 and responsibility for planning, harmonizing the planning goals of this chapter, and
12 implementing a county's or city's future rests with that community.

13 RCW 36.70A.3201 (in part).

14 In sum, the burden is on the Petitioner to overcome the presumption of validity and
15 demonstrate that any action taken by the County is clearly erroneous in light of the goals
16 and requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2).
17 Where not clearly erroneous and thus within the framework of state goals and requirements,
18 the planning choices of local government must be granted deference.

19 **V. DISCUSSION**

20 **A. Timeliness of the Challenges**

21 **Positions of the Parties**

22 As a general defense to all the challenges, the County asserts that the remaining issues in
23 this case are untimely and collateral attacks on previously adopted GMA provisions. Lewis
24 County's Response to Petitioners' Opening Brief at 11. The County argues that the
25 challenged provisions were present in Ordinance 1179G, adopted in May of 2004, and were
26 only re-organized in the instant ordinance, Ordinance 1179J. Petitioners reply that if
27 Ordinance 1179G applied to fully contained communities and master planned resorts, there
28 was no notice to the public of that effect. Wristen-Mooney Petitioners' Reply Brief at 3.
29 Petitioners further note that Ordinance 1179J did not simply copy the provisions of
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1 Ordinance 1179G (codified as LCC 17.20.050) into new code sections as LCC 17.20.051
2 and 17.20.052; they assert that new definitions and different procedures were created. *Ibid*
3 at 6.
4

5 **Board Discussion**
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7 The County's defense of timeliness rests upon the provisions of the Growth Management
8 Act, Ch.36.70A RCW, that require that challenges to enactments be brought within 60 days
9 of the date of publication of their adoption:

10 (2) All petitions relating to whether or not an adopted comprehensive plan,
11 development regulation, or permanent amendment thereto, is in compliance with
12 the goals and requirements of the chapter or chapter 90.58 or 43.21C RCW must
13 be filed within sixty days after publication by the legislative bodies of the county
or city.

14 (a) ...

15 (b) Promptly after adoption, a county shall publish a notice that it has adopted
16 the comprehensive plan or development regulations, or amendment
thereto.

17 Except as provided in (c) of this subsection, for purposes of this section the date of
18 publication for a county shall be the date the county publishes the notice that it has
19 adopted the comprehensive plan or development regulations, or amendment thereto.
20 RCW 36.70A.290(2)(b).

21 The County urges the Board to find that provisions regarding fully contained communities
22 and master planned resorts were adopted in Ordinance 1170B in 2000. This is true.
23 Ordinance 1170B established a procedure for processing applications for urban growth
24 areas "not associated with a specific city" (LCC 17.20.010 adopted by Ordinance 1170B). It
25 also specifically addressed fully contained communities (LCC 17.20.060(1)) and master
26 planned resorts (LCC 17.20.060(2)). However, the procedures adopted for these types of
27 urban growth areas in Ordinance 1170B are markedly different from the procedures being
28 challenged in the Ordinance here (Ordinance 1179J).
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31 The County does not argue that the procedures in Ordinance 1170B in 2000 are unchanged
32 from those challenged here, but it does argue that the provisions adopted in 1170B

1 pertaining to *all* special urban growth areas were modified with the adoption of Ordinance
2 1179G in 2004. Thereafter, the County argues, Ordinance 1179J (the one challenged here)
3 simply re-organized the already adopted procedures for processing applications for master
4 planned resorts and fully contained communities within the Lewis County Code. Lewis
5 County's Response to Petitioners' Opening Brief at 10.
6

7
8 Petitioners argue that Ordinance 1179G (the 2004 ordinance) only applied to major
9 industrial developments (RCW 36.70A.365) and industrial land banks (RCW 36.70A.367).
10 Petitioners' Reply Brief at 2-3. They point to a "whereas" clause in Ordinance 1179G that
11 recites the purpose of the adoption:

12 WHEREAS, the State Growth Management Act, RCW 36.70A.365(3) and .367(4)
13 distinguish the nature of the comprehensive plan amendment process for major
14 industrial developments outside of urban growth areas

15 and to the text of the amended code section itself which references only the major industrial
16 development and industrial land bank sections of the Growth Management Act:
17

18 As anticipated in RCW 36.70A.365(3) and .367(4), amendments to the
19 comprehensive plan and development regulations under LCC 17.20.050 shall be
20 separate from the annual comprehensive plan amendment process specified in LCC
21 17.12.

22 LCC 17.20.050(1) (in pertinent part) (Ordinance 1179G).

23 Petitioners' Reply Brief at 2. Petitioners further argue that even if Ordinance 1179G was
24 meant to apply to fully contained communities and master planned resorts, the County
25 cannot foreclose them from challenging an enactment where they were not given notice of
26 that applicability in the ordinance itself. *Ibid* at 4-5.
27

28 We agree with Petitioners that Ordinance 1179G did not provide notice of the applicability of
29 its provisions to fully contained communities. The preamble to Ordinance 1179G states that
30 prior Chapter 17.20 of the Lewis County Code applied to all master plans under RCW
31 36.70A.360-367. These sections of the GMA encompass master planned resorts (RCW
32

1 36.70A.360), major industrial developments (RCW 36.70A.365) and industrial developments
2 (RCW 36.70A.367) but not fully contained communities (RCW 36.70A.350). A principle of
3 statutory construction – *expressio unius est exclusio alterius* - holds that where a statute
4 specifically designates the things or classes of things upon which it operates, an inference
5 arises in law that all things or classes of things omitted from it were intentionally omitted by
6 the legislative body. *State v. Swanson*, 116 Wn. App. 67, 75, 65 P.3d 343, 2003 Wash.
7 App. LEXIS 342 (2003) (Div. II). By expressly referencing some but not all types of special
8 urban growth areas, Ordinance 1179G must be read to apply only to those expressly
9 described urban growth areas. Fully contained communities were not included.
10 The preamble to Ordinance 1179G also provides that the GMA “distinguishes” the
11 comprehensive amendment process for major industrial developments and industrial land
12 banks. Reading these preamble provisions together, the implication is that the amendments
13 to LCC 17.20.050 in Ordinance 1179G only apply to major industrial developments and
14 industrial land banks. This conclusion is buttressed by the fact that the amended language
15 of LCC 17.20.050 in Ordinance 1179G only references industrial land banks and major
16 industrial developments.
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20 Petitioners further point out that the procedures applicable to processing an application for a
21 fully contained community and a master planned resort in Ordinance 1179J (the instant
22 ordinance) and those which the County argues were applicable to those types of urban
23 growth areas in Ordinance 1179G (the 2004 ordinance) are not the same. Petitioners’
24 Reply Brief at 6. These differences will be discussed below; however, we note that the
25 procedures for fully contained communities and master planned resorts in Ordinance 1179J
26 are not even the same as the procedures for major industrial developments and industrial
27 land banks in the same ordinance.² The County’s argument that the provisions of
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31 ² Petitioners additionally point out that Ordinance 1179G was adopted outside the regular annual
32 comprehensive plan amendment cycle; for that reason, its scope was limited to adoptions to achieve
compliance with a Board order. See RCW 36.70A.130(2)(b). The County responds that any challenge to the
compliance of Ordinance 1179G with RCW 36.70A.130 is now time-barred. However, the Petitioners’ point is

1 Ordinance 1179J related to master planned resorts and full contained communities were
2 unchanged from Ordinance 1179G therefore fails on those grounds as well.

3
4 **Conclusion:** The challenges to the procedures adopted in Ordinance 1179J for handling
5 an application for a fully contained community under RCW 36.70A.050 and a master
6 planned resort under RCW 36.70A.360 are timely.

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9 **B. Fully Contained Communities – Issues 11 – 17**

10 **Positions of the Parties**

11 The portion of Ordinance 1179J which deals with the procedure for handling applications for
12 fully contained communities is codified in the Lewis County Code at LCC 17.20.051.

13 Petitioners challenge the compliance of LCC 17.20.051 with the GMA on a number of
14 grounds: it does not comply with the requirements for annual consideration of
15 comprehensive plan amendments found in RCW 36.70A.130(2) (Issue 10); it fails to provide
16 that applications require an allocation from the community reserve (of the County's
17 population allocation) (Issue 11); the consolidated hearing provisions fail to comply with the
18 consistency and public participation requirements of the Act (Issue 13); LCC 17.20.051
19 creates an adjudicative process for deciding on the application rather than a legislative
20 process as the Act requires for comprehensive plan amendments (Issue 14); it assigns
21 jurisdiction of any appeals of the decision on an application for a fully contained community
22 to the courts rather than to the growth boards (Issue 15); and the master site plan (FCC
23 plan) procedures of LCC 17.20.051 fail to comply with the requirements for development
24 regulations as part of the approval of a fully contained community under RCW 36.70A.350
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30 not that Ordinance 1179G did not comply with RCW 36.70A.130(2)(b); rather, they argue that any ambiguity
31 about whether fully contained communities and master planned resorts were part of Ordinance 1179G should
32 be resolved such that its adoption was compliant with RCW 36.70A.130.

1 (Issue 16). Issues 12 and 17 seek a determination of invalidity based on these allegations
2 of noncompliance.

3
4 The County responds that it is not necessary to incorporate every part of RCW 36.70A.350
5 into the County's process for handling applications for fully contained communities. Lewis
6 County's Response to Petitioners' Opening Brief at 11-12. The County further maintains
7 that it is entitled to "its reasonable interpretation and development of processes and
8 procedures" for fully contained communities' applications. *Ibid* at 12.
9

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11 **Board Discussion**

12 RCW 36.70A.350 provides that the County may choose to establish a process for
13 designating a fully contained community as an independent urban growth area if nine
14 criteria are met:
15

- 16 (a) New infrastructure is provided for and impact fees are established consistent with
17 the requirements of RCW 82.02.050;
- 18 (b) Transit-oriented site planning and traffic demand management programs are
19 implemented;
- 20 (c) Buffers are provided between the new fully contained communities and adjacent
21 urban development;
- 22 (d) A mix of uses is provided to offer jobs, housing and services to the residents of
23 the new community;
- 24 (e) Affordable housing is provided within the new community for a broad range of
25 income levels;
- 26 (f) Environmental protection has been addressed and provided for;
- 27 (g) Development regulations are established to ensure urban growth will not occur in
28 adjacent nonurban areas;
- 29 (h) Provision is made to mitigate impacts on designated agricultural lands, forest
30 lands, and mineral resource lands;
- 31 (i) The plan for the new fully contained community is consistent with the
32 development regulations established for the protection of critical areas by the
county pursuant to RCW 36.70A.172.

RCW 36.70A.350(1)(a)-(i).

The statute also requires that fully contained communities may only be approved if the
county "reserves a portion of the twenty-year population projection and offsets the urban

1 growth area accordingly for allocation to new fully contained communities that meet the
2 requirements of this chapter.” It further specifies that:

3 Any county electing to establish a new community reserve shall do so no more often
4 than once every five years as a part of the designation or review of urban growth
5 areas required by this chapter. The new community reserve shall be allocated on a
6 project-by-project basis, only after specific project approval procedures have been
7 adopted pursuant to this chapter as a development regulation. When a new
8 community reserve is established, urban growth areas designated pursuant to this
9 chapter shall accommodate the unreserved portion of the twenty-year population
10 projection.

11 Final approval of an application for a new fully contained community shall be
12 considered an adopted amendment to the comprehensive plan prepared pursuant to
13 RCW 36.70A.070 designating the new fully contained community as an urban growth
14 area.
15 RCW 36.70A.350(2).

16 In LCC 17.20.051, the County has chosen to establish a process for designating fully
17 contained communities as urban growth areas as allowed by RCW 36.70A.350. However,
18 the process established does not address all the required elements under RCW
19 36.70A.350. The County urges that all the elements of the process do not need to be
20 spelled out in the code and cites to our earlier decision in *Roth v. Lewis County*, WWGMHB
21 Case No. 04-2-0014c (Final Decision and Order, December 9, 2004) for that proposition.
22 Lewis County’s Response to Petitioners’ Opening Brief at 16. However, the County reads
23 too much into the cited language in *Roth*. The limited holding in that case was with respect
24 to the procedures to be followed in the event that a change in the original proposal
25 exceeded the notice to the public. The process established in the code does not need to
26 address every possible contingency. However, it does need to detail the procedure that
27 applies in every case. The procedure to be followed for processing a special urban growth
28 area application must be set out in the development regulations so that the public, as well
29 as the applicant, will know what the requirements are.
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1 As Petitioners have charged, there is no requirement in LCC 17.20.051 that there be an
2 allocation of population from a community reserve to the new fully contained community
3 (Issue 11). The County responds that it has made such an allocation and points to
4 Resolution 04-413 which adopted population allocations, including “Unallocated Urban.”
5 Exhibit 221. However, LCC 17.20.051 does not contain any provisions allocating this
6 reserve to an approved fully contained community. This is a requirement of RCW
7 36.70A.350 and the absence of such a provision fails to comply with RCW 36.70A.350.
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10 At argument, the County showed a graph of how it intends to process applications for fully
11 contained communities. Illustrative Exhibit 1. This graph shows that the applications for
12 fully contained communities will be processed as part of the annual comprehensive plan
13 amendment process and will therefore include the “Planning Commission workshop in
14 conjunction w/annual CP & DR amendment workshops” and “Consolidated public hearing
15 on Planning Com’n CP & DR; open-record Hearings Exmr. Master plan & SEPA appeal
16 hearings; Planning Com’n workshop” leading to “Planning Commission recommendations
17 on both FCC & annual CP & DR amendments, & Hearings Exmr. Recommendations on
18 master plan transmitted to BOCC. Hearings Exmr. Considers and issues decision on SEPA
19 appeal.” It therefore appears to be the County’s intention to process applications for fully
20 contained communities as part of the annual comprehensive plan amendment process
21 (Issue 10). However, nothing in LCC 17.20.051 apprises the public and applicant(s) of this
22 aspect of the procedure. This is an especially important point because other types of
23 applications for special urban growth areas, notably applications for major industrial
24 developments and industrial land banks, are *not* processed in the annual amendment cycle.
25 LCC 17.20.050.
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30 The failure to include the coordination of the processing of the fully contained communities
31 application with the annual comprehensive plan amendment cycle also creates confusion
32 about the consolidated hearing procedure (Issue 13). While LCC 17.20.051 speaks only of

1 a Hearings Examiner hearing and hearings examiner recommendations on the
2 comprehensive plan amendment and development regulations, the County apparently
3 intends to include the Planning Commission in the hearing and to provide recommendations
4 to the Board of County Commissioners (BOCC) by coordinating the fully contained
5 community approval process with the annual comprehensive amendment procedure.
6 Illustrative Exhibit 1. This appears likely to resolve the consistency and public participation
7 concerns of Issue 13³ but until it is incorporated into LCC 17.20.051, LCC 17.20.051 is
8 noncompliant on those bases. Using the hearings examiner alone to make
9 recommendations about a legislative amendment is not consistent with the County code
10 provisions regarding the role of the hearing examiner (Ch.2.25 LCC) and the role of the
11 Planning Commission (Ch.2.11 LCC); nor is it consistent with the GMA's requirement that
12 approval of the application for a fully contained community be a comprehensive plan
13 amendment. RCW 36.70A.350(2). (Issue 14). The differing requirements for participation
14 in a hearings examiner proceeding (an adjudicative proceeding) from general public
15 participation in legislative decision-making also make LCC 17.20.051 noncompliant with
16 RCW 36.70A.140.⁴ As we have said, the County's Illustrative Exhibit 1 makes it clear that
17 the County's intended process will address these concerns. However, until LCC 17.20.051
18 includes those additional steps, it is noncompliant.
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23 Petitioners also allege that the County has impermissibly collapsed consideration of the
24 comprehensive plan amendment and development regulations into the consideration of the
25 site plan. Wristen-Mooney Petitioners' Opening Brief at 10. This, they argue, is because
26 "[T]his ordinance purports to encompass the entire FCC plan as adjudicatory." *Ibid.*
27

28
29 ³ Although it remains unclear why LCC 17.20.051(7) assigns to the hearings examiner the open record hearing
30 on both the project and the comprehensive plan amendment and development regulations, and the
31 recommendations to the Board of County Commissioners on both.

32 ⁴ For example, an adjudicative proceeding has limits on who may participate that do not apply in legislative
decision-making.

1 Again, we note that this does not appear to be the County's intention. However, we agree
2 with the Petitioners that LCC 17.20.051 fails to include the comprehensive plan amendment
3 process shown on Illustrative Exhibit 1 and thus does not set out a compliant legislative
4 process for processing the comprehensive plan amendment and development regulations
5 needed for designation of a fully contained community.
6

7
8 Petitioners go further, however, and allege that a "project" action may not be part of the
9 approval of a fully contained community. Wristen-Mooney Petitioners' Opening Brief at 12.
10 Petitioners allege that "[I]t is premature to try to ascertain consistency with a plan and
11 regulation that has yet to be adopted." *Ibid.* The County's approach, as we understand the
12 intent from the argument at the hearing on the merits, is to include the details of the master
13 plan in the review of the proposal for a fully contained community overall. The reason for
14 this is that the County wishes to make its decision regarding the requested designation
15 change and development regulations in response to a specific proposal. We have found
16 that the consideration and appeal of the site plan decision as distinct from the adoption of
17 comprehensive plan amendment and development regulations for major industrial
18 developments in a consolidated hearing process is compliant with the GMA (see *Roth v.*
19 *Lewis County*, WWGMHB Case No. 04-2-0014c, Order on Motions to Dismiss,
20 September 10, 2004). Petitioners here have failed to show why such an approach would
21 not be compliant in considering an application for a fully contained community. However,
22 since we do not have before us ordinance language that separates the site plan from the
23 comprehensive plan amendment and development regulations, we cannot determine
24 compliance at this point. (Issue 15). We also note that separating out the project elements
25 of a fully contained community from the comprehensive plan amendments and development
26 regulations in a combined hearing process is likely to require a clear delineation of the
27 elements that pertain to each.
28
29
30

31 The Petitioners also argue that the "FCC plan" in LCC 17.20.051 becomes a subarea plan
32 according to LCC 17.20.020(2). Wristen-Mooney Petitioners' Opening Brief at 13-15.

1 Because it is a subarea plan, they argue, it is part of the comprehensive plan and cannot be
2 adopted through the adjudicatory hearing examiner process.

3
4 LCC 17.20.020(2) is part of Ch. 17.20 LCC, which deals with urban growth areas that are
5 not associated with any city. LCC 17.20.010. LCC 17.20.020 has two subsections; the first
6 refers to property designated for any of the uses addressed in the chapter (New Fully
7 Contained Communities, Master Planned Resorts, Major Industrial Developments, and
8 Major Industrial Developments – Master Planned Developments). The second subsection
9 provides:
10

11 Specific permitted uses on the property shall be detailed through the master plan
12 process described below and *the master plan shall become the subarea plan and*
13 *development code for the property*, identifying uses, standards and procedures for
14 approval, consistent with the intent and purpose of the GMA section under which it is
15 approved.

16 LCC 17.20.020(2) (emphasis added).

17 As Petitioners point out, the adoption of a subarea plan under the GMA is considered either
18 part of the comprehensive plan (RCW 36.70A.080(2)) or a development regulation (RCW
19 36.70A.030(7)) unless it is a site-specific rezone authorized by the comprehensive plan or a
20 subarea plan. RCW 36.70B.020(4).

21 A comprehensive plan may include, where appropriate, subarea plans, each of which
22 is consistent with the comprehensive plan.

23 RCW 36.70A.080(2).

24 “Development regulations” or “regulation” means the controls placed on development
25 or land use activities by a county or city, including, but not limited to, zoning
26 ordinances, critical areas ordinances, shoreline master programs, official controls,
27 planned unit development ordinances, subdivision ordinances, and binding site plan
28 ordinances together with any amendments thereto. A development regulation does
29 not include a decision to approve a project permit application, as defined in RCW
30 36.70B.020, even though the decision may be expressed in a resolution or ordinance
31 of the legislative body of the city or county.

32 RCW 36.70A.030(7).

“Project permit” or “project permit application” means any land use or environmental
permit or license required from a local government for a project action, including but

1 not limited to building permits, subdivisions, binding site plans, planned unit
2 developments, conditional uses, shoreline substantial development permits, site plan
3 review, permits or approvals required by critical areas ordinances, site-specific
4 rezones authorized by a comprehensive plan or subarea plan, but *excluding the*
5 *adoption of a comprehensive plan, subarea plan, or development regulations except*
6 *as otherwise specifically included in this subsection.*
RCW 36.70B.020(4) (emphasis added).

7 Therefore, by making the master plan a subarea plan, the County has created an
8 inconsistency between the adjudicatory process for the master plan review as a hearings
9 examiner proceeding and the County's procedures for adoption of comprehensive plan
10 amendments and development regulations. See LCC 17.20.051(3), (7), (8), (9), and (10).
11 This fails to comply with RCW 36.70A.040(4), requiring development regulations to be
12 consistent with and implement the comprehensive plan, and RCW 36.70A.070, requiring the
13 comprehensive plan to be an internally consistent document. (Issue 16).
14

15
16 **Conclusion:** The County's intended process for handling applications for fully contained
17 communities is not adequately reflected in the language of LCC 17.20.051. As written, LCC
18 17.20.051 fails to comply with RCW 36.70A.350 because there is no requirement in LCC
19 17.20.051 that there be an allocation of population from a community reserve to the new
20 fully contained community. (Issue 11). LCC 17.20.051 also fails to comply with the
21 requirement in RCW 36.70A.350(2) that the County will process applications for fully
22 contained communities as part of the annual comprehensive plan amendment process.
23 (Issue 10). LCC 17.20.051 eliminates the Planning Commission from the hearing process,
24 which creates inconsistencies between the code provisions applicable to the hearing
25 examiner's proceedings and the legislative decision-making process established in the
26 code. It also confuses the public participation opportunities as a result. This fails to comply
27 with RCW 36.70A.040(4), 36.70A.070, and 36.70A.140. (Issue 13).
28
29

30
31 On the other hand, use of a consolidated hearing process for considering the site plan and
32 the comprehensive plan policies and development regulations for a special purpose UGA

1 may be compliant with the GMA. This holds true as long as the portions of the process
2 addressed to the permitting decision are distinct from those features of the process
3 addressed to the comprehensive plan amendment and development regulations. (Issue
4 14). We have addressed this issue in our earlier decisions - *Vinatieri v. Lewis County*,
5 WWGMHB Case No. 03-2-0020c and *Roth v. Lewis County*, WWGMHB Case No.
6 04-2-0014c. LCC 17.20.051 does not impermissibly assign review of the comprehensive
7 plan policies and development regulations to the courts, but tracks legislative issues as part
8 of GMA review while project adoptions are reviewable under the procedures of Ch. 36.70C
9 RCW. (Issue 15).

10
11
12 The master plan becomes a subarea plan which creates some inconsistencies in the
13 County's development regulations and plan because the master plan includes the site plan
14 (project level) together with the comprehensive plan amendment and development
15 regulations (GMA level). Therefore this does not comply with RCW 36.70A.040 and
16 36.70A.070. (Issue 16).

17 18 19 **C. Master Planned Resorts**

20 **Positions of the Parties**

21 Petitioners argue that the provisions for handling applications for Master Planned Resorts
22 adopted as LCC 17.20.052 fail to comply with the Growth Management Act in many of the
23 same ways that they argue that the provisions for Fully Contained Communities fail to
24 comply. They argue, first, that a consolidated hearing creates inconsistencies in the
25 process that also violate public participation requirements of the GMA (Issue 19); second,
26 they argue that LCC17.20.052(10) impermissibly assigns jurisdiction to the courts for
27 matters of GMA appeals (Issue 20); third, they argue that the fact that the master plan
28 becomes a subarea plan under County code creates inconsistencies in the County's
29 adopted procedures and impermissibly assigns LUPA (Land Use Petition Act, Ch. 36.70C
30 RCW) status to GMA matters (Issue 21); fourth, they argue that the adoption of the master
31
32

1 plan at the same time that comprehensive plan policies are adopted for a master plan resort
2 fails to comply with RCW 36.70A.360 because the consistency of the proposed amendment
3 with the comprehensive plan is not addressed in advance of the master plan approval
4 (Issue 23); and fifth, they argue that there is no provision for allocation of community reserve
5 population projections to accommodate any permanent residents of a master plan resort
6 required by RCW 36.70A362(5) (Issue 24). Petitioners' Opening Brief at 18-23.
7

8
9 The County responds that it is entitled to its reasonable interpretation and development of
10 process and procedures for master planned resorts – master plans, comprehensive plan
11 amendments and development regulations associated with their approval. Lewis County's
12 Response to Petitioners' Opening Brief [Amended] at 13-14. The County asserts that the
13 arguments of Petitioners have been decided by this Board on prior occasions and the
14 County's public participation program has been approved. *Ibid* at 14. The County further
15 notes that RCW 36.70A.362 does not apply in this case since the County did not create a
16 process for "existing" master planned resorts. *Ibid*.
17

18 19 **Board Discussion**

20 In LCC 17.20.052, the County has elected to establish a procedure for processing
21 applications for master planned resorts. This is optional under the GMA:

22 Counties that are required or choose to plan under RCW 36.70A.040 may permit
23 master planned resorts which may constitute urban growth outside of urban growth
24 areas as limited by this section. A master planned resort means a self-contained and
25 fully integrated planned unit development, in a setting of significant natural amenities,
26 with primary focus on destination resort facilities consisting of short-term visitor
27 accommodations associated with a range of developed on-site indoor or outdoor
28 recreational facilities.

RCW 36.70A.360(1).

29 As the County points out, it did not choose to establish such a procedure for "existing"
30 resorts under RCW 36.70A.362. LCC 17.20.052 applies to master planned resort
31
32

1 applications arising under RCW 36.70A.360. The provisions of RCW 36.70A.362 do not,
2 therefore, apply to LCC 17.20.052. Petitioners' argument that the County failed to allocate a
3 portion of its twenty-year population projection in its master planned resort process as
4 required by RCW 36.70A.362 is, as a result, without merit. (Issue 24).

5
6
7 A master planned resort is not an urban growth area – it is an area outside of an urban
8 growth area in which urban growth is allowed. RCW 36.70A.360(1). Unlike the (other)
9 urban growth areas (UGAs) described in Ch. 17.20 of the Lewis County Code – new fully
10 contained communities, major industrial developments, and industrial land banks (major
11 industrial development – master planned developments) – an authorized master planned
12 resort does not become a designated UGA. Compare RCW 36.70A.360 with RCW
13 36.70A.350(2) (fully contained communities), 36.70A.365(3) (major industrial
14 developments), and 36.70A.367(5) (industrial land banks).

15
16
17 For the special kind of urban growth allowed as a master planned resort, the GMA requires
18 that the comprehensive plan “specifically identifies policies to guide the development of
19 master planned resorts.” RCW 36.70A.360(4)(a). This is at least in part because the
20 master planned resort does not become a designated urban growth area (UGA) and
21 therefore requires policies specifically geared to this unique use. These policies must be in
22 place to consider applications for master planned resorts; without them, the County’s
23 process fails to comply with RCW 36.70A.360(4)(a). (Issue 23).

24
25
26 The Lewis County Comprehensive Plan (CP) contains a section devoted to Master Planned
27 Resorts. CP at 4-17. This section gives an overview of how the County envisions master
28 planned resorts. It describes regions of the county with significant natural amenities near
29 the national parks and forests, the rivers and lakes which have “world-class fishing.” It also
30 anticipates a possible equestrian-related resort on lands abutting Highway 12. CP 4-18.
31
32 However, there is nothing in the Urban Growth Areas Goals, Objectives and Policies which

1 “guides the development” of master planned resorts. CP 4-19 – 4-23. LCC 17.20.052
2 contains at least some policies guiding the development of master planned resorts but this
3 is a development regulation, not a comprehensive plan policy.
4

5 We do not agree with Petitioners that a consolidated hearing process necessarily creates
6 inconsistencies and noncompliance. (Issue 19). In fact, we note that the Central Board has
7 found that a master planned resort plan is a necessary part of the approval of an existing
8 master planned resort. See *Kenyon v. Pierce County*, CPSGMHB Case No. 01-3-0001
9 (Final Decision and Order, August 28, 2002). However, the same concerns apply to the
10 master planned resort consolidated hearing in LCC 17.20.052 as apply to the fully contained
11 community procedures in LCC 17.20.051. No role is assigned to the Planning Commission
12 in the hearing or recommendations regarding the comprehensive plan amendment and the
13 development regulations. LCC 17.20.052(7). This differs from the consolidated hearing
14 procedure as to major industrial developments, which does encompass the Planning
15 Commission in both the hearing process and in the recommendations to the Board of
16 County Commissioners. LCC 17.20.050(7). Again we note that the County’s intention, as
17 shown at argument and in Illustrative Exhibit 2, is to include the Planning Commission in the
18 hearing and in providing recommendations by coordinating the master planned resort
19 consideration with the annual comprehensive plan amendment process. However, this is
20 not reflected in the County code. Using the hearings examiner alone to make
21 recommendations about a legislative amendment is not consistent with the County code
22 provisions regarding the role of the hearing examiner (Ch.2.25 LCC) and the role of the
23 Planning Commission (Ch.2.11 LCC). RCW 36.70A.040 and 36.70A.070. The differing
24 requirements for participation in a hearings examiner proceeding from general public
25 participation in legislative decision-making also make LCC 17.20.052 noncompliant with
26 RCW 36.70A.140. (Issue 19). See discussion of Issue 13 above.
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1 In Issue 20, Petitioners argue that LCC 17.20.052 assigns review of GMA determinations to
2 the processes in RCW 36.70C RCW. However, we do not read LCC 17.20.052(10) to
3 allocate the right of appeal in violation of the GMA. The challenged provision reads:

4 Amendment to the comprehensive plan and development regulations to support the
5 MPR is a legislative process with appeal pursuant to Chapter 36.70A RCW. MPR
6 plan approval is an adjudicative decision under Chapter 36.70B RCW, with appeal
7 pursuant to Chapter 36.70C RCW.
8 LCC 17.20.052(10).

9 In fact, LCC 17.20.052(10) may be read to make it clear that the GMA requirements for a
10 master planned resort must be met in comprehensive plan provisions and development
11 regulations rather than in the project-level master plan. Although LCC 17.20.052(7)
12 confuses these distinctions, LCC 17.20.052(10) properly allocates the appeal of the GMA
13 processes for the comprehensive plan and development regulations portions of a master
14 planned resort to the GMA. Petitioners have not met their burden of proof as to Issue 20.

15
16
17 Issue 21 again points out the inconsistencies between LCC 17.20.020(2) which turns the
18 master plan into the subarea plan and development regulations for the property on which
19 the master planned resort is authorized and RCW 36.70A.030(7). If the master plan for the
20 master planned resort is both a legislative action and a project action, it cannot also be a
21 subarea plan because a subarea plan is not a project, unless it is a site-specific rezone
22 authorized by existing comprehensive plan policies or an existing subarea plan. RCW
23 36.70B.020(4). Since neither of those exceptions applies here, there is an inconsistency in
24 the creation of a subarea plan by this procedure. If, as it appears from argument, the
25 County intends to adopt development regulations and comprehensive plan provisions
26 specific to the master planned resort in the master plan process, making the comprehensive
27 plan amendment and the development regulations the subarea plan would not create
28 inconsistencies if the site plan were not included in it. However, we cannot review language
29 that has not yet been adopted. As written, LCC 17.20.052 is inconsistent with LCC
30
31
32

1 17.20.020(2) in violation of the consistency requirements of RCW 36.70A.070 and
2 36.70A.040.

3
4 **Conclusion:** We again find that the County's intended process has not been completely
5 described in its development regulations and comprehensive plan. Our findings of
6 noncompliance must rest on the adopted language, which in this case appear to differ from
7 the County's intentions in processing applications for master planned resorts. These
8 findings address Issue 19 and Issue 21. As to Issue 19, using the hearings examiner alone
9 to make recommendations about a legislative amendment is not consistent with the County
10 code provisions regarding the role of the hearing examiner (Ch.2.25 LCC) and the role of
11 the Planning Commission (Ch.2.11 LCC). This fails to comply with the consistency
12 requirements of RCW 36.70A.040 and 36.70A.070. The differing requirements for
13 participation in a hearings examiner proceeding from general public participation in
14 legislative decision-making also make LCC 17.20.052 noncompliant with RCW 36.70A.140.
15 As to Issue 21, as drafted in LCC 17.20.052, the master plan for the master planned resort
16 is both a legislative action and a project action; the entire master plan cannot become a
17 subarea plan because a subarea plan is not a project-level action unless it meets
18 exceptions not applicable here. This again is a violation of the consistency requirements of
19 RCW 36.70A.040 and 36.70A.070.

20
21
22
23 In addition, RCW 36.70A.360(4)(a) requires the adoption of plan policies to guide the
24 development of master planned resorts prior to the consideration of a specific application.
25 While the County may have adopted such policies in LCC 17.20.052, the GMA requires that
26 those guidance policies be adopted in the comprehensive plan. (Issue 23).
27

28
29 As to Issue 20, Petitioners have not met their burden of proof since LCC 17.20.052(10)
30 properly allocates the appeal of the GMA processes for the comprehensive plan and
31 development regulations portions of a master planned resort to the GMA.
32

1 As to Issue 24, Petitioners' argument arises under RCW 36.70A.362, which is inapplicable
2 here. Issue 24 is, as a result, without merit.

3
4 **D. INVALIDITY**

5 **Positions of the Parties**

6
7 Petitioners request a determination of invalidity as to the development regulations adopted
8 concerning the processing of applications for fully contained communities - LCC 17.20.051 -
9 as substantially interfering with Goals 1, 2, 3, 4, and 12 of the GMA. Issue 12. They also
10 request a determination of invalidity as to LCC 17.20.051(2), (3), (4), and (10) for substantial
11 interference with Goals 1, 6, 7, and 11 of the Act. Issue 17.

12
13 Petitioners further request an invalidity determination as to the development regulations
14 adopted for processing applications for master planned resorts – LCC 17.20.052 – as
15 substantially interfering with Goals 6, 8, 9, 10, 11, and 12 of the GMA. Issue 25. They also
16 request a determination of invalidity as to LCC 17.20.052(2), (3), (4), and (10) as
17 substantially interfering with Goals 2, 3, 4, and 10 of the Act. Issue 22.

18
19
20 We do not find that the continuing validity of LCC 17.20.051 and LCC 17.20.052 will
21 substantially interfere with the goals cited by the Petitioners. The County is making good
22 faith efforts to incorporate the GMA requirements into its processes for considering
23 applications for special purpose UGAs and master planned resorts. Petitioners have failed
24 to show that there is a significant risk of development occurring during the remand period
25 that will impair the County's ability to conduct proper planning in the future.
26
27

28 **VI. FINDINGS OF FACT**

- 29
30 1. Lewis County is a county located west of the crest of the Cascade Mountains that is
31 required to plan pursuant to RCW 36.70A.040.
32

- 1 2. The petition for review in this case challenges the adoption of Ordinance 1179J (the
2 Ordinance), adopted by the Lewis County Board of County Commissioners on
3 adopted on August 8, 2005.
- 4 3. Notice of adoption of the Ordinance was published on August 16, 2005.
- 5 4. The petition for review was filed on October 4, 2005.
- 6 5. Petitioners participated in the County's process of consideration and adoption of
7 Ordinance 1179J orally and in writing.
- 8 6. The Ordinance adopted amendments to the Lewis County Code, Ch. 17.20 LCC.
- 9 7. Based on the Board's decision in the related cases of *Vinatieri v. Lewis County*,
10 WWGMHB Case No. 03-2-0020c and *Roth v. Lewis County*, WWGMHB Case No.
11 04-2-0014c issued November 23, 2005, Issues 1-9 of the petition for review (as
12 modified in the Prehearing Order) were dismissed by the Board. Order on Motion to
13 Dismiss, December 7, 2005. That order is incorporated by reference as part of this
14 Final Decision and Order.
- 15 8. Ordinance 1179G did not provide notice of the applicability of its provisions to fully
16 contained communities.
- 17 9. The amended language of LCC 17.20.050 in Ordinance 1179G and the preamble
18 only reference industrial land banks and major industrial developments.
- 19 10. In LCC 17.20.051, the County has chosen to establish a process for designating fully
20 contained communities as urban growth areas as allowed by RCW 36.70A.350.
21 However, the process established does not address all the required elements under
22 RCW 36.70A.350.
- 23 11. There is no requirement in LCC 17.20.051 that there be an allocation of population
24 from a community reserve to the new fully contained community.
- 25 12. LCC 17.20.051 fails to apprise the public and the applicant(s) of the bifurcated
26 nature of consideration of the project elements from the comprehensive plan
27 elements and development regulations for a fully contained community.
- 28 13. While LCC 17.20.051 speaks only of a Hearings Examiner hearing and hearings
29 examiner recommendations on the comprehensive plan amendment and
30 development regulations, the County apparently intends to include the Planning
31 Commission in the hearing and to provide recommendations to the Board of County
32

1 Commissioners (BOCC) by coordinating the fully contained community approval
2 process with the annual comprehensive amendment procedure. Illustrative Exhibit 1.

- 3 14. Applications for other types of special urban growth areas, notably applications for
4 major industrial developments and industrial land banks, are not processed in the
5 annual amendment cycle.
- 6 15. Using the hearings examiner alone to make recommendations about a legislative
7 amendment is not consistent with the County code provisions regarding the role of
8 the hearing examiner (Ch.2.25 LCC) and the role of the Planning Commission
9 (Ch.2.11 LCC); nor is it consistent with the GMA's requirement that approval of the
10 application for a fully contained community be a comprehensive plan amendment.
11 RCW 36.70A.350(2).
- 12 16. By making the master plan a subarea plan, the County has created an inconsistency
13 between the adjudicatory process for the master plan review as a hearings examiner
14 proceeding and the County's procedures for adoption of comprehensive plan
15 amendments and development regulations.
- 16 17. LCC 17.20.051(10) segregates the legislative issues as part of GMA review from the
17 reviews under the procedures of Ch. 36.70C RCW.
- 18 18. LCC 17.20.052 establishes a procedure for considering applications for new
19 master planned resorts under RCW 36.70A.360, but not "existing" resorts under
20 RCW 36.70A.362.
- 21 19. The Lewis County Comprehensive Plan (CP) contains a section devoted to Master
22 Planned Resorts which gives an overview of how the County envisions master
23 planned resorts.
- 24 20. However, there is nothing in the Urban Growth Areas Goals, Objectives and Policies
25 which "guides the development" of master planned resorts. CP 4-19 – 4-23.
- 26 21. No role is assigned to the Planning Commission in the hearing or recommendations
27 regarding the comprehensive plan amendment and the development regulations in
28 the consolidated hearing process of LCC 17.20.052(7).
- 29 22. LCC 17.20.052(10) provides that the GMA requirements for a master planned resort
30 must be met in comprehensive plan provisions and development regulations rather
31 than in the project-level master plan.
32

1 23. Any Finding of Fact hereafter determined to be a Conclusion of Law is hereby
2 adopted as such.

3
4 **VII. CONCLUSIONS OF LAW**

5 A. The Board has jurisdiction over the parties and subject matter of this petition for
6 review.

7 B. The petition for review was timely filed.

8
9 C. The Petitioners have standing to raise the claims in the petition for review.

10 D. Issues 1-9 of the petition for review as modified in the Prehearing Order have already
11 been decided in the related cases of *Vinatieri v. Lewis County*, WWGMHB Case No.
12 03-2-0020c and *Roth v. Lewis County*, WWGMHB Case No. 04-2-0014c; or are not
13 properly before the Board. The Board's Order on Motion to Dismiss dated
14 December 7, 2005 is incorporated as part of this final order.

15 E. The challenges to the procedures adopted in Ordinance 1179J for handling an
16 application for a fully contained community under RCW 36.70A.050 and a master
17 planned resort under RCW 36.70A.360 are not time-barred.

18 F. LCC 17.20.051 fails to comply with RCW 36.70A.350 because there is no
19 requirement in LCC 17.20.051 that there be an allocation of population from a
20 community reserve to the new fully contained community. Issue 11.

21 G. LCC 17.20.051 also fails to comply with the requirement in RCW 36.70A.350(2) by
22 failing to provide that the County will process applications for fully contained
23 communities as part of the annual comprehensive plan amendment process.
24 Issue 10.

25 H. LCC 17.20.051(7) creates inconsistencies between the hearing examiner's
26 proceedings and the legislative decision-making process in the County code. It
27 confuses the public participation opportunities as a result. This fails to comply with
28 RCW 36.70A.040(4), 36.70A.070, and 36.70A.140. Issue 13.

29 I. Bifurcation of the consideration of the application of a fully contained community into
30 an adjudicative process for the site plan and a legislative process for the plan policies
31 and development regulations does not violate RCW 36.70A.350(2) or RCW
32 36.70A.070. Issue 14.

- 1 J. LCC 17.20.051(10) does not impermissibly assign review of the comprehensive plan
 2 policies and development regulations of the fully contained community to the courts
 3 and is compliant with RCW 36.70A.280 on that basis. Issue 15.
- 4 K. LCC 17.20.052(7) creates inconsistencies between the hearing examiner's
 5 proceedings and the legislative decision-making process in the County code. It
 6 confuses the public participation opportunities as a result. This fails to comply with
 7 RCW 36.70A.040(4), 36.70A.070, and 36.70A.140. Issue 19.
- 8 L. The County is not required to allocate a portion of its twenty-year population
 9 projection to a new master planned resort in its master planned resort process.
 10 Issue 24.
- 11 M. The adoption of a subarea plan under the GMA is considered either part of the
 12 comprehensive plan (RCW 36.70A.080(2)) or a development regulation (RCW
 13 36.70A.030(7)) unless it is a site-specific rezone authorized by the comprehensive
 14 plan or a subarea plan. RCW 36.70B.020(4). Since the County has determined that
 15 the site plan is a project level action, it may not be included in a subarea plan. Issues
 16 16 and 21.
- 17 N. LCC 17.20.052(10) properly allocates the appeal of the comprehensive plan and
 18 development regulations portions of a master planned resort to the GMA. Issue 20.
- 19 O. The County's comprehensive plan does not contain policies to "guide the
 20 development of master planned resorts" as required by RCW 36.70A.360(4)(a).
 21 Issue 23.
- 22 P. Any Conclusion of Law hereafter determined to be a Finding of Fact is hereby
 23 adopted as such.

24 **VIII. ORDER**

25 **Based on the foregoing, the County is ordered to bring LCC 17.20.051 and 17.20.052**
 26 **into compliance with the Growth Management Act as set forth in this final decision**
 27 **and order within 180 days. The following schedule shall apply:**

Item	Date Due
Compliance Due	September 20, 2006
Compliance Report	September 27, 2006
Objections to a Finding of Compliance	October 11, 2006
Response to Objections	October 25, 2006
Compliance Hearing	November 1, 2006

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

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

11 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the
12 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
13 judicial review may be instituted by filing a petition in superior court according to the
14 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil
15 Enforcement. The petition for judicial review of this Order shall be filed with the
16 appropriate court and served on the Board, the Office of the Attorney General, and all
17 parties within thirty days after service of the final order, as provided in RCW
18 34.05.542. Service on the Board may be accomplished in person or by mail, but
19 service on the Board means **actual receipt of the document at the Board office** within
20 thirty days after service of the final order. A petition for judicial review may not be
21 served on the Board by fax or by electronic mail.

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

24 Entered this 23rd day of March 2006.

25 _____
Margery Hite, Board Member

26 _____
Holly Gadbow, Board Member

27 _____
Gayle Rothrock, Board Member