

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

RIDGE,

Petitioner,

v.

KITTITAS COUNTY,

Respondent,

TRENDWEST RESORTS, INC. and
TRENDWEST INVESTMENTS, INC.

Intervenors,

CITY OF CLE ELUM,

Intervenors,

CITIZENS FOR SOUND COMMUNITY
DEVELOPMENT,

Intervenors,

1000 FRIENDS OF WASHINGTON,

Intervenors.

Case No. 00-1-0017

FINAL DECISION AND ORDER

I. PROCEDURAL HISTORY

On December 8, 2000, David A. Bricklin, representing RIDGE, filed a Petition for Review alleging Kittitas County adopted a series of ordinances for the Trendwest Master Planned Resort (MPR), i.e., Ordinance No. 2000-12 adopting an amendment to the County's Comprehensive Plan; Ordinance No.

2000-13 adopting an amendment to the text of the County's Zoning Code; and Ordinance No. 2000-14 amending the Zoning Map. The parties stipulated prior to the hearing on the merits that the Board lacked jurisdiction over Ordinance No. 2000-14 and that RIDGE's claims regarding that ordinance were properly before the Yakima County Superior Court in RIDGE's LUPA appeal.

On December 26, 2000, the Board signed an order granting intervenor status to Trendwest Resorts, Inc. and Trendwest Investments, Inc. upon their filing of a Stipulation and Agreed Order.

On January 10, 2001, James C. Carmody, Velikanje, Moore & Shore, counsel for Citizens for Sound Community Development (Citizens), filed a Motion to Intervene as well as Declaration of Susie Weis. Subsequently, RIDGE filed an objection to the motion. After consideration of the arguments, the Board granted Intervenor status to Citizens.

In response to a Stipulation and Agreed Order on Intervention, the Board granted Intervenor status to the City of Cle Elum on February 2, 2001.

1000 Friends of Washington filed a motion seeking Amicus status, which was subsequently stipulated to and granted.

The City of Roslyn filed a motion for leave to file an Amicus Curiae brief. The motion was subsequently denied at the motion hearing.

On January 29, 2001 the Board entered a Prehearing Order regarding RIDGE's appeal.

On May 2, 2001, the Board held a hearing on the Merits. Present were Skip Chilberg as Presiding Officer, and Board Members Judy Wall and Dennis Dellwo. Petitioner RIDGE was represented by David A. Bricklin of Bricklin & Gendler. James A. Hurson, Deputy Prosecuting Attorney for Kittitas County, represented Respondent Kittitas County. John W. Hempelmann and Brian L. Holtzclaw of Cairncross & Hempelmann represented Intervenors Trendwest Resorts, Inc. and Trendwest Investments, Inc. James C. Carmody of Velikanje, Moore & Shore represented Citizens. Graham Black of Buck & Gordon represented the City of Cle Elum.

On May 18, 2001 the Board entered an "Order on Motions and Order Amending Prehearing Order" ("Board's Order"). The Board's Order addressed, among other things, Trendwest's motion to dismiss certain RIDGE claims, including any claims that are addressed by the MPR Policies adopted by Kittitas County. The Board ruled that: "[i]n response to the second part of Trendwest's motion asking that claims in RIDGE's petition related to whether MountainStar, as approved by the County through the Sub-Area Plan and the MPR Zoning District, complies with the requirements for MPRs set forth in RCW 36.70A.360, the Board holds that these claims will be determined with exclusive reference to the MPR policies to the extent the MPR policies address such claims." Board's Order, p. 2.

II. FINDINGS OF FACT

1. On October 10, 2000, Kittitas County passed Ordinance 2000-12, KCCP Sub-area Plan for MountainStar, and Ordinance 2000-13, MPR Zoning District.
2. Kittitas County Countywide Planning Policies (CPPs) authorize the location of MPRs outside urban growth area.
3. Kittitas County conducted a SEPA review of the probable significant environmental impacts of non-project legislative actions, including the requested Subarea Plan and MPR Zoning District. Upon completion and publication of the MountainStar EIS, the County formally adopted the MountainStar EIS and Environmental Review for the County's proposed adoption of the Subarea plan and MPR Zoning District.
4. Roslyn is a small Washington state town located adjacent to the 6,000 acre MountainStar Subarea Plan. This is a site of an MPR that would be potentially almost five times the size of Roslyn.

III. DISCUSSION OF LEGAL ISSUES AND CONCLUSIONS

Issue 1: Whether the Comprehensive Plan amendment creates inconsistencies with the Comprehensive Plan for the City of Roslyn in violation of RCW 36.70A.100?

Petitioner's Position: RIDGE argues that the MountainStar Subarea Plan is not consistent with the goals and policies of the City of Roslyn's Comprehensive Plan. RIDGE cites to provisions in Roslyn's Comprehensive Plan identifying an "influence area" outside the City's existing corporate boundaries, and other goals and policies encouraging economic development "compatible with Roslyn's needs and historical context." RIDGE asserts that the Countywide Planning Policies ("CPPs") adopted by the Kittitas County Council of Governments is a factor, but not the only factor, for determining whether the Subarea Plan is consistent with Roslyn's Comprehensive Plan. RIDGE asserts that consistency can be determined by comparing the MountainStar Subarea Plan directly to Roslyn's Comprehensive Plan. RIDGE argues that the numerous impacts on Roslyn from Trendwest's proposed development identified in the EIS and raised in comments submitted by the City demonstrate that the adoption of the MountainStar Subarea Plan creates inconsistencies and lack of coordination with Roslyn's Comprehensive Plan. Referring to the Draft Environmental Impact Statement, at 5-38, RIDGE notes "There is only one sentence there that touches on the interjurisdictional coordination issue and then only to identify the issue, not evaluate it. ...The final EIS contains no analysis of this issue". Petitioner's Opening Brief, page 26-27.

Respondent's and Intervenors' Positions: Trendwest and the County assert that the CPPs are the

only mechanism for determining whether the Subarea Plan is consistent with Roslyn’s Comprehensive Plan. They argue that the Subarea Plan merely “affixes” the MPR Policies adopted by the County to the Trendwest Property. Because the Board already upheld the MPR Policies as GMA compliant and determined the MPR Policies are consistent with the CPPs, Trendwest and the County argue that the Subarea Plan is “consistent with” Roslyn’s Comprehensive Plan as required by RCW 36.70A.100. Trendwest also asserts that RIDGE could have, and should have, raised this issue in its prior appeal to the Board challenging the MPR Policies, and therefore should be precluded from raising any consistency arguments in this appeal.

Discussion: RCW 36.70A.100 provides “the comprehensive plans of each county or city that is adopted pursuant to RCW 36.70A.040 shall be **coordinated with, and consistent with**, the comprehensive plans adopted pursuant to RCW 36.70A.040 of those counties or cities with which the county or city has in part . . . common borders or related regional issues.” (Emphasis provided.) The Board has jurisdiction in this matter. Clearly the issue here is non-project specific, and must be addressed prior to any project-specific action. The statute requires coordination and consistency at this early stage of planning, not just as a part of a development agreement.

The Board finds that the GMA establishes the Countywide Planning Policies (“CPPs”) as the mechanism for achieving consistencies between the comprehensive plans of a county and the cities within that county. RCW 36.70A.210(1) provides a CPP “shall ensure that city and county comprehensive plans are consistent as required by RCW 36.70A.100.” The Board has already ruled that the MPR Policies are consistent with the CPPs. *City of Ellensburg v. Kittitas County*, EWGMHB No. 96-1-0017. The Board is not asked whether the MountainStar Subarea Plan is consistent with the CPPs, but with the City of Roslyn. We find that if the MountainStar Subarea Plan is consistent with the CPPs, it is inherently consistent with the comprehensive plan for the City of Roslyn. No one has challenged the consistency of the Roslyn Comprehensive Plan with the CPPs.

Petitioner argues that the CPPs are not the only way to ensure consistency between the County Comprehensive Plan and Roslyn Comprehensive Plan. The Board believes RCW 36.70A.100 supports that view by requiring not only consistency, but coordination between the governmental units.

The importance of coordination is first found in the legislative finding at the beginning of the GMA:

The Legislature finds that uncoordinated and unplanned growth, together with a lack of common goals expressing the public’s interest in the conservation and wise use of our lands, pose a threat to the environment, sustainable economic development, and health, safety and high quality of life enjoyed by residents of that state. It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning

RCW 36.70A.010.

The Supreme Court quoted these findings and explained that they:
Reflect a legislative awareness that land is scarce, land use decisions are largely permanent, and particularly in urban areas, land use decisions affect not only the individual property owner or developer, but entire communities.

Erickson & Assoc. v. McLerran, 123 Wn.2d 864, 876 (1994).

The Board finds that there is a lack of “coordination” by the County with the City of Roslyn. Petitioners argue successfully that concerns raised by the City of Roslyn have not been adequately addressed by either County actions or the EIS. An example of this is the impact on housing demand on the City of Roslyn. At the hearing on the merits, Trendwest counsel made a great display of all the material related to housing impacts in the EIS. “Addressing” housing issues related to Roslyn is not the same as resolving them or coordinating with affected jurisdictions. Nor does the EIS “coordinate” the comprehensive plans of the City and County.

Conclusion regarding Issue 1: We concur with Petitioners there has been a lack of meaningful effort to address the key issues related to future growth impacts on Roslyn. Therefore, while the MountainStar Subarea Plan may be consistent with the comprehensive plan for the City of Roslyn, we find the Respondent has not met the requirement of RCW 36.70A.100 to “coordinate with” the City of Roslyn.

ISSUES 2, 3, 4, 7 and 8: Whether the Zoning Code Text Amendment assures that MPRs will be consistent with the requirements specified in RCW 36.70A.360.

Petitioner’s Position: The Petitioners decided to argue Issues 2, 3, 4, 7 and 8 together, contending that they cover similar violations of the GMA. The primary thrust of their argument on these issues center around their contention that the County’s action was not consistent with a variety of GMA requirements specific to MPRs, including whether the County’s action assured that:

1. The MPR would be “self-contained and fully integrated.”
RCW 36.70A.360(1) (Issue 2)
2. The MPR would have its “primary focus on destination resort facilities consisting of short-term visitor accommodations.” RCW 36.70A.360(1) (Issue 3).
3. “All costs associated with service extensions and capacity increases [for services such as sewer, water, fire, and emergency medical] directly attributable to the master planned resort are fully borne by the resort.” RCW 36.70A.360(2) (Issue 4)
4. The project is consistent with critical area regulations.
RCW 36.70A.360(4)(b) (Issue 7)
5. Infrastructure and service impacts, on- and off-site, have been “fully considered and

mitigated.” RCW 36.70A.360(4)(e) (Issue 8).

The common issue is contended to be whether there is sufficient detail in the MPR development regulations to address any of these issues adequately.

Respondent’s and Intervenor’s Position: Trendwest and the County argue that the MPR Zoning District requires a Comprehensive Plan amendment and a rezone to apply the MPR Policies to any specific MPR proposal in Kittitas County. Consequently, they assert that the MPR Policies require a specific MPR proposal to comply with the requirements of RCW 36.70A.360, including the requirements for a resort to be “self-contained and fully integrated” and have a “primary focus on destination resort facilities consisting of short-term visitor accommodations.” Trendwest and the County also point out that the MPR Zoning District contains specific regulatory provisions applicable to a MPR. The County further asserts that it was appropriate to adopt a generic MPR Zoning District without additional specific development regulations because there is no way to identify regulations that might be necessary for MPRs in different parts of Kittitas County. The County and Trendwest therefore argue that it is appropriate and consistent with the GMA for the MPR Zoning District to establish a process under which site-specific development regulations will be determined on a case-by-case basis through a project-specific development agreement and MPR permit.

Discussion: In 1998 this Board had a similar issue before it. RIDGE, in *City of Ellensburg v. Kittitas County*, EWGMHB No. 96-1-0017, objected that the MPR Policies adopted by Kittitas County in their Comprehensive Plan were not specific enough to comply with the GMA. In that case, following the suggestion of the Attorney for the Intervenor, Mr. Hempelmann, this Board found that “the complaint that the MPR Policies do not have sufficient detail in precluding urban or suburban land uses in the vicinity should be addressed when the development regulations are prepared. It is good to remember the Plan is a guide or general policy and the regulations that will soon be developed will put the ‘meat on the bones.’” P. 12. Kittitas County has now adopted a Subarea Plan for a MPR and a Master Planned Resort Zone, KCC 17.37. It is this second ordinance that encompasses most of the County’s development regulations dealing with MPRs. While this Board expected more detail, the County may proceed as they have done as long as we are assured that the MPR Policies and the GMA are complied with.

The Comprehensive Plan is where the MPR “policy” for the County is formulated. These policies serve little purpose unless there are development regulations to implement them. There is no specific statute that requires development regulations be written for MPRs, yet the County cannot proceed to permit MPRs without such regulations. Kittitas County has chosen to implement the MPR Policies by adopting a Zoning Code Amendment: Master Planned Resort Zone and a Master Planned Resort Subarea Plan. While these do not have many detailed regulations guiding siting of a MPR, a permitting procedure is developed. The specific details of each Resort are “hammered out” in the Development Agreements provided for in KCC 15A.11, Development Agreements, and RCW 36.70B.170 - .210.

Conclusion regarding ISSUES 2, 3, 4, 7 and 8: The Petitioners have not shown the Board that the County's actions are clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA. We are not left with a firm and definite conviction that a mistake has been made here. If the final Development Agreement results in a permit for a MPR that violates the MPR Policies found in the Comprehensive Plan or the GMA, RCW 36.70A.360, a party must seek review before the Superior Court. This Board cannot review site-specific issues.

ISSUE 5: Whether the GMA requires that MPRs be approved as a type of planned unit development (PUD)? RCW 36.70A.360(1). Whether the County's Comprehensive Plan and Zoning Amendments, which do not require the Trendwest MPR to be approved as a planned unit development, is a violation of RCW 36.70A.360(1).

Petitioner's position: RIDGE argues that RCW 36.70A.360(1) requires the County to process an application of a MPR as a planned unit development ("PUD") under the County's PUD provisions (ch. 17.36 KCC). They argue that by not processing a MPR as a PUD, the County eliminates the need for an applicant to provide proof of water availability for a MPR consistent with the requirements of the County PUD provisions. RIDGE also argues that a MPR can be zoned both under the Master Planned Resort Zoning District and the County's existing PUD ordinance such that there is no inconsistency with the MPR Policies (GPO 2.185), which contemplate approval of a MPR under a development agreement and MPR Zoning District.

Respondent's and Intervenor's Positions: The County argues that its PUD ordinance is a pre-GMA enactment and that the MPR Zoning District is a second type of planned unit development ordinance adopted consistent with the GMA. Trendwest argues a planned unit development is a generic planning term and that while RCW 36.70A.360(1) describes a MPR as a type of "planned unit development" it does not require approval of a MPR under a particular PUD ordinance. Trendwest and the County assert that the County's existing PUD ordinance is an independent zoning district and, therefore, a MPR cannot be zoned both under the MPR Zoning District and the PUD ordinance. Finally, Trendwest argues that RIDGE is precluded from raising this issue because the MPR Policies (in particular GPO 2.185) previously approved by the Board contemplate approval of a MPR under a development agreement and the MPR Zoning District rather than as a PUD.

Discussion: RCW 36.70A.360(1) defines a MPR as a type of "planned unit development." The County has a zoning ordinance for planned unit developments, KCC 17.08.445. A process is established therein for the assessment of a PUD application. Instead of using this process for siting a MPR, the County established a Subarea Plan and a MPR Zoning District, which includes the process for establishing a MPR. A MPR cannot be zoned under both the MPR Zoning District and the PUD provisions. Both are separate and distinct zoning districts under the Kittitas County Code.

The phrase “Planned Unit Development” is “a generic term for a regulatory technique which allows a developer to be excused from otherwise applicable zoning regulations in exchange for submitting to detailed, tailored regulations. The technique is characterized by flexibility.” *Schneider Homes, Inc. v. City of Kent*, 87 Wn. App. 774, 775-76, 942 P.2d 1096 (1997). A PUD is a type of property development intended “to achieve flexibility by permitting specific modifications of the customary zoning standards as applied to a particular parcel of land.” *Barrie v. Kitsap Cy.*, 84 Wn.2d 579, 585, 527 P.2d 1377 (1975).

The MPR statute pointed to as requiring permitting only through the PUD process does not appear to the Board as requiring such a limited interpretation. RCW 36.70A.360(1). The cited phrase rather describes the type of zoning treatment. How the County establishes the permitting process is relevant only in that it must assure that the GMA and MPR policies are complied with.

Conclusion Regarding Issue 5: The Petitioners have not shown that the actions of the County referred to here are clearly erroneous.

ISSUE 6. The GMA allows amendments to a comprehensive plan to occur only on an annual basis (unless an emergency exists). RCW 36.70A.130(2). Kittitas County has tried to sidestep this requirement by characterizing this Comprehensive Plan amendment as a sub-area plan. This the County cannot lawfully do.

Discussion: Petitioners contend the County did not follow RCW 36.70A.130(2) , which requires (the County) to amend its Comprehensive Plan “no more frequently than once every year except that amendments may be considered more frequently under the following circumstances: (1.) the initial adoption of a sub-area plan”.

Respondents argue that the MPR zoning district constitutes a sub-area plan. Further, petitioners arguments “exalt form over substance and, at best, demonstrate a procedural error of no consequence.”

Conclusion Regarding Issue 6: The Board concurs with Respondents. Whether the zoning amendment was a “sub-area” plan or not, its significance is such that it is appropriately dealt with separate from any other comprehensive plan amendments. Even with a question of its title as a sub-area plan, the creation of the MPR zone, in effect, is a sub-area plan.

ISSUE 8: Infrastructure and service impacts, on- and off-site, must be “fully considered and mitigated.” RCW 36.70A.360(4)(e). This provision requires consideration of infrastructure and service impacts beyond those within the scope of RCW 36.70A.360 (2). RCW 36.70A.360(4)(e) requires mitigation even if the municipality or special purpose district has not extended service lines or increased its capacity (e.g., if there

simply has been a degradation of service levels). Whether the Comprehensive Plan and Zoning Amendments fail to provide adequate assurance of mitigation for these public infrastructure and service impacts? Among other things, because it has not yet been determined that there is a water supply and water rights available for the development and the plans for the water system, water treatment and wastewater treatment have not been determined, it was impossible for the County to have “fully considered and mitigated” those infrastructure impacts. As another example, inadequate consideration was given to the effect of induced and accelerated growth around the project on the availability of water for that new development.

Petitioner’s Position: Petitioner argues that the on- and off-site infrastructure and service impacts have not been fully considered and mitigated, as required by RCW 36.70A.360(4)(e). Petitioners state “with all of the key aspects of the proposal not yet determined, the County cannot possibly have ‘fully considered and mitigated’ the project’s infrastructure and service impacts yet”. (Petitioner’s Opening Brief, page 42.)

Respondent’s And Intervenors’ Positions: Respondent and Trendwest argue this statement is precisely the point, i.e., those impacts are project specific, and thus not within the Board’s jurisdiction. The impacts could not have been fully considered and mitigated, nor could they be expected to be, as part of a comprehensive plan or zoning amendment. They assert the MPR Policies address these issues, and mitigation will occur as part of the permitting process.

Discussion: The Board concurs with Trendwest and the County. The “key aspects of the proposal” are project-specific, and need not be addressed as part of a comprehensive plan or zoning action.

Conclusion Regarding Issue 8: The Board lacks jurisdiction to decide project-specific issues.

ISSUE 9: Under the Growth Management Act, critical areas were to be designated and regulations to protect them adopted nearly ten years ago (by 1991). RCW 36.70A.060, -.170. Kittitas County still has not designated aquifers. Nor has the County adopted regulations to protect the not-yet-identified aquifers. An MPR can be approved only if the County determines that the MPR is consistent with the regulations adopted to protect critical areas, including aquifers. Whether because the County has not yet designated the aquifers nor adopted regulations to effectively protect the “to be designated” aquifers, it cannot yet approve an MPR through Comprehensive Plan or Zoning Amendments or otherwise?

Petitioner’s Position: RIDGE’s position as stated in its Petition for Review is set forth in the statement of Issue 9, above.

Respondent’s And Intervenors’ Positions: Trendwest contends this issue was not briefed and should be deemed abandoned.

Discussion: The Board reviewed the briefing and found no reference to Issue 9 or briefing on that issue. The Respondent and Intervenors were not able to brief this issue in response to any argument made by the Petitioner. This Board has been consistent in its treatment of non-briefed issues. If an issue is not argued in a brief, it is deemed abandoned as a matter of law.

Conclusion Regarding Issue 9: This issue is deemed abandoned.

ISSUE 10: Whether the Comprehensive Plan and Zoning Amendments authorize development on the property different than the activity analyzed in the EIS? The EIS was prepared for a project that was far more limited than the one ultimately approved by the County Commissioners. For instance, the EIS describes the proposed action as a master planned resort with most land development devoted to roads, residences, and golf courses. A far smaller amount of land was indicated to be devoted for lodges, a resort center, recreation centers, and maintenance. Only 1.9 acres of the 6,200 acre site is to be devoted to a mining museum. Yet the Zoning Code Text Amendment approved by the County Commissioners authorizes Trendwest to utilize the land for a wide range of development activities beyond the scope considered in the EIS. These provisions authorize “cultural and educational facilities of all kinds, . . .” (Emphasis added.) These provisions are broad enough to allow Trendwest to argue that it is allowed to establish a community college, a trade school, a 20,000-seat rocket concert amphitheater, a “living history” community (ala Williamsburg, Virginia), and anything else that can conceivably be characterized as a “cultural” or “educational” facility. The EIS did not analyze impacts associated with any of these uses. Another provision allows “industrial uses . . . to the extent necessary to maintain and operate MountainStar.” The EIS did not analyze the environmental impacts associated with any industrial uses. The County Commissioners were not authorized to take action-approving uses other than those analyzed in the EIS. Whether in these and similar respects, the taken by the County violates SEPA requirements? RCW 43.21C.030- .031.

Petitioner’s Position: Petitioner’s position is duly summarized in the statement of Issue 10 set forth above. The gist of Petitioner’s argument is their contention that the MPR Zoning District authorizes development with greater impacts than what was analyzed in the County EIS for the MountainStar Resort.

Respondent’s And Intervenors’ Positions: Trendwest and the County argue that many of the potential uses under the MPR Zoning District raised by RIDGE are not probable uses (e.g. a community college) and could not be approved as part of a Master Planned Resort consistent with the requirements of RCW 36.70A.360 and the MPR Policies. They further argue that the MPR Zoning District does not “authorize” any particular uses without County approval of a development agreement and MPR permit, which would require independent project-specific environmental review of such uses. In addition, they argue that Washington law does not require the County to conduct EIS-level review for every conceivable use contemplated under the MPR Zoning District. Trendwest also argued at the hearing on the merits that RIDGE failed to appeal the Notice of Adoption/EIS Addendum issued by the County on June 27, 2000 as its SEPA review for the MountainStar Subarea Plan and MPR Zoning District, and, therefore, RIDGE has not timely appealed the County’s SEPA

determination for those actions.

Discussion: The Board has jurisdiction to review only the MountainStar Subarea Plan and MPR Zoning District, non-project specific County actions. We must determine if the EIS performed for the non-project specific actions was adequate. Less detail is required for an EIS on a non-project action. WAC 197-11-704(2)(b)(ii). A specific project will undergo a much more rigorous SEPA review.

Washington case law does not require the County to conduct EIS-level review for every conceivable use contemplated under the MPR Zoning District. The approval of the generic MPR Zoning District does not authorize any particular MPR development activity. A specific MPR proposal will be required to undergo detailed project-specific SEPA review. *Ullock v. City of Bremerton*, 17 Wn. App. 573, 565 P.2d 1179 (1977).

The EIS performed was adequate for the non-project EIS. We find the law does not require the examination of each and every potential option, especially if they are not probable options for an MPR as defined by the GMA.

We are authorized to review the non-project actions of the County. The contents of the EIS on non-project proposals are described in WAC 197-11-442. That code provision declares that the County “shall have more flexibility in preparing EISs on non-project proposals, because there is normally less detailed information available on their environmental impacts and on any subsequent project proposals. The EIS may be combined with other planning documents” WAC 197-11-442 (1).

Conclusion Regarding Issue 10: It is clear from the above and examination of the record that the County has adequately performed the EIS for the non-project actions of the County.

ISSUE 11: Whether the EIS fails to analyze adequately the water related impacts associated with the proposed project (and the broader set of and uses authorized by the challenged County ordinances)? The EIS fails to describe or analyze a viable water supply for the project. In particular, the EIS fails to adequately consider the impacts of developing a new water system, a water supply treatment plant, a wastewater treatment plant, and granting and transferring various water rights. In general, the EIS acknowledged that it does not disclose the impacts pertaining to those issues and justifies that by claiming that these impacts will be analyzed later. SEPA does not authorize deferring analysis of these impacts, particularly, where as here, the County is simultaneously granting Trendwest sweeping approval to develop its property for the next 30 years. Whether in these and similar respects, the action taken by the County violates SEPA requirements? RCW 43.21C.030 -.031.

Petitioner’s Position: Petitioner’s position is summarized in the statement of Issue 11 set forth above. RIDGE essentially argues that the water supply options for Trendwest’s Resort have not yet

been selected and therefore the EIS does not adequately analyze all probable significant adverse impacts of those options, in particular the impacts of Trendwest's pending applications to transfer water rights within the Yakima River basin to provide potable water for its proposed Resort. RIDGE also asserts that the County's environmental review was improperly "segmented" from environmental review for Cle Elum's proposals to construct new "regional" water treatment and wastewater treatment facilities. RIDGE argues that Trendwest's Resort is dependent upon those "mega" utility proposals and, therefore, the environmental review for those proposals was required to have been consolidated with the County's environmental review for the Resort.

Respondent's And Intervenors' Positions: Trendwest and the County assert that the alleged inadequacies in the EIS raised by RIDGE are project-specific issues that are being addressed in RIDGE's Superior Court LUPA appeal and by the State Department of Ecology, the agency with jurisdiction over Trendwest's applications for water rights transfers. They argue that those project-specific issues are properly before the Superior Court and that there was no legal requirement for the County to identify all potential sources of water and analyze potential environmental impacts of transferring such water in order to change the Comprehensive Plan land use designation for the Trendwest Property through adoption of the MountainStar Subarea Plan.

In regards to the segmentation issue, Trendwest argues there can be no segmentation argument here because the County's decisions to adopt the MountainStar Subarea Plan and generic MPR Zoning District are not dependent upon, and do not rely for their justification upon, the Cle Elum utility projects. Trendwest asserts that any segmentation argument is properly before the Superior Court in RIDGE's LUPA appeal. Intervenor City of Cle Elum asserts there was no unlawful segmentation because the record demonstrates that Cle Elum can and will proceed with the utility projects regardless of Trendwest's Resort. Cle Elum further asserts that requiring combined environmental review of its utility projects with the environmental review of Trendwest's Resort would have complicated review and dragged its projects into the appeals of Trendwest's Resort.

Discussion: Kittitas County has flexibility in preparing the non-project EIS for the MountainStar Subarea Plan and MPR Zoning District. WAC 197-11-443(2) provides that a "non-project proposal may be approved based on an EIS assessing its broad impacts. When a project is then proposed consistent with the approved non-project action, the EIS on such a project shall focus on the impacts and alternatives including mitigation measures specific to the subsequent project and not analyzed in the non-project EIS. The scope shall be limited accordingly" Clearly, the probable significant adverse impacts of Trendwest's water supply options are project-specific and must be included in the project-specific EIS. These issues are being addressed in the LUPA appeal now before the Superior Court.

Conclusion Regarding Issue 11: The record before this Board reflects sufficient review of water supply, water treatment, and wastewater treatment options and impacts. Project specific impacts are not before the Board.

ISSUE 12: Whether the EIS also is deficient because it fails to analyze the impacts associated with Trendwest’s simultaneous, interdependent proposal to develop hundreds of acres of adjacent property as part of the Cle Elum urban growth area? See, e.g., RCW 43.21C.030, -.031. The two projects are interdependent because they will share various utility systems and because a substantial part of the secondary growth spawned by the Trendwest proposal will occur inevitably in the expanded Cle Elum urban growth area. Similarly, it is unlikely that the expanded Cle Elum UGA would be justified or developed but for the neighboring proposed Trendwest development.

Petitioner’s Position: RIDGE argues that Trendwest’s development of the Resort is dependent upon its development of its property in the Cle Elum UGA such that SEPA required environmental review of those developments to be combined in a single EIS. Petitioner asserts that the MPR is dependent upon the UGA development because, among other things, traffic impacts are “linked,” they will both utilize Cle Elum’s utility projects, and the UGA could provide employee housing for the Resort.

Respondent’s And Intervenors’ Positions: As with RIDGE’s segmentation arguments regarding Cle Elum’s utility projects discussed under Issue 11, above, Trendwest argues there can be no segmentation argument here because Trendwest’s proposed development in the UGA is not the “proposal” at issue in this appeal. Trendwest asserts there is no evidence that the County’s decisions to adopt the MountainStar Subarea Plan and the generic MPR Zoning District are dependent upon Trendwest’s proposed development in the UGA to require combined environmental review under WAC 197-11-060(3)(b). Trendwest and the County further assert that the County was not required to conduct environmental review of the UGA development in conjunction with the EIS for Trendwest’s Resort because the testimony and evidence in the record shows that the Resort is not dependent upon the UGA development in any regard. Intervenor City of Cle Elum argues that the City has long been planning to expand the City into what is now the approved urban growth area, and that such expansion will proceed regardless of whether the Resort goes forward. Trendwest, the County and Cle Elum argue that the testimony before the County Commissioners of Trendwest representatives, the Mayor of Cle Elum, Cle Elum’s land use counsel and Cle Elum’s planning consultant reveals that the UGA will develop whether or not Trendwest’s Resort is developed.

Discussion: The question before us is whether the County’s environmental review for adoption of the MountainStar Subarea Plan and MPR Zoning District were unlawfully segmented. There is inadequate evidence before the Board to conclude that these proposals cannot proceed without each other or are interdependent parts of each other. The two projects referred to are sufficiently different and independent to allow the separate review of their impacts. While the two have common roots and may be used in furtherance of the other, this is not sufficient to rebut the presumption that the acts of the County are valid.

Conclusion Regarding Issue 12: The Petitioners have failed to meet their burden of demonstrating that the County unlawfully segmented environmental review for the MountainStar Subarea Plan and MPR Zoning District from environmental review for proposed development in Cle Elum’s urban

growth area.

ISSUE 13: Whether the EIS also was inadequate in its discussion of traffic and parking; housing; land use (including off-site growth that will be stimulated by the project); and cultural and traditional use? See, e.g., RCW 43.21C.030, -.031. The EIS failed to contained required worst-case analysis; failed to adequately analyze the no action alternative; and failed to provide an adequate response to comments on the Draft EIS. The EIS failed to adequately describe and analyze the impacts of the “planned action” and failed to adequately describe the phasing and process and commensurate mitigation. These issues were all detailed in greater depth and supporting evidence provided as part of the EIS administrative appeal.

Petitioner’s Position: Petitioner’s position as stated in its Petition for Review is summarized in the statement of Issue 13 set forth above.

Respondent’s And Intervenors’ Positions: Trendwest contends this issue was not briefed and should be deemed abandoned.

Discussion: The Board reviewed the briefing and found no briefing of Issue 13. Reference to this issue was found in the Petitioner’s brief, but actual discussion of this issue was not found. The Respondent and Intervenors were not able to brief this issue in response to any argument made by the Petitioners. This Board has been consistent in its treatment of non-briefed issues. If they are not argued in a brief, it is deemed abandoned as a matter of law.

Conclusion Regarding Issue 13: This issue is deemed abandoned.

ISSUE 14: Whether the Comprehensive Plan amendment and Zoning Code amendments are inconsistent with the planning goals of the Growth Management Act (RCW 36.70A.020)? Among other things, the amendments do not encourage the preservation of historic lands, sites and structures (Goal 13), but instead hasten their demise; they do not encourage economic growth “within the capacities of the state’s natural resources, public services, and public facilities” (Goal 5); the property rights of the neighbors have not been “protected from arbitrary and discriminatory actions” (Goal 6); the amendments do not “[e]ncourage the conservation of productive forest lands and . . . discourage incompatible uses” (Goal 8); they do not “[e]ncourage the retention of open space . . . , conserve fish and wildlife habitat, increase access to natural resource lands and water” (Goal 9); they do not “[p]rotect the environment and enhance the state’s high quality of life, including air and water quality, and the availability of water” (Goal 10); they do not “[e]ncourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts” (Goal 11); they do not ensure that public facilities and services are available concurrent with new development (Goal 12); they do not encourage development in urban areas and do not reduce sprawl (Goals 1 and

2); and they do not “[e]ncourage efficient multi-modal transportation systems” (Goal 3).

Petitioner’s Position: Petitioner’s arguments regarding the GMA planning goals were raised primarily in regards to Petitioner’s arguments for a determination of invalidity. RIDGE argued that the authorization for Trendwest’s Resort under the MountainStar Subarea Plan is inconsistent with the GMA’s “anti-sprawl” goals (Goals 1 and 2). They also asserted that the MountainStar Subarea Plan and MPR Zoning District interfere with the Act’s goal of ensuring adequate public facilities and services to support development (Goal 12), and the historic preservation goal (Goal 13), in light of impacts on the City of Roslyn identified in the EIS for Trendwest’s Resort. Finally, RIDGE asserts that the failure to provide adequate housing for Trendwest’s Resort is inconsistent with the Act’s housing goal (Goal 4). Petitioner did not raise arguments regarding any other of the GMA’s Planning Goals.

Respondent’s And Intervenors’ Positions: Trendwest and the County argued that MPRs are an authorized form of urban growth outside urban growth areas and therefore do not interfere with Goals 1 and 2. They assert that because the MountainStar Subarea Plan and MPR Zoning District do not “authorize” any particular development there can be no inconsistency with Goal 4. They further assert that the alleged interference with Goal 12 regarding public facilities and services is a project-specific issue not before the Board. Finally, Trendwest and the County assert that RIDGE’s arguments regarding impacts on Roslyn’s historic character (Goal 13) are an attempt to re-argue the issue raised in RIDGE’s prior appeal of the MPR Policies regarding the separation required from adjacent urban areas in order for a MPR to be “self-contained.”

Discussion: This issue was not specifically argued in the Petitioner’s briefs and is a general allegation that the County’s actions were not consistent with a number of the goals found in the GMA. The Board reviewed the briefing submitted and argument and find the Petitioners did not demonstrate to the Board that the actions of the County were clearly erroneous.

Conclusion Regarding Issue 14: The Petitioners have not shown that the actions of the County referred to here are clearly erroneous.

ISSUE 15: Whether the Comprehensive Plan amendment creates inconsistencies with other portions of the Kittitas County Comprehensive Plan in violation of RCW 36.70A.070? Among other things, the Comprehensive Plan amendment must be made consistent with the County Comprehensive Plan’s housing element (e.g., housing needs, housing strategies); the transportation element (e.g., transportation needs, level of service/concurrency, deficiencies and planned improvements); capital facilities element (e.g., public facility needs, financial feasibility); utilities element (e.g., utility needs and proposed facilities, GPO 6.16); water policies (e.g., GPO 2.17 and 2.18); protection of aquifers (GPO 2.67 – GPO 2.70); land use element (e.g., GPO 2.94); and commercial land use (e.g., GPO. 2.100, GPO 2.201, GPO 2.104).

Petitioner's Position: This issue alleged internal inconsistencies in the County Comprehensive Plan, specifically regarding urban/suburban growth, housing needs for employees associated with the resort, and capital facilities and public services. Petitioners argue that growth associated with the resort will not be self-contained, and thus, in violation of KCCP 51.1 (2.4) and 51.2.

Respondent's And Intervenors' Positions: Respondent and Intervenors contend that the application of the MountainStar Subarea Plan to the Trendwest property does not in itself create an inconsistency. Any inconsistency, they argue, would be challenged through examination of the development agreement and permitting process, which is not within the jurisdiction of this Board.

Discussion: The Board concurs with the Respondent and Trendwest. Any inconsistencies, which may exist, must be addressed by a project-specific development agreement.

Conclusion Regarding Issue 15: The MountainStar Subarea Plan, in and of itself does not constitute an internal inconsistency in the Comprehensive Plan.

ISSUE 16: Whether the Zoning Code amendments approved by the Commissioners also are inconsistent with the Comprehensive Plan (e.g., the elements and sections identified in the foregoing paragraph)? The inconsistency between the Comprehensive Plan and the adopted development regulations violates the requirements of the Growth Management Act, including RCW 36.70A.040.

Petitioners' Position: Petitioner's position as set forth in its Petition for Review is summarized in the statement of Issue 16 set forth above.

Respondent's And Intervenors' Positions: Trendwest contends this issue was not briefed and should be deemed abandoned.

Discussion: The Board reviewed the briefing and found no reference to Issue 16 or briefing on that issue. The Respondents and Intervenors were not able to brief this issue in response to any argument made by the Petitioners. This Board has been consistent in its treatment of non-briefed issues. If they are not argued in a brief, it is deemed abandoned as a matter of law.

Conclusion Regarding Issue 16: This issue is deemed abandoned.

ISSUE 17: Intervenor Trendwest alleges that the County's adopted Master Planned Resort Policies control the disposition of many of the foregoing issues. Do those MPR Policies address any of the foregoing issues? Do they control the disposition of any of those issues?

Discussion And Conclusion Regarding Issue 17: The Board asks that the parties refer to our answers to each of the proceeding issues. Our discussion in its entirety answers this question.

Petitioner’s Request For Invalidity Determination: The Petitioners request that the County’s actions be declared invalid. RCW 36.70A.302(b) provides that the Board may declare an action invalid if “the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of (the GMA).” The Board has found non-compliance on only one issue, that of the County’s failure to coordinate with the City of Roslyn. The Board believes the need for coordination with Roslyn’s Comprehensive Plan can be addressed simultaneous with the MPR development and not substantially interfere with the goals of the GMA. The request for an invalidity finding is denied.

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IV. ORDER

1. The County complied with the State Environmental Policy Act with regard to its adoption of the MountainStar Subarea Plan and the MPR Zoning District. The EIS is adequate for purposes of the County’s non-project decisions to approve the MountainStar Subarea Plan and MPR Zoning District. Ridge has not met their burden of proof that the County’s action was clearly erroneous.

2. The MPR Zoning District complies with the requirements of the GMA. RIDGE failed to meet its burden of demonstrating that the County’s decision to adopt the MPR Zoning District was clearly erroneous.

3. The MountainStar Subarea Plan complies with the GMA in all respects except that the County failed to “coordinate” with the City of Roslyn’s Comprehensive Plan under RCW 36.70A.100. As stated above with regard to Petitioner’s request for an invalidity determination, the Board believes that the need for coordination with Roslyn’s Comprehensive Plan under RCW 36.70A.100 can be addressed simultaneous with the MPR development.

4. The County shall provide the Board within thirty (30) days of the date of this Final Decision and Order a plan for how it will coordinate with the City of Roslyn’s Comprehensive Plan. The County shall come into compliance with RCW 36.70A.100 within 120 days of this Order.

Pursuant to RCW 36.70A.300(5), this is a final order for purposes of appeal.

Pursuant to WAC 242-02-830(1), a motion for reconsideration may be filed within ten days of service of a final decision.

SO ORDERED this 7th day of June 2001.

EASTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD

D. E. "Skip" Chilberg, Board Member

Judy Wall, Board Member

Dennis A. Dellwo, Board Member