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**State of Washington  
GROWTH MANAGEMENT HEARINGS BOARD  
FOR EASTERN WASHINGTON**

FRIENDS OF AGRICULTURE,  
  
Petitioner,  
  
v.  
  
GRANT COUNTY,  
  
Respondent.

Case No. 05-1-0010

**FINAL DECISION AND ORDER**

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**I. SYNOPSIS**

Larry and Preta Laughlin submitted an application to Grant County to re-designate 35 acres of existing farmland from "Agricultural Resource" to "Master Planned Resort". The Laughlin's proposed a plan for development of the project site called "Winchester Waters". The proposal includes seven single-family residential lots, two townhouses for permanent housing, six recreational vehicle sites, a sports court, a 2,500 sq. ft. pro shop and store, a twelve acre ski lake with boat launch, six sites for park model recreational vehicles, an area designated for future commercial development, a camping area, and additional amenities, such as jogging trails, swimming and picnic areas and a putting green.

The Grant County Planning Commission conducted two public hearings for the annual amendment applications, which included File No. 2005-01, the Laughlin application. The Planning Commission used Grant County Code (GCC) Chapter 25.12 as the sole criteria to review the comprehensive plan amendment applications. After considering testimony, evidence and the re-designation requirements, the Planning Commission unanimously recommended denial of File No. 2005-01, the proposed land use re-designation from

1 "Agricultural Resource" to "Master Planned Resort". Grant County staff forwarded the  
2 Planning Commission's Findings of Fact to the Grant County Board of County Commissioners  
3 (BOCC).

4 The BOCC received the Planning Commission's Findings and conducted one public  
5 hearing on August 1, 2005. The Grant County Comprehensive Plan provides that a  
6 recommendation of denial is deemed to be final unless appealed to the BOCC (Petitioner's  
7 HOM Brief at 4). There is no record that an appeal was filed subsequent to the Planning  
8 Commissioner's findings. Nevertheless, the BOCC voted unanimously to adopt the twelve  
9 amendments, including File No. 2005-01, the Laughlin application.

10 The Petitioner, Friends of Agriculture (Ms. Barbara Lutz, Ms. Jean Mattson, Mr. Lee  
11 Bode and Ms. Vera Walker), filed a timely Petition for Review and claim Grant County failed  
12 to follow certain goals and requirements of the Growth Management Act (GMA), in  
13 particular RCW 36.70A.020(8), RCW 36.70A.020(2), and RCW 36.70A.360. In addition, the  
14 Petitioner requested that the Eastern Washington Growth Management Hearings Board  
15 (Board) enter a finding of invalidity.

16 The Board finds that Grant County failed to protect agricultural land of long-term  
17 commercial significance, failed to assure the conservation of agricultural resource land and  
18 allowed for the conversion of agricultural lands in a manner that interferes with the  
19 continued use of designated lands for the production of food and/or agricultural products,  
20 and failed to follow the requirements for designation of "Master Planned Resorts". The  
21 Board also determined that Grant County is out of compliance by adopting Resolution No.  
22 05-267-CC, which substantially interferes with the fulfillment of the goals of the GMA. The  
23 Board finds the BOCC's action invalid.

## 24 **II. PROCEDURAL HISTORY**

25 On October 3, 2005, FRIEND OF AGRICULTURE, by and through their representative,  
26 James Carmody, filed a Petition for Review.

1 On October 31, 2005, the Board held the Prehearing conference. Present were, John  
2 Roskelley, Presiding Officer, and Board Members Dennis Dellwo and Judy Wall. Present for  
3 Petitioner was James Carmody. Present for Respondent was Stephen Hallstrom.

4 On November 10, 2005, the Board issued its Prehearing Order.

5 On November 21, 2005, the Board received Grant County's Motion to Dismiss Petition  
6 for Review and, Alternative Motion for Dismissal of Issues.

7 On December 5, 2005, the Board received Petitioner's Memorandum in Opposition to  
8 Motion to Dismiss.

9 On December 12, 2005, the Board received Grant County's Reply Brief in Response  
10 to Memorandum in Opposition to Motion to Dismiss.

11 On December 19, 2005, the Board held a telephonic Motion Hearing. Present were,  
12 John Roskelley, Presiding Officer, and Board Members Dennis Dellwo and Judy Wall. Present  
13 for Petitioner was James Carmody. Present for Respondent was Stephen Hallstrom.

14 On December 27, 2005, the Board issued its Order on Motion to Dismiss Petition For  
15 Review.

16 On January 17, 2006, the Board received Petitioner's Hearing on the Merits Brief.

17 On February 3, 2006, the Board received from Witherspoon, Kelley, Davenport &  
18 Toole a Notice of Association of Counsel, Motion for Telephonic Hearing, Motion for  
19 Continuance of Due Date for Respondent's Brief, and Declaration of Stacy Bjordahl in  
20 Support of Motion to Continue.

21 On February 6, 2006, the Board issued an Order on Motion to Continue.

22 On February 28, 2006, the Board held the hearing on the merits. Present were, John  
23 Roskelley, Presiding Officer, and Board Members Dennis Dellwo and Judy Wall. Present for  
24 Petitioner was James Carmody. Present for Respondent was Stephen Hallstrom and Stacy  
25 Bjordahl.  
26



1 agricultural industries and failing to encourage the conservation of productive agricultural  
2 lands and discourage incompatible uses?

3 **The Petitioner's Position:**

4 The Petitioner argues that the 35 acres of agricultural land in File No. 2005-01 is  
5 agricultural land of long-term commercial significance as designated by Grant County. They  
6 provide facts, case law and statutes as a basis for this designation. The Petitioner believes  
7 Grant County violated RCW 36.70A.020(8), which encourages the "...conservation of ...  
8 productive agricultural lands." The term, "agricultural lands" has been a matter of  
9 significant judicial discussion. The Petitioner cites *City of Redmond v. Central Puget sound*  
10 *Growth Management Hearings Board* (CPSGMHB), 136 Wn.2d 38, 959 P.2d 1091 (1998)  
11 and *King County v. CPSGMHB*, 142 Wn.2d 543, 1 P.3d 133 (2000). The court in *King County*  
12 *v. CPSGMHB*, 142 Wn.2d at 558 summarized the GMA mandates with regard to agricultural  
13 resource lands, while the legislature defined "Agricultural land" in RCW 36.70A.030(2) and  
"Long-term commercial significance" in RCW 36.70A.030(10).

14 The Petitioner argues that the subject property is currently devoted to agricultural  
15 purposes, which in this case is nursery stock, and has long-term commercial significance for  
16 agricultural production because of its soil composition and irrigation rights. The Washington  
17 Supreme Court has recognized these two elements as the statutory definition of agricultural  
18 lands: (1) that the land be primarily devoted to agricultural purposes; and (2) that the  
19 property has long-term commercial significance for agricultural production. *City of Redmond*  
20 *v. CPSGMHB* 136 Wn.2d, 49, 959 P.2d 1091 (1998).

21 Grant County has adopted similar criteria to that of WAC 365-190-050 for agricultural  
22 resource lands. The subject property has been designated "Irrigated Agricultural Land", and  
23 such a designation is significant in the context of agriculture in Grant County. The County's  
Comprehensive Plan states in part:

24 "The vitality and sustainability of the Columbia Basin's and Grant County's  
25 agriculturally-based economy are inextricably tied to the continuing availability  
26 of irrigable lands and irrigation water... Subdivision of irrigable lands can

1 reduce the availability of such lands for commercial agriculture and can  
2 increase commercial agricultures' share of system costs and construction costs  
3 obligations... While conversion of less productive farmland may be  
4 appropriate, it is crucial that the inventory of irrigable and irrigated lands be  
5 protected."

6 Grant County has also established goals and policies with regard to agricultural  
7 resource lands, including Goal RE-1, a mandate to preserve agricultural land; Policy RE-1.3,  
8 a requirement to protect and preserve agricultural lands; Policy RE-1.56, directing the  
9 County to designate areas of more intense development in appropriate areas; Policy RE-  
10 1.57, prohibiting "spot zoning"; and Policy RE-1.8, encouraging the retention of agricultural  
11 lands.

12 The Petitioner argues that the original designation of the subject property as  
13 "Agricultural Resource" was proper and that all criteria remain satisfied. The site contains  
14 prime farmland soils; is located within established irrigation districts; lies within an area of  
15 historic and current farming operations; and receives current use tax benefits. Furthermore,  
16 the removal of quality-irrigated farmland is in direct conflict with both Grant County's  
17 Comprehensive Plan goals and policies, as well as the GMA.

18 The Petitioner also argues that since the initial designation of agricultural resource  
19 lands requires application of statutory and regulatory criteria, the same analysis and  
20 evaluation is required on de-designation. *Orton Farms, LLC v. Pierce County, CPSGMHB*  
21 Case No. 04-3-0007c FDO (August 2, 2004).

22 **The Respondent's Position:**

23 The Respondent, Grant County, argues that the Laughlin property is not agricultural  
24 land of long-term commercial significance and the Petitioners fail to meet the burden of  
25 proof that the property is "primarily devoted to agricultural production". The Respondent  
26 cites *City of Redmond v. CPSGMHB*, 136 Wn2d 38, 42 (1998), which concludes that the land  
owners' current use of the land is not conclusive under the GMA's definition of "agricultural  
lands". Furthermore, the GMA expressly authorizes the conversion of agricultural lands to

1 "Master Planned Resorts" where the land is better suited and has more long-term  
2 importance. RCW 36.70A.360(4)(c).

3 The Respondent argues that the subject property is inadequate in size, shape and  
4 irrigation facilities to be "primarily devoted to" agricultural production.

5 Under the second prong of the two-part test, the Washington Supreme Court found  
6 the BOCC must evaluate five criteria before the area could be designated "agricultural land".  
7 *City of Redmond*, 136 Wn.2d at 53-54. These are not optional factors to be considered;  
8 they are required components for determining "long-term commercial significance". *Orton*  
9 *Farms*, supra.

10 The Respondent contends that the GMA does not preclude a jurisdiction from  
11 reevaluating agricultural resource lands or converting the lands to "Master Planned Resorts"  
12 when the property is better suited. According to the Respondent, the Laughlin property  
13 does not meet the requisite elements for agricultural resource land because it does not  
14 have "long-term commercial significance" as required by the five criteria cited in *City of*  
15 *Redmond*. The Respondent believes the following five criteria show the Laughlin acreage is  
16 not agricultural land of long-term commercial significance: (1) The Petitioners failed to cite  
17 any evidence concerning the growing capacity of the Laughlin's acreage; (2) The Petitioners  
18 failed to meet the burden of proof that the property has sufficient productivity for long-term  
19 commercial significance; (3) The Petitioners failed to meet the burden of proof concerning  
20 the soils of the property; (4) The Laughlin Property is located near population areas; and  
21 (5) The subject property has the possibility of more intense land uses.

22 **The Petitioner's Reply Brief:**

23 The Petitioner contends that the surrounding properties are designated agricultural  
24 land of long-term significance and the area is developed for farming purposes. The  
25 emphasis in the Petitioner's Reply Brief is on Grant County's failure to apply and analyze de-  
26 designation criteria and standards. *Orton Farms, LLC v. Pierce County*, supra. The County's  
evaluation process must be a part of the record and must support the de-designation  
determination. *Orton Farms* at 78. Grant County failed to apply the GMA's criteria and the

1 record is void of any facts supporting the de-designation of prime farmland. According to  
2 the Petitioner, the County cannot simply adopt an ordinance that undoes, undermines, or  
3 contradicts the analysis performed to support the original designation decisions.

4 The Petitioner argues that testimony in the record clearly indicates the subject  
5 property has been farmed and, according to aerial photographs, the site and adjacent  
6 properties are or have been in recent agricultural production. Further, the Petitioner argues  
7 that the Laughlin Property is agricultural land of long-term commercial significance because  
8 of its growing capacity, productivity and soil composition. Grant County failed to conduct an  
9 evaluation or analysis of these components as it relates to the designation of resource  
10 lands. A significant factor regarding the Laughlin property is the availability of irrigation  
11 water. The property was designated as "Irrigated Agricultural Land". "The purpose of this  
12 designation is to conserve these lands for agricultural production." Grant County  
Comprehensive Plan.

13 The Petitioner also contends the record is clear that Grant County failed to apply or  
14 analyze any of the minimum guidelines established by CTED (WAC 365-190-050) for  
15 designation of agricultural resource lands or de-designation of agricultural resource lands.  
16 In addition, the Petitioner argues that the record shows the Planning Commission and the  
BOCC recognized the Laughlin property as prime farmland.

17 **Board Analysis:**

18 In 1999, Grant County adopted its Comprehensive Plan under the Growth  
19 Management Act. The Comprehensive Plan designated 1,264,281 acres as agricultural  
20 resource lands of long-term commercial significance, including the 35 acres owned by the  
21 Laughlin's and the subject of this appeal. Grant County designated its agricultural resource  
22 lands into three categories: Irrigated Agricultural Land; Dryland Agricultural Land; and  
23 Rangeland. The Laughlin property, File No. 2005-01, is designated Irrigated Agricultural  
24 Land.

25 Issue No. 1 asks if Grant County's Resolution No. 05-267-CC violates RCW  
26 36.70A.020(8), which requires counties to:

1 "Maintain and enhance natural resource-based industries, including productive  
2 timber, agricultural, and fisheries industries. Encourage conservation of  
3 productive forest lands and productive agricultural lands, and discourage  
incompatible uses."

4 The Supreme Court in *King County v. CPSGMHB*, 142 Wn.2d at 558 summarized GMA  
5 mandates with regard to agricultural resource lands:

6 "The agricultural lands provisions (RCW 36.70A.020(8), .060, and .170) direct  
7 counties and cities (1) to designate agricultural lands of long-term commercial  
8 significance; (2) to assure the conservation of agricultural lands; (3) to assure  
9 that the use of adjacent lands does not interfere with their continued use for  
10 agricultural purposes; (4) to conserve agricultural land in order to maintain  
and enhance the agricultural industry; and (5) to discourage incompatible  
uses."

11 RCW 36.70A.030(2) defines "agricultural lands" and focuses on properties devoted to  
12 the "commercial production" of agricultural products. "Long-term commercial significance" is  
13 defined in RCW 36.70A.030(10) as:

14 "Includes the growing capacity, productivity, and soil composition of the land  
15 for long-term commercial production, in consideration with the land's  
16 proximity to population areas, and the possibility of more intense uses of the  
land."

17 The Washington Supreme Court has recognized that there are two elements of the  
18 statutory definition of agricultural lands: (1) that the land be primarily devoted to  
19 agricultural purposes; and (2) that the property has long-term commercial significance for  
20 agricultural production. *City of Redmond v. CPSGMHB*, supra.

21 The court in *Redmond* found "...land is 'devoted' to agricultural use under RCW  
22 36.70A.030 if it is in an area where land is actually used or capable of being used for  
agricultural production...".

23 The Board finds the record is complete with oral and written testimony that the  
24 Laughlin property is either in agricultural production or has been in the past. According to  
25 the Petitioner, the Laughlin property is presently used for nursery stock. Testimony in the  
26

1 record from the present owner, Larry Laughlin, indicates the land has been in agricultural  
2 production, and Terry Mattson, whose family farmed the Laughlin property in the 1960's,  
3 1970's and 1980's, testified that the land is "prime farmland". In addition, written records,  
4 including the Environmental Checklist (Exhibit F), confirm that the site has been used for  
5 agriculture. The record also confirms that all agricultural land within the area is farmed  
6 and/or capable of being used for agricultural production. Importantly, the property has  
7 been designated "Irrigated Agricultural Land", which is significant in the context of  
8 agriculture in Grant County as written in its Comprehensive Plan.

9 Grant County has adopted criteria for agricultural resource lands similar to the  
10 guidelines established by WAC 365-190-050, which establish the land as agricultural  
11 resource land. This designation seems appropriate given that all the criteria remain satisfied  
12 with respect to the property. The County has also established goals and policies with regard  
13 to agricultural resource lands that require agricultural land of long-term commercial  
14 significance to be preserved, protected as a non-renewable resource, and retained as  
15 farmland in commercial production.

16 The Petitioner claims de-designation of agricultural lands demands the same analysis  
17 and evaluation as the initial designation. The Board agrees. The Central Board, in *Orton*  
18 *Farms, LLC v. Pierce County*, CPSGMHB Case No. 04-3-0007c, FDO (August 2, 2004),  
19 stated:

20 "...Since agricultural resource lands were identified and designated pursuant to  
21 the GMA's criteria and requirements, it follows that the dedesignation of such  
22 lands demands additional evaluation and analysis to ascertain whether the  
23 GMA criteria and requirements are, or are not, still applicable to the lands  
24 being changed. A rational process of evaluating objective criteria is essential  
25 for designating or dedesignating agricultural lands."

26 The Laughlin property was initially and appropriately designated "Agricultural  
Resource" by Grant County. In order to de-designate the property to "Master Planned  
Resort", the County needed to perform a reasoned evaluation and analysis the change in  
designation. Grant County did not do this procedure.

1 The GMA mandated the designation of agricultural lands with long-term commercial  
2 significance for commercial production of food or other agricultural products. RCW  
3 36.70A.170(1)(a). Once resource lands have been designated, they must be further  
4 protected under RCW 36.70A.060(1). The court in *King County v. CPSGMHB*, 142 Wn.2d  
5 543, 562 (2000) stated "...when read together, RCW's 36.70A.020(8), .060(1) and .170  
6 evidence a legislative mandate for the conservation of agricultural land."

7 WAC 365-190-040 sets forth the regulatory standards and criteria for land map  
8 designation changes to resource lands. The regulatory directives were adopted by Grant  
9 County under GCC 25.12.030(g)(2)(E). Briefly, this policy states that "[A]ny proposed  
10 resource land map designation changes shall recognize that resource land designations  
11 were intended to be long term designations...", then lists four provisions that must be met  
12 before a change can be made. They are:

- 12 (i) A change in circumstances pertaining to the comprehensive plan or  
13 public policies;
- 14 (ii) A change in circumstances beyond the control of the landowner  
15 pertaining to the subject property;
- 16 (iii) An error in initial designation;
- 17 (iv) New information on resource land or critical area status.

18 Neither the Planning Commission nor the BOCC considered these provisions in their  
19 deliberations. The record contains no evidence that there was any change to the four  
20 provisions or factual basis for de-designation other than landowner intent to convert the  
21 property to another use, which is not a controlling or determinative factor. *City of Redmond*  
22 *v. CPSGMHB*, 136 Wn2d 38, 959, P.2d 1091 (1998).

23 Grant County, by adopting Resolution No. 05-267-CC and thus removing 35 acres of  
24 prime irrigated farmland from production, fails to conserve agricultural resource lands and is  
25 allowing for the conversion of agricultural lands in a manner that interferes with the  
26 continued use of designated lands for the production of food and/or agricultural products.  
As noted above, the subject property is the crème de la crème of agricultural land. It's flat,  
has irrigation rights and prime soils. Converting this property to urban development,

1 campsites, commercial development and a twelve-acre lake interferes with the primary  
2 purpose of prime irrigated farmland – food production. Not only does the state encourage  
3 the retention of such property, but Grant County’s own code and Comprehensive Plan does  
4 the same.

5 **Conclusion:**

6 The Board finds the Petitioner has carried their burden of proof and that the County’s  
7 actions are clearly erroneous. The County failed to maintain and enhance a productive  
8 agricultural industry, failed to encourage the conservation of productive agricultural lands  
9 and failed to discourage incompatible uses with its adoption of Resolution No. 05-267-CC.

10 **Issue No. 2:**

11 Does Grant County Resolution No. 05-267-CC violate RCW 36.70A.020(8) by reason  
12 of the cumulative effect of agricultural designations and elimination of productive  
13 agricultural lands?

14 **The Petitioner’s Position:**

15 The Petitioner agrees with the Respondent that the issue was not briefed.

16 **The Respondent’s Position:**

17 The Respondent argues that the Petitioner failed to brief this issue and therefore the  
18 issue is deemed abandoned. WAC 242-02-570.

19 **Board Analysis:**

20 The Board agrees with the Parties.

21 **Conclusion:**

22 The Petitioner failed to brief this issue, therefore it is abandoned.

23 **Issue No. 3:**

24 Does Grant County Resolution No. 05-267-CC result in the inappropriate conversion  
25 of rural agricultural lands to sprawling, low-density development in violation of RCW  
26 36.70A.020(2)?

**The Petitioner’s Position:**

The Board finds the Petitioner failed to brief this issue.

1 **The Respondent's Position:**

2 The Petitioner did not allocate any portion of its Hearing on the Merits Brief to this  
3 issue and failure to brief an issue is deemed abandonment.

4 **Board Analysis:**

5 The Board agrees with the Respondent. No where in the Petitioner's Hearing on the  
6 Merits Brief was this issue discussed.

7 **Conclusion:**

8 The Petitioner failed to brief this issue, therefore it is abandoned.

9 **Issue No. 4:**

10 Does Grant County Resolution No. 05-267-CC violate criteria for designation of  
"Master Planned Resorts" as specified by RCW 36.70A.360?

11 **The Petitioner's Position:**

12 The Petitioner argues that the subject property and the owner's proposal fail to meet  
13 the GMA's criteria for a "Master Planned Resorts". They contend the land is not located in a  
14 setting of significant natural amenities, will not be self-contained and fully integrated, and  
15 does not primarily focus on resort facilities for short-term visitor accommodations.

16 The Petitioner contends that the proposal has no "significant natural amenities"  
17 existing on the subject property. It is flat farmland, with no scenic vistas, watercourses,  
18 mountains or other natural features. The primary amenity proposed by the Laughlin's plan  
19 is a water ski lake, which is not a natural feature. The Petitioner argues that if this site  
20 satisfies the GMA criteria for a "Master Planned Resort", then literally every open rural  
parcel in the state is a prospective resort site.

21 The Petitioner argues that the proposal is in fact an urban level residential  
22 subdivision with a water ski lake. A "Master Planned Resort" must also have a "...primary  
23 focus on destination resort facilities consistent with short-term visitor accommodations..."  
24 RCW 36.70A.360(1). The Petitioner argues the primary focus of this proposal is upon  
25 permanent single-family residential development. The proposal presents no significant (or  
26 "primary") short-term visitor accommodations.

1 The Petitioner also argues that the development proposal also fails to meet the GMA  
2 requirement that the resort be "...self-contained and fully integrated planned development."  
3 They cite the Eastern Washington Growth Management Hearings Board's decision *Ridge v.*  
4 *Kittitas County*, EWGMHB No. 96-1-0017c Order on Compliance and Validity, (April 16,  
5 1996) to emphasize that the proposal needs at least "...sufficient services and needed  
6 places to shop for common needs..." and "...The visitors and residences at the Master Plan  
7 Resort should be able to meet their daily needs without being forced to go elsewhere." The  
8 Petitioner contends the Laughlin proposal is not "self-contained" and permanent residents  
9 are required to travel to urban areas for needs and services.

9 **The Respondent's Position:**

10 The Respondent argues that the Grant County Comprehensive Plan allows for  
11 "Master Planned Resorts". The intent of Grant County's regulations is to allow "Master  
12 Planned Resorts" having urban characteristics to be located outside of Urban Growth Areas  
13 (UGA's). The Respondent claims that the record reflects Grant County considered the  
14 approval criterion contained in its Comprehensive Plan.

15 The Respondent contends the "Master Planned Resort" is consistent with public  
16 policy and modeled its designation process on consistency with one or more of the criteria  
17 that are set forth in WAC 365-190-040(g). The Respondent argues that a comprehensive  
18 plan amendment to designate a "Master Planned Resort" from a designation as a resource  
19 land is dependent on one of four criteria. In this instance, the Respondent contends there is  
20 either a change of circumstances, an error in the initial designation or new information  
21 concerning the suitability of this parcel of property as a resource land.

22 The Respondent argues that the landowners both clearly testified that the land was  
23 not suitable for long-term commercial significance, thus showing a change of circumstances  
24 or one of the other criteria. The Respondent claims the Petitioners did not submit any  
25 contravening evidence.

26 The Respondent contends that the "Master Planned Resort" will be located in a  
setting with a significant natural amenity, which is the lake to be built on the property upon

1 approval of the amendment. The Respondent contends that there is no authority or support  
2 for the Petitioner's claim that a natural amenity must first exist.

3 The Respondent also claims that the primary focus of the proposed "Master Planned  
4 Resort" is as a destination resort facility consisting of short-term visitor accommodations  
5 associated with a range of developed on-site indoor or outdoor recreational facilities. In  
6 support, the Respondents reference the proposal, which includes a water-ski lake, jogging  
7 trails, a sport court, swimming and picnic areas, a pro shop and convenience store, and  
8 other amenities.

9 Furthermore, the Respondent contends that the "Master Planned Resort" will be self-  
10 contained. The final requirements to provide commercial goods and services take place at  
11 the permit review approval process, not during the amendment process. The County notes  
12 that the GMA use of the phrase "self-contained" does not require a "Master Planned Resort"  
13 to contain everything the resort or the visitors need. *Ridge v. Kittitas County*, EWGMHB No.  
14 96-1-0017c, Order on Compliance, (April 16, 1996). The Respondent points out that this  
15 Board held that the better interpretation would require the "Master Planned Resort" to have  
16 sufficient services and needed places to shop for common needs to be met and avoid an  
17 adverse impact upon the neighboring urban areas. Id. The proposal will be required to  
18 comply with Grant County Code. GCC 23.04.650

19 **The Petitioner's Reply Brief:**

20 The Petitioner argues that any development of a "Master Planned Resort" is subject  
21 to the directives of RCW 36.70A.360. A "Master Planned Resort" must be located in "...a  
22 setting of significant natural amenities, with primary focus on destination resort facilities  
23 consisting of short term visitor accommodations...", which the Petitioner believes is not the  
24 case in this proposal.

25 Grant County argues that an artificially created lake will be the primary natural  
26 amenity. The Petitioner looks to Webster's Dictionary to define, "natural" and finds it  
defined as, "Existing in or formed by nature". They believe that an artificially created ski  
lake by this definition is not a "natural amenity".

1 In *Butler v. Lewis County*, WWGMHB Case No. 99-2-0027c FDO (June 30, 2000), the  
2 Western Board rejected an argument that certain "natural amenities" that could be found at  
3 a distance from the proposal fulfilled the requirements of the statute. The Laughlin proposal  
4 may include an artificial lake and in *Butler* the proposal included a golf course, but the  
5 Petitioner argues that these facilities are not what is required under the statute as "natural  
6 amenities".

7 The Petitioner contends that the primary focus on this proposal is on a residential  
8 subdivision, not on a destination resort facility consisting of short-term visitor  
9 accommodations. There are approximately ten permanent housing units on one-acre sites  
10 in the proposal, which is essentially a permanent living community. The Petitioner argues  
11 that with only a 2,500 square foot pro shop and convenience store, the planned concept is  
12 not consistent with the GMA.

13 The Petitioner also argues that the planned amenities for this proposal do not  
14 provide for "...sufficient services and needed places to shop for common needs to be met  
15 and avoid an adverse impact upon the neighboring urban areas." *Ridge v. Kittitas County*,  
16 supra. The proposal falls far short of facilities and services needed to accommodate the  
17 visitors and residents of the resort.

18 **Board Analysis:**

19 Both state statutes and Grant County authorize the existence of "Master Planned  
20 Resorts". RCW 36.70A.360 states in part:

21 "...A master planned resort means a self-contained and fully integrated  
22 planned unit development, in a setting of significant natural amenities, with  
23 primary focus on destination resort facilities consisting of short-term visitor  
24 accommodations associated with a range of developed on-site indoor or  
25 outdoor recreational facilities."

26 Grant County uses the state's definition and intent in its code. GCC 23.04.650 defines  
a "Master Planned Resort" and permitted uses; GCC 23.12.220 paraphrases the state

1 statute and requires minimum standards and flexible standards; while GCC 25.12.070  
2 provides for the planning, development and operation of "Master Planned Resorts".

3 Clearly, there is some ambiguity in the statute's definition of a "Master Planned  
4 Resort", particularly in the terms, "significant natural amenities", "primary focus", and "...  
5 with a range of... ". Any one of these terms can be interpreted broadly by the courts and  
6 boards. One thing is clear, though, the statute differentiates between "natural amenities"  
7 and "developed on-site indoor or outdoor recreational facilities."

8 Generally speaking, "natural amenities" brings to mind ocean beaches, natural lakes,  
9 rivers, mountains, deserts and wetlands. These are features formed through nature's  
10 actions. Even though farmland can be attractive and interesting, few would consider this  
11 landscape as a "significant natural amenity". Neither can a twelve-acre man-made lake be  
12 considered anything but a "developed outdoor recreational facility". Just by definition of  
13 "natural", it is not a "natural amenity", no more than a golf course or water park.

14 The Western Board addressed this issue briefly in *Butler*. In *Butler* the Board said:

15 "Under the record in this case there is no showing that the location is a setting  
16 of significant natural amenities. The failure to adhere to the requirements of  
17 the Act and purportedly apply a provisional designation to the MPR  
18 substantially interferes with Goals 1, 2 and 12 of the Act. ,*Butler v. Lewis*  
19 *County*, 99-2-027c FDO (June 30, 2000).

20 The Board agrees with the Petitioner on this issue.

21 The Petitioner also argues that the Laughlin proposal does not fulfill the requirement  
22 in the statute that "Master Planned Resorts" have a primary focus as a destination resort  
23 facility and cater to short-term visitor accommodations. They argue that the proposal is a  
24 residential subdivision with ten permanent residential units, basically a permanent living  
25 community. The proposal has an additional six RV spaces and a number of proposed sites  
26 for camping.

1 The Board agrees with the Petitioner's assessment. The proposal is an urban  
2 development outside the designated UGA, but the legislature recognized this in authorizing  
3 Master Planned Resorts. In *Gain v. Pierce County*, the CPSGMHB wrote:

4 "The legislature recognized that MPR's are urban growth outside of UGA's. The  
5 GMA permits the urban growth of an MPR if the County's regulations do not  
6 permit other urban or suburban growth in the vicinity of the MPR. [Urban  
7 growth in MPR's is recognized by, not prohibited by the Act.] *Gain v. Pierce  
8 Co*, CPSGMHB Case No. 99-3-0019 FDO (April 18, 2000).

9 If all the other requirements had been met, the urban development at the site would  
10 have been justified. Grant County does not permit other urban or suburban growth in the  
11 vicinity of the proposal. However, the proposal fails to have a "primary focus on destination  
12 resort facilities consisting of short-term visitor accommodations". The plan submitted to the  
13 County shows too few visitor accommodations in relationship to the permanent urban  
14 growth. Thus, the "primary focus" is on permanent housing, not short-term visitors.

15 In regards to the proposal being "self-contained", the Eastern Board addressed this  
16 issue in *Ridge v. Kittitas County*. In *Ridge*, the Board stated:

17 "The GMA use of the phrase "self-contained", does not require a MPR to  
18 contain everything it or the visitors need. This would be virtually impossible  
19 and would be too strict an interpretation of the language. The better  
20 interpretation would require the MPR to have sufficient services and needed  
21 places to shop for common needs to be met and avoid an adverse impact  
22 upon the neighboring urban areas. The visitors and residences at the MPR  
23 should be able to meet their daily needs without being forced to go  
24 elsewhere. The county's MPR policies require this. The fact others might shop  
25 there or visit does not put the county in violation of the "self-contained"  
26 section of the Act." *Ridge v. Kittitas County*, EWGMHB Case No. 96-1-0017  
Order on Compliance and Invalidity (April 16, 1998).

27 The Laughlin "Master Planned Resort", as proposed, has limited services. Certainly  
28 the proposal has the capability of supplying the basics available at typical convenience  
29 stores, such as gas, milk, bread, picnic foods and even heated pre-made sandwiches, but  
30 groceries per se will be limited. The Eastern Board in *Ridge* indicated "sufficient services

1 and needed places to shop". This is where the ambiguity in the language makes it difficult  
2 to determine just what is "self-contained", and whether a convenience store provides  
3 "sufficient service".

4 The Board agrees with the Petitioner. "Self-contained" means that a "Master Planned  
5 Resort" should be a livable community that can supply the daily needs of those that visit  
6 and live there. A convenience store and pro-shop does not fulfill this requirement.

7 **Conclusion:**

8 The Board finds the Petitioner has carried their burden of proof and that the County's  
9 actions, by adopting Resolution No. 05-267-CC, are clearly erroneous. The County failed to  
10 ensure the Laughlin proposal, File No. 2005-01, fulfilled the requirements of RCW  
11 36.70A.360 for "Master Planned Resorts". The proposal does not have "significant natural  
12 amenities", does not have a "primary focus" as a destination resort and is not a "self-  
13 contained" community.

14 **Issue No. 5:**

15 Does Grant County Resolution No. 05-267-CC fail to assure the conservation of  
16 agricultural resource lands and allow for the conversion of agricultural lands in a manner  
17 that interferes with the continued use of designated lands for the production of food and/or  
18 agricultural products?

19 **The Petitioner's Position:**

20 The Petitioner briefed this issue in their discussion of agricultural land of long-term  
21 commercial significance.

22 **The Respondent's Position:**

23 The Respondent addressed this issue under their discussion of agricultural land of  
24 long-term commercial significance.

25 **The Petitioners' Reply Brief:**

26 The Petitioner did not brief this issue any further.

**Board Analysis:**

The Board addressed this issue under Board Analysis in Issue No. 1.

1 **Conclusion:**

2 The Board finds the Petitioner has carried their burden of proof and that the County's  
3 actions, by adopting Resolution No. 05-267-CC, are clearly erroneous. The County failed to  
4 assure the conservation of agricultural resource land and allowed for the conversion of  
5 agricultural lands in a manner that interferes with the continued use of designated lands for  
6 the production of food and/or agricultural products.

7 **Issue No. 6:**

8 Does Grant County Resolution No. 05-267-CC substantially interfere with the  
9 fulfillment of the goals of the Growth Management Act and should be declared invalid?

10 **The Petitioner's Position:**

11 The Petitioner argues that Resolution No. 05-267-CC substantially interferes with the  
12 fulfillment of the goals of the GMA because the development proposal in File No. 2005-01  
13 could vest during the period of remand and development of this property will irreparably  
14 and irreversibly eliminate existing agricultural resource land. The Petitioner believes the  
15 potential for vesting is significant in this case and the preservation and conservation  
16 mandates can only be protected through invalidation. They argue that the actions of the  
17 County significantly interfere with the fulfillment of Goal 8 of the GMA. Their argument may  
18 be found in their arguments summarized above.

19 **The Respondent's Position:**

20 The Respondent argues that the Petitioner failed to provide any substantive  
21 argument concerning this issue and believes the Petitioner has submitted only conclusory  
22 statements. To emphasize their argument, the Respondent cites *Island County Citizens'*  
23 *Growth Management Coalition , et al v. Island County*, WWGMHB Case No. 98-2-0023c,  
24 June 2, 1999 FDO at 38:

25 "Mere conclusory statements in a compliance brief are insufficient to  
26 overcome the statutory presumption of validity."

The Petitioner, the Respondent concludes, has failed to meet their burden of proof.

1 **Board Analysis:**

2 A finding of invalidity may be entered only when a board makes a finding of non-  
3 compliance and further includes a "determination, supported by findings of fact and  
4 conclusions of law that the continued validity of part or parts of the plan or regulation  
5 would substantially interfere with the fulfillment of the goals of this chapter." RCW  
6 36.70A.302(1). The Board has also held that invalidity should be imposed if continued  
7 validity of the non-compliant Comprehensive Plan provisions or development regulations  
8 would substantially interfere with the local jurisdiction's ability to engage in GMA-compliant  
9 planning.

10 Goal 8 of the GMA, RCW 36.70A.020(8) Natural resource industries, encourages  
11 cities and counties to "Maintain and enhance natural resource-based industries, including  
12 productive timber, agricultural, and fisheries industries. Encourage the conservation of  
13 productive forest lands and productive agricultural lands, and discourage incompatible  
14 uses."

15 From the record before the Board, the adoption of Resolution No. 05-267-CC by the  
16 Grant County BOCC has substantially interfered with the fulfillment of this goal. The County  
17 chose to improperly remove prime irrigated farmland from the County's agricultural land of  
18 long-term commercial significance. The Laughlin acreage may only be 35 acres and a  
19 difficult shape to irrigate with other than rill irrigation, but the soil is prime soil and irrigated  
20 land is the most valuable land in the County. The County's goals and policies reflect the  
21 importance of such land and encourage commercial farmland owners to retain their lands in  
22 commercial farm production (Policy RE-1.8). Goal RE-1 states, "Agricultural land of long  
23 term commercial significance shall be preserved in order to encourage an adequate land  
24 base for long term farm use", and Policy RE-1.3 states, "Designated agricultural lands shall  
25 be protected and preserved as a nonrenewable resource to benefit present and future  
26 generations." With these goals and policies in mind, the County needs to reevaluate their  
decision to adopt Resolution No. 05-267-CC and encourage urban-like development in urban  
areas or on land that is not prime irrigated farmland.

1 On the record before us, we find that the continued validity of the violations of the  
2 GMA described in the above non-compliant Legal Issues does substantially interfere with  
3 the fulfillment of Goal 8 of the Growth Management Act, such that the enactment at issue  
4 should be held invalid pursuant to RCW 36.70A.302. The adoption of Resolution No. 05-  
5 267-CC and thus File No. 2005-01, authorizing a "Master Planned Resort" in prime irrigated  
6 farmland is found to be invalid pursuant to RCW 36.70A.302(1). The Petitioner has carried  
7 their burden of proof.

**Conclusion:**

8 The Board finds that the Petitioner has carried their burden of proof and the Board  
9 finds Resolution No. 05-267-CC invalid.

**V. FINDINGS OF FACT**

- 11 1. Grant County is a county located east of the crest of the Cascade  
12 Mountains and is required to plan pursuant to RCW 36.70A.040.
- 13 2. Petitioner is composed of citizens of Grant County who participated in  
14 the hearings for the adoption of Resolution No. 05-265-CC in writing  
and/or through testimony.
- 15 3. The County adopted Resolution No. 05-267-CC on August 1, 2005.
- 16 4. The Petitioner filed the petition herein on Resolution No. 05-267-CC on  
17 October 3, 2005.
- 18 5. Resolution No. 05-267-CC, in particular File No. 2005-01, changed the  
19 designation of prime irrigated farmland known as "Agricultural  
Resource" land to "Master Planned Resort".
- 20 6. The subject property is prime farm land and has been in continued  
21 farming at least from the date designated as Agricultural Resource  
22 lands.
- 23 7. The proposal does not have "significant natural amenities", does not  
24 have a "primary focus" as a destination resort and is not a "self-  
25 contained" community.

1 **VI. CONCLUSIONS OF LAW**

- 2 1. This Board has jurisdiction over the parties to this action.
- 3 2. This Board has jurisdiction over the subject matter of this action.
- 4 3. The Petitioner has standing to raise the issues listed in the Prehearing
- 5 Order.
- 6 4. The Petition for Review in this case was timely filed.
- 7 5. Grant County is out of compliance for its de-designation of prime
- 8 irrigated farmland from "Agricultural Resource" to "Master Planned
- 9 Resort" and did not ensure Resolution No. 05-267-CC conforms to RCW
- 10 36.70A.020(8), the County's Comprehensive Plan (GCC 25.12.030(2)(D)
- 11 and (E) and the County's own goals and policies, in particular Goal RE-
- 12 1, Policy RE-1.3, Policy RE-1.56, Policy RE-1.57, and Policy RE-1.8.

13 **VII. INVALIDITY FINDINGS OF FACT**

14 **Pursuant to RCW 36.70A.300 (2)(a)**

15 We incorporate the Findings of Fact above and add the following:

- 16 1. RCW 36.70A.020(8) provides:
- 17 "Natural resource industries. Maintain and enhance natural resource-
- 18 based industries, including productive timber, agricultural, and fisheries
- 19 industries. Encourage the conservation of productive forest lands and
- 20 productive agricultural lands, and discourage incompatible uses."
- 21 2. The Board finds that the actions of the County substantially interfere
- 22 with the fulfillment of RCW 36.70A.020(8). The County's actions
- 23 frustrate the primary purposes of the GMA reflected in this goal.
- 24 3. Agricultural land of long-term commercial significance, especially that
- 25 land which is irrigated, should be preserved through conservation and
- 26 incompatible uses should be discouraged. The County has failed to
- maintain and enhance the agricultural industry in Grant County and its
- actions have threatened the future of this industry by allowing its prime
- irrigated farmland to be de-designated to "Master Planned Resort".

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**VIII. CONCLUSIONS OF LAW**

**Pursuant to RCW 36.70A.300 (2)(a)**

1. The Board has jurisdiction over the parties and subject matter of this case.
2. The County's failure to protect prime irrigated farmland substantially interferes with the fulfillment of Goal 8 of the GMA. The Board concludes that this action substantially interferes with the local jurisdictions' ability to engage in GMA-compliant planning.

**IX. ORDER**

1. In Issue No. 1, the Board finds the Petitioner has carried their burden of proof and that the County's actions are clearly erroneous. The County failed to maintain and enhance a productive agricultural industry, failed to encourage the conservation of productive agricultural lands and failed to discourage incompatible uses with its adoption of Resolution No. 05-267-CC. The County is found out of compliance in this issue.
2. In Issue No. 2, the Petitioner failed to brief this issue, therefore it is abandoned.
3. In Issue No. 3, the Petitioner failed to brief this issue, therefore it is abandoned.
4. In Issue No. 4, the Board finds the Petitioner has carried their burden of proof and that the County's actions, by adopting Resolution No. 05-267-CC, are clearly erroneous. The County failed to ensure the Laughlin proposal, File No. 2005-01, fulfilled the requirements of RCW 36.70A.360 for "Master Planned Resorts". The proposal does not have "significant natural amenities", does not have a "primary focus" as a destination resort and is not a "self-contained" community. The County is found out of compliance in this issue.
5. In Issue No. 5, the Board finds the Petitioner has carried their burden of proof and that the County's actions, by adopting Resolution No. 05-267-CC, are clearly erroneous. The County failed to assure the conservation of agricultural resource land and allowed for the conversion of agricultural lands in a manner that interferes with the continued use of designated lands for the production of food and/or agricultural products. The County is found out of compliance in this issue.

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- 6. The Board finds that the Petitioner has carried their burden of proof and the Board finds Resolution No. 05-267-CC invalid.
- 7. Grant County must take the appropriate legislative action to bring themselves into compliance with this Order by **May 15, 2006, 60 days** from the date issued. The following schedule for compliance, briefing and hearing shall apply:

Compliance Due	<b>May 15, 2006</b>
Statement of Action Taken to Comply (County to file and serve on all parties)	<b>May 30, 2006</b>
Petitioners' Objections to a Finding of Compliance Due	<b>June 13, 2006</b>
County's Response Due	<b>June 27, 2006</b>
Petitioners' Optional Reply Brief Due	<b>July 5, 2006</b>
Telephonic Compliance Hearing. Parties will call: <b>360-357-2903 followed by 18220 and the # sign. Ports are reserved for Mr. Carmody, Ms. Bjordahl, and Mr. Hallstrom</b>	<b>July 10, 2006, 10 a.m.</b>

If the County takes legislative compliance actions prior to the date set forth in this Order, it may file a motion with the Board requesting an adjustment to this compliance schedule.

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

**Reconsideration:**

**Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this Order to file a petition for reconsideration. Petitions for reconsideration shall follow the format set out in WAC 242-02-832. The original and four (4) copies of the petition for reconsideration, together with any argument in support thereof, should be filed by mailing, faxing or delivering the document directly to the Board, with a copy to all other parties of record and their representatives. Filing**

1 means actual receipt of the document at the Board office. RCW 34.05.010(6),  
2 WAC 242-02-330. The filing of a petition for reconsideration is not a  
3 prerequisite for filing a petition for judicial review.

4 **Judicial Review:**

5 Any party aggrieved by a final decision of the Board may appeal the decision to  
6 superior court as provided by RCW 36.70A.300(5). Proceedings for judicial  
7 review may be instituted by filing a petition in superior court according to the  
8 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil.

9 **Enforcement:**

10 The petition for judicial review of this Order shall be filed with the appropriate  
11 court and served on the Board, the Office of the Attorney General, and all parties  
12 within thirty days after service of the final order, as provided in RCW 34.05.542.  
13 Service on the Board may be accomplished in person or by mail. Service on the  
14 Board means actual receipt of the document at the Board office within thirty  
15 days after service of the final order.

16 **Service:**

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

19 SO ORDERED this 14<sup>th</sup> day of March 2006.

20 EASTERN WASHINGTON GROWTH MANAGEMENT  
21 HEARINGS BOARD

22 \_\_\_\_\_  
23 John Roskelley, Board Member

24 \_\_\_\_\_  
25 Judy Wall, Board Member

26 \_\_\_\_\_  
Dennis Dellwo, Board Member