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4 **State of Washington**  
5 **GROWTH MANAGEMENT HEARINGS BOARD**  
6 **FOR EASTERN WASHINGTON**  
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10 WILMA et al.,

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12 Petitioners,

13 v.

14 STEVENS COUNTY,

15 Respondent.  
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Case No. 06-1-0009c

ORDER ON MOTION TO  
SUPPLEMENT, MOTION TO DISMISS,  
AND REQUEST FOR EXTENSION TO  
PURSUE SETTLEMENT

21 **I. PROCEDURAL HISTORY**

22 On September 8, 2006, SAUNDRA WILMA and ROBERT BERGER, filed a Petition for  
23 Review.

24 On September 11, 2006, JAMES DAVIES and LARSON BEACH NEIGHBORS and  
25 JEANIE WAGENMAN, filed Petitions for Review.  
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1 On October 10, 2006, the Board held a telephonic Prehearing conference for Case  
2 Nos. 06-1-0007, 06-1-0008, and 06-1-0009 collectively. Present were, John Roskelley,  
3 Acting Presiding Officer, Board Members Judy Wall and Dennis Dellwo were unavailable.  
4 Present for Petitioners were Sandra Wilma, Robert Berger, James Davies, and Jeanie  
5 Wagenman. Present for Respondent was Peter Scott.

6 The Board at the Prehearing conference consolidated Case Nos. 06-1-0007-06-1-  
7 0009. The new Case Name and Number is as follows and shall be captioned accordingly:  
8 WILMA et al. v. STEVENS COUNTY, 06-1-0009c. The acting Presiding Officer instructed the  
9 Petitioners to consolidate the issues and provide the Board and Respondent with copies of  
10 consolidated issues by October 16, 2006. The Petitioners advised they were unable to meet  
11 the October 16, 2006, deadline for submitting the proposed consolidated issues and would  
12 provide the Board and Respondent the issues as soon as possible.

13 On October 24, 2006, the Board received the proposed consolidated issues.

14 On October 25, 2006, the Board asked the Respondent to advise the Board if it  
15 objected to the rewritten issues. Mr. Scott on October 31, 2006, filed with the Board  
16 Respondent's Objection and Motion for Extension.

17 On October 31, 2006, the Board received Petitioners' Motion to Supplement the  
18 Record.

19 On November 1, 2006, the Board issued its Prehearing Order.

20 On November 8, the Board received Respondent's Motion to Dismiss Issue Nos. 11,  
21 12, and 13, filed by Petitioner James Davies.

22 On November 15, 2006 the Board received from Petitioner James Davies, Response  
23 to Motion to Dismiss, Respondent Stevens County's Response to Motion to Supplement the  
24 Record, and Request for Extension.

25 On November 20, 2006, the Board received Respondent's Reply in Support of Motion  
26 to Dismiss and Response to Petitioners' Request for Extension.

On November 27, 2006, the Board received Larson Beach Neighbors & Jeanie  
Wagenman's Response to Stevens County's Response to Motion to Supplement Record.

1 On November 27, 2006, the Board held the telephonic motion hearing. Present were,  
2 John Roskelley, Presiding Officer, and Board Members Dennis Dellwo and Joyce Mulliken.  
3 Present for Petitioners were, Sandra Wilma, James Davies, Larson Beach Neighbors, &  
4 Jeanie Wagenman. Present for Respondent was Peter Scott, Clay White, and the Stevens  
5 County Board of County Commissioners.

## 6 II. DISCUSSION

7 The Eastern Washington Growth Management Hearings Board (Board) held a  
8 telephonic motion hearing on November 27, 2006. There were three items on the agenda:  
9 (1) Petitioner's Request for Extension of time for settlement discussions; (2) Respondent's  
10 Motion to Dismiss Issues No. 11, No. 12, and No. 13; and (3) Petitioner's Motion to  
11 Supplement the Record.

12 Petitioner's Request for Extension of time for settlement discussions was denied.  
13 WAC 242-02-560 Settlement extensions – Continuances is the statute that authorizes the  
14 Board to extend the 180-day time limit for issuing a final decision and order, if (3)(a) the  
15 request was timely filed; and (b)(i) all parties named in the caption of the petition agree to  
16 and sign the request; or (ii) a petitioner and respondent agree to and sign the request and  
17 the board determines that a negotiated settlement between the remaining parties could  
18 resolve significant issues in dispute. The Respondent, Stevens County, did not believe there  
19 was a significant change in either parties' positions at the present time, so sought the denial  
20 of the Request of Extension. Based on (3)(b)(i), the Board denied the Petitioners' request.

21 Concerning the Respondent's Motion to Dismiss, Respondent argued that Issues No.  
22 11, No. 12 and No. 13 should be dismissed because the County is under no obligation to  
23 adopt a subarea plan, which is an optional planning element, and the County's decision to  
24 defer that process is not re-viewable. In addition, the Respondent argued that Issues No.  
25 12 and No. 13 pertain to development regulations, which have not yet been adopted.

26 The Petitioner, Mr. Davies, argued that Issue No. 11 relates only to the contents of  
the subarea plan and other documents. Under Issue No. 12, the Petitioner argued that a  
moratorium would be wise in the upland areas surrounding Loon Lake until the

1 accumulation of scientific data could guide those designations. The Petitioner was  
2 concerned about vesting in those areas of higher densities. Petitioner recognized that this  
3 could take place as soon as the invalidity order was removed. Issue No. 13 asserts that the  
4 data collected by the County and contained in the County's Comprehensive Plan's EIS and  
5 background data attachments are faulty and did not consider the environmental issues  
6 raised in contradiction to the EIS.

7 The Board, after hearing all arguments, dismissed Issues No. 11, No. 12 and No. 13.  
8 As argued by the Respondent, a subarea plan is not a requirement of the GMA and, at this  
9 point, the County has not adopted development regulations. If necessary, Mr. Davies will  
10 have an opportunity to file a petition with the Board at the time development regulations  
11 are adopted.

12 Petitioner's filed a timely Motion to Supplement the Record (WAC 242-02-540) to add  
13 three years of activity by the Loon Lake Citizen's Advisory Committee. These documents  
14 were requested by Jan Shawl to be included as part of the record during the County's  
15 Comprehensive Plan process (Exhibit #341). The Petitioner also asked for any photographs  
16 of the LAMIRDs created by the County that shows the 1993 built environment.

17 The Respondent argued that the documents requested are not part of the  
18 Comprehensive Plan record because these documents pertain to subarea planning for the  
19 Loon Lake watershed and were collected by a citizens group, not the County. According to  
20 the Respondent, the County would have no way of knowing when the items were  
21 submitted. In addition, the Respondent was concerned about the number of documents the  
22 Petitioner's were asking to be including in the record. Concerning the photographs  
23 requested, the Respondent argued that the County did not rely on any photographs of  
24 LAMIRDs during the Comprehensive Plan process. The Respondent believes there are no  
25 photographs as requested by the Petitioner and the County should not be ordered to go out  
26 and find photos that meet the Petitioner's criteria.

The majority of the Board agreed with the Petitioner that the Loon Lake watershed  
subarea planning documents requested by Ms. Shawl should be included in the record. The

1 documents were developed by the Loon Lake Citizen's Advisory Committee, which was  
2 formed under the auspices of the Stevens County Commissioners, Resolution 61-2002,  
3 passed on April 7, 2002. The County initially provided staff to record and take minutes of  
4 the meetings. The Petitioner also claims Mr. Nickels, Stevens County Prosecuting Attorney,  
5 indicated to the participants that the committee's efforts were to be incorporated into the  
6 first Comprehensive Plan. As to the number of documents, there is nothing in the GMA that  
7 limits the number of documents that can be submitted into the record. The Board requests  
8 the Petitioner to prioritize and limit supplemental documents to those necessary for  
9 argument purposes.

10 Board member Mulliken argued that it was inappropriate to add additional  
11 documents to the record that may lead the Petitioner to claim the County should have  
12 incorporated the subarea plan or would require the County to do so later. Ms. Mulliken was  
13 also concerned that there may be other citizen advisory reports in existence that contradict  
14 the Loon Lake Subarea Watershed Committee reports, but not included in the record or  
15 available to the Respondents.

16 The Board agreed with the Respondent concerning the alleged photographs of the  
17 LAMIRDs. The alleged photographs were not requested during the Comprehensive Plan  
18 process, they were not used during the process, and the photographs may not even exist.

### 19 **III. ORDER**

20 Based on the briefing and oral arguments of the parties the Board hereby orders the  
21 following:

- 22 1. Petitioners' Request for Extension to Discuss Settlement is denied.
- 23 2. Respondent's Motion to Dismiss Issues No. 11, No. 12, and No. 13,  
24 dismissing Petitioner James Davies, is granted.
- 25 3. Petitioners' Motion to Supplement the Record with the documents  
26 pertaining to the Loon Lake Sub-Area is granted. The Board requests  
the Petitioner to prioritize and limit these documents, if possible, and  
provide the list of documents that will be supplemented in the record to

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the Board by **December 14, 2006**. Petitioners Motion to Supplement the Record with photographs of the LAMIRDs created by the County that shows the 1993 built environment is denied.

**SO ORDERED** this 4<sup>th</sup> day of December 2006.

EASTERN WASHINGTON GROWTH MANAGEMENT  
HEARINGS BOARD

\_\_\_\_\_  
John Roskelley, Board Member

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Dennis Dellwo, Board Member

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Joyce Mulliken, Board Member