

**CENTRAL PUGET SOUND  
GROWTH MANAGEMENT HEARINGS BOARD  
STATE OF WASHINGTON**

<b>LAWRENCE MICHAEL INVESTMENTS, L.L.C.;</b>	)	<b>Case No. 98-3-0012</b>
<b>CHEVRON USA INC.; and</b>	)	<b>(LMI / Chevron)</b>
<b>CHEVRON LAND AND</b>	)	
<b>DEVELOPMENT COMPANY,</b>	)	
	)	
Petitioners,	)	<b>Finding of COMPLIANCE</b>
	)	
v.	)	
	)	
<b>TOWN OF WOODWAY,</b>	)	
	)	
Respondent.	)	
	)	

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**I. Procedural Background**

On June 18, 1998, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Lawrence Michael Investments, L.L.C., Chevron USA, and Chevron Land and Development Company (**Petitioners** or **LMI**). The matter was assigned Case No. 98-3-0012 (hereafter referred to as **LMI/Chevron**). Petitioners challenged the Town of Woodway's (**Woodway** or **City**) adoption of Ordinances No. 98-338 and 98-339 (**Ordinances**), amending Woodway's Comprehensive Plan (**Plan**). The general ground for the challenge is noncompliance with various sections of the Growth Management Act (**GMA** or **Act**).

The Board issued its Final Decision and Order (**FDO**) in the above referenced case on January 8, 1999. The Board's ORDER provided as follows:

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, having considered the arguments of the parties, and having deliberated on the matter the Board Orders:

1. Woodway's Comprehensive Plan, as amended by Ordinance Nos. 98-338

and 98-339, **does not comply** with: a) RCW 36.70A.020(1) and (2); b) RCW 36.70A.070(preamble); c) RCW 36.70A.070(1); and d) RCW 36.70A.210. With regard to these provisions of the Act, Woodway's actions were clearly erroneous.

2. In order for Woodway to achieve compliance with the Act, as set forth in this Final Decision and Order, the Board **remands** Woodway's Comprehensive Plan, as amended, to Woodway with the following directions:

a) Regarding compliance as noted above in this Order at 1a, b, c and d, **amend** the map designations, as contained in Section 1 of Ordinance No. 98-339, to permit appropriate urban densities consistent with the goals and requirements of the GMA for the entire 60.8-acre Plan Amendment Area;

b) Regarding compliance as noted above in this Order at 1a, b and d, **repeal** the Special Study Area Criteria (SSAC) and Subarea, as contained in Ordinance No. 98-338, **or amend** the SSAC to provide for compact urban growth within and throughout the Subarea at appropriate urban densities consistent with the goals and requirements of the GMA;

c) Regarding compliance as noted above in this Order at 1a and b, **amend** the Comprehensive Plan, as amended, to clarify that the amendatory language, as contained in Section 3 of Ordinance No. 98-339 ("where appropriate and provide for compact urban growth consistent with the policies of this plan and goals of the Growth Management Act"), means that low density development is appropriate only as a description of existing development and any new development or redevelopment shall consist of compact urban growth at appropriate urban densities, consistent with the goals and requirements of the GMA.

d) Regarding compliance as noted above in this Order at 1b, **remove** the inconsistencies between the amended goals, policies and text, as contained in Section 3 of Ordinance No. 98-339, and the Woodway Comprehensive Plan, consistent with the goals and requirements of the Act.

3. The Board directs the Town of Woodway to comply with the goals and requirements of the Act, as set forth in the Final Decision and Order, and as noted in this Order at items 2a, b, c and d of this Order, by no later than **May 11, 1999**. Woodway is instructed to submit to the Board a "Statement of Compliance" (**SOC**). The SOC shall include: 1) a description of the legislative actions taken to comply with the Act, as directed in this FDO; and 2) copies of all

legislative enactments adopted to achieve compliance with the Act, as directed in this FDO. Woodway shall provide four copies of the SOC to the Board and a copy to the parties by no later than **4:00 p.m., Friday, May 21, 1999**.

*LMI / Chevron, FDO, at 55-57.*

On May 21, 1999, the Board received “Town of Woodway’s Statement of Actions to Comply and Motion to Extend Compliance Deadline.” Woodway indicated in its filing that it had entered into a settlement agreement with LMI / Chevron that included a schedule for amending its Plan.

On May 24, 1999, the Board issued its “Order Granting Compliance Extension and Notice of Compliance Hearing.” The Order required the City to comply by July 26, 1999, and to submit a second SOC by August 6, 1999. The Compliance Hearing was rescheduled for September 27, 1999.

On August 6, 1999, the Board received Woodway’s “Statement of Compliance” (**SOC2**).

On August 25, 1999, the Board received “LMI’s and Chevron’s Precompliance Hearing Brief.” The brief merely noted that the Petitioners would attend the compliance hearing and comment at that time.

On September 27, 1999, the Board held a Compliance Hearing in CPSGMHB Case No. 98-3-0012 at the Board’s Offices.

On October 7, 1999, the Board issued “Order Finding Noncompliance and Notice of Second Compliance Hearing” (**FNC**). In the FNC, the Board concluded:

1. The revision of Woodway’s Comprehensive Plan policy LU-8, in Section 1 of Ordinance 99-369, permits an appropriate urban density for the entire 60.8-acre Plan Amendment Area, consistent with the requirements of the GMA as directed in the FDO, Section XI, 2 (a) [partial]. Ordinance 99-369 achieves partial compliance with the Act. Therefore, Woodway **complies**, in part, with the goals and requirements of the GMA.
2. Ordinance 99-369 does not amend the map designations, legends or notes as changed by Section 1 of Ordinance 98-339, thereby creating internal inconsistency and ignoring the requirements of the GMA as directed in the FDO, Section XI 2(a) [partial]. Therefore, Woodway **does not comply**, in part, with the goals and requirements of the GMA.

3. Ordinance 99-369 does not address compliance with the GMA as directed in the FDO, Section XI 2 (b)(c) and (d). Therefore, Woodway **does not comply** with the goals and requirements of the GMA.
4. Pursuant to RCW 36.70A.330(3), the Board shall transmit this **Finding of Noncompliance** to the Governor.
5. Pursuant to RCW 36.70A.330(5), the Board will schedule an additional compliance hearing to determine whether Woodway has complied with the goals and requirements of the GMA.

FNC, at 6.

The FNC, at 7, also directed that:

Based upon the Finding of Noncompliance, the Board **ORDERS**:

1. The Town of Woodway shall fully comply with the goals and requirements of the GMA, as directed in the Board's January 8, 1999 FDO and this October 7, 1999 Finding of Noncompliance, prior to the scheduled second compliance hearing.
2. The Board hereby schedules a second compliance hearing in CPSGMHB Case No. 98-3-0012 (*LMI/Chevron v. Woodway*) for **Monday, December 13, 1999, at 10:00 a.m.** in the Board's offices.
3. The Town of Woodway shall file a "Third Statement of Compliance" (**SOC3**) with the Board that includes copies of all legislative enactments adopted to achieve compliance with the GMA. Woodway shall provide four copies of the SOC3 to the Board and to the parties by no later than **4:00 p.m., Monday, December 6, 1999.**
4. Petitioners LMI/Chevron may, at their option, submit comment on Woodway's SOC3 by no later than **4:00 p.m., Thursday, December 9, 1999.** If comment is received, Woodway may respond at the compliance hearing.

On December 6, 1999, the Board received Woodway's "Statement of Compliance" (**SOC3**). The Board did not receive a comment on Woodway's SOC3 by Petitioner.

On December 13, 1999, the Board held a Second Compliance Hearing in CPSGMHB Case 98-3-

0012. Present for the Board were Board Members Joseph W. Tovar and Edward G. McGuire, Presiding Officer. Jennifer A. Dold represented the Town of Woodway. Andrew Lane, law clerk to the Board, also attended. Cynthia LaRose, RPR, of Robert H. Lewis & Associates, Tacoma, provided Court reporting services.

## **II. Compliance Issues**

### **A. Applicable Law**

RCW 36.70A.330 provides, in relevant part:

(1) After the time set for complying with the requirements of this chapter under RCW 36.70A.300(3)(b) has expired . . . the board shall set a hearing for the purpose of determining whether the . . . city is in compliance with the requirements of this chapter.

(2) The board shall conduct a hearing and issue a finding of compliance or noncompliance with the requirements of this chapter and with any compliance schedule established by the board in its final order. . . .

(3) If the board after a compliance hearing finds that the . . . city is not in compliance, the board shall transmit its findings to the governor. The board may recommend to the governor that the sanctions authorized by this chapter be imposed. The board shall take into consideration the . . . city's efforts to meet its compliance schedule in making the decision to recommend sanctions to the governor.

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### **B. Discussion**

Woodway's December 6, 1999 SOC3 states: "Ordinance 99-374 was unanimously adopted by the Town of Woodway Town Council on November 15, 1999 to comply with this Board's October 7, 1999 Order Finding Non-Compliance and Notice of Second Compliance Hearing and to complete the Town's compliance with the Final Decision and Order (Jan. 8, 1999)." SOC3, at 1.

Section 1, of Ordinance 99-374 rescinds Ordinance No. 98-338 in its entirety. Section 2, of Ordinance 99-374 repeals Sections 1(a), (b) and (d) and Section 3 of Ordinance 98-339 Section 3, of Ordinance 99-374 amends Woodway's Comprehensive Plan Map to reflect Land Use Policy LU-8 for the Urban Restricted designation, as contained in Ordinance 99-369. Also the

Development Potential Map and Tables 1 and 4 are amended.

The Board notes that the Findings of Fact adopted concurrently with, and attached to, Ordinance No. 99-374 provide in part:

8. On October 7, 1999, the Board found that designating the Chevron/Woodway Highlands property as Urban Restricted (4 du/acre) was consistent with the goals and requirements of the GMA. *The Board also found that the Comprehensive Plan Map must be updated to show the new designation for the property and that Ordinances 98-338 and portions of Ordinance 98-339 must be rescinded for the Comprehensive Plan to be consistent with the Goals and requirements of the GMA.*

9. Proposed Ordinance 99-374 includes an updated Comprehensive Plan Map and *rescinds Ordinance 98-338 and portions of Ordinance 98-339 as directed by the Board.*

Findings of Fact and Conclusions of Law adopted concurrently with Ordinance 99-374, at 2 (emphasis supplied).

While the Board suggested the repeal **or** amendment of Ordinance 98-338 as a means of achieving compliance with the GMA, it did not direct the Town to rescind Ordinance 98-338. Likewise, the Board viewed the Section 3 amendments of Ordinance 98-339 as an improvement to the Town's Plan; <sup>[1]</sup> on remand, the Board merely directed the Town to amend its Plan to remove inconsistencies, it did not direct the Town to rescind these portions of Ordinance 98-339. *See LMI / Chevron, FDO, at 55-57.* It was the Town's choice, and within its discretion, to rescind all, or part, of these ordinances in its effort to remove inconsistencies and achieve compliance with the GMA.

In its FNC, the Board found that the adoption of Ordinance 99-369 achieved partial compliance with the GMA as contained in the Board's FDO, Section XI 2(a).

The Board now finds that the Town's adoption of Ordinance 99-374 addresses the remaining compliance issues noted in the Board's January 8, 1999 FDO (Section XI 2(a), (b), (c) and (d)) and the October 7, 1999 FNC.

### **III. FINDING OF COMPLIANCE**

Having reviewed the FDO, FNC, SOC's and materials provided by the Town, the Board determines and finds that the Town of Woodway has complied with the goals and requirements

of the GMA. Therefore, the Board issues this **finding of compliance** to the Town of Woodway in CPSGMHB Case No. 98-3-0012 (*LMI/Chevron v. Town of Woodway*). The Board will notify the Governor that Woodway is now in compliance with the Act.

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So ORDERED this 20<sup>th</sup> day of December, 1999.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Edward G. McGuire, AICP  
Board Member

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Joseph W. Tovar, AICP  
Board Member

Note: This Order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.

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[\[1\]](#) The amendatory language, now rescinded, explicitly provided for accommodating compact urban growth.