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4 **State of Washington**  
5 **GROWTH MANAGEMENT HEARINGS BOARD**  
6 **FOR EASTERN WASHINGTON**

7 JAMES A. WHITAKER,

8 Petitioner,

9 v.

10 GRANT COUNTY,

11 Respondent.

Case No. 99-1-0019

ORDER ON RECONSIDERATION AND  
AMENDMENT OF ORDER ON  
COMPLIANCE ISSUED MAY 6, 2004

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15 **I. BACKGROUND**

16 On December 3, 1999, James A. Whitaker filed a Petition for Review.

17 A hearing on the merits was held on April 27, 2000. A Final Decision and Order was  
18 entered on May 19, 2000.

19 On November 15, 2001, the Superior Court of Washington for Thurston County  
20 entered its Findings of Fact, Conclusions of Law, and Order on Administrative Procedure Act  
21 Appeal, remanding this matter for the admission of supplemental evidence, to wit, the  
22 1997-1999 building permit information before this Board.

23 On February 6, 2004, the Board received Respondent's Motion to Set Compliance  
24 Hearing.

25 On March 24, 2004, the Board held a compliance hearing. Present were Dennis  
26 Dellwo, Presiding Officer, and Board Members Judy Wall and D.E. "Skip" Chilberg. Present

1 for Petitioner was James Whitaker. Present for Respondent were Stephen Hallstrom, Stanley  
2 Schwartz and Stacy A. Bjordahl.

3 On May 18, 2004, Respondent Grant County sought reconsideration of the Board's  
4 May 6, 2004, Order on Compliance.

5 Briefing was received from the Respondent and Petitioners and a hearing was not  
6 held.

## 7 **II. MOTION OF RESPONDENT**

8 The Respondent moved for reconsideration of the Order on Compliance (dated May  
9 6, 2004) as it related to the four LAMIRDS found out of compliance, the correction of  
10 clerical errors and for a determination of compliance for the Mae Valley 5 LAMIRD.

11 The County contends the Parker Springs LAMIRD 30.3 undeveloped lands between  
12 Ridgeview Estates and Parker Springs is properly included as "infill" and is authorized in  
13 RCW 36.70A(5)(d). The County similarly believes the additional undeveloped acreage found  
14 between developed areas in McConihe Shore LAMIRD is appropriate "infill".

15 The County seeks the removal of non-compliance from the George LAMIRD and its  
16 remand for a more detailed discussion of the proper type of LAMIRD to be designated.

17 The County seeks the Board's finding that Warden 2 LAMIRD is in compliance or that  
18 it is out of compliance but subject to a possible determination of compliance upon  
19 designation of this LAMIRD as a Type II or III LAMIRD.

20 The County contends further that the Petitioner did not object to Mae Valley 5 and  
21 thus should be found in compliance.

22 The County further requests that certain clerical errors be corrected. These will be  
23 addressed at the end of this order.

## 24 **STANDARD OF REVIEW**

25 Comprehensive plans and development regulations (and amendments thereto)  
26 adopted pursuant to Growth Management Act ("GMA" or "Act") are presumed valid upon  
adoption by the local government. RCW 36.70A.320. The burden is on the Petitioner to

1 demonstrate that any action taken by the respondent jurisdiction is not in compliance with  
2 the Act. RCW 36.70A.320.

3 The Washington Supreme Court has summarized the standards for Board review of  
4 local government actions under Growth Management Act. It was stated:

5 The Board is charged with adjudicating GMA compliance, and,  
6 when necessary, with invalidating noncompliant comprehensive  
7 plans and development regulations. RCW 36.70A.280, .302. The  
8 Board "shall find compliance unless it determines that the action  
9 by the state agency, county or city is clearly erroneous in view of  
10 the entire record before the county, or city is clearly erroneous  
11 in view of the entire record before the Board and in light of the  
12 goals and requirements of [the GMA]." RCW 36.70A.320(3). To  
13 find an action "clearly erroneous" the Board must be "left with  
14 the firm and definite conviction that a mistake has been  
15 committed." *Dep't of Ecology v. Pub. Util. Dist. No. 1*, 121 Wn.2d  
16 179, 201, 849 P.2d 646 (1993).

17 The Board will grant deference to counties and cities in how they plan under Growth  
18 Management Act. RCW 36.70A.3201. But, as the Court has stated, "local discretion is  
19 bounded, however, by the goals and requirements of the GMA." *King County v. Central*  
20 *Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561, 14 P.2d 133  
21 (2000). It has been further recognized that "[c]onsistent with *King County*, and  
22 notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly  
23 when it foregoes deference to a . . . plan that is not consistent with the requirements and  
24 goals of the GMA." *Thurston County v. Cooper Point Association*, 108 Wn. App. 429, 444, 31  
25 P.3d 28 (2001).

### 26 **III. DISCUSSION**

27 Parker Springs and McConihe Shore Lamirds have a similar problem. Both, as Type I  
28 Lamirds must be contained within their Logical Outer Boundaries (LOB). RCW 36.70A  
29 (5)(d)iv. The statute allows infill, but with limits. RCW 36.70A.(5)(d)(iv) provides:

30 Lands included in such existing areas or uses shall not extend beyond the  
31 logical outer boundary of the existing area, thereby allowing a new pattern of

1 low-density sprawl. Existing areas are those that are clearly identifiable and  
2 contained and where there is a logical boundary delineated predominately by  
3 the built environment, but that may also include undeveloped lands if limited  
as provided in this subsection.

4 The inclusion of large pieces of undeveloped land, platted or not, is not infill. The Board  
5 interprets the above language to allow undeveloped land to be within the Logical Outer  
6 Boundary such as undeveloped lots or spaces between the structures that do exist. The  
7 exemption for Type I LAMIRDS is to allow existing more intensive uses to continue in a  
8 limited way and would allow infill of those limited areas. The undeveloped lands included in  
9 these two LAMIRDS are not what the Legislature intended. These two LMIRDS continue to  
be out of compliance.

10 The Gorge LAMIRD cannot be considered in compliance in its present configuration.  
11 Had the County not added the 174 acres it would have been in compliance. Further, the  
12 inclusion of two types of LAMIRDS within the same designation makes it impossible to  
13 decide if they are in compliance.

14 Warden 2 remains out of compliance. This is not a Limited Area of More Intensive  
15 Rural Development. This is a large piece (169 acres) of land located dead center in irrigated  
16 agricultural lands. This is ostensibly for small cottage industry. Little if any development was  
17 found on this property and does not meet the definitions of a LAMIRD. However, to be  
18 consistent with other portions of this order, this LAMIRD is found out of compliance but  
19 subject to a determination of compliance upon designation of this LAMIRD as a Type II or  
20 III LAMIRD and its compliance with the requirements of that designation.

The following clerical errors will be corrected in the original compliance order:

- 21 1. Marine View 1, George 5, Moses Lake 2, Moses Lake 7, Soap Lake 1,  
22 Mae Valley Shore, and Wheeler 3 are removed from Attachment A.  
23 Because these had been included in the County's List of LAMIRDS By  
24 Type, it was thought that these had not been removed. This error is  
25 corrected.



1 5. McDonald Frontage 1 is found in compliance as a Type I LAMIRD,  
2 Agricultural Service Center and the Order on Compliance will reflect such a  
3 finding.

4 **SO ORDERED** this 2<sup>nd</sup> day of June 2004.

5 EASTERN WASHINGTON GROWTH MANAGEMENT  
6 HEARINGS BOARD

7 \_\_\_\_\_  
8 Dennis Dellwo, Board Member

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10 Judy Wall, Board Member

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12 D.E. "Skip" Chilberg, Board Member