

1 **BEFORE THE WESTERN WASHINGTON GROWTH**  
2 **MANAGEMENT HEARINGS BOARD**  
3

4 WARREN DAWES, JOHN E. DIEHL, GORDON JACOBSON,  
5 JUTTA RIEDIGER, VERN RUTTER, and KERRY HOLM,  
6 individually and as members of the KERRY HOLM, individually and  
7 as members of the MASON COUNTY COMMUNITY  
8 DEVELOPMENT COUNCIL (MCCDC), a non-profit association,

9 Petitioners,

10 v.

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12 MASON COUNTY,

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14 Respondent,

15 and

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17 PETER E. OVERTON, et al., McDONALD LAND COMPANY,  
18 HUNTER CHRISTMAS TREES, HUNTER FARMS, SOUTH 101  
19 CORRIDOR GROUP, Inc., and MANKE LUMBER COMPANY,

20 Intervenor  
21

No. 96-2-0023c

**ORDER RE:  
INVALIDITY  
(For Compliance  
Hearing #8)**

22 Pursuant to RCW 36.70A.302 (6), a county or city subject to a determination of invalidity may file a  
23 motion requesting that the board clarify, modify or rescind the order. Mason County requested an  
24 expedited hearing to consider lifting invalidity on February 11, 2003. A hearing was held on May 7,  
25 2003, in which both invalidity and compliance issues were argued. To comply with the statutory  
26 timelines, this Board issues the following order on invalidity. The Board will issue an order at a later  
27 date that will address the County's compliance with the Growth Management Act in this case.  
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## I. PROCEDURAL HISTORY

On August 14, 2002, this Board found that the County's designation of 194 isolated non residential areas of industrial, commercial, or tourist and recreational use as Limited Areas of More Intense Rural Development (LAMIRD) and the designation of 13 other LAMIRDs, previously designated noncompliant, substantially interfered with the goals of the Growth Management Act (GMA), Goals 1 (urban growth) and 2 (reduce sprawl).

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## II. DISCUSSION OF THE ISSUES

RCW 36.70A.302(1)(b) gives authority to Growth Management Hearings Board to issue an order of invalidity if the Board supports with findings of fact and conclusions of law that the continued validity of part or parts of a plan or regulation interfere with the fulfillment of the goals of the GMA. In other words, a determination of invalidity means that the continued implementation of specified plans, plan policies, and regulations seriously threatens the County's future ability to adopt planning legislation which complies with the Act. *WEAN v. Island County*, WWGMB 95-2-0063 (Compliance Order, April 10, 1996)

In the order outlined above, this Board found that the designation of 194 newly designated isolated nonresidential LAMIRDs and the 13 already designated LAMIRDs substantially interfered with Goal 1(to encourage growth in urban areas where public facilities and services can be provided in an efficient manner) and Goal 2 (to reduce the inappropriate conversion of undeveloped land into sprawling, low density development) of the GMA. In response to the Board's order, the County undertook an environmental analysis and amended its plans and regulations with respect to LAMIRDs. The County has also reduced the number of LAMIRDs designated according to RCW 6.70A.070(5)(d)(ii) and (iii) to 175. These 175 LAMIRDs contain small-scale nonresidential uses that existed prior to July 1, 1990.

1 **Decision**

2 This Board has said that it will only find invalidity for the most egregious interference with the goals  
3 of the GMA. *See Abenroth v. Skagit County*, WWGMHB 97-2-0063 (January 23, 1998). We find  
4 that the County has removed the substantial interference with RCW 36.70A.020(1) and (2) by  
5 instituting the following measures:  
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- 7 • drawing tight boundaries around parcels containing existing small-scale isolated
- 8 nonresidential uses that existed prior to July 1,1990;
- 9 • imposing numerical limits of no more than five a year on future rezones involving more
- 10 intensive uses in rural areas outside of Rural Activity Centers (RACs) and hamlets;
- 11 • limiting the numbers of acres that can be rezoned to more intensive uses in the rural area
- 12 outside of RACs and hamlets, to 50 acres, except for Rural Tourist Campground or Rural
- 13 Natural Resource Area;
- 14 • requiring that rezones for isolated small-scale nonresidential rezones cannot occur within one-
- 15 half mile of any other LAMIRD or Urban Growth Area;
- 16 • adding mitigating measures when allowing the permitting of new development or expansion
- 17 of current development in Rural Commercial designations to current size limitations including
- 18 height limitations, increased setbacks, landscaping, and regulation of signs; and
- 19 • adopting a now compliant Resource Ordinance to protect critical areas and conserve resource
- 20 lands in or adjacent to LAMIRDs. *See Diehl v. Mason County*, WWGMHB 95-2-0073,
- 21 (June 6, 2003).

22 With the enactment and enforcement of these amendments, we find that there is no longer a concern  
23 that rights will vest in the challenged provisions that will prevent proper planning in Mason County's  
24 rural areas.

25 **III. FINDINGS OF FACT**

- 26 1. The County adopted Ordinance 09-03 on February 11, 2003.
- 27 2. The County has completed a FEIS that evaluates the environmental impacts of designating
- 28 14 designated, but unassessed Isolated Commercial and Industrial Areas (ICIAs) and 175
- 29 new LAMIRDs consisting of existing isolated small-scale nonresidential uses.
- 30 3. The FEIS evaluated three alternatives for nine areas designated as hamlets (a type of
- 31 LAMIRD).
- 32 4. The FEIS evaluated four alternatives for 14 areas designated, but unassessed ICIAs and
- the 175 newly designated LAMIRDs.
5. 79.1% of the 175 LAMIRDs designated according to RCW 36.70A.070(5)(d)(ii) and (iii)
- are for tourist or recreational commercial uses.

- 1 6. The County has eliminated the comprehensive plan policy (RU214) that allows the
- 2 boundaries of LAMIRDs to expand by ten percent.
- 3 7. The County limits new rezones for more intensive use in rural areas outside of hamlets
- 4 and RACs to five per year.
- 5 8. Mason County Code (MCC) Section 105.080 limits new rezones to more intensive uses in
- 6 the rural area outside of hamlets and RACs to a total of 50 acres a year, except for Rural
- 7 Tourist and Rural Natural Resource Designations.
- 8 9. The County has mapped the 175 newly designated small-scale existing rural
- 9 nonresidential isolated uses by tightly drawing boundaries around each parcel in order not
- 10 to allow for infill.
- 11 10. The County has determined and recorded the method by which the 175 newly designated
- 12 existing isolated nonresidential uses have been designated as LAMIRDs according to
- 13 RCW 36.70A.070(5)(d)(ii) or (iii).
- 14 11. MCC Section 105.080 requires that any rezone of an isolated small-scale business to a
- 15 designation consistent with RCW 36.70A.070(5)(d) must be at least one-half mile by road
- 16 from any other LAMIRD or UGA.
- 17 12. To mitigate the impacts of a LAMIRD designation, MCC Sections 1.04.320, .330, and
- 18 .340 limit the size and height of development in rural commercial areas.
- 19 13. To mitigate the impacts of a LAMIRD designation, MCC Sections 1.04.320, .330,
- 20 and .340 requires setbacks from property lines, landscaping in setbacks, and regulation of
- 21 signs.
- 22 14. The County has a compliant Resource Ordinance that protects critical areas and conserves
- 23 resource lands.

#### 24 IV. CONCLUSIONS OF LAW

25 Mason's County's enactment of Ordinance 09-03 cures the substantial interference with RCW  
26 36.70A.020(1) and (2) found by the Board in its August 14, 2002 compliance order through  
27 amendment to the following sections of the MCC Code: Section 1.05.080, 1.04.320, .330, .340, and  
28 1.02.043.

#### 29 V. ORDER

30 Based upon review of the County's request for an expedited hearing to consider lifting invalidity and  
31 its supporting briefs, the brief submitted by Mr. Diehl, the arguments of the parties at the compliance  
32 hearing, and the files and records herein, the Board finds that Mason County has removed substantial  
interference with the goals and requirements of the GMA in this case.

1 The Board **rescinds** its determination of invalidity for MCC Sections 104.320, .330, .340, 1.02.043,  
2 and 1.05.080 and the issues determined invalid in the August 14, 2002 order in WWGMHB 95-2-  
3 0023c.

4 We will issue an order concerning compliance subsequently.

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6 So ordered this 6<sup>th</sup> day of June, 2003.

7 WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD  
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11 Holly Gadbow, Board Member

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13 Nan Henriksen, Board Member

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15 Margery Hite, Board Member  
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