

Through the passage of ESHB 6094 that amended RCW 36.70A.070(5), the GMA was changed to clearly allow counties mechanisms for making existing, nonconforming isolated small-scale rural commercial, industrial, and tourist and recreational uses conforming. The passage of RCW 36.70A.011, Findings—Rural Lands, emphasizes the Legislative intent that “rural counties must have the flexibility to retain existing businesses and allow them to expand”. However, there is nothing in the current statute that says that allowing these existing nonresidential uses to be conforming and to expand does not have to comply with the goals and requirements of the Growth Management Act (GMA). Mason County originally designated a very large number (194) of existing isolated nonresidential uses as Limited Areas of More Intense Rural Development (LAMIRD), but the Board determined in its August 14, 2002 order that the County’s designation of these LAMIRDs did not comply with the goals and requirements of the GMA and were invalid until more work was done. This work included the completion of an environmental impact statement that showed that there are no adverse and cumulative impacts that could not be mitigated, that boundaries for these existing small-scale isolated uses were drawn according to RCW 36.70A.070(5)(d), and that future rezones would not cause sprawling low-intensity development. The Board also asked the County to show how designation of such a great number of LAMIRDs, as well as the uses that are allowed in the County’s rural commercial zones conformed with the rural character; contained and controlled rural development; assured visual compatibility with the surrounding rural area; reduced the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area; conserved resource lands; protected surface water and ground water resources; and protected against conflicts with the use of agricultural, forest, and mineral resource lands. The Board also found the County needed to identify and map open space corridors between the urban growth areas of Shelton and Allyn.

In the June 6, 2003 order in this case, we found that the County had removed substantial interference with RCW 36.70A.020(1) and (2) by instituting the following measures:

- drawing boundaries around parcels containing existing small-scale isolated nonresidential uses that existed prior to July 1,1990;
- imposing numerical limits of no more than five a year on future rezones involving more intensive uses in rural areas outside of Rural Activity Centers (RACs) and hamlets;
- limiting the numbers of acres that can be rezoned to more intensive uses in the rural area outside of RACs and hamlets, to 50 acres, except for Rural Tourist Campground or Rural Natural Resource Area;
- requiring that rezones for isolated small-scale business rezones cannot occur within one-half mile of any other LAMIRD or Urban Growth Area;
- adding mitigating measures when allowing the permitting of new development or expansion of current development in Rural Commercial designations by including in their development regulations limitations on building size and including height, increased setbacks, landscaping, and regulation of signs; and
- adopting a now compliant Resource Ordinance to conserve resource lands and protect critical areas in or adjacent to LAMIRDS. See WWGMHB 95-2-0073 *Dawes v. Mason County* (Compliance Order June 6, 2003)

This order finds the County in compliance on the above issues. The work that the County has done over the last almost eight years has also made the designation of these LAMIRDS possible. Concurrent work of bringing the County's Resource Ordinance, Flood Damage Protection Ordinance, and stormwater regulations was needed to ensure that these LAMIRD designations did not cause environmental impacts that could not be mitigated. The County has also adequately established that its rural character is in conformance with the GMA and protected it through its development regulations. All these things needed to be completed, in place, and compliant before the Board could determine that Mason County's unique approach of designating such a large number of isolated, nonresidential LAMIRDS was in compliance with the GMA. The building blocks of the GMA are now carefully balanced. We have already found that the County's work mentioned above has

removed substantial interference with the Goals 1 and 2 of the GMA. Here we find that these actions comply with the Board's order and with the GMA. We also find that the County has identified and mapped open space corridors between Allyn and Shelton in compliance with the Board's order and RCW 36.70A.160.

The County's Brief reminds the Board that "there has been tremendous animosity and great divergence of opinion between the many petitioners, intervenors, and other parties in this case." County's Reply to Petitioner's Response Brief on Invalidity Issues at 2. As the County achieves compliance with the GMA, we would like to acknowledge the efforts of all participants in this more than seven-year process. Petitioners of whom Mr. Diehl is "the last man standing" have spent their time, talent, and resources to insist that Mason County comply with the GMA and helped ensure a compliant GMA framework for Mason County. The County staff has spent years trying to negotiate among these divergent interests to devise a compliant comprehensive plan, development regulations, critical area protection, and resource conservation. The County Commissioners have wrestled with their values and GMA, which they acknowledge are not always consistent, "to get on with life" and found a way comply with the GMA. The record shows that the Commissioners have stated that the County has made a genuine efforts to balance the GMA with County values, "is not playing games with the GMA", and wants to balance environmental protection and economic development. We wish them well in implementing this balance.

The Board also appreciates the patience of the parties in waiting for this order. Two of us are new to the Mason County GMA process and Ms. Henriksen did not participate in the decision on the last compliance order. It has taken us some time to understand the issues, history, and how past work fits with current compliance efforts.

II. PROCEDURAL HISTORY

See Appendix A.

III. STANDARD OF REVIEW, PRESUMPTION OF VALIDITY, BURDEN OF PROOF

Ordinance amendments made in response to a finding of noncompliance are presumed valid. RCW 36.70A.320.

The burden is on petitioners to demonstrate that the action taken by Mason County is not in compliance with the requirements of the Growth Management Act (GMA, Act). RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), we “shall find compliance unless [we] determine that the action by [Mason County] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA].” In order to find the County’s action clearly erroneous, we must be “left with the firm and definite conviction that a mistake has been made.” *Department of Ecology v. PUD 1*, 121 Wn.2d 19, 201 (1993).

IV. ISSUES WHERE INVALIDITY WAS LIFTED AND THAT ARE NOW COMPLIANCE ISSUES

1. Has the County assessed through a Final Supplemental Environmental Impact Statement (FSEIS) the following:

- *probable adverse environmental impacts and cumulative effects of the creation of 194 new LAMIRDs,*
- *13 old and previously un-assessed LAMIRDs,*
- *the effect of the policy allowing Isolated Commercial Industrial Area (ICIA) expansion of up to ten percent of the 1990 boundary?*

2. *Has the County demonstrated that its restrictions on rezones in Criterion I effectively reduce sprawl, extend to Rural Tourist (RT) and Rural Natural Resource (RNR) and extend to the 194 new LAMIRDs?*
3. *Did the County map the new LAMIRDs and determine which of the subsections of RCW 36.70A.070(5)(d) apply to each?*
4. *Is the mapping of the new LAMIRDs complete and are the new LAMIRDs consistent with the provisions of RCW 36.70A.070(5)(a-c), (d), (iii), and (iv)? Do Sections 104.320, 330, .340, and .043 comply with the Act and with Goals 1 and 2?*

Issue Where the August 24, 2002 Order Found Noncompliance

1. *Has the County identified an open space corridor between the UGAs of Allyn and Shelton under the requirements of RCW 36.70A.160?*

V. ANALYSIS AND DISCUSSION OF THE ISSUES

Has the County assessed through an FSEIS the following:

- *probable adverse environmental impacts and cumulative effects of the creation of 194 new LAMIRDs,*
- *13 old and previously un-assessed LAMIRDs,*
- *effect of the policy allowing ICIA expansion of up to ten percent of the 1990 boundary?*

Applicable Laws and Rules:

RCW 36.70A.020(10) Goals. (10) The Environment

RCW 43.21C.090

WAC 197-11-442(1)

Positions of the Parties:

The County states that it completed a FSEIS that has evaluated the probable and cumulative effects of creating 175 new LAMIRDs (the County has reduced the number of LAMIRDs from 194 at the time of the order to 175 by not designating isolated commercial and industrial uses that were established after July 1, 1990 and the 13 (the County counts 14) previously designated LAMIRDs. The County also shows that it has eliminated the comprehensive plan policy of allowing ICIA expansion of up to 10 per cent, because it was inconsistent with the County's goal of limiting areas of more intense development. County's Brief on Invalidity Issues at 3.

Petitioner Diehl complains that the County has only done a cursory analysis of the environmental impacts of the alternatives for designating LAMIRDs, criticizes some of the alternatives that the County has chosen to analyze as not reasonable, and believes that the fatal flaw in the County's analysis is the County's failure to analyze an alternative that evaluated whether all the isolated LAMIRDs designated according to RCW 36.70A.070(5)(d) should be conforming uses. Petitioner also argues that the County did not evaluate the uses and regulations governing the County's rural commercial designations that replaced the Matrix of Allowed Uses. Petitioner's Response Brief on Issues Where the County's Prior Actions Was Determined To Be Invalid at 3, 6, and 7.

Discussion:

The County has completed a FSEIS that evaluated the 14 previously designated LAMIRDs where the environmental impacts had not been assessed and 175 parcels that contained isolated nonresidential uses that existed before July 1, 1990. During the review of the draft SEIS the County determined that it should also assess the environmental impacts of the designation of nine hamlets for which the environmental impacts had not yet been assessed.

The County evaluated three alternatives for hamlets and four alternatives for both the previously designated, but unassessed ICIA's and for the 175 newly designated LAMIRDs. Three alternatives were considered for the hamlets: the preferred alternative of designating these areas as LAMIRDs, the no action alternative of not designating them and leaving them as nonconforming uses, and an alternative that added adjacent parcels to the hamlets and increased the size of these LAMIRDs. The County added another alternative to the FSEIS for the previously designated, but not assessed Isolated Commercial, Industrial Areas (ICIA's) and 175 newly designated LAMIRDs that allowed for the intensification of uses. The FSEIS adequately described alternatives, evaluated impacts, assessed cumulative effects, and suggested mitigation measures.

Mr. Diehl argues that the alternatives that allowed for additional parcels to be added to the LAMIRDs and that allowed the use(s) to be intensified were not reasonable because they would not comply with the GMA. For guidance on the usefulness and legality of including these alternatives we look to *King County v. Cent. Puget Sound Bd.*, 91 Wn. App. 1, 31, 951 P.2d 1151 (Div. I, 1998)¹, a decision of the court of appeals. The court states:

If we required all alternatives included in an EIS to be of certain legal status, projects would come to a halt until such status could be judicially determined, assuming that a determination could be obtained without issuing an advisory ruling. In order to avoid this outcome, EISs would include only unchallenged alternatives, rendering the discussion of reasonable alternatives superficial, and weakening their force as an effective decision making tool. There is no legal requirement that alternatives be certain or uncontested, only that they be reasonable.

¹ Reversed on other grounds, *King County v. Cent. Puget Sound Bd.*, 138 Wn.2d 161, 979 P.2d 374 (1999). (The Washington Supreme Court approves this language from the court of appeals decision saying "Contrary to Friends' assertions, an alternative may be taken into account for comparative purposes in an EIS even if the alternative's legal status is contested", 138 Wn.2d at 184.)

King County v. Cent. Puget Sound Bd., 91 Wn. App. 1, 31, 951 P.2d 1151 (Div. I, 1998)²,

The Board finds that the alternatives were reasonable and therefore appropriate for consideration in the FSEIS. Furthermore, the Board recognizes that in the future that the County could receive requests to enlarge or intensify uses in LAMIRDs. It should be useful to the County, if it receives such requests, to have environmental information in an EIS on hand to help evaluate these potential requests for the consistency with the GMA, the cumulative effects on county services and facilities, and on the environment.

Petitioner asserts that the FSEIS does not adequately evaluate the impacts or mitigation measures of the County's commercial zoning regulations. However, our examination of the record finds that the FSEIS discussed the impacts and shows how specific floor area ratios, limitations on the size and the height of uses, and allowing certain uses through a special use permit or as an accessory use will reduce sprawl and mitigate developments effects on rural character. Index 3327 at 35 and 36.

To further evaluate the adequacy of the County's FSEIS, we look to the guidance that WAC 197-11-442 gives on the content of nonproject EIS proposals:

“The lead agency shall have more flexibility in preparing EISs on nonproject proposals, because there is normally less detailed information available on their environmental impacts and on any subsequent project proposals. The EIS may be combined with other planning documents....The EIS's discussion of alternatives for a comprehensive plan, community plan, or other area wide zoning or for shoreline or land use plans shall be limited to a general discussion of

² Reversed on other grounds, *King County v. Cent. Puget Sound Bd.*, 138 Wn.2d 161, 979 P.2d 374 (1999). (The Washington Supreme Court approves this language from the court of appeals decision saying “Contrary to Friends’ assertions, an alternative may be taken into account for comparative purposes in an EIS even if the alternative’s legal status is contested”, 138 Wn.2d at 184.)

the impacts of alternate proposals for policies contained in such plans, for land use or shoreline designations, and for implementation measures. The lead agency is not required under SEPA to examine all conceivable policies, designations, or implementation measures but should cover a range of such topics. The EIS content may be limited to a discussion of alternatives which have been formally proposed or which are, while not formally proposed, reasonably related to the proposed action.

WAC 197-11-442(1)(4) Contents of EIS on nonproject proposals.

The County's FEIS is consistent with this guidance.

The Board takes seriously the directive provided by RCW 43.21C.090 :

In any action involving an attack on a determination by a governmental agency relative to the requirement or the absence of the requirement, or the adequacy of a "detailed statement", the decision of the governmental agency shall be accorded substantial weight.

RCW 43.21C.090.

Also, this Board has held, in rulings regarding SEPA compliance, that a petitioner must sustain the burden of proof, when challenging the adequacy of an FEIS.

An analysis of SEPA compliance for GMA purposes is based on the same "clearly erroneous" standard established for compliance.

Durland v. San Juan County, WWGMHB No. 99-2-0010c (May 2, 2001).

Further, the County eliminated the provision that ICIAAs could be expanded by ten per cent. Therefore, they did not assess the impacts of that provision. We find that is reasonable. Eliminating this provision helps reduce sprawl and the impacts these LAMIRDs impact on the environment and rural character.

Decision:

Therefore, based on our review of the FSEIS, WAC 197-11-442, RCW 43.21C.090, and on this Board's past decisions, we find that the County adequately analyzed the 14 previously designated LAMIRDS and the 175 newly designated LAMIRDS, as well as the uses and regulations for rural commercial uses contained in the County's zoning code, in its FSEIS. We find that this analysis complies with the goals and requirements of the GMA, particularly RCW 36.70.020(10).

Has the County demonstrated that its restrictions on rezones in Criterion I effectively reduce sprawl, extend to RT and RNR and extend to the 194 new LAMIRDS?

Applicable Law:

RCW 36.70A.020(2)

RCW 36.70A.070(5)(b)

RCW 36.70A.070(5)(c)(i)(iii)

Positions of the Parties:

The County states that it has followed most of the recommendations of Petitioner and has adopted Petitioner's recommendations for criteria for rezones including Criterion I. Chapter 105.080 B. extends the application of these rezone criteria to RT and RNR designations and to the 194 (now 175) newly designated LAMIRDS.

No petitioner briefed this issue.

Discussion:

Our review of the record shows Criterion I has been extensively revised. It has been rewritten to incorporate most of the recommendations of Petitioner Diehl. The adopted rezone criteria effectively reduce sprawl by requiring the County to enter written findings on eight criteria in response to an application for a rezone. Other measures that the County has adopted ensure that rezones effectively reduce sprawl are those in Chapter 105.080, Section B. These limit rezone requests in the rural area outside of Rural Activity Centers and hamlets to five per year and also limit the total amount of acres that can be rezoned to 50 acres per year unless the rezone was done to correct a clerical error or an error due to topography committed in the original zoning. This numeric limit rezone applies to RT and RNR designations. Rezones of RT and RNR do not count towards the total acreage allowed for rezones on annual basis. Exhibit #3301, at 21 and 22.

We want to emphasize that the adoption of Criterion I is particularly important to our lifting of invalidity and to a finding of compliance on this issue. 175 existing isolated small-scale LAMIRDS, nine hamlets, and 14 other LAMIRDS would ordinarily appear to be an unusually large number of LAMIRDS. Coupled with the effect of RCW 36.70A(5)(d)(ii) and (iii) that allows for the creation of new small-scale industrial, commercial, and recreational LAMIRDS, the large number of LAMIRDS could thwart the intent of RCW 36.70A.020(2) (the GMA's sprawl reduction goal). The requirement that no new isolated small-scale business LAMIRD can be created one-half mile from any other LAMIRD or urban growth area and the numerical and acreage limitations that Criterion I imposes on the number of new small-scale isolated LAMIRDS that can be created help alleviate our concern that the sprawl reduction goal is being undermined and contributed to our previous order lifting invalidity.

Based on our review of Criterion I, the maps of the County provided showing the distribution of LAMIRDs, the County's and Petitioners' briefs, and RCW 36.70A.020(2) and RCW 36.70A.070(5)(d), we find that Criterion I effectively reduces sprawl, applies to RT and RNR designations and to the 175 new LAMIRDs and now complies with the Board's August 14, 2002 order and the goals and requirements of the GMA.

Did the County map the new LAMIRDs and determine which of the subsections of RCW 36.70A.070(5)(d) apply to each?

Applicable Laws:

RCW 36.70A.070(5)(d)(i), (ii) and (iii)

RCW 36.70A.070(5)(a) – (c)

RCW 36.70A.020 (1) and (2)

Position of the Parties:

The County states that it has mapped the 175 new LAMIRDs and has appropriately identified how they correspond to either RCW 36.70A.070(5)(d)(ii) or (iii).

Petitioner Diehl concedes that the new LAMIRDs have been mapped, but is especially concerned that some of the parcels identified as being designated consistent with RCW 36.70A.070(5)(d)(iii) ((d)(iii) LAMIRD) are adjacent and should have been identified as LAMIRDS according to RCW 36.70A070(5)(d)(i) ((d)(i) LAMIRD), because they are clustered. Petitioner believes that they are not actually small isolated LAMIRDs.

Discussion:

The record shows the County's work in individually mapping the newly designated LAMIRDs. Index# 3336 at 1 - 180. The Board order references 194 LAMIRDs

because that is the number the County originally proposed. During its work on the compliance order, the County reduced the number of proposed new LAMIRDs to 175, because the County decided not to designate isolated recreation, tourist, commercial, small-scale business or nonresidential development on lots that came into existence after 1990. The maps indicate boundaries around each lot that contains existing development. RCW 36.70A.070(d)(ii) ((d)(ii) LAMIRD) and (iii) both require that the intensification of existing isolated recreation or tourist uses or cottage industry or small-scale business uses be contained to the existing uses on lots on which the development is located. However, (d)(ii) and (d)(iii)LAMIRDs do not need to be designed principally to serve the rural population, so long as public services are designed to serve the small scale tourist use or small-scale business or cottage industry and the design does not permit low density sprawl. The record also shows that the County has analyzed and determined which section of RCW 36.70A.070(5)(d) applies to each of the 175 newly designated LAMIRDs.

To determine whether the small-scale tourist or recreational LAMIRDs are designated or mapped appropriately we will look at how the GMA describes various types of LAMIRDs. We will consider the map included in the record that shows the relationship of the individually designated and mapped LAMIRDs to each other in light of those definitions.

RCW 36.70A.070(5)(d)(ii) describes small-scale recreational or tourist LAMIRDs this way:

The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development.

RCW 36.70A.070(5)d(ii).

Because RCW 36.70A.070(d)(ii) describes small-scale recreational or tourist LAMIRDs as “the intensification of development on lots” we conclude that the County could have drawn the boundary around the clustered parcels which all appear to have tourist or recreational uses on them instead of around each individual lot. The use of the plural “lots” indicates that more than one lot can be included in a Type (5)(d)(ii) LAMIRD. In this case, the record shows that various church, 4-H, and scout camps occupy multiple lots. For instance, the City of Tacoma owns 12 adjacent parcels in Mason County and the Lake Limerick Country Club has nine adjacent parcels. Each of the lots described above contains a recreational or tourist-related use, is designated as Type (5)(d)(ii) LAMIRD. However the County elected to map each lot individually. While mapping and designating these adjacent lots together as one LAMIRD would have reduced the number of isolated small-scale recreational or tourist LAMIRDs, it would not have reduced the land area or uses permitted in the LAMIRDs. Therefore, mapping adjacent LAMIRDs together as one LAMIRD would not have any practical effect on the area or intensification of development in the (d)(ii) LAMIRDs designated by the County.

The County’s choice to map these (d)(ii) LAMIRDs individually does illuminate the reason for the large number of LAMIRDs. The FSEIS discloses that 79.1 per cent of the acreage of 175 isolated small-scale LAMIRDs are designated as Rural Tourist Campground. 27 other lots are designated as other kinds of rural tourist uses such as marinas, recreational vehicle parks, or motels. Examination of the lot by lot designation and the maps of LAMIRD designations give the Board some perspective why the number of LAMIRDs is so large. Most of the 175 isolated small-scale LAMIRDs are small-scale recreational and tourist LAMIRDs designated pursuant to RCW 36.70A.070(5)(d)(ii). Because Mason County contains part of the coastline of Hood Canal and some parts of the Olympic National Park, it is a likely destination for camps and other recreational uses. This helps explain the large number of small-scale recreational and tourist LAMIRDs designated by the County.

By indicating boundaries for each existing lot in the small-scale tourist or recreational LAMIRDs, the County has taken an action that is sprawl confining. Recreational and tourist uses that exist in Mason County are also less likely to interfere with rural character.

The rest of the 175 LAMIRDs on existing isolated nonresidential parcels that are not Rural Tourist or Rural Campground are (d)(iii) LAMIRDs. The zoning classifications for these LAMIRDs under the Mason County Code include Rural Commercial 1, 2, and 3, Rural Natural Resource, and Rural Industrial classifications. The Petitioner argues that some of these LAMIRDs which the County has designated as (d)(iii) LAMIRDs are not truly isolated, but are clustered or adjacent to similar commercial or industrial development. Petitioner argues that these LAMIRDs should be designated (d)(i) LAMIRDs.

To determine whether the County boundaries for (d)(iii) LAMIRDs are consistent with the GMA we will compare the definitions for (d)(i) LAMIRDs to (d)(iii) LAMIRDs. RCW 36.70A.070(5)(d)(i) describes (d)(i) LAMIRDs:

Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments....

RCW 36.70A.070(5)(d)(i).

RCW 36.70A.070(5)(d)(iii) describes Type (5)(d)(i) LAMIRDs:

The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents. Rural counties may allow the expansion of small-scale

businesses as long as those small-scale businesses conform with the rural character of the area as defined by the local government according to RCW 36.70A.030(14).

RCW 36.70A.070(5)(d)(i).

(d)(i) LAMIRDS generally allow for some infill development within the logical outer boundaries drawn pursuant to RCW 36.70A.070(5)(d)(iv).

(d)(iii) LAMIRDS, on the other hand, are isolated by definition and further development is confined to the lot(s) on which the earlier development is located. The businesses located are small in scale and must conform to the rural character of the county.

In this case, the County has mapped the lots containing existing small-scale businesses or cottage industries. As it did with the existing isolated small-scale recreational and tourist type (d)(ii) LAMIRDS, the County delineated the boundaries of each LAMIRD on every individual lot rather than drawing lines around several lots containing the same use. In the case of these (d)(iii) LAMIRDS, there are fewer adjacent parcels that could have been included in one large LAMIRD than exist for the recreational and tourist type (d)(ii) LAMIRDS. Moreover, some of the lots are quite large, especially in the case of LAMIRDS carrying the RNR designation. Some of these lots could have met the definition of (d)(i) LAMIRDS. However, drawing boundaries on the basis of the individual lots conforms with the GMA requirements for a (d)(iii) LAMIRD. In this case, the boundaries drawn by the County may actually reduce sprawl because the logical outer boundaries that might have been drawn for a type (d)(i) LAMIRD could exceed the individual lot boundaries. This potentially reduces the amount of development on the lot.

We also note that for all of the existing, isolated small-scale LAMIRDs Mason County Code (MCC) Section 1.02.062 C establishes the parcel lines indicated on the maps as the boundaries of these LAMIRDs:

The zoning designations for parcels³ in Table A, “Parcels with Non-Residential Land Uses in the Rural Area of Mason County, February 2003” adopted under Ordinance 09-03, are adopted and are part of this chapter. The boundaries of the zoning shall be the boundaries of the tax parcel and are part of this chapter. MCC 1.02.060

Exhibit 3301 at 9.

While (d)(ii) could be mapped in another way and Petitioner would map some of the (d)(iii) LAMIRDs differently, we find that the County’s action is not clearly erroneous. The manner by which the County drew the boundaries around these LAMIRDs has a sprawl containing effect. The mapping and LAMIRD designation fulfill the sprawl reduction intent of the GMA.

Mapping 175 LAMIRDs is also critical because it makes possible the application of Criterion I. Criterion I requires that new small-scale business LAMIRDs be spaced at least one-half mile from any other LAMIRD or UGA and limits the creation of all small isolated nonresidential LAMIRDS to five a year. In our August 14, 2002 order, the Board noted that at that time Criterion I only applied to industrial or commercial (RI or RC) LAMIRDs. The Board pointed out that LAMIRDS designated as Rural Tourist, Rural Tourist Campground, and Rural Natural Resources comprised 85 per cent the acreage encompassed by the 194 new LAMIRDs. Therefore, because Criterion I did not apply to these LAMIRDs, the Board found that Criterion I substantially interfered with the fulfillment of the Goal 2 (reduce sprawl) and Goal 10 (environment) and was invalid.

³ The Board assumes that each parcel is one lot.

On page 11 of this decision, we find that the numerical limits of Criterion 1 now apply to the creation of isolated nonresidential small-scale LAMIRDS, including Rural Tourist, Rural Tourist Campground, and Rural Natural Resource designations. Requiring no new small-scale business LAMIRD can be created more than one half mile from any other LAMIRD or UGA helps prevent the undermining of RCW 36.70A.020(2), the GMA's goal that directs sprawl reduction. Its application to these LAMIRDS would not have been possible without the County mapping and delineating boundaries for these LAMIRDS and is an essential ingredient in making their designation consistent with the GMA.

Decision:

Based on our review of Exhibits 3327, 3336 and 3350, RCW 36.70A.070(5)(d), and the County's and Petitioner Briefs, we find that the County's mapping of the 175 new LAMIRDS is consistent and complies with RCW 36.70A.070(5)(d)(ii) and (iii) as well as the requirement to confine existing small-scale rural development. We also find that delineating and establishing boundaries for these LAMIRDS enable the application of Criterion I, an important sprawl reducing measure, and make the designation of these 175 existing isolated small-scale LAMIRDS consistent with RCW 36.70A.020(2). We find that this mapping complies with the Board's order and the goals and requirements of the GMA. We also find that the County's exercise in its discretion in determining the section of RCW 36.70A.070(5)(d)(ii) and (iii) that applies to each of the 175 LAMIRDS is within the County's discretion and is not clearly erroneous. This mapping and identification complies with the Board's order and with the goals and requirements of the GMA.

4. Is the mapping of the new LAMIRDS complete and are the new LAMIRDS consistent with the provisions of RCW 36.70A.070(5)(a-c), (d), (iii), and (iv)? Do

Sections 104.320, 330, .340, and .043 comply with the Act and with Goals 1 and 2?(Conclusions of Law,(Compliance Order (August 14, 2002) at 13.

Applicable Laws:

RCW 36.70A.070(5)(a)-(c), (d)(iii), (iv)

RCW 36.70A.020 (1), (2)

Because the County had designated such an unusually large number of existing isolated LAMIRDs, the Board ordered the County to ensure that the designation of the 175 LAMIRDS and the development regulations that applied to them was consistent with requirements in RCW 36.70A.070(5)(a) –(c), (d)(iii) and (iv) and complied with the GMA goals (1) to confine urban growth to urban areas and (2) to reduce sprawl.

We will deal with whether or not the County complied with RCW 36.70A.0705(5)(d)(iv)) first. This section deals with containing areas and uses. Earlier in this order we found that the County had designated the new 175 LAMIRDs appropriately by drawing boundaries around each existing lot occupied by existing small businesses or natural resource related uses and by declaring in their comprehensive plan that these lot lines were the boundaries for (d)(iii) LAMIRDs. This is consistent with RCW 36.70A.070(5)(d)(iv). We also found that the delineation of boundaries also helped reduce sprawl by making it possible to impose the requirement that no new isolated (d)(iii) LAMIRD could be created within a half mile of any existing LAMIRD or UGA. Both the mapping and the application of Criterion I are important to the County's compliance with Goal 2 in regard to these new LAMIRDs. These actions also make the designation of these (d)(iii) LAMIRDs comply with RCW 36.70A.070(5)(c)(i) (containing or otherwise containing rural development) and (5)(c)(iii) (reducing the inappropriate conversion of undeveloped land into sprawling low-density development).

The Board also required the County to show how its designation of these LAMIRDs is consistent with other sections of RCW 36.70A.070(5)(a), (b) and (d)(iv). To be consistent with RCW 36.70A.070(5)(a) – (c) and (d)(iv), the Board found that the County is required to do the following: (1) develop a written record on how the designation of the 175 LAMIRDs comport with the goals and meet the requirements of GMA, (2) show how these LAMIRDs do preclude urban uses in rural areas, (3) establish measures to contain rural development; and (4) protect the rural character as defined by the county and the GMA: by containing or otherwise controlling rural development; assuring visual compatibility of rural development with the surrounding rural area; reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area; protecting critical areas, surface water and ground water resources; and protecting against conflicts with the use of agricultural, forest, and mineral resource lands

Positions of the Parties:

Petitioner argues that the County’s approach to designating all pre-1990 existing development as conforming fundamentally fails to harmonize the goals of the GMA with the County’s rural element, especially the GMA’s sprawl prevention goal and RCW 36.70A.070(5)(a)-(c)’s requirements to protect rural character. Petitioner argues that it is reasonable to assume that unplanned development characterized the “pre-1990 era”, so some existing isolated uses would be compatible with rural character and some of it would not be. Petitioner argues that the County has no rationale for treating all “pre-1990” uses as conforming uses consistent with its rural character.

The County replies that the GMA allows for the designation of these LAMIRDs as long as these designations protect rural character and that their strategy to protect character is to “principally design businesses to serve a rural population” and to limit the creation of new LAMIRDs and require spacing between LAMIRDs. The method the County uses to protect rural character is to require the rural development to be

small and substantially less intense than urban development. For guidance in determining whether their definition and mechanisms to protect rural character are consistent with the GMA and not sprawl producing, the County relies upon, the Washington State Department of Community, Trade and Economic Development's (CTED) publication, *Keeping the Rural Vision*. CTED is charged by the GMA to provide technical assistance to cities and counties planning under the GMA. See RCW 36.70A.190(4)(a). In this publication CTED explains its view of the intent of RCW 36.70A.070(5)(d)(ii) and (iii) and discusses whether the designation of existing isolated commercial, industrial, and tourist and recreational development as LAMIRDS is appropriate in the rural area as existing uses:

Most counties have existing businesses located in the rural area that are isolated from other more intense development and so are not located in an area appropriate for the designation as a rural village or rural activity center. In other words, the business is not located inside the logical outer boundary of a designated limited area of more intense development within which infill, development, and redevelopment can occur. In attempting to meet the requirements of GMA not to allow more intense development in rural areas, many counties designated these businesses as nonconforming uses. ESB 6094 was designed to allow counties to address the need of the rural community to retain and expand these businesses. Intensification of development on lots containing isolated nonresidential uses is now allowed under RCW 36.70A(5)((sic)(ii) and (iii).

Keeping the Rural Vision, Washington State Department of Community, Trade, and Economic Development (June, 1999) at 37-38. Exhibit #3308.

CTED's explanation of the intent of the law addresses Mr. Diehl's argument and the County's designation process directly. CTED points out that the intent of the legislation was to achieve the goal of making these isolated commercial, industrial, and tourist and recreational uses conforming uses. While CTED's advice in this

publication is not law or rule, it is a reasonable source for the County to consult for guidance. The County's approach to designating these LAMIRDs is consistent with CTED's explanation of the law's intent.

Also, our examination of the RCW 36.70A.070(5)(d)) suggests that the County's designation of existing uses as (d)(iii) LAMIRDs is consistent with what RCW 36.70A.070(5)(b) directs:

The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. In order to achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.

RCW 36.70A.070(5)(b).

Therefore, these new LAMIRDs should not constitute urban growth.

To determine whether these LAMIRDs should be considered urban growth, we look to the introduction to RCW 36.70A.070(d) which states:

Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area.

RCW 36.70A.070(5)(d)

This section clarifies that that the Legislature did not intend to have appropriately designated LAMIRDs looked upon as urban growth.

For (d)(iii) LAMIRDs RCW 36.70A.070(5)(d)(iii) allows, “The intensification of development on lots *containing isolated nonresidential uses or new development* of isolated cottage industries and isolated small-scale businesses.” (Emphasis added). The words “containing isolated nonresidential uses or new development” mean that either existing or new isolated uses fitting the type (d)(iii) definition are allowable in (d)(iii) LAMIRDs.

Mr. Diehl asserts that July 1, 1990 is not the “magic date” for determining what uses should be thought of as conforming. Although it is true that the County didn’t have to make conforming uses of all the existing isolated recreational or tourist uses or isolated cottage or small scale businesses that existed on that date, the law allows this. RCW 36.70A.070(5)(d)(v)(A) says:

“For purposes of (d) of this subsection, an existing area or existing use is one that was in existence: (A) On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter.

RCW 36.70A.070(5)(d)(v)(A).

The descriptions of isolated commercial and industrial LAMIRDS are part of this subsection and the July 1, 1990 date applies to them.

We find that the County’s decision to designate all isolated small-scale industrial or commercial uses that existed on or before July 1, 1990 as conforming uses in LAMIRDs is not inconsistent with RCW 36.70A.070(5)(a), (b), (c), and (d)(iv). Therefore, we conclude that these LAMIRDs have been designated appropriately and are not urban growth in a rural area that RCW 36.70A.070(5)(b) prohibits and RCW 36.70A.070(5)(d) allows.

The consistency of (d)(iii) LAMIRDs with rural character has come to us on compliance and is the final rural issue on which the County needs to comply. The Board’s August 14, 2002 order emphasized that the Rural Commercial 1, 2, and 3

designations and regulations governing these designations applied both to small isolated nonresidential commercial uses, as well as to hamlets and neighborhood and village centers. The Board, therefore, invalidated these sections until the County could show that these regulations protected the environment and rural character. This order also stated that the uses allowed in these designations appear to be consistent with the GMA, but wanted assurance that the environment and the rural character would be protected from these uses.

We have already found in this order that the designation and mapping of the County's isolated small-scale commercial uses meet the goals and requirements of RCW 36.70A.070(5)(d)(ii) and (iii). Previous orders have found the rest of Mason County's rural element compliant. For these reasons, we interpret the requirement imposed on the County by the Board's order regarding rural character as a requirement to develop a written record that shows that the uses of Type (5)(d) iii LAMIRDs as well as the uses in (d)(i) LAMIRDs protect the environment and rural character. The Board's August 14, 2002 order indicated that the uses permitted in those LAMIRDs could not be found to be consistent with the GMA, until the County showed that to the environment and rural character was protected. We will now examine whether there is evidence in the record to show this.

The County's development regulations declare that their definition of rural character is the GMA's definition of rural character as defined in RCW 36.70A.030(14):

These isolated commercial LAMIRDs, however, shall protect rural character, which is defined at RCW 36.70A.030(14), by containing and limiting rural development, but not being in conflict with surrounding uses and by assuring that such development is visually compatible with the surrounding area. The County's primary method of achieving such purpose is by providing for buffer yards, limiting the character of rezones, by limiting building size, height, and floor to area ratios in

such a way to be appropriate in rural areas. Public services and facilities shall not be provided so as to permit low intensity sprawl.

Mason County Development Regulations (DRs), Section 1.02.043. Exhibit # 3301, at 7.

The county development regulations also discuss the county's strategy to ensure that the regulations governing (d)(iii) LAMIRDs as well as (d)(i) LAMIRDs will protect rural character. A January 14, 2003 memo by Planner Allan Borden to the PAC explains how the designation of existing uses meets the goals and requirements of the GMA. He clarifies that the County's strategy is that the scale, intensity, and design of the rural use is more important to protecting rural character than the type of use. In that memo, he points out that for Mason County, limitations in rural commercial zones on building size, intensity, and visual impact keeps development rural in character and protects rural character. Exhibit #3316. The staff, the public, and the PAC discussed the consistency of these Type (5)(d)(iii) LAMIRDs with the GMA and the mechanisms the County plans to use to make them consistent with rural character. Exhibit #s 3310, at 24-29; 3315, at 21-25; and 3317, at 19-21. The Prosecutor and Senior Planner Bob Fink also described to the County Commissioners the County's philosophy about rural character and how the strategy to protect it is incorporated in the County's amendments to their development regulations. Exhibit # 3349.

Petitioner Diehl does not believe that these discussions are adequate to fulfill the requirement that the County develop a written record required by RCW 36.70A.070(5)(a) and argues that the definition and strategy for protecting rural character should be included in the findings of fact. RCW 36.70A.070(5)(a) provides:

Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes

the planning goals in RCW 36.70A.020 meets the requirements of this chapter.
RCW 36.70A.070(5)(a)

We find that RCW 36.70A.070(5)(a) does not give specific direction to provide a written record of the County's establishment of rural character. Instead, rural character is addressed in RCW 36.70A.070(5)(c):

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

(i) Containing or otherwise controlling rural development;

(ii) Assuring visual compatibility of rural development with the surrounding rural area;

(iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;

(iv) Protecting critical areas, as provided in RCW 36.70A.060 and surface water and ground water resources; and

(v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

RCW 36.70A.070(5)(c).

This section creates an overall requirement to create a written record harmonizing the goals to the GMA with the County's rural element, but does not create a separate requirement for the same process in the establishment of rural character.

We find under the compliance setting here where the majority of the rural element has been found compliant, that the memo, the minutes of the PAC and the County

Commission, and the explanation in the County's adopted development regulations are adequate to meet this requirement to establish rural character.

Now we will examine if the County's development regulations for its rural commercial zones actually protect rural character as required by RCW 36.70A.070(5)(b), (c) and (d)(iii).⁴ The Board's August 14, 2002 order shows that the Board was most concerned about the impacts of uses in isolated small-scale commercial districts ((d)(iii) LAMIRDs) and the hamlets, village centers, and neighborhood centers (Type (5)(d)(i) LAMIRDs) on the environment and rural character . The Board declared Sections 1.04.320, 1.04.330, and 1.04.345, the sections of the Mason County Code that apply to these LAMIRDS, noncompliant and invalid until the county had assessed their environmental impacts and evaluated mitigating measures through an FSEIS. The Board's direction that these regulations need to comply with RCW 36.70A.070(5)(a)–(c) means that the mitigating measures identified in the FSEIS must be incorporated into the County's development regulations.

The County's FSEIS identified measures for mitigating the impacts of development in these LAMIRDs that included dimensional standards, floor area ratios, setbacks, design requirements, application of the County's stormwater and critical areas regulations, special use permits, and requirement that services should not be provided in a way to permit low intensity sprawl. The special use permit requires public review of whether the proposal affects public health and safety, introduces hazardous conditions, impacts existing uses on adjacent lands, and has adequate public facilities but does not introduce urban services into rural area. Exhibit # 3327 at 15 - 36.

⁴ Rural Commercial designations include R1, R2, R3, and R4 zones. These designations and the regulations for these designations currently have been applied to small-scale isolated commercial LAMIRDs except for R4. R2 and R3 zones also apply to hamlets, neighborhood centers, and village centers. R4 designation applies to larger isolated commercial uses that are created as part of Ordinance 09-03. The R4 designation is not subject to this compliance order.

When we examine the amendments to the County's rural commercial zones imposed by Ordinance 09-03, we find that the County has incorporated mitigating measures of landscaped buffers, floor area ratios, sign regulations, special use permits, and limitations on size⁵ and heights⁶ of buildings. Exhibit # 3301, at 11-15. We find that these measures will enable the County to mitigate the impacts of new development or redevelopment on rural character and the environment in these LAMIRDs. These mitigating measures are an important factor in making the designation of these LAMIRDs compliant with the GMA.

Mr. Diehl calls the County's regulation for rural commercial development permissive and not small-scale enough to protect rural character. He says that 7200 square feet for the buildings allowed in R2 and R3 zones are "relatively large". However, Petitioner does not show us on what basis he asserts that this size is "relatively large" nor how it is inconsistent with rural character.

We find that the County has provided mechanisms through landscaped buffers, adequate setbacks, and sign regulations to help assure visual compatibility with the surrounding area and fulfill the County's obligations as to RCW 36.70A.070(5)(c)(ii) for Type 5(d)(iii) LAMIRDs. **We find that the limitations placed on rural commercial development through the use of appropriate floor area ratios, limitations on size and height of buildings, special use permits for some uses, and permitting some uses like gas stations and self storage only as accessory uses in certain zones coupled with the drawing of boundaries around existing small-scale isolated commercial LAMIRDs make the County's Rural Zoning Categories consistent with RCW 36.70A.070(b) and RCW 36.70A.070(b) and (c)(i) and (iii) Exhibit # 3338, at 1-37.**

⁵ Size of buildings is limited to 4500 square feet in R1 and 2 zones and 7200 feet in R3 zones.

⁶ Height of buildings in all rural commercial zones is limited to 2 stories or 35 feet.

Finally, the work that the County has done over the last almost eight years complying with Board orders played an essential role in making the designation of these LAMIRDS possible. These include the County's stormwater regulations to protect surface water and ground water resources, compliant resource land designations and conservation measures, and its recently compliant critical area protection regulations. These regulations, along with compliant urban growth area designations, comply with RCW 36.70A.070(c)(iv) and (v).

Public Participations in the Consideration of the LAMIRD Designations and Commercial Regulations in Designated LAMIRDS

Petitioner Diehl urges the Board to find the County's regulations noncompliant because the process that the County used violated the GMA's goals and requirements for participation. Petitioner alleges that the County violated the public participation requirements of the GMA because the County only gave a week's notice of changes the staff made to the PAC's recommendations and the changes proposed to meet the Board's August 14, 2003 order were only available the day of the BOCC hearing. Our examination of the record shows that Mr. Diehl prepared and presented extensive comments on the County's rural commercial regulations and that the staff painstakingly presented both their recommendations and Mr. Diehl's recommendations to the PAC. Exhibit #s 3323, 3326, at 1-8, and 3330. The record shows that the PAC adopted more of the staff's recommendations than Mr. Diehl's. However, when the staff made a recommendation to the BOCC a week before the final public hearing, many of their recommendations were closer to Mr. Diehl's than to the PAC's. Exhibit # 3301. Minutes of the January 6, 2003 PAC meeting show that the PAC discussed the process for presenting their recommendation and the possibility that an alternate staff recommendation would be presented to the BOCC. Again, minutes of the February 11, 2003 staff meeting state that the staff presented the staff's recommendation and reported on public testimony. Exhibit #3337, at 2 - 3.

RCW 36.70A.035(2)(a), (b)(i), (ii) provides⁷:

(2)(a) Except as otherwise provided in (b) of this subsection, if the legislative body for a county or city chooses to consider a change to an amendment to a comprehensive plan or development regulation, and the change is proposed after the opportunity for review and comment has passed under the county's or city's procedures, an opportunity for review and comment on the proposed change shall be provided before the local legislative body votes on the proposed change.... (b) An additional opportunity for public review and comment is not required under (a) of this subsection if: (i) An environmental impact statement has been prepared under chapter 43.21C RCW for the pending resolution or ordinance and the proposed change is within the range of alternatives considered in the environmental impact statement; (ii) The proposed change is within the scope of the alternatives available for public comment

RCW 36.70A.070(2)(a), (b)(i), (ii).

In the case of the staff recommendations that the County eventually adopted, these changes were in the range of alternatives that the PAC discussed. All of the subjects and issues on which the County took action were within the range of alternatives that were before the public with opportunities to comment. We find that the public process that the County undertook, while not ideal due to the fact that there are no minutes of the public meeting where the staff recommendation was made, is within the parameters of RCW 36.70A.035(2)(b)(ii).

We note that the “show your work requirement” is not independent of the specific directives of the GMA. In the context of LAMIRDs, the county must meet the requirements of RCW 36.70A.070(5) and we have found that they have done this. We find that the Petitioner cannot raise the same issue as a separate requirement under the rubric of public participation.

⁷ Originally cited as “RCW 36.70A.035(2)(b)”.

Mr. Diehl provides no evidence that the County violated its own public participation procedures. Therefore, we find that Petitioner has not sustained his burden of proof that the County violated RCW 36.70A.020(11), RCW 36.70A.035, or RCW 36.70A.140 in its adoption of measures to protect rural character.

Having found that Petitioner has not sustained his burden of proof that the County violated the GMA's goals and requirements for public participation and based on the discussion above, we find that Sections 104.320, 330, .340, and .043 of the Mason County code now comply with the Board's August 14, 2002 order and the goals and requirements of the GMA, particularly RCW 36.70A.020(1) and (2) and RCW 36.70A.070(5)(a) –(c).

Open Space Corridors

4. Has the County identified an open space corridor between the UGAs of Allyn and Shelton under the requirements of RCW 36.70A.160?

Applicable Laws:

RCW 36.70A.160

RCW 36.70A.070(1)

RCW 36.70A.020(11)

RCW 36.70A.035

RCW 36.70A.140

In the discussion of open space corridors between Allyn and Shelton in the Board's August 14, 2002 order, it is clear that the Board's chief concern was *mapping* of open space corridors. The Board order says:

The corridors between the Allyn-Belfair area and Shelton are not mapped. They are identified as the following facilities which are mapped: a bypass bicycle route, a railroad, streams, a transmission line, and a pipeline. In contrast to the well-mapped proposed

corridors of the three Allyn-Belfair area maps, there is no Allyn-Shelton corridor mapping.
Dawes v. Mason County, Case No. 96-2-0023c (Compliance Order 8/19/2002) at 9.

In a previous decisions in this case it is also clear that the mapping of open space corridors was the Board's main concern:

The maps of open space lack specificity. Recreation areas and transportation and utility corridors are not identified. Open spaces need to be identified and prioritized and delineated on a map.
Dawes v. Mason County, Case No. 96-2-0023c (Final Decision and Order, 12/5/96) at 12.

As MCCDC pointed out, it is at a scale that does not allow features to be accurately located. We find that the map does need to delineate trails and parks to be developed, and does not meet the CP requirement that it include lands that can provide multiple use open space and act as separators between incompatible land uses.
Dawes v. Mason County, Case No. 96-2-0023c (Compliance Order, 3/1/01) at 18.

Our examination of the open space maps show that the map specifically and clearly identify open space areas. These include a 200 foot study area along the railroad and utility lines running between Allyn and Shelton, trails, sites of county parks, streams, where buffers would be required according to the County's critical areas ordinance, utility lines, and railroad lines or rights of way, and generally identify other open spaces such as national parks, state parks, and agricultural and forest lands of long-term commercial significance. Exhibit #s 3360 and 3361.

Petitioner asks us to find that the County violated public participation provisions of the GMA identifying open space corridors pursuant to RCW 36.70A.160.

From our review of the record, it appears that the development of the proposal for the open space corridors among and between Allyn and Shelton was truly “bottoms up”. The discussion of the proposals for open space corridors was open-ended and free-flowing. It appears that the PAC brainstormed alternatives with feedback from the staff and the public at several PAC meetings. While the County conceded that something more than utility ROWs needed to be designated due to the Board’s August 14, 2002 order, it appears that there was no formal staff proposal before the PAC, when this discussion began. Even at the PAC’s first public hearing on the comprehensive plan amendments prepared to comply with this Board’s order, it appears that there was no formal recommendation on the width of the open space corridor along the railroad and utility corridors between Allyn and Shelton. In fact, the PAC spent two meetings trying to determine the intent of RCW 36.70A.160, before they determined what kind of a corridor between Shelton and Allyn was needed, that width of the designated corridor should include six hundred feet on either side of the utility and railroad ROWs, a suggestion that was proposed by Mr. Diehl. The minutes of that meeting refer to a staff recommendation for 300 feet along the railroad corridor. The staff at that meeting did not appear to object to the proposed utility ROWs and additional 600 feet on either side, but qualified that they had just seen the proposal. Exhibit #s 3332, at 13, 15, and 3317, at 8–11.

Our examination of the record demonstrates that the PAC and the staff thoughtfully considered the requirements of RCW 36.70A.160 and struggled to determine what it meant. Together, with members of the public with active participation from Mr. Diehl, the PAC and the staff, discussed whether RCW 36.70A.160 called for open space separation for UGAs, trails connecting UGAs, or for wildlife corridors and concluded that the purpose of this requirement was all of these things. Exhibit #3326, at 9-10.

County Planner Bob Fink described the staff's rationale for an open space corridor between the Hood Canal and Case Inlet for the PAC. Exhibit #3332, at 13, 15.

The rationale for the corridor next to utility ROWs appears in a discussion between the staff and the PAC where the staff described the nature of corridor planning was to establish a width for the corridor at a general level. Actual trail planning would involve more specific examination of each site and each purpose for the area. Mr. Diehl recommended to the PAC that if the County was going to designate the corridor for future planning it should designate one that was ample enough to work around obstacles. The PAC eventually recommended a corridor that included 600 feet on either side of the ROWs as the suggestion of Mr. Diehl. Exhibit #3310.

The BOCC had the opportunity to review the minutes of the PAC meetings and had access to their reasoning as well as the staff's. Exhibit #3349, at 7. The rationale for designating open space corridors is to allow the County to acquire land or work with adjacent property owners on either side of the utility and railroad ROW for the purpose of a trail connecting Allyn and Shelton. The County's comprehensive plan policies also provide a reasonable rationale for this designation (See Chapter III-6, Open Space, Mason County Comprehensive Plan, revised 2003).

We find that Mason County did not violate RCW 36.70A.035, RCW 36.70A.070.140, or RCW 36.70A.020(11) when it adopted and mapped the open space corridors between Allyn and Shelton.

Furthermore, we find that the record on which the final decision is based supports the final decision on the designation and mapping of open space corridors between Allyn and Shelton and demonstrates that the County has shown its work.

From our review of the Petitioner's and County's briefs, the County's comprehensive plan and zoning ordinance, the record in this case, and the goals and requirements of the GMA, we find that the County has complied with this Board's August 19, 2002 Order and the goals and requirements of the GMA in regard to designating open space corridors between Allyn and Shelton.

VI. FINDINGS OF FACT

1. This Board issued a Compliance Order on August 10, 2002 directing Mason County to undertake certain actions to bring the County into compliance with respect to the designation of Limited Areas of More Intensive Rural Development (LAMIRDS) according RCW 36.70A.070(5)(d)(ii) and (iii) and uses allowed in all LAMIRDS.
2. The County adopted Ordinance 09-03 on February 11, 2003.
3. In conjunction with Ordinance 09-03, the County completed a FEIS that evaluates the environmental impacts of the County's 14 Industrial Commercial Industrial Areas, 175 LAMIRDS designated according to RCW 36.70A.070(5)(d)(ii) and (5)(d)(iii), and nine hamlets.
4. The August 10, 2002 Compliance Order required the County to assess the impacts of the uses in (d)(i) LAMIRDS known as hamlets or neighborhood or rural activity centers on the environment and rural character. The FSEIS did appropriately assess the environmental impacts of those LAMIRDS by addressing potential environmental impacts. The FSEIS identified measures to protect the County's rural character including size and height limitations, setbacks, landscaping in setbacks, appropriate floor area ratios, sign regulations, use of special use permits, and by requiring no new isolated small business LAMIRD can be created within one-half mile of these designations.
5. The County designated 175 LAMIRDS according to RCW 36.70A.070(5)(d)(ii) or (iii). All of these LAMIRDS are on lots with small-scale tourist and recreational uses or small-scale businesses or cottage industries in existence as of July 1, 1990. The County chose to designate them all as LAMIRDS rather than to make them non-conforming uses.
6. The County chose to map each of the existing small-scale recreation or tourist uses as (d) (ii) LAMIRDS and individually. The County's choice to map these LAMIRDS individually did not appreciably alter the amount of land or

intensity of development that would be permitted had the County chosen to group the adjacent lots together.

7. The County chose to map the (d)(iii) LAMIRDs individually also. This choice does not increase the size or intensity of the development that would be permitted in(d)(iii) LAMIRDs if all the adjacent lots on which small scale industries were located as of July 1, 1990 were mapped together as a single Type (5)(d)(iii) LAMIRD.

8. The FEIS evaluated three alternatives for nine areas designated as hamlets.

9. 79.1 % of the area on which existing rural isolated uses are located contains small-scale tourist or recreational commercial uses .

10. The County has eliminated the comprehensive plan policy that allows the boundaries of ICIAs to expand by 10%.

11. Under the provision known as Criterion I, the County limits new rezones for all LAMIRDs to 5 per year outside of rural centers and hamlets.

12. Outside of rural centers and hamlets, the County limits new rezones for LAMIRDs to 50 acres a year, but does not include Rural Tourist and Rural Natural Resource Designations in this limitation.

13. The County has determined and recorded how the 175 existing isolated nonresidential uses have been designated as LAMIRDs according to RCW 36.70A.070(d)(ii) or (iii).

14. The County has mapped the 175 newly designated LAMIRDs by drawing the boundaries for each LAMIRD as the lot which contains an existing isolated small scale non-residential use.

15. The County utilizes July 1, 1990 as the date by which a use had to be in existence to be designated as a conforming small-scale isolated nonresidential use in the rural area.

16. RCW 36.70A.070(5)(d)(iv) allows uses established before July 1, 1990 to be considered a conforming use if they otherwise meet the requirements for LAMIRDs.

17. The County requires that any rezone of a small isolated Type (5)(d)(iii)LAMIRD must be at least ½ mile by road from any other LAMIRD or UGA.

18. The County has developed a written record for their strategy to ensure that its designation of LAMIRDS protects rural character.

19. The County protects rural character in its rural commercial zones by applying size and height limitations and floor area ratios, requiring large setbacks from property lines, requiring landscaping in setbacks and regulating signs.⁸

20. The County has a compliant Resource Ordinance that protects critical areas and conserves resource lands.

21. The County has identified and mapped open space corridors between Allyn and Shelton.

VII. CONCLUSIONS OF LAW

Mason County's enactment of Ordinance 09-03 cures the noncompliance found by the Board in its August 14, 2002 compliance order.

VIII. ORDER

Based upon review of the Board's August 14, 2000 FDO, Mason County Ordinance 09-03, the comments of the parties at the compliance hearing, the County and Petitioner Briefs, and considering Findings of Fact 1-21 and Conclusion of Law, *supra*, the Board finds that Mason County has removed substantial interference with the requirements of the GMA as set forth in the aforementioned Board Orders and finds actions that Mason County took in response to the Board's order comply with the Board's order and the GMA.

⁸ Originally cited as "The County protects rural character in its rural commercial zones by applying size and height limitations and floor area ratios, requiring large setbacks from property lines, requiring landscaping in setbacks, regulating signs environmental protections and other regulations upon the future development in LAMIRDS limiting the size and height of development."

The Board finds Sections 102.043, and 104.320, 330, and .340 of the MCC and the issues in Case No. 95-2-0023c where compliance had not been found are now in compliance with RCW 36.70A.070(5)(c) and (d), RCW 36.70A.020(1) and (2), and RCW 43.31C. We also find that the designation of the open-space corridors between Allyn and Shelton comply with the GMA.

This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

So ORDERED this 12th day of November 2003.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Holly Gadbow, Board Member

Margery Hite, Board Member

Nan Henriksen, Board Member

APPENDIX A – PROCEDURAL HISTORY

On August 14, 2002, the Western Washington Growth Management Hearings Board found that the failure to assess the environmental impacts through a Final Environmental Impact Statement (FEIS) of 194 new Limited Areas of More Intense Rural Development (LAMIRD) and 14 previously designated LAMIRDs that had not had previous environmental assessment, noncompliant, substantially interfered with the goals of the Growth Management Act (GMA), and were invalid. The Board also found that because Criterion I (Section 1.05.080(I) of the Mason County Code (MCC)) for evaluating rezones did not apply to Rural Neighborhood Center (RNC) and Rural Tourist (RT), development in these areas could escape the restrictions on area or use limited by logical outer boundaries. Because RTs and RNCs comprise such a large percentage of the 194 new LAMIRDs, the Board found Criterion I noncompliant and invalid. The Board also found that the failure to map the 194 new LAMIRDS and to designate an open space corridor between the UGAs of Allyn and Shelton to be noncompliant. The Board issued the following order for the County to address in 180 days:

1. Through an FSEIS, assess probable adverse environmental impacts and cumulative effects of the creation of 194 new LAMIRDs, 13 old and previously un-assessed LAMIRDs, including consideration of the effect of the policy allowing ICIA expansion of up to ten percent of the 1990 boundary. Compliance and Invalidity Issue
2. The County must map the new LAMIRDs and determine which of the subsections of RCW 36.70A.070 (5) (d) apply to each. Invalidity Issue
3. The County must identify an open space corridor between the UGAs of Allyn and Shelton under the requirements of 36.70A.160. Compliance Issue

4. The County must demonstrate that its restrictions on rezones in criterion I effectively reduce sprawl, extend to RT and RNR and extend to the 194 new LAMIRDs. Invalidation Issue

The Conclusions of Law in the August 14, 2002 decision in this case stated that until mapping of the new LAMIRDs is complete and compliance with the provisions of RCW 36.70A.070(5)(a-c), and (d) (3) (iii) and (iv) are met, Sections .104.320, 330, .340, and .043 fail to comply with the Act and substantially interfere with Goals 1 and 2. These sections of the ordinance are invalid until the FSEIS is completed and reviewed regarding cumulative effects of LAMIRDs unassessed under SEPA.

On November 7, 2002 the Board received a progress report from Mason County on their work for meeting the compliance order. On January 29, 2003, the Board received another progress report that showed that the County was on track to adopt regulations intended to comply with the compliance order in mid February. On February 11, 2003, the Board received a report announcing that the County Board of Commissioners had adopted development regulations intended to comply with the compliance order, and a request for an expedited hearing. On February 18, the Board received a proposed prehearing order from the County. On February 21, 2003, the Presiding Officer issued a prehearing order that included the schedule for submitting briefs. On February 24, 2003, the Board received a motion to dismiss the McDonald Land Company as an Intervenor. On March 5, 2003, Petitioner Diehl filed a motion to supplement the record with Theresa Kirkpatrick's letter to the editor and the Declaration of Warren Dawes. On March 10, 2003 the Board received a response from the County objecting to Mr. Diehl's motion to supplement the record. On March 11, 2003, the Board received Mr. Diehl's reply to the County's objection. On April 2, 2003, the Presiding Officer issued an order denying Mr. Diehl's Motion to Supplement the Record. On April 21, 2003 the Board received a motion from Sarah

Smyth McIntosh to participate in the compliance hearing. On April 28, 2003, Sarah Smyth McIntosh submitted a Reply Brief. The Board did not accept the Reply Brief. On May 2, 2003 the Board received a response from Mr. Diehl objecting to Ms. Smyth-McIntosh's participating in the compliance hearing. On May 6, 2003, the PO issued an order to not allow Ms. Smyth McIntosh to participate in the hearing because Ms. Smyth had not met the briefing schedule included in the February 21, 2003 Order. A Compliance Hearing was held on May 7, 2003 at the Mason County Veterans Hall, 210 West Franklin Street, Shelton, Washington, that lasted approximately four hours. All three Board members attended. The County was represented by Deputy Prosecutor Darren Nienaber, who was assisted by Senior Planner Bob Fink and Allan Borden. Mr. John Diehl represented himself.

At the Compliance Hearing, the Board accepted *Designating Your Community's Open Space, "A Parks, Open Space, and Recreation Planning Guide"* (June, 1993) as an exhibit as Exhibit #3350. Mr. Nienaber also stated that the County has not adopted maps of the Twanoh – Grapeview Corridor. The Board was planning to adopt these soon. The Board allowed the County to submit the maps, ordinance and minutes of the meeting adopting this corridor subsequent to the hearing. The County did this. They are Index Nos. 3360 to 3363.

On June 6, 2003, the Board issued an order lifting invalidity from the regulations the Board had found invalid in its August 14, 2002 order. We found with the enactment of these measures that there was no longer a concern that rights would vest in the challenged provisions that would prevent proper planning in Mason County's rural areas.