

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2 DRY CREEK COALITION and
3 FUTUREWISE,

4
5 Petitioners,

6 v.

7
8 CLALLAM COUNTY,

9
10 Respondent.

Case No. 07-2-0018c

**ORDER ON DRY CREEK COALITION'S
MOTION FOR RECONSIDERATION AND
MOTION TO AMEND SCHEDULE**

11
12 THIS Matter comes before the Board upon Petitioner Dry Creek Coalition's ("DCC") Motion
13 for Reconsideration of the Board's April 23, 2008 Final Decision and Order, and Motion to
14 Amend the Compliance Schedule set forth in that order.¹ Clallam County opposes the
15 motion.²
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17
18 **DISCUSSION and ANALYSIS**

19 A motion for reconsideration of a final decision of a Board is governed by WAC 242-02-832.
20 It provides, at WAC 242-02-832(2), that a motion for reconsideration must be based on at
21 least one of the following grounds:

- 22 (a) Errors of procedure or misinterpretation of fact or law, material to the party seeking
23 reconsideration;
24 (b) Irregularity in the hearing before the board by which such party was prevented from
25 having a fair hearing; or
26 (c) Clerical mistakes in the final decision and order.
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30 ¹ Motion for Reconsideration and Motion to Amend Schedule, filed May 5, 2008 (Motion for Reconsideration).

31 ² On May 8, 2008 Clallam County filed a Motion for Additional Time to Respond to Dry Creek's Motions. Dry
32 Creek, by e-mail dated May 9, 2008, has stipulated to the granting of the additional time. The County filed its
Response to DCC's Motion for Reconsideration on May 19, 2008 (County Response).

1 Motions for Reconsideration will be denied when they present no new arguments that were
2 not previously considered in the original decision.³

3
4 In addition to reconsideration, DCC also seeks to amend the compliance schedule set forth
5 in the April 23, 2008 Final Decision and Order (FDO). DCC submits this motion based on
6 WAC 242-02-522 which provides for the powers of the Presiding Officer.

7
8 With its motions, DCC seeks three things: (1) amendment of the Compliance Schedule,
9 (2), correction of clerical errors, and (3) reconsideration of the Board's holding in regards to
10 the Laird's LAMIRD RLC and Laird's LAMIRD RNC. The Board will address each of these
11 in turn.
12

13
14 **A. Amendment of the Compliance Schedule**

15 DCC requests the Board modify the compliance schedule set out in the April 23, 2008 FDO.
16 DCC notes that the current compliance schedule requires the County to file its compliance
17 report on October 30, 2008, with Petitioner's objections to be filed by November 3, 2008.
18 DCC contends the current schedule does not provide for adequate preparation time for a
19 response to the County's compliance report, including obtaining necessary documents and
20 preparing objections or related motions, and seeks a modification to permit 34 days for the
21 filing of objections.⁴ DCC also asserts that the compliance schedule fails to address
22 deadlines for "additions to the index, motions, motion responses and replies and a reply re:
23 Petitioner's Objections" and sets forth a proposed schedule for the Board's consideration.⁵
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25

26 The County objects to DCC's proposal for a month-long extension of the window for
27 Petitioners to object to a compliance report. The County argues that the request is based
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30 _____
31 ³ *CCNRC v. Clark County*, WWGMHB No. 96-2-0017 (RO 1/21/98).

32 ⁴ Motion for Reconsideration, at 1-2 (citing *ICAN v. Jefferson County*, Case NO. 03-2-0010c to support an
assertion that Public Disclosure Requests may necessitate additional time)

⁵ Motion for Reconsideration, at 2.

1 on speculation and is both premature and unwarranted based on the grounds presented in
2 this matter.⁶

3
4 **Board Discussion**

5
6 In the April 23, 2008 FDO, the Board set forth a compliance schedule which required the
7 County to file its compliance report by October 30, 2008 and file any objections to this report
8 by November 3, 2008. It is customary for the Board to allot a week to ten days between the
9 compliance deadline and the compliance report and filing of the Index. Depending on the
10 complexity and the amount of remand work, the date that the Petitioner must file its
11 objections varies. Generally, the Board sets the deadline for Petitioner's objection two
12 weeks from the filing of the compliance report. In this case, the Board inadvertently
13 allotted only four days, which is clearly not sufficient. However, with its request, DCC seeks
14 not a only a correction of the schedule to reflect the Board's customary practice, but also
15 over a month to respond to the County's compliance report. It bases its request on the
16 contention that it may have difficulty in obtaining documents from the County based on the
17 experiences of other petitioners in other counties. Such speculation and conjecture
18 provides no justification for DCC's request. **The schedule will be amended by this Order**
19 **to allot additional time for a response.**
20
21

22 Further, there is no basis for DCC's objection that the compliance schedule fails to address
23 deadlines for additions to the index, motions, motion responses and replies and a reply re:
24 Petitioner's Objections. The schedule in a compliance case is different from the schedule
25 set out in a Pre-Hearing Order in advance of the Hearing on the Merits. It has been the
26 Western Board's longstanding practice to set dates only for compliance, for the filing of the
27 compliance report and Index, for objections to a finding of compliance, for response to
28 objections, and for the compliance hearing. If DCC finds the need to file a motion, it may do
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32 ⁶ County's Response, at 11
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1 so in accordance with the Board rules for bringing motions. **DCC's request to amend the**
2 **schedule to add deadlines for additional filings, such as motions and responses, is**
3 **denied.**

4
5 **Conclusion:** The Board finds and concludes that the Compliance Schedule set forth in the
6 April 23, 2008 FDO did not adhere to the Board's customary time period for responsive
7 filings in regards to a compliance report. However, the Board will not amend the schedule
8 to include provisions for additional filings and briefings, which is not its customary practice
9 **In this regard, DCC's Motion to Amend the Compliance Schedule is GRANTED, in**
10 **part, and DENIED, in part.**

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12
13 **B. Clerical or Scriveners' Errors**

14 Within its Motion, DCC identifies several clerical errors in the FDO it wishes corrected.⁷

15
16 The County does not object outright to the corrections suggested by DCC, with the
17 exception of one. The County argues DCC, with a request to change language from "by
18 urban growth" to "by more intense rural development," is not correcting language but
19 substituting language, with DCC providing no explanation in support of this change.⁸

20
21 **Board Discussion**

22 DCC notes several clerical errors in the FDO. Of these errors, none are substantive.
23 However, the Board will address the suggested corrections needing clarification.

24
25 DCC requests the phrase "by urban growth" on Page 21, Lines 20-21 should be changed to
26 read "by more intensive rural development." This is the one suggestion Clallam County
27 objects to, asserting that DCC has provided no explanation in support of the suggested
28 change. The sentence DCC points to reads:

29
30
31 _____
32 ⁷ Motion for Reconsideration, at 3-4.

⁸ County Response, at 11.

1 Adopting pre-existing zoning to establish the LAMIRD would in many if not
2 most cases bring within the LOB areas that are in no way characterized by
3 urban growth.

4 The Board notes that this section of the FDO is discussing Limited Areas of More Intense
5 Rural Development (LAMIRDs) and the appropriate terminology for the type of development
6 contained within these areas is that suggested by DCC. Therefore, the sentence should
7 have read:
8

9
10 Adopting pre-existing zoning to establish the LAMIRD would in many, if not
11 most cases, bring within the LOB areas that are in no way characterized by
12 **more intensive rural development**. (Change showed in **bold**).

13 The Board notes the error and the modification will be recognized by this Order.

14
15 DCC suggests that the word “noncompliance” on Page 22, Line 2 should in fact be
16 “compliance,” but it has misread the Board’s order. In this portion of the FDO, the Board
17 held that the County’s use of pre-existing zoning to establish the logical outer boundary of a
18 LAMIRD does not mean the LAMIRD is compliant.

19
20 DCC points out that the quote from CTED, on Page 77, Lines 13-16, is not exactly correct.
21 The actual language is:
22

23
24 The main economic threshold then becomes “what burden is the homeowner
25 willing to pay?” Sewer providers also bear additional costs for treatment with
26 lower densities.

27 The language in the FDO inadvertently provided this quotation as:

28 The main economic threshold **is what is the homeowner** then becomes
29 “what burden is the homeowner willing to pay ... costs for treatment **at** lower
30 densities. (Incorrect language shown in **bold**)
31
32

1 DCC does not provide any reason why this misquote would have a substantive effect on the
2 meaning of the FDO, thus, the Board notes the error and the modification will be noted by
3 this Order.
4

5 **Conclusion:** As to the clerical errors noted by DCC, the Board finds and concludes most
6 are not substantial but, as noted *supra*, this Order on Reconsideration serves to modify
7 those errors which required clarification or correction. **Therefore, the Board will note all**
8 **errors but finds there is no need to amend and reissue the April 23, 2008 FDO to**
9 **reflect these errors.**
10

11 **C. Motion for Reconsideration**
12

13 Laird's LAMIRD RLC
14

15 DCC argues that the Board erred with regard to Laird's LAMIRD RLC designation by limiting
16 its finding of non-compliance to only the conditional use provisions and not including the
17 permitted uses, which DCC contends are not consistent with the development existing in
18 1990.⁹
19

20 DCC asserts the Board also erred when it found DCC failed to establish that the wood
21 product manufacturing plan was not consistent with the character of the existing area and
22 when it found that the a commercial timber-based use appear consistent with the use
23 existing in 1990.¹⁰ DCC contends this wood manufacturing facility produces pollution and
24 noise at levels not comparable to 1990 levels and therefore, is inconsistent with such
25 uses.¹¹
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31 ⁹ Motion for Reconsideration, at 4-5.

32 ¹⁰ Motion for Reconsideration, at 6-7.

¹¹ Motion for Reconsideration, at 8.

1 DCC also argues the Board erred with regard to Laird's LAMIRD RNC designations. As to
2 Laird's LAMIRD RNC East (Laird's East), DCC contends the Board erred when it did not find
3 noncompliance for the allowed uses in the Laird's East, alleging that since no use existed in
4 1990 then no new use may be allowed.¹²
5

6 For Laird's LAMIRD RNC West (Laird's West), DCC argues the Board erred because it did
7 not find noncompliance for more intensive residential uses and commercial uses.¹³ DCC
8 points to arguments and exhibits presented in its original briefing to support the assertion
9 that the Comprehensive Plan and Zoning Code are permitting "excessively high residential
10 densities" and, as it did with the Laird's LAMIRD RLC, contends commercial uses are
11 permitted at a more intensive scale, use, size, and intensity than in 1990.¹⁴
12

13
14 In addition, for Laird's West, DCC request that despite the Board's holding the LAMIRD was
15 oversized, the Board should reconsider whether the more intensive commercial
16 development in this LAMIRD is adequately minimized and contained within the boundaries
17 at the four roads identified.¹⁵
18

19 In support of these assertions, DCC reiterates the arguments it presented in the original
20 briefing as well as exhibits presented with that briefing.
21

22 In summary, the Board concludes DCC requests the following:
23

- 24 1. The Board clarify its order to make clear that the reference to "size" is to allowed
25 "building size" (area and height) for individual buildings so that the building itself is
26 not significantly larger than the 1990 maximum building size in the LAMIRD. DCC
27 seeks this same application in regard to total building size in a project.
28

29
30 ¹² Motion for Reconsideration, at 9.

31 ¹³ Motion for Reconsideration, at 9.

32 ¹⁴ Motion for Reconsideration, at 10-11.

¹⁵ Motion for Reconsideration, at 11.

- 1 2. The Board find the Comprehensive Plan policies and Development Regulations
- 2 which provide for “inappropriate allowed” uses within the Laird’s LAMIRDs non-
- 3 compliant.
- 4 3. The Board find the wood manufacturing plant within the Laird’s LAMIRD RLC is not
- 5 consistent with the character of the existing area.
- 6
- 7 4. The Board reconsider the sizing of Laird’s West.

8
9 In response, the County asserts that DCC’s motion introduces no new argument but is
10 merely a re-argument of a decision with which it disagrees.¹⁶ In particular the County notes
11 that, with regard to Laird’s LAMIRD RLC, DCC focuses solely on building size while ignoring
12 the actual intensity of the pre-existing industrial and commercial use in determining the
13 character of the area.¹⁷ The County also argues, as to this area, DCC’s assertions based
14 on the noise and pollution of the existing wood manufacturing use have failed to establish a
15 baseline for purposes of comparison with noise and pollution associated with the previous
16 industrial use.¹⁸

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18
19 With regard to Laird’s East, as with the other portions of its motion, the County asserts DCC
20 is merely repeating arguments from its prior briefing and now contends the “board didn’t go
21 far enough.”¹⁹ The County reasserts its position that there were existing commercial
22 activities on the property in 1990.²⁰

23
24 As to Laird’s West, the County notes that this area was designated RNC based on pre-
25 existing commercial uses but that it also contained residential uses.²¹ The County argues
26 that, while DCC seeks to segregate and limit residential and commercial uses, the GMA
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29 ¹⁶ County Response, at 2-4.
30 ¹⁷ County Response, at 5.
31 ¹⁸ County Response, at 7.
32 ¹⁹ County Response, at 9.
²⁰ County Response at 9.
²¹ County Response, at 10.
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1 recognizes mixed-use LAMIRDs. Thus, according to the County, there is no reason to
2 remove the residential property which was part of the 1990 built environment from this
3 LAMIRD.²²

4
5 In addition, the County notes DCC relies on building size but fails to demonstrate why the
6 use and size limitations imposed by the County are inconsistent with the character of the
7 existing area.²³

8
9 **Board Discussion**

10 **We will consider the Petitioner's request for reconsideration.**

11 Laird's LAMIRD RLC

12 The major thrust of DCC's argument appears to be that the Board erred in failing to find
13 allowed uses non-compliant, in addition to conditional uses, in this LAMIRD because these
14 allowed uses represented a substantial increase in the intensity of use, pointing specifically
15 to building size. DCC argues that a limitation is necessary because the GMA requires
16 consistency and RCW 36.70A.070 (5)(d)(i)(C) prohibits an increase in the "intensity" of use
17 over the 1990 levels. The Board addressed this in the FDO, at pages 16-19, concluding
18 that where the GMA requires that any development or redevelopment in terms of "building
19 size, scale use, or intensity shall be consistent with the character of the existing areas" this
20 language does not limit the LAMIRD to only those "uses" that were in existence in 1990.
21 "Uses" is one of several descriptors the statute uses to define the character of the area.
22 We agree with the County that the uses that were allowed in the Laird's LAMIRDs make
23 them mixed used LAMIRDs that allow for residential, commercial, and industrial uses.
24 RCW 36.70A.070 (5)(d)(i) states:

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29 Limited areas of more intensive rural development. Subject to the
30 requirements of this subsection and except as otherwise specifically provided

31 ²² County Response, at 10.

32 ²³ County Response, at 10.

1 in this subsection (5)(d), the rural element may allow for limited areas of more
2 intensive rural development, including necessary public facilities and public
3 services to serve the limited area as follows: (i) Rural development consisting
4 of the infill, development, or redevelopment of existing commercial, industrial,
5 residential, or mixed-use areas, whether characterized as shoreline
6 development, villages, hamlets, rural activity centers, or crossroads
7 developments.

8 With language like “infill” and “redevelopment” – the GMA acknowledges that LAMIRDs,
9 although they are to be contained and the uses consistent with the existing character, were
10 not frozen in time.

11 As the County notes, the statute expressly allows development, redevelopment, and change
12 in use, even from vacant land, provided that the use is consistent with the character of the
13 existing area.²⁴

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15
16 Thus, while DCC focuses on the claim that the log storage yard did not have any
17 commercial/industrial buildings, and the largest building in the RLC area in 1990 was a
18 single-story 1,562 square foot house, this ignores the *nature* of the log storage yard as an
19 existing commercial/industrial use related to the timber industry.²⁵ The record contains a
20 February 1, 2005 letter to the County’s code enforcement officer complaining about the
21 hours of operation and the noise coming from the mill at night. The letter says that DCC
22 understands the nature of the operation and its objective is not to shut down the mill.²⁶

23 Other evidence in the record show DCC efforts to show violations of noise and pollution
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30 _____
²⁴ County’s Response at 5.

31 ²⁵ The Board further notes that there was no evidence of the level of intensity of the log storage yard in 1990 to
32 serve as a baseline for any alleged increase in “intensity” of use.

²⁶ Exhibit 35 at 48 and 49.

1 standards.²⁷ However, nothing in the record demonstrates that the current noise levels are
2 inconsistent with those that existed in 1990.²⁸

3
4 Although it is true that the Board stated that “the uses must be similar to the use, scale, size,
5 **and** intensity as the uses that existed as of July 1, 1990”²⁹ it would have been more
6 appropriate, and consistent with RCW 36.70A.070 (5)(d)(i)(C), for the Board to have said
7 “the uses must be similar to the use, scale, size, **or** intensity as the uses that existed as of
8 July 1, 1990.” The manner in which these factors combine help determine whether the
9 uses allowed within the LAMIRD are consistent with the character of the area.
10

11
12 Petitioner requests the Board rule on just one of these factors, building size, and define it to
13 mean total building size. However, building size is but one characteristic to consider in
14 assessing the character of the existing area, consideration must also be given to use, scale,
15 or intensity. Total building size speaks more to “scale”.

16
17 Here, Petitioner seeks to have the character of residential uses determine the standards for
18 the wood manufacturing plant. In contrast, the County points out that while the log yard
19 did not contain buildings, the aerial photo shows piles of logs much higher than the existing
20 residence.³⁰ The Board does not find it inconsistent with RCW 36.70A.070(5)(d)(i) or RCW
21 36.70A.070 (5)(d)(i)(C) that the log yard re-developed with buildings or was not in scale with
22 the existing residential use. However, the Board notes that wood manufacturing plants are
23 an allowed use in the RLC with no limits on building size. While the Board has no
24 compelling evidence to determine that the wood manufacturing plant is not consistent with
25 the use, scale, size, or intensity of the 1990 log storage yard, the County must have
26 measures in place to ensure that the size of allowed uses in terms of size, scale, use or
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29 ²⁷ Exhibit 35 at 50 and 60.

30 ²⁸ The Board further notes that there was no evidence of the level of intensity of the log storage yard in 1990 to
31 serve as a baseline for any alleged increase in “intensity” of use.

32 ²⁹ April 23, 2008 FDO, at 19.

³⁰ Clallam County’s Response at 6. Clallam County’s Draft LAMIRD Report, Laird’s LAMIRD.

1 intensity is consistent with the character of the area in 1990 to keep wood manufacturing
2 plants in the character of the existing area.

3
4 Other Permitted Commercial and Industrial Uses in Laird's LAMIRDS East and West RNCs

5
6 Petitioner also reiterates that the other permitted uses allowed in RLC and RNC zones
7 should not be permitted because they are not consistent with existing uses in 1990,
8 although Petitioner does object the health clinic in the RNC zone in Laird's LAMIRD West.
9 Petitioner also objected to the scale and size of the other commercial uses in the area. The
10 County says that Petitioner just repeats his arguments concerning use, size, and intensity.
11 As the County points out Laird's LAMIRD East and West are mixed use LAMIRDS, and
12 contained residential and commercial uses, while Laird's LAMIRD East contained
13 residential and commercial uses. As we noted *supra*, while LAMIRDS must be contained
14 and the uses consistent with the existing character of the area, redevelopment is not
15 prohibited. The commercial uses to which Petitioner objects, are not dissimilar to the health
16 clinic, which it finds appropriate or a grocery store or tavern, in terms of the uses'
17 appropriateness for a rural area. DCC's argument in its briefing stated that the allowed uses
18 would be more intensive, but failed to support this assertion with anything more than an
19 argument that they are different than those uses existing in 1990. Although these uses may
20 be different, the Board wonders how a retail store is more intensive than timber harvesting
21 or how is a veterinarian clinic more intensive than a tavern. Do they generate more traffic
22 or noise? Do they demand more resources from the community? What DCC does assert is
23 that these uses would conflict with the rural character of the area. But, pursuant to RCW
24 36.70A.070(5)(d)(i)(A), a LAMIRD is not required to assure visual compatibility with the
25 surrounding rural areas. What the redevelopment of a LAMIRD is required to do is to be
26 consistent with the character of the LAMIRD itself.
27
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29

30 The Board states, *supra*, that "use" is just one of four characteristics to be evaluated with
31 the primary evaluation based on maintaining the "character of the existing areas." In order
32

1 to adequately evaluate the “existing character”, building size, scale, or intensity should also
2 be considered. With reconsideration, DCC now raises an “intensity” argument based not
3 on the “use” being permitting but on building size or square footage, contending that the
4 CCC should provide for limitations on size to ensure that the uses conform to the LAMIRD’s
5 character. In this regard DCC targets the size and scale of the uses existing in 1990 and
6 points out that Clallam County, with CCC 33.15.050 and CCC 33.15.060, fails to limit the
7 square footage or height of development/re-development so as to ensure consistency with
8 the character of the LAMIRD. In Laird’s LAMIRD East and West, the largest commercial
9 building existing in 1990 was a one-story grocery store of 1762 square feet and the largest
10 building currently is a health clinic of 2062 square feet.³¹ Both of the code provisions
11 relating these LAMIRDs provide for minimum lot size, width, and setbacks and bulk design
12 standards such as square footage and height. Height limits within the RLC zone, with
13 some exception for compliance with State and Federal pollution control regulations, is 50
14 feet. Height for the RNC zone is set at 40 feet. Building square footage for the RLC zone
15 is limited to no greater than 10,000 square feet but only limited for neighborhood-scale
16 grocery stores, retail uses, and professional offices; it is silent as to all other uses. The
17 RNC mirrors the 10,000 square foot limitation, but adds “other commercial and industrial
18 land uses” to its listing. In effect, the RNC limits retail, grocery, professional office,
19 commercial, and industrial uses to no greater than 10,000 square feet; it is silent only as for
20 residential.
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24
25 The Board agrees, in part, with DCC’s assertion. Although the Board does not agree that a
26 “use” must be the same, specific use as existed in 1990, the “use” should be of the same
27 general type. This interpretation is supported by the GMA’s language in regard to “re-
28 development” and “change in use.” In this regard, the allowed uses are, on their face,
29 consistent with the LAMIRD’s 1990 character. The Board concurs with DCC in that the
30

31
32 ³¹ Exhibit Numbers 35-27, 28, and 41.

1 GMA requires more; it requires consistency with the character of the LAMIRD based on
2 consideration of size, scale, use or intensity. Without regulations that address these
3 components, there are no assurances that these elemental characteristics of the LAMIRD
4 will remain. As noted *supra*, a LAMIRD is not frozen in time but may develop and re-
5 develop over time within the limits of RCW 36.70A.070(5)(d). However, the existing
6 character of the area should remain generally the same. To permit a structure of 10,000
7 square feet and 50 feet tall in an area which historically has contained single-story
8 commercial buildings of 1,000 to 2,000 square feet, does not result in consistency. Also, a
9 LAMIRD is not supposed to become a mini UGA or an economic development node. Their
10 purpose is to recognize existing more intense rural growth and contain it.
11
12

13 The Board notes that the County applies the RNC designation to a broad range of LAMIRDs
14 from Laird's LAMIRDs, mixed use LAMIRDs, to more tourist orientated LAMIRDs like Lake
15 Crescent. All are subject to the same conditions including limitations including size, height,
16 and lot size. While counties do not need a separate zoning designation for every LAMIRD,
17 the designations and code provisions that they apply need to be consistent with the existing
18 character of the area. Here, the RLC and RNC limitations for existing commercial uses do
19 not require consistency with the character of the existing area and do not comply with RCW
20 36.70A.070 (5)(d)(i)(C) and RCW 36.70A.020(2).
21
22

23 Lastly, the Board notes that the Clallam County Code (CCC) provides for a maximum
24 residential density of one du/acre and a minimum lot size for all uses of one acre. DCC
25 asserts the County is permitting more intensive residential development in violation of RCW
26 36.70A.070(5) and .020(2). Petitioner argues that the County's comprehensive plan and
27 development code allow for one unit per half acre and one dwelling unit per acre. However,
28 as noted *supra*, the GMA permits development of a LAMIRD including infill development.
29 Petitioner says that DCC's argument mirrors its one for non-residential uses – essentially,
30 the LAMIRD is frozen in time and all subsequent activity must conform exactly. In these
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1 mixed use LAMIRDs, designated pursuant RCW 36.70A.070(5)(d)(i), if the LAMIRD is sized
2 appropriately and commercial and business uses are allowed at the appropriate scale and
3 size, the Board does not find that one unit per acre density for residential use is clearly
4 erroneous.
5

6
7
8 DCC's Motion for Reconsideration regarding Laird's LAMIRD's East and West are
9 GRANTED in part and DENIED in part.

10
11 The Board will add the following Findings of Fact to its April 23, 2008 Final Decision and
12 Order:

13 Additional Findings of Fact (Not Related to Invalidity)

14 54. In Laird's LAMIRD East and West, the largest commercial building existing in 1990 was
15 a one story grocery store of 1762 square feet and the largest building currently is a health
16 clinic of 2062 square feet.
17

18 55. Height limits within the RLC zone, with some exception for compliance with State and
19 Federal pollution control regulations, is 50 feet. Height for the RNC zone is set at 40 feet.

20 56. Building square footage for the RLC zone (CCC 33.15.060) is limited to no greater than
21 10,000 square feet but only limited for neighborhood-scale grocery stores, retail uses, and
22 professional offices; it is silent as to all other uses. The RNC (CCC 33.15.050) mirrors the
23 10,000 square foot limitation, but adds "other commercial and industrial land uses" to its
24 listing.
25

26
27 The additional Conclusions of Law are added to the April 23, 2008 Final Decision and
28 Order:

29 GG. The size and height limitations for neighborhood scale grocery stores, retail uses,
30 professional offices, and other commercial and industrial uses (CCC 33.15.050 (9) and (10))
31 do not comply with RCW 36.70A. 070(5)(d)(i)(C) and RCW 36.70A.020(2). While the County
32

1 is not required to establish height limitations or size limitations based on the exact maximum
2 height or square footage of uses existing in 1990, the County must have measures in place
3 to ensure that the size of allowed uses in terms of size, scale, use or intensity is consistent
4 with the character of the area in 1990.

5 HH. The limitations for neighborhood scale grocery stores, retail uses, professional offices
6 (CCC 33.15.060 (8)(a) and (9), and the lack of limitations on size and height limitations for
7 other commercial uses in the RLC, except for wood manufacturing plants, do not ensure
8 consistency with the 1990 existing character of the Laird's LAMIRD and do not comply with
9 RCW 36.70A.070(5)(d)(i)(C) and RCW 36.70A.020(2). While the County is not required to
10 establish height limitations or size limitations based on the exact maximum height or square
11 footage of uses existing in 1990, the County must have measures in place to ensure that
12 the size of allowed uses in terms of size, scale, use or intensity is consistent with the
13 character of the area in 1990.
14

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16
17 Sizing of LAIRD's LAMIRD West

18 In the Motion for Reconsideration, DCC noted that the Board agreed Laird's West was
19 oversized and concedes that the four roads could be used as LOBs. However, DCC still
20 challenges the sizing of the LAMIRD and bases an evaluation of the LOB on the word
21 "predominant," asserting the inclusion of the Parcel 11 is "outfill" and creates a LAMIRD
22 which is not predominantly characterized by intensive commercial development.
23

24 With its FDO, the Board found that the Laird's West LAMIRD did not comply with the
25 designation criteria set forth in the GMA (see Page 37 and Page 101, Conclusion of Law
26 M). The Board did not establish the LOB for this LAMIRD, rather that is at the discretion of
27 Clallam County subject to the requirements set forth in the GMA, and clarified by the Board
28 in this matter, in regards to the designation of LAMIRDs. The Board notes the purpose of
29 the LOB but also notes that the GMA specifically authorizes the inclusion of land which may
30 not necessarily meet the definition of the "built environment" in order to address physical
31
32

1 boundaries, including roads, and to prevent abnormally irregular boundaries so as to
2 contain development with a clearly delineated boundary. The Board has also held that large
3 areas of outfill cannot be added to reach roads or other geographic features. Because of
4 the Board's ruling in the FDO, the decision of where that LOB is to be located has yet to be
5 determined; therefore, DCC's argument as to the exclusion of Parcel 11 is premature. In
6 this regard, DCC's request for the Board to reconsider its conclusion in regard to the Laird's
7 West LAMIRD is not warranted.
8

9
10 **DCC's Motion for Reconsideration in regard to LOB for the Lairds LAMIRD RNC –**
11 **West is DENIED.**
12

13 **ORDER**

14
15 Having reviewed Petitioner DCC's Motions for Reconsideration and to Amend Schedule, the
16 County's Response, and the relevant provisions of the GMA and the Board's Rules of
17 Practice and Procedure, the Board finds that DCC has failed in part and succeeded in part
18 to provide a basis either in error of fact or in error of law that compels further reconsideration
19 of the Final Decision and Order. **Therefore, for the reasons set forth above, DCC's**
20 **Motion for Reconsideration and Motion to Amend Schedule are hereby DENIED, in**
21 **part, and GRANTED in part as follows:**
22

- 23
- 24 1. The Board inadvertently allotted only four days from the date of the filing of the
25 compliance report for objections to a finding of compliance, and this is clearly not
26 sufficient. The schedule will be amended by this order to allot the customary time of ten
27 days for a response.
 - 28 2. The Board finds clerical errors were not substantive but, as noted *supra*, this Order
29 serves to modify those errors as necessary. Due to the fact that these errors are not
30 substantive, the Board will not issue a corrected FDO in this matter.
31
32

1 3. The Board will add the following findings of fact and conclusions of law to its April
2 23,2008 Final Decision and Order:

3 Additional Findings of Fact (Not Related to Invalidity)

4 54. In Laird's LAMIRD East and West, the largest commercial building existing
5 in 1990 was a one story grocery store of 1762 square feet and the largest
6 building currently is a health clinic of 2062 square feet.

7 55. Height limits within the RLC zone, with some exception for compliance
8 with State and Federal pollution control regulations, is 50 feet. Height for the
9 RNC zone is set at 40 feet.

10 56. Building square footage for the RLC zone (CCC 33.15.060) is limited to
11 no greater than 10,000 square feet but only limited for neighborhood-scale
12 grocery stores, retail uses, and professional offices; it is silent as to all other
13 uses. The RNC (CCC 33.15.050) mirrors the 10,000 square foot limitation,
14 but adds "other commercial and industrial land uses" to its listing.

15 4. The additional Conclusions of Law are added to the April 23, 2008 Final Decision and
16 Order:

17 GG. The size and height limitations for neighborhood scale grocery stores,
18 retail uses, professional offices, and other commercial and industrial uses
19 (CCC 33.15.050 (9) and (10)) do not comply with RCW 36.70A.070 (5)(d)(i)
20 (C) and RCW 36.70A.020(2). While the County is not required to establish
21 height limitation or size limitations based on the exact maximum height or
22 square footage of uses existing in 1990, the County must have measures in
23 place to ensure that the size of allowed uses in terms of size, scale, use or
24 intensity is consistent with the character of the area in 1990 to comply with
25 RCW 36.70070 (5)(d)(i)(C) and RCW 36.70A.020(2).

26 HH. The limitations for neighborhood scale grocery stores, retail uses,
27 professional offices (CCC 33.15.060 (8)(a) and (9) , and the lack of limitations
28 on size and height limitations for other commercial uses in the RLC, except
29 for wood manufacturing plants, do not ensure consistency with the 1990
30 existing character of the Laird's LAMIRD and do not comply with RCW
31 36.70A.070 (5)(d)(i)(C) and RCW 36.70A.020(2)

32 While the County is not required to establish height limitation or size
limitations based on the exact maximum height or square footage of uses
existing in 1990, the County must have measures in place to ensure that the
size of allowed uses in terms of size, scale, use or intensity is consistent with
the character of the area in 1990 to comply with RCW 36.70070 (5)(d)(i)(C)
and RCW 36.70A.020(2).

1 A revised compliance schedule is set forth below:

Item	Date Due
Compliance Due on identified areas of noncompliance	October 23, 2008
Compliance Report and Index to Compliance Record	October 30, 2008
Objections to a Finding of Compliance	November 13, 2008
Response to Objections	December 1, 2008
Compliance Hearing	December 15, 2008

9 SO ORDERED this 9th day of June 2008.

13 _____
14 James McNamara

17 _____
18 Holly Gadbaw