State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

JAMES A. WHITAKER, Petitioner, v. GRANT COUNTY, Respondent.	Case No. 99-1-0019 ORDER ON COMPLIANCE

I. BACKGROUND

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

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

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

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

On March 24, 2004, the Board held a compliance hearing. Present were Dennis Dellwo, Presiding Officer, and Board Members Judy Wall and D.E. "Skip" Chilberg. Present for Petitioner was James Whitaker. Present for Respondent were Stephen J. Hallstrom, Stanley Schwartz and Stacy A. Bjordahl.

II. SYNOPSIS OF THE CASE

The Board found Grant County's designation of LAMIRDS out of compliance due to the County's failure to comply with their County-Wide Planning Policies, develop a written

Eastern Washington
Growth Management Hearings Board
15 W. Yakima Avenue, Suite 102
Yakima, WA 98902
Phone: 509-574-6960
Fax: 509-574-6964

Harmonization Document showing how the LAMIRDS harmonize with the Rural element of the Comprehensive Plan and the goals of the GMA and the failure to comply with the GMA, RCW 36.70A.070(5)(d), limiting the LAMIRDS to built up area, thereby encouraging sprawl.

The County mounted a substantial effort to reexamine the LAMIRDS in an effort to bring themselves into compliance with the GMA and the Board's Order. New County-Wide Planning Policies (CWPP) were developed and are not objected to by the Petitioner. A harmonization document was developed which the Petitioner has not specifically objected to. The boundaries of the LAMIRDS were examined in detail and set anew, often thereby reducing some of the LAMIRDS area. The Petitioner continues to object to the majority of the remaining LAMIRDS.

The actions of the County are commendable and address many of the Board's concerns. However, each LAMIRD must be looked at to determine if they qualify as one of the three types of LAMIRDS allowed by the GMA. While most of the LAMIRDS identified by the County as Type I are in compliance, those identified as combinations of Type I, II and III fail to comply with the statutory limits. Except in certain exceptions, the Hearings Board finds it impossible to determine if these combined LAMIRDS are in compliance.

III. STANDARD OF REVIEW

Comprehensive plans and development regulations (and amendments thereto) adopted pursuant to Growth Management Act ("GMA" or "Act") are presumed valid upon adoption by the local government. RCW 36.70A.320. The burden is on the Petitioner to demonstrate that any action taken by the respondent jurisdiction is not in compliance with the Act. RCW 36.70A.320.

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

> The Board is charged with adjudicating GMA compliance, and, when necessary, with invalidating noncompliant comprehensive plans and development regulations. RCW 36.70A.280, .302. The Board "shall find compliance unless it determines that the action by the state agency, county or city is clearly erroneous in view of

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> the entire record before the county, or city is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of [the GMA]." RCW 36.70A.320(3). To find an action "clearly erroneous" the Board must be "left with the firm and definite conviction that a mistake has been committed." *Dep't of Ecology v. Pub. Util. Dist. No. 1,* 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

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

The Board has jurisdiction over the subject matter of the Petition for Review. RCW 36.70A.280(1)(a).

IV. FINDINGS OF FACT

1. The Grant County Planned Growth Committee was reconvened to consider amendments to the 1993 County-Wide Planning Policies (CWPP).
2. The Grant County Planned Growth Committee amended CWPP Nos. 1, 2 and 2A thereby allowing Grant County to designate LAMIRDS.
3. The amendments of CWPP Nos. 1, 2, and 2A were adopted by the County Commissioners and not objected to by the Petitioners.
4. The Grant County Board of Commissioners adopted a Harmonization Document entitled "Grant County Planning Goals and Rural Element of the Comprehensive Plan." This document explains how the County's

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Growth Management Hearings Board
15 W. Yakima Avenue, Suite 102
Yakima, WA 98902
Phone: 509-574-6960
Fax: 509-574-6964

establishment of LAMIRDS and the rural element of the Comprehensive Plan harmonize the goals of the GMA.

5. The Petitioners did not challenge the Harmonization Document.

6. On January 14, 2004 the County adopted Ordinance No. 04-007-CC, which designated 72 LAMIRDS. The amended LAMIRDS comprise a total area of 6,482 acres, a reduction of approximately 46% from the pre-Petition designation.

7. The County categorized the Limited Areas of More Intensive Rural Development (LAMIRDS) into seven designations: Rural Communities, Rural Villages, Shoreline Development, Recreational Development, Agricultural Service Centers, Commercial Areas and Industrial Areas. Few LAMIRDS were referred to as one of the three types listed in the GMA.

8. Upon the written request of the Hearings Board, the County provided a list of what type LAMIRD each was.

9. The County Identified 24 LAMIRDS as a Type I and 37 LAMIRDS as combinations of Type I, II and III.

V. ISSUE

- ***Did the County fail to comply with the limited areas of more intensive rural development (LAMIRD) requirements of RCW 36.70A.070(5), when it adopted the Ordinance No. 04-007 - CC?***

VI. DISCUSSION

A. Applicable Law

The pertinent portions of RCW 36.70A.070(5), regarding LAMIRD creation, provide as follows:

> (d) *Limited areas* of more intensive rural development [LAMIRDS]. Subject to the requirements of this subsection and except as otherwise specifically

Eastern Washington
Growth Management Hearings Board
15 W. Yakima Avenue, Suite 102
Yakima, WA 98902
Phone: 509-574-6960
Fax: 509-574-6964

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 as follows:

(i) 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. A commercial, industrial, residential, shoreline, or mixed-use area shall be subject to the requirements of (d)(iv) of this subsection, but shall not be subject to the requirements of (c)(ii) and (iii) of this subsection. An industrial area is not required to be principally designed to serve the existing and projected rural population;

(ii) 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. A small-scale recreation or tourist use is not required to be principally designed to serve the existing and projected rural population. Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl;

(iii) 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. Public services and public facilities shall be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl;

(iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this

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15 W. Yakima Avenue, Suite 102
Yakima, WA 98902
Phone: 509-574-6960
Fax: 509-574-6964

subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl;

(v) 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;

(B) On the date the county adopted a resolution under RCW 36.70A.040(2), in a county that is planning under all of the provisions of this chapter under RCW 36.70A.040(2); or

(C) On the date the office of financial management certifies the county's population as provided in RCW 36.70A.040(5), in a county that is planning under all of the provisions of this chapter pursuant to RCW 36.70A.040(5).

(e) Exception. This subsection shall not be interpreted to permit in the rural area a major industrial development or a master planned resort unless otherwise specifically permitted under RCW 36.70A.360 and 36.70A.365.

B. The Elements of LAMIRDS

There are three types of LAMIRDS allowed under RCW 36.70A.070(5)(d)(i), (ii) and (iii). For simplicity, they will be referred to as Type I, II or III. In our previous orders we have referred to these as RAIDS. The Board now wishes to refer to these as LAMIRDS, as the Central and Western Hearings Boards have done. The previous acronym, RAIDS (Rural Areas of Intensive Development), left out the letters “L” and “M”. The letter “L” which is for the word “limited” in “Limited Areas of More Intensive Rural Development”, is a key part of this exception to rural development.

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The GMA's key goal has been to direct urban development into urban growth areas and to protect the rural area from sprawl. In 1997 the State Legislature amended the GMA to make accommodation for "infill, development or redevelopment" of "existing" areas of "more intensive rural development," however such a pattern of growth must be "minimized" and "contained" within a "logical outer boundary." This cautionary and restrictive language evidences a continuing legislative intent to protect rural areas from low-density sprawl.

So what are LAMIRDS? They are neither urban growth, nor are they to be the pattern of future rural development. LAMIRDS are settlements that existed on July 1, 1990, (July, 1991 in this case), in some land use pattern more intensive than what might typically be found in a rural area. RCW 36.70A.070(5)(d)(v). LAMIRDS are "characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments." RCW 36.70A.070(5)(d)(i).

The provisions of (c)(ii) (visual compatibility) and (iii) (reduce low-density development) do not apply to those LAMIRDS designated under (d)(i). This section does not allow increased low-density development, but merely removes the reduction requirement. The logical outer boundary (LOB) provisions of (d)(iv) apply only to LAMIRDS designated under (d)(i) (Type I). Type II and III both allow "new development" and "intensification of development." Type I LAMIRDS do not allow "new development" except as it may be part of "infill, development, or redevelopment."

Type I LAMIRDS consist of certain "existing areas" defined in RCW 36.70A. 070(5)(d)(v). The allowed uses and areas include commercial, industrial, residential or mixed-use areas "whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments." An "industrial area" is not required to be principally designed to serve the "existing and projected rural population." Thus, all other Type I LAMIRDS (commercial, residential, or mixed-use) must be principally designed to serve the "existing and projected rural population." In designating and establishing LAMIRDS under Type I a county must "minimize and contain" ((d)(iv)) the existing area or existing use. A prohibition against including lands within the LOB that allows a "new pattern

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15 W. Yakima Avenue, Suite 102
Yakima, WA 98902
Phone: 509-574-6960
Fax: 509-574-6964

of low-density sprawl" for the existing area or existing use must be adopted ((d)(iv)). Type I LAMIRDS, being neither rural nor urban, allowing existing areas or existing uses, must always be "limited" i.e., minimized and contained.

In establishing the LOB for an "existing area" (but not for existing uses) under RCW 36.70A.070(5)(d)(iv) a county is required to "clearly" identify and contain the LOB. That identification and containment must be "delineated predominately by the built environment," but may include "limited" undeveloped lands. We agree with the Western Growth Board and conclude that legislative intent, as determined from reading all parts of the GMA with particular emphasis on (5)(d), means the "built environment" only includes those facilities, which are "manmade," whether they are above or below ground. To comply with the restrictions found in (d), particularly (d)(v), the area included within the LOB must have manmade structures in place (built) on July 1, 1991. (*City of Anacortes v. Skagit County,* Compliance Order, WWGMHB No. 00-2-0049c, FDO, February 6, 2001.)

The provisions of RCW 36.70A.070(5) (d)(v) (existing area or existing use as of July 1, 1990) apply to all LAMIRDS whether designed under (d)(i) (ii), or (iii). Thus, for any "intensification" allowed under Type II or Type III the designated use or area must have been in existence on July 1, 1990 (or later date under the provisions of (5)(B) or (C)). This restriction does not apply to "new development" authorized under Type II or Type III. Anytime the phrase "existing" is used to define an area or use, the provisions of RCW 36.70A.070(5) (v) (7-1-90 or as here, 7-91) modify that phrase.

Under Type II, small-scale recreation or small-scale tourist LAMIRDS are authorized. Commercial facilities to serve those LAMIRDS are allowed. The intensification or creation of small-scale recreational or small-scale tourist uses must rely on a rural location and setting. Such LAMIRDS cannot include new residential development. The uses need not be principally designed to serve the "existing and projected rural population." "Public services and public facilities" must be limited to those "necessary to serve" only the LAMIRD. Such public services and public facilities must be provided "in a manner that does not permit low-density sprawl."

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15 W. Yakima Avenue, Suite 102
Yakima, WA 98902
Phone: 509-574-6960
Fax: 509-574-6964

The LAMIRDS allowed under Type III authorize intensification or creation of "isolated cottage industries and isolated small-scale businesses." These need not be principally designed to serve the "existing and projected rural population" and non-residential uses. They must provide job opportunities for rural residents. Public services and public facilities have the same constraints as those provided under Type II.

The allowance of small-scale recreational and small-scale tourist uses, isolated cottage industries and isolated small-scale businesses are also subject to the provisions of RCW 36.70A.070(5)(a), (b), and (c), as well as the definitions contained in RCW 36.70A.030(14) and (15).

C. Individual LAMIRDS:

The County designated 72 LAMIRDS originally, choosing later to remove 13 from the designation. The balance, approximately 59, will be covered individually. The first group of LAMIRDS to be considered is those the County has identified as Type I LAMIRDS.

A. Type 1 LAMIRDS:

1. Rural Community

SCHAWANA AND BEVERLY: These two LAMIRDS were not found out of compliance in the original matter and continue to be in compliance.

WHEELER: This LAMIRD consists of an area of built up single-family residences, multi-family units, a church, a café and tavern, all developed before July 1991. The Petitioner has not carried his burden of proof and shown the Board that the boundaries are not limited by the "built environment". This Board recognizes that the built environment includes only those facilities, which are manmade above or below the ground. To comply with the restrictions found in RCW 36.70A.070(5)(d), particularly (d)(v), the area included within the LOB must have manmade structures in place on July 1991. The LOB must be delineated predominately by the built environment, but may include "limited "undeveloped lands. The Petitioner's objection that the LAMIRD includes some vacant platted parcels is not enough. We must presume, without other evidence, that these are the "limited" undeveloped lands allowed as infill. The Petitioner has not shown otherwise. WHEELER is in compliance with the GMA.

ROYAL CAMP: Royal Camp LAMIRD was a "Camp" developed by the Bureau of Reclamation to provide housing in support of the Columbia Basin Irrigation project. It has single-family residences, a church and an agricultural supply business. This development

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15 W. Yakima Avenue, Suite 102
Yakima, WA 98902
Phone: 509-574-6960
Fax: 509-574-6964

existed prior to July 1991. The Petitioner objects to the LAMIRD because it still contains large areas of undeveloped land between the existing structures and that it promotes urban sprawl. The Petitioner did not provide the nature of the undeveloped land and how it is excessive. Without more, the Petitioner has not carried his burden. The County is presumed to have followed the law and allowed infill and reasonably limited the size of the LAMIRD. We find that the County is in compliance on this LAMIRD.

PARKER SPRINGS: Parker Springs is an area similar to Wheeler except for the inclusion of the 30.3-acre area added on to the north. The County contends that this added vacant agricultural land is to provide infill between the Parker Springs pre-1991 area and Ridge View Estates, a post 1991 development. This is totally contrary to the permitted extent of a LAMIRD under RCW 36.70A.070(5)(d)(i). The LAMIRD is within limits except for the added 30 acres. With the addition of the 30 acres, this LAMIRD is out of compliance. The County's actions are clearly erroneous and the Petitioner has carried his burden of proof.

TRINIDAD: Trinidad is a town site with a general store, a trading post, a mini-storage facility and several single–family residences, all developed before July 1991. The Petitioner again contends the size is too large, including excessive vacant areas. While the County is constrained to limit the LAMIRD'S area to the pre-1991 built up area, the Petitioner has failed to shown that they have not done this. General assertions are insufficient. The County actions are presumed to be valid. The Petitioner has not carried his burden on this LAMIRD. Trinidad is compliant.

WANAPUM VILLAGE: The Petitioner concedes that this LAMIRD is now in compliance. Wanapum Village was decreased by 37.1 acres. Wanapum is in compliance.

MARINE VIEW HEIGHTS AND MARINE VIEW 1: These LAMIRDS contain a golf course, single-family residences, a camping facility, a RV resort, a service station and a sport resort. Much of the built up area was prior to 1991, and this is contended by the County to be the proper size for such a LAMIRD. The Petitioner again does not provide sufficient evidence to carry his burden of proof. These LAMIRDS are in compliance and the Petitioner has failed to show that the County's actions were clearly erroneous.

WHITE TRAIL: Again, the Petitioner has not carried his burden. The objections raised by the Petitioner raise concerns, yet are not sufficient to overcome the presumption of validity. White Trail is in compliance.

DESERT AIRE: The Petitioner's specifically excluded this LAMIRD from their petition. This LAMIRD was not found out of compliance in the original order herein. Desert Aire is in compliance.

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2. Shoreline development:

McCONIHE SHORE: This LAMIRD is clearly out of compliance. The spaces between the four distinct areas of development are extensive. The LAMIRS contains 729 acres, much of it vacant. That alone would cause this to be out of compliance, however there is nothing in the record showing that this development was built prior to 1991. This is a Type I LAMIRD and must be minimized and not extend beyond the logical outer boundary delineated predominately by the built environment existing prior to 1991. Some undeveloped lands can be included if limited. This was not done here. The Petitioner has carried his burden and the County's actions in designating this LAMIRD is clearly erroneous.

MAE VALLEY SHORE: The Petitioner does not object to this LAMIRD. Mae Valley is in compliance.

BLUE LAKE SHORE: The Petitioner has not carried his burden of proof here. While a LAMIRD should limit the inclusion of undeveloped lands, the Petition must show more than he has. In his brief/chart the Petitioner says only that "However, it appears to include undeveloped land on the south end of the lake." This is not enough to leave the Board with an abiding conviction that the County's actions are wrong. This LAMIRD is not found out of compliance.

SUNLAND ESTATES: This LAMIRD was specifically not included in the Petitioner's original petition and was not found out of compliance in the original Order. This LAMIRD is in compliance.

3. Recreation Development

CRESCENT BAR: The Petitioner does not object to this LAMIRD and is therefore found in compliance.

THE GORGE: The designation of this LAMIRD is difficult to clearly understand. The maps and summaries in the Record indicate that this LAMIRD is truly made up of two or more LAMIRDS. The first and largest is a Type I and covers the major portion of the concert venue. The second, a Type II or III is the undeveloped area south of the campground area east of Road W. This adds 145 acres currently in agricultural use. The total acreage is slightly less than 1000 acres. The argument of the County is that the Gorge LAMIRD has all three types of LAMIRDS included in one. The record is not clear and it is impossible with what the Board has before it to see what the County has done. If this is a Type I LAMIRD, the boundaries are clearly beyond the natural built boundaries and are clearly in error. If this is an area with all three types of LAMIRDS mixed in, they again would be clearly in error. They are not comparable together. Because of the way this LAMIRD has been

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15 W. Yakima Avenue, Suite 102
Yakima, WA 98902
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designed, the Board finds the County out of compliance. The County is permitting urban sprawl in rural areas and has not properly designated LOBs for these LAMIRDS.

NORTH SOAP LAKE: This is an area north of Soap Lake and south of Bureau of Reclamation Lands and facilities to the north. The Petitioner contends there is no "intense activity" going on in this area. That is not the requirement. The statute speaks of "areas of more intensive rural development." This area must be constrained within the logical outer boundary of the existing area of use. The County can consider the physical boundaries such as bodies of water, streets and highways and landforms and contours. Here the County contends it has properly limited this area to such boundaries and the Petitioner has not rebutted the presumption of validity found in the GMA for actions of the County. The Petitioner fails to carry his burden of proof and this LAMIRD is not found out of compliance.

MARINE VIEW 2: This LAMIRD is at the south end of Potholes State Park and consists of a resort, marina, launch, café, service station, cabins, trailer and RV Park and a small grocery store. As long as there is no further residential development, this is felt by the Petitioner to be compliant. The County appears to agree with this prohibition. This LAMIRD is in compliance.

4. Agricultural Service Center

WINCHESTER: This LAMIRD is an historic plat of mixed uses developed prior to July 1991. The Petitioner's main objection is that it is not rural, is not isolated, a state highway goes through it and there is no need for it. This is not enough. This historic plat is an area of more intensive rural development and appears to be limited to the developed area. The Petitioner has not carried its burden and the LAMIRD is not found out of compliance.

RUFF: This LAMIRD includes the old town site of Ruff. The final LOB was decreased 49.3 acres and the County contends the boundary was limited to the pre 1991 built area. The inclusion of undeveloped lands was claimed to be only that needed for infill. The Petitioner contends it should be contracted to include only the built environment of 1991. This is not sufficient to carry the burden placed upon the Petitioner. The actions of the County are presumed valid. The Petitioner has not convinced the Board that the County's actions are clearly erroneous. This LAMIRD is not found out of compliance.

McDONALD SIDING: This LAMIRD was eliminated by the County.

BALLARD'S CAFÉ: This is a 26.40-acre site of mixed uses including agricultural equipment and supply company, a firehouse and small café. The site includes undeveloped lands or lands developed after 1991 together with pre-1991 development. The LAMIRD is

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Growth Management Hearings Board
15 W. Yakima Avenue, Suite 102
Yakima, WA 98902
Phone: 509-574-6960
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limited and fits within the definition of a Type I LAMIRD classification. The Petitioner did not carry his burden of proof. This LAMIRD is found in compliance.

STRATFORD: The Petitioner does not object to this LAMIRD. The Board finds it compliant.

McDONALD SIDING 2: Mc Donald Siding 2 is a new area made up of five other previously adopted LAMIRDS. Moses Lake 4, 5,6, 8 and 9. The total acres between are reduced by 272.9 acres. In its reduced size, 464.85 acres, it is still a large LAMIRD. However, because the Petitioner only speaks of not being isolated and that there is no need to grow, they have not carried the burden of proof. This LAMIRD is not found out of compliance.

B. Type I / II / III Lamirds:

The County designated 37 LAMIRDS as combinations of Type I, II and II. The County did not separate them and the Board must believe the County intends all three types to be included in each LAMIRD. The County contends the GMA does not require each LAMIRD be segregated into a separate designation as a Type I, II or III. They further cite a Western Board decision, *City of Anacortes v. Skagit County,* Compliance Order, WWGMHB No. 00-2-0049c, as supporting this contention. This is not correct. The GMA identifies three types of Limited Areas of More Intensive Rural Development. The County must chose which LAMIRD is appropriate for the specific site. To hold otherwise would be to ignore the law and the cases that interpret the law.

The statute, RCW 36.70A.070 (5)(d) is the best place to start to find that the GMA established three separate LAMIRDS. The Statute talks of the rural element to "allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:"

The argument that there are three separate types of LAMIRDS is clearly supported when you examine the three paragraphs that are set apart, listing the type of LAMIRD and the limitations for each type. To have all three types in the same space without boundaries between them would not only be confusing but virtually impossible. Type I is a mixed-use

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Fax: 509-574-6964

area that can have residential development infill. This must be bound by logical outer boundaries delineated predominately by the built environment. The same case cited by the County, *Skagit, Supra*, asserts that these limitations, RCW 36.70A. 070(5)(d)(iv), do not apply to Types II and III. Further, Types II and III can have new development, isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population contrary to Type I. Also Types II and III do not allow residential development.

The County cited dictum found in *City of Anacortes v. Skagit County,* Compliance Order, WWGMHB No. 00-2-0049c. This was dictum without legal argument and is not precedent for this Board. However, the Western Hearings Board later ordered Mason County to specify which of the three types of LAMIRDS theirs fit into. *Dawes, et al v. Mason County,* WWGMHB No. 96-2-0023c, Compliance Order, August, 14, 2002. That case made it clear that the Western Hearings Board felt this individual designation was needed to be able to determine if there is compliance.

The County must choose which Type of LAMIRD it wishes to establish. Then and only then can the Hearings Board review the LAMIRD and determine if the County is in compliance with the GMA. The first four LAMIRDS listed below are found in compliance because they were either not objected to or the Record is clear which Type was intended and the Board was able to properly make a determination of compliance. The final LAMIRD was able to be considered and determined to be out of compliance or noncompliance. The balance of the LAMIRDS are remanded for the County to determine if the area is appropriate to be designated as a LAMIRD and whether it will be designated as a Type I, II or III. The County is advised to review the earlier part of this order where we have discussed the limitations for each of the LAMIRDS.

Commercial/Industrial

GEORGE 1: The Petitioner does not object to this LAMIRD. The Board finds this LAMIRD in compliance.

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Fax: 509-574-6964

COULEE 1: The Petitioner does not object to this LAMIRD. The Board finds it in compliance.

GEORGE 6: This 9.90 acre LAMIRD is near George and is established as a Type III. It is currently zoned industrial and is in retail use. The Petitioner has not carried his burden of proof. The Board does not find this LAMIRD out of compliance.

WANAPUM 2: This LAMIRD is not out of compliance. The Petitioner believes it may meet the requirements of a Type III. It does meet the requirements of the GMA and is in compliance.

WARDEN 2: This LAMIRD is comprised of 169.05 acres of farmland. There is no discussion of what this land is to be used for. The County contends it qualifies for a Type III LAMIRD that authorizes the intensification of development on lots containing isolated non-residential uses or new development of isolated cottage industries. This does not qualify. The LAMIRD is removing 169 acres of irrigated farmland from agricultural resource lands, and placing higher density rural activities in its place. A LAMIRD is for limited, more intensive rural development. The exceptions are to allow more intensive development in rural areas, not agricultural resource areas. This LAMIRD is not in compliance.

VI. ORDER

1. The County is in compliance by the adoption of new CWPPs authorizing the designation of LAMIRDS as provided under RCW 36.70A.070(5)(d).
2. The County has properly adopted a written Harmonization Document as required under the GMA.
3. The LAMIRDS are found in compliance or noncompliance as reflected in this Order and Attachment A. The LAMIRDS found out of compliance are remanded to the County and they are directed to eliminate such LAMIRDs or make the corrections required to bring them into compliance.
4. The Balance of the LAMIRDS, those described as combinations of Types I, II and III, are to be reviewed and the County shall determine if such a LAMIRD is appropriate and if so, what Type.

Eastern Washington
Growth Management Hearings Board
15 W. Yakima Avenue, Suite 102
Yakima, WA 98902
Phone: 509-574-6960
Fax: 509-574-6964

5. The County has 90 days from the date of this Order, **August 4, 2004,** to come into compliance with the GMA and the Boards order.

Pursuant to RCW 36.70A.300(5), this is a final order for purposes of appeal.

Pursuant to WAC 242-02-832, a Motion for Reconsideration may be filed within ten days from the date of service of this Order.

SO ORDERED this 6th day of May 2004.

EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

_____
Dennis Dellwo, Board Member

_____
Judy Wall, Board Member

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

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ATTACHMENT A

<u>LAMIRDS FOUND IN COMPLIANCE</u>:

SCHAWANA

BEVERLY

WHEELER

ROYAL CAMP

TRINIDAD

WANAPUM VILLAGE

MARINE VIEW HEIGHTS AND MARINE VIEW 1

WHITE TRAIL

DESERT AIRE

MAE VALLEY SHORE

BLUE LAKE SHORE

SUNLAND ESTATES

CRESCENT BAR

NORTH SOAP LAKE

MARINE VIEW 2

WINCHESTER

RUFF

BALLARD'S CAFÉ

STRATFORD

McDONALD SIDING 2

GEORGE 1

COULEE 1

GEORGE 6

WANAPUM 2

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LAMIRDS FOUND OUT OF COMPLIANCE:

PARKER SPRINGS

McCONIHE SHORE

THE GORGE

WARDEN 2

LAMIRDS FOUND OUT OF COMPLIANCE DUE TO THE FAILURE TO DESIGNATE THEM AS TYPE I, II, OR III LAMIRDS

BALLARD 1

COULEE 2

COULEE 3

CROOK ESTATES 1

DODSON ROAD 1

EPHRATA 2

EPHRATA 3

GEORGE 2

GEORGE 5

GEORGE 7

JET FARMS 1

MAE VALLEY 1

MAE VALLEY 2

MAE VALLEY 3

MAE VALLEY 4

MAE VALLEY 5

MARINE VIEW 1

MOSES LAKE 2

MOSES LAKE 7

MOSES LAKE 10

O'SULLIVAN SHORES

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ROCKY FORD 1

ROCKY FORD 2

ROYAL 1

ROYAL 2

SILICA ROAD 1

SOAP LAKE 1

STRATFORD ROAD 1 & 2

STRATFORD ROAD 3

PARK ORCHARD

WARDEN 1

WHEELER 1

WHEELER 3

WHEELER 4

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