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**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

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I. BACKGROUND

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

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

15 On November 15, 2001 the Superior Court of Washington for Thurston County
16 entered its Findings of Fact, Conclusions of Law, and Order on Administrative Procedure Act
17 Appeal, remanding this matter for the admission of supplemental evidence, to wit, the
18 1997-1999 building permit information before this Board.

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

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

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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

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

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

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

16 **III. STANDARD OF REVIEW**

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

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

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

1 the entire record before the county, or city is clearly erroneous
2 in view of the entire record before the Board and in light of the
3 goals and requirements of [the GMA]." RCW 36.70A.320(3). To
4 find an action "clearly erroneous" the Board must be "left with
5 the firm and definite conviction that a mistake has been
6 committed." *Dep't of Ecology v. Pub. Util. Dist. No. 1*, 121 Wn.2d
7 179, 201, 849 P.2d 646 (1993).

8 The Board will grant deference to counties and cities in how they plan under Growth
9 Management Act. RCW 36.70A.3201. But, as the Court has stated, "local discretion is
10 bounded, however, by the goals and requirements of the GMA." *King County v. Central*
11 *Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561, 14 P.2d 133
12 (2000). It has been further recognized that "[c]onsistent with *King County*, and
13 notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly
14 when it foregoes deference to a . . . plan that is not 'consistent with the requirements and
15 goals of the GMA." *Thurston County v. Cooper Point Association*, 108 Wn. App. 429, 444, 31
16 P.3d 28 (2001).

17 The Board has jurisdiction over the subject matter of the Petition for Review. RCW
18 36.70A.280(1)(a).

19 **IV. FINDINGS OF FACT**

- 20 1. The Grant County Planned Growth Committee was reconvened to
21 consider amendments to the 1993 County-Wide Planning Policies
22 (CWPP).
- 23 2. The Grant County Planned Growth Committee amended CWPP Nos. 1,
24 2 and 2A thereby allowing Grant County to designate LAMIRDS.
- 25 3. The amendments of CWPP Nos. 1, 2, and 2A were adopted by the
26 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

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

3 5. The Petitioners did not challenge the Harmonization Document.

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

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

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

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

18 V. ISSUE

- 19 • *Did the County fail to comply with the limited areas of more
20 intensive rural development (LAMIRD) requirements of RCW
21 36.70A.070(5), when it adopted the Ordinance No. 04-007 - CC?*

22 VI. DISCUSSION

23 A. Applicable Law

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

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

1 provided in this subsection (5)(d), the rural element may allow for limited
2 areas of more intensive rural development, including necessary public facilities
and public services to serve the limited area as follows:

3 (i) Rural development consisting of the infill, development, or
4 redevelopment of existing commercial, industrial, residential, or mixed-use
5 areas, whether characterized as shoreline development, villages, hamlets,
6 rural activity centers, or crossroads developments. A commercial,
7 industrial, residential, shoreline, or mixed-use area shall be subject to the
8 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;

9 (ii) The intensification of development on lots containing, or new
10 development of, small-scale recreational or tourist uses, including
11 commercial facilities to serve those recreational or tourist uses, that rely on
12 a rural location and setting, but that do not include new residential
13 development. A small-scale recreation or tourist use is not required to be
14 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;

15 (iii) The intensification of development on lots containing isolated
16 nonresidential uses or new development of isolated cottage industries and
17 isolated small-scale businesses that are not principally designed to serve
18 the existing and projected rural population and nonresidential uses, but do
19 provide job opportunities for rural residents. Public services and public
20 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;

21 (iv) A county shall adopt measures to minimize and contain the existing
22 areas or uses of more intensive rural development, as appropriate,
23 authorized under this subsection. Lands included in such existing areas or
24 uses shall not extend beyond the logical outer boundary of the existing
25 area or use, thereby allowing a new pattern of low-density sprawl. Existing
26 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

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

9 (v) For purposes of (d) of this subsection, an existing area or existing use
10 is one that was in existence:

11 (A) On July 1, 1990, in a county that was initially required to plan under all
12 of the provisions of this chapter;

13 (B) On the date the county adopted a resolution under RCW
14 36.70A.040(2), in a county that is planning under all of the provisions of
15 this chapter under RCW 36.70A.040(2); or

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

19 (e) Exception. This subsection shall not be interpreted to permit in the
20 rural area a major industrial development or a master planned resort
21 unless otherwise specifically permitted under RCW 36.70A.360 and
22 36.70A.365.

23 **B. The Elements of LAMIRDS**

24 There are three types of LAMIRDS allowed under RCW 36.70A.070(5)(d)(i), (ii) and
25 (iii). For simplicity, they will be referred to as Type I, II or III. In our previous orders we
26 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.

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

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

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

20 Type I LAMIRDS consist of certain "existing areas" defined in RCW 36.70A.
21 070(5)(d)(v). The allowed uses and areas include commercial, industrial, residential or
22 mixed-use areas "whether characterized as shoreline development, villages, hamlets, rural
23 activity centers, or crossroads developments." An "industrial area" is not required to be
24 principally designed to serve the "existing and projected rural population." Thus, all other
25 Type I LAMIRDS (commercial, residential, or mixed-use) must be principally designed to
26 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

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

4 In establishing the LOB for an "existing area" (but not for existing uses) under RCW
5 36.70A.070(5)(d)(iv) a county is required to "clearly" identify and contain the LOB. That
6 identification and containment must be "delineated predominately by the built
7 environment," but may include "limited" undeveloped lands. We agree with the Western
8 Growth Board and conclude that legislative intent, as determined from reading all parts of
9 the GMA with particular emphasis on (5)(d), means the "built environment" only includes
10 those facilities, which are "manmade," whether they are above or below ground. To comply
11 with the restrictions found in (d), particularly (d)(v), the area included within the LOB must
12 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.)

13 The provisions of RCW 36.70A.070(5) (d)(v) (existing area or existing use as of July
14 1, 1990) apply to all LAMIRDS whether designed under (d)(i) (ii), or (iii). Thus, for any
15 "intensification" allowed under Type II or Type III the designated use or area must have
16 been in existence on July 1, 1990 (or later date under the provisions of (5)(B) or (C)). This
17 restriction does not apply to "new development" authorized under Type II or Type III.
18 Anytime the phrase "existing" is used to define an area or use, the provisions of RCW
19 36.70A.070(5) (v) (7-1-90 or as here, 7-91) modify that phrase.

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

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

6 The allowance of small-scale recreational and small-scale tourist uses, isolated
7 cottage industries and isolated small-scale businesses are also subject to the provisions of
8 RCW 36.70A.070(5)(a), (b), and (c), as well as the definitions contained in RCW
9 36.70A.030(14) and (15).

9 **C. Individual LAMIRDS:**

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

13 **A. Type 1 LAMIRDS:**

14 **1. Rural Community**

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

17 **WHEELER:** This LAMIRD consists of an area of built up single-family residences, multi-
18 family units, a church, a café and tavern, all developed before July 1991. The Petitioner has
19 not carried his burden of proof and shown the Board that the boundaries are not limited by
20 the "built environment". This Board recognizes that the built environment includes only
21 those facilities, which are manmade above or below the ground. To comply with the
22 restrictions found in RCW 36.70A.070(5)(d), particularly (d)(v), the area included within the
23 LOB must have manmade structures in place on July 1991. The LOB must be delineated
24 predominately by the built environment, but may include "limited" undeveloped lands. The
25 Petitioner's objection that the LAMIRD includes some vacant platted parcels is not enough.
26 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.

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

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

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

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

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

24 **MARINE VIEW HEIGHTS AND MARINE VIEW 1:** These LAMIRDS contain a golf
25 course, single-family residences, a camping facility, a RV resort, a service station and a
26 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.

1 **2. Shoreline development:**

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

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

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

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

21 **3. Recreation Development**

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

24 **THE GORGE:** The designation of this LAMIRD is difficult to clearly understand. The
25 maps and summaries in the Record indicate that this LAMIRD is truly made up of two or
26 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

1 designed, the Board finds the County out of compliance. The County is permitting urban
2 sprawl in rural areas and has not properly designated LOBs for these LAMIRDS.

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

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

17 **4. Agricultural Service Center**

18 **WINCHESTER:** This LAMIRD is an historic plat of mixed uses developed prior to July
19 1991. The Petitioner's main objection is that it is not rural, is not isolated, a state highway
20 goes through it and there is no need for it. This is not enough. This historic plat is an area
21 of more intensive rural development and appears to be limited to the developed area. The
22 Petitioner has not carried its burden and the LAMIRD is not found out of compliance.

23 **RUFF:** This LAMIRD includes the old town site of Ruff. The final LOB was decreased
24 49.3 acres and the County contends the boundary was limited to the pre 1991 built area.
25 The inclusion of undeveloped lands was claimed to be only that needed for infill. The
26 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

1 limited and fits within the definition of a Type I LAMIRD classification. The Petitioner did not
2 carry his burden of proof. This LAMIRD is found in compliance.

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

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

11 **B. Type I/II/III Lamirds:**

12 The County designated 37 LAMIRDS as combinations of Type I, II and II. The County
13 did not separate them and the Board must believe the County intends all three types to be
14 included in each LAMIRD. The County contends the GMA does not require each LAMIRD be
15 segregated into a separate designation as a Type I, II or III. They further cite a Western
16 Board decision, *City of Anacortes v. Skagit County*, Compliance Order, WWGMHB No. 00-2-
17 0049c, as supporting this contention. This is not correct. The GMA identifies three types of
18 Limited Areas of More Intensive Rural Development. The County must chose which LAMIRD
19 is appropriate for the specific site. To hold otherwise would be to ignore the law and the
20 cases that interpret the law.

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

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

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

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

14 The County must choose which Type of LAMIRD it wishes to establish. Then and only
15 then can the Hearings Board review the LAMIRD and determine if the County is in
16 compliance with the GMA. The first four LAMIRDS listed below are found in compliance
17 because they were either not objected to or the Record is clear which Type was intended
18 and the Board was able to properly make a determination of compliance. The final LAMIRD
19 was able to be considered and determined to be out of compliance or noncompliance. The
20 balance of the LAMIRDS are remanded for the County to determine if the area is
21 appropriate to be designated as a LAMIRD and whether it will be designated as a Type I, II
22 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.

23 **Commercial/Industrial**

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

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

3 **GEORGE 6:** This 9.90 acre LAMIRD is near George and is established as a Type III. It is
4 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.

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

8 **WARDEN 2:** This LAMIRD is comprised of 169.05 acres of farmland. There is no
9 discussion of what this land is to be used for. The County contends it qualifies for a Type
10 III LAMIRD that authorizes the intensification of development on lots containing isolated
11 non-residential uses or new development of isolated cottage industries. This does not
12 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.

13 **VI. ORDER**

- 14
- 15 1. The County is in compliance by the adoption of new CWPPs authorizing
16 the designation of LAMIRDS as provided under RCW 36.70A.070(5)(d).
 - 17 2. The County has properly adopted a written Harmonization Document as
18 required under the GMA.
 - 19 3. The LAMIRDS are found in compliance or noncompliance as reflected in
20 this Order and Attachment A. The LAMIRDS found out of compliance
21 are remanded to the County and they are directed to eliminate such
22 LAMIRDS or make the corrections required to bring them into
compliance.
 - 23 4. The Balance of the LAMIRDS, those described as combinations of Types
24 I, II and III, are to be reviewed and the County shall determine if such
25 a LAMIRD is appropriate and if so, what Type.
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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

ATTACHMENT A

LAMIRDS FOUND IN COMPLIANCE:

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

1 **LAMIRDS FOUND OUT OF COMPLIANCE:**

2 PARKER SPRINGS

3 McCONIHE SHORE

4 THE GORGE

5 WARDEN 2

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

8 BALLARD 1

9 COULEE 2

10 COULEE 3

11 CROOK ESTATES 1

12 DODSON ROAD 1

13 EPHRATA 2

14 EPHRATA 3

15 GEORGE 2

16 GEORGE 5

17 GEORGE 7

18 JET FARMS 1

19 MAE VALLEY 1

20 MAE VALLEY 2

21 MAE VALLEY 3

22 MAE VALLEY 4

23 MAE VALLEY 5

24 MARINE VIEW 1

25 MOSES LAKE 2

26 MOSES LAKE 7

MOSES LAKE 10

O'SULLIVAN SHORES

- 1 ROCKY FORD 1
- 2 ROCKY FORD 2
- 3 ROYAL 1
- 4 ROYAL 2
- 5 SILICA ROAD 1
- 6 SOAP LAKE 1
- 7 STRATFORD ROAD 1 & 2
- 8 STRATFORD ROAD 3
- 9 PARK ORCHARD
- 10 WARDEN 1
- 11 WHEELER 1
- 12 WHEELER 3
- 13 WHEELER 4

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