

**Rural Places: Hamlets, Small Towns, Villages, Crossroads and Residential
Neighborhoods Under the Growth Management Act**

April 29, 2003

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I. Introduction

When the Growth Management Act (“GMA or “the Act”) was written in 1990, its authors gave short shrift to the rural lands and rural places – and, especially to existing small towns, villages and crossroad developments that are common and characteristic of any rural area in America. The GMA had a number of goals: there were goals to encourage urban growth; there were goals to reduce sprawl; and there were goals to encourage housing for all economic segments of the community, encourage economic development and protect property rights.

But, the word “rural” is not found in any of the 13 goals of the GMA, even today.

The Central Board was polite when it called the Act’s initial description of future rural uses and development patterns “sparse.” *Henley v. Snohomish County*, Order on Reconsideration, August 12, 2003.

Under the GMA, the legislature defined urban growth, and urban growth can occur inside the urban growth boundary. Outside the line, growth can occur only if it is not urban in nature. RCW 36.70A.110(1). Rural counties, like urban counties, established urban growth areas with “cookbook recipes” that accounted for future populations, land capacity factors and needs for open space. Forest and agricultural lands were set aside based on scientific formulas of soils and the prospect for harvesting crops from those lands.

Rural lands are then the “left overs” after designating urban growth areas and resource lands. This leads the Western Board to characterize rural lands as “left-over meatloaf in the GMA refrigerator” – an analogy that caused indigestion for the Commissioners in San Juan County, even after the analogy became stale following amendments to the GMA in 1997. *See, Town of Friday Harbor v. San Juan County*, Final Decision and Order, July 21, 1999 quoting *Port Townsend v. Jefferson County*.

But, nothing creates conflict like ignoring something that is obvious. In rural counties, the Act’s ignorance of rural lands collided with patterns of development that were already on the ground, and the expectations of the people who lived in or near these areas. Many places were not quite urban, and they were not quite rural either – at least in the sense where the natural environment predominates.

In some counties, rural lands account for 85 percent of the land area. Without statutory guidance, the early Growth Board decisions wrestled with the maximum density and uses that would be permitted in rural lands. Existing business areas were especially problematic. The Central Board, in a 1995 decision elaborating on the Act’s requirements for rural areas, recognized that commercial uses are an historical and appropriate use of rural lands. *Vashon-*

Maury v. King County, Final Decision and Order, October 23, 1995. But, for the Act to work in rural counties more assistance was needed from the legislature.

Fortunately, rural lands were a major topic considered by the Land Use Study Commission when it proposed amendments to the GMA in 1997. From the Commission came definitions for “rural character” and “rural development” and “rural services.” While historic land use patterns that interfere with the goals of the GMA cannot be perpetuated, local governments can now legitimately consider the history of development of the lands and the need to allow people to live and work in rural lands when they determine the “pattern of rural densities and uses.” RCW 36.70A.070(5)(a) and (b).

Finally, in 2002, the Legislature made findings that recognize the importance of rural lands and the needs of rural communities to have the flexibility to attract and retain businesses. RCW 36.70A.011. Once again, the legislature reiterated that it is the “local vision” of rural character that determines the scope and extent of rural economies and traditional rural lifestyles. Indeed, the absence of a more specific direction from the state confirms the discretion of local government in developing a rural plan. This plan must provide for the economic prosperity of residents that live in rural areas, and permit rural-based agriculture, commercial, recreational and tourist businesses that are consistent with planned land use patterns. And, to meet the goals of the GMA, it must be done in a way that is compatible with the use of the land by wildlife and provide for fish and wildlife habitat.

What became clear in 1997, and was confirmed in 2002, is that there were places generally accepted by the community as an appropriate mix of commercial, industrial and residential uses. These are places that enhance the rural sense of community and quality of life. These places had different names in different counties. They were unincorporated, yet they were referred to by the people as towns, villages, hamlets, crossroads or “country store” or recreation land subdivision. Regardless of the name, these places created a rural neighborhood look and feel that was characteristic of that community. And, the people who lived in these areas wanted them to continue, grow, and mature, without becoming urban.

The 1997 Legislature created a new category of rural places called “LAMIRD” for “Limited Areas of More Intensive Rural Development.” Is a LAMIRD a tool for planners to provide for rural development? Or, are LAMIRDS simply another way to state that nonconforming uses or “grandfathered” rights may continue? This paper will discuss the three types of LAMIRD and the issues that counties and the growth boards have addressed with respect to established boundaries and regulating the uses of these places. Other presenters at this conference will discuss the provision of water and sewer services to these areas.

II. Three Types of LAMIRDS

There are three types of LAMIRDS authorized by the 1997 amendments. They are: 1) existing commercial, industrial, residential or mixed-use areas; 2) intensification or new development of small-scale recreation/tourism uses; and 3) intensification or new development of isolated cottage industry/small scale-businesses. Each of these LAMIRDS has two principal aspects to consider: their boundaries and the allowable uses and development.

Type 1. Existing Rural Hamlet, Village or Small Town

Type 1 LAMIRDS are authorized by RCW 36.70A.070(5)(d)(i). These areas consist of infill, development or redevelopment of existing commercial, industrial, residential, or mixed-use areas and are described 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.

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

Unlike urban growth areas, the boundaries of a Type 1 LAMIRD may not change. They are fixed by the pattern of development established in 1990.

A. Boundaries for Type 1 LAMIRDS

Virtually every LAMIRD of this type is subject to a *permanent* limitation on the boundaries. The Type 1 LAMIRD is not subject to the visual compatibility or anti-sprawl measures of subsection .070(5)(c), but it is subject to other measures to limit and contain these areas based upon the level of development in 1990. RCW 36.70A.070(d)(iv) is specifically applicable which states as follows:

(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 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.

A Type 1 LAMIRD shall establish a logical outer boundary (LOB) for the more intensive area based on a predominantly “built environment” in 1990. For that reason, the boundaries of most LAMIRDS of this type have already been established. The “built environment” can consider physical boundaries/features and both surface and subsurface (utility lines) development. The key phrase is “built environment” not “commercial development”. *Anacortes v. Skagit County*, Compliance Order January 31, 2002. Thus, gas stations that were in the midst of closing and removing underground storage tanks in 1990 may be used for locating LAMIRD boundaries. *Id.*

Boundaries must be drawn very tightly, and records must clearly justify the choices. The Growth Boards have shown a willingness to closely examine the boundary, when challenged. *See, e.g., Olympic Environmental Council v. Jefferson County*, Final Decision and Order, November 22, 2000; *Vince Panesko et al. v. Lewis County*, Final Decision and Order, March 5, 2001; *City of Anacortes v. Skagit County*, 00-2-0049c Final Decision and Order, February 6, 2001.

The area of development and use must be existing on July 1, 1990 or the date initially required to plan under the GMA. Boards have taken a “snapshot” approach to the initial date. In describing the LAMIRD, it is the development that is on the ground on, not after, that date. Development that existed before that date is pertinent, if the development has led to the alteration of the physical environment.

“Built environment” refers to “man-made” facilities. *Anacortes v. Skagit County*, Final Decision and Order, February 1, 2001. Vested rights are not sufficient to determine the extent of the built environment. *Anacortes v. Skagit County*, Compliance Order, January 31, 2002. There must be man-made structures either on or under the property. The vested project can be constructed, but the boundaries of the parcel cannot be used to link up or form the logical outer boundary or allow infill of neighboring properties.

But, the development does not have to be visible on the surface. Subsurface development of water lines and sewer lines may allow the LAMIRD designation. But, the Western Board split hairs when it ruled that a sewer line extended to a property (a trunk line) is sufficient evidence of existing development, whereas a sewer transmission line (built adjacent to the

property, no valve installed) will not be considered. *Anacortes v. Skagit County*, Compliance Order, January 31, 2002.

B. Allowable Uses within Type 1 LAMIRDS

The broadest range of possible uses are allowed under Type 1 LAMIRDS. Industrial, commercial, residential and mixed uses are expressly allowed. The nature and extent of the uses permitted in these areas are not subject to the rural visual compatibility and inappropriate conversion of rural lands requirements of .070(c).

One thing that is clear from the Act, is that just because the development in a LAMIRD “looks urban” it is not, by definition. The 1997 Amendments added a provision to the definition of “urban growth” which specifically excludes development in LAMIRDS. See RCW 36.70A.030(17). Thus, the continuance and expansion of the type of uses that existed in 1990 is allowable, even if it would otherwise appear or be urban. *Henley v. Snohomish County*, Order on Reconsideration, August 12, 2002.

The Western Board has construed the limitations on Type 1 LAMIRDS not as an authorization for increased low density development, but rather as merely an elimination of the duty to reduce existing sprawling low density development in the rural areas. *Anacortes v. Skagit County*, Final Decision and Order, February 1, 2001. In residential areas, this means that a LAMIRD with a pattern of development at two units per acre may allow infill at two units per acre, but not infill at greater densities.

An industrial use is NOT required to serve the rural population. Does this mean that all other types of developments, such as commercial developments, must serve the rural population? The Western Board said “yes”, using the logic that because an industrial area need not be principally designed to serve the rural population the legislature meant that commercial, residential, and mixed use areas must be principally designed to serve the existing and projected rural population. *Anacortes v. Skagit County*, Final Decision and Order, February 1, 2001.

But, is “service to the rural population” a workable limitation on commercial and mixed-use developments? Are the people who live and work in rural areas any different from their urban counterparts? Certainly, the rural population in San Juan County benefits from the service of Costco and other urban businesses. The Western Board first took the approach that this limitation is to be determined on a business-by-business basis. In March 2001 the Western Board wrote “light industry, small engine repair, furniture repair, and plumbing shops are uses obviously designed to serve more than just the rural population. These are clearly not uses that are appropriate to rural areas, rural character and are not consistent with maintaining rural character.” *Dawes v. Mason County*, Compliance Order, March 1, 2001.

More recently, the Western Board has adopted a more liberal approach to the restriction on uses when it said, “The legislature intended the restriction of such existing uses to be one of a generic nature, rather than one of strictly limiting the Type (i) LAMIRD to exactly the uses in

existence on July 1, 1993.” *Mudge, Panesco, Zieske v. Lewis County*, Compliance Order, July 10, 2002.

This later decision is a better approach and consistent with the 2002 Amendments and with the Central Board decision in *Burrow v. Kitsap County*, Compliance and Remand March 29, 2000. The Central Board has been reluctant to examine specific businesses to determine allowable uses. Thus, the Central Board looks at *types of uses* (i.e. office or residential or commercial) that existed in 1990, not the specific businesses (i.e. law office, single family residential or grocery store). *Burrow v. Kitsap County* Order on Compliance, Mar. 29, 2000. But, the most recent decision of the Central Board suggests that the Central Board, may in the future, examine the actual business or uses to determine what the appropriate range of uses might be. *Henley v. Snohomish County*, Order on Reconsideration, August 12, 2002. fn. 3, citing *Burrow* at 19-20.

There is no statutory requirement that the existing or allowable use in Type 1 LAMIRD be designed principally to serve rural population or otherwise tied to the rural areas. A broader reading of the statute is required, especially in light of the decision by the Central Board in *Henley* and the 2002 Amendments to the GMA. According to the Central Board, the allowable future uses depend upon the “pattern” of development that is defined by the pattern that existed in 1990. *Henley, supra*. A future pattern that is inconsistent with that pattern could be impermissible urban growth? So, what is a pattern of uses? Will a checkerboard pattern of commercial and residential be allowed to continue? What does pattern mean when the LAMIRDS specifically allow for “redevelopment” of parcels?

C. Needs Analysis for Type 1 LAMIRDS

Must a county conduct a needs analysis before establishing commercial and industrial uses in LAMIRDS? Skagit County did a needs analysis, and the Western Board ruled such an analysis is required by the Skagit County Comprehensive Plan. *Anacortes v. Skagit County*, Final Decision and Order, February 1, 2002.

But, the only place the reference to “needs” is found is in subsection .070(d)(iv) which requires the county to address the need to preserve the character of existing natural neighborhoods and communities. The plain language of this provision should not be construed to require a needs analysis of commercial and industrial lands, unless the local plan requires it.

Type 2. New or Intensified Small Scale Recreation/Tourism

Type 2 LAMIRDS are authorized by RCW 36.70A.070(d)(ii). Type 2 LAMIRDS include intensification of development on lots with existing or proposed new development of small-scale recreational or tourist uses that rely on a rural location and setting, but that do not include new residential development. A Type 2 LAMIRD may include the intensification and expansion of existing development or it may be new development. *Mudge, Panesco, Zieske v. Lewis County*, Order on Reconsideration, August 19, 2002. (Historical Note: This decision was the last Order by Western Growth Board William H. Nielsen.)

(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;

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

A. Boundaries

The Type 2 LAMIRDS are meant to be single or combination of “lots” and not a wide area such as a town or village. Therefore, a good argument can be made that the Type 2 LAMIRDS are not subject to the “logical outer boundary analysis” and they are not subject to the “snapshot” of development that existed in 1990. Development codes could provide for their establishment by the county or by the applicant (as a type of re-zone).

There is no restriction on where these LAMIRDS are located, and, so, it may be possible to “nest” a Type 2 LAMIRD inside a Type 1 LAMIRD, thereby allowing the intensification of use of parcels that do not have the same history or pattern of use in a Type 1 LAMIRD. However, there are no cases which discuss this approach. Decisions of the Western Board before the 2002 Amendments would *suggest* that the nesting of new developments inside Type 1 LAMIRDS does not meet the requirement that LAMIRDS be limited, minimized and contained. See *Anacortes v. Skagit County*, Final Decision and Order, February 1, 2001.

Unlike Type 1 LAMIRDS, Type 2 and Type 3 LAMIRDS are subject to the limitations found in subsection 070(c) which provide broad guidelines to assure capability with the surrounding area, limit conversion of undeveloped land to sprawling densities and avoid conflicts with resource lands.

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

- (i) Containing or otherwise controlling rural development;
- (ii) Assuring visual compatibility of rural development with the surrounding rural area;
- (iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;
- (iv) Protecting critical areas, as provided in RCW 36.70A.060 and surface water and ground water resources; and

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

B. Uses and Development – Small Scale Recreation or Tourist

Development in the Type 2 LAMIRDS can be the expansion or intensification of existing use or new uses that are “small scale recreational or tourist.” This is not a substitute for a recreational master planned resort, however. See RCW 36.70A.050(e).

The Western Board has suggested that for an “intensification” of use, the use must have been in existence since July 1, 1990. *Anacortes v. Skagit County*, Final Decision and Order. But, this point seems meaningless in light of the language allowing “new development.” It defies common sense to say that a kayak rental business started in 1991 could not intensify to kayak sales and retail clothing sales in 2003, just because the business didn’t exist at that location in 1991.

The tourist or recreational use must “rely on a rural location and setting.” There is no guidance on what this means. Do winery tours and wine sales “rely on a rural location?” Fruit, vegetables and flowers can all be purchased in urban areas, so does a roadside stand rely on a rural location? What about noisy activities that take up a lot of space, like a “speedway” or “go cart” track? Is “rural location and setting” a meaningful limitation?

Type 2 LAMIRDS can include commercial facilities to serve the use and are not limited to development designed to serve the existing rural population, but may not include a new residential component. If the development is new, instead of existing, it is not subject to LOB in (d)(iv). Public facilities and services are limited to that necessary to serve the LAMIRD.

Type 3: New or Intensified Isolated Cottage Industry/Small-Scale Business

Type 3 LAMIRDS are authorized by RCW 36.70A.070(d)(iii). The Type 3 LAMIRDS include 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. This type of LAMIRD will typically be crossroads developments or businesses that will need a rural location such as a kennel or veterinary business, blacksmith shop, auto repair, plumbing shop, junk yard, salvage yard or other similar business that requires a large amount of land and generates a small amount of revenue. The GMA states:

(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. *Rural counties may allow the expansion of small-scale businesses as long as those small-scale*

businesses conform with the rural character of the area as defined by the local government according to RCW 36.70A.030(14). Rural counties may also allow new small-scale businesses to utilize a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area as defined by the local government according to RCW 36.70A.030(14). 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.

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

A. Boundaries for Type 3 LAMIRDS

Like the Type 2 LAMIRDS, the Type 3 LAMIRDS are meant to be single or several “lots” and not a wide area such as a town or village. Unlike Type 1 LAMIRDS, there is no reference to subsection (iv) regarding establishment of logical outer boundaries based upon patterns of development in 1990. Nonetheless, the Western Board has required all Type 3 LAMIRDS to be “mapped” using the requirements of .070(5)(iv). *Dawes v. Mason County*, Compliance Order August 14, 2002. Thus, the Western Board has imposed the “logical outer boundary analysis” and mapping requirement on Type 3 LAMIRDS.

Development codes can provide for their establishment by the county or by the applicant (as a type of re-zone). There is no restriction on where these LAMIRDS are located, and so it may be possible to “nest” a Type 3 LAMIRD inside a Type 1 LAMIRD, and thereby allow the intensification of use of parcels that do not have the same history of use.

B. Uses and Development in Type 3 LAMIRDS

The Type 3 LAMIRD provides broad options for future development potential. This is underscored by the placement of the 2002 amendments to the GMA in this section as shown in italics, above. This provision allows the expansion of existing small-scale businesses and may allow the development of new small-scale businesses on previously occupied sites provided the business is compatible in size and scale with the rural character of the area as defined in the Rural Element of the County's Comprehensive Plan. While this new amendment was arguably adopted at least partially in response to Board decisions limiting or prohibiting changes in uses Type 1 LAMIRDS, it was codified in the section pertaining to Type 3 LAMIRDS, a section which already permitted "new" development.

The use must conform to rural character of the area as defined in the Rural Element of the County's Comprehensive Plan. Such uses do not need to be designed to serve the rural population, but must provide job opportunities for rural residents. One Board Decision (*Anacortes*) would suggest that a needs analysis is required but, there is no statutory basis for

this requirement. Public facilities and services are limited to that necessary to serve the LAMIRD.

Thus, a small rural village (Type 1 LAMIRD) may have parcels with a small scale business that desires to change from one classification to another. This should be allowed, although there are some pre-2002 Growth Board decisions which suggest that a more rigid approach should be taken. *See, e.g., Burrow v. Kitsap County*, 99-3-0018co/98-3-0032cco (Order on Compliance in a Portion of Alpine and Final Decision and Order in Burrow)(March 29, 2000) at 21-23; *City of Anacortes v. Skagit County*, Final Decision and Order, February 1, 2001.

Typical uses that may fall within a Type 3 LAMIRD are neighborhood shopping centers, isolated commercial or industrial businesses, small industrial parks and crossroads commercial development including gas stations, mini-markets or grocery stores. These uses do not rely upon the rural location and are not recreational or tourist oriented. They do, however, provide jobs for people who live in rural areas.

Conclusion

A LAMIRD is not a mini-UGA or a rural substitute for a UGA. *Island County Citizens Coalition v. Island County*, Compliance Order, March 22, 2000. This is because LAMIRDS are to be limited and contained in terms of their boundaries and uses. They are not intended to provide centers for development growth or be the primary location for urban services.

The fundamental purpose of LAMIRDS is to acknowledge and authorize existing development. LAMIRDS will serve their purpose because they will allow small towns, hamlets and cross roads communities to mature. They will allow infill and change of use as the community grows. They will provide a means for competing water and sewer services and, thus, solve health and environmental problems.

The permanent and limited Type 1 LAMIRDS will protect neighborhoods from encroachment from new developments and hence protect the expectations of those who live in the rural areas. Best of all, LAMIRDS are yet another way to allow people to live and work in rural areas, thereby reducing traffic congestion in urban centers.

But, LAMIRDS are naturally limiting. As rural lands gradually fill in with people, more pressure will be placed on existing LAMIRDS. Businesses in existing LAMIRDS should thrive without much innovation because of the natural limits to competition created by the boundary and use limitations. Thus, while LAMIRDS may provide for some rural development, they should not be viewed as a long-term way for a community to grow.

LAMIRDS will only provide a short-term solution to on-going rural development. LAMIRDS only work under the GMA because there are urban areas nearby to take on such growth. Isolated LAMIRDS long distances from urban centers will need to be called UGAs. While some historical towns and villages may incorporate in the future, it would be wise for

county leaders to lay out the infrastructure of water and sewer over the top of existing development.