

## Framing the Commercial/Industrial Type III LAMIRD issue

**Problem:** One part of the LAMIRD discussion relates to property currently zoned commercial or industrial that may not have been developed as of July 1, 1990. Most of the affected parcels in this category fall within the Transportation Corridor category in the Whatcom County Comprehensive Plan.

The 2005 Western WA Growth Management Hearings Board Order (Case No. 05-2-0013) stated that the Transportation Corridor descriptor for Whatcom County (including Gateway Industrial & Guide Meridian) must incorporate the requirements of RCW 36.70A.070(5)

**Objectives:** To meet requirements of the Growth Management Act, Countywide Planning Policies, WWGMHB final decision & order: (key themes listed)

- Designate LAMIRDs according to RCW 36.70A.070(5) (WWGMHB); including measures that:
  - Contain or otherwise control rural development
  - Assure visual compatibility with surrounding rural area
  - Reduce inappropriate conversion of undeveloped land
  - Protect critical areas, surface water and groundwater
  - Protect against conflict with resource lands
- Retain urban vs. rural distinctions (CWPP)
- Encourage economic development & employment (CWPP & GMA)
- Enhance natural resource-based industries (GMA & CWPP)
- Protect the environment (GMA) / protect water quality & quantity (CWPP)
- Protect private property rights (CWPP & GMA)
- Encourage development in urban areas (CWPP & GMA)
- Reduce sprawl (GMA) / prevent strip development (CWPP)

### Alternatives:

Type I –

While the preferred option may be to designate areas as Type I LAMIRDs, Type I LAMIRD designation must be based on the built environment predominating on July 1, 1990, & not extend beyond logical outer boundaries (RCW 36.70A.070(5)(d)(iv)). This option is simply not available for areas without an existing built environment as of July 1, 1990.

Here is an example of a GMHB discussion on this issue (note Lewis County was required to plan under the provisions of GMA on July 1, 1993, not July 1, 1990 as is the case with Whatcom County):

“The next Freeway/Commercial area shown by Ex. VIII-309 is located north of the river on both sides of I-5 and includes the connecting of SR 506 with I-5. The record demonstrated that a very limited and spotty built environment and uses existed on July 1, 1993. The LAMIRD, however, includes vast areas of acreage that are not even ‘intense rural development’ today. The LAMIRD as designated does not comply with the Act. Additionally, the entire area substantially interferes with Goals 1,2, and 12 of the Act. There is very little and very unconnected commercial rural development that existed on July 1, 1993. There may be other alternatives the County can employ in its goal to protect these businesses, but drawing this

particular LAMIRD does not comply with the Act and does substantially interfere with the Act's goals." (*Panesko v. Lewis County, WWGMHB Case No. 00-2-0031c (Final Decision & Order 3-5-01)*)

- Rezone – Though still an option for policy makers, public comments have indicated the following is not a preferred option for those who own or manage commercial or industrial zoned property with existing commercial/industrial uses [reflecting Options A & B under question 8 in the 3/26/09 staff memo]: Change to Rural zoning in areas not predominated by the built environment on July 1, 1990 (allow existing use through zoning certificate or nonconforming use affidavit).
- Type III – A remaining option [reflecting Option C under question 8 in the 3/26/09 staff memo] is to **designate Type III LAMIRDs defined as allowing “The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses...”** (RCW 36.70A.070(5)(d)(iii)). There are a number of alternative directions to go with this option, guided by the Growth Management Hearings Board decisions and indicated by examples from other counties.

#### GMHB Cases – Type III LAMIRDs

##### ***Panesko v. Lewis County, WWGMHB Case No. 00-2-0031c (Final Decision & Order 3-5-01)***

“LAMIRDs designated under (d)(ii) or (iii) are defined and bounded by ‘lots’ and thus LOB requirements are irrelevant.”

##### ***Diehl v. Mason County, WWGMHB Case No. 95-2-0023c (Compliance Order 11-12-03)***

“The requirement that no new isolated small-scale business LAMIRD can be created one-half mile from any other LAMIRD or urban growth area and the numerical and acreage limitations that Criterion I imposes on the number of new small-scale isolated LAMIRDs that can be created help alleviate our concern that the sprawl reduction goal is being undermined.”

##### ***Whitaker v. Grant County, EWGMHB Case No. 99-1-0019 (Order on Compliance, 5-6-04)***

“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. This restriction does not apply to ‘new development’ authorized under Type II or Type III.”

##### ***Better Brinnon Coalition v. Jefferson County, WWGMHB Case No. 03-2-0007 (Compliance Order 6-23-04)***

“The Legislature’s use of the term ‘isolated’ for both cottage industry and small-scale businesses in RCW 36.70A.070(5)(d)(iii) demonstrates an unambiguous intention to ensure that any commercial uses established by the mechanism of a type (d)(iii) LAMIRD be set apart from other such uses.”

“We find that the proposed new type (d)(iii) LAMIRD does not comply with RCW 36.70A.070(5)(d)(iii) and (iv) because it connects a new area of more intense rural uses to an existing LAMIRD which allows the same kinds of uses. LAMIRDs must limit and contain growth, not extend it from one LAMIRD to the next.”

***Whitaker v. Grant County, EWGMHB Case No. 99-1-0019 (Second Order on Compliance, 11-1-04)***

“For a Type III LAMIRD the Board must first determine whether the LAMIRD appropriately contains ‘isolated’ cottage industry and small-scale businesses. This phrase does not require that the cottage industry and small-scale business to be located in an isolated part of the county. It is however required that the cottage industry and small-scale business itself be isolated from other similar uses. The location adjacent to other LAMIRDs or allowing similar uses within it causes a LAMIRD to not meet the requirement for ‘isolated’ uses.”

“Side-by-side LAMIRDs can hardly be said to contain and reduce sprawl and limit growth.”

“If new Type III LAMIRDs could be created for commercial development abutting other LAMIRDs, it would be possible to create strip malls or other stretches of more intensive rural development throughout the rural areas. This would encourage sprawl in the rural areas rather than containing limited amounts of development in the rural zone as envisioned by the Act.”

***Hensley v. Snohomish County (Hensley VI), CPSGMHB Case No. 03-3-0009c (Final Decision & Order, 9-22-03)***

“If a Type 3 LAMIRD allows ‘a new cottage industry or new small-scale business’ these new uses must be ‘isolated’.... The American Heritage Dictionary of the English Language, New College Edition, at 694, defines ‘isolate’ as “1. To separate from a group or whole and set apart. 2. To place in quarantine...4. To render free from external influence; insulate.” Can it be said that the County’s creation of this 9-acre LAMIRD would yield isolated uses – uses set apart, or free from external influence. This particular LAMIRD is located along an interstate highway running through the most urbanized, congested and densely populated area of the state. The location [I-5 and 300<sup>th</sup> St. NW] is far from being an isolated location where new small-scale business could be created without creating pressure for urbanization. It is hard for the Board to conceive of an isolated location along the I-5 corridor in the CPS region where a Type 3 LAMIRD would be an appropriate designation. Nonetheless, this 9-acre Type 3 LAMIRD is not isolated.”

**Other County Examples – Type III LAMIRDs**

***Skagit County***

Criteria for initial (existing) Type III designations “Rural Businesses”:

- Must have existed on June 1, 1997<sup>1</sup> as comm/ind uses (whether zoned as such or not);
- Granted comm/ind zoning appropriate to size & scale of rural uses through Comp Plan amendment process;
- Must not be similar in nature and location to other uses designated Rural Business;
- Must be compatible with the rural character of the area;
- Must not conflict with the conduct of natural resource activities of long-term commercial significance;
- Must be consistent with any adopted Community Plan for the area;
- Limited expansion and change of use opportunities.

Criteria for new or expanded Type III designations:

- Rezone process (for new);
- Limited uses (production, repair, services, manufacture, limited retail, ...);
- Expansions limited to 1,500 SF or 50%, whichever is less (with some exceptions);
- Change of use requires Hearing Examiner determination.

### ***Mason County***

Criteria for initial (existing) Type III designations:

- Commercial/industrial stand-alone use or a small group of associated uses;
- Limited area/limited ownerships per business;
- Only residential uses on premises are associated with private residences of owners/managers;
- Do not require urban services or induce urban growth;
- Boundaries can contain uses to reduce the potential for sprawl;
- Businesses have been in existence since July 1, 1990<sup>2</sup>.

Criteria for new or expanded Type III designations:

- Rezone process (for new);
- Total acreage should not exceed acreage of built environment as it existed on July 1, 1990 unless: such boundaries would split property ownership;
- The request fits with industrial/commercial needs established in an adopted industrial needs study or an adopted economic development plan for the County;
- Additional acreage requested is less than a 10% increase over the July 1, 1990 boundary acreage;

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<sup>1</sup> Skagit County was required to plan under the provisions of GMA on June 1, 1997, not July 1, 1990 as is the case with Whatcom County, according to RCW 36.70A.070(5)(d)(v).

<sup>2</sup> In Mason County, about a dozen properties had been developed since July 1, 1990 as commercial/industrial. They considered these as part of their Comp Plan update in 2005. Since these businesses were nonconforming due to actions of the county, they were granted appropriate zoning (rural comm/ind) and Type III LAMIRD designation. They were at times close to one another, but not close to other LAMIRDS or UGAs.

- New boundary and/or use would be compatible with existing rural uses;
- New boundary and/or use would not jeopardize open space and recreational areas identified in the County's open space plan;
- New boundary and/or use can meet CAO and other applicable environment protection regulations;
- New boundary and/or use will not require urban services or act as an inducer to low density sprawl development;
- New boundary and/or use will not require additional transportation facilities or reduce existing transportation facilities below an accepted level or rural service;
- New boundary and/or use can be made visually compatible with the surrounding rural area;
- New boundary and/or use avoids creating new nonconforming uses.

### ***San Juan County***

Criteria for Rural Industrial/Commercial designations (Type III):

- Lands with an existing or historical commitment to rural industrial/commercial uses;
- Direct access to public minor or major arterial;
- Land where on-site physical features can be used to protect surrounding lands from negative impacts;
- Uses limited to those which are most appropriately located in and are compatible with the rural environment;
- New residential development (except as accessory) is prohibited;
- Performance standards needed to ensure that allowed uses are consistent with the rural character of the area and minimize adverse environmental impacts.

### **Summarized Considerations for Whatcom County Approach to Type III LAMIRD designations**

- Whether to differentiate between uses existing today, those existing on July 1, 1990, and new proposed uses; and if so, how?
- How to determine uses are contained and isolated?
- How (and to what level of detail) to ensure uses are visually compatible with surrounding area, conform to rural character, and are similar to size, scale, and intensity of uses in surrounding area?
- Whether to review the county as a whole or only affected areas per GMHB order?