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TECHNICAL MEMORANDUM

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LAMIRD to UGA Conversion – DRAFT Case Law Analysis

Introduction

As part of the 2026 comprehensive plan periodic update, Chelan County has asked the consultant team to review and summarize information pertaining to the feasibility of converting all or a portion of the Malaga Limited Area of Intensive Rural Development (LAMIRD) into an Urban Growth Area (UGA). This technical memorandum constitutes the project deliverable of a Case Law White Paper evaluating case law relevant to the parameters of whether and how such a conversion can take place.

This memorandum is organized into the following major sections:

- 1) Statutory and WAC requirements pertaining to UGA designation and LAMIRDs
- 2) Relevant case law summary and conclusions
- 3) Outline of critical questions and next steps

Please note that nothing in this memorandum should be construed to constitute legal advice.

Statutory and WAC Requirements

The requirements for designation of UGAs can be found in RCW 36.70A.110. This section of the GMA spells out the criteria for initial adoption of UGA boundaries. It is the responsibility of the County, in consultation with the cities, to designate UGAs of a size consistent with the need to accommodate the 20-year population and employment growth forecast.

[RCW 36.70A.110\(1\)](#)

Each county that is required or chooses to plan under RCW [36.70A.040](#) shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is a designated new fully contained community as defined by RCW [36.70A.350](#). [...]

[RCW 36.70A.110\(2\)](#)

Based upon the growth management population projection made for the county by the office of financial management, the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period, except for those urban growth areas contained totally within a national historical reserve. As part of this planning process, each city within the county must include areas sufficient to accommodate the broad range of needs and uses that will accompany the projected urban growth including, as appropriate, medical, governmental, institutional, commercial, service, retail, and other nonresidential uses.

Each urban growth area shall permit urban densities and shall include greenbelt and open space areas. In the case of urban growth areas contained totally within a national historical reserve, the city may restrict densities, intensities, and forms of urban growth as determined to be necessary and appropriate to protect the physical, cultural, or historic integrity of the reserve. An urban growth area determination may include a reasonable land market supply factor and shall permit a range of urban densities and uses. In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth. [...]

[RCW 36.70A.110\(3\)](#)

Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining

portions of the urban growth areas. Urban growth may also be located in designated new fully contained communities as defined by RCW [36.70A.350](#).

[WAC 365-196-310](#) (Urban Growth Areas)

This chapter of the Washington Administrative Code (WAC) outlines requirements for urban growth areas, including the criteria and process by which land can be designated within an urban growth area.

Key elements of this section of WAC include:

(c) An urban growth area may include territory that is located outside a city if such territory already is characterized by urban growth or is adjacent to territory already characterized by urban growth.

(d) Based upon the growth management planning population projection selected by the county from within the range provided by the office of financial management, and the resulting allocations of housing need, and based on a countywide employment forecast developed by the county at its discretion, the urban growth areas shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding 20-year period. Counties and cities may provide the office of financial management with information they deem relevant to prepare the population projections, and the office shall consider and comment on such information and review projections with counties and cities before they are adopted. Counties and cities may petition the office to revise projections they believe will not reflect actual population growth.

(e) The combined urban growth area may not exceed the areas necessary to accommodate the growth management planning projections, plus a reasonable land market supply factor, or market factor. In determining this market factor, counties and cities may consider local circumstances. Counties and cities have discretion in their comprehensive plans to make many choices about accommodating growth. Each urban growth area shall permit urban densities and shall include greenbelt and open space areas.

[...]

(5) Recommendations for meeting requirements.

(a) Selecting and allocating countywide growth forecasts. This process should involve at least the following:

(i) The total countywide population is the sum of the population allocated to each city; the population allocated to any portion of the urban growth area associated with cities; the population allocated to any portion of the urban growth area not associated with a city; and the population growth that is expected outside of the urban growth area. Counties and cities should use consistent growth forecasts, allocations, and planning horizons. The planning horizon should start on the relevant deadline specified in RCW [36.70A.130](#)(5) and encompass 20 years.

(ii) RCW [43.62.035](#) directs the office of financial management to provide a reasonable range of high, medium and low 20-year population forecasts for each county in the state, with the medium forecast being most likely. Counties and cities must plan for a total countywide population that falls within the office of financial management range.

(iii) Consideration of other population forecast data, trends, and implications. In selecting population forecasts, counties and cities may consider the following:

(A) Population forecasts from outside agencies, such as regional or metropolitan planning agencies, and service providers.

(B) Historical growth trends and factors which would cause those trends to change in the future.

(C) General implications, including:

(I) Public facilities and service implications. Counties and cities should carefully consider how to finance the necessary facilities and should establish a phasing plan to ensure that development occurs at urban densities; occurs in a contiguous and orderly manner; and is linked with provision of adequate public facilities. These considerations are particularly important when considering forecasts closer to the high end of the range. Jurisdictions considering a population forecast closer to the low end of the range should closely monitor development and population growth trends to ensure actual growth does not begin to exceed the planned capacity.

(II) Overall land supplies. Counties and cities facing immediate physical or other land supply limitations may consider these limitations in selecting a forecast. Counties and cities that identify potential longer term land supply limitations should consider the extent to which current forecast options would require increased densities or slower growth in the future.

(III) Implications of short term updates. The act requires that 20-year growth forecasts and designated urban growth areas be updated at a minimum during the periodic review of comprehensive plans and development regulations (WAC [365-196-610](#)). Counties and cities should consider the likely timing of future updates, and the opportunities this provides for adjustments.

(D) Counties and cities are not required to adopt forecasts for annual growth rates within the 20-year period, but may choose to for planning purposes. If used, annual growth projections may assume a consistent rate throughout the planning period, or may assume faster or slower than average growth in certain periods, as long as they result in total growth consistent with the 20-year forecasts selected.

(iv) Selection of a countywide employment forecast. Counties, in consultation with cities, should adopt a 20-year countywide employment forecast to be allocated among urban growth areas, cities, and the rural area. The following should be considered in this process:

(A) The countywide population forecast, and the resulting ratio of forecast jobs to persons. This ratio should be compared to past levels locally and other regions, and to desired policy objectives; and

(B) Economic trends and forecasts produced by outside agencies or private sources.

(v) Projections for commercial and industrial land needs. When establishing an urban growth area, counties should designate sufficient commercial and industrial land. Although no office of financial management forecasts are available for industrial or commercial land needs, counties and cities should use a countywide employment forecast, available data on the current and projected local and regional economies, and local demand for services driven by population growth. Counties and cities should consider establishing a countywide estimate of commercial and industrial land needs to ensure consistency of local plans.

Counties and cities should consider the need for industrial lands in the economic development element of their comprehensive plan. Counties and cities should avoid conversion of areas set aside for industrial uses to other incompatible uses, to ensure the availability of suitable sites for industrial development.

(vi) Selection of community growth goals with respect to population, commercial and industrial development and residential development.

(vii) Selection of the densities a county or city seeks to achieve in relation to its growth goals. Inside the urban growth areas, densities must be urban. Outside the urban growth areas, densities must be rural.

More code can be found in [WAC 365-196-310](#).

WAC 365-196-425

This section of the WAC contains code related to the Rural element. Subsection 6 deals with LAMIRDs. By the definitions established in these sections, the Malaga LAMIRD would be considered a Type 1 LAMIRD (isolated area of existing more intense development).

(6) Limited areas of more intense rural development. The act allows counties to plan for isolated pockets of more intense development in the rural area. These are referred to in the act as limited areas of more intense rural development or LAMIRDs.

(a) LAMIRDs serve the following purposes:

(i) To recognize existing areas of more intense rural development and to minimize and contain these areas to prevent low density sprawl;

(ii) To allow for small-scale commercial uses that rely on a rural location;

(iii) To allow for small-scale economic development and employment consistent with rural character; and

(iv) To allow for redevelopment of existing industrial areas within rural areas.

(b) An existing area or existing use is one that was in existence on the date the county became subject to all of the provisions of the act:

(i) For a county initially required to fully plan under the act, on July 1, 1990.

(ii) For a county that chooses to fully plan under the act, on the date the county adopted the resolution under RCW [36.70A.040](#)(2).

(iii) For a county that becomes subject to all of the requirements of the act under RCW [36.70A.040](#)(5), on the date the office of financial management certifies the county's population.

(c) Counties may allow for more intensive uses in a LAMIRD than would otherwise be allowed in rural areas and may allow public facilities and services that are appropriate and necessary to serve LAMIRDs subject to the following requirements:

(i) Type 1 LAMIRDs - Isolated areas of existing more intense development. Within these areas, rural development consists of infill, development, or redevelopment of existing areas. These areas may include a variety of uses including commercial, industrial, residential, or mixed-use areas. These may be also characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.

(A) Development or redevelopment in LAMIRDs may be both allowed and encouraged if it is consistent with local character and if existing providers of public facilities and public services confirm there is sufficient capacity of existing public facilities and public services to serve new or additional demand. Counties may allow new uses of property within a LAMIRD, including development of vacant land.

(B) Allowed commercial development or redevelopment. Any commercial development or redevelopment within a mixed use area must be principally designed to serve the existing and projected rural population and must meet the following requirements:

(I) Any included retail or food service space must not exceed the footprint of previously occupied space or 5,000 square feet, whichever is greater, for the same or similar use; unless the retail space is for an essential rural retail service and the designated limited area is located at least 10 miles from an existing urban growth area, then the retail space must not exceed the footprint of the previously occupied space or 10,000 square feet, whichever is greater; and

(II) Any included retail or food service space must not exceed 2,500 square feet for a new use unless the new retail space is for an essential rural retail service and the designated limited area is located at least 10 miles from an existing urban growth area, then the new retail space must not exceed 10,000 square feet; and

(III) For the purposes of this section, "essential rural retail services" means services including grocery, pharmacy, hardware, automotive parts, and similar uses that sell or provide products necessary for health and safety, such as food, medication, sanitation supplies, and products to maintain habitability and mobility as defined in RCW [36.70A.070](#).

(C) When establishing a Type I LAMIRD, counties must establish a logical outer boundary. The purpose of the logical outer boundary is to minimize and contain the areas of more intensive rural development to the existing areas. Uses, densities or intensities not normally allowed in a rural area may be allowed inside the logical outer boundary consistent with the existing character of the LAMIRD. Appropriate and necessary levels of public facilities and services not otherwise provided in rural areas may be provided inside the logical outer boundary.

(D) The logical outer boundary must be delineated primarily by the built environment as it existed on the date the county became subject to the planning requirements of the act.

(I) Some vacant land may be included within the logical outer boundary provided it is limited and does not create a significant amount of new development within the LAMIRD.

(II) Construction that defines the built environment may include above or below ground improvements. The built environment does not include patterns of vesting or preexisting zoning, nor does it include roads, clearing, grading, or the inclusion within a sewer or water service area if no physical improvements are in place. Although vested lots and structures built after the county became subject to the act's requirements should not be considered when identifying the built environment, they may be included within the logical outer boundary as infill.

(III) The logical outer boundary is not required to strictly follow parcel boundaries. If a large parcel contains an existing structure, a county may include part of the parcel in the LAMIRD boundary without including the entire parcel, to avoid a significant increase in the amount of development allowed within the LAMIRD.

(E) The fundamental purpose of the logical outer boundary is to minimize and contain the LAMIRD. Counties should favor the configuration that best minimizes and contains the LAMIRD to the area of existing development as of the date the county became subject to the planning requirements of the act. When evaluating alternative configurations of the logical outer boundary, counties should determine how much new growth will occur at build out and determine if this level of new growth is consistent with rural character and can be accommodated with the appropriate level of public facilities and public services. Counties should use the following criteria to evaluate various configurations when establishing the logical outer boundary:

(I) The need to preserve the character of existing natural neighborhoods and communities;

(II) Physical boundaries such as bodies of water, streets and highways, and land forms and contours;

(III) The prevention of abnormally irregular boundaries; and

(IV) The ability to provide public facilities and public services in a manner that does not permit low-density sprawl.

(F) Counties should not propose or accept applications that would expand or create a new Type-1 LAMIRD. Once a logical outer boundary has been adopted, counties may consider

changes to the boundary in subsequent amendments if there was an error in application of the original criteria. When doing so, the county must use the same criteria used when originally designating the boundary. Counties should avoid adding new undeveloped parcels as infill, especially if doing so would add to the capacity of the LAMIRD.

[...]

(d) The initial effective date of an action that creates or expands a limited area of more intense development is the latest of the following dates per RCW [36.70A.067](#):

(i) Sixty days after the publication of notice of adoption of the comprehensive plan, development regulation, or amendment to the plan or regulation, implementing the action, as provided under RCW [36.70A.290](#)(2); or

(ii) If a petition for review to the growth management hearings board is timely filed, upon issuance of the board's final order.

(e) Major industrial developments and master planned resorts governed by other requirements. Counties may not use the provisions of RCW [36.70A.070](#) (5)(d)(iii) to permit a major industrial development or a master planned resort. These types of development must comply with the requirements of RCW [36.70A.360](#) through [36.70A.368](#). For more information about major industrial developments, see WAC [365-196-465](#). For more information about master planned resorts, see WAC [365-196-460](#).

While the Legislature has not weighed in specifically on whether a LAMIRD can be converted to a UGA, it is our opinion that any expansion of UGA land within a fully planning county would be subject to all the RCWs and WACs related to UGA designation.

Case Law

There are several relevant Growth Management Hearings Board (GMHB) cases and related cases in the courts related to potential redesignation of the Malaga LAMIRD. Those cases are summarized below, with takeaways for Chelan County listed after each summary.

KITTITAS COUNTY CONSERVATION ET AL. V. KITTITAS COUNTY (CASE NO. 07-1-0004C)

This case dealt with a number of issues, one of which is Issues No. 5, 12, and 14, which involve the question of whether Kittitas County appropriately show its work regarding sizing and locational criteria for UGAs and whether its use of so-called Urban Growth Nodes was valid since they were not designated as either UGAs or LAMIRDS and did not clearly meet the criteria of either.

The petitioners argued that Kittitas County's UGAs were oversized (contained more than enough capacity to account for projected growth) and that therefore the County needed to revisit the designation of its Urban Growth Nodes and either size them down, or define them as LAMIRDS instead.

The County argued that its Urban Growth Nodes were intended to recognize communities with “urban characteristics” but acknowledged that these five areas could be classified as either UGAs or LAMIRDs.

The GMHB concluded that Kittitas County erred in how it adopted Urban Growth Nodes. It did not conduct a proper land capacity analysis and did not adopt an updated Capital Facilities Plan to designate and accommodate UGA expansions. It noted that Urban Growth Nodes are not an acknowledged mechanism within the UGA and that the County would need to conduct a land capacity analysis and capital facilities planning and re-designate the five Urban Growth Nodes as either UGAs or LAMIRDs as appropriate and comply with the relevant provisions for each.

Takeaways for Chelan County

- There is no “both/and” option between LAMIRDs and UGAs. An area of intensive development must either be a LAMIRD or a UGA.
- The sizing of a UGA must be sufficient to accommodate 20 years of growth plus a reasonable market factor (as determined by a land capacity analysis). The sizing of a LAMIRD must be based on the logical outer boundary of a pre-existing area of more intense development within a rural area and cannot be expanded beyond this boundary.

KITTITAS COUNTY CONSERVATION AND FUTUREWISE V. KITTITAS COUNTY (CASE NO. 11-1-0001)

This case dealt with a challenge to Kittitas County’s expansion of the Thorp LAMIRD in the county’s 2010 comprehensive plan. In this matter, Kittitas County expanded the Thorp LAMIRD from 12 to 30.5 acres to develop a travel center, which also involved map changes (comprehensive plan and zoning). The GMHB cited *Gold Star Resorts, Inc. v. Futurewise, et al.*, 167 Wn 2n 723, 727-28 (2009), in which the Washington Supreme Court held that LAMIRDs are not intended for continued use as a planning device but are “intended to be a one-time recognition of existing areas and uses and are not intended to be used continuously to meet needs (real or perceived) for additional commercial and industrial lands.”

The GMHB decided that Kittitas County’s expansion of the Thorp LAMIRD violated the GMA on a number of grounds.

The Legislature has since clarified this matter – in 2022, SB 5275 amended RCW 36.70A.070 to include flexibility for development and redevelopment in LAMIRDs subject to confirmation from all public services providers that sufficient facilities and services exist to serve any new demand from development or redevelopment.

Takeaways for Chelan County

- The takeaway for Chelan County from this case is that expansion within a LAMIRD can only be allowed to the extent that it complies with new provisions within RCW 36.70A.070(5) as well as that the uses being developed or redeveloped within the LAMIRD comply with the case law

and WACs regarding whether those uses and the size of those uses are appropriate within the type of LAMIRD in question.

- Notwithstanding the flexibility added to the RCWs by SB 5275, major expansion of commercial, industrial, or residential uses within a LAMIRD would run afoul of the Supreme Court's ruling that a LAMIRD is not intended for continued use as a planning device. Any major growth that occurs in Malaga would have to occur as a UGA.

WILMA ET AL. V. STEVENS COUNTY (CASE NO. 06-1-0009C)

In this case, the petitioners raised 23 separate issues regarding the 2006 comprehensive plan update in Stevens County. The relevant issues were Issue No. 2, which pertained to whether some of the UGAs designated by the County in its adopted plan were appropriately designated or whether they should have been designated as LAMIRDs, Issue No. 5, which pertained to greenbelts and open spaces not being designated on the comprehensive plan map for the new UGAs, and Issue No. 6, which pertained to non-contiguous areas being designated as a LAMIRD in Loon Lake and whether these boundaries meet the definition of "logical outer boundary" of a LAMIRD.

In its analysis of this issue, the Board considered that Stevens County followed a process to determine whether some areas already characterized by urban-type growth (within the local context of a rural county) should be designated as either UGAs or LAMIRDs. It ruled that Stevens County erred in not providing a capital facilities plan and financial plan for urban services within the new UGAs but was valid in its designation of the new UGAs based on the objective criteria developed by staff.

A related issue is that the petitioners in this case argued that the County did not show greenbelts and open spaces on its comprehensive plan maps of the new UGAs. The GMHB decided that the County is *"required to at least analyze the potential for greenbelt and open space within specific UGAs. The County can base its decision on a variety of criteria, including population, size, and need of the individual UGAs, factor that analysis into its planning and show designated greenbelts and open space on the County's maps. Some UGAs may not need greenbelts and open spaces, some may need both. Regardless, the County must include greenbelt and open space areas or show its work on why greenbelts and open spaces are not necessary when it designates UGAs."*

The other issue related to the sizing and logical outer boundaries of LAMIRDs, where the Board agreed with Stevens County that it had shown its work and had appropriately designated the Loon Lake LAMIRD but raised questions about why the County included some areas within a logical outer boundary in some LAMIRDs but did not include similar areas in similar circumstances in other LAMIRDs.

Takeaways for Chelan County

- While Malaga is not necessarily the same type of LAMIRD as considered in *Wilma et al. v. Stevens County*, the takeaway from how the GMHB decided this case for Chelan County is that Stevens County had a logical set of criteria to distinguish whether an area should be a LAMIRD or a UGA that were defensible to the Hearings Board.
- If Chelan County proposes to re-designate all or a portion of the Malaga LAMIRD as a UGA, the GMHB decision makes it clear that the UGA must meet all the requirements of a UGA, including

(but not limited to) capital facilities (see below) as well as designation (or consideration of the need for) of open space and greenbelts.

- Chelan County must develop a capital facilities plan (including a financing plan) as part of this comprehensive plan update for the proposed Malaga UGA to ensure the UGA can be provided with the full range of urban services within the planning period to accommodate the projected growth.

Outline of Critical Questions and Next Steps

Critical questions that will need to be answered include:

- 1) Is this an area where future growth is likely?
- 2) Does Chelan County need additional land to accommodate housing or employment growth that cannot be accommodated within the existing UGAs?
- 3) Does the LAMIRD have the necessary urban governmental services, or can they be feasibly provided?

Key next steps include:

- 1) Enumerate the future growth that is likely specifically in the Malaga area that will require designation of an urban growth area.
- 2) Conduct capital facilities planning, including financing plan.
- 3) Give proposed Malaga UGA a growth target. This will need to be part of an overall process of countywide growth forecasts consistent with [WAC 365-196-310\(5\)](#).
- 4) Conduct a land capacity analysis on the existing land in the proposed UGA.