

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2  
3 VINCE PANESKO, et al,

4 Petitioners,

5  
6 v.

7  
8 LEWIS COUNTY,

9  
10 Respondent,

**No. 00-2-0031c**

**ORDER DENYING MOTION  
TO RESCIND INVALIDITY**

11  
12 EUGENE BUTLER, et al,

13 Petitioners,

14  
15 v.

16  
17 LEWIS COUNTY,

18  
19 Respondent,

**No. 99-2-0027c**

**ORDER DENYING MOTION  
TO RESCIND INVALIDITY**

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22  
23 THIS Matter comes before the Board upon the motion of Lewis County for an order  
24 rescinding the invalidity determination entered in these coordinated cases (also referred to  
25 herein as *Butler v. Lewis County* and *Panesko v. Lewis County*) on February 13, 2004<sup>1</sup>, as  
26 modified on May 21, 2004.<sup>2</sup> Motion of Lewis County To Rescind Invalidity on Rural Land  
27 Designations. Petitioners Butler, Gore, Hayden, Knutsen, Mudge, Susan Roth, Richard  
28 Roth, Smethers, Smith, Yanisch and Zieske (the Butler Petitioners hereafter) oppose the  
29 County's motion. Response To Motion To Rescind Invalidity [and] Petitioners' Hearing Brief  
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<sup>1</sup> Order Finding Noncompliance and Imposing Invalidity.

<sup>2</sup> Order on Reconsideration of Extent of Invalidity.

1 on Remand. Petitioner Panesko also opposes the County's motion. Response To Motion  
2 To Rescind Invalidity On Rural Land Designations.

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4 **I. SYNOPSIS OF DECISION**

5 The County's motion to rescind the invalidity determinations entered in 2004 is based  
6 exclusively upon the Washington Supreme Court decision of August 10, 2006, reversing in  
7 part the February 13, 2004 and May 21, 2004 orders in this case.<sup>3</sup> The County urges the  
8 Board to find that the Supreme Court decision has the effect of *de facto* rescinding the ruling  
9 of invalidity it seeks to have rescinded.<sup>4</sup> Petitioners argue that the Supreme Court decision  
10 did not reverse the invalidity determination(s) and that the Board should not address  
11 invalidity until it has the compliance remand issues before it.<sup>5</sup>  
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14 Here, the Board finds the central issue to be the Board's finding in its February 13, 2004  
15 order in these coordinated cases regarding the inconsistency between the designation  
16 criteria for agricultural lands adopted by the County in 2003 and the mapping of those lands.  
17 Supplemental Findings Of Fact And Conclusions Of Law Regarding The Invalidity Of  
18 Agricultural Resource Lands Designation Definitions, Maps, And Criteria - No. 6; Order  
19 Finding Noncompliance and Imposing Invalidity, February 13, 2004. Upon review of the  
20 issues presented and argued to the Washington Supreme Court, the Board finds that this  
21 issue was not appealed, nor was it necessarily included in the issues that were appealed.  
22 Therefore, the Board's decision and finding on this issue remain in effect after the Supreme  
23 Court's decision.  
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30 <sup>3</sup> The County has taken no legislative action to achieve compliance in the intervening years and therefore does  
31 not offer any amended comprehensive plan or development regulation provisions as removing substantial  
32 interference with the goals of the Growth Management Act.

<sup>4</sup> Motion to Rescind Invalidity on Rural Lands Designations at 3.

<sup>5</sup> Petitioners' Response to County Motion to Rescind Invalidity and Hearing Brief on Remand at 15-16;  
Response to Lewis County Motion at 4.

1 Because the comprehensive plan and zoning maps are not consistent with the County's  
2 designation criteria, the maps are non-compliant. Because the maps erroneously represent  
3 those lands that should be designated as agricultural, the invalidity finding as to the maps  
4 designating rural lands will not be rescinded at this time. When the remand case in its  
5 entirety is presented to the Board, the Board may consider the compliance and invalidity  
6 questions together.  
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## 8 9 **II. RELEVANT PROCEDURAL HISTORY**

10 The invalidity determination at issue here was entered in 2004 after several prior decisions  
11 in which the Board found that the County had failed to properly designate agricultural  
12 resource lands in compliance with the Growth Management Act (GMA), Ch. 36.70A RCW.  
13 In its February 13, 2004 Order Finding Noncompliance and Imposing Invalidity, the Board  
14 found noncompliance and imposed invalidity as to LCC 17.10.126(a); LCC 17.10.126(b); the  
15 amendment to the comprehensive plan enacted through Resolution 03-368 LCC  
16 17.30.590(1)(c); and "All maps designating agricultural resource lands (adopted in  
17 Ordinance 1179E and Resolution 03-368)". In its May 21, 2004 Order on Reconsideration  
18 of Extent of Invalidity, the Board modified the extent of the portions of the map that were  
19 found invalid to be:  
20

- 21 • Those portions of the maps mapped as "Class C" farmlands on Ex. XII-50 (new  
22 maps introduced at the April 26, 2004 hearing on reconsideration)
- 23 • Those portions of the maps mapped as "Recommended as not Agricultural  
24 Resource Lands" that apply to rural lands only.

25 Order on Reconsideration of Extent of Invalidity at 12.  
26

27 The County appealed the Board's orders to the Lewis County Superior Court. The Superior  
28 Court affirmed the Board on all issues. Subsequently, the County was granted direct review  
29 by the Washington Supreme Court. On August 10, 2006, the Washington Supreme Court  
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1 issued a decision reversing the Board in part, affirming the Board in part, and remanding the  
2 case.<sup>6</sup>

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4 The County filed its motion to rescind invalidity as to rural lands on September 1, 2006.  
5 Petitioner Panesko filed his opposition on September 8, 2006. The Butler Petitioners filed  
6 their opposition on September 12, 2006.  
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9 To expeditiously schedule a hearing on the County's motion pursuant to RCW  
10 36.70A.302(6), the Board issued a Prehearing Order on Motion to Rescind Invalidity on  
11 September 14, 2006. However, the County objected to the Prehearing Order and further  
12 briefing was filed. As a result, a telephonic prehearing conference was held on October 3,  
13 2006 and the Prehearing Order was amended in accordance with the agreements reached  
14 at the prehearing conference. The amended prehearing order provided a briefing schedule  
15 and set the hearing on the motion for November 1, 2006.  
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18 The hearing on the motion was held November 1, 2006 at the Winlock City Hall in Winlock,  
19 Washington. All three Board members attended, Margery Hite presiding. Eugene Butler  
20 appeared for the Butler Petitioners and Vince Panesko appeared *pro se*. Petitioners  
21 Smethers and Vinatieri were also present. The County was represented by Chief Civil  
22 Deputy Prosecuting Attorney, Douglas Jensen. Community Development Director Robert  
23 Johnson and Consultant Mike McCormick also were present for the County.  
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26 At the hearing on the merits, the County's motion to strike the Butler Petitioners' Reply Brief  
27 was granted based on the condition in the Prehearing Order that a Reply Brief could only be  
28 offered if the County presented new argument in its brief. The County's Motion to  
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31 <sup>6</sup> *Lewis County v. Western Washington Growth Management Hearings Board, et al.*, Washington Supreme  
32 Court Docket No. 76553-7, August 10, 2006

1 Supplement the Record with the mandate from the Supreme Court (filed October 26, 2006)  
2 was denied as not timely and not relevant to the issues presented.

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4 After argument, the parties were asked to submit post-hearing briefing on the extent of the  
5 issues presented on appeal to the Washington Supreme Court. All parties timely filed their  
6 post-hearing submissions on November 13, 2006.<sup>7</sup> Petitioner Panesko objects and moves  
7 to strike the County's response as exceeding the scope of the allowed post-hearing briefing.  
8 The Board will allow the County's response but will give the attachments due weight.  
9 Petitioner Panesko also filed a second post-hearing submission on November 16, 2006.<sup>8</sup>  
10 The County objects to this submission<sup>9</sup> and the Board agrees that it exceeds the scope and  
11 timing allowed for post-hearing submissions so it will be stricken.  
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### 14 **III. ISSUE PRESENTED IN MOTION**

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16 Does the Washington Supreme Court decision of August 10, 2006 in this case require  
17 the rescission of the Board's invalidity determination as to the maps of rural lands in this  
18 case?  
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### 20 **IV. BURDEN OF PROOF**

21  
22 There are two ways that a local jurisdiction may bring a request to the Board to rescind a  
23 prior determination of invalidity. When the jurisdiction has responded to the invalidity  
24 determination by taking legislative action, the motion is brought pursuant to RCW  
25 36.70A.302(7)(a):

26 (7)(a) If a determination of invalidity has been made and the county or city has  
27 enacted an ordinance or resolution amending the invalidated part or parts of the plan  
28 or regulation or establishing interim controls on development affected by the order of  
29 invalidity, after a compliance hearing, the board shall modify or rescind the  
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31 <sup>7</sup> Petitioners' Post Hearing memorandum Re: Issues Ruled Upon On Appeal (Butler Petitioners); Petitioner  
32 Panesko Post-Hearing Brief; and Response by Lewis County To Supplementation of Supreme Court Record.

<sup>8</sup> Petitioner Panesko Supplemental Post-Hearing Brief, November 16, 2006.

<sup>9</sup> Lewis County's Response to Petitioner Panesko's Supplemental Post-Hearing Brief

1 determination of invalidity if it determines under the standard in subsection (1) of this  
2 section that the plan or regulation, as amended or made subject to such interim  
3 controls, will no longer substantially interfere with the fulfillment of the goals of this  
4 chapter.

5 Under such circumstances, the Board holds a compliance hearing and decides whether the  
6 amended provision no longer substantially interferes with the goals of the Growth  
7 Management Act. The burden is on the jurisdiction to demonstrate that the new ordinance  
8 or resolution will no longer substantially interfere with fulfillment of GMA goals. RCW  
9 36.70A.320(4).  
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11  
12 The GMA also provides that a jurisdiction may bring a motion to “clarify, modify or rescind  
13 the order” of invalidity. RCW 36.70A.302(6). At the hearing on such a motion, “the parties  
14 may present information to the board to clarify the part or parts of the comprehensive plan  
15 or development regulations to which the final order applies.” *Ibid.* The Board is required to  
16 issue any order based on the supplemental information not later than thirty days after the  
17 hearing. *Ibid.*  
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19  
20 Here, the County has not taken legislative action but has brought its motion pursuant to  
21 RCW 36.70A.302(6) and WAC 242-02-833. The basis for the County’s motion is the  
22 Washington Supreme Court decision of August 10, 2006. Therefore, the issue for the Board  
23 here is whether the Supreme Court decision, directly or indirectly, caused the determination  
24 of invalidity as to the mapping of rural lands in this case to fall.  
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27 This is the County’s motion and the County bears the burden of showing that the Board’s  
28 prior determination of invalidity should be rescinded.  
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1 **V. DISCUSSION**

2 **Positions of the Parties**

3 The County argues that the state Supreme Court decision in this case remanding the  
4 determination of non-compliance on agricultural resource land designations under Ord.  
5 1179E and Resolution 03-368 results in no finding of noncompliance by the Board.<sup>10</sup>  
6 Relying on this Board's decision in the Order Granting Reconsideration in *Futurewise v.*  
7 *Lewis County*, WWGMHB Case No. 06-2-0006 (the *Futurewise* case hereafter), the County  
8 argues that the Supreme Court decision has the *de facto* effect of rescinding the ruling of  
9 invalidity.<sup>11</sup>

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12 The Butler Petitioners argue that the Supreme Court did not address the invalidity  
13 determination in this case but remanded the compliance issues to the Board to determine if  
14 the County used permissible criteria for designation of agricultural lands in light of the  
15 considerations outlined in RCW 36.70A.030 and WAC 365-190-050.<sup>12</sup> They point out that  
16 the Supreme Court did not find the County's designation criteria compliant and that the  
17 Board's ruling is in effect until the mandate reaches the Board.<sup>13</sup> The Butler Petitioners  
18 argue that the Board should hear the compliance issues on remand together with the  
19 invalidity issue to avoid a gap in decision making.<sup>14</sup>

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23 Petitioner Panesko argues that the Court remanded these cases to the Board for further  
24 proceedings because both the Board and the County used incorrect definitions of  
25 agricultural land.<sup>15</sup> Petitioner Panesko also argues that many of the Board's findings and  
26 conclusions were not reversed by the Court.<sup>16</sup> Among those Petitioner Panesko argues was  
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29 <sup>10</sup> Motion to Rescind Invalidity on Rural Lands Designations at 3.

30 <sup>11</sup> *Ibid.*

31 <sup>12</sup> Petitioners' Response to County Motion to Rescind Invalidity and Hearing Brief on Remand at 2,

32 <sup>13</sup> *Ibid* at 16.

<sup>14</sup> *Ibid.*

<sup>15</sup> Petitioner Panesko Brief at 4-5.

<sup>16</sup> *Ibid* at 8-11.

1 the Board's determination that "the County did not comply with the Growth management Act  
2 in the application of its other criteria to map Class A Farmlands."<sup>17</sup>

3  
4 **Board Discussion**

5 Because the County has taken no action to achieve compliance, the only question before  
6 the Board in this motion is the effect of the Supreme Court decision. While the parties have  
7 briefed and argued the meaning and effect of the Court's decision with respect to the  
8 Board's determinations regarding the criteria for designation of agricultural lands, we do not  
9 reach those questions here. The reason for this is that the Board's findings with respect to  
10 the inconsistency between the County's agricultural designation criteria and its application  
11 of those criteria to designate and map agricultural lands were not reversed. The  
12 determination that the County's maps of rural lands are invalid was not just based upon the  
13 County's adoption of non-compliant designation criteria. It was also based upon the  
14 inconsistency between the designation criteria that the County adopted and the lands it  
15 designated and mapped as agricultural. The Board found that the County has not  
16 designated or mapped its agricultural lands in a manner consistent with its own designation  
17 criteria:  
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20 *Supplemental Findings Of Fact And Conclusions Of Law Regarding The Invalidity Of*  
21 *Agricultural Resource Lands Designation Definitions, Maps, And Criteria*

22 ...

23 6. The County has also designated agricultural lands in conflict with its own  
24 designation criteria. The maps showing designations of lands in Lewis County do  
25 not comply with either the County's criteria or the requirements of the GMA.  
26 Order Finding Noncompliance and Imposing Invalidity at 46.

27 The finding of inconsistency between the County's designation criteria and its maps is not  
28 dependent upon a determination that the designation criteria were clearly erroneous;  
29 instead, the Board found non-compliant the County's failure to follow its own designation  
30 criteria in designating and mapping agricultural lands. The Lewis County Superior Court  
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<sup>17</sup> *Ibid* at 9.

1 upheld the Board's determinations on appeal and therefore the Board's decision in this  
2 regard was not reversed by the Superior Court.

3  
4 The Supreme Court decision itself does not discuss the issue of the consistency between  
5 the County's designation criteria and its mapping. However, the County argues that the  
6 Board's decision on this point was overturned by implication, referring to the concluding  
7 language of the opinion:  
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9 In conclusion as explained above, we reverse the Board's decision that Lewis County  
10 may not designate agricultural lands based on the local farm industry's projected land  
11 needs. If the State wants to conserve all land that is capable of being farmed without  
12 regard to commercial viability, it may buy the land.

13 We also remand the case for the Board to apply the correct definition of agricultural  
14 land, taking into account whether the county used permissible criteria. However, we  
15 affirm the Board's invalidation of the exclusion of farm homes and farm centers from  
16 designated agricultural lands because "serving the farmer's non-farm economic  
17 needs" is not a permissible consideration. We also affirm the Board's invalidation of  
18 non-farm uses within agricultural lands.

19 *Lewis County v. Western Washington Growth Management Hearings Board, et al.*,  
20 Washington Supreme Court Docket No. 76553-7, August 10, 2006 at 20.<sup>18</sup>

21 The Board does not agree with the County that this language in the Supreme Court decision  
22 supports the County's position that the Board's decision regarding the inconsistency  
23 between the designation criteria and the actual mapping was reversed. The Court's  
24 discussion and decision concerned the designation criteria themselves, not how those  
25 criteria were implemented.

26 The Board asked the parties to supply the Board after the hearing with the issues argued on  
27 appeal to the Supreme Court. Nowhere in the pleadings that were presented to the  
28 Supreme Court do we find any reference to the issue of inconsistency between the County's  
29 own designation criteria and its mapping of agricultural lands. If the issue were before the  
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32 <sup>18</sup> The Court also stated in a foot-note that it would not reach the procedural issues raised by Lewis County  
since the case was decided on statutory grounds

1 Supreme Court, it should have been set forth in the issues on appeal in the Statement of  
2 Grounds for Direct Review (Exhibit B to the Response by Lewis County to Supplementation  
3 of Supreme Court Record). We have reviewed this carefully and find nothing indicating this  
4 issue was presented in the issues on appeal. We have also reviewed the copies of the  
5 Supreme Court briefing submitted by the County to determine whether the issue was raised  
6 in the briefs. We find no discussion of this issue in the Respondent Brief of Vince Panesko  
7 (Exhibit C to the Response by Lewis County to Supplementation of Supreme Court Record);  
8 Brief of Respondents (Exhibit D to the Response by Lewis County to Supplementation of  
9 Supreme Court Record); or the County's Reply Brief (Exhibit E to the Response by Lewis  
10 County to Supplementation of Supreme Court Record).  
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13 The Board therefore finds that its decision with respect to the inconsistency between the  
14 County's designation criteria and its mapping of agricultural lands was not reversed on  
15 appeal. We further find that until the maps match the designation criteria, those maps are  
16 invalid because they misrepresent which lands should be designated as agricultural  
17 resource lands using the County's own criteria. The continued validity of the maps  
18 substantially interferes with the fulfillment of Goal 8 of the GMA and the motion to rescind  
19 invalidity is therefore denied.  
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22 In denying the motion to rescind invalidity at this time, the Board is not prejudging the issues  
23 on remand. A schedule has been adopted to allow for briefing and argument on the scope  
24 of the remand as well as the compliance questions themselves. Based upon those  
25 arguments and the record submitted in support of them, the Board will make its decision as  
26 directed by the Supreme Court.  
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29 The County relies heavily upon the Order Granting Motion for Reconsideration in *Futurewise*  
30 *v. Lewis County*, WWGMHB Case No.06-2-0003, to support its request for rescission of  
31 invalidity in these coordinated cases. The County argues that the Board has already ruled  
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1 on the continuing effectiveness of its invalidity determinations in this case in *Futurewise v.*  
2 *Lewis County*, WWGMHB Case No.06-2-0003, Order Granting Motion for Reconsideration,  
3 August 24, 2006. The procedural situation in that case was different from that presented  
4 here, and different arguments were presented. As a matter of argument in this motion,  
5 Petitioner Panesko has pointed out that the Board's determination that the County's  
6 comprehensive plan and zoning maps do not match their agricultural lands designation  
7 criteria was not appealed to the Supreme Court.<sup>19</sup> This is a new argument and sheds light  
8 on the scope of the Supreme Court's reversal.  
9

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11 Procedurally, this case is different in two major respects. The first is because of the  
12 difference between a hearing on a petition for review (as was the case in the *Futurewise*  
13 case) and a hearing on a motion to rescind a determination of invalidity (as is the case  
14 here). The burden of proof is on the County when bringing a motion to rescind invalidity so  
15 the burden for this motion is on the County. However, the burden is on the Petitioners to  
16 establish noncompliance in the first place. In the *Futurewise* case, the Petitioners had the  
17 burden to show noncompliance and the Board found that the Petitioners had not met their  
18 burden of proof.  
19

20  
21 In the Final Decision and Order in the *Futurewise* case, the Board based its finding of  
22 noncompliance and invalidity as to the Winlock UGA boundaries solely on the prior invalidity  
23 determination (in the *Butler v. Lewis County* and *Panesko v. Lewis County* cases). No other  
24 challenges to the Winlock UGA had been sustained. When the Washington Supreme Court  
25 reversed the Board's decision with respect to the criteria for designation of agricultural lands  
26 in the *Butler v. Lewis County* and *Panesko v. Lewis County* cases, the Board reconsidered  
27 its decision to base a new noncompliance finding in the *Futurewise* case on the invalidity  
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32 <sup>19</sup> Even assuming the parties to the *Futurewise* case were now precluded from raising arguments that could  
have been raised in that case, Petitioner Panesko was not a party to *Futurewise v. Lewis County* and would  
not be bound by the arguments raised in that case.

1 determination in the *Butler v. Lewis County* and *Panesko v. Lewis County* cases because  
2 the basis for that invalidity determination had been reversed (at least in part):

3       The Board's decision that the expanded Winlock UGA boundaries do not comply with  
4 the GMA requirements for conservation of agricultural resource lands (RCW  
5 36.70A.060(1) and 36.70A.170) rested upon a finding that the new Winlock UGA  
6 boundaries include lands subject to a determination of invalidity:

7       ...

8       Based on the State Supreme Court decision, the Board withdraws these findings of  
9 fact and conclusions of law. Sovran is correct that the prior invalidity determination is  
10 the sole basis upon which the Board found the expanded Winlock UGA boundaries  
11 noncompliant. Therefore, the Board finds that the new Winlock UGA boundaries are  
12 compliant with RCW 36.70A.060(1) and 36.70A.170.

13 *Futurewise v. Lewis County*, WWGMHB Case No. 06-2-0003, Order Granting Motion for  
14 Reconsideration at 3.

15 Where there was no other basis for a noncompliance finding established by the Petitioners  
16 in that case, the Board agreed to reconsider its original decision to find noncompliance as to  
17 the Winlock UGA. Contrary to the County's interpretation, the Board did not rescind its prior  
18 invalidity determination but rather found that the prior invalidity determination was not a  
19 sufficient basis for a new noncompliance and invalidity finding when the basis for at least a  
20 portion of the invalidity determination had been reversed.

21 The second major distinction is that the Final Decision and Order in *Futurewise* found  
22 violations of RCW 36.70A.060(1) and RCW 36.70A.170, which require the conservation of  
23 resource lands. There was no finding that the Winlock UGA boundaries were noncompliant  
24 based upon the lack of consistency between the designation criteria in the County code, the  
25 comprehensive plan, and the comprehensive plan and zoning maps. Such a finding would  
26 have rested on different GMA provisions – RCW 36.70A.040 and 36.70A.070 – provisions  
27 which require consistency between the comprehensive plan, the development regulations,  
28 and the maps. Since Petitioners in the *Futurewise* case had not established a lack of  
29 consistency as a basis for the noncompliance of the Winlock UGA boundaries, that basis for  
30 the invalidity determination was not established either. It is the lack of consistency between  
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1 the various parts of the plan, the development regulations and the maps which was not  
2 reversed by (or even presented to) the Washington Supreme Court. In both respects,  
3 Petitioners in the *Futurewise* case failed to establish their case for noncompliance of the  
4 Winlock UGA boundaries.  
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6  
7 In this case, on the other hand, the County is seeking rescission of a prior determination of  
8 invalidity as to the designation of rural lands. Therefore, the County has the burden of  
9 showing that the invalidity determination should be rescinded. This invalidity determination  
10 was imposed as to “[t]hose portions of the maps mapped as “Recommended as not  
11 Agricultural Resource Lands” that apply to rural lands only, as shown on Ex. XII-50. Order  
12 on Reconsideration of Extent of Invalidity at 12.  
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14  
15 The County has put forward the Washington Supreme Court decision as the basis for  
16 rescission. In light of that decision, the Board agrees that the invalidity determination based  
17 upon the County’s designation criteria is not effective at this time.<sup>20</sup> However, the invalidity  
18 determination in these coordinated cases did not rest solely on the Board’s findings  
19 regarding the agricultural designation criteria that were reversed by the Supreme Court. In  
20 fact, the Board’s decision with respect to the lack of consistency between the agricultural  
21 lands designation criteria and the actually mapping of agricultural lands was a key finding of  
22 noncompliance and a basis for the invalidity determination as to the County’s maps. No. 6,  
23 Supplemental Findings Of Fact And Conclusions Of Law Regarding The Invalidity Of  
24 Agricultural Resource Lands Designation Definitions, Maps, And Criteria. This finding was  
25 not reversed by the Supreme Court. Therefore, the County has not met its burden of  
26 establishing that the Board’s invalidity determination as to the maps adopted in Ordinance  
27 1179E and Resolution 03-368 should be rescinded at this time.  
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32 <sup>20</sup> The Board will make an invalidity determination on remand pursuant to the schedule adopted for that purpose.

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## VI. FINDINGS OF FACT

1. Lewis County is a county located west of the Cascade Mountains that is required to plan pursuant to RCW 36.70A.040.
2. Petitioners Butler, Gore, Hayden, Knutsen, Mudge, Susan Roth, Richard Roth, Smethers, Smith, Yanisch and Zieske (the Butler Petitioners) were original petitioners in the coordinated cases of *Butler v. Lewis County*, WWGMHB Case No. 99-2-0027c, and *Panesko v. Lewis County*, WWGMHB Case No. 00-2-0031c.
3. Petitioner Panesko was an original petitioner in the coordinated cases of *Butler v. Lewis County*, WWGMHB Case No. 99-2-0027c, and *Panesko v. Lewis County*, WWGMHB Case No. 00-2-0031c.
4. In its February 13, 2004 Order Finding Noncompliance and Imposing Invalidity, the Board found noncompliance and imposed invalidity as to LCC 17.10.126(a); LCC 17.10.126(b); the amendment to the Comprehensive Plan enacted through Resolution 03-368 LCC 17.30.590(1)(c); and “All maps designating agricultural resource lands (adopted in Ordinance 1179E and Resolution 03-368)”.
5. In its May 21, 2004 Order on Reconsideration of Extent of Invalidity, the Board modified the extent of the portions of the map that were found invalid to be:

Those portions of the maps mapped as “Class C” farmlands on Ex. XII-50 (new maps introduced at the April 26, 2004 hearing on reconsideration)  
Those portions of the maps mapped as “Recommended as not Agricultural Resource Lands” that apply to rural lands only.

Order on Reconsideration of Extent of Invalidity at 12.
6. The County appealed the Board’s orders to the Lewis County Superior Court. The Superior Court affirmed the Board on all issues.
7. The Washington Supreme Court granted directed review. On August 10, 2006, the Washington Supreme Court issued a decision reversing the Board in part, affirming the Board in part, and remanding the case.
8. The Washington Supreme Court reversed the Board’s decision that Lewis County may not designate agricultural lands based on the local farm industry’s projected land needs and remanded the case to the Board to apply the correct definition of

1 agricultural land, taking into account whether the county used permissible criteria for  
2 designation of agricultural lands.

3 9. Supplemental Finding Of Fact And Conclusion Of Law 6, Regarding The Invalidity Of  
4 Agricultural Resource Lands Designation Definitions, Maps, And Criteria in the  
5 Board's Order Finding Noncompliance and Imposing Invalidity, February 13, 2004,  
6 was not appealed to the Washington Supreme Court and was not reversed by the  
7 Court.  
8

9 10. Supplemental Finding Of Fact And Conclusion Of Law 6 states:

10 The County has also designated agricultural lands in conflict with its own designation  
11 criteria. The maps showing designations of lands in Lewis County do not comply with  
12 either the County's criteria or the requirements of the GMA.  
13 Order on Reconsideration of Extent of Invalidity at 12.

14 11. The Washington Supreme Court decision does not alter the Board's conclusion that  
15 the maps showing designations of lands in Lewis County are inconsistent with the  
16 County's adopted criteria.

17 12. The Board's decision with respect to the lack of consistency between the agricultural  
18 lands designation criteria and the actually mapping of agricultural lands was a key  
19 finding of noncompliance and a basis for the invalidity determination as to the  
20 County's maps.  
21

22 13. The discrepancy between the designation criteria and the County's maps continues  
23 to substantially interfere with the fulfillment of Goal 8 of the GMA.

24 14. Any finding of fact that is deemed to be a conclusion of law is hereby incorporated as  
25 such.  
26

## 27 **VII. CONCLUSIONS OF LAW**

28 **A. The Board has jurisdiction over the parties and the subject matter of this**  
29 **motion.**

30 **B. The August 10, 2006 decision of the Washington Supreme Court did not disturb**  
31 **the Board's finding that the maps adopted in Ordinance 1179E and Resolution**  
32



1 of a motion for reconsideration is not a prerequisite for filing a petition for judicial  
2 review.

3 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the  
4 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for  
5 judicial review may be instituted by filing a petition in superior court according to the  
6 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil  
7 Enforcement. The petition for judicial review of this Order shall be filed with the  
8 appropriate court and served on the Board, the Office of the Attorney General, and all  
9 parties within thirty days after service of the final order, as provided in RCW  
10 34.05.542. Service on the Board may be accomplished in person or by mail, but  
11 service on the Board means actual receipt of the document at the Board office within  
12 thirty days after service of the final order. A petition for judicial review may not be  
13 served on the Board by fax or by electronic mail.  
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15 **Service.** This Order was served on you the day it was deposited in the United States  
16 mail. RCW 34.05.010(19)  
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