

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 FUTUREWISE, et al.,

4 Petitioners,

Case No. 06-2-0003

5 v.

6 LEWIS COUNTY,

FINAL DECISION AND ORDER

7 Respondent,

8 And,

9 SOVRAN, et al.,

10 Intervenor.

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13 **I. SYNOPSIS OF DECISION**

14 In this case, Petitioners challenge the enlargement of the urban growth areas (UGAs) of
15 three cities in Lewis County. The three cities are Napavine, Winlock and Chehalis. Two of
16 those cities, Napavine and Chehalis, did not contest the challenges to their expanded
17 UGAs. As to those UGAs, we find that the analysis in the record does not support the new
18 boundaries, which are sized beyond the population projections for the UGA (Napavine) or
19 not based on the need for additional urban lands (Chehalis). Also, because the boundaries
20 of the new Chehalis and Napavine UGAs significantly increase the amount of land for urban
21 development beyond the need for such land, we find that the new Chehalis and Napavine
22 UGAs substantially interfere with the anti-sprawl goal of the Growth Management Act
23 (GMA), RCW 36.70A.020(2).
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27 The City of Winlock, Lewis County and the Intervenor Sovran LLC, Sovran Lewis LLC and
28 The Benaroya Company (Sovran), on the other hand, vigorously contest the challenges
29 brought against the expansion of the Winlock UGA. The expansion of the Winlock UGA is
30 part of the City of Winlock’s ambitious new economic vision to create jobs within the
31 community. In support of the City’s strategy, Lewis County added a portion of its urban
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1 population reserve to its standard population allocation to the Winlock UGA. Based on this
2 enhanced population allocation and a buildable lands analysis justifying the need for
3 residential, commercial and industrial lands, expanded boundaries of the Winlock UGA have
4 been created.

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7 Petitioners challenge both the size and the location of the new Winlock UGA. However,
8 they fail to show that the justification for the new Winlock UGA boundaries is clearly
9 erroneous. Further, they have not demonstrated that the location of the new Winlock UGA
10 fails the adjacency requirements of RCW 36.70A.110(1).

11
12 However, the new Winlock UGA changes the designation and mapping of lands that are still
13 subject to a determination of invalidity because of substantial interference with Goal 8 of the
14 GMA, RCW 36.70A.020(8). Invalidity was imposed on the designation and mapping of
15 those lands in a prior case because they meet two standards for consideration as
16 agricultural lands of long-term commercial significance: (1) the lands contain prime soils;
17 and (2) the lands are used or recently have been devoted to agriculture. Because the
18 County has not yet adopted compliant designation criteria, the mapping and designation of
19 lands meeting these standards have been subject to an invalidity determination so that the
20 lands will be available for consideration for designation once compliant criteria have been
21 adopted.
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25 The County failed to offer any evidence that the change in designation and mapping of
26 those lands as urban lands within the Winlock UGA will no longer substantially interfere with
27 the fulfillment of the natural resource industries goal of the GMA. This is the County's
28 burden under RCW 36.70A.320(4) and 36.70A.302(7)(a). The inclusion of those lands in
29 the Winlock UGA expansion therefore fails to comply with the GMA requirements to
30 conserve and protect agricultural resource lands. RCW 36.70A.060(1) and 36.70A.170.
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1 This affects the entire UGA, its justification and its sizing. Therefore, the Winlock UGA
2 expansion is noncompliant on those grounds.

3
4 Designation and mapping of the new UGA boundaries creates the potential for applications
5 for urban development to vest before the County has had the chance to achieve
6 compliance. We therefore find that the expanded boundaries adopted in Resolution 05-326
7 for the Chehalis, Napavine and Winlock UGAs substantially interfere with the County's
8 ability to fulfill the GMA anti-sprawl goal (Napavine and Chehalis UGAs) and the GMA
9 natural resource industries goal (Winlock).

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11
12 As was done with the Cardinal Glass Major Industrial Development, the Board will schedule
13 a hearing on a County motion to rescind invalidity on an expedited basis if the County
14 chooses to bring such a motion. At this point, however, the Board has not been given any
15 basis for rescinding its prior invalidity determination.

16 17 18 **II. PROCEDURAL HISTORY**

19 On December 6, 2005, the Lewis County Board of County Commissioners adopted
20 Resolution No. 05-326. Among other things, Resolution No. 05-326 adopted urban growth
21 boundaries for the cities of Chehalis, Winlock, Morton and Napavine. On February 7, 2006,
22 Petitioners Futurewise, Eugene Butler, Kathleen Heikkila, and Eugene Matthews filed a
23 petition for review challenging the adoption of Resolution No. 05-326. On February 9, 2006,
24 Petitioners filed their First Amended Petition for Review.

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26
27 On March 2, 2006, Sovran, LLC, Sovran Lewis, LLC and The Benaroya Company
28 (collectively "Sovran") filed a motion to intervene.¹ Sovran was granted leave to intervene
29 on March 7, 2006.² A prehearing conference was held on March 6, 2006 and the
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¹ Motion to Intervene of Sovran, LLC, Sovran Lewis, LLC and The Benaroya Company.

² Order Granting Intervention to Sovran LLC, Sovran Lewis LLC, and The Benaroya Company.

1 Prehearing Order was issued March 7, 2006. On March 16, 2006, the City of Winlock filed a
2 motion to intervene in this case and was granted intervention status on March 30, 2006.³
3

4 On March 17, 2006, Lewis County filed an objection to the Prehearing Order and a request
5 that the issues in the petition for review be clarified.⁴ Based on the lack of a response to the
6 County's motion, the Board issued an order on March 29, 2006 directing the Petitioners to
7 file a revised issue statement.⁵ Noting that they had been confused about the time for
8 response to the County's motion because of the date for response to "substantive motions"
9 in the Prehearing Order, Petitioners nonetheless filed a revised issue statement on April 6,
10 2006.⁶ The Board amended the Prehearing Order on April 20, 2006 to reflect the revised
11 issues.^{7 8}
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15 The County filed its Index to the Record of the Local Jurisdiction on March 8, 2006. On
16 March 23, 2006, Petitioners filed their Additions to the Record, adding a comment letter from
17 Petitioners (dated November 2, 2005). On March 31, 2006, Petitioners filed a motion to
18 supplement the record further with the Map of Lands Subject to Invalidity (Index No. 280).
19 This motion to supplement was granted on April 20, 2006.⁹ On May 30th, Intervenor Sovran
20 filed a motion for the Board to take official notice of a map posted on the County's web-site.
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26 ³ Order Granting Intervention to the City of Winlock.

27 ⁴ Objection to Prehearing Order, and Motion to Clarify or to Make More Definite and Certain.

28 ⁵ Order Amending Prehearing Order on Motion and Objection of Lewis County.

29 ⁶ Redrafted Issue Statement.

30 ⁷ Amended Prehearing Order.

31 ⁸ On April 27, 2006, the County wrote a letter to the Presiding Officer, expressing a continuing objection to the
32 issue statement and a desire to reserve its objections. However, no action was requested from the Board nor
was any order issued in response.

⁹ Order Supplementing the Record.

1 Motion for Official Notice. No objection was filed¹⁰ and the Board granted the motion to take
2 official notice of the map titled "Proposed Agricultural Resource Lands." ¹¹
3

4 The hearing on the merits was held on June 27, 2006 in Chehalis, Washington. All three
5 board members attended. Petitioners were present and represented by John Zilavy. Lewis
6 County was represented by Deputy Prosecuting Attorney Douglas Jensen, assisted by
7 Robert Johnson. Intervenor Sovran was represented by John McCullough and Courtney
8 Flora. Intervenor City of Winlock was represented by Mark Scheibmeir.
9

10 11 III. ISSUES PRESENTED

- 12 1. Does the adoption of Lewis County Resolution No. 05-326 fail to comply with RCW
13 36.70A.020(1), 36.70A.020(2), 36.70A.110(1) and (2) and 36.70A.130 when it
14 enlarges the urban growth areas (UGAs) for the cities of Winlock, Napavine and
15 Chehalis without evidence in the record establishing that any enlargement or the size
16 of the enlargement adopted is necessary to accommodate the County's adopted 20
17 year population forecast.
18
19 2. Does Resolution No. 05-326 fail to comply with RCW 36.70A.020(1), 36.70A.020(2),
20 36.70A.110(1) and (2), 36.70A.170(1), 36.70A.060(1), 36.70A.070(5) and
21 36.70A.130 when, in the case of the City of Winlock, the UGA expansion effected by
22 the Resolution runs through an area that is both rural and agricultural, fails to protect
23 the character of each and is in an area not characterized by urban development nor
24 adjacent to an area characterized by urban development.
25
26 3. Does Resolution No. 05-326 fail to comply with RCW 36.70A.020(8), 36.70A.060(1),
27 36.70A.170 and 36.70A.130 when it expands urban growth areas into agricultural
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30 ¹⁰ Petitioners submitted the Declaration of Eugene Butler Responding to Sovran Motion for Official Notice on
31 June 14, 2006 which described limitations on the usefulness of the map. However, Petitioners did not object
32 to the request to take official notice of the map.

¹¹ Order on Motion for Official Notice.

1 lands_that continue to meet the GMA's statutory definition and minimum guidelines
2 for agricultural lands of long-term commercial significance and, in addition, that are
3 subject to an order of invalidity from this board.

- 4 4. Does the continued validity of the violations of RCW Title 36.70A from Resolution No.
5 05-326 alleged above substantially interfere with the fulfillment of the goals of the
6 Growth Management Act (RCW 36.70A.020(1), RCW 36.70A.020(2) and RCW
7 36.70A.020(8)), such that the enactments at issue should be held invalid pursuant to
8 RCW 36.70A.302.
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11 **IV. BURDEN OF PROOF**

12 For purposes of board review of the comprehensive plans and development regulations
13 adopted by local government, the GMA establishes three major precepts: a presumption of
14 validity; a "clearly erroneous" standard of review; and a requirement of deference to the
15 decisions of local government.
16

17 Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and
18 amendments to them are presumed valid upon adoption:
19

20 Except as provided in subsection (5) of this section, comprehensive plans and
21 development regulations, and amendments thereto, adopted under this chapter are
22 presumed valid upon adoption.
23 RCW 36.70A.320(1).
24

25 The statute further provides that the standard of review shall be whether the challenged
26 enactments are clearly erroneous:

27 The board shall find compliance unless it determines that the action by the state
28 agency, county, or city is clearly erroneous in view of the entire record before the
29 board and in light of the goals and requirements of this chapter.
30 RCW 36.70A.320(3)
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1 In order to find the County's action clearly erroneous, the Board must be "left with the firm
2 and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*,
3 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

4
5 Within the framework of state goals and requirements, the boards must grant deference to
6 local government in how they plan for growth:
7

8 In recognition of the broad range of discretion that may be exercised by counties and
9 cities in how they plan for growth, consistent with the requirements and goals of this
10 chapter, the legislature intends for the boards to grant deference to the counties and
11 cities in how they plan for growth, consistent with the requirements and goals of this
12 chapter. Local comprehensive plans and development regulations require counties and
13 cities to balance priorities and options for action in full consideration of local
14 circumstances. The legislature finds that while this chapter requires local planning to
15 take place within a framework of state goals and requirements, the ultimate burden and
16 responsibility for planning, harmonizing the planning goals of this chapter, and
17 implementing a county's or city's future rests with that community.
18 RCW 36.70A.3201 (in part).

19 In sum, the burden is on the Petitioner to overcome the presumption of validity and
20 demonstrate that any action taken by the County is clearly erroneous in light of the goals
21 and requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2).
22 Where not clearly erroneous and thus within the framework of state goals and requirements,
23 the planning choices of local government must be granted deference.

24 V. DISCUSSION

25 ***Issue No. 1: Does the adoption of Lewis County Resolution No. 05-326 fail to***
26 ***comply with RCW 36.70A.020(1), 36.70A.020(2), 36.70A.110(1) and (2) and***
27 ***36.70A.130 when it enlarges the urban growth areas (UGAs) for the cities of***
28 ***Winlock, Napavine and Chehalis without evidence in the record establishing that***
29 ***any enlargement or the size of the enlargement adopted is necessary to***
30 ***accommodate the County's adopted 20 year population forecast.***
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1 **Positions of the Parties**

2 Petitioners argue that the record of the County does not establish a basis for enlarging the
3 urban growth areas (UGAs) of Winlock, Napavine and Chehalis.¹² As to Napavine,
4 Petitioners admit a need for 233 additional residential acres by 2025 was shown.¹³
5 However, Petitioners claim that the Napavine UGA was increased by 845 acres without a
6 showing of need.¹⁴ Similarly as to the Chehalis UGA, Petitioners argue that the 400 acre
7 expansion “had nothing to do with an analysis of accommodation of the 20-year OFM
8 population forecast and instead is based on perceptions of convenience and landowner
9 requests.”¹⁵

11
12 As to the UGA for the City of Winlock, Petitioners argue that it is not based on a need for
13 more land to accommodate population growth.¹⁶ Petitioners point to the County’s Review
14 Matrix which observes that “the existing UGA is sufficient for the City’s PGC Population
15 allocation of 2,550”.¹⁷ Petitioners acknowledge that Winlock’s growth plan is based on a
16 new economic vision and that the County’s comprehensive planning would allow such a
17 vision.¹⁸ However, Petitioners argue that the population growth allocated to Winlock does
18 not justify planning for the creation of 2,344 jobs by 2025.¹⁹

20
21 Intervenor Sovran, joined by the County and Winlock, responds that Petitioners have used
22 the wrong population allocation figure for the City of Winlock.²⁰ Prior to the challenged
23 expansion of the Winlock UGA, Sovran asserts, the County had allocated an urban
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28 ¹² Petitioners’ Hearing on the Merits Brief at 16-17.

29 ¹³ Ibid at 17.

30 ¹⁴ Ibid at 18.

31 ¹⁵ Ibid at 19.

32 ¹⁶ Petitioners’ Hearing on the Merits Brief at 18.

¹⁷ Ibid at 11, citing Index 74.

¹⁸ Ibid at 8.

¹⁹ Ibid at 10.

²⁰ Prehearing Brief of Sovran, LLC, Sovran Lewis, LLC, and The Benaroya Company at 7

1 population of 2,550 to the Winlock UGA through the year 2025.²¹ However, Winlock
2 requested an increase in its population allocation as part of its economic vision and the
3 County ultimately allocated a population of 4,561 by 2025 to the Winlock UGA.²² Using that
4 figure and the Buildable Lands Analysis (Appendix 4, Final EIS – Ex. 62), Sovran argues
5 that the expanded UGA includes “exactly the right area to both employ and house the city’s
6 current population allocation of 4,561.”²³
7

8 9 **Board Analysis**

10 The GMA requires that urban growth areas be established to accommodate projected
11 population growth in the planning period covered by the comprehensive plan (20 years):

12 Based upon the growth management population projection made for the county by
13 the office of financial management, the county and each city within the county shall
14 include areas and densities sufficient to permit the urban growth that is projected to
15 occur in the county or city for the succeeding twenty-year period, except for those
16 urban growth areas contained totally within a national historical reserve.
17 Each urban growth area shall permit urban densities and shall include greenbelt and
18 open space areas. In the case of urban growth areas contained totally within a
19 national historical reserve, the city may restrict densities, intensities, and forms of
20 urban growth as determined to be necessary and appropriate to protect the physical,
21 cultural, or historic integrity of the reserve. An urban growth area determination may
22 include a reasonable land market supply factor and shall permit a range of urban
23 densities and uses. In determining this market factor, cities and counties may
24 consider local circumstances. Cities and counties have discretion in their
25 comprehensive plans to make many choices about accommodating growth...

26 RCW 36.70A.110(2)(in pertinent part)

27 No party contested any of the facts or arguments regarding the expansion of the Napavine
28 and Chehalis UGAs presented by Petitioners. Both of those UGAs were expanded upon
29 the request of the respective cities.²⁴

30 ²¹ Ibid at 8.

31 ²² Ibid.

32 ²³ Ibid at 9.

²⁴ Ex. 86.

1 As to the Napavine UGA, the evidence shows that the City did an analysis of the residential
2 lands needed to accommodate the projected population increase to 2025.²⁵ According to
3 this analysis, Napavine requires an increase of 233 acres as the Gross Residential Area
4 needed for 2025.²⁶ However, the Napavine UGA was increased by 845 acres.
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7 RCW 36.70A.110(2, read together with the anti-sprawl goal (RCW 36.70A.020(2)), limits the
8 size of UGAs as well as ensuring that the UGA boundaries are sufficient to accommodate
9 projected growth. In *Diehl v. Mason County*, 94 Wn.App. 645, 982 P.2d 543 (Div. II, 1999),
10 Division II of the Court of Appeals found that "... [T]he OFM projection places a cap on the
11 amount of land a county may allocate to UGAs." *Ibid* at 654. Thus, RCW 36.70A.110
12 requires that UGAs be sufficient in size to accommodate the OFM population projection for
13 the 20-year planning horizon but also limits the size of UGAs to those lands needed to
14 accommodate the urban population projection utilized by the county.
15

16
17 In this case, the analysis of land required for urban uses in the Napavine UGA to 2025
18 establishes a need for an additional 233 acres. No analysis was presented that
19 demonstrates a need for the 854 acres by which the Napavine UGA was actually expanded.
20 The GMA requires the local jurisdiction to "show its work" when establishing UGA
21 boundaries. See *Bremerton, et al. v. Kitsap County*, CPSGMHB Case No. 95-2-0039c
22 (Final Decision and Order, October 6, 1995) and *City of Tacoma et al. v. Pierce County*,
23 CPSGMHB Case No. 94-3-0001 (Final Decision and Order, July 5, 1994.) Otherwise, there
24 would be no way to ensure or review the local jurisdiction's analysis required by RCW
25 36.70A.110. Since no evidence before the Board supports a need for the 854 acres by
26 which the Napavine UGA was enlarged, Lewis County Resolution No. 05-326, Attachment D
27 fails to comply with RCW 36.70A.110(1) and (2).
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32 ²⁵ Ex. 168.

²⁶ *Ibid*.

1 As to the Chehalis UGA, seven private proposals to include additional property in the
2 Chehalis UGA and one City-initiated proposal form the basis for the expansion.²⁷ The
3 reasons given for the expansion are to allow development, to provide police and fire service,
4 to create a “more logical UGA boundary”, because interstate highways are “intrinsically
5 urban in nature”, and to facilitate connection with the wastewater system.²⁸ This parcel-by-
6 parcel addition of property to a UGA does not include an analysis of the projected
7 population for which urban lands are needed and does not size the Chehalis UGA using
8 those considerations. It therefore fails to comply with RCW 36.70A.110(1) and (2).
9

10
11 Unlike the challenges to the Chehalis and Napavine UGAs, the Petitioners’ challenge to the
12 Winlock UGA’s compliance with RCW 36.70A.110(1) and (2) is strongly contested. Sovran,
13 joined by the City and County, argues that the Petitioners have used the wrong population
14 allocation figure to evaluate the amount of land needed in the Winlock UGA. Sovran points
15 out that the Petitioners’ challenge to the size of the Winlock UGA is based on the
16 assumption that the population allocation to Winlock was 2,550 to the year 2025. This
17 overlooks the additional allocation that Winlock requested (Ex. 8) and was given by the
18 County (Ex. 88).²⁹ Although the initial population allocation was 2,550, the County
19 ultimately allocated a population of 4,561 (by 2025) to the Winlock UGA from its unallocated
20 urban population reserve.³⁰
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24 The Final Environmental Impact Statement (FSEIS) for the Amendment of Comprehensive
25 Growth Management Plan for the City of Winlock utilizes the population allocation figure of
26 4,561 in analyzing Alternative 3.³¹ The Buildable Lands Analysis for Winlock UGA
27 Alternatives (Appendix 4 to the FSEIS) summarizes the land needed for a projected
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30 ²⁷ Ex. 21.
31 ²⁸ Lewis County Resolution No. 05-326, Attachment A.
32 ²⁹ See also Winlock Ordinance 892.
³⁰ Ex. 88.
³¹ Ex. 62 at 85.

1 population of 4,561 in 2025.³² It shows a need for 373 net acres for residential zones; 106
2 net commercial acreage; and 542 net industrial acreage. It assumes total employment of
3 3,034, with a population to jobs ratio of 1.5.³³ According to the analysis in these
4 documents, the Winlock UGA is sized to accommodate the revised population allocation to it
5 from the County.
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8 Petitioners were invited to respond to these numbers in post-hearing submittals but did not
9 do so. Petitioners' Reply Brief sets out a different calculation of need for industrial and
10 commercial lands than is present in the FEIS based on an analysis of the jobs to be created
11 under the City's new economic vision.³⁴ It does not, however, provide a persuasive
12 argument as to why its calculations are correct. In fact, the calculations offered by
13 Petitioners are difficult to follow and Petitioners fail to explain how they relate to the overall
14 analysis used by the City, especially the buildable lands analysis.³⁵ An industrial needs
15 analysis for Lewis County was prepared by E.D. Hovee and Company in 1997.³⁶ It
16 concluded that there was a total industrial land demand of 2, 411 acres in Lewis County
17 over the twenty-year period.³⁷ THK Northwest revisited the Hovee study in July 2002 and
18 found a total demand for 2,344 acres of industrial land by 2025.³⁸ Using this analysis, the
19 FEIS concluded 603 gross acres of industrial land should be allocated to the Winlock
20 UGA.³⁹ It also determined that 99 acres of commercial lands would be needed and 395
21 acres of residential lands (Alternative 3) would be needed.⁴⁰ Petitioners bear the burden of
22 showing that the City's justification for its increased UGA boundaries fails to comply with the
23 GMA. Petitioners have failed to sustain that burden of proof.
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27 _____
28 ³² Ex. 62.

29 ³³ Ibid.

30 ³⁴ Petitioners' Reply Brief at 3.

31 ³⁵ Ex. 62 at 85.

32 ³⁶ Ex. 62 at 77.

³⁷ Ibid at 78.

³⁸ Ibid at 79

³⁹ Ibid at 81.

⁴⁰ Ibid.

1 **Conclusion:** Petitioners have not demonstrated that the population allocation analysis in
2 the Final Environmental Impact Statement fails to support the expansion of the Winlock
3 UGA adopted in Lewis County Resolution No. 05-326, Attachment B. Therefore, the
4 expansion of the Winlock UGA complies with RCW 36.70A.110(1) and (2). On the other
5 hand, Petitioners have shown that the expansion of the Napavine and Chehalis UGA
6 boundaries fail to comply with RCW 36.70A.110(1) and (2).
7

8 **Issue No. 2: Does Resolution No. 05-326 fail to comply with RCW 36.70A.020(1),**
9 **36.70A.020(2), 36.70A.110(1) and (2), 36.70A.170(1), 36.70A.060(1), 36.70A.070(5)**
10 **and 36.70A.130 when, in the case of the City of Winlock, the UGA expansion**
11 **effected by the Resolution runs through an area that is both rural and agricultural,**
12 **fails to protect the character of each and is in an area not characterized by urban**
13 **development nor adjacent to an area characterized by urban development.**
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17 **Positions of the Parties**

18 Petitioners challenge the compliance of the Winlock UGA with the “locational” requirements
19 of RCW 36.70A.110(1). Petitioners claim that the expansion area is not limited to lands
20 characterized by urban growth and lands adjacent to lands characterized by urban growth
21 as required by that provision of the GMA.⁴¹
22
23

24 **Board Analysis**

25 We agree with the County that Petitioners have abandoned their claims that Resolution No.
26 05-326 fails to comply with 36.70A.070(5).⁴² There was no argument presented concerning
27 the preservation of rural character and therefore that claim is deemed abandoned.
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⁴¹ Petitioners’ Hearing on the Merits Brief at 20.

⁴² Respondent Lewis County’s Response to Petitioner Futurewise’s Brief at 3.

1 The remaining portion of Issue No. 2 raises the compliance of the Winlock UGA expansion
2 with the requirements in RCW 36.70A.110(1) that an urban growth area may include
3 territory outside a city only if that territory is characterized by urban growth or is adjacent to
4 territory already characterized by urban growth:

5 An urban growth area may include territory that is located outside of a city only if
6 such territory already is characterized by urban growth whether or not the urban
7 growth area includes a city, or is adjacent to territory already characterized by urban
8 growth, or is a designated new fully contained community as defined by RCW
9 36.70A.350.

10 RCW 36.70A.110(1)(in pertinent part).

11 The Winlock UGA expansion extends the Winlock UGA approximately three miles to the I-5
12 interchange.⁴³ The extension forms an “L” shape, extending from the existing UGA along
13 State Route 505 to the I-5 Interchange and then following I-5 for an approximately equal
14 distance.⁴⁴

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16
17 Petitioners allege that the UGA expansion promotes sprawl by “leapfrogging over properties
18 adjacent to the existing UGA”.⁴⁵ Exhibit 74 is a Review Matrix for the City of Winlock’s UGA
19 Expansion Petition (11/7/05) prepared for the November 8 Lewis County Planning
20 Commission Workshop.⁴⁶ It is not clear from this exhibit what is meant by “leapfrogging
21 over properties adjacent to the existing UGA”. The statement is just listed as the argument
22 “con” on the question of whether the proposal promotes sprawl.⁴⁷

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25 From Exhibit 49, Map #3, it appears that the UGA expansion begins at a portion of the
26 existing UGA boundary although it does not surround the existing UGA. Unlike the
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31 ⁴³ Petitioners’ Hearing on the Merits Brief at 8.

32 ⁴⁴ Index 49, #3 Winlock Map.

⁴⁵ Petitioners’ Hearing on the Merits Brief at 11. Petitioners cite to Ex. 74 for this proposition.

⁴⁶ Ex. 74 at 1.

⁴⁷ Ex. 74 at 2.

1 Arlington UGA expansion reviewed in *1000 Friends v. Snohomish County*,⁴⁸ there is no gap
2 between the prior UGA boundaries and the UGA expansion (or at least the evidence does
3 not show a gap). Petitioners summarily state “This land is clearly not characterized by
4 urban growth. Nor can it reasonably be considered adjacent to land characterized by urban
5 growth (“unless adjacent is construed to a ridiculously broad manner, as one might also
6 conclude that the Pacific Ocean is adjacent”),⁴⁹ but they do not explain their adjacency
7 argument. The proposed expansion (unlike the Pacific Ocean) does abut a portion of the
8 prior UGA boundary. The same matrix (cited for proposition that the UGA expansion
9 promotes sprawl) reviews the proposal’s compliance with RCW 36.70A.110 and finds that
10 the proposed expansion is “ok”.⁵⁰ Apart from the assertion that it does not, Petitioners have
11 not explained how the territory included in the proposed UGA expansion fails to meet the
12 requirement that it be adjacent to land characterized by urban growth.
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16 There may be a case to be made that the proposed Winlock UGA fails to comply with the
17 UGA location requirements of RCW 36.70A.110(1) but Petitioners have not made it. The
18 record is devoid of evidence that the choices made by the County in extending the UGA
19 boundaries were clearly erroneous. This is Petitioners’ burden and they have not met it.
20

21
22 **Conclusion:** Because Petitioners have not overcome the presumption of validity of
23 Resolution 05-326 to show that the territory included in the Winlock UGA expansion is
24 neither characterized by urban growth nor adjacent to lands characterized by urban growth,
25 we find that the Winlock UGA expansion complies with the location requirements of RCW
26 36.70A.110(1).
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31 ⁴⁸ *1000 Friends v. Snohomish County*, CPSGMHB Case No. 03-3-19c (Final Decision and Order, March 22,
2004)

32 ⁴⁹ Petitioners’ Hearing on the Merits Brief at 20.

⁵⁰ Ex. 74 at 5.

1 **Issue No. 3: Does Resolution No. 05-326 fail to comply with RCW 36.70A.020(8),**
2 **36.70A.060(1), 36.70A.170 and 36.70A.130 when it expands urban growth areas**
3 **into agricultural lands that continue to meet the GMA's statutory definition and**
4 **minimum guidelines for agricultural lands of long-term commercial significance**
5 **and, in addition, that are subject to an order of invalidity from this board.**
6

7
8 **Positions of the Parties**

9 Petitioners point out that the expansion of the Winlock UGA includes lands that are
10 agricultural resource lands of long-term commercial significance currently under an order of
11 invalidity from this Board.⁵¹ Designating such agricultural resource land for urban and
12 industrial development "snubs its nose" at the Board's order of invalidity, Petitioners argue,
13 and fails to assure the conservation of designated agricultural lands.⁵² The County,
14 Petitioners urge, is removing land from consideration as agricultural resource land before
15 that determination has been made, in spite of this Board's order of invalidity.⁵³
16

17
18 Sovran and the County respond that the determination of invalidity only related to the
19 specific portions of the comprehensive plan or development regulation found to substantially
20 interfere with the goals of the GMA.⁵⁴ This, Sovran argues, does not prohibit the County
21 from passing a subsequent amendment, which must be presumed valid.⁵⁵ Sovran further
22 challenges that the record contains no evidence that any lands of long-term agricultural
23 significance are located in the Winlock UGA expansion area.⁵⁶ Sovran points out that the
24 County has not designated any agricultural resource lands in the Winlock UGA and that its
25 code requires that agricultural lands be located outside areas characterized by urban
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29 _____
30 ⁵¹ Ibid.

31 ⁵² Ibid at 21.

32 ⁵³ Petitioners' Reply Brief at 7-8.

⁵⁴ Prehearing Brief of Sovran, LLD, Sovran Lewis, LLC, and The Benaroya Company at 23.

⁵⁵ Ibid at 24

⁵⁶ Ibid.

1 development.⁵⁷ Sovran also argues that agricultural lands may be located within a UGA
2 under RCW 36.70A.060(4) if there is a program for the transfer or purchase of development
3 rights.⁵⁸

4
5 The County argues that the mere presence of potential agricultural resource lands is not
6 dispositive of whether lands should be designated for a UGA.⁵⁹ The County urges that
7 Petitioners' position assumes a heightened level of scrutiny for the inclusion of agricultural
8 resource lands in a UGA, a standard not contained in the GMA.⁶⁰

11 **Board Analysis**

12 The County argues, first, that the Petitioners have abandoned Issue No. 3 and portions of
13 other issues.⁶¹ We do not find that Petitioners abandoned Issue No. 3. Petitioners argued
14 the merits of the agricultural resource lands issues, including the effect of the pending
15 invalidity determination in their opening brief.⁶² They did not list Issue No. 3 as an issue but
16 that is evidently an oversight since the argument made clearly encompasses Issue No. 3.

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18
19 On the issue of the change in designation of lands whose designation and mapping are
20 subject to an invalidity finding, the burden is on the County to show that the re-designation
21 of lands whose designation is subject to a finding of invalidity no longer substantially
22 interfere with the goals of the GMA:

23
24 A county or city subject to a determination of invalidity made under RCW 36.70A.300
25 or 36.70A.302 has the burden of demonstrating that the ordinance or resolution it has
26 enacted in response to the determination of invalidity will no longer substantially
27 interfere with the fulfillment of the goals of this chapter under the standard in RCW
28 36.70A.302(1).
RCW 36.70A.320(4).

29
30 ⁵⁷ Ibid at 25.

⁵⁸ Ibid at 26.

⁵⁹ Respondent Lewis County's Response to Petitioner Futurewise's Brief at 8.

⁶⁰ Ibid at 9-10.

⁶¹ Respondent Lewis County's Response to Petitioner Futurewise's Brief at 3.

⁶² Petitioners' Hearing on the Merits Brief at 20-1.

1 The mapping of certain lands as “rural” was found to be invalid in the *Butler* and *Panesko*
2 decisions.⁶³ This includes lands within the Winlock UGA expansion. See the map entitled
3 “Lands Subject to Invalidity WWGMHB Decision 5/21/04, The I-5 Corridor.”⁶⁴ In the *Butler*
4 and *Panesko* decisions, we found that the County had not adopted compliant designation
5 criteria for agricultural resource lands and had not mapped those lands in compliance with
6 valid designation criteria. Since many years had gone by since the Board had first ordered
7 the County to designate agricultural resource lands, the Board imposed an invalidity finding
8 on the map of rural lands that met two criteria for designation as agricultural lands of long-
9 term commercial significance: (1) the lands contained prime soils; and (2) the lands are
10 used or recently have been devoted to agriculture.⁶⁵ The purpose of the invalidity
11 determination was to ensure that those lands would be available for consideration for
12 designation when the County adopted compliant designation criteria.⁶⁶

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15
16 The designation of those “rural” lands was amended by the resolution challenged in this
17 case (Resolution No. 05-326), which made and mapped the lands as “urban”.⁶⁷ Resolution
18 No. 05-326, therefore, comes within the definition of “an ordinance or resolution amending
19 the invalidated part or parts of the plan or regulation”:

20
21 If a determination of invalidity has been made and the county or city has enacted an
22 ordinance or resolution amending the invalidated part or parts of the plan or
23 regulation or establishing interim controls on development affected by the order of
24 invalidity, after a compliance hearing, the board shall modify or rescind the
25 determination of invalidity if it determines under the standard in subsection (1) of this
26 section that the plan or regulation, as amended or made subject to such interim
27 controls, will no longer substantially interfere with the fulfillment of the goals of this
28 chapter.

RCW 36.70A.302(7)(a).

29 ⁶³ *Butler et al. v. Lewis County*, WWGMHB Case No. 99-2-0027c and *Panesko et al. v. Lewis County*,
30 WWGMHB Case No. 00-2-0031c (Order On Reconsideration of Extent of Invalidity, May 21, 2004.)

31 ⁶⁴ Exhibit No. 280.

32 ⁶⁵ *Ibid* at 6.

⁶⁶ *Ibid*.

⁶⁷ See also *Bremerton et al. v. Kitsap County*, CPSGMHB Case No. 04-3-0009c (Final Decision and Order,
August 9, 2004) (“An expansion of a UGA is essentially a redesignation...”).

1 In the *Butler* and *Panesko* decisions, the designation of those lands as “rural” was found to
2 substantially interfere with Goal 8 of the GMA.⁶⁸ Goal 8 is the “natural resource industries”
3 goal:

4 Maintain and enhance natural resource-based industries, including productive timber,
5 agricultural, and fisheries industries. Encourage the conservation of productive forest
6 lands and productive agricultural lands, and discourage incompatible uses.
7 RCW 36.70A.020(8).

8
9 To overcome the invalidity determination, the County must demonstrate that the change in
10 designation of those rural lands to urban lands will no longer interfere with Goal 8. See
11 RCW 36.70A.320(4), quoted above. In this case, there was no attempt made by the County
12 to demonstrate that the change in designation to “urban” of those lands whose designation
13 is currently under a finding of invalidity will no longer substantially interfere with Goal 8.

14 The only evidence offered in this regard was the map on the County’s web-site which shows
15 proposed agricultural resource lands.⁶⁹ As indicated in the Declaration of Mr. Butler, this is
16 “merely a proposal to be acted on at a later date after due notice and hearings.”⁷⁰

17 We have no basis upon which to determine that the designation change accomplished by
18 Resolution No. 05-326 removes the substantial interference with Goal 8 found to have been
19 caused by the designation of those lands. This is the County’s burden. RCW
20 36.70A.320(4). Therefore, there is still no valid designation of those lands and the re-
21 designation of the rural lands as “urban” is noncompliant with the requirements for
22 designation and conservation of agricultural resource lands. RCW 36.70A.060(1) and
23 36.70A.170.
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27 On a prior occasion, we rescinded the invalidity finding imposed in the *Butler* and *Panesko*
28 cases as to the designation of lands made part of the Cardinal Glass Major Industrial
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31 ⁶⁸ Ibid.

32 ⁶⁹ Exhibit A to the Declaration of Courtney E. Flora in Support of Motion for Official Notice.

⁷⁰ Petitioner Butler’s Declaration Responding to Motion for Official Notice at 2.

1 Development (MID).⁷¹ To make the determination that substantial interference had been
2 removed by the new MID, we considered evidence that the specific lands at issue did not
3 have long-term commercial significance for agriculture and that the change in designation of
4 those specific lands would not interfere with the use of adjacent lands for agriculture:

5 Because the lands do not now have long-term commercial significance for
6 agricultural production, and because the MID UGA will not adversely impact the
7 designation and protection of lands adjacent to it as agricultural resource lands, the
8 Board finds that the designation of the Cardinal MID UGA site no longer substantially
9 interferes with the goals of the GMA.⁷²

10 This evaluation was upheld by the Thurston County Superior Court:

11 The GMA provides a number of considerations when designating land, including
12 among other things the possibility of more intense uses of the land. The Growth
13 Board properly weighed these considerations when it evaluated the Cardinal Plant
14 site for its long-term commercial significance for the production of agricultural
15 products; the Growth Board properly considered the effect of Judge Hicks' LUPA
16 decision on the construction of the Cardinal Plant; and the Growth Board properly
17 concluded that a more intense use of the Cardinal site was not only possible, but
highly likely.

18 The Growth Board properly concluded that the Cardinal Plan will not interfere with
19 adjacent agricultural uses, if adjacent lands are designated for agricultural use. The
20 record was uncontroverted on this issue.⁷³

21 However, the County provided no such evidence to the Board in this case. The direct
22 evidence regarding the potential designation of the lands at issue as agricultural resource
23 lands was submitted by Petitioners.⁷⁴ The map which Sovran submitted through official
24 notice represents a possible recommendation for designation of agricultural resource lands
25 within Lewis County. It is not final and its rationale has not been provided to the Board. We
26 find that no evidence in our record shows that substantial interference with Goal 8 of the
27

28
29 ⁷¹ *Butler et al. v. Lewis County*, WWGMHB Case No. 99-2-0027c and *Panesko et al. v. Lewis County*,
WWGMHB Case No. 00-2-0031c (Order Rescinding Invalidity, May 12, 2005).

30 ⁷² *Ibid.* at 4.

31 ⁷³ Conclusions 7 (in pertinent part) and 8, Order Denying Petition for Review, June 21, 2006, *Panesko v.*
32 *Western Washington Growth Management Hearings Board and Lewis County and Cardinal FG Company*,
Thurston County Superior Court Case No. 05-2-00823-5. (submitted by Lewis County)

⁷⁴ See Petitioner Butler's Declaration Responding to Motion for Official Notice.

1 GMA has been removed by the re-designation of “rural” lands as urban lands through the
2 adoption of Resolution No. 05-326. Therefore, we find the designation of those lands as
3 part of the Winlock UGA to be non-compliant with the GMA requirements for designation
4 and conservation of agricultural resource lands. RCW 36.70A.060(1) and 36.70A.170.
5

6
7 **Conclusion:** The change in designation of rural lands to include them in the expanded
8 Winlock UGA was not accompanied by a showing that the new designation and mapping of
9 those lands (subject to a finding of invalidity in the *Butler* and *Panesko* decisions) no longer
10 substantially interferes with Goal 8 of the GMA. Inclusion of those lands into the expanded
11 Winlock UGA without such a showing fails to comply with the GMA requirements to
12 designate and conserve agricultural lands of long-term commercial significance. RCW
13 36.70A.060(1) and 36.70A.170. The invalidity determination was imposed to preserve
14 those rural lands for consideration for designation as agricultural resource lands once the
15 County adopts compliant designation criteria. Under the standard of RCW 36.70A.320(4)
16 and 36.70A.302(7), the County must show that substantial interference with Goal 8 of the
17 GMA has been removed when it changes the designation of those lands as it did when it
18 adopted Resolution No. 05-326. Therefore, we find the Winlock UGA to be non-compliant
19 with the GMA because it maps and designates lands as part of the new Winlock UGA in
20 violation of RCW 36.70A.060(1) and 36.70A.170.
21
22

23
24 **Issue No. 4: Does the continued validity of the violations of RCW Title 36.70A from**
25 **Resolution No. 05-326 alleged above substantially interfere with the fulfillment of the**
26 **goals of the Growth Management Act (RCW 36.70A.020(1), RCW 36.70A.020(2) and**
27 **RCW 36.70A.020(8)), such that the enactments at issue should be held invalid**
28 **pursuant to RCW 36.70A.302.**
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1 **Positions of the Parties**

2 Petitioners argue that invalidity should be imposed upon the Winlock UGA expansion for the
3 same reason that this Board found that the failure to designate agricultural lands of long-
4 term commercial significance substantially interferes with Goal 8 of the GMA.⁷⁵ “Figuratively
5 plowing over the land with Ordinance 05-326, followed by its literal destruction can interfere
6 with the same goal no less and for that reason alone this Board should issue an order of
7 invalidity.”⁷⁶ They also argue that the expansion of the Napavine and Chehalis UGAs
8 interferes with the GMA goals requiring the “discouragement of inefficient use of land.”⁷⁷
9

10
11 Sovran, joined by the County and the City of Winlock, argues that a determination of
12 invalidity is not warranted.⁷⁸ Sovran argues that noncompliance has not been shown,
13 Petitioners have not met their burden of showing substantial interference, and the Winlock
14 UGA expansion is needed to accommodate the population allocation to it.⁷⁹ The County
15 further argues that Petitioners’ claims rest on a mistaken interpretation of the preeminence
16 of Goal 8 of the GMA.⁸⁰
17

18
19 **Board Analysis**

20 A finding of invalidity may be entered when a board makes a finding of noncompliance and
21 further includes a “determination, supported by findings of fact and conclusions of law that
22 the continued validity of part or parts of the plan or regulation would substantially interfere
23 with the fulfillment of the goals of this chapter.” RCW 36.70A.302(1) (in pertinent part).
24

25
26 In this decision, we find the Napavine and Chehalis UGA expansions in Resolution 05-326
27 fail to comply with RCW 36.70A.110 because the analysis of the need for more urban lands
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30 ⁷⁵ Petitioners’ Hearing on the Merits Brief at 21-22.

31 ⁷⁶ *Ibid* at 22.

32 ⁷⁷ *Ibid*.

⁷⁸ Prehearing Brief of Sovran, LLC, Sovran Lewis LLC, and The Benaroya Company at 28.

⁷⁹ *Ibid*.

⁸⁰ Respondent Lewis County’s Response to Petitioner Futurewise’s Brief at 12.

1 does not justify the extent of the expansion in the Napavine UGA and because no analysis
2 of need was made for the Chehalis UGA expansion.

3
4 We have held that invalidity should be imposed if continued validity of the noncompliant
5 comprehensive plan provisions or development regulations would substantially interfere with
6 the local jurisdiction's ability to engage in GMA-compliant planning. See *Vinatieri v. Lewis*
7 *County*, WWGMHB Case No. 03-2-0020c and *Irondale Community Action Neighbors v.*
8 *Jefferson County*, WWGMHB Case No. 04-2-0011, as examples.

9
10
11 In the case of the Napavine and Chehalis UGA expansions, the expanded UGA boundaries
12 potentially allow urban levels of development to occur in areas that are not needed to
13 accommodate planned urban uses. Because permits for such improper urban development
14 could vest during the period of remand, we find that the Napavine and Chehalis UGA
15 expansions substantially interfere with Goal 2 of the GMA – reduction of sprawl:

16
17 Reduce the inappropriate conversion of undeveloped land into sprawling, low-density
18 development.
19 RCW 36.70A.020(2).

20 As to the Winlock UGA, we do not find noncompliance with RCW 36.70A.110 but we do find
21 noncompliance with RCW 36.70A.060(1) and 36.70A.170; the designation and mapping of
22 some lands included in the Winlock UGA expansion are subject to a determination of
23 invalidity. That invalidity determination held those lands available for an evaluation as to
24 whether they should be designated as agricultural lands of long-term commercial
25 significance.⁸¹ The County has not come forward with a rationale explaining why these
26 lands no longer need to be made available for consideration for designation as agricultural
27 resource lands, which is the County's burden under RCW 36.70A.320(4). As we said
28 above, that burden is met with a showing of two circumstances: (1) that the lands do not
29 now have long-term commercial significance for agricultural production, and (2) that the
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⁸¹ Those lands are shown on Exhibit 280.

1 change in designation will not adversely impact the designation and protection of lands
2 adjacent to it as agricultural resource lands. The County made this showing in a prior case
3 but chose not to address the issue in this case.
4

5
6 Because no determination has been made that the change in designation and mapping of
7 lands in the Winlock UGA expansion to urban lands no longer substantially interferes with
8 Goal 8 of the GMA, the designation and mapping of those lands shown on Exhibit 280 as
9 part of the Winlock UGA continue to be invalid. As a result, the entire Winlock UGA
10 expansion is invalid – it designates and maps urban lands such that lands still being held for
11 consideration as designated agricultural resource lands could be developed in ways that are
12 inconsistent with such consideration. Without such an invalidity determination, applications
13 to develop those lands at urban densities and uses could vest, removing those lands from
14 possible conservation as agricultural resource lands without first assessing their suitability
15 for that purpose. In making such an invalidity determination, the Board is not prejudging the
16 question of whether these lands will be designated as agricultural lands of long-term
17 commercial significance when that designation is ultimately accomplished; that question has
18 not been presented to the Board here.
19
20

21
22 **Conclusion:** The expansion of the Napavine and Chehalis UGAs substantially interferes
23 with Goal 2 of the GMA (RCW 36.70A.020(2)) because it allows inappropriate conversion of
24 undeveloped land during the period of remand. The designation and mapping of the entire
25 Winlock UGA expansion to include lands subject to a determination of invalidity as shown in
26 Exhibit 280 substantially interferes with Goal 8 of the GMA (RCW 36.70A.020(8)) and is
27 therefore invalid.
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29 VI. FINDINGS OF FACT

- 30 1. Lewis County is a county located west of the crest of the Cascade Mountains that is
31 required to plan pursuant to RCW 36.70A.040.
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2. Petitioner Futurewise is a non-profit organization that participated in the adoption of Resolution 05-326. Petitioners Butler, Heikkila and Matthews also raised the matters addressed in its Petition for Review to the County in their participation in the adoption of Resolution 05-326.
3. Intervenor City of Winlock is a city located in Lewis County whose urban growth boundaries were established in Resolution 05-326
4. Intervenor Sovran is a property owner whose property is located in the boundaries of the Winlock urban growth area (UGA) as modified by Resolution 05-326.
5. Resolution 05-326 was adopted by the County on December 6, 2005.
6. Petitioners filed their initial petition for review of Resolution 05-326 on February 7, 2006 and filed an amended petition for review on February 9, 2006.
7. Both the Napavine and the Chehalis UGAs were expanded upon the request of their respective cities.
8. The analysis of the residential lands needed to accommodate the projected population increase in the Napavine UGA demonstrates a need for an additional 233 acres in Gross Residential Area by 2025.
9. The Napavine UGA was increased by 845 acres.
10. No analysis was presented that demonstrates a need for the 854 acres by which the Napavine UGA was actually expanded.
11. The Chehalis UGA was expanded as the result of seven private proposals to include additional property in the Chehalis UGA and one City-initiated proposal.
12. The reasons given for the expansion of the Chehalis UGA are to allow development, to provide police and fire service, to create a “more logical UGA boundary”, because interstate highways are “intrinsically urban in nature”, and to facilitate connection with the wastewater system.
13. The parcel-by-parcel addition of property to the Chehalis UGA does not include an analysis of the projected population for which urban lands are needed and does not size the Chehalis UGA using those considerations.
14. The County initially allocated a projected population of 2,550 to the Winlock UGA to the year 2025.

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- 15. Upon request of the City of Winlock, the County ultimately increased the projected population to the Winlock UGA by giving Winlock a portion of its unallocated urban population reserve that increased Winlock’s projected population to 4,561 by the year 2025.
- 16. The Buildable Lands Analysis for Winlock UGA Alternatives summarizes the land needed for a projected population of 4,561 in 2025.
- 17. The Buildable Lands Analysis for Winlock UGA shows a need for 373 net acres for residential zones; 106 net commercial acreage; and 542 net industrial acreage. It assumes total employment of 3,034 at a population to jobs ratio of 1.5.
- 18. An industrial needs analysis for Lewis County was prepared by E.D. Hovee and Company in 1997. It concluded that there was a total industrial land demand of 2,411 acres in Lewis County over the twenty-year period.
- 19. THK Northwest revisited the Hovee study in July 2002 and found a total demand for 2,344 acres of industrial land by 2025.
- 20. Using the Hovee and THK Northwest analyses, the Final Environmental Impact Statement (FEIS) concluded 603 gross acres of industrial land should be allocated to the Winlock UGA. It also determined that 99 acres of commercial lands would be needed and 395 acres of residential lands would be needed.
- 21. According to the analysis in Buildable Lands Analysis, the Winlock UGA is sized to accommodate the revised population allocation given to it by the County.
- 22. Petitioners did not brief their argument concerning the failure of the UGA expansions to preserve rural character.
- 23. Petitioners argued the merits of the agricultural resource lands issues, including the effect of the pending invalidity determination in their opening brief.
- 24. The Winlock UGA expansion extends the Winlock UGA approximately three miles to the I-5 interchange. The extension forms an “L” shape, extending from the existing UGA along State Route 505 to the I-5 Interchange and then following I-5 for an approximately equal distance.
- 25. The evidence in the record does not show a gap between the prior Winlock UGA boundaries and the Winlock UGA expansion area.

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- 26. The proposed Winlock UGA expansion abuts a portion of the prior Winlock UGA boundary.
- 27. Petitioners have not explained how the territory included in the proposed UGA expansion fails to meet the requirement that it be adjacent to land characterized by urban growth.
- 28. The designation and mapping of certain lands as “rural” was found to be invalid in the Butler and Panesko decisions. This includes lands within the Winlock UGA expansion. See the map entitled “Lands Subject to Invalidity WWGMHB Decision 5/21/04, The I-5 Corridor.” Exhibit No. 280.
- 29. In the Butler and Panesko decisions, we found that the County had not adopted compliant designation criteria for agricultural resource lands and had not mapped those lands in compliance with valid designation criteria.
- 30. The Board imposed an invalidity finding on the map of designated rural lands that met two criteria for designation as agricultural lands of long-term commercial significance: (1) the lands contained prime soils; and (2) the lands are used or recently have been devoted to agriculture. The purpose of the invalidity determination was to ensure that those lands would be available for consideration for designation when the County adopted compliant designation criteria.
- 31. The designation and mapping of those “rural” lands was amended by Resolution No. 05-326, which made the lands urban and part of the Winlock UGA.
- 32. In this case, there was no attempt made by the County to demonstrate that the change in designation to “urban” of those lands whose designation is currently under a finding of invalidity will no longer substantially interfere with Goal 8 of the GMA (RCW 36.70A.020(8)).
- 33. In a prior case, the Board rescinded the invalidity finding as to the designation of lands made part of the Cardinal Glass Major Industrial Development (MID) in Lewis County.
- 34. To make the determination that substantial interference had been removed in the mapping and designation of the Cardinal Glass MID, the Board considered evidence that the specific lands at issue did not have long-term commercial significance for agriculture and that the change in designation of those specific lands would not interfere with the use of adjacent lands for agriculture. Here, the County provided no such evidence to the Board.

Findings of Fact Related to Invalidity

- 35. In the case of the Napavine and Chehalis UGA expansions, the expanded UGA boundaries potentially allow urban levels of development to occur in areas that no evidence shows are needed to accommodate planned urban uses.
- 36. Applications for noncompliant urban development in the Napavine and Chehalis UGAs could vest during the period of remand if the Napavine and Chehalis UGAs are not found invalid.
- 37. Such urban development would substantially interfere with Goal 2 of the GMA – reduction of sprawl:
Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.
RCW 36.70A.020(2)
- 38. The Winlock UGA expansion, includes lands whose designation and mapping are subject to a prior determination of invalidity.
- 39. The Winlock UGA has been sized and mapped to include the noncompliant lands subject to the prior determination of invalidity.
- 40. The Winlock UGA expansion (Attachment B to Resolution 05-326) designates and maps land within it as urban.
- 41. An invalidity determination is necessary to assure that applications to develop those potential agricultural resource lands in the Winlock UGA at urban densities and uses do not vest, removing those lands from possible conservation as agricultural resource lands without first assessing their suitability for that purpose.
- 42. In the Butler and Panesko decisions, the designation of lands that both contained prime soils and were used or recently had been devoted to agriculture as “rural” lands was found to substantially interfere with Goal 8 of the GMA. Goal 8 is the “natural resource industries” goal:
Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.
RCW 36.70A.020(8).
- 43. The City of Winlock does not have a program for the transfer of development rights for agricultural resource lands located within its UGA boundaries.

1 44. Any Finding of Fact hereafter determined to be a Conclusion of Law is hereby
2 adopted as such.
3

4 **VII. CONCLUSIONS OF LAW**

- 5 A. This Board has jurisdiction over the parties to this action.
6 B. This Board has jurisdiction over the subject-matter of this action.
7 C. Petitioners have standing to raise the issues in its Petition for Review.
8 D. The petition for review in this case was timely filed.
9 E. The expansion of the Napavine and Chehalis UGA boundaries fails to comply with
10 RCW 36.70A.110(1) and (2).
11
12 F. Petitioners have not demonstrated that the population allocation analysis in the
13 Final Environmental Impact Statement fails to support the expansion of the Winlock
14 UGA adopted in Lewis County Resolution No. 05-326, Attachment B. Petitioners,
15 therefore, have not met their burden of proving that the Winlock UGA expansion
16 violates the sizing requirements of RCW 36.70A.110(1) and (2).
17
18 G. Petitioners have abandoned their claims that Resolution No. 05-326 fails to comply
19 with 36.70A.070(5).
20
21 H. Petitioners have not overcome the presumption of validity of Resolution 05-326 to
22 show that the territory included in the Winlock UGA expansion is neither
23 characterized by urban growth nor adjacent to lands characterized by urban growth,
24 and therefore the Winlock UGA expansion complies with the location requirements
25 of RCW 36.70A.110(1).
26
27 I. Under the standard of RCW 36.70A.320(4) and 36.70A.302(7), the County must
28 show that substantial interference with Goal 8 of the GMA has been removed when
29 it changes the designation of those lands subject to a finding of invalidity as it did
30 when it adopted Resolution No. 05-326. The County failed to meet this burden.
31
32 J. The Winlock UGA is non-compliant with RCW 36.70A.060(1) and 36.70A.170.
because it maps and designates lands as urban whose mapping and designation
has been found to be invalid in a prior case.
K. The inclusion of lands in the Winlock UGA whose designation and mapping are
subject to an invalidity determination substantially interferes with Goal 8 of the
GMA.

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L. Any Conclusion of Law hereafter determined to be a Finding of Fact is hereby adopted as such.

VIII. ORDER

The County is ordered to achieve compliance with the Growth Management Act pursuant to this decision no later than January 26, 2007. The following schedule for compliance, briefing and hearing shall apply:

Compliance Due	January 26, 2007
Compliance Report and Index to Compliance Record (County to file and serve on all parties)	February 2, 2007
Any Objections to a Finding of Compliance and Record Additions/Supplements Due	February 16, 2007
County's Response Due	March 2, 2007
Compliance Hearing (location to be determined)	March 8, 2007

The Board will adopt an expedited schedule if the County makes a request of the Board to rescind the determination of invalidity as to the lands within the Winlock UGA to hear the County's request.

Entered this 2nd day of August 2006.

Margery Hite, Board Member

Holly Gadbow, Board Member

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Gayle Rothrock, Board Member

Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this Order to file a petition for reconsideration. Petitions for reconsideration shall follow the format set out in WAC 242-02-832. The original and three copies of the petition for reconsideration, together with any argument in support thereof, should be filed by mailing, faxing or delivering the document directly to the Board, with a copy to all other parties of record and their representatives. **Filing means actual receipt of the document at the Board office.** RCW 34.05.010(6), WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil

Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person, by fax or by mail, but service on the Board means **actual receipt of the document at the Board office** within thirty days after service of the final order.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)