BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

FUTUREWISE,et al., Petitioners, v. LEWIS COUNTY, Respondent, SOVRAN, LLC, SOVRAN LEWIS, LLC AND THE BENAROYA COMPANY, Intervenors.	Case No. 06-2-0003 **ORDER GRANTING RECONSIDERATION**

This Matter comes before the Board upon the motion of Intervenors ("Sovran" collectively) for reconsideration of the Board's Final Decision and Order issued August 2, 2006.[1] Sovran seeks reconsideration of the Board's determination regarding the Winlock urban growth area (UGA) on the basis of the Washington Supreme Court's August 10, 2006 ruling in *Lewis County v. Western Washington Growth Management Hearings Board.*[2] Petitioners oppose Sovran's motion for reconsideration.[3]

We agree with Sovran that the Court's decision in *Lewis County v. Western Washington Growth Management Hearings Board*[4] has changed the basis upon which this Board's decision with respect to the Winlock UGA was made. Therefore, the Board reconsiders its decision with respect to the Winlock UGA boundaries. The invalidity determination no longer applies to the lands at issue in the Winlock UGA and therefore the inclusion of those

[1] Sovran's Motion for Reconsideration, August 15, 2006.

[2] *Ibid.*

[3] Petitioners' Answer to Sovran's Motion for Reconsideration, August 21, 2006.

[4] Slip Opinion No. 76553-7.

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lands in the expanded UGA does not contravene the GMA requirements for conservation of agricultural resource lands.[5]

DISCUSSION

Sovran argues that the Board should reconsider its decision because the order of invalidity which was the sole basis for the Board decision invalidating the Winlock UGA expansion "has no force or effect".[6] Petitioners disagree and argue that the order of invalidity is still in effect.[7] Petitioners argue that the State Supreme Court did not set aside the determination of invalidity and, in fact, upheld the Board as to the farm home and farm center exclusions.[8]

However, a determination of invalidity cannot be made unless there is first a determination of noncompliance with the GMA:

> A board may determine that part or all of a comprehensive plan or development regulations are invalid if the board:
>
> (a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300.

RCW 36.70A.302(1)(a).

Although the Court in *Lewis County v. Western Washington Growth Management Hearings Board* did not expressly address the invalidity determination, it reversed and remanded the Board's decision with respect to the noncompliance of the County's designation of agricultural resource lands. Without a finding that the designation is noncompliant, the invalidity determination cannot be sustained. [9] Therefore, the determination of invalidity as to the rural lands that should be held for consideration for designation as agricultural resource lands no longer applies.

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[5] RCW 36.70A.060(1) and 36.70A.170

[6] Sovran's Motion for Reconsideration at 3.

[7] Petitioners' Answer to Sovran's Motion for Reconsideration.

[8] *Ibid at 5.*

[9] The Board has not yet made a determination that the County's agricultural designations are compliant but the *noncompliance* finding has been reversed.

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

Findings of Fact 38 and 39:

> 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.

Conclusions of Law I, L and K:

> I. Under the standard of RCW 36.70A.320(4) and 36.70A.302(7), the County must show that substantial interference with Goal 8 of the GMA has been removed when it changes the designation of those lands subject to a finding of invalidity as it did when it adopted Resolution No. 05-326. The County failed to meet this burden.
>
> L. 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.

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

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ORDER

Based on the foregoing, this Board **DELETES** Findings of Fact 38 and 39 and Conclusions of Law I, L and K of the Final Decision and Order dated August 2, 2006. The Board further **ADDS** a new Conclusion of Law:

> I. The new Winlock UGA boundaries established through Resolution 05-326 are compliant with RCW 36.70A.060(1) and 36.70A.170.

Entered this 24th day of August 2006.

_____
Margery Hite, Board Member

_____
Holly Gadbaw, Board Member

_____
Gayle Rothrock, Board Member

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

<u>Judicial Review</u>. 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 or by mail, but service on the Board means <u>actual receipt of the document at the Board office</u> within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

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

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