

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2 GROVER HARADER, PATRICIA HARADER,
3 and KATHLEEN HEIKKILA,

Case No. 06-2-0007

4 Petitioners,

5 v.

FINAL DECISION AND ORDER

6 CITY OF WINLOCK,

7 Respondent,

8 And,

9 SOVRAN LLC, SOVRAN LEWIS LLC and
10 THE BENAROYA COMPANY, and LEWIS
11 COUNTY,

12 Intervenors.
13

14
15 **I. SYNOPSIS OF DECISION**

16 The petition for review filed in this case challenges City of Winlock Ordinance 892, which
17 adopted a new comprehensive plan. Winlock's new comprehensive plan incorporates the
18 UGA boundaries set by Lewis County. Both reflect Winlock's ambitious strategy for
19 developing greater economic opportunity in the community. Challenges to the Lewis
20 County decision to adopt expanded Winlock UGA boundaries were brought and decided in
21 *Futurewise v. Lewis County*, WWGMHB Case No. 06-2-0003 (Final Decision and Order,
22 August 2, 2006).
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25 Petitioners bring a variety of challenges to the Winlock UGA expansion which erroneously
26 assume that the City could set its own UGA boundaries. Those challenges are denied in
27 this decision.
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30 Petitioners also challenge the compliance of one of the Winlock comprehensive plan
31 policies with RCW 36.70A.110(3). Policy 2.1.8 adds a target for development to those
32 established in RCW 36.70A.110(3) but does not purport to allow development where urban

1 services are not provided. We find this policy compliant with RCW 36.70A.110(3) and RCW
2 36.70A.020(12).

3
4 Petitioners also assert that the City of Winlock has not conducted its Update of its
5 comprehensive plan and development regulations as required by RCW 36.70A.130(1), (2)
6 and (4). The City submitted the notices and ordinances which it asserts met the Update
7 requirement after the hearing on the merits. On review of those submissions, we find that
8 the requirements for an Update have not been met because there was no public notice that
9 the review and revision was under consideration nor was there a finding in any ordinance of
10 the review that had taken place or that revisions were or were not undertaken as a result.
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13 **II. PROCEDURAL HISTORY**

14 The petition for review in this case was filed on March 10, 2006. Petitioners are Kathleen
15 Heikkila, Grover Harader and Patricia Harader. Petitioners challenge City of Winlock
16 Ordinance No. 892 which adopted the Winlock 2005 Comprehensive Plan, the Winlock
17 Urban Growth Map and the Winlock 2005 Capital Facilities Plan.¹ Ordinance No. 892 was
18 adopted January 9, 2006 and published on January 13, 2006. Petitioners participated
19 orally and in writing in the City's adoption process for Ordinance No. 892.
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22 On April 5, 2006, Lewis County filed a motion to intervene.² The prehearing conference was
23 held telephonically on April 7, 2006. Petitioners Heikkila, Grover Harader and Patricia
24 Harader attended (telephonically). The City of Winlock was represented by Mark
25 Scheibmeir. Douglas Jensen, chief civil deputy prosecuting attorney, represented
26 Intervenor Lewis County.
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¹ Petition for Review, Paragraph 2.

² Lewis County's Motion to Intervene.

1 On April 10, 2006, Sovran LLC, Sovran Lewis LLC, and The Benaroya Company
2 (collectively Sovran) filed a motion to intervene in this case.³ Intervention status was
3 granted to Lewis County and Sovran on April 14, 2006.⁴ Intervention in both instances was
4 limited to Issues 6-8.
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7 The City filed its Index to the Record of the Local Jurisdiction on April 12, 2006. Petitioners
8 filed Additions to the Index on April 24, 2006.⁵ On April 28, 2006, Petitioners also filed a
9 motion to supplement the record.⁶ The Board accepted the additions and supplemented
10 the record after no objection was filed to Petitioners' motions.⁷
11

12 This case was heard over two different hearing dates. Issues 6-8 were heard together with
13 the hearing on the merits in *Futurewise v. Lewis County*, WWGMHB Case No. 06-2-0003 on
14 June 27, 2006. This was because Issues 6-8 address the expansion of the Winlock UGA,
15 which was also challenged in the *Futurewise* case.
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18 The hearing on the merits on Issues 6-8 was held on June 27, 2006 in Chehalis,
19 Washington. Kathleen Heikkila spoke for Petitioners, who were all present. The City was
20 represented by attorney Mark Scheibmeir. Lewis County was represented by chief civil
21 deputy prosecuting attorney Douglas Jensen. Intervenor Sovran was represented by
22 attorney Jack McCullough. All three board members attended.
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24
25 Prior to the hearing on the merits on Issues 6-8, Sovran filed a motion to clarify that it was
26 allowed to intervene in Issues 1-5.⁸ Petitioners had no objection. At the hearing on the
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29 ³ Motion to Intervene of Sovran LLC, Sovran Lewis LLC, and The Benaroya Company.

30 ⁴ Order Granting Intervention to Lewis County and Sovran LLC, Sovran Lewis LLC, and The Benaroya
31 Company.

32 ⁵ Petitioners indicate that they did not receive the City's Index until April 14, 2006.

⁶ Motion to Supplement the Record or Allow New or Supplemental Evidence.

⁷ Order Adding to and Supplementing the Record, May 15, 2006.

⁸ Sovran's Motion for Clarification Regarding Intervenor Participation, July 3, 2006.

1 merits, the Board found Sovran has no interest in Issue 4 but otherwise allowed Sovran to
2 intervene in Issues 1, 2, 3 and 5.

3
4 The day before the hearing on the merits on Issues 6-8, Petitioners filed a motion for official
5 notice of Lewis County tax records for certain land parcels.⁹ This motion was denied based
6 on an agreement from all parties that this tax parcel information was already in the record,
7 as Table 3.1 to the Final Environmental Impact Statement. Ex. 62. Petitioners further
8 moved for official notice of the comments submitted by Kathleen Heikkila to the Winlock City
9 Council relating to the adoption of the 2005 Comprehensive Plan, Capital Facilities Plan and
10 Urban Growth Area Map.¹⁰ Admission of the comment letters was also denied, based on
11 the agreement of the City and Intervenors that Petitioners have standing to bring their
12 challenges in this case.
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16 The hearing on the merits on Issue 1-5 was held in Winlock, Washington on July 18, 2006.
17 Kathleen Heikkila again spoke for the Petitioners, who were all present. The City was
18 represented by attorney Mark Scheibmeir. Sovran was represented by attorney Courtney
19 Flora. All three board members attended.
20

21 **III. ISSUES PRESENTED**

22
23 1. Did the City of Winlock fail to comply with RCW 36.70A.140 when the Mayor signed
24 an agreement to pursue “efforts to expand the City’s Urban Growth Area to the I-5
25 interchange” before the City established a public participation program identifying
26 procedures providing for public participation in the amendment of the City’s
27 comprehensive land use plan?
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⁹ Petitioners’ Motion for Official Notice, June 26, 2006.

¹⁰ *Ibid.*

- 1 2. Did the City of Winlock fail to comply with RCW 36.70A.140 when the Mayor signed
2 an agreement to pursue “efforts to expand the City’s Urban Growth Area to the I-5
3 interchange” without consideration of and response to public comments?
- 4 3. Did the City of Winlock fail to comply with RCW 36.70A.110(3) when it approved
5 “areas designated for creation of employment opportunities” to have first priority in
6 development of urban growth areas?
- 7 4. Did the City of Winlock fail to comply with RCW 36.70A.130 when it did not take
8 legislative action by December 1, 2005 to update its comprehensive plan and
9 development regulations?
- 10 5. Does adoption of Ordinance 892 fail to comply with RCW 36.70A.020(1), RCW
11 36.70A.020(2) and RCW 36.70A.130 when it accepted a population projection
12 representing a 4.8 percent increase without evidence in the record to support the
13 increased population forecast?
- 14 6. Does adoption of Ordinance 892 fail to comply with RCW 36.70A.020(1), RCW
15 36.70A.020(2) and RCW 36.70A.130 when it approves and adopts a comprehensive
16 plan and urban growth map and capital facilities plan that expanded the UGA without
17 evidence in the record establishing that the size of the expansion adopted is necessary
18 to accommodate the City’s adopted population forecast?
- 19 7. Does Ordinance 892 fail to comply with RCW 36.70A.020(1), RCW 36.70A.020(2),
20 RCW 36.70A.170, RCW 36.70A.060(1), RCW 36.70.070(5) and RCW 36.70A.130 when
21 it approves and adopts a comprehensive plan and urban growth map and capital
22 facilities plan in which the UGA expansion encompasses an area that is both rural and
23 agricultural, fails to protect the character of each, and is in an area not characterized by
24 urban development nor adjacent to an area characterized by urban development?
- 25 8. Does Ordinance 892 fail to comply with RCW 36.70A.020(8), RCW 36.70A.060, RCW
26 36.70A.170 and RCW 36.70A.130 when it approves and adopts a comprehensive plan
27 and urban growth map and capital facilities plan that expand the UGA into agricultural
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1 lands of long term commercial significance, which are additionally subject to an order of
2 invalidity from this board?

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4 **IV. BURDEN OF PROOF**

5 For purposes of board review of the comprehensive plans and development regulations
6 adopted by local government, the GMA establishes three major precepts: a presumption of
7 validity; a “clearly erroneous” standard of review; and a requirement of deference to the
8 decisions of local government.
9

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

13 Except as provided in subsection (5) of this section, comprehensive plans and
14 development regulations, and amendments thereto, adopted under this chapter are
15 presumed valid upon adoption.

16 RCW 36.70A.320(1).

17
18 The statute further provides that the standard of review shall be whether the challenged
19 enactments are clearly erroneous:

20 The board shall find compliance unless it determines that the action by the state
21 agency, county, or city is clearly erroneous in view of the entire record before the
22 board and in light of the goals and requirements of this chapter.

23 RCW 36.70A.320(3)

24 In order to find the City’s action clearly erroneous, the Board must be “left with the firm and
25 definite conviction that a mistake has been made.” *Department of Ecology v. PUD1*, 121
26 Wn.2d 179, 201, 849 P.2d 646 (1993).
27

28 Within the framework of state goals and requirements, the boards must grant deference to
29 local government in how they plan for growth:

30 In recognition of the broad range of discretion that may be exercised by counties and
31 cities in how they plan for growth, consistent with the requirements and goals of this
32 chapter, the legislature intends for the boards to grant deference to the counties and

1 cities in how they plan for growth, consistent with the requirements and goals of this
2 chapter. Local comprehensive plans and development regulations require counties and
3 cities to balance priorities and options for action in full consideration of local
4 circumstances. The legislature finds that while this chapter requires local planning to
5 take place within a framework of state goals and requirements, the ultimate burden and
6 responsibility for planning, harmonizing the planning goals of this chapter, and
7 implementing a county's or city's future rests with that community.
8 RCW 36.70A.3201 (in part).

9 In sum, the burden is on the Petitioners to overcome the presumption of validity and
10 demonstrate that any action taken by the City is clearly erroneous in light of the goals and
11 requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2).
12 Where not clearly erroneous and thus within the framework of state goals and requirements,
13 the planning choices of local government must be granted deference.

14 V. DISCUSSION

15 *Issue Nos. 1 and 2:*

- 16 **1. Did the City of Winlock fail to comply with RCW 36.70A.140 when the Mayor**
17 **signed an agreement to pursue “efforts to expand the City’s Urban Growth Area to**
18 **the I-5 interchange” before the City established a public participation program**
19 **identifying procedures providing for public participation in the amendment of the**
20 **City’s comprehensive land use plan?**
- 21 **2. Did the City of Winlock fail to comply with RCW 36.70A.140 when the Mayor**
22 **signed an agreement to pursue “efforts to expand the City’s Urban Growth Area to**
23 **the I-5 interchange” without consideration of and response to public comments?**

24 **Threshold Issue:** Are agreements for engineering and professional services subject to the
25 GMA requirements for public participation, RCW 36.70A.140.
26

27 **Positions of the Parties**

28 Petitioners argue that the City entered into agreements committing to an expansion of the
29 Winlock UGA without first establishing a public participation program for the decision to
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1 enter into such agreements.¹¹ Opportunities for public participation were scheduled to be
2 held after the Winlock Mayor signed the agreements, Petitioners point out.¹² Petitioners
3 urge that the Mayor should not have been able to sign the agreements to pursue efforts to
4 expand the City's Urban Growth Area to the I-5 interchange before the City established a
5 public participation program identifying procedures for early and continuous public
6 participation in the development and amendment of comprehensive land use plans, as
7 required by RCW 36.70A.140.¹³

9
10 Sovran responds that Petitioners mistake the meaning of RCW 36.70A.140.¹⁴ RCW
11 36.70A.140 requires a local jurisdiction to adopt a public participation program applicable to
12 all comprehensive plan and development regulation amendments, Sovran asserts.¹⁵ This
13 does not mean, Petitioners argue, that the City must establish a public participation program
14 for individual amendments such as the UGA expansion.¹⁶ Winlock adopted its public
15 participation program with its 1997 comprehensive plan, Sovran points out. Ordinance 892
16 was adopted following the adopted public participation procedures, Sovran alleges, and the
17 City Council decision was not made until seventeen public events had occurred under those
18 procedures.¹⁷

21 **Board Analysis**

22 Both Issues 1 and 2 allege a violation of RCW 36.70A.140. It provides:

23
24 Each county and city that is required or chooses to plan under RCW 36.70A.040 shall
25 establish and broadly disseminate to the public a public participation program
26 identifying procedures providing for early and continuous public participation in the
27 development and amendment of comprehensive land use plans and development
28 regulations implementing such plans. The procedures shall provide for broad

29 ¹¹ Petitioners' Prehearing Brief on Issues 1 through 5 at 2.

30 ¹² *Ibid* at 3.

31 ¹³ *Ibid* at 4.

32 ¹⁴ Sovran's Prehearing Brief on Issues 1 through 5 at 8.

¹⁵ *Ibid* at 9.

¹⁶ *Ibid*.

¹⁷ *Ibid* at 9-10.

1 dissemination of proposals and alternatives, opportunity for written comments, public
2 meetings after effective notice, provision for open discussion, communication
3 programs, information services, and consideration of and response public
4 comment...¹⁸

5 By its terms, RCW 36.70A.140 requires a public participation program for “early and
6 continuous public participation in the development and amendment of *comprehensive land*
7 *use plans and development regulations* implementing such plans”. (emphasis added) The
8 agreements challenged in Issues 1 and 2 are agreements for professional services and cost
9 reimbursement, not comprehensive plans or development regulations. Exs. C118 and
10 C119.
11

12
13 In contrast, Ordinance 892 does adopt a comprehensive plan and development regulations.
14 Sovran offers a number of exhibits showing extensive public participation in the adoption of
15 Ordinance 892.¹⁹ Petitioners reply that this public participation only took place after the
16 challenged agreements were signed.²⁰ However, RCW 36.70A.140 does not apply to the
17 execution of agreements for engineering services (Ex. C119) or for cost reimbursements for
18 those engineering services, legal services and expenditures related to the expansion of an
19 urban growth area (Ex. C118).
20

21
22 Petitioners imply that the execution of those agreements committed the City to make
23 specific comprehensive plan amendments but Sovran and the City point out that these
24 services were necessary in order to consider the possible amendment of the comprehensive
25 plan. Sovran argues that the Final Environmental Impact Statement considered several
26 alternatives, including a “Current Trends” alternative. Ex. G2. The preparation of
27 alternatives and the purchase of services to put forward those alternatives does not
28 constitute a comprehensive plan or development regulations subject to RCW 36.70A.140.
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31 ¹⁸ RCW 36.70A.140(in pertinent part)

32 ¹⁹ Exhibits A1, A16, A24, A25, A27, A35, A51, A78, A86, A88, A96, A97, A98, B5, B12, B21, B24, B27, B31,
B35, B40, B44, B46, B54, B55, B58, B59, C1.

²⁰ Petitioners’ Reply Brief on Issues 1 through 5 at 1.

1 **Conclusion:** The execution by the Mayor of Winlock of the challenged professional
2 services and cost reimbursement agreements (Exs. C118 and C119) is not subject to the
3 public participation requirements of RCW 36.70A.140.

4 **Issue No. 3: Did the City of Winlock fail to comply with RCW 36.70A.110(3) when it**
5 **approved “areas designated for creation of employment opportunities” to have**
6 **first priority in development of urban growth areas?**

7 **Positions of the Parties**

8 Petitioners challenge Policy 2.1.8 of the new Winlock Comprehensive Plan.²¹ This policy,
9 they argue, violates RCW 36.70A.110(3) by providing that the first priority of development
10 within the Winlock UGA will be “areas designated for creation of employment
11 opportunities.”²² RCW 36.70A.110(3), they maintain, requires that the priority for
12 development within a UGA be:
13

14 ...located first in areas already characterized by urban growth that have adequate
15 existing public facility and service capacities to serve such development, second in
16 areas already characterized by urban growth that will be served adequately by a
17 combination of both existing public facilities and services and any additional needed
18 public facilities and services that are provided by either public or private sources, and
19 third in the remaining portions of the urban growth areas.²³

20 Sovran argues that the Board lacks subject-matter jurisdiction over this claim because it is
21 essentially a challenge to the adopted UGA boundaries, which is not within the City’s
22 authority.²⁴ Sovran also asserts that the City properly incorporated Goal 5 of the GMA (the
23 economic development goal) when it created Policy 2.1.8 because it is part of the City’s
24 actions to stimulate economic growth in its UGA.²⁵

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31 ²¹ Petitioners’ Prehearing Brief on Issues 1 through 5 at 6.

32 ²² *Ibid* at 4.

²³ *Ibid* at 4-5.

²⁴ Sovran’s Prehearing Brief on Issues 1 through 5

²⁵ *Ibid* at 12-13.

1 Petitioners also claim that Winlock’s expanded UGA contains virtually no urban services.²⁶
2 Petitioners point to the City’s response to the concern about uncertain water service
3 acknowledging “There is no guarantee of acquiring additional water rights, because
4 everything is subject to DOE’s approval, whether it is an application for new water rights or a
5 transfer of existing water rights... nothing is guaranteed and there is no way to predict
6 exactly how water rights will work out..”²⁷
7

8
9 Intervenor Sovran disputes the assertion that the expanded Winlock UGA lacks urban
10 services and water may not be available: “Yet the record is replete with evidence that the
11 City can provide urban services to the area. AR C-17; AR G-2.”²⁸
12

13 **Board Analysis**

14 This issue raises the compliance of Winlock Comprehensive Plan Policy 2.1.8 with RCW
15 36.70A.110(3). It is not a challenge to the UGA boundaries themselves. Therefore, we
16 disagree with Sovran that this Board lacks jurisdiction over this issue. We agree, however,
17 that the establishment of the UGA boundaries is not within the authority of the City of
18 Winlock, as discussed in Issues 6-8 below. The City has an obligation to ensure that its
19 comprehensive plan is coordinated with the County comprehensive plan (RCW 36.70A.100)
20 but there is no evidence to show that the tiering of development chosen by the City in its
21 plan policies is necessary to coordinate with County UGA boundary choices.
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25 We also find that this issue does not raise a challenge to the sufficiency of urban services to
26 the expanded Winlock UGA. The issue states a challenge to particular language in the
27 comprehensive plan, not to the fact that certain areas are included in the expanded Winlock
28 UGA. We agree with Sovran that such a challenge would constitute a challenge to the UGA
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32 ²⁶ Petitioners’ Prehearing Brief on Issues 1 through 5 at 5.

²⁷ *Ibid* at 5-6.

²⁸ Sovran’s Prehearing Brief on Issues 1 through 5 at 14.

1 boundaries themselves and the City does not have authority to set or change the UGA
2 boundaries.²⁹

3
4 As noted, Petitioners have stated a claim with respect to the compliance of an adopted
5 Winlock comprehensive plan policy with a provision of the GMA. At argument, Sovran
6 asserted that RCW 36.70A.110(3) is “aspirational” rather than mandatory because it uses
7 the word “should” instead of “shall”:
8

9 Urban growth *should* be located first in areas already characterized by urban growth
10 that have adequate existing public facility and service capacities to serve such
11 development, second in areas already characterized by urban growth that will be
12 served adequately by a combination of both existing public facilities and services and
13 any additional needed public facilities and services that are provided by either public
14 or private sources, and third in the remaining portions of the urban growth areas.
15 Urban growth may also be located in designated new fully contained communities as
16 defined by RCW 36.70A.350.³⁰

16 Sovran argues that once UGA boundaries are established, development is driven by
17 property owners and is not within the City’s control.³¹

18
19 Policy 2.1.8 of the Winlock comprehensive plan states:

20 Development *should* be located within designated urban growth areas in the
21 following priority:

- 22 • Areas designated for creation of employment opportunities.
- 23 • Areas already characterized by urban growth that have existing public facilities
24 and service capacities to serve such development; and
- 25 • Areas already characterized by urban growth that are not presently served by
26 existing public facilities or services but for which facilities and services will be
27 provided by either public or private sources.

28 (emphasis added)

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32 ²⁹ See discussion of Issues 6-8 below.

³⁰ RCW 36.70A.110(3)(emphasis added).

³¹ Argument at Hearing on the Merits

1 The question of whether there are sufficient urban services extended throughout the
2 Winlock UGA has not been raised here. The question, instead, is whether the City's policy
3 of encouraging development first in areas designated for creation of economic opportunity
4 fails to comply with RCW 36.70A.110(3). The problem Petitioners' raise with Policy 2.1.8 is
5 that it implies that such areas (designated for creation of economic opportunity) do not have
6 urban levels of service and will not have them provided by either public or private sources.
7 This is because the plan policy distinguishes between "areas designated for creation of
8 employment opportunities" and the other two types of areas within the Winlock UGA - "areas
9 already characterized by urban growth that have existing public facilities and service
10 capacities to serve such development"; and "areas already characterized by urban growth
11 that are not presently served by existing public facilities or services but for which facilities
12 and services will be provided by either public or private sources." RCW 36.70A.110(3) and
13 the concurrency goal of RCW 36.70A.020(12) require urban levels of development to occur
14 only when urban levels of service are available.
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18 However, the statements of Sovran and the City at argument indicate that the City does not
19 intend to have urban growth occur where urban services are not available. Further, we
20 must assume that the areas targeted for creation of employment opportunities within the
21 expanded Winlock UGA will have urban levels of service at the time of urban levels of
22 development since otherwise the UGA boundaries set by Lewis County would be
23 noncompliant.³²
24

25
26 **Conclusion:** Winlock Comprehensive Plan Policy 2.1.8 should be read to mean that areas
27 targeted for creation of employment opportunities will be the priority for urban development
28 and that they will have adequate urban levels of service at the time of such development.
29 Such a policy complies with RCW 36.70A.110(3) and RCW 36.70A020(12).
30

31
32 ³² See *Association of Rural Residents v. Kitsap County*, CPSGMHB Case No. 93-2-0010 (Final Decision and Order, June 3, 1994) for the Central Board's discussion of the interrelationship of RCW 36.70A.110(3), RCW 36.70A.020(12), and RCW 36.70A.070(3) to achieve concurrency in urban growth areas.

1 **Issue No. 4: Did the City of Winlock fail to comply with RCW 36.70A.130 when it**
2 **did not take legislative action by December 1, 2005 to update its comprehensive**
3 **plan and development regulations?**

4 **Positions of the Parties**

5
6 Petitioners argue that the City did not complete its update of its comprehensive plan and
7 development regulations by December 1, 2005.³³ Petitioners point to public notices and the
8 Environmental Impact Statement to show that the City Ordinance 892 was not an update,
9 but only an expansion of the existing UGA boundaries.³⁴

10
11 The City responds with the documents upon which it relies in establishing that it has
12 completed its required Update: public notices of the comprehensive plan update process,
13 the ordinance adopting development regulations (Ordinance 896), and the ordinance
14 adopting the comprehensive plan update (Ordinance 892).³⁵

15
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17 **Board Analysis**

18 The City of Winlock was required to review and revise, if necessary, its comprehensive plan
19 and development regulations to ensure compliance with the GMA:

20
21 ...A county or city shall take legislative action to review and, if needed, revise its
22 comprehensive land use plan and development regulations to ensure the plan and
23 regulations comply with the requirements of this chapter according to the time
24 periods specified in subsection (4) of this section...

25 RCW 36.70A.130(1)(a)(in pertinent part)

26 Because the City of Winlock is located in Lewis County, its deadline for completing its
27 Update was December 1, 2005:

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29
30 ³³ Petitioners' Prehearing Brief on Issues 1 through 5, at 7.

31 ³⁴ *Ibid.*

32 ³⁵ Letter from City Attorney Mark Scheibmeir to the Presiding Officer, July 24, 2006. In response to a Board request at the Hearing on the Merits, the City provided documents it relies upon to show that it completed its Update as required by RCW 36.70A.130. There was no objection to these documents and they will be given Exhibit No. A 100.

1 The department shall establish a schedule for counties and cities to take action to
2 review and, if needed, revise their comprehensive plans and development
3 regulations to ensure the plan and regulations comply with the requirements of this
4 chapter. The schedule established by the department shall provide for the reviews
and evaluations to be completed as follows:

5 ...
6 (b) On or before December 1, 2005 and every seven years thereafter, for
7 Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties and
the cities within those counties..

8 RCW 36.70A.130(4)(in pertinent part).

9 The requirements for the Update legislative action are described with some specificity in the
10 statute:

11 Legislative action means the adoption of a resolution or ordinance following notice
12 and a public hearing indicating at a minimum, a finding that a review and evaluation
13 has occurred and identifying the revisions made, or that a revision was not needed
and the reasons therefore.

14 RCW 36.70A.130(1)(a)(in pertinent part).

15
16 Ordinance 892 does not contain a statement that a review and evaluation has occurred of
17 any changes in the comprehensive plan that may be needed to assure compliance with the
18 GMA. Ordinance 896 similarly lacks such a statement with respect to the City's
19 development regulations. Neither contains a finding that certain revisions were made or
20 that revisions were not needed.
21

22
23 The public notices sent by the City are primarily about the proposed UGA expansion. Some
24 of them could be read to address the comprehensive plan generally, such as the City
25 Council agenda item on June 13, 2005 entitled "Update on Status of UGA Expansion/Comp
26 Plan". However, none of them advise the public that the comprehensive plan and
27 development regulations are being reviewed for the purpose of ensuring compliance with
28 the GMA. Petitioners maintain that they had no idea that the meetings were for any
29 purpose other than considering the proposed UGA expansion and that would be a
30 reasonable conclusion from the documents provided to the Board. We find that the public
31 notices and the statements in the Ordinance did not meet the requirements for an Update
32

1 established in RCW 36.70A.130(1). Therefore, the City has not completed its Update of its
2 comprehensive plan and development regulations as required by RCW 36.70A.130.

3
4 **Conclusion:** The City has not met the requirements for an Update of its comprehensive
5 plan and development regulations pursuant to RCW 36.70A.130 according to the schedule
6 for such Update established in RCW 36.70A.130(4)(b).
7

8
9 **Issue No. 5: Does adoption of Ordinance 892 fail to comply with RCW**
10 **36.70A.020(1), RCW 36.70A.020(2) and RCW 36.70A.130 when it accepted a**
11 **population projection representing a 4.8 percent increase without evidence in the**
12 **record to support the increased population forecast?**

13 **Positions of the Parties**

14 Petitioners argue that the City did not utilize the growth management population projection
15 made for the County by the Office of Financial Management, as directed in RCW
16 36.70A.110.³⁶ Petitioners claim that the City doubled the population projection from 2.8
17 percent to 4.8 percent, thereby contributing to sprawl and failing to encourage urban
18 development where adequate public facilities and services can be efficiently provided.³⁷
19

20
21 Sovran responds that the population allocation to the Winlock UGA was increased through
22 an allocation from the County's urban reserve.³⁸ The County approved the population
23 allocation to the Winlock UGA, Sovran points out, and it fully justifies the size of the Winlock
24 UGA.³⁹
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31 ³⁶ Petitioners' Prehearing Brief on Issues 1 through 5, at 8.

32 ³⁷ *Ibid.*

³⁸ Sovran's Prehearing Brief on Issues 1 through 5, at 15.

³⁹ *Ibid* at 16.

1 **Board Analysis**

2 The population allocation to the Winlock UGA was accomplished by Lewis County in its
3 adoption of Lewis County Resolution 05-326. See the Final Decision and Order in
4 *Futurewise v. Lewis County*, WWGMHB Case No. 06-2-0003. Use of a proper population
5 allocation is part of a county's responsibility in setting UGA boundaries. RCW
6 36.70A.110(1) and (2). Although the City requested the population allocation used in
7 establishing the Winlock UGA boundaries, the responsibility for allocating the population
8 projection assigned to Lewis County by the Office of Financial Management is with the
9 County. This challenge is not properly brought against the City.
10
11

12 **Conclusion:** The City did not violate RCW 36.70A.130 or RCW 36.70A.020(1), and RCW
13 36.70A.020(2) when it adopted its 2005 comprehensive plan in conformity with the UGA
14 boundaries set by the County for the Winlock UGA. The City properly amended its
15 comprehensive plan to reflect the County's decision with respect to the Winlock UGA
16 boundaries. See RCW 36.70A.100.
17
18

19 **Issues 6-8:**

20 **6. Does adoption of Ordinance 892 fail to comply with RCW 36.70A.020(1), RCW**
21 **36.70A.020(2) and RCW 36.70A.130 when it approves and adopts a comprehensive**
22 **plan and urban growth map and capital facilities plan that expanded the UGA**
23 **without evidence in the record establishing that the size of the expansion adopted**
24 **is necessary to accommodate the City's adopted population forecast?**

25 **7. Does Ordinance 892 fail to comply with RCW 36.70A.020(1), RCW 36.70A.020(2),**
26 **RCW 36.70A.170, RCW 36.70A.060(1), RCW 36.70.070(5) and RCW 36.70A.130**
27 **when it approves and adopts a comprehensive plan and urban growth map and**
28 **capital facilities plan in which the UGA expansion encompasses an area that is**
29 **both rural and agricultural, fails to protect the character of each, and is in an area**
30 **not characterized by urban development nor adjacent to an area characterized by**
31 **urban development?**

32 **8. Does Ordinance 892 fail to comply with RCW 36.70A.020(8), RCW 36.70A.060,**
RCW 36.70A.170 and RCW 36.70A.130 when it approves and adopts a
comprehensive plan and urban growth map and capital facilities plan that expand
the UGA into agricultural lands of long term commercial significance, which are
additionally subject to an order of invalidity from this board?

1 **Threshold Issue:** Does the City of Winlock have an independent duty under the GMA to
2 ensure that the boundaries of the UGA of which it forms a part comply with the GMA?

3 **Positions of the Parties**

4 The threshold question with respect to all three of these issues is whether the City has an
5 independent duty to ensure that the UGA boundaries comply with the GMA. Petitioners
6 concede that the responsibility for designating a UGA is with the County.⁴⁰ However,
7 Petitioners also allege that the City has an obligation under RCW 36.70A.130(1)(b) to
8 ensure that “any amendment of or revision to a comprehensive land use plan shall conform
9 to this chapter.”⁴¹ Petitioners argue “Therefore, if Winlock’s revised comprehensive plan
10 does not comply with the Growth Management Act, the City has an obligation to bring it into
11 compliance.”⁴²
12
13

14
15 Sovran and the City⁴³ argue that the County, not the City has the authority to modify the
16 boundaries of a UGA. RCW 36.70A.110.⁴⁴ The City’s subsequent adoption of its 2005
17 comprehensive plan, they argue, merely implemented the County’s action in expanding the
18 Winlock UGA boundaries.⁴⁵ Therefore, they claim, the challenge should be to the County’s
19 adoption of expanded UGA boundaries, not to the City’s adoption of a comprehensive plan
20 that merely reflects the County’s decision.⁴⁶
21

22
23 The County argues that the Board lacks jurisdiction as to Issues 6, 7 and 8 and that these
24 should be dismissed.⁴⁷
25

26
27 ⁴⁰ Petitioners’ Prehearing Brief on Issues 6, 7, and 8 at 1.

⁴¹ *Ibid.*

28 ⁴² Petitioners’ Reply Brief on Issues 6, 7 and 8 at 8.

29 ⁴³ The City joins in Sovran’s brief. Hearing on the Merits.

30 ⁴⁴ Sovran’s Prehearing Brief on Issues 6, 7 and 8 at 7.

⁴⁵ *Ibid.*

⁴⁶ *Ibid* at 7-8.

31 ⁴⁷ Intervenor Lewis County’s Response to Petitioners’ Brief at 3. The County also argues in its brief that the
32 Petitioners lack standing, leading Petitioners to offer comment letters they submitted to the City during the
adoption of Ordinance 892. At the hearing on the merits, all parties agreed Petitioners have standing to bring
their challenges to Ordinance 892.

1 **Board Analysis**

2 Petitioners concede that the responsibility to designate UGA boundaries under RCW
3 36.70A.110 lies with the County. However, they argue that the City has a duty to ensure
4 that its comprehensive plan complies with the GMA so that the City has an independent
5 obligation to make the UGA boundaries it adopts in its comprehensive plan compliant with
6 the GMA.⁴⁸

7
8 RCW 36.70A.110(1) clearly places the responsibility for designating UGA boundaries on the
9 counties:

10 Each county that is required or chooses to plan under RCW 36.70A.040 shall
11 designate an urban growth area or areas within which urban growth shall be
12 encouraged and outside of which growth can occur only if it is not urban in nature.⁴⁹

13
14 Petitioners rely upon the language of RCW 36.70A.130 requiring counties and cities to take
15 legislative action to “review and, if needed, revise its comprehensive land use plan and
16 development regulations to ensure the plan and regulations comply with the requirements of
17 this chapter...”⁵⁰ However, this provision does not shift the responsibilities assigned in the
18 GMA; it requires a review of the City’s adoptions under the GMA but it does not change the
19 requirements for those adoptions. Under Petitioners’ theory, the City could change the UGA
20 boundaries set by the County because the City found that the County’s decision was not
21 compliant with the GMA; such a change by the City would itself violate the requirements of
22 RCW 36.70A.110.
23

24
25 The legislative action challenged here, Ordinance 892, followed upon the County’s adoption
26 of an expansion of the Winlock UGA. The City properly amended its comprehensive plan to
27 reflect the County’s decision with respect to the Winlock UGA boundaries. See RCW
28 36.70A.100. The County’s adoption was challenged in WWGMHB Case No. 06-2-0003. If
29 the County changes its decision with respect to the Winlock UGA boundaries, then the City
30

31
32 ⁴⁸ Petitioners’ Prehearing Brief on Issues 6, 7, and 8 at 1.

⁴⁹ RCW 36.70A.110(1)(in pertinent part)

⁵⁰ RCW 36.70A.130(1)(a)(in part)

1 must also reflect those changes in its comprehensive plan. The City does not have
2 authority under the GMA to make its own choices about the location or size of the Winlock
3 UGA.
4

5 **Conclusion:** The City of Winlock does not have the ability or the duty under the GMA to set
6 or alter the boundaries of the UGA of which it forms a part. The adoption in Ordinance 892
7 of the expanded Winlock UGA boundaries established by Lewis County achieves
8 coordination and consistency between the comprehensive plan of the City and the
9 comprehensive plan of Lewis County as required by RCW 36.70A.100.
10
11

12 VI. FINDINGS OF FACT

- 13 1. The City of Winlock is situated in Lewis County, which is located west of the Cascade
14 Mountains and is required to plan according to RCW 36.70A.040.
- 15 2. The petition for review in this case was filed on March 10, 2006. It challenges City of
16 Winlock Ordinance 892.
- 17 3. City of Winlock Ordinance 892 adopted the Winlock 2005 Comprehensive Plan, the
18 Winlock Urban Growth Map and the Winlock 2005 Capital Facilities Plan.
- 19 4. Ordinance 892 was adopted January 9, 2006 and published on January 13, 2006.
- 20 5. Petitioners participated orally and in writing in the City's adoption process for
21 Ordinance 892.
- 22 6. Issues 1 and 2 challenge the execution of agreements for engineering services (Ex.
23 C119) or for cost reimbursements for those engineering services, legal services and
24 expenditures related to the expansion of an urban growth area without public
25 participation.
- 26 7. Policy 2.1.8 provides that areas designated for employment opportunities within the
27 Winlock UGA should be developed first but these areas will have urban levels of
28 service at the time of such development.
29
30
31
32

- 1 8. Ordinance 892 does not contain a statement that a review and evaluation has
2 occurred of any changes in the comprehensive plan that may be needed to assure
3 compliance with the GMA. Ordinance 896 similarly lacks such a statement with
4 respect to the City's development regulations. Neither contains a finding that certain
5 revisions were made or that revisions were not needed.
6
7 9. None of the public notices sent by the City concerning the adoption of Ordinances
8 892 and 896 advise the public that the comprehensive plan and development
9 regulations are being reviewed for the purpose of ensuring compliance with the GMA,
10 nor do statements in the Ordinance indicate a Plan Update is being adopted..
11
12 10. The population allocation to the Winlock UGA was accomplished by Lewis County in
13 its adoption of Lewis County Resolution 05-326.
14
15 11. Ordinance 892 was adopted after Lewis County set the new boundaries for the
16 Winlock UGA.
17
18 12. In Ordinance 892, the City amended its comprehensive plan to reflect the County's
19 decision with respect to the Winlock UGA boundaries.
20
21 13. Any Finding of Fact hereafter determined to be a Conclusion of Law is hereby
22 adopted as such.

23 **VII. CONCLUSIONS OF LAW**

- 24 A. This Board has jurisdiction over the parties to this action.
25 B. This Board has jurisdiction over the subject-matter of this action.
26 C. Petitioner has standing to raise the issues in its Petition for Review.
27 D. The Petition for Review in this case was timely filed.
28 E. The challenged agreements signed by the Mayor of Winlock are not subject to the
29 public participation requirements of RCW 36.70A.140 (Issues 1 and 2).
30 F. Winlock Comprehensive Plan Policy 2.1.8 complies with RCW 36.70A.110(3).
31 (Issue 3).
32

- 1 G. The City has failed to Update its comprehensive plan and development regulations
 2 pursuant to RCW 36.70A.130 according to the schedule for such Update
 3 established in RCW 36.70A.130(4)(b) (Issue 4).
 4 H. Ordinance 892 does not violate RCW 36.70A.130 or RCW 36.70A.020(1), RCW
 5 36.70A.020(2) by reflecting the population allocation utilized by Lewis County when
 6 it set the boundaries for the Winlock UGA (Issue 5).
 7 I. The City of Winlock does not have the authority under the GMA to adopt different
 8 UGA boundaries than those set by Lewis County. The adoption of Ordinance 892
 9 achieves coordination and consistency between the comprehensive plan of the City
 10 and the comprehensive plan of Lewis County as required by RCW 36.70A.100
 11 (Issues 6-8).
 12 J. Any Conclusion of Law hereafter determined to be a Finding of Fact is hereby
 13 adopted as such.
 14
 15
 16

17 **VIII. ORDER**

18 The County is ordered to achieve compliance with the Growth Management Act pursuant to
 19 this decision as to Issue 4 no later than February 13 2007. The following schedule for
 20 compliance, briefing and hearing shall apply:
 21

22

| | |
|---|-------------------|
| 23 Compliance Due | February 13, 2007 |
| 24 Compliance Report (County to file and serve on all parties) | February 20, 2007 |
| 25 Any Objections to a Finding of 26 Compliance Due | March 6, 2007 |
| 27 County's Response Due | March 20, 2007 |
| 28 Compliance Hearing (location to be 29 determined) | March 29, 2007 |

30
31
32

1 Entered this 30th day of August 2006.

2
3
4 _____
Margery Hite, Board Member

5
6
7 _____
8 Holly Gadbow, Board Member

9
10 _____
11 Gayle Rothrock, Board Member

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

13
14
15 **Reconsideration.** Pursuant to WAC 242-02-832, you have ten (10) days from the
16 mailing of this Order to file a petition for reconsideration. Petitions for
17 reconsideration shall follow the format set out in WAC 242-02-832. The original and
18 three copies of the petition for reconsideration, together with any argument in
19 support thereof, should be filed by mailing, faxing or delivering the document directly
20 to the Board, with a copy to all other parties of record and their representatives.
21 **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.

22
23 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the
24 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
25 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

26
27 **Enforcement.** The petition for judicial review of this Order shall be filed with the
28 appropriate court and served on the Board, the Office of the Attorney General, and all
29 parties within thirty days after service of the final order, as provided in RCW
30 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.

31
32 **Service.** This Order was served on you the day it was deposited in the United States
mail. RCW 34.05.010(19)