

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 FUTUREWISE, et al.,

4
5 Petitioners,

Case No. 06-2-0003

6 v.

7 **ORDER GRANTING RECONSIDERATION**

8 LEWIS COUNTY,

9 Respondent,

10
11 SOVRAN, LLC, SOVRAN LEWIS, LLC
12 AND THE BENAROYA COMPANY,

13 Intervenor.
14

15 **This Matter** comes before the Board upon the motion of Intervenor (‘‘Sovran’’ collectively)
16 for reconsideration of the Board’s Final Decision and Order issued August 2, 2006.¹ Sovran
17 seeks reconsideration of the Board’s determination regarding the Winlock urban growth
18 area (UGA) on the basis of the Washington Supreme Court’s August 10, 2006 ruling in
19 *Lewis County v. Western Washington Growth Management Hearings Board*.² Petitioners
20 oppose Sovran’s motion for reconsideration.³
21

22
23 We agree with Sovran that the Court’s decision in *Lewis County v. Western Washington*
24 *Growth Management Hearings Board*⁴ has changed the basis upon which this Board’s
25 decision with respect to the Winlock UGA was made. Therefore, the Board reconsiders its
26 decision with respect to the Winlock UGA boundaries. The invalidity determination no
27 longer applies to the lands at issue in the Winlock UGA and therefore the inclusion of those
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30 ¹ Sovran’s Motion for Reconsideration, August 15, 2006.

31 ² *Ibid.*

32 ³ Petitioners’ Answer to Sovran’s Motion for Reconsideration, August 21, 2006.

⁴ Slip Opinion No. 76553-7.

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

3 DISCUSSION

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

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

13 A board may determine that part or all of a comprehensive plan or development
14 regulations are invalid if the board:

15 (a) Makes a finding of noncompliance and issues an order of remand under
16 RCW 36.70A.300.

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

18
19 Although the Court in *Lewis County v. Western Washington Growth Management Hearings*
20 *Board* did not expressly address the invalidity determination, it reversed and remanded the
21 Board’s decision with respect to the noncompliance of the County’s designation of
22 agricultural resource lands. Without a finding that the designation is noncompliant, the
23 invalidity determination cannot be sustained.⁹ Therefore, the determination of invalidity as
24 to the rural lands that should be held for consideration for designation as agricultural
25 resource lands no longer applies.

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28 _____
29 ⁵ RCW 36.70A.060(1) and 36.70A.170

30 ⁶ Sovran’s Motion for Reconsideration at 3.

31 ⁷ Petitioners’ Answer to Sovran’s Motion for Reconsideration.

32 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.

1 The Board's decision that the expanded Winlock UGA boundaries do not comply with the
2 GMA requirements for conservation of agricultural resource lands (RCW 36.70A.060(1) and
3 36.70A.170) rested upon a finding that the new Winlock UGA boundaries include lands
4 subject to a determination of invalidity:
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7 Findings of Fact 38 and 39:

8 38. The Winlock UGA expansion, includes lands whose designation and mapping
9 are subject to a prior determination of invalidity.

10 39. The Winlock UGA has been sized and mapped to include the noncompliant
11 lands subject to the prior determination of invalidity.

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

18 L. The Winlock UGA is non-compliant with RCW 36.70A.060(1) and 36.70A.170
19 because it maps and designates lands as urban whose mapping and designation has
20 been found to be invalid in a prior case.

21 K. The inclusion of lands in the Winlock UGA whose designation and mapping are
22 subject to an invalidity determination substantially interferes with Goal 8 of the GMA.

23
24 Based on the State Supreme Court decision, the Board withdraws these findings of fact and
25 conclusions of law. Sovran is correct that the prior invalidity determination is the sole basis
26 upon which the Board found the expanded Winlock UGA boundaries noncompliant.

27 Therefore, the Board finds that the new Winlock UGA boundaries are compliant with RCW
28 36.70A.060(1) and 36.70A.170.
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1 **ORDER**

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

4 **ADDS** a new Conclusion of Law:

- 5 I. The new Winlock UGA boundaries established through Resolution 05-326 are
6 compliant with RCW 36.70A.060(1) and 36.70A.170.
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9 Entered this 24th day of August 2006.

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Margery Hite, Board Member

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Holly Gadbow, Board Member

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Gayle Rothrock, Board Member

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

21 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the
22 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
23 judicial review may be instituted by filing a petition in superior court according to the
24 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil
25 Enforcement. The petition for judicial review of this Order shall be filed with the
26 appropriate court and served on the Board, the Office of the Attorney General, and all
27 parties within thirty days after service of the final order, as provided in RCW
28 34.05.542. Service on the Board may be accomplished in person or by mail, but
29 service on the Board means actual receipt of the document at the Board office 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.

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