No. 84187-0

J.M. JOHNSON, J. (concurring in part and dissenting in part)—The legislature enacted the Growth Management Act (GMA), chapter 36.70A RCW, to allow citizens, through local governments, to cooperate and coordinate with respect to land use planning.[1] If courts permit unelected hearings boards to dictate planning requirements to elected local governments rather than provide truly deferential oversight, however, litigation rather than cooperation results. Consequently, local governments are unable to

[1] *See* RCW 36.70A.010, which states:

> The legislature finds that uncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state. *It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning*. Further, the legislature finds that it is in the public interest that economic development programs be shared with communities experiencing insufficient economic growth.

(Emphasis added.)

implement decisions based on their citizens' local needs and circumstances.

I agree with the majority that the Eastern Washington Growth Management Hearings Board (Board) improperly found that Kittitas County's airport zone is noncompliant with the GMA. However, I cannot agree with its remaining conclusions or its decision to remand to the Board. The Board did not give Kittitas County (County) the deference required under the GMA and our case law, leading it to the incorrect holding that the County's comprehensive plan (Plan) and development regulations are "clearly erroneous." RCW 36.70A.320(3). The majority's decision to remand to the same Board will serve to further protract and delay while not allowing the appropriate local government to govern.

I would find that the County's Plan and most of the challenged development regulations comply with the GMA. Accordingly, I would reverse most of the Board's holdings and direct the Board to remand to the County to allow its legislative body to make any necessary adjustments to its Plan and development regulations. I therefore concur in part and dissent in part.

Additional Facts and Procedural History

In addition to the facts and procedural history cited by the majority, I note that the County passed Ordinance 2006-63 at the end of nearly a year and eight months of public participation and consideration.[2] Over 60 public hearings were held, and "[a]ll members of the public who wanted to were allowed to speak or submit written correspondence."[3] Ordinance 2007-22 was similarly adopted – only after public hearings were held and written and oral testimony taken from all concerned parties.[4] In contrast, the Board's hearings on theses matter took just one day each, on July 16, 2007, and February 13, 2008, respectively.[5] Finally, I would also note that the Kittitas Superior Court has issued a stay on each of the Board's orders in response to motions from two of the intervenors in this case.[6]

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[2] Kittitas County Ordinance (Ord.) 2006-63 (Dec. 11, 2006), at 1-4; *see also* 1 Administrative R. (1 AR), *Kittitas County Conservation v. Kittitas County*, No. 07-1-0004c, 2007 WL 2729590 (E. Wash. Growth Mgmt. Hr'gs Bd. Aug. 20, 2007), at 300-03.

[3] 1 AR at 301-03.

[4] Ord. 2007-22 (July 19, 2007), at 1-8; *see also* 2 Administrative R. (2 AR), *Kittitas County Conservation v. Kittitas County*, No. 07-1-0015, 2008 WL 1766717 (E. Wash. Growth Mgmt. Hr'gs Bd. Mar. 21, 2008), at 8-16; *see also* RCW 36.70A.140 (requiring public participation in comprehensive plans).

[5] 1 AR at 2291; 2 AR at 1196.

[6] Kittitas County Conserv.'s, RIDGE's, and Futurewise's Mot. for Discretionary Review, App. B. A court may only issue a stay if it determines the party requesting a stay is likely

Analysis

A. Cities and Counties Have Broad Discretion To Adopt Comprehensive Plans Under the GMA

The necessary starting point when reviewing any GMA case is the broad range of discretion the legislature expressly granted counties and cities to adopt comprehensive plans according to their local growth patterns, resources, and needs.[7] The legislature determined this deference is required because "[l]ocal comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances." RCW 36.70A.3201; *see also Manke Lumber Co. v. Diehl*, 91 Wn. App. 793, 804, 959 P.2d 1173 (1998)

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to succeed on the merits.

[7] RCW 36.70A.3201 states, in pertinent part:

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

Although we give weight to a hearings board's interpretation of the GMA, a hearings board's ruling is not entitled to deference from this court if it fails to give deference to a county planning decision that complies with the GMA. *King County v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.*, 142 Wn.2d 543, 553, 14 P.3d 133 (2000); *Quadrant Corp. v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.*, 154 Wn.2d 224, 238, 110 P.3d 1132 (2005).

(reversing the Western Washington Growth Management Hearings Board's finding of GMA noncompliance due to lack of substantial evidence). To this end, comprehensive plans and development regulations are presumed to be valid upon adoption. RCW 36.70A.320(1). Additionally, upon challenge, the burden is on the petitioner to demonstrate that any action taken by a county or city under the GMA is not in compliance with the requirements of the GMA. RCW 36.70A.320(2). This burden is intentionally very high: hearings boards (and courts) must apply "a more deferential standard of review to actions . . . than the preponderance of the evidence standard." RCW 36.70A.3201. Neither the majority nor the Board explains how the County fails under this particularized standard of review.

Furthermore, within the constraints of this high level of deference, the hearings board *must* find that a city or county's action complies with the GMA, unless it determines that the comprehensive plan or development regulation is "clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." RCW 36.70A.320(3). A county's action is not "clearly erroneous" merely because an unelected hearings board has a "'firm and definite conviction that a

mistake has been committed'";[8] rather, "'[a] finding is "clearly erroneous" when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.'" *Ancheta v. Daly*, 77 Wn.2d 255, 259-60, 461 P.2d 531 (1969) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395, 68 S. Ct. 525, 92 L. Ed. 746 (1948));[9] *see also United States v. Or. State Med. Soc'y*, 343 U.S. 326, 72 S. Ct. 690, 96 L. Ed. 978 (1952). In short, whether an action is "clearly erroneous" should not turn on a hearings board member's "firm and definite conviction," but whether the hearings board is firmly

[8] Majority at 5 (internal quotation marks omitted) (quoting *Lewis County v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 157 Wn.2d 488, 497, 139 P.3d 1096 (2006)).

[9] A bit of case history is helpful here to explain how this exacting definition became lost among our precedent. The majority obtains its incomplete definition of "clearly erroneous" from *Department of Ecology v. Public Utility District No. 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993). Majority at 5. *Department of Ecology*, however, cites *Cougar Mountain Associates v. King County*, 111 Wn.2d 742, 747, 765 P.2d 264 (1988). *Dep't of Ecology*, 121 Wn.2d at 201. *Cougar Mountain Associates*, in turn, cites *Polygon Corp. v. City of Seattle*, 90 Wn.2d 59, 69, 578 P.2d 1309 (1978), to explain the difference between the "arbitrary and capricious" standard and the "clearly erroneous" standard. *Cougar Mt. Assocs.*, 111 Wn.2d at 747. *Polygon Corp.* then cites *Ancheta*, where we adopted the definition of "clearly erroneous" established by the United States Supreme Court in *United States Gypsum Co*. *Polygon Corp.*, 90 Wn.2d at 69; *Ancheta*, 77 Wn.2d at 259-60. For the curious, an agency's decision is "arbitrary and capricious" if the decision is the result of willful and unreasoning disregard of the facts and circumstances. *Overlake Hosp. Ass'n v. Dep't of Health*, 170 Wn.2d 43, 239 P.3d 1095 (2010).

convinced that an error of law has occurred after full consideration of the law and the evidence. Neither the majority nor the Board explains why the County's Plan and development regulations, after giving the County this high level of deference, can be found "clearly erroneous" under this exacting definition.

Finally, because the ultimate burden and responsibility for planning, harmonizing the planning goals of the GMA, and implementing a county's or city's future rests with that community, on remand we should direct the Board to remand to the County to allow its legislative body to make only the necessary adjustments to its Plan and development regulations. *See Viking Props., Inc. v. Holm*, 155 Wn.2d 112, 125-26, 118 P.3d 322 (2005) (quoting RCW 36.70A.3201).

To summarize my conclusions below, I would hold that the presumption of the validity of the County's Plan and development regulations has not been rebutted, with the partial exception of chapter 17.31 of the Kittitas County Code (KCC). The petitioners have not shown that the County's Plan or the remaining development regulations, after application of a more deferential standard of review than the preponderance of evidence

standard, remain "clearly erroneous" in view of the entire record and the goals and requirements of the GMA.

B. The Board Improperly Dismissed Community Testimony

The Board dismissed the community testimony of Lila Hanson, Pat Deneen, and Urban Eberhart from the Kittitas County Farm Bureau to support the proposition that three-acre zoning preserves the rural character of Kittitas County and promotes agriculture. They testified that three-acre zoning would allow farmers to sell off the smallest portion of agriculturally marginal land possible for cash flow purposes in low-irrigation years, allowing the farmer to remain economically competitive by being able to retain the greatest amount of productive farmland. This, they argued, would allow farmers to retain the most agriculturally valuable farmland possible for subsequent years when farming is better, thereby promoting agriculture and preserving rural character.

This is exactly the sort of flexibility and consideration of local circumstances the legislature intended local governments to address in their comprehensive plans. Therefore, it was improper to dismiss the evidence. Accordingly, following our analysis in *City of Arlington*, the County's action

was not clearly erroneous and the Board's decision was not rendered in view of the entire record. *See City of Arlington v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.*, 164 Wn.2d 768, 774, 193 P.3d 1077 (2008). While the majority dismisses this evidence as not dispositive of the question of rural character, *City of Arlington* is clear that when a hearings board dismisses a key piece of evidence supporting the county's action, it commits error. *Id.* at 795. The community testimony is reflective of the local circumstances of many Kittitas County farmers. Dismissing such evidence is error, which warrants reversal of the Board's decision.

C. The County Developed a Written Record Explaining the Rural Element of the Plan

RCW 36.70A.070(5) requires counties to include a rural element in their comprehensive plan. Because circumstances vary from county to county, "a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020[1] and meets the requirements of this chapter."

[1] The 13 planning goals are listed and paraphrased as follows:

> (1) Urban growth. (Encourage development in urban areas).
> (2) Reduce sprawl. (Reduce conversion of undeveloped land into sprawling development).

RCW 36.70A.070(5)(a).

The GMA does not specify what form the record must take or how detailed it must be, recognizing that these are local decisions made by elected local representatives. Thus, hearings boards have recognized, as should we, that the GMA does not require a local jurisdiction to develop a separate statement explaining how its rural element harmonizes the planning goals in RCW 36.70A.020, as long as the plan itself "'is clear in its description of how its amendments harmonize with the overall goals in Section 020.'"

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(3) Transportation. (Encourage efficient transportation systems).

(4) Housing. (Encourage the availability of affordable housing).

(5) Economic development. (Encourage economic development).

(6) Property rights. (Private property shall not be taken for public use without just compensation having been made).

(7) Permits. (Applications for both state and local government permits should be processed in a timely and fair manner).

(8) Natural resource industries. (Maintain and enhance natural resource-based industries).

(9) Open space and recreation. (Retain open space and enhance recreational opportunities).

(10) Environment. (Protect the environment and enhance the state's high quality of life).

(11) Citizen participation and coordination. (Encourage citizen involvement in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts).

(12) Public facilities and services. (Ensure the facilities and services necessary to support development are adequate to serve the development at the time the development is available for occupancy).

(13) Historic preservation. (Identify and encourage the preservation of lands, sites, and structures that have historical or archaeological significance).

RCW 36.70A.020

Bayfield Res. Co. v. Thurston County, No. 07-2-0017c, 2008 WL 2115328, at *12 (W. Wash. Growth Mgmt. Hr'gs Bd. Apr. 17, 2008) (quoting *Friends of Skagit County v. Skagit County*, No. 99-2-0016, 1999 WL 721857, at *5 (W. Wash. Growth Mgmt. Hr'gs Bd. Sept. 7, 1999)).

Here, chapter 8 of the Plan has the required rural element, which identifies rural lands in Kittitas County, their uses, current land use patterns, government services in rural lands, and the goals, policies, and objectives for rural land in Kittitas County. Within chapter 8, the goals of the GMA are found interspersed with the County's policies to varying degrees.[11] Because the Board (and the majority) misapprehended what may constitute a written record, we consider the County's expression of these "goals, policies, and objectives" (GPOs) in the next few paragraphs.

With respect to urban growth and public services, GPO 8.1 states that municipal and public services "should not be extended outside of urban growth areas in Rural Lands." 1 AR at 215. GPO 8.4 states that "[e]ssential public facilities should not be located outside cities, urban growth areas or

[11] This makes sense, given that chapter 8 is but one section of the County's comprehensive plan. Some goals listed in RCW 36.70A.020, such as community involvement, make more sense elsewhere and need not be repeated in the rural element section.

nodes . . . ." *Id.* at 216. With respect to reducing sprawl, GPO 8.3 states that "sprawl will be discouraged if public services and public facilities established under RCW 36.70A.070(5)(d) are limited to just those necessary to serve the developed area boundaries and are not allowed to expand into adjacent Rural Land." *Id.* GPO 8.13 states that "methods other than large lot zoning to reduce densities and prevent sprawl should be investigated." *Id.* at 217.

With respect to housing, GPOs 8.46-8.53 discuss where residential lots may be located and what types of developments will be considered. *Id.* at 220-21. GPO 8.46 states that "residential development on rural lands must be in areas that can support adequate private water and sewer systems." *Id.* at 220. With respect to economic development, GPOs 8.38-8.45 discuss business uses in rural lands. *Id.* As section 8.5(D) elaborates, "The economy of our rural community has traditionally been based on natural resource activities and Kittitas County encourages and supports their continuation in Rural Lands. . . . Rural Areas are not just rustic places; they are vital, thriving communities with working landscapes and working peoples." *Id.* at 219.

With respect to property rights, GPO 8.7 states that "private owners

should not be expected to provide public benefits without just compensation." *Id.* at 216. With respect to natural resource industries, section 8.2 states that the County "will strive to encourage and support [historic] resource-based activities in whatever areas and zones they occur." *Id.* at 214. With respect to historic preservation, GPO 8.11 states that "existing and traditional uses should be protected and supported while allowing as much as possible for diversity, progress, experimentation, development and choice in keeping with the retention of Rural Lands." *Id.* at 217. GPOs 8.54-8.61 discuss goals related to open space and recreation. *Id.* at 222-23.

With respect to the environment, section 8.5(G), which includes GPOs 8.62-8.66B, discusses shorelines, critical areas, habitat, and scenic areas in Kittitas County. *Id.* at 223. GPO 8.9 adds that "[p]rojects or developments which result in the significant conservation of rural lands or rural character will be encouraged." *Id.* at 217.

Viewed as a whole then, the County's Plan is clear in its description of how its amendments harmonize with the overall goals of RCW 36.70A.020. Indeed, the Plan *is* how the County explains how its rural element harmonizes the planning goals in RCW 36.70A.020. The County has developed a written

record that satisfies the flexible standard of RCW 36.70A.020(5). This was supplemented by consideration of the community testimony and public input taken by the County during the year and eight months leading up to the adoption of Ordinance 2006-63. In light of this community testimony and the Plan itself, the Board's conclusion that the County failed to develop a written record is erroneous.

D. The Board Improperly Employed a Brightline Rule Regarding Rural Densities

The majority attempts to skirt the issue of whether the Board employed a bright-line rule to delineate between rural and urban densities, which we have held the Boards may not do. *Thurston County v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 164 Wn.2d 329, 190 P.3d 38 (2008); *Gold Star Resorts, Inc. v. Futurewise*, 167 Wn.2d 723, 734-35, 222 P.3d 791 (2009). With a wink, the majority acknowledges that "[t]he Board appears to have relied on such a rule here." Majority at 14.

The Board did improperly apply a bright-line rule in this case. The Board expressly framed the issue as "[d]oes Kittitas County's failure to review and revise the comprehensive plan to eliminate densities greater than

one dwelling unit per five acres in the rural area . . . violate [the GMA]?" 1 AR at 2292; 2 AR at 1197-98; *see also Thurston County*, 164 Wn.2d at 358 n.20 (holding that although the Board did not explicitly adopt a five acre brightline rule, such a rule was implicit in its decision because of the way the issue regarding rural densities was framed). The Board also stated:

> This Board and the other two Hearings Boards have studied rural lot sizes, effects of those lot sizes and measured these findings against the requirements of the GMA and its definitions. With this extensive research and having reviewed the Kittitas County Record, searching for the basis for the sizing of these Rural lots, this Board finds that [one dwelling per three acres] are urban densities and this urban growth is prohibited in the Rural element.

1 AR at 2302.[12] This language is equivalent to that in the Board order we struck down in *Gold Star Resorts*, in which a hearings board stated that "'[r]esidential densities of greater than one dwelling unit per five acres are not considered rural densities.'" *Gold Star Resorts*, 167 Wn.2d at 734-35 (alteration in original) (quoting Board's Final Decision and Order at *21).

Here, the Board also stated that its determination "is not a 'brightline'

[12] This language, found in the Board's Final Decision and Order with respect to Ordinance 2006-63, was incorporated by reference in the Board's Final Decision and Order with respect to Ordinance 2007-22. 2 AR at 1204.

definition" but rather "the end-result of an accumulation of quantitative data which points to an appropriate lot size for rural development," considering data from outside Kittitas County. 2 AR at 1203. Thus, the Board's determination was not based on local circumstances. As to respondent's argument that the average small farm in Kittitas County is 5.62 acres, and therefore any density greater than that is urban in nature, the superior court was correct in finding that this "belies the definitions and guidelines provided to the County [by the GMA]," which were provided so that the County may "define its own rural character, rural development, and urban growth." Kittitas County Conserv.'s, RIDGE's, and Futurewise's Mot. for Discretionary Review, App. B at 7.

I would hold that a hearings board may not merely disclaim a bright-line rule while applying one. A hearings board must articulate *why* the local circumstances in a county do not support the county's own determination of what constitutes rural and what constitutes urban. *Thurston County*, 164 Wn.2d at 359 ("Whether a particular density is rural in nature is a question of fact based on the specific circumstances of each case."). Respondents have not overcome the presumption that the County's rural densities comply with

the GMA given the local circumstances.

E. The Board Improperly Found that the County Failed To Protect Rural Character

The Board found that the County's Plan and several of its development regulations fail to protect rural character under RCW 36.70A.070(5)(c). Although the majority agrees that the Plan lacks provisions required by the GMA to protect rural areas, it declined to reach the challenged development regulations (perhaps because they are not clearly erroneous). I would reverse rather than affirm the Board on this issue because the County's Plan complies with RCW 36.70A.070(5)(c), and because the County is entitled to deference with respect to implementing measures it decides will best protect rural character.

I reach this conclusion because the majority conflates the separate but related functions of a plan and development regulations. A comprehensive plan is "a generalized coordinated land use *policy statement* of the governing body of a county or city that is adopted pursuant to this chapter." RCW 36.70A.030(4) (emphasis added). It is not a set of regulations and standards. *Cf.* majority at 15-16. Development regulations, on the other hand, are "the

controls placed on development or land use activities by a county or city," and are what actually implement the plan. RCW 36.70A.030(7) (emphasis added); RCW 36.70A.040. In other words, a plan is like a blueprint for a home. It guides construction but does not imbue the home with substance. Development regulations, on the other hand, are like brick and mortar. They serve to both build the home (growth) and to protect its interior (management). While a house must be built according to the specifications in the blueprint, as with a plan, the specifications need only detail the kind of home the county wants to build for itself. The county bears the ultimate burden and responsibility for planning and implementing the sort of home its citizens want. *See* RCW 36.70A.3201. The GMA was enacted to allow citizens, local governments, and interested entities to coordinate and cooperate with each other with respect to land use planning, not to mandate a particular outcome chosen by unelected boards.

The majority finds this analogy too simplistic. Majority at 17 n.6. However, this has been our understanding of role of comprehensive plans for decades. *E.g.*, *Woods v. Kittitas County*, 162 Wn.2d 597, 613, 174 P.3d 25 (2007) (comprehensive plans serve as "'guide[s]'" or "'blueprint[s]'"

(internal quotation marks omitted) (quoting *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 873, 947 P.2d 1208 (1997))); *see also Barrie v. Kitsap County*, 93 Wn.2d 843, 849, 613 P.2d 1148 (1980) (comprehensive plans are "guide[s] to the adoption of zoning regulations" and "'blueprint[s] which suggest[] various regulatory measures'") (quoting *Lutz v. City of Longview*, 83 Wn.2d 566, 574, 520 P.2d 1374 (1974) and citing *Buell v. City of Bremerton*, 80 Wn.2d 518, 526, 495 P.2d 1358 (1972))); *see also Shelton v. City of Bellevue*, 73 Wn.2d 28, 35, 435 P.2d 949 (1968). In *Shelton*, we described comprehensive plans in the following manner:

> "[P]lanning," in the broad sense, contemplates the evolvement of an over-all program or design of the present and future physical development of the total area and services of the existing or contemplated municipality. . . . by its very nature and purpose, realistic municipal "planning" is and must be comprehensive, flexible, and prospective . . . . [*S*]*ince it usually proposes rather than disposes, it does not ordinarily, without further regulatory implementation, in and by itself, impose any immediate restrictions upon the land area it purports to cover. Planning, as such, then in effect forms a blueprint for the various regulatory measures it suggests*.

Shelton, 73 Wn.2d at 35 (emphasis added). The majority argues that the legislature has "required that certain elements be included in the blueprint (or the Plan) itself, including protection of rural character. Majority at 17 n.6.

The majority misapprehends the nature of these required elements, rendering development regulations redundant and plans even more unwieldy.

By requiring "measures," RCW 36.70A.070(5)(c) contemplates that the Plan shall include *policy statements* relating to the five criteria of RCW 36.70A.070(5)(c), which apply to and protect rural character when implemented by development regulations.[13] As explicated above, chapter 8 of the County's Plan contains these required policy statements. 1 AR at 215-23.

In sum, the work of actually implementing a comprehensive plan falls to a county's development regulations adopted by duly elected local officials. Indeed, this is why the County's Plan states:

> The Comprehensive Plan is based on a framework of community goals and objectives adopted by the County as a

[13] The five criteria are:

> (i) Containing or otherwise controlling rural development;
> (ii) Assuring visual compatibility of rural development with the surrounding rural area;
> (iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;
> (iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and groundwater resources; and
> (v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

RCW 36.70A.070(5)(c).

> formal expression of public policy. There is no assurance, however, that orderly development or any of the other goals will be accomplished simply by the formal adoption of the Plan. The value of the Plan lies in the determination and commitment of the County in the future to implement the Plan through the adoption of ordinances and codes designed to achieve the stated objectives.

1 AR at 56. This statement is not an indictment against the County as the majority suggests. Majority at 16.

F. The Board Improperly Concluded that the County Failed To Provide for a Variety of Rural Densities

I also disagree with the majority's conclusion that the County did not provide for a variety or rural densities in its Plan. Here, the Plan specifically states that "Kittitas County recognizes and agrees with the need for continued diversity in densities and uses on Rural Lands." 1 AR at 216 (GPO 8.5). This provision for a variety of rural densities is included in the Plan's rural element and therefore satisfies RCW 36.70A.070(5)(b). That the Plan's provision for rural densities is borne out by the County's zoning regulations, which allow for six different rural densities, is not problematic. It is statutorily intended. Unlike the situation that could produce the loophole Kittitas County Conservation, RIDGE, and Futurewise (collectively

"RIDGE") and the Washington Department of Community, Trade and Development (CTED) suggest, the County's Plan is not silent on the provision of rural densities. Therefore, it cannot be circumvented by site-specific rezones. This argument is without merit.

G. Chapter 17.31 KCC Does Not Fully Comply with the GMA

RCW 36.70A.170(1)(a) requires cities and counties to designate and preserve agricultural land of long-term commercial significance. RCW 36.70A.177 allows cities and counties to use innovative zoning techniques to achieve this end, including agricultural zoning that limits the density of development and restricts or prohibits nonfarm uses of agricultural land. Agricultural zoning may allow agricultural and non-agricultural accessory uses[14] that support, promote, or sustain agricultural operations and production. RCW 36.70A.177(2)(a).

Chapter 17.31 KCC provides for conditional uses for farm laborer shelters, room and board lodging, canneries and processing plants for agricultural products, livestock sales yards and churches, in addition to the uses mentioned by the majority. All these uses directly promote and sustain

[14] Accessory uses are defined in RCW 36.70A.177(3).

agricultural operations and production.

Thus, rather than affirm the Board's order that chapter 17.31 KCC is noncompliant with the GMA, I would direct the Board to remand to the County to amend those provisions that are not designed to conserve agricultural lands and encourage the agricultural economy as required by RCW 36.70A.177(1).

The Board also incorrectly concluded that chapter 17.31 KCC is "void as to the scope and limitations of [conditional] uses, thus allowing unlimited discretion in permitting them." 2 AR at 1217. The County's ordinances must be read as a whole: KCC 17.60A.010 and KCC 17.60A.020, for example, contain various restrictions on whether conditional permits are granted in general. However, because these ordinances are not specific to the goals of conserving agricultural lands or the agricultural economy, I would allow the County on remand to strengthen its development regulations to include criteria constraining when conditional permits may be granted on agricultural land in particular.

H. The Board Unlawfully Found that the County's Subdivision Regulations Fail To Protect Water Resources

Finally, I cannot agree with the Board's decision that chapter 16.04 KCC violates the GMA by not explicitly requiring that "all land within a common ownership or scheme of development be included within one application for a division of land." 2 AR at 1218, 1221-23. Chapter 16.04 KCC only speaks to the procedure for submitting preliminary plat applications, not to whether an application is ultimately approved. Other agencies make the decisions on water use. The County's ordinances and Plan must be read as a whole, and several of the County's ordinances address groundwater. Majority at 36 n.10. Without explaining how Kittitas County's Plan and development regulations fail to protect water resources *as a whole*, respondents cannot meet their burden to rebut the presumption that the County's ordinances are valid.

Conclusion

The amended GMA and our case law require growth hearings boards to give cities and counties a high level of deference. Here, the Eastern Washington Growth Management Hearings Board failed to give Kittitas County the requisite level of deference, leading the Board to conclude incorrectly that the County's Plan and several of its development regulations

are "clearly erroneous." The respondents have not rebutted the presumption that the County's Plan and development regulations are valid (with one partial exception of chapter 17.31 KCC).

Because the County's Plan and most of its development regulations comply with the GMA, I would reverse the Board and remand, with instructions to remand to the County. This would allow the County's elected legislative body to make necessary adjustments to its Plan and development regulations, rather than permit an unelected Board to dictate planning requirements. The majority's decision to remand to the Board will only serve to further protract and delay sustainable growth and planning while not allowing the County and its citizens to govern themselves as the GMA intended. I therefore respectfully concur in part and dissent in part.

AUTHOR:

Justice James M. Johnson

WE CONCUR:

Richard B. Sanders, Justice Pro