IN THE SUPREME COURT OF THE STATE OF WASHINGTON

KITTITAS COUNTY, a political subdivision of the State of Washington; BUILDING INDUSTRY ASSOCIATION OF WASHINGTON (BIAW), a Washington not-for-profit corporation; CENTRAL WASHINGTON HOME BUILDERS ASSOCIATION (CWHBA), a Washington not-for-profit corporation; MITCHELL F. WILLIAMS, d/b/a MF WILLIAMS CONSTRUCTION CO.; TEANAWAY RIDGE, LLC; KITTITAS COUNTY FARM BUREAU; SON VIDA II; and AMERICAN FOREST LAND COMPANY, Petitioners, v. EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD; KITTITAS COUNTY CONSERVATION; RIDGE; FUTUREWISE; and WASHINGTON DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT, Respondents.	No. 84187-0 En Banc Filed July 28, 2011

OWENS, J. -- Kittitas County (the County) and several other parties

(collectively “Petitioners”) challenge two final decisions and orders of the Eastern

Washington Growth Management Hearings Board (Board). The Board found several provisions of the County's revised comprehensive plan (Plan) and development code noncompliant with the Growth Management Act (GMA), chapter 36.70A RCW. Petitioners argue that the Board misinterpreted the law and acted beyond its jurisdiction, without substantial evidence, and arbitrarily and capriciously in making findings related to rural and agricultural densities and uses, zoning techniques, land use near airports, and water resources. We hold that the Board did not improperly disregard evidence and appropriately found that the County violated the GMA by failing to: develop the required written record explaining its rural element, include provisions in its Plan that protect rural areas, provide for a variety of rural densities, protect agricultural land, and protect water resources. However, we find that the Board improperly found that the County's airport overlay zone is noncompliant with the GMA. Finally, we decline to reach the questions of whether the Board applied a bright line rule to determine appropriate rural density and failed to protect rural areas in specific development regulations.

Facts

In December 2006, the County passed Ordinance 2006-63, updating its Plan as required by the GMA. Kittitas County Ordinance (Ord.) 2006-63 (Dec. 11, 2006) (Administrative Record, *Kittitas County Conservation v. Kittitas County*, No. 07-1-

0004c (E. Wash. Growth Mgmt. Hr'gs Bd.) (1 AR) at 1-242); RCW 36.70A.130(4)(c). Kittitas County Conservation, RIDGE, and Futurewise (collectively "RIDGE") and the Washington Department of Community, Trade and Economic Development (CTED)[1] filed petitions for review with the Board, alleging that ordinance 2006-63 failed to comply with the GMA. The Board held a hearing and issued a final decision and order, directing the County to further revise its Plan and specific development regulations to achieve compliance with the GMA. *Kittitas County Conservation v. Kittitas County*, No. 07-1-0004c, 2007 WL 2729590 (E. Wash. Growth Mgmt. Hr'gs Bd. Aug. 20, 2007) (*Kittitas Conservation* I). Petitioners separately appealed the Board's order in the Kittitas County Superior Court, where their appeals were consolidated.

In the midst of that challenge, the County proceeded to revise its development code, adopting ordinance 2007-22. Ord. 2007-22 (July 19, 2007) (Administrative Record, *Kittitas County Conservation v. Kittitas County*, No. 07-1-0015 (E. Wash. Growth Mgmt. Hr'gs Bd.) (2 AR) at 8-16). RIDGE also challenged this ordinance in proceedings before the Board. After another hearing on the merits, the Board issued a final decision and order, again concluding that the County's Plan and several of its development regulations failed to comply with the requirements of the GMA. *Kittitas*

[1] CTED has since been renamed the Department of Commerce. It has some oversight, rule making, and coordination authority under the GMA. *See generally* chapter 36.70A RCW.

County Conservation v. Kittitas County, No. 07-1-0015, 2008 WL 1766717 (E. Wash. Growth Mgmt. Hr'gs Bd. Mar. 21, 2008) (*Kittitas Conservation* II). Petitioners separately appealed in the superior court, where their cases were again consolidated.

RIDGE filed motions for discretionary review in both consolidated cases, which were granted by Division Three of the Court of Appeals. The Court of Appeals then consolidated the two cases into one and certified it for review by this court pursuant to RCW 2.06.030.

IssueS

1. Did the Board improperly disregard evidence or elevate some GMA goals over others?

2. Did the Board properly determine that the County failed to develop a written record explaining the rural element of its Plan?

3. Did the Board improperly employ a bright line rule regarding rural densities?

4. Did the Board properly find that the County failed to protect rural character?

5. Did the Board properly conclude that the County failed to provide for a variety of rural densities?

6. Did the Board properly find that the County's development regulations allow for urban densities and uses in its designated agricultural land?

7. Did the Board properly determine that the County's land use decisions

around its airports violate the GMA?

8. Did the Board properly determine that the County failed to protect water by not requiring disclosure of common ownership in subdivision applications?

Analysis

In reviewing growth management hearings board (board) decisions, courts give "'substantial weight'" to a board's interpretation of the GMA. *Lewis County v. W. Wash. Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 498, 139 P.3d 1096 (2006) (quoting *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 553, 14 P.3d 133 (2000)). Courts' deference to boards is superseded by the GMA's statutory requirement that boards give deference to county planning processes. *Quadrant Corp. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 154 Wn.2d 224, 238, 110 P.3d 1132 (2005) ("a board's ruling that fails to apply this 'more deferential standard of review' to a county's action is not entitled to deference from this court"). To make a finding of noncompliance with the GMA, a board must find that a county's actions are "clearly erroneous," RCW 36.70A.320(3), meaning the board has a "'firm and definite conviction that a mistake has been committed.'"[2] *Lewis County*, 157

[2] The concurrence/dissent (J.M. Johnson, J.) makes much of the fact that the boards are unelected; however, the legislature created and authorized boards to review, with great deference, local land use decisions for compliance with the GMA. Former RCW 36.70A.250 (1994), *amended by* Laws of 2010, ch. 211, §§ 4, 17 (creating one statewide board, rather than three separate local boards); RCW 36.70A.320(3). The standard of review by which boards review a challenge to local comprehensive plans and development regulations is prescribed by statute. *Id.* Our case law clarifies the meaning

Wn.2d at 497 (quoting *Dep't of Ecology v. Pub. Util. Dist. No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993), *aff'd*, 511 U.S. 700, 114 S. Ct. 1900, 128 L. Ed. 2d 716 (1994)). We have also importantly recognized that the GMA "is not to be liberally construed." *Thurston County v. W. Wash. Growth Mgmt. Hearings Bd.*, 164 Wn.2d 329, 342, 190 P.3d 38 (2008).

Courts apply the standards of the Administrative Procedure Act, chapter 34.05 RCW, and look directly to the record before the board. *Lewis County*, 157 Wn.2d at 497; *Quadrant Corp.*, 154 Wn.2d at 233. Specifically, courts review errors of law alleged under RCW 34.05.570(3)(b), (c), and (d) de novo. *Thurston County*, 164 Wn.2d at 341. Courts review challenges under RCW 34.05.570(3)(e) that an order is not supported by substantial evidence by determining whether there is "'a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order.'" *Id.* (internal quotation marks omitted) (quoting *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 46, 959 P.2d 1091 (1998)). Finally, courts review challenges that an order is arbitrary and capricious under RCW 34.05.570(3)(i) by determining whether the order represents "'willful and unreasoning action, taken without regard to or consideration of the facts and circumstances surrounding the action.'" *City of Redmond*, 136 Wn.2d at 46-47 (internal quotation marks omitted) (quoting *Kendall v. Douglas, Grant, Lincoln & Okanogan Counties*

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of the "clearly erroneous" standard, including as it applies to boards.

Pub. Hosp. Dist. No. 6, 118 Wn.2d 1, 14, 820 P.2d 497 (1991)).

I. The Board Did Not Improperly Disregard Evidence or Elevate GMA Goals

The GMA requires boards to defer to counties' local planning processes, even establishing a presumption of validity for comprehensive plans and development regulations. RCW 36.70A.320(1). Petitioners contend that the Board did not give proper deference to the County and implicitly present a question about the evidentiary rule in *City of Arlington v. Central Puget Sound Growth Management Hearings Board*, 164 Wn.2d 768, 193 P.3d 1077 (2008). In particular, Petitioners allege that the Board improperly "dismissed" community testimony in support of three-acre densities.[3] Petitioners argue that, under *City of Arlington*, the mere presence of evidence supporting a county decision as comporting with the GMA entitles that county to Board deference. While the issue of proper deference pervades each question, Petitioners' argument and the significance of proper deference to our standard of review in GMA cases compel us to clarify the rule at the outset.

In *City of Arlington*, this court held that boards must consider anecdotal evidence, and, where, within the constraints of the GMA, more than one appropriate planning choice exists, boards must defer to a county's discretion. 164 Wn.2d at 788.

[3] The community testimony consists of two e-mails and a transcript of a presentation to the Kittitas County commissioners, each by a different individual or group. The testimony can generally be characterized as supporting three-acre rural densities because of economic benefits, including that it frees farm owners to sell small lots in difficult economic times.

Petitioners, however, take the rule in *City of Arlington* to the extreme point of eliminating any evaluative role for boards. The legislature granted authority to three boards to adjudicate issues of GMA compliance. Former RCW 36.70A.250 (1994), .280(1)(a) (2003). While county actions are presumed compliant unless and until a petitioner brings forth evidence that persuades a board that the action is clearly erroneous, RCW 36.70A.320(3), deference to counties remains "bounded . . . by the goals and requirements of the GMA," *King County*, 142 Wn.2d at 561. The deference boards must give "is neither unlimited nor does it approximate a rubber stamp." *Swinomish Indian Tribal Cmty. v. W. Wash. Growth Mgmt. Hearings Bd.*, 161 Wn.2d 415, 435 n.8, 166 P.3d 1198 (2007). Moreover, when it comes to interpreting the GMA, the same deference to counties does not adhere, and we give substantial weight to a board's interpretation. *Lewis County*, 157 Wn.2d at 498.

The Board did not improperly disregard evidence presented by the County. The Board was required to review all evidence supporting the County's decisions, which it did. Despite Petitioners' insistence, the cited evidence simply is not dispositive of many of the issues raised. For example, the community testimony does not address whether a three-acre density designation is consistent with rural character or other issues of GMA compliance but focuses instead on the nonagricultural economic needs of farmers and rural landowners. Counties may not cite to *any* fact or opinion and

then call for absolute deference. Boards must be able to look to evidence and at least evaluate its relevance. To clarify, *City of Arlington* stands for the fact that boards must consider anecdotal evidence provided by counties and defer to local planning decisions as between different planning choices that are compliant with the GMA. It does not mean that counties may point to any evidence and demand unbounded deference.

Petitioners additionally assert that the Board improperly elevated some GMA goals over others, resulting in improper deference to local planning decisions. We find that this argument is without merit. Each question presented is about the requirements, not the goals, of the GMA, and we will accordingly decide the issues.

II. The Board Properly Determined that the County Failed To Develop the Requisite Written Record, Explaining Its Rural Element

The GMA requires that local governments include certain mandatory elements in their comprehensive plans, including a "rural element." RCW 36.70A.070(5). The GMA specifically allows counties to consider local circumstances when planning this element, providing that

> [b]ecause circumstances vary from county to county, in establishing patterns of rural densities and uses, 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 and meets the requirements of this chapter.

RCW 36.70A.070(5)(a). The plain language of the statute does not specify what form

the written record must take, only that counties shall develop such a record. Because the court gives substantial weight to boards' interpretation of the GMA, it is notable that boards have generally held that a "written record" need not be a discrete document but must provide an actual explanation. *See, e.g.*, *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); *Suquamish Tribe v. Kitsap County*, No. 07-3-0019c, 2007 WL 2694968, at *33 (Cent. Puget Sound Growth Mgmt. Hr'gs Bd. Aug. 15, 2007). We agree.

In both of its decisions, the Board found that the Plan lacks the required written record and that such a record does not otherwise exist. "The critical statement in the Board's conclusion is '. . . the County has not developed a written record explaining how the rural element harmonizes the planning goals in the GMA and meets the requirements of the Act'." *Kittitas Conservation* II, 2008 WL 1766717, at *7 (alteration in original) (quoting *Kittitas Conservation* I, 2007 WL 2729590, at *11). Petitioners challenge this finding.

Petitioners point to community testimony and to goals, policies, and objectives (GPOs) in the Plan (specifically GPOs 8.1, 8.3, 8.5, 8.9, 8.13, 8.27, 8.28, 8.30, and 8.49) as evidence of a written record that explains GMA compliance and goal harmonization. *See* Ord. 2006-63 (Plan) at 160-66 (1 AR at 215-21). With the

exception of GPO 8.3, which states that "[s]prawl will be discouraged if public services and public facilities . . . are limited to just those necessary to serve the developed area boundaries," explaining how GPO 8.1 harmonizes the goals and meets the requirements of the GMA, none of the other citations by Petitioners do the same work. *Id*. at 161 (1 AR at 216). For example, GPO 8.5 reads, "Kittitas County recognizes and agrees with the need for continued diversity in densities and uses on Rural Lands." *Id*. Except to agree with state law, this statement does not explain how the Plan's rural element actually meets the requirement of the GMA to provide for a variety of rural densities. The community testimony evinces support for three-acre rural densities but at no point articulates, nor does the County elsewhere explain, how that planning outcome harmonizes the goals or meets the requirements of the GMA.

The GMA is clear that, to the extent counties consider local circumstances in planning the rural element of their comprehensive plans, they must develop some kind of written explanation. The County does not dispute that it considered local circumstances. Looking then to the record before the Board, even with great deference to the County, there simply is no written explanation that articulates how the County's rural element harmonizes the goals and meets the requirements of the GMA. The significance of the County's failure to develop an explanation of local circumstances is strongly felt, as we weigh other issues about which we and the Board

would have benefited from additional information and analysis of local circumstances. As such, we find that the Board accurately interpreted and applied the law and that its decision was supported by substantial evidence and not arbitrary and capricious. We affirm the Board's findings and orders that the County violated the GMA by failing to develop the required written record and that the County must now comply.

III. Boards May Not Rely on Bright Line Rules Regarding Rural Densities

Boards, as adjudicative entities, cannot make or use bright line rules to delineate between urban and rural densities. *Gold Star Resorts, Inc. v. Futurewise*, 167 Wn.2d 723, 734-35, 222 P.3d 791 (2009) (citing *Thurston County*, 164 Wn.2d at 357-60). "Whether a particular density is rural in nature is a question of fact based on the specific circumstances of each case." *Thurston County*, 164 Wn.2d at 359. In this case, the Board found that the County violated the GMA by allowing for a rural density of one dwelling unit per three acres. Petitioners argue that, in reaching this conclusion, the Board erred by applying a bright line rule. Because the County failed to develop a written record explaining how its planning decisions, taking into account local circumstances, comply with the GMA, we do not reach an answer on this question. Instead, we remand this question for reconsideration by the Board once the County supplies necessary local information.

The parties do not dispute the clear rule that boards may not apply a bright line

standard, only whether the Board actually relied on one in this case. In its decision, the Board emphasized the lack of a written record provided by the County and found:

> The Petitioners in this case have shown through definitions, expert opinion, statutes, and past court and board decisions that 1 [dwelling unit]/3 acre zoning allowed in the County is more urban-like in nature and violates the GMA. This is not a "bright line" definition as the Respondent and Intervenors would like us to find, rather it is the end-result of an accumulation of quantitative data which points to an appropriate lot size for rural development.

Kittitas Conservation II, 2008 WL 1766717, at *7. Looking to the record before the Board, we find very little local data. The issue is framed from the outset as a bright line question: "Does Kittitas County's failure to . . . eliminate densities greater than one dwelling unit per five acres in the rural area . . . violate [various provisions of the GMA]?" *Kittitas Conservation* I, 2007 WL 2729590, at *4. RIDGE presented sparse local data to the Board and instead focused mostly on studies of land use in other counties and states, academic articles, and density decisions in other jurisdictions.

Petitioners responded with little relevant local information. As we discussed, the community testimony in support of three-acre rural designations generally does not address the preservation of rural character but rather emphasizes the nonagricultural economic needs of farm owners. There is no discussion of whether the density is consistent with rural character and only minimal discussion of the potential benefit that allowing farms to profit in the short-term from the division and development of

small parts of their land will help preserve the rural area in the long run. The County also identifies a unique local problem of "rural sprawl," essentially untended weed patches that result from requiring larger-than-desired lot sizes in rural areas.[4] Ord. 2006-63 (Plan) at 160 (1 AR at 215). The County, however, fails to explain how three-acre rural designations, while responsive to identified community concerns, also protect rural areas. As a result, it is unclear how three-acre rural density designations are appropriate in the County's rural area, when there is substantial evidence that they are harmful to rural areas in other communities.

We reaffirm that questions of appropriate rural densities are fact specific to local communities and that boards may not rely on bright line rules regarding density. The Board appears to have relied on such a rule here. However, because the County failed to develop a written record explaining its consideration of local circumstances in planning its rural element, we decline to simply vacate the Board's finding regarding three-acre densities as a bright line rule. While parties that challenge county planning decisions bear the burden to show that a county erred in planning, RCW 36.70A.320(2), counties have some responsibility to assure that local data is considered by the Board, RCW 36.70A.070(5)(a). We therefore remand to the Board

[4] The County notably means something different by "rural sprawl" than the sprawl referred to in the GMA. The GMA seeks to reduce "sprawling, low-density development in the rural area," RCW 36.70A.070(5)(c)(iii), while the County suggests increased development will help mitigate its sprawl.

to reconsider the fact-intensive issue of rural density, recognizing the unique qualities of the County, once the County has complied with GMA requirements, consistent with this decision.

IV. The Board Properly Found that the County Violated the GMA by Failing To Protect Rural Character in Rural Areas

The GMA requires that counties' comprehensive plans include provisions that protect rural areas, stating in relevant part that:

> The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:
>
> (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.

RCW 36.70A.070(5)(c). The Board found that the County's Plan and several of its development regulations fail to protect rural character. Petitioners appealed the decision regarding the Plan and three regulatory chapters. We hold that the Board properly found that the Plan lacks required provisions to protect rural areas; we do not reach the challenged development regulations.

Neither our holding nor the Board's findings should be interpreted as suggesting that Kittitas County is not rural enough. Through the GMA, the legislature sought to

minimize "uncoordinated and unplanned growth," which it found to "pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state." RCW 36.70A.010. The GMA provides counties with the discretion to designate an area as rural or to designate it differently to allow for increased growth and development. However, where a county, in its discretion, *opts* to designate land as part of its rural element, it must protect the character of the land as required by RCW 36.70A.070(5)(c).

The County's rural element includes several GPOs (specifically GPOs 8.1, 8.3, 8.5, 8.9, 8.13, 8.27, 8.28, 8.30, and 8.49), which Petitioners argue function to protect rural character. For example:

> GPO 8.9 Projects or developments which result in the significant conservation of rural lands or rural character *will be encouraged*.
>
> GPO 8.13 Methods other than large lot zoning to reduce densities and prevent sprawl *should be* investigated.

Ord. 2006-63 (Plan) at 162 (1 AR at 217) (emphasis added). The cited GPOs almost exclusively employ conditional rather than directive language and fall short of ensuring the protection of rural areas, as required by RCW 36.70A.070(5)(c). It is further instructive that the Plan's executive statement expressly acknowledges the Plan's limited reach, stating that "it contains no regulations or minimum standards." *Id*. at 1 (1 AR at 56). It goes on to state:

> There is no assurance . . . 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.

Id. While the GPOs suggest that the County and its development regulations *should* address the requirements of the GMA, they simply do not require or assure as much.

Petitioners argue that certain development regulations, including limitations on the amount of rural land to be zoned at the highest densities and rezone criteria, satisfy the required GMA measures. *See* Kittitas County Code (KCC) 17.04.060; KCC 17.98.020(7). While it is unclear whether the regulations Petitioners cite do all the work they suggest,[5] the presence of protective measures in the zoning regulations is irrelevant because the statutory language of the GMA is clear that protective measures *shall* be included in the Plan. RCW 36.70A.070(5)(c).

The GMA requires deference to local government determinations regarding what measures will best protect rural character but is clear that plans must actually include such measures.[6] The record before the Board establishes that the portions of

[5] The cap on higher density rural designations still allows the majority of the County's rural area to be zoned at the highest densities. The cap limits rural three- and five-acre densities to 16 percent of "overall land mass available in Kittitas County." KCC 17.04.060. The County's rural area constitutes 24 percent of the land in the County. Carried out, over 66 percent of the rural area could be designated at the highest rural densities. Additionally, Petitioners' reference to the County's rezoning criteria as a protective measure, in place of specific protections in the Plan, is somewhat disingenuous. While there are other criteria with varying levels of specificity, the first criterion for a rezone is compatibility with the Plan. KCC 17.98.020(7)(a). Without protections for rural areas in the Plan, this is a meaningless criterion.

the Plan relating to the protection of rural areas almost exclusively consist of aspirational principles, not imperatives. As such, the Plan violates the GMA by failing to include required measures that protect rural areas.

County development regulations must also comply with the requirements of the GMA. *See* RCW 36.70A.130(1)(a) ("a county or city shall . . . ensure the plan and regulations comply with the requirements of this chapter"). Also for failure to protect rural areas, the Board found that the County's development regulations regarding performance based cluster platting, ch. 16.09 KCC; designated "agricultural (A-20)" rural zones, ch. 17.29 KCC; and planned unit developments (PUDs), ch. 17.36 KCC, violate the GMA. Petitioners appealed these decisions and argue that these regulations are permitted because the GMA specifically provides that counties may implement innovative zoning techniques in rural areas. *See* RCW 36.70A.070(5)(b). We withhold judgment on these regulations and remand to the Board to reconsider after the County complies with the GMA by including protections of rural areas in its Plan.

The Board found that the regulations allow nonrural densities and uses in rural areas. Specifically, regarding the County's cluster platting regulation, ch. 16.09 KCC,

[6] The dissent makes an analogy comparing a comprehensive plan to a blueprint for a house and development regulations to the brick and mortar. Concurrence/dissent (J.M. Johnson, J.) at 17-18. This analogy oversimplifies the regulation of land use in our state, but, even accepting it, we note that the legislature has clearly required that certain elements be included in the blueprint (or the Plan) itself, including protection of rural character.

the Board was troubled that it "does not include a limit on the maximum number of lots allowed on the land included in the cluster; prohibit the number of connections to public and private water and sewer lines; nor include requirements to limit development on the residual parcel." *Kittitas Conservation* I, 2007 WL 2729590, at *34; *see Kittitas Conservation* II, 2008 WL 1766717, at *9, *36. Petitioners argue that the County uses clustering as expressly envisioned by the GMA, RCW 36.70A.070(5)(b), and point to several protections, including a prohibition of prospective use with the PUD ordinance, established minimums for open space allocation, and procedural safeguards, including evaluation of impacts on adjacent uses and optional attachment of conditions, *see, e.g.*, KCC 16.09.030, .040(D), (E).

The Board also found that the County's "A-20" agricultural zone violates the GMA by allowing for conditional use permits and one-time lot splits. *See* KCC 17.29.030, .040. Despite its name, this zone is a rural designation. The Board stated:

> [I]f the County has standards in place to keep intact rural character and limit the size of development, some of the uses might be permissible in the rural area, such as kennels and agricultural-related auctions and museums. However, that's not the case here. In this case, the County failed to provide the necessary standards and limitations in its regulations to ensure urban-type uses will not be conditionally permitted or administratively decided in the rural area.
>
> The Board agrees with the County that a one-time split may be an allowable "innovative technique", but only if it conforms to the GMA statutes mentioned, does not exceed the permitted density, or create non-conforming lots.

Kittitas Conservation II, 2008 WL 1766717, at *12, *26. To the extent the Board implies here that only innovative techniques that match underlying density designations are permissible under the GMA, the Board errs. The GMA contemplates use of zoning techniques that may result in some higher densities (e.g., clustering) so long as they "are not characterized by urban growth." RCW 36.70A.070(5)(b), .030(19).

Finally, the Board found that chapter 17.36 KCC, regulating PUDs, violates the GMA by failing to protect rural character. *See Kittitas Conservation* II, 2008 WL 1766717, at *13. PUDs are developments "in which a mixture of land uses are permitted including residential, commercial, and open space, the plan for which may not correspond in lot size, density, or type of dwellings to other zoning districts." KCC 17.08.450. The Board found fault because "KCC 17.36 allows commercial uses, such as hotels, motels, restaurants, cafes, taverns and other businesses in the rural area." *Kittitas Conservation* II, 2008 WL 1766717, at *13.

We decline to reach a decision regarding each challenged regulatory chapter because the issues are too entwined with the overarching lack of protection of rural areas in the Plan, as well as its failure to develop a written record explaining local circumstances. The GMA allows for use of innovative zoning techniques, even those that may increase densities above the underlying rural designation. RCW

36.70A.070(5)(b). However, there must be some protections in place to limit development so it is consistent with rural character and not characterized by urban growth. *Id*. In our view, compliance with the GMA's requirement to include provisions that protect rural character in the Plan *may* save the challenged zoning regulations. We leave that to later determination by the Board.

V. The Board Properly Found that the County's Plan Fails To Provide for a Variety of Densities

Among other required provisions in the rural element of a comprehensive plan, the GMA states that "[t]he rural element shall provide for a variety of rural densities." *Id*. The Plan does not directly include a variety of rural densities but instead allows the zoning code to designate densities, which has effectively resulted in a variety of densities in the rural area, including one dwelling unit per 3, 5, and 20 acres. Ord. 2006-63 (Plan) at 5 (1 AR at 60) (describing *existing* land uses); *see* 1 AR at 1097 (land use map with one rural designation) and 1099 (zoning map with several assigned rural designations).[7] The parties dispute whether the GMA is satisfied by reference in the Plan to zoning regulations that have included six possible designations (with three possible densities) and innovative zoning techniques or whether the Plan itself must include some designations or other language to directly and prospectively provide for a

[7] The concurrence/dissent (J.M. Johnson, J.) also cites GPO 8.5: "Kittitas County recognizes and agrees with the need for continued diversity in densities and uses on Rural Lands." Ord. 2006-63 (Plan) at 161 (1 AR at 216). As we previously noted, this GPO expresses agreement with state law but does nothing to implement it.

variety of rural densities.

This issue comes down to a question of law: What does it mean that counties "shall provide for a variety of rural densities" in their comprehensive plans? RCW 36.70A.070(5)(b). The plain meaning of "provide for" could be disputed, meaning either "to make a proviso or stipulation," *Webster's Third New International Dictionary* 1827 (2002), or "to furnish the means of support . . . [;] to prepare . . . some probable or possible situation" (i.e., to allow for something to happen or exist), *Webster's New Twentieth Century Dictionary, Unabridged* 1450 (2d ed. 1960). The former meaning seems most appropriate in the context of the entire GMA. *See Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 10-12, 43 P.3d 4 (2002) (concluding that the court should consider the context of the entire act when interpreting the plain meaning of statutory text). This provision that counties "shall provide for a variety of rural densities" is situated within one of the mandatory elements of comprehensive planning under the GMA. RCW 36.70A.070(5)(b). Additionally, the GMA distinguishes between when a County "shall provide for" and "may provide for" something. For example, the statute uses the phrase "shall provide for" regarding the requirements for public participation in local planning, which surely is not optional. *See, e.g.*, *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 138 Wn.2d 161, 176, 979 P.2d 374 (1999) (noting that "counties are required to

'provid[e] for early and continuous public participation'" (alteration in original) (quoting RCW 36.70A.140)).

As this court has noted, "the GMA does not dictate a specific manner of achieving a variety of rural densities." *Thurston County*, 164 Wn.2d at 360. In *Thurston County*, the Western Washington Growth Management Hearings Board invalidated several of that county's rural designations and then also faulted it for not providing a variety of rural densities. This court remanded to that board to determine whether innovative zoning techniques were sufficient to provide for a variety of rural densities, observing that "[t]he use of innovative techniques may be sufficient, regardless of the underlying zoning classifications, to achieve a variety of rural densities." *Id*. The Thurston County plan, unlike the County's Plan, included distinct rural designations. *Id*. at 338-39. In any event, the question of what, if anything, must be in a comprehensive plan regarding a variety of rural densities is now squarely before the court. A plain reading of the statute indicates that the Plan itself must include something to assure the provision of a variety of rural densities.

We also note a practical concern raised by RIDGE and CTED. They argue that reading the GMA to not require that the Plan itself provide for a variety of rural densities will result in the evasion of GMA requirements through site-specific rezones. This is not the first time this court has recognized this potential problem. *See Woods*

v. Kittitas County, 162 Wn.2d 597, 629-32, 174 P.3d 25 (2007) (Becker, J., concurring). Because interested parties cannot raise GMA compliance issues in Land Use Petition Act (chapter 36.70C RCW) petitions, *id*. at 616 (majority opinion), site-specific rezones are only evaluated for compliance with the GMA through evaluation of their consistency with the existing Plan. A comprehensive plan that is silent on the provision of a variety of rural densities (and other protective measures for rural areas) effectively allows rezones that circumvent the GMA. This argument may prove too much, as rezones must also comply with development regulations, which can be challenged for compliance with the GMA. *Id*. at 615-16. However, in *Woods*, the petitioner's land was designated at one dwelling unit per 20 acres, and the County later approved a 3-acre rezone after it was too late for her to challenge the development regulations for compliance with the GMA. *Id*. at 629-30 (Becker, J., concurring) ("The rezone was the first and only time that the actual change of density on the subject site could have been challenged . . . as violating the GMA."); RCW 36.70A.290(2) (stating that petitions challenging a comprehensive plan or development regulation as noncompliant with the GMA "must be filed within sixty days after publication"). While we decide this question on the basis of the plain statutory language, we recognize that reading out the requirement that counties include certain protections *in* the Plan itself, including to provide for a variety of rural densities, could result in the

evasion of GMA requirements through site-specific rezoning.

There is substantial evidence in the record that was before the Board that nothing in the Plan directly and prospectively assures a variety of rural densities. We find that the County must include something in its Plan that provides for a variety of rural densities.

VI. The Board Properly Found that the County Allows Impermissible Uses in a Designated Agricultural Area

The County's commercial agricultural zone is regulated by chapter 17.31 KCC. As with rural lands, the GMA allows for use of innovative zoning techniques in agricultural areas and does not limit such techniques to the statutorily enumerated examples. RCW 36.70A.177. Despite that, the Board found that the allowance by chapter 17.31 KCC for one-time lot splits and a variety of conditional uses, *see* KCC 17.31.030, .040, violates the GMA's requirement to protect agricultural land. Petitioners appealed. We find the Board's decision to be an accurate application of our decision in *Lewis County* and therefore affirm the Board on this issue.

Regarding one-time splits, chapter 17.31 KCC includes a lot size requirement that limits division to two lots per 10 acres and also provides that "[o]nce this provision has been applied to create a new parcel, it shall not be allowed for future parcel subdivision, while designated commercial agriculture." KCC 17.31.040(1). Regarding conditional uses, many enumerated uses• including, for example,

nonlivestock auctions, quarries and sand and gravel excavation, and kennels• are allowed by permit if the County's Board of Adjustment determines that

> the proposed use is essential or desirable to the public convenience and not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood [and] will not be unreasonably detrimental to the economic welfare of the county and that it will not create excessive public cost for facilities and services.

KCC 17.60A.010. While the Board acknowledged that "[t]here are uses presently allowed by the County that may be appropriate for the [agricultural lands of long term commercial significance], if their scope and/or function are limited," the Board concluded that the County "impermissibly allows urban uses on its agricultural lands of long-term significance, and fails to include standards within its development regulations to limit such uses and protect the commercial agricultural zone," as required by the GMA. *Kittitas Conservation* II, 2008 WL 1766717, at *15-16.

This court held in *Lewis County* that, while a board must consider local industry needs, the Western Washington Growth Management Hearings Board "did not err by invalidating ordinances that . . . allowed nonfarm uses within designated agricultural lands." 157 Wn.2d at 493-94. The court noted that the problem was "that *any* farmer could convert *any* five acres of farmland to more profitable uses, even if such conversion would remove perfectly viable fields from production." *Id*. at 505. While the County has a permitting process in place, the criteria for approving conditional

uses on agricultural land do not relate to the conservation of agricultural lands or encourage the *agricultural* economy. *See* RCW 36.70A.177(1) ("The innovative zoning techniques should be designed to conserve agricultural lands and encourage the agricultural economy.") In *Lewis County*, the court determined that, despite the GMA's allowance for innovative techniques, the GMA requires that agricultural lands be protected. 157 Wn.2d at 508-09; *see King County*, 142 Wn.2d at 560 ("In order to constitute an innovative zoning technique consistent with the overall meaning of the [GMA], a development regulation must satisfy the [GMA]'s mandate to conserve agricultural lands for the maintenance and enhancement of the agricultural industry.").

In this case, the Board noted that chapter 17.31 KCC allows activities that "remove the land from agricultural production for many years, if not forever." *Kittitas Conservation* II, 2008 WL 1766717, at *15. The Board appropriately applied the rule from *Lewis County*, and the record includes substantial evidence that the County has no protections in place to protect agricultural land from harmful conditional uses. Like in *Lewis County*, the Board's invalidation of the County's regulation does not strip the County of its ability to use innovative techniques but, rather, assures the "county's zoning methods are actually 'designed to conserve agricultural lands and encourage the agricultural economy.'" *Lewis County*, 157 Wn.2d at 507-08 (quoting RCW 36.70A.177(1)). We therefore find that the Board accurately interpreted and

applied the law, acting on substantial evidence and not arbitrarily or capriciously. We affirm the Board's finding that chapter 17.31 KCC is not compliant with the GMA.[8]

VII. The Board Improperly Found that the County's Airport Zone Is Noncompliant with the GMA

Petitioners, in particular intervenor Son Vida II, argue that the Board erred by finding that chapter 17.58 KCC, regulating the County's airport overlay zone, violates the GMA by failing to implement land use restrictions that assure adequate safety precautions. *See* RCW 36.70A.070(1) (requiring, where appropriate, that the County's land use element address general aviation airports). Son Vida II argues that the doctrine of stare decisis prevents the Board from considering issues of density within the airport overlay zone and, alternatively, that the Board's finding is improper. We disagree that stare decisis precluded consideration of this issue but find that the Board failed to give proper deference to the County's planning decision under the relevant statutes.

Son Vida II, a property owner in the Kittitas County and Ellensburg airport overlay zones, wrongly argues the doctrine of stare decisis. Son Vida II previously challenged whether ordinance 2001-10, which amended the Kittitas County airport zone, violated the GMA by reducing the densities allowed in parts of the Ellensburg

[8] The concurrence/dissent (J.M. Johnson, J.) takes issue with this remedy and argues for remanding to the County. We note, however, that the County may still revise the regulation to come into compliance with the GMA; the statutory scheme provides for such revision upon a board's finding of invalidity. RCW 36.70A.302(7).

urban growth area to nonurban densities. *See Son Vida II v. Kittitas County*, No. 01-1-0017, 2002 WL 32065595 (E. Wash. Growth Mgmt. Hr'gs Bd. Mar. 14, 2002). The Board then concluded the regulation did not violate the GMA. *Id*. at *13. Son Vida II now argues that, because the Board essentially held that the regulation complied with the GMA, the doctrine of stare decisis limits the Board's authority in this case. We disagree.

Stare decisis "means no more than that the rule laid down in any particular case is applicable only to the facts in that particular case or to another case involving identical or substantially similar facts." *Floyd v. Dep't of Labor & Indus.*, 44 Wn.2d 560, 565, 269 P.2d 563 (1954) (emphasis omitted). While there are other relevant considerations, such as whether the doctrine of stare decisis even applies to boards as quasi-judicial agencies,[9] stare decisis does not apply in the way Son Vida II suggests because the parties and issues are different. Stare decisis does not prevent another party from petitioning a court for consideration of how previously decided law applies to the new party's facts. In the GMA context, this court has specifically recognized the authority of boards to review new challenges to comprehensive plans or development regulations if they have recently been modified or if the County declines to revise them but the GMA has been amended since the last review. *Thurston*

[9] "Although stare decisis plays only a limited role in the administrative agency context, agencies should strive for equality of treatment." *Vergeyle v. Dep't of Emp't Sec.*, 28 Wn. App. 399, 404, 623 P.2d 736 (1981).

County, 164 Wn.2d at 344. Because the County modified the airport overlay zone by extending previous regulations that applied to Bowers Field to all airports in the County, *see* Ord. 2007-22 (2 AR at 8-16); KCC 17.58.040A, .040B, RIDGE's petition was properly reviewable by the Board. The issues and the parties are different: Son Vida II previously challenged whether the densities were too low, whereas RIDGE now alleges that the densities are too high. Any implication in the *Son Vida II* case of 2002 that the airport zone was compliant under the GMA against *any* challenge was merely dictum because only the narrow question of whether the permitted densities were too low to comply with the GMA was before the Board.

While boards should be consistent in their holdings, *see* RCW 34.05.570(3)(h) (providing as grounds for reversal of an agency decision that its "order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency"), stare decisis does not preclude this challenge.

The question properly before the Board was whether the County's failure to prohibit residential uses and higher-than-recommended densities by the Washington State Department of Transportation (WSDOT) violates the GMA. The GMA subjects county land use planning affecting general aviation airports to RCW 36.70.547, which states that a county "shall, through its comprehensive plan and development

regulations, discourage the siting of incompatible uses adjacent to such general aviation airport." RCW 36.70A.510. The Board found that, because the County's regulation diverges from WSDOT recommendations for land use near airports, the County's regulation violates the GMA. We disagree and find that the Board should have deferred to the County.

The County's regulation differs from WSDOT recommendations by allowing higher densities and not flatly prohibiting residential uses in certain safety zones. *See Kittitas Conservation* II, 2008 WL 1766717, at *31. The Board gave substantial weight to WSDOT's recommendations. *Id*. at *32. The Board, however, is supposed to give deference to the County unless the County clearly erred. RCW 36.70A.320(3). The statutory scheme requires only that counties "discourage" incompatible uses. RCW 36.70.547. Discouragement is not the same as prohibition. The County clearly did not follow all of WSDOT's recommendations. While this may be imprudent, the statutory scheme does not suggest that counties *must* follow the advice of WSDOT. Considering the loose statutory language and the requirement of boards to defer to counties' planning choices, the record before the Board does not establish firmly and definitely that the County erred.

VIII. The Board Properly Found that the County's Subdivision Regulations Fail To Protect Water Resources as Required by the GMA

The GMA includes requirements that counties consider and address water

resource issues in land use planning. *See, e.g.*, RCW 36.70A.020(10) (GMA goal to protect the environment, including "water quality[] and the availability of water"), .070(1) (requiring that land use elements "shall provide for protection of the quality and quantity of groundwater used for public water supplies"), (5)(c)(iv) (requiring that rural elements include measures "[p]rotecting . . . surface water and groundwater resources"). RIDGE challenged whether provisions of the County's subdivision code, Title 16 KCC, violated the water protection requirements of the GMA. The Board found that they did, holding "that the County's subdivision regulations allow multiple subdivisions side-by-side, in common ownership, which then can use multiple exempt wells . . . contrary to the GMA's requirements to protect water quality and quantity." *Kittitas Conservation* II, 2008 WL 1766717, at *18. The Board's conclusion results from connecting the GMA's mandates to protect water with this court's interpretation of RCW 90.44.050 in *Campbell & Gwinn*, 146 Wn.2d at 4, that the total group groundwater use in a residential development must be considered, rather than the separate use of each residential lot, for purposes of determining if use is in excess of 5,000 gallons per day for permit exemption. *Kittitas Conservation* II, 2008 WL 1766717, at *18-19. Petitioners argue that the Board's finding is outside its jurisdiction, and, even if not, that the Board erred. We disagree and affirm the Board's finding that the County's subdivision regulation violates the GMA.

The Board has jurisdiction to hear petitions alleging a county's development regulations are not compliant with the GMA. RCW 36.70A.280(1)(a). Because the GMA includes requirements to protect water, the Board has statutory authority to hear petitions that challenge whether development regulations violate those GMA provisions that require a county to address water issues in its land use planning. *See Swinomish Indian Tribal Cmty. v. Skagit County*, 138 Wn. App. 771, 780, 158 P.3d 1179 (2007) (noting that the tribe may seek relief, regarding water well issues, "from the Growth Management Hearing's [sic] Board regarding new ordinances adopted by the County to comply with the . . . GMA, or seek such relief regarding a failure to adopt appropriate ordinances.").

Having noted the Board's jurisdiction, we then look to the substance of its decision. Chapter 16.04 KCC, the specific subdivision regulation challenged by RIDGE, provides in part:

> Any person desiring to subdivide the land in an unincorporated area of the county shall submit a preliminary plat (see Chapter 16.12) to the director which shall be accompanied by filing fees established annually by the board of commissioners under separate action.

KCC 16.04.040. Chapter 16.12 KCC requires disclosure of the owner(s) and information about abutting property owners but not disclosure of related subdivision applications. *See* KCC 16.12.020. Primarily as a matter of law, RIDGE argued that the County is required to assure that "all land within a common ownership or scheme

of development be included within one application for a division of land" in order to comply with the GMA's requirements to protect water. *Kittitas Conservation* II, 2008 WL 1766717, at *16. The record before the Board included evidence of water shortages in the county and subdivision applications that allegedly evade the law under this court's interpretation of RCW 90.44.050 (requiring a permit to withdraw groundwater) in *Campbell & Gwinn* by relying on multiple exempt wells. *Id*. at *17.

In *Campbell & Gwinn*, this court interpreted the permit exemption of RCW 90.44.050 and held that commonly owned developments are not exempt and therefore must comply with the established well permitting process if the total development uses more than 5,000 gallons of water per day. 146 Wn.2d at 4. The case did not directly address the impact of the holding on county planning or land use decisions, noting only that "[amici] urge that [the GMA] planning duties will be hindered if the exempt well provision does not apply to multiple wells in a development." *Id*. at 18 n.9.

Primarily relying on the water protection provisions of the GMA and *Campbell & Gwinn*, the Board concluded that chapter 16.04 KCC fails to assure that authorized subdivisions do not contravene or evade water permitting requirements. The County's allowance for multiple, separately evaluated subdivision applications for properties that are all part of the same development tacitly allows subdivision applicants to evade this court's rule in *Campbell & Gwinn*. In effect, the County could approve the

subdivision of land, relying on the availability of permit-exempt wells for water supply, under circumstances in which *Campbell & Gwinn* would actually require water permits from the Department of Ecology (Ecology) under RCW 90.44.050. Petitioners argue that the Board misinterpreted the relevant law. We disagree and hold that the Board correctly interpreted and applied the law when it found that the County's subdivision regulation violates the GMA by failing to protect water resources.

At times, Petitioners seem to argue that the County is entirely preempted from adopting regulations related to the protection of groundwater resources, authority it suggests rests entirely with Ecology. Ecology disagrees with Petitioners on this point, and, because Ecology is the primary administrator of chapter 90.44 RCW, the court gives great weight to its interpretation of that chapter. *See Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn.2d 568, 594, 90 P.3d 659 (2004). Petitioners specifically cite RCW 90.44.040, which provides:

> Subject to existing rights, all natural groundwaters . . . are hereby declared to be public groundwaters and to belong to the public and to be subject to appropriation for beneficial use under the terms of this chapter and *not otherwise*.

(Emphasis added.) While this provision preempts the County from separately *appropriating* groundwaters, it does not prevent the County from protecting public groundwaters from detrimental land uses. Nothing in the text of chapter 90.44 RCW

expressly preempts consistent local regulation. *See State v. Kirwin*, 165 Wn.2d 818, 826, 203 P.3d 1044 (2009) (noting that, while the court considers the purpose and the facts and circumstances surrounding a statute, the court "'will not interpret a statute to deprive a municipality of the power to legislate on a particular subject unless that clearly is the legislative intent'" (internal quotation marks omitted) (quoting *HJS Dev., Inc. v. Pierce County*, 148 Wn.2d 451, 480, 61 P.3d 1141 (2003))).

In fact, several relevant statutes indicate that the County *must* regulate to some extent to assure that land use is not inconsistent with available water resources. The GMA directs that the rural and land use elements of a county's plan include measures that protect groundwater resources. RCW 36.70A.070(1), (5)(c)(iv). Additional GMA provisions, codified at RCW 19.27.097 and 58.17.110, require counties to assure adequate potable water is available when issuing building permits and approving subdivision applications. *See Swinomish Indian Tribal Cmty.*, 138 Wn. App. at 780 ("We agree that the County is legally required to follow the dictates of [RCW 19.27.097]."). Specifically regarding subdivisions, RCW 58.17.110(2) provides:

> A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) Appropriate provisions are made for . . . potable water supplies.

Finally, without comment on the adequacy of its provisions, we note that the County has in fact adopted regulations related to water use.[1] We conclude that the County is

not precluded and, in fact, is required to plan for the protection of water resources in its land use planning.

Petitioners also argue that the County's subdivision regulations need not require disclosure of adjoining subdivision applications because the recording act, Title 65 RCW, already makes available common ownership as a public record. Next, Petitioners argue that even if the County collected common ownership information in its subdivision application process, Ecology, not the County, is designated to enforce the permitting process for groundwater use. As such, Petitioners argue that the County cannot and is not required to deny subdivision applications on the basis of the *legal* availability of groundwater. The parties dispute whether the requirement of RCW 58.17.110 that counties assure appropriate provisions are made for potable water supplies means only that counties must assure that water is factually available underground or that water is both factually and legally available.

While Ecology is responsible for appropriation of groundwater by permit under RCW 90.44.050, the County is responsible for land use decisions that affect

[1] *See, e.g.*, Ord. 2006-63 (Plan) at 9-10 (1 AR at 64-65) (water rights), 165, GPO 8.46 (1 AR at 220) ("Residential development on rural lands must be in areas that can support adequate private water and sewer systems."), 166, GPO 8.49 (1 AR at 221) ("Lot size should be determined by provision for water and sewer."); *see also* KCC 16.09.010 (2007) (2 AR at 21) (stating the purpose of cluster platting as, in part, "to conserve water resources by minimizing the development of exempt wells"); KCC 17.36.040(3) (requiring a PUD final plan to include "[c]ertification from state and local health authorities that water and sewer systems are available to accommodate the development").

groundwater resources, including subdivision, at least to the extent required by law. In recognizing the role of counties to plan for land use in a manner that is consistent with the laws regarding protection of water resources and establishing a permitting process, we do not intend to minimize the role of Ecology. Ecology maintains its role, as provided by statute, and ought to assist counties in their land use planning to adequately protect water resources. We note that the record demonstrates that Ecology in fact communicated with the County about concerns regarding the availability of water during its planning process.

Without a requirement that multiple subdivision applications of commonly owned property be considered together, the County cannot meet the statutory requirement that it assure appropriate provisions are made for potable water supplies. Instead, nondisclosure of common ownership information allows subdivision applicants to submit that appropriate provisions are made for potable water through exempt wells that are in fact inappropriate under *Campbell & Gwinn* when considered as part of a development, absent a permit. To interpret the County's role under RCW 58.17.110 to only require the County to assure water is physically underground effectively allows the County to condone the evasion of our state's water permitting laws. This could come at a great cost to the existing water rights of nearby property owners, even those in adjoining counties, if subdivisions and developments overuse

the well permit exemption, contrary to the law.

The record before the Board included information about water shortages in the County and separately considered subdivision applications that relied on permit-exempt wells for water. However, this issue is fundamentally a question of law regarding how the GMA requires counties to protect water resources. The court gives "'substantial weight'" to a board's interpretation of the GMA. *Lewis County*, 157 Wn.2d at 498 (quoting *King County*, 142 Wn.2d at 553). The GMA requires that counties provide for the protection of groundwater resources and that county development regulations comply with the GMA. The Board properly interpreted the GMA's mandate to protect water to at least require that the County's subdivision regulations conform to statutory requirements by not permitting subdivision applications that effectively evade compliance with water permitting requirements. We affirm this Board decision.

Conclusion

This case presents multiple issues related to GMA compliance. We hold that the Board properly interpreted and applied the law in finding that the County has failed to comply with the GMA's requirements to develop a written record explaining its rural element, include provisions in the Plan that protect rural areas, provide for a variety of rural densities in the Plan, protect agricultural land, and protect water

resources. We further hold that the Board did not improperly dismiss evidence. Finally, we hold that the Board improperly determined that the County's airport overlay zone is noncompliant with the GMA. Accordingly, we remand these matters to the Board for further proceedings consistent with this opinion.

AUTHOR:

Justice Susan Owens

WE CONCUR:

Chief Justice Barbara A. Madsen

Justice Mary E. Fairhurst

Justice Charles W. Johnson

Justice Gerry L. Alexander

Justice Debra L. Stephens