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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 271234, consolidated with
271242, 271251, 271269, 271277

**COURT OF APPEALS DIVISION III
STATE OF WASHINGTON**

KITTITAS COUNTY, a political subdivision of the State of Washington,
BUILDING INDUSTRY ASSOCIATION OF WASHINGTON (BIAW), CENTRAL
WASHINGTON HOME BUILDERS (CWHBA),
MITCHELL WILLIAMS, d/b/a/ MF WILLIAMS CONSTRUCTION CO.,
TEANAWAY RIDGE, LLC, KITTITAS COUNTY FARM BUREAU, and SON
VIDA II,

Appellants,

v.

KITTITAS COUNTY CONSERVATION, RIDGE, FUTUREWISE,
and EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS
BOARD,

Respondents.

PETITIONER SON VIDA II'S AMENDED OPENING BRIEF

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I. INTRODUCTION

Son Vida II (“Son Vida”) commenced an action in Kittitas County Superior Court seeking Superior Court review of the decision of the Eastern Washington Growth Management Hearings Board (“Board”) in which the Board found portions of Chapter 17.58 KCC (Kittitas County Code (“KCC”)) did not comply with the Growth Management Act (“GMA”).¹ This Court accepted direct review of the Board’s decision.

II. ASSIGNMENTS OF ERROR

Son Vida assigns the following errors set forth in the Findings of Fact and Conclusions of Law in the Board’s FDO.

(a) The Board’s Finding of Fact 9 in which the Board concluded Chapter 17.58 KCC failed to protect the County’s airports as required by RCW 36.70A.020(3) and RCW 36.70A.510 (with reference to the Planning Enabling Act statute). (AR, p. 1251): RCW 36.70.547. The Board’s Findings of Fact 9 is an erroneous application of the law by the Board.

(b) The Board’s Finding of Fact 9 in which the Board concluded Chapter 17.58 KCC failed to protect the County’s airports as required by RCW 36.70A.020(3) and RCW 36.70A.510 (with reference to the Planning Enabling Act statute), RCW 36.70.547 is not supported by substantial evidence. (AR, p. 1251).

¹ The Board’s Final Decision and Order (FDO) (AR, p. 1193-1261) identifies this as Issue 8. The Board in its FDO begins its discussion of Issue 8 at page 43 (AR, p. 1235) of the FDO and concludes that discussion at page 55 of the FDO. (AR, p. 1247). Finding of Fact 9 in the FDO (AR, p. 1251) and Conclusion of Law 11 (AR, p. 1252) also address Issue 8.

(c) The Board's Conclusion of Law 11 in which the Board concluded Kittitas County allows unlimited urban residential development within the Airport Overlay Designations, primarily in Zones 1, 2 and 5 and is, therefore, not in compliance with the GMA is an erroneous application of the law. (AR, p. 1252).

(d) The Board's Conclusion of Law 11 in which the Board concluded Kittitas County allows unlimited urban residential development within the Airport Overlay Designations, primarily in Zones 1, 2 and 5 and is, therefore, not in compliance with the GMA. This Conclusion of Law is not supported by substantial evidence. (AR, p. 1252).

III. STATEMENT OF CASE

Son Vida is the owner of real property which is located in Kittitas County, Washington. (AR, p. 115). The property owned by Son Vida is located, in part within City of Ellensburg City limits and in part in Kittitas County. (AR, p. 115). The property located in Kittitas County is partially in the City of Ellensburg Urban Growth Area ("UGA") established by Kittitas County. (AR, p. 115). A portion of Son Vida's property is outside the UGA and is designated under Kittitas County's Comprehensive Plan as rural. (AR, p. 115). Son Vida's property outside the Ellensburg City limits lies within, and is therefore, subject to Kittitas County's Airport Overlay Zone (Chapter 17.58 KCC). (AR, p. 115). The portions of Son Vida's property within the City of Ellensburg are subject to the City of Ellensburg's Airport Overlay Zone (Chapter 13.11 EMC). (AR, p. 115).

Son Vida was the petitioner in *Son Vida v. Kittitas County*, EWGMHB 01-1-0017 (hereinafter referred to as the "2001 Case").² (AR, p. 115; AR, p. 123; AR, p. 209 to 214). In that case, Son Vida challenged Kittitas County Ordinance No. 2001-10. Ordinance 2001-10 was the ordinance that adopted Chapter 17.58 KCC for the first time. (AR, p. 210, AR, p. 1002). In the 2001 Case Final Decision and Order ("2002 FDO") the Eastern Washington Growth Management Hearings Board found the densities and property restrictions in the various turning zones designated in Chapter 17.58 KCC as it relates to the Ellensburg Airport ("Bowers Field"), including Zones 1, 2 and 5 complied with the GMA. (AR, p. 137). Son Vida appealed the Board's decision in 01-1-0017 to the Kittitas County Superior Court.³ (AR, p. 209).

When Kittitas County began its review of its development regulations in 2006, which culminated in Ordinance 2007-22 and are the subject of this Petition for Review, Chapter 17.58 KCC provided for a variety of densities depending upon the "turning zone" the property was located in. (AR, p. 1009 to 1010; AR, p. 1013). Based on the 2001 Case those development regulations complied with the GMA. As a result, since 2001 property in and around Bowers Field has been developed consistent with the 2001 Case GMA compliant development regulations. (AR, p. 116). The Airport Overlay Zone included property that was inside the City of Ellensburg Urban Growth Area

² The Board's decision in EWGMHB 01-1-0017 is in the record of AR, p. 123 to 140 and at AR, p. 191 to 208. EWGMHB 01-1-0017 is referred to herein as the 2001 Case, the Board's decision in the 2001 Case is referred to as the 2002 FDO.

³ Kittitas County Superior Court Cause No. 02-2-000163-0. The Superior Court case is still an active case and has not been heard by the Kittitas County Superior Court. Son Vida, prior to this Court accepting review sought consolidation of the 2001 Case with this case. The Kittitas County Superior Court denied that motion.

and included property that was outside the City of Ellensburg Urban Growth Area. (AR, p. 115). The Airport Overlay Zone that existed at the time the Board issued the 2002 FDO and the Airport Overlay Zone which is the subject of this appeal are identical with respect to Bowers Field. (AR, p. 218 to 221). There were no changes made to the Airport Overlay Zone densities or property restrictions allowed in the various turning zones at Bowers Field. (AR, p. 218 to 220; AR p. 225 to 227). (Several terms were changed to reflect other changes in the development code). The changes made to Chapter 17.58 KCC in Ordinance 2007-22 applied the existing Airport Overlay Zone, for the first time, to other airports in Kittitas County.⁴ (AR, p. 221 to 224). The changes to the Airport Overlay Zone did not change the development regulations, including densities allowed in KCC 17.58.050(2) which applies to Bowers Field. (AR, p. 218 to 221; AR, p. 225 to 227). The densities Petitioners alleged and the Board concluded, in Conclusion of Law 11 in its FDO, violated the GMA were the densities and property restrictions the Board concluded were consistent with the Growth Management Act in the 2002 FDO issued in the 2001 Case.

In the FDO in this case, the Board asserted that “the County fails to provide residential density limitations in the runway protection zone, which is the zone directly at the end of the runway and an area which WSDOT, Aviation Division, recommends residential use not be permitted”. (AR, p. 1238, L. 17). The Petitioners argue RCW 36.70.547 prohibits the siting of

⁴ See KCC 17.58.040(B) which applied the AOZ to airports in Easton and Cle Elum. (AR, p. 221).

incompatible uses adjacent to general aviation airports. In supporting their argument to the Board the Petitioners relied upon a WSDOT, Aviation Division, publication which was provided to Kittitas County by WSDOT as part of the public comment on the development regulations.⁵ (AR, p. 398, Petitioner's Hearing on the Merits Brief, page 32, n.108, see also AR, p. 300). This document is one of the documents that the Board in its FDO placed emphasis on. It should not be lost on the Court that this document that the Petitioners relied upon and the Board relied upon is dated February, 1999 and was the guidance document WSDOT had published when the County adopted the original Airport Overlay Zone Ordinance that was at issue in the 2001 Case. (AR, p. 307). The document existed when both Kittitas County and the City of Ellensburg adopted their original Airport Overlay Zones that led to the 2001 Case and 2002 FDO.⁶ The Board, in this case, concluded in its FDO that the comment letter submitted by the WSDOT, Aviation Division, on July 25, 2006, which included the 1999 study as an attachment was a "strong indication WSDOT's Aviation Division considered KCC 17.58 outdated and in need of significant change. (AR, p. 1246). The Board went on to discuss its belief that the Airport Overlay Zone failed to discourage the siting of incompatible uses and in fact allowed residential uses in some of the turning zones. (AR, p. 1246). The Board's Conclusion of Law 11 indicates that Kittitas County has allowed unlimited urban residential development within the Airport Overlay Zone designations, primarily in Zones 1, 2 and 5. (AR, p.

⁵ The document is referred to herein for ease of reference as the "WSDOT Report".

⁶ In 2001 the City of Ellensburg and Kittitas County adopted Airport Overlay Zones as part of a Joint Planning Process. (AR, p. 1002).

1252). The Board concluded that action was not in compliance with the GMA. (AR, p. 1252). That conclusion by the Board is wholly unsupported by the record and is an erroneous interpretation and application of the law to the facts.

IV. DISCUSSION

A. Standard of Review

When this Court reviews a Board decision, the Administrative Procedure Act (Chapter 34.05 RCW) standards should be applied to the record before the Board. *Thurston County v. Western Washington Growth Management Hearings Board*, 164 Wn.2d 329, 341, 190 P.3d. 38 (2008). The appealing party has the burden of proving invalidity of the Board's actions. RCW 34.05.570(3). See also, *Thurston County*, 164 Wn.2d at 34. The Board's order must be supported by substantial evidence to persuade a fair-minded person the truth or correctness of the order." *Thurston County*, 164 Wn.2d at 341. Issues of law are reviewed de novo. *Id.* at 341. Mixed questions of law and fact requires the Court to determine the law independently and apply the law to the facts as found by the Board. *Thurston County*, 164 Wn.2d at 341.

B. Presumption of Validity and Burden of Proof

Counties have broad discretion when planning under the GMA. RCW 36.70A.320 provides in pertinent part:

(1)...comprehensive plans and development regulations, and the amendments thereto, adopted under this chapter are *presumed valid* upon adoption.

(2)...the *burden is on the petitioner* to demonstrate that any action taken by a state agency, county, or city under this chapter is not in compliance with the requirements of this chapter."

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

(emphasis added)

Quadrant Corp. v. State Growth Management Hearings Board, 154 Wn.2d 224, 237 (2005). The Legislature amended the statute in response to the GMA being "riddled with politically necessary omissions, internal inconsistencies, and vague language." *Id.* at 232, *Thurston County*, 164 Wn.2d at 342. The Legislature left no doubt what its intentions were when it came to the proper deference to be afforded to local governments planning under the GMA when it provided:

In amending RCW 36.70A.320(3) by section 20(3), chapter 429, Laws of 1997, the legislature intends that the boards apply a more deferential standard of review to actions of counties and cities than the preponderance of the evidence standard provided for under existing law. 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 boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the

planning goals of this chapter, and implementing a county's or city's future rests with that community. (emphasis added)

RCW 36.70A.320(1).

The State Supreme Court in reviewing RCW 36.70A.320(1) concluded "In the face of this clear legislative directive, we now hold that deference to county planning actions, that are consistent with the goals and requirements of the GMA, *supersedes* deference granted by the APA and courts to administrative bodies." *Quadrant*, 154 Wn.2d at 238 (emphasis added). This clear mandate providing local jurisdictions more deference planning under the GMA was further discussed in *Viking Properties, Inc. v. Holm*, 155 Wn.2d 112 (2005). There, the State Supreme Court said that the "GMA acts exclusively through local governments and is to be construed with the requisite flexibility to allow local governments to accommodate local needs." *Id.* at 125-26.

Finally, the Supreme Court made its position unequivocally clear in *Swinomish v. Western Washington Growth Management Hearings Board*, a case dealing with Skagit County's critical areas ordinance. *Swinomish v. Western Washington Growth Management Hearings Board*, 161 Wn. 2d. 415, 166 P.3d. 1198 (2007). In *Swinomish*, the Supreme Court reaffirmed its ruling in *Quadrant*. *Id.* at 1204. The court then addressed the lack of priorities between GMA goals. In this case Futurewise argues protection of the Bowers Field is a greater priority than urban growth in the vicinity of the Ellensburg

Urban Growth Area and managing rural land uses outside of the Urban Growth Area.⁷ In *Swinomish*, the court ruled as follows:

In fact, the GMA explicitly eschews establishing priorities: "The [GMA's planning] goals are not listed in order of priority and shall be used exclusively for the purpose of guiding and development of comprehensive plans and development regulations." RCW 36.70A.020.

Id. at 1203.

Lastly, the GMA "should not be liberally construed" *Thurston County*, 146 Wn.2d at 342. (Emphasis added). See also *Woods v. Kittitas County*, 162 Wn.2d 597, 612 n.8, 174 P.3d 25 (2007).

Kittitas County's Development Regulations, as amended by Ordinance 2007-22 was adopted pursuant to Washington's Growth Management Act ("GMA") and is presumed valid. This Court should find Ordinance 2007-22 complies with GMA unless it determines that Kittitas County's passage of Ordinance 2007-22 is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of GMA. RCW 36.70A.320. See also, *Lewis County v. Western Washington Growth Management Hearings Board*, 157 Wn.2d 488, 497, 139 P.3d 1096 (1996). Before the Court can find an action clearly erroneous, the Court must be left with the firm and definite conviction that a mistake has been committed. *Id.* at 497. *Department of Ecology v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 552, 14 P.3d 133 (2000).

⁷ Bowers Field is bordered by the Ellensburg Urban Growth Area. (AR, p. 1014).

The Legislature specifically provided that local development regulations "require counties and cities to balance priorities and options for action in full consideration of local circumstances." RCW 36.70A.320(1). In the case of Kittitas County's Airport Overlay Zone, the Board had already concluded the Airport Overlay Zone as applied to Bowers Field was compliant, recognizing in its decision Kittitas County's need to balance competing goals to meet local circumstances. (AR, p. 140; AR, p. 138). For the Board to conclude six years later that the Ordinance is not now GMA compliant was not only clearly erroneous, but also not supported by the record.

C. The Board's Prior Decision in the "2001 Case" Prevents the Board From Now Ruling the Bowers Field AOZ Does Not Comply With the GGMA.

The issue of whether the Airport Overlay Zone (AOZ) for the Ellensburg Airport (Bowers Field) violates the Growth Management Act has been decided. Under the Doctrine of *Stare Decisis* the Board should have concluded the AOZ for Bowers Field complied with the GMA. The doctrine of *Stare Decisis* is best summarized as follows:

"The doctrine means no more than the rule laid down in any particular case as applicable only to the facts in that particular case or to another case involving identical or substantially similar facts."

Floyd v. The Department of Labor and Industries, 44 Wn.2d 560, 565, 296 P.2d 563 (1954). In this case, the Board had previously examined the Airport Overlay Zone development regulations and uses at Bowers Field and concluded the development regulations in the various turning zones within the

Airport Overlay Zone complied with the Growth Management Act. (AR, p. 140). In the 2001 Case and 2002 FDO the issue was the appropriate development regulations in the turning zones. (AR, p. 124-125). The identical issue the Board, in its FDO in this case, concluded now violate the GMA. In the 2001 Case the Board found the AOZ complied with the GMA. (AR, p. 140). Thus, the doctrine of *Stare Decisis* required the Board and now this Court reach the same result in this case.

The Board has no authority to revisit its decision in the 2001 Case. The Board's decision to do so is contrary to this Court's ruling in *Spokane County v. City of Spokane*, 148 Wash. App. 120, 197 P.3d 1228 (2009)⁸. In that case Spokane County argued the "Hearings Board had already concluded in its final 2002 decision that the County was in compliance with the GMA and, therefore, cannot now revisit that decision". *Id.* at 125. In deciding the issue this Court noted the "Hearings Board, in the earlier 2002 appeal, already concluded that the County had complied with the GMA. It was then improper for the Board to revisit that Order." *Id.* at 125. Identical facts exist here. The Board decided in the 2001 Case that the densities, land use controls and other development regulations existing in the various turn zones contained within the AOZ applicable to Bowers Field were GMA compliant. (AR, p. 140). The Board should be prohibited from now revisiting that very issue and concluding the densities, land use controls and other development regulations

⁸ Son Vida filed a Partial Motion to Dismiss, seeking the dismissal of Issue 8. (AR, p. 183). The Motion was based on *Stare Decisis*, but given the later ruling in *Spokane County v. City of Spokane*, 148 Wash. App. at 120, granting the Partial Motion to Dismiss would have been appropriate.

controlling what occurs in a turning zone are now not GMA compliant. The Board's decision to revisit and ultimately reverse the 2002 FDO issued in the 2001 Case was an erroneous application of the law to the facts and is not supported by substantial evidence in the record. This Court should reverse the Board and rule Chapter 17.58 KCC, as applied to Bowers Field, complies with the GMA.

D. Chapter 17.58 KCC Complies with the Growth Management Act.

The issue in the 2001 Case was whether the Airport Overlay Zone violated the Growth Management Act for a variety of reasons one of which was the development regulations allowed within the Airport Overlay Zone. (AR, p. 124, 125). The Board concluded the Airport Overlay Zone and specifically the densities within the Airport Overlay Zone turning zones complied with the Growth Management Act. (AR, p. 140). One of the pieces of evidence the Board relied on was a letter from the Washington State Department of Community Trade and Economic Development (CTED) to the City of Ellensburg discussing the densities within the Airport Overlay Zone. (AR, p. 1030). In that letter CTED's recommendation to the City of Ellensburg was the densities within the Urban Growth Area of the City of Ellensburg be set at a minimum of 4 units per acre within the Airport Overlay Zone. CTED, as the Board pointed out in the FDO, opined the recommended minimum of 4 units per acre did not preclude a variety of densities within an airport overlay zone. (AR, p. 1030). CTED also opined one housing unit per acre is not an urban density. (AR, p. 1030). Based on that evidence, the

Board in the 2001 Case concluded the densities mandated by the Airport Overlay Zone were GMA compliant. (AR, p. 140).

Futurewise asserts it is not just densities they are raising as an issue, but also types of structures, etc. The land use controls, including density and structures allowed in Chapter 17.58 KCC relating to the Ellensburg Airport, were substantially unchanged by Ordinance 2007-22. (AR, p. 216). The Board in the 2001 Case analyzed land use controls, including controls on structures, density and activities and found those land use controls GMA compliant. Before the Board, Futurewise relied on a February 1999 document captioned "Airports and Compatible Land Use, Volume 1", Washington State Department of Transportation Aviation Division February 1999. (AR, p. 307). The WSDOT Report specifically indicates its purpose is to offer technical assistance. WSDOT acknowledges it has no power to make land use decisions. (AR, p. 313). The WSDOT report by its very terms is a guide for local jurisdictions. The WSDOT Report states:

By utilizing the technical expertise and best practices guidelines provided by the Airport Land Use Compatibility Program jurisdictions may acquire the tools to make responsible decisions regarding components or risk that may impact their liability. These tools will help them:

- Assess qualitative and quantitative risk factors,
- Develop a matrix to help define what constitutes acceptable risk-taking in specific situations,
- Craft strategies to develop effective and inclusive risk communication practices to facilitate building consensus among

agency representatives, stakeholders and the general public.

(AR, p. 341).

The WSDOT Report suggests a series of accident safety zones. (AR, p. 348; AR, p. 350 to 353). The WSDOT Report is a guidance document and is not intended to establish minimums, maximums and hard and fast requirements. A comparison of WSDOT Report with the Airport Overlay Map adopted by Kittitas County which was at issue in the 2001 Case and in the current version of Chapter 17.58 KCC shows they are very similar.⁹

It is clear Kittitas County at the time of the 2001 Case adopted a matrix approach to regulating land uses based in the specific zone. (AR, p. 109, 110). In deciding the 2001 Case and 2002 FDO, the Board concluded "the County in adopting the Airport Overlay Zone, worked with the City of Ellensburg to form what both jurisdictions felt was a well balanced consideration of all factors related to this area." (AR, p. 134). The Board in the 2001 Case then went on to quote from the manager for Transportation Planning from the Washington State Department of Transportation's letter to the City of Ellensburg dated June 2001:

"The role of the WSDOT Aviation Division through the Airport Land use Compatibility Program is to provide the best available information and research to land use decision makers, and to advocate for the preservation of Washington State's public use airports as airports are defined as essential public facilities. The goal of the Airport Land Use Compatibility Program is to encourage a balance between infrastructure preservation and quality of life."

⁹ Compare AR, p. 348 to 353 with AR, p. 218 to 219 and AR, p. 225 to 227

....

We find the Airport Overlay Zoning District achieves that critical balance. Furthermore, we find the plan to be an exemplary land use model and we hope to share your successful work with other jurisdictions. We commend your leadership in collaboration with Kittitas County through the development of the Airport Overlay Zoning District as well as the aviation community, state and federal agencies and the general public." (emphasis added)

(AR, p. 134).

The very agency that wrote the report Futurewise relies on found the City of Ellensburg and Kittitas County's AOZ "an exemplary land use model". Furthermore, WSDOT at that time indicated that they intended "to share your successful work with other jurisdictions".

Lastly, the Board in the 2001 Case recognized the following:

The legislature was very clear that each county was to be given a broad range of discretion when planning for growth and the boards are to grant deference to both the counties and cities in how they plan for that growth. The Respondent has shown that they had input from the state, public, and airport authorities. Kittitas County and the City of Ellensburg in designating urban growth areas and develop regulations may not have satisfied all citizens in their jurisdiction, but the legislature in its finding was clear when they said the Boards must give cities and counties great deference.

(AR, p. 139).

When the Court reviews and compares the evidence to the discussion of the Standard of Review, the Court should conclude no mistake was made

by Kittitas County and just as the GMA requires, Kittitas County has adopted a development regulation based on local circumstances using state wide models.

E. The Board's Ruling on Issue 8 Amounts to the Board Improperly Adopting a Bright Line Rule.

The Board's conclusion that Chapter 17.58 KCC violated the GMA was in effect the adoption of a bright line rule which the Board is precluded from doing under the law.

In its FDO in this case the Board concluded Kittitas County had violated the GMA because of the allowed residential development in certain turning zones within the Airport Overlay Zone. (AR, p. 1252). As discussed in the previous sections Kittitas County is required to balance competing goals under the GMA based upon local circumstances. Kittitas County did that to the Board's satisfaction in 2002, but now for reasons not clearly articulated in the record other than the ordinance that was before the Board in 2001 was outdated and needed updating (AR, p. 1246), the Board has come out and specifically said that the ordinance violates the GMA because it allows residential development within certain turning zones. (AR, p. 1252). The adoption of this type of a density restriction is similar to the issue of what is an urban and what is a rural density. As the Supreme Court has indicated the Board lacks the power to make bright line rules regarding densities. *Viking Props.*, 155 Wash.2d at 129-130; *Thurston County*, 164 Wn.2d at 358-360. The Supreme Court has specifically held that a Hearings Board "may not use a bright line rule to delineate between urban and rural densities, nor may it

subject certain densities to increased scrutiny". *Id.* at 358-360. In this case, the Board's prohibition on residential development within turn zones 1, 2 and 5 is nothing more than a bright line rule which the Board is precluded from adopting. What the Board should have done is recognize that Kittitas County considered its local circumstances in balancing the desire to protect Bowers Field, but also allow development within the vicinity of Bowers Field. The Board ignored the fact that in 2002 they concluded this Airport Overlay Zone was GMA compliant. Once the Board did that in 2002, they approved a pattern of development that has occurred around Bowers Field that they now seek to stop. This Board's attempt to adopt a bright line rule should not be sanctioned by this Court. This Court should conclude that Chapter 17.58 KCC does comply with the GMA.

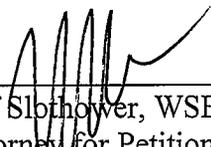
Here, the Board ignored the clear legislative directive and case law that directs it to provide Kittitas County deference. Instead, the Board imposed a one-size-fits-all, bright line rule of no residential dwellings in the turn zones in violation of the GMA. The Board's action is a clearly erroneous application of the law to the facts.

V. CONCLUSION

For the reasons set forth herein, this Court should reverse the Board's conclusion that Chapter 17.58 KCC does not comply with the GMA.

RESPECTFULLY SUBMITTED this 20 day of April, 2009.

LATHROP, WINBAUER, HARREL,
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