Case No. 92722-7

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CONCERNED FRIENDS OF FERRY COUNTY & FUTUREWISE,

Respondents,

v.

FERRY COUNTY

Petitioner,

and

THE GROWTH MANAGEMENT HEARINGS BOARD,

Respondent.

ANSWER OF THE RESPONDENTS CONCERNED FRIENDS OF FERRY COUNTY AND FUTUREWISE

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I. INTRODUCTION

The Washington State Supreme Court has held that "[w]hen read together, RCW 36.70A.020(8), .060(1), and .170 evidence a legislative mandate for the conservation of agricultural land."[1] To carry out this mandate, Ferry County, along with every other county in Washington State, was required to designate agricultural lands of long-term commercial significance under the Growth Management Act (GMA) by September 1, 1991.[2]

It took Ferry County 23 years to finally designate any working farms and ranches as agricultural lands of long-term commercial significance, finally designating 405 acres of privately owned land.[3] The 405 acres represents 0.05 percent of the county's 749,452 acres of land in farms.[4]

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[1] *King County v. Central Puget Sound Growth Management Hearings Bd.*, 142 Wn.2d 543, 562, 14 P.3d 133, 143 (2000).

[2] RCW 36.70A.170(1)(a).

[3] Administrative Record (AR) 6376 – 77, Ferry County Development Regulations Ordinance No. 2013-05 pp. 30 – 31. Ferry County designated 479,373 acres as "Agricultural Lands of Long-Term Commercial Significance." This consists of 405 acres "subject to long-term conservation easement[s]" and 478,968 acres owned by the U.S. Forest Service and the Washington State Department of Natural Resources and "subject to long-term grazing allotments." AR 6376, *Id.* at p. 30. In citing to the Administrative Record we omit the preceding zeros from the "Bates" numbers place on the record by the Board.

[4] AR 6390, United States Department of Agriculture, National Agricultural Statistics Service, *2007 Census of Agriculture, Washington State and County Data Volume 1 Geographic Area Series* • Part 47 Chapter 2: County Level Data, Table 8. Farms, Land in Farms, Value of Land and Buildings, and Land Use: 2007 and 2002 p. 291 (Feb. 2009). Hereinafter *2007 Census of Agriculture* Table 8.

Evidence in the record shows that agriculture in Ferry County has long-term commercial significance. Unfortunately evidence in the record also shows that Ferry County lost almost 50,000 acres of land in farms between 2002 and 2007 including land within the Colville Indian Reservation in the county.[5]

The Washington State Department of Agriculture's *Washington Agriculture Strategic Plan 2020 and Beyond* documents the need to conserve agricultural lands to maintain the agricultural industry and the jobs and incomes the industry provides.[6]

This answer will show this is not a close case. The Court of Appeals correctly interpreted and applied the Growth Management Act, the minimum guidelines for designating agricultural lands of long-term commercial significance in WAC 365–190–050, and the Ferry County Comprehensive Plan. Substantial evidence supports the Court of Appeals decision and Ferry County's Petition for Review cited to no evidence in the record. This is not an issue that the Supreme Court should decide.

II. STATEMENT OF THE CASE

Over 20 years ago, by September 1, 1991, all counties in Washington State, not just the fully planning counties, were required to

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[5] AR 6390, *Id.*

[6] AR 6429 – 31, Washington State Department of Agriculture, *Washington Agriculture Strategic Plan 2020 and Beyond* pp. 50 – 52 (2009).

designate agricultural lands of long-term commercial significance.[7] "Between 2003 and 2013, the Board has issued 9 separate Orders Finding Continuing Non-Compliance with the GMA for Ferry County's failure to protect Agricultural Lands of Long-Term Commercial Significance."[8]

In 2007, Ferry County had 232 farms with 749,452 acres of land in those farms.[9] This was an increase from 207 farms in 2002.[10] The 2007 Census of agriculture estimated that 53.1 percent of the county was in farms.[11] The 749,452 acres of land in those farms does not include the National Forest grazing allotments.[12] Ferry County has the eighth largest amount of land in farms of all the counties in Washington State including lands within that portion of Colville Indian Reservation in the county.[13] The Order Finding Compliance concluded that 104,539 acres of the farmland on the reservation was in fee ownership, that is this land is

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[7] RCW 36.70A.170(1)(a).
[8] AR 6248, *Concerned Friends of Ferry County et al. v. Ferry County*, GMHB Case No. 01-1-0019, Ninth Compliance Order [Agricultural Resource Lands] (Feb. 8, 2013), at 1 of 18.
[9] AR 6390, *2007 Census of Agriculture* Table 8 p. 291.
[10] *Id.*
[11] *Id.*
[12] AR 6415 – 16, United States Department of Agriculture, National Agricultural Statistics Service, *2007 Census of Agriculture, Washington State and County Data Volume 1 Geographic Area Series* • Part 47 pp. B-14 – B-15 (Feb. 2009).
[13] AR 6389 – 92, *2007 Census of Agriculture* Table 8 pp. 290 – 94. "Ferry County has regulatory authority over Fee lands within the Colville Reservation as provided in Brendale v. Yakima Indian Reservation (492 U.S. 408 [1989]), although this area of law is in flux and such regulatory authority is less clear as a result of *Gobin v. Snohomish County*, 304 F.3d 909, (9th Cir. 2002)." AR 6359, Ferry County Critical Areas Ordinance 2013-04 p. 55.

privately owned.[14] Of the land in farms in the county, 14,842 acres is cropland.[15]

In 2007, the Ferry County farms had an average value of over $1.4 million.[16] This compares with a Washington State average of a little over $759,000.[17]

Also in 2007, Ferry County farms and ranches had 4,126 cattle and calves.[18] In that same year, Ferry County ranked 29th out of 39 Washington counties in the dollar value of cattle and calves sold.[19] It also ranked 23rd out of 39 counties in the acres of land, 6,784 acres, used to grow hay, grass silage, and green chop in 2007.[20] In 2003, Ferry County farmers and ranchers harvested 21,800 tons of hay, the 14th highest tonnage of Washington State counties.[21]

Ferry County Ordinance No. 2013-03 amended the comprehensive plan to adopt the Ferry County Comprehensive Plan Future Land Use Map officially designating the County's agricultural land of long-term

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[14] AR 7499, Order Finding Compliance p. 10 of 16.
[15] AR 6390, *2007 Census of Agriculture* Table 8 p. 291.
[16] AR 6390, *Id.*
[17] AR 6389, *Id.* at p. 290.
[18] AR 680, U.S. Department of Agriculture, 2007 Census of Agriculture County Profile Ferry County Washington p. *2.
[19] *Id.*
[20] *Id.*
[21] AR 3808, Stephanie Meenach, Eric L. Jessup, & Kenneth L. Casavant, *Transportation Characteristics and Needs of the Washington Hay Industry: Producers and Processors* p. 5 (Washington State University, School of Economic Sciences, SFTA Research Report #11: November 2004).

commercial significance.[22] Ferry County Development Regulations Ordinance No. 2013-05 adopted the criteria for designating agricultural lands of long-term commercial significance.[23] These two ordinances are the subject of this appeal. Unfortunately evidence in the record also shows that Ferry County lost almost 50,000 acres of land in farms between 2002 and 2007 including the land within the Colville Indian Reservation in the county.[24] Maps produced by Ferry County show residential development on prime soils between Republic and Curlew for example.[25]

The Washington State Department of Agriculture's *Washington Agriculture Strategic Plan 2020 and Beyond* documents the need to conserve agricultural lands to maintain the agricultural industry and the jobs and incomes the industry provides.[26] The thousands of acres of farmland that Ferry County did not designate as agricultural lands of long-

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[22] AR 6356, Ferry County Comprehensive Plan Future Land Use Map Page 6 Agricultural Land of Long-Term Commercial Significance.
[23] AR 6376 – 77, Ferry County Development Regulations Ordinance No. 2013-05 pp. 30 – 31. Ferry County designated 479,373 acres as "Agricultural Lands of Long-Term Commercial Significance." This consists of 405 acres "subject to long-term conservation easement[s]" and 478,968 acres owned by the U.S. Forest Service and the Washington State Department of Natural Resources and "subject to long-term grazing allotments." AR 6376, *Id.* at p. 30.
[24] AR 6390, *2007 Census of Agriculture* Table 8 p. 291.
[25] AR 1712, Ag Land of Long-Term Commercial Significance Area 1 (the homes are depicted as stars). See also AR 1713, 1714, and 1715, Ag Land of Long-Term Commercial Significance Areas 2 – 4.
[26] AR 6429 – 31, Washington State Department of Agriculture, *Washington Agriculture Strategic Plan 2020 and Beyond* pp. 50 – 52 (2009).

term commercial significance are zoned for a density of one dwelling unit per 2.5 acres and so are not protected from over-development.[27]

III. STANDARD OF REVIEW

In Kittitas County v. Eastern Washington Growth Management Hearings Board, the Supreme Court of Washington State succinctly stated the standard of review for appeals of Board decisions:

> ¶ 14 Courts apply the standards of the Administrative Procedure Act [APA], chapter 34.05 RCW, and look directly to the record before the board. *Lewis County,* 157 Wn.2d at 497, 139 P.3d 1096; *Quadrant Corp.,* 154 Wn.2d at 233, 110 P.3d 1132. 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, 190 P.3d 38. 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)).[28]

"Under the judicial review provision of the APA, the 'burden of demonstrating the invalidity of [the Board's decision] is on the party asserting the invalidity.'"[29] In this case that is Futurewise and the Concerned Friends of Ferry County.

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[27] AR 6942, Ferry County Development Regulations Ordinance No. 2013-05 p. 41.
[28] *Kittitas County v. Eastern Washington Growth Management Hearings Board,* 172 Wn.2d 144, 155, 256 P.3d 1193, 1198 (2011).
[29] *Thurston County v. Cooper Point Ass'n.*, 148 Wn.2d 1, 7 – 8, 57 P.3d 1156, 1159 – 60 (2002) citing RCW 34.05.570(1)(a).

"Substantial weight is accorded to a board's interpretation of the GMA, but the court is not bound by the board's interpretations."[30] In interpreting the GMA, the courts do not give deference to local government interpretations of the law.[31]

On mixed questions of law and fact, the court determines the law independently, and then applies it to the facts as found by the Board.[32] The reviewing court does not weigh the evidence or substitute its view of the facts for that of the Board.[33]

In considering this case, it is important to note that appeals by citizens and citizen groups are the mechanism that the Governor and Legislature adopted to enforce the GMA.[34] Unlike some laws, such as Washington's Shoreline Management Act, there is no state agency that reviews and approves or disapproves GMA comprehensive plans and development regulations. It is the responsibility citizens and groups, such as the Concerned Friends of Ferry County and Futurewise (hereinafter Concerned Friends), to appeal noncompliant comprehensive plans and development regulations to the Board.

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[30] *Thurston County v. Western Washington Growth Management Hearings Bd.*, 164 Wn.2d 329, 341, 190 P.3d 38, 44 (2008).
[31] *Kittitas County,* 172 Wn.2d at 156, 256 P.3d at 1199.
[32] *Thurston County v. Cooper Point Ass'n*, 148 Wn.2d 1, 8, 57 P.3d 1156, 1160 (2002).
[33] *Callecod v. Wash. State Patrol,* 84 Wn. App. 663, 676, 929 P.2d 510, 516 n. 9 (1997) *review denied Callecod v. Wash. State Patrol*, 132 Wn.2d 1004, 939 P.2d 215 (1997).
[34] *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 138 Wn.2d 161, 175 – 77, 979 P.2d 374, 380 – 82 (1999).

IV. ARGUMENT

A. The Court of Appeals correctly deferred to Ferry County's decisions under the Growth Management Act (GMA) and the court's decision is supported by substantial evidence.

While not one of the issues presented for review, the Ferry County Petition for Review argues on pages 4 through 10 that the Court of Appeals failed to grant deference to Ferry County's decisions on designating agricultural lands of long-term commercial significance. This argument fails for two reasons. First, as the Supreme Court has held, deference is owed to county planning actions "that are consistent with the goals and requirements of the GMA ... [T]his deference ends when it is shown that a county's actions are in fact a 'clearly erroneous' application of the GMA, ..."[35] As will be documented below, the Court of Appeals was correct to conclude Ferry County's decision to only designate 405 acres of private farmland violated the GMA.

Second, the Court of Appeals was mindful of the Supreme Court's holdings that the Board and courts are to give deference to Ferry County's planning decisions.[36] The Court of Appeals recognized the deference appropriate to Ferry County as part of its analysis.[37]

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[35] *Quadrant Corp. v. State Growth Mgmt. Hearings Bd.*, 154 Wn. 2d 224, 238, 110 P.3d 1132, 1139 (2005).
[36] *Concerned Friends of Ferry Cty. v. Ferry Cty.*, No. 46305-9-II Slip Op. at 6 –7, 2015 WL 8927147, at *3 – 4 (2015).
[37] *Id.* at 28, 2015 WL 8927147, at *16.

The Ferry County Petition for Review argues that there are two instances where the Court of Appeals failed to properly defer to the County. The following two subsections of this answer analyze the County's arguments and show that they fail.

1. Substantial evidence supports the Court of Appeals conclusion that more than 2,816 acres of land meet the County's point system and so should have been designed as agricultural lands of long-term commercial significance (ARL). (Ferry County Issue 1.)

The Ferry County Petition for Review, on pages 8 and 9, claims that the first instance of the Court of Appeals failing to defer to the County was the court's conclusion that over 2,816 acres of land qualified under the County's point system to be designated as agricultural lands of long-term commercial significance. Ferry County refers to these lands as Agricultural Resource Lands (ARL).[38] Contrary to the County's argument, substantial evidence supports the court's conclusion.

Ferry County argues, without any citation to the record, that the 2,816 acres did not meet the 500 acre block criterion.[39] However, as the Court of Appeals wrote:

> ¶ 68 As noted, Ordinance No. 2013–05 itself states that Table B "shows the total acreage of land designated" under different alternatives. CP at 6374. Thus, the 2,816–acre figure is what the process in Table B indicates should be designated under the criteria by the most recent

[38] *Id.* at 1, 2015 WL 8927147, at *1.
[39] Ferry County's Petition for Review by the Supreme Court p. 9.

> alternative given. The County states, though, that the 2,816.00–acre figure represents the acreage eliminated because it does not meet the block group minimum. This, however, contradicts the actual figures in Table B. Adding up all the acreage in the last column noted as removed because it did not "meet [the] threshold" gives the sum of 2,656.96 acres, almost identical to the 2,657.06 shown as removed at the bottom of the last column. CP at 6374. As noted, the phrase "[d]oes not meet threshold" includes all the criteria for designation. The 500–acre minimum block size is one of these criteria. Thus, the 2,816.00–acre figure does not represent acreage eliminated in the last iteration, but the remaining qualifying acreage under the County's criteria after the removal of 2,657.06 acres in the final iteration.
>
> ¶ 69 In addition, the County acknowledges that the final two columns in Table B use the prior 1,000–acre minimum block size. The larger the minimum, the more land will be excluded. Therefore, the 500–acre minimum, which was ultimately adopted, will result in more than 2,816 acres qualifying for designation as ARL under the County's own criteria. How much more cannot be divined from this record.[40]

The Court of Appeals' careful analysis of Table B from Ferry County Ordinance No. 2013-05 is accurate and well-grounded in the record as the court's record citations show.[41] The record also demonstrates that Table B shows the application of the ordinance's criteria. Ferry County Development Regulations Ordinance No. 2013-05, in referring to Table B, states that "[t]he last column was used as the final criteria in

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[40] *Concerned Friends of Ferry Cty. v. Ferry Cty.*, No. 46305-9-II Slip Op. at 23 – 24, 2015 WL 8927147, at *13 – 14 (2015).
[41] AR 6374 – 77, Ferry County Development Regulations Ord. No. 2013-05 pp. 28 – 31.

determining Agricultural Land of Long-Term Commercial Significance."[42] The last column of Table B has as part of one of its headings "5 points & above ..."[43] Ordinance No. 2013-05 also states "5 points or above: Ag land of long-term commercial significance unless challenged[.]"[44] So the "total acreage" of 2,816.85 acres in the far right column at the bottom of Table B qualified as agricultural lands of long-term commercial significance based on Ferry County's point system.[45]

The lands in Table B do not include the lands subject to state and federal grazing leases.[46] They are in addition to the total acres of land in Table B.[47]

The County's bare assertion, unsupported by any record citations, is not enough to establish that the Court of Appeals' conclusion on this question is not supported by substantial evidence.[48] In fact, the record shows that it is.[49]

In addition, the court is correct that Ferry County acknowledged that Table B used the 1,000 acre block criterion, not the 500 acre block

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[42] AR 6376, *Id.* at p. 30.
[43] AR 6374, *Id.* at p. 28.
[44] AR 6377, *Id.* at p. 31.
[45] AR 6376, *Id.* p. 30.
[46] Transcript of Proceedings December 20, 2013, *Concerned Friends of Ferry County v. Ferry County*, Case Nos. 97-1-0018c, 01-1-0019, and 11-1-0003 p. 95. (The Board did not give "AR Numbers" to the transcript in the record.)
[47] *Id.*
[48] Ferry County's Petition for Review by the Supreme Court pp. 8 – 9.
[49] AR 6374 – 77, Ferry County Development Regulations Ord. No. 2013-05 pp. 28 – 31.

criterion the County ultimately adopted.[50] So the Court of Appeals is correct that the 2,816 acres of land that qualified as agricultural lands of long-term commercial significance is an undercount.

2. Substantial evidence supports the Court of Appeals conclusion that only designing 405 acres of privately owned farmland violated the GMA and the County Comprehensive Plan because it does not support cattle production.

The second instance of the Court of Appeals' failure to defer to the County, according to the Ferry County Petition for Review,[51] is the court's conclusion that insufficient land was designated ARL to produce hay to feed the cattle in the County when they cannot graze on Federal land. This is an attack on the Court of Appeals' statement in the facts section of its opinion that

> Cattle ranches are the County's major agricultural industry. This industry
>
> > is dependent upon federal and state grazing leases for summer grazing. The grazing leases allow grazing on Federal and State forest lands for only six months each year. During the six-month grazing season, hay is produced on private lands to sustain livestock through the balance of the year.
>
> AR at 6343 (Comprehensive Plan § 7.4.31).[52]

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[50] Ferry County's Response to Request for Supplemental Briefing p. 3 Case No. 46305-9-11 (July 6, 2015).
[51] Ferry County's Petition for Review by the Supreme Court pp. 9 – 10.
[52] *Concerned Friends of Ferry Cty. v. Ferry Cty.*, No. 46305-9-II Slip Op. at 11, 2015 WL 8927147, at *6 (2015).

But as the Court of Appeals' citation to the record shows, this statement is a direct quote from the Ferry County Comprehensive Plan. So the Court of Appeals deferred to the County's own comprehensive plan in making this finding.

The Ferry County Petition for Review, on pages 9 and 10, ignores the Ferry County Comprehensive Plan quoted by the Court of Appeals. Instead and without citing to the record, it sets up a series of straw cattle. For example, the Petition for Review claims "there is no record of how many cattle are raised in the County ..."[53] But this is wrong, the Census of Agriculture documents that in 2007, Ferry County farms and ranches had 4,126 cattle and calves.[54] Contrary to the assertions in the Petition for Review, the record includes peer-reviewed evidence of how much hay is needed to feed each cow.[55] There is evidence in the record of the acres of land used to grow hay and even the hay yield of some soil.[56] But the

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[53] Ferry County's Petition for Review by the Supreme Court pp. 9 – 10.
[54] AR 680, U.S. Department of Agriculture, 2007 Census of Agriculture County Profile Ferry County Washington p. *2.
[55] AR 6772, David L. Scrnecchia, *The Animal-Unit and Animal-Unit-Equivalent Concepts in Range Science* 38 JOURNAL OF RANGE MANAGEMENT p. 347 (July 1985). The Journal Range Management is peer-reviewed. AR 6775, Society of Range Management Publications webpage.
[56] AR 680, U.S. Department of Agriculture, 2007 Census of Agriculture County Profile Ferry County Washington p. *2; AR 6451, USDA Natural Resources Conservation Service, *Yields of Non-Irrigated Crops (Component): Annual hay crop (Tons)—North Ferry Area, Washington (Fields South of Malo Hay Yields Non-Irrigated)* p. 3 of 4 (7/10/2013).

County's Petition for Review did get one thing right, there is no evidence in the record that any of these cattle are wintered outside Ferry County.[57]

On pages 9 and 11, the Ferry County Petition for Review seems to argue that there is no difference between private and public land for the agricultural industry. Ferry County designated 478,968 acres owned by the U.S. Forest Service and the Washington State Department of Natural Resources and "subject to long-term grazing allotments" as agricultural lands of long-term commercial significance.[58] Only designating Department of Natural Resources and U.S. Forest Service grazing leases and 405 acres of private land "subject to long-term conservation easement[s]"[59] as agricultural lands of long-term commercial significance creates serious problems for Ferry County farmers and ranchers and inconsistencies with the GMA and the County comprehensive plan. First, the Forest Service only allows grazing in the Colville & Okanogan-Wenatchee National Forests.[60] So where will the winter feed come from? Hay and grain cannot be grown on the national forest land.

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[57] Ferry County's Petition for Review by the Supreme Court p. 9.
[58] AR 6376, Ferry County Development Regulations Ordinance No. 2013-05 pp. 30.
[59] AR 6376 – 77, Ferry County Development Regulations Ordinance No. 2013-05 pp. 30 – 31.
[60] AR 6779, *Forest Plan Revision, Colville & Okanogan-Wenatchee National Forests May 2009 Briefing: Rangelands and Forest Plan Revision* p. 2 of 2.

Second, in order to graze on a National Forest Service allotment, a rancher or farmer must obtain a Forest Service grazing or livestock permit.[61] To be eligible for a Forest Service grazing or livestock permit, the rancher or farmer must own a "base property." A "[b]ase property is land and improvements owned and used by the permittee for a farm or ranch operation and specifically designated by him to qualify for a term grazing permit."[62] So to use Forest Service land, a rancher or farmer must own and use a farm or ranch. By failing to designate private land as agricultural lands of long-term commercial significance, Ferry County is putting the use of the Forest Service grazing allotments at risk with significant adverse impacts on ranching in Ferry County and the Ferry County economy. If a farmer or rancher does not own and use a base property, they cannot get an allotment. Putting access to national forest grazing land at risk is contrary to the GMA goal in RCW 36.70A.020(8) of "[m]aintain[ing] and enhance[ing] natural resource-based industries ...." It also creates an inconsistency with the Ferry County Comprehensive Plan because the county's natural resource goal calls for maintaining the "productive use of agricultural ... lands of long-term commercial

[61] 36 CFR § 222.3 (2012).
[62] 36 CFR § 222.1(b)(3) (2012).

significance."[63] But if privately owned farms and ranches are not conserved, then the grazing allotments will go unused, taking these agricultural lands of long-term commercial significance out of use.

In short, substantial evidence supports the Court of Appeals' conclusion, based on the Ferry County Comprehensive Plan, that private land is needed to grow hay for the months the cattle do not graze on the allotments. The Ferry County Petition for Review cites no evidence to the contrary.

B. The Court of Appeals correctly concluded that the County's designation of agricultural lands of long-term commercial significance violated the GMA and the minimum guidelines for the designation of agricultural lands in WAC 365–190–050. (Ferry County Issues 2 and 3).

As we have seen, the Court of Appeals' determinations that the 2,816 acres of land meet the County's point system and so should have been designed as agricultural lands of long-term commercial and that private agricultural land is needed to support the county's cattle industry are supported by substantial evidence. It is also consistent with the GMA and WAC 365–190–050.

As the Court of Appeals wrote: "The principal GMA goal served by designating and conserving [Agricultural Resource Lands] ARL is that

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[63] AR 6340, Ferry County Ordinance No. 2013-03 *Ferry County Comprehensive Plan and the Curlew Lake Sub Area Plan* p. *1.

of RCW 36.70A.020(8): to '[m]aintain and enhance natural resource-based industries, including productive ... agricultural ... industries.' This and related provisions evidence 'a legislative mandate for the conservation of agricultural land.' *King County,* 142 Wn.2d at 562, 14 P.3d 133."[64] But Ferry County's designation of only 405 acres of privately owned farm land does not maintain and enhance the agricultural industry because it does not protect the hay fields and pastures needed to feed the cattle in the county[65] and because it does not protect the privately owned "base properties" needed to obtain a federal grazing lease.[66]

For these same reasons, Ferry County's designation of only 405 acres of privately owned farm land does not comply with WAC 365–190–050(5) and the Ferry County Comprehensive Plan. As the Court of Appeals wrote:

> WAC 365–190–050(5), which states that in the application of ARL designation criteria, "the process should result in designating an amount of [ARL] sufficient to maintain and enhance the economic viability of the agricultural industry in the county over the long term."
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> ¶ 74 The County's comprehensive plan goals and policies are consistent with these state goals. One of the plan's two goals specifically relating to agricultural lands is to "[m]aintain and enhance natural resource-based

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[64] *Concerned Friends of Ferry Cty. v. Ferry Cty.*, No. 46305-9-II Slip Op. at 25, 2015 WL 8927147, at *14 (2015).
[65] *Id.* at 11, 2015 WL 8927147, at *6 citing AR 6343 the Ferry County Comprehensive Plan § 7.4.31.
[66] 36 CFR § 222.3 (2012); 36 CFR § 222.1(b)(3) (2012).

> industries in the county and provide for the stewardship and productive use of [ARL]." AR at 6341. Even more to the point, the [Ferry County Comprehensive] [P]lan's Natural Resource Policy 2 states:
>
> > [i]n furtherance of the Natural Resources Goal and the overall goals of the GMA, it is the Natural Resources Policy of Ferry County to ... [d]esignate sufficient commercially significant agricultural ... land to ensure the County maintains a critical mass of such lands for present and future use.
>
> AR at 6341.[67]

Contrary to the argument in the Ferry County's Petition for Review on page 11, the Court of Appeals did not require the designation of privately owned farmland because it was privately owned. The Court of Appeals rejected the county's decision to designate almost no privately owned farmland because these lands meet the requirements of the County's point system to be designated as agricultural land, to "[d]esignate sufficient commercially significant agricultural ... land to ensure the County maintains a critical mass of such lands for present and future use" as the Ferry County Comprehensive Plan directs, and to comply with the GMA.[68]

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[67] *Concerned Friends of Ferry Cty. v. Ferry Cty.*, No. 46305-9-II Slip Op. at 25 – 26, 2015 WL 8927147, at *14 – 15 (2015).
[68] *Id.* at 24 – 27, 2015 WL 8927147, at *13 – 16.

C. The petition does not involve an issue of substantial public interest that should be determined by the Supreme Court.

This Court's *Lewis County* decision has already comprehensively addressed the designation of agricultural lands of long-term commercial significance.[69] The Court of Appeals' decision was of necessity fact heavy. Ferry County, by designating so little land that is actually used for agriculture has made this an easy case. So a Supreme Court decision addressing this case will not contribute significantly to law of designating agricultural lands of long-term commercial significance. Especially here where the facts weight so heavily in one direction. So this case is not an issue that should be determined by the Washington State Supreme Court as provided for in RAP 13.4(b)(4).

This case also does not meet the requirements of RAP 13.4(b)(1) through (3). And the County does not argue that this decision falls under these RAPs.

The Ferry County Petition for Review argues the Supreme Court should consider this question because it requires the County to modify its ordinances and affects land use in the County and the County's ability to adopt local ordinances affecting land use.[70] But the Legislature and

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[69] *Lewis Cty. v. W. Washington Growth Mgmt. Hearings Bd.*, 157 Wn. 2d 488, 139 P.3d 1096 (2006).

[70] Ferry County's Petition for Review by the Supreme Court pp. 10 – 11.

Governor have required all counties, including Ferry County, to designate agricultural lands of long-term commercial significance.[71] This Court cannot change that. This is not a case that requires a decision of the Supreme Court.

V. CONCLUSION

In short, this is not a close case. Ferry County's designation of agricultural lands of long-term commercial significance was decades late. The County failed to comply with its own comprehensive plan, the GMA, and the GMA's implementing regulations. The Court of Appeals correctly interpreted and applied the law. Substantial evidence supports the Court of Appeals' decision. There is no need for the Washington State Supreme Court to review this decision.

Respectfully submitted this 12th day of February 2016.

Tim Trohimovich, WSBA No. 22367
Counsel for the Concerned Friends of Ferry County & Futurewise

[71] RCW 36.70A.170(1).

CERTIFICATE OF SERVICE

I, Tim Trohimovich, declare under penalty of perjury and the laws of the State of Washington that, on February 12, 2016, I caused a PDF file of the original and true and correct copies of the following document to be served on the persons listed below in the manner shown: **Answer of the Respondents Concerned Friends of Ferry County and Futurewise.**

Washington State Supreme Court 415 12th Ave SW Olympia, WA 98501-2314 Mailing: PO Box 40929 Olympia, WA 98504-0929	Mr. L. Michael Golden Golden Law Office PLLC 298 S. Main Street, Suite 203 Colville, WA 99114 Tel. 509-684-6322 Attorney for Ferry County
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[ ] By Legal Messenger or Hand Delivery	[ ] By Legal Messenger or Hand Delivery
[ ] By Federal Express or Overnight Mail prepaid	[ ] By Federal Express or Overnight Mail prepaid
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Dated this 12th day of February 2016.

Tim Trohimovich, WSBA No. 22367

OFFICE RECEPTIONIST, CLERK

To: Tim Trohimovich
Cc: mike@goldenlaw.us; dionnep@atg.wa.gov; amyp4@atg.wa.gov; LALolyef@atg.wa.gov; 'Dave Robinson (dlrobinson49@rcabletv.com)'; scttsmmns@yahoo.com
Subject: RE: Answer Concerned Friends of Ferry County v. Ferry County, Supreme Court Case No. 92722-7

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Supreme Court Clerk's Office

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From: Tim Trohimovich [mailto:Tim@futurewise.org]
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To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: mike@goldenlaw.us; dionnep@atg.wa.gov; amyp4@atg.wa.gov; LALolyef@atg.wa.gov; 'Dave Robinson (dlrobinson49@rcabletv.com)' <dlrobinson49@rcabletv.com>; scttsmmns@yahoo.com
Subject: Answer Concerned Friends of Ferry County v. Ferry County, Supreme Court Case No. 92722-7

Dear Sirs and Madams:

Enclosed please find the Answer of the Respondents Concerned Friends of Ferry County and Futurewise in Supreme Court Case No. 92722-7, *Concerned Friends of Ferry County & Futurewise v. Ferry County*. We are also mailing copies to the parties as shown in the certificate of service.

Please contact me if you need anything else.

Tim Trohimovich, AICP
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Building Communities & Protecting the Land