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**IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

CONCERNED FRIENDS OF FERRY COUNTY and FUTUREWISE,

Appellants,

v.

STATE OF WASHINGTON, DEPARTMENT OF COMMERCE, FERRY COUNTY, and the GROWTH MANAGEMENT HEARINGS BOARD,

Respondents.

BRIEF OF APPELLEE
FERRY COUNTY

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GROWTH MANAGEMENT HEARINGS BOARD DECISIONS

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I. INTRODUCTION

The only issue in this case is whether a determination of compliance issued by the Washington Department of Commerce ("Department") complied with the Growth Management Act ("GMA"). Futurewise and the Concerned Friends of Ferry County (Appellants) have tried, without success, to use this case to obtain review of Ferry County's ("County") comprehensive land use plan and development regulations.

The Growth Management Hearings Board ("Board"), determined that it was divested of jurisdiction to review the County's legislative acts when the County reverted to partial planning under RCW 36.70A.040(2)(b). Appellants failed to assign error to the Board's jurisdictional ruling. Now they are attempting to bootstrap their way around this by arguing that the Department was required to review the County legislative acts for compliance with myriad GMA requirements.

The Board disagreed, ruling that the Department followed the applicable regulations and correctly limited the determination of compliance to outstanding issues when the County reverted to partial GMA planning. Appellants have failed to show that the Department's actions were erroneous, or that the Board's decision is legally incorrect or unsupported by substantial evidence. The County respectfully requests this court affirm the Board's Final Decision and Order.

II. STATEMENT OF THE CASE

On September 22, 2014 Ferry County adopted Resolution 2014-20 pursuant to RCW 36.70A.040(2), in which the Legislature authorized certain counties to opt out of full GMA planning requirements and become partial planning jurisdictions.[1] Resolution 2014-20 was not challenged.

Under the partial planning legislation, counties seeking to opt out of full GMA planning are required to address outstanding compliance issues by requesting a determination of compliance from the Washington Department of Commerce ("Department").[2] At the time Resolution 2014-20 was adopted, Ferry County had outstanding compliance issues. Specific to this case is a compliance issue identified by the Court of Appeals when reviewing a final decision by the Board in EWGMHB Case No. 01-1-0019. The sole compliance issue in that case had to do with the designation of agricultural resource lands, specifically agricultural lands of long-term economic significance ("ARL"). In that case, the Board found the County's designation of ARL compliant. On review, the Appellate Court affirmed the County's decision to designate 479,373 acres of public lands and private lands subject to conservation easements as ARL.[3] The Court also affirmed the Board's determination that criteria used by the County to determine

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[1] Agency's Certified Record ("CR") 1745 (Ferry County Resolution 2014-20).
[2] RCW 36.70A.060(d)(i).
[3] *Concerned Friends of Ferry Cty. v. Ferry Cty.*, 191 Wn. App. 803, ¶1 (2015).

which fee land is eligible for ARL designation complied with the GMA.[4] However, the Court determined that the County's decision not to designate any of the eligible acreage was not GMA complaint. On that point the Board's decision in EWGMHB Case No. 01-1-0019 was remanded to the Board.[5] The Court of Appeals decision was not appealed.

On August 8, 2016, Ferry County adopted Resolution 2016-04, which designated 2,939.98 acres of fee land as agricultural land of long-term economic significance to go with 499,073 acres of ARL designated and previously affirmed by this Court.[6] In making the additional designation, both the Department and the Board found that the County used the same eligibility criteria affirmed by this Court as GMA compliant in *Concerned Friends of Ferry Cty, supra.*[7] On September 20, 2016, appellants requested a briefing schedule and hearing in EWGMHB Case No. 01-1-0019 for the Board to review Ferry County Resolution 2016-04. On December 6, 2016, the Board ruled that it lacks subject matter jurisdiction to review Resolution 2016-04 and that Case 01-1-0019 was closed.[8] That ruling was also not appealed.

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[4] Id at ¶ 2.
[5] Id at ¶ 71.
[6] CR 1815 (FDO at 8 of 12).
[7] CR 1816 (FDO at 9 of 12).
[8] CR 138-140.

In the meantime, Ferry County had requested a determination of compliance from the Department pursuant to RCW 36.70A.060(d)(i).[9] The County initiated the process by publishing a Notice of Intent to seek a determination of compliance.[10] On February 26, 2016, the Department published a revised notice of a hearing to consider the statement of issues to be addressed in the requested determination of compliance.[11] The Department determined that the only compliance issue pertaining to this case was Ferry County's "Failure to designate a critical mass of commercially significant resource lands" based upon the holding in *Concerned Friends of Ferry Cty, supra.*[12] The Statement of Issue was not challenged.

On February 28, 2017, the Department issued its determination of compliance.[13] The Department reviewed and made findings regarding the county's adoption of Resolution 2016-04, concluding that the County had corrected the compliance issue identified in *Concerned Friends of Ferry Cty, supra* by designating 2,939.98 acres of fee land as agricultural land of long-term commercial significance using the eligibility criteria upheld by the Board and this Court.

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[9] CR 1553-54.
[10] CR 188 (citing WAC 365-199-030).
[11] CR 189.
[12] Id. See also, CR 1559 (Determination of Compliance)
[13] CR 1556-1562.

Appellants sought review of the Department's determination of compliance before the Board pursuant to RCW 36.70A.060(d)(iii). The following issue statement was presented to the Board for review.[14]

> Did Ordinance 2016-04's designation of agricultural lands of long-term commercial significance, the failure to properly zone and conserve these lands, and the Department of Commerce's Determination of Compliance comply with RCW 36.70A.020(8); RCW 36.70A.030(2), (10); RCW 36.70A.040(2), (4); RCW 36.70A.050(3); RCW 36.70A.060(1); RCW 36.70A.070; RCW 36.70A.103; RCW 36.70A.130(l)(d); RCW 36.70A.170(1); WAC 365-190-040(8)(d); or WAC 365-190-050 or is the designation or zoning consistent with the Ferry County Comprehensive Plan? See Ordinance 2016-04 pp. 16- 31 in Tab 2016-04, Ferry County Comprehensive Plan Future Land Use Map Agricultural Land of Long-Term Commercial Significance page 6 in Tab 20 I 6-04, the Ferry County zoning maps; and the State of Washington Department of Commerce, Determination of Compliance - Ferry County (Date - February 28, 2017) in Tab DCDC.

The Board issued a Final Decision and Order in which it ruled, as it did in EWGMHB Case No. 01-1-0019, that adoption of Ferry County Resolution 2014-20 deprived the Board of subject matter jurisdiction to review Resolution 2016-04. The Board also ruled that requirements for zoning and conservation were beyond the scope of the compliance issue before the Department, which was properly limited to the <u>designation</u> of

[14] CR 2-3.

agricultural resources lands. Finally, the Board ruled that Appellants failed to show that the determination of compliance was clearly erroneous.[15]

Appellants sought judicial review of the Board's FDO. Neither the Petition for Review ("PFR"), nor Appellants Brief, filed in Thurston County Superior Court, challenges the Board's ruling that it lacked subject matter jurisdiction to review Ferry County Resolution 2016-04.[16] Instead Appellants simply asked the Superior Court to review Resolution 2016-04, arguing that it does not maintain the agricultural industry as goal 8 of the GMA requires, and failed to conserve designated farmland as required by RCW 36.70A.060.[17] The Superior Court, ruling from the bench, found substantial evidence to support the FDO and no error in the Board's interpretation or application of law.[18] Appellants have now appealed to this court.

III. ARGUMENT

A. The Growth Management Hearings Board Correctly Ruled that it Lacked Jurisdiction to Review Ferry County Resolution 2016-04.

Appellants assert that Ferry County Resolution 2016-04 does not comply with various requirements of the GMA dealing with the

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[15] CR 1808-10 (Board FDO)
[16] Superior Court Record 2-26 (PFR at 4); Superior Court Record 94-126 (Appellants' Brief).
[17] Id.
[18] Superior Court Record 271-72 (Order Affirming FDO).

designation, zoning, and conservation of ARL. Even if that were true (it is not), Appellants cannot prevail because they failed to challenge the Board's determination that it lacks subject matter jurisdiction to review Resolution 2016-04—twice!

The rules of appellate procedure are clear: matters to which no error is assigned will not be considered on appeal.[19] On December 6, 2016, the Board ruled that it lacks subject matter jurisdiction to review Resolution 2016-04 and that Case 01-1-0019 was closed.[20] That ruling was not appealed. In the FDO now before this Court, the Board again ruled that it lacks subject matter jurisdiction to review Resolution 2016-04 because Ferry County was no longer required to plan under RCW 36.70A.040 when the resolution was adopted, having already resolved to become a partial planning jurisdiction.[21] Appellants did not assign error to the Board's decision not to review Resolution 2016-04 for GMA compliance. Yet, beginning on Page 9, Appellants spend 32 pages of their brief arguing to this Court that Resolution 2016-04 does not comply with the GMA. As explained below, Appellants' arguments are rife with error and misrepresentation, but that does not matter. The Hearings Board declined to consider whether Resolution 2016-04

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[19] *Sepich v. Dep't of Labor & Indus.*, 75 Wn.2d 312, 319, 450 P.2d 940, 945 (1969) Citing ROA 43 ("We will not consider alleged errors that have not been pointed out in the assignments of error.").
[20] CR 138-140.
[21] CR 1808-10.

complies with the GMA based on lack of subject matter jurisdiction. Appellants did not challenge the Board's ruling. Therefore, whether Resolution 2016-04 complies with the GMA is not properly before this court. Any and all argument directed at whether Resolution 2016-04 complies with the GMA should be ignored.

B. The Board Correctly Ruled that a Determination of Compliance is Limited in Scope to Outstanding Compliance Issues.

Appellants take the position that the County's request for a determination of compliance under the partial planning statute required the Department to start from scratch and review the County's entire development regulation and comprehensive plan for compliance with the entire GMA. That is not what the law requires.

As the Board ruled, the scope of Department review is "limited to outstanding findings of noncompliance established in an order from the board or court." [22] The administrative rules adopted for the purpose of completing a determination of compliance state:

> After taking the legislative action necessary to address the outstanding noncompliance issues, the county may apply to the department for a determination of compliance. A county must submit its application to the department by January 30, 2017.[23]

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[22] CR 1812 (FDO at 5 of 12 citing RCW 36.70A.060(1)(d)(i) and WAC 365-199-030.
[23] WAC 365-199-030(3)(a).

Thus, it is only outstanding compliance issues that are subject to Department review.

When the County passed Resolution 2014-20 to revert to partial planning, it was out of compliance on three issues, only one of which is pertinent to this case. Specifically, in a case challenging the County's designation of ARL, this Court held

> that the challenged county criteria for the designation of ARL are not clearly erroneous, but that the County's designation of ARL itself is contrary to the GMA, implementing Washington Administrative Code (WAC) rules, and the County's own comprehensive plan. Therefore, we reverse.[24]

The Court did not address conservation of ARL; it did not address zoning; it did not address compliance with the County's comprehensive plan; and it did not address any of the other myriad issues Appellants have attempted to place in front of this court for judicial review.

Previously, this court upheld the ARL designation by Ferry County of 479,373 acres of public land and land covered by long-term conservation easements.[25] Yet, Appellants consistently ignore that figure and have represented to this court, as they did to the lower court and Hearings Board that the County has designated less than one half of one percent of the land

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[24] *Concerned Friends of Ferry Cty. v. Ferry Cty.*, 191 Wn. App. 803, ¶2 (2015) (emphasis added).
[25] Id at ¶ 70.

in farms.[26] At a minimum Appellants' blatant misrepresentation of established facts undermines Appellants' credibility. Frankly, it wanders close to sanctionable conduct.

In the prior case, this Court took exception to the County's decision not to "designate any of the over 2,816 acres that its own criteria showed qualified as ARL." [27] It is upon that point, and that point alone that the County was found noncompliant and the case remanded. Accordingly, the County's failure to designate land that its criteria showed as qualified for ARL designation was the only compliance issue within the scope of consideration by the Department in responding to the County request for a determination of compliance. The Board correctly declined to consider any issues beyond the scope of the outstanding compliance issues in existence as the time Ferry County adopted Resolution 2014-20 and reverted to partial planning status.

C. The Department of Commerce Committed No Error in Granting the Determination of Compliance.

Under the GMA, a jurisdiction that is not in compliance with any of the listed GMA planning requirements when it adopts a partial planning resolution, must apply to the Department for a determination of

[26] Appellants Brief at 5.
[27] *Concerned Friends of Ferry Cty. v. Ferry Cty.*, 191 Wn. App. 803, ¶71 (2015).

compliance.[28] As shown above, the scope of that determination is properly limited to compliance issues outstanding at the time a jurisdiction reverts to partial planning. The legislature also provided that a person with standing may petition the Board for review of a determination of compliance within sixty days of the issuance of the decision by the department.[29] Appellants filed a PFR of the Department's determination of compliance. The Board ruled that Appellants failed to show the Department's determination of compliance was clearly erroneous. It is from that decision that this appeal was taken. Nothing else in Appellant's brief is properly before this court and nothing else should be considered.

The County applied for a determination of compliance in accordance with the Department's rules.[30] The Department provided notice to petitioners.[31] Three issues were stated in the Department's Notice of Joint Public Hearing published in the state Code Reviser on February 28, 2016.[32] Only one issue was pertinent: namely, "the failure to designate a critical mass of commercially significant agricultural resource lands."[33]

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[28] RCW 36.70A.060(1)(d)(i).
[29] RCW 36.70A.060(1)(d)(iii).
[30] CR 1761-1765.
[31] CR 1748-1751.
[32] CR 1775
[33] The PFR filed in this case does not implicate Issues 1 or 2, addressing the designation of Fish and Wildlife Habitat Conservation Areas, so those issues are not discussed in this brief.

On March 23, 2016, Futurewise commented in connection with the designation of ARL that "we remain concerned that the county is focusing excessively on designating state and federal grazing land. If the county continues to pursue this tack, the county will not meet the opt-out time limits."[34] Thus, Appellants participated directly in defining the issues for which a determination of compliance was requested in this case. They clearly understood that the issue identified by the Court of Appeals deals with the designation of ARL. On February 28, 2017, the Department provided notice to Appellants that the County's application for a determination of compliance was granted.[35]

Based on the foregoing, the Board correctly limited its review to whether the Department was clearly erroneous in determining that the County addressed its prior "failure to designate a critical mass of commercially significant agricultural resource lands."

D. The Department Correctly Determined that the County Designated a Critical Mass of Private Land as ARL for Hay Production as Directed by the Court of Appeals.

In response to the County's application for a determination of compliance, the Department correctly determined that the only compliance issue identified by the Court of Appeals was whether the County had

[34] CR 1754.
[35] CR 1767-1773.

corrected its earlier failure to designate any ARL deemed eligible under the County's adopted criteria. In addressing the designation of private land as ARL the Court of Appeals reviewed: 1) several findings of fact by the Hearings Board, 2) the criteria used by the County to determine the eligibility of privately owned farm land for non-prescriptive designation as ARL, and 3) the application of those criteria under the County's development regulations. As the following discussion of these three elements shows, the Court of Appeals' holding was limited to the designation of private land as ARL for hay production.

1. The Only Issue the Department was Required to Consider is the Designation of a Critical Mass of ARL for Hay Production.

The Court looked at the County's Comprehensive Land Use Plan, which states in part that "hay is produced on private lands to sustain livestock though the balance of the year" (i.e., winter).[36] Based on that statement, the Court overturned the Board's finding that "hay is not commercially significant" reasoning that "whatever its significance considered in isolation, hay production is an essential element of the County's major agricultural industry" (i.e., cattle ranching).[37] The Court then concluded that "[u]nless the County's livestock industry itself is

[36] *Concerned Friends*, 191 Wn. App. at ¶28
[37] *Id.*

deemed not to be commercially significant, the production of hay needed to sustain it must also be deemed commercially significant."[38]

The Court declined to disturb other Board findings challenged by Appellants, including that: 1) Appellants' proffered figure of 749,452 acres in farms includes the 478,968 acres of public grazing land already designated as ARL by the County, 2) that there are only 25,215 acres of privately owned farm land in the County, and 3) that the County ranks last in the state in market value of crop and livestock production.[39] Indeed, the Court specifically upheld the Board's finding "that the County's viable crop land is quite limited due to poor soils, severe winters, short growing season, and sparse rainfall."[40] Additionally, the County was not found out of compliance for deciding not to designate ARL for purposes other than hay production. Thus, the issue in this case is limited to the designation of private land as ARL for hay production needed to sustain the cattle industry during the winter months.

2. The Court of Appeals Ruled that the Criteria Used by the County for Designating ARL Complies with GMA.

Much of Appellants' brief is directed at rehashing matters already decided and not properly before the Board, or this Court. For example, the

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[38] *Id.* at ¶29.
[39] *Id.* at ¶¶ 29-30, 70.
[40] *Id.* at ¶ 60.

Court of Appeals agreed with the Board that the point system used by the County to identify land suitable for hay production complies with GMA, commenting that Futurewise's contrary position "borders on the frivolous."[41]

The Court reviewed the scoring criteria used by the County to identify fee land eligible for designation as ARL. Those criteria include soil classification, availability of public services, proximity to urban growth areas, predominant farm size, proximity to markets, and history of nearby land use. In each instance, the Court ruled that the criteria comply with GMA and the County's Comprehensive Plan.[42] It is important to note that the Court expressly considered the manner in which the County assigned points to soils by classification, including Class III and IV soils that are present in the County. Ultimately, the Court concluded the "criteria, in other words, were the tool most suited to identifying lands suitable for hay production."[43]

Appellants contend that the soils data used to rate farm and ranch land is incomplete, arguing specifically, as it did last time before the Court of Appeals, that the County did not properly score Class III and Class IV

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[41] *Id.* at ¶ 35.
[42] *Id.* at ¶¶ 40, 44, 51, 54, and 57
[43] *Id.* at ¶ 78

soils that are not also prime soils. Appellants contend that other ratings are incomplete. As noted, the Court already addressed soil classifications.

More upsetting than Appellants' effort to re-litigate matters already decided, is their unfounded insinuation that the County made changes to the rating system previously approved by the Board and the Court of Appeals on review. Appellants (either deliberately or carelessly) point to the County's response to comments to support this insinuation. The comment response merely explains why the County refused to revisit the scoring method already approved by the Court of Appeals. Appellants received a copy of the proposed amendments to the existing development regulation.[44] In the process of amending Ordinance 2013-05, no changes were made to the County's rating system. A copy of the draft amendments adopted in Ordinance 2016-04 is included in the record so the Court can take notice.[45]

The first factor in the Department's regulations for determining commercial significance of agricultural land is to identify soils classified as prime or unique.[46] There are no unique soils in Ferry County.[47] The County's inventory of prime soils on free lands is 21,360 acres as stated in the recitals of Ordinance 2016-04. That number is unchanged and is

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[44] CR 1648-1649.
[45] CR 1648-1673.
[46] WAC 365-190-050(3)(c)(i).
[47] CR 1584.

identical to the inventory stated in the earlier version of the same development regulation reviewed by the Court of Appeals.[48] It is also identical to the sum of acres reported in the body of the ordinance previously reviewed by the Board and by the Court of Appeals, none of which were amended.[49] In advancing this argument, Appellants have gone from bordering on frivolous to bordering on misrepresentations before a tribunal. This Court should not consider arguments related to matters previously decided nor be enticed in to doing so by misleading arguments that are not supported in the record.

3. The Department Correctly Granted the County's Application for a Determination of Compliance Because Ordinance 2016-04 Designates a Critical Mass of ARL for Hay Production to Sustain the Cattle Industry

The Court of Appeals also reviewed the County's use of a "Block Group Minimum" of 500 acres. The Court determined that use of a Block Group Minimum to minimize scatter is not clearly erroneous and is consistent with the GMA and the County's Comprehensive Plan.[50] However, the Court found non-compliance because use of a 500-acre Block Group Minimum resulted in no additional designations of ARL beyond the

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[48] CR 1654.
[49] CR 1660-1662.
[50] *Concerned Friends*, 191 Wn. App. at ¶ 63.

479,373 acres designated by prescription. The reason is geography. Most of the higher scoring soils occur in narrow river valleys where most of the population resides. As a result, none of the acres identified under the scoring criteria as "most suitable for hay production" occur in Block Group Minimums of 500 acres or more.[51]

Applying these facts to the County's Comprehensive Plan, the Court concluded that the County's decision not "to designate the land which its criteria show should be designated, when that potentially jeopardizes a critical component of the jurisdiction's principal agricultural industry" was clearly erroneous.[52] Importantly, the Court of Appeals did nothing to disturb the prescriptive designation of 479,373 acres of public grazing allotments and private land covered by long-term conservation easements as ARL.[53] That designation remains in effect and is unchallenged by Appellants in this case.[54]

In the case reviewed by the Court of Appeals it was noted that 2,816 acres scored 5 points or more under the County ARL criteria. The Court cautioned the County that simply designating those acres as ARL may not satisfy the requirements of GMA.[55] The County did not do so. Instead, the

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[51] *Id.* at ¶ 79.
[52] *Id.*
[53] *Concerned Friends*, 191 Wn. App. at ¶70.
[54] CR 1740-1741 (See Future Land Use Maps at 54 and 55 of 57)
[55] *Concerned Friends*, 191 Wn. App. at ¶81.

County set about determining how much hay production is needed to sustain the population of cattle typically overwintered in Ferry County. The County found that 2,989 cattle are overwintered. This number was developed though a survey process. The County first obtained a list of cattle producers from the cattleman's association.[56] In addition, the County obtained a list of grazing allotment holders on state and federal lands in the County.[57] The survey was prepared and sent to cattle ranchers in Ferry County asking for information about the number of cattle grazed, the number of cattle overwintered, the amount of hay grown and the amount of hay imported or exported.[58] Over 70% of the surveys were returned and the results were compiled.[59] The County then extrapolated the survey results to account for those cattlemen that did not respond to the survey in order to arrive at a final number of cows overwintered.[60] The County also found, based on information in the record, that a cow requires 24# of hay per day to maintain weight.[61] And, each acre in Ferry County is capable of producing 2 tons of hay annually.[62] Using these numbers the County determined that 2,959

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[56] CR 1586-1587.
[57] CR 1589-1615.
[58] CR 1617-1620.
[59] CR 1622-1624.
[60] CR 1691-1693 (finding of fact #9)
[61] CR 1631-1640.
[62] CR 1645-1646.

acres are required to produce hay used to sustain cattle typically overwintered in Ferry County.[63]

The County did not simply designate the 2,816 acres that scored five points or more as ARL because it was not enough acreage to satisfy the critical mass for sustaining the cattle industry and because of scatter. Instead, the County tested various combinations of point totals and Block Group Minimums to arrive at the calculated critical mass of acres.[64] This process was fully explained to Appellants:

> Attached are copies of county maps (north half and south half) showing all land that scored at +4 and +5 under that system. The 2816.85 acres identified in Table B of Ordinance No. 2013-05 is shown in green.
>
> The scoring system applied by the County is unchanged. In other words, the same lands were considered. The County went through the land that scored +4 and eliminated approximately 527 that is not being used for agricultural purposes. The County then applied a block group requirement of 100 acres because that equated best to the critical mass of acreage being used or capable of being used for hay production that was calculated as necessary to maintain or enhance hay protection as an accessory to the Cattle Industry. The County looked as larger block sizes but that reduced the total below the critical mass. The County also looked at smaller block groups including none, but that captured small and widely scattered parcels that would be difficult to conserve over the long term. You already have the resulting map, identifying something on the order of 2,939 acres.[65]

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[63] CR 1691-1693 (finding of fact #9)
[64] CR 1642-1643.
[65] CR 1675 (emphasis added).

The scope of the County's work is reflected in the Planning Director's log.[66] Ultimately, the County identified parcels totaling 2,939.98 acres of additional private lands and designated them as ARL, to go with the 479,373 previously designated, for a total of 482,717.98 acres of ARL in Ferry County.[67]

Despite having this information, Appellants now allege that the County used a scoring system different than what was approved by the Court and that the County designated less than half a percent of the 792,250 acres of land in farms in Ferry County.[68] The scoring system has already been addressed. Also noted above is the fact that the Court of Appeals declined to disturb the Board's earlier finding that Appellants' proffered figure of 749,452 acres in farms includes the 478,968 acres of public grazing land already designated as ARL by the County.[69] Thus, Appellants' contention regarding the percentage of land designated as ARL is yet another misleading effort to re-litigate that which has been decided. Ferry County has designated 64% of the acres in farms as ARL (482,717.98/749,452). What is more, the County has fully addressed the compliance issue by designating a critical mass of ARL, including land

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[66] CR 1679-1685.
[67] CR 1626-1629.
[68] Appellants' Brief p. 5.
[69] *Concerned Friends*, 191 Wn. App. at ¶ 30.

needed for hay production to support the cattle industry as the Court of Appeals directed.

As shown above, the only compliance issue the County was required to address was the "designation" of ARL on private land for hay production.[70] Appellants argue that the County has failed to comply with other elements of GMA. For example, after creating unnecessary confusion by combining some of the ARL previously affirmed by the Court with newly designated ARL, Appellants assert that the newly designated acres (2,939.98) does not "enhance" agricultural industries.[71] In their effort to expand the scope of the compliance issue, Appellants deliberately conflate the GMA goal of "maintaining and enhancing natural resource based industries" with the GMA requirement providing for resource lands to be "designated under RCW 36.70A.170."[72] It is well established that GMA goals do not create substantive requirements.[73] Obviously, "industries" is not the same as "lands." It follows that the **goal** to "**maintain and enhance natural resource-based industries**" under RCW 36.70A.020(8) is different from the **requirement** to "**designate**" **ARL** under RCW 36.70A.170. The only thing the Court of Appeals required Ferry County to

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[70] *Id.* at ¶1
[71] Appellants' Brief at 10.
[72] Compare RCW 36.70A.020(8) and RCW 36.70A.170(1).
[73] *Quadrant Corp. v. State Growth Mgmt. Hearings Bd.,* 154 Wn.2d 224, 246, 110 P.3d 1132, 1143 (2005)

do was designate sufficient land for hay production in support of the cattle industry to achieve a critical mass of ARL. The Department properly identified the narrow compliance issue and properly granted the County's application for a determination of compliance after confirming that the County's action is adequately supported by the evidence in the record. There is no error in the Department's action.

E. The County's Zoning Regulations are Not at Issue in this Case.

Appellants also contend that the Department erred because the County did not adopt zoning maps, so its development regulation does not comply with the requirement to "conserve" resource lands under RCW 36.70A.060(1)(d).[74] This argument fails. The Court of Appeals decision addressed designation of ARL, not zoning or conservation.[75] As the Supreme Court explained "a future land use map [depicts] how property is designated in the jurisdiction; the designations guide how property may thereafter be zoned by the jurisdiction."[76] Because there is no conclusion of noncompliance with zoning or conservation requirements in the Court's decision, and no PFR was timely filed by Appellants, the Board could not review Ordinance 2016-04 for compliance with the conservation

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[74] Appellants' Brief at 24.
[75] *Concerned Friends*, 191 Wn. App. at ¶ 1.
[76] *Stafne v. Snohomish Cty.*, 174 Wn.2d 24, 31, 271 P.3d 868, 871–72 (2012).

requirement even if it had jurisdiction to do so. By the same token, the Department was not required to review the County's action for compliance with any issues for which no conclusion of non-compliance was entered prior to the County's reversion to partial planning.

CONCLUSION

Appellant's contention that the Department did not comply with GMA in granting the County's application for a determination of compliance is without merit. Appellants' refusal to acknowledge established facts and their persistent effort to relitigate matters previously decided is less than meritless. Ferry County followed the law and resolved the compliance issues that were outstanding when the County reverted to partial planning. The Department of Commerce followed the law and granted a determination of compliance. For reasons stated herein the County respectfully requests that the Board's FDO be affirmed.

Respectfully submitted this 6th day of May, 2019.

By: Peter G. Scott, WSBA No.: 31712
Attorney for Appellee, Ferry County

CERTIFICATE OF SERVICE

The undersigned declares on penalty of perjury under the laws of the State of Washington that on this 6th day of May, 2019, the undersigned caused the electronic original and true and correct copies of the foregoing Brief of Appellee, Ferry County, to be served on the persons listed below in the manner shown:

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Signed and certified this 6th day of May, 2019.

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