No. 46305-9-II

(Thurston County Superior Court Case No. 14-2-00496-3)

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

CONCERNED FRIENDS OF FERRY COUNTY and
FUTUREWISE,

Petitioners,

v.

FERRY COUNTY and the
GROWTH MANAGEMENT HEARINGS BOARD,

Respondents.

BRIEF OF RESPONDENT FERRY COUNTY

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A. INTRODUCTION

Ferry County is a small, rural county located in Northeastern Washington. The Southern half of the County consists of the Eastern portion of the Colville Confederated Tribes Reservation. The County borders Canada to the North, has mountain ranges on its East and West sides and is bordered by the Columbia River to the South. The County is not naturally subject to the provisions of the Growth Management Act, but chose to make itself subject to the provisions of that Act by opting into the GMA. This was largely due to incentives offered by the State to this small, sparsely populated, rural County. In the time since the County opted into the GMA, it has striven to comply with the requirements of that Act, and in this case has managed to establish its compliance with the Agricultural Resource Lands requirements of the GMA. The County is committed to the protection of agriculture in the County and has enacted appropriate regulations to do so.

B. RESPONSE TO ASSIGNMENTS OF ERROR

1. Response to Assignment of Error 1

The Board did not err in concluding that the "Criteria for Designating Agricultural Lands of Long Term Commercial

Significance in Ferry County, Washington" are consistent with the Ferry County Comprehensive Plan.[1]

Issue 1: Is the Board's conclusion that the "Criteria for Designating Agricultural Lands of Long Term Commercial Significance in Ferry County, Washington" a proper interpretation or application of the GMA and supported by substantial evidence? Yes.

2. Response to Assignment of Error 2

The Board did not err in concluding that the "Criteria for Designating Agricultural Lands of Long Term Commercial Significance in Ferry County, Washington" complied with the GMA and the Minimum Guidelines to Classify Agricultural Lands.

Issue 2: Is the Board's conclusion that the "Criteria for Designating Agricultural Lands of Long Term Commercial Significance in Ferry County, Washington" are consistent with the GMA and the Minimum Guidelines to Classify Agricultural Lands a proper interpretation or application of the GMA and supported by substantial evidence? Yes.

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[1] AR 7505

3. Response to Assignment of Error 3

The Board did not err in concluding that Ferry County properly applied the "Criteria for Designating Agricultural Lands of Long Term Commercial Significance in Ferry County, Washington" and the GMA and the Minimum Guidelines to Classify Agricultural Lands in its designation of agricultural land of long-term commercial significance.

Issue No. 3: Is the Board's conclusion that Ferry County properly applied the "Criteria for Designating Agricultural Lands of Long Term Commercial Significance in Ferry County, Washington" in its designation of agricultural land of long-term commercial significance a proper interpretation or application of the GMA and supported by substantial evidence? Yes.

Issue No. 4: Is the Board's conclusion that Ferry County complied with the GMA and the Minimum Guidelines to Classify Agricultural Lands a proper interpretation or application of the GMA and supported by substantial evidence? Yes.

4. Response to Assignment of Error 4

The Board did not err in issuing the following Finding of Fact in its Order Finding Compliance:

> Ferry County reports that there are a total of 749,452 acres of land in agricultural production in Ferry County, with 459,545 acres in National Forest grazing allotments and 19,423 acres of land representing state forest grazing leases. Of the total lands in agricultural production, an estimated 25,215 are privately owned.

Issue 5: The Board's conclusion that the National Forest Grazing allotments include 749,452 acres and that there are an estimated 25,215 acres of privately owned farmland in Ferry County is supported by substantial evidence.

5. Response to Assignment of Error 5.

The Board did not err in finding that Ferry County ranked last as to the market value of crop and livestock products and "hay is not commercially significant but is accessory to the livestock industry."

Issue 6: The Board's finding that Ferry County ranked last as to the market value of crop and livestock products and that has is not a commercially significant crop is supported by substantial evidence.

C. FACTS

In Ordinance No. 2013-03, Ferry County adopted the Ferry County Comprehensive Plan Future Land Use Map and thereby designated Agricultural Land of Long Term Commercial

Significance (ARL).[2] The ARL lands were designated pursuant to criteria set forth in Ordinance No. 2013-05.[3] Ferry County applied the methodology and criteria to the lands in the County, and designated 479,373 acres as ARL.[4] This is more than one-third of the total land mass of the County.

In Ordinance 2003-05, Ferry County provided a section entitled Background and Analysis Information which describes the nature and history of agriculture in Ferry County.[5] The next section in the Ordinance is entitled Criteria for Designating Agricultural Lands of Long-Term Commercial Significance in Ferry County, Washington, and discusses the criteria developed for designation as ARL. [6] In the section that describes the criteria developed to designate ARL, Ferry County each applicable section of the Washington Administrative Code, explains how it applies to Ferry County, and discusses how each criteria was applied by Ferry County. The County used a point system to provide an objective, verifiable and repeatable procedure of determining what lands

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[2] AR 6356, Ferry County Comprehensive Plan Future Land Use Map, Page 6
[3] AR 6376-77, Ferry County Development Regulations Ordinance No. 2013-05, pp. 30-31.
[4] AR 6376-77, Ordinance No. 2013-05, PP. 30-31.
[5] AR 6362-6364.
[6] AR 6364-6376.

would be designated as ARL. This is not the first time Ferry County has used this system, and the Board has previously accepted this procedure but requested modification to particular criteria used in the point system.[7] In the ordinances currently challenged, Ferry County responded to the Order of the Board and modified the criteria, but not the methodology, and was found to be in compliance with the GMA. This Court should also find the County in compliance, as it is the burden of the Appellants to prove the County's ordinances are not valid, they did not meet that burden below, and they cannot meet that burden here.

According to the Census of Agriculture, the number of farms in Ferry County increased from 207 in 2002, to 232 in 2007.[8] 749,452 acres were reported as "land in farms" in 2007, which is defined to include primarily lands used for "crops, pasture or grazing", but also includes "woodland and wasteland" and "in many instances, an entire American Indian Reservation was reported as one farm." AR 6415-16, 2007 Census of Agriculture, Part 47, pp. B-14-15. Thus, the term "land in farms" does not represent land in production or even land capable of production. It is either land that is owned as

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[7] See, Order Finding Compliance, referencing February 8, 2013, Compliance Order.

[8] AR 6390, 2007 Census of Agriculture, Table 8, p. 291

part of what the Department of Agriculture identifies as an operating farm, or it is Reservation land.[9] It is not clear from the 2007 Census of Agriculture how much of the Colville Indian Reservation is considered as part of the "land in farms" in Ferry County, nor is it clear which of the 232 farms identified in the 2007 Census of Agriculture are on the reservation and which are not. Nor is it clear how much of the 749,452 acres of land in farms is actually in agricultural production or can be used for agricultural production. This information may or may not be available to the Department of Agriculture, but is listed only as (D) in the Census tables. AR 6390, 2007 Census of Agriculture, Table 8, p. 291.

D. ARGUMENT

1. Standard of Review

The APA governs this Court's review of the Growth Board's decision. RCW 36.70A.300(5). The interaction between the GMA and the APA creates a unique standard of review — deference is owed the County's legislative decision, and not the Growth Board's Decision. *See, e.g., Bainbridge Citizens United v. Washington State*

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[9] Id.

Dept. of Natural Resources, 147 Wn. App. 365 (2008); *Sherman v. State*, 128 Wn.2d 164 (1995).

a. *Deference is Due the County's Legislative Choices in GMA Implementation*

One of the core premises of the GMA is the principle of deference to local decision making. This principle manifests itself in several forms. Most basically, the Legislature has long dictated that "comprehensive plans and development regulations, and amendments thereto, adopted under [the GMA] are **presumed valid** upon adoption." RCW 36.70A.320(1) (emphasis added). As a corollary principle, the Legislature placed "**the burden on the petitioner** [before the Growth Board] to demonstrate that any action taken by a state agency, county, or city under [the GMA] is **not** in compliance with [the GMA]." RCW 36.70A.320(2) (emphasis added).

The Legislature further mandated that "[t]he board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in light of the goals and requirements of [the GMA]." RCW 36.70A.320(3) (emphasis added). Growth Boards are statutorily obligated to defer to local

decision making, rather than imposing their own policy preferences. RCW 36.70A.320(3).

In 1997, the Legislature re-emphasized that the Growth Boards were not to impose their own policy preferences, but must defer to local decision-making:

> **The legislature intends that the board applies a more deferential standard of review to actions of counties and cities. 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 their growth...** Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances... **[T]he ultimate burden and responsibility for planning, harmonizing the planning goals of [the GMA], and implementing a county's or city's future rests with that community.**

RCW 36.70A.3201 (emphasis added).

The Legislature was not alone, however, in recognizing that local control had been too often eroded by the Growth Boards. After analyzing the importance of RCW 36.70A.3201, the State Supreme Court stated as follows:

> 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 in general .... **Thus a board's ruling that fails to apply this "more deferential standard of review" to a county's action is not entitled to deference from this court.**

Quadrant Corp. v. Wash. State Growth Mgmt. Hearings Bd., 154 Wn.2d 224, 238 (2005) (emphasis added). In other words, although appeals under the APA generally require the court to accord deference to the agency's decision, that is not the case with appeals from a Growth Board decision.

The Supreme Court re-affirmed this conclusion, holding that Growth Boards, in considering county planning choices, must give deference to choices that are compliant with the GMA. In response to an argument that a county needed to have more than anecdotal evidence to support a decision, the Court of Appeals ruled boards "must consider anecdotal evidence provided by counties" and "must defer" defer to local planning decisions as between different planning choices that are compliant with the GMA. *Kittitas County v. E. Wash. Growth Mgmt. Hearings Bd.*, 172 Wn.2d 144, 156, 256 P.3d 1193 (2011).

b. Specific Standard of Review

Under the APA, a reviewing court should sustain the Board's ruling unless:

> (d) The agency has erroneously interpreted or applied the law;
>
> (e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under [the APA];
>
> ...
>
> (i) The order is arbitrary or capricious;

RCW 34.05.570(3).

Thus, like the Growth Board, this Court defers to the County's planning action unless the County's action is clearly erroneous. *Quadrant Corp.*, 154 Wn.2d at 238. Issues of law are reviewed de novo. *Honesty in Envtl. Analysis & Legislation (HEAL) v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd*, 96 Wn. App. 522, 526 (1999). Findings of fact are reviewed by whether substantial evidence supports the Growth Board's findings. *Id.* Substantial evidence is that sufficient to persuade a fair minded, rational person of the truth of the matter. *Id.*

2. The Board did not err in concluding that the "Criteria for Designating Agricultural Lands of Long Term Commercial Significance in Ferry County, Washington" are Consistent with the Ferry County Comprehensive Plan.

Ferry County used a point system for designating ARL to ensure there is a repeatable, verifiable and objective method of determining how each WAC criteria was applied to each and every parcel of land. The Appellants have provided no authority that holds use of a point system is inappropriate, and in fact the administrative record shows that they did not appeal the County's use of a point system in the predecessor to Ordinance 2013-05, nor did they appeal the Board's acceptance of the use of a point system. Having lost below, and having no authority upon which the base an outright challenge to a point system, the Appellants argue that the use of a point system is not required by Ferry County Comprehensive Plan Policy 7.4.30(7) and (9) or 7.4.31.[10] However, nothing in 7.4.30(7) or (9) prohibit the use of a point system, nor does anything in 7.4.31, and the Board so found. The use of a point system to provide an objective, verifiable and repeatable method of applying WAC criteria to the lands in the County is deemed valid upon adoption.[11] The burden was on the appellants below to show how the use of a point system was in conflict with the County's

[10] Appellant's Brief at p. 12, citing AR 6343
[11] RCW 36.70A.320(1).

Comprehensive Plan provisions, and they failed to meet that burden.

In their brief, Appellants say that a particular piece of land was not identified as ARL, and therefore the use of a point system is inappropriate.[12] This, however, is conclusory and is not the sort of analysis required to overcome the presumption of validity. Similarly, on p. 13 of their brief, Appellants say that giving a zero of lands within a quarter mile of a LAMIRD is improper, but they fail to mention that this issue was addressed in the Board's prior Order on Compliance, and that the application of a zero was at the direction of the Board because the County had previously applied a -1 to such lands. The County agreed with the Board that proximity to a LAMIRD had no effect on nearby lands and removed the -1 designation. This is entirely consistent with Policy 7.4.30(7) and (9) and 7.4.31 and with the GMA. The Appellants' argument that because a particular parcel was not included, the entire methodology is in conflict with broadly stated policies simply does not follow. To overcome the presumption of validity, the Appellants must show **how** a particular criteria conflicts with the

[12] Appellant's Brief at p. 12

Comprehensive Plan, or **how** a particular methodology conflicts with the Comprehensive Plan, and that is what is missing from the Appellant's first Assignment of Error.

3. **The Board's Conclusion that the "Criteria for Designating Agricultural Lands of Long Term Commercial Significance in Ferry County, Washington" is a Proper Interpretation or Application of the GMA and is Supported by Substantial Evidence.**

The Board was aware of the history of the County's creation of the point system and how the methodology was modified at the direction of the Board over several appearances before the Board. The Board was also aware of how the criteria were modified by the County at the direction of the Board and at the urging of the Appellants. In the previous round of Compliance hearings, Ferry County was directed to modify the criteria applicable to lands in proximity to a LAMIRD to remove a -1. The County did as directed, removed the -1 criteria for lands that are in proximity to a LAMIRD, so lands no longer receive a negative impact on their likelihood to be designated as ARL if they are in proximity to a LAMIRD, and the Appellants have not shown how that process is inconsistent with either the County's policies or the GMA. There is evidence in the record that supports the finding of the Board that the County's

criteria are not shown inconsistent with the County's Comprehensive Plan.

The same analysis applies to the Appellant's argument against the County's use of a "block group" in that the County used this criteria previously, the Board approved the concept but not the size, so the County reduced the size of the block group. The burden is on the Appellants to show how the use of a block group is inconstant with the County's Comprehensive Plan, and they have failed to do so.

The Appellants consistently argue that Ferry County designated 450 acres of private land as ARL and that this somehow means the County has violated the GMA. However, the methodology adopted by the County was developed over time as the result of repeated challenges to the County's land use regulations. It allows for a verifiable, repeatable and objective method of applying defined criteria to parcels of land. The Board has approved not only of the method, but also the criteria. Notable one of the criteria is not private ownership. Who owns the land is not a criteria that is approved by any RCW, WAC, Ferry County Policy or Ferry County Land Use Regulation. The Appellants argue that Ferry County's use of a point system is improper because it is

not **required by name** in the Comprehensive Plan, then complain that we have not designated more private lands knowing that we cannot make that part of the criteria. The Board chose not to make the County adopt a criteria that would be unlawful to use (private ownership vs. public ownership), and substantial evidence supports the Board's decision.

a. *Criterion One, Soil Classification, is a Proper Interpretation and Application of WAC 365-190-050*

Ferry County used USDA land capability land classes I through IV for this criterion, but only for those that are present in the County. For example, there are no Class I soils in Ferry County.[13] Thus, no points were allocated for Class I soils. Appellants argue that this is improper, but how is it inappropriate, improper or in conflict with the GMA or the County's Comprehensive Plan if it chooses not to assign a point factor to lands that do not exist in the County? No parcel can be pointed to that should have had such a point criterion properly applied to it, and no parcel can be pointed to that had such a point criterion inappropriately applied to it.

[13] AR 6388.

The Appellants argue that Class IV soils, in particular Red Silt Loam, should be given points even if not irrigated. However, the County provided a factual basis for its decision to allocate points to Class IV soils only if irrigated (AR 6368), and that is substantial evidence that supports the Board's decision. Class IV soils are marginal soils, and have very severe limitations on their use as agricultural land, including steep slopes, severe susceptibility to wind or water erosion, severe past erosion, shallowness, low moisture-holding capability, waterlogging, flooding, high salinity or moderately adverse climate.[14] The Appellants do not disagree that there are severe limitations on Class IV soils, and they do not point to a lack of substantial evidence to support the Board's approval of this criterion.

b. *Criterion Three, Availability of Public Services, is a Proper Interpretation and Application of WAC 365-190-050(3)(c)(iv)*

Criterion Three does not penalize a parcel because it is in proximity to a LAMIRD. Giving a parcel a zero on one criterion does not give it a zero for a final score. It just means that particular criterion has no effect on the final score.[15] As stated above, the

[14] IAR 6368.
[15] AR 6364-74

administrative record shows that this particular criterion did at one time provide a -1 for proximity to a LAMIRD, but the negative effect was removed at the order the Board. The arguments made by Appellants, that proximity to a LAMIRD should not negatively affect the potential for designating a nearby parcel as ARL were accepted by the Board and the County, and the negative impact was removed. Substantial evidence supports the Board's decision to approve the modification of this criterion.

c. *Criterion Four, Proximity to an Urban Growth Area, Is Supported by Substantial Evidence.*

As with the criterion applicable to proximity to a LAMIRD, the criterion for proximity to a UGA does not apply a negative factor to potential ARL designation.[16] The Board properly determined that the County had considered the potential areas where land development may occur, knew the history of this particular criterion, and properly found that the burden was on the Appellants to show that the presumptively valid County land use regulation was invalid. The Board found that the County had carefully considered how this criterion was to be applied. The record at AR 6367-68 provides substantial evidence supporting the Board's decision.

[16] AR 6370.

d. *Criterion Five, Predominate Parcel/Farm (Ownership) Size, is a proper Interpretation and Application of WAC 365-190-050*

As indicated in the Board's decision below, the Appellants failed to point to any parcel that was improperly excluded from consideration as a result of this criterion. This is important now, just as it was below, because the Appellants rely on national averages regarding rented land and broad claims that "over a certain size there is no real connection between farm size and long-term commercial significance."[17] To successfully challenge this criterion, the Appellants must show how it conflicts with WAC 269-190-050, and they have failed to do so. Every county in this State differs from every other county, and it is for this reason that the local government is responsible for determining how the GMA and its enacting regulations are to be applied in each county. Here, Ferry County did not exclude all lands under 20 acres, as the Appellants claim, but parcels under 20 acres in size that had already been platted for development. AR 6370. This is not a subtle distinction, yet it is one the Appellants gloss over time after time. The Board found that in the unique circumstances of Ferry County, "in contrast

[17] Appellant's Brief at 27.

to other areas of Washington State" agriculture in Ferry County is limited by geography, dependence on federal and state grazing lands and distance to source of inputs and markets.[18] Substantial evidence supports the Board's finding.

e. Criterion Six, Proximity to Markets/Services is Supported by Substantial Evidence.

The Appellants urged the Board to find Criterion Six invalid, and the Board properly pointed out that the burden was on the Appellants to show how the County's analysis was flawed. In Ordinance 2013-05, Ferry County explains how this criterion applies to agriculture in Ferry County. Due to the unique geography of Ferry County, which includes mountain ranges to the East and West, the Columbia River to the South and Canada to the North, Ferry County is isolated. To its East and West are Stevens and Okanogan Counties, which are not major population centers. The Board found that it was appropriate for Ferry County to consider the costs associated with shipping to and from market, over mountain passes, in the development of this criterion. The Appellants argue against this, but they do not deny that costs are greater the further one is from market, and they do not show how a +1 point if one is

[18] Order Finding Compliance, p. 13.

within 50 miles from market disadvantages any parcel in consideration for ARL. If the parcel is more than 50 miles from market it does not receive the +1, and the Board's decision to approve this criterion is supported by substantial evidence.

f. Criterion Seven, History of Nearby Land Uses, is Supported by Substantial Evidence and is a Proper Application of the GMA.

The Appellants urge that the criterion is inconsistent with the WAC that it very nearly mirrors, yet the examples given are of the application of the criterion, not how it is inconsistent with the GMA or the WAC. Even looking at this as an as-applied argument, the Appellants fail. The Appellants argue that Criterion Seven is used to apply a -1 to any land that is adjacent to a house. Yet, they failed to establish before the Board that this was true or that a single parcel was given a -1 when it should not have been given a -1. The burden was on the Appellants below and they failed to meet their burden. They fail to meet there burden here as well.

g. Other Factors Considered: Block Group

Ferry County did not develop the block group criterion in this round of Compliance Hearings. As alluded to by Appellants, this has been a part of the administrative record below and has been modified until the Board has found it to be GMA compliant. The

Appellants are forced to admit that block groups have been accepted as appropriate land use tools in *Manke Lumber Co. Inc., v. Diehl*, 91 Wn.App. 793, 807-08, 959 P.2d 1173, 1181, rev. den. 137 Wn.2d 1018, 984 P.2ed1033 (1999) and elsewhere, so the only argument presented by Appellants is that the use of a block group in inconsistent with the Ferry County Comprehensive Plan. However, a Comprehensive Plan is a broad, policy document and does not contain all the nuts and bolts of implementation. That is what development regulations are for, and that is where the block group is listed. It appears as a criterion among the other criterion used by the County to determine how to implement the policy contained in the Comprehensive Plan. To simply assert that a provision is inconsistent with the Comprehensive Plan simply because it is not called for by name in the Comprehensive Plan is not enough. An actual conflict must be shown. WAC 365-196-210(7) defines consistency, and was quoted by the Board below. To be consistent, the challenged provision cannot be incompatible with another provision. The County worked with the Department of Commerce to develop its land use regulations, including the block group, and provided the Board with the record of those discussions, including the development and sizing of a block group both

generally and specifically in Ferry County. The Board found that the use of a block group was permissible in the last round of Compliance Hearings, but urged that it be made smaller. This round, the County again went through the exercise suggested by the Department of Commerce, using the guidance of the Board, and developed a smaller block size intended to prevent the creation of small, scattered parcels designated ARL. The Board's decision to uphold the County's action is supported by substantial evidence.

4. Ferry County Has Properly Applied the County's Designation Criteria and Complied with the GMA and the Minimum Guidelines in Designating Agricultural Lands of Long-Term Commercial Significance.

The Appellants argue that Ferry County should not designate federal grazing lands as ARL, despite the fact that federal grazing leases are long-term leases, are clearly agricultural in nature, and comprise the majority of agriculture in Ferry County (cattle raising). Ferry County strongly desires to protect agriculture within the County, especially long-term, commercial agriculture necessary to provide livelihoods for Ferry County citizens and food for citizens here and elsewhere. The County could have decided to ignore the clear, factual data before it and not designate the single largest source of agriculture in the County, but it would be improper

to do so. The County has chosen to recognize the long-term nature of the grazing leases, and their agricultural nature as well. This is consistent with the GMA and with the County's Comprehensive Plan. The Board recognized and agreed with the County's argument, and there is substantial evidence in the record supporting the County's decision to protect agriculture in this fashion.

5. The Weighting of Criteria for Assessing Long-Term Commercial Significance is Not Clearly Erroneous.

The Appellants intentionally misread and misquote a portion of Ordinance 2013-05 to support their argument. At page 39 of Appellant's brief, they indicate that the County has left a word out of a clearly stated provision, when it has not. The Appellants also misstate what the section clearly means. The quote at issue is this:

> A weighting of criteria that is calculated to assure that no lands are designated does not provide significant "critical mass" to assure the viability of the agricultural industry over the long-term.[19]

The meaning of this statement is both clear and as nearly opposite what the Appellants claim as possible. This sentence simply means that the County must designate ARL in order to assure the viability

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[19] AR 6374.

of ARL in the long run. This is what the GMA requires, what the WAC requires, what the County understands, and what the Board has upheld. As indicated in the sentences preceding the quoted section, the County has tried several methods to ensure adequate protection of the agricultural industry, and the current method is intended to protect a critical mass of agriculture so the industry can survive in the long term. Exactly how that methodology is applied, and how each criterion was adopted and applied, is discussed at length in the pages preceding that quote. The Board has a long history of working on these issues with Ferry County, and the Board's decision is supported by substantial evidence.

Each of the challenged criteria are individually addressed by the Board, and the administrative record shows that each of these criteria have been adopted and adapted over time in response to challenges by the Appellants and decisions by the Board. At the end of the day, the issue here is that the Appellants do not like the result. However, this is not a result-oriented process. The County is required to undertake a public process and show its work. The Board has reviewed the County's work and is in a unique position to say whether the County's work is sufficient in light of the entire record.

The Appellants erroneously state that Ferry County has designated only 405 acres of ARL.[20] The record clearly shows that the County has designated 479,373 acres ARL.[21] The land designated ARL is land actually in agricultural use or capable of agricultural use and constitutes a critical mass of lands sufficient to support and maintain the agricultural industry in Ferry County. The Board below found this to be true after extensive review of the record, and there is substantial evidence to support the Board's decision.

6. Ferry County Properly Designated ARL, Including Federal Grazing Lands, Working Farms and Ranches.

Appellants argue that Ferry County is in violation of the GMA because it did not – in their subjective opinion – designate enough private land as ARL.[22] However, Appellants point to no authority that would allow Ferry County to discriminate against particular classes of owners of land and designate land because of who owns it. Ferry County maintains that no such authority exists. The vast majority of Ferry County is in State or Federal ownership, or is part of the Reservation. The requirement of the GMA is that a critical

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[20] Appellants' Brief at 41-42.
[21] AR 6376-77.
[22] Appellants' Brief at 44.

mass of lands be designated and protected to ensure the future of the agricultural industry, and the County has done so. The County has followed every direction of the GMHB, has reviewed every portion of the County, every type of agriculture, every accessory use to agriculture, and every other consideration that any individual or entity has been able to come up with over nine years of litigation. The County cannot designate land simply because a private citizen rather than a governmental entity owns it.

The Appellants point out that the Forest Service has a requirement that there must be a "base property" in order to obtain a grazing permit. What Appellants fail to point out is that there is no requirement the "base property" be in the County where the permit is granted. The Appellants point to no requirement that the "base property" be anything more than a mailing address provided when filling out the application for a grazing permit. The Appellants don't mention that the "base property" could be in the middle of a town. *Most importantly, the Appellants point to no "base property" that was excluded from designation.* The Appellants fail in their burden of proving that the County has failed to designate working farms and ranches.

7. The Board's Focus on the Unique Characteristics of the County Being Reviewed Is Entirely Appropriate.

The Appellants take issue with a statement by the Board that Ferry County ranks last as to market value of crop and livestock products. Appellants assert that Ferry County actually ranks 37th out of the 39 counties. This is a distinction without a difference. The Board does not cite to its source in the voluminous record, and since there is discussion in the record of cattle as the most significant agricultural product and that hay is the second most important crop, it may be that the Board looked at individual rankings for these items, or that it looked to cumulative amounts. The record is not clear on that point. Regardless, the statement is not issued in the form of a finding, but as part of the Board's awareness that Ferry County is not a great producer of agricultural products. That point cannot be disputed, nor can the Board's statement that Ferry County's total market value is approximately $3 million, "compared to $1.2 billion each for Yakima and Grant Counties."[23] The question whether Ferry County ranks 37th or 39th is not critical to the Board's decision, and is not clearly erroneous.

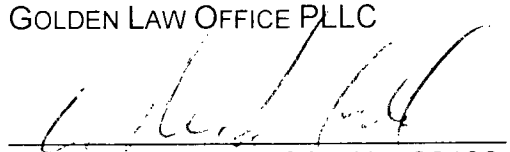
[23] Order Finding Compliance at p.15:9-10.

E. CONCLUSION

The Eastern Washington Growth Management Hearings Board has followed the GMA and has held Ferry County to the requirements of that Act. The County has developed an objective, verifiable and repeatable methodology for designation of ARLs. The methodology applies criteria that have been adjusted to comply with the intricacies of the GMA, the Board has found the criteria to meet the stringent standards of that Act. The County's even-handed application of the methodology and each criteria to the lands in the County in a public process have resulted in the designation of nearly one-half million acres of ARL. The Board has found this to be sufficient to protect the agricultural industry in Ferry County. There is substantial evidence in the record supporting the Board's findings, and the Board's decision should be affirmed.

Respectfully Submitted this 8th day of December, 2014

GOLDEN LAW OFFICE PLLC



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CERTIFICATE OF SERVICE

The undersigned declares on penalty of perjury under the laws of the State of Washington that on this 8th day of December 2014, the undersigned caused the electronic original and true and correct copies of the following documents to be served on the persons listed below in the manner shown: **Response Brief of Ferry County.**

State of Washington Court of Appeals Division II
950 Broadway, Suite 300
Tacoma, Washington 98402
Electronic Original

	By United States Mail, postage prepaid and properly addressed
	By Legal Messenger or Hand Delivery
	By Facsimile
	By Federal Express or Overnight Mail prepaid
X	Efiled

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Attorney for Petitioners Concerned Friends of Ferry County and Futurewise

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X	By Email: scttsmmns@yahoo.com

	By United States Mail, postage prepaid and properly addressed
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Signed and certified on this 8th day of December, 2014.

Bonnie Inman, Legal Assistant

GOLDEN LAW OFFICE PLLC

December 08, 2014 - 10:10 AM

Transmittal Letter

Document Uploaded: 463059-Response Brief.pdf

Case Name: Concerned Friends of Ferry County and Futurewise v. Ferry County and the Growth Management Hearings Board

Court of Appeals Case Number: 46305-9

Is this a Personal Restraint Petition? Yes ■ No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

■ Brief: __Response__

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Bonnie Inman - Email: mike@goldenlaw.us

A copy of this document has been emailed to the following addresses:

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