

Case No. 46305-9-II

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

CONCERNED FRIENDS OF FERRY COUNTY AND FUTUREWISE,

Petitioners,

v.

FERRY COUNTY AND
THE GROWTH MANAGEMENT HEARINGS BOARD,

Respondents.

**BRIEF OF PETITIONERS
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, finally designating 405 acres of privately owned land as agricultural lands of long-term commercial significance.³ The 405 acres represents 0.05 percent of the county’s 749,452 acres of land in farms.⁴

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 placed 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.

This brief will show that the Growth Management Hearings Board’s order finding Ferry County’s designation of only 0.05 percent of the county’s 749,452 acres of land in farms is a misinterpretation and misapplication of the GMA and is not supported by substantial evidence.⁵ The Concerned Friends of Ferry County and Futurewise (Concerned Friends) respectfully request that the Court reverse the Board and remand this decision back to the Board for action consistent with the GMA.

II. ASSIGNMENTS OF ERROR, ISSUES, AND SHORT ANSWERS

Assignment of Error 1: The Board erred in concluding that the “Criteria for Designating Agricultural Lands of Long-Term Commercial Significance in Ferry County, Washington” were consistent with the Ferry County Comprehensive Plan.”⁶

Issue 1: 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 County Comprehensive Plan an erroneous interpretation or application of the GMA and not support by substantial evidence? Yes. (Assignment of Error 1.)

⁵ AR 7505, *Concerned Friends of Ferry County v. Ferry County*, GMHB Case No. 01-1-0019, Order Finding Compliance [Agricultural Resource Lands] (Feb. 14, 2014), at 16 of 16. Hereinafter referred to as the Order Finding Compliance.

⁶ AR 6364 – 77, Ferry County Development Regulations Ordinance No. 2013-05 pp. 18 – 31.

Assignment of Error 2: The Board erred in concluding that the “Criteria for Designating Agricultural Lands of Long-Term Commercial Significance in Ferry County, Washington” complied with the Growth Management Act (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 Ferry County an erroneous interpretation or application of the GMA and not support by substantial evidence? Yes. (Assignment of Error 2.)

Assignment of Error 3: The Board erred in concluding that Ferry County properly applied the “Criteria for Designating Agricultural Lands of Long-Term Commercial Significance” and the GMA and the Minimum Guidelines to Classify Agricultural Lands in only designating 405 acres of privately owned agricultural land as agricultural land of long-term commercial significance?⁷

Issue 3: Is the Board’s conclusion that Ferry County properly applied the “Criteria for Designating Agricultural Lands of Long-Term

⁷ AR 6376, Ferry County Development Regulations Ordinance No. 2013-05 p. 30; AR 6356, Ferry County Comprehensive Plan Future Land Use Map Page 6 Agricultural Land of Long-Term Commercial Significance.

Commercial Significance” in only designating 405 acres of privately owned agricultural land as agricultural land of long-term commercial significance an erroneous interpretation or application of the GMA and not support by substantial evidence? Yes. (Assignment of Error 3.)

Issue 4: Is the Board’s conclusion that Ferry County complied with GMA and the Minimum Guidelines to Classify Agricultural Lands in only designating 405 acres of privately owned agricultural land as agricultural land of long-term commercial significance an erroneous interpretation or application of the GMA and not support by substantial evidence? Yes. (Assignment of Error 3.)

Assignment of Error 4: Futurewise assigns error to the following finding of fact in the Board’s Order Finding Compliance:

Ferry County reports 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.⁸

Issue 5: Is the Board’s conclusion that the National Forest Grazing allotments are include in the 749,452 acres of land in farms and that there are an estimated 25,215 acres of are privately owned farmland in Ferry County supported by substantial evidence? No. (Assignment of Error 4.)

⁸ AR 7498, Order Finding Compliance p. 9 of 16.

Assignment of Error 5: Futurewise assigns error to the following finding of fact in the Board’s Order Finding Compliance: 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.”⁹

Issue 6: Is the Board’s finding that Ferry County ranked last as to the market value of crop and livestock products and that hay is not a commercially significant crop supported by substantial evidence? No. (Assignment of Error 5.)

III. FACTS

Over 20 years ago, by September 1, 1991, all counties in Washington State, not just the fully planning counties, were required to designate agricultural lands of long-term commercial significance.¹⁰ “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.”¹¹

In 2007, Ferry County had 232 farms with 749,452 acres of land in those farms.¹² This was an increase from 207 farms in 2002.¹³ The 2007

⁹ AR 7504, Order Finding Compliance p. 15 of 16.

¹⁰ RCW 36.70A.170(1)(a).

¹¹ 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.

¹² AR 6390, *2007 Census of Agriculture* Table 8 p. 291.

¹³ *Id.*

Census of agriculture estimated that 53.1 percent of the county was in farms.¹⁴ The 749,452 acres of land in those farms does not include the National Forest grazing allotments.¹⁵ 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.¹⁶ The Order Finding Compliance concluded that 104,539 acres of the farmland on the reservation was in fee ownership, privately owned.¹⁷ Of the land in farms, 14,842 acres is cropland.¹⁸

In 2007, Ferry County farms had an average value of over \$1.4 million.¹⁹ This compares with a Washington State average of just over \$759,000.²⁰

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

¹⁴ *Id.*

¹⁵ 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). See Assignment of Error 4, Issue 5 of this brief.

¹⁶ 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.

¹⁷ AR 7499, Order Finding Compliance p. 10 of 16.

¹⁸ AR 6390, *2007 Census of Agriculture* Table 8 p. 291.

¹⁹ AR 6390, *Id.*

²⁰ AR 6389, *Id.* at p. 290.

commercial significance.²¹ Ferry County Development Regulations Ordinance No. 2013-05 adopted the criteria that when applied by the County only designated 405 acres of its privately owned working farms and ranches as agricultural lands of long-term commercial significance.²² These two ordinances are the subject of this appeal. Evidence in the record shows that Ferry County's criteria violate the GMA. 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.²³ Maps produced by Ferry County show residential development on prime soils between Republic and Curlew for example.²⁴

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

²¹ AR 6356, Ferry County Comprehensive Plan Future Land Use Map Page 6 Agricultural Land of Long-Term Commercial Significance.

²² 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.

²³ AR 6390, *2007 Census of Agriculture* Table 8 p. 291.

²⁴ 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.

jobs and incomes the industry provides.²⁵ The thousands of acres of Ferry County farmland that are not designated as agricultural lands are zoned for a density of one dwelling unit per 2.5 acres and so are not protected from development.²⁶

IV. 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)).²⁷

“Under the judicial review provision of the APA, the ‘burden of demonstrating the invalidity of [the Board’s decision] is on the party

²⁵ AR 6429 – 31, Washington State Department of Agriculture, *Washington Agriculture Strategic Plan 2020 and Beyond* pp. 50 – 52 (2009).

²⁶ AR 6942, Ferry County Development Regulations Ordinance No. 2013-05 p. 41.

²⁷ *Kittitas County v. Eastern Washington Growth Management Hearings Board*, 172 Wn.2d 144, 155, 256 P.3d 1193, 1198 (2011).

asserting the invalidity.”²⁸ In this case that is the Concerned Friends of Ferry County and Futurewise (Concerned Friends).

“Substantial weight is accorded to a board’s interpretation of the GMA, but the court is not bound by the board’s interpretations.”²⁹ In interpreting the GMA, the courts do not give deference to local government interpretations of the law.³⁰

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.³¹ The reviewing court does not weigh the evidence or substitute its view of the facts for that of the Board.³²

In considering this appeal, 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.³³ 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. The responsibility to appeal noncompliant

²⁸ *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).

²⁹ *Thurston County v. Western Washington Growth Management Hearings Bd.*, 164 Wn.2d 329, 341, 190 P.3d 38, 44 (2008).

³⁰ *Kittitas County*, 172 Wn.2d at 156, 256 P.3d at 1199.

³¹ *Thurston County v. Cooper Point Ass’n.*, 148 Wn.2d 1, 8, 57 P.3d 1156, 1160 (2002).

³² *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).

³³ *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 138 Wn.2d 161, 175 – 77, 979 P.2d 374, 380 – 82 (1999).

comprehensive plans and development regulations to the Board is that of citizens and groups such as the Concerned Friends.

V. ARGUMENT

- A. Ferry County has failed to properly designate agricultural lands of long-term commercial significance because the County's criteria violate the GMA.**
- 1. Ferry County has failed to properly designate agricultural lands of long-term commercial significance by failing to apply the criteria for designating agricultural lands in the Ferry County Comprehensive Plan and by adopting development regulations with criteria that are not consistent with and fail to implementing the comprehensive plan violating RCW 36.70A.130. (Assignment of Error 1, Issue 1.)**

The *Ferry County Comprehensive Plan* includes the following criteria for designating agricultural lands of long-term commercial significance:

7. In determining which lands to designate for long-term commercial agricultural use, the County will comply with the requirements of the Growth Management Act by classifying and designating agricultural land by an area wide process. Lands to be considered for possible designation will include lands not already characterized by urban growth, lands used or capable of being used for agricultural production, and land that has long-term commercial significance for agriculture. The process shall be an objective analytical process to assess lands potentially suitable for agricultural uses applied equally to all lands subject to possible designation.³⁴

³⁴ AR 6342, Ferry County Ordinance No. 2013-03 *Ferry County Comprehensive Plan and the Curlew Lake Sub Area Plan* p. *3.

Ferry County Comprehensive Plan provision “7.4.31” is consistent with this policy providing in part that:

Designated agricultural lands are lands that include the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the lands proximity to population areas, and the possibility of more intense uses of the land. To be included in this designation, lands also must not be already characterized by urban growth and must be primarily devoted to the commercial production of agricultural products enumerated in RCW 36.70A.3030(2). Long-term commercial significance means the land is capable of producing the specified natural resource at commercially sustainable levels for at least the twenty year planning period, if adequately conserved.³⁵

Three additional criteria: avoiding designating very small areas, avoiding jagged or confusing boundaries, and avoiding splitting parcels are in Comprehensive Plan Policy “7.4.30 9.”³⁶ RCW 36.70A.130(1)(d) requires that “[a]ny amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.”

Rather than apply the criteria in Policies “7.4.30 7 and 9” and provision “7.4.31,” the County chose to use the “Criteria for Designating Agricultural Lands of Long-Term Commercial Significance in Ferry County, Washington.”³⁷ The criteria are not “consistent with” and fail to

³⁵ AR 6343, *Id.* p. *4.

³⁶ AR 6342, *Id.* at p. *3.

³⁷ AR 6364 – 77, Ferry County Development Regulations Ordinance No. 2013-05 pp. 18 – 31.

implement comprehensive plan Policies “7.4.30 7” and “7.4.30 9” and provision “7.4.31” as RCW 36.70A.130(1)(d) requires.

First, the “Criteria for Designating Agricultural Lands of Long-Term Commercial Significance in Ferry County, Washington” use a point system.³⁸ Nothing in Policies “7.4.30 7 and 9” or provision “7.4.31” calls for the use of a point system. Instead Policy “7.4.30 7” calls on the County to consider for “possible designation” “lands not already characterized by urban growth, lands used or capable of being used for agricultural production, and land that has long-term commercial significance for agriculture.”³⁹ Comprehensive Plan provision “7.4.31” includes similar criteria. By applying the point system rather than the criteria in comprehensive plan, agricultural lands consistent with this policy were not designated as agricultural lands of long-term commercial significance. For example, the bottom land along the river in Sections 17, 19, 20, 30, Township 40, Range 34 EWM has 72 percent of this land in Land Capability I through IV soils meeting the soils criteria, is not characterized by urban growth, and is primarily devoted to the commercial production of agricultural products as can be seen from the aerial photograph.⁴⁰

³⁸ AR 6364 – 77, *Id.*

³⁹ AR 6343, Ferry County Ordinance No. 2013-03 *Ferry County Comprehensive Plan and the Curlew Lake Sub Area Plan* 7.4.31 p. *4.

⁴⁰ AR 6438, USDA Natural Resources Conservation Service, *Soil Map – North Ferry Area, Washington (Sections 17, 19, 20, 30, Township 40, Range 34)* p. 3 of 3 (9/16/2012);

Second, a number of the “Criteria for Designating Agricultural Lands of Long-Term Commercial Significance in Ferry County, Washington” criteria are not consistent with Policies “7.4.30 7 and 9” or provision “7.4.31.” The “Criteria for Designating Agricultural Lands of Long-Term Commercial Significance in Ferry County, Washington” gives zero points to farmland within a quarter mile of limited areas of more intense rural development (LAMIRDs).⁴¹ However, the GMA provides that development within LAMIRDs is not urban growth.⁴² Further LAMIRDs cannot be expanded beyond their required locations.⁴³ So the areas beyond the LAMIRDs are not areas characterized by urban development excluded from designation as agricultural lands of long-term commercial significance by Policy “7.4.30 7.”⁴⁴ Nothing in Policies “7.4.30 7 and 9” or provision “7.4.31” excludes these lands. By excluding these lands, the “Criteria for Designating Agricultural Lands of Long-Term Commercial

AR 6579, 6618, 6620, 6649, 6650, 6663, 6666, 6675, 6676, 6686, 6705, 6708, 6709, & 6733, USDA Natural Resources Conservation Service, *Map Unit Description North Ferry Area, Washington* p. 31, p. 70, p. 72, p. 101, p. 102, p. 115, p. 118, p. 127, p. 128, p. 138, p. 157, p. 160, p. 161, & p. 185 of 198 (6/25/2012); AR 6356, Ferry County Comprehensive Plan Future Land Use Map Page 6 Agricultural Land of Long-Term Commercial Significance. “Map units” is the term for the different soils shown on the soil maps and referred in the reference materials.

⁴¹ AR 6377, Ferry County Development Regulations Ordinance No. 2013-05 p. 31.

⁴² RCW 36.70A.030(19).

⁴³ RCW 36.70A.070(d).

⁴⁴ AR 6342, Ferry County Ordinance No. 2013-03 *Ferry County Comprehensive Plan and the Curlew Lake Sub Area Plan* p. *3.

Significance in Ferry County, Washington” is inconsistent with and fails to implement the comprehensive plan.⁴⁵

The “Criteria for Designating Agricultural Lands of Long-Term Commercial Significance in Ferry County, Washington” also included an amended “block group” criterion that provides that “[t]o be considered long-term commercial significance, agricultural lands should be in a contiguous block of 500 acres or more.”⁴⁶ But nothing in Policy “7.4.30 7” or provision “7.4.31” requires consideration of a “block group” or requires that agricultural lands must be in a contiguous block of 500 acres or more.⁴⁷ Policy “7.4.30 9” does call on the County to “avoid whenever possible ... designating very small areas very small areas,” but areas just under 500 acres are not very small.⁴⁸ And the block criterion always excludes areas under 500 acres, not whenever possible while still designating agricultural land consistent with the comprehensive plan. By excluding land that meets the criteria in Policies “7.4.30 7 and 9” and provision “7.4.31,” such as the land in Sections 17, 19, 20, 30, Township 40, Range 34 EWM, the “Criteria for Designating Agricultural Lands of

⁴⁵ AR 6342 – 43, *Id.* at p. *3 – 4.

⁴⁶ AR 6372, Ferry County Development Regulations Ordinance No. 2013-05 p. 26.

⁴⁷ AR 6342 – 43, Ferry County Ordinance No. 2013-03 *Ferry County Comprehensive Plan and the Curlew Lake Sub Area Plan* pp. *3 – 4.

⁴⁸ AR 6342, *Id.* at p. *3.

Long-Term Commercial Significance in Ferry County, Washington” are inconsistent with and fail to implement the comprehensive plan.

Ferry County’s substitution of the “Criteria for Designating Agricultural Lands of Long-Term Commercial Significance in Ferry County, Washington” for Comprehensive Plan Policies “7.4.30 7 and 9” and provision “7.4.31” ultimately led to a Future Land Use Map that designates only 405 acres of privately owned agricultural land that are “subject to long-term conservation easement[s.]”⁴⁹ But having land in long-term conservation easements is not one of the criteria in Comprehensive Plan Policies “7.4.30 7 and 9” and provision “7.4.31.”⁵⁰ It is also not in the “Criteria for Designating Agricultural Lands of Long-Term Commercial Significance in Ferry County, Washington.” The substitution of the inconsistent criteria in the for the criteria Comprehensive Plan Policies “7.4.30 7 and 9” and provision “7.4.31” in the development regulations and the inconsistent application is inconsistent with and fails to implement the comprehensive plan in violation of RCW 36.70A.130(1)(d) . Amending the Ferry County Comprehensive Plan to adopt a Future Land Use Map inconsistent with

⁴⁹ AR 6376, Ferry County Development Regulations Ordinance No. 2013-05 p. 30; AR 6356, Ferry County Comprehensive Plan Future Land Use Map Page 6 Agricultural Land of Long-Term Commercial Significance.

⁵⁰ AR 6342 – 43, Ferry County Ordinance No. 2013-03 *Ferry County Comprehensive Plan and the Curlew Lake Sub Area Plan* pp. *3 – 4.

the criteria in Policies “7.4.30 7 and 9” and Policy “7.4.31” also violates RCW 36.70A.130(1)(d) and RCW 36.70A.070 which requires a consistent comprehensive plan..

In concluding that the point system in the “Criteria for Designating Agricultural Lands of Long-Term Commercial Significance in Ferry County, Washington” complied with the GMA, the Board made errors of law and relied on facts that are not supported by substantial evidence. The error of law was not to consider whether the point system “implements the comprehensive plan” as RCW 36.70A.130(1)(d) requires. Implement means to “carry out: accomplish, fulfill ...”⁵¹ By excluding land from the designation of agricultural lands of long-term commercial significance that the comprehensive plan would have designated, such as the bottom land along the river in Sections 17, 19, 20, 30, Township 40, Range 34 EWM,⁵² the point system fails to implement, to carry out, the comprehensive plan.

The second error of law and fact is the Board’s conclusion that the Concerned Friends have not shown that the “Criteria for Designating

⁵¹ WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY p. 1134 (2002).

⁵² AR 6438, USDA Natural Resources Conservation Service, *Soil Map – North Ferry Area, Washington (Sections 17, 19, 20, 30, Township 40, Range 34)* p. 3 of 3 (9/16/2012); AR 6579, 6618, 6620, 6649, 6650, 6663, 6666, 6675, 6676, 6686, 6705, 6708, 6709, & 6733, USDA Natural Resources Conservation Service, *Map Unit Description North Ferry Area, Washington* p. 31, p. 70, p. 72, p. 101, p. 102, p. 115, p. 118, p. 127, p. 128, p. 138, p. 157, p. 160, p. 161, & p. 185 of 198 (6/25/2012); AR 6356, Ferry County Comprehensive Plan Future Land Use Map Page 6 Agricultural Land of Long-Term Commercial Significance.

Agricultural Lands of Long-Term Commercial Significance in Ferry County, Washington” “are incompatible with or will thwart the language in Comprehensive Plan Policy Sections 7.4.30(6) and 7.4.31.”⁵³ But as this section has shown, the point system excluded land the comprehensive plan would have designated violating the GMA.

2. The “Criteria for Designating Agricultural Lands of Long-Term Commercial Significance in Ferry County, Washington” violate RCW 36.70A.170, RCW 36.70A.030(2) and (10), and RCW 36.70A.020(8) and the Minimum Guidelines to Classify Agricultural Lands. (Assignment of Error 2, Issue 2.)

Even if the “Criteria for Designating Agricultural Lands of Long-Term Commercial Significance in Ferry County, Washington” were consistent with the County comprehensive plan, they would still violate RCW 36.70A.170, RCW 36.70A.030(2) and (10), RCW 36.70A.020(8), and WAC 365-190-050(3)(c). The Washington State Supreme Court has held the GMA includes a three part definition of agricultural lands of long-term commercial significance:

¶ 17 In sum, based on the plain language of the GMA and its interpretation in *Benaroya I*, we hold that agricultural land is land: (a) not already characterized by urban growth (b) that is primarily devoted to the commercial production of agricultural products enumerated in RCW 36.70A.030(2), including land in areas used or capable of being used for production based on land characteristics, and (c) that has long-term commercial significance for agricultural production, as indicated by

⁵³ AR 7500, Order Finding Compliance p. 11 of 16.

soil, growing capacity, productivity, and whether it is near population areas or vulnerable to more intense uses.⁵⁴

This test is based on RCW 36.70A.170 and RCW 36.70A.030(2) and (10).

In *Lewis County*, the Washington Supreme Court also held “that counties may consider the development-related factors enumerated in [former] WAC 365–190–050(1) in determining which lands have long-term commercial significance.”⁵⁵ This Court correctly pointed out in the *Clark County* decision that the former version of WAC 365–190–050 provided that counties “shall” consider the long-term commercial significance factors.⁵⁶ The current version of WAC 365-190-050(3)(c) provides in part that “counties and cities should consider the following nonexclusive criteria” “[S]hould, while definitely strongly encouraging a particular course of action, is permissive.”⁵⁷ If a county chooses to use the factors in WAC 365-190-050(3) the county must comply with the factors.⁵⁸

⁵⁴ *Lewis County v. Western Washington Growth Management Hearings Bd.*, 157 Wn.2d 488, 502, 139 P.3d 1096, 1103 (2006) (*Lewis County*).

⁵⁵ *Lewis County*, 157 Wn.2d at 502, 139 P.3d at 1103.

⁵⁶ *Clark County Washington v. Western Washington Growth Management Hearings Review Bd.*, 161 Wn. App. 204, 232 – 33, 254 P.3d 862, 874 – 75 (2011) *vacated in part on other grounds by Clark County v. Western Washington Growth Management Hearings Review Bd.*, 177 Wn.2d 136, 298 P.3d 704 (2013). This part of the decision was not vacate.

⁵⁷ *State v. Smith*, 174 Wn. App. 359, 367 – 68, 298 P.3d 785, 790 (2013) *review denied State v. Smith*, 178 Wn.2d 1008, 308 P.3d 643 (2013).

⁵⁸ *Lewis County*, 157 Wn.2d at 504, 139 P.3d at 1104 “Thus, upon remand, when the Board reviews whether Lewis County properly designated agricultural lands, the inquiry should include whether the county’s decisions were “clearly erroneous” in light of the considerations outlined in RCW 36.70A.030 or WAC 365–190–050.”

Additionally, our Supreme Court has suggested that counties cannot consider additional other factors to the detriment of the GMA's stated goals and requirements. See *Lewis County*, 157 Wn.2d at 506 n. 16, 139 P.3d 1096 (“[A]lthough counties may consider factors besides those specifically enumerated in RCW 36.70A.030(10) in evaluating whether agricultural land has long-term commercial significance, that is not what happened here. Rather, Lewis County simply decided to serve its own goal ... instead of meeting the GMA's specific land designation requirements.”).⁵⁹

RCW 36.70A.050(3) provides that the Washington State Department of Commerce's rules for designating natural resource lands in WAC 365-190-05 “shall be minimum guidelines that apply to all jurisdictions”

While Ferry County purportedly based its point system on the factors in WAC 365-190-050(3), the County misinterpreted and misapplied these provisions and so did the Board. The Board's order is also not supported by substantial evidence. We will examine each of the point system criteria that violate the GMA.

(i) Criterion One, Soil Classification, is a misinterpretation and misapplication of WAC 365-190-050.

Ferry County claims to base this criterion on WAC 365-190-050(3)(b)(ii) and (3)(c)(i).⁶⁰ WAC 365-190-050(3)(b)(ii) provides that:

In determining whether lands are used or capable of being used for agricultural production, counties and cities shall use the land-capability classification system of the United

⁵⁹ *Clark County*, 161 Wn. App. 204, 233, 254 P.3d 862, 875 (2011).

⁶⁰ AR 6366, Ferry County Development Regulations Ordinance No. 2013-05 p. 20.

States Department of Agriculture Natural Resources Conservation Service as defined in relevant Field Office Technical Guides. These eight classes are incorporated by the United States Department of Agriculture into map units described in published soil surveys, and are based on the growing capacity, productivity and soil composition of the land.

WAC 365-190-050(3)(c)(i) provides that in determining whether the “land has long-term commercial significance for agriculture” “counties and cities should consider the following nonexclusive criteria, as applicable: (i) The classification of prime and unique farmland soils as mapped by the Natural Resources Conservation Service[.]”

Ferry County used USDA land capability land classes I through IV (also referred to Class 1 through 4) for this criterion, but only some of them.⁶¹ Certain undefined Class III soils were only given points if they are irrigated even though some Class III soils suffer from excessive wetness and waterlogging after drainage.⁶² Class IV soils were only given points if they are irrigated even though some Class IV soils also suffer from wetness and waterlogging after drainage.⁶³ The “Ret silt loam, heavy variant” is just such a soil, having an IVw rating but it is only given points if irrigated.⁶⁴ “Northern” Ferry County has 1,293 acres of “Ret silt loam,

⁶¹ AR 6366 – 68, *Id.* at pp. 20 – 22.

⁶² AR 6367 – 68, *Id.* at pp. 21 – 22.

⁶³ AR 6368, *Id.* at p. 22.

⁶⁴ AR 6708, USDA Natural Resources Conservation Service, *Map Unit Description North Ferry Area, Washington* p. 160 of 198 (6/25/2012).

heavy variant.”⁶⁵ Failing to give points for this and similar soils is a misinterpretation of WAC 365-190-050(3)(b)(i).

This criterion also does not take into account prime and unique farmland soils as WAC 365-190-050(3)(c)(i) calls for. For example, the “Ret silt loam, heavy variant” is “prime farmland if drained and either protected from flooding or not frequently flooded during the growing season.”⁶⁶ But unless this soil is irrigated, even though it does not need irrigation, the County does not give this soil any points. This is a misinterpretation of WAC 365-190-050(3)(c)(i).

Finally, the County does not explain why various soil classes get various point scores and how they were coordinated with the order point ratings in the system. The county only says the numeric score depends “on their relative suitability as productive agricultural soil.”⁶⁷ But why soils get two points, four points, or six points is unexplained.

(ii) Criterion Three, Availability of Public Services, is a misinterpretation and misapplication of WAC 365-190-050(3)(c)(iv).

This criterion has two problems. First it does not address the availability of public facilities and services instead it addresses proximity

⁶⁵ AR 6510, USDA Natural Resources Conservation Service, *Acreage and Proportionate Extent of the Soils North Ferry Area, Washington* p. 4 of 5 (06/25/2012).

⁶⁶ AR 6506, USDA Natural Resources Conservation Service, *Prime and other Important Farmlands North Ferry Area, Washington* p. 2 of 2 (06/25/2012).

⁶⁷ AR 6366, Ferry County Development Regulations Ordinance No. 2013-05 p. 20.

to limited areas of more intense rural development (LAMIRDs).⁶⁸ WAC 365-190-050(3)(c)(iv) requires consideration of the “availability of public services[.]”

Second, the public facilities and services that serve LAMIRDs cannot serve areas outside LAMIRDs, this is the case for all three types of LAMIRDs.⁶⁹ And the LAMIRDs themselves cannot expand.⁷⁰ Ferry County conceded that the LAMIRD boundaries will not change.⁷¹ So giving zero points to land within a quarter mile of a LAMIRD is unwarranted and inconsistent with the criteria in WAC 365-190-050(3)(c)(iv) which calls for considering the availability of public facilities, not for considering how close a farm is to a LAMIRD. RCW 36.70A.050(3) provides that Commerce’s rules for designating natural resource lands “shall be minimum guidelines that apply to all jurisdictions” Rather than considering the guideline, Ferry County twisted it into something totally different. This is not considering the rules as the GMA requires.

The Board concluded that the “County determined that potential agricultural land within close proximity to LAMIRDs should be protected

⁶⁸ AR 6369, *Id.* at p. 23.

⁶⁹ RCW 36.70A.070(5)(d).

⁷⁰ RCW 36.70A.070(5)(d)(i); (5)(d)(ii); (5)(d)(iii); (5)(d)(v).

⁷¹ AR 6369, Ferry County Development Regulations Ordinance No. 2013-05 p. 23.

since the potential draw of schools, water and sewer districts, medical facilities, etc. place more demand for development in those areas.⁷² But the criterion does not just give zero points for land in LAMIRDs or in water and sewer districts, it also does not give points for land within a quarter mile of LAMIRD. The Board's conclusion is based on development "in those areas" that have the facilities, the LAMIRDs, not on the land outside of the LAMIRDs but within a quarter mile that cannot be served with public facilities from the LAMIRD.⁷³ This criterion misinterpreted or misapplied the GMA and WAC 365-190-050(3)(c)(iv).

(iii) Criterion Four, Proximity to an Urban Growth Area, is not supported by substantial evidence.

WAC 365-190-050(3)(c)(v) requires consideration of the "[r]elationship or proximity to urban growth areas[.]" While we agree that agriculture and urban uses are not compatible, given the county's limited projected population growth the County should not be giving zero points for farms within five miles of the Republic urban growth area as the County's criterion does.⁷⁴ It is unlikely that the Republic urban growth area will be expanded by a mile. This can be seen by calculating the amount of land needed to accommodate the projected 2030 Medium

⁷² AR 7501, Order Finding Compliance 12 of 16.

⁷³ *Id.*; AR 6366, Ferry County Development Regulations Ordinance No. 2013-05 p. 20.

⁷⁴ AR 6366, Ferry County Development Regulations Ordinance No. 2013-05 p. 20.

population projection increase. This increase is 2,650 people.⁷⁵ Using the current estimate of 1.72 people per housing unit, 1,541 new housing units would be required to accommodate the population increase for all of Ferry County.⁷⁶ At four housing units per acre, 385.25 acres would be required to accommodate these homes. This is just over half, sixth-tenths, of a square mile. If all of these houses were built in a square it would be 0.776 miles by less than 0.776 miles. So giving zero points for land within five miles of the Republic urban growth area, as this criterion does,⁷⁷ is unrealistic and greatly exceeds the scope of WAC 365-190-050(3)(c)(v) which directs the county to consider the land's "[r]elationship or proximity to urban growth areas." Land four miles from Republic is not proximate to the urban growth area. And given the limited land needed to accommodate the County's projected urban growth, land three and four miles from the urban growth area does not have a relationship with the urban growth area that would in any way impact the lands ability to be used for agriculture

⁷⁵ The Washington State Office of Financial Management "Medium" population projection for Ferry County in 2030 is 10,250. This is an increase of 2,650 people from Ferry County's 2011 population estimate of 7,600. AR 6461, Washington State Office of Financial Management, *Final Projections of the Total Resident Population for Growth Management Medium Series: 2000 to 2030* (October 2007); AR 6462, Office of Financial Management, *April 1 Population of Cities and Towns and Counties Used for Allocation of Selected State Revenues State of Washington* p. *1 (June 30, 2011).

⁷⁶ AR 6465, Washington State Office of Financial Management, *Housing Units for Cities, Towns, and Counties: April 1, 2010 and April 1, 2011* p. *2 (June 30, 2011).

⁷⁷ AR 6369 – 70, Ferry County Development Regulations Ordinance No. 2013-05 pp. 23 – 24.

long-term. It is certainly not need to accommodate the less than one square mile of land needed to accommodate the County's projected growth.

Further, it would be better for the Republic urban growth area to expand outside the flood plain where much of the farmland is located.⁷⁸ In fact, most of Ferry County's urban growth area is outside the valley.⁷⁹

The Board concluded that the City of Republic, Ferry County's only incorporated place and only urban growth area, was subject to population expansion and more intense uses and that the Concerned Friends failed to put in the record facts necessary to controvert the County's determination.⁸⁰ But all of facts on population growth and most of the floodplain facts were before the Board.⁸¹ Substantial evidence does not support the Board's order on this criterion.

(iv) Criterion Five, Predominate Parcel/Farm (Ownership) Size, is a misinterpretation or misapplication of WAC 365-190-050 and not supported by substantial evidence.

WAC 365-190-050(3)(c)(vi) requires consideration of the “[p]redominant parcel size[.]” Where, as for the word “predominant,” the

⁷⁸ AR 6467, FEMA Flood Map Viewer for the area south of the City of Republic. AR 6469, a Google Earth Image documents that the valley south and northeast of Republic is used for agriculture.

⁷⁹ AR 6812, County Comprehensive Plan Future Land Use Map NW ¼ page 1; AR 6820, Republic Urban Growth Area (attached to Ferry County Development Regulations Ordinance No. 2013-05 after the “maps” page).

⁸⁰ AR 7502, Order Finding Compliance p. 13 of 16.

⁸¹ AR 6317 – 18, Concerned Friends of Ferry County's Objections to a Finding of Compliance pp. 12 – 13.

legislature has not defined a term in the GMA, the courts “apply its common meaning, which may be determined by referring to a dictionary.”⁸² “Predominant” is defined as “holding an ascendancy: having a superior strength”⁸³

Rather than looking at the predominate parcel size in its agricultural areas, Ferry County’s criterion looks to the published farm sizes from the *Census of Agriculture* giving point values for the size of the “Parcel/Farm (Ownership) Size.”⁸⁴ The point values range from negative three for “parcels/farms” from one to nine acres to three points for “parcels/farms” 1,000 or more acres in size.⁸⁵

In considering “parcel/farm (ownership) size,” Ferry County looks at the land in farm and requires that all of the land must be contiguous and that platted parcels smaller than twenty acres cannot be counted.⁸⁶ The Census of Agriculture does not include either requirement.⁸⁷ Ferry County requires that the land be owned, but the Census of Agriculture counts land

⁸² *Quadrant Corp. v. State Growth Management Hearings Bd.*, 154 Wn.2d 224, 239, 110 P.3d 1132, 1140 (2005), referring to WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY. *Id.*

⁸³ WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY p. 1786 (2002).

⁸⁴ AR 6390, *2007 Census of Agriculture* Table 8 p. 291; AR 6370 – 71, Ferry County Development Regulations Ordinance No. 2013-05 pp. 24 – 25.

⁸⁵ AR 6371, Ferry County Development Regulations Ordinance No. 2013-05 p. 25.

⁸⁶ AR 6370 – 71, Ferry County Development Regulations Ordinance No. 2013-05 pp. 24 – 25.

⁸⁷ 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.

that is both owned and rented.⁸⁸ “Rented land is especially important for commercial farming. Nationwide, about 40 percent of farmland is rented.”⁸⁹ What Ferry County is doing is taking a set of farm categories the USDA designed for one purpose (reporting the sizes of operating farm units),⁹⁰ changing the rules so they do not even count the same thing, and then trying to use it as an indicator of long-term commercial significance.

However, over a certain size there is no real connection between farm size and long-term commercial significance. While the acres in land in farms declined between 2002 and 2007 in Ferry County, the number of farms increase by 25 farms or 12.1 percent.⁹¹ This is a faster increase in the number of farms than Washington State’s 9.3 percent increase.⁹² On a percentage basis in Ferry County, the number of farms grew fastest in the 260 to 499 acre category.⁹³ For farms in this size category, Ferry County gives one point, assuming all of the land in these farms is continuous and

⁸⁸ AR 6370 – 71, Ferry County Development Regulations Ordinance No. 2013-05 pp. 24 – 25; AR 6415, 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* p. B-14.

⁸⁹ AR 6519, Professor Tom Daniels, *What to Do About Rural Sprawl?* p. 1 Presented at the American Planning Association Conference, Seattle, WA. (April 28, 1999).

⁹⁰ 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).

⁹¹ AR 6390, *2007 Census of Agriculture* Table 8 p. 291.

⁹² AR 6389, *Id.* at 290.

⁹³ AR 6390, *Id.* at 291.

these farmers do not rent or lease too much of their farmland.⁹⁴ Farms 1,000 acres and larger, which receive the largest number of points under Ferry County’s system, declined by 16.6 percent, four farms, between 2002 and 2007.⁹⁵

There is a relationship between predominate parcel size and long-term commercial significance because small lots drive up prices for farmers and fragment the agricultural landscape, making it difficult for the remaining farmers to assemble land to rent.⁹⁶ “Rented land is especially important for commercial farming” since nationally “about 40 percent of farmland is rented.”⁹⁷ Small parcels can also be difficult to farm with modern machinery. But it is possible to have a mid-size or even smaller farm with fields large enough to plow with modern machinery and the growth in Ferry County’s mid-size farms show.

There are additional problems with the “parcel/farm (ownership) size” criterion. Ferry County, like all counties, is divided into townships, ranges, and sections.⁹⁸ A full size section is 640 acres, so there are no

⁹⁴ AR 6370 – 71, Ferry County Development Regulations Ordinance No. 2013-05 pp. 24 – 25.

⁹⁵ AR 6390, *2007 Census of Agriculture* Table 8 p. 291.

⁹⁶ AR 6519, Professor Tom Daniels, *What to Do About Rural Sprawl?* p. 1 (Presented at the American Planning Association Conference, Seattle, WA: April 28, 1999).

⁹⁷ AR 6519, *Id.*

⁹⁸ AR 6812 – 15, Ferry County Comprehensive Land Use Map pp. 1 –4 (attached to Ferry County Development Regulations Ordinance No. 2013-05 after the “maps” page).

parcels larger than 640 acres in the entire county.⁹⁹ But a 640 acre parcel only gets two points, not the three points a non-existent 1,000 acre parcel would get.¹⁰⁰ The problem with this criterion is underlined by the fact that none of the large farms have been designated as agricultural lands of long-term commercial significance even though they presumably would get the most points.¹⁰¹ Only 405 acres of privately owned land were designated.¹⁰²

This criterion is inconsistent with *Ferry County Comprehensive Plan* Policy “7.4.30 7” which says nothing about farm size.¹⁰³ Policy “7.4.30 9” does call on the County to “avoid whenever possible ... designating very small areas very small areas,” but predominate parcel size is not the same as designated agricultural land which is done on a county wide or area wide basis and includes multiple parcels and covering larger areas.¹⁰⁴ It is inconsistent with RCW 36.70A.130(1)(d) which requires development regulations to implement the comprehensive plan as this criterion is not consistent with *Ferry County Comprehensive Plan*.

⁹⁹ *Lilygren v. Rogers*, 1 Wn. App. 6, 9, 459 P.2d 44, 46 (1969) “A section of land, as a legal subdivision under the congressional rules of survey, is a mile square, and usually contains 640 acres.”

¹⁰⁰ AR 6371, Ferry County Development Regulations Ordinance No. 2013-05 p. 25.

¹⁰¹ AR 6370 – 71, Ferry County Development Regulations Ordinance No. 2013-05 pp. 24 – 25.

¹⁰² AR 6376 – 77, *Id.* at pp. 30 – 31. The 405 acres are “subject to long-term conservation easement[s] ...” AR 6376, *Id.* at p. 30.

¹⁰³ AR 6342, Ferry County Ordinance No. 2013-03 *Ferry County Comprehensive Plan and the Curlew Lake Sub Area Plan* p. *3.

¹⁰⁴ AR 6342, *Id.* at p. *3; WAC 365-190-050(1).

The “parcel/farm (ownership) size” criterion is also violates the GMA definition of agricultural lands of long-term commercial significance and WAC 365-190-050(3)(c)(vi) which requires consideration of the “[p]redominant parcel size” because the criterion does not consider predominant parcel size, but rather a weird hybrid of parcel sizes and ownerships.¹⁰⁵ Having chosen to use the WACs, county must comply with them.

The Board’s response was that “there is evidence in the record that, in contrast to other areas of Washington State, the profitability of agriculture in Ferry County is limited due to soils, climate, lack of agricultural land blocks, dependence on government grazing lands, and distance to source of inputs and markets.”¹⁰⁶ However, the Board did not take into account the large areas of agricultural land currently being farmed in Ferry County.¹⁰⁷ 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.¹⁰⁸

¹⁰⁵ *Lewis County v. Western Washington Growth Management Hearings Bd.*, 157 Wn.2d 488, 502, 139 P.3d 1096, 1103 (2006).

¹⁰⁶ AR 7502, Order Finding Compliance p. 13 of 16.

¹⁰⁷ AR 6457 – 60, WSDA (Washington State Department of Agriculture) *2012 Crop Distribution Map*.

¹⁰⁸ 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*

In addition, the Board's statement has nothing to do with predominate parcel size. So the Board's decision on this criterion is not supported by substantial evidence and is an erroneous interpretation and application of the GMA.

(v) Criteria Six, proximity to Markets/Services, is not support by substantial evidence.

WAC 365-190-050(3)(c)(xi) requires consideration of the “[p]roximity to markets[.]” In its rating system, Ferry County penalizes farms and ranches located more than 50 road miles from “market/services,” actually a single livestock market.¹⁰⁹ This criterion ignores three facts related to the movement of livestock and hay in Washington State. First, livestock have not one but three potential market destinations: “Livestock are shipped to three main locations in Washington once leaving producer operations; feed lots, other farms, and slaughter facilities.”¹¹⁰ But Ferry County does not take into account shipping to other farms in Ferry County.

County, 304 F.3d 909, (9th Cir. 2002).” AR 6359, Ferry County Critical Areas Ordinance 2013-04 p. 55.

¹⁰⁹ AR 6371, Ferry County Development Regulations Ordinance No. 2013-05 p. 25.

¹¹⁰ AR 6473, Stephanie Meenach, Eric L. Jessup, & Kenneth L. Casavant, *Transportation and Marketing Needs for the Washington State Livestock Industry* p. 6 (Washington State University, School of Economic Sciences, Strategic Freight Transportation Analysis (SFTA) Research Report #12: November 2004). While Ferry County farms were not included in the origin and destination survey, the facilities that receive Ferry County livestock were. A full copy of this report is available at AR 3775 – 3796.

Second, livestock arrive at feedlot and producer operations from all over Washington State.¹¹¹ Producers received 39.05 percent of their livestock from within 50 miles.¹¹² The balance, over 60 percent, arrives from 50 miles to greater than 100 miles.¹¹³ And U.S. Highway 395, which runs through Ferry County from the Canadian border to Stevens County and then on to the Spokane livestock markets is one of the major livestock transport routes in the state.¹¹⁴

Third, hay is shipped throughout Washington State, to other states, and to foreign markets in Asia.¹¹⁵ Pend Oreille farmers ship 60 percent of their hay to foreign markets.¹¹⁶ Ferry County farmers are closer to the ports of Seattle and Tacoma than Pend Oreille farmers.¹¹⁷ And this criterion does not even consider hay markets.¹¹⁸

This criterion is inconsistent with *Ferry County Comprehensive Plan* Policies “7.4.30 7 and 9” and provision 7.4.11 which say nothing

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ AR 6474, *Id.* at p. 12.

¹¹⁵ AR 3813, Stephanie Meenach, Eric L. Jessup, & Kenneth L. Casavant, *Transportation Characteristics and Needs of the Washington Hay Industry: Producers and Processors* p. 10 (Washington State University, School of Economic Sciences, SFTA Research Report #11: November 2004). Ferry County farms were not included in the origin and destination survey. A full copy of this report is available at AR 3798 – 3828.

¹¹⁶ *Id.*

¹¹⁷ AR 6472, Stephanie Meenach, Eric L. Jessup, & Kenneth L. Casavant, *Transportation and Marketing Needs for the Washington State Livestock Industry* p. 6 (Washington State University, School of Economic Sciences, Strategic Freight Transportation Analysis (SFTA) Research Report #12: November 2004).

¹¹⁸ AR 6371, Ferry County Development Regulations Ordinance No. 2013-05 p. 25.

about penalizing farms more than 50 miles from one particular livestock market.¹¹⁹ So it is inconsistent with RCW 36.70A.070 and RCW 36.70A.120 which require consistent between the parts of the comprehensive plan since this criterion was used to develop the comprehensive plan's Future Land Use Map.

The Board ignored all of this evidence and Ferry County provided no evidence in support of the 50 mile penalty.¹²⁰ The Board's order is not supported by substantial evidence.

(vi) Criterion Seven, History of Nearby Land Uses, is not support by substantial evidence and is a misapplication of the GMA.

WAC 365-190-050(3)(c)(ix) requires consideration of the “[h]istory of land development permits issued nearby[.]” The maps of the fields near Malo show that several of houses near the fields are part of the farm with agricultural outbuildings.¹²¹ Ferry County Assessor aerial and tax records show the farm house on land taxed under the “Agriculture Current Use” taxation program.¹²² So this land use is used for agricultural production. But Criterion Seven does not distinguish between farm houses

¹¹⁹ AR 6342 – 43, Ferry County Ordinance No. 2013-03 *Ferry County Comprehensive Plan and the Curlew Lake Sub Area Plan* p. *3 – 4.

¹²⁰ AR 7502, Order Finding Compliance p. 13 of 16.

¹²¹ AR 6439, USDA Natural Resources Conservation Service, Soil Map—North Ferry Area, Washington (Agricultural Fields North of Malo) p. 1 of 3 (7/9/2013).

¹²² AR 6768, “Map showing 33811900007002” and AR 6769, “Assessor Data 33811900007002” p. 1.

and other houses, instead land that is adjacent to a house is given a score of “-1” regardless of whether the residence is a farm or ranch house.¹²³ It is also inconsistent with WAC 365-190-050(3)(c)(ix) because it does not take into account the type of permit that was issued failing to distinguish farm and ranch homes from other houses. Penalizing farmers and ranchers for living near their farms and ranches is a misapplication of the GMA.

The Board’s one sentence response was the Concerned Friends “did not show how the County failed to consider nearby land uses in a way that violates WAC 365-190-050(3)(c)(ix).”¹²⁴ But this ignores the evidence of the farm house and that Ferry County does not distinguish between farm and non-farm residential uses.

(vii) Other Factors Considered: *Block Group.*

The County amended its block group criterion to require that agricultural lands of long-term commercial significance “should to be in a contiguous block of 500 acres or more.”¹²⁵ This is an exclusionary factor, if the land is not in a 500 acre block; it is not designated as agricultural lands of long-term commercial significance.¹²⁶ This criterion is inconsistent with *Ferry County Comprehensive Plan* Policy “7.4.30 7” and

¹²³ AR 6366, Ferry County Development Regulations Ordinance No. 2013-05 p. 20.

¹²⁴ AR 7503, Order Finding Compliance p. 14 of 16.

¹²⁵ AR 6372, 6374 – 77, Ferry County Development Regulations Ordinance No. 2013-05 p. 26 & pp. 28 – 31.

¹²⁶ *Id.*

provision “7.4.31” which say nothing about “block groups” and do not authorize block groups to override all of the other criteria.¹²⁷ Policy “7.4.30 9” does call on the County to “avoid whenever possible ... designating very small areas very small areas,” but areas just under 500 acres are not very small.¹²⁸ And the block criterion always excludes areas under 500 acres, not whenever possible while still meet the other policies that call for designating agricultural land.

So the criterion is inconsistent with RCW 36.70A.070 and RCW 36.70A.120 which require consistent between the parts of the comprehensive plan since this criterion was used to develop the comprehensive plan’s Future Land Use Map.

We recognize that the Court of Appeals in the *Manke* decision determined that Mason County could limit forest land designations to parcels, really blocks of land, of at least 5,000 acres as the guidelines allow consideration of “predominant parcel size.”¹²⁹ We also recognize that the supreme court in the *Lewis County* decision cited this decision

¹²⁷ AR 6342 – 43, Ferry County Ordinance No. 2013-03 *Ferry County Comprehensive Plan and the Curlew Lake Sub Area Plan* pp. *3 – 4.

¹²⁸ AR 6342, *Id.* at p. *3.

¹²⁹ *Manke Lumber Co., Inc. v. Diehl*, 91 Wn. App. 793, 807 – 08, 959 P.2d 1173, 1181 (1998) *review denied Manke Lumber Co., Inc. v. Diehl*, 137 Wn.2d 1018, 984 P.2d 1033 (1999).

with approval. The difference here is that this criterion is inconsistent with the Ferry County Comprehensive Plan. The Board did not respond.¹³⁰

B. Ferry County has failed to properly apply the County’s designation criteria, and comply with the GMA and the Minimum Guidelines in designating agricultural lands of long-term commercial significance.

1. The Application of Designation Criteria to Federal Grazing Allotments, also known as grazing leases, violates RCW 36.70A.070 and RCW 36.70A.130(1)(d). (Assignment of Error 3, Issue 3, Issue 4.)

The “Application of Designation Criteria to Federal Grazing Allotments” attempts to argue that the county applied its criteria to the federal and state grazing allotments in a similar way to the private agricultural land, only differing where data was not available.¹³¹ But that is not the case. This is clearly shown in the soil classification criterion. This criterion states that USDA Land Capability “Classes I through IV have been determined to have the appropriate characteristics that could make them suitable for Agricultural Lands of Long-Term Commercial Significance designation.”¹³² However, federal lands have been designated as agricultural lands of long-term commercial significance that have few or no USDA land capability class I through IV soils. For example, the

¹³⁰ AR 7503 – 04, Order Finding Compliance pp. 14 – 15 of 16.

¹³¹ AR 6372 – 74, Ferry County Development Regulations Ordinance No. 2013-05 pp. 26 – 28.

¹³² AR 6366, *Id.* at p. 20. But see AR 6368, *Id.* at p. 22 which only gives points to certain unlisted Class III soils and all Class IV soils if they are irrigated.

Southwest, Northeast, and Southeast quarters of Section 29, Township 40 East, Range 34 North EWM has been designated as agricultural lands of long-term commercial significance.¹³³ But only 16 percent of these 477 acres have a land capability of IV or better and there are no land capability II or III soils.¹³⁴ And as you can see from the aerial photograph, none of this area is irrigated.¹³⁵

In contrast, the bottom land along the Kettle River adjacent to this section has 72 percent of this land in Land Capability Class II through IV soils, with the largest percentage, 42.5 percent, in Land Capability Class II soils.¹³⁶ But the bottom land was not designated. So the criteria are being applied to the privately owned farm and ranch land in an inconsistent

¹³³ AR 6356, Ferry County Comprehensive Plan Future Land Use Map Page 6 Agricultural Land of Long-Term Commercial Significance.

¹³⁴ AR 6438, USDA Natural Resources Conservation Service, *Soil Map – North Ferry Area, Washington (Section 29, Township 40, Range 34)* p. 3 of 3 (9/16/2012); AR 6583, 6585, 6597, 6606, 6684 – 86, 6716, 6725, 6738, & 6741 – 42, USDA Natural Resources Conservation Service, *Map Unit Description North Ferry Area, Washington* p. 35, p. 37, p. 49, p. 58, p. 136 – 38, p. 168, p. 177, p. 190, p. 193 – 94 of 198 (6/25/2012); AR 6356, Ferry County Comprehensive Plan Future Land Use Map Page 6 Agricultural Land of Long-Term Commercial Significance.

¹³⁵ AR 6438, USDA Natural Resources Conservation Service, *Soil Map – North Ferry Area, Washington (Section 29, Township 40, Range 34)* p. 3 of 3 (9/16/2012).

¹³⁶ AR 6438, USDA Natural Resources Conservation Service, *Soil Map – North Ferry Area, Washington (Sections 17, 19, 20, 30, Township 40, Range 34)* p. 3 of 3 (9/16/2012); AR 6579, 6618, 6620, 6649, 6650, 6663, 6666, 6675, 6676, 6686, 6705, 6708, 6709, & 6733, USDA Natural Resources Conservation Service, *Map Unit Description North Ferry Area, Washington* p. 31, p. 70, p. 72, p. 101, p. 102, p. 115, p. 118, p. 127, p. 128, p. 138, p. 157, p. 160, p. 161, & p. 185 of 198 (6/25/2012); AR 6356, Ferry County Comprehensive Plan Future Land Use Map Page 6 Agricultural Land of Long-Term Commercial Significance. See also the calculations for Sections 17, 19, 20, 30 in the Excel spreadsheet “Land Capability Rating for Soils from the Soil Map for Sections 17 19 30 R34 T40” at AR 6512.

manner. *Ferry County Comprehensive Plan* Policy “7.4.30 7” requires that the process of designating agricultural lands of long-term commercial significance shall be “applied equally to all land subject to possible designation.”¹³⁷ Since the Future Land Use Map is part of the Ferry County Comprehensive Plan, this inconsistent application created an inconsistency in the comprehensive plan.¹³⁸ This violates RCW 36.70A.070, RCW 36.70A.120, and RCW 36.70A.130(1)(d).

There are additional inconsistencies. Many of the grazing allotments are more than 50 miles from a market or supplier which is another criterion in the “Criteria for Designating Agricultural Lands of Long-Term Commercial Significance in Ferry County, Washington”¹³⁹ Again, this violates the GMA.

2. The Weighting of Criteria for Assessing Long-Term Commercial Significance is clearly erroneous because it misinterprets WAC 365-190-050(5) violating RCW 36.70A.020(8) and RCW 36.70A.050. (Assignment of Error 3, Issue 3, Issue 4.)

RCW 36.70A.050 requires the Washington State Department of Commerce to adopt minimum guidelines for the designation of

¹³⁷ AR 6342, Ferry County Ordinance No. 2013-03 p. *3.

¹³⁸ AR 6356, Ferry County Comprehensive Plan Future Land Use Map Page 6 Agricultural Land of Long-Term Commercial Significance.

¹³⁹ AR 6371, Ferry County Development Regulations Ordinance No. 2013-05 p. 25; AR 6356, Ferry County Comprehensive Plan Future Land Use Map Page 6 Agricultural Land of Long-Term Commercial Significance.

agricultural lands of long-term commercial significance. RCW 36.70A.050(3) provides that “[t]he guidelines under subsection (1) of this section shall be minimum guidelines that apply to all jurisdictions” WAC 365-190-050(5) provides that “[w]hen applying the criteria in subsection (3)(c) of this section [the WAC long-term commercial significance criteria], the process should result in designating an amount of agricultural resource lands sufficient to maintain and enhance the economic viability of the agricultural industry in the county over the long term; and to retain supporting agricultural businesses, such as processors, farm suppliers, and equipment maintenance and repair facilities.” *Ferry County Comprehensive Plan Policy “7.4.30 2”* provides “[d]esignate sufficient commercial significant agricultural ... land to ensure the County maintains a critical mass of such lands for present and future use.”¹⁴⁰

Instead of following WAC 365-190-050(5) and the Ferry County Comprehensive Plan and using this minimum guideline to designate sufficient agricultural lands on a countywide basis to maintain the agricultural industry, the county created “[a] weighting of criteria that is calculated to assure that no lands are designated does [sic] not provide significant ‘critical mass’ to assure the viability of the agricultural industry

¹⁴⁰ AR 6341, Ferry County Ordinance No. 2013-03 *Ferry County Comprehensive Plan and the Curlew Lake Sub Area Plan* p. *2.

over the long-term.”¹⁴¹ So under the county’s interpretation each area individually must “provide significant ‘critical mass’ to assure the viability of agricultural industry over the long-term” or it cannot be designated. If each area does not provide this critical mass, it is not designated. However, WAC 365-190-050(5) requires the opposite. WAC 365-190-050(5) requires the County to designate enough agricultural land countywide to provide the critical mass. Ordinance No. 2013-05, on pages 28 through 30, shows that the County excluded many areas using this “weighting of criteria” because they do not provide “critical mass.”¹⁴² So we see that Ferry County applies WAC 365-190-050(5) exactly the opposite of the way the rule recommends. Rather than following the rule to designate enough agricultural lands to maintain the industry, Ferry County designated only 405 acres of private land as agricultural lands of long-term commercial significance, harming the industry.¹⁴³ The harm can be seen in the fact that Ferry County lost 63,771 acres of land in farms between 1997 and 2007.¹⁴⁴ The county’s application of WAC 365-190-050(5) and the concept of critical mass is a clearly erroneous interpretation of the minimum guidelines. RCW 36.70A.050(3) provides that the

¹⁴¹ AR 6374, Ferry County Development Regulations Ord. No. 2013-05 p. 28.

¹⁴² AR 6374 – 77, *Id.* at pp. 28 – 31.

¹⁴³ AR 6376, *Id.* at p. 30.

¹⁴⁴ AR 6515, *Change in Land in Farms 2007 to 2002: Washington State and Washington Counties.*

guidelines “shall be minimum guidelines that apply to all jurisdictions ...” Rather than considering the guidelines and properly interpreting and applying WAC 365-190-050(5), the County used the regulation to justify the opposite of what the regulation recommends. This is not considering the rules as the GMA requires and is clearly erroneous.

The inconsistency with WAC 365-190-050(5) can be seen small number of cattle that can be supported by the county’s 405 acres of privately owned agricultural lands of long-term commercial significance.¹⁴⁵ In 2007, Ferry County farms and ranches had 4,126 cattle and calves.¹⁴⁶ Ferry County has chosen to designate as agricultural lands of long-term commercial significance 405 acres of land that could grow hay for the six months that the cattle cannot graze the federal or state lands.¹⁴⁷ Using the hay yields of Mires gravelly loam, a land capability category 3 soil, the 405 acres will support 170 cattle and calves for the six months they cannot graze the federal and state grazing allotments if the

¹⁴⁵ AR 6376, Ferry County Development Regulations Ord. No. 2013-05 p. 30.

¹⁴⁶ AR 680, U.S. Department of Agriculture, 2007 Census of Agriculture County Profile Ferry County Washington p. *2.

¹⁴⁷ AR 6342, Ferry County Ordinance No. 2013-03 Ferry County Comprehensive Plan and the Curlew Lake Sub Area Plan Section 7.4.31 p. *7.

land is not irrigated.¹⁴⁸ If irrigated, it would support 935 cattle and calves.¹⁴⁹ The following table shows the math and the data sources.

Estimated Annual Hay Yield from Ferry County Agricultural Lands of Long-Term Commercial Significance and the Cattle it Can Support

	Tons Per Acre (Mires gravelly loam)	Pounds Per Acre	Acres of Agricultural Lands of Long-Term Commercial Significance	Pounds of Hay Produced Per Year	Pounds Need to Feed a Cow Each Day	Cows that Can Be Feed for Six Months
Ir-rigated Yield	5.5	11,000	405	4,455,000	26.46	935
Un-ir-rigated Yield	1	2,000	405	810,000	26.46	170

Sources:

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).

AR 6447, USDA Natural Resources Conservation Service, *Yields of Irrigated Crops (Component): Grass-legume hay (Tons)—North Ferry Area, Washington (Fields South of Malo Hay Yields Irrigated)* p. 3 of 4 (7/10/2013).

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

¹⁴⁸ 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).

¹⁴⁹ AR 6447, USDA Natural Resources Conservation Service, *Yields of Irrigated Crops (Component): Grass-legume hay (Tons)—North Ferry Area, Washington (Fields South of Malo Hay Yields Irrigated)* p. 3 of 4 (7/10/2013).

peer-reviewed. AR 6775, Society of Range Management Publications webpage.

AR 6453, Jackie Nix, Plan Ahead For This Winter's Feed Needs p. *1 (Sweetlix: Sept. 2006).

So the land the county has designated will not support the needs of county's agricultural industry even if only cattle operations are considered. Since this land will only support 4 percent to 23 percent of the county's cattle it does not maintain and enhance the county's agricultural industry. This violates WAC 365-190-050(5). It violates RCW 36.70A.070 because it is inconsistent with *Ferry County Comprehensive Plan* Policy "7.4.30 2."¹⁵⁰ It also violates the GMA natural resources goal in RCW 36.70A.020(8) which directs the County to "[m]aintain and enhance natural resource-based industries"

The Board did not decide this issue,¹⁵¹ violating the rule of the *Low Income Housing Institute* decision.¹⁵² This provides this court with another reason to reverse the Board's Order Finding Compliance.

¹⁵⁰ AR 6340, Ferry County Ordinance No. 2013-03 *Ferry County Comprehensive Plan and the Curlew Lake Sub Area Plan* p. *1.

¹⁵¹ AR 7501 – 04, Order Finding Compliance 12 – 15.

¹⁵² *Low Income Housing Institute v. City of Lakewood*, 119 Wn. App. 110, 119, 77 P.3d 653, 657 (2003) the Board must "decide all issues requiring resolution as required by RCW 36.70A.290(1) and the APA (specifically RCW 34.05.570(3)(f))."

3. Ferry County’s failure to properly designate working farms and ranches is inconsistent with the designation of the federal grazing allotments and the GMA. (Assignment of Error 3, Issue 3, Issue 4.)

RCW 36.70A.020(8) directs counties to “[m]aintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.” RCW 36.70A.070 requires that the comprehensive plan “shall be an internally consistent document”

Ferry County adopted its agricultural lands designation as part of the comprehensive plan.¹⁵³ 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.¹⁵⁴ Only designating Department of Natural Resources and U.S. Forest Service grazing leases and 405 acres of private land¹⁵⁵ as agricultural lands of long-term commercial significance creates serious problems for Ferry

¹⁵³ AR 6356, Ferry County Comprehensive Plan Future Land Use Map Page 6 Agricultural Land of Long-Term Commercial Significance; AR 6343, Ferry County Ordinance No. 2013-03 *Ferry County Comprehensive Plan and the Curlew Lake Sub Area Plan* p. *4.

¹⁵⁴ AR 6376, Ferry County Development Regulations Ordinance No. 2013-05 pp. 30.

¹⁵⁵ AR 6376 – 77, Ferry County Development Regulations Ordinance No. 2013-05 pp. 30 – 31.

County farmers and ranchers and inconsistencies with the GMA and the comprehensive plan. First, the Forest Service only allows grazing in the Colville & Okanogan-Wenatchee National Forests.¹⁵⁶ So where will the winter feed come from? Hay and grain cannot be grown on the national forest land.

Second, in order to graze on a National Forest Service allotment, a rancher or farmer must obtain a Forest Service grazing or livestock permit.¹⁵⁷ To be eligible for a 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.”¹⁵⁸ So to use Forest Service land, a rancher or farmer must own 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

¹⁵⁶ AR 6779, *Forest Plan Revision, Colville & Okanogan-Wenatchee National Forests May 2009 Briefing: Rangelands and Forest Plan Revision* p. 2 of 2.

¹⁵⁷ 36 CFR § 222.3 (2012).

¹⁵⁸ 36 CFR § 222.1(b)(3) (2012).

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 comprehensive plan because the county’s natural resource goal calls for maintaining the “productive use of agricultural ... lands of long-term commercial significance.”¹⁵⁹ 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.

Third, by failing to designate private farm and ranchland, the county does not have to fulfill its duty *to assure the conservation of agricultural lands and to assure that the use of adjacent lands does not interfere with their continued use for the production of food or agricultural products.*¹⁶⁰ So private farmers and ranchers can be harmed by nearby incompatible development. Residential development and agriculture are incompatible.

Newcomers to the countryside often have little understanding of the business of farming or forestry. The conflicts between farmers and non-farm neighbors are well-known. Neighbors typically complain about farm odors, noise, dust, crop sprays, and slow moving farm machinery on local roads. Farmers point to crop theft, vandalism, trash dumping, and dogs and children trespassing and harassing

¹⁵⁹ AR 6340, Ferry County Ordinance No. 2013-03 *Ferry County Comprehensive Plan and the Curlew Lake Sub Area Plan* p. *1.

¹⁶⁰ *King County v. Central Puget Sound Growth Management Hearings Bd. (Soccer Fields)*, 142 Wn.2d 543, 556, 14 P.3d 133, 140 (2000) emphasis in original.

livestock. In forested areas, the increase in residents bring a greater likelihood of fire. In short, farming and forestry are industrial uses. They should be kept as separate as possible from rural residential development.¹⁶¹

Right to farm laws will not protect the farmers and ranchers from complaints and lawsuits.¹⁶² Failing to protect the agricultural industry by designating no private farm or ranch land is inconsistent with the GMA natural resources lands goal in RCW 36.70A.020(8).

Finally, Ferry County asserts regulatory authority over lands owned in fee by non-native Americans within the Colville Reservation as provided in *Brendale v. Yakima Indian Reservation*, 492 U.S. 408 (1989)¹⁶³ Yet the county has failed to designate any of these lands through the application of criteria that violate the GMA.

4. The Board’s focus on certain facts and opinions about Ferry County’s agriculture rather than the GMA criteria and minimum guidelines was an erroneous interpretation of the GMA. (Assignment of Error 3, Issue 4; Assignment of Error 5, Issue 6).

In the Board’s Order on Compliance, the Board relied on facts and opinions about agriculture in Ferry County to justify upholding the

¹⁶¹ AR 6519, Professor Tom Daniels, *What to Do About Rural Sprawl?* p. 1 (Presented at the American Planning Association Conference, Seattle, WA: April 28, 1999).

¹⁶² AR 6526, Arthur C. Nelson, *Preserving Prime Farmland in the Face of Urbanization: Lessons from Oregon* 58 JOURNAL OF THE AMERICAN PLANNING ASSOCIATION 467, p. 470 (1992) (footnotes omitted). As the Journal of the American Planning Association “Instructions for Authors” p. 1, AR 6545, documents, the Journal of the American Planning Association is a peer reviewed technical journal.

¹⁶³ AR 6359, *Ferry County Critical Areas Ordinance* 2013-04 p. 55.

County's decision to only designate designated 405 acres of its privately owned working farms and ranches as agricultural lands of long-term commercial significance.¹⁶⁴ Two key facts cited by the Board were wrong, at least as of the most recent Census of Agriculture figure available when the record in this case was created. Ferry County does not rank last in the state for the value of agricultural products sold. In 2007 Ferry County ranked 37 out of 39 counties.¹⁶⁵ So if the value of agricultural products sold justify only designating 405 acres, two other counties can designate even less land.

Ferry County ranks higher in the value of cattle and calves sold, 29th out of 39 counties in 2007.¹⁶⁶ It also ranks 23rd out of 39 counties in the acres of land, 6,784 acres, used to grow hay, grass silage, and green chop in 2007.¹⁶⁷ In 2003, Ferry County farmers and ranchers harvested 21,800 tons of hay, the 14th highest tonnage in Washington State.¹⁶⁸ In 2007, hay sales were the third highest commodity by dollar volume of

¹⁶⁴ AR 7504, Order Finding Compliance p. 15 of 16. AR 6376; Ferry County Development Regulations Ordinance No. 2013-05 p. 30.

¹⁶⁵ AR 680, U.S. Department of Agriculture, 2007 Census of Agriculture County Profile Ferry County Washington p. *2.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ 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).

sales by Ferry County farmers.¹⁶⁹ While the Board was certainly right that hay production supports the cattle and calve production, sales of \$327,000 in 2007 and the other data show that hay is a commercially significant crop.¹⁷⁰ The Board's conclusion that hay is not a commercially significant crop,¹⁷¹ based on a statement in Ferry County Development Regulations Ordinance 2013-05 assuming the \$327,000 in hay sales were not commercial significant, is not supported by substantial evidence.

In 2007, the Ferry County farms had an average value of over \$1.4 million.¹⁷² This compares with a Washington State average of a little over \$759,000.¹⁷³ And between 2002 and 2007 the number of farms increased from 207 to 232, an increase of 25 farms or 12 percent.¹⁷⁴ The number of farms in Ferry County increased faster than farms in Washington for the same period. The figure for Washington State was 9.3 percent.¹⁷⁵

While opinions and facts about agriculture are important for monitoring the industry and helping it become more economically successful, they are not the criteria in the GMA or the Minimum

¹⁶⁹ AR 680, U.S. Department of Agriculture, 2007 Census of Agriculture County Profile Ferry County Washington p. *2.

¹⁷⁰ *Id.*

¹⁷¹ AR 7504, Order Finding Compliance at 15 of 16.

¹⁷² AR 6390, 2007 Census of Agriculture Table 8 p. 291.

¹⁷³ AR 6389, *Id.* at p. 290.

¹⁷⁴ AR 6390, *Id.* at p. 291.

¹⁷⁵ AR 6389, *Id.* at p. 290.

Guidelines.¹⁷⁶ Since the Board's duty is to determine compliance with the goals and requirements of the GMA,¹⁷⁷ the Board erred when it lost focus away from the GMA and Minimum Guidelines.

VI. CONCLUSION

As we have seen, the Board failed to correctly interpret and apply the law and the Board's order is not supported by substantial evidence. We respectfully request that this Court reverse the Board's Order Finding Compliance.

Respectfully submitted this 10th day of October 2014.



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Counsel for the Concerned Friends of Ferry
County & Futurewise

¹⁷⁶ *Lewis County*, 157 Wn.2d at 502, 139 P.3d at 1103.; WAC 365-190-050.

¹⁷⁷ RCW 36.70A.290(2).

CERTIFICATE OF SERVICE

I, Tim Trohimovich, declare under penalty of perjury and the laws of the State of Washington that, on October 10, 2014, 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: **Brief of**

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Dated this 10th day of October 2014.



Tim Trohimovich, WSBA No. 22367

FUTUREWISE

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Transmittal Letter

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Comments:

Hi: Enclosed is the Concerned Friends and Futurewise Petitioners' Brief. Please contact me if you require anything else. Tim Trohimovich, 206-343-0681 Ext. 118, tim@futurewise.org

Sender Name: Tim Trohimovich - Email: tim@futurewise.org

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