

## State Supreme Court hears trail case

By [Jefferson Robbins](#)

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OLYMPIA — Orchardists battling the plan to extend the Apple Capital Recreation Loop Trail north to Lincoln Rock State Park took their fight to the state Supreme Court on Tuesday.



Jack Feil Orchardist and plaintiff

Lawyers for Jack and Delaphine Feil and John and Wanda Tontz, arguing on behalf of a coalition of growers along the proposed 5.1-mile Rocky Reach Trail extension, claim permits issued by Douglas County to build the trail are illegal under the state Growth Management Act. Their previous lawsuits, the first of which was filed in 2004, have been rejected by Douglas County Superior Court and the state Court of Appeals.

John Tontz died last spring, not long before the Supreme Court agreed to review the case. The nine-judge court heard 45 minutes of arguments from lawyers, with Douglas County Prosecutor Steve Clem speaking on behalf of his county.

“The petitioners’ arguments, the relief they’re requesting from this court, threaten the finality and certainty of local land use planning, besides being contrary to the GMA,” Clem told the court.

Feil, Tontz and other orchardists lease agricultural land on a right of way owned by the state since the 1950s, when it was condemned for a highway that was never built. The corridor is 10 feet wide, with a 100-foot buffer zone on either side, stretching from the Odabashian Bridge to Lincoln Rock.

Douglas County granted a recreational overlay permit to the Washington State Parks and Recreation Commission, allowing the planned bike-and-pedestrian trail to travel through a longstanding agriculturally zoned area. The orchardists sued, saying the overlay permit violated the Growth Management Act.

“You can’t just categorically say that, ‘Oh, you can never have a recreational facility ever in an ag resource area,’ ” plaintiffs’ attorney Robert Rowley said in court

Tuesday. "... But right through the center of a limited supply of irrigated, mature orchard? The answer, I think, is no."

Clem and Deputy Attorney General James Schwartz countered that the Growth Management Act doesn't apply, since the plaintiffs didn't appeal the trail plans within the period allowed by that act. Instead, they argued, the Land Use Petition Act applies.

"There is substantial evidence in this record to support what the county decided," Schwartz said. "... I think my opponents are looking solely at, can they bring the Growth Management Act back into this case as a collateral attack? And the answer to that is no, because they have not challenged either the comprehensive plan or the zoning ordinance within the 60-day period. This is a LUPA case."

The court will issue a written opinion on the case at an unknown future date.

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