

March 20, 2009

SKAGIT COUNTY  
PERMIT CNTR.

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To the Skagit County and the City of Mount Vernon,

*On behalf of the Dike and Britt Road Landowners Association, I, Josh Axthelm, respectfully submit the following comments as an addition to the comments submitted 3/17/09 at the "Urban Growth Area Open Space Plan" Public Hearing:*

A request was made by the County Commissioners to back-up comments made about why the trail/pathways and the Open Space area were in conflict with the County and City Comprehensive Plans, additionally how was the public not properly notified. I submit the following statements, code references and laws:

The current Comprehensive Plan for the Skagit County shows the UGA stopping at the city limits in south Mount Vernon. (See attached appendix "A1 & A2") The land beyond this point is rural land zoned AGNRL. According to the County Comprehensive Plan the definition of Urban Growth are as follows:

*Urban growth: refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be **incompatible** with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.*

*Urban growth areas: means those areas designated by a county pursuant to RCW 36.70A.110.*

According to the City Comprehensive Plan the definition of Urban Growth Areas are as follows:

*Urban Growth Areas: (1)Each county that is required or chooses to adopt a Comprehensive land use plan under GMA shall designate an urban growth area or areas within which urban growth shall be encouraged, and outside of which growth can occur only if it is not urban in nature. Each city that is located in such a county shall be included **within** an urban growth area. An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth, or is adjacent to territory already characterized by urban growth.*

The City of Mount Vernon, adopted Comprehensive Plan likewise shows the UGA terminating at the same point.(Appendix “B1”) However (2) plans adopted in the 2008 update by the City of Mount Vernon are in conflict with the established UGA definitions (See Attached appendix “B2 & B3”) and are creating confusion as they have been included in the proposed “UGA Open Space Plan”.

Comments were called for by the City and a survey was completed for city residents, however this did not extend to properties outside of the city. Our opportunity, to oppose or approve of the plan changes, that directly affect our property, did not arrive until now with the submittal of the “Urban Growth Area Open Space Plan” Additionally the name itself “Urban Growth Area Open Space Plan” creates confusion as it is addressing areas that are by law, not part of the Urban Growth Area or future expansion area of Mount Vernon.

State law states the following requires with respect to the Urban Growth Area:.

According to RCW 36.70A.110 paragraph 1

*1) Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is a designated new fully contained community as defined by RCW 36.70A.350.*

According to these documents, the Urban Growth Area is specified by the County after which the City can develop the Comprehensive Plan within those limits of the County approved Urban Growth Area. In the case of the “Urban growth Area Open Space Plan” It is showing an area that comes from the City of Mount Vernon Comprehensive Plan. The comments by the city should have stopped at the limits to the approved UGA instead of extending beyond and around an agricultural area. This removal should be requested by the county as it is in conflict with both Washington state law, GMA and the established County UGA.

Because the suggested expansion of the UGA along with the Trails/Pathways and the Open Space designated by the city. The UGA needs to be first, expanded and approved by the Skagit County however, this meeting discussing the expansion of the UGA by way of pathway and open space is occurring after the city already had approved the changes and shows them within their comprehensive plan. Thus I am requesting the sections be revised to remove all reference to the pathways until after proper procedure is followed at the county level.

According to the WWGMHB (Western Washington Growth Management Handbook) January 2007; page 238:

Under the GMA land is included in an UGA if it is deemed appropriate for urban development. If it is not appropriate for urban development it should be left out of an UGA. Abenroth v. Skagit County 97-2-0060 (Final Decision and Order, 1-23-98)

Pathways connecting communities and parks are Urban in Nature. In the Case of the Dike and Britt road areas, the Pathway and Opens Space designated on the “Urban Growth Area Open Space Plan” goes well beyond the city limits and the approved Urban Growth Areas, to surround an area that is AGNRL. This Land is productive farmland and is not intended to be added to the UGA. Furthermore, there is no other community within a reasonable distance to the existing UGA boundary at south Mount Vernon. (Note that the pathway refers to extension to Stanwood!)

According to Skagit County Code 14.38 “RIGHT-TO-MANAGE NATURAL RESOURCE LANDS”:

*14.38.030 Disclosure.*

*(1) The statement set forth in Subsection (2) of this Section (“disclosure”) shall be used under the following circumstances and in the following manners:*

*(a) Skagit County shall mail a copy of the disclosure, with an explanatory informational attachment to all landowners whose parcel(s) lie within an area or within 500 feet of an area designated as a Natural Resource Land in Skagit County beginning in the year 1999 and every 3 years thereafter; provided that no liability shall attach to Skagit County for any actions or omissions under this Subsection.*

*(b) Upon transfer of real property by sale, exchange, gift, real estate contract, lease with an option to purchase, any other option to purchase, ground lease coupled with improvements, or any other means, the seller shall be required to record with the County Auditor a statement containing the language set forth in Subsection (2) of this Section in conjunction with the deed conveying the real property; provided, however, that the real property is located within 1 mile of the Agriculture Natural Resource Land (Ag-NRL), or 1/4 mile of Industrial Forest Natural Resource Land (IF-NRL), Secondary Forest Natural Resource Land (SF-NRL), or Rural Resource Natural Resource Land (RRc-NRL), or Mineral Resource Overlay (MRO-NRL) districts, as set forth in SCC 14.16.400, 14.16.410, 14.16.420, 14.16.430, and 14.16.440, respectively.*

*(2) The following shall constitute the disclosure required by this Section: This disclosure applies to parcels designated or within 1 mile of designated agricultural land or designated or within 1/4 mile of rural resource, forest or mineral resource lands of long-term commercial significance in Skagit County. A*

*variety of Natural Resource Land commercial activities occur or may occur in the area that may not be compatible with non-resource uses and may be inconvenient or cause discomfort to area residents. This may arise from the use of chemicals; or from spraying, pruning, harvesting or mineral extraction with associated activities, which occasionally generates traffic, dust, smoke, noise, and odor. Skagit County has established natural resource management operations as a priority use on designated Natural Resource Lands, and area residents should be prepared to accept such incompatibilities, inconveniences or discomfort from normal, necessary Natural Resource Land operations when performed in compliance with Best Management Practices and local, State, and Federal law.*

Skagit County Resolution No. R20020036 dated 1/29/02 page 3. The following referring to Adopting a Map and text relating to Open Space and Greenbelts:

*The Board adopts Planning Commission findings 17 and 104 from the Planning Commission Recorded Motion which are renumbered as follows:*

*a) RCW371066A0 states that open space corridors within and between urban growth areas shall include lands useful for recreation emphasis added and the term recreation implies a public use. Therefore the open space corridors and greenbelts should be limited to only public lands*

*b) Because corridors and greenbelts have an implied meaning of public access and because dikes are not open for public access dikes do not qualify as open space corridors and greenbelts.*

Designation and use of the Dike and Britt Slough as a pathway and establishing a pathway may be hazardous to the users health. Statements were made at the “UGA Open Space Plan” meeting on the 17<sup>th</sup> of March referring to increasing health awareness to children and the community to increase exercise etc. This is a truly worthy cause and deserves all the backing it can receive. It should be noted however that use of the dike and Britt Slough could be hazardous to one's health. Often there are farmers that spray chemicals, pesticides, fertilizer, agricultural products, animal manure, etc. The smell can often be overwhelming. Physical proximity to equipment that is working is a hazard not only to the children and adults that use the dike but to the pets that are usually off-leash and get in the way of the work being performed. I'm sure you are well aware of the dangers of farm equipment. Trails through farmland increase the risk to the farmer using the equipment and the Dike and Britt Slough maintenance crews. The Open Space Plan addresses future acquisitions. If one were to obtain acquisitions it would also need to consider the health hazards to the user. To restrict the farmer would in turn deem the land unusable for agricultural use and this would be against the GMA, County Code and state laws preserving farmland.

According to the WWGMHB (Western Washington Growth Management Handbook) January 2007; page 247:

*Simply because a rural area has sewer and small lots does not mean it is required to be designated as an UGA. Solberg v. Skagit County 99-2-0039 (Final Decision and Order, 3-3-00)*

*Compliance with the language of a local government's own ordinance is required before compliance with the GMA can be achieved. The availability of public water services only, without public sewer and other urban services, does not provide the basis for logically-phased and efficiently-served urban development. ICCGMC v. Island County 98-2-0023 (RO 7-8-99)*

Much of Skagit County in this area has been converted to PUD water because of water quality and wells, Additionally there are pockets of smaller lots adjacent to the dike and Britt roads with larger parcels of farmland behind.

There is an area of the city limits, Christenson Seed, that extends into the farmland, however this land is Agricultural land and should remain as such. It is our understanding that developments rights have been sold as is required by state law.

According to the WWGMHB (Western Washington Growth Management Handbook) January 2007; page 244:

*A city cannot designate property within its municipal boundaries as agriculture unless the city has enacted a program for transfer or purchase of development rights under RCW 36.70A.060(4). Achen v. Clark County 95-2-0067 (Compliance Order, 10-1-96)*

As far as use of the dike as a pathway, Use of the dike for walking trails is ignoring the fact that the property is private property.

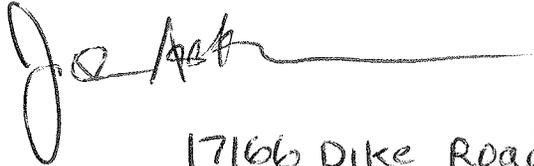
Many of the Legal descriptions of landowners address the dike easement, (note that it remains the private property of the land owner) approximately as follows:

*“also except a right of way/easement for dike purposes for the construction, use and maintenance of a dike as condemned by diking district #3 of Skagit County in Superior court cause no. 2982”*

Many of the potential users would surely enjoy the view and the nature that the dike and the river bring. If it were public property it would be nice to use it, However this is not the case. It is our back yard and our view. If they wanted the view and the land along with the responsibility of keeping it up they should have bought a piece of property instead of a house in town with no view. In most cases we had to pay more per acre to have this amenity. How would they like it if the public were free to walk through their back yard or have a picnic on their back porch? If the public wanted land on the river they could have bought it along with the increase flood insurance and dike district fees that we pay. If you settle for a city lot, then don't try to take rights from those that rightfully own it.

As a matter of suggestion, We would suggest rerouting pathways to along the Britt Slough and up Blackburn along public right of ways, which are consistent with the existing UGA and would connect the other pathways within the UGA and the city of Mount Vernon. (See attached appendix "C")

Sincerely,



Josh Axthelm  
Dike and Britt Road Landowners Association

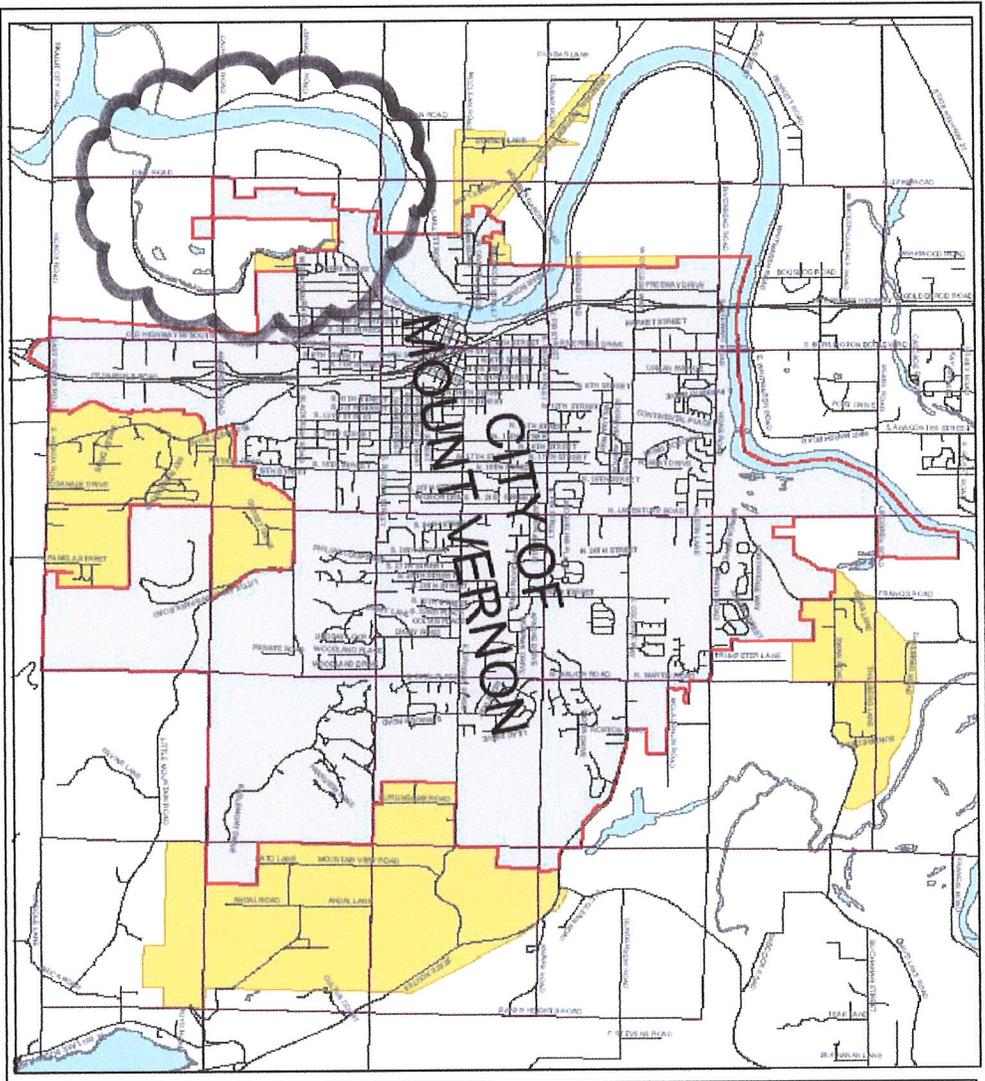
17166 Dike Road Mount Vernon

Cc:

Mayor Bud Norris, City of Mount Vernon  
Mount Vernon City Council Members  
Mount Vernon Community and Economic Development  
Mount Vernon Parks and Recreation  
Skagit County Commissioners  
Skagit County Planning and Development  
Jeroldine Hallberg, Skagit County Planning  
Aiden Axthelm, Dike and Britt Road Landowners Association Secretary







**LEGEND**

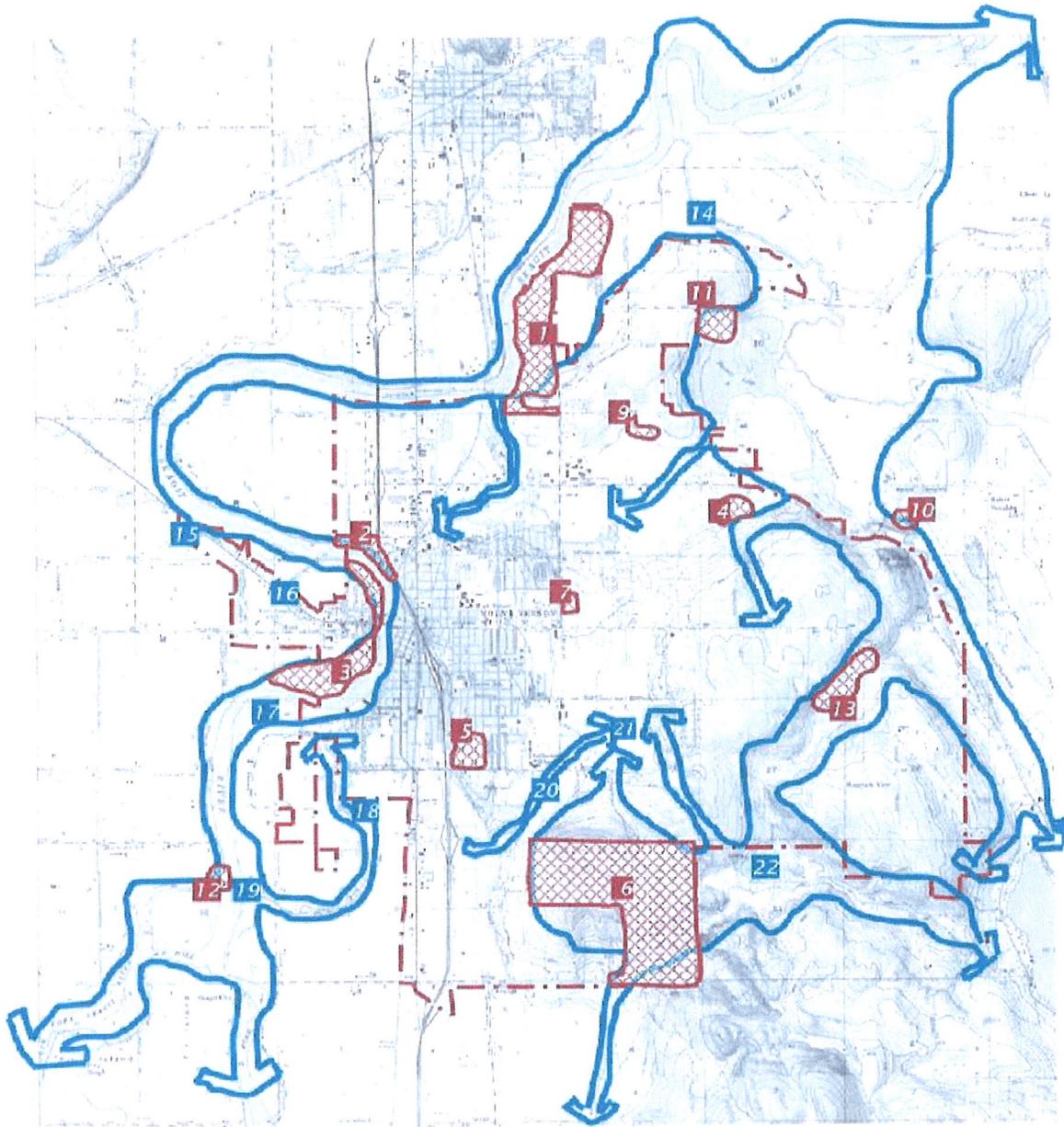
- INCORPORATED CITY LIMITS
- URBAN GROWTH AREA

**MAP LU-1**



**CITY OF MOUNT VERNON  
URBAN GROWTH AREAS**

"Appendix B1"



**Conservancy sites – environmental resources**

Existing conservancies

- 1 Ted Reep Park
- 2 Lion's Park North
- 3 Edgewater Park
- 4 Bakerview Wetlands
- 5 Hillcrest Park
- 6 Little Mountain
- 7 Kiwanis Park
- 8 Bonnie Rae Park
- 9 Skagit County Playfield – wetlands
- 10 Big Rock Park
- 11 Skagit Land Trust – Barney Lake
- 12 DFW Spud House
- 13 Beaver Pond – Eaglemont

Proposed conservancies

- 14 Nookachamps Creek
- 15 Memorial Highway/SR-536
- 16 Moore's Garden Road Wetlands
- 17 South Bank/Dike Road
- 18 Britt Slough
- 19 Britt Slough at Britt Road
- 20 Maddox Creek/Barbness
- 21 Blackburn Road Wetlands
- 22 Carpenter Creek-Little Mtn Road

- existing open space
- proposed open space corridors
- existing open space
- proposed open space acquisitions

