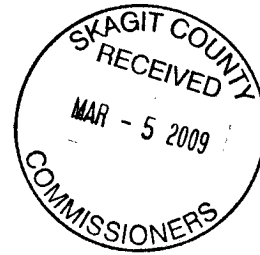


March 1, 2009

Jeroldine Hallberg
Skagit County Development Services
1800 Continental Place
Mount Vernon, Wa 98273



RE: Proposed Skagit Countywide UGA Open Space Concept Plan

Dear Ms Hallberg:

I have examined the plan as proposed and as onlined on the Skagit County webpage as of the date of this letter. I regret that I will be out of the state at the March open meeting, and must make my comments by letter.

Please refer to my memo to you of April 25,2008, concerning the trails portion of this plan. My comments in that memo are still pertinent, and by this reference are incorporated in this letter. Copy is attached.

In addition I have very specific objection to the comments made in the answer to frequently asked questions, 5.1, referring to Appendix A, Page A-4, following A-7: RCW 36.70A.165. I recommend that this wording be reviewed with your legal department, as it appears to be a fundamental misunderstanding of the meaning of condemnation and adverse possession.

Condemnation is the act of government (federal, state, county, municipal), and of duly authorized units of government and public utility companies invested with the right of eminent domain, to take private property for public use and benefit, upon the payment of just compensation. It is that act of the sovereign in substituting itself in place of the owner and/or the act of taking all or part of the rights of the owner.

Adverse Possession is the actual, exclusive, open, notorious, hostile, and continuous possession and occupation of real property under an evident claim or right of title. The time required legally to obtain title by adverse possession varies from state to state. (In Washington it is 7 years with color of title, 10 years without). Adverse Possession cannot be claimed against Federal, State, County, City or other public ownerships, and in most cases against the operating properties of public utilities and railroads.

In 36.70A:165 the legislature is stating that it extends this protection against adverse possession to lands designated as a "plat greenbelt", "open space area", or land " dedicated to open space to a public agency or to a bona fide(?) homeowners association"

It is unknown whether this statute has been tested in the Courts.

The statement is made that "Individuals may voluntarily sell property or easements to an open space program should they so desire." This is obviously true.

The governmental agency may also acquire these rights by condemnation, provided that they show public use and necessity (and perhaps even private use, i.e. Kelo case. This latter case and its ramifications is the subject of a current study committee of the State Attorney General). They may acquire these rights, or acquire property for other public purposes (i.e. road) across open space designated areas.

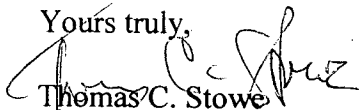
The legislature has specifically stated that certain park bond funds may not be used to acquire property by condemnation, but that only applies to those funds.

The adverse possession comments in 36.70A simply mean that after that statute was passed, and provided the courts do not overturn it, the use of open space designated property by those not owning it in fee does not ripen into title by means of user.

I personally believe that this legislation is valid with respect to those rights conveyed to a public agency. I doubt that it can be applied to private homeowners associations. The private association greenbelts are for the use and enjoyment of the owners of the association, not the public.

The Country must also be careful, in designating open space areas, to avoid the issue of Inverse Condemnation, defined as a legal process by which an owner may claim compensation and loss in value of property when a public agency has proposed a taking but not proceeded to acquire same, thus having the effect of rendering the property unsaleable in the open market.

Yours truly,



Thomas C. Stowe
P.O. Box 847
Anacortes, WA 98221

cc: County Commissioners

April 25, 2008

Tom Beckwith
Jeroldine Hallberg

The Following Comments apply to the Skagit Countywide UGA Open Space & Trails Concept diagrams and accompanying aerial overlays distributed at the meeting on April 14, 2008 at Skagit Station.

Anacortes Page:

1. The two "arrowed" areas leading south from SR 20 at both Reservation Road and the Golf Course are in no sense common open space. The Reservation Road area is heavily developed to commercial and industrial use. The Golf Course is privately owned, as is the beach across from same at Similk Bay. These open space designations appear to be without merit.
2. It is unclear from the diagram, but an unnamed trail is shown leading from the golf course area due west across a great deal of developed private property, eventually going around the south side of Mount Erie. A substantial section of this is not in the Anacortes UGA, and the trail would appear to cross through a large ranch area, developed with the multimillion dollar Scimitar estate. (Last sold for 8.4 million, since added to with at least 2 million more in land and improvements) It is illogical to believe this property may be crossed with a trail.

The Anacortes Park Department is not aware of this trail, per Gary Robinson.

The County Parks Department Department was contacted. It is not on any approved plan. The County Parks and Recreation master plan is very vague about specific trail locations with a few exceptions.

3. The portion of the PNW Trail at the west end of Cambell Lake also crosses at least 5 private improved properties, making the location very expensive, and, as in #2, probably only obtainable through condemnation.

Other alternate routes have been suggested, especially Rosario Road, which would be far less costly.

4. There is a substantial problem with the proposed trail in the City of Anacortes, northerly from The Guemes Channel Trail to Cranberry Lake. The location appears to be due south of the Loverick Marina, in a fully developed residential area.

What has been discussed in the City is a trail west of Anacopper Road, in the east edge of undeveloped Port of Anacortes property, connecting with the Community Forest near the south end of Philadelphia St. This would require the least acquisition, provided the Port agrees.

When it was noted that Bob Hyde, Port Manager, was on the contact list, Mr. Hyde was

interviewed, and stated he had had no contact with anyone connected with this study.

5. The PNW Trail through the Deception Pass State Park will require the approval of the Park Ranger. It was not noted that he had been contacted with respect to this study. The Route may or may not meet the plans already developed by the Park

6. There a myriad of problems with the trail along the Guemes Channel. Only a small section near the San Juan Island Ferry is actually adopted. The balance requires innumerable private ownerships, and, in the area shown on the map, goes through the Port properties leased to Dakota Creek. Again, the costs of this and the ability to acquire would appear to make the trail unlikely to ever occur.

What has been discussed in the City is a trail along 6th Street ending at Waterfront Park. This does not involve the Port at all, or its lessees.

7. There appears to be a band around the shoreline of Campbell Lake and Lake Erie. There have been a few properties who have given easements. Is it the intention to acquire easements along the Shoreline?

8. Areas shown on smaller maps on Guemes Island as open space, are in fact heavily developed portions of the island. There are large areas of Guemes which have various Trust ownerships and easements, as well as State Fish and Game ownerships. They are not, however, in the, location shown. This should be corrected, and should also include the added 70 acres the Land Trust intends to acquire.

Burlington/Bayview Comments:

No trail is shown on this plan along Chuckanut Drive from Whatcom County to Burlington. This has been on the County plan at least 10 years, and is to be on the old Interurban Right of Way. Has this been abandoned? If not, it should be shown.

Mt. Vernon Comments:

Trails are shown on the Skagit and other levees. Have these been discussed with and approved by the Dike Districts which have jurisdiction over same? No Dike District appears to have been contacted. This issue has been brought up before, and is not believed to be resolved.

Dike District 12 has been acquiring substantial properties for revision of the Shagit River Dike, an overflow area, and channel revision. The proposed trails appear to conflict substantially with their intentions.

Comments re "Survey" and "Ratings" document.

1. The GMA comments re open space are contained in 36.70A.160. Eh C.1.1 comment is a rephrasing of that statute. All of the law pertaining to critical areas is not included. The study

should include those as well. The emphasis in this questionnaire, and the study, is on trails, and to some extent open space.

The "Codification" symbols, with C designations, are apparently only a list prepared by the maker of this study. They are not in any law anywhere, and I believe are misleading. If this is the C list where are the A and B lists?

The questionnaire therefore is intended to guide the respondent into answers which predetermine an action, ie a huge trail network, at a very substantial tax cost. This benefits only that portion of the population who use the trails.

Creating a huge approved network of these trails, and a bureaucracy to spend the tax funds that acquire, build and maintain them is a major County undertaking, not mandated by Growth Management.

A decision must be made that this is a primary goal of the County, and the act should have a method for acquiring and finishing the trails once started (i.e Condemnation). Otherwise you will end up with a piecemeal approach, with a section of one trail here, and another there, hoping somehow to get landowners to agree to the placements.

Tom Stowe
Box 847
Anacortes, WA 98221