

**BEFORE THE WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD**

ABENROTH, et al.,)	
)	No. 97-2-0060c
Petitioners,)	
)	COMPLIANCE
v.)	ORDER ON
)	SHORT-TERM
SKAGIT COUNTY,)	REMANDED
)	ISSUES
Respondent,)	
)	
and)	
)	
TOM and SHEILA BUGGIA, et al.,)	
)	
Intervenors.)	
_____)	

On September 23, 1998, we issued a compliance hearing order in this case requiring Skagit County (County) to take action by January 22, 1999, to address our findings of noncompliance on various items denominated therein as “short-term issues.” On February 4, 1999, the County submitted a brief of actions taken and index on those issues. On February 16, 1999, Friends of Skagit County (FOSC) submitted a response to the County’s brief. On February 25, 1999, we received replies from the County and the City of Sedro-Woolley. On February 25, 1999, the County also submitted a motion to add to the record. On March 1, 1999, the City of Mount Vernon filed a motion to intervene.

A compliance hearing was held March 3, 1999. Participating in the hearing were: William Nielsen and Les Eldridge of our Board; John Moffat for the County; Patrick Hayden for Sedro-Woolley; and Gerald Steel for FOSC. Nan Henriksen, absent owing to illness, listened to the hearing tapes and participated in this decision.

Mount Vernon's motion to intervene was denied due to its untimeliness. The following items from Skagit County’s motion to add to the record were admitted:

Exhibit 6025a (MV) and 6161a (SW): January 19, 1999, memorandum from Gary Christensen to Board of County Commissioners (BOCC).

Exhibit 6035 (MV) and 6172 (SW): Notice of adoption of Ordinances #17307 (MV) and #17308 (SW).

Exhibit 6036 and 6173: Affidavit of publication of Ordinances #17307 (MV) and 17308 (SW).

Exhibit 6038 (MV): City of Mount Vernon Ordinance #2940 dated February 10, 1999, relating to transfer of development rights.

FOSC made no showing of continued noncompliance on many of the remanded issues. We therefore find the County to be in compliance with the Growth Management Act (GMA, Act) on the following short-term issues:

1. Designation of Goodell property;
2. Designation of Lennox property;
3. Designation of Matthiesen property;
4. Town of Hamilton urban growth area (UGA);
5. Definition of legal lot of record;

6. Lands removed from City of Mount Vernon UGA:
 - a. Rundgren/Pederson property;
 - b. 117 acres of property abutting Salem Lutheran Church property; and
7. 274 acres south of city limits of Sedro-Woolley removed from its UGA.

We also rescind our finding of invalidity from the Rundgren/Pederson property.

We commend the County and other parties for their good work in reaching compliance on the above issues.

The only issues for which FOSC did attempt to make a showing of noncompliance were:

1. City of Mount Vernon UGA - disputed 17 acres related to Salem Lutheran Church property.
2. City of Sedro-Woolley UGA:
 - a. Northern state property;
 - b. 13 acres south of city limits;
 - c. 33 acres south of city limits.

1. City of Mount Vernon UGA - Disputed 17 Acres

FOSC contended that:

- In the December 22, 1998, County staff report, the County staff analyzed the Salem Lutheran Church annexation by the City of Mount Vernon and concluded that the 17 acres most northerly in the Salem Lutheran Church property were not included in the annexation.
- This land is prime agricultural land, surrounded by other prime agricultural land and was designated Ag-NRL by County Ordinance #16291.
- The only reason that the County placed this 17 acres of prime agricultural land inside the UGA was because it is owned by the City.
- The 17 acres continues to meet all requirements in the comprehensive plan (CP) for Ag-NRL designation.
- There is no provision in the CP for including resource land inside a UGA just because it is owned by a city. This is an inappropriate designation criterion.

The County responded:

- FOSC has not met its burden of proof. The only evidence cited by FOSC for its position that the disputed 17 acres was not annexed by the City of Mount Vernon is the December 22, 1998, County staff report. However, Ordinance #17307 found that the 17 acres was part of the Salem Lutheran Church property and may have been within the legal description of the property that was annexed. The January 19, 1999, County Planning and Permit Center report called for inclusion of the 17 acres in the Mount Vernon UGA.
- In the Planning Commission (PC) recorded motion attached to Ordinance #17307, the PC made the following findings in support of its recommendation to retain the 17-acre parcel within the Mount Vernon UGA:

“4. In a December 22, 1998 memo to the Planning Commission, the Department provided corrected acreages for the property designated by the County as Ag-NRL that was not annexed to the City with the Salem Lutheran property. This included a 117 acre parcel of property located adjacent to and east of the Salem Lutheran property and directly south of Lindegren Road. The memo also stated that, according to Skagit County Mapping Services, a 17 acre parcel of the Salem Lutheran Church property was not actually annexed to the City along with the remainder of the property, as intended, due to a faulty legal description.

5. On January 13, 1999, the Mount Vernon City Council met and voted not to support inclusion of the parcel of property adjacent to and east of the Salem Lutheran Church property and directly south of Lindegren Road within the Mount Vernon UGA. Director of Community and Economic Development Rick Cisar informed the Department of that action via letter received on January 14, 1999 (Exhibit 6018) which was included in the packet of correspondence distributed to the Planning Commission for review.

6. In its January 19, 1999 report, Response to Testimony on Proposed Revisions to the Mount Vernon Urban Growth Area, and based on the letter from the City of Mount Vernon and other correspondence, the Department revised its recommendation to the Planning Commission and instead recommended that the 117 acres of property adjacent to and east of the Salem Lutheran Church property and south of Lindegren Road be removed from the Mount Vernon UGA and redesignated in the County Comprehensive Plan as Ag-NRL.

7. In that same report, the Department recommended to the Planning Commission that the 17 acres of property located north of the Salem Lutheran Church property be retained within the Mount Vernon UGA because 1) it was already owned by the City, 2) the City had intended to annex it with the remainder of the Salem Lutheran Church property, 3) the City intended to develop recreational trails on the property, and 4) the City contended that it indeed had annexed the 17 acres and that the legal description was not in error. (emphasis added)”

- Exhibit 6038, Mount Vernon Transfer of Development Rights Ordinance, includes the contested 17 acres.
- This Board should be reluctant to declare noncompliant acreage which a city contends it has already annexed. This is particularly true where the record is clear that the City believes it annexed the property, and where inclusion of the land in the UGA is a simple

procedural question involving a legal description in an annexation ordinance, rather than a substantive question of GMA interpretation and policy regarding the land at issue.

- This Board has no authority to rule on the scope or legality of the City’s annexation.
- Finding inclusion of the disputed 17 acres within the Mount Vernon UGA to be out of compliance with the GMA is beyond this Board’s authority under RCW 36.70A.280(1) and is not warranted based upon this record.
- FOSC has failed to show that inclusion of this 17 acres within the Mount Vernon UGA is “clearly erroneous” under RCW 36.70A.320(3).

Friends replied that we are not being asked to determine whether the 17 acres are annexed or not. We are simply being asked to determine that if the land is not annexed, those 17 acres still meet the criteria of their previous Ag-NRL designation and must remain noncompliant.

Board Discussion

In the January 23, 1998, final decision and order (FDO) we voiced concern about the inclusion of “agricultural/sensitive” areas in an already oversized Mount Vernon UGA. We stated at p. 27:

“The record does not justify the need to convert this land to urban densities. If it is to remain agricultural/open space, it cannot be included in the UGA unless the City has enacted a program authorizing transfer or purchase of development rights. RCW 36.70A.060(4). Mount Vernon has not enacted such a program.”

Subsequent to our decision Mount Vernon annexed the Salem Lutheran Church property and asked the County to remove the Rundgren/Pederson property and 117 acres next to the Salem Lutheran Church property from its UGA. Mount Vernon also passed Ordinance #2940 which provided for transfer of development rights from the disputed 17 acres to other locations in the City.

We continue to have concerns about the inclusion of prime agricultural lands within UGAs. However, removal of the Rundgren/Pederson property and 117 acres to the east of the Salem Lutheran Church property from the UGA is a significant improvement over the original UGA. Further, the City did enact a transfer of development rights program for the contested 17 acres as we had required. We therefore are not convinced that the County’s actions were clearly erroneous in this matter.

2. City of Sedro-Woolley UGA

In its February 4, 1999, brief of action taken, the County stated:

“1. Sedro Woolley UGA.

On February 3, 1999, the Skagit County Board of Commissioners (BCC) adopted Ordinance No. 17308 (Exhibit 6171) relating to the Sedro Woolly UGA. A copy of the Ordinance is attached which includes excerpts from the many attachments to the Ordinance: the Department’s Final Staff Report to the Planning Commission dated January 19, 1999, the Planning Commission Recorded Motion and a map showing the actions taken. The Ordinance did the following:

- a. With respect to the “large open space/agricultural area in the floodway to the south of the City,” the County removed 274 acres from the UGA and designated it as Ag-NRL on the Comprehensive Plan, and left in the UGA two parcels, one of 13 acres and one of 33 acres, both designated as open space.

The 13-acre parcel was left in because (1) six acres are owned by the City, (2) the City intends to use the property for City purposes and (3) because it contains swampy areas and has been previously used by the public as an informal dumping ground and by the City for temporary storage and burning of yard waste materials. (Exhibit 6171, p. 2)

The 33-acre parcel was left in the UGA because (1) it is not appropriately designated Ag-NRL, (2) it would provide a logical boundary for the UGA, (3) it would provide a physical connection between the southern contiguous city limits and the boat ramp, and (4) it is primarily in the floodway or flood plain and is unbuildable except for the northern tip of the 33 acres. (Exhibit 6171, Recorded Motion (also Exhibit 6159) at pp. 4-5)

- b. With respect to the Northern State property, the County removed from the UGA all property north of a line drawn horizontally “from the center one-quarter of Section 7, T35N, R5E, W.M., to a point approximately 400 feet East of the Center one-quarter section corner of section 8, T35N, R5E, W.M. The area removed from the UGA is designated Public/Open Space. The County left in the UGA the remainder of the Northern State Property.

The remainder of the Northern State Property was left in the UGA (1) due to

expected high volume use of the projected soccer field areas, (2) due to health concerns related to that use if it were on a septic system, (3) to avoid a potential public safety hazard, (4) to create a logical outer boundary for the UGA and (5) because the City sewer systems as upgraded, will be able to handle the increased flows from this area. (Exhibit 6171, Record Motion (also Exhibit 6159) pp. 5-7, Findings 2-8.)

The Comprehensive Plan Maps #1 and 3g are changed to reflect these actions.

The January 23, 1998 Final Decision and Order (FDO) required the County either to “remove these properties from the UGA or show the need to include them in light of the requirements of the Act.” The County has removed from the UGA much of the area the Board found in noncompliance. The record supports inclusion of the remaining area in the UGA.”

Area to the South of Sedro-Woolley

Friends responded that the PC made three recommendations with respect to this area:

a. **PC Issue A – 13 acres south of city limits.**

The PC found that inclusion of this property in the UGA including 6 acres owned by the City “would be incompatible with the low-density residential and agricultural uses on surrounding properties.”

The PC further found that “the area is subject to flooding and would not be suitable for the various uses anticipated by the City under its open space zoning district.” The PC recommended that this 13 acres be designated “Ag-NRL, as consistent with the Skagit County Natural Resources Land Map dated September 11, 1996.” FOSC supported the PC’s recommendation.

The BOCC rejected the PC recommendation and included this 13 acres in the City UGA as open space even though it confirmed that the area had Ag-NRL designation. The BOCC found that the 13 acres was not “pristine” farm land and that its retention in the UGA would allow the City to use its 6 acres for City uses.

FOSC asked us to find the inclusion of these 13 acres in the UGA both non-compliant and

invalid for the following reasons:

- Both the PC and BOCC acknowledged that the presumed valid NRL Ordinance designates this land as Ag-NRL.
- The BOCC's finding that the land is not "pristine" farmland and contains swampy areas is not justification to remove this land from the Ag-NRL designation through UGA designation.
- The fact that there has been some illegal dumping by the public and storage and burning of yard waste by the City on 3 acres of this land is not justification for removal from Ag-NRL designation.
- The fact that a city can use designated agricultural land for other uses, even if true, is not a justification for further expansion of an already oversized UGA into adjoining Ag-NRL land.
- This Board stated in its January 23, 1998 FDO that if land "is not appropriate for urban development, it should be left out of an UGA."
- Its inclusion in the UGA should be found not in compliance with the GMA because NRL is not conserved pursuant to RCW 36.70A.060A and -.170.
- The 13 acres should also be found invalid because of substantial interference with Goals 1, 2, 6 and 8 of the Act.

b. **PC Issue B – 274 acres of open space at the southern city limits.** All parties agreed that removal of these 274 acres from the UGA and return to Ag-NRL designation was appropriate.

c. **PC Issue C – 33 acres of open space property between southern city limits and Riverfront Park.**

The PC found that this area would provide "a physical connection between the southern contiguous city limits and Riverfront Park, which currently is an island of city-owned and incorporated property within the County." The PC stated that "only the very northern tip of the 33 acres is buildable." The PC verified that this area had Ag-NRL designation but it believed that this land was "not actually agricultural land of long term commercial significance." The BOCC approved the PC's findings and recommendation.

FOSC asked us to find the inclusion of these 33 acres in the UGA not in compliance with the

GMA for the following reasons:

- The County has not provided adequate justification for converting this Ag-NRL to an UGA.
- The County found that “only the very northern tip of the 33 acres is buildable, the rest being either in the floodway or the floodplain.”
- The County’s mere “belief” that this area is not Ag-NRL is not sufficient to overcome the presumption of validity of the NRL Ordinance that the county used to designate this land Ag-NRL.
- It may be a valid objective to provide a 5-acre connection between Riverfront Park and the City, but this does not rise to a justification to include in the UGA the additional 28 acres of Ag-NRL in the floodplain and floodway east of this 5-acre connection.
- Inclusion of the 28 acres in the UGA is in violation of RCW 36.70A.060 and -.170 in that Ag-NRL is not conserved but allowed to convert to other uses if placed inside the UGA.

Northern State Property

Friends stated that they had provided the county with a proposal that the Northern State property north and east of the proposed fairgrounds should be excluded from the UGA. In response to this proposal, planning staff recommended the exclusion of “the northern wooded area of the property, the playfields east of Helmick Road, and the wetlands mitigation area to the south of the property” from the UGA. The PC recommended that the playfields east of Helmick Road and the wetlands mitigation area be included in the UGA. The PC recommended excluding the northern portion of the property from the UGA but included areas designated as “pasture land” and “day use area” that FOSC had proposed to be excluded. The BOCC adopted the PC’s recommendations.

FOSC asked us to find not in compliance with the GMA inclusion of those areas which it had argued against in the local process for the following reasons:

- With respect to the playfields east of Helmick Road, even though inclusion of a small area for restrooms and concessions would be appropriate, this does not justify the inclusion of the much larger remainder area that is not proposed for urban development.
- Wetland mitigation area to the south of the property is not appropriate for inclusion.

Undevelopable lands on the edge of an UGA should not be included in an UGA.

- The City and County have not generally addressed the provision of urban services to Northern State in their Capital Facilities Plans (CFP) nor identified where they will get the funds to develop the park and provide urban services. The portion of the property not suitable for urban development should be remanded for lack of a CFP.
- The County has begun to do the right thing by taking the northern portion of this property out of the UGA. However, the county has still included state-owned open space land to the north which is not appropriate for urban development.
- Inclusion of the acreage listed above will not violate goal 8, since these are not designated Agricultural lands, but will violate goals 9 and 10.

As to the areas south of the City, the City of Sedro-Woolley responded:

- None of the property that was retained in their UGA meets criteria for Ag lands of long-term commercial significance.
- The City's proposed Open Space designation and proposed uses are compatible and appropriate for the contested areas south of the City. The City's designation for these areas allow the following uses:

A. Permitted Uses

1. Public Uses. Allows parks, recreational uses, public infrastructure and other developments intended primarily for public use.
2. Quasi-public uses. Allows parks, recreational uses, public infrastructure and other developments intended primarily for public use.
3. Agriculture.
4. Residential. Allows one single family dwelling unit per 40 acres.

B. Conditional Uses.

1. Clustered unit development restricted to that necessary for the operation of an agricultural operation (i.e. manager or worker residences).
 2. Associated agricultural uses (i.e. sales).
 3. Public utility facilities.
- The City's CP Policy #LU4.1 states the City's intent to "promote open space, recreation and agriculture as the highest and best use of flood-prone areas." Further, the City's CP in OS 1.1 includes an open space goal to designate floodplain areas for open

space, recreational and agricultural purposes.

- FEMA recommends baseball and soccer fields as a permitted use in flood zones. The City's desire to include these activities in the UGA is not unreasonable. Though not intended for urban development, these areas are intended to provide activities that are a natural and necessary accompaniment to urban growth.
- The proposed designation of the open space areas is consistent with the goals of the GMA which in RCW 36.70A.110(1) requires that each urban growth area include greenbelts and open spaces. An open space designation between the City limits and the Skagit River would continue to allow uses compatible with a flood zone in areas not actively involved in agricultural operations. This is a logical designation given the close proximity to population areas.
- Although not a more intense use of the land, the City's proposed uses would allow benefit to City and County residents while not creating adverse environmental impacts.

As to the Northern State Area of the UGA, the City of Sedro-Woolley responded:

- Inclusion of the Northern State Ballfields is consistent with GMA, which requires recreational facilities and greenbelts in UGAs. The CPs and UGA submitted by the City and County recognize that comprehensive intergovernmental cooperation is the best way to meet the recreational demands of Sedro-Woolley and Skagit County residents. Growth requires additional recreational facilities. Northern State can satisfy some of this demand.
- It is logical and appropriate to include the wetlands mitigation and interpretive area within the UGA.
- The UGA boundaries proposed by FOSC are arbitrary and capricious. The boundaries proposed by the City and County are based on well-established features that can be easily reproduced and located by City and County staff. GMA encourages orderly growth and logical boundaries. FOSC's recommendations would result in illogical boundaries that would divide property within a single ownership. FOSC's recommendations would also subject the development of the Northern State area to rules of two different jurisdictions, thus increasing the complexity and costs involved.

Sedro-Woolley ended its response with the following:

“FOSC with its limited vision has failed to see the need of uses such as parks,

recreational facilities, and State-owned essential public facilities, as necessary accompaniments required to meet the demands of urban growth. The State, City and County through their joint cooperation have attempted to address those needs while providing protection to the environment. The Comprehensive Plans and boundaries submitted by the City and County insure growth in an orderly and uniform manner.

The Growth Management Act was intended to promote local government planning. The Northern State site is an example of jurisdictions working together to plan for their mutual benefit. RCW 36.70A.3201 specifically gives the local jurisdictions broad discretion in planning for future growth. The Urban Growth Areas established for Sedro-Woolley are consistent with the Growth Management Act for all the reasons discussed previously and should be upheld by the Board.”

Board Discussion

In our January 23, 1998 FDO, as to noncompliant areas of the Sedro-Woolley UGA, we stated at p. 26:

“... Although Sedro-Woolley’s UGA may be larger than absolutely necessary, in general, we find the Sedro-Woolley UGA in compliance with the Act. However, the inclusion of two large undeveloped areas do not appear to be needed or adequately supported by the record and therefore do not comply with the Act. These are the large open space/agricultural area in the floodway to the south of the City and the Northern State property.

Under GMA, land is to be 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. In order to achieve compliance the County must either remove those properties from the UGA or show the need to include them in light of the requirements of the Act.”

In response, the County, in cooperation with the City, removed approximately ½ square mile from the UGA north of the Northern State property and more than 85 percent of the open space/agricultural area in the floodway to the south of the City. Further, the County and City provided extensive evidence for the inclusion of the remaining contested land within the UGA.

Although we remain concerned about designated agricultural lands being included in UGAs, we believe that, given the record before us, requiring the County to go back and go through a formal redesignation process before including in the UGA the remaining 46 acres to the south of the City

limits, would achieve nothing of substance.

We commend the County and City for the removal of the huge majority of the open space/ agricultural lands from the UGA. Given all the evidence and argument listed above, plus a careful review of the entire record presented to us, we are not convinced that the County's actions regarding the Sedro-Woolley UGA were clearly erroneous.

This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

Pursuant to WAC 242-02-832(1), a motion for reconsideration may be filed within ten days of issuance of this final decision.

So ORDERED this 29th day of March, 1999.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Nan Henriksen
Board Member

William H. Nielsen
Board Member

Les Eldridge
Board Member