

BEFORE THE WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD

IN THE MATTER OF THE PETITION OF)
THE CITY OF BURLINGTON FOR A)
DECLARATORY RULING)

No. 97-2-0020

ORDER RE:
PETITION FOR
DECLARATORY
RULING

On June 11, 1997, we received a petition for declaratory ruling from the City of Burlington (City). We received a response from Skagit County on June 26, 1997. No other interested persons submitted materials. We have reviewed the materials and decline to issue a declaratory ruling for the reasons set forth below.

The City asked for a ruling in the following matters:

1. Is the inclusion of Gages Slough in the City's Urban Growth Area (UGA) consistent with the Growth Management Act?
2. Is it possible to have a permanent greenbelt of agricultural land for which the City and County could jointly share authority?
3. Are counties the best administrators of resource lands abutting cities and towns?

1 In its petition the City noted that it was disappointed that the comprehensive plan
2 (CP) was significantly different from the verbal agreement reached with the County
3 over a year ago. It declared that it did not intend to file an appeal because of cost
4 considerations and because it was the City's assumption that an appeal of the UGA
5 boundary location could not be won.

6
7 The County asserted that there is no actual controversy which would justify a
8 declaratory ruling, a requirement of WAC 242-02-910 (1)(b). It further contended
9 that the City's request for a ruling "from the perspective of the Board whether the
10 City's proposals have merit" is actually one for an advisory opinion, prohibited
11 also under Section 910 (1)(b). Additionally, the County pointed out that the 60-day
12 window of opportunity for the filing of petitions regarding its CP has yet to expire.
13 It speculated that rulings by this Board on questions asked by the City prior to
14 expiration of the 60-day petition filing period might well preclude consideration of
15 similar concerns raised by other petitions. The County argued that those potential
16 parties would lose the benefit of the ample record provided by the CP in making
17 their case.

18 CONCLUSION

19 The City has requested us to rule regarding whether or not a particular natural
20 resource should be included in its UGA, whether counties are the best
21 administrators of resource lands of abutting cities and towns, and whether cities
22 and counties can share joint authority within an UGA over agricultural land or
23 greenbelts. The City failed to show actual controversy arising from these
24 questions, or that the adverse effect of uncertainty outweighed adverse effects on
25 others likely arising from the order requested. If we were to issue a declaratory
26

1 ruling in these matters, it would constitute a formal opinion on a question not
2 presented in an adversary proceeding. Such advisory opinions are expressly
3 prohibited by WAC 242-02-910 (1)(b). These questions are more appropriately
4 addressed in a petition for review regarding Skagit County's CP.

5
6 We decline to rule in response to the City's request.

7
8 So ORDERED this 29th day of July, 1997.

9
10 WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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12 

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14 Les Eldridge
Board Member

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16 

17
18 William H. Nielsen
Board Member

19
20 

21
22 Nan A. Henriksen
Board Member

BEFORE THE WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD

IN THE MATTER OF THE PETITION OF)
THE CITY OF BURLINGTON FOR A) No. 97-2-0020
DECLARATORY RULING)
)
) DECLARATION
) OF SERVICE
)

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

I, SHELLIE A. BURNHAM, under penalty of perjury under the laws of the State of Washington, declare as follows:

I am an Assistant for the Western Washington Growth Management Hearings Board. On the date indicated below and manner indicated below, an Order RE: Petition for Declaratory Ruling in the above-entitled case was sent to the following:

Margaret Fleek, Planning Director City of Burlington 901 E. Fairhaven Avenue Burlington, WA 98233	John R. Moffat 605 S. 3rd Street Courthouse Annex Mt. Vernon, WA 98273
--	---

<input checked="" type="checkbox"/> By United States Mail	<input checked="" type="checkbox"/> By United States Mail
<input type="checkbox"/> By Legal Messenger	<input type="checkbox"/> By Legal Messenger
<input checked="" type="checkbox"/> By Facsimile	<input checked="" type="checkbox"/> By Facsimile

City of Burlington Clerk P.O. Box 288 Burlington, WA 98233-0288	Robert Tjerrdsma, Mayor City of Burlington P.O. Box 288 Burlington, WA 98233-0288
--	--

<input checked="" type="checkbox"/> By United States Mail	<input checked="" type="checkbox"/> By United States Mail
<input type="checkbox"/> By Legal Messenger	<input type="checkbox"/> By Legal Messenger
<input type="checkbox"/> By Facsimile	<input type="checkbox"/> By Facsimile

DATED this 29th day of July 1997, at Olympia, Washington.


SHELLIE A. BURNHAM

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite #B-2
PO Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

1 WWGMHB Case 97-2-0020, In the Matter of the Petition
2 of the City of Burlington for a Declaratory Ruling,
3 an Order RE: Petition for Declaratory Ruling,
4 DECLARATION OF SERVICE: I certify that I mailed a
5 copy of this document by U.S. mail to the persons and
6 addresses listed below on July 29, 1997.


Shellie A. Burnham

7 Code Publishing Company
8 Attn: William C. Ferensen
9 P.O. Box 51164
10 Seattle, WA 98115-1164

Office of the Governor
State of Washington
Fred Stephens, Deputy Chief of Staff
Mail Stop: 40001

11 Tracy Burrows
12 1000 Friends of Washington
13 The Cobb Building, Suite 303
14 1305 Fourth Avenue
15 Seattle, WA 98101

David Williams, Executive Director
Association of Washington Cities
1076 South Franklin Street
Olympia, WA 98501

16 Eugene Green
17 Senate Government Operations Committee
18 Room 235, Cherberg Building
19 Mail Stop: 40482

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Dept. of Community Development
Growth Management Services
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20 Kathy Szolomayer
21 Attorney General's Office
22 Mail Stop: 40115

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26 Mail Stop: 40109

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Cheryl Nielson
Assistant Attorney General
Natural Resources Division
Mail Stop: 40100

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Community, Trade & Economic Develop.
Growth Management Services
Mail Stop: 48300

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OFM Office of the Director
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Legislative Officer
CTED
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Counsel
House Government Reform
& Land Use Committee
Mail Stop: 40600

The Honorable Mary Margaret Haugen
Washington State Senator
Mail Stop: 40482

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The Honorable Harriet Spanel
Washington State Senator
Mail Stop: 40482

The Honorable Barry Sehlin
Washington State Representative
Mail Stop: 40600

The Honorable Dave Anderson
Washington State Representative
Mail Stop: 40600

The Honorable Dave Quall
Washington State Representative
Mail Stop: 40600

The Honorable Jeff Morris
Washington State Representative
Mail Stop: 40600

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KLKI 1340 Am
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KAPS
P.O. Box 70
2029 Freeway Drive
Mount Vernon, WA 98273

Tony Flynn
Skagit Argus
P.O. Box 739
Mount Vernon, WA 98273

Skagit Valley Herald
Newsroom
P.O. Box 578
Mount Vernon, WA 98273

Business Pulse
P.O. Box 589
Burlington WA 98233

Channel Town Press
P.O. Box 575
LaConner, WA 98257

KSVR 90.1 FM
2405 East College Way
Mount Vernon, WA 98273

The Cardinal
2405 East College Way
Mount Vernon, WA 98273

Skagit River Post
Courier Times
P.O. Box 32 807 Metcalf
Sedro Woolley, WA 98284

Jim Kirkpatrick
Utilities District
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Mount Vernon, WA 98273-1436

Skagit PUD
Kim
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Mount Vernon, WA 98673

Patsy Martin
Port of Skagit County
P.O. Box 348
Burlington, WA 98233

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

IN THE MATTER OF THE PETITION OF)
THE CITY OF BURLINGTON FOR A) No. 97-2-0020
DECLARATORY RULING)
)
) DECLARATION
) OF SERVICE
)

STATE OF WASHINGTON)
) ss.
CITY OF BURLINGTON)

I, SHELLIE A. BURNHAM, under penalty of perjury under the laws of the State of Washington, declare as follows:

I am an Assistant for the Western Washington Growth Management Hearings Board. On the date indicated below and manner indicated below, a Notice in the above-entitled case was sent to the following:

Margaret Fleek, Planning Director City of Burlington 901 E. Fairhaven Avenue Burlington, WA 98233	John R. Moffat 605 S. 3rd Street Courthouse Annex Mt. Vernon, WA 98273
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<input checked="" type="checkbox"/> By United States Mail	<input checked="" type="checkbox"/> By United States Mail
<input type="checkbox"/> By Legal Messenger	<input type="checkbox"/> By Legal Messenger
<input checked="" type="checkbox"/> By Facsimile	<input checked="" type="checkbox"/> By Facsimile

DATED this 27th day of June 1997, at Olympia, Washington.


SHELLIE A. BURNHAM


1
2 **BEFORE THE WESTERN WASHINGTON GROWTH**
3 **MANAGEMENT HEARINGS BOARD**

4 IN THE MATTER OF THE PETITION OF)
5 THE CITY OF BURLINGTON FOR A) No. 97-2-0020
6 DECLARATORY RULING)
7) NOTICE
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16 Pursuant to WAC 242-02-920, this notice acknowledges the receipt of a petition
17 from the City of Burlington for a Declaratory Ruling regarding issues connected
18 with urban growth areas, natural resource lands, and critical areas. We received
19 the petition from the City of Burlington on June 11, 1997. A response from Skagit
20 County was received June 26, 1997. Other interested persons have ten days from
21 the date of this notice to submit materials regarding this petition. Subsequent to
22 that deadline, we will review the briefs, memoranda, and materials submitted and
23 enter an Order regarding this matter.
24
25
26

Dated this 27th day of June, 1997.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

20 
21 Les Eldridge
22 Presiding Officer

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite #B-2
PO Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

RECT

JUN 26 1997

WESTERN
GROWTH MANAGEMENT BOARD

BEFORE THE WESTERN GROWTH MANAGEMENT
HEARINGS BOARD
STATE OF WASHINGTON

In the matter of the)	
Petition of the)	
City of Burlington)	NO. 97-2-0020
for a Declaratory Ruling)	
)	SKAGIT COUNTY'S RESPONSE
)	TO PETITION FOR DECLARATORY
)	RULING

The City of Burlington has filed a Petition for Declaratory Ruling requesting that this Board determine whether certain of "the City's proposals" for its urban growth areas (UGAs) "have merit or could succeed if they were supported by the County." (Petition at 4). This Board should decline to issue a declaratory ruling under WAC 242-02-910(3)(b) for several reasons. First, there is no actual controversy which would justify a declaratory ruling under WAC 242-02-910(1)(b). Second, the City's request is actually one for an advisory opinion, similarly prohibited by WAC 242-02-910(1)(b). Finally, due to the fact that the County recently adopted its Comprehensive Plan and there will undoubtedly be petitions filed over the next 60 days challenging that Comprehensive Plan which may well bring in to question the City's UGAs, any ruling by this Board on the City's request without considering the ample record made by the County and which would exclude participation of parties who may file appeals during the 60-day appeal period would have an

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1 adverse effect on the general public which would not be
2 outweighed by the uncertainty which the City alleges in its
3 petition. Thus under WAC 242-02-910(1)(d), this Board should not
4 issue a declaratory ruling.

5 It is clear from the City's petition that there is no
6 present controversy involving the City's UGAs. The City admits
7 as much in paragraph 3 of its Petition:

8 [I]t is not the intention of the City to file an appeal
9 because an appeal of the urban growth area boundary
location likely cannot be won and would be very costly.

10 Despite the fact that the City acknowledges that it could not win
11 an appeal regarding the County's designation of its UGA
12 boundaries, the City goes on in the next sentence and asks this
13 Board to issue a ruling "from the perspective of the Board
14 whether the City's proposals have merit or could succeed if they
15 were supported by the County." This is a blatant request for an
16 advisory opinion from this Board. Both current regulation [WAC
17 242-02-910(1)(b)] and the recent amendments to RCW 36.70A.290(1)
18 [see section 12, ESB 6094] prohibit this Board from issuing
19 advisory opinions. The City's request is one for an advisory
20 opinion which this Board should refuse.

21 In addition, where other litigation is likely to bring into
22 question the issue of the City's UGA boundaries, this Board
23 should decline to issue a declaratory ruling under WAC 242-02-
24 910(3)(b). See Petition of Overton, PDR 96-3-0001, CPC 1583,
25 1587 (1996) where the Central Puget Sound Board declined to
26 render a declaratory ruling where many of the issues raised were
27 subject to current appeals before that Board.

1 Here, similarly, the County adopted its Comprehensive Plan
2 on May 19, 1997, and published notice thereof on June 5, 1997.
3 Over the next sixty days, the County expects that numerous
4 appeals to this Board will be filed under RCW 36.70A.290 which
5 will raise various issues regarding the County's Comprehensive
6 Plan and the extensive record made over years in the adoption of
7 that Comprehensive Plan. It would be inappropriate for this
8 Board to give the City advice, in the context of this limited
9 appeal and without the extensive factual record generated by the
10 County in support of its UGA boundaries, regarding the City's
11 request. In addition, it would be prejudicial to other potential
12 litigants to have this Board issue a declaratory ruling on the
13 City's request without giving those potential litigants input or
14 an opportunity to be heard. Issuing a decision on the City's
15 request would therefore be in violation of WAC 242-02-910(1)(d)
16 which provides that the petition show

17 that the adverse effect of uncertainty outweighs any
18 adverse effects on others or on the general public that
19 may likely arise from the order requested

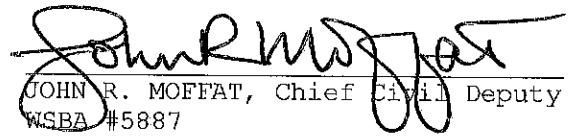
20 Here, there is no prejudice to the City since it has indicated
21 that it is not challenging the UGA boundaries. If the City
22 disagrees with its UGA boundaries it still has the option to file
23 an appeal and have that appeal considered within the context of
24 the extensive factual record made by the County in the adoption
25 of its Comprehensive Plan. This Board should not pre-empt
26 consideration of the full record involving the County's
27 development of its Comprehensive Plan, including its UGA
28 boundaries, merely to give the City of Burlington advice.

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The County respectfully requests that the City's Petition
for Declaratory Ruling be dismissed.

DATED this 23rd day of June, 1997.

SKAGIT COUNTY PROSECUTING ATTORNEY



JOHN R. MOFFAT, Chief Civil Deputy
WSBA #5887
Attorney for Skagit County

RECEIVED
JUN 18 1997
WESTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD

BEFORE THE WESTERN GROWTH MANAGEMENT
HEARINGS BOARD
STATE OF WASHINGTON

In the Matter of the)
Petition of the) NO. 97-2-0020
City of Burlington)
for a Declaratory Ruling) DECLARATION OF DELIVERY
) BY:
) XX MAIL
) _____ FAX
) _____ ABC/LMI
)

I, Judy L. Kiessler, declare as follows:

That I am over the age of 18 years, not a party to this action, and competent to be a witness herein;

That I, as a secretary in the office of the Skagit County Prosecuting Attorney, caused true and correct copies of the following documents to be delivered as set forth below:

Notice of Appearance, and Declaration of Delivery

and that I addressed said documents to the following:

Margaret Fleek, Director
Planning Department
901 E. Fairhaven Avenue
Burlington, WA 98233

and on the 13 day of June 1997, deposited said documents so addressed as follows:

- by first-class mail, with sufficient postage prepaid thereon, in the United States Mail, at Mount Vernon, Skagit County, Washington.
- sent for delivery by ABC-LEGAL MESSENGERS INC., at Mount Vernon, Skagit County, Washington.
- sent for delivery by facsimile to the offices of _____, (FAX Number: [] _____).

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1 I certify under penalty of perjury under the laws of the State of
Washington that the foregoing is true and correct.

2 EXECUTED at Mount Vernon, Washington this 13 day of June, 1997.

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5 Judy L. Kiesser

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JUN 18 1997

WESTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD

BEFORE THE WESTERN GROWTH MANAGEMENT
HEARINGS BOARD
STATE OF WASHINGTON

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6 In the matter of the)
7 Petition of the)
8 City of Burlington) NO. 97-2-0020
9 for a Declaratory Ruling)
) NOTICE OF APPEARANCE
) OF SKAGIT COUNTY
)

10 TO: Clerk of the above entitled Board, and

11 TO: MARGARET FLEEK, Planning Director, as representative
12 for City of Burlington

13 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the above named
14 Defendant Skagit County does hereby appear in the above entitled
15 action, without waiving the defenses of:

- 16 1. Lack of jurisdiction over the subject matter;
17 2. Lack of jurisdiction over the party;
18 3. Improper venue;
19 4. Insufficiency of process;
20 5. Insufficiency of service of process;
21 6. Failure to state a claim upon which relief may be granted;


and

- 22 7. Failure to join a party under Rule 19.

23 YOU ARE HEREBY FURTHER NOTIFIED that all further papers and
24 pleadings herein, except original process, shall be served upon the
25 undersigned attorneys at the address below stated.

26 DATED this 13th day of June, 1997.

27 SKAGIT COUNTY PROSECUTING ATTORNEY

28 By 
JOHN R. MOFFAT, Chief Civil Deputy
WSBA #5887
Attorney for Skagit County

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JUN 11 1997

WESTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD

BEFORE THE WESTERN GROWTH MANAGEMENT

HEARINGS BOARD

STATE OF WASHINGTON

In the matter of)
the Petition of)
the City of Burlington)
for a Declaratory)
Ruling)

No. 97-2-0020

PETITION FOR
DECLARATORY RULING

COMES NOW the City of Burlington with its petition for declaratory ruling as follows:

1. Petitioner. Petitioner City of Burlington (City) mailing address is C/O Planning Department, 901 E. Fairhaven Avenue, Burlington, Washington 98233. The petitioner is represented in these proceedings by its Planning Director, Margaret Fleek, Telephone number (360) 755-9717, Facsimile number (360)755-9309.

2. The following sections of the statute are brought into issue by this petition:

A. RCW 36.70A.060 Natural resource lands and critical areas - development regulations. Subsection (4) states: "*Forest land and agricultural land located within*

urban growth areas shall not be designated by a county or city as forest land or agricultural land of long-term commercial significance under RCW 36.70A.170 unless the city or county has enacted a program authorizing transfer or purchase of development rights.”

B. RCW 36.70A.110 Comprehensive plans - Urban growth areas. This section is not reproduced, but the relevant aspects include statements in part as follows: *“(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 urban in nature.....An urban growth area may include territory that is located outside of a city only if such territory is already 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.*

(2)Each urban growth area shall permit urban densities and shall include greenbelt and open space areas.....”

C. RCW 36.70A.150 Identification of lands useful for public purposes. This section states: *“Each county and city that is required or chooses to prepare a comprehensive land use plan under RCW 36.70A.040 shall identify lands useful for public purposes such as utility corridors, transportation corridors, landfills, sewage treatment facilities, storm water management facilities, recreation, schools, and other public uses. The county shall work with the state and the cities within its borders to identify those areas of shared need for public facilities. The jurisdictions within the county shall prepare a prioritized list of lands necessary for the identified public uses including an estimated date by which the acquisition will be needed.*

The respective capital acquisition budgets for each jurisdiction shall reflect the jointly agreed upon priorities and time schedule.”

D. RCW 36.70A.160 Identification of open space corridors - Purchase authorized. This section states: *“Each county and city that is required or chooses to prepare a comprehensive land use plan under RCW 36.70A.040 shall identify open space corridors within and between urban growth areas. They shall include lands useful for recreation, wildlife habitat, trails, and connection of critical areas as defined in RCW 36.70A.030. Identification of a corridor under this section by a county or city shall not restrict the use or management of lands within the corridor for agricultural or forest purposes. Restrictions on the use or management of such lands for agricultural or forest purposes imposed after identification solely to maintain or enhance the value of such lands as a corridor may occur only if the county or city acquires sufficient interest to prevent development of the lands or to control the resource development of the lands...Nothing in this section shall be interpreted to alter the authority of the state, or a county or city, to regulate land use activities.*

The city or county may acquire by donation or purchase the fee simple or lesser interests in these open space corridors using funds authorized by RCW 84.34.230 or other sources.”

3. The state of facts is that the City of Burlington has been working to get to a mutually agreeable solution to specific issues with Skagit County for several years. Now Skagit County has adopted a Comprehensive Plan that is significantly different from the verbal agreement reached with the County over a year ago. While that is a disappointment to the City, it is not the intention of the City to file an appeal because an appeal of the urban growth area boundary location likely cannot be won and would be very costly.

However, the City of Burlington would like to understand from the perspective of the Board whether the City's proposals have merit or could succeed if they were supported by the County. If the uncertainty relative to the application of these provisions of the statute is not laid to rest, the same questions will be asked when the Urban Growth Areas and Comprehensive Plans are reviewed, whether in five years or twenty.

4. The City of Burlington spent to a lot of time, trouble and public expense to attempt to include Agricultural resource land in the Urban Growth Area on the west side of the city, in order to accomplish multiple goals, including the following:

a. Identify and protect Gages Slough wetland which is the unique storm sewer outfall of the city and includes a pump station and outfall into the Skagit River located in Skagit County, but containing most of the City's runoff. The City needs development regulation level authority in this area and the County has agreed that they do not have it and do not intend to regulate at that level (Nuisance code and Surface Water Best Management Practices - maintenance and wetland restoration issues).

b. Identify and protect land lying between the only north-south road west of the City, and the present City Limits, as the buffer between the City and Agricultural resource land to the west.

c. Design, develop, and adopt legislation that enacts a program authorizing transfer or purchase of development rights to provide a full plate of options so the overall program of preserving agricultural and other resource lands is more viable to all different types of property owner situations, for Gages Slough and other designated agricultural resource land west of the City Limits.

5. The City of Burlington is uniquely located almost 100% in the 100 year floodplain. The City has only recently (since 1989) begun to see major development in the Interstate 5 corridor. Rapid growth was experienced for 3-4 years. In the past few years, the City has adopted a Comprehensive Flood Hazard Management Plan, joined the Federal Emergency Management Agency Community Rating System program, and taken the position that no more growth is desirable in the floodplain, beyond the present City Limits. Once the City made the policy decision, dramatic steps have been taken, including the acquisition of over 100 acres of land abutting the Skagit River Dike for 2.3 million dollars, to remove flood prone lands from potential development as part of the flood hazard mitigation strategy.

6. When Skagit County adopted its Resource Lands Ordinance, the City did not appeal the map decisions west of the City Limits because the City had a verbal agreement with Skagit County to work together to our mutual best interests. For the County, the priorities are preservation of Agricultural resource lands west of Burlington and flood hazard mitigation. For the City, the priorities are wetland restoration and surface water management, flood hazard mitigation and preservation of an open space corridor west of the City Limits (preserving agricultural resource land being the means). The verbal agreement with the County was that the two jurisdictions would share responsibility for the lands west of the city; the land would be included in the Urban Growth Area and jointly managed under an Interlocal Agreement. By mutual agreement, each city and town in Skagit County will have an Interlocal Agreement that includes county adoption of city ordinances in each Urban Growth Area so that new development will comply with relevant urban standards.

7. In examining the record, it appears that the County is generally taking the position that absolutely NO resource lands of any kind should be located in Urban Growth Areas and that cities will not preserve those lands once included in the Urban Growth Area, simply because cities *by their very nature* do not preserve resource lands. This is an interesting viewpoint, and it is not an accurate reflection of this community. Burlington has owned up to the fact that living in the floodplain is generally not desirable, and all future residential development is targeted for the joint City/County Urban Growth Area a mile west of the City, but on high ground and city sewer. The uncertainty about the options for the future relative to Gages Slough and adjacent lands adversely affects the City and the property owners that have been involved in these discussions and issues over a period of nearly seven years.

8. Relief sought. The City of Burlington would like to understand the Board's opinion about the application of the cited sections of the statute to the local condition.

A. Would it be consistent with the Board's interpretations of the statute for the City of Burlington to include Gages Slough in the City's Urban Growth Area? The rationale is because it is the City's major storm sewer outfall; it requires major capital and maintenance improvements to operate without damaging property located both in the City Limits and west of the City Limits; it is not a priority for Skagit County whose Public Works Department wants to relinquish all responsibility for Gages Slough west of Burlington; and there is a ordinance that provides for the Purchase or Transfer of Development Rights (TDR) in place in the City of Burlington.

About 90% of all storm water in the City of Burlington has its outfall into Gages Slough, either directly or piped. If the Gages Slough wetland corridor west of the City Limits

cannot be included in the Urban Growth Area, the City will likely have to acquire the entire wetland corridor in order to responsibly manage surface water, both quantity and quality, as it leaves the western City Limits and goes to the Skagit River. The City may need to include major land acquisition in its long range planning. A better understanding of the choices for the future is needed if substantial capital funds need to be raised for land acquisition.

Some preservationists argue that conservation easements are better in the long term than acquisition; however, the level of management control that is necessary requires ordinances that the county does not have on the books. It follows that the city will have to acquire the land to gain the control since it is not in the Urban Growth Area.

It appears that the City will not have the tools to work with that are available to the County. The City does not just need easements, it needs regulatory authority, and the only way to get the authority short of annexation, or the formerly anticipated Urban Growth Area Interlocal Agreement, is through land acquisition.

B. Is it possible in theory to have a permanent green belt of Agricultural land over which the City and County share joint authority through designation as an Urban Growth Area, so the County cannot change its rules at a simple vote of two Commissioners?

It does not appear that the Board has ruled on a case that is similar to this, although admittedly, the more than 2000 pages of information are ominous for the lay reader. Adverse effects of your ruling on these questions will be much easier to deal with than the continued uncertainty the City faces. The case in the City of Redmond involved a

situation where the land was already in the City Limits and the City had no ordinance regarding transfer or purchase of development rights. The City of Burlington's goal is joint management with the County, thus increasing the odds of keeping that greenbelt west of the City Limits and precluding additional residential development in the floodplain. Growth Management appears to require green belts and open space designated in Urban Growth Areas; this is the location where Burlington does not presently have designated Open Space on the potentially vulnerable edge of the community. It is particularly difficult because of the extremely high traffic volumes on the highways west of Burlington to retain open space and the new adopted County Comprehensive Plan provides for very intrusive uses on Agricultural resource lands to encourage small scale commercial activities.

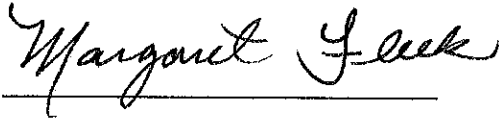
C. Is it the Board's position that Counties are the best administrator of resource lands abutting cities and towns? If so, is there any application of the statute requiring an ordinance for transfer or purchase of development rights except when there is such land already existing in City Limits?

The goal of the statute appears to be to transfer residential density from resource lands to areas with urban services. There appears to be little motivation for Cities to accept additional density to preserve resource lands if there is no assurance that cities have a say in what happens to the community open space/resource land corridor that is proposed to be protected. A proliferation of fruit, seafood and espresso stands appears imminent on the edge of Burlington.

9. The adverse effect of uncertainty outweighs any adverse effects on others or on the general public that may likely arise from the order requested.

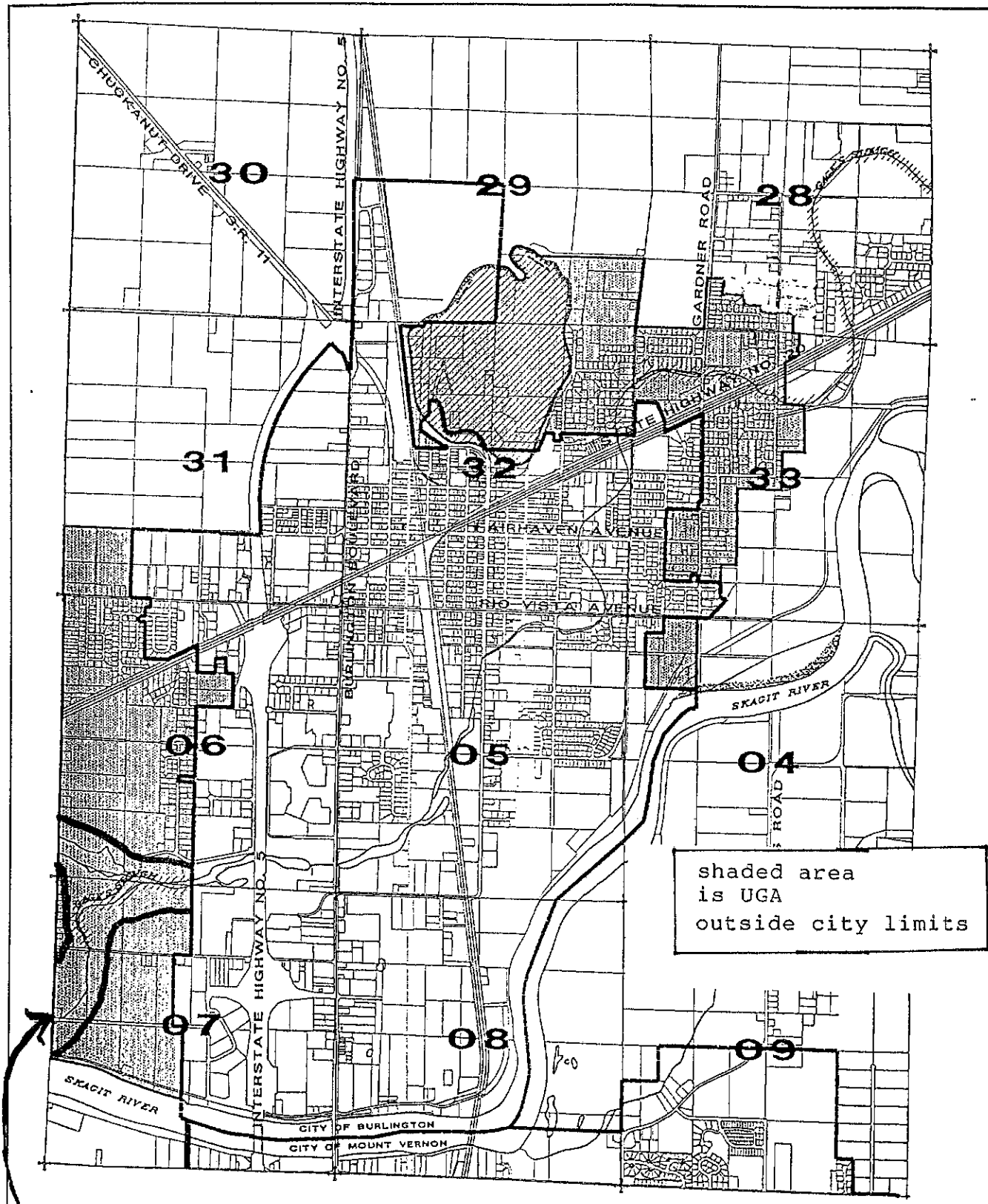
10. The undersigned as representative for the City of Burlington has read the foregoing Petition for Declaratory Ruling and believes the contents to be true.

DATED: June 9, 1997

A handwritten signature in cursive script that reads "Margaret Fleek". The signature is written in dark ink and is positioned above a horizontal line.

Margaret Fleek, Planning Director

1996 Verbal Agreement
with Skagit County

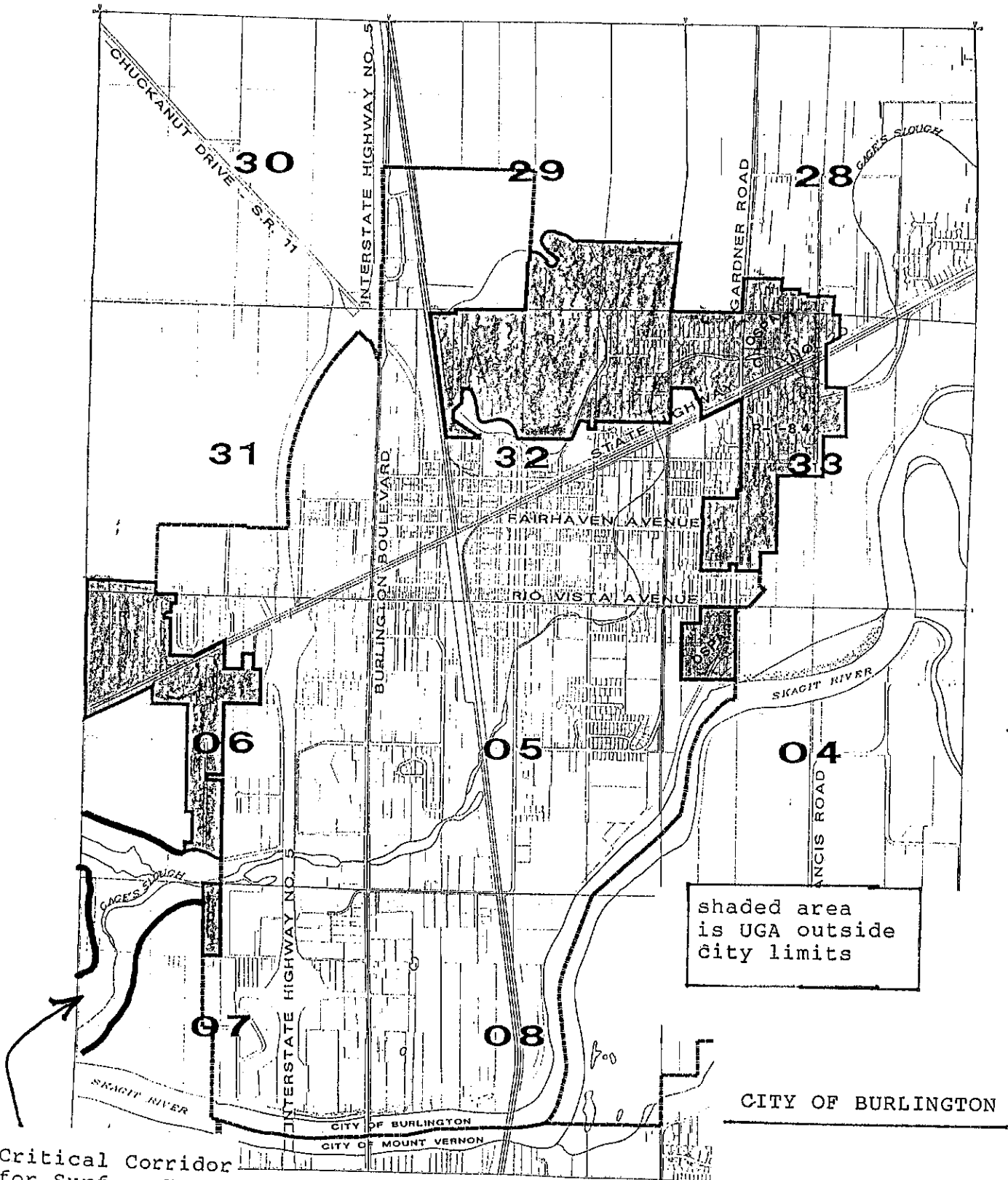


shaded area
is UGA
outside city limits

Critical corridor
for Surface Water
management

CITY OF BURLINGTON

1997 Decision
of Skagit County



Critical Corridor
for Surface Water
management

CITY OF BURLINGTON