



PHILIP BURI
PHILIP@BURIFUNSTON.COM

May 22, 2008

Royce Buckingham, Deputy
Whatcom County Prosecuting Attorney
311 Grand Avenue, Suite #201
Bellingham, WA 98225

Re: Creation of Chuckanut Mountains Park District, BRB #2007-02

Dear Royce:

I represent the Chuckanut Mountains Park District Advisory Committee. I write to protest the Whatcom County Boundary Review Board's entry of findings of fact and a decision tonight.

There is no polite way to put this: the Board's decision to reject the Chuckanut Mountains Park District petition without a public hearing, for reasons that contradict its earlier statements, without sufficient analysis is both illegal and unwarranted.

First, the Board's proposed decision is illegal. On May 22, 2007, the Board acknowledged that the Notice of Intention was complete, triggering the Board's review of the Park petition.

The complete Notice of Intention for the Creation of Chuckanut Mountains Park District was received by the Boundary Review Board for Whatcom County on May 11, 2007 and, after review for completeness and accuracy of the legal description of the affected property, was filed on May 16, 2007. The forty-five day lapse period, day one being the file date, ends June 29, 2007.

(5/22/07 Board Memo; attached as exhibit A). The jurisdiction of the Board was properly invoked on May 16, 2007.

Under RCW 39.93.160, the Board *must* hold and complete a public hearing before ruling on the Park petition.

When the jurisdiction of the boundary review board has been invoked, the board shall set the date, time and place for a public hearing on the proposal. The board shall give at least thirty days'

advance written notice of the date, time and place of the hearing to the governing body of each governmental unit having jurisdiction within the boundaries of the territory proposed to be annexed, formed, incorporated, disincorporated, dissolved or consolidated, or within the boundaries of a special district whose assets and facilities are proposed to be assumed by a city or town, and to the governing body of each city within three miles of the exterior boundaries of the area and to the proponent of the change.

RCW 36.93.160(1).

The only public meeting scheduled in this case was set for August 20, 2007 at the Fairhaven Library. I have attached a copy of the letter and notice from the Board as exhibit B.

As you know, that public hearing never took place. On the night of the meeting, the Board cancelled the public meeting because SEPA review was not complete. In the action plan review list for 2007, the Board confirms canceling the meeting for lack of SEPA review. "Jurisdiction Rescinded – SEPA not yet completed, therefore application not yet complete." The Park proponents had submitted everything necessary for the Board's review – the Board could not continue because it had not completed its statutory responsibility to conduct SEPA review.

Because there has never been a public meeting on the Notice of Intention, the Board cannot lawfully deny the Park proposal.

The board shall not modify or deny a proposed action unless there is evidence on the record to support a conclusion that the action is inconsistent with one or more of the objectives under RCW 36.93.180. Every such determination to modify or deny a proposed action shall be made in writing pursuant to a motion, and shall be supported by appropriate written findings and conclusions, based on the record.

RCW 36.93.150. There was no hearing; therefore, there is no record. The Board cannot simply act on its own, without a record, to deny the petition. It can only allow the time period to lapse, which automatically grants the petition. RCW 36.93.100.

Second, the Board's reasons for denying the petition contradict its earlier statements, its representations in court, and its agreement to conduct SEPA review. The Board has never, until the May 15, 2008 meeting, given notice to the Park proponents that it would dismiss the Notice of Intention for being incomplete. As quoted above, the Board notified the proponents in May 2007 that the Notice was complete. On October 8, 2007, Chairman Bill Bliss wrote Park proponents on the status of their proposal.

The Washington Department of Ecology has recently assigned the Boundary Review Board of Whatcom County to facilitate the SEPA analysis in this case. Thus, *your NOI is properly submitted with regard to SEPA at this time, and the Board will now proceed with review, as requested.*

(10/8/07 Bliss letter; Exhibit C) (emphasis added).

If the Board seeks additional information regarding SEPA review or any matter, Park proponents will gladly present it. But the Board cannot claim that the Notice of Intention is fatally deficient after stating that it was complete.

Furthermore, the Board represented to Judge Uhrig on May 2, 2008 that the SEPA review process was underway, and made no mention of its intent to deny the Park petition. If this was intentionally withheld from Judge Uhrig, it is grounds for sanctions. Assuming the Board made its decision on the spot on May 15, 2008, it still cannot deny the petition while the writ of mandamus is pending. If the Board seeks to purposely moot Judge Uhrig's writ, it is contempt of court and again, that is ground for sanctions. The Board, like any party before the Court, must comply with a court order or seek to have it modified. It cannot intentionally circumvent the order by illegally denying the Park petition.

Third, the Board has not conducted sufficient analysis to decide the issue. The Park proponents have never had a fair hearing before the Board. They have not had the opportunity to present their evidence or testimony from experts and citizens who support this important project. The Board has not conducted the SEPA review necessary to evaluate the environmental impacts and benefits from the creation of a Park district.

Under RCW 36.93.160, the Washington Legislature listed the grounds for reversing the decision of a Boundary Review Board.

The superior court may...reverse the decision if any substantial rights may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional provisions, or
- (b) In excess of the statutory authority or jurisdiction of the board, or
- (c) Made upon unlawful procedure, or
- (d) Affected by other error of law, or
- (e) Unsupported by material and substantial evidence in view of the entire record as submitted, or
- (f) Clearly erroneous.

RCW 36.93.160(6). If the Board denies the Park petition tonight, it will satisfy every ground for reversal.

I urge the Board to not take hasty action tonight, and instead comply with Judge Uhrig's order, complete SEPA review, and hold a valid public hearing on the proposal. The law requires no less.

Sincerely,

BURI FUNSTON MUMFORD, PLLC

A handwritten signature in black ink, appearing to read 'P. Buri', with a long horizontal line extending to the right.

Philip J. Buri

cc: Dr. Robert Gibb
Pat Atkinson (for distribution to the Board)

**WHATCOM COUNTY
BOUNDARY REVIEW BOARD**

600 Lakeway Drive
Bellingham, WA 98225-5236



RECEIVED BY

MAY 29 2007

BURI FUNSTON
MUMFORD, PLLC

To: Interested Parties

Subject: Notice of Intention, BRB 2007-02
Creation of Chuckanut Mountains Park district

From: Pat Atkinson, Chief Clerk
Boundary Review Board

A handwritten signature in black ink, appearing to read "Pat Atkinson", is written over the printed name and title.

Date: May 22, 2007

The complete Notice of Intention for the Creation of Chuckanut Mountains Park District was received by the Boundary Review Board for Whatcom County on May 11, 2007 and, after review for completeness and accuracy of the legal description of the affected property, was filed on May 16, 2007. The forty-five day lapse period, day one being the file date, ends June 29, 2007.

Please contact me at 360-676-6749 or atkinpj@dshs.wa.gov if you have any questions.

See attached Checklist for distribution.

**WHATCOM COUNTY
BOUNDARY REVIEW BOARD**

600 Lakeway Drive
Bellingham, WA 98225-5236



July 19, 2007

TO: Interested Parties

FROM: Pat Atkinson, Chief Clerk

SUBJECT: **Public Hearing – Creation of Chuckanut Mountains Park
District**

RECEIVED BY

JUL 26 2007

BURI FUNSTON
MUMFORD, PLLC

Enclosed with this memo is a flyer announcing the date, time, and location of a public hearing for the Creation of Chuckanut Mountains Park District.

The submitting group (Chuckanut Mountains Park District Advisory Committee), affected jurisdictions, and other organized groups will each have thirty (30) minutes for presentations to the Board. Individual citizens will have three (3) minutes each to present information.

To be included in the record, written comments may be submitted at the hearing or may be sent prior to the hearing to Pat Atkinson, Chief Clerk, 600 Lakeway Drive, Bellingham, WA 98225.

PUBLIC HEARING

Concerning

Creation of Chuckanut Mountains Park District

Date: Monday, August 20, 2007
Time: 7:00 p.m.
Location: Fairhaven Library
1117 12th St.
Bellingham, WA 98225

**For additional information, contact Pat Atkinson,
Chief Clerk, Boundary Review Board for Whatcom
County, 600 Lakeway Drive, Bellingham, WA 98225
(360)676-6749**

**WHATCOM COUNTY
BOUNDARY REVIEW BOARD**

600 Lakeway Drive
Bellingham, WA 98225-5236



October 8, 2007

Dr. Robert Gibb
Chuckanut Mountain Park District Advisory Group
204 Viewcrest Road
Bellingham, WA 98229

Dear Dr. Gibb:

This letter is to provide an update on the status of your proposal before the Boundary Review Board for Whatcom County.

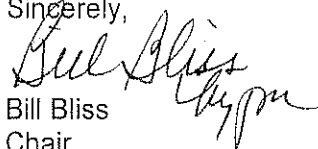
The Washington Department of Ecology has recently assigned the Boundary Review Board of Whatcom County to facilitate the SEPA analysis in this case. Thus, your NoI is properly submitted with regard to SEPA at this time, and the Board will now proceed with review, as requested.

Because the Boundary Review Board for Whatcom County has lead agency status in the SEPA process, we will be soliciting a qualified, neutral third party to complete all the steps necessary to the SEPA determination for the potential park district. We will keep all interested parties informed of the status of this effort.

We are aware of a request for an extension from the Advisory Committee, and we will respond to that request separately.

If you have any questions, please contact Pat Atkinson, Chief Clerk.

Sincerely,


Bill Bliss
Chair

c: Phillip Buri, Attorney
Carole Korelin, Chief Clerk, BRB for Skagit County
Arne Denny
Royce Buckingham