

The Board held a prehearing conference on December 11, 1996, at the Board's office, 2329 One Union Square, Seattle. There being no objection from either the County or FOTL, the presiding officer orally granted Quadrant's Motion to Intervene.

On December 13, 1996, the Board issued an "Order Granting Intervention and Prehearing Order" (the **Prehearing Order**). The Prehearing Order established a schedule for the submittal of motions and briefs and set forth the legal issues to be determined ^[1].

On January 6, 1997, the Board received from FOTL a Preliminary Exhibit List. On this same date, the Board received from Quadrant "The Quadrant Corporation's Preliminary Exhibit List."

On January 17, 1997, the Board received from FOTL V a "Motion to Supplement the Record."

On January 21, 1997, the Board issued an "Order Correcting Prehearing Order."

On January 22, 1997 the Board received "The Quadrant Corporation's Memorandum in Opposition to FOTL/CPT's Motion to Supplement the Record."

On January 24, 1997, the Board issued an "Order on Motions to Supplement the Record."

On February 19, 1997, the Board received "Prehearing Brief FOTL-5" (the **FOTL PHB**).

On March 5, 1997, the Board received "The Quadrant Corporation's Pre-Hearing Brief" (the **Quadrant PHB**). On this same date, the Board received "King County Prehearing Brief" (the **County PHB**). The County moved to strike Paragraph 2.5 of the FOTL PHB. County PHB, at 13.

On March 12, 1997, the Board received the "FOTL/CPT Reply Brief" (the **FOTL Reply**).

On March 18, 1997, the Board held a hearing on the merits at the Board's Seattle office. Present for the Board were Chris Smith Towne, Edward G. McGuire and Joseph W. Tovar, presiding. Present for FOTL/CPT was Joseph Elfelt. Present for Quadrant was Kristina M. Dalman. Representing the County was Michael J. Sinsky. No witnesses testified. Court reporting services were provided by Cynthia J. LaRose, Robert H. Lewis & Associates, Tacoma. On this same date, the Board received from the County four copies of attachment A to King County Ordinance 12170, which had been attached to the County PHB as Exhibit 6.

II. FINDINGS OF FACT

1. The property at issue is a portion of the Northridge Urban Planned Development (**UPD**) site in the Bear Creek Area. The Northridge property is also known and referred to as a Master

Planned Development (**MPD**).See Quadrant's PHB, Ex. R-Index 10.

2.The Northridge property was designated an Urban Growth Area (**UGA**) by the Phase I CPPs adopted on July 6, 1992.Ordinance 10450.The property is shown within a UGA on the map [\[2\]](#) between pages 15 and 16 and is referenced in Policy LU 14(b) .County PHB, Ex. 1.

3.Quadrant deleted the panhandle from its UPD application in July 15, 1994.Application Revision Package.County PHB, Ex. 12.

4.King County Council adopted the Phase II CPPs on August 15, 1994.Ordinance 11446. County PHB, Ex. 2.Policy LU-14(b) from the Phase I CPPs was renumbered as Policy LU-26 (b).

5.On November 18, 1994, King County adopted its GMA Comprehensive Plan (the **Plan**). Ordinance 11575.The Northridge site was included within the UGA.Also included was Policy U-201 [\[3\]](#) .County PHB, Ex. 3.

6.The Draft Environmental Impact Statement (**DEIS**) for the Northridge UPD, issued in May 1995, identified an "eastern panhandle" portion of the property (the **panhandle**).The Fact sheet of the DEIS revealed that the panhandle is excluded from Quadrant's UPD permit application for Northridge [\[4\]](#) .FOTL PHB, Ex. 4; County PHB, Exs. 11, 13.

7.FOTL commented on the DEIS.Joseph Elfelt's July 3, 1995 letter, Letter 10 on page 4-33 of the DEIS, demonstrates that FOTL was aware of removal of the panhandle from Quadrant's UPD application.FOTL PHB, Ex. 5.

8.The County amended its Plan on December 18, 1995.Ordinance 12061.County PHB, Ex. 5.

9.The Final Environmental Impact Statement is dated January 1996.FOTL PHB, Ex. 5.

10.In March 1996, the County again amended its Plan (including U-201) and zoning code in response to the Board's remand order in *Vashon-Maury v. King County*, CPSGMHB Case No. 95-3-0008.County PHB, Ex. 6 (Ordinance 12170 (Plan)), Ex. 7 (Ordinance 12171 (Zoning Code)).

11.The County's hearing examiner reviewed the UPD permit application and issued a Report and Recommendation to the King County Council on June 28, 1996.FOTL PHB, Ex. 6.

12.On November 25, 1996, the County again amended its Plan.Ordinance 12531.County PHB, Ex. 8.

13.FOTL V filed its Petition for Review on December 16, 1996.

14.The County Council approved the Northridge UPD preliminary plat and rezone on January 10, 1997.County PHB, Ex. 9 (Ordinance 12598), Ex. 10 (Ordinance 12601).

III.MOTION TO STRIKE

The Motion to Strike is **denied**.

IV.DISCUSSION

Background

Quadrant owns approximately 1,506 acres in the Bear Creek area of unincorporated King County. The entire Quadrant property is included in the Bear Creek UGA, an island UGA.The County adopted the Bear Creek UGA when it adopted its GMA Plan on November 18, 1994.Finding of Fact 5.FOTL appealed the 1994 Plan, challenging the inclusion of the Quadrant property in the Bear Creek UGA.This Board and King County Superior Court agreed with Quadrant and the County that the Quadrant property was appropriately included in the Bear Creek UGA.

FOTL now challenges the existing UGA designation for a portion of Quadrant's Northridge property.FOTL alleges that the County's Plan is internally inconsistent as well as inconsistent with the CPPs, in violation of the GMA.Specifically, FOTL argues that the County imposed upon itself a duty to redesignate, from urban to rural, the Quadrant property if Quadrant did not pursue applications to implement development.Because Quadrant excluded the panhandle portion of its property from its UPD application, FOTL argues that the County is obligated to redesignate the panhandle from urban to rural.

Analysis

The 1994 Plan includes policy U-201 that requires the County to redesignate Quadrant's property from urban to rural if the UPD application is denied by the County or not pursued by Quadrant. Finding of Fact 5.This policy is consistent with CPP LU-26(b).

On July 15, 1994, four months before the County adopted the 1994 Plan, Quadrant submitted a UPD application for 1,046 acres of the Quadrant property.This application excluded 460 acres, the panhandle.Finding of Fact 6.Thus, at the time the County adopted the 1994 Plan, only part of the Quadrant property was included in a UPD application.

FOTL argues that Quadrant stopped pursuing development of the panhandle when it excluded it

from its UPD application, and that Quadrant's reasons were made known in its May 1995 DEIS. Finding of Fact 7. Assuming, *arguendo*, that FOTL is correct and Quadrant stopped pursuing development of the panhandle when it submitted its UPD application, then the 1994 Plan was inconsistent internally as well as with the CPPs when it was adopted by the County. It is that action, the County's adoption of the allegedly "inconsistent" 1994 Plan, that is the proper subject of FOTL's present challenge.

As explained below, the appeal period for the 1994 Plan has long since passed. FOTL's present petition is too late to invoke this Board's jurisdiction. The Board's jurisdiction is granted by statute and is limited in subject matter and timeliness of appeal. RCW 36.70A.290 provides in part:

(2) All petitions relating to whether or not an adopted comprehensive plan, development regulation, or permanent amendment thereto, is in compliance with the goals and requirements of this chapter . . . must be filed within sixty days after publication by the legislative bodies of the county or city.

"Petitioners have alleged noncompliance with the consistency requirements of RCW 36.70A." FOTL Reply, at 2. Such a challenge is clearly within the Board's subject matter jurisdiction; internal plan consistency and consistency with CPPs are duties imposed by the Act. At issue here is whether FOTL's failure to timely appeal the County action that caused the alleged inconsistency bars the present challenge.

FOTL offers three arguments to support its claim that its petition is timely. "First, there is no evidence before the Board that petitioners were aware that Quadrant was not pursuing urban development on the 'panhandle' until May of 1995 when the DEIS for Northridge was issued." FOTL's Reply, at 8. Petitioners have not explained how their ignorance of Quadrant's UPD application creates Board jurisdiction two years after the County's action (and a year and a half after FOTL became "aware" of Quadrant's plans).

The policy in this state "is to review decisions affecting use of land expeditiously so that legal uncertainties can be promptly resolved and land development not unnecessarily slowed or defeated by litigation-based delays." *Federal Way v. King County*, 62 Wn. App. 530, 538 (1991). This policy is reflected in the GMA. GMA appeals must be filed with the boards within sixty days after publication, and the boards must issue final orders within 180 days of receipt of the petition for review. *See* RCW 36.70A.280 and .300. Thus, the Act, consistent with state land use policy, required FOTL to promptly appeal the alleged inconsistency in the County's Plan.

It is irrelevant that FOTL asserts that it was not aware of Quadrant's UPD application. The purpose of time limitations is to give finality to land use decisions. To carve out an exception to this well settled area of the law, by ignoring the appeal period of sixty days after the County adoption of the 1994 Plan, "would completely defeat the purpose and policy of the law in making

a definite time limit.”*Deschenes v. King County*, 83 Wn.2d 714, 718 (1974). Even meritorious claims may be eliminated by operation of time limitations on appeals. *See Federal Way*, 62 Wn. App., at 533. The Act granted FOTL sixty days to appeal the adoption of the 1994 Plan, the action that created the alleged inconsistency. FOTL did not file its petition for review within the appeal period prescribed by the Act.

FOTL next argues that its petition is timely because it is presenting a failure-to-act challenge, and that no statute of limitations applies. FOTL Reply, at 8 (citing *Friends of the Law v. King County*, CPSGPHB Case No. 94-3-0003, Order on Dispositive Motions (April 22, 1994), at 30).

Petitioners’ argument is without merit. FOTL’s challenge is not a failure-to-act challenge. The alleged inconsistency was created in 1994 when the County adopted its GMA Plan; the inconsistency was not created when FOTL states that it learned of Quadrant’s reasons for excluding the panhandle from its UPD application. Even if the Board were to accept that event as triggering the 60-day appeal period, FOTL did not file a petition for review within that time. Even if the County itself (which is to say the County’s legislative authority) was not aware of Quadrant’s exclusion of the panhandle until the May 1995 DEIS, the alleged inconsistency nonetheless existed when the 1994 Plan was adopted. The County “acted” when it adopted the 1994 Plan, and the sixty-day appeal period began when the County published notice of its action.

Finally, FOTL argues that “it was reasonable for Petitioners to wait before filing this petition. . . . If petitioners had acted sooner, then the strident cry from Quadrant undoubtedly would have been that we were acting in haste.” FOTL Reply, at 9. FOTL’s argument is unpersuasive. What is “reasonable” was determined by the legislature to be sixty days. Neither Petitioners’ nor Quadrant’s idea of what a reasonable appeal period might be is determinative.

The Board holds that it lacks jurisdiction to consider FOTL V’s Petition for Review. Consequently, it cannot and will not answer the legal issues raised by FOTL V and dismisses the Petition for Review with prejudice.

CONCLUSION

The Board is without jurisdiction to consider FOTL V’s Petition for Review. The Petition for Review is, therefore, **dismissed with prejudice**.

V. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, the GMA, case law and prior Orders of this Board, the Board enters the following order:

FOTL V’s Petition for review is **dismissed with prejudice**.

So ORDERED this 12th day of May, 1997.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Joseph W. Tovar, AICP
Board Member

Chris Smith Towne
Board Member

Note: This Final Decision and Order constitutes a final order as specified by RCW 36.70A.300 unless a party files a Petition for Reconsideration pursuant to WAC 242-02-830.

[1] The legal issues in this case are as follows:

(1) Does CPP LU-26(b) and comprehensive plan policy U-201 create a self-imposed duty upon the County to designate certain land for rural land use if the conditions referenced in CPP LU-26(b) and plan policy U-201 are met?

(2) If the answer to Legal Issue No. 1 is yes, did the County fail to comply with the Growth Management Act by failing to act to redesignate as "rural" the eastern 460 acres of the Northridge property? (RCW 36.70A.070, .120, and .210). Prehearing Order, at 6, as corrected on January 21, 1997 by the Order Correcting Prehearing Order.

[2] CPP LU-14(b) provided:

The GMPC recognizes that the Bear Creek Master Plan Developments (MPDs) are subject to an ongoing review process under the adopted Bear Creek Community Plan and recognizes these properties as urban under these Countywide Planning Policies. If the applications necessary to implement the MPDs are denied by King County or not pursued by the applicant(s), then the property subject to the MPD shall be redesignated rural pursuant to the Bear Creek Community Plan. Nothing in these Planning Policies shall limit the continued review and implementation through existing applications, capital improvements appropriations or other approvals of these two MPDs as new communities under the Growth Management Act.

[3] Policy U-201 provides:

In addition, this policy recognizes that the Bear Creek Mater Plan Developments (MPDs) are subject to an ongoing review process under the adopted Bear Creek Community Plan and that these properties are urban under the Countywide Planning Policies. If the applications necessary to implement the MPDs are denied by King County or not pursued by the applicant(s), then the property subject to the MPD shall be redesignated rural pursuant to the Bear Creek Community Plan. Nothing in this policy shall limit the continued review and implementation through existing applications, capital improvements appropriations or other approvals of these two MPDs as new communities under the Growth Management Act.

[4] The Fact Sheet stated:

The proposed 1,046 acre Northridge UPD would be constructed on the western portion of the 1,506 acre Quadrant property. DEIS, at i.