



On March 7, 1997, the Board received Torrance’s “Reply to King County Regarding Supplementation of the Record.”

On March 12, 1997, the Board held a Hearing on the Dispositive Motion at its office, 2329 One Union Square, Seattle. Board Members Chris Smith Towne, Presiding Officer, and Joseph W. Tovar were present for the Board. Elaine Spencer represented Torrance; Kevin Wright represented the County. The proceedings were recorded by Cynthia LaRose, Robert H. Lewis & Associates, Tacoma. [\[1\]](#)

## **II. findings of fact**

1. The Torrance property was designated Agricultural Production District in King County’s 1985 Comprehensive Plan. *Alberg v. King County [Alberg]*, CPSGMHB Case No. 95-3-0041, Final Decision and Order (Sept. 13, 1995), at 8 (Findings of Fact).
2. The County designated the Torrance property as agricultural lands of long-term commercial significance in 1992. Motion to Dismiss, Ex. A (King County Motion 8496).
3. In 1994, Petitioners requested that the County redesignate the Torrance property from agriculture to industrial. Opposition to Motion to Dismiss, Declaration of John Torrance, and attachments.
4. On November 18, 1994, the Metropolitan King County Council (the **Council**) enacted Ordinance 11575, adopting the 1994 King County Comprehensive Plan (the **1994 Plan**); the agricultural designation of the Torrance property was unchanged by the enactment of Ordinance 11575. *Alberg*, at 2 (Findings of Fact).
5. Petitioners did not appeal the County’s enactment of Ordinance 11575.
6. In January 1995, the Council enacted Ordinance 11653, adopting zoning, zoning maps and development conditions to implement the 1994 Plan. The Torrance property received “P-suffix” zoning conditions, which established the nature and extent of future land uses on the property. *Alberg*, at 5-6 (Findings of Fact).
7. Petitioners did not appeal the County’s enactment of Ordinance 11653.
8. The P-suffix zoning conditions were challenged, by parties other than Petitioners, in *Alberg*; in its Final Decision and Order, the Board found the P-suffix conditions to be out of compliance with the GMA and remanded them to the County. *Alberg*, at 48.
9. In 1995, Petitioners again requested removal of the Torrance property from agricultural designation. Motion to Dismiss, Ex. H (excerpt from Speaker Sign-in Sheet from November 18, 1995 Council Committee Meeting), I (excerpt from Speaker List from December 11, 1995 Council Hearing), and J (Petitioners’ December 11, 1995 submittal to the Council).
10. In response to the Board’s *Alberg* remand, the County enacted Ordinance 12061, deleting the P-suffix conditions on the Torrance property, but the agricultural designation of the Torrance property was unchanged by the enactment of Ordinance 12061. Motion to Dismiss, Ex. K (excerpt from Ordinance 12061).
11. Petitioners did not appeal the enactment of Ordinance 12061.

12. On March 25, 1996, the Board issued a Final Decision and Order in *Benaroya, et al., v. City of Redmond* [*Benaroya*], *CPSGMHB* Case No. 95-3-0072c. In its answer to Legal Issue No. 1, challenging an agricultural designation, the Board concluded that:

Because the [] property has not been primarily devoted to the commercial production of agriculture, it does not meet the definition of agricultural lands pursuant to RCW 36.70A.030(2). FDO, at 10.

13. In 1996, Petitioners again requested removal of the Torrance property from agricultural designation. Opposition to Motion to Dismiss, Ex. 1154 and 3394. Petitioners' request was contained in "Amendment to Attachment A to Proposed Ordinance 96-496" which would have rezoned the property "from both the Agriculture Production district and Agriculture Land Use Designations to Industrial." Petitioners' proposed amendments were deleted by the Council before adopting Ordinance 96-496. See Petition for Review, at 1-2; County's Motion to Dismiss, at 4-5; Ex. 1070.

### **III. discussion**

#### **Board Jurisdiction**

The Board's jurisdiction is granted by statute. The legislature determined that a petition for review of a jurisdiction's action adopting a comprehensive plan, development regulation, or permanent plan or regulation amendment under the GMA must be filed within sixty days after publication of notice of the adoption by the legislative body of the jurisdiction. RCW 36.70A.290(2). The Board does not have the authority to review petitions filed more than sixty days after publication of the jurisdiction's challenged action. The Board cannot create exceptions that expand this

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authority.

#### **County Actions Affecting Torrance Property**

Over a period of several years, Petitioners have attempted to remove the County's designation of the Torrance property as agricultural lands of long-term commercial significance. Petitioners requested that the Torrance property be removed from agricultural designation when the County adopted its GMA Plan in 1994. The County denied Petitioners' request. Petitioners did not appeal the County's action to the Board at that time.

In 1995, the County applied zoning to implement its GMA Plan. The Torrance property was zoned agricultural as part of this zoning action, and was assigned a specific zoning condition that allowed use of the property for certain non-agricultural purposes (a P-suffix condition). Although Petitioners did not appeal the County's zoning action, other parties appealed the zoning action to this Board. See *Alberg*. The Board found certain aspects of the County's zoning action to be out of compliance with the GMA.

In response to the Board's finding of non-compliance, the County contemplated alternatives that would comply with the Act. Petitioners appeared before the County to advocate removal of the agricultural designation of the Torrance property. The County declined Petitioners' request. Instead, the County removed the P-suffix condition from the Torrance property. Again, Petitioners did not appeal the County's action to the Board at that time.

#### **Petitioners' Actions**

Petitioners had the opportunity to invoke this Board's jurisdiction, as provided by RCW 36.70A.290(2), to challenge the County's 1994 and 1995 actions. Petitioners' present challenge to the County's designation and/or zoning of the

Torrance property as agricultural is untimely.

In 1996, Petitioners again requested that the County remove the agricultural designation and zoning from the Torrance property. The County again declined this request. Petitioners appealed the County's adoption of Ordinance 96-496 to this Board because it did not remove the Torrance property from agricultural designation.

## Analysis

The question Petitioners raise is whether the County violated the GMA by failing to grant Petitioners' request to remove the Torrance property from agricultural designation.

The Board addressed a similar issue in *Cole v. Pierce County [Cole]*, CPSGMHB Case No. 96-3-0009, Final Decision and Order (July 31, 1996). In *Cole*, Petitioners proposed an amendment to redesignate Petitioners' property because they asserted that the original designation was not in compliance with the GMA, at the time of adoption or subsequent to adoption. *Cole*, at 9. Pierce County rejected the proposed amendment and Petitioners filed a petition for review challenging Pierce County's failure to adopt the proposed amendment.

In *Cole*, the Board stated:

While RCW 36.70A.130 authorizes a local government to amend comprehensive plans annually, it does not require amendments. Moreover, it does not dictate that a specific proposed amendment be adopted. . . . At such time as [Pierce] County takes an action pursuant to the authority of RCW 36.70A.130 or fails to meet a duty imposed by some other provision of the GMA, [Petitioners] may have an action that could properly be brought before the Board. Absent such facts, [Petitioners'] recourse is elsewhere. *Cole*, at 10.

Torrance seeks to distinguish this matter from *Cole*, arguing that *Cole's* applicability:

should be restricted to circumstances where there is neither any showing that the original comprehensive plan was not in compliance with the GMA when adopted or that changed circumstances have made a plan which may have once been in compliance, in compliance no longer. Memorandum in Opposition, at 11.

Torrance argues that under the Board's ruling in *Benaroya*, issued subsequent to the County's designation of its property, the Torrance property should not have been given an agricultural designation, since it is not primarily devoted to commercial agricultural production.

The County responds that:

No matter how 'clearly' petitioners believe they have shown that the 1994 designation of their property as agricultural land of long term commercial significance violated the GMA, this Board does not have jurisdiction to review that decision now. Reply, at 3.

The Board agrees. The present controversy is indistinguishable from *Cole*. Petitioners disagree with the original designation of the Torrance property, but did not challenge the County's actions making that designation. **The Board holds that Petitioners cannot now challenge that designation; neither can Petitioners challenge the County's decision not to adopt Petitioners' proposed amendments.**

## **Conclusion**

Petitioners are time-barred from challenging the County's 1994 and 1995 GMA actions. Nor can Petitioners challenge before the Board the County's decision not to adopt Petitioners' proposed amendments.

The County's Motion to Dismiss is **granted**.

#### **IV. ORDER**

Based upon a review of the petition for review, the briefs of the parties, the RCWs, the Board's Rules of Practice and Procedure and prior decisions of this Board and the courts, the Board enters the following ORDER:

Respondent King County's motion to dismiss is **granted**; Torrance's petition for review (Case No. 96-3-0038) is **dismissed with prejudice**. The Hearing on the Merits, scheduled in the Notice of Hearing in this matter, is canceled.

So ORDERED this 31st day of March, 1997.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Edward G. McGuire, AICP  
Board Member

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Joseph W. Tovar, AICP  
Board Member

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Chris Smith Towne  
Board Member

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[1] Board Member Edward G. McGuire reviewed the audio tape of the Hearing on the Dispositive Motions.

[2] In *Friends of the Law and Bear Creek Citizens for Growth Management v. King County [FOTL I]*, CPSGMHB 94-3-0003, Order on Dispositive Motions (1994), the Board noted an exception to the 60-day appeal limitation, citing to its Rules of Practice and Procedure:

A petition relating to the failure of a state agency, city or county to take an action by a deadline specified in the act may be brought at any time after the deadline has passed. WAC 242-02-220(4). *FOTL I* Order, at 30.

[3] Even if the County's 1994 and 1995 actions were somehow out of compliance with the GMA, the time has passed for a challenge of those actions before this Board.