

**CENTRAL PUGET SOUND  
GROWTH MANAGEMENT HEARINGS BOARD  
STATE OF WASHINGTON**

AGRICULTURE FOR TOMORROW, )	)	<b>Case No. 99-3-0004</b>
	)	
Petitioner,	)	
	)	<b>(AFT II)</b>
v.	)	
	)	
SNOHOMISH COUNTY,	)	<b>ORDER ON DISPOSITIVE MOTION</b>
	)	
Respondent.	)	
	)	
	)	

---

**I. Procedural Background**

On April 6, 1999, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Agriculture for Tomorrow (**Petitioner** or **AFT**). The matter was assigned Case No. 99-3-0004. Petitioner challenges Snohomish County's (**County**) decision not to docket for further consider the removal of an area from the urban growth area (**UGA**) and redesignation of part of the area as agriculture. The County's decision is formalized in Motion No. 99-028. The grounds for the challenge is noncompliance with several sections of the Growth Management Act (**GMA** or **Act**).

On April 16, 1999, the Board issued a "Notice of Hearing" in the above-captioned case. The Order set a date for a prehearing conference and established a tentative schedule for the case.

On May 6, 1999, the Board received "Snohomish County's Index of Record." Also on May 6, 1999, the Presiding Officer sent a memo to the parties, via telefacsimile, urging Petitioner to restate the legal issues to be decided by the Board.

On May 10, 1999, the Board conducted a prehearing conference (**PHC**) at the Financial Center, Seattle. At the PHC, the County indicated it would be filing a dispositive motion regarding the Board's jurisdiction over the County's action.

On May 14, 1999, the Board issued its Prehearing Order (**PHO**) establishing the final schedule and setting forth the Legal Issues to be resolved by the Board.

On May 21, 1999, the Board received “Respondent Snohomish County’s Motion to Dismiss AFT’s Petition for Review” (**County Motion**).

On May 28, 1999, the Board received “Petitioner’s Response to Snohomish County’s Motion to Dismiss AFT’s Petition for Review” (**AFT Response**).

On June 4, 1999, the Board received “Snohomish County’s Reply Supporting Motion to Dismiss AFT’s Petition for Review” (**County Reply**).

The Board did not hold a hearing on the dispositive motions.

## **II. Findings of fact**

1. Snohomish County adopted its GMA Comprehensive Plan (**Plan**) on June 28, 1995. Index 93, Ord. 94-125.
2. In its 1995 Plan, the County designated agricultural lands on the future land use map (**FLUM**). Index 93, Ord 94-125, section 4, at 17; and FLUM.
3. The county did not designate any part of the Island Crossing Upland Plateau (the 220 acre “crescent” area northwest of the Arlington airport and east of I-5 (**the crescent**)) as agriculture; instead the area was delineated as being within the City of Arlington’s Urban Growth Area (**UGA**) and designated on the FLUM as Urban Low Density Residential (4-6 du/ac) and Urban Commercial. County Motion, at 2; Index 93, FLUM.
4. The area has remained within Arlington’s UGA and retained its urban designations since the County’s Plan was adopted in 1995. County’s Motion, at 3.
5. In 1996, Snohomish County adopted Ordinance No 96-032, that added Chapter 32.07 to the Snohomish County Code (**SCC**), entitled “Procedures for Proposal of Amendments or Revisions to the GMA Comprehensive Plan and Development Regulations.” Index 80, Chapter 32.07 SCC.
6. Snohomish County’s amendment procedures allow any person to propose amendments or revisions to the Plan or development regulations, but all proposals must comply with specified submittal requirements. (SCC 32.07.030) All proposals are subject to initial review and evaluation by the Department of Planning and Development Services. The department reviews and evaluates the submitted proposal against eight criteria set forth in the code. (SCC 32.07.040(1)(a)-(h)) Following its review and evaluation, the department informs the applicant of its initial evaluation and based upon this evaluation, offers a recommendation to the County Council on whether the proposal should be processed further. (SCC 32.07.040(2)) The department compiles a list of all the proposed amendments and revisions, including

recommendations for the County Council. The Council reviews the list and determines “in a public hearing” which of the proposals will be further processed. The list approved by the Council is the “final docket” for further review, evaluation and consideration. (SCC 32.07.060) Index 80.

7. In 1996, Pilchuck Audubon Society Smart Growth Campaign offered a Plan amendment proposal involving 432 acres that included removal of the crescent from Arlington’s UGA and redesignation of the area from urban to rural and agricultural. County Motions, at 3 and Index 42

8. The department processed Pilchuck’s proposal, and after its initial review and evaluation recommended “Do not process further.” The County Council accepted the recommendation and declined to place the proposal on the final docket. Index 42 and County Motion, at 3.

9. In 1998, AFT submitted a proposed Comprehensive Plan and zoning map amendment that was similar, but smaller, to the proposal submitted by Pilchuck in 1996. The area affected by AFT’s proposal only involved the 220 acre crescent. AFT’s request sought to: 1) exclude the area from the City of Arlington’s UGA; 2) amend the Plan’s FLUM designations, changing them *from* Urban Low Density Residential (4-6 du/ac) and Urban Commercial *to* Riverway Commercial Farmland, Rural Residential (1 du/5 ac-basic) and Rural Industrial; and 3) rezone the area consistent with the proposed agriculture and rural designations. Index 4 and PFR attachment 1.

10. The department processed AFT’s proposal and recommended “Do not process further.” Index 4 and 7.

11. On February 10, 1999, the County Council determined, in a public hearing, that the proposal should not be processed further and the proposal was not placed on the final docket. Motion No. 99-028, with attachment.

### **III. County’s motion to dismiss**

#### **Discussion**

In its Motion to Dismiss, the County argues: 1) AFT’s petition challenges designations made by the County when it originally adopted its Plan in 1995, pursuant to RCW 36.70A.290(2), a 1999 challenge to those designations is untimely; 2) AFT challenges the County’s failure to amend its Plan, as requested by AFT, pursuant to RCW 36.70A.280(2), an appeal of such action is not authorized by the GMA; and 3) the challenged action, Council Motion No. 99-028 did not adopt any plan or development regulations, therefore the Board has no jurisdiction to consider AFT’s PFR. County Motion, at 5. In addition, the County cites to *Cole v. Pierce County*, CPSGMHB Case No. 96-3-0009c, Final Decision and Order (Jul. 31, 1996) and *Torrance v. King County*,

CPSGMHB Case No. 96-3-0038, Order Granting Dispositive Motion (Mar. 31, 1997) to support their arguments. County Motion, at 5-7. In response, AFT distinguishes the facts in the present challenge from those of *Cole* and *Torrance*. Additionally, AFT refers to this Board's decision in *Port of Seattle v. City of Des Moines*, CPSGMHB Case No. 97-3-0014, Final Decision and Order (Aug. 13, 1997) as a basis for hearing appeals beyond the sixty day appeal period set forth in RCW 36.70A.290(2). AFT Response, at 1-2. In reply, the County reasserts that its 1995 designations cannot now be challenged and that *Cole* and *Torrance* are applicable. Further, the County contends it had discretion, which it exercised, in carrying out its GMA duty (to identify, designate and protect agricultural lands). The exercise of this discretion is unlike the situation in the *Port of Seattle*, where the City of Des Moines refused to amend its Plan to remove policies that precluded an essential public facility (GMA duty not to preclude EPFs). County Reply, at 1-4. The Board agrees with the County.

The issues set forth in AFT's PFR, as clarified and restated in the PHO, challenge the County's 1995 UGA and FLUM designations for the Island Crossing Upland Plateau -- the crescent. Pursuant to RCW 36.70A.290(2), the time for challenging these 1995 designations is long past, AFT's 1999 PFR is untimely.

Additionally, the Board has generally upheld local governments in the situation where a petitioner has proposed a Plan amendment to a local government and the local government has declined to adopt the proposed amendment. The circumstances surrounding AFT's challenge are clearly governed by *Cole* and *Torrance*. The GMA, pursuant to RCW 36.70A.130, requires local governments to have a process for amending their Plans. However, the Act does not require local government to adopt a particular proposed amendment offered by a petitioner, absent an explicit non-discretionary GMA duty compelling such amendment. [\[1\]](#)

Finally, the legislative action challenged by AFT is the County's adoption of Motion No. 99-028 entitled "A Motion of the Council of Snohomish County Approving the Final Docket of Proposed Amendments and Revisions to the GMA Comprehensive Plan or Development Regulations Implementing the Plan for the 1998 Annual Docketing Cycle." This action does not adopt or amend the County's Plan or development regulations. Therefore, pursuant to RCW 36.70A.280 (2), the Board does not have jurisdiction to review AFT's PFR.

### Conclusion

The County's motion to dismiss the petition filed by AFT is **granted**.

### IV. ORDER

Based upon review of the Petitions for Review, the briefs and exhibits submitted by the parties, and having deliberated on the matter the Board ORDERS:

1. Snohomish County's Motion to Dismiss is **granted**.
2. The Petition for Review filed by Agriculture for Tomorrow is **dismissed with prejudice**.
3. The hearing on the merits in CPSGMHB Case No. 99-3-0004 (*AFT II*), scheduled for Monday, August 23rd is **cancelled**.

So ORDERED this 18th day of June, 1999.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

---

Edward G. McGuire, AICP  
Board Member

---

Joseph W. Tovar, AICP  
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.

---

[1] AFT's reliance upon *Port of Seattle v. Des Moines* is misplaced. In that case the Board Stated:

When Des Moines adopted its Plan in December 1995, there was no regional decision to expand STIA. However, the PSRC passed Resolution A-96-02, amending the MTP to include a third runway at STIA, on July 11, 1996. The City's duty to comply with the GMA in the context of the decision to expand an essential public facility (STIA) was triggered when the PSRC passed Resolution A-96-o2. RCW 36.70A.200 imposes a duty requiring the City's Plan not to preclude essential public facilities, even when the decision regarding the essential public facility was made subsequent to the initial adoption of the Plan.