

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

F. WHITMORE READING, HAROLD P. DYGERT,	)	
JOANNE MOORE-DYGERT, JOANN BLACK, J.R.	)	
GONZALEZ, MARY JO ROGERS-GONZALEZ,	)	No. 94-2-0019
CHRISTINE M. MASTERSON, LYNN M. SALERNO,	)	
STEPHEN SCHRODER, STEPHEN LINDBERG and	)	FINAL ORDER
DIANA RYDER, individually, and as members of	)	
the SOUTH END NEIGHBORS DEFENSE FUND, a	)	
non-profit association, & THEODORE MAHR,	)	
RAYMOND A. and EMILY K. MAHR, GARY	)	
PERKINS, HENRY STOCKBRIDGE and MEMBERS	)	
OF SAVE ALLISON SPRINGS,	)	
	)	
Petitioners,	)	
	)	
vs.	)	
	)	
THURSTON COUNTY and	)	
CITY OF OLYMPIA,	)	
	)	
Respondents,	)	
	)	
and	)	
GARY E. BRIGGS,	)	
	)	
	)	
Intervenor.	)	
	)	
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On September 23, 1994, attorney Theodore A. Mahr, acting on his own behalf and on behalf of Raymond A. and Emily K. Mahr, Gary Perkins, Henry Stockbridge and the members of Save Allison Springs, (*Mahr*), filed a petition for review challenging the comprehensive plan for Olympia and the Olympia urban growth area. The plan covered both the municipal corporate limits and the urban growth area of Olympia, was denominated a "joint" comprehensive plan and was adopted by both the City of Olympia and Thurston County. On September 29, 1994, F. Whitmore Reading and others, individually, and as members of the South End Neighbors Defense Fund, (*Reading*), filed a petition challenging the same comprehensive plan. Where both *Mahr* and *Reading* presented the same argument they will be referred to as petitioners.

On October 5, 1994, Gary E. Briggs filed a motion to intervene. Following the prehearing conference on November 10, 1994, an order was entered November 16, 1994, which directed consolidation of the petitions and granted intervenor status to Mr. Briggs. The November 16, 1994, order also fixed deadlines for various motions and established the issues. For ease of reference, and since the arguments were jointly presented, the city, county and intervenor shall be referred to as respondents.

After the November 10, 1994, hearing, all parties filed motions to supplement the original index to the record. *Mahr* filed a motion to amend his petition. Respondents did not object to the proposed amendment. A hearing on November 30, 1994, resulted in an amended prehearing order, entered December 6, 1994. The amended prehearing order added two issues as a result of the *Mahr* amended petition and established the index to the record through item number 230, except for numbers 40, 43 and 226. The initial prehearing order was also changed to reflect the agreement of the parties that everyone had the documents from the index in their respective possession and that the submission of the actual documents that would become our record was to be done in conjunction with the submission of the brief of each party.

During the time these procedural matters were being completed, both Olympia and Thurston County filed motions to dismiss the petitions as being untimely under RCW 36.70A.290(2). By order dated November 23, 1994, we denied those motions. Respondents' request for a writ from Thurston County Superior Court to dismiss this case was denied by Judge Casey on the grounds that RCW 34.05 required judicial review by appeal of a final decision rather than by extraordinary writ.

On December 6, 1994, respondents filed dispositive motions on all issues. On December 22, 1994, we entered an order granting the motion as to one issue, striking one sub-issue that was conceded by petitioners and denying the motions as to all other issues in the case. The hearing on the merits began at 9:00 a.m. January 19, 1995, and concluded at 4:00 p.m. January 20, 1995.

Obtaining the record for our review was a nightmare. Hereinafter the problems and the reasons for them.

On January 6, 1995, respondents filed a motion to "supplement the record" by inclusion of items number 231-247. A few days before the commencement of the hearing on the merits each petitioner also filed a request to "supplement the record". These motions were filed despite the November 23, 1994, deadline for filing such motions established in the prehearing order and a full hearing that was held on November 30, 1994, to resolve *all* questions about the record.

We allowed argument on the motions the morning of January 19, 1995. Exhibits 231-246 were admitted because the documents were not "supplemental evidence" but should have been included in the original index list filed prior to November 30, 1994. Exhibit 248, materials submitted by *Reading* and found in a city file only after a public records request was made, was also admitted. Again, these items were not "supplemental evidence" because they were part of the original "record developed by the city, [or] county", RCW 36.70A.290(4).

The other exhibits, which included affidavits from expert witnesses, as well as respondents' computer model (Ex. 247) which had not previously been published were "supplemental" evidence. None of the requests were timely, WAC 242-02-540, nor were the exhibits "necessary or of substantial assistance", RCW 36.70A.290(4). We, therefore, denied admission.

Meanwhile, on December 22, 1994, petitioners each submitted a brief on the merits. Neither submitted the part of the record that he intended to rely upon as was required by the December 6, 1994, amended prehearing order. Approximately one week later *Reading* submitted the exhibits used in his brief. *Mahr* complained that submission of exhibits was the respondents' responsibility. *Mahr's* position was rejected because of the agreement at the November 30, 1994, hearing that a party would be responsible for submission of the exhibits from the index that each relied upon in his brief.

On January 6, 1995, respondents filed their brief with an original and three copies of the exhibits from the record upon which they intended to rely. That filing, with the necessary copies, included *20 filing boxes(!!)* of documents and two copies of 425 separate audio cassettes.

Given the high level of competence of counsel in all other facets of this case, we were astonished by the difficulty encountered in presenting the record. In light of that difficulty we take this opportunity to explain and clarify the items which are appropriate to be included in the record

submitted for a board hearing.

RCW 36.70A.290(4) states:

"The board shall base its decision on the record developed by the city, county, or the state and supplemented with additional evidence if the board determines that such additional evidence would be necessary or of substantial assistance to the board in reaching its decision."

Under the provisions of this section a board renders its decision in a case based upon the evidence contained in the record developed by the local government during the time of adoption of the challenged action except in rare instances where supplemental evidence is allowed.

In order to determine what that "record developed" by the local government is, WAC 252-02-520 (1) requires that the respondent local government prepare and submit an index within thirty days after the filing of a petition. This index, which should include *all* materials in files that were used in the development of the action being challenged, is an exhaustive *list* of the "record developed" by the local government. It is from this list that the exhibits to be submitted to a board are to be garnered.

Under WAC 242-02-520(2) a preliminary list of the items from the index that will be used in the appeal is to be submitted by *each party* within 20 days after receiving the index. The admonition contained in this section concerns the necessity to actually review the list and be aware of both what is contained in the index list and also which of those items are important to the issues in the case. The admonition bears repeating:

"...in complying with the requirements of this subsection, parties *shall not simply designate every document* but shall carefully review the index, and designate *only* those documents that are *reasonably necessary* for a full and fair determination of the issues presented." (emphasis supplied)

It is the intent of this subsection to ensure that only the items which are reasonably necessary for a board decision go through the expense of submission of an original and three copies. In order to assure that the record before a board stays within the parameters set forth by the Act and by our rules, a practice has developed with all three boards that the submission of exhibits be done at the time a party's brief is filed. This avoids the problem of over-designation at the fiftieth day from petition deadline and keeps the size of the board record to the relevant and necessary items.

The purpose of WAC 242-02-520(2) is to minimize the time-consuming preparation of the record by a local government. In the instant case the five filing boxes (which with copies amounted to twenty filing boxes) submitted by respondents were reviewed by us prior to the January 19, 1995, hearing on the merits. During that review we found major problems with the exhibits.

First, about 70% of the exhibits submitted had no relevance to the issues presented in this case. Respondents did not even reference this unnecessary material in their brief. Secondly, it was abundantly clear that respondents had not reviewed the exhibits prior to submission. As an example, the volumes of planning commission minutes of every meeting for more than a year, not only included the one or two pages that potentially had relevance to the case, but also contained another forty to fifty pages of materials such as draft minutes of the last meeting, agendas for the planning commissions' retreat, etc. Another example involved a memorandum entitled "Are we planning for 20-years growth-or 40?". While the memorandum was relevant there were at least seven different copies in various exhibits.

This lack of review by respondents is simply unacceptable. It is a responsibility of all counsel, but particularly local government counsel, to ensure that the record transmitted from the local government to a board is only that which is reasonably necessary for a decision. An incredible amount of human and natural resources were wasted in this case by the failure to adequately review the material prior to submitting it to us. Two copies of 425 different audio cassettes, of which no more than five were even referred to by respondents, involved massive unnecessary staff time. The simple act of xeroxing five file boxes of documents (of which at least three boxes were totally unnecessary under any view of the record) involved substantial and unnecessary cost.

The purpose of legislation providing for an administrative appeal process is to provide a more efficient and more cost effective mechanism for resolving disputes than that of Superior Court. That laudable purpose has been thwarted by the manner in which the respondents submitted their portion of the record. Much of the expense to the City of Olympia and Thurston County for defending this case was unnecessary, and lies at the feet of counsel for the respondents.

Once we were finally able to determine which parts of this record had relevancy, we were able to address the issues which were presented in the amended prehearing order. Generally, those

issues fell into three broad categories; (1) a challenge to the adequacy of the final Environmental Impact Statement (SEPA issues); (2) a challenge to the transportation element; and (3) a challenge to the Olympia urban growth area (UGA) boundary adopted in the comprehensive plan.

### SEPA ISSUES

As we noted in *Mahr v. Thurston County*, WWGMHB #94-2-0007, State Environmental Policy Act (SEPA) issues do not involve the four-question analysis we established in *Clark County Natural Resources Council v. Clark County*, WWGMHB #92-2-0001. While we have previously addressed the scope of our review of determinations of nonsignificance (DNS) by means of the "clearly erroneous" test, this is the first case involving a challenge to an EIS. Thus, the logical first step is to establish standards for, and the scope of, our review of an EIS challenge. We note that respondents did not contest petitioners' standing to challenge the adequacy of the EIS, nor any alleged failure by petitioners to exhaust administrative remedies.

In determining the appropriate standard of review we look first to the GMA. RCW 36.70A.280 (a) provides the jurisdictional underpinnings for review of a SEPA document relating to GMA plans, regulations or amendments.

RCW 36.70A.320, applies the presumption of validity to comprehensive plans, development regulations and amendments only. We conclude that an EIS does not carry a presumption of validity (adequacy) under the Act, although the burden of proof of showing inadequacy is with a petitioner.

RCW 43.21C.090 states in part:

"In any action involving an attack on...the adequacy of a 'detailed statement', the decision of the governmental agency shall be accorded substantial weight."

Pursuant to RCW 43.21C.110 the Department of Ecology has adopted "rules of interpretation and implementation" in WAC 197-11. Under RCW 43.21C.095 those rules are to be "accorded substantial deference" in dealing with SEPA.

Under WAC 197-11-738 a "detailed statement" is a final EIS. WAC 197-11-714 defines an "agency" as the local government body authorized to make law, hear contested cases or is a local

agency. WAC 197-11-762 defines "local agency" for purposes of this case as the Olympia City Council. Thus, the "substantial weight" requirement of RCW 43.21C.090 applies to the local government decision-maker. Petitioners' contention that the RCW 43.21C.090 deference does not apply to local governments is contrary to the language of the WACs. The fact that the Olympia City Council did not formally rule on the adequacy of the EIS is not significant since the record shows that the EIS was used in reaching the final decision on the comprehensive plan.

The EIS was a nonproject, phased review document under WAC 197-11, and appropriately so. It is from this foundation that we reviewed appellate cases to determine a proper standard of review for our use. Cases which dealt with a DNS or with a project EIS were less persuasive. Rather, we found most compelling those cases which involved nonproject, phased development situations, such as *Ullock v. Bremerton* 17 Wn. App. 573 (1977) (*Ullock*), and *Citizens v. Klickitat County* 122 Wn.2d 619 (1993) (*Citizens*). *Cathcart v. Snohomish County* 96 Wn.2d 201 (1981) (*Cathcart*) was also instructive as a nonproject, phased EIS case, with a recognition that Justice Stafford's concurring opinion probably presented a sounder basis for the decision.

Generally those cases set forth the parameters which apply to court review of an EIS. Those rules can be summarized as follows:

1. The scope of review is *de novo*;
2. The adequacy of an EIS is determined by the "rule of reason";
3. The governmental agency's determination that an EIS is adequate is entitled to "substantial weight".

We adopt these rules as our foundation for EIS review.

In the context of a SEPA challenge under the GMA we must initially decide the scope of "*de novo*" review of the nonproject EIS. RCW 36.70A.290(4) provides that our review is to be based upon the "record developed by the city, [or] county". It follows from the cases emanating from *Leschi Improvement Council v. State Highway Comm'n*, 84 Wn.2d 271 (1974), viewed in conjunction with the GMA, that our scope of *de novo* review is restricted to examination of the record properly before us.

Section .290(4) of the Act also provides that supplemental evidence is allowable if necessary, or

if it would be of substantial assistance in reaching our decision. In the instant case there was no timely request made to supplement the record, as required by WAC 242-02-540. The only request to supplement the record on SEPA issues was filed immediately prior to the hearing on the merits. That request involved documents that were developed after the comprehensive plan was adopted, and an affidavit. Even had the request been timely, the proposed supplemental evidence would not have been of substantial assistance nor necessary in reaching our decision. We leave for a future case the issue of what supplemental evidence, if any, would be appropriate for *de novo* review.

Within the context of a *de novo* review, wherein the council's determination of adequacy is afforded "substantial weight", we review the adequacy challenge under the "rule of reason". Not every remote or speculative consequence need be included in the EIS, *Cheney v. Mountlake Terrace*, 87 Wn.2d 338 (1976). A nonproject plan "need only analyze environmental impacts at a highly generalized level of detail," *Citizens*. An EIS is adequate in a nonproject plan "where the environmental consequences are discussed in terms of a maximum potential development of the property" *Ullock*.

Having determined the general principles announced by SEPA, WAC 197-11, and the courts, we turn to the specific claims in this case.

*Mahr* pointed out that the comprehensive plan provided that some type of widening of Mud Bay road in west Olympia was scheduled to occur in approximately three years and that new roads of some type were directed to be in place in the Ken Lake area during the 20-year life of the plan. None of these eventualities were mentioned in the EIS.

*Reading* pointed out that the 130-acre site upon which the Briggs Nursery has been located for many years was designated by the comprehensive plan to be the only urban village in the Olympia area. A sophisticated draft proposal involving more than 900 housing units and at least 200,000 square feet of commercial floor space was presented. Much of the Briggs Nursery site is on a class II aquifer. In the 83 years that the site has been a nursery, pesticide application and other potential damage has likely occurred. No discussion of these matters was included in the EIS.

Respondents countered that phased review for a nonproject action does not involve the level of detail asserted by petitioners. The EIS and the comprehensive plan both pointed out that, depending on the scope of the project, a more detailed project-specific EIS would be appropriate at the time implementation became a reality. We agree with respondents.

WAC 197-11-442 deals with the content of a nonproject EIS. It states that a lead agency shall have more flexibility in the preparation of a nonproject EIS because normally less detailed information is available.

While the lead agency is to discuss impacts and alternatives, it is only required to do so "in the level of detail appropriate to the scope of the nonproject proposal." A portion of the WAC states as follows:

"(3) If the nonproject proposal concerns a specific geographic area, site specific analyses are not required, but may be included for areas of specific concern....

(4) The EIS's discussion of alternatives for a comprehensive plan,...shall be limited to a general discussion of the impacts of alternate proposals for policies contained in such plans,...and for implementation measures. The lead agency is not required under SEPA to examine all conceivable policies, designations, or implementation measures...."

WAC 197-11-443(2) points out that a phased review of a nonproject action is to be based on an assessment of broad impacts. When a particular project is later proposed, the EIS must then focus on impacts and alternatives including mitigation measures, specific to the subsequent project and which have not been previously analyzed.

In *Richland v. Boundary Review Board*, 100 Wn.2d 864 (1984) the court dealt with a nonproject EIS for a regional shopping center zoning classification. The court pointed out that no specific shopping center had been proposed, and affirmed the adequacy of the EIS. Citing *Cheney* the court held that a nonproject EIS was not required to include a discussion of "possible" future development of a particular site.

As pointed out in *Ullock* at 581, a nonproject land use action has no immediate or measurable environmental consequence, but is in fact a legislative action designed to accomplish permissible changes. In *Cathcart* the court noted that the EIS under consideration for the 25-year project was "bare bones" and "devoid of any quantitative discussion as to cumulative and secondary

effects on surrounding areas." Nonetheless the court approved the adequacy of the EIS and said at 210:

"This project is an appropriate candidate for a piecemeal EIS presentation, for at this time it is extremely difficult to assess its full impact. Given the magnitude of the project, the length of time over which it will evolve, and the multiplicity of variables, staged EIS review appears to be an unavoidable necessity. At this point, an exhaustive EIS is impracticable in light of the difficulty of determining in the abstract, for a period of 25 years, such things as the rate at which the project will develop, the particular location of the housing units, the growth of the tax base which will support the needed public services, the evolution of transportation technologies, and the evolving socioeconomic interests of the prospective population."

Here the urban village concept at the Briggs Nursery site was no more than an idea. Development regulations to implement the comprehensive plan are even now being formulated. While a draft site plan was presented, it had no legal effect. The record showed that the timing of any environmental impacts from the Briggs site would have been speculative and based upon a variety of factors not the least of which is the transference of the nursery operation to Grays Harbor County over the next 20 years. While *Reading* complained that the traffic analysis that showed no significant impact on the surrounding area was incorrect, he failed to sustain his burden of proof (see transportation element section). The 1988 Thurston County comprehensive plan designated the site as medium residential, 4-8 dwelling units per acre. There was not a significant change brought about by the redesignation to an urban village by the Joint Comprehensive Plan, such as might have been shown by a conversion of natural resource lands to residential.

Likewise, the potential roads in the Ken Lake area in west Olympia were so remote and speculative as to not even require mentioning in the EIS. While the Mud Bay road widening was scheduled to occur within three years, the specifics of when, where, number of lanes, pedestrian traffic, bicycle lanes, etc. were totally unknown. Any reference in the EIS to the potential widening project would have necessarily involved only speculative impacts.

Nor does WAC 365-195-760 direct a different result. While it is important to integrate SEPA analysis at the "front end" of the process, there is not yet a mandated requirement to do so under SEPA, a WAC, or GMA. Inclusion of some of the items claimed necessary by petitioners would

have made this EIS better. The failure to include them, however, is not fatal.

Based on the record before us, the deference afforded under RCW 43.21C.090 and the lack of evidence to support petitioners' claims, we find the EIS adequate for this comprehensive plan.

Petitioners' remaining challenges to the transportation element of the Joint Comprehensive Plan and to the urban growth area are not directed toward the process used for adoption. Rather the complaints are to the substantive decisions of the Olympia City Council and Thurston County Board of County Commissioners. We therefore, analyze these non-SEPA challenges under our question 4 analysis:

"4. DOES THE COMPREHENSIVE PLAN FALL WITHIN THE DISCRETION GRANTED TO THE DECISION-MAKER TO CHOOSE FROM A RANGE OF REASONABLE OPTIONS?"

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TRANSPORTATION ELEMENT

Under GMA the Thurston Regional Planning Council (TRPC) was designated as the Regional Transportation Planning Organization, RCW 47.80.020. The TRPC consists of representatives from Thurston County, various cities and towns, Intercity Transit, Port of Olympia, school districts, and the state capitol committee. Pursuant to RCW 47.80.040, a Transportation Policy Board was appointed. In conjunction with the TRPC, the Policy Board prepared a regional transportation plan that was adopted in March 1993, RCW 47.80.030. This transportation plan served as the foundation for, and was adopted into the transportation element of the Joint Comprehensive Plan. Many of the goals and policies of the transportation plan were also integrated throughout the comprehensive plan.

The Regional Transportation Plan (RTP) set forth a series of goals and policies designed to create "an affordable and balanced transportation system that works effectively and that people will want to use." The overall objective of the plan is stated as follows:

"The following goals, policies and strategies will contribute to *reducing the percent of people who drive alone*. This would be *measured* by reducing work trip drive alones to 60% in 20 years." (Emphasis supplied)

Those goals, policies and strategies included increasing densities in the urbanized area, high and medium density traffic corridors, a connected-streets policy, incentives for alternate modes of transportation including pedestrian-friendly access, and disincentives for single occupancy vehicles.

The rate of drive-alone work trips for Thurston County in 1992 was 85% of the total work trips. The goal was to reduce drive-alones. The measuring device to determine if that goal was achieved is the drive alone work trip reduction to 60% in 20 years. The plan only directed this reduction to work trip commuting, not non-work related driving. The RTP also hedged somewhat by directing that the right-of-way acquisition projections were to be based upon a goal reduction of single occupancy vehicle work trips from 85% of the total work trips to 70%.

Petitioners challenged this "60% goal" as being unrealistic and unachievable. Their argument was that because of this unrealistic basic assumption in the RTP, the transportation element and the capital facilities element of the Joint Comprehensive Plan were doomed to failure.

Petitioners' argument fails on a number of grounds. Initially there is little or nothing in the record before us to support their claim that the reduction goal is unrealistic or unachievable. The only evidence presented in support of the claim was an affidavit from a traffic analyst submitted at the dispositive motion hearing. The affidavit was reintroduced at the hearing on the merits. We declined to admit the affidavit on both occasions. Rarely will we consider supplemental evidence that could have been, but was not, submitted to the local government decision-maker. A claim that petitioners here did not have the opportunity to gather, pay for and present this evidence to the local government decision-maker is unavailing. This is particularly so when the record reveals the process for the RTP and the Joint Comprehensive Plan involved some four years during which time many of the individual petitioners participated.

In reviewing the RTP and the Joint Comprehensive Plan, we note that the "goal" is to reduce "the percentage of people who drive alone." As stated in the RTP this goal is to be measured by the achievement of a reduction in *work* trip drive-alones to 60%. Even assuming the 60% reduction is a "goal", a goal is not a guarantee.

A comprehensive plan is not a static document. As things change, and they always do, the GMA

envisions that updates and changes to conform with new information obtained over the life of the plan will be made. Petitioners have failed to overcome the presumption of validity that attaches to the Joint Comprehensive Plan. Even had we admitted the traffic analyst's affidavit, this result would not have changed.

In 1992 the City of Olympia adopted a "connected-streets policy" for future development. The policy directed that future subdivisions in the City were to be designed so that streets would not dead-end within the subdivision but rather connect-up to other streets. Cul-de-sacs and dead-ends were to be discouraged. The purpose of the connected-streets policy was to provide better traffic flow, encourage alternative methods of travel and discourage auto-dependency. Petitioners claim that the Joint Comprehensive Plan, which adopted this connected-streets policy, failed to take into consideration RCW 36.70A.020(6) which states a goal of the Act to be that private property shall not be taken for public use without just compensation.

The connected-streets policy does not require that private property be taken so that existing streets would be connected, but only that future development incorporate the policy as a design feature. Petitioners' claim that the Joint Comprehensive Plan did not consider the financial impact of this alleged "taking" is without merit and not supported by evidence contained in this record.

Similarly the complaint that Level of Service (LOS) standards were not contained in the comprehensive plan as required by RCW 36.70A.070(6)(ii), is contrary to the record. The Regional Transportation Plan provided regional coordination and was adopted in the Joint Comprehensive Plan at chapter 6 page 3. The RTP discussed applicable LOS levels at high density and medium density corridors, transit services, etc. The Joint Comprehensive Plan transportation element identified intersection LOS's and the Capital Facilities Plan indicated the planned facilities necessary to accomplish the designated LOS.

*Reading* also contended that the Joint Comprehensive Plan failed to establish the requisite concurrency aspects for the proposed Briggs Nursery Urban Village. If *Reading's* argument was that RCW 36.70A.020(12), the concurrency goal, was not achieved in the Joint Comprehensive Plan the argument is contrary to the evidence revealed by this record. The Joint Comprehensive Plan provided an excellent presentation of ensuring that public facilities and services would be

adequate to serve development "at the time the development is available for occupancy" without decreasing the LOS standards.

The concurrency goal of the Act is specifically directed to the transportation element by RCW 36.70A.070(e), which provides that *after* adoption of the comprehensive plan, development regulations must be adopted that prohibit the approval of a development which would cause a transportation facility LOS to decline below those designated in the comprehensive plan. Obviously, petitioners cannot claim at this point that this section of the Act has been violated since there are neither development regulations as yet, nor a development application for the Briggs Nursery site to be acted upon.

Finally, petitioners contended that the 10-year traffic forecast required by RCW 36.70A.070(6) (iv) was not included in the Joint Comprehensive Plan. Petitioners are correct in this assertion.

Respondents acknowledged that the forecast is neither in the Joint Comprehensive Plan nor the Regional Transportation Plan. Respondents have shown that the work was in fact done by means of a computer model (Ex. 247) and "was available to anyone who wanted to use it." The "availability" of this computer model does not comply with the Act.

RCW 36.70A.070(6) directs that the various transportation sub-elements "shall" be included in the plan. The point of requiring inclusion of these sub-elements is two-fold. First, the Legislature obviously wanted to ensure that the analyses and evidence were prepared. Secondly, and as importantly, the Legislature intended that those analyses be made readily available to both the local decision-maker and members of the public. This mandatory sub-element was not complied with by having a computer model available but not set forth in the plan as required.

Respondents proffered the computer model as an exhibit in this record (Ex. 247). Just as we are not disposed to allow petitioners to bring forth evidence not available to the local decision-makers, we are similarly not disposed to allow respondents to do the same thing.

### URBAN GROWTH AREA

Petitioners challenged the adoption of the Olympia urban growth area. A number of challenges were made and superficially appeared to be directed to the City of Olympia's part of the Joint

Comprehensive Plan. Nonetheless, it is clear under RCW 36.70A.110(1) that a county has the ultimate responsibility of determining population figures and urban growth boundaries. Obviously, any city involved in the location of the boundary would have a great deal of influence in the final decision by the county. Nevertheless, any challenge to the urban growth area must necessarily be leveled against the particular county involved.

The precise boundaries and population figures for the north county area were developed by the cities of Lacey, Olympia and Tumwater in conjunction with Thurston County by means of a 1988 interlocal agreement and participation in the Thurston Regional Planning Council. The Thurston County Board of Commissioners' adoption of the Joint Comprehensive Plan ratified the boundaries and population projections established by the TRPC.

Petitioners complained that the population projections were fundamentally flawed because the TRPC used a computer model called EMPFOR rather than the Office of Financial Management (OFM) projections. Additionally, the Joint Comprehensive Plan established a population projection for the year 2015 from the EMPFOR model rather than the year 2012 from the OFM projection. We do not find the use of these figures, nor the establishment of 2015 as the appropriate planning period, as being out of compliance.

RCW 36.78.110(2) provides, in part, that urban growth areas established in a comprehensive plan are to provide for the "urban growth that is projected to occur in the county for the succeeding 20 year period."

In our jurisdiction, there are counties that are just now beginning the GMA process. It would seem disingenuous to require them to stop their planning at the year 2012 simply on the basis that OFM does not have a more current population projection.

We hold that the use of the EMPFOR model under the evidence in this case, was within the discretion of the Board of County Commissioners. The EMPFOR model allowed a 20-year planning horizon to take place as well as provided for more current information such as the anticipated (although yet unrealized) influx of additional troops to Fort Lewis. The EMPFOR model was shown to be extremely accurate in comparison to historical population figures. The difference in future population projections between EMPFOR and the OFM model was slight. Under all the information contained in this record as to the population projections as they relate

to the Olympia area, we find that Thurston County is in compliance with the Act.

Petitioners also contended that no matter which population projection was used, the urban growth area boundary was not based upon an adequate land capacity analysis, and was too large. After reviewing this record we are mystified by petitioners' claim that no land capacity analysis took place. The plan itself and the foundational material upon which it was based are replete with charts, maps, and information, showing the amount of land in the Olympia municipal limits and UGA, as well as existing and projected housing units, commercial areas, and industrial areas. This record contains an excellent land capacity analysis upon which local decision-makers could rely.

All of those kudois given, nonetheless we agree with petitioners that the area designated as the Olympia urban growth boundary is too large.

Respondents argued that pre-existing sewer, water and planning decisions made it impossible, or at least impractical, to designate a smaller UGA. We reiterate our previous statements that the GMA does not allow what now appear to be unfortunate historical planning decisions to be the basis for future planning decisions. It is time to leave that past behind.

Two reasons salvage this overly large UGA from being out of compliance with the Act. First is the exceptionally well-developed series of goals and policies of the Comprehensive Plan and the Regional Transportation Plan. The anti-sprawl, in-filling, minimum densities and compact development features of both plans, assuming proper development regulations are later adopted, complies with the omnipresent anti-sprawl foundation of the Act.

The second feature which mitigates against non-compliance is the unique configuration of the cities of Olympia, Lacey and Tumwater. Conceptually, the area of these virtually abutting cities can be described as a square or a rectangle with a part of the southeast quadrant eliminated. Visually, the overall area looks something like this:

The interior boundary lines between the three cities are minimally significant for GMA purposes. It is the exterior boundaries that are important. At the time of the hearing, Thurston County had not adopted a comprehensive plan UGA for either Lacey or Tumwater. Given that scenario, and the evidence in this record, we are not persuaded that the presumption of validity which attaches to the county's adoption of the Olympia UGA has been overcome by petitioners. We will review all the exterior boundaries if future challenges are made to the completed UGAs as established by Thurston County.

The foundational characteristic of the Act is the avoidance of inefficiencies found in a sprawling development pattern. Were it not for the excellent anti-sprawl goals, policies and strategies of the Joint Comprehensive Plan *and* the unique configuration of the three cities, this UGA would not have been in compliance with the Act.

Petitioners' remaining claim that RCW 36.70A.020(10), the environment goal, was violated has no support in this record.

We find that the Joint Comprehensive Plan does comply with the Act, except for the failure to include the forecast required by RCW 36.70A.070(6)(iv).

In order to fully comply with the Act, that deficiency must be corrected with 120 days of this date.

This is a Final Order under RCW 36.70A.300 for purposes of appeal.

DATED this \_\_\_\_\_ day of March, 1995.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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William H. Nielsen  
Board Member

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Les Eldridge  
Board Member

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Nan A. Henriksen  
Board Member