

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

THE COOPER POINT ASSOCIATION, THE LEAGUE))	No. 00-2-0003
OF WOMEN VOTERS OF THURSTON COUNTY,))	
JOLENE UNSOELD, MICHAEL LYNCH, TOM))	
MUMFORD, LEA MITCHELL, and SYLVIANN))	ORDER
FRANKUS,))	GRANTING
)))	DISPOSITIVE
Petitioners,))	MOTION
)	
v.))	
)	
)))	
THURSTON COUNTY,))	
)	
Respondent,))	
)	

In the petition for review filed February 8, 2000, petitioners Cooper Point Association, The League of Women Voters of Thurston County, Jolene Unsoeld, Michael Lynch, Tom Mumford, Lea Mitchell, and Sylviann Frankus (CPA) challenged the adoption of the Cooper Point Wastewater Facilities General Plan (CPWFGP) as an amendment to the Thurston County comprehensive plan (CP). The challenge involved claims of failure to comply with the State Environmental Policy Act (SEPA) and RCW 36.70A.110(4).

On March 31, 2000, Thurston County filed a dispositive motion on all issues. Petitioners filed a responsive brief on April 14, 2000, and a hearing was conducted on May 3, 2000. We grant the County's motion on the SEPA issues (1-5) and deny the motion relating to RCW 36.70A.110 (4). That issue will be reserved for the hearing on the merits.

Early in its SEPA process (although the record copy is undated and unsigned) Thurston County prepared what it denominated as a "SRF Checklist" reviewing the various proposals for the CPWFGP. The avowed purpose of the proposals was to deal with a wastewater problem in a rural area called Cooper Point. Cooper Point is a small peninsula north of the Olympia urban

growth area (UGA) that bisects Eld Inlet on the west and Budd Inlet on the east. Prior to the adoption of the Growth Management Act (GMA, Act) two residential communities in the Cooper Point area called Beverly Beach and Tamoshan were developed at urban densities. Both communities have been served by a community sewer system, with each community discharging wastewater into Budd Inlet. Additionally, a recent survey of onsite septic systems disclosed a need to provide alternatives for certain lots (100 over a 20 year period) that would be physically constrained from rebuilding an onsite failed system to current health standards.

As had been its practice since its adoption of the CP in 1995, Thurston County issued a draft supplemental environmental impact statement (DSEIS) for proposed amendments to the CP, which included the CPWFGP. On August 16, 1999, the County mailed copies of the DSEIS to approximately 40 entities and/or individuals, including the newspaper and regional libraries. Because of high public interest in the proposed CP amendments, the County extended the comment period for the DSEIS to November 8, 1999. On October 11, 1999, the County mailed a second notice of the availability of the DSEIS to approximately 165 individuals and/or entities. The final SEIS was issued December 10, 1999, with copies mailed to over 200 interested individuals and entities. The SEIS contained discussion of 5 alternatives and included the “SFR Checklist” as an appendix.

In reviewing the adequacy of an EIS or SEIS the following rules apply:

1. The scope of review is *de novo*;
2. The adequacy of an EIS is determined by the “Rule of Reason;” and,
3. The governmental agency’s determination that an EIS is adequate is entitled to “substantial weight.”

Reading v. Thurston County #94-2-0019.

CPA’s challenge to SEPA compliance in this case involves five separate issues.

First, CPA contended that SEPA was violated because the County “failed to solicit any public

input into the *scope* of the SEIS. As the County pointed out, WAC 197-11-620(1) requires the SEIS is to be prepared in the same way as an EIS *except* that scoping is optional. The County chose not to scope, which it had the right to do. There is no lack of SEPA compliance on this challenge.

CPA also challenged the Thurston County notification procedures. The record before us demonstrated that the County fully complied with the requirements of WAC 197-11-455(1) in sending a draft SEIS to the specific list of agencies and any person specifically requesting a copy. Additionally, the notice of the draft SEIS availability through the provisions of WAC 197-11-455(5),-510 was complied with. There is no evidence in this record that anyone who requested notice had not been given such notice. Several of the petitioners received a copy of the draft SEIS and commented upon it. The notification procedures complied with SEPA.

The County characterized its proposed CP amendment as a non-project action. CPA claimed that since the primary focus of the SEIS involved a 4-inch sewer line extension to the Beverly Beach and Tamoshan communities, in reality the SEPA review should have been one that involved review of a specific project proposal.

WAC 197-11-704(2)(b)(ii) provides that a proposed amendment of a CP is a non-project action. While the preferred alternative set forth in the SEIS involved the extension of a 4-inch sewer line beyond the Olympia UGA, a variety of other alternatives were discussed. The fact there was a preferred alternative that had been developed after years of public meetings and workshops does not somehow convert a non-project action into a project action under the record presented