

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

ACHEN, et al.,)	
)	No. 95-2-0067
Petitioners,)	
v.)	COMPLIANCE
)	ORDER
CLARK COUNTY, et al.,)	(Transportation)
)	
Respondents,)	
)	
and)	
)	
CLARK COUNTY SCHOOL DISTRICTS, et al.,)	
)	
Intervenors.)	
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In its 1994 Comprehensive Plan (CP), Clark County established a locally adopted transportation level of service (LOS). We issued an initial finding of noncompliance regarding Office of Financial Management (OFM) population projection usage, or lack thereof, on September 20, 1995. A compliance order on October 1, 1996, found continued noncompliance because of the “lack of analysis and incomplete data” in the adoption of the County’s Capital Facilities Plan (CFP) that resulted from Clark County’s use of the high range OFM population projection. In the December 17, 1997, Second Compliance Order we found “a severe inconsistency” between the CFP for transportation and the County’s land use plan. The genesis of the inconsistency related to an acknowledged funding shortfall over the period of the CP in excess of \$80 million (perhaps substantially in excess). We held that it was the “county’s duty to reassess its land use and related elements” so that the CP was internally and externally consistent. After two years of hand-wringing, frustration and false starts, in early 2000, Clark County began a program “to ascertain whether a *fundable* CFP produced an *acceptable LOS* given the *current land use plan*.” (Italics supplied)

Staff first prepared a 20-year (2000-2020) revenue forecast. (Ex 401, attach. 1). Staff then prepared a “potential CFP” based upon the available funding forecast and developed in

accordance with the criteria and prioritization in the County's Transportation Improvement Program (TIP). (Ex 401, attach. 2, attach. 4). The County abandoned its previously adopted "intersection" LOS measurement for a corridor system, a methodology consistent with Clark County's largest city, Vancouver. In some ways the County raised its standards over those of Vancouver. Clark County did not allow a 10-trip exemption, did not reduce its lowest LOS category and included state highways of regional significance for concurrency measurement. See *Progress Clark County, Inc., et al., v. City of Vancouver*, 99-2-0038c.

The "corridor" measurement methodology utilizes the Regional Transportation Council's (RTC) planning model, a 20-year projection which is updated annually. Staff then determined the final step, a resultant LOS within the parameters of the "fundable" CFP and projected population increases under current CP land use plans and policies, extrapolated from 2012 to the year 2020.

After extensive public participation (not challenged by petitioners) the Board of County Commissioners (BOCC) adopted its concurrency ordinance at Clark County code (CCC) 12.41 (Ex 408) on October 10, 2000. As requested by the parties, a compliance hearing was held on October 25, 2000. Notice was sent to all parties. Only petitioners CCNRC, et al. and the County participated.

The new ordinance, CCC 12.41, divides transportation corridors into four categories, Type 1 Urban Arterials, Type 2 Urban Arterials, non-corridor signalized intersections and non-corridor roads that are unsignalized. As to the last two categories no changes to the previous LOS standards were made.

Additional standards were added to the urban arterial categories that included a maximum wait of two traffic signal lengths (240 seconds) and a single-hour peak period measurement methodology. Programmed road improvement projects to meet concurrency standards were based upon a 3-year (rather than 6-year) timeframe.

As with all matters involving Growth Management Hearing Board review, except rescission of invalidity, petitioners bear the burden of proof to show a lack of compliance under the clearly erroneous standard, RCW 36.70A.320. Pursuant to RCW 36.70A.320(1), CCC 12.41 is

presumed valid upon adoption. Under RCW 36.70A.320(3), a hearings board “shall find compliance unless it determines that the action by [Clark County] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA].” In order to find the County’s action clearly erroneous, we must be “left with the firm and definite conviction that a mistake has been made.” *Department of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993). The clearly erroneous standard also applies to a local government’s determination of nonsignificance (DNS), *Mahr v. Thurston County*, 94-2-0007 (FDO 11-30-94).

The compliance hearing addresses the issue of whether compliance with the Growth Management Act (GMA, Act) has been achieved, not necessarily whether a strict adherence to the remand order has been followed. *Advocates for Responsible Development v. City of Shelton*, 98-2-0005 (Order 6-17-99).

Prior to adoption of its ordinance, Clark County completed a threshold determination under WAC 197-11-390 (Ex. 405). After staff had decided on a proposed LOS standard, the responsible official issued a DNS on July 5, 2000 (Ex. 405, attach. A). An administrative appeal was filed by petitioners and others which prompted County staff to issue additional analysis and comment (Ex. 405, attach. C). Although acknowledging the proposed lowering of LOS standards and thus a potential increase in traffic congestion leading to an increase in noise, air emissions and depletion of energy resources, the conclusion of the DNS was that such “adverse environmental impacts” were only “moderate.” While petitioners complained vociferously that the potential cumulative impacts were “significant,” their claims were not supported by the record. Petitioners did not sustain their burden to show that the issuance of the DNS failed to comply with the State Environmental Policy Act.

Petitioners also complained that the County failed to follow the December 17, 1997 remand order to “reassess its land use...” element and instead concentrated solely on lowering LOS standards to insure that “no development could possibly be denied.” Petitioners failed to recognize that the ultimate issue in a compliance hearing is compliance with the Act, not necessarily compliance with the remand order.

RCW 36.70A.070(6) directs that a local government must establish a level of service, inventory

all transportation facilities and services “to define existing capital facilities and travel levels,” project future needs, and adopt a “multi-year” financing plan that is coordinated, and consistent, with the TIP plan. Local governments have the authority to adjust any of those three elements (LOS, needs and/or funding) to fit local circumstances as long as the ultimate decision concerning those elements are consistent with each other, based upon facts established in the record, including consistent measuring methodologies, and are not based upon artificial standards designed to avoid the concurrency requirements of RCW 36.70A.070(6)(b). See *Butler v. Lewis County*, 99-2-0027c (FDO 6-30-00).

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Here, Clark County started its analysis with the existing 1994 CP land use element, including OFM population projections, reviewed probable funding availability and determined from that information an acceptable LOS standard. It used the same measuring methodology and criteria for its CFP, transportation element and TIP plan. Petitioners have failed to sustain their burden of showing any of their claims to be accurate and have failed to show a lack of compliance with the GMA. Essentially, Clark County did exactly what the GMA requires. The record does not demonstrate that the concurrency ordinance could never be used to deny a development application. As acknowledged by the County, there will be intermittent LOS failures, resulting in a denial of an application until a way to reach the LOS standard can be achieved. Ultimately, the County’s decision as to the level of traffic congestion its citizens must endure is a ballot box issue, not a GMA issue.

Petitioners’ complaints concerning the OFM population projections and the need to “reassess” the land use element are not persuasive under this record. The “battle of statistics” set forth by petitioners and the County are essentially irrelevant to the issue of compliance with the GMA under these facts. While petitioners also complained that the use of a 2020 planning horizon for transportation was inconsistent with the 2012 land use element projections which were extrapolated to 2020 by staff, under the record here whatever inconsistencies might have occurred are insignificant. The County, in order to comply with the regional coordination elements of the Act, used the RTC 20-year annually updated traffic projections. It would be unrealistic to expect the County to update its land use element each year to be perfectly consistent. Extrapolation of the land use element, under this record, complies with the Act. While there may well be a future time when the land use element would need comprehensive review and perhaps revision, that is

not an issue presented by this case.

Petitioners have also failed to convince us that the allowance of the ordinance for vested development applications to be covered under the new ordinance, the July 19, 2000, letter from Washington State Department of Transportation (Ex 402, attach. E) or the alleged misuse of the 1994 Highway Capacity Manual failed to comply with the Act.

We find that, as to the transportation remand, Clark County has complied with the GMA.

This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

Pursuant to WAC 242-02-830(2), a motion for reconsideration may be filed within ten days of issuance of this decision.

So ORDERED this 16th day of November, 2000.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

William H. Nielsen
Board Member

Les Eldridge
Board Member

Nan A. Henriksen
Board Member