

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

ACHEN, et al.,)	
)	No. 95-2-0067
Petitioners,)	
vs.)	
SECOND)	COMPLIANCE
CLARK COUNTY et al.,)	ORDER
)	
Respondent,)	
)	
and)	
)	
CLARK COUNTY SCHOOL DISTRICTS, et al.,)	
)	
Intervenors.)	
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As some of the remand issues from our original compliance order of October 1, 1996, as modified by an order on reconsideration dated November 20, 1996, are presently on appeal to Superior Court, a stipulated order was entered limiting the issues for this hearing. Various petitioners sent letters, dated July 29, 1997, and August 26, 1997, that expressed satisfaction with Clark County’s compliance which further narrowed the scope of this hearing. The issues that were presented for the hearing on October 9, 1997, involved the size of the Camas urban growth area (UGA), UGA movement in general, resource lands (RL) that had been included in urban reserve areas (URA) instead of being designated, the capital facility plan (CFP), and stormwater. Briefing and oral argument were held contemporaneously with the compliance case of *Clark County Natural Resources et al., v. Clark County, et al.*, #96-2-0017, (*CCNRC II*). That order was issued December 2, 1997.

In *CCNRC II*, we held that the “procedural” provisions of ESB 6094 applied when the local government action was taken before July 27, 1997, but our hearing and decision was subsequent to that date. The same fact pattern is involved in this case. We examine the record in light of the policies, goals, and requirements of the Growth Management Act (GMA, Act) to determine, under the clearly erroneous standard, whether Clark County has failed to comply with the Act.

The burden of showing noncompliance is on the petitioners. As we have stated since our first compliance hearing in *Port Townsend et al. v. Jefferson County*, #94-2-0006, the ultimate issue is whether the County has achieved compliance with the Act, not whether specific adherence to our remand order was achieved.

In the remand order of October 1, 1996, we reaffirmed our final order decision that no evidence appeared in the record to substantiate establishing the Camas UGA as larger than the existing city limits. In its reexamination of this issue on February 26, 1997, (Ex. 353) County staff agreed with that conclusion. Nonetheless, petitioners along with other parties, all of whom were involved in a Superior Court appeal of our compliance order regarding the portion of the Camas UGA known as area “A”, agreed to a stipulated resolution of the appeal that allowed annexation. The remaining issue here involved 195 acres denominated as area “E” which is the only portion of the UGA not now within the city limits.

The record revealed that there was little or no vacant area within area “E” for future residential or commercial growth. Ex. 354 and 358 also showed that all of the area was serviced by city water and sewer. Inclusion of the area within the Camas UGA would not contribute to sprawl or inefficient expansion of public services and facilities. Under these specific facts, and in light of the increased deference directed by RCW 36.70A.3201, we do not have a definite and firm conviction that Clark County made a mistake by including area “E” within the Camas UGA.

The area between Camas and Vancouver known as Fishers Swale was once again reviewed by Clark County. Under Ordinance 1997-04-31, the County established the area as one that was entitled to “special consideration status for open space and greenbelts.” The purpose of that designation was to create an open space/greenbelt between the Vancouver and Camas UGAs. The prior record showed that the County Parks and Open Space Plan identified the area as an important corridor for private and public preservation. After reviewing the complete record, in light of the policies, goals, and requirements of the Act, we do not have a firm and definite conviction that Clark County has made a mistake. Compliance has been achieved as to this issue.

In both the final order and the order on remand, we found noncompliance as to the allowable short-term incremental movement of any or all UGAs within the County. We held that the

criteria established for changing UGAs did not provide sufficient stability and incentives for infill. Clark County has now established a five-year minimum period before UGAs can be revisited. A request to change an UGA can only be initiated by a city. Criteria were established, but only for the *consideration* of UGA movement. As noted by Clark County, simply considering movement of UGAs does not inescapably lead to a conclusion that they will be moved. That issue would be properly addressed at the time any changes to the UGA boundaries occurred. The action taken by Clark County as to this issue is in compliance with the Act. Two issues relating to inclusion of potential resource lands for future urban growth were remanded. The first was whether the Washougal UGA properly included land that should have had a RL designation. In response, Clark County revisited the UGA of Washougal. The current record, under the clearly erroneous standard, demonstrated that the area that included potential RL was appropriately picked rather than the one that included substantial critical areas.

In response to the other remand RL issue of the proper designation of land within the URAs (beyond the 20-year horizon), the County designated RL in the Camas and Vancouver URAs. The County also placed an URA overlay over the RL designations. The URA concept, as noted in our previous orders, is an innovative way of planning for growth beyond the 20-year period of the current comprehensive plan (CP). The areas in dispute are now properly designated as resource lands and the overlay for post 20-year planning purposes does not violate the GMA. Clark County is in compliance on this issue.

The thrust of petitioners' complaint at the initial compliance hearing concerning the capital facilities plan, related to the increased population figure adopted by the County. This new population projection of 416,000 in the year 2012 was within the range of the Office of Financial Management forecast of December 1996. In response to the CFP remand, Clark County required public facilities providers to assess whether their existing plans were consistent with and able to provide for the increased population projection. Additionally, the completed, rather than the draft, Vancouver CFP was reviewed for consistency with the County CP. In Ex. 133, County staff analyzed the various special district CFPs and determined that the County CFP, except for transportation, was consistent with and adequately provided for the new population figures. We do not have a definite and firm conviction that a mistake has been made as to this issue. Clark County is in compliance.

In reviewing its CFP for transportation, the County completed an extensive reanalysis of the impact to transportation facilities resulting from its decision to use a population projection of 416,000 in the year 2012. The staff reports found in Ex. 396 and the testimony to the planning commission and Board of County Commissioners (BOCC) emphasized that this additional transportation analysis was preliminary because there was insufficient time during the remand period to complete necessary planning. We note that the previous language of RCW 36.70A.300, prohibited us from allowing more time for compliance than 180 days. That restriction has been changed by ESB 6094. Under new subsection (3)(b) we now have authority to extend that period of time. We have not been requested to do so in this case. To its credit, the County recognized and acknowledged during the May 8, 1997, planning commission hearing that there was a severe inconsistency between the CFP for transportation and the land use plan. The County committed to continuing work on that inconsistency. At the time of the hearing on October 9, 1997, the County had not completed the action necessary to become consistent. While we once again find the County out of compliance, we are receptive to the County submitting a schedule that is reasonable to bring this matter into compliance.

The major reason for the acknowledgement of the inconsistency was that the preliminary reanalysis established a funding deficiency of some \$83 million, of which \$70 million were for facility deficiencies located within County jurisdiction. The balance were deficiencies shown in the Vancouver UGA.

This particular issue highlights some of the frustrations expressed by the BOCC and staff concerning county authority under the GMA as to funding issues of a CFP. The new analysis demonstrated that six additional intersections in the county would be burdened with unacceptable lower than current level of service (LOS) standards. Of those six, funding for two were controlled by Clark County. Funding for the other four were the responsibility of the Washington State Department of Transportation (WSDOT). The County noted it had "little ability" to cure the WSDOT funding deficiencies. Similarly, the County observed that it had no funding authority over schools and/or special utility districts. The County determined it was powerless to take action except for those public facilities and services that were funded by it.

This approach misses the direction provided by GMA. It is a county's responsibility to pull together all of the CFP information from the other districts or agencies in its jurisdiction so that it can determine, and make consistent, the location, needs, and cost of all capital facilities. A county cannot simply say because it has no authority to control those costs or needs, there is no reason to take them into consideration. Rather, it is the county's responsibility to be the one to make a regional analysis of all CFP needs, locations, and costs so that the public has an accurate assessment of what and where tax dollars are being spent regardless of whether they go to the state, county, or special districts. If, as here, the analysis shows a significant shortfall, then it is a county's duty to reassess its land use and related elements so that the CP is internally and externally consistent.

That is what legislative recognition of counties as "regional governments" found in RCW 36.70A.210(1), in light of the rest of the Act, means. This duty is also directed by RCW 36.70A.210(3)(h).

The other transportation issue raised by petitioners involved amendment 1996-04-13. This ordinance was adopted as an emergency ordinance without a public hearing on April 9, 1996, under RCW 36.70A.390. The basis for the adoption was a staff memo promulgated on April 8, 1996. The ordinance changed the previously adopted LOS standards in a number of locations. It also changed the concurrency period from current to three years. Taking such action by this method is not in compliance with the GMA.

While we agree with the County that ultimately such action could have been taken, we point out that a major purpose of the GMA is to provide coordinated and predictable planning. RCW 36.70A.130 requires that any amendments to DRs "shall be consistent with and implement the comprehensive plan." Subsection (2)(a) provides that proposed amendments to the CP may not be considered more frequently than once every year except in circumstances not applicable to this action. The standards for concurrency established by Ordinance 1996-04-13 are wholly inconsistent with the ones adopted in the CP and do not comply with RCW 36.70A.130.

The stormwater remand order involved two issues. The first was a December 20, 1995, amendment to the 1994 stormwater control ordinance. The 1995 amendment established a lower retention standard for new development than the 1994 ordinance. During the remand period,

Development Engineering Review Manager John Harris presented information concerning the process, and the need, that led to the 1995 amendment proposal. That additional information was contained in Exs. 322 and 324. After reviewing the current record under the clearly erroneous standard, we cannot say that we have a definite and firm conviction that a mistake was made with regard to the 1995 amendment. Clark County is in compliance on this issue.

The second stormwater remand issue was one with which the County expressed confusion. The initial remand came about because of the overwhelming evidence in the original *Achen* record that existing stormwater pollution problems were contributing to water quality and quantity deficiencies. Part of the County's "confusion" that was expressed in its compliance memorandum was premised on the proposition that solution of existing pollution problems were not GMA-mandated. The County did agree that "basin plans should be adopted and implemented to deal with existing pollution problems (even if not GMA-mandated)." As we pointed out in the original *Achen* decision, the provisions of RCW 36.70A.070(1) that address requirements of the land use element of the CP state:

"...Where applicable, the land use element shall review drainage, flooding, and *storm water run-off in the area and nearby jurisdictions* and provide guidance for *corrective actions* to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound." (Italics supplied).

The record here, and in previous reviews of the County's CP, showed that the need for corrective action was definitely applicable to the Clark County situation. Non-point pollution impacting waters of the state and the quality and quantity of ground water used for public water supplies is a significant problem in Clark County. This also involves the aquifer recharge issue transferred to this case from *CCNRC II*.

The record demonstrated that in the 1990s Clark County paid for and received three extensive basin plans. They involved the east fork of the Lewis River, Burnt Bridge Creek, and the recently completed Salmon Creek Basin Plan. We have reviewed those three basin plans at various times. By and large, the plans are thorough and well done. Each contained a number of general and specific recommendations for mitigating or cleansing the discharges that pollute Clark County waters. Insofar as the combined record of these cases show, none (0) of the

recommendations have been adopted or implemented. It is this failure to follow the specific direction of the Legislature to take “corrective actions” that has been and continues to be the noncompliance that we once again find even under the clearly erroneous standard. The plans provide the framework that require some hard decisions. So far it does not appear from the record that any of those decisions have been made. While we acknowledge that the recent annexation of much of the Burnt Bridge Creek Basin Plan area into Vancouver presents some interesting jurisdictional issues, particularly if Vancouver fails to act, cooperative planning between jurisdictions is one of the concepts of the Act, particularly under RCW 36.70A.070(1). Whatever problems are to be involved in the ultimate mix, a no action alternative is not allowed under the GMA.

In most respects Clark County has complied with the Act as set forth in the remand order dated October 1, 1996. The two significant issues that are still not compliant involve stormwater implementation and transportation consistency between the CFP and the land use element. The County has 180 days from the date of this order to comply in those areas. Within the next 60 days, the County shall provide to us with a copy to petitioners, a report as to the progress it is making towards compliance. If the issues are complex enough to require greater than 180 days, the County shall file a motion for additional time with supporting argument at the time of the initial periodic report.

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

So ORDERED this 17th day of December, 1997.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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William H.
Board Member

Les Eldridge
Board Member

Nan A. Henriksen
Board Member