

**From:** [Oliver Orjiako](#)  
**To:** [Jeffrey Delapena](#)  
**Subject:** FW: Comments regarding Chelatchie SMO Non-Compliance  
**Date:** Monday, August 5, 2024 4:40:44 PM  
**Attachments:** [Comments regarding Chelatchie SMO Compliance Aug 5 2024.docx](#)  
[Excerpts from Planning Commission and Council hearings on SMO.docx](#)

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Hi Jeff:

Please, for the Chelatchie Bluff index of record. Thanks.

Oliver

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**From:** Ann Foster <annfoster5093@gmail.com>  
**Sent:** Monday, August 5, 2024 4:30 PM  
**To:** Glen Yung <Glen.Yung@clark.wa.gov>; Sue Marshall <Sue.Marshall@clark.wa.gov>; Karen Bowerman <Karen.Bowerman@clark.wa.gov>; Michelle Belkot <Michelle.Belkot@clark.wa.gov>; Gary Medvigy <Gary.Medvigy@clark.wa.gov>; Kathleen Otto <Kathleen.Otto@clark.wa.gov>; Oliver Orjiako <Oliver.Orjiako@clark.wa.gov>; Rebecca Messinger <Rebecca.Messinger@clark.wa.gov>  
**Subject:** Comments regarding Chelatchie SMO Non-Compliance

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Dear Councilors, Ms. Otto and Dr. Orjiako:  
Please accept our statement regarding Clark County's non-compliance with the Chelatchie Bluff SM overlay in the attachments below.

The first document contains our statement. The second document contains excerpts from official County hearings that support our statement.

Please submit these to Public Records.

Best regards,  
Ann Foster  
Friends of Clark County



# Friends of Clark County

PLANTING THE SEEDS OF RESPONSIBLE GROWTH

August 5, 2024

TO Council Chair Gary Medvigy, Councilors Sue Marshall, Karen Bowerman, Michelle Belkot, Glen Yung; County Manager Kathleen Otto; Director of Community Planning Dr. Oliver Orjiako

Dear Clark County Council:

The Growth Management Hearings Board issued its decision in March of 2023. Since the Board issued that decision, FOCC has asserted, both in subsequent "Compliance Hearings", as well as in front of this Council last June, that the FDO found that the County Ordinance did not comply with the GMA and invalidated that ordinance. FOCC has also asserted that in order to come into compliance with the GMA, the County must repeal the full ordinance and failure to repeal the ordinance could have real adverse consequences to the residents of Clark County. Given the recent revelations from the Clean Water Rate Study work session, it is clear that the State is withholding loans and grants totaling at least 6 million dollars, due to the County's failure to repeal the Chelatchie Surface Mining Overlay and come into compliance with the GMA.

FOCC asserts that, despite statements at the recent work session, the public should be aware that a simple review hearing and documents presented to the Planning Commission on May 18, 2023 and the Council on June 27, 2023, reveals that both Dr. Orjiako and Ms. Cook made it explicitly clear that the County would NOT be compliant with GMA UNLESS it repealed the SMO ordinance and further made clear that the consequences of retaining the illegal SMO could result in the loss of financial support including making the County ineligible for grants and loans. The record from the hearings in front of the Planning Commission and Council last year accurately and completely reflect the County officials were told multiple times that they were not in compliance, would remain in non-compliance unless they repealed the ordinance and failure to come into compliance meant that the State could, as they had in the recent past, refuse to provide financial assistance to the County in the form of loans and grants.

FOCC asserts that the failure of the County to repeal the ordinance that the Growth Board clearly invalidated has resulted in at least two adverse consequences of which we are aware:

1) Eric Temple and PVJR engaged in unlawful, unpermitted and environmentally destructive construction activities at Barberton and Chelatchie

Prairie based upon Mr. Temple's clearly stated belief that the Chelatchie Bluff Mine was inevitable no matter the findings of a future environmental analysis, and this SMO was used as justification for PVJR's unpermitted construction of the Chelatchie Yard;<sup>[a]</sup>

And,

2) According to Staff, the state has now, predictably, refused to provide at least 6 million dollars in financial support to the County due to its non-compliance, money that may not be recoverable and, thus, will have to be covered by Clark County taxpayers. It is unknown how many more loans and grants have been, or will be, withheld or forfeited while the County remains out of compliance.

Going forward, FOCC continues to maintain that 1) the ordinance has been invalidated and failure to repeal the SMO ordinance means that County remains non-compliant with the GMA, 2) there are financial and collateral consequences that directly flow from the County being non-compliant such as Mr. Temple's destructive activities and loss of millions of dollars in financial assistance and 3) the Council should value Washington's keystone environmental laws, such as the GMA and the State Environmental Policy Act, that exist to protect the environment along with the health, safety, and well-being of every Washingtonian and act in accordance with those laws.

Last June, the mining and mineral companies asserted that repealing the ordinance would result in adverse economic consequences to them. Ms. Cook and Dr. Orjiako stated that the failure to repeal the ordinance would result in potential adverse economic consequences to Clark County. The Council voted to protect the economic interests of the corporations over the County. There is no legal requirement that the County come into compliance, but failure to do so will result in the state continuing to provide financial support to the County that it would otherwise provide. Given the recent revelations, the Council is again at a crossroads and again has the chance to side with the economic interests of the corporations by keeping the invalidated ordinance in place; or it can side with the economic interests of the County and repeal the invalidated ordinance as previously recommended by Dr. Orjiako and Ms. Cook.

As Ms. Cook stated at the June 27, 2023, hearing "I think it's kind of a good thing for counties to endeavor to be in compliance with state law. And we've been told in rather stark terms that we are not in compliance with state law."

Best regards,

Ann Foster,

President

Friends of Clark County





# Friends of Clark County

PLANTING THE SEEDS OF RESPONSIBLE GROWTH

## Excerpts from Planning Commission hearing on March 18, 2023, and Council hearing on June 27, 2023:

At the Planning Commission Hearing, Sr. Deputy Prosecuting Attorney Christine Cook stated the following:

The Growth Board stated Ordinance Number 2022-07-01(B) Section 2, Sub (5), places at risk 330 acres of environmentally sensitive lands by authorizing mineral extraction without an adequate analysis and consideration of the potential adverse environmental impacts of this action. Thus, the Board finds that the continued validity of Ordinance Number 2022-07-01(B) in particular Section 2, Sub (5) that amended the county comprehensive plan and zoning designation Forest Tier 1, FR-80, to add a surface mining overlay on four parcels substantially interferes with Goal 10 of the GMA. And then following that the Board ordered the County to come into compliance with the final decision and order.

**So that is what staff recommends you do, that is what the Prosecutor's Office recommends you do.**

Ms. Cook then addressed compliance:

So at this point our view is that the law says that the ordinance that applied the surface mining overlay is not compliant, it's invalid, the Growth Board ordered the County to come into compliance and the proposal is that the County repeal Section 2, Sub (5) of the ordinance so that the County may do so and proceed with the remainder of the issues regarding that property, the remainder of the proceedings regarding that property and with its other planning tasks of the next couple years which are significant. So, if you have any questions, I and the Staff would be happy to answer them.

Ms. Cook, remaining firm and once again emphasized **“The issue is we've got an ordinance that the Growth Board says is illegal. The only way I know to come into compliance is to get rid of the ordinance.”**

On June 27, 2023, Ms. Cook and the staff appeared before the Clark County Councilors. Specifically, Dr. Orjiako, Director of Community Planning, told the Council the following:

So, in essence, what they ruled, whether we agree with it or not, is that we are in violation of that state law and our request is asking the council to repeal this section so that we can return to the Growth Management Hearings Board to find our land use plan to be in compliance.

Ms. Cook then addressed the potential negative impacts of not coming into compliance.

So, when the Growth Board finds that a county action is noncompliant with the Growth Management Act and invalid, that can render the County ineligible to apply for or receive certain state grants and loans. So that is a risk. That, in fact, occurred the last time the County's actions were determined to be noncompliant and invalid. So that is -- that is a -- a concrete dollars-and-cents risk. The other uncertainty that results from having on the County's books, as it were -- books, maps, whatever -- an action that has been determined to be illegal, you know, that's -- that's another kind of issue.

Dr. Orjiako then explained that the County could be at risk of losing a \$700,000 grant, and possibly a larger grant related to studying climate change as part of the County's comprehensive plan update.

Ms. Cook stated the following regarding her view of the claims by the Construction and Mineral corporations that repealing the ordinance would be catastrophic for them:

We hear from them that this would be catastrophic. I am not quite sure that that is the case. In fact, I would argue that it is not. They could ask for the overlay to be restored or the council could do that of its own initiative. My position is that that kind of action would not have to occur during the normal once-a-year comprehensive plan cycle because it would be part of the resolution of a court order.... So here we are trying to make the best of it in a manner that is lawful and protects the interests of the County. We understand that the interests of the County are not necessarily the same as the interests of the applicant and that they have a different point of view, which is absolutely legitimate for them to have. **But that is not what Staff is recommending because Staff have concluded that it would be best for the County to do what Staff has recommended.** That is a policy decision. It is up to you.

Ms. Cook, in response to a question by Councilor Yung stated:

“I think it’s kind of a good thing for counties to endeavor to be in compliance with state law. And we’ve been told in rather stark terms that we are not in compliance with state law.”