

From: [Bart Catching](#)
To: [Jeffrey Delapena](#)
Cc: [Jose Alvarez](#)
Subject: FW: Comprehensive Plan Update
Date: Friday, April 24, 2026 3:54:18 PM
Attachments: [SILB0108.L01.pdf](#)

Jeff,

Please add this to the comp plan comments.

Thanks,

- Bart

From: kris@eriksonlaw.com <kris@eriksonlaw.com>
Sent: Friday, April 24, 2026 3:01 PM
To: Bart Catching <Bart.Catching@clark.wa.gov>; 'Sonja Wiser' <Sonja.Wiser@clark.wa.gov>; Wendy Baird <Wendy.Baird@clark.wa.gov>
Subject: Comprehensive Plan Update

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Bart, Sonja and Wendy:

Please find attached correspondence from attorney Mark A. Erikson, pertaining to the matter referenced above.

Thank you,

Kris Eklove
Office Manager

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April 24, 2026

E-MAIL & HAND DELIVER

Clark County Councilors
c/o: Bart Catching
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Re: Comprehensive Plan Update

Dear: Councilors and Staff:

On April 23, 2026, a Clark County Hearing Examiner ruled that County Code volume-to-capacity ratios (vc) are mandatory, rather than something to consider in overall analysis of transportation concurrency. The actual language of the County Code provides as follows:

The maximum volume to capacity ratio for each roadway segment shall not exceed nine-tenths (0.9), when measured independently for each roadway segment of travel. [1]

Under this ruling, many roadway segments already fail transportation concurrency, including NE 179th Street between Delfel Road and Interstate 5 (vc = 1.042); and 179th between 15th Avenue and Interstate 5 (vc = 1.137). These are background conditions which, under the above ruling, preclude any development that relies upon 179th Street to access Interstate 5. We are still researching; however, other roads which probably fail transportation concurrency include portions of SR 503, 119th Street, 139th Street, 94th Avenue, and Padden Parkway. Clearly, staff have historically treated volume-to-capacity ratios as something to consider in overall concurrency analysis, or this situation would not have developed. Prospectively, however, this problem would seem to result in a defacto moratorium upon development, stifling compliance with GMA.

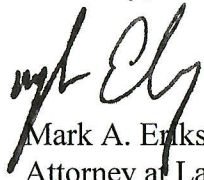
¹CCC 40.350.020(G)(1)(a). Volume-to-capacity ratio are calculated by dividing trips by single direction capacity per hour, as provided in CCC Table 40.350.020-1.

Fortunately, the Washington Court of Appeals has provided a solution:

[I]f a proposed development project violates the city's adopted LOS, the city has a variety of options available to it. These may include **changing the relevant LOS**, modifying traffic patterns so as to reduce nonresident commuter traffic, thus reducing traffic congestion, or creatively addressing traffic mitigation expenses. But a city cannot simply exempt the proposal from compliance with traffic standards it has adopted pursuant to the GMA. [²]

In our opinion, a revision providing that volume-to-capacity ratios are something to consider in overall concurrency analysis, not a mandatory requirement, would qualify as a change in the relevant level of service, permitted in the foregoing.

Sincerely,



Mark A. Erikson
Attorney at Law

MAE/ke
SILB0108.L01.wpd

²*Bellevue v. East Bellevue Community Municipal Corporation*, 119 Wash.App. 405, 414-15, 81 P.3d 148 (2003), *review denied*, 152 Wash.2d 1004 (2004), *emphasis added*.