**From:** Jeffrey Delapena
**To:** "Heidi Pozzo"
**Cc:** Oliver Orjiako; Jose Alvarez
**Subject:** RE: Please include in the Comp Plan index of record
**Date:** Tuesday, August 18, 2026 8:03:00 AM

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Good day, Heidi,

Thank you for providing these submitted comments. These will be added to the Comprehensive Plan Index of Record.

Best,

Jeff Delapena
Program Assistant
COMMUNITY PLANNING

564.397.4558

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-----Original Message-----
From: Heidi Pozzo <hcpheidi@yahoo.com>
Sent: Tuesday, August 18, 2026 6:51 AM
To: Jeffrey Delapena <Jeffrey.Delapena@clark.wa.gov>
Cc: Oliver Orjiako <Oliver.Orjiako@clark.wa.gov>; Jose Alvarez <Jose.Alvarez@clark.wa.gov>
Subject: Please include in the Comp Plan index of record

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Dear Jeff,

Please include this in the Comprehensive Plan index of record.

Thank you,

Heidi

June 4, 2026

*VIA E-MAIL ONLY TO*
*melissa.curtis@clark.wa.gov*
*developmentcomments@clark.wa.gov*

Joe Turner, Clark County Land Use Hearing Examiner
c/o Melissa Curtis, Staff Contact
Clark County Department of Community Development
1300 Franklin Street
Vancouver, WA 98660

**Re: Response Comments on 174th Street Subdivision—PLD-2026-00002, WHR-2026-00012 & FPA-2026-00026**

Dear Mr. Examiner and Ms. Curtis:

Pursuant to the schedule for post-hearing submissions set at the hearing in the above-referenced matter on April 23, 2025, please consider the following response comments submitted on behalf of Dean Hergesheimer on the proposed 174th Street Subdivision.

## A. The proposed 174th Street Subdivision should be denied for failing to meet applicable concurrency standards.

At the hearing on April 23, 2025, the Examiner requested clarification from the parties regarding whether the findings in the Staff Report, Ex. 52, are consistent with level of service ("LOS") standards set forth in CCC 40.350.020.G.1.a, specifically regarding the code's volume-to-capacity ("v/c") ratio standards for transportation corridors affected by the proposed 174th Street Subdivision. The Examiner recognized the inconsistency in the County's analysis, in that the development proposal exceeds the maximum v/c ratio permitted under CCC 40.350.020.G.1.a, and yet the County nevertheless concluded that concurrency is satisfied. When asked at the hearing to explain how that conclusion could be reconciled with the express language of the code, the County's staff engineer was unable to provide a direct answer and requested more time to discuss the issue with the County's transportation manager during the open record period.

Neither the County nor the applicant have resolved the inconsistency identified by the Examiner or otherwise met their burden of showing that anything other than the plain-language reading of CCC 40.350.020.G.1.a controls the concurrency determination. At the hearing, the applicant's attorney urged the Examiner to disregard the plain language of the code, asserting that enforcing the adopted v/c ratio standard "would be throwing a significant chunk of the County into moratorium." *See* Video Recording of April 23, 2025, Hearing (timestamp 1:54:25).[1] Mr. Morasch further argued that the County has a "long standing practice" of interpreting the code in a manner that permits v/c ratio exceedances so long as the corresponding intersections satisfy the applicable

[1] https://www.cvtv.org/video/clark-county-land-use-hearings-04-23-26-2026041019/

LOS standard. *See id.* (timestamp 1:54:56). The applicant did not, however, submit any further substantive response during the open record period to support that assertion.

In contrast, the County submitted letters from its traffic engineering section manager and transportation division manager asserting that industry practice and past County interpretation are more determinative of LOS performance than the plain language of the code. *See* Ex. 135 (May 21, 2026, letter from Steve Gallup) (recommending a methodology established in the Highway Capacity manual that is nowhere mentioned in the Clark County Code); Ex. 136 (May 21, 2026, letter from David Jardin) (recommending an "evaluation method that has been applied and practiced since 2010," but is not mentioned in the Clark County Code); Ex. 141 (May 21, 2026 county response letter) (asking the Examiner to consider the standards and methodologies recommended by Mr. Gallup and Mr. Jardin). Notwithstanding these letters, the County has not identified any language in the Clark County Code to support its argument that historical practices can override the code's express (and mandatory) v/c ratio LOS standard.

Principally, the County's post-hearing submittals rely on CCC 40.350.020.F.9 for its assertion that that v/c ratio is "not [] an absolute" and that concurrency staff can "consider other factors that the Public Works Director has determined could have an impact on the operating level of transportation corridors and intersections" in its concurrency analysis. Ex. 136 at 2. The County's interpretation effectively treats subsection F.9 as overriding the clear, unambiguous LOS standards codified in subsection G. *See* CCC 40.350.020.G.1.a (establishing a v/c ratio standard of 0.9 for affected transportation corridors). But that is not at all the purpose of subsection F.9. Subsection G establishes the County's mandatory LOS standards, both for corridors and intersections. Subsection F merely specifies the factors that the County must consider in determining if those LOS standards will be met. Subsection F certainly does not—as the County argues—allow the County to ignore the clear, unambiguous LOS standards in subsection G.

In subsection G, the County has established three principal LOS standards—one for transportation corridors (CCC 40.350.020.G.1.a), one for signalized intersections (CCC 40.350.020.G.1.b), and one for unsignalized intersections (CCC 40.350.020.G.1.c). The LOS standard for corridors at G.1.a is volumetric, meaning compliance is measured by comparing the projected traffic volume ("v") of the roadway against the road's capacity ("c"), with a fixed "c-value" defined in the table at G.1.a depending on the road type. By contrast, the standards for signalized and unsignalized intersections are temporal. Rather than measuring traffic volumes against roadway capacity, they evaluate performance based on delay and wait-time thresholds—*i.e.,* the amount of time it would take a car to move through the intersection during the peak hour of traffic. CCC 40.350.020.G.1.b–c.

This distinction is critical to understanding the purpose and limits of subsection F. When the County conducts a concurrency analysis, the different types of LOS standards at CCC 40.350.020.G necessarily require consideration of different types of information. The factors listed in subsection F reflect that reality. Some factors are specifically directed toward determining traffic levels, i.e., the "v" component of the corridor v/c LOS calculation—including existing traffic levels, potential traffic from proposed and approved developments, background traffic growth, and reserve capacity. *See* CCC 40.350.020.F.1, .4, .5, .7 & .8. Other factors relate to the present (and

future) physical parameters of the road system and are more relevant to intersection performance and a temporal standard, such as mitigation measures imposed on approved developments, any reasonably funded future road improvements, and physical modifications to the road that could affect temporal wait times. *See* CCC 40.350.020.F. .2, .3, .6. Subsection F.9 then serves as a catchall, directing the Public Works Director to consider any additional factors that may affect the operating level of transportation corridors or intersections but that are not otherwise captured in the preceding provisions. *See* CCC 40.350.020.F.9 (directing the County to consider "[a]ny other factors that the Public Works Director has determined could have an impact on the operating level of the transportation corridors or intersections.").

In essence, subsection F tells the County all the "inputs" it must consider when it evaluates whether LOS standards will be met. Subsection G codifies the LOS standards themselves. Nothing in subsection F says that the LOS standards in subsection G can simply be ignored, or that one of those LOS standards can replace another. In this regard, the County's interpretation is particularly flawed because subsection G states each LOS standard in mandatory terms. *See* CCC 40.350.020.G.1.a ("LOS standards ***shall*** be as follows: The maximum volume to capacity ratio for each roadway segment ***shall not exceed*** nine-tenths (0.9)") (emphasis added); CCC 40.350.020.G.1.b ("Individual movements at each signalized intersection of regional significance in the unincorporated county ***shall not exceed***…") (emphasis added); CCC 40.350.020.G.1.c ("All unsignalized intersections of regional significance in the unincorporated county ***shall achieve*** LOS E standards or better…") (emphasis added). Each of these LOS standards is binding and mandatory. None of them can be ignored.

Thus, properly understood, subsection F.9—the sole code section cited by the County for its reading of the LOS concurrency standards—functions as a catchall for additional considerations that may affect the concurrency analysis. It permits staff to account for factors that influence transportation performance but are not expressly identified elsewhere in subsection F. It does not authorize staff to replace the adopted LOS standards with different standards. Nor does it permit compliance to be determined based on considerations other than those standards themselves.

In sum, CCC 40.350.020.G.1.a establishes mandatory maximum v/c ratio of 0.9 for transportation corridors. That ratio is the threshold against which compliance is measured. Subsection F identifies the factors that inform the analysis used to determine whether that threshold is met. Nothing in subsection F purports to authorize County staff to alter, waive, or disregard that mandatory standard.

This reading is reinforced by subsection CCC 40.350.020.E.3, which directs the Public Works Director to issue a concurrency approval only when the proposal complies with the adopted level-of-service standards set forth in subsection G. *See* CCC 40.350.020.E.3 ("The Public Works Director shall issue a concurrency approval where the Public Works Director determines that the proposed development's impacts upon all affected transportation corridors and intersections of regional significance *do not result in the operating levels for the transportation corridors, signalized intersections, and unsignalized intersections falling below the adopted level of service standards established in Section 40.350.020.G*") (emphasis added). A roadway operating above the maximum v/c ratio established in CCC 40.350.020.G.1.a does not satisfy those standards. The

County's interpretation would therefore render the v/c ratio standard meaningless and would violate the plain language of the code.

**B. The Hearing Examiner does not have authority to grant ad hoc exemptions to the County's adopted LOS standards, or to allow County Staff to deviate from those standards in their concurrency analysis. The Examiner's role is to enforce the code as written.**

In their response letters, Mr. Gallup and Mr. Jardin effectively ask the Hearing Examiner to look beyond the plain language code requirements and to award an equitable remedy—namely, to approve new, non-code-compliant concurrency standard that, in the County's opinion, provides "a clearer and more realistic understanding of current operations." Ex. 13 at 2. But it is not for the Examiner to decide which standard is preferred by County administrative staff, but to enforce the standard adopted by the Clark County Council and codified in the Clark County Code.

Washington courts have long held that hearing examiners may not apply equitable doctrines that may otherwise be common in the Washington court system. *See Chaussee v. Snohomish Cnty. Council,* 38 Wn. App. 630, 636 (1984). The courts' basis for that holding is that administrative bodies (including hearing examiners) "are creatures of the legislature without inherent or common-law powers conferred either expressly or necessarily by implication." *Chaussee*, 38 Wn. App. at 636 (emphasis added; quoting *Messer v. Bd. of Adjustment*, 19 Wn. App. 630, 639 (1984)). Similarly, in *Durland v. San Juan county*, the Court of Appeals held that "[a] hearing examiner's authority [] is *limited* to that granted by the creating body." *Durland v. San Juan County*, 174 Wn. App. 1, 11 n.6 (2012) (emphasis added). In *Lejeune v. Clallam County*, the Court of Appeals again held that "[a]dministrative tribunals are creatures of the legislative body that creates them, . . . *and their power is limited to that which the creating body grants*." 64 Wn. App. 257, 270 (1992) (emphasis added). The common theme of all these cases is that administrative tribunals, including hearing examiners, have no inherent common-law powers. They can apply the code as written. They cannot override or grant deviations from the code when the code itself does not allow for that.[2]

Here, the County has cited no provision of the Clark County Code that would allow the Examiner to ignore or deviate from any of the mandatory LOS standards at CCC 40.350.020.G. The County

[2] On this point, we also note that CCC 40.350.020.N specifically requires the Public Works Director to publish (and to regularly update) an official manual describing the County's methodologies and criteria for determining concurrency under Section 40.250.020 of the Clark County Code. *See* CCC 40.350.020.N.3. To our knowledge, such a manual has not been published. But even if such a manual had been published, and even if it had been updated to include the novel approach to concurrency that the County now advances, the code clearly specifies that the LOS standards codified at CCC 40.350.040.G control over any contrary interpretation advanced by County administrative staff. *See* CCC 40.350.040.N.5 ("The provisions of the administrative manual shall be consistent with and implement the provisions of this section. *To the extent the provisions of the manual are inconsistent with the provisions of this section, the provisions of this section shall control*.") (emphasis added). For this reason, too, the Examiner has no authority to deviate from the clear LOS standards codified at CCC 40.350.040.G, including the mandatory v/c corridor standard at CCC 40.350.040.G.1.a.

Council could easily have adopted different standards or amended the code if it wanted to, but has not chosen to do so. If the County believes the adopted concurrency standards no longer reflect its preferred methodology, the remedy is to amend the code through the County's legislative process, not to ask the Examiner to ignore the code as written.

Ultimately the Hearing Examiner's duty is to determine if the subdivision approval criteria have been met. Among those criteria is the requirement that "[t]he proposal complies with ***all applicable standards*** in this code." *See* CCC 40.350.040.D.3.c (emphasis added). Here, the LOS standards at CCC 40.350.020.G are among the applicable standards in the code that the 174th Street proposal must meet, and they are mandatory, without exception. The updated Staff Report itself confirms that the proposal exceeds the designated v/c ratio standard, thereby failing to comply with the County's own concurrency requirements. *See* Ex. 52 at 4 (April 21, 2026, Concurrency Staff Report) ("The traffic study indicates that the above corridors will have a volume to capacity (v/c) ratio of greater than 0.9 in the 2028 buildout horizon."); *see also* Ex. 140 at 5 (May 21, 2026, Concurrency Staff Report) (same). Because the corridor LOS standard at CCC 40.350.020.G.1.a will not be met, the subdivision must be denied.

Thank you for your consideration of this comment letter.

Very truly yours,

TELEGIN LAW PLLC



Bryan Telegin

*Counsel for Dean Hergesheimer*

cc: Client