

1 • The FEIS discloses racial and economic disparities in tree canopy cover
2 and identifies the City’s intent to address the disparities,⁴¹⁴ contrary to JuNO’s claim that
3 the FEIS lacks such discussion.⁴¹⁵

4 Appellants’ other criticisms fail to demonstrate that the City’s approach was
5 unreasonable. Appellants’ witnesses simply asserted the FEIS should have done more,
6 without identifying any industry standard or flaw that renders the FEIS’s analysis
7 unreasonable.

8 Appellants’ primary criticism is that the FEIS should have done a more granular
9 analysis, including an individualized or parcel-level analysis for each urban village.⁴¹⁶ But
10 Appellants fail to demonstrate why the City’s approach is unreasonable for a citywide
11 nonproject EIS. None of Appellants’ witnesses controverted the City’s experts’ testimony
12 that nonproject EISs typically do not include *any* tree canopy analysis.⁴¹⁷ As JuNO’s brief
13 acknowledges, the EISs for rezones of the University District and Uptown did not include
14 a detailed or parcel-level analysis of tree canopy cover.⁴¹⁸ Similarly, the EIS for the Seattle
15 2035 Comprehensive Plan, a citywide nonproject EIS, provides only a brief and general
16 description of potential tree canopy impacts.⁴¹⁹ The City’s analysis, which looks at impacts
17 on a citywide basis and also in the urban villages aggregated based on displacement risk
18 and access to opportunity,⁴²⁰ far exceeds what is typical in a nonproject EIS. The
19 analysis’s findings—a less than one percent change over 20 years across all action

20 ⁴¹⁴ FEIS at 3.340–3.341 (disclosing that the City is considering “[partnering] with the community to expand
21 trees in low canopy areas to advance environmental justice and racial equity,” and describing Executive
Order 2017–11, which calls for “prioritizing addressing racial and economic disparities in accessing and
enjoying the benefits of urban trees”).

22 ⁴¹⁵ JuNO Brief at 26–27.

⁴¹⁶ JuNO Brief at 27–29; FNC Brief at 15; FORC Brief at 28.

23 ⁴¹⁷ Tr. vol. 9, 95:12–96:5, July 26, 2018 (Leech); Tr. vol. 17, 118:1–5, Aug. 31, 2018 (Graham).

24 ⁴¹⁸ JuNO Brief at 29. To the extent JuNO is arguing that the Uptown and University District EISs were
inadequate, such arguments are time-barred.

25 ⁴¹⁹ Hr’g Ex. at 3.5–11 to –12.

⁴²⁰ FEIS at Exs. 3.6-6, 3.6-8, 3.6-12, and 3.6-16.

1 alternatives citywide and amongst the aggregated urban villages—confirms that urban
2 village-specific or parcel level analysis were not necessary, particularly when SEPA
3 provides that an EIS should summarize discussion of less important impacts or, in the case
4 of insignificant impacts, exclude such discussion entirely.⁴²¹

5 FORC and FNC also criticize the analysis for including street trees, but for
6 contradictory reasons—FORC claims that inclusion of street trees “substantially
7 inflate[s]” the baseline,⁴²² while FNC claims the analysis fails to account for “recent
8 losses of significant right of way trees.”⁴²³ In any event, neither argument has merit. As to
9 FORC’s claim, FORC fails to articulate why the inclusion of street trees is unreasonable
10 (aside from the fact that inclusion increases the tree canopy coverage). Further, the FEIS
11 expressly discloses that analysis includes street trees under the City’s Street Trees
12 Management Program, adequately informing decision-makers.⁴²⁴ As to FNC’s claim, the
13 data of the existing tree canopy reflects any gaps in enforcement, and thus captures any
14 losses of street trees that may have occurred.⁴²⁵ The FEIS discloses the City’s ongoing
15 efforts to increase enforcement and strengthen tree protections.⁴²⁶ And by including street
16 trees in the calculation of trees that may be impacted by the proposal⁴²⁷ (notwithstanding
17 the City regulations providing stronger protections for street trees than private trees, as
18 Mr. Rundquist described⁴²⁸), the impacts analysis is more conservative.

19 Lastly, FNC’s criticisms of the FEIS’s cumulative impacts and mitigation
20 discussion have no merit. FNC claims the FEIS should have analyzed cumulative impacts

21 ⁴²¹ SMC 25.05.402(B), (C); WAC 197-11-402(2), (3).

22 ⁴²² FORC Brief at 26.

23 ⁴²³ FNC Brief at 16.

24 ⁴²⁴ FEIS at 3.317.

25 ⁴²⁵ Tr. vol. 17, 122:15–123:3, Aug. 31, 2018 (Graham).

⁴²⁶ FEIS at 3.340–3.341.

⁴²⁷ Tr. vol. 9, 154:12–155:2 July 26, 2018 (Leech).

⁴²⁸ Tr. vol. 9, 201:13–205:23, July 26, 2018 (Rundquist).

1 to tree canopy resulting from a proposal relating to detached accessory dwelling units
2 (“DADUs”). FNC improperly cites a draft EIS not in the record⁴²⁹ and makes no claim that
3 any information about the proposal was available at the time the FEIS was prepared. To
4 the contrary, the only evidence in the record confirms the proposal for DADU and ADUs
5 was not sufficiently defined to consider in a cumulative impacts analysis.⁴³⁰

6 FNC’s criticisms of the mitigation discussion challenge the adequacy of the
7 mitigation measures identified in the FEIS, an issue that the Examiner has already
8 dismissed and is irrelevant in this appeal, as discussed further below in Section VI.⁴³¹
9 Further, FNC’s claim that the FEIS relies solely on existing tree protection ordinances for
10 mitigation is incorrect; the FEIS identifies a variety of mitigation, including improving
11 existing regulations, expanding trees on public lands and in rights-of-way, and reforming
12 the design review process.⁴³²

13 **F. The Transportation Analysis Is Reasonable.**

14 JuNO is the primary Appellant whose brief criticizes the transportation analysis.⁴³³
15 JuNO’s brief relies solely on the testimony of Rich Koehler, a fact witness who did not
16 testify to having any transportation or SEPA-related experience. Further, no other
17 Appellant presented a transportation expert. In contrast, the City’s expert, Ariel Davis, has
18 a Master’s degree in Transportation Engineering and is particularly qualified to opine on
19 the analysis’s adequacy, based on her experience managing the transportation analyses of
20

21 ⁴²⁹ FNC Brief at 17–18 n.34. The City moves the Examiner to strike that reference to extra-record evidence.

22 ⁴³⁰ Tr. vol. 15, 194:2–24, Aug. 24, 2018 (Wentlandt).

23 ⁴³¹ Prelim. Order on Prehearing Motions at 3.

24 ⁴³² FEIS at 3.340–3.341.

25 ⁴³³ JuNO Brief at 16–21. SUN’s Brief raised a single criticism—that the transportation analysis provides metrics about state facilities under existing conditions and the action alternatives, but does not identify these metrics as impacts because the City has not adopted any formal standards. SUN Brief at iii. But as SUN acknowledges, the FEIS does disclose these metrics to decision-makers, and no transportation expert opined that the FEIS was obligated to develop a standard in the absence of a City standard.

1 nonproject proposals within the City such as the citywide 2035 Comprehensive Plan.⁴³⁴
2 JuNO’s criticisms are unsupported and fail to establish any inadequacy.

3 JuNO’s assertion that the FEIS should have presented parking occupancy data for
4 the West Seattle Junction (“WSJ”) urban village has no merit. As the FEIS discloses, the
5 FEIS’s parking occupancy data is based on data the City collects from 20 districts (and
6 does not include the WSJ).⁴³⁵ The FEIS’s use of existing data is reasonable, particularly
7 because JuNO makes no attempt to show that WSJ-specific data is necessary or can be
8 collected in a cost-effective manner.

9 Ms. Davis’s testimony established that use of PM peak hour data is a reasonable
10 and well-established industry practice used in transportation analyses and in EISs. Ms.
11 Davis explained that SDOT’s traffic counts show that traffic is worse citywide during the
12 PM peak, and that using PM peak data results in a more conservative analysis.⁴³⁶ DPD
13 Director’s Rule 5-2009 and the Seattle 2035 Comprehensive Plan EIS⁴³⁷ illustrate the
14 standard practice of using only PM peak data.

15 Moreover, Ms. Davis testified that she reviewed three days of AM and PM peak
16 hour data that her firm had for the West Seattle Bridge, and the data suggested that PM
17 peak hour conditions were worse.⁴³⁸ In contrast, Mr. Koehler presented only one day’s
18 worth of data using the FEIS’s methodology, taken at various times in the morning of
19 April 12.⁴³⁹ More importantly, even if the AM peak hour conditions were worse at one
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21 ⁴³⁴ Hr’g Ex. 285.

22 ⁴³⁵ FEIS at 3.235, 3.237.

23 ⁴³⁶ Tr. vol. 16, 131:22–133:23, Aug. 30, 2018 (Davis).

24 ⁴³⁷ Hr’g Ex. 4 at 3.7–17.

25 ⁴³⁸ Tr. vol 16, 133:4–13, Aug. 30, 2018 (Davis).

⁴³⁹ Tr. vol. 8, 67:17–71:4, July 25, 2018 (Koehler). Mr. Koehler also took photographs of an SDOT transportation sign estimating transit times on November 21 and 30, but there is no evidence establishing how SDOT’s times are calculated and how that methodology compares to the FEIS’s methodology. Tr. vol. 8, 65:14–66:4, July 25, 2018 (Koehler).

1 specific area, a single exception does not warrant deviating from the standard industry
2 practice of using the PM peak hour to capture worse conditions citywide.

3 JuNO next contends the FEIS should have analyzed the streets and intersections
4 internal to the WSJ and should have analyzed issues such as seasonal effects, or the width
5 of streets within WSJ under SMC 23.53.015, and traffic safety at the street and
6 intersection level.⁴⁴⁰ Preliminarily, Ms. Davis testified that she has never worked on a
7 nonproject EIS that included an intersection-level analysis;⁴⁴¹ that issues such as street
8 width would have to be addressed at a project-level;⁴⁴² and that the FEIS’s overall
9 approach was reasonable and adequate.⁴⁴³

10 More fundamentally, JuNO’s argument is another variant of Appellants’
11 overarching position that the FEIS should have performed an individualized and more
12 granular analysis for every urban village. But JuNO fails to demonstrate that the FEIS’s
13 citywide approach was unreasonable. The fact that the City took an approach in a different
14 situation and in a different EIS does not limit its ability to choose to do its analysis here
15 differently, so long as its approach is reasonable.⁴⁴⁴

16 **G. The Open Space and Recreation Analysis Is Reasonable.**

17 FNR’s brief reiterates its position that the FEIS should have specifically identified
18 and addressed the town center park project (“Park Project”). FNR’s arguments
19 mischaracterize the FEIS and the witnesses’ testimony and have no merit.
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21

22 ⁴⁴⁰ JuNO Brief at 19–21.

23 ⁴⁴¹ Tr. vol. 16, 131:18–21, Aug. 30, 2018 (Davis). The FEIS also discloses that its approach differs from an
intersection-level analysis. FEIS at 3.242.

24 ⁴⁴² Tr. vol. 16, 133:24–134:11, Aug. 30, 2018 (Davis).

25 ⁴⁴³ Tr. vol. 16, 134:12–18, Aug. 30, 2018 (Davis).

⁴⁴⁴ The Seattle 2035 Comprehensive Plan is a more comparable citywide proposal, and the transportation
analysis applied similar metrics, level of service standards, and data as the MHA FEIS. Hr’g Ex. 4, 5.

1 Mr. Steinbrueck’s and Mr. Abolins’ testimony that the FEIS fails to discuss the
2 City’s analysis of open space gaps, specifically gaps in the North Rainier neighborhood, is
3 incorrect.⁴⁴⁵ The FEIS discusses the City’s 2017 Parks and Open Space Plan and the plan’s
4 gap analysis, and identifies the areas that are underserved according to the gap analysis.⁴⁴⁶
5 The FEIS specifically identifies North Rainier as an underserved area in three separate
6 discussions.⁴⁴⁷ Thus, FNR cannot argue that the FEIS fails to inform decision-makers of
7 gaps in open space.

8 FNR’s claim that the exclusion of the Park Project was misinformed and
9 unsupported is also incorrect.⁴⁴⁸ Ms. Graham testified that open space analyses typically
10 exclude conceptual parks (i.e., parks without a completion schedule or identified funding
11 sources) because of the lack of guarantees that the park will be acquired and constructed,
12 and because exclusion results in a more conservative, “worst-case scenario” impacts
13 analysis.⁴⁴⁹ Appellants presented no expert with experience preparing open space analyses
14 for EISs and no evidence that validly refuted Ms. Graham’s expert testimony establishing
15 typical practices for open space analyses. As discussed in the City’s Closing Brief,
16 nothing in the Sammamish Town Center Sub-Area EIS contradicts Ms. Graham’s
17 testimony.⁴⁵⁰ The proposed action under review in the Sammamish EIS included a
18 conceptual park.⁴⁵¹ By contrast, here, the Park Project is not part of the City’s underlying
19 proposal. Thus, the Sammamish EIS’s inclusion of conceptual park as part of its preferred
20

21 _____
⁴⁴⁵ FNR Brief at 10–11.

22 ⁴⁴⁶ FEIS at 3.344–3.345.

23 ⁴⁴⁷ FEIS at 3.345 (discussing the Parks and Open Space Plan), 3.347 (showing baseline conditions for parks
and open space in the urban villages), 3.350 (comparing parks and open space across action alternatives).

24 ⁴⁴⁸ FNR Brief at 8–9.

25 ⁴⁴⁹ Tr. vol. 17, 139:4–140:8, Aug. 31, 2018 (Graham).

⁴⁵⁰ City Brief at 56 n.311.

⁴⁵¹ Hr’g Ex. 303 at 2–8.

1 alternative does not bear on the adequacy of the parks and open space analysis in the
2 FEIS.

3 Appellants also presented no evidence that credibly refuted the conclusion that the
4 Park Project is a conceptual park. Ms. Graham testified that at the time of the FEIS’s
5 preparation, she and her team found no information indicating funding or a completion
6 schedule for the Park Project.⁴⁵² Mr. Wentlandt testified that he “talked directly with
7 [Department of Parks and Recreation (“DPR”)] staff about this at length,” and DPR has
8 not identified or proposed to acquire any specific parcels, even at this time.⁴⁵³

9 FNR characterizes the Park Project as a “funded park project” “carefully
10 developed and integrated” into Accessible Mount Baker plan.⁴⁵⁴ First, although FNR relies
11 on a grant application submitted by the City to King County as evidence of funding, an
12 application is not evidence that specific funding sources have been secured.⁴⁵⁵ Second, the
13 Accessible Mount Baker plan is a “conceptual plan” that “identified a vision” for
14 transportation improvements, and does not demonstrate that the Park Project is anything
15 more than a conceptual park.⁴⁵⁶ Mr. Wentlandt’s testimony regarding his conversations
16 with DPR staff is more recent and reliable evidence of the park’s current status.

17 Lastly, FNR’s arguments also ignore that nothing about the proposal or the zoning
18 changes precludes or bars future construction of the Park Project.⁴⁵⁷ FNR also asks the
19 City to ignore legal restrictions on a city when making zoning decisions that depress
20 property values in preparation for acquiring the property for public purposes in the

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22 ⁴⁵² Tr. vol. 17, 139:15–24, Aug. 31, 2018 (Graham).

23 ⁴⁵³ Tr. vol. 14, 166:11–167:12, Aug. 23, 2018 (Wentlandt).

24 ⁴⁵⁴ FNR Brief at 9.

25 ⁴⁵⁵ See Tr. vol. 11, 36:6–21, Aug. 20, 2018 (James). Although Mr. James testified about the application’s submission, he did not testify that the Town Center Park had definitively secured funding.

⁴⁵⁶ Tr. vol. 14, 165:17–166:7, Aug. 23, 2018 (Wentlandt).

⁴⁵⁷ Tr. vol. 14, 167:19–168:1, Aug. 23, 2018 (Wentlandt); Tr. vol. 17, 140:9–13, Aug. 31, 2018 (Graham).

1 future.⁴⁵⁸ In short, the FEIS’s analysis was reasonable. FNR’s desire for special
2 consideration of the Park Project in the FEIS is unwarranted and unreasonable.

3 JuNO challenges the open space analysis on limited grounds – specifically: (1) that
4 the FEIS “fails to mitigate findings of significant, adverse impacts” citywide and at the
5 urban village level and fails to consider the financial costs in proposed mitigation; and (2)
6 on the grounds that the FEIS open space is inconsistent with the Comprehensive Plan.⁴⁵⁹
7 Section VI below responds to JuNO’s arguments regarding mitigation. Section V.A.4,
8 above, describes the City’s approach to summarizing consistency with the Comprehensive
9 Plan and specifically responds to Appellants’ flawed theory of the extent of the analysis of
10 consistency that SEPA requires. Importantly, with regard to parks, the FEIS’s
11 measurement against the City’s adopted level of service standard is another evaluation for
12 consistency.

13 **H. The Public Services and Utilities Analysis Is Reasonable.**

14 JuNO is the sole Appellant whose brief addressed the public services and utilities
15 analysis.⁴⁶⁰ JuNO’s arguments rely on the testimony of Janine Rees, a fact witness who is
16 undisputedly unqualified to assess or opine on this subject and who testified that she has
17 never performed any SEPA-related environmental analysis.⁴⁶¹

18 Ms. Graham testified that the public services and utilities analysis applied
19 reasonable and standard methodologies, including incorporating the analysis used for the
20 Seattle 2035 Comprehensive Plan EIS. SEPA expressly encourages the uses of existing
21 environmental documents.⁴⁶² As Ms. Graham testified, the use of the Comprehensive Plan
22

23 ⁴⁵⁸ 83 Am. Jur. 2d Zoning and Planning § 48.

24 ⁴⁵⁹ JuNO Brief at 31–34.

25 ⁴⁶⁰ JuNO Brief at 41–18.

⁴⁶¹ Tr. vol. 9, 11:1–18, July 26, 2017 (Rees).

⁴⁶² WAC 197-11-600.

1 EIS was especially appropriate because of its citywide scope and recent data.⁴⁶³ Thus, Ms.
2 Graham and her team applied the same LOS standards set by the City and used in the
3 2035 Comprehensive Plan EIS, and appropriately updated the analysis by researching and
4 reviewing additional data from City departments.⁴⁶⁴ While JuNO may take issue with the
5 way the City has defined its LOS standards citywide,⁴⁶⁵ this appeal is not the appropriate
6 venue to address such issues.

7 JuNO argues the FEIS should have included the police data JuNO cited in its
8 comment letter, such as the Berkshire report. Ms. Graham testified that during the review
9 of City information for the FEIS, her team did not find the information JuNO cited.⁴⁶⁶
10 JuNO's comment letter confirms that nearly all of the information that JuNO and Ms.
11 Rees cited, including the Berkshire Report, did not come from the Seattle Police
12 Department or any other City department.⁴⁶⁷ JuNO presented no evidence that the City has
13 adopted the Berkshire report's conclusions or findings. SEPA does not require that an EIS
14 include every piece of information available from any source, and the FEIS's reliance on
15 data from the City was reasonable. Based on the City's data, the FEIS provides adequate
16 information to decision-makers about capacity for specific precincts and urban villages.⁴⁶⁸

17 Similarly, although JuNO argues the FEIS should have provided more specific
18 data with respect to fire and emergency medical services ("EMS"), the FEIS discloses the
19 impacts that JuNO raises. The FEIS discloses that the City's performance is slightly below

20 ⁴⁶³ Tr. vol. 17, 143:2–7, Aug. 31, 2018.

21 ⁴⁶⁴ *Id.* at 142:12–18.

22 ⁴⁶⁵ JuNO Brief at 42. JuNO's brief claims the Berkshire report's response time metric "has replaced" the
23 City's LOS standard, but the characterization is incorrect. As Ms. Graham testified, the City continues to use
24 the same response time metric cited in the 2035 Comprehensive Plan EIS. Tr. vol. 17, 143:23–144:1; FEIS
25 at 3.360.

⁴⁶⁶ Tr. vol. 17, 143:14–22, Aug. 31, 2018.

⁴⁶⁷ Hr'g Ex. 202 at 68–70 of the document (under the "Comments on DEIS Analysis Section 3.8 Public
Services and Utilities" section) (citing articles from the Seattle times, mynorthwest.com, sccinsight.com,
and crosscut.com. The exhibit states that the Berkshire report was found on sccinsight.com.).

⁴⁶⁸ FEIS at 3.360.

1 the National Fire Protection Association’s standard (which the City has adopted as a
2 target), and informs decision-makers the specific urban villages that may require
3 additional fire and EMS services due to projected demand.⁴⁶⁹ Moreover, the urban village-
4 specific data that JuNO cites is no longer available, as Ms. Rees admitted.⁴⁷⁰ As Ms.
5 Graham testified, the FEIS’s level of information is appropriate for a nonproject EIS
6 analyzing services on a citywide basis.⁴⁷¹

7 JuNO’s criticisms of the sewer analysis similarly contend the FEIS should have
8 provided more specific information, but ignores the fact that the FEIS discloses impacts
9 and conditions in sufficient detail to inform decision-makers. The FEIS identifies the
10 existence of pipes that are “likely at or near capacity” and the potential need to upgrade
11 pipes downstream.⁴⁷² The FEIS also identifies the City’s combined sewer infrastructure
12 and highlights the City’s plan and capital projects to reduce combined sewer overflows.⁴⁷³
13 JuNO’s desire for different disclosures does not render the FEIS’s disclosures inadequate.

14 **VI. THE EXAMINER HAS ALREADY DISMISSED APPELLANTS’**
15 **PRIMARY CHALLENGES TO THE EFFICACY AND LIKELIHOOD OF**
16 **MITIGATION**

17 The Preliminary Order on Prehearing Motions concluded that “Adequacy of
18 mitigation is not relevant” in this appeal, and granted the City’s motion to dismiss claims
19 challenging the failure to analyze the efficacy or likelihood of mitigation.⁴⁷⁴
20

21 _____
22 ⁴⁶⁹ FEIS at 3.361–3.362. The FEIS states, “The target is to meet the NFPA standards 90 percent of the time.
23 On average, the department currently meets EMS response standards 86 percent of the time and fire
24 response standards 89 percent of the time.”

25 ⁴⁷⁰ Tr. vol. 8, 267:19–268:7, July 25, 2018 (Rees).

⁴⁷¹ Tr. vol. 17, 145:2–11, Aug. 31, 2018 (Graham).

⁴⁷² FEIS at 3.366, 3.368.

⁴⁷³ FEIS at 3.366,

⁴⁷⁴ Prelim. Order on Prehearing Motions at 3.

1 Despite the Examiner’s Order, Appellants’ briefs repeat the same challenges to the
2 adequacy of mitigation, and even repeat the same arguments the Appellants
3 unsuccessfully raised in their prehearing motions.

4 Preliminarily, Appellants continue to ignore the controlling SEPA case law and
5 regulations. As noted above in section V.A.7 and in the City’s prior briefing SEPA case
6 law and regulations control when there are any divergences or differences between the
7 NEPA and SEPA.⁴⁷⁵ With respect to mitigaition, the SEPA regulations and case law
8 distinguish between the need for an EIS to include a discussion of mitigation and the need
9 to demonstrate the adequacy, efficacy, or feasibility of the mitigation, concluding that the
10 latter need not be analyzed in an EIS.⁴⁷⁶

11 Appellants do not address the controlling SEPA regulations and case law, and
12 instead simply repeat their citation to the same federal NEPA case addressing a project
13 action.⁴⁷⁷ The NEPA case law is not relevant or controlling. Moreover, the case that
14 Appellants cite, *Neighbors of Cuddy Mountain*, is distinguishable and inapplicable on a
15 number of levels.⁴⁷⁸ The Examiner should reject Appellants’ continued attempt to rely on
16 an incorrect legal standard for mitigation.

17 _____
⁴⁷⁵ See City’s Resp. to SCALE’s Mot. Summ. J. at 9–10, 20–23.

18 ⁴⁷⁶ See City’s Mot. for Partial Dismissal at 24 (explaining the relevant SEPA case law, including: *Glasser v.*
19 *City of Seattle*, 139 Wn. App. 728, 739–42, 162 P.3d 1134 (2007); *Solid Waste Alternative Proponents v.*
20 *Okanogan Cty.*, 66 Wn. App. 439, 447, 832 P.2d 503, 508 (1992); *Residents Opposed to Kittitas Turbines v.*
21 *State Energy Facility Site Evaluation Council*, 165 Wn.2d 275, 312, 197 P.3d 1153, 1171 (2008); *Cascade*
Bicycle Club v. Puget Sound Reg’l Council, 175 Wn. App. 494, 514, 306 P.3d 1031, 1040 (2013)). See also
SMC 25.05.440.E.3.d, WAC 197-11-440(6)(c)(iv) (regulations permit but do not require evaluation of
feasibility and economic practicability and confirm that the FEIS “need not analyze mitigation measures in
detail...”); City’s Resp. to SCALE’s Mot. Summ. J. at 20–23.

22 ⁴⁷⁷ SCALE Brief at 19–20, JuNO Brief at 3 n.2, 3 (citing *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*,
137 F.3d 1372 (9th Cir. 1998).

23 ⁴⁷⁸ See City’s Resp. to SCALE’s Mot. Summ. J. at 22–23 (addressing *Neighbors of Cuddy Mountain*).
Neighbors of Cuddy Mountain addressed a specific project action with mitigation requirements governed by
both NEPA and the National Forest Management Act. 137 F.3d at 1380. When addressing nonproject or
24 programmatic action under NEPA, the Ninth Circuit has held that that “detailed analysis of mitigation
measures . . . is unwarranted at this stage.” *N. Alaska Envtl. Ctr. v. Lujan*, 961 F.2d 886, 891 (9th Cir. 1992).
25 See also *San Juan Citizens All. v. Stiles*, 654 F.3d 1038, 1054 (10th Cir. 2011) (holding that quantitative
assessments of mitigation measures are generally not appropriate for programmatic actions).

1 Appellants’ solely challenge the adequacy and efficacy of the mitigation measures,
2 which is not at issue in this adequacy appeal under SEPA:

3 • JuNO argues the FEIS “fails to mitigate findings of significant, adverse
4 impacts” to open space and recreation, and claims the FEIS must “estimate the number of
5 acres of parks and open space” the mitigation measures would create.⁴⁷⁹

6 • SCALE criticizes the discussion of mitigation for historic resources
7 because the FEIS fails to discuss the mitigation measures’ “effectiveness, expense,
8 practicality, [or] potential for being adopted.”⁴⁸⁰

9 • FNC criticizes the FEIS’s mitigation discussion because the measures “will
10 not be able to mitigate for the significant likely impacts.”⁴⁸¹

11 As the Examiner has already concluded, the adequacy of mitigation is not relevant
12 here, and Appellants’ repeated challenges to the adequacy of mitigation measures need not
13 be considered. Moreover, as explained in the City’s Closing Brief, the discussion of
14 mitigation satisfies the relevant SEPA standard.⁴⁸²

15 **VII. THE CITY COMPLIED WITH SEPA’S NOTICE REQUIREMENTS**

16 FORC is the only Appellant whose brief raised any notice issues, in the last
17 footnote at the end of its brief.⁴⁸³ As addressed in the City’s Closing Brief, FORC’s
18 alleged notice issues are not based on any of SEPA’s notice requirements. This is perhaps
19 most evident by the fact that none of the Appellants cites to any specific SEPA notice
20 requirement. That is because SEPA notice requirements do not require the City to
21

22 ⁴⁷⁹ JuNO Brief at 31–34.

23 ⁴⁸⁰ SCALE Brief at 20.

24 ⁴⁸¹ FNC Brief at 19. FNC’s arguments regarding the FEIS’s discussion of project-level review are addressed
25 above.

⁴⁸² City Brief at 58.

⁴⁸³ FORC Brief at 43–44 n.39. In the footnote, FORC states that it “joins in Appellant JuNO’s analysis,” but
JuNO’s brief does not raise any notice issues.

1 distribute hard copies of the DEIS to the 26 branch libraries throughout the City,⁴⁸⁴ to
2 provide individual notice of outreach or neighborhood meetings, or to translate the FEIS
3 into other languages. Appellants' challenges to the public outreach fail.

4 **VIII. THE CITY'S RESPONSE TO COMMENTS WAS ADEQUATE**

5 In its response, JuNO asserts that the City's response to comments was technically
6 deficient. JuNO raises this argument in its brief as it did at hearing, in a passing manner
7 without providing any specific allegations and relying on a voluminous document it
8 entered into the record to make its legal arguments, despite the Examiner's admonishment
9 to specify their allegations at hearing with more detail.⁴⁸⁵ That generalized allegation at
10 hearing and in its brief while relying on documentary evidence to provide more detailed
11 legal argument does not satisfy its burden and should not be considered.

12 On the merits, JuNO's claims assume a level of specificity for comment responses
13 that is not supported by the rules. The SEPA rules expressly authorize the City to provide
14 any of a variety of responses to comments. Specifically, the City "may respond to each
15 comment individually, respond to a group of comments, cross-reference comments and
16 corresponding changes in the EIS, or use other reasonable means to indicate an
17 appropriate response to comments."⁴⁸⁶ The City responded to JuNO's comments using a
18 combination of those techniques. The City relied on "Responses to Frequent Comments"
19 where JuNO's allegations were similar to those of other commenters.⁴⁸⁷ Additionally, the
20 FEIS dedicated twelve pages to respond to JuNO's specific comments where the comment

21 _____
22 ⁴⁸⁴ SMC 25.05.455, which regulates where the DEIS must be sent, contains no such distribution
requirement.

23 ⁴⁸⁵ Tr. vol. 1, 91:11-96:21, July 25, 2018 (Koehler). Specifically, the Examiner clarified that while "there
24 are sometimes the impression of parties that it's in this grand record that an individual has every single page
of thousands of pages of documents that they can tap in at any moment. In reality, that's not what happens,
and I hate to burst the bubble on that." *Id.* at 94:5-10.

25 ⁴⁸⁶ SMC 25.05.560.C; WAC 197-11-560(3)

⁴⁸⁷ See FEIS at Chapter 4.3

1 warranted additional explanation beyond the responses to frequent comments.⁴⁸⁸ While
2 JuNO failed to explain any specific allegations at hearing or in its brief, JuNO’s Exhibit
3 185 includes a spreadsheet that argues that the City failed to capture every nuance to its
4 lengthy comment letter or taking issue when the City simply acknowledged an editorial
5 opinion. In fact, the City adequately addressed those comments, even if not to JuNO’s
6 preferred level of specificity.⁴⁸⁹

7 Finally, even if there are omissions in the City’s responses to JuNO’s comment
8 letter, any errors in failing to respond are judged under the harmless error standard.⁴⁹⁰ In
9 this instance, where JuNO has had 19 days of hearing in which it was given ample
10 opportunity to advance its claims, any omission in response to comments is the definition
11 of “harmless error.” JuNO’s claim fails.

12 **IX. CONCLUSION**

13 Appellants have failed to meet their burden and the Examiner should reject their
14 appeals. The FEIS satisfies the rule of reason.

15 DATED this 10th day of October, 2018.

16 PETER S. HOLMES	VAN NESS FELDMAN LLP
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18 <u>/s/Jeff Weber, WSBA No. 24496</u>	<u>/s/Tadas A. Kisielius, WSBA No. 28734</u>
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23 ⁴⁸⁸ See FEIS at 4.417–4.429.
24 ⁴⁸⁹ For example, Hr’g Ex. 185 asserts there was no response to various allegations that the FEIS failed to
25 consider the unique nature of the West Seattle Junction Urban Village, when, in fact that is precisely the
kind of comment to which the City appropriately prepared a response to frequent comments of a similar
vein, at 4.4-4.5.
⁴⁹⁰ *Klickitat Cty. Citizens*, 122 Wn.2d at 637–38.

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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:

**WALLINGFORD COMMUNITY
COUCIL, ET AL.,**

of the adequacy of the FEIS issued by the
Director, Office of Planning and
Community Development.

Hearing Examiner File

W-17-006 through W-17-014

CERTIFICATE OF SERVICE

I, Amanda Kleiss, declare as follows:

That I am over the age of 18 years, not a party to this action, and competent to be a witness herein;

That I, as a legal assistant with the office of Van Ness Feldman LLP, on October, 2018, filed the City of Seattle’s Response to Appellants’ Closing Briefs, transcript excerpts, and this Certificate of Service with the Seattle Hearing Examiner using its e-filing system and that on October 10, 2018, I addressed said documents and deposited them for delivery as follows:

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at Seattle, Washington on this 10th day of October, 2018.

/s/Amanda Kleiss
Declarant

VOLUME 1

JUNE 25, 2018

Hearing - Day 1

In the Matter of the Appeal of: Wallingford Community Council, et al.

June 25, 2018



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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeal of:)
WALLINGFORD COMMUNITY COUNCIL,)
ET AL.,) W-17-006
) through
of the adequacy of the FEIS issued by the) W-17-014
Director, office of Planning and)
Community Development.)

Hearing, Day 1 - June 25, 2018
Heard before Hearing Examiner Ryan Vancil

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June 25, 2018

HEARING EXAMINER: I'll call to order this June 25, 2018 session before the Seattle hearing examiner. My name is Ryan Vancil. I'm the hearing examiner for the City of Seattle and will be presiding over this matter. The matter to be heard today or for the weeks ahead involve the consolidated appeals of the Wallingford Community Council, Morgan Community Association, Friends of Ravenna-Cowen, Seattle Coalition for Affordability, Livability & Equity, Seniors United for Neighborhoods, Beacon Hill Council of Seattle, Friends of the North Rainier Neighborhood Plan, West Seattle Junction Neighborhood Organization, and Fremont Neighborhood Council. An appeal of the City's adoption of the final environmental impact statement for legislative proposal to implement mandatory housing affordability requirements for new commercial and multifamily developments in the city. The hearing examiner numbers for these matters are W-17-006 through 014.

The authority to adopt and determine the wisdom of adopting, implementing the MHA legislation lies with the City Council and is not an issue within the jurisdiction of the hearing examiner. The purpose of this hearing is to review the adequacy of the FEIS to meet the rule of reason

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standard of review in the context of the issues raised by the appellants only. The authority of the hearing examiner to hear and decide this matter includes Chapter 25.05.680 and SMC 2341. Under the Code, the SEPA official's determination is accorded substantial weight, and the burden of establishing to the contrary is on the appellants. The hearing will be conducted in accordance with Chapter 3.02 of the City's Administrative Code, and the hearing examiner rules.

Before testifying, each witness must take an oath or affirmation to tell the truth, and will be subject to questioning by the other parties. This is a fact-intensive hearing process. And as the parties have seen from the hearing examiner's determination on prehearing motions, the intent is that the decision in this matter will be based on the full and comprehensive hearing of the facts possible in the time allocated.

To ensure efficiency of the hearing, due to the extensive number of witnesses and evidence anticipated to be introduced, I may be more proactive in addressing concerns of redundancy or relevancy of testimony and evidence than I might otherwise. And in addition to efficiency, this will be done to assure that all parties have an opportunity to be heard within the time allocated.

That said, I want to thank and recognize the superb

STEINBRUECK, Peter

1 MALE SPEAKER: 2?
 2 THE WITNESS: 2.
 3 MALE SPEAKER: Open 3, the first part of 3.
 4 THE WITNESS: Okay. Thank you. Okay. 4, 3. Here we go.
 5 If nothing more, we've created a lot of paper here. Okay.
 6 So Appendix H. Is this the one that documents MHA's --
 7 let's see. Zoning maps.
 8 **Q. (By Mr. Bricklin) So are you at H18, for instance?**
 9 A. No. I'm looking for H here just to start with.
 10 (Simultaneous crosstalk)
 11 A. Does this include all the boundary adjustments?
 12 **Q. Yeah.**
 13 A. Okay. So I'm in the -- here we go. Okay. Got it. Now,
 14 what page?
 15 **Q. H19.**
 16 A. Okay. Okay. Got it. H19.
 17 **Q. And what are we looking at here?**
 18 A. We are looking at the proposed zoning alternative 3, Ballard
 19 Urban Village.
 20 **Q. All right. And actually, let's --**
 21 **(Inaudible colloquy)**
 22 MR. BRICKLIN: Do you have that, Mr. Examiner?
 23 HEARING EXAMINER: I am. I'm trying to get these into one
 24 notebook so I don't have to keep doing this every time.
 25 MR. BRICKLIN: Yeah. Right.

1 A. Yes.
 2 **Q. And --**
 3 A. Zoning designations there.
 4 **Q. Right. And the lowest density -- on the legend, are they --**
 5 **are those zoning density -- are the zoning classifications**
 6 **ordered in from less dense to more dense? That is, the**
 7 **residential small lot is the least dense?**
 8 A. Yes. Yeah. Yeah.
 9 **Q. And then low-rise 1 is more dense?**
 10 A. Yes.
 11 **Q. Those are low-rise multifamily; is that right?**
 12 A. Yes. Yeah, yeah, yeah.
 13 **Q. And low-rise 2 is still low-rise multifamily but a greater**
 14 **height; is that right? Low-rise 2?**
 15 A. That's correct, yes.
 16 **Q. And low-rise 3 is one height yet higher?**
 17 A. Yeah. Uh-huh. Uh-huh.
 18 **Q. And mid-rise is higher yet?**
 19 A. Yes.
 20 **Q. All right. And does the map under this alternative 3 show**
 21 **areas where, for instance, there would be -- it looks like**
 22 **that must be low-rise -- I can't quite make the color out --**
 23 **2 maybe down there on the south part of the expansion area;**
 24 **is that right?**
 25 A. The low-rise 2 is the -- is the dark -- not quite the

1 **Q. (By Mr. Bricklin) So using that just as an example, first**
 2 **let's make sure everyone understands how these maps work.**
 3 **Is the existing urban village line shown -- looking at that**
 4 **legend at the top, is the existing urban village line shown**
 5 **in a solid black line?**
 6 A. Yes.
 7 **Q. And is the proposed expansion shown in a dotted line?**
 8 A. Yes.
 9 **Q. I'm just going to wait until you're -- so we're on Exhibit**
 10 **H -- or page H19.**
 11 A. Uh-huh.
 12 **Q. So the black line is the existing urban village line, and**
 13 **the --**
 14 MR. BRICKLIN: Good?
 15 HEARING EXAMINER: I'm with you.
 16 MR. BRICKLIN: Yep? All right.
 17 **Q. (By Mr. Bricklin) So the solid line is the existing urban**
 18 **village line, and the dashed line is the proposed expansion**
 19 **under this alternative?**
 20 A. Uh-huh. Right.
 21 **Q. And so there -- it looks like there's an expansion out there**
 22 **on the east side of the existing urban village?**
 23 A. That's correct.
 24 **Q. Is that what we're seeing? And I notice there are different**
 25 **colors and hatchings within that expansion area.**

1 darkest red, but, yeah.
 2 **Q. Yeah.**
 3 A. So, yeah, on the southeast side of the existing urban
 4 village boundary.
 5 **Q. All right.**
 6 A. Southeast corner there, yeah.
 7 **Q. All right. And by the way, I see that's hatched, you know,**
 8 **those diagonal lines?**
 9 A. Yes.
 10 **Q. And I see in the legend it means hatched areas have a larger**
 11 **increase in zoning or a change in zoning type?**
 12 A. Yes, that's right.
 13 **Q. All right.**
 14 A. Yeah.
 15 **Q. And I see that that part of the expansion area to the east**
 16 **of it, there's single-family zoning, is that right, the**
 17 **gray?**
 18 A. Yeah. Yeah, that's right. It's pretty much -- yeah, and
 19 then there's some indus- -- industrial -- light industrial
 20 to the south.
 21 **Q. All right. And then on the west of that area there's**
 22 **single-family zoning?**
 23 A. Yes.
 24 **Q. And so when you talk about edge effects, are you talking**
 25 **about the blocks there where under this example there would**

1 **be new low-rise, that is apartments or condos, being built**
 2 **in what is currently a single-family zone?**
 3 A. Yeah.
 4 **Q. And they would be across the street from existing**
 5 **single-family neighborhoods?**
 6 A. Yes, that's correct. I think this is a very good example of
 7 the case for moving the edge farther into the single-family
 8 areas.
 9 **Q. All right. And so if you --**
 10 A. And they have tried to create a kind of a transition there
 11 outside of the existing urban village by this -- this staged
 12 level of intensity.
 13 **Q. So if you're living in a house on -- on the opposite side of**
 14 **that dashed line, that is, outside the proposed expansion**
 15 **area, right now you look across the street, and on the other**
 16 **side of the street there's another single-family home like**
 17 **the one you live in, but under this proposal, it would**
 18 **change to an apartment option?**
 19 A. Yes, correct. Yes.
 20 **Q. All right. Let's look at H25.**
 21 A. This is H25?
 22 **Q. H25.**
 23 A. Yes. This would be Columbia City Urban Village.
 24 **Q. Yes. And actually, I'm referring now to the --**
 25 MR. BRICKLIN: This is rather confusing, Mr. Examiner.

1 A. Uh-huh. Uh-huh.
 2 **Q. And here again, there is a dashed line on the south -- now**
 3 **on the southwest side of Columbia City, showing an expansion**
 4 **of the urban village out to the west; is that right?**
 5 A. That's correct, yeah.
 6 **Q. And is the -- and again, there's hatching in most of that**
 7 **area indicating --**
 8 A. Dense.
 9 **Q. -- a larger increase in zone change; is that right?**
 10 A. Uh-huh. Uh-huh.
 11 **Q. I can't hear you.**
 12 A. Yes. I'm sorry. Yeah, I'm sorry. Yeah.
 13 **Q. All right. Because you have to remember you're making a**
 14 **record for somebody who might one day type this into words.**
 15 A. All right.
 16 **Q. All right? And again this shows the change in zoning to a**
 17 **low-rise, and I can't tell the shades of color --**
 18 A. Low-rise 2, low-rise 3 are included there.
 19 **Q. Right.**
 20 A. And I think some residential small lot.
 21 **Q. All right. And again, the new edge effect is going to**
 22 **impact the people who live in the gray area to the west of**
 23 **the new line; is that right?**
 24 A. Most definitely.
 25 **Q. All right. And there are, what would you say, one, two --**

1 The exhibit numbers and the page numbers are one off from
 2 each other. So the -- in the EIS, the appendix, page H26 is
 3 also identified as Exhibit H25.
 4 HEARING EXAMINER: Yeah.
 5 MR. BRICKLIN: So we need to be careful whether we're
 6 referring to page numbers or exhibit numbers in this
 7 document. Do you see what I mean there? So the number at
 8 the bottom left corner is H26.
 9 HEARING EXAMINER: Right.
 10 MR. BRICKLIN: Up in the top left, the exhibit number is
 11 H25.
 12 HEARING EXAMINER: Oh, and that's Exhibit 4, this
 13 document, right?
 14 MR. BRICKLIN: Yeah, right.
 15 HEARING EXAMINER: All right.
 16 MR. BRICKLIN: Yeah. So we have to be careful which
 17 reference we're using there.
 18 HEARING EXAMINER: Okay.
 19 **Q. (By Mr. Bricklin) So I'm going to -- let's stick with the**
 20 **numbers at the bottom left.**
 21 HEARING EXAMINER: Okay.
 22 **Q. So page H26.**
 23 A. Yeah.
 24 **Q. Is the map for the preferred alternative rezoning in**
 25 **Columbia City Urban Village. You see that?**

1 **eight or ten, twelve different blocks in this area?**
 2 A. Yeah. And I think that that main arterial there is Martin
 3 Luther King Way. That's -- that's where the edge currently
 4 exists. The definable urban form edge is Martin Luther King
 5 Way, Martin Luther King Jr. Way South.
 6 **Q. Right.**
 7 A. And on the west side of that line, which I have traipsed and
 8 traveled by foot, climbing through dense wooded areas, areas
 9 with no street infrastructure. I even had trouble mapping
 10 this because the city's own zoning maps did not give a level
 11 of detail in this area to essentially draw lines between
 12 privately-owned parcels, public lands, and street
 13 right-of-ways. And so -- and it's a very steep, critical
 14 area -- steep slope, critical area part of the zoning here,
 15 or designation overlay, I should say.
 16 **Q. And --**
 17 A. And then up -- farther up the hill, this is a kind of a
 18 greenbelt belt. It is not kind of. It is a greenbelt --
 19 greenbelt zone here, and then -- but there is housing there.
 20 There's some spotty single-family housing where it levels
 21 out at the foot of the slope. But beyond that, it turns
 22 into a greenbelt, and then it -- it is entirely, I think,
 23 single family.
 24 **Q. All right. And then let's turn to page H29. And is this**
 25 **the proposed -- or the preferred alternative for Crown Hill?**

VOLUME 2

JUNE 26, 2018

Hearing - Day 2

In the Matter of the Appeal of: Wallingford Community Council, et al.

June 26, 2018



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HEARING, DAY TWO - June 26, 2018
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-o0o-
June 26, 2018

HEARING EXAMINER: We return to the record June 22nd. Sorry, June 26th. Continuing Mr. Howard?

MR. ABOLINS: Yes.

MR. BRICKLIN: I made a copy of that --

HEARING EXAMINER: -- Exhibit 8?

MR. BRICKLIN: Exhibit 8.

HEARING EXAMINER: Mm-hmm. Thank you.

MR. BRICKLIN: You bet.

HEARING EXAMINER: We'll mark that and it's already been admitted. And for this I know that the parties had some discussion at the end of the day about scheduling. Is the revised schedule available yet?

MR. WEBER: Yeah, we sent it this morning to that MAJ e-mail. Well, actually, that goes to you guys.

MR. ABOLINS: The short answer is yes, we do. I mean, for the time being we resolved this issues and I think if Talas can just send a copy to your office then at least, as of right now --

HEARING EXAMINER: -- That'd be perfect. Yeah, that would help me manage it. I'll be looking at that essentially to help me understand how much time the parties need. And essentially what we've done is extended the hearing to

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accommodate that need and I'm looking at that as being the set amount the parties will get. So I recognize there's some flexibility in that, but what I'm not looking to do is adding additional days to our schedule. The balance initiated in our first prehearing conference requested three to four weeks. We're at three and a half. I probably will add a half day to a day just to pad. And that's going to be my day. I'm not going to give that to any party. But we'll see how that goes at the end just to give us a little breathing space. And we can talk schedule on that. But that gives almost the whole four weeks that was requested initially and that should be adequate. So just a cautionary note. Make sure you function within the time even if it's not according to the exact schedule that we have. I know we'll be trying to change things with that.

MR. ABOLINS: What is best e-mail to send that to now?

HEARING EXAMINER: The hearing examiner one? Do you know what that is?

THE CLERK: Hearing dot.

MR. ABOLINS: Hearing dot examiner?

THE CLERK: Yeah.

MR. ABOLINS: Okay. Great. Thank you.

HEARING EXAMINER: Thank you. Anything else before we get started?

MR. ABOLINS: No. We're ready to call and continue our

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testimony with Spencer Howard.

HEARING EXAMINER: Okay. Mr. Howard, you're still under oath.

THE WITNESS: Yes.

HEARING EXAMINER: And have we finished the questions from Appellant?

MR. ABOLINS: Just a few more, Your Honor.

HEARING EXAMINER: Okay.

SPENCER HOWARD: Witness herein, having previously been duly sworn on oath, was examined and testified as follows:

D I R E C T E X A M I N A T I O N

BY MR. ABOLINS:

Q. Good morning, Mr. Howard.

A. Good morning.

Q. So I just wanted to follow up and talk a little bit about your Port Gamble work. That was a programmatic EIS as well, correct?

A. That was, yes.

Q. And can you compare the approach to historic resources in the Port Gamble EIS to the approach that we were examining in the FEIS for the MHA?

A. Yes. For the Port Gamble redevelopment EIS, we, the goal of

REID, William

1 **Q. All right.**
 2 MR. BRICKLIN: And Mr. Examiner, I'm turning to page 22 of
 3 Appendix A.
 4 THE WITNESS: Sure.
 5 **Q. (By Mr. Bricklin) So earlier you referred to a rubric that**
 6 **involved two different factors and if you mix and match the**
 7 **two times two you end up with a grid of four. Are those, and**
 8 **I think in the EIS and in the Appendix A, instead of using**
 9 **the word "rubric" they refer to it as a typology. Same**
 10 **thing?**
 11 A. Yeah. Rubric's my word, but typology is their word, yes.
 12 **Q. Yeah. All right. And so is this, on page 22 of the**
 13 **Appendix, is this those four categories you're talking about,**
 14 **the high displacement risk, low access to opportunity, and**
 15 **other combinations of those two factors?**
 16 A. Yes. This is the visualization of that for all the urban
 17 villages relative to one another.
 18 **Q. All right. And then they show which urban villages fall into**
 19 **which of those categories, as it were. Types. And when you**
 20 **were speaking of the risk to low income people being able to**
 21 **move into the home ownership market, is that risk that you**
 22 **said is not spread out evenly among the different economic**
 23 **groups, would that vary from urban village to urban village**
 24 **how that gets manifest?**
 25 A. Yes. I mean, each urban village has distinct home prices and

1 A. So talking nonsubsidized, by virtue of all new construction,
 2 it will all be top of market and the most expensive. Yes.
 3 **Q. All right. And so if you have a old brick apartment house in**
 4 **town that is torn down and is replaced with a new project,**
 5 **you may end up with equal or more units. But are you, would**
 6 **they necessarily be serving the same part of the market?**
 7 **Would the new units be serving the same part of the market as**
 8 **the ones you lost?**
 9 A. It would overwhelmingly be a loss of units at lower costs
 10 replaced by units at top of market cost. Redevelopment
 11 happens on sites whose existing improvements are cheap enough
 12 to buy, tear down, and put in place something else in order
 13 for the development to pencil. To financially make sense.
 14 And so projects, existing housing that is more expensive in
 15 place are extremely low likelihood to be bought, torn down,
 16 and replaced by higher density development. It is greatly
 17 skewed towards existing housing that's more modest cost being
 18 bought, torn down, and replaced by brand new housing that
 19 would be top of market in cost for whatever neighborhood
 20 we're talking about.
 21 **Q. And this is, I presume, an existing phenomenon even before**
 22 **this proposal were to be enacted?**
 23 A. Yes, indeed. Here and anywhere else there are people.
 24 **Q. Right. And what would the expected impact of this proposal**
 25 **be on that? Would that tend to accelerate it? No impact?**

1 distinct rents. And so yes, it varies.
 2 **Q. All right. And then when you said that the EIS didn't**
 3 **address this issue, that's true both across the city and also**
 4 **at an urban village level of granularity?**
 5 A. I would say so, yes.
 6 **Q. All right. So let's talk about your point about economic**
 7 **dislocation, which I think you described as basically a**
 8 **supply and demand condition, right? The supply takes you to**
 9 **the demand goes up for housing and the supply doesn't go up**
 10 **fast enough and you get priced out of the market?**
 11 A. Right. Exactly.
 12 **Q. Right.**
 13 A. If demand outstrips supply, exactly.
 14 **Q. And, you know, one thing that's always struck me is the**
 15 **proposal is said to increase housing capacity, you know,**
 16 **zoning capacity. But would that necessarily translate into**
 17 **additional housing at the low end of the market? Or may the**
 18 **new housing end up being more expensive than the low end of**
 19 **the market can afford?**
 20 A. I would say that it guarantees that the new housing created,
 21 the new -- setting aside any subsidized housing units that
 22 are created with the fees --
 23 **Q. -- Yeah, right.**
 24 A. -- or that one place --
 25 **Q. -- I just want to deal with the nonsubsidized market.**

1 **Or decelerate that?**
 2 A. Well, I think at least initially and for some time it would
 3 be an acceleration of the affordability problem for a number
 4 of reasons. Number One, you have, you know, if you're
 5 talking about a situation where existing housing is replaced
 6 by, is torn down and replaced by brand new housing at top of
 7 market, you've not only taken out what I would call
 8 affordable housing stock, older homes or older apartments
 9 that by virtue of being older, they're market rate, but they
 10 rent or their prices are more modest because they're older.
 11 You are losing those units and they're not being replaced.
 12 **Q. With units of the same price?**
 13 A. With units of the same price, that's correct.
 14 The other problem is that you have a delay. Households
 15 have to move out of their apartments or whatever was torn
 16 down. There's no guarantee they'll find anything any time
 17 soon. So even though the FEIS goes into detail about how
 18 many new units are created, but only this many are displaced,
 19 well, there are potentially vast time periods between when
 20 that displaced household can even find something. Much less
 21 if it's even in the City of Seattle. So the math is
 22 extremely simplistic in that regard.
 23 **Q. And did the EIS or the equity analysis that it's based on**
 24 **look at this basic supply and demand equation for the low end**
 25 **of the market rate, nonsubsidized market?**

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1 rate rental project, subsidized ownership units being built
 2 in a market rate project. And I don't see a ton of if
 3 somebody were to build an ownership building, you know, a
 4 condo or whatever, you're more likely to see, because it's an
 5 ownership project, you're more likely to see it all being
 6 market rate ownership and fee paid in lieu. So you're not
 7 going to see a lot of ownership units created with the
 8 program, the performance units. For those reasons.
 9 **Q. So earlier in your testimony you said that the question of**
 10 **economic displacement or dislocation was given light**
 11 **treatment, I think you said. Are you aware of the, what's**
 12 **referred to as the correlation analysis that appears in the**
 13 **EIS? I believe it's page 3.48.**
 14 A. Let me go there and take a look. I did review this page, I
 15 mean, let's see.
 16 MR. ABOLINS: What page?
 17 MR. WEBER: This is page 3.48 in the EIS.
 18 MR. ABOLINS: Thank you.
 19 THE WITNESS: So, yeah, I'm familiar with correlation.
 20 What specifically?
 21 **Q. (By Mr. Weber) Well, my question is do you have any quibble**
 22 **or a quarrel with the methodology of that correlation?**
 23 A. Well, I mean, the analysis goes through and calculates a
 24 correlation. But as it notes, "Correlation has no predictive
 25 value." So, and again, it's based on historic development

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1 pattern pre-MHA. So I don't have a quibble with what it
 2 does, but I wouldn't use it to predict necessarily what's
 3 going to happen.
 4 **Q. But do you acknowledge that that is substantial discussion of**
 5 **economic displacement that is in the EIS?**
 6 A. It's a statistical analysis. It's not an enumeration, per
 7 se. There's a margin of error. There's sample bias.
 8 There's, it's a statistical product. I suppose that as a
 9 statistical analysis it's fine, but I don't necessarily for
 10 those reasons would say that it is a proper and appropriate
 11 treatment of the issue.
 12 **Q. Can you turn to page 3.86 of the EIS?**
 13 A. Sure.
 14 **Q. So at the very bottom of the last paragraph, do you see the**
 15 **sentence that says, "The additional housing supply has the**
 16 **potential to reduce economic displacement pressures in the**
 17 **same neighborhoods?" And then it continues to the end of the**
 18 **page. Does that change your view of whether the dynamic of**
 19 **potential increases in price in a specific locality is**
 20 **addressed in the EIS?**
 21 MR. BRICKLIN: And what was the page number? I'm sorry.
 22 MR. WEBER: Page 3.86.
 23 THE WITNESS: No. It's two sentences. It's mentioning it
 24 might happen, but that's, it's two sentences of qualitative
 25 speculation. So no, it's a statement.

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1 MR. WEBER: That's all I have.
 2 HEARING EXAMINER: Redirect?
 3
 4 REDIRECT EXAMINATION
 5 BY MR. BRICKLIN:
 6 **Q. So on that last point, I mean, what kind of analysis would**
 7 **you think would be necessary to inform a decision-maker and**
 8 **the public about those impacts? Beyond those two sentences.**
 9 **What's missing?**
 10 A. Well, I think -- I don't think it would have been terribly
 11 difficult to take a look at different urban villages and
 12 track which ones have seen how much new development, has
 13 occurred, new apartments or whatever. And then check the
 14 assessor value data, county assessor value data, to see what
 15 has happened to home prices or other property values as new
 16 investment has gone into that, those urban villages. So to
 17 identify what's the affordability impact been in terms of
 18 numbers. That is an analysis that has precedent and it's
 19 fairly straightforward to do.
 20 **Q. Okay. And you were asked about material on page 3.48, titled**
 21 **"Housing Development and Change in Low-Income Households."**
 22 **And you said yes, there's a discussion there, but it's not a**
 23 **proper treatment of the issue. Flesh that out for the**
 24 **examiner, if you would. Why is that not a proper way to**
 25 **address that issue?**

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1 A. Well, it's purely statistical. I mean, it's not enumeration.
 2 You know, there's no enumeration of change. It's sort of,
 3 it's statistical analysis. It's sample, it's analysis based
 4 on sample rather than documented enumeration.
 5 **Q. What do you mean? I don't know what you mean by enumeration?**
 6 A. Like how many, how many, like, this was how many households,
 7 like, these are the known certain numbers what's happened
 8 versus this other variable, this has also happened. And so
 9 here's the relationship. We don't see any numbers really at
 10 least until -- we see correlations in Table 3.1-33 on page
 11 3.50.
 12 **Q. Mm-hmm.**
 13 A. But those are just correlations and statistical analysis.
 14 It's not actual number of things.
 15 **Q. So if you were a reader of the impact statement and you**
 16 **wanted to know the extent to which these two factors are**
 17 **correlated -- well, excuse me. Let me put it this way.**
 18 **On page 3.48 in the first paragraph, the last sentence**
 19 **says, "This can occur if new housing brings about amenities**
 20 **that make the neighborhood more attractive to higher income**
 21 **households, driving up rents and housing prices," and then it**
 22 **goes on, "While it's hard to predict the impact at the**
 23 **neighborhood scale, it's possible to examine the historical**
 24 **relationship between housing growth and change in the number**
 25 **of households at various income levels."**

SODT, Sara

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1 **Q. Okay. But that's only if it's a landmark; is it not?**
 2 A. But it's also unnecessary demolition of historic resources.
 3 **Q. And then I'd just like you to briefly take a look again at**
 4 **the comprehensive plan. Let me find that here quickly.**
 5 MR. JOHNSON: I think it's No. 3.
 6 MS. BENDICH: (Inaudible). Ah, here we are.
 7 **Q. (By Ms. Bendich) If you could turn to the page that has the**
 8 **little green sticky on it?**
 9 MR. ABOLINS: Which is?
 10 MS. BENDICH: This is in Section 3.5 -- I'm sorry. The
 11 comprehensive plan.
 12 **Q. (By Ms. Bendich) Could you read the number of the page**
 13 **that's at the bottom of that?**
 14 A. 66.
 15 **Q. 66. And has the 2035 -- did the City Council with the**
 16 **mayor's approval approve a section on preservation and**
 17 **cultural resources?**
 18 A. Yes.
 19 **Q. And if you'll look down, does it say what the benefits are**
 20 **of having historic preservation in that section?**
 21 A. Yes.
 22 **Q. And does it say that it's really important to acknowledge**
 23 **and protect Seattle's heritage?**
 24 A. Basically, it says that, yes.
 25 **Q. And does it say that historic resources revitalize**

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1 **commercial districts?**
 2 A. Not in those words, but it says (as read): "Incubates
 3 small, locally owned businesses. Revitalize" -- sorry.
 4 "Revitalize commercial districts and generate local jobs."
 5 **Q. And it's an important thing for tourism?**
 6 A. Yes.
 7 **Q. And then if you look down, are there land use goals?**
 8 A. Yes.
 9 **Q. And these comprehensive plan wants to maintain the City's**
 10 **cultural identity and heritage; is that correct--**
 11 A. Yes.
 12 **Q. -- land use G.14.**
 13 **And then policies. And it says LU 14.1. (As read):**
 14 **"Maintain a comprehensive survey and inventory of Seattle's**
 15 **historic and cultural resources"; do you see that?**
 16 A. Yes.
 17 **Q. Do we have that now in Seattle?**
 18 A. We started one, and then we did not -- we lost funding to do
 19 that.
 20 **Q. And does it say (as read): "Update the survey and inventory**
 21 **when developing a new community plan or updating an existing**
 22 **plan as appropriate"?**
 23 A. It does say that.
 24 **Q. As part of the MHA FEIS process, is it your understanding**
 25 **that this is basically developing a new community plan with**

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1 **the upzoning?**
 2 A. I -- I don't know if that's how it's termed.
 3 **Q. Okay. Are you familiar in general with the 2035**
 4 **comprehensive plan?**
 5 A. I am.
 6 **Q. Okay. And you're aware that there are sections there on**
 7 **neighborhoods?**
 8 A. Yes, although I -- I haven't read them necessarily.
 9 **Q. All right. We won't go there.**
 10 A. Where they're there.
 11 **Q. We won't go there.**
 12 MS. BENDICH: Okay. Thank you, Ms. Sodt. I have no
 13 further questions.
 14 MR. BRICKLIN: Very briefly.
 15
 16 C R O S S - E X A M I N A T I O N
 17 BY MR. BRICKLIN:
 18 **Q. And, Ms. Sodt, my name is Dave Bricklin. I'm representing**
 19 **SCALE, the coalition of groups.**
 20 **When you had said that your staff doesn't use the data**
 21 **that's more than five years old, that was for project**
 22 **review?**
 23 A. Yes.
 24 **Q. All right. How about for more general planning purposes,**
 25 **evaluating more problematic plan-level proposals? Do you**

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1 **reach back and look at older data then?**
 2 A. I haven't. I haven't had -- really had that opportunity to
 3 do that sort of work.
 4 **Q. So it hasn't presented itself one way or another?**
 5 A. Yeah.
 6 **Q. All right.**
 7 A. I mean, we use the database, the electronic database.
 8 **Q. Okay. Well, some of the information on the -- in the**
 9 **database is more than five years old, right?**
 10 A. That's true.
 11 **Q. So you're using data older than five years all the time; is**
 12 **that right?**
 13 A. Yes, but I -- like I said, I -- how I use the database or
 14 how my staff uses the database is we use it, but we also do
 15 a field survey to get an updated understanding of a
 16 property.
 17 **Q. Right. But that's not project-specific, right?**
 18 A. Mm-hm. And I don't know how other people have used our
 19 database.
 20 **Q. Okay. And were you here when Mr. Kasperzyk testified**
 21 **earlier about the information he provided your department on**
 22 **the Ballard historical inventory?**
 23 A. I wasn't here for that.
 24 **Q. You were not?**
 25 A. Yeah.

VOLUME 4

JUNE 28, 2018

Hearing - Day 4

In the Matter of the Appeal of: Wallingford Community Council, et al.

June 28, 2018



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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeal of:)
WALLINGFORD COMMUNITY COUNCIL,)
ET AL.,) W-17-006
) through
of the adequacy of the FEIS issued by the) W-17-014
Director, office of Planning and)
Community Development.)

Hearing, Day 4 - June 28, 2018
Heard before Hearing Examiner Ryan Vancil

Transcribed by: Chastity Feezle, WA-CRL
Court-Certified Transcription

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1 -o0o-

2 June 28, 2018

3

4 HEARING EXAMINER: All right. We continue with the

5 appellants' case.

6 MR. BRICKLIN: The appellants call David Sherrard.

7 HEARING EXAMINER: Please state your name and spell it for

8 the record.

9 THE WITNESS: My name is David Sherrard. And the last

10 name is spelled S-H-E-R-R-A-R-D.

11 HEARING EXAMINER: And do you swear or affirm the

12 testimony you will provide in today's hearing will be the

13 truth?

14 THE WITNESS: I do so affirm.

15 HEARING EXAMINER: Thank you.

16

17 DAVID SHERRARD: Witness herein, having first been

18 duly affirmed on oath, was examined

19 and testified as follows:

20

21 DIRECT EXAMINATION

22 BY MR. BRICKLIN:

23 **Q. Good morning, Mr. Sherrard. Welcome. Would you please tell**

24 **the examiner a little bit about your background?**

25 A. I'm a city planner. I have been for 41 years as of this

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1 coming August. I worked initially for the County and City

2 of Walla Walla, San Juan County. Worked for 17 years for

3 the City of Bellevue. I've been a planning consultant for

4 about 15 years. In addition to doing a variety of product

5 review and code development, I also have specialized in

6 environmental review. For 15 of the 17 years I was with the

7 City of Bellevue, I was responsible for doing the technical

8 review of every SEPA determination issued by the City for

9 every action, including private and public actions.

10 While at the City, I supervised a number of

11 environmental impact statements, including a number of

12 non-project environmental impact statements, as well as

13 writing some in cases where we thought it was more efficient

14 than hiring consultants.

15 **Q. All right. And what is your -- are you now retired? Are**

16 **you still working?**

17 A. I am still working. I have a on-call relationship with the

18 consulting firm that I've worked with for the last 15 years

19 or so, which allows me to work with other firms, which

20 allows me to extend my contribution to projects beyond just

21 the ones that Parametrix would be involved in.

22 **Q. And it looks like we neglected to include your CV in our**

23 **listing of exhibits. I don't know -- have you seen that?**

24 **I'm just noticing that that doesn't show up. So I may --**

25 **I'll deal with that later.**

Page 8

1 A. I believe we provided that to the City prior to the

2 deposition.

3 **Q. Yeah, I know, but I don't see it on the list that I provided**

4 **to you, unless you're seeing it there. I'll deal with that**

5 **later. I don't want to hold things up now. So what were**

6 **you asked to do with regard to this project?**

7 A. I was asked to review the draft and final environmental

8 impact statements and the various appendices and other

9 information in the voluminous discovery files that the city

10 had provided, to look at the specific issue of the adequacy

11 of alternatives in reference to the requirements of the

12 State Environmental Policy Act.

13 **Q. All right. And so what did you do to prepare for that, or**

14 **to analyze that issue, about the adequacy of the**

15 **alternatives?**

16 A. Well, of course, I refreshed myself in looking at the state

17 statutes and the SEPA guidelines, and then I looked through

18 the EIS and the supporting information, and evaluated that

19 in relation to the guidelines.

20 **Q. All right. And before we get into the details, can you**

21 **summarize your key findings?**

22 A. Yeah. First the city considered but rejected several

23 alternatives raised in scoping and DEIS comments. I believe

24 these alternatives were rejected inappropriately and should

25 have been included, because they meet the objectives of the

SHERARD, David

1 A. Yes.

2 **Q. And would you describe very briefly what that mechanism is?**

3 A. Well, I think that an excellent description of that is found

4 in Seattle City Council Resolution No. 31551.

5 **Q. Well, we'll get to that in a second. Just start out --**

6 A. Well, it basically means that you do not upzone, and you do

7 not necessarily require developments to provide affordable

8 housing, but you assess a fee, which is then used to develop

9 affordable housing elsewhere.

10 **Q. So --**

11 A. And, in fact, that is, in part, an element of this proposal,

12 except this proposal also includes the upzone.

13 **Q. Okay. And would -- in your opinion, would a -- does a**

14 **linkage fee have the ability to accomplish the objectives of**

15 **the proposal as stated in the EIS in section -- on page 2.4?**

16 A. Yes.

17 **Q. Can you explain how?**

18 A. It provides affordable housing.

19 **Q. Yep.**

20 A. It does not increase the supply of housing necessarily,

21 although I don't think that that really is an appropriate

22 goal. It does leverage directly development by requiring

23 development to pay a fee. That certainly is a very

24 effective leverage. And it certainly can be designed to be

25 equitable. You can design it in a way that, for example, if

1 (Exhibit No. 68 admitted into evidence.)

2 **Q. (By Mr. Bricklin) And does the EIS include in its**

3 **alternatives that are analyzed in detail a linkage fee**

4 **alternative?**

5 A. It does not include an alternative such as this, which I

6 find really peculiar, because it was on the table for years.

7 **Q. Did the city develop this linkage fee proposal that's**

8 **reflected in Exhibit 68 as just kind of back of the**

9 **envelope, or did they --**

10 A. Oh, no.

11 **Q. -- devote a substantial amount of time to it?**

12 A. They not only devoted a substantial amount of time, but a

13 substantial amount of consultant reports, I believe some of

14 which are in the whereas section. So they retained

15 consultants to do, you know, a wide variety of reports. You

16 know, this was a very thorough, multiyear program that came

17 up with a alternative that I believe everyone at the time

18 agreed was -- would be effective. And at that time they

19 thought it was the appropriate way to go.

20 **Q. And did the council when it adopted this resolution indicate**

21 **in the resolution whether they viewed this as a viable**

22 **alternative for mitigating the impact of new commercial and**

23 **residential development on the demand for affordable**

24 **housing?**

25 A. Yes.

1 you retain existing affordable housing, you know, you may

2 have another -- another type of fee assessed. Or in some

3 cases, for example, you could forgive fees for housing

4 within a certain rent-restricted range.

5 **Q. Assuming that the fees are used to produce additional**

6 **housing, would that also meet the objective of increasing**

7 **the production of housing?**

8 A. Yeah. You could design the fee to produce however much

9 money you, you know, you wanted.

10 **Q. All right.**

11 MR. BRICKLIN: This is SCALE 142, Jeff.

12 MR. WEBER: Okay.

13 (Exhibit No. 68 marked for identification.)

14 **Q. (By Mr. Bricklin) I'm handing you what's being identified**

15 **for this record as Exhibit 68, I believe, right? Do you**

16 **recognize that document?**

17 A. Yeah, that is the resolution that was passed by the council

18 as a result of a multiyear effort on the part of the council

19 subcommittee, in particular, Councilperson O'Brien, that

20 really went almost all the way towards developing such a fee

21 program.

22 **Q. All right.**

23 MR. BRICKLIN: We'd move the introduction of Exhibit 68.

24 MR. WEBER: No objection.

25 HEARING EXAMINER: 68 is admitted.

1 **Q. Do you know whether the drafters of the EIS in the document**

2 **indicated why they did not include this as a alternative**

3 **discussed in detail?**

4 A. In my looking through the document, I find absolutely no

5 mention of this option as -- as existing in their -- in

6 their knowledge.

7 **Q. All right. You noted that one of the objectives of the city**

8 **here is to -- let me get the words the right way -- to**

9 **distribute the benefits and burdens of growth equitably.**

10 **Can a linkage fee proposal accomplish that?**

11 A. Yeah, it can, and -- and, you know, it actually probably has

12 more potential to do so just because the city has a much

13 greater extent of control on where the money is spent and

14 where these affordable housing opportunities, you know,

15 occur.

16 **Q. And same question as to the alternative you mentioned**

17 **earlier, the inclusionary zoning alternative. Can that**

18 **alternative accomplish the city's objective of distributing**

19 **the benefits and burdens of growth equitably?**

20 A. Yes.

21 **Q. And why do you feel that?**

22 A. Well, you can use some of the same mechanisms used in the

23 MHA proposal. For example, not targeting areas where you

24 want to preserve existing housing. You also have the

25 opportunity of targeting the housing achieved development in

VOLUME 5

JUNE 29, 2018

Hearing - Day 5

In the Matter of the Appeal of: Wallingford Community Council, et al.

June 29, 2018



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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the matter of the Appeal of:)
WALLINGFORD COMMUNITY COUNCIL,) Hearing Examiner File
ET AL.,) WT-17-006 through WT-17-014
of adequacy of the FEIS issued)
By the Director, Office of)
Planning and Community Development)

HEARING, DAY 5 - JUNE 29, 2018
Heard Before Hearing Examiner Ryan Vancil

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Court-Certified Transcription

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2 June 29, 2018

3

4 MS. BENDICH: We have a few housekeeping matters before we

5 start.

6 HEARING EXAMINER: Okay.

7 MS. BENDICH: Do you want to start, Mr. Bricklin?

8 MR. BRICKLIN: Sure. Yesterday, one of the witnesses

9 referred to Exhibit 69 of a Seattle Times map that he noted

10 when it was printed the legend was cut off, so we have

11 printed the correct version which we'd like to substitute.

12 I've provided a copy to counsel.

13 HEARING EXAMINER: Okay.

14 Do you want to grab that? This is substituting for 69.

15 Anything else?

16 MS. BENDICH: Yes. The second matter is I believe we had

17 spoken before about trying to at least truncate some of the

18 witnesses by submitting declarations.

19 HEARING EXAMINER: Yes.

20 MS. BENDICH: And I do have one declaration here from

21 Barbara Warren. I have the original and a copy. I've

22 spoken with Counsel this morning and they believe they don't

23 need to cross-examine her, so I'd like to submit that

24 evidence as testimony today so we can get this filed.

25 HEARING EXAMINER: Okay.

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1 MS. BENDICH: And I am not sure what the procedure is, how

2 we admit this. You know, do we say, "I move the admission

3 of this testimony"?

4 HEARING EXAMINER: Yeah. I think we're just going to have

5 to admit it as an exhibit submitted by counsel without

6 somebody -- unless you're having some witness testify to its

7 contents or introducing it, there's no other way to do it.

8 MS. BENDICH: All right. Well, we'll do whatever we need

9 to do so that she doesn't have -- we don't have to have more

10 witnesses.

11 HEARING EXAMINER: Um-hum. If the City has any objection,

12 let us know --

13 MR. JOHNSON: No objection. Yeah. No objection.

14 HEARING EXAMINER: -- if you have an objection, right.

15 MS. BENDICH: Are we going to mark this as an exhibit

16 number, then?

17 HEARING EXAMINER: Yes.

18 MS. BENDICH: Oh.

19 MALE SPEAKER: What's the witness's name?

20 MS. BENDICH: Barbara Warren. (Inaudible).

21 HEARING EXAMINER: Right.

22 MR. JOHNSON: Is that the same that you've emailed to us?

23 MS. BENDICH: Absolutely.

24 MR. JOHNSON: Okay.

25 HEARING EXAMINER: This is marked as Exhibit 85.

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1 (Exhibit No. 85 marked for identification)

2 HEARING EXAMINER: It's dark. We're missing a light,

3 yeah. We may all go dark for a second here, but we're going

4 to have to switch the lights and make sure we've got them

5 all on. There we go. Okay.

6 And was there any objection?

7 MR. JOHNSON: No objection.

8 HEARING EXAMINER: So 85 is admitted.

9 (Exhibit No. 85 admitted into evidence)

10 MS. BENDICH: All right. And just for the record, I am

11 Judith Bendich for Friends of Ravenna-Cowen, and --

12 HEARING EXAMINER: I am sorry. Were there other

13 preliminary? My --

14 MS. BENDICH: Oh. No.

15 HEARING EXAMINER: Okay.

16 MS. BENDICH: That's it.

17 HEARING EXAMINER: I've got two.

18 MS. BENDICH: Oh, okay.

19 HEARING EXAMINER: One is I -- we've had some -- a little

20 confusion over getting started and the opening of the

21 hearing room. Our normal procedure is to open 15 minutes

22 before a hearing. I am happy to accommodate with all the

23 materials and such that we have here, but just so it's -- we

24 have a hard, clear time, I'll set it at 8:30 so that my

25 staff --

EWING, Kern

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1 of the city?

2 A. It names them.

3 **Q. It names them. Does it discuss what the impacts would be to**

4 **specific sections of the city?**

5 A. In a very general way. But I guess the answer is no.

6 **Q. Okay. With respect to Ravenna Park, is there any discussion**

7 **of the impacts to Ravenna Park?**

8 A. No.

9 **Q. And in your view, what would be -- if this upzoning were to**

10 **occur under, let's say, the preferred alternative, what**

11 **would be the impacts to Ravenna Park?**

12 A. I think there'd be two impacts. One would be the loss of

13 the vegetative buffer which would have a negative impact on

14 the maturation of existing forest in Ravenna Park and on

15 restoration projects there.

16 The second would be an increase in impermeable area and in

17 building mass, which would result in greater heat retention

18 by the concrete, pavement, buildings; greater heat

19 generation; heating and cooling installations in the

20 buildings. And so there would be more heat kept and then

21 rereleased in the general vicinity of Ravenna Park.

22 **Q. And why does that matter?**

23 A. Well, it matters because the system that's -- that people

24 are trying to restore or create in Ravenna Park is a system

25 which is based on a unique microsite kind of humidity,

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1 temperature, high temps, low temps, medium temperatures.

2 And so if you modify that, you're not going to have the kind

3 of vegetation, the kind of animals, the kind of food chain

4 in that system that you would have if it were more -- a more

5 natural climate.

6 **Q. And do you have any concerns about the water quality that**

7 **would seep into Ravenna Creek as a result of upzoning?**

8 A. I think the upzoning would create more potential for

9 pollution in terms of air pollution, which would then be

10 transferred to the soil and potentially into water pollution

11 and direct runoff onto the streets. If that got into the

12 park, that would be a problem.

13 **Q. Okay. Now, have you -- in reviewing this section of the**

14 **EIS, have you made some notes yourself as to specific**

15 **sections of this EIS with which you had concern?**

16 A. Yes.

17 **Q. Okay. As you go through those, please state the --**

18 **Okay.**

19 **Q. -- the page number and the paragraph that you're looking at.**

20 A. In -- on Page 3.316, the -- discussing the tree protection

21 ordinance. At the top of the page, there is a discussion of

22 exceptional trees. I would submit that the buffer along

23 62nd Street, the vegetative buffer that's on -- outside of

24 the park is -- would fall in the category of exceptional

25 trees are specifically protected and defined as a tree or

Page 227

1 group of trees that constitutes an important community

2 resource because of its unique, historical, ecological, or

3 esthetic values.

4 **Q. And why are you concerned about that with respect to Ravenna**

5 **Park? Is this a -- is this elsewhere in the document or as**

6 **a result of your experience? In looking at the upzoning**

7 **that is proposed, what's your concern?**

8 A. Well, if you violate the buffer -- if you remove the buffer,

9 you're going to have less functioning -- an ecosystem which

10 is less able to provide the environmental functions of water

11 quality improvement, improved hydrology, and improved

12 habitat.

13 **Q. Well, aren't you assuming that if you have RSL zoning, that**

14 **trees would be removed? Is that an underlying assumption**

15 **that you have?**

16 A. That is.

17 **Q. And why do you come to that assumption?**

18 A. Well, one reason is because the amount of coverage that is

19 proposed in RSL zoning is a big increase over the kind of

20 land coverage that you have in residential -- what is it --

21 single lot.

22 **Q. Single-family --**

23 A. Single-family residence. Excuse me.

24 So there'd be a lot more land that would be covered by

25 either buildings or by sidewalks or by driveways. And

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1 that's area that could not have trees in. So if there are

2 existing trees under the footprint of the new development,

3 those trees would have to go.

4 **Q. And what about shrubs?**

5 A. And shrubs.

6 **Q. Okay. There is a tree ordinance. Is there a shrub**

7 **ordinance?**

8 A. Not that I know of.

9 **Q. And is there a ground cover ordinance that you know of?**

10 A. Not that I know of.

11 **Q. Okay. Let's move on. And what's -- do you have other -- if**

12 **we could just go through page by page that you have concerns**

13 **about.**

14 A. On Page 3.321, there's --

15 **Q. Let me just go back to Page 3.18. Okay. We're just going**

16 **through this page by page.**

17 A. Okay. Right.

18 **Q. Were there examples on Page -- if you look down at the**

19 **bottom of the page, the very last -- next-to-the-last**

20 **sentence. And if you could talk generally what that**

21 **paragraph was talking about in terms of evaluation of sample**

22 **size to evaluate the impact of a residential single lot.**

23 **Could you discuss that for us?**

24 A. Are we on 3.320?

25 **Q. No. 3.318. If you could go back.**

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1 **Q. Is there -- are you aware that there's a requirement in here**
 2 **that they plan to add to say that even in the residential**
 3 **small lot, there had to be a tree planted?**
 4 A. Right.
 5 **Q. Well, what's your view of that?**
 6 A. It's hard to make a tree grow where it doesn't want to grow.
 7 And so I don't know why the residential small lot
 8 designation didn't have a tree planting requirement
 9 initially. But looking at those lots, there's not a whole
 10 lot of space to put trees into. And if you put trees into
 11 them, they can't be the kind of trees that would develop a
 12 very large canopy, because in that particular -- in those
 13 kinds of zones, there's a 30-foot height allowance. And so
 14 you've got some fairly tall walls adjacent to the tree
 15 planting areas.
 16 And in Seattle we have a fairly low sun angle. And so
 17 there would probably be a lack of available sunlight. And a
 18 lot of the root systems of the trees would probably be under
 19 impermeable areas, which would be difficult for them.
 20 **Q. When you say "difficult for the tree," what do you mean?**
 21 A. The root systems would probably suffer from lack of oxygen
 22 and potentially because of that, the trees might not reach
 23 the size that they would reach somewhere else.
 24 **Q. Professor Ewing, if you were conducting a study of the**
 25 **Ravenna -- the area in general, would it be -- would you be**

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1 **able to study it from -- on high from Google or lidar maps**
 2 **to see what the effects would be actually within Ravenna**
 3 **Park?**
 4 A. It would be very difficult to see below the top canopy
 5 layer, and so an on-site investigation would probably be
 6 more appropriate if you're looking at the effect, the
 7 impacts, or the inventory of shrubs, subcanopy trees and
 8 larger trees.
 9 **Q. Do you have a professional opinion about whether the EIS is**
 10 **adequate in your view to address the impacts in Ravenna**
 11 **Park?**
 12 A. It doesn't say -- I'd say no, it doesn't say much about the
 13 impact on Ravenna Park.
 14 **Q. And would you anticipate there would be significant impacts**
 15 **to Ravenna Park if this upzone took place?**
 16 A. It wouldn't be insignificant. Certainly the park is on a
 17 trajectory to become a more mature forested ecosystem.
 18 Changes like urbanization immediately adjacent to it would
 19 probably put the trees under more stress, and it would --
 20 either they wouldn't reach that end point or they would do
 21 so very much more slowly.
 22 **Q. So I'd like to draw your attention to Page 3.342, the very**
 23 **last item on that page, Paragraph 3.6.4. And could you read**
 24 **that to us, please?**
 25 A. "No significant unavoidable adverse impacts to ECAs or tree

Page 235

1 canopy cover have been identified."
 2 **Q. In your opinion, is that accurate?**
 3 A. No. I think there would be some adverse impacts.
 4 **Q. And with respect to Ravenna-Cowen -- not Cowen, but with**
 5 **respect to Ravenna Park in particular, would you expect**
 6 **those to be significant?**
 7 A. Yes.
 8 **Q. Okay. Thank you.**
 9 MS. BENDICH: We're finished with direct.
 10 HEARING EXAMINER: Thank you.
 11 MS. BENDICH: And do I have all my exhibits in?
 12 HEARING EXAMINER: Good question. Yes.
 13 MR. MITCHELL: Yes.
 14 MS. BENDICH: Okay. Thank you.
 15 HEARING EXAMINER: It's a little tough this time of the
 16 day.
 17 MS. BENDICH: Every day.
 18 HEARING EXAMINER: Cross, please.
 19
 20 **CROSS-EXAMINATION**
 21 **BY MR. MITCHELL:**
 22 **Q. Good afternoon, Professor Ewing. My name is Daniel**
 23 **Mitchell, assistant city attorney for the City.**
 24 **Professor Ewing, are you familiar with environmentally**
 25 **critical areas in Seattle?**

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1 A. I know what they are, yes.
 2 **Q. Can you list them? Are you able to do that?**
 3 A. May --
 4 **Q. Well, the types.**
 5 A. The types?
 6 **Q. Um-hmm.**
 7 A. I can certainly list some of them. Want me to list them?
 8 **Q. Sure.**
 9 A. Landslide areas, sloped, critical slope areas, wetlands,
 10 riparian zones, soil liquefaction, coal mines. That's all I
 11 can think of.
 12 **Q. Okay. Are you familiar with Chapter 2509 of the Seattle**
 13 **Municipal Code that protects Seattle's environmentally**
 14 **critical areas?**
 15 A. No.
 16 **Q. Okay. So there's an exhibit that was entered. It's Friends**
 17 **of Ravenna-Cowen 15, but we've marked it as --**
 18 MS. BENDICH: 112.
 19 MR. MITCHELL: Thank you.
 20 MS. BENDICH: If that's what you're referring to. The
 21 buffer?
 22 MR. MITCHELL: Yes. Hearing Examiner No. 112.
 23 **Q. (By Mr. Mitchell) So this article is titled "Wetland and**
 24 **Stream Buffer Size Requirements - A Review."**
 25 A. Yes.

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Hearing - Day Seven - 7/24/2018

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Planning and Community Development)

HEARING, DAY SEVEN - JULY 24, 2018
Heard Before Hearing Examiner Ryan Vancil

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Court-Certified Transcription

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2 July 24, 2018

3

4 HEARING OFFICER: We'll return to the record for July 24,

5 2018, continuing with the appellant's case.

6 MR. WEBER: Your Honor, before we begin, could I address

7 an issue about exhibits?

8 HEARING OFFICER: Yes.

9 MR. WEBER: Two issues, actually. So, at the end of the

10 day yesterday, I think there was an outstanding question

11 about Exhibits 121 and 124, which were the notes of Mr.

12 Thaler and Ms. Ayres, and we had reserved the question of

13 how to deal with those. I guess I want to say the City does

14 continue to object to introduction of those as exhibits

15 because they are in this case more or less notes of what

16 those two people said, but the City's position is it's

17 appropriate that if they're going to use notes the City get

18 to see those notes. But we're not comfortable with the idea

19 of those kinds of documents going into evidence because it's

20 quite possible that there would be material in those kinds

21 of documents that the person at the stand does not actually

22 talk about, and in that case it's essentially evidence

23 that's coming in without prior disclosure and someone has to

24 then sort through what the witness said versus what's in the

25 exhibit. It's problematic.

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1 And I want to point out that this is a potentially much

2 bigger issue, and I'm going to raise my second point, which

3 is -- so pursuant to your direction yesterday, at about

4 10:30 p.m. last night we received from Mr. Bricklin the,

5 quote/unquote, notes of Mr. Levitus' testimony. Mr. Levitus

6 is testifying later this morning. Those notes -- and we'll

7 get to this -- this is a 25-page document with citations,

8 footnotes, graphics. This is an expert report. There's no

9 way, unless Mr. Levitus is planning to speak for about eight

10 hours, that he's going to read this document. And so the

11 City's position -- this is an illustration of where this

12 whole issue is going -- is it really is not appropriate for

13 a document like that to be submitted into evidence at this

14 point. I mean, we asked for discovery of experts, we didn't

15 receive that document. We took Mr. Levitus' deposition, we

16 didn't receive that. Now we've received it 12 hours or less

17 before Mr. Levitus is testifying. And even if we were able

18 to effectively review that overnight and use it for

19 cross-examination, essentially it's creating a situation if

20 it comes into evidence where there's going to be an enormous

21 volume of material that should have been disclosed earlier

22 that Mr. Levitus will not have testified to. Your Honor is

23 going to have to sort through that material for purposes of

24 your decision, and then, God forbid, a review in court is

25 going to have to figure out what to do with all that. So we

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1 object to those notes being admit under to evidence.

2 And I guess at the risk of sounding too apocalyptic, I

3 think this is really a major question as to how hearing

4 examiner proceedings are going to go in the future. And if

5 the Examiner would like to have perhaps Mr. Bricklin give

6 you those notes so you can review them in camera and decide

7 how you want to deal with this, the City would be okay with

8 that. But I think you face a really significant issue here

9 as this has developed about how to deal with these kinds of

10 documents, and the City does object not only to 121 and 124,

11 but to the notes of Mr. Levitus, as well, being admitted.

12 HEARING OFFICER: Any response from the appellants?

13 MR. BRICKLIN: Well, there's kind of a couple of layers, I

14 guess. I certainly agree that -- I mean, first of all, I am

15 not sure that it's necessary that -- I think the Examiner

16 yesterday made the statement that, well, once they're marked

17 as exhibits I'd have to consider them in making my decision.

18 I'm not actually sure that's true. So, for instance, I

19 think about an exhibit that's offered and marked and then

20 the Examiner decides it's inadmissible for whatever reason.

21 It's still an exhibit. It still has an exhibit number.

22 It's part of the record. It's available in the record if

23 there's a later judicial review so they can look at the

24 exhibit, understand why it was objected to and whether the

25 objection was valid. So my point is that simply because a

BATAYOLA, Maria

1 that racial equity was considered in the development of this
2 chapter, yes or no? And it's -- it frames it, "Per the
3 language in the sensitive population section, page 3.323,
4 it's not clear if racial equity was considered in the
5 development of this chapter. The EIS explicitly needs to
6 name race and identify people of color, immigrants,
7 refugees, people with low incomes, limited English speaking
8 individuals as sensitive populations. We know that certain
9 populations are more susceptible to poorer health outcomes
10 as a result of environmental hazards due to the interplay of
11 socioeconomic conditions, stress, systemic racism and
12 affordability and access to high quality health care."

13 Q. Okay. And then the next one?
14 A. The next one is Exhibit 143. And this is an email string
15 from Mr. Dan Nelson, who is the project coordinator, to
16 Sarah Sodt, S-O-D-T. You know, I'm not familiar with this
17 document.
18 Q. Okay. Then let's pass it. And then I'll have the same
19 question about 140.
20 A. Yeah.
21 MR. THALER: The last one (inaudible) correct. 144.
22 MR. BRICKLIN: Yes.
23 Q. (By Mr. Thaler) This one is new to us, is it not? Do you
24 remember seeing this?
25 A. This is a new piece; however, it's very informative. It's

1 Development, recommendations on fair housing. It feels like
2 this analysis sought to defend a specific strategy instead
3 of recognizing the benefits and impacts new development has
4 on the neighborhood level.
5 Q. Okay. So we don't know who produced this document, do we?
6 A. We just found it from the hundred thousand documents --
7 Q. Yes, okay.
8 A. -- that came in from the City.
9 Q. Yes. Thank you.
10 MR. THALER: I'd move the admission of the series, 131
11 through 144, less the one document that was a duplicate that
12 got pulled off my pile from yesterday.
13 HEARING OFFICER: That was 139.
14 MR. THALER: Okay.
15 HEARING OFFICER: Also, you skipped over 143. The witness
16 indicated she was not familiar with it, and you said move
17 on. So are we still trying to admit that or --
18 MR. THALER: Say again? 143?
19 HEARING OFFICER: 3.
20 MR. BRICKLIN: Yes. The next to the last one.
21 HEARING OFFICER: It's headed "MHA EIS Racial Equity
22 Review Update." It's an email --
23 MR. THALER: It's --
24 HEARING OFFICER: -- dated October 31, 2017.
25 MR. THALER: Yes. It's of marginal relevance, so I will

1 called "Key Points from MHA DEIS Housing." And I don't know
2 what "SES" means (inaudible) I'm thinking it's the Office of
3 Sustainability, but I don't believe so.
4 What is important about this document is it actually
5 drills down to using the racial equity toolkit and the
6 specifics on how to apply it. So for example, it's talking
7 about the first bullet, "The datum must look at change in
8 racial demographics, because not doing so dismisses the
9 racial displacement of" -- "racial dimension of
10 displacement. The focus on cultural displacement can go
11 deeper even if it's hard to measure impacts. As written, it
12 looks very dismissive." The "it" is referring to the MHA --
13 the draft EIS. It talks about using income as a proxy for
14 displacement as a limited indicator and that the EIS must be
15 explicit about that particular limitation.
16 "The final EIS should also look at the households at 50 to
17 80 percent of the average median income, not just 50 percent
18 or below." So there's a series of guidance in terms of what
19 they needed to do. But I believe the most important one is
20 in the summary wherein it talks about, quote, a conclusion
21 that increasing development capacity encouraging market-rate
22 developments in high displacement risk areas is an
23 anti-displacement strategy in and of itself is a very
24 dangerous conclusion for Seattle and the field of planning
25 nationally and goes against the HUD, Housing and Urban

1 leave that out also.
2 HEARING OFFICER: Any objections from the City?
3 Exhibits 131 through 144, less 139 and 143, are admitted.
4 (Exhibit Nos. 131-138, 140-142 and 144 admitted into evidence)
5 HEARING OFFICER: Oh. I'm reminded that from yesterday we
6 also have 127 through 130 that have not been --
7 MR. THALER: And those are --
8 HEARING OFFICER: From today.
9 MR. BRICKLIN: This morning.
10 HEARING OFFICER: So Exhibits 127 through 130 have not
11 been admitted, also not been admitted.
12 MR. THALER: Oh, yes.
13 MR. BRICKLIN: I think they're the ones --
14 MR. THALER: Yeah. Those are the -- yes. I move them.
15 HEARING OFFICER: Any objections?
16 127 through 130 are admitted.
17 (Exhibit Nos. 127-130 admitted into evidence)
18 MR. THALER: No further questions.
19 HEARING OFFICER: Cross?
20
21 C R O S S - E X A M I N A T I O N
22 BY MR. WEBER:
23 Q. Good morning, Ms. Batayola. I'm Jeff Weber with the City.
24 Just a couple of quick questions.
25 So is it correct that apart from viewing the deposition of

LEVITUS, David

1 **Dan Nelson that you didn't have any personal involvement**
 2 **with the work of the racial equity review team?**
 3 A. This particular set of work?
 4 **Q. Correct.**
 5 A. That's correct.
 6 **Q. You didn't have any personal involvement?**
 7 A. That's correct.
 8 **Q. And as to the Exhibits 131 through 142, the document, the**
 9 **work of that team, is it correct that these were all**
 10 **comments dealing with the draft Environmental Impact**
 11 **Statement?**
 12 A. No.
 13 **Q. It's not correct?**
 14 A. My recollection is the -- excuse me. I flipped my thinking.
 15 You're correct. They're comments for the draft
 16 environmental EIS, and they were finalized and submitted
 17 after the final EIS was published.
 18 **Q. But they're not comments on the content of the final**
 19 **Environmental Impact Statement?**
 20 A. They should have been included in the draft EIS so that
 21 there is information to the community that says (inaudible)
 22 that it's -- I apologize. That said racial and social
 23 equity was considered. In the absence of including those
 24 comments, he gave the community the implication that racial
 25 and social justice and (inaudible) was done and that it was

1 HEARING OFFICER: It's all right. Nothing to be sorry
 2 about.
 3 Any redirect?
 4 MR. THALER: No, Your Honor.
 5 HEARING OFFICER: Thank you for your testimony,
 6 Ms. Batayola.
 7 THE WITNESS: Thank you.
 8 MR. THALER: I'll call Mr. Levitus.
 9 HEARING OFFICER: We'll take a recess.
 10 MR. THALER: All right.
 11 HEARING OFFICER: We'll come back. Let's just say 17
 12 after --
 13 MR. THALER: Okay.
 14 HEARING OFFICER: -- to give us all 15 minutes.
 15 MR. THALER: Okay. All right.
 16 (Recess)
 17 HEARING OFFICER: Okay. We'll return with Appellants'
 18 next witness.
 19 MR. BRICKLIN: All right. We'll call David Levitus.
 20 HEARING OFFICER: Please state your name and spell it.
 21 MR. LEVITUS: Hello. My name is David Levitus.
 22 D-A-V-I-D, L-E-V-I-T-U-S.
 23 HEARING OFFICER: And do you swear or affirm the testimony
 24 you will provide in today's hearing will be the truth?
 25 MR. LEVITUS: Yes, I do.

1 adequate. At the beginning of council, when we filed --
 2 when we filed our appeal, we had assumed --
 3 MR. BRICKLIN: Does she need water? Offer her some water.
 4 THE WITNESS: Toby, I can cry and I can continue.
 5 MR. THALER: Yeah.
 6 THE WITNESS: I need to just do this.
 7 We had assumed that the racial equity analysis was done
 8 properly. And I know, having been part of the City in the
 9 formative years on racial and social justice, that I
 10 believed -- I believed that the City had done it right. And
 11 so in our appeal, we had appealed because of the lack of
 12 specificity, we had appealed because of lack of
 13 alternatives, we had appealed because of our environmental
 14 justice issues. And to find out those EJ issues were
 15 actually called out by the Office of Sustainability and
 16 Environment when, in fact, on summary judgment that critical
 17 life issue (inaudible) was thrown out, and the lack of
 18 concurrency, to see that the Department of Transportation --
 19 there was one also that I saw from City Light saying they
 20 hadn't even considered all of that, densification of the
 21 north part of Beacon Hill, and to see that that information
 22 was not included, it feels like a betrayal.
 23 MR. WEBER: I have nothing further.
 24 THE WITNESS: I'm sorry.
 25 MR. THALER: Don't be sorry.

1 HEARING OFFICER: Thank you.
 2 MR. THALER: This one here is clean and --
 3 MR. LEVITUS: Oh, is that?
 4 MR. THALER: Yeah. And feel free to --
 5 MR. LEVITUS: Thank you.
 6
 7 DAVID LEVITUS: Witness herein, having first been
 8 duly sworn on oath, was examined
 9 and testified as follows:
 10
 11 DIRECT EXAMINATION
 12 BY MR. BRICKLIN:
 13 **Q. Good morning, Mr. Levitus. Would you please tell the**
 14 **Examiner a little bit about your background, who you are and**
 15 **what kind of work you do?**
 16 A. Sure. So I'll start with my education. I earned my
 17 bachelors in history and economics at New York University.
 18 My focus there, I did an honors thesis about urban
 19 development policy in New York, New Jersey, which was --
 20 they were cited by the National Endowment on the Humanities.
 21 I did a graduate research paper about a low-income housing
 22 program in New York City. And then I came to the University
 23 of Southern California, where I completed my masters and
 24 PhD, officially in history, but I had three exam fields, and
 25 one of those was in urban studies, building off my

1 coursework in urban history, geography, quantitative
2 methods. And I became an expert in patterns of metropolitan
3 development over the last century. And as -- during my time
4 in grad school, I became a reviewer for a leading journal
5 called "Urban History," including papers on the equity
6 implications of patterns of metropolitan development. And
7 so that's my educational background.

8 I, as professional experience, first started in housing in
9 college, worked for the former general counsel of the
10 New York Housing Department in his legal practice doing
11 research on specific cases and looked -- tracking housing
12 policy, as well as kind of the day-to-day work of his time
13 in the housing court there.

14 Since -- during grad school and since then, I've been very
15 active in a variety of issues in Los Angeles, where I've
16 lived for the last 13 years, including from 2013 to 2016 I
17 was the prime leader of a community organizing network
18 called LA Voice to work on affordable housing. I was
19 involved in that organization's work with a very
20 broad-ranging coalition called ACT-LA, which sought to
21 increase equitable development, especially around transit,
22 and was very active in crafting a policy that eventually
23 became a ballot initiative which passed in November of 2016,
24 Measure JJJ, and was a -- was kind of a -- was an
25 inclusionary zoning ordinance both around transit and for

1 that's what that process involved, yes.

2 **Q. Okay. Continue.**

3 A. And last, I had a role, public service, in an elected
4 official city body, the West LA-Sawtelle Neighborhood
5 Council, which includes approximately about 35,000 people
6 within it, its borders. I was an at-large board member
7 elected by the community, and I was vice chair of the
8 planning and land use management committee. And in that
9 role, I was tasked with reviewing proposed developments
10 across the entire area, which was experiencing rapid growth
11 and providing official feedback to the city planning
12 department, the city council. And I also participated in
13 some early comments on the Expo Transit Corridor
14 Neighborhood Plan that I mentioned earlier.

15 **Q. Okay. And what were you retained to do for SCALE?**

16 A. Sure. So I was retained to review the EIS, kind of assess
17 its adequacy concerning housing impacts, including
18 displacement, segregation, racial and social inequity, and
19 related matters, including, you know, relevant alternatives.

20 **Q. And what did you do to prepare for your testimony?**

21 A. So I reviewed and assessed the EIS, including its analysis
22 of impacts and range of alternatives presented. And I based
23 that on my firsthand experience, really kind of in the
24 weeds, researching and designing inclusionary housing and
25 zoning policy and working on zoning extensively, my academic

1 the whole city. And I was very active in developing that
2 and pushing for it.

3 My current profession, I do some writing, academic
4 writing, but my principal job is I'm the executive director
5 of a nonprofit called LA FORWARD working on a variety of
6 social justice issues in Los Angeles, and that includes
7 continuing to serve on the host community, the primary
8 governance body of this ACT-LA coalition, on several of its
9 committees and really shaping its work on -- whether it's
10 engaging with the local metro agency, community plan updates
11 and neighborhood planning, and statewide planning
12 legislation. And in that role, I've reviewed and analyzed,
13 given testimony about an inter-neighborhood plan called the
14 Exposition Transit Corridor Neighborhood Plan, gave
15 testimony at city council, and also was less involved but
16 involved in a South LA, Southeast LA community plan,
17 neighborhood plan process.

18 And then in terms of other public service --

19 **Q. And just stopping you there --**

20 A. Oh, yeah. Sure.

21 **Q. -- for half a second.**

22 A. Sure.

23 **Q. And did that include review of the environmental review
24 documents for that, for those projects?**

25 A. Right. Yeah. So in California they're called EIRs, and

1 expertise, background in patterns of urban development over
2 the long term from 1900 to the present, and then I also
3 consulted -- additionally, I consulted relevant professional
4 academic literature around inclusionary zoning, displacement,
5 and that sort of thing.

6 **Q. All right. So what I've done with a number of experts is
7 have them first sort of hit the bullet points. And I know
8 you're not wild about bullet points, but if you could
9 explain to the Examiner first what your main takeaways are,
10 and then we'll go back through them in a little more detail.**

11 A. Sure. So I'll start with some of my conclusions about the
12 range of alternatives that -- well, let me just say it. I
13 think that the EIS failed to consider a reasonable range of
14 alternatives that would have accomplished the stated
15 objectives without kind of the negative impacts of the
16 proposals that were included. And really, four main points
17 on that, possible alternatives.

18 One is higher in-lieu fees or a tiered system of in-lieu
19 fees. The higher the fee, the further away from the
20 development site in order to encourage more on-site
21 developments in the interest of preventing kind of
22 segregation and displacement in a particular neighborhood.

23 Number two, to increase the MHA affordable housing
24 requirements for -- consider those for study. The other
25 peer cities have done much higher, and that wasn't -- it

1 **Q. Okay. And you said that in terms of the feasibility of**
2 **doing this, that other jurisdictions are using fees higher**
3 **than what Seattle analyzed in this document?**

4 A. Um-hum.

5 **Q. Can you give some examples?**

6 A. Sure. Montgomery County, Maryland, the first inclusionary
7 zoning program, which has been tweaked a lot over the years,
8 currently is at 12.5 percent with no incentives for
9 developers. You know, New York and Chicago have both
10 tried -- had programs that range, but sometimes go up to 20
11 or 25 percent. San Francisco and Santa Monica both have
12 programs that are -- require affordable housing above 20
13 percent. So it's very common.

14 **Q. Okay.**

15 A. And the last -- my last point on that is, you know,
16 oftentimes, you know, the in-lieu fees get set -- this is --
17 sorry. I should be clear. So this is a quote from the
18 Department -- HUD, Housing and Urban Development, from their
19 document/report, "Inclusion ary Zoning in Mixed-Income
20 Communities." And it says that although -- you know,
21 although an option to provide in-lieu fees provides
22 developers and localities --

23 **Q. Slow down again.**

24 A. Sorry. "Although an option to provide" -- "to pay in-lieu
25 fees provides developers and localities with more

1 **and then the fees are used to build affordable housing in**
2 **the not-so-well-off parts of town. Is there a study by**
3 **Lincoln Institute of Land Policy that speaks to that issue**
4 **by Calavita and Mallach?**

5 A. There is. And that's -- I did not consult that directly,
6 but it's cited in the HUD report that I just mentioned.

7 **Q. All right.**

8 A. And basically that whether the market-rate housing gets
9 built in a gentrifying area, kind of a growing area where
10 there's increasing market-rate housing, or whether it's
11 built in an already well-off area, the fact that the
12 affordable housing is provided on site as a result of an
13 in-lieu fee and then that gets built in the low-income area
14 can accentuate inequality and displacement and segregation.

15 **Q. All right. All right. So then the third alternative you**
16 **discussed was a neighborhood-by-neighborhood rezoning**
17 **process. What did you mean by that one?**

18 A. So --

19 **Q. And let me ask you. So here you're shifting from analyzing**
20 **the fee and the performance part of the program to the**
21 **upzone part of the program; is that right?**

22 A. Right.

23 **Q. All right. And so what does this**
24 **neighborhood-by-neighborhood alternative look like with**
25 **regard to the upzone part of the program?**

1 flexibility, critics argue that these fees do not always
2 reflect the true costs of creating affordable housing,
3 particularly in areas of high land prices."

4 **Q. And so what do they mean by that?**

5 A. So that if the fees are set too low and the amount of money
6 generated isn't enough to actually build an affordable
7 housing unit, which is supposed to be the -- kind of the
8 equivalent of what would get built on site -- if you're
9 supposed to built 100 -- if you're building a hundred-unit
10 market-rate building and you're supposed to include, let's
11 say, 10 percent affordable units, the amount of money that
12 gets paid in fee instead of doing on site, if you do an
13 in-lieu fee, that amount of money might not be enough to
14 cover 10 units. And that would be a real problem and would
15 actually reduce the amount of housing, affordable housing
16 that gets built overall.

17 **Q. And so do you minimize that problem by charging a higher**
18 **fee?**

19 A. Yes, you can minimize it by charging a higher fee.

20 **Q. And is that the point of that HUD report that you were**
21 **quoting?**

22 A. Yes.

23 **Q. All right. And you mentioned earlier that the in-lieu fees**
24 **can actually exacerbate segregation and -- by building the**
25 **new higher-priced developments in the well-off parts of town**

1 A. Well, and I should say it's not just upzoning.

2 **Q. Okay.**

3 A. It could also be fees. But specifically, it's largely
4 talking about where to allocate density. I believe you
5 could kind of reduce the negative impacts and accentuate the
6 positive impacts by allowing neighborhood level planning to
7 drive the allocation.

8 **Q. How do you do that? What does that mean?**

9 A. Well, so as is common practice in cities across the
10 country -- it's been done in Seattle previously, it's
11 practiced in LA -- that you kind of have a general plan for
12 the city, but you kind of on a given geographic area -- LA,
13 for example, is broken into 35 areas, but you can break the
14 city into whatever size the city thinks is appropriate and
15 kind of do an analysis of what the situation on the ground
16 is there, who lives there, you know, demographically, what
17 are the assets there, and then make decisions about where
18 specific upzones should be and any -- and potentially
19 include any kind of particularly mitigating policies
20 designed for that special area. And that has been done.
21 You know, it is feasible to do a lot of different areas in
22 a relatively short period of time. In Los Angeles, which is
23 a city of 4 million, is now doing every neighborhood plan,
24 all 35 of them, over the next five years. It just takes
25 staff resources. And what it allows you to do is to kind of

1 to move into some of their -- these new affordable units and
 2 stay with -- in close contact with their communities and
 3 support networks and jobs and transit. If that's the best
 4 practice, you know, this problem of a lag -- see, the
 5 problem with the fact that it takes four years or even in a
 6 good scenario two or three years for these affordable
 7 housing units to be built means that the folks who are being
 8 displaced as a result of rising land values and rising rents
 9 are -- they've left. They're gone. The -- you know, the
 10 cow has left the barn. The horse has left the barn. It's
 11 too late. And you know, these questions about the amount
 12 and timing and pace of growth as ways of limiting
 13 displacement, it seems reasonable to me that like these
 14 would be included as part of the EIS, right? You know, and
 15 that in particular there be consideration given to how it
 16 would be possible to make sure that affordable units are --
 17 funded by in-lieu fees are, you know, placed into
 18 neighborhoods that are about to, you know, see an explosion
 19 of market-rate housing as an explosion of upzoning.
 20 So basically, you know, this plan threatens displacement
 21 and segregation from two different angles. One, it's
 22 upzoning a lot of these kinds of areas, even ones that are
 23 high displacement risks, supposedly. And at the same time,
 24 it's not going to be able to -- those new units that are
 25 coming in because their in-lieu fees are not on site are

1 MR. WEBER: Um-hum.
 2
 3 CROSS - EXAMINATION
 4 BY MR. WEBER:
 5 **Q. So, Mr. Levitus, I'm Jeff Weber With the City Attorney's**
 6 **Office. I'll have a few questions for you.**
 7 A. Sure.
 8 **Q. Have you ever been involved in preparing or drafting an**
 9 **Environmental Impact Statement?**
 10 A. I have not been involved on the city level, but I've been
 11 deeply involved in reviewing these as a part of professional
 12 work and public service work and very familiar with the
 13 issues that are involved with them.
 14 **Q. But not as a preparer or a drafter?**
 15 A. No.
 16 **Q. So you've talked about various benefits that you believed**
 17 **would flow from having affordable units on site. I just**
 18 **want to understand. Is it necessary that the affordable**
 19 **units be actually on site in the development itself or just**
 20 **that they be nearby in a certain type of neighborhood?**
 21 A. I think generally there's some research showing that it's
 22 best if they are mixed right in. It really ensures a level
 23 of integration that you can't avoid. It's also good to have
 24 them nearby, but if you're able to have them on site, that
 25 ensures a level of social mixing that wouldn't necessarily

1 likely to be far away. And so that seems like that scenario
 2 was not analyzed at all in this document.
 3 **Q. All right. So that -- so this is not an issue where you can**
 4 **point to something in the EIS that's -- you're taking issue**
 5 **with, but rather, something that's simply missing from the**
 6 **analysis?**
 7 A. Right. And I think that's exactly right that it's generally
 8 omitted. You know, there's a mention that Alternative 1 is
 9 least likely to reduce displacement.
 10 **Q. That's the no action alternative?**
 11 A. Right. The no action alternative. Because it will generate
 12 many fewer income-restricted units. But that doesn't take
 13 into consideration how the increase in development capacity
 14 of the upzoning will generate, you know, say, displacement
 15 in a certain area. So it's -- you know, and one could
 16 analyze a variety of different programs, as I've mentioned
 17 earlier today, that would, you know, have -- my point is
 18 that it's not really the number of affordable units that are
 19 built, but when and where they're built. And that's really
 20 crucial and that's not analyzed sufficiently in this
 21 document.
 22 **Q. All right.**
 23 MR. BRICKLIN: I think that's all I have for this witness.
 24 Thank you.
 25 HEARING OFFICER: Cross.

1 even occur in the same neighborhood.
 2 **Q. Have you ever conducted any economic modeling or feasibility**
 3 **analysis related to the feasibility of development projects?**
 4 A. I haven't -- I have not conducted a formal analysis, but I
 5 have, you know, reviewed kind of that type of analysis for
 6 different cities over the years and am kind of familiar with
 7 the general act.
 8 **Q. So have you reviewed or performed any economic feasibility**
 9 **analysis specifically about this proposal and whether the**
 10 **higher affordable housing requirements you're proposing**
 11 **would actually be possible without negatively affecting**
 12 **housing production?**
 13 A. Well, I think they would be -- I haven't performed a, you
 14 know, extensive economic analysis myself, but I think given
 15 what we've seen in many peer cities, they would be -- you
 16 know, certainly it's likely they would be feasible creating
 17 the outcomes I've talked about.
 18 **Q. But you haven't reviewed or done any analysis that relates**
 19 **to Seattle in particular?**
 20 A. I mean, I think peer cities are not so different, but I have
 21 not conducted a specific analysis, economic analysis of
 22 Seattle.
 23 **Q. So you talked about the relationship between the performance**
 24 **requirement versus the fee in lieu. Can you explain or do**
 25 **you know how that economic relationship was set in this case**

1 **for the proposal before us?**
 2 A. I can't recall the specific details. I reviewed it, but
 3 I -- it's not coming to mind right now, but -- yeah.
 4 **Q. Have you done any economic analysis to relate those two**
 5 **variables and determine on your own whether you think that**
 6 **economic relationship is correct?**
 7 A. Well, I think there's no one correct answer. You know,
 8 with -- unlike a linkage fee where there has to be a nexus
 9 study, you know, this is really a discretionary question of
 10 do you want to incentivize on-site housing or off-site
 11 housing. And so, you know, I haven't done a study of what
 12 level would cause what to happen, but clearly, the history
 13 of the -- some of the policy in Seattle has been that
 14 developers like to pay into in-lieu fees instead.
 15 **Q. So you talked about a number of different alternatives that**
 16 **you thought should have perhaps been considered, and you**
 17 **said that you thought they would meet the objectives as**
 18 **listed in the EIS. And one of the alternatives you were**
 19 **talking about was a linkage fee in combination with some**
 20 **other things. I'm curious whether you think a linkage fee**
 21 **alone, just a straight linkage fee with nothing else would**
 22 **serve the objectives of the EIS, including the objective of**
 23 **increasing overall production of housing.**
 24 A. Well, I think a linkage fee alone would certainly serve the
 25 objective of, you know, creating more affordable housing.

1 **the rate of production of units and what specifically it**
 2 **would take to reach 6,200 under an approach of the kind**
 3 **you're talking about?**
 4 A. Have I done kind of a detailed economic analysis? No. But
 5 looking at kind of generally growth rates in Seattle, under
 6 new construction and the city size compared to a, say, place
 7 like LA, I've kind of rough eyeballed it, but I have not
 8 done a detailed analysis.
 9 **Q. So at one point you were also talking about the idea of sort**
 10 **of spreading out the program to broader geographical areas**
 11 **with the idea that maybe then you wouldn't have to upzone so**
 12 **much in certain places. How do you understand or what do**
 13 **you understand the current geographical extent of the**
 14 **proposal to be in terms of the areas being upzoned?**
 15 A. Well, it's all the -- I believe all the urban villages, and
 16 so -- are where the -- most of the development increase is
 17 going to be concentrated.
 18 **Q. So if you were to spread this proposal more broadly**
 19 **geographically, where would you spread it to? What areas**
 20 **would you put it in that it isn't already proposed to be in?**
 21 A. Well, I think that's where the kind of the more granular
 22 neighborhood contextual analysis would come in is finding
 23 places where the development capacity would be appropriate.
 24 You know, I think the -- one of the alternatives I
 25 mentioned, a combination of a linkage fee and expanded

1 It would -- because it wouldn't do upzoning, would
 2 potentially reduce displacement pressures in certain
 3 neighborhoods and spread out the cost of supporting
 4 affordable housing more widely. Whether it would generate
 5 overall more production, it's unlikely to do that. But
 6 that's why I was talking about, you know, there -- these
 7 policy mechanisms are often paired together. It's a little
 8 bit like, you know, Obamacare, the ACA, you need the mandate
 9 and the -- this other thing. They only work together, so...
 10 **Q. So one of the other alternatives you talked about was maybe**
 11 **a more neighborhood-based planning approach. And you**
 12 **mentioned that Los Angeles had done that. It had taken five**
 13 **years. Does a multiple-year or a five-year lag due to**
 14 **neighborhood planning affect whether the City would be able**
 15 **to meet the objective of creating a certain number of**
 16 **affordable units in a certain amount of time?**
 17 A. Well, it's important to note that that's when all the plans
 18 are finish ed being updated. Some of the plans are already
 19 updated in the five years. So I think it's a rolling
 20 process, but I think it is -- it would be reasonable to
 21 reach that objective of 6,200 affordable units, you know,
 22 given what we've seen in other cities by the number of units
 23 created in a very short period of time. So I think that
 24 would be reasonable.
 25 **Q. Have you, yourself, done analysis to look at the question of**

1 incentive zoning program, you know, would hopefully
 2 generate -- instead of generating concentrated new
 3 development of -- it would generate -- in just some urban
 4 villages, it would generate it more widely upsizing those
 5 urban villages so it's less intrusive.
 6 **Q. So on the displacement question, you talked about how you**
 7 **would like to see -- or an alternative approach to getting a**
 8 **displacement issue would have been more granular**
 9 **neighborhood studies. Are you talking about in this context**
 10 **getting at the economic displacement issue?**
 11 A. I think there are -- so there's three kinds of displacement,
 12 as the EIS talks about: Physical, economic, and cultural.
 13 And I think there I was talking about kind of these
 14 displacements. Mostly about economic, but about the others
 15 as well.
 16 **Q. Okay. So obviously you have a lot of critiques of the**
 17 **correlation. If you were to do a more granular study of**
 18 **economic displacement and you wanted it to be quantitative --**
 19 A. Yeah.
 20 **Q. -- what would that look like? Do you have any**
 21 **recommendations or thoughts about that?**
 22 A. Sure. I mean, there's a variety of, you know, scales you
 23 could do it at. You could do it at a level of each urban
 24 village. You could do it a collection to census tracts.
 25 You could carve up the city in a lot of ways. But, you

VOLUME 8

JULY 25, 2018

Hearing - Day 8

In the Matter of the Appeal of: Wallingford Community Council, et al.

July 25, 2018



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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:)
)
WALLINGFORD COMMUNITY)W-17-006
COUNCIL, ET AL.,)through
)W-17-014
Of the adequacy of the FEIS issued)
By the Director, Office of Planning)
And Community Development.)

Hearing, Day 8 - July 25, 2018
Heard before Hearing Examiner Ryan Vancil

TRANSCRIBED BY: Bonnie Reed, CET

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July 25, 2018

HEARING EXAMINER: We're returning with appellants' case, July 25, 2018.

MS. SAWYER: Hello.

HEARING EXAMINER: Good morning.

MS. SAWYER: Oh, I'm sorry, I'm Amanda Sawyer, I'm with JuNO. And I'll be questioning this morning.

HEARING EXAMINER: Are the --

MR. BRICKLIN: And I think if I can facilitate this, there's a question about the documents. There's at least one, and maybe more than one, very thick document, traffic data. And I think the question is whether we need to put in a 100-page document with a lot of data in it or --

MS. SAWYER: Or I have a smaller copy --

MR. BRICKLIN: There's a summary. I gather that the data that fills up the bulk of that document is summarized. And there's no question as to the summary in the front of that document is that right? Is that what the summary is?

MS. SAWYER: Well, it's an additional exhibit that's used that data.

HEARING EXAMINER: Has the city seen the summary?

MR. BRICKLIN: No -- well, yes, because it was provided as

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one of the --

MR. JOHNSON: So if you can give us the exhibit number, we can look at it.

MR. BRICKLIN: So do you know the JuNO exhibit number?

MS. SAWYER: The JuNO exhibit number is 107:

MR. KOEHLER: For the big fat one.

MS. SAWYER: I can provide everyone with their copy.

MR. BRICKLIN: Sure you can do that if you want.

MR. KOEHLER: Maybe we can do this as we're going.

MR. BRICKLIN: That's fine if you want to do it when you get to it. Yeah, I think that would be easier.

MS. SAWYER: This is your copy. I made a copy of everything that we referred to and (inaudible).

MR. MITCHELL: This is ours.

MR. BRICKLIN: And I think I heard Amanda say that she's not planning to ask all of those be admitted but rather the witness will be referring to some of them. I say that in terms of not asking the clerk to mark them all initially.

HEARING EXAMINER: Right. We'll do those as we come in because I'm not sure if these are all in the order where they will be accepted or not. This is a stack enough that I don't want to get too far into marking things in advance.

MS. SAWYER: Thank you.

HEARING EXAMINER: Are you ready to proceed with the witness?

KOEHLER, Rich

1 as data that I'm not sure the witness can speak to the
2 reliability of, that's it.

3 THE WITNESS: What I can say is the mere part of the
4 design and review packets that I looked at from the city's
5 website.

6 HEARING EXAMINER: Okay. Well, yeah, the testimony speaks
7 for itself in that respect, thank you, overruled.

8 A. So I was just explaining what this is. And it's a
9 tabulation of all the units that were in the development
10 pipeline at the time we submitted our letter to Sam Assefa.
11 When I added them all up, it added up to 2,194 units of
12 which I was trying to ascertain how many of those units were
13 already incorporated in the baseline of 3,880 housing units
14 that had been provided by the city. Because obviously, if
15 that's how many are in the development pipeline, that
16 represents a tremendous percentage of the baseline.

17 It could be, however, that these are parts of the
18 projected growth. However, the projected growth of 3,000
19 units is still very small or small compared to what was in
20 the development pipeline of two years. So I was having
21 difficulty trying to establish whether the baseline and
22 growth projections were underestimated to what I was seeing
23 within the development pipeline.

24 **Q. And did Sam Assefa or someone from the city respond to the**
25 **information provided in this letter?**

1 **FEIS. Do you recognize this table?**

2 A. Yes, it's a summary of street occupancy, which is a parking
3 assessment by these neighborhoods.

4 **Q. Is the West Seattle Junction listed on this table?**

5 A. No, it's not listed. And I was looking for it because what
6 a lot of people do in West Seattle Junction is they drive
7 their cars up there from outside West Seattle Junction and
8 park in order to take the bus, but it wasn't -- West Seattle
9 Junction was not listed on this table.

10 **Q. Thank you. And if we could turn to page 148-9, again. This**
11 **is not a new exhibit, it's part of the record in Exhibit 2.**
12 **Do you recognize this table?**

13 A. Yes, it's a map of screen lines from the FEIS transportation
14 section.

15 **Q. And what does this map in the first table show?**

16 A. Well, the table shows a list of these screen lines. And it
17 shows what the level of service standard is for each one.
18 It shows that by the time the alternative for no action is
19 completed in 20 years, three of those screen lines will be
20 out of level of service compliance. And the map depicts
21 which three screen lines are the ones that would be out of
22 level of service compliance.

23 **Q. Thank you. And on page 3.284 in this tab, how does it**
24 **describe those impacts?**

25 A. What it says is that any screen line that's out of

1 A. He responded but he didn't respond to this particular
2 question of whether the development pipeline was
3 incorporated in the baseline or growth patterns or not.

4 **Q. Okay, thank you. I'd like to turn our attention to**
5 **transportation. Mr. Koehler, how long have you lived in**
6 **West Seattle?**

7 A. 1997.

8 **Q. And during that time, did you commute to work?**

9 A. Yes. I've commuted to work during that entire time period.

10 **Q. And where did you work when you were commuting from West**
11 **Seattle Junction?**

12 A. I always work off the peninsula, so I'm either commuting
13 downtown or I'm commuting to -- at one point commuted to
14 north of Seattle to Lynnwood. And at one point I commuted
15 to Redmond.

16 **Q. And what was your method of commuting?**

17 A. Currently I take the bus probably three or four days a week.
18 And I drive one to two days a week if I have a family event
19 or something I need to do after work.

20 **Q. And how has your commute been?**

21 A. It's been -- it's taking ever longer to get to my place of
22 work in the morning and it's been quite difficult to get to
23 work.

24 **Q. Thank you. If we could turn to tab 148-8, this is not a new**
25 **exhibit. This is part of the record in Exhibit 2, the MHA**

1 compliance and includes at least a .01, which is roughly a 1
2 percent impact that MHA would create as additional load on
3 that screen line should be called out as a potentially
4 significant impact and it calls out those three.

5 **Q. Thank you. And please turn to tab 148-10. This is not a**
6 **new exhibit, it's already part of the record as Exhibit 2,**
7 **the MHA FEIS. Do you recognize this page?**

8 A. Yes, it's a page from the FEIS transportation section.

9 **Q. And what does the table show?**

10 A. The table shows the level of service standards for traffic
11 corridors from A to F. And the document later refers to
12 levels of service E and F being unacceptable.

13 **Q. Thank you. And what does the map on the next page show?**

14 A. The map shows the transit corridors that were studied by the
15 MHA FEIS.

16 **Q. And on the following page there's a table, what does this**
17 **table show?**

18 A. The table shows the transit times and levels of service at
19 peak for each of the corridors that are depicted on the map.

20 **Q. And did any of these line items in the table surprise you?**

21 A. Yes, line 7, which is the West Seattle Bridge Corridor
22 surprised me quite a bit.

23 **Q. And why is that?**

24 A. Because it doesn't match my personal experience. The level
25 of service travel time for eastbound on west Seattle bridge

1 is listed at 8.5 minutes for a level of service of D. But
 2 I've found that my own personal commute across the West
 3 Seattle Bridge is much longer than that. And I personally
 4 set aside roughly 30 minutes for that bridge crossing.
 5 **Q. And so in order to investigate this further than just your**
 6 **personal feelings, can we turn to tab 77 and 78? I would**
 7 **ask that these images be viewed together and marked as a**
 8 **single exhibit, Exhibit 171. Do you recognize these photos?**
 9 **(Exhibit No. 171 marked for identification.)**
 10 A. Yes, these --
 11 MR. BRICKLIN: One second, 171; is that right?
 12 MS. SAWYER: Yes, 171.
 13 MR. BRICKLIN: I don't think she's been wrong yet.
 14 A. These are photographs of SDOT transportation sign which is
 15 suspended over Fauntleroy Avenue heading east, which is
 16 giving traffic advisories as to what the transit time over
 17 the West Seattle Bridge would be to I-5 which roughly
 18 equates to corridor number 7. You can see that one of them,
 19 which was taken on November 21st, not 2017, it indicates a
 20 15 minute crossing time. And on the next page, on November
 21 30th, it indicates a crossing time of 18 minutes.
 22 MS. SAWYER: I'd like to offer Exhibit 171 into evidence.
 23 MR. JOHNSON: Could I just ask for a little more
 24 foundation in terms of clarifying that the witness took the
 25 photo and time the photo was taken and et cetera?

1 5:45 p.m. for a Wednesday in March. The lower and upper
 2 travel times reported by Google were recorded and the travel
 3 time was calculated as the average of the minimum times plus
 4 75 percent of the difference between minimum and maximum
 5 times. This methodology accounts for the higher travel
 6 times experienced during the peak hour. And since this was
 7 p.m. peak, is probably why I couldn't find any kind of
 8 impact eastbound because traffic eastbound is the a.m.
 9 MR. BRICKLIN: Is what?
 10 A. Is the morning.
 11 **Q. So you feel the deficiency in the MHA FEIS is using only**
 12 **p.m. travel times instead of a.m. in certain areas where --**
 13 A. Yeah, I suspected that, so I wanted to conduct my own kind
 14 of further investigation to justify whether my belief that
 15 the FEIS use of p.m. peak hour underestimated the actual
 16 peak times on the West Seattle Bridge of corridor 7.
 17 **Q. Thank you. If we could turn to tab 79, 81, 84, 88, they're**
 18 **marked together. I'd like to evaluate these documents**
 19 **together and mark them as a single exhibit, 172. Mr.**
 20 **Koehler, what are these images?**
 21 **(Exhibit No. 172 marked for identification.)**
 22 A. On the morning of April 18th, which is a Wednesday, I did
 23 what I believed to be corridor 7 quarries from Google Maps
 24 which matched the city's methodology to try to understand
 25 whether the travel times for eastbound peak would be

1 THE WITNESS: Yep. I took these photos from my car at
 2 roughly between 7:00 and 8:00 in the morning.
 3 MR. JOHNSON: On the dates?
 4 THE WITNESS: On the dates indicated, yes.
 5 MR. JOHNSON: No objection.
 6 HEARING EXAMINER: 171 is admitted.
 7 (Exhibit No. 171 admitted into evidence.)
 8 MS. SAWYER: Thank you.
 9 **Q. (By Ms. Sawyer) And when you compare your personal**
 10 **experience to the FEIS, how do you explain the discrepancy?**
 11 A. Well, when I saw the discrepancy between the table and my
 12 own personal experiences, I wanted to dive in and understand
 13 what the methodology was that the city used to compute the
 14 peak traffic times.
 15 **Q. Thank you. So if we turn to the next tab, tab 149. This is**
 16 **not an exhibit, it's already part of the record as Exhibit**
 17 **2. Do you recognize this page?**
 18 A. Yes, it's from one of the appendices from the MHA FEIS
 19 transportation section.
 20 **Q. And could you read this for us, the corridor travel time**
 21 **section?**
 22 A. Corridor travel times were estimated using Google maps
 23 search results for each study corridor during a week day
 24 p.m. peak hour. Each travel time corridor was mapped at the
 25 depart at time, was set to 5:00 p.m., 5:15 p.m., 5:30 p.m.,

1 accurate or what they would be for the a.m. peak.
 2 **Q. And tab 79, what does it show?**
 3 A. It shows that for corridor 7, the transit time would have
 4 been 16 minutes according to Google.
 5 **Q. And on tab 81, the next page, can you explain what this is**
 6 **depicting?**
 7 A. It shows that the traffic is getting slightly worse and so
 8 the transit time across corridor 17 would have been 17
 9 minutes at that time of day.
 10 **Q. And can you explain on the next page what tab 84 shows?**
 11 A. Eighty-four shows that by 8:15 in the morning, the transit
 12 time had degraded to 20 minutes and it was also interesting
 13 to note that at that point, Google was starting to recommend
 14 that customers divert through neighborhood streets in order
 15 to complete that journey as an alternative to corridor 7,
 16 which matches my own personal experiences of how people
 17 choose to drive.
 18 **Q. And lastly on tab 88, could you explain what is depicted on**
 19 **this tab?**
 20 A. It shows that by 8:30 in the morning, the traffic time had
 21 degraded to 21 minutes.
 22 MS. SAWYER: I'd like to offer Exhibit 172 into evidence.
 23 MR. JOHNSON: No objection.
 24 HEARING EXAMINER: 172 is admitted.
 25 (Exhibit No. 172 admitted into evidence.)

1 **Q. (By Ms. Sawyer) And in reference to these maps during this**
2 **time, if you apply the city's methodology to these, what**
3 **level of service would you have?**

4 A. So using the city's methodology which is to take 75 percent
5 of the difference between the minimum and maximum, I would
6 have computed the travel time of 20 minutes at peak which is
7 far different from the 8.5 minutes that was depicted in the
8 EIS and would have been a level service of F as opposed to a
9 level service of D.

10 **Q. Thank you. Along the same lines, if we turn to tab 80, 82,**
11 **85 and 89, I'd ask that we evaluate these together like we**
12 **did with the previous documents and would like this to be**
13 **marked as a single exhibit, 172 -- I'm sorry, 173. Mr.**
14 **Koehler, what are these images?**
15 **(Exhibit No. 173 marked for identification.)**

16 A. Well, these are images also from that same morning. What I
17 did is I made a Google query that ran beyond corridor 7 onto
18 a little bit of northbound I-5. And I did that because the
19 travel times northbound on I-5 can be substantially
20 different than southbound because there's so much more
21 traffic and congestion headed north than south. So I
22 prepared these for that reason and found that the travel
23 times northbound were in fact worse than the travel times
24 indicated on corridor 7 without having -- including the I-5
25 north component.

1 north, 8:15, 21 minutes. And then 8:30 in the morning, 27
2 minutes to get to SR 99 across that junction.

3 **Q. So that was 86 and 90 respectively?**

4 A. Correct.

5 MS. SAWYER: Thank you. I'd like to offer Exhibit 174
6 into evidence?

7 MR. JOHNSON: No objection.

8 HEARING EXAMINER: 174 is admitted.

9 (Exhibit No. 174 admitted into evidence.)

10 MS. SAWYER: Thank you.

11 **Q. (By Ms. Sawyer) Thank you. And if we could turn to tab 87.**
12 **We would like this to be marked as Exhibit 175. Mr.**
13 **Koehler, do you recognize this image and what is it?**
14 **(Exhibit No. 175 marked for identification.)**

15 A. Yes, it's a snapshot that I took from the Seattle Department
16 of Transportation page which allows for a realtime rendering
17 of traffic conditions. It shows that -- I did it because I
18 wanted to corroborate the Google queries to see if there
19 were any traffic incidents reported on this map. And it did
20 corroborate the information provided by Google. And it did
21 not show any traffic incidents.

22 MS. SAWYER: Thank you. I'd like to offer Exhibit 175
23 into evidence.

24 MR. JOHNSON: No objection.

25 HEARING EXAMINER: 175 is admitted.

1 **Q. And can you explain tab 80, what time this was taken at?**

2 A. That was 7:45 in the morning for a transit time of 19
3 minutes.

4 **Q. And tab 82?**

5 A. Transit time 21 minutes taken at 8:00 in the morning.

6 **Q. Tab 85, please.**

7 A. 8:15 in the morning, transit time 27 minutes.

8 **Q. And lastly tab 89, please.**

9 A. 8:30 in the morning, transit time 24 minutes.

10 MS. SAWYER: Thank you. I'd like to offer Exhibit 173
11 into evidence?

12 MR. JOHNSON: No objection.

13 HEARING EXAMINER: 173 is admitted.

14 (Exhibit No. 173 admitted into evidence.)

15 MS. SAWYER: Thank you.

16 **Q. (By Ms. Sawyer) And lastly with the Google Map if we could**
17 **please turn to Exhibits 83, 86 and 90, I'd like to ask that**
18 **these be evaluated as a single item and marked -- as a**
19 **single exhibit marked 174. Mr. Koehler, what do these**
20 **images show?**

21 **(Exhibit No. 174 marked for identification.)**

22 A. They show another popular route across West Seattle Bridge,
23 which is to take SR 99 north.

24 **Q. And tab 83, what time and what information does this show?**

25 A. That was 8:00 with a transit time of 21 minutes to SR 99

1 (Exhibit No. 175 admitted into evidence.)

2 MS. SAWYER: Thank you.

3 **Q. (By Ms. Sawyer) And turning to tab 101, we would like this**
4 **to be marked as Exhibit 176. Mr. Koehler, do you recognize**
5 **this image and what is it?**

6 **(Exhibit No. 176 marked for identification.)**

7 A. Yes, it's a screen shot from the West Seattle Blog taken on
8 that same morning. I did this because I wanted to see
9 whether the West Seattle Blog was reporting any traffic
10 incidents that might have affected those traffic times and
11 confirmed that it did not.

12 MS. SAWYER: Thank you. I would offer Exhibit 176 into
13 evidence.

14 MR. JOHNSON: No objection.

15 HEARING EXAMINER: 176 is admitted.

16 (Exhibit No. 176 admitted into evidence.)

17 **Q. (By Ms. Sawyer) Thank you. What time should we move to**
18 **the -- okay. If we could turn to tab's 92 through 96, I'd**
19 **like to ask that we review these together and they be marked**
20 **as a single exhibit, 177?**

21 HEARING EXAMINER: I'm sorry that's tab --

22 MS. SAWYER: I'm sorry, 92 to 96.

23 HEARING EXAMINER: Oh, getting ahead of you.

24 MS. SAWYER: So much map fun, you can hardly contain
25 yourself.

VOLUME 9

JULY 26, 2018

Hearing - Day 9

In the Matter of the Appeal of: Wallingford Community Council, et al.

July 26, 2018



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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeal of:)
WALLINGFORD COMMUNITY COUNCIL,)
ET AL.,) W-17-006
) through
of the adequacy of the FEIS issued by the) W-17-014
Director, office of Planning and)
Community Development.)

Hearing, Day 9 - July 26, 2018
Heard before Hearing Examiner Ryan Vancil

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206.624.3005

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July 26, 2018

HEARING EXAMINER: We return with direct for Ms. Rees.

MS. TOBIN-PRESSER: Should we start right in?

HEARING EXAMINER: I'm sorry?

MS. TOBIN-PRESSER: Should we start right in? She's already sworn and everything. Okay.

HEARING EXAMINER: Yes. You're still sworn in from yesterday.

CONTINUED DIRECT EXAMINATION

BY MS. TOBIN-PRESSER:

Q. Ms. Rees, would you please turn to tab 137 in your notebook? And this will need to be an exhibit. I think we're at 206.

HEARING EXAMINER: Did you say 137 or 1 --

MS. TOBIN-PRESSER: 137.

HEARING EXAMINER: Uh-huh. Marked as 206. (Exhibit No. 206 marked for identification.)

Q. (By Ms. Tobin-Presser) Do you recognize this document?

A. Yes.

Q. And what is it?

A. It is the Seattle Fire Department budget. You can see in the upper left-hand side it's from the City of Seattle website. I put the website number at the top of the page.

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And it's a document prepared by Chief Harold D. Scoggins, fire chief with Seattle Fire Department.

MS. TOBIN-PRESSER: I would offer Exhibit 206 into evidence.

MR. MITCHELL: No objection.

HEARING EXAMINER: 206 is admitted. (Exhibit No. 206 admitted into evidence.)

Q. (By Ms. Tobin-Presser) And can you tell from this document the time period for this budget?

A. At the bottom of the page it says 2017-18 proposed budget.

Q. And did you obtain information from this document regarding the number of fires that occur per number of residents in the city?

A. Yes, I did. In the second paragraph, Chief Scoggins points out that Seattle averages 0.7 fires annually per 1,000 residents.

Q. Now, does the MHA EIS provide any information regarding the likely number of increased fires that would occur with an anticipated increased population?

A. There is no specificity.

Q. Did you do anything to assess specific impacts?

A. Yes, I did.

Q. So would you please turn to tab 154? This doesn't need to be an exhibit. It's pages 3.3 and 3.4 of the MHA EIS that's already Exhibit 2. Did you use any information from these

REES, Janine

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1 **pages in your analysis of the impacts of an increased**
 2 **population on fires?**
 3 A. Yes. On pages 3.3 and 3.4, the American Community Survey,
 4 ACS, estimated that there were more than 55,500 residents
 5 that moved to Seattle from outside King County during the
 6 previous year.
 7 **Q. And is what you just read found on the last sentence at the**
 8 **bottom of the page and then continuing on to the next page?**
 9 A. Yes.
 10 **Q. Okay. And what does that mean when you -- if anything, when**
 11 **you connect that to Chief Scoggins' average?**
 12 A. Well, calculating out what the number of increased fires
 13 would be, you would use 55 times 0.7 fires per 1,000 people.
 14 And that means there would be 38.5 additional fires per
 15 year.
 16 **Q. Now, turning back to Exhibit 206, Chief Scoggins' report --**
 17 **and that was tab 137 in the notebook -- what else did the**
 18 **Chief's report say?**
 19 A. Well, if you look at page 336 of this budget report, the
 20 chief reports the number of full-time equivalents in the
 21 operations program for the budget years 2015 through 2018.
 22 And as you can see, it's static. There are 1,001.25 FTE's
 23 over every year. And if you go down -- that's operations
 24 budget control level. Then go down to the bottom of the
 25 page, Battalion 3, that's the battalion number of the medic

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1 program. If you look at the number of full-time equivalents
 2 over the same budget period from 2015 to 2018, you can see
 3 that there's a decrease in the number of full-time
 4 equivalents during that same timeframe.
 5 **Q. So prior to any population increases that would result from**
 6 **the MHA proposal, we've seen that the city has already grown**
 7 **dramatically, correct?**
 8 A. Yes.
 9 **Q. And the MHA EIS says that increased demand due to MHA would**
 10 **be managed during the approval process for a particular**
 11 **project; is that correct?**
 12 A. Yes.
 13 **Q. So based on the information you just provided, how has the**
 14 **city managed the increased population to date with respect**
 15 **to fire services?**
 16 A. Well, thus far it appears that management based on
 17 population increase has resulted in decrease in medic
 18 staffing and no increase in firefighter staffing over that
 19 four-year period of time.
 20 **Q. So did the MHA EIS discuss any impacts on the 911 call**
 21 **center service?**
 22 A. No.
 23 MS. TOBIN-PRESSER: I don't have any further questions.
 24 HEARING EXAMINER: Thank you. Cross.
 25 \\\

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1 CROSS EXAMINATION
 2 BY MR. MITCHELL:
 3 **Q. Yes. Good morning, Ms. Rees. My name is Daniel Mitchell.**
 4 **I'm an assistant city attorney. I'll be asking you some**
 5 **questions on cross examination. You're not being called as**
 6 **an expert witness on chapter -- issues regarding chapter**
 7 **3.8; is that correct?**
 8 A. I don't know what it really means to be an expert on
 9 services and utilities.
 10 MS. TOBIN-PRESSER: We're just calling her as a fact
 11 witness.
 12 MR. MITCHELL: Okay.
 13 **Q. (By Mr. Mitchell) Do you have any experience in preparing**
 14 **environmental impact statements, Ms. Rees?**
 15 A. No.
 16 **Q. Do you have any experience in preparing any SEPA-related**
 17 **environmental analysis?**
 18 A. No.
 19 MR. MITCHELL: No further questions.
 20 MS. TOBIN-PRESSER: Thank you.
 21 HEARING EXAMINER: Any redirect?
 22 MS. TOBIN-PRESSER: Oh, no. Thank you.
 23 HEARING EXAMINER: Thank you, Ms. Rees.
 24 MS. TOBIN-PRESSER: Your Honor, we have Ms. Rees' notes
 25 that she's prepared to enter into evidence, or however we do

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1 with witness notes.
 2 HEARING EXAMINER: Yes, we've generally been doing that,
 3 but -- and we've had some issues with it, too, so I'm not
 4 quite sure the status of the notes. Is there anything in
 5 the notes that was not covered?
 6 MS. TOBIN-PRESSER: No.
 7 HEARING EXAMINER: Okay.
 8 MS. TOBIN-PRESSER: Okay.
 9 HEARING EXAMINER: Let's go ahead and enter those as an
 10 exhibit at 207.
 11 MS. TOBIN-PRESSER: Oh, I'm sorry. I --
 12 HEARING EXAMINER: The issue was, people were introducing
 13 notes where they had information in there that was not
 14 covered. So --
 15 MS. TOBIN-PRESSER: We did skip over a couple questions
 16 just in the interest of time, so I can't definitively say
 17 that.
 18 HEARING EXAMINER: I don't see that the city's asked for
 19 those notes, so -- but there hasn't been a distribution of
 20 those, and I didn't see her reading directly from those,
 21 which has been why we've asked for the notes in the past.
 22 MS. TOBIN-PRESSER: Okay.
 23 HEARING EXAMINER: I think we can pass. Thank you.
 24 (Inaudible colloquy)
 25 MS. BENDICH: While they -- okay. While they are I

LEECH, Mike

1 A. Yes. The RSL designation, which is explained in our method
 2 as well, that because of the size -- because there was only
 3 one area zoned as an RSL in the study area, it didn't have
 4 enough of a sample size to accurately estimate the percent
 5 cover. So for this area the tree cover was calculated as
 6 the average of the SF and LR, weighted by lot coverage.
 7 **Q. And is that explained on page 3.318 at the bottom?**
 8 A. Yes.
 9 **Q. Okay. So can you walk through, using Exhibit 3.6-5, on page**
 10 **3.329, can you walk through, as an example, of how you**
 11 **calculated -- take the zoning change of single family to**
 12 **residential small lot, using that slightly different**
 13 **methodology you just described. So does the high scenario**
 14 **in the change coefficient, is that -- is that the -- is that**
 15 **in the middle between single family average tree canopy**
 16 **cover and low-rise average tree canopy cover?**
 17 A. Yes, it is. The difference between those two tree cover
 18 percentages is that 1.17 percent.
 19 **Q. And then again, the low scenario is essentially --**
 20 A. Half.
 21 **Q. -- half of that?**
 22 A. That's correct.
 23 **Q. Okay. And so the same -- and there's a tree canopy analysis**
 24 **summary prepared for each of the action alternatives?**
 25 A. Yes.

1 yesterday again just before preparing for testimony and
 2 noticed that this -- the percentages for the high and low
 3 scenario actually should be corrected. The -- for the high
 4 scenario, the percentage should be 20.9 percent, not
 5 19.09 percent.
 6 **Q. Was that 20.09? I'm sorry.**
 7 A. That's correct.
 8 **Q. Okay.**
 9 A. And the low scenario should be 21 percent.
 10 HEARING EXAMINER: 21 even?
 11 THE WITNESS: Yes.
 12 **Q. (By Mr. Mitchell) And so the figures on Exhibit 3.6-15 are**
 13 **the correct figures. It's just that the percentages were**
 14 **shown as --**
 15 A. Correct. I identified a few percentage translation errors
 16 from translating from Excel to the -- to the document.
 17 **Q. And would the --**
 18 A. But that doesn't represent any change to the acreages, just
 19 the percentages.
 20 **Q. And so actually the overall tree canopy analysis summary**
 21 **then for the preferred alternative, shows as less impactful**
 22 **than it -- than it showed or --**
 23 A. In terms of percentages, yes.
 24 **Q. And you were not here yesterday for the testimony of Woodrow**
 25 **Wheeler; is that correct?**

1 **Q. Okay. And again, those are located on 3.335 for alternative**
 2 **3, and 3.339 for the preferred alternative. And so sticking**
 3 **with looking at Exhibit 3.6-15, the preferred alternative on**
 4 **3.339, does it show the total acres currently covered by**
 5 **tree canopy?**
 6 A. Yes.
 7 **Q. And that's at the -- toward the bottom of the exhibit?**
 8 A. Yes.
 9 **Q. And what is that figure?**
 10 A. That's 2,398.8 acres.
 11 **Q. Okay. And that's the tree canopy cover acreage in the**
 12 **entire study area of the preferred alternative, correct?**
 13 A. Correct.
 14 **Q. Okay. And what's the percentage of tree canopy cover then**
 15 **under the preferred alternative in the -- currently?**
 16 A. 21.01 percent.
 17 **Q. Okay. And then applying the high scenario and low scenario**
 18 **change on the -- in the right columns on the exhibit, what**
 19 **are -- what are the total acreages shown?**
 20 A. Total acres for the high scenario is 2,386.3. Low scenario
 21 is 2,392.5.
 22 **Q. And so what are the total tree canopy cover percentages of**
 23 **the high scenario and low scenario?**
 24 A. So what's stated on this is 19.09 for the high scenario, and
 25 19.15 for the low scenario. I was reviewing this just

1 A. That's correct.
 2 **Q. But do you understand that he had asserted that there was a**
 3 **calculation error between text that's on page 3.338 and the**
 4 **exhibit that's on page 3.339 that we were just discussing?**
 5 A. Yes.
 6 **Q. So do you understand -- even though you didn't hear his**
 7 **testimony, do you understand what his assertion was? And**
 8 **I'll direct you to the last sentence of the first paragraph**
 9 **under the heading, "Tree canopy." It starts with, "The**
 10 **zoning changes proposed."**
 11 A. Yeah, I think this is the -- the paragraph is referring
 12 specifically to the expansion areas, whereas the -- the
 13 table is referring to the entire study area of the preferred
 14 alternative. So those numbers are going to be different.
 15 **Q. Okay. And so the numbers that were referenced on page 3.338**
 16 **in that paragraph were not intending to be data taken from**
 17 **Exhibit 3.6-15?**
 18 A. That's correct.
 19 **Q. So let's talk about Exhibit 3.6-16 that's on -- also on page**
 20 **3.339. What is this -- what does that exhibit show?**
 21 A. This exhibit shows the tree cover by displacement dash -- or
 22 slash access group and preferred alternative -- for the
 23 preferred alternative.
 24 **Q. Okay. And why did you decide to include this data in the**
 25 **analysis?**

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1 not?
 2 A. That's a good question.
 3 **Q. And to be totally fair, I would love it if you had a**
 4 **computer open that had good PDF's and search function so**
 5 **that we could do this.**
 6 A. Me, too. I believe they were included for within those --
 7 those designations.
 8 **Q. Were you here when I testified before lunch, or right after?**
 9 **I can't even remember --**
 10 A. Today, yes.
 11 **Q. Yes. Did you hear me testify about the loss of right-of-way**
 12 **trees next to projects?**
 13 A. Yes.
 14 **Q. Was that kind of impact included somehow in this data**
 15 **analysis, or in your -- in your subjective determination of**
 16 **where there was -- where there were impacts?**
 17 A. So in the data analysis, that was not included when we were
 18 doing the calculations in these summary tables, no.
 19 HEARING EXAMINER: Pause there. Come back at 3:15. Thank
 20 you.
 21 (Recess)
 22 HEARING EXAMINER: We return with cross of Mr. Leech.
 23 MR. THALER: Okay. Thank you.
 24 **Q. (By Mr. Thaler) So how are we to determine whether the**
 25 **right-of-way trees are included or not? That's really a key**

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1 question. So a question that relates to that is, does it --
 2 even assuming that right-of-way trees are not going to
 3 change, wouldn't including the right-of-way trees in the
 4 analysis skew the data?
 5 A. We -- we wanted to -- we included the right-of-way areas
 6 within the designations as part of our analysis.
 7 **Q. Okay. Did the assumptions include -- what did the**
 8 **assumptions -- how did the assumptions deal with changes to**
 9 **the right-of-way trees as a result of the zoning changes?**
 10 HEARING EXAMINER: Did you have a response?
 11 A. I'm sorry. Can you repeat the question again?
 12 **Q. (By Mr. Thaler) How would you include in your impact**
 13 **analysis what's happening -- what assumptions did you make**
 14 **in your impact analysis in all these tables of percentage**
 15 **changes without having the tree -- the right-of-way trees**
 16 **separately accounted for? In other words, how do -- what**
 17 **assumptions did you make with respect to the change in the**
 18 **right-of-way trees as opposed to the private land trees?**
 19 A. They were -- they were grouped together as part -- within
 20 each -- within a zoning designation, we included the
 21 right-of-way trees as part of that designation. So there's
 22 areas that -- that are part of the right-of-way within each
 23 of those zoning designations, and we included those, all of
 24 those areas in our calculations.
 25 **Q. Where are the assumptions spelled out?**

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1 A. On the assessment methodology on page 3.317. We stepped
 2 through the assessor's methodology, continuing on to 3.318.
 3 **Q. So my question earlier about the -- how could you determine**
 4 **that there was zero percent change from an LR1 to an LR3-M**
 5 **is buried in that last paragraph there where it says, "For**
 6 **example, a zone change from LR to LR would not represent a**
 7 **change." Is that correct?**
 8 A. Yes.
 9 **Q. The right-of-way assumption is not explicit in here, is it?**
 10 **Or if it is, please point it out to me.**
 11 A. It's not explicit.
 12 **Q. Okay. Who on the team was the ultimate decider for making**
 13 **the decisions as to what was in and out in the assumptions**
 14 **and how they were to be addressed?**
 15 A. That would be Geoff and Sharese.
 16 **Q. So between the two of them, I'd have to ask?**
 17 A. Yes.
 18 **Q. That includes the assumption of full build-out and how it**
 19 **relates to land use changes and how the zoning code is**
 20 **applied?**
 21 A. Yes.
 22 **Q. Is there any -- was there any ground truthing done?**
 23 A. For the -- to --
 24 **Q. For the assessment that you worked on.**
 25 A. The assessment that was provided to us?

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1 **Q. Either the data that you got from Vermont through the city,**
 2 **or -- well, correct me if I'm wrong, back up one step -- I'm**
 3 **assuming that you're testifying here because you're**
 4 **responsible for the 2016 assessment document.**
 5 A. I'm responsible for the analysis that was performed in the
 6 EIS.
 7 **Q. In the EIS. And who was ultimately responsible for the 2016**
 8 **document?**
 9 A. The -- are you referring to the -- the tree canopy
 10 assessment that was done by the University of Vermont
 11 Spatial Analysis Lab?
 12 **Q. So they are the author of that document?**
 13 A. Yes.
 14 **Q. Did you have any feedback into how it was edited or --**
 15 A. I did not.
 16 **Q. Okay. And an impact analysis and an impact assessment of**
 17 **the changes to be imposed in a number -- in over two dozen**
 18 **urban villages around the city, do you think it would make**
 19 **sense to do -- to separate the data to do it urban village**
 20 **by urban village?**
 21 A. We made a determination that for this programmatic level,
 22 that the analysis that we had completed was sufficient for
 23 this EIS.
 24 **Q. Did you do any analysis of the distinction between inside**
 25 **and outside urban villages?**

1 A. We evaluated the areas within each of the proposed zoning
 2 alternatives. So that was within -- within the project
 3 extent.
 4 **Q. But no division by land to be in urban villages; i.e., urban
 5 villages as expanded, and all the L and C and NC zones
 6 outside the urban villages?**
 7 A. To my knowledge, we didn't do an evaluation outside of those
 8 areas, only within the -- the project extent.
 9 **Q. Okay. The project extent includes all of it. It's the
 10 division that I'm curious about. How do you define the
 11 project area? Do you need to look at a map?**
 12 A. If I can go back to the --
 13 **Q. The project area will be in section 1 of the EIS or 2.1,
 14 1.2.**
 15 **(Inaudible colloquy)**
 16 **Q. (By Mr. Thaler) Try 2.3, study area. Exhibit 2-1 on page
 17 2.3. So you understand that the dark outlined areas are
 18 urban villages, but that there is significant study area
 19 outside the urban villages?**
 20 A. Yes.
 21 **Q. So the question is, was there any analysis based on that
 22 distinction, in and out?**
 23 A. The analysis that was performed for the tree canopy
 24 assessment was presented in --
 25 **Q. Well, no, for the EIS. Well, no, that's a question. If**

1 **Q. Is there any place in the EIS or the documents directly
 2 referenced by it, the 2016 document being the primary one,
 3 that explain how the leaf-off LiDAR data was accounted for
 4 in the impact assessment?**
 5 A. To my knowledge, those methods were not detailed in the
 6 impact assessment.
 7 **Q. Or in the 2016 document, other than the reference?**
 8 A. Yeah, by reference, the methods are described, but not --
 9 **Q. Okay.**
 10 MR. BRICKLIN: You done?
 11 MR. THALER: Unless you want to feed me something, or
 12 you've got something.
 13 MR. BRICKLIN: We can ask our own.
 14 MS. BENDICH: I have a few.
 15 HEARING EXAMINER: They can ask their own questions.
 16 MS. BENDICH: I have a --
 17 MR. BRICKLIN: We can ask our own.
 18 HEARING EXAMINER: Yeah. Separate parties.
 19 MS. BENDICH: Yes, Your Honor.
 20 MR. THALER: Go for it. I'm done. Thank you very much.
 21 THE WITNESS: Thank you.
 22 CROSS EXAMINATION
 23 BY MS. BENDICH:
 24 **Q. So, Mr. Leech, I just have a few follow-up questions based
 25 on what Mr. Thaler was asking you, if you'll bear with me.**

1 you're doing an analysis of impacts in the study area, and
 2 considering it on this large spatial extent, but you're
 3 relying on a report from somebody else; i.e., the Vermont
 4 group, if that report is limited in terms of the assumptions
 5 and how the data is displayed, then your analysis is going
 6 to be likewise limited, isn't it?
 7 A. No. The data set that was provided to us by Vermont was one
 8 input data layer. Then we were provided -- the city
 9 provided us the data sets, GIS data layers for the various
 10 alternatives. And through the process of an overlay
 11 operation, we -- we can assess the tree canopy cover for the
 12 various alternatives.
 13 **Q. Okay. So the project team could have pulled out an
 14 inside/outside urban village?**
 15 A. Yes. Yeah. It's possible that we, you know, we could've --
 16 could've done more.
 17 **Q. And you could've done the urban village itself, each one?**
 18 A. Yes, those calculations could be made.
 19 **Q. Okay. I think I'm almost done. The 2016 Seattle canopy
 20 assessment -- and my apology if I've asked this -- it was
 21 not peer reviewed, was it?**
 22 A. To my knowledge, no.
 23 **Q. Have you ever worked on a peer-reviewed document? Have you
 24 published?**
 25 A. I have not published a peer-reviewed document.

1 A. Sure.
 2 **Q. You mentioned something about a significant amount of ground
 3 work. I just want to know what that means.**
 4 A. Oh. In terms of an accuracy assessment for remote sensing
 5 methods, there's various ways to assess the accuracy of data
 6 products. In some cases, there is ground data collection
 7 that is ground truthing, to go out in the field and collect
 8 point data, or within fixed radius polygons, various
 9 techniques for collecting data on the ground to confirm or
 10 validate that the areas to be mapped are -- are what -- what
 11 they say they are from the classification.
 12 **Q. But that wasn't done in this case; is that correct?**
 13 A. That's correct.
 14 **Q. And why is that signif- -- I mean, what I want to know is,
 15 why do people even do -- you said to make sure it was
 16 verifiable, I suppose.**
 17 A. Yeah, there's various methods for conducting, kind of
 18 assessing the overall accuracy of data products. So with
 19 traditional remote sensing methods, that was the traditional
 20 approach was to either put people on the ground to collect
 21 the data within the study area, or use high resolution
 22 imagery, different imagery from what's being used in the --
 23 in the classification to confirm that, yes, this is a tree
 24 in that location. So there's different methods to doing
 25 accuracy assessments. And based on the resources available

RUNDQUIST, Nolan

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1 MR. MITCHELL: I'd like to move for admission of
 2 Exhibit 220.
 3 MS. BENDICH: No objection.
 4 HEARING EXAMINER: I assume Ms. Bendich is responding?
 5 MS. BENDICH: I guess so.
 6 HEARING EXAMINER: We don't have to all chime in.
 7 MR. BRICKLIN: Right.
 8 HEARING EXAMINER: But please let me know if not.
 9 MR. BRICKLIN: We will.
 10 MS. BENDICH: If I'm wrong, tell me.
 11 HEARING EXAMINER: 220 is admitted.
 12 (Exhibit No. 220 admitted into evidence.)
 13 **Q. (By Mr. Mitchell) Okay. So we're going to talk now about**
 14 **the street tree regulations in chapter 1543. They are**
 15 **city's tab 123 for convenience, but I think that it's --**
 16 **we've not then?**
 17 HEARING EXAMINER: City code?
 18 MR. MITCHELL: City code, yeah.
 19 HEARING EXAMINER: Did you say 1 --
 20 MR. MITCHELL: That's City's 123.
 21 A. Probably have it memorized, but --
 22 **Q. (By Mr. Mitchell) So, Mr. Rundquist, I think you mentioned**
 23 **earlier that this street tree ordinance was adopted in 2013;**
 24 **is that correct?**
 25 A. I believe so. April, yeah.

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1 **Q. Okay. All right. So can you tell us about chapter 1543?**
 2 A. Okay. The -- the basic intent of the chapter was to improve
 3 tree protection in the right-of-way and improve the quality
 4 of tree care in the right-of-way. One of the things we did
 5 was set up a section where we regulate tree care providers
 6 by registering them and requiring that they have insurance,
 7 business license, and certified arborists to perform the
 8 work. And, again, we -- we didn't have very many
 9 protections in the old code where -- you know, whereby if
 10 somebody affixed a sign to a tree or, you know, climbed a
 11 tree with climbing spurs or something like that, we really
 12 didn't have a means to -- to slap them, so to speak. So we
 13 tried to go ahead and allow us to have some things that --
 14 that gave the trees a little bit more protection and gave us
 15 the ability to issue citations to bad actors.
 16 **Q. So does 15.43.030 require people to seek a street use permit**
 17 **before planting, removing, or performing major pruning on**
 18 **any street tree?**
 19 A. Yes.
 20 **Q. Okay. Talk to us about that process.**
 21 A. Well, basically if someone wants to do work on a tree, plant
 22 a tree or remove a tree, they give an application to our
 23 street use section. We have one of our arborists go out and
 24 review the proposed work to see whether, you know, the
 25 trees -- for example, for removal, we have specific

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1 categories that, you know, a tree can be removed if it's a
 2 dangerous tree. If it poses a danger to the transportation
 3 system that can't be resolved by pruning or whatever, like,
 4 if it's a -- a tree that's blocking visibility to something
 5 or whatever that would cause a traffic hazard, if a tree is
 6 essentially associated with a construction project, and the
 7 project impacts it in a way that it cannot be preserved, the
 8 tree then can be removed. But again, tree preservation was
 9 the primary thing (inaudible).
 10 **Q. Okay. And those instances that you're talking about, those**
 11 **are in 15.43.030(C)?**
 12 A. (C). That's correct.
 13 **Q. Okay. But (C) -- (C) also provides that it is the city's**
 14 **policy to retain and preserve street trees whenever**
 15 **possible?**
 16 A. Yes.
 17 **Q. Okay. Okay. I'm just going to use -- just a point of**
 18 **reference, we're looking at what's been marked as Hearing**
 19 **Examiner 190. It's the PowerPoint presentation. And I'm**
 20 **looking at a photograph that in the photograph is 17th**
 21 **Northeast at Northeast 63rd. So, and do you see this**
 22 **photograph?**
 23 A. Okay.
 24 **Q. Okay. Would you say that the first -- does it appear that**
 25 **the first tree that you see in that photograph, the**

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1 closest -- well, the tree on the left of the photograph -- I
 2 know that you don't know for certain, but would it appear to
 3 you that it would -- that it potentially is a street tree?
 4 A. Yes.
 5 **Q. Okay.**
 6 A. That looks like between the sidewalk and the curb.
 7 **Q. Yes. So the 15.43.030 regulation would -- it would prohibit**
 8 **this homeowner from just coming out and taking a hacksaw and**
 9 **taking that tree down, correct?**
 10 A. That's correct.
 11 **Q. Okay.**
 12 A. Well, it wouldn't keep them from doing it, but it makes it
 13 illegal for them to do it.
 14 **Q. Makes it illegal. Okay. But there are a few instances**
 15 **identified in 15.43.030(C)(1) through (4) that -- where it**
 16 **is possible for the removal of that tree?**
 17 A. That's correct.
 18 **Q. Okay. And let's back up, actually. What is a street tree?**
 19 **I don't think we identified that.**
 20 A. Basically, a street tree is defined in our ordinance as
 21 being any tree that grows within a designated street
 22 right-of-way in the city. That includes alley rights-of-way
 23 or any unimproved street rights-of-way.
 24 **Q. Okay. Okay. So if a property owner is -- has a street tree**
 25 **in front of their property, they could, you know -- if it**

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1 turned out to be a hazardous tree, if it poses a public
 2 safety hazard, or if it's in such a condition of poor health
 3 or poor vigor that removal is justified, then they have to
 4 go through a permit process to have that tree removed,
 5 correct?
 6 A. That's correct. And then they're also required to replace a
 7 tree with essentially one that's compatible with a site that
 8 has equal or greater canopy.
 9 **Q. And where does 15.43.030 require that?**
 10 A. (D).
 11 **Q. Okay. But also, if a -- if a property owner was seeking to**
 12 **develop or redevelop their property, and they cannot**
 13 **successfully situate the development such that a street tree**
 14 **would be preserved, then there is -- that also -- there's an**
 15 **exception there that a street tree could be removed legally**
 16 **through a permitting process?**
 17 A. That's correct.
 18 **Q. Okay. So there are some development pressures with street**
 19 **trees?**
 20 A. Absolutely.
 21 **Q. But would you say that they are protected more than, say,**
 22 **trees on private property?**
 23 A. At this point, I believe they were.
 24 **Q. I mean, the regulations are more stringent?**
 25 A. We go into every development with the intent that the tree

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1 will be preserved.
 2 **Q. And when I say more stringent, when I -- the requirement to**
 3 **remove the tree comes with a permitting process through the**
 4 **street tree regulations, correct?**
 5 A. Correct.
 6 **Q. Okay. Okay. And what about when the city is proposing to**
 7 **remove the tree on city lands? Is there a requirement that**
 8 **the city actually has to plant two trees for every one**
 9 **removed?**
 10 A. Yes. That was a mayoral proclamation that -- I believe in
 11 around 2000 and -- 2007 or something.
 12 MR. MITCHELL: I'll have City's Exhibit 62 marked.
 13 A. And we've been following that basically for any tree that we
 14 remove that's within our purview that's an SDOT-maintained
 15 tree for any reason, then we go ahead and replace it with
 16 two trees.
 17 HEARING EXAMINER: Are you done with that code section?
 18 MR. MITCHELL: What's that?
 19 HEARING EXAMINER: Are you done with that code section?
 20 MR. MITCHELL: Yes.
 21 HEARING EXAMINER: Thank you.
 22 A. Where is it?
 23 **Q. (By Mr. Mitchell) Go to tab 62.**
 24 A. 62?
 25 HEARING EXAMINER: Marked as 221.

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1 (Exhibit No. 221 marked for identification.)
 2 **Q. (By Mr. Mitchell) It might be in a different binder.**
 3 A. Too many books.
 4 MS. BENDICH: Number?
 5 MR. BRICKLIN: His number? 62, city.
 6 (Inaudible colloquy)
 7 A. Oh, 5. Okay.
 8 **Q. (By Mr. Mitchell) Okay. Do you recognize what's been marked**
 9 **as Exhibit 221?**
 10 A. Yes. Yes, I do.
 11 **Q. Can you describe that document?**
 12 A. It was an executive order from Mayor Nickels that was put
 13 through to any city department that -- that removed a tree,
 14 they were required to plant two trees back.
 15 **Q. Okay. Does the first whereas clause recognize that Seattle**
 16 **has earned the nickname the Emerald City?**
 17 A. Yes, it does.
 18 **Q. Okay.**
 19 MR. MITCHELL: I'd move for the admission of Exhibit 221.
 20 MS. BENDICH: No objection.
 21 HEARING EXAMINER: 221 is admitted.
 22 (Exhibit No. 221 admitted into evidence.)
 23 MR. MITCHELL: Okay. I'd like to have city's tab 67
 24 marked as an exhibit.
 25 HEARING EXAMINER: Marked as 222.

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1 (Exhibit No. 222 marked for identification.)
 2 **Q. (By Mr. Mitchell) Do you recognize this document?**
 3 A. Yes. It's our street tree manual.
 4 **Q. What's the purpose of the street tree manual?**
 5 A. The street tree manual is -- was intended as a -- more or
 6 less a user guide for the street tree ordinance. It puts a
 7 little more detail into the things that are mandated by the
 8 ordinance. And it is in -- it also is a director's rule, so
 9 it has essentially effect of law.
 10 **Q. And did you help prepare -- or develop the street tree**
 11 **manual?**
 12 A. Yes. I was the primary author of this.
 13 **Q. Okay. So just looking at the second page, which is the**
 14 **table of contents, this gives an overview of the type of**
 15 **guidance that the street tree manual is providing?**
 16 A. Yes, it does.
 17 **Q. Okay. Does the street tree manual provide information as to**
 18 **the requirements to protect street trees during**
 19 **construction?**
 20 A. Yes, it does.
 21 **Q. And is that on -- can you turn to page 25? Is there a --**
 22 **actually, it's the next page, 26, there's a diagram. What's**
 23 **this diagram representing?**
 24 A. It's out of our standard plans for construction. So we
 25 basically tried to incorporate existing documents into the

VOLUME 10

JULY 27, 2018

Hearing - Day 10

In the Matter of the Appeal of: Wallingford Community Council, et al.

July 27, 2018



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Page 1

BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeal of:)
WALLINGFORD COMMUNITY COUNCIL,)
ET AL.,) W-17-006
) through
of the adequacy of the FEIS issued by the) W-17-014
Director, Office of Planning and)
Community Development.)

Hearing, Day 10 - July 27, 2018

Heard before Hearing Examiner Ryan Vancil

Transcribed by: Debra Kallgren, CETD
Court-Certified Transcription

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1 -o0o-
2 July 27, 2018

3
4 UNIDENTIFIED MALE: Mr. Rundquist.
5 HEARING EXAMINER: We continue with Mr. Rundquist on
6 cross, July 27, 2018.

7
8
9 NOLAN RUNDQUIST Witness herein, having been previously
10 duly affirmed on oath, was examined
11 and testified as follows:
12

13 CROSS - EXAMINATION (Contd.)
14 BY MS. BENDICH:
15 **Q. Good morning, Mr. Rundquist.**
16 A. Good morning.
17 **Q. Does SDOT maintain data on the total number of street trees?**
18 A. Pardon?
19 **Q. Does SDOT maintain data on the total number of street trees?**
20 A. We -- well, we're attempting to do so. We -- we have an
21 in- -- acknowledged that we have an incomplete inventory
22 right now.
23 But -- but all street trees are intended to be
24 inventoried, except those are that in hard-to-get-to,
25 unimproved street rights-of-way, things like that.

Page 7

1 **Q. Okay. But currently do you have -- whatever your inventory**
2 **is, do you have one that has numbers of trees in it?**
3 A. Yes, we do.
4 **Q. Okay. And I think you've already mentioned how you're**
5 **trying to update that information. Does that inventory**
6 **include street trees planted by homeowners?**
7 A. Yes, it does.
8 **Q. Does it include trees that SDOT provided to property owners?**
9 A. SDOT typically, if we plant the tree, we maintain it. We do
10 have several other departments that supply trees to
11 homeowners. And yes, if they are street trees, they are
12 included in that inventory.
13 **Q. Okay. And in your experience as an arborist, is there a way**
14 **to calculate how many acres of street trees there are?**
15 A. We would probably look to the -- to do a GIS analysis, we
16 would probably look to the canopy layer.
17 **Q. Okay. Let me -- let me --**
18 A. But -- but no. You know, we --
19 **Q. Okay. I'm just looking at -- you know the number of trees.**
20 A. Correct.
21 **Q. You know kind of the spacing of the trees. Isn't there a**
22 **way simply to change that into a calculation of how many**
23 **acres that is?**
24 A. It's -- that's typically not how we look to figure out, you
25 know, how many -- how many street trees we have. Since it's

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1 a linear area, you know, basically a right-of-way, 60 feet
2 wide and however many feet long, we could figure out how
3 many acres of street trees, I suppose. But again --
4 **Q. Isn't that a standard way in forestry to do --**
5 A. In forestry, perhaps. In urban forestry, absolutely not.
6 **Q. Okay. All right. Did anyone involved in the MHA draft EIS**
7 **contact you or your staff to obtain information about street**
8 **trees?**
9 A. I -- I did not have any contact with them.
10 **Q. And to your knowledge -- well, have you participated at all**
11 **in the EIS process?**
12 A. No.
13 MS. BENDICH: Thank you. I am finished.
14 HEARING EXAMINER: Mr. Thaler.
15 MR. THALER: Okay.
16
17 CROSS - EXAMINATION
18 BY MR. THALER:
19 **Q. I am going to hand you Exhibit 212 from yesterday. And**
20 **before I do that, I want to ask, do you remember testifying**
21 **that the City agrees that there are difficulties protecting**
22 **trees on private property, but does a pretty good job on**
23 **right-of-way trees?**
24 A. Yes.
25 **Q. Okay. This is Exhibit 212, and I've numbered the pages.**

MEFFORD, Chris

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1 A. Allowed.

2 **Q. What are allowed?**

3 A. Yes. That's on page 3.161.

4 **Q. And is there anything in the EIS that describes -- wait.**

5 **I'm sorry. What about -- let's look at page 3.163.**

6 A. Okay.

7 **Q. There's three pictures on there, and they show an image**

8 **of -- this is under the heading Affected Environment. And**

9 **so what do you -- how do you interpret that? And tell me if**

10 **that adequately addresses and describes West Seattle, what**

11 **you were testifying earlier.**

12 A. Okay. So what this purports to describe is establish single

13 family housing areas, new infill single family housing and

14 lowrise multifamily infill housing areas.

15 And certainly with respect to the West Seattle Junction,

16 and I imagine other areas as well, it's extremely

17 misleading, and it certainly doesn't describe the existing

18 area. And --

19 **Q. It doesn't describe west -- like the actual neighborhood?**

20 A. No.

21 **Q. It's just a generic?**

22 A. No. And it's actually misleading.

23 **Q. How is it misleading?**

24 A. Well, if you look at the picture that's supposed to be

25 established single family housing areas, as you can see,

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1 it's actually a picture of a sidewalk. There's some houses

2 to the left-hand side of the picture. They're not -- you

3 can't even see what they look like.

4 The second picture is -- is purporting to show what new

5 single -- infill single family housing looks like in the

6 areas to be affected. And it's that boxy, geometric style

7 that's sort of hulking.

8 And certainly in the West Seattle Junction Urban Village

9 that is not predominantly the case. And I would just, as I

10 said, I would probably be going back to a couple of the

11 pictures.

12 But if you look at Exhibit 241, picture number 10, that's

13 an example of new infill construction within the West

14 Seattle Urban Village, and it looks nothing like that

15 picture.

16 If you look down at the third picture, which is lowrise

17 multifamily infill housing, it is in exactly the same style

18 as the above picture of new infill single family housing,

19 and it's taken from much farther away.

20 So it gives the impression that it's very similar in scale

21 to the new infill single family housing. So the implication

22 of this page is, you know, first that existing character of

23 the single family housing areas isn't even important enough

24 to show a real picture of.

25 Second, that new -- new housing looks like this boxy,

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1 geometric structure; and then third, and the new multifamily

2 construction will look the same; and therefore, you know,

3 who really cares? There's not really going to be an impact.

4 It's all going to look like what's already coming in anyway.

5 And that is not the case in the West Seattle Junction.

6 **Q. Okay. And on this new single family housing, how do you**

7 **know that it's not the case that West Seattle Junction is**

8 **transforming into what they're showing -- or that that's the**

9 **existing -- that reflects the current existing environment**

10 **or architecture in West Seattle Junction right now?**

11 A. Well, as I mentioned, I was the person in JuNO that was

12 responsible for kind of looking at this section, so I

13 already knew sort of generally that that wasn't the case.

14 But when I read the EIS, I went to Zillow and looked up

15 every single family parcel in the West Seattle Junction

16 Urban Village, and made a note of when it was built. And

17 everything that was built within the last 25 years I drove

18 by and looked at to determine whether or not it actually

19 looked like this new infill single family housing depicted

20 here. And very little did.

21 **Q. Okay. And did you provide that data as part of JuNO's**

22 **response to the EIS?**

23 A. I did. It's in -- it's actually in the published final

24 environmental impact statement in the comments section.

25 It's under -- it's under -- for some reason, even though

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1 JuNO submitted the comment, it's under -- I think it's under

2 Presser. But --

3 **Q. Okay.**

4 A. Maybe Tobin-Presser.

5 **Q. Okay. So it's under your name?**

6 A. Yes.

7 **Q. Not --**

8 A. I'm not sure why.

9 **Q. Not the organization?**

10 A. Right.

11 **Q. All right.**

12 A. The entire JuNO comment, for some reason, is under my name.

13 MS. NEWMAN: If I could, I have another exhibit I'd like

14 to have marked. I don't know if this will be all one

15 exhibit, or four separate. I think one would be our

16 preference.

17 And I can give you all a copy. This is a SCALE exhibit.

18 And I don't know the number of the SCALE exhibit, but I can

19 look it up.

20 HEARING EXAMINER: That would be helpful.

21 MS. NEWMAN: All right.

22 HEARING EXAMINER: So these are?

23 MS. NEWMAN: These are SCALE Exhibits 193 through 196, and

24 I have -- will offer them either as four separate or one

25 single, deferring to the Examiner on how you would prefer.

1 A. Yes.

2 **Q. I'm looking for it, and I have not found it. If you have a**

3 **printed-out copy of it, I would appreciate -- I'll give you**

4 **a couple minutes to scan it. I'd like to know where it is.**

5 MR. MITCHELL: Are you referring to an exhibit?

6 MR. THALER: No. I'm referring to a peer-reviewed study

7 that the witness is relying on to support the methodology

8 driving the study that is incorporated into the EIS to make

9 the determination that there's no significant impacts.

10 MR. MITCHELL: Well, the witness read from an exhibit.

11 MR. THALER: The witness read from an exhibit that is not

12 the peer-reviewed study that is being relied on and cited.

13 HEARING EXAMINER: So the witness has relied on his memory

14 of that peer-reviewed study. If cross has a copy of that

15 and wants to put it in front of him to --

16 MR. THALER: He has a copy of it. He told me.

17 HEARING EXAMINER: Of the study?

18 MR. THALER: Do you have a copy of it here?

19 THE WITNESS: It's in -- it's in my bag.

20 HEARING EXAMINER: Then that's fine, yeah. Normally it

21 would be your responsibility to provide it, but if he's got

22 it, then sure, you can look at it.

23 MR. JOHNSON: Do you want me to grab it?

24 THE WITNESS: I guess.

25 HEARING EXAMINER: If it's within a couple arms' length of

1 **Q. I was going to say, please read the next sentence, too.**

2 A. "Because of the high accuracies combined with the need to

3 limit cost for many projects, accuracy assessments are not

4 performed for every SAL tree canopy mapping project. The

5 time and money that could be devoted to statistical analysis

6 are instead devoted to manual corrections to improve the

7 overall representation of tree canopy and avoid obvious

8 errors as described above."

9 **Q. So the question of an accuracy assessment, is there an**

10 **accuracy assessment proposed in the methodology that you**

11 **submitted to the city?**

12 A. No, I don't -- well, not me per- -- I didn't do the

13 analysis.

14 **Q. Okay. I need to keep it -- I need to remember that you're**

15 **not the Vermont person.**

16 A. Yes.

17 **Q. So let's lay a little foundation. What is your**

18 **relationship? Are you the project manager and subcontracted**

19 **to the Vermont folks to do the actual GIS work?**

20 A. We worked with the City of Seattle to perform the tree

21 canopy analysis for the -- for this EIS.

22 **Q. And then --**

23 A. We were provided -- the city provided us with the data

24 product to use as one of the inputs to do the analysis.

25 **Q. And when you say "we", you mean ESA?**

1 reach, let's go ahead and do that.

2 (Inaudible colloquy)

3 THE WITNESS: Sorry. It's a pretty long --

4 HEARING EXAMINER: Take your time.

5 THE WITNESS: -- paper, as you probably have known.

6 MR. THALER: Yeah, it's 30 pages of text. Big type.

7 THE WITNESS: That's true.

8 A. Okay. So 3.2.4, accuracy assessment.

9 **Q. (By Mr. Thaler) Hold on. Let me get back to it here.**

10 A. This is kind of a summary beyond --

11 **Q. So what did you say? 3 point --**

12 A. 3.2.4, accuracy assessment.

13 **Q. Yes.**

14 A. This is a paper that describes the University of Vermont

15 Spatial Analysis Lab's kind of methods using object-based

16 image analysis using various input data sources,

17 combinations of leaf-on, leaf-off LiDAR with high resolution

18 imagery. And they state in this paragraph that, "Accuracy

19 assessments for selected SAL tree canopy mapping projects

20 are shown in table 2. In all cases, accuracy has exceeded

21 90 percent for tree canopy and were usually higher."

22 **Q. Could you read --**

23 A. "Because of that accuracy combined with the" --

24 **Q. Okay. Good.**

25 A. Sorry.

1 A. Correct.

2 **Q. And then ESA worked with the Vermont group. So we're -- how**

3 **does -- you're avoiding --**

4 **(Inaudible colloquy)**

5 **Q. (By Mr. Thaler) So you're saying that the city stands**

6 **between you and the Vermont group?**

7 A. Correct.

8 **Q. Was there an accuracy assessment in any of that material?**

9 A. The accuracy assessment was not requested by the city as

10 part of this assessment.

11 **Q. Did that concern you at all, or did you rely on the**

12 **statement in O'Neil?**

13 A. So, after any conversations with -- with Jarlath and

14 understanding the project, it was clear to me that from his

15 experience doing urban tree canopy assessments for projects

16 that have smaller budgets, that it makes more sense to do

17 manual -- to make the investments to do manual corrections

18 to improve the overall product and make the investment to do

19 a significant amount of groundwork, which is pretty costly

20 to do to then generate the statistical analyses, which give

21 you percentages of overall accuracy of the product.

22 **Q. Okay. Let's go to the -- well, one more point on this**

23 **O'Neil. There's a section -- let me confirm that. Since**

24 **you have O'Neil in front of you, could you turn to page**

25 **2 point -- to section 2.1.2?**

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1 rushed, you know, couple months long, oh, hey, these are
 2 these three options, one of which we've already proposed,
 3 and we're going to -- right in the middle of this purported
 4 outreach process, we're going to put out the final
 5 environmental impact statement, which has Option B in it,
 6 and then the comment period is going to close.
 7 And also, Option B doesn't reflect what your neighborhood
 8 said.
 9 **Q. So do you think there's any -- do you have any feeling from**
 10 **the way the City's handled this that the City may ultimately**
 11 **adopt as a comprehensive plan amendment Option A, Option C,**
 12 **or Option D?**
 13 A. There's nothing in the environmental impact statement that
 14 would point to that.
 15 MS. NEWMAN: Okay. This is City Exhibit 30, which I don't
 16 think has been introduced into the record yet. I'd like to
 17 mark that.
 18 HEARING EXAMINER: This is 244.
 19 (Exhibit No. 244 marked)
 20 MS. NEWMAN: Do you need a copy of your exhibit?
 21 MR. KISIELIUS: No.
 22 **Q. (By Ms. Newman) Ms. Tobin-Presser, there's a document I**
 23 **think that's in front of you, the Seattle City Council**
 24 **Legislative Summary is on the top.**
 25 A. Yes. I see it.

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1 MS. NEWMAN: I'm sorry. What was the exhibit number this
 2 was marked?
 3 HEARING EXAMINER: 244.
 4 **Q. (By Ms. Newman) 244, do you recognize that document?**
 5 A. I do.
 6 **Q. Can you tell us what -- within the context of what we've**
 7 **just been talking about, what the significance of this**
 8 **document is?**
 9 A. Well, the significance of this document --
 10 **Q. And what it is.**
 11 A. Oh, so it's a Seattle City Council Legislative Summary. And
 12 what it does is -- I don't know if I'm saying this
 13 correctly, but this is the point at which certain
 14 neighborhood proposed amendments were docketed by the city
 15 council for consideration, along with MHA.
 16 And so there's a number of pages at the beginning that go
 17 up to I think page 6. But then after that there's an actual
 18 resolution, and it's Bates stamp number 4936.
 19 **Q. And so they're docketing -- you earlier described a process**
 20 **where neighborhoods submitted proposed amendments to the**
 21 **comp plan, and you're saying this is the City actually**
 22 **docketing the amendments that were proposed under -- by the**
 23 **neighborhoods?**
 24 A. Yes. So it says at the bottom of page 1 of the resolution,
 25 comprehensive docket, section 1, comprehensive plan docket

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1 of amendments to be considered in 2018. The following
 2 amendments proposed by individuals or organizations should
 3 be reviewed by the mayor and council as possible amendments
 4 to the comprehensive plan. The full text of the proposal
 5 are contained in clerk file 320265. So --
 6 **Q. So as of today, do we have any idea what the City's**
 7 **preferred alternative to -- as far as specific language for**
 8 **a comp plan amendment is?**
 9 A. Out of the options that they pro- -- no, no.
 10 **Q. For comprehensive plan amendments --**
 11 A. No.
 12 **Q. -- with the MHA proposal?**
 13 A. No.
 14 **Q. Do we know what they're proposing?**
 15 A. No.
 16 **Q. And has anything that the City's prepared or anticipates as**
 17 **their preferred alternative been docketed?**
 18 A. Not to my knowledge.
 19 **Q. All right. So the only amendments that have been docketed**
 20 **are the ones that the neighborhoods have proposed?**
 21 A. To my knowledge, yes.
 22 **Q. Okay.**
 23 HEARING EXAMINER: Ms. Newman, where are you in timing?
 24 MS. NEWMAN: I'm -- I still have quite a bit. So --
 25 HEARING EXAMINER: Okay.

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1 MS. NEWMAN: I think it's a --
 2 HEARING EXAMINER: We're going to take a break there for
 3 lunch.
 4 MS. NEWMAN: Okay.
 5 HEARING EXAMINER: And we will return at 1:45.
 6 (Lunch recess)
 7 HEARING EXAMINER: And we return with Ms. Tobin-Presser on
 8 direct.
 9 MS. NEWMAN: Thank you, Mr. Examiner.
 10 **Q. (By Ms. Newman) Continuing where we left off, if we could**
 11 **look -- if you could look at the EIS, which is Exhibit 2 on**
 12 **page 3.130.**
 13 A. Okay.
 14 **Q. And I want to point out this is the section in the EIS that**
 15 **analyzes land use impacts. We were focused earlier on the**
 16 **section that talks about the existing environment for land**
 17 **use, and this is the section that talks about the impacts of**
 18 **the proposal.**
 19 **And on page 3.130 there is a section that's titled**
 20 **Consistency With Policies and Codes. Do you see that?**
 21 A. I do.
 22 **Q. Will you read the first sentence of that section.**
 23 A. Reasons to implement MHA under alternative 2 would be
 24 generally consistent with comprehensive plan policies and
 25 land use code requirements. With few exceptions, the area