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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeal of:)
SEATTLE MOBILITY COALITION)
From a DNS issued by the) Cause No. W-18-013
Seattle City Council.)

HEARING - VOLUME I
Hearing Examiner Ryan Vancil Presiding
June 10, 2019

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June 10, 2019

HEARING EXAMINER: I'll call it to order. This is June 10, 2019, 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 at today's proceeding.

The matter to be heard today involves appeal of the Seattle Mobility Coalition of the state environmental policy act final environmental impact statement. The hearing examiner's number for the matter is W-18-013, W-18-012 having been dismissed by a prehearing motion.

The authority of the hearing examiner to hear and decide this matter includes Chapter 25.05.680 and SMC 23.41. Under the code, the SEPA official's determination is accorded substantial weight, and the burden establishing 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 make an oath or affirmation to tell the truth and will be subject to questioning by the other party. Unless I hear otherwise from the parties, the order of proceeding will be as follows: There is an opportunity for opening statements

1 which may be waived. We'll hear first from the appellant,
2 then the department. And then we go to the presentation of
3 the evidence, witnesses, and exhibits in the same order,
4 with opportunities for rebuttal and closing arguments at the
5 end.

6 Following the close of the hearing, I'll issue a written
7 decision. All parties will get a copy of that decision, and
8 information will be included in it on how to appeal.

9 Just a reminder that no cell phones. All phones should be
10 off. There's no food or drink except the water on the
11 table.

12 Are there any procedural items we need to address before
13 we get started? All right then. You may proceed with
14 opening statements. How do you want to handle that?

15 MS. KAYLOR: I have a couple-sentence opening statement,
16 and otherwise we'll waive.

17 HEARING EXAMINER: Okay. How about the city?

18 MS. ANDERSON: The city will waive.

19 HEARING EXAMINER: Okay.

20 MS. ANDERSON: Thank you.

21 HEARING EXAMINER: We'll just get started then with the
22 appellants. And if you want to do an introductory statement
23 to the case, that's great.

24 MS. KAYLOR: All right. I'm Courtney Kaylor here on
25 behalf of Appellant, Seattle Mobility Coalition.

1 In this case, the City of Seattle has proposed to adopt
2 Comprehensive Plan amendments for its transportation impact
3 fees, and these amendments will require the adoption of a
4 fee and specify the methodology by which the fee will be
5 determined. The city failed to adequately analyze
6 environmental impacts in connection with this proposal,
7 including specifically housing production and housing
8 affordability and construction and transportation impacts
9 resulting from construction of funded projects. And for
10 that reason, Appellants request that the examiner reverse
11 the DNS, remand it to the City of Seattle either for
12 preparation of an EIS or for analysis of these impacts and
13 imposition of mitigation that would reduce them to a less
14 than significant level.

15 For our first witness, we call Morgan Shook.

16 HEARING EXAMINER: Mr. Shook, do you swear or affirm that
17 the testimony you will provide in today's hearing will be
18 the truth?

19 THE WITNESS: Yes, I do.

20 HEARING EXAMINER: Thank you. I'm going to ask before --
21 while he's getting some water, remind me the volume of
22 exhibits, and is there a proposed methodology or solution
23 regarding these, or are we just going to do 1 through
24 whatever? I think that that's pretty common. I think we
25 did that even for MHA, so I don't imagine we'll have more

1 than that here.

2 Are there any prepared notebooks or anything like that
3 that I need to know about?

4 MS. KAYLOR: We did not prepare notebooks, primarily
5 because we anticipate that we may not submit all of the
6 exhibits on our preliminary exhibit list.

7 HEARING EXAMINER: Right. I appreciate that. Okay.
8 We'll just proceed then. Thank you.

9 MS. KAYLOR: All right. Thank you. And so speaking of
10 exhibits, we will now hand you what we would like to have
11 marked as Exhibit 1. And I have a copy for everyone. Thank
12 you. I will note, many of our exhibits are double-sided.
13 If that poses a difficulty, we're happy to provide
14 single-sided copies.

15 HEARING EXAMINER: That's fine.

16 MS. KAYLOR: Thanks.

17 (Appellant's Exhibit No. 1 marked for identification.)

18

19 MORGAN SHOOK: Witness herein, having first been
20 duly sworn on oath, was examined
21 and testified as follows:

22

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

24 BY MS. KAYLOR:

25 Q. Mr. Shook, can you briefly summarize your qualifications?

1 A. My name is Morgan Shook. I am a director and partner at an
2 economics and finance firm, ECONorthwest. I have a degree
3 in -- I have a master's degree in urban regional planning.
4 I've been operating in a consulting and policy analysis
5 capacity since 2005.

6 I have experience working both on programmatic EISs, as
7 well as project level EISs, having both prepared EISs and
8 also defended them in any appeal hearings.

9 Q. Thank you. And can you identify what's been marked as
10 Exhibit 1?

11 A. Yes. This is a recent copy of my curriculum vitae or
12 resumé.

13 MS. KAYLOR: Thank you. I'd move to admit Exhibit 1.

14 HEARING EXAMINER: Any objection?

15 MS. ANDERSON: No objection.

16 HEARING EXAMINER: Exhibit 1 is admitted.

17 (Appellant's Exhibit No. 1 admitted into evidence.)

18 Q. (By Ms. Kaylor) And what has your role been relating to this
19 appeal?

20 A. I have been asked by the coalition to review the
21 Comprehensive Plan amendments and to provide my professional
22 assessment on whether or not they will impact elements of
23 the environment under SEPA, specifically housing and housing
24 affordability.

25 Q. So what work have you done to prepare for your testimony

1 today?

2 A. I have reviewed materials prepared by the city, including
3 the Comprehensive Plan amendment, the SEPA checklists, as
4 well as supporting documentation that the city has prepared,
5 including its 2015 summary work plan on impact fees, as well
6 as other documentation provided that counsel is part of that
7 process. I have also reviewed the use of impact fees more
8 broadly in the region to understand sort of their effect and
9 correlation on housing production. And I have done some
10 simple analysis to put in context how impact fees affect
11 housing production and with the resulting issue on housing
12 affordability.

13 HEARING EXAMINER: And, I'm sorry, Counsel, I didn't give
14 an opportunity for introduction of counsel, so just for
15 recording purposes to identify the voices, if we can get
16 counsel on the record.

17 MS. KAYLOR: Yes. I'm Courtney Kaylor representing
18 Appellant Seattle Mobility Coalition.

19 MR. CARPMAN: David Carpman representing Appellant Seattle
20 Mobility Coalition.

21 MS. ANDERSON: Liza Anderson representing the Department.

22 HEARING EXAMINER: Thank you.

23 Q. (By Ms. Kaylor) Are you familiar with the proposal that is
24 the subject of this appeal?

25 A. Yes, I am.

1 Q. I will hand you what will be marked our Exhibit 2.

2 (Appellant's Exhibit No. 2 marked for identification.)

3 Q. (By Ms. Kaylor) Can you describe what this is?

4 A. This is an ordinance amending the Seattle Comprehensive Plan
5 to incorporate changes related to the transportation impact
6 fee program proposed as part of the 2017/2018 Comp Plan
7 amendment process.

8 MS. KAYLOR: I'd like to move to admit Exhibit 2.

9 MS. ANDERSON: No objection.

10 HEARING EXAMINER: Admitted.

11 (Appellant's Exhibit No. 2 admitted into evidence.)

12 Q. (By Ms. Kaylor) And what parts of this proposal are
13 important to your analysis?

14 A. There are two aspects. First is the change in language to
15 no longer consider impact fees, but to use impact fees, as
16 well as a proposed methodology for calculating those impact
17 fees.

18 Q. And looking at Exhibit 2 on attachment A, page 2, the
19 paragraph that's numbered -- or the policy that's numbered
20 T10.7, is that --

21 HEARING EXAMINER: I'm sorry, is there a -- was that
22 attachment A?

23 MS. KAYLOR: Oh, sorry. Attachment 1 -- sorry about
24 that -- page 2, policy 10.7.

25 Q. (By Ms. Kaylor) Is this the policy change that you were

1 discussing requiring the city to use transportation impact
2 fees?

3 A. Yes. "Consider" is struck, and inserted is, "Use
4 transportation impact fees."

5 Q. And then turning to attachment 2 of the same document on
6 page 1, is this the discussion of the methodology that you
7 were referencing?

8 A. Yes. It's on page 1 is the discussion under existing system
9 value, as well as facility improvements (inaudible)
10 development.

11 Q. Okay. I'm going to hand you a couple additional documents
12 for my next question. And these will be marked Exhibit 3
13 and 4.

14 (Appellant's Exhibits No. 3 & 4 marked for identification.)

15 MS. KAYLOR: Thank you. Not this one yet. Thirty-five.
16 Pardon me while we shuffle around here a little bit with our
17 documents. Thank you.

18 Q. (By Ms. Kaylor) So are you aware of any work the city has
19 done to determine the maximum permissible fee under this
20 methodology?

21 A. Yes, I have.

22 Q. First, looking at what has been marked Exhibit 3, the
23 memorandum from Fehr & Peers, can you discuss the fee cap
24 based on the existing system value?

25 A. Yeah. So the memo from Fehr & Peers to the city is a brief

1 summary memo discussing how it calculates existing system --
2 system value and how it then uses a control or denominator
3 of person trips generated in Seattle to control for the
4 value per person trip which is used to then estimate the
5 effect or price for impacts of new development.

6 Q. And does that memo calculate an amount for that cap on
7 impact fees?

8 A. It does not. It's in the attachment.

9 Q. Oh, and I'm sorry, I'm looking at what has been marked
10 Exhibit 3.

11 A. Okay. Oh, I'm sorry.

12 Q. And just looking at the -- that memo on page 4 at the top,
13 and as you point out, the attachment. Does this memo and
14 its attachment calculate an amount on the maximum allowable
15 TIF rate?

16 A. Yes, it does.

17 Q. And what is that amount?

18 A. I believe it is -- it finds that there is a peak per hour
19 per person trip resulting in a system value of roughly
20 19,700 per PM peak trip. This rate can be considered the
21 maximum allowable TIF rate.

22 Q. Okay.

23 HEARING EXAMINER: And for the record, TIF rate is?

24 THE WITNESS: Transportation impact fee.

25 HEARING EXAMINER: Thank you. I also want to note that

1 there's some handwritten notes on page 2 of Exhibit 3. Is
2 that --

3 MS. KAYLOR: And I will just say for the record, these
4 documents were obtained from a City of Seattle Public
5 Records Act request, and we didn't alter them --

6 HEARING EXAMINER: Okay.

7 MS. KAYLOR: -- from that request.

8 HEARING EXAMINER: Thank you.

9 Q. (By Ms. Kaylor) Can I ask you to turn to the next document
10 that I provided -- or that David provided, and specifically
11 to turn to the final page of that e-mail attachment. That
12 is a table. And can you describe your understanding of what
13 this is?

14 A. This seems to be an example of an impact fee rate schedule.

15 Q. And in your understanding, does this relate to the maximum
16 defensible impact fee?

17 A. That's my understanding.

18 Q. And what is the fee rate or fee rates identified on this
19 document?

20 A. Yeah. So along the left side there is an Institute of
21 Transportation Engineers' code that relates to a specific
22 type of land use. It there shows some information about
23 trip generation, the units of measure, and then the -- then
24 they use a per passenger car equivalent to then arrive at
25 the calculation of an impact -- transportation impact fee

1 rate that would be charged to those corresponding.

2 So, for example, if we go down to ITE code 220 for
3 apartments, the rate is segmented by both in general, but
4 then as it relates to projects within certain land use
5 designations within the city. For example, if we go over to
6 village, (inaudible) person -- per person trip, we have a
7 rate of \$6,700.16. If they are in a center, that fee is
8 then \$4,716. And that is on a per dwelling unit basis.

9 Q. Thank you. And so at this point in time, do we know the --
10 what the exact amount of the fee will be?

11 A. We do not.

12 Q. But based on the information you have, do you have a general
13 understanding of the magnitude of the likely fee?

14 A. I do.

15 Q. And do you need to know the exact fee amount in order to
16 evaluate impacts on housing?

17 A. You do not.

18 Q. And without an exact fee amount, what would you base your
19 analysis of impacts on?

20 A. I would base that both on sort of the theoretical
21 understanding of impact fees and sort of how they work. I
22 would base that on a growing body of professional and
23 academic literature. I would base that both on my
24 professional sort of experience working in land development
25 both for cities and developers. And I would base that also

1 on some additional examination of fees that the city has
2 done and that I have done as well looking at sort of its
3 impact on development feasibility for housing.

4 Q. Thank you.

5 MS. KAYLOR: And before I forget, I'll move for the
6 admission of Exhibits 35 and 36. Oh, I'm sorry. 3 and 4.

7 HEARING EXAMINER: Any objection?

8 MS. ANDERSON: No objection.

9 HEARING EXAMINER: 3 and 4 are admitted.

10 (Appellant's Exhibits No. 3 & 4 admitted into evidence.)

11 Q. (By Ms. Kaylor) So did you analyze the impacts of this
12 proposal on housing production and affordability?

13 A. I did.

14 Q. And what was your conclusion?

15 A. My conclusion is that the policy proposal will have
16 significant adverse impact on housing production and housing
17 affordability.

18 Q. And I'm going to hand you now another exhibit, or
19 Mr. Carpman will. And this will be marked Exhibit 5.

20 (Appellant's Exhibit No. 5 marked for identification.)

21 Q. (By Ms. Kaylor) Can you tell me what the basis for your
22 conclusion is?

23 A. Yeah. So first I said there's a strong sort of theoretical
24 basis. The simple way to state this is costs matter, right,
25 any -- for any kind of business, and housing development is

1 a business. It provides the bulk of housing that is
2 available to people both within the city and the region. We
3 typically call that market rate housing.

4 And so for any given project they're always trying to
5 balance the rents and prices that are available to support
6 that production, and impact fees change that cost of
7 production. So -- so we know that kind of from a
8 theoretical basis there is a growing and intriguing and body
9 of literature, both within the professional academic
10 settings that try to understand that theoretical basis as it
11 relates to sort of what we see on the ground. And I think
12 there is a growing consensus amongst those in the profession
13 acknowledging that the literature is complicated, but
14 there's a growing body of literature here that impact fees
15 generally sort of raise prices either through passing costs
16 on, or through restricting the amount of housing or -- that
17 can get built so the resulting cost here isn't one of
18 housing scarcity. That has an impact on a housing
19 production, and therefore affordability, because people then
20 have to bid up prices in order to compete for a smaller
21 amount of housing.

22 The third piece here is related to my review of the
23 city's materials. The city's 2015 summary work plan
24 disclosed that there are impacts to housing both in terms of
25 sort of price and those issues that have an impact on its

1 fair housing affordability. There is my own work, as I
2 said, working for both cities and for developers examining
3 questions of housing production where we've examined the
4 impact that impact fees have. And that's parks,
5 transportation, school, fire, and places where they haven't.

6 Then also some additional analysis just to examine how
7 impact fees have related to sort of housing production in
8 the Central Puget Sound over the last 10 years. So, and
9 then I've done some simple calculations to sort of bring
10 that forward as sort of illustrations of the types of
11 impacts I'm talking about.

12 Q. All right. So I'd like to talk in a little bit more detail
13 about each of these grounds. First just kind of the overall
14 theory, and then the literature, and then your particular
15 work in this area. But before I do, I want to be sure I
16 have taken care of some of our exhibits here. So let me ask
17 you to identify briefly what is in Exhibit 5 which we handed
18 you.

19 A. This is an exhibit I've prepared with some -- first some
20 summary of the academic literature -- professional
21 literature, excuse me, on sort of impact fees. A short
22 description of I think why we tend to see impact fees have a
23 distortionary effect in land markets. And then section --
24 I'm sorry, that's section 2.

25 And section 3 provides just some illustrative and

1 understanding of sort of how impact fees add costs to
2 construction projects.

3 And then section 4 provides some additional information
4 of understanding fee arrangements within the Central Puget
5 Sound, as well as what their potential sort of effect on
6 housing production as a policy measure contemplated in the
7 Comprehensive Plan amendment.

8 Q. Thank you.

9 MS. KAYLOR: I'd like to move to admit Exhibit 5.

10 MS. ANDERSON: No objection.

11 HEARING EXAMINER: Exhibit 5 is admitted.

12 (Appellant's Exhibit No. 5 admitted into evidence.)

13 Q. (By Ms. Kaylor) And you mentioned in your introduction, what
14 is our Exhibit 23, you mentioned a document that had been
15 prepared by the City of Seattle, impact fee policy
16 assessment and work plan development, and I just want to be
17 sure that we get that into -- into our record here. So
18 we'll hand that out as well. And that will be Exhibit 6.

19 (Appellant's Exhibit No. 6 marked for identification.)

20 Q. (By Ms. Kaylor) If you could please -- so this document will
21 be marked as Exhibit 6. If you could please turn to page 5
22 of that document. I believe you mentioned the city had
23 acknowledged in a previous -- in this particular document
24 the impacts of fees, looking at who would be affected by an
25 impact fee program, and to what extent. Is that the section

1 of this document you were referring to?

2 A. It is.

3 Q. Thank you.

4 MS. KAYLOR: I'd like to move to admit Exhibit 6.

5 MS. ANDERSON: No objection.

6 HEARING EXAMINER: Exhibit 6 is admitted.

7 (Appellant's Exhibit No. 6 admitted into evidence.)

8 Q. (By Ms. Kaylor) Okay. Having addressed our exhibits, I'd
9 like to go back and discuss each of the grounds that you
10 mentioned in your introduction. So first just the general,
11 I guess, theoretical basis for your conclusion. First,
12 generally, why do impact fees affect housing prices?

13 A. So I think the simple way to explain it, there are two sides
14 of the sort of housing production equation. On one side you
15 have sort of the demand for housing, so represented any
16 rents. And then you have sort of basically the sort of
17 supply side of the equation. You add those two things,
18 intersect, right, we have sort of at some equilibrium market
19 prices, right?

20 So developers don't set this. This is really a
21 function of what's happening in the broader economy, as well
22 as sort of what the relevant supply looks like across all
23 segments.

24 And so for new construction, they must balance that
25 sort of price and income. So the income is important

1 because it's there to sort of obviously pay back investors
2 to service loans and to actually sort of -- to tribute sort
3 of the returns necessary to (inaudible) that production.
4 The relevant parts of the cost side include obviously your
5 hard costs, so things like materials and labor to construct
6 the thing, as well as a range of soft costs that are related
7 to sort of getting the project entitled, designed,
8 engineered, and permitted.

9 And two key pieces of your soft costs are obviously the
10 taxes you pay in Washington. It's a nontrivial matter,
11 given that construction is subject to the sales tax rate.
12 But then also a series of fee arrangements. And some of
13 those fees are charged on cost recovery basis. They're
14 important for sort of permitting, to plugging into a system
15 like utilities, waste water, sewer and water. And other of
16 those fees, right, can be things like impact fees that are
17 meant to sort of mitigate future impacts on sort of
18 infrastructure.

19 The thing I'd highlight there, right, and particularly
20 relevant for this conversation is the market sets the
21 majority of the prices as a developer, right? It sets the
22 cost of capital. It sets the cost of labor and materials,
23 right? And one things that govern -- one thing that
24 government agencies do control is the actual sort of fee
25 setting and taxation policy. And obviously they have a sort

1 of broad government -- they have a broad mandate to deliver
2 sort of public goods and public services. But they always
3 must sort of -- sort of think about those issues relative to
4 issues of sort of economic competition and economic vitality
5 and -- and obviously trying to balance those goals, meaning
6 it's a complicated picture. And so for fee arrangements
7 particularly, you know, that's something -- that's important
8 to highlight.

9 So those are the kinds of things that go into sort of
10 the production model that impact fees contribute to, right?
11 They contribute both to -- in some cases to the actual
12 revenue side, right, particularly if they're developing
13 projects that address needs for mobility and the
14 flexibility. But then they also are on the cost side of the
15 equation, particularly if they would raise the cost to sort
16 of produce any given unit of housing.

17 Q. Okay. And so does the fact of an impact fee necessarily
18 mean that developers will need to charge more than tenants
19 are willing to pay?

20 A. No. Developers don't set the market, right? The market is
21 a function of sort of what's happening on the demand side
22 and the supply side. So in both on the rent side,
23 (inaudible) versus sort of price takers who are also price
24 takers in that extent, right?

25 Practically the way it works out, right, they can sort

1 of test the market, right, try to see if there's a
2 willingness to pay. And this is kind of how housing markets
3 work, right? Either there are people who are willing to pay
4 those prices, or they are not. And that's what controls
5 sort of the market rate for housing.

6 Q. Okay. And what causes -- when do impact fees cause housing
7 prices to rise?

8 A. Yeah, so -- so there are two things that are important with
9 impact fees that I think decision-makers need to understand.
10 It depends on what the projects are, right? To the extent
11 that the projects are actually solving the marginal costs
12 that additional people place on the system, right? And
13 those costs are then translated into a fee that also
14 represents some additional gain because it solves the
15 mobility challenge.

16 So there's a higher sort of potential premium for
17 living in the place, because instead of living in a
18 congested place that it now takes you 20 minutes to get to
19 your job, you live in a relatively un-congested place that
20 gets you [sic] 15 minutes to get to your job, right? And so
21 people price those things into land markets.

22 When we do that, typically when we balance both the
23 improvement and the fee arrangement, we call that typically
24 a pretty efficient fee in that there are sort of these
25 corresponding pieces, and so land markets are less distorted

1 with respect...

2 When we don't do that, when we don't have a set of
3 projects that actually price the impact that additional
4 users have on the system in terms of the need for new
5 capacity, what happens is we actually can overcharge
6 projects. So in that case, right, revenues -- you haven't
7 solved sort of the actual sort of underlying mobility
8 challenge, and you've created a charge on the other side
9 that then is not able to be supported at market rents. So
10 therefore, you don't have a project.

11 So that's what we typically say around looking at sort
12 of efficient sort of fee arrangements. When you have that
13 sort of strong nexus, then we typically see less distortion
14 in land markets.

15 Q. Okay. And with regard to impact fees, typically do impact
16 fees create that nexus? Are they efficient?

17 A. Typically not. And not because of -- I think this is mostly
18 an artifact of just bad practice overall. I think the
19 simple way to state this, right, efficient fees draw the
20 strong nexus to say, what is the cost that an additional
21 user at the sort of most congested time exerts on the system
22 that then necessitates certain kinds of projects to mitigate
23 those impacts? And that then we understand those impacts
24 and price them at the marginal cost of adding one additional
25 person.

1 Impact fee programs typically use a cost allocation
2 process that simply says, here's a bunch of projects; here's
3 their cost; here's what it costs us to sort of deliver those
4 services now. We assume those to be the same going forward
5 in the future, and so let's charge an average cost. And
6 what happens here is the average cost is typically higher
7 than the marginal cost of those impacts.

8 And so it's possible that some projects may be
9 undercharged in those arrangements, but it's also more
10 likely that most projects are going to be overcharged in
11 those arrangements. Whether we see it in industry or in
12 government, average costs are almost always typically higher
13 than your marginal cost, because they don't account for some
14 of those existing capacity issues, existing fixed costs that
15 you have in place. So it's really important to understand
16 sort of both the project lists and how you are designing the
17 fee arrangement in order to have a smaller impact on land
18 markets.

19 Q. And so what happens to a development project if it's being
20 overcharged, or if the fee is not efficient?

21 A. Yeah. So I think I'll go back to my example here. Think
22 about kind of three situations, right? A status quo where
23 there's no impact fees. Say the average rent is about
24 \$1,500 for a unit, and you have a cost to produce, but
25 that's also your -- that's the rate at which you would sort

1 of -- those projects pencil, right? Like, given my cost
2 structure at 15 -- at an average rent of \$1,500 a unit, I
3 can build my project, okay?

4 And then imagine a project here that goes forward like
5 an actual capacity improving project that solves some
6 congestion problem, right, mobility problem. So here, let's
7 say we price that in. So the project goes in, and now you
8 can sort of charge, you know, 1,550, right, \$1,550. But
9 then you have a corresponding cost, and let's just say that
10 cost is roughly equal to the 1,550 amount. The project can
11 still pencil, right, it goes forward.

12 But what happens a lot in average cost pricing, right,
13 is that -- and in particularly impact fee arrangements is
14 that the current market rent of 1,500 stays the same, but
15 now you have a cost structure that requires you to get to
16 1,550, and so the project doesn't move forward. And
17 they're -- you know, the big issue is really about fee
18 arrangements, but there are other issues around impact fees
19 that are also challenging, right?

20 So typically fees are collected in advance of any
21 improvement ever being constructed. So you actually already
22 have priced in the amount of the fee before you actually
23 even put in the project that is supposed to mitigate the
24 effect of the development.

25 And also a smaller issue here is the fees are actually

1 paid not by the actual users of the system, right? They are
2 paid by proxy by the developer at the time of development.
3 And this also raises an issue. The main issue here is
4 really is that the sort of time value money aspect of what
5 it takes to sort of finance a project is much higher than
6 the time value money of the social costs of those projects
7 that you're putting forward. And it's those kind of issues
8 here that are really important in terms of understanding why
9 impact fees can work and why they cannot work and why they
10 may produce impacts and unintended consequences that we're
11 considering.

12 Q. So looking at the memo that you prepared, Exhibit 5 on page
13 6, does this diagram illustrate your point here?

14 A. Yeah. So the diagram on page 6 on Exhibit 1 is just a
15 really simple, stylized example here giving you some sense
16 of the different components of costs. And so to the left I
17 have kind of created sort of a piece where you have current
18 costs in a feasible housing project, and on the right you
19 have sort of increased fees, not feasible, given the same
20 sort of break-even rent that you need. So, like, that
21 \$1,500 amount that I was talking about.

22 Your larger set of fees are obviously in hard costs and
23 constructions -- excuse me -- but development fees, state
24 and local taxes and impact fees are also a growing and
25 significant amount of a construction budget for a project.

1 These aren't exact numbers. I'm using kind of a
2 prototypical project, but it gives you some rough magnitude
3 of typically what the project costs are on -- on a -- on a
4 sort of multifamily building, say a podium project. So one
5 that has steel and concrete at the bottom and wood -- and
6 wood frame on top, about a roughly 200-unit project.

7 Q. Okay. And so then an inefficient fee, would that have any
8 effect on housing supply? And feel free to refer to other
9 diagrams in your memo as you answer my question.

10 A. Yeah, so I'll go back to sort of an inefficient fee. And I
11 would say what we see here proposed in the Comprehensive
12 Plan amendment, both with the methods and the resulting
13 documentation, is a sort of what I would say broadly a cost
14 allocation approach that is sort of normative in the impact
15 fee industry, which we also see is why we typically are
16 seeing these issues around sort of housing production with
17 that type of approach.

18 And so -- and so the inefficiency here is that we're
19 just not drawing a strong nexus to the impact and the
20 benefits of the projects that -- that reduce congestion,
21 right, relative to what the actual sort of price should be
22 for projects to pay. So -- so I would say an efficient one
23 has that strong nexus, understands the marginal costs of
24 adding additional capacity and prices accordingly. An
25 inefficient one would typically use sort of broad cost

1 allocation or average cost allocation methods to apportion
2 for fee setting.

3 Q. Okay. So if I understand you correctly, a fee such as the
4 one that's proposed here will impact project feasibility and
5 cause some projects not to go forward; is that right?

6 A. Yes. Yes. And my conclusion here and the basis for why I
7 think there's a significant impact, the requirement to use
8 impact fees, to price it using broad cost allocation, fees
9 will actually lead to most projects being overcharged for
10 that. Obviously then with the sort of the issues of
11 basically collecting the money before projects are
12 collect -- are completed, collecting money by proxy, that it
13 becomes more and more difficult for projects to sort of
14 price those in within the marketplace for the additional
15 rents to support those additional costs that the fees will
16 be a part of in terms of a construction budget.

17 Q. Okay. And will that cause all projects to become
18 infeasible?

19 A. No.

20 Q. And in what -- in which cases would it cause projects to
21 become infeasible?

22 A. Yeah, so -- so the policy being proposed here is
23 programmatic, right, to use the fees under -- and to price
24 them in a certain sort of way. And so in the sort of broad
25 programmatic pieces, we're talking about adding additional

1 costs to start a project construction. And so I've done
2 some sort of rough math to say sort of at the margins
3 what -- what kind of declines in feasibility might we expect
4 in doing so. And so if you turn to page 9 of I guess it's
5 Exhibit --

6 Q. 5.

7 A. -- Exhibit 5, I've used some average impact fee prices,
8 prices that are less than what the maximum impact -- maximum
9 defensive impact fee price that is cited in Exhibit --

10 Q. That would be Exhibit 4.

11 A. 4. So understand sort of how on a large scale these fees
12 can reduce the production of housing. And so the hex bins
13 collared on the left have the average new construction rents
14 within the City of Seattle currently in place. And I've
15 created some financial pro formas with the right -- you
16 know, reasonable sort of assumptions for financial return,
17 construction costs, soft costs, and then varied the amount
18 of the fee on the right.

19 And so what we see here highlighted in the red hatch
20 marks are using sort of average fee arrangements across
21 Puget Sound cities less than in total of the modeling year
22 transportation and park impact fees. But in total are less
23 than what is cited as the maximum defensible fee in the
24 exhibit. And what we see here is a reduction in housing
25 production expressed as density.

1 And so places where -- and I've normalized this to land
2 cost of zero so we're not looking at sort of what the
3 existing production piece is. But if we accept that our
4 challenge here is housing shortages, our ability to deal
5 with housing affordabilities is about maintaining and
6 expanding the probability of housing getting constructed.
7 And so the hatch marks in red show basically where we see a
8 reduction in housing density. So towers become podium
9 products, which is a less dense type form of housing.
10 Podium projects become stacked flats, which is a less
11 density -- dense form of projects, and so on.

12 And so here we can see as a policy measure the use of
13 these fees to be implemented somewhat inefficiently is going
14 to reduce the possibility that housing becomes a competitive
15 and productive project in these areas.

16 Q. Thanks. Just turning back to the -- your first basis, and
17 going I think a little bit earlier in your memo, you had
18 mentioned in addition to kind of a theoretical basis that
19 you've just described, that there is literature that
20 supports this conclusion. And so can you discuss some of
21 that literature?

22 A. Yeah. I think as I was saying earlier, you know, I think
23 the development community has always been somewhat cranky
24 over impact fees, and the issue had always been sort of on
25 one side you have, you know, a strong theoretical basis for

1 this, but then everybody wants to see kind of the proof.
2 And having done research in this setting, it's challenging,
3 it's complicated. But with that notion, there is an
4 emerging picture here that cross studies, and none of them
5 are sort of, you know, speak with, you know, a singular
6 voice, and in no setting do we see studies speak with
7 singular voices. But we see them having an effect on
8 housing prices and housing production. And obviously the
9 details matter greatly.

10 What is the fee charged for? How is the fee put in
11 place? Who is paying it? How is it relative to other
12 jurisdictions that also use fees? These are all important
13 facets. What projects were funded? What kinds of things
14 got built, and when, are all sort of key issues. But I
15 would say there is an emerging picture.

16 And I would kind of put the papers that I referenced in
17 my exhibit into kind of three buckets, right? First the
18 U.S. Department of Housing and Urban Development maintains a
19 website on regulatory (inaudible) the housing and housing
20 affordability. It also produced a paper examining a list of
21 those things and impact fees are cited for -- as being sort
22 of challenging. I would say the summary that I would pass
23 on here -- I will read it if I can find it.

24 Q. Is that on page 2 at the top of your memo that's been
25 identified as Exhibit 5?

1 A. Yeah. I'm sorry. Yes. Right at the top. Sorry. I was
2 looking at the -- "Impact fees are an accepted and growing
3 mechanism to finance the infrastructure of public services
4 associated with new development. Although some impact fees
5 reflect actual front-end infrastructure and development
6 costs, others are disproportionate to the community's actual
7 costs, reflect in a necessary high level of infrastructure
8 investment or assessed in an aggressive manner. Although
9 not new, impact fees are becoming a prevalent financing
10 strategy for new development almost everywhere across the
11 United States, and they are often a significant impediment
12 to the development for affordable housing."

13 There are a range of other studies that I have pulled
14 together. There is a strong -- a nice summary of the
15 literature as a few years ago by Vicki Been as shown on page
16 3. This is 2005. But it's a strong sort of analysis, and I
17 think the key takeaway here from that study is that
18 there's -- it's complicated, right, that moving forward
19 requires governments to think about multiple issues of their
20 broader need to deliver infrastructure, balanced against the
21 need to provide housing.

22 And also to be thinking about the potential sort of
23 distribution of those effects. Do they fall particular
24 regressively on lower income communities, communities of
25 color, and so on?

1 And the last one are a series of papers by Mathur, but
2 here is some analysis that he's done over the years looking
3 at impact fees in King County specifically, both what I have
4 here, as well as the city's exhibit on one of these paint a
5 very complicated yet important picture of impact fees.

6 One, generally, is a class of activities, we -- they
7 exert impacts on prices and housing. And they are
8 differentials with respect to the types of fees that are
9 charged.

10 Q. Thank you. And I won't ask you to address all of the
11 studies that you've cited in your paper, but thank you for
12 that summary. The last study that you mentioned, the Mathur
13 study, the city also identified in its exhibit list, does
14 that study contradict your conclusion about these impact
15 fees?

16 A. No, it doesn't.

17 Q. And why not?

18 A. The study I think is coming back a few years later examining
19 an additional data set looking at the fee incidents across
20 different types of fees. And you find some -- he had some
21 additional sort of very insightful findings related to the
22 impact fees. It matters what kind of fee is charged. I
23 think he was looking at park transportation and -- but other
24 sort of fees as part of that. And then understanding the
25 distribution of those effects, particularly either on high

1 or low-priced housing.

2 And I think his findings are very in line with my
3 understanding of impact fees. That it matters what it's
4 charged and how -- and who the -- and how those charges fall
5 across both the existing and -- sorry, the existing and new
6 housing inventory.

7 Q. And then turning again to your work, you've discussed it a
8 little bit earlier, but is your own work in line with the
9 conclusion that impact fees, the way they're structured
10 here, would have significant adverse housing effects?

11 A. Yes. I've done two things. The analysis that I walked you
12 through on the map. The other one was simply looking at the
13 rate of housing production and the total cost of fees and
14 impact fees as part of the development budget.

15 And there are two kind of things I would walk away from
16 here. Seattle has actually traditionally done a very nice
17 job at keeping their fee environment fairly low. And that
18 has translated with a 10 X increase in housing production
19 over that same time.

20 But when we relate housing production to the rate of
21 the fees, both development fees, SEPA fees, and impact fees,
22 we find generally there's a strong correlation between
23 jurisdictions within the Central Puget Sound that charge
24 those -- the rate at which they charge those fees relative
25 to how much housing -- multifamily and dense housing they

1 have produced. And so Seattle is moving forward or has
2 moved forward with mandatory housing affordability.
3 Obviously there are up-zones, and then there are fee
4 arrangements, fees-in-lieus that developers could
5 participate in.

6 So Seattle's already changing the environment of which
7 that fee proposal -- or the fees that are charged to
8 development exists. They have documented that as part of a
9 PowerPoint that I reviewed that was delivered to counsel of
10 understanding kind of where Seattle will be in terms of fees
11 with MHA. And now is also considering using impact fees
12 cumulatively on top of that.

13 And that may also change the productivity of housing
14 both -- in two respects. Obviously more broadly with -- in
15 terms of how much housing we can produce as a city, but then
16 also related to MHA. How will -- how will the additional
17 impact fees change sort of the productivity that MHA
18 requires in terms of delivering rent in income-restricted
19 units as part of projects, as part of the -- as they are
20 built or -- or as part of fee-in-lieu arrangements that
21 those projects will be subject to.

22 Q. And is this addressed in your report as well?

23 A. Yes. So I have some documentation on Exhibit 8 -- I'm
24 sorry, page 8 on Exhibit 3 -- just roughly showing the
25 development and housing fees, as well as what Seattle may

1 look like with average transportation impact fees and
2 everything.

3 Q. Okay.

4 A. And a similar analysis is contained in the city's PowerPoint
5 presentation to counsel.

6 Q. So based on this literature and your own work and your
7 review of this current proposal, what about this current
8 proposal leads you to your conclusion that the impacts will
9 be adverse and significant?

10 A. So there's a requirement now to use, no longer consider, and
11 there is a methodology layed out here that is likely to use
12 cost allocation methodology that will result in sort of the
13 overcharging of projects. That overcharging of projects
14 will be represented on the cost side but not necessarily on
15 the revenue side of the equation, leading to an economic
16 situation where housing is less feasible across the city
17 than it is today.

18 Q. And I think we discussed this already a little bit, but
19 given that the exact amount of the fee isn't determined yet,
20 how can you reach a conclusion on significance now?

21 A. I would say on two respects. Obviously the pricing.
22 There's a sort of methodology here that's for -- that's not
23 likely to draw that strong nexus that land markets need to
24 price in the value of the capacity improvements. And I
25 would say also the subsequent documentation on the impact

1 fee pricing suggests that those prices, if they were used
2 today, would be significantly higher than what I've
3 analyzed, and would place an even larger cost burden on --
4 on projects.

5 But also I think the thing we know from the literature
6 and from theory, right, there is a marginal relationship,
7 right? For every dollar increase in a fee, there is a
8 corresponding impact on the sort of production side. And I
9 think that's what the math is trying to demonstrate here,
10 right? At different prices we have different outcomes. And
11 so as fee arrangements go higher and higher, right, they
12 have a corresponding impact on housing feasibility across
13 the city.

14 So whether the fee is a dollar, it will be impactful or
15 very small, right, versus if the fee is at \$6,700 per
16 dwelling unit where the impact is likely to be much higher
17 than what I have even assessed as part of my work.

18 Q. And I'd like to direct your attention to a couple additional
19 exhibits. First the Exhibits 5 and 6, our Exhibits 5 and 6.
20 So first I'll hand you -- or Dave, Mr. Carpman, will hand
21 you what will be marked Exhibit 7, which is the
22 environmental checklist for this proposal, and what will be
23 marked Exhibit 8, which is the Determination of
24 Non-significance for this proposal.

25 (Appellant's Exhibits No. 7 & 8 marked for identification.)

1 Q. (By Ms. Kaylor) And have you reviewed these documents
2 previously?

3 A. I have.

4 Q. Do these documents disclose the impact on housing production
5 or housing affordability that you've discussed today?

6 A. No, they don't.

7 Q. And in your opinion, should they have been disclosed?

8 A. I think they should. I think impact fees, we understand
9 them much better today than we have five, ten years ago. It
10 is complicated both on the project side and on the pricing
11 side, and I think decision-makers should understand those
12 nuances as they discuss policies to implement the fee.

13 I think this is the challenge in part with that having
14 the fee, right? In some cases when past we have a
15 Comprehensive Plan and policy, right, that is implemented in
16 many different kind of land use arrangements or codes or
17 ordinances, right, versus here we have a fee, right? The
18 policy is the fee.

19 So understanding issues of the project list, the fee
20 arrangements, and potential mitigation to avoid sort of
21 hazards that we may be worried about, particularly around
22 the equitable development side or issues of displacement, I
23 mean, those are important things that decision-makers need
24 to grapple with or even sort of the impact potentially on
25 MHA. I mean, those are things that are important that

1 decision-makers should have -- should know. We know that
2 today, right? And so -- and the city has flagged this as
3 part of their work plan group, right, already. And that
4 isn't carried forward in the SEPA checklists or the DNS.

5 MS. KAYLOR: Thank you. No further questions. Oh, my
6 apologies, I don't -- I neglected to request admission of
7 the SEPA checklist and the DNS.

8 MS. ANDERSON: No objection.

9 HEARING EXAMINER: Exhibits 7 and 8 are admitted.

10 (Appellant's Exhibits No. 7 & 8 admitted into evidence.)

11

12 C R O S S E X A M I N A T I O N

13 BY MS. ANDERSON:

14 Q. Hello, Mr. Shook.

15 A. Hello, Counsel.

16 Q. How are you?

17 A. I'm well. Yourself?

18 Q. Good. So I've got just a couple of questions for you. All
19 right. I would ask you to turn to what has been marked as
20 Exhibit 6. That one is the work group summary.

21 A. Thank you.

22 Q. All right. And I believe you indicated in your testimony
23 that, in fact, the city indicated that there would be
24 impacts to housing based on this exhibit; is that correct?

25 A. Correct.

1 Q. And can you point me to where in this exhibit it states
2 that?

3 A. It's on page 5 under potential cost burden allocation. And
4 I'll read the segment on which I'm basing this on. "One of
5 the primary concerns surrounding impact fees is ultimately
6 who bears the cost of the fee. The extent to which the
7 developer is able to pass on costs is largely determined by
8 the market conditions at the time of development. To the
9 degree of which impact fees were assessed on residential
10 development, even with affordable housing exemptions from
11 growth management act impact fees, the housing market as a
12 whole would still likely be affected by changes in prices
13 and rents."

14 Q. Okay. And so is that the basis upon which you conclude that
15 there would be impacts to housing?

16 A. No. As I stated earlier, it's much more comprehensive than
17 that.

18 Q. You indicated that it's complicated. And what are some
19 factors that relate to the fact that it's complicated? For
20 example, if there's an increase in cost of some of the hard
21 costs, for example, materials, could that also have an
22 impact on housing?

23 A. Yes. I would say, bottom line, costs matter, right? And
24 what I'm trying to differentiate here, there are costs that
25 are largely out of the control of government, right? But

1 government does control investment policy for needed
2 infrastructure that we all need, and in this case, impact
3 fees. It also controls sort of how those fees should be
4 charged to new residents of the city, right? New users of
5 those systems.

6 And the complexity is on both sides, right? Like, what
7 is the impact that those new users are placing on the
8 transportation system, right, that is necessitating the need
9 for additional capacity to mitigate those impacts? And then
10 what is the cost to produce those projects apportioned on
11 the marginal value of one additional user?

12 So -- so two-fold. It matters on the project side, but
13 then it matters how you think about char- -- designing a fee
14 so that you -- we can avoid as a community, right, those
15 impacts on housing that I think we've been attendant to.
16 And I think, you know, I'll say also with housing, right,
17 it's like -- I know SEPA's, like, very specific with the
18 physical environment and changes to it, but I think in the
19 last 10 years -- and I think the city policies understood
20 this -- housing matters greatly, for a range of social,
21 environmental, and economic issues, right?

22 We're understanding that income mobility and income in
23 equality is in large part due to rising housing costs,
24 right? That we have seen large intergenerational transfers
25 of wealth to these current generations to pay a lot more for

1 housing than we have in the past, right? We've seen people
2 priced out of their communities who have to go live in
3 places that require them to have longer commutes to -- that
4 were -- there aren't good substitutes like transit
5 available, so there's larger impacts both on the
6 environment, both on the additional capacity side for
7 accommodating those vehicle trips, right? So I would say --

8 Q. Mr. Shook, can I --

9 A. I think it's always kind of important to remember that.

10 Sorry. Thanks.

11 Q. Can I interrupt you?

12 A. No. I'm done.

13 Q. That sounds like a larger societal problem, doesn't it?

14 A. Well, I think it's -- I know SEPA's -- I would say my -- we
15 can think about SEPA just in the housing impacts, but
16 housing is -- you know, nobody really cares about unoccupied
17 buildings, right? We care about the people and households
18 that are in them. And what we can do as policymakers,
19 right -- and I think this is the part where I think we need
20 to disclose to decision-makers that they can actually have
21 real impacts on people's economic well-being and social
22 well-being, as well as the environmental sort of issues that
23 we were paying attention to, right? And this is how the
24 whole point gets complicated.

25 And so when we start pulling on impact fees, and

1 particularly with a policy to move forward here, I think
2 decision-makers, we know enough here as professionals that
3 we should be disclosing these things to counsel and senior
4 staff as they sort of work forward to design these systems.
5 I'm not necessarily opposed to impact fees. What I'm saying
6 here is that we owe both the community and those folks to
7 disclose what we know about them. And the way we've
8 designed it, both in the Comprehensive Plan amendment and
9 the methodology is likely not to be efficient and is likely
10 to be distortive with respect to land markets.

11 Q. Okay. So is it your opinion that all impact fees would be
12 distortive to markets?

13 A. No.

14 Q. Okay. And so whether or not an impact fee would be
15 distortive depends on a number of factors; is that correct?

16 A. Correct.

17 Q. And do we know the factors involved in this particular
18 instance?

19 A. We do. We have a rough sense of the projects, and we have a
20 rough sense of -- I mean, what's available here isn't
21 summary level detail in terms of the pricing, but it's a
22 typical sort of approach doing impact fees, which is
23 allocating costs on an average basis.

24 Q. Do we know the cost amount? Do we know the fee amount?

25 A. We don't know the exact amount.

1 Q. Okay.

2 A. But we do know benchmarks around what the maximum defensible
3 fee is.

4 Q. And when you say the benchmarks, what number are you relying
5 on?

6 A. Well, maybe -- say that again? I would say we know -- I'm
7 relying on what's in the -- in the memo on the example fee
8 table.

9 Q. Okay. So that's the \$19,000 number?

10 A. No. It's the other one that is in more detail. It's -- I
11 can't remember which exhibit number it is. I'm sorry. But
12 it's the --

13 MS. KAYLOR: I believe that's Exhibit 4, the table.

14 A. This table.

15 Q. (By Ms. Anderson) So what is that amount?

16 A. It's -- it depends on the -- on the project and where it is.

17 Q. Okay. And has that been determined? Is it your
18 understanding that that has been determined?

19 A. It is my understanding that has not been determined.

20 Q. Okay. So is it possible that if and when a transportation
21 impact fee program is developed, that there will be
22 modifications to this?

23 A. Likely.

24 Q. Yes. Okay. And is it possible for transportation impact
25 fee programs to include contours that increase the

1 efficiency?

2 A. You mean by --

3 Q. Are there examples of transportation impact fee programs
4 where there are components that there is a closer nexus
5 based on your --

6 A. My understanding is impact -- there are -- as part of the
7 GMA, there are appeal require -- they are required to have
8 sort of appeal and measures for projects so they can
9 offer -- they can contest the fee and provide alternative
10 calculations of those fees.

11 Q. Uh-huh. And have you ever been involved in any?

12 A. I have.

13 Q. Okay. And in the case where a developer wants to contest
14 the impact fee imposed, what are the steps that they go
15 to -- go through to do that?

16 A. I would say broadly they are guide boards to that, right, in
17 terms of understanding. But it's trying to understand
18 roughly either projects that they have already mitigated as
19 part of their development. So are they mitigating two
20 impacts at once?

21 It's my understanding also that they can contest what's
22 on the denominator side typically of the cost allocation
23 scheme. So if they somehow think that, for example, a
24 community may apportion their cost based on dwelling units,
25 but underlying those dwelling units are assumptions about

1 occupancy, and so maybe, you know, they are building mostly
2 studios, but they are getting charged occupancy levels of
3 two-bedroom units, they can contest those types of things.
4 So -- so I would say there are sort of some broad
5 limitat- -- or there's some limitations, but within those
6 limitations they can provide for trying to tie their project
7 back to impacts as well as sort of alternative calculations.

8 Q. Okay. And it's your testimony that that's required by law?

9 A. I understand that to be required as part of the impact fee
10 ordinance.

11 Q. And do you know whether or not that would be included in any
12 program that the city would consider?

13 A. I would assume that it would be.

14 Q. Okay. All right. I ask you to turn to Exhibit 5, please.
15 This is your summary of analysis. So in this paper, did
16 you -- I believe that your testimony was that you examined
17 some prototypical projects; is that correct?

18 A. Yes. So are you speaking specifically about my own
19 calculations?

20 Q. Uh-huh. Yes. And so you didn't do any specific analysis
21 with respect to the city's program; is that correct?

22 A. There is no program, so I do not do anything to the city's
23 specific program.

24 Q. Thank you. Now, I believe you also indicated that there
25 were a couple of ways to mitigate this inefficiency that you

1 were testifying about. One was an individual analysis which
2 I think you just discussed. Another one could be creation
3 of an exemption for affordable housing. Are you familiar
4 with that kind of an exemption?

5 A. I am.

6 Q. Okay. And are there transportation impact fee programs in
7 the Puget Sound that utilized this exemption for affordable
8 housing?

9 A. They are.

10 Q. And do you have any idea whether or not the city, if it, in
11 fact, adopted a program, would include an exemption for
12 affordable housing?

13 A. I don't know.

14 Q. Okay. Okay. All right. I'd ask you to turn to page 9 of
15 this exhibit. I have a note here Exhibit 5, but I don't see
16 that. I believe you were testifying about these two maps
17 here that are Exhibit 4. And can you clarify for me, what
18 average fees were you considering in this analysis in
19 preparing this exhibit?

20 A. Yeah. For transportation impact fees I think I was using
21 \$1,500.

22 Q. And what other fees were you including in that analysis?

23 A. It included a current use of all development fees charged,
24 so permitting, as well as utility hook-up fees. It also
25 included -- I'm sorry, I should just say it was a

1 comprehensive list of fees that are paid by a project. My
2 recollection would be it would include some SEPA fees
3 potentially. It included in both cases. So the only thing
4 that's being varied on the right is impact fees. But in
5 both cases including -- I'm sorry, development permitting
6 fees, entitlement fees, utility hook-up fees, MHA fees, and
7 then impact fees, yeah.

8 Q. And was that impact fees only for transportation or for
9 others including parks and schools?

10 A. This is just transportation, I believe. I can't remember
11 exactly, but (inaudible) I remember it being just looking at
12 transportation.

13 Q. Okay. And is it -- it's your testimony that, in fact, there
14 would be less density or less dense form of products
15 produced as a result of transportation impact fees; is that
16 accurate?

17 A. Yes.

18 HEARING EXAMINER: (Inaudible) go ahead and finish.

19 A. Oh, I was going to say, either less dense or potentially
20 project that might be infeasible, right, that those were the
21 impact fees pushed them over the price -- the point of sort
22 of project feasibility.

23 HEARING EXAMINER: And before we go on to the next
24 question we're going to take a break for 15 minutes.

25 MS. ANDERSON: Okay.

1 HEARING EXAMINER: It looks like our clock is a few
2 minutes ahead. We're going to be working off of our clock
3 here. And so return at 10:30 -- 10:34 on our -- 10:34 on
4 that clock maybe.

5 (Recess)

6 HEARING EXAMINER: We'll return with Mr. Shook still on
7 cross by the city.

8 MS. ANDERSON: Thank you very much.

9 Q. (By Ms. Anderson) Mr. Shook, looking again at Exhibit 4 of
10 Exhibit 5, I guess these two maps on page 9, when you
11 prepared these maps, did you take into consideration the
12 zoning?

13 A. No.

14 Q. And you talked a little bit about your opinion that there
15 would be a significant impact to housing. And is that based
16 in -- is that based on costs -- impact fee costs being
17 passed on to a renter or an owner? Is that part of -- is
18 that part of your opinion? The significance to housing,
19 what is that based on? Is that based to --

20 A. That's a fee amount, yeah.

21 Q. Okay. And the fee amount as it is passed on to --

22 A. So there's two separate issues here. So there's one is what
23 the actual fee is, right?

24 Q. Right.

25 A. That is paid we know specifically by the developer. In

1 economics, the question is, who's ultimately bearing the
2 incidents of a fee? Is it the producer of the good or the
3 consumer of the good? And so it depends I think on how
4 elastic the market is. So in areas where there is not
5 elas- -- so in housing markets, typically not very elastic,
6 right, it takes time. There are other regulatory hurdles to
7 build housing. We've seen this historically, right, why we
8 see large spikes in housing prices because it takes a lot of
9 time for housing to get built, and then when it does get
10 built, it typically doesn't get built in sufficient numbers.

11 And so in those cases, the long-run burden -- the short
12 and long-run burden of the cost is borne by the consumer of
13 that. As opposed to where we have very elastic goods,
14 right, where demand and price move -- sorry, demand and
15 supply move with each other a little more. So there in most
16 cases in, you know, elastic markets we see most of the price
17 being paid by the producer or being borne ultimately by the
18 producer.

19 In this case, right, the concept is really thinking
20 about the long-run cost of it, right? You know, it's not
21 like, oh, I'm being charged \$1,000, I'll just mark it up
22 500 -- you know, I'll mark it up \$700. That's not the way
23 those analyses or what that really is meant to do, right?
24 So understanding, how does that value of the fee get
25 ultimately capitalized in the value of the land. And that

1 capitalization, is it borne by the producer, the developer
2 of the housing, or the consumer, the tenant of the housing?

3 And so in this case when we're talking about those two
4 things, in housing markets, it's almost always being borne
5 by the consumer of the product, which is why we see the
6 affordability challenge.

7 Q. Okay. And so if that cost is borne by the ultimate
8 consumer, not the developer, then isn't it true that whether
9 or not a project is feasible, that would likely be -- is
10 less of an issue? And I guess that's a terrible question to
11 ask, a terrible form of a question. But the idea I'm trying
12 to get across is it can't be both. It can't be both passed
13 on to the consumer and also paid for by the developer and
14 have impacts on both; isn't that correct? If we're talking
15 about \$1,500 --

16 A. So -- so I think you're confusing two concepts. So there's
17 a fee that's charged. A developer either can pay that fee,
18 afford to pay that fee or it can't, right? That's what --
19 what happens, right? Because, you know, a lot of these
20 cases the project's not built, whatever. There's no way to
21 extract higher value out of the marketplace than there is
22 with outside of the current price being paid, okay? So they
23 can either pay or not pay.

24 Q. Okay. Can I ask --

25 A. So the -- let me -- I'll answer your question in a second.

1 Q. Okay.

2 A. So the incident of the fee, right, is when people talk about
3 this, they're talking about the long-run effect of that,
4 right? So the fee, right, is a long-term expectation placed
5 on the value of the land, okay? And the question is, who
6 does that -- who -- you know, nobody gets that -- nobody
7 gets a free lunch, right? You put a cost on there. So
8 who's paying -- who's paying that lunch, right? Is it the
9 producer or the consumer of -- of the product over time?

10 It's not instantaneous at the time of the transaction,
11 right? It's a long-term effect that we're talking about in
12 economics. It's not like -- you know, like I said, it's not
13 like, oh, you charged 1,500, I'm just going to mark you up
14 for 2,000. I just made you -- I just made \$500 on it.
15 That's not the way it works. So that's -- that's that
16 issue.

17 Q. I guess, isn't it -- thank you, I understand that more
18 clearly. Isn't it true that a developer could also decide
19 to modify their proposal, in fact, electing to make the unit
20 smaller or make some other decision?

21 A. Yeah, most certainly likely the case, right? I mean,
22 they're already trying to understand delivering a product
23 that you can -- that the market demands, right? So when
24 you're forced with making other choices, you're saying, I
25 have to find a way to go around this cost by doing something

1 otherwise I wouldn't already want to do, right? And so what
2 is then -- you have to ask the cost, well, what is the
3 impact of having smaller units? Do you make less money?
4 Did you -- you know, is the market less served? I mean,
5 otherwise they would've done that initially, right?

6 Q. Or perhaps you have less amenities.

7 A. Yeah, all these things, right, could happen, right? You
8 know, so -- but you're ult- -- but there's -- there is a
9 corresponding impact if you make these choices. Or you
10 could just build less, right, which is the point I'm trying
11 to make.

12 Ultimately, right, the end result is you can nibble at
13 these things in the margins as much as you can. They're
14 already doing that because the market is so darn
15 competitive. Or, right, you could just do something else or
16 not do something at all.

17 Q. Okay. And I think I don't have any other questions for you.

18 A. Thank you.

19

20 E X A M I N A T I O N

21 BY HEARING EXAMINER:

22 Q. I have just a few questions for you, Mr. Shook. I want to
23 understand, in your analysis you've identified that there
24 would be, for various reasons, based on theory and your
25 experience and your analysis of the documents from the city,

1 an identification that there's an impact associated with the
2 impact fee on housing affordability. And then you also make
3 the statement that there would be a significant impact on
4 housing affordability. And I'm wondering how and where you
5 quantify the differentiation. So as you said, there could
6 be an impact of a dollar if that's significant. How do you
7 quantify, and where do you quantify?

8 A. Yeah, no, I think this is a very difficult issue, right,
9 because we don't actually have the fee amount. But we do
10 have enough information to understand what a likely fee
11 would be, right?

12 And so when I say there's a significant impact on
13 housing production, and a significant impact on housing
14 affordability, I'm speaking with respect to the idea I'm
15 trying to put forward in the map, right, that we broadly are
16 making housing less productive, right, as an economic
17 investment tool, because we have to -- we have to bear --
18 the project has to bear the cost.

19 And the way we bear the cost is by doing something
20 different. Typically moving down sort of the density
21 spectrum or making these changes to housing quality,
22 housing -- phys- -- the physical look of the housing, right,
23 to try to accommodate these things. And so -- and when we
24 see it as a policy program across the entire city, we see
25 that my -- my conclusion here is that we're going to have a

1 significant reduction. And so the map here and the
2 highlighting these red places are places where there's
3 existing multifamily housing, dense -- and dense product.
4 And we can see how that housing becomes less productive and
5 less dense. So that's the basis for my conclusion here that
6 we're having significant impacts to housing production.

7 So the issue around housing affordability is our
8 housing affordability problem has really been driven by
9 housing shortages, right? We don't have enough housing to
10 meet demand. And the only way the market responds to that
11 is by people bidding up prices. And the ultimate losers of
12 that bidding process, right, are those with less income,
13 which tend to be people of color, vulnerable populations,
14 right, who don't have income that can bid up that price of
15 housing. And that's what we've seen, right?

16 We look at the data. We've seen sort of that price
17 impact being -- disproportionately being borne on renters,
18 being borne on people of color over the last, you know, 10,
19 20 years, both within the city and across the region. And
20 so -- so the relationship of housing production is really
21 that we're slowing the rate at which we need to add housing
22 to meet demand and accelerating the effects of this bidding
23 process that has downstream affordability challenges.

24 Q. And your quantification of that significant impact, is that
25 wholly contained in the Exhibit 4 to Exhibit 5, page 9?

- 1 A. Yeah. Yes. So without the actual fee to understand
2 projects, what I've tried to do here is understand sort of
3 what the policy would do. And from a policy perspective,
4 both because of the arrangement of the fee and the bear --
5 the burden that's going to be placed on --
- 6 Q. So are you explaining another location (inaudible)?
- 7 A. No, no. Exactly. But this is -- but I just want to make
8 sure --
- 9 Q. Okay. Let's make sure your -- let's make sure your
10 responses are responsive only to the question I'm asking
11 you.
- 12 A. Okay. Sorry. I just wanted to make sure I under- -- you
13 understood.
- 14 Q. (Inaudible) as well.
- 15 A. Thank you.
- 16 Q. So the chart here, it says a 20 percent reduction in
17 feasibility, and it looks to me that that's based on a
18 combination of MHA plus the impact fee?
- 19 A. Yeah. So we're looking at both MHA fees and impact fees
20 going forward as part of production.
- 21 Q. Do you have any break-out of the reduction that would be due
22 simply to impact fees?
- 23 A. Not off the top of my head, but that's an analysis I could
24 do.
- 25 Q. Do you know how much of the 20 percent reduction is

1 attributable to MHA?

2 A. It's hard -- it's hard to know, because in this case we
3 would have to understand sort of what the capacity was in
4 those places. And so this analysis is a little more
5 stylized to understand the economics of the policy. And
6 so -- but so it's hard to know, I would say, roughly
7 assigning a percentage for each. But -- but you're right,
8 there is going to be some burden that is MHA perhaps, but it
9 depends on sort of what capacity was given as part of the
10 upzone relative to sort of what the fee arrangement impact
11 would be on housing production.

12 Q. Okay. And it's titled 20 percent reduction in feasibility.

13 A. In ar- -- in areas. Excuse me. Yeah, in the text below --

14 Q. Okay.

15 A. Yeah, so we basically looked at sort of geographically.

16 Q. Collectively. Right. And when you're saying reduction in
17 feasibility, is that reduction in feasibility such that the
18 project doesn't happen? Is that a minor reduction?

19 (Inaudible)?

20 A. Yeah. So -- so the way you think about this, right, think
21 about these -- all these hex bins representing a market
22 price for rent, right? So in downtown it may be close to
23 four. In some of these other far-lying sort of areas it may
24 be two and a half or which -- basically each hex bin there's
25 a different average rent, and that's based on data that we

1 collect through third-party sources that track rental rates.

2 And so we can then construct an -- a financial
3 feasibility pro forma that then equates a certain price to a
4 certain product. So we know if you're going to build a
5 tower, you know, we're leaving land at zero just to kind of
6 leave land prices out of it. So at a tower you're going to
7 need, say, \$3 in rent, right? And in a stacked -- I'm
8 sorry, in a podium product, which is a concrete base with
9 wood stick on top, you're going to need 2.50 or something
10 like that. I can't remember the exact numbers. But that's
11 the way we do it, so we equate that.

12 We then load on the fees and say, well, where did my
13 pencil-out price go? So before I was able to build a tower
14 at that price, but now with the fees I actually need a
15 higher price. And so that tow- -- that thing that would
16 pencil out as a tower now only pencils out as a podium,
17 right? And the thing that penciled out as a podium with the
18 fees now pencils out as a stacked flat, and so on. So
19 that's the way that analysis is done.

20 Q. So your 20 percent reduction feasibility conclusion is
21 mirrored in your Exhibit 1 where all of the fees are there,
22 but only with this impact fee added at top do you pass that
23 feasibility conclusion?

24 A. Yeah. So -- so, yeah, so and what the 20 percent is
25 20 percent of the area. So if you look at it like -- so, I

1 don't know, hypothetically we have 100 hex bins, so I'm
2 saying we see -- we see decreased feas- -- feasibility of a
3 prototype within 20 -- you know, 20 of those hex bin areas.
4 So it's not on a project basis, but it's in an area basis.

5 Q. Okay. And the conclusion here includes MHA and --

6 A. Yes, it does.

7 Q. All right. No more questions. Thank you.

8

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

10 BY MS. KAYLOR:

11 Q. Mr. Shook, just a couple follow-up questions. First, there
12 was a question about what has been identified as Exhibit 6,
13 the City of Seattle impact fee policy assessment and work
14 plan development work group summary report. And looking at
15 that exhibit -- first of all, looking at the bottom of page
16 5, which is the one you cited, when was this prepared?

17 A. I believe it was 2015.

18 Q. Yeah. And what's your understanding of what this work group
19 was?

20 A. My understanding is a staff and consultant led work group to
21 understand the policy -- impact fee policy and to do some
22 inventory of existing programs and to then discuss how
23 impact fees may sort of work within the City of Seattle and
24 to provide some recommendations within that.

25 Q. Okay.

1 A. And that includes transportation, parks, schools, and fire
2 protection impact fees.

3 Q. Thank you. And this comment about the effect of impact fees
4 on housing just simply wasn't carried through, was that your
5 testimony to the environmental analysis?

6 A. Yeah. I would say it's not the clear -- most
7 clearly-written discussion of the issue, so it's brief
8 related to the broader side of it. But ultimately it gets
9 to the main issue here is that there is a price effect of
10 the fee that is going to show up in housing.

11 Q. Thank you. And there were some questions regarding whether
12 the specific fee amount has been determined. Does the
13 Comprehensive Plan proposal that we're talking about here
14 allow imposition of the full maximum defensible fee that you
15 referenced in your testimony earlier?

16 A. It does not exclude it.

17 Q. Is there anything about the Comprehensive Plan amendment
18 proposal that requires the city to impose a lesser amount?

19 A. There's nothing.

20 Q. And do you believe it's probable that the amount ultimately
21 imposed will have the impacts that you discussed today?

22 A. I do.

23 Q. And thinking about the probable fee, what do you base your
24 conclusion on?

25 A. I based it on -- on two-fold, obviously. The documentation

1 that's been provided in the exhibits, but also more
2 practically I think having witnessed sort of the way cities
3 construct their fees and particularly the way that
4 governments sort of negotiate -- or elected officials
5 negotiate on that -- on the fee. And so I've actually
6 included in my exhibit just a quick binning of impact fees
7 in Central Puget Sound. So in Exhibit -- I'm sorry, what
8 exhibit is this?

9 Q. Your report is Exhibit 5.

10 A. Exhibit 5. And within Exhibit 5, Exhibit 2, there is a
11 process I think where governments just implicitly go through
12 some neighboring or peer jurisdiction benchmarking. You
13 know, council simply will be presented with the fee
14 calculations, the recommended fee rates, and then they'll
15 want to know, well, what is our neighboring jurisdiction
16 charging? Let's not charge any more or less than what
17 they're doing, right? Let's -- let's -- let's price it to
18 the market.

19 And so when we just look at the Central Puget Sound, we
20 see a lot of clustering of fee -- transportation impact fees
21 in the 4 to \$6,000 range. And so it's not unreasonable to
22 sort of -- to assume here that -- that we'll have, you know,
23 some sort of conversation that looks at what others are
24 pricing, and as a basis for fee setting.

25 Q. Thank you. There were some questions about whether there

1 were ways to mitigate the inefficiency of these fees. Are
2 any of these potential mitigation measures included in the
3 Comprehensive Plan amendment proposal we've been discussing?

4 A. They are not.

5 Q. Are any of those potential mitigation measures included in
6 the environmental checklist?

7 A. They are not.

8 Q. And are any of those potential mitigation measures included
9 in the Determination of Non-significance?

10 A. They are not.

11 Q. There was some discussion about a potential appeal process.
12 Do you have any idea how much it costs to go through an
13 appeal process like that?

14 A. Not off the top of my head, but it's a non-trivial amount
15 usually requiring transportation, planning firms, as well as
16 firms like ours to help evaluate it.

17 Q. And is there any guarantee of success?

18 A. No. These are all typically submitted to the city and with
19 some administrative process to either accept or deny or
20 refine that.

21 Q. Turning to the impacts here that you've been discussing,
22 there were questions about whether there would be less
23 density as a result of these proposed fees. And your
24 response was, "Yes, or the projects would be infeasible."
25 Does this reduction in density you were discussing relate to

1 the feasibility of new proposed projects, correct?

2 A. Correct.

3 Q. Does this impact only affect new housing product, or does it
4 have a broader effect?

5 A. Yeah, so this is the examiner's question here. I think
6 the -- the -- my conclusion on housing affordability is
7 because we are going to slow the rate of housing production
8 for new units that entered the marketplace, right? And so
9 that is an important piece because housing markets kind of
10 work a little bit like used car markets, right? You know,
11 so there's a process where, you know, as housing ages and
12 declines, becomes sort of more, I think, affordable -- I
13 think the term of art now is naturally-occurring affordable
14 housing.

15 And that's the part here that the affordability impacts
16 are really contained in, right? It's not that we're doing
17 less of the new stuff, right? You just increase -- that
18 scarcity of housing units now increases the pressure on the
19 lower-priced older housing that's typically been more
20 affordable at the market rate to individuals with lower
21 incomes.

22 Q. Thank you. And just to clarify, your testimony was that
23 less new housing would be built, and that would have the --

24 A. Yes. The impact --

25 Q. -- other impact you just discussed.

1 A. The impact is -- you know, the impact here of the way I
2 understand the Comprehensive Plan amendment and the way the
3 fees will be structured is that we're going to have an
4 impact on housing production. And that subsequent impact on
5 housing production will have downstream housing
6 affordability impacts.

7 Q. There were some additional questions about who would bear
8 these costs, whether it would be the developer or the
9 consumer. And I just want to clarify, is it possible for
10 the developer just to pass these costs along to the
11 consumer, and then there's no problem?

12 A. Again, I think it all depends on sort of the nature of the
13 marketplace. But I think housing markets, particularly in
14 urban infill areas, right, is really characterized by issues
15 of scarcity, which is why we've seen housing prices rise the
16 way they have over the last 20, 30 years, however far you
17 want to go back.

18 And so in those places, it's just -- it's hard to build
19 housing timely, period, right? I mean, it just takes time
20 to -- when the prices are there, to mobilize the capital,
21 mobilize the -- you know, this is why we see from the time
22 of permitting to the time of occupancy, you know, years go
23 by, right? And so that is when I say, in elastic market,
24 right? We don't see housing supply move really elastically,
25 like, in the same way we could just print an additional

1 piece of paper, right, if housing -- if paper prices went
2 up, right? That's pretty elastic.

3 So when charges are, like, in the -- like I said, in
4 the paper analogy. So the paper marketplace, right? So if
5 my -- my marginal costs for adding another piece of paper is
6 zero, but if I all of a sudden had to pay a tax on paper, I
7 as a producer of paper would bear the cost of that tax
8 because I can't really pass that on because it doesn't cost
9 me much. Whereas, housing markets work the other way,
10 right? It's fairly inelastic. It takes time.

11 And in those cases -- and I could draw the economic
12 supply and demand drawing here, but the issue here is that
13 with that raise in price, we have a decrease in policy --
14 decrease in supply. And when we divide up who bears the
15 burden of that, the majority of those costs are passed on to
16 the cus- -- the consumer over the long run. Maybe not a
17 single consumer. Consumers, right, over time are the ones
18 that pay that cost.

19 Q. And I think I just want to back up a little bit to your
20 discussion about why there is a reduction in production.
21 And I believe you discussed that there is a maximum market
22 rate that can be charged. And so if an impact fee causes
23 the rent that would be needed or sale price that would be
24 necessary in order to break even to exceed that market rate,
25 that renders the project infeasible. Was that your

1 testimony?

2 A. Yeah, that's correct.

3 Q. Yes.

4 A. That's correct.

5 Q. So then one would not simply be able to just pass these
6 along to the consumer because they might exceed the market
7 rate; is that right?

8 A. Correct.

9 Q. Okay. So I'd like to just briefly follow up on some of the
10 examiner's questions. Regarding quantification of the
11 impact, is it your conclusion that the proposed impact fees
12 will have more than a moderate impact on housing production
13 affordability?

14 A. As I understand it.

15 Q. And this diagram that is Exhibit 4 includes both MHA fees
16 and impact fees. Based on your work in Puget Sound
17 generally, would you conclude that impact fees alone would
18 have a significant impact?

19 A. Yes. I mean, I've been involved recently in a project where
20 a vested master plan project that was executing a phase 3
21 would be subject to the city's change in a new
22 transportation impact fee. And in that project, the new fee
23 would actually have rendered the project -- actually
24 rendered the project infeasible. They could not move
25 forward with it with that additional cost. So it actually

1 was practical sort of experience here; when prices change,
2 either you can recoup that revenue somehow or you can't,
3 right? In this case -- that case, that project could not.

4 Q. And generally across the board, have you done work in a
5 range of different jurisdictions in Puget Sound that would
6 support your conclusion?

7 A. Yeah. I mean, so we're asked by cities to help them through
8 subarea planning processes or community development
9 processes in understanding kind of what the market will bear
10 in their areas, right, so that they can design zoning that
11 fits that, that they could design public benefit
12 arrangements that fit that.

13 You know, a project I did a few years ago for the City
14 of Kirkland, looking at the total (inaudible) subarea, they
15 were thinking about trying to find an exemption or abatement
16 process for their impact fee program to allow development to
17 move forward in certain areas with certain conditions. And
18 so that was a place here specifically where they wanted to
19 say, we understand the burden that impact fees have on the
20 development. We might be willing to reduce or find
21 alternative arrangements for payment of those fees if other
22 conditions are met as part of the -- part of the project or
23 plan zoning, excuse me.

24 Q. And so based on those individual cases and then -- have you
25 done work more broadly with impact fees that led you to

1 conclude that those alone would have significant impact as
2 well?

3 A. With that, and then just -- just some, you know, cursory
4 examination of the relationship of fees in Puget Sound
5 relative to housing production. You know, no single piece
6 of all that, right, is a silver bullet, but in taking them
7 together, we have a very rich understanding of impact fees
8 and the impacts on housing that are important to disclose to
9 decision-makers as they take this up.

10 Q. Thank you.

11 HEARING EXAMINER: Thank you, Mr. Shook.

12 THE WITNESS: Thank you.

13 MS. KAYLOR: Our next witness is Mike Swenson. And if you
14 don't mind, I'm just going to take a brief moment to label
15 those exhibits that the witness has with the proper number
16 so that they can identify them.

17 HEARING EXAMINER: While they're labeling, can you please
18 state your name for the record?

19 THE WITNESS: Michael Swenson.

20 HEARING EXAMINER: And do you swear or affirm the
21 testimony you'll provide in today's hearing will be the
22 truth?

23 THE WITNESS: I do.

24 \\

25 \\

1 \\

2 MICHAEL SWENSON: Witness herein, having first been
3 duly sworn on oath, was examined
4 and testified as follows:

5

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

7 BY MS. KAYLOR:

8 Q. Excellent. So, Mr. Swenson, the first thing we're going to
9 do is hand you another exhibit, which will be Exhibit 9.
10 And it's our Exhibit 2.

11 (Appellant's Exhibit No. 9 marked for identification.)

12 Q. (By Ms. Kaylor) And with that, can you briefly summarize
13 your qualifications?

14 A. Yes. I'm a principal with the Transpogroup. Approximately
15 22 years of experience in the field. I graduated with a
16 bachelor of science from Montana State University. My
17 current work at the Transpogroup focuses on a variety of
18 transportation planning and design experience with SEPA
19 analyses for private developments, as well as the
20 implementation of transportation impact fees for those types
21 of projects.

22 Q. And what is your role with regard to this appeal?

23 A. So with regard to this appeal, I've reviewed the
24 Comprehensive Plan amendment. The material of that was
25 referenced in -- in the DNS in the SEPA checklist,

1 specifically focusing on the nature and identification of
2 any construction-related impacts of the projects that have
3 been identified.

4 MS. KAYLOR: And I'd like to move for the admission of
5 Exhibit 9, Mr. Swenson's resumé.

6 MS. ANDERSON: No objection.

7 HEARING EXAMINER: Exhibit 9 is admitted.

8 (Appellant's Exhibit No. 9 admitted into evidence.)

9 Q. (By Ms. Kaylor) Are you familiar with the proposal that is
10 the subject of this appeal? And it should be Exhibit 2.
11 You can maybe go ahead, just leave those up there. It
12 should be Exhibit 2.

13 A. I am.

14 Q. And turning to attachments A and B to that proposal, can you
15 describe those?

16 A. A and B, you said?

17 Q. I believe I have the right -- I'm sorry, perhaps it's 1 and
18 2.

19 A. Okay. I was going to say.

20 Q. Sorry about that. Yes. There are no A and B. It's 1 and
21 2. Thank you.

22 A. Yeah, so attachment -- attachment 2 identifies the impact --
23 a list of what's been identified as the impact fee eligible
24 projects. And then there's also a corresponding map of the
25 location of those 21 identified projects.

1 Q. Okay.

2 A. Excluding -- if I could, excluding the Bike Master Plan,
3 Pedestrian Master Plan, and Freight Master Plan projects on
4 that map.

5 Q. Based on your review of the proposal, would the
6 Comprehensive Plan amendment fund those projects?

7 A. Comprehensive Plan amendment directs staff to develop a
8 program to fund those projects.

9 Q. And is it possible to evaluate the construction impacts of
10 those projects at this time?

11 A. Yeah. And in my opinion, based on the project descriptions
12 and the information that's available, and understanding the
13 nature of those projects, it's reasonable to identify and
14 assess what those impacts would -- could be.

15 Q. And I'm going to -- we're going to hand you what will be
16 marked Exhibit 10, which is our Exhibit 27.

17 (Appellant's Exhibit No. 10 marked for identification.)

18 Q. (By Ms. Kaylor) Did you conduct an analysis of those
19 impacts?

20 A. Yes, I did. We went through a process of identifying each
21 of the projects and researching each of the projects that
22 were identified on the impact fee -- eligible impact fee
23 list, identified the project descriptions and also the
24 probable construction impacts of each of those.

25 Q. And is that shown on Exhibit -- summarized on Exhibit 10?

1 A. Yes.

2 Q. And did your office prepare that exhibit?

3 A. We did.

4 MS. KAYLOR: I'd like to move for the admission of
5 Exhibit 10.

6 MS. ANDERSON: No objection.

7 HEARING EXAMINER: Exhibit 10 is admitted.

8 (Appellant's Exhibit No. 10 admitted into evidence.)

9 Q. (By Ms. Kaylor) So can you give us, looking at Exhibit 10,
10 an overview of the analysis that's contained there?

11 A. Yeah. So we went for a process, as I mentioned, of
12 identifying the project description. So on the -- working
13 from the left side of the page to the right side of the
14 page, we have -- we've noted the project type -- or the
15 project itself. The project type, whether it was a capital
16 improvement plan project, a modal plan, or a project that
17 was identified in the Move Seattle Project.

18 We then researched the information that's available,
19 either through the SEPA checklist or the reference
20 documents, provided a project description based on available
21 information, and then as I mentioned, we noted based on that
22 project description and knowing the corridors, understanding
23 and noting what the probable construction impacts would be.

24 Q. And then in the last column, what was your --

25 A. The last column was just a reference as to whether or not we

1 had identified or could find identification of the
2 construction impacts of that project in the SEPA checklist
3 for the Comp Plan amendment.

4 Q. Thank you. So I'm just going to ask you some questions
5 about your analysis. And first I notice that the project
6 list is broken up into categories that are colored yellow,
7 blue, and I guess that's orange, salmon color. Can you
8 describe those categories for us? First, what's the yellow?

9 A. Yeah, so the yellow -- so the categories that we've
10 organized are summary, and it's the same organization the
11 city had used in the attachments to the SEPA checklist, I
12 believe. The first yellow color are projects that are
13 included in the current Comprehen- -- or the current Capital
14 Improvement Program, City of Seattle.

15 The -- the blue projects are references to the city's
16 three modal plans that were identified in the impact fee
17 project list.

18 And then the salmon color are those projects that are
19 listed in the -- are -- that are pulled from the Move
20 Seattle Vision Project.

21 Q. Thank you. Just briefly, can you describe what the Capital
22 Improvement Program is?

23 A. Yeah. So the Capital Improvement Program is -- is basically
24 a list of -- it's a six-year list of -- it's a list of
25 projects that have been identified as kind of a six-year

1 priority list for funding and construction.

2 Q. And how about the modal plans, what are those?

3 A. So the modal plans are broad level plans that the City of
4 Seattle has prepared that focus on, by name, a specific
5 mode. So, for example, the Pedestrian Master Plan
6 identifies a priority network that the city has identified
7 for its pedestrian-related improvements. And it includes a
8 list of strategies, as well as network improvements that
9 they will want to prioritize over the course of the plan.

10 Q. And how about the Move Seattle Vision Project? What is
11 that?

12 A. So those are a series of projects that are identified as
13 part of the Move Seattle levy. Those projects include a
14 variety of projects, including some capital -- or, sorry,
15 complete street type projects which are multimodal in
16 nature, as well as transit improvements.

17 Q. Thank you. So now just focusing on the project description
18 column, how can you provide a description of these projects
19 if -- well, what is the project description based on?

20 A. The project description is based on either information that
21 is -- was included in the checklist or -- in the SEPA
22 checklist, or materials that were referenced in that, or
23 information that we were able to research online and pull
24 from either the plans themselves or -- or other references.

25 Q. Thank you. And I will have you look at what has been marked

1 Exhibit 7, which is the SEPA checklist. Are the project
2 descriptions there that you're referencing on attachment A?

3 A. Correct.

4 Q. And then -- and what is attachment B?

5 A. Attachment B is the -- is a map that has both the current
6 CAP projects that are noted in attachment A, as well as the
7 Move Seattle Vision Projects.

8 Q. Okay. And you've already discussed what other documentation
9 you've relied on, so I won't ask you about that again. But
10 moving then to the third column of your chart, how did you
11 identify these probable construction impacts?

12 A. Based on the nature of the projects and the descriptions
13 that are available, understanding if we're talking about --
14 if the projects were referencing pedestrian improvements or
15 transit improvements, information that's available in the --
16 you know, the modal plans for some of their projects, we
17 were able to assess what those project elements would be,
18 and then based on experience and understanding how those
19 projects are constructed, those types of projects are
20 constructed, we identified those probable impacts.

21 Q. Thank you. So I'm not going to ask you to talk about every
22 single project here in the chart, but I would like to talk
23 with you in a little bit more detail about that analysis.
24 And so first just looking at the CIP projects, those
25 projects that are color-coded yellow, generally what

1 categories do those fit into?

2 A. Most of the projects are either transit, specific to transit
3 improvements, or what's considered a complete street
4 project.

5 Q. Okay. And we'll hand you what will be marked Exhibit 11.
6 (Plaintiff's Exhibit No. 11 marked for identification.)

7 Q. (By Ms. Kaylor) Can you tell me, what's a complete street?

8 A. A complete street is a term that's used within -- within the
9 industry to kind of describe a -- a street that is a -- is
10 accommodating all -- all modes of travel. So it's -- it has
11 its pedestrian improvements, whether that's wider sidewalks
12 or pedestrian scale lighting. There's improvements and
13 facilities to accommodate bikes, transit, as well as the
14 automobile. And then this -- this Exhibit 11 also shows
15 just some of the utilities themselves. But I'm focused
16 primarily on the -- the above-pavement elements.

17 Q. Above -- above ground?

18 A. Yeah.

19 Q. Yeah, okay. And so how do streets that aren't complete
20 become complete?

21 A. So the city goes through a process through looking at the
22 modal plans for the different modes, understanding what the
23 priority networks are, and looks at the specific corridor of
24 question and identifies what improvements would be needed
25 for which mode to bring it up to the desired standard.

1 Q. Okay.

2 MS. KAYLOR: So I'd like to move to admit Exhibit 11.

3 MS. ANDERSON: No objection.

4 HEARING EXAMINER: And 10? And 10 as well?

5 MS. KAYLOR: I did not ask for that already. Thank you.

6 Yes, and 10 as well.

7 HEARING EXAMINER: Exhibits 10 and 11 are admitted.

8 (Appellant's Exhibits No. 11 admitted into evidence.)

9 Q. (By Ms. Kaylor) So just to look at one example of a complete
10 street, going back to attachment A to the SEPA checklist
11 which has been identified as Exhibit 7, can you tell us what
12 is involved in the Delridge Complete Street Project?

13 A. So the Delridge -- yeah, the description for the Delridge
14 Complete Street is pretty typical of a complete street
15 project. It's identified improvements for transit, then the
16 addition of transit lanes for improving speed and
17 reliability. It references elements for protected bike
18 lanes and sidewalks for the non-motorized travel. Then also
19 elements around traffic operations to benefit transit
20 freight and general purpose vehicles.

21 Q. Okay. And just kind of talking about what this looks like
22 on the ground, when these things are being built and going
23 through that list, what does the -- what is involved in the
24 addition of transit lanes?

25 A. So that'll -- the scope of that improvement is -- is

1 dependent upon -- is kind of a block-by-block assessment.
2 But in general, typically what would occur is if there's
3 on-street parking, a lot of times that on-street parking is
4 removed. The roadway surface is either -- there's
5 re-striping normally involved to designate the transit lane.
6 Depending on the pavement condition, there may be pavement
7 restoration or enhancements, those types of elements.

8 Q. And may those improvements include roadway widening?

9 A. They could in blocks where there may not be a two-lane
10 capacity, there could be widening involved in those blocks
11 as well.

12 Q. And so when you constructed that improvement, what does the
13 construction look like, and what construction impacts are
14 there?

15 A. So depending on the element involved, there's likely to be
16 lane closures or intermittent lane closures to deal with the
17 striping aspects. There could be more extensive impacts if
18 there's reconstruction of a pavement section required,
19 addition of construction traffic that we're all familiar
20 with, and then any short-term displacement of parking,
21 depending on how that transit lane is operated.

22 A lot of times the transit lanes could be in a peak
23 direction only travel. So in a non-peak direction, then
24 buses may not use that transit lane. And so during
25 construction there may be, you know, 24/7 parking

1 restrictions while that improvement's being constructed.

2 Q. And might that improvement result in the loss of parking
3 long term?

4 A. Yeah, potentially.

5 Q. If the roadway needs to be widened, what additional impacts
6 result from that?

7 A. So that may -- that would have a more extensive impact,
8 either on the reconstruction of sidewalks, street lighting,
9 utility poles, or storm conveyance, other physical
10 improvements that may be in that -- in that right-of-way
11 that needs to be shifted.

12 Q. And in addition to lane closures, would pedestrian traffic
13 be affected?

14 A. Yeah, during that construction they could be, you know,
15 temporarily rerouted or conditions less than what they are
16 today.

17 Q. Might there be other environmental impacts to areas of noise
18 or construction lighting or dust or pollution or things?

19 A. Certainly during that. Yeah, during that construction time
20 period you'd see those typical -- those typical activities
21 as well.

22 Q. And so then just kind of moving down the list of the
23 description of that project, that one particular project
24 included protected bike lanes. What are those?

25 A. So protected bike lanes is basically a bike facility that is

1 separated from traffic through either a -- a physical
2 separation. It could be raised, it could be separated by
3 planters, or there could be a -- just a -- a buffer, if you
4 will, that separates that bike lane from either parking or
5 the traffic by, you know, more than the four-inch stripe.

6 Q. Okay. And during construction, what does that look like?
7 What are the construction impacts associated with that kind
8 of an improvement?

9 A. That would be similar to what I described previously with
10 striping and lane closures to accommodate that. How that
11 fits within a transit lane is not -- not clear from the
12 description, but the process in which they construct a bike
13 lane would have a similar impact; lane closures,
14 intermittent flagging, possible, you know, pavement
15 reconstruction depending on the nature of the bike lane,
16 those types of activities. And impacts would be similar.

17 Q. Okay. And just kind of going back to your probably
18 construction impacts, I see you have listed transit stop
19 removal or relocation, transit route reconfiguration. Might
20 those be impacts of adding transit lanes or even bike lanes?

21 A. Yeah. Probably more of an impact associated with the
22 transit lane element. As that work is being done, you know,
23 within that section along the curb lane, you do have to
24 still manage existing stops. So those stops may be closed
25 temporarily, relocated, or alternative facilities provided.

1 Q. Okay. And then sidewalk improvements was another element
2 listed. Sidewalk improvements and amenities for walkers and
3 transit riders. What are those things?

4 A. So depending on, again, this section, you know, it's a long
5 corridor, areas where maybe wider sidewalks are called for
6 or pedestrian lighting is identified. That sidewalk would
7 be -- likely the existing sidewalk would likely be removed,
8 and then the wider sidewalk poured and reconstructed. So
9 during that time, pedestrian routing would be impacted and,
10 you know, redirected around that construction site or -- or
11 measures done to maintain that. But that -- those measures
12 weren't identified.

13 Q. Okay. And I'm just going to skip over the modal plans for a
14 second and turn to the salmon-colored projects, the Move
15 Seattle Vision Projects. Generally, are these similar types
16 of projects to those listed in the CIP section?

17 A. They are.

18 Q. And what would you expect in terms of impacts then from
19 these?

20 A. Based on the descriptions, I -- we would expect that -- in
21 concept that the impacts and nature of those construction
22 impacts would be similar.

23 Q. And so let's just look, for example, at one of those
24 projects. The first one on the list, the Greenwood Phinney
25 Project, No. 13. I won't ask you -- is this also described

1 on Exhibit 8 of the environmental checklist?

2 A. Yes.

3 Q. Okay. And I won't ask you to read that description, but
4 drawing from it, all of the elements listed there, one of
5 the elements is constructing new sidewalks, correct?

6 A. Upgrading, yes.

7 Q. Can you talk about what that might look like in the physical
8 world as it's being constructed?

9 A. Yeah. So that -- that's going to be very location -- I
10 think location specific in terms of the scope of that.
11 There's -- any new sidewalk is going to have some grading
12 associated with that. If it's a path or if it's a sidewalk
13 that's going in with, you know, existing curb and gutter,
14 then that's different. There could be situations where you
15 have a sidewalk with curb and gutter added just as a -- a
16 matter of meeting standards. And so you'd have roadway
17 improvements, parking -- you know, loss of parking during
18 the construction of that, and then, you know, additional
19 construction vehicles for, you know, removing the dirt and
20 bringing in the construction materials.

21 Q. Okay. And one other element of that project description
22 that we haven't talked about before is building bus bulbs.
23 What are those, and what impacts might those -- constructing
24 those have?

25 A. So bus bulbs are essentially an extension of the sidewalk

1 that allows a bus to potentially stop in-lane and not merge
2 in and out of traffic in areas where a pullout isn't
3 possible. It's -- so it's essentially constructing a new
4 curb and gutter adjacent to the travel lane. So, again,
5 you'd have lane closures, intermittent lane closures,
6 flagging, and some of that just typical construction
7 activity over the course of that.

8 Q. Or you have some sidewalk closures we discussed before with
9 some of the other improvements?

10 A. Yeah, the work zone itself would have those pedestrian and
11 auto-related impacts.

12 Q. Okay. So I'm, again, not going to ask you to elaborate on
13 all of these projects. So just by way of example, would you
14 expect generally that the projects with similar elements
15 would have similar environmental impacts?

16 A. They -- they would, and I think when we talk about the
17 similar projects, I think also the -- the length of the
18 corridors -- you know, not every cor- -- not every project
19 has the same length and size, and that is -- that's also a
20 factor in the degree of which those construction impacts
21 would be expected to occur.

22 Q. Okay. Excellent. I'll ask you a little bit more about that
23 in a minute. So let's talk about the modal plans briefly
24 here. Those are the three blue listed plans. You've
25 briefly described a modal plan before and what those are. I

1 see three modal plans listed here. Does this mean three
2 improvements?

3 A. No. Within -- within the modal plans themselves, there's
4 many, many improvements that have been identified within
5 either the pedestrian priority network or the -- the bicycle
6 network. The Freight Master Plan itself has roughly 60 --
7 about 60 projects I think that have been listed. And I did
8 not count the number of projects in the pedestrian/bicycle,
9 but the maps are extensive in terms of the area that it
10 covers and the scope of those projects.

11 Q. Okay. Thanks. And I'll return to that again as well. Just
12 briefly, looking at, again, Exhibit A to the checklist,
13 there is a description, kind of an overall description of
14 the Pedestrian Master Plan. Do you see that?

15 A. I do.

16 Q. And based on the description there, what can you say about
17 the -- are those similar improvements to what we've been
18 talking about previously for some of these projects?

19 A. Yes, they are.

20 Q. And just really briefly, what are some of the elements?

21 A. So when you think about the pedestrian permits, it would --
22 it would cover things such as the sidewalks, mid-block
23 pedestrian signals. Part of the sidewalks are curb ramps
24 and curb bulbs, those kinds of elements. And then I
25 mentioned pedestrian lighting as well.

1 Q. Okay. And, again, I won't ask you to go through all of the
2 list of descriptions, because we can -- we can read them
3 all. But I think at this point we'll just talk a little bit
4 more in detail about what's included in some of these modal
5 plans, because these are obviously abbreviated descriptions.
6 So looking first, since we were just talking about the
7 Pedestrian Master Plan, let's go ahead and look at that.
8 And we are handing you an exhibit that will be marked
9 Exhibit 12.

10 (Appellant's Exhibit No. 12 marked for identification.)

11 Q. (By Ms. Kaylor) And I'm also at the same time going to hand
12 you -- if I can just see that for a second. I'm going to
13 hand you an excerpt of -- we don't really need the whole
14 thing. I'm going to hand you a map from the Master Plan
15 2018 to 2022 Implementation Plan and Progress Report. And
16 we'll have that marked as Exhibit 13.

17 MS. ANDERSON: What is this from?

18 MS. KAYLOR: It's from the -- it's from one of the public
19 records documents from our exhibit list. The document that
20 it's from is the Pedestrian Master Plan 2018 to '22
21 Implementation Plan and Report. And it is included in what
22 was -- unfortunately, our numbering was off in our exhibit
23 list, but it is an attachment to the e-mail from A. Schafer
24 to the council members from December 5th, 2017.

25 MS. ANDERSON: So what number was it on your exhibit list?

1 MS. KAYLOR: 20. And we can include the whole thing, but
2 I'm trying to avoid extra paper here.

3 MS. ANDERSON: It would be great if we could just enter
4 the whole thing, but let me flip and just see if I have a
5 20. So you're saying it's being marked as Exhibit 20.

6 MS. KAYLOR: Well, it was -- it was --

7 MS. ANDERSON: Not marked. It's this. Okay. Okay. I
8 see it.

9 MS. KAYLOR: All right. Do you want the whole thing,
10 or -- we're just going to refer to a map in it. So I'm
11 happy to do either one.

12 MS. ANDERSON: I think I'd prefer the whole thing be
13 included just for context.

14 MS. KAYLOR: All right. Here we go.

15 HEARING EXAMINER: Are you going to be referring to any
16 part of it in your --

17 MS. KAYLOR: Perhaps, depending on what we hear.

18 HEARING EXAMINER: Because I'd rather not have whole
19 documents unless they're going to get used.

20 MS. KAYLOR: Uh-huh. I understand. So do you want to
21 wait and see what the testimony is?

22 HEARING EXAMINER: Is that what you're doing?

23 MS. ANDERSON: Yes.

24 HEARING EXAMINER: Okay.

25 MS. KAYLOR: All right. Well, we may potentially get the

1 rest of the document then.

2 HEARING EXAMINER: We'll mark that Exhibit 13. And that
3 can be expanded to the entire document once we get there.

4 MS. KAYLOR: Okay.

5 (Appellant's Exhibit No. 13 marked for identification.)

6 Q. (By Ms. Kaylor) So I will first talk about the Pedestrian
7 Master Plan. That has been identified as Exhibit 12. And
8 then the single-page map has been identified as Exhibit 13
9 which is from the Pedestrian Master Plan 2018 to '22
10 Implementation Report.

11 And I'd first like you to look at both of those maps.
12 And why don't we start with Exhibit 13. Or, I'm sorry,
13 we'll go ahead and start with Exhibit 12. And with
14 Exhibit 12, there are a number of 11-by-17 maps. And can
15 you tell me what these show?

16 A. Yeah. So figures 4-2, figure 4-3, 4-4, and 4-5, and 4-6,
17 and 4-7, those are all basically sector maps of the City of
18 Seattle. They show the priority investment network for
19 pedestrians. They list -- and it shows in the legend the --
20 in purple -- well, dark purple and light purple, it shows
21 where there are missing sidewalks on either arterials or
22 non-arterial streets.

23 Q. Okay. And just generally, what is a priority investment
24 network? What's the priority investment network?

25 A. So these are roadways that the city would consider to be at

1 a level where improvements would be prioritized. They can't
2 prioritize every street in the City of Seattle. So the
3 network that's shown here is what they've determined to be
4 that priority network where improvements and dollars and
5 investments would be focused.

6 Q. And so would that include installation of sidewalks on those
7 areas where that it's indicated they're missing in purple?

8 A. That would be -- yes, that would be the -- that's what the
9 legend would suggest.

10 Q. And are there any other improvements that are anticipated
11 for that priority investment network for those streets?

12 A. Yeah. So these figures show really the sidewalk elements.
13 The chapter 5 of that document, pages 74 through 77,
14 identify other strategies and actions that would be taken
15 within there. So, for example, section 2 on page 75 of the
16 exhibit, if you look at strategy 2.2, we talked previously
17 about curb bulbs. This would be an example where action
18 2.2.1, provide curb bulbs, pedestrian crossing islands or
19 pedestrian refuge when possible. 2.2.2 references lane
20 reductions as appropriate to reduce crossing time.

21 So those are actions that the city's identified that
22 are strategies to improve pedestrian safety that are not
23 exclusively listed on these charts, but are part of the
24 implementing strategies and actions identified in the plan.

25 Q. And the plan, would those be prioritized on the priority

1 investment network locations or streets?

2 A. Yes. It -- it does -- it does talk about strategies and
3 actions within the priority investment network itself.

4 Q. And the charts I've just asked you to look at, that's not --
5 each one shows a segment of the city, correct?

6 A. Each one -- can you clarify --

7 Q. Each one shows only a part of the city, right?

8 A. Correct. Each graphic -- each -- each sheet is a sector of
9 the city.

10 Q. Can you turn now to the Exhibit 13? And what does this
11 graphic show?

12 A. That's the -- that's the overall network for the entire
13 city, all the sectors basically combined.

14 Q. Okay. So basically those prior maps, but put all into one
15 page?

16 A. Correct.

17 Q. Okay. So then going back and looking at the list of
18 projects to be funded by this proposal, No. 11, the
19 Pedestrian Master Plan implementation, would that one line
20 include the work in that entire priority investment network
21 that's shown on those maps?

22 A. As far as I can tell from the information that's presented,
23 I'd say, yeah, by reference it would adopt the whole plan,
24 which would be everything shown in the plan and on those
25 exhibits.

1 Q. Okay. And looking then at -- I'm going to hand you next
2 Exhibit 14. Is that up next? Yes. Okay. I'm going to
3 hand you what will be marked Exhibit 14. Coincidentally,
4 also, Exhibit 14 on our exhibit list.

5 (Appellant's Exhibit No. 14 marked for identification.)

6 MS. KAYLOR: And I'm being reminded -- I'm not sure why I
7 can never remember this, but I would move for the admission
8 of Exhibits 12 and 13.

9 MS. ANDERSON: No objection.

10 HEARING EXAMINER: 12 and 13 are admitted with the caveat
11 that 13 may be expanded to include additional portions of
12 that document.

13 (Appellant's Exhibits No. 12 & 13 admitted into evidence.)

14 Q. (By Ms. Kaylor) So then turning to Exhibit 14, can you tell
15 me what this is?

16 A. So Exhibit 14, this is elements from the Seattle Bicycle
17 Master Plan dated April 2014.

18 Q. And is that the document that's referenced as one of the
19 modal plans on the list of funded projects?

20 A. Yes.

21 Q. Okay. And can you -- looking at, again, the large-size maps
22 that are included in this exhibit, can you describe what's
23 shown there?

24 A. Yes. Similar to the pedestrian modal plan that the city has
25 been broken into multiple sectors. And within each of these

1 sector graphics it identifies an existing network and then a
2 recommended network, the difference being in the line type
3 that's shown. And there's different categories of -- of
4 those connections. So for city-wide network, it shows where
5 the existing off-street bike facilities would be versus,
6 say, the recommended bike facilities with the -- the dashed
7 red line basically.

8 Q. Okay. And do those proposed improvements extend throughout
9 the city?

10 A. They do. They cover -- they cover all sectors of the city.

11 Q. There's no single map there that covers the entire city,
12 but -- is there?

13 A. I -- not -- not in the way that -- no, not -- not with the
14 same level of detail that the individual sector maps
15 summarize it.

16 Q. Okay. And is there as well some narrative included in that
17 document about what improvements are proposed in this -- in
18 these areas indicated on the map?

19 A. Yeah. It provides some -- some -- some basic information
20 and some -- some metrics for that. So, for example, on page
21 40, at the top of page 40, table 4-3, that identifies for
22 the different bicycle facilities how many miles are
23 essentially new facilities and how many miles worth of new
24 facilities are proposed. That number is shown at the
25 bottom. The total is 403.5 miles of new facilities, 473 and

1 a half miles of new or upgraded facilities.

2 Q. Okay. And so this single line in the list of funded
3 projects for the impact fees that says Bike Master Plan
4 implementation, that would include those 403 miles of new
5 facilities, 473 miles of new or improved facilities?

6 A. That's -- that's my understanding of it.

7 MS. KAYLOR: And then I'd like to move to admit
8 Exhibit 14.

9 MS. ANDERSON: No objection.

10 HEARING EXAMINER: 14 is admitted.

11 (Appellant's Exhibit No. 14 admitted into evidence.)

12 Q. (By Ms. Kaylor) Then turning to our next exhibit which will
13 be marked Exhibit 15.

14 (Appellant's Exhibit No. 15 marked for identification.)

15 Q. (By Ms. Kaylor) I'm going to ask you similar questions about
16 this exhibit. I'll ask you to turn to the large maps and
17 tell me what they show.

18 A. So these maps, similar to the other modal plans, these maps
19 show the location of spot projects as the plan defines it
20 and then corridor projects throughout the different -- you
21 know, use site-referencing sectors, but through the
22 different areas; South Seattle, North Seattle, and Central
23 Seattle.

24 Q. Okay. And so the types of improvements that are discussed
25 in your chart here, turning radius adjustment,

1 channelization, left turn signage and other improvements,
2 would those be expected to occur in the locations indicated
3 on the maps?

4 A. Yeah, not every one of those impacts at every location, but
5 that's the -- the nature of the impacts.

6 Q. And are these also city-wide?

7 A. They are city-wide.

8 MS. KAYLOR: Okay. Move to admit Exhibit 15.

9 MS. ANDERSON: No objection.

10 HEARING EXAMINER: 15 is admitted.

11 (Appellant's Exhibit No. 15 admitted into evidence.)

12 Q. (By Ms. Kaylor) So I'd like to -- we have a lot of maps
13 here, and I'd just like to go through them I guess
14 individually. So first the map that's attached to the
15 environmental checklist, which is Exhibit 7. Which of the
16 funded projects does that show?

17 A. So that includes -- that includes all of the projects with
18 the exception of those identified in the Pedestrian Master
19 Plan, Bicycle Master Plan and Freight Master Plan.

20 Q. Okay. And the projects that are identified there, are they
21 single-point projects? Can you characterize the projects
22 that are identified on that map?

23 A. I would say that they're -- they are -- they're all more
24 corridor based. Obviously there's intersection improvements
25 along the way, but these are really intended to address

1 larger corridor needs.

2 Q. And do they extend throughout the city?

3 A. Yeah, they include the north, central, and south areas.

4 Q. And are the modal -- and you have just testified the modal
5 plan improvements are not included. Looking at the modal
6 plan improvements in the Pedestrian Master Plan, do those --
7 how do those interact with the projects that are shown on
8 Exhibit 7?

9 A. There's definitely overlapping projects within the various
10 areas. I'm not sure how many specifically overlap with
11 these corridors, but generally speaking, there's multiple
12 projects within the different sectors, neighborhoods, or,
13 you know, designations as the plans have labeled them.

14 Q. And how about the Bike Master Plan?

15 A. Similar to the pedestrian plan. That -- they overlay with
16 both the pedestrian plan, as well as these corridor
17 projects.

18 Q. And the same question about the Freight Master Plan. How
19 does that interact?

20 A. Same assessment as the others.

21 Q. And so based on your review of all these materials and your
22 understanding of construction impacts of transportation
23 projects, have you reached a conclusion about the impacts of
24 these projects?

25 A. Yeah. Given -- given the nature of the projects, the scope

1 of these projects, particularly the number of projects that
2 are identified in the modal plans, there would be
3 significant impacts from a construction perspective if those
4 were to -- to all occur. You know, either -- either at the
5 same time or even in close dur- -- close timelines with each
6 other so that you have con- -- you know, consistent
7 construction activity in some of those areas.

8 Q. Okay. And so you're not suggesting that, say, pedestrian
9 improvements to a single block are significant in
10 themselves?

11 A. Not necessarily. I mean, as we -- as we -- as I mentioned
12 before, it kind of depends on the nature of that improvement
13 along that block. But not necessarily. I think it's the
14 combination of all of the activity overlapping in sequence
15 with each other or overlapping that creates that constant
16 level of construction activity, which creates those impacts.

17 Q. Okay. And are these kinds of impacts impacts that there's
18 mitigation to address possibly?

19 A. There certainly is. I mean, there's a lot of times that,
20 you know, mitigation can be set during off hours. You
21 don't -- you know, some of these corridor projects, you
22 don't tear the whole corridor up start to finish. You do
23 them -- you phase them. So there's certainly considerations
24 that can be given to that.

25 Based on the information that we were able to review in

1 the checklist, there wasn't any information around seeing
2 that the construction of each stage, or that this would be
3 the process to review those construction activities to make
4 sure that they're not overlapping. That information was not
5 in the checklist or the DNS. So, but it is -- it is
6 possible, and it happens now with development projects
7 downtown. So it is possible to do that.

8 Q. Okay. So let's go ahead and turn to the SEPA checklist,
9 which is Exhibit 7. And I think you have that there
10 somewhere amongst all of the exhibits.

11 A. Got it.

12 Q. Okay. And I'd just like to have you turn starting on page 3
13 of the environmental checklist. Are any of the potential
14 significant adverse impacts you described addressed in this
15 checklist?

16 A. No.

17 Q. And are any of the potential mitigation measures addressed?

18 A. No.

19 Q. And then turning to Exhibit 8 which is the Determination of
20 Non-significance, are any of the impacts or mitigation
21 measures addressed here?

22 A. No.

23 Q. And anticipating a response the city may make, why isn't it
24 sufficient to look at these impacts at some point in the
25 future? To look at the impact of each project, say, when

1 construction permits are being issued for it?

2 A. The -- the difference in -- like, individually you can do
3 that, but I think as I mentioned before that really it's the
4 cumulative effect of all these projects occurring that
5 really need to understand what that cumulative impact is.
6 So mitigation measures could be identified to deal with that
7 cumulative impact. I mean, it's similar to what the city is
8 undergoing right now with all of the major projects
9 downtown. The mitigation is being done in a cumulative
10 state, not individually.

11 And I think it's important to -- especially given the
12 magnitude and number of projects that have been identified
13 in these modal plans to understand how this could all happen
14 because the impact fee essentially -- or this amendment
15 basically says, go for forth and produce an impact fee that
16 makes all of these plans happen. So I think we need to
17 understand what those impacts are if all of these plans
18 happen as -- as directed through the impact fee.

19 Q. Thank you. The DNS, again, Exhibit 8, lists a few
20 documents. And it incorporates by reference on page 2.
21 Have you reviewed these documents?

22 A. I have.

23 Q. And do these documents address these -- the cumulative
24 impacts of construction that you've identified here today?

25 A. No. They -- they essentially defer the evaluation of any

1 single project within those plans to a later date.

2 Q. Okay. Just for completeness of the record here, I will --
3 we will hand out what will be marked as Exhibit 16, which is
4 a portion of the first document identified in the DNS, the
5 final EIS for the Comprehensive Plan update.

6 (Appellant's Exhibit No. 16 marked for identification.)

7 Q. (By Ms. Kaylor) And I'm just going to ask you to turn to
8 page 1-1 of that document and to look at the description of
9 the proposal. Does the proposal include construction of all
10 of these transportation impacts -- of all these
11 transportation projects?

12 A. Yes. That's my -- my understanding.

13 Q. And so I guess I will go back. Just reviewing the
14 description of the proposal in that first sentence, what is
15 the proposal?

16 A. "The city is" -- the sentence that starts out, "The city"?

17 Q. Yeah.

18 A. "The city is considering text and map amendments to the city
19 (inaudible) the Seattle Comprehensive Plan that would
20 influence the manner and distribution of projected growth of
21 70,000 housing units, 115,000 jobs in Seattle through 2035."

22 Q. And I'll go ahead and stop you there. Does that
23 specifically describe any of the transportation impacts
24 that -- the transportation projects we've just been
25 discussing, or is that limited to the housing units and the

1 job growth?

2 A. This talks about -- it describes the housing and job growth.

3 Q. Okay. I'm going to then hand out -- Mr. Carpman will hand
4 out the Exhibits 12 and Exhibit 13 which are the checklist
5 and DNS for the Bike Master Plan.

6 HEARING EXAMINER: Those are marked as 17 and 18.

7 (Appellant's Exhibits No. 17 & 18 marked for identification.)

8 HEARING EXAMINER: And with that, we're going to take a
9 break until -- we'll come back at 1:30.

10 MS. KAYLOR: Oh, time flies.

11 HEARING EXAMINER: It does. And we'll address
12 admissibility of 16 through 18 at that time. Thank you.

13 (Lunch Recess)

14 HEARING EXAMINER: We'll return to the record with
15 Mr. Swenson on direct.

16 Q. (By Ms. Kaylor) Hello again, Mr. Swenson. When we left off
17 we were discussing the documents that are incorporated by
18 reference in the DNS for this proposal. And I think the
19 most efficient thing to do here would be to go ahead and
20 hand those documents out, and then I will ask you a couple
21 questions about them collectively.

22 So we have already handed out the documents, the DNS
23 and checklists relating to the Bike Master Plan. Next we
24 have a collection of documents relating to which master plan
25 here? Freight Master Plan. And that will be -- I think it

1 probably makes sense just to mark both the DNS and the
2 checklist relating to the Freight Master Plan as one
3 exhibit, unless there's any objections to that.

4 HEARING EXAMINER: We have 16 -- what have been marked as
5 16, 17, and 18. 16 was the FEIS --

6 MS. KAYLOR: Yes.

7 HEARING EXAMINER: -- for the Comp Plan. 17 and 18 -- 17
8 is the DNS for the Bicycle Master Plan, and 18 is the SEPA
9 checklist for the Bicycle Master Plan.

10 MS. KAYLOR: Yes.

11 HEARING EXAMINER: We don't have the freight. Were you
12 going to hand that to him next?

13 MS. KAYLOR: Yes. I'm going to hand the freight. And we
14 can continue to mark the DNS and checklist separately or
15 just batch them together, which might be a little more
16 efficient.

17 HEARING EXAMINER: However you're going to use them. If
18 you'll be interchanging them a lot, and they're highly
19 distinguishable as far as your testimony, then we can mark
20 them separately. But if you're going to make a bleak
21 reference to them and move on then a single exhibit is
22 acceptable.

23 MS. KAYLOR: I think it will make sense to do them as
24 single exhibits.

25 HEARING EXAMINER: Okay. We'll keep these for the Bicycle

1 Master Plan separate for now since you've already got them
2 marked.

3 MS. KAYLOR: Great. So the DNS and checklist for the
4 Freight Master Plan will be Exhibit 19. And for Exhibit 20
5 we will have the same documents corresponding for the
6 Pedestrian Master Plan. And finally, we will have the
7 corresponding documents for the Transit Master Plan. This
8 completes the documents that were incorporated by reference.

9 HEARING EXAMINER: And, Ms. Kaylor, just when you're
10 handing papers in just be careful of the red button. That
11 will shut the clock off, so --

12 MS. KAYLOR: Thank you.

13 HEARING EXAMINER: It's only happened once, but it did
14 happen.

15 (Appellant's Exhibits No. 19-21 marked for identification.)

16 Q. (By Ms. Kaylor) So, Mr. Swenson, with regard to all of these
17 documents, the DNS and checklist for the Bike Master Plan,
18 Freight Master Plan, Pedestrian Master Plan, and Transit
19 Master Plan, have you reviewed those documents before today?

20 A. I have.

21 Q. Thank you. And do any of those documents analyze the
22 significant adverse cumulative impacts of implementation of
23 all of those plans and the additional funded projects under
24 the proposed impact fee that you discussed previously today
25 in your testimony?

1 A. They do not.

2 Q. Thank you.

3 MS. KAYLOR: And that is my last question for Mr. Swenson.

4 HEARING EXAMINER: Cross?

5 MS. KAYLOR: And I would like to move to admit the
6 Exhibits 16 through 21.

7 MS. ANDERSON: No objection.

8 HEARING EXAMINER: Exhibits 16 through 21 are admitted.
9 (Appellant's Exhibits No. 16-21 admitted into evidence.)

10

11 C R O S S E X A M I N A T I O N

12 BY MS. ANDERSON:

13 Q. Mr. Swenson, I do have some questions for you, but I'm just
14 going to take a minute here and get them organized here.

15 All right. So, Mr. Swenson, nice to see you again.

16 A. You as well.

17 Q. I'd like to start out with some questions with respect to
18 the proposal here. And is it your testimony that there will
19 be construction impacts based on this proposal?

20 A. To the extent that this proposal enables and directs the
21 funding for these projects to occur, there would be.

22 Q. Is it your understanding that this proposal funds the
23 projects?

24 A. It directs staff to develop impact fees to fund the
25 projects.

1 Q. Okay. You provided some testimony regarding Exhibit 7, the
2 attachment A to Exhibit 7, which is the SEPA checklist I
3 believe. And you provided some testimony I believe that
4 typically there were -- there would typically be some
5 construction impacts involving re-striping or pavement
6 restoration. And this is in particular with respect to
7 Delridge, the Delridge proposal. Do you recall that
8 testimony?

9 A. Yeah.

10 Q. Okay. And is it true that your testimony also was that it
11 really -- the impacts really depend on the elements of the
12 construction involved? Do you recall that testimony?

13 A. Yes, I do.

14 Q. Okay. So did you evaluate the construction impacts of the
15 Delridge proposal of the -- the components of that Delridge
16 proposal?

17 A. We did not look at it block by block, but we did consider
18 what those impacts may be based on the project description
19 and the material that was available.

20 Q. Okay. And so when you say you did evaluate the impacts that
21 may be, is your understanding that that's the standard under
22 SEPA?

23 MS. KAYLOR: Objection. Calls for legal conclusion.

24 HEARING EXAMINER: Sustained.

25 Q. (By Ms. Anderson) So is it your testimony that these

1 construction impacts will result based on this project
2 description that you reviewed at Exhibit B?

3 A. Based on the elements that are described for that project, I
4 would anticipate that the construction impacts that we've
5 identified are likely to occur based on the elements that
6 were noted in the project description.

7 Q. All right. So it's your testimony that you believe those
8 impacts identified would be likely?

9 A. Yes.

10 Q. And is it also your testimony that any of these impacts
11 could be mitigated?

12 A. I think there's things that can be done to mitigate the
13 impacts, yes.

14 Q. And did you factor that into your analysis?

15 A. We -- I -- I did in the sense that I didn't find any
16 information about mitigation measures that were proposed, so
17 at this point we were assuming the potential for these
18 projects to overlap because we didn't identify or could not
19 find references to in the checklist of the DNS about any
20 mitigation that was identified for construction.

21 Q. Okay. So is it fair to say that you assumed there wouldn't
22 be mitigation?

23 A. Yeah, as it wasn't referenced in the checklist.

24 Q. Okay. So do you know what the time horizon is for
25 implementation of the Bike Master Plan?

1 A. I'm not sure the exact horizon is for it, but I'm assuming
2 it's a -- you know, well, I don't want to assume because I'm
3 not sure what that horizon here was.

4 Q. So you don't know?

5 A. I don't know.

6 Q. Okay. How about for the Pedestrian Master Plan? Do you
7 know what the time horizon is for that plan?

8 A. I do not recall specifically.

9 Q. How about for the Transit Master Plan?

10 A. I don't recall.

11 Q. Do you have any reason to believe that the project related
12 to the modal plans, as well as the corridor projects that
13 were all addressed in your Exhibit 10, and that are
14 reflected on -- actually, let me just stick with Exhibit 10.
15 Do you have any reason to believe that these projects would
16 all occur at the same time or close in time?

17 A. I think the timing is unclear when they could occur, but
18 there's nothing that says they could not occur. And if
19 they're being funded through impact fees, it's unclear.

20 Q. All right. And did I understand your testimony correctly
21 that you concluded there would be significant construction
22 impacts if all the construction from all these projects, the
23 21 projects that were attached to the proposal, which is
24 Exhibit 2, were to occur, either at the same time or close
25 in time? Was that your testimony?

1 A. Yeah.

2 Q. Okay. And so is it also fair to say that if these projects
3 were spread out over time there wouldn't be significant
4 impact with respect to construction?

5 A. I think it depends on the projects and how far apart they
6 are and which ones you're talking about and what mitigation
7 is identified ultimately for those.

8 Q. Okay.

9 A. But yeah.

10 Q. Okay. And you also provided some testimony about there
11 being cumulative impacts or cumulative effects. Does that
12 testimony relate specifically to the timing of all these
13 projects?

14 A. It -- it would be in that sense, yes.

15 Q. Okay. So when you're referring to cumulative effects or
16 cumulative impacts, that's what you're talking about?

17 A. Correct. Correct.

18 MS. ANDERSON: Thank you. No more questions for me.

19 HEARING EXAMINER: Redirect?

20

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

22 BY MS. KAYLOR:

23 Q. Mr. Swenson, to your knowledge, are the master plans that
24 we've been discussing, the bike, the pedestrian, and
25 freight, are they being implemented now?

1 A. I believe there's elements of those plans that are underway.

2 Q. And if all -- if the projects were funded through impact
3 fees, would that increase the likelihood that the projects
4 would get built in the near term?

5 A. It would be if they were funded, yeah.

6 Q. I just wanted to clarify, there was a question relating to
7 whether your determination of significance was based on all
8 of the projects occurring at the same time or close. In
9 order for the impacts to be significant, do all of these
10 projects need to occur at the same time or close to each
11 other, or could some subset of them overlap and still cause
12 significant impacts?

13 A. Yeah, I think a subset, depending on the nature of the
14 projects, a subset certainly, again, depending on the nature
15 of the project, could create those and would create those
16 significant impacts.

17 Q. And similarly there was a question about whether the
18 cumulative effects relate only to the timing. Do the
19 cumulative effects also relate to the number and scope of
20 these projects?

21 A. Yeah. Timing -- yeah. Yes. The timing and scope of those
22 projects.

23 Q. Okay. And again, it's -- there's been some questions about
24 whether the construction impacts could be mitigated. Did
25 you see any mitigation contained in the proposal or the

1 checklist or the DNS for this project?

2 A. I did not.

3 MS. KAYLOR: Thank you. No further questions.

4 HEARING EXAMINER: Thank you, Mr. Swenson.

5 MS. KAYLOR: And our next witness is George Steirer.

6 HEARING EXAMINER: Please state your name for the record.

7 THE WITNESS: George Steirer.

8 HEARING EXAMINER: Do you swear or affirm the testimony
9 you'll provide in today's hearing will be the truth?

10 THE WITNESS: I do.

11 HEARING EXAMINER: Thank you.

12 MS. KAYLOR: First we will hand out an exhibit that will
13 be identified as Exhibit 22, Mr. Steirer's resumé.

14 (Appellant's Exhibit No. 22 marked for identification.)

15

16 GEORGE STEIRER: Witness herein, having first been
17 duly sworn on oath, was examined
18 and testified as follows:

19

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

21 BY MS. KAYLOR:

22 Q. Good afternoon, Mr. Steirer. Can you briefly summarize your
23 qualifications?

24 A. Yes. So I received a degree in environmental policy and
25 planning from Western Washington University in 1998.

1 Shortly thereafterwards [sic] I began work as a municipal
2 planner working on projects and long-range planning such as
3 Comprehensive Plans, including completing and reviewing
4 environmental -- or checklists and issuing threshold
5 determinations.

6 The last job on the municipal side was from 2006 to
7 2015 with the City of Mercer Island where I was the
8 principal planner supervising city staff. And for the
9 approximate last four and a half years, I've been a private
10 consultant mainly working on projects which includes
11 completing SEPA checklists and ensuring compliance with
12 SEPA.

13 Q. Thank you. And what is your role in this appeal?

14 A. So my role is to review the City of Seattle's compliance for
15 the Comprehensive Plan amendment on transportation
16 improvement impact fees for compliance with SEPA and provide
17 testimony today.

18 Q. What have you done to prepare for your testimony today?

19 A. I have read the SEPA checklist related to that, the DNS, the
20 documents on the record that are provided in the DNS, as
21 well as the documents provided by Mr. Shook and Mr. Swenson,
22 and reviewed the -- reviewed the documents for compliance
23 with SEPA.

24 Q. Are you familiar with the proposal that's the subject of
25 this appeal?

1 A. Yes.

2 Q. And have you reached a conclusion about whether the
3 checklist and DNS adequately described the proposal here?

4 A. I have reached a conclusion on that.

5 Q. And what is that conclusion?

6 A. Conclusion is that the SEPA checklist states that there is a
7 separation between the proposed Comprehensive Plan amendment
8 and the impact fees that are required under the
9 Comprehensive Plan amendment. This is an artificial
10 separation between the two because under SEPA you are
11 required to review the proposals that are dependent upon
12 each other.

13 So since the Comprehensive Plan amendment mandates the
14 impact fees, they are dependent upon one another. They are
15 not separated out. That should've been included. A review
16 of the impact fee should've been included with the
17 Comprehensive Plan amendment and the SEPA analysis.

18 Q. And did you reach a conclusion with regard to the evaluation
19 of construction impacts from construction of the funded
20 projects?

21 A. Yes. Again, on the SEPA checklist, there is an artificial
22 separation between the two because the Comprehensive Plan
23 amendment clearly links the projects with the Comp Plan
24 amendment. They're going to be funded by the impact fees.
25 So, again, they're dependent upon one another. There was an

1 arti- -- artificial separation created there with those
2 transportation projects, improvement projects as well. And
3 so that review should've been done.

4 And SEPA calls for a review of a cumulative analysis of
5 everything as soon as possible and as early as possible in
6 the SEPA review process. That wasn't done. That should've
7 been done here.

8 Q. So in your opinion do the checklist and DNS contain adequate
9 information to evaluate the proposal?

10 A. No. So --

11 Q. And I'll just stop you. You may want to have a copy of this
12 document we're discussing in front of you. And if you do,
13 it has been admitted as -- the checklist as Exhibit 7 and
14 the DNS as Exhibit 8. I'll just give those to you if you
15 want to refer to them.

16 A. Thank you. So Exhibit 7, the SEPA checklist, part B wasn't
17 completed. It references WAC 197-11-315, subsection (1)(e),
18 which states you don't have to complete subsection (b) if it
19 provides meaningful -- if it doesn't provide meaningful
20 information. But in this particular case, completing that
21 section would provide meaningful information for the
22 decision maker for the reviewer.

23 Specifically, the information that Mr. Shook and
24 Mr. Swenson had provided earlier related to affordable
25 housing, housing productivity and the impacts from the

1 construction of the transportation improvement projects. So
2 that should've been completed in this case because it
3 would've provided meaningful information for the analysis.

4 Additionally, section D of the SEPA checklist didn't --
5 well, let me go back. The section D states that further --
6 further actions by the city require full implementation, but
7 it also says that there will be no changes to regulation
8 pertaining to future or existing land uses. So those seem
9 to be in conflict, but clearly there are changes to future
10 policies that are required for implementation of this.

11 Additionally, when it says there's no -- there are --
12 when it says there are future actions related to this for
13 full implementation, it isn't clear. It doesn't specify
14 what those actions are. It should have listed those out.

15 One last part on D if I may?

16 Q. Yes.

17 A. Subsection D also doesn't list the information that was
18 provided by Mr. Morgan and Mr. Shook, which it should've
19 provided that information as well.

20 Q. And so faced with the inadequate information in the
21 checklist, what should the city have done?

22 A. So when there's inadequate information in a checklist, SEPA
23 calls for the SEPA responsible official to ask for
24 additional information from the applicant. In this
25 particular case, the city should've -- they should've done

1 that.

2 Q. Thank you. And the DNS relies on other prior environmental
3 review. In your opinion, was this proper?

4 A. No.

5 Q. And why not?

6 A. Because those prior reviews do not look at the cumulative
7 impacts of all the proposed projects. There is additional
8 information that is not included in those environmental
9 reviews such as affordable house -- the impacts on
10 affordable housing, housing productivity, and the cumulative
11 impacts or the impacts on those -- from those construction
12 projects.

13 Q. And based on the information that you've reviewed and the
14 testimony you've heard today, do you believe the facts
15 support retention of the DNS?

16 A. No. So based on the testimony and the facts that I've
17 heard -- the testimony I've heard today and the information
18 that are in the record, as Mr. Shook and Mr. Swenson have
19 testified, it rises to -- the proposal rises to a level of
20 significance. Significance is, according to SEPA, a
21 reasonable likelihood of a more than moderate adverse impact
22 on environmental quality.

23 So when we look at a reasonable likelihood, we've heard
24 from Mr. Shook and Mr. Swenson that they are -- they would
25 happen. They would occur. That's more than speculative.

1 That's more than just likely. They're saying it would
2 happen. That's according to experts. That's not -- that's
3 not addressed in the DNS.

4 Additionally, when we look at more than moderate, we're
5 looking at frequency and duration. So if all -- if a subset
6 of these, according to Mr. Swenson, that if the subset of
7 these transportation improvement projects were to occur that
8 would -- if they -- that would be a significant adverse
9 impact because it would last for a long time, and there
10 would be significant issues with that resulting, you know,
11 in transportation delays and the other -- the other
12 transportation issues that he mentioned for construction.

13 Q. Thank you. And with regard to housing production and
14 affordability, would your -- what would your conclusion be?

15 A. There would be a significant impact to housing affordability
16 and production if this was adopted without any mitigation.

17 Q. And based on your experience with SEPA as a SEPA official,
18 what would SEPA require at this point?

19 A. SEPA would require that the EI -- that the DNS be reversed
20 and that an EIS be performed by the city. And the EIS would
21 look at a minimum at alternatives, but would look at
22 mitigation options so that the decision-makers have all the
23 information available to them.

24 MS. KAYLOR: Thank you. No further questions.

25 HEARING EXAMINER: Cross?

1 MS. ANDERSON: Yes. Thank you.

2 C R O S S E X A M I N A T I O N

3 BY MS. ANDERSON:

4 Q. Hello, Mr. Steirer.

5 A. Hello.

6 Q. I just have a couple of questions for you. I guess we're
7 going to work backwards. You just gave your opinion
8 regarding housing and housing affordability. Did I
9 understand your opinion to be that you believe there will be
10 significant impacts to housing and housing affordability as
11 a result of this proposal?

12 A. Yes.

13 Q. And was that based on your own independent analysis?

14 A. It was based on listening to the testimony, what is in the
15 record.

16 Q. Okay. Did you conduct any analysis yourself with respect to
17 housing impacts and impacts to housing affordability?

18 A. I analyzed the information that's on the record.

19 Q. And does that include the testimony of Mr. Shook?

20 A. Yes.

21 Q. Okay. So your opinion is based in large part on Mr. Shook's
22 testimony; is that correct?

23 A. I would categorize it as it's based in part on Mr. Shook's
24 testimony.

25 Q. Okay. What else is it based on?

1 A. What SEPA requires and the definition of significance under
2 SEPA.

3 Q. Okay. So can you point me in particular to what you believe
4 the impacts to housing to be?

5 A. They would be based on -- based on the information available
6 in the record, I would say those impacts include
7 affordability. So there would be an increase in price --
8 prices as a result of this, a decrease in affordability.

9 Q. Let me stop and interrupt you. Is this based on your
10 independent analysis?

11 A. It depends on your definition of independent analysis.

12 Q. Did you conduct an analysis of the increase in price and the
13 decrease in supply yourself?

14 A. What I believe -- to try to get to what I believe your
15 question is is no to that, if I'm understanding your
16 question correctly.

17 Q. All right.

18 A. I didn't do the same analysis that Mr. Shook did.

19 Q. Right. Okay. All right. Is there anything that you would
20 want to -- anything related to housing or housing
21 affordability that you would want to add to your conclusion
22 about the basis?

23 A. Not at this moment.

24 Q. Okay. All right. With respect to the checklist, do I
25 understand your testimony correctly that the checklist

1 should have identified impacts to housing and housing
2 affordability?

3 A. Yes.

4 Q. And construction impacts in the checklist; is that correct?

5 A. Yes.

6 Q. Okay. And I want to ask you about your testimony that -- if
7 I understand correctly, that reliance on prior DNSs was
8 improper; is that your testimony?

9 A. Reliance on prior DNSs did not give the decision maker all
10 the necessary information to make an adequate threshold
11 determination. That would more accurately describe my
12 testimony.

13 Q. Okay. And did you review these prior DNSs?

14 A. I reviewed portions of some of the prior DNSs.

15 Q. And can you recall which ones you reviewed?

16 A. I'm recalling the Transportation Plan DNS, the master
17 plan -- Transportation Master Plan DNS. That's the only
18 ones I'm recalling at this moment. There may have been
19 additional ones, but I'm not recalling them right now.

20 Q. Okay. So I'm going to ask you to go ahead and look at what
21 has been marked as Exhibit 17 I believe and 18, Seattle
22 Bicycle Master Plan. Did you review those documents?

23 A. I did review them. I don't believe I reviewed every word of
24 it.

25 Q. Okay. And so if I understand your testimony, it was that

1 the Transportation Master Plan DNS did not analyze the
2 cumulative impacts of the proposal; is that correct?

3 A. Of the proposed Comprehensive Plan amendment and all of
4 the -- all of the projects that are proposed to be funded,
5 that's correct. That's my testimony.

6 Q. And so your testimony is that you didn't rely on any other
7 documents to come to that conclusion?

8 A. That was not my testimony, no.

9 Q. Okay. What is your testimony?

10 A. As it relates to the -- this document, Exhibit 18? Can you
11 rephrase your question for me, please?

12 Q. Did you rely on Exhibit 17 and 18 in coming to your
13 conclusion that the city didn't look at cumulative effects?

14 A. Yes, I did rely on this. Just to be clear, I didn't -- I
15 was trying to answer your question very clearly. You had
16 originally said solely, if I relied on it solely. So I just
17 wanted to be clear that that was a part of my testimony,
18 yes.

19 Q. Okay. So did you rely on any other documents in reaching
20 that conclusion?

21 A. That the checklist did not adequately address all of the
22 transportation impacts that are in the proposal? That's
23 your question?

24 Q. My question relates to the checklist and the DNS, yes.

25 A. I'll try to say it in a complete sentence to sound clear

1 what I'm -- what I'm testifying then. So my testimony is
2 that, yes, I relied on other documents other than Exhibit 17
3 and 18 to testify that the cumulative impacts of all the
4 projects that are shown as part of the Comprehensive Plan
5 amendment were not adequately evaluated.

6 Q. Can you tell me which other documents you relied on?

7 A. Okay. So the documents that are listed in the DNS, as well
8 as the information provided by the written documents
9 provided by Mr. Morgan and Mr. Shook.

10 Q. Okay. So does that include Mr. Shook's declaration?

11 A. Yes.

12 Q. And did you conduct any independent analysis with respect to
13 your testimony related to evaluation of construction
14 impacts?

15 A. Yes and no. So I did evaluate construction impacts and what
16 the city did for SEPA compliance. I think that was an
17 independent -- independent review. I didn't do an
18 independent review of those impacts similar to what Mike
19 Morgan did -- or Mr. Swenson did.

20 Q. Okay. So it your testimony that there are construction
21 impacts due to this proposal or likely -- likely
22 construction impacts?

23 A. Based on the information I read from Mr. Swenson and the
24 other documents, yes.

25 Q. Okay. So I'll try asking another way. What did you

1 evaluate to come to the conclusion that there would be
2 construction impacts due to this proposal?

3 MS. KAYLOR: Objection. Asked and answered.

4 MS. ANDERSON: I think this is a separate question. This
5 is irrespective of Mr. Swenson's testimony.

6 HEARING EXAMINER: Overruled. The series of questions
7 before was relative to only Exhibits 17 and 18 and the list
8 of projects. So this is a different scope.

9 A. I reviewed the -- I reviewed the information that is on the
10 record. So I reviewed the documents that are listed in the
11 DNS. I did review -- I apologize if this is not getting to
12 your question. I'll rephrase it if need be. But I
13 understand this to be your question. But I did review the
14 documents that are in the DNS, as well as the document --
15 the declaration provided by Mr. Swenson, as well as the SEPA
16 checklist and the proposed Comprehensive Plan amendment.

17 Q. (By Ms. Anderson) Okay. So that answers part of my
18 question.

19 A. Okay.

20 Q. And I think the next question is, what did you rely on
21 specifically to reach the conclusion that there are
22 construction-related impacts due to this proposal?

23 A. I wish I could say it was just one document, but I can't.
24 It would have to be everything. So the Comprehensive Plan
25 amendment has a list of -- a list of projects. That

1 project -- that list, for example, lists the Bicycle Master
2 Plan. That Bicycle Master Plan has several other projects
3 in it, for example. So I sense you're asking me to tell you
4 if there was just one specific document, but I can't -- I
5 can't do that under oath.

6 Q. Right. I'm hoping you can point me to where there are some
7 construction impacts identified in the record.

8 A. Oh, uh-huh. So Mr. -- Mr. Swenson's document has a list of
9 impacts that would -- that would be there.

10 Q. Okay. So you're relying on Mr. Swenson's document, which
11 I'll direct you to is Exhibit 10. Is that the document
12 you're referring to?

13 A. I -- I'm leaning on this, yes.

14 Q. And then lastly, is it your testimony that the proposal is
15 dependent upon the transportation impact fee projects
16 attached to Exhibit 2?

17 A. Exhibit 2, as well as the -- as well as the projects within
18 the plans that are referenced for the Comprehensive Plan
19 amendment, that would be funded by the transportation impact
20 fees. I think there was -- just for clarity, there was
21 earlier testimony that this only shows some of them. This
22 map only shows some of them.

23 Q. So I understand your testimony to be that this proposal,
24 Exhibit 2, is dependent upon the project list contained here
25 as Exhibit 2 -- or attachment 2; is that your testimony?

- 1 A. Can you repeat the first part of that question again,
2 please?
- 3 Q. I was asking whether or not the proposal -- it's your
4 testimony that the proposal is dependent upon the project
5 list noted as attachment 2 to Exhibit 2?
- 6 A. Yes.
- 7 Q. And did I understand your testimony correctly that you
8 believe there was an artificial separation between the
9 proposal and an impact fee program?
- 10 A. Yes.
- 11 Q. Okay. And is there anything else that you're relying on to
12 come to that conclusion?
- 13 A. Anything else other than the SEPA checklist?
- 14 Q. No. Other than what your testimony was just a moment ago.
- 15 A. No, other than -- other than a SEPA checklist, what's in the
16 record and the requirements under SEPA, no, I'm not relying
17 on anything else.
- 18 Q. Thank you.
- 19 A. Uh-huh.
- 20 HEARING EXAMINER: Is that it?
- 21 MS. ANDERSON: Oh, yes. No other questions.
- 22 HEARING EXAMINER: Redirect?
- 23 MS. KAYLOR: Very briefly.
- 24 \\
- 25 \\

1 \\

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

3 BY MS. KAYLOR:

4 Q. You indicated that you relied on, in part, documents and
5 information provided by Mr. Swenson and Mr. Shook. Does a
6 responsible official in conducting a SEPA analysis typically
7 rely on expert studies and reports done by other
8 individuals?

9 A. Yes.

10 Q. And --

11 A. If I may add, especially when there isn't a complete record
12 of all the potential impacts.

13 Q. Your testimony was in part that the documents identified in
14 the DNS, which is Exhibit 8, did not take into account the
15 impacts of -- did not analyze the impacts of the proposal on
16 affordable housing or cumulative impacts of the
17 transportation impact fees -- transportation impact
18 projects -- transportation improvement projects funded by
19 the proposal. Looking at the date of the proposal, if you
20 look at Exhibit 2, on the bottom, is there a date there?

21 A. Yes. November 21st, 2017.

22 Q. And then looking at the environmental checklist which is
23 Exhibit 7 on the first page, is there a date the checklist
24 was prepared?

25 A. Yes. October 21st, 2018.

1 Q. And the documents then that are listed in the DNS, which is
2 Exhibit 8, did they precede -- what are their dates in
3 relation to the existence of this proposal?

4 A. So the Exhibit 8 is dated October 25th, 2018, and Exhibit 7,
5 the checklist, is four days before that. And then the --
6 and then the Exhibit 2, the ordinance, is almost a year
7 before that.

8 Q. And the documents that were incorporated by reference in the
9 DNS, do they precede this proposal?

10 A. Yes.

11 Q. So could they have analyzed its impacts?

12 A. No.

13 MS. KAYLOR: Okay. Thank you. I don't have any other
14 questions, thank you. Oh, I don't have any other questions.
15 However, I'm being reminded that I did not ask for the
16 admission of Exhibit 22, so I ask for that now.

17 MS. ANDERSON: No objection.

18 HEARING EXAMINER: Exhibit 22 is admitted.

19 (Appellant's Exhibit No. 22 admitted into evidence.)

20 HEARING EXAMINER: Thank you, Mr. Steirer.

21 MS. KAYLOR: And we have no further witnesses.

22 HEARING EXAMINER: Okay. To the city.

23 MS. ANDERSON: Yep. Very good. Thank you. At this time
24 I would like to call Ketil Freeman.

25 HEARING EXAMINER: Please state your name for the record.

1 THE WITNESS: Ketil Freeman.

2 HEARING EXAMINER: Do you swear or affirm that the
3 testimony you'll provide in today's hearing will be the
4 truth?

5 THE WITNESS: I do.

6

7 KETIL FREEMAN: Witness herein, having first been
8 duly sworn on oath, was examined
9 and testified as follows:

10

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

12 BY MS. ANDERSON:

13 Q. Hello, Mr. Freeman.

14 A. Hello.

15 Q. Can you please provide information related to your
16 experience?

17 A. Sure. So I have a master's degree in regional planning from
18 the University of North Carolina at Chapel Hill. I got that
19 in 1998. Immediately after graduate school I worked for an
20 engineering consulting firm called Reid Middleton. I worked
21 for them for a little bit less than a year. Among my duties
22 at Reid Middleton was preparing environmental documentation
23 for that engineering firm's clients, including drafting a
24 portion of a supplemental EIS for the Port of Everett's
25 comprehensive scheme.

1 After Reid Middleton I went to work for what was then
2 called the Seattle Department of Construction and Land Use
3 which is now SDCI. There I acted as a current planner and
4 authored SEPA threshold determinations for projects that
5 were proposed within the city. I worked there until about
6 2001 when I went to law school.

7 After law school I went to work for the Seattle City
8 Council Central Staff. I have worked there since 2005.
9 Among my duties at Seattle's -- at the Central Staff are
10 advising the council members on changes to environmental and
11 land use regulations. There is some occasional SEPA work,
12 including advising the council on amendments to the city's
13 SEPA ordinance, as well as authoring threshold
14 determinations for project and non-project actions that the
15 council has an interest in.

16 MS. ANDERSON: All right. So at this time I would ask
17 that we mark Mr. Freeman's resumé, I believe it would be
18 Exhibit 23.

19 HEARING EXAMINER: Yes. Are you asking that that be
20 admitted?

21 MS. ANDERSON: Yes.

22 MS. KAYLOR: No objection.

23 HEARING EXAMINER: 23 is admitted.

24 (Department's Exhibit No. 23 marked for identification.)

25 (Department's Exhibit No. 23 admitted into evidence.)

1 Q. (By Ms. Anderson) All right. And so in particular, can you
2 describe your experience evaluating environmental impacts of
3 non-project actions?

4 A. So it's somewhat limited, but and then most of that has
5 occurred while at the council. If there is something that
6 the council is interested in pursuing, and for which SDCI or
7 some other executive department does not want to act as lead
8 agency, then we will sometimes, me and my colleague -- by
9 "we" I mean myself and my colleagues will sometimes prepare
10 the environmental documentation necessary for that action.

11 So there are a couple that come to mind. One a while
12 ago now is a maintenance to the city's noise ordinance.
13 That's something that required review under SEPA. A more
14 recent one was a change to the land use code for a project
15 downtown or for some type of project downtown. And for that
16 I think I authored the threshold determination, possibly the
17 checklist.

18 Q. And so did you also have some SEPA experience when you
19 worked at I guess what was previously the Department of
20 Construction and Inspections?

21 A. I did. And that, in fact, that was mostly -- it was my
22 bread and butter. Most of -- I don't know how many SEPA
23 threshold determinations I authored there in reviewing
24 private development proposals, private and public
25 development proposals in the city, but it was quite a few.

1 I was -- it was part of my current planning role. I was the
2 land use planner, a land use planner assigned to review
3 those kinds of projects. I don't know exactly how many I --
4 I did. My guess would be somewhere between 15 and 30
5 perhaps.

6 Q. All right. So before we -- I guess, as you know, we're here
7 today based on the appeal of the DNS. Are you familiar with
8 the DNS?

9 A. I am.

10 Q. Okay. And that is -- and how are you familiar with it?

11 A. I drafted the DNS.

12 Q. Okay. And so that's Exhibit 8. I'll give you a copy just
13 so you have it. All right. Now, before we discuss the DNS
14 in detail, I would first like to ask you to discuss the
15 proposal that's the subject of the environmental review.
16 Are you familiar with the proposal?

17 A. I am.

18 Q. Okay. And I'm going to hand you what's been marked as
19 Exhibit 2. What do you understand this exhibit to be?

20 A. Sure. So this is a draft bill that would amend the
21 Comprehensive Plan. Shall I say more?

22 Q. Please.

23 A. It would amend the Comprehensive Plan by amending policies,
24 goals and policies and the transportation element, including
25 adding some narrative description. And also the

1 transportation appendix to add some narrative description
2 and include a project list to meet the requirements of
3 82.02.050, which is the RCW that describes what's necessary
4 to implement an impact fee program.

5 Q. And I'd like to ask you to look in particular at attachment
6 1. Is this the methodology that the city is proposing to be
7 used if a transportation impact fee program is developed?

8 A. It is. I think if you were to turn to the discussion
9 section that talks a little bit sort of at a high level
10 about what that methodology would be, attachment 2 has a
11 somewhat more lengthy description of the methodology,
12 including a description of the existing system value
13 quantification that the replacement value of the current
14 system.

15 Q. And did you work with others to prepare this proposal?

16 A. I did.

17 Q. Who did you work with?

18 A. I worked with our primary consultant, Fehr & Peers. I think
19 he'll testify here shortly. And we also worked with
20 representatives from the mayor's office, Ahmed Darrat, who
21 was for a time the mayor's transportation advisor. And also
22 with Kristen Simpson at the Seattle Department of
23 Transportation.

24 Q. All right. Who is the project proponent of this proposal?

25 A. The primary proponent for this proposal is Council Member

1 O'Brien.

2 Q. And is Council Member O'Brien the one that asked you to
3 prepare this proposal?

4 A. He is.

5 Q. Okay. And are there any other council members you know of
6 that are supportive of this proposal?

7 A. I know of at least two other council members who are
8 supportive of impact fees generally. They published an op
9 ed in the Seattle Times. That's Council Member Bagshaw and
10 Council Member Herbold.

11 Q. And do you know whether any of the other council members are
12 supportive of the creation of a transportation impact fee
13 program?

14 A. I -- I -- I believe that Council Member Herbold is probably
15 supportive of creation of a transportation impact fee
16 program. Whether or not it is this program is a -- I don't
17 know the answer to that question.

18 Q. All right. So you worked pretty much exclusively with
19 Council Member O'Brien in preparing this with respect to
20 council members?

21 A. That's correct.

22 Q. Okay. Now, does this proposal change the current use of
23 land?

24 A. It does not.

25 Q. All right. Does the proposal impact the continued use of

1 land on the environment?

2 A. It does not.

3 Q. Okay. Does the proposal require that council adopt a
4 transportation impact fee program?

5 A. It does not.

6 Q. And why not?

7 A. So they -- this is an initial step, and perhaps even the
8 only step, but it's sort of a general -- sort of a general
9 practice in the city is that initially a policy proposal is
10 adopted. After that policy proposal is adopted,
11 implementing regulations are adopted, and that is informed
12 in part by the fact that council members may disagree
13 amongst themselves, and they may or may disagree [sic] with
14 the council about what the policy proposal may be. And as a
15 consequence, it could be changed or modified through the
16 course of council deliberations.

17 There's also kind of a go/no-go question sometimes with
18 policy proposals, and this arguably is one those as well.
19 So it could be the case that an outcome of this is that no
20 impact fee program is developed at all.

21 Q. So is it your understanding that this proposal -- that it's
22 the entirety of some transportation impact fee program?

23 A. No. Future steps would be needed to implement a regulatory
24 program.

25 Q. And what future steps do you believe may be required?

1 A. The council would need to finalize a rate study. The
2 council would need to make policy choices about the
3 magnitude of a potential transportation impact fee, whether
4 impact fees should vary by planning geography, and also what
5 kind of mechanism should be in place for exemptions for
6 affordable housing and also very individualized
7 determinations.

8 Q. Why was this proposal for a Comprehensive Plan amendment put
9 forward in advance of a proposal for a transportation impact
10 fee program? And I believe you've addressed that briefly,
11 but if you could provide any additional information.

12 A. Sure. I mean, as I mentioned, there is sort of a go/no-go
13 decision here when it comes to transportation impact fees.
14 I think it's sort of theoretically possible that the council
15 could either amend this proposal or reject this proposal.
16 Also, the council could accept this proposal but establish a
17 different time frame. Implementation of that time frame
18 could be anywhere from who knows what.

19 So there are changes that could happen through council
20 deliberations that modify the current Comprehensive Plan
21 proposal and could inform whether there are future steps and
22 what those future steps might be.

23 Q. And did you hear the prior testimony that this proposal
24 requires council to adopt a transportation impact fee
25 program?

1 A. I did.

2 Q. Okay. And do you agree with that assessment?

3 A. I don't.

4 Q. And why not?

5 A. Well, any -- if and when this proposal is in front of the
6 council for decision making, they could amend some of the
7 policy language that is in the SEPA proposal that is -- you
8 know, that we're talking about here today. And they could
9 also reject it as well.

10 Q. And so in particular, can you point me to the policy
11 language that proposes a change? And I believe the existing
12 language, if you could just read the existing language?

13 A. Sure. The existing language is: "Consider use of
14 transportation impact fees to help fund transportation
15 system improvements needed to serve growth."

16 Q. And what is the proposed revision?

17 A. So the proposed revision would be: "Use transportation
18 impact fees to help fund the transportation system
19 improvements needed to serve growth." So that would be the
20 policy change.

21 Q. Okay. And is it your opinion that that policy change would
22 not require the council to adopt a transportation impact fee
23 program?

24 A. If they -- if they adopted the language as is, it would
25 become something that is more affirmative. But affirmative

1 under what time frame is kind of an open question. It could
2 be implemented over, you know, a broad planning horizon.

3 Q. And is it your testimony that the council has discretion to
4 determine if or when they would adopt a transportation
5 impact fee program?

6 A. It is.

7 Q. All right. Now, did you hear the testimony of Mr. Steirer
8 that the entire program, so Comprehensive Plan and
9 development standards, should've been prepared and submitted
10 to council for consideration at the same time?

11 A. I did.

12 Q. Okay. And is it your testimony that -- I guess do you agree
13 with his opinion?

14 A. I do not.

15 Q. Okay. And why is that?

16 A. As I mentioned before, it's unclear what the council will do
17 with this current proposal. They may adopt it as it's
18 currently proposed. They may amend it based on discussion.
19 And they also may reject it.

20 Q. Okay. And do you have any information about what, in fact,
21 you think would be likely?

22 A. No. It would be speculation on my part.

23 Q. Okay. All right. So now I would like to talk a little bit
24 about the environmental review. You provided testimony that
25 you issued a DNS; is that correct?

- 1 A. That's correct.
- 2 Q. Okay. And in coming to that conclusion, did you review the
3 environmental checklist?
- 4 A. I did.
- 5 Q. Okay. And did you prepare the environmental checklist?
- 6 A. I drafted the environmental checklist, and it was
7 independently reviewed by my colleague, Lish Whitson.
- 8 Q. Okay. And did you review any other documents?
- 9 A. Yes.
- 10 Q. Okay. And what documents did you review?
- 11 A. I reviewed the draft and final EIS for Seattle 2035. That
12 was the seven-year Comprehensive Plan update. I also
13 reviewed the threshold Determination of Non-significance for
14 the Seattle Transit Master Plan, the DNS for the Seattle
15 Bike Master Plan, the DNS for the Seattle Freight Master
16 Plan, and the DNS for the Seattle Pedestrian Master Plan.
- 17 Q. All right.
- 18 A. That -- I should actually add, in addition to that, I relied
19 on documents prepared by Fehr & Peers, including their
20 existing system value methodology memo and preliminary
21 assessments of what a maximum supportable fee could be.
- 22 Q. All right. So with respect to the SEPA checklist, is it
23 your understanding that SEPA allows for a project proponent
24 to prepare a SEPA checklist?
- 25 A. Yes.

1 Q. Okay. And as part of this SEPA checklist, did you complete
2 section B of the checklist?

3 A. I did not.

4 Q. And did you hear Mr. Steirer's testimony that he believes it
5 to be an error for the city not to have completed that
6 section?

7 A. I did.

8 Q. Okay. And do you agree with that assessment?

9 A. I do not.

10 Q. And why not?

11 A. The Washington Administrative Code provides an exception for
12 non-project action such as this.

13 Q. Okay. And is it your opinion that providing information
14 testified to by Mr. Shook and Mr. Swenson would assist the
15 decision maker in making a decision?

16 A. So with respect to housing affordability issues, I'll just
17 note that section D does not actually require disclosure of
18 those kinds of impacts. However, you know, there -- that
19 notwithstanding, analysis of those kinds of impacts is
20 inherently speculative given a variety of sort of unknown
21 factors that are out there. And those unknown factors I can
22 elaborate a little bit. Those unknown factors include --

23 Q. What are those, yeah?

24 A. -- who the decision-makers will be when the time comes for
25 setting an impact fee program assuming that -- that the

1 council does go down the path of implementing an impact fee
2 program. What the regulatory climate is like, we know now
3 that -- which we did not know at the time that I drafted the
4 threshold determination that MHA has been adopted. So that
5 is a new regulatory fee. It's also a new regulatory fee
6 that is under appeal at the Growth Board.

7 There may be other changed regulatory costs as well
8 that might make a difference when it comes to doing any kind
9 of feasibility analysis through a pro forma. So there --
10 you know, there are a lot of factors out there that are
11 unknowable at this point. We know sort of generally what
12 the types of variables are, but not necessarily what the
13 variable -- what the number is to be used on those
14 variables.

15 Q. Okay. All right. So you indicated that you relied on some
16 other documents when issuing the DNS. And did you also rely
17 on the checklist related to the Freight Master Plan, the
18 Transit Master Plan, the Pedestrian Master Plan, the Bike
19 Master Plan?

20 A. Yeah. So it wasn't just the threshold determination. Those
21 don't actually provide that much information in terms of
22 disclosures. It was the checklists as well.

23 Q. All right. And did you also review the draft and final EIS
24 for Seattle 2035?

25 A. I did.

1 Q. Okay. All right. All right. So with respect to your
2 Determination of Non-significance, did you consider the
3 construction impacts of the projects that were identified --
4 I think it's attachment 2, correct me if I'm wrong -- of
5 Exhibit 2, the project list?

6 A. I'm sorry, could you restate your question?

7 Q. Yes. Did you consider the construction impacts of the
8 projects that were identified as transportation impact fee
9 eligible projects?

10 A. I reviewed the disclosures and the SEPA checklists for the
11 modal plans as they relate to construction impacts. And
12 I'll say that the information there is -- is variable. It's
13 somewhat sparse -- spare. I think probably this -- the
14 checklist that has the most information and discloses
15 impacts at a -- and is at a very high level is the
16 Pedestrian Master Plan.

17 I also looked at disclosure of impacts related to
18 construction generally in Seattle 2035. That's also a very
19 generalized disclosure. It talks about impacts to air and
20 earth and water associated with construction generally. So
21 I reviewed those documents for those types of impact
22 disclosures.

23 Q. Okay. All right. And were you here -- oh, I guess you were
24 here. Did you hear Mr. Steirer's testimony that the DNS
25 should have considered the construction impacts of these 21

1 transportation impact fee eligible projects?

2 A. I did.

3 Q. Okay. And does the proposal authorize the construction of
4 these 21 transportation projects?

5 A. No, it does not.

6 Q. Does it fund these 21 transportation projects?

7 A. No. It makes them eligible for potential future
8 expenditures, but the projects could proceed without impact
9 fees.

10 Q. Okay. So how would these projects proceed without impact
11 fees?

12 A. They'd be funded from other sources that are available for
13 transportation infrastructure projects. So it would be
14 (inaudible) or Move Seattle levy or grants and the other
15 usual suite of potential revenue sources that are available
16 for transportation projects.

17 Q. Is it your understanding that these 21 projects will move
18 forward regardless of whether or not transportation impact
19 fees are adopted?

20 A. Yeah. Some more likely than others. For instance, the Move
21 Seattle Vision Projects I think have yet to have any funding
22 source identified definitively for those. But certainly the
23 projects that are listed in the CIP now and have a funding
24 plan associated with them would likely move forward without
25 impact fees.

1 Q. And the CIP projects that you're referring to, were those
2 the projects that were identified in yellow on Mr. Swenson's
3 exhibit? This would be Exhibit 10.

4 A. Yes.

5 Q. And then how about the projects that were identified in the
6 orange?

7 A. The orange are I believe -- these might have been referred
8 to as salmon.

9 Q. Salmon.

10 A. Yeah. So the -- the Move Seattle Vision Projects, they're
11 not included in the current CIP. These are projects that
12 were identified as part of the Move Seattle process for --
13 to a future -- future investments by the city using some
14 other source of revenue, possibly a levy renewal. So these
15 are not projects that are listed in the CIP. So of the
16 projects that are currently in the -- that are in the
17 project list and the proposal, these are the projects that
18 have the least secured sources of funding.

19 Q. And how about the projects identified in blue on this
20 exhibit?

21 A. So the projects identified in blue are the modal plan
22 implementation projects. The city periodically updates
23 priority investments based on these modal plans, and they
24 are often incorporated into the CIP. So they -- they could
25 be funded without transportation (inaudible).

1 Q. Okay.

2 MS. ANDERSON: So what I would like to have marked is I
3 think a component of an exhibit we already have. And this
4 was the Pedestrian Master Plan. I believe it's Exhibit 12;
5 is that right? Okay. And I just printed out the first few
6 pages. So I will give the examiner a copy, and I'm going to
7 give the witness a copy. So I'm not sure if this should be
8 marked as a new exhibit or if we just want to refer to it
9 and have it incorporated into Exhibit 12.

10 HEARING EXAMINER: It looks like -- well, I reserved
11 Exhibit 13 to add to, but not this one, so we'll do this as
12 a separate Exhibit 24.

13 MS. ANDERSON: Okay.

14 MS. KAYLOR: What pages did you print out?

15 MS. ANDERSON: I printed out beginning through page 10.
16 (Department's Exhibit No. 24 marked for identification.)

17 Q. (By Ms. Anderson) I actually would direct you, Mr. Freeman,
18 to page 3. Can you tell me what the time frame is for this
19 Pedestrian Master Plan?

20 A. Yeah. It has a 20-year time frame.

21 Q. Okay. And what kind of a document is this?

22 A. It's a planning document essentially. I mean, it's a
23 document that the city uses to prioritize pedestrian
24 investments. It sets out -- you know, I think Mr. Swenson
25 probably described it pretty well. It sets out a suite of

1 investments that the city could make to improve its
2 transpor- -- its pedestrian -- its pedestrian network.

3 Q. And is it your understanding that these plans are modified
4 over time?

5 A. It is.

6 Q. Okay. So is it fair to say that a project that may be
7 listed in one of these plans may be revised or removed at
8 some future point?

9 A. That's true.

10 Q. Okay. And do you know how frequently this Pedestrian Master
11 Plan is updated?

12 A. I -- I don't off the top of my head. It is regularly
13 updated, but I forget what the (inaudible) is.

14 Q. Okay. All right. So back to my line of questioning related
15 to whether or not these 21 projects that have been
16 identified as transportation impact fee eligible, whether or
17 not this proposal funds any of those projects. I believe
18 you've already testified that no, in fact, is your
19 understanding?

20 A. This proposal does not fund any of these projects. It
21 simply puts them on a list in the transportation element of
22 the Comprehensive Plan to make them eligible for potential
23 future funding.

24 Q. Okay. And is putting projects on a list a required step
25 before creating a transportation impact fee program?

1 A. It is.

2 Q. Okay. And so is that the reason that this proposal came to
3 be?

4 A. It is. Correct.

5 Q. Okay. And is it your understanding that there will be
6 environmental review conducted before any of these projects
7 are actually constructed?

8 A. Yes, that's my understanding. I believe that environmental
9 review is often done when projects are at about a 30 percent
10 design level.

11 Q. Did you have the opportunity to coordinate with Mr. Mark
12 Mazzola from the Seattle Department of Transportation
13 related to this?

14 A. Yeah. My understanding is based on a conversation with
15 Mr. Mazzola.

16 Q. All right. Okay. All right. So did you consider the
17 impacts to housing that are likely due to this proposal?

18 A. No.

19 Q. All right. And why not?

20 A. The mission before section D of the checklist does not
21 require that disclosure. And also, to do that analysis
22 involves speculation, and it would be not use- -- not
23 particularly useful to the decision-makers. And it's
24 speculative for the reasons I mentioned before. Don't know
25 who the decision-makers will be when the time comes for a

1 decision on -- on a future implementation step, or even for
2 this particular proposal.

3 And also, we don't really know what the regulatory
4 environment will be like either. I mentioned that MHA has
5 passed, so that's actually a changed circumstance since the
6 threshold determination was drafted. But it is not -- it's
7 not a process that's done yet. There's been an appeal to
8 the Growth Board. Perhaps fees may change based on that.

9 There may be other changes, other regulatory changes as
10 well, or changes to market conditions, too. I mean, if
11 interest -- if interest rates go up or something like that,
12 that also would have a pretty good effect on project
13 feasibility. So at this stage and planning for
14 transportation impact fee program, that analysis is not
15 (inaudible).

16 Q. All right. And does that also include impacts to housing
17 affordability?

18 A. It does.

19 Q. Okay. Is it exclusive to housing affordability, or does
20 that also include impacts to housing generally?

21 A. That would be impacts to housing generally. I think that
22 they're sort of -- it's hard to separate those two.

23 Q. All right. Are you familiar with the SEPA provision that's
24 related to incomplete or unavailable information?

25 A. I am.

1 Q. Okay. And do you believe that you should've analyzed the
2 environmental impact to housing supply based on an
3 imposition of -- that \$11,000 number that was cited in -- I
4 believe it is Exhibit 4.

5 A. No. I think -- so the -- there are exceptions to the
6 requirements of the section related to incomplete
7 information. And included in those exceptions are if
8 information -- if -- if it's just too expensive to get the
9 information, which is not necessarily a limitation here.
10 But if -- if doing the analysis is inherently speculative,
11 and as I mentioned before, that would be the case for using
12 that \$11,000 maximum supportable fee number. There -- you
13 know, there -- among other factors that sort of creates some
14 uncertainty is I'd have no idea what level -- what fee level
15 might be supported by the council. Ultimately there may be
16 a proposal forthcoming from Council Member O'Brien, but I
17 don't have any knowledge about what that fee might -- what
18 his proposal might be.

19 Q. And has a rate study been completed?

20 A. A rate -- a draft rate study has been completed by Fehr &
21 Peers. That study is ultimately subject to change. It will
22 depend in part on some of the policy decisions made by
23 Council Member O'Brien in forming his proposal and also by
24 his colleagues in modifying his proposal once it's out there
25 for discussion.

1 Q. Have you had the opportunity to review this draft rate
2 study?

3 A. Only cursory.

4 Q. And provided any feedback?

5 A. I have not provided any feedback on that.

6 Q. Okay. All right. All right. And did you hear
7 Mr. Steirer's testimony that SEPA would require a project
8 proponent to look at all of the impacts early on and that
9 the city failed to conduct a cumulative impacts analysis by
10 not looking at the Comprehensive Plan proposal --
11 Comprehensive Plan amendment proposal with the
12 transportation impact fee proposal?

13 A. I did.

14 Q. Okay. And do you agree with that?

15 A. I don't.

16 Q. And why not?

17 A. As I -- so it may be good to just go back to what this
18 partic- -- what this non-project action would do. This
19 non-project action would add a list to the Comprehensive
20 Plan and accomplish some other steps that are kind of a
21 necessary precondition to some future development of an
22 impact fee program. That action, in and of itself, has no
23 impacts on the built and natural environment whatsoever.

24 As I mentioned before, there are some future steps that
25 would be needed to implement a transportation impact fee

1 program, but what those -- sort of how those -- whether
2 those steps occur and how they -- how they occur remain to
3 be seen, and it's essentially speculative to guess what that
4 might be. So it's -- it's -- you know, in analyzing the
5 cumulative impacts of this proposal, I don't -- so I'm not
6 exactly sure what I would be looking at because I don't know
7 that there's going to be a second step, or if there is a
8 second step, what that step looks like.

9 Q. All right. So is it your opinion that this proposal and
10 some future proposal are not dependent upon one another?

11 A. I think the difficulties -- I don't know what the future
12 proposal is. We -- this proposal is a definite step that
13 needs to be accomplished to implement an impact fee program.
14 But there may not be a second step, and so it's -- analyzing
15 the impacts of that second step are -- are inherently
16 speculative because a lot of parameters that one would need
17 to conduct environmental review are unknown.

18 Q. So is it your testimony that this proposal cannot or will
19 not proceed unless a future transportation impact fee
20 program is implemented simultaneously with this proposal?

21 A. No. This proposal could proceed independently.

22 Q. Is that why you proposed this Comprehensive Plan amendment
23 preceding any transportation impact fee program?

24 A. It is.

25 Q. And is it your testimony that this Comprehensive Plan

1 amendment cannot or will not proceed unless a transpor- --
2 oh, unless another proposal, here, these 21 transportation
3 projects, would be implemented simultaneously with the
4 Comprehensive Plan proposal?

5 A. Could you rephrase -- restate the question? I'm not sure I
6 understood you.

7 Q. Yeah. Is it your testimony that this proposal,
8 Comprehensive Plan amendment, that it will -- cannot or will
9 not proceed unless the 21 transportation impact fee eligible
10 projects are implemented simultaneously with this proposal?

11 A. I'm not sure what you mean by implemented. Do you mean
12 developed?

13 Q. I mean constructed.

14 A. No, that's not my testimony.

15 Q. Okay. So is it your testimony that these are independent
16 actions?

17 A. Yes.

18 Q. Okay. And is it your testimony that these are independent
19 parts of a larger proposal that must depend on a larger --
20 the larger proposal for their justification, or can this
21 specific proposal, the Comprehensive Plan amendment, proceed
22 on its own?

23 A. It can proceed on its own. And there are a few reasons for
24 that. I think I mentioned them already, but the one --
25 there is a threshold question about whether or not the

1 council wants to implement an impact fee program, and that
2 would be answered by this -- by council deliberations on
3 this party choice for the Comprehensive Plan. And as I also
4 mentioned, there -- you know, there are a host of factors
5 that the council could consider in deciding whether to
6 implement an impact fee program and how to implement an
7 impact fee program.

8 I could see a scenario in which either this proposal is
9 modified or rejected. I could also see a scenario in which
10 the council amends the Comprehensive Plan but sets out a
11 time frame by which an impact fee program might be developed
12 in that time frame. It could be -- it could be -- it could
13 be years from now.

14 MS. ANDERSON: All right. I'm looking for a moment here
15 for the Comprehensive Plan as an exhibit. And my
16 recollection was it already came in. Exhibit 16; is that
17 right? No?

18 HEARING EXAMINER: That's an EIS for the 2035.

19 MS. ANDERSON: Oh, that's the EIS that came in. Okay.

20 HEARING EXAMINER: Why don't we give you a minute to find
21 that. We're going to take a break until 3:15.

22 MS. ANDERSON: Great. Thank you.

23 (Recess)

24 HEARING EXAMINER: Continuing with Mr. Freeman on direct.

25 MS. ANDERSON: Yes. Thank you.

1 Q. (By Ms. Anderson) So, Mr. Freeman, I would like to direct
2 you to Exhibit 16. Did you adopt the draft and final
3 Environmental Impact Statement for the Seattle Comprehensive
4 Plan update in your DNS that's the subject of this appeal?

5 A. I did.

6 Q. And why did you adopt that document?

7 A. For a couple of reasons. One is the denominator in
8 determining the maximum supportable fee is derived from this
9 document. So the future person trips comes from Seattle
10 2035. So that's one reason. Another is the Seattle 2035
11 had broad disclosures about construction impacts associated
12 with growth over the 20-year horizon of the plan.

13 Q. And can you identify for the examiner where we would find
14 some of these disclosures?

15 A. Yeah, let's see. So I'm looking at -- this is -- I believe
16 this is what Ms. Kaylor handed out. The disclosures related
17 to construction impacts are primarily in the sections that
18 relate to earth and water quality, air and noise. So I'm
19 looking here at page 1-12 of this exhibit, and it says,
20 "Future construction activities will generate the potential
21 for disturbed soil on construction sites to be conveyed to
22 nearby drainage systems. Such an example of the type of
23 high-level construction impact disclosure that is in this
24 document."

25 Q. And is it your understanding the disclosures in this

1 document relate only to private construction activities, or
2 do these relate to city projects as well?

3 A. I would say it is unclear. Sometimes it seems to refer to
4 private development, although the types of construction
5 impacts would be pretty similar. But it does also sometimes
6 refer to development activity broadly.

7 Q. And I would also direct you to the second paragraph on page
8 1.12. It talks about increased density in activity levels
9 and the associated use of automobiles and other activities.
10 It appears as though that impact is related to -- it's
11 common to all alternatives.

12 A. Yeah. I think if I believe what's being described in that
13 section, it has more to do with, say, runoff from pollutants
14 from an automobile that has sealed oil filters and such.

15 Q. Okay. So that's unrelated, perhaps, to any city-related
16 projects. Are there any other places in this exhibit that
17 you would like to discuss?

18 A. So I can -- I guess another example I could point to is on
19 page 1-14, the bottom of the page, construction-related
20 greenhouse gas emissions. I'll just sort of read the first
21 sentence there by way of an example. "GHGs would be emitted
22 through construction activities from demolition and
23 construction equipment, trucks used to haul construction
24 materials to and from sites and from vehicle emissions
25 generated during work travel to and from construction

1 sites." So that's sort of another example of the high level
2 of disclosure related to -- to construction impacts that are
3 present in this document.

4 Q. Okay. And then how about the modal plans that had been
5 discussed previously? Are the modal plans contemplated in
6 this -- the EIS prepared for Seattle 2035?

7 A. Yeah. The modal plans, it's in the transportation element
8 of the draft EIS. I'm actually not sure if it's present in
9 this document that you -- that I'm referring to, the
10 Exhibit 16. But in the transportation element to the draft
11 EIS there is a discussion of the modal plans as
12 implementation steps. Also, impact fees are discussed as a
13 mitigation measure in the transportation element.

14 Q. Okay.

15 A. Well, you know what, I'm sorry. I take it back. I'm
16 looking now here now that I have leafed through this some.
17 And it's not the same language that is in the DEIS. But if
18 you look at page 1-25 you see mitigation strategies. It
19 says, "The recommended mitigation strategies focus on five
20 main themes." And they reference the modal plans here. The
21 first paragraph references -- references the pedestrian/bike
22 modal plan. The Seattle Transit Master Plan is referenced
23 in the second paragraph, and the Freight Master Plan is
24 referenced in the third.

25 Q. And also is the pedestrian and bicycle network addressed on

1 page 1-24?

2 A. It is.

3 Q. Of that one (inaudible)?

4 A. I do, yeah.

5 Q. All right. And so does it indicate these plans are being
6 implemented and are expected to continue to be implemented
7 under all alternatives?

8 A. It does.

9 Q. So did you also, in addition to adopting this draft and
10 final EIS for Seattle 2035, did you also adopt each of the
11 modal plans?

12 A. I did.

13 Q. Okay. So just to be clear for the record, you reviewed and
14 adopted the Bicycle Master Plan?

15 A. I did.

16 Q. Okay. And you reviewed and adopted the Pedestrian Master
17 Plan?

18 A. I did.

19 Q. And you also reviewed the Freight Master Plan?

20 A. I did.

21 Q. Okay. And adopted it?

22 A. Correct.

23 Q. Okay. And then lastly, you reviewed and adopted the Seattle
24 Transit Master Plan?

25 A. I did.

1 Q. Okay. Into the DNS; is that correct?

2 A. Correct.

3 Q. Okay. All right. Were you here when Mr. Morgan Shook
4 testified?

5 A. I was.

6 Q. Okay. And did you hear Mr. Shook's testimony that there
7 would be a change in density as a result of the adoption of
8 a -- this proposal?

9 A. I -- I did. Well, I heard him say that based on his
10 analysis there would be a reduction in feasibility, which
11 could result in a developer choosing to develop -- to
12 develop a 5 over 2 type of construction as opposed to a
13 tower.

14 Q. Okay. So do you believe that that would result in reduced
15 density?

16 A. Not necessarily.

17 Q. Okay. And why not?

18 A. It's often the case that you can achieve similar densities
19 or even greater densities in a 5 over 2 type of
20 construction. Generally what is developed in a tower,
21 depending on the development standards of the zone, is a
22 product that is higher end, and so typically it has more
23 square footage per unit, especially at the higher levels.
24 Typically there is a podium associated with tower
25 development, depending on where you're developing in

1 Seattle.

2 Let's say it's South Lake Union, there may be a 4-foot
3 -- a 40-foot-tall podium, and as a consequence, the FAR, so
4 the allowable density of that structure, may be very similar
5 to the density that's developed in a 5 over 2 product.
6 Generally in a 5 over 2 product as well you might see
7 smaller units, so that also helps make up the density
8 difference.

9 Q. Okay. And for the record, a 5 over 2 product is what?

10 A. It's five floors of wood frame construction over a
11 two-floor -- a two-floor concrete podium.

12 Q. And so in particular, you're referring to Exhibit 4 and 5 in
13 Mr. Shook's exhibit that I'm desperately trying to find
14 here. I believe it's Exhibit 5. Yes, Exhibit 5. All
15 right. So is it your testimony that you disagree with
16 Mr. Shook's assessment that there might be or that there
17 would be an impact to housing as a result of this proposal?

18 A. I would disagree with the assessment that a reduction in
19 feasibility may result in less dense products being
20 delivered by the market.

21 Q. Is there anything else that you would want to address with
22 respect to Mr. Shook's testimony?

23 A. I think, you know, just looking at both of these maps, some
24 questions come to my mind. He's identified a 12-story tower
25 as a product that could be delivered in neighborhoods where

1 12-story buildings cannot be constructed. I believe he also
2 testified that this analysis does not incorporate zoning.

3 Q. So where is an example of a neighborhood where a 12-story
4 tower may be shown but wasn't -- is not allowed?

5 A. Sure. So the West Seattle junction appears to have 12-story
6 tower heights. Up to 12 stories are not permitted in that
7 particular urban village. Another example here -- let's
8 see. Another example that comes to mind, it looks like
9 North Beacon Hill has got a 12-story tower close to the
10 light rail station. Heights -- heights up to 12 stories are
11 not permitted in those zones either.

12 Q. So based on the testimony that you've heard today from
13 Mr. Shook and Mr. Swenson and Mr. Steirer, does it change
14 your opinion that a -- that a DNS was properly issued?

15 A. No.

16 Q. And why not? That's a very broad question.

17 A. As I mentioned before, the analysis that would be necessary
18 to try to quantify housing impacts from this proposal are
19 necessarily speculative. If you don't know what a fee may
20 be at some point in the future, you don't know what market
21 conditions may be like, so the analysis that is suggested by
22 Mr. Shook is not rife at this point.

23 Q. And how about Mr. Steirer's testimony that the checklist
24 omitted some information related to construction impacts and
25 housing impacts? Does that testimony change your opinion?

1 A. It does not.

2 Q. And why not?

3 A. Section D, which is the section for non-project proposals,
4 does not require disclosure of housing impacts; that's one
5 thing. Also, this is a -- you know, this is a -- this
6 action does not in any way -- it's not a condition, a
7 necessary condition precedent to any of those projects being
8 built. They will be built whether or not there is a
9 transportation impact fee program. To that sense, it is
10 discreet.

11 MS. ANDERSON: Thank you. No more questions for me.

12 HEARING EXAMINER: Cross?

13 MS. KAYLOR: Thank you.

14

15 C R O S S E X A M I N A T I O N

16 BY MS. KAYLOR:

17 Q. Good afternoon, Mr. Freeman. I have a few questions for you
18 as I'm sure you can anticipate. And I'm just kind of going
19 to go through these in the order in which you presented
20 them. And so I may circle back on some of them because
21 there was a little bit --

22 A. Sure.

23 Q. -- of overlap in different parts of your testimony. But I
24 understood your testimony to be that the proposal would not
25 impact the continued use of land. Did you conduct an

1 analysis on how the proposal would impact or not impact land
2 uses, including housing?

3 A. I reviewed the -- the modal -- the threshold determinations
4 and checklists for the modal plans. But more importantly,
5 the proposal does not purport to change any land use
6 designations in any part of the city. It simply identifies
7 a project list that could be eligible for impact fee revenue
8 at some point in the future.

9 Q. But did you conduct any independent analysis on whether the
10 proposal would affect housing, for example?

11 A. No, I did not.

12 Q. So you testified at a few different points about what the
13 proposal would do or not do. And at first I just want to
14 ask you, turning to what has been marked Exhibit 2, which is
15 the proposal, first I'd like to ask you about attachment 1,
16 page 2, and specifically the change to policy 10.7. I
17 believe that you testified that this policy change would not
18 require the council to adopt impact fees. Was that your
19 testimony?

20 A. No, I don't think it was. I think my testimony was that as
21 this is written now, this would be affirmative. So at some
22 point in the future that council would need to implement an
23 impact fee program. However, you know, this is not a final
24 proposal. Whatever is eventually adopted by the council, if
25 they adopt anything, would be subject to council discussion

1 and deliberation and amendment. So I don't yet know what
2 the final policy may be after that process.

3 Q. All right. Thank you for clarifying.

4 A. Uh-huh.

5 Q. I appreciate that. So let me just be sure that I understand
6 your clarification. So the clarification is that this
7 particular language would require the council to adopt
8 impact fees?

9 A. Yeah. And we would need to have consistent development
10 regulations with our policies at some point in the future.

11 Q. Thank you. And turning to the other piece of this proposal,
12 what I heard you say was that this proposal would adopt a
13 list of potentially eligible transportation improvement
14 projects; is that correct?

15 A. That's correct.

16 Q. But the proposal actually does more with regard to those
17 listed projects, doesn't it?

18 A. You have to say more.

19 Q. Let me ask you a more specific question. The list is
20 integral to the methodology, to the existing system value
21 methodology that is described on attachment 2, page 1, is it
22 not?

23 A. Not necessarily, no. I mean, the existing -- I think part
24 of the -- the scope of the testimony will be covered a
25 little bit by Ms. Breiland. But the purpose of doing the

1 existing system value calculation is to essentially set
2 something that is like the replacement value of the entire
3 existing system. So it is in some ways a high level check
4 that we can use to make sure that whatever impact fee
5 program is implemented by the city, if any is implemented,
6 does not exceed that replacement value. Because if it
7 exceeded that replacement value then it would not -- it
8 would be remedying existing -- remedying existing
9 deficiencies.

10 That's not necessarily related to the list. I guess it
11 is a relationship I suppose to the list in the sense that
12 the maximum supportable fee (inaudible) cost of all of the
13 projects on the list is less than the value of the existing
14 transportation system.

15 Q. And so I appreciate that clarification. Looking
16 specifically at attachment 2, page 1, under the heading,
17 Existing System Value Methodology, I believe that what you
18 have just described is reflected in those first two
19 paragraphs. Specifically looking at the second paragraph,
20 there is a discussion of the existing value of the systems
21 calculated using the value of existing infrastructure and
22 land in the right-of-way, divided by the number of current
23 PM peak hour person trips, and the rate cannot exceed that
24 value.

25 And I think what I'm asking you about is that next

1 paragraph under which the total cost of impact fee eligible
2 capacity improvements are calculated based on a list of
3 projects required to serve new development. That list is
4 the list that follows on the next page, is it not?

5 A. It is.

6 Q. Then that total amount -- and so the -- the methodology
7 specified here requires that the total cost be based on that
8 list, and then that total amount is then divided by the
9 number of new person trips forecast over a 12-year period.
10 The time frame for improvements listed in the impact fee
11 program to establish the cost-per-person trip of needed
12 capacity improvements. Impact fee rates by land use are
13 calculated based on that cost. So the list of projects and
14 the cost of those projects is integral to the determination
15 of impact fee rates, is it not?

16 A. Not necessarily to the determination of rates. I'd say that
17 that is a policy discussion that has yet to happen, and
18 there are a variety of factors that would go into that. But
19 for the purposes of meeting the -- coming within the four
20 corners of 82.02.050, which is the statute that sort of says
21 what you need to do to your Comprehensive Plan to implement
22 an impact fee program, that's what this accomplishes.

23 Q. And looking again at that last paragraph, the
24 cost-per-person trip is based on two factors: Being the
25 cost of those listed improvements, and the number of new

1 person trips forecast, correct, under the plain language of
2 that section?

3 A. Yes, correct.

4 Q. And the final sentence is that impact fee rates by land use
5 are calculated based on that cost, correct?

6 A. Uh-huh. That would be the maximum supportable fee.

7 Q. So can you explain what you mean by the maximum supportable
8 fee?

9 A. So that is the highest fee that the city could charge,
10 and -- and as part of I'm sure Ms. Breiland's testimony
11 later today or tomorrow we'll learn about how that's
12 distributed across different land uses based on ITE codes.
13 But it is the -- it is the cost-per-person trip; the maximum
14 supportable cost.

15 Q. Maximum supportable cost. All right. And so do -- we had
16 some testimony earlier about that maximum supportable cost,
17 and we looked at what has been marked as Exhibit 4. I don't
18 know if that's one of the exhibits in front of you.

19 A. I don't -- I don't think I -- I do not have Exhibit 4 there.

20 Q. I'll give you a copy if it's not. And if you can flip to
21 the last page of that exhibit, which is a table which we
22 have looked at previously. Is this a calculation of that
23 maximum defensible fee?

24 A. It is.

25 Q. And so this proposal, the Comprehensive Plan amendment

1 language that we have here in front of us as Exhibit 2,
2 would that allow adoption of the maximum defensible fee by
3 council?

4 A. It would allow it. Although, that is a very unlikely
5 outcome.

6 Q. And why do you believe it's unlikely?

7 A. I -- I guess I would support Mr. Shook's testimony that the
8 city has been pretty good about trying to keep its
9 regulatory, so the cost associated with regulating land use,
10 relatively low. It seems unlikely that the council would
11 support a fee that might thwart achieving other
12 comprehensive plan goal objectives like accommodating 70,000
13 new households and 115,000 new jobs.

14 Q. And why would the not adopting the maximum defensible fee
15 thwart that goal?

16 A. As -- as Mr. Shook testified, it may have a negative effect
17 on development, make development infeasible.

18 Q. Okay. But there's nothing in this proposal here that
19 prevents the council from doing that, from adopting the
20 maximum defensible fee?

21 A. No.

22 Q. The maximum defensible fee would be consistent with the
23 methodology that's described on attachment 2, page 1, would
24 it not?

25 A. Let me remind myself what attachment 2, page 1 is.

- 1 Q. That's what we were just looking at, that --
- 2 A. Yes, it would.
- 3 Q. -- that language. Thank you. So you identified a number of
- 4 factors that you said made an analysis of impacts at this
- 5 point speculative. And I'm not going to recall all of them,
- 6 but I believe some of them had to do with who the
- 7 decision-makers would be on council when a development
- 8 regulation would come before council, and which council
- 9 members would support or not support ultimately a particular
- 10 fee or a fee at all. Is that accurate?
- 11 A. That is one factor.
- 12 Q. Okay.
- 13 A. Yeah.
- 14 Q. Okay. And was it another factor that you were un- -- you
- 15 could not know whether ultimately a development fee would be
- 16 adopted?
- 17 A. That is another factor, yeah.
- 18 Q. So isn't it always true that a proposal may not move
- 19 forward?
- 20 A. Yes, it is always true that a proposal may not move forward.
- 21 There is always -- there is always a do-nothing alternative.
- 22 Q. And SEPA review is required before a decision is made on the
- 23 proposal, correct?
- 24 A. That's correct.
- 25 Q. So for any given project, the proposal that is being

1 analyzed under SEPA for any given proposal must be analyzed
2 at a time before whoever the proponent is decides to move
3 forward or not move forward, correct?

4 A. That's correct.

5 Q. So how can SEPA review ever occur in a meaningful way if the
6 proposal may or may not go forward?

7 A. Sure. I think you identified sort of two political
8 dimensions to the uncertainty there, but I listed some
9 others that are really more about what would go into an
10 analysis of feasibility. And those include things like
11 market conditions, the regulatory climate, when the council
12 chooses to go forward, assuming the council chooses to go
13 forward at all. So those are other factors that have less
14 to do with politics and more to do with things that can be
15 quantified and analyzed. But to speculate about what those
16 things are right now would not be -- would not lead to any
17 kind of meaningful information for the decision-makers.

18 Q. And so I'm just going to circle back. The fact that a
19 project might not ultimately move forward isn't a reason not
20 to conduct SEPA review, is it?

21 A. No, it's not.

22 Q. And then circling back to the issues that you've raised in
23 your last question, typically when you conduct SEPA review
24 you look at the existing environment at the time the
25 proposal is made, don't you?

1 A. That's correct, you do.

2 Q. And with any SEPA review, it's possible the existing
3 environment may change in the future?

4 A. That's true.

5 Q. That does not preclude you from conducting SEPA review at
6 the time that the proposal is made?

7 A. That is true.

8 Q. Okay. You mentioned a range of policy choices that the
9 council may make, including exempting affordable housing or
10 providing for individualized determinations or on fees. Is
11 the council required to make any of those choices by this
12 proposal?

13 A. Not by this proposal. There are some aspects to what you
14 are describing that are I think the individualized
15 determination opportunity for appeal as a requirement of
16 state law. This proposal does not in and of itself compel
17 that, but state law does.

18 Q. Is there any other -- are there any other qualifications to
19 these fees or any other exemptions that would be required by
20 this proposal?

21 A. I'm not sure what you mean by qualifications, but I think
22 the answer to your question, as I'm understanding it, is no.

23 Q. And are there similarly any exemptions, any reductions from
24 the maximum defensible fee or any other qualifications that
25 would be required by the DNS in this case?

1 A. The -- perhaps -- maybe you could -- maybe you could
2 rephrase that question. I'm not sure what you mean by DNS
3 requiring something. There's no mitigation that is
4 prescribed by the DNS. Is that what you're asking?

5 Q. Yes.

6 A. That's correct.

7 Q. We discussed earlier the fact that council may choose to
8 adopt a fee that's less than the maximum defensible fee
9 because of concerns about impacts to its other policy goals.
10 Don't you think it would be helpful for council to have
11 information about the impacts of the maximum defensible fee
12 on housing production, for example, when it makes that
13 policy decision?

14 A. So we don't actually have a fee proposal. I mean, this is
15 part of the difficulty is that there's not currently a
16 proposal for a fee. And analyzing what kind of impacts that
17 may have at some future point, assuming the council still
18 wants to proceed with this, the council could request an
19 analysis of the impacts on feasibility of a -- of an
20 implementing proposal. So of a -- you know, of a -- of a
21 regulation, an ordinance codifying a regulation in the
22 Seattle Municipal Code that proposes a fee.

23 And that analysis -- you know, at that time an analysis
24 might be ripe. You know, we'll know what the market
25 conditions are. And we could also -- we could -- we could

1 analyze a range of potential fees. But when that time comes
2 is uncertain, and if that time comes is also uncertain.

3 Q. Could the council request the analysis now?

4 A. The council could, yeah, theoretically request that analysis
5 now.

6 Q. Turning to the various documents that were adopted in the
7 DNS. The DNS was identified previously as Exhibit 8.

8 A. Uh-huh. I have it.

9 Q. Do any of those documents analyze the environmental impacts
10 of the proposed adoption of transportation impact fees?

11 A. Not -- I don't recollect any of them analyzing that, no.

12 Q. Looking at -- I'll skip ahead here.

13 A. I should -- let me rephrase that. It's not an analysis, per
14 se, but impact fees are mentioned as a mitigation measure in
15 Seattle 2035, so in the FEIS and DIS.

16 Q. Thank you. And that's the document you and Ms. Anderson
17 were just discussing. That has been identified as
18 Exhibit 16. You can turn to that. Actually, it's Exhibit
19 7. Oh, I'm sorry, it's Exhibit 16. It was Exhibit 7 in our
20 witness and exhibit list. So I'm juggling a couple
21 numbering systems here. The point, that area that you were
22 just referencing, if you turn to page 125, is this
23 mitigation strategy that's identified on page 125 that
24 references those plans; is that right?

25 A. That's correct.

1 Q. Is there anywhere in this document that specifically
2 analyzes the construction impacts of those plans?

3 A. Did you say the construction impacts?

4 Q. Yes.

5 A. No, not in this document. I think -- yeah, I think to the
6 extent that that exists, it is in the areas we were pointing
7 to earlier. So earth and water quality, air quality and
8 greenhouse gas emissions, noise.

9 Q. Do any of those sections specifically reference the
10 transportation improvements that are contemplated by those
11 plans?

12 A. They don't.

13 Q. You testified that the projects that are listed in the
14 proposal, which again is Exhibit 2, could proceed in the
15 absence of these fees. Looking at these projects, are
16 the -- are the CIP projects fully funded at this time, to
17 your knowledge?

18 A. I -- to my knowledge, they -- I don't actually know for each
19 particular project. I would not be at all surprised if
20 several of them, or maybe even all of them are not fully
21 funded.

22 Q. Are the three master plans that are identified fully funded?

23 A. No, they are not.

24 Q. And are the Move Seattle Vision Projects that are identified
25 fully funded?

1 A. No, they are not.

2 Q. Do you think these projects are more likely to be developed
3 if they were funded?

4 A. Yes, within certain constraints.

5 HEARING EXAMINER: Do you have additional questions?

6 MS. KAYLOR: I am eliminating a number of questions
7 because they've already been answered.

8 HEARING EXAMINER: Okay.

9 MS. KAYLOR: I have one potential additional question, so
10 let me just try and figure out what I wrote here very
11 quickly.

12 I have no further questions.

13 HEARING EXAMINER: Okay. Thank you. Redirect?

14 MS. ANDERSON: Yes, please. Thank you. Just a couple of
15 questions.

16

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

18 BY MS. ANDERSON:

19 Q. Mr. Freeman, is it your testimony that it would be not
20 possible to evaluate likely impacts to housing based on the
21 existing proposal?

22 A. Yeah, that is my testimony. I was struggling there with the
23 use of your -- the use of the term "likely," I guess, and so
24 that's what I come back to. I think that at the heart of
25 sort of the dif- -- what makes it speculative to sort of try

1 to quantify the impacts to housing, is that there's not a
2 proposal. And so, you know, without -- without knowing what
3 a fee is, what the market conditions might be at some point
4 in the future, the reasons that I've sort of recited
5 earlier, that an analysis using sort of the -- the maximum
6 supportable fee in today's -- in using today's market
7 variables and everything else is ultimately not particularly
8 useful because it's not -- it's not likely to be anything
9 that -- that a council member proposes. It's theoretically
10 possible that it's something that council could adopt, but
11 that is highly unlikely to my mind.

12 So the information that we would need to do that
13 analysis and have it be meaningful for the purposes -- for a
14 decision maker is not available to us right now. And if we
15 were to supply current information, it would be misleading.
16 And if we would try to impute future information, it would
17 be speculation.

18 Q. All right. And in your opinion, is this non-project action
19 similar to a, say, a construction project from the
20 perspective that whether or not it's likely to occur? And
21 I'm not sure I made that clear, but --

22 A. Well, it's -- I mean, it's -- it is -- it is a non-project
23 action, so in that sense it is distinct from -- so that the
24 analysis that one would do for a project like this is
25 distinct from the analysis that one might do for a

1 construction project. So all -- we can identify all the
2 different elements of the environment that will be impacted
3 with any kind of degree of certainty so that we could
4 identify mitigation measures and -- and determine things
5 like the likelihood of a significant impact.

6 Q. And in your experience, is that analysis somewhat maybe more
7 difficult or less particularized for a non-project action
8 than for a project action?

9 A. It is. And there are even degrees within non-project
10 actions. I think Comprehensive Plan amendments, for the
11 most part, are especially difficult to analyze under SEPA
12 because oftentimes they are -- they prescribe policies that
13 are uncertain. And until the implementing regulations are
14 developed, if they ever are, it's difficult to determine
15 what kind of environmental impacts that may be.

16 HEARING EXAMINER: Thank you, Mr. Freeman.

17 MS. ANDERSON: At this time I would like to call
18 Ms. Breiland.

19 Oh, just leave those, actually. They're for her.

20 THE WITNESS: Okay.

21 MS. ANDERSON: Yeah, thank you.

22 HEARING EXAMINER: Please state your name for the record.

23 THE WITNESS: Kendra Breiland.

24 HEARING EXAMINER: And do you swear or affirm the
25 testimony you'll provide in today's hearing will be the

1 truth?

2 THE WITNESS: I do.

3 HEARING EXAMINER: Thank you.

4 KENDRA BREILAND: Witness herein, having first been
5 duly sworn on oath, was examined
6 and testified as follows:

7

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

9 BY MS. ANDERSON:

10 Q. Hello, Ms. Breiland. How are you?

11 A. Good.

12 Q. Good. All right. Can you please state for me your
13 qualifications?

14 A. So I graduated with a bachelor's of science in environmental
15 policy from UC Davis, and a master's in urban planning from
16 UCLA. And I'm also a member in American Institute of
17 Certified Planners.

18 Q. I'm handing you a document that I would ask to be marked as
19 Exhibit 24. Are you familiar with this document?

20 A. Yes. It's my resumé.

21 Q. Okay.

22 HEARING EXAMINER: That's marked as 25.

23 MS. ANDERSON: Oh, 25. Apologize.

24 (Exhibit No. 25 marked for identification.)

25 Q. (By Ms. Anderson) All right. So are you familiar with the

1 proposal?

2 A. Yes, I am.

3 Q. Okay. And what has your role been with respect to the
4 proposal?

5 A. I have assisted the City of Seattle to consider projects
6 that may be under consideration for inclusion in a
7 transportation impact fee program. I helped the city
8 consider methodologies for developing that impact fee
9 program. And as Mr. Freeman mentioned, I would be assisting
10 the city in developing a rate study eventually as a part of
11 this proposal.

12 Q. So do you have any -- I guess where are you currently
13 employed?

14 A. Currently employed at Fehr & Peers.

15 Q. Okay. And what are your job responsibilities there?

16 A. I'm a principal in our Seattle office. Primary piece of my
17 work is serving as either a project manager or a principal
18 in charge of projects. My projects tend to be public sector
19 projects. Many of them are transportation impact fee
20 programs. Other projects include city transportation
21 element updates and other types of long-range planning
22 applications.

23 Q. And so you mentioned some experience with transportation
24 impact fee programs; is that correct?

25 A. That is correct.

1 Q. Okay. Could you tell me how many transportation impact fee
2 programs that you have worked on?

3 A. I have been involved in the development of roughly 20
4 transportation impact fee programs. I've actually been
5 involved in a very meaningful capacity as project manager
6 for roughly 10.

7 Q. And so when you say you've worked in the capacity of a
8 project manager for 10, what in particular does that mean?

9 A. That means being involved intimately in kind of every aspect
10 of the project. Our work tends to include developing a rate
11 study for communities, but we sometimes also help them to
12 develop their ordinances as well.

13 Q. And when you refer to their ordinances, what in particular
14 is that? Is that an implementing ordinance?

15 A. Correct. That's what goes into their code.

16 Q. Okay. And have you ever had the opportunity to work with a
17 municipality in adopting policies into their Comprehensive
18 Plan related to transportation impact fee and/or adopting
19 transportation impact fee eligible projects into their
20 Comprehensive Plan?

21 A. I'm going to answer that question as a yes. For many of the
22 communities that we work in, we actually first help the
23 community to do their transportation element of their
24 Comprehensive Plan. That's often the document that includes
25 the policies saying that they would like to do an impact fee

1 program. It also includes identification of projects that
2 would ultimately be put into their capital facilities
3 element. And then we often work as a second step with the
4 community to help them develop their transportation impact
5 fee program.

6 Q. And in your experience, are those -- the component of
7 developing a Comprehensive Plan amendment or -- amendment to
8 the Comprehensive Plan, are those typically separate from
9 the development of the transportation impact fee program?

10 A. Can you restate the question?

11 Q. Yes. I was trying to make sure I understood the timing
12 between a municipality developing a Comprehensive Plan
13 amendment related to policies or identification of projects
14 in their Comprehensive Plan, and whether or not that occurs
15 simultaneous to the development of the actual transportation
16 impact fee program.

17 A. It typically predates the transportation impact fee program.

18 Q. Okay. So in this scenario where the city has developed a
19 Comprehensive Plan amendment in advance of a transportation
20 impact fee program, is that unusual in your experience?

21 A. No.

22 Q. Okay. Is that typical?

23 A. It is -- so to elaborate on why I'm struggling with
24 answering the question, transportation impact fee programs
25 should be using projects that are within the capital

1 facilities element of a transportation -- or a capital
2 facilities element of a community's Comprehensive Plan. So
3 when I work with communities to help them develop a
4 transportation impact fee program, we look to those projects
5 that are in their capital facilities element. And if there
6 are projects that they wish to fund through a transportation
7 impact fee program, and those projects are not currently
8 within a capital facilities element, we would work with them
9 first to complete that step before developing their
10 transportation impact fee program.

11 Q. All right. And you indicated that you worked on a number of
12 transportation impact fee programs for other municipalities.
13 When was the most recent experience you've had working on
14 developing such a program?

15 A. Definitely within the last year. If memory serves me, it
16 was probably with the City of Gig Harbor. That was very
17 recently. Although, I'm working with communities right now
18 in considering transportation impact fee programs.

19 Q. So for the record, can you identify some of the
20 transportation impact fee programs that you have worked on
21 for other municipalities?

22 A. Sure. The City of Kirkland, the City of Kenmore, the City
23 of Monroe, the City of Gig Harbor, the City of Sequim, the
24 City of Portland not within Washington state. We just
25 completed impact fees for the City of Bellingham. We've

1 worked with the City of Redmond. I could keep going, but I
2 won't.

3 Q. That's very good. Thank you. All right. So what is your
4 understanding of the proposal?

5 A. My understanding of the proposal is that the city is wishing
6 to update its comprehensive -- or its capital facilities
7 element to include projects such that those projects could
8 be funded through an impact fee program. The proposal also
9 includes policy language expressing a desire to consider
10 implementing an impact fee program.

11 Q. All right. So I'm going to direct you to Exhibit 2. And I
12 am going to ask you to look at attachment 1, I believe, of
13 Exhibit 2. Can you see that?

14 A. Uh-huh.

15 Q. All right. And then I guess ask you to look at Exhibit 2 of
16 Exhibit 2 -- attachment 2 of Exhibit 2.

17 A. Okay.

18 Q. And what is your understanding of what that is?

19 A. So first of all, these are amendments to the transportation
20 appendix of the city's Comprehensive Plan. And these
21 include adding language to adopt the existing system value
22 methodology, which we can talk about further. And then I
23 believe it also includes the list of projects that are being
24 proposed to be added to the capital facilities element.

25 Q. And you stated in your prior testimony that oftentimes

1 municipalities adopted -- would adopt a list in their
2 capital facilities element. Does this proposal involve
3 inclusion in the capital facilities element or the
4 transportation appendix?

5 A. It appears, just looking at the markings on attachment 2,
6 that it is the transportation appendix.

7 Q. All right. So is it your understanding that this proposal
8 is not a full transportation impact fee program yet?

9 A. That is correct.

10 Q. All right. So what in particular were you tasked with doing
11 as part of your work with the city and this proposal?

12 A. My primary role is helping the city to develop a
13 transportation impact fee program proposal. So that will be
14 development of a rate study. Specific to what we're
15 discussing today, it was assistance with the city in
16 considering projects that may be eligible for inclusion in
17 an impact fee program. And also, as we've noted in
18 attachment 2, helping the city to come up with a methodology
19 for considering deficiencies.

20 Q. Right. Let's go ahead and address the methodology first.
21 Did you hear -- actually, let's take a step back and just
22 have -- ask you to describe the methodology, at very high
23 level, the methodology to determine existing deficiencies.
24 And before we do that, can you give some context to why the
25 city needs to use a methodology to evaluate or determine

1 existing deficiencies in the city's system?

2 A. A context for why the city needs to use a methodology for
3 considering existing deficiencies. Okay. Well, I'm going
4 to first go to 82.02.050 which state law requires that
5 transportation impact fees can't fund existing deficiencies.
6 So that's basic level from the state's perspective. That's
7 something we -- the City of Seattle can't be funding.

8 And so what is standard practice is to look at the
9 city's level of service policy and look to that for guidance
10 for what you determine to be an existing deficiency. As
11 many people around the table know, in 2016 the city updated
12 the way that its level of service policy to not be based on
13 screenline volume-to-capacity ratios anymore, but it's a
14 very different methodology which is related to mode share.
15 And so the city's level of service standard is really
16 looking to future development to be generating, by in large,
17 trips that are by modes other than single-occupancy
18 vehicles.

19 So when you look at that kind of level of service
20 standard, it doesn't provide your standard guidance for
21 developing an impact fee program. Using a typical
22 volume-to-capacity ratio, or an intersection level of
23 service standard, it's pretty rote -- every -- you know, all
24 the transportation professionals kind of know how to do it.
25 There's a very clear-cut process.

1 But when you've got a community with a very different
2 level of service standard, it doesn't provide the typical
3 kind of guidance. And so it was very important in working
4 with Seattle staff that we developed a level of service
5 standard -- or that we developed a deficiencies methodology
6 that's fair to development, but also is in line with the
7 city's level of service standard. And so the methodology
8 that we've used to identify deficiencies is two-fold.

9 The first I'm going to say is -- is very simple. We
10 identified that there are a number of projects on the list
11 that are going to be rebuilding streets where the paving is
12 in very poor condition. And to the extent that we're
13 repaving streets and rebuilding facilities, we did eliminate
14 the costs of those projects that were related to repaving
15 costs. And so that's pretty -- pretty standard not
16 addressing that existing deficiency and -- or not -- not
17 funding -- fixing those deficient -- existing deficiencies.

18 But more the subject of our discussion today is the
19 existing system value methodology. And at its most basic
20 premise, it's that the city cannot ask development community
21 to fund more transportation infrastructure on a -- on a --
22 on a value-per-trip basis than it is providing to its
23 existing users today.

24 So to define existing system value methodology,
25 essentially what we did was we took the city's status and

1 conditions report that -- I think it was last updated in
2 2015 or 2016. I can't remember the exact year. We took the
3 valuation of what we would consider to be all relevant
4 transportation infrastructure that were reasonable to
5 include in that valuation. That included arterial lanes;
6 that included sidewalks; that included traffic signals and
7 intersection infrastructure, kind of all that capacity
8 infrastructure, and we divided that over the number of trips
9 that are occurring on the system today.

10 And so that gave us a valuation that we've talked about
11 today in terms of what that value is. And it's a very high
12 value. It's about \$27,000. I think I heard a wrong number
13 said earlier in the testimonies today. But I was looking
14 during listening to that testimony. It's about \$27,000.
15 But that's not kind of where we stop with that. That's --
16 that's not the maximum defensible rate within the city.

17 The other kind of premise in Washington state law is
18 that transportation impact fees need to be based on kind of
19 the -- the eligible infrastructure. And so we compare that
20 existing system value methodology to the cost -- the
21 eligible transportation impact fee program costs divided by
22 future trips. And that's a much lower number. That's about
23 11,000. I'm not sure of the exact amount. But to come up
24 with what is that maximum defensible rate, it's the lower of
25 those two numbers.

1 Q. And did you prepare a memo related to this existing system
2 value?

3 A. Yes.

4 Q. Okay. I believe this is already in the record. I believe
5 it's been marked as Exhibit 6 perhaps.

6 MS. ANDERSON: Is that right?

7 HEARING EXAMINER: 3.

8 Q. (By Ms. Anderson) Exhibit 3.

9 A. Probably 3, yeah.

10 Q. Okay. I apologize. Exhibit 3.

11 A. Thank you.

12 Q. Are you familiar with this memo?

13 A. Yes.

14 Q. And does this memo summarize basically the testimony that
15 you just gave about the creation of this
16 cost-per-future-person trip?

17 A. That is correct. I would say page 2 of the memo actually
18 provides a diagram that explains that a little more clearly.

19 Q. All right. So that's one component of this transportation
20 impact fee framework, I guess. And then you also mentioned
21 another component is identification of projects to be
22 identified in the Comprehensive Plan as transportation
23 impact fee eligible; is that correct?

24 A. That is correct.

25 Q. Okay. And can you turn to Exhibit 2?

1 A. Uh-huh.

2 Q. Attachment 2. And note if you are familiar with the list of
3 transportation impact fee eligible projects identified in
4 attachment 2.

5 A. I am.

6 Q. Okay. And how are you familiar with those?

7 A. I assisted the city in identifying those projects.

8 Q. Okay. And tell me what -- how did you go through that
9 process?

10 A. Sure. So the sources of these projects came from a variety
11 of sources that have been discussed today. The Pedestrian
12 Master Plan, the Freight Master Plan, the Transit Master
13 Plan, the Capital Improvement Program, Move Seattle. I'm
14 trying to see if I forgot any there. But they've all been
15 referenced earlier in testimony today.

16 So we went through the project lists that were included
17 in each of those plans, and we worked with staff to identify
18 the projects within those plans that met the basic
19 requirements of transportation impact fee programs. And
20 there's kind of three that I -- that I think about.

21 The first is that it's a project that provides
22 capacity. So there were a number of projects within these
23 various plans that -- that don't provide capacity for
24 growth. And so those were discounted for that reason, not
25 included in the proposal.

1 The second requirement under state laws, that it's
2 within the right-of-way of streets and roads. So there were
3 lots of trail projects, for example, outside of the
4 right-of-way of streets and roads that were not eligible for
5 inclusion, so those were taken out.

6 And then the third piece is that the project is
7 included within the capital facilities element of the -- the
8 Comprehensive Plan. And so that's where -- once we found
9 those projects that we felt were a good match for a
10 transportation impact fee program that matched kind of the
11 com- -- or the city's, their multimodal objectives of the
12 Comprehensive Plan, we essentially recommended they be
13 included on this list.

14 Q. And is it your understanding that this is a final list?

15 A. No.

16 Q. Okay. And of these projects that have been included in this
17 list, is the entirety of the project capacity producing?

18 A. No. As I mentioned earlier, we went through these projects,
19 and some of these projects include, for example, repaving
20 components. And those projects were omitted for inclusion
21 in impact fees.

22 Q. And so when you say those projects, you mean components on
23 a --

24 A. Components.

25 Q. -- particular project?

1 A. Correct.

2 Q. All right. So there are some features or components of a
3 project that might not be transportation impact fee
4 eligible?

5 A. Correct.

6 Q. Okay. All right. So as part of identifying this project
7 list, did you calculate the cost of the capacity building
8 components of a project list?

9 A. We worked with Seattle DOT staff to identify the total cost
10 of the projects, and then from those total costs -- and,
11 again, your question is related to identifying the capacity
12 component of those projects. We omitted costs related to
13 paving. So that was in terms of identifying the capacity
14 component of those projects, that -- that was the work that
15 was done for that -- that piece of work.

16 Q. So far. Okay. And do you know whether or not there might
17 be other components that -- of any of these projects that
18 may be deemed to be not capacity related at some point in
19 the future?

20 A. That is work that we'll continue to do moving into the
21 future.

22 Q. Okay. All right. So I would like to go back to the
23 Exhibit 6 -- no, Exhibit 3. Exhibit 3, the memo that you
24 prepared. And to ask you how you determined the existing
25 number of person trips for PM peak hour.

1 A. That was based on land uses that are on the ground today,
2 and then we used relationships between those land uses and
3 trip generation estimates that are available through the
4 Institution of Transportation Engineers. That's kind of
5 stated the practice for identifying vehicular trip
6 generation. And then we used additional data from the Puget
7 Sound Regional Council's household travel survey to further
8 identify the person trips being generated. And so that's
9 how we came up with the estimate of existing person trips
10 generated by the City of Seattle.

11 Q. And have you prepared a maximum fee memo, I guess, or
12 methodology -- have you used a methodology similar to this
13 for any other jurisdictions?

14 A. Yes.

15 Q. Any Washington jurisdictions?

16 A. No.

17 Q. Which jurisdiction have you used this for?

18 A. I have personally been involved in this for the City of
19 Portland. And my firm has been involved in this for the
20 City of Oakland, California.

21 Q. All right. All right. And then why did you prepare the
22 maximum fee this way for the City of Seattle? And I think
23 you already alluded to a little bit of the city's level of
24 service perhaps being different. Can you provide some
25 additional insight into the rationale for the preparation of

1 this methodology?

2 A. Sure. And I think it really kind of stems back to just this
3 is a mature urban environment, and so because we don't have
4 an intersection or volume-to-capacity based level of service
5 standard to look to, the way that these other two urban --
6 mature urban environments that we've talked about, Oakland
7 and Portland, have a lot of similarities with Seattle.
8 These -- both communities also share in terms of policies to
9 Seattle, in terms of multimodal policies, transportation
10 plans that include a large number of multimodal projects.
11 This was a methodology that was used again to recognize that
12 the transportation system truly works as a system.

13 As I, you know, try to -- often the analogy that I
14 provide is that transportation is like water. People kind
15 of flow all over the system. And so really when we think
16 about the multimodal projects that are included -- that will
17 be -- would be included in such a proposal, these projects,
18 they add to that system. And it's -- it's not fair to ask
19 development to come in and to provide relatively more
20 transportation than exists today. And so it's really
21 looking at how are we asking them to essentially -- to
22 continue building that transportation system to kind of keep
23 it at a -- kind of a stable level to what we're providing
24 today.

25 So again, this is -- this is a methodology that's very

1 multimodal. The city's transportation level of service
2 policy is very multimodal. It's based on person trips. And
3 so this is again a methodology that ties well to person
4 trips. And so I -- I guess I'll let you elaborate if
5 there's more you want me to say.

6 Q. Okay. And so for the record, can you state your
7 understanding of what multimodal policies are? What is
8 multimodal?

9 A. Multimodal, just at its heart, is recognizing that
10 transportation occurs via a variety of modes. It tends to
11 tie mostly to ground transportation, so walking, biking,
12 transit, micro-mobility, all kinds of different vehicular
13 and motorized modes transit.

14 So the city's policies really are looking to facilitate
15 travel by a variety of these modes, but the city's level of
16 service policy recognizes that single-occupancy vehicle
17 driving tends to be the least space-efficient mode, which
18 means that fewer people can travel within a given amount of
19 space. And so in crafting an impact fee program, we had to
20 think creatively about methodologies that would be
21 consistent with those city policy aims.

22 MS. ANDERSON: I don't have any further questions for you.

23 HEARING EXAMINER: Cross?

24 MS. KAYLOR: Yes.

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2 C R O S S E X A M I N A T I O N

3 BY MS. KAYLOR:

4 Q. Ms. Breiland, you summarized your professional experience
5 earlier at the beginning of your testimony. What is your
6 professional experience with regard to SEPA?

7 A. I have worked on a variety of plans that have included some
8 component of SEPA analysis. I have led force and
9 transportation discipline reports of SEPA documents, the
10 transportation analysis, and I've assisted in a number of
11 SEPA checklists.

12 Q. Okay. And have you worked on SEPA analysis for
13 transportation impact programs in the past?

14 A. Generally not. I know -- I believe we've had some
15 checklists, but that's -- that's -- that would be the extent
16 of it.

17 Q. Okay. And did you assist with the -- were you involved in
18 the preparation of the environmental checklist or the
19 Determination of Non-significance in this case?

20 A. I believe I reviewed some documents, but I did not
21 contribute to the development of it.

22 Q. You discussed the existing system value and your work
23 relating to that and specifically talked about Exhibit 3.
24 Does the methodology that is outlined in Exhibit 3 -- I'm
25 just going to turn back now and ask you to look also at

1 Exhibit 2. I just want to understand the relationship of
2 your memo here and what's described here in the proposal.
3 So looking at attachment 2, page 1, do you see the heading,
4 Existing System Value Methodology?

5 A. Yes.

6 Q. And the calculation that you're describing here in your memo
7 that's Exhibit 3, is that the calculation that's described
8 in that middle paragraph under that heading?

9 A. That is correct.

10 Q. And you also mentioned -- let's see here. You've prepared
11 additional analysis relating to this proposal, correct?

12 A. That is correct.

13 Q. And we have previously discussed a table that is identified
14 as Exhibit 4, or is included in Exhibit 4. Is Exhibit 4
15 there in front of you? Oh, here we go. Can you turn,
16 please, to the final document, the final page of this
17 document? And do you recognize this table?

18 A. I do.

19 Q. Is this a table you assisted in the preparation of?

20 A. I did.

21 Q. And I'm just going to ask you again to kind of flip back to
22 Exhibit 2, the proposal here. And again on that same page,
23 we were just looking at attachment 2, page 1 under that
24 heading, Existing System Value Methodology. And now I'd
25 like you to look at the last paragraph in that description

1 there. That calculation, that total cost of impact fee
2 eligible capacity improvements, divided by the number of new
3 person trips forecast, is that the calculation that you
4 performed in Exhibit 4?

5 A. So just to clarify, you're asking about the third paragraph
6 under existing system value methodology in Exhibit 2?

7 Q. That is correct.

8 A. Okay.

9 Q. At Exhibit 2 -- I'm sorry, Exhibit -- yes, Exhibit 2,
10 attachment 2.

11 A. Yes. This -- this is related. And I think as I -- I
12 related is when we talked about this during the deposition,
13 there are components of this very draft type table, and
14 there are some components of this that would need to be
15 updated.

16 Q. What are those components?

17 A. This is based on ITE 9th Edition data. So that is an
18 outdated data source. And this was just put together as --
19 as kind of an example for staff. The land use categories
20 that were applied here were also based on just another
21 community's land use -- or fee schedule categories. And
22 those would need to be updated to be appropriate to Seattle.

23 And then, of course, the last piece here, the fee rate
24 that is used as the basis is based on the draft list of
25 projects and a number of assumptions that would need to be

1 vetted and I would say are not in any sort of final state.

2 Q. And so looking at the first -- the ITE manual, you would
3 update that to use current ITE data; is that (inaudible)?

4 A. Correct.

5 Q. And then secondly, the land use categories might need to be
6 modified; is that correct?

7 A. That is correct.

8 Q. Okay. And then finally the numbers in the last column are
9 based on the list that is in the proposal, correct?

10 A. That is correct.

11 Q. And what other assumptions are you -- is your testimony
12 based on here?

13 A. Okay. Well, first of all, the list of projects that were
14 added as a part of the proposal, I would say it's not clear
15 to me that all of those projects would move forward that
16 council would elect, because it's ultimately council's
17 decision of what projects are included in a -- are included
18 in impact fee program. Just because it meets all the
19 requirements of state law doesn't mean that they would need
20 to re- -- to include those. And many of the councils that I
21 work with across the state don't often include all of the
22 projects that might be eligible.

23 We would also be taking a careful look to ensure that
24 we're including the cost components that we think are
25 eligible. And as I related to Ms. Anderson, I think that's

1 still something that we would further continue to refine.
2 So I think that kind of states it that there's, you know,
3 quite a bit of work to be done before this number that we're
4 showing in this very draft document here would be used to
5 craft a draft program proposal.

6 Q. And are there any other decisions that would go into the
7 last column there?

8 A. And by the last column, do you mean columns H, I, and J?

9 Q. I do, yes. The last several columns.

10 A. I would say this is a very kind of draft document that was
11 developed by my office. I would say even the three kind of
12 categories of land uses, the urban centers, the hub urban
13 villages and other areas -- and I realize that's not clear
14 through the formatting of this document here that's been
15 printed. Columns H, I, and J, I would say those are even --
16 haven't been discussed with council at this point, so I
17 would not consider them to be final.

18 Q. This document is dated October 31st of 2018, correct?

19 A. Correct.

20 Q. Do you know how long -- how long have you been working on
21 this --

22 A. We --

23 Q. -- analysis?

24 A. We were initially hired by the city in 2015. We worked
25 actively on this project until the first quarter of 2016

1 when the city decided to take a pause on this project. And
2 I believe our contract was -- got back underway in early
3 2018.

4 Q. And are you aware of prior drafts of this document?

5 A. I'm sure there have been many versions of that.

6 Q. Do you know about how long your firm's been working on this
7 particular analysis?

8 A. Well, as I mentioned, we were hired in 2015. I've been the
9 project manager for the entire time.

10 Q. Okay. And have you been working on this draft schedule?

11 A. We developed a draft version of it in I can't remember if it
12 was 2015 or 2016 that was based on a different set of
13 project assumptions and -- and different kind of ways of
14 approaching an impact fee program.

15 Q. Okay. I'll hand you what's been identified -- let's see.
16 What will be marked as -- now I've lost it. Just one
17 moment. I'm going to just go ahead and hand you a whole
18 document. It is our Exhibit 30. This will be marked as I
19 believe Exhibit 26.

20 (Appellant's Exhibit No. 26 marked for identification.)

21 Q. (By Ms. Kaylor) And I'll just turn your attention
22 particularly -- this is an e-mail that we received from the
23 City of Seattle with a number of attachments. And the one
24 that I will ask you to look at is your Fehr & Peers memo
25 that is the second attachment here. And particularly, turn

1 to page -- following page 4. Well, I guess it appears here
2 later on as well. Is this an earlier draft of that
3 document?

4 HEARING EXAMINER: So, Counsel, can we get oriented in
5 Exhibit 26 what we're looking at?

6 MS. KAYLOR: Yes, absolutely. In Exhibit 26 -- and, you
7 know what, actually, I think this is going to be a little
8 bit more trouble than it's worth based on the previous
9 testimony, so I'm going to withdraw this document.

10 HEARING EXAMINER: Okay.

11 MS. KAYLOR: Yeah, it's just probably not -- it's too much
12 information.

13 HEARING EXAMINER: I'm going to leave it marked since we
14 already did that and we've got a sticker on it. We're just
15 going to say denied on it, or you're withdrawing it.

16 MS. KAYLOR: Well, I will go ahead.

17 Q. (By Ms. Kaylor) You had indicated that you had a draft
18 version in 2015 or 2016. Is that draft version included in
19 your April 15, 2016 memo that is included in this exhibit?

20 A. That is correct.

21 Q. Yes. Thank you.

22 HEARING EXAMINER: So, Counsel, we are using this exhibit?

23 MS. KAYLOR: Yes. I will go ahead since --

24 HEARING EXAMINER: Okay. All right. So we've got
25 Exhibit 26, and you're referring to a memorandum -- the

1 exhibit itself is not paginated, so there's multiple
2 documents in it. You referenced a memorandum dated
3 April 15, 2016?

4 MS. KAYLOR: Yes.

5 HEARING EXAMINER: Is there a portion of that that you're
6 specifically asking her about?

7 MS. KAYLOR: I am asking her about the table that follows
8 page 4. It's not paginated, the table that follows page 4.
9 And the second page of the table that follows page 4.

10 Q. (By Ms. Kaylor) Is this one draft of that document?

11 A. Yes.

12 Q. And primarily I just wanted -- you had referenced a draft
13 version that you prepared in 2015 or 2016, and I wanted to
14 get that on the record. I don't have specific questions
15 about it. So you've been working for quite a while then on
16 this draft document?

17 A. Well, as I -- as I mentioned, actually, we were put on hold
18 from April. Right shortly after the -- the table that
19 you're referencing was delivered to the city, we were put on
20 hold for the remainder of 2016 and pretty much I think all
21 of 2017, so we restarted our work in 2018.

22 Q. You mentioned in calculating the maximum defensible fee in
23 your current memo, which is Exhibit 4, that you had
24 subtracted the cost of pavement from those projects; is that
25 right?

1 A. That's correct.

2 Q. And did you subtract any other costs?

3 A. We -- in terms of determining impact fee eligible costs of
4 each project, there were a number of deductions taken. One
5 was pavement. That was the only one that I specifically
6 referenced as an existing deficiency type deduction. Other
7 deductions that we took out were funding source -- or funds
8 that were already committed to those projects.

9 So Move Seattle contributions were deducted, and then
10 we also performed modeling analysis of each of the projects
11 to determine the kind of user profile of each of those --
12 that those projects would carry because another component of
13 impact fees is that we cannot be funding -- or we cannot be
14 paying for the component of trips that are carrying kind of
15 trips outside of the jurisdiction. So that was additional
16 kind of components of those projects that we did not
17 determine to be impact fee eligible.

18 Q. Are those exemptions shown on the page that immediately
19 precedes your table, the two pages that immediately precede
20 your table in Exhibit 4?

21 A. Exhibit 4. So this is the very small text tables here?

22 Q. Yes, that is correct.

23 A. Inspecting what I'm looking at here, we've got the 2018 cost
24 estimate, and we had the percentage of ineligible costs,
25 growth accommodating cost percentage of Seattle, and levy

1 amount. Yes.

2 Q. You had some discussion with Ms. Anderson. You had some
3 discussion with Ms. Anderson about methods for identifying
4 existing deficiencies. And we had a conversation previously
5 about this as well. And I believe your testimony was that
6 this existing system value methodology was simply -- was
7 intended to reflect -- I'll see if I can find my notes on
8 exactly what you said here. But it intended to reflect that
9 it wasn't fair to ask the development community to pay more
10 per PM person trip than the city was pay- -- than the city
11 is providing today; is that correct? Is that an accurate
12 description of the goal of that methodology?

13 A. Not to ask the development community to provide more
14 transportation infrastructure, which we can only kind of
15 estimate on a cost-per-trip basis than what is provided on
16 the ground today, correct.

17 Q. Okay. And how does that relate to identifying existing
18 deficiencies?

19 A. Well, what I would say is that I would characterize it as I
20 did in my deposition that it is more of kind of a fair share
21 consideration. Again, the city's level of service standard
22 does not provide us with clear-cut guidance on existing
23 deficiencies, and so really if I look at what I would think
24 is absolutely required, I think that recognizing rebuilding
25 of components in the system that are not performing -- or,

1 excuse me, that are not in a good state of repair, I think
2 that's -- that's why we've taken that -- that pavement
3 reduction.

4 What I would say is if you look at the city's level of
5 service standard, which is based on mode share, actually,
6 the city is currently leading that level of service
7 standard. So in many of the impact fee programs that I work
8 in, if all of the intersections are meeting the city's level
9 of service D/E or E standard, then we declare no existing
10 deficiencies, and we can move forward with crafting of the
11 impact fee program.

12 So when you look at the city's mode share standard, and
13 based on the data today, the city is currently not
14 generating so many SOV trips that it's currently failing
15 that standard. So I would say, you know, in a very fair
16 way, looking at the city's level of service standard, we're
17 currently meeting it. So from that very narrow lens, we
18 don't have any existing deficiencies today.

19 So, I would say in crafting this program, we were
20 trying to be politically astute in recognizing that having
21 some level way of being a good partner with the development
22 community would behoove the city. And so for that -- from
23 that perspective, that's why we have omitted the paving
24 costs, and that's why we have gone through the effort of
25 putting together the existing system value methodology,

1 similar to what Portland and Oakland did.

2 Q. And so are you aware that the city has adopted street
3 standards for its streets within its jurisdiction?

4 A. That is correct.

5 Q. And did you consider those street standards in determining
6 what was an existing deficiency?

7 A. No, and that is not standard to do.

8 Q. So there may be streets out there that don't meet the city's
9 current street standard, but you're not considering those to
10 be deficient today?

11 A. That is correct, and that would not be consistent with how
12 other communities have approached this as well.

13 Q. Okay. Thank you. Let me just run through my notes really
14 quick to see if I have any other questions.

15 MS. KAYLOR: Thank you. I'd like to move to admit
16 Exhibit 26 since we did talk about it.

17 HEARING EXAMINER: We had marked 24 and 25 as well, but
18 they haven't been admitted.

19 MS. ANDERSON: Yes, I would move to have them admitted.
20 No objection.

21 HEARING EXAMINER: On 26?

22 MS. ANDERSON: No objection on 26.

23 HEARING EXAMINER: Any objections to 24 and 25?

24 MS. KAYLOR: No.

25 HEARING EXAMINER: 24, 25, and 26 are admitted.

1 (Department's Exhibits No. 24 & 25 admitted into evidence.)

2 (Appellant's Exhibit No. 26 admitted into evidence.)

3 MS. KAYLOR: And let me just see if I have any other
4 questions here. No other questions.

5 HEARING EXAMINER: Redirect?
6

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

8 BY MS. ANDERSON:

9 Q. Let's start with Exhibit 26. Is it your understanding that
10 the project list that was created in Exhibit 26 was based on
11 a different transportation impact fee program?

12 A. That is correct.

13 Q. Okay. And how was that draft transportation impact fee
14 program, just briefly, constructed or contemplated?

15 A. I would say it was -- a lot of the fundamentals underlying
16 the program really haven't changed. What you see in the
17 draft materials that were developed in 2016, a very
18 multimodal project list. There are a lot of overlaps
19 between the projects that are -- that are probably shown on
20 this list from 2016. And the projects that were added to
21 the city's transportation appendix is a part of the
22 proposal.

23 I would say there's been just some updates in the
24 thinking around the determination of existing deficiencies.
25 And then again, you know, projects, just some of those --

1 those underlying details have evolved.

2 Q. Okay. And in particular, as to the level of service, is
3 that something that there's been a change to since this
4 proposal contemplated in Exhibit 26?

5 A. The level of service policy was formally adopted by the city
6 in 2016, which I believe was after the materials that are
7 shown in Exhibit 26 were developed. I think our general
8 understanding of the level of service policy was the same
9 between the two, but kind of what happened in the span of
10 those two years was that we worked with other communities
11 and were exposed to other methodologies. And that's when we
12 got back underway on this project. We brought those
13 experiences and then discussions with staff that seemed to
14 be a better fit for a way to consider existing deficiencies
15 than the approach that we had taken in 2016.

16 HEARING EXAMINER: Ms. Anderson, how many questions do you
17 think you have for redirect?

18 MS. ANDERSON: (Inaudible.)

19 HEARING EXAMINER: Okay. So we won't finish with
20 Ms. Breiland today.

21 THE WITNESS: That's fine. I can come back.

22 HEARING EXAMINER: And the city has two more witnesses.
23 Okay. Mr. Mazzola and Bjorn?

24 MS. ANDERSON: Yes.

25 HEARING EXAMINER: Okay. And Appellants -- we didn't

1 address this in the beginning, but it looks like some of the
2 witnesses were listed as witnesses as well by Appellants.
3 It hasn't been an issue yet, but normally how I would treat
4 that is instead of just doing cross, you're actually on
5 direct at the same time. So if it's an issue tomorrow, I
6 see that you have also called Mr. Bjorn, so that's how I
7 would treat that.

8 MS. KAYLOR: And I anticipate that cross-examination will
9 work for us.

10 HEARING EXAMINER: Yeah, that's fine. I just, I
11 wouldn't -- and there hadn't been many objections. If there
12 had been an objection I suppose to the scope of it, that's
13 what that addresses is that you don't have to limit yourself
14 just to what --

15 MS. KAYLOR: Thank you.

16 HEARING EXAMINER: Because it's your witness. All right.
17 With that, we'll see you tomorrow at 9 o'clock. Thank you.

18 MS. KAYLOR: Wednesday.

19 MS. ANDERSON: Wednesday.

20 HEARING EXAMINER: Oh, sorry. Wednesday. Right. Right.
21 Given that, actually, I do want to ask, given the remaining
22 two witnesses, do counsel believe that we're still going to
23 need the 18th?

24 MS. ANDERSON: I don't think so. I can't promise.

25 MS. KAYLOR: Yeah.

1 MS. ANDERSON: You still would have to do rebuttal,
2 perhaps.

3 MS. KAYLOR: We will have some rebuttal, certainly. I
4 can't assess how long Ms. Anderson's two witnesses will
5 take, but I wouldn't anticipate that our rebuttal would --
6 will be lengthy. But we'll obviously have to hear the
7 testimony of the last two witnesses before I know for sure.

8 HEARING EXAMINER: Uh-huh.

9 MS. KAYLOR: I believe that we will be done on Wednesday,
10 but I also thought we would be further along than we are at
11 this moment today.

12 HEARING EXAMINER: Uh-huh. Okay. Well, we've moved along
13 pretty efficiently. Unless your rebuttal's longer than your
14 case in main (inaudible) we'll do pretty well on Wednesday.
15 But let's see how it goes. No one's going to get in on our
16 calendar that soon anyway. So I will see you Wednesday.
17 Thank you.

18 MS. KAYLOR: Thank you.

19 MS. ANDERSON: Thank you.

20 (Conclusion of June 10, 2019 proceedings)

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23

24

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C E R T I F I C A T E

1

2

3 STATE OF WASHINGTON)

4) ss

5 COUNTY OF KING)

6

7 I, the undersigned, do hereby certify under penalty of
8 perjury that the foregoing court proceedings were transcribed
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14 attorney or counsel employed by the parties hereto, nor
15 financially interested in its outcome.

16

17

18 IN WITNESS WHEREOF, I have hereunto set my hand
19 this 8th day of July, 2019.

20

21

22

23

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25

