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BEFORE THE HEARING EXAMINER  
FOR THE CITY OF SEATTLE

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

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HEARING - VOLUME II  
Hearing Examiner Ryan Vancil Presiding  
June 12, 2019

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1 JUNE 12, 2019; MORNING SESSION

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3

4 HEARING EXAMINER: Good morning. We continue with  
5 Ms. Breiland on redirect?

6 MS. ANDERSON: Yes.

7

8 KENDRA BREILAND: Witness herein, having previously  
9 been duly sworn on oath, was examined  
10 and testified as follows:

11

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

13 BY MS. ANDERSON:

14 Q. Good morning, Ms. Breiland.

15 A. Good morning.

16 Q. So I just have a few questions for you. First is  
17 previously you were discussing the list of projects  
18 that you helped compile. And in your understanding is  
19 there any requirement that every project on that list  
20 be constructed?

21 A. No, there's not. My understanding of State law around  
22 impact fees is that the project list essentially has  
23 three requirements. One, that all the projects are  
24 providing capacity for future growth, which is  
25 something that we looked at and confirmed; a second one

1 is that all of the projects are on a capital facilities  
2 element, which is part of the proposal; and then the  
3 third is that they are in the right-of-way of local  
4 streets and roads, and that is also met. There's no  
5 actual requirement within state law that all of the  
6 projects on the impact fee list be constructed within  
7 the time line of the program.

8 Q. And you're referring to the State impact fee statute?

9 A. Correct, 82.02.

10 Q. All right. And did you calculate the cost of the  
11 capacity building components from that project list?

12 A. Essentially we took the costs that were provided to us  
13 by Seattle Department of Transportation and then we  
14 took a number of reductions to account for those  
15 non-capacity components.

16 So those reductions included the pavement reduction  
17 that I described earlier; they also included taking  
18 reductions for any committed funds, so the Move Seattle  
19 levy; and then thirdly some of the modeling exercises  
20 that we undertook to identify the portion of trips that  
21 were not related to Seattle land uses. And so that's  
22 kind of -- we kind of backed into that capacity  
23 component is how I would characterize it.

24 Q. Thank you. And at this point do you know whether or  
25 not operations and maintenance components of these



1 projects have been considered and/or removed from the  
2 project list and/or project cost list?

3 A. I do not. At this point we would be -- again, because  
4 the kind of draft project list is very preliminary at  
5 this point and would be getting further vetting by  
6 Council, some of those projects would require further  
7 vetting through our work on this project.

8 Q. Now, you indicated that you did some transportation  
9 impact fee work for other municipalities. Do you  
10 happen to know what other local municipalities charge  
11 for transportation impact fees?

12 A. It varies greatly. Just on a cost per pm peak-hour  
13 trip basis, we have some jurisdictions like Kitsap  
14 County, that are down below a thousand dollars per pm  
15 peak-hour trip, all the way up to the City of  
16 Sammamish, which is the highest in the state, that's  
17 somewhere around 15,000 per pm peak-hour trip, so it  
18 varies. Kind of Puget Sound average is somewhere in  
19 that kind of -- I can't recall exactly -- 5,000 or  
20 so.

21 Q. Okay. All right. So now I would ask you to turn to  
22 Exhibit 26 and direct you to -- this would be a memo  
23 dated February 9th, 2016, from you and others at Fehr &  
24 Peers. Are you familiar with this memo?

25 A. Did you say February 9th?

1 Q. February 9th, yep --

2 A. Okay.

3 Q. -- 2016.

4 A. I am in the wrong spot. I'm looking at an April 9th  
5 memo.

6 Q. Keep looking. Keep looking.

7 A. Or April --

8 Q. Further back.

9 A. Okay. Yes, I'm familiar.

10 Q. Okay. And how are you familiar with this memo?

11 A. I was one of the authors of the memo.

12 Q. Okay. And what does this memo do?

13 A. So as I related in my previous testimony, we were put  
14 under contract in 2015 to help the City develop a  
15 transportation impact fee project or transportation  
16 impact fee program and our work was put on hold at in  
17 the first quarter of 2016. And so this memo was one of  
18 the kind of final products that we put together to  
19 really kind of get everyone up to speed in terms of the  
20 thinking that we had performed through our analysis  
21 between kind of fall of 2015 up to February 9th of  
22 2016.

23 And so this memo, just quickly going through kind of  
24 the components, provided some background on what  
25 transportation impact fees are and the legal basis for

1       them. It included kind of what we had heard in terms  
2       of kind of the fundamentals of what the City was  
3       looking to do as a part of crafting its program. And  
4       then we talked about the City's new mode-share level of  
5       service -- that was not yet adopted at that point but  
6       it was moving forward -- and how that kind of  
7       influenced our thinking. And then it talked through  
8       kind of the crafting of the program and some of the  
9       specific numbers, like the number of trips that were  
10      assumed.

11       I would say that the memo described a different  
12      approach for looking at existing deficiencies than we  
13      have been considering with the City since 2018.

14 Q.   Okay. Very good. And yesterday -- or actually Monday  
15      you were asked about the table in this memorandum. I  
16      believe it's on page 9 of 11.

17 A.   Okay.

18 Q.   And it starts out on top "Example" --

19 A.   Um-hum.

20 Q.   -- "Impact Fee Schedule."

21 A.   Um-hum.

22 Q.   Was this an impact fee schedule that you prepared for  
23      the City of Seattle or was this something that was  
24      pulled from your work in another municipality?

25 A.   I -- this, just in looking also at the table on page 8,

1       which is what helps me look into that because that's  
2       the inputs, it shows that this was developed based on a  
3       draftless projects that were being considered at the  
4       time.

5             And running through the calculations that are  
6       described in this memo, what I would say is that again  
7       a main reason why this kind of example impact fee  
8       schedule was really highlighted as only an example is  
9       that it, again, relied on outdated data in terms of the  
10      ITE Trip Generation memo that was being used. And I  
11      think it was really important to us as this memo was  
12      being put together to reserve the right to update  
13      information for more technical accuracies.

14 Q.    Okay. And so were the land use categories specialized  
15       for the City?

16 A.    No.

17 Q.    Okay. All right. All right. And so you just  
18       indicated that the approach changed between this memo  
19       and the current methodology?

20 A.    Um-hum.

21 Q.    And that approach was the calculation of the  
22       methodology --

23 A.    Um-hum.

24 Q.    -- in essence?

25 A.    Correct.

1 Q. Okay. All right. And that, in part, was to recognize  
2 the new level of service for the City?

3 A. To recognize the new level of service and actually to  
4 attempt to simplify things.

5 Q. Okay. All right.

6 A. I recognize the irony.

7 Q. Let's see. I'm going to ask you to turn to what's been  
8 marked as Exhibit 3, and I'll give you a copy of that.  
9 All right. And just to be clear, this memo that you  
10 prepared summarizes the current methodology that is the  
11 basis for your proposal; is that correct?

12 A. That is correct.

13 Q. Okay. All right. I'm looking over my notes for any  
14 other questions that I need to ask you.

15 And you indicated that you worked with City staff in  
16 preparing this project list; is that correct?

17 A. That is correct.

18 Q. Okay. And did City staff include staff from Seattle  
19 Department of Transportation --

20 A. Yes.

21 Q. -- as well as the Mayor's office and Council Central  
22 Staff?

23 A. I cannot recall whether or not the Mayor's office was  
24 included, but Central Staff and DOT was included. And  
25 it's just it's not a "yes" or "no," it's not a

1 recollection.

2 MS. ANDERSON: Got it. Okay. All right. No more  
3 questions from me. Thank you.

4 HEARING EXAMINER: Thank you, Ms. Breiland.

5 THE WITNESS: Okay.

6 HEARING EXAMINER: That was redirect?

7 MS. ANDERSON: Right. Yes.

8 HEARING EXAMINER: Were you --

9 MS. KAYLOR: No, I have no questions. Thank you.

10 HEARING EXAMINER: Oh, okay. I was just reading body  
11 language. All right.

12 MS. ANDERSON: All right. Thank you. At this point  
13 I would like to call Mr. Bjorn? "Borne?" Bjorn?

14 HEARING EXAMINER: Please state your name.

15 THE WITNESS: Andrew Bjorn.

16 HEARING EXAMINER: And do you swear or affirm the  
17 testimony provided in today's hearing to be the truth?

18 THE WITNESS: I do.

19 HEARING EXAMINER: Thank you.

20

21 ANDREW BJORN: Witness herein, having first been  
22 duly sworn on oath, was examined and  
23 testified as follows:

24 / / /

25 / / /

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

2 BY MS. ANDERSON:

3 Q. Hello, Mr. --

4 A. Bjorn.

5 Q. -- Bjorn. Can you please describe your experience?

6 A. My experience? I've been a planner and economist for  
7 nine-and-a-half years. I've been working at Berk  
8 Consulting in Seattle since July of 2017. I've also  
9 worked at Community Attributes in 2015 and O2 Planning  
10 + Design in Calgary, Alberta, Canada, from 2010 to 2015  
11 and then from 2016 to July of 2017.

12 MS. ANDERSON: Okay. I would ask for this document  
13 to be marked as Exhibit 27.

14 (Department's Exhibit No. 27 marked for identification)

15 Q. (By Ms. Anderson) Do you recognize this document?

16 A. I do.

17 Q. Okay. What is this?

18 A. This is my resume.

19 Q. Okay. All right. So you have a bachelor's of science  
20 in civil and environmental engineering?

21 A. I do.

22 Q. All right. And you have two master's degrees; is that  
23 correct?

24 A. I do.

25 Q. Okay. And what are those master's degrees in?

1 A. One is in civil engineering, the other is in urban  
2 planning.

3 Q. Okay. And then you also have a Ph.D.?

4 A. I do.

5 Q. Okay. And what was your area of focus for your Ph.D.?

6 A. The area of focus for my Ph.D. was in both urban  
7 ecology and in urban land economics.

8 Q. Okay. All right. And how long have you been employed  
9 with Berk?

10 A. Almost two years.

11 Q. Okay. And what is the scope of your job  
12 responsibilities at Berk?

13 A. At Berk I'm a senior associate. My responsibilities  
14 are primarily with project management as well as with  
15 technical analysis, strategic advice, report  
16 development.

17 Q. And tell me about your experience with economics as it  
18 relates to your current work.

19 A. So my dissertation for my Ph.D. involved development of  
20 modeling for housing prices using similar techniques as  
21 to what the literature uses for evaluating the effects  
22 of impact fees.

23 Aside from that, I've also had experience with  
24 examining housing markets in the region. Most recently  
25 we were tasked with examining the effects of potential



1 housing affordability policies on the housing market in  
2 the city of Tacoma.

3 We've also done work with looking at affordable  
4 housing policies in the city of Edmonds. I've been  
5 involved with growth management planning and regional  
6 planning, then have also involved to some extent the  
7 costs of growth.

8 Q. Okay. Excellent. All right. I would ask you if you  
9 were present for Mr. Shook's testimony?

10 A. I was.

11 Q. Okay. And did you hear his testimony that in his  
12 opinion the proposal would likely result in significant  
13 impacts to housing?

14 A. I was present for that and I did hear that.

15 Q. Okay. And do you agree with that conclusion?

16 A. I do not.

17 Q. Okay. And let's walk through the basis for why you do  
18 not agree with that conclusion. So I'm going to ask  
19 you to turn to exhibit -- well, not 26. I keep wanting  
20 to call it 26 -- Exhibit 5. Thank you.

21 All right. Did you have the opportunity to review  
22 this document?

23 A. I have.

24 Q. Okay. And do you -- I guess Mr. Shook made some  
25 conclusions, reached some conclusions in this document.

1 And do you agree with his conclusions?

2 A. I do not.

3 Q. Okay. Let's address perhaps the first conclusion.

4 Number 1, Mr. Shook concluded that average cost impact  
5 fees are inefficient. Would you agree with that  
6 assessment?

7 A. I would agree that average cost impact fees can have  
8 inefficiencies. But other approaches that could be  
9 used would also be inefficient and likely burdensome to  
10 the City processes and would not likely result in cost  
11 savings.

12 Q. Okay. And do you have examples of other methodologies  
13 that you were just referring to?

14 A. Only in respect to theory. The typical approaches that  
15 are used for developing impact fees are reasonably  
16 consistent with the average cost approach.

17 Q. Okay. All right. I'll ask you to look at his report  
18 again. And I believe he reached the conclusion that  
19 marginal costs, using a marginal cost would be far more  
20 onerous. And do you agree with that assessment?

21 A. I'm sorry. Where does it say that in the --

22 Q. I have it written in my notes, so I don't know exactly  
23 where in the document it says that. If you don't see  
24 that, we can just move on.

25 Certainly he reached the conclusion that impact fees

1 can limit housing supply?

2 A. Um-hum.

3 Q. And is that something -- do you agree with that  
4 opinion?

5 A. I do not.

6 Q. Okay. And why not?

7 A. One of the challenges, and this is reflected in the  
8 academic literature for this, is that the examination  
9 of impact fees and their effects on the housing markets  
10 are not simply a matter of evaluating the costs but  
11 also evaluating the value of the amenities associated  
12 with impact fees. To consider one and not consider the  
13 other would not be a thorough evaluation of the full  
14 effects of the policy.

15 Q. And did you have the opportunity to review the  
16 literature cited in Mr. Shook's report?

17 A. I have.

18 Q. Okay. And Mr. Shook's testimony was that although the  
19 literature and the issue is complicated, he came to a  
20 clear opinion that impact fees would impact housing.  
21 And in your review of the literature is that the same  
22 conclusion that you would reach?

23 A. I would say that impact fees may have an effect on  
24 elements of the market. However, I would disagree with  
25 the blanket assertion that impact fees will always have

1 a negative impact on the market, especially with  
2 respect to constraining supply.

3 As mentioned, the consideration of the benefits of  
4 the amenities derived from transportation facilities  
5 that are able to be constructed as a result of the  
6 impact fees are not considered in Mr. Shook's  
7 testimony, but in the literature there is an extensive  
8 amount of discussion about this. And, in fact, what is  
9 noted is that many of the price increases associated  
10 with impact fees are not associated with the simple  
11 passing of costs from developers to renters or buyers  
12 with no associated benefit but instead an increase in  
13 the willingness to pay of buyers or renters to live  
14 close to certain amenities.

15 So in this particular case, looking at, for example,  
16 increased transit accessibility, increased access to  
17 cycling infrastructure, improved pedestrian  
18 infrastructure, all of these are valued in the market  
19 and all of these would be associated with a positive  
20 effect. In fact, many of these benefits have been  
21 shown in the literature to result in property price  
22 increases, regardless of whether there's an impact fee  
23 or not.

24 Q. Okay. And in particular, one of the reports in the  
25 literature review is a document entitled "Do All Impact

1 Fees Affect Housing Prices the Same?" by Mr. Mathur.

2 A. Um-hum.

3 Q. So I'm going to go ahead and ask for -- now, this  
4 document was cited in Mr. Shook's report; is that  
5 correct?

6 A. It was.

7 MS. ANDERSON: Okay. I would ask that this be marked  
8 as Exhibit 28.

9 (Department's Exhibit No. 28 marked for identification)

10 Q. (By Ms. Anderson) And I'm going to give you a copy.

11 A. Thank you.

12 Q. All right. Can you tell me what this article concludes  
13 with respect to impact fees and the effect on housing  
14 price?

15 A. Yes. So this study was performed on sales data for  
16 housing in King County. And the two main conclusions  
17 from this report are that, first, the price effects of  
18 impact fees are not consistent between different types,  
19 the different quality types of housing. So high-end  
20 housing, for example, has a greater impact associated  
21 with an impact fee, whereas lower-end housing, for  
22 example, has a much smaller calculated effect.

23 Additionally there are differences between the  
24 effects from different types of impact fees. So, for  
25 example, one of the interesting conclusions from this

1 report is that park impact fees result in some cases  
2 with an effect that is essentially \$4 for each dollar  
3 of impact fee levied.

4 So in these cases, the effects can be seen as related  
5 to both the willingness to pay of likely home buyers as  
6 well as the perceived value of the amenity to those  
7 home buyers.

8 Q. Okay. And is there a place in particular that you've  
9 highlighted or that you'd like to indicate in this  
10 report?

11 A. One of the assertions in this report tends to be  
12 different from the assertions that were made by  
13 Mr. Shook in the literature review provided. And one  
14 note here that I've highlighted is that -- and I will  
15 quote here.

16 Q. And let's direct the Examiner to the page you're  
17 reading.

18 A. Oh, yes. I'm sorry. This would be page 5 of this  
19 document.

20 Q. And did you highlight this document?

21 A. I have.

22 Q. Okay. So go ahead.

23 A. So the statement is:

24 "Furthermore, the visibility and premium  
25 that residents put on impact fee-funded

1           infrastructure could also influence the fee's  
2           housing price effect. For example,  
3           neighborhood parks are a highly visible and  
4           valued amenity. Furthermore, they can be  
5           used by both new and existing residents.  
6           Therefore, a park impact fee is likely to  
7           significantly increase the price of both new  
8           and existing housing."

9 Q.    Okay. And do you -- in your opinion do you believe  
10       this would be true for the transportation impact fees  
11       contemplated here?

12 A.    In my opinion it would be quite likely that a similar  
13       effect would be present. In the literature, as  
14       mentioned, valuation of these types of amenities  
15       separately indicate that there is an associated amenity  
16       value for home buyers and for renters.

17 Q.    For this type of --

18 A.    For this type of --

19 Q.    -- of transportation impact fee?

20 A.    Yes.

21 Q.    And that would involve bike infrastructure, pedestrian  
22       infrastructure?

23 A.    Yeah. So different sources in the literature typically  
24       evaluate this in different ways. But generally  
25       examination of walkability and transit access are well

1           documented in the literature as having a positive price  
2           impact.

3 Q.    And so when you say they have a positive price impact,  
4           does that mean that it would cost more for a resident  
5           or property owner to purchase that or that the value  
6           would be greater?

7 A.    The value would be greater --

8 Q.    Okay.

9 A.    -- in that in the market the willingness to pay for  
10          home buyers would be higher. This would not be a cost  
11          to them, it would be an additional amenity that they  
12          would value and want to have access to.

13 Q.    Okay. All right. Now, you mentioned something about  
14          new development and higher end development and whether  
15          or not impact fees would allow a capture of those  
16          benefits from this housing. Could you provide a little  
17          more information about your testimony?

18 A.    One conclusion that was reached in this report is that  
19          the effects are different amongst different quality  
20          levels of housing. So the author separated the housing  
21          market between -- one second here -- between all new  
22          housing, low-quality new housing, and high-quality new  
23          housing, to try to separate out the effects of these  
24          amenities on different types of housing but also  
25          different submarkets, essentially, different quality



1 level submarkets.

2 Q. Okay. And was the conclusion different for the  
3 different submarkets?

4 A. It was, that the high-quality housing had a  
5 substantively higher effect than low quality housing.  
6 In this case, and not just in this paper but in other  
7 sources in the literature, this has been linked not to  
8 the passing of costs from the developer to the buyer  
9 but to that willingness to pay for those facilities.

10 Q. Okay. So any other points that you'd like to make with  
11 respect to the Mathur article and comments on  
12 Mr. Shook's testimony related to it?

13 A. Related to this article? No.

14 Q. Okay. All right. And did you have the opportunity to  
15 review some of the other articles cited in Mr. Shook's  
16 report?

17 A. I have.

18 MS. ANDERSON: Okay. Then I'm going to hand out  
19 another one of those articles. And I'm going to ask  
20 that it be marked as Exhibit 29.

21 (Department's Exhibit No. 29 marked for identification)

22 Q. (By Ms. Anderson) This is the Burge and Ihlanfeldt  
23 article.

24 A. Thank you.

25 Q. Have you had the opportunity to review this article?

1 A. I have.

2 Q. Okay. And do you agree with Mr. Shook's assessment  
3 related to its conclusions?

4 A. No, I do not.

5 Q. Okay. That impact fees could negatively affect  
6 housing. And why not?

7 A. Well, I should qualify this to say that this paper does  
8 say that in some cases impact fees can have a negative  
9 impact on housing. However, in Exhibit 5 on page 3,  
10 the statement that was made in relation to this paper  
11 was that across all three area types -- central city  
12 inner, suburban, and outer suburban areas -- in all  
13 three estimators, water/sewer impact fees are found to  
14 reduce multifamily housing construction.

15 However, reading further into the paper and looking  
16 at what is labeled page 7 in this document, the  
17 highlighted portion says that:

18 "The results indicate that impact fees  
19 earmarked for making off-site water and sewer  
20 system improvements generally reduce  
21 multifamily housing construction.

22 "In contrast, impact fees designated for  
23 other types of infrastructure are found to  
24 increase multifamily housing construction  
25 within inner suburban areas but have no

1 effect within central cities or outer  
2 suburban areas."

3 Q. And is this also noted on page 5 of this report?

4 A. It is, in the abstract, yes.

5 Q. Okay. All right. So is it your opinion that impact  
6 fees would not increase -- I guess would have no impact  
7 or could potentially increase multifamily housing  
8 construction in the city of Seattle?

9 A. I believe that the literature is complex. But  
10 typically what is indicated in the literature is that  
11 there are certain types of impact fees usually  
12 associated with the extension of site-specific  
13 infrastructure, such as water and sewer impact fees,  
14 that generally have a negative impact on construction.

15 However, park impact fees, transportation impact  
16 fees, and comparable fees have either a limited or  
17 positive impact in the market. And this can be due to  
18 a number of different reasons but it's typically  
19 related to the amenity value associated with these  
20 improvements.

21 Q. And when you say a "positive impact in the market,"  
22 you're referring to a positive impact in the housing  
23 market in that there's the creation of additional  
24 housing or --

25 A. It may --

1 Q. -- not a reduction in housing?

2 A. It may be related to an increase in production. It may  
3 be related to an increase in price associated not with  
4 increased costs but increased willingness to pay for  
5 amenities. So these are generally taken as being  
6 positives in the market, positive value. This would be  
7 related to either no impact to the ongoing construction  
8 or potentially even an increase in construction in  
9 certain cases.

10 Q. Okay. And have you been able to make a full evaluation  
11 of the impacts to housing based on this proposal?

12 A. Based on this proposal? No, I have not.

13 Q. And why not?

14 A. Because there are two primary challenges to this.  
15 First is that the decisions that are related to the  
16 final implementation of this impact fee program will be  
17 related to the actual impacts. So there is currently  
18 no impact fee schedule. There are currently no  
19 provisions for waivers or reductions for affordable  
20 housing. It is not clear what the particular area for  
21 which these impact fees will be levied will be. So all  
22 of these attributes would be important to determining  
23 what those impacts would be.

24 Additionally, there's also the effect of the amenity  
25 on housing prices. And this is a challenge because, as

1 was stated by a number of witnesses, that the schedule  
2 that was provided for transportation projects is not  
3 necessarily the schedule by which -- is not necessarily  
4 the list of projects that will be in the final  
5 proposal. It is not clear what the timing of those  
6 projects would be. It's not clear how specific  
7 projects would be valued by both -- by future  
8 residents.

9 So with all of these statements, with all of these  
10 characteristics, we could certainly evaluate general  
11 scenarios; however, they would be speculative. They  
12 would be dependent upon final decisions that would be  
13 associated with, for example, code amendments that  
14 would be necessary to implement the program.

15 Q. Okay. Okay. Very good. And did you have the  
16 opportunity to review another document cited in  
17 Mr. Shook's report entitled "Impact Fees and Housing  
18 Affordability," by Vicki Been?

19 A. I have.

20 MS. ANDERSON: Okay. I am going to ask that this be  
21 marked as Exhibit 30.

22 (Department's Exhibit No. 30 marked for identification)

23 THE WITNESS: Thank you.

24 Q. (By Ms. Anderson) Um-hum. Did you have the  
25 opportunity to review this document?

1 A. I have.

2 Q. Okay. And did you agree with Mr. Shook's conclusion  
3 related to this particular report?

4 A. So this report provides an overview of the current  
5 literature and theory behind impact fees. I disagree  
6 with the statement that was included on page 3 of  
7 Exhibit 5 that states that:

8 "The increasing use of the impact fees and  
9 the costs that they may add to the  
10 development process raises serious concerns  
11 about the effect using impact fees to fund  
12 infrastructure will have on the affordability  
13 of housing."

14 So the concern that I have about that statement is  
15 that even as reflected in this overview document, there  
16 is a particular statement and line of thinking in here  
17 that specifies that the amenity value of the facilities  
18 that are provided as a result of impact fees need to be  
19 considered in the assessment of those fees.

20 So looking at page 149 of this document, the  
21 highlighted portion states:

22 "But if the impact fees provide  
23 infrastructure or tax savings or risk  
24 reduction that consumers value and cannot get  
25 elsewhere for the same housing price property

1 tax payment, consumers will be willing to pay  
2 more for the housing. Prices will increase  
3 but consumers will be no worse off because  
4 they're receiving additional value for the  
5 extra price they pay."

6 So this highlights that the literature does not  
7 simply state that impact fees are uniformly negative.  
8 And it also indicates that with the consideration of  
9 amenity value in the assessment of the effects of  
10 impact fees on the market, that it's not guaranteed  
11 that these will be negative.

12 MS. ANDERSON: Okay. I would move to have  
13 Exhibit 28, 29, and 30 admitted.

14 HEARING EXAMINER: Any objection?

15 MS. KAYLOR: No objection.

16 HEARING EXAMINER: Exhibits 27 through 30 are  
17 admitted.

18 (Department's Exhibit Nos. 27, 28, 29, and 30 are admitted)

19 MS. ANDERSON: Thank you.

20 Q. (By Ms. Anderson) All right. Now, I believe we've  
21 talked a little bit about Mr. Shook's conclusion that  
22 in his opinion impact fees can limit housing.

23 A. Um-hum.

24 Q. And I believe you've established that you don't agree  
25 with that assessment; is that correct?

1 A. That is.

2 Q. Okay. And tell me, if I understand correctly, part of  
3 the basis for your opinion is that Mr. Shook's  
4 testimony ignores the amenity value of these  
5 transportation projects; is that correct?

6 A. That is.

7 Q. Okay. And are there other bases for reaching this  
8 conclusion?

9 A. With respect to -- I'm sorry?

10 Q. With respect to whether or not impact fees can limit  
11 housing supply. So one of the bases that Mr. Shook did  
12 not appear to address was related to the amenity value  
13 of the transportation project. I was asking if there  
14 were any other bases upon which -- that served as a  
15 basis for disagreement with Mr. Shook's conclusion.

16 A. I think from the perspective of the literature, those  
17 summarize the main objections that I would have to  
18 that. There are certainly objections to other parts of  
19 the statement that I can go through.

20 Q. That would be great.

21 A. Okay. Thank you. So the -- what had been mentioned  
22 before with the difference between average and marginal  
23 calculations for impact fees, the challenge with that  
24 is that, for one, if calculations were made on a  
25 marginal basis instead of on an average basis site by



1 site, that would incur cost. So for every type of  
2 development project, you may have the requirement, for  
3 example, to evaluate --

4 (Cell phone rings)

5 UNIDENTIFIED SPEAKER: Sorry.

6 THE WITNESS: -- you may have the requirement to  
7 evaluate what the marginal impacts would be of an  
8 individual project.

9 Typically the way that average cost pricing is  
10 conducted, there is a disaggregation of the individual  
11 development types. So looking, for example, at trip  
12 generation from a variety of different land uses as a  
13 means of providing additional resolution to reduce the  
14 differences between the marginal and the average  
15 costs.

16 Another concern with noting that difference between  
17 average and marginal cost evaluation is that there are  
18 elements in the statute that permit and require, in  
19 fact, that an appeal process be set forward that allows  
20 someone who is pursuing a development for which an  
21 impact fee would be applicable, to object to that and  
22 raise arguments about why that would not be  
23 applicable.

24 In addition, there are considerations in both the  
25 statute and comparable impact fee programs in other

1 locations in Washington state that specifically allow  
2 site-specific evaluations of impacts that would address  
3 differences between, for instance, a standard type of  
4 development and a type of development that may not  
5 necessarily fit into that class.

6 This is also something that can be directed by a  
7 city. At the discretion of the director, for example,  
8 there are specific developments that could be required  
9 to do a site-specific evaluation.

10 So in these cases, while the average cost method is  
11 not necessarily perfect, there are instruments by which  
12 it can get closer to the actual impacts that are  
13 associated with that development.

14 Q. (By Ms. Anderson) And when you say the "impacts,"  
15 you're referring to the actual cost?

16 A. Yes.

17 Q. Yes. Okay. All right. And did you have any other  
18 thoughts? I guess I wanted to ask you to turn to  
19 Exhibit 4 and 5 of Exhibit 5 in this involving the hex  
20 maps. Am I...

21 A. I...

22 Q. Are you seeing those?

23 A. I have this as Exhibits 3 and 4. I don't seem to have  
24 an Exhibit 5 in --

25 Q. Mr. Shook's report, that April 22nd report?

1 A. Yes, the one that you provided as Exhibit 5 --

2 Q. Yes.

3 A. -- the hex map is listed as Exhibit 4.

4 Q. Okay. I believe it's actually Exhibit 5.

5 A. Okay.

6 Q. But I'd ask you to turn to Exhibit 4 and 5 in that  
7 document.

8 HEARING EXAMINER: In the Exhibit 5 in the record we  
9 do have 3 and 4. It doesn't go up to 5.

10 MS. ANDERSON: Okay. I apologize.

11 HEARING EXAMINER: I don't see a...

12 MS. ANDERSON: Exhibit 3 and 4 of the hex maps is  
13 what I'm referring to.

14 Q. (By Ms. Anderson) Do you think there are any other  
15 problems or concerns that you have with Mr. Shook's  
16 analysis in particular with respect to these Exhibits 3  
17 and 4?

18 A. I have a few objections, some of which have been noted  
19 previously by other witnesses. One is actually with  
20 Exhibit 1, which is on page 6, and this is a statement  
21 that looks at how fees associate with housing financial  
22 feasibility.

23 And the assertion that I would make here is that  
24 according to the literature, it's not entirely clear  
25 that that break-even level is constant. If, for

1 example, the amenities associated with impact fees do  
2 provide additional value in the market that renters or  
3 borrowers are willing to pay for, this break-even level  
4 is not going to be constant between what is listed here  
5 as current costs and increased fees.

6 With --

7 Q. Okay. That's very helpful.

8 A. Thank you.

9 With Exhibit 4, again what had been mentioned  
10 previously was that, as stated in the note:

11 "Highlighted is Seattle with the current  
12 fee structure, including mandatory housing  
13 affordability fees introduced in South Lake  
14 Union, with the addition of transportation,  
15 school, and park impact fees based on sample  
16 fees typically assessed by Puget Sound  
17 cities."

18 So in this particular case, the two bars that are  
19 associated with Seattle do not necessarily apply  
20 consistently for development in Seattle.

21 With Exhibit 4 on page 9, I have not seen the basis  
22 for which this map was created and I'm not sure of the  
23 calculations that went into this map, but there are  
24 certainly some concerns, first of which is the notion  
25 that there is a 20 percent reduction in feasibility.

1       This is a bit of a loaded statement and I believe that  
2       Mr. Shook addressed this in his testimony.

3           However, this isn't even a statement by which you can  
4       say that there is a 20 percent reduction in feasibility  
5       of potential projects. This is a 20 percent reduction  
6       in feasibility of the individual colored hexes here.

7           There is no consideration, from what I can see, of  
8       the potential development sites that are located in  
9       these particular areas. Additionally, there's no  
10      consideration of the underlying zoning in these  
11      locations.

12          And what was mentioned in Mr. Freeman's testimony on  
13      Monday was that for certain areas there is no way that  
14      a 12-story residential tower would be allowed under  
15      current zoning. I, for one, live in Ballard and I know  
16      that if a 12-story apartment building were to go up in  
17      the area designated, there would be considerable  
18      community opposition, I would believe.

19          So what these lead me to believe is that this is  
20      not -- it's not an accurate statement to note  
21      specifically that this is a 20 percent reduction in  
22      feasibility or in feasibility of potential projects.

23          However, what was also mentioned previously was that  
24      this is noting both proposed MHA fees and regional  
25      average impact fees. This is not noting actual impact

1 fees, this is adding MHA fees on top of impact fees for  
2 a change from the base condition.

3 So as was noted previously, there's no clear  
4 statement that could be made from this about what the  
5 actual impacts would be of a final program.

6 Q. And in your opinion would it be possible to come to a  
7 conclusion about the 20 percent reduction due to fees  
8 at this point?

9 A. While I believe that it's challenging to evaluate what  
10 the impacts would be, I can state that given the  
11 parameters that are here, under these specific  
12 assumptions I would state that a 20 percent reduction  
13 in feasibility is an incorrect statement.

14 Q. And could you assess a percentage reduction in  
15 feasibility in your experience at this time?

16 A. It would be possible to evaluate changes in feasibility  
17 on a property-by-property basis for a specific  
18 proposal; however, there are a lot of challenges  
19 associated with this. Again, as mentioned before,  
20 we're looking at both the costs and the amenities  
21 associated with those costs. And it's not looking at  
22 current situations, it's looking at future scenarios  
23 and comparing what would happen under an impact fee  
24 program versus what would not happen if an impact fee  
25 program were not present and the projects on the list

1           were delayed or canceled as a result.

2           So it's certainly possible on a property-by-property  
3           basis to suggest, given certain assumptions, whether  
4           a -- you know, whether a particular rise in amenity  
5           value and rise in costs would make a development  
6           project feasible or not.

7           On a broader scale like this, I would be very  
8           hesitant at this point to make any assumption because  
9           it would be purely speculative and based on assumptions  
10          that may not come to pass with the final impact fee  
11          program.

12 Q.      All right. And do you have experience with SEPA prior  
13          to this particular appeal?

14 A.      I do not. I have reviewed the SEPA checklist and the  
15          definitions; however, I do not have experience with  
16          SEPA before this --

17 Q.      Prior to this?

18 A.      -- project, yes.

19 Q.      Okay. Very good. So do you understand and have you  
20          reviewed the definition of "significant" under SEPA?

21 A.      I have.

22 Q.      Okay. It means a reasonable likelihood of more than a  
23          moderate adverse impact on environmental quality.

24 A.      Um-hum.

25 Q.      It involves context and intensity and does not limit

1           itself to a formula or a quantifiable test. It may  
2           vary depending on the physical setting. Intensity  
3           depends on the magnitude and duration of an impact.

4           So the severity of an impact should be weighed along  
5           with the likelihood of its occurrence. An impact may  
6           be significant if its chance of occurrence is not great  
7           but the resulting environmental impact would be severe  
8           if it occurred.

9           So you did indicate you've reviewed that?

10   A.    Yes.

11   Q.    Okay. And did you also review the definition of  
12           "probable" under SEPA?

13   A.    I have.

14   Q.    Okay. And that means it's likely or reasonably likely  
15           to occur, as in a reasonable probability of more than a  
16           moderate effect on the quality of the environment.  
17           It's used to distinguish likely impacts from those that  
18           merely have a possibility of occurring --

19   A.    Um-hum.

20   Q.    -- but are remote and speculative.

21           All right. So and then lastly the definition of  
22           "impacts," did you have the opportunity to review that?

23   A.    I have.

24   Q.    Okay. The definition of impacts under SEPA. I won't  
25           read that.



1 A. Um-hum.

2 Q. So obviously you heard Mr. Shook's testimony that he  
3 believes that there are to be a likely significant  
4 impact to housing. And I understood part of that  
5 testimony to be based on this 20 percent reduction  
6 feasibility due to fees.

7 In your opinion is a 20 percent reduction or any  
8 percent reduction in feasibility of a particular  
9 project, would it have a larger impact on housing  
10 generally?

11 A. Let me see if I understand the question. So if your  
12 question relates to whether the current proposal would  
13 result in a 20 percent reduction in feasibility and a  
14 corresponding decrease in housing production, what I  
15 would state is that it is not entirely clear at this  
16 point. However, it is entirely probable that an impact  
17 fee program can be developed that would have minimal to  
18 no significant impact on both housing production and  
19 costs passed to the consumer.

20 In that case, if there is a possibility at this  
21 point, I cannot state that there is a likelihood or not  
22 of future steps in this process selecting a program  
23 that would have an impact or not. However, this  
24 particular proposal does not in and of itself  
25 specifically indicate that there will be significant

1 adverse effects.

2 At a later time when code amendments are proposed,  
3 when a more detailed fee structure can be developed, a  
4 more detailed evaluation of that can be provided such  
5 that it can be clear as to whether or not there are  
6 impacts.

7 However, at this point this particular proposal does  
8 not require that. And, in fact, what I would state is  
9 that the literature would suggest that there are  
10 possibilities that would allow for improvements in  
11 value and even positive effects on both amenities and  
12 on housing production.

13 Q. Okay. I just want to make sure I've asked you all the  
14 questions.

15 All right. So lastly, did you -- well, I hope  
16 lastly -- did you conduct an individualized analysis of  
17 housing impacts based on the proposal? And I think  
18 you've generally answered this but I'd like to  
19 specifically ask you.

20 A. No, I have not.

21 Q. Okay. And why not?

22 A. Because as mentioned, the evaluation of this would be  
23 purely speculative given that there are no parameters  
24 for the impact fee program specifically from this  
25 proposal. There is a potential list of projects, there

1 is a methodology that's included, but neither of these  
2 would be sufficient to evaluate the full effects in the  
3 market.

4 Q. Do you have any other thoughts at this time that you  
5 would like to share with the Examiner?

6 A. The only other thing to state here is that there are a  
7 wide range of possible outcomes from impact fees;  
8 however, at this stage those impacts are not currently  
9 known. There could be long-term effects on the housing  
10 market, both positive and negative; however, at this  
11 particular point this particular proposal does not  
12 assert that there will be negative impacts. That's for  
13 a later determination once more details about the  
14 program are known.

15 Q. And I actually have a couple more questions --

16 A. Oh.

17 Q. -- that I realize I've got. I'm sorry. You thought  
18 you were done, but there are a couple of additional  
19 exhibits that I wanted to ask you about.

20 A. Sure.

21 Q. All right. One of which is I believe it already came  
22 in as an exhibit. It would be, let's see, to Groh from  
23 Staley, so...oh, I think it's 26. I think we were  
24 already talking about 26. Do you see that?

25 A. I may need that, I think.

1 Q. I think it should be --

2 A. It isn't in my --

3 Q. -- there. It's got an email on top from Brennon  
4 Staley.

5 A. No, I do not. I don't have that.

6 Q. It's not --

7 A. Oh, it might be over here.

8 Q. -- there? Yep, there it is.

9 A. Yes. Thank you.

10 Q. Yep. Alrighty. I would ask you to turn to a sheet  
11 that as the Berk logo on it and it's entitled "Seattle  
12 Transportation and Park Impact Fees, Comparison of  
13 System Improvement Charges in Seattle and Nine Peer  
14 Jurisdictions."

15 A. Yes.

16 Q. Dated May 10th of 2016.

17 A. Yes.

18 Q. Do you see that document?

19 A. I do.

20 Q. Okay. Now, was your firm responsible for preparing  
21 this?

22 A. My firm was responsible for preparing this; however, I  
23 was not at the firm at the time.

24 Q. Ah, okay. All right. So you don't -- you won't be  
25 able to address any of the specifics in this document?

1 A. No, I will not. There was a later report that was  
2 provided last year.

3 Q. Oh yes. Okay. All right. So let's go ahead and look  
4 at that later report. And let me see. I believe this  
5 is entitled "City of Seattle Transportation Capital  
6 Funding Review Draft October 2018."

7 A. Yes.

8 MS. ANDERSON: And I only have two copies, so I'm  
9 going to give the Examiner this one.

10 Courtney, I apologize. I believe you have a copy of  
11 this already.

12 Oh. I think I handed you a wrong version. I'm going  
13 to have that back. Thank you.

14 MS. KAYLOR: Which exhibit on your -- I assume this  
15 is on your list?

16 MS. ANDERSON: Yeah. This --

17 MS. KAYLOR: Or is it --

18 MS. ANDERSON: -- I think is on --

19 MS. KAYLOR: -- on my list or --

20 MS. ANDERSON: -- your list. Yeah, I think it's on  
21 your list, so let me -- hold on a second.

22 It had a memo. Okay. This is from Ketil, Ketil to  
23 (inaudible), I apologize, Freeman. Thirty-two?  
24 Thirty-two? Exhibit 32 I think.

25 MS. KAYLOR: And my apologies. Our exhibit list, the

1 exhibits got misnumbered at the end, so I think there's  
2 two 32s.

3 MS. ANDERSON: Okay. I'm sorry. It's Exhibit 33 and  
4 the other number is 28. So it starts with an email  
5 from Freeman to Levy (phonetic) and it's a document  
6 that's attached to that.

7 Okay. So now --

8 MS. KAYLOR: Hang on. I don't -- which exhibit?

9 MS. ANDERSON: Thirty-three.

10 MS. KAYLOR: Oh, thank you. I was on 32. Okay.  
11 Thanks.

12 MS. ANDERSON: Yep. So I would ask that this exhibit  
13 be marked -- I ask this document be marked as  
14 Exhibit 31.

15 (Department's Exhibit No. 31 marked for identification)

16 THE WITNESS: Thank you.

17 Q. (By Ms. Anderson) Thank you. Are you familiar with  
18 this exhibit?

19 A. I am.

20 Q. Okay. And can you provide a summary of what this  
21 document is?

22 A. So this is a document that was provided to the City of  
23 Seattle to summarize sources of capital funding for  
24 transportation facilities as well as to provide a broad  
25 general cost burden analysis for different instruments

1 used for revenue for transportation programs.

2 Q. And were you part of the project team?

3 A. I was part of the project team. I was -- I'm sorry.

4 I'm not listed as part of the project team on the

5 report itself; however --

6 Q. I think you were.

7 A. Nope, not on this.

8 Q. Oh, pardon me.

9 A. Not on that draft. I'm sorry.

10 Q. Oh, I'm looking at the December draft. Okay. You

11 are --

12 A. Okay.

13 Q. -- on the December draft.

14 A. Okay. I might need to refer to some pages that might

15 be different, so --

16 Q. Okay.

17 A. Unless you have a copy of the --

18 Q. I do have one copy of this. So is the draft report

19 from --

20 A. This is from October.

21 Q. Is the draft report from October, do you know is it

22 significantly different from the final report in

23 December?

24 UNIDENTIFIED SPEAKER: It is. There's (inaudible).

25 MS. ANDERSON: Okay. Okay. So maybe what I will do

1 is also have this document marked as an exhibit.

2 Q. (By Ms. Anderson) And I guess what I'm asking you to  
3 do is to give a high-level overview of the analysis  
4 related to potential use of transportation impact fees  
5 for the City of Seattle.

6 A. Okay. For the purposes of this, should I refer to page  
7 numbers from that exhibit or from this one?

8 Q. I think at this point, yes, let's refer to the December  
9 version.

10 A. Okay. Then I have the October version so I might need  
11 that.

12 Q. Okay.

13 MS. KAYLOR: My apologies. Which -- I have the  
14 October version in our --

15 MS. ANDERSON: Right.

16 MS. KAYLOR: I don't have a copy.

17 MS. ANDERSON: Right. And I don't have any copies  
18 except this one.

19 MS. KAYLOR: Okay.

20 Q. (By Ms. Anderson) So I strike that. Let's just go  
21 with the version that we've got in the record. Let's  
22 go with the October version and --

23 A. Um-hum.

24 Q. -- that should be sufficient.

25 A. Okay.



1 Q. So go ahead.

2 A. So there is a literature review at the beginning that  
3 does cover other jurisdictions and evaluates what the  
4 sources of transportation revenue are from those  
5 jurisdictions.

6 The analysis that I believe that you're referring to  
7 begins on page 23 of the document that I have here.  
8 And what this does is that it evaluates the relative  
9 cost burden of the taxes and fees associated with  
10 transportation on both renters and on home buyers as  
11 well as for three different income classes. So it's  
12 upper middle, moderate income, and lower income.

13 So the costs that are evaluated here are both direct  
14 in terms of the costs that are directly levied onto  
15 either a landlord or a homeowner and indirect costs  
16 that are associated more with development and real  
17 estate transactions. So these are costs that are not  
18 directly borne by the owner of the property, per se,  
19 but influence the prices at which a property is sold  
20 at. So the evaluation that was done here was just to  
21 break apart and evaluate the differences in the burden  
22 between these different categories.

23 Now, what is important to note here is that the  
24 potential indirect household costs section --  
25 subsection, I believe -- begins on page 29 of this

1 document and it specifically addresses impact fees and  
2 the share of those impact fees as capitalized into  
3 prices. However, what it does state here in the third  
4 full paragraph of the assumptions, under the  
5 assumptions header, is that:

6 "The findings of this analysis should,  
7 therefore, be interpreted as potential costs  
8 to households rather than actual costs. It  
9 is important to keep in mind that buyers in  
10 local markets influence the allocation of  
11 costs between reductions in asset value or  
12 increases in rent. Buyers' level of  
13 willingness to pay into the real estate  
14 market will determine how impact fees and/or  
15 real estate excise taxes influence rents or  
16 prices."

17 So in this case we were looking at capitalized values  
18 to give an understanding of scale of impact fees for  
19 individual units; however, we weren't specifically  
20 looking at the impact fees that -- the final price  
21 effects of impact fees on individual home buyers or on  
22 renters.

23 MS. ANDERSON: Okay. Thank you. At this time I  
24 would move to have admitted Exhibit 31.

25 HEARING EXAMINER: Any objection?

1 MS. KAYLOR: No objection.

2 HEARING EXAMINER: Thirty-one is admitted.

3 (Department's Exhibit No. 31 admitted into evidence)

4 Q. (By Ms. Anderson) Okay. Now, you provided some  
5 testimony about impacts or lack thereof on housing  
6 supply.

7 A. Um-hum.

8 Q. And you also provided some testimony about impacts to  
9 consumers or renters.

10 A. Um-hum.

11 Q. Let's go back and talk a little bit about the impacts  
12 on the effects of housing supply.

13 A. Um-hum.

14 Q. And is it fair to say that your conclusion is that this  
15 proposal will not have a negative effect on housing  
16 supply?

17 A. My testimony is that this proposal in and of itself is  
18 not going to have an impact on housing prices or  
19 housing supply, in that the source of the effects will  
20 be the final parameters of an impact fee program. So  
21 at this stage it is uncertain as to what those impacts  
22 would be and it would be highly speculative for me to  
23 make a statement about what may be, in fact, a  
24 political decision that is made or, you know, specific  
25 characteristics of the program that are determined by

1 the City.

2 MS. ANDERSON: Thank you. No more questions from  
3 me.

4 HEARING EXAMINER: Cross? Oh, sorry. Actually,  
5 we'll just stop there and take a break and come back at  
6 10:30.

7 (Recess)

8 HEARING EXAMINER: And we return to the record with  
9 Mr. Bjorn on cross.

10

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

12 BY MS. KAYLOR:

13 Q. Good morning, Mr. Bjorn.

14 A. Good morning.

15 Q. I have a few questions for you just to follow up on  
16 your testimony.

17 A. Um-hum.

18 Q. I believe Ms. Anderson asked you -- in your testimony,  
19 in response to one of Ms. Anderson's questions you say  
20 you disagree that impact fees will always have an  
21 impact on housing. Can impact fees have an impact on  
22 housing --

23 A. Yes.

24 Q. -- production and affordability?

25 A. Yes.

1 Q. And in this case have you conducted an analysis of the  
2 impact of the current proposal on housing affordability  
3 or production? Have you conducted an independent  
4 analysis?

5 A. I have conducted an independent analysis in terms of  
6 evaluating the information that was presented about the  
7 Comprehensive Plan Amendment, but there is no -- there  
8 is not a sufficient amount of information to evaluate  
9 the specific property price impacts.

10 Q. And so is that -- the question was: Have you conducted  
11 an independent analysis of whether this proposal  
12 impacts housing production or affordability?

13 A. At a high level. But I have not evaluated specific  
14 projects for feasibility or evaluated the specific  
15 market changes as a result of an impact fee program.

16 Q. And what high-level analysis did you conduct?

17 A. An evaluation of the Comprehensive Plan Amendment  
18 overall and an evaluation of the literature associated  
19 with this, coupled with the experience that I have in  
20 real estate and in urban economics.

21 Q. And so I believe your response to a question from  
22 Ms. Anderson was that at this point there was not  
23 specific enough information in your opinion to conduct  
24 an analysis. Are you changing your mind on  
25 that answer?

1 A. No. That was the finding that I would have from that,  
2 that there is no -- there is not a sufficient amount of  
3 information to evaluate what the final impacts of an  
4 impact fee program would be.

5 Q. And so did you conduct such an analysis of what the  
6 impacts would be? Did you conduct an independent  
7 analysis of what the impacts on housing or housing  
8 affordability would be resulting from the impact  
9 proposal?

10 MS. ANDERSON: Objection. Asked and answered.

11 MS. KAYLOR: I don't think it has been answered,  
12 which is why I'm asking again.

13 HEARING EXAMINER: He's sort of answered it, but his  
14 responses are -- there is a contradiction in it.

15 THE WITNESS: Okay.

16 HEARING EXAMINER: And I will allow the repeat of the  
17 same question --

18 THE WITNESS: Um-hum.

19 HEARING EXAMINER: -- because there may be -- she's  
20 actually asked it in the context of a clarification.  
21 Overruled.

22 THE WITNESS: Um-hum. I did not evaluate changes in  
23 housing feasibility specifically as the result of this  
24 Comprehensive Plan Amendment, no.

25 Q. (By Ms. Kaylor) Turning to the three studies that

1 Mr. Shook referenced that you also discussed --

2 A. Yes.

3 Q. -- first I'd like to look, taking those in the order in  
4 which you discussed them, I would first like us to turn  
5 to the Mathur study --

6 A. Um-hum.

7 Q. -- that has been identified as Exhibit 28.

8 A. Yes.

9 Q. Turning to the bottom of page 4, and then I'll ask you  
10 to flip to the top of page 5, do you agree with the  
11 proposal presented in this study, that in cases in  
12 which property taxes do not decrease after imposition  
13 of impact fees and the level of services doesn't  
14 increase, the fee essentially acts like a tax? Do you  
15 agree or disagree?

16 A. I agree.

17 Q. Okay. And moving down that page, page 5 --

18 A. Um-hum.

19 Q. -- to the third full paragraph, do you agree with this  
20 statement that:

21 "Key factors that influence the housing  
22 price effects of impact fees are the degree  
23 of excludability, visibility, and  
24 desirability of the fee-funded infrastructure  
25 and services; the spatial scale of

1 fee-mitigated impacts; the government  
2 policies to reduce the fees' price impacts;  
3 the extent to which the fees help lower  
4 residential property taxes; and the quality  
5 of the house"?

6 Do you agree or disagree with that statement?

7 A. I agree.

8 Q. And then turning to page 3 of the study, was this study  
9 conducted based on information dated from 1993 to 1999?

10 A. Yes.

11 Q. Thank you. And did it look at King County generally?

12 A. Yes.

13 Q. Turning to then the next study that you identified --  
14 hopefully I'm pronouncing this person's name right --  
15 the Burge, the Burge study, which is Exhibit 29.

16 A. Yes.

17 Q. They reach a conditional conclusion.

18 A. Um-hum.

19 Q. On the top of page 10, the first full paragraph of  
20 page 10, they're summarizing their discussion and say:

21 "In summary, impact fees will expand  
22 multifamily housing construction if the  
23 savings experienced by the developer in  
24 obtaining project approval from the local  
25 government exceeds the fees he must pay."



1           Do you agree that that's an accurate summary of their  
2           discussion?

3   A.    It is an accurate summary of this particular study,  
4           yes.

5   Q.    And then turning to the next study that you discussed  
6           by Been, which has been identified as Exhibit 30 --  
7           pardon me for a moment while I find the page that I  
8           wanted to reference here.

9           HEARING EXAMINER:  And I apologize, Ms. Kaylor.  I  
10          want to make sure that I tracked the last question you  
11          asked.  You asked about page 10, the first full  
12          paragraph.  Was that the sentence starting "In  
13          summary"?

14          MS. KAYLOR:  That is correct.

15          HEARING EXAMINER:  And you asked for agreement on  
16          that conclusion?

17          MS. KAYLOR:  That that was an accurate summary of the  
18          conclusion of the study.

19          HEARING EXAMINER:  Right.  Okay.  All right.  Thank  
20          you.

21          MS. KAYLOR:  Yes.

22   Q.    (By Ms. Kaylor)  And just one moment.  I did not mark  
23           the page that I wanted to ask about.  Oh.  Actually, I  
24           simply wanted to reference the same section that you  
25           had referenced, so I don't think I need to do that with

1 an additional question to you.

2 A. Okay.

3 Q. That is why I didn't mark it.

4 So just a few minutes earlier I asked you whether it  
5 was possible that an impact fee program could have  
6 impacts on housing production and housing  
7 affordability. I believe you answered it could --

8 A. Um-hum.

9 Q. -- correct?

10 A. Yes.

11 Q. And in your testimony earlier I heard you talk about a  
12 few considerations that may affect whether an impact  
13 fee has that -- an impact fee program has that effect.  
14 And the items that I heard you talk about specifically  
15 were an appeal process and then whether there were  
16 considerations in the program that allowed a  
17 site-specific evaluation.

18 A. Yes.

19 Q. Do you recall that testimony?

20 A. Yes.

21 Q. So I'd like you to turn to what has been marked  
22 Exhibit -- well, let me figure out what it's been  
23 marked. Let's see here. Exhibit 2. And we may need  
24 to --

25 A. I might need that.

1 Q. -- hand that to you.

2 A. Thank you.

3 Q. This is the proposal that we've been all discussing  
4 over the past day and a little bit more.

5 Can you tell me, in this proposal is there a  
6 requirement that the impact fee program include a  
7 provision for a site-specific evaluation?

8 A. I do not believe so.

9 Q. Is there a provision in this proposal that requires an  
10 appeal process?

11 A. I -- while I do not believe that this particular  
12 proposal includes that, I do believe that the statute  
13 specifically requires an appeal process to be included.

14 Q. And so my question was just about this proposal.

15 A. Okay.

16 Q. And I'll stop there.

17 I heard your testimony that at this point it would be  
18 speculative to evaluate the impacts of this proposal.  
19 And I heard you say a couple things why that would be  
20 true. And one of them specifically is that you weren't  
21 sure ultimately what would be adopted; is that correct?  
22 Is your conclusion that an analysis would be  
23 speculative based on the fact that ultimately you don't  
24 currently have a specific fee adopted in front of you?

25 A. It would be because there is no specific fee structure.

1       There are no other conditions associated with the  
2       program, such as waivers for affordable housing, and  
3       then that there is no schedule for which the proposed  
4       projects on the project list would be constructed.

5   Q.   Any other considerations?

6   A.   I -- there are likely other considerations but I  
7       believe those to be the primary ones.

8   Q.   So going back to your testimony on the considerations  
9       that could affect whether an impact fee program has an  
10      impact on housing or housing affordability, you  
11      discussed that site specific evaluation. Are there  
12      other potential things that could be included that  
13      would reduce that impact or eliminate that impact?

14  A.   Reduce the -- I'm sorry. Reduce the --

15  Q.   An impact on how -- that could prevent there being an  
16      impact on housing.

17  A.   With respect to the program in general and  
18      considerations that could reduce the impacts on housing  
19      in general, negative impacts?

20  Q.   Right.

21  A.   There would be -- determining the particular area in  
22      which the impact fee would apply would be one. The --  
23      you know, the particular transportation study that was  
24      used, I mean, the methodology of that is important but  
25      I can't necessarily speak to that. I -- at this point

1 I -- I'm not sure whether there are any others that  
2 are -- that come to mind immediately, but there are  
3 likely other factors that are included.

4 Q. Okay. So just looking at this one factor that you were  
5 able to identify here --

6 A. Sure.

7 Q. -- sitting here today, and again looking at Exhibit 2,  
8 is there any requirement anywhere here in Exhibit 2  
9 that the Council limit the area in which the impact fee  
10 would apply within the city?

11 A. The Comprehensive Plan Amendment specifies no area in  
12 which it would apply, other than that a program would  
13 be -- and let me get the exact quote here. Essentially  
14 this proposed amendment allows for an impact fee, but  
15 it doesn't specify the area in which it would be  
16 included.

17 Q. And so does the proposed amendment require the Council  
18 to limit the area in which the impact fee would apply?

19 A. It has no requirement, no.

20 Q. Does this proposal require the Council to consider the  
21 type of factors that you have been discussing when it  
22 ultimately adopts a fee?

23 A. This proposal is very broad. It specifies the  
24 methodology that is used in general for setting the  
25 fees, but it does not specify the other considerations

1 that I have noted here.

2 Q. And turning to what's been identified as Exhibit 8,  
3 which is the Determination of Nonsignificance for this  
4 proposal --

5 A. Thanks.

6 Q. -- have you reviewed this document before?

7 A. I have, yes.

8 Q. Okay. And does this document -- I'm just going to  
9 repeat the same question I had for Exhibit 2 in  
10 relation to Exhibit 8. Does this document require that  
11 the Council limit the geographic scope of the fee?

12 A. No, it does not.

13 Q. Does this document require that the Council allow a  
14 site-specific evaluation for the fee?

15 A. No, it does not.

16 Q. And does this document require that the Council design  
17 the fee to make sure there are no impacts to housing?

18 A. It has no statement to that.

19 Q. So you've identified a number of issues that could  
20 determine whether this proposal has impacts to housing.  
21 Don't you think it would be useful for the Council to  
22 have that information when it makes a decision on  
23 whether to adopt this proposal?

24 A. I believe that it's useful for Council to have  
25 information about the tangible effects, that there can

1 be a wide variety of different potential outcomes from  
2 an impact fee program. But this Comprehensive Plan  
3 Amendment does not provide the necessary detail to  
4 determine what those impacts are, except at a very high  
5 general level and not necessarily as a certainty that  
6 the impacts would be negative.

7 Q. Thank you. Turning briefly to the memo that you were  
8 discussing with Ms. Anderson as was part of Exhibit 31.

9 THE WITNESS: Did I give that back to you? I'm  
10 sorry.

11 MS. ANDERSON: Um, it was the December one. This is  
12 the October one. Yes, you did. Sorry.

13 THE WITNESS: Thank you.

14 Q. (By Ms. Kaylor) I just have a general question. You  
15 probably won't need to refer to specific pages.

16 A. Oh.

17 Q. But I just wanted to clarify. Does this memo evaluate  
18 whether the impact fee proposal will have an impact on  
19 housing production or housing affordability?

20 A. To my knowledge, the statements that are here are about  
21 cost burden and are not necessarily to the point of  
22 indicating the specific impacts to housing production.

23 MS. KAYLOR: Thank you.

24 HEARING EXAMINER: Mr. Bjorn, I just wanted to  
25 clarify with you some of your testimony --

1 THE WITNESS: Um-hum.

2 HEARING EXAMINER: -- about it was relative to  
3 identifying that the impact fee may or may not in and  
4 of itself have an impact on production and/or costs, in  
5 part because there was an offset it sounded like or  
6 something like an offset, as I would describe it, for  
7 amenities that were developed as a result of that fee.  
8 And in that you described that as a consideration that  
9 needs to be taken in, something that needs to be taken  
10 into consideration in determining whether there's a  
11 reduction in production and/or affordability.

12 I certainly understand it in the context of  
13 production, as you presented it, and the documents you  
14 have here. If you get good amenities that come with  
15 it, you could have many more, or at least the same  
16 units produced.

17 I'm a little challenged by the concept of that being  
18 applied to affordability. If you get an impact fee,  
19 there is a cost. And even if you get an amenity with  
20 it, that cost is still there. So how -- help me  
21 understand. Are you saying that this is something to  
22 be factored in, that in fact with this factoring in  
23 there would not be any impact on affordability? You  
24 made some statements that were a bit broad in that  
25 respect --



1 THE WITNESS: Yes.

2 HEARING EXAMINER: -- so I'm wanting to understand  
3 the parameters of what you're saying.

4 THE WITNESS: Yes. So with respect to changes in  
5 housing price, what's important and what hasn't in  
6 previous testimony been separated is the increase in  
7 costs just from a tax alone. So if the City were to  
8 simply levy a tax and not provide any benefit, the  
9 impacts that Mr. Shook had referenced in his testimony  
10 are applicable, where you can have developers passing  
11 on costs so that people need to spend more for the same  
12 house, for the same rental unit. And there are also  
13 impacts to developers and landowners as well.

14 With the statements about amenities, the increase in  
15 value is associated with a higher willingness to pay.  
16 So typically with a lot of new development, it's at the  
17 higher end where there is a greater willingness to pay  
18 for certain amenities. This is -- I mean, we're  
19 looking at housing prices -- we're looking at rental  
20 rates in the city above -- well above \$3 per square  
21 foot for certain formats.

22 With respect to affordability, there are some  
23 considerations here. One is that broadly if there is  
24 no impact or even a positive impact on the value that  
25 someone gets, then there's likely no impacts on housing

1 production. And then that means that there is a  
2 competition for other affordable units. So you  
3 essentially don't get folks from the higher end of the  
4 market looking to compete with folks in more affordable  
5 units.

6 There is also provisions in the statute to allow for  
7 waivers of affordable housing projects. So in -- as  
8 per the statute, you can either waive 80 percent of the  
9 impact fees or all of them if you substitute it with  
10 general impact -- general fund revenues.

11 But there are provisions in there such that for  
12 specifically affordable projects that are being  
13 constructed, that those impact fees will not apply.  
14 And those are -- those are rent controlled such that  
15 the additional value of the amenity is not applicable,  
16 it's subject to the median income in the county.

17 So altogether what we're looking at with the -- like  
18 the impacts here -- is that you will get increases in  
19 prices, but those will be associated with those amenity  
20 values and specifically associated with higher-end  
21 units that are being constructed.

22 There are other impacts that are in the market, but  
23 does that -- I'm not sure if I'm addressing all of the  
24 content of the question that you had, but...

25 HEARING EXAMINER: I guess what I'm trying to get to

1 the root of is the scope of your statement of what  
2 you're saying about how this applies to affordability.

3 THE WITNESS: Yeah.

4 HEARING EXAMINER: I understand again on the  
5 production side. Are you saying that with regard to  
6 the impact on affordability, that because of the  
7 amenity addition, as you factor that in against  
8 increased costs of the impact fee, is it that in  
9 your -- in this theory, as you're applying it, that  
10 there are no costs to affordability or that it's  
11 possible that there would not be any? I'm not sure if  
12 you're carte blanche that, nope, there's no impact on  
13 affordability. I understand how you get to your  
14 impacts --

15 THE WITNESS: Yeah.

16 HEARING EXAMINER: -- but I guess I'm not seeing -- I  
17 mean, I get it, people are willing to pay for more --

18 THE WITNESS: Um-hum.

19 HEARING EXAMINER: -- but that still sounds like an  
20 increase in cost to me.

21 THE WITNESS: Yes.

22 HEARING EXAMINER: And that does impact  
23 affordability.

24 THE WITNESS: Um-hum.

25 HEARING EXAMINER: And so if that's how it plays out,

1       it seems within the realm of possibility as opposed to  
2       again carte blanche that it would never happen.

3           THE WITNESS: Um-hum. I think that it's strongly  
4       dependent on how the program is constructed, because  
5       there are elements, such as provisions for -- for  
6       example, the way that impact fees treat accessory  
7       dwelling units, for instance, that can mitigate the new  
8       construction of those or of affordable housing  
9       projects.

10       With existing development, something else to keep in  
11       mind is that this is -- this is not looking to -- there  
12       are going to be certain cases where development is  
13       going to go in, regardless of whether there is an  
14       impact fee program or not, and those higher-end homes  
15       are not going to be affordable units. So when we're  
16       talking about the price impacts to affordable housing,  
17       I think that there are -- I think that the short  
18       version is that there are possible impacts, but it's  
19       wholly dependent on the way that the program is  
20       constructed. It's not clear from anything that's given  
21       here as to whether there would be price impacts.

22       And that -- again, that depends on how, you know, how  
23       the subject area is drawn, whether it includes areas  
24       with affordable housing. That incorporates whether --

25           HEARING EXAMINER: And I --

1 THE WITNESS: Oh, sorry.

2 HEARING EXAMINER: -- I don't want to cut you off,  
3 but I think --

4 THE WITNESS: Oh no. That's fine.

5 HEARING EXAMINER: -- I think I understand those  
6 variables --

7 THE WITNESS: Okay.

8 HEARING EXAMINER: -- and I just wanted to make sure  
9 that I understood the scope of --

10 THE WITNESS: Okay.

11 HEARING EXAMINER: -- how applicable that was or not.  
12 It sounds like it's possible, but yes there's a chain  
13 of possibilities that it would not as well. Thank  
14 you.

15 THE WITNESS: Sure.

16 MS. ANDERSON: And before we move on, I actually --  
17 Mr. Bjorn prepared a memorandum that was in the City's  
18 witness and exhibit list. It basically is less detail  
19 than the testimony he just provided, but it is kind of  
20 a summary of his testimony. And I meant to introduce  
21 it at the time that he was testifying. I would like to  
22 introduce it at this time, hoping that it might be  
23 helpful to the Examiner.

24 But if -- and opposing counsel has seen it, so if you  
25 have an objection, let me know, but...

1 MS. KAYLOR: No objection.

2 HEARING EXAMINER: Okay.

3 MS. ANDERSON: Then obviously this is marked --

4 HEARING EXAMINER: Mark that as Exhibit 32.

5 (Department's Exhibit 32 marked for identification)

6 MS. ANDERSON: Thank you.

7 THE WITNESS: Thank you.

8 HEARING EXAMINER: And I don't have any further  
9 questions if you're ready for redirect.

10 MS. ANDERSON: Yes, I am.

11 MS. KAYLOR: Excuse me, but can I just have the  
12 opportunity, since this memo didn't come in on direct,  
13 to re-review it and if I have questions, to ask  
14 questions about it?

15 HEARING EXAMINER: Let's do that now, yes.

16 MS. KAYLOR: Thank you.

17 HEARING EXAMINER: We'll pause for that.

18 MS. KAYLOR: And I have read it before, but I just  
19 want to be sure that I refresh my memory here.

20 I have no specific questions about the memo.

21 MS. ANDERSON: Okay. Great.

22 HEARING EXAMINER: And redirect?

23 MS. ANDERSON: Thank you.

24 / / /

25 / / /

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

2 BY MS. ANDERSON:

3 Q. Mr. Bjorn, you -- I wanted to follow up with a couple  
4 of questions. Is it your understanding that the City  
5 would be required to charge development the maximum  
6 defensible fee that had been calculated?

7 A. It's my understanding from the statute in comparable  
8 programs that that is not required.

9 Q. So in other words, the City can charge up to but not  
10 more than --

11 A. Yes.

12 Q. -- the maximum defensible fee?

13 A. Yes.

14 Q. Yes. Thank you. Okay.

15 And as to the Mathur study, Ms. Kaylor asked you  
16 whether or not you agreed with the determination that a  
17 fee could act like a tax.

18 A. Yes.

19 Q. Okay. And my notes indicate here that you indicated  
20 that it could act like a tax?

21 A. Yes.

22 Q. And what is the significance of that?

23 A. So as I'd noted previously, when the study specifies  
24 that this may act like a tax, the implication is that  
25 there is no direct benefit that's associated with the

1 impact fee. And as such, the tax is simply just an  
2 additional cost associated with development. So that's  
3 the particular use in this document for that  
4 terminology.

5 Q. Okay. So is it your opinion that an impact fee program  
6 would always act like a tax?

7 A. My opinion is that, no, it will not always like a  
8 tax.

9 Q. Okay. And the reason for that is because there would  
10 be an amenity with the projects proposed; is that  
11 correct?

12 A. Yes.

13 Q. Okay. And is it your opinion that the projects  
14 proposed -- the projects identified as transportation  
15 impact fee eligible in Exhibit 2 are the types of  
16 projects that would provide an amenity?

17 A. I have an answer, but if I could get Exhibit 2, that  
18 would be -- I don't believe that I have it here.

19 THE WITNESS: Ah, thanks.

20 MS. ANDERSON: Here. It should be there, yeah.

21 Yep.

22 UNIDENTIFIED SPEAKER: It's the draft bill.

23 THE WITNESS: Oh. Was it one that I had? Ah, yes.

24 So I've reviewed the list, but I have not reviewed  
25 all of the characteristics of each program, such that I



1 can't make a clear determination whether these --  
2 whether these projects would for certain result in  
3 amenity value.

4 However, the general types of projects that are  
5 included on here, including improvements to transit  
6 access, improved pedestrian and bike accessibility, and  
7 Complete Streets projects, are very consistent in the  
8 literature with what is considered to be an amenity for  
9 in the housing market.

10 Q. (By Ms. Anderson) Okay. And so is it your opinion  
11 that these types of projects identified in Exhibit 2  
12 would be the type that would be viewed as an amenity in  
13 the market?

14 A. Generally, yes.

15 Q. Thank you. And then I'd like you to turn to  
16 Exhibit 31, please.

17 A. Yes.

18 MS. KAYLOR: And I'm going to object to any  
19 questions -- oh, I apologize. I thought we were  
20 looking at Exhibit 32. Not objecting to questions --

21 MS. ANDERSON: Oh, okay.

22 MS. KAYLOR: -- on 31.

23 Q. (By Ms. Anderson) Is it your understanding that this  
24 was a final report?

25 A. The version that I have here --

1 Q. Yes.

2 A. -- is the draft version. It is not a final December  
3 2018 report.

4 Q. Okay. And were you involved in preparing the final  
5 December 2018 report?

6 A. I was generally involved with providing a review of the  
7 document. I cannot remember specific dates, but I have  
8 had involvement throughout the project.

9 Q. Okay. And do you -- did you provide any  
10 recommendations or modifications from this October 2018  
11 report that you can recall at this time related to cost  
12 burden?

13 MS. KAYLOR: And I'm going to object because this is  
14 beyond the scope of cross. I did not ask about the  
15 final version or really anything -- any specifics about  
16 this report.

17 HEARING EXAMINER: Do you have a response,  
18 Ms. Anderson?

19 MS. ANDERSON: I do have a response. And I'm just  
20 trying to see what, in fact, Ms. Kaylor asked whether  
21 or not this affects the cost burden. I guess my  
22 response is it just goes to Mr. Bjorn's involvement in  
23 the development of this report and ultimately the final  
24 report. And...

25 HEARING EXAMINER: Which I don't think Ms. Kaylor

1 really asked questions about. You had some questions  
2 about that earlier, but --

3 MS. ANDERSON: Yeah.

4 HEARING EXAMINER: -- so sustained.

5 MS. ANDERSON: All right. I have no further  
6 questions for you.

7 THE WITNESS: Thank you.

8 HEARING EXAMINER: Thank you, Mr. Bjorn.  
9 City's next witness?

10 MS. ANDERSON: Yes. I would like to call Mr. Mark  
11 Mazzola, please.

12 HEARING EXAMINER: Please state your name for the  
13 record.

14 THE WITNESS: Sure. Mark Mazzola.

15 HEARING EXAMINER: Do you swear or affirm the  
16 testimony you provide in today's hearing will be the  
17 truth?

18 THE WITNESS: I do.

19

20 MARK MAZZOLA: Witness herein, having first been  
21 duly sworn on oath, was examined and  
22 testified as follows:

23 / / /

24 / / /

25 / / /

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

2 BY MS. ANDERSON:

3 Q.   Hello, Mr. Mazzola.

4 A.   Hello.

5 Q.   Can you tell me a little bit about your experience with  
6       SEPA?

7 A.   Sure.  So I've been in the Environmental Services Group  
8       for the Seattle Department of Transportation for the  
9       last 12 years.  I served as a senior environmental  
10      analyst from 2007 to 2000 -- or through 2011 -- then  
11      early 2012 became the environmental manager, then just  
12      recently last fall had the SEPA responsible official  
13      authority delegated down to my position.

14       MS. ANDERSON:  I'm going to ask that this document be  
15      marked as Exhibit 32.

16       HEARING EXAMINER:  We're on 33.

17       MS. ANDERSON:  Thirty-three.

18       (Department's Exhibit No. 33 marked for identification)

19 Q.   (By Ms. Anderson)  Do you recognize this document?

20 A.   Yes, I do.  It's my -- a copy of my resume.

21 Q.   Okay.  All right.  Can you tell me some of your job  
22      responsibilities in your current role for Seattle  
23      Department of Transportation?

24 A.   Sure.  So I manage a small team of folks and we're  
25      responsible for the environmental review permitting and

1 environmental compliance for our construction projects  
2 and we also evaluate non-project actions, such as our  
3 modal plans that were referenced earlier in the  
4 hearing.

5 Q. Okay. All right. And beyond your current position, do  
6 you have any other past professional or academic  
7 experience in planning and environmental review?

8 A. I do. I have a graduate degree in community and  
9 regional planning from the University of Texas in  
10 Austin and had a variety of sort of environmental  
11 policy jobs. But more relevant would be I was a  
12 consultant for a year for the URS Corporation in  
13 Oakland, California, working on California  
14 Environmental Quality Act decisions, NEPA documents in  
15 permitting as part of that position.

16 Q. And in your opinion is that CEQA somewhat similar to  
17 SEPA?

18 A. Yes, very familiar -- or very similar. Excuse me.

19 Q. Okay. And CEQA, that's the California version of --

20 A. Environmental quality, correct. That's California's  
21 version of SEPA.

22 Q. All right. Can you describe your specific experience  
23 with SEPA regarding review of proposals and/or issuance  
24 of threshold determinations?

25 A. Sure. So since starting with the Seattle Department of

1       Transportation, I've reviewed dozens of projects over  
2       the last 12 years to determine, first of all, our --  
3       and primarily looking at our capital projects, so  
4       delivered through our SDOT's Capital Projects and  
5       Roadway Structures Division. Those are projects where  
6       we hire a contractor to -- it's the design-bid-build  
7       projects.

8             And so we'll evaluate projects to, first of all,  
9       determine whether they qualify for a SEPA exemption.  
10       If not, we'll draft up a SEPA checklist. And we've had  
11       a hand -- well, a few instances, such as our Elliott  
12       Bay Seawall project, and our Waterfront project where  
13       we've determined early on that those would rise to the  
14       level of potential significant adverse impacts, so we  
15       conducted EISs for those projects.

16 Q.       Okay. And you were involved in both the Seawall  
17       project and the Waterfront Seattle?

18 A.       That's correct. And just for the record, the  
19       Waterfront Seattle, it was officially titled the  
20       Alaskan Way Promenade and Overlook Walk Project, so...

21             MS. ANDERSON: Okay. Great. Okay. All right. So I  
22       would move to have Mr. Mazzola's resume admitted into  
23       the record.

24             MS. KAYLOR: No objection.

25             HEARING EXAMINER: Thirty-three is admitted.

1 (Department's Exhibit No. 33 admitted into evidence)

2 HEARING EXAMINER: We still have 32 was not --

3 MS. ANDERSON: Oh. I would also move to have Exhibit  
4 32 admitted into the record, please.

5 HEARING EXAMINER: Any objection?

6 MS. KAYLOR: No objection.

7 HEARING EXAMINER: Thirty-two is admitted.

8 (Department's Exhibit No. 32 admitted into evidence)

9 MS. ANDERSON: Thank you.

10 Q. (By Ms. Anderson) All right. Are you familiar with  
11 the Determination of Nonsignificance that is the  
12 subject of this appeal?

13 A. Yes, I am.

14 Q. Okay. And have you reviewed it?

15 A. I have.

16 Q. Okay. Are you also familiar with the proposal that is  
17 the basis for the environmental review?

18 A. Yes, I reviewed that as well.

19 Q. Okay. All right. In addition did you have the  
20 opportunity to review the SEPA checklist?

21 A. I did, yes.

22 Q. Okay. All right. So we're going to talk about each of  
23 these documents in turn. So first I'd like to talk a  
24 little bit about the SEPA checklist. And in your  
25 opinion does the SEPA checklist that was used in this

1 case conform to the WAC SEPA form?

2 A. Yes, it does.

3 Q. Okay. And I believe that SEPA checklist is Exhibit 7  
4 and it should be in the pile. If it's not, I will give  
5 it to you. There it is.

6 A. Oh. Thanks.

7 Q. Okay. So is this the checklist you reviewed?

8 A. It is, correct.

9 MS. ANDERSON: Okay. And I'm also going to ask for  
10 this document to be marked as an exhibit. I'd ask that  
11 this be marked as Exhibit 34.

12 (Department's Exhibit No. 34 marked for identification)

13 THE WITNESS: Thank you.

14 Q. (By Ms. Anderson) Are you familiar with this document?

15 A. The Exhibit 34?

16 Q. Yes.

17 A. Yes. It's the SEPA checklist template that's included  
18 in -- I take it some -- either in the WAC or the SMC.

19 Q. Yes, in the WAC. Okay. So all right. So you had the  
20 opportunity to review the SEPA checklist that was  
21 prepared in this case?

22 A. Yes.

23 Q. Okay. And did you have the opportunity to hear the  
24 testimony by Mr. Steirer that there were some  
25 deficiencies in this checklist?



1 A. Yes, I did hear that testimony.

2 Q. Okay. And in your opinion do you believe that there  
3 are some deficiencies or any deficiencies that he  
4 identified with respect to the checklist?

5 A. No. I disagree with Mr. Steirer's testimony. I don't  
6 believe there are deficiencies in the checklist.

7 Q. Okay. And can you elaborate on that? Why do you  
8 believe there are not deficiencies?

9 A. Sure. The one I feel I'm qualified to speak to is the  
10 discussion about the list of transportation projects  
11 that were listed as eligible in the proposed Comp Plan  
12 Amendment. And I believe the testimony was that those  
13 should have been included as part of the analysis of  
14 this non-project action, and I disagree.

15 Q. Okay. And why is that?

16 A. I feel that similar to previous testimony that we've  
17 heard, that it's kind of a number of reasons.  
18 Number 1, that the proposal of the Comp Plan Amendment  
19 doesn't direct the Department or the City to construct  
20 those projects. Rather it's just a list of projects  
21 that would be eligible to receive that funding.

22 And that eligibility does not -- that does not  
23 provide a certainty that those projects would actually  
24 get built. There's just a number of factors that play  
25 into the construction of those projects. So that's one

1 kind of factor.

2 The second is that a lot of these projects, there was  
3 a project description with them, but it is a very high  
4 level, and so it would be somewhat speculative to go  
5 through those projects and try and do any kind of  
6 evaluation at this point in time.

7 Similar to that, actually, is if you're just going by  
8 those project descriptions, many of those would -- on  
9 their face, as written in the document -- would  
10 presumably qualify for a categorical exemption. And so  
11 under SEPA, then no more evaluation is required.

12 But, you know, as a practitioner I would want more  
13 detail because -- just because of a description, there  
14 could be other factors that play into that that could  
15 kick those projects out of an exemption status. So  
16 again it's just -- it's too soon. These projects  
17 aren't ripe yet for review.

18 And then thirdly, as part of our project delivery  
19 process, we evaluate -- we start our SEPA evaluation  
20 basically somewhere between zero and 30 percent design.  
21 So in other words, once we're sure that the project is  
22 going to get built, or at least with some certainty,  
23 that we will begin our SEPA evaluation.

24 And I want to be clear that when I say "once we're  
25 sure that the project is going to be built," that's --

1       that means that we as a department are moving forward  
2       with the project.  It's not a done deal as far as SEPA  
3       goes in terms of there's no turning back yet.  I mean,  
4       that's where we strive to complete our SEPA reviews,  
5       before design is finished, but for sure before we let a  
6       contract for a construction contract, because that is  
7       the point of no return for us and that's the time by  
8       which we need to have SEPA complete.

9   Q.   Okay.  All right.  That's very helpful.  All right.  So  
10       in your opinion could -- and I believe there was some  
11       testimony about delay in traffic.

12  A.   Um-hum.

13  Q.   In your opinion could delay in traffic have been  
14       evaluated at the time that the DNS was issued?

15  A.   Again, I think it would just have been speculative.  
16       You know, at some level you could say that any  
17       construction project could result in some level of  
18       delay in traffic.  I mean, I think just living and  
19       moving throughout the city, we're all very aware of  
20       that.  But just because of that fact doesn't mean it  
21       would be appropriate to discuss that here in the SEPA  
22       checklist.

23  Q.   And likewise would it be appropriate to factor that  
24       into the Determination of Nonsignificance?

25  A.   Correct.

1 Q. So to be clear, it would not be appropriate?

2 A. It would not be appropriate to factor the traffic delay  
3 in the SEPA checklist or the DNS.

4 Q. Okay. All right. Okay. So I would like to ask you to  
5 turn to the SEPA environmental checklist form, which I  
6 believe is Exhibit 33. Does this form address  
7 non-project actions?

8 A. Excuse me. Is this Exhibit 34, the template?

9 Q. Thirty-four, the template, yes.

10 A. Okay.

11 Q. Thank you. And I guess I'd direct you to the first  
12 page of the template.

13 A. Sure. Okay. Okay. So the -- yes. So it mentions --  
14 excuse me. You asked about does this template  
15 contemplate the non-project actions? I may be  
16 rephrasing your question. But yes, there's a section  
17 here near the bottom of the first page where it says,  
18 "Use of Checklist for Non-project Proposals." And for  
19 that it says, "Complete the applicable parts of Section  
20 A and B plus the supplemental sheet for non-project  
21 actions Part D."

22 Q. All right. And did you happen to hear Mr. Steirer's  
23 testimony that in his opinion the information provided  
24 by Mr. Swenson and Mr. Shook should have been included  
25 in the SEPA checklist?

1 A. I did hear that testimony.

2 Q. Okay. And my understanding was that the basis for that  
3 was that he's of the opinion that that information  
4 would contribute meaningfully to the analysis of the  
5 proposal.

6 So let's talk specifically about construction or  
7 construction impacts. Do you believe that inclusion of  
8 that information in this checklist would be necessary  
9 to -- would be necessary and would contribute  
10 meaningfully to the analysis of the proposal?

11 A. I don't believe that the discussion of construction  
12 would be necessary or meaningful to this particular  
13 proposal for the Comp Plan Amendment. Again, they're  
14 two different things in my mind. The Comp Plan  
15 Amendment was to begin the process to allow -- as I  
16 understand, to allow transportation impact fees to help  
17 provide an additional source of funding for a list of  
18 proposed transportation projects that have already been  
19 identified.

20 So again, the approval and decision-making process  
21 about this list of transportation projects going  
22 forward, that goes through a different process than  
23 this City Comp Plan Amendment would. So again, just  
24 to -- in my understanding, this has more to do with the  
25 sources of funding for these transportation projects

1       rather than the construction of these transportation  
2       projects of themselves.

3   Q.   Okay.  Okay.  And would the opinion you just gave also  
4       tie specifically to impacts to transportation?

5   A.   Correct.  Correct.  Because the appropriate place to  
6       evaluate the impacts of those projects, whether it's  
7       through construction on things like traffic impacts or  
8       traffic delay, would be through the decision-making  
9       process and delivery process of those projects.

10  Q.   Okay.  And similarly any impacts to pedestrian access?

11  A.   Correct.  Same thing, yeah.  That would be appropriate  
12       through the delivery and decision-making process of  
13       those transportation projects as opposed to the  
14       decision-making process about the funding for those  
15       projects.

16  Q.   Okay.  Very good.  All right.  All right.  Mr. -- and  
17       you indicated you were here for Mr. Steirer's  
18       testimony.  Do you agree with his opinion that the  
19       proposal here in Exhibit 2, that it is interdependent  
20       with the adoption of a transportation impact fee  
21       program?

22  A.   I'm sorry.  Could you repeat the question, please?

23  Q.   Yes.  I'm wondering if you would agree with  
24       Mr. Steirer's testimony that the Comprehensive Plan  
25       Amendment, that's the proposal here, and a

1 transportation impact fee program, which is not the  
2 subject of this appeal, whether or not those are  
3 interdependent.

4 A. So my understanding of how the process works is that  
5 this is the first step in the implementing of a  
6 potential future transportation impact fee program, so  
7 that the Comp Plan Amendment in and of itself  
8 wouldn't -- would presumably lead to the establishment  
9 of a transportation impact fee program, but it was  
10 unclear about when and how that could actually happen.  
11 So that it is a standalone or independent non-project  
12 action at this point in time.

13 Q. And so you disagree with Mr. Steirer's testimony that  
14 those -- both the Comp Plan and the actual details of  
15 the transportation impact fee program must have been  
16 evaluated at the same time?

17 A. Correct.

18 Q. All right. Mr. Steirer also testified about some SEPA  
19 cumulative impacts. Are you familiar with the term  
20 "cumulative impacts" --

21 A. Yes, I am.

22 Q. -- under SEPA?

23 Okay. And can you tell me a little bit of your  
24 understanding of cumulative impacts under SEPA?

25 A. Sure. Just perhaps in simple terms, it's basically

1       when you're looking at potential adverse impacts of a  
2       particular project, you want to also consider similar  
3       potential adverse impacts that may be happening through  
4       other means, whether it's say -- to use an example of a  
5       transportation project, if we're looking at eliminating  
6       parking, which people get very excited about, of  
7       course, we would also look about at what other  
8       development may be taking place around the -- within a  
9       particular project area that may also be removing  
10      parking, then trying to consider that, okay, together  
11      are these things resulting in a much greater impact  
12      than we would otherwise see just from our project.

13 Q.   And in your opinion did the City fail to look at  
14      cumulative impacts associated with this proposal?

15 A.   I don't believe so. I think cumulative impacts in the  
16      kind of realm of a Determination of Nonsignificance, a  
17      SEPA checklist, it's sort of baked into the analysis.  
18      I'd argue there's no specific questions in the SEPA  
19      checklist that elicit a response specific about  
20      cumulative impacts, but it is something -- you know, if  
21      you're to read the SEPA code, it is something that when  
22      you are issuing a Determination of Nonsignificance, it  
23      is something that you are meant to be able to consider  
24      when you're issuing that DNS.

25 Q.   All right. And speaking of the SEPA checklist, is



1           there any notation in the SEPA checklist for impacts to  
2           housing affordability?

3   A.    No.  There's questions about housing units either being  
4           added or removed, and so to me that's quantity, but  
5           there's no specific questions that relate to housing  
6           cost or affordability.

7           MS. ANDERSON:  All right.  Now I would like to hand  
8           you another document that I would ask to be marked as  
9           Exhibit 35.

10          (Department's Exhibit No. 35 marked for identification)

11   Q.    (By Ms. Anderson)  Are you familiar with this document?

12   A.    Yes, I am.  It's a document I helped fill out for you  
13           when you had some questions about the status of the  
14           environmental review for different projects.

15   Q.    Okay.  All right.  So this list came from the proposal.  
16           And what I'd like to understand is whether or not you  
17           would expect environmental review to be conducted for  
18           these projects on this list.

19   A.    Sure.  So the list, kind of the first group there, is  
20           titled "CIP."  That's our capital projects and these  
21           are projects that are delivered through my division  
22           where we hire a contractor to help construct them.  So  
23           yes, I do expect the environmental review to be done  
24           with some group.

25          Some, as you can see in the table, we have projects

1 that are already under way in terms of their  
2 environmental review. And it varies if -- you'll see  
3 SEPA and NEPA if we receive federal funding, which is  
4 another source of funds for our project, federal grant  
5 money, then we'll be under a NEPA process, the National  
6 Environmental Policy Act.

7 The next -- oh, go ahead.

8 Q. And I guess let me stop you.

9 A. Sorry. Excuse me.

10 Q. Before you go on, I just want to make clear.

11 A. Um-hum.

12 Q. This was the projects -- you were here -- were you here  
13 and did you hear the testimony of Appellant's experts  
14 that there would be -- that there would be impacts due  
15 to these proposals?

16 A. Yes. I heard their testimony that their opinion is  
17 that there would be various construction impacts for  
18 these proposals.

19 Q. Okay. All right. And so I'd like you to just walk  
20 through this list and tell me if (A) you'd expect  
21 environmental review to occur and what is the status of  
22 environmental review to date?

23 A. Sure. And should I just go project by project?

24 Q. You can do it any way you want it.

25 A. Okay.

1 Q. You can do it project by project or you can group them.

2 A. Sure. So I'll start with the list of capital  
3 improvement projects. We have the Northgate Ballard to  
4 Downtown Transit Improvements. That project is still  
5 within its planning stage, but we do have an  
6 environmental lead assigned to that project. So again,  
7 it's the kind of thing where it's a little too early to  
8 really start any kind of meaningful review. Although  
9 there's -- I'll just stop there.

10 There's -- we -- as I mentioned before, we typically  
11 really start our environmental review in earnest when  
12 there's some level of design, because that gives us the  
13 information we need to be able to fill out a SEPA  
14 checklist, for example.

15 The Delridge Multimodal Improvements, that is in  
16 process as well. Here's an example of we're partnering  
17 with King County Metro on this project. It's a joint  
18 SDOT/Metro project. And if I'm not mistaken, I believe  
19 that King County is the agency that's actually writing  
20 up the SEPA checklist, because the route goes out of  
21 outside the city limits, so we felt it was more  
22 important that they be the -- or more appropriate for  
23 them to be the lead agency.

24 We have our Madison Street Bus Rapid Transit Project.  
25 This is a project where actually the NEPA and SEPA

1 process were completed a couple of years ago. But then  
2 due to a change in fleet type and some other project  
3 changes, we're conducting a re-evaluation under NEPA  
4 right now, so we're hopefully nearly done with that.

5 The Market/45th Transit Improvements and the next  
6 one, the Rainier/Jackson -- I'm not sure if that cut  
7 off -- anyway, those next two projects are both still  
8 in the planning stages. So again we have environmental  
9 leads assigned to those projects but they're just kind  
10 of waiting for the project to get a little bit further  
11 on in development.

12 We have our Rapid Ride Roosevelt Project. We are in  
13 the process of conducting a NEPA environmental  
14 assessment for that project. That's still in its draft  
15 stages.

16 Our Grand Street Station Project, that is another  
17 project still in the early planning stage. And that is  
18 a project where my understanding is that Sound Transit  
19 would likely be the agency conducting the environmental  
20 review for that.

21 Our accessible --

22 HEARING EXAMINER: I'd ask you just to --

23 THE WITNESS: Oh. Sure.

24 HEARING EXAMINER: You're going through each project  
25 already and I'm curious also not just about the

1 environmental review timing, which you're going through  
2 now, but also simply development or implementation of  
3 the project, if you know, if when you're going through  
4 them you could mention that.

5 THE WITNESS: Sure. And I'll try and -- if I know,  
6 I'll say so.

7 HEARING EXAMINER: If you don't, you don't --

8 THE WITNESS: I don't necessarily --

9 HEARING EXAMINER: -- I (inaudible), yeah.

10 THE WITNESS: -- know it though.

11 HEARING EXAMINER: Sure.

12 THE WITNESS: So I could say at least if a project's  
13 in our planning stage now, my thought would be it  
14 probably would be late 2020/2021 at the soonest that it  
15 would actually probably get constructed, because  
16 usually planning can last -- depending on how much kind  
17 of going back and forth there is, that can last several  
18 months if not a year. Our design process can typically  
19 last a year, even for something as simple as adding  
20 some new sidewalks, and then construction after that.  
21 So a project can easily have, you know, a three- to  
22 five-year life span from kind of planning through  
23 construction, and many times much longer than that.

24 But then I'll also say for a smaller project, if it's  
25 a matter of just adding some curb bulbs or curb ramps

1 or some quick intersection improvements, those can move  
2 faster, especially if they're not being constructed by  
3 our -- through a contractor. And I'll speak a little  
4 bit more about that as I go through.

5 The next two, the Accessible Mt. Baker and East  
6 Marginal Way Heavy Haul Improvements, those again both  
7 still in the planning stage, so no meaningful  
8 environmental review has been done yet.

9 The next group of projects I'm not as familiar with,  
10 to be honest. They are -- and that's why I sort of  
11 referred in this table to somebody else. The way our  
12 project delivery system works is we have a different  
13 division, our project development division. That's  
14 where projects kind of have their genesis before  
15 they -- and then there's two ways that they can go. If  
16 they reach a certain dollar threshold, and I believe  
17 that's around 90- to \$100,000, they'll move into my  
18 division to become a contractor-built project. If they  
19 stay below that dollar threshold, then they can be our  
20 crew built. And then that process, and I'll say I'm  
21 not as familiar with, but my understanding is those can  
22 move a lot faster, but they tend to be much smaller in  
23 scale and scope.

24 And then some of these -- so these kind of lists of  
25 improvements that are identified here may be standalone

1 projects or they could get wrapped into a larger  
2 corridor project. If we have an arterial  
3 reconstruction project, for example, that intersects  
4 with one of these intersections, what we try and do for  
5 efficiency sake is to pull those projects together so  
6 these intersection improvements would be built along  
7 with the main corridor reconstruction. And then  
8 they're evaluated all together under SEPA.

9 Q. (By Ms. Anderson) And so let me ask you a follow-up  
10 question on --

11 A. Sure.

12 Q. -- on these, some of these projects that are identified  
13 below the gray bar. Are these all projects that are  
14 still in the project development division? I believe  
15 you referred to that. Is it your understanding?

16 A. As far as my understanding, yes.

17 Q. Okay.

18 A. Yeah.

19 Q. Okay. So this is -- if, in fact, they are in the  
20 project development division, that would indicate that  
21 they are still being developed in the project and it  
22 would subsequently be reviewed under SEPA; is that  
23 correct?

24 A. Right. If -- I mean, the way our -- so our process  
25 isn't perfect, but the way it's supposed to work is

1       that, you know, we review on any project that's going  
2       to be built.

3             And so that delivery -- it's a much more refined  
4       process if a project moves into our Capital Projects  
5       Roadway Structures Division. So to the extent that any  
6       of these projects listed below the gray bar become part  
7       of a capital project, we'll certainly look at that.

8             And then we try and capture also the projects that  
9       aren't -- or that may be just crew built. But to be  
10      frank, we don't always catch them just because folks  
11      who deliver those projects don't always know to come in  
12      front of us. But I think it's just given the nature of  
13      these projects and their scale and scope, they are -- I  
14      would argue that they would qualify for categorical  
15      exemptions anyway, so...and then under SEPA, you're not  
16      always -- it's not always required to document that  
17      categorical exemption.

18   Q.    Okay. So do you know what's contemplated in some of  
19      these proposals? For example, Greenwood/Phinney/67th  
20      to Fremont Complete Streets?

21   A.    No, I don't know. I mean, I understand what "Complete  
22      Streets" means, trying to get as many various -- trying  
23      to get the corridor to support as many different types  
24      of modes of transportation as they can. But as far as  
25      what the specific improvements along that corridor



1 would be, it's not clear.

2 Q. And is that because the project hasn't been fully  
3 developed?

4 A. Correct. Just giving it a name isn't enough,  
5 unfortunately, to know exactly what's going on. And  
6 then even when we start out with a project, that can  
7 change over time just once there's time to talk with  
8 the community, it can rely on the amount of funding  
9 available as well, and then other factors that just  
10 haven't been considered yet or even discovered until  
11 you actually start undertaking design work.

12 Q. And how many of these projects, if you could estimate,  
13 would likely qualify for the finish contractor build?

14 A. Oh. So certainly the ones above the gray bar, those  
15 are already within our division and will be contractor  
16 built. And I'm sorry, the other ones, it would just be  
17 too speculative to try and guess. I mean, I -- yeah.

18 Q. All right. And it's true on the second page as well?

19 A. Correct, on the second page as well.

20 Q. Okay. All right. So were you here to hear some  
21 testimony about some of the modal plans?

22 A. Yes, I was.

23 Q. Okay. And can you help me understand whether or not  
24 the impacts of some regional plans would have been  
25 evaluated or will be evaluated by your division?

1 A. Yes. So my division, my group, either myself or folks  
2 on my team evaluated the various modal plans as  
3 non-project actions under SEPA.

4 And then as the projects identified in those modal  
5 plans get delivered, we do independent -- or, excuse  
6 me, additional SEPA reviews as project level reviews of  
7 them as well.

8 Q. Okay. And that would be true for the Pedestrian Master  
9 Plan?

10 A. Correct. Pedestrian Master Plan, the Transit Master  
11 Plan, the Bike Master Plan, and then the Freight Master  
12 Plan as well.

13 Q. Okay.

14 A. And I will say they're not -- there may be elements of  
15 those plans or projects or initiatives identified in  
16 those plans that aren't physical projects. In other  
17 words, they could be programs for commute trip  
18 reduction, for example. We would not look at things of  
19 that sort. It would -- we look at the construction  
20 projects, if I can make a distinction between that,  
21 those two things.

22 Q. Okay. And also would you look at non-project actions,  
23 for example, legislation?

24 A. We do look at legislation as non-project actions kind  
25 of in a variety of different things. But in relation

1 to the modal plans, unless it's something -- I mean,  
2 there's an exemption for government policies and  
3 procedures, unless they result in a substantive change  
4 or kind of regulatory aspect of the environment. And  
5 so we'll take a look at that and see if we need to do a  
6 SEPA checklist or not.

7 And that's where the folks implementing those  
8 programs also coordinate closely with the City's law  
9 department and the folks who draft the legislation,  
10 just to make sure, okay, do we need to do SEPA on this  
11 or not.

12 Q. Okay. All right. Let's see. And I believe that there  
13 were some projects identified on this list, for  
14 example, 16th Avenue South at East Marginal Way, South  
15 Intersection Improvements. I believe that Chris Eaves  
16 or "Ives" --

17 A. Eaves.

18 Q. -- Eaves in your department is the project manager for  
19 these projects; is that correct?

20 A. That sounds correct to me.

21 Q. Okay.

22 A. Yeah.

23 Q. And is it your understanding that the projects related  
24 to the Freight Modal Plan are -- that they are still  
25 being evaluated and, in fact, they're in the planning

1 stages, so no SEPA review would have been performed for  
2 those?

3 A. That's my understanding, that those Freight Master Plan  
4 projects are still in the planning phase and,  
5 therefore, no SEPA review has been done yet at a  
6 project level.

7 Q. Okay. And that would include the BIN MIC truck route  
8 improvement area?

9 HEARING EXAMINER: We need to check on the recording.

10 MS. ANDERSON: Okay.

11 (Recess)

12 HEARING EXAMINER: All right. We're back on the  
13 record.

14 We had our primary record system -- recording  
15 system -- picked up status only about nine minutes ago.  
16 We have a backup recording system that does have  
17 everything on it. Unfortunately it's a system that can  
18 just run a long time, so we have to go back through the  
19 last 24 hours essentially to find the 9-minute mark.

20 We also have a handheld recorder that we're going to  
21 use today and we're remarking the backup. So we have  
22 the record of everything, there's no need to go back on  
23 it, but there could be a delay in getting those  
24 recordings up on our website. There could be some  
25 special instructions on how to download that type of

1 thing, so just be aware of that, that it may -- we try  
2 to get it up the next day, but that may not be  
3 happening. But we have everything, no need to go back  
4 over it.

5 MS. ANDERSON: Very good. Thank you.

6 Q. (By Ms. Anderson) So, Mr. Mazzola, is it your  
7 understanding that these Freight Modal Plan projects  
8 are still in the planning stages and no SEPA review has  
9 occurred?

10 A. That is my understanding.

11 Q. Okay. And I guess we'll just leave it at that.

12 Okay. All right. So I'm going to hand you what has  
13 already been marked as Exhibit 10. Did you hear  
14 Mr. Swenson's testimony related to this particular  
15 exhibit?

16 A. I did, yes.

17 Q. I believe his testimony was that there would be some  
18 construction impacts related to these particular  
19 proposals?

20 A. That's my understanding as well.

21 Q. Okay. That are identified on the Transportation Impact  
22 Fee Eligible Project list. And just to reiterate or to  
23 make clear for the record, do you agree with  
24 Mr. Swenson's testimony that these proposals would have  
25 or may have likely construction impacts?

1 A. Yes. I agreed to Mr. Swenson's testimony to the extent  
2 that he believes that these construction projects would  
3 have construction impacts while they're being built,  
4 yes.

5 Q. Okay. And is it your understanding that this proposal  
6 involves the construction of any of these projects?

7 A. So that is not my understanding. My -- I do not agree  
8 that this proposal -- I don't agree that this proposal  
9 involves the construction of the transportation  
10 projects listed as eligible to receive that -- excuse  
11 me, to receive the TIF funding.

12 Q. Okay. And is it your understanding that this proposal  
13 funds these projects?

14 A. No, that is not my understanding. So I do not believe  
15 that this proposal funds the projects listed in the  
16 Comp Plan Amendment proposal.

17 Q. Okay. And then lastly, is it your -- lastly on that  
18 point, is it your opinion that this proposal would  
19 result in the construction of these projects?

20 A. That is not my understanding either. I don't believe  
21 that the proposal would result in the construction of  
22 those projects.

23 Q. Okay. Or that the proposal is in any way driving the  
24 construction of those 21 transportation impact fee  
25 eligible projects?

1 A. I don't believe that the proposal drives the  
2 construction of those projects either.

3 Q. Okay. Thank you. All right. So I will hand you now  
4 what has been marked as Exhibit 11.

5 A. Thanks.

6 Q. Is it your understanding that that exhibit, which  
7 identifies an example of a Complete Street, that that  
8 is what in particular would be proposed for any of the  
9 Complete Street projects identified on the  
10 transportation impact fee eligible list?

11 A. So the exhibit that you presented me has -- shows you a  
12 number of different things relating to surface  
13 improvements, such as sidewalks, landscaping, roadway,  
14 you know, traveled roadway improvements, you know, with  
15 parking, bike lanes, motor vehicle lanes, pedestrian  
16 lighting or street lighting, and then a number of  
17 underground utilities and facilities as well. And so I  
18 would agree that, you know, these exhibits are all  
19 things that could occur within the public right-of-way,  
20 you know, above ground and below. But I don't agree  
21 that it completes -- excuse me. I don't agree that a  
22 Complete Streets project would involve all of these  
23 things. It may be and would likely be some subset of  
24 the things shown on this diagram.

25 Q. Okay. Thank you. I'm going to hand you what's been

1 marked as Exhibit 13. Do you recognize this exhibit?

2 A. I've seen exhibits like it and so it's clearly labeled  
3 as the Priority Investment Network in Seattle's Urban  
4 Village Network, it looks like for -- probably from a  
5 Pedestrian Master Plan --

6 Q. Um-hum.

7 A. -- areas that are probably missing sidewalks or could  
8 use sidewalk improvements.

9 Q. Yep, that's right. It's from the Pedestrian Master  
10 Plan Implementation Plan Progress Report.

11 A. Okay.

12 Q. In your experience with SDOT, these plans, for example,  
13 the Pedestrian Master Plan, is review and -- is  
14 environmental review of that plan I guess a guarantee  
15 that everything included in that plan will, in fact, be  
16 constructed?

17 A. So no. The environmental review of the modal plan,  
18 such as the Pedestrian Master Plan, is no guarantee  
19 that all the projects will be developed. Or, I mean,  
20 I -- and I could even say further that the master plans  
21 themselves are no guarantee that all the projects will  
22 be developed. It's more of a goal-setting kind of  
23 aspirational plan to help direct and focus the  
24 Department to say, you know, here's where we need to --  
25 you know, we have done some analysis of various factors



1 and we've determined this is where we need to focus our  
2 money, you know, as it comes in and as we're able to  
3 deliver these projects.

4 Q. Okay. All right. And did you hear the testimony from  
5 Mr. Swenson that he was -- that it was his opinion that  
6 there would be some significant construction impacts  
7 if, in fact, all of these projects were constructed at  
8 the same time?

9 A. I did hear his testimony --

10 Q. Okay.

11 A. -- to that effect.

12 Q. Okay. And is it likely that the projects identified on  
13 the transportation impact, the eligible project list,  
14 would be constructed at the same time?

15 A. I would say it's very unlikely that they would be  
16 constructed at the same time.

17 Q. And why is that?

18 A. There's a number of factors that play into how quickly  
19 we, as the Department of Transportation, can deliver  
20 projects. And so including, you know, No. 1, do we  
21 have funding for it? Is there community support for  
22 it? And then just the limitations on the amount of  
23 staff we have to design or manage the design of these  
24 projects as well as the number of contractors who are  
25 out there available to build the projects.

1           So typically we've -- over the past several years  
2           we've delivered between I want to say maybe about 11 to  
3           25 projects a year that go out for advertisement. And  
4           each of those projects has different construction  
5           lengths. Of course, some have wrapped up within a few  
6           months, others take several years, and so there's some  
7           other kind of systematic constraints to how many  
8           projects we can deliver at any given time and how  
9           quickly.

10           Yeah, not least of all funding, but all these other  
11           kind of structural constraints as well, just staff  
12           resources and again the contractors who build the  
13           projects. There's only so many folks out there who do  
14           this. And I can say just kind of anecdotally that  
15           given the growth and kind of development that Seattle's  
16           undergoing right now, we're having a hard time keeping  
17           contractors moving quickly enough to try and meet our  
18           own deliverable goals for projects we're working on  
19           right now.

20 Q.       Okay. All right. And also as to the scope of these  
21           modal plans, do you know the length of time that the  
22           Department contemplates these plans -- the period of  
23           time for these plans?

24 A.       I'm sorry I don't know off the top of my head, but I --  
25           so I think typically if they do have a date selected,

1       it's probably within a 20-year time frame. Kind of I  
2       think we try and tie things to the Puget Sound Regional  
3       Council's Metropolitan Transportation Plan time frames,  
4       but these modal plans are also -- have periodic updates  
5       as well. It just depends.

6   Q.   Okay. All right. And I'm going to hand you what's  
7       been marked as Exhibit 14 and ask you to -- whether or  
8       not you recognize this.

9   A.   Yes, I recognize this document. It's the Seattle  
10       Bicycle Master Plan.

11  Q.   Okay. And did you hear Mr. Swenson's testimony that  
12       the plan contemplates construction of over 400 miles of  
13       bike lanes?

14  A.   I was here for his testimony. I don't recall that  
15       specific testimony, but I don't disbelieve it.

16  Q.   Okay. Do you believe that it is likely that all 400 of  
17       these bike miles would be constructed as contemplated  
18       in the Bike Master Plan over a 20-year period?

19  A.   No. I think unlikely that all 400 miles will be built  
20       out within that time frame.

21  Q.   Okay. But again if, in fact, a particular bike route  
22       is being proposed, for example, a protected bike lane  
23       on Second Avenue, if that's being proposed, that  
24       project proposal would come to the Department for  
25       environmental review; is that correct?

1 A. That's right, it would. So these projects in here -- I  
2 mean, I can say this from experience -- well, most of  
3 the projects in here would come through our project,  
4 our capital projects delivery process. There are some  
5 that may not, however, that would just be crew build if  
6 it's a matter of just putting on some paint and plastic  
7 bollards kind of thing, which does happen from time to  
8 time. That's something our group may not review just  
9 if the folks who are delivering that project don't loop  
10 us in, which unfortunately does happen sometimes.

11 But again, that's the kind of example where bike  
12 facilities are clearly categorically exempt under SEPA,  
13 so in that sense we're still following in compliant  
14 with the SEPA code.

15 Q. Okay. And would this be true for the other modal  
16 plans, the Pedestrian Modal Plan and Freight Modal  
17 Plan?

18 A. Correct. That would be true of the other modal plans  
19 as well.

20 Q. Yeah, okay. All right. Okay. Now I'm going to hand  
21 you what's been marked as Exhibit 8. Have you reviewed  
22 this document?

23 A. Yes, I have.

24 Q. Okay. This is the DNS?

25 A. That's correct. This is the DNS for the proposal

1 at issue.

2 Q. Okay. And so having heard the testimony of the  
3 Appellant's witnesses -- well, I guess, first of all,  
4 would you agree with Mr. Freeman's decision to issue a  
5 Determination of Nonsignificance for this proposal?

6 A. Yes. I believe this is the correct threshold  
7 determination for this proposal.

8 Q. Okay. And in your opinion there are no likely  
9 significant environmental impacts as a result of this  
10 proposal?

11 A. Yeah. I would agree that there would not be probable  
12 significant adverse impacts as a result of this  
13 proposal.

14 Q. Okay. And you indicated that you were here for the  
15 prior testimony of the Appellant's witnesses; is that  
16 correct?

17 A. That's correct.

18 Q. Okay. And you didn't hear anything in any of that  
19 testimony that would change your opinion that a  
20 Determination of Nonsignificance was appropriate in  
21 this case?

22 A. That's correct. I did not hear anything that would  
23 change my opinion.

24 MS. ANDERSON: All right. I don't have any other  
25 questions for you.

1 THE WITNESS: Okay.

2 HEARING EXAMINER: Ms. Kaylor, do you have an  
3 estimate of time that you need for cross? Not that I'm  
4 limiting you. I just need to figure out when to  
5 break.

6 MS. KAYLOR: Half an hour.

7 HEARING EXAMINER: Okay. Let's see how we do and go  
8 to 12:30.

9 MS. KAYLOR: Okay.

10

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

12 BY MS. KAYLOR:

13 Q. Good afternoon, Mr. Mazzola.

14 A. Good afternoon.

15 Q. I have a few follow-up questions on your testimony to  
16 be sure that I understand what it is --

17 A. Sure.

18 Q. -- that you're saying here.

19 First, I just want to understand a little bit better  
20 the scope of the SEPA review that you and your  
21 department do.

22 A. Sure.

23 Q. So I heard you talk about environmental review for  
24 specific project proposals and also master programs,  
25 master plans. Does your department conduct

1 environmental review of proposed Comprehensive Plan  
2 Amendments as it relates to transportation?

3 A. Not in my experience. My department does not review --  
4 my department does not conduct SEPA reviews for  
5 Comprehensive Plan Amendments.

6 Q. Okay. And so are the non-project actions that you  
7 review limited to the master plans that you have  
8 discussed previously or is there other types of  
9 non-project actions that your department reviews under  
10 SEPA?

11 A. There's other types of non-project actions that we  
12 review. Maybe to give a couple of examples, it would  
13 be code changes to our street-use legislation. For  
14 example, to allow sidewalk cafes or things like  
15 streeteries, where you can have sitting areas within  
16 the parking lane, within the public right-of-way.

17 We'll do -- maybe I'll just stop there. That's --  
18 without trying to run through various other examples.  
19 But we'll do basically just legislative reviews as  
20 well.

21 Q. And so it sounds to me like zoning code changes that  
22 would effect transportation; is that right? A good  
23 overall category? I'm just trying to get an idea of  
24 the scope of the --

25 A. Sure.

1 Q. -- work that you guys do.

2 A. So I wouldn't characterize it as zoning changes. We  
3 don't review land use changes or anything like that.  
4 That would be other departments within the City. But  
5 anything kind of non-project elements that to the --  
6 excuse me. If I may start over.

7 Q. Sure.

8 A. So we do look at legislative changes primarily under  
9 Title 15 of the Seattle Municipal Code that, you know,  
10 that's the code that regulates the use of the public  
11 right-of-way, what's allowed in there, what's not, and  
12 then in addition to the modal plans. And I may be not  
13 thinking of some other examples, but it's all  
14 specifically related to transportation or use of the  
15 public right-of-way.

16 Q. Okay. Thank you. And you testified about when your  
17 department would typically conduct SEPA review. And  
18 did I hear you correctly that you said that would  
19 typically occur at a 30 percent design stage for a  
20 project?

21 A. Correct. By 30 percent design, we should have enough  
22 information to really delve into the environmental  
23 review with earnest. Sometimes there's things that we  
24 can begin doing as soon as we know what the footprint  
25 of the project is, in other words, what's the bounds of



1 the project.

2 You know, as an example, if we knew a project was  
3 going around Greenlake, we would know that, okay, this  
4 is close to water. We would need some shoreline review  
5 as part of that. If we know the nature of the project,  
6 such as it's going to be bicycle facilities, then  
7 that's -- you know, there's certain aspects that we can  
8 start -- or certain questions within the SEPA checklist  
9 that we can begin answering. But really by 30 percent  
10 design, we should have enough detail to really delve  
11 into the analysis.

12 But just as things evolve through design, there could  
13 be other factors that come in later that could change  
14 our analysis. So we're not necessarily ready to issue  
15 our threshold determination at 30 percent. It's again  
16 more when we can actually begin our review in earnest.

17 Q. Going back to just your example about the code changes  
18 to the street use legislation relating to sidewalk  
19 cafes --

20 A. Um-hum.

21 Q. -- when do you do your environmental review for that  
22 type of proposal?

23 A. That would be usually around the time of the draft  
24 legislation.

25 Q. Okay. And so I also want to understand exactly -- or

1 more exactly -- what it is that you're doing when you  
2 conduct this review. And you mentioned I think  
3 generally a -- you've mentioned this in a couple of  
4 different locations, so I'm trying to consolidate my  
5 question so I don't have to go over the same ground.

6 So you were describing I think your internal process  
7 for when projects would come to you and said the  
8 process isn't perfect but if a project is part of a  
9 capital project, you would review it. The process  
10 might be different for crew-built projects.

11 A. Um-hum.

12 Q. So am I understanding correctly that you would review  
13 all projects that would exceed the monetary threshold  
14 for contractor-built projects? Am I understanding that  
15 correctly, do you review all of those?

16 A. So maybe I can try rephrasing it a little bit  
17 differently. So my understanding is that there is  
18 about a 90- to \$100,000 threshold of project  
19 construction cost. So under that our City crews are  
20 allowed to build those projects. Over that dollar  
21 amount, that becomes something that we need to bid out  
22 to outside contractors for construction.

23 And so the contractor-built projects are the projects  
24 that get funneled through my division for project  
25 delivery and that's -- so yes. We'll -- for any time

1       that a project comes into our division, a team is  
2       assigned to that. So we'll get a project manager, a  
3       project engineer, an environmental lead, a public  
4       outreach lead, et cetera. So then that's where we will  
5       do environmental reviews as part of that process.

6 Q.   Okay. And so then for the projects done by City crews,  
7       are you not reviewing those projects?

8 A.   So we review many of them. But I can't say that some  
9       don't slip through, just depending on the staff in  
10      charge of delivering those projects and whether they  
11      know to come talk to us first.

12 Q.   Okay.

13           HEARING EXAMINER: Ms. Kaylor, I'm going to ask you  
14      to pause there. On further research, it looks like we  
15      did not get the ten -- about nine minutes worth of  
16      testimony when there was direct from the City with the  
17      witness, and so we'll have to go back and recreate  
18      that.

19           What I propose that we do is that you can hear the  
20      recording up to that time, so you know where it was,  
21      and then -- and following that as well. Then we will  
22      take a break for lunch, give the City an opportunity to  
23      find in your notes where those are and, frankly, we'll  
24      leave it open if there's more, get you back on direct  
25      essentially, and then we can continue with cross that

1 would pick up any questions that arise from that.

2 Any questions or objections or concerns from counsel?

3 THE CLERK: So that other hearing that we had where  
4 we had this issue, the solution was that we turned off  
5 a channel using the FTR Player. That is working. So  
6 it's only one channel that was corrupted, so basically  
7 the MP3 will not be able to be listened to.

8 HEARING EXAMINER: Oh, okay.

9 THE CLERK: But if you use the FTR Player, you can  
10 turn off Channel 1 and you still can play --

11 HEARING EXAMINER: So we do have the recording then.

12 THE CLERK: So we do have --

13 HEARING EXAMINER: I apologize. All right. Then I'm  
14 not going to make you go back over it again. We do  
15 have it. I thought that we had a clean recording on  
16 the record.

17 So there will be special instructions essentially to  
18 access that. I believe last time it involved getting a  
19 CD. Is that -- yeah. So we don't have to go back  
20 through the exercise of trying to recreate the same  
21 questions/objections that may have arisen during that  
22 time.

23 Let's use our last ten minutes and we can continue  
24 with cross.

25 MS. KAYLOR: Thank you. I'm glad of that.

1 HEARING EXAMINER: We all are.

2 MS. ANDERSON: Yes.

3 HEARING EXAMINER: Just we've got all of these  
4 redundancies in the system now because we actually had  
5 a hearing where just we had to redo it and that was a  
6 bit of a nightmare.

7 MS. KAYLOR: Oh. Yes.

8 Q. (By Ms. Kaylor) Okay. So picking up, we were just  
9 talking about your process and that you review the  
10 contractor projects and may review crew-built projects,  
11 but some of them you may not review. You also  
12 discussed categorical exemptions under SEPA.

13 So for some of the projects you review, whether they  
14 be contractor ones or crew-built ones, are some of  
15 the -- would you expect to issue an exemption for some  
16 of those projects?

17 A. Yes. I would expect to -- that we would write up a  
18 categorical exemption memo, which are just memos to the  
19 file.

20 Q. Okay. And what types of projects would qualify for a  
21 categorical exemption, in your opinion?

22 A. So projects such as sidewalk construction projects,  
23 bicycle facility projects, projects that are actually  
24 arterial reconstruction projects. So that would  
25 include basically shutting down portions of a street at

1 a time to rebuild. Not only put new asphalt in but  
2 also reconstruct the concrete base of the roadway as  
3 well.

4 So those can be a pretty substantial construction,  
5 but they're qualified -- it's a categorical exemption  
6 under SEPA. So those are just examples of the types of  
7 projects we would list as a (inaudible).

8 Q. Okay. Just to try and get a little bit of a better  
9 idea --

10 A. Um-hum.

11 Q. -- curb bulbs, would those be categorically exempt?

12 A. Yes, curb bulbs would be exempt under pedestrian  
13 improvement facilities.

14 Q. Okay. So that would be similar to sidewalks being  
15 exempt?

16 A. Correct. Because a curb bulb is an extension of the  
17 sidewalk, so we'd consider that a pedestrian facility.

18 Q. And so all pedestrian facilities would be exempt? So  
19 sidewalks, crosswalks, curb bulbs?

20 A. Crosswalks, curb bulbs, curb ramps, yep.

21 Q. Okay. How about things like signal installation, would  
22 that be exempt?

23 A. Traffic signs and signals are exempt as well.

24 Q. And changes in turn lanes or lane restriping on a  
25 street, would that be exempt?

1 A. Both of those things are exempt. There's exemptions  
2 specifically for rechannelization as well as I think --  
3 I forget the exact language but basically adding turn  
4 lanes and things like that at intersections as well.

5 Q. Okay. How about adding bicycle facilities?

6 A. Bicycle facilities are exempt as well.

7 Q. Adding landscaping?

8 A. I believe so. We don't -- if I'm hesitating on that  
9 answer, it's because we don't construct just  
10 landscaping. We'll include landscaping as part of  
11 larger parts of our project.

12 But now having said that, we add landscaping as part  
13 of our typical street improvement projects. So, for  
14 example, if we have a new sidewalk project, we'll  
15 install landscaping as part of that and we still  
16 consider it categorically exempt, so...

17 Q. Okay. And so just going back to sidewalks, would that  
18 be both reconstruction of an existing sidewalk and  
19 expansion or addition of a sidewalk? Would those all  
20 be categorically exempt?

21 A. Both would be considered categorically exempt.

22 Q. How about expanding -- adding a travel lane to a  
23 street? Would that be categorically exempt?

24 A. I'm not remembering the exact wording of the code.

25 Adding a new travel lane could likely kick a project

1 out of an exemption. So, in other words, we would need  
2 to do a SEPA checklist for that type of project.

3 Q. Okay.

4 A. At the least do a SEPA checklist.

5 Q. Okay. And how about lighting, adding street lighting?

6 A. Pedestrian lighting is exempt. Or street lighting,  
7 pedestrian lighting, either way.

8 Q. Okay. Just let me see if there's anything else I want  
9 to ask you about in terms of what would be exempt and  
10 what wouldn't be exempt in your usual, usual processes.

11 This may or may not have been included in what I  
12 already asked you, but adding a bus lane, a transit  
13 (inaudible) facility --

14 A. So transit-only lanes, that's actually a recent  
15 addition as an exemption, where the SEPA code, the WAC,  
16 was updated back in 2016. I was actually part of the  
17 committee to try and clarify some of those  
18 transportation-related exemptions. So transit-only  
19 lanes is now categorically exempt.

20 Q. Okay. Thank you.

21 A. It was not always but I'll say it that way.

22 Q. But now it is, yeah. All right. I think those are all  
23 of the examples I can think of, so thank you for  
24 clarifying. Appreciate that. And I'm just going to go  
25 through my notes and see if --



1 A. Sure.

2 Q. -- I have any other additional questions for you.

3       You testified generally about when projects would  
4 typically be constructed if they're in the planning  
5 stage now. And I believe you testified to a three- to  
6 five-year life planning to construction. Was that --  
7 did I remember that right?

8 A. That's what I said, yes.

9 Q. Okay.

10 A. And there's -- I would just like to say there's a great  
11 variability in that too based on a number of different  
12 factors.

13 Q. Certainly. If a project becomes fully funded, would  
14 that potentially accelerate that schedule?

15 A. Not necessarily, because our design process doesn't  
16 typically get started until we have full funding. Not  
17 to say that never happens, because sometimes we get a  
18 grant, for example, to take a design to 30 percent for  
19 a particular project, but typically we don't start into  
20 design unless we have full funding.

21 Q. Okay.

22 A. And if I may add, that could include an anticipation of  
23 receiving some grant funds, which may not yet be  
24 obligated but we know that they're earmarked for  
25 our project.

1 Q. Okay. This is circling back. I didn't quite catch all  
2 of these questions when I was going through earlier,  
3 just circling back to the scope of the things that you  
4 review. I have it in my notes here that you do not  
5 review things that are programs as opposed to projects.  
6 Is that right?

7 A. I'm sorry, I don't recall saying that. I think it  
8 depends which program it is or what may be happening or  
9 changing as part of that program.

10 Q. Okay. Would it be generally accurate to say that if  
11 something doesn't involve physical construction, you  
12 would not be reviewing it?

13 A. So aside from the non-project --

14 Q. Aside from --

15 A. -- types of projects --

16 Q. Yes.

17 A. -- I've mentioned earlier, I would say yeah. Typically  
18 it's the construction, you know, physical construction  
19 that we evaluate.

20 Maybe one example of a program we would not  
21 necessarily get involved in is something like our  
22 Commute Trip Reduction program. That's kind of --  
23 that's a separate program that the Department does with  
24 other businesses to try and get people to use transit  
25 or alternative forms of coming to work, besides driving

1 in a single-occupancy vehicle. So unless there's some  
2 legislation or other kind of programmatic change to  
3 that, we don't get involved in those types of things.

4 Q. Okay. Thank you. In your testimony you discussed the  
5 likelihood of projects that are identified as eligible  
6 for funding under this proposal --

7 A. Um-hum.

8 Q. -- the likelihood of them being constructed  
9 concurrently. And you gave an estimate of how many  
10 projects are typically delivered a year.

11 A. Um-hum.

12 Q. If the eligible projects were all fully funded, could  
13 that increase the number of projects that were  
14 delivered in a year?

15 A. There could be a potential that it could increase by a  
16 little bit the number of projects we deliver per year.  
17 But as I had tried to say before, there's a number of  
18 other constraints with through that project delivery  
19 system, not least of all the number of SDOT staff we  
20 have available to work on any of these projects and  
21 then the number of staff at our -- the City's contracts  
22 office that reviews these things and, you know,  
23 approves the bid process and, you know, not least of  
24 all the number of contractors and their availability to  
25 actually construct the projects. So beyond funding,

1           there's again another -- a number of different factors  
2           that all sort of play into how many projects we can  
3           deliver at any given time.

4 Q.   And I believe your testimony, your estimate on the  
5           number of projects had to do with projects that are  
6           constructed by contractors; is that right?

7 A.   That's correct.

8 Q.   And would there be additional projects that would be  
9           crew-constructed projects that would be delivered each  
10          year?

11 A.   That's correct.  There's a number of crew-built  
12          projects each year, and I don't know the number of  
13          those.  But I could say, you know, my understanding  
14          with them, that it's the same constraints that we do,  
15          we have in terms of staff, the crews have as well, if  
16          not even more so.  There's only so many crew staff that  
17          we have available to construct, and so that would play  
18          a factor, as well as funding.

19 Q.   Yes.  And just to -- yes.  Thank you.

20                Finally, Ms. Anderson asked you if in your opinion  
21                the proposal was likely to have significant adverse  
22                impacts.  Was your response to that question limited to  
23                construction impacts that we've been talking about or  
24                were you rendering an opinion about any sort of impact?

25 A.   I was rendering an opinion on kind of the proposal

1 contained within the SEPA checklist and the DNS. So  
2 not in consideration -- to me again the construction  
3 impacts of that list of projects eligible to receive  
4 funding is a separate issue, so my opinion about the  
5 DNS is about the proposal contained within the DNS and  
6 checklist.

7 Q. And I guess let me clarify my question. Your opinion  
8 regarding impacts, the impacts you're talking about are  
9 those construction impacts resulting from those listed  
10 projects that you're addressing or are you addressing,  
11 for example, impacts on housing?

12 A. I'm sorry. Can you repeat that question?

13 Q. The question that you responded to was very broad.

14 A. Um-hum.

15 Q. So I'm asking are you rendering an opinion on the  
16 impacts of the proposal to housing, for example?

17 A. Yes. It would be the impacts to all the elements of  
18 the environment that were contained within -- that were  
19 addressed in the SEPA checklist and in the DNS. So  
20 including housing, impacts to the other elements, the  
21 environment contained in the checklist as well.

22 Q. Okay. And what is the basis for -- let's see. Are you  
23 an economist?

24 A. I am not an economist, no.

25 Q. Okay. Have you conducted a specific analysis, an

1 independent analysis relating to impacts to housing  
2 production or housing affordability?

3 A. I have not conducted an independent analysis.

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

5 HEARING EXAMINER: Thank you.

6 Ms. Anderson, how much time do you need for redirect?

7 MS. ANDERSON: Hopefully not too long. Yeah,  
8 probably not too long. Should I just go ahead?

9 HEARING EXAMINER: Okay. Well, I guess the question  
10 is what are we looking at for rebuttal witnesses?

11 MS. KAYLOR: I think we -- I will be considering that  
12 over lunch. I believe at this point we will have some  
13 rebuttal testimony from all three of our witnesses,  
14 some more brief than others.

15 HEARING EXAMINER: Um-hum.

16 MS. KAYLOR: And it is always difficult to estimate  
17 the amount of time required --

18 HEARING EXAMINER: Right. Yeah. I'll stop you  
19 there.

20 MS. KAYLOR: -- for that.

21 HEARING EXAMINER: That's actually plenty. I think  
22 that that's clear.

23 And then my question is: Does Mr. Mazzola have to be  
24 here for the rebuttal witnesses? In other words, if we  
25 finish with him on your redirect now, does he have to



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4 HEARING EXAMINER: And we return to the record with  
5 the City on redirect for Mr. Mazzola.

6 We are on the record and, Mr. Mazzola, I'll just  
7 remind you that you're still under oath.

8 THE WITNESS: Thank you.

9

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

11 BY MS. ANDERSON:

12 Q. Thank you, Mr. Mazzola. First of all, it has come to  
13 my attention that the environmental checklist form that  
14 you were reading from was missing every other page, so  
15 I would like to just resubmit into the record a copy, a  
16 correct copy of the checklist form that has all the  
17 pages.

18 MS. ANDERSON: So if I can just move to have that  
19 replaced, I would appreciate that.

20 Q. (By Ms. Anderson) Mr. Mazzola, you provided some  
21 testimony --

22 HEARING EXAMINER: So just to make sure, that was  
23 you're switching out what was marked as Exhibit 34?

24 MS. ANDERSON: The checklist, yes.

25 HEARING EXAMINER: Okay.



1 MS. ANDERSON: The form checklist.

2 HEARING EXAMINER: Is that Exhibit 34 that you're  
3 wanting to switch?

4 MS. ANDERSON: Yes.

5 HEARING EXAMINER: Okay.

6 MS. ANDERSON: Thank you.

7 HEARING EXAMINER: Neither 34 or 35 have been  
8 admitted yet, so we'll just -- we can switch the  
9 document.

10 MS. ANDERSON: Okay. Great. And since we are at  
11 that point, maybe I will move to have Exhibit 34 and 35  
12 admitted.

13 HEARING EXAMINER: Any objections?

14 MS. KAYLOR: No objection.

15 HEARING EXAMINER: Exhibits 34 and 35 are admitted.

16 (Department's Exhibit Nos. 34 and 35 admitted into evidence)

17 MS. ANDERSON: Thank you.

18 Q. (By Ms. Anderson) All right. Mr. Mazzola, you've  
19 provided some testimony about bike facilities being  
20 categorically exempt from SEPA. Did I understand that  
21 correctly?

22 A. That's right.

23 Q. Is that true for all bike facilities?

24 A. So in the SEPA code under "Categorical Exemption," it  
25 lists "Bicycle Facility." So whenever we evaluate a

1 project, we have to look at all the various components  
2 that we kind of referred to earlier as sidewalks being  
3 included -- or, excuse me, landscaping being included  
4 with sidewalks, for example.

5 So for a bike facility project, we would look at what  
6 else the project is doing. And so if the bike project  
7 is tied in with an arterial reconstruction project,  
8 that still may be exempt or, to make it more  
9 complicated, it could trigger some drainage code  
10 requirements to add in more detention. So usually that  
11 means a detention or storage pipe that is greater than  
12 12 inches, so that would kick it out of an exemption  
13 status and we'd end up doing a SEPA checklist. So  
14 that's -- we look at a range of the entire project,  
15 what all is included, and then we make our assessment  
16 about whether it's exempt or not.

17 But if it's just a bicycle facility in and of itself,  
18 then, yes, that would be categorically exempt.

19 Q. Okay. And could you say generally how often a bike  
20 facility would just be posed on its own?

21 A. Oh gosh, I don't have a good fraction or percentage in  
22 mind, but I would say probably less often than not.  
23 Most of the facilities that we would build are included  
24 as part of part of an (inaudible).

25 Q. Okay. So, for example, I'm thinking of the bike route

1 on Second Avenue.

2 A. Correct.

3 Q. Was that something that was SEPA exempt?

4 A. You know, that was built on its own. Like in other  
5 words, it wasn't part of a larger roadway  
6 reconstruction project. I know there was a lot of  
7 signal work and that kind of thing that was included in  
8 it. So if I recall right, I believe that was  
9 categorically exempt.

10 Q. Okay. And so another example, like the Burke-Gilman  
11 Trail, the Missing Link component.

12 A. So the Missing Link is a story in and of itself. That  
13 one started off years ago as a Determination of Non --  
14 we ended up doing a SEPA checklist with a Determination  
15 of Nonsignificance.

16 There were -- there were different -- the code has  
17 been updated since we made that initial determination,  
18 so at the time what triggered the SEPA checklist was  
19 the acquisition of some right-of-way in addition to the  
20 amount of ground disturbance that the project included.

21 So then in 2016 the code was updated and some of the  
22 language was clarified. So if we -- the ground  
23 disturbance threshold has change from 1 acres to 5  
24 acres and the right-of-way acquisition requirement  
25 isn't there any more, at least for a bike facility.

1 And so if we were to start that project today, it could  
2 be arguably considered categorically exempt.

3 But, as you may know, through a series of appeals and  
4 everything, we ended up doing an EIS for that project.

5 Q. Okay. So if there is a component that is not  
6 categorically exempt, would you then still prepare a  
7 checklist for the proposal?

8 A. Correct. Right. So if any piece of that project  
9 causes the entire project to be -- excuse me. So when  
10 looking at a construction project, if any piece of that  
11 project is not exempt, we do a SEPA review for the  
12 entire project, so the whole thing is included and  
13 evaluated in the SEPA checklist, or EIS if that were  
14 the case.

15 Q. Okay. All right. And did I understand your testimony  
16 around whether or not you or your group would review  
17 programs, did I understand your testimony to be that  
18 SDOT wouldn't review something like the CTR Program,  
19 Commute Trip Reduction Program, but it might review  
20 other types of transportation-related programs under  
21 SEPA?

22 A. That's correct. And I apologize if I was confusing  
23 earlier about it. It would have to be kind of a  
24 specific example to what that program would be, and I  
25 can let you know whether we would review (inaudible).

1 Q. Okay. And you also provided some testimony that I  
2 believe stated that after a -- during the planning  
3 process, you would expect a project to take somewhere  
4 on average between three to five years from planning to  
5 construction, but there are a lot of variables so it  
6 might be much longer or shorter than that?

7 A. That's correct.

8 Q. Okay. So would you say that three to five years is  
9 just a good generalization for all types of projects,  
10 or is that a specific type of project?

11 A. Oh. I guess in my mind when I mentioned that time  
12 frame, I was just sort of thinking as our capital  
13 projects in general. Kind of if you can imagine them  
14 on a bell curve, you know, the three- to five-year time  
15 frame would be the majority of our projects, and then  
16 on the tail ends there would be some that go much  
17 quicker and on the other end some that could take much  
18 longer.

19 MS. ANDERSON: Okay. All right. No other questions  
20 for me. Thank you.

21 THE WITNESS: Okay.

22 HEARING EXAMINER: Thank you.

23 THE WITNESS: Okay.

24 HEARING EXAMINER: Anything further from the City?

25 MS. ANDERSON: No.

1 HEARING EXAMINER: All right.

2

3 DEPARTMENT RESTS

4

5 MS. KAYLOR: For our first rebuttal witness, we'd  
6 call Mr. Shook.

7 HEARING EXAMINER: And can you just give me an  
8 outline of who you plan to call and (inaudible) and  
9 what your expectations are?

10 MS. KAYLOR: Certainly. We intend to call Mr. Shook  
11 and Mr. Steirer. We've determined we don't need to  
12 recall our third witness.

13 HEARING EXAMINER: Um-hum.

14 MS. KAYLOR: And we have no additional witnesses.

15 HEARING EXAMINER: Um-hum.

16 MS. KAYLOR: And I anticipate Mr. Shook's testimony  
17 will take, not including cross-examination, a half an  
18 hour. It could take a little bit longer but  
19 approximately --

20 HEARING EXAMINER: Sure.

21 MS. KAYLOR: -- that much.

22 HEARING EXAMINER: Um-hum.

23 MS. KAYLOR: And Mr. Steirer's testimony will be  
24 shorter.

25 HEARING EXAMINER: Great. Thank you.

1           Just a reminder, you're still under oath from the  
2           last time, Mr. Shook.

3           THE WITNESS: I understand.

4

5           MORGAN SHOOK:           Witness herein, having previously  
6                                    been duly sworn on oath, was examined  
7                                    and testified as follows:

8

9                                    APPELLANT'S CASE ON REBUTTAL

10

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

12 BY MS. KAYLOR:

13 Q.    Good afternoon, Mr. Shook. I just have a few follow-up  
14           questions from your testimony day before yesterday and  
15           responding to some of the testimony we have heard from  
16           the City.

17           So first, did you hear Mr. Bjorn's testimony that  
18           there was not sufficient information at this time to  
19           analyze impacts on housing production or affordability?

20 A.    I did hear that.

21 Q.    And do you agree with that?

22 A.    I do not agree with that.

23 Q.    And why not?

24 A.    I believe there's sufficient information contained in  
25           the Comprehensive Plan Amendment, accompanying

1 materials that have been used by the City, as well as  
2 the methodology laid out for (inaudible) laden fees as  
3 well as the (inaudible) the project lists of potential  
4 projects that we (inaudible).

5 Q. And is it common practice to do qualitative analysis of  
6 housing impacts at the plan level?

7 A. Yes, it is.

8 Q. And is this something you or your firm have done in the  
9 past?

10 A. We have.

11 Q. Can you give me some examples of that?

12 A. Sure. I think broadly we've been engaged by cities to  
13 help them through the policy environment, particularly  
14 when they're talking about land use plans and/or  
15 programs or issues of taxation or fee setting to  
16 evaluate these things, both qualitatively and  
17 quantitatively. Their senior staff, the decision  
18 makers, typically want to understand the theoretical  
19 basis, understand some practical implementation of  
20 these things so that they can understand the  
21 implications of those choices and to make them  
22 subsequently.

23 We are also involved in the SEPA process typically as  
24 part of those land use programs, particularly at the  
25 programmatic level, to offer our opinion and to apply



1 theory, our professional knowledge, to evaluate those  
2 impacts. And we've done that obviously in a variety of  
3 settings but also in the housing and housing  
4 affordability space as well.

5 Q. Thank you. And can you think of any examples in the  
6 city of Seattle?

7 A. Yeah. So recently, you know, we defended the -- or  
8 prepared the housing analysis for the U District rezone  
9 as well as defending that (inaudible) EIS at appeal.

10 We've also prepared the City's economic and housing  
11 analysis for the Accessory Dwelling Unit program as  
12 well as defending that at appeal. And we use many of  
13 the same sort of techniques of theory, professional  
14 experience as well as sort of examples that apply those  
15 micro-economics in both of those settings.

16 Q. Thank you. And did you hear Mr. Bjorn's testimony that  
17 three of the studies referenced in your memorandum did  
18 not support the finding of impact here?

19 A. I did hear that.

20 Q. And do you agree with that conclusion?

21 A. I do not agree with that conclusion.

22 Q. Do you believe that those studies support your  
23 conclusion?

24 A. I believe they do.

25 Q. And why generally?

1 A. Why generally? Because I think academic and  
2 professional analysis in this space is difficult,  
3 right? These are hard problems that are complicated in  
4 the real world environment.

5 That's not to say that we shouldn't do analysis and  
6 try to understand them, particularly when the  
7 (inaudible) data are relevant and there's enough  
8 theoretical as well as sort of practical experience  
9 that these may be issues, and that's exactly why  
10 there's been a body of work that is done.

11 And so cumulatively, right, that body of work is  
12 leading us towards a direction that suggests there are  
13 elements about impact fees that should be understood  
14 and disclosed with respect to issues of housing  
15 production and housing affordability. And all those  
16 studies are consistent with that general idea.

17 Obviously, the main issue here is really about  
18 understanding the degree that the projects are solving  
19 some -- and particularly in the transportation  
20 department -- solving some actual impact and this  
21 necessitates new capacity, right? And I would  
22 differentiate that from a broader discussion of just  
23 broader amenities. There are distinct differences as  
24 being things that may be nice in terms of views or  
25 access to, you know, nice facilities like commercial

1 districts or parks or things of that nature from the  
2 actual sort of aspects of the transportation system.

3 And so those studies are consistent with like areas  
4 where distortions are (inaudible), and they are all --  
5 those studies are consistent with the areas where we  
6 may not see those impacts because fee arrangements  
7 have done a better job of actually tying the nexus of  
8 the impact to the projects that mitigate those impacts  
9 of new growth.

10 Q. So I'd like to have you just look individually at these  
11 studies and we'll start with the study by I think it  
12 was Been. I'm going to hand you that study and ask you  
13 to look at page 163, particularly, and to explain how  
14 the conceptual framework in that study relates to the  
15 work that you've done.

16 HEARING EXAMINER: And which exhibit number was that?

17 MS. KAYLOR: Oh, my apologies. That is Exhibit 30.

18 HEARING EXAMINER: Thank you.

19 THE WITNESS: So again this is a sort of meta review  
20 for a fairly -- relatively recent of sort of both the  
21 theoretical underpinnings as well as sort of a  
22 distillation of the research in here. And I think it's  
23 useful because I think it points out some limitations,  
24 some challenges with that research, which is perfectly  
25 acceptable within sort of the professional academic

1 literature, right?

2 And I think on page 163, I think she does a great job  
3 of actually bringing forward four really important  
4 points here with regard to impact fees and their  
5 impacts on housing that need to be understood,  
6 particularly given what we know about what is  
7 documented in the proposal. And I'll enumerate I think  
8 these things. I think I'll turn to the third paragraph  
9 down. It's the second paragraph under "Research." I  
10 think the first thing here:

11 "First, to understand whether any price  
12 effect of an impact fee reflects value added  
13 or a dead-weight loss to the housing  
14 consumer, researchers must include variables  
15 related to the infrastructure and other  
16 amenities that may be financed from the  
17 impact fee in their models."

18 So this is an important part. And I'll go back to my  
19 earlier testimony, and Mr. Bjorn did as well, there are  
20 two parts of this, right? The projects matter. And  
21 how you translate the projects into a fee are important  
22 to understand the way in which they could be efficient,  
23 right, and produce less distortions in land markets,  
24 and ways they may be inefficient and actually create  
25 unintended consequences in the housing market,

1 particularly with respect to housing production and  
2 affordability.

3 I think the second paragraph or the paragraph below  
4 that:

5 "Second, studies of price effects need to  
6 be more attentive to the effect fees have on  
7 the supply of housing in the jurisdiction."

8 I think this is a point that keeps coming up more and  
9 more. There are silver bullet or great examples of  
10 this, but there are I would say at least a dozen  
11 studies in this environment, hedonic price models that  
12 have been trying to understand the price effects of  
13 those impact fees. And generally as a body of work,  
14 they generally conclude that the fees actually increase  
15 prices.

16 Now, it's important to know, and I'll get to this  
17 later, but it's important to understand also the  
18 mechanism for that, right? They may actually provide  
19 amenity value. "Since like I have a nice sidewalk" or,  
20 you know, "This facility is improved and it makes me  
21 feel better about things," versus the actual effect it  
22 has on the transportation system, right?

23 And so did the project understand the impact that an  
24 additional user would have on this system, then tie  
25 that impact to the actual project that solves that

1       problem, and then understands the cost that should be  
2       apportioned equitably and fairly to a range of  
3       different users?

4           And I think impact fee programs do some of that in  
5       the back end in terms of portioning it, but they tend  
6       to flip it around, right? They tend to start with the  
7       budget projects and simply allocate those costs on some  
8       sort of metric, whether it be population, future growth  
9       and trips, but on an (inaudible) like basis, as opposed  
10      to starting with what are the actual impacts of new  
11      growth that need to be mitigated upon the  
12      transportation system and what's the best way to do it,  
13      which projects should qualify, what are the costs of  
14      those projects, and how should those be sort of  
15      allocated geographically by use type.

16           So and the third one here and because -- the third  
17      point here, "Third, because an inefficient impact fee  
18      is most likely to be passed through to consumers when  
19      the consumers have few substitutes for the housing," is  
20      a key point here that we need to understand.

21           So you earlier asked Mr. Bjorn a question, these fees  
22      all -- these studies all kind of point to some  
23      aggregates or increase in price and should we consider  
24      that increase in price an impact on housing. And the  
25      short answer to that is yes, right? Because either

1 through the scarcity issue, right, why are people  
2 willing bid more? They're willing to bid more because  
3 there's a scarcity.

4 Or, right, you actually then actually may have  
5 improved the amenity value, right? So like if there  
6 was no park and all of a sudden you put a park there or  
7 a street tree or whatever it is, right, that amenity  
8 value has some value and it's capitalized into the  
9 value of the land and people would be willing to pay  
10 for that. You know, for example, with the tree, you  
11 know, are you willing to pay for that tree, right? So  
12 those are the two methods for which we see these price  
13 effects show up.

14 And I think the fourth one here is that we need to  
15 be -- her point here is we understand impact fees as  
16 they've been used in many jurisdictions as ways to  
17 discourage growth, right? And I think her point here  
18 is you can even take a sort of more optimistic view  
19 here, that people are trying to make sure that there  
20 are actual infrastructure at the community's level, a  
21 service to meet those needs. Or you can take a more  
22 pessimistic view, in that these are actually more NIMBY  
23 policies used to discourage housing.

24 So those four key points that she summarized here I  
25 think is the type of guidance that we need to take to

1 heart as professionals and try to deploy here in this  
2 case when we talk about policy programmatically to move  
3 forward with fees. And what I don't see in the  
4 proposals is those discussions about the project  
5 selection, the fee setting, and sort of potentially  
6 mitigating those impacts on (inaudible).

7 Q. And so kind of tying back to the terminology I think  
8 that you used in your initial testimony, in your  
9 opinion does the Been article support your conclusion  
10 that an inefficient fee, like we have here, causes  
11 impacts?

12 A. Yeah. And I think it's consistent I think in almost  
13 all of the papers that it said, well, when we don't see  
14 those impacts, we typically see a sort of problem of  
15 capacity being solved that gets priced into the  
16 marketplace, so we don't have those types of price or  
17 supplies distortions.

18 Q. And next I'd like you to take a look at the Burge  
19 study, and I'll just direct your attention particularly  
20 to page 10, but obviously feel free to discuss any part  
21 of this study that you would like. And can you explain  
22 how this study relates to the analysis that you've  
23 performed?

24 A. So I think I'll go over some of the other testimony,  
25 but if you could turn to page -- excuse me. Turn to



1 page 10, the second paragraph:

2 "Is the condition of which (inaudible)  
3 impacts on the housing market when we have  
4 some degree of efficiency."

5 And it just states simply, right, that there are  
6 solutions and benefits being delivered by the products  
7 that can be adequately priced, like those projects  
8 vis-a-vis the fee and willingness to pay. So those are  
9 sort of where we see more efficiency, right, but they  
10 only result in the fact that you actually are trying --  
11 that you are tying the projects to the impacts and to  
12 the fees and to the pairs [sic].

13 Q. And so in this case was it your determination that the  
14 fee was nonefficient?

15 A. In the case of the proposal?

16 Q. Yes.

17 A. Yes.

18 Q. And I'll hand you finally the study by Mathur and  
19 direct your attention to page 5 and ask you if you  
20 could discuss how this study, the principles in this  
21 study, relate to the analysis that you've performed.

22 A. Yeah. So I think, you know, this is another study that  
23 advances our understanding of impact fees and which he  
24 was trying to sort of disaggregate the fees. And he  
25 found a very set of interesting sort of conclusions

1 with respect to what types of fees and how those fees  
2 fall, right?

3 So Brawley (phonetic) finds park fees account for the  
4 majority of the price impacts that are observed within  
5 the single-family marketplace in the King County, but  
6 then he also disaggregates and sees things like  
7 transportation impact fees having differential effects  
8 with respect to higher-priced housing that's  
9 (inaudible) or lower-cost housing.

10 And I think the piece here that's important here is  
11 on page -- that I'd like to highlight is actually on  
12 page 5. And I'll just read this:

13 "The discussion above highlights the key  
14 factors that influence the housing price  
15 effects of impact fees: the degree of  
16 excludability, visibility, and desirability  
17 of the fee-funded infrastructure and  
18 services; the spatial scale of the  
19 fee-mitigated impacts; the government  
20 policies to reduce the fees' price impacts;  
21 the extent to which the fees lower  
22 residential property taxes or the quality of  
23 the house."

24 But I think I would focus mostly about the policy on  
25 (inaudible) here, because we understand sort of the

1 nature of the tool that herein it could be -- it could  
2 be valuable for a jurisdiction. But they're all  
3 limitations with respect to sort of the impacts, and  
4 particularly the ones we want to pay attention to in  
5 housing production and housing affordability.

6 And so the piece here, I'm understanding that as well  
7 as sort of how -- what the projects are, who benefits  
8 from them, and how best to sort of price those in are  
9 things that are necessary to include in the program if  
10 you wanted to say it's an efficient fee.

11 But we don't see that discussed in the policy  
12 proposal, the documentation for the methodology, and  
13 the projects to make those -- tie those things together  
14 and highlight the places where governments had the  
15 discretion or are mitigating those policies, those  
16 impacts.

17 Q. So applying those factors in the Mathur report to the  
18 proposal in front of you, what would you determine  
19 regarding those factors?

20 A. In regarding those factors, I see a proposal moving  
21 forward to use impact fees. There is a project list  
22 that may or may not be funded, but there are a set of  
23 projects there that are eligible for funding. There is  
24 a methodology to calculate what the fee should be  
25 across different types of land use categorizations.

1           And what is missing there is I think -- what I said  
2           earlier -- is a discussion in the methodology or the  
3           approach that says what is the impact that new users  
4           are having on the system and can we identify that  
5           within the project list or within our growth going  
6           forward. Can we trace that to the projects, so what  
7           are the right set of projects that should fall under  
8           this, and how then should those prices be allocated to  
9           different types of users.

10           And that's sort of my -- our sort of -- my contention  
11           here around when we talk about efficient pricing and  
12           trying to understand the marginal impacts of new users  
13           on the system, it's that issue, that strong access to  
14           the impact that can be walked back to the fee so that  
15           we could limit the amount of sort of price distortions  
16           on impact fees, that impact fees can have.

17           And probably also, right, I think the other issue  
18           here raised in testimony is impact fees are just a tool  
19           for funding, right? There are other good substitutes,  
20           available substitutes for transportation funding that  
21           may be -- they need to be considered potentially as  
22           part of places to sort of meet the needs of our  
23           transportation improvement program.

24           The City is talking about, you know,  
25           transportation -- assessing fees on transportation

1 network companies. The City used moving forward the  
2 analyses to examine congestion pricing in downtown and  
3 sort of just adjust with the issues of congestion and  
4 raising revenue. But those are all sort of key pieces  
5 of the context of sort of why the policy environment  
6 is -- why those impacts need to be disclosed so that  
7 decision makers have an understanding of the  
8 substitutes they have, just to the challenge they have  
9 around funding transportation infrastructure.

10 Q. Okay. And so then just to summarize our discussion  
11 around these studies was do you agree with Mr. Bjorn's  
12 comment that your approach doesn't consider whether the  
13 projects funded by the fee provide an amenity or value?

14 A. No, I disagree. I think I made it clear in my earlier  
15 testimony that there are two sides of this issue that  
16 are important. It's, you know, what actually gets  
17 built, which problem or challenges are solved for us  
18 from the transportation perspective and how those fees  
19 surround it.

20 Q. Thank you. So did you hear the question posed by the  
21 Examiner earlier regarding whether there would be an  
22 affordability impact regardless of whether an amenity  
23 or value was provided? And can you respond to that  
24 question?

25 A. Yeah. I would say the simple answer to that is yes,

1 right? I mean, that's what the literature identifies  
2 in these studies is that when you build these projects,  
3 whether there are amenity values or there are problems  
4 that solve congestion problems, they raise prices,  
5 right, because you've actually delivered some value.  
6 And the issue right around housing affordability is  
7 also one of sort of income and that folks with lower  
8 incomes can't afford those kind of prices in this area.

9 The key to understanding how to mitigate that issue  
10 is understanding that we need to find continued ways to  
11 sort of deliver housing supply at lower prices to meet  
12 those challenges. And what's the right, most effective  
13 way, right? Is it through broad taxes, where rates can  
14 be kept low and the tax bases are pretty wide and  
15 broad, or are they sort of very narrow taxes or fees  
16 that fall on certain things that we have actually a lot  
17 more production on it.

18 Q. Thank you. Did you hear Mr. Bjorn's comments on -- and  
19 I'm just going to actually have you turn to the exhibit  
20 first. Looking at what's been identified as Exhibit 5,  
21 which is the memorandum that you prepared -- and we'll  
22 wait till you've got that in front of you.

23 A. Okay. My apologies on lately my exhibits, exhibits  
24 within the exhibits.

25 Q. Did you hear Mr. Bjorn's comment on your Exhibit 4

1 relating to the 20 percent reduction?

2 A. I did.

3 Q. And can you respond to those comments?

4 A. Yeah. I believe he said there was a -- I was making an  
5 assertion that there was a 20 percent decline in  
6 housing feasibility across projects. That's not --  
7 wasn't my assertion or my testimony and is not what's  
8 detailed in the explanatory tax.

9 What we're trying to highlight here is when we remove  
10 land out of the equation and we look at prices and the  
11 relative costs it takes to produce different densities  
12 of housing, when we add on the additional costs we see  
13 a decline in the most feasible prototype that's  
14 available and, therefore, a decline in density.

15 And the way we -- the 20 percent figure here is  
16 simply to reference in our sort of spatial analysis  
17 here that's represented in the hexes, we see a decline  
18 of the maximum feasible prototype within 20 percent of  
19 those hexes. I think that's in the text, but I think  
20 that's -- I'm just clarifying. I'm not saying there's  
21 a 20 percent decline in feasibility or decline in  
22 housing. That's not my assertion.

23 Q. Thank you. Did you hear Mr. Bjorn's comment that that  
24 diagram did not identify the impact of the proposed  
25 fees because it also included MHA fees?

1 A. Yes.

2 MS. KAYLOR: And I'd like to ask you to respond to  
3 that, but first I'm going to hand out an exhibit that I  
4 will ask to be marked Exhibit 36.

5 (Appellant's Exhibit No. 36 marked for identification)

6 MS. ANDERSON: Where is this coming from? Is this --

7 MS. KAYLOR: This is a rebuttal exhibit.

8 MS. ANDERSON: So okay. Something we've never seen,  
9 right?

10 MS. KAYLOR: That is correct.

11 Q. (By Ms. Kaylor) So did you -- is it -- is it your  
12 opinion that the proposed fees in this case will have a  
13 significant adverse impact on housing production and  
14 affordability in isolation themselves?

15 MS. ANDERSON: I'm actually going to object before we  
16 get into this. If you're talking about this exhibit, I  
17 guess I would want to understand the foundation for  
18 including this exhibit and where it came from and --

19 MS. KAYLOR: We'd be happy to walk through those  
20 things.

21 Q. (By Ms. Kaylor) We've handed you an exhibit that's  
22 been marked Exhibit 36. Can you please describe the  
23 origin of this exhibit and what it shows?

24 A. So this exhibit shows the impact of fees on the  
25 financial returns of a prototypical multifamily



1 project, in this case a 200-unit (inaudible) project of  
2 concrete podium with wood-frame construction on top,  
3 something very similar seen in the city of Seattle.

4 It then applies survey information we have on fees  
5 that would be assessed to this specific project across  
6 Seattle in three different kind of concepts, as well as  
7 a range of peer cities within the Puget Sound that  
8 either have impact fees or not but have the generally  
9 exact -- that, sorry, have impact fees and other  
10 development fees.

11 Q. I'll just step back a minute and ask is this an exhibit  
12 that you and your staff prepared?

13 A. It is.

14 Q. Okay. Thank you. So if you could proceed and explain  
15 what that first page of the exhibit shows.

16 A. Yes. And so -- so one way developers think about  
17 project feasibility is on the financial terms, right?  
18 Given the prices that I can get in the marketplace in  
19 terms of rents --

20 HEARING EXAMINER: Can I ask you, before you get too  
21 much into the substance of it --

22 THE WITNESS: Yeah.

23 HEARING EXAMINER: -- there's an objection on the  
24 table to the --

25 MS. ANDERSON: Thank you.

1 HEARING EXAMINER: -- to the document. And so I  
2 appreciate you getting into the history of where it  
3 came from. I think we've addressed that and I don't  
4 know if that's still what you're asking him, but you  
5 sound like you are describing the substance of it as  
6 opposed to the source of it.

7 And I'm curious to what's the -- what are we  
8 rebutting with this?

9 MS. KAYLOR: There was testimony by Mr. Bjorn that  
10 there was not an analysis and then, in his opinion, not  
11 an impact from the impact fees in isolation, separate  
12 from MHA, and this is rebutting that testimony. That's  
13 in direct rebuttal to a specific assertion that was  
14 made by the City witness, which was that there were no  
15 significant adverse impacts on housing from this  
16 proposal and specifically relating to the analysis that  
17 Mr. Shook performed, that there was no -- no  
18 independent analysis with regard to the impact fees.  
19 And so this is directly responsive to that testimony.

20 HEARING EXAMINER: Was this available before?

21 MS. KAYLOR: No.

22 HEARING EXAMINER: Why not?

23 MS. KAYLOR: It had not been prepared.

24 HEARING EXAMINER: But I mean the information. Part  
25 of what you've indicated the rebuttal is to is the

1 statement by the City witness that there was not an  
2 analysis done. Now you're doing the analysis.

3 MS. KAYLOR: Correct.

4 HEARING EXAMINER: That's not rebuttal, that's  
5 simply --

6 MS. ANDERSON: New analysis.

7 HEARING EXAMINER: Yeah, that's new analysis, so...

8 MS. KAYLOR: Well, I guess I would -- I would say  
9 that it is rebuttal because the City witness went a  
10 step further beyond identifying an absence of analysis  
11 and affirmatively stated that in his opinion there were  
12 no significant adverse impacts from this proposal to  
13 housing production or housing affordability. And this  
14 exhibit goes directly to rebut that assertion, that, in  
15 fact, this proposal itself will result in significant  
16 adverse impacts to housing production and  
17 affordability. And it's, again, information that's  
18 directly relevant to the testimony that has been  
19 provided.

20 HEARING EXAMINER: Yeah, it is directly relevant. My  
21 concern is the timing.

22 MS. KAYLOR: And I appreciate that. Happy to, you  
23 know, take a break and have the City's witness have  
24 some opportunity to review it.

25 Again, this is directly in responsive to an issue

1           that has come up in hearing and I think it's our right  
2           to respond to that issue.

3           HEARING EXAMINER: I'm weighing that against the  
4           obligation to bring it in in direct.

5           City?

6           MS. ANDERSON: I strenuously do object to the  
7           inclusion of this new exhibit because it could have  
8           been provided in advance and it wasn't. And obviously  
9           it would put the City at a disadvantage not having an  
10          opportunity to review this or to be able to have  
11          addressed it in our response to their case in chief.  
12          This was not something that was disclosed on their  
13          witness and exhibit list nor addressed in the  
14          depositions.

15          MS. KAYLOR: I will note that depositions were  
16          conducted prior to the disclosure of any exhibits, so  
17          none of the exhibits were discussed in the depositions,  
18          except the pre-existing City proposal, and so that is  
19          an issue that should not be relevant to this  
20          determination; and that, again, this is directly  
21          relevant both to a question asked by the Examiner and  
22          to an assertion made by City witnesses and that we  
23          should be allowed to make our record on that point.

24          HEARING EXAMINER: Well, Appellant's capacity to  
25          bring its case is tantamount, we do want to make sure

1       that that's available. Even pro se litigants are not  
2       allowed to bring in items that are not on their exhibit  
3       lists and weren't disclosed. And this is -- and this  
4       is new -- it looks like new data to me. If I'm  
5       misreading it...

6           MS. KAYLOR: It's simply a -- there's been a comment  
7       made that the existing method of presenting this  
8       information didn't properly isolate impact fees as  
9       opposed to other fees that with which those would have  
10      cumulative --

11           HEARING EXAMINER: That comment --

12           MS. KAYLOR: -- impacts.

13           HEARING EXAMINER: -- was not made by a City witness,  
14      it was made by yours.

15           MS. KAYLOR: No. It was made by Mr. Bjorn.

16           HEARING EXAMINER: Because my question was to  
17      Mr. Shook. I made it directly to him. So he was  
18      simply re parroting what your own witness said.

19           MS. KAYLOR: Yes. But Mr. Bjorn then criticized  
20      Mr. Shook's work on that basis this morning and further  
21      offered the opinion that there were no significant  
22      adverse impacts resulting from this particular  
23      proposal.

24           And we do have the opportunity to show that there are  
25      significant adverse impacts resulting from this

1 particular proposal. And I would say in my experience  
2 it's very common for parties to provide rebuttal  
3 exhibits and testimony in response to points that are  
4 made by other parties.

5 MS. ANDERSON: If I could, Your Honor, the Appellant  
6 has the burden of establishing that there would be  
7 significant impacts. That's their initial burden in  
8 their case in chief. So if they wanted to bring in  
9 this information, they should have raised it in their  
10 case in chief.

11 I strenuously disagree that this is in response to  
12 information raised in the City's case. I don't think  
13 that's true and I think that it would prejudice the  
14 City to allow this information to come in at this late  
15 juncture without having the City's experts -- without  
16 them having the opportunity to have some time to look  
17 at it and review it and provide counsel with feedback  
18 on that.

19 MS. KAYLOR: And again, we're happy to take a break  
20 and --

21 HEARING EXAMINER: Yeah. We're going to need to do  
22 more than take a break on it. I fully agree with  
23 everything City counsel just said. This is -- while  
24 rebuttal documents are commonly accepted in this forum,  
25 they never come in the form of making the party's case

1 in chief. And this should have been and could have  
2 been presented at the time of the Appellant's case. It  
3 should have been on the exhibit list.

4 There's a very thin stretch between the statements  
5 from the City's witness that there were no impact fees,  
6 and on that thin stretch I will allow it, but we're  
7 going to need to have adequate time for the City to  
8 respond and review it. And we'd encourage this  
9 practice to not occur again (inaudible).

10 Given that, we won't take any testimony on it today.  
11 We have the 18th set aside and so we'll need to come  
12 back to address this on that date. If you have other  
13 questions for the witness, please proceed with those.

14 MS. KAYLOR: I have no further questions for this  
15 witness.

16 HEARING EXAMINER: Cross?

17 MS. ANDERSON: Thank you.

18

19 C R O S S - E X A M I N A T I O N

20 BY MS. ANDERSON:

21 Q. Hello, Mr. Shook. I'm going to be looking from a  
22 variety of sources here. So I would like to talk with  
23 you a little bit about your testimony that it's common  
24 practice to do a qualitative analysis. Do you recall  
25 that testimony?

1 A. I do.

2 Q. Okay. And when you say it's a common practice to do a  
3 qualitative analysis, can you give me an example of  
4 when you were involved with a determination with  
5 respect to housing and housing affordability analysis  
6 that was looked at qualitatively not quantitatively?

7 A. Yeah. I'll reference the one I did, the U District  
8 EIS.

9 Q. It was a U District EIS?

10 A. Yeah.

11 Q. So this was analysis prepared in the context of an  
12 Environmental Impact Statement?

13 A. Yes.

14 Q. Okay. So in that case the proponent, in that case the  
15 City, determined that there would likely be significant  
16 impacts to housing and housing affordability?

17 A. As part of the purpose to do the EIS?

18 Q. Yes.

19 A. I can't recall specifically what the reason, but  
20 yeah.

21 Q. Okay. So when you were -- your firm was involved, you  
22 were -- you helped prepare the analysis for the EIS?

23 A. Correct.

24 Q. Okay. And is it your understanding that a qualitative  
25 analysis needs to occur in the context of an



1 environmental checklist?

2 A. I don't know.

3 Q. Okay. And you also indicated that you did some work  
4 with respect to the City's ADU proposal; is that  
5 correct?

6 A. Correct.

7 Q. Okay. And did you, in fact, prepare the analysis,  
8 looking at potential housing impacts of the ADU  
9 proposal?

10 A. We did, yes.

11 Q. Okay. And again, was that in the context of an  
12 Environmental Impact Statement?

13 A. It was.

14 Q. Okay. And can you describe briefly for me the type of  
15 quantitative analysis you did with respect to housing  
16 in that context?

17 A. Twofold. So one was we provided an economic look at  
18 the financial feasibility of ADU production under a  
19 range of different scenarios, contemplated it in the  
20 alternatives --

21 Q. Um-hum.

22 A. -- and then used to sort of disclose direction,  
23 magnitude of effects with respect to (inaudible)  
24 housing financial performance.

25 And then we also produced a forecast of ADU

1 production as part of that and with a discussion around  
2 issues of housing affordability, displacement, and  
3 access to economic opportunities as part of it.

4 Q. Okay. And the proposal that was being evaluated, what  
5 specifically was that proposal with respect to ADUs?

6 A. The proposal was changes to the land use code to allow  
7 more flexibility for ADU options within the  
8 single-family zone.

9 Q. Okay. So all right. And so your firm prepared the  
10 analysis for the Environmental Impact Statement?

11 A. Correct.

12 Q. Okay. Did your firm provide any other additional  
13 analysis related to the SEPA process for ADUs?

14 A. What do you mean additional analysis on SEPA houses?

15 Q. I'm just wondering if your firm did anything else  
16 related to SEPA for that particular proposal.

17 A. Outside of preparing the technical report and reviewing  
18 the chapters on housing economics, and then participate  
19 in the (inaudible) process.

20 Q. Okay. And so did your firm prepare the language in the  
21 EIS with respect to housing and economics?

22 A. In that specific chapter?

23 Q. Yeah.

24 A. The City and the (inaudible) consultant were in charge  
25 of initial drafts that we reviewed (inaudible).

1 Q. Okay. All right. Okay. Okay. Okay. All right. You  
2 provided some response related to these three studies  
3 and I guess the -- I want to look at the Been study.  
4 And do I understand your testimony --

5 HEARING EXAMINER: Let's make sure when referring to  
6 the studies to include the exhibit number, please.

7 MS. ANDERSON: It's Exhibit No. 30.

8 Q. (By Ms. Anderson) Did I understand your testimony  
9 correctly that -- you've said several times, you know,  
10 the projects matter, the projects matter. And do I  
11 understand correctly that it's your opinion that a  
12 transportation impact fee program or an impact fee  
13 program is not the best way to assess fees on  
14 development?

15 A. I'm sorry, I don't think I understand the question.

16 Q. Is it fair to say that your testimony is that an impact  
17 fee program you believe is not the most efficient form  
18 of imposing a cost on development?

19 A. I would say that is unknown. My testimony has been the  
20 proposal, as I understand it, does not put forward the  
21 way we know we can make -- move forward with an  
22 efficient fee structure that minimizes impacts to  
23 housing production and affordability.

24 Q. Okay. All right. So you -- it's your opinion that  
25 there may be a fee program that does more to increase

1 efficiencies between the cost of housing and the -- the  
2 cost of housing and the fee?

3 A. Yeah. I would say specifically -- when I say that  
4 efficiently, right, it means we identify what the  
5 impact is that new users are having on the  
6 transportation system, that that impact translates into  
7 the need for projects that solve those problems. And  
8 then the cost of those projects are then allocated  
9 fairly to the users. In the school case, arrange a  
10 different transportation -- or, sorry, different land  
11 use types.

12 Q. Okay. So have you reviewed the project list on the  
13 City's proposal?

14 A. Yes, I've looked it over.

15 Q. Okay. And could you identify which projects you  
16 believe wouldn't provide value to development?

17 A. I would say I can't identify projects that -- there  
18 aren't projects identified that actually -- that are  
19 tied -- that are linked to the actual impact for the  
20 need for new capacity. What I see is a list of  
21 projects that may be eligible with this capacity, but  
22 what's missing in that piece, right, is the linkage to  
23 the actual impact that necessitates the project in the  
24 first place to the eligible to be -- and to be priced  
25 efficiently as an impact fee.

1 Q. All right. And do you understand how the City measures  
2 mobility?

3 A. I'm broadly familiar, but I'm not a transportation  
4 planner with respect to certain mobility.

5 Q. Okay. So do you understand how the mode-share level of  
6 service works?

7 A. I do.

8 Q. Okay. All right. And a couple of questions related to  
9 the maximum defensible fee. What fees did you assume  
10 in your analysis?

11 A. Which analysis are you speaking of?

12 Q. Your analysis in the April 22nd report, I believe.  
13 That's Exhibit -- one second, I'm going to tell you  
14 what exhibit that is.

15 UNIDENTIFIED SPEAKER: Exhibit 5.

16 Q. (By Ms. Anderson) Exhibit 5.

17 A. Exhibit 5. And which -- which exhibit within the  
18 Exhibit 5?

19 Q. I don't know that it was an exhibit within the  
20 Exhibit 5. Oh, let's see here. Actually, I think that  
21 is correct. I think it was Exhibit -- I think it's 4.  
22 Yeah, Exhibit 4, "Fees Reduce Housing Density."

23 A. Yeah. So in this case we're using -- and sort of at  
24 the time when this was done, I wasn't aware of the  
25 maximum defensible fee. So in this case there's an

1 impact fee of roughly \$2500 per dwelling unit that I'm  
2 assuming on analysis.

3 Q. All right. And did you include any other assumptions  
4 about fees in this exhibit?

5 A. Yes. Fees for permitting, SEPA, utility hookups are  
6 all assumed in that, as well MHA fees.

7 Q. Okay. And you didn't assume that there were any other  
8 impact fees included in that assumption --

9 A. Just (inaudible).

10 Q. -- is that correct?

11 All right. Okay. Okay. All right. I apologize.  
12 I'm going to jump around a little bit here, as I  
13 already have been, but I'm going to continue on with  
14 that.

15 All right. You talked a little bit about -- all  
16 right. So -- okay. So with respect to this Exhibit 4,  
17 you indicated that you said you removed land out of  
18 this analysis; is that correct?

19 A. That's correct.

20 Q. And what do you mean by that?

21 A. Land is an input to the cost, right? So if somebody is  
22 going to build something, they have to acquire the land  
23 at the price.

24 The point of this exhibit here is to normalize for  
25 things we have fairly certain understanding of about

1 their cost across the city. So materials, labor, the  
2 fees you would pay on that project, they're all pretty  
3 consistent whether you're building in the north end,  
4 south end, or downtown for that kind of product.

5 But if you move it around the city, the land changes.  
6 It changes the financial calculation that I'm trying to  
7 get at here is showing how the margins -- a fee can  
8 reduce the potential for delivering more dense housing.  
9 And so think of it as this simple example. If I gave  
10 you the land for free, what's the most dense housing  
11 product you can build on across the city in those  
12 places.

13 As an example here, just to understand sort of how  
14 the (inaudible) fee reduces -- is a cost that needs to  
15 be borne on a project, particularly if the fee is  
16 levied inefficiently like a tax.

17 Q. Okay. And in your opinion are -- I guess you have  
18 experience with some transportation impact fee  
19 programs?

20 A. Limited.

21 Q. Okay. And do you have any idea how many of those  
22 programs in Washington utilize this same system that in  
23 your opinion is inefficient?

24 A. I don't know precisely. And I think my point here is  
25 that the standard practice here has been one that's

1 borne out of sort of practicality, right? But I think  
2 as we've learned more about their effects and then  
3 particularly as we reflect on the housing shortages and  
4 the affordability crisis, it makes us think back about,  
5 well, is the standard practice here the one giving us  
6 the outcomes that we are trying to get at.

7 And I think that is the basis of sort of -- my  
8 assertion here is, sure, this may be sort of the way  
9 the standard practice operates with the fee, but we  
10 might want to -- now that we know some things about the  
11 impact fees, we might want to rethink about the way  
12 that we standardly kind of go about calculating the  
13 fees.

14 Q. Okay. So you removed the price of land. And is it  
15 fair to say that what you're specifically looking at is  
16 this prototype? And if I understand your testimony,  
17 your testimony was that there would be a decline within  
18 the most feasible housing types, which are you saying  
19 the most feasible housing type under the existing  
20 condition is the 5-over-1 podium and the 12-story  
21 tower?

22 A. So this is an abstraction, right --

23 Q. Um-hum.

24 A. -- to illustrate the effect of the fee with respect to  
25 housing production and how that may operate across the



1 state. And so it's not meant to represent a single  
2 project in every single one of these places but to  
3 understand how the feasibility of that project, once we  
4 adjust for prices both on the rent and the construction  
5 cost, absent land, how when we can isolate the effect  
6 of the fees. In this case, obviously MHA with impact  
7 used together, but if you were to separate it out you  
8 could actually find a similar (inaudible).

9 So the whole -- the purpose of this is really to sort  
10 of help demonstrate that issue.

11 Q. And do you think it's reasonable to isolate the fees in  
12 reaching an opinion about effects on housing?

13 A. I think it would be reasonable on the basis of this  
14 issue, sure.

15 Q. Okay. All right. So I believe I heard your testimony  
16 to be that there may be a decline with some of the most  
17 feasible housing types. There may be. But there also  
18 may not be a decline, isn't that fair to say, within 20  
19 percent of these hexes?

20 A. I don't think I understand the question.

21 Q. I think I understood your testimony to be that there  
22 may be a decline within the most feasible housing type  
23 shown here in 20 percent of the hexes. Isn't it --

24 A. I'd say there is a decline in the most feasible  
25 prototype within those areas that are highlighted in

1 red from a more dense product to a less dense product.

2 So each one of those ones says in his case a tower  
3 went to a podium or a podium went to a stack flat or a  
4 podium went to nothing, but that -- there was  
5 somebody -- one of those prototypes would be imposition  
6 of the fees took a step down in feasibility.

7 Q. Okay. And so do I understand your testimony correctly  
8 to be that that's -- that may be a possibility?

9 MS. KAYLOR: Objection. Mischaracterizes prior  
10 testimony.

11 THE WITNESS: I don't think so, no. I mean, I think  
12 what I'm saying discretely, the math says when I do it  
13 this way, I see a decrease in the feasibility based on  
14 holding all other variables consistent across, across  
15 those types.

16 Q. (By Ms. Anderson) And it's a reduction in the most  
17 feasible prototype in 20 percent of these dots is what  
18 your testimony is?

19 A. Yes. We see a decline in feasibility along the  
20 prototypes to a less-dense housing type in 20 percent  
21 of those hexes.

22 Q. Okay.

23 A. And those hexes as a universe represent where we  
24 actually have sufficient price data on what the  
25 existing market rates are for a newer product.

1 Q. Okay. All right. In doing your analysis, did you  
2 assume that the City would be utilizing the affordable  
3 housing exemption or provision set out in State law?

4 A. I made no assumption one way or the other.

5 Q. So you didn't --

6 A. These are market rate projects.

7 Q. Okay. So we're talking about market rate projects?

8 A. Yeah.

9 Q. Okay. So you didn't do any analysis with respect to  
10 affordable housing?

11 A. Like an affordable project, like that would mean a  
12 nonprofit-houser would build?

13 Q. Yes.

14 A. No, I did not.

15 Q. Okay. So you didn't make any assumptions related to  
16 whether or not the City's transportation impact fee  
17 program would utilize an exemption for affordable  
18 housing?

19 A. I didn't make an assumption one way or the other. It's  
20 not something that I analyzed.

21 Q. Okay. All right. Do you have an idea about the  
22 percentage of units in Seattle that are currently cost  
23 burdened in the city?

24 A. I do have this recently, but I don't have the number  
25 off the top of my head.

1 Q. Okay. Did you do any analysis related to the number of  
2 units that -- the change in the cost burden that might  
3 occur as a result of this particular proposal?

4 A. No, I did not in any precise sense.

5 Q. Okay. Are you aware of any Washington municipalities  
6 that use average -- or that use marginal cost pricing  
7 rather than the standard average cost pricing?

8 A. No.

9 Q. Okay.

10 A. I would say as a -- I would caveat that, though. Their  
11 discussions around the policy and tools may actually  
12 get them to marginal prices, but I would say that would  
13 be more as a sort of accident of them trying to balance  
14 different goals but not necessarily as explicitly  
15 stated that were trying to do this.

16 But I would -- I have seen in (inaudible) where  
17 projects are trying to think about the  
18 capacity-inducing issue and trying to formally build  
19 the projects and allocate those costs. So those are  
20 elements of sort of marginal cost pricing. But nobody  
21 says, "Here's -- here's how we're going to do it."

22 So my point here about the marginal cost pricing,  
23 right, is really about a way of thinking about the fee.

24 Q. And did you make an assumption about the City's  
25 program, when you were conducting your analysis, about

1           whether or not there would be an individualized  
2           determination for applicants with respect to impact  
3           fee?

4   A.    What do you mean "individualized"?

5   Q.    I think that you -- did you hear the testimony that  
6           there is a State law provision that requires an  
7           individualized determination?

8   A.    There's a State law that requires an individualized --

9   Q.    Determination for impact fees. Did you hear that  
10          testimony?

11  A.    I don't know if I did.

12  Q.    Okay.

13           HEARING EXAMINER: I'm not sure the witness testified  
14          on that in rebuttal. And we're getting narrowed down,  
15          so let's make sure we're not asking him questions about  
16          something he didn't address on rebuttal.

17           MS. ANDERSON: Okay. All right. I thought that you  
18          had addressed that. All right. I'll move on from  
19          that.

20  Q.    (By Ms. Anderson) Did you assume in your analysis that  
21          any transportation impact fee program would include an  
22          impact fee payment deferral program?

23           MS. KAYLOR: And I will object. I believe this is  
24          beyond the scope of this witness' testimony today.

25           MS. ANDERSON: I think that he testified about the

1 impacts of the proposal and I wanted to understand what  
2 assumptions he made. And this was one assumption that  
3 I didn't address previously, but I want wanted to know  
4 if he made an assumption related to whether or not the  
5 City would include a deferral program, which is  
6 sometimes a component of --

7 HEARING EXAMINER: Was there something in his  
8 rebuttal testimony that raised that question for you?

9 MS. ANDERSON: I think he was just talking about the  
10 components that he considered, and so I wanted to be  
11 explicit about whether or not he considered this  
12 particular component.

13 MS. KAYLOR: And I don't think there was any  
14 testimony about -- there was certainly testimony of  
15 what he considered on Monday when he originally  
16 testified, I just don't recall any testimony about that  
17 on rebuttal.

18 HEARING EXAMINER: If he touched on the components,  
19 then you can ask questions about those, so I'll  
20 overrule it.

21 MS. ANDERSON: Okay.

22 Q. (By Ms. Anderson) Did you assume that the program  
23 would include an impact fee payment deferral program?

24 A. For what -- for what analysis? Assumed for what?

25 Q. I'm sorry. In reaching the conclusion that the

1 proposal would have an adverse impact on housing  
2 production and affordability.

3 A. So I would say yes, I considered that those fees could  
4 be deferred. My central assertion here has to do with  
5 the nature of the projects and the price setting and  
6 whether or not those prices are data front or deferred,  
7 right, is secondary to that larger issue.

8 Q. Okay. So you did evaluate whether or not the impact  
9 fee payment could be deferred?

10 A. I considered that.

11 Q. Okay. And was that part of your conclusion?

12 A. I would say it doesn't change my conclusion.

13 MS. ANDERSON: Okay. Okay. I don't have any other  
14 additional questions.

15 HEARING EXAMINER: Okay. Redirect?

16 MS. KAYLOR: Yes, one quick thing.

17

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

19 BY MS. KAYLOR:

20 Q. Ms. Anderson in her questions repeated the phrase  
21 "maybe" several times. Is it your testimony that the  
22 proposal is likely to significantly affect housing  
23 production and affordability?

24 A. It is.

25 Q. And I want to clarify. Did you conduct -- was part of

1 your analysis examining the effect of the proposal on  
2 housing affordability?

3 A. Yes.

4 Q. Ms. Anderson went through a list of items and asked if  
5 you considered them. When you analyzed the impacts of  
6 the proposal, did you consider the proposal, the  
7 proposed elements of the proposed Comprehensive Plan  
8 Amendment that appear at Exhibit 2?

9 A. I did.

10 Q. Did you consider some different proposal that is not  
11 reflected in Exhibit 2?

12 A. I did not.

13 MS. KAYLOR: Thank you. No other questions.

14 HEARING EXAMINER: Thank you, Mr. Shook. We will  
15 need to have you come back Monday.

16 UNIDENTIFIED SPEAKER: Tuesday.

17 HEARING EXAMINER: Tuesday. Is it the 18th is  
18 Tuesday?

19 UNIDENTIFIED SPEAKER: Did I get that right?

20 HEARING EXAMINER: Our next day --

21 MS. KAYLOR: I'll double-check.

22 HEARING EXAMINER: -- that we had scheduled for  
23 hearing.

24 MS. KAYLOR: Yes.

25 HEARING EXAMINER: What I would like to do is, this



1 is concerning Exhibit 36, can counsel identify the  
2 testimony that you're rebutting in advance, perhaps by  
3 the end of day Friday?

4 MS. KAYLOR: I can. I have a question about the  
5 hearing tapes and when we would have access to that.

6 HEARING EXAMINER: Do you have a sense of that? This  
7 is not the testimony that was impacted by the  
8 recording. This was -- I don't believe this was  
9 Mr. Bjorn's testimony from today.

10 THE CLERK: There is no way to make an MP3 to put on  
11 the website that will be useable, so --

12 HEARING EXAMINER: Even for the -- for the entire  
13 day?

14 THE CLERK: No. For that section.

15 HEARING EXAMINER: So this was before the  
16 interference.

17 THE CLERK: Oh. Well, it's already up.

18 HEARING EXAMINER: Oh, okay. That answers that.

19 MS. KAYLOR: Okay. So all of Mr. Bjorn's testimony  
20 from today is available on the website? And I would  
21 need to go back and just recall the exact order; is  
22 that right? I just don't recall exactly when we had  
23 the issue.

24 THE CLERK: It happened during Mr. Mazzola's.

25 MS. KAYLOR: Okay. Great. Thank you.

1           So yes, by Friday certainly.

2           HEARING EXAMINER:   Okay.   End of day.

3           MS. KAYLOR:   Yes.

4           HEARING EXAMINER:   So and if you need more time,  
5 something comes up, maybe Monday's fine, but just that  
6 will help me understand the scope of what we're going  
7 into on Monday for purposes of rebuttal, and the City  
8 as well.

9           And the City is being afforded the opportunity to  
10 review the document.   They'll have warning in advance  
11 what the rebuttal testimony is.   And if there is a need  
12 for response to that, the City can put that on.   I  
13 don't know how far we'll go down that road as rebuttal  
14 back and forth, but we will just see how that goes.

15          MS. ANDERSON:   So did I understand correctly that  
16 Ms. Kaylor would provide information by close of  
17 business Friday about the scope of the testimony?

18          HEARING EXAMINER:   To the testimony from Mr. Bjorn  
19 that this is being presented in rebuttal too.

20          MS. ANDERSON:   Okay.

21          HEARING EXAMINER:   Just so we know what the rebuttal  
22 is about.

23          MS. ANDERSON:   Okay.

24          HEARING EXAMINER:   And there's no other description  
25 of scope because I think the document speaks for itself

1 in that respect. We don't know the testimony that  
2 accompanied it.

3 MS. ANDERSON: Right.

4 HEARING EXAMINER: And my assumption is -- the  
5 operating assumption we have is that the only reason  
6 we're reconvening is to hear testimony about this  
7 exhibit and not additional questions.

8 MS. KAYLOR: That is correct. And as I recall, I  
9 believe there were portions of Mr. Freeman's testimony  
10 that this responds to as well and perhaps some overlap  
11 between Mr. Bjorn and Mr. Freeman's testimony. So --

12 HEARING EXAMINER: If that's the case --

13 MS. KAYLOR: -- I will certainly identify --

14 HEARING EXAMINER: -- then certainly, yeah.

15 MS. KAYLOR: Yes.

16 HEARING EXAMINER: I shouldn't limit you to -- it was  
17 earlier indicated Mr. Bjorn, but if there's other  
18 testimony that's being rebutted, if you could just  
19 identify that by end of day Friday.

20 MS. KAYLOR: Certainly.

21 HEARING EXAMINER: Again, and the City will have an  
22 opportunity to review this in that time, hear the  
23 testimony on Monday, and then if they have rebuttal,  
24 rebuttal-rebuttal testimony to that, they can present  
25 that at the time.

1           And I'm taking that step because we're in that unique  
2 position of the evidence that overlaps rebuttal plus  
3 chief in case -- case in chief -- that, yeah, this is  
4 central to the Appellant's case is whether there's a  
5 significant impact or not. And so with this coming in  
6 at this time, the City needs an opportunity to respond.

7           Any questions about how we're proceeding with that,  
8 Counsel?

9           MS. KAYLOR: Nope.

10          HEARING EXAMINER: Okay. Time? As long as we have  
11 Mr. Shook here, what time? Nine a.m., can we do that?

12          MS. KAYLOR: Nine a.m. --

13          HEARING EXAMINER: Okay.

14          MS. KAYLOR: -- works for us.

15          HEARING EXAMINER: All right. And you had one more  
16 rebuttal witness for the day?

17          MS. KAYLOR: Yes.

18          HEARING EXAMINER: Okay.

19          MS. KAYLOR: Mr. Steirer.

20          Good afternoon, Mr. Steirer. I have just a couple of  
21 follow-up questions for you in response to the  
22 testimony that we heard earlier today.

23          HEARING EXAMINER: And just a reminder, Mr. Steirer,  
24 you're still under oath from the last time you were  
25 before us.

1 THE WITNESS: Thank you.

2

3 GEORGE STEIRER: Witness herein, having previously  
4 been duly sworn on oath, was examined  
5 and testified as follows:

6

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

8 BY MS. KAYLOR:

9 Q. So were you here earlier today to hear the testimony of  
10 Mr. Mazzola?

11 A. I was.

12 Q. And did you hear his testimony that SEPA review of the  
13 listed projects, the projects listed in the  
14 Comprehensive Plan proposal, didn't need to be done  
15 until the -- until 30 percent design?

16 A. I did hear him discussing that, yes.

17 Q. And do you agree with that testimony?

18 A. No.

19 Q. Why not?

20 A. SEPA doesn't say that you only have to do SEPA review  
21 when you get to X percent, 30 percent or 5 percent or 2  
22 percent. It says you do SEPA review when you have an  
23 actual -- when you have a proposal in front of you,  
24 that's when SEPA is required. That includes for  
25 project and non-project actions.

1 Q. Thank you. And in this case is it your opinion, based  
2 on your experience with implementing SEPA, that that  
3 SEPA analysis should be done -- should have been done  
4 in connection with the Determination of Nonsignificance  
5 that was issued here?

6 A. Yes. A SEPA analysis should have been done and it  
7 should have included a review on all of the  
8 environmental elements. Those environmental elements  
9 would have provided meaningful analysis in this  
10 particular case.

11 Q. And did you hear Mr. Mazzola's testimony that it was  
12 not certain or guaranteed that these listed projects  
13 would be constructed?

14 A. Yes, I heard him say that.

15 Q. Under SEPA, in your professional opinion, is it  
16 necessary that it be certain or guaranteed that a  
17 project be constructed in order for SEPA reviews to be  
18 triggered?

19 A. No. They're -- SEPA doesn't exempt you out of SEPA  
20 review if it's not guaranteed. So when you have a  
21 proposal in front of you, when you have an action  
22 that's nonexempt, then you must go through SEPA review.  
23 And in this particular case, that would be required.

24 Q. Did you hear Mr. Mazzola's testimony regarding the fact  
25 that SEPA review would occur at some point in

1 the future?

2 A. Yes.

3 Q. In your opinion does that future potential SEPA review  
4 satisfy all SEPA's requirements?

5 A. No, because, for example, a couple of reasons. One, as  
6 Mr. Mazzola had mentioned, certain projects are exempt.  
7 And this proposal before us here is directly related to  
8 adoption of impact fees to fund these proposals.

9 SEPA requires that you look at the cumulative  
10 analysis as early as possible, in the early as possible  
11 time that you have an action. If you don't have enough  
12 information to do that, then you need to request  
13 additional information to make sure that those  
14 cumulative impacts do not have a significant adverse  
15 environmental impact.

16 Q. And did you hear Mr. Mazzola's testimony regarding the  
17 various aspects of the listed projects that would be  
18 SEPA exempt?

19 A. Yes.

20 Q. And based on that testimony, did you -- do you agree  
21 with him that it's sufficient to defer analysis until  
22 the 30 percent design phase?

23 A. No, not -- not in this particular case and not  
24 necessarily for each individual one. But talking about  
25 what's, of course, today in this particular case, we

1       have a proposal in front of us, decision makers have a  
2       proposal that it's directly linked, it's directly  
3       connected to the funding of these projects.

4             The whole purpose of the Comprehensive Plan Amendment  
5       is to fund these projects, so you have to look at the  
6       cumulative impacts. You have an action before you, you  
7       have a proposal before you, you have to -- you have to  
8       do it now. You have to do it in the earliest possible  
9       stage, not necessarily when you've got 30 percent on  
10      each individual project that isn't exempt.

11            SEPA contemplates the issue that all of these things  
12      may be exempt, or a lot of them, and then you're not  
13      looking at the cumulative impacts. You need to look at  
14      the cumulative impacts, especially if they're SEPA  
15      exempt. You don't -- the purpose of SEPA is to make  
16      sure that you're not missing out on those cumulative  
17      impacts analysis when somebody comes in for several  
18      exempt projects but together they would have a  
19      significant adverse impact. One of them might not, but  
20      together they might or they would, then that's what  
21      SEPA is trying to capture.

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

23            HEARING EXAMINER: Cross?

24            MS. ANDERSON: Mr. Steirer, is it your -- well, I  
25      think I have no questions for you, actually.



1 THE WITNESS: Okay.

2 MS. ANDERSON: Thanks.

3 HEARING EXAMINER: Thank you, Mr. Steirer.

4 All right. We'll see you all again on Tuesday the  
5 18th at 9:00 a.m. Anything else we need to address  
6 before we leave?

7 MS. ANDERSON: Could we just briefly address closing?

8 HEARING EXAMINER: Yes.

9 MS. ANDERSON: And my expectation or my -- is that it  
10 would be a written closing, just from prior examples.

11 HEARING EXAMINER: Um-hum.

12 MS. ANDERSON: But if you would prefer an oral  
13 closing, we could --

14 HEARING EXAMINER: I don't think I'd ever prefer. No  
15 offense to counsel, but I have no reservations, and I  
16 think I've said it before, I prefer written simply  
17 because it takes counsels' expert eye and legal  
18 argument and applies it to the facts. It's better than  
19 a prehearing brief, better than oral.

20 So but I -- with all due respect to counsels'  
21 schedules and budgets, I allow the oral closing if  
22 that's preferred.

23 MS. KAYLOR: I would say we also prefer written  
24 closings for the same reasons, and that would be our  
25 preference here. So it makes sense, we could set a

1 schedule now. Does that --

2 HEARING EXAMINER: We can do that.

3 MS. ANDERSON: That works. That's fine.

4 HEARING EXAMINER: I could be pretty liberal with  
5 that, so really at the counsels' discretion, when they  
6 think they can have something ready.

7 MS. KAYLOR: I will say that we have another hearing  
8 that is currently scheduled for the 20th, 21st, and  
9 26th, and so in light of that would appreciate a little  
10 bit of leeway on the briefing schedule.

11 HEARING EXAMINER: Yeah. I think that it's up to  
12 counsel.

13 MS. KAYLOR: So if possible we would like a couple of  
14 weeks after that, the close of that hearing, which  
15 would be -- which would be the 10th. And if we could  
16 push that out to the 12th, which is a Friday, I  
17 believe -- hang on actually.

18 Ah, I actually have another full day -- another  
19 hearing scheduled on the 10th and the 11th. In light  
20 of that, if I'm not pushing this too far, it would be  
21 great to have until the 19th. I understand if there's  
22 objections. As you all know, I was out for a month and  
23 I got many hearings that would have occurred over that  
24 period of time pushed into now, which is causing me  
25 some scheduling difficulty. So I will ask for that and

1 understand if I can't have that full amount of time.

2 HEARING EXAMINER: Where is the City on it? I've --  
3 the last I recall we talked schedule, we were outside  
4 the legislation window, but I don't know if that's  
5 still the case --

6 MS. ANDERSON: Yeah.

7 HEARING EXAMINER: -- or not.

8 MS. ANDERSON: Yeah. That is -- that is true still.  
9 So I think that's fine and that assumes that we're  
10 filing a concurrent closing and there wouldn't be a  
11 response? Okay. So --

12 MS. KAYLOR: That's what I was assuming.

13 MS. ANDERSON: -- I hope. Okay.

14 MS. KAYLOR: But I would be happy to do it either  
15 way --

16 HEARING EXAMINER: Yeah, we can do that.

17 MS. KAYLOR: -- whatever is most helpful.

18 HEARING EXAMINER: But I think --

19 MS. ANDERSON: Or not. I guess I'm just wondering if  
20 you think --

21 HEARING EXAMINER: Yeah. How about I'd like an  
22 opportunity for a response reply.

23 MS. ANDERSON: Okay.

24 HEARING EXAMINER: Let's just put that a week  
25 later --

1 MS. ANDERSON: Okay.

2 HEARING EXAMINER: -- so we don't drag things out.

3 MS. ANDERSON: Okay.

4 MS. KAYLOR: And so are we doing --

5 HEARING EXAMINER: And it's not required, but it's an  
6 opportunity for the opposing counsel to essentially  
7 comment on the final closing. And that would be the  
8 19th then closing is due and then the 26th the response  
9 would be due.

10 MS. ANDERSON: Okay.

11 MS. KAYLOR: And so am I understanding this right  
12 that what we're doing is having two -- both parties'  
13 closing brief on the 19th and then both parties' an  
14 opportunity to respond on the 26th?

15 HEARING EXAMINER: Yes.

16 MS. KAYLOR: Okay. Thank you.

17 HEARING EXAMINER: Anything else we need to address  
18 before Tuesday?

19 MS. ANDERSON: No.

20 HEARING EXAMINER: All right. Thank you very much.  
21 I'll see you then.

22 (June 12, 2019, hearing proceedings concluded)

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C E R T I F I C A T E

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STATE OF WASHINGTON )  
 ) ss  
COUNTY OF KING )

I, the undersigned, do hereby certify under penalty of perjury that the foregoing court proceedings were transcribed under my direction as a certified transcriptionist; and that the transcript is true and accurate to the best of my knowledge and ability, including any changes made by the trial judge reviewing the transcript; that I received the audio and/or video files in the court format; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

In WITNESS WHEREOF, I have hereunto set my hand this 8th day of July, 2019.

\_\_\_\_\_  
Bonnie Reed, CET