

1 BEFORE THE HEARING EXAMINER
2 FOR THE CITY OF SEATTLE

3

4 In the Matter of the Appeal of:) Hearing Examiner File:
5) W-21-007
6 TreePAC Environmental Impact Review)
7 Townhouse Reforms Legislation,)

7

8 HEARING VIA ZOOM - VOLUME II
9 Hearing Examiner Susan Drummond Presiding
10 March 1, 2022

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March 1, 2022

HEARING EXAMINER: Good morning, everyone. We're back on the record on Appeal Number W-21-007. Today is February 29th [sic], 2022, Tuesday morning, 9:00 a.m.

Mr. Moehring, Mr. Mitchell, it looks like we have both of you back on board. Good morning. I think we were continuing, Mr. Moehring, with your questioning of Ms. Neuman, is that correct? Are there any other procedural issues we need to address before we get -- complete that?

MR. MOEHRING: No. I was just going to ask Mr. Mitchell if you're interested in the other testimony that we're expecting today or just kind of go with -- go with the flow.

HEARING EXAMINER: Are there -- is there -- are there any updates on that that I should be aware of or anything I need to address? I mean, if you all have resolved things, I'll probably just defer to you all.

MR. MITCHELL: Your Honor, I guess I would -- we have sort of informally sort of established the order, but I would be glad to hear from Mr. Moehring if he has a -- you know, a definitive -- more of a definitive order of the way that they'll call their witnesses.

MR. MOEHRING: Okay. I can do that. So we're going to finish up with Ms. Neuman and then we'll continue -- or

1 start with Ms. Ramos, and then that's the end of the City
2 witnesses, as far as I know.

3 Then we'll start with the TreePAC environmental impact
4 review witnesses, Mr. Lider; Mr. Derdowski; Mr. Kaplan;
5 Ms. Wolf; and then hopefully he's feeling better,
6 Mr. Ellison at the end, the last number.

7 HEARING EXAMINER: Okay.

8 MR. MOEHRING: And we do have a few more witnesses for
9 tomorrow morning.

10 HEARING EXAMINER: And those would be the lay witnesses?
11 It looks like there were --

12 MR. MOEHRING: Yeah.

13 HEARING EXAMINER: -- three on here. Or do you -- do you
14 know how many or who -- which ones you'd be calling or is
15 that not yet a final determination on that?

16 MR. MOEHRING: Yes, we do. Kind of going by memory here,
17 it would be Mr. Wheeler; myself; an arborist, Mr. Oxman; and
18 a lay witness, Ms. Grant.

19 HEARING EXAMINER: Okay.

20 MR. MOEHRING: Some of the other witnesses on our list we
21 removed because of the partial order of this.

22 HEARING EXAMINER: Oh, okay. Understood. Okay. Well,
23 thank you. That's helpful for me actually to have that
24 additional detail.

25 All right. Any further questions on that?

1 MR. MOEHRING: No.

2 HEARING EXAMINER: Okay.

3 MR. MITCHELL: Not from the City. Thank you.

4 HEARING EXAMINER: Okay. All right. Ms. Neuman, good
5 morning. Do we have you up?

6 THE WITNESS: I'm here. Good morning.

7 HEARING EXAMINER: Good morning. So I'm not going to
8 swear you in again. You remain under oath. You are free to
9 keep your video off. I think we had some connectivity
10 issues yesterday, and I think that -- it seemed like it
11 worked better to do it that way.

12 Mr. Moehring, you may proceed with your questions.

13 THE WITNESS: Sounds good.

14 MR. MOEHRING: Okay. Thank you.

15

16 MEGAN NEUMAN: Witness herein, having been
17 previously sworn on oath,
18 resumed the stand:

19

20 C R O S S - E X A M I N A T I O N (CONTINUED)

21 BY MR. MOEHRING:

22 Q. Good morning, Ms. Neuman. Continuing on where we left off
23 yesterday, just a little recap. I guess you testified
24 yesterday that you're a land use -- on the land use and tech
25 team at the Department of Construction and Inspections; is

1 that correct?

2 A. Yes.

3 Q. And I guess you identified yesterday that you were one of
4 the individuals -- part of the team, along with Mr. Staley
5 and Mr. Wentlandt, Mr. VanSike, Ms. Pettyjohn, and
6 Mr. Welch. And of the group that --

7 A. (Inaudible) same team as (inaudible).

8 Q. Can you repeat that one more time? Sorry. It was a little
9 bit --

10 A. I'm sorry. I'm having some connectivity issues on my side,
11 too. Are you able to hear me or --

12 HEARING EXAMINER: I can hear you now, yes. You were a
13 little garbled before.

14 A. Okay. And, Mr. Moehring, your question was garbled to me,
15 so please if you could repeat that back to me, I would
16 appreciate it.

17 Q. (By Mr. Moehring) Okay. Let me slow down. So you
18 testified, I guess, yesterday that you are part of the team
19 for this proposal, and that team included Mr. Staley,
20 Mr. Wentlandt, Mr. VanSike, Ms. Pettyjohn, and Mr. Welch,
21 and yourself. And other --

22 A. The team that I manage were -- was consulted by Mr. Staley
23 and his group to contribute to this proposal. We are not
24 part of the creation of the proposal or analysis of the
25 proposal. We were consulted.

1 Q. You were consulted. Okay. And I'm not sure if you were
2 there for Mr. Staley's testimony yesterday. Were you?

3 A. I was.

4 Q. Okay. And do you recall him testifying that -- to some
5 questions that he would defer those to the Department of
6 Construction and Inspections, such as parking sizes and
7 other code-related questions?

8 A. Yes. I will do my best to answer code-related questions. I
9 do not have the code in front of me, but I know (inaudible)
10 should always read the code when --

11 Q. So --

12 A. -- and not try to go from memory.

13 Q. Okay. Yes, totally. Totally understood.

14 MR. MOEHRING: Just, if we could, Lars (phonetic), open
15 Exhibit No. 52 as a background.

16 Q. (By Mr. Moehring) And if you have a paper copy of 52, go to
17 Page 8, Interrogatory Question No. 5. And when we get
18 there, Ms. Neuman, I'm wondering if you could read the
19 question only for Interrogatory No. 5. He'll pull it up on
20 the screen here.

21 HEARING EXAMINER: Mr. Moehring, do we need to read that
22 full question? It's a good paragraph long. I mean...

23 MR. MOEHRING: Let's see.

24 HEARING EXAMINER: I really want to move efficiently
25 through today's testimony.

1 MR. MOEHRING: Yeah.

2 HEARING EXAMINER: And make sure we really focus on what
3 actually is relevant to the appeal and skip anything that's
4 not.

5 Q. (By Mr. Moehring) Okay. Just read the first sentence,
6 please. Thank you.

7 A. For core document Exhibits 8, 9, 10, 11, and 12, the site
8 plan only describes and demonstrates the rowhouse portion of
9 the whole development and does not show the number and site
10 characteristics for the townhouses located behind the
11 rowhouses, as provided with the fully described Exhibit 13.

12 Q. Okay. Thank you. So this kind of sets the tonation [sic]
13 for the following questions. And, basically, I want to look
14 at a few of the core documents that were provided by the
15 City to answer some of those unresolved questions that we
16 had from earlier testimony. So, if we could, we can close
17 this exhibit and open Exhibit No. 7 -- City Exhibit No. 7
18 and the Hearing Examiner Exhibit No. 7.

19 And, Ms. Neuman, when this is opened up, we're going to
20 look at just three of the City examples. And those are
21 Lines No. 9, 10, and 12. If it's relative to the record,
22 would we identify or the read the address, the number of
23 rowhouses and number of townhouses for Exhibits 9, 10, and
24 12, as listed here.

25 A. Exhibit 9, address 5030 and 5036 Sandpoint Place Northeast;

1 number of rowhouse units 5; number of townhouse units, 2.

2 Were those the only items you wanted me to read?

3 Q. Number -- Line 10 and Line 12.

4 HEARING EXAMINER: And I do have a paper copy of this in
5 front of me, Mr. Moehring, so I don't need the address. If
6 you can just refer to the exhibit number, that's probably
7 sufficient.

8 Q. (By Mr. Moehring) Okay.

9 A. Great.

10 Q. So we're all familiar with this exhibit. All right. Let's
11 keep this open just in case and refer to the first exhibit
12 number -- City Exhibit No. 9. Open up City Exhibit No. 9.
13 And let us know, Ms. Neuman, when this is a readable site
14 plan. All we really need to look at is the site plan image
15 in the center -- top center.

16 A. I can -- I can see the image but I can't read the text. I
17 don't --

18 Q. Okay.

19 A. It depends on what your question is.

20 Q. All right. Yeah. I don't think we'll get that level of
21 detail.

22 Could you describe for the written record, which is C on
23 this drawing?

24 A. I see a site plan of a development proposal for rowhousing.

25 Q. Okay. And what location is this, again?

1 A. It looks like the right-of-way label is Sandpoint --

2 Sandpoint Place. I believe it was "Northeast."

3 Q. Okay.

4 A. 5032 Sandpoint Place Northeast.

5 Q. And does the number of rowhouses match what that is on

6 Exhibit No. 7?

7 A. Can you go back to that exhibit?

8 LARS: Yeah. I want to know (inaudible).

9 A. There. This is for Line -- Exhibit 9.

10 Q. (By Mr. Moehring) Right.

11 A. There are five rowhouses indicated in this part.

12 Q. Did the number of townhouses --

13 A. The number of townhouses is looking like two.

14 Q. And that matches the drawing, right?

15 A. This drawing is not for the site for the townhouses, so we'd

16 have to look at a different (inaudible).

17 Q. Okay. So our interrogatory asked for that information and

18 we were directed to go to the City's website. We were

19 provided some information and -- but I leave it up to the

20 Examiner to identify if you want us to open up the remaining

21 part of the site.

22 HEARING EXAMINER: No. That's fine. I mean, I have

23 everything in front of me and I can tell what's on here,

24 so --

25 Q. (By Mr. Moehring) Okay. Is the -- for this site, how

1 many -- can you describe where -- is there a lot boundary
2 adjustment or a short plat of this property?

3 A. Can you zoom in so I could see the property line? It may or
4 may not be indicated on this plan. I can take a look. Or
5 perhaps the legal description would be a good place to look
6 to see if there was a higher planning action.

7 LARS: Are you able to see that all right?

8 A. Yeah. I can see what you have. So this is Parcel A, a
9 short plat, No. 3033557-LU. So, yes, I would agree that
10 that front lot is Parcel A of the short plat.

11 Q. Okay. And do you also see parking spaces on that front lot?
12 Vehicle parking spaces.

13 A. Yes.

14 Q. And how many are provided? How many parking spaces are
15 provided on the front lot? "Front" being the street facing
16 left.

17 A. It looks like four.

18 Q. And do you -- do you know what the -- he asked Mr. Staley
19 and he wasn't sure. Do you know how many -- in areas where
20 parking is required, do you know how many parking spaces are
21 required for townhouses and rowhouses per dwelling?

22 A. I was generally thinking four multifamily units that are not
23 (inaudible) of the dwelling units require one parking space
24 per unit.

25 Q. Okay. So how many parking spaces are provided on the front

1 lot, compared to how many dwellings are on the front lot?

2 A. There are five units on the front lot and four parking
3 spaces on the front lot.

4 Q. Okay. Is the fifth -- is there a fifth parking space
5 provided on the rear lot?

6 A. I believe that there is another parking space provided on
7 the back lot, yes.

8 Q. Okay. Thank you. We can keep this. Open up now Exhibit --
9 two more I just want to take a look at, if it's okay with
10 the Examiner.

11 HEARING EXAMINER: And, Mr. Moehring, I wasn't sure what
12 you're getting at. I mean, I have this plan in front of me.
13 I can see how many rowhouses and parking spots and all that.
14 But I'm not clear on what your -- the aim of your
15 questioning is.

16 MR. MOEHRING: This is a very important line of
17 foundation -- foundational questions. Unfortunately, being
18 an architect, I know that foundations both in building and
19 in -- I guess in these hearings, take some time to set up.
20 So that will become evident once we look at these examples
21 and then compare those to what is required by the code.

22 HEARING EXAMINER: Okay.

23 MR. MOEHRING: So if you could pull up Exhibit No. 10.
24 And I'm also trying to establish a pattern. I'm sorry.

25 Q. (By Mr. Moehring) Which, do you see this drawing,

1 Ms. Neuman? And if you do, if you could briefly describe
2 what you see.

3 A. I do see the drawing. It appears that there's a -- the
4 rowhouse development proposed on Parcel A for eight
5 rowhouses.

6 Q. Okay. And does that match what was on Exhibit No. 7? We
7 can flip to No. 7, if you like.

8 A. Yes, please. Yes.

9 Q. Do you also see the -- Exhibit No. 7 said there was eight
10 townhouses. Do you see the eight townhouses?

11 A. This property -- or this permit appears to just be for the
12 eight rowhouses.

13 MR. MOEHRING: Okay. And, again, Your Honor, we can
14 provide supplemental information on that or we can actually
15 look at the drawing, if you'd like.

16 HEARING EXAMINER: No. I have -- no. I have the drawing.
17 That's fine. I've got it right in front of me. I'm looking
18 at it.

19 MR. MOEHRING: In terms of the townhouses, you have those,
20 as well?

21 HEARING EXAMINER: I have the -- I'm looking at Exhibit 10
22 with the rowhouses.

23 MR. MOEHRING: Okay. What is not shown is the drawing,
24 which was obtained from the interrogatories of the eight
25 townhouses in the -- in the back.

1 HEARING EXAMINER: Okay.

2 Q. (By Mr. Moehring) Do you see a lot subdivision line on
3 your -- Ms. Neuman?

4 A. Again, I'd have to look at the legal description to confirm
5 how the parcels were created. But there does appear to be
6 three parcels represented in this drawing.

7 Q. Okay. Do you see any parking spaces on the Parcel A with
8 the eight rowhouses?

9 A. I don't think so, but it's pretty faint. The lines are
10 pretty faint.

11 Q. Okay. We're zooming in. Do you see any parking spaces?

12 A. I don't.

13 MR. MOEHRING: Okay. And, again, we can follow it with
14 additional detail, if the Examiner would like.

15 Q. (By Mr. Moehring) Okay. And let's pull up the last
16 example, if we could. That would be Exhibit No. 12. And if
17 we could zoom in to the site plan for Ms. Neuman to take a
18 look at.

19 Okay. This final example, can you briefly describe what
20 you see on this -- on this drawing?

21 A. This appears to be a three-unit rowhouse development.

22 Q. Okay. And does that match the number that's on Exhibit
23 No. 7 for this address? That would be Exhibit No. 12.

24 A. I assume so.

25 Q. Take a quick look. And in addition to the three rowhouses,

1 how many townhouses on this development lot from this table?
2 I'm sorry. Go back to Exhibit 7 real quick. So we've got
3 the three for Line 12, Exhibit 12. We have three rowhouses,
4 as you mentioned. And how many townhouses?

5 A. On this development site there are three rowhouses in this
6 table. This is also representing three townhouse units on
7 separate lots.

8 MR. MOEHRING: Thank you. We can show Ms. Neuman Exhibit
9 12 one more time.

10 Q. (By Mr. Moehring) Does this drawing show the three
11 townhouses?

12 A. No. They would be under a separate permit.

13 Q. Separate permit, separate drawing that we received.

14 MR. MOEHRING: And, again, we can provide supplemental
15 information on this for the Examiner, if you please -- if
16 you would like.

17 HEARING EXAMINER: No. I think it's in the table.

18 Q. (By Mr. Moehring) Okay. Do you see a lot subdivision line
19 on this -- or a lot boundary adjustment line?

20 A. I see property lines depicted in blue.

21 Q. Okay. Do you see the parking for the three rowhouses?

22 A. I see three parking spaces off the alley, yes.

23 MR. MOEHRING: Let's page over to the right a little bit
24 so we can see what she's talking -- okay. Great. Thank
25 you.

1 Q. (By Mr. Moehring) And one of the questions was a size of a
2 parking space. Could you -- could you take a look at the
3 size shown here? And is that a code compliant parking space
4 size?

5 A. Medium parking spaces are 8-by-16. Those look to be
6 compliant.

7 Q. Great. Then are the parking spaces all shown within the
8 property?

9 A. These appear to be off-site parking.

10 Q. Okay.

11 A. Which is permitted by code.

12 Q. And which code allows off-site parking?

13 A. The standards in our multifamily zoning. I don't have the
14 exact citation for you, but it would be Chapter 23.45.

15 Q. Is it -- okay.

16 MR. MOEHRING: Lars, could we open up 23.45 --

17 HEARING EXAMINER: By the way, the code on this -- on this
18 exhibit references Code Section 23.54.025?

19 THE WITNESS: That's the requirement for when you -- when
20 you are allowed to have off-site parking by the zone, which
21 would be in 23.45. The code cite in 23.54 would tell you
22 how to accomplish that.

23 HEARING EXAMINER: Okay.

24 THE WITNESS: They work together, those two code cites.

25 HEARING EXAMINER: Thank you.

1 THE WITNESS: Yeah.

2 MR. MOEHRING: So the code section, I'm sorry, that's
3 being referred to is 23.54?

4 HEARING EXAMINER: Well, there's a reference on 23.54.025.
5 But I think what the witness was saying is you read
6 23.54.025 in conjunction with another section in 23.45.

7 THE WITNESS: Yeah.

8 MR. MOEHRING: Okay. Lars, do you have the 23.54 --
9 23.45.536? Or, if not, I can probably pull it up.

10 LARS: I have that right now.

11 MR. MOEHRING: Okay. Thank you.

12 Q. (By Mr. Moehring) Now, Ms. Neuman, does 23.- -- does code
13 Section 23.45 apply to rowhouses and townhouses?

14 A. Which code section?

15 Q. 23.45. Chapter 23.45?

16 A. Yeah.

17 Q. Okay.

18 A. If those -- if those rowhouses are located in a multifamily
19 zone, then that zone -- those zone standards would apply.

20 Q. Okay. Am I understanding all the examples that were -- that
21 were provided by the City are within the multifamily zoning?
22 Is that your understanding, as well, Ms. Neuman?

23 A. Yes.

24 MR. MOEHRING: Okay. Lars, you're still displaying the
25 23.24.

1 LARS: Sorry about that. Could you direct me to which
2 document you want?

3 MR. MOEHRING: I'll pull it up. How about that? All
4 right. Here we go. Okay.

5 Q. (By Mr. Moehring) Can you see this code section on your
6 screen, Ms. Neuman?

7 A. Yes.

8 Q. And can you recite the code section in Paragraph B?

9 A. Location of parking. If parking is required, it shall be
10 located on the same lot as the use requiring the parking,
11 except if otherwise provided in this upper section,
12 23.45.536.B.

13 Q. And is -- do you see anything in this section of -- that you
14 just referenced, 23.45.536.B, that would allow the townhouse
15 and rowhouse parking on a separate property?

16 A. Yes. I believe it's not quite shown.

17 Q. And let's page down.

18 A. Yeah. And it's No. 6, I believe.

19 Q. Okay.

20 A. Yup, No. 6 would apply.

21 Q. And could you read that?

22 A. Sure. Parking that is required and accessory to a
23 residential or nonresidential use may be located on a lot
24 within 800 feet of the lot where the use that requires the
25 parking is located, provided that: A, the lot is not

1 located in a single-family zone; and, B, the requirements of
2 Section 23.54.025 for required parking are met.

3 And that's the relationship that I was talking about
4 between these two sections.

5 Q. Okay. And thank you. Would you say that all of the
6 examples meet that requirement for parking?

7 A. They -- all of the examples would be able to utilize this
8 provision, yes.

9 Q. Okay. Thank you. Okay. We'd like to then refer to the
10 requirements for lot subdivision.

11 MR. MOEHRING: And if we could now go, Lars, to the
12 section that you had open, 23.24.045.

13 Q. (By Mr. Moehring) Ms. Neuman, would you mind reading the
14 section here in Paragraph D?

15 A. It says, 23.24.045 unit lot subdivisions, Section B, except
16 for any lot for which a permit has been issued pursuant to
17 Sections 23.44.041 or 23.45.545, for a detached accessory
18 dwelling unit. Lots developed or proposed to be developed
19 with uses described in Subsection 23.24.045.A, may be
20 subdivided into individual unit lots. The development as a
21 whole shall meet development standards applicable at the
22 time of the permit application accepted. As a result of the
23 subdivision development on individual unit lots may be
24 nonconforming as to some or all of the development standards
25 based on analysis of the individual unit lot, except that

1 any private usable open space or private amenity area for
2 each dwelling unit shall be provided on the same unit lot as
3 the dwelling unit it serves.

4 Q. Okay. Thank you. Thank you. And do you know that all the
5 examples have provided the private amenity area for each of
6 the dwelling units within the same unit lots?

7 A. You have not shown me the unit lot subdivision plans, so I
8 can't answer that question.

9 Q. Okay.

10 A. But if a unit lot subdivision was reviewed and approved by
11 the Department, it would meet the standard.

12 MR. MOEHRING: And if we could look at Paragraph E.

13 Q. (By Mr. Moehring) Can you describe your understanding the
14 difference between the unit lot and a parent lot?

15 A. A parent lot is a component of the unit lot. It refers to
16 the whole property that is being subdivided into individual
17 unit lots.

18 Q. And are you allowed to have multiple townhouses or multiple
19 rowhouses within one parent lot?

20 A. Yes. The parent lot would be the lot subject to the
21 development standards.

22 Q. Would you be allowed to have both townhouses and rowhouses
23 within the parent plat?

24 A. No.

25 Q. And if this -- is this proposal seeking to combine both

1 townhouses and rowhouses within lot without the use of
2 subdivisions?

3 A. No. This proposal does not change the definitions of
4 rowhouses, which requires that to be the only principal use
5 on this -- on the land.

6 Q. Okay. And let's go up to Code Section 23.24 for short
7 plats. And there's -- yes, the criteria, 23.24.040. Yes,
8 thank you. Would you mind reading this chapter and just the
9 criteria 2, 3, 7, and 8.

10 A. 23.24.040, criteria for approval, the director shall, after
11 conferring with appropriate officials, use the following
12 criteria to determine whether to grant condition or deny a
13 short plat: Number 2, adequacy of access for pedestrians,
14 vehicles, utilities, and fire protection as provided in
15 Section 23.53.005 and Section 23.53.006; adequacy of
16 drainage, water supply, and sanitary sewage disposal; skip
17 to 7, I believe. Whether the proposed division of land is
18 designed to maximize the retention of existing trees.

19 And No. 8, conformance to the provisions of Section
20 23.24.045, when the short subdivision is for the purpose of
21 creating separate lots of record for the construction and/or
22 transfer of title of single-family dwelling units,
23 townhouse, rowhouse, and cottage housing developments,
24 existing apartment structures built prior to January 1st,
25 2013, but not individual apartment units or any combination

1 of the above types of residential development, as permitted
2 in the applicable zones.

3 Q. Thank you. Thank you. So with the proposed legislation --
4 or the proposed modifications, would there need to be --
5 looking at these criteria and the Criteria No. 2, as you
6 mentioned, would there need to be an evaluation of access
7 for pedestrians and vehicles?

8 A. I don't understand the question.

9 Q. There is a proposal to make modifications to the LR 1 zoning
10 parameters, correct?

11 A. Yes.

12 Q. And would those proposed modifications have to accommodate
13 Criteria No. 2 for access of pedestrians and vehicles?

14 A. The standards in the proposal are not related to short
15 plats. I don't believe they're modifying the short plat
16 criteria.

17 Q. Okay. Does the proposal restrict the ability to do short
18 plats?

19 A. No.

20 Q. And --

21 A. I don't believe so.

22 Q. -- is there an incentive for development to pursue short
23 plats, even after this proposal is completed?

24 A. There might be. Each developer has to choose how they want
25 to develop their property within the confines of the code.

1 Q. Okay. A similar question for utilities. Would utilities
2 have to be evaluated as the number of dwelling units for
3 short plats are pursued or increased in rowhouse
4 development -- rowhouse and townhouse developments?

5 A. For any of these standards or criteria that we're looking
6 at, this would only apply to a request for a short plat.

7 Q. Okay.

8 A. So as part of that request, we would -- yes, we would
9 analyze these criteria.

10 Q. Can you identify without a short plat what are the sanitary
11 requirements for each townhouse or rowhouse in terms of
12 provisions for a connection to the street?

13 A. That is outside my technical expertise. Not a land use code
14 issue.

15 Q. Okay.

16 A. There are likely other codes that govern that.

17 Q. Has there been somebody else on the team that you're aware
18 of that has reviewed the utility connections required for
19 townhouse and rowhouses with this proposal?

20 HEARING EXAMINER: Are utility connections even -- I mean,
21 are those standards even being changed, Mr. Moehring?

22 THE WITNESS: No.

23 HEARING EXAMINER: I mean, I am -- I'm confused as to the
24 line of questioning here because those are the short plat
25 criteria. Those aren't affected by the proposal. You've

1 got the criteria that you're challenging through the SEPA
2 appeal, but you're referring to provisions that I don't -- I
3 don't think are being changed. So I guess there's a
4 question of relevance in my mind.

5 MR. MOEHRING: Yeah. It's a question for somebody else, I
6 think. Without providing testimony, I'll have to defer that
7 question to somebody else.

8 HEARING EXAMINER: Okay. All right.

9 Q. (By Mr. Moehring) And, finally, with Criteria No. 7, again,
10 this is just for short plats. And I think we -- if I recall
11 correctly in your testimony yesterday, that of the examples
12 that were polled since 2019 (inaudible) legislation, all but
13 one had used short platting. Is that -- did you hear that
14 as well, Ms. Neuman?

15 A. I did.

16 Q. So with the relevance of short platting in that perspective,
17 is criteria -- how -- do you know if Criteria No. 7 has been
18 successful in terms of maximizing a need of retention of
19 existing trees on developed properties?

20 A. All short plats that are approved by the Department, by the
21 director, comply with this criteria.

22 Q. Does the Department -- or has the Department shared any
23 statistical information with the Office of Planning and
24 Community Development or any other agency relative to the
25 success of this criteria (inaudible)?

1 A. I don't know.

2 Q. Okay. So you don't know if the process of land use -- well,
3 process of short platting has yielded the maximum retention
4 of (inaudible) trees?

5 MR. MITCHELL: Your Honor, the -- it's already been asked
6 and answered.

7 HEARING EXAMINER: It is asked and answered. Yeah.

8 MR. MOEHRING: Okay. All right. Thank you.

9 Q. (By Mr. Moehring) Are there any land use -- I know this is
10 a question you may not be able to answer. But are there any
11 land use sections that allow block segregation without
12 meeting the block subdivision criteria?

13 MR. MITCHELL: Your Honor, I --

14 HEARING EXAMINER: I'm really confused by that question,
15 Mr. Moehring. I'm not sure what you're trying to ask there.
16 You know, if you have -- if you have a land subdivision, it
17 will have to comply with whatever requirements apply to it.

18 MR. MOEHRING: Okay. Yeah. No. That's fair enough.

19 Q. (By Mr. Moehring) Well, let me ask you this, then: Is
20 there any -- is the use of lot segregation -- has that been
21 documented as a means to circumvent the -- any other
22 requirement of the code?

23 A. Can you rephrase the question?

24 Q. Sure.

25 A. Projects that choose to subdivide have to comply with the

1 code, if I'm understanding your question.

2 Q. So if there is a requirement that is -- it was testified
3 yesterday in terms of the difference between rowhouses and
4 townhouses. Do you recall what the difference between
5 rowhouses and townhouses, one of the -- and I think it was
6 Exhibit No. 3 that described the difference between the two.

7 A. There's a definitional difference in the land use code
8 between rowhouse development and townhouse development. The
9 primary difference is that rowhouse development cannot have
10 any other principal use on the same lot.

11 Q. Right. Okay. Thank you. And a lot, again, is a legal lot
12 and not be (inaudible); is that correct?

13 A. A lot by definition in the land use code, yes.

14 Q. Okay.

15 A. Which is not a unit lot.

16 MR. MOEHRING: Thank you. I have no further questions for
17 Ms. Neuman.

18 HEARING EXAMINER: Thank you. Okay. Mr. Mitchell,
19 anything further for Ms. Neuman?

20

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

22 BY MR. MITCHELL:

23 Q. Ms. Neuman, could you just really quickly summarize the
24 difference between the lots that are created through a short
25 plat and unit lots that are created through a unit plot

1 subdivision?

2 A. Sure. The short plat process take as larger piece of land
3 and divides it into smaller lots, and those lots have to
4 meet certain standards. We are looking at some of the code
5 criteria that needed to be met in order to create a lot.

6 A unit lot, by definition, is not a lot. It's not the
7 same thing. It's a mechanism to allow segregation of land
8 for the purpose of sale or for title exchange.

9 HEARING EXAMINER: And I should -- I just -- I should
10 know. I am familiar with the unit lot provisions and I do
11 understand some of the difference between the unit lot
12 criteria and the plat criteria. And City of Seattle is a --
13 a little bit unique in some ways. But I am familiar with
14 those.

15 MR. MITCHELL: Thank you. And I don't have any further
16 questions, Your Honor. Thank you.

17 HEARING EXAMINER: Okay. All right. I think --
18 Mr. Moehring, anything further?

19 MR. MOEHRING: No thank you.

20 HEARING EXAMINER: All right. Thank you for your
21 testimony, Ms. Neuman. You are dismissed.

22 Okay. I think the City had one last witness, and this was
23 Ms. Ramos. There is, of course, an outstanding question on
24 relevance, given that she did not participate in the SEPA
25 review process, and her work was from some time ago, so --

1 but, anyway, we'll address that.

2 Ms. Ramos -- I'm sorry. Mr. Mitchell, is that correct,
3 the last witness?

4 MR. MITCHELL: It is. That is correct. Yes. Ms. Ramos
5 or Ramos, we'll hear from her on pronunciation, but will be
6 the last City witness.

7 HEARING EXAMINER: Okay. Thank you.

8 Ms. Ramos, if you could correct my pronunciation and state
9 your name for the record.

10 THE WITNESS: My name is Jacqueline Faith Ramos.

11 HEARING EXAMINER: Ramos. Okay. Thank you.

12 Do you swear or affirm to tell the truth under penalty of
13 perjury under the laws of the state of Washington?

14 THE WITNESS: I do.

15 HEARING EXAMINER: Thank you.

16

17 JACQUELINE FAITH RAMOS: Witness herein, having first been
18 duly sworn on oath, was examined
19 and testified as follows:

20

21 MR. MITCHELL: Good morning. And one other clarification
22 question for -- do you prefer I call you Ms. Ramos or
23 Ms. Faith Ramos? Just curious.

24 THE WITNESS: Oh, I do go my middle name but not my first
25 name, if that was the question.

1 MR. MITCHELL: So if I was just going to refer to a
2 surname, would it be --

3 THE WITNESS: Ms. Ramos.

4 MR. MITCHELL: -- Ms. Ramos. Okay. Thank you.

5

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

7 BY MR. MITCHELL:

8 Q. Okay. Ms. Ramos, can -- and can you please go ahead and say
9 and spell your first and last name -- full name for the
10 record?

11 A. First name is Jacqueline, J-a-c-q-u-e-l-i-n-e; middle name
12 Faith, F-a-i-t-h; last name Ramos, R-a-m-o-s.

13 Q. Thank you, Ms. Ramos. And where do you work, Ms. Ramos?

14 A. I am a strategic advisor for City of Seattle.

15 Q. Okay. And how long have you been -- and which department is
16 that in?

17 A. I currently work in Seattle City Light.

18 Q. Okay. And do you have familiarity with the townhouse reform
19 or the slate of proposal that's at issue in this SEPA
20 appeal?

21 A. You might have to ask that question in a different way.

22 Q. Did you -- did you have any role whatsoever in the
23 environmental review of the townhouse reform proposal?

24 A. I did not.

25 Q. Did you have any role in drafting the townhouse reform

1 proposal?

2 A. I did not.

3 Q. And so you have no firsthand knowledge about the drafting or
4 the environmental review of the proposal at issue?

5 A. Correct.

6 MR. MITCHELL: Well, I think, Your Honor, I am going to
7 leave it at that, since Ms. Ramos didn't have any
8 involvement in the -- in the preparation and legislation or
9 the environmental review of the legislation that's issue --
10 at issue here. I will -- I'll turn it over to the
11 appellants for cross. And I think that they're planning to
12 talk about earlier work that Ms. Ramos has done in issuing a
13 report when she used to work with STCI.

14 Q. (By Mr. Mitchell) Well, just to make sure that I -- that
15 I -- that I have the ability to ask you about that,
16 Ms. Ramos, why don't you go ahead and -- did you work for
17 the Seattle Department of Construction and Inspections in
18 the past?

19 A. I did. I did.

20 Q. When did you work for Seattle Department of Construction and
21 Inspections?

22 A. From June 2016 through April 4th, 2017.

23 Q. And during your time working for the Department of
24 Construction and Inspections, did you -- did you do any --
25 did you have any -- I should ask: Did you have any role in

1 the tree canopy assessments that was discussed and is an
2 exhibit in this appeal?

3 A. I was hired to do complementary research on tree regulations
4 and permitting.

5 Q. Okay. And let's talk about that. I'm going to -- did
6 you -- did you prepare a report based on the work you just
7 talked -- you just mentioned?

8 A. Several, yes.

9 Q. Several. I'm going to -- I'm going to show on the screen --
10 sorry -- and this is the appellant's Exhibit 74, I believe.
11 Did you -- do you recognize this document?

12 A. I do.

13 Q. Is this one of the reports that you had prepared?

14 A. Yes.

15 Q. And can you just describe briefly what your work was and
16 the -- and describe the final report?

17 A. I can. I was hired in June 2016 as a graduate student
18 intern. I was enrolled in the executive master of public
19 administration and then later deferred and enrolled in the
20 master of sustainable transportation at University of
21 Washington School of Engineering.

22 The internship was -- the assignment was to review past
23 permit applications relating to tree regulations, review the
24 site plans and outcomes, and review the number of trees that
25 were on-site prior to the application, and the number of

1 trees that resulted after applications were approved.

2 Q. Great. And this -- and this work was -- and the timeline
3 that came after the tree canopy assessment report?

4 A. There was a parallel body of work going on for the -- a
5 LiDAR assessment for the tree canopy analysis. So this was
6 part of that research in determining the actual number of
7 trees that were coming out and, therefore, impacting canopy.

8 Q. Okay. And could you talk about the -- would you say, is
9 this, sort of, the culmination of your work, this final
10 report, or is there other -- are there other reports that
11 that you describe as sort of the culmination of your work,
12 other than this?

13 A. This is the final report from Phase 2. There was Phase 1
14 and Phase 2. There were monthly presentations to executives
15 and managers, and then a final report for Phase 1 and final
16 report for Phase 2, which was also accompanied by PowerPoint
17 presentations.

18 Q. Great.

19 A. PowerPoint presentation.

20 Q. And just briefly would you describe, I guess, the -- you
21 know, the methodology, what you did, and what you -- what
22 you found in this report?

23 A. From what I recall, given that it was six years ago, it was
24 a mixed method -- mixed methods, quantitative and
25 qualitative. We -- I worked with data analysts to develop a

1 Sequel query related to trees and site work.

2 We assessed multifamily and single family zones, including
3 low-rise zones. I think the methodology is described on a
4 page in here somewhere. There you go. Thank you.

5 Q. Yeah. Okay. And then there are findings that are also
6 described?

7 A. Yes, there are. There are findings. I think there were --
8 I don't recall exactly. But findings that were then
9 associated to mitigation and recommendations.

10 Q. And then there are also recommendations made?

11 A. Correct.

12 MR. MITCHELL: Okay. Well, with that, I don't have any
13 further questions, Your Honor. Thank you.

14 HEARING EXAMINER: Okay. Thank you.

15 Mr. Moehring, do you have questions?

16 MR. MOEHRING: Yes. Thank you.

17

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

19 BY MR. MOEHRING:

20 Q. Thanks for doing this this morning, Ms. Ramos. I think
21 we'll pull up that same document, if we can, Exhibit No. 74.
22 And if you could go to the last page of that document, just
23 to -- it would be page number -- I'm sorry -- Page 7 of 15.
24 Yeah. Okay.

25 And, Ms. Ramos, just to further ask you about this, can

1 you -- can you identify what your role was in terms of this
2 report?

3 A. I was the research lead.

4 Q. Okay. And if we could page down, one of the -- oh, let's
5 page back up again. There it goes. One of the persons
6 involved with the townhouse, rowhouse reform has been listed
7 here, Mr. Staley, and also Ms. Pettyjohn. Do you -- what
8 context were they involved in your report? I believe just a
9 copy of the report or what context were they involved?

10 A. I don't recall their specific involvement. But anyone who
11 is listed as a subject matter expert was consulted directly
12 at least once, but likely a number of times.

13 Q. Okay. You had mentioned a -- or it was mentioned that a
14 PowerPoint was done. And I was wondering if we could refer
15 to one of those PowerPoints with our Exhibit No. 73. And I
16 totally understand, Ms. Ramos, that this may not be
17 necessarily the freshest, you know, thing in your mind.
18 It's been a while back. But I just want to refer to the
19 applicable sections of the PowerPoint that refer to the
20 multifamily zones. And if we could -- does this report kind
21 of look familiar to you?

22 A. It does, yes.

23 MR. MOEHRING: Oh, I'm sorry. Lars, could we open up 73
24 and not 73(S). 73(S) is without the notes. 73 includes
25 some notes. There we go. Thank you.

1 Q. (By Mr. Moehring) And on this first page here, let's -- if
2 you could read the -- let's page down to the notes on this
3 and just verify, since it's been a while, what the purpose
4 of this report was back in March 2017.

5 Ms. Ramos, go ahead. I'm sorry.

6 A. No. I interrupted your question. Continue.

7 Q. So if you could just kind of -- if you -- perhaps using the
8 notes as a point of recall what the purpose of this
9 presentation was and who it was for.

10 A. This presentation was the final presentation to executives,
11 managers, and subject matter experts for the Phase 2
12 research.

13 Q. Okay. So I just want to briefly look at a few of the pages
14 of that report that pertain to multifamily. And the first
15 page that is Page No. 14 -- and if you could describe what
16 is Page 14. Yeah, and we were just there. Thank you.

17 MR. MOEHRING: Great. Thanks, Lars.

18 Q. (By Mr. Moehring) Describe what this particular slide --
19 what it shows for the written record and what the note
20 mentions.

21 A. Based on the note, since it has been a while, the next two
22 slides show a different -- show a few different plan views
23 of a subdivided unit lot site with existing trees. These
24 examples are still better than many others I saw in our
25 random sample.

1 Q. And for the written record, can you describe a little bit on
2 the drawing on the left and the drawing on the right?

3 A. The drawing on the left is with the existing trees and
4 existing structures. The drawing that I said -- the drawing
5 on the left. The drawing on the right is the proposed
6 development.

7 Q. And in a general sense, how many -- or in a general sense,
8 what is the before and after results of the tree canopy with
9 this particular example?

10 A. The circles on the drawing on the left would be existing
11 trees and tree canopy. Well, the (inaudible) line. And
12 there are no circles on the plan on the right. So the
13 assumption would be no trees would remain for the plan on
14 the right.

15 Q. Okay. And if we could go to the next page, Page 15. I
16 think there's a subsequent example and some notes with that.
17 If you could maybe do the same for here and kind of describe
18 what you're seeing and what the note was suggesting.

19 A. The plans, again, are showing circles with the existing
20 trees and then without -- with the plant landscaping to
21 replace those trees. The note says if we provided clear,
22 consistent requirements for application submittals, then we
23 could expect higher quality submittals to support DCI staff
24 review and implementation of code requirements.

25 Q. Okay. Thank you. And then if we could go to some other

1 examples, which include two more. One is on Page 20. And
2 if you could do something similar where you could describe
3 the images and any developer notes to those images.

4 A. The image on the top shows a year of 2007. The image on the
5 bottom is 2015, so before and after development. The note
6 says, "Property owner opened a MUP and was approved for a
7 land use and building permit to build 18 sites with
8 townhomes. Later, he temporarily closed his permit, and
9 interestingly enough, and an employee of his then submitted
10 individual hazardous tree removal applications for each tree
11 on each parcel so the development site was actually cleared
12 outside of development."

13 Q. Let's page down a little bit so we can see the rest of that
14 paragraph.

15 A. Once the lots were cleared, the employees submitted building
16 permit applications for development of each newly cleared
17 lot; twelve White Poplars and one Corkscrew Willow. If the
18 code included some level of replacement requirement for
19 hazardous trees, then this canopy would not be lost and
20 replaced with only asphalt.

21 Q. Thank you. And do you know roughly where this was in
22 Seattle?

23 A. I do not. I don't recall.

24 Q. All right. And the last one would be Page 22. Right. If
25 you could similarly describe the two images and any relative

1 notes.

2 A. The image on the left was existing development. And the
3 image on the right was after new development. And the note
4 reads: "Developer removed exceptional tree from
5 right-of-way. Site inspector issued a notice of violation
6 and penalty. The developer paid recompense to the community
7 by planting multiple large trees in the neighborhood. I
8 noticed what appeared to be a large street tree and looked
9 into it. It was a right-of-way tree and SDOT came in after
10 the fact and assessed penalties, and worked with the
11 developer to compensate the community for loss of this tree.
12 This is an example for how we can improve our code to gain
13 compensation for tree removal."

14 Q. I know that this is not your department. Do you know --
15 have you been following the tree protection code since your
16 consulting work has been completed? Not with the -- not
17 with the university, perhaps, but with your own interests?

18 A. I have not been following the current legislation.

19 Q. Okay. Thank you. And then the final -- the last exhibit,
20 there was some questioning from Mr. Mitchell about how much
21 work that you've done in that short time. If we could pull
22 up Exhibit No. 70. And if we could zoom in a little bit on
23 this.

24 Can you describe what you -- what you kind of see in this
25 document?

1 A. This appears to be emails from -- between 2015 and September
2 of 2018 from me to other staff members or to me from other
3 staff members.

4 Q. I think this just -- would this kind of reinforce your
5 earlier testimony that you had been -- you were quite
6 involved doing this research with -- between that time
7 period of June 2016 and April 2017?

8 A. For -- on the tree regulations and codes related to tree
9 removals and replacements and planting requirements, yes.

10 Q. Thank you. As far as you know, has there been anybody else
11 that has done any additional work beyond the work that you
12 have done that you completed?

13 A. I don't know.

14 MR. MOEHRING: Okay. Thank you, Ms. Ramos. No further
15 questions.

16 HEARING EXAMINER: Mr. Mitchell, anything further?

17 MR. MITCHELL: Just really briefly.

18

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

20 BY MR. MITCHELL:

21 Q. Ms. Ramos, so you're -- I just spilled and broke my coffee
22 cup.

23 HEARING EXAMINER: Oh, no.

24 MR. MITCHELL: All right.

25 HEARING EXAMINER: Do you need a --

1 MR. MITCHELL: The (inaudible) of working from home. No
2 it's okay.

3 Q. (By Mr. Mitchell) Ms. Ramos, did -- so your work for STCI
4 and your reports, they -- did they -- they would have
5 assessed impacts from the code that -- you know, regarding
6 code provisions that existed at the time of reporting; is
7 that correct?

8 A. The assignment high level was to assess what the code allows
9 with regard to tree retention or tree removal.

10 Q. And so the reporting that you did, did not assess the
11 impacts of this proposal at issue as to current existing
12 code; is that right?

13 A. I'm not familiar with the current legislation, so I couldn't
14 say.

15 MR. MITCHELL: All right. Well, thank you. I don't have
16 any further questions.

17 HEARING EXAMINER: Okay. Mr. Moehring, I assume nothing
18 further.

19 MR. MOEHRING: That is correct. Thank you.

20 HEARING EXAMINER: Okay. Thank you, Ms. Ramos. You are
21 dismissed.

22 So I think we might take our midmorning break just a tad
23 early.

24 Mr. Mitchell, it looks like you've got -- I'll let you
25 take care of that.

1 MR. MITCHELL: I've got a little cleanup.

2 HEARING EXAMINER: Yeah, yeah, yeah. So let's -- it says
3 10:06. Let's reconvene at 10:21. We're briefly adjourned.
4 Thank you all.

5 AUTOMATIC VOICE: Recording stopped.

6 (Recess)

7 HEARING EXAMINER: We are back on the record on Appeal
8 W-21-007. I believe at this point the City had completed
9 its witnesses. We were moving to the appellants with
10 Mr. Moehring calling Mr. Lider as his first witness.

11 Is that correct?

12 MR. MOEHRING: That's true.

13 HEARING EXAMINER: Okay. Good morning, Mr. Lider. If you
14 could state your name for the record.

15 THE WITNESS: Yes. Good morning. William Lider.

16 HEARING EXAMINER: And do you swear or affirm to the tell
17 the truth under penalty of perjury under the laws of the
18 State of Washington?

19 THE WITNESS: I do.

20 HEARING EXAMINER: Thank you.

21

22 WILLIAM LIDER: Witness herein, having first been
23 duly sworn on oath, was examined
24 and testified as follows:

25 ///

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

2 BY MR. MOEHRING:

3 Q. All right, Mr. Lider. I'm wondering if you could spell your
4 first and last name for the record.

5 A. Sure. William, W-i-l-l-i-a-m; Lider, L-i-d-e-r.

6 Q. And we're going share your CV, which is Exhibit No. 33. And
7 as we pull it up, I was wondering if you could tell us a
8 little bit about your background and your expertise that
9 you'll be testifying today.

10 A. Certainly. I'm a graduate from Humboldt State University in
11 environmental resources engineering. I moved to Washington
12 State in 1978, and I worked approximately 13 years for the
13 Port of Seattle designing civil engineering projects,
14 including many stormwater projects around the harbor area.
15 And also spent a fair amount of time working at SeaTac
16 Airport.

17 And then for approximately seven years I was the lead
18 stormwater engineer for Parsons Brinckerhoff in Seattle. I
19 designed many projects for the City of Seattle, in addition
20 to other projects for Sound Transit and WSDOT. But in
21 particular, I designed the stormwater water quality
22 treatment for the Fremont Bridge project. I designed a
23 large project on 12th Avenue about a mile long in Seattle,
24 including major stormwater design changes. I've designed
25 the utility relocation for stormwater for the South Lake

1 Union streetcar project. And then as a consultant to Sound
2 Transit I designed all the stormwater along the Rainier
3 Valley area of the Sound Transit track. I relocated
4 drainage. And I also designed, oh, about a mile or two of a
5 water main on Harbor Island from the (inaudible) yard
6 reconstruction project, in addition to a lot of stormwater
7 projects in that area.

8 Q. Great. Thank you. We can stop sharing this exhibit. And I
9 want to pull up your next exhibit, which is Exhibit No. 66,
10 I believe, which would be your declaration. Is there a
11 declaration?

12 And, Mr. Lider, I'm letting another person guide the page,
13 so if you want us -- the page up or down, you just let us
14 know.

15 The first question, then, for you is: So it sounds like
16 you've been involved with a lot of design work for the --
17 for the area. How long have you been in the -- in the area?

18 A. I moved to Washington State in 1978. I became a
19 professional civil engineer in 1984. So 43 years, roughly,
20 I've lived in the area.

21 Q. Okay. And can you briefly, without getting into detail,
22 just briefly describe this document that we have on the
23 screen and what we'll be covering today with it?

24 A. Yeah. It briefly discusses stormwater issues and the
25 importance of tree retention to flow control for stormwater

1 runoff.

2 Q. And this is in regard to the townhouse reform DNS proposal?

3 A. Correct.

4 Q. Okay. Very good. When did you become aware of the
5 townhouse reform proposal?

6 A. When I was contacted. Oh, when was that? By Janet Way in
7 late January and requested assistance on this project in
8 kind of a review of the stormwater impacts that would be
9 created by the loss of trees.

10 Q. Okay. Did you also review the DNS?

11 A. Yes.

12 Q. Can you mention a little bit about what type of maps you
13 were looking at within the proposal?

14 A. I was primarily looking at the tree retention with
15 environments and what impacts would occur with the loss of a
16 tree canopy and how that relates to the City's drainage
17 manual.

18 Q. Okay. Is one of the exhibits you reviewed the SEPA
19 checklist?

20 A. Yes.

21 Q. Which, I believe, is our Exhibit No. 3, if I -- if I
22 remember correctly. Would you like to go through that or go
23 through your declaration?

24 A. I can probably just go through the declaration. You know,
25 the SEPA checklist is generally pretty vague and

1 broad-based, where I think my declaration might be a little
2 more focused.

3 Q. Okay. Well, I'll let you testify, then, to your
4 declaration.

5 A. All right. What I'm doing is pro bono, first off, I'd like
6 to mention. I'm not being paid for my time here, except for
7 my time putting together my testimony. I'm doing this
8 because I'm concerned about maintaining the tree canopy not
9 only in Seattle but in other cities and municipalities
10 throughout Western Washington.

11 I feel that if this code change is proposed, it is going
12 to have significant unmitigated impacts because of the tree
13 loss. The tree canopy provides two important functions:
14 stormwater runoff and flow control.

15 The first is interception, and the second is
16 transpiration, and maybe to a lesser extent, some
17 infiltration around the base of the tree. But primarily the
18 two big issues are interception and transpiration.

19 The concept of interception is relatively simple. That is
20 that if anybody that's stood under a tree in a rainstorm can
21 say that you're going to stay dry for about an hour before
22 the water starts dripping down on your head. And the reason
23 for that is when the raindrops encounter a tree, they follow
24 a very circuitous route from leaf to twig to leaf to twig
25 and so on until it eventually reaches the ground.

1 What that does is delay the timing of the rainfall until
2 it hits the ground or hits a paved hard surface where the
3 water is going to be concentrated and flow into the
4 stormwater system. And then, of course, the other is
5 transpiration where the stormwater or the stormwater that's
6 being held in the soil avoids the soil around the base of
7 the tree and will be taken up by the tree and put back in
8 the atmosphere.

9 And those are very important issues and are listed in --
10 specifically listed in the attachment to my declaration from
11 the City of Seattle's drainage manual that the City does
12 provide a credit for tree canopy retention.

13 The problem with a credit is that developers are going to
14 look at the bottom line. And if they can make more money
15 cutting the tree down and doing some other BMP-like
16 detention, an underground vault, then they're going to do
17 that, if it makes more money. So the code really needs to
18 address keeping these trees rather than allowing them to be
19 removed.

20 Now, the City's municipal NPDES permit does give the City
21 the ability to require tree retention. And I quoted that in
22 my -- in my declaration out of the Phase 1 -- 2019 Phase 1
23 municipal stormwater at Appendix 1. And it says in short
24 that the permitted -- the permitted clearing -- or clearing
25 and grading of trees and other areas required to preserve

1 critical or sensitive areas, buffers, native growth
2 protection easements, or tree retention areas as may be
3 required by local jurisdictions, shall be delineated on site
4 plans and the site development site.

5 So the City can, if it so chooses, make it mandatory to
6 retain these trees. And so this is a decision that the City
7 and the citizens need to make in the City of Seattle to do
8 that.

9 If we can jump down to the City's stormwater manual,
10 Volume 3 Section 5.2, which I believe is Page 5. Yeah,
11 there we go. On there, that talks about the applicability
12 of newly planted trees and, you know, receiving tree credits
13 for planting of trees. And one of the things that is really
14 important here, I think, and to make out of this is that,
15 you know, right now the City has this requirement for
16 retaining trees in setbacks. And certainly retaining trees
17 are much better performing than newly planted trees that
18 might take 10, 15 years to reach the interception and
19 transpiration rates of existing trees. So retaining the
20 trees is important.

21 Now, I don't know -- do you have the -- one of the typical
22 sewer system maps that you could put up?

23 Q. Yeah. That's Exhibit No. 65.

24 A. Okay. That one is a good one there. If you blow that up
25 just a little bit. Just kind of blow it up. Just any

1 closer would work.

2 There are two basic types of stormwater systems in the
3 City of Seattle. There's the separated stormwater system
4 and then the combined stormwater system, which is combined
5 sewage and stormwater runoff.

6 Now, if you look at this particular drawing or map that's
7 up there, you can tell right away that this is a combined
8 sewer system because you can see multiple pipes coming out
9 of the house and catch basins being tied into what's
10 indicated as a yellow line on the -- on the drawing as an
11 eight-inch VC pipe, which we've heard is a vitrified clay
12 pipe. This is an old-style pipe that's used throughout the
13 City. It was pretty popular back in the '30s, 40s, and
14 '50s. And about that time, it stopped being used and
15 went -- the City went to a concrete pipe.

16 The problem with this pipe is, number one, it's
17 undersized. Now, I've done Manning calculations of
18 eight-inch sewer pipes and what flow can -- what an
19 eight-inch sewer pipe can flow. And assuming that the pipe
20 is laid at a half of percent, which is a pretty standard
21 grade for an eight-inch pipe, that pipe can only convey
22 about one cubic foot per second.

23 And if you look at the area that that pipe is collecting,
24 it's a huge area that would need probably a -- at least a
25 12-inch pipe dedicated to stormwater flow. And, of course,

1 the assumption when I said that an eight-inch vitrified clay
2 pipe flowing full was about one cubic foot per second or a
3 little less, it is assuming that the pipe is clear and
4 clean.

5 And, of course, pipes are not always clear and clean.
6 They become blocked with sediments and solids. And so if
7 there was any sedimentation that had occurred from, say,
8 people washing Sheetrock mud down the -- down the drains or
9 whatever, that pipe would lose even more flow capacity. And
10 it really depends on how often these pipes are cleaned and
11 video inspected to make sure that they're tight.

12 Two things can happen. Obviously, one is that you can see
13 water and sewage bubbling up from manholes where the pipe
14 becomes, what we call, surcharged or pressurized because the
15 flow is too great. And when the -- when the head is above
16 the ground, then you see this kind of artesian well bubbling
17 up of raw sewage and stormwater combined.

18 So that's problem number one. I mean, that's obviously
19 not only aesthetic and a nuisance issue, but it's a
20 significant public health risk for all the diseases that can
21 be borne through sewage.

22 The second issue that's important to note there, when you
23 start surcharging this whole eight-inch vitrified clay and
24 other pipes are that the water can actually start squirting
25 or leaking out of the joints. And a lot of these old, old

1 pipes may not even have rubber gasket and joints. And the
2 ones that do, you can pretty much bet that the rubber gasket
3 has deteriorated over time. The polymers and the -- and the
4 rubber tend to degrade and become brittle and crack, and so
5 they become more prone to leaking.

6 That, in turn, can wash out fines around the pipe bed and
7 create a void around the pipe and above the pipe, which,
8 number one, can cause potholes and/or a collapse of the pipe
9 itself where the pipe drops into a hole. And you can see
10 that. And I've seen it on a number of video inspections
11 that I've reviewed where pipe has separated and basically
12 broken down. And the longer that happens, the more high
13 flows you see, the worse it gets.

14 Now, sewer pipe is, by state law, separated ten feet
15 horizontally from water mains and generally other utilities
16 so that there's no or little chance of cross-connection or
17 cross-contamination from one side to the other. And that
18 works well when you're running parallel pipe. But at
19 intersections and other locations, the sewer line does have
20 to cross under water pipe. And if it's the old (inaudible)
21 joint or leaded joint pipe water main that the City has a
22 lot of from going back to the 1920s, 1930s-era pipe, if you
23 undermine that pipe and it settles, then you can have a huge
24 washout because now you've got an 8-inch or 12-inch water
25 main that's under 120 feet SI pressure blasting out water

1 that's going to wash out and flood the neighboring
2 properties.

3 So bring that back to the tree canopy issue. Maintaining
4 trees and the trees in place to help reduce stormwater
5 runoff is a big benefit. Putting in little planters, like
6 the City uses in a lot of locations without trees, with
7 native or ornamental grasses and the like, they provide
8 about -- a little bit more than a rain barrel might for
9 stormwater flow control. Yes, they do provide a little bit,
10 but not as much, in my opinion, as having the tree canopy in
11 place.

12 So I think, to wrap it up for my input, that the City
13 really needs to strengthen its code to keep these existing
14 trees in place as much as possible and prevent any tree loss
15 above and beyond the aesthetic value and wildlife value and
16 so on of trees having a tree-lined neighborhood and heat
17 reduction in a neighborhood. From a stormwater standpoint,
18 which is my field of expertise, keeping the trees in place
19 is extremely important.

20 Q. Thank you. A question on this map before we close this map.
21 Is there a -- the magenta or purple-colored lines -- can you
22 describe what those shown on the drawings are?

23 A. Yes. Those are side sewer connections. So those are the --
24 basically showing the piping on the private property that
25 tie into the City's maintained pipe. And so the City would

1 be responsible for maintaining that -- for instance, the
2 center of the picture, that eight-inch VC pipe. The magenta
3 lines would be the responsibility of the property owner.

4 Q. And are those magenta lines the -- as far as your
5 understanding, are they actually -- they're running
6 underneath the ground, but -- and I assume that -- we had --
7 we had asked the prior testimony from the City about the
8 requirements for side sewers. Do you know what the
9 requirements for side sewers, in terms of the number of
10 connections required for townhouse and rowhouse
11 developments?

12 A. No, I don't know off the top of my head. I know that
13 typically you only see one connection per property. But
14 larger properties might have more than one. But if you look
15 at drawing, the red squares represent catch basins. So
16 there's a catch basin or a yard drain in some of those
17 areas. And the -- they would be tied in with the -- with
18 the combined sewer system.

19 Q. Is there any -- you're talking about the importance of the
20 tree canopy in at least helping the stormwater control. Is
21 it possible to plant trees where we have underground
22 utilities like this (inaudible)?

23 A. You have to have at least five feet of clearance between the
24 tree and (inaudible). And so that's pretty typical in most
25 municipalities. And I believe that's the same in the City

1 of Seattle.

2 Q. Okay. So it might be the more dwellings you have -- or you
3 stated the more underground utilities you have, that more
4 restrictions in terms of planting trees; is that correct?

5 A. That would be correct, yes.

6 Q. Okay. I think we can go back to your declaration, if you
7 like, but you had mentioned, also, before about conditions
8 where you've got an undersized pipe or older piping. And
9 there's backflow. Is there any examples that you have
10 any -- that you'd like to share in terms of problems in the
11 City of Seattle that -- or at least the areas that might be
12 of concern?

13 A. Well, I've -- years ago when I was working for the Port of
14 Seattle, had seen sewage bubbling up out of manholes at
15 Fisherman's Terminal. And so, typically, where you see it
16 is the low areas where there's a lot of flow going into it.

17 I also worked for -- I did work for a client in West
18 Seattle that had that problem.

19 And just last year I did another project for a client in
20 the City of Seattle in the Rainier Valley who also had
21 plumbing problems with that. And, of course, the addition
22 of -- or the failure of a storm sewer can be horrendous.

23 Just last month there was a sewage backup in the city of
24 Mountlake Terrace that did tens of thousands of dollars of
25 damage to a home. Where in that particular case, the City

1 hadn't maintained the pipe, and it backed up, and sewage
2 flowed in through all the drains -- the low drains in the
3 house and did considerable damage to the home.

4 So if you have a sewage backup or a plug or a failure
5 because the pipe washed out and collapsed, then you can not
6 only have the public health issues, but you could have
7 significant liability to the City of Seattle property
8 damage.

9 Q. You also mentioned earlier in your review of the SEPA
10 checklist relative to the stormwater and utilities. What is
11 your observations or comments relative to what you saw in
12 that SEPA checklist?

13 A. Could we pull the SEPA checklist up? I don't know that I've
14 got that.

15 Q. Yeah. Is that Exhibit No. 3?

16 LARS: I think it is. Oh, it's the City -- sorry, the
17 City's Exhibit 3.

18 MR. MOEHRING: Yeah, City's Exhibit -- yeah. I'm sorry.
19 There we go. Thank you.

20 A. Can you scroll down to the stormwater section?

21 Q. (By Mr. Moehring) And "Utilities" is on Page 14. There's
22 also an narrative on Page 16 about stormwater.

23 A. Can we blow that up a little? Yeah, I'm not seeing anything
24 in this part here that --

25 LARS: I think it's -- I think it's a little further down,

1 Mr. Moehring.

2 MR. MOEHRING: There we go. Is this the area with the
3 salmon and the --

4 LARS: Well, there's a -- there's a section that talks
5 about utilities. It's a little further down.

6 MR. MOEHRING: Oh, yeah, Page 19. Here we go. That's
7 No. 6.

8 Q. (By Mr. Moehring) Is that it, Mr. Linder?

9 A. Yeah, I think so. Yeah. I'm not seeing it there, either.

10 Q. Oh. Oh, let's go to Page 20, the bottom two paragraphs.

11 A. Okay. There we go. I think that's probably where we're at.

12 Yeah. The issue of stormwater runoff really does not seem
13 to be very well addressed at all in any of the environmental
14 checklists that I can see, particularly talking to the
15 City's drainage manual and the requirements for tree
16 retention and tree credit. But one of the things about --
17 like I said before with tree credit is that it's only a
18 credit if the developer feels that they're going to come out
19 on the positive side of it. If it's not, then it becomes
20 more or less voluntary. And if it's voluntary, then the
21 bottom line is -- of the development cost is what's going to
22 govern it.

23 And so unless the City has a code or ordinance on there,
24 it's not going to be able to maintain the tree requirements.
25 What that does say there, kind of a general kind of very

1 vague statement is on the last sentence of the second -- or
2 next-to-the-last paragraph.

3 "New development will also be required to provide
4 stormwater control to meet energy standards as required
5 under the drainage and energy codes."

6 Well, energy has nothing to do with this part in there.
7 And this really does not address the impact of the tree loss
8 and the tree canopy that's described in Section 5.2 of the
9 County's -- or excuse me -- the City's drainage manual.

10 Q. Can we also go back to Page 16, which is under Part D,
11 No. 2? This may also be what you were referring to. If you
12 look at the second paragraph, it starts to talk about the
13 plants, animals, fish, and marine life. And it also about
14 midway through refers to higher stormwater flows.

15 A. Yes, it does. It does say it could impact stormwater flows.

16 Q. And what does the last sentence say in that paragraph?

17 A. "No significant adverse impacts to plants, animals, fish, or
18 marine life are likely the result of this proposed -- of
19 this proposal."

20 Q. And the following sentence?

21 A. "Proposed measures to protect and preserve plants, animals,
22 fish, or marine life are as proposed."

23 Q. Now, are there certain areas of Seattle where there's a
24 higher risk to marine life, such as salmon, that should
25 be -- that you think may need to be studied?

1 A. Absolutely. This has -- for example, Pipers Creek in
2 Carkeek Park that drains a large portion of North Seattle --
3 stormwater running in -- undetained into the -- into the
4 creek can erode the creek and cause streambed incising,
5 basically, from the deep gully or ditch because of the high
6 flows. And it could cause bank erosion. So that sediment,
7 in turn, will be washed downstream and will cover up the
8 salmon runs or riffles where the -- where the salmon and
9 other fish -- trout -- lay their eggs.

10 Another important impact is to threatened species like
11 Chinook Salmon. Now, I'm not talking about a 50-pound
12 Chinook Salmon that they fly in from Alaska. But what
13 happens is that a lot of -- or historically when the fry,
14 the small juvenile salmon would come down the rivers like
15 the Snohomish River or Skagit River, they would have an
16 intertidated area of brackish water because they have to
17 adjust from fresh water to salt water before they go out to
18 sea and become large adult salmon we like to eat.

19 And so historically, there was a lot of intertidal habitat
20 where they could hide and rest up. And a lot of those areas
21 now, of course, have filled in. So what they've found in a
22 lot of studies is that these juvenile salmon that are maybe
23 an inch in length -- and they're almost invisible. They're
24 very transparent. If you look at the fish in the water,
25 you've got to look really closely to see them.

1 They can still be present down near the mouth of a river
2 or a creek like Pipers Creek. And they will go up in that
3 creek and adjust to the -- to the water -- or back in --
4 basically get back into the fresh water and then go back and
5 forth several times before they finally go out to sea.

6 Now, if the juvenile Chinook salmon are in Pipers Creek
7 when there is a flood that brings a lot of sediment, then it
8 can overwhelm and kill these juvenile Chinook salmon.

9 So keeping the flow under control and meeting the
10 requirements by providing -- or keeping tree canopy up, this
11 is one more step that we can do to help protect (inaudible).

12 Q. And --

13 A. I would not agree with that statement that -- you know, that
14 there would be no impact as a result of a reduction in tree
15 canopy.

16 Q. Great. One of the -- not necessarily important for you to
17 review it, but one of the City's examples of a multifamily
18 development was their Exhibit No. 10, which was located at
19 roughly the 8300 block of 13th Avenue Northwest up in the
20 Greenwood, you know, area. Is there particular concerns
21 about storm sewers and sanitary sewers being properly sized
22 with the increased development in that area?

23 A. Yes. Like I said, the 8-inch pipe is going to be less
24 than -- which is a standard kind of collector sewer pipe in
25 the City -- is going to be less than one cubic foot per

1 second. So you're certainly going to be surcharging a pipe
2 like that in heavy storm flows that -- where there's a
3 combined storm and sanitary sewer connection. And so --

4 Q. So --

5 A. -- the term --

6 Q. Oh, I'm sorry. Go ahead.

7 A. Oh, I was going to say and, in turn, that water is going --
8 the combined sewer flow is going to go in to eventually make
9 its way into the treatment plant. And so that combined
10 sewer flow is going to over- -- or not "overwhelm," but
11 certainly tax the ability of a treatment plant, say, like it
12 was at a point to treat all the flows going into it.

13 But the concern would be with combined sewer, the boiling
14 up or overflow into the street routine, which I -- like I
15 said, I have personally seen that on occasion in Seattle --
16 and then the loss of fines and undermining of the pipe with
17 the separated system. That would be the system going into,
18 say, a creek like Pipers Creek or potentially into Lake
19 Washington or some other water body. And so, again, that
20 would be a flow control issue that -- Lake Washington flow
21 control is not an issue but it certainly is an issue with
22 Pipers Creek and Thornton Creek and other small creeks
23 throughout the city of Seattle.

24 Q. So in looking at this proposed measure here, which basically
25 has no proposed actions, from what you read, in your

1 assessment of -- your high-level assessment of this, what
2 should have this -- what should be -- the City be doing
3 before considering the additional density in these
4 multifamily areas?

5 A. I would say that they need to identify and protect trees
6 that are to be retained on the property so that the tree
7 canopy can be maintained and that the reduction and flow
8 offered by, like I said, the interception of transpiration
9 and to a lesser extent, infiltration of stormwater can be
10 maintained. So to least -- at the very least maintain the
11 predeveloped condition in that area. But then also look at
12 trying to improve on that by actually increasing tree canopy
13 wherever possible.

14 Q. Is there any need to have the City look at their existing
15 street-level systems before increasing the capacity on a
16 block-by-block basis?

17 A. I think that would be very advisable that the City should
18 look at the flow capacity of all their stormwater and
19 combined sanitary sewer systems to make sure that they're
20 adequate for flow before any additional development
21 occurred.

22 Typically, getting a little into the engineering, WSDOT
23 uses the -- what is called the "rational method" for sizing
24 conveyance pipes to a hundred-year or a 25-year, whatever,
25 storm event that the City designs its piping to for

1 conveyance. And that piping conveyance is in addition to or
2 (inaudible) separate from flow control. Because there's a
3 big difference between flow control, which is designed --
4 which is using the Western Washington hydraulic model design
5 detention vaults and the like, flow controls versus flood
6 controls, which is when that system goes into overflow,
7 which is going to happen in anything above a hundred-year
8 storm event.

9 And given the fact that -- I think yesterday we probably
10 went through somewhere between a 25- and 50-year storm
11 event. That means -- a 50-year storm event means there's a
12 2 percent chance that we're going to have that storm in any
13 given year. And with climate change and the warming and
14 changing of weather patterns, what we were calling
15 hundred-year storms may become 50- or 25-year storms. And
16 25-year storms may become two-year storms. So the system to
17 be resilient needs to really be augmented and looked at. At
18 the very least, should probably be passed with what would be
19 considered to be a hundred-year storm event at this point in
20 time.

21 Q. My final direct question -- direct examination question.
22 The checklist mentions many times, including with stormwater
23 and that this is a nonproject action and, therefore, it
24 doesn't need to be looked at. Can these issues that you're
25 describing be -- can be examined on a project-by-project

1 basis?

2 A. They can, but they typically --

3 MR. MITCHELL: Your Honor -- Your Honor, I do have to
4 object to the -- to the form of question on that. I
5 don't -- I don't think that anywhere does the -- does the
6 document say that the impacts don't have to be looked at.

7 HEARING EXAMINER: No. Yeah. That is -- the document
8 does speak for itself, and I would agree that's not
9 precisely what it -- what it says.

10 But you may proceed with the question -- or answering the
11 question, Mr. Lider.

12 A. Okay. Can you -- can you re-ask the question, please?

13 Q. (By Mr. Moehring) Yes. When is the proper time to study
14 the impacts for this proposal?

15 A. Well, typically, it would be before the project-level permit
16 application time. The problem is, is that most developers
17 don't want to look at a whole city block or multi-city block
18 or quarter mile downstream to analyze whether or not the
19 pipe has capacity. That puts a very big burden on a single
20 developer.

21 In turn, if it was done on the system level like we're
22 looking at here, then the City should do the design work and
23 then the City would know going into it before the developer
24 or a private individual had to spend a lot of money to do a
25 design and then have -- another developer might come in a

1 year or two down the road and have to do it all over again.
2 And so having the City do this at this point in time as part
3 of a program level, rather than a project level development
4 permit, I think would save everybody a lot of time, money,
5 and grief.

6 MR. MOEHRING: Respond to -- for the record -- can we go
7 up two pages to Page 14, Section 16 on utilities, and have
8 Mr. Lider read the response under Item B.

9 A. This is a nonproject action. No utilities are proposed for
10 this project. Which probably is a true statement, but it
11 really skirts and doesn't answer the question of analyzing
12 the flow capacity and the pipes both in combined and
13 separated systems.

14 MR. MOEHRING: Thank you, Mr. Lider. I have no further
15 questions.

16 HEARING EXAMINER: Thank you. Mr. Mitchell, do you have
17 any questions?

18 MR. MITCHELL: Yes, Your Honor. I do.

19

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

21 BY MR. MITCHELL:

22 Q. Good morning, Mr. Lider. Thank you for your participation
23 in this proceeding.

24 Have you ever testified in a proceeding before?

25 A. Yes.

1 Q. Have you ever testified in regards to analyzing a SEPA
2 determination before?

3 A. Probably, but I can't name one off the top of my head. Both
4 of them are project-level testimony that I've given.

5 Q. Okay. You don't -- but you don't recall ever providing
6 testimony as to analysis of a nonproject legislative action?

7 A. Not that I can recall.

8 Q. Did you -- did you -- you said that you reviewed the
9 proposal that's at issue; is that correct?

10 A. Yes.

11 Q. Can you describe the proposal?

12 A. Basically, it's for the townhouses to go forward with a --
13 as I would see it -- a reduction in precanopy requirement.
14 That was primarily what I was looking at.

15 Q. Okay. So do you -- is it your understanding that there's
16 amendments to the tree protection code as part of this
17 proposal?

18 A. There may be.

19 Q. Is it your understanding that there's any changes to the
20 City's requirements for utilities?

21 A. Not that I'm aware of. The utilities -- particularly,
22 the -- you know, looking at it for the tree separation
23 requirement, I don't see any changes there.

24 Q. And would there -- would there be any changes in this
25 proposal that would lead to any changes in the City's

1 drainage manual that you mentioned?

2 A. Not that I've seen. I haven't seen any proposals that would
3 change the drainage manual. That probably wouldn't happen
4 until the next go-around, which is probably four or five
5 years down the road with the Department of Ecology.

6 Q. And so was there anything else that you wanted to talk about
7 in terms of your description of the proposal that's at issue
8 here?

9 A. No.

10 Q. Okay. And I think it was Exhibit 66 in -- which was your
11 declaration. In your declaration that you submitted, is
12 there any reference to the proposal that's at issue in this
13 appeal?

14 A. My declaration was kind of generally on the importance of
15 maintaining the tree canopy and the -- retaining the
16 existing trees, and what the impact would be to the
17 stormwater runoff if that tree canopy was degraded or
18 reduced.

19 Q. So there wasn't an analysis as to the proposal, per se. It
20 was more of a general declaration as to trees and their,
21 sort of, impact on stormwater?

22 A. I'd say that's probably a fair description. I didn't, for
23 instance, try and do a surface water review of the runoff of
24 any specific project block or any specific project. But I
25 can generally say that the more trees that are removed, the

1 more runoff you're going to see. Both of the combined and
2 sanitary, depending on what part of the town you're in.

3 Q. And did you do any sort of an analysis as to the specific
4 impacts of this proposal as to -- well, let me -- let me ask
5 you this: Are there any reports that you've prepared that
6 analyze the --

7 MR. MOEHRING: Objection, Your Honor. Objection,
8 Your Honor.

9 HEARING EXAMINER: I'll allow the question. I'm sorry.
10 You didn't complete the objection.

11 MR. MOEHRING: Oh, yes. I'm objecting. It seems like
12 Mr. Mitchell is asking Mr. Lider as if he works for the City
13 and has been involved in preparing reports and analysis.
14 Mr. Lider was simply asked to look at has been done and if
15 it's been adequate and provide that evaluation.

16 HEARING EXAMINER: Well, I think -- I think Mr. Mitchell
17 is driving at the link between Mr. Lider's testimony and the
18 proposal, so I will allow the question.

19 Q. (By Mr. Mitchell) I'm asking Mr. Lider: You're testifying
20 today as an expert witness. And I'm asking if you've
21 prepared any sort of expert reports based on your review of
22 the proposal that analyze the proposal's impacts.

23 A. No, I have not.

24 MR. MITCHELL: Okay. I don't have any further questions,
25 Your Honor. Thank you.

1 HEARING EXAMINER: Okay. Thank you.

2 Mr. Moehring, anything further?

3 MR. MOEHRING: Yes.

4

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

6 BY MR. MOEHRING:

7 Q. Mr. Lider, you've been asked if you had done any reports.

8 Is that something that would be expected of a witness to do?

9 A. Not in my experience, no. You know, I have written hundreds
10 and hundreds of reports on stormwater issues addressing
11 collapsed pipes; you know, design of stormwater; flow
12 control; water quality treatment, and so I'm very familiar
13 with the code requirement not only at the City of Seattle,
14 but pretty much throughout Western Washington.

15 And on a program-level basis, I would not typically write
16 a report on that. But the program level sets the stage for
17 the project's specific design. And by not having that
18 report done, which, quite frankly, would take many, many
19 hours and much more capacity than what I have -- you know, I
20 have done, like, throughout the Rainier Valley for Sound
21 Transit; major stormwater design through the City of
22 Seattle; and in looking at discharge into Lake Washington
23 for that project. And also designed the large detention
24 facilities in the city of Seattle for basically stormwater
25 banking or detention banking for future projects.

1 So doing something like that would be something that goes
2 above and beyond a project -- or a program-level basis. And
3 so maybe trying to wrap it up here that the City needs to do
4 the program analysis, not the -- not the individual engineer
5 or individual developer.

6 MR. MOEHRING: Thank you for your testimony.

7 HEARING EXAMINER: Anything further, Mr. Mitchell?

8 MR. MITCHELL: No, Your Honor. Nothing further.

9 HEARING EXAMINER: Okay. All right. Well, Mr. Lider,
10 thank you for your testimony this morning. You are
11 dismissed.

12 I forgot to mention -- I did mention this yesterday, but
13 we'll be breaking at noon today for our -- for our lunch
14 hour. But why don't we go ahead and proceed to the
15 appellant's next witness.

16 I believe that's Mr. Derdowski; is that correct,
17 Mr. Moehring?

18 MR. MOEHRING: That's correct.

19 HEARING EXAMINER: Okay. Mr. Derdowski, do we -- yes,
20 there you are. Good morning. If you could state --

21 THE WITNESS: Good morning.

22 HEARING EXAMINER: If you could state your name for the
23 record.

24 THE WITNESS: My name is Brian Derdowski.

25 HEARING EXAMINER: And do you swear or affirm to tell the

1 truth under penalty of perjury under the laws of the state
2 of Washington?

3 THE WITNESS: Yes, I do.

4

5 BRIAN DERDOWSKI: Witness herein, having first been
6 duly sworn on oath, was examined
7 and testified as follows:

8

9 HEARING EXAMINER: Thank you.

10 THE WITNESS: How is the sound, may I ask?

11 HEARING EXAMINER: Oh, I hear you just fine. Thank you
12 for checking.

13 THE WITNESS: Okay. Thank you.

14

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

16 BY MR. MOEHRING:

17 Q. Good morning, Mr. Derdowski.

18 A. Good morning.

19 Q. May I ask you for the record to spell out your name for the
20 record?

21 A. Sure. D-e-r-d-o-w-s-k-i; first name Brian, B-r-i-a-n.

22 Q. Okay. And I wanted to talk a little bit about your
23 background and knowledge about what you're about to testify
24 today.

25 A. Yes. Well, I've been involved in SEPA reviews since an

1 activist for -- since the mid '80s. I was elected to the
2 King County Council in 1989. And at that time I was
3 immediately appointed as chair of the growth management
4 committee. And in that position, I sponsored some, frankly,
5 landmark legislation that was adopted by the Council. The
6 first comprehensive critical areas we called the "Sensitive
7 Areas Ordinance," impact fees for roads and schools, the --
8 a whole revision of a subdivision called -- and on and on.
9 I voted on thousands and thousands of very wide -- of acres
10 of very wide rezones.

11 And sat in on appeals in a decision-making capacity
12 through my three terms, so reviewing developer reviews and
13 hearing SEPA appeals.

14 After I left the Council, I continued this work. I've
15 assisted or advised, well, many, many dozens of land use
16 appeals as a citizen.

17 I have been a technical witness on a -- on a City of
18 Seattle area-wide decision relative to the University
19 District rezoning several years ago.

20 I've been a student of a SEPA issue; been a fan of the --
21 of the ordinance and what it's intended to do; and have
22 participated with governments in informal advice. And so
23 SEPA is a -- is a key area that I'm interested in.

24 The first time that I analyzed the development impacts of
25 a project was in 1975. I was an intern with the City of

1 Colville. And it was my -- I was the lead, actually, on
2 analyzing the financial and service-level impacts of a very,
3 very large mixed-use development in the City of Colville.
4 It was a short duration -- the internship. I got a lot of
5 insights from that.

6 Q. Great. And --

7 A. I should say -- I should say that I am not an attorney. And
8 I have attended training sessions and briefings. I have
9 read a lot of the law and SEPA handbooks and such, but I am
10 not an attorney.

11 Q. Okay. How familiar are you with the proposed townhouse
12 reform legislation and SEPA checklists and summary
13 documents?

14 A. Yes. Well, I've read all the documents that are online
15 in -- from the Hearing Examiner's office. I've read those.
16 I have read -- I have read all of the interrogatories. I
17 have gone back in time to review several environmental
18 impact statements from the past. Mainly, the mandatory
19 housing proposal, and the accessory dwelling unit ordinance.
20 And read everything I could get my hands on.

21 Now, some of these documents I read in greater detail than
22 others. But I did do at least a general review of every
23 document that I -- of those documents that I just listed.

24 Q. It sounds like you're very familiar or quite familiar with
25 what is being proposed.

1 In terms of the proposed SEPA determination of
2 nonsignificance, let's talk a little bit more about that
3 relevant to your background and experience and what you've
4 seen. Can you maybe start off with commenting on what you
5 think would be the main purpose of a SEPA review by the
6 City?

7 A. Sure. Sure. It's -- one of the main purposes of SEPA is to
8 inform the decision-makers and to inform the public. I
9 mean, that is central. The Supreme Court has referred to
10 SEPA as environmental full disclosure law.

11 When I was on the King County Council, I always wanted
12 more information rather than less. And I always felt that
13 the harm of leaving information out of the record was much
14 greater than whatever harm could be done by including
15 information that didn't fit some procedural or some
16 legalistic box. I wanted to err on the side of
17 comprehensiveness.

18 That is also one of the reasons why I believe that pro se
19 appellants should be afforded some degree of flexibility in
20 the way that they present their information in arguments.
21 Unfortunately, I see all too many cases where motions are
22 filed during the -- prior to the hearing to remove issues
23 and items from the record. And these are sometimes done on
24 grounds that I would call "high-technical." There is not
25 legal support for this.

1 One case that is often cited is Citizens for Mount Vernon
2 vs. The City of Mount Vernon. And there the Court ruled
3 that, quote, individual citizens did not have to raise
4 technical legal arguments with a specificity and to the
5 satisfaction of a trained land use attorney.

6 As a King County councilmember, I used to encourage our
7 hearing examiners to actively build the record when the
8 public interest would be served by that approach. If a
9 pro se appellant was having trouble framing an issue -- and
10 they often do -- there are -- there are -- SEPA -- on one
11 hand, SEPA is very straightforward. But on another hand,
12 it's very complex. There's multiple layers. I have advised
13 attorneys that are not land use attorneys on the intricacies
14 of SEPA just to -- as a lay advisor. And it is complicated.

15 And so I always want to have the hearing examiners help
16 build the case, help build a -- not build a case, but build
17 the record. Make sure we had a record.

18 Now, here that is particularly important. There is no
19 permit applicant here. There's nobody here that has due
20 process considerations where the appearance of fairness can
21 be -- being extremely careful about the process is -- it may
22 affect their property (inaudible).

23 In this case, we have an ordinance that was drafted by the
24 executive branch, and that is being discussed here before a
25 hearing examiner who is a creature of the legislature -- the

1 legislative branch -- to inform the legislative branch, the
2 council.

3 And so, in my view, there should be, as open and full of
4 records as possible.

5 Another major purpose of SEPA is to customize development
6 conditions for special circumstances. Now, I have
7 drafted -- and I was quite active in legislation. I wasn't
8 one of those councilmembers that just simply have the staff
9 write everything. I would take an active role in the actual
10 drafting, much to the consternation of the staff. But they
11 came to respect that over time.

12 And what I found, that it was quite a challenge to write
13 legislation that would apply to every circumstance, to
14 all -- to everything you can think of. If you did, it would
15 be the ordinance. The outcome would be complex. It would
16 be cumbersome and very difficult to interpret. And so I
17 relied on the authority of SEPA -- I called it like a
18 pressure release valve -- that we could draft legislation
19 that was -- that was reasonable and broad and clear enough.
20 But we did not have to apply it to every single circumstance
21 that could possibly arise because we had SEPA. The SEPA was
22 the tool that we could use to customize the regulation.
23 And, in fact, as you know, legislation is often a
24 compromise. And many regulations are adopted with the
25 assumption that SEPA is there.

1 If you truncate SEPA or if you remove SEPA, what you've
2 done is you have taken an ordinance, a set of regulations
3 that assumed the presence of SEPA and you've taken that
4 away. And that means that all of the assumptions and all of
5 the analysis done with those regulations is compromised.

6 Q. Bringing it back to -- thank you. And turning back to this
7 particular SEPA DNS, were you able to hear any of the
8 testimony from the City yesterday?

9 A. Yes. I listened to all of it.

10 Q. Okay. Do you have any preliminary thoughts about the review
11 that had been done?

12 A. I do. But, first of all, I want to make very clear that I
13 am not impugning the motives of any of the staff people.
14 What I saw were professionals. They were competent. They
15 looked like they had the public spirit. And so if I offer
16 critiques about their work product, it's not their work
17 product. It's not about that. I may have some critiques,
18 however, about the way the process works. And they --
19 sometimes staff get put into boxes.

20 SEPA has been much aligned over the last few years.
21 There's an attempt to integrate SEPA and GMA without fully
22 understanding what SEPA fully does. And part of the reason
23 for that is that agencies all too often treat SEPA as a
24 check-the-box sort of exercise. And citizen groups,
25 frankly, grasp SEPA appeals as a -- as a way to get what

1 they really want, which is accurate, impartial, full
2 information. And so as a consequence, the SEPA is sometimes
3 twisted in such a way that we don't see the full value of
4 it.

5 In this case, the ordinance was developed by some of the
6 very same staff that were involved in the SEPA analysis.

7 Now, when I was first elected to the county council, one
8 of the very first things I did with Executive Tim Hill was
9 advise that we needed to separate the environmental review
10 and the inspection teams from the development review teams.
11 Because it's sort of like running a business and the
12 inspectors are checking their own work. There's a reason
13 why you separate the inspection function from the
14 manufacturing function. So, too, you should separate the
15 SEPA review function from the development review function of
16 the ordinance. Because, otherwise, there's just this
17 inherent -- there's just this inherent -- it's a conflict of
18 interest.

19 It isn't referred to right off. And I'm sure the staff
20 did the very best they can. But the fact is if you've been
21 involved in developing the ordinance and now you're going to
22 analyze it, how deeply are you really going to get into it?
23 That's human nature. And I think we need to recognize that.
24 It is obvious from the first day of testimony.

25 Q. Is one of the items from yesterday's testimony relative to

1 the amount of information that was provided relative to
2 Seattle's tree canopy?

3 A. Absolutely. Looking at the testimony yesterday and today,
4 this -- it was -- it's obvious that the scope of the GIS
5 review and other reviews were heavily influenced by people
6 who created the ordinance. And I think that's why we don't
7 see -- it may be one of the reasons why we don't see a
8 detailed analysis of the tree canopy. I will address this
9 subject a little bit later, but -- because it's an important
10 issue.

11 Another concern that I had is that the City's SEPA review
12 process is not particularly well documented. For example,
13 there appears to be nothing that -- no record -- a formal
14 designation of the SEPA responsible official. My
15 understanding of state law and the city code suggests that
16 there should be a formal designation. And that formal
17 designation, in my view, should be in the form of a written
18 memo. I have found nothing.

19 I went back into the City's SEPA review procedures and
20 found that the decisions are often made by the departments.

21 I went into the Department of Planning and Community
22 Development, and I did not find any director rules that
23 govern the SEPA responsible officials.

24 I -- so when the -- when you, Mr. Moehring, asked the
25 question yesterday, there was an immediate objection. And

1 you were unable to answer -- ask that question. And I felt
2 that it -- what made me think of this is a technical issue.
3 But I think that the designation of the SEPA responsible
4 official passing the arm band to a person who is qualified
5 and trained is important.

6 I also found scant information about the City's review
7 procedures. It's sort of left to every responsible official
8 to do it the way they want to, consistent, of course, with
9 Department of Ecology and the City's general guidelines.
10 But I would have liked -- I think the City should, frankly,
11 develop a formalized set of procedures for how
12 SEPA-responsible officials are going to address this. If
13 the City is going to use a whole variety of responsible
14 officials who are subdirector level people, they really need
15 to get a handle on this.

16 Now, I have many concerns about the detailed review, which
17 I'll address there.

18 Q. Okay. Maybe if you could talk a little bit about the
19 determination that was provided and then if there's SEPA
20 thresholds that should be considered in that determination.

21 A. Could you describe -- could you describe that again?

22 Q. In other words, what are the standards of review for a SEPA
23 threshold --

24 A. Sure.

25 Q. -- determination?

1 A. Sure. Sure. Again, I'm not an attorney. But it's a
2 clearly erroneous standard. Well, is -- was the -- did the
3 City -- did the City make an error that is clear? And --
4 but the City also has a requirement on their end to
5 demonstrate that they have analyzed every impact that
6 they've actually considered -- analyzed and considered every
7 environmental impact. And they have to meet what the
8 attorneys will call prima facie evidence, which means on its
9 face that it would be obvious to anyone reviewing the
10 document that they look at that issue. And those are the
11 minimum requirements.

12 Q. Okay. We had heard prior testimony -- also from the City
13 testimony -- about a common use in the SEPA checklist of the
14 term "nonproject action" and "no action required" because
15 this is not a project action. Could you comment a little
16 bit on this from your perspective, what you've seen?

17 A. You know, over the years, this issue has come up on so many
18 occasions. In my opinion, SEPA-responsible officials have
19 allowed nonproject action reviews to be made very reasonable
20 and appropriate review of environmental impacts.

21 I did some research on this for this hearing, even though
22 this has been an issue that I've been involved in for years.
23 In one case, the Growth Management Hearings Board remanded
24 its decision back to the jurisdiction exactly for this
25 purpose.

1 Now I want to talk to you a little bit about that. The
2 case was Olympians for Smart Development and Livable
3 Neighborhoods vs. The City of Olympia. It was in 2019. And
4 the reason I selected this is that the facts are quite
5 similar to here.

6 There, the City was considering an ordinance that would
7 increase density in some residential zones. It would reduce
8 the size limits for accessory dwellings. It would reduce
9 parking requirements, and authorize triplexes and
10 fourplexes. So there is a lot of similarity there.

11 And there the citizens on appeal to the hearings board
12 contended that the City's reviews weren't -- they weren't
13 detailed or quantified. There, as here, the SEPA checklist
14 addressed various elements of the environment. In there,
15 they used the cursory "does not apply" as this is a
16 nonproject action.

17 In the Olympia case, those words were used on 46 topics.
18 And you may be interested to know that in this case this
19 checklist, using similar language, applied to 38 topics.

20 The board ruled in favor of the citizens' group, and it
21 made a number of findings. And I think they were very
22 instructive. Quoting from the board's decision. First
23 followed up: While WAC 197-11-442(2) allows more
24 flexibility when considering nonproject actions, that does
25 not allow avoidance of environmental review merely because

1 there are no specific proposals under consideration.
2 Nonproject actions are not exempt from adequate SEPA review.
3 In fact, jurisdictions may not evade SEPA review by
4 deferring analysis until later stages of actual development.

5 Now, I should say that if I'm writing a document and I put
6 in a highlight -- I'm going to put on emphasis added -- so
7 when you're reading something, I'm providing emphasis.
8 Well, that's my emphasis. That's not the board's emphasis.
9 I want to make that clear.

10 HEARING EXAMINER: But, Mr. Moehring, can I interrupt one
11 second? I have a question for Mr. Moehring.

12 Mr. Moehring, I -- this sounded a bit like legal argument.
13 I'm certainly familiar with the case law. And legal
14 argument can be made in closing. What I would really -- I
15 mean, are we going to be focusing on actual facts and
16 evidence with this witness?

17 MR. MOEHRING: Yeah. I was trying to use case studies and
18 case examples and compare it to what is being proposed here
19 to help provide some background in basis of review for this
20 particular proposal.

21 HEARING EXAMINER: Okay. If we could move to the factual
22 piece of this because I don't need legal argument. And,
23 certainly, you can provide that in closing. And I'm very
24 familiar with SEPA and standards of review and so forth.
25 But if we could focus the testimony on the facts that are

1 pertinent to the case, that would be most helpful for me.

2 Q. (By Mr. Moehring) So moving on --

3 A. Mr. Moehring, may I address that?

4 HEARING EXAMINER: No. We're not going to have an expose
5 on legal argument. If we have -- the questions need to
6 address factual issues that are before me. And, in
7 particular, the actual issues that were raised in the SEPA
8 appeal. So if we -- if I could defer to Mr. Moehring for
9 his next question on this.

10 Q. (By Mr. Moehring) Okay. To that point, did you identify
11 any elements of the environment that should have been
12 reviewed in greater detail with this proposal?

13 A. Well, yes, I did. And my purpose for bringing forward some
14 general observations about SEPA is to be able to establish
15 the basis for why I'm arriving at my conclusions. And so I
16 think that -- and, frankly, I think my testimony is
17 compromised if I do not have the ability to set forth the
18 criteria, the basis that I use.

19 Q. Okay, Mr. Derdowski.

20 A. Yes.

21 Q. Let's go through --

22 A. Yes.

23 Q. -- and --

24 A. Sure. Okay. The -- first of all, yes, the City should have
25 provided a more detailed analysis of stormwater and combined

1 sewer and stormwater impacts.

2 Now, the reason for this is because the proposed
3 ordinance, arguably could increase impervious areas. Now,
4 there are certain statements that were made by staff that
5 this may not be true. But if you analyze the way projects
6 will actually be reviewed, there is a potential of that. In
7 fact, I think the checklist may refer to that. And,
8 certainly, if you increase the density on lots of, say -- as
9 was discussed yesterday, a 5,000 square feet, from three --
10 down from three residences or three units of housing to
11 four, there's obviously going to be some additional sewer
12 flows.

13 Now, that information is -- Mr. Lider has competently
14 testified to -- is -- that information should be taken in
15 the context of what is the City's overall infrastructure
16 capacity for handling stormwater and sewage. And it is well
17 known that the City has had problems with CSO overflows in
18 violations of Department of Ecology standards and the like
19 for many years. This was an issue when I was on the metro
20 council going back to the '90s. It's still a problem.

21 And in doing my research, I found a couple of maps from
22 prior adopted environmental statements that the City
23 produced -- environmental impact statements -- that
24 documented areas within the city that have -- that
25 experienced periodic flooding and sewage overflows.

1 Now, this ordinance applies throughout the city equally.
2 And should it? One of my preliminary remarks about why a
3 nonproject action is problematic is because a nonproject
4 action is looking at a general set of circumstances which
5 are not necessarily the same as when applied to the
6 specific. Because a piece of property that's in an area
7 that is experiencing combined sewer overflows is quite
8 different than another piece of property that does not have
9 that problem. And this ordinance doesn't address that.

10 Now, the City will argue that there's regulations that
11 will address that. But here's the problem: If you -- if
12 you rely on your project-by-project permit review process to
13 consider those impacts, you will be precluding SEPA options.
14 There may be mitigations that are appropriate for -- that
15 should be done by the public -- regional projects. The
16 City, in fact, has a capital project plan that they put
17 together to deal with combined sewer overflows.

18 Anytime an ordinance comes up that has the potential of
19 increasing density, as this does, that data should flow into
20 the folks that are putting up capital facilities plans
21 together. And the best way to do that is through SEPA.

22 How can we make decisions? If we -- if we -- if we just
23 review projects on an incremental basis, we will close
24 potential SEPA mitigations over time. Because as we keep
25 improving -- approving these, the opportunity to develop a

1 subarea or regional solution is less likely. The
2 mitigations that would be reasonable now may not be
3 reasonable after we redevelop all these sites and we make
4 all these investment, public and private, in infrastructure.

5 So in order to be able to make appropriate decisions in
6 capital projects to deal with stormwater, you need to
7 have -- and in order to be able to have a full range of SEPA
8 mitigations on how to deal with it, you need to do it on an
9 area-wide basis. And SEPA requires that those -- and that
10 was one of the things I was going to address was that SEPA
11 requires that you consider impacts at its earliest possible
12 point. And I'm sure there will be technical folks that
13 will -- that have already testified, and maybe more, that
14 the time to look at those impacts is now and not later.

15 And that case that I referred to clearly pointed out that
16 the hearings board agrees with that perspective.

17 Now, another area -- by the way, those maps that I found
18 that documented the substandard storm and sewer flow
19 (inaudible) infrastructure, you can find that in the 2017
20 mandatory housing FEIS. And that information appears to not
21 have been considered by the SEPA responsible official. I
22 found nothing in the record that suggested that they
23 considered that.

24 Now, what else?

25 Q. Again, what do you -- what is your thoughts on what we're

1 very interested in is not only the tree canopy.

2 A. I'll get to that. That's part of the same section that I
3 wrote up, so please hang on. I'm having to reconstruct.
4 Because what I did is I integrated the detailed information
5 that I was going to offer in observations with the
6 conceptual about how SEPA applies. The reason I did that is
7 because a lot of times citizen groups will raise a technical
8 issue. But because they don't raise it in a SEPA context,
9 they're attacked on that and their opinions are disregarded
10 because they didn't put it in a proper SEPA framework. And
11 since my testimony has been upended, I have to reconstruct
12 that. And I'll attempt to do that to the best of my
13 ability. Just hang on.

14 And, by the way, I was only just a few words away from
15 concluding that previous section.

16 HEARING EXAMINER: Okay. Thank you for that
17 clarification.

18 A. Another area is -- involves historic districts. The City --
19 the City's checklist relies on this as a nonproject action.
20 Because I mentioned earlier -- approximately three times --
21 but in yesterday's testimony, the City touted Supplement D
22 as a -- as the way that they resolved this. And I found
23 Supplement D to be just as unsatisfying as I did the
24 checklist because it doesn't address probable impacts in the
25 same way that the SEPA checklist doesn't address probable

1 impacts. One of those is historic districts. Supplement D
2 brings in some information that there were approximately 90
3 and 70 parcels, together about 170 parcels that would be in
4 historic districts. And they said that there would be no
5 impact on the preservation of history properties.

6 And what the City ignored and did not address is the
7 phenomena that if you make -- if you increase the
8 probability and the speed in which projects are going to be
9 developed -- and that, by the way, is the stated objective
10 of the ordinance -- is to speed up the development of this
11 housing and to shorten review times. And that will bring
12 more product on the market. And if -- and how that does not
13 affect the potential loss of historic properties, I don't
14 understand how they can come to that conclusion.

15 The City also made an observation that -- in their
16 Supplement D that there would be slight impacts to wildlife.
17 I don't know what "slight" is. Is that -- there's no
18 numeric, there's any quantitative understanding of what the
19 term "slight" is. I've never -- the case that I was
20 referring to says you should do a quantitative review and
21 overturn the City's decision because they did not do a
22 quantitative review.

23 Let me continue.

24 The City, in its Supplemental D, said that -- it sort of
25 dispensed with product -- actually did that yesterday in

1 testimony, as well, is -- in testimony yesterday, the staff
2 said that the impacts would be consistent with the impacts
3 that we have been expecting as a city. And that quote
4 completely misses the point of SEPA. It isn't a matter of
5 what impacts are you expecting. It is a matter of what
6 impacts you have identified, how you analyze them, and how
7 significant they are.

8 Whether you expect them or not is not -- is not material,
9 unless a staff person was assuming that -- if that comment
10 was intended to mean that they were relying on some prior
11 adopted document, that might make sense. I'll address that
12 later. But nowhere have they adopted those prior
13 departmental documents.

14 Okay. Let's go back to the specific issues. I mentioned
15 stormwater. I mentioned historic properties. And the next
16 is canopy.

17 The City should have provided a detailed analysis of the
18 current state of our tree canopy and documented tree loss
19 over time. The reason for that is because if you're going
20 to identify an environmental impact on a resource, you need
21 to have good understanding of what that resource is. Is it
22 degraded? Is it -- is it in good shape? The mitigations
23 that you would apply to a degraded resource are quite
24 different than the mitigations that you would apply to a
25 healthy component of the element of the environment. You

1 have no understanding about how vital or at risk or
2 questionable the tree canopy is, unless you do the analysis.

3 The proposed ordinance will likely increase the number of
4 trees that will be lost. The City has acknowledged that.
5 But we don't have any numeric numbers. What we do know, as
6 Mr. Lider pointed out, there will be -- I understand there
7 will be some technical testimony later -- that the loss of
8 trees has negative impacts on streams, wetlands, wildlife,
9 fish, and urban heat affected zones. And I'm sure those
10 will be documented by others that are perhaps more
11 qualified.

12 The council and the public would benefit from a more
13 detailed analysis of this increasingly urgent phenomena of
14 the loss of tree covering.

15 I noted with particular interest Mr. Welch's testimony
16 yesterday that the City appears to have the technology to
17 identify tree canopy in detail.

18 In response to questions, Mr. Welch initially said that he
19 didn't know of a way to track canopy on a lot-by-lot basis.
20 And, after all, this ordinance will be applied on a
21 lot-to-lot basis. And the appellant's exhibit of a
22 City-generated map clearly showed tree canopy at the lot
23 level.

24 Mr. Welch and Mr. Staley testified that one reason that
25 they did not do a detailed analysis of tree canopy was

1 because the data tended to miss small newly planted trees
2 and was misleading. I found that very unsatisfying.

3 Ms. Ramos' testimony today was enlightening. I could
4 understand why the City moved to quash her subpoena. In my
5 opinion, her testimony clearly documented that detailed
6 lot-by-lot canopy analysis was possible, it was available,
7 and it is not misleading.

8 My conclusion is this: The City's SEPA analysis didn't
9 generate detailed tree canopy because it didn't think the
10 data would support their ordinance. And the testimony
11 yesterday, I think, underscores and supports that -- my
12 belief.

13 Another issue that should be analyzed is the impact of
14 variances on the tree retention standards. The city code
15 allows developers to ask for variances if they cannot
16 achieve maximum densities on their properties. By allowing
17 an increase from three to four units on a 5,000-square-foot
18 lot, the City is setting the stage for more variance
19 requirements.

20 By the way, do you know that New York City has a 22
21 percent tree canopy, without counting Central Park? And the
22 U.S. Forest Service estimated that including Central Park,
23 New York City's tree canopy is 39 percent. And New York
24 City added 3,253 acres of tree canopy between 2010 and 2017.

25 My son, who lived in New York, had a penthouse -- or had

1 a -- had a condo apartment just blocks from the Empire State
2 Building. There were street trees that -- it was a quiet
3 area, and there were more trees on his street than in many
4 city of Seattle neighborhoods. We can do better.

5 On other issues, the City should have provided a detailed
6 analysis of the increased fire risks that are associated
7 with potential deduced building setbacks and fire truck
8 access.

9 Now, here I did not do an in-depth analysis of development
10 regulations on this subject. But in reading the documents
11 that I did read, there's some heights that are changing,
12 some lists that are changing, and you're allowing -- you're
13 making it easier to put structures behind rowhouses without
14 benefit of a subdivision. And the subdivision code is where
15 you get into the fire code, but you get more extensive fire
16 code reviews and subdivision review than you do with just
17 building permit review. And this, again, is an issue where
18 this ordinance will have disparate impacts, depending on
19 where you are in the city. There's a lot of parts of the
20 city that have very poor fire flow. And that poor fire
21 flow, especially if a project in some of the older
22 neighborhoods -- some of the less economically advantaged
23 neighborhoods, they don't have proper fire flow. And so it
24 becomes more incumbent to make sure that the geometry, what
25 you're building, allows emergency vehicle access in those

1 areas that do not have proper fire flow. The City should
2 have also provided a detailed analysis of traffic hazards
3 caused by increased development in certain neighborhoods
4 where there are existing traffic safety hazards. There
5 might be a poor walkway, no place for the kids to walk to
6 school. There might be a substandard sight distance. There
7 might be a substandard design. These microlevel impacts
8 will not be thoroughly reviewed or mitigated on a
9 project-by-project basis.

10 Moreover, the stated purpose of the ordinance is to -- is
11 to allow developers to increase the density without having
12 to do a subdivision. And the subdivision code is where you
13 bring in a lot of these regulations that deal with the sight
14 distance issues and the -- and the safety hazards and the
15 walkways and the like. And the City, at that point, has a
16 greater amount of discretionary authority, which I'll
17 address later.

18 So the areas that I've identified, in my opinion, that
19 should have a quantitative analysis, setting us -- there are
20 many legal reasons and policy reasons why you should look at
21 project-level -- you should look at incremental
22 project-level impacts.

23 And those -- and those argument- -- and the reasons for
24 doing that are well enunciated in certain decisions, such as
25 the Olympians case that I referred to. And perhaps we'll be

1 able to add that later in legal argument.

2 But the specific areas that I think would benefit greatly
3 from quantitative analysis so much, that the absence of it
4 compromises the adequacy of the environmental analysis; the
5 stormwater flow, the traffic safety, the tree loss, and tree
6 canopy, and -- traffic, fire, tree canopy, and stormwater,
7 and sewage.

8 MR. MOEHRING: Mr. Derdowski, I think maybe the Hearing
9 Examiner may want to consider a break at this point.

10 HEARING EXAMINER: Yeah. We're going to break at noon
11 today.

12 Mr. Moehring, are you -- are you about concluded with this
13 witness, just so I have a sense for what we'll do after
14 lunch?

15 MR. MOEHRING: I have a few more questions.

16 HEARING EXAMINER: Okay. Well, you've got time for a
17 little bit more. We're going to -- we have five more
18 minutes, so ...

19 MR. MOEHRING: Okay.

20 THE WITNESS: You know something? I would like to -- I
21 would appreciate a break.

22 HEARING EXAMINER: Okay.

23 THE WITNESS: I think that it also would allow me some
24 time to reconstruct my testimony because of the fact that
25 the integration of SEPA law and policy and technical

1 analysis has to be completely redone. And I think I can do
2 that in the next hour.

3 HEARING EXAMINER: Okay. Well, we'll go ahead and break
4 now, then, and we'll complete Mr. Derdowski, your testimony
5 after the lunch hour.

6 Any other procedural questions before we briefly adjourn?

7 Mr. Moehring?

8 Mr. Mitchell?

9 MR. MITCHELL: Not from -- not from me, Your Honor.

10 HEARING EXAMINER: Okay. All right. Okay. So it is --
11 you know, it's 11:56. We will reconvene at 1:00 p.m. Thank
12 you all. We're briefly adjourned.

13 MR. MOEHRING: Thank you.

14 AUTOMATIC VOICE: Recording stopped.

15 (Lunch recess)

16 HEARING EXAMINER: Good afternoon. We're back on the
17 record on appeal number W-21-007.

18 Mr. Moehring, I think you were continuing with your
19 questioning of Mr. Derdowski.

20 MR. MOEHRING: Yes, thank you.

21 Mr. Derdowski, are you there?

22 THE WITNESS: I am. Hello.

23 MR. MOEHRING: Great.

24 HEARING EXAMINER: Welcome back, Mr. Derdowski. I swore
25 you in earlier. I'm not -- don't need to swear you in

1 again. You remain under oath.

2 THE WITNESS: Yes. Thank you.

3 MR. MOEHRING: Quick administrative question for
4 the -- for you, Your Honor. There was some -- Mr. Lider had
5 testified to a couple of exhibits. Do I need to ask those
6 be entered into -- or ask Mr. Mitchell?

7 HEARING EXAMINER: No. Unless there were -- all of your
8 exhibits are -- have been admitted, absent some objection.
9 I didn't -- I don't recall hearing an objection, so I think
10 everything is in.

11 MR. MOEHRING: Okay.

12 HEARING EXAMINER: Now, Mr. Mitchell, is that -- is my
13 recollection correct?

14 MR. MITCHELL: Yes, that's correct. I didn't object, and
15 I agree with how you --

16 HEARING EXAMINER: Characterized that.

17 MR. MITCHELL: -- with your assessment of the exhibit
18 situation.

19 HEARING EXAMINER: Okay.

20 MR. MOEHRING: And one other question. Is every
21 participant able to put themselves off of mute? I just
22 don't want to have some disturbances during the testimony.

23 HEARING EXAMINER: Oh, okay. It looks like most are -- I
24 think everyone is on mute right now.

25 MR. MOEHRING: I don't know if you had any control over

1 that on your side, but --

2 HEARING EXAMINER: We -- we can, yes. The clerk can make
3 sure. I think everyone's muted, though, it looks like --

4 MR. MOEHRING: Okay.

5 HEARING EXAMINER: -- as of right now.

6 MR. MOEHRING: All right. Sorry about that.

7 Mr. Derdowski, ready for the next question?

8 THE WITNESS: Yeah.

9

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

11 BY MR. MOEHRING:

12 Q. Okay. Yesterday you mentioned that you listened to some of
13 the testimony and that it was testified that one of the
14 goals of the proposed interest was to allow greater density
15 (inaudible) subdivisions?

16 A. Yes.

17 Q. And I wondered if you could comment to the SEPA effects or
18 the impacts of this goal?

19 A. Well, yes. And it's actually -- I would consider it one of
20 my most important concerns. State law and city codes have
21 extensive requirements for subdivisions or plats. If you
22 read Chapter 23.22 and 23.24, you will find that there's a
23 wide range of public-interest-oriented requirements. They
24 are very detailed. And, in my opinion, there's a good
25 reason why developers want this ordinance.

1 It's not a question so much of time, but they don't
2 want -- if -- I could easily understand that a developer
3 might not want to meet the stringent requirements that are
4 found in the subdivision code. If you look at the -- in
5 fact, you could probably say that the City's regulatory
6 scheme is founded on its subdivision code. It is there
7 where you will find traffic concurrency, sensitive area and
8 utility dedications, public notice requirements. Public
9 notice is different for a subdivision. The review process
10 itself enact fees. You'll find that there's a requirement
11 for findings of fact related to the public benefit.

12 Subdivisions are important. The City has a greater amount
13 of discretionary authority over subdivisions than it does
14 for building codes.

15 Now, when the City did its SEPA review of previous zoning
16 specifics, it relied on its subdivision code to provide
17 needed environmental mitigations. By now allowing
18 developers to bypass subdivisions, the City is negating, in
19 my opinion, or potentially negating all of that previous
20 environmental work.

21 In addition, I mentioned earlier as well that a
22 subdivision gives the City greater discretionary authority.
23 A building permit is a much higher level of entitlement. In
24 my opinion, what the City should have done in its SEPA
25 review is it should have said that one of the impacts of

1 this ordinance is that developers will be able to achieve a
2 higher density without going through a subdivision process
3 and that will mean there will be fewer subdivisions and more
4 building permits. In fact, that's one of their stated
5 objectives.

6 But then they should have followed up by saying here's a
7 table of the requirements in the subdivision code. Here's
8 all the things you have to do, and here are the things you
9 have to do for a building permit. And let's compare them.
10 And any item that was not in the building permit but was
11 considered at the subdivision level, those should have been
12 clearly identified so the decision-makers, in this case the
13 council, could look at it and say, well, gee, do we really
14 want all these kinds of developments to avoid all those
15 other requirements?

16 Moreover, some of those requirements may have an effect on
17 the way environmental mitigations are repaired and applied
18 at the permit level.

19 So it is a -- it's a -- it's a very important issue.
20 Increasing density with a subdivision is fundamentally
21 different than increasing density with a simple building
22 permit.

23 I think I might have skipped a question or two, Moehring.
24 My record shows me on number 6. That question was number 7.

25 Q. Sorry about that.

1 The City has stated that the development regulations are
2 adequate to address the environmental impacts and that no
3 detailed review is necessary.

4 A. This is a very common situation. And, in fact --

5 MR. MITCHELL: Your Honor, I'm going to have to object to
6 the form of the question. I don't recall the City saying
7 that no detailed review is necessary.

8 HEARING EXAMINER: Yeah. Mr. Moehring, maybe just
9 rephrase that or just -- so we --

10 MR. MOEHRING: Yeah. I'll rephrase the question.

11 Q. (By Mr. Moehring) So, Mr. Derdowski, we have heard
12 testimony yesterday that say, for example, with stormwater,
13 that things are continuously being updated and that they
14 don't need to review this relative to SEPA issues.

15 A. Yes.

16 Q. How --

17 A. Well, that --

18 Q. How will --

19 A. -- that's really the way it should be. And, in fact, one of
20 the advantages of having a robust set of regulations is that
21 you do encourage better review and you can facilitate
22 development because you don't have to rely on more
23 cumbersome approaches. SEPA can be cumbersome.

24 However, development regulations themselves may not
25 address all of the impacts. We'll sometimes call that a

1 SEPA gap. Development regulations themselves go through a
2 SEPA analysis. And I probably know this better than anyone,
3 that development regulations are compromises. They're --
4 they are not often optimal for protection of the resource
5 because the decision-makers are balancing economic
6 development and a whole variety of things when they're
7 adopting development regulations. But if a pattern can be
8 shown that a development regulation is not protecting the
9 resource, then SEPA is there to fill the gap.

10 It's also possible that an agency may have a set of
11 implementing procedures and methods where the development
12 regulation itself is pretty strong, but the application of
13 it is very weak. I used to run into this all the time. I
14 would have an ordinance that I sponsored to protect streams
15 and wetlands, and, in fact, people were violating it and the
16 county might not have proper monitoring and inspection
17 procedures in place.

18 So how you implement your regulations is often just as
19 important as the regulation itself. And so, therefore, if
20 you're analyzing an environmental impact and if there is
21 reason to believe and if there's data to show that the
22 application of the development regulation is spotty and
23 inconsistent, worked around with variances, fill in
24 the blank, and if there's a bending of that pattern, it
25 creates a probable significant adverse environmental impact,

1 then that should be looked at in a SEPA context.

2 Very good example of this is stormwater. As the science
3 of stormwater pollution has evolved, regulations have to be
4 continually updated. In my opinion, the City's current
5 regulations regarding stormwater and sewage are not strong
6 enough. They're not fully implemented.

7 Now, this is based on general knowledge; not from this
8 case, but based upon other things that have come to my
9 attention. And, in fact, this criticism could probably be
10 levied against most jurisdictions. And so that gap ought to
11 be at least considered.

12 Now, with tree retention, this is also a problem. It's
13 widely known, anybody that's had anything to do with land
14 development or neighborhoods knows that periodically
15 developers cut the wrong trees down. Sometimes they damage
16 tree roots. They bring their bulldozers over and they
17 damage the trees. They will sometimes be compacting the
18 soil. What they do is weaken the existing trees. It's also
19 widely known that in wind events, the trees in a cluster
20 tend to do better. There is -- there's lots and lots of
21 examples of cases where one significant tree was left. The
22 rest of them were cut. And then a big wind event comes
23 along and, boom, we lose the tree.

24 There's lots of emerging data as well that shows that the
25 trees actually create a kind of ecological family. It's

1 been documented that trees actually share nutrients and
2 that -- between themselves through the root systems. It's
3 amazing. And this is evolving science.

4 The point here is that the practices that we've followed
5 in the past, the day-to-day activity of how development is
6 actually done, have a cumulative effect on the efficacy of
7 tree regulations that we have. They are undermining the
8 effectiveness. And so relying on tree retention standards
9 alone to protect that resource, in my opinion, it's just
10 not -- it's not supported by the science and it's not
11 supported by the practice. It's not a good idea. It ought
12 to be at least considered.

13 In my opinion, that where there is information where the
14 appellant can document a pattern of a failure to apply
15 development regulations appropriately, then to that extent
16 that should be brought into the record. One may argue,
17 well, that's something that's the past, you know. But how
18 things have been done in the last several years informs any
19 sort of analysis of what we might call cumulative impact.

20 Q. Can I ask you more about the cumulative impact and --

21 A. Yes.

22 Q. -- you had mentioned before the MHA, about the impact study
23 and its link to SEPA again. Pull up the red page on that.
24 This is just for notice of the public document. The MHA
25 environmental EIS from November 2017. I know you haven't

1 looked at this.

2 A. Which --

3 Q. Perhaps you haven't looked at it, but --

4 A. Which one, Mr. Moehring?

5 Q. It's -- I'm going to pull it up on the screen here if I can.

6 A. Sure.

7 Q. Let's see here. Okay. I'm not sure. Can you see the
8 document or page of the document?

9 A. Yes.

10 Q. Okay. So paging up here to the header of the document,
11 page 316.

12 A. Yes.

13 Q. And you're talking about the cumulative impacts. And it was
14 kind of testified as well about, you know, the MHA which
15 preceded this minor modification, as it's called. Would you
16 mind reading this second paragraph here, including the
17 underlined portion, and then I'd like to get your comments
18 on cumulative impact.

19 A. Sure. Okay. [As read] Seattle's Department of Construction
20 and Inspections, SDCI, Office of Sustainability and
21 Environment, OSE, conducted an analysis of existing tree
22 protection measures to assess whether or not the current
23 regulations and processes are helping the City achieve the
24 goals of the Urban Forest Stewardship Plan, UFSP. The
25 findings are informing the development of recommendations to

1 address gaps and opportunities. City of Seattle, 2017,
2 subsection (c).

3 And then the underlined section reads as follows: [As
4 read] In October of 2017, the mayor signed executive order
5 2017-11 directing City departments to improve departmental
6 coordination, strengthen enforcement, and adopt new
7 regulations to improve and expand protections for Seattle's
8 urban trees and canopy coverage.

9 Q. Are you familiar with that executive order by --

10 A. No.

11 Q. -- (inaudible)? Okay.

12 A. No. I -- you know, I read this section when I did my
13 relatively cursory review of the EIS, but I -- I don't -- I
14 don't -- I'm not familiar with the executive order.

15 Q. Okay. That's fine. I just wanted to bring this up to talk
16 about where the MHA left off with the assumption, you know,
17 of action on this executive order and some of the plans.
18 But with that I'm going to stop sharing my screen and ask
19 you to comment on the issue of cumulative impact with this
20 proposal.

21 A. Sure. Well, first of all, the definition is something that
22 should be considered. In my -- in my -- in my mind, one of
23 the best definitions that I've found is from a guidance
24 document from the Washington State Department of
25 Transportation. And here's what they state: [As read]

1 Cumulative impacts are the summation of impacts on a
2 resource resulting from the incremental impact of the action
3 when added to other past, present, and reasonably
4 foreseeable future actions regardless of what agency,
5 federal or nonfederal, or person undertakes those actions.
6 Cumulative impacts can result from individually minor but
7 collectively significant actions taking place over a period
8 of time.

9 And this definition, I think, is a good -- good
10 operational definition to use.

11 I don't hear you, Mr. Moehring.

12 Q. Sorry about that.

13 A. Okay.

14 Q. Moving on to the next question, I'll try to wrap this up
15 shortly with other witnesses coming up here. So I
16 appreciate all of this input, but let me see what I can do.

17 Next question. As you looked at the proposal, did you
18 identify any issues in the case where consideration of
19 cumulative impacts would be required?

20 A. Absolutely. Yes, I did. And one of the things that we
21 should note is that from testimony of the staff and a
22 reading of the SEPA checklist and section (B) as well as the
23 checklist, that the City made a number of -- well,
24 statements about not considering the past, the past issues,
25 or may not necessarily be relevant what occurred in the

1 past, an issue might not have to be considered because it
2 was incremental, and they might -- this might be imprecise
3 language that they used, but these are red flags for me when
4 I'm looking at whether a city did an appropriate analysis.

5 The fundamental problem with nonproject level SEPA review
6 is that project level impacts for projects that are
7 categorically exempt from SEPA never get analyzed and the
8 proposed ordinance will directly authorize many such
9 projects. These are -- these are small projects. They
10 are -- they involve a low threshold of having to do SEPA
11 review, and it will not be analyzed.

12 And so at the nonproject level, dismissing those impacts
13 because they're incremental, in my view, is very
14 inappropriate. The -- this ordinance will directly
15 authorize many categorically exempt projects, and they
16 should analyze those cumulative impacts, those incremental
17 impacts, if you will.

18 The functional areas, I think I mentioned before, were --
19 I won't go into them again, but the tree retention,
20 stormwater, sewage, and traffic. The City has a duty, I
21 think, to identify these cumulative impacts, document them,
22 and that means quantitatively, not qualitatively, and the
23 applicant, the appellant, here, I think have a right to
24 show -- for the City to show its work. Something -- if I'm
25 on the city council, I'm going to want the -- the City to

1 show its work.

2 The staff report referred to -- I mentioned earlier that
3 the staff report and yesterday's testimony referred to
4 probable access, incremental. And I think this is a clearly
5 erroneous assumption. Going back to the definition of the
6 Washington State DOT, cumulative impacts are the summation
7 of impacts on a resource resulting from an incremental
8 impact when added to other past, present, reasonably
9 foreseeable future actions. And that --

10 Q. Thank you.

11 Let's go back to this morning. You mentioned that you
12 wanted to talk a little bit more -- or testify a little bit
13 more about the Office of Planning and Community Development,
14 and they should have prepared more of a quantitative --

15 A. Yes.

16 Q. -- data analysis for certain impacts versus the qualitative,
17 as was testified, I believe, by Mr. Staley. You want
18 to -- you mentioned you want to address this --

19 A. Yes.

20 Q. -- further?

21 A. Yes, I do. And I think the record would have benefit from
22 the additional quantitative data. Certainly the testimony
23 relative to tree canopy that we heard today and yesterday
24 certainly underscores this. But in addition to that, the
25 appellant -- in reading all the various documents that the

1 appellant had requested quantitative data regarding the
2 amount of development capacity that had been created in the
3 past by various lot subdivisions and boundary adjustments.

4 The City responded that that request was overly burdensome
5 and that OPCD had not quantified the data set. So that
6 means that OPCD, reviewing a project, an ordinance, that
7 will actually add a substantial amount of additional
8 density, did not quantify data about the amount of
9 development capacity that has been created in the past and
10 is currently being produced by subdivision and boundary line
11 adjustments and the like.

12 And as I mentioned earlier, that means that it's very
13 difficult to identify what is the existing condition of
14 development capacity because, remember, in a SEPA review,
15 we're looking at the delta. We're looking at what this
16 ordinance does. And so I think -- I think that information
17 should have been in the record. The City should have been
18 able to produce it.

19 In addition to that, the appellant's had requested
20 quantitative data regarding the number of -- regarding a
21 variety of issues, tree canopy, floor areas, et cetera, that
22 was related to the MHA and the accessory dwelling unit of
23 (inaudible).

24 Now, the way the appellant's requested that information
25 was -- frankly didn't go through the -- didn't hit the

1 target, in terms of the language that you often have to use
2 in order to document why a piece of information is relevant
3 in a SEPA context. And so, as a consequence, it invited
4 objection by the City, and here a concurrence to that data
5 did not include -- not include the appeal issue or not
6 provide the data.

7 The problem there, I mentioned earlier, that some -- some
8 deference should be given to pro se appellants specifically
9 so you don't lose information that is -- that might be
10 useful. Had you said -- had the appellants said that there
11 is that -- that an understanding of the development
12 capacity, the existing development capacity currently is
13 necessary to understand the effect of the additional
14 capacity and prior adopted environmental impact statements
15 and prior adopted ordinances will inform that. And part of
16 that information includes what has been the history of
17 development review since those ordinances were adopted.
18 Then I think that it would have been a very persuasive case
19 that it could be included -- that the data could be given
20 and the issue could be included in the appeal. But that
21 language wasn't used because you're doing it pro se.

22 And my purpose for my testimony -- a big part of my
23 testimony today is to help to frame the SEPA context within
24 which the technical folks who will follow after me and who
25 preceded me, with Mr. Lider, that -- that their testimony is

1 framed in a proper SEPA context, so it isn't dismissed out
2 of hand.

3 Then if -- now, if previously adopted environmental
4 documents are enacted or if they didn't analyze some
5 significant impacts, so there's a case to be made that
6 when -- when the accessory dwelling unit was approved, they
7 didn't do that. But that's not relevant here.

8 But if it could be shown that in prior environmental
9 documents (inaudible) and if the proposed ordinance would
10 increase those impacts, then all the impacts that have been
11 previously analyzed must also be considered in the correct
12 SEPA review. The City can't say, well, we didn't look it
13 two or three years ago. We don't have to now because this
14 is 2022. Huh-uh. Anytime there is new data, there's a
15 change of circumstance, there's a probable significant
16 adverse impact that wasn't identified, that is on the
17 grounds for discussion. In fact, in my opinion, the City
18 has a duty to reopen SEPA on a previously adopted ordinance
19 if there is some data that -- that there's a significant
20 adverse environmental impact that can't be mitigated and
21 that was not analyzed in a prior environmental document.

22 In fact, I've been involved in (inaudible) in such -- on
23 just such matters. And so if the -- if the jurisdiction has
24 the duty to reopen, if there's new information, it certainly
25 has the duty to consider those impacts when it's going to

1 make the problem worse.

2 And so the -- it is -- that when a -- it absolutely is
3 logical that when a new ordinance is under consideration
4 that will create similar impacts, all the known impacts that
5 haven't been analyzed under SEPA should be reviewed.

6 And then, finally, to bring the issue of quantitative
7 analysis, I mentioned that the sanitary sewer and
8 stormwater, we don't have the numbers. We just say it's
9 incremental improvement. Mr. Lider's testimony was quite
10 persuasive. If you have a number that has decrepit
11 capacity, it's going to -- it's going to have an --
12 experience a different result from this ordinance than
13 another neighborhood that -- whose infrastructure is in
14 better shape.

15 I won't -- I won't repeat that testimony.

16 Q. Okay. (Inaudible) --

17 A. That's -- okay.

18 Q. Maybe I can ask you to elaborate. You had referred to some
19 codes and ordinances, and the City stated that they have
20 reviewed certain issues, like you're referring to as well,
21 for prior environmental --

22 A. Yeah.

23 Q. -- documents.

24 A. Yeah.

25 Q. Did -- did you review any of the City's prior environmental

1 documents?

2 A. I did.

3 Q. (Inaudible) --

4 A. I did.

5 Q. -- little bit about an MHA, but --

6 A. I did. It's one of the first things I do when I do any sort
7 of analysis like this. One of the first things I do is I go
8 into the documents, the checklist and the decision, and I
9 look for what environmental documents they are adopting and
10 using in making this decision. Normally, in my experience,
11 my jurisdictions will say, well, in doing this review, we
12 considered this environmental impact statement. That
13 analysis that was done.

14 I found nothing in the -- I found some text that said that
15 they -- and there was some testimony that said that they
16 considered it. But the law is very clear about this.
17 There's a three step process in RCW 43.21C.034. And there's
18 a WAC on this as well. There's three steps that they have
19 to follow. This is mandatory.

20 One, they have to determine that the prior action and the
21 new action have similar elements that provide a basis for
22 comparing their environmental consequences.

23 Number two, they must take official action to adopt the
24 preexisting SEPA document using the adoption form or its
25 equivalent in the WAC.

1 And, three, provide a copy of the adopted SEPA document to
2 accompany the current proposal submitted to the
3 decision-maker.

4 I saw nothing in the record to indicate that the City
5 followed these steps. And these are mandatory for any --

6 Q. Mr. Derdowski, you referenced a WAC. Can you elaborate?

7 A. Yeah.

8 Q. (Inaudible)?

9 A. Yeah. WAC -- WAC 197-11-965. And that citation I got from
10 a -- it was either a court case or a hearing support
11 decision that summarized those, but those speak for
12 themselves. Now --

13 Q. Okay.

14 A. -- here's the thing. If the City didn't do those three
15 steps, then two conclusions have to follow. One, the City's
16 current analysis of impacts must stand on its own and must
17 independently pass the test of adequacy. It is not
18 appropriate for the SEPA-responsible official or the staff
19 to conclude that they, in their mind, had some knowledge of
20 some previous environmental impact work that was done. Had
21 they considered that, they have to adopt that document
22 before they can refer to it. And that means, if they don't,
23 that means that this environmental review has to stand on
24 its own by itself unsupported by any of those previous
25 documents.

1 And, two, the City should have reviewed those prior
2 documents because a proper SEPA review takes into account
3 all information that they can get ahold of. It takes care
4 of -- they should consider the previous information and also
5 anything that's currently under -- underway.

6 Q. So in the -- your reviewing of the City environmental impact
7 statements, what information did you identify that might be
8 instructive to us?

9 A. Sure. Well, I went to the -- I looked at the 2018 -- yes.
10 Now, mind you, I was being very selective about certain
11 things that the appellant's were interested in. I didn't do
12 a full-blown analysis of these documents.

13 In the 2018 FEIS regarding accessory dwelling units, I
14 noted that the section on stormwater and sewer was very,
15 very scant, with just a few paragraphs. It did mention the
16 possibility of overflows in some neighborhoods. So what
17 does that -- what did I derive from that? Well, what I
18 conclude from that was that it hadn't been looked at in the
19 past in any level of detail, because I was looking for that.

20 And, number two, that -- but it did identify this issue
21 that I've mentioned and that Mr. Lider's mentioned, that
22 there are overflows in some neighborhoods. And there's
23 nothing in the record here that says -- that documents that.
24 I also noticed that the section regarding tree canopy had
25 very useful LiDAR analysis that would have been useful for

1 this ordinance, but it doesn't appear to have been utilized.
2 I also noticed that there were certain mitigating factors
3 noted in the FEIS which would appear to be partially negated
4 by the proposed ordinance.

5 So, for example, in the -- here's another example. In the
6 2017 MHA FEIS, I noted that there were certain mitigations
7 that would be negated. On page 24, one of the proposed
8 mitigations was this: Retain a density limit for
9 rowhouse/townhouse building types of one unit per
10 1350 square feet of lot area in the LR1 zone.

11 So the EIS in 2017 for the MHA had a mitigation that it
12 relied upon to come to its conclusion that the environmental
13 impacts could be managed and mitigated appropriately; that
14 one of those mitigations that it relied upon was this
15 density. So what should have happened is that in this SEPA
16 review, if they are going to change from 1350 to 11, what
17 they should have done, they should have gone back to that
18 previous document and said, okay, what impact was that
19 mitigation that they were relying on, was that mitigation
20 that -- did it pertain to? What is that impact? Now,
21 without that mitigation, what will the impact be? And do we
22 need to do something in this ordinance to address that?

23 Because what we've done, this ordinance strips away a
24 mitigation that the 2017 FEIS relied upon. You've got a
25 breakdown in the continuity of these documents. It could be

1 one reason why the City didn't adopt these two when it
2 issued a (inaudible).

3 In the 2017 MHA FEIS, I noted -- I mentioned this before,
4 I noticed two maps that showed areas of substandard
5 stormwater and sewer (inaudible) in certain city
6 neighborhoods. Oh, it should have been in this record.
7 It's very relevant to this -- to this proposal. So those
8 are just some examples.

9 Now, mind you, I did a cursory review of these. The City
10 should have been all over this. They should have gotten
11 into that. They should have adopted those FEISes. They
12 should have -- that should have been the foundational
13 document for their SEPA review.

14 Q. Okay. Well, I just have one more two-part question, just a
15 quick question, to make sure we -- this final question. Are
16 you aware of the -- you know, one of the exhibits that they
17 tried to -- that the City wanted to share was the -- about
18 the new tree ordinance?

19 A. Yeah.

20 Q. And if you're aware of that, and if you're also aware about
21 the comprehensive plan updates? Are you aware of both of
22 those?

23 A. I'm aware. I'm -- I've not studied them.

24 Q. Okay.

25 A. But I'm aware and I've just very casually scanned them.

1 Q. Is there any implications, well, to the review during these
2 proceedings?

3 A. Yeah. Yep. Well, first of all, one of the -- one of the
4 tenets of SEPA review is that you take advantage of all the
5 information you can find that's readily -- that's available.
6 You consider impacts at their earliest opportunity. You
7 don't just wait until later. And so you -- and, I mean,
8 that's -- that's the essence of the thorough review.

9 So the fact that there's a tree retention regulation
10 that's under consideration, the fact that there's analysis
11 that's currently being done, the fact that there's studies
12 that are being created, there's data that's being generated,
13 that information should have -- should be informing these
14 proceedings.

15 Now, mind you, you don't have to wait until an FEIS is
16 completed or a SEPA review is completed. If there's data
17 being generated within your own jurisdiction, you ought to
18 be taking that into account. What that tells me, there's
19 not enough communication interdepartmental and within the
20 departments, between the different teams that are working on
21 these projects. Part of that may be because they have
22 different objectives, and so they don't necessarily talk to
23 each other. But that's what directors do. That's what
24 mayors do. What they do is they make sure that different
25 departments are coordinating and working with each other.

1 This data is currently underway.

2 If I'm on the council, and I'm told to vote on this and
3 there's a tree problem and I know in a few months there's
4 going to be a tree retention ordinance coming my way, if I
5 know there's going to be an update and I'm being told to
6 update some density, I'm going to be saying to myself, why
7 now? I'm going to be saying give me that information. Why
8 aren't we considering these together? Are we segmenting
9 this SEPA review?

10 You know, it's not the right way to inform the elected
11 officials. Because, remember, the essence of SEPA review is
12 informing the decision-makers, informing the public, and
13 taking information and customizing conditions if it's
14 warranted. That's the whole essence of SEPA. And, in my
15 opinion, there was some -- there were some lost
16 opportunities here in this review.

17 MR. MOEHRING: Well, thank you, Mr. Derdowski, for your
18 very thorough testimony on the SEPA issues.

19 I have no further direct questions, Your Honor.

20 HEARING EXAMINER: Thank you, Mr. Moehring.

21 Mr. Mitchell?

22 MR. MITCHELL: Yes, thank you.

23

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

25 BY MR. MITCHELL:

1 Q. Thank you. Good afternoon, Mr. Derdowski. Thank you for
2 participating and for your public service.

3 A. Well, thank you. And (inaudible), Mr. Mitchell.

4 Q. Thank you.

5 So just to be clear, your testimony is not -- you're not
6 suggesting any sort of environmental expertise to --
7 regarding your testimony; is that correct?

8 A. Well, I wouldn't say that. Environmental expertise is a lot
9 of things. I don't -- I think you can have some
10 environmental expertise about what's -- how SEPA relates to
11 certain environmental issues without having a B.S. in
12 geology or being a wetlands biologist. My experience is
13 from school of hard knocks.

14 Q. Okay. Do you have a -- do you have a B.S. in terms of your
15 education?

16 A. Actually, what I have is an interdisciplinary honors degree
17 with the University of Redlands, which had a very unique
18 program for people with a scientific bent and people with a
19 social bent. It was a very unusual thing. So my education
20 is relatively broad in that connection.

21 I also spent almost 20 years of my life in different
22 engineering and capacities where doing -- dealing with
23 technical analysis and studies was something that was -- was
24 part of my job.

25 So -- and that's a little different. You don't find an

1 awful a lot of wetland officials with that kind of
2 background. And, of course, as an elected official, I -- I
3 had my share of briefings and I hired staff, in fact, that
4 had these sorts of skills. And so -- and I hired a lot of
5 consultants for folks that I've worked with to work on
6 different issues.

7 So I think it's a simplification -- an
8 oversimplification -- I think your question is
9 oversimplifying. I think that my testimony stands on its
10 own, is very clear. In some cases, I bring in some
11 technical knowledge. In other cases, I refer to others'
12 technical knowledge. And in most cases I bring together the
13 SEPA context.

14 My primary goal here and my primary -- the request that
15 the appellant's had of me was to provide a SEPA framework
16 for various technical issues that they included in their
17 appeal.

18 Q. Okay. I appreciate that.

19 A. Yeah.

20 Q. And I'm -- I've opened up Appellant's Exhibit 35. This
21 describes your education. You talked about the --

22 A. Yeah.

23 Q. -- interdisciplinary bachelor's degree that you received
24 from University of Redlands, I see. And that was in
25 government and business and economics; is that correct?

1 A. Yes. Actually, what had happened, I -- I qualified -- I
2 accomplished all the requirements for the interdisciplinary
3 honors program, but I felt that a lot of the graduate
4 schools and employers might not realize that I had actually
5 also completed the major requirements, the specific major
6 requirements, and I was qualified to receive a major in
7 government with an emphasis in state and local government,
8 and another major in business and economics.

9 And so the school accommodated me to list on my diploma
10 that I not only had -- had that -- that I had specific
11 majors as well as the magna cum laude interdisciplinary
12 honors thing that I did.

13 Q. Okay. And did you have any sort of post education regarding
14 any sort of scientific background after that
15 interdisciplinary studies degree that you received?

16 A. Not -- not in a college framework. I was on the national
17 board of plasma thermal metallizers, which was a kind of
18 fairly technical method of rapidly solidifying particles.
19 And so I -- you know, in the course of -- of my profession,
20 I had various kinds of trainings.

21 And then on the King County Council, of course, you know,
22 you have a lot of briefings and trainings. And I've
23 attended some DOE briefings on different things. I served
24 on the legislative study group on vesting -- I think I was
25 the only attorney -- one of the few that -- on the vesting

1 ordinance that was looked at a couple years ago.

2 So this is -- but, no, not in a -- in a -- in a
3 postgraduate setting at all.

4 Q. Okay. And you said that you reviewed the proposal. Could
5 you describe what the -- what the proposal --

6 A. Yes.

7 Q. -- is?

8 A. Yes. Well, of course -- of course generally. Just -- and
9 I --

10 Q. From your -- from your understanding --

11 A. Yeah.

12 Q. -- of what the draft legislation accomplished.

13 A. Yep. I knew -- I anticipated. Of course, I'm -- I'm
14 looking for the document, because I -- not that I need it,
15 but it's more precise if I have it in front of me. And the
16 best way is the actual summary of the -- of analysis and
17 decision. It's the first thing I did was review the draft
18 ordinance because I found that the devil's in the details.
19 And it's -- and on one level this ordinance is quite simple.
20 The implications of it can be a little complex.

21 And so certainly there's a revision to the density
22 requirements. That's probably -- I considered to be perhaps
23 the most important thing is that it allows an increase in
24 density for one unit per 1300 to one unit per 1150, in
25 certain zones for certain types of developments, like

1 townhouses and rowhouses. And it also applies the density
2 limit to rowhouse development on interior lots of
3 approximately 3,000. And one could argue that that actually
4 would be an increase in neighborhood or environmental
5 protections.

6 In addition to that, it makes a number of changes on --
7 oh, providing opportunities for bicycle shelters and -- that
8 have -- that will not count against your floor area ratio.
9 Also provides flexibility for putting in covers for --
10 again, oriented toward being able to encourage
11 bicycle -- bicycle access.

12 There are some other changes with respect to other types
13 of shelters and height limits and projections. I'm looking
14 at projections of 4 feet that don't enclose a floor area are
15 excluded from a floor area. These are all fairly -- fairly
16 minor and fairly technical.

17 When it got to the issue about the -- I mentioned fire
18 access. When I read the section of the ordinance dealing
19 with setbacks, and they were small changes, but the
20 combination of setbacks and possible overhang obstructions
21 sent a red flag in my mind because if you're putting houses
22 real close together and you have a house in the back you got
23 to get to, emergency access might be an issue.

24 So I kept looking at that to see -- you know, because a
25 foot doesn't sound like much, but it can be when you're

1 actually doing a site (inaudible). And I think I found -- I
2 could be wrong, but I think I found the comment from -- from
3 a fire -- from a representative, your fire -- your fire
4 chief. It's not -- you don't use a fire marshal. You have
5 a fire chief. And I think there may have been some comment
6 about the access, wanting to make sure we preserve that
7 access.

8 I never found a resolution of that, and so I raise it here
9 for the good of the ordinance. I mean, I think -- I think
10 it's -- it's important to make sure that we don't create
11 fire hazards.

12 Q. And --

13 A. (Inaudible).

14 Q. I'm sorry. Where was -- where was that comment?

15 A. I'd have to find it for you, but I can't. You know, for the
16 good of the order, I'd be happy to share that with -- with
17 your staff or whomever because it ought to be looked at.
18 And, again, this is a legislative decision. You know,
19 you're not dealing with an applicant. There's plenty of
20 opportunity between now and the City Council -- the SEPA
21 hearing is not the only rodeo here.

22 Q. That's okay. I'm sure we'll see it in your closing briefs.

23 There's a comment --

24 A. Well, maybe. (Inaudible).

25 Q. I'm sure there's a comment to that effect.

1 A. Yeah. And also parking. You know, there's some
2 modifications. You know, interesting, you know, a reduction
3 of -- where you don't have to have as big a parking spot,
4 you know, because people are driving smaller cars, that
5 seems reasonable.

6 Q. And so (inaudible) --

7 A. But the primary (inaudible) -- the primary thing, sir, the
8 primary, most important thing that I was able to see was
9 this increase in density from -- going from 3 to 4 under
10 5,000 units, that there's been a practice of going to a
11 subdivision in order to get there, and the City was going to
12 basically streamline that. And the concern that I have is
13 that we'll be losing a lot of the standards of review you
14 find in subdivisions, not just -- that I mentioned earlier.
15 And that's a problem.

16 And that, secondly, that cumulative, over a whole lot of
17 these (inaudible), depending on where you are, you can have
18 some localized effects that are quite significant. You
19 know, when you do a subdivision review, for example, if you
20 live next door and you've got an encroachment on your
21 boundary or fill in the blank, you get your notice and then
22 you go to -- then say, hey, listen, you know, this guy has a
23 fence that's 5 feet on my property, and there's -- you know,
24 there's localized circumstances in these older neighborhoods
25 where public notice and some sort of detailed public review.

1 And the precision that happens when you do a subdivision is
2 very useful.

3 And I believe in increased density. You know, I took a
4 lot of heat for this over the years. You know, my -- if you
5 look into my background, my involvement with the growth
6 management is -- is -- is well documented, and -- but I know
7 this. That if you don't do density right, you will lose
8 public -- the public's confidence. If you don't serve the
9 needs of families with density, you will drive them out of
10 our urban areas. And that you've got to do densities really
11 smart. And part of that is notice. Part of that is really
12 detailed review. And especially if you do infill, you got
13 to be really careful how you do it. You got to be
14 methodical, and you've got to realize that not all
15 neighborhoods are the same and that there is an accumulation
16 of capacity problems and a little track of safety issues.
17 There's a whole bunch of issues that need to be -- there
18 needs to be a mechanism to address that.

19 And that was -- that's why I decided to put all this
20 energy into this. On its face is not that complex an
21 ordinance, but it -- it -- it does, taken together with
22 other things, it's significant.

23 Q. And earlier you had compared the proposal to the -- to the
24 proposal for the City of Olympia, their --

25 A. Yes.

1 Q. -- their "Missing Middle" ordinance.

2 A. Yes.

3 Q. Can you describe that ordinance?

4 A. I can. Now, mind you, that ordinance was -- I did not read
5 the ordinance. I read the decision. But the -- and --
6 and -- and it was more complex. It was more detailed. It
7 had -- in my opinion, on my read -- my frequent read, it had
8 greater impacts than this ordinance does. I don't need to
9 compare the level of magnitude of impacts, but they were
10 similar in the sense that they were citywide.

11 It was an increase in density of various types. It was an
12 attempt to encourage infill. There were changes in parking.
13 There was changes -- there was a whole variety of changes.
14 But the most important thing, the thing that caught my eye,
15 was that there were -- the way the SEPA review was done
16 paralleled many of the approaches that were used in this
17 ordinance, and that the decision by the board was very
18 clear. And my -- as I've testified earlier, my critique of
19 this ordinance is that it didn't have enough quantitative
20 review. It dismissed incremental reviews, and it didn't
21 have enough (inaudible). It didn't look at cumulative
22 impact and, instead, kind of dismissed it as incremental
23 impact. People like to worry about that. And there were --
24 there were density considerations that would have an effect,
25 especially localized on certain -- on certain -- on certain

1 impacts.

2 And the appellants were -- raised objections to the way
3 that analysis was done. And the -- the approach that the
4 City used was very similar to the approach that they used in
5 Olympia. And the decision of the board was very, very
6 clear.

7 My goal here is to have the City of Seattle do things
8 better. I mean, that's the whole point of all this. I look
9 at SEPA as an empowering method. It's not a gotcha thing.
10 It's a tool you use. And it's a good tool, if it's done
11 right. And, in my opinion, the City would benefit from a --
12 a closer review and consideration of the way it does these
13 nonproject level reviews on infill projects. And -- but,
14 again, in summary, the Olympia ordinance was clearly -- it
15 appeared on my reading to be more extensive with greater
16 impacts. But the parallel in the way they were analyzed was
17 very similar, and, therefore, the decision that they -- the
18 board came out with was instructive here.

19 MR. MITCHELL: All right. I appreciate your time. Thank
20 you, Mr. Derdowski. I don't have any further questions.

21 HEARING EXAMINER: Mr. Moehring, anything further?

22 MR. MOEHRING: No. Just for clarification purposes,
23 Mr. Derdowski, do you know what the case number, just for
24 reference, of that State of Washington, City of Olympia
25 case?

1 HEARING EXAMINER: I pulled --

2 THE WITNESS: Let me see if I have it.

3 HEARING EXAMINER: I think it's 19-2-0002C, so I think
4 I've got it.

5 MR. MOEHRING: Okay.

6 HEARING EXAMINER: I think that's the correct one.

7 MR. MOEHRING: Thank you. No further questions.

8 HEARING EXAMINER: All right.

9 THE WITNESS: All right. Thank you.

10 HEARING EXAMINER: All right. Thank you, Mr. Derdowski,
11 for your testimony this afternoon.

12 So I think, then, Mr. Moehring, are we moving to
13 Ms. Kaplan?

14 MR. MOEHRING: That's correct.

15 HEARING EXAMINER: Ms. --

16 MR. MOEHRING: Mr. Kaplan.

17 HEARING EXAMINER: Oh, Mr. Kaplan. You said Mary Kaplan
18 or was that a Marty Kaplan? Okay.

19 MR. MOEHRING: Martin Kaplan.

20 HEARING EXAMINER: Martin. Mr. Kaplan, there we go, if
21 you could state your name for the record.

22 THE WITNESS: Good afternoon. My name is Martin Kaplan,
23 K-a-p-l-a-n.

24 HEARING EXAMINER: And you swear or affirm to tell the
25 truth under penalty of perjury under the laws of the state

1 of Washington?

2 THE WITNESS: I do.

3 HEARING EXAMINER: Thank you.

4

5 MARTIN KAPLAN: Witness herein, having first been
6 duly sworn on oath, was examined
7 and testified as follows:

8

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

10 BY MR. MOEHRING:

11 Q. Good afternoon, Mr. Kaplan. Would you mind spelling your
12 first and last name for the record?

13 A. Yes. Martin Kaplan. K-a-p-l-a-n. First name is Martin,
14 M-a-r-t-i-n.

15 Q. Thank you.

16 And do you reside in Seattle?

17 A. I do. My address is 588 Bell Street, Seattle, 98121.

18 Q. Okay.

19 A. I'm sorry. I need to apologize. My camera gave out on my
20 laptop, so I'm using my iPad, so I'm going to be looking
21 around a little bit. Hopefully I'll be looking at you.

22 HEARING EXAMINER: Thank you for that clarification. I
23 can see you just fine, so.

24 THE WITNESS: Okay. Good. Thanks.

25 Q. (By Mr. Moehring) Tell us a little bit about your

1 professional history.

2 A. I -- I've been a licensed architect in the state of
3 Washington since 1980. I'm also licensed in the state of
4 Idaho and was in California, and I'm -- also have a
5 (inaudible) national license, NCARB. Yeah.

6 Q. Any professional honors?

7 A. I've been honored pretty consistently over my career, design
8 honors, both locally, nationally, and regionally.

9 Q. In addition to your professional practice, would you mind
10 sharing your involvement with the City of Seattle boards and
11 commissions?

12 A. Sure. Most notably in relationship to this situation, I
13 served on Seattle Planning Commission from 2004 to 2012. I
14 had, you know, many duties and many opportunities to help
15 influence our city. I've served on numerous other boards as
16 well. I served on the ARCH Community Housing in Blaine
17 County, Idaho, for about four years where our mission was to
18 help ensure diverse housing opportunities.

19 I served on the Queen Anne Community Council from 2002 to
20 2020. I was also on the Land Use Review Committee for those
21 years and chaired that committee from 2010 through 2021.

22 Oh, I served on the Queen Anne Community Council through
23 2021.

24 I think those are probably most notable associations for
25 this appeal.

1 Q. The -- maybe we can pull up real quickly your résumé, CV.
2 It would be Exhibit 31. And as we're pulling that up, what
3 other work have you been involved with relative to
4 the -- well, during your work on the architectural board?

5 A. Well, as far as other board work that I've done in
6 relationship to the planning commission and other work, it
7 goes back quite a -- quite a ways when myself and a couple
8 colleagues got together, talked the City into upzoning parts
9 of South Lake Union and Uptown, which is commonly called
10 Lower Queen Anne. We were able to get the City to accept
11 our proposal to do a framework design study where the City
12 sponsored it, provided us a planner for community outreach,
13 and to eventually go through the environmental impact
14 statement process and were successful in accomplishing many
15 community goals and objectives there, as far as increasing
16 density opportunities for affordable housing and integrating
17 a much more diverse community.

18 In addition to that, when I was on the Seattle Planning
19 Commission and on the Queen Anne Community Council, I
20 represented both in the upzone and rezone for South Lake
21 Union, (inaudible) involving that for many, many years. And
22 also one of my first duties on the planning commission was
23 actually to help draft Seattle's first inclusionary zoning
24 ordinance.

25 So I've been associated with increasing density for pretty

1 much my whole career. And then in 2006 I and some other
2 colleagues on the planning commission drafted the first
3 potential legislation for accessory dwelling units and
4 called them backyard cottages at the time. They were the
5 first ADUs in the city. And in 2006 we brought that to
6 South Seattle as an experiment.

7 I had many, many community outreach meetings. Numerous
8 units were built in 2009. We went to the City council and
9 asked that it be citywide. And basically through some
10 hearings and things they accepted, you know, our work, and
11 that current legislation was adopted citywide in 2009. It's
12 been changed a bit since then, but those are some -- some of
13 my past recent efforts.

14 Q. And 2009 was there also a similar type of SEPA process?

15 A. (Inaudible) you're testing my memory here.

16 Q. Okay.

17 A. Yeah. We --

18 Q. Just curious.

19 A. Yeah. We brought into -- I mean, citywide we had meetings.
20 And at first with southeast Seattle, and then we had
21 meetings throughout the city to discuss the options and the
22 legislation that we were planning to present. And, you
23 know, a lot of that drafting of the regulation was based
24 upon being informed by public comment.

25 Q. Okay. Any other comments on your résumé before I close --

1 close your résumé?

2 A. No. I think just keep it to -- to this.

3 Q. Okay.

4 A. Thank you.

5 Q. Thank you.

6 Okay. So questions for you. With your background and
7 development of additional density in Seattle, have you also
8 had -- ever had to appeal a pending land use legislative
9 action here in Seattle?

10 A. Yes, in 2015. And, again, I remind that I was intimately
11 involved with helping author the first ADU legislation. And
12 in 2015 it was current. And I received information from the
13 city planner that council member Mike O'Brien and Mayor Ed
14 Murray had plans to completely revise that legislation and
15 essentially eliminate single-family zoning and -- well,
16 eliminate the DADU legislation through the city and replace
17 it with a much higher and less regulatory policy that had
18 not been public.

19 And so I spoke to -- first of all, I found out that -- I
20 was given a copy of the proposed legislation and discussed
21 it with another city council member, thinking that this was
22 pretty outrageous, that the council and the city could
23 actually advance this legislation without following what I
24 understood were the rules regarding SEPA and other public
25 outreach and investigations into feasibility. And so this

1 council member --

2 MR. MITCHELL: Your Honor, I guess with all due respect, I
3 just -- I didn't object much to Mr. Derdowski's testimony,
4 and I don't plan to object much here, but I don't see the
5 relevance, I guess, of talking about these prior proposals
6 and the process that went into them.

7 HEARING EXAMINER: Mr. Moehring, any comment on that? I
8 guess there is the same question in my mind.

9 MR. MOEHRING: Yeah. We're just setting the foundation
10 here to talk about this current proposal and how this is not
11 the first time proposals like this have come up and how they
12 were dealt with in terms of the hearing examiner's outcomes.
13 Obviously, Mr. Mitchell is well aware of -- this is an
14 appeal issue, and he's also referred to past appeals in his
15 prior correspondence, prior to the hearing.

16 HEARING EXAMINER: I'll allow a little bit on this, just
17 as background, but I would like to kind of move into the
18 principal aspect of his test -- Mr. Kaplan's testimony.

19 So, Mr. Kaplan, you may proceed.

20 THE WITNESS: Okay. Well, let me see. Where did I leave
21 off?

22 At any rate, in a nutshell, I -- I followed through with
23 the appeal on the basis that the city planners themselves
24 issued a DNS, and this legislation was going to advance
25 without any public review, any environmental impact study

1 whatsoever. And, again, we're talking citywide, every piece
2 of property. And it was just -- I found it to be illegal
3 and -- and so I appealed and we prevailed.

4 Q. (By Mr. Moehring) You prevailed. What was the results of
5 the appeal, if you can be a little more specific?

6 A. Well, the effort was -- is to hold the city accountable to
7 actually prepare an environmental impact statement, to have
8 a rich and robust public outreach in all four corners of the
9 city, to get public input, and to (inaudible) input to
10 inform the eventual writing of any changes or legislation.

11 But just -- just to say that there would be no impact to
12 utilities, parking, to -- you know, to property values, to
13 affordable housing, to displacement, just to basically
14 suggest that, well, we've looked at it, there's no impact,
15 without any proof whatsoever, I felt was irresponsible and
16 thankfully so did the hearing examiner.

17 Q. If we could open up Exhibit No. 14 and go right to the
18 conclusions of the hearing examiner. If you could guide us,
19 Mr. Kaplan, to the appropriate page.

20 A. Wow. Good question.

21 Q. Maybe it would be indicated here.

22 A. (Inaudible).

23 Q. Here we go. Thank you.

24 Yeah. So if you could briefly go through the main
25 conclusions that were derived from the hearing examiner.

1 A. Okay. And I think this is important because it clearly
2 relates to exactly what's going on today. And I'll just
3 pick out a few sentences of these conclusions that I --

4 HEARING EXAMINER: I'm a little hesitant -- just can I
5 interrupt. I -- I don't want to get too much into legal
6 argument. And I do have this decision, you know, here and,
7 of course, I could read it anyway. I will review it and
8 there will be an opportunity with closing arguments to
9 address kind of the legal analysis and the legal framework.
10 But I don't want to get -- again, I want to stay away from
11 the legal argument during the factual portion of the
12 hearing.

13 MR. MOEHRING: Okay.

14 HEARING EXAMINER: It'll just -- it'll just take up too
15 much time to do it that way. But if we can get into the
16 actual facts of the testimony, I think that would be most
17 useful. And then certainly there will be an opportunity to
18 address any case law that the parties want to further bring
19 to my attention during closing, whether that's written or
20 oral. But we'll address that after the close of testimony.

21 Q. (By Mr. Moehring) Mr. Kaplan, you mentioned before there
22 were some parallels to this decision and appeal to the
23 proposed townhouse reform decision. Is there a particular
24 item in this decision that would be comparable, such as
25 trees or parking or (inaudible) scale that might apply here?

1 A. Well, we operate through everyone in respect to the hearing
2 examiner, you know, I can pick out -- I'll pick out a couple
3 that -- that I feel are significantly similar and that
4 the -- I argued and the hearing examiner agreed in 2016 that
5 the record must demonstrate -- this is in paragraph
6 number 1 -- quote, [As read] That environmental factors were
7 considered in a manner sufficient to amount to a prima facie
8 compliance with procedural requirements of SEPA and that
9 decision to issue a DNS was based on information sufficient
10 to evaluate the proposal's environmental impact.

11 Clearly, this has not been accomplished in that the City
12 self-dealt and issued the DNS themselves without studying
13 any of the environmental impacts.

14 And that continues in number two, where it says, [As read]
15 The reviewing body may not substitute this judgment for the
16 decision-maker, but instead examines the record and all the
17 evidence in light of public policy underlying SEPA.

18 And clearly this was not done as well.

19 And the other issue that I think is really important was
20 in paragraph 4, which says, [As read] OPCD was the proponent
21 of the proposed ordinance and the same OPCD staff who
22 developed the legislation and were advocating for it also
23 prepared the checklist and made the SEPA threshold
24 determination.

25 And there were emails that we had as evidence back then

1 that suggested that Mr. Wetland (phonetic) and Mr. Walsh
2 were -- Welsh (phonetic) were advocates, and they were
3 involved in this decision as well and made the decision
4 themselves. And that's just not -- not legal.

5 Paragraph 5, there's an SMC provision that provides,
6 quote, [As read] An agency initiates a proposal is the lead
7 agency for that proposal and would, whenever possible, the
8 agency people carrying out SEPA procedures should be
9 different from the agency people making the proposal.

10 And simply that obviously was not done. In fact, you
11 know, Mr. Wetland and Mr. Welsh were advocates and promoted
12 this proposal.

13 You know, I think that what needs to be studied is
14 the -- what type of housing is this going to produce? The
15 idea is build more housing that's going to be more
16 affordable. Well, in 2015 and '16, you know, we definitely
17 proved that that is not the case. And if you could look at
18 the record today, the housing that's been built after this
19 legislation was advanced to allow greater density, that
20 greater density is all market rate million dollar townhomes
21 instead of affordable housing, which was advocated at the
22 time.

23 The -- and, again, this goes in to paragraph 8 where the
24 DNS is clearly erroneous because the OPCD failed to consider
25 the proposed -- proposal's impact on existing housing,

1 including the displacement of some populations. There has
2 been no study and there's no evidence that this legislation
3 even considered that with any particular study, just
4 people's opinions.

5 And I'll try and be brief here, just looking through my
6 notes. The -- the direct and indirect impacts and
7 cumulative impacts Mr. Derdowski discussed obviously were
8 not studied as well, because there has been no study. And,
9 you know, these are significant adverse environmental
10 impacts that must be studied in an EIS in the context of the
11 development, economic, environmental, and it would be -- the
12 impacts that would be created by the proposal. There's been
13 no -- no study of the environmental or economic impacts.
14 And there's no citations of any studies or other data as a
15 basis for the conclusion for the DNS.

16 And -- and to -- to a large extent and a very important
17 extent, the note -- or the designation of the DNS, without
18 any particular study in environmental impacts, fails to
19 substantiate conclusions that the proposal will have
20 negligible impacts on public services and facilities. In
21 2015 and '16 provided extensive evidence that increasing
22 density will always have some impact on infrastructure, and
23 especially when you're dealing with cumulative impacts over
24 time. And if you don't study that, especially in a city
25 that's platted a hundred years ago and many of the utilities

1 have not been upgraded, and so you've got, you know, a
2 significant portion of the city that's been zoned and
3 engineered for single-family homes, which was not 8 or 10 or
4 12 people at the time, it was averaged 3 or 4 people, those
5 utilities have not been upgraded to support 16 people or 18
6 people.

7 And we asked in 2015 and '16 that those studies be
8 completed, and it's my understanding that as of yet those
9 studies have not been completed. But, yet, the City issues
10 a DNS here and says there won't be any impact. And even
11 though in increase in density is relatively minor, as
12 compared to what it was in '15/'16, you're still adding
13 another family unit that could be four or five people,
14 whatever, onto a property, and at some point I think the
15 City -- it's incumbent upon the City to actually prove that
16 there's no environmental impact and no impact to
17 infrastructure systems. I mean, it's just -- it's pretty
18 obvious.

19 And, let's see, to conclude here, you know, I think,
20 Mr. Moehring, I think that's a quick summarization.

21 Q. We're going to close this document.

22 You heard some testimony yesterday that I wanted to ask
23 you about, because was one of the reasons why you had worked
24 with other people, you said, was it 2006 regarding the -- is
25 that when you were -- the city was bringing accessory

1 dwelling units or backyard cottages, was that back in 2006?

2 A. That's correct.

3 Q. And do you recall -- and I'm going to ask this in context of
4 the current proposal -- the reason for -- or the reasons,
5 perhaps -- for adding backyard cottages in Seattle?

6 A. Sure. We found that it would be an opportunity to increase
7 density and possibly provide more affordable housing on lots
8 of certain sizes that could easily accept additional
9 building envelope and density and infrastructure. We were
10 very precise at that point and did quite a bit of study
11 about what size those lots should be and what the size of
12 the populations should be at that point.

13 Q. I'd like to open up an exhibit that was talked about
14 yesterday by Mr. Staley. That's the City Exhibit No. 15,
15 and we're going to flip to one page. I'm not sure the -- if
16 you heard any of that testimony, Mr. Kaplan, from Mr. Staley
17 about the housing choices report.

18 A. I'm sorry, I did not. I was having to travel yesterday and
19 was unable to log in.

20 Q. Not a problem.

21 One of the things that was mentioned was affordability, as
22 you mentioned, was one of the key drivers for the DADUs.
23 And I actually have to admit I can't recall if it was
24 Mr. Welsh or Mr. Staley, but they're talking about one of
25 the motives for this change proposed is affordability and

1 that townhouses are more affordable than single-family
2 homes. So if we could go to page 11 of the report, and
3 there's a Figure 4.1. There we go.

4 Are you -- see if we can enlarge that a little bit.

5 A. I can see that.

6 Q. Okay. Could you describe a little bit about this table and
7 the comparison in affordability between townhouses and
8 detached houses.

9 A. Yeah. I'm sorry, Mr. Moehring, but I -- you know, I did not
10 review this beforehand, but I think I can move through here
11 pretty quickly. It -- you know, it appears that, from this
12 chart, there's not a significant difference between the
13 valuation or the home sales price average between a townhome
14 and a detached home.

15 Q. And for the record purposes, would you mind indicating what
16 the values that the City published in this are for a
17 detached house versus a townhouse?

18 A. 795 for a detached house and 730 for a townhome.

19 Q. Would you say that there's much more of an incentive for
20 somebody to purchase a townhouse because of this data over a
21 single-family house?

22 A. Well, I would assume that somebody that would invest 7- to
23 \$800,000 would probably be more interested in a detached
24 house, which would most likely be larger than a townhome
25 that would be, you know, probably less yard and much

1 smaller.

2 Q. And if we could just page up to the prior diagram you passed
3 on the current page. It's 10, I guess. And I'm realizing
4 you haven't had a chance to look at this, but one of the
5 testimony we heard yesterday was that there was a review
6 with perhaps selected groups of organizations
7 with -- connected by the Office of Planning and Community
8 Development to reach out and find out what people's
9 preferences might be.

10 And in terms of those prices that we've seen, I'm not sure
11 if you can see this table, but in the price range of the
12 700,000 that you talked about, are we talking about most of
13 the people on this chart or just a few people being able to
14 afford something in that price range for a townhouse?

15 A. Well, I'm sorry but I can't see the bottom of the exhibit,
16 but I -- I've got to be pretty certain that the number of
17 people that could afford a \$700,000 townhouse are
18 significantly less than any other market.

19 Q. And there is afoot of making the -- okay. Yeah. That's
20 fair enough. I thank you for that observations. You can
21 close this report.

22 Is there any other observations that you have from the
23 actual townhouse/rowhouse SEPA checklist or reports that
24 accompanied that report that you'd like to testify about at
25 this time?

1 A. Not in particular, but I might just add, as I did not
2 mention during your opening, that since 1978, as part of my
3 architectural projects, I've also gotten involved in
4 developing multifamily buildings and infill projects in the
5 city of Seattle as well. So my comments regarding valuation
6 or numbers of people that are interested in certain type of
7 product are based on more than just being an architect.
8 They're actually based on developing these projects and
9 building them as well.

10 MR. MOEHRING: Thank you. I have no further direct
11 questions.

12 HEARING EXAMINER: All right. Thank you.

13 Mr. Mitchell?

14 MR. MITCHELL: Yes. Thank you.

15

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

17 BY MR. MITCHELL:

18 Q. Good afternoon, Mr. Kaplan. Did I hear you correctly, did I
19 just hear you say that the number of people that could
20 afford a \$700,000 property is less than the number of people
21 that could afford detached homes?

22 A. No, that's --

23 Q. Did you mean -- did you mean other who -- in another
24 development category? Did I -- I don't know if I heard that
25 correctly.

1 A. Yeah. No. Thanks. If I said that, I was not heard
2 correctly, because I don't see (inaudible) would say that.
3 What I think I was asked and what I answered is the number
4 of people who can afford a \$700,000 sales price, whether
5 it's a detached or townhome, is far less than those that
6 could afford something less.

7 Q. Okay. I see.

8 And would -- do you agree that the current -- the existing
9 regulations for LR1 zones already allow apartments and
10 cottage housing developments?

11 A. Yeah. They allow small -- small multifamily developments,
12 that's correct.

13 Q. And those developments are -- those type of developments
14 don't have any density limits; is that correct?

15 A. Well, it --

16 Q. In the LR1 zone, if -- if -- if MHA is --

17 A. Correct.

18 Q. -- is applied; is that right?

19 A. Well, they have a density limit based, I think, on lot size.

20 Q. Right.

21 So building constraints?

22 A. That's right.

23 Q. Yeah. Yeah. Okay.

24 A. Well, but you're suggesting number of units, I understand.
25 There's not a limit they can build, you know, small units.

1 MR. MITCHELL: Well, I appreciate your time, Mr. Kaplan.

2 I don't have any further questions. Thank you.

3 HEARING EXAMINER: Anything further, Mr. Moehring?

4 MR. MOEHRING: No, thank you, Your Honor.

5 HEARING EXAMINER: All right. Well, thank you for your
6 testimony this afternoon, Mr. Kaplan. You are dismissed.

7 THE WITNESS: Thank you.

8 HEARING EXAMINER: So is Ms. Wolf your next witness,
9 Mr. Moehring?

10 MR. MOEHRING: Yes, she is.

11 HEARING EXAMINER: Okay. Do we have Ms. -- there she is.

12 Ms. Wolf, if you could -- there we go. If you could state
13 your name for the record.

14 You're muted, it looks like. There you go.

15 THE WITNESS: Yes. Hello. Kathleen Wolf.

16 HEARING EXAMINER: And do you swear or affirm to tell the
17 truth under the penalty of perjury under the laws of the
18 state of Washington?

19 THE WITNESS: Yes, I do.

20 HEARING EXAMINER: Thank you.

21

22 KATHLEEN WOLF: Witness herein, having first been
23 duly sworn on oath, was examined
24 and testified as follows:
25

1 DIRECT EXAMINATION

2 BY MR. MOEHRING:

3 Q. Good afternoon, Ms. Wolf. Thanks for joining us. Would you
4 mind -- your name is very straightforward, but just for the
5 record, do you mind spelling out your first and last name.

6 A. Yes. Kathleen, K-a-t-h-l-e-e-n. Last name Wolf, W-o-l-f.

7 Q. And I will ask that Exhibit No. 36, which is your
8 credentials and résumé, be shared. Tell us a little bit
9 about your background and experience, if you could.

10 A. Yes. I work at the University of Washington in the School
11 of Environmental and Forest Sciences. And while that school
12 has a long legacy as one of the best forestry schools in the
13 nation, my work varies a little bit from that legacy in that
14 I work with regard to urban greening and urban forestry, and
15 I'm also a social scientist. So the background theory,
16 methods of my work is premised in environmental psychology
17 based on studies that I did at the University of Michigan.

18 And so I have explored, researched human perceptions,
19 behaviors, attitudes about urban nature. And in the last
20 decade that work has turned to more direct explorations of
21 human health and wellness associated with the experience of
22 nearby nature and urban outdoor environment.

23 Q. Thank you.

24 One of the things we had covered with the City's
25 witnesses -- were you able to join any part of the hearings

1 yesterday, in terms of listening at all?

2 A. I was not able to, no.

3 Q. Okay. Because the City -- we had gone over the 2016 Tree
4 Canopy Assessment with Mr. Brennan Staley from the Office of
5 Planning and Community Development, and we also, this
6 morning, reviewed some of the studies that was done by
7 Ms. Ramos, Faith Ramos, who is still with the City but in a
8 different capacity, in terms of tree loss within the city of
9 Seattle, and we're going to have some more testimony on that
10 forthcoming.

11 But I was wondering if you could share a little bit about
12 what portion of the -- that you would be testifying today
13 regarding the tree canopy and its significance?

14 A. So the tree -- urban forest management plans at the City of
15 Seattle are premised on periodic canopy assessments, and
16 these are done using remote sensing technologies. Then
17 translation of those technologies, be it satellite data or
18 be it LiDAR, which is a more localized kind of a
19 radar-sensing approach, and from those assessments, there is
20 an interpretation of current canopy ratings or current
21 canopy cover. And this is done across the entire city, but
22 it is also done -- the most recent assessment took into
23 account subzones or neighborhoods across the city of
24 Seattle.

25 I will say that a new urban forest management plan is at

1 least near final draft -- it hasn't indeed been released --
2 that has a very strong focus on equity and diversity,
3 because what we see -- and this is not unique to Seattle.
4 This is happening or has happened in nations -- cities all
5 across our nation -- is there is a revealed disparity of
6 tree presence, also parks presence, in neighborhoods often
7 of lower socioeconomic standing. And that while it's --
8 it's not universal. I mean, it's a general trend, but we do
9 see that trend here in Seattle.

10 So the earlier urban forest management plans tend to focus
11 on tree canopy goals by different types of land use having
12 to do with the density of buildings, density of people,
13 population, and so on. That continues with the current
14 urban forest management plan, but with increased emphasis
15 and attention to these historic disparities because -- not
16 just because there aren't the same number of trees, because
17 there are deep socioeconomic and public health consequences
18 of not having this vegetation and this natural -- natural
19 resource asset in such communities.

20 I will also mention there was another analysis that I at
21 one time was an associate scientist with the forest service
22 regional science lab based in Fremont, and in collaboration
23 with Forterra, a nonprofit organization, and also in City of
24 Seattle, we conducted what is known as an i-Tree Eco
25 analysis. And that analysis, using a modeling software

1 platform provided by the forest service, was an effort to
2 estimate a range of various ecosystem services provided by
3 trees and urban forest canopy, including stormwater,
4 including climate response, as well as other services.

5 So there -- there are a number of data sets, interpretive
6 reports based on that data. And then, moving forward to
7 what do you do with this, management plans that reflect a
8 very good and historic understanding of tree canopy in
9 Seattle, including concerns about loss, and that has to do,
10 of course, with upzoning and increased density expression
11 within the city.

12 Q. You mentioned i-Tree. We had submitted one exhibit. I just
13 want to provide the opportunity for you to comment on that,
14 if you'd like to comment further. That's Exhibit No. 68,
15 just a -- just as a point of reference, and if you had
16 anything else in particular from that. Is this the document
17 that you were referring to or one of the studies that --

18 A. Actually, no. This is a fairly recent report. So i-Tree
19 Hydro, what you see mentioned in the subheading there, the
20 subtitle, is another tool offered by the forest service to
21 conduct analysis about the consequences and services
22 provided by trees, the forest canopy.

23 So this is actually work that was done in collaboration
24 with the Department of Ecology, and I believe also King
25 County. And ongoing work is happening in order -- in

1 response to this analysis to encourage more tree
2 conservation and planting for the sake of stormwater
3 management.

4 So this represents but one of a suite of tools offered by
5 the forest service that are made that are utilized not only
6 by the City of Seattle and King County, but, again, by
7 cities all over the country, to better understand our urban
8 forest resources and the many benefits that they provide.
9 In this case, this particular report focuses on stormwater
10 functionality.

11 Q. Thank you.

12 You had mentioned before tree equity. And was one of the
13 research articles that you had shared, I think,
14 environmental justice related that perhaps you want to talk
15 about?

16 A. Yes. And I'll start by saying that comments that I provide,
17 too, I am often -- so I continue to monitor, synthesize, and
18 then write about and speak about much more than my own
19 research with regard to urban natural resources and health
20 response, as well as other functions and benefits. And so
21 as I speak about these things, please know that I am
22 representing a broader array of findings, facts, and
23 analysis.

24 And so with regard to equity, to get to your question, the
25 last canopy assessment that was conducted by the City of

1 Seattle did indeed identify disparities of canopy and tree
2 presence across communities. Again, in general. Not a
3 literal, but a general pattern of less tree cover in those
4 communities of lower socioeconomic status. And this is not
5 a novelty in Seattle.

6 It -- we have heard a great deal in recent months, in the
7 last couple of years, about some of the structural
8 inequities across communities compared to various
9 communities, and the presence of trees and green space is
10 indeed one component of that. There are many others, of
11 course, in terms of housing equality, access to education,
12 and so on. Not -- obviously not the focus of this hearing.

13 But there are a number of investigators, meaning social
14 scientists, natural resource scientists, and also
15 practitioners, people who manage natural resources but also
16 urban planners, community advocates, community organizers,
17 who are very concerned about environmental justice. And I
18 will say that historically environmental justice focused on
19 a regulatory outlook, which is environment as a source of
20 risk for toxin, pollutants, bad air quality, lead in the
21 environment, those sorts of things. But within the last --
22 certainly the last 40 years, but in an accelerated way in
23 the last 10 years, we have come to learn about what I would
24 say are the salutogenic benefits; that is, not the risks and
25 toxins, but those beneficial aspects of having green in our

1 environment.

2 And so environmental justice has grown to expand beyond
3 the sort of superfund site outlook or prevention or
4 mitigation of risks and toxins to embracing the positive
5 circumstances, experiences, and consequently health outcomes
6 that people encounter when people living in greener
7 environment or places having more nearby nature. So this is
8 but one article that -- and there are many now, I will
9 state. Some of them very specific to certain places, others
10 of them more general in their scope of analysis, which this
11 one represents, acknowledging and attempting to address
12 these sorts of disparities with regard to environmental
13 justice and urban forestry.

14 Q. Is there a particular portion of this article that you'd
15 like to emphasize that we should turn to?

16 A. If I recall, if you scroll through quickly, I believe this
17 article identifies a range of health benefits. Perhaps it's
18 not this one. No. This was more of a -- using, again,
19 remote sensing and statistical analysis and GIS modeling.
20 This article in particular identified those disparities of
21 forest cover that have been expressed in many different
22 cities. The implications.

23 Here we have a chart, just scrolled by, about
24 implications. It appears this article is addressing what
25 are the implications for going forward. Implications, in

1 terms of why these disparities now exist. But then going
2 forward is the implication with regard to the broader
3 evidence about human health and welfare. What might be
4 future planning and actions to boost, to remedy these
5 disparities of canopy cover?

6 Q. Before we move from this article to the next one, I assume,
7 are you familiar with the 2016 tree canopy study that the
8 City of Seattle has prepared?

9 A. I have not looked at it recently, but yes. I have been
10 asked -- when the City drafts its respective updates of the
11 urban forest management plan, I am -- I have been asked to
12 review them. So, yes, I am aware of that.

13 Q. And was there any relative City of Seattle environmental
14 justice or tree equity results that came out of that
15 assessment that you would like to share?

16 A. So I don't have the specifics, the numbers at my fingertips,
17 but what we do see is generally a pattern of more affluent
18 communities having more obvious canopy cover than less
19 affluent communities. And generally, not -- not entirely,
20 but generally distributed in south Seattle, we see
21 fewer -- less access to trees and green in those spaces.

22 And this has been -- I don't remember what the
23 jurisdictional units are, but the City, in its analysis, a
24 secondary analysis, they first did full city canopy cover,
25 but in a secondary analysis they were able to

1 identify percent canopy cover within subzones across the
2 city.

3 It raises instantly -- when one looks at these maps, it
4 instantly raises the question of equity. And, again, not so
5 long ago, across my career, I've been doing this research
6 close to 40 years -- excuse me -- 30 years. The research
7 has been done for 40. I've been working at this for close
8 to 30. But what one sees is early on in the early forestry
9 and arboriculture setting or world or discipline is an
10 emphasis on beautification. Aren't trees nice? Aren't they
11 pretty? Aren't they nice to have? But the essentialness of
12 a green element in cities was not recognized.

13 Now, with the extensive, extensive health and wellness
14 associations of having contact with trees, views of trees,
15 walkable spaces within trees and the urban forest canopy, we
16 see now that plants, nature, including trees, are profoundly
17 important for quality of life and human wellness and
18 welfare. And so what we see with these implications are --
19 they're suggesting measures to introduce or to sustain more
20 trees in cities.

21 This particular article, and there are many others that do
22 this, explains the why. Why these implications are
23 important. It is because of the extensive evidence of
24 wellness and benefit that makes trees no longer just nice to
25 have and just beautiful, but profoundly important for the

1 wellness of humans and households and even entire
2 communities.

3 Q. Thank you.

4 That lends me to share another article that you were also
5 an author of --

6 HEARING EXAMINER: Mr. -- Mr. Moehring, one quick question
7 before you move on. You had labelled up here it's
8 Exhibit 39 the witness was talking about. I have it
9 labelled in my notebook at 38. So should it be -- should
10 this be -- I just wanted to clarify the exhibit number on
11 this particular exhibit.

12 MR. MOEHRING: Should be 39.

13 HEARING EXAMINER: Okay. All right. So this should be
14 39. And I think I do not have a 38, then.

15 MR. MOEHRING: Okay.

16 HEARING EXAMINER: Actually, it's labelled as -- this one
17 is labelled as 38 on your exhibit list, the one that you
18 have up there as 39. And it's -- the title, "The Urban
19 Forest Ecosystem Services."

20 MR. MOEHRING: Okay. All right. I probably made a
21 mistake there.

22 HEARING EXAMINER: Okay. Should -- I guess just in terms
23 of -- and eventually we'll have a master record or index of
24 record that details all this, but should this -- for right
25 now, do we want this to be 39 or -- as on the exhibit

1 list -- 38?

2 Why don't we keep it as 38, because that's what you have
3 on your exhibit list, so that might be easier on my end.

4 MR. MOEHRING: Okay. I'll do that.

5 HEARING EXAMINER: Okay. And just so you know, I do not
6 have a 39. So I didn't know if you all -- if you intended
7 for there to be a 39.

8 MR. MOEHRING: Okay. That might explain something here
9 too. Okay. I'd like to see if you -- do we have an
10 Exhibit 40? I'm going to check the title here.

11 HEARING EXAMINER: "Greening Blocks"?

12 MR. MOEHRING: Exhibit -- yeah, "Greening Blocks."

13 HEARING EXAMINER: Okay. Looks like the numbering got a
14 little -- yeah. 40 is -- starts "Greening Blocks" is the
15 title.

16 MR. MOEHRING: All right.

17 Q. (By Mr. Moehring) Ms. Wolf, may we talk about the "Green
18 Blocks" article that you were an author or coauthor with?

19 A. Yes, please.

20 Q. And tell us a little bit about this research that was done
21 for this and some of the conclusions that you would like to
22 have the City consider.

23 A. All right. First, if you notice the title, there's several
24 elements there that are important. First, this is
25 conceptual. So what that means is my coauthors and I, we

1 considered the range of -- a range of benefits and features
2 offered by trees and offered, then, some guidance, some
3 guidelines for how trees can be implemented within
4 residential areas, meaning greening blocks. You could
5 interpret greening blocks as a neighborhood scale
6 intervention with regard to conserving and sustaining and
7 planting trees in various spatial configurations. Why would
8 you do this? For the practical integration of health and
9 climate resilience, cobenefits.

10 This is another trend that I'm seeing in the research with
11 regard to trees, where earlier studies tended to be a single
12 purpose or outlook, be it stormwater, be it air quality, be
13 it carbon sequestration. More and more there's a
14 recognition that, in the urban environment, there's the
15 necessity to consider how any, any element, any system in
16 the city must provide stacked or cobenefits. And that
17 was -- our effort in this particular project was based on
18 other people's research to provide some spatial intervention
19 ideas that integrate human health and climate resilience.

20 Q. Thank you.

21 Is there any document or research item within this
22 document that we should -- we should look at?

23 A. If you'd please scroll. The typology of -- some of the
24 authors -- two of the authors are landscape architect
25 scholars at the University of British Columbia. And as you

1 can see, academic articles tend to be quite wordy. They're
2 not light reading. They can sometimes be difficult to
3 interpret for practical reasons.

4 If you'll stop there, please. This particular article, it
5 was our effort to provide some more practical guidelines to
6 be readily interpreted by designers and planners for
7 implementation. And with regard to the trees, you've asked
8 me now about two scales. You've asked me about canopy cover
9 across the entire city. This is (inaudible), if you will,
10 the microscale of site design and site planning. And what
11 we have done is to offer suggestions for the placement and
12 conservation of trees within the spatial dimension of
13 residential areas in ways that would optimize human health
14 response.

15 So this one, figure number 2, is about the placement of
16 trees adjacent to windows or adjacent to buildings to allow
17 or to encourage window views of nature. And one might
18 think, well, that -- you know, what's that about? There are
19 studies, one of the earliest was done in 1984, with a
20 hospital -- a little different context -- finding that
21 people who had a view of trees in postsurgery recovery
22 versus a view of a brick wall during the same surgery and
23 the time after healed more quickly, used less powerful
24 analgesics, painkilling medications, and left the hospital,
25 healed a little more quickly. All statistically significant

1 outcomes.

2 Subsequent research has explored this idea of a window
3 view, finding mood improvement, finding stress reduction.
4 And, again, I don't have the numbers at my fingertips now,
5 but should there be followup questions, I could provide
6 those numbers. But I'm speaking from papers and studies
7 that have demonstrated statistically significant outcomes.

8 If you will, let's scroll let's say two more of these in
9 the papers and I'll speak to that. Let's see. A little
10 more, please. Here we are. This one, create refuge. The
11 others we go from windows to the location of trees adjacent
12 to entryways to a building. There again, research that was
13 done with public housing in Chicago finding that trees near
14 the entryway of residential settings increase social
15 cohesion. I shouldn't say increase. They found
16 associations, statistical linkage, between increased social
17 cohesion which also lends itself to better health,
18 particularly for children, and reduced stress, improved
19 mood, and so on.

20 This particular intervention, create refuge, is a direct
21 response to climate. What we see here is a cluster of trees
22 within a residential setting that provide thermal refuge.
23 And what do I mean by that? Studies have shown for decades
24 that the air temperature within a grove of trees is much
25 less than adjacent areas during summer temperatures. This

1 is becoming ever more important during the climate era where
2 we're seeing peak heat events that people have cooler places
3 outdoors to find refuge.

4 And some really interesting studies about the
5 meteorological effects, broader effects is that these places
6 of refuge to find cooling not only within that space but
7 that there is a plume of benefit that extends beyond the
8 immediate boundary or drip line or canopy edge of this
9 grove.

10 What does this mean? It means that during that peak heat
11 event, there are -- there's a higher incidence of crime.
12 During peak heat events, there are more hospitalizations for
13 respiratory and cardiovascular health conditions. There are
14 other health consequences that are not detectable, if you
15 will, in this institutional way. But the consequence of
16 having clusters of trees within residential areas offers
17 this refuge opportunity as well as cooling the ambient
18 environment, making it more helpful for people and
19 residents.

20 Q. Thank you.

21 Any other implications with this particular diagram?
22 Would it suggest kind of a multifamily configuration with a
23 courtyard with trees in it? Is that what this diagram kind
24 of represents?

25 A. Yeah, most definitely. It's a rather simplistic drawing, as

1 you can see. But those brownish lattice little symbols are
2 indeed buildings. And my partners who we collaborated on
3 the writing of this, they are based at the University of
4 British Columbia and are highly interested in integration --
5 more effective integration of landscape and trees within a
6 higher density build environment.

7 Q. Great.

8 Then I'd like to go to another research article that you
9 did involved with -- and that's the "Urban Trees and
10 Health" -- "Urban Trees and Human Health: A Scoping Review."
11 That would be Exhibit No. 37.

12 A. In this effort, again, collaborative, reflected the
13 increased attention to the benefits that are provided by
14 nearby nature experiences. In this case, trees. And if you
15 look across the associations or affiliations of the authors,
16 this for me was an unusual collaboration but one that is
17 becoming more common in that there is a medical doctor, a
18 physician, on the writing team. There is an urban forester,
19 two of them, on the writing team. There is a public health
20 official on the writing team. And Gregory Richardson is
21 actually with a national-level climate agency in Canada.

22 So what we attempted to do here, very generally, a review
23 article. What is it? Well, in academia research,
24 individuals, teams generate their own research questions,
25 pursue data analysis and interpretation, and then

1 publication. And over time one starts to see a collection
2 of like articles or collection of topical relationship, and
3 so one does a systematic collection of this material,
4 screening of it for its relevance, as well as its science
5 quality, and then publish the synthesis across the
6 collection of articles.

7 In this particular review, we arrived at a collection of
8 about 200 studies representing urban trees and human health
9 ranging back 25 years to about two years ago. That was the
10 time scope of this (inaudible). What we did, then, was to
11 evaluate what are the different topics of health benefit as
12 well as what is the current weight of evidence or strengths
13 of evidence with regard to these topics. And so this
14 article goes on in both text and graphic format to share
15 that with others of a wide body of research and activity
16 that's been done.

17 I'll mention that all of the articles were of the English
18 language, that they were not all of the United States. They
19 were from nations all over the world. And they ranged in
20 scope from laboratory experiments with, say, 30, 40 people
21 to statistical associations known as cross-sectional studies
22 across entire cities and even entire nations. Some nations
23 have a very good national scope health data system as well
24 as satellite data about their tree cover, so they're able to
25 do these broader statistical analysis.

1 Q. And what -- sorry. And what lessons have -- have you
2 learned from this article that could be applied to planning
3 of multifamily townhouse developments and increased density
4 thereof?

5 A. If you would scroll through this article, there should be
6 one chart showing generally the results of our work. It
7 should be a chart with little black dots, white dots. It
8 might be a bit along here. There we are. There we are.

9 Okay. Black dots then representing stronger results; half
10 circles representing -- you know, promising, but not
11 conclusive; white representing maybe there's some negative
12 or very uncertain consequences there.

13 So what I'd like to point out, first of all, experiment --
14 those first two columns with the dots on the left are the
15 ones that are indicative of the highest consistency, if you
16 will, of positive results. So what we see are 4.2.1,
17 cognition and attention restoration. And this is a body of
18 work that has addresses -- has addressed our contemporary
19 lifestyle in many ways. A lot of time on Zoom, a lot of
20 time focused on tasks, and we deplete our ability to
21 maintain attention to what is important in our life.

22 And if that attention is depleted, we can become
23 irritable. Can lead -- there's some hypothesis that that
24 can lead to crime, more -- less -- less impulse inhibition
25 and potentially crime. There's some suggestion that this

1 can lead to children not being able to focus their attention
2 on what is important in their lives and in their learning.
3 And it also suggests relationship to creativity.

4 So in the workplace, what do we bring to the workplace
5 that is of value? For many people it's creativity. The
6 ability to generate ideas. All of this is related to
7 cognition and attention restoration. And we saw some
8 strengths of evidence there, quite a bit of strengths of
9 evidence, actually, with regard to experiences and trees.

10 The other -- the next one down is mental health, anxiety,
11 and moods. Seeing, again, experiences of trees. Walking
12 within a grove, looking out a window, quite an array of tree
13 experiences lend themselves to improved mental health,
14 improved anxiety, improved mood or a reduced anxiety. And
15 to the point where some of these studies are actually --
16 some of these studies are more general character or
17 self-reported mood. You know, the day-to-day experiences
18 that we have. But others are exploring people who are
19 clinically diagnosed with depression or anxiety, typically
20 then requiring some level of treatment. And finding that
21 experiences of trees don't completely alleviate these
22 clinical disorders or illness, but are a part of a plan for
23 addressing those things.

24 Likewise, psychophysiological stress. What is this about?
25 Well, our physiological systems, stress response, blood

1 pressure, heart rate, all of those things also are connected
2 to mood and connected to anxiety. There's alignment of our
3 psychological and physiological response system. And a
4 number of articles showing, then, that, again, tree -- tying
5 in green environments, including forested areas, has a
6 consequence for these responses.

7 And some of that, I've seen articles about stress response
8 in particular, where a laboratory group is introduced to a
9 stressful situation and then they're shown images of more
10 built environments, exclusive of landscape, equivalent
11 environments that have landscape and trees, and seeing
12 within minutes, literally within minutes, a reduction in the
13 biomarkers indicating stress, one being cortisol. We emit
14 cortisol as part of our endocrine system when we're
15 stressed.

16 If you'd like, I can talk about some of these others, but
17 you -- you can see the pattern here of the strength of the
18 evidence associated with certain health outcomes. What does
19 this have to do with higher density residential settings?
20 Again, what it suggests is that in the last ten years, in
21 particular, we have begun to understand the importance of
22 ambient greening, of nearby nature, of having immediate
23 access, not going away from the city out to the mountains or
24 the ocean, vacations, staycation, whatever. No.
25 Convenient, constant, and of quality, spaces of quality that

1 lend themselves to these sorts of benefits. Often not on a
2 level of consciousness for a lot of people, but the
3 biomarkers and the laboratory experiments reveal these
4 things.

5 I will say that professionally, over the past two years
6 during COVID, the amount of outreach I've heard from
7 journalists, from professional groups, from practitioners,
8 medical and public health practitioners about the mental
9 health consequences of COVID and the character of our
10 neighborhoods, more and more people are recognizing the
11 value of green in their everyday health and wellness. And I
12 think that that is expressed substantially here within this
13 particular chart in our (inaudible).

14 Q. Thank you.

15 And I think we had one more research article that we'd
16 like to cover, if that's okay with you.

17 A. Sure.

18 Q. That was the Exhibit No. 38. I'm not sure if the examiner
19 has this one. It's entitled "The Urban Forest and
20 Eco" -- here it is -- "Ecosystems."

21 HEARING EXAMINER: Yes.

22 MR. MOEHRING: Your Honor, do you have that --

23 HEARING EXAMINER: I have that one, and it is marked as
24 38.

25 MR. MOEHRING: Okay.

1 THE CLERK: It was 39.

2 HEARING EXAMINER: Oh, it was 30 --

3 THE CLERK: It was marked as --

4 HEARING EXAMINER: Oh, it was marked -- I'm sorry. Let me
5 correct that.

6 THE CLERK: They had it -- they had Exhibit 38 -- or 39
7 that was marked on a list as Exhibit 38.

8 HEARING EXAMINER: Okay.

9 THE CLERK: So is this Exhibit 38 also on the list?

10 HEARING EXAMINER: Yes. This is on the list, yes, as 38.

11 THE CLERK: Okay.

12 HEARING EXAMINER: So, yeah, that's -- you can --
13 that's -- I think we're all in order.

14 You may proceed, Mr. Moehring.

15 MR. MOEHRING: Thank you.

16 Q. (By Mr. Moehring) Ms. Wolf, if you wouldn't mind sharing a
17 little bit about what this article is about and its
18 significance to the urban forested multifamily areas.

19 A. All right. I don't believe I provided this exhibit, but --

20 Q. Oh.

21 A. -- I'm aware of the work of, in particular Greg McPherson,
22 the second author. And he is now retired, but he was a
23 forest service analyst focusing on urban forestry. And so
24 this article, though I haven't looked at it in a while. I
25 don't remember the date. I think it's a little older. But

1 I'm aware of the analysis. He -- his -- his career, again,
2 nearly 30 years of his career was dedicated to this sort of
3 analysis with regard to urban forestry and various ecosystem
4 services.

5 And I'll step back a little bit. The notion of ecosystem
6 services really was -- established itself by the Millennium
7 Ecosystem Assessment, which laid out this notion of
8 ecosystem services and the value, with -- with then
9 translation to economic value with regard to nature.

10 Early on the ecosystem services were assumed to be
11 provided by landscapes and ecosystems beyond the city. The
12 urban area was seen as sort of, well, that's -- that's
13 wasteland. It's fallen, if you will. But ongoing research
14 has demonstrated the ecosystem services are extensive
15 cities, in part because of the proximity to thousands, if
16 not millions of people and the cumulative benefit of what
17 one tree, what a small grove of trees, what a small park can
18 provide to many, many people through passive experience,
19 looking in, driving by, as well as active experience,
20 perhaps taking a walk within, walking your dog, spending
21 time there with your children and so on.

22 So this particular article appears to address urban water,
23 which would be, then, the stormwater management function of
24 trees. So -- should I speak a little bit more about that?
25 I'm guessing that you've had another person speak about

1 stormwater management and the effectiveness of trees.

2 Q. Yes. We had Mr. Lider testify this morning. You're welcome
3 to also talk about this relative to any benefits that -- of
4 it to the sense of your familiarity and your research.

5 A. All right. So water, stormwater management, the
6 understanding of how trees, then, intersect water. First of
7 all, canopy interception, which reduces the amount of water
8 that ultimately reaches the ground and suggests the need for
9 larger pipe and drain systems. So, again, I'll readily
10 admit urban forestry is not a panacea. It will not
11 eliminate stormwater problems, climate issue, and so on.
12 But it is an incredibly powerful complement codesign element
13 in many of these needs and challenges within the city
14 system.

15 So urban water is one of those. Heat I spoke about a
16 little bit earlier. The recognition over decades, again,
17 EPA having done studies early on, demonstrating the urban
18 heat island effect. This dome of heat that one sees in
19 figures over city centers and where it is less over more
20 rural and agricultural areas. But additional research has
21 revealed that there are localized spikes in this heat as
22 well.

23 And so the consequence for people, their comfort, their
24 safety within the more neighborhood or even a single parcel
25 residential area, trees have an influence on that and can

1 help to ease climate adaptation with regard to the localized
2 or microscale heat.

3 Pollution cycles. If there are residential areas and are
4 near arterial high volume traffic roads, we know that the
5 microparticles that are associated with high traffic roads,
6 there is a plume of these microparticles that can disburse
7 for some distance from the road. They're not contained to
8 the right-of-way. They're disbursed at some distance. And
9 we see that as a concern, particularly for schools that are
10 located near high -- high traffic volume roads. But this
11 pertains to residential as well.

12 So, again, trees of certain type with all of the leaf
13 surface, there's a deposition of these ultrafine particles
14 within the leaves and that can, then -- not always, but
15 can -- reduce the quantity of that material in the air which
16 has positive value or consequences for respiratory and
17 asthma situations.

18 So I will say that with this research, Greg's work,
19 Dr. McPherson and the other's doing related work, what
20 they're seeing is we must pay attention not to just tree
21 canopy across the entire city. Is it 26 percent? Is it
22 30 percent? What's the goal here? But start to think
23 about, just as we think at a very fine scale about the
24 buildings that represent a residential space, but think in
25 the very fine scale of vegetation at the residential or

1 microscale space in terms of what are the stacked benefits?
2 Or what are the cobenefits that are desired with regard to
3 water, with regard to heat, with regard to human health.

4 And the research now going from that macroscale a couple
5 of decades ago to many microscale potentials is moving along
6 really quickly.

7 Q. Thank you.

8 You had mentioned before one of the benefits of trees is
9 providing kind of a plume of cooling around that tree. And
10 there was some testimony from the City yesterday regarding
11 Green Factor, which may not necessarily include a tree or
12 something that provides shade, but it provides some sort of
13 other green elements, such as planter, planters or permeable
14 surfaces. Is there any precautions that you would suggest,
15 knowing the research that you've done for the benefits of
16 the human being and for the environment around these
17 buildings, to relying more on a point system of a green
18 factor rather than actually requiring the planting of trees?

19 A. There are many elements within that question, so I will
20 speak to one or two of them. And if you have follow-up
21 questions, I can -- if I didn't answer them.

22 The first is Green Factor has been in place for a decade
23 or so. I'm not sure. But I have colleagues in the
24 landscape architecture program at the University of
25 Washington who helped develop that system. My understanding

1 of the Green Factor system and the points, it's an
2 opportunity or extended an opportunity for those who are
3 doing a building plan or a site plan to have
4 interchangeability or substitutable of various green
5 elements. But I think initially the green element emphasis
6 was on building function. It was building cooling. It was
7 roof water capture. It was reduced heating and cooling
8 costs of the building.

9 And what I would suggest is that in the time that it has
10 elapsed since the Green Factor was initiated, we have
11 learned a lot more about the experience of nature, that is
12 the volume, if you will. So the greening blocks was about
13 creating volume. It wasn't simply assembling elements. It
14 was about creating the volume with trees associated with
15 buildings that address both climate and human health.

16 And, again, I haven't looked at the Green Factor in some
17 time, but the progress of research about human health, I
18 don't think -- I may be mistaken, but I don't think is
19 represented to the extent that research suggests it could or
20 should be in that point system. I believe that the point
21 system reflects technological solutions focused very much on
22 building function.

23 But what we're understanding now from research about
24 trees, landscape, and human health, as well as the climate
25 and these other functions and benefits, is this volume

1 between buildings and connecting buildings is also important
2 for people and important in multiple ways, from, as I
3 mentioned the review article, physiological response, mental
4 health response. I haven't talked much about social
5 cohesion.

6 Really interesting research now focusing on the importance
7 of our social interactions and those volumes in and around
8 buildings are those places that can encourage or discourage
9 social cohesion factors, interactions and so on. Why is
10 this important? Research shows that people who are lonely
11 or socially isolated are far more prone to disease and are
12 not -- they do not recover from illness, surgery and so on,
13 as quickly.

14 And this has become such a public health concern that the
15 England's National Health Service started about three years
16 ago, three, four years ago, a minister -- they started a
17 position, a Minister of Loneliness. A person who is
18 dedicated to trying to develop strategies to engage more
19 people socially in informal ways within their communities.

20 So does the Green Factor address this? I -- I don't
21 recall, but more recent research about vegetation, about
22 landscaping, and about greening suggests that there are
23 functions of trees and green spaces as the elements within
24 and around buildings that are quite important. And the
25 research wasn't there when the Green Factor was first

1 drafted.

2 Q. Thank you.

3 I'm going to share -- I want to get some of your direct
4 observations regarding multifamily townhouse/rowhouse
5 development to -- relative to the research, just to connect
6 the research to the application. And I think in order to
7 share large (inaudible). See if I can share here. I'm not
8 sure if -- and I don't need to spend much time on this
9 diagram, if you're familiar with reading architectural site
10 plans at all.

11 A. Somewhat, yes. I -- I have a professional master's degree
12 in landscape architecture, so I'm somewhat familiar with
13 plans --

14 Q. Okay.

15 A. -- being able to read, though it's been a while. A little
16 rusty.

17 Q. And I assume you can see a site plan on your screen?

18 A. I can, yes.

19 Q. And for the written record, can you -- well, just as a point
20 of context, this is one of the six City core exhibits of
21 kind of a model, I suppose, of what they're -- would like to
22 carry forward with, with this proposed legislation.

23 So it's a City exhibit of a site plan, and I was wondering
24 if you could describe a little bit about what you're seeing
25 so that, for the written record, it will be identified.

1 HEARING EXAMINER: And just for the record, I believe this
2 is City Exhibit 9.

3 MR. MOEHRING: Thank you.

4 THE WITNESS: Let's see. So attempting -- there's a lot
5 of content there.

6 MR. MOEHRING: Yeah.

7 THE WITNESS: And what I see, then, are multiple building
8 footprints. Let's see. The -- that smaller pattern, is
9 that that walkway or a drive, then, that goes down the
10 center?

11 MR. MOEHRING: From here to here?

12 THE WITNESS: Yeah.

13 MR. MOEHRING: That strip (inaudible), yeah.

14 THE WITNESS: Yeah. Yeah. And, let's see, I'm assuming
15 that there's very little setback at the lot line. Is that
16 correct?

17 MR. MOEHRING: There's a small setback to the bottom left
18 rowhouse, and there's a small setback to the upper -- upper
19 left, I suppose.

20 THE WITNESS: All right. What I see there are none of the
21 circle representations that one usually sees for vegetation,
22 and neither the larger circle representing more mature trees
23 nor more garden sort of introduction. That may be on
24 another sheet, of course. These sorts of plans typically
25 have multiple elements.

1 But, again, not so long ago one would look at this and see
2 an absence of landscape. Perhaps there are green walls or
3 green roofs there. It's hard to tell. But look at this
4 and, you know, it's, well, not much green. Not a big deal.
5 Landscape is -- you know, it's nice to have, but, again, how
6 many -- how many residents would there be in this particular
7 construction?

8 MR. MOEHRING: I think this is showing on the five
9 rowhouses, and then I think what we heard testified to
10 before is that there's two townhouses in back.

11 THE WITNESS: So what we see here is very much a reliance
12 on vehicle entry and access. Very little opportunity for
13 people to view nature from their windows. We don't know
14 about the surrounding context. Perhaps there's opportunity
15 there. There's very little opportunity for people to engage
16 with each other -- excuse me -- which is -- which can be
17 promoted by having dedicated green spaces, particularly if
18 there are children in the household.

19 There's -- I see in my own community, I see construction
20 projects like this and that sense of place, that sense of
21 community that can be provided by green does not appear to
22 be expressed.

23 I also see there's a lot of surface cover here and
24 trees -- again, we don't know what the traffic conditions
25 are nearby, but if there are air pollutant concerns, water

1 collection concerns, we don't see any vegetation to help
2 mitigate those situations.

3 Q. (By Mr. Moehring) And then I'd also like to show an image
4 of recent townhouse/rowhouse construction. This is an
5 illustrative image, not an exhibit. And in the context of
6 your research, I have two images to show you. And it's
7 basically the same thing, but just different views. If you
8 have any thoughts in terms of what the health benefits or
9 lack of might be with -- with what you're seeing here.

10 A. The one that strikes me immediately is heat, microscale heat
11 concentration. And, of course, not as much of an issue in
12 the winter months that we're in now, but as we see increased
13 climate change effects, likely more high heat incidents,
14 there's -- I don't see opportunity for relief.

15 One could say, well, these units, you know, anticipating
16 heat change may have air conditioning. But from a health
17 perspective, one does not want to stay indoors for days or
18 weeks at a time. So having a green space that's
19 comfortable, that's cooler outside is valuable.

20 I don't see any play spaces. So often gardens are
21 codesigned as social spaces, including for children. These
22 townhomes do seem large enough that they're probably family
23 units, so I -- I don't see any opportunity for children to
24 be outside.

25 Are there nearby parks? The question then is the burden

1 on the parks' system of this sort of development that does
2 not provide onsite relief or onsite vegetation. To put the
3 burden -- the burden of health and the burden of green
4 amenity access on any nearby park system, it starts to
5 create a situation where the carrying capacity of parks can
6 be exceeded and that generates some issues.

7 You know, what comes to mind as I see this is the United
8 Nations, the World Health Organization, there's a global
9 network known as the Biophilic Cities network are all
10 working to establish metrics, benchmarks for incorporating
11 green in cities, from the site scale to the back row or
12 entire city scale. And there are efforts to interpret the
13 science in ways that are practical, that are meaningful, and
14 readily understood.

15 And the guideline that has -- is starting to get some
16 traction internationally is the 3-30-300 guideline. And
17 that is you can see 3 trees from your window, your home
18 window; you have 30 percent canopy cover in your
19 neighborhood; and you live within 300 meters or 300 yards of
20 a park or green space.

21 And the development that you had on display there, if
22 there are many of these within a neighborhood, the three --
23 two or three trees is not likely. The 30 percent canopy
24 cover is not likely. And then that puts the burden on
25 provision of adequate green space for that 300-meter

1 guideline.

2 So these are -- this is -- again, it's not a situation
3 that's unique to Seattle, but it is a purpose, an outlook, a
4 community desire, a recognition of the -- again, the
5 salutogenic benefits of nature and how to more effectively
6 integrate that into our everyday spaces.

7 Q. Thank you.

8 The final question that I have that hopefully ties up the
9 research, the examples that you've seen and back to city of
10 Seattle, we heard some testimony yesterday from the City
11 staff on the -- our Exhibit No. 1, which is the 2016 Tree
12 Canopy Assessment, if we could pull that up. And we'd like
13 to go very quickly to one diagram that was in here regarding
14 local climate, local temperature. We kind of mentioned that
15 in looking at the example of the townhouse. I can't
16 remember what page it's on. Let's see. It'll pop up real
17 quickly. I think it was halfway through. Is it more? One
18 more page. Oh, two more pages. There we go. If you could
19 zoom in a little bit.

20 You've probably seen this a while back, but would you mind
21 describing what you see and how this kind of corresponds
22 with your testimony?

23 A. Yes. If we look -- so the image on the left is thermosensor
24 application to the entire city. Image on the right, then,
25 is indication by up-canopy density, by indication of the

1 intensity of the presence of green. And what we -- when we
2 look at these two images is, in part, a question of equity.
3 The South Seattle area of greater heat, with the orange and
4 red, indicating higher temperatures. I'm assuming those are
5 summer temperatures. And we also know, or I think -- or
6 maybe even another figure in this report indicates the lower
7 socioeconomic status of those communities -- not all, but
8 some of those communities -- indicating a higher level of
9 heat.

10 So here the -- here we see a correlation with regard to
11 not only heat expression, but the possible consequence with
12 climate change, where those dark red areas will grow. They
13 will expand, particularly if trees are removed. Because we
14 see that large trees, in particular, that unfolding canopy
15 of a single tree over a large area is far more effective
16 than small trees that are often planted as replacement after
17 construction because they're not, one, a species that are
18 selected to attain a large size. And, two, there's not an
19 adequate planning of the space that large trees need to grow
20 and attain that size. And that's not only their space, but
21 that is the below ground root space.

22 So while this image points out several things, one is
23 obviously the relationship of heat and tree canopy. It
24 points out inequity across our city. And it suggests that
25 there is -- the consequence of tree removal and a decline

1 with climate to perhaps see a map that has even more of the
2 red and orange content.

3 MR. MOEHRING: Thank you, Ms. Wolf. No further direct
4 questions.

5 HEARING EXAMINER: Okay. Thank you. You know, we're at
6 3:31, so I'm thinking we maybe take a 15-minute break. And
7 then, Mr. Mitchell, if you have any questions, we can turn
8 to you.

9 Are the parties amenable to that?

10 MR. MITCHELL: Yes, I think that's fine. I mean, I
11 probably wouldn't have that many questions --

12 HEARING EXAMINER: Oh.

13 MR. MITCHELL: -- for Ms. Wolf, but --

14 HEARING EXAMINER: Well, we can --

15 MR. MITCHELL: -- go ahead.

16 HEARING EXAMINER: Either way. If you don't
17 have -- we -- it's fine.

18 MR. MITCHELL: I could go either way too. I just don't
19 know if Ms. Wolf would prefer to --

20 HEARING EXAMINER: Ms. Wolf, I guess it's up to you.

21 MR. MITCHELL: -- (inaudible) excused before the break or
22 not really.

23 HEARING EXAMINER: Ms. Wolf, would you like a break or
24 should we get through?

25 THE WITNESS: I -- if -- anticipating there may not be

1 many questions, as you indicated, I would just as soon
2 proceed and --

3 HEARING EXAMINER: Okay.

4 THE WITNESS: -- then we can wrap up my time here.

5 HEARING EXAMINER: Okay. Let's go ahead and do that,
6 then.

7 MR. MITCHELL: Thank you. And thank you, Ms. Wolf, for
8 your time and for your important studies and research that
9 you've done.

10

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

12 BY MR. MITCHELL:

13 Q. So you testified quite a lot on a lot of studies that have
14 been done related to urban forest and the health benefits,
15 socio health benefits. Would you characterize the testimony
16 you provided as testifying on sort of national and
17 international sort of principles that have findings from
18 scientific studies, when you were talking about
19 those -- those studies?

20 A. Yeah. I'm -- I'm not sure of your question, if you would
21 please repeat.

22 Q. Were those -- was your testimony on those studies, let's --
23 well, let me just say, were the studies sort of findings
24 from more of a national/international scale?

25 A. All right. So I'll reference back to that review article.

1 So the studies that have been done relating to trees and
2 nature and health, they have done -- been done from the
3 scale of a laboratory at a certain location, and that does
4 include the University of Washington. There are several
5 scientists that are exploring these questions.

6 We also, as of three, three and a half years ago, started
7 a nature and health network that is a combination of
8 scholars, community practitioners, state and local agencies
9 that are all very interested in this nexus of nature and
10 health and how to promote more -- more nature -- native
11 opportunities for communities.

12 So, yes, there are studies that have been done nationally,
13 they've been done internationally, but there are -- also
14 have been studies that have been done here. I reference
15 Greg Bratman, who is a colleague of mine, who is a
16 psychologist and has done really interesting work here.
17 There are others studying forest schools, which are
18 preschools for children that are operating completely within
19 parks and green spaces and so on.

20 What I will say is even though studies that are done on
21 national or international scale, part of the activity of
22 science, when one designs a research project, is to think
23 about generalizing (inaudible). And that is, what can one
24 do in the research design that one can defensibly link your
25 findings and say, you know, these are applicable in other

1 places. Some studies are very dedicated to a particular
2 place and particular situation. And, you know, they usually
3 call out the place or the situation in the title. But many
4 have this sense of generalizability or this purpose of
5 generalizable.

6 So though they may be done in other locations, we're
7 similar enough as humans and as communities that we can
8 reasonably apply those results in other places.

9 Q. I appreciate that.

10 And did you undertake any study of the current legislative
11 proposal as to sort of the impacts from your -- from your
12 perspective that would result from specifically as to sort
13 of urban forests and the impacts as to health and socio
14 impacts related to -- related to the specific proposal that
15 is at issue in this appeal?

16 A. I can't say that I have, in part because of timing. We
17 often hear about the long time frame of research, careful
18 design, data collection, analysis and so on. And then the
19 peer review process so that what we put forward is judged to
20 be of adequate scientific merit. So, no, we have not.

21 But, again, I would say that there are a number of studies
22 of different scales and generalizability to the situation
23 that the hearing is about. For instance, the Green Blocks
24 evaluation that we did was done in Vancouver. Of course,
25 different nation, little different city, but similar

1 challenges and urban planning dynamics, I would say, as
2 Seattle.

3 MR. MITCHELL: Appreciate that. And thank you for your
4 time again. I don't have any further questions.

5 HEARING EXAMINER: Okay. Mr. Moehring?

6 MR. MOEHRING: Thank you, Your Honor. Thank you,
7 Ms. Wolf.

8 HEARING EXAMINER: Okay. All right. Ms. Wolf, thank you
9 for your testimony this afternoon. You are dismissed.

10 At this point, so we're at 3:38, we'll go ahead and take
11 our 15-minute break. So we'll come back at 3:53, I guess,
12 if I got that right. We are briefly adjourned. Thank you
13 all.

14 THE WITNESS: Thank you.

15 (Recess)

16 HEARING EXAMINER: Thank you. Good afternoon, we're back
17 on the record on appeal W-21-007.

18 Mr. Moehring, was Mr. Ellison going to be your next
19 witness?

20 MR. MOEHRING: Yeah, that's correct, Your Honor.

21 HEARING EXAMINER: Okay. All right. Mr. Ellison, good
22 afternoon. If you could state your name for the record.

23 THE WITNESS: Thank you. My name is Richard Ellison.
24 That's R-i-c-h-a-r-d. E-l-l-i-s-o-n.

25 HEARING EXAMINER: Thank you.

1 And do you swear or affirm to tell the truth under penalty
2 of perjury under the laws of the state of Washington?

3 THE WITNESS: I do. Yes, I do.

4 HEARING EXAMINER: Thank you.

5 THE WITNESS: And hopefully my voice won't give out in
6 this hearing.

7 HEARING EXAMINER: Oh, okay. Yeah, well, let us know if
8 you need a break or some water or something.

9 THE WITNESS: I've got some water here.

10

11 RICHARD ELLISON: Witness herein, having first been
12 duly sworn on oath, was examined
13 and testified as follows:

14

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

16 BY MR. MOEHRING:

17 Q. Good afternoon, Mr. Ellison. I would like to start off by
18 having you spell your name for the record.

19 A. I just did that, but R-I --

20 Q. Oh, you did. Yes. Never mind. Sorry about that.

21 I'd like to pull up Exhibit No. 51 of Mr. Ellison's
22 background. And while we're doing that, tell us a little
23 bit about yourself and your experience, why you're here
24 today.

25 A. Thank you. I have an undergraduate degree, I have a

1 bachelor of science from the State University of New York in
2 Binghamton where I double majored in biology and geology. I
3 also have a master of science in botany from Washington
4 State University, has an emphasis in ecology, particularly
5 studying plant/animal interactions. In addition, I have
6 taken upper level biology and horticulture classes from the
7 University of Washington, including one on climate change.

8 Q. Thank you.

9 And can you briefly describe any work experience relative
10 to this townhouse reform appeal.

11 A. My primary occupation for over 20 years has been as an
12 adjunct professor at a variety of locally -- local community
13 colleges and private colleges teaching courses in botany,
14 general biology, environmental science, geology, and general
15 science. In addition, I worked -- prior to that, I worked
16 for a couple of years doing environmental documents in the
17 print sector, writing environmental -- basically writing the
18 biology of plants and animal sections for environment
19 sections, environmental assessments, environmental impact
20 statements, wetland surveys, endangered species (inaudible).

21 I've also worked for about a year as a revegetation
22 biologist in Olympic National Park.

23 Q. Thank you.

24 And do you want to discuss -- can you discuss what
25 sections of the environmental documents that you worked on?

1 A. I worked primarily on -- you know, if we're working on a
2 checklist, then I'd probably end up covering at least the
3 sort of plants and animals and endangered species sections
4 of those checklists. Same thing for environmental
5 assessments and environmental impact statements. That would
6 involve writing things, going -- doing from literature
7 reviews, contacting local jurisdictions, trying to find out,
8 you know, what I can from them about local jurisdiction and
9 any plants and animals of concern in the area; literature
10 reviews; and then it would be followed by doing a field
11 study and writing a report as part of that.

12 Q. Very good.

13 I see you have about two pages of résumé here. Do you
14 have any academic publications also relative to the subject
15 matter of this townhouse reform appeal?

16 A. Yes. I think the one that would be relevant would be I did
17 a review of an environmental assessment on a Montana coal
18 mine, which was published in MIT's Environmental Impact
19 Assessment Review journal. Basically it was looking to
20 identify potential mining impacts that required mitigation
21 planning which might have been absent from the study
22 (inaudible). The idea was that the environmental
23 assessment, whether it had done a thorough review of what
24 potential impacts might have been.

25 Q. Do you mind discussing your role working with the NPS?

1 A. Yes. I was working in Olympic National Park. Basically
2 there was a Soleduck revegetation growth project which
3 required pretty extensive work. They basically widened the
4 whole road. And so my role had two parts. One, I was hired
5 to design field studies basically to evaluate the success of
6 the revegetation work that was being done. And then the
7 other half I was just kind of a laborer who was
8 transplanting plants and planting new plants out in the
9 field working with the field crew.

10 Q. Thank you.

11 How long have you been involved in urban forestry issues
12 in Seattle and in what capacity?

13 A. I've been involved in Seattle as a community -- I moved to
14 Seattle in, oh, 1981, and not that long after became
15 involved as a volunteer in parks in kind of basic plant
16 removal and helping put new plants in, in different parks
17 throughout the city. It was kind of a fun activity.

18 I further became involved in protection issues when I
19 saw -- I'd been living in the University District and
20 working at the University of Washington as a research
21 technician, and I saw there was a project that was going to
22 basically remove 24 large trees, and the conclusion on that
23 was there would be no significant impacts. So I was
24 concerned that all of these trees were being removed without
25 proper attention to what was going on.

1 As I citizen in 1993, I appealed this development project,
2 and we had a hearing in front of a hearing examiner and we
3 were not successful in that appeal. But at the time we
4 would like to reappeal and it would go to the -- actually,
5 the City Seattle Council. Seattle City Council affirmed
6 basically the hearing examiner, but put some conditions on
7 the project. The conditions that were put on the project
8 primarily included the preservation of what turned out to be
9 the tallest Chinese tree privet in the Pacific Northwest
10 that was on this development property.

11 And what they did was they required (inaudible)
12 preservation. They were sure about them putting a tree
13 protection bond in of \$2500, and this is the first time the
14 City of Seattle's ever put a bond on a tree. So the appeal
15 served both the -- you know, to try and protect some of the
16 trees on the property, but it also -- really also alerted
17 the city council as to this issue of trees and development.

18 As a result of that, about a year later I was invited by
19 the city council to be on what was (inaudible), invited me
20 to be on the urban forest task force. And this was, very
21 basically, very similar to the current urban forest
22 commission, where it was a group of professionals and
23 advocates from the community and also from the City's
24 (inaudible) itself was D -- DPLU at the time, and also the
25 City attorney's office had a representative there because

1 the goal was to try to create some kind of legal means of
2 protecting trees during development.

3 This went on for two years. It was an interesting
4 experience.

5 Q. So regarding that urban forest task force, how would you
6 describe the function or success of the task force?

7 A. The committee was great (inaudible). It was very balanced,
8 where we had developers -- I mean, they try to do a really
9 good job -- developers, planners, advocates, biologists, and
10 some of the legal office to try to come up with proposals,
11 how can we save trees in development, that all the different
12 parties agreed (inaudible).

13 And so we'd write up our proposal, and we'd sort of give
14 it to the person who was representing the City for the
15 planning office, and then it would sort of go into the black
16 hole and it would come out and it would be vastly different
17 than what we asked for.

18 And so this kind of back and forth went on for two years,
19 and then finally something came out which had some good,
20 good points to it. But, you know, it wasn't what we were
21 hoping to get. In some cases we felt like what was
22 happening is we ran into being tracked away from really
23 trying to get change politically by giving us something but
24 not what we were hoping to get.

25 Q. Okay. Let's talk about the -- a little more about this

1 particular appeal. And we can stop sharing the screen, I
2 think, at the moment.

3 A. Actually, I'd like to add one more thing to -- to my
4 experience with the urban forest task force, and it really
5 reflects my experience I've had in trying to be an advocate
6 for trees since then, Friends of City Council and in public
7 meetings and different things that I've attended, and that
8 is that to me it appears that DPD has -- DCI has not really
9 been working enough with the community to really come up
10 with balanced solutions.

11 So this process has been going on for 25 years now, and
12 it's reflected that we're still trying to get an ordinance
13 that works for the community.

14 So part of my concern is just simply that -- that
15 the -- you know, we had representatives from -- from DCI and
16 from the planning office suggest -- OCB suggest that, gee,
17 we've got a new ordinance coming down the track. There's
18 nothing to worry about. But this is sort of the game that
19 the City has been playing for a long time. And we get a
20 little bit, and then we don't get much from that. We just
21 get a little increment that may be better. In some cases
22 it's not better.

23 So the idea that there's going to be this magical tree
24 protection ordinance come and preserve everything in the
25 future I think is something that needs to be taken with

1 some -- some reflection.

2 Q. Okay. So let's talk a little bit about, you know, from your
3 past experiences and some of the testimony -- were you able
4 to hear some of the testimony from yesterday?

5 A. Yes, I was able to hear most of the testimony.

6 Q. Okay. So relative to your past experience, how is this
7 relevant to the current townhouse reform proposal?

8 A. Could you reframe the question? I'm sorry.

9 Q. I'm sorry. Yeah.

10 I just wanted to know how your background is relevant to
11 this appeal?

12 A. My background is pretty wide in the sense of my training and
13 my activities over time, and so I feel I can give a pretty
14 broad perspective insight into what has been happening, what
15 needs to happen in regards to trees and the ecology, climate
16 change, and what the City could be doing, should have done
17 in regards to this proposal for optimal of L -- of the LR1.
18 Is that -- is that kind of --

19 Q. Well, yes. Thank you.

20 So you've also been the appellant's representative for the
21 TreePAC Environmental Impact Review Committee. We know that
22 you're very familiar with the proposal by the Office of
23 Planning and Community Development for townhouse reform. If
24 you were analyzing the proposal, the proposed project, how
25 might have you approached the responsibility of ecological

1 portions of the environmental checklist?

2 A. One, they did a very detailed analysis using GIS, and they
3 had all the information that they could have very easily
4 have included in sort of the tree canopy portion of that
5 analysis to try to say, gee, this is how much tree canopy is
6 on sites, either on all the L1, which is something they
7 could do, or at least on the six sites that they had chosen
8 as examples for us to represent what L1 proposals as
9 acceptable proposals look like.

10 They could have then also just done a quick visit to, say,
11 those six sites and, you know, and kind of affirmed what
12 they thought they had.

13 You can go ahead and, as I've done, and looked at Google
14 Map pictures and Google Earth pictures, where you can go
15 back in time and actually see what vegetation was on site
16 prior to it. And so this type of information has been
17 available to the City. The fact that they can do it online
18 so well is -- is a wonderful thing. And so considering,
19 again, the detail that they've put into in looking at
20 lot -- every little lot parameter possible, it seemed very
21 easy for them, if they wanted to, if it was really of great
22 interest to them, that they could have done something to
23 look at the tree canopy and do some kind of evaluation from
24 that.

25 Kind of funny historically, 20-odd years ago, used to have

1 a citywide wildlife biologist. The City had its own, like,
2 head of -- he was the -- or she was the wildlife biologist
3 for the City of Seattle. And that got eliminated in a
4 budget cut at that time. And, you know, we tried to sort of
5 replace it since then, but we're missing that sort of
6 overall big-picture person as part of the Seattle government
7 process.

8 Q. Okay. What I'd like to do is go to --

9 A. So I think, again -- yeah, sorry. (Inaudible).

10 Q. Okay. What I'd like to do is go to the City Exhibit No. 3,
11 which is the SEPA checklist, and take us to I think page 7,
12 which is the part on plants and animals. And let -- let us
13 know, Mr. Ellison, if we need to zoom in.

14 A. I can read it. I assume everyone else can. So that works
15 for me. I mean, what you can see is they've checked off
16 everything on the list. Well, they're just going to cover
17 everything. It looks to me very suspicious in that way,
18 which, you know, we can check all the boxes. So maybe
19 there's some pasture out there where there are some probably
20 fruit trees. But, I mean, do we have full vineyards? We
21 have permanent crops there, you know.

22 I'm assuming there's some wetland on some sites. So
23 they're assuming there are cattails, buttercups, bullrush,
24 skunk cabbage. Skunk cabbage, for example, that's a wetland
25 Albany species, meaning that's got to be a permanent wetland

1 year round for that plant to grow. Did someone actually go
2 on site and look at any of these and see whether they really
3 exist or not? I really doubt.

4 I mean, it is a checklist, but at the same time it
5 would -- it would seem like they could say, okay, there's a
6 wetland on the map here for where this L1. Let's go check
7 it out. Just get a quick look at it, see what's going on.
8 That's what I would want to do as a professional biologist.
9 Again, pull up some aerial photos and take a look and see,
10 well, what's going on.

11 So my impression is that, you know, I would have said
12 there's some significant impacts. I would not say that
13 there's no impact. And this is -- I have a problem, you
14 know, with that kind of conclusion.

15 Now, a supervisor would be somebody who would make the
16 final decision. So if I was working with (inaudible)
17 downtown, as I have, you know, my supervisor might say,
18 well, you know, because (inaudible) is a nonproject project,
19 then I'm -- we're just going to put that in there and say
20 that it's no impact. And it is unfortunate with that is how
21 it happens sometimes in the environmental consulting groups.
22 And this is part of the nature of the business. Some
23 are -- are (inaudible) red flags. Oh, our client would be
24 very unhappy with this. I think we can do it this way.

25 Q. How would you might have written some of these responses

1 differently?

2 A. Well, again, I would have probably done some site visits,
3 just to kind of get a little better feeling for what was
4 over there. And, you know, my guess is there's probably no
5 pasture. I mean, here you are trying to convert somebody's
6 single-family home into an L1. It's probably not on
7 somebody's pasture. There probably doesn't have crops of
8 wheat out there. And if you have a full wetland situation
9 where you do have skunk cabbages, for example, and cattails,
10 then, you know, you're not obviously going to be able to
11 build on that portion of the site. That would not be legal
12 in the state of Washington. And the City, you know,
13 would -- you know, would not -- but you still have to
14 recognize that it was there.

15 But I -- I truly do question whether there was a -- you
16 know, even a really thorough examination of, you know, what
17 was on site.

18 Q. If we had some testimony regarding the -- do you mind
19 reading the response, if you can see it, for number B -- or
20 the letter -- for B, what kind of -- yeah.

21 A. [As read] What kind of vegetation to remove or altered.
22 Yes. This is a nonproject action. This proposal would not
23 result in direct removal or alteration of vegetation.
24 Changes in vegetation could occur indirectly as a result of
25 future development if the proposal incrementally encourages

1 or discourages development in the affected area.

2 So, you know, they're -- they're kind of kicking the can
3 down the road trying to say, oh, it's just a project by
4 project. We don't have to -- we don't have to do an
5 evaluation of what's on site. I mean, there is more
6 information that is in the supplement that they provided,
7 but it's still very limited.

8 Q. Were you able to hear some of the testimony provided by some
9 of the City witnesses regarding the Green Factor and -- or
10 could you --

11 A. Yes. Yes, I --yes, I did.

12 Q. Okay. And --

13 A. (Inaudible) discussed the Green Factor.

14 Q. Do you feel that the Green Factor is an accurate mitigation
15 as for the loss of trees on properties?

16 A. No, I do not. And, you know, this is part of the -- you
17 know, when the Green Factor was first being created and the
18 community got a chance to try to give input, it all came
19 down to a formula of how much trees were (inaudible)
20 preserved and how much trees were going to get planted
21 versus other things, like ring roots and -- and potted
22 plants.

23 It also depends on the size of the tree you're planting
24 too, because you could have a big canopy tree or sort of
25 middle canopy tree or small, very small canopy tree, and the

1 City has an approach to things which is very reasonable and
2 (inaudible) right tree, right place. So you can't put a
3 Redwood into a little pot and expect it to mature and
4 (inaudible) canopy.

5 So the idea is that in the green factoring, you give
6 credence to what you can do. However, the -- trying to see.
7 Somewhere I have a copy of a balance of effect. But the
8 idea being that if you save a tree, you get one green -- you
9 get one point. And then if you -- but if you don't save a
10 tree, and you put a green wall you maybe get -- you
11 basically get like .4 points. You plant a small tree, you
12 get something more.

13 And so what's happening is you're giving so much of option
14 to a developer that they say, oh, I don't need to save this
15 big tree here. I can just get rid of it, and I can just put
16 a couple of potted plants over here and a green wall over
17 here, something on the rooftop, and I meet all the green
18 requirements.

19 And so this is a problem because it's happening throughout
20 the city in its developmental process. If it's an exception
21 tree, sometimes an exceptional tree can be saved. Sometimes
22 it can't be saved. I've seen both -- I've seen it go both
23 ways in that sense.

24 Q. Expanding on that same question, the Green Factor, with your
25 teachings and experience in botany and biology,

1 environmental sciences, how does the Green Factor support
2 the sciences of botany and biology and supporting wildlife?

3 A. The Green Factor is designed to try to support plants and to
4 try to support wildlife. But, in practice, it's not very
5 successful. If you had a large canopy tree where, you
6 know -- and, you know, lots of smaller trees that are
7 maturing up and have -- have a good foliage to them, even
8 particularly evergreen of almost any size, there's a lot of
9 birds who use it, a lot of native birds who use that as
10 habitat. Obviously, the small tree isn't as valuable as a
11 big tree that has a huge lot. I mean, if you're going to
12 have a gallon jug versus a pint jug, there's a lot more you
13 can do with that gallon jug. But if you don't have any jug
14 at all, then you're in trouble.

15 So if you don't have a canopy, then what you're doing
16 basically is that wildlife, they're always thinking of sort
17 of that -- kind of a maximum population of as they are. And
18 they kind of expand out to fill out their resources, and
19 then they kind of go through (inaudible) equilibrium, up and
20 down a little bit. And then as you remove the resources
21 and, you know, where are the wildlife and uses go?

22 Well, they -- if you go to the next tree and somewhere
23 else, but there's already -- it's already -- somebody's
24 occupying it, so things get more crowded, and so there's --
25 it's tougher for them. And then if you translate that into

1 something like a climate change environment, where you have
2 a real shortage of either habitat to hide in or you have
3 shortage in the heat, shade to hide in, or moisture to keep
4 cool, a variety of things for food source, how much food is
5 out there for them to eat, so you're going to see a
6 reduction of what they call carrying capacity.

7 Basically, it's as -- you know, it's kind of like this --
8 the idea of you have an island, and the smaller the island
9 is, the less diversity of species that can exist there and
10 the less population numbers that can exist there.

11 So by striking the canopy, especially if you have a lot of
12 canopy -- a lot of canopy on the site, then you're -- you're
13 really radically reducing, you know, the amount on that
14 site. Now, maybe it's just one tree on that site. But you
15 say, well, we're just losing the one site. Or maybe that
16 there's two and you lose one, and maybe you got six and you
17 lose one or you lose five, which is more the way it works
18 when you have six. Then what I ask, what are the cumulative
19 effects? Because it's not just one parcel we're looking at.
20 We're looking at a citywide upzone, and we're looking at the
21 cumulative effects.

22 Q. Mr. Derdowski had testified a bit on the cumulative effects.
23 Do you think there might be some cumulative effects and
24 impacts as a result of the increase in density within the
25 low-rise multifamily zone, particularly the LR1

1 rowhouse/townhouse zone?

2 A. I do. I think we've already seen the cumulative effects,
3 and I think we'll see more cumulative effects because the
4 city is rapidly developing. The city has created its, you
5 know, urban centers now around the light rail stations.
6 Single-family homes in these areas now are -- besides being
7 called neighborhood residential, they are now essentially
8 allowed to be developed as I believe LR1 and 2, at least,
9 and so they are being converted just like the rest of the
10 LR1 properties are.

11 And so the single-family zone which basically contains the
12 majority of the canopy of the city is being reduced in
13 itself. And so, again, we're seeing kind of a citywide
14 reduction in tree canopy, and this is just -- it's just one
15 more chink in the armor. It's, you know, cut by a thousand
16 cuts.

17 And so I believe we'll see the diversity of both plant and
18 animal species decline, as well as the number of animals
19 decline. And I'm really referring to mostly about the
20 native species, because if you -- as you create more and
21 more of an urban environment, certain species drop out.
22 Like birds, for example. And you start seeing more urban
23 (inaudible). In other words, that are not native to the
24 region, the -- what we call pigeons, we call crows have
25 moved in to the territory.

1 I loved when I saw a barn owl in my backyard one -- one
2 winter, or one fall, and it was making cooing sounds to call
3 its mate. I was just -- we were all just amazed to see
4 that. But the sad part on some level is a barn owl is what
5 is driving the spotted owl to extinction. So it's expanding
6 its territory. But we're happy to at least see the barn owl
7 around.

8 So the question is, is how far do we transform the city in
9 this rapidly changing natural environment that is called
10 urbanization and also compounded by climate change?

11 Q. Is there any environmental benefits or ecological benefits
12 that a variety of wildlife provides? You mentioned, you
13 know, different types of bird, say, for example, or
14 different little services that -- that the natural animals
15 have and benefit the city of Seattle.

16 A. I mean, looking at the -- I mean, wildlife perform a lot of
17 functions. Is that what you're asking? You know, in that
18 sense --

19 Q. Yes. I'm sorry. That's a better way to ask it, yeah.

20 A. For one, they -- they eat a lot of bugs. They're eating
21 mosquitos or flies or beetles or some other kinds of pests.
22 If you don't have -- have, you know, I think -- that was
23 what made famous a long time ago was the sign of spring was
24 the idea that pesticides were killing all the birds off and,
25 therefore, we were going to see, you know, not only a silent

1 spring from the birds, but you're going to see a big burst
2 of insect population.

3 And birds -- you know, all those little babies are feeding
4 in the springtime in their nest, they're just consuming all
5 kinds of things. Not just earthworms, but it's all kinds of
6 bugs. Of course if you don't have any soil left because
7 you've got everything in planters, you know, the less bugs,
8 then there will be less earthworms available for them in
9 that capacity. But trees have a lot of bugs.

10 And if you are, you know, talking about other issues, I
11 mean, they do a lot of heat disbursement is one thing for
12 helping to -- you know, when you see a lot of -- a lot of,
13 you know, where'd that tree come from kind of thing?
14 Where'd that plant come from? Well, some bird transported
15 it, and that's kind of the process of nature.

16 There's a tremendous value to people to see a bird. You
17 know, they're -- they're with their family and they see some
18 birds or they see a squirrel in a tree, they see a frog
19 hopping along the wetland and they hear those sounds, these
20 tend to be the things that bond people together or make them
21 feel happy on a whatever occasion. Might be (inaudible) for
22 human beings to be able to essentially feel nature, be part
23 of nature.

24 And if you're in a -- just a wall-to-wall concrete urban
25 dream jungle, then there's a lot less of that provided for

1 you. I think the City's intention -- or DCI's intention to
2 pretend that street trees are going to solve all our
3 problems and parks are going to solve all our problems,
4 really what we're doing to things is we are eliminating what
5 would be considered sort of a biological matrix. We're
6 making everything an island and having a harder time with
7 connectivity.

8 So as you develop block on block, I see, for example,
9 where in my neighborhood where it transitions from
10 single-family to low-rise two, you're going from basically
11 there are no trees or just a couple little trees to then
12 huge canopies. So the thing for me is the City needs to
13 figure a way to develop around the big trees as much as they
14 can. Preserve that as open space for families and children
15 and birds and bugs and all of these things.

16 I mean, I think there's a way the City can do both, but
17 there really has -- but I'm not seeing that as something
18 that -- that the planning office and DCI is really
19 believing. I think they believe that, oh, we're just going
20 to have to develop it and do it at any cost.

21 So, again, how does it relate to this proposal? This
22 proposal is just one more steppingstone in the desiccation
23 and elimination essentially of the natural ecosystem and its
24 connection to the natural ecosystem making that matrix
25 having more holes in it. The city cannot be an urban

1 sacrifice zone where mother nature doesn't exist or maybe it
2 does in parks, like in a zoo, essentially.

3 Why can't Seattle be better at that? Why can't Seattle be
4 a leader in environmental stewardship and do it the right
5 way? I mean, I believe we're totally capable of doing that.

6 Q. I believe you prepared a few exhibits, and I'd like to call
7 those up at this point, if it's okay with you. That would
8 be Exhibits 20, 21, and 22. And we can start with 20, I
9 suppose. Can you tell me -- or, for the written record as
10 well, and I'm not sure if we need to zoom in on this, but if
11 you could tell me a little bit about what this document --
12 why it was prepared and what it's about.

13 A. Well, this document is one -- is a -- is a version of the
14 City's core document number 7, Exhibit No. 7. And the idea
15 was that this was what -- something that's missing from this
16 chart. They could have done an evaluation of looking at,
17 oh, gee, we've got six sites knocked down by (inaudible).
18 How many trees were on the site before? How many trees are
19 on the site after? How many -- you know, what did we leave
20 there as existing? And then what are we putting in there as
21 new mitigations?

22 And so that was missing. So I assisted in the process of,
23 with my team, to try to update this chart and include those
24 new categories, basically. The number of significant trees
25 retained, the number of significant trees removed, and the

1 number of significant (inaudible).

2 Q. Okay. And can you describe for the written record, again,
3 it might be already recorded, how many sites was included
4 within this chart?

5 A. Yes. This chart includes the six properties that the City
6 has given as examples, essentially, for, you know, here's --
7 the City provided to us as these are good examples of what's
8 going on in the LR1 that we feel represent what this whole
9 project is all about. And so --

10 Q. And --

11 A. -- are larger than others, so they --

12 Q. Can --

13 A. We show the square footage of the property ranging from, oh,
14 2020 square feet to (inaudible) 9,000 square feet.

15 Q. And in terms of the columns that you've added to the City
16 Exhibit No. 7, where the first column you mentioned was the
17 number of trees retained.

18 A. Yes.

19 Q. Of these six sites, how many trees were retained?

20 A. I see basically one, maybe two trees is -- if you can blow
21 it up there. I can't see. It looks to me like two trees
22 have been preserved.

23 Q. And the total of trees removed across these six sites?

24 A. There's some question as to the exact number, but it appears
25 like four to five, and six in one, and nine in another.

1 Another was unknown. I can't see the bottom of the page.
2 Can you shrink it down or lower it down there? One more.
3 And then 13 on one site.

4 So you're looking at, you know, 25, 30 trees on six
5 properties that were removed and of that only one or two
6 were retained.

7 Q. Does that -- you had mentioned some other exhibits kind of
8 looked at this chart in a more graphic form.

9 A. Yes. I mean, I think -- and this is part of how we
10 proceeded was we tried to use basically Google Earth and
11 Google Maps and their photos to look at sites as they are
12 now and the sites as they were historically before the
13 development began, trying to get the most recent pictures
14 before development as we could. Some sites, there were no
15 pictures available for essentially currently. But it does
16 still display a pretty radical before and after effect of
17 what is happening on these properties, and it gives an
18 example of the kind of thing that the City could have done
19 themselves to say, gee, well, you know, are there any
20 impacts to (inaudible) animals?

21 Q. Let's look at Exhibits 21A, B, C, and D, or -- and if you
22 could describe for the written record what's being displayed
23 and your observations.

24 A. Well, this is showing development site -- it says 8332 to
25 8351, but really it includes -- that's -- it includes the

1 entire property that the City has suggested, which is larger
2 than that. So if you're looking at the left-hand side, this
3 is a photo from currently, 2021, and the -- at the bottom,
4 they can see it's basically all cleared in brown. That's
5 actually the other property that's listed. And I believe
6 it's 8222 to 83 something else.

7 And then the upper portion of the lot that looks more
8 tanner in color, that's also all cleared, is 8332 to 8350.
9 And then you see a small strip of green in between and
10 another strip in tan there. These are different parcels and
11 not actually the trees that were retained in the
12 development, but these are trees that were essentially
13 neighboring, you know, the parcel.

14 Now, if you look on the right-hand side, you can see
15 there's three different pictures. The bottom one shows you
16 a big tan picture of -- it shows the whole neighborhood.
17 You can't probably scroll it up because I think you can't do
18 that. You can see, you know, that there are a substantial
19 number of large trees there and smaller trees that are now
20 gone.

21 And then if you scroll downward, you know, see the upper
22 pictures, you can see some -- some vision of -- keep going
23 one more -- you see some vision of the trees that were
24 basically on site prior to the clearing that you see on the
25 left.

1 Q. This is in the rough area of the City Exhibit No. 9 -- I'm
2 sorry -- City Exhibit No. 10, the 8322 to 8326 and 8350 13th
3 Avenue Northwest; is that correct?

4 A. I'm not sure of the number of which one it is, but I take
5 that, that you're -- there we go. So you got a nice little
6 site plan for us, showing you basically the location of the
7 new townhouses and ...

8 Q. Yeah. That's fine. I just wanted to associate your
9 photographs with the City exhibit.

10 A. And that's good because obviously we don't have pictures of
11 the newly constructed site in that fashion.

12 Q. Is there another example in your Exhibit 21 that you want to
13 share or talk about?

14 A. Yeah. I'd like, actually, to go through -- and if you look
15 at Exhibit 21B next, which is not one of the examples that
16 was part of their exhibits. It was one that was -- that
17 there was a lot of contention in the neighborhood over this
18 issue. There was a lawsuit and appeal. The appeal was lost
19 (inaudible). Tulip tree you can see on the right-hand side.
20 You can see in the middle picture, the bottom picture,
21 there's a huge canopy of one tree. That was a tulip tree.

22 And then you see there the whole property was completely
23 full of canopy. And then there's -- on the top you see a
24 picture of a house up on the hill, and then there's lots of
25 trees, as you can see as canopy, and then you see a

1 development sign.

2 Then on the left-hand side of the screen, you see the
3 house that's (inaudible) down. You see the stub of the
4 tulip tree and some other trees. And then in the bottom
5 left you see basically the new construction that's in place.

6 So this, you know, project obviously had a lot of canopy
7 lost and, you know, it's all part of how, you know, there's
8 not much room on the -- in that new construction there for
9 trees. I don't see much there planted in that picture.
10 Maybe they've done an outstanding job for replanting. It's
11 hard to tell from the picture, but there definitely isn't
12 much soil space there, if they have done that.

13 And go to the -- our next picture. Let's go to the next
14 group of 21C. And we're back to -- these are -- these are
15 part of the City's -- these are the actual City parcels that
16 the City recommended as being great examples of what they're
17 working on.

18 And so going from whatever property was before to now
19 these new constructed homes. So looking at the 704, 712
20 West number to that, the bottom right, you can see 2018
21 picture. You can see some canopy. There are some trees.
22 Not huge, but there are some trees definitely in the canopy.
23 And then you can see sort of street view on the left of
24 2017, pictures showing some -- go back to where you were.
25 You're jumping through. We want the 704, number C.

1 Thank you, Lars, for getting that back there.

2 In the -- in the left, again, bottom left, there's 2017
3 picture. You can see there's some street trees and some
4 trees behind. And then in these pictures above, you see
5 first the clearing, essentially a little bit cleared. The
6 construction of new structure. And then in 2020 the final
7 structure that's there. I'm not sure if it's connected
8 townhouses.

9 We go to the next slide, please, just below. It's the
10 Sand Point Way, I think. What do you have next? There we
11 go. So here at 5030 and 5036 Sand Point Way, again, we're
12 trying to see comparison of properties. And below left you
13 can see 2017, there's some trees. And then in 2021, you can
14 see that it's -- this is one of these properties that
15 actually we don't have a current picture of what's going on
16 on that property. So this is just showing you that there
17 are a lot of trees on the property. What you can see is
18 right next door there's another similar property that
19 basically went through reconstruction, and there's not much
20 vegetation on that site.

21 Next slide, please. 8322, 8336, and 8328 13th Avenue
22 Northwest, the bottom left corner you see a rectangle in red
23 that shows the property at that time and a lot of -- you see
24 a lot of green on that property. 2018 you see it's
25 transformed. (Inaudible) in 2014, in the upper left, you

1 see a picture of just a clearing. In 2018, you see the
2 construction of the new project. And then on top of that,
3 in the upper right corner, you see the new construction with
4 some new plantings, but definitely there's a lot of canopy
5 that was lost on that property. And the trees that you see
6 to the right that are tall, those are from -- that's not on
7 the property. That is a neighboring property.

8 Next picture. 34 -- no. 3412, 34, again, you get to see
9 first on the left-hand side, you see all the trees that are
10 on this property. And we don't have a picture of it
11 currently, but right across the alley there, there is -- you
12 see some new construction that has a different interest, and
13 you can see that there's a little bit of some trees sticking
14 out between looks like the buildings on the north side of
15 the property, a couple little trees, and then that's it, as
16 opposed to the left-hand side.

17 Scroll one more picture. Here's another example at 3412
18 34th Avenue West. Upper left-hand side, you can see the
19 existing vegetation through a fence that's quite dense. And
20 then on the right-hand side, upper right corner, you see
21 just simply a whole lot's been cleared. There are some
22 trees in the background from the neighbor's property and
23 there's one little tree left in front. But then in the
24 bottom right-hand corner, you can see -- well, it's an
25 example of what the property they were going to build there.

1 There is just nothing planted. If this is -- it's obviously
2 a different construction for a different project, but
3 it's -- it shows an example of, gee, here's -- there's no
4 trees in these pictures. There's no vegetation. This is
5 what we're getting as a result of development in Seattle.

6 Next slide, please. Here's an example at 1216 and 1218
7 27th Avenue. On the left-hand -- right-hand side -- excuse
8 me -- you see in the rectangle with red, there is a lot of
9 green. That is the canopy that was there. And then in
10 2016, two years later, you can see the same rectangle.
11 There's no trees to be seen.

12 So there's no canopy there. This canopy loss has not been
13 evaluated, and this is part of our concern is how do we --
14 you know, how do we go about evaluating this now?

15 (Inaudible) GIS that allows you to do these kind of things.

16 Next slide, please.

17 Q. Mr. Ellison, real quick, I think I maybe heard you say --
18 did you say 1216 or 1716?

19 A. I meant to say 1716. I'm sorry.

20 Q. Okay. Thank you.

21 A. And here's just another view. This is that same property,
22 basically, just another view showing the land clearing in
23 2014 and beyond. And to the right you see all of the trees
24 that used to be on that parcel, very, very dense green. And
25 then in the bottom left-hand corner you see what we have as

1 replacement. There are a couple of -- three trees that seem
2 to be doing all of the canopy mitigation. They're not very
3 big yet. Maybe they'll get to be huge. I don't know how
4 much soil they have and how well they do.

5 I do know that street trees have a high mortality. I
6 remember having a discussion with the arborist about how the
7 street trees have a very high mortality. They get hit by
8 cars. They don't get watered enough. They're not
9 established. And part of the idea of when you have a tree
10 that's alive and existing right now, this is a survivor.
11 It's got big -- it's a survivor. You plant a new tree
12 there; maybe it's a survivor, maybe it's not.

13 And to give you the best example of that, the Chinese tree
14 privet that we're trying to save back in the mid 1990s, in
15 the University District, that had a \$2500 bond, once
16 construction was over and the bond was removed, a few years
17 later that tree was gone.

18 Q. Mr. Ellison, I just want to point out that we're about
19 15 minutes away from being over and probably want to let an
20 opportunity for cross-examination, perhaps.

21 Is there another exhibit that you'd like to go over?

22 A. Yes. Let's -- I wanted to try to look at --

23 Q. Exhibit 22?

24 A. Well, we should pull in Exhibit 22. We can do that very
25 quickly. But I really wanted to go back to the City's

1 Exhibit 3 and look at their final impact statement, their
2 assessment that was done in detail.

3 Q. Okay.

4 A. So --

5 Q. Maybe we do that, then.

6 A. -- just jump into that. I believe the (inaudible), so we'll
7 proceed. So we want to go to a different page. I believe
8 it's page 16.

9 Q. And in terms of the environmental checklist, then, this
10 appendix D, which we've heard testimony before, page 16, do
11 you mind reading a few sentences from here that raise
12 concern that adequate analysis --

13 A. Lars, could you lower that down more of question two,
14 please. Thank you.

15 [As read] How would the proposal likely affect plants,
16 animals, fish, and marine life? There are vegetative
17 portions of properties present within the affected areas and
18 various wildlife (inaudible) urban areas (inaudible) birds
19 are present.

20 And skipping to the next paragraph. [As read] This is a
21 nonproject proposal resulting in no direct impact to plants,
22 animals, fish, or wildlife because -- or marine life because
23 it does not directly impose development. The project could
24 indirectly affect potential for impact to plants, animals,
25 fish or marine life because the future development affected

1 by the proposal might slightly affect these habitats. The
2 nature of such adverse impacts on different levels of future
3 development could relate to factors such as adding slightly
4 to tract related to deposits on local streets, but
5 theoretically leading to higher stormwater flows ultimately
6 released to the affected properties. Proposal could also
7 have minor changes to the extent of (inaudible) bike
8 facilities for building projects impact stormwater flows.

9 The proposal managed to mitigate or conserve plants,
10 animals, fish, and marine life are none proposed.

11 So this is, you know, a pretty strong, to me, lack of
12 taking responsibility for what has obviously been the
13 continuation of a large progression of eliminating the
14 canopy in the city. The city is about to come out of the
15 new LiDAR study. It's probably going to be later on -- it
16 will be sometime this year, six months I think was the plan.
17 I only mentioned earlier in the deposition. And to compare
18 LiDAR now to LiDAR back -- last one will show I believe a
19 tremendous loss of canopy throughout the city as a result of
20 development practice.

21 And so it is the long-term cumulative impacts that are not
22 being evaluated. The impacts to birds, native birds and
23 wildlife are not being measured or evaluated. The increased
24 runoff is being relegated to (inaudible) capture of
25 properties, and it still may not really take care of

1 (inaudible) problems.

2 You know, the urban (inaudible) effects issues are
3 basically ignored and not evaluated. These impact not only
4 humans and (inaudible) wildlife and native birds and plants
5 on site that do not have the benefit of the canopy, the
6 soils, living soils of the earth. Obviously it's an urban
7 requirement that you can't (inaudible) it's not a pristine
8 environment. But it does not mean that we should neglect
9 our duties to try to maximize the potential during
10 development to really mitigate the problems that we are
11 creating.

12 And it is this loss of opportunity to mitigate the problem
13 that is of greatest concern here because, without evaluating
14 the issue of what the impacts are, we're basically just sort
15 of putting our hands in front of our face and saying say no
16 evil, see no evil, you know, kind of a situation. That's
17 not to say that it's an evil -- we are essentially doing
18 evil to the earth in a sense. I mean, this is what climate
19 change is on the big, broad picture. But climate change, to
20 solve it isn't just about driving a few cars and getting in
21 mass transit. It's about dealing with the immediate impacts
22 of things like urban island heat effect and how do we
23 mitigate making Seattle by being a leader in environmental
24 stewardship.

25 What are the other urban cities doing? How are they

1 protecting the -- what kind of canopy protection do they
2 have? What kind of restoration projects do they have? What
3 is going on to really try to deal with this issue? And I
4 feel that, you know, by going ahead and saying that this is
5 a DNS situation, nonproject alternative, next table please,
6 is really passing the buck to the next generations to have
7 to -- and really all of us as, you know, what is it going to
8 be next summer? Is it going to be a 110 degrees or just 108
9 or maybe it's only a hundred? How many days are we going to
10 have a forest fire producing smoke coming, blowing all the
11 smoke in from Eastern Washington at the same time? Are we
12 going to have a drought that's going on for months like
13 we've had over the last couple of months.

14 I mean, what is the worst-case scenario here? What is the
15 90 percent scenario here? What is just a ten-year scenario
16 here of the problems that occur because we've had such heat
17 problems? Then, of course, big storms and floods and things
18 like that coming through in the wintertime.

19 So, like again, oh, it's really hot last summer? Oh, it's
20 kind of nice. It's cooler now.

21 I guess I need to give time for --

22 MR. MITCHELL: Yeah. Thank you, Mr. Ellison. I'm going
23 to stop questioning you and -- so Mr. Mitchell has a chance
24 to ask you questions.

25 HEARING EXAMINER: Yeah. Let's -- Mr. Mitchell, do you

1 have questions? I know we're getting close on time.

2 MR. MITCHELL: Just a few, Your Honor.

3 HEARING EXAMINER: Okay.

4 MR. MITCHELL: I will keep an eye on the time, and I don't
5 think I'll go past 5:00. I don't think.

6 HEARING EXAMINER: We can go -- if we need to, we can go
7 in to tomorrow. I know everyone's hoping to get this
8 witness done today.

9 MR. MITCHELL: Yeah, yeah. I don't see it being an issue.

10

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

12 BY MR. MITCHELL:

13 Q. And, Mr. Ellison, good afternoon.

14 A. Good afternoon.

15 Q. And thank you for your -- appreciate your testimony.

16 You acknowledge that the density changes proposed are in
17 the -- limited to the LR1 zone, correct?

18 A. That is correct. What I'd like to say that the City is
19 proposing or -- and is rapidly changing already in certain
20 areas, like, again, the light rail areas where single family
21 is no longer single family is now LR1. So there's a trend
22 politically in the city to try to make more housing on
23 single family and making that fourplexes or six-plexes type
24 of properties. And that means that the canopy that is now
25 single family will start looking like the canopy on LR1.

1 Q. No. But this legislative proposal is only seeking to change
2 the density in LR1, the density level. Is that -- that's
3 correct, right?

4 A. That is correct. But the thing is that LR1 itself is going
5 to have a greater impact as time goes by as well because
6 more of the city is going to be LR1. So to say, oh, the DNS
7 on it now, and then suddenly half the city is now LR1, then
8 they can go ahead and say, oh, look, it was LR1, no impact
9 necessary to review. There you go, boy.

10 Q. And let me -- let me ask you this. LR1 zones currently
11 allow for multifamily housing, right?

12 A. Yes, sir.

13 Q. And the development projects that you were testifying about
14 and showing in your testimony, those were all projects that
15 were presumably in our -- in the LR1 zone, but they're all
16 projects that were developed under either historic or
17 current development regulations, correct?

18 A. That is correct, sir.

19 Q. And you expressed concern with those projects impacts,
20 correct?

21 A. That's correct.

22 Q. So you'd say you have concern with -- with existing code and
23 in the protections that it affords currently?

24 A. I have concern with the existing code, and then as we change
25 the code to the new proposal, if that is -- if that is

1 confirmed, then the cumulative impact of the previous
2 proposal changes two years ago to LR1, and then the changes
3 a few years before that to LR1 add up and become what is
4 called cumulative impacts. And these cumulative impacts are
5 long-term impacts and they are significant impacts.

6 Q. So I appreciate that. Let's talk about the checklist just
7 briefly. You took some issue -- there was a list of
8 different types of plant life and -- that were listed and
9 they were all checked. I think there's a description at the
10 bottom of that section that said that this was recognizing a
11 diversity of plant life in the urban space because it was
12 essentially a nonproject proposal covering a lot of area in
13 the city. You -- you took issue with -- you indicated that
14 you would have -- that you would have made some site visits.
15 Now, what if you made some site visits and you didn't see
16 any pasture in those site visits, would you suggest, then,
17 that that shouldn't have been checked, because you didn't
18 see that in the site visits that you made?

19 A. I would look at -- I would look at -- I would try to get an
20 understanding of what a lot of these LR1 sites are and look
21 for any outliers that might be unusual, because you have
22 aerial photos and so you consider (inaudible). This LR1
23 part is a giant parcel. It's not zoned LR1. And so then,
24 oh, maybe that's something I should go investigate.

25 It's my impression, just looking at the document, that

1 this -- it was just making an assumption where we're just
2 going to check it off. I mean, it is an environmental
3 checklist under environmental assessment in DIS. But I
4 think that because it's citywide, it's just -- to me it's an
5 example of just kind of filling in the dots of it and not
6 actually doing the homework that I feel should be required.

7 If it was reflected in a more substantial discussion, say
8 in the appendix, that tried to do -- you know, just at a
9 much higher level say we went and looked at these sites or
10 we had this more information, you know, that might reflect
11 that this was, you know, an actual evaluation going on. But
12 I'm not seeing and I didn't hear testimony from the City
13 offices saying -- suggesting that, yeah, we went ahead and
14 did a couple visits and this is what we found or we went and
15 did all these kind of surveys. I heard just sort of -- I
16 don't feel that that's -- that it was adequately
17 investigated.

18 Q. Okay. And I think that you characterized City Exhibit 7,
19 which is the chart that shows a few different example
20 projects in sort of the amount of density that -- that sort
21 of was achieved in those projects. You characterized that
22 as sort of the City's sort of recognition of the types of
23 projects that would be developed under the proposal.

24 What --

25 A. I --

1 Q. I don't know if you --

2 A. -- why I assumed this -- I assumed (inaudible) --

3 Q. Okay.

4 A. -- presented those (inaudible).

5 Q. What was -- what was that assumption based on?

6 A. It was based upon -- well, it was an assumption. And it was

7 based upon that if we're asking for information and we say,

8 oh, well, here, have six, then we -- I make the assumption

9 that this is a genuine effort by the City to give a

10 representative sample of what they feel the proposal is

11 evaluating LR1.

12 Q. Okay. Oh, in LR1, yes. So those are -- I see.

13 So you were just saying those are representative of

14 LR1-type developments?

15 A. I'm -- that's what I'm saying. I'm suggesting that the City

16 is suggesting (inaudible) these are -- these are

17 representative samples. Here, take a look at these.

18 Q. Okay. Right. Under the -- under the current code, right?

19 That's what you're saying?

20 A. Under the current -- under the current code, because

21 obviously the new code doesn't allow the density that is

22 being reflected in what you're proposing. So, you know, I'm

23 looking at those sites and saying look at what's happened on

24 those sites. It's pretty significant. And so you want to

25 do (inaudible) more.

1 But, again, it's that incremental damage, and there's
2 already so much damage that's being done. You're going to
3 say do a little bit more, so don't worry about it. It's
4 okay. And I'm saying, no, it's not okay because the impact
5 is not being adequately investigated in regards to long-term
6 impacts.

7 MR. MITCHELL: Okay. I appreciate the clarification. And
8 thank you. I appreciate it. I don't have any further
9 questions.

10 HEARING EXAMINER: Okay. Thank you, Mr. Mitchell.

11 Mr. Moehring?

12 MR. MOEHRING: Yeah, a few cross-examine questions, if we
13 can do it now or if you want to do that first thing in the
14 morning?

15 HEARING EXAMINER: Yeah. Are they really quick or ...

16 MR. MOEHRING: Five to ten minutes.

17 HEARING EXAMINER: Okay. Let's do it tomorrow since we're
18 right at 5:00 now.

19 Sorry about that, Mr. Ellison. We'll have to call you
20 back in the morning, although you may be here anyway.

21 THE WITNESS: (Inaudible).

22 HEARING EXAMINER: Okay. Well, thank you for your
23 testimony this afternoon.

24 We will reconvene tomorrow at 9 a.m. It looks like we
25 will get through everyone tomorrow. I just -- I don't -- I

1 think we made good progress today.

2 There are a few procedural issues. I think I'm going to
3 address those tomorrow. Just -- and, Mr. Moehring, just
4 remind me tomorrow, I may -- I'll talk with the clerk, and I
5 may have you email a Word document with the updated exhibit
6 list to just aid in the preparation of the master list. But
7 I'll check in with you tomorrow on that.

8 Are there any other procedural questions before we adjourn
9 for tonight?

10 MR. MOEHRING: No, Your Honor.

11 UNIDENTIFIED SPEAKER: (Inaudible) amount just simply the
12 opening statement that somebody had to --

13 HEARING EXAMINER: Yeah. I saw the email. I'll address
14 that tomorrow. And Mr. Mitchell may have a comment on that,
15 so I'll address -- that's one of the procedural issues that
16 I had in mind to address tomorrow, so.

17 Yeah. Any other questions? Okay.

18 MR. MITCHELL: No, Your Honor.

19 HEARING EXAMINER: All right. Thank you all. We are
20 adjourned. We'll reconvene tomorrow morning at 9:00. Thank
21 you all.

22 MR. MITCHELL: You too.

23 (March 1, 2022, conclusion of proceedings)

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C E R T I F I C A T E

STATE OF WASHINGTON)
)
COUNTY OF KING)

I, the undersigned, do hereby certify under penalty of perjury that the foregoing court proceedings or legal recordings were transcribed under my direction as a certified court reporter; and that the transcript is true and accurate to the best of my knowledge and ability, including changes, if any, made by the trial judge reviewing the transcript; that I received the electronic recording in the proprietary 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 11th day of March, 2022.

Debra Riggs Torres
s/ Debra Riggs Torres, RPR, CCR No. 20122368

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