

1 BEFORE THE HEARING EXAMINER
2 FOR THE CITY OF SEATTLE

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

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8 HEARING VIA ZOOM - VOLUME III
9 Hearing Examiner Susan Drummond Presiding
10 March 2, 2022

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Transcribed By: Chastity M. Feezle, WA-CRL
 Reed Jackson Watkins
 Court-Certified Transcription
 206.624.3005

1 A P P E A R A N C E S

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3 On Behalf of the Appellant:

4 DAVID MOEHRING

5 RICHARD ELLISON

6 TreePAC Committee

7 2131 North 132nd Street

8 Seattle, Washington 98133

9

10

11 On Behalf of Office of Planning and Community Development:

12 DANIEL MITCHELL

13 Seattle City Attorney's Office

14 701 Fifth Avenue

15 Suite 2050

16 Seattle, Washington 98104-7095

17

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20

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March 2, 2022

HEARING EXAMINER: Good morning, everyone. I'm Susan Drummond, City of Seattle Deputy Hearing Examiner. We're here on hearing date three for Appeal W-21-007. Today is March 2nd, 9:00 a.m. I think at this point in the proceedings we were wrapping up a few redirect questions of Mr. Ellison. Is that -- is my recollection correct on that, Mr. Moehring, Mr. Mitchell?

MR. MITCHELL: That was my recollection as well.

HEARING EXAMINER: Okay. Mr. Moehring, would you like to go ahead and proceed with your last questions for Mr. Ellison? And, Mr. Ellison, you do remain under oath. I'm not going to re-swear you in. We have you --

THE CLERK: He's just joining now.

HEARING EXAMINER: Just joining now.

MR. MOEHRING: I don't see him at the moment. Oh, yeah, here he is just coming on.

HEARING EXAMINER: Okay. There he is. Good morning, Mr. Ellison. I was just saying, since I swore you in yesterday, I'm not going to swear you in again. You remain under oath. And Mr. Moehring was about to start with -- he has a few additional questions of you, I believe.

THE WITNESS: Okay. Thank you, Your Honor.

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

2 BY MR. MOEHRING:

3 Q. Good morning, Mr. Ellison. Yeah, real quickly on redirect,
4 some other questions that Mr. Mitchell had asked you. One
5 of the questions I believe he asked you at the end of the
6 day yesterday was regarding the potential impact of this
7 proposed townhouse reform legislation and that you had made
8 some testimony about the area of Seattle being impacted more
9 than just what it is today. So is that your understanding
10 as well in terms of what the conversation was yesterday?

11 A. I'm confused by what you mean by impacted more -- excuse me,
12 I'm confused by your question, actually.

13 Q. Okay. Well, let me make a simpler question. Did you
14 testify yesterday that you felt that larger areas of the
15 City of Seattle were expected to be transformed from
16 neighborhood residential or single family, as it once was
17 called, into low-rise LR1 zones?

18 A. Yes, I did, because that's been the trend in the city where,
19 for example, as I stated in my testimony, that portions of
20 the single family that are adjacent to the light rail
21 stations are now considered I believe low-rise, and there
22 is, you know, significant push within the city government
23 and within the state government to do more of that
24 throughout the city.

25 So my concern is -- I don't know the legal standpoint

1 on this, but my concern is that if, say, there's a DNS on
2 this particular upzone, that means that if in the future the
3 city upzoned other portions of Seattle to LR1 through -- or
4 the state did it, just said, okay, all single family is now
5 LR1 or LR2, then automatically this DNS applies to all those
6 properties. And if that is the case, then suddenly you have
7 basically 68 percent of the canopy of Seattle, which is a
8 single family, suddenly zoned LR1, which has, for one, its
9 requirements of, you know, much lower goals in canopy cover.

10 Q. Right. Right. No, we heard your testimony yesterday. I
11 just wanted to verify that was the conversation. So then
12 simple yes or no questions perhaps here, I don't know. Is
13 the source of -- the source of your concern, is it -- where
14 is the source of your concern?

15 A. My source of concern is not only impacts that have not been
16 vacated away from --

17 Q. I'm sorry. Where have you heard of the potential changing
18 multi -- or changing single-family zones into multifamily
19 zones?

20 A. Well, I've read it in the Seattle Times, in editorials.
21 I've seen it in the legislator -- legislation from the state
22 legislature. I've seen city councilmembers in total
23 support, voicing total support of this type of legislation.

24 Q. Okay.

25 A. So to me the writing's on the wall that, you know, this is,

1 you know, the progression of things.

2 Q. Okay. And part of the -- some of us are familiar with the
3 February 2nd, 2022 Seattle Times article that you're
4 referring to that also kind of includes a map that I guess I
5 can't really show. It looks like -- am I still online?

6 HEARING EXAMINER: You are. I can hear you. Let's see,
7 where did you go, actually?

8 MR. MITCHELL: I see you.

9 MR. MOEHRING: Okay. Sorry.

10 HEARING EXAMINER: And I can hear you now. I can't see
11 you right now.

12 MR. MOEHRING: Back again.

13 HEARING EXAMINER: There you are. Okay. You're back.

14 Q. (By Mr. Moehring) Okay. So, yeah, I was saying that I think
15 you -- the article you're referring to was this
16 February 2nd, 2022 map that was published in the City of
17 Seattle; is that correct?

18 A. That is one of a variety of ones I have read.

19 Q. And what does that map kind of show you? You kind of
20 described it before, but just to be clearer. You got it.

21 A. I'm going to have to make you -- try to make you the host
22 screen.

23 Q. Oh, I see.

24 A. I don't know if there's any way that can be shared as a --
25 it's difficult for me to see, so perhaps you could describe

1 to me that what is on this.

2 MR. MITCHELL: How about this -- how about this; I have no
3 objection, Mr. Moehring, if you wanted to add that newspaper
4 article as an exhibit.

5 MR. MOEHRING: Okay. All right. We'll move on then.

6 Q. (By Mr. Moehring) So just to paraphrase --

7 HEARING EXAMINER: Just to clarify for the record, that
8 newspaper article will be added as an exhibit, and we'll
9 give it a number. It'll be just at the end of the
10 appellant's exhibits. So, yeah, you may proceed, Mr.
11 Moehring.

12 Q. (By Mr. Moehring) So, Mr. Ellison, yes or no, do you
13 acknowledge that Seattle is a growing city?

14 A. It is definitely a growing city. I've been here since
15 1981 --

16 Q. Do you know that we need to accommodate more growth in
17 residential?

18 A. I am aware that -- that it is a growing city, and there's
19 too many homeless people on the street, and there are too
20 many young people with no place to live. And at the same
21 time, it's a beautiful city. It's the Emerald City, and
22 there's a need to keep it liveable.

23 Q. Okay.

24 A. I grew up in the suburbs of New York City, and I'm -- and
25 pretty similar to where I live now, in many ways. But I've

1 also been into New York City, and I feel that there's this
2 drive to make everything look as urban as they can make it.
3 And even New York City has a higher canopy cover I think
4 than Seattle. And so there's a real need for Seattle to
5 learn how to build in a magnificent,
6 environmentally-friendly way that's not just using green
7 washing as a means of saying things are green, but actually
8 having a green canopy and having an ecosystem. And it's
9 really quite possible.

10 Q. Well, would the key be of your testimony yesterday is that
11 you acknowledge the growth as you have testified, and that
12 you certainly want future development that comes out of this
13 zoning type to also accommodate nature?

14 A. It must accommodate nature. If we try to deal with climate
15 change and just simply quality of living, you can't separate
16 the two of them. You can't have one without the other. And
17 for Seattle to be a vibrant, economically-vibrant city, if
18 this is just that hot, sweltering echo of living in the
19 summers 10, 20 years from now, then business is going to
20 move on.

21 Q. Okay.

22 MR. MOEHRING: No further cross-examination.

23 HEARING EXAMINER: Okay. Mr. Mitchell, anything further?

24 MR. MITCHELL: No, Your Honor. Thank you.

25 HEARING EXAMINER: Okay. All right. Thank you for

1 your --

2 THE WITNESS: Thank you very much.

3 HEARING EXAMINER: Yep. Thank you for your testimony this
4 morning, Mr. Ellison.

5 So then I think we will move, Mr. Moehring, to your next
6 exhibit. And I wasn't sure on the order on that. You have
7 you here, but I didn't know if you were going to go next, or
8 if you were planning to go last with Mr. Wheeler next.

9 MR. MOEHRING: Your Honor, our order was -- I'm going
10 to -- now that Richard is feeling a little bit better, I'm
11 going to pass the baton back to Richard. He is going to
12 come up with our next witnesses, which is Mr. Wheeler,
13 myself, Mr. Oxman, and Ms. Grant.

14 HEARING EXAMINER: Okay. All right. So you'll be next,
15 and I guess Mr. Ellison will then be asking you questions;
16 did I hear that correctly?

17 MR. MOEHRING: After Woody Wheeler, right.

18 HEARING EXAMINER: Okay. All right. Mr. Wheeler, do --
19 oh, we do have you there. If you could state your name for
20 the record, Mr. Wheeler.

21 THE WITNESS: What would you like me to say?

22 HEARING EXAMINER: Your name.

23 THE WITNESS: Woody Wheeler.

24 HEARING EXAMINER: And do 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: Yes.

3 HEARING EXAMINER: Thank you. Thank you. All right,
4 Mr. Ellison, I believe you have some questions for
5 Mr. Wheeler?

6 MR. ELLISON: Yes, thank you.

7

8 WOODY WHEELER: Witness herein, having first been
9 duly sworn on oath, was examined
10 and testified as follows:

11

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

13 MR. ELLISON:

14 Q. Thank you, Woody. Glad you could make it. Glad we both
15 could make it. What is your professional and educational
16 qual- -- what is your professional education?

17 A. Okay. I am a professional bird and natural history tour
18 guide, an author, and an educator. I have degrees in
19 environmental studies and geography from Western Washington
20 University. I studied wildlife biology and forestry at
21 University of Montana. And I took ornithology and wildlife
22 management at University of Washington.

23 In addition, I am a Seattle Audubon master birder, a
24 certified interpretive guide, and took the Cornell Lab of
25 Ornithology bird biology course. I led tours for Naturalist

1 Journeys for 10 years and continue to do so regionally
2 through my own business, which is Conservation Catalyst.
3 Previously I worked for the Nature Conservancy, Audubon
4 Society, Seattle Parks Foundation, and the U.S. Forest
5 Service.

6 MR. ELLISON: And can we pull up Woody's resume just for
7 the record, please?

8 HEARING EXAMINER: And do you have an exhibit number on
9 that?

10 MR. ELLISON: We have it listed as Exhibit 47, but I'm not
11 sure what you would call it.

12 HEARING EXAMINER: Yeah, for right now 47, thank you.

13 Q. (By Mr. Ellison) Is there anything on this resume you'd like
14 to elaborate more on?

15 A. Me?

16 Q. Yes, sir.

17 A. No. I kind of think it speaks for itself. Just that I have
18 spent my whole career in natural history from being a
19 wildlife biology major, all the way through becoming a bird
20 and natural history tour guide. I've worked in nonprofits
21 in development and in project management. And, yeah,
22 that's -- that's what I do is try to interpret and get
23 people to understand and care about nature. That's really
24 my agenda.

25 Q. Thank you, Woody. Okay, so let's move on. So from your

1 professional perspectives, please describe the impacts of
2 the effects of reduced tree canopy and the loss of
3 individual exceptional trees to birds and wildlife.

4 A. So tree canopy is absolutely key to attracting and retaining
5 birds and wildlife. Trees provide places for birds to nest,
6 to raise families, to take cover from predators, to provide
7 stopover points on long-distance migration, something that's
8 happening right now and will be more so in the increasing
9 month -- in the future months.

10 Trees provide lots of food: Insects, fruits, seeds,
11 and especially caterpillars. Larger, native trees and
12 groves have the highest value because they provide habitat
13 for a set of forest-dependent birds. And I have in my
14 Exhibits Nos. 7 through 16, show examples of some of the
15 forest-dependent or tree-dependent, if you prefer, birds.

16 I'm going to share a quote from the Yale School of
17 Forestry about this. Quote, "As cities continue to expand
18 and encroach upon natural habitats, urban forests are
19 becoming increasingly vital to biodiversity. Urban forests,
20 collections of trees within the boundaries of a metropolitan
21 area, are proving vital for one type of wildlife in
22 particular, urban birds. Humans can also benefit from the
23 urban greenery, for example, through cooler temperatures and
24 mental health benefits."

25 And then I'd like to add from Josh Morris from Seattle

1 Audubon and the Urban Forestry Commission, this is a quote
2 from him: "One of the biggest causes in the decline of bird
3 populations in Seattle" -- and bird populations are
4 declining in Seattle. I can vouch for that because I count
5 them, and I submit hundreds of eBird lists annually in our
6 parks, in our streets, in my neighborhood, on the
7 Burke-Gilman Trail, et cetera. The loss -- or the decline
8 of bird populations, the number one cause, is the loss of
9 habitat. That's mostly due, according to Josh, to
10 construction, climate change, and a shrinking tree canopy.
11 He added that, quote, "Birds are an indicator species, and
12 they are telling us that the ecosystems on which human
13 society depend are in trouble."

14 Q. Thank you, Woody. Are there any specific species of birds
15 that rely upon trees for habitat?

16 A. Definitely. There are quite a few of them, and I won't list
17 all of them, but I'll mention some names. And as I said a
18 moment ago, my exhibits include -- there are pictures. I
19 think it's important to see the faces of these birds that
20 currently inhabit our city and are threatened as we take
21 trees away and other vegetation.

22 Here are some examples: Pileated and hairy woodpecker,
23 Vaux's swift, bald eagle, osprey, merlin, Cooper's hawk,
24 sharp-shinned hawk, barred, western screech, and
25 great-horned owls, pacific red, black-throated gray, and

1 Townsend's warbler. Had one of those at my house today.
2 Pacific-slope and olive-sided flycatcher, varied and
3 Swainson's thrush, and western tanager, arriving in May from
4 western Mexico. And that's just to name a few.

5 Now, to give an example of the importance of tree
6 canopy to just one species, the pileated woodpecker, that's
7 a bird, the largest woodpecker in North America. It needs
8 250 acres of forest habitat according to the Cornell Lab of
9 Ornithology. Maintaining neighborhood canopy cover above
10 20 percent improves its habitat suitability, especially when
11 trees provide corridors to larger green spaces like parks
12 and natural areas.

13 And that's a key point. Just having postage stamp
14 parks and nature areas then all the rest developed does not
15 work. You need to have corridors linking those
16 withstanding, large trees. Connectivity is vital to
17 maintaining a healthy urban forest. As Yale School of
18 Forestry reminded us, having urban forests, collections of
19 trees within the boundaries of metropolitan area, are vital
20 to bird populations.

21 Q. So just to clarify something, Woody, are you suggesting that
22 as the tree canopy in the area where the canopy drops below
23 20 percent, that these do not act as corridors then for
24 certain species of birds to move around essentially in
25 Seattle to connect to the large habitat areas?

1 A. Yes. That's when it becomes critical. That's when they
2 start to really collapse. That's when you start to have
3 what are called extirpations where parts of the populations
4 are removed from the larger population.

5 Q. Are there other studies that have documented the decline of
6 bird numbers and diversity in Seattle? Are you aware of it?

7 A. There is the annual Christmas count that Seattle Audubon
8 runs, and I've participated in for 20 years. And we go to
9 every part of Seattle near Christmas -- not Christmas day,
10 but around that time of year -- and hundreds of people
11 compile data on the populations. It's been declining for
12 the last 10 years. There were 129 species counted in the
13 Christmas bird count in Seattle 10 years ago. The most
14 recent one has 114.

15 Q. Okay. Thank you. What are the benefits of having trees in
16 urban areas?

17 A. Well, trees are exceptional, not expendable infrastructure
18 or to make a city liveable and sustainable to birds,
19 wildlife, and humans. In the words of Trees Louisville, as
20 in Louisville, Kentucky, which is I think doing some
21 impressive work in protecting their trees -- they've had
22 some serious climate-related events and fatalities in that
23 city, and have come to realize that trees are a strategy in
24 reversing those trends.

25 So I'm going to read a short excerpt from their

1 language. "What other piece of infrastructure can single
2 handedly reduce pollution, prevent flooding, provide food
3 and shelter to wildlife, reduce crime, lower energy bills,
4 improve physical and mental health and be beautiful, to
5 boot."

6 Q. What is the significance of the loss of these trees? Why is
7 this -- why is this (inaudible)? What's the significance
8 here, in relation to birds?

9 A. Well, yeah, in relation to birds, as climate change ramps up
10 and our summers become hotter, the importance of having
11 trees -- I'll say birds and people, how about that? I'll
12 link them together.

13 Q. Okay.

14 A. We just had a United Nations report that was in the paper on
15 March 1st that I think you probably all noticed. And it
16 says, "World was too slow in adapting to climate change." I
17 think that speaks directly to the City of Seattle. We're
18 too slow to adapting to climate change. And having trees is
19 a last line of defense for birds, wildlife, and for us. And
20 we simply aren't adapting, as I see it. We're doing
21 business as usual as if these things weren't even a problem.

22 And climate change is our equivalent of having tanks at
23 the border like they do at -- in the Ukraine. Climate
24 change is our border, and it already hit us hard last June.
25 And what are we doing? I don't see the adjustments. So,

1 anyway, the heat dome that happened last June was not a
2 fluke. Seattle, all cities, should be taking actions to
3 prepare for climate change.

4 Trees are incredibly important, as I wrote in my book.
5 I don't have that exhibit, but here's my book, it's called,
6 "Look up. Birds and Natural Wonders Just Outside Your
7 Windows." It has a chapter on tree tolerance, which I
8 should've put the exhibits, but I didn't. We should be
9 taking action to prepare for climate change. Trees are
10 incredibly important.

11 As I wrote in my book, trees provide beauty, habitat
12 for birds and wildlife, shade, wind, and erosion protection,
13 clean air, and they mitigate climate change. According to a
14 report by the Green Cities Research Alliance, "Seattle's
15 trees" -- and I quote -- "saved the city about \$23 million
16 annually in carbon storage, pollution removal, and
17 residential energy savings. And it would cost the city
18 4.9 billion to replace its trees," end of quote.

19 Trees absorb carbon dioxide and emit oxygen. They
20 provide fabulous ecological services if we would just leave
21 them standing.

22 Q. Woody, if I could get a clarification or ask for more
23 information about -- you were talking about climate change
24 and some of the impacts. And I was wondering, is there
25 anything that was noted or documented last summer, for

1 example, when we had the big heat wave come through? Were
2 there any effects that were noticed or measured in the bird
3 community?

4 A. Yeah, actually, Seattle Audubon noted that certain birds
5 were dying, and they -- you know, it's -- it was hard to
6 quantify that, but they were paying attention to groups of
7 birds that were suffering and dying. We -- you know, but we
8 don't have all the carcasses or the data on how many. But
9 there were some that did not make it through the heat dome.

10 I would say that, you know, as a person who counts
11 birds all the time and leads bird tours, the tours in June
12 and July which normally have pretty good counts, the counts
13 plummeted in both cases because that heat wave wiped out a
14 lot of the insects, which is a key food for birds. And I
15 would add that birds are great because they help control our
16 insects. But that heat wave knocked out the insect fauna in
17 a significant way, and the bird counts in June and July that
18 I took that were on some lousy trips I tried to lead to show
19 people birds were due to that weather.

20 Q. Okay. Thank you. So do you feel that the -- in regards to
21 this inquiry and a potential upzone, do you feel that the
22 city adequately analyzed the potential impacts from this
23 project?

24 A. No, I don't. With this determination of non-significance,
25 the city will not fully evaluate the environmental impacts

1 of townhouse developments in Seattle. The proposed
2 expedited process of building new townhouses does not
3 address the cumulative -- and I think this is a key word --
4 the cumulative impact that (inaudible) throughout the city.

5 Richard, you mentioned the 68 percent of canopy.
6 That's what I'm concerned about, not just one of these
7 developments or even two or three, but the cumulative effect
8 of so many of them. The large trees we continue to lose are
9 not replaceable in our lifetimes.

10 The city has also delayed the passage of a tree
11 ordinance for more than twelve years and has not released --
12 and that's a key point -- a vital update on its LiDAR tree
13 canopy cover study. We should know the results of that.
14 Louisville, Kentucky got their update, and they found that
15 they were improving by 1 percent. I'd love to hear that
16 news here, but I'm afraid we're going in the other direction
17 right now.

18 These are all essential steps in seriously addressing
19 tree and canopy loss and treating climate change like the
20 existential crisis that it is.

21 Q. Thank you. What do you believe the city can do or should do
22 in order to balance both the development process and tree
23 protection in regards to this process here that we're
24 discussing?

25 A. Okay, I'll recommend five things. First, to abide by the

1 current tree ordinance, including protection and
2 preservation of exceptional trees and tree groves. I have
3 witnessed exceptional trees being taken down in the yard
4 next door to mine that should be stopped but hasn't been by
5 our current regulations.

6 Secondly, complete a full environmental impact
7 statement to address the short term, long term, and
8 cumulative impacts of this proposal.

9 Third, release the latest LiDAR updated data on tree
10 canopy in Seattle so we know where we stand.

11 Fourth, pass the revised tree ordinance as drafted by
12 the city's Urban Forestry Commission.

13 And fifth, pass the pending tree service provider
14 registration procedure and requirement bill.

15 Q. Excellent. Excellent suggestions.

16 A. Thank you.

17 Q. Are there any other things that you'd like to add to your
18 testimony today?

19 A. Well, I have a declaration letter, and I would be happy to
20 read that or at least portions of it if I can.

21 Q. I'm fine with that. It is a longer document. I don't know
22 if I should ask the hearing examiner if that is something
23 that would be allowed to be done. Maybe the whole thing, or
24 maybe portions of it.

25 HEARING EXAMINER: Is this an exhibit? I'd rather avoid

1 reading lengthy documents. We've tended to avoid that
2 throughout this hearing just because it's time consumptive,
3 and if I do -- is that an exhibit, or --

4 MR. ELLISON: Yes, it is an exhibit.

5 HEARING EXAMINER: What's the number on it? Can I take a
6 quick look at it?

7 MR. ELLISON: That is a good question.

8 THE WITNESS: It's my letter of declaration. It's 46.

9 HEARING EXAMINER: 46? All right. Let me pull it up.

10 THE WITNESS: I can highlight portions of it.

11 HEARING EXAMINER: So there's definitely no need to read
12 all of this. This is definitely -- it's a pretty lengthy
13 document. I will read it myself certainly. And it is part
14 of the record. It hasn't been objected to at this point, so
15 it's an admitted document.

16 MR. MITCHELL: Yes, that's correct. No objection.

17 HEARING EXAMINER: Okay.

18 Q. (By Mr. Ellison) Perhaps there might be a paragraph or two,
19 Woody, that you'd like to select that you feel is
20 particularly important for -- to be, you know, discussed in
21 case there's any questioning that needs to follow.

22 A. Okay. How about if I read the summary? Two paragraphs.

23 HEARING EXAMINER: Two paragraphs, like, summary, that
24 sounds like that would provide the key pieces of it. I
25 think that would frame it for me nicely.

1 THE WITNESS: Okay, then I'll do that.

2 Q. (By Mr. Ellison) First right here, is that the end?

3 A. It's at the end. You could read along. Here it is.

4 Q. Okay. Go ahead, Woody.

5 A. In summary, Seattle is at a crossroads. Should we honor our
6 commitments to (inaudible) up the city's Urban Forest
7 Stewardship Plan, the Green New Deal, and the Urban Bird
8 Treaty, which we signed on to, or should we hastily develop
9 all available land to the point where our city becomes a
10 sterile, urban heat island, uninhabitable for people, birds,
11 or wildlife? The choice is ours, and we need to think not
12 just about the short term, but the long-term consequences as
13 well.

14 Incorporating nature into the city is no longer just a
15 nice thing to do, it is an essential part of the city's
16 infrastructure. We are currently on a slippery slope headed
17 toward an unsustainable city unworthy of the moniker, the
18 Emerald City. It is up to us to find a balance between the
19 critical needs of housing and the environment. We must
20 address both. This proposal was written as if the
21 environment and climate change do not matter, which is
22 unacceptable, irresponsible, and shortsighted.

23 Q. Thank you, Woody.

24 A. You're welcome.

25 Q. If it would be okay to ask you a few questions regarding

1 that last statement. You mentioned the Urban Forestry plan,
2 and I was wondering why you mentioned it. What were the
3 particular (inaudible)?

4 A. Well, I think the Urban Forestry plan lays out wonderful
5 guidelines for the city, and I was very excited when that
6 came out, and I felt proud to be in a visionary city like
7 Seattle that took that seriously, or at least I thought at
8 the time it did. And that was revised in 2020, and it lays
9 out how important especially the mature trees are in
10 absorbing carbon dioxide, reducing oxygen, attenuating
11 rainfall, preventing erosion, providing aesthetics, mental
12 health. There are studies on crime and how trees benefit
13 that. And then we have this climate event, and we're going
14 to have more of these.

15 That was not a one-off event. It's knocking on our
16 door. I used the analogy of the Ukraine an- -- the Russian
17 tanks at the border. It's here, and we need to be acting.
18 And I feel like we're not showing the creativity and the
19 innovation for which Seattle is known. We have the
20 (inaudible) architects. We have the people who understand
21 what to do. We just need to take the action. I don't see
22 the vision and the leadership here.

23 And this is yet another example where we're looking on
24 with business as usual as if climate wasn't even an issue.
25 And I think it's time to plan differently and to accommodate

1 trees and more -- and vegetation, for that matter, in a more
2 serious fashion. Creating a heat island, which is what
3 we're doing, is suicide strategy. Not just for the city,
4 but especially for the people who live in these new projects
5 who don't have any vegetation around and are mostly
6 hardscapes. That's not a liveable situation, and we should
7 realize that.

8 Q. One final question for you, Woody. I saw that you also had
9 something about a Seattle Urban Bird Treaty, International
10 Bird Treaty for the city. What was that?

11 A. Okay. Hang on. I wrote a piece about that because that was
12 something that came to my attention later on. But --

13 Q. I know it's also mentioned in some other submitted testimony
14 from Tina Cone [phonetic].

15 A. Here it is right here.

16 Q. If it's possible if you could elaborate on that.

17 A. I have it, but just a short thing on that. May 5th, 2017,
18 the U.S. Fish and Wildlife Service, Seattle Audubon, Audubon
19 Washington, Heron Habitat Helpers, Seattle Parks &
20 Recreation Department, Washington Department of Fish and
21 Wildlife, and other partners, designated Seattle an Urban
22 Bird Treaty city. This program promotes habitat
23 conservation through a base of series control, native plant
24 restoration, bird safe building programs, bird and habitat
25 monitoring and educational programs. It recognizes Seattle

1 is at critical weight, along with the (inaudible). Further
2 information about the Urban Bird Treaty city designation is
3 available at their website, which is on my letter of
4 declaration.

5 Q. So how were these trees that would be in low-rise 1 areas
6 important to this treaty?

7 A. Well, the treaty establishes a commitment to protect bio
8 diversity, and tree canopies is a key part of that, as are
9 the birds, as are the wildlife that use the trees. Even the
10 insect fauna and the caterpillars, which is bird food, are
11 part of the biodiversity.

12 Q. And is this signed at all by any Seattle government
13 officials?

14 A. Was it signed by any, did you say?

15 Q. Yes.

16 A. I think that --

17 Q. I'll take your word on it. I just asked if you're aware of
18 any.

19 A. I think I saw that on my list here. Well, Seattle Parks &
20 Recreation Department signed off on it.

21 Q. Okay. Thank you very much.

22 A. You're welcome.

23 Q. Are there any final statements you need to -- anything you
24 need to address?

25 A. I think we should do what you said earlier, Richard. We

1 should showcase, not destroy, our urban forests. We have
2 the best tree-growing climate arguably in the United States.
3 We are the state that has the temperate rainforest, the best
4 example of the lower 48. We have perfect conditions for
5 growing and sustaining large, especially evergreen trees.
6 That's a wonderful asset that Seattle has. We shouldn't be
7 clear-cutting that. We should be celebrating that and
8 keeping those trees in the standing position as much as
9 possible.

10 I am the great-grandson of a landscape architect who
11 incorporated nature designs into all of his work. Later
12 worked for Chicago Parks Department. He spent his whole
13 living incorporating nature on properties. It absolutely
14 can be done and should be done, and I think we need to take
15 it seriously and show what a progressive, creative,
16 environmental-friendly city we truly are.

17 Q. Thank you very much, Woody.

18 A. You're welcome.

19 HEARING EXAMINER: Mr. Mitchell, do you have any
20 questions?

21 MR. MITCHELL: Your Honor, I don't. I was able to speak
22 with Mr. Wheeler in a previous appeal. I recognize
23 Mr. Wheeler, and it's good to see you again.

24 THE WITNESS: (Inaudible).

25 MR. MITCHELL: I don't have any questions for Mr. Wheeler.

1 HEARING EXAMINER: Okay. All right. Well, thank you for
2 your testimony this morning, Mr. Wheeler. You are
3 dismissed.

4 THE WITNESS: Thank you.

5 HEARING EXAMINER: So then I think, Mr. Ellison, you were
6 going to call Mr. Moehring next; is that correct?

7 MR. ELLISON: That is correct.

8 HEARING EXAMINER: Okay. Mr. Moehring, if you could state
9 your name for the record.

10 THE WITNESS: David Moehring.

11 HEARING EXAMINER: And do you swear or affirm to tell the
12 truth under penalty of perjury under the laws of the State
13 of Washington?

14 THE WITNESS: Yes, I do.

15 HEARING EXAMINER: Thank you.

16

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

20

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

22 BY MR. ELLISON:

23 Q. Good morning, Mr. Moehring. Please state your name for the
24 record.

25 A. David Moehring, and that's -- last name is spelled

1 M-O-E-H-R-I-N-G.

2 Q. What neighborhood do you live in, and how long have you
3 lived there?

4 A. Interbay/Magnolia area. It's a low-rise residential zone
5 area. I've been there since 2015.

6 Q. What is your professional and educational background in
7 relation to -- particularly in relationship to the appeal?

8 A. I'll be testifying today on architectural matters as a
9 licensed architect in the State of Illinois, also a National
10 Architecture Council, which means I'm registered with NCARB,
11 which means I'm registered to qualify for licensing in other
12 states. I've been a licensed architect since 1989 and
13 have -- started working off in the private practices for
14 large firms like Skidmore, Owings & Merrill in Chicago, and
15 have done some work for institutional and university
16 campuses, and from that have transitioned over to
17 universities first, with the University of Illinois in
18 Chicago and currently with the University of Washington at
19 Bothel as a capital planner.

20 Q. Thank you, Mr. Moehring, for that. Outside of your work
21 with the university, do you do -- belong to any commissions
22 or any professional organizations?

23 A. Yeah. Actually, I'm a recent, about a year now,
24 commissioner of the Urban Forestry Commission. I represent
25 position No. 8, which is for developers of architectural

1 field. Actually, I'm motivated to finish early today
2 because that meeting starts at 3 o'clock.

3 Also involved in the community in the Magnolia
4 Community Council since I think 2017, and also with TreePAC
5 since 2017.

6 Q. Thank you. As an architect, what is your opinion for
7 increasing density within, A, the City of Seattle, and
8 within multifamily zones?

9 A. Well, I definitely agree with you, Richard, that we need to
10 accommodate the increased growth and plan for that density.
11 Seattle has a -- needs much more multifamily zones than it
12 currently has in order to accommodate that growth. And
13 multifamily is a great -- you know, I live in a
14 multifamily -- there's only three units on my particular
15 6,000-square-foot lot, so I am fortunate to have some trees
16 on my property. But there are some going up right now,
17 about five on a lot, which is a bit more dense. So I do
18 think we need more density. We just have to do it -- do it
19 right, as many people have mentioned before.

20 Q. Thank you. Have you been involved in the review or
21 preparation or petition of other citywide SEPA decisions?

22 A. With my work with the university, I have not. I have been
23 involved in terms of petitioning, and also as an expert
24 witness for the recent mandatory housing affordability
25 appeals. I was testifying on behalf of 24 community groups

1 on the issue of (inaudible). I also did testify a little
2 bit on a recent Queen Anne Community Council appeal that
3 increased the number of backyard cottages in single-family
4 zones.

5 Q. Very good. Thank you. Are you familiar with the townhouse
6 zoning reform SEPA DNS proposal that is the subject of this
7 hearing?

8 A. Yes, I read all the published documents that the city has
9 issued on it, and have also been very involved in this
10 appeal with the group.

11 Q. When did you become aware of this?

12 A. It was a bit of -- bit of a surprise. I think I'm one of
13 the few geeks that get the department public notices every
14 Monday and Thursday, and it kind of stumbled in my e-mail
15 with the listing of the other public notices. I probably
16 otherwise would've missed it. It was I think published
17 November 15th, 2021. But if I hadn't stumbled across that,
18 I probably would never have heard about it.

19 Q. Did you review the SEPA documents then that were published,
20 and if so, what were your observations?

21 A. Yeah, I looked at the exhibit (inaudible) is Exhibit No. 3
22 for the issues that we're most concerned about that the
23 plants and animals, access to vehicles, the nature and the
24 habitats for nature, height (inaudible) and scale issues.
25 And I was surprised I guess as we've been hearing from

1 others in terms of the amount of items being written off, I
2 guess, if you want to say, that there was -- this is a
3 non-project action. There's no need to review.

4 Now, I do understand from the mandatory housing that
5 they're -- that, you know, it's gone through some review at
6 that stage back in -- when that was first initiated in 2017
7 and finally legislated in 2019. But at the same time, the
8 amount of density is being proposed to be increased, and
9 there are some ramifications that I'd like to testify on
10 that today as well.

11 Q. (Inaudible). Have you reviewed the Office of Planning and
12 Community Development's core documents and Exhibits 1 to 18
13 that were submitted in response to the townhouse reform
14 appeal?

15 A. I have, and what I wanted to do, if it was okay, is to
16 review some observations relative to the environmental
17 issues. Two of the core exhibits, one would be, I'd say, a
18 good example of what the city might want to pursue. And
19 another of those core documents, which I would say would be
20 highly impact -- would have a much more impacts to the
21 environment. And I think the two that I'm looking -- I'd
22 like to talk about is the No. 9 to start and No. 13 to
23 (inaudible).

24 MR. ELLISON: Can you bring up City's Exhibit No. 9,
25 please?

1 Q. (By Mr. Ellison) Okay. Here's one of the city examples.

2 This drawing has already been referred to in prior

3 testimony. Please, would you just briefly describe for the

4 record what the exhibit shows?

5 A. So this was -- yeah, as you mentioned, it was shown before,

6 so very briefly, it's a -- shows a site plan shown on an

7 angle to match the angle of Sand Point Place NE. And at the

8 street front on the upper left-hand side, it shows a series

9 of three rowhouses, a drive -- driveway access, and then two

10 rowhouses, so five altogether facing the street. Then on

11 the rear part of the site, it dashes in two -- it talks

12 about parcel B which was already solved, I believe, by the

13 lot boundary adjustment or lot -- or lot subdivision. And

14 parcel B appears to dash in two structures, but the two

15 structures have not been identified.

16 And it also shows a bunch of dimensional information on

17 it. It shows areas for bicycle parking. It shows area for

18 stormwater collection. It shows the type of pavements that

19 are being used and access ways for pedestrians. It also

20 shows five vehicle parking spaces for the five rowhouses.

21 Q. Is there any other observations you wish to reflect on in

22 the document here?

23 A. You know, one of the things that we had asked for with the

24 interrogatory process was more information about the

25 complete development, given that it refers to parcel B and

1 the dashed lines. The response to the interrogatory was to
2 go help yourself at the SDCI drive portal. So they also
3 responded by attaching several documents. We received that
4 I think a week or so before the appeal hearings.

5 So what I'd like to do is share five of those documents
6 that are relative, relative to this project. And we
7 compiled -- I thought we compiled them as a separate PDF.
8 I'm not sure if we had that handy. If not, I can probably
9 pull it up.

10 Q. That would be Supplemental City Exhibit 9. 5032, 5034 Sand
11 Point (inaudible) PDF.

12 A. That's right. All these documents are already part of the
13 public record. There's not -- there's (inaudible)
14 documents. And on mine, I had to rotate the first page, so
15 we'll see what -- what you come up with.

16 Q. We're in the process. Is it an illustration image?

17 A. No, it's -- it's architectural and engineering drawings.
18 And there's also an arborist report for this particular
19 development from the City Exhibit No. 9. Now, I won't be
20 going through the arborist report. That's not my
21 qualification. But I think you might have an arborist
22 testifying as well if needed.

23 Q. We're going to have to ask you to pull it up, David, because
24 we're having problems up here finding the document.

25 A. Oh, good. Let me see if I've got it here.

1 HEARING EXAMINER: Which exhibit number are you pulling
2 up?

3 THE WITNESS: It's not exhibit. It was just a compilation
4 of the -- some of the drawings that we received, or some of
5 the drawings that I pulled up to further describe this
6 development.

7 Q. (By Mr. Ellison) So these are from city documents you're
8 saying that came from the -- your correspondence with the
9 city and the interrogatory?

10 A. Right. Are you seeing anything?

11 Q. Yes.

12 A. Seeing at the same time? Okay. All right.

13 Q. (Inaudible) get rid of the right arrow there just on the
14 right-hand side to Exhibit 9 over there.

15 A. Oh, okay.

16 Q. Thank you.

17 A. So this is one page, but we didn't have the prior
18 information with the same time (inaudible) so prior to the
19 development plans, this is the existing plan for that site.
20 As you can see, there are several trees in the -- around the
21 site. In the backyard there's at least five or six
22 significant trees. In the front yard there's three -- two
23 trees in the front yard plus a tree in the neighbor's yard.
24 And in the street, there's one large tree and one -- one
25 smaller tree according to the diagram.

1 The next page shows a little bit of -- shows, like, the
2 landscaping drawing, and what I basically wanted to
3 highlight here is the -- there is one tree that's being
4 added to the site after all those other trees are being
5 cleared. I'm think- -- I was told that -- you know, I
6 haven't been to the site. I think our arborist has been.
7 But I think they were trying to save one of the street
8 trees. And there was one exceptional tree in the back that
9 I think they're going to save.

10 The next page also shows the tree that was planted in
11 this area which was a good sign, I thought. But as you can
12 see, pretty much the rest of this site is all pavement and
13 impermeable surfaces.

14 I'm going to skip by the arborist report. Not my
15 expertise. But they did do an evaluation of the trees on
16 site.

17 And the final drawing I wanted to share with this one,
18 if I can get this rotated, was an underground -- I know
19 there was some testimony on some underground services. Let
20 me zoom in here. And you recognize the site again with this
21 drawing. What's added to this drawing is some blue lines
22 which I believe are some stormwater drawings, stormwater
23 piping, I should say, and some red lines which may also be
24 stormwater or sanitary.

25 And I'm going to zoom in on the center area of this

1 site so you can see a little clearer. And what I noticed in
2 that area where the -- let's see here. Let's see. I might
3 not be able to do this.

4 Is the image coming up very fuzzy on your side and
5 distorted?

6 HEARING EXAMINER: No, I can see it very clearly.

7 THE WITNESS: Okay. Excellent. All right.

8 A. All right. So at the bottom of this drawing you'll see
9 there's, like, a circle with the No. 11 in it, which is
10 basically located between the single-family residences on
11 the right-hand side and the three rowhouses on the left-hand
12 side. It's my understanding that those are the underground
13 stormwater collection features, which is probably over
14 permeable -- collecting water off of a permeable surface.

15 And then that's going into -- towards the bottom of
16 that are round containment collection basin, and that's the
17 same location where the tree is planted. So that my point
18 is here, that basically even though there is one tree
19 planted and it's checkmark on that green -- the green -- the
20 green checklist, that tree won't really survive, or it's
21 going to cut into this basin, which I kind of show a
22 cross-section on, cross-section here. So this is I guess an
23 example of there is just way too much ingenuity required to
24 handle stormwater, sanitary, parking, and there's basically
25 no open space remaining whatsoever to accommodate the

1 requirements needed for a typical townhouse and rowhouse.

2 I'm going to stop sharing if there's no questions on
3 this.

4 Q. Just to clarify, so you're saying that one -- this is one of
5 the properties --

6 MR. MITCHELL: I'm sorry. If I may, Your Honor, could we
7 have that plan set, the full plan set marked as an
8 appellant's exhibit as well?

9 HEARING EXAMINER: Yeah. I've been seeing it as
10 illustrative, but if the parties wish to admit it into the
11 record, we can go ahead and do that. I assume, though, no
12 concerns with that, Mr. Ellison?

13 MR. ELLISON: I don't have any concerns with that, though
14 I would make the suggestion that if it is possible to rotate
15 the images prior to submitting it, then it would make it
16 easier for all the parties to see. And if it was possibly
17 done -- I don't know if it's possible to have that done
18 before the arborist gets a chance to testify, then --

19 HEARING EXAMINER: Well, I think the logistics of
20 submittal probably happen later, not immediately.

21 MR. ELLISON: Okay.

22 HEARING EXAMINER: So right now I do not have an
23 electronic or hard copy of that particular document.

24 MR. MITCHELL: And that would be the full plan. And I'm
25 referring to the full plan set, even the portions that were

1 glossed over.

2 HEARING EXAMINER: So actually, the Seattle Times article,
3 by the way, I think that became 77. 78 is the plan set for
4 the Sand Point Way project, which has further detail on the
5 material that was provided with the city exhibits. I think
6 was that 8 maybe or --

7 MR. MOEHRING: I'll say it was very difficult to find
8 because it was under four different addresses on the SDCI
9 portal, but nevertheless, we tracked it down.

10 HEARING EXAMINER: Okay. Well, anyway, it's submitted as
11 Exhibit 78. Just a reminder, the parties will need to have
12 both a paper copy and an electronic copy of that submitted
13 to the examiner's office just the same way you submitted the
14 other exhibits.

15 Q. (By Mr. Ellison) And just to clarify, David, this is one of
16 the six sites that the city had used as examples for, you
17 know, sample LR1 development, correct?

18 A. That's right. And just a quick summary on this one,
19 Mr. Ellison, the number -- the site size was about 7,500
20 square feet. Before subdivision, that would allow about
21 five dwellings. After subdivision it had the five plus the
22 two using that development technique that's being referred
23 to.

24 There is very little space for my site features.
25 There's basically only space for vehicle access and vehicle

1 parking. There is all underground -- there's very expensive
2 underground struc- - underground stormwater containment
3 system that I can't -- I can't fathom how that would be
4 financially feasible for most investors and developers to
5 proceed that route rather than just allowing nature to do
6 its own work. And that the remaining space for retaining
7 and planting significant trees was zero, even though there
8 was a medium-sized tree (inaudible) the two-inch caliber, I
9 don't know, (inaudible) medium-sized tree planted over the
10 stormwater retention basin.

11 So that was the bad example from the city. And if it
12 would be okay with you, then I would share the good example.

13 Q. If OPCD is planning to use this particular model for future
14 legislation, should the court documents also feature such of
15 these impervious areas, tree canopy retained or removed, or
16 locations of stormwater control?

17 HEARING EXAMINER: Mr. Ellison, just if you -- I caught
18 that, but if you could in the future maybe sit a little
19 closer to the microphone. You got a little -- it was a
20 little hard to hear.

21 MR. ELLISON: I'm sorry. Is this any better?

22 HEARING EXAMINER: No, that's all right. Yes, thank you.

23 Q. (By Mr. Ellison) If the OPCD is planning to use this as a
24 model for future legislation, should the court documents
25 also include the features such as impervious surface areas,

1 tree canopy retained or removed, and stormwater control
2 features?

3 A. Oh, definitely I think just like your testimony yesterday
4 regarding even Exhibit No. 7 that just basically showed the
5 number of units, it didn't have any information on it
6 relative to, you know, trees or (inaudible) areas or
7 impervious surfaces. So we really wonder what, if any,
8 evaluation of those environmental components have been
9 conducted on these core exhibits.

10 Q. Who will be responsible for -- is that the project manager?
11 I mean, who is responsible for sort of overseeing and, you
12 know, noting, hey, there's something out of place here;
13 you're putting a tree on top of (inaudible) -- trying to put
14 a tree on top your water heater?

15 A. Well, I don't work for the city, but I'm imagining that they
16 assign, like you mentioned, like a project planner to each
17 of the projects. The little I do know from looking at
18 public information documents on different sites is that they
19 have multiple people and multiple things and kind of an
20 overseeing planner. So it may be sometimes that their
21 planner may be looking just at the engineering of the
22 stormwater system, and another person may be looking at the
23 landscape and planting. That's just my guess, though.

24 Q. Could this particular example be modified to avoid the
25 city's determination of non-significance?

1 A. Oh, yes, definitely. One of the things is simply to -- all
2 the testimony I've ever heard about the benefits of seeing
3 trees out your windows, having birds and natural habitats
4 live within those environments, the cooling of -- the
5 cooling aspects of the tree canopy. If these elements are
6 moved out to the streets and (inaudible) from sidewalk on
7 one side to the sidewalk of the neighboring street and
8 everything else is in full buildings, we're going to have a
9 lot of hot spots, a lot of people who will not be exposed to
10 green areas and a lot of nature that's going to be removed
11 from our city.

12 So this particular example, in my opinion, could
13 benefit from relaxation possibly of parking requirements
14 within the site. But that has its drawbacks that needs
15 studied, too, because then you're pushing -- my
16 understanding from another New York Times article is that
17 outside of the city core of Seattle, 80 percent of Seattle
18 households have at least one vehicle.

19 So if you exclude parking from inside the site, you're
20 pushing out to the street. I think there's been some
21 studies before on this in terms of how can that be
22 accommodated, and it really can't. So maybe it means that
23 parking has to go inside of buildings so that you have
24 access, but you're not taking up open space to accommodate.
25 Of course, there's expenses to that.

1 Another approach is simply relook at the density being
2 proposed. The next example we're going to see accommodates
3 parking in a different way that doesn't gut the rest of the
4 site from its environmental possibilities. And we're going
5 to talk about that. I can maybe offer another
6 recommendation.

7 Q. Were there any other documents you wanted to share in
8 relation to this?

9 A. Yeah. Exhibit -- City Exhibit No. 13. And that's what I'm
10 referring to as kind of the good example. And by
11 coincidence, that example is also in my neck of the woods at
12 3408 34th Avenue West.

13 Q. So this is the -- this is going to be for 3408 34th Avenue
14 West.

15 A. Correct.

16 Q. And this is one of the -- another one of the sample sites
17 that the city has provided?

18 A. Yeah. Now, what you're seeing on your drawing -- and this
19 is -- I don't have -- I didn't need to get additional
20 drawings on this, because all the information was on this
21 one drawing fortunately. So I can just describe what I'm
22 seeing -- or what you're all seeing here and then provide an
23 architectural assessment of it.

24 Basically what it is, it's a larger site. It is -- the
25 prior site that we saw was about 7,500 square feet. This

1 particular site is quite a bit bigger. It's 11,330 square
2 feet. And it's located right on a major arterial street in
3 the Magnolia neighborhood, 34th Avenue West. There's
4 grocery stores and a library on that street.

5 It was formerly occupied by two small, run-down
6 cottages that were vacated and boarded up. So there's no
7 displacement caused by this. There was no heritage
8 buildings. It was on a flat site. There was no ECAs or
9 environmental critical areas relative to the site.

10 And the proposed density for this with the five --
11 basically what it shows, with the street on the left-hand
12 side, two street trees. Unfortunately, those street trees
13 were just deter- -- just removed by SDOT for some reason
14 and -- but they'll be replaced, I'm sure. So then there's
15 five rowhouses up along the street that you can kind of see
16 with -- each of those rowhouses have a roof deck. Then
17 there's a gap of about 34 feet from the back of -- back of
18 the roof deck of one building to the roof deck of the
19 adjacent two sets of townhouses.

20 So all in all, there's nine residential units on this
21 11,000-square-foot site. If you do the simple math, 11,330
22 square feet divided by the 9 dwellings, that comes to one
23 dwelling for every 1,260 square feet. Keep in mind that the
24 proposal is one dwelling for every 1,150 square feet. So
25 this particular example is actually less dense than what the

1 city is proposing.

2 And it shows. It shows in that you have more
3 comfortable open space. You have a place for new trees to
4 be planted. And not only for new trees to be planted, but
5 the trees to grow and mature in both (inaudible) and in
6 canopy. And that's something for an arborist to elaborate I
7 guess on.

8 And the benefit that I was talking about before with
9 this scenario is that it's located on an alley so that all
10 the parking spaces that are required, one parking space per
11 dwelling is accessed from the alley. So you're not coming
12 into the middle of the site and gutting all the possibility
13 of having open space amenity areas and spaces for trees to
14 grow. It's very efficient. You don't have, you know, the
15 24-foot-wide -- or 22-foot-wide view from maneuvering
16 spaces.

17 So there's definitely -- I do regret that it did
18 move -- remove a lot of trees or remove three exceptional
19 trees. It removed the two street trees, like I said. Two
20 of the neighbor's trees to the south were removed.
21 Everything was taken out. But at least, at least with this
22 example -- and I think it's due to the amount of density
23 that's -- that it turned out to be here -- that there was --
24 and it's largely also due to the access from the alley for
25 the vehicles, that at least there's some chance for green

1 spaces. A little -- witnesses testified -- Ms. Wolf
2 testified that people could look out their window and relate
3 to trees and nature and (inaudible) living.

4 There's also very reasonable exterior amenity areas.
5 Although there was little rectangles kind of shown, that
6 prior example, example No. 9, there are leftover spaces.
7 There are spaces on top of these stormwater retention basin
8 that would be a place to put out a table or grill or even
9 have family members engage in outdoor activities.

10 And the other good thing about this example is that the
11 buildings are clustered. Unlike in the prior example where
12 it showed two separate stand-alone buildings in the
13 backyard, these buildings are clustered sharing a wall, more
14 energy efficient.

15 Q. Okay. Thank you. I believe you've shown two different city
16 examples, one seemingly for and the other one having set
17 forth terms of certain levels with (inaudible) facts in
18 relation to trees and open space. There are a few -- are
19 there any other (inaudible) good or bad examples that OPCD
20 should be studying in order to better access the range of
21 alternatives that might be provided developers in designing
22 the projects?

23 A. Yes. Let me share that, too. But are you seeing my screen
24 now with the --

25 Q. No, I'm not.

1 A. Okay. Just to -- let's see, sorry about this. I want to
2 share an illustrative image as well and see if we can do
3 this. Okay. Can you see the image of a series of rowhouses
4 along a street?

5 Q. Yes.

6 A. Okay. So just going back to the point of having enough
7 space for trees, this particular example, again, in my neck
8 of the woods at 3015 30th Avenue West, was recently built, I
9 think completed last year. I think it has four rowhouses at
10 that street, and at least two townhouses in back, maybe more
11 that you kind of see on the left-hand side.

12 But what you see in this image, eventually this -- as
13 this street is built out, there would be another structure,
14 probably just as tall in the foreground so that the two
15 sides -- the side of one building, one facing the side of
16 the other building. And with rowhouses, they're -- you can
17 go as much as a zero-foot setback if you're going up against
18 another rowhouse. So I'm not sure what happens with those
19 windows.

20 But my point is, can you -- if you can barely see the
21 tree that has been planted in front of the -- between the --
22 front of the rowhouses in the street?

23 Q. I can see that a little bit. If you might blow the image up
24 or at least go ahead and --

25 A. Here's a better view of it. So basically in this -- with --

1 you only need, like, a five-foot setback with townhouses,
2 rowhouses. In some cases that works because you may have a
3 good right-of-way green space. In a case like this, it
4 doesn't work because you might be right up against the
5 sidewalk. In my perspective, it doesn't work.

6 You'll see two plants or two trees here. Of course, it
7 is the winter season for deciduous trees, but as you might
8 imagine, as these trees mature, and being so close to the
9 building, next to the windows like this, either the tree is
10 going to die, or it's going to affect the building that
11 they're going to want to cut it down. So eventually those
12 trees that were planted that marked off on the checklist
13 will be gone.

14 So I did want to share for the purposes of looking
15 at -- for SEPA requires looking at alternatives on how to
16 make things work. And we've seen the provided site plans
17 only. But I wanted to share on a site level what the
18 looking alternatives might mean. And I prepared -- I had
19 two exhibits prepared that I'd like to share. I think one
20 is -- the first one is 19, and the second one is 19B.

21 Q. So your example of 19 should be 2213 NW 63rd Street.

22 A. And this, again, is a good example. It was prepared by a
23 Seattle architectural firm. What you see in the first
24 drawing here is the site -- oh, this is the -- I'm sorry,
25 this is the bad example. Maybe I'll start with the bad and

1 move to the good.

2 This particular site is in Ballard at 2213 NW 63rd
3 Street. What's shown right now is the proposed drawing or
4 the proposed design that's actually since been built. And
5 what it had was three rowhouses in the front. It used a lot
6 subdivision, and added a single-family residence in the
7 back. (Inaudible) subdivision, the development technique
8 would not have been applied and would've just been able to
9 do rowhouses under the townhouses.

10 But in the process, there was a grove of trees. Now,
11 here, two of the grove -- two of the trees in the grove
12 were -- already fell down due to development to the
13 right-hand side. And the city did not require that the
14 grove -- the grove commission be honored. But what we
15 wanted to -- what we wanted to show was there was other
16 choices to maintain that grove and to also maintain -- you
17 can see some of the neighborhood -- neighbor trees to the
18 bottom of this drawing that were very close to the
19 foundation excavation work as you can see on the drawing.

20 So on the next few examples, if we just page through
21 from the -- to the next one. What you see very commonly is
22 without subdivision, again, very comfortably fitting the
23 three attached townhouses all in and being able to maintain
24 that grove. That was not pursued.

25 The next image, or next page down, shows another

1 option. This showed two rowhouses in front and two
2 townhouses in the back. Again, trying to maintain those
3 trees. That was not pursued.

4 Next option. Again, same type of configuration, just
5 modified it, (inaudible) and over did the next two
6 (inaudible) as well. This one is a little bit hard to reach
7 where you have rowhouses offset. It also sacrificed some of
8 those trees, so not a very good example. And the next one,
9 the last one here, kind of clustered the buildings and also
10 tried to use the parking within the building as well and get
11 some yard space.

12 So there were some options to consider, but none of
13 those were pursued, and the development went -- it cleared
14 out the remaining grove of trees. And also it impacted the
15 neighbor's trees.

16 The last exhibit --

17 HEARING EXAMINER: Mr. Moehring, just one quick
18 clarification question. From your perspective, were the
19 preferred options A through C and E? I just wanted to
20 clarify.

21 THE WITNESS: That's correct.

22 HEARING EXAMINER: Okay.

23 THE WITNESS: A through C.

24 A. The next one is a good example, 19 -- Exhibit 19B I guess it
25 is. Yeah, thank you. This is also in the Ballard

1 multifamily area this is called. The proposed -- what was
2 originally proposed -- and this one was good not only that
3 the development changed, but it also changed to make
4 everybody happy I think, in that the same number of dwelling
5 units was provided, and the trees were retained.

6 This particular example, let me describe this. What
7 you see here is three rowhouses facing the street. There
8 was one single-family residence in the back. That
9 single-family residence, SFR as it's identified, you can see
10 it was encroaching within a neighbor's tree canopy. With a
11 critical root zone it would have been into the excavation
12 area.

13 And also, the three rowhouses in front, it was also
14 going to cut into a large, significant tree, more of an
15 ornamental tree out by the street. So the same architect --
16 actually, this architect who worked on this was -- lived
17 right next to this property, so they were motivated to look
18 at this, came up with several examples.

19 And I'll look at the next few pages here. There's only
20 three pages. First option was to, you know, move the
21 parking in back, although, having park view closer to the
22 top of (inaudible) is not the best thing either, although
23 I've seen some examples how to do it. That is option A.
24 That also sacrificed a unit.

25 Option B, again, had a similar cluster to what we saw

1 before. And option C, again, had a similar separate
2 arrangement that it had before.

3 If you go back to the first -- the primary option that
4 the developer was proposed, what happened is that the two
5 owners next door who were concerned about their tree, they
6 had to file an appeal. The developer pursuing the appeal
7 decided that they were going to reconfigure their
8 development. And basically what they did is they were able
9 to get the parking waived, I think because of its proximity
10 to transit, being in Ballard (inaudible) area.

11 And they had did four rowhouses up in front. And
12 you'll hear that the -- later on, too, four rowhouses --
13 they moved the four rowhouses back --

14 (Inaudible background noise)

15 HEARING EXAMINER: We're going to mute somebody.

16 THE WITNESS: Okay.

17 HEARING EXAMINER: There we go.

18 A. So they had moved the four rowhouses back off the front of
19 the street to retain the front tree, and plus left the
20 neighbor's tree in the back, retained and healthy without
21 impacting its critical root zone. So I am going to stop
22 sharing this.

23 HEARING EXAMINER: And just a note for the record, Mr.
24 Ellison and Mr. Moehring, I do not have a hard copy of
25 Appellant Exhibit 19B, so we'll just need to make sure that

1 that is taken care of following the hearing.

2 THE WITNESS: Okay.

3 Q. (By Mr. Ellison) I believe on the first day of testimony
4 that in case a tree canopy can be assuaged from townhouse
5 properties, and we can look at sort of how to plant trees in
6 right-of-ways and other parts of the city as an alternative.
7 Is that an environmentally supportive direction to pursue?

8 A. Yeah. I prepared one other exhibit, and I'd like to share
9 that if I could. I think it's Exhibit 15 relative to space
10 on a site for trees versus space on this -- 15 and 15A.

11 Q. And as part of that, are you suggesting that trees could
12 just be planted in the street and not on the properties,
13 or that's what you're going to pursue?

14 A. No, I don't think so, just by looking at the city's goals.
15 I think it was part of the earlier testimony that -- with
16 the 2016 tree canopy assessment there was a goal for
17 multifamily to have at least 20 percent of the land area,
18 including the right-of-way, of multifamily areas to have a
19 tree canopy. And there looking at some studies, I don't
20 think that is possible if you don't have trees also on the
21 development site.

22 Q. Okay. Thank you. Could we have Exhibit No. 15, please?

23 A. And I'm going to skip by a lot of the first pages because
24 it's already been testified on. I know here we've done it.
25 So I think if we go to page 8. And I'm going to go really

1 quickly through these so I don't -- so there were some --
2 page 8, again, is right -- cut and paste right out of the,
3 you know, Exhibit No. 1. On the right-hand side showing the
4 management units and what percentage canopy cover that they
5 have. Say, for example, that the Ballard area that we just
6 did, Exhibits 19 and 19B on is within that 10 percent to
7 13 percent canopy cover area according to the map here
8 shown.

9 On the left-hand side that I took from the City of
10 Seattle, it's a general zoning map just to kind of show
11 there's a correspondence. So if you, again, look at the
12 Ballard area where the low-rise multifamily zone is in
13 the -- in a darker-tone color, and you glance over and look
14 at the canopy area, you'll see that there's a direct
15 correspondence of where we have these multifamily zones and
16 a reduction in the tree canopy. So it's a concern that if
17 we don't watch the remaining tree canopy that's there, these
18 areas are going to become even more affected.

19 So if you go to the next page, there's a -- as we also
20 had shown one of the exhibits, these multifamily areas,
21 low-rise multifamily zones are often next to other denser
22 zones, which do not have trees in them. I think you've
23 testified on -- Mr. Ellison, with Exhibit No. 22 I think it
24 was. So that there's a -- there's more of a demand I think
25 for low-rise LR1 to have trees to compensate for those

1 immediately adjacent denser areas.

2 Next page. There's also some testimony -- one more
3 page. There we go. One more with the blue arrows. Yep,
4 thanks. There's also some testimony about rowhouses versus
5 townhouses, and I wanted to highlight that here again with
6 rowhouses having space behind them, there would be more
7 density, you know, out by the street. And this, with the
8 rowhouses so it could afford not having structures behind
9 it. However, again, with the development technique, the
10 concept of more density by the street is not being followed,
11 or the intent is not being followed.

12 So to show the intent, I wanted to show the next slide
13 of density with tree canopy. And the image on the -- what
14 you see here is a rendering overlaid on top of a photograph.
15 That photograph again shows examples -- I don't honestly
16 know where this photograph is. I think this has been
17 prepared sometime ago. Canopy for that location, but that's
18 not the point. The point is, it shows the old concept of
19 having rowhouses with many units lining the street and then
20 having space in back for exterior amenity areas, trees,
21 natural habitats to exist. And that's -- this other
22 rendering here is an example from a Seattle project.

23 Next page. Am I missing one slide? Let's page -- go
24 up to page 14. Yeah, here we go. This is in Georgetown.
25 It's a proposal. And, again, one of the fair, rare and few

1 where they kept original concept where it shows basically
2 Carlton Avenue South is the street along the top, and
3 South -- let's see -- South Warsaw Street -- I just want to
4 make sure I got that title right -- to the right-hand side,
5 which would be north, with five rowhouses -- or, I'm sorry,
6 six rowhouses along Warsaw Street; another it looks like
7 seven, eight rowhouses along Carlton. But what you also see
8 here is there's also pockets in front for exterior amenity
9 living along the street. There's pockets in the back with
10 those light blue tone places to sit outside. There's a
11 green area for different people in this community to
12 congregate. And there's also a lot of street trees and
13 trees in this back area. This is the original intent of
14 rowhouses and why they had indicated to have density out by
15 the street and no other dwelling structures behind that.

16 Finally, if you want to look at the SEPA impacts for
17 what I think should've been studied, which is the next
18 slide. And we will skip right to slide No. 19. And this
19 will be the last slide here.

20 So basically there's lots of ways that they can plan
21 this. We already talked about the benefits of not having
22 the parking within the site if it's accessed from this
23 cross-street. But these two examples basically showed the
24 difference between on a 6,000-square-foot lot, if you had
25 four versus five dwellings.

1 What happens when you have more dwellings is maybe the
2 floor area doesn't change or the overall footprint of the
3 buildings don't change, but what does change and what does
4 make an impact is the -- where do you park the vehicles? If
5 the units -- as an example, you might see on the right-hand
6 side become too narrow, you know, basically for a parking
7 space, if the parking space outside the nine-foot wide, on
8 the inside you need at least eleven feet. You also need to
9 get up to the other floors.

10 So you'd have 11 feet for your parking spaces inside.
11 You'd also have another three-foot for a corridor or maybe a
12 three-foot stair going directly up to the other floors. So
13 you need to have a minimum width of your rowhouses in order
14 to have parking inside. So often that's not possible. And
15 when it's not possible, that parking space has to be
16 outside.

17 What does that do? That pushes the buildings further
18 apart if you're going to have, you know, more density. So
19 whenever you add density, you're adding a parking space,
20 which if it cannot be accommodated outside, it means you're
21 taking up outdoor space which could've had trees; it
22 could've had a place for permeable surfaces and stormwater
23 collection. It could've had a place for exterior amenities.

24 The other -- there's a lot of other things that are
25 associated with additional dwellings. There is bike

1 requirements. As we know, this proposal is contemplating
2 those because it's really hard to have the bikes being
3 accommodated when you're having these dwelling units.

4 And also not often thought about, unless you actually
5 live in a townhouse area like I do, is we have three trash
6 containers each. And that -- the code actually mandates an
7 area set aside for each unit, which is two-foot by six-foot
8 I believe it is. It might be the two-foot by five-foot as a
9 trash area. So two-foot by five-foot times four units is a
10 certain area. Two-foot by five-foot times five units is a
11 larger area. Again, you're taking out useable land space.

12 But you're also, by doing that, is you're reducing the
13 ability to have the code-required exterior amenity space.
14 The code requires for townhouses and rowhouses at least
15 25 percent of the lot area in exterior amenity space. So if
16 you have a 6,000-square-foot site like this, you're talking
17 about having at least 1,500 square feet of exterior amenity
18 space. Half of that can be up at the rooftop. That's why
19 you see so many of these structures that have flat roofs
20 and, you know, decks on top of their roof, because they just
21 don't have the ground space to accommodate the code-required
22 exterior amenity space.

23 If we page up one space -- one page, I'm sorry. Again,
24 I just wanted to show that you might be able to benefit,
25 again, when you have an alley, because in an alley, you're

1 not gutting out that center green space. So basically what
2 I think the city, if they would've done a thorough study,
3 not only of their own documents -- and you can stop sharing
4 this. If they had done a thorough study not only of their
5 own examples, but of other examples around the city, or just
6 a simple conceptual study like I've presented today, they
7 would've identified some maybe additional things that they
8 could've pursued, such as -- you know, maybe right now
9 they're talking about only doing it for interior lots. You
10 know, they're not going to touch corner lots, which I think
11 is a great idea.

12 Well, perhaps I think, if they think about the
13 exterior -- or the environmental impacts, maybe it should
14 only be on lots that have access to alleys, and maybe those
15 lots that don't have alleys and a more reasonable density so
16 that they can maintain some of the environmental aspects
17 that we so need as has been testified by prior witnesses.

18 HEARING EXAMINER: Mr. Moehring, one more -- another
19 clarifying question. I just want to take you back on that
20 Exhibit 15. It's my understanding that the project that you
21 discussed that's at Carlton Avenue South and South Warsaw
22 Street is a good example in your view; is that correct?

23 THE WITNESS: That's an excellent example.

24 HEARING EXAMINER: Okay.

25 THE WITNESS: One other thing I have an interest -- did I

1 answer your question?

2 HEARING EXAMINER: Yes, you did. Thank you. I just
3 wanted to confirm.

4 THE WITNESS: Did I also -- do we also have Exhibit -- the
5 one that follows -- or accompanies this, 15A?

6 HEARING EXAMINER: Yes, I do have 15A.

7 THE WITNESS: Okay, because the question I think you
8 raised was about -- or Mr. Ellison raised was about street
9 trees. And so, again, in the context of -- I just took a
10 snapshot of a portion of Ballard, again, using King County
11 parcel viewer, which owns the, you know, (inaudible) lines,
12 this basically shows -- I'm not sure if I can see the --
13 what street this is. But it's more -- it's more shown not
14 for the street itself, but as an example of what currently
15 happens.

16 And in this example on the upper side, which is north,
17 you'll see some rowhouse developments. And, you know, a lot
18 of those are reasonably accommodated. There's, like, three
19 rowhouses on a, you know, original -- the original parent
20 lot next to that with -- again, with a zero-foot setback
21 gives it more rowhouses. That's the original concept I
22 think when Seattle introduced this in its legislation, and
23 to leave the back open.

24 Now, here in this back example, the -- you can't really
25 tell where the shadow lines -- there's a parking space, but

1 there is also some green space behind the shadows there.
2 But you also see -- typically there's no more than three
3 dwellings per lot on the north side of the street. On the
4 south side of the street you'll see some of the -- you'll
5 see one example where there is four dwellings on a parent
6 lot that's on the lower left-hand side. You can kind of see
7 four separate -- yeah. You can kind of circle it right
8 there. What basically it is is four separate what they call
9 single-family residences within a multifamily thing. So
10 they took away the efficiency of putting the buildings
11 together. And the consequence of that environmentally is
12 that there's no green space. There's no trees. It sells
13 for more money. But that's my understanding is the
14 individual stand-alone building on these sites will have a
15 higher market value. But its environmental impact's much
16 greater, if you can imagine this carrying -- carrying along
17 throughout the City of Seattle would be significantly
18 higher.

19 So you also see on the streets, there are some street
20 trees. But how can you get 20 percent of the multifamily
21 area in canopy cover just by the street trees? And keep in
22 mind that typically there's also power lines and cable lines
23 overhead that splice and dice and also maximize the height
24 of our street trees.

25 So the next slide, which is the last slide, page 2, I just

1 tried to do a rough, you know, calculation. So if you have
2 a 5,000-square-foot lot like this example had -- and I know
3 this is not correct, but typically the right-of-way from
4 right -- from right-of-way to right-of-way, it's about 60 to
5 70 feet. So I don't think you're going to get a 20-foot
6 area. But in order to have a 20 percent canopy cover, that
7 entire dashed area to the top would have to be covered with
8 trees to meet our city's goals. And again with the
9 constraints of driveway access, utility lines running
10 underground, overhead utilities running above, we're just
11 not going to get there with our current goals, with the
12 street trees. So hopefully that answers your question.

13 Q. (By Mr. Ellison) David, I'd like to ask you a question.
14 Looking at this picture and the one you just brought up.
15 And that is that it appears to me -- like, if you go to the
16 picture on 4, looking at the three townhouses, rowhouses
17 essentially, you see a whole cluster of them. The only tree
18 I really see, it looks like it's coming from the
19 single-family residence that adjacents on the left-hand side
20 there. There really aren't a lot of trees in the backyard
21 because it looks like it's all parking.

22 And it seems that there is room for trees in the
23 backyard, but they're not utilizing that space. It looks
24 like there's room -- I see a car parked in one, and there's
25 a lot of space between the house and the car that could be a

1 place for planting trees.

2 And then if I look at the fourplex you had on the lower
3 left, it also looks like there's room for trees between the
4 houses, but none are being planted or none required. So it
5 seems to me that -- you know, I don't know what is required
6 for some of the utility lines and other complications of
7 construction, but it seems to me that there might be
8 opportunities for putting trees on this property but in one
9 situation parking's taking up a lot of the space, and in the
10 other they just -- it doesn't (inaudible) but requirement to
11 have adequate planting. So I'm just wondering, am I, you
12 know, seeing this incorrectly?

13 A. Yeah, I think you're pretty much on board. I'm not sure if
14 we can zoom in at all to those clusters that Mr. Ellison was
15 talking about. Those are fairly new, it looks like, my
16 guess is. But one thing I notice right off the -- right off
17 the bat, Mr. Ellison, is that, see how far those are set
18 back from the dashed property line?

19 Now, keep in mind, the code only requires a setback of
20 five feet for rowhouses and townhouses from that light gray
21 property line that we can actually see. Then you'll see
22 some -- that building just to the east, the larger mass
23 building, is much closer to the -- or I should say the
24 right-hand side would be east. Yeah, that particular
25 building there, you see how close that is to the gray

1 property line versus those clusters of rowhouses to the left
2 of there?

3 And what it looks to me, just like the one example we
4 talked about before, which I think was 19B, they
5 intentionally set back the rowhouses. And you can kind of
6 see some young plant -- tree canopy being planted. Their
7 canopy is going to develop over the next 30 years. But I do
8 agree with you, the shadow area behind, I really can't tell
9 what's going on there. If it's all pavement, that would be
10 a real shame. I don't -- obviously they don't need all that
11 space for the parking vehicles as shown.

12 And, again, if there -- I don't have the before image
13 to see if there was a larger (inaudible) here.

14 MR. ELLISON: (Inaudible). So if Mr. Derdowski could put
15 a mic- -- mute his microphone, please?

16 Q. (By Mr. Ellison) In the proposal, David, you know, looking
17 at the assessments of plants and animals, fish and marine
18 section of the final checklist, is -- how does what your
19 work is looking at, how does that impact --
20 potentially impacts to plants, animals and wildlife? And
21 how is that being addressed or not addressed in the
22 (inaudible) checklist?

23 A. So let me respond to the (inaudible) checklist that it's not
24 being -- it's not being responded to. Even if it's -- I
25 think it was testified by, for instance, Mr. Derdowski, that

1 even if there's been some past actions, if you're proceeding
2 with new actions that are going to even further impact the
3 environment, it needs to be done now. And if it's not done
4 now, we're going to end up with a continuation of some of
5 the examples that we have seen, continuation of that core
6 exhibit number -- the city number Exhibit No. 9 where there
7 is -- there's no planting being on site.

8 And the density doesn't accommodate -- you know, and
9 raising the density as we can see also in the given examples
10 of city example No. 9 to city example No. 13 makes a big
11 difference. If it's 1,150 or if it's 1,250, that can be all
12 it takes to have the amount of green space that is needed to
13 have some of those environmental features.

14 It can also accommodate more permeable surfaces for
15 collecting stormwater versus elaborate expense of
16 underground collection systems that quite frankly, you know,
17 in my -- again, with personal experience, I'm sure other
18 townhouse owners are the same way, we're fee simple.
19 There's no HOA or no condo associate -- association money.
20 When something goes wrong, we have to battle it out. And if
21 these systems, these stormwater, underground stormwater
22 collection systems should fail or not be maintained in 20
23 years, or have to be cleaned out, getting those seven fee
24 simple homeowners or renters to agree on the tens of
25 thousands of dollars it would take to repair or clean and

1 maintain a system may be a real challenge.

2 And that's not really being -- you know, it's -- I
3 don't think it's being considered. I think it needs to be
4 considered in terms of maintenance. It also needs to be
5 considered in terms of planning and accommodating the
6 environmental aspects.

7 And also, the final point I'm going to say is I think
8 the city needs to reevaluate alley locations, those that
9 have access to alleys, compared to those locations that do
10 not have alleys. And look at the benefits of those sites
11 that have alleys as more of a better candidate to propose
12 their increase in density.

13 Q. Thank you. Are there any -- do you have any further
14 comments you'd like to make before we -- I see it's also
15 getting time for taking a break.

16 HEARING EXAMINER: Yeah, I think that we were -- it sounds
17 like we're getting close to the end, so we might as well
18 conclude I guess with the direct examination, and then maybe
19 we'll take our 15-minute break.

20 Q. (By Mr. Ellison) Do you have any last statements, David,
21 before Mr. Mitchell would ask you questions after the break?

22 A. No, I felt I've talked enough already, so I'm done.

23 HEARING EXAMINER: All right. Thank you, Mr. Moehring.
24 We'll turn to any questions Mr. Mitchell may have I think
25 after the break. It's 10:44. Why don't we take -- well, 16

1 minutes, I guess. We'll reconvene at 11:00 a.m. Any
2 questions before we adjourn? Nope. Okay. We'll adjourn
3 until 11:00. Thank you all.

4 MR. MITCHELL: Thank you.

5 (Recess)

6 HEARING EXAMINER: All right. Good morning again. We are
7 back on the record with Appeal W-21-007. I think at this
8 point, Mr. Mitchell, did you have any questions for Mr.
9 Moehring?

10 MR. MITCHELL: Just a few, Your Honor. Thank you.

11

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

13 BY MR. MITCHELL:

14 Q. Good morning, Mr. Moehring. Mr. Ellison testified I think
15 in his testimony he mentioned that the proposal would be an
16 upzone, and then he gave a clarification to that. Do you
17 agree that this proposal would -- involves an upzone?

18 A. No, my understanding of the upzone, it would be when you're
19 going from LR1 to LR2 or neighborhood residential to LR1.
20 You know, that's what I'd consider the upzone. But it is an
21 increase in density.

22 Q. Okay. And you acknowledge that there are already types of
23 development projects that can be built in LR1 zones that
24 don't have any density limits?

25 A. Yeah, LR2 and LR3, I think there's no density limits on

1 townhouses and rowhouses.

2 Q. In LR1, can apartments be built without density limits?

3 A. Actually, I don't believe they can. If you look at Exhibit
4 No. -- the City Exhibit No. 3, I think it clearly shows some
5 density limits on that.

6 Q. Let me rephrase. An apartment building subject to MHA
7 requirements in the LR1 zone, would that have any density
8 limits?

9 A. Can I check the Exhibit No. 3? Because I think there are
10 density limits, but I just --

11 Q. Oh, sure, yeah. I'll share an exhibit with you. One
12 second. It's not City's Exhibit 3, it's --

13 A. Oh, yeah.

14 Q. It's City Exhibit 17, which I'll pull up for you. One
15 second. Sorry about that. Here you go. Can you see that?

16 A. Yep.

17 Q. City Exhibit 17?

18 A. Yes.

19 Q. And now in the LR1 zone, which is this row, the top row,
20 now, there's a column for apartments.

21 A. Yeah, this --

22 Q. And so --

23 A. Footnote referred to is that footnote under (inaudible)
24 or --

25 Q. This one is 2. So if there's -- if apartments are subject

1 to MHA, which I think is this column that starts with MHA
2 suffix, then is there currently a density limits for
3 apartments in LR1 zone?

4 A. I know that the footnote requires some family-sized units to
5 be accommodated. So it's not that they can put in a bunch
6 of small, little, you know, units, but they -- but then --

7 Q. So they have to -- they have to build to building capacity?

8 A. Yeah, to (inaudible), right.

9 Q. Right. Okay, but they could build as many units so long as
10 they built to building capacity?

11 A. And provided some family units as well, yes.

12 Q. All right. And you agree that for cottage housing in the
13 LR1 zone that if MHAs required that there be no limit --

14 A. That's correct.

15 Q. -- density?

16 A. Yep.

17 Q. And you acknowledge that there's no change to open space or
18 green factor requirements that are -- that exist currently?

19 A. That's correct, yes. No changes to the open space or
20 amenity space.

21 Q. And you acknowledge that there's no change to building
22 height requirements?

23 A. That's correct, for LR1 there's no change.

24 Q. And you acknowledge that the density change is only to the
25 LR1 zone in terms of the zoning classifications in the city;

1 is that correct?

2 A. Well, that's a good question because I understand that was
3 for all rowhouses and townhouses.

4 Q. Well, let's bring up the --

5 A. So you could have a --

6 Q. Oh, okay.

7 A. You could have a non-MHA suffix LR2 or LR3 development that
8 would have less density than one unit per 1,300 if it's not
9 also increased to one unit to 1,150. So that it's a little
10 bit confusing in terms of what's being proposed. Is it --

11 Q. Oh, so your understanding is that the proposal would
12 actually change the density limits to areas of Seattle that
13 are not zoned LR1?

14 A. Well, it's not identified, so it's a bit ambiguous. It
15 refers only to LR1 but not to LR2, LR3 for the non-MHA
16 areas. So it's a bit of a gap I guess in the proposal.

17 Q. Okay. And you acknowledge that the floor area ratio is not
18 changing as part of the proposal?

19 A. Yes.

20 Q. Okay.

21 MR. MITCHELL: I don't have any further questions. Thank
22 you.

23 HEARING EXAMINER: Okay. All right. Thank you,
24 Mr. Mitchell.

25 Mr. Ellison, anything further?

1 MR. ELLISON: Yes.

2

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

4 BY MR. ELLISON:

5 Q. David, I'd just like to ask you to clarify, with the changes
6 proposed in the LR1 in this -- in this proposal -- and I
7 apologize for calling it an upzone if it's not technically
8 an upzone. This is where not being a lawyer, not
9 understanding the perhaps technicality of how it's
10 operating. But I assumed that the change in code meant that
11 it was an upzone. Perhaps that is a misunderstanding in
12 that sense.

13 But, David, if they're allowing an extra unit on each
14 of these properties for LR1, (inaudible) suggested that
15 there really is no change in the amount of coverage, and
16 therefore there is really no increased impact towards trees.
17 It is my understanding that you felt that there actually
18 were changes in the way the coverage is being operated and
19 the intrusion over potential areas where trees could exist,
20 be it utilities or otherwise. Could you elaborate how that
21 difference is from what is being suggested by Mr. Mitchell?

22 A. Yeah. And what I'd like to do if I can start out with
23 really quickly, is to refer to the testimony from
24 Mr. Staley. You might remember, I think there was some
25 questions about apartments versus townhouses. And although

1 there was testified that apartments may be more efficient in
2 terms of their building footprint on the sites, because it's
3 one building versus, you know, two or three buildings on a
4 site, they may have more parking spaces, right?

5 So it's more than just the floor area ratio. It's how
6 those floor spaces are arranged and the functionality of
7 those floors. So associating that back to townhouses, if
8 you have four townhouses on a site and that floor area has
9 been set at, you know, 1.3 times the site area, you can put
10 those as we -- I think we saw some examples, you can put
11 those four townhouses or rowhouses right next to each other,
12 and you leave a lot of the site area open. Or you can put
13 those four townhouses as four separate boxes with
14 (inaudible), access for vehicle access between those, and
15 you take out all the green space.

16 And just the fact that by adding a dwelling, you're
17 also now adding site space required for parking for access
18 for bicycles, although it's small, for trash areas. It's
19 not just simply a matter of the floor area. It's a matter
20 of that floor area, how it's configured on the site, and
21 what comes along with those additional dwellings, as we kind
22 of saw in some of the examples.

23 Q. (Inaudible) there are potential code recommendations that
24 might mitigate some of the problems with providing
25 opportunity for tree space?

1 A. Yeah. I think, like, one of the recommendations was -- that
2 I'm making is that only look at adding -- or increasing the
3 density where we have alleys because -- alley access I
4 should say, alley-way access, because then you're not
5 bringing a vehicle in along the street, along the side of
6 the potential dwelling. You're not taking that space
7 between the front and the back dwellings for vehicular --
8 for vehicular access. And when you have that access right
9 off the alley, it's a much more efficient configuration.
10 You don't need that vehicle-maneuvering space because the
11 alley's already there for it.

12 Q. Would eliminating parking requirements, reducing parking
13 requirements be another option?

14 A. Just based upon the Seattle Times data with 80 percent of
15 households having at least one vehicle, I do not think
16 that's the solution at the moment. Or if it is the
17 solution, maybe it's in certain areas of the city. Again, I
18 think only that Seattle Times data showed downtown Seattle
19 having 50 percent of the households having vehicles. We're
20 not quite Manhattan yet, but to push vehicles out of the
21 street and have them find someplace to park, especially on
22 streets where there's only parking on two sides and a middle
23 lane, like the street that I'm on with townhouses, it's
24 probably not a good idea.

25 Q. (Inaudible) also if it was to go that way would require sort

1 of more impacts (inaudible)?

2 A. That's correct.

3 Q. Another question for you. Looking at the canopy
4 requirements that are required for LR1 and then thinking
5 also about LR2 and 3 as kind of a package there a little
6 bit, you know, can the -- the LR1 I think carries the
7 greater load of canopy than LR2 and LR3. And so if you are
8 then reducing the canopy potential of LR1, then this is
9 going to impact the overall abilities for both LR1, 2, and 3
10 to hold their piece of the goals, essentially, that the city
11 is trying to achieve through its canopy goal for that zone?

12 A. Yeah, that comes along with the -- with the increased
13 density, of course, you've got less space for trees and
14 plants. So LR1 being the least dense of the multifamily
15 zone, just kind of that stepping stone between neighborhood
16 residential and multifamily. That's going to take the bulk.
17 That's going to require that the bulk of the city's goal,
18 which is 9 percent of the city overall, or within the LR --
19 or within that multifamily category where they're shooting
20 for 20 percent overall goal, since there's no opportunities
21 in LR2 and LR3 to accommodate trees because of their
22 increased density, as I think was shown on that Exhibit 21,
23 22 or -- 22 I think it is -- LR1 has to take the brunt of
24 meeting that goal.

25 Q. Really part of the problem might be that for whatever

1 reasons, it's that each builder is building out to the
2 maximum levels for these goals. And if there was a
3 requirement that there's -- say they could not build out as
4 much so that there would be sort of less -- unfortunately
5 there would be less housing per project, that might provide
6 some amenity space for trees and open space for people in
7 these other zones, but that's not part of, perhaps, you
8 know, this discussion. But the problem is that, you know,
9 can the LR1 with any reduced tree canopy basically, you
10 know, afford to lose any more canopy than it already has.

11 MR. ELLISON: That's all the additional questions I have.
12 Thank you.

13 HEARING EXAMINER: Thank you. Mr. Mitchell, anything
14 further?

15 MR. MITCHELL: Nothing further, Your Honor. Thank you.

16 HEARING EXAMINER: Okay. All right. Well, thank you,
17 Mr. Moehring, for your testimony this morning.

18 Mr. Ellison, would Michael Oxman be your next witness?

19 MR. ELLISON: Yes, I believe he is.

20 HEARING EXAMINER: Okay. Mr. Oxman, do we have you up
21 there? Yes, there, I see you. Good morning.

22 THE WITNESS: Morning.

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

25 THE WITNESS: I am Michael Oxman. M-I-C-H-A-E-L,

1 O-X-M-A-N.

2 HEARING EXAMINER: And do you swear or affirm to tell the
3 truth under penalty of perjury under the laws of the State
4 of Washington?

5 THE WITNESS: Yes, I do.

6 HEARING EXAMINER: Thank you.

7

8 MICHAEL OXMAN: Witness herein, having first been
9 duly sworn on oath, was examined
10 and testified as follows:
11

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

13 BY MR. ELLISON:

14 Q. Good morning, Mr. Oxman.

15 A. Morning.

16 Q. Thank you for attending our hearing today. Could you please
17 tell us your occupation and your professional experience?

18 A. I'm an arborist. I'm certified by the International Society
19 of Arbor Culture, Certificate No. BN-0756A. And I am also
20 qualified as a tree risk assessor, which means that I can
21 write reports that meet the city's criteria for arborist's
22 reports and have those be used by the city in its
23 administration of the tree management policy in Seattle.

24 So as we scroll through my CV, you'll see that I'm a
25 consultant, an author, volunteer. And I have 50 years

1 experience in the arbor culture profession, including
2 teaching and serving as an advocate. And I'm currently on
3 the board of TreePAC, which is a party in this appeal. And
4 I'm also on the board of the Seattle Green Spaces Coalition.

5 Q. Thank you, Mike. Could you pull up your image, illustration
6 image, photos 3 and 4, showing 3015 30th Avenue West?

7 A. Yes, I can see those on the screen.

8 Q. Okay. So looking at the planter boxes -- you'll have to
9 scroll down I think for that. Looking at the planter boxes,
10 what would you say they are for? Can you tell us about what
11 kind of plants would survive in that kind of planter box?

12 (Inaudible) they survive?

13 A. Sure. In this view we can see two trees. One of them has
14 dead leaves on it, and one of them has no leaves on it. So
15 to me, that would indicate that the tree with the dead
16 leaves is an oak tree, because those hold last year's leaves
17 on the stem persistently throughout the winter. And the
18 other tree has already lost its leaves, so it's probably a
19 different kind of a tree.

20 So these two trees are planted behind these old, short,
21 concrete retaining walls. It looks like there's a grade
22 change, which would mean that the drainage for the roots of
23 these trees is below grade, so there has to be some kind of
24 supplemental drainage system. We can see two boxes in the
25 sidewalk that look like utility vaults. So there is

1 extensive underground utility infrastructure immediately
2 surrounding these two trees.

3 So the trees are within just a few feet of the building
4 face, and it looks like the face is modulated. That means
5 that there's an overhang over the front doors, and the
6 second floor hangs out quite a bit. So there really is no
7 room for these trees to get any larger than they currently
8 are. So this would be considered a substandard planting
9 design without room for future growth of trees, which would
10 not contribute to the city's canopy cover goals.

11 Q. (Inaudible) these trees will survive these planter boxes?

12 A. No.

13 Q. Why is that?

14 A. Because a couple reasons. I mentioned that there is a
15 drainage issue because this -- the planting surface is below
16 grade, so water will accumulate there and cause soggy soil,
17 and the roots will actually drown. Another reason is that I
18 can see the width of the concrete retaining walls is maybe
19 six or eight feet, and the measurement depth to the wall of
20 the building is probably only a few feet. So there might be
21 40 square feet of soil in these containers.

22 And the drip line of the trees already extends past the
23 soil, so that means that there is not enough nutrition in
24 the soil for these trees to grow, flourish, and become
25 amenities. And therefore, as they're sickly trees in their

1 later life, maybe two, three years down the road, that
2 residents will remove these trees because of their sparse
3 appearance.

4 Q. What would be more appropriate then to go into these minimal
5 planter boxes (inaudible)?

6 A. Shrubs. But shrubs do not qualify the green factor. So --
7 so they -- they have somehow decided to push it and put in a
8 poor design in the hopes that it would be approved. And
9 judging from what I see here, this has been approved, even
10 though it's a substandard planting design.

11 Q. Are there any requirements for replacement of trees that die
12 in a project like this?

13 A. No.

14 Q. Okay. Thank you. Can we see City Exhibit No. 9, looking at
15 the Sand Point Place site plan?

16 A. So I'm not looking at that document.

17 Q. Oh, you don't want -- you don't want to look through that
18 document? Okay.

19 A. I did visit 3050 Sand Point Way NE, and I am familiar with
20 the plans, the documents for that project. And I have
21 several comments on that about the workability and the lack
22 of trees there. I'm having a problem pulling up that file
23 right now.

24 That project on Sand Point Way does contain an
25 exceptional tree, a Hollywood juniper tree that was

1 pre-existing on the site. It's about 15 inches in diameter.
2 The tree is still there, and it still looks healthy. And
3 the rest of the site unfortunately doesn't have any trees.

4 And then on the -- out on the curb there's -- it looks
5 like spots for three street trees. However, it's a rather
6 narrow planting strip, so it's unfortunate that the project
7 is dependent on those three street trees to get points for
8 its green factor. And also, where one of the street trees
9 was -- is supposed -- there is nothing there now, just
10 grass.

11 But where one of those street trees is going to be is
12 occupied by two water meters and another utility vault, a
13 storm -- street stormwater drainage vault. So there's a
14 very limited amount of soil because of the abutting utility
15 vaults where these street trees are supposed to be.

16 So, again, for site design, we would be limited to only
17 very small species of trees like pear trees or vine maple
18 trees that never get very large. Substandard design there
19 with a 34-foot-high building with little trees that are
20 going to be maybe 10 or 12 feet tall.

21 So as you can see in this diagram, there are outlines
22 of the three street trees on the far left, and that -- those
23 outlines to me are unrealistic. You know, I kind of doubt
24 that those circles are actually where there used to be
25 trees. They're probably icons that were put there by CAD

1 software. Although, I never saw this street -- this project
2 ahead of time, so I don't actually know what the trees used
3 to be there.

4 Q. Could you make some comments a little bit about how much
5 soil a tree needs in order to grow?

6 A. Yes. And there's a good example. At the very bottom of
7 this drawing, you can see that there are some steps leading
8 to the left of the drawing. And just above those steps is a
9 shaded portion that shows plants. And that -- those plants
10 are only in a strip about 3 feet wide by about 30 feet long.
11 So soil has to be in large contiguous areas. So this little
12 bit of soil here, unfortunately in the Seattle building
13 code, is combined with other little bits of soil where
14 shrubs can be, and that is the open space.

15 And, of course, because all those noncontiguous patches
16 of soil are unable to support a tree root system, then we
17 get complying with the letter of the law, amount of soil
18 space available, with the actuality, and that is that no
19 trees can grow on this entire site. The vast majority of
20 this site is taken up by two things: The impervious roofs
21 and the pervious driveways, which serve as -- well, there is
22 another lot -- there's two lots to the right-hand side of
23 here that are -- that have townhomes on them, but their
24 parking and access has taken out possibility of any trees.

25 Q. Thank you. Why don't we look at TEIR Exhibit 21C. Let's go

1 to the second slot, please. Looking at the Sand Point Place
2 before and after pictures.

3 HEARING EXAMINER: Hey, 21C is the Bertona [phonetic]
4 project? Oh, no, I see Sand Point. Never mind.

5 Q. (By Mr. Ellison) Excuse me. Can you hear me now?

6 A. I can hear you.

7 HEARING EXAMINER: Yes.

8 Q. (By Mr. Ellison) So is this a site that you did -- a place
9 that you did a site visit to? And if so, basically, what
10 did you see in terms of the existing trees or the potential
11 to plant new trees?

12 A. There is no place to plant new trees except in the curb cut,
13 in the curb between the sidewalk and the curb. It's a
14 narrow space. It's less than five feet wide. So if you
15 had, let's say, for example, a five-foot-wide patch of soil
16 that is five-foot deep, you would get 25 square feet of
17 soil.

18 Well, trees need about 400 square feet of soil to
19 thrive. So the difference between having a couple dozen
20 square feet of soil versus hundreds of square feet of soil
21 means that the trees will be stunted. They will be dwarfed
22 by inadequate nutrition. Too small of a root system that
23 has these utility vaults up against it that are below ground
24 and prevent roots from growing underneath the street because
25 the soil underneath the street is a sub base that is

1 compacted to 98 percent compaction, which precludes any
2 roots from growing out under the -- under the street.

3 So this site is -- as you can see by these drawings is
4 going to have a very small contribution to the city's canopy
5 cover goal of 9 percent canopy cover in low-rise 1 and 2
6 zones.

7 MR. ELLISON: I wonder if we could pull up the diagram
8 that David had used for his example looking at Sand Point
9 Way in the diagrams. Do we have that available?

10 MR. MOEHRING: I'll pull it up if -- I'm going to stop
11 sharing.

12 MR. ELLISON: You have to stop sharing.

13 MR. MOEHRING: (Inaudible).

14 Q. (By Mr. Ellison) Is this the site that you visited, David?
15 I mean, Michael.

16 A. Yes. Yes. And it's kind of deceptive because there is
17 another lot right to the east of this one that isn't
18 rowhouses. And that is the location of the exceptional
19 tree, which is described in the arborist report for the
20 project.

21 Q. Well, I was just kind of wondering, again, sort of if you
22 had any comments on the planting space, you know, from these
23 diagrams? So obviously if a planner is looking at what on
24 earth could we do with the site, you know, what is
25 reasonable to put in here, I see they show a planting box on

1 the upper right corner of the diagram, and I'm assuming that
2 this is what is going to be planted in the space on the
3 street side of the Sand Point Way properties.

4 A. Yeah, and --

5 Q. Can you (inaudible) it for the -- what's shown on the
6 treescape there, on the right-hand side?

7 A. One interesting thing about this project is that there's
8 cars parked in the -- in the parking spaces. There's lights
9 off. People are in the houses. And yet the street trees
10 haven't been planted.

11 And it's my understanding that an occupancy permit
12 can't be issued until after all of the landscaping is done.
13 So I'm thinking that there's a possibility that the
14 Department of Construction and Inspection isn't
15 instructing -- isn't inspecting and isn't issuing their
16 permits in the appropriate sequence, as evidenced in the
17 city's tree regulations research report from 2016, which the
18 Urban Forestry Commission has commented on extensively, and
19 which was the subject of an executive order to enforce the
20 tree ordinance in 2017.

21 MR. ELLISON: Could you scroll over to the right there
22 again, just to show a planting box? Okay.

23 Q. (By Mr. Ellison) So looking at this planting box, how
24 realistic is what they're showing as far as, you know, what
25 the tree is able to do, and really what species of trees

1 might -- are there species of trees that might work in this
2 space versus obviously you're not going to get a sequoia
3 plant in there.

4 A. Well, there isn't a legend on here that describes the
5 dimensions of this plant -- the tree planting pit. But I
6 can tell you that the typical species would be pear trees or
7 vine maple trees, which are considered small trees. You
8 know, the city has three different categories of trees
9 listed in the green factor, and it -- so those are small,
10 medium, and large, just like small, medium, and large
11 parking spaces.

12 One of the parking spaces that we saw has a wheeled
13 stop that was moved out of the way by a vehicle just because
14 it's too small. So the tree doesn't have the ability to
15 slide pieces of concrete over when its roots wants to grow
16 wide, so the tree just causes its roots to grow in circles,
17 and the roots never find any nutrition by circling around
18 the planting hole. And eventually those tree roots will act
19 like a noose around the trunk of the tree and strangle it to
20 death. And as the roots expand in size, they girdle the
21 tree and cut off circulation. And that is the -- one of the
22 causes of the stunting of the trees.

23 HEARING EXAMINER: Mr. Oxman, quick clarification
24 question. What's the difference between a planting area and
25 a bio planter area? I noticed that on the diagram there.

1 THE WITNESS: My idea of a bio planter, there's another
2 common name for it, rain garden.

3 HEARING EXAMINER: Got it.

4 THE WITNESS: A bio planter is basically a pit. And they
5 have a nickname, trash cans. And the whole idea is to
6 recharge the aquifer for the benefit of the community at
7 large. And by cutting down trees and requiring that they be
8 replaced with bio planters is kind of a -- it is not part of
9 a consensus of landscaping sustainability.

10 There is a faction of people that are focused on rain
11 gardens. However, rain gardens are only indicated if the
12 trees have been cut down. And, of course, there really
13 isn't good research on whether they actually succeed in
14 recharging the aquifer because the areas of concrete
15 pavement around these bio planters is compacted to
16 98 percent soil compaction. And there are no core spaces,
17 so no water can exfiltrate out of bio planters into the
18 surrounding soil because they're surrounded by building
19 foundations, streets, and walkways.

20 Q. (By Mr. Ellison) Could we move on to TEIR Exhibit 22, which
21 would show the Greenwood-Phinney Ridge before and after
22 photos. Okay. So looking -- you'll have to scroll through
23 some of these and let us know which ones you want to focus
24 on. But please, you know, give us your consent and thoughts
25 on what you see the canopy cover difference is between the

1 before and after -- before and after photos at a variety of
2 these different properties on the Phinney Ridge development.
3 A. So this one shows the church prior to the demolition. You
4 can see several trees on the edge of the property there.
5 And then look -- this looks like the proposed after version,
6 and the -- you can see that there's townhomes that are
7 behind the rowhouses.

8 Okay, now, this is a different address, and in the
9 lower left side of this red box, you can see a very large
10 tree. And then we move on down to the after version that
11 shows no tree. And it looks like it's some type of parking
12 area or a common area where the tree used to be. So this
13 is -- so this is an example at 6417 Phinney Avenue North
14 that it would be considered not a success at allowing the
15 canopy cover goal 9 percent for low-rise to occur ever. So
16 this is -- there really will never be a tree here, and so
17 the ordinance that allows this type of construction is
18 counter to the comprehensive plan goal of protecting the
19 environment by being good stewards and passing laws that
20 allow contribution of environmental amenities for our
21 community.

22 Q. Michael, just looking at this one property here, it looks
23 like it's a lot of open space in front of the building on
24 the left-hand side. And I wonder if that tree that was
25 there might have been saved during construction, but it was

1 chosen not to be saved for construction-ease purposes. Is
2 that possible, or do you think that -- or is that -- could
3 that tree have been saved, perhaps?

4 A. Well, judging by the density there, you know, I'm counting
5 at least eight units, so there's probably some parking
6 there.

7 Q. So you're saying that that's part of the required parking?

8 A. I don't know this -- I don't know the details on this
9 project, but it's typical for the ordinances that require
10 parking to counter the ordinances requiring that trees be
11 retained to the maximum extent possible, which is one of --
12 one of the city's ordinances.

13 Q. Do you care to comment about this particular parcel here?

14 A. Oh, this looks like three single-family dwellings prior to
15 construction, maybe even four. And they have, like,
16 extensive landscaping within the 25-foot single-family
17 setback. And, of course, all single-family dwellings in
18 Seattle have to be 25 feet from the curb. And that allows
19 the landscaping to buffer the front of the building so that
20 the residents don't have vehicles and pedestrians looking in
21 their windows and so that the people inside the dwellings
22 don't have to look directly out at citizens or vehicles
23 passing in front of them.

24 So in the lower portion, now that we've seen the after
25 version, we can see that there are a couple of rowhouses, a

1 six-unit rowhouse, and an eight-unit rowhouse behind it.
2 And then it does show some street trees, but they are --
3 there is no longer a 25-foot setback. So it looks like
4 those street trees are probably really close to the
5 buildings and will never really amount to much because they
6 don't have any space for their branches to grow, and they
7 don't have any soil for their roots to grow into.

8 So trees have requirements of both above ground and
9 top -- below-ground space. And our building codes,
10 especially this proposal here, will cause even less space in
11 the future, which is inappropriate.

12 So here we are at 306 North 74th Street, a
13 single-family property with probably at least as many trees
14 in square footage as the building. And then the after view,
15 which shows no trees. Not able to contribute to the city's
16 canopy cover goals of 9 percent within low-rise 1 and 2.

17 Now we're at 8213 Greenwood Avenue North. It looks
18 like the after version does save some trees. So this is an
19 improvement. And if the street trees can continue to
20 survive in this -- between the sidewalk and the curb, this
21 would be considered a more successful development that would
22 be more beautiful for the residents and more -- and more of
23 a contributor to ameliorating environmental effects of heat
24 island, CO2 production and filtration of particulates from
25 the atmosphere.

1 HEARING EXAMINER: And that was the 8213 to the 8215
2 Greenwood Avenue North project that you were referring to?

3 THE WITNESS: That's correct.

4 HEARING EXAMINER: Thank you.

5 A. So here we are at 8755 Phinney Avenue North, and this one
6 looks like two single family or possibly a single family
7 with a detached garage that has quite a bit of green space,
8 and then now afterwards has zero trees.

9 This is 9205 Greenwood Avenue North. And I happen to
10 know that there is a bog. The Phinney bog is to the west of
11 this project. And that really has to do with explaining a
12 lot of the green space around there, because the creek is in
13 culverts, and then it comes above ground and then drops into
14 a culvert to go under the streets. And it's a very moist
15 neighborhood with really good conditions for tree growth.
16 So that would explain why we have so much greenery in this
17 project.

18 Q. So, Michael, whenever you get a chance, I can see that
19 there's quite a bit of canopy on this property that says
20 construction's not begun yet, so I don't know what the end
21 result of that property is.

22 A. Neither do I.

23 MR. ELLISON: Next slide, please.

24 A. Yeah, so -- so I can see from this project that there's
25 amassing of the building, center of the property, with room

1 for street trees on the south side and on the west side, but
2 no room for trees in between the buildings.

3 Q. (By Mr. Ellison) This one here, Michael?

4 A. Well, this shows trees only on the perimeter of this site,
5 so I don't know what this building used to be.

6 And this one, it looks like 14023 Greenwood Avenue
7 North, there was a very large tree at the far west side of
8 the property which is not indicated in the after photo.
9 It's gone, and no room for trees in the rest of the block.

10 Q. Do you need to get something to drink at all, too?

11 A. I'm fine. I'm good. I just want to keep going.

12 Q. Okay. Are we finished with this exhibit, sir?

13 A. Yeah.

14 Q. Okay. So we need to follow up back to your Exhibit No. 1,
15 Seattle tree canopy assessment. So looking at the city's
16 canopy cover assessment, please tell us what you see
17 regarding the city's goals for canopy cover for the
18 multifamily zone.

19 A. Well, multifamily covers about 11 percent of the entire
20 city, 5,600 acres. And according to the testimony from
21 Brennan Staley, there's about 4,800 acres of single family.
22 And according to Mr. Wentlandt's testimony, that's a very
23 small slice of the city.

24 So I did some con- -- calculations myself on how many
25 trees would be involved in 4,800 acres, and I found 75,000

1 trees. So if most of these projects don't have room for
2 trees, then we're going to lose thousands of acres of canopy
3 cover by our current policies and even less if this proposal
4 proceeds. So I'm rather skeptical that this 9 percent
5 canopy cover will be still in existence this June when we're
6 expecting the completion of the 2022 canopy cover survey.

7 Q. So in those Greenwood (inaudible) project examples that you
8 just presented, what thoughts do you have about the
9 potential for multifamily zones to sort of carry their
10 weight or portion towards the city goals of canopy?

11 A. It's pretty realistic -- unrealistic. I mean, I've been
12 following this, and I'm amazed at the ingenuousness of the
13 city when they passed the detached accessory dwelling unit
14 ordinance when they revised the multifamily ordinance, of
15 which I was also an appellant on.

16 And so we have this double standard. We're saying we
17 want 9 percent canopy cover. We're not going to get it.
18 Therefore, our 2037 goal, our 25-year goal, is not going to
19 happen. And I can see that ahead of time. There's -- every
20 day when I go out into the community and look at trees
21 professionally, I can see that we're losing our trees in
22 construction projects at a very rapid rate that isn't
23 reflected in our city policies.

24 And when I see that the compliance, code compliance
25 section of the Department of Construction and Inspections

1 has been not enforcing the tree ordinance, when I see that
2 the mayor's executive order to enforce the tree ordinance
3 had to have happened because it's common knowledge that
4 we're not enforcing our tree ordinances. And we are not
5 going to achieve this 9 percent goal.

6 Q. Was the mayor's executive order something that you feel has
7 now been accomplished?

8 A. Not at all. And it's basically lip service. The SDCI staff
9 are not organized into a unit. When you try and contact
10 SDCI, you get a different person every time you call that
11 picks up the phone. And they basically, unfortunately,
12 succumbed to the job of working not to protect trees, but to
13 remove trees because of the financial return for developers.

14 Developers lobby heavily for the city to pass more
15 liberal tree protection ordinances, and this is an example
16 of a developer-written ordinance, to cram development in
17 where you have 34-foot-high buildings that are 10 feet apart
18 with canyons of shade with no light. And so those families
19 that live in those buildings have kids that go out and don't
20 see the sun until they get out onto the street.

21 Well, the street isn't where we want our citizens and
22 our kids to play. We want projects that have trees big
23 enough for kids to climb. And you're not going to get a
24 three-foot-wide canopy pear tree big enough for a kid to
25 have a fun day climbing.

1 Q. Okay, David [sic], I was wondering if you might be able to
2 comment about this other (inaudible) we just pulled up.
3 This is table 1, percentage of city's land mass, current
4 canopy cover, and it targets (inaudible) and (inaudible)
5 city's canopy cover.

6 A. You know, that's kind of a deceptive drawing, because at the
7 very bottom it says right-of-way, 24 percent. And that
8 24 percent is overlaid on top of all of these other
9 percentages. So it's better understood not with a chart but
10 with -- but with an actual database of trees.

11 And in the 2007 urban forest management plan, about 15
12 pages of the 60-page report are dedicated to explaining why
13 we need inventory so that we can have a good basis of
14 understanding to implement tree management policies. But we
15 have a completely separate agency that manages these
16 24 percent of the city's street trees called the Seattle
17 Department of Transportation, SDOT.

18 So SDOT is a member of the tree's core team that deals
19 with urban forestry, but they are not required to do what
20 the planning departments want to do. They are only required
21 to do what the street department recommends. So there is
22 disunity, and that's why in 2009 the city auditor found that
23 the city departments do not cooperate well with each other.
24 So this -- these governmental silos permeate all the way
25 down to the individual tree basis, which is substandard.

1 Q. (By Mr. Ellison) So, David [sic], for example, if you have a
2 5,000-square-foot lot, which has about 50 feet of street
3 front, assuming most the lots are about 100 feet deep, how
4 many trees could you fit on a 50-foot strip of city
5 right-of-way? And, you know, and how many considering that
6 there are driveway and citizen walkways, will this -- how
7 will this affect the city's goals of canopy cover?

8 A. You could -- you could fit in the 50-foot-wide street
9 frontage, one to two trees. If you look at a tree that
10 extends -- a nice shade tree is going to be 30-feet wide,
11 which means it extends 15 feet on either side of the trunk.
12 So you definitely want sun in between the two trees.

13 So to really cram three or more street trees into a
14 50-foot-wide street frontage just because you need more
15 points on your green factor score sheet is kind of
16 unrealistic, in my opinion.

17 Q. Does it depend in part on also just simply the width of the
18 planting strip as well? And if so, like, what is the --
19 what is the current standard, and, you know, is that
20 appropriate?

21 A. So the width of tree planter strips along the street
22 right-of-way is not standard. It rains anywhere from two
23 feet to ten feet, most of which there are four or five feet.
24 So I'd say probably at least half of our street
25 right-of-ways are four to five feet.

1 Q. What about in the LR1 zone, though?

2 A. LR1 zones currently are where there used to be single
3 family, so really there isn't a consistent standard there
4 that I know of.

5 Q. Okay.

6 A. But there's -- typically there's inadequate soil space for
7 street trees to develop into canopies that are more than
8 30-feet wide. And, of course, you know, the common
9 citizen's definition of a tree, is the tree big enough to
10 climb. So that means that you need a tree that's about 25
11 to 30-feet wide for it to really become a significant air
12 conditioner that is manufacturing oxygen out of carbon
13 dioxide and filtering out particulates in the atmosphere,
14 absorbing carbon dioxide, and contributing to slowing down
15 of water -- stormwater runoff after rains.

16 So all of -- all of these environmental effects of
17 trees are vastly superior on large trees. And with small
18 soil volumes as typically found between the sidewalk and the
19 curb, those benefits are severely limited.

20 Q. So we'll probably -- are we done with this particular
21 exhibit, sir?

22 A. Yes.

23 Q. Okay.

24 MR. ELLISON: Close this exhibit. Thank you.

25 Q. (By Mr. Ellison) One question for you is, for example, so if

1 we're trying to get back to the lot, and the buildable lot
2 in the LR1 zone there, if you have a certain amount of
3 uncovered area which could be added together, and it looks
4 like maybe you could fit in a large tree, but it's really
5 split up into side yards and a planting strip out front, how
6 does that affect the ability to place trees? And one moment
7 you can look and say, well, gee, there's this much potential
8 open space on the property, and therefore we can probably
9 put this size tree, a large tree, you know, a medium-sized
10 tree, but in reality, you have just really, you know, strips
11 between side yards and a planting strip area.

12 A. The aggregate open space in this zone is fragmented into
13 several different planting areas. Typically those are long
14 strips on the front or the sides or the rear of buildings or
15 up against parking areas, up against bike racks, up against
16 (inaudible) containers. And mostly these soil areas are
17 parking covered by permeable surfaces.

18 The permeable pavement is -- it's basically a ploy in
19 the -- in the green factor to get us to think that there's
20 soil underneath the driveway and the parking areas, but it's
21 not functional for tree roots, in spite of the -- you know,
22 the wishes of the architects who are looking at these
23 projects based on a topped-out plan, sitting in a helicopter
24 (inaudible) feet up looking straight down. That's not how
25 you get soil. You have to get down and dirty, get your

1 fingers in the dirt and then find out if there's room for
2 roots. And on these multifamily low-rise 1 and 2 projects,
3 there is no viable soil for tree roots to grow.

4 Q. Would there be a technique by which, say, you could put a
5 tree underneath permeable pavement so capacity in a parking
6 area so that maybe a car would be parked on either side of a
7 tree? Would that -- is there a way of doing something like
8 that?

9 A. Yes, there is. And then the drips of oil from the car go
10 down through the pores in the pavement, and they poison the
11 roots, stunting it, slowing its growth, and pretty much
12 guaranteeing that the tree will eventually be removed in
13 maybe five years or so and just a wish and a prayer of an
14 architect's dream, but no place for kids to climb trees.

15 Q. What about if, say, just an open-space amenity area that was
16 normally paved, would there be an opportunity to, say, make
17 that permeable pavement and put a tree in that spot as well?

18 A. Yes, I have seen trees in these private backyards of
19 townhomes. And that is really our only chance to have
20 canopy cover in this zone. And what we really need are
21 buildings that are farther apart from each other. We need
22 to go and take a lot that is going to be developed and not
23 bulldoze down all of the trees, but to bulldoze around these
24 trees, and then have those root zones be inviolable, as in
25 exceptional tree root zone tree protection areas, and then

1 build our buildings.

2 But our exceptional tree ordinance is too small --
3 excuse me, it's too big right now. There is proposal to
4 increase the exceptional setbacks from a 30-inch diameter
5 tree down to a 24-inch diameter tree. And that is in a
6 current proposal by the Seattle Department of Construction
7 and Inspections.

8 So SDCI knows that the stuff that I'm saying is true,
9 and that's why they did make a proposal to change and
10 tighten up on protection of extra large trees called
11 exceptional trees. So I am hopeful. I do believe that the
12 combination of our elected officials wanting to satisfy the
13 dreams of the public to have a vibrant green space in our
14 community will start to reign in the developers who will be
15 building projects that will increase the city's financial
16 income from a taxable valuation.

17 Q. Thank you, Michael.

18 MR. ELLISON: I see that the time is now 12:02. I don't
19 know if this is an appropriate time to be breaking for
20 lunch.

21 HEARING EXAMINER: Well, I'm wondering if we can get
22 through everyone, because we just have one more witness.
23 And I think you're about complete with Mr. Oxman; is that
24 correct?

25 MR. ELLISON: Yeah, that is actually my last question for

1 Mr. Oxman.

2 HEARING EXAMINER: Okay.

3 MR. ELLISON: So it would be time for Mr. Mitchell if he
4 wants to cross-examine Mr. Oxman.

5 HEARING EXAMINER: Yeah, why don't we move --
6 Mr. Mitchell, do you have any questions for Mr. Oxman?

7 MR. MITCHELL: I appreciate the opportunity, and,
8 Mr. Oxman, we've talked in previous appeals, and it's good
9 to see you again. I don't have any further questions.

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

12 I think we just have one last witness, Ms. Grant. And it
13 looks like based on the information in the witness list we
14 may be able to go ahead and get her testimony complete
15 beforehand. So, Mr. Ellison, why don't we go ahead and call
16 Ms. Oxman [sic]. It looks like we've got her up there.

17 MR. ELLISON: Ms. Grant.

18 HEARING EXAMINER: I'm sorry, Ms. Grant. I apologize.

19 Ms. Grant, good afternoon. If you could state your name
20 for the record.

21 THE WITNESS: Good afternoon. My name is Suzanne Grant.

22 HEARING EXAMINER: And do you swear or affirm to tell the
23 truth under penalty of perjury under the laws of the State
24 of Washington?

25 THE WITNESS: I do.

1 HEARING EXAMINER: Thank you.

2 MR. ELLISON: I'm going to pass the reign to Mr. Moehring
3 at this time.

4 MR. MOEHRING: Thank you, Mr. Ellison.

5

6 SUZANNE GRANT: Witness herein, having first been
7 duly sworn on oath, was examined
8 and testified as follows:

9

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

11 BY MR. MOEHRING:

12 Q. Good morning, Ms. Grant -- or good afternoon, sorry. Made
13 the same mistake. Would you mind spelling your first and
14 last name for the record?

15 A. S-U-Z-A-N-N-E. Grant, G-R-A-N-T.

16 Q. Thank you. Great. Thank you for joining us today. I want
17 to ask you a few questions regarding your declaration that
18 has been submitted for the record. I think that is Exhibit
19 No. 50 --

20 A. 45, I think.

21 Q. 45, thank you. Before we do that, would you mind telling me
22 a little bit about yourself, where you live in Seattle, and
23 any other thing that you'd like to share about yourself?

24 A. I live at 2723 4th Avenue West on Queen Anne Hill, 98119,
25 within two houses of 2813-15 4th Avenue West, at which

1 location an exceptional tree was removed, referred to by
2 Mr. Ellison yesterday.

3 Q. I believe that was Exhibit 21B, if I remember correctly. If
4 I do, there's something wrong with me to know that
5 information. Not that we need to share it, but just a point
6 of reference. Great. Thank you.

7 And is there anything else you'd like to share before
8 we get into asking for your testimony?

9 A. I am just one of a group of neighbors and citizens of
10 Seattle that have endeavored for years and years to try to
11 save the trees on our own. I'm a musician, a music teacher.
12 I teach here. I live here, teach at home, and so I'm
13 looking right out my window right now at the location of
14 where the tree once was. I don't know what else is
15 applicable.

16 I have also cared a long time about birds and the
17 earth. I was at the first Earth Day, 1970. I have then
18 been conducting school courses about Earth Day and saving
19 trees and the earth ever since, so working with kids,
20 writing musicals, that sort of thing.

21 Q. Great. I think in addition to you being a -- pardon, I
22 meant to say somebody who might be impacted by the proposed
23 legislation because of your adjacency to the LR1 zoning
24 area. I know you've also had some experiences that are
25 pertinent to some of the SEPA decisions here, and so some of

1 the questions that we will be asking you pertain to the
2 city's -- I'm not sure -- by the way, have you -- how many
3 of the days of testimony have you been able to listen to?

4 A. I've been here from the beginning except when I had to go
5 teach.

6 Q. Okay. So you've probably heard some of the testimony
7 relative to the SEPA decision that this is a non-project
8 action, and that if there is SEPA considerations, that they
9 should be considered on a project level?

10 A. Yes, I believe -- I believe so, although, you understand
11 those terms as an architect better than I do.

12 Q. Okay. And with that -- with your declaration, I think
13 you've also had the connection with your neighbors, some
14 direct experience trying to mitigate development for its
15 environmental issues; is that correct?

16 A. Absolutely, yes. We have a hearing that I would like to get
17 to. I wonder if I might be able to preface those remarks
18 with some of my remarks about this SEPA decision itself,
19 because I was quite familiar with the SEPA checklist at the
20 previous hearing that I was involved in.

21 Q. Yes, please do.

22 A. Part of the SEPA determination, for example, starts with
23 talking about livability and public health. But there's no
24 mention of trees or climate change. Mr. Staley, as being
25 involved with the Urban Forestry team, certainly knows that

1 without adequate tree coverage, the health benefits in those
2 areas are greatly reduced. And I live in the neighborhood
3 where some of those health benefits were reduced.

4 A single-family home on a heavily-landscaped lot, just
5 two houses away from me -- again, I can see the new
6 development as I speak -- it was replaced with five
7 townhouse rowhouses and supposedly sufficient plantings to
8 equal the canopy coverage that was originally on the lot.
9 And before I'd like to describe the photographs contained in
10 my Exhibit 45, if we could pull those up, actually.

11 But I'd like to speak to one item under the land uses
12 where it says, "The SEPA item thresholds and determination
13 of land uses" -- it says it could slightly increase the
14 development of townhouses. No, I'm looking at -- for my
15 Exhibit 45, please.

16 Let's see. Slightly encourage the development of
17 townhouses and rowhouses as comparison to detached homes.
18 And it could result in minor changes in the type and amount
19 of residential, depending on the individual site and the
20 objectives of the builder. It could slightly increase the
21 number of townhouse units resulting.

22 How do you define slightly and minor? And this is
23 where the discretion of the hearing examiner comes into
24 play. My previous experience in this hearing that you
25 referred to, Mr. Moehring, with SDCI 2019, gave no relief,

1 after a group of neighbors tried their best to save an
2 exceptional tree and brought this issue to a hearing
3 examiner. It was up to his discretion to disallow much of
4 our testimony and rule in favor of the city in cutting down
5 the exceptional tulip tree that Mr. Ellison referred to.

6 And are you leaving this critical decision up to the
7 discretion of the developer? The objectives of the
8 developer -- of the builder, are clear, to develop as much
9 as possible and make as much money as possible. Overall,
10 the degree of impact could not be more than minor it says in
11 there. Actually, the cumulative impact of low-rise 1 lands
12 being cleared of trees would be major.

13 You've heard so many times that the 68 percent of our
14 canopy coverage is on single-family lots. Now, please look
15 at the photographs in my exhibit down there. They clearly
16 tell the story of what happened on this lot. The
17 developer -- there's the first one. You can stop there.
18 The developer, Alex Mason, had a choice to go slightly fewer
19 units and save this 44-inch dbh tulipifera liriodendron tree
20 that had an approximately 94-foot spreading canopy.

21 So on this page 1 and 2, there's other photos you can
22 see the beautiful tree that once was. Alex Mason, the
23 developer, chose to build slightly more units on the lot.
24 At the time, there were architectural alternatives presented
25 to him, but he lacked the creativity and motivation to do

1 anything except what was the easiest way for him to make
2 money on the lot. He found a landscape architect, Devin
3 Peterson, who claimed that her plantings and landscape plan
4 would replace this existing canopy.

5 Not only was there this massive tree on the west side
6 of the lot, there were copious other plantings and
7 significant trees on the south and east sides. Now, can you
8 please scroll down and see my Exhibit 1, pages 3 and 4?

9 In fact, per the arborist report, there was 2,415
10 square feet of canopy coverage on the lot, and we can read
11 ourselves that that figure does not even mention -- measure
12 canopy coverage accurately, leaving out total volume and
13 height. And there's one more. That's the south side, thank
14 you.

15 To see the lot as it is today, please scroll on down
16 and see my Exhibit 2, pages 1 and 2. On past the
17 magnificent tree. Thank you. Now, if you look carefully at
18 the photographs, you have to pause and look carefully at
19 these photographs, on the left side, you can see the puny,
20 fern leaf beech that is attempting to grow there now. It is
21 meant to replace the magnificent exceptional tree that
22 slipped through the SDCI tree protection quote, unquote,
23 loopholes in 2019. Those exceptions referred to by you,
24 David Moehring. It was cut down at Christmas. There's one
25 more photo I think of that.

1 And by the way, the placement, this placement here, of
2 this beech tree, it was inaccurately located per the
3 landscape plans, which I went through many times per my
4 hearing. Also, its placement behind the northwest corner of
5 the rowhouse, and within three feet of the walls in a
6 three-foot box as below grade per Mr. Oxman's testimony just
7 now, and will never likely, never enable it to obtain a
8 beech's projected growth of 35-feet wide.

9 In my opinion, it's just a convenient checking of the
10 boxes on a green factor sheet. This is what could happen
11 with slightly more townhouses and rowhouses per lot. Even
12 the loss of one exceptional tree can have a significant
13 impact. And this story has unfortunately repeated itself
14 many times in our city.

15 I'd like to quote, if I may, Maggie Rogers of
16 PlantAmnesty who wrote a letter to Mr. Staley in
17 November 2021. "Seattle's current townhouse development
18 standard does not accommodate the urban canopy objectives
19 since the 2019 legislation increased the allowed dwellings
20 count to one townhouse for every 1,300 square feet of land.
21 That was an approximately 33 percent in dwelling count
22 increase. With the 2019 increase, there was no stipulation
23 for how increasing the density would also accommodate trees.
24 This new proposal from OPCD just two years later seeks to
25 further increase the allowed townhouse dwelling count once

1 again without one consideration to the tree canopy." Thank
2 you, Maggie.

3 In the proposal under the off-street parking, now,
4 good, you can see the parking. There is -- it's supposed to
5 improve public health and reduce greenhouse gas emissions.
6 Well, reducing greenhouse gas emissions is an admirable goal
7 related to mitigating the planet crisis we're facing. In
8 fact, they have already talked about, yesterday's paper,
9 quoting the UN Secretary General stating that to delay is
10 death.

11 Trees provide both the only land-based means for
12 Seattle to (inaudible), offset perfect heat islands and
13 house existing natural habitats. Thank you, Maggie, again.

14 And it's a document, in fact, that older trees
15 accumulate far more carbon later in their life cycles than
16 they do in their early years. In my declaration, which you
17 may read on your own, I will quote -- I quote climate
18 scientists. But they state the importance of reserving
19 older forests as the simplest and most effective way to
20 mitigate climate change and to offset years of fossil fuel
21 emissions.

22 Now, take note. That exceptional tree that SDCI cut
23 down was probably 90 years old. So if you want to reduce
24 gas emissions, greenhouse gas emissions, it's probably more
25 effective to use pro-forestation -- I hope you know that

1 term -- saving the existing trees.

2 Now, good, I'm glad you're looking at this photo. See,
3 graphic evidence of the canopy coverage lost due to the
4 excessive number of townhouses and rowhouses on the lot.
5 Please revisit -- now, go back on up to Exhibit 1, page 4,
6 and compare that view -- keep on going up, up, up, up, where
7 there were trees, at one time. Page 4. There it is right
8 there. That's the south side of what is now -- go back on
9 down where you were -- Exhibit 2, page 3. This is what it
10 looks like.

11 Now, one more further. One more further. Keep on
12 going down, down, down. There it is. That's what was there
13 on the south side. You see all the trees that are planted
14 there now?

15 Now please go back on up -- sorry to make you do
16 this -- Exhibit 1, page 3, which is the front of the site.
17 We looked at the copious plantings -- yeah, right there. So
18 now if you compare that with the Exhibit 2, page 4 -- keep
19 on going back down again; thank you, you're scrolling quite
20 well -- to see the derth of plantings currently on the east
21 side compared to what was living there -- that's it right
22 there -- on the front before the trees were destroyed.

23 If I could speak briefly regarding the creation of new
24 shadows by this building, which is in the SEPA threshold.
25 Exhibit 2, page 5, if you'll go down one more photo, please,

1 the last photo, please. The vine maples that are expected
2 to grow on the east side of the lot in the cavern, per
3 Mr. Oxman's terms, below the overhang -- there's an overhang
4 above the roof -- of the roof there, between a high wall and
5 the wall of the townhouse. Again, there is to be no way
6 that those trees will achieve their expected canopy coverage
7 that was promised during the appeal process of 2019. This
8 is supported by Mr. Oxman's testimony this morning.

9 I submitted evidence of plantings at another townhouse
10 development. I'll just cut to the chase here. They're
11 dead. Three out of four died due to the shadows that were
12 created. I asked -- I submitted a complaint to SDCI,
13 received acknowledgment of my complaint but no further
14 action has been taken by SDCI, Graham Black, the developer,
15 or the residents. They're supposed to be -- somebody's got
16 to take care of this. They're blocked from the light by the
17 townhouse.

18 The environmentally sensitive areas that are mentioned.
19 Today there's only incremental adverse impact. Well, due to
20 the increased potential pace or number of townhouse
21 developments, I think you will agree developers will build
22 as much as they're allowed to build, in order to reach their
23 development capacity per Mr. Staley's explanation on Monday
24 (inaudible) strive to reach it no matter the exceptional
25 trees they want to cut down. Therefore, we can assume there

1 will be the adverse impact referred to under this section of
2 the threshold determination.

3 The ECA at 2813-15 4th West was on the east side of the
4 lot. We're the front side. There were trees holding up
5 that land. But the city allowed the developer to come in
6 and totally remove the dirt while -- I mean, all the dirt
7 gone and the trees holding up the land, and they promised
8 robust plantings to replace them, which have not happened or
9 have since withered and died. I have photographs of those
10 on my computer. I'd be glad to share if you want to see
11 them.

12 Regarding the transportation and parking, it says the
13 changes could lead to a slightly increased -- slightly
14 increased likelihood of builders, including vehicle parking
15 spaces on site. Well, you saw the building parking spaces,
16 and you heard Mike Oxman talking about what happens. More
17 dwellings, the more cars.

18 I can testify that the townhouse development over there
19 across the street from me, the parking spots are full where
20 the trees used to grow. And the residents' cars still were
21 on to the side streets.

22 Regarding the natural environment, plants and animals,
23 it says, existing regulations would address impacts to the
24 plants at the time of future development. Expert witnesses
25 have testified to the impact of less tree canopy on these

1 issues. And I can attest to the absence of birds, absence
2 of leaves that shed rainwater, roots that absorb the flow of
3 rain, the absence of shade.

4 The existing regulations that the determination
5 mentions failed to protect the exceptional tree that was
6 murdered in 2019. There's a hole in the sky where the tree
7 once was. Somebody's making money, and it's the developers
8 who are making the money. You the city are not here to
9 ensure that developers make money off of density and more
10 housing.

11 We can have more density. We do need more affordable
12 housing. We just must demand that the developers approach
13 the challenge with creativity and awareness.

14 During my hearing -- Mr. Moehring asked me about my
15 experience -- I observed the SDCI planner joking with the
16 developer's lawyer during a break about just how great the
17 new allowances for backyard cottages were going to be for
18 them folks. OPCD should demand an environmental impact
19 study each time a lot is developed, where more structures
20 will be adding to the stress on the neighborhood environment
21 and infrastructure, even while they reduce our tree canopy.

22 You, OPCD, are here to ensure that the goals of the
23 comprehensive plan are met. Seattle OPCD must honor
24 Seattle's comprehensive plan, which views to protect and
25 enhance our urban forests.

1 Last paragraph. We, the citizens of Seattle, have
2 continued to fight by ourselves for our urban forest for
3 years and years. At my hearing, the hearing examiner told
4 me afterwards that without a lawyer, we will never win our
5 cases. And, in fact, even with a lawyer, only four out of
6 five cases to save trees are ever successful.

7 My story was reported in 2019 to the Seattle Times, on
8 KIRO, and KUOW. My subsequent singing presentation to the
9 city council in 2020 was carried on social media and
10 received thousands of views. Last November my song received
11 national exposure on the Ellen show.

12 The country and the world have their eyes on our
13 progress, or lack thereof here in the Emerald City regarding
14 saving or destroying our urban forests. I beg the hearing
15 examiner to please deny the DNS. An environmental impact
16 study is necessary and called for. The impacts of this
17 proposal must be evaluated so they can be mitigated. To
18 delay is death. Thank you.

19 Q. Thank you.

20 HEARING EXAMINER: No further questions, Mr. Moehring?
21 Okay. Mr. Mitchell, do you have anything?

22 MR. MITCHELL: No, Your Honor. Thank you, Ms. Grant, for
23 that testimony.

24 HEARING EXAMINER: Okay. Thank you, Ms. Grant. You are
25 dismissed.

1 So I think that was the last witness today. I have a
2 number of procedural issues I wanted to check in with the
3 parties before -- and I guess in terms of closing arguments,
4 maybe that's the first thing I should address. We could
5 just have written closing. And that was mentioned earlier
6 in the hearing. I just wanted to hear what the parties'
7 preferences are on that. And that, of course, would be the
8 opportunity to provide additional detail on the legal
9 framework.

10 I know, Mr. Moehring, one of your witnesses wanted to do
11 that. But having briefing would be an opportunity for that.
12 I want to hear the parties' thoughts on that on whether they
13 prefer to just have written closing.

14 MR. ELLISON: Thank you, Your Honor. We had the
15 opportunity to discuss this issue last night, and we would
16 actually prefer to submit our final closing arguments as
17 writing.

18 HEARING EXAMINER: And, Mr. Mitchell?

19 MR. MITCHELL: That would be OPCD's preference as well.

20 HEARING EXAMINER: Okay. All right. Well, let's talk
21 about both time frame and page lengths, then. I assume this
22 would be simultaneous briefing, and I just want to hear from
23 the parties on how much time they think they need, and also
24 their thoughts on page length.

25 MR. ELLISON: I'd like to refer to David for this one.

1 MR. MOEHRING: Yeah, I'm open to Mr. Mitchell's
2 suggestions. I think there's been a lot written already on
3 this.

4 HEARING EXAMINER: Yeah, there has.

5 MR. MOEHRING: Maybe, you know, 20 to 25 maximum pages.

6 HEARING EXAMINER: That's a little bit more than I do for
7 closing typically, but --

8 MR. MOEHRING: No, I could do less than that, too. I
9 didn't know if it's double spaced, if you want to --

10 HEARING EXAMINER: Yeah, I usually don't specify, but
11 typically most briefing, sometimes people do squish it up a
12 bit. But, yeah, typically double spaced is easier for me to
13 read, so -- and I think that's what -- all the pleadings
14 from both parties have been double spaced, I think, from the
15 earlier pleadings that I've reviewed, so --

16 MR. MOEHRING: Maybe 15 pages double spaced? Does that
17 sound more reasonable?

18 HEARING EXAMINER: Something along those lines I think
19 would make sense. Mr. Mitchell, do you have thoughts on
20 that?

21 MR. MITCHELL: I would just defer to whatever the standard
22 length is that you would normally (inaudible) --

23 HEARING EXAMINER: You know, there's not a standard. It
24 kind of depends on the case.

25 MR. MITCHELL: I think 15 would be adequate then.

1 HEARING EXAMINER: Okay.

2 MR. MITCHELL: I think that's reasonable.

3 HEARING EXAMINER: Okay. Why don't we go with that
4 suggestion on 15 pages, double spaced. That seems about
5 right for this one.

6 Let's see. There was a question I think on the opening
7 statement from Mr. Ellison that was read by Mr. Orme about
8 whether that should be -- and I believe it was the type -- a
9 typed-out version that was submitted yesterday, and whether
10 that should be an exhibit. I mean, technically it's not
11 evidence, it's an opening statement, so it's basically a
12 transcript, in a sense.

13 How do the parties wish that document to be treated?

14 MR. ELLISON: I mean, it is just -- it's just an
15 opportunity for -- I mean, it's basically read verbatim, so,
16 you know, obviously there's someone who is trying to type
17 that up. It just makes it easier perhaps for you to read,
18 or in case there was any -- something that was, you know,
19 misinterpreted by the person typing things up or however
20 it's done. I don't know if the computer's doing that. Just
21 that you had -- it's all in one, concise document. It's
22 very easy to read and handle as part of it -- part of the
23 record in that fashion. I apologize for not being able to
24 be in person to --

25 HEARING EXAMINER: No, that's fine.

1 MR. MITCHELL: I don't have any objection if that would be
2 marked as an exhibit.

3 HEARING EXAMINER: Okay. Well, I have -- I'm fine with
4 accepting it. I do appreciate it being typed up. Thank
5 you, Mr. Ellison. I think what I'm going to do, since
6 technically it's not evidence, I won't accept it as an
7 exhibit, but I'll go ahead and accept it and review it, and
8 it's there really to make I think my job easier in a sense.
9 I think that was the intent there.

10 So do the parties have any concerns with that approach?

11 MR. ELLISON: That's fine. You know, it's part of the
12 public record in that fashion.

13 HEARING EXAMINER: Yeah. It's certainly part of the
14 record anyway because it was read. But, yeah, I am
15 accepting it into the record, just not marking it as a
16 formal exhibit just because it's an opening, and it's
17 essentially a transcript of the opening arguments. But I
18 appreciate that.

19 I do have some question on the appellant's exhibits. I'm
20 clear on the department's. I think what would be helpful
21 for the hearing examiner clerk is to get a Word document of
22 kind of the final list of exhibits. We don't need it in a
23 table, but just a list. Kind of the way you have in your
24 amended exhibit list, but with -- the titles should be
25 filled in.

1 But there are a number of placeholders that were reserved
2 for the interrogatory response. If you could put in the --
3 I think it's documents 52 to 64. Don't renumber anything.
4 Keep your original numbering. And if there's an exhibit
5 that's skipped -- there are a few that are -- just put a
6 placeholder because we're not using that number, but we'll
7 keep the numbering the same. I think that makes it easier.

8 I think there were a few clarifications throughout the
9 hearing on this list. For example, I think it was
10 Exhibit 19B that I did not have, so just make sure that
11 exhibit is filed through the usual procedures which are
12 specified in the prehearing order. I think there was no
13 Exhibit 39. I did not have that.

14 And I think Exhibit 40, there was a -- let's see.
15 Exhibit 40, I think the one I have is green block's exhibit,
16 so it has a different title than the one on the exhibit
17 list. There was no 62. There was no 69. And then we added
18 77 as the Seattle Times article. 78 is the plan set from
19 the Sand Point Way project.

20 And I'm just going through my notes on the kind of
21 happenings, proceeded through the hearing in terms of that,
22 the exhibits. Any questions? I know that's a fair amount,
23 but are there any questions from the appellants on that?

24 MR. ELLISON: I don't have any questions, and I see --
25 I've been watching Mr. Moehring nodding. He said yes to all

1 (inaudible) --

2 HEARING EXAMINER: Okay.

3 MR. ELLISON: -- documents, and no, we didn't have any
4 other questions. I guess I would ask David whether any
5 other documents that we were using, had wanted to submit
6 that somehow or other (inaudible) haven't been discussed
7 (inaudible) to be presented as part of the record.

8 MR. MOEHRING: The only thing I can think of is
9 illustration images of the trees next to the sidewalk that I
10 think both -- but they were illustrative. They were
11 intended to be illustrative. I didn't know if you wanted
12 those (inaudible) --

13 HEARING EXAMINER: I don't think I need those, but if you
14 wish them to be, I mean, I'll have -- Mr. Mitchell, he may
15 or may not have an objection on that. I don't know.

16 MR. MITCHELL: I don't have an objection that that image
17 or the couple of different slides of that same development,
18 that the trees and the planter boxes; is that what you're
19 referring to? I would be fine if that would be an exhibit.

20 HEARING EXAMINER: Okay. So if you want to make it an
21 exhibit, just, I think probably that that would then be 79.
22 And if you could add that to the list and go ahead and
23 submit those, then we'll be complete on that.

24 Okay. So I think that addresses my exhibit questions.
25 Let's see. Oh, just FYI, you know, this is a non-project

1 action, so typically I wouldn't do a site visit. But I
2 think I actually am going to visit a couple of the projects.
3 Certainly not all of them, but some of the townhome rowhouse
4 projects, just to get a sense. That's not evidence. I
5 don't enter the site. But it could be useful and provide
6 some context, so I just want to give the parties a heads up
7 on that.

8 Let's see. Oh, we have not -- we didn't set a deadline.
9 How much time do the parties need to prepare the
10 post-hearing briefs?

11 MR. ELLISON: I was thinking maybe two weeks, but I don't
12 know what would be a typical deadline.

13 HEARING EXAMINER: I kind of defer to the parties a bit on
14 that. So two weeks certainly is within the realm. The
15 office doesn't have a preference one way or the other. It's
16 kind of up to the parties on that.

17 So, Mr. Moehring, does two weeks work for you?

18 MR. MOEHRING: I think that sounds appropriate.

19 HEARING EXAMINER: Okay. All right. So today's the 2nd,
20 so that would be the 16th, close of business at 5:00 p.m.
21 If that works, we'll go ahead and set that as the deadline.
22 Okay.

23 All right. I think that addresses all of the questions
24 that I had. Do the parties have any procedural questions?

25 MR. ELLISON: I guess one question is how long it takes

1 for a ruling after all the (inaudible) and is there
2 opportunity to respond to the -- Mr. Mitchell's comments as
3 part of that?

4 HEARING EXAMINER: So in terms of my ruling, that'll be
5 out within 15 days of March 16th, possibly earlier. I'll
6 probably start -- I may do some drafting before then, so --
7 but no later than 15 days from the -- whenever the close is
8 from the parties' submittals, which I believe is March 16.
9 So I think that's your first question.

10 Your second one had to do with -- so you're talking about
11 on the second round of briefing? Is that your question?

12 MR. ELLISON: No, I'm -- well, I'm referring to being able
13 to respond to Mr. Mitchell's final statement.

14 HEARING EXAMINER: You mean the final brief? You mean the
15 closing statement?

16 MR. ELLISON: Final brief, yes.

17 HEARING EXAMINER: Okay. So sometimes we do that,
18 sometimes not. What are the parties' thoughts on
19 essentially reply briefing?

20 MR. ELLISON: David?

21 MR. MITCHELL: I'm open to -- if the appellants have the
22 desire for that, I'm open to that. I don't have any
23 objections to it. I'm also fine with just having one
24 closing brief.

25 MR. MOEHRING: Would it help or hurt the hearing examiner,

1 or -- I'd defer to the --

2 HEARING EXAMINER: Yeah, I don't think I need replies,
3 just because there has already, as you noted, Mr. Moehring,
4 been briefing in this matter, so I don't think I'll need
5 that. That said, sometimes issues are raised that somehow
6 maybe the parties might want to respond to. So sometimes
7 there are -- there is a reply.

8 MR. ELLISON: (Inaudible) of, say, having one week?

9 HEARING EXAMINER: Yeah, I mean, if you wanted to do a
10 reply, you could do one within one week, and it would be
11 shorter. The page limit on that would be, I don't know,
12 five pages, maybe a little bit more. So not a long -- not a
13 long brief. But if the parties are amenable to that, that's
14 fine.

15 MR. ELLISON: I mean, it could be that, you know, after we
16 see Mr. Mitchell's response, that, you know, we're fine with
17 our arguments and we don't feel there's a need to, you know,
18 respond, and we might just say, well, okay, you know, we're
19 good. So I can see the value of there was just some -- one
20 glaring thing that we wanted to say about one comment, that
21 would give us an opportunity to do so.

22 HEARING EXAMINER: Okay. Well, we can do it that way,
23 too. So the parties can submit their briefs on the 16th,
24 and then if either party wishes to -- feels the need to
25 submit a reply, they could just -- should we just set the

1 dead- -- I guess, well, maybe just send an e-mail to the
2 other party and to the examiner's office noting that they
3 would like to submit a reply and that one will be submitted.
4 I guess right now perhaps we should set the deadline for
5 that and the page limit if it's going to be kind of an
6 optional sort of thing, depending upon kind of what the
7 other party has in their briefs.

8 MR. ELLISON: We're fine with that. Thank you.

9 HEARING EXAMINER: Okay. All right. So why don't we --
10 so if it's on the 16th, it would be a week later, which
11 would be the 23rd, if there's a reply. Page limit on that,
12 I mentioned five. Could be a little bit more.

13 MR. ELLISON: Eight pages?

14 HEARING EXAMINER: Okay, eight pages. So, all right. So
15 eight pages on the reply. And then if -- since this is
16 optional, if the parties could alert each other in terms of
17 whether a reply will be submitted or not, just so -- because
18 if one party wants to reply and then the -- just so you're
19 all on notice, because it is set up a little differently
20 with it -- with there -- perhaps there will be a reply,
21 perhaps there won't if we're going to set it up like that.
22 So if you all could communicate with each other on that. If
23 there is not going to be a reply, if you can just notify the
24 hearing examiner's office so I know in terms of my time
25 frame for getting a decision out, if there's nothing more I

1 need to wait for.

2 MR. ELLISON: I think that's a great suggestion. I know
3 we've had great communication with Mr. Mitchell. He's been
4 very cooperative throughout the whole process. So I see
5 that as being a great way of thinking. Thank you.

6 HEARING EXAMINER: Okay. That's good. If you'll just
7 communicate with each other, and then if there's no reply,
8 just let me know, and then I won't -- I won't hold on my end
9 in terms of drafting a decision. So I think that works.

10 And by the way, I do appreciate you -- I know there were a
11 lot of questions on this in terms of discovery and how the
12 hearing should proceed and all that, and I really appreciate
13 you all being able to -- it looks like you worked it out
14 pretty well, and we were able to track through things I
15 think fairly efficiently. So I really appreciate the effort
16 that went into that. I know it can be challenging kind of
17 sorting all those issues. So that's definitely appreciated.

18 MR. MITCHELL: I should just say, it was great working
19 with Mr. Ellison and Mr. Moehring and the others who I've
20 worked with through that process.

21 HEARING EXAMINER: That's good to hear, because I know
22 it's not always easy.

23 Let's see. I think that's it. Any other procedural
24 questions from the parties?

25 MR. MOEHRING: I had one question, if I could. Maybe more

1 towards Mr. Mitchell. Sometimes the city requests I think
2 transcripts, but I'm not sure if that's something that would
3 be requested here.

4 MR. MITCHELL: I haven't fully made up my mind on that
5 yet. There's a good possibility that I'm going to have a
6 transcript arranged for.

7 MR. MOEHRING: Okay. If you do, just give us the
8 opportunity to get a copy. If there's some money that we
9 need to contribute for that, just let us know.

10 MR. MITCHELL: Okay. Appreciate that.

11 MR. MOEHRING: Thank you.

12 MR. ELLISON: As these proceedings are recorded, does that
13 mean this is something that we can then go back to to view
14 in that fashion as another means of understanding the
15 testimony besides just the transcript?

16 HEARING EXAMINER: Yeah, you certainly can -- yeah, it's
17 publicly available. You certainly can go back and listen to
18 the testimony. Is that your question?

19 MR. ELLISON: Yes. Yeah. I was just kind of wondering,
20 yeah, if that kind of is available. I can learn -- I can
21 learn how to do that.

22 HEARING EXAMINER: Yeah. Yeah. Yeah, it's all recorded,
23 and if there's a question on that, you can always check with
24 the clerk on how to -- how to obtain that recording. So,
25 yes, it is available.

1 Anything else? Okay.

2 MR. ELLISON: (Inaudible) Your Honor. Thank you.

3 HEARING EXAMINER: All right. Well, thank you all.

4 Appreciate the professionalism and courtesy that both
5 parties exhibited throughout the proceeding.

6 Ms. Oberhansly, is there anything else that I need to
7 address before we adjourn?

8 THE CLERK: No, thank you.

9 HEARING EXAMINER: Okay. All right. Thank you all. We
10 are adjourned.

11 MR. ELLISON: Thank you.

12 MR. MITCHELL: Thank you.

13 (Conclusion of March 2, 2022 Trial Proceedings)

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19 Chastity Feezle

20 s/Chastity M. Feezle, WA-CRL

21 Reed Jackson Watkins, LLC

22 800 Fifth Avenue, Suite 101-183

23 Seattle, Washington 98104

24 Telephone: (206) 624-3005

25 E-mail: info@rjwtranscripts.com