

**Description**

Minutes for W-17-004, Day 3  
The Ballard Coalition  
Wednesday, November 29, 2017

Time: 8:30 a.m.  
Examiner: Ryan Vancil  
Assistant: Alayna Johnson

Party Representatives:

Pat Schneider, Josh Brower, and Danielle Granatt, for Appellant

Erin Ferguson and Tadas Kiselius, for Department

Matthew Cohen, for Intervenor

**Date**

11/29/2017

**Location**

Large Hearing Room

<u>Time</u>	<u>Speak</u>	<u>Note</u>
<a href="#">8:30:26 AM</a>		Hearing Examiner opens Day 3 of the hearing.
<a href="#">8:31:35 AM</a>		Brower continues direct examination of Cohen.
<a href="#">8:34:42 AM</a>		Brower asks Cohen about his review of the economic considerations report in the draft EIS.
<a href="#">8:35:45 AM</a>		Cohen describes a hedonic model.
<a href="#">8:38:11 AM</a>		Brower asks Cohen about Appellant exhibit A-350.64 and it is marked as Exhibit A15.
<a href="#">8:41:04 AM</a>		Five minute break.
<a href="#">8:49:24 AM</a>		Back on the record.
<a href="#">8:49:29 AM</a>		Brower continues direct examination of Cohen, discussing Exhibit A15.
<a href="#">8:55:26 AM</a>		Cohen objects; questions are not about the preferred alternative.
<a href="#">8:55:42 AM</a>		Brower responds.
<a href="#">8:57:18 AM</a>		OVERRULED.
<a href="#">8:57:41 AM</a>		Ferguson objects to testimony by counsel; sustained.
<a href="#">9:00:12 AM</a>		Brower moves to admit Exhibit A15. It is admitted.
<a href="#">9:00:23 AM</a>		Appellant Exhibit A-350.64 is marked as Exhibit A16.
<a href="#">9:00:54 AM</a>		Brower asks Cohen about Exhibit A16 and A15.
<a href="#">9:07:54 AM</a>		Brower asks Cohen about the significant impacts to Ballard Marina and Salmon Bay Sand and Gravel mentioned on page 4-12 of the draft EIS.
<a href="#">9:10:44 AM</a>		Brower moves to admit A16. It is admitted.
<a href="#">9:12:05 AM</a>		Appellant exhibit A-350.66, economic considerations report from the final draft of the EIS is marked as Exhibit A17.
<a href="#">9:14:36 AM</a>		Brower asks Cohen about language changes on Page 4-11 of Exhibit A16.
<a href="#">9:17:59 AM</a>		Brower asks Cohen about page 4-9 of Exhibit A17.
<a href="#">9:19:28 AM</a>		Brower moves to admit Exhibit A17 and it is admitted.
<a href="#">9:27:33 AM</a>		Brower asks about speaking to affected businesses about potential projects.
<a href="#">9:30:57 AM</a>		Brower asks about flaws in the data analysis presented in the EIS for economic impacts.
<a href="#">9:35:16 AM</a>		Brower asks Cohen about changes in the data between the draft and the final EIS.
<a href="#">9:36:57 AM</a>		Brower asks Cohen which version of the EIS most accurately represents the economic impacts.
<a href="#">9:38:46 AM</a>		Brower asks Cohen if the missing link would create more than moderate adverse impacts on the businesses in the area.
<a href="#">9:39:23 AM</a>		Brower concludes.
<a href="#">9:39:32 AM</a>		Ferguson begins cross examination of Cohen.
<a href="#">9:39:50 AM</a>		Ferguson asks if the economic study is adequate for a SEPA review.
<a href="#">9:44:39 AM</a>		Ferguson asks if it is possible to isolate impacts of the trail from other broader shifts in the area.
<a href="#">9:46:10 AM</a>		Brower objects; question in deposition is not the same as question being asked.

<a href="#">9:49:34 AM</a>	Ferguson asks if any business will fail due to the construction of the trail.
<a href="#">9:52:01 AM</a>	Ferguson asks about "more than moderate adverse impacts" on the business environment.
<a href="#">9:56:24 AM</a>	Ferguson asks about the changes from the draft EIS to the final EIS.
<a href="#">9:59:04 AM</a>	Brower objects; mistating prior testimony. Overruled.
<a href="#">10:01:53 AM</a>	Ferguson asks if the best practices described by Cohen are required by SEPA.
<a href="#">10:02:51 AM</a>	Ferguson concludes.
<a href="#">10:02:55 AM</a>	M. Cohen begins cross examination of S. Cohen.
<a href="#">10:05:54 AM</a>	Brower objects; asked and answered.
<a href="#">10:06:13 AM</a>	Overruled; question is different.
<a href="#">10:09:53 AM</a>	Cohen concludes.
<a href="#">10:09:57 AM</a>	Examiner asks questions of Cohen.
<a href="#">10:15:46 AM</a>	Examiner concludes.
<a href="#">10:15:52 AM</a>	Brower begins re-direct examination of Cohen.
<a href="#">10:16:43 AM</a>	Cohen objects, Brower clarifies; objection withdrawn.
<a href="#">10:19:37 AM</a>	Cohen objects; questions not related to cross. Sustained.
<a href="#">10:22:35 AM</a>	Brower concludes.
<a href="#">10:22:58 AM</a>	Break. Back at 10:45.
<a href="#">10:46:01 AM</a>	Back on the record.
<a href="#">10:46:10 AM</a>	Appellant calls Paul Merdrum as a witness and he is sworn in.
<a href="#">10:46:41 AM</a>	Brower begins direct examination of Merdrum, vice president of Salmon Bay Sand and Gravel.
<a href="#">10:52:39 AM</a>	Ferguson objects; relevance.
<a href="#">10:53:54 AM</a>	Overruled.
<a href="#">10:54:41 AM</a>	Brower asks about wages earned by Merdrum's employees.
<a href="#">10:55:07 AM</a>	Ferguson objects, Kiselius shares objection; leading questions. Sustained.
<a href="#">10:58:18 AM</a>	Brower asks Merdrum about Exhibit A1, Bishop's auto-turn analysis.
<a href="#">11:02:28 AM</a>	Ferguson objects; calls for speculation.
<a href="#">11:02:43 AM</a>	Sustained; rephrase question.
<a href="#">11:04:59 AM</a>	Ferguson objects; not related to EIS. Question had already been answered.
<a href="#">11:06:03 AM</a>	Brower asks Merdrum about the hourly wage of his employees.
<a href="#">11:07:23 AM</a>	Brower asks Merdrum about what he would need to pay flaggers and how that would affect his business.
<a href="#">11:07:53 AM</a>	Ferguson objects; overruled.
<a href="#">11:08:52 AM</a>	Cohen objects; lack of foundation.
<a href="#">11:09:08 AM</a>	Brower responds.
<a href="#">11:10:46 AM</a>	Sustained. Question rephrased.
<a href="#">11:21:31 AM</a>	Brower asks Merdrum about the rail lines in the area.
<a href="#">11:24:11 AM</a>	Ferguson objects; relevance of the railroad.
<a href="#">11:25:23 AM</a>	Overruled.

<a href="#">11:25:59 AM</a>	Objection; leading witness. Sustained.
<a href="#">11:31:39 AM</a>	Brower asks Merdrum about impacts of delay on business.
<a href="#">11:32:19 AM</a>	Brower asks Merdrum if his business may fail due to the trail.
<a href="#">11:34:39 AM</a>	Brower concludes.
<a href="#">11:34:43 AM</a>	Ferguson begins cross examination of Merdrum.
<a href="#">11:36:32 AM</a>	Ferguson asks if Merdrum recalls a conversation with an SDOT consultant.
<a href="#">11:39:55 AM</a>	Ferguson concludes.
<a href="#">11:39:59 AM</a>	Cohen begins cross examination of Merdrum.
<a href="#">11:45:30 AM</a>	Brower objects; relevance.
<a href="#">11:45:36 AM</a>	Cohen responds.
<a href="#">11:46:32 AM</a>	Brower replies.
<a href="#">11:46:35 AM</a>	Overruled.
<a href="#">11:55:13 AM</a>	Brower objects; mischaracterizing. Overruled.
<a href="#">11:57:40 AM</a>	Brower objects; outside the scope of EIS.
<a href="#">11:58:12 AM</a>	Cohen responds.
<a href="#">11:59:34 AM</a>	Sustained.
<a href="#">11:59:47 AM</a>	Cohen concludes.
<a href="#">11:59:51 AM</a>	Examiner asks questions of Merdrum.
<a href="#">12:01:28 PM</a>	Examiner concludes.
<a href="#">12:01:29 PM</a>	Brower begins re-direct examinaion of Merdrum.
<a href="#">12:02:16 PM</a>	Cohen objects; lack of foundation. Already answered.
<a href="#">12:04:57 PM</a>	Cohen objects; beyond scope of cross. Brower responds.
<a href="#">12:05:43 PM</a>	Sustained.
<a href="#">12:06:09 PM</a>	Cohen objects; same line of questioning.
<a href="#">12:06:18 PM</a>	Sustained.
<a href="#">12:06:36 PM</a>	Brower asks about number of employees and trucks at his business.
<a href="#">12:06:55 PM</a>	Brower concludes.
<a href="#">12:08:25 PM</a>	Appellant reserves ability to call Claire Hoffman as a witness in the future.
<a href="#">12:09:30 PM</a>	Break for lunch. Back at 1:30.
<a href="#">1:30:41 PM</a>	Back on the record.
<a href="#">1:30:47 PM</a>	Kiselius gives brief outline of how they will present their case.
<a href="#">1:31:52 PM</a>	Respondent calls Erinn Ellig as a witness and she is sworn in.
<a href="#">1:32:04 PM</a>	Kiselius begins direct examination of Ellig, from Parametrics.
<a href="#">1:34:50 PM</a>	Kiselius asks Ellig about her experience working on other non-motorized transportatoin plans.
<a href="#">1:36:53 PM</a>	Kiselius offers Ellig's resume as an exhibit. It will be marked as Exhibit R4.
<a href="#">1:37:49 PM</a>	Exhibit R4 is admitted.
<a href="#">1:43:55 PM</a>	Kiselius asks Ellig about the transportation discipline report in Exhibit R3.
<a href="#">1:47:55 PM</a>	Ellig refers to Table 4-1.
<a href="#">1:50:50 PM</a>	Ellig refers to Appendix B and C, and Table C-1.

<a href="#">1:52:20 PM</a>	Kiselius asks about the sufficiency of the data collected on the driveways.
<a href="#">1:52:40 PM</a>	Kiselius asks Ellig about delays and the Synchro model used to analyze delays.
<a href="#">1:54:13 PM</a>	Objection; foundation.
<a href="#">1:54:36 PM</a>	Withdrawn.
<a href="#">1:55:47 PM</a>	Objection; offering testimony beyond the scope of the question.
<a href="#">1:56:26 PM</a>	Sustained.
<a href="#">1:58:08 PM</a>	Kiselius asks Ellig about methodology and data collected for analysis.
<a href="#">2:00:13 PM</a>	Ellig refers to Chapter 4 of the transportation discipline report, page 431, figure 4-10.
<a href="#">2:02:08 PM</a>	Brower objects; no foundation for testimony and use of "we" in testimony.
<a href="#">2:03:00 PM</a>	Overruled.
<a href="#">2:05:46 PM</a>	Kiselius asks how the methodology was created for this EIS.
<a href="#">2:08:17 PM</a>	Kiselius asks about impacts for various forms of transportation.
<a href="#">2:11:19 PM</a>	Kiselius asks about business interviews that were conducted for the EIS.
<a href="#">2:14:29 PM</a>	Ellig refers to Interview with Paul Merdrum in Appendix B of the transportation discipline report.
<a href="#">2:16:24 PM</a>	Kiselius asks about video data taken for driveways.
<a href="#">2:17:14 PM</a>	Ellig refers to chapter 3 of the Transportatoin Discipline Report, page 3-2, Figure 3-1.
<a href="#">2:23:17 PM</a>	Kiselius asks about current conditions regarding truck turns, bicycle traffic, and pedestrians.
<a href="#">2:24:01 PM</a>	Kiselius asks about impacts to freight traffic, referring to chapter 5 of the Transportatoin Discipline Report.
<a href="#">2:27:46 PM</a>	Kiselius asks about design level.
<a href="#">2:27:51 PM</a>	Objection; foundation.
<a href="#">2:29:07 PM</a>	Overruled.
<a href="#">2:29:14 PM</a>	Brower objects to Ellig as an expert witness and other witnesses that were listed as lay/expert witnesses.
<a href="#">2:29:58 PM</a>	Discussion of discovery issue.
<a href="#">2:40:01 PM</a>	Discovery issue will be brought in a motion.
<a href="#">2:43:26 PM</a>	Kiselius continues direct examination of Ellig.
<a href="#">2:44:13 PM</a>	Kiselius asks if the level of design was sufficient for analysis.
<a href="#">2:45:18 PM</a>	Ellig refers to chapter 1 of the Transportation Discipline Report, respondent exhibit C-13. It is marked as Exhibit R5.
<a href="#">2:48:56 PM</a>	Kiselius moves to admit Exhibit R5 and it is admitted.
<a href="#">2:51:58 PM</a>	Kiselius asks Ellig about respondent exhibit C-11. It is marked as Exhibit R6 and is admitted.
<a href="#">2:53:47 PM</a>	Kiselius asks Ellig about the City of Seattle Freight Master Plan with Appendices, marked as Exhibit R7.
<a href="#">2:55:00 PM</a>	Ellig refers to Appendix C of Exhibit R7.
<a href="#">2:55:13 PM</a>	Kiselius moves to admit Exhibit R7 and it is admitted.

<a href="#">2:56:15 PM</a>	Kiselius asks Ellig about the City of Seattle Bicycle Master Plan, respondent exhibit C-8, marked as Exhibit R8.
<a href="#">2:57:40 PM</a>	Kiselius asks about catalyst projects, page 40 of Exhibit R8.
<a href="#">2:58:25 PM</a>	Kiselius moves to admit Exhibit R8 and it is admitted.
<a href="#">3:01:15 PM</a>	Kiselius asks about safety of no-build versus preferred alternative.
<a href="#">3:01:52 PM</a>	Safety of existing conditions are in chapter four of the Transportation Discipline Report, page 4-33.
<a href="#">3:04:00 PM</a>	Ellig refers to chapter 5, page 5-1.
<a href="#">3:04:52 PM</a>	Kiselius asks where barriers are discussed in the FEIS.
<a href="#">3:05:33 PM</a>	Break.
<a href="#">3:22:52 PM</a>	Back on the record.
<a href="#">3:23:12 PM</a>	Discussion of discovery issue.
<a href="#">3:25:10 PM</a>	Kiselius continues direct examination of Ellig.
<a href="#">3:25:48 PM</a>	Ellig refers to page 5-18 of the Transportation Discipline Report.
<a href="#">3:27:50 PM</a>	Ellig refers to Exhibit R1, page 129, Table 1-1.
<a href="#">3:32:46 PM</a>	Kiselius asks Ellig about page 3-4 of the Transportation Discipline Report.
<a href="#">3:35:28 PM</a>	Kiselius asks about chapter 5, page 5-20 and the risks of bicycles moving in both directions and mitigation of those risks (page 1-5).
<a href="#">3:40:32 PM</a>	Kiselius asks Ellig about the proposed alternatives in Figure 1-1.
<a href="#">3:41:27 PM</a>	Brower objects; foundation. Sustained.
<a href="#">3:42:06 PM</a>	Kiselius asks about mixing zones.
<a href="#">3:44:51 PM</a>	Kiselius asks Ellig if the testimony of other witnesses has changed her opinion about the work she did on the EIS or the conclusions found in the EIS.
<a href="#">3:45:26 PM</a>	Kiselius concludes.
<a href="#">3:47:13 PM</a>	Brower begins direct examination of Ellig.
<a href="#">4:01:52 PM</a>	Brower asks Ellig about sufficiency of design level.
<a href="#">4:07:28 PM</a>	Brower asks Ellig about "would" versus "could."
<a href="#">4:09:16 PM</a>	Kiselius objects; asked and answered. Sustained.
<a href="#">4:11:10 PM</a>	Brower asks about freight impacts.
<a href="#">4:15:06 PM</a>	Kiselius objects; attorney-client privilege. Overruled.
<a href="#">4:18:14 PM</a>	Brower asks about Ellig's experience with safety analysis.
<a href="#">4:20:21 PM</a>	Kiselius and Cohen object; mischaracterizing prior testimony and stating an unsupported truism.
<a href="#">4:22:06 PM</a>	Brower responds.
<a href="#">4:22:34 PM</a>	Sustained; rephrase question.
<a href="#">4:26:52 PM</a>	Kiselius objects; asked and answered. Sustained.
<a href="#">4:27:10 PM</a>	Brower asks about Ellig's interview with Merdrum.
<a href="#">4:31:58 PM</a>	Kiselius objects; issue has been dismissed.
<a href="#">4:32:25 PM</a>	Overruled; for limited purpose.
<a href="#">4:35:12 PM</a>	Brower asks Ellig about Appellant exhibit A-250.11, page 3-5. Marked as Exhibit A18.
<a href="#">4:36:49 PM</a>	Brower moves to admit A18. It is admitted.
<a href="#">4:37:19 PM</a>	Brower asks Ellig about Appellant exhibit A-350.11 and it is marked as Exhibit A19.

<a href="#">4:38:19 PM</a>	Brower moves to admit Exhibit A19 and it is admitted.
<a href="#">4:50:08 PM</a>	Brower concludes direct.
<a href="#">4:51:45 PM</a>	Kiselius begins cross examination of Ellig.
<a href="#">4:56:15 PM</a>	Kiselius concludes.
<a href="#">4:56:19 PM</a>	Brower begins cross examination of Ellig.
<a href="#">4:57:33 PM</a>	Brower asks Ellig about Appellant exhibit A-350.10, marked as Exhibit A20.
<a href="#">4:58:24 PM</a>	Brower concludes.
<a href="#">4:58:34 PM</a>	Brower moves to admit Exhibit A20 and it is admitted.
<a href="#">4:58:51 PM</a>	Examiner asks questions of Ellig.
<a href="#">5:00:53 PM</a>	Examiner asks Ellig to provide a list of the driveways used for the analysis.
<a href="#">5:05:40 PM</a>	Examiner concludes.
<a href="#">5:05:56 PM</a>	Examiner closes Day 3 of the hearing.