

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In The Matter of the Appeal Of:)
)
 THE BALLARD COALITION)
)
 Of the adequacy of the Final) Hearing Examiner
 Environmental Impact Statement,) File X-17-004
 Prepared by the Seattle)
 Department of Transportation)
 for the Burke Gilman Trail)
 Missing Link Project)

VERBATIM TRANSCRIPTION OF AUDIO RECORDING OF
PROCEEDINGS

--oOo--

VOLUME III
(Pages 638 through 993)

NOVEMBER 29, 2017

--oOo--

Heard before Ryan Vancil, Deputy Hearing Examiner for
the City of Seattle, 700 Fifth Avenue, Suite 4000,
Seattle, WA 98104

Page 639

1 APPEARANCES:
2 --oOo--
3
4 HEARING EXAMINER:
5 RYAN VANCIL
6
7 FOR THE APPELLANT THE BALLARD COALITION:
8 PATRICK J SCHNEIDER, ESQ.
9 Foster Pepper
10 1111 Third Avenue, Suite 3000
11 Seattle, WA 98101
12 (206) 447-2905
13 Pat.Schneider@Foster.com
14
15 JOSHUA C. ALLEN BROWER, ESQ.
16 DANIELLE N. GRANATT, ESQ.
17 Veris Law Group
18 1809 Seventh Avenue, Suite 1400
19 Seattle, WA 98101
20 (206) 829-9590
21 Josh@VerisLawGroup.com
22 Danielle@VerisLawGroup.com
23
24 FOR THE RESPONDENT DEPARTMENT OF TRANSPORTATION
25 ERIN FERGUSON, ESQ.
Seattle City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104
(206) 684-8615
Erin.Ferguson@Seattle.gov

TADAS A. KISIELIUS, ESQ.
Van Ness Feldman LLP
719 2nd Avenue, Suite 1150
Seattle, WA 98104
(206) 623-9372
Tak@vnf.com

Page 641

1 CHRONOLOGICAL INDEX
2 --oOo--
3 FEBRUARY 13, 2017
4 Witnesses for Appellant:
5 SPENCER COHEN
6 Direct (Resumed) by Mr. Brower 634
7 Cross by Ms. Ferguson 695
8 Cross by Mr. Cohen 715
9 Examination by the Hearing Examiner 721
10 Redirect by Mr. Brower 726
11 PAUL NERDRUM
12 Direct by Mr. Brower 734
13 Cross by Ms. Ferguson 778
14 Cross by Mr. Cohen 783
15 Examination by the Hearing Examiner 797
16 Redirect by Mr. Brower 799
17 ERIN ELLIG (Shared witness)
18 Direct by Mr. Kisielius 811
19 Cross by Mr. Brower 919
20 Cross/Redirect by Mr. Kisielius 976
21 Cross/Redirect by Mr. Brower 981
22 Examination by the Hearing Examiner 983
23 Discussion of Motion
24 Adjournment 992
25 --oOo--

Page 640

1 APPEARANCES
2 (Continued)
3 --oOo--
4
5 FOR CASCADE BICYCLE CLUB:
6 MATTHEW COHEN, ESQ.
7 Stoel Rives LLP
8 600 University Street, Suite 3600
9 Seattle, WA 98101
10 (206) 386-7569
11 Matthew.Cohen@Stoel.com
12
13 --oOo--
14
15
16
17
18
19
20
21
22
23
24
25

Page 642

1 EXHIBIT INDEX
2 --oOo--
3
4 APPELLANT'S ADMITTED
5 A-15 662
6 A-16 669
7 A-17 676
8 A-18 963
9 A-19 966
10 A-20 983
11
12
13 RESPONDENT'S ADMITTED
14 R-4 816
15 R-5 883
16 R-6 885
17 R-7 889
18 R-8 892
19
20
21 --oOo--
22
23
24
25

Page 643

1 SEATTLE, WASHINGTON
 2 NOVEMBER 29, 2017
 3 MORNING SESSION
 4 --oOo--
 5 THE HEARING EXAMINER: Okay. We're
 6 back on the record, and we were with Appellants.
 7 Where we left of was we're still on direct for
 8 Mr. Cohen, with Appellants. Are there any
 9 procedural issues we need to address before we get
 10 started?
 11 MR. BROWER: Not from our side.
 12 THE HEARING EXAMINER: One question I
 13 had was did we get 14, A-14 admitted? It's
 14 identified as Exhibit -- or was that the one that
 15 was not admitted? That was the last one. Was that
 16 the email? It's A-312.4
 17 MR. BROWER: I have my notes that it
 18 was.
 19 THE HEARING EXAMINER: Let's make sure
 20 which one that was.
 21 MR. BROWER: That was the Puget Sound
 22 Regional Council Study.
 23 THE HEARING EXAMINER: Right. Okay.
 24 So that -- and I don't -- we don't have that marked
 25 as admitted yet. So --

Page 644

1 MR. BROWER: I think we all agreed
 2 yesterday that it was.
 3 THE HEARING EXAMINER: Any objection
 4 to the Puget Sound? Okay.
 5 MS. FERGUSON: Nope.
 6 THE HEARING EXAMINER: All right. So
 7 that's admitted.
 8 MR. BROWER: And I think it was A-315
 9 that wasn't admitted.
 10 THE HEARING EXAMINER: Right. All
 11 right. Mr. Brower?
 12 MR. BROWER: Thank you.
 13 STEPHEN COHEN (Resumed),
 14 a witness, having been previously sworn,
 15 was examined and testified as follows:
 16 DIRECT EXAMINATION (Resumed)
 17 BY MR. BROWER:
 18 Q. Good morning, Mr. Cohen.
 19 A. Good morning.
 20 Q. You are under oath still. Yesterday,
 21 before we ended the day, you and I were talking
 22 about stressors that impact both the maritime and
 23 industrial sector in Washington in general and the
 24 maritime and industrial sector in Ballard in
 25 particular.

Page 645

1 Do you remember that?
 2 A. I do.
 3 Q. And can you remind us why -- what is the
 4 impact of those stressors on those clusters?
 5 A. The impact is that growing encroachment
 6 or perceived encroachment -- there are a couple
 7 things. One, there's a perception that long-run of
 8 those businesses won't be viable or there's not
 9 support for those businesses as there's
 10 non-industrial use that gets in close proximity to
 11 industrial operations. But more acutely, businesses
 12 were concerned that as there are more non-industrial
 13 uses actually happening in close proximity to those
 14 industrial operations that particularly residential
 15 operations and essential uses, that that will
 16 help -- that will adversely affect and curtail
 17 operations at those businesses. For instance,
 18 having to change their operation schedule to
 19 accommodate concerns about noise among residents
 20 that live in close proximity to that industrial
 21 operation.
 22 Q. And does that kind of go hand in glove
 23 with the agglomeration concept that if you start
 24 peeling apart this group you undermine the entire
 25 cluster?

Page 646

1 A. It has a -- definitely, I think an
 2 adverse impact on the agglomeration benefits and the
 3 agglomeration effects. Because what we learned in
 4 our studies in the maritime industry, for instance,
 5 as well as in other clusters across the state, but
 6 particularly with the case in maritime is that
 7 there's a high degree of fragility within the
 8 cluster. And this was communicated to us through
 9 direct conversations with businesses.
 10 The example I gave yesterday was not
 11 directly in that the area of study, but it was
 12 within *Bin Mic, in which a shipyard shared with us
 13 that they share a crane, for instance, with two
 14 other businesses. And if any one of those
 15 businesses goes away or the one that operates the
 16 crane it will have deleterious effects on the
 17 operations of all those other businesses that use
 18 that crane. And so, there's examples like that
 19 where there is shared resources. There is shared
 20 assets. And when one -- and as well as just simply
 21 serving the needs of businesses within the cluster,
 22 whether it's a refueling operation for fishing
 23 vessels; whether it's a shipyard for fishing vessels
 24 and repair operations. And if one goes away, it'll
 25 have a sizable impact on the viability of the other

Page 647

1 businesses within that cluster.
 2 Q. In the course of your work did you review
 3 the Economic Considerations Report that was part of
 4 the draft EIS?
 5 A. I did.
 6 Q. And did you review three drafts of that
 7 report?
 8 A. I did.
 9 Q. And the Maritime Industrial Cluster Study
 10 that you and your firm did in 2013 and then updated
 11 in 2017, were those -- either of those referenced in
 12 that Economic Considerations Report?
 13 A. Not to my recollection, no.
 14 Q. What about the Puget Sound Regional
 15 Council Study on Industrial Lands? Was that
 16 referenced in that Economic Considerations Report?
 17 A. Not to my recollection, no.
 18 Q. Are either of those Maritime Industrial
 19 Cluster Studies, the 2013 or 2017, are they hard to
 20 find?
 21 A. No. They're readily available online.
 22 Q. And what about the Puget Sound Regional
 23 Counsel Industrial Land Study?
 24 A. That should also be available online, but
 25 it's also a public document, so it should be easily

Page 648

1 accessible.
 2 Q. So did the Economic Considerations Report
 3 that was included in the draft EIS, did that use a
 4 hedonic model?
 5 A. Yes.
 6 Q. What is a hedonic model?
 7 A. A hedonic model is essentially a
 8 regression analysis. But it's a statistical means
 9 of disaggregating the attributes of property value.
 10 So looking at the different components statistically
 11 to determine what features or attributes on -- have
 12 what effects on property value using a regression
 13 approach.
 14 Q. So we're talking about real property dirt
 15 here?
 16 A. Yes.
 17 Q. Do you think that's the right model to
 18 use to look at impacts to businesses in the maritime
 19 industrial cluster looking at property values?
 20 A. In my opinion, I feel that it's an
 21 insufficient approach. I feel like there's many
 22 other methods that are actually much less
 23 complicated and to me much more intuitive to get at
 24 an understanding of the costs that are -- would be
 25 borne by industrial users based on the research

Page 649

1 question in this study, which was what would those
 2 impacts be to those businesses.
 3 Q. Did the hedonic model that was used in
 4 the Economic Considerations Report in the draft EIS
 5 look at impacts to single-family home real property
 6 as well as industrial land property?
 7 A. It did.
 8 Q. Is there any single-family home land --
 9 zoned land within the study area where the trail is
 10 located?
 11 A. Not to my knowledge, no.
 12 Q. Do you think that the hedonic modeling
 13 and the modeling done in the Economic Considerations
 14 Report was flawed?
 15 A. I did.
 16 Q. Do you think it was incomplete?
 17 A. I feel like the approach was incomplete.
 18 Q. Let's turn and talk about some of the
 19 findings. You can turn to Volume 9, Exhibit 350.64,
 20 please.
 21 THE HEARING EXAMINER: What exhibit
 22 number was that?
 23 MR. BROWER: 350.64.
 24 BY MR. BROWER:
 25 Q. Mr. Cohen, do you have that document in

Page 650

1 front of you?
 2 A. I do.
 3 MS. FERGUSON: I'm sorry. One second.
 4 I'm was trying to find it in the electronic version.
 5 It's not there. So what volume?
 6 MR. BROWER: 9.
 7 THE HEARING EXAMINER: While
 8 Ms. Ferguson's looking for that, could you just fill
 9 me in on what this is?
 10 MR. BROWER: Certainly. This is the
 11 first draft of the Economic Discipline Report that
 12 was prepared by ECONorthwest which was a sub
 13 consultant to ESA, which is the prime consultant to
 14 SDOT for this project. And the reason that you see
 15 the ESA logo on the first page is that ESA uses a
 16 template. You'll hear that from Mr. Johnson when he
 17 testifies for all of their sub-consultant reports.
 18 And this report is dated January 29th, 2016.
 19 THE HEARING EXAMINER: Is this part of
 20 draft EIS, the EIS -- how --
 21 MR. BROWER: The Economic
 22 Considerations Report was only included in the draft
 23 EIS. This version is not, which is what you'll
 24 hear.
 25 BY MR. BROWER:

Page 651

1 Q. Mr. Cohen, did I accurately describe this
 2 document to the Hearing Examiner?
 3 A. Yes.
 4 Q. To your understanding?
 5 A. Yes.
 6 Q. And did you review this document as part
 7 of your work?
 8 A. I did.
 9 Q. Would you please turn to page 4-3 of that
 10 report, which is also --
 11 MR. BROWER: And I'd like to mark this
 12 as A-16, I believe, Mr. Examiner.
 13 THE HEARING EXAMINER: A-15.
 14 MR. BROWER: 15.
 15 BY MR. BROWER:
 16 Q. So if you'd turn to page 4-3 of what's
 17 been marked as Exhibit A-15. Would you read the
 18 highlighted language in your copy that starts at
 19 line 7 on that page and goes down through line 10?
 20 A. "The operational impacts may entail some
 21 quote, unquote "winners," those whose businesses --
 22 business residence benefit from increased
 23 accessibility and pedestrian and bike traffic as
 24 well as quote, unquote "losers." Those who are" --
 25 THE HEARING EXAMINER: All right.

Page 652

1 Pause for just a moment. The chess clock ran out.
 2 MR. BROWER: I guess we're done.
 3 THE HEARING EXAMINER: It only goes up
 4 to 9:59, so. All right. No, I'll clear it and then
 5 this will take a minute. Let's take a five-minute
 6 break, so I can clear that.
 7 MS. FERGUSON: As we go I'm going to
 8 label the right exhibit in here to make it easy for
 9 everybody. So that's what I'll be doing.
 10 (Recess taken.)
 11 THE HEARING EXAMINER: All right. So
 12 apparently the setter mode is something that's going
 13 to take me a lot longer to figure out than -- once
 14 this freezes. So I don't know if it's not working
 15 or what have you. So the chess clock has done its
 16 service for us so far. We will keep track of time
 17 for the Appellants for this morning, at least, until
 18 the next break and I can see if I can figure out how
 19 to work it or get it to work at the next break.
 20 Okay. Let's go ahead.
 21 MR. BROWER: Thank you.
 22 BY MR. BROWER:
 23 Q Mr. Cohen, would you go back and start
 24 again reading the highlighted language that starts
 25 at line 7 of page 4-3 of what's been marked as

Page 653

1 Exhibit A-15?
 2 A. "The operational impacts may entail some
 3 quote, unquote "winners," those whose businesses and
 4 residences benefit from the increased accessibility
 5 of pedestrian and bike traffic as well as quote,
 6 unquote "losers," those who are detrimentally
 7 impacted by the trail from congestion of existing
 8 activity with increased pedestrian bike traffic."
 9 Q. Would you now turn to page 4-9 of that
 10 same document? And would you read the highlighted
 11 language on -- and tell me what -- I think it starts
 12 on lines 24. Or is there a -- what's the
 13 highlighted language start on?
 14 A. On 24.
 15 Q. Thank you. On 24.
 16 A. "At these points the congestion of
 17 pedestrian and bike travelers with industrial
 18 traffic may cause significant economic harm.
 19 Significant impacts result often of the interference
 20 of the business operations of industrial properties
 21 due to pedestrian and bicycle traffic. This
 22 interference may result in decreased profitability
 23 and in extreme cases result in some industrial users
 24 going out of business."
 25 Q. In your professional opinion would you

Page 654

1 agree that delay for these industrial businesses
 2 could cause economic harm?
 3 A. I do believe that.
 4 Q. And would you turn to page -- what is in
 5 red at the bottom, page 033? And what is shown in
 6 Table 4-3-2?
 7 A. These are economic impacts to adjacent
 8 industrial or warehouse properties listed by tenant.
 9 Q. And is the -- you look across the page
 10 from the bottom to the top, there's a second column
 11 towards the top called likelihood to be impacted
 12 with 1 least likely and 5 most likely.
 13 A. Yes.
 14 Q. Are there two businesses that have a
 15 rating of 5?
 16 A. There is.
 17 Q. And what are those businesses?
 18 A. The first is Salmon Bay Sand and Gravel,
 19 and the second is Ballard Mill Marina.
 20 Q. And so this is ECONorthwest concluding
 21 that these businesses will be most likely to be
 22 impacted? Is that the correct way to read this
 23 chart?
 24 A. Yes.
 25 Q. And would you turn the page to what's

Page 655

1 page 034 in red at the bottom of Exhibit A-15? And
 2 do you see Table 4-3-3?
 3 A. Yes.
 4 Q. What is ECONorthwest describing in this
 5 table?
 6 A. It's describing the expected costs of
 7 traffic delay for the year 2040 intersection.
 8 Q. And they're actually assigning a dollar
 9 value to that delay?
 10 A. Yes.
 11 Q. Do you understand how they did that?
 12 A. My understanding is they used an estimate
 13 of value of time.
 14 Q. And multiplied that by the amount of
 15 delay?
 16 A. That's correct.
 17 Q. And what was that estimated value of time
 18 that they used?
 19 A. They used a value of \$20 per hour.
 20 Q. Do you know why they picked 20 bucks an
 21 hour?
 22 A. It's -- I don't recall directly, but it
 23 seems reasonable based on other studies I've seen
 24 the past. I would assume that they've used --
 25 typically when value of time studies are done

Page 656

1 there's a standard that's established by U.S.
 2 Department of Transportation of other agency
 3 including Washington State Department of
 4 Transportation as well. So I assume that there was
 5 some standard that they used.
 6 Q. So would that -- I'm going to get way in
 7 over my head in economics and statistics. Is that
 8 an average or a mean or a median? I'm probably
 9 mixing a bunch of terms.
 10 A. I don't necessarily know. I think it's
 11 probably an average.
 12 Q. So there's some businesses that pay more
 13 and some that pay less?
 14 A. That's correct.
 15 Q. Okay.
 16 A. So it's a pretty -- I would -- it's
 17 pretty -- it's possible that it's -- it reflects a
 18 wide diversity of offtakes of vehicle operations.
 19 Q. So would you look about three quarters of
 20 the way down? Do you see there's a line for Salmon
 21 Bay Sand and Gravel on the north side and then
 22 Salmon Bay Sand and Gravel on the south side?
 23 A. Yes.
 24 Q. So it looks like the no build alternative
 25 and the Shilshole delay has the same time value of

Page 657

1 delay. Is that correct?
 2 A. That's correct.
 3 Q. But what about the next line for the
 4 south side? Is that the same?
 5 A. It is not.
 6 Q. And how much is the south Shilshole delay
 7 in total cost to Salmon Bay?
 8 A. For the south delay?
 9 Q. Yes.
 10 A. That would be \$32,904.
 11 Q. And what about for Covich and Williams,
 12 which is right next door?
 13 A. Covich and Williams.
 14 Q. And one right below.
 15 A. That'd be \$27,097.
 16 Q. Would you go back to page 32, please?
 17 Would you read the highlighted language that goes
 18 from line 24 to 26?
 19 A. "Of the properties identified, is
 20 expected that the Ballard Marina and Salmon Bay Sand
 21 and Gravel may be significantly impacted by the
 22 operation of the Shilshole South alternative.
 23 Q. So ECONorthwest is concluding that this
 24 trail will significantly impact these businesses.
 25 Is that correct?

Page 658

1 MR. COHEN: I'm going to object, Your
 2 Honor. The Shilshole South alternative is not the
 3 preferred alternative. And Mr. Brower is misstating
 4 the -- what's in the record in referring to this
 5 trail.
 6 MR. BROWER: I think Mr. Cohen is
 7 confused. The -- this report was only in the draft
 8 EIS, not the final EIS. And the draft EIS did not
 9 include the preferred alternative, so.
 10 MR. COHEN: And I'm not confused.
 11 That's the point of my objection. It's not this
 12 trail. You're asking about this trail. That's not
 13 the trail that's described in that report.
 14 MR. BROWER: But the south Shilshole
 15 alternative comprises most of the preferred
 16 alternative in the FEIS. It's the exact same trail
 17 all the way up until Market. And instead of going
 18 along Not 54th, the preferred alternative includes a
 19 section that was never analyzed which gets you from
 20 Not 54th up to Market and then along Market. But on
 21 Shilshole, it's the exact same alternative. And --
 22 THE HEARING EXAMINER: So --
 23 MR. BROWER: -- the draft EIS is part
 24 of this case.
 25 THE HEARING EXAMINER: So in the draft

Page 659

1 EIS there's some indication that, you're arguing or
 2 trying to demonstrate, it seems, that there is an
 3 economic impact associated with delay. And this is
 4 illustrating that?
 5 MR. BROWER: Exactly. And the --
 6 THE HEARING EXAMINER: This isn't the
 7 specific project that's at issue.
 8 MR. COHEN: My only concern, Your
 9 Honor, is I don't mind if Mr. Brower asks questions
 10 about the Shilshole South alternative which was, as
 11 he says, in the draft EIS. Just doesn't happen to
 12 be the alternative that was ultimately selected in
 13 the final EIS. So it's a matter of a modest
 14 misrepresentation of what we're talking about.
 15 THE HEARING EXAMINER: I'll allow it
 16 because I understand the distinction. This isn't
 17 demonstrating that this, the preferred alternative,
 18 will cause delay and that there will be negative
 19 economic impacts as a result of that. It's not
 20 showing that, and I don't think that that's what
 21 it's offered for at least so far.
 22 MR. BROWER: Well, I think it's a
 23 little -- it's highly more than once in that,
 24 Mr. Examiner, because a couple things happened.
 25 MS. FERGUSON: I'm going to object to

Page 660

1 testimony by the attorney.
 2 THE HEARING EXAMINER: Well, it's
 3 additionally argument. What I'm doing is allowing
 4 you to go forward.
 5 MR. BROWER: Thank you.
 6 THE HEARING EXAMINER: You can make
 7 the arguments --
 8 MR. BROWER: Okay.
 9 THE HEARING EXAMINER: -- later as to
 10 why this was admitted and I'll be with you.
 11 BY MR. BROWER:
 12 Q. Let me try and focus this a little bit.
 13 Mr. Cohen, did the final EIS include an update to
 14 the Economic Considerations Report?
 15 A. it did not.
 16 Q. So the Economic Considerations Report is
 17 only in the draft EIS?
 18 A. That's correct.
 19 Q. So the -- and was the preferred
 20 alternative in the draft EIS or was there no
 21 preferred alternative in the draft EIS?
 22 A. I'd have to -- I believe the preferred
 23 was in the draft EIS.
 24 Q. Could you go back and check? Let's --
 25 because that's actually not the case. Okay?

Page 661

1 A. Oh.
 2 Q. We'll move on, because we've got other
 3 witnesses --
 4 A. Right. Sorry.
 5 Q. -- that can testify this and we'll clean
 6 this up with the City's witness. But so the only
 7 time that we can talk about this Economic
 8 Considerations Report if it's only in the draft EIS
 9 is only related to the alternatives in the draft
 10 EIS. Is that correct?
 11 A. That's correct.
 12 Q. So again to my question, is ECONorthwest
 13 concluding in the draft -- excuse me in the draft
 14 report that's part of the draft EIS that there will
 15 be significant impacts to these businesses?
 16 A. They're claiming that there's a
 17 possibility that there would be significant impacts.
 18 Q. Thank you. Did you also review a second
 19 draft of this report that was done in May or June?
 20 A. I did.
 21 Q. And we're going to have to move to a
 22 different volume. Volume 10.
 23 MR. BROWER: I dropped one yesterday
 24 and luckily it didn't explode.
 25 MR. KISIELIUS: It slid out of my

Page 662

1 hands.
 2 MS. FERGUSON: Sure.
 3 THE HEARING EXAMINER: And which one
 4 are we looking at again?
 5 MR. BROWER: This is Volume 10. This
 6 is the first document in the volume A-350.65.
 7 Before we get there I'd move to admit what's been
 8 marked as Exhibit A-15.
 9 MS. FERGUSON: No objection.
 10 MR. COHEN: No.
 11 THE HEARING EXAMINER: A-15 is
 12 admitted.
 13 (APPELLANT'S EXHIBIT A-15 ADMITTED.)
 14 MR. BROWER: Thank you, Mr. Examiner.
 15 And I'd like to have this marked as A-16, please.
 16 BY MR. BROWER:
 17 Q. Mr. Cohen, do you have what's been marked
 18 as Exhibit A-16 in front of you?
 19 A. I do, yes.
 20 Q. And do you recognize this document? Is
 21 this something that you reviewed as part of your
 22 work for this project?
 23 A. Yes. I reviewed it.
 24 Q. And is this the second draft of the
 25 Economic Considerations Report?

Page 663

1 A. Yes.

2 Q. In looking through this document, is any

3 of the language that you just read that was in the

4 first draft included in this second draft?

5 A. There were tract modifications in this

6 draft.

7 Q. So let's go and look at page 4-3, for

8 example.

9 MS. FERGUSON: Josh, what page?

10 MR. BROWER: Actually, I'm was going

11 to do a better job of orienting us.

12 BY MR. BROWER:

13 Q. Actually, I'd like you to look at page

14 4-1 in what's been marked as Exhibit A-16. And

15 that's Section 4.2, Impacts Common to All Build

16 Alternatives. Do you see that?

17 A. Yes.

18 Q. Is the winners and losers language in

19 this section anymore or has it been taken out?

20 A. I'm not seeing it in here.

21 Q. So let's now turn to --

22 THE HEARING EXAMINER: And can you

23 give me the -- I'd like to track the changes between

24 the two exhibits you have. So if you're referencing

25 the page from A-15 as to where that was would be

Page 664

1 helpful for me to --

2 MR. BROWER: Certainly. I apologize

3 for not doing that. So --

4 THE HEARING EXAMINER: Okay.

5 MR. BROWER: -- that's page 4-1 of

6 Exhibit A-16, also marked as page 034 in red.

7 THE HEARING EXAMINER: 4 -- I'm sorry.

8 I thought we were in 4-3?

9 MR. BROWER: I apologize. I -- the

10 page numbering changed from version to version

11 because --

12 THE HEARING EXAMINER: Okay. So for

13 A-16, we were on 4-1?

14 MR. BROWER: Yes.

15 THE HEARING EXAMINER: And it's

16 comparable in A-15?

17 MR. BROWER: To A-15 to page 4-3.

18 THE HEARING EXAMINER: Thank you.

19 MR. BROWER: And they're both Section

20 4.2 And I apologize. I'm going to ask you to

21 bounce back and forth between A-15 and A-16, so

22 you're going to have to have both volumes in front

23 of you.

24 THE HEARING EXAMINER: Can you give me

25 a minute to get mine out as well?

Page 665

1 MR. BROWER: Certainly.

2 (Pause in proceedings.)

3 BY MR. BROWER:

4 Q. Mr. Cohen, in A-15, which is the first

5 draft, what was the language you said was not in the

6 second draft, A-16, on that?

7 THE HEARING EXAMINER: I think

8 Mr. Brower indicated it was page 4-3.

9 THE WITNESS: Yes.

10 THE HEARING EXAMINER: I want to make

11 sure what line and what language.

12 THE WITNESS: The specific language

13 was on Port -- page 4-3, or in red page 23. Lines 7

14 through 10, so beginning with the "Operational

15 impacts some winners" and then ending at the bottom

16 of that paragraph.

17 THE HEARING EXAMINER: Thank you.

18 Mr. Cohen, if you would turn now to

19 page 4-9 of Exhibit A-15?

20 MR. BROWER: And the -- sorry.

21 BY MR. BROWER:

22 Q. And again, would you remind us where the

23 highlighted language is on page 4-9 of Exhibit A-15?

24 A. I'm looking at lines 24 through 27.

25 Q. If you would turn to Exhibit A-16,

Page 666

1 please, and look at page A -- excuse me, 4-8, which

2 is also page -41 at the bottom in red. So on

3 Exhibit A-15, page 4-9, can you remind us what the

4 highlighted language in lines 24 through 27 say?

5 Can you read it again?

6 A. It reads, "At these points, the

7 congestion of pedestrian and bike travelers with

8 industrial traffic may cause significant economic

9 harm. Significant impacts result from the

10 interference of business operations, industrial

11 properties due to pedestrian bicycle traffic. This

12 interference may result in decreased profitability

13 and in extreme cases result in some industrial users

14 going out of business."

15 Q. So in the first draft in January,

16 ECONorthwest is saying that some businesses may go

17 out of business. Is that correct?

18 A. That's correct.

19 Q. So and that's in the section entitled How

20 Mixed-Use Trails Negatively Impact Property in A-15.

21 Is that correct?

22 A. That's correct.

23 Q. So that same section is on page 4-8 of

24 Exhibit A-16. Does exhibit -- does the second draft

25 of the ECONorthwest include the same language about

Page 667

1 some businesses going out of business?
 2 A. It does not.
 3 Q. So that was removed from the second
 4 draft?
 5 A. Apparently, yes.
 6 Q. So going back to A-15 on page 4-12, this
 7 is the section that talks about the significant
 8 impacts to Ballard Marina and Salmon Bay Sand and
 9 Gravel. Can you read that language to us again?
 10 THE HEARING EXAMINER: What lines are
 11 those?
 12 MR. BROWER: That'd be lines 24
 13 through 26 on page 4-12 of Exhibit A-15.
 14 THE WITNESS: It reads "Of the
 15 properties identified, it is expected that the
 16 Ballard Marina and Salmon Bay and Gravel may be
 17 significantly impacted by the operation of the
 18 Shilshole South alternative."
 19 BY MR. BROWER:
 20 Q. And is that language anywhere in that
 21 same section of Exhibit A-16, which would be on page
 22 4-10 and 4-11 of A-16?
 23 A. I do not see it in that section.
 24 Q. So again, the language about significant
 25 impact to specific businesses has been removed from

Page 668

1 the second draft.
 2 A. It's apparently so, yes..
 3 Q. And do you see on page 4-11 of Exhibit
 4 A-16, this is a -- what we call a red line isn't it?
 5 It's got the track changes going?
 6 A. Yes.
 7 Q. Can you read the sentence about mid-way
 8 down the page on line 8 that's a new red line?
 9 A. The new red line track changes read, "It
 10 is anticipated that the trail will improve safety
 11 for pedestrian bike modes, but if the" -- and then
 12 it --
 13 Q. You can stop there. So the new version
 14 says the trail will improve safety, but it doesn't
 15 talk about economic impacts to these businesses,
 16 does it?
 17 A. That's correct.
 18 Q. And in Exhibit A-15, we looked at page
 19 033 in red and 034 in red, which were Tables 4-3-2
 20 and 4-3-3 respectively. Do you see those?
 21 A. Yes.
 22 Q. And these are tables that -- what do they
 23 do? Are they quantifying the economic impacts to
 24 these businesses?
 25 A. These are quantifying one aspect of the

Page 669

1 economic costs to these businesses. That specific
 2 cost being the delays and at those driveways --
 3 intersections.
 4 Q. And, again, they did that by using the
 5 \$20 an hour figure times the amount of delay?
 6 A. That's correct.
 7 Q. Are either of those tables in the second
 8 draft of the Economic Considerations Report?
 9 A. I do not see them in there.
 10 Q. So again, they were removed?
 11 A. Yes.
 12 Q. Did you also review the final Economic
 13 Considerations Report draft published in the draft
 14 EIS?
 15 A. I did.
 16 Q. And --
 17 MR. BROWER: Well, Mr. Examiner, I
 18 move to admit Exhibit A-16.
 19 MS. FERGUSON: No objection.
 20 MR. COHEN: No objection.
 21 THE HEARING EXAMINER: A-16 is
 22 admitted.
 23 (APPELLANT'S EXHIBIT A-16 ADMITTED.)
 24 MR. BROWER: Thank you.
 25 BY MR. BROWER:

Page 670

1 Q. Would you, Mr. Cohen, turn to the next
 2 tab in Volume 10? And is that the final Economic
 3 Considerations Report that was included in the draft
 4 Environmental Impact Statement?
 5 A. Yes.
 6 Q. And you reviewed this as part of your
 7 work on this project?,
 8 A. I did.
 9 Q. And just in general, does the final draft
 10 include any of the language that was in the first
 11 draft about the significant adverse impacts to these
 12 businesses?
 13 A. I don't recall it did.
 14 Q. And does the final draft of the
 15 Environmental Considerations Report that's been
 16 marked as Exhibit A-17 include those quantitative
 17 tables that show the analysis, Tables 4-3-2 and
 18 4-3-3?
 19 THE HEARING EXAMINER: Sorry. Let's
 20 get our exhibit numbers right. Are you referring in
 21 the last one to A-16?
 22 MR. BROWER: A-15.
 23 THE HEARING EXAMINER: You said 17
 24 MR. BROWER: Sorry. I'm comparing 17
 25 to 15.

Page 671	Page 673
<p>1 THE HEARING EXAMINER: We don't have</p> <p>2 17 yet. So that's part of what I --</p> <p>3 MR. BROWER: I apologize. I'd like to</p> <p>4 mark what's been --</p> <p>5 THE HEARING EXAMINER: The</p> <p>6 Environmental Considerations Report?</p> <p>7 MR. BROWER: Yes. Which is A-350.66.</p> <p>8 THE HEARING EXAMINER: So we'll mark</p> <p>9 --</p> <p>10 MS. FERGUSON: And can I say that this</p> <p>11 report is already admitted as part of Exhibit -- we</p> <p>12 didn't do the draft.</p> <p>13 THE HEARING EXAMINER: No. We haven't</p> <p>14 got the draft in there.</p> <p>15 MR. BROWER: It will be part of the</p> <p>16 full draft EIS rather than have it come in as two</p> <p>17 separate exhibits. Doesn't make sense to just do</p> <p>18 the draft now?</p> <p>19 MR. BROWER: I would like to have this</p> <p>20 as a separate exhibit.</p> <p>21 THE HEARING EXAMINER: I'm fine with</p> <p>22 it being separate as well.</p> <p>23 MR. COHEN: So, Mr. Brower, what's the</p> <p>24 number on it in your numbering system?</p> <p>25 MR. BROWER: 350.66.</p>	<p>1 THE HEARING EXAMINER: Did you say 16?</p> <p>2 MR. BROWER: Yes.</p> <p>3 THE HEARING EXAMINER: The second</p> <p>4 draft?</p> <p>5 MR. BROWER: Yes.</p> <p>6 MR. COHEN: Thank you.</p> <p>7 BY MR. BROWER:</p> <p>8 Q. Mr. Cohen, would you turn to page 4-11 of</p> <p>9 Exhibit A-16, which is also marked in red as page</p> <p>10 044? Do you see a strike-through change on line 5</p> <p>11 of that page?</p> <p>12 A. I do.</p> <p>13 Q. And what is that strike-through change?</p> <p>14 A. The change was from "would" to "could."</p> <p>15 THE HEARING EXAMINER: Now, sir, which</p> <p>16 page are you on? I didn't hear you right.</p> <p>17 MR. BROWER: Page 4-11 of Exhibit</p> <p>18 A-16. Sorry. I might be -- it is A-16. I</p> <p>19 apologize.</p> <p>20 THE HEARING EXAMINER: No. I said</p> <p>21 that right. But I see. All right.</p> <p>22 BY MR. BROWER:</p> <p>23 Q. And would you read the whole sentence in</p> <p>24 the way it was originally written before the strike-</p> <p>25 through which starts on line 3 and runs through line</p>
Page 672	Page 674
<p>1 MR. COHEN: Thank you.</p> <p>2 MR. BROWER: That's in Volume 10.</p> <p>3 THE HEARING EXAMINER: And we're</p> <p>4 marking it as A-17.</p> <p>5 MR. BROWER: I apologize. I got a</p> <p>6 little ahead of myself.</p> <p>7 THE HEARING EXAMINER: I thought</p> <p>8 that's where you were going, but I --</p> <p>9 BY MR. BROWER:</p> <p>10 Q. Mr. Cohen --</p> <p>11 THE HEARING EXAMINER: We don't have</p> <p>12 any 17 on that.</p> <p>13 BY MR. BROWER:</p> <p>14 Q. -- I'm asking you to compare the final</p> <p>15 Environmental Considerations Report that's been</p> <p>16 marked as Exhibit A-17 with the first draft of the</p> <p>17 Environmental Considerations Report, which has been</p> <p>18 marked as A-15. Does A-17 include the quantitative</p> <p>19 analysis in Tables 4-3-2 and 4-3-3?</p> <p>20 A. I don't see them in there, so no.</p> <p>21 Q. So again, those -- that quantitative</p> <p>22 analysis was removed from the final version?</p> <p>23 A. That's correct.</p> <p>24 Q. I apologize. I want to go back to</p> <p>25 Exhibit A-16 for a second.</p>	<p>1 5?</p> <p>2 A. The original sentence was "To the extent</p> <p>3 of the businesses, not properties, that operate</p> <p>4 these city driveways are dependent upon driveway</p> <p>5 traffic to maintain a profitable enterprise, these</p> <p>6 delays would result in higher cost of production.</p> <p>7 Q. So in that original first draft, they</p> <p>8 were saying it actually would happen?</p> <p>9 A. That's correct.</p> <p>10 Q. And it was changed to say that it "could"</p> <p>11 happen?</p> <p>12 A. That's correct.</p> <p>13 Q. And "could" means it might happen?</p> <p>14 A. It's pretty ambivalent, yeah. Ambiguous,</p> <p>15 sorry.</p> <p>16 THE HEARING EXAMINER: I'm sorry,</p> <p>17 Mr. Brower, I may have not tracked that.</p> <p>18 MR. BROWER: Okay.</p> <p>19 THE HEARING EXAMINER: I was on 4-11</p> <p>20 of A-16. Is that?</p> <p>21 MR. BROWER: That is correct. And so,</p> <p>22 what we were looking at, Mr. Examiner, was lines 3</p> <p>23 through 5 of page 4-11 on A-16.</p> <p>24 THE HEARING EXAMINER: Okay.</p> <p>25 MR. BROWER: There's a very -- it's</p>

Page 675

1 hard to see, but looking closely it's just a "c" to
 2 a "w" change.
 3 THE HEARING EXAMINER: I see. Yes.
 4 That's why I didn't catch it. All right.
 5 MR. BROWER: Yeah.
 6 THE HEARING EXAMINER: Thank you.
 7 MR. BROWER: Certainly.
 8 (Pause in proceedings.)
 9 BY MR. BROWER:
 10 Q. If you would turn to page 4-9 of Exhibit
 11 A-17, which is the final draft? Do you see that
 12 page?
 13 A. I do.
 14 Q. Would you read the last paragraph on page
 15 4-9? Starts with "It is anticipated."
 16 A. "It is anticipated that the trail would
 17 improve safety overall for pedestrian bicycle modes.
 18 With the higher volume of pedestrian bicycle traffic
 19 near industrial businesses and their loading and
 20 unloading zones, increases the localized probability
 21 of industrial vehicles -- industrial vehicle
 22 involved with bicycle and pedestrian conflicts then
 23 business operating expenditures could increase due
 24 to higher costs of insurance. However, the full
 25 extent of any potential increases in business costs

Page 676

1 under the 20/24 Shilshole South alternative and how
 2 these costs compare to the 20/40 no build
 3 alternative are unknown."
 4 Q. But didn't they at least make a
 5 quantitative estimate of that in the first draft in
 6 those tables we talked about?
 7 A. With respect to with the delays they did.
 8 Q. Okay.
 9 A. But not with respect to impacts on or
 10 expenditures for higher insurance premiums.
 11 Q. Or having to use other mitigation
 12 measures, say, for example, a flagger?
 13 A. That's correct.
 14 MR. BROWER: Mr. Examiner, I'd also
 15 move to admit Exhibit A-17, please.
 16 MS. FERGUSON: No objection.
 17 MR. COHEN: No objection.
 18 THE HEARING EXAMINER: A-17 is
 19 admitted.
 20 (APPELLANT'S EXHIBIT A-17 ADMITTED.)
 21 BY MR. BROWER:
 22 Q. In reviewing ECONorthwest's draft and
 23 final
 24 report -- final Environmental Considerations Report
 25 which we've just talked about, did you develop an

Page 677

1 opinion regarding how ECONorthwest treated water-
 2 dependent and water-related uses compared to other
 3 upland properties and uses?
 4 A. I was -- can you clarify? I'm -- just in
 5 the interest of how they --
 6 Q. Certainly. Did they -- did ECONorthwest
 7 distinguish between water-dependent and water-
 8 related uses as compared to single-family homes near
 9 or adjacent to the study area?
 10 A. In their hedonic model they included a
 11 variable -- in their hedonic model specifically for
 12 industrial property value, they included a variable
 13 for water-dependent -- or waterfront frontage. But
 14 there was no -- in terms of the distinction in the
 15 report between water-dependent versus nonwater-
 16 dependent, I didn't detect any, no.
 17 Q. Do you think that's an important
 18 distinction?
 19 A. I think it's a very important
 20 distinction.
 21 Q. Why is that?
 22 A. Because I feel that in my opinion these
 23 businesses are located on the waterfront primarily
 24 because they depend on the waterfronts. And there's
 25 not a lot of working waterfronts left in the region

Page 678

1 that these businesses would be able to relocate to
 2 or be available to exist in. So I think that
 3 comparing them against other industrial uses without
 4 taking into consideration of water dependency skews
 5 the analysis.
 6 Q. Would it have been hard to do the
 7 analysis that you just described?
 8 A. I think it would have been -- it would
 9 have required probably a wider net of observations
 10 across the region to look at water-dependent uses
 11 and water-dependent businesses that are on
 12 industrial land. So I think it would have been
 13 possible.
 14 Q. What do you mean by water-net? Outside
 15 Seattle?
 16 A. Outside King County.
 17 Q. So maybe into the Tri-County area?
 18 A. That's correct.
 19 Q. And would you also have looked at other
 20 factors related to impacts to these businesses in
 21 doing that modeling or study?
 22 A. Yeah. I would have actually -- if I
 23 could speak about the modeling specifically or the
 24 approach?
 25 Q. Certainly.

Page 679

1 A. I would have started by first taking a
 2 tabulation of the identified types of impacts and
 3 seeing what -- to what extent I could quantify those
 4 impacts irrespective of whether there's a model that
 5 could be employed to do that. In the original, in
 6 fact, in all three of the draft Economic
 7 Considerations Reports drafts and Final Report, they
 8 do call out mitigation strategies. And that would
 9 have been someplace I would have looked at. I would
 10 have asked what would be -- since they've identified
 11 potential costs in terms of increases and premiums
 12 to the businesses that would be impacted directly by
 13 this -- I think the proposed route, I would have
 14 gone to an actuary, for instance, and asked them or
 15 done some investigation to look at what those
 16 premium increases would have been.

17 Likewise, with the suggestion in prior
 18 drafts of flaggers to help mitigate -- as a
 19 mitigation strategy, I would have also looked to
 20 look at what would be the cost of a flagger. So I
 21 would have -- first I would -- I looked at ways to
 22 identify those costs which don't seem terribly
 23 difficult, honestly, to do that or at least at first
 24 to meet the outreach to experts who can answer those
 25 questions. I also would have spoken directly with

Page 680

1 the businesses to get a full understanding of -- if
 2 I can -- I don't mean to.

3 Q. Please.

4 A. Beyond the question. But I would have --
 5 that would have been one of the first actions I
 6 would have done would be to go directly to the
 7 businesses and ask them, in their opinion, what
 8 would have been the potential impacts on their
 9 businesses. I would not have necessarily used their
 10 input as data, or direct evidence, because there's
 11 clearly going to be a bias because it's going to --
 12 it's directly impacting their businesses. And
 13 they've already -- have an expressed point of view,
 14 many of them, on the benefits and costs of the
 15 trail. But I would have asked -- I would have first
 16 gone to them and asked them to understand what those
 17 potential impacts would be. And then I would have
 18 gone and validated those or, you know, unvalidated
 19 or disproved those perceptions as well. But I would
 20 have gone to -- I would have categorized those
 21 impacts first and then gone to validate them with
 22 other sources and experts to develop an assessment
 23 that way, so.

24 Q. So let me kind of break down what you
 25 just said. So the premiums, are you talking about

Page 681

1 insurance premiums?
 2 A. That's correct.
 3 Q. So and what's an actuary?
 4 A. Someone who estimates premiums and
 5 doesn't -- premium -- analytics for insurance
 6 company, for instance.
 7 Q. So across an entire industry?
 8 A. That's right.
 9 Q. And is that hard information to get?
 10 A. I don't believe it would be hard. I
 11 believe it would be -- I don't believe it would be
 12 difficult to reach out to an insurance expert to get
 13 their opinion about what those increases in premiums
 14 would be, because in the end, if there is a -- if
 15 their report -- because I think the report is
 16 correct in stating that there could be insurance
 17 premium increases. Someone has to arrive at that
 18 increase anyways. The insurance company would have
 19 to come up with an estimate of what -- a new premium
 20 that they would charge these companies. So they're
 21 going to have to compute it anyways, so I think it'd
 22 be worthwhile to get an outside expert's opinion
 23 about that.
 24 Q. And you also said trying to get
 25 information about flaggers and going and talking to

Page 682

1 the businesses. Have -- do you believe the
 2 businesses would talk to you?
 3 A. Yes. Absolutely.
 4 Q. So do you remember Ms. Ferguson took your
 5 deposition a couple weeks ago?
 6 A. I do.
 7 Q. And she asked you a bunch of questions
 8 about, you know, would the businesses actually talk
 9 to you?
 10 A. Yes.
 11 Q. And have you ever worked on a project
 12 where you actually went out and talked to the
 13 businesses about their confidential or proprietary
 14 business information?
 15 A. I have.
 16 Q. And who is the client that you did that
 17 for?
 18 A. Well, there have been many clients. One
 19 that probably -- not exactly approximates a project
 20 or resembles, but is somewhat similar was a project
 21 I did for the City of Seattle. And that project was
 22 looking at the potential adverse impacts of coal
 23 trains or an increase of coal trains to the City of
 24 Seattle.
 25 Q. So who at the City of Seattle hired --

Page 683

1 was it they hired Community Attributes?
 2 A. That's correct.
 3 Q. And which department or agency hired
 4 Community Attributes?
 5 A. That was the Office of Economic
 6 Development.
 7 Q. So OED hired Community Attributes to help
 8 it with the study?
 9 A. That's correct.
 10 Q. And in -- so you went out and talked to
 11 businesses. Which businesses did you talk to?
 12 A. I don't recall all of the businesses,
 13 although it's documented in our Coal Train Study for
 14 the City. But we did speak with the Edgewater
 15 Hotel. We talked with a group of businesses in
 16 Soto. We talked with -- those are the ones. We
 17 talked to the Ivar's and there were a few others
 18 that would be right along the pathway of the
 19 existing BNSF line through downtown.
 20 Q. So that's a linear project, the coal
 21 train, and you and your team just walked the route
 22 and talked to businesses?
 23 A. Well, we reach out to them. We did some
 24 introductory emails. We also worked with the City
 25 as well, because the City has good relationships

Page 684

1 with those businesses. And so, they were able to
 2 facilitate interruptions for us as well.
 3 Q. And were you able to keep the information
 4 that they gave you confidential?
 5 A. Absolutely.
 6 Q. How'd you do that?
 7 A. We state up front that we will not
 8 disclose any information to any outside parties
 9 unless they give us their direct permission to do
 10 so.
 11 Q. And did you see any indication in any of
 12 the drafts prepared by ECONorthwest, the first,
 13 second, or third, that they did anything similar to
 14 go out and talk to these businesses?
 15 A. I did not see any evidence of that.
 16 Q. And that's typically, as I said, when we
 17 do our studies, our method has always been to, which
 18 I think is the right method, is to -- especially for
 19 an impact is before we go into a modeling approach
 20 and go through a very resource-intensive exercise of
 21 doing an economic model or other approach to --
 22 especially in a problem that's what I would consider
 23 a relatively intractable problem to some degree.
 24 Where there's no easily convenient and available
 25 data source to assess that problem, we like to do

Page 685

1 some initial field work to talk with businesses to
 2 really kind of scope it conceptually, first to
 3 understand what those -- and categorize and build a
 4 framework for how we evaluate those impacts. And
 5 those impacts could be both negative and positive.
 6 Think of it as sort of a cost-benefit analysis.
 7 Q. And going back to the Coal Train Study,
 8 did Community Attributes finish its work for the
 9 City of Seattle.
 10 A. We did.
 11 Q. And what happened to that report? Did
 12 you submit it to the City?
 13 A. We did submit it to the City.
 14 Q. Going back to ECONorthwest's work, did
 15 you look at the interview questions in Appendix B to
 16 the final EIS?
 17 A. I did.
 18 Q. And were those -- what were those
 19 questions geared towards?
 20 A. If I recall, those questions were not
 21 done by ECONorthwest. They're done by the
 22 Parametrix, I think, more -- one of the
 23 transportation consultants. And they had to do with
 24 transportation-related activities and, yeah,
 25 transportation related activities among those

Page 686

1 businesses.
 2 Q. So not really geared towards economics?
 3 A. I didn't detect any questions that
 4 related to economics.
 5 Q. Getting back to the three reports by
 6 ECONorthwest, did you -- were you finally able to
 7 get a chance to look at the dataset on which the
 8 report is based?
 9 A. I did have a chance to look at it.
 10 Q. And how big is that dataset?
 11 A. It's an enormous dataset.
 12 Q. Like hundreds of gigs?
 13 A. I don't remember the size, but it was --
 14 it's not -- it would -- it's a very -- it's a lot.
 15 It's -- I think if 21 -- there are many files, and I
 16 think one was 22,000 kilobytes. I don't remember
 17 the exact size, but it was enormous, yeah.
 18 Q. Enormous.
 19 A. There were probably about 20 or so
 20 different, separate C-S-E-A files or something
 21 around that range.
 22 Q. And those require a specific program to
 23 access and analyze?
 24 A. Yeah. If we were to reproduce the
 25 analysis with that data, we would use a statistical

Page 687

1 software package such as "R."
 2 Q. And did the dataset change between the
 3 January draft and the final report published in the
 4 draft EIS?
 5 A. I don't believe it changed, the
 6 observations, at least, for the industrial hedonic
 7 pricing model for industrial properties was the
 8 same. It was 593 observations reported in the two
 9 prior drafts and the final Environmental
 10 Considerations Report. So -- and we received one
 11 submission of data, so I'm work -- my assumption was
 12 it has not changed.
 13 Q. Was there a statistical summary of that
 14 data provided anywhere in ECONorthwest's work?
 15 A. There was not, which I was surprised
 16 about.
 17 Q. Why were you surprised by that?
 18 A. Typically, at least in academia, and I
 19 think that -- but it should hold true for all other
 20 types of statistical analysis. Before doing any
 21 sort of more complicated modeling, there should be
 22 first an initial presentation of the data and the
 23 variables used. So there should have been, for
 24 instance, reported number of the, for instance, the
 25 mean and the standard deviation and the median for

Page 688

1 each of the variables that is considered as a test
 2 variable in their analysis.
 3 Q. Why is that helpful?
 4 A. It helps to identify -- first it's a --
 5 it helps the outside reader understand, first
 6 understand the data. And understand if -- and then
 7 also identify if there's any strange irregularities
 8 or if things that we might think is worth exploring
 9 more with the inclusion of other data or inclusion
 10 of -- or trying to increase the sample size.
 11 Q. Does it also help to identify whether the
 12 data is really the right data to be trying to answer
 13 the question at hand?
 14 A. Absolutely.
 15 Q. And do economists regularly also stress
 16 test their data and their analysis method?
 17 A. Yes. Anytime you do an econometric
 18 analysis and produce a model with results, it's
 19 always helpful and it's a good -- it's a best
 20 practice to present multiple iterations of that
 21 model with the inclusion/exclusion of different
 22 variables at a minimum for the same dependent
 23 variable. So in this case, for industrial property
 24 value changes or industrial property to present
 25 multiple iterations of that model with different

Page 689

1 inclusion or exclusion of variables and then report
 2 it -- an overall measure of fitness that allows us
 3 to compare across the different models. So, for
 4 instance, like an r-squared or adjusted r-squared or
 5 an EIC or BIC statistic.
 6 Q. At least that -- a lot of that goes over
 7 my head.
 8 A. Sorry.
 9 Q. It's okay. In layman's terms are you
 10 stress testing the data to see if it's the right set
 11 of data or that the modeling is correct or both?
 12 A. Well, there's two pieces. First when you
 13 look at the descriptive statistics before you do a
 14 model to look if it's the right data, and understand
 15 if there's any abnormalities or irregularities or
 16 strange things that would potentially spur you to
 17 reassess your data sets, and also it gives
 18 confidence in the reader that you've done all the
 19 due diligence in the data analytics. The second
 20 piece with respect to comparison of models is that
 21 it gives the reader an assurance that the model
 22 presented is the best model and is the most
 23 appropriate model, and the findings of that model
 24 are the most appropriate and gives us confidence in
 25 those estimates. So, for instance, it would be

Page 690

1 helpful to know at least producing five or six
 2 different models that show different results or
 3 different coefficients and different levels of
 4 statistical significance, that the model that's
 5 presented as evidence in the appendix, that there is
 6 no adverse impact or statistically seeing if it has
 7 adverse impact on industrial properties from
 8 distance or proximity to a multi-use trail is, in
 9 fact, the best model and the best findings -- most
 10 appropriate findings.
 11 Q. So, I think if I understand what you're
 12 saying, is to say that if we're looking at impacts
 13 to industrial water-dependent businesses, should we
 14 be comparing them to single-family homes in another
 15 part of Ballard? Is that kind of a layman's way to
 16 say it?
 17 A. Well, no, this is specifically to clarify
 18 -- I would have repeated that process for each of
 19 the different models. I think it's perfectly fair
 20 and appropriate and correct, in fact, to have
 21 different analysis and models for different
 22 dependent variables in this case, which would be the
 23 industrial properties value versus multi-family
 24 value, land value, versus single-family value, for
 25 instance, or commercial value. I think it's

Page 691

1 actually quite appropriate to have separate models
 2 for each of those. But I think that there should be
 3 an evidence in the technical appendix perhaps not in
 4 the main report, but at least in the technical
 5 appendix to show that there are multiple -- you've
 6 stress tested it and you've looked at different
 7 models and arrived at the right conclusion that
 8 you've selected the correct model as evidence that
 9 there's no adverse impacts. Or whatever those
 10 impacts are could be positive, negative;
 11 statistically significant or not.
 12 Q. Did ECONorthwest stress test its model?
 13 A. I didn't see evidence of it. They might
 14 have done it in shop and just not here, so.
 15 Q. But it wasn't published in any of the
 16 reports that you saw?
 17 A. It wasn't published in any of the
 18 reports.
 19 Q. So going back, I think you said their
 20 data set didn't change between the January draft,
 21 which concluded there are significant impacts, and
 22 the May final version, which doesn't say anything
 23 about significant impacts, is that correct? The
 24 data didn't change?
 25 A. That's correct.

Page 692

1 Q. And did their methodology change between
 2 the January draft and the final version?
 3 A. For the hedonic model or overall?
 4 Q. Either one.
 5 A. I'd say in terms of the hedonic pricing
 6 model that did not change in my view. The results
 7 from what I looked at were the same, so it would
 8 seem that the method for the statistical model did
 9 not change. However, the overall way that they
 10 framed the impacts did change due to the exclusion
 11 in the final draft of the transportation to land
 12 impacts and specifically to those businesses that
 13 we've identified -- that the report identifies such
 14 as Salmon Bay Sand and Gravel.
 15 Q. So the way they reported it, what's the
 16 significance of that change?
 17 A. It shows, well, it's -- by removing what
 18 they call out as a negative impact on those
 19 businesses, it doesn't allow the reader to
 20 understand those impacts.
 21 Q. So if the data didn't change and the
 22 methodology didn't change -- methodology didn't
 23 change, how did the conclusions change from one
 24 draft to the final version?
 25 A. I feel like the conclusions, there was

Page 693

1 language in the original, as we called out, before
 2 identified that it was more definitive in the
 3 initial draft that was removed in the final draft.
 4 And so, it makes it more -- it makes the impact seem
 5 negligible or nonexistent, perhaps.
 6 Q. Mr. Cohen, in your opinion, which of the
 7 three: the January draft, the May/June second
 8 draft, or the final version published in the draft
 9 EIS best and most honestly discloses the potential
 10 economic impacts to the businesses in the study
 11 area?
 12 A. Well, can I qualify my statement?
 13 Q. Absolutely.
 14 A. I feel that the first draft was the most,
 15 in my opinion, like present or accurate in terms of
 16 the potential impacts. However, that being said, I
 17 also felt that it was insufficient. There was
 18 insufficient analysis even in the first draft for
 19 the reasons that I've mentioned before
 20 about -- there was no evidence that they spoke with
 21 businesses. There was no evidence that they did --
 22 there was no presentation of, even though they
 23 stated that there was a potential impact on
 24 insurance premiums for these businesses because of
 25 the higher risk of accidents between bicycles and

Page 694

1 industrial vehicles, there was no -- maybe there was
 2 an effort, but there was no presentation in the
 3 reports to show what those estimates were.
 4 Likewise, with the flaggers as a
 5 mitigation strategy as well, there was no estimate
 6 in there. So while I agree that those impacts -- I
 7 feel, I agree with the conclusions more closely, in
 8 the initial draft. I also feel that there was not
 9 sufficient analysis to even support those claims
 10 where -- but it should have been, I feel like it
 11 could have been done relatively -- with relative --
 12 relatively easily.
 13 Q. And, Mr. Cohen, going back to your --
 14 what we talked about yesterday, based on your
 15 professional experience, your work on industrial
 16 land studies and the maritime and industrial cluster
 17 studies, and your work on this project, is it still
 18 your opinion that the Missing Link will create more
 19 than a moderate risk of a significant adverse impact
 20 to the maritime and industrial businesses within the
 21 study area?
 22 A. Based on my experience with -- on
 23 industrial lands and from researching businesses and
 24 activities in that area, and more broadly within the
 25 maritime cluster, I do believe that there will be a

Page 695

1 more than moderate impact. But I also feel like
 2 there needs to be more research done to support that
 3 as well. But based on my experience and the
 4 research that's already been completed, not just by
 5 my firm but other firms as well, I believe that
 6 there would be a more than moderate adverse impact
 7 on those businesses.
 8 MR. BROWER: Thank you, Mr. Cohen.
 9 Nothing further.
 10 THE HEARING EXAMINER: Cross?
 11 CROSS-EXAMINATION
 12 BY MS. FERGUSON:
 13 Q Good morning, Mr. Cohen.
 14 A. Good morning.
 15 Q. And I just want to make sure that I
 16 understood your testimony correctly. Is it your
 17 opinion that the Economics Considerations Report,
 18 the final version that we've been talking about is
 19 not adequate for purposes of SEPA review?
 20 A. I am not -- I don't feel that I'm
 21 qualified to comment on the adequacy of a SEPA
 22 review.
 23 Q. And during your testimony you described
 24 the type of data that you think should be gathered.
 25 Would you consider that -- well, let's be more

Page 696

1 specific. Based on the profitability of businesses
 2 and the cost of mitigation -- are those good ways to
 3 describe the type of information you think we should
 4 have gathered?
 5 A. Yes. Other data as well, but, yes.
 6 Q. Okay. The two big categories that you've
 7 mentioned are profitability and the cost of
 8 mitigation?
 9 A. Or even just business-operation costs.
 10 Q. Business-operation costs? Okay. I will
 11 try to use that term. I might slip to profitability
 12 because --
 13 A. No problem.
 14 Q. -- that's the way I think about it, but
 15 we mean the same thing. Would you consider that
 16 type of analysis to be a cost-benefit analysis?
 17 A. I consider it to inform a cost-benefit
 18 analysis.
 19 Q. Can you tell me what the difference would
 20 be?
 21 A. It'd be an assessment of what those costs
 22 would be, so you would -- it would help to arrive at
 23 what the potential costs would be for those
 24 businesses compared against what the potential
 25 benefits might be.

Page 697

1 Q. So is your answer yes?
 2 A. It would be an input into.
 3 Q. Input into. Okay. So are you suggesting
 4 that we gather that information in order to be able
 5 to do a cost-benefit analysis?
 6 A. Yes.
 7 Q. Okay. And are you aware whether that
 8 type of analysis is required by SEPA?
 9 A. Again, I'm not an expert on SEPA, so I
 10 can't answer that.
 11 Q. Regarding the business operation data
 12 that you suggested would be valuable, had you ever
 13 gathered the type of information before besides the
 14 Coal Train Project? Well, actually, let's -- I'm
 15 just going to ask that one question. Have you
 16 gathered that type of information before?
 17 A. We haven't gathered it. Not necessarily
 18 systematically to the point of creating a data set,
 19 but we have gathered that data before. We've asked
 20 companies questions about their overall costs, the
 21 types of costs they have.
 22 Q. Okay. So just to clarify, in your
 23 deposition, I think I asked the same question have
 24 you gathered that type of data, and your answer was
 25 --

Page 698

1 A. Yes.
 2 Q. Do you remember what your answer was?
 3 A. I don't remember what my answer was, no.
 4 Q. So let's assume that your answer was
 5 "no."
 6 A. Okay.
 7 Q. Was the difference that it wasn't every
 8 single business?
 9 A. That would have been the case, yeah.
 10 Q. And the Coal Train Project that you
 11 talked about, was that in the context of an EIS?
 12 A. No.
 13 Q. In your opinion to do a full economic
 14 analysis, would you need to gather the business
 15 operation information and the cost of mitigation
 16 data for all these alternatives restraining order
 17 just the one along Shilshole?
 18 A. It's really depends on the scope of the
 19 project. It could just be for the preferred route.
 20 And in order to -- but then depends what the purpose
 21 of the -- I supposed it depends on the purpose of
 22 the scope in the project. If the project is to
 23 determine whether or not there will be impacts and
 24 to what's the net benefit or cost from one single
 25 project then -- or one single route. But if it was

Page 699

1 determined -- if we wanted to look at which would be

2 the least impactful in a negative way of the

3 different proposed routes, then it would have to be

4 for each one of those.

5 Q. Do you have any idea how much it might

6 cost to have that type of data?

7 A. Unfortunately, no. I could come up with

8 estimates, but I would prefer to do a full scope

9 before I come up with an actual estimate of what

10 those costs would be.

11 Q. If you were forced to speculate, would

12 you consider that approach to be cost-prohibitive?

13 A. It depends. I think that -- it depends

14 what you mean by cost-prohibitive. Is there a range

15 that you're describe -- that you would -- what would

16 be the range or threshold for something that's cost-

17 prohibitive?

18 Q. I'm asking you.

19 A. I'm not the client, so.

20 Q. Would you consider it to be a resource

21 intensive exercise?

22 A. It could be a relatively resource

23 intensive. But again, it's hard to predict. It's

24 hard to speculate.

25 Q. Do you think that it's possible to

Page 700

1 actually isolate the potential impacts from the

2 trail from other broader shifts in the area?

3 A. I believe it is possible to a degree. I

4 believe, for instance, asking for -- for instance,

5 looking at the mitigation costs and getting a -- an

6 estimate from an actuary as well as an estimate of

7 the cost of flaggers is a -- what I would consider a

8 relatively low-hanging fruit. If you want to help

9 understand very specifically the mitigation costs --

10 Q. I'm sorry. I'm going to stop you. And

11 I'm going to have you turn to page 38 of your

12 deposition.

13 MR. BROWER: Could he finish his

14 sentence, please?

15 MS. FERGUSON: He wasn't answering the

16 question asked.

17 THE WITNESS: Can you repeat the

18 question? I'm sorry.

19 BY MS. FERGUSON:

20 Q. I'd just like you to turn to page 38 in

21 your deposition. And on line -- so I asked the

22 question at line 2. Would you generally say that

23 question's the same question I'm asking you now

24 whether or not you can isolate the impacts?

25 MR. BROWER: Objection. That's not

Page 701

1 what I think line 2 question says. Maybe the --

2 MS. FERGUSON: That's what I'm asking

3 him. Would you consider that --

4 MR. BROWER: But I'm asking making an

5 objection. Can I finish it, please?

6 My objection is I don't think your

7 question on page 38 is the same question you're

8 asking. Maybe we could just read the question on

9 page 38?

10 MS. FERGUSON: That's what I was just

11 going to suggest.

12 BY MS. FERGUSON:

13 Q. Mr. Cohen, can you please read the

14 question from line 2 to line 5?

15 A. The question is you also asked "How much

16 are business concerns acutely about the disruptions

17 from an increase in cyclists versus broader concerns

18 of a rezoning and encroachment onto industrial

19 areas?" How would you -- again, how would you

20 answer that question?

21 Q. And then you have a long answer there. I

22 guess, I don't want to spend that much time. Do, I

23 guess, do you know if you can isolate? I'm just

24 going to ask one more time now. Do you know if you

25 can isolate the changes from the trail versus

Page 702

1 changes from other change in the neighborhood?

2 A. This question's actually is specific to

3 business perceptions and concerns. So this question

4 has to do with the separation of or being able to

5 isolate business concerns over the trail versus

6 business concerns for an overall in shifts and

7 movements in the Bin Mic area. So it's not the same

8 question.

9 Q. So I'd love for you to answer that

10 question.

11 A. Which question?

12 Q. The one that you just said --

13 A. The one I just --

14 Q. -- as I asked you in the deposition.

15 A. The -- you asked in the deposition? I

16 think it'd be difficult to separate just because

17 it's based on perception. It's not necessarily

18 impossible, but it'd be difficult to say whether or

19 not one can separate one's perceptions and expressed

20 concerns and to get into their mind, for instance,

21 to be able to identify how much of their concern is

22 from the trail itself specifically versus a broader

23 shift or perceived broader shift in the Bin Mic

24 area. But that's more of a -- feels like a

25 psychological question, and I don't -- wouldn't feel

Page 703

1 equipped to answer that.
 2 Q. Thank you. Now I understand the
 3 difference in your answers. So then, can you answer
 4 the other question of whether the actual changes in
 5 the area -- so other changes, potential land use
 6 changes, nearby additional population growth, would
 7 it be possible to isolate those actual impacts of
 8 the trail versus actual impacts of other changes?
 9 A. I think it depends what your dependent
 10 variable is that you're -- is it if you're asking
 11 about what the, for instance, the impact on
 12 industrial value -- industrial land value is, there
 13 are probably ways to do it. I'd have to think about
 14 it some more, but there are ways to try to isolate
 15 or include depending on the kind of analytics you
 16 do. If you did a statistical model, you could
 17 create a variable to account for that. There's
 18 certainly ways to do that, but I'd have to think
 19 about it some more.
 20 Q. And I'm not sure I heard in your
 21 testimony: do you anticipate that any business
 22 would fail as a result of the project?
 23 A. Did I hear specifically? Is that what
 24 you're asking?
 25 Q. I'm asking you if you testified whether

Page 704

1 or not any business would fail as a result of the
 2 project.
 3 A. Oh, I don't feel -- I don't have enough
 4 -- I don't have the access to, for instance, the
 5 profit margins of these businesses to make a
 6 distinction or know specifically at this moment
 7 whether or not they would fail because of the --
 8 because of the trail. I did in the -- the draft EIS
 9 there was reference to that, the possibility of
 10 businesses -- those operations going of business --
 11 going out of business, but I've not done any
 12 analysis to determine what that threshold would be
 13 in terms of the, you know, if one were to -- these
 14 additional potential costs on these businesses for
 15 mitigation in insurance premiums, for example, like
 16 how that would impact their viability in the long
 17 run. So I'm not able to determine at this time like
 18 which ones would fail or if any would fail.
 19 Q. Do you have an opinion of whether you
 20 thought -- think that is likely?
 21 A. I wouldn't say likely, because again, I
 22 don't have the data in front of me to be able to
 23 make -- likely feels like a -- even likely feels
 24 like a strong statement. I will say that there are
 25 adverse costs and all costs matter especially for

Page 705

1 any business, but especially for industrial
 2 businesses, all costs matter. So if you increase
 3 the cost on a business with no countervailing
 4 increase in revenues to counterbalance that cost,
 5 then just -- it's going to have an adverse impact on
 6 that business. Whether that adverse impact in and
 7 of itself in isolation leads to a business going out
 8 of business is really -- I don't feel I have access
 9 to data to arrive at a determination about that.
 10 But regardless, all costs matter.
 11 Q. So would it be a correct characterization
 12 to say that you don't know that they're likely, but
 13 they are possible?
 14 A. It's a possibility.
 15 Q. But it's not -- you don't have enough
 16 information to say they are likely?
 17 A. Right. I don't feel -- I don't have the
 18 information to arrive at that conclusion. But I do
 19 feel like it's still a cost and it's a more than
 20 moderate -- potentially more than moderate cost.
 21 Q. Am I correct that you testified that your
 22 opinion is that this project is likely to have more
 23 than a moderate impact on the environment?
 24 A. I never -- I don't believe I ever -- I
 25 don't recall saying anything about the environment.

Page 706

1 Q. So more than a moderate impact on these
 2 businesses?
 3 A. Oh, in the business environment?
 4 Q. Uh-huh (affirmative response).
 5 A. On businesses, yes.
 6 Q. And do you base -- how do you measure
 7 what is a more than moderate impact to those
 8 businesses?
 9 A. I would say that anything that -- I don't
 10 have a good threshold in mind for what that would
 11 be. I'd have to first evaluation what those costs
 12 are and do an analysis from what those costs are
 13 before determining whether they're more than
 14 moderate costs. My intuition and past experience
 15 tells me that -- and also looking at the
 16 ECONorthwest report from 2016, the original draft
 17 where they estimated the tens of thousands of
 18 dollars in transportation delays is -- among
 19 businesses such as Salmon Bay and Gravel to me is
 20 more than a moderate cost. And I believe there are
 21 other greater costs, perhaps, to those businesses as
 22 well based on, for instance, again, the insurance
 23 premiums as well as the cost to hire a flagger or
 24 flaggers for business.
 25 Q. Am I correct that you generally agree

Page 707

1 that a hedonic model is an appropriate method to
 2 evaluation the impact of a multi-use trail on
 3 surrounding property values?
 4 MR. BROWER: Excuse me. Did you say
 5 is or isn't?
 6 MS. FERGUSON: Is.
 7 THE WITNESS: I think it's one method.
 8 I think it's a method for evaluating the impact on
 9 industrial property value. But I think there are
 10 other methods as well that could compliment that
 11 approach.
 12 BY MS. FERGUSON:
 13 Q. But the hedonic model itself is not an
 14 inappropriate model to use here?
 15 A. I would describe it as an insufficient
 16 approach or incomplete. It is one of many
 17 considerations.
 18 Q. And you in your testimony discussed the
 19 two maritime industrial studies, the original and
 20 the update. Are you suggesting that those should
 21 have been cited in the Economics Report?
 22 A. I -- actually I --
 23 Q. Those should be output?
 24 A. I do believe whether or not their cited,
 25 I guess I'm not familiar with, like, the judicial

Page 708

1 process, examination process; what it means whether
 2 or not to be appropriately cited. I think they
 3 should have been considered, so, I think. And I
 4 think the reasons for them to be considered would be
 5 because it provides greater a understanding to the
 6 reader and decision makers about whether or not to
 7 -- in their evaluation of the impacts of a proposed
 8 multi-use trail and the proposed route to understand
 9 the fragility in the ecosystem that exists in the
 10 study area.
 11 Q. Can you describe for me the purpose of
 12 those studies?
 13 A. Those studies were to help inform policy
 14 makers, stakeholders that are interested parties in
 15 Washington State about the size and economic value
 16 and impact including not just the direct impact, but
 17 the multiplier impacts of the maritime sector in
 18 Washington State. As part of that, up until that
 19 point there had not been much study in -- to help
 20 people understand or interested parties and
 21 stakeholders understand holistically how large and
 22 important the maritime sector is.
 23 Q. And would you consider those to be
 24 advocacy pieces?
 25 A. I would describe it -- I would describe

Page 709

1 our analysis as objective and not advocacy, but that
 2 the use of that study was for, in part, advocacy.
 3 Q. And now I'd like to talk about your
 4 testimony related to the changes from the draft
 5 report to the final version. Had you reviewed those
 6 prior to your deposition?
 7 A. The draft reports?
 8 Q. Uh-huh (affirmative response).
 9 A. Yes.
 10 Q. And do you recall me asking if you had
 11 any other -- or do you recall discussing the changes
 12 from the draft to the final in that deposition?
 13 A. I'd have to go back and review the
 14 deposition. I would -- but I would assume that we
 15 most likely spoke about it. But I just don't
 16 recall, but it -- I would assume that we did speak
 17 about it.
 18 Q. We might have you check the deposition to
 19 see if we did. Why I want to ask is because I asked
 20 if you had any other concerns about the project.
 21 And my recollection was that you didn't mention any.
 22 Is that different than your recollection?
 23 A. Concerns about the project, the EIS or
 24 the specific -- the actual proposed multi-use trail?
 25 Q. The report. We had gone through your

Page 710

1 concerns about the economic, the hedonic model and
 2 your other concerns and I asked if there was
 3 anything else. We can go to the section if you'd
 4 like.
 5 A. Yeah.
 6 Q. I guess, but my real question is is what
 7 helped form your opinion about the changes between
 8 the draft and the final?
 9 A. Reviewing the documents, if that's what
 10 you mean. What helped inform them when just
 11 comparison of the documents and looking at the track
 12 changes across the initial draft and the second
 13 draft of the report.
 14 Q. And you went through a bunch of changes
 15 between the draft and the final. Are those changes
 16 the bases of your conclusion that the final report
 17 is inadequate?
 18 A. Those didn't -- my -- those did not
 19 inform my opinion about the inadequacy because I
 20 felt that the initial Economic Considerations draft,
 21 in and of itself, was insufficient.
 22 Q. And I guess I want to go back the way
 23 that I may have misframed the question. Because
 24 there, I was assuming that you had made the
 25 determination that it was inadequate. Am I still

Page 711

1 correct in recalling that you don't have enough
 2 information to make that determination or
 3 experience?
 4 A. If -- so just to clarify, you're asking
 5 if I felt that the first draft was inadequate? Yes.
 6 I felt the first draft was inadequate.
 7 Q. So I guess that what I'm asking is that
 8 earlier, just a few minutes ago, I asked do -- is
 9 your opinion that the report is inadequate. And if
 10 I recall correctly, you said "I don't have enough
 11 experience to make that determination."
 12 MR. BROWER: Objection. Misstates the
 13 prior testimony.
 14 MS. FERGUSON: That's my recollection.
 15 If the witness would like to correct?
 16 THE WITNESS: If I recall correctly,
 17 your question was about SEPA.
 18 THE HEARING EXAMINER:
 19 (Indiscernible). Overruled.
 20 THE WITNESS: I'm sorry.
 21 THE HEARING EXAMINER: Go ahead. You
 22 can answer the question.
 23 THE WITNESS: If I recall correctly,
 24 the question was about the adequacy of the report in
 25 fulfilling requirements of SEPA, if I remember

Page 712

1 correctly. I think that was the question I was
 2 being asked.
 3 BY MS. FERGUSON:
 4 Q. And so how are you understanding the
 5 question now?
 6 A. To me it's a different question.
 7 Q. Okay.
 8 A. So I interpreted your first question to
 9 be -- if I'm correcting -- if I'm understanding your
 10 questions correctly, my understanding of your first
 11 question was how does the report fulfill the
 12 requirements of SEPA in which I am not qualified to
 13 -- I don't feel like -- I'm not qualified to answer
 14 that because I'm not an expert on SEPA.
 15 Your second question with regards to the
 16 adequacy of the report, I assumed that what you were
 17 referring to then was the adequacy in addressing the
 18 question of overall economic impacts of the proposed
 19 trail. Is that correct? Is that what you were
 20 asking for the second question? That was my
 21 understanding. So I was able to -- I'm able to
 22 answer your second question, but I'm not able to
 23 answer the original question that -- in the context
 24 of SEPA.
 25 Q. Would you consider your definition of

Page 713

1 what's adequate in the context of academia? In the
 2 context of your profession?
 3 A. Just in the context of answering the
 4 research question, the scope -- my understanding of
 5 the scope of the project. I don't feel that the
 6 scope of the project -- I feel that the scope -- I
 7 don't feel that the research adequately answered the
 8 scope of the project whether it was in the context
 9 of academia or professionally. Speaking in my role
 10 as a professional consultant, I would say that -- I
 11 would -- I do not feel it was -- adequately answered
 12 the necessary question. It did not adequately
 13 answer the question or the scope of the original --
 14 of the economic considerations scope.
 15 Q. So throughout your testimony, you used
 16 language to say that in academia, in best practice,
 17 worthwhile -- is that your understanding? So, I'm
 18 sorry. Let me rephrase the question. When asked
 19 questions about what should have been included in
 20 the report, you used, in my recollection, correct me
 21 if I'm wrong, language that said in academia you
 22 would do certain things. In best practice you would
 23 do certain things. Is it your understanding that
 24 those things are required under SEPA?
 25 A. I do not have a -- I can't comment on

Page 714

1 SEPA.
 2 Q. And have you ever worked on an EIS
 3 before?
 4 A. I have not.
 5 Q. And have you ever worked on any part of
 6 environmental review under SEPA?
 7 A. Not to my recollection.
 8 Q. And so your opinion that Economic
 9 Considerations Report is inadequate, is that based
 10 on any prior experience, training, or real
 11 familiarity with SEPA?
 12 A. Not based on familiarity with SEPA.
 13 Q. Is it your understanding that economics
 14 are an element of the environment under SEPA?
 15 A. I believe that, again, not being an
 16 expert on SEPA, my understanding which is not as an
 17 expert on SEPA, is that many EISs do include an
 18 economics report or analysis as part of an
 19 Environmental Impact Study.
 20 Q. Do you have any informed understanding of
 21 what type of economic analysis SEPA might actually
 22 require?
 23 A. I do not.
 24 MS. FERGUSON: No further questions.
 25 THE HEARING EXAMINER: Mr. Cohen?

Page 715

1 MR. COHEN: I've got just a few.
 2 CROSS-EXAMINATION
 3 BY MR. COHEN:
 4 Q Mr. Cohen, you testified that the Missing
 5 Link could have, and I'm quoting "Potentially more
 6 than moderate costs on certain businesses within the
 7 area affected by the project." Am I correctly
 8 quoting you?
 9 A. Yes. That's a correct.
 10 Q. Does that statement refer to any
 11 particular version of the project, preferred
 12 alternative, Shilshole South -- what version of the
 13 trail are you commenting on?
 14 A. It would be based on either of the
 15 trails that crosses over a driveway of an industrial
 16 business. So it would be, you know, I did not -- I
 17 looked at the analysis across all trails -- all
 18 trail's proposals -- proposed trails. So it would
 19 be across any of the trails that cross -- for any
 20 trails that cross -- proposed trails that cross
 21 businesses.
 22 Q. Okay.
 23 THE HEARING EXAMINER: Mr. Cohen,
 24 could I ask you to move your microphone a bit
 25 closer? Right about your -- notepad.

Page 716

1 MR. COHEN: Thank you.
 2 THE HEARING EXAMINER: It's easier
 3 than speaking up. Just a bit closer than that even
 4 would be helpful.
 5 BY MR. BROWER:
 6 Q. And --
 7 THE HEARING EXAMINER: Just a bit
 8 closer than that.
 9 MR. BROWER: He wants it even closer.
 10 THE WITNESS: Thank you. Is it
 11 picking up now?
 12 THE HEARING EXAMINER: Thank you.
 13 Yes, more. I think we were getting it, but it was
 14 low tones.
 15 MR. COHEN: Thank you. I'm okay.
 16 BY MR. COHEN:
 17 Q. And your testimony does not include any
 18 representations about what the actual costs are that
 19 would be borne by any specific businesses as a
 20 result of the construction of the trail?
 21 A. In terms of the insurance premiums and
 22 the flaggers? That's correct. I do not have any --
 23 I have not presented any estimates of what those
 24 would be.
 25 Q. And did you make any inquiries of the

Page 717

1 businesses affected by the project as to what those
 2 costs would be?
 3 A. I did not.
 4 Q. So how did you quantify those costs for
 5 purposes of drawing conclusions?
 6 A. Well, what I said was is that these are
 7 potential more than moderate costs. And my
 8 conclusion is that or has been that there needs to
 9 be further analysis to arrive at those costs. And
 10 so, before we understand what those total impacts
 11 are, there needs to be a complete analysis. And
 12 that's why I've used the term "insufficient" and
 13 "inadequate" to describe the Environmental
 14 Considerations Report as it's been presented in its
 15 draft and final versions.
 16 Q. So your comment that there could be
 17 potentially more than moderate costs is not based on
 18 any information provided by any specific business?
 19 MR. BROWER: Objection. That's been
 20 asked and answered. He already said that it's based
 21 on the quantitative analysis.
 22 MR. COHEN: He can testify about what
 23 he said.
 24 MR. BROWER: And I can please finish
 25 my objection.

Page 718

1 MR. COHEN: Yeah.
 2 MR. BROWER: He's testified that he --
 3 it's already based on the quantitative analysis in
 4 the January draft of the Environmental
 5 Considerations Report. We're treading the same
 6 ground.
 7 THE HEARING EXAMINER: The -- it's
 8 somewhat repetitive, but it's a unique question.
 9 I'll overrule it. It's related to whether it was
 10 related to any specific business data.
 11 THE WITNESS: With respect to -- so I
 12 did not collect, I did not particular -- I did not
 13 perform any of my own independent analysis of the
 14 potential costs. That would require an additional
 15 study to do that. But there was analysis in the
 16 first draft of the Environmental Considerations
 17 Report such as the traffic delays on the different
 18 intersections and driveways that did suggest, in my
 19 opinion, that there would be more than --
 20 potentially more than moderate impacts to these
 21 businesses.
 22 That said, again, I feel like there
 23 was insufficient analysis to draw a conclusion about
 24 the impacts and that there needs to be more study,
 25 more research done. And I think that, and as I

Page 719

1 mentioned before, I think that those pieces are not
 2 terribly difficult to get at such as the cost of
 3 flaggers, which one could ask. One could talk to
 4 businesses that currently use flaggers already, and
 5 get an assessment of what it would cost for all
 6 businesses or whatever -- what the mitigation
 7 strategy might be for using flaggers or additional
 8 flaggers.

9 One could also look at -- without even
 10 going into the businesses, one could look at data
 11 report or data that's published by the U.S. Bureau
 12 of Labor and Statistics to look at what the average
 13 wage is for a flagger, and come up with a reasonable
 14 estimate of how many hours that worker would need to
 15 work throughout the day for -- at 52 weeks a year;
 16 whatever the appropriate schedule or timeframe would
 17 be, to come up with that estimate, and for the
 18 insurance premiums to talk with an actuary. But
 19 that analysis has not been done yet, but I feel
 20 like, in my opinion it could be done.

21 BY MR. COHEN:

22 Q. And would you agree that that analysis,
 23 say the need for and cost of flaggers would be a
 24 business by business determination? You couldn't do
 25 it generically for every business in the area,

Page 720

1 correct?

2 A. You could talk to some businesses and get
 3 a representative sample. I think there were -- in
 4 one of the routes there were 46 businesses that
 5 would be directly impacted, industrial businesses,
 6 if I'm remembering the number correctly. I don't
 7 want to go back and check, but if you talked to 20
 8 of them, for instance, and got a reasonable
 9 estimate.

10 Another way would be -- without even
 11 needing to talk to businesses in this specific
 12 issue, this specific query, as I mentioned to try to
 13 get a reasonable estimate from a couple or just
 14 through existing research and just some data sources
 15 to come up with a reasonable estimate.

16 Q. So, Mr. Cohen, let's say you spoke with a
 17 particular business and they said we would need
 18 flaggers X times a day in order to operate our
 19 business with the trail in place. You find that
 20 that statement could be extrapolated for other
 21 businesses?

22 A. No. I think that that would -- as I
 23 mentioned before, I would talk to businesses to
 24 develop an understanding of their concerns and of
 25 their potential mitigation strategies. I would then

Page 721

1 validate or disprove those statements with a third-
 2 party sources, whether they be data sources; whether
 3 they be outside experts. But I would not -- I
 4 wouldn't, as I mentioned before, I would not
 5 directly take the data or findings directly from
 6 those businesses verbatim. I would validate. And
 7 that's what we do for any of our projects that we've
 8 done in our firm, and I think many other firms do as
 9 well, is to talk to businesses to develop an
 10 understanding of the framework and the
 11 considerations and variables for consideration, but
 12 then to validate that through another source.

13 Q. But you didn't do any of that?

14 A. Not for this project.

15 Q. Thank you.

16 MR. COHEN: No further questions.

17 THE HEARING EXAMINER: All right. I
 18 just have a couple.

19 EXAMINATION

20 BY THE HEARING EXAMINER:

21 Q I want to make sure I understand your
 22 testimony concerning the sufficiency of the
 23 analysis. As a separate issue, some of the cross-
 24 examination questions were getting at the same
 25 question. But I just want to make sure I am crystal

Page 722

1 clear on it. Your expressed opinion that there
 2 would be more than a moderate impact, is that based
 3 on any evidence other than what you saw in the draft
 4 EIS materials?

5 A. That is correct. Let me -- that is,
 6 well, that is -- for the acute impact that's
 7 correct, Mr. Examiner. I've also, through
 8 additional reports that have been done on industrial
 9 lands, know that there is a lot of fragility, and
 10 that even small costs -- or not even small, but more
 11 than moderate costs can have a sizable impact on the
 12 viability of those businesses due to other sources,
 13 other research as well, such as on industrial lands
 14 from the maritime cluster, those business in the Bin
 15 Mic area.

16 Q. So you have the -- and that was my other
 17 question, too, is I wanted to ask you about those --
 18 I think it was two studies that you introduced.
 19 Maybe A-12 and A-13, if I have it right. And I --
 20 you don't necessarily have to look at those.

21 A. Okay.

22 Q. I assume you're familiar with them.

23 A. Yeah.

24 Q. What I heard clearly from your testimony
 25 was that this industry has a positive impact on the

Page 723

1 economy. We're concerned with the negative impacts
 2 on the industries here, so impact starts to become a
 3 word we're tossing around. Do those studies talk
 4 about negative impacts on the industry from these
 5 competing land uses?
 6 A. The two maritime studies did not look at
 7 the issue of competing land uses.
 8 Q. Okay. So they're looking at what this
 9 industry does positive for the economy? Is that a
 10 fair summary of what they're representing?
 11 A. Yeah. It's a characterization and just
 12 data informed description of what those businesses
 13 do and trying to articulate with data the footprint
 14 of those businesses.
 15 Q. Okay. And the Puget Sound Regional
 16 Council item, is that talking about negative impacts
 17 from competing land uses?
 18 A. That does talk about that.
 19 Q. Okay. And aside --
 20 A. Or -- well, let me qualify.
 21 Q. Go ahead.
 22 A. I don't recall if the term "negative" was
 23 used in the report. It talks at length -- and I was
 24 not the chief author of it, so I'd want to go back
 25 and review. I supported it as an analyst for it,

Page 724

1 but it talked about competing land uses, but it
 2 didn't use the term -- I don't believe it used the
 3 term "negative." A more impact, necessarily with
 4 respect to land use changes.
 5 Q. Okay.
 6 A. But it talked about the current
 7 conditions of
 8 change -- of and overtime changes in land use and
 9 rezoning.
 10 Q. Okay. I'll take a look at it. Then
 11 those are the items that I have received in the
 12 record from you in addition to the draft EIS. But
 13 you've just made mention to, perhaps, other studies
 14 or something along those lines that informed your
 15 statement as to whether there's a more than moderate
 16 negative impact. Do we know what those studies are?
 17 Have you -- how do we -- what are they? What -- is
 18 that --
 19 A. I just --
 20 Q. -- just something you're speaking to
 21 generally from your experience or?
 22 A. I'd say, I --
 23 Q. Clarify for us what that is.
 24 A. Sure. I -- the other study that I had in
 25 mind and I don't remember if we talked about it or

Page 725

1 not, but was -- it might be -- we did a -- and I did
 2 not work extensively on this project, but our firm
 3 earlier this year also did a study on industrial
 4 lands within Seattle. And that was for the State of
 5 Seattle Office Economic Development as well.
 6 Q. And you worked on that?
 7 A. I just moderately supported it to some
 8 degree.
 9 Q. And when you say "industrial lands," did
 10 that break out maritime lands specifically or was it
 11 industry generally?
 12 A. I believe it broke it out. I don't
 13 remember if it broke it out specifically maritime,
 14 but maritime was a crucial part of industrial lands
 15 under review.
 16 Q. Okay.
 17 A. Including the Inner Bay Bin Mic Area,
 18 although I believe that that -- a different term was
 19 used to describe the Bin Mic region. If I remember
 20 correctly, but it covered those lands.
 21 Q. Okay. Aside from the -- what you found
 22 in the draft EIS materials, did you rely on, for
 23 your opinion, any evidence derived from any source
 24 as to negative impacts that are caused by this
 25 project on these businesses?

Page 726

1 A. Are -- and, Mr. Examiner, are you asking
 2 -- just to clarify, in addition to the draft reports
 3 --
 4 Q. Yeah.
 5 A. -- for this and specifically on the
 6 trail?
 7 Q. Yes.
 8 A. No. My only -- the only information
 9 specifically on the impacts of the trail --
 10 Q. On these businesses.
 11 A. -- on these businesses were the draft and
 12 final Environmental Considerations Report.
 13 Q. Okay. All right. I just wanted to make
 14 sure I understood the full scope of what you were
 15 relying on and how you came to your conclusions. I
 16 don't have any further questions.
 17 Redirect?
 18 MR. BROWER: Thank you, Mr. Examiner.
 19 REDIRECT EXAMINATION
 20 BY MR. BROWER:
 21 Q. Mr. Cohen, the other Mr. Cohen was
 22 asking you some questions and it seemed to me that
 23 he was -- sounds like he was -- it was as if he was
 24 asking you if it's hard to get that information
 25 about cost to businesses from businesses. On your

Page 727	Page 729
<p>1 work on the Coal Train Study, were the businesses 2 willing to talk to you? 3 A. I would say that if businesses are -- so 4 businesses have no requirement to talk with a 5 consultant. So, but if the -- if they're -- if they 6 have a -- if they're invested in the project or when 7 I say "invested" -- when they have a -- they have 8 direct concerns that affect their business, they are 9 oftentimes more motivated to share information. 10 Q. And did you find that those businesses 11 along the linear transportation corridor were 12 motivated to speak to you? 13 A. Yes. 14 MR. COHEN: Objection. Just a second. 15 I believe that Mr. Cohen testified he never asked. 16 So it's not a matter of whether they were motivated 17 or not. I believe he testified he never asked. 18 THE HEARING EXAMINER: We're talking 19 about the Ballard businesses? 20 MR. BROWER: No. I'm talking about 21 the businesses along the Coal Train Linear. About 22 -- 23 MR. COHEN: Forgive me. 24 THE HEARING EXAMINER: Okay. 25 Withdrawn? Is that withdrawn, Mr. Cohen?</p>	<p>1 calls. City of Seattle staff were generous enough 2 to help us with some introductions to businesses. 3 So that's -- and we looked on a map to see where 4 those businesses are. So I guess we "walked" it, 5 but in a digital way, so. 6 Q. So it wasn't too resources intensive for 7 the Office of Economic Development to have you reach 8 out to businesses along a five-mile route? 9 A. No. And it's not a resource intensive 10 exercise either for the consultants. Figure with 11 planning, scheduling, and a one-hour interview, it's 12 a maybe a total of maybe two hours, plus, maybe 13 another hour to synthesize notes and findings. 14 Q. So you -- in response to one of 15 Mr. Cohen's questions, you said you'd only need to 16 talk to about 20 of the 46 businesses along the 17 preferred alternative. Why is 20 the magic number? 18 A. Technically -- and it's a bit arbitrary, 19 but like 26 is a common number. It depends on the 20 number of variables that are being asked, but in 21 statistics, 26 is usually considered to be a minimum 22 sample size. It's a bit arbitrary though how they 23 arrive at that, but, you know. 24 Q. So 26 out of the 46? 25 A. Yeah. Some means of getting at a -- a</p>
Page 728	Page 730
<p>1 MR. COHEN: It is withdrawn. Thank 2 you. 3 THE WITNESS: And the question again, 4 I'm sorry? 5 BY MR. BROWER: 6 Q. Were the businesses along the Coal Train 7 route, were they motivated to speak with you? 8 A. Yes. They were motivated to speak with 9 me. 10 Q. And again, that was a study that your 11 firm prepared for the City of Seattle? 12 A. That's correct. 13 Q. And so, they didn't think it was resource 14 intensive to have you go out and -- you and your 15 team go walk the route that goes -- how far does it 16 go? From all the way by -- all the way up by the 17 sculpture garden all the way down to Soto? 18 A. That's correct. 19 Q. So how many miles is that? 20 A. I'll have to think about it. Maybe it's 21 five, but I'm not exactly sure. But we didn't have 22 to necessarily, we didn't walk -- we just called 23 companies and set up interviews and just talked -- I 24 mean, they were willing to talk with us. But we 25 just and did, you know, we did emails. We did phone</p>	<p>1 population understanding of what the potential 2 impacts would be of those businesses. 3 Q. So about two hours per business times 26 4 businesses? 5 A. Uh-huh (affirmative response). 6 Q. So 52 hours? 7 A. Yes. 8 Q. And Mr. Cohen asked you -- do you just 9 believe what the businesses told you along the Coal 10 Train route or did you aggregate their information 11 and make it confidential? 12 MR. COHEN: Objection. I didn't ask 13 any questions about the businesses on the Coal Train 14 route. 15 MR. BROWER: That is true. He was 16 asking you whether you would just accept the answers 17 of the businesses along the Shilshole route. Is 18 that correct? 19 MR. COHEN: Objection. I didn't ask 20 that either. 21 THE HEARING EXAMINER: All right. 22 Objection is sustained. Ask a new question. 23 MR. BROWER: Thank you. 24 BY MR. BROWER: 25 Q. Did you just accept the answers of the</p>

Page 731

1 businesses along the Coal Train route?
 2 A. No. We always understand the responses
 3 in the context of who the interviewee is, and so we
 4 scrutinized them and we seek to validate them. It
 5 depends what the question is or what the answer is.
 6 So if it's a question about the characteristics of
 7 the business such as what they do, what are their
 8 main lines of business, how large is their
 9 employment base, their work force, those kind of
 10 questions we take directly from the business. But
 11 if it's speculative, particularly when the case of
 12 it's speculative, we use that feedback to inform our
 13 own research design, and our own research questions.
 14 So we use the businesses who we see as a type of
 15 expert who is on the ground to provide us input to
 16 inform our own research questions which we then run
 17 with and go and do our own queries and inquiries.
 18 So in those -- with those questions, it
 19 informs the direction of our analysis and then we
 20 also seek to try to validate their analysis. But we
 21 would never -- we never just take verbatim. If we
 22 do take their -- if it's not a statistical analysis,
 23 which is most times the case, if it's not a
 24 statistical analysis and we want to report what they
 25 say, we would simply say this business says this.

Page 732

1 We're not -- if you report it in a study,
 2 we would say "businesses reported these things."
 3 These are perceptions. We're not necessarily saying
 4 these are true. We never -- we don't like to
 5 conflate the analyst's understanding and
 6 interpretation with the direct input or the comment
 7 of the business.
 8 Q. Mr. Cohen, in response to a question
 9 asked by Ms. Ferguson, I believe you started to say
 10 that getting information on insurance and flaggers
 11 would be the "low-hanging fruit"?
 12 A. That's correct.
 13 Q. Why is that the low-hanging fruit?
 14 A. Because I think that it's one of those
 15 types of estimates where it would be easy to talk to
 16 businesses, to ask them, to get a sense for how much
 17 a flagger costs. Or we could go to U.S. Bureau of
 18 Labor and Statistics Occupational Employment
 19 Statistics database and look up an occupation that
 20 resembles or is perhaps even exactly is a
 21 construction flagger, for instance, or flagger, to
 22 direct traffic. So that would not be difficult.
 23 That would be something that's readily available and
 24 we can come up with a reasonable and I believe
 25 defensible estimate of what that cost would be even

Page 733

1 if we don't talk to businesses.
 2 Q. Wonderful. Thank you, Mr. Cohen.
 3 MR. BROWER: No further questions.
 4 THE HEARING EXAMINER: Thank you,
 5 Mr. Cohen.
 6 THE WITNESS: Okay.
 7 MR. BROWER: Do we -- are we going to
 8 take a morning break or just keep going?
 9 THE HEARING EXAMINER: We're going to
 10 take a break, but let's -- we've got a few minutes.
 11 Where are we with --
 12 MR. BROWER: We have one witness left.
 13 THE HEARING EXAMINER: One witness.
 14 Okay. What's your estimate on time for?
 15 MR. BROWER: Under an hour for him.
 16 Maybe we could take a break beforehand?
 17 THE HEARING EXAMINER: Yeah. I need
 18 time to get this thing going again. I think I'm
 19 just going to rip the batteries out and see what
 20 happens.
 21 MR. BROWER: Hit it.
 22 THE HEARING EXAMINER: Okay. We'll
 23 take a break and come back at a quarter to. Thank
 24 you.
 25 MR. BROWER: Thank you.

Page 734

1 (Recess taken.)
 2 THE HEARING EXAMINER: All right.
 3 We're back on the record and we're on to the next
 4 witness from the Appellants.
 5 MR. BROWER: Ballard Coalition calls
 6 Paul Nerdrum.
 7 THE HEARING EXAMINER: Please state
 8 your name for the record and spell your last name.
 9 MR. NERDRUM: Paul Nerdrum,
 10 N-e-r-d-r-u-m.
 11 THE HEARING EXAMINER: Do you swear or
 12 affirm that the testimony you provide in today's
 13 hearing will be the truth?
 14 MR. NERDRUM: I do.
 15 PAUL NERDRUM,
 16 a witness, having been previously sworn,
 17 was examined and testified as follows:
 18 DIRECT EXAMINATION
 19 BY MR. BROWER:
 20 Q. Good morning, Mr. Nerdrum. Thank you for
 21 joining us.
 22 Would you please state your business
 23 address for the record?
 24 A. Our business address is 5228 Shilshole
 25 Avenue Northwest, and we're located on both sides of

Page 735

1 Shilshole, both the north and south side.
 2 Q. And what is your business?
 3 A. We're in the Ready-Mix Concrete industry
 4 and building material distribution.
 5 Q. And is that Salmon Bay Sand and Gravel?
 6 A. That is correct.
 7 Q. And what is your role at Salmon Bay Sand
 8 and Gravel?
 9 A. I am vice-president of Salmon Bay, and
 10 I'm day to day the general operations guy.
 11 Q. Who is the president of Salmon Bay?
 12 A. It's my father, Cal Nerdrum.
 13 Q. And how long has Salmon Bay been in its
 14 current location?
 15 A. We're celebrating our 110th year in
 16 business this year.
 17 Q. That's one hundred and ten years?
 18 A. One hundred and ten years.
 19 Q. And are you a family-owned business?
 20 A. Yes. We are.
 21 Q. And which generation are you on now?
 22 A. I'm on -- I'm number four, but I have a
 23 son there who's number five.
 24 Q. And what does Salmon Bay do generally?
 25 What's the business of Salmon Bay?

Page 736

1 A. Well, we do delivery of mixed concrete
 2 and sand and gravel to the greater Seattle
 3 marketplace, to the construction trades, homeowners,
 4 city projects, county projects; in addition, to
 5 which deliver building materials to the same
 6 marketplace and then ship abroad. We ship
 7 extensively up into Alaska; some material by barge,
 8 most by ocean going containers. So we bring sand
 9 and gravel in, we made concrete out of it by adding
 10 cement add mixtures, water, colorants, whatever is
 11 required by those mix designs, and then deliver it
 12 to the jobsites in Seattle.
 13 Q. And do you -- is your focus to big high
 14 rises down town or smaller projects?
 15 A. The mid-size and down. We're one of the
 16 smaller Ready-Mix companies in King County. And so,
 17 we don't participate in projects like the Seattle
 18 Tunnel or the Big Dig or the 60 story high-rises,
 19 but mid-rise and down, we participate all the way
 20 down to the homeowner level.
 21 Q. So you're one of the smaller sand and
 22 gravel Ready-Mix Concrete companies left in the
 23 region?
 24 A. We are.
 25 Q. And do you know how many Ready-Mix

Page 737

1 Concrete companies are left in the region?
 2 A. Well, in King County proper --
 3 Q. Yes.
 4 A. -- there are four in the City and one
 5 just south of the City, so five.
 6 Q. And what are those five?
 7 A. The one south of the City is Miles Sand
 8 and Gravel. And they are located both in King
 9 County and in Pierce County, as well as Snohomish
 10 County. The Seattle based ones are CalPortland,
 11 Stone Way Concrete, and ourselves, and Cadman
 12 Concrete.
 13 Q. Do you know the relative size of those
 14 companies compared to yours?
 15 A. I do.
 16 Q. And what would those be?
 17 A. Well, think David and Goliath. Two of
 18 them are multi nationals that are one from parent
 19 company in Japan and the other one from Germany.
 20 They're all across North America and this continent.
 21 So I'm not sure I could say we are 1/10th of one
 22 percent their size. They're just huge and they're
 23 very diverse. Stone Way is about three times to
 24 four times our size. Miles is probably 15 to 20
 25 times our size.

Page 738

1 Q. So you're the smallest?
 2 A. We are the smallest.
 3 Q. And are any of the other ones family
 4 owned?
 5 A. Miles Sand and Gravel is.
 6 Q. And do you know how long they've been in
 7 business?
 8 A. I think it was maybe the late 40's when
 9 they started.
 10 Q. So you're the oldest?
 11 A. We are the oldest.
 12 Q. And do you -- are you a Union shop?
 13 A. We are.
 14 Q. A 100-percent Union?
 15 A. We are -- all of our production laborers
 16 Union are. Our administrative and sales people are
 17 not.
 18 Q. How many unions are represented at your
 19 business?
 20 A. We have four different locals represented
 21 there.
 22 Q. And what unions are those?
 23 A. The Automotive Machinist 289, Operating
 24 Engineers 302, teamster's Local 174, and teamster's
 25 Local 117.

Page 739

1 Q. And do you personally negotiate those
 2 labor contracts?
 3 A. I do.
 4 Q. How often does that come up?
 5 A. Cyclically, they're usually two to four
 6 years, three being probably most common. And
 7 they're not necessarily on the same calendar dates
 8 or I'd be pretty busy on the same month, so.
 9 Q. Was your business and the other Ready-Mix
 10 Concrete businesses in the Seattle recently subject
 11 to a strike by the Unions?
 12 A. CalPortland actually had a strike. We
 13 had three days of walk-outs to allow them to attend
 14 Union meetings to weigh in on the contract proposals
 15 on the table at the time. That would have been
 16 this last August.
 17 Q. So that was a strike against CalPortland,
 18 but your Union members also walked out?
 19 A. Yeah. For three days. It was a -- Union
 20 called a general meeting to discuss the proposals on
 21 the table, so it was not a strike; more of a walk-
 22 out.
 23 THE HEARING EXAMINER: Mr. Nerdrum,
 24 could I ask you to speak up a little bit more, and
 25 you can move the mic a bit. We're not quite picking

Page 740

1 up every --
 2 THE WITNESS: Okay.
 3 THE HEARING EXAMINER: -- as well as
 4 I'd like it. Thank you.
 5 THE WITNESS: Very good.
 6 BY MR. BROWER:
 7 Q. Do you know if the other businesses
 8 against whom you compete are also Union shops?
 9 A. Miles is non-Union, the other ones that I
 10 mentioned are all union.
 11 Q. So four out of the five are all Union
 12 shops?
 13 A. Correct.
 14 Q. And do you know if the contracts are
 15 relatively the same across all four of those Union
 16 shops?
 17 MS. FERGUSON: Objection. I've been
 18 waiting for relevance.
 19 MR. BROWER: The -- we just heard
 20 someone for hours talking about the economic impacts
 21 to these businesses on a theoretical level with an
 22 expert. And now, we're going to talk about the
 23 actual factual economic impacts to these businesses,
 24 which is the heart and soul of the Economic
 25 Considerations Report. The Economic Considerations

Page 741

1 Report tried to assess what the economic impacts to
 2 these businesses are. They used a \$20-an-hour
 3 relative employment figure. So I'm trying to get at
 4 what the actual wages are that Mr. Nerdrum and his
 5 company pays.
 6 MS. FERGUSON: We had a Union
 7 representative here yesterday that could have
 8 testified to all this as well.
 9 THE HEARING EXAMINER: If he didn't,
 10 that's fine. I guess my only concern is if we're
 11 getting into -- the testimony about comparison of
 12 the other businesses in the region. I'm not quite
 13 sure that we're on point with that. It's -- I could
 14 sit here and talk about your business all day. I
 15 would be very interested. But we really do need to
 16 stay focused on how this project is impacting
 17 Mr. Nerdrum's business, and Mr. Nerdrum's -- the
 18 nature of his business. So why don't we stay
 19 focused on that? I'll overrule the objection.
 20 MR. BROWER: Thank you. And the focus
 21 really is -- and it may seem -- and please give me a
 22 little bit of leeway, but I will bring it back
 23 around.
 24 MS. FERGUSON: The objection I think
 25 has been overturned.

Page 742

1 THE HEARING EXAMINER: Yes.
 2 MS. FERGUSON: So you can go ahead.
 3 MR. BROWER: Okay. Okay.
 4 BY MR. BROWER:
 5 Q. So, Mr. Nerdrum, getting back to my
 6 question, do you know if those other Union shops pay
 7 the same wages that you pay?
 8 A. Yes. They do.
 9 Q. And do you -- what about the costs to
 10 your business? Do you pay the same amount that they
 11 do for sand and gravel, and cement, and add mix?
 12 A. I don't think I could say a yes or no. I
 13 would assume, because some of our suppliers are also
 14 our competitors, that they may have an advantage in
 15 cost. Because we buy sand and gravel from one of
 16 our suppliers is our competitor. We buy cement from
 17 people that also compete in the same marketplace.
 18 So I'm going to assume that their costs are lower
 19 than mine.
 20 Q. So those businesses, I think, in the
 21 commerce you might say are vertically integrated?
 22 A. They are vertically integrated.
 23 Q. Okay. So in where you're located with
 24 your business, you're competing against other
 25 companies in Seattle that are vertically --

Page 743

1 MS. FERGUSON: I'm going to object,
 2 leading questions.
 3 MR. COHEN: I share that objection.
 4 MR. BROWER: I'm just trying to move
 5 this along.
 6 THE HEARING EXAMINER: I'll sustain
 7 the objection. Again, I'm concerned about the
 8 comparison with the other businesses as well. We
 9 just don't need to go there for relevancy. I
 10 understand. I don't think we need to go there for
 11 Mr. Nerdrum's -- to understand Mr. Nerdrum's
 12 business --
 13 MR. BROWER: Certainly. Okay.
 14 THE HEARING EXAMINER: -- in the
 15 context of the impacts of this project.
 16 MR. BROWER: Certainly.
 17 BY MR. BROWER:
 18 Q. Mr. Nerdrum, in what quantity do you buy
 19 barges of sand and gravel? One at a time or a
 20 hundred at a time?
 21 A. We buy one or two at a time, and we
 22 transfer those barges in two-to-four times a week.
 23 The quantities will be from 2 to 3500 tons on each
 24 of those barge loadings.
 25 Q. And what about the quantities of the add

Page 744

1 mix? Do you buy them in large bulk or just a couple
 2 of trucks or carloads at a time?
 3 A. Fairly frequent deliveries we get once or
 4 twice a week with a given add mixture. It's just
 5 based on the demand. I'll set an example. In the
 6 summertime we go through a lot of retarder to slow
 7 the set of concrete. In the wintertime, we go
 8 through a lot of accelerator to accelerate the set
 9 of concrete. So the rate that we would receive
 10 materials for each of those would be different based
 11 on the time of the year and the demand of the mix
 12 designs.
 13 Q. And do those materials -- some come by
 14 barge it sounds like?
 15 A. We have the add mixtures. The sand and
 16 gravel comes exclusively to us by barge until things
 17 happen, like the locks closure or we're out of
 18 balance on pea gravel versus three-quarter-inch
 19 rock, and then we have to truck in.
 20 Q. And how do the other materials arrive at
 21 your facility?
 22 A. We bring our cement in about 60 percent
 23 by rail, the other powder products come by truck;
 24 pneumatic-tanker truck.
 25 Q. And do you have facilities located on

Page 745

1 both sides of Shilshole Avenue?
 2 A. We do.
 3 Q. And what's on the south side of
 4 Shilshole?
 5 A. On the south side is our Ready-Mix
 6 production facility, and our sand and gravel load in
 7 and unloaded distribution.
 8 Q. If you'd indulge me for a second, I'd
 9 like to bring a figure up. (Pause.) Mr. Nerdrum,
 10 Danielle is going to hand you Volume 1. I believe
 11 these are Exhibit A-2, which are Mr. Bishop's
 12 AutoTURN analysis.
 13 THE HEARING EXAMINER: Sorry, you are
 14 at A-2, or?
 15 MR. BROWER: The admitted A-2 --
 16 THE HEARING EXAMINER: Okay.
 17 MR. BROWER: -- which is --
 18 MS. FERGUSON: I think it's A-1?
 19 MR. BROWER: A-1 -- apologize. Yes.
 20 It's Exhibit 310.21. I should just read my own
 21 notes.
 22 BY MR. BROWER:
 23 Q. Mr. Nerdrum, I put up on the screen
 24 behind me Exhibit page 4.5B as in boy.
 25 UNKNOWN SPEAKER: And which page is

Page 746

1 this?
 2 MR. BROWER: It's page 021.
 3 BY MR. BROWER:
 4 Q. Do you see that figure, Mr. Nerdrum?
 5 A. I do.
 6 Q. So we heard a lot of testimony over the
 7 last couple of days about your driveways on the
 8 south side of Shilshole, which are labeled 9, 9A,
 9 9B, 9C and 9D. Do you see those?
 10 A. I do.
 11 Q. And it's been a lot of debate over
 12 whether you have five driveways or four driveways
 13 and a loading dock.
 14 A. We have four driveways and a loading dock
 15 on the south side of Shilshole.
 16 Q. And would that loading dock be number 9C
 17 between the -- I think Mr. Olstad described it as
 18 the overhead bulk delivery and the main exit
 19 driveway, which is 9B? Not the easiest figures to
 20 read.
 21 A. It would be 9D.
 22 Q. I think driveway 10 is the Covich and
 23 Williams driveway.
 24 A. Oh, pardon me. Then it would be 9C, I
 25 thought 10 was ours.

Page 747

1 Q. Thank you. And you also have facilities
 2 you mentioned on the north side of Shilshole. What
 3 is on the north side of Shilshole related to your
 4 business right across from your Ready-Mix plant?
 5 A. We have our administrative offices and
 6 warehouses that run from 20th Avenue Northwest
 7 westwardly to just about the end of the block.
 8 There is a parking lot at the end of the block. so
 9 we're warehouse space and loading dock area on the
 10 whole of the area between Vernon and 20th Northwest
 11 with the exception of the parking lot that's on the
 12 very western end of that.
 13 Q. So if you look at this figure, there are
 14 a number of yellow driveways on the north side of
 15 Shilshole. Do you see those?
 16 A. Correct.
 17 Q. And are those all of your driveways?
 18 Because they -- I think you said your business goes
 19 from 20th Avenue Northwest, which is on the --
 20 towards the right-hand side of this figure, all the
 21 way to the left?
 22 A. Those are either driveways or loading
 23 docks.
 24 Q. And are those all actively used?
 25 A. Yes.

Page 748

1 Q. And this figure also shows parallel
 2 parking in between those loading docks? Is that
 3 what currently exists today?
 4 A. No. There's back- in angled parking 21
 5 or 22-feet deep.
 6 Q. Would, in your opinion, changing the
 7 angle of the parking impact your business?
 8 A. Yeah. Because our customers --
 9 MS. FERGUSON: Objection. Call for
 10 speculation.
 11 MR. BROWER: He's the 5th generation
 12 owner of this property. He's grew up his whole life
 13 there. I'm just -- he's allowed to give lay opinion
 14 based on his factual knowledge.
 15 THE HEARING EXAMINER: Could you
 16 rephrase? I'll sustain the objection and ask that
 17 you rephrase the question, so that we understand
 18 what you mean by impact the business.
 19 MR. BROWER: Sure.
 20 THE HEARING EXAMINER: That could be
 21 economic. It could be --
 22 MR. BROWER: Operational. Got it.
 23 THE HEARING EXAMINER: -- or not.
 24 MR. BROWER: Certainly.
 25 BY MR. BROWER:

Page 749

1 Q. How is all of that back-in angled parking
 2 used today?
 3 A. well, customers come in, back-in angled
 4 parking, come to the office, request the material
 5 ordered, and then they'll move to the appropriate
 6 door to get loaded. And that could be across the
 7 street or into one of those warehouses or loading
 8 docks on the north side.
 9 Q. So they both use it. They use it
 10 operationally to come get in and out of your
 11 driveways and loading docks?
 12 A. Yes. They do.
 13 Q. And they also come and park to come
 14 shopping at your business?
 15 A. Yes. They do.
 16 Q. So economically?
 17 A. Yes.
 18 Q. And are you worried about the City
 19 changing from back-in angle to parallel parking?
 20 A. I'm very worried about it, because it
 21 precludes the ability for some of our customers to
 22 be able to get to us to back in to those loading
 23 docks and get their material orders.
 24 Q. Did the City talk to you about changing
 25 the parking from back-in to parallel?

Page 750

1 A. No.
 2 Q. Did the City ever come talk to you about
 3 how many driveways you have and how you use them?
 4 A. No. I gave some information to, I think
 5 the current project manager, last name Galassini,
 6 probably? I handed it to her on one of the
 7 community meetings that they had where they had new
 8 drawings at a percentage of completion of design.
 9 And I told her what our driveway usages were on the
 10 south side of Shilshole, and where they had accesses
 11 that were marked incorrectly on their maps. And I
 12 gave her a small hand drawing.
 13 Q. Did that drawing show all four of your
 14 driveways and our loading dock?
 15 A. Yes. It did.
 16 Q. And did it also show vehicles, at least
 17 the direction in and out of each?
 18 A. Yes. It did.
 19 Q. And was that this summer that you gave it
 20 to her or another time?
 21 A. No. It was this summer.
 22 Q. So --
 23 MS. FERGUSON: Objection. It's not
 24 related to the EIS.
 25 MR. BROWER: That was just about my

Page 751

1 question to be.
 2 MS. FERGUSON: But that wasn't your
 3 question.
 4 THE HEARING EXAMINER: He's already
 5 answered the question that you're objecting to, I
 6 think.
 7 MS. FERGUSON: Maybe I was talking
 8 over him. I didn't hear the answer.
 9 MR. BROWER: He said he gave it to her
 10 this summer.
 11 THE HEARING EXAMINER: Yeah.
 12 MS. FERGUSON: Okay.
 13 THE HEARING EXAMINER: So we already
 14 got an answer.
 15 BY MR. BROWER:
 16 Q. So that was after the FEIS was published?
 17 A. Yes.
 18 Q. So they didn't -- SDOT didn't ask you
 19 about this before it issued the draft EIS?
 20 A. They did not.
 21 Q. And they didn't ask you this before they
 22 issued the final EIS?
 23 A. No. They did not.
 24 Q. And when you read the draft EIS did it
 25 correctly indicate the number of driveways and your

Page 752

1 loading docks?
 2 A. I don't believe so.
 3 Q. Mr. Nerdrum, we heard a lot of testimony
 4 about the eco-northwest economics report, where it
 5 used a figure of \$20-an-hour as an average wage for
 6 employees in this area. Is that what you pay your
 7 employees?
 8 A. No.
 9 Q. What is -- and they use that wage to
 10 calculate a quantitative impact to your business
 11 related to the delay of a Ready-Mix Concrete truck.
 12 What do you pay your Ready-Mix concrete driver?
 13 A. The composite rate with a lot of the
 14 fringe benefits in that would be like a prevailing
 15 wage rate?
 16 Q. Yes, please.
 17 A. Is that what you asking? It's between
 18 \$53 and \$54-an-hour.
 19 Q. And does it also -- do you have a cost
 20 for the truck as well?
 21 A. Yeah. Truck and driver costs is about
 22 \$92.60.
 23 Q. So a little over -- almost four-
 24 and-a-half times the \$20 rate?
 25 A. Yeah.

Page 753

1 Q. And we heard a lot of testimony about
 2 whether or not you could hire flaggers to mitigate
 3 potential impacts from this project. Do you use
 4 flaggers now?
 5 A. We do not.
 6 Q. Do you know how much it would cost you to
 7 hire flaggers?
 8 A. I do.
 9 Q. How do you know that?
 10 A. We have an operating engineer's agreement
 11 Local 302, and in their wage book their flagger rate
 12 is \$41 an hour.
 13 Q. So 41 bucks an hour, is that a fully
 14 loaded rate with benefits and pension?
 15 A. I don't think the health and welfare is
 16 in that, but pension is. Yes.
 17 Q. So how much would health and welfare add
 18 to that?
 19 A. It's about \$1400 a month.
 20 MS. FERGUSON: Objection. Lack of
 21 foundation. Speculation.
 22 MR. BROWER: He just testified it's in
 23 a contract that he has.
 24 MS. FERGUSON: You didn't site that as
 25 a basis. I heard that he didn't know --

Page 754

1 MR. BROWER: No.
 2 MS. FERGUSON: -- the response to the
 3 question.
 4 THE HEARING EXAMINER: He did. I did.
 5 THE WITNESS: Yeah. We held contracts
 6 with Local 302 operating engineers.
 7 BY MR. BROWER:
 8 Q. So in that contract that you have with
 9 Local Operating Engineer's 302, it actually
 10 specifies a rate that you would have to pay
 11 flaggers?
 12 A. Not in our contract. In their prevailing
 13 rate. If I hire a flagger, it has to be a 302, and
 14 then I would default to what their rate is, which is
 15 \$41-an-hour.
 16 Q. Got it. Plus, health and welfare?
 17 A. Correct.
 18 Q. And I -- I'm sorry, I didn't hear what
 19 your answer was to the health and welfare cost?
 20 A. It's about \$1400 a month.
 21 Q. So that's another \$16,000 or \$17,000 a
 22 year?
 23 A. That'd be about right.
 24 Q. So 41 plus 16 is about \$57,000? Is that
 25 -- my math correct?

Page 755

1 A. Yeah. It came close.
 2 Q. So if you had to hire flaggers, how many
 3 would you have to hire?
 4 MR. COHEN: Objection. Lack of
 5 foundation. He has no clue how many flaggers he
 6 would need for what circumstances relating to the
 7 trail might require him to hire flaggers.
 8 MR. BROWER: Mr. Examiner, I mean, I'm
 9 hard pressed not to go back to what Dick Settle
 10 teaches us about environmental impact statements.
 11 There supposed to be readable and understandable to
 12 the lay person, not just to experts. This is a
 13 person whose business will be directly impacted by
 14 the trail. We've spent hours talking about -- and
 15 the EIS even talks about the use of flaggers. What
 16 I'm asking him is how much it will actually cost his
 17 business to use a flagger. This is directly
 18 relevant. I can't understand why -- this is a
 19 person who's just trying to give fact testimony.
 20 And I've gotten more objections than any other
 21 witness so far. It seems like nobody wants to hear
 22 from Mr. Nerdrum, and I'm quite puzzled by this.
 23 THE HEARING EXAMINER: So all of that
 24 aside, I -- the objection is whether there's
 25 foundation for Mr. Nerdrum to speak to whether the

Page 756

1 -- he knows how many flaggers he would have to hire
 2 --
 3 MR. BROWER: Okay.
 4 THE HEARING EXAMINER: -- if the
 5 project is developed? Is that correct?
 6 MR. BROWER: I'm just asking if he had
 7 to hire flaggers --
 8 MR. KISIELIUS: So far what we're --
 9 MR. BROWER: Sorry.
 10 THE HEARING EXAMINER: So were you in
 11 the context of the -- I guess it was unclear in your
 12 question. I -- right now what we have is that he
 13 has a Union book, I think it is, that has rates in
 14 it, so he knows what flaggers are. He doesn't use
 15 flaggers. You've gone over the costs that could
 16 come associated with that for insurance, et cetera,
 17 and benefits.
 18 MR. BROWER: Yes.
 19 MR. KISIELIUS: Your Honor?
 20 THE HEARING EXAMINER: And then you
 21 moved on to how many flaggers you'd have to hire for
 22 the project. So there is a gap there. And so, I'll
 23 sustain the objection, and it may need just
 24 rewording.
 25 MR. BROWER: So --

Page 757

1 THE HEARING EXAMINER: I do -- I will
 2 address part of what you said.
 3 And I -- in the interest of time, we
 4 don't want to overburden Mr. Nerdrum's testimony
 5 with objections. Certainly, in the context of the
 6 other witnesses that we've had where their testimony
 7 is going to be driving the Appellant's case much
 8 more closely. I'm not going to suppress you or stop
 9 you from doing it, but I just -- we want to be
 10 careful that if we got "coffee'd up" at the break
 11 that we don't take it out on Mr. Nerdrum.
 12 MR. KISIELIUS: Your Honor. My
 13 suggestion -- I don't want to frustrate Mr. Nerdrum
 14 talking about his business, but buried in that
 15 question is a set of assumptions about how the trail
 16 would impact his business. And if Mr. Nerdrum had a
 17 basis to speak to well, I'm assuming that if that
 18 trail goes in, there will be X bicycles. They will
 19 require me to hire a flagger on so many occasions.
 20 If the assumptions were stated, then there would be
 21 a basis for him to say what would it cost your
 22 business.
 23 THE HEARING EXAMINER: Okay.
 24 Can you treat that link?
 25 BY MR. BROWER:

Page 758

1 Q. So Mr. Nerdrum, let's back up.
 2 THE HEARING EXAMINER: And I think I
 3 sustained the objection, we'll move on.
 4 MR. BROWER: Okay. Good. Good.
 5 BY MR. BROWER:
 6 Q. Mr. Nerdrum -- let's back up. How long
 7 have you been working on the Burke-Gilman Trail
 8 Missing Link Project?
 9 A. Since 1995.
 10 Q. So 22 years?
 11 A. Yeah.
 12 Q. And do you believe that you are familiar
 13 with all the iterations of the SEPA review that has
 14 been done the first DNS?
 15 A. I believe so.
 16 Q. What about the second DNS?
 17 A. I believe so.
 18 Q. And are you familiar with the process
 19 that culminated with the preparation of this EIS?
 20 A. I do -- I am.
 21 Q. And have you had a chance to review
 22 pieces of this EIS?
 23 A. I have.
 24 Q. And have you had numerous and multiple
 25 conversations with City representatives over the

Page 759

1 course of the 22 years about this project?
 2 A. Yes. I have.
 3 Q. More than you can count?
 4 A. Very probably.
 5 Q. Do you believe that you have a good
 6 working knowledge of where this trail would be
 7 located in front of your business?
 8 A. Yes. I do.
 9 Q. Do you believe you have an understanding
 10 of how this trail and its operation might impact
 11 your business?
 12 A. Yes. I do.
 13 Q. What is that?
 14 A. I believe that if it's a multi-use trail
 15 on the south side of Shilshole, it will add foot
 16 traffic, bicycle traffic, and any other type of
 17 skateboard, roller blades, roller skates going
 18 directly across where all of our vehicles have to
 19 come in to get loaded or receive materials: both
 20 incoming and outgoing. Not just our trucks, but
 21 other vendor trucks, as well as customers who are
 22 picking up materials.
 23 The number of those crashings is going to
 24 be -- varies with the volume, but it would be from
 25 150 to 350 a day. And we have an output in a batch

Page 760

1 plant that will load a truck about every three
 2 minutes. So I would assume that I would have to
 3 probably hire flaggers in order to be able to get my
 4 trucks out, so that we could weigh the trucks and
 5 get them back onto the street. And I would probably
 6 use two flaggers because we have both north and
 7 south bound traffic on Shilshole. And we would have
 8 to stop traffic in both directions to get some of
 9 those loads out.
 10 Q. Have you seen the design plans that are
 11 included in the draft and final EIS for both the
 12 south Shilshole alternative and the preferred
 13 alternative?
 14 A. Yes. I have.
 15 Q. Have you seen subsequent design plans
 16 that have been moved past the 10-percent design?
 17 A. On those that are not 90-percent design?
 18 Q. Yes.
 19 A. Yes. I just reviewed those last week.
 20 Q. So you are intimately familiar with the
 21 details of this project?
 22 A. I am.
 23 Q. So -- and you intimately familiar with
 24 where this project will be located?
 25 A. I am.

Page 761

1 Q. And you are intimately familiar with how
 2 this project will impact your business?
 3 A. Very much so.
 4 Q. So you mentioned before that you might
 5 have to hire two flaggers? So -- and was it \$57,000
 6 dollars a year per flagger?
 7 A. Yeah. If we take the 41 and 16 for the
 8 health and welfare? Yeah.
 9 Q. So that would be what? A hundred --
 10 A. Two flaggers at an eight-hour shift, but
 11 we operate 10/11 hours a day. So we may have to
 12 have the 3rd flagger to cover that stagger in the
 13 shift.
 14 Q. So that would be a -- what 120 to
 15 \$200,000 impact to your business?
 16 A. Yeah.
 17 Q. And we, in the course of the last couple
 18 days, saw some videos of the cement trucks arriving
 19 while other trucks were leaving.
 20 A. Yes.
 21 Q. Would there be circumstances where you
 22 might need more than two flaggers?
 23 A. It's conceivable.
 24 Q. Because you -- why would that be?
 25 A. Well, we'd have some exiting or entering

Page 762

1 different driveways, and the exit and enter for both
 2 the farthest north and the farthest south driveways.
 3 So if we had exiting trucks on the north driveway
 4 and exiting trucks on the south driveway, we might
 5 have to use multiple flaggers. So it might have to
 6 be more than two, it might have to be two at one
 7 location, one at the other. You have to
 8 functionally be able to stop the traffic.
 9 Q. You -- could you envision a scenario
 10 where you might need four flaggers?
 11 A. I would hate to think of it, but if you
 12 go to the north side of the street, and we're trying
 13 to get a container truck into one of our warehouse
 14 or loading docks, I would say you could probably
 15 entertain a fourth flagger to get somebody in on the
 16 north side to one of those warehouses.
 17 Q. So three to four flaggers are going to
 18 add what, 200-\$250,000-a-year to the cost to operate
 19 your business?
 20 A. That's correct.
 21 Q. Is that a significant cost to you?
 22 A. A very significant cost.
 23 Q. Why is that?
 24 A. Well, why is \$250,000 significant?
 25 Because it is. It's not a cost that we currently

Page 763

1 would cover in our competitive margins that are
 2 allowed in the construction industry. But I think
 3 it would chew up a whole lot of the reason that a
 4 lot of businesses are in business, and that's to try
 5 to turn a profit.
 6 Q. Do you think you could pass those costs
 7 on to your consumer?
 8 A. I don't see how I could.
 9 Q. Is that because of the competition that
 10 you're paying?
 11 A. We have to compete with other people in
 12 the marketplace who aren't bearing those same costs.
 13 Q. So would this trail significantly impact
 14 your business?
 15 A. Very substantially.
 16 Q. Mr. Nerdrum, are you also involved with
 17 the Ballard Terminal Railroad?
 18 A. I am.
 19 Q. And how are you involved with the Ballard
 20 Terminal Railroad?
 21 A. I'm one of the owners of it.
 22 Q. And how long have you been involved with
 23 the Ballard Terminal Railroad?
 24 A. Since its inception in 1997.
 25 Q. And how did it come into being?

Page 764

1 A. The Ballard Terminal Railroad came into
 2 being when the City and Burlington Northern were
 3 engaged in a process to try to abandon the rail line
 4 that serviced our freight needs in front of our
 5 facility that ran from the interchange point on the
 6 end line down through Freemont. And it had already
 7 been abandoned I think to *Latona Street. And so,
 8 we engaged in a process and formed Ballard Terminal
 9 Railroad -- it's a short-line railroad to be able to
 10 acquire the right of way and the use of that rail
 11 for continued freight service.
 12 Q. What is a short-line railroad?
 13 A. It's a non-mainline carrier that operates
 14 a small section of track that is connected somewhere
 15 to one of the main line carriers, so that they can
 16 conduct freight business -- commercial carrier
 17 business on rail to and from customers that are
 18 along that line. Some short lines are a mile long,
 19 some short lines are 20 miles long, some short lines
 20 are several hundred miles long, but they all connect
 21 with the main line carriers that run coast to coast.
 22 Q. Why doesn't Burlington Northern just
 23 bring the cars to you?
 24 A. Well, they opted that they didn't believe
 25 that there was enough service on the line for it to

Page 765

1 be a continued profitability for them. And the car
 2 loadings that they take, that happen in that type of
 3 market are the "onesie-twosie" carloads. And the
 4 mainline carriers are more interested in unit trains
 5 that pull trains of grain, or coal, or container
 6 trains that are going from a water port to a
 7 distribution center. They really don't like the
 8 breakup of the trains, and break bulk. So they,
 9 across the nation pretty much got out of that
 10 business, and that's what proliferated the number of
 11 short lines that are out there today in the United
 12 States. They're all pieces of what were formally
 13 branch lines of the mainline carriers.
 14 Q. So is the Ballard Terminal Railroad a
 15 part of the original Burke-Gilman Railroad?
 16 A. Well, that's interesting, because there
 17 was actually three different railroads that ran
 18 through that area: the Northern Pacific, the Great
 19 Northern and the Burke-Gilman. In some portions of
 20 that they shared right of way, and other portions
 21 they shared trackage, and in some portions, they
 22 were independent of themselves. So some part of
 23 that -- they probably was part of the Burke-Gilman.
 24 Q. So the tracks that are there now were
 25 part of the original Burke-Gilman?

Page 766

1 A. Yeah. I can't tell you they were part of
 2 G.N. or -- what was the -- G.N., G.P., and Burke-
 3 Gilman, I think were the three railroads that
 4 operated in that area. And they also serviced the
 5 lumber mills and whatnot in that area. So I'm not
 6 sure if it was part right where we're located of the
 7 original Burke-Gilman, but some portions of it were.
 8 The southern end of our short line probably was part
 9 of the original Burke-Gilman, because there was a
 10 crossing train bridge that went across the ship
 11 canal at about 9th Avenue Northwest, and I think
 12 that's where the G.P. or the Great Northern ended.
 13 And I think Burke-Gilman continued on then through
 14 Freemont and ultimately down to the Black Diamond, I
 15 think.
 16 Q. So I think you mentioned in the 90s,
 17 Burlington Northern went to abandon that line? Is
 18 that correct?
 19 A. Correct.
 20 Q. And what is that process -- do you know
 21 what that process entails?
 22 A. Uh-huh (affirmative response).
 23 Q. And what does it entail?
 24 A. Well, they have to file a petition with
 25 the Surface Transportation Board for abandonment,

Page 767

1 and they have to provide evidence or documentation
 2 that there's not enough traffic there to be
 3 serviced. And if they're discontinuing service to
 4 somebody, then they have to pay some form of a
 5 payment to those people to make up their loss of
 6 rail service. And then it's ruled on by the S.T.B
 7 as to whether they can abandon it or not. If it's
 8 being abandoned, then it's subject to somebody else
 9 coming forward, such as a short line operator to
 10 petition the S.T.B. to get the rights to run rail on
 11 that section of proposed abandoned track.
 12 Q. Did you personally participate in that
 13 abandonment process in the 90s?
 14 A. I would -- I did. Yes.
 15 Q. And was the City of Seattle another
 16 participant in that?
 17 A. Pardon me?
 18 Q. Did the City of Seattle also participate
 19 in that process?
 20 A. They did. They participated in it, and
 21 we ended up with a franchise agreement. And so, we
 22 had to deal with the City because much of the
 23 railroad is on city right-of-way. Some is not, some
 24 is. And, in fact, we have one of -- I think there's
 25 seven now, but we were the very first piece of rail

Page 768

1 to be rail-banked with active rail on it. And it
 2 was kind of an anomaly in Washington, DC at the
 3 S.T.B, because most rail-bank property is just that,
 4 it's set aside maintaining that corridor for
 5 potential future use, but usually not with then
 6 continued active rail use. So I believe we were the
 7 first active rail-banked railroad.
 8 Q. Would you mind speaking up a little bit
 9 more?
 10 A. We were the first active -- does this
 11 have an on/off switch or?
 12 THE HEARING EXAMINER: It's mostly
 13 going to just pick up your voice. This isn't
 14 necessarily projecting your voice.
 15 MR. BROWER: Yeah. I --
 16 THE HEARING EXAMINER: -- somewhat of
 17 the speakers are --
 18 MR. BROWER: I think I'm getting it on
 19 the one end --
 20 THE WITNESS: Maybe it's -- I'm
 21 blocking.
 22 MR. BROWER: Yeah.
 23 THE WITNESS: I think we have the
 24 first piece of rail-banked rail in the United States
 25 that actually was rail-banked with active rail

Page 769

1 service continuing on. I think there's now, seven,
 2 eight, maybe nine? So yeah, I was actively involved
 3 with that process.
 4 BY MR. BROWER:
 5 Q. And you mentioned a franchise agreement,
 6 what was that?
 7 MS. FERGUSON: Objection. I'm not
 8 sure where this is going, but I don't see the
 9 relevance. The railroad is not raised as an issue
 10 in the appeal.
 11 MR. BROWER: It's impacted by this
 12 trail. It's one of the businesses that are impacted
 13 by the trail.
 14 THE HEARING EXAMINER: Can you help us
 15 understand how the abandonment of the railroads,
 16 which is subject to our analysis, related?
 17 MR. BROWER: Sure. Yes. I'm happy to
 18 make that connection. Do you want me to explain it?
 19 THE HEARING EXAMINER: Quickly.
 20 MR. BROWER: Okay. The railroad has a
 21 30-year franchise. And this trail may make it
 22 impossible for the railroad to keep operating, which
 23 is what I'm trying to get at, because the trail is
 24 moving the rail in certain places, and also
 25 reconfiguring the road in certain places to make the

Page 770

1 operation of the railroad unsafe.
 2 THE HEARING EXAMINER: And the rail is
 3 something the business depends on for its functions?
 4 MR. BROWER: And the railroad depends
 5 on being able to move for its business. There's two
 6 businesses at issue here. You have the railroad
 7 itself, which is a business, and then the businesses
 8 that the railroad serves.
 9 THE HEARING EXAMINER: I'll overrule
 10 it.
 11 BY MR. BROWER:
 12 Q. So, Mr. Nerdrum, in that process was a
 13 franchise entered into with the city?
 14 A. Yes. It was.
 15 Q. And what is the length of that franchise?
 16 A. It is 30 years.
 17 Q. And do you know when it started?
 18 A. 1998.
 19 Q. So it runs until 2028?
 20 A. That's correct.
 21 Q. And in a course of your review of this
 22 project, have you come to learn that the City might
 23 want to move some of the railroad tracks?
 24 A. We have.
 25 Q. And did you also learn that the City

Page 771

1 wants to remove some of your railroad tracks?
 2 MR. KISIELIUS: Objection. He's
 3 leading the witness again.
 4 THE HEARING EXAMINER: Sustained.
 5 BY MR. BROWER:
 6 Q. Have you had discussions with the City
 7 about impacts to the railroad?
 8 A. The City has had no discussion with me on
 9 that.
 10 Q. Have you reviewed the plans for this
 11 trail?
 12 A. I have. Mainly it was the location ones
 13 I just recently reviewed.
 14 Q. All right. Based on the information in
 15 the EIS, were you concerned as the owner of the
 16 railroad of potential impacts to it?
 17 A. Yes.
 18 Q. And what were your concerns?
 19 A. Well, I believe in the length of the
 20 corridor that we operate that rail on, we also have
 21 areas where we have railroad tracks and cargo load
 22 and unload areas. And the placement of the trail in
 23 an area that would eliminate our ability to do that
 24 would make functionally our railroad not as operable
 25 as it is currently.

Page 772

1 Q. And why is that? You mentioned run
 2 around. What does that mean?
 3 A. When you switch cars and when we're out
 4 you have to bring the air change pump, drop off
 5 empty cars, bring back loaded cars, spot them in
 6 locations and you may have to take and run around
 7 with the locomotive to get to the other end, or to
 8 return back to the interchange point to spot cars or
 9 pick cars back up. So you need to be able to have
 10 two pieces of track side by side that you can move
 11 the locomotive past and then come back and get by
 12 those cars. If the cars are actively being
 13 unloaded, you obviously can't move those cars,
 14 because they're being unloaded. So you need a --
 15 sections within that that you can run around from
 16 one end to the other to move empty or loaded cars.
 17 Q. So if the trail had those impacts, would
 18 the railroad be able to keep in -- operating?
 19 A. We'd have a difficult time in areas where
 20 you need to perform those services, and any
 21 preclusion of our ability to do that hampers or
 22 limits the ability of the railroad to operate.
 23 Q. Would that be a significant impact to
 24 that business?
 25 A. That would be a significant impact.

Page 773

1 Q. Does the railroad currently operate
 2 inside a travel lane on the road right now?
 3 A. We do.
 4 Q. Where?
 5 A. Northwest 45th Street. We operate on
 6 that from about where the Fred Meyer store is down
 7 by 9th Avenue Northwest.
 8 Q. You're right in the middle of the road?
 9 A. Yes.
 10 Q. Is that a problem?
 11 A. In the middle of the road, there hasn't
 12 been a problem. Not many cars want to compete with
 13 you when you're moving a locomotive down the center
 14 of the road.
 15 Q. Sure. Now do you -- when a locomotive is
 16 moving are there other people around it? Train
 17 operators or rail -- what do you call them, rail
 18 men?
 19 A. The rail operators or brakemen that are
 20 there depending on what the need is. If they're
 21 spotting cars down in our south storage area, the
 22 run around track down there, there needs to be one
 23 plus the engineer. And he's either bobtailing the
 24 last car in line or he's leading, if they're backing
 25 in to it. And he's in radio communications with the

Page 774

1 engineer.
 2 Q. And again, did anybody from the City
 3 during the course of preparing the EIS talk to you
 4 or anybody else at the railroad about potential
 5 impacts to its operation?
 6 A. Not to my knowledge.
 7 Q. Do you know if there's any discussion of
 8 those impacts in EIS?
 9 A. I don't think I've seen any.
 10 Q. (Pause.) Mr. Nerdrum, I think you talked
 11 generally about the impacts of the trail. We're
 12 shifting back now to Salmon Bay Sand and Gravel; the
 13 cost of flaggers, if you had to use them, to get
 14 your trucks in and out.
 15 A. Yes.
 16 Q. Would added delay from the trail also
 17 impact your business?
 18 A. Yeah. I was going to add that, we load a
 19 truck every three minutes when we're batching
 20 concrete. If we had trucks stacked up because they
 21 could not get out, then our cost to operate that
 22 truck driver and equipment is about \$92.60 an hour.
 23 Q. So time is money?
 24 A. Time is money.
 25 Q. And about how many trips a day on average

Page 775

1 do you expect your trucks to make?
 2 A. There's a seasonality to it, but we hope
 3 that they make four trips a day. There are
 4 sometimes they might make two and they might make
 5 eight. We had a job that was up in Ballard, and we
 6 had one guy -- made 11 trips to that job. Good day,
 7 but.
 8 Q. So would delay impact your ability to get
 9 that many trucks in and out a day?
 10 A. Yes.
 11 Q. And how would it impact that?
 12 A. If they had to slow, and crawl, and wait
 13 for the ability to get back out onto Shilshole to
 14 start heading to the jobsite, it would delay getting
 15 to the customer. We're carrying a perishable
 16 product which is set sensitive, so that delay could
 17 cost us serviceability to our customers and lost
 18 truck-utilization time.
 19 Q. Would that be a significant impact to
 20 your business?
 21 A. Yes. It would.
 22 Q. Ms. Ferguson asked Mr. Cohen whether
 23 Mr. Cohen believed the trail would cause any
 24 businesses to fail. Do you think this trail could
 25 cause your business to fail?

Page 776

1 A. I do.
 2 Q. Why is that?
 3 A. I think the impacts that are going to be
 4 significant, both there in construction of what is
 5 proposed at the 90-percent level, and then, our
 6 ability to get our materials in and out, our trucks
 7 in and out, our warehouses services for load and
 8 unload would very considerably put this business
 9 out.
 10 Q. Do you know the business just to the
 11 north of your property on the south side of
 12 Shilshole?
 13 A. Yes. I do.
 14 Q. What's that business?
 15 A. The north side operate the C D Stimson,
 16 and they operate a marina on the waterfront side of
 17 the property and basically an office park on the
 18 upland side of that property.
 19 Q. Do you know if they have plans to
 20 redevelop that property?
 21 A. They do. They did the job three
 22 different times with three different contractors.
 23 They still haven't decided to move forward with it.
 24 Q. So you're intimately familiar with it,
 25 because you've actually bid the job?

Page 777

1 A. Correct.
 2 Q. And what is that project proposed to be?
 3 A. It's an office building. It's north of
 4 their current and exiting office buildings between
 5 there and where the old Yankee Diner use to be
 6 located.
 7 Q. Would having an office building next to
 8 an industrial use impact your ability to keep
 9 operating?
 10 A. It may have -- and see what kind of
 11 additional traffic it brought. And added traffic on
 12 Shilshole is certainly going to be something that
 13 would be negative, and then what other types of
 14 impacts would we have.
 15 Q. Is it your understand that this project
 16 will eliminate parking along the Shilshole?
 17 A. Yes.
 18 Q. And is that from -- how do you know that?
 19 A. All of the drawings I've seen, in
 20 particular, with the 90-percent completion
 21 currently, it's going to take well over half the
 22 parking that exists on Shilshole between the Ballard
 23 bridge and 24th Avenue Northwest out of service.
 24 Q. Do your employees use that parking?
 25 A. Some do.

Page 778

1 Q. Do your customers use that parking?
 2 A. Yes.
 3 Q. Will the loss of that parking then
 4 significantly impact your business?
 5 A. Absolutely.
 6 Q. Mr. Nerdrum, I've got nothing else.
 7 Thank you.
 8 THE HEARING EXAMINER: Cross?
 9 MS. FERGUSON: Thank you.
 10 CROSS-EXAMINATION
 11 BY MS. FERGUSON:
 12 Q. You just finished testifying about
 13 parking near your business?
 14 A. Yes.
 15 Q. In my understanding there's some both on
 16 the south and the north that's utilized?
 17 A. There's parking on both the north and
 18 south side of Shilshole utilized.
 19 Q. Is your understanding that that parking
 20 is all located in City right-of-way?
 21 A. I'm sure that it is.
 22 Q. You also testified about the quantity and
 23 frequency of certain deliveries of large quantities
 24 of supplies to your business?
 25 A. Uh-huh (affirmative response).

Page 779

1 Q. Are you aware whether those numbers are
 2 reflected in the EIS?
 3 A. I don't believe they are.
 4 Q. You also discussed the use of flaggers,
 5 and am I correct that you do not currently use any
 6 flaggers?
 7 A. We don't hire flaggers currently, no.
 8 Q. Are you aware whether or not those are
 9 required currently?
 10 A. I don't believe they are.
 11 Q. You also talked about some loading docks
 12 on the north side?
 13 A. Correct.
 14 Q. Do you have any loading dock permits for
 15 those?
 16 A. Well, if you have a driveway that goes
 17 back into your property and there's a loading dock
 18 back in the middle of the property, I'm unaware that
 19 there would be any permit requirement for that.
 20 Q. You mentioned several times that you have
 21 not talked to SDOT. Do you recall a phone interview
 22 with a consultant from SDOT approximately October
 23 2016?
 24 A. October of 2016? Yeah. There could have
 25 been a consultant that I talked with.

Page 780

1 Q. Were you aware that was related to the
 2 EIS?
 3 A. I don't know that I was aware it was
 4 related to the EIS.
 5 Q. But you recall that conversation?
 6 A. Yeah. I think so.
 7 Q. You also discussed that delay would be an
 8 impact to your business? And you didn't quantify --
 9 A. You said delay?
 10 Q. Delay.
 11 A. Yeah.
 12 Q. Delay.
 13 A. I'm sorry if I --
 14 Q. No. It's okay. My voice does not carry
 15 --
 16 A. -- thought. I've been fighting an inner
 17 ear infection for about a week, so.
 18 Q. -- so you and I have the same problem.
 19 You talked about delay.
 20 A. Uh-huh (affirmative response).
 21 Q. And that that would be what type of an
 22 impact to your property?
 23 A. Delay in being able to get our trucks out
 24 onto the street. What kind of impact is that?
 25 Q. Uh-huh (affirmative response).

Page 781

1 A. Well, given that there's a cost literally
 2 per minute of what the value of that truck and
 3 driver is, any loss time would be a cost -- or a
 4 delay would be a cost incurred by the company.
 5 Q. And then am I -- I'm sorry. Were --
 6 A. Okay.
 7 Q. Am I correct that you quantify that as a
 8 significant impact to your business?
 9 A. Yeah. It could be a very significant
 10 impact.
 11 Q. And is that any amount of delay: a
 12 minute, a second, 10 minutes, 20 minutes?
 13 A. Well, right now entering onto Shilshole
 14 Avenue, we have two lanes of traffic: a north and a
 15 south bound. And so, those delays that you wait for
 16 an opening in that traffic are probably less
 17 significant than if you took that combined with
 18 trail users that would be coming at different rates
 19 of speed. And our concern really is currently, if
 20 we move forward from our property onto the railroad
 21 track area, or the area of the margin between
 22 Shilshole Avenue and our property lines, and the
 23 trucks can wait there looking for an opening to
 24 enter into the south bound or north bound on
 25 Shilshole. There's a light at 24th and Market.

Page 782

1 Usually provides openings on the south bound more
 2 frequently than you would see them on the north
 3 bound just because there's a traffic control up
 4 there and probably the 70 percent of our traffic
 5 probably is south bound.
 6 So I think that if you add the additional
 7 traffic of pedestrians, foot, bicycles, skateboard,
 8 roller-bladers in addition to two lanes of Shilshole
 9 Avenue northbound/southbound traffic; I don't know
 10 how you could not anticipate additional delays,
 11 because you now have another traffic impediment of a
 12 pedestrian nature or a cycling nature in addition to
 13 the vehicular traffic that's out there.
 14 Q. I just want to make sure that -- thank
 15 you, that did answer my question -- that any amount
 16 of delay you would consider to be significant?
 17 A. Oh, I think it would be very significant.
 18 Q. And any amount?
 19 A. Any added amount. Yeah.
 20 Q. Okay. And you've discussed several times
 21 an inability to get in and out of your business. Is
 22 that your understanding of what the impact to your
 23 business would be?
 24 A. Yes.
 25 MS. FERGUSON: No further questions.

Page 783

1 MR. COHEN: I have some questions.
 2 CROSS-EXAMINATION
 3 BY MR. COHEN:
 4 Q. Mr. Nerdrum, it's nice to see you again.
 5 A. Good to see you again.
 6 Q. I want to start with Ballard Terminal
 7 Railroad.
 8 A. Uh-huh (affirmative response).
 9 Q. You said that you are one of the owners?
 10 A. Correct.
 11 Q. In fact, you own 99 percent of Ballard
 12 Terminal Railroad? Correct?
 13 A. That's correct.
 14 Q. And does Byron Cole still own the other
 15 one percent?
 16 A. Actually, James Forgette, the new
 17 operations manager.
 18 Q. Okay. And Ballard has how many
 19 customers?
 20 A. Our primary customer is Salmon Bay Sand
 21 and Gravel, but we have service in about 10
 22 different customers over the life of our railroad.
 23 Including the City of Seattle and King County?
 24 Q. How about us let's say in the last three
 25 years?

Page 784

1 A. Salmon Bay would have been our primary
 2 customer.
 3 Q. Any other customers in the last three
 4 years?
 5 A. No that's -- yeah, we may have done a
 6 flour trans load for the Safeway Bakery. It would
 7 be about three years ago, maybe four now.
 8 Q. And is that Safeway Bakery still there?
 9 A. Well, it was in Bellevue, they lost their
 10 rail service over there. And so, we did trans loads
 11 of railcars of flour. We trans loaded them onto the
 12 truck and then they trucked it over to the bakery.
 13 I don't know if the Safeway Bakery is still in
 14 Bellevue or not.
 15 Q. I'm sorry. I'm -- let me make clear.
 16 I'm asking only about the Ballard Line. I know you
 17 have other railroads as well.
 18 A. No. I'm talking about the Ballard line.
 19 Q. Okay.
 20 A. Yeah.
 21 Q. So --
 22 A. We trans loaded flour from railcars on
 23 the Ballard line and then those trucks delivered
 24 them to the bakery -- Safeway in Bellevue.
 25 Q. And where did you do that -- where in

Page 785

1 Ballard did you do that trans load?
 2 A. On the south end of our line would be
 3 just south of 45th -- between 45th and 43rd we have
 4 a double track run around that we use for trans load
 5 purposes.
 6 Q. And the bakery facility is Bellevue is
 7 now gone?
 8 A. I don't know.
 9 Q. Okay. How long has it been since you did
 10 that trans load?
 11 A. I'm going to guess three to four years.
 12 We did it for about three years, and it was probably
 13 six times or seven times a year. It takes about
 14 four truck loads to empty a railcar of flour. And
 15 it's probably been three or four years since we last
 16 did that.
 17 Q. So other than the flour trans loads three
 18 years ago, no other customers served by Ballard
 19 Terminal Railroad other than Salmon Bay in the last
 20 three years?
 21 A. Yeah. Not that I can recall.
 22 Q. What if you went five years?
 23 A. Then you'd be back into the flour --
 24 Q. The flour?
 25 A. Yeah.

Page 786

1 Q. Anybody else?
 2 A. No. We brought a couple of boats in for
 3 what at the time was CSR -- yeah, where CSR is
 4 located. Used to be a different -- it was Seaview
 5 East Shipyard, and they brought down some boats I
 6 think from Canada or Alaska on railcar and we
 7 unloaded their boats for them; brought their
 8 railcars in and unloaded the boats.
 9 Q. Okay. How long ago was that?
 10 A. Gosh, it's got to be 10 years?
 11 Q. Okay. You indicated that Ballard
 12 Terminal Railroad operates pursuant to a franchise
 13 agreement with the City?
 14 A. Correct.
 15 Q. The City owns 100 percent of the railroad
 16 right of way that Ballard operates on, do they not?
 17 A. I believe that's correct.
 18 Q. And the franchise agreement is the
 19 vehicle that enables Ballard to operate on that
 20 track at all?
 21 A. Correct.
 22 Q. And that right of way is rail banked?
 23 A. That is correct.
 24 Q. All the way to Fred Meyer?
 25 A. I believe it is rail banked from the

Page 787

1 interchange point of where they joined the
 2 Burlington Northern down past Fred Meyer. I think
 3 it goes clear on through Latona, probably past Dunn
 4 lumber and I don't know how much further beyond
 5 that.
 6 Q. Given the -- I believe Mr. Brower used
 7 the term vertical integration -- but given the
 8 co-ownership between Ballard Terminal Railroad and
 9 Salmon Bay Sand and Gravel, are the business
 10 relationship between Ballard and Salmon Bay arm's
 11 length. Do you do -- does -- strike that question.
 12 Does Salmon Bay pay Ballard for freight deliveries?
 13 A. Yes.
 14 Q. At market rates?
 15 A. Yes.
 16 Q. And are your freight bills provided by
 17 Ballard Terminal Railroad -- are Salmon Bay's
 18 freight bills provided by Ballard Terminal Railroad
 19 or by BNSF
 20 MR. BROWER: Objection. Relevance.
 21 MR. COHEN: Mr. Nerdrum is talking
 22 about the impact of the trail on the operations of
 23 two of his businesses, and I'm interested in the
 24 relationship between those businesses as they bear
 25 on the particular economic benefits and

Page 788

1 disadvantages facing this company. Recall that
 2 Mr. Nerdrum testified that if he had to bear the
 3 cost of dealing with the trail, he would be exposed
 4 to costs that other businesses -- competing
 5 businesses elsewhere in the region don't have to
 6 bear. I am exploring whether as a result of his use
 7 of the city right of way, he gets some advantages
 8 that other businesses don't have to bear.
 9 MR. BROWER: But who he gets his bills
 10 from has nothing to do with that.
 11 THE HEARING EXAMINER: Overruled.
 12 BY MR. COHEN:
 13 Q. So who renders invoices to Ballard -- or
 14 to Salmon Bay? I'm sorry?
 15 A. Ballard Terminal Railroad bank renders
 16 the invoices to --
 17 Q. And those invoices include the
 18 interchange cost assessed by BNSF?
 19 A. Correct.
 20 Q. Thank you. Is Ballard profitable today?
 21 A. Yes.
 22 Q. So profitable in the sense that the cost
 23 of providing that service for less than the revenues
 24 received?
 25 A. Yes.

Page 789

1 Q. Do you know how many cars were delivered
 2 to Salmon Bay by Ballard in 2016?
 3 A. Not off hand. I would guess between 130
 4 and 150 cars.
 5 Q. One of your managers testified yesterday
 6 that Salmon Bay receives on average four rail cars a
 7 week? Does that sound right to you?
 8 A. Probably close, yeah.
 9 Q. And would that be on an annual basis?
 10 A. It might be a little bit higher in the
 11 summertime when the traffic is up and depending on
 12 which cement supplier Salmon Bay is using we may
 13 have more cars available to us. We can unload a car
 14 in about three hours, so it's conceivable we could
 15 use two cars in a day. But sometimes the cars
 16 aren't available and sometimes Burlington Northern
 17 doesn't --
 18 Q. I understand there's variability
 19 seasonally and otherwise, but would it work out to
 20 about four cars a week on an annual average?
 21 A. Yeah, probably.
 22 Q. Okay. Under the franchise agreement,
 23 does Ballard pay anything to the City for the right
 24 to operate rail service on city owned right of way?
 25 A. No.

Page 790

1 Q. And under the franchise agreement does
 2 the City retain the right to move the tracks around
 3 as necessary to accommodate other uses of the City
 4 right-of-way?
 5 A. I'd have to re-read that to see what it
 6 actually says. I don't know.
 7 Q. Do you use any portion -- strike that
 8 question. Does Ballard use any portion of the City
 9 owned right of way east of Salmon Bay Sand and
 10 Gravel for any purpose today?
 11 A. East of Salmon Bay?
 12 Q. Uh-huh (affirmative response).
 13 A. Yeah. We brought a locomotive down to
 14 our locomotive pen. We trans load cars down between
 15 45th and 43rd. We store rail and track maintenance
 16 materials along the way.
 17 Q. You maintain a locomotive pen, I think
 18 you called
 19 it --
 20 A. Uh-huh (affirmative response).
 21 Q. -- at what location?
 22 A. It would be between 14th and 11th on
 23 Northwest 45th Street.
 24 Q. Uh-huh. Why do you keep the locomotive
 25 there?

Page 791

1 A. Well, we keep the locomotive there
 2 because the city failed to follow through with
 3 selling us the property we intended to build the
 4 locomotive pen on down on Bright Street. And so,
 5 we've had to store it outside and service it outside
 6 rather than being able to put together a facility to
 7 do that in.
 8 Q. Is there any reason why you couldn't
 9 store and service the locomotive in front of Salmon
 10 Bay?
 11 A. It would be difficult to do that and
 12 still have cars delivered to and from and unload if
 13 we were storing locomotive and servicing a
 14 locomotive there.
 15 Q. Why?
 16 A. They would be in the way?
 17 Q. How so?
 18 A. Well, if you measure the distance of the
 19 footage between the driveways, the only logical
 20 place that it would fit would be where the railcars
 21 have to be spotted to unload. Otherwise, you'd be
 22 blocking the driveway to store and service it in
 23 those locations.
 24 Q. So in other words, there's no room to
 25 store the locomotive any nearer to your principal

Page 792

1 business than the locomotive pen?
 2 A. No. We lease adjacent property by the
 3 locomotive pen, so that we can store our materials
 4 that we need to service the locomotive with right
 5 next to the locomotive pen.
 6 Q. Mr. Nerdrum, does Salmon Bay Sand and
 7 Gravel have any employee parking spaces within your
 8 property?
 9 A. We do.
 10 Q. How many?
 11 A. I think there's four down by our truck
 12 maintenance facility and three between what we call
 13 warehouse 4 and warehouse 7, and that's probably it.
 14 Q. So let me narrow that question a little
 15 bit. Any employee parking spaces on the campus of
 16 the Ready-Mix plant?
 17 A. No.
 18 Q. But you have employees at the Ready-Mix
 19 plant?
 20 A. Correct.
 21 Q. And one of your employees testified
 22 yesterday that he walks to work, but everybody else
 23 drives to work? Is that correct?
 24 A. Yes. Everybody's pretty envious of his
 25 commute.

Page 793

1 Q. I am, too.
 2 A. Me too.
 3 Q. So how many employees drive to work?
 4 A. I would say probably 65-67?
 5 Q. And do most of them start very early in
 6 the morning?
 7 A. Yes. We start as early as five o'clock
 8 in the morning.
 9 Q. So when they arrive, do they look for
 10 parking on the city street?
 11 A. Yes. Some of them definitely do, but we
 12 have truck parking facilities which they -- our
 13 employees can park their vehicles in at Northwest
 14 46th Street and 9th Northwest. And at 42nd Street,
 15 we have a two-acre plot down there that we precast
 16 ecology blocks in and park and stage mixer trucks
 17 in, and some of our employees will pick the mixer
 18 trucks up there, leave their vehicles there and come
 19 up. So we're probably scattered when you -- 25
 20 drivers and six or eight production people, batch
 21 men, yard operator, crane operator, whatnot. The
 22 drivers are mostly parked away, because that's where
 23 their vehicles are parked. The production people
 24 are going to vie for parking in the immediate
 25 Ballard area.

Page 794

1 Q. Am I fair in thinking the employees want
 2 the closest spaces available to the Ready-Mix plant,
 3 and they fill up the spaces on the right-of-way
 4 first and then move farther if necessary?
 5 A. I think that's a safe assumption.
 6 Q. Okay. Does Ballard pay the City anything
 7 for -- I'm sorry, does Salmon Bay pay the City
 8 anything for the privilege of having employees park
 9 their cars --
 10 MR. BROWER: Objection.
 11 MR. COHEN: -- on city owned right-of-
 12 way?
 13 MR. BROWER: Objection. Why is it a
 14 privilege?
 15 THE HEARING EXAMINER: I'm not sure I
 16 understand the objection?
 17 MR. BROWER: I think it's -- he's
 18 already mischaracterizing what happens.
 19 THE HEARING EXAMINER: It's his
 20 privilege to ask that question, so overruled.
 21 THE WITNESS: The answer would be no.
 22 You said does Salmon Bay pay the City?
 23 MR. COHEN: Uh-huh (affirmative
 24 response).
 25 THE WITNESS: If you say from the

Page 795

1 standpoint of a permitted parking fee structure of
 2 some kind? No.
 3 BY MR. COHEN:
 4 Q. Let me run my question. Does Salmon Bay
 5 provide any compensation of any kind to the City for
 6 the privilege of having your employees park their
 7 cars on the City right-of-way?
 8 A. I don't believe so.
 9 Q. Would it be fair -- is really your
 10 judgment -- would it be fair to say that a loss of
 11 parking you anticipate from the trail is the biggest
 12 impact to Salmon Bay Sand and Gravel from the trail
 13 project -- economic impact to Salmon Bay?
 14 A. No.
 15 Q. You think it's safety?
 16 A. I think it's safety.
 17 Q. Okay. Oh, yes. Mr. Nerdrum, you're
 18 aware that the City has established a design
 19 advisory committee to involve members of the
 20 community in the planning of the design of the
 21 trail?
 22 A. I am.
 23 Q. Were you invited to --
 24 MR. BROWER: Objection. This is well
 25 outside the scope of EIS. The design advisory

Page 796

1 committee was nothing to do with EIS. And me, being
 2 told based on the City's motion that we're only
 3 allowed to talk about what's in the EIS and not what
 4 happened after the EIS. That was the ruling, I
 5 believe, that was in their motion -- first motion in
 6 limine, was to limit our discussion at this hearing
 7 to what is in the EIS, and the design advisory
 8 committee is not in the EIS.
 9 MR. COHEN: The reason for the
 10 question is that Mr. Nerdrum has stated here a
 11 series of very aggressive statements about what the
 12 trail is going to do to his business. And the
 13 design advisory committee is a vehicle established
 14 by the City to hear and respond to concerns of
 15 community members. It turns out that Mr. Nedrum was
 16 --
 17 MR. BROWER: Are you going to start
 18 testifying? Because I think there's an objection on
 19 the --
 20 MS. COHEN: I can certainly pursue it
 21 with Mr. Nerdrum, if I'm permitted to do so?
 22 MR. BROWER: But you're now --
 23 THE HEARING EXAMINER: I'd like to
 24 hear what he's got to say about where we're going.
 25 MR. COHEN: So as I understand it,

Page 797

1 Mr. Nerdrum was invited to participate on that
 2 committee and he declined. And I'm interested in
 3 knowing in light of his testimony about the impacts
 4 of the trail, why he declined?
 5 MR. BROWER: How does that --
 6 MS. COHEN: Because it goes to the
 7 credibility of the dire assertions that Mr. Nerdrum
 8 is asserting about the effect of the project.
 9 MR. BROWER: I don't -- I'm renewing
 10 my irrelevance.
 11 THE HEARING EXAMINER: I understand
 12 your objection. I'll sustain the objection. This
 13 is going a bit far field.
 14 THE WITNESS: I would answer that
 15 question.
 16 THE HEARING EXAMINER: So it's not
 17 related to the impacts, as I see it, under the EIS.
 18 MR. COHEN: Okay. Thank you. Then I
 19 have no further questions.
 20 EXAMINATION
 21 BY THE HEARING EXAMINER:
 22 Q. One question for you, Mr. Nerdrum, I --
 23 you were asked several times about different
 24 impacts: delay, added flaggers, et cetera. And
 25 your response to that -- well, the question included

Page 798

1 it, and sometimes your response included it, the
 2 term "significant impact." Can you help me
 3 understand what you mean when you're saying
 4 "significant impact"? It's a term of legal art for
 5 us.
 6 A. As it related to the delay or --
 7 Q. Well, not in any -- the reason I'm asking
 8 is that it -- that's a specific term with specific
 9 meanings under SEPA, the law that enables and calls
 10 for this EIS that you have indicated you're familiar
 11 with. Are you using it as a legal term or are you
 12 measuring --
 13 A. Oh, I'm not an attorney, so if I ever --
 14 had anybody think I was, I'm not.
 15 Q. Okay.
 16 A. A significant impact to me would be if we
 17 were loading a truck every three minutes, and we
 18 can't get those vehicles out onto the road to head
 19 to their delivery locations, and they back up in the
 20 yard to the point that we can't through put and load
 21 anymore trucks. Then we're stopping our production
 22 and our customers are losing the service of
 23 receiving our product in a timely fashion. I would
 24 view that as a significant delay.
 25 Q. Okay. Thank you for your clarification.

Page 799

1 THE HEARING EXAMINER: Redirect?
 2 MR. BROWER: Thank you.
 3 REDIRECT EXAMINATION
 4 BY MR. BROWER:
 5 Q. Mr. Nerdrum, Mr. Cohen a number of
 6 questions about the franchise, so I want to explore
 7 more about that with you. In the beginning around
 8 '95 or '96 when the franchise was being negotiated
 9 with the City, did it include provisions for
 10 completion of the Burke-Gilman Trail?
 11 A. I believe so.
 12 Q. And do you remember what those were?
 13 A. I don't.
 14 Q. Was there an exhibit that showed where
 15 the Burke-Gilman Trail was going to go?
 16 A. I think there was.
 17 Q. And do you remember where that was going
 18 to be located?
 19 A. I don't.
 20 Q. Okay.
 21 A. But I say that because the length of the
 22 franchise, you know, it -- to ask me that one
 23 question, I don't know.
 24 Q. Is it your memory that the trail was
 25 going to be on Shilshole as part of the franchise

Page 800

1 agreement?
 2 MR. KISIELIUS: Objection. Lack of
 3 foundation.
 4 THE WITNESS: No.
 5 MR. KISIELIUS: He said he didn't
 6 remember.
 7 THE HEARING EXAMINER: All right.
 8 Yeah. So we'll assume it was answered.
 9 MR. KISIELIUS: Thank you.
 10 THE WITNESS: Did you want me to
 11 answer, or?
 12 THE HEARING EXAMINER: You already did
 13 answer it, so we'll proceed to the next question.
 14 BY MR. BROWER:
 15 Q. Mr. Cohen also asked you about the
 16 locomotive pen. Was there a provision in the
 17 franchise agreement for a location of a locomotive
 18 facility?
 19 A. Yes. There was.
 20 Q. And what was that agreement?
 21 A. Pardon me?
 22 Q. What was the agreement in the franchise
 23 for the locomotive facility?
 24 A. It was that the City would sell to
 25 Ballard Terminal Railroad the property at Northwest

Page 801

1 Bright Street, so that it could be used as a
 2 locomotive pen because it was a piece of simple
 3 property that was off of the rail banked section of
 4 the franchise.
 5 Q. And where -- where's Bright Street? Is
 6 that in relation to the line?
 7 A. Northwest Bright Street would be directly
 8 behind or east of Fred Meyer.
 9 Q. So over at the eastern -- is that the
 10 eastern terminus of the short line?
 11 A. It's about three blocks from the eastern
 12 terminus.
 13 Q. Would you know which division of the City
 14 owns that piece of property? Is SPU, SDOT, Seattle
 15 City Light?
 16 A. Well, we made two different attempts to
 17 try to get the City to honor their agreement. And
 18 so, I think it was under police and facilities at
 19 that time; the last time we had some discussion on
 20 it. So I don't know that that's SDOT, or, you know,
 21 for me the City is kind of a large overall thing, so
 22 where it's pigeon holed at, I'm not sure.
 23 Q. So you had a contract with the City where
 24 it was supposed to sell you that property?
 25 A. Correct.

Page 802

1 Q. And did they honor that contract?
 2 A. No. They did not.
 3 Q. Do you know why they haven't?
 4 A. I don't know why.
 5 Q. Let's do some math together, if you don't
 6 mind. Do you have a calculator with you?
 7 A. No.
 8 Q. Got a phone?
 9 A. Give me a piece of paper.
 10 Q. Okay. The Transportation Discipline
 11 Report calculates that there can be up to a
 12 27-second delay at each of your driveways from this
 13 trail.
 14 A. Okay.
 15 Q. How many trips in and out per day happen
 16 at your main two driveways?
 17 A. Again, it will vary, but it could be 150
 18 to 300. So you want me to take 200 or --
 19 Q. Why don't we take the middle of that
 20 about 200?
 21 A. Okay.
 22 Q. Okay. Would you multiply 200 times 27
 23 seconds?
 24 MR. KISIELIUS: Your Honor, I think
 25 I'm going to object that this line of questioning

Page 803

1 goes beyond the scope of the cross.
 2 MR. BROWER: It's exactly what
 3 Ms. Ferguson asked about the "significant." And it
 4 actually goes to your question as well,
 5 Mr. Examiner, what is significant? We're going to
 6 put it into actual dollar value.
 7 THE HEARING EXAMINER: My question was
 8 simply on if he was using it as a legal term.
 9 MR. BROWER: Okay.
 10 THE HEARING EXAMINER: So this isn't
 11 addressing that.
 12 MR. BROWER: Got it. But it goes
 13 exactly -- Ms. Ferguson asked about significant and
 14 what that means. And what the delay -- any delay
 15 you said -- would any delay be significant? So I'm
 16 trying to quantify this.
 17 THE HEARING EXAMINER: But you're --
 18 MS. FERGUSON: I did not intend to do
 19 that.
 20 THE HEARING EXAMINER: Well you did,
 21 but your questions aren't actually getting at how he
 22 quantifies it. This is providing a quantity --
 23 MR. BROWER: Right.
 24 THE HEARING EXAMINER: -- as opposed
 25 to Mr. Nerdrum telling us this is how he came up

Page 804

1 with what significant is to him.
 2 MR. BROWER: Right. Okay.
 3 BY MR. BROWER:
 4 Q. So, Mr. Nerdrum, --
 5 THE HEARING EXAMINER: I'll sustain
 6 the objection.
 7 MR. BROWER: Thank you.
 8 BY MR. BROWER:
 9 Q. Mr. Nerdrum if the delay was 27 seconds
 10 on average per driveway, how much does it cost per
 11 hour for you to operate a truck with a driver?
 12 A. \$92.60.
 13 Q. So would it be possible for you to do the
 14 math as to the number of trips that come in and out,
 15 and what that delay would cost you?
 16 A. Yes.
 17 Q. Okay. Would you mind doing that math for
 18 me?
 19 MR. KISIELIUS: Your Honor, I have the
 20 same objection. I think it's the same line of
 21 questioning.
 22 THE HEARING EXAMINER: I agree.
 23 Sustained.
 24 MR. BROWER: Okay.
 25 THE HEARING EXAMINER: It's just not

Page 805

1 where we went with cross. It's -- I understand your
 2 --
 3 THE WITNESS: Do I answer or not
 4 answer?
 5 THE HEARING EXAMINER: Nope.
 6 THE WITNESS: Not answer.
 7 THE HEARING EXAMINER: Okay.
 8 THE WITNESS: Then don't need the
 9 calculator.
 10 MR. BROWER: I have nothing further.
 11 Oh, I do.
 12 BY MR. BROWER:
 13 Q. Mr. Nerdrum, I meant to ask you two
 14 things to confirm. How many total employees do you
 15 have?
 16 A. Seasonally adjusted between 65 and 70.
 17 Q. And how many Ready-Mix Concrete trucks do
 18 you have?
 19 A. 26.
 20 Q. And what about other trucks in your
 21 fleet? Do you have other trucks?
 22 A. Yeah. We have three or four dump-trucks
 23 or flat beds and three dump-trucks.
 24 Q. And all of those vehicles come and go
 25 from your facility every day?

Page 806

1 A. Yes. They do.
 2 MR. BROWER: Thank you. Nothing
 3 further.
 4 THE HEARING EXAMINER: Okay.
 5 Mr. Nerdrum, thank you for your
 6 testimony.
 7 THE WITNESS: Thank you.
 8 THE HEARING EXAMINER: And where are
 9 we?
 10 MR. BROWER: That concludes our case
 11 in chief.
 12 THE HEARING EXAMINER: Very good.
 13 (APPELLANT RESTS.)
 14 MR. SCHNEIDER: Well, just to qualify
 15 that, I think we should all get on the record with
 16 the fact that we At -- our direct examination of the
 17 City's witnesses will take place in the City cross,
 18 so they don't have to --
 19 THE HEARING EXAMINER: Understood.
 20 But you're not calling any new witnesses of your own
 21 --
 22 MR. SCHNEIDER: Right.
 23 THE HEARING EXAMINER: -- at this
 24 time.
 25 And you all agree to that?

Page 807

1 MS. FERGUSON: We agree to that.
 2 MR. BROWER: Yes. Several times.
 3 THE HEARING EXAMINER: You're held to
 4 that regardless. So --
 5 MS. FERGUSON: We do want to clarify
 6 that you're limiting that to the witnesses that we
 7 are calling? And we've agreed to call all of the
 8 witnesses on our list?
 9 MR. BROWER: And to be clear, I think
 10 there was some discussion about Claire Hoffman. So
 11 we need -- she's not part of.
 12 MR. BROWER: Not on your list? Okay.
 13 Then we would reserve the right to call Claire
 14 Hoffman. But can we make that decision as we -- if
 15 we don't have to, we won't. But I guess I forgot
 16 that we didn't agree on Claire.
 17 MR. BROWER: No. Not that we didn't
 18 agree that we --
 19 MR. BROWER: Exactly. Maybe we didn't
 20 -- I didn't understand Claire.
 21 THE HEARING EXAMINER: They weren't
 22 planning on calling her.
 23 MR. BROWER: Okay.
 24 THE HEARING EXAMINER: That was one
 25 that you wanted to call. And so, we could wait and

Page 808

1 see if you still need to call her as a principle
 2 witness.
 3 MR. BROWER: We would appreciate that.
 4 I think that would be the most efficient way to do
 5 it.
 6 THE HEARING EXAMINER: I agree.
 7 MR. BROWER: Thank you.
 8 THE HEARING EXAMINER: All right.
 9 Then we are going to go to lunch. One question I do
 10 have is can -- is there any reason we couldn't take
 11 out the exhibits from these notebooks and give you
 12 back what we're not using --
 13 MR. BROWER: Absolutely.
 14 THE HEARING EXAMINER: -- so that we
 15 keep the record clear up on this side.
 16 MR. BROWER: Yes.
 17 THE HEARING EXAMINER: Okay. So we'll
 18 take care of that. We are now at Appellants 12
 19 hours and --
 20 What's that?
 21 THE ASSISTANT: (Inaudible).
 22 THE HEARING EXAMINER: Oh, I got that.
 23 Yeah. Thanks.
 24 12 hours and 17 minutes and for the
 25 Respondents it's four hours and six minutes. So I

Page 809

1 think we're on track. A little bit -- I mean,
 2 proportionately if you have the same amount of cross
 3 as the City you could slop over our 15-hour-limit a
 4 bit by an hour, but I think we're just going to wait
 5 and see when or if that's a problem.
 6 MR. BROWER: Thank you.
 7 THE HEARING EXAMINER: Anything else
 8 we need to do procedurally before all of the
 9 exhibits are in before we go to lunch? Okay. Then
 10 we'll come back at 1:30. Thank you.
 11 MR. BROWER: Thank you.
 12 (Recess taken.)
 13 THE HEARING EXAMINER: We are back on
 14 the record, and we begin with the Respondent's case.
 15 Do you mind giving me a brief outline of how we're
 16 going to proceed?
 17 MR. KISIELIUS: In terms of
 18 presentation of evidence?
 19 THE HEARING EXAMINER: Uh-huh
 20 (affirmative response).
 21 MR. KISIELIUS: And as we had
 22 indicated before in terms of an opening statement,
 23 we've -- we're resting on our pre-hearing brief.
 24 THE HEARING EXAMINER: Uh-huh. Okay.
 25 MR. KISIELIUS: In terms of the order

Page 810

1 of presentation we plan to present expert testimony
 2 of witnesses who helped to prepare the document to
 3 explain their part in the drafting of the EIS and
 4 its conclusions, and responding to the testimony of
 5 the opponent's experts. We'll start with the
 6 transportation. They'll be several of them. We'll
 7 then turn to land use, and economics, and we will
 8 finish with a couple City Department of
 9 Transportation witnesses.
 10 THE HEARING EXAMINER: Okay.
 11 MR. KISIELIUS: I can give you
 12 specific --
 13 THE HEARING EXAMINER: No. That's all
 14 I was looking for was the outline.
 15 MR. KISIELIUS: Okay.
 16 THE HEARING EXAMINER: And then,
 17 Mr. Cohen, how are you -- you'll just come after
 18 that? Is that how --
 19 MR. COHEN: Your Honor, we will just
 20 come after that.
 21 THE HEARING EXAMINER: Okay.
 22 MR. COHEN: I have one witness.
 23 THE HEARING EXAMINER: Okay. Very
 24 good. All right. Thank you.
 25 Please state your name for the record

Page 811

1 and spell your last name?
 2 MS. ELLIG: Erin Ellig, last name is
 3 spelled E-I-I-I-g.
 4 THE HEARING EXAMINER: Do you swear or
 5 affirm that the testimony you provide in today's
 6 hearing will be the truth?
 7 MS. ELLIG: I do.
 8 THE HEARING EXAMINER: Thank you.
 9 ERIN ELLIG,
 10 a witness, having been previously sworn,
 11 was examined and testified as follows:
 12 DIRECT EXAMINATION
 13 BY MR. KISIELIUS:
 14 Q. Ms. Ellig, could you please tell us your
 15 occupation?
 16 A. Yes. I'm a transportation planner.
 17 Q. Okay. And by whom are you currently
 18 employed?
 19 A. Parametrix.
 20 Q. Okay. And what are your primary
 21 responsibilities at Parametrix?
 22 A. I work on a variety of different
 23 transportation planning projects, those includes
 24 EISs, corridor studies, freight rail analysis, and
 25 non-motorized planning.

Page 812

1 Q. Okay. Can you provide a very brief
 2 summary of your professional training and
 3 experience?
 4 A. Yes. I got an undergrad degree in
 5 geography from the University of Washington. I also
 6 got a Master's of Urban Planning degree from the
 7 University of Washington with a focus on land use,
 8 infrastructure, and transportation planning as part
 9 of that degree. I took classes focusing on
 10 non-motorized transportation planning. Some of
 11 those classes were in the Department of Engineering.
 12 I also did a studio in Copenhagen, Denmark that
 13 focused on bicycle travel, and also taking classes
 14 on statistical analysis for transportation planning
 15 projects.
 16 Q. Okay. And how long have you been working
 17 as a transportation planner?
 18 A. Five years. Just under five years.
 19 Q. Okay. I want to ask you to briefly
 20 describe your prior experiences working on or
 21 preparing EISs. Have you been involved in preparing
 22 EISs other than this one?
 23 A. Yes.
 24 Q. How many?
 25 A. Other than this EIS, I have been involved

Page 813

1 in four.
 2 Q. Okay. And in what capacity were you
 3 involved in those?
 4 A. To give a couple of examples, I was part
 5 of the team that worked on the Alaskan Way Promenade
 6 and Overlook Walk EIS for the City of Seattle. I
 7 was responsible for helping to develop the
 8 methodology, as well as, write the draft portion of
 9 the Transportation Discipline Report. I've also
 10 worked on the east side rail corridor master plan
 11 EIS, and that is for a trail facility traveling
 12 between Renton and Woodinville. And I helped
 13 develop analysis that informed some EIS conclusions
 14 specifically evaluating acrid crossings of where the
 15 future trail alignment would be and what potential
 16 issues there might be at those crossings.
 17 Q. Okay. And you've already maybe started
 18 answering my next question which was about your
 19 experiences working on bicycle or non-motorized
 20 trail. I realize there's some intersection between
 21 those two questions.
 22 A. Yeah.
 23 Q. So can you describe if you've been
 24 involved in bicycle or non-motorized trail projects
 25 other than this one and the one you just described?

Page 814

1 A. Yes. To give a couple of examples, I
 2 have worked on several non-motorized planning
 3 projects, one was for the City of Issaquah, also for
 4 the City of Puyallup and the City of Orting, as part
 5 of those -- their non-motorized plans. So we look
 6 at existing conditions, the roadway network, and
 7 then propose potential facility types and locations
 8 to put those facility types in the City and provide
 9 some information on how to implement those.
 10 Q. Okay. And you'd also mentioned I think
 11 some work on rail transportation analysis?
 12 A. Yes.
 13 Q. Can you describe that briefly?
 14 A. Yes. I have worked on several freight
 15 rail studies in the state. So one of them was for
 16 the Joint Transportation Committee for the
 17 Washington State Legislature. We evaluated all of
 18 the acrid rail crossings throughout the state. And
 19 I provided a framework for prioritizing which of
 20 those were the most problematic to help decision
 21 makers decide where to focus funding to make
 22 improvements to those. I've also worked on the City
 23 of Seattle's Coal Train Study. And helped develop
 24 two rails crossing studies for Skagit County. One
 25 was evaluating their acrid crossings throughout the

Page 815	Page 817
<p>1 county, as well as, one focusing on a particularly 2 problematic crossing and how we could improve that 3 acrid crossing. 4 Q. Thank you. I'm going to pause for a 5 second and just ask a logistical question. 6 MR. KISIELIUS: Mr. Examiner, the 7 Department of Transportation had attached to the 8 witness and exhibit list that's filed, resumes of 9 the various witnesses. And we assume that makes it 10 part of the record as part of the pleadings that's 11 been filed. If the Examiner's preference, if you 12 prefer to enter those types of things as exhibits in 13 the record separately, I'd be -- I'd offer her 14 resume -- 15 THE HEARING EXAMINER: If they want 16 if you want them to have any evidentiary value then 17 they need to be submitted as an exhibit. 18 MR. KISIELIUS: I would offer them -- 19 offer Ms. Ellig's resume as an exhibit. It's the 20 one that was attached to the witness and exhibit 21 list that we -- 22 THE HEARING EXAMINER: Otherwise 23 they're just part of the pleadings, so. 24 MR. KISIELIUS: And I should give the 25 witness a copy just to make sure she can say that</p>	<p>1 Trail. There's about a mile-and-a-half gap through 2 Ballard now, so the objective was to complete that 3 gap with a multi-use facility that could safely 4 accommodate a variety of trail users. 5 Q. Okay. What was your role in this 6 specific project? 7 A. In the EIS? 8 Q. Correct. I'm sorry. 9 A. My role was to write the Transportation 10 Discipline Report and as part of that there are a 11 series of stages that we go through. First, we 12 develop a methodology that is reviewed by the 13 consultant team and by the client. And then, we 14 developed the Transportation Discipline Report as 15 part of the draft EIS, and then, also the 16 transportation sections of the actual EIS for the 17 both the draft and the final versions. 18 Q. Okay. And what were your 19 responsibilities with respect to those steps that 20 you just identified? 21 A. My responsibilities were to objectively 22 assess and inventory the potential impacts of the 23 build alternatives. 24 Q. Okay. And you may have answered this, 25 but just to specify, what were the deliverables with</p>
<p>Page 816</p> <p>1 this is -- 2 BY MR. KISIELIUS: 3 Q. Ms. Ellig, is this your resume? 4 A. Yes. 5 Q. Does it accurately reflect your 6 educational background and professional training and 7 experience? 8 A. Yes. 9 MR. KISIELIUS: I'd move to enter it 10 as an Exhibit 4. 11 THE HEARING EXAMINER: Yes. We're on 12 R-4. 13 Any objection? 14 MR. BROWER: No objection. 15 THE HEARING EXAMINER: R-4 is 16 admitted. 17 (RESPONDENT'S EXHIBIT R-4 ADMITTED.) 18 BY MR. KISIELIUS: 19 Q. So I'm going to shift from your 20 background and talk a little bit about the project. 21 Generally, what's your understanding of the Missing 22 Link's project objective? 23 A. My understanding of the Missing Link's 24 project objective was to provide a connection 25 between the two existing termini of the Burke-Gilman</p>	<p>Page 818</p> <p>1 which you were specifically involved? 2 A. I was involved with the methodology 3 deliverable, also, several drafts of the draft EIS, 4 and several drafts of the final EIS, as well as, the 5 transportation chapters for the EIS. 6 Q. Okay. And, Ms. Ellig, the final EIS and 7 appendices which have been admitted into evidence. 8 There's copies of them next to you, so if -- I'm 9 going to ask you some questions -- if you need to 10 refer to these please do. 11 A. Okay. 12 Q. I want to ask you more generally though 13 an overarching question which is how did your work 14 on this EIS compare to the other multi-use trail or 15 similar projects unanalyzed under SEPA? 16 A. I would say it's similar in respect to 17 the process that we took to complete the work and 18 identify impacts. I do think that there were some 19 items that were different than my past experience in 20 other EISs, primarily some of the things that we 21 address as part of the EIS, specifically including 22 AutoTURN analysis as part as our impacts discussion, 23 as well as developing delays for driveways. 24 Q. Okay. And are those different because 25 you typically wouldn't do those type of things?</p>

Page 819

1 A. Correct. We would typically not do those
 2 things as part of an EIS.
 3 Q. I'm going to ask you another kind of
 4 frame work question before we delve into some of the
 5 details. What were your primary goals with regard
 6 to completing your aspects of the environmental
 7 analysis for the project?
 8 A. My primary goals were to identify any of
 9 the impacts that could occur due to the build
 10 alternatives and compare those to the existing and
 11 no build conditions.
 12 Q. Okay. So could you tell us the --
 13 describe what the study area was for the EIS?
 14 A. Yes. Generally, the northern boundary
 15 was just north of Northwest 56th Street and followed
 16 along Leary Way. The southern border was just south
 17 of Shilshole Ave Northwest, and the eastern edge
 18 extended to just past 11th Ave Northwest, and the
 19 western terminus was near the driveway to the
 20 Ballard Locks.
 21 Q. Okay. And is that depicted in your --
 22 A. Yes.
 23 Q. So I don't know that you have the number
 24 there, but I do. This is the Technical Appendices
 25 to the final EIS.

Page 820

1 MR. KISIELIUS: Begin to orient the
 2 Examiner. There's several technical discipline
 3 reports in there. Transportation Discipline Report
 4 is the one in the -- I think it was --
 5 THE HEARING EXAMINER: And what page?
 6 Or do you look at it or does --
 7 MR. KISIELIUS: We'll be -- I have
 8 questions where I'm going to ask to refer to it
 9 throughout.
 10 THE HEARING EXAMINER: And so, what
 11 page are we on?
 12 MR. KISIELIUS: Currently? Which page
 13 would --
 14 THE WITNESS: We --
 15 MR. KISIELIUS: -- you're just
 16 describing the study area --
 17 THE WITNESS: Yes.
 18 MR. KISIELIUS: Can you tell us about
 19 which page that's on?
 20 THE WITNESS: Yes. It is figure 4-1.
 21 It appears on page 4-2.
 22 THE HEARING EXAMINER: Okay.
 23 THE WITNESS: There's not actually a
 24 page number on that figure, but it's the page just
 25 before 4-3.

Page 821

1 BY MR. KISIELIUS:
 2 Q. And how was that study area defined?
 3 A. That study area was defined as the area
 4 where any of the build alternatives could alter the
 5 roadway geometry or alter roadway operations. So,
 6 for example, change how a traffic signal operates.
 7 Q. I'm going to ask you about the approach
 8 that you took with respect to a couple different
 9 categories. And we'll get into some of the details,
 10 but I'm going to ask you about assess transportation
 11 and safety impacts for this project.
 12 A. Okay.
 13 Q. So I noticed that it talks about certain
 14 factors that you assess. Can you remind us what
 15 those factors are?
 16 A. Yes. We -- those factors -- I would like
 17 to refer to them as the transportation modes that
 18 are present in the study area. Those are general
 19 purpose vehicles, freight-truck vehicles,
 20 non-motorized transportation, public transportation,
 21 freight rail, and safety.
 22 Q. How did you identify those?
 23 A. Those are consistent with the standard
 24 types of transportation modes that we evaluate as
 25 part of EISs. And those are also all of the

Page 822

1 transportation modes that exist in the study area.
 2 Q. Okay. And did you look at traffic volume
 3 and operations?
 4 A. We did.
 5 Q. Okay. I'd like to ask you to -- I'm
 6 going to walk you through a couple of those and ask
 7 a couple of questions about your methodology
 8 starting with maybe traffic volume and operations.
 9 What methodology did you use to assess that?
 10 A. The methodology that we used to assess
 11 traffic operations; our first step is to collect
 12 daily general-purpose volumes on roadway segments.
 13 So we essentially place a tube in the roadway and
 14 collect information on how many vehicles are
 15 traveling across that per day. And we also
 16 collected turning movement counts for the p.m. peak
 17 hour at signalized and un-signalized intersections.
 18 And that data helped us to establish a base line.
 19 And then, we developed a growth rate to
 20 grow those existing volumes to a future year. 2040
 21 was the year selected for that. And we developed
 22 our growth rate by reviewing both the PSRC's
 23 regional travel demand model growth rate for the
 24 study area, as well as previous studies that were
 25 completed for the Burke-Gilman Trail missing link

Page 823

1 EIS that I think had been referred to previously in
 2 the testimony. Those were completed in 2008 and
 3 2011 by Parsons Brinckerhoff. Those studies
 4 highlighted a .6- percent growth rate for general
 5 purpose vehicles. So we used that growth rate to
 6 grow them from 2015 to 2040.

7 Q. Okay.

8 A. And all of that information, the traffic
 9 turning movement data at intersections, was input
 10 into a software called Synchro, and that piece of
 11 software estimates a level of delay for
 12 intersections. And in order for us to compare
 13 performance of intersections, we assign a metric
 14 called level of service, and there is a scale that
 15 is associated with that level of service "A" through
 16 level of service "F". Level of service A is free
 17 flowing traffic. Level of service F is congested,
 18 and that allows us to compare how the performance of
 19 intersections.

20 Q. Okay. And is that methodology that you
 21 described the one that you typically use?

22 A. Yes.

23 Q. Is it typically used in your profession
 24 for assessing that factor?

25 A. It is. Yes.

Page 824

1 Q. Okay. I want to ask you, because you
 2 were describing intersections, did you look at
 3 driveways as well?

4 A. Yes. We did look at driveways as well.

5 Q. So I'm going to ask you about the
 6 methodology you used there first. But I think
 7 there's a fundamental question that was raised in
 8 the testimony about the number of driveways --

9 A. Uh-huh (affirmative response).

10 Q. -- and, I think, a question of whether
 11 you looked at the same number of driveways as the
 12 expert's witnesses did? Do you recall Mr. Bishop's
 13 testimony on that topic?

14 A. I do.

15 Q. How many driveways were examined in that
 16 EIS?

17 A. We examined 44 driveways. I think
 18 there's a couple of distinctions I'd like to make
 19 for the Hearing Examiner. If you turn to page 4-7,
 20 we have a table titled 4-1. In that table we have a
 21 list of all of the driveways for which we collected
 22 traffic data at. That traffic data was p.m. peak
 23 hour turning-movement counts. So it's similar to
 24 what we collected for actual intersections.

25 We collected data for 44 driveways, but the

Page 825

1 distinction I'd like to make is that some of these
 2 there's actually more than one driveway that's
 3 listed for that row. So for example, Salmon Bay
 4 Sand and Gravel there are five driveways at that
 5 location. And I believe that is driveway number 9
 6 in Table 4-1. And we collected traffic count data
 7 at all five driveways at that location, and then
 8 summarized it as part of the EIS as one location.
 9 That was also a similar methodology that we did for
 10 Covich Williams for example. There are two
 11 driveways at that property, we counted both and
 12 summarized it as one driveway.

13 Q. Okay.

14 A. The other thing I'd like to mention about
 15 the number of driveways that were evaluated in the
 16 EIS is that every single driveway that crosses any
 17 of the build alternatives was included as part of
 18 the design. And that design helped us to analyze
 19 impacts for a number of things that I mentioned --
 20 safety, so we looked at every single driveway that
 21 was crossed by any alternative to help us develop
 22 our understanding of that the impacts would be.

23 Q. I may confusing -- confuse things here by
 24 asking you to refer to an appendix in the appendix.

25 A. Yes.

Page 826

1 Q. Can you look to the Appendix A of the
 2 Transportation Discipline Report?

3 A. Yes.

4 Q. And can you tell us, does this address
 5 driveways as well?

6 A. This does address driveways as well.
 7 This table is summarizing special considerations for
 8 each of the driveways where we collected data counts
 9 for. So we have information on what type of
 10 driveway it is, whether it's commercial, residential
 11 or industrial. We've also listed information
 12 regarding whether it's is a high traffic volume
 13 driveway. Also, if there's any fork lick --
 14 forklift activity occurring at those driveways,
 15 because there are a number along the alignments
 16 where there are forklifts driving in and out of
 17 driveways and across the street. And so, we've made
 18 note of that here as well.

19 Q. Okay. And do any of the other appendices
 20 to the Transportation Discipline Report address
 21 driveways as well?

22 A. Yes. Appendix B -- so Appendix B
 23 includes driveway interview notes. So that is
 24 another piece of data that I collected on driveways.
 25 I spoke to 16 different driveway owners about

Page 827

1 activity that occurs at their driveways: when is a
 2 frequent time of use, if individuals who are using
 3 that driveway are frequently going in and out, or
 4 whether they're unfamiliar with that driveway, what
 5 types of trucks might be using that driveway.
 6 There's also another appendix following
 7 that -- Appendix C, which is the daily driveway
 8 turning movement counts by vehicle classification.
 9 And this table provides a detailed summary of the
 10 traffic volumes, turning movements, at those
 11 driveways, so how many total vehicles are coming in
 12 and out. And then it also separates them by small
 13 vehicles, as well as medium and large, and what
 14 types of movements they're making. So
 15 rights -- right in, right out, left in, left out
 16 through movements; that type of thing.
 17 THE HEARING EXAMINER: Can you
 18 reference what that chart was, but I didn't catch
 19 that?
 20 THE WITNESS: Table C-1.
 21 THE HEARING EXAMINER: Thank you.
 22 THE WITNESS: And that's in Appendix C
 23 to the Transportation Discipline Report.
 24 BY MR. KISIELIUS:
 25 Q. So were you here for testimony the other

Page 828

1 day about the sufficiency of the data that was
 2 collected relating to driveways?
 3 A. Yes.
 4 Q. Do you -- well, what's your opinion in
 5 terms of the sufficiency of the data that you
 6 collected for driveway analysis?
 7 A. My opinion is that the data was collected
 8 was sufficient to evaluate impacts.
 9 Q. Okay. Let's talk about delays at the
 10 driveways specifically, because I want to focus on
 11 that. And I understand you use Synchro?
 12 A. Yes.
 13 Q. Ms. Hirschey's memo said that Synchro's
 14 analysis of a driveway treats the driveway and trail
 15 as "An intersection with the driveway traffic
 16 stopped in the multi-use trail without stop
 17 control." Is that an accurate characterization of
 18 Synchro's analysis?
 19 A. I want to just rephrase how we did it and
 20 maybe that would help provide clarification?
 21 Q. Sure.
 22 A. So in the Synchro model for driveway
 23 delay, we treated those as two separate
 24 intersections. So a vehicle leaving a driveway
 25 would have a stopped intersection with the trail.

Page 829

1 And they would need to stop at that intersection,
 2 look both ways to -- before crossing the trail to
 3 the next intersection that they would approach which
 4 is the intersection of the driveway and the roadway.
 5 So there would be two intersections with a stop
 6 control function. And our analysis of the delay
 7 essentially summed those two pieces of delay that
 8 any vehicle would experience. First, at the multi-
 9 use trail, and then again what they would experience
 10 when they reached the driveway that they were trying
 11 to enter.
 12 Q. Okay. So it -- just to make sure because
 13 that was a very detailed explanation. I just want
 14 to capture it -- or see if you agree? Does that
 15 account for both the driveway and trail traffic in
 16 determining the delay at that driveway?
 17 A. Yes. It does.
 18 Q. Okay. And so, in your opinion, does
 19 Synchro accurately analyze driveway delay?
 20 A. Yes.
 21 MR. BROWER: Objection. Foundation.
 22 MR. KISIELIUS: Your Honor, she's
 23 testified that she does driveway delay analysis and
 24 uses standard method -- modeling. She's just
 25 describing the outputs of that. I'm not sure what

Page 830

1 part of the foundation is missing?
 2 MR. BROWER: Well, I don't think you
 3 asked her of her experience with Synchro. Did you?
 4 THE HEARING EXAMINER: I thought she
 5 had discussed that earlier.
 6 MR. BROWER: Okay. I'm sorry. I
 7 withdraw.
 8 THE HEARING EXAMINER: Overruled.
 9 BY MR. KISIELIUS:
 10 Q. I don't recall if you answered the
 11 question? So for the record, in your opinion does
 12 Synchro accurately analyze driveway delay?
 13 A. Yes.
 14 Q. I want to turn to now --
 15 A. One thing I would -- wanted to just also
 16 mention about -- I think I had previously said we
 17 don't typically do Synchro analysis for driveways as
 18 part of EISs. I think this is a good example of
 19 where we use the available resources and traffic
 20 modeling tools that we have to us to evaluate
 21 something we might not typically evaluate. So we
 22 use that software to help us understand that delay.
 23 Q. Thank you for that clarification. I'm
 24 going to come back to some more specific questions
 25 about some of the appendices that you just talked

Page 831

1 about. But for now I want to kind of keep it at
 2 more summary level. I'm going to switch to a
 3 different factor, I want to talk about freight. So
 4 what methodology did you use to assess freight?
 5 A. For freight we used a similar methodology
 6 as I had discussed for general purpose vehicles or
 7 what we were calling traffic operations. So we
 8 looked --
 9 MR. BROWER: Objection. She's
 10 offering -- she's been consistently offering
 11 testimony way beyond the scope of the question. He
 12 asked her what the methodology was and now she's
 13 actually saying what she did with the methodology.
 14 Could we actually ask some questions instead of just
 15 having her give kind of long soliloquys?
 16 MR. KISIELIUS: I think she -- I'm
 17 just asking her what she did, and she was answering.
 18 I'm happy to lead her along, but I don't think it's
 19 necessary.
 20 MR. BROWER: Well, you asked her what
 21 methodology she used, so she said the methodology.
 22 Now she's going into what she did with the
 23 methodology. So those are two different things.
 24 THE HEARING EXAMINER: Maybe I don't
 25 understand the distinction? I -- the question was

Page 832

1 what the methodology was that you use to, so if you
 2 could just limit your answer to that?
 3 THE WITNESS: Okay. We evaluated
 4 delay at intersections, signalized and un-signalized
 5 for freight vehicles. We -- and we get to that
 6 level of delay through the methodology I was
 7 describing earlier for traffic operations.
 8 BY MR. KISIELIUS:
 9 Q. Okay. And what did you do within that
 10 methodology to assess the freight of traffic?
 11 A. We also collected data -- daily counts
 12 for freight vehicles and where those were operating
 13 in the study area. And we did use a different
 14 growth rate for freight opposed -- as opposed to
 15 general purpose vehicles.
 16 Q. Why?
 17 A. Because we understand that they local and
 18 regional economy has an impact on the level of
 19 freight traffic in the study area, so we used a
 20 higher growth rate for freight specifically which
 21 was 3.85 percent per year, which was consistent with
 22 the Seattle Freight Access Project.
 23 Q. Okay. And did you do this for each of
 24 the alternative?
 25 A. Yes.

Page 833

1 Q. Okay. Am I going to ask -- I'm just
 2 looking for methodology and sort of what you did at
 3 this point, we'll come back to impacts in a second.
 4 But I want to ask, do you agree -- or do you recall
 5 Mr. Kuznicki's testimony about other routes having
 6 less freight activity such as Ballard Avenue?
 7 A. Yes.
 8 Q. Do you agree?
 9 A. No.
 10 Q. Why?
 11 A. Because the daily traffic count
 12 information would show the opposite of what
 13 Mr. Kuznicki was saying. That data appears in the
 14 FEIS, as well as the Transportation Discipline
 15 Report.
 16 Q. Okay. Let's switch to non-motorized
 17 users.
 18 A. Okay.
 19 Q. What methodology did you use?
 20 A. We collected data on daily non-motorized
 21 use at -- on the B.G.T at 9th Ave., as well as the
 22 B.G.T near Seaview Ave., so that's on either end of
 23 the City area. We also collected data on
 24 non-motorized users during the p.m. peak hour at the
 25 intersections where we collected traffic data.

Page 834

1 Q. Okay. And what did you assume for growth
 2 projections of that volume?
 3 A. For growth projections for that volume --
 4 or for the non-motorized users, we assumed a one
 5 percent per-year growth for pedestrians and a five
 6 percent per-year growth rate for bicycles.
 7 Q. How did you derive those growth rates?
 8 A. The -- those growth rates were derived
 9 from reviewing studies in the Seattle area, as well
 10 as looking at historical growth rates on similar
 11 facilities. So we evaluated bicycle growth on the
 12 Fremont Bridge, as well as the B.G.T near Northeast
 13 70th Street.
 14 Q. Okay. And in your study of non-motorized
 15 traffic volumes, did you find that a substantial
 16 number of bicyclists are using the street under
 17 existing conditions?
 18 A. Yes.
 19 Q. What data support that conclusion?
 20 A. The data that supports that conclusion is
 21 our turning-movement counts at intersections in the
 22 study area.
 23 Q. Is that in the Transportation Discipline
 24 Report?
 25 A. Yes.

Page 835

1 Q. Okay. I may ask you to point to that in
 2 a second, but I want to ask you a question first.
 3 There was both in Ms. Hirschey's memo and in some
 4 testimony the other day, she indicated that, well, I
 5 think she called it an assumption, that a
 6 substantial number of bicyclists are using the
 7 street. She believed that the p.m. peak hour
 8 turning movement data shows that half of the
 9 westbound bicycle volume turns north on 17th Avenue
 10 Northwest. Is her conclusion and characterization
 11 of that movement data accurate?
 12 A. I would say that no, it is not.
 13 Q. Okay. Can you point us to that movement
 14 data?
 15 A. Sure. It is in Chapter 4 of the
 16 Transportation Discipline Report. It is located on
 17 page 431 on Figure 4-10.
 18 Q. Okay. And what does this data actually
 19 show about the bicycle volume?
 20 A. This data shows where cyclists and
 21 pedestrians are operating during the p.m. peak hour
 22 on a number of different corridors in the study
 23 area. I think you were asking me if
 24 Ms. Hirschey's conclusion that cyclists turn up 17th
 25 Ave. Northwest, half of them is correct? I said no,

Page 836

1 because it is -- there are still cyclists that may
 2 be traveling beyond that. There's another
 3 intersection that wasn't included between what's
 4 denoted as K and Q. I would also say that on the
 5 remaining intersections of Shilshole Ave. Northwest
 6 during the p.m. peak hour there are between 40 and
 7 50 cyclists using the roadway, which is
 8 approximately one every two minutes or less, which I
 9 would say is a substantial number of cyclists using
 10 that corridor.
 11 Q. Okay. Let's talk briefly about public
 12 transportation, what methodology did you use?
 13 A. For public transportation, we collected
 14 information on which corridors transit is operating
 15 and the locations of bus stops in the City area.
 16 Q. Okay. And is that -- well, let's turn to
 17 rail. Can you describe -- did you look at rail?
 18 A. Yes, freight rail.
 19 Q. Yes. And what methodology did you apply?
 20 MR. BROWER: I'm going to object. The
 21 witness has repeatedly said "we." Could we have a
 22 foundation as to who the "we" is that she's
 23 referring to?
 24 THE WITNESS: I'm referring to
 25 Parametrix.

Page 837

1 MR. KISIELIUS: There's an objection,
 2 we have to resolve.
 3 THE WITNESS: Okay.
 4 THE HEARING EXAMINER: So objection
 5 for foundation --
 6 MR. BROWER: Foundation.
 7 THE HEARING EXAMINER: -- of
 8 testimony?
 9 MR. BROWER: Yes. Throughout the last
 10 four or five answers she says, "We" have done this,
 11 and "we" have done that. I think we're entitled to
 12 know who the "we" is. It's a collective, so maybe
 13 foundation --
 14 THE HEARING EXAMINER: A request for
 15 clarification, but --
 16 MR. KISIELIUS: I'd offer that
 17 Mr. Brower can ask these types of clarifications in
 18 his cross-examination. I thought it was clear from
 19 her description of her work on this project that she
 20 was part of a team, but Mr. Brower, if he wants to
 21 explore that in his cross-examination can.
 22 MR. BROWER: I could voir dire right
 23 now.
 24 THE HEARING EXAMINER: I don't see it
 25 as a lack of foundation in the -- which is the basis

Page 838

1 for the objection. She's speaking for her own
 2 perspective of what was done. She did reference a
 3 team that she's part of. Whether she means a
 4 different "we" or not that's going to be up to
 5 Respondents to explain in the value, so I'll
 6 overrule that.
 7 MR. BROWER: Okay.
 8 BY MR. KISIELIUS:
 9 Q. So on freight rail, what methodology did
 10 you use?
 11 A. For freight rail I collected information
 12 on the locations of rail crossings in the study
 13 area, as well as the location of the rail line.
 14 Q. Okay.
 15 A. I also talked to Byron Cole to collect
 16 information on the frequency of rail operations in
 17 the study area.
 18 Q. Okay. So you -- I'm not sure that it's
 19 clear on the record who the person you just named
 20 is, who is that person?
 21 A. Byron Cole is affiliated with the Ballard
 22 Terminal Railroad.
 23 Q. Okay.
 24 A. I believe he was an owner.
 25 Q. And you reached out to him for what

Page 839

1 purpose?

2 A. To collect information on how frequently

3 trains were used on the rail line in the study area.

4 Q. Okay. What about the volume of freight

5 rail traffic, what did you assume?

6 A. I believe that I assumed there were

7 approximately three rail movements occurring per

8 week based on my discussions with Mr. Cole.

9 Q. And how does that compare to what you

10 heard in the testimony about the actual use of the

11 rail line?

12 A. I believe that would be a higher volume

13 of train usage than what I have heard spoken in

14 testimony previously.

15 Q. Okay. And then, the last factor I wanted

16 to ask you about in terms of methodology is safety.

17 You mentioned safety. What methodology did you use

18 to assess that?

19 A. I collected data from the City of

20 Seattle, as well as the Seattle Fire Department on

21 collisions in the study area, as well as incident

22 response data to help establish a base line. And

23 then, we also evaluated the design for potential

24 impacts -- the design of each of the build

25 alternatives.

Page 840

1 Q. Okay. And I think there was some

2 testimony about whether -- about the existence of a

3 methodology to undertake this analysis. What's your

4 opinion -- is there a single methodology for

5 undertaking a safety analysis?

6 A. I don't believe there is one single

7 methodology for undertaking a safety analysis.

8 Q. So how did you develop the one that you

9 used for the safety analysis here?

10 A. I developed the methodology used for this

11 project because reviewing other EISs, and taking

12 that into context with what was occurring in the

13 study area.

14 Q. Okay. And were those EISs of similar

15 types of projects?

16 A. Yes.

17 Q. Was your methodology for this project

18 peer reviewed by anyone else?

19 A. Yes.

20 Q. Who?

21 A. The methodology was peer reviewed by my

22 team at Parametrix, as well as the BSA Team, as well

23 as the City of Seattle.

24 Q. Okay. So we've talked about the

25 methodologies that you've used. I want to ask you

Page 841

1 how you determine whether something constituted an

2 impact for each of these factors we've just

3 discussed.

4 A. Okay.

5 Q. So maybe we'll start with general

6 purpose, the traffic volume operations piece.

7 A. Sure.

8 Q. How did you determine whether there was

9 an impact?

10 A. We determined there would be an impact if

11 an intersection that operated at LOS-D or better

12 would degrade to LOS-E or F, because of any of the

13 build alternatives. Also, an impact would occur if

14 an intersection in the study area that already

15 operated at LOS-E or worse, degraded by five seconds

16 or more in delay --

17 Q. Okay.

18 A. -- because of the build alternatives.

19 Q. And what about impacts to freight? How

20 did you determine whether something constituted and

21 impact to freight?

22 A. I determined impacts to freight using

23 some of the methodology. We looked up the LOS of

24 intersections. And also, evaluated the potential

25 for the trail design to impede freight movement to

Page 842

1 businesses, and to create travel delay for freight

2 vehicles.

3 Q. Okay. And I should ask you also, did you

4 -- let's go back to what you just described. The

5 volumes and operations for vehicular traffic, did

6 you determine that there were impacts there?

7 A. For the preferred alternative, we did

8 determine there was an impact.

9 Q. Okay. And I'm going to ask you to point

10 out where in a second. Maybe I'll save those

11 questions. You just described impacts to freight.

12 What about impacts to non-motorized users? How did

13 you determine whether or not there were there were

14 impacts from the alternatives?

15 A. I qualitatively evaluated the presence of

16 non-motorized facilities and whether pedestrian, or

17 bicycle or other non-motorized travel would be

18 altered in the study area, and whether there would

19 be delay for non-motorized use in the study area.

20 Q. And public transportation? How did you

21 determine whether something constituted an impact to

22 that?

23 A. I looked at whether any of the build

24 alternatives would alter a bus stop, or would create

25 additional travel delay for public transit.

Page 843

1 Q. Freight rail, how did you determine
 2 something constituted an impact?
 3 A. For freight rail we evaluated whether
 4 operations would change, or whether the freight line
 5 would have to be moved and couldn't operate --
 6 Q. Okay.
 7 A. -- continually.
 8 Q. And then finally to safety. How did you
 9 determine whether something constituted an impact?
 10 A. We evaluated the potential for any of the
 11 build alternatives to increase or decrease the risk
 12 of motor vehicle/trail user conflicts, as well as
 13 motor vehicle/motor vehicle conflicts, and also
 14 evaluated sight distance impacts.
 15 Q. So I appreciate you indulging me and
 16 having you walk through all of that. I think it
 17 would be helpful to just orient the Examiner to the
 18 sections of the Transportation Discipline Report
 19 that's summarize and provide -- not summarize --
 20 provide more detail of what you just described. So
 21 you could you talk about where the methodology is
 22 reported, and then where that impact analysis is
 23 reported in the Transportation Discipline Report?
 24 A. Yes. It's in Chapter 3, Methodology.
 25 Q. Okay. And then, what about the impact

Page 844

1 analysis?
 2 A. The impact analysis is also in Chapter 3.
 3 There's a heading titled "3.5 Identification of
 4 impacts."
 5 Q. And then what about --
 6 THE HEARING EXAMINER: Is this Exhibit
 7 R-1?
 8 MR. KISIELIUS: No, Mr. Examiner,
 9 we're still looking at the Transportation Discipline
 10 Report that's the Appendix 2.
 11 THE HEARING EXAMINER: Okay. I think
 12 just for the record if we can --
 13 MR. KISIELIUS: That's R-3.
 14 THE HEARING EXAMINER: All right.
 15 Okay. So if we -- just for the record if we can
 16 reference that if we're looking back to it. So even
 17 if I know where we're at --
 18 MR. KISIELIUS: Okay. I might -- 4.
 19 THE HEARING EXAMINER: -- somebody may
 20 not who's listening to this later.
 21 MR. KISIELIUS: Actually, and I might
 22 -- I'll try to navigate both, because I think the
 23 witness will --
 24 THE HEARING EXAMINER: I understood.
 25 Let her know what you're handing.

Page 845

1 MR. KISIELIUS: Okay. Great. So
 2 here, we're talking about R-3 in the Transportation
 3 Discipline Report within --
 4 THE HEARING EXAMINER: You don't have
 5 to repeat the title every time.
 6 MR. KISIELIUS: Well, because there's
 7 several of them in here.
 8 THE HEARING EXAMINER: Okay. All
 9 right.
 10 MR. KISIELIUS: So, I mean, we are
 11 going to be with different witnesses talking about
 12 --
 13 THE HEARING EXAMINER: I'll leave it
 14 to your discretion what you need to do, so.
 15 BY MR. KISIELIUS:
 16 Q. And then, can you talk about what's in
 17 Chapter 5 of that report?
 18 A. Yes. Chapter 5 summarizes the potential
 19 impacts of the no build alternative, as well as each
 20 of the build alternatives.
 21 Q. Okay. Thank you. Now I want to get into
 22 some details about some of the things we've heard of
 23 the last couple of days. You started describing one
 24 of the appendices to the Transportation Discipline
 25 Report in R-3 about your interviews with businesses

Page 846

1 in the study area.
 2 A. Yes.
 3 Q. So first, can you just describe how were
 4 those businesses selected for interview?
 5 A. Those businesses were selected for
 6 interview based on comments in the DEIS. Those were
 7 businesses where we received comment that we may
 8 want to have more detailed or additional information
 9 on the types of operations that are happening in
 10 those driveways.
 11 Q. So is that the purpose of the interview
 12 then, to get that information?
 13 A. Yes.
 14 Q. And during your interviews, did any of
 15 the business owners state that their driveway was
 16 used by large vehicles only occasionally?
 17 A. I believe so.
 18 Q. Can you give us some examples through --
 19 if you need to page through, you can.
 20 A. Sure.
 21 Q. Let me focus you rather than have you
 22 flip around. Yesterday and today we heard testimony
 23 about Salmon Bay Sand and Gravel and Ballard Mill
 24 Marina. In your interviews with those businesses
 25 did they provide you with any information that was

Page 847

1 inconsistent with what you heard yesterday?
 2 A. Yes. They did.
 3 Q. Can you describe what that was that's --
 4 A. Yes. For the Ballard Mill Marina, I was
 5 told in my interviews with them that there were no
 6 backing vehicles out of any of their driveways.
 7 Q. And did you hear something different the
 8 other day?
 9 A. I did hear something different.
 10 Q. What did you hear?
 11 A. I heard that and saw on some of the some
 12 of the exhibits that there are vehicles backing out
 13 of those driveways.
 14 Q. Does that though change your analysis?
 15 Did --
 16 A. I would say no, because we knew that
 17 there were backing movements out of other driveways.
 18 And so, that was included in part of our analysis of
 19 impacts.
 20 Q. Okay. I want to focus in specifically on
 21 Mr. Nerdrum's comments today. I think he said that
 22 the Department didn't reach out. Nobody from the
 23 City reached out to him about the EIS before I think
 24 he said this summer?
 25 A. Uh-huh (affirmative response).

Page 848

1 Q. Is that true?
 2 A. No. That's not true.
 3 Q. Okay. How do you know it's not true?
 4 A. I know it's not true because I personally
 5 called Paul Nerdrum in October of 2016.
 6 Q. And is that documented in this appendix
 7 to the Transportation Discipline Report?
 8 A. Yes.
 9 Q. There aren't page numbers. Could make
 10 this a little difficult, but could you tell us
 11 roughly where?
 12 A. It's towards the end of the interviews.
 13 The first page of his interview appears on a left
 14 side page.
 15 Q. Okay.
 16 MR. BROWER: Could we get that page
 17 number?
 18 MR. KISIELIUS: Yeah --
 19 THE WITNESS: There --
 20 MR. KISIELIUS: -- there isn't one.
 21 Appendix B to the Transportation Discipline Report
 22 is without number, so.
 23 BY MR. KISIELIUS:
 24 Q. What would somebody who's looking for
 25 this in Appendix B be looking for to identify his?

Page 849

1 A. Sure. The date and time -- date is
 2 10/03/2016, and if you continue to look down,
 3 interviewee is Paul Nerdrum. Salmon Bay Sand and
 4 Gravel is also listed as the business name of the
 5 interviewee.
 6 MR. KISIELIUS: Josh, it will be on
 7 the left hand side. I think might have just-- it's
 8 on the left-hand side page. His name will be about
 9 four lines down.
 10 THE WITNESS: It's about seven pages
 11 back from the end of that appendix.
 12 THE HEARING EXAMINER:
 13 Chronologically, it helps.
 14 MR. BROWER: Got it. Thank you.
 15 BY MR. KISIELIUS:
 16 Q. And when you spoke with Mr. Nerdrum, had
 17 you -- did you identify that you were calling
 18 related to the EIS?
 19 A. Yes.
 20 Q. Okay. And do these notes accurately
 21 reflect what he told you in that interview?
 22 A. Yes.
 23 Q. Okay. Did you use video analysis as part
 24 of your work to identify truck volumes described in
 25 the EIS?

Page 850

1 A. Yes.
 2 Q. Okay. How many days of video did
 3 Parametrix collect as part of your work?
 4 A. We collected a total of five days of
 5 video data for driveways on Shilshole Ave., as well
 6 as the Not 54th piece of the corridors.
 7 Q. And how many days of data are summarized
 8 in the final EIS?
 9 A. One day is summarized.
 10 Q. Is that common to use just one day out of
 11 a broader volume of collection?
 12 A. Yes. That's fairly common. Yes.
 13 Q. Okay. Did you count large and medium
 14 trucks in that data set?
 15 A. I did count large and medium trucks.
 16 Q. And what's the difference between a large
 17 and medium truck. What are we talking about here?
 18 A. We are talking about length, essentially.
 19 There's a figure that might be helpful in Chapter 3
 20 of the Transportation Discipline Report.
 21 Q. Direct us to that page number -- that'd
 22 be helpful.
 23 A. It is on page 3-2.
 24 Q. Okay.
 25 A. It's called Figure 3-1, Vehicle

Page 851

1 classifications. This figure is consistent with how
 2 FHWA classifies different vehicle types. It's based
 3 on axle and length. For medium trucks we are
 4 talking about five -- Classes 5 to 7. For large, it
 5 is 4 and 8 to 13.
 6 Q. Okay. You're referring then -- what
 7 numbers are you referring to and you said 8 to 13
 8 and --
 9 A. Sure. There are numbers on that graphic.
 10 Eight says, "Single trailer three or four axle
 11 trucks." And it goes for large vehicle to 12 multi-
 12 trailer six-axle trucks.
 13 Q. Okay. And so, could you again describe
 14 which ones were the large ones and which ones were
 15 the medium ones?
 16 A. Yes. Large trucks are Category 4, which
 17 are buses. And then 8 to 12 -- or to 13, excuse me.
 18 And medium is Class 5 to 7.
 19 Q. Got it. So tell me a little bit about
 20 how that worked that one day with the video review?
 21 How does that happen?
 22 A. We had a traffic count firm put video
 23 cameras out along the alignment of those 44
 24 different driveway areas that I discussed earlier.
 25 And they collected five days' worth of video data at

Page 852

1 those driveways, for which they summarized the
 2 turning movements for those. And then, we used one
 3 day, which is what they originally provided to us of
 4 those five days, to provide information in the EIS.
 5 Q. Okay. Have you looked at more than just
 6 that one day?
 7 A. Yes.
 8 Q. Why? Why did you -- if it's typical to
 9 use one why have you gone back and looked at all
 10 five?
 11 A. I've gone back and looked at additional
 12 days of data based on comments that I was hearing
 13 from business owners that we may have missed
 14 potential trucks. Because they were saying there
 15 was more than what we had shown in the EIS.
 16 Q. Okay. And so, for that more broad-based
 17 count of all five days -- well, let me ask. Did you
 18 count on all five days?
 19 A. Yes.
 20 Q. For -- just for those driveways?
 21 A. Yes. For three driveways.
 22 Q. And did you divide the data between
 23 medium and large trucks?
 24 A. Yes.
 25 Q. And what did you find when you looked at

Page 853

1 the five days of data for those driveways?
 2 A. We found that on average -- so we were
 3 making a distinction between medium and large. We
 4 were particularly interested in large trucks. And I
 5 found that on average at Salmon Bay Sand and Gravel
 6 there are one large truck going in and one large
 7 truck coming out on average per day. At Covich
 8 Williams there's about four going in and four coming
 9 out a day. And at Ballard Mill Marina there's about
 10 three total -- four or so -- so two going in, two
 11 coming out a day on average.
 12 Q. And does that -- were you able to
 13 determine the average number of large trucks from
 14 the overall volume of traffic for those trucks?
 15 A. Yes.
 16 Q. What was that?
 17 A. It's about -- so at Salmon Bay Sand and
 18 Gravel and the Ballard Mill Marina driveways it's
 19 about one percent of the total volume. At Covich
 20 Williams it's about 20 percent of the total volume.
 21 Q. So does -- did your review, that more
 22 extensive review of those five days, was that in
 23 line with the single day analysis that was done?
 24 A. Yes.
 25 Q. Okay. I'm going to ask you about maybe

Page 854

1 some of the other things that were observed through
 2 the review of that video data. Do recall
 3 Mr. Bishop's testimony that with the project trucks
 4 will need to use available pavement to go -- and go
 5 into the opposing lane to make turns?
 6 A. Yes.
 7 Q. So when you looked at those videos did
 8 you find -- did you see, were you able to see, the
 9 street to see whether trucks were making that
 10 maneuver now?
 11 A. Yes.
 12 Q. Okay. So that's currently under existing
 13 conditions?
 14 A. Yes. Trucks are currently when they are
 15 leaving a driveway using the opposing lane of
 16 traffic to complete a turn.
 17 Q. Okay. I think Mr. Bishop said that there
 18 isn't currently a contraflow bicycle or pedestrian
 19 traffic. I believe I heard Mr. Kuznicki say that he
 20 actually witnessed bicycles going in the wrong
 21 direction. Did you see any through the video review
 22 bicycles going in the wrong direction?
 23 A. Yes. I did.
 24 Q. And that's on Shilshole?
 25 A. Yes.

Page 855

1 Q. Okay.

2 A. There are also pedestrians that are going

3 in a contraflow movement. Some of those appear to

4 be moving along the corridor. There's also parkers

5 that are on the wrong side of the road moving around

6 to access vehicles, as well as bicycles traveling in

7 the opposite -- on the opposite side of the street.

8 Q. Okay. I'm going to ask you some more

9 questions in response to what we've heard. I just

10 want to come back and summarize about the work that

11 you did for the EIS. How did your work here compare

12 to other multi-use trail or other similar projects

13 you've analyzed focused on the methodologies you

14 just described in the data collection and the

15 analysis?

16 A. I think it's similar with the exception

17 that I haven't typically done as extensive of a look

18 at driveways and driveway delay, that type of thing.

19 Q. And here is that you did more than you

20 typically do?

21 A. Yes.

22 Q. Okay. And let's summarize quickly your

23 conclusions on each of those elements. I started

24 going here and I just want to complete that now. I

25 think you mentioned what the conclusions about the

Page 856

1 preferred alternatives impacts to freight? Could

2 you summarize that again for us?

3 A. Could you repeat that question for me,

4 please?

5 Q. What's your conclusion about the

6 preferred alternative impacts to freight traffic?

7 A. Sure. I'm going to turn to Chapter 5.

8 Q. Please do.

9 MR. BROWER: Are we in the TDR still?

10 THE WITNESS: Yes.

11 MR. KISIELIUS: Yeah. I'm sorry.

12 I'll let you know when I switch documents but that's

13 the -- and the TDR presenter is still the same

14 document.

15 THE HEARING EXAMINER: R-3?

16 MR. KISIELIUS: Correct.

17 THE HEARING EXAMINER: I'm just trying

18 to keep in on the record. I kind of know where

19 we're at, but I, again for audiences that are not

20 here, we want to make sure that we've got a clear

21 chain of what exhibit we're looking at.

22 THE WITNESS: So for the preferred

23 alternative, we, or myself, evaluated intersection

24 operations. There is an intersection on Northwest

25 46th Street and Shilshole Ave. that would operate an

Page 857

1 LOS-E, I believe, when it would otherwise operate at

2 an LOS-D under the no build.

3 MR. BROWER: Could we figure out which

4 page she's talking about, please?

5 THE WITNESS: Yes. That page is 517.

6 MR. BROWER: Thank you.

7 THE WITNESS: You're welcome.

8 That is a freight corridor, so we

9 summarized that as an impact for freight.

10 BY MR. KISIELIUS:

11 Q. Okay.

12 A. I also summarized in here that there are

13 approximately 39 driveways and loading docks that

14 would be crossed by the preferred alternative. That

15 would add an increase in delay of up to 11 seconds,

16 which is the highest level of delay that we analyzed

17 for the preferred alternative.

18 Q. Okay. And just to be clear, I'm sorry,

19 because I think there was some questions about 27

20 seconds. You said for the preferred alternative,

21 it's how many?

22 A. 11 seconds.

23 Q. Okay.

24 A. We also summarized that there could be up

25 to two driveway accesses that could be combined into

Page 858

1 one. They're accessing a single parking lot and

2 could be combined in an effort to improve safety.

3 Q. Okay.

4 A. Other impacts, there could also be some

5 changes in access and how private property owners

6 use the space in front of their buildings and City's

7 right-of-way. I also summarized that vehicles that

8 are backing in or out of driveways adjacent to the

9 trail could potentially be hazardous.

10 Q. Okay. And we'll get into some more

11 details on those. Just to get on a higher level,

12 could you direct us to where you've documented your

13 conclusions about the preferred alternative's

14 impacts to non-motorized users?

15 A. Yes. It's in section 5.3.2.4 of the

16 Transportation Discipline Report.

17 Q. Okay. And what page is that on?

18 A. It starts on page 517.

19 Q. Okay. Great. And the remainder follow

20 on the subsequent page?

21 A. Yes.

22 Q. So there was some discussion today about

23 whether or not the EIS examined impacts to freight

24 rail?

25 A. Uh-huh, yes.

Page 859

1 Q. Do you agree with that?

2 A. We evaluated impacts to freight rail in

3 the EIS.

4 Q. Okay. And is that located on that page

5 519?

6 A. It is located on 519 and section 5.3.2.6.

7 Q. And is that specific to any one of the

8 alternatives?

9 A. This is specific to the preferred

10 alternative.

11 Q. And let me just step back framework-wise.

12 Do you run through these same impacts for all of the

13 alternatives?

14 A. Yes.

15 Q. There have been some discussion about the

16 amount of the design that has been completed. Do

17 you believe that the City designed the project to a

18 sufficient level to facilitate environmental review

19 of transportation impacts?

20 MR. BROWER: Objection. There's no

21 foundation that she has any experience designing

22 trails.

23 MR. KISIELIUS: I'm not asking her if

24 she designed the trail, I'm asking her if it's

25 designed sufficiently for her to be able to analyze

Page 860

1 the transportation impact. She writes

2 transportation impact analyses for EISs.

3 MR. BROWER: She is a planner. She's

4 not an engineer or a designer.

5 MR. KISIELIUS: Her job, as she

6 described it, is to write that section of EIS. I'm

7 not asking if she designed it. I'm asking if she

8 had sufficient information to be able to make those

9 conclusions that she does in the course of her

10 profession.

11 MR. BROWER: I guess I have a larger

12 problem which is Mr. Kisielius said Ms. Ellig is an

13 expert witness. She's not an expert witness. She

14 was not held out as an expert witness during

15 discovery. We did not get her personal notes or

16 personal files the way you do with an expert. We

17 got discovery. We got the drafts of the documents.

18 They have an expert, Mr. Shultise.

19 THE HEARING EXAMINER: Okay. Let me

20 pick that up in a minute, but there's an objection

21 that's not related to that.

22 MR. BROWER: Sure.

23 THE HEARING EXAMINER: The witness is

24 speaking to whether she felt she had adequate

25 information at 10-percent design based on her

Page 861

1 experience. I'll overrule the objection and allow

2 her to testify as to that.

3 Now, the issue as to whether you --

4 are you raising a separate issue as to whether you

5 were adequately notified as to whether she was an

6 expert, or --

7 MR. BROWER: Well, I -- certainly --

8 THE HEARING EXAMINER: -- helping with

9 timing while we're doing this right now.

10 MR. BROWER: Of course. I thought

11 Mr. Kisielius was asking for her professional

12 opinion regarding the level of design being

13 sufficient or not. Whether in her experience and

14 was it good enough for her to do her job. I don't

15 have any objection to that. But if she's going to

16 give an expert opinion as to whether this is

17 sufficient, she wasn't held out as an expert, we

18 weren't given access to her files and notes in the

19 same way we would have been had any of these people

20 been disclosed as experts to us.

21 MR. KISIELIUS: I can respond?

22 THE HEARING EXAMINER: Please.

23 MR. KISIELIUS: In all of our witness

24 and exhibit lists, in all of them, we identified

25 each one of these as expert witnesses and finding

Page 862

1 expert testimony, Ms. Ellig included.

2 MR. BROWER: You actually identified

3 them as lay and expert, and we asked you repeatedly

4 which one is it going to be?

5 MR. KISIELIUS: And we explained --

6 MR. BROWER: Right.

7 MR. KISIELIUS: -- I think you're

8 conflicting two different things, which is whether

9 your entitlement to the rules, to their files, in

10 the way a testifying expert would be when they are

11 part of a broader attorney/client sphere. And

12 that's a different issue. We talked about this in

13 advance of the deposition.

14 MR. BROWER: I guess we're going to

15 have to agree to disagree, Mr. Kisielius, because we

16 were held out that they were going to testify about

17 their work on the EIS, which we have no objection

18 to. But if they're going to provide expert opinions

19 the way that our experts did, that was not our

20 understanding.

21 MR. KISIELIUS: Those are not

22 inconsistent things. I'm asking her about her work

23 on this --

24 MR. BROWER: Okay.

25 MR. KISIELIUS: -- and she can do that

Page 863

1 as an expert on that topic. That's not
 2 inconsistent.
 3 MR. BROWER: I think they are.
 4 MR. KISIELIUS: And everything in
 5 writing that we've ever given you has held them out
 6 as an expert. And we thought we explained it
 7 sufficiently.
 8 MR. BROWER: I would disagree, and I
 9 repeatedly asked which one are they going to be?
 10 MR. KISIELIUS: Once.
 11 MR. BROWER: And I felt like we didn't
 12 get a clear answer from you.
 13 THE HEARING EXAMINER: So what you're
 14 -- so they were disclosed as experts or lay?
 15 MR. BROWER: Yep. Over and over
 16 again, and I asked repeatedly which one is it going
 17 to be, because it's one or the other? I mean, we
 18 disclosed our experts.
 19 MR. COHEN: I respectfully disagree
 20 with Mr. Brower's remark just now. It is not one or
 21 the other. The witness can have fact-based
 22 information --
 23 THE HEARING EXAMINER: Both expert and
 24 lay testimony.
 25 MR. BROWER: Sure.

Page 864

1 MR. KISIELIUS: -- and be qualified as
 2 an expert.
 3 THE HEARING EXAMINER: Right.
 4 MR. BROWER: And I don't disagree with
 5 that, but in terms of how the discovery process
 6 works, we are -- we're entitled to very different
 7 information like Mr. Shultise's files, and his
 8 notes, and is communications with Ms. Ferguson, for
 9 example.
 10 THE HEARING EXAMINER: So --
 11 MR. BROWER: And we weren't given
 12 their communication with Ms. Ferguson because you
 13 claimed it was attorney/client privilege. If
 14 they're experts to the extent like Mr. Shultise,
 15 then we were entitled to see all of your
 16 communications with Parametrix, and with ESA, and
 17 with ECONorthwest. And you withheld all of that
 18 from us.
 19 MR. KISIELIUS: You got a huge amount
 20 of information from Parametrix. You did not get the
 21 attorney/client privilege --
 22 MR. BROWER: Exactly.
 23 THE HEARING EXAMINER: Let me pause
 24 for a moment and clarify where we're at. What
 25 exactly is the objection you're are raising right

Page 865

1 now in the context of this witness's testimony? Are
 2 you saying that we need to stop the hearing, because
 3 you didn't get adequate discovery? What is -- I
 4 don't want to just have an argument in the middle of
 5 a hearing.
 6 MR. BROWER: Sure.
 7 THE HEARING EXAMINER: So what are we
 8 doing here?
 9 MR. BROWER: Our objection is that we
 10 have no problem with him -- all of these witnesses
 11 worked on the EIS and for whom given their
 12 communications with the City Attorney's Office that
 13 testifies to what they did for the EIS. But if
 14 they're going to start offering professional
 15 opinions as to the standard of care, and the
 16 standard of what you should or shouldn't do in EIS,
 17 that would be a testifying witness for whom we are
 18 entitled to see all of Ms. Ferguson's communications
 19 with them.
 20 MR. COHEN: If I may comment --
 21 THE HEARING EXAMINER: And so what --
 22 No.
 23 What remedy are you looking for?
 24 MR. BROWER: To keep them to testify
 25 to what they did on the EIS and not provide

Page 866

1 professional opinions about the standard to which --
 2 THE HEARING EXAMINER: Even though
 3 they were disclosed as expert witnesses?
 4 MR. BROWER: They were disclosed as
 5 lay experts and expert/lay, and we were specifically
 6 told we couldn't have their communications with
 7 Ms. Ferguson. So either we get all their
 8 communications the way we had to give all our
 9 communications.
 10 MR. KISIELIUS: You didn't.
 11 THE HEARING EXAMINER: All I can say
 12 is --
 13 MR. BROWER: We did.
 14 MR. KISIELIUS: No. You withheld
 15 under -- excuse me. I'm sorry.
 16 MR. BROWER: I withheld one, so
 17 Counsel --
 18 THE HEARING EXAMINER: I don't want
 19 you debating with each other about this.
 20 MR. KISIELIUS: Right. Apologize.
 21 THE HEARING EXAMINER: What I want is
 22 to move on with the hearing. And what I'm not --
 23 what I'm hearing is that you may have a concern --
 24 it's not an objection to the witness's testimony, as
 25 much as it is concern about characterization of the

Page 867

1 Respondent's witnesses in general and whether you've
 2 -- and essentially a discovery issue --
 3 MR. BROWER: Yes.
 4 THE HEARING EXAMINER: -- that you're
 5 raising now.
 6 MR. BROWER: And we thought these
 7 witnesses -- the way we deposed them, had I known
 8 that Mr. Kisielius was going to ask Ms. Ellig for
 9 professional opinions about the standard to which
 10 EISs should be prepared, or the levels of design
 11 should be prepared, I would have asked for all of
 12 her communications with the City's Attorney's
 13 Office.
 14 THE HEARING EXAMINER: So the -- at
 15 least at a fundamental level, there was disclosure,
 16 there was description. And, I mean, everyone said,
 17 yes, they're an expert. So you got that. As to
 18 whether documents were exchanged or not; whether
 19 that's going to affect your case or not, I don't see
 20 that I can make a ruling right now as to whether
 21 they're going to proceed with testimony, because I
 22 don't know what was exchanged and what wasn't. And
 23 I'll stop the hearing right now and figure that out,
 24 but that doesn't seem like the best use of our time.
 25 So --

Page 868

1 MR. BROWER: Well, I can tell you we
 2 were given none of the City Attorney's Office
 3 communications with the people at Parametrix, or
 4 ESA, or ECONorthwest. So -- which we would love to
 5 see, which we do believe is attorney/client
 6 privilege, but we didn't push that issue. The City
 7 claimed it was attorney/client privilege, and so, we
 8 respected that. So I'm -- we are more than happy to
 9 have these witnesses testify as to what they did or
 10 didn't do to prepare the EIS, but if we're now going
 11 to switch hats, and again --
 12 THE HEARING EXAMINER: I think the
 13 only way to address it really is that you're going
 14 to have a standing objection to the witnesses, on
 15 the basis that you've described --
 16 MR. BROWER: Okay.
 17 THE HEARING EXAMINER: -- that you're
 18 prejudiced in the terms of what you've described.
 19 MR. BROWER: I think we have been.
 20 THE HEARING EXAMINER: Is there going
 21 to be an opportunity for us to pick that up and
 22 rebuttal or something along those lines, I don't
 23 know. But stopping the hearing for the speculation
 24 that there might be something in there, I don't
 25 know? And simply, because there may or may not have

Page 869

1 been adequate discovery, I don't see at this point
 2 we can just stop the hearing to cure that.
 3 MR. BROWER: I think a different
 4 remedy would be to have these people not provide
 5 professional opinions as to the standard to which
 6 EISs should be prepared. They have a
 7 professional, excuse me, and expert witness,
 8 Mr. Shultise, who is a nationally -- you know, he
 9 claims to be a nationally recognized expert on
 10 issues related to this trail. They --
 11 THE HEARING EXAMINER: That would be a
 12 draconian remedy, when we know they were disclosed
 13 as exhibit -- as expert witnesses.
 14 MR. BROWER: Respectfully, I remain
 15 confused. When it says expert/lay, and we have
 16 discovery --
 17 THE HEARING EXAMINER: Well, your
 18 confusion and whether they actually are --
 19 MR. BROWER: Sure. Sure.
 20 THE HEARING EXAMINER: -- is
 21 different. But I am concerned about your
 22 possibility that you were not -- you did not receive
 23 the discovery you were entitled to. I'm just taking
 24 that at face value whether it happened or not. I
 25 can't even rule on it now or now, because I don't

Page 870

1 know what happened. But if did you know that the
 2 witness was an expert, and if you were confused if
 3 they were expert or lay, and you didn't get it
 4 figured out before we get here now to your
 5 satisfaction, I'm going to let them testify as an
 6 expert. If you have a discovery issue, I'm not sure
 7 when or how we're going to deal with that?
 8 MR. BROWER: I mean, I think we are
 9 being severely prejudiced, because had we treated
 10 these witnesses as true outside testifying experts,
 11 we would have gotten all of the City Attorney's
 12 communications with them, which were withheld on the
 13 basis of attorney/client privilege.
 14 THE HEARING EXAMINER: So I'll
 15 dedicate a little bit more time to this.
 16 MR. BROWER: All right.
 17 THE HEARING EXAMINER: Let hear from
 18 the City.
 19 MR. KISIELIUS: Mr. Examiner --
 20 THE HEARING EXAMINER: The most I'm
 21 letting you know is what was disclosed; what wasn't.
 22 MR. KISIELIUS: So just a couple of
 23 responses to what I've been listening to. We
 24 disclosed them as expert. They also have --
 25 THE HEARING EXAMINER: So -- we don't

Page 871

1 need to cover ground we already covered. They're
 2 experts. They're going to testify on that basis.
 3 MR. KISIELIUS: They -- we also --
 4 THE HEARING EXAMINER: I'm really
 5 concerned about the discovery issue, and that's it.
 6 MR. KISIELIUS: We also withheld
 7 certain documents on the basis of the
 8 attorney/client privilege, because the Department's
 9 longstanding position has been that when the
 10 Department hires outside consultants to do the work
 11 that staff could do that they are brought within the
 12 attorney/client sphere. So withheld those. They
 13 were given notice that we were withholding weeks
 14 ago, and could have raised this objection with
 15 plenty of time before now, in the middle of a
 16 hearing, to try and resolve it and spring this on
 17 us. I will also note, that Mr. Brower has -- is
 18 asking hypocritically for a different result to be
 19 applied to the City, because he has asserted a
 20 privilege over his outside testifying expert's
 21 communications with his office.
 22 MR. BROWER: May I respond?
 23 MR. KISIELIUS: And the number of
 24 documents doesn't matter. It's the principle that
 25 you're asserting it, and telling us that our

Page 872

1 position with our consultants working on the behalf
 2 of the City is that they're brought within that.
 3 And if there was an issue, it should have been
 4 brought up weeks ago.
 5 MR. BROWER: May I just respond to --
 6 THE HEARING EXAMINER: What I'd like
 7 to ask the Appellants to do is you're going to have
 8 to bring this in a motion, if you don't feel that
 9 your discovery has been addressed.
 10 MR. BROWER: All right.
 11 THE HEARING EXAMINER: We can't just
 12 stop the hearing to try this address this now. They
 13 can't give it to you, and I don't know what the
 14 documents are.
 15 MR. BROWER: Sure. Just for the
 16 record, may I respond to what Mr. --
 17 THE HEARING EXAMINER: I really want
 18 to avoid the point where you keep trying to throw
 19 rocks at each other.
 20 MR. BROWER: Certainly.
 21 THE HEARING EXAMINER: We are through
 22 that --
 23 MR. BROWER: Understood. Okay.
 24 THE HEARING EXAMINER: -- and I
 25 understand the urge.

Page 873

1 MR. BROWER: I respect that.
 2 THE HEARING EXAMINER: Want I want to
 3 do is try to address the concern you raised.
 4 MR. BROWER: Okay.
 5 THE HEARING EXAMINER: And that is try
 6 to get you an opportunity to bring this in a motion
 7 without stopping a whole hearing to address a
 8 discovery issue. If there's a way of remedying it,
 9 we need to be able to provide time to do that. We
 10 do have a day next week that's set aside for
 11 rebuttal. We're moving along pretty well with the
 12 timing, so it's possible that if there's a need to
 13 -- what I need is some kind of description of what
 14 is being withheld, and why you think you're entitled
 15 to it.
 16 MR. BROWER: Okay.
 17 THE HEARING EXAMINER: Right? I mean,
 18 I --how else can I rule on it?
 19 MR. BROWER: Certainly.
 20 THE HEARING EXAMINER: So I'd have to
 21 ask you to bring it in a motion as soon as you can,
 22 which I recognize you're not going to do that while
 23 you're here.
 24 MR. BROWER: Yes.
 25 THE HEARING EXAMINER: But I -- what

Page 874

1 -- I guess when would be -- when would you propose
 2 to do that as opposed to right now?
 3 MR. BROWER: Could we table this issue
 4 for the moment and continue the hearing. Because
 5 I'm going --
 6 THE HEARING EXAMINER: We can
 7 certainly do that.
 8 MR. BROWER: -- time is precious.
 9 MR. SCHNEIDER: Yes.
 10 MR. BROWER: And I will confer with
 11 co-counsel maybe after the next break I'll come
 12 back?
 13 THE HEARING EXAMINER: That's -- and
 14 bring -- come back with a proposal?
 15 MR. BROWER: Yes.
 16 THE HEARING EXAMINER: But the idea
 17 with it -- we'd be looking for some type of motion
 18 if you feel that we're -- that discovery has not
 19 been adequate. You've got to explain it; why your
 20 entitled to the documents. They have an opportunity
 21 to respond and explain why it's privileged --
 22 MR. BROWER: Certainly.
 23 THE HEARING EXAMINER: -- and what
 24 they are. And then I need a chance to rule on that.
 25 MR. BROWER: Okay.

Page 875

1 MR. SCHNEIDER: Could I speak up
 2 briefly just to identify what I see as the problems?
 3 THE HEARING EXAMINER: Uh-huh
 4 (affirmative response).
 5 MR. SCHNEIDER: So I think part of the
 6 problem for us in bringing a motion is we don't know
 7 what the witnesses are going to be asked to testify
 8 to that goes beyond their fact-based testimony and
 9 transitions into the opinion testimony. Without
 10 knowing that it's hard to know how we're prejudiced.
 11 So it's sort of a chicken and egg problem, I think,
 12 from our point of view.
 13 THE HEARING EXAMINER: So I guess one
 14 thing -- I mean, if the discovery was -- if they're
 15 allowed to keep this based on attorney/client
 16 privilege then you guys don't get any more than
 17 you're entitled to, and we're good to go with how we
 18 are now. If they're -- if that's not the case; if
 19 you didn't get documents that you're entitled to,
 20 then that's the problem area.
 21 MR. SCHNEIDER: Yeah.
 22 THE HEARING EXAMINER: I -- the
 23 challenge for me is stopping the hearing to try and
 24 address that. I -- is it possible that we would
 25 have a motion in -- and again, we don't need to

Page 876

1 address this now. We can do it after the break.
 2 And I'd like you to think about it more. You may
 3 come up with something better than me shooting from
 4 the hip. But the idea could be that you would do a
 5 motion. We get a ruling on the motion. If there is
 6 a need for those witnesses to come back for
 7 additional cross, because that's when you would
 8 address it would be in cross. You'd still -- you
 9 could preserve the opportunity to do objections. I
 10 mean, essentially, we'd have to try to hold the door
 11 open for things that you would do here that you
 12 wouldn't have had the otherwise -- that otherwise
 13 would have the opportunity to do, if you had those
 14 documents. So I have to figure out a way to
 15 preserve that in this.
 16 MR. SCHNEIDER: Again, my --
 17 THE HEARING EXAMINER: The other way
 18 -- the only other way to do it is stop the hearing
 19 now and do this.
 20 MR. SCHNEIDER: And I don't think
 21 anyone is proposing that. I think might be helpful
 22 for Counsel to talk amongst ourselves and for our
 23 side of the table to get a sense of, you know, how
 24 big the problem is from our point of view. And
 25 then, you know, that may or may not be something we

Page 877

1 can do on the break. But if you could just give us
 2 leave to assess the problem and come back --
 3 THE HEARING EXAMINER: Okay.
 4 MR. SCHNEIDER: -- either after the
 5 break or first thing in the morning.
 6 THE HEARING EXAMINER: If you haven't
 7 figured out by the end of the break, but you need
 8 more time absolutely fine. I appreciate you taking
 9 the time to do that. And we'll continue with the
 10 hearing now, with the understanding that you'll all
 11 be coming back to me a proposal on how you want to
 12 approach this. Is there anything more that we need
 13 to address on this side and before we proceed?
 14 MR. KISIELIUS: Just so I'm clear on
 15 the ground rules until we have a chance to convene
 16 before the break.
 17 THE HEARING EXAMINER: Uh-huh
 18 (affirmative response).
 19 MR. KISIELIUS: I get to proceed as --
 20 THE HEARING EXAMINER: Yes. Yes.
 21 BY MR. KISIELIUS:
 22 Q. Sorry for the interruption.
 23 MR. BROWER: One question. I think
 24 you overruled my objection?
 25 THE HEARING EXAMINER: Uh-huh

Page 878

1 (affirmative response).
 2 MR. BROWER: I can't even remember
 3 what it was --
 4 THE HEARING EXAMINER: This was in the
 5 context of whether she was an expert or not.
 6 MR. BROWER: Got it.
 7 THE HEARING EXAMINER: It was
 8 disclosed. I understand there was some confusion on
 9 that part. I don't know if there's -- you know. If
 10 that had been raised beforehand maybe we could have
 11 addressed it differently, but at this point I think
 12 that's slicing it close enough that we'll say they
 13 did disclose it, because they did. All right.
 14 BY MR. KISIELIUS:
 15 Q. I believe the question on the table was
 16 whether you believed that the City designed the
 17 project to a sufficient level for purposes of
 18 environmental review?
 19 A. I do.
 20 Q. Why?
 21 A. I believe that it was designed to a
 22 sufficient level for me to identify all of the
 23 potential impacts that could be incurred by any of
 24 the build alternatives.
 25 Q. Okay.

Page 879

1 THE HEARING EXAMINER: And before we
 2 go -- one more clarification I'll add, is that I
 3 understand that -- so that we don't have to have
 4 additional -- I understand that you have a standing
 5 objection essentially.
 6 MR. BROWER: Thank you.
 7 THE HEARING EXAMINER: In that -- in
 8 this context, so.
 9 MR. KISIELIUS: Thank you.
 10 THE WITNESS: And what I reviewed had
 11 things like the project footprint, where driveway
 12 locations were, what types of changes would occur at
 13 intersections. And that is the type of information
 14 that I need to assess what types of impacts would be
 15 incurred by any of the build alternatives.
 16 BY MR. KISIELIUS:
 17 Q. Okay. So the final EIS states that
 18 impacts can and will be mitigated through design
 19 features. Can you describe what are some of those
 20 design features that are identified to be used for
 21 mitigation purposes?
 22 A. Sure. Those are listed in Chapter 1, but
 23 some examples are --
 24 Q. Okay. I'm going to interrupt you.
 25 Chapter 1 -- are you still looking at --

Page 880

1 A. Yes, of the Transportation Discipline
 2 Report. They're listed in Section 1.4.
 3 Q. Okay.
 4 A. And these types of things include:
 5 altering an angle of a driveway with a roadway,
 6 geometric changes to create perpendicular
 7 intersections, other things like pavement markings,
 8 raised cross walks, signalizing intersections,
 9 providing rapid flashing beacons, et cetera.
 10 Q. Okay. Are there any standards or
 11 guidelines for use of these design features?
 12 A. Yes.
 13 Q. And specifically related to safely
 14 designing trails?
 15 A. Yes. NACTO and AASHTO have information
 16 on those.
 17 Q. Okay. I'm going to ask you do you have
 18 the binder there of ours --
 19 A. Yes.
 20 Q. -- to look at C-14 and C-13.
 21 MR. KISIELIUS: Mr. Examiner, we're
 22 looking at our binder now with our internal
 23 numbering.
 24 MR. BROWER: I have one notebook with
 25 numbers and another one with a numbers, so.

Page 881

1 (Discussion over correct binders.)
 2 MR. BROWER: Okay. Right. So this is
 3 the right notebook, but I'm not seeing the "C" part
 4 is what I'm --
 5 THE WITNESS: It shouldn't -- the "C"
 6 is not on the tab. I'm sorry.
 7 MR. BROWER: Oh, okay.
 8 THE WITNESS: It's on the Table of
 9 Contents, but not the tab.
 10 MR. BROWER: Okay. So which tab are
 11 we on?
 12 THE WITNESS: 14.
 13 MR. BROWER: Thank you.
 14 BY MR. KISIELIUS:
 15 Q. So you could describe -- you could start
 16 with either one --
 17 A. Yeah.
 18 Q. But just tell us which one you're going
 19 to be talking about.
 20 A. Sure. I'm going to be talking about 13.
 21 Q. Okay. And is this one of the -- you
 22 referred to NACTO is this --
 23 A. Yes. This is a NACTO document.
 24 Q. Okay. Can you tell us what that is?
 25 A. This is a piece of the Urban Bikeway

Page 882

1 Design Guide that provides information on
 2 intersection crossing markings.
 3 Q. Okay.
 4 A. It provides information on what those
 5 types of facility treatments are and describes how
 6 those might improve safety.
 7 Q. Okay. And I'm going to pause there.
 8 MR. KISIELIUS: Could I have that --
 9 I'd asked to have that marked as an exhibit?
 10 THE HEARING EXAMINER: We're on R-5.
 11 MR. KISIELIUS: R-5.
 12 BY MR. KISIELIUS:
 13 Q. Can you tell us again, are you -- what
 14 number are you looking?
 15 A. I'm looking at 13.
 16 MR. KISIELIUS: So 13 would be R-5.
 17 THE HEARING EXAMINER: Oh, I was on
 18 14.
 19 MR. KISIELIUS: Apologies.
 20 THE HEARING EXAMINER: Okay. So R-5.
 21 All right.
 22 BY MR. KISIELIUS:
 23 Q. And did you use that document for your
 24 work on the FEIS?
 25 A. Yes. I'm generally familiar with this

Page 883

1 information to help analyze impacts.
 2 Q. Okay.
 3 MR. KISIELIUS: And I'd ask to have
 4 that entered into -- as evidence.
 5 THE HEARING EXAMINER: Any objection?
 6 MR. BROWER: No.
 7 THE HEARING EXAMINER: R-5 is
 8 admitted.
 9 (RESPONDENT'S EXHIBIT R-5 ADMITTED.)
 10 BY MR. KISIELIUS:
 11 Q. And I confused things by asking you to
 12 look at two. Can you look at R-14?
 13 A. Yeah. R-14 is describing designs --
 14 Q. It's not -- I'm -- I apologize.
 15 THE HEARING EXAMINER: R-14 is just
 16 R-14.
 17 MR. KISIELIUS: It is. Yes.
 18 THE HEARING EXAMINER: The -- R-6.
 19 BY MR. KISIELIUS:
 20 Q. This will be numbered R-6, it's 14 in
 21 your binder.
 22 A. And what's included in, I believe, top of
 23 14 in my binder --
 24 Q. That's what we're looking at.
 25 A. -- is information on design vehicle.

Page 884

1 Q. I apologize. (Pause.) We'll come back
 2 to that one.
 3 A. Okay.
 4 THE HEARING EXAMINER: Scratch that,
 5 or?
 6 MR. KISIELIUS: It was -- I think
 7 there's a -- we have an internal discrepancy in
 8 terms of our exhibits.
 9 THE HEARING EXAMINER: Okay.
 10 MR. KISIELIUS: I apologize.
 11 THE HEARING EXAMINER: Okay. So we're
 12 still at R-5 --
 13 MR. KISIELIUS: Correct.
 14 THE HEARING EXAMINER: -- as the
 15 intersection crossing markings.
 16 MR. KISIELIUS: And, Your Honor, may I
 17 approach the witness --
 18 THE HEARING EXAMINER: Uh-huh
 19 (affirmative response).
 20 MR. KISIELIUS: -- just to make sure
 21 we're looking at the same thing? I think there's a
 22 problem with our numbering.
 23 BY MR. KISIELIUS:
 24 Q. Thank you. I'm sorry. Please turn to
 25 Tab 11 in your binder.

Page 885

1 A. Yes.
 2 MR. KISIELIUS: Okay. And I'll ask to
 3 have that one marked as R --
 4 THE HEARING EXAMINER: 6.
 5 MR. KISIELIUS: 6.
 6 BY MR. KISIELIUS:
 7 Q. Are you familiar with that document?
 8 A. Yes.
 9 Q. Okay. And what is that?
 10 A. This is another piece of the NACTO Urban
 11 Bikeway Design Guide. And it provides information
 12 on colored bike facilities.
 13 Q. Okay. And is that a source document that
 14 you used in your work for the final EIS?
 15 A. Yes.
 16 MR. KISIELIUS: I'd ask to have that
 17 entered as an exhibit.
 18 THE HEARING EXAMINER: Any objections?
 19 All right. R-6 is admitted.
 20 (RESPONDENTS EXHIBIT R-6 ADMITTED.)
 21 BY MR. KISIELIUS:
 22 Q. Let's talk a little bit about the concern
 23 that the project is in an area with freight traffic.
 24 Are there any guidelines that discuss placing trails
 25 in areas with heavy freight or other transportation

Page 886

1 modes?
 2 A. Yes. I believe there are.
 3 Q. Okay. Are -- I'm going to ask you to
 4 take a look at the freight master plan once we
 5 identify it.
 6 A. Okay.
 7 MR. KISIELIUS: Mr. Examiner, we're
 8 going to hand you a copy of this -- a large
 9 document.
 10 Josh, this is the one that we gave you
 11 a separate copy of this -- the outside.
 12 THE HEARING EXAMINER: We're going to
 13 stop for a break at 3:00.
 14 MR. KISIELIUS: Okay.
 15 THE HEARING EXAMINER: Mark as 7.
 16 R-7?
 17 MR. BROWER: Just to be clear, the one
 18 is a Freight Master Plan and the other is a City of
 19 Seattle Pedestrian Master Plan Appendices. Are you
 20 sure they go together?
 21 MS. FERGUSON: We are going to use
 22 that, but I have an extra copy of the appendices if
 23 you want?
 24 MR. BROWER: Oh, got it.
 25 MS. FERGUSON: Do you have the freight

Page 887

1 master plan?
 2 MR. BROWER: That's all you gave us.
 3 MS. FERGUSON: I have an extra copy of
 4 that.
 5 MR. BROWER: Thank you.
 6 THE HEARING EXAMINER: That's this
 7 one?
 8 MR. KISIELIUS: Freight Master Plan is
 9 correct.
 10 MS. FERGUSON: Yes.
 11 MR. KISIELIUS: Freight appendices?
 12 MR. KISIELIUS: Yes.
 13 I appreciate everybody's patience with
 14 this.
 15 BY MR. KISIELIUS:
 16 Q. Can you describe what that document is?
 17 A. Yes. This is the City of Seattle Freight
 18 Master Plan and its accompanying appendices. And
 19 the Freight Master Plan is the modal transportation
 20 plan for the City for freight.
 21 A. And does this address placing trails in
 22 areas with heavy freight or other transportation
 23 modes?
 24 A. Yes. It does.
 25 Q. Okay.

Page 888

1 A. I believe there's some information in the
 2 design guidelines, Appendix C.
 3 Q. Okay. Can you direct us to that?
 4 A. Yes.
 5 Q. While you're looking for that I had a
 6 question from Counsel.
 7 MR. KISIELIUS: Has this been marked
 8 at R-7, Mr. Examiner?
 9 THE HEARING EXAMINER: Yes. That's
 10 right.
 11 MR. KISIELIUS: Thank you.
 12 MR. BROWER: Thank you.
 13 THE WITNESS: There's a title page
 14 called design guidelines Appendix C.
 15 BY MR. KISIELIUS:
 16 Q. Okay.
 17 A. It -- the last page of the preceding
 18 appendix is 92.
 19 Q. Okay.
 20 A. And this document provides some
 21 information on how to balance the needs of different
 22 user types in freight corridors including
 23 non-motorized users.
 24 Q. Okay. And is this a document that you've
 25 relied on in your assessment of the transportation

Page 889

1 impacts in the EIS?
 2 A. Yes.
 3 Q. Okay.
 4 MR. KISIELIUS: I'd ask to have that
 5 entered into as an exhibit.
 6 THE HEARING EXAMINER: Any objection?
 7 MR. BROWER: None.
 8 THE HEARING EXAMINER: R-7 is
 9 admitted.
 10 (RESPONDENTS EXHIBIT R-7 ADMITTED.)
 11 BY MR. KISIELIUS:
 12 Q. And I'm doing these a bit in master,
 13 because I think you -- I'm going to ask you some
 14 other questions about that, and I believe other
 15 witnesses will talk. But I think it's -- we'll just
 16 go through the process here. Bicycle Master Plan.
 17 So if you can turn to Tab 8 in your binder?
 18 A. Okay. In there.
 19 Q. Do you recognize that?
 20 A. Yes.
 21 Q. Okay. What is that?
 22 A. This is Chapter 4 of the Bicycle Master
 23 Plan for the City of Seattle.
 24 Q. And does this address guidelines for
 25 placing trails in areas with heavy freight or other

Page 890

1 transportation modes?
 2 A. Yes.
 3 Q. Can you tell us what it says in there?
 4 A. I can. Well, it describes -- first of
 5 all the Burke-Gilman Trail is a catalyst project. I
 6 believe there's also a section that describes
 7 needing to balance the needs of different modes in
 8 the same corridors.
 9 Q. What does that mean to be a catalyst
 10 project?
 11 A. I believe that means it's a major bicycle
 12 project that the City is pursuing to help -- I think
 13 they're primarily focused on promoting regional
 14 travel. It's a main portion of the bicycle network
 15 that the City of Seattle wants to encourage.
 16 Q. All right. And is this the type of a
 17 document -- is this document one you that you used
 18 or relied on in formulating your analysis that was
 19 incorporated in the EIS?
 20 A. Yes. And, actually, --
 21 Q. So --
 22 A. -- could I just elaborate on what a
 23 catalyst project is? I found the actual text --
 24 Q. Please do. Thank you.
 25 A. -- in the document I'd like to read. It

Page 891

1 says, "Catalyst projects are located at choke points
 2 in the network that pose significant challenges to
 3 implementation due do physical constraints.
 4 Catalyst projects like the Burke-Gilman Trail
 5 Missing Link also reduce critical barrier to
 6 bicycling by closing network gaps and increase
 7 safety by building all ages and abilities friendly
 8 bicycle facilities to the maximum feasible extent."
 9 Q. Okay. Thank you.
 10 MR. BROWER: What page was that?
 11 THE WITNESS: That is on page 40 of
 12 the document, and I think COS.000105.
 13 MR. BROWER: Oh, got it.
 14 THE WITNESS: Not sure what that
 15 number is for?
 16 THE HEARING EXAMINER: Exhibit R-7
 17 page 40? Right?
 18 MR. KISIELIUS: R-7? Is that R-7 or
 19 R-8?
 20 THE HEARING EXAMINER: Are we on to a
 21 new one? Is it R-8? Okay. Sorry, it is R-8, R-8,
 22 40.
 23 MR. KISIELIUS: And to make sure --
 24 has that Been -- if it hasn't been I'd move to enter
 25 that as an exhibit.

Page 892

1 THE HEARING EXAMINER: Any objection?
 2 MR. BROWER: No.
 3 THE HEARING EXAMINER: R-8 is
 4 admitted.
 5 (RESPONDENTS EXHIBIT R-8 ADMITTED.)
 6 BY MR. KISIELIUS:
 7 Q. Okay. So let's now get into some
 8 specific questions about what and was not included
 9 in the transportation analysis in the EIS.
 10 A. Okay.
 11 Q. There was some discussion yesterday about
 12 a blind-spot diagram and sight-distance hazards. Do
 13 you recall, does the FEIS talk about blind spots and
 14 sight-distance issues? Does it disclose those as
 15 potential impacts?
 16 A. Yes.
 17 Q. Can you identify where that's discussed?
 18 And let's start with the preferred alternative.
 19 A. Yes. It's in Chapter 5.
 20 Q. Of -- and here we're talking about --
 21 A. The Transportation Discipline Report.
 22 Q. Which is document -- or Exhibit R-3. Can
 23 you describe -- what does it say about those
 24 specific issues related to blind spots and sight
 25 distance?

Page 893

1 MR. BROWER: Could we get a page
 2 number please?
 3 THE WITNESS: Yes. It's starting on
 4 page 519. In this section, we're describing
 5 potential safety impacts. Section reads that "The
 6 potential impacts include sight distance concerns
 7 about driveways crossing the B.G.T Missing Link."
 8 If you turn to page 520 there's also some discussion
 9 that, "Non-motorized users on the B.G.T Missing Link
 10 would be traveling in both directions on one side of
 11 the street. This would require vehicles crossing
 12 the trail to look both directions for non-motorized
 13 users before continuing across the trail. For
 14 drivers of large vehicles with reduced visibility,
 15 it could be difficult to see in both directions of
 16 travel."
 17 Q. Okay. And as -- so this I think I asked
 18 you for the discussion of the preferred alternative.
 19 Does -- do the rest of the sections address those
 20 issues?
 21 A. Yes. A similar discussion is provided
 22 for each of the build alternatives.
 23 Q. Okay. Does the final EIS disclose
 24 whether those sight distance and blind-spot concerns
 25 are expected to improve or worsen under the build

Page 894

1 alternatives?
 2 A. Yes. It does.
 3 Q. Can you direct us to where and what it
 4 says?
 5 A. Yeah. It's in the same section, 5.3.2.7
 6 starting on page 519 there's several statements
 7 throughout this section that describe that. But
 8 compared to the no build condition, it is my opinion
 9 that safety would be improved for those items by
 10 creating a defined space for trail users and
 11 non-motorized in the study area to be. As opposed
 12 to conditions as they exist today where there is no
 13 dedicated facility, and it's a bit haphazard. I
 14 believe that was the wording that another witness
 15 used even.
 16 Q. So let me ask you, because there was
 17 other testimony about the extent to which the EIS
 18 analyzed existing conditions. Do you -- did you
 19 assess existing conditions from a transportation or
 20 traffic safety standpoint?
 21 A. Yes.
 22 Q. Can you show us where please?
 23 A. Yes. Existing conditions are summarized
 24 in Chapter 4. The safety section of that begins on
 25 page 433, it's under 4.2.7.

Page 895

1 Q. This is still the Transportation
 2 Discipline Report?
 3 A. This is still the Transportation
 4 Discipline Report.
 5 Q. For the record it's Exhibit R-3. And is
 6 there discussion of impacts under that existing
 7 condition, the no build alternative?
 8 A. This is for the existing condition. The
 9 no build alternative is back in Chapter 5.
 10 Q. Okay. Can you describe what that is?
 11 MR. BROWER: Again, what page are we
 12 on? I'm sorry.
 13 MR. KISIELIUS: We were just on page 4
 14 --
 15 THE WITNESS: 33.
 16 MR. KISIELIUS: 33.
 17 THE HEARING EXAMINER: And that's the
 18 existing conditions analysis? Is that right?
 19 THE WITNESS: That's correct.
 20 BY MR. KISIELIUS:
 21 Q. Well, let me pause there. Is that that
 22 extent of the existing conditions analysis?
 23 A. That's just the safety section, so there
 24 is additional analysis for all transportation modes
 25 in the study area and their conditions as they exist

Page 896

1 in the existing condition.
 2 Q. And can you tell us where that starts in
 3 the document?
 4 A. Yes. That section is the entirety of
 5 Chapter 4, which begins on -- well, page 4-1. It's
 6 called Affecting Environment.
 7 Q. Okay.
 8 THE HEARING EXAMINER: So the 433,
 9 existing conditions analysis for safety, was just a
 10 sub-section of that?
 11 THE WITNESS: Correct.
 12 THE HEARING EXAMINER: Okay. Thank
 13 you.
 14 BY MR. KISIELIUS:
 15 Q. And you're about to tell us about the no
 16 build alternative and how that relates?
 17 A. Yes.
 18 Q. Can you describe first where that is?
 19 A. Yes. It's in Chapter 5.
 20 Q. And this is again on the Transportation
 21 Discipline Report?
 22 A. Yes. The Transportation Discipline
 23 Report.
 24 Q. For the record which is still part of R-2
 25 -- R-3. Excuse me.

Page 897

1 A. And that starts on page 5-1.
 2 Q. Okay.
 3 A. This section includes information on what
 4 the environment would be in the year 2040 if there
 5 were no trail multi-use facility.
 6 Q. Okay. I'm going to walk you through a
 7 couple of specific issues that were raised, and that
 8 there was an assertion that there was no analysis in
 9 the EIS of those topics. I'm going to ask you about
 10 that.
 11 A. Okay.
 12 Q. Just -- I believe there was some
 13 discussion Mr. Bishop testified about the use of
 14 barriers and whether they can be an impact?
 15 A. Uh-huh (affirmative response).
 16 Q. And that that was not disclosed in the
 17 FEIS. Is that correct?
 18 A. That's not correct.
 19 Q. Okay. Where are barriers discussed in
 20 the FEIS?
 21 A. Barriers are discussed under each of the
 22 build alternatives in Chapter 5. If we want to
 23 focus on the preferred alternative?
 24 Q. Please.
 25 A. I disclosed that there could be conflicts

Page 898

1 between vehicles and trail design features. Trail
 2 design features includes items like barriers.
 3 Q. Okay.
 4 MR. BROWER: Is there a page that that
 5 occurs on?
 6 THE WITNESS: Yes. There is -- 519.
 7 THE HEARING EXAMINER: All right. And
 8 there we'll take a break, and we'll come back at 20
 9 after. Thank you.
 10 MR. BROWER: Thank you.
 11 MR. KISIELIUS: Thank you.
 12 THE HEARING EXAMINER: Counsel will
 13 give a good faith effort at the issue on discovery.
 14 Thank you.
 15 (Recess taken.)
 16 THE HEARING EXAMINER: Back on the
 17 record. Anything to report on the question from
 18 Appellant or are we waiting until tomorrow or?
 19 MR. BROWER: Do you think -- I left
 20 the room, but I thought we had reached at least some
 21 type of an agreement. I was waiting. I didn't hear
 22 what Tadas -- Mr. Kisielius --
 23 THE HEARING EXAMINER: Mr. Kisielius
 24 said.
 25 MR. BROWER: Okay.

Page 899	Page 901
<p>1 MR. KISIELIUS: No.</p> <p>2 MR. BROWER: Got it.</p> <p>3 THE HEARING EXAMINER: I didn't have</p> <p>4 that.</p> <p>5 MR. KISIELIUS: I thought we waiting</p> <p>6 for you to come back.</p> <p>7 MR. BROWER: Okay.</p> <p>8 MR. KISIELIUS: I think what we've</p> <p>9 decided is that we're going to proceed with our</p> <p>10 questioning. Mr. Brower can flag those places where</p> <p>11 he thinks the testimony's exceeded it. The -- and</p> <p>12 they will make a judgment about whether they need to</p> <p>13 pursue based on phase-10 Volume of the degree to</p> <p>14 which they feel the need to object. Is that fair?</p> <p>15 MR. BROWER: Yes. And Mr. Cohen</p> <p>16 raised the issue that if we are going to ask to file</p> <p>17 a motion that we do it, I think, you -- what was the</p> <p>18 language you used, Mr. Cohen? In a reasonable or</p> <p>19 sane manner?</p> <p>20 MR. COHEN: It's not -- my concern is</p> <p>21 I think that motion would raise -- there are -- I</p> <p>22 think there are waiver issues and other things. So</p> <p>23 I'd ask that it be briefed in a, you know, a normal</p> <p>24 deliberative way. If they decide to file a motion,</p> <p>25 we should have the chance to file a timely response</p>	<p>1 you didn't raise that objection at this time.</p> <p>2 MR. BROWER: Thank you.</p> <p>3 THE HEARING EXAMINER: Do so if you</p> <p>4 can, because I think that's easier for the record.</p> <p>5 MR. BROWER: We will.</p> <p>6 THE HEARING EXAMINER: But for</p> <p>7 preserving this issue, I think it's better not to</p> <p>8 close the door on it until the door has been closed.</p> <p>9 MR. BROWER: Okay.</p> <p>10 THE HEARING EXAMINER: All right.</p> <p>11 Please proceed.</p> <p>12 BY MR. KISIELIUS:</p> <p>13 Q. Ms. Ellig, do you recall the testimony of</p> <p>14 Mr. Anderson, CSR Marine saying that his trucks</p> <p>15 currently block the right-of-ways and they also</p> <p>16 block the trail?</p> <p>17 A. Yes.</p> <p>18 Q. Does the final EIS disclose the possibly</p> <p>19 of trucks blocking the trail?</p> <p>20 A. Yes. It does.</p> <p>21 Q. Can you direct us to where?</p> <p>22 A. Yes. I believe that we could go to page</p> <p>23 518 --</p> <p>24 Q. Okay. And this is, again, of the</p> <p>25 Transportation Discipline Report?</p>
Page 900	Page 902
<p>1 then. For instance, they might want to look at</p> <p>2 their deposition transcripts. We might all want to</p> <p>3 look at the law.</p> <p>4 THE HEARING EXAMINER: Right. And we</p> <p>5 did have, you know, we had some -- at least two</p> <p>6 pre-hearing conferences here and --</p> <p>7 MR. COHEN: Yeah.</p> <p>8 THE HEARING EXAMINER: -- orders on</p> <p>9 motions and discovery.</p> <p>10 MR. COHEN: Yes.</p> <p>11 THE HEARING EXAMINER: So rather than</p> <p>12 rushing into it, that could help. All right. The</p> <p>13 only thing I'd like to add to that is I do think</p> <p>14 it's important for you to identify essentially raise</p> <p>15 the same objection to the degree you can, but to the</p> <p>16 degree this does become an issue, if motions are</p> <p>17 filed, and ultimately if you were prevailing in</p> <p>18 that, I do want to make sure that everything is</p> <p>19 preserved within that universe. And so, I am going</p> <p>20 to treat this more as a standing objection as an</p> <p>21 issue -- as to -- as we proceed. So if it came up</p> <p>22 in the context of referencing back to a witness's</p> <p>23 testimony and you said this is exactly what I was</p> <p>24 talking about, I didn't raise the objection at that</p> <p>25 time, I'm not sure that I want to nail you because</p>	<p>1 A. -- of the Transportation Discipline</p> <p>2 Report.</p> <p>3 Q. And that is R-3 just for the record.</p> <p>4 A. So in the paragraph just above Section</p> <p>5 5.3.2.4.2, there is some discussion of this</p> <p>6 scenario. And to read what it says, "Vehicles would</p> <p>7 be required to stop for trail users at all driveways</p> <p>8 and trail intersections. However, after stopping</p> <p>9 before the trail, vehicles could continue forward</p> <p>10 over the trail and stop at the roadway. It is</p> <p>11 possible that vehicles blocking the trail would</p> <p>12 occasionally delay trail users during the day. On</p> <p>13 average, trail users could have to wait 15 to 25</p> <p>14 seconds for a vehicle to clear the trail."</p> <p>15 Q. Okay. And does the final EIS disclose</p> <p>16 the number of medium and large trucks using each of</p> <p>17 the driveways including this specific driveway</p> <p>18 Mr. Anderson was discussing?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Ms. Hirschey raised a concern</p> <p>21 about conflict points between vehicles and</p> <p>22 non-motorized trail users. Are -- well, let me ask</p> <p>23 you first. Are conflict points an issue under</p> <p>24 existing conditions?</p> <p>25 A. Yes. They are.</p>

Page 903

1 Q. Did the final EIS discuss conflict
 2 points?
 3 A. Yes. It does.
 4 Q. How do -- how did you analyze conflict
 5 points for the final EIS?
 6 A. I analyzed conflict points. Every
 7 intersection with the trail is a potential conflict
 8 point, so any driveway crossing or any crossing of
 9 the multi-use path with an intersection would
 10 constitute an area where conflict could occur.
 11 Q. Okay. And did you inventory those
 12 locations?
 13 A. Yes. We did.
 14 Q. Okay. Again, could you tell us where
 15 that's located?
 16 A. Yes. I'd like to refer to the final EIS.
 17 Q. Okay. So now we're talking about, for
 18 the record, R-1. Okay. R-1. You have that there
 19 in front of you?
 20 A. I do have it.
 21 Q. Okay. Great.
 22 A. Starting on page 129 of the final EIS
 23 there is a table titled Table 1-1.
 24 Q. Okay.
 25 A. And the title of that table is Potential

Page 904

1 Traffic Hazards by Alternative Segment.
 2 Q. Okay. So that's a concept we haven't
 3 talked about yet. What is the -- and it uses the
 4 word "segment." How is it divided at the project?
 5 A. Sure. There's an accompanying figure on
 6 page 128 and it shows what we called the West
 7 Segment, the Central Segment, and the East Segment
 8 and this was just a way for us to organize items
 9 like driveway crossings against each other for each
 10 of the build alternatives. So in the table for each
 11 segment there is a summary of driveways,
 12 intersections, sight-line concerns, traffic and
 13 roadway changes, and it describes characteristics
 14 associated with each build alternative.
 15 So, for example, the preferred alternative
 16 crosses about eight driveway loading zones. It
 17 describes what type of driveways those are. And it
 18 also describes in the next row down how many
 19 intersection crossings.
 20 Q. And, again, this is for a segment of that
 21 alternative --
 22 A. This is for a segment of that
 23 alternative. So as you move through this table,
 24 you'll see that there is a West Segment with a
 25 summary of each of these pertinent items, a Central

Page 905

1 Segment with the same items summarized, and then an
 2 East Segment with the same items summarized for each
 3 of the build alternatives.
 4 Q. Okay. And I'm sorry for asking you to
 5 jump around. I'm just trying to run through the
 6 couple of items that were asserted to be missing.
 7 So I want to talk about -- or allegations about the
 8 adequacy. I want to talk about the discussion of
 9 the p.m. peak hour and your selection of the p.m.
 10 peak hour for purposes of identifying delay.
 11 A. Okay.
 12 Q. So do you recall Ms. Hirschey testified
 13 that instead of using the p.m. peak hour the
 14 analysis should have used data from business hours
 15 --
 16 A. Yes.
 17 Q. -- when there might be a higher volume
 18 with trucks?
 19 A. Yes. I do remember that.
 20 Q. So let me ask you, do you agree or
 21 disagree with her statements about the use of
 22 the p.m. peak hour?
 23 A. I disagree with her statement.
 24 Q. Okay. Can you describe what you did --
 25 A. Yes.

Page 906

1 Q. -- and why?
 2 A. Yes. When we collected non-motorized and
 3 traffic-volume data for the day, we had information
 4 on when a number of different transportation modes
 5 in the study area would be at their highest volume.
 6 So when we were preparing our methodology, we
 7 evaluated both traffic data as well as non-motorized
 8 data to determine when was the highest hour of
 9 travel in the study area. For both bicycles and
 10 pedestrians, the highest period is during the p.m.
 11 peak period. That's also consistent with general
 12 purpose vehicles. And in order for us to establish
 13 the worst-case condition, we decided to use the p.m.
 14 peak hour. For example, when a truck is leaving a
 15 driveway in the study area during the p.m. peak
 16 hour, it will experience the least amount of gaps in
 17 opposing traffic on both the trail and the street on
 18 which it's trying to enter. So the delay that we
 19 anticipate during the p.m. peak hour would be
 20 highest. If we evaluated that during the mid-day we
 21 would likely see less delay because there's less
 22 opposing traffic on both the multi-use path and on
 23 the roadway that the vehicle is trying to enter. So
 24 they wouldn't have as much delay as their trying to
 25 reenter the traffic stream from a driveway, for

Page 907

1 example.
 2 Q. So that's true even if the freight volume
 3 is higher at that moment?
 4 A. That's correct, because the way it is
 5 reported as an average delay per vehicle.
 6 Q. And so can you turn -- I'm sorry to make
 7 you jump. This is now at Exhibit R-3 Transportation
 8 Discipline Report. Can you turn to page 3-4?
 9 A. Yes.
 10 Q. And I'm focused on Figure 3-2. Could you
 11 describe what we're seeing here and what how it
 12 relates to the testimony you just provided?
 13 A. Yes. This is a figure that is showing
 14 both freight and general purpose vehicles throughout
 15 the duration of the day on Northwest Leary Way and
 16 Shilshole Avenue Northwest. And it's showing
 17 when a.m. peak period occurs and the p.m. peak
 18 period. And the red line shows general purpose
 19 vehicles and their volume throughout the day. And
 20 the blue bars are the freight vehicles and their
 21 volume throughout the day.
 22 Q. So again, I want to understand why. It
 23 looks like freight traffic might be higher in
 24 relationship to just freight traffic during the
 25 middle of the day. Why is it that the delay that

Page 908

1 they would experience would still be greatest during
 2 the p.m. peak?
 3 A. Because they have to compete with other
 4 modes that have their highest volume during that
 5 day, which is what's creating the delay for the
 6 freight vehicle.
 7 Q. And would you describe using the p.m.
 8 peak as a worst-case scenario for assessing that
 9 delay?
 10 A. Yes. I would, and just to sort of
 11 describe how we determine what our peak period is,
 12 it does depend on the specifics of that project.
 13 So, for example, I've worked on other projects where
 14 we use the peak period was 12 to 1 p.m., the middle
 15 of the day because it was a retirement community and
 16 that was when traffic volumes were highest. But
 17 because we evaluated the data during our methodology
 18 development for this project and came to the
 19 conclusion that traffic volumes and non-motorized
 20 volumes and other transportation modes in the study
 21 area are higher, that would have been the time
 22 period that would provide us with the worst-case
 23 scenario.
 24 Q. And again, is that standard practice in
 25 your profession?

Page 909

1 A. Yes.
 2 Q. Okay. Another or Ms. Hirschey's
 3 contentions was
 4 that -- if the FEIS fails to disclose any of the
 5 risks associated with the contraflow movements of
 6 non-motorized. Is that correct? Do you agree with
 7 that?
 8 A. I don't agree with that.
 9 Q. Where does the -- where does your
 10 analysis discuss those potential risks associated
 11 with the contraflow?
 12 A. We discuss those in the Transportation
 13 Discipline Report.
 14 Q. The same document we were just in?
 15 A. Yes. The same document in chapter 5.
 16 Q. Okay.
 17 A. For the preferred alternative, we could
 18 turn to page 520.
 19 Q. Okay. And can you summarize what's found
 20 here and where it discusses that?
 21 A. Yes. The second paragraph up from the
 22 bottom of the page describes that "Non-motorized
 23 users on the BGT Missing Link would be traveling in
 24 both directions on one side of the street. This
 25 would require vehicles crossing the trails look both

Page 910

1 directions for non-motorized users before continuing
 2 across the trail."
 3 Q. Okay. And does the final EIS also
 4 discuss potential methods of mitigating those risks?
 5 A. Yes. It does.
 6 Q. Can you tell us where?
 7 A. There is some discussion in the following
 8 paragraph. "Trail design features could be" -- oh,
 9 excuse me. This is referring to something else. It
 10 is discussed, I believe at the beginning of the
 11 Transportation Discipline Report in Chapter 1 on
 12 page 1-5. There is a discussion of the different
 13 types of design treatments that could be introduced
 14 to mitigate safety impacts.
 15 Q. Okay. So there was some discussion about
 16 the -- Ms. Hirschey's testimony about safety factors
 17 that she had identified. Are you familiar with
 18 that?
 19 A. Yes. I am.
 20 Q. And did the -- did your analysis discuss
 21 and disclose those -- almost all those safety
 22 factors identified in Ms. Hirschey's memo?
 23 A. Yes. It did.
 24 Q. So does it discuss the number of
 25 signalized and unsignalized intersection crossings?

Page 911

1 A. Yes.

2 Q. Okay. You don't have to turn there, but

3 did we -- can you --

4 A. We have described it -- one location

5 where it exists is in the FEIS in the table we were

6 just discussing. It's also described in the

7 Transportation Discipline Report.

8 Q. Okay. What about the types of driveway

9 use, number of driveways, and driveway sight

10 distance?

11 A. Yes. Described in both the FEIS and the

12 Transportation Discipline Report.

13 Q. And does the -- and did you apply -- and

14 just because you applied those against all of the

15 build alternatives?

16 A. Yes.

17 Q. I want to go back to that table that

18 you're describing earlier on page 129 of the final

19 EIS, which is R-1.

20 A. Okay.

21 MR. BROWER: Which page?

22 MR. KISIELIUS: 129.

23 THE WITNESS: Starts on page -- yeah.

24 129.

25 BY MR. BROWER:

Page 912

1 Q. Notice you were describing that earlier

2 and you talked about the different alternatives. I

3 notice it didn't discuss the no build alternative.

4 Did you discuss -- or excuse me. Did you analyze

5 safety factors those ones we were just describing as

6 they apply to the no build alternative?

7 A. Yes. I did.

8 Q. Okay. And where would that be found?

9 A. That is in Chapter 5 of the

10 Transportation Discipline Report under the no build

11 section.

12 Q. Okay. And did you analyze how the safety

13 factors compared under the build -- excuse me. What

14 was your general -- how did you do that?

15 A. Evaluate -- how did I evaluate the no

16 build?

17 Q. Yes. As compared to the -- yes. As you

18 evaluate no build against those safety factors.

19 A. I reviewed the safety of those -- I guess

20 I'm confused about what you're asking.

21 Q. Well, why don't you point us to where it

22 is --

23 A. Sure.

24 Q. -- and the analysis there. Again, I

25 don't want to belabor it.

Page 913

1 A. So in the Transportation Discipline

2 Report, the discussion of the no build alternative

3 starts on page 5-1.

4 Q. Okay.

5 MR. KISIELIUS: And that's R-3 for the

6 record.

7 BY MR. KISIELIUS:

8 Q. So just the last couple of questions

9 about analysis in the final EIS and in your

10 Transportation Discipline Report. There was some

11 testimony and discussion about what was referred to

12 as a "new segment" portion of the preferred

13 alternative. Are you familiar with that segment?

14 A. I am familiar with what's been referred

15 to as the "new segment."

16 Q. And can you describe what that is?

17 A. Yes. And I think there is a graphic that

18 might help illustrate that and it's in the

19 Transportation Discipline Report.

20 MR. KISIELIUS: R-3 for the record.

21 THE WITNESS: If we turn to page 1-2,

22 there's a figure titled Figure 1-1, "proposed

23 alternatives."

24 BY MR. KISIELIUS:

25 Q. Okay. And which portion are we focused

Page 914

1 on?

2 A. The segment that's being referred to as

3 the "new segment" is an area that's shown in red

4 dots just south of Northwest Market Street. And

5 then the further edge is where it connects to the

6 blue Shilshole South alternative line.

7 Q. Okay. I'm going to ask you a couple

8 questions about that -- the testimony related to

9 that segment. There was some discussion about the

10 use of the mixing zone on the intersection of Market

11 and Shilshole.

12 A. Yes.

13 Q. Is that concept -- I think it was called

14 uncommon or potentially dangerous. Is the use of a

15 mixing zone supported by any studies or design

16 manuals?

17 MR. BROWER: Objection. She's not a

18 traffic engineer, and there's no foundation that

19 she's even used a mixing zone before. So lack of

20 foundation.

21 THE HEARING EXAMINER: Use a what?

22 MR. BROWER: Used a mixing zone

23 before.

24 MR. KISIELIUS: I was about to ask her

25 if she was familiar with the concept and if it --

Page 915	Page 917
<p>1 and starting with where it comes from, but I can ask 2 her if she's familiar with the concept first. 3 THE HEARING EXAMINER: That -- I don't 4 see that. 5 BY MR. KISIELIUS: 6 Q. Are you familiar with what I'm referring 7 -- 8 THE HEARING EXAMINER: Sustained. 9 MR. KISIELIUS: I'm sorry. I need -- 10 BY MR. KISIELIUS: 11 Q. Are you familiar with the concept of a 12 mixing zone? 13 A. Yes. I am familiar. We have a similar 14 situation on the East Side Rail Corridor, which I 15 evaluated as part of that project. 16 Q. Okay. And what is that, generally, the 17 concept of a mixing zone? 18 A. The concept is an area where there is 19 non-motorized traffic traveling in different 20 directions, perhaps in a -- what we might call 21 congested non-motorized environment. 22 Q. Okay. And are you aware of whether that 23 concept is supported by studies or design manuals? 24 A. I am aware. 25 Q. Okay. Is it?</p>	<p>1 Q. I can help you. Can you go to 115? 2 A. Yes. Go to -- 3 Q. 1-15. 4 A. Okay. I'm at 1-15. 5 Q. Can you tell us what we're looking at 6 here? 7 A. This is an illustration of the potential 8 trail and what it might look like. Provides some 9 information on different features of that. One of 10 the things that it is pointing to is a mixing zone 11 at the corner of 24th Avenue Northwest and Northwest 12 Market Street encourages bicycle traffic at a 13 congested location. 14 Q. I want to ask you a couple questions just 15 generally. We've talked about a lot of different 16 things today. But have you heard anything in the 17 opponent's testimony that causes you to question any 18 of your conclusions or analysis in the final EIS? 19 A. No. 20 Q. Do you believe you used reasonable and 21 standard methods of your profession to assess and 22 disclose the potential traffic impacts of this 23 project? 24 A. Yes. I do. 25 Q. Is the person responsible for the</p>
Page 916	Page 918
<p>1 A. Yes. 2 Q. Okay. Can you tell us which ones? 3 A. NACTO and AASHTO provide information on 4 that. 5 Q. Okay. Do you recall Mr. Bishop's 6 testimony that the intersections features were not 7 clearly identified in the final EIS? 8 A. Yes. 9 Q. I'm going to ask you to point to the 10 locations there. Can you turn to page 129 of the 11 final EIS? 12 MR. KISIELIUS: That's R-1. That's 13 1-29. I apologize. 1-29. Not 129. 14 THE WITNESS: Yes. I'm there. 15 BY MR. KISIELIUS: 16 Q. Is it addressed there? 17 A. Yes. 18 Q. Can you tell us where? I'm sorry. 1-30. 19 A. It's actually addressed on page 1-3-0, 20 1-30. 21 Q. Is it depicted anywhere in the? 22 A. Yes. 23 Q. Can you tell us where? 24 A. I can. Let me double-check where it's 25 located.</p>	<p>1 Transportation Discipline Report, and for authoring 2 the Transportation Impact Analysis, do you think 3 that the EIS adequately disclosed traffic impacts 4 including traffic safety? 5 A. Yes. I do. 6 Q. And do you think that the EIS adequately 7 disclosed those traffic impact concerns -- those 8 traffic impact concerns that were specifically 9 raised by the opponents? 10 A. Yes. I do. 11 Q. So even after hearing all that testimony, 12 do you stand behind the conclusions in the EIS that 13 you helped prepare? 14 A. I do. 15 Q. Thank you, Ms. Ellig. I don't have 16 questions for you. 17 A. Welcome. 18 MR. COHEN: I have one or two 19 potential questions. Could I have one minute to 20 confer with the City lawyers? I want to make sure 21 that I'm -- you know. 22 THE HEARING EXAMINER: Okay. 23 (Pause in proceedings.) 24 MR. COHEN: No questions, Your Honor. 25 THE HEARING EXAMINER: Okay. And just</p>

Page 919

1 to confirm, going forward with the City's witnesses,
 2 order of cross then, are we doing Intervenor first
 3 or how are you wanting to do that?
 4 MR. BROWER: I was thinking that and I
 5 nodded to Mr. Cohen, that since they're on the same
 6 side they would do their direct first and then we
 7 would do our cross.
 8 THE HEARING EXAMINER: This is a
 9 direct witness for everybody?
 10 MR. BROWER: Yes.
 11 THE HEARING EXAMINER: All right.
 12 MR. COHEN: That's fine, Your Honor.
 13 THE HEARING EXAMINER: Okay. I just
 14 wanted to make sure that we do it consistently. I
 15 don't think it matters which order.
 16 CROSS-EXAMINATION
 17 BY MR. BROWER:
 18 Q Good afternoon, Ms. Ellig. It is
 19 Ms. Ellig, isn't it?
 20 A. Yes. It is.
 21 Q. I believe I heard you say earlier today
 22 that you have five years of experience. Is that
 23 correct?
 24 A. I have five years' experience with
 25 Parametrix, yes.

Page 920

1 Q. Could you go to R-1, please?
 2 A. Could you -- what is our --
 3 Q. That's the final EIS. Sorry. And that's
 4 five years of experience with Parametrix as we sit
 5 here today?
 6 A. Yes.
 7 Q. So if you would turn to page 13-3 of the
 8 final EIS, which is R-1? Do you see that?
 9 A. I do see that.
 10 Q. And do you see that you're listed as one
 11 of the authors under the Transportation Section?
 12 A. I do.
 13 Q. And it says that as of May 2017, you had
 14 six years of relevant experience?
 15 A. Yup.
 16 Q. And didn't the draft EIS, which was
 17 issued a year earlier also said you had six years?
 18 A. I don't recall what the draft EIS said.
 19 Q. So the additional year you're counting
 20 your extern and internships before working at
 21 Parametrix?
 22 A. As well as my portion of my years as a
 23 Master's of -- of Urban Planning student, yes.
 24 Q. Did anybody at SDOT instruct you to
 25 remove language from your draft Transportation

Page 921

1 Discipline Report?
 2 A. The City of Seattle provided feedback on
 3 our work products.
 4 Q. So is it your testimony here today that
 5 they did not instruct you to remove language about
 6 traffic hazards from your draft Transportation
 7 Discipline Report?
 8 A. I think as I stated in my deposition,
 9 they asked me to remove those words, and as I
 10 answered to you then, I said it was to provide
 11 additional specificity. Those words were removed
 12 and replaced with language about incident response
 13 data. The reason for that was because traffic --
 14 noon traffic hazards seemed like a kind of squishy
 15 word that might be difficult for people to
 16 understand. So we wanted to include language that
 17 had data behind it.
 18 Q. So the answer is yes, you were instructed
 19 --
 20 A. Yes. We removed those words.
 21 Q. Likely given that position, if you could
 22 let me finish and I'll --
 23 A. I do apologize.
 24 Q. Thank you. So the answer is yes, SDOT
 25 did instruct you to remove language about traffic

Page 922

1 hazards?
 2 A. Yes.
 3 Q. So you've mentioned earlier that your
 4 Transportation Discipline Report was peer reviewed.
 5 Is that correct?
 6 A. That's correct.
 7 Q. And it was peer reviewed by Mr. Laprouse?
 8 A. Yes.
 9 Q. And doesn't he also work at Parametrix?
 10 A. He does work at Parametrix.
 11 Q. Is he one of your bosses?
 12 A. He is a colleague of mine.
 13 Q. I mean, he's more senior, isn't he?
 14 A. He is more senior than I am.
 15 Q. And you also mentioned it was peer
 16 reviewed by the City. Is that correct?
 17 A. That's correct.
 18 Q. And -- but the City is your client,
 19 ultimately, isn't it?
 20 A. They are.
 21 Q. Did Parametrix pay a third -- mutual
 22 third party to peer review your Transportation
 23 Discipline Report?
 24 A. Not that I am aware of.
 25 Q. I believe you said you've worked on four

Page 923

1 EISs in your career?
 2 A. Four in addition to the Burke-Gilman
 3 Trail and Missing Link EIS, yes.
 4 Q. So five total?
 5 A. Correct.
 6 Q. And I think you said three of them
 7 related to bicycle facilities?
 8 A. Including the Burke-Gilman Trail, yes.
 9 Three relate to bicycle facilities.
 10 Q. And you are not an engineer?
 11 A. I am not an engineer.
 12 Q. And you're not a designer?
 13 A. I am not a designer.
 14 Q. You talked about the interviews that were
 15 conducted with business owners. Do you remember
 16 that?
 17 A. I do remember that.
 18 Q. Were there 11 interviews?
 19 A. I believe I misspoke in the deposition.
 20 There are 16, which are included in the
 21 Transportation Discipline Report in an appendix.
 22 Q. And in your deposition you said you
 23 conducted 8 of the 11. Was that a misstatement or
 24 was that correct?
 25 A. I would need to count in the appendix.

Page 924

1 If you would like me to do that, I can.
 2 Q. It's fine. I think the appendix will
 3 speak for itself.
 4 A. Okay.
 5 Q. And you've never done any transit design
 6 work, have you?
 7 A. No.
 8 Q. And it's also correct that you didn't
 9 actually visit the study area until after the draft
 10 EIS was issued, did you?
 11 A. No. I did live in the study area for two
 12 years while I was a student at the University of
 13 Washington. Regularly drove through the study area
 14 and cycled both city streets in that area as well as
 15 the Burke-Gilman Trail on my way to the University.
 16 Q. But you didn't look at any of the
 17 driveways before -- in a professional capacity
 18 before the draft EIS was issued, did you?
 19 A. Not in the field, but through video and
 20 Google Earth, which I believe other testimony has
 21 discussed as well by your witnesses. So there was
 22 field work that was completed. It wasn't
 23 necessarily physical.
 24 Q. And those -- isn't it correct, yes or no,
 25 that the interviews you conducted, and I think you

Page 925

1 said there's 16 of them were conducted in September
 2 of 2016?
 3 A. I believe that was around the time when
 4 they were conducted; maybe October as well. The
 5 dates are on the interviews in the appendix of the
 6 Transportation Discipline Report.
 7 Q. You mentioned the video data of the
 8 traffic. Wasn't that gathered in October or
 9 November or December, I think, of 2016?
 10 A. I'd have to look at the EIS. Would you
 11 like me to do that?
 12 Q. Please.
 13 A. Okay. So I am looking at Table 4-1 in
 14 the Transportation Discipline Report.
 15 MR. BROWER: And just for the record,
 16 that's R-3.
 17 BY MR. BROWER:
 18 Q. And can you tell us what page that's on?
 19 A. Yes. 4-7.
 20 Q. Okay.
 21 A. And in that table there are collection
 22 dates for the count locations.
 23 Q. But do those differentiate between the
 24 video count and the other counts?
 25 A. They do not differentiate, although the

Page 926

1 video counts were taken in November of 2016,
 2 December of 2016, and February of 2017.
 3 Q. Do you remember that November of 2016 was
 4 exceptionally rainy?
 5 A. I don't remember off the top of my head.
 6 Q. Did you ever talk to Mr. Nerdrum about
 7 whether that weather impacted the level of his
 8 business activity?
 9 A. When I spoke to the various driveway
 10 owners, I did ask them if there were particular
 11 times of the year that were busier, and if there was
 12 a specific time to take counts. I specifically
 13 spoke to Warren Acrovick as well, and he requested a
 14 specific timeframe for when we take those counts.
 15 Q. That wasn't my question. My question is
 16 did you speak to Mr. Nerdrum in or around or after
 17 November 2016 to determine whether that weather
 18 system that was impacting our region in any way
 19 impacted the level of activity at his business that
 20 you observed by watching those videos?
 21 A. I did not ask Mr. Nerdrum about the
 22 weather activity, no.
 23 Q. And you didn't personally conduct any of
 24 the bicycle or pedestrian counts, did you?
 25 A. No.

Page 927

1 Q. Did you ask Mr. Nerdrum if the p.m. peak
 2 used is the -- is when the actual freight-traffic
 3 volumes for his business Salmon Bay Sand and Gravel
 4 is at its highest?
 5 A. I asked him when the busiest times were
 6 for his business operations, and if I could go to
 7 the appendix and read his response?
 8 A. Actually, your Counsel may want to
 9 redirect you on that. My question is did you ask
 10 Mr. Nerdrum if the p.m. peak hour used is when the
 11 actual freight traffic volumes are highest at his
 12 business. Yes or no?
 13 A. I don't believe I did.
 14 Q. Of the 16 businesses that -- and again,
 15 you didn't do all those interviews yourself, did
 16 you?
 17 A. No. I did not do all of them myself.
 18 Q. And Mr. Masick (ph) helped you?
 19 A. That's correct.
 20 Q. And they were primarily conducted by
 21 phone?
 22 A. That is correct.
 23 Q. And weren't they primarily located on
 24 Northwest 54th Street and Shilshole?
 25 A. No. That is not correct.

Page 928

1 Q. Isn't that what you told me during your
 2 deposition?
 3 A. I may have misremembered. I believe we
 4 also talked about the fact that there were
 5 interviews conducted on Shilshole as well as North
 6 45th Street.
 7 MR. BROWER: Mr. Examiner. I'm going
 8 to unseal her deposition cuts, okay? (Pause.)
 9 THE WITNESS: Thank you.
 10 BY MR. BROWER:
 11 Q. Ms. Ellig, would you please read the
 12 highlighted language that I've marked on page 35 of
 13 your deposition that starts at line 21 and goes to
 14 25?
 15 A. Yes. You asked a question: "Do you know
 16 if those 11 businesses were spread out along the
 17 entire length of the Missing Link or were they
 18 concentrated in one or more areas?" I responded
 19 "They were primarily located on Northwest 54th
 20 Street in Shilshole" and I believe I provided --
 21 Q. Ms. -- that's all I asked you. Thank you
 22 very much. You talked during your direct testimony
 23 about the driveways that were reviewed and analyzed
 24 in the FEIS. Is that correct?
 25 A. Yes. That's correct.

Page 929

1 Q. And were there 44 of those?
 2 A. Yes.
 3 Q. But those aren't all the driveways within
 4 the study area, are they?
 5 A. No. There are more driveways within the
 6 study area than the 44 that data was collected for.
 7 Q. How were those 44 driveways selected?
 8 A. Those were selected to include a range of
 9 different land uses and traffic volumes as well as a
 10 variety of locations on each of the alternatives.
 11 Q. But you didn't actually ask any of the
 12 businesses what trucks actually come and go from
 13 their businesses, did you?
 14 A. As part of the interviews, I asked them
 15 for information on what types of trucks come and go
 16 from their businesses.
 17 Q. For the 16 businesses that were
 18 interviewed?
 19 A. That's correct. The remaining were
 20 collected through counts.
 21 Q. And some of those counts are "tube
 22 counts" I think you called them? Little strips that
 23 you drive over on the road?
 24 A. Those are the segment counts. The
 25 turning-movement counts were collected through video

Page 930

1 data.
 2 Q. In November of 2016?
 3 A. That's correct.
 4 Q. After the draft EIS was issued?
 5 A. Yes.
 6 Q. (Pause.) Could you go back to the
 7 Transportation Discipline Report which is R-3,
 8 please?
 9 A. Sure.
 10 Q. And if you'd look at page 4-7 which is
 11 Table 4-1?
 12 A. Okay.
 13 Q. You say that the Salmon Bay Sand and
 14 Gravel has, which I believe is driveway number --
 15 listed as driveway number 9?
 16 A. Yes.
 17 Q. How does this tell a reader that it has
 18 four driveways and a loading dock?
 19 A. This particular part does not tell
 20 whether there are four driveways and a loading dock.
 21 Q. But this is the list -- the list of
 22 driveways where weekday turning movement count
 23 locations and dates were conducted?
 24 A. It's a table summarizing that
 25 information.

Page 931

1 Q. If you would turn to page 5-11 of R-3?
 2 A. Okay.
 3 Q. I believe your testimony was that at a
 4 10-percnet level of design it's your opinion that
 5 you had sufficient design information to disclose
 6 all of the potential impacts from the propose
 7 project. Is that correct?
 8 A. Yes.
 9 THE HEARING EXAMINER: Mr. Brower, was
 10 that 5-11 or 5 --
 11 MR. BROWER: 5-11 --
 12 THE HEARING EXAMINER: Thank you.
 13 MR. BROWER: -- of R-3.
 14 BY MR. BROWER:
 15 Q. So on page 5-11 under Section 5.3.2.1,
 16 which is called the Roadway Network, the second
 17 paragraph, the second sentence says, "The facility
 18 would be a 10 to 12-foot wide width."
 19 Well, which is it? Is it going to be 10
 20 or 12?
 21 A. The design drawings, for which I did the
 22 primary piece of my impacts analysis include a
 23 12-foot trail. I believe those are the CAD drawings
 24 for which your team did the AutoTURN analysis from.
 25 Q. Then why does it say that it's going to

Page 932

1 be a 10 to 12-foot wide trail here?
 2 A. This is a standard thing that we include
 3 in EISs just to provide some generality --
 4 Q. Wouldn't it --
 5 A. -- in case the design may change later
 6 on.
 7 Q. So when you say "we," who's the "we"?
 8 A. Again, I'm referring to my Parametrix
 9 team.
 10 Q. And that's based on the five EISs you've
 11 worked on?
 12 A. The team that I worked with?
 13 Q. No. You said "we" do this as a standard
 14 basis. So that's based -- and you've only worked on
 15 five EISs, correct?
 16 A. That's correct. I have worked on five
 17 EISs.
 18 Q. Okay. So but if you had a 12-foot -- if
 19 you had design drawings showing 12 feet wide, then
 20 this is incorrect, isn't it?
 21 A. I don't believe it's incorrect. Again,
 22 it's a general statement to provide information to a
 23 lay person. It may change with further design.
 24 It's a standard way of describing projects like
 25 these.

Page 933

1 Q. What is that standard based on?
 2 A. What is the standard based on? Could you
 3 repeat the question?
 4 Q. You say it's a standard way of describing
 5 things. Is there a guideline or a rule that you can
 6 cite to that says this is how we do it in an EIS?
 7 A. No. It's based on my professional
 8 judgment.
 9 Q. It goes on to say that it will have a 1
 10 to 10-foot wide buffer. That's quite a discrepancy
 11 Is it 1 foot to 10 feet?
 12 A. I'd have to look at the design.
 13 Q. So what's it going to be? 1 or 10 feet?
 14 A. I believe for the majority of the trail,
 15 it's five feet.
 16 Q. And how do you know --
 17 A. I would need to review the design.
 18 Q. I apologize. I didn't mean to cut you
 19 off.
 20 A. Okay.
 21 Q. And so based on the 10-percent design, do
 22 you know what it's going to be?
 23 A. Yes. I do. If I had the design
 24 drawings, I would be able to tell you.
 25 Q. So at 10-percent design you can

Page 934

1 definitely state what it will be at 100-percent
 2 design?
 3 A. I am not a designer, so I'm not sure I
 4 can answer that question as we have established.
 5 Q. So it could change?
 6 A. It could change, yes.
 7 Q. If you would turn to page 517 of R-3,
 8 please?
 9 A. Sure. About midway down that page in the
 10 third full paragraph, the second to last sentence
 11 reads, "Also" -- excuse me. "Although some
 12 driveways could experience additional delay compared
 13 to the no build alternative" --
 14 THE HEARING EXAMINER: I apologize
 15 again, Mr. Brower. What page are we on?
 16 MR. BROWER: Certainly. 5-17.
 17 THE HEARING EXAMINER: Thank you.
 18 MR. BROWER: I even waited thinking we
 19 were all there.
 20 BY MR. BROWER:
 21 Q. So about midway down the third full
 22 paragraph there's a sentence that starts "Although
 23 some driveways could experience additional delay
 24 compared to the no build alternative this delay
 25 would not be considered a significant impact because

Page 935

1 this additional delay, while inconvenient would not
 2 be expected to become severe enough to substantially
 3 effect freight operations. And then you cite the
 4 ECONorthwest 2016." Is that correct?
 5 A. That's correct.
 6 Q. And you wrote this report in April 2017?
 7 A. Yes.
 8 Q. And --
 9 A. I believe so.
 10 Q. And which version of the Environmental
 11 Considerations Report is this statement based on?
 12 The first version in January 2016 or the final
 13 version in the draft EIS?
 14 A. I believe it's based on the final
 15 version, but I am not completely sure at this exact
 16 moment. But this, I believe, refers to the final
 17 version of that report.
 18 Q. Did you see the January 2016 version of
 19 the ECONorthwest Report?
 20 A. I don't believe that I did.
 21 Q. Were you here for the prior testimony
 22 about that report?
 23 A. No. I was not.
 24 Q. If the results in the January 2016
 25 ECONorthwest were different than the results in the

Page 936

1 final ECONorthwest, would that impact analysis?
 2 A. Again, I would have to have read both of
 3 those, and I cannot recall at this time. I'm also
 4 not an economic planner, so I would have limited
 5 ability to speak to those conclusions.
 6 Q. But you made a conclusion here
 7 definitively stating that "while inconvenient would
 8 not be expected to become severe enough" based on
 9 that report?
 10 A. Yes.
 11 Q. So you felt comfortable enough to make
 12 statement using the word "would" instead of "could"
 13 based on your experience?
 14 A. Yes. I did.
 15 Q. Okay. And what's the differential impact
 16 of -- between using "would" and "could"? Do you
 17 remember when we discussed this in your deposition?
 18 A. I briefly remember we discussed this.
 19 Q. And do you remember what -- what's your
 20 opinion on that differential? Why would you use
 21 "would" versus "could"?
 22 A. It depends on the context. "Would" and
 23 "could", "may" are standard vocabulary that we use
 24 in EISs, because again, none of the build
 25 alternatives actually exist. So when we're

Page 937

1 describing them in the text we typically use that
 2 type of word to describe it.
 3 Q. So in the five EISs you've worked on in
 4 your five years at Parametrix, and you didn't work
 5 on any EISs before you were at Parametrix, did you
 6 A. That's correct. I did not.
 7 Q. So your entire experience opining about
 8 the adequacy and sufficiency of an EIS is based on
 9 your work at Parametrix?
 10 A. That's correct.
 11 Q. Have you ever seen an EIS that concludes
 12 that there will not be a significant impact of any
 13 kind from the project?
 14 A. I believe I have.
 15 Q. Which one was that?
 16 A. I can't give you a name. I don't
 17 remember at this exact point.
 18 Q. So out of the five you've worked on, you
 19 can't remember which one it was?
 20 A. I don't remember out of the five that I
 21 worked on whether or not there were any that had no
 22 significant impacts --
 23 Q. Did you ever write it --
 24 A. -- without looking at them.
 25 Q. Have you ever -- so have you written four

Page 938

1 other Transportation Discipline Reports in your
 2 career?
 3 A. I have written three and provided
 4 analysis for others.
 5 Q. Did any of those conclude there would be
 6 no significant impacts from the project?
 7 A. I think I answered that already.
 8 Q. No. You didn't. I'm asking a different
 9 question. The first question was whether the EIS
 10 concluded it. This question is whether your report
 11 said there was no significant impacts.
 12 Q. Again, if I was able to look at those
 13 reports, I would be able to definitively answer yes
 14 or no to that question. But at this time I don't
 15 remember off the top of my head whether there were
 16 significant impacts in the Transportation Discipline
 17 Reports for which I participated in.
 18 Q. But you've only written three other ones,
 19 and you can't remember out of those three?
 20 MR. KISIELIUS: Mr. Examiner,
 21 objection. Asked and answered now three times.
 22 THE HEARING EXAMINER: Sustained.
 23 BY MR. BROWER:
 24 Q. Turning to the next page, page 5-18, you
 25 highlighted a -- you focused on a sentence on that

Page 939	Page 941
<p>1 page where it says "On average, trail users could 2 have to wait 15 to 25 seconds for a vehicle to clear 3 the trail." 4 A. That's correct. 5 Q. Why did you say "could" there instead of 6 "would"? 7 A. I said "could" there because at certain 8 times there will not be a vehicle sitting across the 9 trail blocking non-motorized traffic from traveling 10 through. 11 Q. So going back to the prior page where you 12 said "would" not be expected to become severe 13 enough, what's the -- do you have any empirical data 14 to support that there would never be instead of 15 "could" be severe economic impacts? 16 A. Again, I am -- can't speak for the 17 economic analysis. I don't have that expertise. 18 Q. But you wrote that sentence, didn't you? 19 A. I wrote that sentence, and it was in 20 conjunction with the other authors of the reports, 21 yes. 22 Q. Did you question why you were using the 23 word "would" versus "could"? 24 A. No. 25 Q. Did you hear Mr. Anderson's testimony</p>	<p>1 will not be removed? 2 Q. Yes. 3 A. I do believe that there will be piece of 4 track removed. 5 Q. And how do you know that? 6 A. Based on the design. 7 Q. Is that the 10-percent design? 8 A. I believe that's what we are calling 9 10-percent design, yes. 10 Q. So somewhere in this document is shows a 11 piece of rail siding being removed? 12 A. I believe we discuss it in the impact 13 section, yes. 14 Q. So in your report? 15 A. Uh-huh (affirmative response). 16 Q. Could you find that for me? Show me 17 exactly where the rail will be removed? 18 A. I don't describe exactly where it will be 19 removed. It's included in the design drawings. It 20 does show that. 21 Q. Got it. So it's a "could." And do you 22 know which sections are no longer used? 23 A. I believe the sections that are to the 24 north of the sections where there are currently 25 train cars stored.</p>
Page 940	Page 942
<p>1 from CSR? 2 A. Yes. I did. 3 Q. Didn't he say that his Lowboy trucks will 4 cause far more than 15 to 25 seconds of delay? 5 A. He did say that. 6 Q. But you didn't -- nobody interviewed him, 7 did they? 8 A. I interviewed Ballard Mill Marina for 9 which is where CSR Marina's located. 10 Q. But it's not the same business is it? 11 A. It is not the same business. 12 Q. So the answer is no, you did not 13 interview CSR. 14 A. I did not interview CSR. 15 Q. Turning the next page on 5-19, under 16 Freight Rail Impacts, the second sentence reads 17 "This could include removing pieces of siding or 18 passing rail" -- moving past the parenthetical, 19 "that are no longer used or relocating track to 20 allow additional right-of-way space for the trail." 21 Do you see that? 22 A. I do see that. 23 Q. Do you know whether they will or will not 24 be removed? 25 A. Do I know whether pieces of track will or</p>	<p>1 Q. So the section to the north of where the 2 trains cars are stored? 3 A. Closer to Shilshole, I believe, based on 4 my recollection. 5 Q. And what -- so are these the -- are we 6 talking about the rail tracks on 45th? 7 A. No. We're talking about the rail tracks 8 along Shilshole Avenue. 9 Q. And all this information is based on a 10 conversation with Mr. Cole? 11 A. As well as information included in the 12 design. 13 Q. But specifically, which tracks are used 14 or not used would be only based on a conversation 15 with Byron Cole? 16 A. I don't remember if Byron Cole discussed 17 that or not. I'd have to review the notes. 18 Q. So what's the basis for knowing whether 19 these tracks are used or not? 20 A. The basis is, I believe, information on 21 the driveway. We collected some information on the 22 driveway video where we could describe that and see 23 that. 24 Q. So you're saying that you took video of 25 driveways, but based on that you can tell whether</p>

Page 943

1 the rail track is use or not?
 2 A. Yes.
 3 Q. And how can you tell that?
 4 A. In the driveway video that I reviewed,
 5 and I will specifically speak about the location in
 6 front of Salmon Bay Sand and Gravel, there are rail
 7 cars that are stored there and moved around with
 8 forklifts by employees of Salmon Bay Sand and
 9 Gravel.
 10 Q. They're towed by a forklift?
 11 A. That is correct.
 12 Q. Okay. And so, that's the entire basis
 13 for this? You saw some video taken in one month in
 14 November of 2016 and you concluded that there are
 15 rail tracks that are no longer used?
 16 A. That and -- yes. Yes.
 17 Q. Let's move down to the next section on
 18 that page.
 19 A. Okay.
 20 Q. Safety. It says "The preferred
 21 alternative would improve safety for non-motorized
 22 users and motor vehicles in the study area." Is
 23 that "would" based on any empirical studies or data?
 24 A. That "would" is based on my analysis of
 25 the no build condition compared to the build

Page 944

1 condition.
 2 Q. So during your deposition I asked you if
 3 you had read any of the current literature on
 4 bicycle safety and trail design safety. Do you
 5 remember that?
 6 A. I believe I do.
 7 Q. And you told me that you thought you
 8 remembered it, but you couldn't remember what it was
 9 and when you read it?
 10 A. That's correct.
 11 Q. Have you -- do you still have that same
 12 memory that you can't remember what you read or when
 13 you read it?
 14 A. No. I do not still have that same
 15 memory.
 16 Q. And why is that?
 17 A. Because I reviewed the documents again to
 18 refresh my memory on what they were called.
 19 Q. Did the City attorney ask you to do that?
 20 A. No.
 21 MR. KISIELIUS: Objection.
 22 MR. BROWER: I -- not asking for what
 23 the City attorney said. I'm just was asking whether
 24 they asked.
 25 MR. KISIELIUS: It's still privileged

Page 945

1 conversation.
 2 MR. BROWER: With an expert, this gets
 3 right back into what we're talking about here.
 4 THE HEARING EXAMINER: She's directed
 5 to do that, so I'd actually overrule it. If she was
 6 directed to do it.
 7 BY MR. BROWER:
 8 Q. So did the City attorney ask you to do
 9 that?
 10 A. No.
 11 Q. And now that you refreshed your memory,
 12 what did you review?
 13 A. NACTO and AASHTO guidelines.
 14 Q. I was asking whether you read any
 15 literature and maybe I could be more clear -- any of
 16 the studies that have been written and published
 17 over the last 20 years that talk about the inherent
 18 unsafe conditions created by a side path. Have you
 19 read any of that -- those studies?
 20 A. No.
 21 Q. Have you read any studies that talk about
 22 the fact that a side path is two to three times more
 23 dangerous than riding in the roadway?
 24 A. I've read the materials that --
 25 Q. The question is a yes or no.

Page 946

1 A. -- Claudia Hirschey provided and that was
 2 part of it.
 3 Q. Okay. So that's a yes. I guess I will
 4 ask you a yes or no question. Yes or no, have you
 5 read any of the studies that talk about the fact
 6 that riding on a contraflow side path is two to
 7 three times more dangerous than riding in the road?
 8 A. Yes.
 9 Q. And that was in Ms. Hirschey's report?
 10 A. Yes.
 11 Q. So you read that after the EIS was
 12 written?
 13 A. I did read that particular one after the
 14 EIS was written.
 15 Q. And that's after the FEIS was written?
 16 A. Yes.
 17 Q. Have you read any of the literature that
 18 talks about the increased risk of conflict points
 19 created by contraflow side paths located to -- next
 20 to a roadway other than in Ms. Hirschey's report?
 21 A. No.
 22 Q. So going back to 5-19, "the preferred
 23 alternative would improve safety," it's not based on
 24 any of that literature?
 25 A. No. Again, it's based on my analysis of

Page 947

1 the no build alternative compared to the build
 2 alternative.
 3 Q. Have you ever done a safety analysis?
 4 A. Yes.
 5 Q. And what -- where did you do that for?
 6 A. As part of EISs.
 7 Q. So those would be the five you've written
 8 in your career?
 9 A. Correct.
 10 Q. And which ones did you do that for?
 11 A. There was a safety analysis that was
 12 conducted as part of the Alaskan Way Promenade
 13 Overlake Walk EIS. We discussed safety regularly in
 14 our other EISs. The ERC Masterplan EIS, I believe,
 15 discusses safety. Safety is part of the Redmond
 16 Link EIS, and I believe safety is also discussed in
 17 the Soto Reunite EIS, which I helped prepare.
 18 Q. But you don't have any specific training
 19 in safety or safety methodology, do you?
 20 A. Beyond what I've received as an employee
 21 at Parametrix, no.
 22 Q. And, again, you're not an engineer or a
 23 designer?
 24 A. Again, I am not an engineer or a
 25 designer.

Page 948

1 Q. So in the Alaskan Way Promenade, what
 2 type of safety analysis was conducted?
 3 A. It was similar to the analysis that was
 4 completed for this project. We reviewed existing
 5 crash data to provide a base lien and then
 6 evaluated the design for any changes to safety as
 7 part of the build conditions.
 8 Q. Were any safety sight-distance analysis
 9 conducted for the Alaskan Way Viaduct Promenade
 10 Project?
 11 A. No.
 12 Q. And none were actually conducted here,
 13 were they?
 14 A. A detailed sight-distance analysis was
 15 not conducted here.
 16 Q. And, in fact, if you go back to that page
 17 5-19 in R-3, the last paragraph, the bullet point
 18 says, "Although the preferred alternative would
 19 improve overall safety compared to the no build
 20 alternative, there is potential for some new impacts
 21 depending on the final design. And it goes on to
 22 list those potential impacts of the sight-distance
 23 concern. So whether there's sight distance concerns
 24 or not is going to depend on final design?
 25 A. Sight distance can be altered in final

Page 949

1 design from my understanding of what occurs in a
 2 design process. But what I am discussing here is
 3 the potential for there to be a sight-distance
 4 issue, which I don't need to complete a detailed
 5 sight-distance analysis to document.
 6 Q. Just to say that there could be some?
 7 A. Yes. There could be some as a potential
 8 impact.
 9 Q. Okay. But you did say that the preferred
 10 alternative would improve overall safety, but you
 11 haven't done the sight-distance analysis. You're
 12 going to -- could do that?
 13 A. The preferred alternative, again, would
 14 improve safety in my professional judgment compared
 15 to the no build condition which is what I described
 16 here.
 17 Q. But again, you've never read any of the
 18 literature about side paths and the inherent --
 19 well, let me ask you a different question. Have you
 20 ever read a study that shows you can design away the
 21 two to three times or more dangerous condition
 22 created by a contraflow bike path located next to a
 23 roadway?
 24 MR. KISIELIUS: Objection,
 25 Mr. Examiner. Embedded in Mr. Brower's question is

Page 950

1 a statement about a truism that I'm not sure is
 2 supported by the record.
 3 MR. BROWER: It's exactly what
 4 Ms. Hirschey testified to and it's what is --
 5 THE HEARING EXAMINER: What's the
 6 truism? What is that?
 7 MR. KISIELIUS: That there is a --
 8 that that -- his question implied mitigating away
 9 the inherent two to three times -- the way he said
 10 it I think was inconsistent with her testimony.
 11 THE HEARING EXAMINER: Inconsistent
 12 with --
 13 MR. KISIELIUS: Ms. -- he's --
 14 THE HEARING EXAMINER: --
 15 Ms. Hirschey's or the current -- you're saying it's
 16 not in the record, right? So --
 17 MR. KISIELIUS: Well, there's several
 18 problems with the question. First is that he's
 19 explaining it rather than his witness has testified
 20 to something, which I'm not sure is an accepted
 21 established fact and not attributing it to his
 22 witness. And it's establishing it as a fact that's
 23 -- and he's not attributing it to her. But
 24 secondly, I think he's also misstating what
 25 Ms. Hirschey said.

Page 951

1 THE HEARING EXAMINER: And what do you
 2 think Ms. Hirschey said? I honestly can't recall at
 3 this point.
 4 MR. KISIELIUS: The two to three times
 5 and he said that definitely two to three times.
 6 MR. COHEN: Actually, Your Honor, I
 7 think it's a little worse than that because he's not
 8 just attributing it to his witness, he's
 9 characterizing it as a known fact documented in a
 10 bunch of studies that his witness may have read and
 11 may have drawn conclusions about. But they are
 12 either not in the record or are contain a number of
 13 statements that she should not have to accept as a
 14 premise for her testimony.
 15 MR. KISIELIUS: He's not talking about
 16 what his witness said, he's talking about --
 17 MR. BROWER: May I respond?
 18 MR. KISIELIUS: -- the accepted view
 19 of --
 20 THE HEARING EXAMINER: Yes.
 21 MR. KISIELIUS: -- the world.
 22 MR. BROWER: No. I'm actually
 23 accurately characterizing Ms. Hirschey's testimony
 24 which Ms. Ellig sat through and listened to all of
 25 it. But the easy way to talk about this is it's

Page 952

1 exactly what the Boulder Bicycle Report, which is
 2 part of the record says. So I'm just reciting --
 3 I'm asking this witness if she's read anything to
 4 contradict what the Boulder --
 5 THE HEARING EXAMINER: I'll ask you to
 6 clarify.
 7 MR. BROWER: Certainly.
 8 THE HEARING EXAMINER: If you could
 9 just simply clarify it, that you're speaking --
 10 you're addressing this through -- in the context of
 11 your witness's testimony, --
 12 MR. BROWER: Certainly.
 13 THE HEARING EXAMINER: Ms. Hirschey,
 14 to the degree that that wasn't clear before, I
 15 believe that's the basis for the objection.
 16 MR. KISIELIUS: Thank you.
 17 BY MR. BROWER:
 18 Q. So, Ms. Ellig, did you hear
 19 Ms. Hirschey's testimony when she was referring to a
 20 study out of Boulder, Colorado that she says and
 21 which I believe the study says, but it speaks for
 22 itself that riding on a contraflow bicycle path is
 23 two to three times more dangerous than riding on the
 24 road? Do you remember that testimony?
 25 A. I heard that testimony.

Page 953

1 Q. Have you read any studies that contradict
 2 that statement?
 3 A. I don't believe I've read any studies
 4 that contradict that particular example in a very
 5 localized area.
 6 Q. Have you ready any studies that
 7 contradict that statement in any non-very localized
 8 area?
 9 A. I don't believe that I personally have.
 10 Q. Going back to safety in R-3 on page 5-19,
 11 the second sentence says "Under this alternative of
 12 dedicated bicycle facility would improve
 13 predictability at conflict points between motor
 14 vehicles and cyclists and reduce the likelihood of
 15 collisions because potential conflict points would
 16 be clearly identified. This, again, is based on a
 17 10-percent level of design. Are all of the design
 18 treatments finalized at 10 percent?
 19 A. I don't believe they are.
 20 Q. And they could change as you get to
 21 30-percent design?
 22 A. I believe they could.
 23 Q. But that's not what it says here in this
 24 report. It says they "would" be.
 25 A. Again, compared to the no build

Page 954

1 condition, it is my professional judgment that
 2 providing that facility would do all of those things
 3 that I have described in that section.
 4 Q. How do you know that for sure if you
 5 haven't seen a 30-percent or 40-percent or
 6 60-percent design? What if they don't include those
 7 things in a 30-percent or 40-percent or 60-percent
 8 design?
 9 A. I wouldn't be able to answer that
 10 question without looking at those designs.
 11 Q. So that's exactly the point. You can't
 12 tell until the design is advanced, can you?
 13 A. I can tell that the design that was
 14 included as part of the EIS would do the things that
 15 I have described in that section.
 16 Q. But you don't know if that design's going
 17 to change or not, do you?
 18 A. I have nothing to do with the design.
 19 Q. But again, you don't know -- that's my
 20 question is you don't know if the design is going to
 21 change, do you? Yes or no?
 22 A. I don't know.
 23 Q. So shouldn't you have said it "could"
 24 improve predictability instead of "would"?
 25 A. I don't believe that I would use the word

Page 955

1 "could" instead of "would." I stand by what I wrote
 2 in the EIS.
 3 Q. Going to page 520, on the top of that
 4 page there is a sentence that reads "These
 5 potentially new impacts would be minimized through
 6 detailed review during the trail design process such
 7 as conducting detailed sight-distance reviews at
 8 each driveway, intersection during final design."
 9 And that final design's going to happen outside of
 10 the EIS, isn't it?
 11 A. Yes.
 12 Q. so aren't you saying to the reader,
 13 "Trust us. We'll take care of this."
 14 A. No. Again, I believe I answered earlier
 15 that I don't need to do a detailed sight-distance
 16 review to understand where there may be sight-
 17 distance impacts.
 18 Q. That's exactly my point, Ms. Ellig. You
 19 don't need to do a detailed design to know where
 20 they could be, but don't you need to do a detailed
 21 design to say they would be resolved?
 22 A. A detailed sight-distance review that
 23 would be completed as part of a final design process
 24 would likely be used to help develop the specific
 25 treatments to address that. So the impact, which I

Page 956

1 disclosed as part of the EIS, is here and I don't
 2 need to do a detailed sight-distance review in order
 3 to identify that impact.
 4 Q. So shouldn't you be saying they could be
 5 minimized? You can't guarantee that they will be,
 6 can you?
 7 MR. KISIELIUS: Objection,
 8 Mr. Examiner. It's asked and answered. He's been
 9 at this for quite some time.
 10 THE HEARING EXAMINER: Sustained.
 11 BY MR. BROWER:
 12 Q. Ms. Ellig, let's turn to your interview
 13 notes with
 14 Mr. Nerdrum, which are at the end of R-1.
 15 THE HEARING EXAMINER: Was ready for
 16 it.
 17 MR. KISIELIUS: I think the directions
 18 are R-3.
 19 MR. BROWER: R-3. Excuse me. R-3.
 20 THE HEARING EXAMINER: And this is
 21 Mr. Nerdrum?
 22 MR. BROWER: Is everybody there?
 23 BY MR. BROWER:
 24 Q. Ms. Ellig, on your notes in section 1 it
 25 includes a number of check boxes. It doesn't look

Page 957

1 like any of them are checked, but it does look like
 2 some of the text has been changed to bold and
 3 italics. Is that correct?
 4 A. That's correct.
 5 Q. And is that how you indicated the
 6 responses?
 7 A. Yes.
 8 Q. So do boat transported come to Salmon Bay
 9 Sand and Gravel?
 10 A. That category is describing a number of
 11 different types. So I believe boat transporters,
 12 Lowboys, tankers, busses are what's included in
 13 there.
 14 Q. Could you have just highlighted the word
 15 "tanker"?
 16 A. I could have just highlighted the word
 17 "tanker."
 18 Q. And in this Mr. Nerdrum on -- under
 19 section 8 responds that he has 12 to 15 driveways?
 20 A. Yes.
 21 Q. And but you -- this interview chart
 22 doesn't break down which vehicles visit which of
 23 those 12 to 15 driveways, does it?
 24 A. It does describe some of that
 25 information. If you look under 11 additional

Page 958

1 comments, Mr. Nerdrum provided me with information
 2 on each of the driveways and the activity that
 3 occurs there: notes activity at driveways on both
 4 the south and the north side of Shilshole Avenue
 5 Northwest.
 6 Q. And did you use any of this information
 7 to -- where he said on the south most entrance on
 8 the main building to determine the frequency that
 9 those trucks actually come and go other than this
 10 report other than this interview?
 11 A. We also established that information
 12 using count data that I described earlier.
 13 Q. And the video?
 14 A. Correct.
 15 Q. Have you ever worked with a lead agency
 16 or a client on an EIS where they instructed you to
 17 actually remove language from your draft reports?
 18 A. Clients provide us with feedback on all
 19 of our work products, so, yes, I have worked with
 20 client who have provided that type of feedback to
 21 help make the document more readable.
 22 Q. So they've actually instructed you to
 23 remove language?
 24 A. As I said before, and I believe I said
 25 this during the deposition, language --

Page 959

1 Q. Ms. Ellig, I --

2 A. Language was replaced with another word,

3 so those exact words were removed but replaced with

4 alternative language.

5 Q. And I understand that's what happened

6 here, which you've confirmed. My question is have

7 you worked with

8 another -- let me kind of back up. When you're

9 writing an EIS, who does the consultant normally

10 work for: the lead agency or the project proponent?

11 A. In my experience, I view -- worked for

12 the project proponent, I believe.

13 Q. So isn't it normal that the EIS

14 consultant is supposed to be independent and work

15 for the lead agency?

16 MR. KISIELIUS: Mr. Examiner, I'm

17 going to object to this line of questions. We've

18 already dismissed the issue about the -- what

19 Mr. Brower seems to be pursuing is the inherent

20 problem that he perceives in having a leading agency

21 be the project proponent. That issue has been

22 dismissed.

23 MR. BROWER: That is not what I'm

24 exploring here. You have held Ms. Ellig out as an

25 expert on EISs and if she doesn't understand the

Page 960

1 fundamental difference as to who the consultant is

2 supposed to work for, I think we're entitled to

3 explore that.

4 THE HEARING EXAMINER: For that

5 limited purpose, then I'll overrule the objection.

6 And if it's for the other, I would sustain it. So I

7 -- I mean, I'll overrule it for now, but in a

8 limited context if that's the purpose of allowing

9 the testimony to proceed.

10 BY MR. BROWER:

11 Q. Ms. Ellig, isn't the EIS consultant

12 supposed to be neutral and write a document that

13 discloses potential significant impacts in a way

14 that the lay reader can understand it?

15 A. Yes.

16 Q. And so shouldn't the EIS consultant be

17 reporting to the lead agency, not the project

18 proponent who wants to build a project?

19 A. I believe that the work that I completed

20 was objective and neutral. And I don't need --

21 Q. No. Just -- I don't mean to cut you off,

22 but you're not answering my question. My question

23 is shouldn't the consultant be neutral? I'm not

24 asking what you did here. I'm asking your general

25 understanding because the City is holding you out as

Page 961

1 an expert on EISs. And I need to see if you

2 understand the fundamental relationship of how

3 consultants work with lead agencies.

4 A. Can you repeat the question, please?

5 Q. Certainly. Shouldn't the EIS consultant

6 be neutral and report in a manner that a lay reader

7 can understand the potential significant adverse

8 impacts created by a project?

9 A. Yes.

10 Q. But this document doesn't disclose a

11 single significant impact, does it?

12 A. No. It does not.

13 Q. And here, the Department of

14 Transportation instructed you to remove language,

15 which you did, correct?

16 A. No. That is not correct.

17 Q. Are we going to have this conversation?

18 You just said that you did remove that phrase

19 "traffic hazards," correct?

20 A. And replaced it with alternative language

21 that provided more detail for the reader.

22 MR. BROWER: Mr. Examiner, do you have

23 Volume 9 to review?

24 THE HEARING EXAMINER: Just a minute.

25 MR. BROWER: Thank you.

Page 962

1 BY MR. BROWER:

2 Q. Ms. Ellig, would you please turn to

3 A-350.11 in Volume 9?

4 A. I've turned there.

5 Q. And this is a section of your

6 Transportation Discipline Report draft from December

7 2015, isn't it?

8 A. Yes.

9 Q. And this is what you wrote, isn't it?

10 A. Yes.

11 Q. So will you please turn to page 004,

12 which is also 3-5 in that tab?

13 THE HEARING EXAMINER: And are you

14 going to introduce this?

15 MR. BROWER: I am.

16 THE HEARING EXAMINER: All right.

17 Let's go ahead and mark it for R-9.

18 MR. BROWER: That would be A.

19 THE HEARING EXAMINER: Sorry. You're

20 right. A-18.

21 BY MR. BROWER:

22 Q. Ms. Ellig, do you see some highlighted

23 language on page 004, highlighted in pink?

24 A. Yes.

25 Q. And what are those words highlighted in

Page 963

1 pink?
 2 A. Those words are "and known traffic
 3 hazards."
 4 Q. So the sentence originally read,
 5 "Analysts qualitatively evaluated impacts on safety
 6 by reviewing collision history and known traffic
 7 hazards in the study area and the potential for the
 8 build alternatives to alter safety." Is that
 9 correct?
 10 A. That's correct.
 11 MR. BROWER: I move to admit this.
 12 MR. KISIELIUS: No objection.
 13 THE HEARING EXAMINER: Any objection?
 14 MR. COHEN: No objection.
 15 BY MR. BROWER:
 16 Q. Would you please now turn --
 17 MR. BROWER: Excuse me.
 18 THE HEARING EXAMINER: A-18 is
 19 admitted.
 20 (APPELLANT'S EXHIBIT A-18 ADMITTED.)
 21 MR. BROWER: Thank you.
 22 BY MR. BROWER:
 23 Q. Would you please now turn to Tab 350.12?
 24 A. I've turned there.
 25 Q. And this is --

Page 964

1 THE HEARING EXAMINER: Mark this as
 2 A-19?
 3 MR. BROWER: Yes, please.
 4 BY MR. BROWER:
 5 Q. This is again a section from your
 6 Transportation Discipline Report in the lower right
 7 hand corner it says "April 2017," so that would be
 8 included in the final EIS. Is that correct?
 9 A. Yes.
 10 Q. And this is what you wrote?
 11 A. Yes.
 12 Q. And do you see the section 3.5.2.6?
 13 A. Yes.
 14 Q. And there's a sentence that's very
 15 similar to the sentence in what's been marked as
 16 A-18, but it reads now "Analysts qualitatively
 17 evaluated impacts on safety by reviewing collision
 18 and incident response history in the study area and
 19 the potential for the build alternatives to alter
 20 safety." Is that what it reads?
 21 A. That is what it reads.
 22 Q. So you removed, at the direction of SDOT,
 23 the phrase "and known traffic hazards" and replaced
 24 it with "incident response histories." Is that
 25 correct?

Page 965

1 A. That's correct.
 2 Q. Thank you.
 3 MR. BROWER: I would move to admit
 4 A-19.
 5 THE HEARING EXAMINER: Any objection?
 6 MR. COHEN: Question whether that
 7 document is already an exhibit?
 8 THE HEARING EXAMINER: You'll have to
 9 provide me some guidance.
 10 MR. COHEN: Isn't that R-3?
 11 THE WITNESS: It is.
 12 MR. BROWER: I would like to have --
 13 THE HEARING EXAMINER: R-3 is the
 14 final --
 15 MR. KISIELIUS: This is an excerpt of
 16 R-3.
 17 MR. COHEN: It's a page from R-3,
 18 actually.
 19 MR. BROWER: And I would like to have
 20 it to --
 21 THE HEARING EXAMINER: I'm all right
 22 as an exhibit for the purposes of the -- and the
 23 direction you've gone with the --
 24 MR. BROWER: Excuse me?
 25 THE HEARING EXAMINER: I'm all right

Page 966

1 with the -- I think that makes sense with the
 2 direction you've gone with the --
 3 MR. BROWER: To have this as a
 4 separate exhibit?
 5 THE HEARING EXAMINER: Yes.
 6 MR. BROWER: Thank you.
 7 MR. KISIELIUS: And there are no -
 8 THE HEARING EXAMINER: A little
 9 redundancy, but we've got some big, thick documents,
 10 and if this is going to be pulled out as an issue,
 11 it can be helpful.
 12 MR. KISIELIUS: No objection.
 13 THE HEARING EXAMINER: Thank you.
 14 THE HEARING EXAMINER: A-19 is
 15 admitted then.
 16 (APPELLANT'S EXHIBIT A-19 ADMITTED.)
 17 MR. BROWER: Thank you.
 18 THE ASSISTANT: I'm approaching you
 19 just to tab it.
 20 MR. BROWER: Sure. (Pause.)
 21 BY MR. BROWER:
 22 Q. Ms. Ellig, is your testimony here today
 23 that you based your Transportation Discipline Report
 24 -- that you incorporated the design principles from
 25 NACTO into your Transportation Discipline Report?

Page 967

1 A. It's my testimony that I'm familiar with
 2 them and I am able to have a knowledge of them in
 3 order to identify potential impacts and associated
 4 mitigation measures to address any impacts.
 5 Q. But you didn't incorporate them into your
 6 Transportation Discipline Report, did you?
 7 A. I'm not sure I understand what you're
 8 asking. I believe they are cited as a citation in
 9 the Transportation Discipline Report.
 10 Q. Would you please turn to page 107 of your
 11 deposition transcript?
 12 A. Yes.
 13 Q. Would you please read lines 19 through 25
 14 out loud, please?
 15 A. I don't have line -- the text is muddled.
 16 Q. Page 107? Oh, that's too bad.
 17 MR. KISIELIUS: On page 27?
 18 MR. BROWER: 107.
 19 May I see it?
 20 THE WITNESS: Yes, you may.
 21 MR. BROWER: Thank you.
 22 THE HEARING EXAMINER: Page numbers or
 23 line numbers that are muddled?
 24 MR. BROWER: The line numbers are
 25 muddled. They seem to be double-printed on here.

Page 968

1 BY MR. BROWER:
 2 Q. Ms. Ellig, would you please read what
 3 I've highlighted and I'll represent to everyone else
 4 that I've highlighted on page 107 lines 18 through
 5 25. Would you please read it out -- excuse me,
 6 starting at line 19 which starts with my question?
 7 Would you please read that out loud?
 8 A. Sure. "Are you familiar with the NACTO
 9 Urban Bikeway Design Guidelines?" I responded, "I
 10 am familiar with it." "Did you use them in
 11 preparing the transportation section of the DEIS or
 12 the FEIS or your Transportation Discipline Report?"
 13 "I did review them, yes."
 14 Q. And will you turn the page now and please
 15 read lines 1 through 9?
 16 A. "When you say review them what did you
 17 do?" "Read the document." Did you incorporate any
 18 of their design guidelines and principles in your
 19 report?" "That's not really my area of what I would
 20 do. Designers typically tend to review that and
 21 incorporate that as needed into the design." "So,
 22 no, you didn't?" "No."
 23 Q. Thank you.
 24 THE HEARING EXAMINER: For
 25 clarification, can someone tell me how to spell

Page 969

1 NACTO?
 2 MR. BROWER: N-A-T-C-O. Oh,
 3 N-A-C-T-O.
 4 THE HEARING EXAMINER: Okay.
 5 MR. BROWER: I keep doing that.
 6 NACTO. N-A-C-T-O.
 7 THE HEARING EXAMINER: N-A-C-T-O.
 8 Okay. Thank you.
 9 BY MR. BROWER:
 10 Q. And didn't you do the same thing with the
 11 AASHTO Guidelines? You just reviewed them but you
 12 didn't actually incorporate them into your report?
 13 A. I reviewed them. It's the same answer I
 14 provided earlier. I reviewed them, was familiar
 15 with the concepts. It does underlie my knowledge
 16 for how I develop my review of the alternatives.
 17 Q. So, again, no you did not actually
 18 incorporate them into your document, did you? They
 19 were just --
 20 A. The exact words from the -- those
 21 documents are not incorporated into my
 22 transportation section, no.
 23 Q. So would you please read -- let me -- I
 24 will highlight some more. Ms. Ellig, I've
 25 highlighted for you line 19 through 25 on page 108

Page 970

1 of your deposition. Will you please read those?
 2 A. Yes. "Are you familiar with the AASHTO
 3 Guide for Development of Bicycle Facilities?" "Yes.
 4 I'm more familiar with the AASHTO Guide." "Did you,
 5 again, review them as part of preparing the
 6 transportation section of the DEIS or FEIS or
 7 Transportation Discipline Report?" "Yes. They were
 8 reviewed." "Is it similar to what you did with the
 9 NACTO Urban Bikeway Design Guidelines?" "Yes."
 10 "You didn't specifically incorporate them into any
 11 of your reports?" "They were incorporated in the
 12 sense that we reviewed consistency with the design
 13 in those documents." "So did you review them for
 14 consistency with the design?" "Trail designers do."
 15 "So you said 'we,' so I'm asking if you did it?"
 16 "No. I didn't personally do it."
 17 Q. Thank you.
 18 THE HEARING EXAMINER: And,
 19 Mr. Brower, just for your information, we're at 13
 20 hours and 15 minutes for Appellants. So that would
 21 leave whatever remainder up to 15. And I know
 22 you've got some direct witnesses left. We may have
 23 some fudge time in there as well, but I just wanted
 24 to alert you to where you are with your time at this
 25 point.

Page 971

1 MR. SCHNEIDER: Okay. And I guess I
 2 would renew the request that I made, I think, at the
 3 last prehearing conference, that as Appellants with
 4 the burden of proof, I think we are unfairly treated
 5 if we are limited to the same number of hours. And
 6 I would simply ask that you consider, you know,
 7 whether we're being efficient and whether there is
 8 more that you need. But if we're limited to an hour
 9 and a bit for all the remaining witnesses, that's a
 10 real problem for us being able to present our case.
 11 MR. KISIELIUS: May I --
 12 MR. BROWER: We've been as efficient
 13 as we possibly can be. We cut half -- we cut
 14 another 14 witnesses off our list.
 15 MR. KISIELIUS: May I respond?
 16 THE HEARING EXAMINER: If you'd like.
 17 I'm -- right now we're -- this is where we are with
 18 your time and we'll address it when you run out.
 19 MR. KISIELIUS: I would like to say --
 20 I mean, this is where we're treading ground that
 21 we'd already tread before. There -- they actually
 22 have now been giving more time with a rebuttal day.
 23 And at the end of the day this is the -- we were --
 24 everybody should have been on notice walking in with
 25 the restrictions of what we were talking about here.

Page 972

1 And so, there shouldn't be any surprises at this
 2 point.
 3 THE HEARING EXAMINER: Okay.
 4 MR. COHEN: I --
 5 THE HEARING EXAMINER: Mr. Cohen?
 6 MR. COHEN: I'd like to add that, in
 7 fact, we all were on notice and that in order to
 8 live within the restrictions of the equal split of
 9 time, I notified a witness that we would not be
 10 calling her because we probably wouldn't have time
 11 to get her in. So I think everybody needs to work
 12 within the time boundaries that we've been assigned
 13 and we are working to do that.
 14 THE HEARING EXAMINER: Okay. I don't
 15 want to hear more argument on that. I just wanted
 16 to let you know where we are with the bounds that we
 17 did set earlier with the time limit. Because as
 18 long as you're within that you're clear and there's
 19 no dispute. Going forward if it -- if you run into
 20 a debt time, just keep in mind even if I'm fudging
 21 some on time, I do need to give time to the
 22 Respondents to put their case on and their six hours
 23 compared to 13 almost, 13-and-a-half. So that's not
 24 even half. And we do only have about just under
 25 seven hours each day set aside for five days. So

Page 973

1 just -- that's where we're going to leave it. I
 2 don't want to argue about it until we get to the
 3 end. But I just -- I wanted to warn you of where
 4 you were in the context of this witness and the
 5 amount of time we have left on the clock.
 6 MR. SCHNEIDER: And we're grateful for
 7 the warning, but if you can tell us again, just how
 8 much time you're allotting us if you don't
 9 reconsider?
 10 THE HEARING EXAMINER: It was 15 hours
 11 that we agreed was about split.
 12 MR. SCHNEIDER: Right.
 13 THE HEARING EXAMINER: So --
 14 MR. SCHNEIDER: And so, I'm sorry
 15 again, how much -- where are we at right now?
 16 THE HEARING EXAMINER: You're at
 17 13:15.
 18 MR. BROWER: An hour and 45 minutes
 19 left.
 20 MR. SCHNEIDER: Okay.
 21 THE HEARING EXAMINER: The reason for
 22 the warning.
 23 BY MR. BROWER:
 24 Q. Ms. Ellig, I just have one more question
 25 for you.

Page 974

1 A. Okay.
 2 Q. In R-7, do you have that handy?
 3 A. I believe you're referring to the freight
 4 Master Plan?
 5 Q. Yes, the --
 6 A. Okay.
 7 Q. -- appendices for that, Appendix A?
 8 A. Yes.
 9 Q. If you'd turn to Design Guideline
 10 Appendix C as in Charlie page 9?
 11 A. I've turned there.
 12 Q. Do you see a section called Designing For
 13 versus Accommodating?
 14 A. I do see that section.
 15 Q. Do you know if the trail was designed for
 16 the vehicles that frequent these businesses or was
 17 it designed to accommodate them?
 18 A. I don't know the answer to that question
 19 as I am not a trail designer.
 20 Q. Thank you.
 21 A. You're welcome.
 22 MR. BROWER: No further questions.
 23 THE HEARING EXAMINER: So I guess
 24 we're at cross now to the witness.
 25 MR. KISIELIUS: Or combined with

Page 975

1 redirect or?
 2 THE HEARING EXAMINER: They're -- or
 3 yeah. Well, yeah, if you want to do that. I don't
 4 know how far down that path we want to go
 5 redirecting your, you know, your own witness for
 6 your own cross, but --
 7 MR. KISIELIUS: Well, yeah. I mean,
 8 we --
 9 THE HEARING EXAMINER: Right now it's
 10 technically cross for their witness as well as
 11 redirect.
 12 MR. KISIELIUS: But we called her
 13 first. Yes. So I was just -- I wasn't actually
 14 keeping track of. I just had a bunch of follow up
 15 questions. But Mr. Brower asked and I'm not sure
 16 that I was being very diligent about which ones fall
 17 in the scope of redirect from his point.
 18 THE HEARING EXAMINER: Yeah. We won't
 19 be able to do that. I don't -- I mean, the way we
 20 arrange this I don't think you can cherry pick what
 21 type of questions you're going to ask.
 22 MR. KISIELIUS: No, no. I was just
 23 trying to --
 24 THE HEARING EXAMINER: It's just --
 25 yeah.

Page 976

1 MR. KISIELIUS: -- as a series of
 2 questions in response to what Mr. Brower was asking.
 3 THE HEARING EXAMINER: I think what
 4 we'll try to do with these situations where you are
 5 all going direct with a witness is give you a second
 6 shot, basically, whether you call it cross or
 7 redirect. I will be generous at the end of that if
 8 you feel like you have an additional question after
 9 you've done your cross, but let's try and get it all
 10 in with your direct and then, obviously, there's a
 11 bit more substance in the cross. And, you know, if
 12 there's another question or two after that it's --
 13 nobody's going to get their hand slapped if they
 14 still have to do that after another party. Does
 15 that make sense?
 16 MR. KISIELIUS: I think so. My only
 17 clarification is when would the Examiner like to ask
 18 your questions?
 19 THE HEARING EXAMINER: I don't have
 20 any -- well, I do have some yet, actually. I can
 21 wait until the end for this witness.
 22 MR. KISIELIUS: Okay.
 23 CROSS/REDIRECT EXAMINATION
 24 BY MR. KISIELIUS:
 25 Q Ms. Ellig, I have a couple questions for

Page 977

1 you.
 2 A. Okay.
 3 Q. Mr. Brower was asking you a little bit
 4 about some relationship interactions between you and
 5 the Department of Transportation. So -- and I want
 6 to explore that a little bit more. In your
 7 experiences working on EISs as a consultant, is the
 8 client there either the lead agency or the project
 9 applicant involved in your work?
 10 A. Yes.
 11 Q. And did that either lead agency or
 12 project applicant typically review your work and
 13 offer feedback?
 14 A. Yes. They do typically do that.
 15 Q. And is that how the Department of
 16 Transportation was involved in this specific
 17 context?
 18 A. Yes.
 19 Q. How did the City's role in this project
 20 compare with the roles of your clients in other
 21 projects?
 22 A. It was similar.
 23 Q. And did the City in its role in this
 24 project make you change your professional opinion?
 25 A. No. It did not.

Page 978

1 Q. So we were talking specifically about
 2 changing the words. And would it be safe to say
 3 that what we're talking about was changing "known
 4 hazards" with "incident response history"?
 5 A. Yes.
 6 Q. Can you tell us why you did that?
 7 A. I did that because I felt that the words
 8 "known traffic hazards" were a bit ambiguous. And
 9 because the Seattle Fire Department has data that
 10 they referred to as incident response data which
 11 includes information on potential traffic hazards
 12 such as the presence of rail tracks in the roadway
 13 or other sorts of things in the study area, that
 14 would make more sense or be clearer for people who
 15 are reading the document.
 16 Q. And that instance or in other instances
 17 in which the Department commented on your work, did
 18 that come with discussion?
 19 A. At times it came with discussion.
 20 Q. And did you ever feel like that was --
 21 that you were being directed to do something or
 22 being recommended to do something that you disagreed
 23 with?
 24 A. No.
 25 Q. Okay. Mr. Brower asked you about R-3,

Page 979

1 Technical -- excuse me. The Transportation
 2 Discipline Report and the issue of peak hours.
 3 A. Yes.
 4 Q. He was asking you about Mr. Nerdrum, and
 5 did you take into consideration whether -- you asked
 6 Mr. Nerdrum or Mr. Nerdrum provided information
 7 about the highest peak from his facility.
 8 A. Yes.
 9 Q. I'm going to ask sort of a basic
 10 question. Would that matter in the context of your
 11 Analysis of trying to figure out what the delay of
 12 the driveway was?
 13 A. No, because again, we were calculating
 14 delay for the p.m. peak hour which would have been
 15 the most conservative estimate of impacts for all
 16 users in the study area.
 17 Q. And why is that? what's the relationship
 18 between the traffic on the street and the delay at
 19 the driveway?
 20 A. The delay at the driveway is highly
 21 dictated by the traffic on the street, because if
 22 they are not able to enter the traffic stream on the
 23 road in which they are trying to get, they will have
 24 more delay.
 25 Q. Okay. There was a lot going on, I think,

Page 980

1 that maybe would benefit from some clarification in
 2 terms of what you did and when you said "we" and I
 3 think in some of the transcripts that Mr. Brower was
 4 asking you to specify whether you personally did
 5 something. Can you just describe for the Examiner's
 6 benefit the role you play in the context of the
 7 people that you worked with on this EIS?
 8 A. Yes. I am I writer and analysis who
 9 documents the impacts. Those impacts or what I
 10 write is reviewed by others in my firm including
 11 Mr. Laprouse as well as other consultants on our
 12 team and the City. And I also work with other
 13 people in my office to help identify impacts -- so
 14 the trail designers, for example.
 15 Q. Okay. And so, when you said "you" didn't
 16 incorporate the NACTO Guidelines and trail designers
 17 do, do you then rely on the work that the trail
 18 designers do to then assess the impacts of that
 19 design?
 20 A. Yes.
 21 MR. KISIELIUS: I don't have any
 22 further questions.
 23 MR. COHEN: And I have none, Your
 24 Honor.
 25 MR. BROWER: A quick one.

Page 981

1 CROSS/REDIRECT EXAMINATION
 2 BY MR. BROWER:
 3 Q. Ms. Ellig, would you go back to Volume 9
 4 of -- in the binder in front of you and turn to Tab
 5 A-350.10?
 6 A. Okay. I'm there.
 7 Q. Is it your testimony that you decided to
 8 remove the phrase "known traffic hazards" because
 9 you didn't think it appropriately or adequately
 10 described the problem and that the -- think, what is
 11 it, the "traffic incidents" does a better job of
 12 that? Is that what you just said?
 13 A. Yes.
 14 Q. Would you turn to page 2 of the --
 15 MR. BROWER: Mr. Examiner, can we mark
 16 this as A-20?
 17 THE HEARING EXAMINER: Yes.
 18 BY MR. BROWER:
 19 Q. Would you turn to page 2 of what's been
 20 marked as A-20? You see in the left-hand corner
 21 there is an item number? And there's an item number
 22 92 about two-thirds of the way down and that row is
 23 highlighted in grey? Do you see that? Do you see
 24 that?
 25 A. I'm not sure I know where you're talking

Page 982

1 about. Can you?
 2 Q. Sorry. Are you --
 3 A. I don't have any grey on my sheet.
 4 Q. Are you at A-350.10?
 5 A. Yes. I am.
 6 Q. May I look at your book, please?
 7 A. Yes.
 8 Q. I'll just give you my book instead.
 9 A. I see where you're talking about actually
 10 now. Page --
 11 Q. Got it? Perfect.
 12 A. Yes. I do.
 13 Q. See line 92?
 14 A. Yes. I see that line.
 15 Q. Would you please read the review comment
 16 from Chris Eaves?
 17 A. Yes. It says, "Remove 'known traffic
 18 hazards in the study area.' See comment above about
 19 specifying items, obstacles of concern rather than
 20 using the term 'traffic hazards.'"
 21 MR. BROWER: Thank you. No further
 22 questions. I move to admit A-20, please.
 23 MR. KISIELIUS: No objection.
 24 MR. COHEN: None, thank you.
 25 THE HEARING EXAMINER: A-20 is

Page 983

1 admitted.
 2 (APPELLANT'S EXHIBIT A-20 ADMITTED.)
 3 EXAMINATION
 4 BY THE HEARING EXAMINER:
 5 Q Ms. Ellig, were there any driveways that
 6 were considered by the Appellants and that you saw
 7 in their exhibits that you did not consider?
 8 A. I don't believe so, no.
 9 Q. Is there something that indicates in your
 10 report or the EIS, you indicated that some are
 11 aggregates, like, number 9 and all of them. Is
 12 there some way to know which one of those are
 13 aggregates? Are they designated in there so we know
 14 which had multiple driveways?
 15 A. Yeah. Let's see. Let me turn to -- it
 16 is the FEIS, section.
 17 THE HEARING EXAMINER: R-1.
 18 THE WITNESS: This helps provide some
 19 context to that, but I'm looking at Figure 1-3. And
 20 on this figure there are blue markings that
 21 designate driveways. It does show multiple for that
 22 location. The only issue is the design treats some
 23 of those as more than one driveway. So you'll see
 24 here there are one, two, three shown for Salmon Bay
 25 Sand and Gravel and that's because there are several

Page 984

1 that are included as one driveway. So I think my
 2 answer is there is not a very direct way to tell
 3 which driveways had multiple as part of the FEIS.
 4 BY THE HEARING EXAMINER:
 5 Q. Okay. But it's your testimony that some
 6 are and this may direct some of that?
 7 A. Yes.
 8 Q. It doesn't comprehensively cover all the
 9 driveways?
 10 A. Correct. Yes.
 11 Q. Rather than ask you to go through your
 12 list and identify each of them today, could you
 13 provide a list of which ones?
 14 A. Yes. I could.
 15 Q. You could take the list and highlight the
 16 ones that are multiple?
 17 A. Yes. Yeah. We developed a spreadsheet
 18 that contains that information that I believe was
 19 part of the documents, but I'm not sure if it was
 20 included as an exhibit. But I could use that to
 21 provide you with that information.
 22 Q. Okay. There was a -- it was a Figure 3-4
 23 in Exhibit R-3 and it showed a vehicle
 24 classification chart. If you can identify by number
 25 which one of those correlates to WB-50 and also

Page 985

1 WB-67, trucks that were referenced by the
 2 Appellant's witnesses?
 3 A. I am not sure I am the best person to
 4 make that distinction. I believe perhaps a designer
 5 might better be able to answer that question.
 6 Q. Fair enough. That's good enough. You
 7 don't have to.
 8 A. Okay.
 9 Q. And when you were talking about reviewing
 10 traffic data that was -- there was a question of
 11 whether you spent one day at it. And then, you
 12 decided to spend additional days responding to
 13 suggestions from business's analysis in the EIS on
 14 this certain activity. And the -- I was trying --
 15 I'm a little confused. There was the one day window
 16 and then there was a five-day window. Was that
 17 activity in the five-day window or was there more
 18 than five days?
 19 A. We had five days of data and our traffic
 20 data consultants who collected it summarized counts
 21 for just one day. And we later asked them to
 22 summarize additional days of data, so they provided
 23 the four additional days' summary of that data for
 24 us to review.
 25 Q. So it wasn't new data that was gathered.

Page 986

1 It was simply going back and collecting it over the
 2 -- from the five that was already --
 3 A. Correct.
 4 Q. Okay. And when they -- when you said
 5 that the businesses were concerned about the
 6 analysis in the EIS, did you mean the draft EIS, and
 7 so this was done between the draft and the EIS or
 8 when was this done?
 9 A. This was done after the FEIS. So we were
 10 hearing information from the project manager for the
 11 design about that concern.
 12 Q. Okay. There's been the term "conflict
 13 points" used by the Appellants and you also
 14 referenced. Is that a technical term of art or was
 15 that a concept from the Appellants?
 16 A. I believe it's a technical term, although
 17 I think there may be some different ways of using
 18 it.
 19 Q. And I ask, in part, because you
 20 referenced Table 1-1, and I apologize. I don't
 21 remember which exhibit that was in. You were using
 22 it as a reference to show conflict points as you had
 23 considered them. First, could you let me know,
 24 remind me which exhibit that -- number that was in?
 25 A. Yeah. That's in the FEIS.

Page 987

1 Q. So R-1. Okay. And so, when you say this
 2 shows conflict points, did you use the term
 3 "conflict points" on there? And if you didn't,
 4 where and how does that show conflict points?
 5 A. I don't believe I used the term "conflict
 6 points" here in that table. For this table,
 7 conflict points are areas where the trail would
 8 cross a driveway or an intersection approach. I
 9 believe the terminology "conflict points" is used
 10 elsewhere in the Transportation Discipline Report.
 11 I think the difference between how it's used in the
 12 FEIS compared to Ms. Hirschey's testimony is we're
 13 talking about the entire driveway being an
 14 area -- a conflict point, and I believe she was
 15 referring to specific points within a driveway where
 16 different types of conflict could occur.
 17 Q. Depending on the user?
 18 A. Right and movements that are being made.
 19 Q. Understood.
 20 THE HEARING EXAMINER: All right. I
 21 don't have any further questions. Is there anything
 22 else for Ms. Ellig?
 23 MR. BROWER: No.
 24 MR. KISIELIUS: No.
 25 THE HEARING EXAMINER: Okay. You

Page 988

1 don't have to come back tomorrow. At least sitting
 2 in that seat.
 3 THE WITNESS: Right. Okay.
 4 THE HEARING EXAMINER: We are
 5 concluded for the day. Talk about time again later,
 6 I'm sure. Is there anything else we need to address
 7 before we conclude?
 8 MR. BROWER: I don't want to be
 9 troublesome, but --
 10 THE HEARING EXAMINER: Yes?
 11 MR. BROWER: -- on the time issue --
 12 THE HEARING EXAMINER: Yes?
 13 MR. BROWER: -- could I make a
 14 proposal, people consider it. Maybe we could have a
 15 -- maybe we could talk about it in the morning. I
 16 think it really is important for us to know how much
 17 time before we start tomorrow's cross-examination.
 18 If we have to, you know, take -- know we only have
 19 10 or 15 minutes per person, that's obviously going
 20 to have a big effect. So I would just suggest that
 21 since we've already set aside an extra day for
 22 rebuttal, that we -- you give that extra time to the
 23 parties and it's up to the parties whether they use
 24 it for cross-examination or rebuttal. And if we use
 25 it up in cross-examination, then there's no

Page 989

1 rebuttal. But give us that time for us to make a
 2 decision about how the best way or use is.
 3 MR. KISIELIUS: I'm -- logistically
 4 there's an issue in terms of us not -- our witnesses
 5 we've asked them to block aside this week. We have
 6 no idea whether -- if we're going to slop over into
 7 the Tuesday. I don't know. I can't --
 8 THE HEARING EXAMINER: Yeah. That's
 9 one of the problems with that is that it really was
 10 set aside for rebuttal, so if we're organizing
 11 witnesses it's scheduling-wise it's not a problem.
 12 And I think that somehow we may try to use that.
 13 But that's part of why I don't have the answer to
 14 what we're going to do yet, because I don't know
 15 the schedule for witnesses. So I think we'll raise
 16 it tomorrow. Your point is well taken,
 17 Mr. Schneider, and I think it's a possibility. I do
 18 remember that Ms. Ferguson had a 10:30 request for
 19 that day. So maybe we -- I'm not sure how that will
 20 plan to --
 21 MR. BROWER: The start?
 22 MR. FERGUSON: Looks like I'm hiring a
 23 baby-sitter.
 24 THE HEARING EXAMINER: All right.
 25 Well, let's see how that goes, because I -- we do

Page 990

1 need to make sure the witnesses are available for
 2 that day.
 3 MR. BROWER: Can we get a heads up as
 4 to who is on tomorrow?
 5 MR. KISIELIUS: Still planning to
 6 follow the same order.
 7 MR. KISIELIUS: So you only told us
 8 about two.
 9 MR. BROWER: So -- Mr. Phillips and
 10 Mr. Shultise, Mr. Laprouse, Mr. Chang, and I think
 11 that's -- yeah, that's the full day.
 12 THE HEARING EXAMINER: Yeah. I mean
 13 the challenge I've got right now is I would be --
 14 I'm pretty flexible on it, but we did agree to time
 15 and we need to make sure that the Respondents have
 16 an opportunity to put on their case. And with the
 17 time we've set aside, they're at half the amount of
 18 time which makes sense. You've had more time for
 19 those witnesses, but then you've still got these
 20 direct witnesses to come. So with the amount of
 21 time we have for the next two days, I'm not -- I'm
 22 just not sure how that's going to play out, and I
 23 think it'll take a longer conversation than we have
 24 right now. But I think, but Mr. Schneider's
 25 suggestion is well taken. At the end of the day,

Page 991

1 part of the conversation will include that -- I
2 think it's Tuesday that we set aside?
3 MR. KISIELIUS: Yes.
4 THE HEARING EXAMINER: Yeah. So I
5 think we can safely say that we'll have some
6 discussion on it. And that's part of your
7 discretion as you -- was your rebuttal opportunity.
8 And if you want to forego that and say, well, we'd
9 rather do direct, that may -- that could make that
10 easier as well. But maybe -- I don't know when
11 Counsel will have a chance to do this, but if you
12 can, talk about scheduling for those. That sounds
13 like that might be the biggest issue with using that
14 time.
15 MR. KISIELIUS: And I think -- I
16 appreciate the need to sort of address this sooner
17 than later, but for us, we've just put on one
18 witness, and so we're --
19 THE HEARING EXAMINER: Right.
20 MR. KISIELIUS: -- just getting a
21 sense of how long it's going to take based on the --
22 THE HEARING EXAMINER: Right.
23 MR. KISIELIUS: Direct -- so cross --
24 THE HEARING EXAMINER: I mean, maybe
25 you can fish through it. Maybe somebody says,

Page 992

1 great, I'd rather go on Tuesday, because I couldn't
2 make it on Friday anyway. I mean, if you can find
3 something like that, I don't know if there is or
4 not, but sometimes there are those opportunities.
5 So -- but I'll -- with the moments that you have
6 between now and starting again tomorrow, if you have
7 any discussion about it, that may be helpful.
8 All right. Thank you all. See you
9 here tomorrow.
10 MR. BROWER: Thank you.
11 MR. KISIELIUS: Thank you.
12 (Proceedings adjourned.)
13 --oOo--
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

I, the undersigned Washington Certified Court Reporter, hereby certify that the foregoing transcription of audio proceedings was transcribed under my direction;

That the transcript is a full, true, and correct transcript to the best of my ability; that I am neither attorney for nor a relative or employee of any of the parties to the action or any attorney or financially interested in its outcome;

IN WITNESS WHEREOF, I have hereunto set my hand and 9th day of December 2017.

/s/ Cynthia A. Kennedy, RPR

NCRA Registered Professional Reporter
Washington Certified Court Reporter No. 3005
License expires November 16, 2018