

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 )

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DECEMBER 1, 2017

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

<p style="text-align: right;">Page 1276</p> <p>1           A P P E A R A N C E S: 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. 26       Seattle City Attorney 27       701 Fifth Avenue, Suite 2050 28       Seattle, WA 98104 29       (206) 684-8615 30       Erin.Ferguson@Seattle.gov 31 32       TADAS A. KISIELIUS, ESQ. 33       Van Ness Feldman LLP 34       719 2nd Avenue, Suite 1150 35       Seattle, WA 98104 36       (206) 623-9372 37       Tak@vnf.com</p>	<p style="text-align: right;">Page 1278</p> <p>1           C H R O N O L O G I C A L   I N D E X 2           --oOo-- 3       DECEMBER 1, 2017 4       Witnesses for the RESPONDENT: 5       BILL SCHULTHEISS (Resumed) 6           Direct by Mr. Kisielius (Resumed)   1281 7           Cross by Mr. Brower               1303 8           Redirect by Mr. Kisielius           1347 9           Exam by Hearing Examiner           1356 10 11       MORGAN SHOOK 12 13           Direct by Ms. Ferguson           1359 14           Cross by Mr. Cohen               1397 15           Cross by Mr. Schneider           1402 16 17       MARK MAZZOLA 18 19           Direct by Mr. Kisielius           1451 20           Cross by Mr. Schnieder           1477 21           Redirect by Mr. Kisielius           1564 22 23       BLAKE TRASK 24           Direct by Mr. Cohen               1572 25       Adjourned                           1593 26 27       --oOo-- 28 29 30 31 32 33 34 35 36 37       (* Denotes phonetic spelling)</p>
<p style="text-align: right;">Page 1277</p> <p>1           A P P E A R A N C E S 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       INTERVENOR: 14       MATTHEW COHEN 15 16       --oOo-- 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 1279</p> <p>1           E X H I B I T   I N D E X 2           --oOo-- 3       COALITION'S                       ID ADMITTED 4       A-5                               -   1402 5       A-21                              1333   - 6       A-22                              1539   1543 7       A-23                              1554   1564 8 9       RESPONDENT'S                   ID ADMITTED 10       R-30                           1282   1283 11       R-31                           1283   - 12       R-32                           -   1294 13       R-33                           1291   1399 14       R-34                           -   1399 15       R-35                           1458   1459 16       R-36                           -   1463 17       R-37                           1580   1592 18       R-38                           1582   1592 19       R-39                           1585   1592 20       R-40                           1588   1592 21       R-41                           1588   1592 22       R-42                           1589   1592 23       R-43                           1590   1592 24       R-44                           1591   1592 25       --oOo--</p>

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<p style="text-align: right;">Page 1280</p> <p>1           DECEMBER 1, 2017</p> <p>2           MORNING SESSION</p> <p>3           --oOo--</p> <p>4           THE HEARING EXAMINER: All right.</p> <p>5           We're back on the record. We are still with the</p> <p>6           city -- with city witness, Schultheiss, and it's</p> <p>7           still your witness, Mr. Kisielius.</p> <p>8           MR. KISIELIUS: Thank you. And --</p> <p>9           THE HEARING EXAMINER: Are there any</p> <p>10          procedural items we need to address first?</p> <p>11          MR. KISIELIUS: Just a scheduling</p> <p>12          snafu from the city's standpoint. One of our</p> <p>13          witnesses that we intended to call today is sick and</p> <p>14          unavailable, so we've talked to the counsel for the</p> <p>15          Coalition. They're amenable to letting him testify</p> <p>16          on Tuesday.</p> <p>17          THE HEARING EXAMINER: Uh-huh.</p> <p>18          MR. KISIELIUS: And we expect, at</p> <p>19          least from the direct, that that would be a very</p> <p>20          short amount is.</p> <p>21          THE HEARING EXAMINER: Great. Thanks</p> <p>22          for letting me know. It seems like we've still got</p> <p>23          time to -- hopefully, nothing more like that</p> <p>24          happens, and we'll be pushing Tuesday off the chart.</p> <p>25          Anything else? All right.</p>	<p style="text-align: right;">Page 1282</p> <p>1           Q. I'm going to pause. I'm sorry.</p> <p>2           A. Yeah, no problem.</p> <p>3           MR. KISIELIUS: Could we please mark</p> <p>4           this?</p> <p>5           THE HEARING EXAMINER: Yes. And this</p> <p>6           will be R-30.</p> <p>7           (RESPONDENT'S EXHIBIT R-30 MARKED FOR</p> <p>8           IDENTIFICATION)</p> <p>9           MR. KISIELIUS: Thank you.</p> <p>10          BY MR. KISIELIUS:</p> <p>11          Q. Just for the record, you're now referring</p> <p>12          to R-30.</p> <p>13          A. Correct.</p> <p>14          Q. Didn't mean to interrupt.</p> <p>15          A. This is a safety study that compared</p> <p>16          different bike facilities in a couple cities, and</p> <p>17          they found evidence that basically all bike</p> <p>18          facilities were safer than existing conditions of</p> <p>19          shared lanes.</p> <p>20          Q. Okay.</p> <p>21          MR. KISIELIUS: I'd ask to have that</p> <p>22          entered.</p> <p>23          MR. SCHNEIDER: No objection.</p> <p>24          MR. COHEN: No objection.</p> <p>25          THE HEARING EXAMINER: R-30 is</p>
<p style="text-align: right;">Page 1281</p> <p>1           MR. KISIELIUS: Good morning,</p> <p>2           Mr. Schultheiss.</p> <p>3           THE WITNESS: Good morning.</p> <p>4           THE HEARING EXAMINER: And just a</p> <p>5           reminder, you're still under oath, Mr. Schultheiss,</p> <p>6           so we don't have to do that again.</p> <p>7           THE WITNESS: Yes. Absolutely.</p> <p>8           BILL SCHULTHEISS (Resumed),</p> <p>9           called as a witness herein having been first duly</p> <p>10          sworn, was examined and testified as follows:</p> <p>11          DIRECT EXAMINATION (Resumed)</p> <p>12          BY MR. KISIELIUS:</p> <p>13          Q. We were wrapping up your discussion</p> <p>14          yesterday of various studies. I just want to ask</p> <p>15          you about two more very briefly. I'm asking -- I</p> <p>16          think the city's binder is still in front of you.</p> <p>17          Can you turn to tab 31, please?</p> <p>18          A. Okay.</p> <p>19          Q. I'm going to -- I'd like to ask you --</p> <p>20          the subject matter of this, it's -- obviously you've</p> <p>21          talked a lot about bicycle safety.</p> <p>22          Can you tell us what aspect of bicycle</p> <p>23          safety this addresses?</p> <p>24          A. This was a recent study that analyzed</p> <p>25          safety data from two different cities.</p>	<p style="text-align: right;">Page 1283</p> <p>1           admitted.</p> <p>2           (RESPONDENT'S EXHIBIT R-30 ADMITTED)</p> <p>3           BY MR. KISIELIUS:</p> <p>4           Q. And finally I'd ask you to turn to R --</p> <p>5           excuse me. Tab 32 in the city's binder.</p> <p>6           MR. KISIELIUS: Which I'd ask to be</p> <p>7           marked as R-31.</p> <p>8           THE HEARING EXAMINER: I'm sorry.</p> <p>9           That was your tab 32?</p> <p>10          MR. KISIELIUS: Correct.</p> <p>11          THE HEARING EXAMINER: Okay. And</p> <p>12          it's R-31?</p> <p>13          MR. KISIELIUS: Yes. Yes.</p> <p>14          THE HEARING EXAMINER: 32 is 31.</p> <p>15          Actually, you hit the 29 right on the nose.</p> <p>16          (RESPONDENT'S EXHIBIT R-31 MARKED FOR</p> <p>17          IDENTIFICATION)</p> <p>18          BY MR. KISIELIUS:</p> <p>19          Q. So, again, given the subject matter here</p> <p>20          being bicycle safety, can you tell us what this</p> <p>21          study addresses?</p> <p>22          A. This study was a unique study that was</p> <p>23          done in Spain. There's been, as I testified</p> <p>24          yesterday, a concept that the more bicycling that</p> <p>25          occurs, the safer the activity becomes through an</p>

<p style="text-align: right;">Page 1284</p> <p>1 increase of awareness. That has been contested by 2 that sort of strand of bicyclists as opposed to 3 being separated from traffic for many years, despite 4 the fact that numerous studies have shown this 5 effect. 6 And one of the criticisms has been that 7 there's too many confounding factors to prove that 8 point. And what's interesting about this study is 9 the first one where there were no confounding 10 factors. 11 Q. What does that mean, confounding factor? 12 A. So, basically, they said, well, you've 13 added bike lanes and maybe, yeah, it shows it's 14 safer, but more people live in the city. Maybe they 15 took an education class. You can't prove any of 16 these things. And it's just a tactic that they've 17 used for years to dismiss every study that shows 18 bike facilities are safer. 19 So this study, which was good about it, 20 powerful of it, is the only thing that changed in 21 the City of Seville, Spain in one year is they added 22 a 36-mile network of of bike lanes. They're 23 primarily two way, separated bike lanes throughout 24 the city. 25 And what they found is that increased</p>	<p style="text-align: right;">Page 1286</p> <p>1 activity's occurring. 2 Q. Okay. That's actually a good segway. 3 I want to ask you about Ms. Hirschey's 4 suggestion that two way -- the contraflow paths are 5 always more dangerous than other alternative 6 designs. Do you agree with that? 7 A. No. The weight of the evidence doesn't 8 support the assertion that a two-way side path is 9 more dangerous than all alternatives. It's -- it's 10 too broad of a statement. 11 Q. Well, what do you mean by that? 12 A. It's not safe for them in the existing 13 conditions of shared lanes. 14 Q. Okay. 15 A. I mean, her statements and the statements 16 that have been kind of said all week by the various 17 witnesses are very definitive. It's more dangerous 18 than all other choices, and that's not supported by 19 the evidence. 20 Q. Okay. So let's talk about this specific 21 instance. 22 Can you assess whether those types of 23 facilities would be safer in this specific context? 24 A. I believe in this context it would be 25 substantially safer than the existing condition of</p>
<p style="text-align: right;">Page 1285</p> <p>1 bicycle traffic from one percent to five percent, 2 and you had an immediate improvement in safety for 3 bicyclists. And those gains have held for seven 4 years following this study. 5 Q. Let me ask you, because you mentioned 6 that on this study, and there's been a couple 7 others. 8 To the extent that any of the studies 9 addressed a specific kind of set aside bicycle 10 facility, how do those studies apply to the project 11 that we're talking about here, that's a multi-use 12 path? 13 A. Well, this -- this is a separated 14 facility for bikes being separate from traffic. The 15 Seville, Spain network was primarily two-way 16 facilities on one side of the street, then the one 17 side of one-way streets, and one side of two-way 18 streets. 19 In my discussions with people that have 20 visited Seville said that most of those cycle tracks 21 were on two-way streets with traffic operations 22 similar to the shoulder in Ballard. 23 Q. So is it relevant to the question of the 24 risk of contraflow movements? 25 A. Yes. It's implicit in that that same</p>	<p style="text-align: right;">Page 1287</p> <p>1 operating the shared lane. 2 Q. Well, what factors do you take into 3 consideration? 4 A. Truck volume, traffic volume, just the 5 weight of the evidence for the past 40 years has 6 shown a consistent trend that bicyclists operating 7 in mixed traffic have a higher risk of crash. 8 Q. And if you were to separate and go -- and 9 eliminate the contraflow such that you're putting 10 traffic on opposite sides of the street, what would 11 you need to think about to assess the risk of those 12 movements? 13 A. I want to make sure I understand your 14 question. 15 If we were to separate the contraflow to 16 make it one way on each side of the street? 17 Q. Yes. Yeah. 18 A. So, if we made a pair of one way bike 19 paths or cycle tracks, that would eliminate the 20 contraflow challenge, which, you know, the research 21 has shown and I've said that it has shown, there's 22 elevated risk of the contraflow movement for bicycle 23 crash for that movement, but the reality is there 24 it's a trade off decision of well, what does that 25 entail?</p>

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<p>1 So, if I go one way on both sides, maybe 2 I've reduced the risk -- that elevated risk of two 3 way on one side, but have I introduced other risk 4 factors that could outweigh that. So, in the 5 context of this choice, you have to look at, well, 6 how many driveways are on the other side of the 7 street, how many road intersections on the other 8 side of the street. So on the south side of 9 Shilshole, there's only one signal light street 10 crossing. Signals have an elevated risk for all 11 users of crashes, and five uncontrolled crossings of 12 streets, so six total street crossings, 37 13 driveways. Again, these facts are based on what was 14 reported in the EIS.</p> <p>15 On the north side of the street, we have 16 nine uncontrolled street crossings, five signals. 17 So compared to the south side, the north side has 18 eight additional street intersections bicycles would 19 have to cross. And it also has 17 additional 20 driveways among it's -- along it. So now we've 21 adopted, as I stated yesterday, intersections with 22 streets where 80 percent of intersection crashes 23 occur with bikes, and we've added eight of them.</p> <p>24 The other thing is, not factored into 25 this decision is what is the volume of traffic</p>	<p>1 preferred alternative.</p> <p>2 How do those compare in your estimation, 3 in your opinion?</p> <p>4 A. So, the -- the proposed -- proposal in 5 the ERS of the two-way side path on the south side 6 of Shilshole, that southern alignment and along 7 Market Street. I've been kind of saying Shilshole, 8 but obviously it goes to other streets.</p> <p>9 So the difference is in the existing 10 conditions today that bicyclists is exposed to 11 conflict continuously throughout their entire 12 journey along the street as well as extra conflicts 13 at some of the intersections with other streets.</p> <p>14 So, on the south side when it becomes a 15 separation of the path, those conflicts have been 16 constrained and limited to the driveways, so that's 17 a substantial reduction of conflicts to the existing 18 conditions.</p> <p>19 Q. Okay. There have been some statements 20 that there -- about the lack of research that shows 21 the risk of contraflow -- that the risk of 22 contraflow movements can be mitigated.</p> <p>23 Are you familiar with that?</p> <p>24 A. I think the statements are that there's 25 no -- I mean, it's been asserted that there's not a</p>
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<p>1 turning across your path. It's -- it's higher in 2 many instances on this -- on the north side because 3 of the streets have more traffic than most of the 4 driveways do on the south side.</p> <p>5 Q. Let's go back to you said earlier about 6 the acknowledging that there's a higher risk with 7 contraflow movement. I guess I want you to focus 8 in. What -- higher risk than what?</p> <p>9 A. Well, the Boulder study's a good example. 10 I mean, it was a good study. And so, as I 11 referenced yesterday, there were 80 crashes on side 12 paths, 54 were in the contraflow direction, so 13 two-thirds. So that's kind of has been spoken at 14 two to three more times crashes occurring in the 15 contraflow direction. And a lot of studies show 16 that. But, again, it's compared to what. The 17 baseline needs to be compared to what would it be if 18 you were in the street. And all of the evidence 19 supports clearly that all types of bike facilities 20 are safer than operating in the street.</p> <p>21 Q. So I want you to -- in the context of 22 Shilshole here, I want you to consider the extent to 23 which a cyclist is exposed to conflicts under 24 current conditions in the street and the extent to 25 which a cyclist is exposed to conflicts under the</p>	<p>1 single study that shows you can do anything to 2 mitigate the contraflow crash.</p> <p>3 Q. Do you agree with that?</p> <p>4 A. I don't agree with that.</p> <p>5 Q. Okay. Why?</p> <p>6 A. Because there is research that is -- and 7 I've provided it --</p> <p>8 Q. Let's turn to tab 30 in your book.</p> <p>9 THE ASSISTANT: To which tab?</p> <p>10 MR. KISIELIUS: 30, 3-0. And I'd ask 11 for that to be marked.</p> <p>12 THE ASSISTANT: R-32.</p> <p>13 THE HEARING EXAMINER: Okay. Thank 14 you.</p> <p>15 (RESPONDENT'S EXHIBIT R-32 MARKED FOR 16 IDENTIFICATION)</p> <p>17 BY MR. KISIELIUS:</p> <p>18 Q. Is this the study you were referring to?</p> <p>19 A. Yeah, so, you know, it was asserted that 20 there's not one single study that proves you can 21 mitigate the crash, and it's not true factually, 22 because this study that I provided shows that 23 there's this study, plus it references other 24 studies, and its own literature review.</p> <p>25 It showed that you can mitigate that</p>

<p style="text-align: right;">Page 1292</p> <p>1 crash. You know, you can't eliminate crashes.  2 You're dealing with human beings and things happen  3 But you can reduce the risk of the crash through  4 some countermeasures and this identifies two  5 specific countermeasures within the research that we  6 found to be effective. One being offsetting the  7 path of travel for bicyclists away from the travel  8 lane, so you can improve the reaction time of  9 drivers turning and reacting to the bicyclists in  10 their path. The other is actually raising up the  11 crossing from street level so that you're slowing  12 down the driver, which increases the propensity to  13 yield. And so they show crash reductions with both  14 of those strategies.  15 Q. Okay. I want to ask you about another  16 statement in Ms. Hirschey's memo. "The industry  17 design guidelines consistently indicate that bicycle  18 pedestrian vehicles facilities should be implemented  19 on streets with fewer conflicts as a safety  20 consideration."  21 Do you agree with that statement?  22 A. I do agree. That's in the NACTO Guide.  23 Q. Okay. And is -- does that -- should that  24 be interpreted as something that is preclusive of  25 using two-way facilities?</p>	<p style="text-align: right;">Page 1294</p> <p>1 MR. KISIELIUS: I'd ask for R-31 to  2 be admitted.  3 THE HEARING EXAMINER: 32.  4 MR. KISIELIUS: 32, excuse me.  5 THE HEARING EXAMINER: Any objection?  6 (No audible response.) R-32 is admitted.  7 (RESPONDENT'S EXHIBIT R-32 ADMITTED)  8 BY MR. KISIELIUS:  9 Q. Mr. Schultheiss, I'm going to ask you now  10 to talk a little bit about the conflict diagrams  11 that Ms. Hirschey discussed. So I think you still  12 have in front of you A-3, for the record, and I  13 think that's in our tabs. Their internal reference  14 was 311.16. It's going to be towards, I think, the  15 end of that. I'll give you a specific page number  16 in just a second.  17 A. I found it.  18 Q. Okay. I need to find it.  19 A. Attachment two at the very back? You're  20 referring to this drawing?  21 Q. I am. And if you just give me a minute  22 because I need to find my copy. My computer's  23 acting up.  24 (Pause in proceedings.)  25 MR. KISIELIUS: There we go. I think</p>
<p style="text-align: right;">Page 1293</p> <p>1 A. No. And the reason that guidance is in  2 there is to call your attention to the fact that an  3 ideal facility would have zero conflicts. You know,  4 it would be a path through the woods, you know.  5 That's where we'd all like to be, but that's not  6 possible in the real world. You know, and, again,  7 as I'm saying, you know, we can look at statistics  8 and say, well the safest facility in Seattle is I-5  9 for cyclists. There's no crashes on the interstate.  10 Well, no one rides there. So, the reality is  11 there's going to be points of conflict between  12 people traveling in different roads. The question  13 is what can we do to address them and minimize the  14 risk if a conflict occurs. And so, the NACTO Guide  15 really does a good job of explaining that you need  16 to be aware of the elevated risk of the contraflow  17 movement. It provides a list of considerations you  18 need to think about as you're doing a design to  19 manage them. But it doesn't specify a specific  20 number and say, if you have X numbers of driveways,  21 don't build it, because it recognizes the fact --  22 and, again, I helped write it based on research --  23 that there's things that you can do to mitigate  24 these challenges and it's safer than the existing  25 conditions typically of shared streets.</p>	<p style="text-align: right;">Page 1295</p> <p>1 it was chewing on your thumb drive, Josh. All  2 dressed for the delay.  3 (Pause in proceedings.)  4 BY MR. KISIELIUS:  5 Q. All right. I'm here now.  6 Okay. Let's talk about just the general  7 approach to using this conflict points. And  8 actually that looks to be kind of truncated there in  9 your version.  10 A. It's -- it's fine.  11 MR. SCHNEIDER: That's obviously a  12 printing error.  13 MR. KISIELIUS: That's okay. I  14 understand.  15 Is it at all possible to get that up  16 on the screen, Josh? The one he's looking at is  17 shrunken.  18 MR. BROWER: I'm sorry, I can't use  19 my -- I'm actually using my computer today.  20 MR. KISIELIUS: Okay.  21 MR. BROWER: Well, we can -- you can  22 -- he's welcome to look at this version.  23 MR. KISIELIUS: That would be great.  24 MR. BROWER: Okay. (Simultaneous  25 speaking.)</p>

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<p>1 MR. KISIELIUS: I was going to say, 2 the examiner's -- 3 MR. BROWER: -- version as well. 4 THE WITNESS: I mean, if you show it 5 to me, I'm fine. Just -- I recognize it. That's 6 fine. 7 MR. BROWER: Maybe the hearing -- 8 this is what it should look like. We'll provide -- 9 MR. BROWER: I apologize, that -- 10 MR. KISIELIUS: Oh, all right. So do 11 we -- are we going to substitute -- 12 MR. BROWER: Yeah, we'll -- 13 MR. KISIELIUS: -- the page? 14 MR. BROWER: Yep. 15 MR. KISIELIUS: All right. 16 A. I'm comfortable. I understand the 17 drawing. 18 BY MR. KISIELIUS: 19 Q. Okay. So is -- can you -- is this 20 approach these specifically called out conflict 21 points, is that consistent with industry practice? 22 A. This is consistent with industry practice 23 for evaluating conflict points for vehicles on the 24 roadway. 25 Q. Okay. Can you talk, though, about -- is</p>	<p>1 showing bicyclists? 2 A. Well, on the path, but it's not going to 3 show the existing conditions for bicyclists in the 4 road, which, you know, I think if we're making a 5 comparison, which this project is supposed to do is 6 existing conditions or proposed conditions which 7 would fully evaluate the existing conditions. And 8 so the existing conditions doesn't show any detail 9 about where bicyclists are operating. But I would 10 just say that, you know, she referenced a 11 Massachusetts DOT bike line guide, which I helped 12 author, in a way that would show conflicts and that 13 document is the reality is if a bicyclist is 14 operating in the street as shown, there's no 15 guarantee that they don't -- you know, we're as wide 16 as a person sitting here, two feet wide, the car is 17 six and eight feet wide. They take up the full 18 width of the lane, and that's why you can have these 19 simplistic conflict drivers where they hit each 20 other because they take up the space. 21 In reality, a bicyclist isn't necessarily 22 operating like a car. They're not in the middle of 23 the lane. They could be beside the car, on the 24 right, which is very nice common practice of how 25 bicyclists ride. And when they turn, they're not</p>
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<p>1 there anything missing from this analysis, in your 2 estimation? 3 A. Well, this -- this analysis is specific 4 to a bike and pedestrian traffic, so the issues at 5 hand in this case seem to be focused on 6 bicycle/pedestrian safety. 7 So when we look at the drawing, the car's 8 hitting each other in the intersection. Each circle 9 represents a type of potential crash. Each of those 10 straight lines, you know, the solid dark line in 11 what's communicated as being the road, which 12 connects those circles with the cars and them is the 13 path of travel as you driving along the road, so 14 there's a path going straight, you know, eastbound, 15 westbound, and turning. And everywhere you draw the 16 line turning across the path of another vehicle, 17 that's a potential conflict point. 18 And so that's why I believe Ms. Hirschey 19 as a drawing on there that note of the type of crash 20 that can occur, a car side swiping, a car rear 21 ending, an angle type crash, so that's depicted 22 accurately in the drawing. 23 The thing that's not showing is where a 24 bicyclist in this street. It's not shown -- 25 Q. Let -- let me pause there. Because it's</p>	<p>1 going to necessarily turn in the exact same manner 2 as a vehicle does. 3 So the conflicts are infinite. This 4 doesn't show parking. 5 Q. And when you say -- I'm just going to 6 pause to you again, when you say "conflicts are 7 infinite," you're talking about conflicts where? 8 A. Conflict in the street between a car and 9 a bicyclist can potentially occur anywhere. So 10 that's not communicated in this drawing. There's 11 really no way to communicate that. 12 So, unless this is a DOT project design 13 guideline, when she talked were mitigating risk for 14 cyclist, we talked about a core principal of 15 minimizing exposure to motorized traffic, and so we 16 should have diagrams that show in color the entire 17 space of the road as a conflict area, and she 18 doesn't include that in here analysis. She 19 references it, but she didn't show a diagram of 20 that. 21 And so if we just take it at face value 22 and we say, well, if -- we'll just accept it at face 23 value and there's bikes there the same as a car, 24 which we know is not true, there's 32 conflict 25 potentials at an intersection, which is industry</p>

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<p>1 practice for cars hitting cars. We go from 32 2 conflicts at an intersection to many fewer at a 3 driveway. 4 Q. Okay. I want to ask you about your 5 familiarity with the concept of a design vehicle. 6 A. Yes, I'm familiar with that. 7 Q. We've heard testimony over the last 8 couple days, Mr. Phillips in particular testified 9 about the distinction between a designing for and 10 accommodating. 11 Are you familiar with that testimony? 12 A. Yes. 13 Q. And do you agree with his explanation? 14 A. I did. It was accurate. 15 Q. So, can -- in terms of selecting the 16 design vehicle, I think we heard Mr. Phillips 17 testify about Seattle standard. 18 Are you aware of any other standards that 19 address design vehicles and selection of them? 20 A. We understood New York has guidance, the 21 NACTO Design Guide has guidance that speaks to 22 choosing design vehicles that have, you know, very 23 frequent occurrence. Again, in the interest of 24 balancing that -- that balance of safety versus 25 complete access, as we've been testifying all week,</p>	<p>1 A. Yes. 2 Q. And is that the case even though the 3 specific design treatments were not identified at 4 specific locations? 5 A. Yes. Because the -- the specific design 6 treatments that are at issue here really is the 7 design treatments at the driveways, you know, 8 whether they're raised or not. And it was called 9 out clearly that they would all be raised unless 10 there was unique issues like with Lowboy trailers, 11 which has been identified at the marina. 12 And so they're going to be able to 13 resolve them at almost all of the driveways where 14 Lowboys are not required. And so that now resolves 15 and addresses one of the known safety issue of the 16 contraflow movement. 17 Q. Let me ask you more generally because, 18 you know, you said you reviewed the transportation 19 impact analysis. 20 Do you agree with the methodologies used 21 in the analysis in those sections? 22 A. Of the EIS? 23 Q. Yes. 24 A. Yes. 25 Q. And do you agree with the conclusions in</p>
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<p>1 and the other experts have testified and the 2 witnesses for the design have testified, that's 3 something that we all work with collectively to make 4 sure that we're creating a safe an infrastructure as 5 possible to manage conflicts. And it doesn't mean 6 designing the largest possible driveways and street 7 intersections for the largest possible vehicle 8 because it may occur once a year. 9 So that's the difference between making 10 that distinction between accommodating, which was 11 shown in the auto turn, on how they can manage the 12 driveways versus choosing an appropriate design 13 vehicle that is routinely designed for so that it 14 turns within its lane, stays within its lane. If 15 it's without encroaching on other travel lanes. 16 Q. Okay. Let me ask you a question about 17 the -- you testified that you had looked at the 18 design that was the basis of the EIS. Do you feel 19 like there was adequate design to be able to assess 20 the transportation safety issues of this potential 21 project? 22 A. Yes. 23 Q. Do you believe there was adequate detail 24 to assess potential conflicts between motorized an 25 nonmotor sides transportation?</p>	<p>1 the EIS regarding transportation and safety? 2 A. Yes. 3 Q. Okay. And have you heard anything in the 4 Coalition's expert testimony or read anything in 5 their documentation that causes you to question the 6 analysis or conclusions in the EIS? 7 A. No. 8 MR. KISIELIUS: Thank you. I don't 9 have any further questions. 10 THE WITNESS: Okay. 11 THE HEARING EXAMINER: Mr. Brower. 12 MR. BROWER: Thank you. 13 CROSS-EXAMINATION 14 BY MR. BROWER: 15 Q. Good morning, Mr. Schultheiss. 16 A. Good morning. 17 Q. You've never worked on a SEPA EIS, have 18 you? 19 A. I have not. 20 Q. And, in fact, your NEPA experience is 21 based on your participation in preparing one EA or 22 EIS; isn't that correct? 23 A. Correct. I think as I recall, I worked 24 on one, and it's turned out. I looked back. I 25 worked on two.</p>

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<p>1 Q. So the statement that you just made that 2 this EIS is sufficient to disclose the impacts under 3 SEPA is not based on any experience with Washington 4 State's SEPA statute because you've never worked on 5 any SEPA EIS, have you?</p> <p>6 A. My statement was in --</p> <p>7 Q. No. No?</p> <p>8 A. -- response to --</p> <p>9 Q. You've never worked on a SEPA EIS, have 10 you?</p> <p>11 A. I'm sorry, you asked a long question.</p> <p>12 Q. I know, but I'm going to shorten it. Let 13 me -- so you're -- you're judging the sufficiency of 14 a Washington State SEPA EIS, but you've never used 15 Washington state's SEPA, have you?</p> <p>16 A. I wasn't judging the SEPA requirements. 17 I was judging whether the facility would be safer 18 than the existing conditions.</p> <p>19 Q. I think you just said that you think the 20 disclosure was adequate under SEPA, didn't you?</p> <p>21 A. I did not.</p> <p>22 Q. Okay. And, Mr. Schultheiss, you're a 23 partner in your firm, aren't you?</p> <p>24 A. Yes.</p> <p>25 Q. And that means you share in the profits?</p>	<p>1 through 25, I asked you a question, "Since 2000 -- 2 2015 or 2016, have you been back out to the study 3 area that's included in the IS?"</p> <p>4 MR. KISIELIUS: I'm going to object 5 to here because I think the question asked -- you 6 are implying that you had asked question whether he 7 had been back since 2005.</p> <p>8 MR. BROWER: Oh, I'm sorry.</p> <p>9 A. There's something in that.</p> <p>10 BY MR. BROWER:</p> <p>11 Q. Maybe I -- I misspoke.</p> <p>12 Have you been back since 2015 -- so 13 you've spent one hour since 2015 or 2016; is that 14 correct?</p> <p>15 A. Yeah. You -- you'd -- you'd said since 16 2005 or '6.</p> <p>17 Q. On my question to you.</p> <p>18 A. The first time. I've been here multiple 19 times since 2005. But since last year, I've been -- 20 in the last two years, 2015 and '16, I've been out 21 there twice. I was out there for one hour as I -- I 22 talked to you in the deposition with Mr. *Donho 23 Cheng when we drove the corridors.</p> <p>24 Q. And that's -- that was the one hour you 25 spent related to this --</p>
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<p>1 A. Yes.</p> <p>2 Q. So you're actually profiting from the 3 work that Tool Design is doing for SDOT on the 4 design of this *Missing Link right now, aren't you?</p> <p>5 A. Yes, I am.</p> <p>6 Q. And as of -- do you remember I took your 7 deposition on November 9th?</p> <p>8 A. Yes.</p> <p>9 Q. And I believe you told me that as of 10 November 9th, you had spent all of one hour driving 11 around the project area since about 2005 or 2006; 12 isn't that correct?</p> <p>13 A. That's not what I said.</p> <p>14 Q. Okay. Let's go look at it.</p> <p>15 A. Is there a place I can look?</p> <p>16 Q. I'm getting -- yes. I had it yesterday.</p> <p>17 MR. BROWER: Would you please open 18 this? There's a seal on the other side. You can 19 break it.</p> <p>20 A. Okay.</p> <p>21 BY MR. BROWER:</p> <p>22 Q. If you'd please turn to page 28. Are you 23 there?</p> <p>24 A. Okay. I've got it open.</p> <p>25 Q. So if you'll see on page 28, lines 24</p>	<p>1 A. It's --</p> <p>2 Q. -- project?</p> <p>3 A. -- like a couple days prior to the 4 deposition.</p> <p>5 Q. It was a Tuesday, you said.</p> <p>6 A. I -- possibly.</p> <p>7 Q. And so you drove it for one hour with 8 *Donho Cheng?</p> <p>9 A. Correct.</p> <p>10 Q. And he's a friend of yours, isn't he?</p> <p>11 A. He's a colleague of mine, yes.</p> <p>12 Q. And you didn't -- while you were driving, 13 you didn't get out of the car and walk at all, did 14 you?</p> <p>15 A. No.</p> <p>16 Q. And you didn't get out of the car and 17 talk to any businesses, did you?</p> <p>18 A. Did not do that.</p> <p>19 Q. And you didn't get out of the car and 20 talk to any bicyclist or pedestrians along the way.</p> <p>21 A. I did not do that.</p> <p>22 Q. I believe then you and I were talking 23 during your deposition, I asked you about the 24 methodology that you generally use when you're being 25 asked to design a trail, and I think you said that</p>

<p style="text-align: right;">Page 1308</p> <p>1 you often go out yourself or with your staff and 2 you'll walk the route; is that correct? 3 A. That's correct. 4 MR. COHEN: Hold on a second. I want 5 to object. I think the witness was trying to answer 6 Mr. Brower's question as to how many times he'd been 7 out there, and I believe he did not have a chance to 8 finish that answer. 9 MR. BROWER: He answered the question 10 I asked him, Mr. Cohen. 11 MR. COHEN: No, I don't think he did, 12 actually. 13 MR. BROWER: You're welcome to ask 14 him a different question when -- 15 MR. COHEN: I think -- did you -- did 16 you finish your answer? 17 THE WITNESS: No, but... 18 THE HEARING EXAMINER: We'll let him 19 finish then if there was an additional... 20 A. And so I was out there, as I 21 acknowledged, with Donho for the one hour, and I 22 didn't talk to anybody. We just drove the 23 corridors. And then I was out there the year prior 24 for the Visions Zero work when I went and assessed, 25 and we talked about that.</p>	<p style="text-align: right;">Page 1310</p> <p>1 back, I think I said, two to three times every year 2 basically for the last 10 years. 3 Q. So every time you've been here, you've 4 been a professional consultant being paid by SDOT to 5 work on an SDOT project. 6 A. That is my job. 7 Q. Yet you sit here today as a neutral 8 expert. 9 A. I am an expert providing my honest 10 opinion. 11 Q. Okay. As a neutral expert. 12 A. Yes. 13 Q. Okay. But up until your testimony today, 14 your entire involvement has been working for SDOT. 15 A. That's what I do. 16 Q. Okay. And on the Vision Zero plan, the 17 people you were talking about, I think you said that 18 you -- on that one, you were looking at the most 19 dangerous intersections in Seattle; is that correct? 20 A. We were looking at intersections that had 21 -- exhibited high risk -- elevated risk -- 22 Q. Okay. 23 A. -- that qualified, and I may have even 24 misstated and said most dangerous, but that showed 25 elevated risk of crashes for people walking and</p>
<p style="text-align: right;">Page 1309</p> <p>1 BY MR. BROWER: 2 Q. Yeah. 3 A. Market and Leary. Market and Shilshole 4 24, and so those are part of the project area. So I 5 was out there for a number of hours at that time 6 observing traffic behaviors, bicyclist behaviors. 7 We did talk to some pedestrians that were passing by 8 at that time. 9 Q. And that was -- and I -- I think the 10 confusion was that I wrote down in my notes 2005 and 11 2006 when you and I did talk about, during your 12 deposition, the work you did for Vision Zero in 2015 13 and 2016 -- 14 A. Right. 15 Q. -- correct? 16 A. In '05, I was part of the bike plan. 17 Q. That's why I got confused. So you were 18 here in 2005 as part of the bike plan. 19 A. Right. 20 Q. And you also came back and worked on the 21 Westlake cycle track, didn't you? 22 A. Correct. 23 Q. And then you came back and you worked on 24 the Vision Zero plan. 25 A. Among many other projects. I've been</p>	<p style="text-align: right;">Page 1311</p> <p>1 bicycling. 2 Q. Sure. But you weren't here in 2015 or 3 2016 to work on the Missing Link EIS. 4 A. The focus of that was Vision Zero 5 project. 6 Q. So no, it wasn't related to *Missing 7 Link. 8 A. So it was not specific to the Missing 9 Link. 10 Q. So, again, going back to the questions 11 that I was asking you, the methodology you use when 12 you're asked to design a trail is you go out and you 13 walk the trail. 14 A. Correct. 15 Q. And you take maps and you take notes. 16 A. That's when I'm working on the design of 17 a trail. 18 Q. Right. And you also told me that your 19 firm is unique in that you like to actually stop and 20 talk to people along the trail; is that correct? 21 A. That's correct. 22 Q. And that would -- would that include both 23 property owners and business owners as well as 24 pedestrians and just people walking through a biking 25 trail?</p>

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<p>1 A. We do that when we can, yes.</p> <p>2 Q. But you didn't do any of that here, did</p> <p>3 you, related to Missing Link?</p> <p>4 A. For this project, my role was not to</p> <p>5 design the trail but to assess the work of the EIS</p> <p>6 and the reports of the experts.</p> <p>7 Q. So your answer is no, you didn't do any</p> <p>8 of that work.</p> <p>9 A. That's correct.</p> <p>10 Q. Do you remember Mr. Bishop's testimony</p> <p>11 where he said that he didn't think the Chicagoland</p> <p>12 study was based on science? Do you remember him</p> <p>13 saying that?</p> <p>14 A. I think I recall he may have said that.</p> <p>15 Q. And did he just say that the Chicagoland</p> <p>16 study and framework was just a tool for</p> <p>17 comparatively assessing risk between one mode versus</p> <p>18 another or one route versus another?</p> <p>19 A. He may have said that.</p> <p>20 Q. Do you know of any study that is based on</p> <p>21 science that does what the Chicagoland study does?</p> <p>22 A. There's no study that evaluates site path</p> <p>23 safety risk.</p> <p>24 Q. That's based on science. There's no</p> <p>25 methodology, right? Excuse me, let me back up.</p>	<p>1 A. Mr. Wilson's a planner, and Ms. Carry's</p> <p>2 an advocate.</p> <p>3 Q. Okay. And what about Mr. Forrester?</p> <p>4 A. He is an industrial engineer.</p> <p>5 Q. But would -- I think you characterized</p> <p>6 him as a bicycle advocate as well, didn't you?</p> <p>7 A. Mr. Forrester is a creator and advocate,</p> <p>8 and he asserts himself as an expert witness in bike</p> <p>9 safety.</p> <p>10 Q. So -- but you don't agree with the</p> <p>11 advocacy positions of those groups.</p> <p>12 A. I didn't agree with the way that -- I</p> <p>13 didn't have a problem with people saying, hey, bikes</p> <p>14 belong in the road, they can advocate it all they</p> <p>15 want. I have a problem when they misstate research</p> <p>16 to achieve their -- you know, their preferred</p> <p>17 objective.</p> <p>18 Q. So, getting back to the question I was</p> <p>19 asking you.</p> <p>20 Do you know of any methodology that's</p> <p>21 being developed to assess the risk of a side path</p> <p>22 that you believe is based on science?</p> <p>23 A. There isn't one.</p> <p>24 Q. And didn't I ask you during your</p> <p>25 deposition that, since you're *Ashton, why haven't</p>
Page 1313	Page 1315
<p>1 So, the Chicagoland is just a</p> <p>2 methodology.</p> <p>3 A. It's a methodology.</p> <p>4 Q. So do you -- I mean, you don't like it</p> <p>5 because you don't think it's based on science.</p> <p>6 A. Well, I talked to the people that</p> <p>7 developed it and I understand that the reason they</p> <p>8 developed that had a purpose which had less to do</p> <p>9 with making a real actual choice between a side path</p> <p>10 or bike lane or the street and that they were trying</p> <p>11 to achieve an objective of kind of forcing the</p> <p>12 agency's hands to go bike lanes instead of side</p> <p>13 paths.</p> <p>14 Q. And I think you said that they're a</p> <p>15 bicycle advocacy group, right?</p> <p>16 A. They -- Chicagoland Bicycle Federation at</p> <p>17 the time was an advocacy organization.</p> <p>18 Q. And I think you also took issue with</p> <p>19 Orlando Commute study because you believe it's based</p> <p>20 on some work done by a man named John Forrester; is</p> <p>21 that correct?</p> <p>22 A. No. Influenced by him. The leadership</p> <p>23 of that organization, Nick Wilson and Carrie</p> <p>24 Caffery, are adhering to his philosophy.</p> <p>25 Q. And, again, are they bicycle advocates?</p>	<p>1 you guys developed one of these?</p> <p>2 A. Yeah, you did ask that.</p> <p>3 Q. And you said you just haven't done it.</p> <p>4 A. It's not that we just haven't done it.</p> <p>5 It's that the scope of our work to develop a</p> <p>6 methodology like that for Ashton, that's not really</p> <p>7 what we're asked to do. We're asked to rely on</p> <p>8 research projects that others have developed that</p> <p>9 are peer reviewed to meet -- if we're going to put a</p> <p>10 methodology at step 1 through step 10, that has to</p> <p>11 be based on some peer reviewed research, and that</p> <p>12 doesn't exist.</p> <p>13 Q. And you heard that Ms. Hirschey had her</p> <p>14 study peer reviewed, didn't you?</p> <p>15 A. She had her study peer reviewed by</p> <p>16 Mr. Bishop and Mr. *Kuznisky.</p> <p>17 Q. No. She actually had it peer reviewed by</p> <p>18 an independent third-party who is paid to review it.</p> <p>19 Did you hear that?</p> <p>20 A. Then I guess I misunderstood who the</p> <p>21 third party was.</p> <p>22 Q. Okay. So, you've walked us through a lot</p> <p>23 of literature, but I don't see your name on any of</p> <p>24 these studies.</p> <p>25 Have you published any studies or</p>

11 (Pages 1312 to 1315)

<p style="text-align: right;">Page 1316</p> <p>1 literature?</p> <p>2 A. Of I published any literature?</p> <p>3 Q. Are you in any published studies?</p> <p>4 A. I have referenced in numerous guidelines</p> <p>5 and -- but research, then I guess maybe you can</p> <p>6 clarify that.</p> <p>7 Q. Research papers like the ones you've been</p> <p>8 walking us through an critiquing. You don't have</p> <p>9 any research papers, do you?</p> <p>10 A. Correct, I don't.</p> <p>11 Q. Would you consider yourself to be a</p> <p>12 bicycle advocate?</p> <p>13 A. No.</p> <p>14 Q. Do you believe that -- we're talking</p> <p>15 about the inherent -- you've spent a lot of time</p> <p>16 talking about the safety of people operating on</p> <p>17 bicycle facilities.</p> <p>18 Have you ever thought about -- are there</p> <p>19 two parts of that, both the driver and the person</p> <p>20 operating the nonmotorized vehicle?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And does the relative safety</p> <p>23 depend on both of them being able to do what they're</p> <p>24 supposed to do, operate their vehicle safely?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 1318</p> <p>1 Q. I think you were actually posting Twitter</p> <p>2 starting the course that you've been here during</p> <p>3 this trial, haven't you?</p> <p>4 A. Yeah, and I've talked about how the</p> <p>5 transit system works pretty nicely here.</p> <p>6 Q. Is this your Twitter feed?</p> <p>7 MR. KISIELIUS: Mr. Examiner, I'm</p> <p>8 going to object at this point. I'm not sure what</p> <p>9 the witness's Twitter feed has to do with anything</p> <p>10 related to this case, and also I'd -- I don't even</p> <p>11 know where this is going.</p> <p>12 MR. BROWER: It's going to impeach</p> <p>13 this witness's credibility based on statements that</p> <p>14 he's made during his testimony because he is very</p> <p>15 prolific in what he puts on the internet, and he's a</p> <p>16 very opinionated bicycle advocate.</p> <p>17 MR. KISIELIUS: You've asked the</p> <p>18 question about whether he considers himself a</p> <p>19 bicycle advocate. He said no. I'm not quite sure</p> <p>20 that --</p> <p>21 MR. BROWER: And I think this Twitter</p> <p>22 feed proves otherwise.</p> <p>23 MR. KISIELIUS: I don't think a</p> <p>24 witness's Twitter feed is relevant to the issues in</p> <p>25 this case.</p>
<p style="text-align: right;">Page 1317</p> <p>1 Q. Do you believe human beings can operate a</p> <p>2 car safely?</p> <p>3 A. I think the historical record shows it's</p> <p>4 a problem.</p> <p>5 Q. But wouldn't the safety of this facility</p> <p>6 where there's 44 driveways in 1.5 miles depend in</p> <p>7 part on the human beings operating their vehicles</p> <p>8 safely?</p> <p>9 A. Yeah, and that's -- that's the key aspect</p> <p>10 of our whole transportation network for anyone doing</p> <p>11 anything.</p> <p>12 Q. But you don't believe human beings can</p> <p>13 operate cars safely, do you?</p> <p>14 A. Well, I think the reality, if you look at</p> <p>15 the crash history of fatalities and injuries in this</p> <p>16 country, we design a roadway system primarily for</p> <p>17 driving and its roads that look like Shilshole that</p> <p>18 have no definition, no curves, people can park</p> <p>19 wherever they want, and that, you know -- and we go</p> <p>20 and design streets intentionally to manage</p> <p>21 conflicts, slow down speeds, and get a safer</p> <p>22 outcome. That's -- that's quite proven.</p> <p>23 Q. Mr. Schultheiss, you're quite a prolific</p> <p>24 participant on Twitter, aren't you?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 1319</p> <p>1 THE HEARING EXAMINER: The fact that</p> <p>2 it's on Twitter doesn't make it not relevant, as we</p> <p>3 all know culturally.</p> <p>4 MR. BROWER: I had to swallow hard on</p> <p>5 that one.</p> <p>6 THE HEARING EXAMINER: Of course it's</p> <p>7 been used quite a bit, so I -- the fact that it's</p> <p>8 Twitter, I guess, is there something more that --</p> <p>9 for the basis.</p> <p>10 MR. KISIELIUS: No. I -- I -- no.</p> <p>11 MR. COHEN: So my request is if we're</p> <p>12 going to use it, could you blow it up a little so</p> <p>13 that we can all read it, including the witness?</p> <p>14 Awesome.</p> <p>15 THE HEARING EXAMINER: I'm sorry --</p> <p>16 MR. BROWER: Thank you.</p> <p>17 THE HEARING EXAMINER: Am I</p> <p>18 overruling or...</p> <p>19 MR. KISIELIUS: I'll withdraw.</p> <p>20 THE HEARING EXAMINER: Okay. Thank</p> <p>21 you.</p> <p>22 BY MR. BROWER:</p> <p>23 Q. Mr. Schultheiss, did you read your</p> <p>24 Twitter post from November 22nd, which is here on</p> <p>25 the screen?</p>

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<p>1 A. "I think it's fair to say nobody's safe.  2 This is why millions are killed and tens of millions  3 injured annually. Humans have proven to be  4 incapable of operating cars safely."  5 Q. Thank you.  6 I think you started talking a lot about  7 cycle tracks, one-way cycle facilities on Shilshole,  8 didn't you, during your testimony, and we actually  9 have some studies that talk about cycle tracks?  10 A. I think you asked -- you talked about  11 maybe a different choice of one way versus two-way.  12 Q. Certainly, and the relative safety and  13 danger of putting a one-way facility on --  14 A. Right.  15 Q. -- either side --  16 A. Right.  17 Q. -- of Shilshole.  18 A. Right.  19 Q. Did you look at the relative safety of  20 doing that on the other alternative routes?  21 A. Did I look at the relative safety of  22 other alternative routes.  23 Q. Having a one-way cycle facility on either  24 side of the road on the other alternative routes.  25 A. I was asked to review the EIS and the</p>	<p>1 vehicles at the expense of the safety of people  2 waking, biking, taking transit. It's had an  3 extraneous harm to livability and quality of life of  4 the public and that we, as a profession -- this is  5 one of My Visions, the webinar was about yesterday,  6 and I even --  7 Q. I'm actually going to stop you there. I  8 don't -- I didn't ask you about your visions, your  9 webinar yesterday. I just asked you a simple  10 question about whether you have a fundamental belief  11 that you can't necessarily change human behavior.  12 A. To finish my answer to that -- sorry it's  13 taking so long -- our profession has to focus on  14 designing streets that change people's behaviors by  15 slowing them down as they turn off streets by using,  16 like, raised crosswalks, for example, truck aprons,  17 so that we can actually require drivers, because to  18 do the right thing, to behave properly in an urban  19 environment.  20 Q. Aren't there two (undiscernible) in that  21 equation, the driver and the bicycle operator?  22 A. Yes.  23 Q. So you need both of them to operate  24 safely.  25 A. Yes.</p>
Page 1321	Page 1323
<p>1 choices presented in the EIS.  2 Q. The EIS didn't look at one-way cycle  3 facilities on other routes, did it?  4 A. The EIS did not look at those.  5 Q. Do you think it should have?  6 A. The purpose of the EIS project is pretty  7 clear that it was to develop a shared-use path.  8 Q. What if the objective was framed  9 differently?  10 A. Then it would have a different set of  11 choices.  12 Q. And isn't it your opinion that you have a  13 fundamental belief that you can't necessarily change  14 human behavior?  15 A. I think it's very difficult to change  16 human behavior, and when I speak about it in that  17 way, and similar to my Twitter feed, that human  18 beings make mistakes. You can't educate and force  19 your way to safety, that you need to be -- as  20 engineers, we need to accept more responsibility.  21 And I think that if we really look at all my Twitter  22 feed, you'll see that I'm a very strong advocate for  23 safety and that we have not, as a profession, done a  24 good job in this country of that, that we've  25 entirely focused too much on accommodating motor</p>	<p>1 Q. Do you believe bicyclists obey warning  2 signs and stop signs?  3 A. They do when applied in accordance with  4 NATCD standards.  5 Q. Mr. Schultheiss, this is a video that  6 you posted on your Twitter, blow it up a little bit  7 so everybody can read it.  8 A. You had a late night.  9 Q. Your post says, "Life in the bike lane.  10 Surely make you lose your mind, life in the fast  11 lane hash tag bike DC."  12 Is this you writing?  13 A. That's me bicycling, yes.  14 Q. Okay. So, I'd like to play this video?  15 A. You should play it. I think if you hover  16 on it, it will play.  17 Q. Yeah. Let me figure out what just  18 happened there. Here we go.  19 MR. COHEN: You blew up your screen  20 so it's probably above it.  21 MR. BROWER: Yeah.  22 THE WITNESS: It's kind of getting  23 weird. If you just hit play.  24 MR. BROWER: Actually, I want to fast  25 forward.</p>

13 (Pages 1320 to 1323)

Page 1324	Page 1326
<p>1 A. So this is me. Do you want me to 2 describe it since it was me? 3 Q. Nope, I don't. Actually, if you could 4 just let me ask the questions, that would be great. 5 So this is you riding, correct? 6 A. That is correct. 7 Q. You have a GoPro on your helmet? 8 A. Yes. 9 Q. You are wearing a helmet? 10 A. Yes. 11 Q. So you -- you didn't stop for this or 12 anything, it's just -- this is just you riding, so 13 if you stopped, it would be show you stopping? 14 A. This is why I think it would be good for 15 me to explain it. 16 Q. Well, look. 17 A. The video was taken at high speed. 18 Q. So -- 19 A. This is not realtime. 20 Q. Okay. 21 A. I covered about a mile in that video. 22 Q. Okay. But, if you stopped, it would show 23 you stopping, wouldn't it? 24 A. You'd hardly be able to tell, and I did 25 stop multiple times. This is at very high -- it's a</p>	<p>1 driveways. It could be helpful at intersections. 2 Q. So you think we should raise the bike 3 trail at the driveways? 4 A. I do believe that because that's shown in 5 research to improve safety. 6 Q. And did you hear Mr. Phillips's testimony 7 regarding CSR? 8 A. I was not here for all of his testimony. 9 I had to leave. 10 Q. And do you understand that Mr. Phillips 11 said specifically that the city will not elevate the 12 driveway at the CRR because of the Lowboy issue? 13 A. I think, as I've stated in my testimony, 14 that a Lowboy trailer makes it impossible to do a 15 raised crossing. 16 Q. So, at that driveway specifically, you 17 wouldn't be able to apply that safety -- 18 A. I think at that one driveway, that is 19 true, you would not be able to have a raised 20 crossing. 21 Q. So, I think -- did you describe Shilshole 22 as a very chaotic environment? 23 A. I did. 24 Q. And I think I also said that the 25 literature, and it was from Seville, Spain, showed a</p>
Page 1325	Page 1327
<p>1 mile in eight seconds. Do you think I went that 2 fast? 3 Q. So, did you stop at that stop sign? 4 Let's go back to this. So here we have some people 5 coming up at a crosswalk. 6 A. Uh-huh. 7 Q. And you appear to just go straight 8 through that? 9 A. Because we're watching video played at 10 extremely high speed. 11 Q. Okay. But did you stop at that stop 12 sign? 13 A. Yes. I slowed down, stopped, and 14 proceeded. 15 Q. It's not really what your video shows, is 16 it? 17 A. This video is playing at very high speed, 18 as I mentioned. I've covered about one mile 19 distance, and it's being played in about eight 20 seconds. 21 Q. Okay. So one of the things you've 22 advocated for is raising the bike trail at 23 intersections. And I believe you also said that 24 would be a good idea at driveways? 25 A. I said it, you know, specifically to the</p>	<p>1 pretty dramatic increase year over year of trail 2 usage after they completed their trail network; is 3 that correct. 4 A. That's correct. 5 Q. So, if the city builds a -- in fact, 6 research holds true, if the city builds a trail on 7 Shilshole, shouldn't you expect to see a year over 8 year increase in usage along Shilshole? 9 A. You should for sure, yes. 10 Q. Well -- 11 A. That's what was stated in the EIS. 12 Q. And so we'll be inviting vulnerable trail 13 users into what you characterize as a very chaotic 14 environment. 15 A. That's not the correct framing because 16 we're not inviting any (undiscernible), and this 17 space, as it exists today, which is the chaotic 18 environment -- 19 Q. So -- 20 A. -- we need the change the environment to 21 make it safer and predictable. 22 Q. By having a two-way side path on one side 23 of the road. And parking restrictions and curb and 24 a narrowed street and raised driveways. It's not 25 absent of any improvements. It's a different</p>

14 (Pages 1324 to 1327)

Page 1328	Page 1330
<p>1 environment.</p> <p>2 Q. What about the 44 industrial driveways,</p> <p>3 are they going to go away?</p> <p>4 A. They will remain.</p> <p>5 Q. So all of that industrial traffic and the</p> <p>6 trucks will still be there.</p> <p>7 A. That same traffic will continue to be</p> <p>8 there.</p> <p>9 Q. And isn't that traffic part of what makes</p> <p>10 Shilshole chaotic?</p> <p>11 A. Exactly. The traffic on the road and</p> <p>12 bicyclists operating the street today with that</p> <p>13 traffic mixed in with it continuously throughout its</p> <p>14 length, that is the problem. And so in the future,</p> <p>15 there will be crossing in there instead of</p> <p>16 continuously at 44 separate driveways.</p> <p>17 Q. Is -- is it -- have you ever designed a</p> <p>18 bike trail anywhere that crosses 44 industrial</p> <p>19 driveways in one -- in less than 1.4 miles?</p> <p>20 A. I have not personally designed a trail</p> <p>21 with the exact characteristics of -- of this</p> <p>22 project.</p> <p>23 Q. So, no you haven't. Is that correct?</p> <p>24 A. No, correct.</p> <p>25 Q. I think during our deposition, you said</p>	<p>1 kind of --</p> <p>2 MR. BROWER: Certainly, neither do I.</p> <p>3 And do you know which page?</p> <p>4 MR. KISIELIUS: I can find it.</p> <p>5 THE HEARING EXAMINER:</p> <p>6 Mr. Schultheiss, just to make sure -- you're going</p> <p>7 to withdraw the question?</p> <p>8 MR. BROWER: Like, I'd want to make</p> <p>9 sure I --</p> <p>10 THE HEARING EXAMINER: Or consider --</p> <p>11 MR. BROWER: -- understand the</p> <p>12 parameters of his nondisclosure, see if we can ask a</p> <p>13 question around it --</p> <p>14 THE HEARING EXAMINER: Okay.</p> <p>15 MR. BROWER: -- without --</p> <p>16 THE HEARING EXAMINER: So let's just</p> <p>17 withdraw the last question, and you're going to</p> <p>18 start a new line of questioning --</p> <p>19 MR. BROWER: Perfect.</p> <p>20 THE HEARING EXAMINER: -- on the same</p> <p>21 subject; is that --</p> <p>22 MR. BROWER: Yes.</p> <p>23 THE HEARING EXAMINER: Okay.</p> <p>24 MR. BROWER: Thank you.</p> <p>25 BY MR. BROWER:</p>
Page 1329	Page 1331
<p>1 that you -- you're familiar with two trails, at</p> <p>2 least, that you've worked on in industrial areas.</p> <p>3 One I think was in -- is it an -- the Anaconda (sic)</p> <p>4 area of --</p> <p>5 A. Anacostia.</p> <p>6 Q. Anacostia. Sorry.</p> <p>7 A. That's okay.</p> <p>8 Q. And -- and I think you also told me that</p> <p>9 -- that area used to be industrial but has been</p> <p>10 rezoned and is in the process of being redeveloped</p> <p>11 into more of a mixtuous commercial and office park;</p> <p>12 isn't that correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And then the other industrial area you</p> <p>15 mentioned was in *Daonis Brooklyn?</p> <p>16 MR. KISIELIUS: At this point, I'm</p> <p>17 going to object only because what became clear</p> <p>18 through the deposition is that his involvement in</p> <p>19 that is subject to a nondisclosure agreement. So</p> <p>20 he's got an obligation of confidentiality that he</p> <p>21 cannot breach through the course of his testimony.</p> <p>22 MR. BROWER: The Brooklyn?</p> <p>23 MR. KISIELIUS: The Brooklyn project,</p> <p>24 which you discovered when you were taking his</p> <p>25 deposition. I don't want to put the witness in that</p>	<p>1 Q. So, Mr. Schultheiss, I apologize, I</p> <p>2 forgot.</p> <p>3 A. That's okay.</p> <p>4 Q. What is the scope of that nondisclosure?</p> <p>5 A. The scope is not to make it public.</p> <p>6 Q. That you worked on the project?</p> <p>7 A. That I worked on that project.</p> <p>8 Q. Got it.</p> <p>9 MR. BROWER: Then I will withdraw the</p> <p>10 question because I don't think we can talk about it</p> <p>11 without putting it into the record.</p> <p>12 MR. KISIELIUS: I'm just saying, it's</p> <p>13 on page 43 if you want to --</p> <p>14 MR. BROWER: Thank you.</p> <p>15 MR. KISIELIUS: Uh-huh.</p> <p>16 A. Sorry. In the deposition, I list -- you</p> <p>17 know, it's the first project I've had with that,</p> <p>18 so... You had asked me, and I just answered the</p> <p>19 question.</p> <p>20 MR. KISIELIUS: Lines 9 through 15</p> <p>21 (inaudible).</p> <p>22 BY MR. BROWER:</p> <p>23 Q. So yesterday you criticized</p> <p>24 Ms. Hirschey's work in part because she relied on</p> <p>25 Commute Orlando and -- but you went further and said</p>

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<p>1 you don't think it was appropriate for her to rely 2 on Commute Orlando because you believe that it's 3 biased based on the work of John Forrester; is that 4 correct? 5 A. No. I said they're an unreliable primary 6 source because they're an advocacy organization. 7 Q. But you spent a lot of time talking about 8 Mr. Forrester. 9 A. It all ties back to him fundamentally. 10 Q. But Ms. Hirschey didn't rely on this. 11 She didn't cite to Mr. Forrester in her bio -- 12 bibliography, did she? 13 A. I don't believe she did, no. 14 Q. We're going to look at Volume I of the 15 appellant's notebook. 16 THE HEARING EXAMINER: This says II. 17 What exhibit? 18 MR. BROWER: A-81. 19 THE HEARING EXAMINER: Mr. *Passini, 20 is it -- is that -- 21 MR. BROWER: Yes. 22 THE HEARING EXAMINER: -- what we're 23 looking at? 24 MR. KISIELIUS: Mr. Brower, I'm 25 sorry. What -- what exhibit number are you on?</p>	<p>1 A. Yes. 2 Q. Thank you. 3 Would you go back to the City's documents 4 please, R-32? 5 A. Okay. Let's confirm the title. 6 MR. KISIELIUS: Just -- just for the 7 witness's clarification, he might be looking at the 8 tab numbers which are -- 9 MR. BROWER: Oh. 10 MR. KISIELIUS: -- confusing and 11 similar to the -- 12 MR. BROWER: Thank you. I apologize. 13 It's going to be Tab 30 but what's been admitted 14 into evidence as R-32. 15 MR. KISIELIUS: Thank you. 16 A. I was on the wrong page, so -- 17 Q. Thank you for -- it is hard with all the 18 numbers and the tabs. 19 A. Motor -- Motor Vehicle Crashes at 20 Unsignalized Intersections. Is this the title -- 21 Q. No. 22 A. -- roughly? 23 Q. Road Factors and Bicycle Motor Vehicle 24 Crashes at Unsignalized -- 25 A. Okay. We're on the same one.</p>
Page 1333	Page 1335
<p>1 MR. BROWER: A-81. 2 THE HEARING EXAMINER: Okay. 3 MR. BROWER: Is -- may I have this 4 marked, please? 5 THE ASSISTANT: Yes. This will be 6 Appellant's A21. 7 (COALITION'S EXHIBIT A21 MARKED) 8 BY MR. BROWER: 9 Q. Mr. Schultheiss, looking at what's been 10 marked as Exhibit A21, and this is the study 11 entitled The Risks of Cycling by *Dr. Arrow Pasedin? 12 A. Correct. 13 Q. Believe this is the *Health Sinky study 14 you were talking about yesterday, isn't it? 15 A. Correct. 16 Q. And this is a study that's actually 17 attached also to Ms. Hirschey's report? 18 A. Yes. 19 Q. Would you turn to page 4 of that report, 20 which is also marked in red as page 004? 21 A. Okay. Got it. 22 Q. Do you see Figure 4? 23 A. Figure 4, I see it. 24 Q. And that actually lists the number of 25 accidents, doesn't it, for each of those movements?</p>	<p>1 Q. Wonderful. 2 A. Okay. 3 Q. Would you turn to page 2 of that 4 document, which is marked on the bottom right-hand 5 corner as COS 000588? 6 A. Okay. 7 Q. Do you see the left-hand column entitled 8 1.1 Type 1 Crashes and Road Factors? 9 A. Got it. 10 Q. Do you understand that in Washington 11 State under Washington State law, a bicyclist on a 12 side path has the right of way when it's crossing a 13 driveway? 14 A. Yes. 15 Q. So that would be a priority vehicle? 16 A. This would be a priority, yes. 17 Q. So if you'd go about halfway down that 18 first page in that second full paragraph, and that 19 paragraph starts "Several priority." 20 Do you see that paragraph? 21 A. I do. 22 Q. There's a sentence that reads: "The risk 23 of bicycle crashes is found to be elevated at 24 priority intersections. The two-way cycle paths 25 along the arterial road, as drivers entering from</p>

16 (Pages 1332 to 1335)

Page 1336	Page 1338
<p>1 the roadside -- excuse me-- the side road, have 2 difficulties in detecting cyclists from the right." 3 Do you see that? 4 A. I see that. 5 Q. So isn't that exactly the situation we 6 have here, where the bicyclist is the priority 7 vehicle and a driver is coming out of a driveway and 8 crossing the path and is going to have difficulty 9 seeing that cyclist? 10 A. It's exactly the same situation. 11 Q. Okay. And the last sentence says: 12 "Drivers develop a scanning strategy which 13 concentrates on more frequent and major dangers but 14 ignores and may even mask visual information on less 15 frequent dangers." 16 Do you see that? 17 A. I see that. 18 Q. And how much time did you spend reading 19 EIS? 20 A. It's hard to estimate, I mean-- 21 Q. Did you read the entire document? 22 A. No. 23 Q. Not from cover to cover? 24 A. No. 25 Q. Do you -- I think you told me you scanned</p>	<p>1 know, very fast. 2 Q. Okay. So I think you hear Mr. Phillips's 3 testimony that one of the main design treatments 4 that the city plans to use to -- in an attempt to 5 make this trail safe is colored trail markings? 6 A. Yes. 7 Q. And they're going to be green? 8 A. Green. 9 Q. Are they sometimes -- do other places use 10 different colors? 11 A. There's -- yeah, I mean, in the United 12 States, it's standardizing to green, and sometimes 13 shared use paths have just normal crosswalks, the 14 white markings. 15 Q. In London, I think they painted all their 16 paths blue, didn't they? 17 A. I don't know what London does. I know 18 Portland tried it once, blue, in the early '90s or 19 something like that, first time in the United 20 States. The Dutch use red exclusively. Yeah. 21 Q. Do you think that colored trail markings 22 are an effective means to make a trail safe? 23 A. The research on it in the United States 24 is showing, thus far, the green is proving to 25 increase awareness. A lot of studies are showing</p>
Page 1337	Page 1339
<p>1 section one and maybe looked at the transportation 2 section? 3 A. I read chapter one. 4 Q. Okay. 5 A. Read the transportation section and 6 scanned the remaining -- remaining chapters. 7 Q. Does the EIS have any discussion about 8 the factors we just talked about that specifically 9 talk about the risk of side paths? 10 A. It talks about the risk of the driveway 11 crossings. 12 Q. In very general terms though, right? 13 A. It says that there's elevated -- you 14 know, there's risk at the driveways and 15 intersections. 16 Q. Do you know where in the EIS it says 17 that? Could you point it out if I asked you to? 18 A. I would have to go page through it, and 19 my memory of the EIS page to page is not as good as 20 the research. 21 Q. So it's not in a section that jumps right 22 out at you that says, you know, Risk of Side Paths 23 Section 3.2.2? 24 A. I can't recall quickly. I can flip 25 through it, but I can't go and point to a page, you</p>	<p>1 that the green is a significant improvement in 2 increasing awareness of drivers of the crossing, of 3 bicyclists of the crossing. 4 Q. Okay. 5 A. The studies are not as conclusive on 6 crash reduction as being associated with that, but I 7 think our understanding of traffic safety is, you 8 know, a key part, as we've been discussing this -- 9 the last half hour is -- as this discusses here, 10 this issue of scanning and the (indiscernible) 11 increased awareness is a key factor in improving 12 behavior. 13 Q. So those visual markings actually help 14 people with that scanning. 15 A. Yeah. They have to recognize, you know, 16 in the road environment something's different. And 17 then I think in a situation like this case we have 18 driveways where it's generally the same people that 19 work there, they're going to become -- they're going 20 to know it's a trail. And the more that these 21 markings are standardized, the more the general 22 public understands what they are. 23 Q. So could you turn to page, in that same 24 report in that same Exhibit, R-32? Could turn to 25 page 593 marked in the lower right hand corner?</p>

17 (Pages 1336 to 1339)

<p style="text-align: right;">Page 1340</p> <p>1 Are you there?</p> <p>2 A. I'm on 593.</p> <p>3 Q. So you see the lower right-hand corner</p> <p>4 there's a new paragraph that starts "Like other</p> <p>5 researchers"?</p> <p>6 A. Yes, I see it.</p> <p>7 Q. And they go on to say, "We found that</p> <p>8 raised bicycle crossings and other speed-reducing</p> <p>9 measures are effective in reducing the number of</p> <p>10 bicycle crashes at priority intersections while</p> <p>11 red-colored pavement and other markings seem to</p> <p>12 deteriorate the safety of cyclists. In general,</p> <p>13 these road features seem to increase cyclists' speed</p> <p>14 and reduce their visual scanning while drivers</p> <p>15 decrease their speed and improve their visual</p> <p>16 scanning."</p> <p>17 So isn't this -- that statement saying</p> <p>18 exactly the opposite of what you just said?</p> <p>19 A. It's not saying the opposite of what I</p> <p>20 said.</p> <p>21 What -- what are you characterizing as</p> <p>22 the opposite of what I said?</p> <p>23 Q. I think you just said that trail markings</p> <p>24 actually will help the bicyclists behave more safely</p> <p>25 is -- right --</p>	<p style="text-align: right;">Page 1342</p> <p>1 other researchers."</p> <p>2 Are you on -- I'm on Exhibit R-32.</p> <p>3 THE HEARING EXAMINER: Uh-huh. Oh,</p> <p>4 see it. Thanks. Second full paragraph, right?</p> <p>5 Okay. Thank you.</p> <p>6 BY MR. BROWER:</p> <p>7 Q. So I think what you've been saying is</p> <p>8 that the research in the United States is showing</p> <p>9 this. So -- and this study was not done in the</p> <p>10 United States, was it?</p> <p>11 A. No. The first three studies were</p> <p>12 European studies. *Garder, *Herstitch, *Schnul.</p> <p>13 Correct.</p> <p>14 Q. So would you now disagree with this</p> <p>15 study?</p> <p>16 A. No.</p> <p>17 Q. So do you agree --</p> <p>18 A. I guess what -- I'm sorry. That was --</p> <p>19 Q. That was a yes or no question.</p> <p>20 A. Okay.</p> <p>21 Q. So, do you agree, yes or no, that colored</p> <p>22 pavement and other markings seem to deteriorate the</p> <p>23 safety of cyclists? Yes or no.</p> <p>24 A. It's -- it can't be answered that way.</p> <p>25 The research is showing --</p>
<p style="text-align: right;">Page 1341</p> <p>1 A. No.</p> <p>2 Q. -- and that's why we mark them?</p> <p>3 A. I said it would help all users and that</p> <p>4 research in the United States in the last 10 years</p> <p>5 is showing consistent findings that the use of green</p> <p>6 is - is --</p> <p>7 Q. But, Mr. Schultheiss, wait a minute. I</p> <p>8 realize that you're trying to answer, but I'm -- I'm</p> <p>9 -- that's not the question I asked you, and this is</p> <p>10 cross, so I need you to only answer the questions I</p> <p>11 asked you.</p> <p>12 So let me -- let me try and rephrase my</p> <p>13 question and be more --</p> <p>14 A. Okay, sure.</p> <p>15 THE HEARING EXAMINER: As you're</p> <p>16 doing that, Mr. Brower, could you -- I did not see</p> <p>17 the line that you were quoting from.</p> <p>18 MR. BROWER: Certainly, Mr. Examiner.</p> <p>19 It's on page 593. It is the second full paragraph,</p> <p>20 and it starts "Like other researchers."</p> <p>21 THE HEARING EXAMINER: Which column?</p> <p>22 MR. BROWER: The right-hand column.</p> <p>23 THE HEARING EXAMINER: The right-hand</p> <p>24 column. Second paragraph?</p> <p>25 MR. BROWER: Yes. It starts "Like</p>	<p style="text-align: right;">Page 1343</p> <p>1 Q. That's fine.</p> <p>2 A. -- it improves.</p> <p>3 Q. Mr. Schultheiss, I think you said you</p> <p>4 also -- that you've helped author the AASHTO Bicycle</p> <p>5 Guideline?</p> <p>6 A. Yes.</p> <p>7 Q. So, would you, in that same binder turn</p> <p>8 to tab 17?</p> <p>9 A. Okay. This is the Design of *Sharities</p> <p>10 Pass.</p> <p>11 Q. And you helped author this?</p> <p>12 A. Yes.</p> <p>13 Q. And this has been marked and admitted as</p> <p>14 Exhibit R-17, I believe.</p> <p>15 UNIDENTIFIED SPEAKER: I think it's</p> <p>16 R-13.</p> <p>17 UNIDENTIFIED SPEAKER: 13.</p> <p>18 MR. BROWER: R-13. Okay. Thank you.</p> <p>19 BY MR. BROWER:</p> <p>20 Q. Would you, Mr. Schultheiss, turn to page</p> <p>21 5-8 in the original numbering? And in the bates</p> <p>22 numbering, it's COS000250.</p> <p>23 Do you see that page?</p> <p>24 A. 5-8, yes.</p> <p>25 Q. And this is the Section 5.2.2 that talks</p>

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<p>1 about shared use paths adjacent to roadways 2 otherwise known as side paths? 3 A. Correct. 4 Q. And halfway down that page, the last full 5 paragraph starts with "Paths can function along 6 highways for short sections or for longer sections 7 where there are few street and/or driveway 8 crossings" -- 9 A. Correct. 10 Q. -- "given appropriate separation between 11 facilities and attention to reducing crashes at 12 junctions." Yes? 13 A. Yes. 14 Q. Do you know that it's actually legal in 15 Washington State to ride your bike on the freeway 16 systems so people can ride on I-5? 17 A. It's legal in parts. Yeah, it has to be 18 designated. I've seen that section of I-90. 19 Q. I only ask that because you made a 20 comment about I-5 would be safest place to ride. 21 And since we're both from Vermont, I would never, 22 you know, I don't think we rode -- 23 A. No a lot in Vermont. 24 Q. I didn't think so. 25 You spent a lot of time talking yesterday</p>	<p>1 consideration to mitigate the -- basically the 2 operational issues, the contraflow movement. 3 Q. So would you read number 14, please, 4 out loud? 5 A. "Traffic control devices, such as signs 6 and markings, have not been shown effective at 7 changing road or path user behavior at side path 8 intersections or in reducing crashes and conflicts." 9 Q. So in intersections in that context means 10 driveways as well based on your testimony a minute 11 ago, doesn't it? 12 A. It's in the context of this location. 13 It's -- it could be read to apply to driveways and 14 street intersections. 15 Q. And would you read number 13 as well 16 outloud? 17 A. "Even if the number of intersections and 18 driveway crossings is reduced, bicycle motor vehicle 19 crashes may still occur at the remaining crossings 20 located along the side path." 21 That's a statement that clearly indicates 22 you can't guarantee safety. 23 MR. BROWER: Nothing Further. 24 THE HEARING EXAMINER: Mr. *Valley? 25 I don't have any questions, if the city --</p>
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<p>1 distinguishing between intersections and driveways, 2 didn't you? 3 A. Yes. 4 Q. And this section talks about crashes at 5 junctions. 6 Isn't that the word it uses? 7 A. It's the same, both combined. That's 8 just a term to say, you know, intersections with 9 street, intersections with driveways. 10 Q. Got it. 11 A. Junctions. 12 Q. So, that section goes on to say that 13 "However, before committing to this option for 14 longer distances on urban and suburban streets" -- 15 which is where we are now, right? 16 A. Correct. 17 Q. So we're -- the city wants to put a side 18 path on an urban street. 19 A. Urban street. 20 Q. -- "with many driveways and street 21 crossings, practitioners should be aware that 22 two-way side paths can create operational concerns." 23 And then it goes on to list what those conflicts can 24 include, all 14 separate paragraphs, doesn't it? 25 A. It highlights 14 different points of</p>	<p>1 MR. KISIELIUS: On redirect, yes. 2 THE HEARING EXAMINER: Uh-huh. 3 UNIDENTIFIED SPEAKER: I do have a 4 couple. 5 REDIRECT EXAMINATION 6 BY MR. KISIELIUS: 7 Q. So, Mr. Schultheiss, there was a back and 8 forth between you and Mr. Brower about your opinion 9 on whether human beings can operate vehicles safely. 10 Given what you testified to as that being 11 a challenge -- I'm using my words. I don't know if 12 you want to correct those -- or the possibility for 13 that type of error, do you believe that existing 14 conditions now involving bicycle transportation on 15 the street are a better choice than the preferred 16 alternative -- 17 A. Yes. 18 Q. -- existing then -- 19 A. I'm sorry, is that-- 20 Q. Which is the better choice? Maybe I will 21 make it less confusing. 22 Which of the two -- given your assumption 23 about the likelihood or potential for error of motor 24 vehicle driving, which of those two choices is a 25 better choice?</p>

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<p>1 A. The better choice is a facility that 2 separates bikes from traffic. So the preferred 3 alternative in this case is better than existing 4 conditions. 5 Q. Sorry I got tangled on my question there. 6 I want to ask you a couple follow-up 7 questions to some of the studies that Mr. Brower 8 asked you about. 9 So I'm going to start with what is in 10 your binder, tab 30, but it's been marked as Exhibit 11 R-32. And I believe Mr. Brower directed you to the 12 second page, which is marked as page 588 in the Bates 13 stamps. 14 A. So this is the road and bike -- Road 15 Factors and Bicycle Motor Vehicle Crashes study? 16 Q. That's correct, yeah. And he was 17 directing you to that first column Type 1 Crashes 18 and Road Factors. 19 A. Okay. 20 Q. And he was talking about the priority 21 intersection designation. 22 A. Yes. 23 Q. And asking about sort of the likelihood 24 or the -- the types of risks with that, and he asked 25 whether this was the situation we're dealing with</p>	<p>1 markings in the United States, raised crossings, can 2 improve the safety of people when they're in the 3 separated facility at these locations where they 4 interact with motorized traffic. 5 Q. Okay. And I want to direct you now a 6 couple pages later to 593 on the Bates stamp number 7 same Exhibit. It's the last -- second-to-last page 8 I believe. 9 Mr. Brower had directed you to that 10 paragraph that -- in the second column that begins, 11 "Like other researchers." 12 A. Yes. 13 Q. So he asked you about the paint markings. 14 I want to first ask you about the earlier part of 15 that sentence. 16 Does this support your testimony earlier 17 about the efficacy of other design measures? 18 A. Yeah, I mean, it's showing very 19 conclusively that when you raise treatments that 20 drivers slow down, raised crosswalks, speed humps. 21 In this case, it's a raised crosswalk at the point 22 where the bicyclist is crossing the path and the 23 motor vehicle, that it -- it slows drivers down, 24 increases yielding and decreasing crashes. 25 Q. Okay. And then he asked you about the</p>
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<p>1 now. 2 A. Correct. 3 Q. And I think your answer was yes. 4 A. Yes, it is the same. 5 Q. So can you tell us, is that -- that risk, 6 that issue present now under existing conditions? 7 A. Is the risk of crashes in this case 8 present now? 9 Q. Yes. Where the driveway enters the 10 roadway. 11 A. Yeah. This -- these studies of type one 12 are turning the drivers from driveways to streets, 13 crossing bicyclists paths. 14 Q. Okay. And so given this risk that you've 15 identified, why is it that you still hold that the 16 preferred alternative is a safer option than the 17 existing conditions? 18 A. Because these -- the way that the 19 evidence of all the studies together is showing that 20 on the existing roadway system, as I've testified, 21 is elevated risk. We see that nationwide. We see 22 that locally. That creating designs that separate 23 bicyclists from traffic improve safety by reducing 24 their exposure to traffic and that there is evidence 25 that shows that the use of green-colored pavement</p>	<p>1 latter part of that paragraph dealing specifically 2 with pavement markings, with coloring of paint. And 3 I think he asked you a yes or no question, and you 4 said "That can't be answered that way." 5 I'd like to ask you how can that be 6 answered? 7 A. Yeah. And so that the context of these 8 studies is, the way it's explained here, the Bill 9 Hunter study's an American study, and he says that 10 bicyclists stop scanning. But his -- his research 11 has been historically problematic because he relies 12 on this video technology, which is quite limited, 13 where he's looking for a bike to turn their head 14 backwards to prove they're scanning. And a lot of 15 us have criticized his methods in this country 16 because some bicyclists operate with mirrors. You 17 can scan with their eyes a little bit, and it's hard 18 to tell the head movement. It's a very bad measure 19 of proving whether bicyclists are scanning for a 20 risk. 21 And so his studies that speak to scanning 22 are generally -- we don't -- he's a good researcher, 23 but on this aspect, we -- this aspect is -- is not a 24 good way to approach research. 25 And when it comes to color, there's --</p>

20 (Pages 1348 to 1351)

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<p>1 there's been studies that have shown mixed results.  2 So, you know, there's -- there's a case that what  3 we're seeing in European studies that were brought  4 up is there -- there's one study that shows that if  5 you mark four legs of the intersection with the  6 green -- with colored crossings, that they  7 necessarily don't improve safety. But in that same  8 study said if you mark one crossing at intersection,  9 it improves safety.</p> <p>10 And what we're talking about throughout  11 this corridor is not marking the crossings colored  12 at every crossing of the street but actually marking  13 the one crossing of the driveway.</p> <p>14 And so that lines up pretty well with his  15 research study -- this is Jensen, if you'd like to  16 check -- that shows that the safety is improved when  17 marking color of one crossing.</p> <p>18 And then in the United States we're  19 seeing, again as I mentioned, the green color is  20 showing that, while these studies show that maybe  21 cyclists' awareness wasn't proven to elevate, the  22 U.S. studies are showing that it is proven that  23 motorists' and cyclists' awareness is improved when  24 there's green-colored paint.</p> <p>25 Q. Let me ask you now to turn to tab 17 in</p>	<p>1 as you understand it having reviewed all of these,  2 does that support your testimony about your  3 comparison between existing conditions and the  4 preferred alternative?</p> <p>5 A. Yes.</p> <p>6 MR. KISIELIUS: And I have no further  7 questions. Thank you.</p> <p>8 THE HEARING EXAMINER: Mr. Cohen?  9 MR. COHEN: I have no questions.</p> <p>10 THE HEARING EXAMINER: Okay.  11 MR. BROWER: I just have a couple.</p> <p>12 MR. KISIELIUS: Wait. Wait. Excuse  13 me. This is not one of those witnesses where  14 they've called him as a direct witness. This --  15 this is a standard expert where we go -- he's had  16 his opportunity for cross-examination and he's done.</p> <p>17 THE HEARING EXAMINER: Oh, this was  18 just re (indiscernible) --</p> <p>19 MR. KISIELIUS: This was just ours.  20 THE HEARING EXAMINER: Okay.</p> <p>21 MR. KISIELIUS: They did not name him  22 as an expert -- excuse me, as a witness on their  23 list.</p> <p>24 THE HEARING EXAMINER: Okay. Are  25 there any others that are shared direct?</p>
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<p>1 your binder, the Exhibit that's been marked R-13.  2 You'll have to go back in your binder. Same binder  3 back to tab 17. That's been marked as R-13, and I'd  4 ask you to turn to page 5-8 and 5-9 of tab 17.</p> <p>5 A. Okay. And this is the Shared-use Paths  6 against the Roadside Paths section?</p> <p>7 Q. Yes. Mr. Brower was asking about those  8 14 characteristics.</p> <p>9 Let me ask you generally about this  10 Section. Do you -- do you interpret this section  11 precluding shared-use paths in urban areas?</p> <p>12 A. No. If we wrote this to preclude them,  13 we would have said do not build them very  14 explicitly. This -- this whole section is saying  15 and acknowledging there's an elevated crash risk for  16 the contraflow movement in that it's important to  17 make sure you do a good job of design. This -- this  18 gives you the direction of things to consider to do  19 that design.</p> <p>20 Q. Okay. Mr. Brower asked you to look at a  21 lot of specific excerpts from some of the studies  22 that you relied on. I'm going to ask you about I  23 think what you referred to as the weight of the  24 evidence.</p> <p>25 And so, with the weight of the evidence,</p>	<p>1 MR. KISIELIUS: I believe Mr. Mazzola  2 is. Josh and Pat, I don't want to misspeak --</p> <p>3 THE HEARING EXAMINER: My -- my  4 question is --</p> <p>5 MR. KISIELIUS: Any witnesses --</p> <p>6 THE HEARING EXAMINER: -- are there  7 any others that you're calling on collective direct  8 (inaudible)?</p> <p>9 MR. KISIELIUS: I mentioned  10 Mr. Mazzola.</p> <p>11 MR. BROWER: Definitely calling --  12 Mr. Mazzola's on our list</p> <p>13 MR. KISIELIUS: Okay. And I just  14 couldn't remember about Mr. Cheng, if he -- if you  15 had named him --</p> <p>16 MR. BROWER: No.</p> <p>17 MR. KISIELIUS: Okay. And Mr. Shook  18 is on our list as well.</p> <p>19 MR. BROWER: That's right.</p> <p>20 MR. KISIELIUS: Okay.</p> <p>21 THE HEARING EXAMINER: And it's just  22 helpful so we don't --</p> <p>23 MR. BROWER: And we've agreed that  24 Mr. Trask, although going to be very quick, is the  25 combo witness.</p>

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<p>1 MR. KISIELIUS: Yes.</p> <p>2 UNIDENTIFIED SPEAKER: Is the witness</p> <p>3 excused?</p> <p>4 THE HEARING EXAMINER: I had one</p> <p>5 question.</p> <p>6 UNIDENTIFIED SPEAKER: Oh, I'm sorry.</p> <p>7 THE HEARING EXAMINER: I'm trying to</p> <p>8 keep him there.</p> <p>9 (Chatter and laughter)</p> <p>10 UNIDENTIFIED SPEAKER: *Christmas</p> <p>11 continues.</p> <p>12 THE WITNESS: It's why I'm here.</p> <p>13 EXAMINATION</p> <p>14 BY THE HEARING EXAMINER:</p> <p>15 Q. You had mentioned that there is evidence</p> <p>16 that green paving crossings -- and I don't want to</p> <p>17 misstate here -- I guess I should ask a clarifying</p> <p>18 question first.</p> <p>19 What -- what service does the green paint</p> <p>20 do? What -- does it increase safety for bicyclists?</p> <p>21 Increase safety for everybody? None of the above?</p> <p>22 What -- how --</p> <p>23 A. Yeah. The intention of the green paint</p> <p>24 is to increase safety and the studies in the U.S.</p> <p>25 show mixed -- many studies showed it decreases</p>	<p>1 Q. Right.</p> <p>2 A. -- if there some of these studies. I</p> <p>3 haven't submitted one myself.</p> <p>4 Q. That's probably where it would have come</p> <p>5 in as far as I can tell.</p> <p>6 THE HEARING EXAMINER: Okay, thank</p> <p>7 you.</p> <p>8 MR. COHEN: I just have a question</p> <p>9 for the -- kind of the documents.</p> <p>10 Is the Jensen study that</p> <p>11 Mr. Schultheiss referenced in your documents? And</p> <p>12 if it's not, can we get a full name of it?</p> <p>13 THE WITNESS: Well, it's referenced</p> <p>14 in the document that's in here. It's one of the lit</p> <p>15 review documents, and I actually -- I just know that</p> <p>16 study.</p> <p>17 MR. COHEN: Okay. Thank you. Okay.</p> <p>18 Clear from my question. Thank you.</p> <p>19 THE HEARING EXAMINER:</p> <p>20 Mr. Schultheiss, thank you for your testimony.</p> <p>21 THE WITNESS: Sure, thank you.</p> <p>22 MS. FERGUSON: And the city calls</p> <p>23 Morgan Shook.</p> <p>24 THE HEARING EXAMINER: Please state</p> <p>25 your name for the record and spell your last name.</p>
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<p>1 conflicts, but many don't. And the challenge with</p> <p>2 drawing -- and so that -- but they all show that</p> <p>3 it's effective at increasing awareness.</p> <p>4 Q. Okay. And so my question is, are any of</p> <p>5 those studies in what we've had introduced here</p> <p>6 today as far as evidence?</p> <p>7 A. The study -- I guess would say that</p> <p>8 probably--</p> <p>9 Q. Just for purposes of the record, I want</p> <p>10 to know --</p> <p>11 A. Right.</p> <p>12 Q. -- what I have to rely on when I go back</p> <p>13 and --</p> <p>14 A. Right.</p> <p>15 Q. -- read this. Am I looking at your</p> <p>16 testimony, or are there exhibits in here that I</p> <p>17 should also look to for that?</p> <p>18 A. I -- I'm not sure. I think they're --</p> <p>19 they reference indirectly when people talk about</p> <p>20 NACTO, and I don't know if that's been put in as an</p> <p>21 exhibit. NACTO sources, all of their</p> <p>22 recommendations to the research, which is many of</p> <p>23 these studies.</p> <p>24 I'm not familiar enough with all these</p> <p>25 binders to know if --</p>	<p>1 THE WITNESS: My name is Morgan</p> <p>2 Shook. Shook is S-h-o-o-k.</p> <p>3 THE HEARING EXAMINER: Do you swear</p> <p>4 and affirm the testimony you're providing in this</p> <p>5 morning's hearing is the truth?</p> <p>6 THE WITNESS: I do.</p> <p>7 THE HEARING EXAMINER: Thank you.</p> <p>8 THE WITNESS: Thank you.</p> <p>9 MORGAN SHOOK,</p> <p>10 a witness, having been first duly sworn,</p> <p>11 was examined and testified as follows:</p> <p>12 DIRECT EXAMINATION</p> <p>13 BY MS. FERGUSON:</p> <p>14 Q. Good morning, Mr. Shook.</p> <p>15 Can you please state your name once more</p> <p>16 and your occupation?</p> <p>17 A. My name is Morgan Shook, and I am a</p> <p>18 senior economic and policy analyst.</p> <p>19 Q. And who do you work for?</p> <p>20 A. I work for a firm called ECONorthwest</p> <p>21 where I am also an owner and lead our Seattle</p> <p>22 operations as well as working in our broader</p> <p>23 economic analysis groups.</p> <p>24 Q. And what are your primary</p> <p>25 responsibilities at ECONorthwest?</p>

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<p>1 A. My primary responsibilities related to 2 project work are the design of analyses, the 3 direction of specialized economic resources in the 4 firm, so PHD, economists, transportation economists 5 in the execution of their work and reviewing and 6 making sure that it meets our quality and 7 thresholds. 8 Q. And can you briefly describe your 9 educational and professional background? 10 A. Yes. So I received my degree in biology. 11 I worked for four years in biotechnology doing 12 technology development. 13 I then worked for three years at the 14 University of Chicago where I lead three large 15 community health interventions looking at the impact 16 and health disparities that exist in diabetes and 17 cardiovascular care. So we -- really questions 18 about medical-cost effectiveness. 19 I then found my passion in cities and 20 went back to graduate school in regional planning 21 where I got my degree from Portland State with a 22 specialization in regional economic development. 23 I also have a certificate in commercial 24 real estate development from the University of 25 Washington extension where I'm also an instructor in</p>	<p>1 projects and environmental review and -- 2 Q. And can you tell me about what capacity 3 you were involved? 4 A. You know, our capacity, both myself and 5 as a firm, is fairly specialized. We get involved 6 with very sort of unique questions related to 7 economics or finance. An example of which would be 8 examination of impact of property values of a 9 trail -- I'm sorry, not trail. Obviously a trial -- 10 but of a regional jail facility -- or two regional 11 jail facilities in this case, the impacts of 12 affordability of an upzone to users in the area, the 13 impacts to local commerce of the siting of a resort, 14 or the types or kinds of unique questions that we 15 are called upon to address. 16 Q. And what was your role with this project? 17 A. So, both the city and ESA asked us to 18 participate in the project to look at the impacts to 19 local businesses from the siting of different 20 alternative trail alignments and segments within the 21 Ballard study area. 22 Q. And what were you asked to produce? 23 A. We were asked to produce an economics 24 consideration analysis of trying to understand how a 25 very unique facility like this may impact the local</p>
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<p>1 data analysis and market analysis. 2 Q. And I'm going to hand you -- we have your 3 resume. 4 And is this a copy of your resume? 5 A. It is. 6 Q. And does it accurately characterize the 7 background you just described? 8 A. It accurately characterizes that. It's 9 missing some references and some specific projects, 10 but generally accurate. 11 THE HEARING EXAMINER: Mark that 12 A-22. 13 THE ASSISTANT: R -- 14 THE HEARING EXAMINER: Oh, sorry. 15 R-33. 16 THE ASSISTANT: Thank you. 17 (RESPONDENT'S EXHIBIT R-33 MARKED FOR 18 IDENTIFICATION) 19 THE HEARING EXAMINER: I at least get 20 the numbers down once I get the parties right. 21 BY MS. FERGUSON: 22 Q. And can you briefly describe for us your 23 experience related to the preparation of EISs or 24 other environmental review? 25 A. Yes. I participated in approximately 15</p>	<p>1 commercial patterns of existing businesses. 2 Q. And are you aware of whether economics is 3 an element of the environment required to be 4 considered under SEPA? 5 A. My understanding is economics is not a 6 required element required to be analyzed under SEPA. 7 Q. And how did your work on this project 8 compare to work you've done on other projects? 9 A. I would say it's similar and different. 10 Similar in the sense that it's 11 controversial, it's difficult. And different in the 12 aspects that every question is unique requiring us 13 to draw upon economic theory, our analytic tools to 14 try to get the best sort of answer that we can to 15 decisionmakers so they can move forward. 16 Q. And let's talk a little bit about the 17 methodology that you used. 18 Is there a standard approach to analyzing 19 economics when you're working on EIS? 20 A. Yeah, there's not, right, at the broadest 21 level of the economics environment is everything, 22 right? It's GDP, it's employment, it's growth in 23 firms, it's wages paid. And when we're asked to 24 weigh in on these things, we always try to narrow it 25 to the very specific question that is -- that is</p>

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<p>1 asked for us. And given the uniqueness of the</p> <p>2 question, and I can't think of any of them where I</p> <p>3 would say, yes, there is an agreed-upon both</p> <p>4 academic and professional, much less SEPA approach</p> <p>5 to doing these types of analysis.</p> <p>6 Q. So how did you decide on a methodology</p> <p>7 for this project?</p> <p>8 A. So we took into consideration the past</p> <p>9 history of the project. Obviously it's been</p> <p>10 controversial and, you know, just following it</p> <p>11 casually. You know, people said there's going to be</p> <p>12 tremendous impacts, there's going to be no impacts.</p> <p>13 And so we try to design a way that took what we know</p> <p>14 about what transportation facilities do in terms of</p> <p>15 impacting land use and businesses and users, try to</p> <p>16 exploit a natural experiment we had here. We have</p> <p>17 examples -- we have a regional multi-use trail</p> <p>18 throughout the county, so we had some experience</p> <p>19 about that, so we could do some analysis on it.</p> <p>20 And then we try to understand that that's</p> <p>21 not even going to capture all of it. We need to</p> <p>22 kind of talk about it qualitatively because it's</p> <p>23 complicated, right? And, you know, what -- you</p> <p>24 know, particularly you're trying to isolate the</p> <p>25 specific effect of a trail relative to everything</p>	<p>1 we were, what we knew the impacts would be -- could</p> <p>2 be and how that might exist for different users.</p> <p>3 So the data we try to use as part of that</p> <p>4 analysis with stuff that was readily available that</p> <p>5 we could use to exploit, and so most of that is</p> <p>6 administrative data collected by employment --</p> <p>7 governmental employment agencies. It's information</p> <p>8 that is collected by the King County Assessors for</p> <p>9 property tax calculations that has information about</p> <p>10 building and property characteristics. And then we</p> <p>11 use some data that we buy through third-party</p> <p>12 vendors related to commercial real estate</p> <p>13 performance.</p> <p>14 So those were all sort of, given our</p> <p>15 approach, the types of information that we would</p> <p>16 likely need to do this analysis.</p> <p>17 Q. And did you consider independently</p> <p>18 gathering additional data?</p> <p>19 A. We did. And so when we thought about</p> <p>20 sort of how we might dive deeply into sort of</p> <p>21 specific businesses, we thought about kind of</p> <p>22 information would we need, right? We would need</p> <p>23 information about their markets, you know, how they</p> <p>24 derive revenue, what level of revenue do they</p> <p>25 derive, what does it cost to produce those types of</p>
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<p>1 that's happening both at the *macrol *convey and</p> <p>2 within all these businesses.</p> <p>3 Q. And what type of data did you determine</p> <p>4 was available to help you with your analysis?</p> <p>5 A. Yeah. So -- so for us, out -- our</p> <p>6 approach is really kind of three-fold, right, for</p> <p>7 the economic literature. And theory tells us these</p> <p>8 businesses are going to get impacted by a facility</p> <p>9 both positively, negatively, and kind of three</p> <p>10 different ways, right? It changes the function of</p> <p>11 the transportation system, right? So people will be</p> <p>12 -- it will be either easier or harder to kind of</p> <p>13 maneuver within the area.</p> <p>14 Those impacts then get reflected into</p> <p>15 what we call the cost of servicing land, so this is</p> <p>16 kind of like the real estate professional saying</p> <p>17 location, location, location, right? Where you are</p> <p>18 and the site that you have and the mix of amenities</p> <p>19 and accessibility you have tell you something about</p> <p>20 the value of your land. So we wanted to understand,</p> <p>21 so could we look at sort of the cost of servicing</p> <p>22 land, which is then our -- sort of we'll talk about</p> <p>23 as our hedonic analysis.</p> <p>24 And then we try to be more comprehensive</p> <p>25 and try to have a qualitative discussion about what</p>	<p>1 things, what's their production function to produce</p> <p>2 those goods and services. And we need to do that at</p> <p>3 scale for every single business. And so part of it</p> <p>4 is to say, like, could we -- are there rough</p> <p>5 approximations for that information, you know, there</p> <p>6 -- you know, could we, you know, design sort of</p> <p>7 models that sort of approximated that. But given</p> <p>8 the diversity of that, we thought, like, you'd only</p> <p>9 have to do this in direct serve basic research.</p> <p>10 You'd have to collect it individually. And even</p> <p>11 then, we thought, well, that would be a very time</p> <p>12 consuming, resource intensive. We'd have to</p> <p>13 validate all that information. Some of that</p> <p>14 information is very sensitive, and people would not</p> <p>15 be willing to disclose that because they involve</p> <p>16 trade secrets. They're in competitive environments.</p> <p>17 And so we settled on our approach here as</p> <p>18 an adequate way that both describes what we think</p> <p>19 the impacts would be, and we also -- and then -- and</p> <p>20 what we -- my understanding of what we'd be required</p> <p>21 under SEPA for economics considerations.</p> <p>22 THE HEARING EXAMINER: Ms. Ferguson,</p> <p>23 how long do you think you're going to --</p> <p>24 MS. FERGUSON: I was hoping 45</p> <p>25 minutes.</p>

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<p>1 THE HEARING EXAMINER: So we'll 2 interrupt him at some point? Okay. 3 MS. FERGUSON: If we could break at 4 10:30, I can aim for 10:30. 5 THE HEARING EXAMINER: Okay. Let's 6 do that. I -- I would loathe to interrupt the flow 7 of a witness, and sometime around 10 or 10:30 we 8 need to take a break. So if that works, I -- you 9 don't have to finish by then, but let's -- let's 10 just go with the break at 10:30. 11 MS. FERGUSON: Okay. 12 THE HEARING EXAMINER: Thanks. 13 THE WITNESS: Thanks. 14 BY MS. FERGUSON: 15 Q. And so let's go back to make sure that 16 I've heard correctly. 17 I think you mentioned that you decided to 18 do both what you've described as a hedonic model. 19 And then how would you describe sort of 20 this other approach? 21 A. Yeah, sorry. So -- so specifically 22 taking that framework, there are kind of three 23 pieces of analysis right there. There is the 24 hedonic analysis. There's the impacts that accrue 25 through (indiscernible), and then we look at impacts</p>	<p>1 and that means here, that we have experience with it 2 as opposed to something that would be done in a 3 laboratory. But we have experience in King County 4 about how different types of land uses are impacted 5 excess -- by their proximity to the multi-use trail 6 and could we learn something from that. 7 Q. And so was it intended to show a change 8 in property value as a result of the project? 9 A. Yeah. 10 Q. Okay. 11 A. Yea, exactly, so -- but to what degree 12 would proximity, adjacency of the trail impact the 13 value of servicing that land as measured in its -- 14 in its property value. 15 Q. Okay. And did you hear Mr. Cohen's 16 testimony? 17 A. I did. 18 Q. Okay. And do you -- I believe -- let me 19 know if you heard something different. I believe 20 that he was critiquing the report on the basis that 21 it should have considered different or additional 22 variables for the hedonic model? 23 A. Yes, that is one of the critiques he had. 24 Q. And do you agree with that critique? 25 A. I do not agree with that critique. In --</p>
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<p>1 to different classes of uses within the study area. 2 And we value different things. We value sort of the 3 change in accessibility as measured in delay. We 4 measure changes in access -- in -- in parking 5 accessibility as -- as documented in the parking 6 discipline part. And then we had a qualitative 7 discussion of impacts by different uses. 8 Q. Okay. So let's talk about the hedonic 9 Model. 10 A. Uh-huh. 11 Q. Can you just, in lay terms, describe what 12 that means? 13 A. Uh-huh. Yeah, so, hedonics is a decade 14 -- decades-old sort of approach by -- in the 15 economic industry and profession that are really 16 trying to say there is a good. It's worth 17 something. What are its component pieces. How do 18 all those component pieces contribute to the value 19 of that good. And it's been most used in property 20 value impacts because we know things like, how big 21 your house is, how many bedrooms, whether you have 22 water views, how accessible are you to downtown. 23 Those all contribute to the value. 24 And so the hedonic analysis here is 25 really to say, we have a natural experiment and --</p>	<p>1 Q. Can I have you explain what a variable is 2 for us so that we understand? 3 A. Yes. So the way the model works, right, 4 we have historical records of transactions of 5 properties, what people actually paid for that land, 6 and we have information, as collected through the 7 assessor, about the characteristics. 8 So the characteristics of each 9 (indiscernible) become our variables, so we wanted 10 to know -- 11 Q. Can you give us examples? 12 A. Example. So variables are kind of, in 13 our modeling, are two. You want to treat the 14 variables differently. You want to treat them as 15 sort of the random things, that you want to care 16 about their impact, right? Distance to trail would 17 be a type of variable. How big the house is, what 18 kind of industrial use, as measured by the assessor. 19 We want to know those kinds of things. Those are 20 our variables. 21 We also -- 22 Q. (Indiscernible.) 23 A. Those are our random variables. But we 24 also have fixed variables that are constant across 25 this because we know the economy moves up and down.</p>

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<p>1 so we want to make sure we treat that correctly as 2 well. 3 Q. Okay. So then back to my question about 4 the critique and thinking that you did not need to 5 consider additional or different variables. 6 Can you explain why? 7 A. Yes. So, all of our models for the 8 different types of land uses use appropriate and 9 available variables that the data set allows us to 10 exploit. They are also in line with broader 11 economic theory regarding hedonic analyses and 12 property values about which type of variables are 13 most meaningful and should be included both as a 14 conceptual and as an experimental form. 15 Q. And if I recall, Mr. Cohen also provided 16 a critique about the fit of the model. 17 A. Yeah. But -- 18 Q. (Inaudible.) 19 (Simultaneous speakers.) 20 A. So, actually, before you get to that 21 question, Mr. Cohen also raised the question that we 22 include other variables, and he gave the example of 23 water dependency. 24 I agree that water dependency is an 25 important variable to consider. It's not one that's</p>	<p>1 Does the fitness show whether or not the 2 model accurately represents the results? 3 A. Yes. 4 Q. (Inaudible.) 5 (Simultaneous speakers.) 6 A. Yeah, we're using the best model 7 available given our approach. 8 Q. Okay. And did you test to see if the 9 model you used for this report was the best fit? 10 A. We did. 11 Q. And was that documented in the report? 12 A. It was documented generally in a 13 discussion about how -- our approach to doing this. 14 Specific exact results of that fitness test were not 15 disclosed in the -- in the analysis. 16 Q. And is it typical for that type of 17 testing to be in the actual report? 18 A. I'm not aware of any SEPA economic 19 considerations analysis that do hedonic analysis, 20 and I've never seen one disclose that. Even in the 21 academic literature, particularly in hedonic 22 analyses for property values, because this is a 23 settled matter in terms of the log-linear 24 specifications that we use is the standard, the 25 hedonic analyses used. That type of information is</p>
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<p>1 available to us. If we were to try to construct 2 that variable, we would have to go and assess every 3 property in our industrial data set about its water 4 dependency, which is without -- out of our resources 5 that we had -- out of realm of the resources we had, 6 as well as sort of what I think SEPA requires for us 7 to do in terms of basic research. 8 Q. Okay. 9 A. So in lieu of that, we included the best 10 proxy that the data set allowed us to have, which 11 was amount of water -- water frontage. 12 Q. Okay. So then back to fit. 13 A. Fit. 14 Q. Can you describe what fit means? 15 A. Yes. So, in the economic modeling world, 16 they -- and particularly for regression analyses, 17 there are different types of forms you could do -- 18 in terms of how you treat the variables and in terms 19 in doing transformations. 20 And so fitness is really saying, does our 21 model introduce the least amount of error just 22 because of the way we're doing it. So that's what 23 fitness means in this -- in that regard. 24 Q. So, just to make sure that I'm 25 understanding right.</p>	<p>1 not included because it's generally accepted that 2 this is the right way, and our analyses in that 3 matter show that to be correct. Our log-linear 4 specification in terms of the treatment of the 5 prices introduces the least amount of error. 6 Q. And you mentioned another term that I 7 just want to make sure that we understand. 8 log-linear specification. 9 How do you-- 10 A. That -- that is Mr. Cohen's comment about 11 sort of model fitness, how do you treat the 12 underlying data, because data aren't always normally 13 distributed, right? There's not a bell curve to 14 everything. Some things are skewed left or right, 15 and you need different treatments to properly do 16 this from a statistically-modeling prospective. And 17 we've done those tests, and we feel confident that 18 we are accurately adhering to both the broader 19 economic profession as well as our analysis. 20 Q. Okay. And is this type of hedonic model 21 a common tool, it sounds like, in your industry? 22 A. It is. 23 Q. And do you think that you followed 24 standard practices in your industry in doing this 25 analysis?</p>

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<p>1 A. We did.</p> <p>2 Q. And you talked briefly about the water-</p> <p>3 dependent uses.</p> <p>4 How did this model take into account the</p> <p>5 general -- of what we've been referring to as the</p> <p>6 maritime industrial nature of the area?</p> <p>7 A. Yes. We did that directly in the</p> <p>8 selection of the variable of water frontage is our</p> <p>9 best attempt, given the available data that we have,</p> <p>10 to approximate the maritime or water dependency</p> <p>11 of -- of businesses within the county and within the</p> <p>12 area.</p> <p>13 Q. Okay. Now let's talk about other ways</p> <p>14 the report looked at the factors related to this</p> <p>15 project.</p> <p>16 What -- what other approach did your</p> <p>17 report take? I think you talked about the other</p> <p>18 aspect being related to delay?</p> <p>19 A. Uh-huh, yeah. So, one of the ways we</p> <p>20 described that the trail may impact business is in</p> <p>21 the form of the performance of the transportation</p> <p>22 environment that can be measured by the amount of</p> <p>23 delay introduced by different alternatives.</p> <p>24 Q. And why did you decide that was an</p> <p>25 appropriate measure of the economic factors?</p>	<p>1 A. I do not.</p> <p>2 Q. Can you remind us what those general</p> <p>3 changes were?</p> <p>4 A. In our draft of the final Considerations</p> <p>5 Economics Report, we had a table that took the delay</p> <p>6 identified in the Transportation Discipline Report</p> <p>7 and then we, as standard practice, multiplied that</p> <p>8 delay by the number of vehicles experience it to get</p> <p>9 to some total amount of delay as measured in --</p> <p>10 in -- in time.</p> <p>11 The Transportation Economics Discipline</p> <p>12 also says that time is valuable to the people --</p> <p>13 we -- and their methods described by FHWA around</p> <p>14 sort of how you might value that time.</p> <p>15 And so in this case, the underlying data</p> <p>16 is a mix of all users, trip types -- and the time of</p> <p>17 day and in different types of vehicles, and so the</p> <p>18 proper treatment of that is to give it a societal</p> <p>19 value of one half that median or average wage rate</p> <p>20 of a region, which at the time in 2014 was</p> <p>21 approximately \$20, and that's what that table shows.</p> <p>22 Q. Okay. And was that table included in the</p> <p>23 final report?</p> <p>24 A. It was not.</p> <p>25 Q. Okay. Why was that change made? Why was</p>
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<p>1 A. Because in a transportation economics</p> <p>2 world, delay is costly, right, for all of us</p> <p>3 intuitively, right? We sit in traffic. We don't</p> <p>4 want to bear that cost, and we're always looking for</p> <p>5 good substitutes or ways around that cost.</p> <p>6 Q. And so what did looking at the potential</p> <p>7 traffic delay tell you from an economics</p> <p>8 perspective?</p> <p>9 A. So by looking at the amount of delay, we</p> <p>10 could look at -- through -- as analyzed in the</p> <p>11 Transportation Discipline Report, the performance of</p> <p>12 certain driveways and certain other intersections</p> <p>13 and facilities about the amount of delay they</p> <p>14 introduced within -- for those alternatives and then</p> <p>15 those are documented in our final analysis.</p> <p>16 Q. Okay. And do you recall the testimony of</p> <p>17 Mr. Cohen regarding various draft versions of the</p> <p>18 report?</p> <p>19 A. I do.</p> <p>20 Q. Okay. I want to talk a little about the</p> <p>21 changes --</p> <p>22 A. Uh-huh.</p> <p>23 Q. -- that were made.</p> <p>24 Do you agree with his characterization of</p> <p>25 the changes that were made?</p>	<p>1 that not included in the final report?</p> <p>2 A. That was not included for two reasons.</p> <p>3 One, about the level of precision that we were</p> <p>4 conveying and about the accessibility and</p> <p>5 interpretability of that -- of those -- of that</p> <p>6 information.</p> <p>7 Q. Okay. Can I first ask, when doing this</p> <p>8 analysis, did you say -- you were aware that the</p> <p>9 businesses were concerned about the impacts of this</p> <p>10 project to them specifically?</p> <p>11 A. Yes.</p> <p>12 Q. And -- can we actually turn to the table?</p> <p>13 So, let's go to -- I'm just going to use the</p> <p>14 appellant's exhibits because they've already been</p> <p>15 admitted. It's A-15 for the record, and it's</p> <p>16 A350.64.</p> <p>17 A. Sorry. Where do I find this? How do I</p> <p>18 navigate this?</p> <p>19 (Inaudible discussion.)</p> <p>20 A. Oh, I'm not navigating this.</p> <p>21 (Inaudible discussion.)</p> <p>22 MS. FERGUSON: 350.64</p> <p>23 (Inaudible discussion.)</p> <p>24 MS. FERGUSON: Yeah, it's the very</p> <p>25 last one.</p>

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<p>1 (Inaudible discussion.)</p> <p>2 THE WITNESS: Gotcha. Thank you.</p> <p>3 Q. If you could turn to page 4-14.</p> <p>4 A. 4-14. Okay.</p> <p>5 Q. Is that the table we've been talking</p> <p>6 about?</p> <p>7 A. Table 4-3-3, Expected Cost of Traffic</p> <p>8 Delay for the year 2040 (sic) Shilshole South</p> <p>9 Alternative.</p> <p>10 Q. And that's what you just described?</p> <p>11 A. It is what we just described.</p> <p>12 Q. And what is that table generally intended</p> <p>13 to show?</p> <p>14 A. That table generally is intended to show</p> <p>15 the estimate of delay as produced by the</p> <p>16 Transportation Discipline Report multiplied by the</p> <p>17 number of vehicles by some societal average of that</p> <p>18 delay -- value of that delay, in terms of money.</p> <p>19 Q. Is it intended to show the actual cost to</p> <p>20 those business?</p> <p>21 A. It does not.</p> <p>22 Q. And were you concerned that a lay person</p> <p>23 might interpret it that way?</p> <p>24 MR. SCHNEIDER: Objection. Leading</p> <p>25 question.</p>	<p>1 Shilshole South (indiscernible) sand and gravel on</p> <p>2 the southside and says that it estimated a \$32,000</p> <p>3 impact to the business. That is not what it -- what</p> <p>4 that number shows. That number shows a total</p> <p>5 societal cost of all users at the PMP. So it</p> <p>6 includes vehicles, it includes pedestrians, it</p> <p>7 includes cyclists, it inclu -- it doesn't include</p> <p>8 trip purpose, whether it's a personal trip, whether</p> <p>9 it's a business trip. And so we were worried that</p> <p>10 people would make those inferences and ascribe that</p> <p>11 value, and that's not what that means.</p> <p>12 But what we really wanted to make sure</p> <p>13 that we protected was the core piece here is</p> <p>14 actually identifying the amount of delay.</p> <p>15 Q. Does it mean that those businesses --</p> <p>16 there won't be cost to those businesses?</p> <p>17 A. That's not -- it does not exclude that</p> <p>18 possibility that they may be impacted costwise.</p> <p>19 Q. Okay. Do you think the information that</p> <p>20 Mr. Cohen described as being removed from the</p> <p>21 initial draft is required for this type of analysis?</p> <p>22 A. I -- my understanding of SEPA is that</p> <p>23 it's not required --</p> <p>24 Q. Uh-huh.</p> <p>25 A. -- that level of analysis.</p>
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<p>1 Q. Why were you concerned about that table?</p> <p>2 A. We were concerned that both a lay person</p> <p>3 and somebody with some high degree of sophistication</p> <p>4 may also misinterpret that result. This -- these</p> <p>5 types of analyses are part of broader -- part of the</p> <p>6 transportation economics role, which is obviously a</p> <p>7 very specialized discipline, and takes a high degree</p> <p>8 of sophistication to understand what you're assuming</p> <p>9 and what they mean.</p> <p>10 And so we are concerned that people would</p> <p>11 not quite underst -- the core thing we're concerned</p> <p>12 about is the value of delay -- the amount of delay,</p> <p>13 and with different types of information, we could</p> <p>14 try to describe the value of that. But the</p> <p>15 underlying data didn't really have us -- with that</p> <p>16 precision because we'll want to know kind of who are</p> <p>17 the users. Where are they going? Is this a</p> <p>18 business trip, a leisure trip? Because you use</p> <p>19 different rates. And -- and we didn't have that</p> <p>20 level of information to be sort of very precise with</p> <p>21 it. And so we were worried about the precision.</p> <p>22 We were also worried about the</p> <p>23 interpretation. I believe Mr. Brower and</p> <p>24 Mr. Cohen's test -- or Mr. Brower's question and</p> <p>25 Mr. Cohen's testimony ascribed this driveway at</p>	<p>1 Q. And in your professional opinion, do you</p> <p>2 think the conclusions in the final report are as or</p> <p>3 more accurate in the sense of disclosing the</p> <p>4 potential economic impacts from this project?</p> <p>5 A. I agree.</p> <p>6 Q. Did you make these changes because SDOT</p> <p>7 told you to?</p> <p>8 A. No, we did not.</p> <p>9 Q. And why did you make these changes?</p> <p>10 A. We had -- after we submitted our draft</p> <p>11 analysis to SDOT for this specific question. SDOT</p> <p>12 raised some questions about the interpretation.</p> <p>13 They were, like, Well, we're transportation</p> <p>14 professionals, but we're not transportation</p> <p>15 economists. What does this mean? Do we -- you</p> <p>16 know, do we need that level of precision as part of</p> <p>17 the SEPA analysis? You know, by taking it out, are</p> <p>18 we not disclosing the impacts on the value of delay?</p> <p>19 And so we had to think about sort of,</p> <p>20 well, what information do we have? What are we</p> <p>21 really trying to communicate as an essential impact</p> <p>22 here? And it was our determination that we'd be</p> <p>23 better off by being very clear about -- and</p> <p>24 transparent about what the impact was and not trying</p> <p>25 to provide more precision than I think we had</p>

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<p>1 information to support.</p> <p>2 Q. Okay. In your experience working on an</p> <p>3 EIS -- or working on EISs, is it common for the lead</p> <p>4 agency or the project applicant to review your work</p> <p>5 and offer feedback?</p> <p>6 A. I have not worked on a project where the</p> <p>7 lead applicant or agency had not reviewed my work.</p> <p>8 Q. Okay. And did the city, in its role in</p> <p>9 this project, make you change your professional</p> <p>10 opinion?</p> <p>11 A. No. Our professional opinions remained</p> <p>12 the same in both drafts, our draft and our final.</p> <p>13 Q. Okay. Do you recall Mr. Cohen testifying</p> <p>14 about what you would need to understand in order to</p> <p>15 understand the cost and impact to these businesses?</p> <p>16 A. I do recall Mr. Cohen's testimony.</p> <p>17 Q. And do you think that SEPA requires that</p> <p>18 level of analysis regarding impacts to individual</p> <p>19 businesses?</p> <p>20 A. I believe SEPA does not require that</p> <p>21 level of analysis to individual businesses.</p> <p>22 Q. All right. And even -- let's assume it</p> <p>23 was.</p> <p>24 A. Uh-huh.</p> <p>25 Q. Is what Mr. Cohen described actually</p>	<p>1 society as a whole, you would also look at the</p> <p>2 benefits as opposed to, well, I have a trail next to</p> <p>3 my business. Is my -- you know, having that trail</p> <p>4 here, is my business better off? Are my employees</p> <p>5 better off? How would I measure those -- that</p> <p>6 piece? Am I more productive as a business? You</p> <p>7 would have to take those into consideration at a</p> <p>8 complete scale. And my understanding is SEPA does</p> <p>9 not require a broader benefit cost analysis.</p> <p>10 The third analysis that Mr. Cohen</p> <p>11 described was a broader macroeconomic analysis</p> <p>12 looking at very specific industry, the maritime</p> <p>13 industry as he described. And that also would be a</p> <p>14 very difficult undertaking and not one that I</p> <p>15 believe SEPA requires us to do. But if one were to</p> <p>16 entertain such an analysis, you would have to make</p> <p>17 some very speculative assumptions around the</p> <p>18 performance of the industry going forward.</p> <p>19 For example, Mr. Cohen gave the example</p> <p>20 of potentially of business going out of business</p> <p>21 because they didn't have access to a crane. So,</p> <p>22 well, then we then have to make some assumption,</p> <p>23 well, what would replace that business at a macro</p> <p>24 level? Would it be a relatively same business that</p> <p>25 would do things? Would that economic activity be</p>
Page 1385	Page 1387
<p>1 feasible?</p> <p>2 A. Mr. Cohen described in his testimony,</p> <p>3 three separate analyses.</p> <p>4 The first analysis he described is</p> <p>5 estimating a financial impact for the purposes of</p> <p>6 understanding profitability on businesses from the</p> <p>7 trail. And he also -- so I'll take that analysis</p> <p>8 first.</p> <p>9 So that analysis would require a lot of</p> <p>10 information, much of which I previously described.</p> <p>11 You would have to know something about their</p> <p>12 marketplace. You would have to know something about</p> <p>13 their production function. What does it cost for</p> <p>14 them produce those? If -- what is their experience</p> <p>15 with the trail today? How might that change with</p> <p>16 the trail going forward in the future? Do they have</p> <p>17 good substitutes to change their operations in a</p> <p>18 less costly way? How does that then impact it?</p> <p>19 So, it will require, as I said before, a</p> <p>20 lot of information, very detailed information that</p> <p>21 would not likely be feasibly collected as part of a</p> <p>22 SEPA analysis.</p> <p>23 The second analysis he described is a</p> <p>24 broader cost benefit analysis where not only would</p> <p>25 you look at the costs to those businesses and to</p>	<p>1 absorbed by one of its competitors? Would it be</p> <p>2 replaced by a more productive industrial business</p> <p>3 and grow the industry? Or would it actually be a</p> <p>4 negative impact?</p> <p>5 All of those are really hard things to</p> <p>6 predict, obviously, if anybody does -- looks at our</p> <p>7 macro environment, there's -- it's a very dynamic</p> <p>8 complex situation, and that level of precision is</p> <p>9 just not possible in terms of that kind of analysis.</p> <p>10 Q. Were you aware of any EISs that include</p> <p>11 any of those three types of --</p> <p>12 A. I'm not aware of any EISs that have any</p> <p>13 of those three analyses.</p> <p>14 Q. And you talked a lot about what I think</p> <p>15 he called business operation costs.</p> <p>16 A. Uh-huh</p> <p>17 Q. What is that data relevant to showing?</p> <p>18 A. Ultimately, assessing business operation</p> <p>19 cost is really knowing the purpose of understanding</p> <p>20 business viability in terms of profitability. Do my</p> <p>21 costs somehow rise to some level that it eats into</p> <p>22 my profitability, then I'm not longer a viable</p> <p>23 enterprise.</p> <p>24 Q. And was your methodology able to isolate</p> <p>25 the potential impact of the trail compared to the</p>

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<p>1 impact of other types of things going on in the 2 neighborhood?</p> <p>3 A. No, our analysis does not do that.</p> <p>4 Q. And did you -- in what way did you try to 5 do that?</p> <p>6 A. I'm not aware that SEPA requires us to 7 distinguish the single incremental effect here 8 versus other macroeconomic changes within the -- 9 within the area, and it would be a very difficult 10 analysis to do, but you would have to undertake a 11 similar one, as I described in that first piece, of 12 understanding exactly what a business is doing, 13 what -- how is it -- what are all the different 14 competitive pressures, like, encroachment, as 15 Mr. Cohen suggested, or complaints from neighbors. 16 You'd have to estimate the impact on their 17 profitability of those pieces and compare that to 18 what a trail would introduce.</p> <p>19 Q. Does the hedonic model try to distinguish 20 between what is the--</p> <p>21 A. Hedonic model is our best attempt and our 22 profession's best tool to try to isolate the 23 incremental impact of a trail on different types of 24 land uses as measured, but it's not a complete tool. 25 It doesn't tell us everything, which is why we have</p>	<p>1 A-17, which is in Volume X. And it's going to be 2 tab 350-66.</p> <p>3 THE HEARING EXAMINER: Which page?</p> <p>4 MS. FERGUSON: Four six.</p> <p>5 BY MS. FERGUSON:</p> <p>6 Q. Okay. Can you please read the very first 7 paragraph on that page?</p> <p>8 A. On four six?</p> <p>9 Q. Uh-huh.</p> <p>10 A. Okay.</p> <p>11 Q. It starts with "For commercial property."</p> <p>12 A. Yeah. So, "How multi-use trails 13 negatively affect property value. The operation of 14 the BGT Missing Link may pose several different 15 types of impacts to commercial properties."</p> <p>16 Q. And I'm going to actually just have you 17 skip forward, because I don't want to make you --</p> <p>18 A. Sure.</p> <p>19 Q. -- read the whole paragraph.</p> <p>20 There's a line that starts with, "For 21 commercial properties."</p> <p>22 A. In the first paragraph?</p> <p>23 Q. Yes.</p> <p>24 A. Okay. "For commercial properties with 25 frequent shipping activity located adjacent to the</p>
Page 1389	Page 1391
<p>1 different types of approaches and analysis in our 2 Economic Considerations Report.</p> <p>3 Q. Okay. Speaking of that, does the 4 report's methodology account for proximity to the 5 trail?</p> <p>6 A. It does. It accounts for proximity and 7 adjacency to the trail in the hedonic analysis. We 8 have an explicit variable in all -- all of our 9 models that measure distance to the existing multi- 10 use trail. And then it's also included as part of 11 our discussion of impacts to different land uses as 12 part of our impact analysis.</p> <p>13 Q. Okay. Did you hear Mr. Cohen talk about 14 whether or not we considered adjacency to the trail?</p> <p>15 A. I don't recall that specifically.</p> <p>16 Q. Okay. Was -- do you think that that was 17 disclosed, that we considered adjacency to the 18 trail?</p> <p>19 A. Yes.</p> <p>20 Q. I'm going to have you turn --</p> <p>21 A. It's at the core of our analysis around 22 what does being close to the trail mean.</p> <p>23 Q. Okay. And then can I also just have you 24 turn to page 46 of a new exhibit, which, of course, 25 is in a different book. It's Appellant's Exhibit</p>	<p>1 trail, the traffic on the (undiscernible) may 2 disrupt delivery patterns. To some extent, these 3 effects may be mitigated by businesses adjusting 4 their delivery schedules to times of day with less 5 frequent pedestrian or bicycle traffic. These 6 changes in delivery activity may harm businesses' 7 profitability and somewhat disrupt traffic patterns 8 in the vicinity."</p> <p>9 Q. And what do you think that discloses?</p> <p>10 A. It discloses that there may be harm to 11 these business from being adjacent to the trail.</p> <p>12 Q. And did you review the Transportation 13 Discipline Report in performing your analysis?</p> <p>14 A. We did.</p> <p>15 Q. And how did that inform your analysis?</p> <p>16 A. We relied on information in the 17 Discipline Report to assess the value of travel time 18 delay.</p> <p>19 Q. And did you also review the Parking 20 Discipline Report?</p> <p>21 A. We did.</p> <p>22 Q. And how did that inform your analysis?</p> <p>23 A. Relied on the parking analysis to make 24 assessments around how parking -- did changes in 25 parking would be affected -- or how business would</p>

<p style="text-align: right;">Page 1392</p> <p>1 be affected by changes in parking availability.</p> <p>2 Q. And in your role, is it common to rely on</p> <p>3 the expertise of other experts in other areas?</p> <p>4 A. It is common.</p> <p>5 Q. And do you agree with the conclusions in</p> <p>6 that report generally?</p> <p>7 A. I have no professional experience to say</p> <p>8 -- to assess that they would be incorrect.</p> <p>9 Q. And was economics -- or was the Economics</p> <p>10 Considerations Report updated for the final EIS?</p> <p>11 A. It was not.</p> <p>12 Q. Why not?</p> <p>13 A. We were not asked to update it for the</p> <p>14 final EIS.</p> <p>15 Q. And are you aware that the final EIS</p> <p>16 included a new preferred alternative?</p> <p>17 A. I am aware.</p> <p>18 Q. And are you aware that it combined -- or</p> <p>19 what's your understanding of what the preferred</p> <p>20 alternative is?</p> <p>21 A. My understanding of the preferred</p> <p>22 alternative, that it takes one of the aligned</p> <p>23 portion -- portions of one of the alignments in some</p> <p>24 other segments to construct a new alternative.</p> <p>25 Q. And can you explain how you think the</p>	<p style="text-align: right;">Page 1394</p> <p>1 Q. So, I think you may have said this</p> <p>2 before, but I just want to make sure.</p> <p>3 In your opinion, do you think that the</p> <p>4 report analyzes and discloses the economic factors</p> <p>5 relevant to this project?</p> <p>6 A. I do.</p> <p>7 Q. Okay. And do you think those factors</p> <p>8 take into account the particular context of this</p> <p>9 project in an area where maritime industrial</p> <p>10 activity is being placed?</p> <p>11 A. Specific, yes, I do. We treat that both</p> <p>12 in our analytic approach and in our discussion.</p> <p>13 Q. Okay. And do you believe that it is</p> <p>14 likely that this project would result in the closure</p> <p>15 or relocation of any of the businesses along the</p> <p>16 proposed route?</p> <p>17 A. It's impossible for us to say with any</p> <p>18 degree of precision or certainty whether any</p> <p>19 individual business would be -- would result in</p> <p>20 closure.</p> <p>21 Q. Okay. So --</p> <p>22 A. And -- and in my understanding of SEPA is</p> <p>23 we don't -- we're not required to make those types</p> <p>24 of precise judgments where the data don't allow us</p> <p>25 to.</p>
<p style="text-align: right;">Page 1393</p> <p>1 original Economics Consideration Report evaluated</p> <p>2 economic factors related to that (indiscernible) --</p> <p>3 A. And so broadly, right, we tried to</p> <p>4 identify how different types of businesses may be</p> <p>5 impacted due to their adjacency to the trail. We</p> <p>6 talked about alternatives, and we discussed it in</p> <p>7 some of the segments.</p> <p>8 The learnings and findings of those</p> <p>9 impacts would be portable to the discussion and</p> <p>10 evaluation of a preferred alternative.</p> <p>11 Q. And in your opinion, did the Final</p> <p>12 Economics Report that was published with the draft</p> <p>13 EIS, analyze the economic factors related to all of</p> <p>14 the available -- or all of the alternatives</p> <p>15 including the preferred alternative?</p> <p>16 A. It would be my opinion, yes.</p> <p>17 MS. FERGUSON: Okay. It's 10:30. I</p> <p>18 have just a few questions.</p> <p>19 THE HEARING EXAMINER: You've got a</p> <p>20 couple minutes.</p> <p>21 MS. FERGUSON: Okay.</p> <p>22 THE HEARING EXAMINER: We'll just go</p> <p>23 to 10:30.</p> <p>24 MS. FERGUSON: Okay.</p> <p>25 BY MS. FERGUSON:</p>	<p style="text-align: right;">Page 1395</p> <p>1 Q. Okay. So you think that -- or is the</p> <p>2 possibility of that harm disclosed in the report?</p> <p>3 A. Yes. The possibility of that harm is</p> <p>4 disclosed.</p> <p>5 Q. Okay. And how do you think that your</p> <p>6 report helps decisionmakers and allows them to</p> <p>7 compare the potential impact of the various</p> <p>8 alternatives?</p> <p>9 A. Yeah. And so, I think it does it in kind</p> <p>10 of, you know two -- two -- three ways. One, it</p> <p>11 gives them a way to think about this issue that</p> <p>12 provides some clarity and consistency of treatment.</p> <p>13 It provides a set of means and mechanisms about how</p> <p>14 businesses may both positively and negatively be</p> <p>15 impacted. And it treats, with some differential,</p> <p>16 the nature of those businesses separating out</p> <p>17 residential from commercial and resident --</p> <p>18 industrial uses.</p> <p>19 Q. And has anything you've heard in this</p> <p>20 hearing so far or any of the evidence you've seen,</p> <p>21 changed any of your opinions?</p> <p>22 A. No.</p> <p>23 MS. FERGUSON: Okay. No more</p> <p>24 questions.</p> <p>25 THE HEARING EXAMINER: Fourteen</p>

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<p style="text-align: right;">Page 1396</p> <p>1 seconds over. That's pretty good.</p> <p>2 MS. FERGUSON: That's really good.</p> <p>3 THE HEARING EXAMINER: We'll stop</p> <p>4 there and come back at a quarter to.</p> <p>5 Thank you.</p> <p>6 (Recess taken.)</p> <p>7 THE HEARING EXAMINER: Thank you.</p> <p>8 MR. COHEN: So -- but it's one --</p> <p>9 what is it? It's in --</p> <p>10 MS. FERGUSON: A-5.</p> <p>11 MR. COHEN: We're talking A-5. No</p> <p>12 problem.</p> <p>13 MR. BROWER: And the other things on</p> <p>14 the the video have already been admitted, the</p> <p>15 movies, the animations.</p> <p>16 MR. COHEN: They have?</p> <p>17 MS. FERGUSON: Yeah. The AutoTURN</p> <p>18 animations?</p> <p>19 MR. COHEN: Okay.</p> <p>20 MR. BROWER: So that's --</p> <p>21 MR. COHEN: Well, we didn't look at</p> <p>22 things that were --</p> <p>23 (Pause in proceedings.)</p> <p>24 THE HEARING EXAMINER: Thank you.</p> <p>25 I'll adjust for my other container. I lost my</p>	<p style="text-align: right;">Page 1398</p> <p>1 action being contemplated and compare it to other</p> <p>2 factors that are occurring within the environment,</p> <p>3 which our report did and some considerations in</p> <p>4 Chapter 5 of our final Environmental Considerations</p> <p>5 Report.</p> <p>6 Q. Okay. Thank you.</p> <p>7 MR. COHEN: No other questions,</p> <p>8 Judge.</p> <p>9 THE HEARING EXAMINER: Thank you.</p> <p>10 MS. FERGUSON: Just as a procedural</p> <p>11 matter, before we get started, actually, two things.</p> <p>12 One, we'd like to have an exhibit marked. The</p> <p>13 parties have agreed that the full draft EIS should</p> <p>14 be admitted as an exhibit. So it's in the</p> <p>15 Appellant's notebook Volume 6. It's Tab A-336.1</p> <p>16 through --</p> <p>17 THE HEARING EXAMINER: I'm sorry.</p> <p>18 Could you say that number again?</p> <p>19 MS. FERGUSON: A-336 -- I'm sorry,</p> <p>20 A-336.1 through A-337. And that is the full draft</p> <p>21 Environmental Impact Statement that we've been</p> <p>22 referring to throughout. And I guess that would be</p> <p>23 R --</p> <p>24 THE HEARING EXAMINER: That would be</p> <p>25 R-34.</p>
<p style="text-align: right;">Page 1397</p> <p>1 pitcher to a witness yesterday.</p> <p>2 Mr. Cohen?</p> <p>3 MR. COHEN: I have a couple of</p> <p>4 questions, Your Honor.</p> <p>5 CROSS-EXAMINATION</p> <p>6 BY MR. COHEN:</p> <p>7 Q. Mr. Shook, I want to ask you about a</p> <p>8 couple of things that I think I heard you say and</p> <p>9 make sure that my understanding is accurate. First,</p> <p>10 I think you testified that SEPA did not require that</p> <p>11 an economic analysis consider the impact individual</p> <p>12 properties?</p> <p>13 A. I don't remember saying that, but if I</p> <p>14 did, let me clarify that I don't believe SEPA</p> <p>15 requires us to look at the impacts to specific</p> <p>16 businesses and their profitability.</p> <p>17 Q. Okay. And there was another statement</p> <p>18 that SEPA does not require that an analysis look at</p> <p>19 the impact of the particular project under review as</p> <p>20 opposed to that project plus all of the other macro</p> <p>21 changes occurring in the neighborhood. Did I get</p> <p>22 that right?</p> <p>23 A. I don't believe I said that, but if I</p> <p>24 did, that's not correct. I mean, my understanding</p> <p>25 of SEPA is that we have to look at the individual</p>	<p style="text-align: right;">Page 1399</p> <p>1 MS. FERGUSON: R-34.</p> <p>2 THE HEARING EXAMINER: All right.</p> <p>3 Just a moment. Let me see if I've got Volume 6.</p> <p>4 MR. SCHNEIDER: Mr. Examiner, you</p> <p>5 don't have it.</p> <p>6 THE HEARING EXAMINER: Okay. All</p> <p>7 right. R-34 admitted.</p> <p>8 MR. KISIELIUS: Thank you.</p> <p>9 THE HEARING EXAMINER: Okay.</p> <p>10 (RESPONDENT'S EXHIBIT R-34 ADMITTED.)</p> <p>11 THE HEARING EXAMINER: We also didn't</p> <p>12 have R-33, the resume?</p> <p>13 MS. FERGUSON: I'd like to admit that</p> <p>14 also.</p> <p>15 THE HEARING EXAMINER: Okay. R-33 is</p> <p>16 admitted.</p> <p>17 (RESPONDENT'S EXHIBIT R-33 ADMITTED.)</p> <p>18 THE HEARING EXAMINER: And you said</p> <p>19 there was another item in there?</p> <p>20 MR. SCHNEIDER: The videos?</p> <p>21 THE HEARING EXAMINER: Uh-huh</p> <p>22 (affirmative response).</p> <p>23 MR. BROWER: This flash drive which</p> <p>24 is Exhibit 35 --</p> <p>25 THE HEARING EXAMINER: Okay.</p>

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<p>1 MR. BROWER: -- which is the edited 2 video that was our Mr. Scott Anderson's testimony. 3 It also includes the four video animations that were 4 part of Mr. Kuznick's testimony, which have already 5 been admitted. 6 THE HEARING EXAMINER: I'm sorry. I 7 was distracted and marking things. 8 MR. SCHNEIDER: Okay. Certainly. 9 THE HEARING EXAMINER: I was 10 anticipating there was a single video and you were 11 listing several that are in there? 12 MR. BROWER: Certainly, and it has 13 the four video animations that were a part of 14 Mr. Kuznick's testimony. And presumed to augment, 15 (indiscernible) has reviewed Exhibit A-5, and I'll 16 let them speak for themselves. 17 MS. FERGUSON: Yeah. It may be 18 admitted. 19 THE HEARING EXAMINER: Okay. So we 20 have A-5 in here and the four video animations. And 21 was there something else? 22 MR. BROWER: No. That's all that's 23 on that drive. 24 THE HEARING EXAMINER: Were the video 25 animations given any exhibit number?</p>	<p>1 MR. COHEN: It's bulky. 2 MR. BROWER: I've tried to email it 3 three times. Excuse me, but it's 114 megabytes, so, 4 yes, I will do that. 5 MR. COHEN: Thank you so much. 6 MR. BROWER: Of course. 7 THE HEARING EXAMINER: All right. 8 A-5 is admitted then. 9 MR. BROWER: Thank you. 10 (APPELLANT'S EXHIBIT A-5 ADMITTED.) 11 THE HEARING EXAMINER: Is there 12 anything else, Ms. Ferguson? 13 MS. FERGUSON: No. 14 THE HEARING EXAMINER: Okay. 15 CROSS-EXAMINATION 16 BY MR. SCHNEIDER: 17 Q. So, Mr. Shook, you made a number of 18 comments about what SEPA does and does not require 19 with regard to economic analysis. What are those 20 statements based on? 21 A. It's based on my understanding of working 22 with environmental review and doing some specialized 23 training for Department of Ecology around 24 environmental impact studies. 25 Q. And does the City of Seattle treat</p>
Page 1401	Page 1403
<p>1 MR. KISIELIUS: They were and I 2 apologize. I -- 3 MS. FERGUSON: A-7, A-8, A-9, A-10. 4 MR. COHEN: So for clarity, there are 5 five videos on that flash drive? 6 MR. BROWER: Yes. 7 MR. COHEN: And are we assigning and 8 separate number to the one that Mr. -- that supports 9 Mr. Anderson's testimony? 10 MR. BROWER: A-5. 11 MR. COHEN: Oh, okay. And the others 12 are -- were previously admitted? 13 MR. BROWER: Yes. 14 MR. COHEN: -- exhibits? 15 MS. FERGUSON: Yeah. 16 THE HEARING EXAMINER: Yeah. 17 MR. BROWER: So the only one we're 18 moving to admit right now is A-5. The rest have 19 already been admitted. I was just physically 20 delivering them in a way that the Examiner can have 21 them in the record. 22 MR. COHEN: Okay. And Counsel, could 23 you upload that video to a Dropbox or something so 24 that we can -- 25 MR. BROWER: Absolutely.</p>	<p>1 economic issues differently than the state SEPA 2 rules? 3 A. My understanding is there's some slight 4 difference, yes. 5 Q. I'm sorry? 6 A. My understanding is there's some slight 7 difference. 8 Q. And, in fact -- 9 A. I'm not familiar with the exacts. 10 Q. Okay. And when you set out to do that 11 Environmental Considerations Report, what was your 12 goal? What was your understanding of the purpose of 13 your preparing this report? 14 A. Our goal and purpose was to try to 15 understand how businesses within the area might be 16 impacted by the differential alignments contemplated 17 in the EIS. 18 Q. So at the conclusion of Ms. Ferguson's 19 questions, she directed your attention to a sentence 20 from the final version of your report. Is that 21 sentence that you read the conclusion -- the 22 takeaway that the businesses should -- is that what 23 the businesses should take away from your report 24 about your conclusions? 25 MR. COHEN: Mr. Schneider, could you</p>

<p style="text-align: right;">Page 1404</p> <p>1 reference the portion of the exhibit you're talking 2 about?</p> <p>3 MR. SCHNEIDER: I am scrambling 4 desperately to find it.</p> <p>5 MR. COHEN: Thank you so much.</p> <p>6 BY MR. SCHNEIDER:</p> <p>7 Q. You were asked to read from page 4-6 of 8 the final report which is A-17. Can you turn to 9 that page again? I'm sorry. Still open?</p> <p>10 A. 4-6 of A-17? Yes. I have it.</p> <p>11 Q. And you read from the first paragraph on 12 that page?</p> <p>13 A. Uh-huh (affirmative response).</p> <p>14 Q. And, again, my question is is that the 15 takeaway for the businesses along Shilshole from 16 your report?</p> <p>17 A. No. I think we break it up by different 18 types of businesses -- business use, and we discuss 19 the impacts to the businesses throughout the 20 Environmental Considerations Report.</p> <p>21 Q. Okay. So if I -- let's assume that I'm 22 the owner of a maritime industrial business along 23 Shilshole. What is your report tell me that I 24 didn't know before you prepared the report just in 25 terms of conclusions? You can direct me to specific</p>	<p style="text-align: right;">Page 1406</p> <p>1 businesses?</p> <p>2 Q. I'm --</p> <p>3 A. As a class of business?</p> <p>4 Q. My analysis assumes that as you go 5 through your report you talk about the impacts on 6 industrial businesses and commercial properties and 7 so forth.</p> <p>8 A. Yeah.</p> <p>9 Q. So now I'm asking you just to narrow the 10 focus of our conversation to the impacts on the 11 industrial businesses along Shilshole.</p> <p>12 A. I don't think I understand what the 13 difference is.</p> <p>14 Q. Well, do you disagree that your report 15 distinguishes between different kinds of businesses, 16 those that are industrial and those that are not?</p> <p>17 A. Do I disagree that my report -- our 18 report distinguishes between different classes of 19 land use and businesses that occupy those land uses.</p> <p>20 Q. Right. And now, again, I'm asking you to 21 tell me as the hypothetical owner of an industrial 22 business what I'm supposed to learn from your report 23 about the potential impacts of this trail.</p> <p>24 A. Isn't that the entire report? I don't --</p> <p>25 Q. I'm asking you for the --</p>
<p style="text-align: right;">Page 1405</p> <p>1 language.</p> <p>2 A. Well, I don't know what people knew 3 before or after. So it's -- so I would have to say 4 then everything we disclose here is potentially new 5 information for them.</p> <p>6 Q. Okay. Well, then let me put it a 7 different way. Direct me to the portions of your 8 final report that inform the owner of an industrial 9 maritime business on Shilshole of the effect of this 10 project on that business. Now I'm asking you to 11 turn to your report and tell us where -- is the 12 hypothetical owner go to understand the impacts.</p> <p>13 A. Various places.</p> <p>14 Q. Let's go through them.</p> <p>15 A. Okay. Let's start with the Executive 16 Summary where we discuss both facility and how it 17 may impact different businesses.</p> <p>18 Q. Okay. So this --</p> <p>19 A. All right.</p> <p>20 Q. Turn to -- if you could identify specific 21 pages and paragraphs for us, please? And again, I'm 22 focusing now on maritime industrial businesses on 23 Shilshole.</p> <p>24 A. So your assumption is that our analysis 25 had a very specific analysis of maritime industrial</p>	<p style="text-align: right;">Page 1407</p> <p>1 A. So there are sections that talk about how 2 to think about this, like how would a trail impact 3 your business. There is a characterization of the 4 environment that exists within there. There is a 5 discussion of different land uses and how those 6 businesses may -- will be positively and negatively 7 impacted. And we discussed those things by 8 alternative alignment.</p> <p>9 Q. Okay. So for comparison, Mr. Shook, 10 let's go back to your draft report which is Exhibit 11 A-15.</p> <p>12 A. Which (indiscernible) are we looking at?</p> <p>13 Q. And that's in -- it's -- you also were 14 using it.</p> <p>15 MR. KISIELIUS: Volume 9.</p> <p>16 THE WITNESS: Oh, sorry. So A-15.</p> <p>17 BY MR. SCHNEIDER:</p> <p>18 Q. And in terms of one of the pages that 19 Ms. Ferguson asked you about.</p> <p>20 MS. FERGUSON: It's under Tab 21 A-350.64.</p> <p>22 THE WITNESS: Okay. So I'm looking 23 at page 4-14? Sorry. 4-14?</p> <p>24 BY MR. SCHNEIDER:</p> <p>25 Q. Yes. I'm looking now at the Table dash</p>

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<p>1 4-14 that you described at some length in response</p> <p>2 to Ms. Ferguson's question. This is a table that</p> <p>3 provides information about costs of delay for the</p> <p>4 Shilshole South alternative. Correct?</p> <p>5 A. A. Correct.</p> <p>6 Q. And again, there is no discussion of the</p> <p>7 preferred alternative because you didn't update the</p> <p>8 report for the final EIS. Correct? Yeah. You need</p> <p>9 to say out loud.</p> <p>10 A. Well, -- well, this is a draft document.</p> <p>11 We talking about the final document?</p> <p>12 Q. No. I'm stepping away from that at the</p> <p>13 moment just to confirm that when we're talking about</p> <p>14 preliminary and final, we're talking about the</p> <p>15 document that ended up in the draft EIS. There was</p> <p>16 no updated document for the final EIS.</p> <p>17 A. Correct.</p> <p>18 Q. Okay. So this -- if I'm a business owner</p> <p>19 who owns one of the driveways that you discuss in</p> <p>20 this report, I learn something, don't I?</p> <p>21 A. In this one?</p> <p>22 Q. Yes. In the draft page 4-14?</p> <p>23 A. In the draft? Yeah.</p> <p>24 Q. Okay. And if I turn to the final report,</p> <p>25 what do I learn that would be comparable to what's</p>	<p>1 Q. And is that the delay that you took from</p> <p>2 the Transportation Discipline Report?</p> <p>3 A. The underlying information comes from the</p> <p>4 Transportation Discipline Report.</p> <p>5 Q. Okay. And that's a total delay over a</p> <p>6 length of street that includes Northwest 46th Street</p> <p>7 and Shilshole?</p> <p>8 A. I don't know. I don't have the alignment</p> <p>9 in front of me. I would assume that that's --</p> <p>10 Q. Okay. So or is --</p> <p>11 A. I'm sorry. Those are intersections.</p> <p>12 Q. Okay. So that's the delay at one</p> <p>13 specific intersection, right?</p> <p>14 A. Correct.</p> <p>15 Q. Correct? So what does that tell me as a</p> <p>16 business along Shilshole about the economic impact</p> <p>17 on my business?</p> <p>18 A. It tells you the amount of delay that</p> <p>19 will be incurred along the alternative from all</p> <p>20 users.</p> <p>21 Q. It tells me the amount of delay at one</p> <p>22 intersection from all users? It tells me nothing</p> <p>23 about the impact on my business, does it?</p> <p>24 A. One's business would experience delay</p> <p>25 like all other users, and that is categorized in</p>
Page 1409	Page 1411
<p>1 on this page?</p> <p>2 A. You learn the amount of delay.</p> <p>3 Q. But the delay's in the Parking Discipline</p> <p>4 Report, isn't it?</p> <p>5 A. Correct. And that is --</p> <p>6 Q. And you're looking at the Economic</p> <p>7 Discipline Report --</p> <p>8 A. Yeah.</p> <p>9 Q. Correct? So where's the economic</p> <p>10 information that's comparable to what's on this</p> <p>11 Table 4-14?</p> <p>12 A. The economic information is the</p> <p>13 interpretation of the delay relative to the</p> <p>14 businesses and how it may impact their costs to</p> <p>15 operate.</p> <p>16 Q. Okay. And so, where's that information</p> <p>17 in the final?</p> <p>18 A. It is included on our discussion on page</p> <p>19 4-7, How Trails Negatively Affect Property Value and</p> <p>20 the amount of delay is shown on page 4-9 in Table</p> <p>21 4-1 as examples.</p> <p>22 Q. So in looking at Table 4-9 or Table 4-1</p> <p>23 on page 4-9, I see a total increase in delay of</p> <p>24 7,237 seconds. Right?</p> <p>25 A. Correct.</p>	<p>1 that table.</p> <p>2 Q. Okay. So how much of those 7,237 are</p> <p>3 attributable to my business's trucks?</p> <p>4 A. That's exactly why we took it out because</p> <p>5 we didn't have the underlying data to make that</p> <p>6 assertion.</p> <p>7 Q. But you did it by business in the draft</p> <p>8 report.</p> <p>9 A. No. It's not by business.</p> <p>10 Q. I'm sorry?</p> <p>11 A. It's just -- it was simply identifying</p> <p>12 driveways.</p> <p>13 Q. Right. Well --</p> <p>14 A. And as I explained the reason we took it</p> <p>15 out, because people aren't -- even people who are</p> <p>16 sophisticated in understanding economics -- even</p> <p>17 might not understand the discipline of</p> <p>18 transportation economics and how we value time and</p> <p>19 what the underlying assumptions mean relative to the</p> <p>20 calculation of those monetary impacts.</p> <p>21 Q. Well, Mr. Shook, you've repeatedly</p> <p>22 explained that to us. Why didn't you just put the</p> <p>23 explanation in the report and leave the data and the</p> <p>24 information, the quantitative information in the</p> <p>25 report for people to interpret according to the</p>

35 (Pages 1408 to 1411)

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<p>1 explanation that you've been providing to us?</p> <p>2 A. Because I think it requires a high degree</p> <p>3 of sophistication, as I said, to interpret</p> <p>4 correctly, and we did not want people to</p> <p>5 misunderstand what we thought is the core impact,</p> <p>6 which is the value of delay that is experienced with</p> <p>7 -- along the alternatives that is documented in the</p> <p>8 Transportation Discipline Report.</p> <p>9 Q. So you're -- you took it out not because</p> <p>10 Mr. Mazzola told you to, but because you thought</p> <p>11 that chart --</p> <p>12 THE HEARING EXAMINER: Please stop.</p> <p>13 MR. SCHNEIDER: -- was --</p> <p>14 MS. FERGUSON: Pat --</p> <p>15 THE HEARING EXAMINER: What are --</p> <p>16 stop.</p> <p>17 Did we lose recording?</p> <p>18 THE ASSISTANT: It stopped at 10:53.</p> <p>19 It looks like it's recording here. See, the clock</p> <p>20 is running here. (Indiscernible). So it's probably</p> <p>21 recording.</p> <p>22 THE HEARING EXAMINER: Can you listen</p> <p>23 to the recording?</p> <p>24 THE ASSISTANT: I'm going to start a</p> <p>25 new --</p>	<p>1 working, and the -- it's showing recording in the</p> <p>2 same way. So I just can't hear it right now.</p> <p>3 Apologize for the interruption, Mr. Schneider, if</p> <p>4 you'll please proceed.</p> <p>5 MR. SCHNEIDER: Thank you.</p> <p>6 BY MR. SCHNEIDER:</p> <p>7 Q. So, Mr. Shook, I honestly don't remember</p> <p>8 exactly where we were, but --</p> <p>9 A. I don't either.</p> <p>10 Q. So my questions have been about how I, as</p> <p>11 a hypothetical owner of property on Shilshole, what</p> <p>12 I'm to understand from reading your report. And so,</p> <p>13 why don't we focus in a little bit. Let me just</p> <p>14 walk you through the headings and sub-headings to</p> <p>15 what, I assume, is the pertinent section, and you</p> <p>16 correct me if I'm wrong. So if we start in Chapter</p> <p>17 4 of your report, that's called "Potential" -- I'm</p> <p>18 on page 4-1, and I'm just going to flip some pages</p> <p>19 here, but I want you to flip with me. So "Potential</p> <p>20 Impacts" of Chapter 4, is that the relevant Chapter?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And then --</p> <p>23 A. Well, let me see --</p> <p>24 Q. We're in the --</p> <p>25 A. Yeah. Yeah. Okay.</p>
Page 1413	Page 1415
<p>1 THE HEARING EXAMINER: So it's</p> <p>2 essential that we find out whether it was recording</p> <p>3 because they are going to have to --</p> <p>4 THE ASSISTANT: We have the back up.</p> <p>5 THE HEARING EXAMINER: -- so we'll</p> <p>6 have to find out whether it's been recording or not.</p> <p>7 So take your time and find out. And you'll -- you</p> <p>8 can just play it. Sometime.</p> <p>9 THE ASSISTANT: It's going.</p> <p>10 (indiscernible).</p> <p>11 THE HEARING EXAMINER: So we're sure</p> <p>12 that we've recorded? We need to be 100 percent</p> <p>13 certain we've recorded after we just</p> <p>14 (indiscernible). The only way to do that is to --</p> <p>15 THE ASSISTANT: Let me just record</p> <p>16 this as a separate --</p> <p>17 THE HEARING EXAMINER: That's fine.</p> <p>18 It may have recorded. So I -- we need to just --</p> <p>19 (Recess taken.)</p> <p>20 THE HEARING EXAMINER: All right.</p> <p>21 We'll get back. I'm -- so it has recorded, but the</p> <p>22 only thing I can't confirm absolutely is actually</p> <p>23 listening to it, because I can't get the speaker to</p> <p>24 work, but it shows it's recording. I've looked back</p> <p>25 on the rest of the record where we know it was</p>	<p>1 Q. We're in the final report.</p> <p>2 A. Want to turn to the right one. Yes.</p> <p>3 Q. Okay. So "Potential impacts" Chapter 4,</p> <p>4 correct?</p> <p>5 A. Uh-huh (affirmative response).</p> <p>6 Q. You go down the page "Operational</p> <p>7 Impacts" section 4-22, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And then, if we turn over to -- and then</p> <p>10 you -- what you do is you dress the impacts by --</p> <p>11 under land use, --</p> <p>12 A. Uh-huh (affirmative response).</p> <p>13 Q. -- which is the heading on the next page.</p> <p>14 Then you address the impacts by property type.</p> <p>15 Correct? It's single family properties, multi-</p> <p>16 family, commercial, mixed use?</p> <p>17 A. Uh-huh (affirmative response).</p> <p>18 Q. And then, finally we get to "Industrial</p> <p>19 and Warehouse Properties" at the bottom of the page</p> <p>20 4-6?</p> <p>21 A. Uh-huh (affirmative response).</p> <p>22 Q. And so, and there's approximately half a</p> <p>23 page before we get to institutional properties?</p> <p>24 A. Uh-huh (affirmative response).</p> <p>25 Q. And so, this -- is this the take away</p>

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<p>1 that I as an industrial business in terms of the</p> <p>2 impacts of this trail on my business? Is this where</p> <p>3 I turn to learn them?</p> <p>4 A. There we have discussion in the Analysis</p> <p>5 and Hedonic Section as part of the very specific</p> <p>6 analysis.</p> <p>7 Q. And we'll turn to that in a moment.</p> <p>8 A. And that's in the Appendix. You have</p> <p>9 discussion on all of the alternatives related to</p> <p>10 some -- to elements that may be interest to</p> <p>11 industrial properties. And you have some discussion</p> <p>12 in Chapter 5 as well.</p> <p>13 Q. In what?</p> <p>14 A. Chapter 5 as well.</p> <p>15 Q. Okay. Well, why don't we discuss this --</p> <p>16 A. Sure.</p> <p>17 Q. -- and I also want to ask you about the</p> <p>18 hedonic. And then, if there's anything else that I</p> <p>19 as a property owner would want to know you direct me</p> <p>20 to it. Okay? So turning to page 4-6, "Industrial</p> <p>21 and warehouse properties," your first paragraph is</p> <p>22 discussing your hedonic analysis?</p> <p>23 A. Uh-huh (affirmative response).</p> <p>24 Q. Actually, so why don't we just turn to</p> <p>25 what you referred to, Table C-4 appendix C., which</p>	<p>1 industrial properties near trails?</p> <p>2 A. Uh-huh (affirmative response).</p> <p>3 Q. And then, is the analysis run on the</p> <p>4 properties that adjoin the trail or on industrial</p> <p>5 that are within a mile of the trail?</p> <p>6 A. The sample size is within a mile. And</p> <p>7 then, our variable is a proximity variable where you</p> <p>8 measure how close the property is to that trail in</p> <p>9 feet.</p> <p>10 Q. And so, looking at industrial properties</p> <p>11 within a mile of a trail with a variable, you</p> <p>12 conclude what?</p> <p>13 A. Our analysis shows that there's no</p> <p>14 statistical significance of the association of a</p> <p>15 multi-use trail to properties values.</p> <p>16 Q. Okay. And the other trails that you</p> <p>17 used, do you know anything about the nature of the</p> <p>18 industrial properties, or the frequency of the trail</p> <p>19 crossings, or any of that information?</p> <p>20 A. No.</p> <p>21 Q. Those were --</p> <p>22 A. That's not -- it is not information that</p> <p>23 is contained within the data set for us to run the</p> <p>24 analysis.</p> <p>25 Q. Okay. So the hedonic analysis basically</p>
Page 1417	Page 1419
<p>1 is on page C-7? Correct? So what do we learn on</p> <p>2 page C-7 about how you did the industrial -- the</p> <p>3 hedonic analysis for the industrial properties?</p> <p>4 A. We learned that -- of the item of</p> <p>5 interest into proximity to the trail, that there's</p> <p>6 no statistical significance of the proximity</p> <p>7 adjacent to the trail to industrial properties.</p> <p>8 Q. Well, before we get to that, I want you</p> <p>9 to explain how you did this analysis. What are the</p> <p>10 industrial properties that you are looking, and how</p> <p>11 did you look at them? So can you just walk us</p> <p>12 through this in lay person's terms?</p> <p>13 A. Yeah. So the sample size specifically?</p> <p>14 Q. Yes.</p> <p>15 A. Yeah. So our analysis used the King</p> <p>16 County assessor's data, so it's all properties</p> <p>17 within King County. We looked at properties that</p> <p>18 were close, I'm sorry, were within a mile of a</p> <p>19 multi-use trail. So the existing Burke-Gilman</p> <p>20 Trail, I believe, I think part of the Duwamish River</p> <p>21 Trail, and I can't remember the other ones. But</p> <p>22 there was a head sort of multi-use pedestrian bike</p> <p>23 allowances on them as our sample size, and that's</p> <p>24 roughly 539 industrial properties.</p> <p>25 Q. Okay. But -- so you identified</p>	<p>1 doesn't tell me anything then? There's no</p> <p>2 statistical significance?</p> <p>3 A. So you said it doesn't tell you anything?</p> <p>4 It tells you results of this analysis that the</p> <p>5 economics profession agrees is the right way to look</p> <p>6 at property value impacts, by regressing against the</p> <p>7 variables that you're interested in. It tells you</p> <p>8 that.</p> <p>9 Q. Well, but let's --</p> <p>10 A. The finding that you bring up is the</p> <p>11 finding that there's no statistical significance --</p> <p>12 no statistically significant association between</p> <p>13 proximity to the value of that -- of those</p> <p>14 properties.</p> <p>15 Q. Or properties within a mile of the trail?</p> <p>16 A. Yes.</p> <p>17 Q. Okay.</p> <p>18 A. That's our sample size.</p> <p>19 Q. So again, there's no specific analysis</p> <p>20 about the -- or no comparison of specific properties</p> <p>21 in specific conditions. The statistical analysis is</p> <p>22 of properties within a mile of the trail?</p> <p>23 A. I don't understand what you mean? The</p> <p>24 first part? No?</p> <p>25 Q. The first part is you didn't go and look</p>

<p style="text-align: right;">Page 1420</p> <p>1 at the properties and see how they were or were not 2 affected by the proximity of the trail. Correct? 3 A. What do you mean by -- what data would 4 you think we would collect about that? Sorry, I'm 5 just trying to understand what kind of information 6 you think I should have been looking at? 7 Q. Well, you don't have -- you didn't make 8 any distinguishing analysis based on whether it's a 9 manufacturing plant, or a warehouse, or whether it's 10 within -- whether there is an industrial driveway 11 with hundreds of trucks, or passenger driveway with 12 passenger cars. You didn't make any analysis that 13 is in any way properties specific. 14 A. That's not correct. 15 Q. Okay. Then correct me how I'm wrong. 16 A. You can look at the list of variables 17 here when you collect how big the size is, how -- 18 the number of buildings that are associated, the 19 relative quality of those buildings, whether or not 20 those uses are classified as heavy industrial, flex 21 industrial, or storage, or other uses, how intensely 22 they use it, how old the property is, whether or not 23 it was waterfront frontage. 24 We also want to care about the relative 25 amenity value, like, is it close to the trail? Is</p>	<p style="text-align: right;">Page 1422</p> <p>1 would all agree; they're numbers. It's 2 quantitative. What else in -- 3 A. I don't know if those would be the actual 4 conditions I would to describe an economic analysis. 5 Q. Well, I -- I'm just, you know, a lay 6 person who doesn't know much about the dismal 7 science. So in terms of other quantified 8 information, what else is in your final report that 9 I, as a business owner, can look to to see 10 quantified information? 11 A. We quantified delay, and we quantified 12 parking. 13 Q. Well, you didn't quantify those. You 14 took those from the Transportation Discipline 15 Report. Right? 16 A. Are they not in the report? 17 Q. I'm asking you what you did to increase 18 the information available to the readers of this 19 document? 20 A. The load of transportation impacts. We 21 were trying to reframe that in the economic context 22 that here is important for both decision makers, for 23 folks who are concerned about the project, and for 24 business owners to say this is how you want to think 25 about the impacts.</p>
<p style="text-align: right;">Page 1421</p> <p>1 there proximities? Is it close to Puget Sound? Is 2 it to a lake? What's its rough accessibility to 3 major roadways? How close it is to major 4 populations and markets to downtown Seattle or 5 downtown Bellevue? And we want a control for the 6 fixed effects of fluctuations within the broader 7 economy. 8 Q. Okay. So there are -- 9 A. And that is the variables that are 10 available to us that are appropriate to use and 11 contained in the King County data set. 12 Q. So the variables that you used are the 13 ones that are on pages of C-7 and C-8? Correct? 14 A. Those are the ones in the final log. 15 Yes. 16 Q. Okay. So in terms of the nature of the 17 business, you distinguish between heavy industrial 18 and flex industrial and storage? 19 A. Uh-huh (affirmative response). 20 Q. And then, everything else is in other 21 use? 22 A. Yes. That's correct. 23 Q. Okay. 24 A. Yeah. 25 Q. So that's an economic analysis I think we</p>	<p style="text-align: right;">Page 1423</p> <p>1 Q. Okay. And so -- 2 A. Yeah. And here's the relevant 3 information from other experts that, as best we can, 4 under what I understand was required under SEPA, and 5 disclose it in our economic considerations for the 6 analysis. 7 Q. Mr. Shook, you've identified your hedonic 8 model. You've identified two pieces of information 9 you took from the Transportation Discipline Report. 10 My question is what other quantified information did 11 you as an economist contribute to this report? 12 MS. FERGUSON: I'm going to object. 13 Asked and answered. 14 MR. SCHNEIDER: No. It hasn't been 15 answered. 16 BY MR. SCHNEIDER: 17 Q. What other information did you 18 contribute? 19 MS. FERGUSON: Let's let the Examiner 20 rule. 21 THE HEARING EXAMINER: The difficulty 22 I'm having is whether it's been asked and answered 23 is just the gentlemen have moved into a bit of a 24 conversational tone with statements being made by 25 Mr. Schneider, as opposed to questions, and the</p>

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<p>1 witness asking questions. So I'll allow the</p> <p>2 question as a form of summary or a bit of</p> <p>3 conversation.</p> <p>4 THE WITNESS: Yeah. The other</p> <p>5 economic information is contained in the existing</p> <p>6 analysis that shows trends around employment, land</p> <p>7 use, assess valuation, changes in commercial real</p> <p>8 estate prices, and vacancy. Those are all examples</p> <p>9 of other quantitative information that document what</p> <p>10 we understand to be the conditions in the area.</p> <p>11 BY MR. SCHNEIDER:</p> <p>12 Q. Okay. So point to a specific place where</p> <p>13 that quantification that you just referred to is</p> <p>14 found.</p> <p>15 A. Beginning on page 3-3, Section 3.2.</p> <p>16 Document the amount of land to --</p> <p>17 Q. Hang on.</p> <p>18 THE HEARING EXAMINER: You're in</p> <p>19 A-17? Is that right? The final report, A-17?</p> <p>20 THE WITNESS: A-17. Yes.</p> <p>21 BY MR. SCHNEIDER:</p> <p>22 Q. Yes. It's 3-3?</p> <p>23 A. Uh-huh. So we give people a sense of</p> <p>24 sort of the rough distribution on page 3.5 of how</p> <p>25 land is allocated by different use, as reported by.</p>	<p>1 THE WITNESS: So if I understand the</p> <p>2 question, where else is there a quantitative</p> <p>3 analysis? Section --</p> <p>4 BY MR. SCHNEIDER:</p> <p>5 Q. That informs me, as a business owner, of</p> <p>6 the impact on my business. And if this is</p> <p>7 background quantification, fine.</p> <p>8 So let's go through. You're -- give us a</p> <p>9 description of what's on page 3-5.</p> <p>10 A. 3-5 is the calculation of land by type.</p> <p>11 Q. Okay.</p> <p>12 A. 3-6 is the assessment evaluation by type.</p> <p>13 3-7 is a list of most valuable -- 10 most valuable</p> <p>14 parcel -- or sorry, 10 most valuable parcels in</p> <p>15 10-15. Section 3.3 shows the rental price for</p> <p>16 different classes of commercial real estate off</p> <p>17 industrial, multi-family, office and retail. And</p> <p>18 3-9 has a description of the rates. 3-4 has a</p> <p>19 description of the employment conditions within the</p> <p>20 area.</p> <p>21 THE HEARING EXAMINER: Sorry. If you</p> <p>22 could just when --</p> <p>23 THE WITNESS: Oh, for 3-10.</p> <p>24 THE HEARING EXAMINER: -- you're --</p> <p>25 yeah, stick to consistently referring. If we're</p>
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<p>1 And then, we have on 3.4 we have amount of value as</p> <p>2 assessed by the King County assessor.</p> <p>3 Q. Okay. So I'm not in the same place you</p> <p>4 are. Where?</p> <p>5 A. Page 3.6 in Section 3.211.</p> <p>6 Q. Okay. Use the -- if you would, the page</p> <p>7 numbers that are on the left --</p> <p>8 A. Oh, the A-350?</p> <p>9 Q. No.</p> <p>10 MS. FERGUSON: And just so we have a</p> <p>11 clear record, I think you might be looking at the --</p> <p>12 or are looking at the draft or the final?</p> <p>13 THE WITNESS: A-17? This looks --</p> <p>14 yeah, this is the final.</p> <p>15 BY MR. SCHNEIDER:</p> <p>16 Q. Okay. So go more slowly --</p> <p>17 A. Okay.</p> <p>18 Q. Maybe the problem is we're not keeping up</p> <p>19 with you. So --</p> <p>20 MS. FERGUSON: And can you just</p> <p>21 confirm the tab number?</p> <p>22 THE WITNESS: Tab number is A-350-66</p> <p>23 -- or point 66?</p> <p>24 MS. FERGUSON: Okay. Correct. Thank</p> <p>25 you.</p>	<p>1 going to be doing page numbers, don't go to</p> <p>2 sections.</p> <p>3 THE WITNESS: 3-10 has a description</p> <p>4 of the employment conditions and trends through</p> <p>5 time, as well as a relative -- sorry. And then on</p> <p>6 3-11 has a description of their composition through</p> <p>7 time. We document the commercial retail aspects of</p> <p>8 different industries on page 3-12. I estimate</p> <p>9 looking at what's happening in taxable retail sales.</p> <p>10 And then, we have some description on page 3-14 and</p> <p>11 3-15 on the parking conditions.</p> <p>12 BY MR. SCHNEIDER:</p> <p>13 Q. Okay. Anything else?</p> <p>14 A. That -- in terms of -- by quantitative if</p> <p>15 you -- the definition is where did we measure</p> <p>16 something and said -- and ascribed a value to it;</p> <p>17 that is the limitation of it.</p> <p>18 Q. Okay. So what in the pages that you just</p> <p>19 went through, which I think went approximately from</p> <p>20 page 3-5 to 3-15, what does that tell me about, as</p> <p>21 an owner of a industrial business on Shilshole, of</p> <p>22 the potential impacts of the project on my business?</p> <p>23 A. We didn't do an analysis of impacts to</p> <p>24 individual businesses and their profitability.</p> <p>25 Q. Okay.</p>

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<p>1 A. We described what happens broadly and how</p> <p>2 those factors may impact specific -- different types</p> <p>3 of land uses and businesses given the composition</p> <p>4 within the study area.</p> <p>5 Q. Okay. So then, let's go back to</p> <p>6 "Operational Impacts" and the section on industrial</p> <p>7 and warehouse properties, which begins at the bottom</p> <p>8 of page 4-6. Correct?</p> <p>9 A. Yes.</p> <p>10 Q. And we've already discussed the hedonic</p> <p>11 analysis. Is there any other quantification of</p> <p>12 information in that discussion?</p> <p>13 A. I believe we included what we think is</p> <p>14 the appropriate amount of quantification given what</p> <p>15 we know.</p> <p>16 Q. Mr. Shook, please answer my question.</p> <p>17 A. And those I --</p> <p>18 Q. Mr. Shook, I didn't ask you whether you</p> <p>19 included the appropriate amount. I asked you</p> <p>20 whether you included any?</p> <p>21 A. I was going to finish my answer.</p> <p>22 Q. No. You answer my question please. Did</p> <p>23 you include any quantification? Yes or no?</p> <p>24 A. And there's no other quantification --</p> <p>25 Q. There's no quantification?</p>	<p>1 at the time of analysis we would have considered it.</p> <p>2 Q. Okay. And then, lets -- why don't you</p> <p>3 just read for us the entire summary in your report</p> <p>4 about how multi-use trails negatively affect</p> <p>5 property value?</p> <p>6 THE HEARING EXAMINER: And this is at</p> <p>7 page?</p> <p>8 MR. SCHNEIDER: 4. -- 4-7, the last</p> <p>9 paragraph above Institutional Properties.</p> <p>10 THE WITNESS: "The results of the</p> <p>11 impact of proximity of industrial properties to</p> <p>12 multi-use trails in Kent County are shown in Table</p> <p>13 C-4, Appendix 6."</p> <p>14 BY MR. SCHNEIDER:</p> <p>15 Q. No. No. We're not on the same place.</p> <p>16 A. Where are we?</p> <p>17 Q. We're again on page 4-7?</p> <p>18 A. Oh, on the negatively part? Sorry.</p> <p>19 Q. Yes.</p> <p>20 A. Okay. "The operation of the B.G.T</p> <p>21 Missing Link may impede some industrial users</p> <p>22 located adjacent to the trail due to congestion of</p> <p>23 industrial traffic to pedestrian and bicycle use.</p> <p>24 Industrial users may be required to adjust delivery</p> <p>25 patterns where the trail crosses loading docks or</p>
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<p>1 A. -- of impacts to specific businesses and</p> <p>2 their profitability. No.</p> <p>3 Q. So let's see what you did say. Once we</p> <p>4 get past the hedonic analysis, which we've already</p> <p>5 discussed, what else do you say? You say how multi-</p> <p>6 use trails positively affect properties value. You</p> <p>7 say it's going to positively affect properties value</p> <p>8 because of improved access for employees. And is</p> <p>9 that based on any understanding of how many of the</p> <p>10 employees on Shilshole commute by foot or bicycle?</p> <p>11 A. This is impacts common to all</p> <p>12 alternatives, not Shilshole.</p> <p>13 Q. It's industrial and warehouse properties.</p> <p>14 A. Yeah. But you said Shilshole.</p> <p>15 Q. Excuse me. In -- that's an appropriate</p> <p>16 qualification. Is it based on any information about</p> <p>17 how many, what percentage, what number of the</p> <p>18 employees of industrial and warehouse properties in</p> <p>19 this Ballard study area get to work by foot or by</p> <p>20 bicycle?</p> <p>21 A. That statement is drawn from the broader</p> <p>22 literature around how multi-use trails impact</p> <p>23 businesses as documented in our reports. We had no</p> <p>24 information on the number of employees or on their</p> <p>25 modes of travel. If that information were available</p>	<p>1 driveways. In addition, the operation of heavy</p> <p>2 machinery and trucks in an environment with more</p> <p>3 pedestrian bicycle travelers may increase the risk</p> <p>4 of accident. Increases in risk of automotive</p> <p>5 accident could trigger -- I'm sorry -- could result</p> <p>6 in hot -- sorry -- could result in higher insurance</p> <p>7 costs or require some waver expenditures to employ</p> <p>8 traffic flaggers to avoid collisions. Industrial</p> <p>9 businesses may need to adapt somewhat by adjust</p> <p>10 delivery schedules to times and days when there's</p> <p>11 relatively few pedestrians and bicyclists using the</p> <p>12 B.G.T. This may result in more scheduled hours of</p> <p>13 operation and higher labor costs to these users.</p> <p>14 These additional operating challenges are likely to</p> <p>15 increase cost of production for these users and</p> <p>16 these costs are unlikely to be passed on to</p> <p>17 consumers due to competition from producers also in</p> <p>18 the region."</p> <p>19 Q. Okay. Is there anything else that I, as</p> <p>20 the hypothetical owner of an industrial business</p> <p>21 along the preferred alternative, that I'm going to</p> <p>22 learn from reading your report other than that there</p> <p>23 are things may impede industrial uses, may increase</p> <p>24 risk of accident, could result in higher insurance</p> <p>25 costs, and so forth?</p>

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<p>1 A. Given the amount of information in our 2 approach that was the level of precision we could 3 get to. 4 Q. So why does it take an economist to write 5 that paragraph? Isn't that something that anyone 6 who owns a business along there already knows? 7 A. I don't know what everybody else knows. 8 Q. Okay. So what do you think you added as 9 an economist in terms of value here for the decision 10 makers about the impacts on industrial businesses? 11 A. Yeah. So I'll restate what I said 12 previously, that our engagement here was really to 13 describe from an economic perspective how a facility 14 like this may impose both benefits and costs. 15 Right? That is a value add and not something that 16 I've seen discusses in any previous documents that I 17 reviewed. And that is an important way to think 18 about this issue. 19 We have further then defined how 20 different things both on the positive side and the 21 negative side by different class of businesses. We 22 are not able, given our analysis, what we did, and 23 what we believe SEPA requires, to precisely estimate 24 any costs, because we don't know both what the 25 benefits are. We don't know what their options may</p>	<p>1 A. Yes. That's correct. 2 Q. Okay. And the draft report using those 3 dollar values includes the impacts of this proposal 4 will be significant, doesn't it? 5 A. I don't believe that's what that says. 6 Q. Would you turn to Exhibit A-15, which is 7 in the other volume, it's behind Tab A-350.64. 8 A. So it is Tab A-350.64? 9 Q. Yes. 10 A. Okay. 11 MS. FERGUSON: I'm sorry, Pat. What 12 page? 13 MR. SCHNEIDER: Actually, I'm going 14 to change and go to your deposition. Mr. Shook, you 15 have them? It's Mr. Schultheiss. 16 BY MR. SCHNEIDER: 17 Q. I apologize for the delay here. That's a 18 copy of your deposition. Could you open it please? 19 And do you recall your deposition that I took on 20 October 24th? 21 A. I do. 22 Q. Okay. I'd like you to turn please to 23 page 57. And I direct your attention to lines 20 24 through 25. Why don't I read my question and you 25 can give the answer?</p>
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<p>1 be with a trail. Maybe there are lower cost 2 substitutes. Maybe there are higher cost 3 substitutes? So we can't arrive at a precise 4 estimate of what it would cost. And then, we have a 5 discussion around what happens cumulatively. 6 There's lots happening within the broader area that 7 needs to be considered. It's also is part of an 8 impact of industrial users. 9 Q. And is that your answer to my question 10 about what this paragraph adds in terms of 11 understanding? 12 A. You asked me whether or not we needed an 13 economist to say that; what it adds to the decision- 14 making process. 15 Q. Yes. And is that your answer to that 16 question? 17 A. Yes. 18 Q. Okay. You did -- there was more 19 quantified information in the draft report, wasn't 20 there? 21 A. By quantified, you mean, we simply did 22 some math? 23 Q. You define it any way you want. There 24 are dollar values assigned to impacts in the draft 25 report? Correct?</p>	<p>1 A. Sure. 2 Q. My question, "So the draft EIS identifies 3 significant negative economic impacts and the final 4 EIS does not. Correct?" Answer -- 5 A. Yes. That's correct." 6 Q. Is your testimony different today then? 7 A. No. 8 Q. And after the draft EIS concluded there 9 were significant negative economic impacts, you 10 didn't do any additional analysis? Correct? 11 A. No. We did not. 12 Q. And you didn't gather any additional 13 information? 14 A. We did not. 15 MR. SCHNEIDER: Okay. Thank you. 16 That's all. 17 THE HEARING EXAMINER: Mr. Shook, 18 just have -- well, first I want to ask where in the 19 draft EIS -- and I know Appellants did this earlier, 20 but I may need your help on this as well. Is where 21 in the draft EIS that finding of significance was? 22 MR. SCHNEIDER: It's not in -- 23 THE HEARING EXAMINER: Or the draft 24 report. Sorry. 25 MR. SCHNEIDER: The draft report.</p>

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<p>1 Yes. It -- the word significant is used a number of</p> <p>2 times. But the specific packet -- passage that I</p> <p>3 had in mind when I asked that question --</p> <p>4 THE HEARING EXAMINER: I know we did</p> <p>5 the sum in your direct.</p> <p>6 MR.BROWER: Could I help us orient?</p> <p>7 THE HEARING EXAMINER: That's all I'm</p> <p>8 asking, so anybody can answer at this point.</p> <p>9 MR. BROWER: So it's at A-15, which</p> <p>10 is behind tab A-350.64 in Volume 9. And I'll let</p> <p>11 Mr. Schneider give you the page number.</p> <p>12 MR. SCHNEIDER: It's on page 415 in</p> <p>13 the second paragraph.</p> <p>14 THE HEARING EXAMINER: 415, second</p> <p>15 paragraph? And which line?</p> <p>16 MR. SCHNEIDER: It begins about the</p> <p>17 middle of the paragraph the conclusion "based upon</p> <p>18 these results."</p> <p>19 THE HEARING EXAMINER: Right. Got</p> <p>20 it.</p> <p>21 MR. SCHNEIDER: Yeah. It's lines 10</p> <p>22 to 13.</p> <p>23 EXAMINATION</p> <p>24 BY THE HEARING EXAMINER:</p> <p>25 Q. And so, my question to you, Mr. Shook, as</p>	<p>1 yes, you know, say yes. Well, what's the difference</p> <p>2 between a 5 and a 3? And we're, like, you know, I</p> <p>3 don't know, you know. And is 5 even significant,</p> <p>4 you know, or is it -- what's the absolute threshold</p> <p>5 that you're establishing that? And we're, like, you</p> <p>6 know, you know, -- and we also consider that, you</p> <p>7 know, this is likely to be appealed and that we</p> <p>8 should be very precise given the analysis that we</p> <p>9 did and the analysis that we couldn't do to sort of</p> <p>10 really measure and feel comfortable about how we</p> <p>11 were disclosing those impacts.</p> <p>12 And so, for us, you know, we're</p> <p>13 economists. We try to think in probabilities.</p> <p>14 Right? You know, and so, it was a significant</p> <p>15 impact. A 10-percent probability in our mind, a 20,</p> <p>16 50, 70? Do we even have any information to get to</p> <p>17 those kinds of assessments?</p> <p>18 And so, after reflecting on the</p> <p>19 feedback we had, you know, we were, like, well, you</p> <p>20 know, to the extent that we could try to talk about</p> <p>21 sort of specific things it'd be great. But we also</p> <p>22 needed to make sure that we were trying to, as</p> <p>23 accurately as we can and given the analysis that we</p> <p>24 were able to do, talk about disclosing those</p> <p>25 impacts. And so -- so through that process we</p>
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<p>1 I understand from your testimony that this did not</p> <p>2 carry through to your final report?</p> <p>3 A. Correct.</p> <p>4 Q. Why is that?</p> <p>5 A. It had to do with the amount of</p> <p>6 precision. So when the city approached us they</p> <p>7 wanted a good faith effort. And I knew, and</p> <p>8 everybody knew, that this has been a very</p> <p>9 controversial project, so we should spend some time</p> <p>10 trying to understand this the best that we could.</p> <p>11 And so, they gave us some freedom to kind of say,</p> <p>12 "Well, how would you solve this? How would you</p> <p>13 discuss this? What could you find?" And so, if you</p> <p>14 think about our report as a series of layers, right?</p> <p>15 What do we know generally about it from the</p> <p>16 literature? What do we know generally from an</p> <p>17 experiment? What do we know about the factors?</p> <p>18 Right? And then, that section was really about can</p> <p>19 we apply that to what we know about something about</p> <p>20 the conditions?</p> <p>21 And it was -- once we submitted our</p> <p>22 draft we received feedback that how can you be so</p> <p>23 precise with those conclusions? Because we had a</p> <p>24 whole section that said, you know, we think the</p> <p>25 trail may relatively on a scale of 1 to 5 -- and</p>	<p>1 thought that that section was not really an</p> <p>2 appropriate way -- well, for the transportation</p> <p>3 piece on the delay, as well as, the qualitative</p> <p>4 section that's in the draft that says, okay, here's</p> <p>5 some relative ranking. And so, without that kind of</p> <p>6 information because we didn't feel like it was</p> <p>7 reliable, we decided to not include that statement</p> <p>8 as a supportable statement for us.</p> <p>9 Q. So you had a qualitative analysis up to</p> <p>10 that point that you came to that conclusion. And</p> <p>11 then, re-examined that. And correct me if I'm wrong</p> <p>12 I want to make sure I understand it.</p> <p>13 A. Yeah.</p> <p>14 Q. And then you re-examine that because you</p> <p>15 felt that the level of qualitative analysis was not</p> <p>16 what you had hoped to -- or expected?</p> <p>17 A. Exactly. I mean, I think we want more</p> <p>18 quantitative information like what the businesses</p> <p>19 were doing, how profitable they were, what -- how --</p> <p>20 what the exact cost between the base line versus the</p> <p>21 alternative would actually impose on them? To get</p> <p>22 to some say, like yeah. You know what, you know,</p> <p>23 this is going to impose costs of X which seems to</p> <p>24 even to their profit margin. And maybe that would</p> <p>25 be for that specific business. But we didn't have</p>

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<p>1 that level of information to be talking about</p> <p>2 specific businesses in that regard and make those</p> <p>3 determinations.</p> <p>4 Q. What was the level of information you</p> <p>5 felt that you had when you made this statement?</p> <p>6 A. At that time, we were guided by what we</p> <p>7 learned in hedonics analysis; our own sort of</p> <p>8 economic theory.</p> <p>9 Q. So this was to make sure it looked -- and</p> <p>10 then go --</p> <p>11 A. There was no other analysis done. It was</p> <p>12 just the same analysis.</p> <p>13 Q. It was in hedonics, which is the property</p> <p>14 value.</p> <p>15 A. Property value.</p> <p>16 Q. So the property value would go down?</p> <p>17 A. What's that?</p> <p>18 Q. So you had results that showed property</p> <p>19 value going down?</p> <p>20 A. No.</p> <p>21 Q. Okay.</p> <p>22 A. The results did not show that. It was</p> <p>23 not significant, so we can't say it's-- it matters.</p> <p>24 Q. So what led you to this is what I'm</p> <p>25 trying to figure out?</p>	<p>1 Q. Right. I understand how you changed.</p> <p>2 A. Yeah. Okay.</p> <p>3 Q. I'm just still trying to make sure I</p> <p>4 understand how you got to this point.</p> <p>5 A. Oh, got to the point.</p> <p>6 Q. And what you were relying on for that.</p> <p>7 And you said it really wasn't the property value,</p> <p>8 that wasn't going down. It wasn't the hedonics</p> <p>9 analysis, it was delay.</p> <p>10 A. Yeah.</p> <p>11 Q. That was --</p> <p>12 A. Delay --</p> <p>13 Q. Okay.</p> <p>14 A. -- is primarily the primary one because</p> <p>15 that's the main way to --</p> <p>16 Q. Was there anything else other than delay</p> <p>17 that got you to that?</p> <p>18 A. I'm trying to think here. Oh, well, and</p> <p>19 also potentially increase risk from accidents.</p> <p>20 Q. Safety?</p> <p>21 A. Uh-huh (affirmative response).</p> <p>22 Q. And so, it was your -- so you had enough</p> <p>23 data with delay and safety to say we think it's</p> <p>24 going to be significant. You looked at that and</p> <p>25 said maybe not enough, maybe we need more detail on</p>
Page 1441	Page 1443
<p>1 A. It was just some -- the same abstraction</p> <p>2 that we have in discussion here around okay, well,</p> <p>3 you know, if it imposes delay, right?</p> <p>4 Q. Okay. So you had --</p> <p>5 A. I don't want to experience that delay,</p> <p>6 right?</p> <p>7 Q. All right. So it wasn't the hedonics.</p> <p>8 A. I have a lot of driveways, so maybe more</p> <p>9 delay. So, like, okay, relatively if you could</p> <p>10 think of a one to one relationship then maybe that's</p> <p>11 the way to think about it. But then, we're thinking</p> <p>12 well, maybe it's not. Maybe, you know, we don't</p> <p>13 know that for any given business to say yeah, that</p> <p>14 linear relationship or those relationships even</p> <p>15 existed. And so, that's why we backed off pushing</p> <p>16 on that type of analysis.</p> <p>17 Q. So would you say then so it wasn't the</p> <p>18 hedonics, it was delay that was -- the delay data</p> <p>19 that you had? Or was it other data as well?</p> <p>20 A. No. I think it was mostly about whether</p> <p>21 or not making inferences from what we had learned in</p> <p>22 the hedonics and how we think about how the impacts</p> <p>23 may happen. Whether or not applying that in a</p> <p>24 business specific level without other information</p> <p>25 was appropriate in making determinations on those.</p>	<p>1 that to make that affirmative statement?</p> <p>2 A. We would want -- we have information --</p> <p>3 enough information there. What we don't have is</p> <p>4 information on the existing -- the specific business</p> <p>5 about how they experience that delay and risk.</p> <p>6 That's the missing piece.</p> <p>7 Q. You didn't have enough information to</p> <p>8 compare existing conditions with what was going to</p> <p>9 be implemented with --</p> <p>10 A. Oh, yeah. So -- well, exactly. What</p> <p>11 happens in -- what happens now with those businesses</p> <p>12 and how they may respond? We don't have that</p> <p>13 information to say well, is there no impact because</p> <p>14 we change your operations, or is, like, there's a</p> <p>15 significant operational impact? And then we need</p> <p>16 to, you know, as we said hire flaggers or, you know,</p> <p>17 change our schedule, you know. We don't have that</p> <p>18 information to make those determinations.</p> <p>19 Q. But you had enough information to note</p> <p>20 that there would be delays; there would be safety</p> <p>21 issues. You just couldn't compare to existing</p> <p>22 conditions?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. Can you point me to where in the</p> <p>25 EIS -- I think you're -- let me check your testimony</p>

<p style="text-align: right;">Page 1444</p> <p>1 and make sure it's correct. I understood that you  2 said that there was a possibility of -- the EIS  3 disclosed the possibility of a single business  4 closing. Is that correct?  5 A. In the final?  6 Q. That's what I have it's a -- the analysis  7 is clearly not saying that if any single business  8 will close. We don't have enough data, based on  9 your testimony, I understand we don't have enough  10 data for that. But I understood you to say that the  11 possibility of that harm was disclosed in the EIS?  12 A. The possibility of that harm exists. The  13 impact on closures is unknown.  14 Q. Right.  15 A. Yeah. Yeah.  16 Q. And so, where was that harm disclosed?  17 That's my question?  18 A. It's disclosed in the discussion on  19 impacts common to all alternatives and it's  20 disclosed on the delay figures that are referenced.  21 Q. And can you point me to it -- what page?  22 A. Yeah. Sure. Yeah. So--  23 Q. This is in the final EIS, right?  24 A. Yes. Final EIS.  25 Q. Is it R-1?</p>	<p style="text-align: right;">Page 1446</p> <p>1 EXAMINATION  2 THE HEARING EXAMINER:  3 Q. So I -- if you --  4 A. In the draft EIS -- the economic  5 considerations report was included as part of the  6 draft EIS.  7 Q. So you didn't say that it's part of the--  8 in the EIS the possibility of that harm is  9 disclosed? That's not in the EIS?  10 A. In the entire EIS? Not our report?  11 Sorry I'm trying to --  12 Q. What about your report?  13 A. I don't know about the rest of the report  14 -- rest of the EIS.  15 Q. I'm just talking about the possibility of  16 that harm being disclosed in the EIS. Do you have  17 any knowledge or information about that?  18 A. I don't. I'm not familiar with the  19 entire EIS.  20 Q. Okay. All right. How about your report  21 then we'll go to that?  22 A. Yeah. So we talked about that harm  23 beginning on Chapter 4 with the potential impacts on  24 impacts common to all build alternatives.  25 Q. And that's page?</p>
<p style="text-align: right;">Page 1445</p> <p>1 A. Yeah. So --  2 MS. FERGUSON: Can I just clarify the  3 record? The final EIS or Final Report?  4 THE WITNESS: Final Report.  5 THE HEARING EXAMINER: Oh, okay.  6 THE WITNESS: Sorry.  7 THE HEARING EXAMINER: It's not in  8 the final EIS?  9 THE WITNESS: I don't believe that  10 comes under consideration or is in the final EIS. I  11 could be wrong.  12 THE HEARING EXAMINER: No. But I  13 understood your response to be the EIS when I --  14 while you were in conversation with Mr. Schneider.  15 So I just want to make sure I either misheard it or  16 --  17 MR. BROWER: Mr. Examiner, of the  18 four discipline reports, only three of them are  19 updated for the final EIS. So the final version for  20 --  21 MS. FERGUSON: Can we have the  22 Witness testify?  23 THE HEARING EXAMINER: Yeah. Well,  24 all I know is I have in my notes that it was  25 disclosed in EIS.</p>	<p style="text-align: right;">Page 1447</p> <p>1 A. That starts on page 4-1.  2 Q. 4-1. Okay. Thank you.  3 A. Yeah. And then, we have subsequent  4 discussion on all the action alternatives.  5 Q. Okay.  6 A. So yeah.  7 THE HEARING EXAMINER: Great. Thank  8 you, Mr. Shook.  9 Ms. Ferguson?  10 MS. FERGUSON: You asked most of my  11 questions, but I just want to make sure.  12 CROSS-EXAMINATION  13 BY MS. FERGUSON:  14 Q. You answered one question from the  15 Examiner and you used -- when you used the term  16 significant related to property value, were you  17 using that term as a SEPA term of or something else?  18 A. We were using it interchangeably in the  19 sense that we were talking both about statistically  20 significance and just in a non-SEPA sense just  21 saying it's synonymous with impact.  22 Q. And was that a pervasive?  23 A. That was a pervasive issue in our draft  24 that we had subsequently cleaned up in our final.  25 Q. So the difference between SEPA</p>

44 (Pages 1444 to 1447)

<p style="text-align: right;">Page 1448</p> <p>1 significance and statistical significance was a 2 concern. 3 A. And also, just what we were describing 4 it's just an impact. 5 Q. Okay. Perfect. And we've been talking 6 about various drafts of your report that led to a 7 final. Is that type of iterative process typical or 8 common in this type of work or is it unusual? 9 A. It's typical and common from my 10 experience -- 11 Q. Okay. 12 A. -- particularly in an area where there's 13 not standard approach for varying in questions. 14 MS. FERGUSON: No further questions. 15 THE HEARING EXAMINER: Mr. Cohen? 16 MR. COHEN: None, Your Honor. 17 THE HEARING EXAMINER: Okay. And 18 this was a direct witness, anything further from 19 you, Mr. Schneider? 20 (Pause.) 21 MR. SCHNEIDER: I have nothing 22 further. Thank you. 23 THE HEARING EXAMINER: Okay. 24 Thank you, Mr. Shook. 25 THE WITNESS: Thank you,</p>	<p style="text-align: right;">Page 1450</p> <p>1 And that's just for you? 2 MR. KISIELIUS: That's just for me. 3 THE HEARING EXAMINER: Yeah. And 4 Trask? 5 MR. COHEN: An hour or less. I 6 believe the Appellants listed him as a witness. 7 THE HEARING EXAMINER: Right. All 8 right. Given that we will take lunch now and we'll 9 come back at 1:15 and start with Mazzola and then go 10 to Trask, and reserve Cheng for Tuesday, anything 11 else we need to address before we break? 12 I think we have all the exhibits 13 admitted? 14 Thank you. 15 MR. COHEN: Thank you. 16 (Noon recess taken.) 17 --oOo-- 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 1449</p> <p>1 Mr. Examiner. 2 THE HEARING EXAMINER: And now, what 3 do we have for witnesses remaining? I think we've 4 got three or four, if I recall. 5 MR. KISIELIUS: For the city we have 6 Mr. Mazzola. Mr. Cheng is the witness who is ill 7 today, so we were hoping to call him on Tuesday. 8 And that will be the remainder of all the city 9 witnesses. 10 THE HEARING EXAMINER: Oh, okay. 11 MR. COHEN: We have Mr. Trask. He 12 can appear today if you -- if everybody wants him to 13 be. 14 THE HEARING EXAMINER: So we have 15 Mazzola and Trask possibly today? 16 MR. COHEN: Uh-huh (affirmative 17 response). 18 THE HEARING EXAMINER: All right. 19 Estimated time for Mr. Mazzola -- or I'm sorry, 20 Mazzola. 21 MR. KISIELIUS: Mazzola. I would 22 expect about a half-hour or 40 minutes. And then, 23 I'm trying to -- it might be shorter, but I'm trying 24 to pad it a little bit. 25 THE HEARING EXAMINER: Yes. Right.</p>	<p style="text-align: right;">Page 1451</p> <p>1 AFTERNOON SESSION 2 --oOo-- 3 THE HEARING EXAMINER: All right. 4 Back on the record. 5 Witness for the city? 6 MR. KISIELIUS: Okay. The city would 7 like to call Mark Mazzola. 8 THE HEARING EXAMINER: Please state 9 your name and spell your last name for the record. 10 MR. MAZZOLA: Sure. Mark Mazzola. 11 And my last name is spelled M-a-z-z-o-l-a. 12 THE HEARING EXAMINER: And do you 13 swear or affirm that the testimony you're providing 14 in today's hearing will be the truth? 15 MR. MAZZOLA: Yes. I do. 16 THE HEARING EXAMINER: Thank you. 17 MARK MAZZOLA, 18 a witness, having been first duly sworn, 19 was examined and testified as follows: 20 DIRECT EXAMINATION 21 BY MR. KISIELIUS: 22 Q. Good afternoon, Mr. Mazzola. Could you 23 please state your occupation? 24 A. Sure. I am the environmental manager for 25 the Seattle Department of Transportation.</p>

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<p>1 Q. Okay. And what are your primary 2 responsibilities at Department of Transportation? 3 A. So broadly speaking, my responsibility as 4 the environmental manager is to ensure that our -- 5 that we follow all the appropriate environmental 6 reviews and regulations in construction and 7 operating our transportation facilities, so that 8 includes environmental reviews such as SEPA, and 9 NEPA reviews, obtaining permits, and then want -- 10 during construction just ensuring that our 11 construction projects comply with those permit 12 conditions and any other applicable environmental 13 regulations. 14 Q. Okay. Do you have any specific training 15 or education that's relevant to your ability to 16 carry out those roles and responsibilities? 17 A. Yes. I've got an undergraduate degree in 18 Biology from the University of Notre Dame. Excuse 19 me, and a graduate Degree in Community and regional 20 planning from the University of Texas. I've had -- 21 prior to beginning work at the City of Seattle in 22 2007, I had a number of jobs at various levels of 23 government, and then even in the private sector as a 24 consultant in various areas of environmental 25 regulation, policy making, and planning.</p>	<p>1 non-motorized transportation facilities in the 2 course of your job? 3 A. So as you may know, a fair number of our 4 Seattle Department of Transportation projects either 5 fully involve non-motorized transportation projects 6 such as sidewalk improvements or bike facility 7 improvements, or a lot of times non-motorized 8 projects are a component of larger roadway 9 reconstruction projects. So I haven't gone through 10 the exercise of counting how many bike and ped 11 projects I've worked on over the years, but it's 12 quite a number that I've either evaluated under the 13 state -- excuse me. It's quite a number that I've 14 either evaluated as part of environmental review 15 process or member -- team members, staff that I 16 supervise, have evaluated as well. 17 Q. Okay. I want to ask you to briefly 18 describe your prior experiences working on 19 environmental review -- 20 A. Sure. 21 Q. -- for SDOT's projects more generally. 22 So first, have you been involved in preparing EISs 23 other than this one? 24 A. I have. 25 Q. Okay. And could you tell us how many?</p>
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<p>1 Q. Okay. 2 A. And then, if I may continue, just here -- 3 since joining the city, just -- I've been working as 4 an environmental planner since I began -- or excuse 5 me, as a senior environmental analyst when I was 6 first hired before becoming the environmental 7 manager in 2012. And then, as part of the job just 8 had -- took some training courses on the State 9 Environmental Policy Act itself as well as related 10 trainings related to the National Environmental 11 Policy Act and various environmental disciplines 12 such as cultural resources or biological 13 assessments. 14 Q. So do you consider yourself familiar with 15 the city and state SEPA regulations? 16 A. Yes. I do. And, in fact, I was invited 17 to participate on a rule-making committee by the 18 Department of Ecology to help revise some of the 19 categorical exemptions related to transportation 20 projects in the State SEPA Code. 21 Q. And more generally, do you rely and use 22 those regulations as part of your regular job 23 duties? 24 A. I do. If not daily, at least weekly. 25 Q. So to what degree do you deal with</p>	<p>1 A. One for the LA Base Seawall Project and 2 then another for the Alaskan Way Promenade and 3 Overlook Walk Project, which is commonly referred to 4 as Waterfront Seattle. Both those projects also 5 involved a supplemental review, a full supplemental 6 EIS in the case of the seawall, where we did a 7 supplemental draft and a supplemental final EIS, and 8 then a supplemental draft EIS for the Waterfront 9 Seattle Project before publishing the final. 10 Q. In what capacity were you involved in 11 those other EISs? 12 A. A very similar capacity that I am on the 13 Burke-Gilman Trail Missing Link, I was the 14 environmental, the City's environmental lead for 15 those projects. 16 Q. Okay. And I asked you specifically about 17 EISs. Do you -- what about environmental review for 18 projects that don't require an EIS? 19 A. So, yes, I've -- for over the past 10 20 years probably evaluated, again, I didn't go through 21 the exercise of trying to count, but I would say 22 roughly 15 or so projects per -- capital projects 23 per year over the last 10 years. And then, even 24 more so if you consider the number of projects that 25 my staff reviews. And then, I do kind of a quality</p>

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<p>1 control review of their work before it's published.  2 And then, we have a number of categorically exempt  3 projects that get delivered by kind of in-house  4 staff as well, or, excuse me, in department crews  5 that build those that we evaluation as well. So if  6 I had to guess, it'd be roughly 150 to 200 projects,  7 probably over the course of my career at SDOT.  8 Q. Okay. Let me ask you briefly about your  9 work with consultants on this specific project.  10 There have been some questions raised about comments  11 with the consultants you've hired. So first, how  12 did you work with the consultant team that you hired  13 to help prepare this EIS?  14 A. Sure. We worked very closely with the  15 consultant team in terms of drafting the methodology  16 for the various components of the EIS, looking at  17 the discipline reports, and then the final, you  18 know, documents, the EIS documents themselves, the  19 draft EIS and final EIS. I relied on their  20 expertise as they developed the documents. Then,  21 you know, my role was to ensure that their analysis  22 were, you know, clear, concise, and consistent. In  23 terms of that it could be readily accessible to the  24 general public and our decision makers.  25 Q. And did you or others at the Department</p>	<p>1 such as transportation and parking, vegetation and  2 wildlife and cultural resources, I rely on their  3 analysis. And then, I look at it and then help  4 translate that technical information and analysis  5 into more of a plain language narrative so that it,  6 again, it's accessible to the general public and our  7 decision makers.  8 Q. Okay. I'm going to -- I didn't have this  9 at my fingertips when I was asking you about your  10 qualifications, but I'd like to hand a copy to you  11 of your resume.  12 THE HEARING EXAMINER: Going to be  13 marked R-35.  14 (RESPONDENT'S EXHIBIT R-35 MARKED FOR  15 IDENTIFICATION)  16 BY MR. KISIELIUS:  17 Q. Now is this an accurate characterization  18 -- you all right?  19 Does this accurately represent your  20 qualifications, your experiences and your  21 educational background?  22 A. Yes. It does.  23 MR. KISIELIUS: I'd ask to have R-35  24 admitted.  25 MR. SCHNEIDER: No objection.</p>
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<p>1 typically review the consultant's work?  2 A. Yes. Absolutely.  3 Q. And did you offer comments or feedback?  4 A. I did.  5 Q. Is that typical?  6 A. Yes. Very typical. So while I'm not an  7 expert in the various technical disciplines,  8 necessarily, that they're developing, I am  9 conversant in all those areas. And so, my job is to  10 make sure that, you know, their analysis makes sense  11 in terms of not only is it logical and based on a  12 sound methodology, but then, making sure that it  13 meets the requirements of SEPA and is consistent  14 with how we've evaluated and disclosed impacts on  15 other projects.  16 Q. Okay. So do you -- did you, as the  17 environmental lead for this project or any others on  18 your team from the Department make consultants  19 change their professional agreements?  20 A. No. Certainly not that I'm aware of.  21 Q. And do you rely on the consultant's  22 expertise?  23 A. I do. And, you know, as I mentioned,  24 they're -- they're technical experts and while I am  25 conversant in those various areas of discipline,</p>	<p>1 THE HEARING EXAMINER: R-35 is  2 admitted.  3 (RESPONDENT'S EXHIBIT R-35 ADMITTED)  4 BY MR. KISIELIUS:  5 Q. Okay. I'd like to ask you a couple  6 questions about the project objective. Well, first,  7 maybe just to start off with could you please  8 describe the project objective?  9 A. Sure. We state the project objection, I  10 think, very clearly in the EIS, but I'll -- to  11 paraphrase, it's to complete the Burke-Gilman Trail  12 with a multi-use facility that's appropriate for all  13 ages and abilities for a variety of non-motorized  14 transportation. We also include in the project  15 objective the desire to connect the facility, the  16 Missing Link to the existing and planned  17 non-motorized network within the neighborhood and  18 then also to preserve truck and freight access to  19 adjacent businesses.  20 Q. How did SDOT arrive at that objective?  21 A. So I think it goes back to, you know, the  22 early 2000s when the city first started in earnest  23 to complete the Missing Link of the Burke-Gilman  24 Trail, which, of course, is a regional trail. This  25 was the last gap and, excuse me, the Missing Link</p>

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<p>1 through the Ballard neighborhood is the last gap in 2 that trail. And so, then -- that -- the desire then 3 was to complete the Missing Link with the multi-use 4 trail. And subsequently that's been echoed in 5 various plan and policy documents that the 6 Department has put out. 7 Q. Okay. I'm going to ask you about a 8 couple of those plans in just a second, but did the 9 existing portions of the Burke-Gilman Trail inform 10 SDOT? 11 A. Yes. It did in the sense that we wanted 12 to maintain the same look and feel as the rest of 13 the Burke-Gilman Trail, which is a multi-use path. 14 And so, that's helped inform that piece of the 15 objective. The multi-use path, that's for all ages 16 and abilities -- 17 Q. Okay. 18 A. For a variety of non -- transportation 19 modes. 20 Q. So I want to go back to the plans you had 21 mentioned. I want to hand you a copy. These are 22 not included in the binder, but they were listed in 23 the -- I'm going to at the outset apologize. The 24 staple is in the wrong corner. So it's stapled 25 backwards. Sorry. And then we have the appendices,</p>	<p>1 Q. Okay. That's fine. Can you tell us, 2 does -- is any of the corridor on the preferred 3 alternative identified on this map? 4 A. Yes. It is. 5 Q. And let me -- tell me. What are we 6 looking at with this map? 7 A. Sure. So what -- this is Figure 4-2, 8 Priority Investment Network, Northwest Sector of the 9 city. So it looks like a map of priority areas for 10 pedestrian travel within the northwest part of the 11 city. 12 Q. Okay. And so, I asked you if the 13 preferred alternative corridor is shown on this map. 14 Can you tell us how it's shown and -- 15 A. Sure. And so you can see in sort of dark 16 and bold lines the alignment of actually our 17 preferred alternative starting where the Ballard 18 Locks would be going up to Northwest Market Street, 19 then down Shilshole Avenue, and even -- and this is 20 where it's a little harder to make out, but there's 21 a thicker line along northwest 45th Street in a 22 slightly lighter shade of grey. 23 Q. So again, I'm going to rely on your 24 memory of this. Can you tell me what the 25 designation along Shilshole is in the corresponding</p>
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<p>1 too. 2 THE HEARING EXAMINER: Mark that as 3 R-36. 4 MR. KISIELIUS: Okay. 5 THE HEARING EXAMINER: Including the 6 appendices. 7 BY MR. KISIELIUS: 8 Q. So, Mr. Mazzola, could you turn to page 9 56 of the plan? Or first of all, can you tell me, 10 do you recognize that plan? 11 A. Yes. So the first document you handed me 12 was the City of Seattle Pedestrian Master Plan. 13 Q. Okay. I'm going to ask you to turn to 14 page 56, please, again, and apologies for the 15 backwards staple. And I'm realizing now it's in 16 black and white. So unfortunately this is black and 17 white, so you might have to refer to your memory and 18 we can maybe replace -- 19 A. Sure. 20 Q. -- these with color copies that are 21 properly stapled. But for the time being, are you 22 familiar enough to be able to -- if you're not 23 familiar enough to be able to answer these 24 questions, you should just let me -- 25 A. I'm familiar enough.</p>	<p>1 key? 2 A. So the designation along Shilshole with 3 the corresponding key is arterial missing sidewalk. 4 Q. Okay. And with -- 5 MR. KISIELIUS: Unless there's an 6 objection, I guess what I would -- I would propose 7 that the city return on Tuesday with a color copy. 8 His testimony speaks for the evidence. We want to 9 -- I just want to have a clear record if that's -- 10 if there's no objection. 11 MR. SCHNEIDER: No objection. 12 THE HEARING EXAMINER: Okay. 13 MR. KISIELIUS: I'd ask to have R-36 14 admitted. 15 MR. SCHNEIDER: No objection. 16 THE HEARING EXAMINER: R-36 is 17 admitted. Thank you. 18 I did hear you, Mr. Schneider. I 19 wasn't just -- 20 (RESPONDENT'S R-36 ADMITTED.) 21 BY MR. KISIELIUS: 22 Q. I'm going to ask you to also now look at 23 the Bike Master Plan. And I believe that's going to 24 be in the binder to your right. And that is Tab 7. 25 And I believe it's R-8.</p>

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<p>1 A. Yeah. An old -- I'm sorry. Tab 7?</p> <p>2 Q. Tab 7, which for the record is Exhibit</p> <p>3 R-8. Excuse me, Tab 8.</p> <p>4 A. Okay. And so I had opened --</p> <p>5 Q. (Indiscernible) -- let's pause to make</p> <p>6 sure we have a clear record. I believe Tab 8's been</p> <p>7 admitted as --</p> <p>8 THE HEARING EXAMINER: As R-8.</p> <p>9 MR. KISIELIUS: -- R-8. Thank you.</p> <p>10 Okay.</p> <p>11 BY MR. KISIELIUS:</p> <p>12 Q. Do you recognize this?</p> <p>13 A. Yes. I do. It's Chapter 4 of the</p> <p>14 bicycle network, from the Bike Master Plan.</p> <p>15 Q. And can you please turn to -- there's a</p> <p>16 bate stamp sort of numbers COS, and I'm asking you</p> <p>17 to look at 000105.</p> <p>18 A. Okay.</p> <p>19 Q. I'd ask you to read -- there's the first</p> <p>20 column. The sentence starting "A small subset."</p> <p>21 Could you read that sentence and the ensuing</p> <p>22 sentence?</p> <p>23 A. Sure. "A small said" -- excuse me. "A</p> <p>24 small subset of the bicycle network are identified</p> <p>25 as catalyst projects. Catalyst projects are located</p>	<p>1 would reduce those critical barriers to bicycling by</p> <p>2 closing the gap and increasing safety for all modes</p> <p>3 and all ages of non-motorized users as it states</p> <p>4 here and in the project objective.</p> <p>5 Q. I'm going to switch topics now and talk</p> <p>6 about the level of design.</p> <p>7 A. Sure.</p> <p>8 Q. The project as it's reviewed in the EIS.</p> <p>9 Are you familiar with the design that was</p> <p>10 reviewed in the EIS?</p> <p>11 A. Yes. I am.</p> <p>12 Q. And so as the environmental lead for this</p> <p>13 project, do you believe that that project was</p> <p>14 sufficiently designed to identify and disclose the</p> <p>15 impacts?</p> <p>16 A. I do.</p> <p>17 Q. Why?</p> <p>18 A. It gave us the information that we needed</p> <p>19 in order to be able to identify and disclose the</p> <p>20 potential adverse impacts. So, for example, that</p> <p>21 would mean that we understood the project. Well,</p> <p>22 first of all, the nature of the project itself --</p> <p>23 that's kind of always a starting point. So what is</p> <p>24 the projects -- what is the project going to do? In</p> <p>25 this case it's a non-motorized multi-use trail</p>
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<p>1 at choke points in the network that pose significant</p> <p>2 challenges to implementation due to physical</p> <p>3 constraints. Catalyst projects like the Burke-</p> <p>4 Gilman Trail Missing Link also reduce critical</p> <p>5 barriers to bicycling by closing network gaps and</p> <p>6 increase safety by availing all ages and abilities</p> <p>7 friendly bicycle facilities to the maximum feasible</p> <p>8 extent."</p> <p>9 Q. And so, are these plans that we've just</p> <p>10 talked about, are these examples of the plans that</p> <p>11 you were just referring to?</p> <p>12 A. That -- these are examples of the plans I</p> <p>13 was referring to earlier, yes.</p> <p>14 Q. And do they reflect the importance of</p> <p>15 this project, the objective of the city?</p> <p>16 A. They do. So as we saw in the Pedestrian</p> <p>17 Master Plan that the corridor we just described</p> <p>18 which happens to coincide with the preferred</p> <p>19 alternative was identified as a priority investment</p> <p>20 area for pedestrians. And the Bicycle Master Plan,</p> <p>21 the Burke-Gilman Trail and Missing Link is</p> <p>22 identified as a catalyst project because it is --</p> <p>23 it's a -- there's physical constraints in terms of</p> <p>24 the current users of the Burke-Gilman Trail through</p> <p>25 that area of Ballard. And this -- the Missing Link</p>	<p>1 facility.</p> <p>2 We understood where the proposed location</p> <p>3 of the trail would be, the footprint of the trail,</p> <p>4 if you will. We understood the areas that we, you</p> <p>5 know, been discussing as conflict points whether</p> <p>6 it's roadway intersections or driveways. We</p> <p>7 identified what sorts of intersection geometry</p> <p>8 changes might be needed including any stop control</p> <p>9 or such as new traffic signals. There they would</p> <p>10 go. Then lastly, we understood other elements of</p> <p>11 the environment that feed into our analysis such as</p> <p>12 traffic volumes, parking counts, those types of</p> <p>13 things that really don't depend on the level of</p> <p>14 design to understand.</p> <p>15 Q. So you listed a lot of things, but I</p> <p>16 guess I have a more basic question for you. Does</p> <p>17 the amount of design that you need in your role as</p> <p>18 environmental lead vary depending on which element</p> <p>19 of the environment you're considering?</p> <p>20 A. Yes. It does. So, for example, you</p> <p>21 could draw a line on a map with the end points and</p> <p>22 tell me, again, what the nature of the project that</p> <p>23 we're going to build, and then I could begin to</p> <p>24 identify what the potential impacts to vegetation</p> <p>25 and wildlife would be. Just understanding what the</p>

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<p>1 nature of the project is, how it's constructed and 2 its location, even general location is enough for 3 some elements of the environment to be able to tell 4 -- be able to disclose what those potential impacts 5 could be. Other elements, as I mentioned like 6 traffic and parking rely on existing information 7 that's out there today. 8 So when we look at the existing 9 conditions and then how we measure that difference 10 of impact between if the project was there versus 11 our, kind of base line no action condition. So 12 things like parking counts today or traffic volumes, 13 those are all -- that's all information that's -- 14 doesn't depend on a level of design to understand. 15 Q. And in your role as environmental lead, 16 do you feel like the design was adequate to assess 17 impacts in all of those various instances you 18 described? 19 A. Yes. I do. 20 Q. Okay. And have you heard anything in the 21 testimony from the last couple of days or in any of 22 the Coalition's reports that they filed that changes 23 your assessment of the -- that specific assessment? 24 A. No. I haven't heard anything over the 25 course of this hearing that would change my</p>	<p>1 A. All right. 2 Q. So were you here with Mr. Nerdrum 3 testified? 4 A. I was. 5 Q. Okay. And were you -- did you hear his 6 testimony about the use of tracks by the railroad in 7 the vicinity of Salmon Bay Sand and Gravel? 8 A. You know, I did hear him mention that, 9 but didn't quite catch or wasn't clear on what the 10 impacts he was describing would be. 11 Q. So can you describe your understanding of 12 the location of existing tracks in the proximity of 13 Salmon Bay Sand and Gravel? 14 A. Sure. So my understanding is that there 15 is two rail lines that are immediately in front of 16 Salmon Bay Sand and Gravel that would be actually 17 the outside of the project footprint. And then, the 18 -- but there may be other elements of -- or segments 19 of rail, you know, further down the alignment. 20 Q. Maybe to help with this, I'm going to ask 21 you to look at Tab 1 in your binder, which has been 22 admitted as R-10. 23 A. And this is the preferred alternative 24 plan set. 25 Q. Yeah. And I'll let everybody catch up.</p>
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<p>1 assessment. 2 Q. I'm going to switch topics again. 3 There's been some testimony from various witnesses 4 about SDOT's failure to reach out to offer the 5 owners through the process of the development of the 6 EIS. So did SDOT attempt to work with the Coalition 7 of members of the Coalition during the design and 8 the EIS drafting process? 9 A. We did. So after the publication of the 10 draft EIS and after the public comment period, we 11 did reach out to members of the Ballard Business 12 Associates as they were referred to then -- or 13 Ballard Business Appellants -- and engaged them in 14 conversations along with other key stakeholders from 15 the area about the preferred alternative. So we 16 engaged them in discussions while we were did -- 17 kind of narrowing -- excuse me -- narrowing down the 18 various build alternatives to the preferred 19 alternative. 20 Q. Okay. And did you incorporate 21 information you received into the process? 22 A. Yes. We did. 23 Q. I'm going to ask you to focus on some 24 very specific testimony from one of the witnesses 25 about rail and rail operations.</p>	<p>1 But we'll be looking at bate stamp number COS-000005 2 and the following page. So can you describe to us 3 -- you were describing two tracks and a third one. 4 Can you tell us what, with reference to this 5 graphic, what you were referring to? 6 A. Sure. So, you know, you'll see two -- a 7 top aerial view and a bottom -- then one on the 8 bottom. So on the bottom aerial view the plan set 9 shows the trail and then immediately below the trail 10 are two rail lines. And this is within the area of 11 Salmon Bay Sand and Gravel. You can see on the far 12 left-hand side of the diagram a short segment of 13 track that doesn't appear to be connected to 14 anything with -- and that's in -- within the trail 15 footprint. And then, to the south you'll also see a 16 third rail within the vicinity; excuse me, within 17 the trail footprint. 18 Q. And did that continue onto the following 19 page? 20 A. Yes. And then that continues onto the 21 following page which is a top aerial diagram there. 22 Q. Okay. so what's your understanding of 23 that third line, the one that you said was within 24 the trail? 25 A. Uh-huh. So my understanding --</p>

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<p>1 Q. Well, let's start with what the 2 understanding was when you were drafting the EIS?</p> <p>3 A. That that section of rail would be able 4 to be removed, that it was not necessary for 5 business operation.</p> <p>6 MR. BROWER: Your Honor, just to be 7 clear, I think you said there was two. There's a 8 little section on the western side, and then there's 9 a third section the eastern side. Which one are we 10 talking about? The west or the east?</p> <p>11 MR. KISIELIUS: I was referring to 12 the one to the right of the page.</p> <p>13 MR. BROWER: To the east?</p> <p>14 MR. KISIELIUS: As we're looking at 15 page 5.</p> <p>16 MR. BROWER: Got it. Thank you. And 17 I will ask the witness to clarify.</p> <p>18 THE WITNESS: Sure. I can clarify. 19 You're right. It's to the right of the page or to 20 the east or south east near the Lockspot -- excuse 21 me. Not -- no, it is the Lockspot Café at 20th 22 Avenue Northwest. Or is it at Salmon Bay Clinic? 23 I'm sorry.</p> <p>24 BY MR. KISIELIUS: 25 Q. You --</p>	<p>1 be the southernmost segment of that rail line that's 2 shown here.</p> <p>3 Q. Okay. And to be clear, the remaining two 4 lines are outside the trail footprint?</p> <p>5 A. That's correct.</p> <p>6 Q. Let's focus on what the EIS says about 7 this. Could you -- I think there's a copy and here 8 I'm referring to R-1. I believe there should be a 9 copy here. No, it's -- I think it's that one.</p> <p>10 A. Oh, may I use that one?</p> <p>11 Q. That's the witness copy.</p> <p>12 A. Okay. Great.</p> <p>13 Q. Can you turn to page 736, 7-36. Sorry. 14 Okay. Are -- do you see there's a section that says 15 "Freight Rail" towards the bottom?</p> <p>16 A. Yes. And this particular paragraph is 17 under a larger discussion about the preferred 18 alternative on page 7-36.</p> <p>19 Q. And so, does this address removal of 20 tracks?</p> <p>21 A. It does.</p> <p>22 Q. Can you tell us what it says about that?</p> <p>23 A. Sure. So if I may read the whole section 24 under "Freight Rail." So under the preferred 25 alternative, the BTR tracks would be relocated</p>
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<p>1 THE HEARING EXAMINER: Voices in your 2 head?</p> <p>3 THE WITNESS: At any rate, yes. 4 That's right. So apologies if I misspoke. It's at 5 the 20th Avenue Northwest intersection there.</p> <p>6 BY MR. KISIELIUS: 7 Q. Okay. Thank you. So let's talk about 8 both, you said that one to which Mr. Brower was 9 referring to the left side of the page, is that 10 connected to anything?</p> <p>11 A. Not according to this plan design, no.</p> <p>12 Q. Okay. So let's focus on the one that's 13 to the right of page 5 that continues on to page 6. 14 What are -- are you familiar with the current 15 conditions in those vicinities?</p> <p>16 A. Yes. I am.</p> <p>17 Q. Okay. Can you tell us what they are?</p> <p>18 A. Sure. And so, currently that -- it's not 19 a -- that third line -- so the topmost section of 20 rail there is not contiguous, as it's shown in this 21 plan set. And, in fact, I -- most of it appears to 22 be either removed or completely paved over such that 23 the rails are no longer visible and there's a short 24 segment that is still there but appears to be 25 partially, if not mostly, paved over and that would</p>	<p>1 between the Hat and Marine driveway approximately 2 600 feet west of 17th Avenue Northwest and just east 3 of the Ballard Bridge. This could include removing 4 pieces of siding or passing rail, rail line that 5 allows trains to pass each other that are no longer 6 used or" --</p> <p>7 Q. Stop there for a second.</p> <p>8 A. Okay.</p> <p>9 Q. So is that -- was that your understanding 10 of the track for -- the track that would be removed 11 was no longer used? You had testified to that 12 before? Does the capture your understanding?</p> <p>13 A. So I think the first sentence there is 14 specific to the rail that we're relocating. But 15 then we do say there -- we could remove other pieces 16 of rail that are no longer used.</p> <p>17 Q. I'm sorry. I didn't mean to interrupt. 18 You can keep reading now.</p> <p>19 A. Okay. "This include removing pieces of 20 siding or passing rail, rail line that allows trains 21 to pass each other that are no longer used or 22 relocating track to allow additional right-of-way 23 space for the trail. All track relocation would be 24 coordinated with BTR so that impacts on rail 25 operations would be minimized so that rail</p>

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<p>1 operations could continue before -- as before once 2 construction is complete.</p> <p>3 Q. So if track that were -- what does it say 4 about track that is currently in use that would need 5 to be relocated?</p> <p>6 A. So that we would work with the BTR 7 Railroad to make sure any relocations or removal of 8 tracks would be consistent with the needs of their 9 business operation.</p> <p>10 Q. Okay. And if -- I understand your -- you 11 testified that that track wasn't needed or didn't 12 look capable of being used. If it were, assuming 13 that it could be, does this capture the City's 14 intent?</p> <p>15 A. Yes, it does. We're making a commitment 16 to the railroad to work with them to ensure that 17 their business operations can continue. And so, if 18 that means relocating other areas of track then 19 that's something we're committed to exploring.</p> <p>20 Q. Okay. So I asked you if you heard 21 anything in the opponent's testimony that caused you 22 to question your conclusions. I want to ask you, do 23 you think that the EIS used reasonable and standard 24 methods to assess and disclose impacts?</p> <p>25 A. I do.</p>	<p>1 to inquire into the lead agency's compliance with 2 SEPA. And as a I stated at the outset, the EIS 3 lists the other permits that are needed. So I don't 4 see how it's not relevant.</p> <p>5 MR. KISIELIUS: Well, in a similar 6 manner that they -- if I may respond?</p> <p>7 THE HEARING EXAMINER: Please.</p> <p>8 MR. KISIELIUS: The -- in a similar 9 manner the permitting that follows and any questions 10 or challenges to whether a permit is required or 11 isn't required or if it should be obtained or not is 12 outside the scope of the EIS adequacy appeal. The 13 fact that an EIS lists the potential approvals that 14 are required afterwards is not relevant or doesn't 15 bring that into the scope of the relevancy of the 16 adequacy of the environmental review.</p> <p>17 THE HEARING EXAMINER: It doesn't 18 automatically, and I agree.</p> <p>19 Can you expand on what you're trying 20 to seek, Mr. Schneider?</p> <p>21 MR. SCHNEIDER: This is the beginning 22 of a whole line of questions that I am going to 23 relate back to the requirements in SEPA where the 24 lead agency to comply with. And I shouldn't have to 25 set out the entire cross-examination approach in</p>
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<p>1 Q. And are they consistent with the methods 2 that you've used in your other EIS (indiscernible)?</p> <p>3 A. I -- it is consistent with the methods 4 I've used in my other EIS experiences as well as 5 conducting SEPA environmental reviews for all the 6 other projects I've worked on.</p> <p>7 MR. KISIELIUS: Okay. I have no 8 further questions.</p> <p>9 MR. BROWER: Mr. Schneider.</p> <p>10 THE HEARING EXAMINER: Mr. Schneider?</p> <p>11 CROSS-EXAMINATION 12 BY MR. SCHNEIDER:</p> <p>13 Q. So Mr. Mazzola, what permits, if any, 14 does SDOT need in order to construct the preferred 15 alternative?</p> <p>16 A. So right now we're --</p> <p>17 MR. KISIELIUS: Objection, 18 Mr. Examiner. The permits that will be pursued and 19 that are required for this are not related to the 20 adequacy of the EIS.</p> <p>21 MR. SCHNEIDER: We're -- well, the 22 EIS lists the permits needed and in addition, this 23 is directly relevant to conduct of the SEPA lead 24 agency which your pre-hearing brief says the Hearing 25 Examiner is supposed to refer to. So I'm entitled</p>	<p>1 response to an objection about something that is 2 specifically referred to in the environmental 3 document at issue.</p> <p>4 MR. KISIELIUS: None of the issues 5 based in the appeal were whether they listed 6 properly the permits that were necessary for the 7 approval. There was a Shoreline permit issue that 8 was dismissed, but I'm not recalling anything that 9 said this is inadequate because you didn't list 10 every single permit that was required.</p> <p>11 THE HEARING EXAMINER: All right. 12 For now I'll overrule it. I'll allow the question, 13 because the question is what permits are needed. 14 That is identified in the EIS, so we can go to that 15 page or however you want to explore that. But 16 I -- we don't want to continue down a 17 path of cross-examination on compliance with those 18 permits or criteria, et cetera. So.</p> <p>19 MR. COHEN: I guess I would ask that 20 if your testing him on the list of permits 21 referenced as needed in the EIS that you give him 22 the cite so that he can look at it as you ask him 23 questions.</p> <p>24 THE HEARING EXAMINER: I'm going to 25 leave that to Mr. Schneider's discretion on how he</p>

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<p>1 wants to handle that question, but.</p> <p>2 MR. COHEN: Thank you.</p> <p>3 BY MR. SCHNEIDER:</p> <p>4 Q. So Mr. Mazzola, do you know what permits</p> <p>5 are needed, if any, for the project?</p> <p>6 A. Yes. I do.</p> <p>7 Q. Okay. Thank you. Could you tell us?</p> <p>8 A. So right now we -- so there's both kind</p> <p>9 of pre -- pre-project approvals that we needed, if</p> <p>10 you will allow me to use that term in terms of the</p> <p>11 permit. And then there's construction-related</p> <p>12 permits that we'd be looking at as well. So in</p> <p>13 terms of sort of the pre-project ones would be a</p> <p>14 review under the City of Shoreline Master Program.</p> <p>15 And then as far as construction ones, we are looking</p> <p>16 at an NPDES Construction Storm Water General Permit</p> <p>17 that's required for any project that's distributing</p> <p>18 an acre or more of ground. And then one thing where</p> <p>19 we're looking at right now is as well is a</p> <p>20 temporary, excuse me, a King County Temporary</p> <p>21 Discharge Permit for ground water management.</p> <p>22 Q. Do you know whether you need any permits</p> <p>23 from the Surface Transportation Board to remove</p> <p>24 railroad track?</p> <p>25 A. I do not know.</p>	<p>1 Q. Okay. And then you referred to two prior</p> <p>2 EISs. One for the Seawall?</p> <p>3 A. That's correct.</p> <p>4 Q. And the one for the Promenade?</p> <p>5 A. The full name is the Alaskan Way</p> <p>6 Promenade and Overlook Walk Project which is a bit</p> <p>7 of a mouthful. So it's Waterfront Seattle.</p> <p>8 Q. Okay. And so, what is the promenade for</p> <p>9 those of us who don't regularly read the --</p> <p>10 A. Sure. How much time do you have? The</p> <p>11 Alaskan Way Promenade and Overlook Walk Project is</p> <p>12 the City's plan to develop the waterfront after the</p> <p>13 Alaskan Way Viaduct is removed by the State of</p> <p>14 Washington.</p> <p>15 Q. Okay. And over what time frame are those</p> <p>16 two EISs prepared?</p> <p>17 A. Between 2012 and I -- and now. Well,</p> <p>18 excuse me. Between 2012 and I'd say last fall is</p> <p>19 when we published the final EIS. If my memory</p> <p>20 serves me right, it was Halloween 2016. I remember</p> <p>21 that day.</p> <p>22 Q. Okay. So you have been the person within</p> <p>23 SDOT responsible for compliance with SEPA for all of</p> <p>24 the prior appeals in this matter. Correct?</p> <p>25 A. I'm sorry, can you -- I lost your</p>
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<p>1 Q. Did you make any inquiry to determine</p> <p>2 that?</p> <p>3 A. I have not made any inquiry to determine</p> <p>4 that yet.</p> <p>5 Q. Did you distribute a copy of the EIS to</p> <p>6 the Surface Transportation Board or any other</p> <p>7 federal agency that deals with railroads?</p> <p>8 A. Not to my knowledge, no.</p> <p>9 Q. Your formal training under SEPA comprises</p> <p>10 two one-day seminars. Is that correct?</p> <p>11 A. I believe that's consistent with my</p> <p>12 testimony at our deposition.</p> <p>13 Q. Right --</p> <p>14 A. (Indiscernible) some are right and then</p> <p>15 at least a one -- I may have used the term as best</p> <p>16 as I recall at least a one-day seminar with the</p> <p>17 Department of Ecology.</p> <p>18 Q. Right. You attended one seminar put on</p> <p>19 by was it Law Seminars International?</p> <p>20 A. That's correct.</p> <p>21 Q. And one one-day training by the</p> <p>22 Department of Ecology?</p> <p>23 A. Right. As I could recall at the time and</p> <p>24 that's still my recollection. I -- there may have</p> <p>25 been another training in there.</p>	<p>1 question. Could you please repeat that?</p> <p>2 Q. So you have been -- your title may not</p> <p>3 have been the same, but you were the hands-on person</p> <p>4 responsible for the three prior DNSs as well as the</p> <p>5 EIS at issue here?</p> <p>6 A. That's correct. I think my title threw</p> <p>7 me off. I've been the environmental lead, as you</p> <p>8 said, for the Burke-Gilman Trail Missing Link</p> <p>9 Project since 2007. That's right.</p> <p>10 Q. And so there were three DNSs. Correct?</p> <p>11 A. That's right.</p> <p>12 Q. Two of which Judge Rogers reversed.</p> <p>13 Correct?</p> <p>14 A. That's correct.</p> <p>15 Q. Right. And then the third one Hearing</p> <p>16 Examiner Watanabe reversed?</p> <p>17 A. That's correct. If the term "reversed"</p> <p>18 is the right term that -- yes.</p> <p>19 Q. Okay. And were you present when Judge</p> <p>20 Rogers issued his second order of remand?</p> <p>21 A. You know, I was present for the hearing.</p> <p>22 I don't recall if I was present when he issued the</p> <p>23 order or if that' something we received in writing.</p> <p>24 Q. Okay. But you've read and are familiar</p> <p>25 with the Second Order of Remand?</p>

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<p>1 A. Yes. And that was the one that remanded 2 the city to go back and provide more detail on the 3 Shilshole segment if 4 I'm -- memory serves me right. 5 Q. Yes. It -- 6 A. Okay. 7 Q. That's the one that said 10-percent level 8 of design was not adequate and remanded it for a 9 more detailed design. 10 A. That's the same remand I'm thinking of 11 then. 12 Q. Yeah. And when you sat down with your 13 team to prepare for the -- to prepare the EIS in 14 this case, Judge Rogers decision played no role in 15 your determination about the level of design. Isn't 16 that correct? 17 A. That's a fair statement that we felt we 18 had enough level of design in order to identify and 19 disclose the impacts. So Judge Rogers's decision 20 did not play in our -- into our determination that 21 we had enough information to do the job that we 22 needed in this EIS. 23 Q. And, in fact, on the remand from Judge 24 Rogers's decision, SDOT planned plans for the 25 Shilshole segment for environmental review that were</p>	<p>1 following my line of thought to a 90-percent design 2 that's correct. 3 Q. Okay. So when the draft EIS at issue in 4 this case was published, you were at a 10-percent 5 level of design? 6 A. So as I've -- as you've pointed to me in 7 our comment response, we said that it was 8 approximately a 10-percent design and that 9 recognizes that there is no set definition of what 10 10-percent design means. 11 Q. Well, you heard Ms. Hirschey's opinion 12 that it was at a 5 to 10-percent level of design. 13 Do you recall that? 14 A. I did hear her testimony to that effect. 15 Q. And I don't recall any of the city 16 witnesses saying anything different, do you? Am I 17 misremembering any testimony? 18 A. I'm sorry. I don't recall one way or the 19 other. 20 Q. Okay. And so when was the draft EIS 21 published? 22 A. I want to say June, but it was summer of 23 2016. June or July. 24 Q. Not the draft. The -- no, okay. I'm 25 sorry. I think you are right. What is your best</p>
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<p>1 a 20 to 30-percent level of design. Correct? 2 A. Excuse me. After Judge Rogers's remand. 3 That's right. 4 Q. Yes. And, in fact, while -- without 5 waiting for the outcome of the appeal hearing in 6 that DNS, SDOT went ahead and basically designed the 7 Shilshole segment to a 90-percent level of design or 8 higher? 9 A. I'm sorry. You're asking did we design 10 the Shilshole segment to a 90-percent level or 11 however the rest of the? 12 Q. However you want to answer it. The 13 Missing Link to a 90 percent or higher level of 14 design? 15 A. Right. I think there's an important 16 distinction there because the original project going 17 back to 2008 did not include the Shilshole segment 18 at all, and that was the first remand that we 19 received from King County. It was to add the 20 Shilshole segment. So if I may, so we developed the 21 rest of the trail to a further degree than we 22 developed the Shilshole segment. 23 Q. Okay. And was that to a 90-percent level 24 of design? 25 A. So for the rest of the trail if you're</p>	<p>1 guess again? 2 A. For the draft EIS it was either June or 3 July of 2016. 4 Q. Okay. And then when was the final EIS 5 published? 6 A. Then the final EIS was published in May 7 of this year, May 25th. 8 Q. Okay. And when did SDOT make the 9 decision to proceed with the final design of the 10 preferred alternative? 11 A. So shortly after we identified what the 12 preferred alternative was going to be, we started 13 putting things in motion to continue developing that 14 design. 15 Q. Yes. And when did you determine what the 16 preferred alternative would be? 17 A. That would have been late February or 18 early March. 19 Q. Okay. And is that when you engaged the 20 *Pertit Firm to advance the design? 21 MR. KISIELIUS: Objection. 22 Mr. Examiner, we're now straying from the design 23 that was at issue in the EIS and talking about the 24 advancements in the design since the EIS. 25 THE HEARING EXAMINER: I'm not sure I</p>

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<p>1 heard a full question yet, so I'm -- I need to let 2 him finish the question and then -- 3 MR. KISIELIUS: I apologize if I -- I 4 thought you'd asked the question. 5 THE HEARING EXAMINER: I still heard 6 him talking when the objection -- 7 MR. KISIELIUS: I apologize. 8 THE HEARING EXAMINER: So it may have 9 been almost over and you may have -- 10 MR. SCHNEIDER: Well, I suspect when 11 I finish the question we'll get the same objection. 12 THE HEARING EXAMINER: Well -- 13 MR. KISIELIUS: I did not mean to 14 interrupt you. I apologize. 15 MR. SCHNEIDER: So the objection is I 16 -- 17 THE HEARING EXAMINER: If you could 18 state the question so I'm sure I've got the whole 19 question so I could -- otherwise I can't rule on it 20 if I don't know what the question is. 21 MR. SCHNEIDER: Okay. Well, I'm no 22 longer sure what the question was, but I'll return. 23 BY MR. SCHNEIDER: 24 Q. So, Mr. Mazzola, my question was, I 25 think, so was it in the February, early March time</p>	<p>1 THE HEARING EXAMINER: Prior to the 2 final application of the EIS? 3 MR. SCHNEIDER: Prior to the 4 publication of the final EIS, which was in May. 5 THE HEARING EXAMINER: So how is that 6 not part of -- 7 MR. KISIELIUS: There's a nuance to 8 sanction if Mr. Schneider's going to be asking about 9 what the Department did or didn't do up until that 10 point, then we're comfortable with that, some 11 discussion about hiring people, that's fine. 12 THE HEARING EXAMINER: Right. 13 MR. KISIELIUS: And I will withdraw 14 my objection if that's what he's saying, but I'm 15 ready. 16 THE HEARING EXAMINER: I don't know 17 enough about the timing of when these things were 18 done to know if the actual question that was asked 19 goes beyond that. 20 MR. KISIELIUS: The nature of our 21 objection is I believe that they were pursuing 22 information related to the advances in the design 23 beyond what was considered in the final EIS. 24 THE HEARING EXAMINER: Right, after 25 the EIS.</p>
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<p>1 frame when you engaged the Pertit firm to advance 2 the design to the construction level? 3 THE HEARING EXAMINER: And is that 4 the question you're objecting to? 5 MR. KISIELIUS: It's still the same 6 objection. The timing is irrelevant to the fact 7 that we're talking about it advancing beyond the 8 design that was considered in the final EIS. 9 MR. SCHNEIDER: And it's directly 10 relevant to the lead agency. 11 (Recess taken.) 12 THE HEARING EXAMINER: We're working 13 again, so. Are you all set? Okay. The recording 14 is working again. As I -- as I understand the 15 question, is what -- well, maybe I should ask you to 16 explain the factual basis of the question, is about 17 additional design done by the Department following 18 the draft EIS? Is that correct or is there 19 something more? I need to make sure I understand 20 what the question is about because you hadn't -- 21 MR. SCHNEIDER: My questions are 22 going to be about what the Department did and did 23 not do between the decision on the preferred 24 alternative and the publication of the final EIS and 25 continuing until today.</p>	<p>1 MR. KISIELIUS: And I think the issue 2 here is that we believe that is outside the scope of 3 the appeal that they filed. That's not part of 4 their appeal and I don't believe it goes to 5 deference, either. I think, as Mr. Cohen has 6 identified, we've got deference and that is sort of 7 an overlay over everything, but that does not give 8 you the right to then pursue evidence supporting 9 different challenges to the underlying EIS. 10 THE HEARING EXAMINER: The challenge 11 as stated in the very introduction to the appeal is 12 that SDOT's FEIS fails to comply with the policies 13 and requirements of SEPA and its implemented 14 regulations. Where were you referring? 15 MR. SCHNEIDER: It's from the first 16 paragraph of the introduction. 17 THE HEARING EXAMINER: But again, if 18 what you're doing is asking up to the EIS -- 19 MR. SCHNEIDER: I'm sorry? 20 THE HEARING EXAMINER: If what you're 21 doing is asking about design up to the time of the 22 publication of the EIS, I understand that the 23 objection is being withdrawn and we can move 24 forward. So is there -- 25 MR. SCHNEIDER: I am. I'm going to</p>

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<p>1 make the point with the evidence related to that, 2 but I would also then like to continue beyond that, 3 not -- I'm not asking for any detail about the 4 design. I'm not attempting to get into what the 5 design looks like, what decisions have or have not 6 been made. That has nothing to do with it. 7 I'm not going to be asking those 8 questions. But the fact that the design has 9 advanced is relevant to several issues in this case 10 and I simply want to establish that fact and it's 11 relevant to multiple issues. So, you know, we can 12 deal with it now or we can -- it might make more 13 sense to let me deal with the stuff that hasn't been 14 objected to and then that may put the rest of this 15 into perspective. 16 MR. KISIELIUS: If I can respond 17 because I do think this is important. 18 THE HEARING EXAMINER: I think since 19 we're talking in the abstract, what I'd like to do 20 is get back to the practical of how we're proceeding 21 in the hearing and I'm going to take your 22 suggestion, Mr. Schneider. Let's go with what we 23 all know is okay up to the time of when the EIS was 24 produced. If there's questions about design that 25 occurred after that, let's pick this back up at that</p>	<p>1 decided on the preferred alternative, you engaged 2 Perteep to complete the design of the preferred 3 alternative, correct? 4 A. I wouldn't characterize it as immediately 5 after. I believe it was later, probably late March 6 where we identified -- excuse me. It was late March 7 when we looked to Perteep to hire them to begin the 8 formal design process for the project. 9 Q. Can I confirm what year you're talking 10 about? 11 A. 2017. 12 Q. Thank you. And Perteep is P-E-R-T-E-E-P? 13 A. That's right. 14 Q. Okay. And that's a design firm that you 15 had on contract? 16 A. That's correct. The Seattle Department 17 of Transportation has a number of on-call contracts 18 for various services, such as design and engineering 19 plan set development and Perteep was one of those 20 firms that we had on contract already kind of 21 irregardless of the brick in the trail, Missing 22 Link. 23 Q. And so you then in late March activated 24 your on-call contract with Perteep for them to 25 finish the design of the preferred alternative --</p>
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<p>1 time, if there are questions related to that, 2 because I don't want to -- if there's no questioning 3 around that, then we don't need to spend time. 4 I invite you and ask to reiterate the 5 objection and I'll watch for it and I can call it as 6 I think we called it something else with the 7 Appellant's standing objection as well. We know 8 it's an issue and so, but please remain aware of it 9 and we'll address that at the time. 10 MR. KISIELIUS: Thank you. 11 THE HEARING EXAMINER: Okay? 12 BY MR. SCHNEIDER: 13 Q. So, Mr. Mazzola, picking up more or less 14 where we left off, the decision as to what the 15 preferred alternative would be was made in late 16 February or early March. Is that accurate? 17 A. That's correct. 18 Q. Okay. And the FEIS was published at the 19 end of May? 20 A. That's right. 21 Q. May 20 -- May 2017. 22 A. That's right. May 25th, yes, of this 23 year. 24 Q. Okay. And so immediately after SDOT 25 published or -- excuse me. Immediately after SDOT</p>	<p>1 A. We began discussions with them. I cannot 2 speak to when -- it's called a work authorization 3 when we hire an on-call firm to do a particular task 4 and I cannot speak to the date that we actually 5 finalized the work authorization with Perteep, but 6 we did begin discussions with them in late March, 7 according to my memory. 8 Q. Okay. And in fact, you did hire them to 9 begin that work before the FEIS was published, 10 correct? 11 A. I believe they were officially on-board 12 before we published the final EIS. That's correct. 13 Q. Okay. So I want to direct your attention 14 to one of the city SEPA rules. I apologize to the 15 way it's printed out. I did multiple times -- on 16 one page and then the content on the second. 17 THE HEARING EXAMINER: Mr. Schneider, 18 can I get a copy? 19 MR. SCHNEIDER: Oh, sorry. 20 THE HEARING EXAMINER: Thank you. 21 BY MR. SCHNEIDER: 22 Q. This is a printout of 2505070 of the 23 City's SEPA regulations. Is that correct? 24 A. That's what it appears to be, yes. 25 Q. Okay. And I want to direct your</p>

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<p>1 attention -- why don't you read for us Section A1 2 and down through 2. 3 MR. KISIELIUS: I'm going to object, 4 again, renew my objection. There are arguments we 5 can make about the path Mr. Schneider is pursuing. 6 The city feels like we've got to defense this. We 7 don't need to because this is not part of their 8 appeal. 9 If they're going to use the first 10 line of their appeal that states that we violated 11 the Environmental Policy Act, there is nothing 12 that's out of bounds. They can change the nature of 13 their appeal like they are today. This is not one 14 of the issues they've raised and we shouldn't have 15 this come up on Day 5 of the hearing. 16 THE HEARING EXAMINER: So what is -- 17 I agree about the notice of appeal. That's a very 18 broad statement. It's in the introduction. It's 19 not identified as an issue. What is the issue as 20 you're framing it? 21 MR. KISIELIUS: As I understand what 22 Mr. Schneider's doing based on this regulation is 23 that he is advancing an argument that the city has 24 violated this regulation by doing something beyond 25 the final environmental impacts statement or before</p>	<p>1 city SEPA policy. I'm with you up to that. I 2 understand that that's what your line of questioning 3 is on at this time. 4 MR. SCHNEIDER: Mr. Schneider again. 5 The evidence -- I guess I have to make an offer of 6 proof since I can't actually present the evidence 7 for you to evaluate without these repeated 8 objections, but the city SEPA rule is one of SEPA's 9 foundational principles that's been litigated in 10 several recent appellate decisions is whether 070 is 11 violated by actions being taken before procedural 12 SEPA's complied with, in this case, before the 13 publication of the final environmental impact 14 statement. 15 The EIS sets out reasonable 16 alternatives. That's what they are by definition, 17 and SDOT made its choice among those reasonable 18 alternatives months before the FEIS was published 19 and has been proceeding to finalize the plans for 20 the preferred alternative, not only despite this 21 appeal but before the FEIS was published. 22 THE HEARING EXAMINER: And you're 23 offering this now as an issue that would support 24 demonstrating that I would not owe deference to an 25 agency that would take a step like that.</p>
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<p>1 its publication in a manner that violates SEPA. We 2 don't agree with that, but that's, again, something 3 we don't need to be arguing about because they did 4 not raise this as part of their appeal. 5 MR. SCHNEIDER: And to begin, not 6 only does this go to the deference that the city is 7 insisting the examiner apply to the lead agency's 8 conduct in this -- in this case, it is directly 9 relevant to whether this EIS is compliant with 10 SEPA's purpose, which is to inform decisionmakers 11 before a decision is made rather than cover up a 12 decision that has already been made. That is a 13 fundamental part of our appeal of the adequacy of 14 this case and finally, the facts that I'm raising 15 could not have been known at the time we filed the 16 appeal because we didn't learn this until discovery. 17 THE HEARING EXAMINER: I don't have 18 enough information to even know what these facts are 19 to really comment on the last part is the difficulty 20 I'm having. The -- I guess of course we're stopping 21 a line of questioning that would elucidate those 22 facts. But you're citing the purpose is this 23 deference challenge. Help me understand what that 24 is in the context of this. 25 We've got a -- they failed to meet a</p>	<p>1 MR. SCHNEIDER: That is one 2 foundational. 3 THE HEARING EXAMINER: One 4 foundational. 5 MR. SCHNEIDER: And it also goes to 6 sort of the pervasive argument throughout the appeal 7 again that this EIS is covering -- is intended to 8 cover up and conceal rather than disclose 9 environmental impacts. The decision was made before 10 the FEIS was final. And again, Your Honor, we're -- 11 you know, we're not dealing with -- we're dealing 12 with a situation where it may not be notice 13 pleading, but you also cannot be expected to 14 identify issues that you have no way to know about 15 until you do it, take a deposition or do some 16 discovery. 17 THE HEARING EXAMINER: When did you 18 become aware of this as an issue? 19 MR. SCHNEIDER: When I deposed Mr. -- 20 I'm sorry, Mr. Mazzola. 21 THE HEARING EXAMINER: And when was 22 that? 23 MR. SCHNEIDER: Last month. The date 24 of the deposition was October 25th, so I guess just 25 over a month ago, and Miss Ferguson was there.</p>

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<p>1 THE HEARING EXAMINER: And was any 2 motion filed to modify or amend the notice of appeal 3 or add an issue at that time or shortly thereafter? 4 MR. SCHNEIDER: No, but again, this 5 is not -- 6 THE HEARING EXAMINER: On that one 7 point, I just want to make sure that we -- 8 MR. SCHNEIDER: No. 9 THE HEARING EXAMINER: I got three 10 pieces to go through here and on that, whether it 11 was part of the notice of appeal, you've indicated 12 it couldn't have been because we only found this out 13 in deposition and so now the City's only finding out 14 about it mid-hearing. We are on December 1st, 15 approximately a month later, so it seems to me that 16 the appellants had an opportunity to file a motion 17 to amend, to bring that in as an issue. Is it 18 agreed you're making a new issue? I understand that 19 the deference is not an issue that you would raise a 20 new issue in, but -- 21 MR. SCHNEIDER: If I could just 22 disagree with one way in which you've laid out the 23 issue. The city was aware. The City's attorney was 24 there in the room. 25 THE HEARING EXAMINER: That you would</p>	<p>1 appellants as to what issues they need to be 2 prepared to address at the hearing. 3 Let's move on to the deference and 4 I'm not sure if we still have another, a second. 5 There were three items that we've been discussing. 6 MR. SCHNEIDER: I don't -- 7 THE HEARING EXAMINER: You gave me 8 three -- and I'm forgetting what one of them was. 9 MR. SCHNEIDER: If I can be helpful. 10 THE HEARING EXAMINER: Please. 11 MR. SCHNEIDER: I believe in the 12 first line of the notice of appeal, the final EIS 13 violated SEPA. 14 THE HEARING EXAMINER: I think that's 15 the same issue. 16 MR. SCHNEIDER: I see. 17 THE HEARING EXAMINER: If I'm not 18 mistaken unless there were two combined issues. So 19 we agree there was another issue. It sounds like we 20 don't have to address it because new counsel's able 21 to tell me that there is. So we remain with the 22 issue of whether this can be raised in the context 23 of showing that the Department does not -- has not 24 adequately met the requirements under SEPA in the 25 context of I don't know how to frame this, but it's</p>
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<p>1 be raising this as an issue in the hearing? 2 MR. SCHNEIDER: Well, it is an issue 3 factually. 4 THE HEARING EXAMINER: Well, they may 5 be aware of all kinds of things they did wrong. 6 MR. SCHNEIDER: All I'm saying is 7 there isn't any -- there shouldn't be any surprise 8 that we would be concerned about this issue since 9 it's so fundamental to SEPA and again, I'm raising 10 it. I'm not asking you to make a separate issue. 11 I'm raising it in the context of no deference is 12 allowed to an agency that does things. 13 THE HEARING EXAMINER: Okay. So that 14 goes to the other basis for what you're saying, and 15 I'm preserving that for the moment because we 16 haven't finished argument on it, but I will at least 17 indicate as a new issue that that should have been 18 raised in a motion to amend the notice of appeal or 19 something along those lines. 20 So I won't allow it as a new issue 21 here and now in the hearing simply because they were 22 present in the deposition. Again, they may be aware 23 of any number of problems, but it is the 24 responsibility of the appellant to bring notice as 25 to both for the hearing examiner and for the</p>	<p>1 in the deference. 2 MR. SCHNEIDER: In all honesty, Your 3 Honor, it never occurred to me to even think I 4 needed to review the notice of appeal to see whether 5 this was in the scope of an issue and so I haven't 6 done so. 7 THE HEARING EXAMINER: Uh-huh. 8 MR. SCHNEIDER: So Mr. Brower's been 9 trying to do it furiously while we've been sitting 10 here, but I haven't looked over the notice of appeal 11 because to me, this was so fundamental to this case 12 that it never occurred to me that it had to be a 13 separate issue and that was just confirmed when we 14 got the prehearing brief arguing deference. You 15 know, I think I'm entitled to present the facts as 16 they happened that show how the lead agency went 17 about its business here. 18 MR. KISIELIUS: Your Honor, I would 19 argue that deference is a standard of review issue. 20 It's not a substantive claim that the EIS is 21 defective. It's how do you look at how much -- you 22 know, how do you look at the pattern of the City's 23 behavior. 24 THE HEARING EXAMINER: And I think 25 that's actually what they're saying. What they're</p>

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<p>1 trying to demonstrate is a pattern of behavior.</p> <p>2 MR. SCHNEIDER: Mr. Examiner, may I</p> <p>3 read a bullet point from the eighth page of our</p> <p>4 notice of appeal, which I believe will resolve --</p> <p>5 THE HEARING EXAMINER: What page?</p> <p>6 MR. SCHNEIDER: Eighth page.</p> <p>7 THE HEARING EXAMINER: And which</p> <p>8 bullet point?</p> <p>9 MR. SCHNEIDER: The fifth full bullet</p> <p>10 point.</p> <p>11 THE HEARING EXAMINER: Yes.</p> <p>12 MR. SCHNEIDER: "The FEIS is</p> <p>13 incomplete and inadequate because SDOT is using an</p> <p>14 ongoing process occurring after the EIS was issued."</p> <p>15 THE HEARING EXAMINER: I'm sorry. I</p> <p>16 thought I had turned right to your notice of appeal.</p> <p>17 Was there an amended one filed?</p> <p>18 MR. SCHNEIDER: It was corrected,</p> <p>19 yes.</p> <p>20 THE HEARING EXAMINER: Ah.</p> <p>21 MR. SCHNEIDER: Sorry about that.</p> <p>22 THE HEARING EXAMINER: Do you know</p> <p>23 what date that was filed?</p> <p>24 MR. SCHNEIDER: I do. I believe it</p> <p>25 was filed on --</p>	<p>1 and FEIS. And C, evaluate whether a multi-use trail</p> <p>2 as the preferred alternative can be designed and</p> <p>3 operate safely in the selected location, which</p> <p>4 evaluation information should have been included in</p> <p>5 the draft and FEIS."</p> <p>6 MR. BROWER: If I might respond?</p> <p>7 THE HEARING EXAMINER: Uh-huh.</p> <p>8 MR. KISIELIUS: Mr. Examiner, in our</p> <p>9 motion to dismiss, we specifically moved to dismiss</p> <p>10 discussion of this precise issue and in their</p> <p>11 response, they conceded that was not properly part</p> <p>12 of the scope of the appeal.</p> <p>13 MR. BROWER: Just the DAC. The issue</p> <p>14 of when the design occurred, I don't think that was</p> <p>15 conceded.</p> <p>16 MR. KISIELIUS: I would add -- I</p> <p>17 defer.</p> <p>18 THE HEARING EXAMINER: So the parties</p> <p>19 have a dispute as to what was said in the -- there</p> <p>20 was -- was there anything --</p> <p>21 MR. BROWER: Motions were months ago.</p> <p>22 I don't have them in front of me. You apparently</p> <p>23 do.</p> <p>24 MR. KISIELIUS: Subsection -- we do</p> <p>25 and subsection B is not saying that it was</p>
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<p>1 MR. KISIELIUS: Eighth of June.</p> <p>2 MR. SCHNEIDER: Eighth of June. It</p> <p>3 was timely filed.</p> <p>4 THE HEARING EXAMINER: All right.</p> <p>5 Just go ahead and read what you've got.</p> <p>6 MR. SCHNEIDER: Really it's the</p> <p>7 subpart b in that paragraph. "Further design for an</p> <p>8 alternative with 30 percent, 60 percent, 90 percent</p> <p>9 and 100 percent, which further design should have</p> <p>10 been performed before and included in the draft</p> <p>11 EIS." I can read the whole paragraph out loud if</p> <p>12 you --</p> <p>13 THE HEARING EXAMINER: That would</p> <p>14 help, be more helpful and it would give me context.</p> <p>15 MR. SCHNEIDER: "The FEIS is</p> <p>16 incomplete and inadequate because SDOT is using an</p> <p>17 ongoing process occurring after the FEIS was issued.</p> <p>18 Design Advisory Committee, DAC, to A, conduct public</p> <p>19 outreach to impacted and affected businesses and</p> <p>20 property owners along the preferred alternative</p> <p>21 routes to obtain information that should have been</p> <p>22 included in the draft FEIS. B, further design for</p> <p>23 an alternative with 30 percent, 60 percent, 90</p> <p>24 percent and 100 percent, which further design should</p> <p>25 have been performed before and included in the draft</p>	<p>1 improperly done. It was saying that this is more of</p> <p>2 your argument about how much design is required to</p> <p>3 be done in advance of the draft EIS. It's the same</p> <p>4 argument we've been talking about. What you're</p> <p>5 raising now is different. You're pointing to a</p> <p>6 different part of the statute and a different part</p> <p>7 of the Code and making a different legal argument.</p> <p>8 This is different fundamentally and this is not --</p> <p>9 MR. BROWER: Procedural compliance</p> <p>10 with SEPA is always part of a SEPA appeal. It's</p> <p>11 been part of this appeal since 2008.</p> <p>12 MR. KISIELIUS: When it's raised in a</p> <p>13 notice of appeal, I agree with you. That's not --</p> <p>14 that's not --</p> <p>15 THE HEARING EXAMINER: In the</p> <p>16 interest of time, what I would like to do is to</p> <p>17 proceed to allow the line of questioning for</p> <p>18 purposes of appeal, for you to preserve this for the</p> <p>19 record.</p> <p>20 MR. KISIELIUS: I just cite one other</p> <p>21 rule, which is your rule actually, Hearing Examiner</p> <p>22 Rule 3.05. It says, "We would have had to amend</p> <p>23 this appeal no later than ten days after the date on</p> <p>24 which it was applied." So we would have had to</p> <p>25 bring a motion to do that and 100 percent sure you</p>

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<p>1 would have said you're way too late to do it because  2 you had to do it ten days after it's filed, which  3 would have been June 18th, not November something.  4 THE HEARING EXAMINER: All right.  5 Well, you did have a month for that, so I'm going to  6 stay with my ruling on that, but I'm going to allow  7 you to proceed with the line of questioning,  8 preserving it for appeal. So you can create the  9 record around it.  10 MR. SCHNEIDER: Does that mean that  11 you're not going to treat it as evidence for  12 purposes of the deference issue?  13 THE HEARING EXAMINER: I -- well,  14 what I'll do with that honestly is I have to leave  15 that for closing argument for the parties to the  16 value of this. I'm not getting clear argument from  17 both sides on this and so I don't have enough  18 information on -- we're arguing about facts before I  19 get them and we continue to do that and I don't -- I  20 can't evaluate those facts until I have them.  21 So since it wasn't in the notice of  22 appeal, it could have been included. I know I've  23 dismissed it on that. It's not a separate issue for  24 purposes of appeal, then, so we don't need to  25 preserve it for that. The question of whether I owe</p>	<p>1 objection. I'm allowing. I'm deferring my ruling  2 on it to you having an opportunity to argue in  3 closing.  4 We have to move on to it and we could  5 keep discussing it until I get the information from  6 you, but we're going to -- it's going to take too  7 long and we'll have wasted our opportunity to finish  8 with a witness today.  9 MR. KISIELIUS: And just to confirm  10 I'm clear with the ground rules, is it appropriate  11 to treat this as a standing objection as this goes  12 on so I don't have to keep renewing this and we'll  13 address it in the closing briefing --  14 THE HEARING EXAMINER: Yes.  15 MR. KISIELIUS: -- is how I  16 understood your ruling.  17 THE HEARING EXAMINER: Yes. Yes.  18 MR. KISIELIUS: Okay.  19 THE HEARING EXAMINER: It's not --  20 yeah. I have not ruled on it, so it's a standing  21 objection on that item that I'll expect the -- allow  22 the -- I don't expect it, but the parties have the  23 opportunity to provide additional briefing on the  24 allowance of this evidence in and the context of  25 deference in your closing briefing, and I will allow</p>
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<p>1 deference for the city is something that we can  2 preserve it in the record for.  3 MR. KISIELIUS: And I apologize. I'm  4 still not clear in my mind about --  5 THE HEARING EXAMINER: In this record  6 for, so I can consider it for that purpose.  7 MR. KISIELIUS: Okay.  8 THE HEARING EXAMINER: I do need to  9 preserve, though, because honestly again, I don't  10 know what it is that the opportunity for the city to  11 object to that in their closing briefing, so the  12 additional argument can't come in at the end on  13 this. I don't -- A, I'm not clear on it at 3:00  14 honestly at the fifth day of the hearing, and I'm,  15 to your credit, you've done everything you can with  16 it I think in this moment, but I'm not getting clear  17 argument here from both sides on this, missing facts  18 and I think you're both doing the best you can with  19 it to inform me, but I'm not sure that I'm getting  20 everything I could, for example, that I could get in  21 actual briefing as to the standard of what's owed to  22 these facts in the context of the deference I owe to  23 the city, and so I will allow the city to renew its  24 objection essentially to this in the closing so it's  25 not -- I'm not -- I'm essentially not ruling on your</p>	<p>1 it to proceed under two purposes for that argument  2 within the context of this hearing and to preserve  3 it for appeal in the record, which, you know, at  4 that point, however I rule on any objection, a judge  5 can decide on, but it will at least be in the record  6 for that to be considered as part of the review if a  7 judge disagrees with me.  8 MR. KISIELIUS: And one last  9 clarification. I'd appreciate it if you'd indulge  10 -- I would intend if Mr. Schneider's going to pursue  11 questions on this that the city will -- may have  12 questions on redirect addressing this issue as well.  13 I would do so for purposes of a complete record but  14 would not be waiving our objection to the subject  15 matter.  16 THE HEARING EXAMINER: Fully agreed.  17 Absolutely. Thank you.  18 BY MR. SCHNEIDER:  19 Q. Try once again, Mr. Mazzola. So the city  20 SDOT engaged Perteep to finalize the design of the  21 preferred alternative before the FEIS was published  22 on May 25th, correct?  23 A. The city engaged Perteep to begin work on  24 the final sign prior to the final EIS being  25 published this year. That's correct.</p>

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<p>1 Q. And Mr. Schultheiss who we heard from, is 2 his firm a subcontractor, then, to Perteep? 3 A. My understanding is that Tool Design is 4 part of the Perteep on-call team. That's correct. 5 Q. Okay. So, again, I think -- I think you 6 were interrupted when I had asked you to read the 7 rule, so why don't we get 070 on the record. If you 8 could read Section A1 and 2, please. 9 A. Sure, and so not the other subsequent 10 sections that all sort of roll up into this -- 11 Q. Well, we'll get to one of the others in a 12 moment. Now, just get A1 and 2. 13 A. Okay, sure. So, beginning at A, "Until 14 the responsible official issues a final 15 determination of non-significance or final 16 environmental impact statement, no action concerning 17 the proposal shall be taken by a government agency 18 that would 1, have an adverse environmental impact, 19 or 2, limit the choice of reasonable alternatives." 20 Q. Okay. And so by choosing to proceed with 21 the design of the preferred alternative, didn't you 22 limit, say, decisionmakers' ability to choose among 23 the reasonable alternatives after the FEIS was 24 published? 25 A. No, we did not, and I would like to</p>	<p>1 Q. Mr. Mazzola, since the FEIS was 2 published, no action as defined in SEPA has taken 3 place, correct? 4 A. I say no formal decision as I would say 5 as contemplated here in Section A1 or 2 has been 6 taken by the Department. That's correct. 7 Q. Okay. And in fact you treated the choice 8 of the preferred alternative as the City's decision 9 to proceed with the project, correct? 10 A. So I guess I'd like to -- I've been 11 having a hard time answering because it -- there's 12 many decisions that the Department has made over the 13 years to move forward with this project and I 14 apologize if I'm not hearing your question or if I 15 lost the meaning of it, but -- 16 Q. Well, I'll come back to it in a moment. 17 A. Sure. 18 Q. Let's assume for example that the new 19 mayor wants to take a look at this issue and decide 20 whether to proceed with the preferred alternative or 21 not. 22 A. Correct. 23 Q. How much money will she discover that the 24 city has already invested in the preferred 25 alternative?</p>
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<p>1 explain if I may. First of all, to bring your 2 attention to subsection D, where it states here that 3 this section does not preclude developing plans or 4 designs and that's exactly what we were doing, and 5 so we recognize that in embarking on the final 6 design process for the preferred alternative comes 7 with some level of financial risk and time to the 8 city because it is always within the right of our 9 decisionmakers to change their minds and so that's a 10 risk that we often are willing to accept for many of 11 our projects, especially the bulk of our projects 12 fall within the level of environmental review 13 appropriate for SEPA checklist and subsequently a 14 determination of non-significance, and within those 15 projects, we by the time we are doing our 16 environmental review, typically we already have the 17 designer, the consultant design team on board and 18 are working to design that project. I'd say that in 19 this case, the Missing Link, it's atypical for the 20 Department because we truly did not know the 21 preferred alternative until after we published the 22 final EIS. Excuse me. I misspoke. We did not know 23 the preferred alternative until after we published 24 the draft EIS and went through the process as I've 25 -- as we've talked about before.</p>	<p>1 A. Into the preferred alternative or into 2 this project over the years? 3 Q. Preferred alternative. 4 A. Into the design of a preferred 5 alternative? I cannot answer because I am not 6 tracking that budget and I don't know how much money 7 we have spent to date on developing that design. 8 Q. Well, we're talking about hundreds of 9 thousands of dollars, right? 10 A. I can speculate presumably, yeah. 11 Q. And you heard Mr. Phillips's testimony 12 about, he said 250 to 350 to advance the designs 13 just from ten percent to 30 percent? 14 A. I apologize. I don't recall that 15 testimony. 16 Q. So what -- what level are the designs at 17 now? 18 A. Well, we've heard here during this 19 hearing that they're approximately at ten percent, 20 so rather than argue, I will say that they are at 21 approximately -- 22 Q. No, no. I'm asking where they are -- 23 A. Oh, I'm sorry. I'm sorry. I was 24 thinking with the draft EIS or the EIS. So they're 25 at 90 percent design right now.</p>

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<p>1 Q. So did you see the Seattle Times article 2 about this case?</p> <p>3 MR. KISIELIUS: Objection, 4 Mr. Examiner. We're now talking about press 5 coverage about this case.</p> <p>6 THE HEARING EXAMINER: That was a 7 foundational question. I can skip it.</p> <p>8 THE WITNESS: It's been reported --</p> <p>9 MR. SCHNEIDER: Yes, it's withdrawn 10 if he's skipping it.</p> <p>11 MR. KISIELIUS: I'm sorry?</p> <p>12 THE HEARING EXAMINER: Did I 13 understand you were withdrawing the question?</p> <p>14 MR. SCHNEIDER: Yes. I'm asking 15 another question.</p> <p>16 BY MR. SCHNEIDER:</p> <p>17 Q. So, has SDOT spent not counting the work, 18 whatever money it spent on taking the preferred 19 alternative to 90 percent, has SDOT spent \$4.8 20 million on design work for Missing Link routes that 21 have been scrapped?</p> <p>22 A. That sounds correct to me. If what 23 you're referring to is the money that we -- that the 24 Department spent basically on what -- if you'll 25 allow me to call the original Burke-Gilman Trail</p>	<p>1 I'm quite frankly not sure how this is at all 2 relevant to the adequacy of the EIS. I understand 3 they pursued a lot of different theories in their 4 deposition of Mr. Mazzola.</p> <p>5 The fact that they pursued those in 6 the scope of discovery, they're allowed to. In the 7 context of this proceeding, we're supposed to be 8 dealing with relevant evidence to the issues they've 9 raised in appeal and I feel this is wide-ranging and 10 irrelevant to the adequacy of the document that's in 11 front of the examiner.</p> <p>12 THE HEARING EXAMINER: And I think 13 we're having the same debate we had earlier about 14 whether deference is owed to this lead agency for 15 its SEPA review of this project, which has been 16 ongoing for ten years now and has been repeatedly 17 found invalid by the courts or by the hearing 18 examiner.</p> <p>19 I guess I don't see how what the 20 Department spent or how they've utilized designs 21 gets at that.</p> <p>22 MR. SCHNEIDER: Well, the fact that 23 they are willing to spend millions of dollars before 24 the SEPA review is final certainly can be construed 25 as evidence that it is trying to preclude any</p>
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<p>1 Missing Link Project prior to Hearing Examiner 2 Watanabe's decision -- remand to the Department to 3 conduct an EIS. So that's my understanding of 4 roughly of what had been spent on that earlier 5 iteration of the project.</p> <p>6 Q. Okay. And so that 4.8 million was spent 7 on projects that -- on design work that was done 8 before the SEPA review was completed, correct?</p> <p>9 A. So I would say that it's money spent on 10 design and other work the Department did related to 11 the project. Prior to the appeal, I guess, of this 12 project being resolved.</p> <p>13 Q. Right. So because Judge Rogers and 14 Hearing Examiner Watanabe disagreed with the SEPA 15 determinations, that 4.8 million was wasted?</p> <p>16 A. I wouldn't -- I would not characterize it 17 as wasted. I don't feel that's my place to do so 18 one way or the other.</p> <p>19 Q. Well, you took the 90 percent plans, for 20 example, for the portions of the Missing Link 21 outside the Shilshole segment and basically scrapped 22 them and went back to 10 percent, didn't you?</p> <p>23 MR. KISIELIUS: I'm going to object 24 again on different grounds. Our digging into the 25 past history and the cost of the past history -- and</p>	<p>1 decisionmaker from making a reasonable, neutral 2 decision after the environmental review is complete 3 because of the city investment that will be wasted 4 if someone makes a different decision.</p> <p>5 MR. KISIELIUS: And if I may, 6 Mr. Schneider I think --</p> <p>7 THE HEARING EXAMINER: So I just want 8 to make sure that that does -- I'll hear what you've 9 got to say, but I just want to make sure that that 10 does not get to the question of deference owed, if 11 that's the argument line, what you just said. So I 12 -- A, I don't see how this gets to the question of 13 deference that would be owed, if that's the basis 14 for the line of question, and B, I don't think that 15 that's what you just said, so am I correct that that 16 is not what you're pursuing with this line of 17 questioning?</p> <p>18 MR. SCHNEIDER: No. I believe it is 19 related to deference because of the actions that are 20 taken before environmental review is complete. The 21 whole purpose of SEPA is to inform decisionmakers 22 once the environmental review is complete and 23 actions have been taken here, public money is 24 invested before the -- in this case, the FEIS is 25 final and in the earlier cases, before the DNS was</p>

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<p>1 final because they were subject to appeal and never 2 became final.</p> <p>3 THE HEARING EXAMINER: You had 4 something to add, Mr. Kiselius?</p> <p>5 MR. KISELIUS: I just -- I do not 6 believe that this is relevant to deference. I 7 believe that what Mr. Schneider's doing is trying to 8 put a spin on past facts that try to cast SDOT in a 9 bad light and again, we disagree with the theories 10 he's pursuing, but that is irrelevant to the scope 11 of the appeal or to the deference that the 12 examiner's supposed to give.</p> <p>13 THE HEARING EXAMINER: I think we've 14 already had this argument and I profoundly disagree 15 that this is not relevant to the issue of deference. 16 Whether the lead agency repeatedly takes action 17 before its environmental review is done because it's 18 both the project proponent --</p> <p>19 MR. KISELIUS: But that wasn't the 20 line of questioning you were just on. The question 21 you were asking them is whether they had utilized 22 designs or not and how much money they had spent.</p> <p>23 MR. SCHNEIDER: Before the 24 environmental review was complete.</p> <p>25 THE HEARING EXAMINER: Right.</p>	<p>1 don't need to repeat what you said at that time.</p> <p>2 A. I apologize. I'm sorry, Mr. Schneider. 3 Can you repeat your question?</p> <p>4 Q. We can go back to your deposition 5 transcript if we need to, but right now, my question 6 is are you aware of anyone having read it since your 7 deposition was taken?</p> <p>8 A. I think besides myself and some of my 9 other team members that work for the city, I'm not 10 aware of whether or not other folks at the city have 11 read the final EIS since my deposition.</p> <p>12 Q. Okay. And again, excluding your circle 13 that's responsible for it --</p> <p>14 A. That's a big circle.</p> <p>15 Q. -- you weren't aware of anyone at the 16 time of your deposition having read it either, 17 correct?</p> <p>18 A. Well, I -- so you can see my struggle. I 19 don't want to be inconsistent with what I said at 20 the deposition, of course. What I would say is that 21 I don't know the extent to which folks at the city 22 have read the EIS since it was published. I know 23 I've gotten questions about it and asked to help 24 look things up, asked -- folks have asked me -- 25 folks from the city or the Department have asked me</p>
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<p>1 MR. KISELIUS: It was actually -- it 2 went to how much money they wasted, which is utterly 3 irrelevant to the legitimacy of this EIS.</p> <p>4 THE HEARING EXAMINER: I'm going to 5 sustain the objection with regard to that line of 6 questioning.</p> <p>7 MR. SCHNEIDER: And I'm sorry, just 8 so I don't trespass to the line of questioning about 9 the amount of money?</p> <p>10 THE HEARING EXAMINER: I believe so, 11 yes, and that it was wasted or not.</p> <p>12 BY MR. SCHNEIDER:</p> <p>13 Q. Am I correct, Mr. Mazzola, in stating 14 that you're not aware of anyone in the city having 15 read the FEIS since it was published?</p> <p>16 A. I don't think that's a fair 17 characterization, no.</p> <p>18 Q. Are you aware of anyone reading it since 19 your deposition was taken?</p> <p>20 A. Since my deposition? So I know you asked 21 me this question during my deposition. I said, and 22 I don't recall exactly if you asked me about 23 specific --</p> <p>24 Q. So Mr. Mazzola, I just want to clarify 25 the question to you is after the deposition, so you</p>	<p>1 for references of where they can find particular 2 information, so I don't recall the extent or I 3 cannot say the extent to which folks from the city 4 have read the final EIS.</p> <p>5 Q. Okay. So questions from whom and when 6 did you get them?</p> <p>7 A. Questions from our project manager, 8 Louisa Galassini, questions from other folks on the 9 design team. That's what I can recall at this 10 point.</p> <p>11 Q. Okay. So isn't it fair that as far as 12 you're concerned, the decision to proceed with the 13 preferred alternative was made when you chose the 14 preferred alternative?</p> <p>15 A. When we chose -- so excuse me. I want to 16 make sure I understand your question. You asked is 17 it fair to say that the decision to proceed with the 18 preferred alternative was made before the final EIS 19 was published?</p> <p>20 Q. No.</p> <p>21 A. I'm sorry.</p> <p>22 Q. The question now is isn't it correct that 23 your understanding was that the city decision to 24 proceed with the project was the choice of the 25 preferred alternative?</p>

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<p>1 A. So I don't think that's a fair</p> <p>2 characterization, either, when you say the City's</p> <p>3 decision to proceed with the project. One could</p> <p>4 argue that it was made in the early 2000s when we</p> <p>5 first started our endeavor to complete the Burke-</p> <p>6 Gilman Trail Missing Link.</p> <p>7 Q. Well, (inaudible), but a lot of folks are</p> <p>8 sitting on the decision to proceed with the project</p> <p>9 as set forth in the preferred alternative.</p> <p>10 A. So, sorry. Could you repeat that</p> <p>11 question, then? Or maybe if I could paraphrase to</p> <p>12 make sure I'm --</p> <p>13 Q. Sure.</p> <p>14 A. -- clear on your question. You're asking</p> <p>15 it was the City's decision to proceed with the</p> <p>16 project once we identified the preferred</p> <p>17 alternative?</p> <p>18 Q. Yeah, and I'm being specific now to your</p> <p>19 understanding, your understanding that the choice of</p> <p>20 the preferred alternative was the same thing as the</p> <p>21 decision to proceed with that alternative.</p> <p>22 A. So I don't think those two items are the</p> <p>23 same thing. So and again, decision to proceed with</p> <p>24 the project versus the preferred alternative with --</p> <p>25 which to proceed with are two separate issues. So</p>	<p>1 I've mentioned before, you know, decisions are made</p> <p>2 about this project as many of our projects every day</p> <p>3 and so the decision was made to move forward with</p> <p>4 the design process and advance the project design,</p> <p>5 to gear the Department up in order to get the</p> <p>6 project out eventually once the hearing here is</p> <p>7 settled.</p> <p>8 Q. So is it -- is what you're saying then --</p> <p>9 let's assume Mr. Kubly retains his position as</p> <p>10 Department Director, that having made the decision</p> <p>11 and before May 25th to invest in the final design of</p> <p>12 the preferred alternative, he's going to make</p> <p>13 another decision whether to do that or not, whether</p> <p>14 to proceed with that project at some point in the</p> <p>15 future?</p> <p>16 A. That's correct, and to be honest, I don't</p> <p>17 know who -- if I may back up. We go through a</p> <p>18 contract award process that involves not only the</p> <p>19 Seattle Department of Transportation but another</p> <p>20 department within the city, the acronym is CPCS I</p> <p>21 want to say, and I'm blanking on what exactly that</p> <p>22 stands for, but it's our contracts folks, so at a</p> <p>23 city level, they review our contract documents and</p> <p>24 approve them and this is standard for any of our</p> <p>25 capital projects that we deliver.</p>
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<p>1 --</p> <p>2 Q. So when and by whom is the future</p> <p>3 decision going to be made about whether to proceed</p> <p>4 with an alternative, then?</p> <p>5 A. So, right now, you know, as we've I think</p> <p>6 -- as the city has announced and as we have stated</p> <p>7 in the final EIS, our -- the City's -- the</p> <p>8 Department's intent is to move forward with the</p> <p>9 preferred alternative. As I mentioned before, the</p> <p>10 Department's made a decision to proceed with the</p> <p>11 project, the project being defined as completing the</p> <p>12 Burke-Gilman Trail Missing Link a long time ago, and</p> <p>13 always with the understanding that no formal agency</p> <p>14 action as Section 070A1 and 2 refer to has yet been</p> <p>15 taken by the city.</p> <p>16 Q. And my question is who is going to take</p> <p>17 that action?</p> <p>18 A. So the Seattle Department of</p> <p>19 Transportation will take that action.</p> <p>20 Q. Okay, but as a district, (inaudible)</p> <p>21 already blessed the preferred alternative and</p> <p>22 approved the investment in the final design of the</p> <p>23 preferred alternative?</p> <p>24 A. So as I mentioned, our intent is to move</p> <p>25 forward with the preferred alternative, so and as</p>	<p>1 And so the project would go through that,</p> <p>2 bidding or advertisement approval process, before it</p> <p>3 goes out to bid for a contractor. So that's --</p> <p>4 there's that decision-making process that the city</p> <p>5 goes through that -- excuse me. There's that</p> <p>6 decision-making process that the city will go</p> <p>7 through as part of this project once we've completed</p> <p>8 the environmental review process, which I understand</p> <p>9 at this hearing we are still in the middle of.</p> <p>10 Q. Well, Mr. Kubly doesn't participate in</p> <p>11 the review of the contract documents, does he?</p> <p>12 A. I can't say one way or the other.</p> <p>13 Q. Well again, you said that Mr. Kubly or</p> <p>14 SDOT would make a future decision about, among the</p> <p>15 choice of reasonable alternatives in EIS and my</p> <p>16 understanding was that would be Mr. Kubly. Did I</p> <p>17 misunderstand? Assuming he's still the director?</p> <p>18 A. Right. So sorry, I'm not quite following</p> <p>19 your question.</p> <p>20 Q. What I'm struggling with is how there</p> <p>21 hasn't been a choice among reasonable alternatives</p> <p>22 if a decision to be made in the future is going to</p> <p>23 be a decision whether to proceed with the project in</p> <p>24 which a great deal of money has already been</p> <p>25 invested or choose another alternative.</p>

<p style="text-align: right;">Page 1528</p> <p>1 A. Okay. So, I mean, the first part of your 2 question mentioned or implied that a decision has 3 not yet been made on a preferred alternative, but it 4 -- 5 Q. No. I'm asking whether the decision that 6 is referred to in 070 about limiting the choice of 7 reasonable alternatives has been made, whether an 8 action has been taken within the meaning of SEPA 9 since the FEIS was published, and I think you said 10 if you want me to shut up so you can respond, just 11 say so -- that there would be a future action by 12 Mr. Kubly. 13 A. Okay. If I -- I may have misspoke and I 14 don't remember the context in which I would have -- 15 in which I said that, but I can say that the 16 Department has not made any decision that would 17 limit the choice of reasonable alternatives. 18 Q. So if we turn to the FEIS, please, which 19 is Exhibit R-1. 20 A. Yes. 21 Q. And specifically to FS III, which is very 22 near the beginning, FS Roman numeral III, which is 23 part of the fact sheet. So -- 24 A. Excuse me. FS-1? 25 Q. FS-III.</p>	<p style="text-align: right;">Page 1530</p> <p>1 begin in a few months from now? 2 A. So that was our expectation when we 3 published the final EIS that is typical to include 4 some sort of projection about when the project 5 design would be finished and construction would 6 begin and end because that is often the question 7 that we get from the public. They, depending on the 8 interest, folks really want to understand, 9 especially on this project since it has been such a 10 long time coming, folks want to know when -- kind of 11 the soonest it could begin construction and then how 12 quickly it would take to actually build the project. 13 Q. Sorry. 14 A. That's all. Thank you. 15 THE HEARING EXAMINER: Okay. We'll 16 take a break there. We'll come back at 3:15. 17 THE WITNESS: Okay, great. 18 (Brief recess.) 19 THE HEARING EXAMINER: Mr. Schneider? 20 BY MR. SCHNEIDER: 21 Q. So Mr. Mazzola, let's go back one more 22 time to 2505070, please. Do you still have that? 23 A. Yes. 24 Q. You brought up in response to one of my 25 earlier questions subsection D. Would you read that</p>
<p style="text-align: right;">Page 1529</p> <p>1 A. Okay. Thank you. 2 Q. Roman numeral III. And I want to direct 3 your attention to the last paragraph, environmental 4 review, and would you read the last two sentences 5 for us? 6 A. Sure. "Final design and permitting are 7 expected to be completed by early 2018 with 8 construction beginning shortly thereafter, the 9 project is anticipated to be complete by 2019." 10 Q. So if construction is expected to begin 11 shortly after early 2018 -- 12 A. Uh-huh. 13 Q. -- how is it that no decision has been 14 made whether to proceed with the project or not? 15 How could construction possibly begin a few months 16 from now if the decision to finalize the design 17 hadn't been made already? 18 A. So I -- as I mentioned before, we make 19 lots of decisions about this project. Our intent is 20 to construct the project and so we have been 21 proceeding with that intent. We have not made -- we 22 have not done anything that would -- I would 23 interpret as an official action as again citing back 24 to 070A1 or 2. 25 Q. Even though you expect construction to</p>	<p style="text-align: right;">Page 1531</p> <p>1 for us, please? 2 A. Sure. So subsection D states, "This 3 section does not preclude developing plans or 4 designs issuing requests for proposals, RFPs, 5 securing options or performing other work necessary 6 to develop an application for a proposal as long as 7 such activities are consistent with subsection 8 250507070A." 9 Q. Okay. And 070A is the subsection above 10 that I had you read about limiting choice of all 11 alternatives, correct? 12 A. That's correct. Subsection A2 states 13 limit the choice of reasonable alternatives. 14 Q. Okay. So one can proceed to develop 15 plans for designs so long as factually that doesn't 16 limit the choice of reasonable alternatives, 17 correct? 18 A. I would interpret subsection D to state 19 that it does not preclude developing plans or 20 designs as long as those activities are consistent 21 with subsection A and part of subsection A2 is say 22 limit the choice of reasonable alternatives, so as 23 long as your plans and designs or these other 24 activities that are listed under Section D issuing 25 requests for proposals, securing options, or</p>

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<p>1 performing other work does not limit your 2 alternatives, and I would point to things like the 3 performing other work or securing options on that -- 4 I'm not entirely sure what securing options means, 5 but it sort of implies that those are activities 6 that could limit your reasonable alternatives. 7 Q. Okay. Well, would you agree that in this 8 case, given the facts we've been talking about, that 9 the issue is whether the Department having proceeded 10 to the 90 percent design level with the intention of 11 beginning construction in a few months on the 12 preferred alternative precludes the choice of 13 reasonable alternatives that are set forth in the 14 EIS? 15 MR. KISIELIUS: Mr. *Tammer, I'm 16 going to object again. I'm going to renew my 17 objection and I'm hoping that we have more facts 18 because we've been at this for a very long time now 19 and I'm hoping that there might be more facts to be 20 able to help make this determination, but they are 21 pursuing a theory that is outside the scope of their 22 appeal and they're pursuing a theory that doesn't 23 involve the adequacy of the EIS. It involves, if we 24 disagree with Mr. Schneider's characterization, but 25 if they were to be true would be a different legal</p>	<p>1 as an issue, a new issue that arose during 2 deposition, that I did partly rule on the objection 3 at that time and that ruling stands. I'm not going 4 to change where I am in allowing additional briefing 5 later and leave it as a standing objection and allow 6 the questioning to continue for purposes of 7 preserving it partly for appeal, which I would allow 8 anyway, and then there's the preserving it for the 9 purposes of the deference argument that Appellants 10 have raised that will be decided only after the 11 closing arguments. 12 BY MR. SCHNEIDER: 13 Q. So Mr. Mazzola, I'd now like to direct 14 your attention to subsection E of 070. 15 A. Okay. 16 Q. And I guess I'll ask you to read it, at 17 least the first few sentences, please. 18 A. Sure. So subsection E states that no 19 final authorization of any permit shall be granted 20 until expiration of the time period for filing and 21 appeal in accordance with Section 2505680 or if an 22 appeal is filed until the fifth day following 23 termination of the appeal. Would you like me -- 24 Q. Yeah. One more sentence, please. 25 A. Okay. If on or before the fifth day</p>
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<p>1 appeal entirely from the one that they've got here, 2 and I'm -- at the risk of reopening that, I just -- 3 we've been at this for awhile and I'm hoping that 4 the facts that have been elicited might get us there 5 now. 6 MR. SCHNEIDER: And I think it is the 7 same objection, although I'm encouraged that counsel 8 now wants me to present more facts rather than fewer 9 facts, but, you know, this issue as I stated arose 10 during the deposition and we would love, for 11 example, to have Mr. Kubly, the SEPA responsible 12 official, testify, but we were precluded from doing 13 discovery from him, so we're dealing with the facts 14 that are available to us and, you know, they are 15 what they are and I don't think there is anything 16 objectionable about my question that hasn't already 17 been argued at length. 18 MR. KISIELIUS: I did concede I'm not 19 -- I'm recognizing I'm renewing my objection just 20 because this is now -- I'm hoping with some 21 additional facts that have been elicited may be more 22 clear. 23 THE HEARING EXAMINER: I've already 24 -- so at least in response to Appellants' statement, 25 I've already ruled that as far as the admissibility</p>	<p>1 following termination of an appeal a party of record 2 files with the director of the Seattle Department of 3 Construction and Inspections a written notice of 4 intent to seek judicial review of the City's action, 5 no direct modification of the physical environment 6 shall begin or be authorized until the 31st day 7 following termination of the appeal or until a court 8 has disposed of any request for preliminary 9 injunctive relief, whichever occurs first. 10 Q. Okay. So in effect, the city has made a 11 policy decision according to the language set forth 12 in here about not allowing projects to proceed until 13 there's at least been some judicial review, correct? 14 A. If I may have a moment to re-read this? 15 MR. KISIELIUS: So, Your Honor, I'm 16 going to object. I believe what he's now asking 17 this witness is a pure question of law as to the 18 meaning of a regulation in the Seattle Municipal 19 Code. It's not even predicated on a fact. He's 20 just asking the witness what does he think this 21 section means. 22 MR. SCHNEIDER: And this witness is 23 the City's person responsible for interpreting and 24 applying this, at least for the Department of 25 Transportation. I'm certainly -- and we've been</p>

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<p>1 asked repeatedly to defer to how the Department 2 applies SEPA. 3 MR. KISIELIUS: I didn't hear any 4 applicability questions here. 5 THE HEARING EXAMINER: I'll sustain 6 it and just let the code speak for itself. I don't 7 think we need to hear from him as to its meaning. 8 We're talking about the Code and we're talking about 9 the code for the sake of best case scenario in this 10 hearing for the purposes of deference, the question 11 of deference, and -- 12 MR. SCHNEIDER: So I'm not asking 13 questions about how Mr. Mazzola interprets the city 14 SEPA regulations? 15 THE HEARING EXAMINER: How much 16 longer are we going to spend on that? 17 MR. SCHNEIDER: This was my last 18 couple of questions about this section. 19 THE HEARING EXAMINER: That's getting 20 to be my primary concern with this is I do want to 21 preserve your right to have this argument in the 22 record for purpose of appeal, but we do need to move 23 along to the more substantive arguments that you 24 have for your case of the adequacy of the analysis 25 of the EIS, which this is not getting to. All</p>	<p>1 proceed -- if we were to receive a favorable 2 decision from the hearing examiner as a result of 3 this hearing we're currently in, that we would 4 proceed with the project regardless of whether or 5 not there is a judicial appeal. 6 And then in the deposition, I said that 7 would not be my decision to make and that it would 8 be up to our director at the time and now I think 9 reflecting on that further, especially given the new 10 administration that we're under, that there would be 11 another decision point when that action actually 12 occurred, similar to if you were to say, you know, 13 whether or not a decision has been -- whether or not 14 a decision has already been made to appeal the 15 hearing examiner's decision, this hearing, you know, 16 that decision can't be made until it actually 17 happens. 18 Q. Well, would you agree that at the time of 19 your deposition, you said the decision had been 20 made? 21 A. In my deposition, I did say a decision 22 had been made. 23 Q. Okay. And so is the change now that you 24 were mistaken or the Department has made a new 25 decision?</p>
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<p>1 right. So I'll allow your questions, then, reverse 2 my statement as to sustaining the objection. I'll 3 allow your questions as to the witness' 4 interpretation of the city code. 5 BY MR. SCHNEIDER: 6 Q. Okay. So Mr. Mazzola, have you ever read 7 subsection E previously? 8 A. I probably have, but not in recent 9 memory. 10 Q. Okay. Has the Department made a decision 11 to proceed with the construction of the preferred 12 alternative regardless of any appeal to Superior 13 Court? 14 A. So I recall that being a question on my 15 deposition as well and I -- during that deposition 16 realized I may have spoke a little too quickly in 17 terms of the decision that may or may not have been 18 made, and so I'll try and answer your question a 19 similar way here if I may, unless you would like me 20 -- well, ask a different -- 21 Q. Well, you go ahead and answer the 22 question any way -- 23 A. So, I said in my deposition that yes, a 24 decision has been made and that was my understanding 25 that there's -- whether an intent or an interest to</p>	<p>1 A. The change now and as I indicated during 2 my deposition is that I probably spoke too hastily 3 about that decision or the extent of that decision. 4 Q. Well, again, does that mean you were 5 mistaken? 6 A. Then, to say I was mistaken, that's fair. 7 Q. So why don't we turn to a new document in 8 Volume 10 of 10 and it's behind tab 835071. If we 9 could have this marked, please. 10 A. Just give me the number again? 11 Q. 8350.71. This will be marked A-22. 12 (EXHIBIT A-22 WAS MARKED FOR IDENTIFICATION) 13 THE HEARING EXAMINER: Do you have 14 it, Mr. Mazzola? 15 BY MR. SCHNEIDER: 16 Q. Just to confirm, under tab A-350.71, 17 looks like a common spreadsheet. 18 A. Yeah. 19 Q. Exhibit 2. 20 THE HEARING EXAMINER: I assume you 21 recognize the document? And if so, please tell us 22 what it is. 23 THE WITNESS: Yes. This appears to 24 be comments spreadsheet for the economics discipline 25 report, although I don't see a date on the actual</p>

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<p>1 document itself, so it's a comments sheet on one of</p> <p>2 the versions of the economics report that was</p> <p>3 developed or to support the EIS.</p> <p>4 BY MR. SCHNEIDER:</p> <p>5 Q. It's the spreadsheet on the first draft</p> <p>6 of Mr. Sharp's report.</p> <p>7 A. Okay. I'll take your word on that, well,</p> <p>8 for now.</p> <p>9 Q. If you like, I can refer you to -- where</p> <p>10 we had some connection on this issue and --</p> <p>11 A. Correct.</p> <p>12 Q. -- that exhibit was the first one.</p> <p>13 A. Okay. Sure. Again, yeah. I -- I'll</p> <p>14 take your word on it that it's the correct one, so.</p> <p>15 Q. Okay. I'll represent that and if you at</p> <p>16 any point disagree, let me know. So again, what is</p> <p>17 the purpose of this? What's going on here?</p> <p>18 A. So the purpose of the comments</p> <p>19 spreadsheet is to provide our feedback back to the</p> <p>20 consultant team that was working on the economics</p> <p>21 discipline report after our initial review of their</p> <p>22 first draft of the economics considerations report.</p> <p>23 Q. Okay. And so explain what we see here.</p> <p>24 There's a reviewer name column.</p> <p>25 A. That's right.</p>	<p>1 A. Sure.</p> <p>2 Q. We see your name, Mazzola, in, under the</p> <p>3 reviewer name column on the left. That means it's a</p> <p>4 comment that you make?</p> <p>5 A. Right. If it's got my name by it, it's a</p> <p>6 comment that I made.</p> <p>7 Q. Okay. So and who was Ron Sharp?</p> <p>8 A. Ron Sharp was the -- one of the project's</p> <p>9 original project managers for the Gilman Trail</p> <p>10 Missing Link.</p> <p>11 Q. Okay. And did you replace him as project</p> <p>12 manager for a period of time?</p> <p>13 A. So I did stand in for Ron for a period of</p> <p>14 time. That's correct.</p> <p>15 Q. And that was a little over a year?</p> <p>16 A. A little over a year. That's right.</p> <p>17 Q. Okay. So I want you to turn to the third</p> <p>18 page of these, to item number 78, 79, 78 being by</p> <p>19 Mr. Sharp.</p> <p>20 A. Uh-huh.</p> <p>21 Q. And 79 being by you. Can you read first</p> <p>22 of all Mr. Sharp's comment in line 78?</p> <p>23 A. Sure. So Mr. Sharp's comment in line 78,</p> <p>24 "Can other words besides winners and losers be used?"</p> <p>25 They sound way too confrontational. How about some</p>
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<p>1 Q. There's sort numbers. There's review</p> <p>2 comment. So what, again, just give us a general --</p> <p>3 A. Sure. I'd be happy to walk you through.</p> <p>4 So just as you mentioned, on the left-hand side,</p> <p>5 just item number to be able to track comments, the</p> <p>6 reviewer name, then under the next series of</p> <p>7 columns, it calls out, you know, whether, you know,</p> <p>8 what drawing the comment might be on, what report or</p> <p>9 looks like spec section, the page number and then</p> <p>10 the page or line number, and so most of those as you</p> <p>11 can see are -- well, there's a couple general</p> <p>12 comments overall. Then the beginning and then</p> <p>13 comments are generally listed by page number and</p> <p>14 line number. Next to that is our comment and then</p> <p>15 next to the comment is, it says LVL, which is Level,</p> <p>16 which is a type of coding for the nature of the</p> <p>17 comment itself, and then up above in kind of a</p> <p>18 darker highlighted row at the heading, you can see</p> <p>19 comment level codes saying 1, it's critical or a</p> <p>20 policy issue, please address; 2, it's a factual --</p> <p>21 factual issue, so we're asking the consultant to</p> <p>22 please double-check the facts; and then number 3 is</p> <p>23 an editorial comment for their consideration.</p> <p>24 Q. Okay. So I want to ask you about a few</p> <p>25 of your comments.</p>	<p>1 may benefit and some may expend decreased</p> <p>2 operational characteristics or something similar."</p> <p>3 Q. And then what was your comment in</p> <p>4 response?</p> <p>5 A. If I may clarify, my comment's not in</p> <p>6 response to Ron's comment. I had a very similar</p> <p>7 comment to Ron on the document that just said please</p> <p>8 delete the terms winners and losers.</p> <p>9 Q. Okay. So your comment was arrived at</p> <p>10 independently?</p> <p>11 A. That's correct, and so this is a</p> <p>12 compilation of all the reviewers' comments. I don't</p> <p>13 believe this was culled through to delete</p> <p>14 duplicative comments or even conflicting comments.</p> <p>15 I'm not -- I don't believe that exercise had been</p> <p>16 done for this. So it's literally just a compilation</p> <p>17 of everybody's independent comments, some of which</p> <p>18 are duplicative.</p> <p>19 Q. Okay. So let's go down to number 94,</p> <p>20 then.</p> <p>21 A. Okay.</p> <p>22 Q. What is your comment there?</p> <p>23 A. So some properties I mistyped. Some</p> <p>24 properties may have shifted land use. Are there any</p> <p>25 -- and then I say -- that was a quote from the</p>

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<p>1 document, are there any examples or data to support</p> <p>2 the fact that businesses may have relocated due to</p> <p>3 the presence of a bike trail? If not, please delete</p> <p>4 this sentence.</p> <p>5 Q. And let's turn the page to your comment</p> <p>6 111.</p> <p>7 A. Okay. Please change damages to impacts.</p> <p>8 Q. And did you make that same comment down</p> <p>9 in 115?</p> <p>10 A. It appears I did. Please change damages</p> <p>11 to impacts.</p> <p>12 Q. Okay. Why did you tell the consultant to</p> <p>13 make that change?</p> <p>14 A. Well, in the SEPA context, it's much more</p> <p>15 common to use the term impacts because you're</p> <p>16 talking about adverse impacts or significant adverse</p> <p>17 impacts, and damages isn't a term that is typical to</p> <p>18 the SEPA evaluation in my experience, and so I just</p> <p>19 felt it would be better to be consistent with the</p> <p>20 way that we characterize impacts throughout the rest</p> <p>21 of the document and wanted to stay similar with the</p> <p>22 terminology.</p> <p>23 Q. This was an economic discipline report,</p> <p>24 correct?</p> <p>25 A. This is for the economics report,</p>	<p>1 to me to be a subjective worst case opinion. Can we</p> <p>2 delete it and end the sentence with "decrease</p> <p>3 profitability".</p> <p>4 Q. Is Mr. Sharp an economist?</p> <p>5 A. I don't believe so, no.</p> <p>6 Q. Okay. How about your comment 164? Would</p> <p>7 you read that, please? And here, I think you're</p> <p>8 referring to the table that Mr. Shook agreed he took</p> <p>9 out of the draft?</p> <p>10 A. I'm not sure I didn't -- I wasn't present</p> <p>11 in the room for all of Mr. Shook's testimony.</p> <p>12 Q. It's table 4 (inaudible).</p> <p>13 A. Okay. So the general comment that I made</p> <p>14 for this table and similar tables throughout the</p> <p>15 document, was the rationale for including just these</p> <p>16 businesses, it seems very subjective. Don't we</p> <p>17 include the subset of businesses and contains a very</p> <p>18 subjective ranking of likelihood to be impacted.</p> <p>19 What is all considered in ranking the likelihood?</p> <p>20 Lines of traffic in and out of the properties and</p> <p>21 number of deliveries? Times of day that driveways</p> <p>22 and loading docks are used? The nature of the</p> <p>23 traffic deliveries? Ideally these tables would be</p> <p>24 removed from the analysis as too subjective.</p> <p>25 However, I have some specific comments on them</p>
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<p>1 correct.</p> <p>2 Q. Okay. And impacts without a qualifier</p> <p>3 are simply impacts. It doesn't convey the same</p> <p>4 meaning as damages, does it?</p> <p>5 A. I don't agree with that statement. I</p> <p>6 think damages or impacts, whether you use either one</p> <p>7 without qualification, it has the same -- excuse me.</p> <p>8 I believe I may have lost your question there. If</p> <p>9 you could repeat it.</p> <p>10 Q. Well, the question was doesn't damages --</p> <p>11 you're changing the meaning. You're not just</p> <p>12 changing the word. Isn't that fair?</p> <p>13 A. I don't think that's a fair statement. I</p> <p>14 would have to go back to the original economics</p> <p>15 consideration report to see what the context -- the</p> <p>16 context in which they use the word damages versus</p> <p>17 impacts because I -- just looking at the comments,</p> <p>18 especially here, I don't see a difference because</p> <p>19 when we talk about impacts under SEPA, that's an</p> <p>20 impact.</p> <p>21 Q. So how about comment 143 by Mr. Sharp,</p> <p>22 the project manager. Would you read that to us?</p> <p>23 A. Okay. It's comment 143 by Ron Sharp, and</p> <p>24 he quotes, "And in extreme cases result in some</p> <p>25 industrial users going out of business". This seems</p>	<p>1 below.</p> <p>2 Q. And how about your comment 175? If you</p> <p>3 could read that.</p> <p>4 A. Yes, sir. So comment 175, "I have a lot</p> <p>5 of concern and questions over how we're quantifying</p> <p>6 the cost of delays. First, I don't think it's</p> <p>7 appropriate to monetize the delay, especially of</p> <p>8 private driveways. Is there another way to discuss</p> <p>9 the potential impacts of traffic congestion without</p> <p>10 trying to assign a dollar amount, perhaps at a</p> <p>11 higher level in terms of whether we think the trail</p> <p>12 would put any of these businesses out of business</p> <p>13 and then in parentheses, which is really the level</p> <p>14 of analysis that we should be conducting? Having</p> <p>15 said that, I'd like to understand the methodology</p> <p>16 and the calculation that went into this analysis,</p> <p>17 what traffic volumes were used over what period of</p> <p>18 time, et cetera, and are all intersections treated</p> <p>19 the same in terms of the importance? If so, is that</p> <p>20 appropriate?"</p> <p>21 Q. And you'll agree that the quantifying of</p> <p>22 the costs of delay was taken out of the final</p> <p>23 version of the report?</p> <p>24 A. That sort of monetization of the delay,</p> <p>25 that was taken out of the economics report.</p>

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<p>1 Q. In response to the question</p> <p>2 Mr. *Gustilez, you stated you didn't make Mr. Shook</p> <p>3 change his report. Is it fair to say you made many</p> <p>4 comments telling him you wanted him to change his</p> <p>5 report?</p> <p>6 A. I made a lot of comments asking about why</p> <p>7 things were stated the way they were, asking</p> <p>8 questions about the sort of backup if you will of</p> <p>9 analysis and then did suggest several other types of</p> <p>10 edits as well.</p> <p>11 Q. In fact, you said please make certain</p> <p>12 changes, didn't you?</p> <p>13 A. I did say please make certain changes,</p> <p>14 yes.</p> <p>15 Q. You would agree, would you not, that the</p> <p>16 first draft of Mr. Shook's report used the word</p> <p>17 significant a lot?</p> <p>18 A. Mr. Shook's initial draft of economics</p> <p>19 report did contain a lot of -- excuse me, did use</p> <p>20 the word significant in a number of different</p> <p>21 contexts throughout that report.</p> <p>22 Q. And the final version, which again was</p> <p>23 part of the draft EIS, does not use the word</p> <p>24 significant once, does it?</p> <p>25 A. I would have to go back and read the</p>	<p>1 it's a chaotic environment and unorganized and about</p> <p>2 how the trail would define and separate -- well,</p> <p>3 excuse me, first separate various modes of traffic,</p> <p>4 namely the non-motorized versus motorized, but then</p> <p>5 also define where those modes of traffic are able to</p> <p>6 go. So adding curb, adding driveway definitions,</p> <p>7 adding formal parking spaces, that type of thing,</p> <p>8 and so we do discuss that as well as just sort of</p> <p>9 the overall design process and consideration of</p> <p>10 safety that goes into the design within Chapter 1 of</p> <p>11 the EIS and then throughout the transportation</p> <p>12 chapter in the final EIS document, and the</p> <p>13 transportation discipline report in the safety</p> <p>14 subsections where we talk about the potential</p> <p>15 impacts of each alternative and the no-action</p> <p>16 alternative as well.</p> <p>17 Q. And my question, Mr. Mazzola, is very</p> <p>18 specific. Where in the transportation discipline</p> <p>19 report, discipline report, is there either analysis</p> <p>20 or data that supports the assertions -- the</p> <p>21 assertions are there. I'm asking where are the</p> <p>22 analysis and data are?</p> <p>23 A. I guess I -- if I may ask, what type of</p> <p>24 analysis or data are you referring to? If you're</p> <p>25 looking for some kind of quantification, then we</p>
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<p>1 final report. I know because if you're just asking</p> <p>2 about the use of the word significant, it still may</p> <p>3 be in there in terms of statistical significance.</p> <p>4 Q. If you don't remember a specific place.</p> <p>5 A. I have to go back and look to confirm.</p> <p>6 Q. Now, so the transportation discipline</p> <p>7 report says in a number of places that the trail</p> <p>8 will make conditions safer, correct?</p> <p>9 A. That's correct.</p> <p>10 Q. And there's no analysis or data in the</p> <p>11 report to back up those assertions, correct?</p> <p>12 A. I don't think that's a correct statement.</p> <p>13 Q. I didn't mean to interrupt, sorry.</p> <p>14 A. Go ahead.</p> <p>15 Q. So if you think that his analysis or</p> <p>16 data, please draw our attention to it where in the</p> <p>17 transportation discipline report or anywhere else in</p> <p>18 the EIS is there analysis or data to support the</p> <p>19 assertion that the preferred alternative would make</p> <p>20 the trail safer?</p> <p>21 A. So --</p> <p>22 Q. Make not the trail safer but make the</p> <p>23 situation safer.</p> <p>24 A. So we discussed -- we've heard a lot of</p> <p>25 testimony about the existing conditions and then how</p>	<p>1 don't include anything of that sort related to the</p> <p>2 safety in EIS.</p> <p>3 Q. You were present at the prior hearings in</p> <p>4 front of at least hearings of Examiner Watanabe,</p> <p>5 correct?</p> <p>6 A. That's correct, as well as under Miss</p> <p>7 Tanner as well.</p> <p>8 Q. Okay. And didn't the Ballard business</p> <p>9 appellants in those prior hearings present the</p> <p>10 studies that were in effect at that time, available</p> <p>11 at that time, about the inherent safety issues</p> <p>12 created by Two Wave Cycle?</p> <p>13 A. I do recall the appellants presenting</p> <p>14 those studies about safety concerns over two-way</p> <p>15 study paths and am familiar with the testimony</p> <p>16 related to those studies.</p> <p>17 Q. So you were aware of those studies that I</p> <p>18 think the person who prepared the safety analysis</p> <p>19 for the transportation discipline report, Ms. Ellig,</p> <p>20 and Mr. Johnston both said they were unaware of</p> <p>21 those reports when the EIS was written. Is that --</p> <p>22 is my memory correct?</p> <p>23 A. I don't recall how they testified to</p> <p>24 those reports.</p> <p>25 Q. Okay. So it's fair to say that you</p>

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<p>1 didn't inform them of that information you had and 2 asked them to provide an analysis of why this trail 3 would be -- would somehow overcome the inherent risk 4 created by two-way movements? 5 A. I did not ask the EIS consultant team to 6 prepare any kind of counter-argument to those 7 studies. 8 Q. And you didn't alert the reader to the 9 existence of the studies. Fair? 10 A. I don't believe so, no. 11 Q. Or even alert the consultants to the 12 existence of those studies? 13 A. I don't recall if whether or not -- 14 excuse me. Let me back up. I don't recall 15 discussions we may have had about concerns over side 16 paths or not, and I'd like to reiterate, there was a 17 lot of folks involved with the early iterations of 18 the designs that I was not necessarily part of all 19 the discussions with. 20 Q. Okay. But you would agree that all of 21 the conclusions in the EIS are based on the 22 information that is in the EIS. In other words, 23 there aren't any outside studies or data that you 24 didn't include, correct? 25 A. I see a two-part question there, one</p>	<p>1 THE ASSISTANT: Sure. 2 THE HEARING EXAMINER: Oh, I've got 3 it. I've found it. Any objection? 4 MS. FERGUSON: No objection. 5 THE HEARING EXAMINER: A-22 is 6 admitted. 7 (EXHIBIT A-22 WAS ADMITTED INTO EVIDENCE) 8 THE HEARING EXAMINER: Now, if we 9 could turn, please, to Volume 10 of 10 again and to 10 tab A350.83? Should we mark this one, 11 Mr. Schneider? 12 MR. SCHNEIDER: Yes, please. 13 THE HEARING EXAMINER: Okay. This 14 will be A-23. 15 MR. KISIELIUS: Mr. Examiner, I'm 16 going to interpose an objection here just for a 17 second because it's marked privileged and I need to 18 confer with counsel to -- 19 THE HEARING EXAMINER: Okay. 20 MR. KISIELIUS: We are withdrawing 21 any objection. 22 THE HEARING EXAMINER: Okay. Marked 23 A-23. So if there's no objection, I'll just go 24 ahead and offer it. 25 (COALITION'S EXHIBIT A-23 MARKED FOR IDENTIFICATION)</p>
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<p>1 whether I conclude all the conclusions that are in 2 the EIS are based solely on the information 3 contained in the EIS and it's the data and analysis 4 that we gathered -- that we put into the EIS which 5 includes the technical reports, appendices and the 6 material and the draft EIS, of course. But then 7 also the professional judgment and opinions of our 8 SDOT staff, including the EIS team, other folks in 9 our department, in the city and our consultant team 10 as well. 11 Q. Okay. So let's break my -- so let me 12 break my question into parts, then. You referred to 13 the experience of SDOT staff. 14 A. Uh-huh. 15 Q. But in terms of actual data or studies, 16 everything is in the EIS that supports the 17 conclusions. 18 A. To my knowledge, yes. 19 Q. So can we turn to one more? Did I offer 20 the matrix? I would like to do so, please. And 21 that was your A356 and 7. Am I at the right one? 22 THE ASSISTANT: I think it was marked 23 as A-22. 24 THE HEARING EXAMINER: Can you remind 25 me your exhibit number?</p>	<p>1 MR. KISIELIUS: I'm sorry. I still 2 haven't -- we're not objecting on the grounds of 3 attorney-client privilege. 4 THE HEARING EXAMINER: Okay. 5 MR. KISIELIUS: I don't know yet the 6 relevance. 7 THE HEARING EXAMINER: Okay. 8 BY MR. SCHNEIDER: 9 Q. So Mr. Mazzola, what is this document 10 behind tab 350.83? 11 A. It appears to be an email from me to some 12 folks on our EIS team about -- just forwarding an 13 email that I got from Eric Ellis, who's our design 14 manager. 15 Q. Okay. And I'd like to direct your 16 attention to the second paragraph of your email. 17 Would you read that to us, please? 18 A. Sure. Eric's response articulates nicely 19 what we had basically all understood. It's nice to 20 have the actual language and source information for 21 future reference. I think this will be useful in 22 testifying how we can say our design will be safe 23 even though it's at a pre-30 percent design. 24 Q. Okay. And so what is the actual language 25 that you're referring to that will be useful in</p>

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<p>1 justifying how you consider the design will be safe?</p> <p>2 A. So the useful -- the information is the</p> <p>3 next several pages of material that Eric has copied</p> <p>4 if I capture it all right from the -- it stops right</p> <p>5 away improvement manual and a state code about</p> <p>6 traffic engineers.</p> <p>7 Q. So I guess I'm not following why these</p> <p>8 excerpts are going to help justify how the design</p> <p>9 will be safe.</p> <p>10 A. What these excerpts help I think was just</p> <p>11 articulate better in kind of engineering and design</p> <p>12 terms for the EIS team that was drafting some of the</p> <p>13 language where we discuss how safety is included in</p> <p>14 our design because it's a slightly different</p> <p>15 vocabulary and so again, while we all have our</p> <p>16 different levels of expertise and so we can</p> <p>17 understand concepts about trail design and how</p> <p>18 organizing the public right-of-way, such as the</p> <p>19 instance of this project, can be beneficial for</p> <p>20 safety. It helps to have the actual language to be</p> <p>21 able to articulate that in the manner more</p> <p>22 effectively.</p> <p>23 Q. Well, I'm asking for specifics. Give us</p> <p>24 an example of language that justifies how you can</p> <p>25 say the design will be safe.</p>	<p>1 of the size and the scope and the cost of the</p> <p>2 project would be much greater than having an</p> <p>3 at-grade facility.</p> <p>4 THE HEARING EXAMINER: Mr. Schneider,</p> <p>5 just a moment. If I could ask you to adjust the</p> <p>6 microphone. This one's probably -- get it as close</p> <p>7 as you can. Two purposes for it. You are leaning</p> <p>8 back and it's a bit further out. I am asking that</p> <p>9 Miss *Della Sandroz also open the doors and we'll</p> <p>10 probably have a flood of some noise from the</p> <p>11 elevators as people are going home late on a Friday</p> <p>12 and maybe want reduced numbers that are here, but we</p> <p>13 need to get some cross-flow and air in here.</p> <p>14 MR. SCHNEIDER: But the clock is</p> <p>15 still running, Your Honor.</p> <p>16 THE HEARING EXAMINER: And I</p> <p>17 apologize. It is late on a Friday and I forgot</p> <p>18 (inaudible), so --</p> <p>19 MR. SCHNEIDER: Take your time.</p> <p>20 THE HEARING EXAMINER: Oh. We were</p> <p>21 talking about the elevator.</p> <p>22 BY MR. SCHNEIDER:</p> <p>23 Q. So SOT was going to invest in final</p> <p>24 design of the preferred alternative but not in a</p> <p>25 consideration of an elevated alternative that would</p>
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<p>1 A. Yeah. I'd have to go back and read</p> <p>2 through these pages because it's been a while since</p> <p>3 I sent this email and I'm not -- it's not fresh in</p> <p>4 my memory.</p> <p>5 Q. Okay. So you sent them an email on May</p> <p>6 2nd, correct?</p> <p>7 A. That's correct.</p> <p>8 Q. Okay. Which was three weeks before the</p> <p>9 FEIS was published?</p> <p>10 A. That's right.</p> <p>11 Q. And this was after you had already</p> <p>12 directed work to commence on the final design of the</p> <p>13 preferred alternative?</p> <p>14 A. I don't -- so I mean, we had decided on</p> <p>15 the preferred alternative at that time. I can't</p> <p>16 speak to kind of where we were in the process of</p> <p>17 advancing the design at that date.</p> <p>18 Q. You testified earlier this was after you</p> <p>19 had engaged critique.</p> <p>20 A. We had engaged critique by that time, but</p> <p>21 I don't know where they were in their kind of formal</p> <p>22 process.</p> <p>23 Q. So why did SDOT not consider an elevated</p> <p>24 alternative?</p> <p>25 A. Because to put it quickly, because sort</p>	<p>1 have removed all of the conflicts that we've been</p> <p>2 talking about in this hearing?</p> <p>3 A. I'm sorry. Could you repeat the</p> <p>4 question?</p> <p>5 Q. Well, I'm just -- I'm having trouble</p> <p>6 understanding why in light of SDOT's decisions that</p> <p>7 we've been talking about why at least considering an</p> <p>8 elevated alternative was too expensive?</p> <p>9 A. Excuse me. I don't mean to sound dense,</p> <p>10 but I'm not quite tracking your question.</p> <p>11 Q. Well, did you do any analysis of the</p> <p>12 actual cost of elevated alternative the way</p> <p>13 Mr. Bishop had done, correct?</p> <p>14 A. That's correct. We didn't do a formal</p> <p>15 estimation of what an elevated structure to complete</p> <p>16 the Missing Link would cost.</p> <p>17 Q. And you heard the testimony of</p> <p>18 Ms. Hershey that the city of Vancouver, British</p> <p>19 Columbia put an elevated alternative through an</p> <p>20 industrial area, correct?</p> <p>21 A. I did hear Miss Hirschey mentioned an</p> <p>22 elevated structure. I don't recall the details of</p> <p>23 the context of that structure.</p> <p>24 Q. So and the purpose of an EIS is to be a</p> <p>25 (inaudible) analysis, isn't it?</p>

<p style="text-align: right;">Page 1560</p> <p>1 A. No.</p> <p>2 Q. No? Correct me.</p> <p>3 A. So I think in fact there's language in</p> <p>4 the code that says the EIS is not meant to be a cost</p> <p>5 benefit analysis. It's meant to evaluate the</p> <p>6 potential impacts of various -- well, let me back up</p> <p>7 a little bit because as you know, there's different</p> <p>8 levels of super review and so it's meant on one hand</p> <p>9 to disclose the potential adverse impacts of a</p> <p>10 project and then in the case of EIS, it's meant to</p> <p>11 evaluate -- excuse me, evaluate different build</p> <p>12 alternatives against a no-action alternative to</p> <p>13 again identify and disclose those potential adverse</p> <p>14 impacts or significant adverse impacts as well.</p> <p>15 Q. Are you familiar with the rule of the</p> <p>16 reason (inaudible)?</p> <p>17 A. If you could refresh my memory, I'd</p> <p>18 appreciate it.</p> <p>19 Q. I'm just asking.</p> <p>20 A. I think I could understand what that's</p> <p>21 referring to, but I would need to re-read the exact</p> <p>22 code language or rule that you're referring to be</p> <p>23 100 percent sure.</p> <p>24 Q. It's not a code language.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 1562</p> <p>1 testimony.</p> <p>2 MR. SCHNEIDER: Well, we have a</p> <p>3 disagreement, then, on our recollections.</p> <p>4 MR. KISIELIUS: The only way to</p> <p>5 resolve it is playing the tape, finding out exactly</p> <p>6 what he said.</p> <p>7 MR. SCHNEIDER: I can rephrase the</p> <p>8 question.</p> <p>9 BY MR. SCHNEIDER:</p> <p>10 Q. Assuming that the studies that we've been</p> <p>11 talking about for days now and the testimony of the</p> <p>12 witnesses, are that two-way facilities because of</p> <p>13 the contraflow movement are more dangerous than</p> <p>14 one-way movements, and parenthetically you have</p> <p>15 acknowledged you were aware of the studies that were</p> <p>16 -- that said that as of the last hearing.</p> <p>17 A. Uh-huh.</p> <p>18 Q. Was there any discussion of whether the</p> <p>19 readers of the EIS ought to be alerted to the fact</p> <p>20 that the city was not even considering the safest</p> <p>21 alternatives?</p> <p>22 MR. KISIELIUS: And I'm going to</p> <p>23 object as to the form of the question. That was a</p> <p>24 very long and compound question with lots of --</p> <p>25 MR. SCHNEIDER: If the witness</p>
<p style="text-align: right;">Page 1561</p> <p>1 Q. Concept in the case law.</p> <p>2 A. Okay. Then if it's related to case law,</p> <p>3 then I'm -- I can imagine what it entails, but I'm</p> <p>4 not familiar from a legal standpoint.</p> <p>5 Q. So when you decided not to study any</p> <p>6 one-way cycle facilities, was there any discussion</p> <p>7 of whether you should alert the reader of the EIS to</p> <p>8 the safety implications of that choice?</p> <p>9 A. I -- in your question there, there's an</p> <p>10 assertion about a difference between safety of the</p> <p>11 (inaudible) trail that we're proposing as part of</p> <p>12 the project versus separated cycle tracks, which</p> <p>13 have -- serve a different purpose than the project</p> <p>14 that we're trying to construct.</p> <p>15 Q. Whether that's true or not, my question</p> <p>16 is specific to the safety issue and I understood</p> <p>17 Mr. Schultheiss to acknowledge several times that</p> <p>18 the one-way facility is safer than a two-way</p> <p>19 facility. So assuming that I heard that correctly</p> <p>20 from the City's own witnesses, was there any</p> <p>21 discussion of whether the EIS ought to tell the</p> <p>22 readers, the decisionmakers, that that choice had</p> <p>23 been made?</p> <p>24 MR. KISIELIUS: I'm going to object</p> <p>25 because he's mischaracterized the witness'</p>	<p style="text-align: right;">Page 1563</p> <p>1 doesn't understand it, he can ask me to rephrase it.</p> <p>2 MR. KISIELIUS: And I can object just</p> <p>3 to the form of the question when it's compound like</p> <p>4 that.</p> <p>5 THE HEARING EXAMINER: Can you try</p> <p>6 rephrasing the question or breaking it down?</p> <p>7 BY MR. SCHNEIDER:</p> <p>8 Q. So Mr. Mazzola, you were aware of the</p> <p>9 studies that talked about the inherent risks of</p> <p>10 contraflow movements on cycle paths, correct?</p> <p>11 A. I am aware that those studies are there,</p> <p>12 exist, yes.</p> <p>13 Q. And at the time that SDOT and you as</p> <p>14 SDOT's person in charge, made the decision not to</p> <p>15 even consider one-way cycle paths or one-way tracks,</p> <p>16 did you consider alerting the reader to the safety</p> <p>17 implications of that decision?</p> <p>18 A. So we did not include anything within the</p> <p>19 EIS that speaks to the safety implications one way</p> <p>20 or the other of a multi-use trail versus one-way</p> <p>21 bicycle facilities.</p> <p>22 MR. SCHNEIDER: Thank you. That's</p> <p>23 all.</p> <p>24 THE HEARING EXAMINER: I don't have</p> <p>25 any questions.</p>

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<p>1 MR. KISIELIUS: I have just a few 2 questions. 3 THE HEARING EXAMINER: Uh-huh. 4 REDIRECT EXAMINATION 5 BY MR. KISIELIUS: 6 Q. Mr. Mazzola -- 7 MR. SCHNEIDER: Excuse me. Before -- 8 I think I forgot to offer the last exhibit we talked 9 about. 10 THE HEARING EXAMINER: Yes, that's 11 correct, A-23 has not been admitted yet. 12 MR. SCHNEIDER: I offer it at this 13 time. 14 THE HEARING EXAMINER: Any objection 15 to A-23? 16 MR. KISIELIUS: No, none. 17 THE HEARING EXAMINER: A-23 is 18 admitted. 19 (EXHIBIT A-23 WAS ADMITTED INTO EVIDENCE) 20 MR. KISIELIUS: May I proceed? 21 THE HEARING EXAMINER: Please. 22 MR. KISIELIUS: Thank you. 23 BY MR. KISIELIUS: 24 Q. Mr. Mazzola, Mr. Schneider asked you 25 about the elevated structure and that as an</p>	<p>1 your role as project manager. Can you remind us 2 again how long you were in that position? 3 A. So it was a little over a year when -- 4 since the -- one of the original project managers, 5 Ron Sharf, and *Perchley had some health concerns 6 and stepped away, so I took over as the project lead 7 or project manager, but all that was happening at 8 that time was production of the environmental impact 9 statement until the last month or six weeks or so 10 after we decided on the preferred alternative and 11 then we started putting things in motion to further 12 design and deliver the project as I've mentioned. 13 Q. Okay. Can you talk about -- I know you 14 started describing this, but a little of what you 15 worked on as project manager during that time and 16 how it fit within your role or whether it fit within 17 your role as a (inaudible)? 18 A. In -- I'm sorry, during which specific 19 time? 20 Q. Project manager. 21 A. During project manager. So yes. For the 22 majority of that time, all that was occurring on the 23 project was the development of the environmental 24 impact statement and so that -- I was the 25 environmental lead anyway, so it was a natural fit</p>
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<p>1 alternative. Can you discuss whether that design 2 option meets the project objective in your opinion? 3 A. Whether or not it meets the project 4 objective would depend on several other factors, one 5 of them being how many access points there would be 6 along that structure. So given it's a -- nearly a 7 mile and a half long corridor, would an elevated 8 structure span that whole distance versus a segment 9 of that distance, there would need to be 10 ADA-accessible access points on either end and then 11 in order to meet one of our project objectives as I 12 mentioned earlier, the connection to the existing 13 non-motorized -- the existing and planned 14 non-motorized facilities within the Ballard 15 neighborhood that would require more access points 16 so folks coming in from the Ballard neighborhood 17 could access it and that would mean either more 18 ramps, ADA-accessible ramps or elevators which would 19 all either take up more space within the project 20 area, potentially into private property if those 21 kinds of structures couldn't fit within the right- 22 of-way, and they would also involve a much higher 23 cost to construct but then also to maintain, 24 particularly when you're talking about elevators. 25 Q. Okay. Mr. Schneider also asked you about</p>	<p>1 for me to just stay on as the project project 2 manager. 3 Q. Okay. I want to change topics. You 4 answered a question from Mr. Schneider about Judge 5 Rogers' decision and whether that played a role when 6 you were determining what design you needed for 7 purposes of environmental -- 8 A. That's right. 9 Q. I think you said it really didn't play a 10 role. Could you tell us what -- what was your 11 target in the design that you were aiming for, that 12 you needed for purposes of the EIS? 13 A. So we didn't have a numerical target in 14 terms of the percent level of design that we needed. 15 What we were looking for was did we have enough 16 information out of the design and then out of other 17 elements of the environment that are unrelated to 18 the advancement of the project design to be able to 19 determine what the potential adverse impacts are. 20 So again, some of those things that don't 21 rely on project design are just what's in the 22 existing environment now, whether it's traffic 23 volumes or number of potential parking spaces or 24 even, you know, going back to Fish and Wildlife, 25 what sort of natural habitat there is in the area</p>

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<p>1 and then just understanding what the nature of the 2 project itself is allows us to begin some of that 3 environmental review. 4 So really our target was did we have 5 enough information to be able to identify the 6 impacts and disclose them in the EIS. 7 Q. And I know I've asked this before. Just 8 to be absolutely clear -- 9 A. Sure. 10 Q. -- do you feel like you met that target 11 with the design that you looked at for purposes of 12 the environmental -- 13 A. Yes, I do feel like we met that target. 14 MR. KISIELIUS: Thanks. I have no 15 further questions. 16 THE WITNESS: Okay. 17 THE HEARING EXAMINER: Mr. Cohen? 18 MR. COHEN: I have none, Your Honor. 19 MR. SCHNEIDER: No, nothing further. 20 THE HEARING EXAMINER: Thank you, 21 Mr. Mazzola. 22 MR. COHEN: I would like to propose. 23 It's 4:15 Friday afternoon. We've had some informal 24 discussions among counsel and my understanding is 25 that the two remaining witnesses on the Respondent's</p>	<p>1 say, but there's also the issue of the request from 2 Ms. Ferguson about starting at 10:30. 3 MS. FERGUSON: I would rearrange my 4 schedule to accommodate. 5 THE HEARING EXAMINER: Okay. Thank 6 you. 7 MS. FERGUSON: You're welcome. 8 THE HEARING EXAMINER: Well, my 9 preference would be to go ahead today, but I can't 10 say that at the moment at least that I don't think 11 we could get done with our -- I assume we could get 12 done with ours in a couple of hours, but then there 13 will be, you know, recross of the rebuttal, so I 14 think we are pushing it a little bit. It may work 15 out fine, but I don't have a great deal of 16 confidence that it will. All right. 17 I think I'd like to gain a little bit 18 of time to make sure that we're panning ourselves to 19 the degree we can so that we're definitely finishing 20 on Tuesday, in which case we'd like to get started 21 with Mr. Trask. Even if we went to 45 minutes, 22 you're estimating it's probably going to take longer 23 than that, so he's going to have to come back 24 Tuesday. 25 What I would -- I'd like the idea of</p>
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<p>1 side are not going to take very much of Tuesday and 2 Mr. Brower, I think you told me you're looking at 3 like a half hour of rebuttal. 4 MR. BROWER: I certainly wouldn't 5 think it would be that little time. I'm expecting 6 somewhat longer than that. 7 MR. COHEN: Well, I'm wondering if we 8 could adjourn for today and resume on Tuesday 9 morning. 10 THE HEARING EXAMINER: I think so. 11 Let me confirm. We could have Mr. Trask and 12 Mr. Cheng. Mr. Trask, I think you indicated plus or 13 minus an hour? 14 MR. COHEN: I don't think it's going 15 to be -- my part of it will not be longer than an 16 hour. 17 THE HEARING EXAMINER: Right. Then 18 we have cross, so -- and then Mr. Cheng? 19 MR. CHENG: Half an hour at the most. 20 THE HEARING EXAMINER: Then cross. 21 So reasonable likelihood that we could get through 22 both of them in the first half of the day, which 23 would still leave -- how much time do you think 24 you're going to leave for redirect? 25 MR. COHEN: Well, it's hard for us to</p>	<p>1 cutting it short. I think that if it's not counsel, 2 it's certainly me that after five days, I'm more 3 tired, and I don't mean that to reflect on anybody's 4 capacity. I remain very impressed with the counsel 5 that I've seen in this hearing, but if we could do 6 half an hour, go to a quarter to and get started and 7 then come back on Tuesday to finish Mr. Trask, then 8 I think that that's the best we can do to use our 9 time. 10 MR. COHEN: I need to -- 11 THE HEARING EXAMINER: Do you want to 12 take a five-minute break? Yeah. We can -- okay. 13 (Brief recess.) 14 THE HEARING EXAMINER: Mr. Cohen? 15 MR. COHEN: Thank you. 16 BY MR. COHEN: 17 Q. Mr. Trask, would you please -- 18 THE HEARING EXAMINER: Please state 19 your name for the record. You've been here long 20 enough. 21 THE WITNESS: I've seen it all, 22 right? 23 THE HEARING EXAMINER: Yeah. 24 THE WITNESS: Blake Trask, last name 25 Trask, T-R-A-S-K.</p>

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<p>1 THE HEARING EXAMINER: Do you swear 2 or affirm the testimony you provide in today's 3 hearing is the truth? 4 THE WITNESS: Yes. 5 THE HEARING EXAMINER: Thank you. 6 THE WITNESS: Thank you. 7 BLAKE TRASK, 8 called as a witness herein having been first duly 9 sworn, was examined and testified as follows: 10 DIRECT EXAMINATION 11 BY MR. COHEN: 12 Q. Mr. Trask, would you please state your 13 name and address for the record? 14 A. My name is Blake Trask. The address 15 which I just memorized, the business address is 7787 16 62nd Avenue Northeast Seattle, Washington 98115. 17 Q. Congratulations. 18 A. Thank you. 19 Q. Tell us about your education. 20 A. I have a bachelor's degree from Colorado 21 College, the bachelor's in International Political 22 Economy, a master's degree from the University of 23 Washington, a master's in marine affairs, 24 essentially environmental policy and planning. 25 Q. And what's your current position?</p>	<p>1 seven non-profits in the region that are advocating 2 for the completion of the East Side rail corridor. 3 Q. Any other -- 4 A. As a trail. Sorry. 5 Q. Any other advisory committee roles? 6 A. I currently serve. I'm a mayoral 7 appointee of the New Seattle Oversight Committee and 8 other advisory, I'm on the Missing Link Design 9 Advisory Committee as well. 10 Q. Has your work at Cascade Bike Club 11 included bicycle route design and safety issues? 12 A. Yes, definitely. That's a big part of 13 what we do in terms of advocating for safe bicycling 14 not only in Seattle but also statewide. 15 Q. Does your work on the Missing Link Design 16 Advisory Committee entail route design and safety 17 issues? 18 A. Very much so. We're working in a 19 collaborative process with many different 20 stakeholders in the neighborhood and otherwise who 21 -- and we're going through Canada's questions with a 22 design team. There's a design consultant 23 specifically that's applied or that's reporting to 24 the Design Advisory Committee to really talk about 25 all the different things around trail widths, around</p>
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<p>1 A. I am the Senior Policy Director at the 2 Cascade Bicycle Club. 3 Q. How long have you held that position? 4 A. I began that position in January of 2016. 5 Q. And what are your previous positions from 6 the most recent back? 7 A. Prior to that, I was the state policy 8 director at Washington Bikes. That was from August 9 2011 until December 2015, at the time of the merger 10 between Washington Bikes and Cascade Bicycle Club. 11 Prior to that, I was a consultant at Triangle 12 Associates. I held that role from May 2007 until 13 July of 2011. 14 Q. Have you served on any public 15 transportation advisory committees? 16 A. Yes. From 2008 to 2012, I was on the 17 Seattle Bicycle Advisory Board. I served as chair 18 of that board for about two and a half years. 19 Prior? 20 Q. Sure. 21 A. Or others, I serve on the East Side Rail 22 Quarter Regional Advisory Committee. That's made up 23 of owners of the East Side rail corridor and I serve 24 in that capacity as a representative of the East 25 Side Greenway Alliance, which is a coalition of</p>	<p>1 intersections, different design treatments, all 2 those things about green paint, where does it 3 belong, et cetera, signage, you know, everything to, 4 you know, how do we address those kind of speed 5 issues that Mr. Schultheiss mentioned and was asked. 6 So it's pretty extensive and it's, you 7 know, it's really exiting. 8 Q. Any other -- any other projects on which 9 you've worked on design and safety issues for 10 Bicycle Transportation Quarters? 11 A. For sure and there are a number, but 12 another recent one is we're on a Vision Zero safety 13 project on Northeast 65th Street that goes from 14 about Ravenna Avenue over to Northeast 20th Avenue 15 and that involves a pretty currently chaotic 16 corridor where you have two informal lanes each way 17 during the peak hours and so it's hard for 18 pedestrians to cross. There's not defined space for 19 people who bike to use that corridor and it's 20 resulted in a number of serious injuries as well as 21 some really tragic deaths in the last couple years. 22 So in that capacity, you know, we're 23 working to provide input and advice not only on 24 behalf of some of the neighborhood members but also 25 on behalf of Cascade Bicycle Club to the Seattle</p>

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<p>1 Department of Transportation around lane widths, 2 travel lane widths, speed maximums, all those types 3 of design features that would be addressed in a 4 Vision Zero project like that. 5 Q. Are you familiar with the Missing Link 6 Project? 7 A. I am. 8 Q. What's the basis for that familiarity? 9 A. Professionally it really started at the 10 issues of the EDIS in June of 2016 and, you know, 11 they're representing Cascade Bicycle Club, it was a 12 relatively new issue for me, so we sat back and 13 looked at the four alternatives and I had my staff 14 planner really fully evaluate that because I wanted 15 to say, see, based on Cascade's previous positions 16 what was the right choice for us to make, and 17 through that -- through analysis, looking at the 18 different driveways, how many intersections were at 19 some of the different -- on some of the different 20 alternatives, you know, and our preference was 21 around the social alternative and from that, we went 22 through, you know, pretty extensive conversations 23 with members of the Ballard Appellants, the Ballard 24 Business Coalition. I can't remember the previous 25 name, and others to really reach out and have</p>	<p>1 to the study area, have you experienced the safety 2 conditions presented by cycling and walking on the 3 route of the preferred alternative? 4 A. Very much so. You know, I think biking 5 on that as Mr. Kazniki suggested, you know, can be 6 somewhat of a thrill ride and that's because of the 7 existing constraints with it, you know, the issues 8 with the fact that there are roadway panel seams 9 that are right where bicycles will be and those gaps 10 can be really big and that's where your tire can go 11 in. 12 Q. Are you a thrill seeker, Mr. Trask? 13 A. I am not and, you know, expressly my 14 interest in bicycling is to make bicycling really 15 boring. 16 Q. Did you do any specific work to prepare 17 for your testimony in this case? 18 A. I did. 19 Q. Tell me about that. 20 A. I decided to really go out and document 21 that, taking photos and some videos. 22 Q. Document what? 23 A. Document the current conditions and the 24 current safety issues as I've identified them 25 through my extensive walking and biking, driving,</p>
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<p>1 conversations about how we could get to yes. And so 2 that's been ongoing and, you know, now I'm involved 3 in the Design Advisory Committee so really 4 intimately involved in that and have done a lot of 5 different things around it. 6 Q. Have you walked the study area? 7 A. Yes, I've walked the study area now twice 8 out in back, one other time with the Design Advisory 9 Committee wearing fluorescent jackets because of the 10 safety issues around it, and I've intermittently 11 stopped and evaluated different places beyond just 12 those walks and so I've walked it kind of partially 13 many different times and through the study area. I 14 spent a lot of time there with my family. I'm a 15 Northwest Seattle resident, so I'm really familiar 16 with the area. 17 Q. Have you ever biked the study area? 18 A. Very much so and -- 19 Q. How many times? 20 A. Countless times, both recreationally as 21 well as in my (inaudible) as well as now 22 professionally to really get a sense of some of the 23 different features and defining characteristics of 24 the corridor itself. 25 Q. In your personal experience and exposure</p>	<p>1 just experiencing the neighborhood, et cetera. You 2 know, I thought it was really important to be able 3 to kind of take that evidence as I've seen it and be 4 able to display that. 5 Q. When did you do that work? 6 A. I did that on October 26th, 27th and 7 November 1st. 8 Q. So I'd like to refer you to -- I guess we 9 should mark some exhibits at this point. So Your 10 Honor, when we prepared these exhibits, we were 11 using a different nomenclature system. We thought 12 we were going to be CBC, so I understand now that we 13 will be marking Cascade exhibits as R -- 14 THE HEARING EXAMINER: Just pick up 15 where we are with that, yes. Thank you. 16 BY MR. COHEN: 17 Q. So I'd like to refer you, Mr. Trask, to 18 what is in your notebook as CBC4 and it's up on the 19 screen behind you. 20 THE HEARING EXAMINER: We'll mark 21 that as R-37. 22 MR. COHEN: R-37, thank you. 23 (EXHIBIT R-37 WAS MARKED FOR IDENTIFICATION) 24 BY MR. COHEN: 25 Q. Did you take that photograph?</p>

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<p>1 A. I took this photo at Northwest 20th 2 Avenue and Social Avenue Northwest. 3 Q. What does it depict? 4 A. You know, for me, it does a really nice 5 job of showing a couple people on bikes. They are 6 heading towards the completed section of the Burke- 7 Gilman Trail towards the East. They're right in 8 front of the (inaudible) Arena as you can see. 9 Salmon Bay Sand and Gravel is in the background and 10 you can see, you know, the parked cars were right up 11 against the shoulder adjacent to them so they're 12 driving or they're riding in the door zone 13 essentially. You can see the counter of the traffic 14 heading against them, so it's a constrained 15 environment and there's a lot of congestion there. 16 There is also (inaudible) interesting to 17 me is you can see a pretty big truck that's starting 18 to barrel down on them from behind and will be 19 passing them in just a few seconds. 20 Q. What is the door zone? 21 A. The door zone is that place where in this 22 situation and typically the driver's side door opens 23 and, you know, a door opens out about three or so 24 feet and typically people aren't really thinking 25 about that there might be a bicycle right adjacent</p>	<p>1 BY MR. COHEN: 2 Q. Exhibit R-38. Could you -- that's your 3 photograph? 4 A. I took this photo Northwest 20th Avenue 5 and Social Avenue Northwest. It's essentially I'm 6 on the other side of the street there and so this is 7 a little bit off of where you could see the bicycle 8 riders in the other photo, but what's interesting 9 about this is the informal driveway markings that 10 are used by landowners and businesses depicted by 11 that blue barrel, which it's a little confusing if 12 you're not aware or you're not really sure what's 13 going on there, where the driveway starts or stops, 14 which side the driveway might be on or what have 15 you. So there's real lack of definition in the 16 corridor and I think it's been defined as chaos by a 17 number of folks in this hearing. 18 I think another thing that's really 19 unique about this and you can see, you know, the car 20 is passing, giving a little bit of berth but still 21 not so much and that there's a lot of gravel that's 22 intruding into the roadway, so the bicycle rider is 23 currently on some of that gravel that's extruding 24 from the driveway and I've already mentioned this, 25 but you can see the panels of the street that kind</p>
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<p>1 to the car or the truck in these instances and so 2 they swing it out there and there's a bicycle there 3 and that bicycle rider runs right into the door and 4 it's the cause of a lot of injuries in the city 5 statewide and nationally and it's really an issue 6 that, you know, as a bicycle rider in my personal 7 experience I'm always thinking about when I'm on the 8 streets. 9 Q. In the bicycling community, has the term 10 become a verb? 11 A. Dooring? 12 Q. Yeah. 13 A. Yes. 14 Q. Okay. 15 A. Or to get doored. 16 Q. Yeah. Anything else in that photo you 17 want to -- 18 A. I think those are the key elements there. 19 Some of the other photos will depict other elements 20 of the existing conditions on the corridor and what 21 it's like to deal with it. 22 Q. I'm showing you what is labeled as CBC-6. 23 THE HEARING EXAMINER: Mark as R-38. 24 MR. COHEN: R-38. Thank you. 25 (EXHIBIT R-38 WAS MARKED FOR IDENTIFICATION)</p>	<p>1 of seam where the bicycle tire is, maybe just an 2 inch or two off of, and that varies through the 3 corridor in terms of its width. In this situation, 4 it might be okay. In other situations, it can be 5 kind of a hairy situation. 6 So the result of all these kind of 7 factors that come together, and you can see on the 8 far right side, that driver or that bicycle rider is 9 about to go up against parked cars, so when they get 10 into that situation, they really have no room to 11 maneuver if something happens, if they hit the 12 gravel, if they hit the seam, and they fly off, you 13 know, they're going to hit that moving car. They're 14 going to hit the parked car. Who knows what will 15 happen? And that's the existing situation. 16 MR. BROWER: I'm going to make two 17 objections. I'm not sure this is the same day as 18 the prior photograph just based on the rider's tire. 19 If you flip back when the rider's in what looks like 20 the winter clothes and then this one the rider's in 21 tee-shirt and shorts. It is Seattle and people do 22 that, but my bigger objection is the witness is 23 testifying to a lot of things that may or may not 24 happen but are not depicted in this photograph, so 25 if we could just keep the testimony to what this</p>

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<p>1 picture actually depicts instead of his 2 editorializing them.</p> <p>3 MR. COHEN: Your Honor, I'm not --</p> <p>4 THE HEARING EXAMINER: It's not the 5 same day, but they're marked different days, so I'm 6 not sure if it was intended that they would be the 7 same day.</p> <p>8 THE WITNESS: If I said it was the 9 same day, I said I was on the other side of the 10 street in a similar location and I apologize if I 11 said the same day.</p> <p>12 THE HEARING EXAMINER: Okay.</p> <p>13 MR. BROWER: And I guess my question 14 is are they even 10/26 is October 26 and 10/27 is 15 the next day in the fall. Maybe it was a beautiful 16 day, but I just want to make sure that we're talking 17 about the same month.</p> <p>18 THE WITNESS: I think you can see 19 that there's pretty nice blue sky there and I have 20 friends that wear shorts pretty often and when 21 they're bicycle riding, oftentimes people like to -- 22 they get a little hot. It was on October 26th.</p> <p>23 THE HEARING EXAMINER: This October 24 was -- And to your second aspect of the objection, 25 let's make sure that we're clarifying the testimony</p>	<p>1 Bridge and the interim condition of the Missing Link 2 Trail and this rider, you can see that there are 3 railroad tracks there and this is the situation 4 that's been described I think at least a couple 5 times in previous testimony with the place in which 6 people oftentimes crash over the Missing Link 7 tracks, the Bauer Terminal Railroad.</p> <p>8 This photo is representative of the issue 9 of bicycle rider --</p> <p>10 MR. BROWER: I'm going to object. 11 Now he's moving past what the photo depicts. If we 12 could ask some questions about what this represents, 13 that might be helpful instead of just having him 14 testify at will.</p> <p>15 MR. COHEN: I asked him what the 16 photo depicts and I -- so I -- I'll simply ask 17 Mr. Trask to answer more narrowly. However, I think 18 much of what he's providing here is the context for 19 why he took the photo at that location. So I think 20 it's meaningful to allow him to testify that this is 21 one of the places on the Missing Link that cyclists 22 have to navigate across railroad tracks and the 23 significance of that obstacle.</p> <p>24 MR. BROWER: Trust me, the day is 25 late and I don't want to make this go any longer</p>
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<p>1 at least as to whether it's something actually 2 depicted in here or whether you are testifying to 3 your experience as a cyclist or something along 4 those lines.</p> <p>5 BY MR. COHEN:</p> <p>6 Q. Mr. Trask, you said that the blue barrel 7 marks a driveway?</p> <p>8 A. As I understand it and the typical 9 conditions where there are driveways in that 10 corridor, it seems like that's the kind of 11 nomenclature of driveways on Social.</p> <p>12 Q. So you recall which side of the barrel 13 the driveway is on?</p> <p>14 A. In this situation, no.</p> <p>15 Q. Showing you what's marked as CBC-7. This 16 would be the Exhibit R-39, I think.</p> <p>17 (EXHIBIT R-39 WAS MARKED FOR IDENTIFICATION)</p> <p>18 A. Yes.</p> <p>19 Q. Thank you. Show me what's depicted here.</p> <p>20 A. I took this photo at Northwest 45th 21 Street and Social Avenue Northwest. It would be 22 best described for folks, the structure right in 23 front of the bicycle rider is essentially the Bauer 24 Bridge, so the bicycle rider is about to -- is 25 heading westbound about to go underneath the Bauer</p>	<p>1 than we have to, but that's why they require 2 questions to be asked instead of just having a 3 witness get up and talk.</p> <p>4 MR. COHEN: Your Honor, I'll --</p> <p>5 THE HEARING EXAMINER: I agree. 6 Let's break it up. The witness was essentially 7 speaking to what the photo illustrates or represents 8 with his testimony. If that can be elicited via 9 question, there's certainly no problem with 10 identifying through the witness' testimony for him 11 what this represents as far as conditions in the 12 project area.</p> <p>13 MR. COHEN: Thank you.</p> <p>14 BY MR. COHEN:</p> <p>15 Q. Okay. Did you complete your description 16 of what you're seeing there?</p> <p>17 A. I was about to say the photo depicts the 18 bicycle rider going at an oblique angle, which is 19 what is the cause of a lot of the crashes there and 20 is in my personal experience what I try to avoid is 21 going at that kind of angle. You try to go across 22 it. Unfortunately just by the interim nature and 23 everything else, because there's a railroad track 24 there, you can't control that situation as well as 25 you would -- one would like, and so that's the --</p>

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<p>1 that's what happens.</p> <p>2 Q. I'm showing you what is labeled as</p> <p>3 CBC-13. I think are we up to R-40?</p> <p>4 THE HEARING EXAMINER: Yes, we are.</p> <p>5 Thank you.</p> <p>6 (EXHIBIT R-40 WAS MARKED FOR IDENTIFICATION)</p> <p>7 BY MR. COHEN:</p> <p>8 Q. Describe what that photo depicts.</p> <p>9 A. I was standing in the same location as I</p> <p>10 took that photo at Northwest 45th Street and Social</p> <p>11 Avenue Northwest and a car -- the travel lane right</p> <p>12 behind me is an eastbound travel lane. That car was</p> <p>13 going eastbound, did a U-turn in the interim bicycle</p> <p>14 facility and drove straight through the bicycle</p> <p>15 facility, just to show the current conditions.</p> <p>16 Q. So, the portion of the lane that the car</p> <p>17 is occupying, which direction would the cyclist be</p> <p>18 traveling if the car --</p> <p>19 A. The car was in the westbound bicycle</p> <p>20 lane.</p> <p>21 Q. Westbound bicycle lane. Thank you.</p> <p>22 Exhibit marked CBC-8, R-41, I think. What does this</p> <p>23 show?</p> <p>24 (EXHIBIT R-41 WAS MARKED FOR IDENTIFICATION)</p> <p>25 A. I took this photo at Northwest Brennan</p>	<p>1 give you much room to maneuver.</p> <p>2 Q. Which direction is this guy going?</p> <p>3 A. This is East-Southeast.</p> <p>4 Q. Thank you.</p> <p>5 A. I guess towards the Fremont neighborhood.</p> <p>6 Q. Thank you. Exhibit marked CBC-11. Now</p> <p>7 it's going to be Exhibit R-43. What does this show?</p> <p>8 (EXHIBIT R-43 WAS MARKED FOR IDENTIFICATION)</p> <p>9 A. I took this photo at Northwest 22nd</p> <p>10 Avenue and Social Avenue Northwest. It was in the</p> <p>11 morning of October 27th and it appeared to be a son</p> <p>12 and his father probably going to school and they're</p> <p>13 using a corridor on the sidewalk and, you know, in</p> <p>14 my experience, if I was to be taking my daughter</p> <p>15 there, I would be using the sidewalk, too.</p> <p>16 Q. Uh-huh. What happens at the end of the</p> <p>17 block to that sidewalk? Do you know?</p> <p>18 A. Typically there's not much -- there</p> <p>19 aren't code lamps. There's not -- there haven't</p> <p>20 been the ADA improvements like other parts of the</p> <p>21 city, so, you know, they would probably get off</p> <p>22 their bike to get onto the street and if they kept</p> <p>23 going on the sidewalk, have to get off and back on</p> <p>24 again.</p> <p>25 Q. Thank you.</p>
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<p>1 Place and Social Avenue Northwest. The bicycle</p> <p>2 rider is headed South, East-Southeast, and you can</p> <p>3 see the bicycle rider is on what is maybe a foot and</p> <p>4 a half shoulder with gravel on it. To the right in</p> <p>5 the dirt, there are pretty significant potholes if</p> <p>6 they veer there, and there's vehicle traffic</p> <p>7 adjacent to them that just passed them at this</p> <p>8 location.</p> <p>9 (EXHIBIT R-42 WAS MARKED FOR IDENTIFICATION)</p> <p>10 Q. Thank you. Next photograph labeled</p> <p>11 CBC-10, Exhibit R-42? What does that show?</p> <p>12 A. I took this photo at Northwest 22nd</p> <p>13 Avenue and Social Avenue Northwest. You could see a</p> <p>14 bicycle rider hugging that kind of shoulder or as we</p> <p>15 might say the desire line of this corridor, and, you</p> <p>16 know, this provides a real good perspective of how</p> <p>17 they're right adjacent to the parked cars that are</p> <p>18 really hugging the shoulder, how they're in the door</p> <p>19 zone explicitly and with, you know, traffic on the</p> <p>20 other side, they don't have much room to maneuver.</p> <p>21 And personally I've experienced that.</p> <p>22 Q. You've experienced what?</p> <p>23 A. Being in pretty tight quarters with motor</p> <p>24 vehicle traffic passing me on my left and parked</p> <p>25 cars, you know, hugging that shoulder. It doesn't</p>	<p>1 Showing you a photograph labeled CBC-12,</p> <p>2 Exhibit R-44. What does this depict?</p> <p>3 (EXHIBIT R-44 MARKED FOR IDENTIFICATION)</p> <p>4 A. I took this photo at Northwest Vernon</p> <p>5 Place and Social Avenue Northwest. It's right in</p> <p>6 front of Sand and Gravel's retail operations on the</p> <p>7 North side of Social and you can see a bunch of</p> <p>8 pallets that are (inaudible) into the public right-</p> <p>9 of-way and it appears that there's been kind of some</p> <p>10 sort of ad hoc clinging thing right on the roadway.</p> <p>11 This is where I would ride as a bicyclist in this</p> <p>12 situation, you know, on my route hugging the</p> <p>13 shoulder, all of a sudden, there's debris in the</p> <p>14 roadway and I'll be forced into the traffic,</p> <p>15 depending on what kind of cars or trucks presents</p> <p>16 the situation.</p> <p>17 Q. Have you been by that location on other</p> <p>18 occasions?</p> <p>19 A. Yes.</p> <p>20 Q. Is that scene with the pallets a one-time</p> <p>21 problem or is it recurrent?</p> <p>22 A. It's recurrent. This one didn't depict</p> <p>23 oftentimes there's a freeze sign there, so if folks</p> <p>24 just want to pick those pallets up, so I've seen it</p> <p>25 repeatedly.</p>

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<p>1 THE HEARING EXAMINER: And we'll stop 2 there. 3 THE WITNESS: Thank you. 4 MR. COHEN: Oh. Your Honor, could I 5 offer into evidence Exhibits 37 through -- R-37 6 through 44? 7 MR. BROWER: No objection. 8 THE HEARING EXAMINER: R-37 through 9 44 are admitted. 10 (EXHIBITS R-37 THROUGH R-44 WERE ADMITTED INTO 11 EVIDENCE) 12 THE HEARING EXAMINER: All right. 13 Again, you can leave. Feel free to leave items 14 here, not personal items, just items for the record, 15 and your notebooks, et cetera. I have on my list as 16 updates for our record, there will be a substitute 17 image from Miss Hershey's report of the conflict 18 diagram because it was shrunken, not the whole 19 thing, and then Miss Ellig's list of driveways 20 broken down so we know which were subdriveways as 21 were related, and then we're replacing R-36 with a 22 color copy with staples, we stapled. Is there 23 anything else that -- for the record that we need to 24 clear up? Okay. 25 We'll start at 9:00 a.m. and one</p>	<p>1 (Due to block pagination, 2 nothing omitted 3 pages 1594 through 1699.) 4 --oOo-- 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
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<p>1 thing I'll ask the counsel is since we'll be 2 concluding that day is be prepared to discuss 3 closing argument and your schedule and what your 4 needs are for that. I will also want some time at 5 the end to discuss with you issues and legal matters 6 as it were for your closing to try to give you some 7 guidance as to questions that I have, not expecting 8 it that day, but so that you know at least some 9 things that would be helpful to me in your closing 10 arguments. 11 Is there anything else that we need 12 to address before we adjourn for the day? 13 MR. COHEN: No. 14 THE HEARING EXAMINER: Thank you 15 everyone for a dedicated week and good counsel, good 16 witnesses. I look forward to seeing you on Tuesday. 17 (Hearing adjourned.) 18 --oOo-- 19 20 21 22 23 24 25</p>	

1 CERTIFICATE

2

3 STATE OF WASHINGTON )  
4 ) ss.  
5 COUNTY OF KITSAP )

6

7 I, the undersigned Washington Certified  
8 Court Reporter, hereby certify that the foregoing  
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18 IN WITNESS WHEREOF, I have hereunto set my  
19 hand and 17th day of December 2017.

20

21

/s/ Cynthia A. Kennedy, RPR

22

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24

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