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1 SEATTLE, WASHINGTON
 2 DECEMBER 5, 2017
 3 MORNING SESSION
 4 --oOo--
 5 THE HEARING EXAMINER: Back on the
 6 record for W-17-004 on our second day -- sorry, last
 7 day of hearing on December 4 -- no, that's the wrong
 8 year, I knew it wasn't the 4th -- 5th.
 9 I have a couple of preliminary items,
 10 and then I'll ask counsel if they have any of the
 11 same.
 12 On Friday, I believe it was Friday
 13 morning, I indicated to counsel I was reconsidering
 14 an order or decision that I made on an objection,
 15 that in the context -- and this was on the third day
 16 and testimony was being -- cross was being provided
 17 by Ms. Ellig, by Mr. Brower, and it was on hearing
 18 day three, part five, of the recording, at 5148, if
 19 anyone cares to go there and reexamine that. It's
 20 all on the record for the website.
 21 In that this is -- and I'm going to
 22 give a rough idea of what I collected as the
 23 testimony, but this isn't meant as a verbatim of
 24 what Ms. Ellig was saying.
 25 But the Appellant's attorney had

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1 asked Ms. Ellig about the safety analysis of the
 2 FEIS, and specifically if she had the same memory of
 3 whether she had read current literature on bicycle
 4 safety and design safety. And then specifically
 5 went on to ask her; at the deposition she had
 6 indicated she did not remember what she had read or
 7 when, and asked whether she still had the same
 8 memory.
 9 She indicated that she did not,
 10 because she had reviewed the documents to refresh
 11 her memory.
 12 At that time the Appellant attorney
 13 asked, "Did the City attorney ask you to do that?"
 14 An objection was raised based on the
 15 attorney-client privilege. At that time, frankly
 16 because I was a little concerned about the witness
 17 being directed to provide specific testimony, I
 18 sustained -- overruled the objection.
 19 On review of the record and case law
 20 concerning the attorney-client privilege, I'm
 21 reversing my ruling on that objection and sustain
 22 the objection. The attorney-client privilege is
 23 essentially sacrosanct, with only clearly defined
 24 exceptions, such as the crime fraud exception that
 25 this potential attorney-client communication does

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1 not fall within.
 2 She said no anyway, so I'm not
 3 sure -- no harm no foul, but just wanted to make
 4 sure that the record is clear on that with concern
 5 to the attorney-client privilege ruling.
 6 Lastly, there was a, what I'll call a
 7 hanging issue on a line of questioning raised by
 8 Appellants concerning City action in the --
 9 following the preferred alternative issuance of the
 10 EIS, and any action that they've taken following the
 11 issuance of the EIS in the context of the preferred
 12 alternative.
 13 Objections, several objections were
 14 raised to that line of questioning at that -- during
 15 that. I already have sustained the objection on the
 16 basis that that line of questioning was not related
 17 to an issue raised by the Appellants in their
 18 appeal. There was a -- Appellants had only pointed
 19 to a broad statement in their introduction, and so
 20 it wasn't a specific issue. And so I've already
 21 ruled on that. I also allowed the testimony for
 22 purposes of the appeal.
 23 I deferred my ruling on objections
 24 concerning the question -- of that line of
 25 questioning bringing in evidence to support an

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1 argument for -- I don't have a better way of terming
 2 this, but maybe for the purpose of impeaching
 3 essentially the City's integrity in the context of
 4 the deference the City is owed for their analysis.
 5 Rather than simply leaving that
 6 hanging out there and having the parties have to
 7 brief in closing, both on the objection and then on
 8 whatever result might come from that, in addition to
 9 also the substance then of the argument, I'm going
 10 to overrule the objection and I will allow that
 11 testimony in for the limited purpose of that --
 12 supporting that argument by Appellants. And simply
 13 direct that the parties spend better time, frankly,
 14 on briefing whether that issue -- whether that
 15 evidence goes to the merits of the argument. I'm
 16 not sure.
 17 The deference is called for in code
 18 and by state law, so whether that is eroded by some
 19 action by the City in the context of the code is
 20 something I'll look to you to brief for me in the
 21 closing.
 22 That is the only preliminary -- we
 23 had some other exhibit items, but maybe I'll just
 24 leave that to you, whether you were going to report
 25 back to me about it on this morning or not.

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<p>1 Anything else from the parties?</p> <p>2 MR. KISELIUS: We're prepared to</p> <p>3 report back on some of the exhibit items.</p> <p>4 THE HEARING EXAMINER: Excellent.</p> <p>5 MR. KISELIUS: The first was the</p> <p>6 replacement of the Pedestrian Master Plan with a</p> <p>7 color copy correctly.</p> <p>8 THE HEARING EXAMINER: Yes.</p> <p>9 We've had multiple analysis of our</p> <p>10 FTR Gold. We're finding that we are not the only</p> <p>11 ones. Apparently our courthouse next door has this</p> <p>12 problem. And this is ubiquitous with recording</p> <p>13 systems around the state, which is why some parties</p> <p>14 bring their own recorders.</p> <p>15 But I've certainly talked to the</p> <p>16 hearing examiner about maybe having some type of</p> <p>17 redundant system as well, which would reduce the</p> <p>18 stress.</p> <p>19 MR. KISELIUS: I've just handed the</p> <p>20 Examiner a replacement. It's got both the actual</p> <p>21 plan and the appendices in color correctly oriented.</p> <p>22 THE HEARING EXAMINER: Remind me</p> <p>23 which exhibit number this was.</p> <p>24 MR. KISELIUS: It is exhibit, I</p> <p>25 believe it's R-36.</p>	<p>1 So it was focused on the Salmon Bay</p> <p>2 Sand & Gravel, and Covich Williams driveways were</p> <p>3 the two that are depicted as being five in the case</p> <p>4 of Salmon Bay Sand & Gravel, and two in the case of</p> <p>5 Covich Williams. For EIS purposes the City</p> <p>6 described them as one.</p> <p>7 But again, the purpose of this is to</p> <p>8 identify the corresponding driveway numbers</p> <p>9 designated by the Coalition and confirming that with</p> <p>10 Ms. Ellig's testimony, those are the places at which</p> <p>11 she clari -- that EIS collected information.</p> <p>12 In addition, on the specific issue of</p> <p>13 driveway counts -- so there is various categories</p> <p>14 depicted here; the type, the site -- design and site</p> <p>15 distance considerations, the vehicle counts.</p> <p>16 For purposes of the vehicle counts,</p> <p>17 there is appended to this images prepared by IDAX,</p> <p>18 the company that collects vehicle counts, when they</p> <p>19 went about the car counting piece to show the</p> <p>20 various access points where these two sets of</p> <p>21 driveways, these were produced in response to</p> <p>22 discovery. We did not name these as an exhibit, but</p> <p>23 we hadn't anticipated the Examiner's request, and we</p> <p>24 thought would be helpful for that limited purpose.</p> <p>25 So that's -- we're hoping, first of</p>
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<p>1 THE HEARING EXAMINER: Okay. Yes.</p> <p>2 MR. KISELIUS: We'll double-check</p> <p>3 right now.</p> <p>4 THE HEARING EXAMINER: You're right.</p> <p>5 MR. KISELIUS: The other item that</p> <p>6 was in the City's court to address was a response to</p> <p>7 request from the Examiner related to a list related</p> <p>8 to the driveways that Ms. Ellig testified about.</p> <p>9 And I think we just want to first</p> <p>10 articulate what our understanding of that request</p> <p>11 was. As we set to work on that, it occurred to us</p> <p>12 that maybe we weren't exactly clear, so we want to</p> <p>13 be sure that we're giving the Examiner the</p> <p>14 information that the Examiner's requested.</p> <p>15 So what Ms. Ellig has prepared --</p> <p>16 what we understood the request to be was a list of</p> <p>17 those driveways along the preferred alternative</p> <p>18 where the Coalition's diagram describes them as</p> <p>19 multiple driveways; in our list they're described as</p> <p>20 one that considered all of those access points.</p> <p>21 So we've got a list that shows those</p> <p>22 with corresponding driveway numbers and references</p> <p>23 to the places within EIS where those are addressed,</p> <p>24 along with -- and I might want to start handing this</p> <p>25 out and we can talk about them.</p>	<p>1 all, that we address the question that the Examiner</p> <p>2 asked, and then secondly, presuming that's the case,</p> <p>3 we would submit this as a response to the Examiner's</p> <p>4 request for more information.</p> <p>5 THE HEARING EXAMINER: I think you</p> <p>6 have. Just to -- for full clarity, what I</p> <p>7 understood essentially is, part of how the case has</p> <p>8 developed, is that there are multiple driveways that</p> <p>9 are identified by the Appellants. Part of what they</p> <p>10 were saying is that some of these were not analyzed</p> <p>11 by the City.</p> <p>12 The City is saying, well, we did</p> <p>13 because -- but they're just lumped into a single</p> <p>14 driveway. And so I needed to clarify where there</p> <p>15 may have been a discrepancy or not. So to the</p> <p>16 degree we've clarified that, that's what I was</p> <p>17 looking for.</p> <p>18 MR. KISELIUS: Thank you.</p> <p>19 THE HEARING EXAMINER: Have you had a</p> <p>20 chance to look at it?</p> <p>21 MR. SCHNEIDER: Well, superficially.</p> <p>22 I would request that we deal with making this an</p> <p>23 exhibit after the break, so we can have a little</p> <p>24 time to look at it.</p> <p>25 MR. KISELIUS: That's fair. This is</p>

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1 the first they're seeing it because we were working
 2 on it over the weekend.
 3 THE HEARING EXAMINER: Okay.
 4 MS. GRANATT: And part of the
 5 Coalition has replacement pages for Exhibit A3 for
 6 that page 211, the figure was too small. So we
 7 just -- it's double-sided, so we just printed out
 8 replacement pages for those two (inaudible).
 9 MR. KISELIUS: Thank you.
 10 Ms. Granatt, are (inaudible) replace witness --
 11 FEMALE: I'm going to go ahead and do
 12 that now.
 13 MR. KISELIUS: Thank you.
 14 THE HEARING EXAMINER: Okay. That
 15 was everything I had on my list.
 16 Is there anything else that we need
 17 to address before we continue with Mr. Trask?
 18 MR. KISELIUS: Nothing from us.
 19 THE HEARING EXAMINER: Mr. Brower or
 20 Schneider; anything? Okay.
 21 Mr. Trask, you're still under oath.
 22 And Mr. Cohen, it's your witness.
 23 Thank you.
 24 MR. COHEN: Thank you, your Honor.
 25 RICHARD TRASK,

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1 a witness, having been previously sworn,
 2 was examined and testified as follows:
 3 DIRECT EXAMINATION
 4 (Continued)
 5 BY MR. COHEN:
 6 Q. I want to make sure that we stopped at the
 7 right place.
 8 Mr. Trask, what's shown on the screen, I
 9 believe has been marked as Exhibit R44.
 10 Did you testify about what this depicts on
 11 Friday?
 12 A. Friday feels like a lifetime ago. I think
 13 I pretty accurately characterized what I saw and the
 14 issues in my personal experience on Shilshole Avenue
 15 Northwest when one is heading, what would be
 16 westbound in this direction. And just the issue
 17 being is as a bicycle rider my typical line on
 18 Shilshole is going to be off the shoulder right
 19 essentially where that bright orange pylon is, and
 20 that's going to push me out into the line of traffic
 21 causing safety issues.
 22 Q. Okay. Thank you.
 23 Showing a photograph marked as CBC14, I
 24 believe we're up to Exhibit R45.
 25 THE HEARING EXAMINER: Yes, we'll

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1 mark this as R45.
 2 (Exhibit No. R45 marked.)
 3 MR. COHEN: Thank you.
 4 Q. (By Mr. Cohen) Did you take this
 5 photograph, Mr. Trask?
 6 A. Yes, I did. I took this photo at
 7 Northwest 20th Avenue and Shilshole Avenue Northwest
 8 on October 27th.
 9 Q. Tell me what it depicts.
 10 A. You know, as I was walking around I was
 11 trying to really observe and see different
 12 situations that really resonated with me. And as I
 13 was kind of looking more to the west, I looked over
 14 and there was a lot of traffic and congestion
 15 starting to build right in front of Salmon Bay
 16 Sand & Gravel.
 17 And what I realized is that -- and I think
 18 Mr. Nerdrum described this as some of the retail
 19 operations, they sell big bags of aggregate and
 20 stick them in the back of the truck. A big bag of
 21 aggregate literally spilled out onto Shilshole
 22 Avenue Northwest and obstructed traffic.
 23 And this situation was just probably a
 24 minute or two after I realized what was happening,
 25 and there were employees from Salmon Bay Sand &

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1 Gravel in the roadway without reflective clothing,
 2 no flaggers. You can see an individual wearing, I
 3 think a New Orleans Saints jersey number 12, running
 4 out with a cone in the middle of the road to stop
 5 traffic, as the employees were furiously shuffling
 6 aggregate off of Northwest -- Shilshole Avenue
 7 Northwest.
 8 To the right of that number 12 jersey you
 9 can barely discern that there is a red backpack, and
 10 that's a bicycle rider that's just passing through
 11 there.
 12 And right before I took that photo there
 13 were a couple of other bicycle riders coming through
 14 this, you know, informally signal -- or marked area
 15 with a lot of congestion, a lot of kind of just -- a
 16 confusing situation.
 17 And, you know, this was, out of the few
 18 hours I was there, just to witness something like
 19 this, I think really points to some of the chaos
 20 that can happen. And the informal traffic control
 21 that occurs by employees without any sort of
 22 flagging, and what kind of hazards that presents for
 23 people walking or biking in a situation like that.
 24 Q. What hazards does it present for people
 25 walking or biking?

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1 A. I mean, you know, I want -- in that type
 2 of situation I want professionals that are actually
 3 managing the traffic when there is a situation like
 4 that. If there is more debris in the roadway,
 5 that's going to cause issues if I'm on my bike in
 6 terms of slipping, et cetera. You know, the lack of
 7 traffic control there. I'm not sure what a car --
 8 how a car is going to maneuver in that situation if
 9 they're confused.

10 So it, again, adds to the confusion and
 11 the chaos that I experience pretty well every time I
 12 traverse Northwest -- Shilshole Avenue Northwest.

13 Q. Thank you.

14 Showing you what has been marked as CBC15.
 15 I believe we're up to Exhibit R46.

16 (Exhibit No. R46 Marked.)

17 THE HEARING EXAMINER: Yes.

18 Q. (By Mr. Cohen) Did you take that photo?

19 A. I took this photo at Northwest 20th Avenue
 20 and Shilshole Avenue Northwest just about -- you
 21 know, I was walking toward the site, and at this
 22 point you can see that the dampness on Shilshole
 23 Avenue Northwest, the cones around it, as these
 24 employees from Salmon Bay are shoveling this
 25 aggregate. The truck on the left was the truck that

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1 was holding that aggregate. And to the right of the
 2 railroad cars, on the far right of the photo, you
 3 can see those big bags. That was one of those bags
 4 that spilled onto Shilshole Avenue Northwest
 5 causing, like I say, the confusion and issues
 6 related to traffic control.

7 Q. Is this photograph related to the incident
 8 you described a minute ago?

9 A. Yes, it is. I'm sorry for not being clear
 10 about this.

11 This was taken just probably a minute
 12 after I took the first photo. They were able to,
 13 like I say, sweep the aggregate off the mainline of
 14 Shilshole Avenue Northwest onto the shoulder by this
 15 point. But this just depicts, you know, they were
 16 pretty furious -- not furious, but furiously
 17 cleaning it up, to their credit.

18 (Exhibit No. R47 Marked.)

19 Q. (By Mr. Cohen) Showing you what's been
 20 marked as CBC16, now Exhibit R47, could you describe
 21 what's going on in this photo?

22 A. I took this photo at 20th Avenue Northwest
 23 and Shilshole Avenue Northwest. I am looking to the
 24 southeast in this photo. And you can see two
 25 joggers right on the shoulder of Shilshole Avenue

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1 Northwest. You can actually see -- I think I
 2 mentioned before the informal driveway markings. In
 3 this case it appears not to be big barrels, but
 4 instead giant tires that demarcate a driveway for
 5 one of the businesses there.

6 But for me, and this is something I really
 7 witnessed when I was on one of the designer advisory
 8 committee walks, is it's almost as if there is a
 9 ghost trail there now, in the sense that there are
 10 users, there are people, I've seen strollers out
 11 there, I've seen joggers --

12 MR. BROWER: I'm going to object.
 13 We're getting way past what this picture depicts.

14 Is there a question on the table
 15 other than what this depicts? It depicts people
 16 running on the shoulder.

17 MR. COHEN: I think that he's
 18 describing what it depicts and why it's significant
 19 to the safety of the street.

20 THE HEARING EXAMINER: So he's
 21 starting to go into a design committee? You're
 22 still on those lines.

23 THE WITNESS: No, I'm saying in my
 24 experience being there and walking there, I've seen
 25 joggers and I've seen all different types of users.

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1 And this depicts that very well, that there are two
 2 joggers using and dodging in and out of the cars.

3 MR. BROWER: Mr. Trask, excuse ms.
 4 I'm going to object again.

5 If there is a question about that,
 6 that's one thing, but he was asked to describe what
 7 this depicts. This picture shows two people running
 8 on October 27 along the side of the road. And he's
 9 described the tires that are there and the cars that
 10 are parked.

11 But if there is a question about his
 12 experience and how it relates to safety, that would
 13 be a different subject. So maybe counsel could ask
 14 him a question.

15 THE HEARING EXAMINER: Yes. I'll
 16 sustain that. And so essentially I think where we
 17 left on Friday we're doing two questions, one is
 18 what's there and what's your experience, or
 19 something along those lines.

20 MR. COHEN: Thank you.

21 THE HEARING EXAMINER: For the
 22 record, (inaudible) it clear. Thank you.

23 Q. (By Mr. Cohen) Mr. Trask, is this scene
 24 representative of situations you've encountered
 25 while biking or walking Shilshole Avenue?

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1 MR. BROWER: Objection; lack of
 2 foundation.
 3 MR. COHEN: I disagree.
 4 Your Honor, in the early part of his
 5 testimony Mr. Trask testified that he has walked the
 6 preferred alternative a number of times and biked it
 7 innumerable times. I think there is a foundation to
 8 ask --
 9 THE HEARING EXAMINER: What's the
 10 lack of foundation of -- lack of foundation of what?
 11 MR. BROWER: Just wanted to make sure
 12 there was a connection to in your experience about
 13 what; I guess is the question. Biking and walking,
 14 I've walked it and biked it as well, I think most
 15 people here have. But you're asking now -- are you
 16 asking to give an opinion about the safety, or just
 17 what he's experienced?
 18 MR. COHEN: I am asking --
 19 THE HEARING EXAMINER: It was about
 20 his experience.
 21 MR. BROWER: Okay. Then withdrawn.
 22 MR. COHEN: Thank you.
 23 Q. (By Mr. Cohen) Is this scene
 24 representative of circumstances you've encountered
 25 walking and biking Shilshole Avenue?

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1 A. Yes.
 2 Q. Showing you what's been marked as CBC17
 3 Exhibit R48, what's going on in this picture?
 4 (Exhibit No. R48 Marked.)
 5 A. I took this photo at Northwest 20th Avenue
 6 and Shilshole Avenue Northwest in front of
 7 (inaudible) Marina.
 8 It depicts another jogger right adjacent
 9 to the tracks. It also shows three lines of cars,
 10 maybe four lines parked deep in that area.
 11 As I was taking this photo, it was rather
 12 challenging just to get a sight line on the jogger,
 13 just because of the number of cars in that area.
 14 And in my experience walking multiple times and
 15 biking innumerable times, this is a typical
 16 situation.
 17 Q. (By Mr. Cohen) Where is Shilshole Avenue
 18 in relationship to that runner?
 19 A. It is to the left of this photo, I guess
 20 behind the big truck that is right on the left side
 21 of this photo. So we're sort of looking to the
 22 southeast. And, again, Shilshole is to the north.
 23 So this is where the railroad tracks are between the
 24 businesses and Shilshole Avenue Northwest.
 25 Q. Thank you.

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1 MR. COHEN: Your Honor, we also have
 2 a video that Mr. Trask took. And if you'll give me
 3 a minute, I will get it up.
 4 THE HEARING EXAMINER: While you're
 5 doing that, do you intend to offer R45 through 48?
 6 MR. COHEN: I do. I honestly can't
 7 remember, did we offer the preceding slides on
 8 Friday?
 9 THE HEARING EXAMINER: I believe we
 10 did. I have them marked as admitted.
 11 MR. COHEN: Okay, thank you.
 12 Then at this time I'll offer R45
 13 through R48 into evidence.
 14 THE HEARING EXAMINER: Any objection?
 15 MALE SPEAKER: No objection.
 16 THE HEARING EXAMINER: R45 through
 17 R48 are admitted.
 18 (Exhibit No. R45 Admitted.)
 19 (Exhibit No. R46 Admitted.)
 20 (Exhibit No. R47 Admitted.)
 21 (Exhibit No. R48 Admitted.)
 22 MR. COHEN: Thank you.
 23 Q. (By Mr. Cohen) Mr. Trask, do you
 24 recognize the first image of the video that is shown
 25 on the screen?

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1 A. Yes, I do.
 2 MR. COHEN: I'd like to designate
 3 this exhibit as R49.
 4 THE HEARING EXAMINER: The video.
 5 MR. COHEN: The video.
 6 THE HEARING EXAMINER: Um-hmm.
 7 MR. COHEN: And your Honor, you have
 8 a flash drive --
 9 THE HEARING EXAMINER: Yes.
 10 MR. COHEN: -- of that video in your
 11 packet, and the parties have copies of it.
 12 (Exhibit No. R49 Marked.)
 13 Q. (By Mr. Cohen) So Mr. Trask, I'm going
 14 to run this video, and I'm going to run it at half
 15 speed so that you can narrate it.
 16 A. Um-hmm.
 17 Q. And I'd like you to just tell us what you
 18 are encountering.
 19 MR. COHEN: It's very short, your
 20 Honor.
 21 A. You just skipped ahead.
 22 Q. (By Mr. Cohen) Oh, I skipped ahead,
 23 great. All right.
 24 A. I took this photo on November 1. This is
 25 me bicycling to the, I guess east southeast on

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<p>1 Shilshole Avenue Northwest. To the left is the</p> <p>2 Salmon Bay Retail to the right is the Wholesale.</p> <p>3 You can see one of the Ready Mix trucks pulling out</p> <p>4 of Salmon Bay. One of the ostensibly employees</p> <p>5 jaywalking across the street in that situation.</p> <p>6 And, you know, the Salmon Bay truck is</p> <p>7 starting to accelerate, but I'm catching up to it</p> <p>8 pretty fast. I think this is a really good kind of</p> <p>9 almost mash up of all the photos I've taken, in that</p> <p>10 you can really see how -- where my line of travel is</p> <p>11 is right on that scene. You can see aggregate and</p> <p>12 different things like that that start to protrude</p> <p>13 into the roadway.</p> <p>14 On the right you can see how I'm really</p> <p>15 pretty close to that door zone in this situation,</p> <p>16 but it gets even worse moving forward.</p> <p>17 In addition, coming up, you can start to</p> <p>18 see some of the informal driveway markings</p> <p>19 represented by the barrels on the right. And there</p> <p>20 is like four, maybe five coming up.</p> <p>21 So the question is is where are the gaps,</p> <p>22 what are the driveways. And I guess that's best</p> <p>23 informed for me by where the cars are parked and</p> <p>24 where they're not parked. Maybe that's the best</p> <p>25 driveway marking.</p>	<p>1 that's right there, I'm hearing something, so I'm</p> <p>2 slowing down because that RV is protruding into the</p> <p>3 shoulder. And so it doesn't look like it, but I'm</p> <p>4 slowing down as a Salmon Bay truck passes me. It's</p> <p>5 maybe a little hard to show there, but that's pretty</p> <p>6 close when you're on a bicycle to see a situation</p> <p>7 like that.</p> <p>8 And again, I'm approaching another RV</p> <p>9 which is protruding really right up into where I'm</p> <p>10 feeling comfortable going, so I'm slowing down as</p> <p>11 I'm looking backwards, because, again, I'm hearing</p> <p>12 something and still moving forward, but trying to</p> <p>13 get around the RV and making sure that I'm safe, as</p> <p>14 well as the fact that on my right there, again, is</p> <p>15 another driveway that I'm approaching and trying to</p> <p>16 make sure that I'm operating safely.</p> <p>17 One of the other issues -- well, and what</p> <p>18 happened right here is another truck passes me. And</p> <p>19 so I think part of what this shows in this video for</p> <p>20 me is all the different factors that I have to</p> <p>21 consider for my safety, while taking the current</p> <p>22 conditions in Shilshole Avenue Northwest from</p> <p>23 dooring to the roadway scene to the poor sight lines</p> <p>24 to the really big trucks that are passing me on my</p> <p>25 left. And the fact that I don't really have very</p>
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<p>1 In addition to that, with those cars so</p> <p>2 close to the driveways, for me, as a bicycle rider,</p> <p>3 it presents a lot of sight line concerns and issues</p> <p>4 as I'm continuing to traverse this.</p> <p>5 And you can see the variability between</p> <p>6 the roadway scene between the shoulder and the</p> <p>7 mainline of Shilshole Avenue Northwest that I'm</p> <p>8 hugging.</p> <p>9 At this point I'm very clearly in the door</p> <p>10 zone. So if there is anything like a car that flies</p> <p>11 its door open in front of me, I don't really have</p> <p>12 very much room to maneuver, definitely to my right.</p> <p>13 And to my left with traffic that is going to be</p> <p>14 continuing to come up, that's going to be an issue.</p> <p>15 It's a little bit slow here. Just missed</p> <p>16 a couple of bicycle riders that were just passing me</p> <p>17 headed westbound on this route as well. So it does</p> <p>18 show the usage, especially west of Shilshole Avenue</p> <p>19 Northwest.</p> <p>20 Another motor vehicle is now passing me,</p> <p>21 which gives you a sense, that one luckily is giving</p> <p>22 wide berth, that's not always the case, especially</p> <p>23 when there are cars pulling out and they don't have</p> <p>24 that much room to maneuver.</p> <p>25 In this situation, right now, with an RV</p>	<p>1 much room to maneuver in a pretty constrained</p> <p>2 corridor under the current conditions.</p> <p>3 Q. Thank you, Mr. Trask.</p> <p>4 MR. COHEN: I'd like to offer</p> <p>5 Exhibit R49 into evidence.</p> <p>6 MR. BROWER: No objection.</p> <p>7 THE HEARING EXAMINER: R49 is</p> <p>8 admitted.</p> <p>9 (Exhibit No. R49 Admitted.)</p> <p>10 Q. (By Mr. Cohen) Mr. Trask, have you ever</p> <p>11 experienced the Missing Link study area from the cab</p> <p>12 of a large truck?</p> <p>13 A. Yes.</p> <p>14 Q. Describe that circumstance for us.</p> <p>15 A. Sure. In January 2016 we were really</p> <p>16 working hard to have, I think conversations with all</p> <p>17 different stakeholders.</p> <p>18 Q. Let me stop you a second.</p> <p>19 A. Yes.</p> <p>20 Q. January 2016 or --</p> <p>21 A. 2017, excuse me. 2017.</p> <p>22 January 2017 we were -- this was in</p> <p>23 between the DEIS and the FEIS. And at that point</p> <p>24 the City was approaching, I think all the different</p> <p>25 parties. And we were very interested in having</p>

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1 conversations with different stakeholders to try to
 2 kind of -- try to come to some sort of common
 3 ground.
 4 And for me and my approach, that's what I
 5 tend to do, that's my professional background is in
 6 interest-based negotiations, working for Triangle
 7 Associates, that's what I did, try and find that
 8 kind of getting to yes place.
 9 And as a part of that we reached out to
 10 Warren Aakervik of Ballard Oil to say, hey, we would
 11 love to spend some time in your shoes or, in this
 12 case, your truck cab. And over a period of a couple
 13 of weeks we were able to schedule a time to do that.
 14 I went out with a former board member of
 15 Cascade, as well as myself, and we met Warren at
 16 about 7:00 in the morning at Ballard Oil.
 17 MR. BROWER: I'm going to object
 18 again. I mean it's a simple yes or no question; did
 19 you have -- have you driven in a truck. And now
 20 we've got another soliloquy going on with no
 21 questions.
 22 And also, Mr. Trask is dipping his
 23 toe into the Design Advisory Committee world, which
 24 we've all agreed we are not allowed to talk about
 25 based on the motion of the City and Cascade, because

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1 those conversations led directly to the formation of
 2 the Design Advisory Committee. So if we could just
 3 leave it to did you ride in the truck and what you
 4 saw, that would be helpful.
 5 THE HEARING EXAMINER: So I'll
 6 sustain the objection. We do want to make sure that
 7 the testimony is directed at the question that was
 8 asked.
 9 MR. COHEN: Thank you, your Honor.
 10 Q. (By Mr. Cohen) Was this ride taken in
 11 the context of the Design Advisory Committee?
 12 A. No.
 13 Q. And describe what you saw on your journey
 14 with Mr. Aakervik?
 15 A. I got to ride on the second half of the
 16 trip from Harbor Island back to Ballard Oil. And
 17 for me it was instructive. What I was able to see
 18 was the ways in which a truck operator like that
 19 operates around motor vehicles, how he thinks about
 20 operating around people walking and biking, and the
 21 design issues that he encounters on a daily basis
 22 around the City of Seattle. And also how he thinks
 23 about trail issues and how his thinking about
 24 trails, and separation between people walking and
 25 biking and trucks has changed over time.

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1 Q. What kind of truck was it?
 2 A. It was a WB-67, the very one that we saw
 3 in some of the earlier videos.
 4 Q. And did you turn into any driveways on
 5 Shilshole Avenue while you were out?
 6 A. We crossed over -- we did not specifically
 7 turn into driveways. We did go over Northwest 24th.
 8 In the study area, we did -- I followed
 9 them out of a driveway. As I was driving behind on
 10 the way out, we drove out of 26th Avenue Northwest,
 11 which has been described, and I was able to watch
 12 them take that wide berth into opposing traffic.
 13 And before -- outside of the study area,
 14 we did cross the Burke-Gilman Trail, the existing
 15 Burke-Gilman Trail, and he was able to describe some
 16 of his concerns around sight line issues; this is
 17 right to the west of the Burke-Gilman -- on the
 18 Burke-Gilman Trail just west of somewhere Salmon Bay
 19 Sand & Gravel keeps a lot of their Ready Mix trucks
 20 that cross the trail on a daily basis.
 21 Q. And did your experience with Mr. Aakervik
 22 inform or change your perspectives on the safety
 23 risks of Shilshole Avenue or the preferred
 24 alternative?
 25 A. It gave me a real sense of the sight line

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1 issue -- not the sight line -- but the blind spot
 2 issues, and how a driver like that has to live in
 3 their mirrors, and the concerns that a driver has
 4 about design issues around the City and how we best
 5 implement the different moto plans, including the
 6 bicycle plan and the freight plan.
 7 Q. Thank you.
 8 Did you hear the testimony from the
 9 Coalition's experts about the safety risks of a
 10 multipurpose two-way trail?
 11 A. I did.
 12 Q. In your experience, as a cyclist and a
 13 bicycle safety advocate, do you believe that any one
 14 type of bicycle path or lane will always be the
 15 safest design for an urban cycle loop?
 16 A. What that takes is a real approach around
 17 context sensitive design, context sensitive
 18 meaning -- and something that I think that
 19 Mr. Schultheiss mentioned earlier in this
 20 proceeding, was the idea that you really have to
 21 take the context of the situation, you know, where
 22 it's located. There isn't a cookie-cutter solution
 23 to one type of facility or trail or other type of
 24 design or not.
 25 And in this situation that's critically

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1 important because this is -- this is book ended by a
 2 multiuse trail on either side.
 3 And in, you know, my experience, to change
 4 that continuity or flow and to restrict it for a
 5 smaller number of users, just bicycle riders instead
 6 of walkers, bikers, joggers, roller skaters,
 7 whoever, that's limited. And in this context that's
 8 not appropriate.
 9 The second thing that Cascade Bicycle Club
 10 always, and has really evolved over the last decade,
 11 is the importance of separation between motor
 12 vehicle users and people walking or biking or
 13 otherwise.
 14 And, you know, above the current
 15 conditions, which don't permit that separation and
 16 don't provide those choices, a multiuse trail in
 17 this context is very appropriate and much safer than
 18 the current conditions.
 19 Q. And is that statement specific to this
 20 location? Are you making a generic statement about
 21 the relative safety of multiuse two-way trails
 22 versus any other design?
 23 MR. BROWER: Objection; lack of
 24 foundation. Counsel himself has characterized
 25 Mr. Trask as a bicycle safety advocate. There is no

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1 proof that he's an engineer or a planner or has any
 2 professional experience that would warrant giving an
 3 opinion as to the relative safety of one design of
 4 trail to another.
 5 Mr. Trask, by his own admission, does
 6 public engagement in policy advocacy, and now he's
 7 being asked to opine as to the safety of one design
 8 over another.
 9 So if we can maybe lay a foundation
 10 as to why he would be -- if he has an engineering
 11 degree or a planning degree or he's a traffic
 12 engineer, because those are the people who he's now
 13 critiquing, but he's an advocate.
 14 MR. COHEN: Your Honor, may I be
 15 heard on that one.
 16 I anticipated this objection. And I
 17 am proposing to ask Mr. Trask to provide his opinion
 18 as a lay witness with respect to a question on which
 19 he has deep experience, and there is precedent in
 20 this proceeding for the delivery of lay opinion
 21 testimony in specifically this circumstance.
 22 I want to give you a couple of
 23 examples from earlier in the hearing.
 24 THE HEARING EXAMINER: I don't think
 25 you need to. I'll overrule the objection. It's lay

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1 testimony. I understand your objection is whether
 2 he's testifying as an expert, and he's not here for
 3 that premise.
 4 MR. BROWER: With that explanation,
 5 and if he's going to testify to his lay opinions
 6 based on the facts within his knowledge, which is
 7 the proper use for lay opinion, we're fine with
 8 that.
 9 THE HEARING EXAMINER: Thank you.
 10 MR. COHEN: Thank you.
 11 Q. (By Mr. Cohen) So back to my question,
 12 Mr. Trask.
 13 A. Yes, sir.
 14 Q. Did you -- do you believe that any one
 15 type of design for accommodation of bicycles in an
 16 urban environment will always be safer than another,
 17 based on your experience?
 18 A. No.
 19 Q. So with respect to Shilshole Avenue, I
 20 understand you favor the two-way multiuse trail over
 21 alternative designs?
 22 A. Yeah. It's consistent with the 20-mile
 23 Burke-Gilman Trail. And in that sense, you know, it
 24 accommodates more users rather than a narrower
 25 design option that doesn't accommodate different

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1 types of users beyond bicycles.
 2 And I can't, you know, I'm a bicycle
 3 safety advocate, but in this -- we're in this weird
 4 situation where we're actually suggesting that all
 5 users should be accommodated, not just bicycles.
 6 Q. I understand. In your experience, in this
 7 quarter, do you believe that the two-way multipurpose
 8 trail has safety benefits?
 9 A. Yes.
 10 Q. What are they?
 11 A. I mean the safety benefits especially over
 12 the current conditions are numerous. There
 13 continuous smooth pavement that doesn't have the
 14 seams, that we experience in the current conditions,
 15 will be really important. The clearly delineated
 16 driveways that provide real visual queues, not only
 17 for users of the trail, but also for users of the
 18 roadways that would be entering those driveways and
 19 crossing the trail, I think present multiple
 20 benefits.
 21 The fact that I, as a bicycle rider, will
 22 not be subject to entering -- or being in the door
 23 zone of a pretty congested corridor is really
 24 critical. The design elements around the trail in
 25 the FEIS that provide clear sight lines at driveways

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1 is really critical. The ability for me to create
 2 what essentially is a multiuse trail, which is for
 3 giving to the users and allows for me, as a bicycle
 4 rider, as a jogger, space to operate.
 5 In that video you saw that there were
 6 places where I was essentially slotted through. I
 7 didn't have -- if something went wrong, I didn't
 8 really have an opportunity to maneuver out of that.
 9 In this D -- in FEIS, I have five feet of
 10 clear space between the trail and the roadway.
 11 There are, you know, squaring up of the crossing of
 12 the railway tracks is incredibly important --
 13 Q. What do you mean by that?
 14 A. Well, the photo that was entered into the
 15 exhibit, really clearly shows that, because a lot of
 16 the design considerations that are made and because
 17 it's an interim trail facility, that the natural
 18 kind of way that a bicycle rider will cross that is
 19 not the safest, it's at an oblique angle.
 20 The trail design, as proposed in the FEIS,
 21 really clearly sets out -- squares up that crossing.
 22 And that's really important because, you know, as a
 23 bicycle safety advocate, when I say I'm working on
 24 this project, the number one thing people say is I
 25 broke my collarbone on that or I know someone that

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1 did that. And even talking with, you know, Paul
 2 Nerdrum, when I've spoken with him, he's fallen on
 3 those tracks himself. And it's -- squaring that up
 4 and making that crossing safer is really critical.
 5 Q. So is it your view that the preferred
 6 alternative will be safer than the existing
 7 condition?
 8 A. Most definitely so.
 9 Q. For the reasons you noted above?
 10 A. Yes.
 11 Q. When Cascade -- did Cascade comment on the
 12 Draft Environmental Impact Statement?
 13 A. We did.
 14 Q. And in those comments did Cascade favor
 15 one alternative over another?
 16 A. Yes, sir.
 17 Q. Which alternative did Cascade comment in
 18 favor of?
 19 A. We -- as I mentioned, I was relatively new
 20 to this in terms of managing Cascade's work on this.
 21 I asked my planner to take a step back and to fully
 22 evaluate all four alternatives, because knowing of
 23 how long this has taken, I wanted to make sure that
 24 we were looking for the safest, the simplest, and
 25 the most connected trail alternative out of the

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1 DEIS.
 2 After we went through that, we saw that,
 3 because of the lack of intersections, which, you
 4 know, in two-way travel are more dangerous than
 5 driveways, because of the improved sight lines,
 6 because of the intuitiveness and the direct -- it's
 7 a shorter distance for all users, we determined that
 8 the South Shilshole alternative would be the best
 9 alternative of the four.
 10 Q. And is the South Shilshole alternative
 11 identical to what has been presented in the FEIS as
 12 the preferred alternative?
 13 A. No.
 14 Q. How do they differ?
 15 A. The critical element is, and I think it's
 16 been mentioned in the proceedings, is not 54th
 17 Street, was part of the South Shilshole alternative
 18 in the DEIS, it is now not. Instead, the trail now
 19 moves up to Market, Northwest Market Street, between
 20 24th Avenue Northwest and the Ballard Locks.
 21 And that was not -- that was not our --
 22 what we wanted, that was a compromise. And I would
 23 say that was a compromise largely borne out of my
 24 experience in riding in Warren Aakervik's truck, of
 25 seeing some of the issues that he faced in that

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1 segment between 24th Avenue and the Ballard Locks.
 2 And the issues that I thought were really credible,
 3 even though we wanted the trail there --
 4 MR. BROWER: Objection.
 5 A. -- that was a compromise.
 6 MR. BROWER: How does this go to the
 7 adequacy of an EIS? Relevance. Talking a
 8 compromise that is not part of this case. There is
 9 no testimony about it. It is completely irrelevant
 10 to the adequacy of an EIS.
 11 MR. COHEN: I don't agree. My reason
 12 for asking the question was I wanted to elicit the
 13 fact that the Cascade Bicycle Club supports the
 14 preferred alternative, even though it requires -- or
 15 it is less optimal for cyclists than South
 16 Shilshole.
 17 And I think that is relevant to the
 18 issues in this case, because each of the Coalition's
 19 witnesses testified about impacts to their business.
 20 But I believe the City's responsibility is to take a
 21 bigger picture perspective. And that the objective
 22 of an EIS is to -- is to outline the issues for the
 23 entire City, not for any one user of the facility.
 24 So I think it's meaningful to know
 25 that stakeholders in the bicycling community support

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1 an option that is not their preferred option,
 2 because it addresses the needs of other users.
 3 THE HEARING EXAMINER: I'm going to
 4 sustain the objection. I understand the purpose of
 5 bringing it in, but I've already ruled against the
 6 Appellants bringing in evidence as to what their
 7 opinion of Cascade's opinion was on the project.
 8 And so what I've tried to do is keep,
 9 to the degree we can, keep that out, because it
 10 isn't relevant to the analysis performed by the
 11 City.
 12 The objective, as framed by the City,
 13 I don't believe is an issue in the appeal from the
 14 Appellants. So I know that the issue you're trying
 15 to elicit is at issue between the parties, but I
 16 don't believe it's at issue in this evidentiary
 17 hearing.
 18 MR. COHEN: All right, your Honor.
 19 Thank you. Then I have no further questions.
 20 CROSS-EXAMINATION
 21 BY MR. BROWER:
 22 Q. Good morning, Mr. Trask. You're not a
 23 planner; are you?
 24 A. I have a master's degree in environmental
 25 policy and planning.

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1 Q. That wasn't --
 2 A. I do not have my AICPs. I'm not a
 3 certified planner, no.
 4 Q. And you've never worked as a professional
 5 planner; have you?
 6 A. Can you help define what a professional
 7 planner is?
 8 Q. What's confusing about that? I read your
 9 transcript of your deposition where you seem to have
 10 the same problem over and over again with simple
 11 questions in your deposition transcript.
 12 Is there something confusing about what a
 13 professional planner does?
 14 MR. COHEN: I'm going to object to
 15 Mr. Brower's speaking objection. He is welcome to
 16 ask questions of the witness. I'd just as soon he
 17 not be abusing the integrity or the accuracy of the
 18 witness's answers.
 19 THE HEARING EXAMINER: It's an
 20 argumentative tone of --
 21 MR. BROWER: Certainly.
 22 THE HEARING EXAMINER: -- questions,
 23 so if you could just rephrase the question, please.
 24 Q. (By Mr. Brower) What don't you
 25 understand -- what do you think a professional

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1 planner does?
 2 A. As a -- well, a planner contributes to a
 3 lot of different -- a planner can be a consultant
 4 working for a jurisdiction making plans and they can
 5 be part of a team that assists in making that plan
 6 or authoring that plan. And in that context, you
 7 know, I'm -- I've worked as a consultant authoring
 8 different plans around Endangered Species Act
 9 recovery. Been a participant in facilitating
 10 stakeholder groups that, you know, help neighborhood
 11 planning.
 12 So I've been around a lot of that. And so
 13 for me, and my kind of more expansive version of
 14 what a planner is, I think that satisfies that.
 15 If a planner is someone who's a primary
 16 author of a comprehensive plan, I have not done
 17 that.
 18 Q. And you've never been a primary author or
 19 even a contributing author to an EIS; have you?
 20 A. No.
 21 Q. And you've never been a primary author or
 22 contributing author to a SEPA checklist either; have
 23 you?
 24 A. I have not.
 25 Q. So really your work at Triangle was

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1 community engagement and managing community
 2 involvement in these plans; isn't that correct?
 3 A. And how can stakeholders come to consensus
 4 on recommendations around plans and, you know, like
 5 neighborhood planning advisory committees, which you
 6 were co-chair of one that I was a consultant for.
 7 Q. Yes.
 8 A. Where you were chair of the planning
 9 commission.
 10 Q. I was. I served for six years. Thank you
 11 for remembering that.
 12 A. Yeah.
 13 Q. And I have the same background in the
 14 degrees you do.
 15 A. Um-hmm.
 16 Q. Well, you've never worked as an engineer;
 17 have you?
 18 A. I have not.
 19 Q. And you've never worked as a
 20 transportation designer; have you?
 21 A. No.
 22 Q. And do you know who Brock Howell is?
 23 A. I do.
 24 Q. And did he have pretty much your same job
 25 while he was at Cascade?

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1 A. No, he did not.
 2 Q. What was his job?
 3 A. He was a manager on the advocacy team.
 4 Q. And aren't you -- you're the senior policy
 5 director; aren't you?
 6 A. Right. I run a policy team. So he would
 7 have worked for me if we had ever overlapped, which
 8 we did not.
 9 Q. Got it.
 10 And your job is primarily advocacy work;
 11 isn't it?
 12 A. My job is to make it safer for people who
 13 bike, which involves elements around advocacy, yes.
 14 We do a lot more than just advocacy.
 15 Q. Mr. Trask, just please answer my
 16 questions.
 17 During your tenure at Cascade, no one's
 18 conducted a safety study regarding (inaudible)?
 19 A. No. No one -- sorry. No one at Cascade
 20 has. I can't speak on behalf of other agencies or
 21 entities.
 22 Q. If you could go back to your photograph,
 23 which has been marked as Exhibit R48. Do you have
 24 that binder? It's tab 12.
 25 A. Yeah.

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1 Q. Did you speak to that jogger when you took
 2 his picture?
 3 A. I did not.
 4 Q. Do you know the jogger?
 5 A. I do not.
 6 Q. Do you know if he works at one of the
 7 local businesses?
 8 A. I do not.
 9 Q. Do you notice he's wearing work boots or
 10 hiking boots?
 11 A. I do.
 12 Q. And you said during your testimony, I
 13 think you said over and over again that you think
 14 this area is chaotic, that it's chaos, and
 15 confusing; is that correct?
 16 A. Yes.
 17 Q. And wouldn't creating a multiuse trail
 18 invite vulnerable users into this environment; yes
 19 or no?
 20 A. Can you help me understand the question a
 21 little bit more, because I think there are some
 22 assumptions within that question that I don't feel
 23 comfortable answering yes or no.
 24 Q. Vulnerable users, the rest (inaudible)
 25 currently, don't they -- excuse me, the rest of

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1 Burke-Gilman Trail currently; don't they?
 2 A. So people walking, biking. If you're
 3 characterizing vulnerable users as trail users, yes.
 4 Q. How would you characterize a vulnerable
 5 user?
 6 A. I think -- I think you're right on. I'm
 7 trying to be clear about what your definition of
 8 vulnerable user is. Just so we're on the same page,
 9 I want a common level of understanding.
 10 Q. Mr. Trask, I get to ask the questions.
 11 What is your understanding of a vulnerable
 12 user?
 13 A. My understanding is a vulnerable user is
 14 someone who is walking, biking in the context of a
 15 trail, skate boarding, someone that's probably
 16 vulnerable to a motor vehicle, a truck, or
 17 otherwise, yes.
 18 Q. Wouldn't it also include young children?
 19 A. By definition, yes.
 20 Q. And maybe elderly as well?
 21 A. Um-hmm.
 22 Q. And maybe people who are not similarly
 23 abled as others?
 24 A. Most definitely.
 25 Q. Okay. And those types of users currently

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1 use the remainder of the Burke-Gilman Trail?
 2 A. I have not done a census, but anecdotally
 3 in my experience I see all sorts of different people
 4 using the trail.
 5 Q. And you participated in some bicycle
 6 counts on other sections of Burke-Gilman Trail done
 7 for the Washington State Department of
 8 Transportation; didn't you?
 9 A. Yes.
 10 Q. And did you observe children, elderly, or
 11 other people using the trail?
 12 A. I can't recall specifically. It was
 13 pretty early for kids when I did it, 6:00 in the
 14 morning, but yeah, I've seen -- I've seen that.
 15 Q. So is it your testimony that kids do not
 16 use the Burke-Gilman Trail?
 17 A. No.
 18 Q. So they do use the Burke-Gilman Trail.
 19 A. Yes.
 20 Q. Okay. And this is going to be a multiuser
 21 trail through -- along Shilshole Avenue.
 22 A. Yes.
 23 Q. Which you have described as chaotic,
 24 confusing, and chaos.
 25 A. Yes.

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1 If I could add something.
 2 Q. No, thank you.
 3 A. Okay.
 4 Q. Did you take any photographs of the
 5 alternative routes that were discussed in the Draft
 6 or Final EIS?
 7 A. Can you respond -- can you answer -- can
 8 you ask the question again.
 9 Q. Did you take any photographs of any of the
 10 alternative routes that were discussed in the Draft
 11 or Final EIS?
 12 A. I have taken different photographs around
 13 the study area.
 14 Q. But you didn't include them in your book
 15 here of the exhibits.
 16 A. No.
 17 Q. And did you take any video of you riding
 18 on other of those alternative routes?
 19 A. Not -- not as an exhibit list, no.
 20 Q. Wouldn't a two-way multiuser trail located
 21 on one of those other routes create a clearly
 22 delineated pathway?
 23 A. Can you -- can you ask the question again?
 24 Q. What don't you understand?
 25 A. I'm just asking you to repeat the

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1 question.
 2 Q. Certainly. Wouldn't a multiuser trail on
 3 one of the other alternative routes also create a
 4 clearly delineated route?
 5 A. Our DEIS analysis also shows they would
 6 (inaudible) intersection (inaudible).
 7 Q. Mr. Trask, that's not my question. Please
 8 just -- your counsel can ask you or questions when
 9 I'm done; this is a yes or no question.
 10 Wouldn't a multiuser trail on another
 11 route create a delineated route along that
 12 alternative?
 13 A. It would create a delineated route.
 14 Q. And wouldn't it, if it was a separated
 15 multiuse path, wouldn't it also get you as a rider
 16 out of the door zone?
 17 A. Without looking at design ish -- the
 18 design of that, I would hope that the designer would
 19 do such a thing.
 20 Q. Let's assume it's going to be the same
 21 design that we have in preferred alternative, which
 22 you say will get you out of the door zone, wouldn't
 23 taking that design and putting it on another route
 24 also get you out of the door zone?
 25 A. Assuming -- assuming what you said,

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1 likely, yes.
 2 Q. And so, again, assuming that we take the
 3 same design and we move it over to a different
 4 route, wouldn't it also provide clear sight lines
 5 for you?
 6 A. Our DEIS analysis --
 7 Q. Mr. Trask, again --
 8 A. No.
 9 Q. It would not. Why not?
 10 A. Because the alternatives had -- the
 11 alternatives really clearly showed proximity to
 12 buildings and the urban environment. And the urban
 13 context in the other alternatives was, in our DEIS
 14 review, showed that there was a real difference
 15 there.
 16 Q. For all of the other alternative routes?
 17 A. The other alternative routes were not as
 18 optimal, even where Shilshole is much closer to the
 19 buildings than South Shilshole.
 20 Q. What about up by Market Street, aren't
 21 there sight long distance issues on Market Street?
 22 A. I think that was part of what we were
 23 saying is -- which part of Market Street? Sorry.
 24 Q. On the part where the trail is currently
 25 proposed to be located.

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1 A. Between 24th and the Locks; are you
 2 asking?
 3 Q. Yes.
 4 A. Yeah, there are those issues, but, you
 5 know, that's what a compromise design ultimately
 6 gets you.
 7 Q. So the --
 8 A. There are a lot of different issues where
 9 (inaudible) where to put --
 10 (Speaking at the same time.)
 11 Q. Mr. Trask, I'm going to --
 12 A. -- of environment.
 13 Q. Mr. Trask, I'm going to ask you -- I
 14 realize you're an advocate and you're trying to push
 15 your advocacy here, but if you could please just
 16 answer my questions, I would appreciate it.
 17 So my question was this. Assuming you
 18 take the trail and you move it up to a different
 19 route, is it your testimony that it would not
 20 provide clear sight lines; yes or no?
 21 A. I'd like you to unpack that, because there
 22 are a lot of assumptions in that yes or no. I think
 23 there is a lot of nuance to this issue. And less
 24 than being a bicycle advocate, I'm trying to be
 25 accurate in my response.

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1 Q. You don't have a commercial driver's
 2 license; do you?
 3 A. I do not.
 4 Q. And you did not personally evaluate the
 5 safety of the other alternatives; did you?
 6 A. Can you help me understand what that
 7 means?
 8 Q. No, Mr. Trask --
 9 A. Okay.
 10 Q. -- I think your testimony is clear enough.
 11 Thank you.
 12 MR. BROWER: I've got nothing else.
 13 THE WITNESS: Thank you.
 14 THE HEARING EXAMINER: City?
 15 MR. KISELIUS: We have nothing for
 16 the witness.
 17 THE HEARING EXAMINER: Redirect?
 18 MR. COHEN: Just a couple of
 19 questions, your Honor.
 20 REDIRECT EXAMINATION
 21 BY MR. COHEN:
 22 Q. Mr. Brower asked you whether you supported
 23 the implementation of a multiuser trail in the chaos
 24 of Shilshole Avenue.
 25 Do you recall that line of questioning?

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1 A. I do, yes.
 2 Q. Do you envision that the multiuser trail
 3 would simply be plopped down in the middle of
 4 Shilshole Avenue?
 5 A. No.
 6 Q. Do you believe that the design features of
 7 the multiuser trail would address the concerns
 8 Mr. Brower asked you about, the chaos of the street?
 9 A. The project on a whole would. Not just
 10 the trail, but the project itself, which the FEIS
 11 talks to, organizes the street. And I think a
 12 number of the other witnesses talked about how it's
 13 not just this -- you don't just put this line of a
 14 trail, but you're putting curbs, you're reorganizing
 15 the parking, you're changing the corridor in a way
 16 that is really hard for a lot of people to visualize
 17 now. But ultimately it will make for a safer, more
 18 organized, more clearly delineated space throughout
 19 the corridor. It's not just about the trail.
 20 MR. COHEN: No further questions,
 21 your Honor.
 22 THE HEARING EXAMINER: Thank you,
 23 Mr. Trask.
 24 THE WITNESS: Thank you, sir.
 25 MR. BROWER: I actually do have the

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1 opportunity to redirect.
 2 THE HEARING EXAMINER: Is this a
 3 direct?
 4 MR. BROWER: This was a
 5 direct/redirect. So if I could just look at -- I
 6 want to look at one thing before (inaudible).
 7 THE HEARING EXAMINER: Okay. Sorry,
 8 I didn't realize you were on direct.
 9 THE WITNESS: It's fine.
 10 MR. COHEN: I have a question. I'm
 11 not sure what the scope of Mr. Brower's current line
 12 of inquiry is. We agreed earlier that the coalition
 13 did name Mr. Trask as a witness; they get to call
 14 him and question him. I thought that was going to
 15 happen in the context of Mr. Brower's initial line
 16 of questioning, and not be divided into two
 17 segments.
 18 So are we on redirect or (inaudible).
 19 THE HEARING EXAMINER: This
 20 essentially would be redirect. This is the same as
 21 the other direct -- the shared direct witnesses.
 22 This isn't an opportunity to ask new questions -- or
 23 new subject matter questions. So it has to be
 24 within the context of testimony that's been provided
 25 already.

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1 MR. COHEN: Thank you.
 2 THE HEARING EXAMINER: Like redirect.
 3 That's sort of a mix between cross and redirect.
 4 MR. BROWER: Nothing. Thank you.
 5 THE HEARING EXAMINER: Okay.
 6 MR. BROWER: Then thank you for
 7 indulging me.
 8 Not a bit. Thank you for reminding
 9 me of the opportunity.
 10 Are we concluded with Mr. Trask?
 11 MR. COHEN: I think so.
 12 THE HEARING EXAMINER: Thank you,
 13 Mr. Trask.
 14 THE WITNESS: Thank you, sir.
 15 THE HEARING EXAMINER: Do we have
 16 any -- oh, yes, you have one more witness,
 17 Mr. Chang.
 18 MR. KISELIUS: Correct.
 19 THE HEARING EXAMINER: Is that right?
 20 MR. KISELIUS: We'd like to call
 21 Mr. Dong Ho Chang.
 22 THE HEARING EXAMINER: Thank you.
 23 Please state your name for the
 24 record, and spell your name.
 25 MR. CHANG: Dong Ho Chang, D-O-N-G,

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1 H-O, C-H-A-N-G.
 2 THE HEARING EXAMINER: Do you swear
 3 or affirm the testimony you'll provide in this
 4 morning's hearing will be the truth?
 5 MR. CHANG: I do.
 6 THE HEARING EXAMINER: Thank you.
 7 DONG HO CHANG,
 8 a witness, having been previously sworn,
 9 was examined and testified as follows:
 10 DIRECT EXAMINATION
 11 BY MR. KISELIUS:
 12 Q. Good morning, Mr. Change.
 13 A. Good morning.
 14 Q. Could you please state your occupation.
 15 A. I'm the City traffic engineer for City of
 16 Seattle.
 17 Q. And how long have you been employed by the
 18 City Department of Transportation?
 19 A. Since February of 2012.
 20 Q. And where were you employed before
 21 Seattle?
 22 A. City of Everett.
 23 Q. In what capacity?
 24 A. As a City traffic engineer.
 25 Q. And then before that?

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1 A. Washington State Department of
 2 Transportation.
 3 Q. Okay. I'm going to ask you to discuss
 4 your -- or describe your primary responsibilities
 5 with Seattle Department of Transportation and your
 6 prior two employers.
 7 A. Sure. For City of Seattle I have some
 8 ordinance responsibilities, so I am charged with
 9 setting speed limits, how traffic control devices
 10 are installed, like new stop signs and signals, and
 11 approve roadway configurations, such as the
 12 Burke-Gilman trail that we're discussing, and lane
 13 lines, and how intersections are configured.
 14 I also am responsible for delivering a
 15 annual traffic report that provides a snapshot of
 16 the transportation state for City of Seattle.
 17 Q. And could you briefly describe your
 18 responsibilities while you were with the City of
 19 Everett?
 20 A. As the traffic engineer for City of
 21 Everett, I was in charge of the transportation
 22 crews, signal operation, signal maintenance, sign
 23 and striping crews. I had several engineers that
 24 did plans and specifications for contracts for small
 25 little projects. Also reviewed capital projects

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1 that were contracted out or crew delivered by the
 2 City.
 3 I worked with our other department heads
 4 for any transportation related elements. And then
 5 have the same function as I do with City of Seattle,
 6 which is to set speed limits and approve
 7 channelization -- changes on the street.
 8 Q. Finally, with Washington State Department
 9 of Transportation, I think you said you were there
 10 for 15 years?
 11 A. Yes. So I served in various different
 12 roles, but my last and the longest tenure was as the
 13 Snohomish area traffic engineer, which meant that I
 14 had the state facilities all along the Puget Sound
 15 region in Snohomish County. So these are state
 16 highways and interstates. And changes in
 17 configurations and projects that are scoped along
 18 those areas.
 19 Q. Did you have any specific training or
 20 education that's relevant to your ability to carry
 21 out your roles and responsibilities with any of your
 22 employers?
 23 A. I have a bachelor's degree in civil
 24 engineering with the University of Washington. And
 25 as I wanted to become more of a managing role, I

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1 obtained a degree in public administration, master's
 2 degree in public administration. I also have a
 3 license as a professional engineer in Washington
 4 state. And I have a certification from the
 5 Institute of Transportation Engineer as a
 6 professional traffic operation engineer.
 7 Q. Okay. To what degree do you deal with
 8 nonmotorized transportation facilities in your work?
 9 A. I tend to deal with nonmotorized
 10 transportation modes fairly -- almost on a daily
 11 base, either through citizen calls, through project
 12 level work, or just reviewing operations on my daily
 13 tasks.
 14 Q. And is that the case at State Department
 15 of Transportation Everett and City of Seattle?
 16 A. Yes.
 17 Q. Okay. Can you describe some of the
 18 projects, some of the nonmotorized transportation
 19 facility projects in which you've been involved?
 20 A. When I was working at the Washington State
 21 Department of Transportation I worked on -- one of
 22 the projects I worked on was the, what's called
 23 Mukilteo Freeway or Speedway, which is State Highway
 24 525, is what I-405 turns into as it heads up to
 25 Mukilteo.

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1 And as that roadway was widened, there is
 2 a section by -- in Mukilteo where the City was
 3 developing a multiuse path on one side of the
 4 street, so I was involved with some of the decision
 5 making.
 6 And there is Interurban trail along the
 7 Snohomish area, Snohomish County area, and so I work
 8 with City of Lynnwood when they were extending their
 9 and developing their connections across I-5 at, I
 10 think it's called 44th, which is SR 524. It's a
 11 overpass that will cross I-5 and a structure that
 12 goes over the off-ramp. So I worked with the City
 13 and the federal (inaudible) administration on
 14 developing the routing and make sure that the
 15 pathway was developed fully.
 16 Up on 128th Street there the Interurban
 17 also crosses Snohomish County. Worked on a project
 18 to create a pedestrian bridge connecting the
 19 facility. And that facility, the multiuse path,
 20 crosses along SR 96, which is 128th Street on the
 21 north side that connects to the new bridge.
 22 For City of -- City of Everett, I worked
 23 on several projects. One particular one was on 41st
 24 Street, which is a connection across I-5 again that
 25 connects down to what is called Riverfront

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1 Development, used to be kind of an environmental
 2 sensitive area, where there was a dump that the City
 3 was redeveloping. And there was a interest to
 4 create a multiuse path.
 5 So I worked on that project to make that
 6 connection across -- on 41th Street there was a
 7 (inaudible) ramp where we made a connection, closed
 8 that (inaudible) ramp and made a connection onto
 9 Broadway. And then a connection into downtown
 10 Everett through the Everett Transit Station along
 11 one of the streets along Smith Avenue.
 12 On the waterfront side all along Everett
 13 is a multiuse path that I worked on where on West
 14 Marine View Drive and East Marine View Drive a
 15 multiuse path was developed and built.
 16 On the water side that goes to multiple
 17 different neighborhoods. One is a kind of
 18 residential neighborhood on the east side, crosses
 19 under I-5, and then that goes through more of an
 20 industrial area where there is a railroad yard.
 21 There is a large trucking company that creates
 22 trucks. Goes through port facility, used to be old
 23 Jeld-Wen window manufacturing.
 24 And there is Porta (inaudible) so there is
 25 lots of marine uses in that corridor. And also

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1 Ameron, which is a concrete pole, single pole
 2 manufacturer, manufacturing. So this multiuse trail
 3 crosses all those areas.
 4 Q. You've described Washington State
 5 Department of Transportation projects and Everett
 6 projects.
 7 How about here in the City of Seattle?
 8 A. So continue to work on lots of different
 9 nonmotorized projects. Most recent one is West Side
 10 Cycle Track, which is along the lake.
 11 There is a new connection with Duwamish
 12 area, where we created a multiuse path on the
 13 Duwamish trail through kind of industrial
 14 manufacturing sector and South Portland Street.
 15 And then there is a new two-way bicycle
 16 facility that we just built, it's not complete yet,
 17 but it's under construction on Gilman and Thorndyke
 18 that connects the Port Side -- Elliott Bay Trail to
 19 Ship Canal Trail.
 20 Q. Is that Magnolia?
 21 A. It's Magnolia and near my home.
 22 Q. Thank you for that.
 23 In your professional capacity, are you
 24 familiar with guidance, national guidance for
 25 nonmotorized transportation facilities?

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1 A. Yes.
 2 Q. Which ones?
 3 A. So the (inaudible) which is the AASHTO
 4 development bike facility.
 5 Q. Let me focus you. I actually should have
 6 been more direct.
 7 Have you been involved in drafting,
 8 reviewing, or commenting on any national guidelines
 9 for nonmotorized transportation facilities?
 10 A. Yes. So I serve on a -- the national
 11 committee on uniform traffic control devices for the
 12 Institute of Transportation Engineers delegation.
 13 And I serve as a voting member of that delegation.
 14 And I sit in on the committee that drafts the
 15 language and changes in the manual on uniform
 16 traffic control devices on bicycle facilities.
 17 Q. I'm going to hand over a copy of your
 18 resume and ask this be marked as, I believe we're on
 19 R50.
 20 (Exhibit No. R50 Marked.)
 21 A. I'm also -- I also serve on the National
 22 Association of City Transportation Officials, which
 23 is NACTO, where a number of technical committees are
 24 formed. I sometimes provide training to other
 25 cities and also work on a technical committee that

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1 reviews current practices on the NACTO manual and
 2 then develops updates to that manual.
 3 Q. So let me ask if you recognize the resume
 4 I just handed to you.
 5 A. Yes.
 6 Q. Is this an accurate statement of your
 7 experience and qualifications?
 8 A. Yes.
 9 MR. KISELIUS: Ask that this be
 10 admitted as R50.
 11 THE HEARING EXAMINER: Any objection?
 12 MR. BROWER: No objection.
 13 THE HEARING EXAMINER: R50 is
 14 admitted.
 15 (Exhibit No. R50 Admitted.)
 16 Q. (By Mr. Kiselius) Mr. Chang, could you
 17 please briefly describe your prior experiences
 18 working on environmental review for SDOT projects.
 19 A. Primarily I review environmental documents
 20 on the high level. So when these larger projects do
 21 get developed, I'm asked to review the scoping and
 22 also the final document for adequacy and also
 23 completeness.
 24 Q. And is there a specific element of the
 25 environment in which you're typically involved?

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1 A. It's the transportation element.
 2 Q. And now focusing in on this specific
 3 project, what was your role for this EIS process?
 4 A. I was involved with the team to review
 5 public comment and developing the alternatives that
 6 were based on the public comments, looking at each
 7 of the segments, and then developing which segments
 8 to analyze further.
 9 Q. And did you review the Transportation
 10 Impact Analysis?
 11 A. Yes, I did.
 12 Q. Comments on that?
 13 A. So my opinion is that there is no
 14 significant --
 15 Q. Well, I meant -- sorry. We'll get to that
 16 in a second.
 17 But did you actually provide -- offer
 18 comments while you reviewed it?
 19 A. During the meetings as we were --
 20 Q. So are you familiar with the methodologies
 21 that were used in the transportation analysis?
 22 A. Yes.
 23 Q. And are those common tools in your
 24 profession?
 25 A. Yes.

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1 Q. What -- just about to testify to your
 2 understanding.
 3 What is your understanding and conclusions
 4 of the Transportation Impact Analysis in the EIS?
 5 A. My understanding is that there is no
 6 significant adverse impact.
 7 Q. Do you agree with that?
 8 A. Yes.
 9 Q. Okay. Let's step back. I'd like to ask
 10 you some framework questions.
 11 Are you familiar with the City's
 12 designation of streets as arterials or truck
 13 streets?
 14 A. Yes.
 15 Q. So can you describe the various street
 16 designations of the streets included in the various
 17 alternatives?
 18 A. Yes. So Shilshole Avenue is classified as
 19 a minor arterial and a major truck street.
 20 Ballard Avenue is -- does not a
 21 designation, so it's not an arterial and does not
 22 have a truck component to it.
 23 Leary Avenue is a principal arterial and
 24 is designated as a major truck street.
 25 And Market Street is a minor arterial and

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1 designated as a major truck street.
 2 Q. I'm going to ask you what some of those
 3 terms mean.
 4 So what does it mean to be a minor
 5 arterial?
 6 A. Minor arterial tends to have less volumes
 7 than a principal arterial, which are the larger
 8 streets that connect through Seattle.
 9 Q. How about major truck street, I heard you
 10 mention that one as well?
 11 A. Major truck streets are intended to carry
 12 larger volume of trucks on that street.
 13 Q. I'm going to ask you to take a look at the
 14 Freight Master Plan, which has been marked as R7.
 15 Just to make sure, I'm going to approach you to make
 16 sure you have a copy of it there, because I don't
 17 think it's in the binder.
 18 MR. KISELIUS: Mr. Examiner, our
 19 witness copy of the Freight Plaster Plan seems to
 20 have disappeared, so if I could just have a minute
 21 to get a replacement.
 22 THE HEARING EXAMINER: And did I hear
 23 you say you don't think this is in the --
 24 (Speaking at the same time.)
 25 THE HEARING EXAMINER: I'm sorry,

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1 it's not in your notebook.
 2 MR. KISELIUS: Correct. We printed
 3 it as a --
 4 THE HEARING EXAMINER: Got it.
 5 MR. KISELIUS: I got it right here.
 6 Mr. Examiner, (inaudible) I wanted to
 7 make sure we're all on the --
 8 THE HEARING EXAMINER: Thank you.
 9 Q. (By Mr. Kiselius) So Mr. Chang, I'd ask
 10 you to open up the Freight Master Plan to page 61,
 11 please. Now I need to catch up. I believe, yeah,
 12 it's correctly stapled, it's just -- let me step
 13 back and ask you.
 14 Does the City have design standards or
 15 guidelines for major truck streets?
 16 A. Yes, we do.
 17 Q. And where are those documents?
 18 A. We currently have them in what's called
 19 Streets Illustrated.
 20 Q. And is it -- are there other design
 21 standards in the Freight Master Plan?
 22 A. Yes.
 23 Q. Okay. And let me ask you, again, a more
 24 framework question. In your opinion, does the
 25 Freight Master Plan apply to streets?

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1 A. Yes, it does.
 2 Q. Okay. Do they also apply to driveways?
 3 A. (inaudible) they're intersecting an access
 4 to the street itself, but primarily no.
 5 Q. What does the Freight Master Plan say
 6 about truck mobility on major truck streets?
 7 A. So it's really to facilitate the travel
 8 through on the street itself. So it's carrying a
 9 large volume of trucks, and the intent is to
 10 facilitate that movement.
 11 Q. Okay. And what is your understanding of
 12 the distinction between accommodating -- what does
 13 it mean to you to accommodate truck mobility?
 14 A. Accommodate truck mobility is, again, part
 15 of the street function in that we're expecting the
 16 trucks to be on that street. And so we design the
 17 street to have the trucks be able to fit and travel
 18 through that street.
 19 Q. So could you please turn to page 24 of the
 20 document.
 21 THE HEARING EXAMINER: Is that R7
 22 still?
 23 MR. KISELIUS: Correct.
 24 Q. (By Mr. Kiselius) I'm having trouble
 25 with my -- 28, excuse me. It was page 24, I was

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1 correct the first time. I apologize for making you
 2 jump around.
 3 THE HEARING EXAMINER: Which page?
 4 MR. KISELIUS: 24.
 5 Q. (By Mr. Kiselius) So I'm going to
 6 apologize, I was confused. I'm looking at the wrong
 7 document.
 8 So page 24. Could you please read the --
 9 I think I'm finally catching up to where you are,
 10 Mr. Chang. Technical difficulties. There we go.
 11 In the left column, could you please read
 12 the second sentence, it begins, "As described in the
 13 TSP."
 14 A. "As described in the TSP, a Major Truck
 15 Street is defined as an 'arterial street that
 16 accommodates significant Freight movement through
 17 the City, and connects to and from major freight
 18 traffic generators."
 19 Q. Okay. So what does that term mean, that
 20 accommodate? What does it mean to accommodate
 21 significant Freight movement?
 22 A. It's part of the traffic stream. There is
 23 other modes that are also in that street itself.
 24 Q. Okay. Let's turn to page 78, please, of
 25 that document. And I'm looking here at the right

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1 column, the last paragraph, continuing on to the
 2 second page.
 3 Actually, let's just direct you to the
 4 second, page 79, left column, the paragraph
 5 beginning "Accommodating."
 6 Could you please read that? Do you see
 7 where I'm looking?
 8 A. Sorry, wrong page. Okay. "Accommodating
 9 for a vehicle allows encroachment of other lanes,
 10 shoulders, or other elements to complete the
 11 required maneuver."
 12 Q. I'll have you stop there. So again, when
 13 we're accommodating trucks, in your opinion does
 14 that -- is this consistent with your understanding
 15 of what it means to accommodate trucks on a major
 16 truck street?
 17 A. Yes.
 18 Q. Okay. Can major truck streets be used for
 19 other modes of transportation, such as walking or
 20 cycling?
 21 A. Yes.
 22 Q. I'm going to ask you to turn now to page
 23 82, the same document.
 24 THE HEARING EXAMINER: 82?
 25 MR. KISELIUS: 82, yes.

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1 Q. (By Mr. Kiselius) And first of all, on
 2 this chart, can you tell us what we're looking at
 3 here?
 4 A. This is a chart of "Safety-Improve safety
 5 and the predictable movement of goods and people."
 6 Q. Okay.
 7 A. Strategies and actions for each of those
 8 elements.
 9 Q. So could you please read the strategy in
 10 1.10 of that chart?
 11 A. "Assess conflicts between bicycle and
 12 freight mobility."
 13 Q. Okay. Read the two actions associated
 14 with that.
 15 A. Sure. So 1.10.1. "Address freight
 16 delivery needs, including alley access and
 17 Commercial Vehicle Load Zone locations, when
 18 developing bicycle infrastructure projects to
 19 minimize conflicts with goods movement and
 20 deliveries."
 21 1.10.2. "Design bicycle facility
 22 treatments to provide predictable movement of people
 23 on bicycles and to minimize conflicts with goods,
 24 movement and deliveries."
 25 Q. So are these principles consistent with

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1 your understanding of the extent to which major
 2 truck streets are to accommodate other modes of
 3 transportation?
 4 A. Yes.
 5 Q. And are those principles, these action
 6 items, consistent with your understanding of the
 7 project at issue here?
 8 A. Yes.
 9 Q. Could you please read the 1.11, strategy
 10 1.11.
 11 A. 1.11 strategy. "Assess conflicts between
 12 pedestrian and freight mobility."
 13 Q. Can you read the two action items
 14 associated with that, please?
 15 A. Sure. Action item 1.11.1. "Design
 16 pedestrian facility treatments to provide
 17 predictable movement of people and to minimize
 18 conflicts with goods movement and deliveries."
 19 1.11.2. "Review pedestrian crossing
 20 opportunities on streets in the freight network and
 21 provide controlled or pedestrian-activated
 22 crossings, where appropriate."
 23 Q. So again, is this consistent with your
 24 understanding of the extent to which the City
 25 intends to accommodate pedestrian movements on major

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1 truck streets?
 2 A. Yes.
 3 Q. And is it consistent with your
 4 understanding of this project as well?
 5 A. Yes.
 6 Q. Okay. I want to have you -- you mentioned
 7 Streets Illustrated, so I'm going to ask you to turn
 8 to tab 9 in the binder that's next to you, but I'll
 9 ask you to keep those Freight Master Plans close by,
 10 because I might refer to them later.
 11 MR. KISELIUS: Mr. Examiner, I know
 12 we've entered -- there are two exhibits that the
 13 City has excerpts from Streets Illustrated, and I
 14 know we've entered one, although in my notes I
 15 wasn't clear which.
 16 THE HEARING EXAMINER: I don't have
 17 tab 9 marked as an exhibit.
 18 MR. KISELIUS: So I'd ask to have
 19 this marked as R51, I believe.
 20 THE HEARING EXAMINER: Yes.
 21 (Exhibit No. R51 Marked.)
 22 Q. (By Mr. Kiselius) Could you please turn
 23 to page, you'll see on the bottom there is a Bates
 24 stamp number that starts COS?
 25 A. Yes.

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1 Q. Please turn to COS000151. And there is a
 2 paragraph marked, a heading, Intersection Concepts.
 3 A. Okay.
 4 Q. Could you please read the last two
 5 sentences of that paragraph.
 6 A. At a minimum all streets should be
 7 designed to accommodate SU30 trucks. The goal is to
 8 balance motor plans to keep streets accessible for
 9 freight, transit and bicycle where designated and
 10 creating positive environment for people walking.
 11 Q. So again, is this reflective of your
 12 understanding of the extent to which the City is
 13 meant to accommodate bicycles and pedestrians even
 14 on major truck streets?
 15 A. Yes.
 16 Q. And is it consistent with your
 17 understanding of the project here?
 18 A. Yes.
 19 Q. Okay.
 20 The heading marked Intersection Concepts,
 21 the last two sentences of the paragraph that
 22 follows.
 23 MR. KISELIUS: I'd ask to have
 24 Exhibit R51 admitted.
 25 MR. SCHNEIDER: Could we just have a

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1 little bit more foundation for what the exhibit is
 2 from the witness.
 3 MR. KISELIUS: Is that an objection?
 4 I thought he had provided foundation by talking
 5 about Streets Illustrated as a place in which the
 6 design standards are articulated and codified, and
 7 this is that.
 8 MR. SCHNEIDER: Well, maybe I just
 9 didn't hear that testimony. But I'm not objecting
 10 yet, I would just like a better explanation what the
 11 document as a whole is.
 12 MR. KISELIUS: I'm happy to
 13 accommodate.
 14 Q. (By Mr. Kiselius) Mr. Chang, do you
 15 recognize this document?
 16 A. Yes, I do.
 17 Q. Can you tell us what it is?
 18 A. Streets Illustrated, which is an update to
 19 our roadway improvement manual, and it provides
 20 design guidance on street design for City of
 21 Seattle.
 22 MR. KISELIUS: And I'd ask to have it
 23 admitted.
 24 MR. SCHNEIDER: What date was this
 25 adopted? If I could voir dire on that issue.

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1 THE WITNESS: Sure. It was -- the
 2 illustrated portion was adopted December 1 of 2017,
 3 prior to.
 4 MR. SCHNEIDER: (inaudible) this
 5 year?
 6 THE WITNESS: Correct. And then the
 7 prior was the right of way improvement manual.
 8 MR. SCHNEIDER: Do you know whether
 9 the language that you have read from was in the
 10 prior version?
 11 THE WITNESS: No, it's -- I believe
 12 it's the newly adopted version that has this
 13 language.
 14 MR. SCHNEIDER: Well, then we're
 15 talking about a newly adopted document that wasn't
 16 in place when the EIS was written, so I'm not sure
 17 about its relevance.
 18 MR. KISELIUS: I can explain.
 19 Mr. Schneider's own witness has cited to this
 20 document at length, and has testified that the plan
 21 is inconsistent with Streets Illustrated in her
 22 written report. And this is proof that she's
 23 offered that the project is inconsistent with design
 24 guidance. We are simply rebutting that.
 25 MR. SCHNEIDER: Well, I don't recall

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1 there being an objection to the use of this
 2 document. I'll withdraw the objection as long as
 3 it's clear the date in which it's adopted. I think
 4 that needs to be a part of the record here.
 5 And the date, you're saying
 6 December 1, Mr. Chang?
 7 THE WITNESS: Yes, it was adopted,
 8 formally adopted December 1.
 9 MR. SCHNEIDER: Okay. Then I'll
 10 withdraw the objection with that clarification.
 11 THE HEARING EXAMINER: R51 is
 12 admitted.
 13 (Exhibit No. R51 Admitted.)
 14 Q. (By Mr. Kiselius) Mr. Chang, I'm going
 15 to ask you a couple of questions about the
 16 transportation and safety concerns that some of the
 17 coalition witnesses have raised.
 18 First, are you familiar with AutoTURN?
 19 A. Yes, I am.
 20 Q. How are you familiar with that?
 21 A. I see AutoTURNs as part of my job where
 22 we're looking at impacts to a turn vehicle at an
 23 intersection and determining whether we need to
 24 modify striping or the intersection itself so that
 25 we can accommodate the vehicle.

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1 Q. At what point in a project would you
 2 typically see an AutoTURN analysis?
 3 A. Typically 60 percent or more.
 4 Q. Okay. Is it common for Department of
 5 Transportation to run AutoTURN analyses on driveways
 6 for a transportation facility project that crosses
 7 over them?
 8 A. No.
 9 Q. Are you familiar with the Coalition's
 10 AutoTURN analysis? Have you looked at those
 11 drawings?
 12 A. Yes, I've seen those drawings.
 13 Q. I'm going to ask you to look at one of
 14 them, and that will be in binder. And it will take
 15 me a second to find the reference. This is A1, I
 16 believe. It will be in a binder (inaudible). I'm
 17 going to ask you to turn to figure 6.1.A. Let me
 18 know when you're there.
 19 THE HEARING EXAMINER: Mr. Kiselius,
 20 I'm going to -- we've missed the 10:30 mark, so I'm
 21 going to go to 10:35.
 22 MR. KISELIUS: Okay. I have a few
 23 more questions.
 24 A. Okay. 6.1.A.
 25 Q. (By Mr. Kiselius) And does the City

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1 Department of Transportation own one of the
 2 driveways in the project area?
 3 A. I believe we have a facility under the
 4 Ballard Bridge.
 5 Q. Okay. And can you identify that driveway
 6 on that figure?
 7 A. It says here 13D and 13E.
 8 Q. Okay. And that's one of the ones for
 9 which there is an AutoTURN analysis that's done?
 10 A. I'm sorry, it's 13E. And yeah, there's an
 11 AutoTURN analysis.
 12 Q. What design vehicle are they using for
 13 that AutoTURN analysis?
 14 A. I believe it's a WB-40 is the design
 15 vehicle.
 16 Q. Is that the one that's in the bottom
 17 right-hand --
 18 A. Yes.
 19 Q. -- of the page? Okay.
 20 Are you familiar with the -- let me ask.
 21 Do you know whether or not a truck of that size uses
 22 that driveway?
 23 A. I asked our bridge operations that work at
 24 that facility, and they do use that vehicle about
 25 twice a year.

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1 Q. Twice a year. Okay.
 2 Would you agree that that would be the
 3 appropriate design vehicle for that driveway, given
 4 that frequency?
 5 A. For twice a year, no, I don't think that
 6 would be the design vehicle.
 7 Q. I do apologize, I'm going to have to make
 8 you jump around through a few binders here, because
 9 I'm going to ask you to respond to a couple of
 10 different things.
 11 I want to turn to a different exhibit,
 12 which would be the blind spot diagram.
 13 THE HEARING EXAMINER: Before we get
 14 there, Mr. Kiselius, how much longer? We could take
 15 a break now for 15 minutes.
 16 MR. KISELIUS: That will be fine. I
 17 won't be able to finish in the next minute.
 18 THE HEARING EXAMINER: Then let's
 19 take a break. And we will come back at ten to.
 20 MR. KISELIUS: Okay. Thank you.
 21 (Recess.)
 22 THE HEARING EXAMINER: Mr. Kiselius
 23 Q. (By Mr. Kiselius) Mr. Chang, I'm going
 24 to ask you to flip to what's been marked as A6, and
 25 I believe it's a -- yes. (inaudible).

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1 There's been a lot of testimony about this
 2 exhibit, I just want to ask you a couple quick
 3 questions related to this A6.
 4 What are the rules of the road for the
 5 truck in this scenario?
 6 A. From Mr. Kuznicki's testimony, this
 7 diagram depicts a scenario where two trucks are on
 8 Shilshole, or some sort of a street, and truck A
 9 legally must yield to truck B before making that
 10 turn. And when truck A is making that left turn, as
 11 he clears the street, must stop for the users on the
 12 multiuse trail, and when it's safe to do so can
 13 cross the multiuse trail.
 14 Q. And so are the -- in your opinion, are the
 15 rules of the road adequate -- or do they address the
 16 potential collision scenario described there?
 17 A. Absolutely.
 18 Q. Okay. You can probably put that binder
 19 away for now.
 20 I'd like to return now to Streets
 21 Illustrated. Again, Ms. Hirsche's memo suggests
 22 that the proposal is in conflict with guidance
 23 provided in SDOT's Streets Illustrated. So let me
 24 step way back.
 25 You had just testified that this was

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1 adopted on December 1. So if that's the case, how
 2 was it that Ms. Hirsche was looking at Streets
 3 Illustrated in the first place?
 4 A. It was out for public review and comment.
 5 Q. Okay. And so that's the version that was
 6 adopted?
 7 A. Yes.
 8 Q. Okay. Does that manual distinguish
 9 between two-way bicycle facilities and shared use
 10 paths?
 11 A. Yes, it does.
 12 Q. Okay. Could you please turn to tab 10.
 13 Do you recognize this?
 14 A. Yes.
 15 Q. Does this chapter address shared use
 16 paths?
 17 A. Yes.
 18 Q. I'd like to turn your attention to
 19 COS000165. There is a heading there that says
 20 shared use paths.
 21 THE HEARING EXAMINER: We'll mark
 22 this as R52.
 23 MR. KISELIUS: Thank you.
 24 (Exhibit No. R54 Marked.)
 25 Q. (By Mr. Kiselius) Can you read that

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1 first sentence under Shared Use Paths.
 2 A. Sure. "Shared use paths are a critical
 3 part of the bicycle and pedestrian network and
 4 accommodate a high volume of pedestrians and
 5 bicyclists. They may be located in independent
 6 right-of-way or adjacent to roadway (sidepath)."
 7 Q. Based on your familiarity with Streets
 8 Illustrated, does Streets Illustrated preclude
 9 shared use path like the one that's the subject of
 10 the EIS?
 11 A. It does not.
 12 Q. And do you agree with Ms. Hirschev's
 13 conclusion that the proposal is in conflict with
 14 guidance provided by Streets Illustrated?
 15 A. It is not in conflict.
 16 Q. You had mentioned earlier that this
 17 replaces an older plan or manual. I'm going to hand
 18 you something here.
 19 MR. KISELIUS: Oh, I'm sorry. Can I
 20 have R52, I'd ask for that to be admitted.
 21 MR. SCHNEIDER: No objection.
 22 THE HEARING EXAMINER: R52 is
 23 admitted.
 24 (Exhibit No. R52 Admitted.)
 25 MR. KISELIUS: This is one of the

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1 Streets.
 2 Do you see that?
 3 A. Yes.
 4 Q. Could you read that for us?
 5 A. Sure. "Major Truck Streets accommodate
 6 significant freight movement through the city and to
 7 and from major freight traffic generators including
 8 Port of Seattle Terminals, inter-modal rail
 9 facilities and the regional freeway network."
 10 Q. Let me ask you to pause right there. So
 11 does this -- is this consistent with your testimony
 12 about the Major Truck Street and the concept of
 13 accommodating?
 14 A. Yes.
 15 Q. Okay. And are you aware of anything in
 16 the right-of-way -- (audio recording stops.)
 17 MR. KISELIUS: No more than ten
 18 minutes.
 19 THE HEARING EXAMINER: 10 or 15
 20 minutes or so?
 21 MR. KISELIUS: Right.
 22 THE HEARING EXAMINER: Okay.
 23 MR. KISELIUS: Thank you.
 24 THE HEARING EXAMINER: Okay. We're a
 25 back on.

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1 ones that we forwarded by link, but didn't include
 2 in our binder.
 3 Mr. Examiner, I'd ask to have this
 4 entered as R53. This is the Seattle --
 5 (Exhibit No. R53 Marked.)
 6 Q. (By Mr. Kiselius) Mr. Chang, do you
 7 recognize this document?
 8 A. It is the printed copy of the Seattle
 9 Right-of-Way Improvement Manual.
 10 Q. And is this the document you were
 11 referring to earlier as being the predecessor to
 12 Streets Illustrated?
 13 A. Yes.
 14 Q. So it's going to be a little tricky here,
 15 because this document does not have page numbers.
 16 But I'd ask you to turn to section 4.2. And again,
 17 I apologize there are no page numbers. It's about a
 18 third of the way through the document.
 19 THE HEARING EXAMINER: 4.2.
 20 MR. KISELIUS: 4.2, yes.
 21 Q. (By Mr. Kiselius) Let me know when
 22 you're there, Mr. Chang.
 23 A. Okay, I'm here.
 24 Q. Okay. About two-thirds of the way down
 25 there is a paragraph that begins Major Truck

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1 MR. KISELIUS: And so just to -- for
 2 the record, I think we can just pick up where we
 3 left off or --
 4 THE HEARING EXAMINER: Yes, we didn't
 5 miss anything.
 6 Q. (By Mr. Kiselius) Okay. So we were just
 7 starting to talk about the design of the preferred
 8 alternative at the intersection of Northwest Market
 9 and Shilshole.
 10 Are you familiar with that design?
 11 A. Yes, I am.
 12 Q. And there's been a lot of testimony about
 13 various aspects. I want to focus in on one specific
 14 contention, which is related to lane offsets.
 15 So there was some testimony from
 16 Mr. Bishop that the lane offsets are greater than
 17 allowed by applicable design standards and that they
 18 are a hazard.
 19 Let me just start by asking you, what's
 20 the function of a lane offset?
 21 A. A lane offset is a transition through the
 22 intersection for a vehicle traveling through the
 23 intersection. And if the intersection itself is
 24 constrained, we look at all the different trade-offs
 25 and try to accommodate that movement as much as

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1 possible. Sometimes there is a offset that's
 2 created.
 3 Q. Okay. Are you aware of any adopted City
 4 policy or design standards that prohibit or restrict
 5 lane offsets?
 6 A. No.
 7 Q. Okay. Were you present for Mr. Bishop's
 8 testimony on WSDOT's standards for lane offsets?
 9 A. Yes.
 10 Q. Okay. How did Mr. Bishop describe those
 11 standards?
 12 A. He cited a intersection chapter in the
 13 WSDOT design -- Washington State Department of
 14 Transportation Design Manual that the recommended
 15 maximum offset of six feet.
 16 Q. Are those applicable within the City?
 17 A. So we do not use that. And other -- we
 18 consider it. It's all based on the context, so it's
 19 not applicable.
 20 Q. So describe that for me a little bit more.
 21 What do you mean by context? What are the
 22 differences between the context of where WSDOT's
 23 standards typically apply and the City environment
 24 in which you work?
 25 A. So the WSDOT standards apply to state

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1 highways and interstates. So those are what those
 2 standards are meant for.
 3 Q. Okay. And what would be some differences
 4 between that environment and where you work within
 5 the City?
 6 A. In the City of Seattle we're in more of an
 7 urban context, so there is a lot more pedestrians,
 8 parking, building. So it's a -- not much
 9 flexibility in terms of acquiring additional width
 10 to create another lane.
 11 Q. Does that affect the context in which you
 12 decide whether or not you would use those
 13 guidelines?
 14 A. Absolutely, because we're really thinking
 15 about the pedestrian environment as well. Because
 16 in the urban context that's really where people are.
 17 Q. Does speed figure into your analysis?
 18 A. Absolutely.
 19 Q. Explain that a little bit.
 20 A. Yeah. So in urban environments,
 21 especially where there is a lot of people, we are
 22 looking for lower operating speed for vehicles, just
 23 because of the nature of all of the activity that
 24 happens on the street. And so they tend to be -- we
 25 want to have our street design really get that lower

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1 speed for the -- from the drivers.
 2 Q. Has the City used similar lane offsets to
 3 the ones that are at that intersection or shown for
 4 that intersection elsewhere in the City?
 5 A. We recently installed a two-way bicycle
 6 facility in Magnolia, that I was discussing. So
 7 right at Dravus and Gilman Avenue there is a lane
 8 offset similar to this, built and working.
 9 Q. Okay. More generally, has the City
 10 identified those specific WSDOT guidelines that it
 11 incorporates into its design guidelines?
 12 A. Can you ask the question again? Sorry.
 13 Q. Sure. Does the City articulate anywhere
 14 in any document those WSDOT guidelines that it
 15 incorporates into its plan review process?
 16 A. So when we are developing federal funded
 17 projects, we adopt local agency guidelines and also
 18 the right-of-way improvement manual, which is the
 19 Streets Illustrated has reference to WSDOT's LAG
 20 Manual.
 21 Q. Okay. So could you --
 22 A. Local area.
 23 Q. You used an acronym there --
 24 A. Yeah.
 25 Q. -- I want to make sure we --

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1 A. So Local Agency Guidelines, which is a
 2 checklist of design guidelines for when you're
 3 developing a project with the state.
 4 Q. And is the lane offset concept captured
 5 within the LAG manual?
 6 A. No.
 7 Q. Okay. Let me ask you about a different
 8 topic now. There has been some testimony about
 9 pavement joints in the travel lane.
 10 Are there any City or state policies or
 11 design standards that prohibit placing pavement
 12 joints in the travel lane?
 13 A. No.
 14 Q. Are you familiar with that condition
 15 existing elsewhere in the City?
 16 A. Yes. So depending on what we're doing
 17 with the lane configuration, there is a existing
 18 pavement offset joint on Shilshole Ave --
 19 (inaudible) right in front of the Ballard Locks
 20 there is a street alignment that has the offset from
 21 the concrete pavement joint.
 22 Q. So in your opinion and experience, do you
 23 expect drivers to follow pavement joints instead of
 24 lane lines?
 25 A. Really the lane line provides the guidance

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1 and pavement joints are not intended as guidance.
 2 And we use striping elimination (inaudible) marking
 3 to provide that positive guidance.
 4 Q. I think there was some testimony that even
 5 like in rainy conditions that might be confusing; do
 6 you agree with that?
 7 A. Again, for -- in the City we have not seen
 8 that as an issue.
 9 Q. So in your opinion do pavement joints in
 10 the travel lane present a safety hazard?
 11 A. No.
 12 Q. I'm going to ask you a couple questions
 13 now about a different topic. First relates to rail
 14 operations on the tracks along Shilshole.
 15 Are there City regulations that govern the
 16 operation of the rail in the vicinity?
 17 A. Yes.
 18 Q. And are you aware of any regulations
 19 related to flagger, responsibilities to provide
 20 flaggers?
 21 A. City has an ordinance that requires a
 22 flagger at uncontrolled ungated (inaudible)
 23 crossings, so like at intersections and driveways.
 24 Q. So that would apply to driveways as well?
 25 A. Yes.

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1 Q. Okay. And while we're on the topic of
 2 flaggers, in a different context, I think there was
 3 a lot of -- there was some testimony about the need
 4 to hire flaggers associated with vehicle maneuvers
 5 into or out of driveways.
 6 First, is there any ordinance requiring
 7 flaggers in those situations?
 8 A. We currently do not have any ordinance
 9 requiring that.
 10 Q. What do you think of that? Is it good
 11 practice to have those?
 12 A. Depending on the business need, definitely
 13 it would be a good practice.
 14 Q. Okay. Under current conditions there is
 15 some testimony that those maneuvers would take five
 16 minutes or even a half an hour. Would that trigger
 17 the need or would it be beneficial to have a flagger
 18 in those circumstances?
 19 A. Five minutes is a long time. I would
 20 think that would be a good consideration for a
 21 flagger.
 22 Q. Given those current conditions, do you
 23 think it's the trail that causes the flaggers or the
 24 vehicle maneuver?
 25 A. It's existing, so it seems like it would

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1 be the current existing condition. And then the
 2 trail obviously will add additional element to it.
 3 And my understanding is that the delay might be
 4 less -- 11 seconds or so for the vehicle to travel
 5 through. So fairly small in comparison to what's
 6 happening on the street.
 7 Q. Okay. I have just a couple more questions
 8 for you.
 9 There was some testimony from Ms. Hirschey
 10 that she could not find another example of a
 11 multiuse trail in the vicinity of an industrial
 12 area.
 13 Are you aware of any examples here in the
 14 City?
 15 A. There is multiple locations with multiuse
 16 trail in the industrial area. Burke-Gilman Trail,
 17 current Burke-Gilman Trail goes through a concrete
 18 plant towards Fremont. There is also Southwest
 19 West -- West Marginal Way, which is a multiuse path
 20 that's about two miles long and goes through
 21 multiple driveways that are industrial in nature.
 22 There is a port terminal facility there. There is a
 23 concrete batch plant. And it's been there since I
 24 think the early 90s.
 25 We also built a new multiuse path trail

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1 through -- on South -- in Portland Street, as part
 2 of the connection to the (inaudible).
 3 Q. That Marginal Way example, the one in the
 4 middle that you just described, is that the same
 5 trail that Ms. Hirschey testified that she had
 6 worked on?
 7 A. From her testimony it sounded like it was
 8 the extension of this trail to connect to existing
 9 Alki Trail.
 10 Q. So I focused you on the City of Seattle.
 11 Are you aware of other examples elsewhere, where
 12 you've worked?
 13 A. So when I worked in City of Everett we had
 14 multiple industrial area with multiuse trail. The
 15 example was the East Marine View Drive and West
 16 Marine View Drive that goes through the port
 17 facility.
 18 Q. Okay. So given all that you've heard over
 19 the last couple days and that you've read through
 20 their exhibits, is there anything that causes you to
 21 question any of the conclusions or analysis in the
 22 Transportation Impact Analysis of the EIS?
 23 A. No.
 24 Q. Do you still believe that the EIS used
 25 reasonable and standard methods for your profession

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1 to assess and disclose potential traffic impacts to
 2 this project?
 3 A. Yes, I do.
 4 Q. And as a person responsible for reviewing
 5 the transportation discipline report and the
 6 Transportation Impact Analysis, do you think that
 7 the EIS adequately disclosed traffic impacts,
 8 including traffic safety?
 9 A. Yes.
 10 MR. KISELIUS: Thank you, Mr. Chang.
 11 THE HEARING EXAMINER: Mr. Cohen.
 12 MR. COHEN: None, your Honor.
 13 THE HEARING EXAMINER: Mr. Schneider.
 14 CROSS-EXAMINATION
 15 BY MR. SCHNEIDER:
 16 Q. Mr. Chang, you testified at the prior
 17 hearing in front of Hearing Examiner Watanabe about
 18 the DNS your department had issued for the Shilshole
 19 segment of the Missing Link; correct?
 20 A. Yes.
 21 Q. And you also testified at that hearing
 22 that it was your opinion there were no significant
 23 traffic hazards or safety impacts; correct?
 24 A. Yes.
 25 Q. I'd like to direct your attention to --

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1 I'm afraid we're going to have to jump around among
 2 the same documents that we've been jumping around.
 3 Well, while we're getting back to -- so
 4 Mr. Chang, how many EISs have you been involved in
 5 at SDOT?
 6 A. I will say several, although two or
 7 three --
 8 Q. Well, I believe Mr. Mazzola testified this
 9 was the third one that SDOT had done, the others
 10 being for the seawall project and for the waterfront
 11 promenade?
 12 A. Yes.
 13 Q. Is that correct?
 14 A. Yes.
 15 Q. Okay. And normally when SDOT builds a
 16 trail, you mentioned the new one on Magnolia for
 17 example, it doesn't undergo SEPA review; correct?
 18 A. Correct.
 19 Q. And what's your understanding of the
 20 purpose of an Environmental Impact Statement?
 21 A. So Environmental Impact Statement is a
 22 project, significant -- significant size that's
 23 going to have implication for environment. And I
 24 primarily focus on the transportation aspect of it.
 25 So when I worked on the Mukilteo Boulevard --

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1 Mukilteo Ferry Terminal relocation, that was looking
 2 at a bunch of different aspects like cultural
 3 resources and things like that. For me it was
 4 primarily looking at the traffic and transportation
 5 impact.
 6 Q. My question is, again, not what you worked
 7 on, but what is your understanding of the purpose of
 8 an EIS?
 9 A. The purpose of an EIS is to disclose --
 10 identify and disclose all the impacted
 11 transportation.
 12 Q. And you understand that one of the issues
 13 in this case is whether the EIS appropriately
 14 disclosed the traffic hazards?
 15 A. Yes.
 16 Q. Were you aware that at the -- were you
 17 aware before this EIS was written of the studies
 18 that document the hazards created by two-way
 19 sidepaths?
 20 A. I'm aware of multiple different studies,
 21 the ones cited by Claudia Hirschey on her exhibit, I
 22 believe tech (inaudible) and included (inaudible) to
 23 those -- some of those (inaudible) I had never seen
 24 before.
 25 Q. Okay. So my question is were you aware of

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1 such studies when the EIS was written?
 2 A. Was I aware of such studies, yes, because
 3 that's part of my duties -- so I'll say yes.
 4 Q. So who made the decision not to disclose
 5 those studies in the EIS? Was that you?
 6 MR. KISELIUS: Objection,
 7 Mr. Examiner. That's testimony offering an
 8 opinion -- an interpretation of the EIS, not asking
 9 an open-ended question whether that was the case in
 10 the first place.
 11 MR. SCHNEIDER: We've had multiple
 12 witnesses acknowledge that there is no reference to
 13 those studies in the EIS.
 14 MR. KISELIUS: I heard the question
 15 differently. I heard you say that there was no
 16 discussion of that issue in the EIS.
 17 THE HEARING EXAMINER: No, it was the
 18 studies being listed in the EIS.
 19 MR. KISELIUS: Withdrawn.
 20 Q. (By Mr. Schneider) So again, the
 21 question was who made the decision not to include
 22 any reference to those studies in the EIS?
 23 A. It would have been the team reviewing it,
 24 and myself as well, as part of the review team.
 25 Q. Is not disclosing the existence of such

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1 studies consistent with the purpose of an EIS?
 2 A. The studies that were cited, again -- can
 3 you ask the question again, please?
 4 Q. Is the decision not to disclose those
 5 studies in the EIS consistent with your
 6 understanding of the purpose of an EIS?
 7 A. I don't quite understand the question
 8 again.
 9 Q. Okay. So let's go to some of the exhibits
 10 you've looked at. I want to draw your attention
 11 back to the Right-of-Way Improvement Manual.
 12 THE HEARING EXAMINER: Which exhibit
 13 is that?
 14 MR. SCHNEIDER: That is R53, I think.
 15 Q. (By Mr. Schneider) Do you have a copy in
 16 front of you?
 17 A. Yes.
 18 Q. And can you turn to page -- not page,
 19 because we don't have any -- section 4.6.2.
 20 A. Okay.
 21 Q. Okay. And what is it -- if we look at the
 22 bottom of the page at 4.6.2, begins on -- there is a
 23 discussion of lane width for arterials; correct?
 24 A. Yes.
 25 Q. Okay. And if we turn the page it has

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1 standard lane widths?
 2 A. Yes.
 3 Q. Okay. And what's the standard lane
 4 width -- so now we're talking about arterials, not
 5 truck streets; correct?
 6 A. This is for design criteria for arterials.
 7 Q. Okay. So what is the standard lane width
 8 for a through traffic lane?
 9 A. On this table, let's see, 11 feet.
 10 Q. Eleven feet?
 11 A. Yep.
 12 Q. So then let's go back to the Streets
 13 Illustrated -- I'm sorry, I don't -- is that -- I
 14 don't have the number of that.
 15 MR. KISELIUS: There are two chapters
 16 (inaudible) so depends on which one you're referring
 17 to.
 18 MR. SCHNEIDER: I'm referring to the
 19 chapter behind the tab 9 on freight.
 20 THE HEARING EXAMINER: R51.
 21 Q. (By Mr. Schneider) Can you turn, please,
 22 to page -- it's the page in the bottom right-hand
 23 number that ends with 151. It's the page you were
 24 talking about earlier.
 25 A. Okay.

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1 Q. Again, what does it say is the lane width
 2 for a through traffic lane?
 3 A. Eleven feet, ten feet for streets that are
 4 not part of freight or transit (inaudible) and not a
 5 two-lane bidirectional roadway.
 6 Q. Okay. Well, you would agree that it's
 7 11-foot standard that applies to Shilshole?
 8 A. It is 11-foot standard from this table.
 9 Q. I want to direct your attention to a page
 10 from the EIS. And it's the large pull-out diagram
 11 that is of the entire route. It's figure 13 next to
 12 page 1-8. If you don't have it handy, we can use
 13 this, because this is a blow up the City has
 14 prepared of that exhibit.
 15 A. Okay.
 16 Q. So I want to direct -- so here we have --
 17 THE HEARING EXAMINER: Mr. Schneider,
 18 I'll need you to be at a -- Mr. Schneider, I'll need
 19 you to be at a microphone.
 20 MR. SCHNEIDER: I'm going to have to
 21 get close for a moment, I apologize.
 22 Q. (By Mr. Schneider) So you'll agree that
 23 on this table or figure 1-3 from the EIS it includes
 24 a typical section on Shilshole?
 25 A. Yes, it does.

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1 Q. And what does it say about the width of
 2 the travel lanes?
 3 A. It has a range from 10-12 foot for the
 4 through lanes.
 5 Q. It has a range from 10-12 feet. Ten feet
 6 would be below the standards in both the
 7 Right-of-Way Improvement Manual and Streets
 8 Illustrated; correct?
 9 A. It is below the posted standards.
 10 Q. Okay. And has any safety analysis been
 11 done of what would happen if you used ten-foot lane
 12 widths for the trucks on Shilshole?
 13 A. So depending on where that location is,
 14 you'd have to determine if there is an impact or
 15 not. So if it's at an intersection where the trucks
 16 are turning versus a small (inaudible) versus a
 17 whole entire corridor.
 18 Q. So whether there is a safety issue, you
 19 would have to determine that in a subsequent
 20 analysis that's not in the EIS?
 21 A. So we have many locations that have
 22 varying lane widths, and we would have to look at
 23 what's available. But we do not have a safety
 24 analysis.
 25 Q. Okay. There is no safety analysis of

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1 dropping below the standards in the EIS; correct?
 2 A. Correct.
 3 Q. Now, you were asked a number of questions
 4 about design vehicles, and you said the SDOT
 5 standard design vehicle is SU-30?
 6 A. Yes.
 7 Q. Have you looked at all of the AutoTURNS
 8 that Mr. Bishop did using the different size
 9 vehicles that actually use Shilshole?
 10 A. I saw the turning templates.
 11 Q. Okay. And you would agree if one is,
 12 would you not, that if one is trying to determine
 13 safety impacts one would want to know the turning
 14 movements of the vehicles that actually use the
 15 street?
 16 A. Depends on the context.
 17 Q. The EIS doesn't contain any safety
 18 analysis based on the turning movements of the
 19 trucks that actually use the street; correct?
 20 A. It does have the turning templates for
 21 vehicles that we identified.
 22 Q. Well, doesn't it have -- at the
 23 intersections doesn't it use the SU-30 design
 24 vehicle?
 25 A. That's our standard, is SU-30, for design

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1 vehicle.
 2 Q. And my question was about the trucks that
 3 actually use the street by the businesses. There is
 4 no safety analysis of the turning movements of those
 5 trucks; correct?
 6 A. It is assumed that the (inaudible) trucks
 7 that are turning, if we design for those at the
 8 intersection, you wind up not having an
 9 intersection. Just the turning template is such
 10 that it is not a common -- it can't have those
 11 larger trucks be able to turn.
 12 Q. I'm sorry, it can't --
 13 A. So we accommodate the larger trucks at the
 14 intersection to the extent feasible.
 15 Q. But my question is there's no safety
 16 analysis of those large vehicles turning across the
 17 trail in the EIS; correct?
 18 A. Turning across the trail. There is
 19 turning templates, but I'm not sure what you're
 20 talking about safety analysis.
 21 Q. Well, can you point to me -- this appeal
 22 is largely about safety. Can you point to me
 23 anywhere in the EIS where there is a safety analysis
 24 of the impacts of those large trucks turning across
 25 the proposed trail?

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1 A. I think we discussed that as those trucks
 2 turn across the path, that they need to stop for the
 3 trail users and then they can proceed through.
 4 Q. So is the safety analysis then the
 5 assumption that the trucks will always see and stop
 6 for the trail users?
 7 A. As required by law, yes.
 8 Q. Well, again, assuming that people are
 9 going to follow the law, is that a safety analysis?
 10 A. We expect everybody to follow, especially
 11 when people are using the street.
 12 Q. And were you here for Mr. Schultheiss's
 13 testimony?
 14 A. I missed, I was sick, so I missed a
 15 portion of it. I apologize.
 16 Q. Well, one of the points he talked about
 17 was the danger of right hook movements.
 18 Are you familiar with that?
 19 A. Depending on the context. I'm familiar
 20 with right hook movements.
 21 Q. Right hooks are when a vehicle turns right
 22 and hits a bicycle that is proceeding straight ahead
 23 because the vehicle doesn't see the bicycle?
 24 A. Again, it depends on the context so you
 25 need to set that for me.

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1 Q. Well, isn't that a common example of a
 2 right hook?
 3 A. So vehicle turning right against a through
 4 bicycle, yes.
 5 Q. Okay. And is there -- and you would
 6 acknowledge, would you not, that there are going to
 7 be many right turn movements across the 41 driveways
 8 on the Shilshole segment of the Missing Link?
 9 A. Yes, there will be right turn movements
 10 across the driveways.
 11 Q. And is there a single blind spot diagram
 12 or discussion in the EIS of the safety issues
 13 created by those potential right hooks?
 14 A. The design is set per the national
 15 guidelines for multiuse path. A right turn vehicle
 16 will have full visibility of the bicycle rider as
 17 they turn. The rules of the road is that as they --
 18 before they cross the path, they have to stop and
 19 make sure that it's safe to do so. So the right
 20 hook issue is not relevant.
 21 Q. So the right hook movement is not
 22 relevant. Does that mean no one ever dies from a
 23 right hook movement?
 24 A. This trail is designed so that if
 25 everybody follows the rules of the road it's

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1 perfectly safe.
 2 Q. Does everyone follow the rules of the
 3 road? Is that what bicyclists do?
 4 A. You're asking me a question that's global,
 5 so expectation is that everybody follows the rules
 6 of the road, just like a traffic signal.
 7 Q. Okay. So am I to understand then that
 8 this trail is safe, in your opinion, because you
 9 assume all the truck drivers and all the bicyclists
 10 are going to follow the rules of the road?
 11 A. Yes.
 12 Q. Isn't federal -- aren't federal funds
 13 being used for this project?
 14 A. I can't -- I can't speak to the funding.
 15 MR. SCHNEIDER: Nothing further.
 16 MR. KISELIUS: We have no further
 17 questions for Mr. Chang.
 18 THE HEARING EXAMINER: Okay. So
 19 you're finished, Mr. Chang.
 20 MR. KISELIUS: This is actually not
 21 one of the witnesses --
 22 THE HEARING EXAMINER: This is not a
 23 direct, okay. Thank you, Mr. Chang. We're all glad
 24 to see you feeling better.
 25 Now we're moving on. Anything

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1 further from the City?
 2 MR. SCHNEIDER: No.
 3 MR. COHEN: No, your Honor.
 4 THE HEARING EXAMINER: And the
 5 intervenor. Okay.
 6 If we could take down the easel and
 7 the illustrative, make sure the audience can still
 8 see.
 9 Appellants, what are we looking at
 10 for rebuttal?
 11 MR. BROWER: We have three rebuttal
 12 witnesses, and I think we can get through two of
 13 them before lunch for sure. And then the third one
 14 after lunch.
 15 THE HEARING EXAMINER: Okay. Let's
 16 give it a shot.
 17 MR. BROWER: The Coalition calls
 18 James Forgette.
 19 THE HEARING EXAMINER: Please state
 20 your name for the record and spell your name.
 21 MR. FORGETTE: James O. Forgette,
 22 Junior. J-A-M-E-S, F-O-R-G-E-T-T-E.
 23 THE HEARING EXAMINER: Do you swear
 24 or affirm that the testimony you're providing at
 25 today's hearing will be the truth?

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1 MR. FORGETTE: Yes.
 2 THE HEARING EXAMINER: Thank you.
 3 JAMES FORGETTE,
 4 a witness, having been previously sworn,
 5 was examined and testified as follows:
 6 DIRECT EXAMINATION
 7 BY MR. BROWER:
 8 Q. Good morning, Mr. Forgette.
 9 A. Good morning.
 10 Q. By whom are you employed?
 11 A. The Ballard Terminal Railroad Company.
 12 Q. And what is your position with the Ballard
 13 Terminal Railroad?
 14 A. General manager.
 15 Q. And for how long have you been the general
 16 manager?
 17 A. Approximately 18 months.
 18 Q. So since about mid 2016?
 19 A. Correct.
 20 Q. And how long have you been with the
 21 Ballard Terminal Railroad?
 22 A. About 16 and a half years.
 23 Q. And during your course of employment what
 24 positions have you held with the railroad?
 25 A. Engineer, conductor, designated supervisor

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1 (inaudible) engineers, maintenance-of-way track
 2 inspector, operations manager, training officer, and
 3 currently general manager.
 4 Q. Did you work for a railroad before joining
 5 Ballard Terminal?
 6 A. Yes, I worked for the Burlington Northern,
 7 which is now the Burlington Northern Santa Fe.
 8 Q. And for how long did you work for BNSF?
 9 A. Approximately a year and a half.
 10 Q. Are you also an owner of Ballard Terminal?
 11 A. I am.
 12 Q. And how much do you own of Ballard?
 13 A. Ten percent.
 14 Q. Does Ballard Terminal Railroad only
 15 operate the short line in Ballard?
 16 A. No, we operate two other railroads.
 17 Q. So you have three railroad lines in total.
 18 A. Correct.
 19 Q. What are those other two rail lines?
 20 A. We have the Meeker Southern Railroad down
 21 in East Puyallup. And we have the Eastside Freight
 22 Railroad that runs (inaudible) Woodinville and
 23 Snohomish, Washington.
 24 Q. In total how much active mainline track
 25 does Ballard Terminal have amongst all three of

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1 those railroads?
 2 A. Ballard has three.
 3 Q. How much active -- what's the total
 4 (inaudible) --
 5 A. Oh.
 6 Q. -- for --
 7 A. The actual length is approximately three,
 8 but total track, including run-arounds and sitings,
 9 would be closer to four and a half, five.
 10 Q. So that's in Ballard.
 11 A. That's in Ballard.
 12 Q. About four and a half miles with the other
 13 track.
 14 A. Correct.
 15 Q. And what about all three of the railroads
 16 together, how much active track do the Ballard
 17 Terminal, Meeker Southern, and Eastside have?
 18 A. Close to 25.
 19 Q. And does that include active mainline or
 20 also sitings?
 21 A. Also sitings.
 22 Q. How many employees does Ballard Terminal
 23 Railroad have?
 24 A. Currently we have six.
 25 Q. And there was some questions and testimony

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1 as to whether Salmon Bay Sand & Gravel is Ballard
 2 Terminal's only customer; is that correct?
 3 A. That's incorrect.
 4 Q. Does Ballard Terminal have another
 5 customer?
 6 A. We have CalPortland.
 7 Q. And what do you do for CalPortland?
 8 A. We store cars for them.
 9 Q. What does that mean?
 10 A. During the (inaudible) months when
 11 CalPortland has extra cars, they're able to store
 12 them on our line as opposed to leave them somewhere
 13 on the Burlington Northern Santa Fe. It's much
 14 cheaper. And as a terminal railway, that's one of
 15 the things we offer.
 16 Q. Is car storage typical in the railroad
 17 industry?
 18 MR. KISELIUS: Mr. Examiner, I'm
 19 going to object to it. If I could have a moment in
 20 terms of the frame of rebuttal testimony.
 21 The only witness that talked about
 22 the use of the railroad was their own witness.
 23 Mr. Nerdrum testified to, in my recollection,
 24 testified to what that railroad is used for.
 25 The only testimony that the City has

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1 presented on that is about the tracks that are in
 2 the vicinity of that location that Mr. Nerdrum
 3 testified to.
 4 So this is rebuttal. It's meant to
 5 respond to new information presented by the City.
 6 It is not -- it should not be used to rehabilitate
 7 or expand where the first witness did not provide
 8 that detail. That's patently unfair to the City,
 9 because we are now out of the ability to respond
 10 factually or otherwise.
 11 MR. BROWER: I thought we were
 12 exploring areas also discussed by Mr. Mazzola and I
 13 believe Ms. Ellig, who both talked about, in their
 14 opinion the Ballard Terminal doesn't use the tracks,
 15 and therefore the City should be entitled to remove
 16 them.
 17 And what I'm trying to do is lay a
 18 foundation as to how those tracks are used by the
 19 railroad. We can skip right to that point if it
 20 would be easier.
 21 THE HEARING EXAMINER: I do think
 22 that that was what the tracks -- the testimony on
 23 tracks was from the City. As far as who used the
 24 lines and customers, that was on direct only of your
 25 witness.

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1 MR. BROWER: Certainly.
 2 THE HEARING EXAMINER: I understand
 3 that that was the line of questioning that we're in
 4 now and that's the basis for the objection. So I
 5 understand that you're moving on from that, and so I
 6 don't know if there is anything to sustain.
 7 MR. BROWER: Certainly. I'll
 8 withdraw that question and move on to other
 9 questions.
 10 THE HEARING EXAMINER: Okay.
 11 MR. BROWER: If you'll indulge me for
 12 just a second, I've lent Mr. Cohen my cable. There
 13 it is. It worked.
 14 Q. (By The Hearing Examiner) Mr. Forgette,
 15 I realize you were not in the room during this
 16 testimony, but there was testimony about the fact
 17 that the Ballard Terminal Railroad does not use some
 18 rail track that's located to the east of Salmon Bay
 19 Sand & Gravel, approximately in front of the
 20 Ballard -- excuse me, the Salmon Bay Cafe. I'm
 21 going to point to some track.
 22 Can you see the television screen, or do
 23 you need --
 24 A. Yeah. Yes, I can see it.
 25 THE HEARING EXAMINER: And just for

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1 clarification, Mr. Brower, for the record, this is
 2 helpful obviously for illustrative purposes, but
 3 this is an image from the record; isn't it?
 4 MR. BROWER: It is.
 5 THE HEARING EXAMINER: We can just
 6 refer to that, so that we know when he refers orally
 7 to a point someone tracking the oral record can keep
 8 up with that.
 9 MR. BROWER: Thank you, Mr. Examiner.
 10 Let me go back and orient everybody.
 11 Q. (By Mr. Brower) This is actually a City
 12 exhibit.
 13 MR. COHEN: And while you're doing
 14 that, can I get up and look at it.
 15 THE HEARING EXAMINER: Yes, please.
 16 MR. BROWER: R10.
 17 THE HEARING EXAMINER: Sorry, was
 18 that tab 10 or R10.
 19 MR. BROWER: It's tab 1. I believe
 20 that is R10. This is the --
 21 THE HEARING EXAMINER: Yes.
 22 Q. (By Mr. Brower) Mr. Forgette, you've
 23 been handed what's been marked and admitted as
 24 Exhibit R10, and we're looking at sheet four of
 25 seven of R10.

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1 Do you see that in the lower right-hand
 2 corner?
 3 A. Yes.
 4 Q. So do you see there is the image above and
 5 then the image below, so let's focus on the image
 6 below on that sheet.
 7 Do you see towards the right-hand corner
 8 there seems to be three sets of railroad tracks that
 9 go from the bottom of the image to the towards the
 10 top of the image?
 11 A. Yes.
 12 Q. And the testimony is that the City wants
 13 to remove that third section at the top.
 14 Do you see that section of trail -- excuse
 15 me, track?
 16 MR. COHEN: Mr. Brower, can I stop
 17 you for just a second. I'm looking at what I think
 18 is sheet four, but I'm not looking at the same page
 19 you are.
 20 THE HEARING EXAMINER: It's Bates
 21 stamp five.
 22 MR. COHEN: Bates stamp five, yes.
 23 Thank you. Sorry.
 24 THE HEARING EXAMINER: Are we there?
 25 MR. COHEN: Yes.

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1 THE HEARING EXAMINER: Good.
 2 Q. (By Mr. Brower) So again, Mr. Forgette,
 3 do you see that third rail line towards the upper
 4 portion of that bottom section image?
 5 A. Yes.
 6 Q. And does the railroad currently use that
 7 track?
 8 A. No.
 9 Q. And so the railroad wouldn't have any
 10 problem with that track being removed.
 11 A. Correct.
 12 Q. If you could turn to the next page,
 13 please, which is sheet five of seven, and might be
 14 Bates stamped page six.
 15 A. Okay.
 16 Q. Do you see -- I'm looking -- I'm reading
 17 the surveyor's notes on how they label --
 18 A. Okay.
 19 Q. -- the pages where every sheet is sheet
 20 five of seven.
 21 Do you see that in the lower right corner?
 22 A. I do.
 23 Q. So you'll see on this image that
 24 towards -- again, we're going to focus on the bottom
 25 diagram, because there is an upper image and a lower

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1 image.
 2 Do you see down at the bottom of that
 3 bottom image there is a railroad track that's
 4 designated with diagonal lines instead of
 5 perpendicular lines? Do you see that?
 6 A. Yes.
 7 Q. Towards the bottom left. I'll point to it
 8 on the television.
 9 Here it says proposed relocated railroad.
 10 Do you see that?
 11 A. Yes.
 12 Q. And then just to the right of that on that
 13 image, about in the middle, it says remove EX
 14 railroad or RR.
 15 Do you see that?
 16 A. Yes.
 17 Q. So those two tracks that are the existing
 18 railroad, what are those? Is one of them a
 19 mainline?
 20 A. Yes. The one closest to the street is our
 21 mainline.
 22 Q. So the one just below the street, what is
 23 that?
 24 A. That's what we call our Western Pioneer
 25 siding.

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1 Q. Does the railroad currently use that?
 2 A. We do.
 3 Q. Would it impact the railroad if the City
 4 removed it?
 5 A. Yes, it would.
 6 Q. Do you know what the Surface
 7 Transportation Board is?
 8 A. I do.
 9 Q. Is it your understanding that the Surface
 10 Transportation Board would have to approve the
 11 removal of active rail line?
 12 MR. KISELIUS: Objection.
 13 A. Yes.
 14 MR. KISELIUS: This is outside the --
 15 THE WITNESS: Sorry. Sorry.
 16 MR. KISELIUS: We're talking about a
 17 hypothetical STB process proceeding. It's not
 18 related to the adequacy of this EIS. This is a
 19 different legal challenge unrelated to the adequacy
 20 of the EIS, and the specific issues that they've
 21 raised in their appeal.
 22 MR. COHEN: I would add -- just a
 23 second, Mr. Brower.
 24 This question also assumes the fact
 25 that is not in evidence, that this is an active rail

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1 line. In the eyes of the STB, this is not an active
 2 rail line.
 3 MR. BROWER: May I respond?
 4 THE HEARING EXAMINER: Yes.
 5 MR. BROWER: This issue of STB
 6 jurisdiction was specifically discussed with
 7 Mr. Mazzola, and it goes to our argument about
 8 procedural compliance with SEPA, which you,
 9 Mr. Examiner, said is an issue that we're allowed to
 10 brief in our closings.
 11 THE HEARING EXAMINER: This is
 12 getting at a question -- so this gets to procedural
 13 SEPA?
 14 MR. BROWER: Our argument is that the
 15 STB, the Surface Transportation Board, has
 16 jurisdiction over this project because it involves
 17 removal of a railroad track. And the City failed to
 18 properly notify the STB.
 19 If you look in list -- the
 20 distribution list in the EIS, you can see all of the
 21 state, federal, and local agencies, including tribes
 22 to whom the EIS was distributed, and the Surface
 23 Transportation Board is missing.
 24 And Mr. Schneider asked
 25 Mr. Mazzola about that, so I'm following up on

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1 Mr. Mazzola's comments.
 2 THE HEARING EXAMINER: Before we ge
 3 too far on that. There was also a second part to
 4 the objection about use, whether there is an
 5 established use of the railway.
 6 MR. BROWER: And Mr. Forgette, who is
 7 the railroad manager and has worked for the railroad
 8 for 16 years, says the railroad actually uses that
 9 track.
 10 THE HEARING EXAMINER: I think there
 11 was discussion from Ms. Ellig and others as well, so
 12 I think we do have at least nominal information in
 13 the record about it being used. I'm parsing this
 14 apart, and I'm not to the part that concerns you
 15 yet, I don't think, unless you still -- unless you
 16 want to address that aspect of it.
 17 MR. KISELIUS: Yes. I think there is
 18 a variety of issues that are of concern here. The
 19 one that's at issue in terms of the extent of the
 20 testimony here is that, to the extent that there is
 21 an STB issue, that is not raised in their Notice of
 22 Appeal.
 23 Again, we disagree with it if it's a
 24 totally different issue that's not relevant to an
 25 adequacy appeal. Separate challenge, different

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1 legal remedies, unrelated to this issue.
 2 Second, part of this is the use of
 3 rebuttal to build their case after the City and
 4 Cascade no longer have an opportunity to provide
 5 evidence on this topic, and that's a big concern
 6 here. Because again, they had a chance to present
 7 witnesses to talk about this issue in more detail
 8 than they have.
 9 Now, on rebuttal, we're going to have
 10 them unpack their entire case on this issue. And
 11 that, again, in terms of the fair procedure, that
 12 seems unfair to the City.
 13 THE HEARING EXAMINER: Okay. So I
 14 think that we have enough -- I'm going to go to the
 15 low hanging fruit first. I do think we have enough
 16 in the record to establish that there is some use
 17 for the tracks, and so I'm going to overrule the,
 18 what I'm going to treat as the second objection,
 19 joining from Mr. Cohen. I think we got something
 20 there, whether it's the specifics that Mr. Forgette
 21 is getting to or not, it's been raised within the
 22 context of the testimony. I'll overrule it for
 23 that.
 24 However, this is rebuttal and we
 25 really, while we did have a more expansive

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1 opportunity for testimony to, I guess attack the
 2 City and its efforts in compliance with SEPA, for
 3 the purposes of challenging the deference that is
 4 owed, I'm not sure that this is rebuttal for that,
 5 so I don't know quite how we're getting there in
 6 this context. So I would sustain that objection.
 7 MR. KISELIUS: Thank you.
 8 THE HEARING EXAMINER: Okay.
 9 Q. (By Mr. Brower) Just going back to one
 10 last question, Mr. Forgette. So the removal by the
 11 City of any track that you use, would that be an
 12 impact to the railroad?
 13 A. Yes, it would.
 14 MR. BROWER: Thank you. Nothing
 15 further.
 16 MR. COHEN: May I have just a minute.
 17 THE HEARING EXAMINER: Um-hmm.
 18 MR. KISELIUS: The City doesn't have
 19 questions for Mr. Forgette.
 20 MR. COHEN: I do, your Honor.
 21 THE HEARING EXAMINER: Um-hmm.
 22 CROSS-EXAMINATION
 23 BY MR. COHEN:
 24 Q. Mr. Forgette, looking again at Exhibit R10
 25 at page Bates stamp COS00006, the one that

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1 Mr. Brower was just asking you about.
 2 A. Yes.
 3 Q. Could you point out to me again the
 4 Western Pioneer siding you were referring to? Where
 5 does it begin and where does it end?
 6 A. Well, in this -- it's the middle track.
 7 I'm trying to see where it begins.
 8 Q. The middle track as in between the two
 9 tracks shown here?
 10 A. That's correct. And (inaudible) joins up
 11 (inaudible) not showing on this page.
 12 Q. Does it join up with the mainline at some
 13 point east of this sheet?
 14 A. Yes.
 15 Q. And you indicated that the railroad uses
 16 that siding?
 17 A. That's correct.
 18 Q. What does it use -- for what purpose does
 19 the railroad use --
 20 A. For tran -- for transloading and for
 21 storage of cars.
 22 Q. Transloading of what?
 23 A. The last (inaudible) transloaded there was
 24 frozen fish. And then after that we had flour.
 25 Q. And how long ago was that, most recent of

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1 those transloads?
 2 A. Of the transloading, it's been (inaudible)
 3 I would say at least five.
 4 Q. Mr. Nerdrum testified that the only rail
 5 freight customer of Ballard Terminal Railroad at
 6 this point is Salmon Bay.
 7 Do you agree with that?
 8 A. I guess it depends on the definition of
 9 customer. (inaudible) we do receive inbound loaded
 10 freight for Salmon Bay, but we do also offer other
 11 services to shippers like car storage.
 12 Q. And that's the reference to CalPortland
 13 you mentioned?
 14 A. Correct.
 15 Q. And are you currently storing cars for
 16 CalPortland?
 17 A. We're not.
 18 Q. How many cars did you store for
 19 CalPortland in 2016?
 20 A. I don't know how many cars, but I would
 21 say it probably would have been 10-15 cars at a
 22 time.
 23 Q. And for what length of time?
 24 A. It's usually for two to three and a half
 25 months.

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1 Q. Where did you store those cars?
 2 A. We stored them at the Western Pioneer
 3 siding and at the (inaudible) street yard and south
 4 of (inaudible).
 5 Q. Mr. Forgette, my understanding is that
 6 Ballard Terminal Railroad owns none of the track
 7 over which you operate in Ballard; is that true?
 8 A. I'm not a hundred percent positive on
 9 that, but that's my understanding.
 10 Q. Have you looked at whether your operating
 11 agreement with the City of Seattle authorizes you to
 12 store cars on that track?
 13 A. It's been some time, but I believe I have.
 14 Q. Have you confirmed that with the City?
 15 A. Not recently, no.
 16 Q. Did --
 17 A. But --
 18 Q. Go ahead.
 19 A. But as a common carrier, that would be
 20 under federal authority what we can do on our tracks
 21 in terms of storing cars and (inaudible) cars that
 22 are empty. So as a railroad common carrier we have
 23 every right to store cars on that City right-of-way.
 24 Q. And you never asked the City whether you
 25 have their permission to do that?

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1 A. When we first started storing cars I
 2 wasn't in charge of the storage. But since I've
 3 been in charge, I have not asked the City.
 4 Q. Is it your impression, Mr. Forgette, that
 5 this is a active rail corridor regulated by the STB
 6 as an active rail line?
 7 A. Absolutely.
 8 Q. And you're not aware that this line has
 9 been railbanked?
 10 A. I'm not aware of whether it has been
 11 railbanked or not. But regardless of whether it's
 12 been railbanked, it is still considered an active
 13 line by the STB.
 14 Q. What is your basis for saying that?
 15 A. Having spoken to the Surface
 16 Transportation Board.
 17 Q. Who did you talk to?
 18 A. I don't remember the (inaudible), but I've
 19 spoken to them about this.
 20 Q. When did you talk to them?
 21 A. I've spoken to them throughout the years.
 22 I don't know my most recent conversation with them.
 23 Q. Was it this year?
 24 A. It probably wasn't this year. It was
 25 probably last year.

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1 Q. And you don't know who you talked to?
 2 A. No, I don't.
 3 Q. So other than storing cars for CalPortland
 4 has Ballard -- has Ballard obtained any revenue from
 5 any customer, other than Salmon Bay Sand & Gravel,
 6 in the last five years?
 7 A. Other than CalPortland; you said?
 8 Q. Um-hmm.
 9 A. Well, yes. We've received revenue from
 10 Salmon Bay Sand & Gravel, CalPortland, and then
 11 Burlington Northern Santa Fe. And that's
 12 (inaudible) Salmon Bay Sand & Gravel cars.
 13 Q. Right. When Salmon Bay receives a car
 14 delivered by Ballard Terminal Railroad, do you
 15 invoice them for that freight delivery?
 16 A. Do we invoice Salmon Bay?
 17 Q. Salmon Bay.
 18 A. We do.
 19 Q. Do you have a tariff that controls what
 20 you charge?
 21 A. We do.
 22 Q. And does Salmon Bay pay charges based on
 23 that tariff?
 24 A. Correct.
 25 Q. You don't have a separate contract, it's

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1 done by tariff?
 2 A. That is correct.
 3 Q. Do you happen to know how much Ballard
 4 charges Salmon Bay per car under that tariff?
 5 A. I do.
 6 Q. How much?
 7 A. \$200.
 8 Q. \$200 a car?
 9 A. Correct.
 10 Q. Mr. Forgette, I have a document I want to
 11 talk to you about.
 12 MR. COHEN: I'd like to get this one
 13 marked.
 14 THE HEARING EXAMINER: R54.
 15 MR. COHEN: R54. Thank you, your
 16 Honor.
 17 (Exhibit No. R54 Marked.)
 18 Q. (By Mr. Cohen) Mr. Forgette, showing you
 19 what's been marked as R54, do you recognize this
 20 document?
 21 A. Yes.
 22 Q. What is it?
 23 A. It's a class two and three railroad -- I
 24 can't read it -- railroad commodities.
 25 Q. It says companies.

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1 A. Companies.
 2 Q. Yeah.
 3 A. 2016 annual report.
 4 Q. For Ballard Terminal Railroad?
 5 A. Correct.
 6 MR. BROWER: Mr. Examiner, I'm going
 7 to object. This is way beyond the scope of direct.
 8 We're looking at a Washington Utilities and
 9 Transportation Commission form. We've never asked
 10 any questions about the UTC.
 11 I've given Mr. Cohen a lot of
 12 latitude. He went deep into the STB, where we
 13 weren't allowed to go into the STB. He's gone deep
 14 into who Ballard Terminal's customers are, which we
 15 weren't allowed to explore, based on objections that
 16 were just recently sustained by the City.
 17 I think this is way beyond the scope
 18 of direct, and also irrelevant to the adequacy of an
 19 EIS.
 20 MR. COHEN: Your Honor, I believe
 21 that the very first thing that Mr. Forgette
 22 testified about was to expand upon the range of
 23 customers described by Mr. Nerdrum, and you
 24 permitted that testimony. So I am wanting to
 25 explore the magnitude of this railroad's operations.

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1 It relates directly to the
 2 Coalition's contention that this is an important
 3 business that will be disrupted by the construction
 4 of the trail on the proposed alternative.
 5 THE HEARING EXAMINER: So just to
 6 clarify. I thought we didn't allow the testimony on
 7 CalPortland. Am I mistaken?
 8 MR. COHEN: There was testimony that
 9 had --
 10 THE HEARING EXAMINER: But there was
 11 an objection --
 12 MR. COHEN: Gotten in --
 13 THE HEARING EXAMINER: -- to it.
 14 MR. COHEN: Yes, after there was some
 15 testimony to it, that's correct.
 16 MR. BROWER: But we --
 17 THE HEARING EXAMINER: But the
 18 objection was sustained.
 19 MR. COHEN: So -- correct. Correct.
 20 MR. BROWER: By his own
 21 co-respondent.
 22 THE HEARING EXAMINER: I don't think
 23 that that was in there.
 24 MR. BROWER: It was never --
 25 Washington Utilities Transportation Commission was

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1 never raised on direct, so this is way beyond the
 2 scope of direct as well.
 3 THE HEARING EXAMINER: So I'm
 4 agreeing with you.
 5 MR. BROWER: Thank you. I'm going to
 6 shut up.
 7 MR. COHEN: Your Honor, I'm thinking
 8 about your ruling.
 9 My purpose for offering this exhibit
 10 goes to the importance of the operations of this
 11 railroad to the impacts of the trail, the economic
 12 impacts to which the coalition is providing -- is
 13 offering contentions that this is a grave impact to
 14 the business community in Ballard. And --
 15 THE HEARING EXAMINER: This goes to
 16 the economic impact to Ballard Terminal Railroad?
 17 MR. COHEN: This member of the
 18 Coalition, yes.
 19 THE HEARING EXAMINER: That was --
 20 that has been a subject of the testimony.
 21 MR. BROWER: And Mr. Examiner, we've
 22 never said important or grave; we said active. And
 23 by his own questioning, Mr. Cohen has confirmed that
 24 this railroad is regulated by tariffs imposed by the
 25 Surface Transportation Board in the FRA, a subject

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1 that we haven't been allowed to explore. And what
 2 they're trying to do is smear the railroad as some
 3 fake business, which is way outside the scope of the
 4 adequacy of the EIS.
 5 The point of the EIS is did it
 6 disclose impacts to businesses? All we've said is
 7 this is an active business and it will be impacted.
 8 MR. COHEN: And I think --
 9 THE HEARING EXAMINER: I tell you
 10 what. I'm going to allow it. But we have blown
 11 open subjects that were closed before, and so there
 12 is going to be an opportunity for redirect for them
 13 to ask questions on subject matters.
 14 MR. BROWER: So towards that point, I
 15 would then like to re-call Mr. Trask to the stand,
 16 because if we're going allow to get into the motives
 17 here, then I've got emails that I want to introduce
 18 that show what the bike club wants to do to the
 19 railroad. Because --
 20 THE HEARING EXAMINER: We're not
 21 getting at motives.
 22 MR. BROWER: Okay.
 23 THE HEARING EXAMINER: It's the
 24 impact on the business by the trail. That's the
 25 broadest scope that we've gotten into.

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1 We also opened the subject of --
 2 well, you're probably keeping better track than I
 3 am, so I'm not going to --
 4 MR. COHEN: And I have no interest
 5 in --
 6 THE HEARING EXAMINER: -- revisit.
 7 MR. COHEN: -- disparaging the
 8 railroad. I'm simply interested in the economic
 9 impact of the trail on it.
 10 THE HEARING EXAMINER: Okay. I'll
 11 allow it.
 12 Q. (By Mr. Cohen) Mr. Forgette, did you
 13 fill out this report?
 14 A. No.
 15 Q. So who did?
 16 A. Well, I signed it, but it looks like Byron
 17 Cole's handwriting.
 18 Q. Um-hmm. But that is your signature on
 19 page three?
 20 A. That's correct.
 21 Q. All right. Am I -- you testified that you
 22 own ten percent of the railroad; is that right?
 23 A. That's correct.
 24 Q. It says here -- I withdraw that question.
 25 Would you turn to page four. I see a

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1 table indicating gross intrastate operating revenues
 2 at the bottom of page four?
 3 A. Correct.
 4 Q. You see that?
 5 A. Yes.
 6 Q. All right. And is the number depicted
 7 there \$35,852?
 8 A. Yes.
 9 Q. And that's the total gross intrastate
 10 operating revenues of Ballard Terminal Railroad in
 11 2016?
 12 A. Correct.
 13 Q. Yeah. And there is also interstate
 14 revenues; correct?
 15 A. Same page up above?
 16 Q. Um-hmm.
 17 A. Okay.
 18 Q. \$3,200; is that correct?
 19 A. That's correct.
 20 Q. So the total revenues of Ballard Terminal
 21 Railroad in 2016 would be about \$37,000?
 22 A. Correct, yeah, 37, 38.
 23 Q. Um-hmm. And if we wanted to figure out
 24 how many cars you delivered in 2016, you would
 25 divide that \$37,000 number by \$200 a car; is that

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1 correct?
 2 A. No, that's not correct. Because we get
 3 paid per car at Ballard two different ways. We get
 4 the \$200 from Salmon Bay Sand & Gravel and then we
 5 get a portion of the Burlington Northern Santa Fe
 6 rate. So it would be those combined.
 7 Q. But the Burlington Northern Santa Fe rate
 8 would only apply to the \$3,200 obtained through
 9 interstate revenues?
 10 A. No, I believe that the Burlington Northern
 11 Santa Fe revenue would be included in the 35,815.
 12 Q. So from -- to understand what Salmon Bay
 13 realized, you'd need to deduct the BNSF charges from
 14 the 35?
 15 A. Well, I think what you would -- you would
 16 take what we get per car, I guess the way I would do
 17 it I would take what we get from the BNSF per car,
 18 from the Salmon Bay Sand & Gravel per car, add that
 19 as one car, and then divide that 35,815, and that
 20 would show you how many cars.
 21 Q. From that number can you estimate the
 22 number of cars?
 23 A. Got a calculator?
 24 Q. Sure, but if you --
 25 A. I'm going to say we hauled about -- I'm

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1 going to say we hauled about -- this is 2016?
 2 Q. Uh-huh.
 3 A. I'm going to say we -- let me do some
 4 thinking here. I'm going to say we hauled about 120
 5 cars, 120, 130 is my guess.
 6 Q. Thank you.
 7 MR. COHEN: No further questions.
 8 MR. BROWER: Can we have this marked,
 9 please. What number are we on?
 10 THE HEARING EXAMINER: This will be
 11 A24.
 12 (Exhibit No. A24 Marked.)
 13 REDIRECT EXAMINATION
 14 BY MR. BROWER:
 15 Q. Mr. Forgette, do you recognize what's been
 16 marked as A24?
 17 A. I do.
 18 Q. And what is that?
 19 A. It's a letter from CalPortland.
 20 Q. Would you please read it into the record?
 21 By the way, when did CalPortland -- did CalPortland
 22 give you that letter?
 23 A. They did.
 24 Q. And when did you get it?
 25 A. I got this last week, I believe.

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1 Q. Would you please read what CalPortland
 2 says, I think it's two sentences?
 3 A. To whom it may concern. CalPortland's
 4 cement division has historically utilized Ballard
 5 Terminal Railroad for winter car storage for excess
 6 cement railcars. CalPortland fully intends to
 7 continue utilizing Ballard Terminal for off season
 8 railcar storage for the foreseeable future. Best
 9 regards, Wayne Johnson, Seattle Cement Terminal
 10 Manager.
 11 Q. Do you know Mr. Johnson?
 12 A. I do.
 13 Q. And he sent you that letter?
 14 A. He did.
 15 MR. BROWER: Based on Mr. Cohen's
 16 line of testimony, I move to admit this into the
 17 record.
 18 MR. COHEN: Do you have a number for
 19 it?
 20 THE HEARING EXAMINER: Yes, this is
 21 A24.
 22 Any objection?
 23 MR. COHEN: No objection.
 24 And I'd like to ask, your Honor, that
 25 R54 be admitted, as well.

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1 THE HEARING EXAMINER: Okay. We'll
 2 get to that.
 3 City, any objection to A24? Okay.
 4 A24 is admitted.
 5 (Exhibit No. A24 Admitted.)
 6 THE HEARING EXAMINER: Any objection
 7 to R54?
 8 MR. BROWER: We've already stated our
 9 objections. And I would add that Mr. Forgette has
 10 said he recognizes his signature, but doesn't
 11 believe he completed this form. So I don't think he
 12 can -- other than saying he signed it. So I think
 13 is a lack of foundation on it. But with those
 14 objections.
 15 THE HEARING EXAMINER: I'll overrule
 16 the objection and admit it.
 17 (Exhibit No. R54 Admitted.)
 18 THE HEARING EXAMINER: We've had the
 19 testimony -- I've essentially overruled the
 20 objection to allowing that line of testimony before,
 21 recognizing it blows open the opportunity for the
 22 Appellants to ask questions about it.
 23 Mr. Forgette's testified to the
 24 numbers. I don't know that that necessarily gets to
 25 the validity of the document or for what it's

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1 speaking to, but we got to the number that he thinks
 2 of the number of cars that were delivered and the
 3 amount that they made.
 4 MR. BROWER: Thank you.
 5 MR. COHEN: Thank you, your Honor.
 6 Q. (By Mr. Brower) I'm going to look at
 7 volume one. I believe you have volume one. We're
 8 going to go to -- Mr. Forgette, if you'd open that
 9 book to tab A254.16. And then if you would flip
 10 through the photographs in that tab, and you'll see
 11 down in the lower right-hand corner there in white
 12 marking there is a photograph labeled A254.35. It's
 13 a photograph of a locomotive with a gentleman
 14 dressed in black with orange striping coming towards
 15 the photographer.
 16 A. Yes.
 17 Q. Do you recognize what's depicted in this
 18 photograph? Is that by your Western Pioneer siding?
 19 A. That's correct. That is -- on the right
 20 of the photo, that is our Western Pioneer siding.
 21 Q. So those would be the stored cars you're
 22 talking about?
 23 A. That's correct.
 24 Q. And is that your locomotive?
 25 A. Yes, it is.

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1 Q. So that's how the locomotive gets around
 2 those stored cars?
 3 A. That's correct.
 4 Q. Is what's depicted in this photograph
 5 still the typical conditions that exist today?
 6 A. Yes, other than trying to get some of the
 7 cars parked on the other side of the railcars,
 8 constantly have to move vehicles because they're in
 9 the way, but yes.
 10 MR. BROWER: Mr. Examiner, I'd like
 11 to have this marked and admitted, please.
 12 MR. COHEN: Mr. Examiner, are we --
 13 MR. BROWER: Just that one
 14 photograph.
 15 MR. COHEN: Okay. And I'm not clear
 16 which one -- where were you -- is it.
 17 MR. BROWER: A254.35.
 18 THE HEARING EXAMINER: This will be
 19 A25. Any objection?
 20 (Exhibit No. A25 Marked.)
 21 MR. COHEN: None, your Honor.
 22 MR. BROWER: Nothing further for --
 23 THE HEARING EXAMINER: A25 is
 24 admitted.
 25 (Exhibit No. A25 Admitted.)

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1 MR. BROWER: Thank you, Mr. Examiner.
 2 And nothing further for Mr. Forgette.
 3 THE HEARING EXAMINER: Thank you.
 4 MR. COHEN: I'm sorry, which exhibit
 5 number is it?
 6 THE HEARING EXAMINER: This was A25.
 7 MR. COHEN: Thank you.
 8 EXAMINATION
 9 BY THE HEARING EXAMINER:
 10 Q. Mr. Forgette, I wanted to ask you one
 11 question. You indicated that the removal of the
 12 track would impact the business.
 13 Can you quantify that impact?
 14 A. Yes. Are you talking about the Western
 15 Pioneer siding in particular or any --
 16 Q. Any. Generally I think you were asked if
 17 the trail tracks were removed, it would impact your
 18 business. And I want to understand the context for
 19 your response of impact.
 20 A. Right. The impact of them removing our
 21 mainline between essentially Salmon Bay Cafe and the
 22 (inaudible) diner spot, would not allow us a -- it
 23 would only give us the unloading track. If we only
 24 have the unloading track and there's cars being
 25 unloaded on the unloading track, which there usually

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1 are, there is one unloading spot and then there's
 2 three more positioned between driveways after that,
 3 we have no way to get around those cars. We have no
 4 way to get to the interchange.
 5 And when we have cars in storage at our
 6 Bright Street Yard, which is our only run-around
 7 track east of there, the only way you could get
 8 those cars out to the interchange would be to hook
 9 up onto them from the east end and shove them to the
 10 interchange track, which is not safe to do.
 11 (inaudible) run-around cars and to get on
 12 the front and to lead by the locomotive. It's the
 13 safest way to operate and it's the standard
 14 operating procedure for railroads, you shove
 15 (inaudible) have to.
 16 And so by taking away that mainline, we no
 17 longer have a way to get on the front of those cars
 18 when they're empty and to take them out to the
 19 interchange. And for the Western Pioneer, I mean
 20 that's huge. That doesn't allow us to operate
 21 safely.
 22 And the Western Pioneer siding is not only
 23 where we store cars for CalPortland, but in terms of
 24 growing our business that is one of only two spots
 25 that we can grow in terms of translating

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1 commodities. Because what we have there at Western
 2 Pioneer currently, is we have the mainline, we have
 3 the Western Pioneer siding, and then on the side of
 4 that we have an asphalt, it's not a road, but it's a
 5 load and unload, truck load and unload 24/7, where
 6 we can bring up a truck to transload commodities
 7 either into the railcar or out of the railcar.
 8 And that's what we did when we had -- at
 9 one point that's what we did with the flour, when we
 10 had flour. And of course that's what we did back
 11 when we had frozen fish from Western Pioneer.
 12 So in terms of growing the business and
 13 having more than just Salmon Bay Sand & Gravel,
 14 Western Pioneer, other than being one of our
 15 (inaudible) two spots to store cars, is also where
 16 we can possibly grow the business.
 17 So you take that away, you take our
 18 mainline away to where we can't operate safely, and
 19 it's going to be very difficult for us to operate in
 20 those conditions.
 21 Q. Is this A25, the photo, illustrative of
 22 some of the conditions you're talking about of you
 23 using your locomotive to go around stored cars?
 24 A. So that particular one, that's what it
 25 would look like. Now, that is a Western Pioneer

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1 siding, so in that situation the siding only has --
 2 you can only go in one way. It doesn't -- it's not
 3 like a run-around track, you can't go around it. So
 4 the Western Pioneer siding, you can just push cars
 5 in, shove cars in.
 6 So in terms of running around, when we
 7 talk of running around cars, we talk about being at
 8 one end of them, say on like a photo like that, and
 9 then being able to go by them and then go down to
 10 the other end, go through a switch, and then back up
 11 onto the end we want to get on.
 12 So for instance Western Pioneer, when we
 13 shove cars in there, when we take them out, when we
 14 take them out and we bring them back on the main
 15 line and they're going out to the interchange, we do
 16 not shove them to the interchange. With a
 17 locomotive in the lead backing up, we go to the
 18 Bright Street Yard and we run around in there where
 19 we can, because we have a switch at both ends, we
 20 get the locomotive on the front end and then we take
 21 them out to the interchange.
 22 And so -- and that is what we do
 23 whenever -- when we operate normally on the Salmon
 24 Bay Sand & Gravel, that's our normal operation in
 25 terms of we get around on the front end immediately

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1 and take those out to the interchange.
 2 Now, if we don't have the mainline to get
 3 around them, we can't get around them. We have to
 4 shove.
 5 Q. Okay.
 6 THE HEARING EXAMINER: Thank you for
 7 your testimony, Mr. Forgette.
 8 THE WITNESS: All right. Thank you.
 9 THE HEARING EXAMINER: Do you have
 10 another rebuttal witness?
 11 MR. BROWER: We do.
 12 THE HEARING EXAMINER: Let's see.
 13 We'll break at 12:30. Do you want to use that time?
 14 MR. BROWER: Yeah, we can get it
 15 done.
 16 And the Coalition re-calls Paul
 17 Nerdrum.
 18 THE HEARING EXAMINER: Mr. Nerdrum,
 19 you remain under oath from your earlier testimony.
 20 MR. NERDRUM: Yes.
 21 PAUL NERDRUM,
 22 a witness, having been previously sworn,
 23 was examined and testified as follows:
 24 DIRECT EXAMINATION
 25 (Rebuttal)

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1 BY MR. BROWER:
 2 Q. Good afternoon, Mr. Nerdrum, and welcome
 3 back.
 4 During Ms. Ellig's testimony she talked
 5 about some traffic counts that were done with a
 6 video camera in November of 2016, and today the City
 7 has given us a list of driveways that Ms. Ellig
 8 prepared in response to a question from the
 9 Examiner.
 10 The page I've just handed you is images
 11 that are represented to be from the IDAX video
 12 study.
 13 Do you see those?
 14 A. I do.
 15 MR. COHEN: May I just interpose an
 16 objection. I don't know if it's an objection.
 17 We were going to talk about whether
 18 that was admitted or not, so if we're stipulating to
 19 its admission, then we can proceed. I'm just --
 20 MR. BROWER: I just want to use it
 21 for illustrative purposes to identify where --
 22 THE HEARING EXAMINER: Mr. Cohen's
 23 had an opportunity to determine if they have an
 24 objection to it?
 25 MR. BROWER: We haven't yet. We're

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1 going to talk about it at lunch.
 2 THE HEARING EXAMINER: So do you see
 3 the conundrum?
 4 MR. BROWER: I do. Let's take it
 5 back. Would you hand that back, please.
 6 Q. (By Mr. Brower) Mr. Nerdrum --
 7 THE HEARING EXAMINER: I'll allow it
 8 if you want to admit it, but if there sill objecting
 9 to it I don't want you to --
 10 MR. BROWER: I think he knows his own
 11 driveway.
 12 THE HEARING EXAMINER: Okay.
 13 Q. (By Mr. Brower) Mr. Nerdrum, did you
 14 know that there was video of your driveway
 15 activities being taken in November 2016?
 16 A. Yes, we saw them put cameras up in
 17 November of 2016.
 18 Q. And Ms. Ellig testified that there appear
 19 to be a very low level of activity at your driveways
 20 in November 2016.
 21 Was there anything unique in your
 22 business --
 23 MR. COHEN: Objection. I believe
 24 that's mischaracterizing the witness's testimony.
 25 MR. BROWER: I believe she testified

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1 that there was very little activity and very little
 2 railcars moved, and in fact that she saw the
 3 railcars being moved by a forklift.
 4 MR. COHEN: We're talking about rail,
 5 not vehicle.
 6 MR. BROWER: Sure.
 7 MR. COHEN: I'm trying to understand,
 8 because I'm trying to understand how you're
 9 characterizing the witness's testimony. That's an
 10 important distinction.
 11 THE HEARING EXAMINER: When you're
 12 saying cars, you're talking about railcars?
 13 MR. BROWER: I was talking about
 14 both. My memory is that she said she watched all
 15 five days of video, the entire five days of video,
 16 and that she saw very little activity. That was my
 17 memory.
 18 MR. COHEN: My memory is more
 19 nuanced. My recollection of her testimony was that
 20 her testimony was more nuanced, not my memory is
 21 more nuanced.
 22 MR. BROWER: I will give you that
 23 your memory is more nuanced.
 24 THE HEARING EXAMINER: All right.
 25 Let's just rephrase the question. There is no way

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1 without (inaudible) to see exactly what was said, so
 2 if you don't mind --
 3 MR. BROWER: No, not at all.
 4 THE HEARING EXAMINER: -- just using
 5 that as an opportunity to clarify.
 6 Q. (By Mr. Brower) I think we all --
 7 Mr. Nerdrum, Ms. Ellig said that during the month of
 8 November she saw very little railcar activity. I'm
 9 going to kind of break it down into two questions.
 10 She also mentioned that she observed
 11 Salmon Bay or the railroad removing a railcar with
 12 what she characterized as a forklift.
 13 Does that happen?
 14 A. (inaudible) forklift or (inaudible) front
 15 loader to (inaudible) out of the area (inaudible)
 16 car in place to unload.
 17 Q. And was there anything unique during the
 18 month of November with regard to how much -- again,
 19 for the record, Salmon Bay Sand & Gravel has dry
 20 bulk materials delivered by railcar?
 21 A. We do, as well as truck.
 22 Q. And was there anything unique in the month
 23 of November as to the amount of dry bulk material
 24 that Salmon Bay needed that month?
 25 A. (inaudible) I'll qualify it. November,

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1 December, January, and February are probably the
 2 slowest months that we have in the construction
 3 industry for supply of concrete, building materials,
 4 Sand & Gravel, and so forth. That November last
 5 year was, I think the wettest November that we've
 6 ever had on record, and so our material volumes that
 7 we delivered and subsequently would take in were
 8 down appreciably.
 9 MR. BROWER: Nothing further.
 10 MR. KISELIUS: Nothing from the City.
 11 MR. COHEN: Nothing from Cascade.
 12 THE HEARING EXAMINER: Thank you,
 13 Mr. Nerdrum.
 14 MR. BROWER: Yes. Thank you,
 15 Mr. Nerdrum.
 16 THE HEARING EXAMINER: You have one
 17 other rebuttal witness, and we're going to do that
 18 after lunch?
 19 MR. BROWER: Yes, please.
 20 THE HEARING EXAMINER: Okay. Before
 21 we go to lunch then, when we come back we'll hear
 22 from Appellants on the offered item from Ms. Ellig.
 23 There was also a standing objection,
 24 and I cannot fully characterize this, but it's
 25 essentially preserved for Appellants, the potential

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1 to make a motion concerning documents that were
 2 withheld for purposes of attorney-client privilege
 3 by the City.
 4 Where are we with that? And if you
 5 don't know, let me know after lunch. We will return
 6 at 1:45. Thank you.
 7 MR. COHEN: Thank you.
 8 MR. BROWER: Thank you, your Honor.
 9 (Recess.)
 10 THE HEARING EXAMINER: Okay. We have
 11 two outstanding procedure items. The City's
 12 proposed list of driveways, and we'll start with
 13 that.
 14 MR. SCHNEIDER: I guess the concern
 15 with it is, I think the first two columns are the
 16 ones that respond to the Hearing Examiner's request,
 17 the rest of it is -- goes beyond the request. And
 18 it appears to constitute, you know, testimony or
 19 evidence that goes well beyond the simple list.
 20 And obviously we haven't had time to
 21 go back and compare what is set forth in those
 22 columns with the underlying document. So I think we
 23 don't object to the first two columns, we do object
 24 to the next five.
 25 MR. KISELIUS: So we were only trying

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1 to be responsive to the examiner's request for
 2 information here. I think the question, as we
 3 understood it, was not just show the numbers, but
 4 rather the testimony related to where we analyze
 5 those issues. And the columns simply represent
 6 different aspects of the analysis, and I think we're
 7 just trying to be upfront with here's what we did
 8 for those collections of driveways. We felt we were
 9 being responsive to the Examiner.
 10 THE HEARING EXAMINER: Well, there is
 11 a bit more information in here than I specifically
 12 requested. I do think that the, well, essentially
 13 the first three columns, the EIS driveway number, LS
 14 driveway number, LS driveway name, which is just an
 15 identifier; those are directly responsive. Driveway
 16 type seems to be industrial, so I'm not sure that
 17 that's adding or taking anything away from where
 18 we're at.
 19 The next three do add more
 20 information than I was requesting. The photos are,
 21 I believe possibly more than, but I find them very
 22 helpful to enhance the requests that I made as to
 23 identifying where the driveways are.
 24 And Appellants are objecting because
 25 they don't have a chance to understand if this is

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1 what's reflected in the record.
 2 Let me ask you this. Is this
 3 something that could be cured by having the
 4 opportunity to ask Ms. Ellig who is here today
 5 additional questions? I find it useful information,
 6 but as a strict rule I mean we could --
 7 MR. SCHNEIDER: So again, I am not
 8 prepared to -- I at least am not prepared to ask any
 9 questions about this. The focus has been on other
 10 things.
 11 If the Hearing Examiner finds it
 12 helpful, but it seems to me this is all stuff that,
 13 assuming it's accurate, it's all stuff that could
 14 also be presented in closing argument by reference
 15 to the EIS itself.
 16 I think the main concern is, right
 17 now, is just in addition to it goes beyond your
 18 request, with other things on our mind today, we
 19 haven't had a chance to go back and confirm it. But
 20 I suppose, as I say that, if we discover it's
 21 inaccurate, we can also address that in the closing
 22 argument. So it's not -- it's not a huge issue
 23 either way, it just is more than we were expecting
 24 and we're a little bit unprepared for it.
 25 MR. KISELIUS: The intent was not to

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1 try to load information in here, we thought that
 2 this largely tracks with Ms. Ellig's testimony
 3 related to the list generally, and she, in her
 4 testimony, walked through different parts of the EIS
 5 where the different driveway numbers were listed.
 6 All this does, all this seeks to do
 7 is to compile the information related to those
 8 various driveways. The photos, I think that was
 9 just an effort to try to, again, document something
 10 to confirm that there for purpose of the examiner.
 11 Again, I think that the issue is, not
 12 just we're pointing them on the list where they
 13 belong, but the analysis is sort of what's the
 14 issue, and we wanted to communicate what parts of
 15 the analysis were relevant to which driveway.
 16 THE HEARING EXAMINER: Right. I
 17 understand what you're trying to do. And like I
 18 said, I think it's probably useful for a party to
 19 consolidate essentially what it's saying on this
 20 issue for everyone's use. But I also recognize
 21 where we're at and timing.
 22 And in fairness to the Appellants to
 23 ask questions about it, let's -- and I don't want
 24 you to have to go back and do this again. My
 25 proposal would be just to strike a line through the

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1 sections that are objectionable and beyond the scope
 2 of what I was necessarily strictly asking for.
 3 Does that work for the parties? Do
 4 you have a different proposal or concern with that
 5 approach?
 6 MR. COHEN: We do not.
 7 THE HEARING EXAMINER: Okay. So I
 8 don't see any -- I mean driveway type speaks for
 9 itself, so I'm not going to strike that out. But
 10 the last three columns, I'm just drawing an X
 11 through, and I'm going to run a line through the
 12 footnotes two through four, and admit the rest as an
 13 exhibit.
 14 MR. BROWER: Is this a numbered
 15 exhibit, your Honor?
 16 THE HEARING EXAMINER: Yes. And it
 17 will be number R60.
 18 Then we have the question of whether
 19 there would be a motion concerning --
 20 SPEAKER: No, that will be R55.
 21 THE HEARING EXAMINER: Okay. R55.
 22 (Exhibit No. R55 Admitted.)
 23 MR. SCHNEIDER: No, there won't be a
 24 motion regarding the attorney-client privilege
 25 issue.

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1 THE HEARING EXAMINER: Okay. Then
 2 let's turn to Appellants for your last rebuttal
 3 witness.
 4 MR. SCHNEIDER: We re-recall Claudia
 5 Hirshey.
 6 THE HEARING EXAMINER: Ms. Hirshey,
 7 you're still under oath from original, the original
 8 hearing.
 9 CLAUDIA HIRSHEY,
 10 a witness, having been previously sworn,
 11 was examined and testified as follows:
 12 DIRECT EXAMINATION
 13 (Continued)
 14 BY MR. SCHNEIDER:
 15 Q. Ms. Hirshey, you were here for Ms. Ellig's
 16 testimony?
 17 A. Yes.
 18 Q. So as someone who has worked on many SEPA
 19 NEPA (inaudible) documents, what role do the rules
 20 of the road play in the safety analysis?
 21 A. I haven't (inaudible) rules of the road in
 22 a safety analysis except for (inaudible). Basically
 23 no rules of the road as a background to help people
 24 operate vehicles.
 25 The way the rules of the road would apply

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1 in a safety analysis is when we're looking at
 2 accident history, when accident occurs in a police
 3 report they'll define what occurred for that
 4 accident. So (inaudible) at intersections you'll
 5 often see a multitude of accident types that say
 6 failure to yield right of way, or failure to stop at
 7 a stoplight. So we see that kind of trend in the
 8 data and then ask ourselves, you know, is there some
 9 way, as analysts and safety analysis, is there some
 10 way to improve upon the condition that's caused by
 11 drivers creating accidents. Most accidents are not
 12 following the rules of the road.
 13 Q. Do the rules of the road provide useful
 14 information when you're comparing alternatives?
 15 A. No. They don't provide -- no. The useful
 16 information is a safety analysis done about how that
 17 road will operate for the various alternatives or
 18 that transportation facility.
 19 Q. We've heard a lot of testimony from the
 20 City's witnesses about compliance with the usual or
 21 common ways of doing things. What's your response
 22 to that in terms of the safety analysis?
 23 A. A lot of these tools that are used are
 24 commonly used, but when transportation projects
 25 become large and complex, you have to take those

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1 common tools and develop study methodologies,
 2 prepare our data collection efforts so that we can
 3 answer the questions pertinent to the decisions that
 4 will be involved in this EIS, and be able to compare
 5 across alternatives. So there -- these kind of
 6 things they're tools, but they're just a part of the
 7 overall -- they're a tool on developing a whole
 8 methodology.

9 Q. And is the proposed Missing Link, is that
 10 a project that is common or ordinary in any
 11 meaningful sense?

12 A. Has not been common or ordinary, and it's
 13 been -- it's a challenging project with some very
 14 complex trade-offs between alternatives.

15 If I could expand a little bit on my
 16 experience with the EIS. When it's a transportation
 17 project, we often have alignment alternatives. And
 18 in the case of rail or bus transit, we may have both
 19 an alignment alternative and station alternatives.
 20 And those are evaluated almost as a first step.
 21 Then when we narrow down to what alignment -- well,
 22 let me back up.

23 For each alignment alternative or station
 24 alternative we might have various concept level
 25 designs that allow us to see potential footprints

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1 and begin evaluating various align alternatives,
 2 such as we have here with three alignment
 3 alternatives, plus a preferred.

4 Once we focus in on alignment, then we
 5 begin developing in more detail the design
 6 alternatives.

7 In this case we only had one design
 8 alternative, that was the two-way trail, so it was
 9 hard to -- it's hard to evaluate what would occur
 10 with a different design alternative on a different
 11 alignment.

12 Q. Can you give us an example of a project
 13 you worked on, an environmental project that you
 14 worked on where you'd have to develop a methodology
 15 to use it on (inaudible)?

16 A. Yes. I think I did in my previous
 17 testimony for the Sound Transit Kirkland projects.
 18 On I-405 in just Kirkland we had over 30 location
 19 alternatives for each of the direct access.

20 And most recently, for Sound Transit Phase
 21 3, as the staff was working with the board to go
 22 through -- well, they invited the elected officials
 23 to bring forward nearly any alignment and station
 24 alternative desired. And then we developed an
 25 evaluation screening process.

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1 So I was tasked with evaluating access to
 2 stations by pedestrians, bicycles and buses. I hope
 3 I'm not going on too long here.

4 Anyway, I thought long and hard about it
 5 and came up with a single measure and then we had
 6 some qualitative measures. But I wanted it
 7 numerical because there were 176 alternative station
 8 locations.

9 So I work with GIS to evaluate the number
 10 of intersections within a half mile of each station.
 11 And the more intersections you have, the more
 12 density of cross streets you had in a half mile, the
 13 greater the accessibility was by ped and bike.

14 It proved to be extremely reliable
 15 numerical measure that then allowed us to evaluate
 16 an abundance of stations. And then I had all the
 17 technical information prepared to be able to mix and
 18 match and respond to the different permutations of
 19 alternatives.

20 Q. So what role does design play in a safety
 21 analysis? When does the (inaudible)? How is it
 22 used when preparing alternatives?

23 A. Design comes (inaudible) safety analysis.
 24 Once you have your design alternatives, we evaluate
 25 each of those design alternatives for their impacts

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1 to safety.

2 Q. And in the EIS that's the subject of this
 3 hearing, is there any evaluation of safety impacts
 4 of design alternatives?

5 A. Well, there is only one design
 6 alternative, and that is the two-way trail for the
 7 preferred alternative and then each of the alignment
 8 alternatives.

9 And the safety analysis is quite
 10 qualitative and fairly similar across alternatives,
 11 what's shown in the EIS. Doesn't really -- I can't
 12 see where it distinguishes between alternatives or
 13 provides information to decision makers.

14 Q. You heard -- you were here present for the
 15 City's testimony about traffic and safety.

16 A. Yes.

17 Q. Did you hear any testimony that there was
 18 anything inaccurate about your safety analysis?

19 A. In everything I've heard throughout this
 20 entire hearing, I haven't heard anyone criticize or
 21 find errors in the fundamentals of the conflict
 22 analysis I prepared, as well as I comprehensively
 23 went through -- developed every safety factor I
 24 could think of so that they would all be exposed,
 25 even if I didn't have the time to fully develop

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1 every single one.
 2 Q. You heard Mr. Schultheiss's testimony?
 3 A. Yes.
 4 Q. And he seemed on a number of occasions
 5 that he disagreed with you.
 6 How would you respond to those asserted
 7 disagreements?
 8 A. Well, he disagreed with what he thought
 9 was my interpretation of these studies, which given
 10 all the -- given everything he talked about, I
 11 accuse him of saying he concluded what he thought
 12 thought.
 13 So what I thought he thought was that I
 14 was proponent of bicycling within the travel lane;
 15 which I am not. I haven't -- so he went through a
 16 great deal of effort to critique each of the studies
 17 cited in my traffic report.
 18 To me they are what they are. None of
 19 them are perfect, none of them are comprehensive.
 20 So, for example, if a reader wanted to
 21 take the Helsinki study and say, you know, it's a
 22 European context, it's not enough examples to really
 23 draw that conclusion. That's fine.
 24 But I haven't yet heard any testimony that
 25 claims a contraflow movement is as safe or safer

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1 than traveling with the direction of traffic. So
 2 anyway, I don't know where to go with all of that.
 3 Q. So Mr. Schultheiss talked about his
 4 understanding of your response or use of a Montreal
 5 study.
 6 Do you recall that?
 7 A. Oh, yes, um-hmm.
 8 Q. What's your response to that?
 9 A. I actually saw that study as well. As you
 10 can imagine, as we all like see the same studies,
 11 because we -- it would be nice if there were more
 12 studies.
 13 I read the Montreal study, I didn't use it
 14 in my report. I didn't appreciate the sources and
 15 et cetera.
 16 But when he was talking about the Montreal
 17 report, he said that I claimed that in Montreal they
 18 are no longer doing two-way cycle tracks. And
 19 actually my testimony was based on a telephone
 20 conversation and email from City of Vancouver, where
 21 City of Vancouver told me they were no longer doing
 22 two-way cycle tracks. So it was a misinterpretation
 23 completely of the Montreal study.
 24 Q. So did Mr. Schultheiss introduce or refer
 25 to any studies that you had not already reviewed and

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1 included or discussed?
 2 A. I read through each of the studies that
 3 were submitted in advance of this hearing by
 4 Mr. Schultheiss.
 5 Q. And just to clarify, you're saying that
 6 you were familiar with those studies when you
 7 prepared your report?
 8 A. The ones that Mr. Schultheiss submitted?
 9 Q. Yes.
 10 A. No, not at that -- the ones I'm familiar
 11 with are the ones that are in the report, plus a few
 12 that he chose not use.
 13 Q. Okay. So what's your response to the
 14 studies that he talked about that aren't included in
 15 your report?
 16 A. There is one that was interesting -- well,
 17 my first response when I read through them was,
 18 well, many of them conclude the same thing that I
 19 have in my own report; the concerns with
 20 implementing two-way cycle tracks where there are
 21 few conflicting driveways, few conflict points, the
 22 concern with contraflow.
 23 And then he did, because he's a designer
 24 and relies on NACTO, which has -- is a design
 25 guideline, he did talk a great length about signing

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1 and pavement marking to mitigate or minimize unsafe
 2 conditions.
 3 Q. And is -- did any of the studies he cite
 4 support his assertion that you can make a two-way
 5 sidepath as safe as other facilities by the design?
 6 A. Well, it's my understanding you can't --
 7 there isn't any evidence that we found that you can
 8 make it as safe or safer because of that contraflow
 9 movement.
 10 There is also -- one of the studies was
 11 interesting, it was about a City that used blue
 12 paint, it was the Jensen study, I think, a City used
 13 blue paint to mark crosswalks. And they basically
 14 ran a test case where they painted one crosswalk
 15 blue --
 16 Q. Why don't we (inaudible) moment and let's
 17 get this document marked.
 18 MR. KISELIUS: Thank you.
 19 THE HEARING EXAMINER: This is R56.
 20 SPEAKER: It's A.
 21 THE HEARING EXAMINER: Oh, sorry.
 22 No, it is the A. A26.
 23 (Exhibit No. A26 Marked.)
 24 Q. (By Mr. Schneider) So I've handed you
 25 what's been marked as Exhibit A26. Is this the

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1 study you were --
 2 A. Yes.
 3 Q. And is this the study that Mr. Schultheiss
 4 referred to in his testimony?
 5 A. Yes.
 6 Q. And so what does this study say that is
 7 relevant to either your testimony or his?
 8 A. Well, there are points in there that we
 9 agree upon.
 10 What occurred here is a phenomenon that
 11 occurs with traffic engineering where the City
 12 painted one crosswalk blue and saw an improvement in
 13 safety. Then by the time he reached painting all
 14 four legs a blue crosswalk, they actually saw a
 15 dramatic decrease in safety, and increase in
 16 accidents.
 17 And what that points to -- there are basic
 18 traffic engineering principles that overuse of
 19 warning signs and pavement markings leads to people
 20 ignoring those warning signs.
 21 Overexposure leads to driver overload. If
 22 you can imagine really closely spaced signs, they
 23 just can't read them all. But drivers do become
 24 overloaded with too much warning.
 25 And then on the part of the pedestrian or

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1 bicyclist, overuse creates a false sense of
 2 security, which is my particular concern where you
 3 have truck turning movements across driveways.
 4 Q. So I'm going to ask you to turn to, what I
 5 believe is Exhibit A1, the exhibit that includes
 6 Mr. Bishop's AutoTURNS, and ask you to turn to what
 7 is identified in red at the bottom as page 037.
 8 And I believe Mr. Bishop testified these
 9 were the summaries of the driveways and incursion
 10 zones for all the AutoTURNS that you see
 11 (inaudible).
 12 A. Right. 037?
 13 Q. Yes.
 14 A. Okay. And the red?
 15 Q. Yes. So you heard Mr. Schultheiss testify
 16 about painting warnings on the pavement.
 17 What is your understanding of what he was
 18 saying about those warning markings on the pavement
 19 in comparison to the incursion zones that Mr. Bishop
 20 identified? And we have it up on the screen as
 21 well.
 22 A. Okay. So there would be green paint,
 23 which is MUTCB color paint across the driveways. In
 24 the red area, which are incursion zones, I believe I
 25 heard Mr. Schultheiss agree that that would be a

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1 zone that would warrant paint markings to warn the
 2 bicyclists or approaching pedestrians of the truck
 3 turning movement.
 4 In addition, I would -- I would recommend
 5 that the length of the warn -- we don't have a
 6 length of the warnings on the EIS, but the designers
 7 identify the lengths of the warning zone based on a
 8 bicycle stopping distance.
 9 Q. So does that suggest then that the length
 10 of the warning zone would be different depending on
 11 whether there is a downhill or uphill movement of
 12 the bicycles?
 13 A. Yes. Yes.
 14 Q. And so looking at this page from Exhibit
 15 A1, and specifically at the southern -- or the lower
 16 two of the three segments, do you have an opinion
 17 about how effective warnings would be in those areas
 18 where we have so many driveways?
 19 A. Well, the warning zone would actually
 20 be -- include all the green, red, and even further
 21 if we were to accommodate a warn -- if we were to
 22 paint a warning zone and include stopping distance
 23 for bicyclists. So it's -- well, this is 30 percent
 24 (inaudible) become like almost half the alignment,
 25 and it will begin losing its effectiveness.

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1 Q. And does the Jensen study, that was cited
 2 by Mr. Schultheiss, support your opinion that those
 3 warnings would lose effectiveness?
 4 A. That's one study that supports that.
 5 Q. And are there other studies that also
 6 support that opinion?
 7 A. I'm sure there is many, but I haven't
 8 researched them all.
 9 MR. SCHNEIDER: I'll offer
 10 Exhibit A26.
 11 THE HEARING EXAMINER: Any objection?
 12 MR. KISELIUS: None.
 13 MR. COHEN: None.
 14 THE HEARING EXAMINER: A26 is
 15 admitted.
 16 (Exhibit No. A26 Admitted.)
 17 Q. (By Mr. Schneider) So turning to your
 18 safety analysis, which is Exhibit A3, and I
 19 specifically want to ask about your Table 1.
 20 And would you remind us what is summarized
 21 on Table 1?
 22 A. Okay. In Table 1 I (inaudible) on the
 23 safety factors, and each of those factors are
 24 described in the report. And actually there were a
 25 few that I didn't include here, because they weren't

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1 really relevant to distinguish between alternatives
 2 or provide information relative to the alternatives.
 3 One example is a user's perception of
 4 safety, and that can have to do with the environment
 5 and whether it's well lit, et cetera.
 6 MR. KISELIUS: Mr. Examiner, I'm
 7 going to interpose an objection here. I think we're
 8 straying from rebuttal.
 9 I think what I hear Ms. Hirshey
 10 testifying is on the same table she testified to at
 11 length at the beginning of the hearing. And this is
 12 now just trying to, again, do a better job of the
 13 description than they did the first time, and that
 14 is outside the bounds of rebuttal testimony.
 15 MR. SCHNEIDER: We have heard
 16 repeated testimony from the City's witnesses that
 17 this is going to be a safe trail, and all of that
 18 testimony has been focused on the preferred
 19 alternative. I am responding to that testimony by
 20 demonstrating what the City's witnesses have not
 21 addressed in any fashion.
 22 MR. KISELIUS: And for precisely that
 23 reason that's something they should have made when
 24 they brought their case in chief.
 25 This is yet again another attempt to

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1 try to expand on the arguments that they've raised
 2 and the testimony they presented.
 3 We were respondents. We were
 4 responding to their arguments. Their focus has been
 5 on the preferred alternative, and as such our
 6 response was focused on the preferred alternative.
 7 If we're going to now talk at length
 8 about the other alternatives, we don't have the
 9 opportunity to have our witnesses testify to that.
 10 MR. SCHNEIDER: Our case has not in
 11 any way been focused on the preferred alternative;
 12 it has been focused on the choice among all the
 13 alternatives and the analysis that allows the
 14 decision maker to choose among alternatives, which
 15 is missing from the EIS.
 16 And we obviously can't respond to the
 17 City's witnesses until they testify.
 18 THE HEARING EXAMINER: So let me -- I
 19 don't think that getting into the alternatives is
 20 going beyond the scope of what's been part of the
 21 hearing. I think they can -- this is rebuttal, so
 22 they can rebut what was or was not essentially
 23 addressed that's in the record, as far as testimony
 24 goes from the City.
 25 What will be -- the only concern I

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1 would have is redundancy and whether we're going
 2 over something that we've got already.
 3 So what are we elucidating new from
 4 Table 1 that we don't have in testimony already?
 5 MR. SCHNEIDER: We're going to
 6 have -- I'm going to elicit testimony about whether
 7 Table 1 provides a basis for comparing the safety of
 8 the alternatives.
 9 THE HEARING EXAMINER: You didn't
 10 cover that in the original testimony? I remember
 11 going over Table 1.
 12 MR. SCHNEIDER: I don't recall asking
 13 the questions I'm about to ask. But we have a
 14 (inaudible) memory than mine, but I don't recall
 15 that.
 16 MR. KISELIUS: And again,
 17 Mr. Examiner, the point I'm trying to make here is
 18 to the extent we did talk about this chart, and we
 19 did talk about comparison of alternatives, but their
 20 job Appellants is to create their case, their
 21 appeal, which we then respond to. Then turn and say
 22 you didn't respond to arguments were about to make
 23 defeats the whole purpose of the rule and the
 24 process of going through this.
 25 This is rebuttal. And to the extent

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1 that they talked about this chart and the comparison
 2 in the alternatives, we've talked about that. We're
 3 going to now build on that beyond what should have
 4 been done the first time. That's exceeding the
 5 bounds for rebuttal testimony.
 6 MR. SCHNEIDER: I think I'm entitled
 7 to respond to both what the City did and what the
 8 City didn't do in terms of addressing the issues
 9 that are before the Hearing Examiner.
 10 THE HEARING EXAMINER: So to that
 11 degree the objection is overruled. You've put your
 12 case on, the City responds to it, now you want an
 13 opportunity to rebut what the City did or didn't
 14 (inaudible).
 15 MR. SCHNEIDER: Okay.
 16 THE HEARING EXAMINER: I just don't
 17 want to repeat anything we did the first time.
 18 Q. (By Mr. Schneider) So we're not going to
 19 go over this in detail, Ms. Hirshey, but does this
 20 provide quantitative means of comparing the safety
 21 of all of the alternatives in the EIS?
 22 A. This does provide a quantitative approach,
 23 because it includes an inventory of all the
 24 driveways, a characterization of those driveways,
 25 and the number of conflict points for each of those

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1 driveways. As well as distinguish between the
 2 number of conflict points for each alternative where
 3 large tractor trailer trucks will pass through
 4 versus SU-30 versus only a passenger car.
 5 I do have two rebuttal points where I
 6 felt -- I do have two rebuttal points where I felt
 7 there was inaccuracies in this testimony with regard
 8 to this.
 9 Q. So what did you hear the City's witnesses
 10 say that, referring now to Table 1, that was
 11 inaccurate?
 12 A. Well, I heard in Mr. Kiselius's
 13 questioning the implica -- stating that I
 14 recommended that we collect data on the 85th
 15 percentile speed.
 16 That was one of the factors I reviewed,
 17 and there is a paragraph on it in the text, but in
 18 fact by going in the field I determined we did not
 19 need to collect on the 85th percentile speed.
 20 I heard Mr. Schultheiss say more than once
 21 that I didn't consider the No Build or the existing
 22 condition. And in fact I filled in this table with
 23 all the safety factors including -- for a number of
 24 signalized, un-signalized intersections and
 25 driveways for all those safety factors; I did

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1 include a No Build along each alignment.
 2 I also heard Mr. Schultheiss say that I
 3 didn't consider signalized intersections, and it's
 4 the first row on the table.
 5 Q. So --
 6 MR. COHEN: Mr. Schneider, I'm sorry,
 7 could you get her to identify the table she was just
 8 referring to.
 9 MR. SCHNEIDER: It's Table 1 in her
 10 report.
 11 MR. COHEN: It's all Table 1?
 12 Q. (By Mr. Schneider) So Ms. Hirshey, based
 13 on the safety analysis that you did in this report
 14 and the summary of that analysis in Table 1, do you
 15 have an opinion about, leaving issue of design aside
 16 for a moment, but does this provide a basis in
 17 determining whether the preferred alternative is the
 18 safest alternative regardless of the kind of
 19 facility that is built?
 20 A. Just so I can be careful, repeat the
 21 question.
 22 Q. The question that I'm trying to ask is, is
 23 there a basis in this table for -- or do you have an
 24 opinion based on this table as to whether the
 25 Shilshole alternative -- the preferred alternative

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1 along Shilshole is the safest alternative without
 2 even getting to the issue of design? I want to --
 3 looking now just at the safety factors --
 4 (Speaking at the same time.)
 5 A. Various alternatives, right.
 6 No, it would not be the safest alignment,
 7 because both have referred in the Shilshole
 8 alignment, have, by far and away, much greater level
 9 of potential conflict and conflict points, which
 10 occurs actually with or without a design for --
 11 between a vehicle and a bicycle and a pedestrian.
 12 And in particular, along Shilshole there
 13 is very large number of conflict points where trucks
 14 pass you at those conflict points, and you have the
 15 difference in mass between pedestrian, bicycle, and
 16 the truck.
 17 So the scale, for example, is number of
 18 conflict points with tractor trailer trucks. For
 19 preferred alternative 391, for Alternative 1 493,
 20 for the Ballard alternative 34, and Leary Way 85.
 21 So the starting point, the number of
 22 conflict points at industrial driveways and more
 23 trucks pass-throughs, is orders of magnitude higher
 24 already along Shilshole Avenue.
 25 Q. So in terms of the conflicts with

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1 trucks -- so I think you just said that Ballard
 2 Avenue would be the safest alternative.
 3 How about as between Leary Way and the
 4 referred alternative?
 5 A. Well, Leary Way has higher volumes, that's
 6 for sure, and they have high through-truck volumes.
 7 But I think as design alternatives, and that would
 8 be my recommendation as well, we would continue to
 9 talk about design alternatives that provide
 10 separation of the user from the street in either
 11 case.
 12 It may or may not be a two-way trail with
 13 that contraflow movement. It could be what we call
 14 protected bicycle lane or a one lane cycle track
 15 with buffer, where the pedestrians continue on the
 16 sidewalk.
 17 Q. Again, leaving aside for a moment the
 18 issue of design --
 19 A. Okay.
 20 Q. -- just this in terms of the conflicts,
 21 the safety condition or hazards that you're starting
 22 with, is there a basis for saying whether the
 23 preferred alternative or Leary would be the safer?
 24 A. The Leary Way alternative does have more
 25 signalized intersection crossings than the preferred

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1 alternative.

2 The trade-off is the preferred alternative

3 has 41 driveways, most of which are active

4 industrial driveways. So there is just a great deal

5 of conflict continuously. So I would say that Leary

6 Way could still be done as a safer alternative than

7 the preferred alignment.

8 Q. You were here for Ms. Ellig's testimony

9 about delay?

10 A. Yes.

11 Q. And do you think the EIS accurately

12 calculates the delay as it will be experienced by

13 the industrial users of the driveway along

14 Shilshole?

15 A. I do (inaudible) that -- it's a good

16 example of using a common tool, but the methodology

17 of employing that tool doesn't fully capture the

18 operations that will occur out there.

19 Q. Okay. And Mr. Brower has helpfully put

20 some poster board on an easel for us.

21 Can you illustrate for us what you're

22 explaining?

23 That's not very dark. Do you have a --

24 A. Okay. So --

25 Q. So --

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1 A. Oh, sorry.

2 Q. (inaudible).

3 THE HEARING EXAMINER: She does need

4 to be at microphone.

5 Q. (By Mr. Schneider) So I'm going to ask

6 you to label.

7 THE HEARING EXAMINER: For further

8 response, she will need to be at a microphone.

9 MR. SCHNEIDER: Do we have a portable

10 one that will work?

11 Q. (By Mr. Schneider) So I'm going to ask

12 you to write in for us what you have -- I want you

13 to explain it, but I also want you to label it. If

14 you can explain and then label as you go, please.

15 A. So typical driveway with trail. Does that

16 help?

17 Q. Yeah. If you could show the trail --

18 identify the trail for us, maybe put a T

19 (inaudible)?

20 A. So this is the two-way trail across the

21 driveway.

22 Q. Okay.

23 A. And this is the street.

24 Q. And is this a typical driveway along

25 Shilshole that you're --

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1 A. Yes.

2 Q. -- referring to?

3 A. Yes.

4 Q. Okay. And so obviously the bottom part of

5 the T would be the driveway itself?

6 A. Yes.

7 Q. Okay. Then if you can explain the point

8 you were making about calculation of delay.

9 A. Okay. So the p.m. peak hour was described

10 as the worst case scenario. Figure 3-4, the

11 Transportation Discipline Report, shows both --

12 shows which -- if you recall, showed a red line that

13 was all traffic and a percent of all traffic that's

14 truck traffic along the bottom. And so the p.m.

15 peak hour is chosen as worst case scenario, which,

16 if you look here, the peak of the peak is a peak,

17 but it has very little truck volume. But during

18 midday the overall traffic volume is nearly the same

19 as the peak, but the truck volumes are much higher.

20 And so when evaluating intersection level

21 of service per Synchro, what it's doing is

22 evaluating an average vehicle delay.

23 Q. Okay.

24 A. Am I going too fast?

25 Q. Two things. The page that she's been

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1 referring to is Exhibit R3, in the Transportation

2 Discipline Report. And maybe we'll give everyone a

3 moment who wants to to turn that.

4 And then you referred to Synchro, if you

5 can explain what that is, please.

6 A. Synchro is the software that evaluates

7 level of service. And the results of what we call

8 level of service analysis is average vehicle delay

9 for all vehicles traveling through an intersection

10 in an hour.

11 So the methodology in the TDR is on page

12 3-6 under .2. So what the TDR says is they

13 evaluated this cross -- this T intersection

14 essentially drive over trail as an isolated

15 intersection, and the intersection of the driveway

16 on the street as an isolated intersection. So I'll

17 put little dots here, two different.

18 Q. And what in fact is the distance between

19 those intersections or proposed to be, the distance

20 between --

21 A. I don't recall exactly, but this is the

22 buffer width, correct?

23 Q. Yes. Do you recall the width of the

24 buffer?

25 A. About five feet. There's about five feet

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1 there.

2 So because -- so delays are counted for at

3 unsignalized intersection based on available gaps.

4 This software is at a macro level, so vehicles per

5 hour. So basically it's a function of whatever

6 turning movement has a flow they have to wait on,

7 the algorithms estimate delay, and then it all gets

8 added up over the course of an hour and then

9 averaged.

10 So without driver volume, because we're

11 peak hours after commercial activity, it's really

12 catching a minimum amount of delay that could occur

13 due to the trucks and vehicles leaving the driveway.

14 Not that that's all -- that's all bad, but

15 what occurs next is the, per the methodology on page

16 3-6, they were in an intersection level service as

17 if this is a T intersection stop sign. So say it's

18 caused seconds of average vehicle delay, for

19 example.

20 Then they say that vehicle moves to the

21 street and stops. And then this vehicle they

22 conduct level of service analysis for delay. So

23 delay would occur -- well, backing up a little bit.

24 The delay for an outbound vehicle, this driveway, is

25 based on the volume of bicycles, which they treat as

Page 1886

1 vehicles. And the other delay is from vehicles

2 entering and if they have to wait for the volume of

3 bicycle. So that would be probably a relatively

4 small delay.

5 Then at the street, an exiting vehicle or

6 truck, that delay is the left turn where they

7 have -- it's the amount of delay is based upon the

8 approach volume either direction, because they have

9 to cross both. And the delay for a right turn is

10 based on finding the opening for traffic in this

11 direction. The entering left turn movement has

12 delay based on finding the opening relative to this

13 approach volume, and the right turn is basically

14 free flow, no delay.

15 So this could be 15 seconds of delay.

16 And then the methodology adds the two

17 delays and says that's how much delay there is.

18 Q. And why do -- why are you saying that that

19 underestimates the delay that will be experienced?

20 A. Well, (inaudible) provide information

21 that's real useful, I seek from an operational point

22 of view, not a design point of view, but an

23 operational point of view.

24 I see two conditions. Either we expect an

25 exiting vehicle or the truck to find a gap between

Page 1887

1 two directions of pathway travel and two directions

2 of street travel, or we need to report for a truck

3 or vehicle that ends up positioned right here, and

4 they'd be positioned across the trail; we need to

5 report what's the frequency and for how long is this

6 truck sitting across the trail forcing bicycles and

7 pedestrians to be stopped and wait for that truck to

8 pull out.

9 Q. And --

10 A. So there is two different operational

11 conditions that haven't really been evaluated. When

12 methodology is (inaudible), an average delay -- at

13 one point an average delay at a second point.

14 Q. So you've been talking -- correct me if

15 what I'm saying is wrong -- but you've been talking

16 about the trucks blocking the driveway and the

17 effect that that would have on bicycle movements and

18 the safety of the bicycle movements. And we'll come

19 back to that.

20 But in terms of the delay experienced by

21 the trucks themselves, is there a more accurate way

22 to measure the delay than simply adding up these two

23 delays as if they were two entirely separate

24 intersections?

25 A. Well, if the desire or expectation is for

Page 1888

1 a truck to be able to find the gap in both the trail

2 traffic and the street traffic, adding these two

3 points is (inaudible) provide that information.

4 What I would do is put out tube counters

5 across the roadway and measure for each direction.

6 A tube counter will record every vehicle and the

7 time of day at which it crossed the tube.

8 So if you dump all of that into a

9 spreadsheet -- and this is what I did at West

10 Marginal Way -- you can find the time difference

11 between vehicles, and actually find the amount of

12 gaps, in other words the time vehicle where there is

13 a gap for this direction and that direction at the

14 same time.

15 Then we go to our research documents to

16 determine what is the necessary gap based on speed

17 and vehicle type; trucks start from a stop, they

18 operate slower. And with (inaudible) in our

19 spreadsheet, you can count, based on the necessary

20 gap required to enter the street, we can count up

21 the number of gaps that occur by time of day or for

22 any given hour or the peak hour.

23 And then we could also do that for the

24 trial, either with advanced data collection

25 technology or manually. We would get sample data

Page 1889

1 for example, at Fred Meyer, and record, by time of
 2 day, vehicles in each direction, determine the gap
 3 analysis there, and merge those two sources of data
 4 to find out how many opportunities are there, how
 5 many gap opportunities are there to complete a
 6 maneuver across both the trail and/or the street at
 7 the same time.
 8 Q. So without a gap analysis, of the kind
 9 you've been describing for both the trail and the
 10 street, is it possible to accurately estimate delay
 11 for the trucks now?
 12 A. No.
 13 Q. And what are the safety implications of
 14 what you've been describing, first of all for the
 15 users of the trail?
 16 A. So for the users of the trail, their
 17 methodology -- I shouldn't say that, I'm very sorry.
 18 What was described in the FEIS is an
 19 analysis approach that assumes stop at the trail,
 20 cross the trail, and then stop at the street. So
 21 (inaudible) trucks or vehicles are stopped to find a
 22 gap on the street, the more often the trail user has
 23 to stop because the truck is sitting across the
 24 tail.
 25 And as that frequency increases, usually

Page 1890

1 there is general -- they'll get more and more
 2 impatient and attempt to go around the truck. And
 3 then if, based on the truck blind spots that were
 4 shown before, they're very large. They're
 5 (inaudible) I mean anywhere in this vicinity they'll
 6 be in a truck blind spot.
 7 Q. Okay. How about does -- to the extent
 8 that the gaps -- the street becomes more crowded,
 9 the gaps become smaller, does that have a safety
 10 implication?
 11 A. Well, for all vehicles, the more a vehicle
 12 has to wait for an available gap, the less patient
 13 they are and the more often they choose a shorter
 14 and shorter gap to enter the traffic stream, which
 15 is a relative measure of risk that they're taking.
 16 Q. And is there any analysis in the EIS of
 17 the safety issues that you just identified?
 18 A. No. In particular not quantified.
 19 Q. All right. Thank you.
 20 Does the EIS discuss the safety
 21 implications of -- you've already testified about
 22 how it doesn't address the contraflow movement.
 23 Does it discuss the safety implications
 24 of -- and provide a basis for comparison among
 25 design alternatives for different kinds of bicycle

Page 1891

1 facilities?
 2 A. There was only one design alternative.
 3 Q. And that is?
 4 A. That's the two-way multiuse trail.
 5 Q. I think both Mr. Phillips and the City's
 6 traffic engineer, Mr. Chang, testified about
 7 Mr. Kuznicki's blind spot Exhibit A6.
 8 Do you recall hearing --
 9 A. Yes.
 10 Q. What do you recall them saying, and what's
 11 your response to it?
 12 A. Mr. Kuznicki showed what he thought did
 13 occur, where trucks try to be polite to each other
 14 and help. A truck will stop in the lane and help a
 15 truck make a left turn. That occurs. I experience
 16 that outside of my neighborhood quite frankly, as we
 17 all have, where a Good Samaritan tries to help you
 18 cross. So that movement does occur.
 19 And I just talked too much; I forgot the
 20 second part of your question.
 21 Q. The question was you were --
 22 A. Oh, so then Mr. Phillips dismissed that
 23 condition because it was an illegal maneuver.
 24 Q. What's your response to that as someone
 25 who does the safety analysis?

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1 A. Well, as a traffic engineer it's
 2 (inaudible) safety analysis. As traffic engineers
 3 we're interested in the operations and safety
 4 independent really of the legality of a maneuver.
 5 If that condition is going to exist or that size
 6 truck is going to operate, we want to know what our
 7 con -- what are operating safety conditions like
 8 with the way the vehicles and the user are behaving,
 9 much of which also includes making errors.
 10 Q. So does Mr. Kuznicki's exhibit of the
 11 truck blind spots, does it illustrate a traffic
 12 hazard that could arise or would arise with this
 13 trail, in your opinion?
 14 A. Yes, it could arise. Most importantly it
 15 demonstrates the large blind spots by trucks, yeah.
 16 It demonstrates where vulnerable users can be -- end
 17 up placed in a large blind spot by a truck.
 18 Q. So we've heard testimony about right hook
 19 maneuvers or right hook accidents. Can you remind
 20 us what those are?
 21 A. Right hook is a term that a lot of people
 22 commonly use for a truck turning right, and the
 23 bicycle or pedestrian ends up within the path of the
 24 truck and it hooks them.
 25 Q. And is that a common or uncommon kind of

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1 accident?
 2 A. It's common enough to be very, very
 3 concerned about it.
 4 Q. And when a right hook accident occurs,
 5 what role does the rule of the -- do the rules of
 6 the road play in a right hook accident?
 7 A. I've never concerned myself with the rules
 8 of the road in a right hook accident. It's more
 9 being concerned about conditions where it will occur
 10 and the risk factor to the bicycle, pedestrian,
 11 vehicle, whoever is operating there.
 12 Q. Would right hooks be a safety issue if the
 13 preferred alternative is built as set forth in the
 14 EIS?
 15 A. Well, yes, there would be right hook
 16 accidents at all of the 41 industrial driveways --
 17 excuse me, there would be potential for right hook
 18 accident, quite a large potential given the number
 19 of trucks involved and the users.
 20 Q. And again, is any of that discussed in the
 21 EIS?
 22 A. No.
 23 Q. Did you hear Mr. Schultheiss or any other
 24 witness disagree with your conflict analysis?
 25 A. I have not heard any disagreement with

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1 Table 1 or --
 2 Q. Or your conflict?
 3 A. -- any of the safety factors, no.
 4 Q. Almost done.
 5 I apologize, I thought I had all this set
 6 up.
 7 THE HEARING EXAMINER: While
 8 Mr. Schneider is looking for that, Ms. Granatt,
 9 could you pass that. Thank you.
 10 Q. (By Mr. Schneider) So did you hear
 11 Mr. Schultheiss testify about NACTO?
 12 A. Yes.
 13 Q. And that he had contributed to the bicycle
 14 safety portions of NACTO?
 15 A. Yes.
 16 Q. And have you reviewed those portions of
 17 the NACTO document that he's referring to?
 18 A. Yes.
 19 Q. And I'm specifically referring to document
 20 that's behind tab 17 of the City's binder. And I
 21 can't remember whether that's been admitted or not
 22 THE HEARING EXAMINER: R13?
 23 MR. SCHNEIDER: R13, yes.
 24 Q. (By Mr. Schneider) So can you turn to
 25 that. So what is R13 again?

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1 A. We're both on the page chapter five design
 2 shared use paths?
 3 Q. Yes.
 4 A. Okay. R13 is the National Association of
 5 City Transportation Officials Design Guidelines for
 6 Bikeways.
 7 Q. And have you reviewed this chapter?
 8 A. Yes.
 9 Q. Is it consistent, in your opinion, with
 10 your safety analysis -- I guess I should ask.
 11 Is your safety analysis consistent with
 12 this chapter?
 13 A. I believe it is. I put in my report, I
 14 cited the bullets that I used from the report in my
 15 report.
 16 Q. Okay. And I'd like to ask you to turn a
 17 few pages in to this Exhibit R13, over to COS000250.
 18 There is a heading 522, shared use paths adjacent to
 19 roadways (sidepaths).
 20 A. Yes.
 21 Q. So I'd like to direct your attention to
 22 the third paragraph of that section. Can you read
 23 that for us, please?
 24 A. Beginning paths can function?
 25 Q. Yes.

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1 A. Paths can function along highways for
 2 short sections or for longer sections where there
 3 are few street and/or driveway crossings given
 4 appropriate separation between facilities and
 5 attention to reducing crashes at junctions.
 6 However, before committing to this option for longer
 7 distances on urban and suburban streets with many
 8 driveways and street crossings, practitioners should
 9 be aware that two-way sidepaths can create
 10 operational concerns.
 11 See figure 5-4 for examples of potential
 12 conflicts associated with sidepaths. These
 13 conflicts include.
 14 Q. Okay. And do you have an opinion as to
 15 whether the proposed sidepath design of the
 16 preferred alternative is consistent with this
 17 discussion in the NACTO document?
 18 A. It is not consistent with this discussion
 19 about minimizing conflicts, minimizing driveways.
 20 Q. We heard Mr. Chang this morning testify
 21 about the 11-foot offset in the lanes at the
 22 intersection of Market and Shilshole on 24th. And
 23 his testimony, as I recall, was about design
 24 standards.
 25 What is your response to that 11-foot

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1 offset as a safety analyst?
 2 A. Well, it's a very, very large offset. And
 3 he spoke to the fact that the City doesn't address
 4 it -- dimension for offset in their design
 5 standards. We often will defer to someone else's in
 6 that case.
 7 Well, one point of frustration when I
 8 heard Mr. Bishop pointing out what the offset was, I
 9 was sitting here looking at the 11-foot offset and
 10 thought if it was a one-way protected bicycle
 11 facility, one way in each direction, the offset
 12 would be half as much. But we couldn't explore that
 13 design option to try to achieve and mitigate such a
 14 large, large offset to half as much.
 15 Q. So as set forth in the EIS, is that offset
 16 a safety hazard that hasn't been addressed either in
 17 terms of identifying it or analyzing it?
 18 A. It's a safety hazard inasmuch as the
 19 vehicles are facing the opposing left turn lane, and
 20 they have just -- in the distance they'll traverse
 21 across the intersection. They'll have skip
 22 striping, as Mr. Phillips said, but to traverse --
 23 be positioned here and traverse an entire 11 feet
 24 and enter the next lane, it's considered less safe.
 25 MR. SCHNEIDER: I don't have any

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1 further questions. Thank you.
 2 THE HEARING EXAMINER: Thank you.
 3 MR. COHEN: No questions.
 4 CROSS-EXAMINATION
 5 BY MR. KISELIUS:
 6 Q. I have just a couple questions for you.
 7 I'd like to ask a question, a follow-up to
 8 some testimony you just gave about the contraflow
 9 movements. I think you said you didn't hear anybody
 10 testify or offer evidence that contraflow movements
 11 are more dangerous than -- and that's the part I
 12 want to get the rest of.
 13 So do you recall saying that it is safe or
 14 safer than the movement going the same direction?
 15 A. No. What I said is I didn't hear any
 16 testimony that said that contraflow movement was as
 17 safe or safer than traveling in the same direction
 18 movement.
 19 Q. That's great. I appreciate that. Because
 20 I'm trying to understand.
 21 There has been some assertions made
 22 through different witnesses and questions about is
 23 safer than what.
 24 So are you testifying that the contraflow
 25 movements can be more dangerous than any other type

Page 1899

1 of bicycle facility?
 2 A. As you know I don't use superlatives, or I
 3 try not to, so any? No.
 4 Q. Okay. So are you saying is as safe or
 5 safer than the movement going with traffic at that
 6 location? Is that the comparison you're making?
 7 A. No. At any location. Because the basic
 8 principle behind the contraflow movement is the
 9 driver's eyes not focused on contraflow movement,
 10 driver's eyes are focused ahead and making their
 11 turning movement, and the contraflow is occurring
 12 behind them.
 13 Q. But I'm just trying to look for clarity
 14 here.
 15 We're talking about at those locations
 16 where the contraflow movement is exposed to vehicle
 17 traffic, so for example the driveway crossing.
 18 Do you agree with that? I mean let me ask
 19 it this way.
 20 A. I don't understand the question.
 21 Q. Is the contraflow movement a risk where
 22 there is no driveway crossing or no intersection
 23 crossing, where it's just on the path set aside from
 24 the road?
 25 Do you believe that that's a risk at that

Page 1900

1 location?
 2 A. Depends on if there is a buffer or not.
 3 Q. Presuming there was a buffer; is that a
 4 risk?
 5 A. Well, it always is on a street or a path,
 6 depending on -- it becomes a higher and higher risk
 7 as volumes increase, because as volumes increase and
 8 things become more crowded you'll have more, in a
 9 vehicular situation, a street motor vehicle or on a
 10 path, more potential crossing the center and someone
 11 colliding.
 12 Q. That's bike bike or ped and here --
 13 A. Yes.
 14 Q. -- we're talking about -- I believe the
 15 basis of your testimony had to do with collision
 16 between motorized vehicles and nonmotorized
 17 vehicles.
 18 So that specific potential conflict
 19 between a motorized vehicle and a nonmotorized
 20 vehicle. My question is -- I'm just trying to get
 21 some specificity here -- is your testimony that that
 22 contraflow movement presents that same risk outside
 23 the driveways?
 24 A. I never testified to that. But if you're
 25 talking about between any -- in a (inaudible) where

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1 there's absolutely zero turning movement conflicts
 2 across the trail, separation provides a safer
 3 condition than non-separation.
 4 Q. I guess I'm not sure that answered my
 5 question. The question --
 6 A. We're talking about a segment that is
 7 completely outside of any driveway or intersection
 8 or anything. So just a segment.
 9 So it's not the contraflow movement that's
 10 at issue, it's the fact that we've -- if we have the
 11 buffer in a trail, we separated the peds and bikes
 12 from the motor vehicle, so we separated speed and
 13 mass.
 14 Q. Thank you. I appreciate that
 15 clarification.
 16 You testified about the 85th percentile
 17 speed just a second ago, and I think you were
 18 pointing out -- actually I'd like to know.
 19 You were concerned that somebody had
 20 testified and critiqued you for use of that metric?
 21 A. No.
 22 Q. Correct?
 23 Could you explain that? I wasn't
 24 (inaudible).
 25 A. The way I heard you ask the question to

Page 1902

1 your witness at the time, was that you said I had
 2 criticized report for not collecting data on the
 3 85th percentile speed.
 4 And speaking here in a rebuttal position,
 5 what I clarified is that it's an important safety
 6 factor to consider, and I explain in a paragraph
 7 why, but out in the field I determine that it wasn't
 8 a necessary point of data collection, agreeing with
 9 the analyst not having collected that data for the
 10 FEIS.
 11 And so you made it a point of discussion
 12 to be thorough, but I didn't include it as a
 13 comparison of alternatives and I didn't suggest that
 14 it needed to be collected.
 15 Q. So just to be clear, you're -- that's not
 16 a point for critiquing the (inaudible) --
 17 A. No. No.
 18 Q. -- EIS?
 19 A. Never was, never has been.
 20 Q. Okay. So when you say data for the 85th
 21 percentile speed was not included in the DEIS or
 22 FEIS and you leave it there, just to be very clear
 23 for the record, that's not a problem.
 24 A. Nope.
 25 Q. Okay. I'd also like to just get some

Page 1903

1 clarity on something you said at the outset of your
 2 testimony related to conceptual design. And I just
 3 want to make sure I understood your testimony. You
 4 were referring to a Sound Transit project, I think.
 5 A. Yes.
 6 Q. And you were talking about gathering
 7 conceptual designs.
 8 So is it your testimony that that is
 9 appropriate to rely on conceptual design for an EIS?
 10 A. What I -- what I was explaining was a
 11 process that we use in NEPA and SEPA for
 12 alternatives analysis, in EISs or EAs, for complex
 13 transportation projects.
 14 So when we start with a multitude of
 15 either alignment alternatives and/or in the case of
 16 bus or rail, it's easy to imagine station
 17 alternatives.
 18 When we have a multiple (inaudible)
 19 options that we need to screen down, we'll develop
 20 concept level designs so that we have some kind of
 21 footprint. Because at that scale you might just,
 22 for environmental screening, you'll pull out
 23 existing data. So you might pull out a document
 24 that shows where the wetlands are or the steep
 25 slopes.

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1 So we see the concept design as some kind
 2 of footprint to be, again, saying extremely likely
 3 to have a strong environmental impact or not likely
 4 at all, maybe a scale of one to five.
 5 So what I was trying to explain is that's
 6 when we use concept design. Once we narrow down to
 7 the EIS alternatives, we further along the design
 8 typically to 30 percent when we're dealing with
 9 fewer alternatives.
 10 Q. Had you ever been involved in a project
 11 that relied on concept level design for purposes of
 12 evaluating environmental impacts in an EIS?
 13 A. Not that I'm aware of. Well, not thinking
 14 of it right now. It's not out of the realm of
 15 possibility.
 16 Q. Ms. Hirshey, do you recognize this EIS?
 17 A. Yes, I do.
 18 Q. Did you work on it?
 19 A. Yes.
 20 Q. And what part did you play in this EIS?
 21 A. For this EIS I prepared the analysis of
 22 pedestrian and bicycle forecast, pedestrian and
 23 bicycle level of pedestrian level service analysis,
 24 analysis of, during predesign in the 30 percent
 25 design, analysis of the volume of pedestrians

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1 between points in providing input to the design team
 2 for the width of sidewalks, the width of crosswalks,
 3 et cetera.
 4 I also basically sat down with a lead
 5 design engineer and went through -- went through all
 6 of the potential staging areas for construction, and
 7 did a qualitative analysis of potential traffic
 8 impacts during construction based on their location.
 9 Oh, and prior to that an alternatives
 10 analysis for the SR-99 alignment. Myself and
 11 another traffic engineer sat down and worked through
 12 the entire alignment looking at where it was at
 13 grade and where the piers were located, to determine
 14 modifications that would be required on 99 in terms
 15 of left turn lanes that would be eliminated due to
 16 location of a pier, any language that we thought
 17 would need to be changed.
 18 Our feedback went back to the designers
 19 and then they changed -- sometimes they did more
 20 accurate above grade, more accurate --
 21 (Speaking at the same time.)
 22 Q. I just wanted to make sure you were
 23 familiar with the document.
 24 A. Yep. Very.
 25 Q. Okay. And you said --

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1 (Speaking at the same time.)
 2 A. And I wrote all the sections on the
 3 nonmotorized bus transit and construction impacts.
 4 Q. And you said you worked with the lead
 5 design engineer. Do you remember who that was?
 6 A. That was Brad Phillips.
 7 Q. So could you please turn (inaudible) I
 8 gave her the whole one in case she needed to look at
 9 more than what we got. But I'd like you to focus on
 10 page 2-8, please. It's going to be in the -- yes.
 11 MR. SCHNEIDER: In what? Oh, in the
 12 first document?
 13 Q. (By Mr. Kiselius) Do you see that
 14 section that's 2.5 descriptions of light rail
 15 alternatives by segment?
 16 A. Yes.
 17 Q. Would you read that first paragraph?
 18 A. The following subsections describe key
 19 features of the light rail alternatives based on
 20 conceptual design information.
 21 You want me to go on?
 22 Q. Please.
 23 A. Appendix F conceptual plans includes a
 24 conceptual design drawings that show the key
 25 elements assumed for each light rail alternative

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1 alignment stations. Conceptual designs include the
 2 primary elements required to develop and operate a
 3 light rail alternative. Landscaping, screening and
 4 other design elements will be further detailed in
 5 later stages of project design.
 6 Q. Can you continue.
 7 A. In addition, further design mitigation
 8 planning for meeting construction stage planning
 9 (inaudible) identify other features needed for
 10 construction staging, construction (inaudible) other
 11 infrastructure connections.
 12 Q. Thank.
 13 And is Appendix E, turn to (inaudible) 17.
 14 Will you please read the title of that appendix?
 15 A. Conceptual plans.
 16 Q. So I'm going to ask you again,
 17 Ms. Hirshey. Have you been involved in an EIS that
 18 has used conceptual plans for purposes of assessing
 19 environmental impacts?
 20 A. That and up to 30 percent design is
 21 included.
 22 Q. Your testimony is that this is based on
 23 30 percent design?
 24 A. I worked on 30 percent design on this
 25 project.

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1 Q. And despite the fact that the text itself
 2 says it's based on conceptual design, you're saying
 3 that it's something different.
 4 A. I'm not saying that this is different or
 5 what they present in here is different or that the
 6 title is different. I worked with the design team
 7 as they approached 30 percent design.
 8 Q. Is the EIS based on the conceptual design?
 9 A. Not my work.
 10 Q. Is -- not your work. I'm asking whether
 11 the EIS is based on the 30 percent design, based
 12 on --
 13 (Speaking at the same time.)
 14 A. To the extent that's what they titled
 15 this, yes.
 16 Q. And the paragraph you just read, is that
 17 consistent? Would that suggest it's based on
 18 conceptual design?
 19 A. With the way they described it, yes.
 20 Q. Thank you.
 21 Is it your understanding that the purpose
 22 of the EIS is to pick the safest option?
 23 A. The purpose of an EIS is to compare
 24 alternatives and provide information to decision
 25 makers. (inaudible) is to communicate safety.

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1 Q. Understood. But is it a purpose to pick
 2 the safest option? Is that the work of the EIS?
 3 A. One of the elements in the environment is
 4 called traffic hazards.
 5 Q. I understand that. That's not answering
 6 my question.
 7 Is it the purpose of the EIS to pick the
 8 safest of all the alternatives?
 9 A. No. It would be the purpose of Vision
 10 Zero.
 11 Q. You testified a bit to the analysis over
 12 here using Synchro. If Synchro were configured to
 13 account for those two movements, would that --
 14 sequence and analyze those -- would that address
 15 your concern?
 16 A. No. I think it requires a gap analysis
 17 and then I think we -- Synchro could be used to
 18 report the amount of time over an hour at which the
 19 vehicles at the driveway are stopped across the
 20 trail. You could use Synchro for that piece, but
 21 not the gap analysis.
 22 Q. If it were capable of that, would that
 23 address your concern?
 24 A. Well, it's not capable.
 25 Q. I'm simply asking that (inaudible)

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1 configured that way, would it --
 2 A. I'm not going to answer that. Do I have
 3 to? It doesn't make any sense.
 4 THE HEARING EXAMINER: Are you saying
 5 you don't understand the question; you want him to
 6 repeat it?
 7 A. Yeah, I don't. It's not -- it can't do
 8 that, so why would I answer if it could. I don't
 9 understand.
 10 Q. (By Mr. Kiselius) As an expert you're
 11 allowed to speculate.
 12 I guess the question is if it were
 13 configured to address those two movements --
 14 A. If a gap analysis were conducted, as I
 15 described using two count data and when vehicles
 16 cross the tubes by time of day, we could address
 17 that issue.
 18 Q. Okay. And it's your testimony that
 19 Synchro cannot be configured in that manner to
 20 address that issue.
 21 A. No.
 22 Q. There was -- you testified about the
 23 critique that you had not considered the No Build.
 24 Is your assessment of the No Build what's captured
 25 in that table?

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1 A. That's part of it.
 2 Q. Where else have you testified or explained
 3 the comparison to No Build?
 4 A. Well, yes, it's all -- the level of effort
 5 and the level of analysis I've done includes the No
 6 Build.
 7 Q. In that table?
 8 A. Yeah. Yes.
 9 Q. Anywhere else in your memo that you talk
 10 about the No Build?
 11 A. No. Unless the text is describing the
 12 table, yeah.
 13 Q. Is the -- is the No Build safer than any
 14 of the (inaudible)?
 15 A. It can't be determined. I mean the fact
 16 that where a track -- the (inaudible) alternative
 17 would attract a high number of vulnerable users,
 18 including young users who don't even know the rules
 19 of the road, cannot judge speed and distance.
 20 Really weighs a lot against the existing condition
 21 in my mind. But I don't have a -- myself, nor an
 22 FEIS does it address that.
 23 Q. Is it that it's incapable of being
 24 determined, or just you don't think it's been done?
 25 A. Incape -- you need to rephrase that

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1 question.
 2 Q. You said it cannot be determined. In my
 3 question I'm trying to understand that statement.
 4 Are you testifying that it cannot be --
 5 the No Build alternative cannot be compared to the
 6 other alternatives, or are you saying that has
 7 not --
 8 A. We'd have to develop a methodology that
 9 could compare the level of exposure to conflict
 10 level of risk of existing condition, where it's
 11 primarily commuter bicyclists, with other bicyclists
 12 using Ballard Way, which is a shared use facility,
 13 or wherever they are, versus attracting the number
 14 of users, including vulnerable users, to pass
 15 through all those conflict points at industrial
 16 driveways with large trucks.
 17 Q. And you didn't do that analysis?
 18 A. I did not do that.
 19 Q. And it's your testimony --
 20 A. Direct comparison.
 21 Q. And it's your testimony that the EIS did
 22 not do that either?
 23 A. No.
 24 Q. Okay.
 25 A. Not in a comprehensive numerical way.

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1 Q. You had a qualifier at the end.
 2 A. Well, a number of people testified,
 3 including Ms. -- what was her last name?
 4 SPEAKER: Ellig?
 5 A. -- Ellig. A number of people testified
 6 they looked at the existing condition and opined
 7 that the build was safer because they looked at the
 8 existing conditions. So that's the only caveat.
 9 Q. Okay.
 10 MR. KISELIUS: Thank you. I don't
 11 have any further questions.
 12 THE HEARING EXAMINER: Just before
 13 we --
 14 MR. COHEN: I have none, your Honor.
 15 THE HEARING EXAMINER: Okay, you have
 16 none.
 17 Before we go to redirect, we have
 18 this drawing. Our preference would be it be
 19 admitted because it was used less to enhance the
 20 testimony than it was as the direction of the
 21 testimony.
 22 MR. SCHNEIDER: I would ask that it
 23 be marked and I would offer it.
 24 THE HEARING EXAMINER: Any objection?
 25 MR. KISELIUS: Okay.

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1 THE HEARING EXAMINER: All right. So
 2 this would be A27. Someone could bring it forward
 3 so we can get it in the record up here.
 4 (Exhibit No. A27 Admitted.)
 5 THE HEARING EXAMINER: And then we
 6 also have this.
 7 MR. KISELIUS: I'd ask that this be
 8 marked and entered as I guess the next exhibit.
 9 MR. SCHNEIDER: And this is a
 10 completely new document. If it's going to be
 11 offered, I would ask for a couple of minutes to
 12 review it, which we haven't had time to do.
 13 THE HEARING EXAMINER: Okay. You can
 14 take that now.
 15 MR. KISELIUS: And just to be clear,
 16 if that is correct, it was not on our list of
 17 exhibits, it was used to impeach (inaudible).
 18 THE HEARING EXAMINER: It's for
 19 rebuttal, I understand.
 20 But you can take a couple minutes now
 21 to look at it.
 22 MR. SCHNEIDER: Are we going to have
 23 other witnesses? I'm wondering if there is going to
 24 be a break, I could do it then.
 25 MR. KISELIUS: So question for the

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1 Examiner. Our understanding was that the
 2 Respondents were not going to be -- the rebuttal
 3 testimony was limited to the Appellants.
 4 THE HEARING EXAMINER: That's what
 5 mine was.
 6 MR. SCHNEIDER: Okay.
 7 THE HEARING EXAMINER: We have time,
 8 I'm willing to use that time. I don't know where we
 9 are with -- you're not finished yet with your
 10 rebuttal so --
 11 MR. SCHNEIDER: Almost.
 12 THE HEARING EXAMINER: Right. We've
 13 got redirect with Ms. Hirshey.
 14 MR. SCHNEIDER: Yeah.
 15 THE HEARING EXAMINER: If we have
 16 time, I'll entertain a suggestion as to how to use
 17 the remainder, but we are at almost 3:30. So a
 18 question would be whether we could actually use that
 19 time with a witness or not.
 20 Is this marked? The Lynnwood Link
 21 extension is marked R56.
 22 (Exhibit No. R56 Marked.)
 23 MR. SCHNEIDER: So if I can just ask
 24 counsel a couple of questions about this document.
 25 It appears to be a small part of the

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1 EIS.
 2 MR. KISELIUS: Correct. So to the
 3 Examiner's point, rather than having large
 4 voluminous documents, I selected the portions --
 5 Ms. Hirshey has more, in case she needed to refer to
 6 more, so if you prefer to use that one, that would
 7 be fine as well.
 8 MR. SCHNEIDER: Well, again, when
 9 we're offering a partial document that is a brand
 10 new document to the hearing, I obviously have
 11 concerns about whether other parts should be
 12 included is -- was Ms. Hirshey given the entire
 13 document, or was that just a bigger selection.
 14 MR. KISELIUS: It's a bigger -- I did
 15 not put in -- I can tell you what's in there, if you
 16 wants to take a look at it as well. My intent is
 17 not to -- I was trying to be efficient with paper,
 18 that's all. So.
 19 MR. SCHNEIDER: Well, I can certainly
 20 say I have an objection based on the fact that
 21 it's -- I mean counsel obviously in good faith is
 22 trying to minimize the size of the record. I wholly
 23 applaud that. But still without knowing what has
 24 been left out, and never having seen the document
 25 before, I think I'm in a handicap position. And I

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1 object to admission of selections from a much bigger
 2 document, when I haven't had any opportunity to
 3 determine whether there are other parts of the
 4 document that should also be included.
 5 MR. KISELIUS: Mr. Examiner, she's
 6 testified to relevant portions of it, so we can also
 7 just withdraw that as an exhibit, if that makes
 8 things easier. I think the testimony speaks for
 9 itself.
 10 THE HEARING EXAMINER: Or else if
 11 there is an opportunity to provide the larger; I
 12 don't know if you have that or not.
 13 MR. KISELIUS: I did not print out
 14 the whole thing. We can certainly provide the whole
 15 thing or we could, like I said --
 16 THE HEARING EXAMINER: My preference,
 17 as far as the record, would be to do exactly what we
 18 have here is to use exactly what was caused.
 19 But counsel's objection is relevant,
 20 in that he needs a chance to see what is being
 21 presented. If it was selected through, then he may
 22 have a legitimate argument.
 23 MR. KISELIUS: May I propose that
 24 we -- I guess there is a number of ways we -- so
 25 we'd have to provide the entirety of it as an

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1 exhibit, there is the excerpt of it, or we could
 2 withdraw the exhibit.
 3 THE HEARING EXAMINER: Can you
 4 provide the entirety today? That's really the
 5 issue, because we're running out of time to address
 6 this.
 7 MR. SCHNEIDER: It's not just
 8 providing it, it's giving me an opportunity to look
 9 at the whole exhibit.
 10 THE HEARING EXAMINER: We are in
 11 rebuttal though, so I mean I can't stop the whole
 12 hearing because (inaudible) rebuttal exhibit.
 13 MR. SCHNEIDER: I wasn't asking for
 14 time to do that. I was raising that as a basis for
 15 the objection about admitting any portion of it.
 16 MR. KISELIUS: So Mr. Examiner,
 17 again, I think she has read the portions that were
 18 relevant to our questions to impeach her testify and
 19 testify to it. I would simply say that the
 20 testimony in the record is adequate, from our
 21 purposes. So to avoid this issue we would simply
 22 withdraw.
 23 THE HEARING EXAMINER: All right.
 24 We'll do that then.
 25 You did not have any questions?

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1 We're on redirect.
 2 MR. SCHNEIDER: I'm sorry?
 3 THE HEARING EXAMINER: You're on
 4 redirect with your --
 5 MR. SCHNEIDER: I understood the
 6 Hearing Examiner had questions.
 7 THE HEARING EXAMINER: No.
 8 MR. SCHNEIDER: Okay. And I don't
 9 have any further redirect then.
 10 THE HEARING EXAMINER: Thank you
 11 again, Ms. Hirshey.
 12 THE WITNESS: You're welcome.
 13 THE HEARING EXAMINER: And any
 14 further for rebuttal?
 15 MR. SCHNEIDER: I'm sorry?
 16 THE HEARING EXAMINER: Anything
 17 further for rebuttal from Appellants?
 18 MR. SCHNEIDER: No. No further
 19 rebuttal.
 20 THE HEARING EXAMINER: Okay.
 21 I would like time for us to discuss
 22 closing arguments, briefing, and also the site
 23 visit. That's going to take 10 or 15 minutes at
 24 most, probably more like ten minutes.
 25 Was there -- is any other party

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1 suggesting that they would like to try to do
 2 rebuttal at this time?
 3 MR. KISELIUS: We do not understand
 4 that we had the opportunity. We are not going to be
 5 moving forward with that.
 6 THE HEARING EXAMINER: It only
 7 appeared because of the amount of time. We
 8 absolutely did set this up as just rebuttal for
 9 Appellants.
 10 MR. SCHNEIDER: Mr. Brower's pointed
 11 out that we have not offer any of your expert's
 12 resumes, and since the City has done so, I guess
 13 just to provide balance, it would make sense to do
 14 so.
 15 I think they're in Volume 2 as
 16 Exhibits A314 through A317. That's Mr. Bishop's,
 17 Ms. Hirshey's, Mr. Knight's, and Mr. Kuznicki's. I
 18 would offer those as well.
 19 MR. KISELIUS: The only one that we
 20 would pause on is just Mr. Knight, who did not
 21 appear (inaudible).
 22 MR. BROWER: We'll substitute
 23 Mr. Cohen's for --
 24 SPEAKER: Thank you.
 25 MR. BROWER: If that's okay.

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1 MR. KISELIUS: Then we have no
 2 objection.
 3 THE HEARING EXAMINER: All right.
 4 Tell me again where these are.
 5 MR. BROWER: Mr. Cohen's is in Volume
 6 2 A312.1.
 7 MR. KISELIUS: I'm sorry, Josh,
 8 A31 --
 9 MR. BROWER: 2.
 10 THE HEARING EXAMINER: You're going
 11 to have to repeat (inaudible) get --
 12 MR. BROWER: Of course.
 13 SPEAKER: Are each resume going to be
 14 a separate exhibit?
 15 THE HEARING EXAMINER: Yes.
 16 312 --
 17 MR. BROWER: .1.
 18 THE HEARING EXAMINER: That will be
 19 A28.
 20 (Exhibit No. A28 Marked.)
 21 MR. BROWER: 314 is Mr. Bishop's
 22 resume.
 23 THE HEARING EXAMINER: Are these all
 24 in the same volume?
 25 MR. BROWER: Yes, they are.

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1 THE HEARING EXAMINER: A29.
 2 (Exhibit No. A29 Marked.)
 3 MR. BROWER: Ms. Hirshey's resume is
 4 A315.
 5 THE HEARING EXAMINER: A30.
 6 (Exhibit No. A30 Marked.)
 7 MR. BROWER: And Mr. Kuznicki's is
 8 A317.
 9 And we would move to admit A28, 29,
 10 30, and 31.
 11 THE HEARING EXAMINER: Any
 12 objections?
 13 MR. KISELIUS: None, your Honor.
 14 THE HEARING EXAMINER: A28 through
 15 A31 are admitted.
 16 (Exhibit No. A28 Admitted.)
 17 (Exhibit No. A29 Admitted.)
 18 (Exhibit No. A30 Admitted.)
 19 (Exhibit No. A31 Admitted.)
 20 SPEAKER: Can we just confirm that
 21 (inaudible) can we just confirm that all of the
 22 (inaudible) exhibits have been admitted.
 23 THE HEARING EXAMINER: Okay. How do
 24 you want to do that?
 25 MR. KISELIUS: Well, I think the

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1 answer would be in ours, everything other than the
 2 one that was just marked (inaudible) admitted.
 3 THE HEARING EXAMINER: Everything
 4 you've submitted whether it's been admitted or not?
 5 MR. KISELIUS: Yes, R1 through R
 6 (inaudible).
 7 THE HEARING EXAMINER: I can't tell
 8 you just by looking whether every tab was submitted
 9 or not.
 10 MR. KISELIUS: No, no, no. Just the
 11 ones that we actually had marked.
 12 THE HEARING EXAMINER: Everything has
 13 been admitted. I'm certain that no party gave me
 14 any exhibits that have not been admitted at this
 15 point, or at least that were not ruled on.
 16 MS. GRANATT: So Appellants exhibits
 17 up to A31 have all been admitted as well?
 18 THE HEARING EXAMINER: Yes.
 19 Any other procedural items?
 20 All right. I'd actually like to take
 21 about a few minute break, if we could. Let's just
 22 make it ten minutes. We'll come back at 25 to.
 23 And the purpose of us returning will
 24 be to discuss closing argument scheduling, the
 25 issues and questions, and also details for the site

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1 visit. Thank you.
 2 (Recess.)
 3 THE HEARING EXAMINER: Okay. Let's
 4 do the easy part, just look at the schedule first
 5 for closing.
 6 My two things about that. One, my
 7 preference would be to set a goal for having final
 8 closing to me by December 22.
 9 I have limited time in January to do
 10 additional review and/or draft a decision. And so I
 11 have an ample amount of time set aside in the first
 12 week, and also between Christmas and New Years. So
 13 I am going to look to December 22 as being the last
 14 day for closing to come in.
 15 Typically I like to get a final
 16 closing argument, but given the nature of the
 17 advocacy that we've seen in this matter, I'm going
 18 to ask, if you want an opportunity to include in
 19 this, an opportunity to respond to closing. Which
 20 is going to be best for your schedules? And we're
 21 heading into the holidays. I don't know what people
 22 have an opportunity to do.
 23 We can do a single closing by the
 24 22nd, or we can set a date for closing, and then a
 25 little bit of time there to get a response in by the

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1 22nd.
 2 MR. KISELIUS: Mr. Examiner, we were
 3 going to propose sequenced briefing as Respondents
 4 to be afforded an opportunity to see the arguments
 5 that are being advanced against the adequacy.
 6 Because again, from the standpoint
 7 of -- well, from the City's standpoint, we haven't
 8 seen the legal arguments yet beyond the Notice of
 9 Appeal. So we're just not -- we want to make sure
 10 we're being comprehensive in our legal arguments and
 11 response, and also sort of focused on the same mark
 12 that they've set.
 13 So our preference would be to do some
 14 version of that. And I'm not sure if that's what
 15 you envisioned by saying -- I'm not sure if you're
 16 proposing both parties file and then both parties
 17 file a response.
 18 THE HEARING EXAMINER: However you
 19 want to do. The main thing I need is that that
 20 sequencing is done by the 22nd. So that's the main
 21 challenge. Obviously you get more time with less
 22 sequencing.
 23 MR. COHEN: Your Honor, I'm concerned
 24 about given the size of the transcript and the
 25 availability and the transcript, and our desire to

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1 respond in a pointed way to the arguments the
 2 Appellants make, without characterizing it in any
 3 way, they have mounted a host of issues and they
 4 will choose what they want to pursue in their
 5 closing memoranda. But I think it would be better
 6 for you and for the Respondents if we can meet those
 7 arguments as presented, as opposed to try to
 8 anticipate what they are going to offer.
 9 And I think if we give them a bit of
 10 time to present their talking points and we get a
 11 bit of time to respond, and we give the court
 12 reporter a bit of time to produce a transcript, it's
 13 going to be tough to do it all by the 22nd. And yet
 14 I think you'll get a better statement of the issues
 15 in dispute if we can do it that way.
 16 THE HEARING EXAMINER: I agree it
 17 could be that way. The problem is it would be --
 18 I'm trying to think of a good metaphor but I can't.
 19 You can give me a better product, but
 20 if you want me to have time to review it it won't
 21 happen in January. That's all I can tell you. We
 22 have, in addition to an extremely busy caseload
 23 during that time, the Hearing Examiner is leaving,
 24 and so it's potential I'm going to be the only
 25 Hearing Examiner from the end of January through the

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1 beginning of March, possibly later.
 2 I am going to be the hearing examiner
 3 for the HALA appeals, 11 appeals for the EIS, for
 4 the affordable housing zoning, and probably we
 5 anticipate an appeal for the Key Arena as well.
 6 So if you want to send me your
 7 closing in the middle of all that and think that I'm
 8 going to do an adequate job, as opposed to I've got
 9 right now eight solid days set aside with nothing to
 10 do but look at your case.
 11 You can give me a holiday for
 12 Christmas and I'll use that, but that's what I've
 13 set aside for you, because I think this case
 14 deserves it. But if we go outside of that, I
 15 absolutely cannot give you that. It will be -- I
 16 don't know when I'll be doing it frankly. So that's
 17 the challenge I've got.
 18 MR. SCHNEIDER: I'm not for a moment
 19 discounting the challenge. The problem we face is
 20 Mr. Brower ordered the transcript of Monday through
 21 Thursday of last week. We don't have it yet. We'll
 22 be ordering the transcript of Friday and today. But
 23 we -- my understanding it will be at least a week
 24 before we get that.
 25 Given the importance of the issues

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1 here to both sides, I think we're sharing the cost
 2 of the transcript, we both want to use it. But
 3 assuming we don't have a transcript, as seems highly
 4 likely, until almost the end of next week, then the
 5 following week Danielle, Ms. Graatt, is gone, as is
 6 Mr. Brower's other associate. I just don't know how
 7 we can do a proper job, even if we exchange briefs
 8 simultaneously by the 22nd.
 9 We're not opposed to the Respondents'
 10 request that we do sequential briefing, but we would
 11 like to accommodate that, but I don't know how we
 12 can -- I don't even know how we can do a decent job
 13 on the opening brief by the 22nd, given the size of
 14 the record here and the multitude of the issues.
 15 THE HEARING EXAMINER: So why don't
 16 you let me know what schedule you're thinking.
 17 MR. SCHNEIDER: Well, I mean ideally,
 18 given the holidays and all the vacations that we're
 19 facing, I would suggest that we have an opening
 20 brief due on January 5, the City has a couple of
 21 weeks or however long they deem appropriate to
 22 respond. We have a week for reply. And I think
 23 that would just about push it into February for the
 24 Hearing Examiner.
 25 And certainly, from our point of

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1 view, we would be willing to waive the deadline for
 2 the Hearing Examiner to issue the decision.
 3 But I think rather than try and get
 4 all this done in December, it would make more sense
 5 to push it out, even to the other side of the
 6 horrific January that you're facing.
 7 THE HEARING EXAMINER: Well, January
 8 is just the beginning. Okay.
 9 I mean I highly appreciate getting
 10 good briefing, it's of limitless value to have. As
 11 I've stated, and probably will again before we
 12 leave, had good counsel and expect to get well
 13 written briefs; and that will be extremely useful in
 14 making the decision and getting into the details.
 15 I honestly just don't know what to
 16 tell you as far as scheduling, what my schedule will
 17 look like if we start -- if essentially we're going,
 18 you know, like you said, February I'll be getting
 19 it, and that's right when the Hearing Examiner
 20 leaves. And like I said, I may be the only Hearing
 21 Examiner for all of the hearings that we have at
 22 that time.
 23 MS. FERGUSON: And from the City's
 24 perspective, that feels like a lot of additional
 25 delay.

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1 THE HEARING EXAMINER: I'm used to
 2 getting closing arguments within, at the outside,
 3 three weeks from the end of a hearing, so that's why
 4 I was really looking at the dates I was. I'm not
 5 going for force that, it's not a set rule and it's
 6 certainly not in the rules. We also have the
 7 holidays to consider. So I'm not looking at that as
 8 a measure you should be aware of, I'm just used to
 9 that for hearings this size.
 10 MR. COHEN: You've persuaded me. I
 11 understand what you're facing, and as much as I
 12 would prefer to do this in a more orderly respond to
 13 the arguments presented, I'm now in favor of getting
 14 everything in by the 22nd.
 15 MS. FERGUSON: I think he's saying
 16 simultaneous rather than staggered.
 17 THE HEARING EXAMINER: And you could,
 18 one opportunity would be, for example, to just
 19 before the 2nd, I know it doesn't give you a lot to
 20 work with, but to have essentially initial briefs
 21 filed of your closing and then a response brief
 22 each. So that you get an opportunity for that
 23 response you're looking for, but that you've put in
 24 the bulk of your closing, what you're aiming for,
 25 all at the same time and then a simultaneous

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1 response. So you all get the same opportunity.
 2 MR. SCHNEIDER: Well, again, what our
 3 concern --
 4 THE HEARING EXAMINER: What was the
 5 staggering you were going to propose so that I
 6 understand what that was going to be.
 7 MR. COHEN: We weren't on the same
 8 page with regard to the schedule, but the City and
 9 Cascade are interested in getting this matter
 10 resolved sooner, so I think -- I don't know if
 11 our -- we didn't have a chance to try these dates
 12 yet on the Appellants, but we were thinking like --
 13 it doesn't work, it doesn't work. The dates we were
 14 looking at are still outside --
 15 THE HEARING EXAMINER: I'm sorry,
 16 what I really meant was the staggering. Were you
 17 thinking opening, response, reply?
 18 MR. COHEN: Yeah.
 19 THE HEARING EXAMINER: That's
 20 unusual, just so you know, for closing. Because we
 21 do have -- we've got an opening brief, we've got the
 22 record here. And this is really -- you know, if we
 23 were just going to go for it now, you all get a
 24 chance to do your closing orally.
 25 So having the staggered, say

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1 prehearing briefings or motion briefings schedule,
 2 is not usual. It's not unheard of by any means.
 3 MR. SCHNEIDER: But I don't see any
 4 way to get it done by the 22nd and have staggered
 5 briefing. I think it would have to be an exchange
 6 on the 22nd. And that --
 7 THE HEARING EXAMINER: Mr. Schneider,
 8 what do you mean by an exchange on the 22nd? An
 9 exchange of?
 10 MR. SCHNEIDER: Both sides would file
 11 a brief on the same day. And the 22nd, again, at
 12 least for me --
 13 THE HEARING EXAMINER: Well, let me
 14 ask if you had your -- if each party had their --
 15 filed their closing by the 22nd, and then had an
 16 opportunity to file a response after that, say
 17 sometime in the first week of January, would that
 18 help alleviate some of the pressure?
 19 MR. SCHNEIDER: I guess it depends on
 20 how much time and how that interacts with your
 21 schedule.
 22 THE HEARING EXAMINER: Right.
 23 MR. SCHNEIDER: A day or two, I don't
 24 think is going to matter.
 25 THE HEARING EXAMINER: No, I don't

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1 mean a day. Well, the 22nd alone, if we go into the
 2 first week of January, you're getting technically a
 3 week, although I'm not sure how many people are
 4 actually around for that one week.
 5 So let me put it this way. A
 6 response brief -- you're going to give me your --
 7 I'm going to have the record, I'm going to have your
 8 opening briefs, or whatever we're going to call
 9 them, your primary closing briefs by the 22nd. I'm
 10 going to have a lot to work with at that point.
 11 I don't have to wait until I get your
 12 response closing briefs in before I start analyzing
 13 the record and your arguments. I can start -- I
 14 mean I can review all of that, and still give you an
 15 opportunity for additional argument and salvage my
 16 time, as it were.
 17 So if you come in even at the end of
 18 that first week of January, that would be the
 19 earliest I would propose for a response, because I
 20 don't even want to consider trying to have people
 21 work over the Christmas break.
 22 MR. KISELIUS: The City would be
 23 amenable to that.
 24 THE HEARING EXAMINER: That would be
 25 January 6.

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1 MR. KISELIUS: 5th, your Honor, I
 2 think.
 3 THE HEARING EXAMINER: Oh, is it?
 4 MR. KISELIUS: Friday the 5th.
 5 THE HEARING EXAMINER: Which year?
 6 MR. KISELIUS: 2018.
 7 THE HEARING EXAMINER: Oh, yeah, the
 8 6th is a Saturday. That's right. So January 5. If
 9 you want another weekend, we can go to January 9.
 10 I'm happy to trim some days in there. I know that
 11 it's not going to matter to me at that point, so if
 12 you need a few more days, that's fine.
 13 MR. BROWER: If we take that
 14 additional time over the holiday, will that leave
 15 you time to -- will we slip out of your queue?
 16 THE HEARING EXAMINER: In some
 17 respects, yes, because we're heading into January,
 18 which is fully booked and overscheduled already.
 19 Again, I will have 80 percent of what
 20 I need if you're filing your briefs by the 22nd.
 21 And all I'm talking about is -- I mean I could
 22 essentially write the decision for the most part to
 23 80 percent draft, and then revise that based on what
 24 your responses are. I could totally change my mind
 25 if I want still in that time. So that's still an

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1 opportunity for you.
 2 Because you're not -- there is no new
 3 evidence coming in, it's just new argument on
 4 arguments I already know what they are. That's why
 5 I'm willing to be ample about that response in the
 6 amount of time you get back to me on. Because I'm
 7 not waiting until I get that response to get
 8 started.
 9 MR. KISELIUS: Again, I think the
 10 City is amenable to that approach, if that works for
 11 everybody else.
 12 MR. SCHNEIDER: We'll do our best.
 13 THE HEARING EXAMINER: If you want
 14 more time than the 22nd, I can give you a few more
 15 days, but we're really talking about working through
 16 Christmas, and I didn't want to do that to anyone.
 17 I didn't think that that was an opportunity for
 18 anyone.
 19 MR. SCHNEIDER: I would prefer that
 20 it be the 22nd and then the 5th.
 21 THE HEARING EXAMINER: All right.
 22 Then I have just a loose list of issues, as I've
 23 identified them. I don't mean my scribbles in a
 24 couple of breaks for this to be comprehensive or
 25 even capturing how you've characterized them, so if

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1 you have comments on it, I mean this to be more of
 2 an open discussion about issues, and welcome you
 3 alerting to me what else you might raise.
 4 Again, not calling for you to be
 5 precluded from raising something later in your
 6 argument.
 7 But I see right now, of course, level
 8 of analysis required to determine safety impacts
 9 from traffic hazards. In particular, one thing I
 10 would like explored in that is this issue of whether
 11 compliance with the law is an adequate assumption as
 12 far as adequacy of safety analysis.
 13 MR. COHEN: Would you say that one
 14 more time.
 15 THE HEARING EXAMINER: Yes. In the
 16 context of the issue whether the level of analysis
 17 done for the safety impacts was adequate, there is
 18 this separate issue that came up, mostly today I
 19 think through Mr. Chang's testimony, and then
 20 through rebuttal, of whether compliance with the
 21 law, rules of the road as they were referred to,
 22 whether the assumption that those will be met as
 23 part of the analysis, is whether that's adequate or
 24 not, to the degree that's even happened in the EIS.
 25 That's as I understood what the testimony was from

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1 the witnesses.
 2 And then I look to the Notice of
 3 Appeal. I did see -- and I apologize, I think I
 4 said the opposite earlier in regards to a ruling on
 5 an objection. It was only part of why the objection
 6 was raised, so the objection ruling stands. But I
 7 do see that in the Notice of Appeal that the
 8 Appellants did raise an issue about the project
 9 objective and the scope. I'm not sure if we're
 10 still -- I think we've still got that issue out
 11 there or it's possible.
 12 They also raised the issue of
 13 inconsistency with the comprehensive plan. There
 14 was an issue of notice. Parking impacts.
 15 Another one in particular I would
 16 like guidance by both sides on, is why are economic
 17 impacts included, particularly in the -- I assume
 18 that's in the context of the Seattle Municipal Code.
 19 My experience with economic impacts in the EIS comes
 20 from outside of Seattle for the most part and it
 21 getting excluded entirely.
 22 So why is it included? Why are we
 23 looking at it here? And then of course, what is the
 24 standard? What are the requirements for that to be
 25 included, and what level of analysis is required?

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1 There was an issue raised about the
 2 shoreline environment. I don't know if that's
 3 strictly essentially a code argument based on the
 4 existing record, or if that's still an issue that
 5 the Appellants will be bringing or not.
 6 I think it would be helpful to look
 7 at additional SEPA case law for the principle of
 8 whether, to the degree that we can find it, whether
 9 one design alternative is adequate. There may be
 10 case law out there on that issue, I don't know.
 11 Those are the primary issues, I
 12 think.
 13 Then we've got a side issue of the
 14 deference by the Hearing Examiner to the City, and
 15 whether factual circumstances or evidence can
 16 influence that when that deference is called for by
 17 code and/or state law.
 18 I know you'll all do this, but I
 19 strongly invite you to orient me within the record
 20 and testimony in concerns to your argument.
 21 I think we've already dismissed, as a
 22 stand-alone issue, the percentage of design in the
 23 motion prior to the hearing, meaning there was a
 24 motion indicating as a matter of law based on the
 25 Judge Rogers' earlier decision, that ten percent

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1 design was not adequate, and that was already ruled
 2 on in a prehearing motion.
 3 MR. SCHNEIDER: Just to be clear I
 4 understand. My understanding is you ruled on it as
 5 a matter of law, but you didn't preclude evidence
 6 and additional --
 7 THE HEARING EXAMINER: That's right
 8 MR. BROWER: It was in the context of
 9 denying a dispositive motion.
 10 THE HEARING EXAMINER: Right.
 11 MR. KISELIUS: And just to be clear,
 12 I think the first in that list of issues that you
 13 raised is meant to capture what remains of that
 14 issue; is that correct? You said level of analysis
 15 required to determine safety impacts?
 16 THE HEARING EXAMINER: It can slop
 17 over into that a bit. But I think the issue of
 18 percentage of design has come up, and at least as I
 19 see it, there isn't anything in SEPA, maybe there
 20 is, if we're still looking at that issue to the
 21 degree that as a number, percentage number, whether
 22 SEPA directs that you have to have done a certain
 23 level of design.
 24 As I see it, I tried to convey this
 25 in the motion, I think Judge Rogers did the same, is

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1 that it's a question of level of analysis rather
 2 than a number.
 3 I saw in the Notice of Appeal an
 4 issue of cumulative impacts raised in relation to
 5 the combined sewer outflow, but I didn't hear any
 6 testimony on that, so I assume we're not pursuing
 7 that issue; is that correct?
 8 MR. SCHNEIDER: I'm not sure we can
 9 answer that without giving it some thought.
 10 THE HEARING EXAMINER: All right.
 11 I'm not precluding issues today, but that's my
 12 impression at the moment.
 13 Would counsel like to add anything
 14 further that I might expect, or you have questions
 15 for me about briefing as we go forward?
 16 MS. FERGUSON: Can I ask one question
 17 about one of the issues mentioned was notice.
 18 THE HEARING EXAMINER: Yes. Notice
 19 of Appeal, page seven, says SDOT failed to provide
 20 public notice of or appropriately evaluate a new
 21 segment of the preferred alternative.
 22 MS. FERGUSON: Thank you.
 23 THE HEARING EXAMINER: I don't know,
 24 but I'm assuming that can be raised in strictly a
 25 legal context at this point, since we didn't hear

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1 testimony specifically related to that, or I didn't,
 2 I should say.
 3 Anything further?
 4 MR. KISELIUS: Not that we can think
 5 of.
 6 MR. BROWER: So just on a practical
 7 level we've obviously introduced exhibits from a
 8 variety of binders. Would it be helpful if we try
 9 to prepare a single set of exhibits?
 10 THE HEARING EXAMINER: You know, I
 11 asked Ms. Johnson if she would pull them out of the
 12 binders, and I came in the next day and it was in a
 13 new binder labeled. I was very impressed. It was
 14 very helpful. So no, thank you; my staff did
 15 address that.
 16 Anything further on that, before I
 17 move on to the site visit?
 18 MR. SCHNEIDER: I assume on the
 19 briefs there is no page limit, there is just an
 20 injunction to be as short as possible?
 21 THE HEARING EXAMINER: Yes. This is
 22 a large record. In my practice I started cringing
 23 when I went over 20, so know that I will when I'm
 24 reading it as well.
 25 SPEAKER: Do we each get to send a

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1 brief?
 2 THE HEARING EXAMINER: Um, no.
 3 MS. FERGUSON: The last question I
 4 have, which I know is the first one my clients are
 5 going to ask, is when we might be able to expect a
 6 decision. I know you probably can't promise a date.
 7 THE HEARING EXAMINER: I don't know
 8 now that we've moved into January. I could have
 9 told you I would be done by January 9 if I had
 10 gotten the briefing all done on the 22nd, because I
 11 would have been shooting to write the decision
 12 completely, but I don't right now. I really have to
 13 reexamine my schedule and see when in January this
 14 is going to happen.
 15 But I am encouraged that you've done
 16 the best you can to accommodate my schedule and get
 17 me everything you can by the 22nd. And we'll see
 18 what comes in in those response briefs that would
 19 change that. I'll be striving to complete as much
 20 as I can by the 5th essentially and then reexamining
 21 things.
 22 I do know I've got hearings the week
 23 of the 9th most days, so certainly won't be that
 24 week. But I would hope by the end of January at the
 25 latest.

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1 MS. FERGUSON: Thank you.
 2 THE HEARING EXAMINER: Without
 3 looking at the -- reexamining the schedule, I think
 4 that's reasonably possible.
 5 MS. FERGUSON: Thank you.
 6 THE HEARING EXAMINER: All right.
 7 May we move on to site visit.
 8 I'm not going to bike it. I thought
 9 that might be efficient, but I don't want to leave
 10 that impression that I'm going to do that. I'm not
 11 the best bicyclist anyway.
 12 So my thought is I will drive and
 13 walk it. I typically -- well, always do site visits
 14 alone. However, for this particular area, there is
 15 so much detail that we've gone into with all of
 16 these driveways, the locations of the railways, I
 17 think it might be helpful to have some guidance from
 18 the parties on those locations. In which case I
 19 would need to be accompanied for at least a portion
 20 of the site visit to highlight those locations.
 21 Is there objection? I'd like to hear
 22 response to that thought.
 23 MR. KISELIUS: First, before we talk
 24 about that, can I just get some clarity -- request
 25 some clarity on the it. Was the examiner focused on

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1 the preferred alternative or all of the alternatives
 2 that are described in the EIS?
 3 THE HEARING EXAMINER: Everything in
 4 the EIS.
 5 MR. KISELIUS: Then in terms of the
 6 request that you just made, if it would be helpful
 7 to the examiner we're more than willing to have a
 8 representative join the examiner. And I think it
 9 would behoove the parties (inaudible) to be
 10 represented.
 11 I think it would be helpful to have
 12 some ground rules in terms of the assistance that
 13 we'd be providing, so that we're not writing
 14 argument, but rather sort of depicting the points of
 15 interest to the examiner.
 16 THE HEARING EXAMINER: Right. And
 17 that's really the purpose of it is, you know, there
 18 is the Salmon Bay Cafe, these are the tracks, here
 19 is Salmon Bay.
 20 There is no evidence to be introduced
 21 at this point. This is to orient the Hearing
 22 Examiner in the area at issue, because I haven't
 23 been out there, certainly in the context of all the
 24 evidence that's been introduced.
 25 SPEAKER: I have a question. Are we

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1 talking parties or counsel accompanying you?
 2 Probably better that it -- I would think better that
 3 it be a party.
 4 THE HEARING EXAMINER: It can depend.
 5 Sometimes parties can be useful, because they'll
 6 point things out, but they don't understand the
 7 rules, what I just said, and so want to tell me the
 8 story all about it. So counsel is better at that.
 9 So to the degree counsel knows the
 10 area -- and we are talking at a pretty surface level
 11 of, again, there is Salmon Bay, it's not a high
 12 level of detail. And I certainly don't want to
 13 discuss certain railroad tracks and vehicles or
 14 something like -- railroad cars or vehicles or
 15 anything like that.
 16 MR. SCHNEIDER: I think it would be
 17 great. I would request it be counsel for those
 18 various reasons, that it's hard to -- I would feel
 19 the same way about our party. I would be worried
 20 that they would blurt something out or say
 21 something. And I think counsel's better cognizant
 22 of the rules and able to only answer the questions
 23 that you ask.
 24 SPEAKER: I would second that from
 25 the experience of have my own clients (inaudible).

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1 THE HEARING EXAMINER: They always
 2 do. They want to tell the story on it.
 3 MR. BROWER: I think all of us are
 4 intimately familiar with this area.
 5 MR. KISELIUS: Okay.
 6 THE HEARING EXAMINER: I don't have a
 7 date yet. I was considering this Thursday, but I
 8 think since we're going to join counsel, that what I
 9 will do is send out a calendar request and will
 10 arrange that by email. And I'll be looking at next
 11 week to do that.
 12 MR. SCHNEIDER: I would only say that
 13 I'm out of the office next Thursday and Friday.
 14 THE HEARING EXAMINER: I wanted to do
 15 it on Friday of course.
 16 MR. BROWER: And I'm out Monday,
 17 Tuesday, and Wednesday, returning Thursday.
 18 THE HEARING EXAMINER: I obviously
 19 have time, so we can do it later. I'll just send
 20 you some dates and we can work it out.
 21 MR. BROWER: Thank you.
 22 Ms. Ferguson, Mr. Kiselius,
 23 Mr. Cohen, Ms. Granatt, Mr. Schneider, Mr. Brower,
 24 thank you. I appreciate your professional civil,
 25 most of the time, and spirited advocacy. We've

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1 waded through a great deal of material and evidence.
 2 I think it's been done efficiently, professionally,
 3 and with a great deal. So I thank you for your
 4 representation and handling the case.
 5 I ask that you will convey to your
 6 clients one thing. An EIS appeal, by its nature,
 7 inherently limits the real world view of what's
 8 happening. It's limited to analysis and whether
 9 it's adequate or not.
 10 It does not get to, what I hope you
 11 will convey to your clients, is that I do understand
 12 the underlying issues and interests that have
 13 brought them here. We have decades' old industries
 14 and businesses, and we have a project that's been in
 15 the works, and now in its last phase since the '90s.
 16 And so putting that in the context of
 17 a limited EIS analysis, and a thumbs up or down,
 18 winning or losing in a hearing, it's really
 19 impossible for us to address all the issues that
 20 bring the parties to that. And I hope you'll convey
 21 to them that I do understand that. So regardless of
 22 the outcome, that that is not part of it.
 23 So I think this is my chance to say
 24 that. And I may include something along those lines
 25 in the decision. But they're not here today, so who

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1 can last (inaudible). The lucky people who lasted
 2 through the end get to hear that. But there is many
 3 who have been with us through the hearing that
 4 haven't, and so I hope you'll please convey that to
 5 them.
 6 I will send you some dates for site
 7 visit and we are concluded.
 8 (Proceedings concluded.)
 9 --oOo--
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CERTIFICATE

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of December 2017.

Brenda Stearns


