

BEFORE THE HEARING EXAMINER
IN AND FOR THE CITY OF SEATTLE

In The Matter of the)
Appeal of:)
))
THE BALLARD COALITION) No. W-17-004
))
Of the adequacy of the Final)
Environmental Impact Statement,)
prepared by the Seattle)
Department of Transportation for)
the Burke-Gilman Trail Missing)
Link Project)

TRANSCRIPT OF AUDIO RECORDED PROCEEDINGS

DAY 4
Thursday, November 30, 2017

OFFICE OF THE HEARING EXAMINER

700 Fifth Avenue
Room 409
Seattle, WA 98104

REPORTED BY: Nicole A. Bulldis, RPR, CCR No. 3384

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1 APPEARANCES
2 FOR APPELLANT:
3 PAT SCHNEIDER
4 Foster Pepper
5 1111 Third Avenue, Suite 3000
6 Seattle, WA 98101
7 (206) 447-2905
8 schnp@foster.com
9 JOSH BROWER
10 Veris Law Group
11 1809 Seventh Avenue, Suite 1400
12 Seattle, WA 98101
13 (206) 829-9590
14 josh@verislawgroup.com
15
16 DANIELLE GRANATT
17 Veris Law Group
18 1809 Seventh Avenue, Suite 1400
19 Seattle, WA 98101
20 (206) 829-9590
21 danielle@verislawgroup.com
22 FOR RESPONDENT:
23 ERIN FERGUSON
24 Assistant City Attorney
25 701 Fifth Avenue, Suite 2050
26 Seattle, WA 98104
27 (206) 684-8615
28 erin.ferguson@seattle.gov
29 TADAS KISIELIUS
30 Van Ness Feldman
31 719 Second Avenue, Suite 1150
32 Seattle, WA 98104
33 (206) 623-9372
34 tak@vnf.com
35
36 FOR INTERVENOR:
37 MATTHEW COHEN
38 Stoel Rives
39 600 University Street, Suite 3600
40 Seattle, WA 98101
41 (206) 624-0900
42 matthew.cohen@stoel.com

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1 Seattle, Washington; Thursday, November 30, 2017
2 8:31 a.m.
3 --o0o--
4 EXAMINER VANCIL: Return on the record with
5 respondents starting.
6 MR. COHEN: Your Honor, I have a
7 preliminary motion. Yesterday, during the lunch hour,
8 appellants circulated a subpoena to a former Cascade Bike
9 Club employee seeking to compel his appearance as part of
10 their rebuttal case on Monday.
11 EXAMINER VANCIL: Tuesday.
12 MR. COHEN: Tuesday.
13 And I'm going to move to quash that
14 subpoena on multiple grounds. First, it's untimely under
15 the Hearing Examiner's rules. It should have been served
16 at least seven days in advance of the date the appellants
17 seek to compel the witness. And it was -- to my
18 knowledge, it hasn't been served yet, but it wasn't even
19 circulated until six days before.
20 Second, and more important, it seeks to
21 compel the attendance of a former Cascade employee. And I
22 don't believe that the views of the Cascade Bike Club are
23 at issue in this case which relates to the legitimacy of
24 the environmental impact statement. So I'm questioning --
25 given the time constraints that we've all talked about,

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1 I'm questioning the relevance of this witness's
 2 appearance. And even if -- even if the subpoena was
 3 timely served, I think you should quash it because its --
 4 its appearance would be a waste of our time. It's not
 5 relevant to any issues in this case.
 6 EXAMINER VANCIL: Is that everything,
 7 Mr. Cohen?
 8 MR. COHEN: I think so.
 9 EXAMINER VANCIL: Okay. Thank you.
 10 MR. BROWER: Mr. Howell is -- excuse me,
 11 Mr. Examiner. Good morning.
 12 Mr. Howell is the author of the email that
 13 Cascade Bicycle Club and the City moved to block from
 14 being admitted into the record. That email goes to the
 15 stressors that competing and incompatible development put
 16 on the maritime industrial industry which is the
 17 subject -- extensive testimony, excuse me -- the extensive
 18 testimony of Mr. Cohen, our expert. This Mr. Cohen says
 19 he doesn't even know Mr. Howell. We are allowed to use
 20 our rebuttal time as we are fit. And the relevance of
 21 Mr. Howell's testimony can only be judged when he's here,
 22 not in advance.
 23 MR. COHEN: So the email in question, which
 24 I anticipated might be of some interest, is an internal
 25 email from 19 -- or 2014, between two former Cascade

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1 employees, and it asserts potential positions that the
 2 bike club never advanced. And Mr. Howell is not -- is --
 3 basically, it's his personal views. So whether -- whether
 4 any of the strategies he outlines in that email are
 5 accurate or not, they were not the positions of the
 6 Cascade Bike Club and really have no evidentiary value.
 7 MR. BROWER: So may I respond to one thing,
 8 please?
 9 EXAMINER VANCIL: No, that -- we got to --
 10 MR. BROWER: Okay. Certainly.
 11 EXAMINER VANCIL: -- argument on both
 12 sides. There was a reply. That was plenty.
 13 Does Mr. Howell -- so you've -- who has the
 14 subpoena been served on or has it been served?
 15 MR. BROWER: It went out for service
 16 yesterday, and it is being -- was -- it is being served on
 17 Mr. Howell, who, at the time he wrote this email, was
 18 Cascade's Policy and Government Affairs Manager and he was
 19 writing to the Executive Director of Cascade.
 20 And other evidence in this case --
 21 EXAMINER VANCIL: I just wanted to know who
 22 he was -- certainly, if you're serving directly on --
 23 MR. BROWER: Yes. Yes.
 24 EXAMINER VANCIL: And if he doesn't work
 25 for Cascade --

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1 MR. BROWER: No.
 2 EXAMINER VANCIL: -- they can't do anything
 3 about it at this point.
 4 MR. BROWER: He's no longer employed by
 5 Cascade. Their seeking to call him to explore the views
 6 of Cascade and find out whether or not they are the
 7 official views of Cascade or not. Mr. --
 8 EXAMINER VANCIL: I don't know that we have
 9 to wait until that happens to get into relevancy.
 10 You indicated it's -- the concept you're
 11 getting at is this land use pressure. We had an expert
 12 witness addressing those land use pressures, the tensions
 13 between the different land uses that are coming. I'm --
 14 I'm not sure how we're getting at that through this. And
 15 we had this discussion when we didn't admit this -- this
 16 email.
 17 Even if this is an accurate -- you know, if
 18 I sort of apply, sort of, a summary judgment standard,
 19 if -- if this is exactly how Cascade feels about this and
 20 they would love to see every business gone in Ballard, I
 21 don't see how that's a land use pressure. It's the
 22 opinion of a -- of a nonprofit organization. It -- it's
 23 not a --
 24 MR. BROWER: We actually --
 25 EXAMINER VANCIL: -- zoning or land use

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1 code pressure that's coming from a use. And this is a
 2 hearing inherently analyzing -- we are looking at the
 3 analysis of different land uses and whether it's adequate
 4 or not. So I'm just not -- I mean, I get it that this is
 5 a good stick in the eye to Cascade but I don't understand
 6 the evidentiary value of it.
 7 MR. BROWER: Sure. And it's not meant to
 8 be a stick in the eye, Mr. Examiner.
 9 EXAMINER VANCIL: It comes across that way
 10 very strongly.
 11 MR. BROWER: Okay.
 12 EXAMINER VANCIL: And, so I'm having a hard
 13 time understanding why --
 14 MR. BROWER: Certainly.
 15 EXAMINER VANCIL: -- particularly with the
 16 limited time we have, how this is something we really want
 17 to be spending our time on.
 18 MR. BROWER: Okay. It -- it goes to a
 19 larger theory of this case that land use is based on
 20 zoning and zoning is based on public advocacy and getting
 21 the City to change its policy, and this is all part and
 22 parcel of the theme of our case. But if you see this as a
 23 stick in the eye then we will clearly not pursue it.
 24 EXAMINER VANCIL: I -- I very much
 25 understand and I -- I don't want to be dismissive of the

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1 Coalition's concern with policy or positioning with regard
 2 to the project, both by City staff or -- or Cascade. But
 3 in the context of this hearing, what we really can only
 4 get at is the level of analysis for the environmental
 5 impact statement.
 6 MR. BROWER: Certainly.
 7 EXAMINER VANCIL: We just can't get at
 8 those broader issues that I know are part of a year's long
 9 case because it's not just a case, it's -- it's much
 10 larger than that between the parties. I understand that.
 11 I just don't see that getting at that here is going to
 12 help us for the issue that's wean us.
 13 MR. BROWER: Certainly.
 14 EXAMINER VANCIL: And I don't mean to be
 15 dismissive of the greater issues that are -- that -- this
 16 is a microcosm within.
 17 MR. BROWER: Certainly.
 18 EXAMINER VANCIL: So I do want to make sure
 19 that the parties understand that I respect those, but I --
 20 in the interest of time and the interest of -- of getting
 21 to the issues that you're presenting that are more at the
 22 heart of your case, I don't think that we need to --
 23 MR. BROWER: Certainly. And I think we've
 24 spent enough time on this email. We'll withdraw the
 25 subpoena.

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1 EXAMINER VANCIL: Okay.
 2 MR. COHEN: Thank you, your Honor.
 3 EXAMINER VANCIL: I have one procedure --
 4 is there any other procedural items that the parties
 5 wanted to raise about timing? I know we'll get to that.
 6 Before we get to that, I want to raise
 7 one -- this is not something I want comment on but I do
 8 want to bring it to the parties' attention as soon as I
 9 can. I made a ruling yesterday on an objection and the
 10 question had been to Ms. Ellig. And I don't remember
 11 exactly the question, but I believe it was whether an
 12 attorney had -- my understanding of the question was
 13 whether an attorney had directed her to say something.
 14 An objection was raised by the City about
 15 attorney-client privilege. I overruled that objection at
 16 the time and my concern is that this is directing a
 17 witness to give testimony. I -- I'm simply having to do
 18 some research to find out the extent of the
 19 attorney-client privilege and whether that is even
 20 included in that or not. And so it's something that I'm
 21 considering and, so, I will come back to you and let you
 22 know whether I'm -- I'm essentially reconsidering the
 23 objection to whether the ruling and whether I need to
 24 address that.
 25 I will not make a new ruling without

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1 hearing from the parties on that, but I do want to let you
 2 know that it's something that I'm re-examining at this
 3 time. I know that it sounds like we may get into the
 4 extent of the attorney-client privilege -- attorney-client
 5 privilege later, as well, and if the issues on discovery
 6 come up again that were discussed; so I just wanted to
 7 alert the parties to that.
 8 Let's move on and Mr. Schneider you had a
 9 comment about timing?
 10 MR. SCHNEIDER: Well, yes, obviously,
 11 Mr. Examiner, we need to know, before we do our first
 12 cross-examination how much time we have left. I -- so,
 13 again, as I've -- as I've said, I -- I think the -- the
 14 plaintiff does have an extra burden and that needs to be
 15 taken into account when there's a chess-clock approach.
 16 I also -- just, you know, doing the math in
 17 my imperfect manner, it looks to me like we're really
 18 dealing -- if we're going from 8:30 to 5:00 and then we
 19 subtract the lunch hours and breaks, I think we're dealing
 20 with six and three quarter hours a day.
 21 EXAMINER VANCIL: Mm-hmm. That's right.
 22 MR. SCHNEIDER: And so that works out to
 23 almost 18 hours per side. And I know there's some, you
 24 know, waste in all of that, but, still, it seems to me
 25 that I don't think we're -- we've come to 18 hours yet.

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1 So -- and I think yesterday we had an hour
 2 and 45 minutes left; so I would just ask for some
 3 accommodation of that. And I don't know whether the
 4 City's attorneys have had a chance to check with their
 5 witnesses or not about, you know, at least leaving open
 6 the option of moving one witness into Tuesday. I can't
 7 imagine we would need to move that to accommodate the
 8 additional time we're thinking of.
 9 I do not think any of the
 10 cross-examinations that are to come, with maybe one
 11 exception, will be anywhere like the one that was --
 12 Ms. Ellig yesterday. I'm expecting very short
 13 cross-examinations of all but one of the upcoming
 14 witnesses.
 15 EXAMINER VANCIL: Let me -- so we had --
 16 what we did set aside was not a set amount of hours, it
 17 was the amount of days for hearings. So we have five days
 18 for a hearing. The end number, somewhere between 15 and
 19 18 has been a moving target and changing.
 20 I'm -- I'm certainly willing to, you know,
 21 fudge a bit so that we do get a good case in for
 22 appellants. We don't want to do it by hours. Minutes,
 23 tens of minutes here and there, that's fine. As to the
 24 18, I guess I don't -- I don't know where we are in the
 25 math and I'm not going to stop and do that right now in

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1 the interest of not using too much of our time. But I
 2 will point out we didn't have -- it wasn't 6 -- 7.75 for
 3 the first day because we didn't start and have longer
 4 times.
 5 And part of that 18-hour number is eaten up
 6 by, for example, this conversation we're having right now.
 7 My intro on the first day, my questions, the recording
 8 shutting down, these are -- these are all part of the, I
 9 think, what parties can reasonably expect happening at a
 10 hearing. I've -- I've seen all of them happen at
 11 different times and I know that all of you have, as well.
 12 And, so, when we talk about whether
 13 there's -- how we allocate time within a five-day period,
 14 that's to be expected that some of the time is going to
 15 get eaten up. So it's not an 18-hour solid, you get 18
 16 hours, you get half of the time that's there. Now, if we
 17 lost two days because the recording shut down, obviously
 18 we'd treat that differently, but we lost 25 minutes.
 19 So -- so I want to couch where we are in that context.
 20 I also want to comment on the length of
 21 witness cross. I think -- or direct, I guess it is, in
 22 this case. If you are approaching it expeditiously, I
 23 will be lenient in that respect. I mean, for example,
 24 with yesterday's witness, we had two sustained objections
 25 of asked and answered. So that is probably getting to the

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1 point where we're getting a little bit long, but I -- I
 2 think we need to work with that.
 3 We also have time on Tuesday. I know you
 4 don't know how much time you need for your rebuttal at
 5 this point because we're just starting on the City's case.
 6 So I know that none of that is definitive but it helps
 7 you -- give you maybe a few fence posts around the field
 8 to let you know how I'm -- how I'm approaching it. I
 9 can't say, "Okay, now you get two more hours," at this
 10 time.
 11 You know, if we got -- but let's see.
 12 Where are we just to get into the numbers?
 13 If we got -- appellants have used 13.20 or
 14 13 hours and 20 minutes, and respondents have used six
 15 hours and two minutes. Then, really, we've -- yeah, I
 16 don't know where we're going to get extra time in the next
 17 two days if we're running with a rule of thumb, as it
 18 were, with 15 hours to a side.
 19 Respondents do have an -- need to have an
 20 opportunity to put on their case. As I mentioned
 21 yesterday, even if we're giving appellants more time out
 22 of the allocated time because they need more time, right
 23 now they're 50 percent over the respondents' time. So
 24 they -- that's certainly working in the appellants' favor
 25 already.

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1 So let's proceed. I'll tell you when we
 2 run out mid-day on that and then we're just -- I'll have
 3 to see where we are with witnesses and how much time you
 4 expect. You'll have some sense, possibly, on direct for
 5 those remaining witnesses. And let's have a more in-depth
 6 conversation probably either before or after noon because
 7 that's about what time we'll -- you'll probably be out of
 8 time depending on how the witnesses play out.
 9 Are there further questions or comments
 10 about this -- this time? I know this is a moving target.
 11 It certainly is for me. And I -- I don't know if the
 12 parties have a more thoughts on how to address it.
 13 MR. COHEN: I'll keep it short. I'd like
 14 to make two points.
 15 EXAMINER VANCIL: Mm-hmm.
 16 MR. COHEN: One is that it's Thursday
 17 morning and the City has managed to put on one witness
 18 because a great deal of time was consumed in the
 19 cross-examination of that witness. And the respondents
 20 still have to put on the bulk of their case. Cascade has
 21 one witness, they're hoping to get him on, as well.
 22 The proposition that because the appellants
 23 have the burden of persuasion they should have more time
 24 strikes me as just absurd. In 30-some years of practice,
 25 I have never seen a party get up and make that contention.

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1 Each of us has been obliged to plan our cases through the
 2 warnings that you gave us repeatedly that this is going to
 3 happen in one week and that we have to conclude our
 4 evidentiary presentations in the time that's available.
 5 So I'm -- I'm troubled by the idea that the
 6 Hearing Examiner would entertain the proposition that the
 7 respondent should get more time -- or the appellant should
 8 get more time than the respondents. We -- we are all
 9 trimming our cases to put them on within the time that's
 10 available.
 11 EXAMINER VANCIL: All right. Unless
 12 there's any further comments on a practical nature, we'll
 13 proceed.
 14 MR. SCHNEIDER: Just one more. Not on this
 15 topic.
 16 EXAMINER VANCIL: And I don't mean on,
 17 generally, how we should approach this but specifics.
 18 MR. SCHNEIDER: I thought the conversation
 19 was concluded. I find Mr. Cohen's comments offensive and
 20 I -- I would love to have an opportunity to respond
 21 because I have been practicing for more than 30 years, as
 22 well. And to call an argument that the party with the
 23 burden of proof doesn't need additional time is absurd.
 24 EXAMINER VANCIL: Okay. So you've had your
 25 opportunity to respond.

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1 Did you have a comment, Mr. Kisielius?
 2 MR. KISIELIUS: Very -- not on this topic,
 3 just more on the -- the witnesses and the order today.
 4 EXAMINER VANCIL: Mm-hmm.
 5 MR. KISIELIUS: So we had identified who
 6 we're calling. I think we're just recognizing that
 7 there's some witness obligations that we're trying --
 8 we're going to have to some adjustments to schedule around
 9 in the middle of the day.
 10 EXAMINER VANCIL: Mm-hmm.
 11 MR. KISIELIUS: So it might not be in the
 12 precise order we -- we talked about just the other day. I
 13 just wanted to alert the Examiner to that and we'll do our
 14 best to --
 15 EXAMINER VANCIL: Oh, okay. You don't have
 16 any specifics on that but that you're going move some
 17 things around.
 18 MR. KISIELIUS: Well, correct. I think the
 19 specifics will depend on how long it takes to get our
 20 first witness on and off.
 21 EXAMINER VANCIL: Okay. And I don't
 22 necessarily need to know as long as you've -- you've all
 23 worked it out with each other.
 24 Okay. Thank you.
 25 Let's get started, then.

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1 MR. KISIELIUS: Okay. City Department of
 2 Transportation would like to call Brad Phillips.
 3 EXAMINER VANCIL: Sorry. I was waiting for
 4 him to show up. (Inaudible.)
 5 Please state your name and spell your last
 6 name for the record.
 7 THE WITNESS: Brad Phillips,
 8 P-h-i-l-l-i-p-s.
 9 EXAMINER VANCIL: And do you swear or
 10 affirm that the testimony you provide in today's hearing
 11 will be the truth.
 12 THE WITNESS: I do.
 13 EXAMINER VANCIL: Thank you.
 14 BRAD PHILLIPS, having been called as a witness on behalf
 15 of Respondent after being first duly
 16 sworn, was examined and testified as
 17 follows:
 18 DIRECT EXAMINATION
 19 BY MR. KISIELIUS:
 20 Q. Mr. Phillips, good morning.
 21 Could you tell us your occupation, please?
 22 A. Professional engineer in civil engineering.
 23 Q. Okay. And by whom are you employed?
 24 A. Parametrix.
 25 Q. Can you briefly describe your educational
 background and training focusing on the items relevant to

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1 your profession?
 2 A. Education is B.S. from University of Washington
 3 in 1992. Started at Parametrix following graduation in
 4 '92. Received my PE, professional engineering license, I
 5 think, in 1996. And I've been doing transportation
 6 engineering for most of my career and other civil
 7 engineering tasks.
 8 Q. Great. I'm going to ask you to briefly describe
 9 your prior experiences working on or preparing EISs.
 10 Let me start by asking, have you been involved in
 11 the preparation of an EIS other than the one we're talking
 12 about today?
 13 A. Yeah. I think about four others.
 14 Q. Okay. Can you describe some of those?
 15 A. The 520 Project that's currently under
 16 construction; I-5 to 405 Lynnwood Link Light Rail Project,
 17 Northgate to Lynnwood. I'm currently working on the
 18 Redmond Link Project for Sound Transit, as well. And the
 19 Eastside Rail Corridor Trail Master Plan.
 20 Q. Okay. And in what capacity were you involved in
 21 those EISs?
 22 A. For the majority of those, I was the design
 23 manager responsible for all of the designs that were
 24 presented through the EIS process.
 25 For the Redmond Project, I'm currently the

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1 project manager overseeing the entire project.
 2 Q. Okay. And the scope and scale of those projects,
 3 I'm familiar with some of them by name, but could you just
 4 describe, briefly, are these larger transportation
 5 projects?
 6 A. Yeah. The 520 Program is \$4- to \$5 billion. It
 7 includes all aspects of, you know, highways. It's 520 so
 8 it also includes the bike paths across the lake.
 9 Lynnwood Link is \$1 billion. Redmond is half a
 10 billion dollars.
 11 Q. Okay. I heard you mention a couple bike-related
 12 elements of those projects. I want to ask you to talk
 13 about those and maybe others.
 14 Have you been involved in bicycle or
 15 non-motorized trail projects other than this one?
 16 A. Yeah. Again, another four or five projects
 17 related both to development of EISs as well as final
 18 design. North Creek Trail Project is one of those, East
 19 Lake Sammamish Trail. I participated in the final design
 20 of those. 520 Program, like I said, had a significant
 21 trail program and that was through the FEIS process.
 22 Q. Okay. And is your design experience with
 23 trails -- do you have experience with designing trails
 24 outside of the EIS process, specifically?
 25 A. Yeah. As I mentioned, North Creek Trail, East

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<p>1 Lake Sammamish Trail --</p> <p>2 Q. Okay.</p> <p>3 A. -- were through to final design.</p> <p>4 Q. Great.</p> <p>5 And it was your capacity, again, as -- maybe you</p> <p>6 said this already, but can you describe how you were</p> <p>7 involved in those projects that you haven't already talked</p> <p>8 about? The ones that weren't related to the EIS and what</p> <p>9 capacity were you involved?</p> <p>10 A. East Lake Sammamish Trail, I was design manager</p> <p>11 responsible for the plans, the development of plan</p> <p>12 specifications.</p> <p>13 North Creek Trail, I was the project manager</p> <p>14 overall for the entire project.</p> <p>15 Did you have other --</p> <p>16 Q. No, but I'm going to hand you your résumé here.</p> <p>17 These were the ones that was attached to the witness and</p> <p>18 exhibit list.</p> <p>19 MR. KISIELIUS: Mr. Examiner, can I ask for</p> <p>20 that to be marked, please?</p> <p>21 EXAMINER VANCIL: This will be R9.</p> <p>22 MR. KISIELIUS: Thank you.</p> <p>23 Q. (By Mr. Kisielius) Do you recognize that?</p> <p>24 A. Yes.</p> <p>25 Q. Is that your résumé?</p>	<p>1 MR. KISIELIUS: Okay.</p> <p>2 EXAMINER VANCIL: Burke-Gilman Trail map?</p> <p>3 MR. KISIELIUS: Everybody?</p> <p>4 MR. SCHNEIDER: Tab 1?</p> <p>5 MR. KISIELIUS: Yes, Tab 1.</p> <p>6 Q. (By Mr. Kisielius) Mr. Phillips, can you</p> <p>7 identify what we're looking at here in Tab 1?</p> <p>8 EXAMINER VANCIL: Should we mark this as</p> <p>9 MR. KISIELIUS: Oh, I'm sorry. Yes,</p> <p>10 please.</p> <p>11 EXAMINER VANCIL: Okay. All right. This</p> <p>12 will be R10.</p> <p>13 THE WITNESS: This is a set of autoCAD</p> <p>14 plans that I was responsible for overseeing the</p> <p>15 development of the footprint and the definition of this</p> <p>16 project that was part of the background for the FEIS.</p> <p>17 Q. (By Mr. Kisielius) Okay. And is it -- is it</p> <p>18 depicting a specific alternative discussed in the EIS?</p> <p>19 A. Yeah, on the second page down in the lower-right</p> <p>20 corner, it says "Preferred Alternative."</p> <p>21 Q. Okay. So is this entire combination of sheets</p> <p>22 the total of the preferred alternative?</p> <p>23 A. Yes.</p> <p>24 Q. And is this the plan upon which the EIS analysis</p> <p>25 is based?</p>
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<p>1 A. That is the short version of my résumé.</p> <p>2 Q. Does it accurately reflect your background and</p> <p>3 professional experience?</p> <p>4 A. Yes.</p> <p>5 MR. KISIELIUS: I'd ask for that to be</p> <p>6 admitted.</p> <p>7 EXAMINER VANCIL: Any objection? R9 is</p> <p>8 admitted.</p> <p>9 (Exhibit No. R9 Admitted)</p> <p>10 Q. (By Mr. Kisielius) Okay. So, now, let's focus</p> <p>11 on specific project.</p> <p>12 Can you describe -- and here I'm talking about</p> <p>13 the Burke-Gilman Missing Link, that's the subject of the</p> <p>14 EIS.</p> <p>15 What was your role in this project?</p> <p>16 A. As design manager, I was responsible for</p> <p>17 preparing the engineering plans for the project, coming up</p> <p>18 with what the alternatives looked like.</p> <p>19 Q. Okay. I would like you -- I think you got our</p> <p>20 City binder to your right there, perhaps.</p> <p>21 Could you turn to what would be Tab 1, first,</p> <p>22 please?</p> <p>23 MR. KISIELIUS: Mr. Examiner, do you have</p> <p>24 our binder there?</p> <p>25 EXAMINER VANCIL: Yes.</p>	<p>1 A. Yes. This was given to the analysts to look at</p> <p>2 for their review.</p> <p>3 Q. And I think -- I don't know if you were here</p> <p>4 yesterday for Ms. Ellig's testimony. She was referring to</p> <p>5 a -- a depiction on Figure 1-3 in the EIS. Is this the</p> <p>6 same background information shown here? The design?</p> <p>7 A. Yes. This was -- this background -- this design</p> <p>8 was used to create the figure in the EIS that you referred</p> <p>9 to.</p> <p>10 MR. KISIELIUS: Mr. Examiner, we -- I'm</p> <p>11 going to pause just for a second.</p> <p>12 We -- the figure in the EIS to which</p> <p>13 Ms. Ellig testified yesterday, we used for illustrative</p> <p>14 purposes, had enlarged. It's Figure 1-3. I was hoping we</p> <p>15 could put that up just for illustrative purposes.</p> <p>16 EXAMINER VANCIL: We might --</p> <p>17 MR. KISIELIUS: We might have some</p> <p>18 witnesses who might want to point for context.</p> <p>19 EXAMINER VANCIL: Mm-hmm.</p> <p>20 MR. KISIELIUS: (Inaudible.)</p> <p>21 EXAMINER VANCIL: Mm-hmm.</p> <p>22 And can you clarify -- so it's an EIS?</p> <p>23 MR. KISIELIUS: Correct.</p> <p>24 EXAMINER VANCIL: Is it R1 or 3?</p> <p>25 MR. KISIELIUS: R1.</p>

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1 EXAMINER VANCIL: Okay. So --

2 MR. KISIELIUS: And it's Figure 1-3 in R1.

3 EXAMINER VANCIL: Thank you.

4 MS. FERGUSON: Can everybody see that?

5 Q. (By Mr. Kisielius) So, Mr. Phillips, is this the

6 Figure 1-3 that depicts what's showing on R10 on a more

7 macro scale?

8 A. Yes.

9 Q. Not a technical term.

10 Let me ask you, I know Figure 1-3 is in the EIS.

11 Are the drawings in R10 included in the EIS?

12 A. No.

13 Q. And why is that?

14 A. They provide a level of detail that's not common

15 for the layperson to understand and it's typical that we

16 simplify those into a more reader-friendly version.

17 Q. Okay. And typical outside of this specific

18 process? Meaning --

19 A. Correct. Our projects normally do this.

20 Q. Okay. I want to ask you, also, were you here for

21 the testimony of the appellant's witnesses involving the

22 AutoTURN analysis?

23 A. Yes.

24 Q. So -- and I think they talked about getting the

25 CAD files of the design that they used for their analysis

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1 from the City. Is -- is it your understanding that the

2 CAD files that are the basis of what's shown in R10 are

3 the same CAD files that they used in their analysis?

4 A. From what I've looked at, it looks like they are

5 the same.

6 Q. Okay. And maybe let's focus on one in

7 particular. I think there's been a lot of testimony about

8 Salmon Bay Sand & Gravel's driveways. I'd like to compare

9 your plan sheet against theirs.

10 I'm going to ask you, first, to turn to, I

11 believe, it's Page 5. Although, if you look at the

12 notation on the plan sheet it says Sheet 4 of 7.

13 MR. KISIELIUS: This is, again, R10 for the

14 record. COS000005 in the bottom right-hand corner.

15 Q. (By Mr. Kisielius) So -- and I'm going to ask

16 you to juggle binders, which may be a little tricky.

17 So in the record, it is A1. In the notebook,

18 I'll probably have to help find it here for you. It is

19 Volume 1 of 10 and I don't know if the Examiner has

20 already -- okay. Good.

21 A310.21, just looking at the (inaudible). Yes.

22 A. Which page?

23 Q. Figure 4.2(b) as in "boy." of Exhibit A1.

24 MR. KISIELIUS: Are we all there?

25 Q. (By Mr. Kisielius) So, Mr. Phillips, do you see

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1 what's shown on Appellant's Exhibit A1 as the Salmon Bay

2 Sand & Gravel driveways?

3 A. Yes.

4 Q. And can you -- do they use numbers to identify

5 those?

6 A. Yes.

7 Q. Okay. Can you tell us what those are?

8 A. 9, 9A, B, C and D.

9 Q. And, so, looking back at your prepared Exhibit

10 R10, Sheet 4 of 7, COS000005, do you see those same

11 driveways depicted in the same manner?

12 A. Yes, I do.

13 Q. Now, I noticed you don't have all the 9A, B, C,

14 and D, so what are you looking at for purposes of

15 similarity?

16 A. Just to help follow, on the far bottom left of my

17 drawing, at -- there's a -- the first one called "Driveway

18 Access," that's actually Driveway 8 and then the next one

19 over is Driveway 9.

20 Q. I'm going to -- I'm going to pause just to

21 clarify. You're now walking left to right from your

22 figure, Figure R10?

23 A. Yes. Yeah.

24 Q. Okay.

25 A. They actually both coincide with each other so it

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1 makes it easy. Far left of theirs is far left of mine, as

2 well.

3 Q. Okay.

4 A. 9A is the narrow driveway shown. Then you go all

5 the way across the front of their building to 9B. My

6 drawing you can see a round thing in the aerial photo.

7 And that driveway is shown fairly wide, which is inclusive

8 of what's shown in theirs as 9B, C, and D combined into

9 one wide driveway; so it looks like these two drawings are

10 the same.

11 Q. Okay. I may ask you to refer to those two; so

12 you might just want to leave them open and near you. Or

13 you might not be able to because I'm going to ask you to

14 switch --

15 A. Mm-hmm.

16 Q. -- to what is Tab 2 in the City's exhibit behind.

17 MR. KISIELIUS: And I'm going to ask the

18 Examiner to please mark that. I believe that would be

19 R11.

20 EXAMINER VANCIL: All right. Yes. Mm-hmm.

21 Q. (By Mr. Kisielius) Can you tell us what we're

22 looking at here?

23 A. This is the set of drawings that was the

24 background for the information for the draft EIS showing,

25 I think, four different alternatives.

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1 Again, as you flip through all the pages, it
 2 would be the names of the DEIS alternatives in the
 3 bottom-right corner of each of those sheets.
 4 Q. And are these the designs of the other
 5 alternatives that were analyzed in the DEIS?
 6 A. Yes.
 7 Q. The designs that were analyzed in the FEIS?
 8 A. These are the designs that, I think, by default,
 9 were in the DEIS and are also in the FEIS.
 10 Q. Why did you prepare a separate one for the
 11 preferred alternative?
 12 A. Typically, and in the EIS process, decisions are
 13 made after the DEIS to modify designs based on the
 14 comments received and the evolution of the thoughts, and
 15 that creates what we call the "preferred alternative."
 16 Q. So was it because the preferred alternative was
 17 something that was included in the FEIS that was not in
 18 the DEIS?
 19 A. Correct.
 20 Q. Okay. Okay. So now I'm going to ask you to keep
 21 those open but ask you a couple more background questions.
 22 I'd like you to talk a little bit about some of the design
 23 guidelines and manuals that you used as you designed the
 24 preferred alternative and the other alternatives.
 25 So we had some discussion the other day about

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1 AASHTO. Are you familiar with AASHTO?
 2 A. Yes.
 3 Q. Can you flip to Tab 19, please? Can you tell us
 4 what we're looking at here?
 5 A. Again, if you flip to the next page over, COS305,
 6 I'm looking at, on the very top is the name of the manual.
 7 Q. Okay.
 8 A. A Policy on Geometric Design of Highways and
 9 Streets.
 10 Q. Okay.
 11 A. And that is the AASHTO policy regarding design of
 12 streets and roadways.
 13 Q. I'm going to ask you to turn to the last page of
 14 that, COS308?
 15 A. Okay.
 16 MR. KISIELIUS: This is Tab 19 and I have
 17 not asked this to be marked yet.
 18 Can I ask that we mark this --
 19 EXAMINER VANCIL: Mm-hmm.
 20 MR. KISIELIUS: -- as Exhibit --
 21 EXAMINER VANCIL: This'll be R12.
 22 Q. (By Mr. Kisielius) In looking at about the
 23 middle of this page, does this address how to deal with
 24 driveways?
 25 A. Yes, it does.

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1 Q. And can you tell us what it says?
 2 A. About the middle of the page, small paragraph,
 3 "An objective of driveway design is to seek a balance that
 4 minimizes conflicts among motor vehicles, bicycles, and
 5 pedestrians and accommodates the demands of travel -- for
 6 travel and access."
 7 Q. Okay. Is this the kind of principle that you use
 8 when you're looking at driveways in this project?
 9 A. Yes.
 10 Q. I'm going to ask you some more questions about
 11 that but I want to still talk about the framework and what
 12 you used.
 13 MR. KISIELIUS: But I would ask for this to
 14 be admitted.
 15 EXAMINER VANCIL: Any objection?
 16 MR. SCHNEIDER: No.
 17 EXAMINER VANCIL: And we got 10 and 11, as
 18 well.
 19 MR. KISIELIUS: Yes, please.
 20 MR. SCHNEIDER: No objection.
 21 MR. KISIELIUS: I could -- if you want me
 22 to save them all for the end we could do them --
 23 EXAMINER VANCIL: However you want to do
 24 that, that's fine.
 25 MR. KISIELIUS: Okay.

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1 EXAMINER VANCIL: If there's one that's
 2 easy to do and you throw it in, but all at the end is
 3 fine.
 4 MR. KISIELIUS: Okay.
 5 EXAMINER VANCIL: So R10, 11, and 12 are
 6 admitted.
 7 (Exhibit Nos. R10, R11, and R12 Admitted)
 8 Q. (By Mr. Kisielius) Could you turn to C-17 -- Tab
 9 17 in your binder?
 10 MR. KISIELIUS: And I'd ask that to be
 11 marked as well.
 12 EXAMINER VANCIL: This will be R13.
 13 MR. KISIELIUS: Thank you.
 14 Q. (By Mr. Kisielius) Can you tell us, generally,
 15 what we're looking at here, Mr. Phillips?
 16 A. This is AASHTO's guidebook for trail design.
 17 Q. Okay. And is this something that you rely on
 18 when you're designing?
 19 A. Yes, it is.
 20 Q. Okay. Can you turn, please, to Tab 11?
 21 MR. KISIELIUS: I'll ask that these be
 22 admitted (inaudible).
 23 EXAMINER VANCIL: We're on Tab 11?
 24 MR. KISIELIUS: Yes. This one's already
 25 been admitted. I apologize. This is R6.

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1 Q. (By Mr. Kisielius) So, Mr. Phillips, do you
 2 recognize this, as well?
 3 A. Yes.
 4 Q. Are these among the standards that you use, also,
 5 in the design of your facilities?
 6 A. Yes, the NACTO guidelines.
 7 Q. Okay.
 8 A. Yeah.
 9 Q. And Tab 12, in your binder.
 10 A. Yes.
 11 Q. Do you recognize this?
 12 A. Yes.
 13 Q. Can you tell us what this describes?
 14 MR. KISIELIUS: And I'll ask this to be
 15 marked as R14, I believe.
 16 EXAMINER VANCIL: Yes.
 17 THE WITNESS: This is another section out
 18 of the NACTO guidelines discussing details of colored
 19 pavement used typically in the bike designs.
 20 Q. (By Mr. Kisielius) Okay. And, again, when we're
 21 talking about pavement markings related to your design and
 22 how those are implemented, is this the type of standard
 23 that you rely on?
 24 A. That's the type of guidance that I rely on, yes.
 25 MR. KISIELIUS: Okay. I'd ask for Exhibits

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1 13 and 14 to be admitted.
 2 EXAMINER VANCIL: Objection?
 3 R13 and 14 are admitted.
 4 (Exhibit Nos. R13 and R14 Admitted)
 5 Q. (By Mr. Kisielius) Okay. So let's talk a little
 6 about the level of design.
 7 The Coalition has raised some concerns about the
 8 extent to which the project was designed at the time, the
 9 EIS analysis. What -- what was the target you were aiming
 10 for? The amount of design that needed to be completed to
 11 support the environmental review?
 12 A. I'm striving, in the design, to be able to depict
 13 the footprint of the project. And the reason for that
 14 is -- and what I mean by footprint is, you know, what does
 15 the project look like? It's more than just the where it
 16 is, but what does it look like. Specifically, how it
 17 works. And it's to get to the level that is needed to be
 18 able to show the impacts of the project.
 19 Q. So is it your -- is it typical for the project to
 20 advance in design beyond the EIS? Once you're finished
 21 with the EIS, would you expect the design to continue to
 22 advance?
 23 A. Yeah, absolutely. The EIS is very early in a
 24 project, and there's a lot of detail that occurs between
 25 the development of the EIS and final design when it's

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1 ready for a contractor to build.
 2 Q. Okay. And can you talk a little bit about that
 3 evolution? I mean, the level of specificity starting from
 4 what you had here and moving forward, what are the types
 5 of things you add as you move forward closer to
 6 construction?
 7 A. The -- there's a -- a level of detail at -- for
 8 example, in this one, the driveways are a good example.
 9 There's a lot more detail that needs to go into -- the
 10 profiles, for example, is fairly complex in this whereas
 11 we're connecting to existing buildings where driveways
 12 occur that you have to maintain; railroad that's there
 13 that we're needing to match into the existing roadway; the
 14 curved ramps as we design for ADA and extensive amounts of
 15 detail that goes into how that functions to meet the
 16 guidelines -- the federal guidelines for ADA requirements,
 17 and how that even relates to the footprint as we get into
 18 grading. And just a tremendous amount of detail to show
 19 that these will work and tell the contractor how to build
 20 them.
 21 Q. Can you talk a little bit about what the level of
 22 effort or cost would be for getting to that level of
 23 detail on all of the alternatives that are analyzed in the
 24 EIS?
 25 A. Oh --

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1 MR. SCHNEIDER: Could we clarify what level
 2 of detail we're talking about?
 3 MR. KISIELIUS: He just specified the
 4 amount of design that would need to advance beyond what
 5 he's done here. And I'm asking him to --
 6 MR. SCHNEIDER: Well, but -- are we talking
 7 about construction design or what?
 8 MR. KISIELIUS: Mr. Schneider, you have an
 9 opportunity to cross-examine and actually seek the
 10 specificity at that time. I don't know if you have an
 11 objection.
 12 MR. SCHNEIDER: The objection is the
 13 question is not clear; so I don't know what the witness is
 14 responding to in terms of what level of design you're
 15 asking him to speak to. That's -- that's all I'm
 16 requesting is specify that.
 17 MR. KISIELIUS: And I believe your
 18 question, in as implicit in an assumption that there's a
 19 common set of commonly understood levels of 30, 10, 50,
 20 60, and I'm not prepared to accept that fundamental
 21 assumption in my questioning.
 22 MR. SCHNEIDER: That -- that was not an
 23 assumption. I was simply asking for clarity. I -- if you
 24 don't want to accommodate me, then it's not an objection
 25 It was a request.

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1 Q. (By Mr. Kisielius) So let's talk a little bit
 2 about the level of effort or cost it would take to advance
 3 the design beyond what you've done in the drawing shown
 4 here to the level of specificity among -- let's talk about
 5 construction.
 6 Getting to construction, what would that take?
 7 A. I'm -- each one of those is probably \$2- or
 8 \$300,000 of labor, maybe even more.
 9 Q. And steps short of that, because obviously
 10 there's interim steps before you get to construction level
 11 drawings. Are you talking about a level of effort that
 12 you typically do when preparing an EIS design for
 13 alternatives?
 14 A. Could you say that again?
 15 Q. Sure. As you are preparing an EIS -- we talked
 16 about what you did here in construction and there are
 17 probably interim steps for design as you move through the
 18 process.
 19 And I'm asking, do you typically do -- let's talk
 20 about that level of effort to get to those types of points
 21 in the process between here and construction. What kind
 22 of level of effort would that be to do that for all of the
 23 alternatives?
 24 A. I'm still not clear what you're asking me for.
 25 Q. Fair enough. Let me try it a different way.

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1 Do you typically go beyond the level of design
 2 shown here for all alternatives in an EIS?
 3 A. No.
 4 Q. And do you think that this design was sufficient
 5 for purposes of environmental review?
 6 A. Yes, I do.
 7 Q. Okay. And you had mentioned what you included
 8 here. I just want to ask some specifics.
 9 So it includes the project's footprint?
 10 A. Yes.
 11 Q. Does it include right-of-way takes?
 12 A. If there are any, it would be shown.
 13 Q. Okay. Are there any that you know of?
 14 A. There are none that I recall.
 15 Q. Okay. General dimensions of the lanes?
 16 A. Yes. They're shown on these drawings.
 17 Q. Okay.
 18 A. I would note that right-of-way is shown on these
 19 drawings, as well.
 20 Q. Okay. Let's talk about the lane widths. There's
 21 been some testimony about the variable widths for the
 22 street and trail sections.
 23 So, first, is a clarifying question. You said --
 24 are lane widths depicted here?
 25 A. Yes, they are.

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1 Q. Okay. And why, in the EIS summary, does it
 2 include some variability?
 3 A. The -- this -- as we said earlier -- as I said
 4 earlier, this design will evolve over time. This is just
 5 the beginning. It is very likely as we progress into
 6 design that we'll find things that we didn't know or we
 7 will look at the design and understand how to make it
 8 better than what was shown now. And those adjustments to
 9 that, we want to be able to preserve through the
 10 environmental process so that you don't have to come back
 11 and adjust the -- or modify the environmental documents
 12 later.
 13 Q. Okay. There's some testimony about identifying
 14 modifications to traffic control as a necessary element of
 15 a design in the EIS.
 16 Was that element completed for the design review
 17 here?
 18 A. Yes, it was.
 19 Q. Okay. And do you recall there was an exhibit
 20 that the appellants prepared or the appellant's experts
 21 prepared showing a cross-section?
 22 A. Yes.
 23 Q. Are you familiar with that? I believe that's in
 24 A1, if you wanted to flip -- if you need to refresh your
 25 recollection of that. I think it showed a barrier. It

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1 would be towards the end of all the AutoTURN drawings.
 2 And is there a -- a number there that we can use
 3 for reference, just so the Examiner has the -- or the
 4 record has the page number?
 5 A. Page 39.
 6 Q. Page 39 of A1.
 7 Do you remember the testimony about the barrier
 8 that's depicted in that cross-section?
 9 A. Not specifically, but I remember them saying
 10 there's a barrier there.
 11 Q. And can you explain whether your design
 12 identified where a barrier would be located?
 13 A. Our design does not indicate a barrier.
 14 Q. Okay.
 15 A. If you look at the similar cross-sections on
 16 Figure 1-3 showing it --
 17 Q. Okay.
 18 A. -- I don't see a barrier in any of those
 19 cross-sections. And those cross-sections are a depiction
 20 of the design that I presented.
 21 Q. Okay. So there was some discussion about the
 22 need to complete an 85 percent speed study.
 23 Was that completed for this project?
 24 A. No, it wasn't.
 25 Q. Why not?

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1 A. I've not done an 85 percent speed study in any of
 2 the EISs that I've done. The project that that was
 3 referencing, I believe, was East Marginal Way as a four-
 4 or five-lane arterial where you would expect the potential
 5 for speeders. Much more than so than a street like
 6 Shilshole with mirror lanes and a 25-mile an hour speed
 7 limit.
 8 So while I believe it is appropriate to do it on
 9 something like East Marginal Way, for a 25-mile an hour
 10 facility, I -- I would not expect anybody to do a speed
 11 study on a street like this.
 12 Q. Okay. So I -- I think I've asked you in terms of
 13 your opinion about whether or not this would be -- this
 14 was adequate level of design, the one that you prepared
 15 for assessing the impacts. I'd like you to compare this
 16 level of design to other projects in which you've been
 17 involved in the environmental review.
 18 How does the level of design that you did with
 19 this project compare to the extent to which those other
 20 projects have been designed at the same stage in the
 21 process?
 22 A. They're very similar.
 23 Q. Can you give examples?
 24 A. Yeah. The Lynnwood Link Project that was
 25 completed a few years ago was probably the best example.

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1 It included arterial streets within the city of Seattle;
 2 so same jurisdiction, streets between Northgate and 145th,
 3 major interchange modifications at both 130th and 145th
 4 non-motorized facilities within those streets, and the
 5 level of detail was the same shown here.
 6 Q. Okay.
 7 A. There's some differences because the projects are
 8 different. 130th, specifically, was a major interchange
 9 rebuild proposal, so we needed to find profiles so you
 10 understood the vertical relationship of this new
 11 interchange to the existing roadways and houses.
 12 That's not the case in -- in this Burke-Gilman
 13 project; so that level of detail you don't need to
 14 advance.
 15 Q. Are those the types of things -- the differences,
 16 is that within the range of what you'd expect to exercise
 17 in your professional judgment?
 18 A. Yes.
 19 Q. And I want to ask you a little bit about, sort
 20 of, design, generally.
 21 Did you hear Mr. Kuznicki's testimony that this
 22 entire corridor is not defined? I think was the
 23 terminology he used.
 24 A. Yes.
 25 Q. He said it might have been chaotic.

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1 Do you -- do you agree with that characterization
 2 of the current conditions?
 3 A. Absolutely.
 4 Q. I think he also suggested that this area is not
 5 capable of definition through design.
 6 Do you agree?
 7 A. I don't agree at all.
 8 Q. Why is that?
 9 A. Our design shown in these drawings depicts new
 10 street design that is orderly with curbs defining roads,
 11 standard driveway aprons that define where each of the
 12 driveway approaches is to the businesses, clearly marked
 13 parking areas and loading zones that a user of this street
 14 will know where he can be and where he should be when this
 15 design -- if this design is constructed.
 16 Q. And that current definition is lacking under
 17 current conditions?
 18 A. I -- I think the only thing that is out there is
 19 a center stripe. Maybe cement stripes in the road, but
 20 there's no parking delineations. Spaces for non-motorized
 21 users is very lacking in this corridor.
 22 Q. Okay. So I'm going to refocus you now on the
 23 earlier sections of A1, the AutoTURN pages, and so I have
 24 to pause to search for the number.
 25 Before we get to their AutoTURN analysis, can I

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1 ask you, did you complete swept path analysis using
 2 AutoTURN for any of the intersections or driveways in --
 3 in this EIS?
 4 A. Yes. I did some representative swept path
 5 analysis for a few locations.
 6 Q. Okay. And I -- maybe we should just identify
 7 where that is. There's a -- I'm going to be turning to R1
 8 which is the final EIS. And there's a copy in the binder
 9 there in front of you.
 10 That's it. If you could turn towards the back
 11 there, Appendix A.
 12 A. Yes.
 13 Q. Is this the AutoTURN that you completed as part
 14 of the EIS process?
 15 A. Yes, it is.
 16 Q. Okay.
 17 EXAMINER VANCIL: And what page was that
 18 on?
 19 MR. KISIELIUS: It's in R1. It's at the
 20 very back. It's Appendix A, so it starts A1 through --
 21 EXAMINER VANCIL: Oh, it's the entire
 22 appendix?
 23 MR. KISIELIUS: No, Mr. Examiner, sorry for
 24 the confusion. There's multiple appendices here.
 25 EXAMINER VANCIL: Mm-hmm.

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<p>1 MR. KISIELIUS: It's -- there are -- this</p> <p>2 is not the Technical Discipline Report. Rather, it's part</p> <p>3 of R1. And there's, I think, two or three appendices that</p> <p>4 are just a couple pages long at the back of the final EIS</p> <p>5 So it's the entire -- I understand the</p> <p>6 question now. Yes.</p> <p>7 EXAMINER VANCIL: Okay.</p> <p>8 MR. KISIELIUS: It's the entirety of A1.</p> <p>9 EXAMINER VANCIL: All right.</p> <p>10 MR. KISIELIUS: Sorry.</p> <p>11 EXAMINER VANCIL: Okay.</p> <p>12 MR. KISIELIUS: It was not your confusion.</p> <p>13 It was mine.</p> <p>14 Q. (By Mr. Kisielius) For how many projects have</p> <p>15 you used an AutoTURN analysis like this?</p> <p>16 A. Every project I do, at some point, likely has an</p> <p>17 AutoTURN analysis or a swept path analysis.</p> <p>18 Q. And what's your understanding of the purpose of</p> <p>19 an AutoTURN analysis like this?</p> <p>20 A. It's to determine final design detailing of your</p> <p>21 street design.</p> <p>22 Q. Okay. And in your experience, at what stage is</p> <p>23 it typically used?</p> <p>24 A. As you enter into final design, it may be used as</p> <p>25 we did here as a representative to make sure that the</p>	<p>1 Q. Is it your understanding whether -- that an</p> <p>2 AutoTURN analysis would be done for all these driveways</p> <p>3 during final design?</p> <p>4 A. I don't think it would.</p> <p>5 Q. Okay. Would it be done for more than what is</p> <p>6 shown here?</p> <p>7 A. Yes, it would.</p> <p>8 Q. Okay. I just, maybe, want to make sure I'm</p> <p>9 understanding because the Coalition has raised some</p> <p>10 concerns that you didn't do an AutoTURN analysis of all</p> <p>11 the driveways in the study area.</p> <p>12 Would that be typical when developing an EIS to</p> <p>13 run an AutoTURN analysis of all the driveways within that?</p> <p>14 A. No.</p> <p>15 Q. Why not?</p> <p>16 A. It's a significant amount of work to do that and</p> <p>17 it doesn't, in my opinion, add any additional value to</p> <p>18 show impacts.</p> <p>19 Q. Okay. So I'm going to ask you some questions</p> <p>20 about the design vehicle.</p> <p>21 Can you briefly explain what a design vehicle is</p> <p>22 and how it's used in an AutoTURN analysis?</p> <p>23 A. A design vehicle is chosen to represent the</p> <p>24 vehicle that would be most representative at the location</p> <p>25 that we're showing.</p>
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<p>1 footprint and right-of-way that we're showing is accurate.</p> <p>2 Q. Is it typical, though, in your experience to run</p> <p>3 an AutoTURN analysis to support an EIS?</p> <p>4 A. As a -- on a limited basis, like we've done here,</p> <p>5 I think, is fair to say.</p> <p>6 Q. Okay. And in your experience, do you typically</p> <p>7 use these on intersections?</p> <p>8 A. Yes.</p> <p>9 Q. Is it common for you, on a transportation</p> <p>10 facility project like this, to use them on driveways?</p> <p>11 A. It's not common.</p> <p>12 Q. Okay. Let's talk a little bit about how you used</p> <p>13 the results of an AutoTURN analysis. So if you have swept</p> <p>14 path that shows something that you would need to address,</p> <p>15 what would those types of things be, first of all, and are</p> <p>16 there design treatments that you can use to address those?</p> <p>17 A. Curb radii, locations of street pavement</p> <p>18 markings, widths of the driveway apron as the -- as it</p> <p>19 backs into the street; some of the three most common.</p> <p>20 Q. Okay. And how did you select which driveways you</p> <p>21 were going to analyze with the AutoTURN in the EIS?</p> <p>22 A. Again, getting back to the point of this set of</p> <p>23 drawings to try to identify the impacts, we looked at</p> <p>24 those key locations that seemed more critical to defining</p> <p>25 the impacts that might occur in this corridor.</p>	<p>1 Q. And how did you identify the design vehicle for</p> <p>2 the AutoTURN analysis that you -- that you ran?</p> <p>3 A. SDOT's manual suggests that the design vehicle</p> <p>4 throughout their facilities is the SU-30.</p> <p>5 Q. Okay. Can you -- there's an exhibit, R7, which</p> <p>6 is -- and for your purposes will be a standalone document</p> <p>7 to the Freight Master Plan. This is one that we admitted</p> <p>8 yesterday. It's a separate document. It's R7.</p> <p>9 Can you turn to Appendix C?</p> <p>10 MR. KISIELIUS: Mr. Examiner, there were</p> <p>11 two -- they're divided into two tabs. We're going to be</p> <p>12 looking at the appendices. You can see --</p> <p>13 EXAMINER VANCIL: What's the page number?</p> <p>14 MR. KISIELIUS: Page 8.</p> <p>15 EXAMINER VANCIL: Sorry. Did you say</p> <p>16 Appendix C, Page 8?</p> <p>17 MR. KISIELIUS: Yes.</p> <p>18 EXAMINER VANCIL: Okay. Planning For</p> <p>19 Trucks?</p> <p>20 MR. KISIELIUS: What's that?</p> <p>21 EXAMINER VANCIL: Planning For Trucks?</p> <p>22 MR. KISIELIUS: Yes.</p> <p>23 EXAMINER VANCIL: All right.</p> <p>24 Q. (By Mr. Kisielius) So does this -- are you</p> <p>25 familiar with this document?</p>

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1 A. Yes, I am.

2 Q. Okay. Does -- does this document talk about what

3 you're describing as a design vehicle?

4 A. Yes, it does.

5 Q. And -- and let me ask you, maybe, a different

6 question.

7 Can you explain to us what -- if there's a

8 difference -- what it means to design for is distinguished

9 from what it means to accommodate?

10 A. Design for is hard to -- hard to describe.

11 Design for really is to make sure that vehicle can operate

12 smoothly within the roadway, is maybe the best way to put

13 it. Maybe I'll jump to using terminology that has been

14 used before. Maybe assuming that it operates within lane

15 of a roadway is common for a design for.

16 Q. Okay. And is that described here on this set of

17 pages?

18 A. I believe it is somewhere.

19 Q. Why don't you turn to C9. I think I confused you

20 by misdirecting your --

21 A. Yes, on the bottom-left corner on Page 9.

22 Q. Okay. And you had mentioned earlier that the --

23 that the City's -- well, let me ask you again.

24 What did you use for -- as a design vehicle for

25 your AutoTURN?

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1 A. The SU-30.

2 Q. And why was that again?

3 A. The SDOT manuals state that the SU-30 is the

4 design vehicle in their street network.

5 Q. Okay. And when you're designing that -- let me

6 step back.

7 Are we talking about driveways or intersections?

8 A. The manuals, unfortunately, just cover

9 intersections whether that's AASHTO or SDOT or WSDOT,

10 they're always referencing intersection when it talks

11 about selection of a design vehicle.

12 Q. Can you turn back to Page 8 where I originally

13 directed you?

14 A. Yeah.

15 Q. And does that, looking at the last paragraph on

16 the second column of that page, can you read the last two

17 sentences of that paragraph?

18 A. The manual specifies the standard design vehicle

19 as a single unit, SU-30 truck.

20 Q. And can you continue on?

21 A. However, the manual recognizes the need to

22 accommodate larger vehicles on streets within the

23 truck/street network.

24 Q. Is that consistent with -- with your

25 understanding of which design vehicles you use?

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1 A. Yes.

2 Q. Was your approach consistent -- in your AutoTURN,

3 consistent with that direction?

4 A. Yes.

5 Q. Can you -- let's -- let's turn to the first

6 column here of the same page. I'd like to ask you about

7 some of the general considerations when planning for

8 trucks that are identified here.

9 Can you read the first sentence of the very -- of

10 that section?

11 A. Planning for trucks in an urban environment

12 requires an understanding of the attributes of trucks, the

13 physical impediments in the environment, and where and

14 when we cannot address all of these factors.

15 Q. I think the last part of that you might have

16 skipped a word or two.

17 A. And where and when we can or cannot address all

18 of these factors.

19 Q. Does that -- does the page here encourage you to

20 consider other roadway users?

21 A. Yes. It talks about understanding pedestrian

22 environments and other vehicles, how they operate within

23 the entire street.

24 Q. And how about -- does it reference some -- does

25 it identify something you need to consider whether you

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1 need to think about priority areas or corridors designated

2 in the Pedestrian Master Plan, Bicycle Master Plan, or

3 Transit Master Plan?

4 A. Yeah, it does. It's the third bullet from the

5 bottom.

6 Q. Okay. So how do any of these additional

7 considerations inform your analysis of whether you should

8 choose to design for larger vehicles? And, here, I'm

9 talking about "design for" as opposed to "accommodate."

10 A. Absolutely.

11 Q. How does it?

12 A. Designing for larger vehicles creates larger

13 radii, larger driveway accesses, those -- those larger

14 elements create unsafe -- can create less safe areas for

15 non-motorized users and increases vehicle speeds and

16 conflicts related to those higher speeds.

17 Q. Okay. We touched on this briefly, but I want to

18 ask you again.

19 Given that you said the design manuals are

20 talking about intersections, how did that affect your work

21 on driveways? When you're thinking about driveways, some

22 of your AutoTURN analysis look at those. Did you use

23 these same principles?

24 A. Yeah, as a professional, I -- because there's

25 very little information regarding how you design a

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1 driveway, I looked at understanding the volumes of
 2 vehicles using some of these driveways and decided it's
 3 appropriate to use some of these same intersection
 4 concepts for the high-volume driveways that were
 5 considered in this project.
 6 Q. So do you consider the frequency with which a
 7 vehicle might use a driveway when determining whether or
 8 not it should be a design vehicle?
 9 A. Absolutely.
 10 Q. And do you use it when determining whether or not
 11 you should have to accommodate that vehicle?
 12 A. Yes.
 13 Q. Okay. And is there -- on deciding whether or not
 14 to accommodate a vehicle, does that involve a measure of
 15 engineering discretion?
 16 A. Yes, it does.
 17 Q. And what are the bounds of that discretion? I
 18 mean, would you ever use the vehicle that uses a driveway
 19 only once?
 20 A. To accommodate, absolutely.
 21 Q. Okay. How about for a design vehicle?
 22 A. No.
 23 Q. Have you worked on other studies that require
 24 identification of a design vehicle?
 25 A. Yes.

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1 Q. And for those other studies, how do you select
 2 them? Is it generally consistent with what you've just
 3 described here for this project?
 4 A. Yes. Understanding the expected use of a street
 5 network and where those -- and what types of vehicles
 6 would be on the street network at the particular location.
 7 Q. Okay. So I'm going to ask you to take a look now
 8 at the -- we're going back to A1 and looking at the
 9 AutoTURN analysis that the appellants have run. It's
 10 further back in that same -- I'd ask you to flip forward
 11 to some of the just couple representative cases.
 12 Did -- do they have identified, for each page, a
 13 design vehicle?
 14 A. Yeah. That's shown on each page.
 15 Q. And do you agree with the design vehicle that
 16 they've chosen if it's larger than a WB -- well, remind
 17 me, again, the vehicle that you used for your AutoTURN?
 18 A. The SU-30.
 19 Q. SU-30.
 20 And do you agree with the design vehicle shown
 21 that are different than the SU-30?
 22 A. This is where the nomenclature gets confusing
 23 because what -- what is shown on here is directly out of
 24 AutoTURN and -- and is common with AASHTO and it is called
 25 a design vehicle. But I would not necessarily use these,

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1 as shown, as the context that we've been talking about for
 2 a design vehicle -- or a design for these streets. I
 3 would not.
 4 Q. I appreciate the distinction you're trying to
 5 make. So those are versions of design vehicles that you
 6 could use?
 7 A. Yes.
 8 Q. Do you agree that they are appropriate for use at
 9 those intersections or driveways as the design vehicle?
 10 A. I do not.
 11 Q. I'd like to follow up on something you said just
 12 a little bit ago and ask you about that distinction within
 13 lane and within available pavement that's shown on these
 14 AutoTURN analyses.
 15 In your analysis, did you make a distinction
 16 between within lane and within available pavement?
 17 A. I didn't use that terminology. But if you look
 18 at the analysis, it is using similar results.
 19 Q. And is a maneuver within available pavement an
 20 acceptable maneuver?
 21 A. In my opinion, it is.
 22 Q. And are maneuvers within available pavement
 23 prevalent under the existing conditions?
 24 A. Yes, they are.
 25 Q. Okay. How do maneuvers under the preferred

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1 alternative compare to the maneuvers under the existing
 2 conditions?
 3 A. In my opinion, they're very similar.
 4 Q. Okay. And does the EIS disclose the ability to
 5 make maneuvers under the five build alternatives and under
 6 existing conditions?
 7 A. Does it what?
 8 Q. Does the EIS talk about maneuvers from driveways
 9 under existing conditions?
 10 A. Yes, it does.
 11 Q. And under the preferred alternative?
 12 A. Does it do it under existing conditions? I'm not
 13 sure about that but it does in the build alternative --
 14 the preferred alternative.
 15 Q. Okay. So let's talk about the -- the comparison
 16 between theirs -- their AutoTURN analysis and the one you
 17 prepared.
 18 Of the driveways that both the EIS and the
 19 Coalition study-reviewed, how would you compare the two
 20 analyses, in general?
 21 A. They're fairly similar, I think, except they used
 22 different vehicles in their analysis.
 23 Q. Okay.
 24 A. Some different vehicles.
 25 Q. Let me ask you, does the Coalition's analysis of

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1 any of the driveways change any of your conclusions or
 2 make your want to rethink the way you did yours?
 3 A. No, it doesn't.
 4 Q. Have you reviewed the entirety of the Coalition's
 5 AutoTURN analysis?
 6 A. Yes, I have.
 7 Q. And does the Coalition's analysis show that the
 8 preferred alternative renders any driveways inaccessible?
 9 A. Not that I have seen, no.
 10 Q. Okay. How would driveway access and design
 11 change under the preferred alternative as compared to
 12 existing conditions? Here, I'm following up on your
 13 discussion earlier about definition versus current
 14 conditions.
 15 A. The -- the project -- this is going to create a
 16 roadway with the standard curb section to define the edge
 17 of the roadway and then have driveway approaches, again,
 18 using standard applications of -- of SDOT standard details
 19 to create a driveway that is commonly known and
 20 understood. Here is where the driveway is with the
 21 depressed curb and I enter here.
 22 Q. Okay. Are any of the driveways going to be
 23 narrowed?
 24 A. We haven't shown any being narrowed. We showed
 25 them matching, as best we could, the existing conditions

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1 with the information that we had.
 2 Q. Okay. And it said the Coalition's analysis
 3 doesn't really change your -- your thoughts or approach on
 4 that.
 5 Are there -- does their analysis raise any
 6 issues, that you see, that could not be mitigated during
 7 the site design -- or the planning design -- the advances
 8 in design?
 9 A. I haven't seen any issues that couldn't be
 10 designed into the project as it advances through design.
 11 Q. And you had earlier talked in general about how
 12 you might use an AutoTURN analysis and the types of design
 13 treatments that you might use to resolve something that
 14 you see there.
 15 Are those same examples relevant here? Could you
 16 use those to help accommodate some of the vehicles shown
 17 in this AutoTURN analysis?
 18 A. Yes. They could be, along with some other
 19 features that we identified in the EIS.
 20 Q. Okay. I'd like you to turn to Figure 2.2b, as in
 21 "boy," of the appellant's AutoTURN analysis. That would
 22 be --
 23 A. A1.
 24 Q. Yes.
 25 A. And I'm sorry was that 2.2b?

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1 Q. Yes, I thought I had a page number. That would
 2 be -- the internal page number is SK254.
 3 And can you take a look -- I'm going to direct
 4 you to Driveway 17d, as in "David."
 5 Can you describe, generally, what you understand
 6 the existing conditions to be at that driveway?
 7 A. Yes. That's the extension of 26th Avenue, the
 8 south side of Market Street. That's a -- kind of an alley
 9 type of design, very narrow with the City right-of-way,
 10 and some -- some kind of an open space next to that that
 11 is private property.
 12 Q. And is the EIS proposing to widen that driveway?
 13 A. It's showing a wider driveway, yes.
 14 Q. Okay. And how would that impact ability to
 15 maneuver within the driveway?
 16 A. It's -- the width of that is essentially
 17 duplicate of what is there today at the edge of the road.
 18 If you were to understand what's happening
 19 underneath, those trucks are going over some grass area as
 20 it's undefined at the street and you can see where the
 21 trucks have worn away a radius going around through the
 22 landscaping. And, so, that driveway at our new proposed
 23 street tries to mimic that location.
 24 Q. Okay.
 25 A. So the driveway at the street edge is wide, but

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1 the intention that the trucks actually are going into the
 2 existing right-of way is unchanged.
 3 Q. Okay. How about -- let's turn to a different
 4 example, Sheet 5.5b, as in "boy." That would be internal
 5 page reference SK276 of Exhibit A1. And I'm going to
 6 direct you to Driveway 12b, as in "boy."
 7 Can you complete the maneuver shown here under
 8 existing conditions?
 9 A. I believe you can.
 10 Q. Okay. And would the design shown here change
 11 that at all?
 12 A. No. I guess, maybe, not at all is -- I mean,
 13 clearly, it would because we're putting in a trail and a
 14 driveway, but it would be designed to accommodate that
 15 vehicle.
 16 Q. Okay. Let's talk a little bit about --
 17 there's -- the incursion zone that's shown on these
 18 drawings, there's been a lot of testimony about that.
 19 First, what's your understanding of what they're
 20 depicting in the incursion zone shown in red on these
 21 drawings?
 22 A. In this one, the blue vehicle is exiting the
 23 driveway and it's where the back part of the trailer --
 24 the back wheels of the trailer would enter back into the
 25 street at the curb line.

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1 Q. Okay. But is the swept path of this design
 2 vehicle encroaching any portion of the trail shown in red,
 3 from your understanding?
 4 A. No, it's not. The vehicle is shown wholly within
 5 the driveway width in -- depicted in yellow in this
 6 drawing and across the trail in gray.
 7 Q. So are you aware of any standards or design
 8 guidelines that define this concept of an incursion zone
 9 that they've used here?
 10 A. I'm not aware of any standards for that, no.
 11 Q. Have you ever heard of the concept before this
 12 case?
 13 A. The use of terminology, "incursion zone"? No.
 14 Q. Okay. And this specific method of tracking and
 15 identifying a specific area on a plan sheet is something
 16 that you need to attend to as a design -- as a designer?
 17 A. Not as a standard. But we recognized it as a --
 18 an area that needs some consideration.
 19 Q. In what way? You said, "We recognized it and
 20 identified it as something that we need to -- that
 21 requires consideration."
 22 What did you mean by that?
 23 A. To understand if it does have an impact on the
 24 trail users and how we might design a trail to deal with
 25 that potential of these large vehicles.

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1 Q. And what's the "it" you're referring to there?
 2 A. What is the "it" I'm referring to?
 3 Q. I'm trying to get you to be precise.
 4 A. In the EIS, we identified the issue.
 5 Q. Which issue? Sorry. I'm just trying to get you
 6 to be a little more precise.
 7 A. We -- we referenced it as a warning zone.
 8 Q. Okay. I want to ask you about that. Sorry for
 9 trying to attach labels. It would just be easier to talk
 10 about things. Does the -- but I want to stop and talk
 11 about this incursion zone concept a little bit more.
 12 In your understanding, does that incursion zone,
 13 an example of which you just talked about, does that
 14 accurately depict locations of places where trucks cross
 15 the path?
 16 A. No.
 17 Q. Okay. Does it tend to overstate or understate
 18 the areas of potential conflict between trucks and trail
 19 users?
 20 A. In many cases, it overstates.
 21 Q. Is that an example of one right there?
 22 A. Absolutely, yes.
 23 Q. Okay. So given current conditions, how much of
 24 that existing length of that corridor is subject to
 25 conflict between non-motorized and motorized

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1 transportation?
 2 A. Along the Shilshole stretch, the entire thing.
 3 Q. Is that more or less, in your opinion, than the
 4 preferred alternative, that area of conflict -- subject to
 5 conflict?
 6 A. Much more than the preferred alternative.
 7 Q. So -- and I want to get back to something that
 8 you started to talk about and I was trying to be dogged
 9 about specificity.
 10 If you were to assume that these incursion zones
 11 accurately conveyed parts of the trail subject to
 12 conflict, are there design options that can resolve some
 13 of the concerns that have been raised by the Coalition's
 14 incursion analysis?
 15 A. Yes.
 16 Q. What are they?
 17 A. Recent practice in trail design is to use some
 18 sort of advanced warning for trail users as they're
 19 getting closer to driveways.
 20 It is, honestly, not something you commonly see
 21 right now because so many of our trails were designed and
 22 built a long time ago, but newer sections of trails within
 23 the Seattle area and the local region, you would see these
 24 advanced warnings built into the trail or into conflict
 25 locations like this.

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1 Q. How about paint markings? Are those effective?
 2 A. Yes, they are.
 3 Q. I think we've heard some testimony -- sorry. I
 4 didn't mean to interrupt.
 5 A. Well, it reminds me, the green shown on their
 6 turning movement diagrams could be representative of some
 7 of the green pavement markings that are also used; so, in
 8 conjunction with the advanced warnings. So those two
 9 systems are used commonly now.
 10 Q. And we heard some testimony that because these
 11 are areas of heavy truck use there's some concern about
 12 using pavement markings?
 13 A. I would agree.
 14 Q. So -- and -- and why?
 15 A. Standard paint, as you might commonly think of a
 16 pavement marking, would wear away. Common in design where
 17 that might occur, you use more -- much more durable
 18 materials. And that's a tool that is available to all
 19 designers in the construction industry now to use these
 20 durable materials especially in locations like this.
 21 Q. And, so, even when using those, is there
 22 maintenance required?
 23 A. Well, everything has maintenance, but it's vastly
 24 reduced, which is why it's common practice now to use them
 25 in these types of scenarios and locations.

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1 Q. Okay. I want to refer you to some testimony
 2 about the -- bear with me. I'm trying to get a reference.
 3 There was -- Mr. Kuznicki had prepared a blind spots
 4 analysis back then and I'm not seeing it.
 5 This is Exhibit A6. And in your tab, that will
 6 be -- the binder will be -- I should probably use a
 7 different binder -- 313.1. So you'll just have to wait
 8 while I get you the binder.
 9 A. And where are you going in A6?
 10 Q. It's -- maybe it's not A6. There's 313.1.
 11 That's it.
 12 A. There's no place to go.
 13 Q. Thank you.
 14 Are you familiar with that?
 15 A. Yes, I've looked at their figure.
 16 Q. Okay. And there's some discussion here about
 17 blind spots and sight distance hazards.
 18 A. Yes.
 19 Q. Can we talk a little bit about the assumptions of
 20 maneuvers that are shown in this diagram?
 21 A. The -- the entire background of this figure is
 22 based on an illegal traffic maneuver of Vehicle A. It
 23 does not have the right-of-way in front of Truck B.
 24 Q. Okay. Let's talk a little bit about
 25 sight-distance issues. I think this shows blind spots,

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1 but there was some discussion mixed in about
 2 sight-distance so I want to start there.
 3 Does the project create -- the preferred
 4 alternative create new sight-distance impacts that are
 5 beyond existing conditions?
 6 A. No, it doesn't.
 7 Q. Does it improve sight-distance concerns or
 8 address sight-distance concerns as compared to existing
 9 conditions?
 10 A. Yeah, I believe it does. The parked vehicles
 11 that are randomly scattered throughout the corridor create
 12 a sight-distance issue for vehicles coming out of those
 13 driveways that can't adequately see down the street if the
 14 vehicles are parked so close to driveways.
 15 Q. Okay. Let's now switch to blind spots.
 16 Are -- does the project create new blind spot
 17 impacts beyond existing conditions?
 18 A. No. A blind spot is a -- as discussed earlier,
 19 is a blind spot for a driver of a vehicle. We don't
 20 change the vehicles in this project; we adjust the
 21 roadways.
 22 Q. So there's some discussion about -- and I think
 23 it's related to -- or you can use this if you need to
 24 describe it, but there's some discussion about safety from
 25 contraflow conflicts.

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1 Can you describe your understanding of what that
 2 means?
 3 A. As I understand it, it's not clear -- it's not
 4 depicted on this, but it would be as if Truck A is coming
 5 out of the driveway. This -- this shows it going in.
 6 Q. Okay.
 7 A. And the description of that contraflow conflict
 8 is as that truck is coming out, does that truck look both
 9 directions on a trail or does he only look one direction
 10 down the street to be able to turn right into a lane?
 11 Q. Are there design features, design treatments that
 12 can be used to minimize that control issue?
 13 A. Yes, there is. Even as shown in this graphic,
 14 the green paint on the -- on the trail, itself, is a very
 15 highly visible indicator of conflicts for both trail users
 16 and vehicle users to be notified there's something
 17 different here. I don't expect green paint normally as
 18 I'm driving. So as they see that green paint, it's a much
 19 higher recognition that there's a different condition that
 20 I need to be concerned with.
 21 Q. Okay. Let me -- let me ask you about --
 22 EXAMINER VANCIL: Mr. Kisielius, just let
 23 me ask -- ask you how long do you think you're going to be
 24 going with this witness?
 25 MR. KISIELIUS: I am most of the way

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1 through.
 2 EXAMINER VANCIL: Okay. Then we'll go
 3 ahead until the end then.
 4 MR. KISIELIUS: Okay. And we could also
 5 break if you would prefer.
 6 EXAMINER VANCIL: No. I -- we have to take
 7 a break sometime around 10:00, 10:30, but --
 8 MR. KISIELIUS: Okay.
 9 EXAMINER VANCIL: -- if you're going to
 10 finish before 10:30, let's go ahead.
 11 MR. KISIELIUS: I believe I will be.
 12 EXAMINER VANCIL: Okay.
 13 Q. (By Mr. Kisielius) Let's talk about some
 14 testimony we heard about specific driveways.
 15 Do you recall the testimony of Mr. Anderson about
 16 lowboys that use that particular driveway?
 17 A. Yes.
 18 Q. Do you recall his testimony that he felt the
 19 trail would be raised in front of his driveway?
 20 A. I do recall them saying that.
 21 Q. Does the FEIS or your design say that the trail
 22 will be raised at that location?
 23 A. No, it does not.
 24 Q. What does the FEIS say about the -- raising the
 25 trail? Talk about using it at specified locations?

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1 A. Not specific, but there is a concept of having
 2 the trail raise at driveways as a means of -- another
 3 means of having vehicles go slower through a driveway
 4 entrance.
 5 Q. And --
 6 A. Which, again, is typical of a standard driveway.
 7 Q. Okay. And does the FEIS talk about coordination
 8 with the business owners when applying those design
 9 treatments?
 10 A. Yes, it does.
 11 Q. And your --
 12 EXAMINER VANCIL: Is it possible to
 13 identify where that --
 14 MR. KISIELIUS: What's that?
 15 EXAMINER VANCIL: Is it possible to
 16 identify where?
 17 Q. (By Mr. Kisielius) Can you identify for the
 18 Examiner where?
 19 A. I -- in the AutoTURNs, it was, I believe, the --
 20 the driveway we were just looking at.
 21 Q. That's the -- oh, no, he's asking about the
 22 reference that you just made.
 23 Does the FEIS say the locations that it would be
 24 coordinated with business owners?
 25 EXAMINER VANCIL: Mm-hmm.

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1 Q. (By Mr. Kisielius) Oh, can you -- there's the --
 2 I will refer you to the final EIS for an example.
 3 A. In the EIS, in Appendix A that we were referring
 4 to for my AutoTURN diagrams that -- that our project did.
 5 There's a note on the bottom-right corner.
 6 EXAMINER VANCIL: Which page?
 7 THE WITNESS: A2 is one example.
 8 EXAMINER VANCIL: Mm-hmm.
 9 THE WITNESS: The note is throughout.
 10 EXAMINER VANCIL: Thank you.
 11 Q. (By Mr. Kisielius) In your opinion, would a
 12 proper design for a driveway where you need to accommodate
 13 lowboys improve existing conditions at this location?
 14 A. I believe -- based on what we heard that witness
 15 say, I think it would improve the conditions at that
 16 driveway.
 17 Q. How?
 18 A. When you're talking about the lowboys, they are
 19 very low to the pavement. And when you are designing
 20 those for driveways and railroad tracks and the
 21 complexities going through there, it's critical to look
 22 at, in excruciating detail, the elevations of your entire
 23 system of your driveway as it goes into that driveway to
 24 make sure that a vehicle is not going to get hung up on
 25 the railroad tracks and get stuck as they described in

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1 that video. And I've done this before on another
 2 driveway, and it's a lot of work to do it, but it insures
 3 that those types of incidents will not happen as long as
 4 that vehicle stays within the designed driveway.
 5 Q. And is that the type of advance in design you
 6 would typically make as part of the evolution of the
 7 project?
 8 A. Absolutely, yeah.
 9 Q. So I'm going to ask you about the -- some other
 10 concerns related to design that were expressed during
 11 testimony. And I'm going to direct you to the
 12 intersection of 24th, Market, and Shilshole.
 13 First, did you AutoTURN analysis look at this
 14 particular intersection?
 15 A. Yes, it did.
 16 Q. Okay. Are you familiar -- so are you familiar
 17 with the design of that shown here at that intersection?
 18 A. Shown where?
 19 Q. Oh, I'm sorry.
 20 I invite you to choose whichever of the pages
 21 that you want to use to describe -- there are several that
 22 show that intersection: A3, 4, 5.
 23 A. Yes.
 24 Q. Exhibit R1, Appendix A.
 25 A. Thank you.

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1 MR. KISIELIUS: I apologize for flipping
 2 around?
 3 EXAMINER VANCIL: That's all right. You
 4 can flip around all you want, just help me keep up.
 5 This is Appendix A. And I'm sorry, which
 6 page? Oh, you were giving him a choice.
 7 MR. KISIELIUS: I was, yes.
 8 THE WITNESS: Let's start at A3.
 9 Q. (By Mr. Kisielius) Okay. First, just generally,
 10 I think there was some discussion about it being an
 11 unusual and potentially dangerous area.
 12 Is this area unusual to you? I mean --
 13 A. I think this is a typical intersection in the
 14 city of Seattle.
 15 Q. Okay. I want to focus a little bit more
 16 specifically on the discussion and the design of the curb
 17 apron because there was some testimony about that.
 18 Is the use of a curb -- well, first, just remind
 19 us, what is a "curb apron"?
 20 A. I think that is referring to the added special
 21 pavement that would be used between the real curb line and
 22 where we would want passenger vehicles to be.
 23 Q. Okay.
 24 A. Sometimes referred to as a truck apron.
 25 Q. Mm-hmm. And, functionally, what does that design

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1 do? What does it seek to accomplish?
 2 A. It seeks to accomplish a tight radii for smaller
 3 vehicles so that when they are negotiating the right turn,
 4 in this case from Market to Shilshole, essentially, that
 5 they would be operating at a slower rate of speeds to
 6 provide additional safety for non-motorized users.
 7 Q. Okay. And is that design concept unusual?
 8 A. I would say it's not common, but it's been used.
 9 Q. And has it been used as a design mechanism
 10 elsewhere in -- that -- that you're aware of?
 11 A. I don't know the specific locations. As I
 12 understand, there's a few locations in the city of Seattle
 13 that uses a common feature.
 14 Q. So this isn't something the City made up --
 15 A. No.
 16 Q. -- for purposes of this project?
 17 Is the use of an apron supported by any design
 18 manuals that you're aware of?
 19 A. It's shown in the Freight Master Plan. And I
 20 believe they may talk about it in NACTO, as well.
 21 Q. Okay. Do these design -- this kind of design
 22 concept improve safety?
 23 A. Yes, it does. As I said, it's -- it's -- you're
 24 trying to slow vehicles down to better accommodate
 25 non-motorized users in a high-pedestrian area like this.

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1 Q. Okay. There was also some discussion at that
 2 intersection -- well, let me ask.
 3 A. Yeah.
 4 Q. On there, can you just point us -- you just
 5 testified to it.
 6 Can you show us where the apron is depicted on
 7 your design drawing there?
 8 A. It's -- I don't believe it's shown in these
 9 AutoTURN figures.
 10 Q. Oh, I'm sorry.
 11 A. We would have to flip to the -- the design
 12 drawings that I have in the other exhibit.
 13 Q. I'll have you turn to Page 115 of the EIS.
 14 A. Okay. Sure. Yes, Figure 1-5.
 15 Q. Is that depicting the apron that you were talking
 16 about?
 17 A. Yes.
 18 Q. Okay. Let's talk about -- at the same
 19 intersection, there was testimony about lane offsets.
 20 Were you present for that testimony?
 21 A. Yes.
 22 Q. Are there design treatments that are available to
 23 address that lane offset?
 24 A. Yes, there are.
 25 Q. What would those be?

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1 A. In -- in large intersections like this and
 2 intersections that are more complex, it's very common to
 3 use guide markers that go through the intersection.
 4 Commonly, between crosswalks within the crosswalks, there
 5 are no markers usually, but in cases like this, you use
 6 what is called a guide marker, and it's a different skip
 7 stripe commonly used for defining these types of lane
 8 offsets for drivers.
 9 Q. Okay. Could you shift the road in your design?
 10 A. We could also shift the road to correct some of
 11 that offset.
 12 Q. Does that kind of design change involve some
 13 trade-offs?
 14 A. Yeah. In looking at move -- if the road section
 15 is going to stay the same number of lanes, is going to
 16 stay the same, you might have to take out sidewalk space
 17 on one side.
 18 Q. And is that the kind of thing you'd expect to do
 19 as part of the design advance? Those types of trade-offs?
 20 A. Yeah. As you get into the very detailed design
 21 of these intersections, that's something that you would
 22 advance through the final design.
 23 Q. Okay. Also with that intersection, I think there
 24 was some testimony focused away from Market, more that
 25 24th Avenue area.

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1 I believe Mr. Bishop testified that, again, the
 2 design will define things whereas, now, I think he used
 3 the words "totally wide open." The design at 24th is
 4 totally wide open.
 5 So, first, can you -- flipping back to your
 6 AutoTURN or your design, whichever you think would show it
 7 better.
 8 A. Let's stick with the same manual. The AutoTURNs
 9 on page A3 --
 10 Q. Okay.
 11 A. -- show it fine.
 12 Q. Okay. So does that design complicate truck
 13 access?
 14 A. No. I don't believe it complicates it. It
 15 changes it.
 16 Q. Mm-hmm. Does it -- what about the added crossing
 17 there?
 18 A. It adds a crossing, which I think helps define
 19 where all users are going to expect conflicts to occur.
 20 Q. So you had testified earlier, in general, about
 21 defining things as adding safety.
 22 Do you believe that that applies here, as well?
 23 The added definition, would that improve safety?
 24 A. Yes, absolutely.
 25 The way it is now, the vehicle could be going

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<p>1 quite fast down that section next to those parked cars and</p> <p>2 with this type of definition of where curbs are, it's</p> <p>3 going to slow all the vehicles down and define where you</p> <p>4 would expect conflicts to occur in that crosswalk.</p> <p>5 Q. Okay. On that same thing, on that same sheet,</p> <p>6 there is some testimony about the maneuver depicted on --</p> <p>7 actually, I believe it's the next one, A4. They were</p> <p>8 focused on the maneuver from northwest-bound Shilshole to</p> <p>9 eastbound Northwest Market Street.</p> <p>10 A. Yes.</p> <p>11 Q. So there was some testimony about after the</p> <p>12 design that maneuver cannot be completed by the design</p> <p>13 vehicle.</p> <p>14 Do you agree?</p> <p>15 A. It cannot be completed by this WB-50 vehicle.</p> <p>16 Q. Okay. And is that stated there?</p> <p>17 A. Yes, it is.</p> <p>18 Q. And is that true under existing conditions, as</p> <p>19 well?</p> <p>20 A. Yes, it is.</p> <p>21 Q. Are there design measures that can improve</p> <p>22 conditions at that intersection?</p> <p>23 A. That's a very generic question. I think some of</p> <p>24 the things that we are doing are improving it, like</p> <p>25 improving crosswalks and ADA access, but --</p>	<p>1 Go towards the back. There's some red page numbers at the</p> <p>2 bottom of each page. Keep going past the AutoTURNS.</p> <p>3 A. All right. Which page?</p> <p>4 Q. Starting at 47.</p> <p>5 A. Okay.</p> <p>6 Q. So are you familiar with this concept design that</p> <p>7 was prepared by the Coalition?</p> <p>8 A. I've looked at it.</p> <p>9 Q. Okay. Can you tell us why the elevated trail</p> <p>10 alternative was not pursued in the EIS?</p> <p>11 A. It didn't meet our objectives of connecting all</p> <p>12 users into our trail.</p> <p>13 Q. Okay. And -- and, so, how does that affect the</p> <p>14 potential design? Would you -- would this current design</p> <p>15 meet that objective? You said it wouldn't, why? What</p> <p>16 else do you need?</p> <p>17 A. It doesn't because it's elevated and you can't</p> <p>18 get to it within that stretch. And, so, the question is</p> <p>19 how do you accommodate any of the non-motorized users</p> <p>20 between the sections of this -- of where it's at grade?</p> <p>21 So how would you -- you know, you might need --</p> <p>22 likely would need an elevator to get ADA requirements of</p> <p>23 users to get up to the -- the trail.</p> <p>24 Q. Okay.</p> <p>25 A. ADA would require an elevator or some type of an</p>
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<p>1 Q. But under existing conditions, currently, that</p> <p>2 design vehicle cannot make that maneuver now?</p> <p>3 A. Specifically, to the design vehicle, is your</p> <p>4 question?</p> <p>5 Q. Yes.</p> <p>6 A. Not without impacts to the existing building that</p> <p>7 is on the corner of that intersection.</p> <p>8 Q. Fair enough?</p> <p>9 A. As shown, this turning vehicle takes out the</p> <p>10 entire sidewalk and doesn't leave any room for</p> <p>11 non-motorized users or pedestrians.</p> <p>12 Q. And, again, that's under existing conditions?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. I'm almost wrapping up here.</p> <p>15 I want to talk briefly about the bridge concept</p> <p>16 that Mr. Bishop addressed. I believe that's also going to</p> <p>17 be in A1, which, for our purposes, 310.21.</p> <p>18 Oh, you've got mine. Bear with me. I've given</p> <p>19 you my binder so I need to pull it up on -- if you can</p> <p>20 find -- if you go further back into that, that's the same</p> <p>21 exhibit as the AutoTURN. It's further back in that</p> <p>22 exhibit and I'll give you a specific page number in just</p> <p>23 one second. Oh, here you go. Starting on Page 47 of A1.</p> <p>24 Apologies for the delay.</p> <p>25 It's -- the page numbers -- it's the same one.</p>	<p>1 ADA access. Another five percent ramp, for example.</p> <p>2 Q. And that would be needed to achieve the</p> <p>3 objective?</p> <p>4 A. To get the users of the Ballard community into</p> <p>5 this trail network.</p> <p>6 Q. So -- and is that depicted on this design?</p> <p>7 A. Only at the two ends.</p> <p>8 Q. Okay. Do you agree that an elevated trail has a</p> <p>9 significantly higher cost than an at-grade trail?</p> <p>10 A. Yes, it does.</p> <p>11 Q. Okay. So let -- let me turn your attention back</p> <p>12 to a couple pages to -- just one page, actually, sorry,</p> <p>13 Page 46.</p> <p>14 So there's some costs shown here. Do you agree</p> <p>15 with the study's estimated cost to build this elevated</p> <p>16 trail?</p> <p>17 A. Not as an all-inclusive cost. No, I don't.</p> <p>18 Q. Well, what do you think is missing? Have they</p> <p>19 included the cost of the road improvements that are</p> <p>20 depicted in the client set?</p> <p>21 A. They're -- not in here.</p> <p>22 Q. Okay. And what about cost to improve</p> <p>23 accessibility that you have just described, for example,</p> <p>24 an additional ramp or elevator?</p> <p>25 A. Those aren't shown in here.</p>

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1 Q. Okay. Did the -- let me -- let me just ask you a
 2 couple questions in general here. You've testified about
 3 a lot of different things and you've listened to
 4 testimony.
 5 Have you heard anything in the opponent's
 6 testimony or in their documents -- read anything in their
 7 documents that causes you to question any of your work
 8 that you've done to support this EIS?
 9 A. No, I have not.
 10 Q. Okay. And do you believe that you used
 11 reasonable and standard methods of your profession to
 12 prepare a design to the degree necessary to assess and
 13 disclose the potential traffic impacts of this project?
 14 A. Yes, I do.
 15 Q. And, so, as the person responsible for the design
 16 and for contributing to the transportation impact
 17 analysis, do you think that the EIS adequately disclosed
 18 traffic impacts?
 19 A. Yes, I do.
 20 Q. And do you think that the EIS has adequately
 21 discussed those issues and concerns raised by the
 22 opponents?
 23 A. Yes, I do.
 24 Q. Okay. I have no further questions.
 25 Thank you.

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1 MR. COHEN: And I have none, your Honor.
 2 EXAMINER VANCIL: Oh, okay. Mr. Schneider,
 3 why don't we use the few minutes that we have and we'll
 4 break at 10:30.
 5 MR. SCHNEIDER: Okay.
 6 CROSS-EXAMINATION
 7 BY MR. SCHNEIDER:
 8 Q. Good morning, Mr. Phillips. I'm Pat Schneider.
 9 I represent the Ballard Coalition.
 10 You described -- well, first of all, is your name
 11 listed as one of the contributors of the EIS?
 12 A. I understand it's not.
 13 Q. Okay. And -- and you know why it's not listed?
 14 A. I would -- I did not write specific sections in
 15 the document.
 16 Q. So what was your role in the preparation of the
 17 EIS, then?
 18 A. Preparing the designs for their use and giving
 19 them some opinions on how the design is affecting the
 20 community and the project.
 21 Q. Okay. So let's turn to the other EISs you said
 22 you worked on.
 23 Were you similarly the person who prepared the
 24 design plans in those other EISs?
 25 A. Yes.

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1 Q. Have you ever actually written a safety analysis
 2 or done a safety analysis for an environmental impact
 3 statement?
 4 A. I have contributed information to the sections.
 5 Q. And by information, do you mean designs?
 6 A. Design, in my opinions, in some cases.
 7 Q. Okay. Can you give us an example of an opinion
 8 that you contributed to an EIS?
 9 A. Sight-distance might be one of those where we
 10 have not calculated it.
 11 Q. Okay. Have you worked with Claudia Hirschey on
 12 one of the projects you described for us?
 13 A. Yes.
 14 Q. And how would you describe her role as per
 15 opposed to yours in that project? And was that the Sound
 16 Transit Lynnwood Link Project?
 17 A. Yes, that was the project.
 18 Q. Okay. And what did you do and what did she do in
 19 that project?
 20 MR. KISIELIUS: Mr. Examiner, I'm going to
 21 object because I'm not sure what the relevance is as to
 22 the working relationship between one of their experts and
 23 ours.
 24 EXAMINER VANCIL: I'll overrule it. We --
 25 we had background from both of them on the project.

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1 MR. KISIELIUS: Okay.
 2 EXAMINER VANCIL: So this is about -- I
 3 assume, you can tell me, Mr. Schneider, but it sounds
 4 like, to me, credibility of the witness and -- and what
 5 they know and what they contribute.
 6 MR. SCHNEIDER: And scope of expertise.
 7 EXAMINER VANCIL: Mm-hmm. Better put.
 8 Thank you.
 9 Q. (By Mr. Schneider) So can you answer the
 10 question, then?
 11 What was your role and what was her role on that
 12 project?
 13 A. My role was working within the design team. And
 14 I was, specifically, the lead civil designer for the
 15 project.
 16 Q. And, then, so Ms. Hirschey, would it be fair to
 17 say, took the information the design team provided and
 18 she's the one that did the environmental review for the
 19 impact statement?
 20 A. She was one member of a very large team
 21 contributing to that writing.
 22 Q. Right. So she's the actual -- one of the authors
 23 of the Transportation Discipline Report for that EIS;
 24 correct?
 25 A. I believe she did a small piece of it, yes.

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1 Q. Okay. And you're not the person who decided what
 2 level of review -- what level of design was appropriate
 3 for the EIS in that case; correct?
 4 A. I would say that I was.
 5 Q. Okay. So Ms. Hirschey has testified that the
 6 preferred alternative in that case was done at which she
 7 would deem to be a 30 percent level of design. And, in
 8 fact, that that is Sound Transit's standard practice; is
 9 that correct?
 10 A. She did testify to that.
 11 Q. Okay. Do you disagree?
 12 A. I don't recall there's anything in Sound
 13 Transit's manuals that says do a 30 percent for an EIS.
 14 Q. Okay. Do you disagree that the preferred
 15 alternative was taken to a 30-percent design for Sound
 16 Transit in that case?
 17 A. I don't agree with the use of the percentage
 18 design as a general rule of how -- what level we get to.
 19 That's not appropriate use.
 20 Q. Well, I'm not asking you what your opinion is
 21 about the -- whether it's appropriate to use levels of
 22 design. I'm asking you: Do you disagree with her
 23 statement that the preferred alternative was taken to a
 24 30 percent level of design so that the safety and other
 25 environmental impacts could be adequately analyzed?

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1 A. If I don't agree with the use of 30 percent, how
 2 could I render an opinion?
 3 Q. So, Ms. Hirschey is, in her written report.
 4 Have you read it?
 5 A. I have not read the entire thing.
 6 Q. Okay. So you've offered several opinions this
 7 morning about the safety of the design of the two-way
 8 sidepath that you prepared; correct?
 9 A. Could you repeat the question? I'm sorry.
 10 Q. You've -- you've offered several opinions this
 11 morning about the safety of the design that you've
 12 prepared for this two-way side path; correct?
 13 A. Yes.
 14 Q. Have you read the reports that say these two-way
 15 side paths in areas where there are intersecting driveways
 16 are inherently more dangerous than other facilities?
 17 A. I haven't read the reports, but I am aware of the
 18 discussions and the -- and the potential that they're
 19 discussing in those manuals -- papers.
 20 Q. Is it fair to say that you're not aware of any
 21 studies that indicate those inherent hazards can be
 22 overcome by good design?
 23 A. Well, I think the NACTO manual discusses some of
 24 those treatments.
 25 Q. The NACTO manual discusses good design; correct?

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1 A. Yes, it does.
 2 Q. Okay. And it doesn't have any study or any
 3 indication that good design can overcome the inherent
 4 dangers of a two-way side path.
 5 Isn't that an accurate statement?
 6 A. I wouldn't agree with that.
 7 Q. Okay. Where in the NACTO materials, any
 8 publication, NACTO or otherwise, is there a study that
 9 demonstrates -- that supports the disagreement that you
 10 just expressed?
 11 I'm asking you now for a study, an empirical
 12 demonstration that good design can overcome that inherent
 13 hazard that multiple studies have proven?
 14 A. NACTO does not include studies, but I assume that
 15 it includes results of those studies and recommendations
 16 based on those studies which they give recommendations in
 17 NACTO.
 18 Q. Okay. And, so, what is the factual basis for
 19 your assumption that NACTO has done studies if you're not
 20 aware of the studies, themselves?
 21 A. I didn't say factual. I said assumption.
 22 Q. I'm sorry?
 23 A. I said it was my assumption that NACTO used
 24 studies.
 25 Q. Okay. And I'm asking you for the basis for that

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1 assumption.
 2 What leads you to assume that?
 3 A. It's typically what's done to create these
 4 guidances and manuals.
 5 Q. So you've referred to ADA access as something
 6 that would be required for this proposed elevated
 7 alternative that Mr. Bishop did a study for.
 8 What -- what is the ADA requirement that you're
 9 referring to?
 10 A. In regards to which piece, did you say?
 11 Q. You said that one of the problems that the
 12 elevated structure is that ADA access would be required.
 13 I'm asking where that requirement is in the ADA
 14 regulations.
 15 A. I -- I don't know exactly where it is in the ADA
 16 regulations.
 17 Q. Okay. And have you ever seen such a regulation?
 18 A. Absolutely.
 19 Q. And what does it say? What is it about this
 20 elevated structure, other than that it has a five percent
 21 grade at either end? What is it about that structure that
 22 requires additional ADA access, according to your memory
 23 of the regulations?
 24 A. The design as presented, I believe, meets ADA.
 25 It's the five percent grade on either end.

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1 Q. Okay.

2 EXAMINER VANCIL: We'll stop there,

3 Mr. Schneider.

4 MR. SCHNEIDER: Okay. Thank you.

5 EXAMINER VANCIL: I have a request. I

6 don't know if this can be done in the 15 minutes that we

7 have for break, but appellants have essentially requested

8 a new allocation of time based on discretion and I need

9 some type of proposal as to what that's going to mean so

10 that I can decide on it as opposed to use discretion. And

11 in the context of where I see it is -- sort of the

12 direction I was going, rather than me doing the work, we

13 have witnesses coming that are on direct and then some

14 that are not your witnesses that you need an opportunity

15 to do potential rebuttal for.

16 I'm seeing us as having an opportunity to

17 reduce some of the rebuttal time if you have a -- I have

18 no sense because I don't remember the witness list,

19 though, without looking at them, which of them are your

20 direct witnesses that you would need time to -- to

21 interview them, at all, as opposed to witnesses for which

22 you will only have cross and/or -- and then possibly need

23 an opportunity to provide rebuttal against those

24 witnesses, as well.

25 So, in my mind, if you're going direct with

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1 somebody, your need to do rebuttal against your own

2 witnesses, in that case, is reduced. And, so, with the

3 reduced need for time on Tuesday.

4 Does that make sense at all?

5 MR. SCHNEIDER: I -- I'm not sure, your

6 Honor. Maybe we can talk about it on the break.

7 EXAMINER VANCIL: Okay. So, I guess, in

8 detail, what I'm asking is you've got a list of witnesses

9 that were -- we've got approaching. How are you proposing

10 that we allocate time given those witnesses? And I think

11 it needs to be in the context of the witnesses and how

12 much time they're going to take and how much time you

13 think it's going to take to go through those.

14 If it's just general, then I -- I don't

15 have much to work with. so --

16 MR. SCHNEIDER: So you're proposing we

17 discuss this witness by witness?

18 EXAMINER VANCIL: That would be -- I don't

19 see how else to get at that -- that issue is to go through

20 that analysis, essentially is how long it's going to take

21 each witness.

22 MR. SCHNEIDER: Okay.

23 EXAMINER VANCIL: So if you can't do that

24 in 15 minutes, I understand. We may need to get into that

25 more in the lunch break. But I am seeing that that's

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1 probably where we're going to have to go if we -- if we --

2 if I have to -- if I can have something to entertain your

3 request, I have to have something to work with and that's

4 really the level that I'm going to need to go to in order

5 to understand if I'm prejudicing the City and -- and

6 intervenor by giving you more time.

7 Or probably what we're doing is not

8 necessarily giving you more time, but figuring out how to

9 allocate Tuesday is what we're getting into.

10 MR. SCHNEIDER: Okay. Thank you.

11 EXAMINER VANCIL: All right. We'll be back

12 at a quarter to. Thank you.

13 (Whereupon a brief recess was taken.)

14 EXAMINER VANCIL: We're back on the record,

15 Mr. Schneider.

16 MR. SCHNEIDER: Thank you.

17 Q. (By Mr. Schneider) So, Mr. Phillips, I believe

18 we were talking about the elevated structure. And correct

19 me if I'm wrong, I think you had just said that this

20 structure, as set forth in Mr. Bishop's documents, does

21 comply with the ADA?

22 A. I -- I said that. I'm not sure I completely

23 agree with that.

24 Q. Well, so my question to you, again, then, is if

25 it doesn't comply with the ADA, what is the regulation in

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1 the ADA that you think it doesn't comply with?

2 A. Unfortunately, ADA is not always very specific.

3 It is up for interpretation. And that interpretation

4 could be made that a span of, I think this is referred to

5 as 2,200-feet long or something like that. A half a mile,

6 might be ruled to be inaccessible for, say, the midway

7 point. And that ADA regulations could, in fact, require

8 midway connection points so that it is meeting that

9 requirement of access for all.

10 Q. Okay. So you don't --

11 A. As I said, it's just not that specific in the ADA

12 manuals, but it is rulings that we have understood in

13 other projects that have occurred.

14 Q. Well, and my understanding is you testified that

15 one of the reasons it wasn't considered is that it

16 wouldn't meet the ADA. Are you now saying that you don't

17 know one way or the other whether it would meet the ADA?

18 A. I think it's fair to say it's up for

19 interpretation, yes.

20 EXAMINER VANCIL: So, Mr. Schneider, if

21 we're not using that illustrative item, we'll take that

22 down.

23 MR. SCHNEIDER: Sure.

24 EXAMINER VANCIL: Thank you, Mr. Schneider.

25 Q. (By Mr. Schneider) So, Mr. Phillips, when you

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1 did the AutoTURN at the intersection of 24th Avenue
 2 Northwest and Market Street and you didn't show the
 3 aprons, did you have to take a step to remove the aprons
 4 from the CAD files that you used for the AutoTURN?
 5 A. I -- I don't recall the -- when those were -- the
 6 background of that was generated, in relation. It's
 7 possible, but I don't recall.
 8 Q. Okay. So you testified that -- that, in your
 9 opinion, the -- well, let's go back to the warning zone.
 10 So are you responsible for the depiction of the
 11 warning zone in the EIS or was that done by someone else?
 12 A. I -- that was prepared with some of my input,
 13 yes.
 14 Q. Okay. And, so, what -- how was the size of the
 15 warning zone determined? Or how will it be determined?
 16 Is there anything in the EIS that tells us that?
 17 A. No. There's nothing that says the dimensions of
 18 it.
 19 Q. And, so, in the area along Shilshole where you
 20 have driveway after driveway and warning zone --
 21 presumably, warning zone after warning zone, is it your
 22 opinion that those warning zones are going to be effective
 23 in such a location? And, if so, what's that opinion based
 24 on?
 25 A. A warning zone is prior to where you are going to

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1 be crossing that conflict zone. And just because there's
 2 one after another doesn't mean that the advanced warning
 3 wasn't given.
 4 Q. I'm sorry. I didn't hear the last sentence.
 5 A. Just because there's one driveway after another
 6 doesn't mean that the warning wasn't given. It was given
 7 in advance of those driveways.
 8 Q. Right. But my question is: What -- what
 9 makes -- what was the basis for your testimony that giving
 10 these warnings would be effective, particularly in a
 11 location where there's one after another and along
 12 Shilshole? I'm compounding the question and I apologize.
 13 But let's -- let me step back and start over.
 14 Along Shilshole, one of the directions is
 15 downhill; correct?
 16 A. At the west end, yes.
 17 Q. Well, isn't all the way from Market Street to
 18 where at -- to past where Shilshole turns and heads more
 19 directly to the east, isn't that all downhill?
 20 A. Yes.
 21 Q. And do you know anything about the speeds that
 22 bicycles attain on that downhill stretch?
 23 A. It's -- they're going to be -- potentially have
 24 faster speeds there.
 25 Q. Okay. And if there's driveway after driveway and

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1 warning zone after warning zone, is the expectation that
 2 the bicyclists are going to slow down for every warning
 3 zone?
 4 A. Those warning zones have nothing to do with the
 5 grade that you were talking about. So when they're flat,
 6 they're going to see those warning zones and the green
 7 paint associated with the conflict zone and understand
 8 that there's a condition there they need to be worried
 9 about.
 10 Q. Okay. And so you're -- you're designing in the
 11 expectation that the bicyclists will pay attention to and
 12 respond to the warning zones; correct?
 13 A. With lots of green paint and highly visible
 14 markers out there, I think it is going to be pretty clear
 15 they need to be aware of their condition.
 16 Q. And my question is: You're designing in the
 17 expectations that the bicyclists will respond in an
 18 appropriate manner to those warning zones?
 19 A. I think that's reasonable to assume.
 20 Q. Okay. And what is that assumption of reasonable
 21 bicycle behavior based on? Can you identify any studies
 22 that confirm that bicyclists respond to warning signs or
 23 traffic control signs of any sort?
 24 A. The NACTO guidelines suggest that -- that as a
 25 best practice.

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1 Q. Okay. And don't the NACTO guidelines also say
 2 you shouldn't put two-way side paths in places where there
 3 are lots of conflicts?
 4 A. It may say that it is. There are other things
 5 that you could consider.
 6 MR. SCHNEIDER: That's all I have.
 7 EXAMINER VANCIL: Anything further?
 8 MR. KISIELIUS: Just a couple of short
 9 questions.
 10 REDIRECT EXAMINATION
 11 BY MR. KISIELIUS:
 12 Q. Is -- is -- can you describe the warning zone?
 13 We sort of added that in the questions from Mr. Schneider.
 14 So what is that concept, generally, in your understanding?
 15 How is it described in the EIS and what's its purpose?
 16 A. May I look to the EIS?
 17 Q. Of course. Of course.
 18 This is -- you're looking at the EIS, itself?
 19 A. EIS.
 20 Q. That's R1.
 21 A. I'm on Page 1-21.
 22 Q. Okay.
 23 A. So there's a note on the upper-left corner that
 24 says, "Driveway Crossing Warning Zone," and it's implied
 25 in this graphic, given the location of the green lines

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1 starting from the truck wheels that that is the swept
 2 path. And it is an area similar to what's been referred
 3 to as the incursion zone.
 4 Q. Okay. There was some discussion about the
 5 elevated trail structure. Putting aside ADA for a second,
 6 does the design that's depicted in the drawings prepared
 7 by the Coalition's expert achieve the project objective in
 8 your opinion?
 9 A. No, it doesn't.
 10 Q. And why?
 11 A. There's a lot of uses and streets connecting
 12 where somebody may be living in that portion of Ballard
 13 coming down those side streets who would want to enter on
 14 to the trail.
 15 Q. And to accommodate that, what would you need to
 16 do from a design standpoint?
 17 A. As -- as I was just testifying, it may be that
 18 elevators would be required. But at a minimum, the street
 19 below on Shilshole would have to also be improved to move
 20 people to the ends of this trail design.
 21 Q. And is that included in the design that you've
 22 reviewed from the Coalition's expert?
 23 A. The design is shown in their drawings but it's
 24 not included in the cost.
 25 Q. Okay. What I meant was the elevator.

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1 A. The midway elevators are not shown.
 2 MR. KISIELIUS: Okay. I have no further
 3 questions.
 4 EXAMINER VANCIL: Just very briefly, let me
 5 pause and ask you a question.
 6 I have some questions. I was going to do
 7 those -- I think we were going to try to do those at the
 8 end of your first round so that you would have the benefit
 9 of having me asking me questions and you could go around.
 10 We didn't do that.
 11 Do you want to proceed, Mr. Schneider, and
 12 I ask my questions and if anybody has any follow-up after
 13 that I can do that? It doesn't matter to me.
 14 MR. SCHNEIDER: I'm fine. I'd just as soon
 15 have you go ahead.
 16 EXAMINER VANCIL: Okay. And if there's a
 17 burning question that a party has after that, I'll allow
 18 that.
 19 MR. KISIELIUS: I apologize if I
 20 overstepped. I thought that was --
 21 EXAMINER VANCIL: I missed it myself, so --
 22 There's no set format for these things; so --
 23 Mr. Phillips, you had given some testimony
 24 about appellants -- you don't have to get this out --
 25 Exhibit A1, Figure 1, which shows a barrier in the -- I

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1 think it's a Jersey barrier in the buffer area. And then
 2 you contrasted that with your own design that you had
 3 helped inform and in the -- in those images, and they did
 4 not show barriers in that.
 5 Are there such barriers called for by the
 6 EIS as a potential mitigation that could wind up in there
 7 or --
 8 THE WITNESS: Yes. They're listed as a
 9 potential to add in the EIS.
 10 EXAMINER VANCIL: So they could be in the
 11 buffer but they weren't depicted in the buffer by you? Or
 12 tell me -- distinguish what your testimony was trying to
 13 get at with that.
 14 THE WITNESS: AASHTO guidelines suggest
 15 that the buffer should be five feet from a street. And
 16 that if you're less than five feet, then a barrier should
 17 be considered. And, so, given the variable widths that we
 18 provided, if final design chooses to do a narrower, then,
 19 potentially, a barrier would be incorporated into the
 20 final design at certain locations.
 21 EXAMINER VANCIL: If the -- if the buffer
 22 is less than five feet?
 23 THE WITNESS: That's the standard in
 24 AASHTO.
 25 EXAMINER VANCIL: AASHTO. Okay. Thank

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1 you.
 2 You indicated that you looked at the --
 3 some of the driveways but not all of them. And I -- and
 4 help me understand how you determined which of those
 5 were -- which ones you should -- you would look at.
 6 You said something along the lines of you
 7 looked at driveways that were critical to your
 8 understanding of impacts. That may not be a direct quote
 9 but help me understand how you got to that point and
 10 evaluated which driveways to analyze.
 11 THE WITNESS: Salmon Bay Sand & Gravel has
 12 a very high volume of their concrete trucks. Getting that
 13 terminology down, right? And those vehicles need to be
 14 accommodated in our -- in our design. And it's a fairly
 15 unique situation so we wanted to look at how those
 16 vehicles would operate when we're done with the project.
 17 So it's -- it's a uniqueness within this corridor that we
 18 said, "Yeah. We think we should look at that." Same thing
 19 with the lowboy. It's a fairly unique vehicle. And,
 20 also, we're -- it's an additional consideration
 21 understanding how AutoTURN works.
 22 Historically, swept path is done not with
 23 AutoTURN. That's newer technology; right? We weren't
 24 always designing using computer technology. Turning
 25 templates have been around in AASHTO books for decades,

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<p>1 and they were repeatable from one condition to another to</p> <p>2 another. So you don't have to, at an initial stage, look</p> <p>3 at every one to understand a -- a repeating issue from one</p> <p>4 driveway to another.</p> <p>5 EXAMINER VANCIL: So I understand you</p> <p>6 didn't have to under the design standards, but I do want</p> <p>7 to make sure I understand the times when you elected to do</p> <p>8 so and what criteria you essentially used to get there.</p> <p>9 You indicated in your response to my</p> <p>10 question for Salmon Bay, for example, there was uniqueness</p> <p>11 about that situation or the lowboy presented uniqueness.</p> <p>12 Was it the uniqueness of -- of a particular</p> <p>13 driveway or was there any other criteria you used to say,</p> <p>14 "We should look at this driveway"? And -- and could you</p> <p>15 help me understand what other driveways you looked at?</p> <p>16 Salmon Bay is an example, but were there others that you</p> <p>17 did look at?</p> <p>18 THE WITNESS: I believe the three in the</p> <p>19 EIS with Salmon Bay, the lowboy at the marina, again,</p> <p>20 uniqueness because of that type of vehicle.</p> <p>21 EXAMINER VANCIL: Mm-hmm.</p> <p>22 THE WITNESS: And 26th could be considered</p> <p>23 a driveway due to the businesses that are down 26th and</p> <p>24 how do they get these huge vehicles out of such a small</p> <p>25 street? And what would that look like with the street,</p>	<p>1 THE WITNESS: Yes.</p> <p>2 EXAMINER VANCIL: And that you -- you did</p> <p>3 use that.</p> <p>4 Did you not, then, in your analysis, look</p> <p>5 at swept paths for, say, WB-40 or WB-67? How did that --</p> <p>6 that's what it sounded to me like when you said SU-30.</p> <p>7 That's what you relied on.</p> <p>8 Did you look at the other vehicles? If</p> <p>9 not, why not?</p> <p>10 THE WITNESS: The AutoTURNS included in the</p> <p>11 EIS show WB-50s at some locations.</p> <p>12 EXAMINER VANCIL: Okay.</p> <p>13 THE WITNESS: And the SU in other</p> <p>14 locations.</p> <p>15 EXAMINER VANCIL: Okay. So you used more</p> <p>16 than just the SU-30?</p> <p>17 THE WITNESS: Yes.</p> <p>18 EXAMINER VANCIL: Okay. You also mentioned</p> <p>19 that for some of these design elements you might use more</p> <p>20 durable materials than paint, but paint is the only one</p> <p>21 I've heard identified.</p> <p>22 What might you use?</p> <p>23 THE WITNESS: Thermoplastic is typical for</p> <p>24 pavement markings. Roadway markings, like crosswalks,</p> <p>25 it's fairly typical. As you walk just downstairs out on</p>
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<p>1 especially in consideration of the more significant street</p> <p>2 modifications we're doing on Market to narrow the number</p> <p>3 of lanes and insure that that would still work?</p> <p>4 EXAMINER VANCIL: Okay. You indicated that</p> <p>5 the -- there is not much driveway design guidance</p> <p>6 available in the standards. It sounds like it's a</p> <p>7 developing area in -- in your field is to provide design</p> <p>8 for those types of elements.</p> <p>9 In this case, did -- I guess what I'm</p> <p>10 trying to get at -- this may be based off Ms. Ellig's</p> <p>11 statement. I think it was Ms. Ellig who said, yesterday,</p> <p>12 is that in some sense, these driveways are treated in the</p> <p>13 EIS more as intersections because of their unique nature.</p> <p>14 Is that how you viewed it? Did you -- did</p> <p>15 you apply design guidelines from -- you said that there</p> <p>16 are design guidelines from intersections that you applied.</p> <p>17 How -- did you view driveways that way? Or is that part</p> <p>18 of your consideration?</p> <p>19 THE WITNESS: Yeah. I believe I said that</p> <p>20 in my testimony, as well, especially the Salmon Bay due to</p> <p>21 the volume in and out of the -- that driveway complex.</p> <p>22 EXAMINER VANCIL: Okay. And I want to</p> <p>23 understand -- I didn't -- I did not understand this aspect</p> <p>24 of your testimony. And you -- you indicated a design</p> <p>25 vehicle, an SU-30.</p>	<p>1 to the street out here, you would see thermoplastic.</p> <p>2 The green that you'd see, say, down on</p> <p>3 Second Avenue is called MMA. I can't remember the</p> <p>4 scientific terminology of what that stands for, but it's</p> <p>5 called MMA.</p> <p>6 EXAMINER VANCIL: And is that always a</p> <p>7 surface that's applied to asphalts or are there colored</p> <p>8 asphalts?</p> <p>9 THE WITNESS: I believe it's an epoxy-based</p> <p>10 and it can -- it attaches to either concrete or asphalt.</p> <p>11 EXAMINER VANCIL: Okay. That was</p> <p>12 completely for my own interest; so I'll jot that down.</p> <p>13 All right. No further questions.</p> <p>14 You had some questions, Mr. Schneider?</p> <p>15 MR. SCHNEIDER: Yes.</p> <p>16 RE-CROSS-EXAMINATION</p> <p>17 BY MR. SCHNEIDER:</p> <p>18 Q. Going back to the Jersey barrier Mr. Examiner</p> <p>19 asked you about.</p> <p>20 Mr. Bishop didn't testify that there was a Jersey</p> <p>21 barrier at that location, did he?</p> <p>22 A. I'm not sure what location you're talking about.</p> <p>23 Q. The location you were talking about that is</p> <p>24 depicted in the -- in the sheet that you were testifying</p> <p>25 about that shows the Jersey barrier.</p>

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<p>1 Didn't Mr. Bishop testify that he inserted one 2 there precisely because the EIS talked about the 3 possibility of using one but he didn't know where they 4 would be and didn't know how they could be accommodated 5 within the five-foot buffer? 6 MR. KISIELIUS: Mr. Examiner, I'm going to 7 object. 8 Mr. Schneider is simply restating his 9 witness's testimony. I believe Mr. Phillips was looking 10 at the depiction that shows a barrier and answering the 11 question whether or not one is actually shown there in the 12 design. I don't think he needs to restate his witness's 13 testimony. It stands for itself. 14 MR. SCHNEIDER: Well, it's 15 cross-examination. And I'm doing this because when 16 Mr. Kisielius asked the question, he asserted that 17 Mr. Bishop had testified that there was a Jersey barrier 18 in that location which is definitely not what the 19 testimony was. And, again, this is cross-examination. 20 EXAMINER VANCIL: I'm going to allow the 21 question. But we do need to let the -- Mr. Bishop's 22 testimony speak for itself, to some degree. I -- I -- if 23 Mr. Phillips recalls it, he could certainly testify to it, 24 but we'll limit it to that. 25 Q. (By Mr. Schneider) So have I fairly</p>	<p>1 A. I haven't read every detail but I understand 2 portions of it, yes. 3 Q. Okay. And wasn't one of her concerns about 4 significant adverse environmental impacts the location of 5 the barriers and the hazards that they, themselves, 6 created? 7 MR. KISIELIUS: Mr. Examiner, I'm going to 8 object, again, on relevance. That was a decision about a 9 DNS, not an EIS. It's under review right now related to 10 an earlier design. 11 MR. SCHNEIDER: We're talking about the 12 issue of hazards and traffic impacts. 13 EXAMINER VANCIL: Barriers. 14 MR. SCHNEIDER: Barriers. 15 EXAMINER VANCIL: Right. 16 MR. SCHNEIDER: Which -- which the 17 testimony is -- has been, both in this case and the last 18 one, can constitute traffic hazards. 19 EXAMINER VANCIL: I'm going to overrule and 20 allow you to continue along the questioning because we've 21 certainly discussed the barriers. 22 (Indiscernible crosstalk.) 23 Q. (By Mr. Schneider) Okay. And if you don't 24 remember the decision well enough to respond to this, just 25 say so. But isn't one of her concerns about the</p>
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<p>1 characterized Mr. Bishop's testimony about the Jersey 2 barrier being illustrated there because he didn't know how 3 it could be accommodated within a five-foot buffer? 4 A. I think you're mixing two different things 5 together, from what I recall in his testimony. 6 Q. Okay. What do you recall? 7 A. He put it in there because he didn't know where 8 it was; so he just inserted it. He also talked about 9 would it -- could it fit within the five-foot buffer, and 10 those are two different discussions. 11 Q. I agree. And I -- and I misspoke if I suggested 12 anything other than the fact that he made both of those 13 points; didn't he? 14 A. That he made both of those points? Is that what 15 you're asking? 16 Q. Yes. 17 A. Yes. he made both of those points. 18 Q. Okay. And he also talked about shy distances. 19 And do you disagree with his testimony about shy 20 distances? 21 A. There are -- he is correct, there are appropriate 22 shy distances to use. 23 Q. Okay. And have you read the Hearing Examiner's 24 decision that led to the production of this environmental 25 impact statement?</p>	<p>1 significant traffic hazards, the location of the barriers 2 and the hazards they, themselves, created? 3 A. I think that's correct. 4 Q. Okay. Thank you. 5 EXAMINER VANCIL: Are you finished? 6 MR. SCHNEIDER: I'm done, yes. 7 EXAMINER VANCIL: Were there any other 8 questions? 9 MR. KISIELIUS: No, your Honor. 10 EXAMINER VANCIL: Thank you, Mr. Phillips. 11 Mr. Kisielius? 12 MR. KISIELIUS: The Department would like 13 to call Ryan LeProwse. 14 EXAMINER VANCIL: Please state your name 15 for the record and spell your last name. 16 THE WITNESS: Ryan LeProwse, 17 L-e-P-r-o-w-s-e. 18 EXAMINER VANCIL: And do you swear or 19 affirm the testimony you provide in today's hearing will 20 be the truth? 21 THE WITNESS: Yes. 22 EXAMINER VANCIL: Thank you. 23 RYAN LePROWSE, having been called as a witness on behalf 24 of Respondent after being first duly 25 sworn, was examined and testified as follows:</p>

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1 DIRECT EXAMINATION
 2 BY MR. KISIELIUS:
 3 Q. Mr. LeProwse, can you please state your
 4 occupation?
 5 A. I'm a senior transportation engineer for
 6 Parametrix.
 7 Q. Okay. And by whom are you currently employed?
 8 A. Parametrix.
 9 Q. Okay. And can you briefly describe your
 10 education and training as it pertains to your profession?
 11 A. Yes. I got a bachelor of science in civil
 12 engineering from the University of Portland in 1999. I
 13 started out as an engineer-in-training for David Evans and
 14 Associates. I worked for them for 14 years and then I've
 15 been with Parametrix for the last four years. I got my
 16 professional license in both Washington and Oregon,
 17 registered PE.
 18 Q. And I would like to ask you, briefly, to describe
 19 your prior experiences working on or preparing EISs.
 20 Have you been involved in preparing an EIS other
 21 than this one?
 22 A. Yes, over ten.
 23 Q. Okay. In what capacity were you involved in
 24 those EISs?
 25 A. I've typically been the lead transportation

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1 engineer or the lead author of the Transportation
 2 Discipline Report or the Parking Discipline Report.
 3 A few examples I can give of those would be the
 4 Alaska Way Promenade and Overlook Walk for SDOT that I was
 5 the lead Transportation Discipline Report author as well
 6 as the Parking Discipline Report author.
 7 As Ms. Ellig talked about, we first initially
 8 started out by creating the Methods and Assumption
 9 document is where you start with the process and identify
 10 for all modes kind of what you're looking at that are
 11 relevant in the area. And then we then go into the
 12 existing conditions, then identify what impacts would be
 13 in the future for the no-build and then the build
 14 alternatives compared to that.
 15 So in a similar fashion, I did the Parking
 16 Discipline Report for that project. I came up with the
 17 methodology as the initial step and then go through and
 18 identify impacts for the future conditions.
 19 Another EIS that I worked on is the Columbia
 20 River Crossing EIS for WSDOT and ODOT. It was a nine-year
 21 EIS project. Ms. Hirschey actually worked with me on it,
 22 as well. She was on the freight team. I was the lead
 23 transportation author for the Discipline Report to that
 24 one. Parking was included in the discipline report. We
 25 also looked at non-motorized facilities as there was a

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1 large trail component to that project that went across the
 2 bridge as well as the connection points on both sides of
 3 the bridge as well as through a transit, kind of, station,
 4 LRT station facilities.
 5 Q. So you mentioned non-motorized transportation
 6 facilities.
 7 Have you been involved in others than the one you
 8 just mentioned or the one that we're talking about today?
 9 A. Yes. All of the EISs have some non-motorized
 10 component. Not all of them have a trail component, but
 11 they have a non-motorized component that are included in
 12 those. So we'll look at forecasting of non-motorized
 13 volumes and look impacts for that mode and how it
 14 interacts with the other modes of transportation.
 15 Q. Okay. I'm going to hand you a copy of your
 16 résumé to be marked.
 17 A. Okay.
 18 EXAMINER VANCIL: This will be R15.
 19 Q. (By Mr. Kisielius) Mr. LeProwse, do you
 20 recognize this résumé?
 21 A. Yes. I recognize this résumé.
 22 Q. Does it accurately reflect your educational
 23 background and your professional training and experience?
 24 A. Yes. This is the shortened résumé showing a few
 25 of my EISs and other projects.

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1 MR. KISIELIUS: I'd like to add this in and
 2 enter it as an exhibit.
 3 MR. SCHNEIDER: No objection.
 4 EXAMINER VANCIL: R15 is admitted.
 5 (Exhibit No. R15 Admitted)
 6 Q. (By Mr. Kisielius) Let's focus on this EIS that
 7 is the subject of this appeal.
 8 What was your role in the EIS?
 9 A. I was the lead reviewer for the Transportation
 10 Discipline Report and the Parking Discipline Report for
 11 the DEIS. I was involved in helping with methodology as
 12 well as identifying impacts; so I was the lead reviewer
 13 for the DEIS.
 14 And then in the FEIS, I became the lead author
 15 for the Parking Discipline Report as one of our previous
 16 employees left the company so I became the lead author for
 17 the Parking Discipline Report.
 18 Q. Okay. As the lead reviewer of the Transportation
 19 Discipline Report, I'm not going to ask you to repeat or
 20 restate what Ms. Ellig said, but I just want to ask do
 21 you -- were you here for her testimony?
 22 A. I was here for her testimony.
 23 Q. And do you agree with the methodologies that she
 24 described and the conclusions that are include in there?
 25 A. Yes, I do agree.

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1 Q. And let's talk more generally about the
 2 methodology and approaches that are used in the
 3 Transportation Discipline Report and the Parking Impact
 4 Analysis as they compare to your other work in EISs.
 5 Would you say that they are similar in approach?
 6 A. Yes, they are similar in approach. I didn't
 7 mention, but I've done EISs for lead agencies including
 8 DOTs, Sound Transit, and Western Federal Lands, as well,
 9 so --
 10 Q. Okay. I want to focus on the Parking Analysis,
 11 specifically.
 12 A. Okay.
 13 Q. So, first, can you describe, again, what the
 14 deliverable was in the final EIS?
 15 A. Yes. It was a Parking Discipline Report. I
 16 think it's -- it's in Volume 3 of the Technical
 17 Appendices. I think it's Appendix C of that.
 18 It's a -- we had a draft technical report and
 19 then a final technical report that are included.
 20 Q. I'm going to ask you a couple questions about
 21 those.
 22 A. Right.
 23 MR. KISIELIUS: So, Mr. Examiner, for the
 24 record, those are in R3. And we've been looking at a lot
 25 of the Transportation Discipline Report that the Parking

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1 Analysis follows.
 2 And, again, for purposes of identifying the
 3 documents, the header includes the title of the report to
 4 make it easier to find.
 5 EXAMINER VANCIL: So where --
 6 THE WITNESS: So it says "Parking
 7 Discipline" over the top-right corner.
 8 MR. KISIELIUS: R3 includes several
 9 technical --
 10 EXAMINER VANCIL: Okay.
 11 MR. KISIELIUS: -- discipline reports.
 12 It's the one that's closer to the back.
 13 EXAMINER VANCIL: Right. I was just
 14 looking at the -- I've got the Parking Discipline Report.
 15 I was just looking at the Appendix C that says "Daily
 16 Driveway Turning Movements."
 17 THE WITNESS: Yeah, no. Sorry. This whole
 18 thing is the Appendix C writeup.
 19 MR. KISIELIUS: So, yeah, we're gonna --
 20 EXAMINER VANCIL: So it's a subset of
 21 Appendix C is the Parking Discipline?
 22 MR. KISIELIUS: No. That was what you were
 23 looking at. The Appendix C was the Appendix C to the
 24 Transportation Discipline Report.
 25 The Transportation Discipline Report ends

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1 with that and the next page begins the Parking Discipline
 2 Report which is a separate technical --
 3 EXAMINER VANCIL: Oh, I see. There's no
 4 cover page for it? Okay.
 5 MR. KISIELIUS: I believe there should be.
 6 EXAMINER VANCIL: Oh, yeah.
 7 Q. (By Mr. Kisielius) Okay. So -- so, first, I'm
 8 going to ask you how did you define the study area for
 9 your parking report?
 10 A. So the study area is defined by the trip purpose
 11 that people are willing -- so after parking, how far
 12 people are willing to walk for a trip purpose. Kind of
 13 topography reasons, walking environment, as well as the
 14 available time that they have. So it's typically about an
 15 eighth of a mile to a quarter of a mile is kind of what we
 16 used for this parking area. So it includes about,
 17 roughly, two blocks from the peripheral of all the
 18 alternatives that are shown.
 19 There's a figure within the document that shows,
 20 kind of, the study area if you'd like to see that
 21 document.
 22 Q. Could you direct us to that?
 23 A. Yes, that is Figure 3-1 that would be on Page 3-3
 24 of the Parking Discipline Report. So after Page 3-2
 25 there's no page numbers, as Ms. Ellig mentioned on the

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1 figures, but it follows 3-2 and it's before 3-4.
 2 Q. Okay. So is it correct to say the study area
 3 includes all of the alternatives?
 4 A. Yes. It does include all of the build
 5 alternatives. That is the way we have typically done
 6 Parking Discipline Reports for all of the EISs that
 7 include -- it's all inclusive of all the alternatives so
 8 you can -- when comparing to the no-build, you can have an
 9 equal comparison across those when identifying impacts.
 10 Q. Okay. So were you present for Mr. Bishop's
 11 testimony about the scope of the study area?
 12 A. I was.
 13 Q. And what's your recollection of his assessment of
 14 how you should have defined the study area?
 15 A. I think my recollection was define it along each
 16 alternative.
 17 If I recall his preferred alternative, he wanted
 18 the study area for the preferred alternative versus
 19 Ballard or Leary. Shilshole South is similar, but a
 20 specific study area for each of the alternatives.
 21 Q. So in your experience working on EISs, is that
 22 typical? Is that approach to do a different study area
 23 for each of the alternatives?
 24 A. That is not typical.
 25 Q. Why?

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1 A. As I mentioned just a few seconds ago, you
 2 typically include all -- or you include all of the
 3 alternatives to identify the impacts when comparing the
 4 no-build across all of the build alternates in an equal
 5 fashion.
 6 Q. Okay. What does that allow you to do?
 7 A. That way you can -- when summarizing, you'll see
 8 later in the document where we're comparing overall loss
 9 of those alternatives, you can have an apples-to-apples
 10 comparison or an equal comparison of the impacts between
 11 the alternatives so the set number, the, you know,
 12 no-build number stays kind of the same.
 13 Q. Okay. Is the approach that you just described
 14 consistent with any studies or standards that you're aware
 15 of?
 16 A. It is. It's supported by a document of, kind
 17 of -- a few documents of how far people are willing to
 18 walk. There's a few documents that have been summarized
 19 that are used in the industry.
 20 Q. I'm going to ask you to turn to Tab 33 of the
 21 City's binder which is --
 22 (Whereupon the recording stopped.)
 23 EXAMINER VANCIL: The clock stopped at
 24 11:19 and we went to -- and I'm sorry I did not
 25 immediately make a note of when you caught -- what time it

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1 was when you caught --
 2 MR. SCHNEIDER: It was about 11:38.
 3 EXAMINER VANCIL: I think we're at about
 4 twenty minutes or so. So I want to make sure that
 5 that's -- that is reflected in your time.
 6 Okay. Thank you. We can proceed.
 7 Q. (By Mr. Kisielius) Okay. So, Mr. LeProwse, I
 8 think we were talking about the study in exhibit -- well,
 9 it's Tab 33. It's R16. And I believe you were concluding
 10 your summary of that.
 11 Does this -- does this document support your use
 12 of -- or your definition of the study area for purposes of
 13 the Parking Impact Analysis?
 14 A. Yes.
 15 Q. Okay.
 16 MR. KISIELIUS: In case it wasn't on the
 17 record, I'd ask to have that admitted as an exhibit. I
 18 believe it was, but I just wanted to make sure that the
 19 record --
 20 EXAMINER VANCIL: Mm-hmm. All of the
 21 exhibits have been admitted. So remind me the number that
 22 you're asking we've just confirmed for the record was?
 23 R15 and R16 are admitted in case that's not
 24 on the record.
 25 (Exhibit No. R16 Admitted)

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1 MR. KISIELIUS: Okay. Thank you.
 2 Q. (By Mr. Kisielius) Okay. So I'm going to ask
 3 you to explain again, how did you calculate parking supply
 4 and utilization? And I encourage you, if you need to, to
 5 refer to the Transportation Discipline -- or Parking
 6 Discipline Report in Exhibit R3.
 7 A. Okay. On Page 3-1 discusses the data collection
 8 that we used; so I'll go back to it again.
 9 So we got two studies from the City of Seattle
 10 SDOT had collected. They were doing, as part of their
 11 annual paid parking survey, for different regions of the
 12 City of Seattle. They had a Ballard core, kind of,
 13 parking area; so they were doing data collection for that
 14 area. And, then, we also got data from them about the
 15 Ballard off-street parking from 2014. So that was
 16 discussed both private and public available parking within
 17 the Ballard area. And then we supplemented that with our
 18 2017 BGT Missing Link Parking Study.
 19 So I'll refer us to, I think, Figure 3-1. I
 20 don't think we discussed that before. So Figure 3-1 on
 21 Page 3-3 discusses those study area, kind of which the
 22 different areas are; so I want to explain again.
 23 So the blue streets in the graphic were completed
 24 as part of the City of Seattle 2015 Ballard Core Paid
 25 Parking Study; so they were having data collection

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1 occurring in July of 2015. We also then supplemented that
 2 with all the green streets we had. We hired the same
 3 subconsultant to go out and collect supplied data on all
 4 the other streets in green within the study area to get
 5 all of the on-street. They also collected off-street
 6 lots.
 7 The 2014 Off-street Lot Study from SDOT had
 8 private and public, but not all of the public lots within
 9 the study area, so we had to supplement that as well; so
 10 that's include in our 2017.
 11 And then going back through. So the time periods
 12 originally in the draft environmental impact statement we
 13 supplied was identified and then we had utilization counts
 14 completed by the subconsultants. So they would go out and
 15 collect data on each hour of the day for our study areas.
 16 So our time periods that we used were 8:00 to 10:00 a.m.
 17 and 3:00 to 7:00 p.m. on a weekday, as far as the draft
 18 environmental impact statement. And then comments came up
 19 through the -- at the end of the draft -- during the
 20 draft -- after the submittal of the draft EIS Parking
 21 Discipline Report about additional times later in the
 22 evening on a weekday as well as weekend data. So we
 23 supplemented that data with new counts in February of 2017
 24 that extended that weekday time period from 8:00 to 10:00
 25 at night. And then on the weekend we did the same, 8:00

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<p>1 to 10:00 a.m., noon, and then 3:00 to 10:00 p.m. were 2 collected for utilization. All the summary data is 3 summarized in Chapter 4 on an hour-by hour basis, 4 block-by-block, kind of showing the utilization. 5 Q. Okay. Is it -- you had mentioned studies that 6 are a couple years old. Is that common and acceptable 7 industry practice to use parking data from studies that 8 are a couple years old? 9 A. Yes, it is common. 10 Q. And have you confirmed the studies counts with 11 more current data? More recent data? 12 A. Yes. We reviewed SDOT's Paid Parking Survey -- 13 Annual Paid Parking Survey for the Ballard Core in 2015, 14 and then a draft 2017 data. So we reviewed both of those 15 and the trends were very similar for the study area that 16 they have, which is identified on that figure. 17 Q. Okay. For purposes of the impact analysis, how 18 did you define an impact to parking? 19 A. In comparison to the total number of on-street 20 and off-streets based on the study area and the no-build 21 and build alternatives as compared as kind of the 22 identification of impacts as well as looking at the 23 utilization under the existing conditions and how much 24 excess supply was available. 25 In Chapter 4, after each of the hour-by-hour</p>	<p>1 unregulated parking that exists on Shilshole. 2 So it's -- so this was also described previously 3 in the two studies that were completed as for the previous 4 phases of this project. But unregulated parking is 5 unstriped areas of City and right-of-way that have 6 historically been used by private businesses for parking 7 and loading. This unpermitted parking is not demarcated 8 by the City. If regulated, it would be marked according 9 to City parking standards. Because the unorganized and 10 unregulated nature of most of the parking on Shilshole 11 Avenue, the occupancy of the parked vehicles depends on 12 the efficiency of the driver's parking on a particular 13 day. 14 So the interesting aspect of this, is as -- as -- 15 I can't say as I mentioned previously -- excuse me. As is 16 occurring out there is in some parallel parking, they're 17 parking three wide in some places along Shilshole in the 18 south side and there's storage of loading containers as 19 well as pallets and, kind of, freight that's parked along 20 there as well; so -- 21 Q. Okay. And did you include the unregulated spaces 22 in your count of the existing parking supply? 23 A. Yes. 24 Q. And, so, did you include them in the supply 25 that's available following construction of the</p>
Page 1116	Page 1118
<p>1 graphics, there's a rollup table that summarizes -- I 2 guess, let's go there. It might be easier for us if we 3 can see it in Chapter 4. 4 Table 4-5, so it's on Page 423. It summarizes 5 the parking supply, occupancy, utilization and available 6 unused parking on an hour-by-hour basis within the study 7 area. So the maximum utilization for on-street is 8 67 percent and we have a table earlier in there that kind 9 of shows paid versus unpaid, but this is a rollup of that, 10 and this includes the off-street in their own columns. 11 Q. So can you wind that back to how this relates to 12 the identification of what constitutes an impact? 13 A. So we identify impacts compared to the no-build 14 condition in Chapter 5 where you're looking at the amount 15 of loss and then you're using utilization. 16 If there was -- if everything was 100 percent 17 utilized, and you lost X number of parking spaces, that 18 could be identified as an impact, but there's excess 19 availability capacity as well as the loss is small. 20 Q. Okay. Let's talk about unregulated parking 21 spaces. 22 So, first, can you tell us what is an unregulated 23 parking spot? 24 A. Yes. I will go to the definition, which is on 25 Page 3-4, third paragraph down, kind of describes the</p>	<p>1 alternatives? 2 A. No. For the two build alternatives, the 3 Shilshole south and the preferred alternative, that 4 unregulated parking was -- a conservative analysis was 5 removed completely from the parking supply. 6 Q. And, again, is that because the project 7 physically occupied those unregulated parking spots? 8 A. No. It does not include all of the space that 9 would be available parking remaining between the trail and 10 the building, potentially. 11 Q. So, again, in theory, could some of those 12 unregulated spots remain following the construction of the 13 project? 14 A. Yes, they could remain. 15 Q. But you assumed they did not in your numbers? 16 A. Correct. 17 Q. And does that tend to overstate or understate the 18 potential loss? 19 A. Overstates. 20 Q. So I'm going to ask you some questions about 21 significant impacts. 22 Did the final EIS conclude the impacts to parking 23 are significant? 24 A. It did not. The parking would not be 25 significant.</p>

Page 1119	Page 1121
<p>1 Q. Why wouldn't it be significant?</p> <p>2 A. The loss of 82 to 344 spaces, which is roughly 2</p> <p>3 to 9 of the total on-street and off-street within the</p> <p>4 study area would not be considered significant.</p> <p>5 Q. Okay. I'm going to direct you to that page,</p> <p>6 6.1 -- excuse me -- Section 6.1, again. It's on Page</p> <p>7 6-11, I believe.</p> <p>8 A. 6-1, yes.</p> <p>9 Q. 6-1, sorry.</p> <p>10 So what do City planning documents say about the</p> <p>11 City's prioritization of modes of travel?</p> <p>12 A. So regular context, current City plans and</p> <p>13 policies prioritize transit and non-motorized over</p> <p>14 single-occupant vehicles. As well as, kind of, on curb</p> <p>15 space planning, they prefer and prioritize transit as well</p> <p>16 as loading zones over single-occupant vehicle parking.</p> <p>17 Q. And do those policies speak to replacement of</p> <p>18 parking supply?</p> <p>19 A. They do. CT 42 states that it's the City's</p> <p>20 general policy to replace short-term parking only when the</p> <p>21 project results in a concentrated and substantial amount</p> <p>22 of on-street parking loss. This project would not remove</p> <p>23 parking spaces in a concentrated and substantial manner.</p> <p>24 Q. Let me ask you, back to whether or not the loss</p> <p>25 of parking constitutes a significant impact. How does</p>	<p>1 Would there be parking located outside of the specific</p> <p>2 corridor -- replacement parking? Not replacement -- other</p> <p>3 alternative parking.</p> <p>4 Is there parking close by?</p> <p>5 A. Yes, there's parking close by.</p> <p>6 Q. And where?</p> <p>7 A. On the adjacent streets or perpendicular streets,</p> <p>8 as mentioned, within the, kind of, close proximity so</p> <p>9 you'd be able to walk that 1,200- to 1,600 feet if you</p> <p>10 needed to. There's closer parking also available, as</p> <p>11 well.</p> <p>12 Q. And that's in the vicinity of what -- what he</p> <p>13 called that concentrated --</p> <p>14 A. Correct.</p> <p>15 Q. -- area of parking loss?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Again, so the question of whether or not</p> <p>18 this impact, the loss of parking was disclosed in the EIS,</p> <p>19 is the loss of parking disclosed in the EIS and where?</p> <p>20 A. Yes, it is. On Figure 5-1 discusses the loss.</p> <p>21 Kind of shows it as well as the table discusses what the</p> <p>22 loss is. But the figure shows for the preferred</p> <p>23 alternative where the loss of parking is for that specific</p> <p>24 alternative. Similar figures were created for the other</p> <p>25 build alternative graph alignments.</p>
Page 1120	Page 1122
<p>1 that all fit into your assessment of whether it is a</p> <p>2 significant impact?</p> <p>3 A. So the policy's part is weighed in as well as</p> <p>4 the, kind of, available utilization as well as the total</p> <p>5 loss. All of those factor into the identification of the</p> <p>6 significance.</p> <p>7 Q. I think there was some testimony from Mr. Bishop</p> <p>8 about the nature of the impact and testimony that it would</p> <p>9 be concentrated in a -- what he called the south side of</p> <p>10 the project.</p> <p>11 Are you familiar with that testimony?</p> <p>12 A. I am familiar with his testimony.</p> <p>13 Q. In your opinion, why is that loss not a</p> <p>14 significant impact?</p> <p>15 A. It's not a significant impact because there's</p> <p>16 available parking on adjacent streets as well as</p> <p>17 perpendicular street in the study area. In addition, all</p> <p>18 the loss that's on the south side of Shilshole, there's</p> <p>19 other loss along the -- that's particular alternative</p> <p>20 along Market as well as Northwest 45th so it's kind of</p> <p>21 spread out along the entire segment.</p> <p>22 As it would be under any of the build</p> <p>23 alternatives, that specific segment is the alternative</p> <p>24 that loses parking for that, kind of, alternative.</p> <p>25 Q. And what about the location of parking spots?</p>	<p>1 Q. Can you use this figure to describe what you were</p> <p>2 just talking about a second ago about the proximity of</p> <p>3 other available parking outside of the specific corridor?</p> <p>4 A. Yes, I can.</p> <p>5 So the numbers listed in black kind of identify</p> <p>6 the quantity of supply on those adjacent streets; so you</p> <p>7 might be losing parking. So the numbers in red are kind</p> <p>8 of the loss of parking along the route and the numbers in</p> <p>9 black are the remaining parking supply for that specific</p> <p>10 street. So there is available -- you can see parking</p> <p>11 adjacent, a block over, not the entire length.</p> <p>12 I think we heard Mr. Kuznicki talk, yesterday,</p> <p>13 about the 12 -- excuse me. Two days ago -- of the 12- to</p> <p>14 1,600-foot walking distance. And it was mentioning people</p> <p>15 would have to walk the entire length of Shilshole looking</p> <p>16 for other parking. There's parking, kind of, one block</p> <p>17 over as shown here on the graphic.</p> <p>18 Q. So can you compare the percentage of parking</p> <p>19 supply that's lost with the current utilization of the</p> <p>20 supply?</p> <p>21 A. Yes, I can.</p> <p>22 Q. So you talked about the current utilization</p> <p>23 supply.</p> <p>24 A. Yes.</p> <p>25 Q. And then there's an amount that's lost under the</p>

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<p>1 different alternatives.</p> <p>2 How do those two compare?</p> <p>3 A. So in Chapter 4, which is existing conditions, we</p> <p>4 talk about the parking supply. I think we just talked</p> <p>5 about the -- I forget what the table was -- Table 4, that</p> <p>6 shows the remaining parking supply, excess supply that's</p> <p>7 not being utilized under each specific hour. So there's,</p> <p>8 at minimum, a thousand on-street parking spaces remaining.</p> <p>9 Here, we're losing 344 -- excuse me -- spaces</p> <p>10 along the entire route; so there would be adjacent supply</p> <p>11 that you can utilize on the adjacent streets.</p> <p>12 Q. Okay. And this analysis that you've been</p> <p>13 describing, is it consistent with your approach to Parking</p> <p>14 Impact Analysis in other projects?</p> <p>15 A. Yes, this is consistent.</p> <p>16 Q. Okay. I think there was some testimony from</p> <p>17 Mr. Kuznicki about the Parking Impact Analysis that was</p> <p>18 done for an earlier version of the project. We talked</p> <p>19 about the scope of the study area, specifically.</p> <p>20 Is the scope of that study area an accurate</p> <p>21 comparison, or a relevant comparison, to what the study</p> <p>22 area should be in this instance, in your opinion?</p> <p>23 A. I think I recall -- sorry. I'll ask you to ask</p> <p>24 it again.</p> <p>25 Q. Sure. Do you recall the testimony -- it's</p>	<p>1 utilization of loading zones, in a similar fashion, where</p> <p>2 they were collecting on-street parking, they counted when</p> <p>3 loading zones were being used.</p> <p>4 Q. Okay. How did you define an impact to a</p> <p>5 loading zone?</p> <p>6 A. Similar to the on-street parking and off-street</p> <p>7 parking, we compared the total number of loading zones</p> <p>8 that are -- currently exist and then would exist under</p> <p>9 no-build and compare that to the build alternative. So if</p> <p>10 there was a loss, we kind of identified that. That was</p> <p>11 how we determined the difference.</p> <p>12 Q. And what was the EIS's conclusion about the</p> <p>13 significance of the project's impact on loading zones?</p> <p>14 A. It would not -- it would not be significant.</p> <p>15 Q. Okay. And why?</p> <p>16 A. The total loss of loading zones, I think, between</p> <p>17 the alternatives range from zero and 24, between all of</p> <p>18 the alternatives. And that would not be significant as</p> <p>19 well as the City mitigation alternatives are identified.</p> <p>20 And the City could work, as I mentioned previously,</p> <p>21 policy -- loading zones are important to the City. A</p> <p>22 higher priority than regular parking; so they would look</p> <p>23 to try to move those loading zones to adjacent streets.</p> <p>24 Excuse me -- along the street, move it down the street if</p> <p>25 they could, across the street if they had to, or an</p>
Page 1124	Page 1126
<p>1 probably because I packed a lot into one question.</p> <p>2 Do you recall Mr. Kuznicki's testimony about the</p> <p>3 parking study that was done for an earlier version of this</p> <p>4 project?</p> <p>5 A. I do. And we referred and we looked -- we</p> <p>6 reviewed both of those studies that were done previously</p> <p>7 and they were very limited in nature and only showed part</p> <p>8 of the study area with a limited amount of utilization</p> <p>9 data completed.</p> <p>10 Q. And that's what I wanted to ask about. Why did</p> <p>11 it show only a portion of the study area that you looked</p> <p>12 at?</p> <p>13 A. It was just along their alignment as well as it</p> <p>14 wasn't the entire alignment. It was a smaller study area.</p> <p>15 And even in that, I think it only covered half of the</p> <p>16 study area of the ultimate alignment.</p> <p>17 Our study area includes all of the alternatives</p> <p>18 so we can do a comparison equally across all alternatives.</p> <p>19 Q. Okay. I'm going to ask you briefly, now, about</p> <p>20 some loading zone analysis.</p> <p>21 How did you calculate loading zone supply?</p> <p>22 A. So we got it from SDOT's Street Parking Inventory</p> <p>23 Sign, kind of, Database. And it gave us where the parking</p> <p>24 loading zone supply was.</p> <p>25 And when our subconsultants were out counting the</p>	<p>1 adjacent street if needed to.</p> <p>2 Q. There's been a lot of focus in some of the</p> <p>3 testimony on the preferred alternative and Shilshole,</p> <p>4 specifically. So I want to ask you about the conclusions</p> <p>5 about the impacts to loading zones on that preferred</p> <p>6 alternative.</p> <p>7 Do you recall what those were?</p> <p>8 A. I think so, yes.</p> <p>9 Q. Can you tell us?</p> <p>10 A. Oh, sorry.</p> <p>11 Q. Yeah.</p> <p>12 A. Yeah. The preferred alternative will lose four</p> <p>13 loading zones along the entire route. Zero of those will</p> <p>14 be along Shilshole. The four would be along Market.</p> <p>15 Q. Okay. So I don't know if you recall the -- or</p> <p>16 were you here for the videos that were shown? One of them</p> <p>17 showed a truck pulling into a spot parallel to the tracks?</p> <p>18 We can show it if you don't recall. I'm just trying to</p> <p>19 save time.</p> <p>20 A. Yes. Yes, I recall. It was at an angle -- not</p> <p>21 the oblique angle that we were talking about, but yes.</p> <p>22 Q. Is -- is that spot along Shilshole?</p> <p>23 A. Yes, on the south side of Shilshole.</p> <p>24 Q. Okay. And so why -- you said there were no</p> <p>25 loading spots at all. Why wasn't that included in your</p>

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1 analysis?

2 A. So in that unregulated nature of the south side

3 of Shilshole, there's no identified loading zones. It's

4 de -- not demarcated like the -- by the City, as we

5 mentioned. So, in addition, there's freight parked there.

6 There's kind of supplies that are parked there; so it's,

7 you know, kind of a free for all or as we've heard there's

8 no loading zones currently identified on the south side.

9 On the north side, there are loading zones identified and

10 those have been documented in the report.

11 Q. Okay. So there's -- in your review, did you

12 discover a loading zone approval for that -- for that

13 space?

14 A. No.

15 Q. And I'm going to ask you a couple questions just

16 to wrap up.

17 Have you heard anything in the opponent's

18 testimony that causes you to question any of the

19 conclusions or analysis in the portions of the final EIS

20 that you reviewed or worked on?

21 A. No.

22 Q. And do you believe that you used reasonable and

23 standard methods of your profession to assess and disclose

24 potential transportation and parking impacts in this

25 project?

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1 A. Yes, I do.

2 Q. And as the person responsible for reviewing the

3 transportation and parking -- providing the Parking Impact

4 Analysis, do you think that the EIS adequately disclosed

5 parking and traffic impacts?

6 A. Yes, I do.

7 Q. And do you think you that you addressed those

8 concerns raised by the opponents on those topics?

9 A. Yes, I do.

10 Q. Okay. I don't have any further questions for

11 you.

12 EXAMINER VANCIL: Mr. Cohen?

13 Mr. Schneider?

14 CROSS-EXAMINATION

15 BY MR. SCHNEIDER:

16 Q. Mr. LeProwse, did I pronounce it correctly?

17 A. LeProwse, yes.

18 Q. LeProwse, so the -s-e sound is still there?

19 A. Yup.

20 Q. You referred to the document which is R16

21 entitled "How Far Should Parkers Have To Walk."

22 I think you've got it.

23 A. Yes. Sorry. I didn't know. The R16 threw me

24 off, yes.

25 Q. So is that a document you used in preparing the

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1 EIS?

2 A. This is a document that I reviewed to determine

3 and identify the study area to help confirm our study area

4 identification.

5 Q. Well, did you do that before or after the Parking

6 Discipline Report was written?

7 A. Before.

8 Q. Okay. And, so, I -- I'm not very familiar with

9 this document, but I see in -- it talks about -- it has a

10 table on Page 30, which is 617 in the Bates number, about

11 level of service conditions A, B, C, and D?

12 A. Yes, I see it.

13 Q. And for an outdoor uncovered condition, level of

14 service A is parking within 400 feet.

15 Am I reading that correctly?

16 A. You are correct.

17 Q. And level of service B is 800 feet. We've heard

18 other testimony in this case about the City of Seattle

19 using an 800-foot radius for parking supply. Is that

20 accurate?

21 A. Could you rephrase the question?

22 Q. Is it accurate that the City uses an 800-foot

23 radius?

24 A. No, it is not accurate.

25 Q. Okay. So does the City -- what does the City use

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1 in terms of standards for a parking study, if it's not 800

2 feet?

3 A. As I mentioned, the City -- well, my

4 understanding of the way the City -- I can't speak for the

5 City, I guess, I'll say.

6 I mean, for the studies I've done for the City,

7 we've followed this similar process of looking at trip

8 purpose, topography, walking environment, as well as, kind

9 of, the available time.

10 These are -- what this document is trying to do

11 is make it a similar condition that people understand.

12 With traffic operations of identifying level of service,

13 there are different trip purposes. So if you're a retail

14 customer, you know, sometimes you might want to shoot for

15 the A or B.

16 If you're trying to be an attractive

17 business -- employee parking, I think, is summarized and

18 discussed in this document, where you're able to walk a

19 little further for employee parking of 1,200- to

20 1,600 feet. And then events is even further than that.

21 People will do events of half a mile to a mile depending

22 on the event.

23 And we have documented in this -- in our --

24 parking -- excuse me -- Parking Discipline Report that we

25 were not doing the, kind of, worse-case event weekend,

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1 Ballard Farmers Market.
 2 Q. Okay. Mr. LeProwse, you need to just respond to
 3 my question.
 4 A. Okay. All right.
 5 Q. And my question was about the City having
 6 standards. And did I understand you to say you don't know
 7 what they are?
 8 A. The City does not have a standard that I'm aware
 9 of.
 10 Q. Okay. And, so, you commended this document to
 11 us. The Parking Discipline Report doesn't give us any of
 12 these distances. It doesn't show us 400 feet or 800 feet
 13 or even 12- or 1,600 -- correct? -- from any of the
 14 alternatives?
 15 A. Can you rephrase your question so I can
 16 understand exactly what you're asking?
 17 Q. Does the Parking Discipline Report depict --
 18 let's talk -- let's focus our discussion on the preferred
 19 alternative.
 20 Does it show 400 feet from the preferred
 21 alternative?
 22 A. Graphically?
 23 Q. In any fashion.
 24 A. We identify what the study area is in the Parking
 25 Discipline Report. We don't graphically say we're 400,

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1 800, 1,200, 1,600, if that's your question.
 2 Q. Okay. And how -- how big is the study area, as
 3 you defined it, in terms of feet?
 4 A. I do not have the measurement, offhand.
 5 Q. So you can't tell us what the distance is from
 6 Shilshole to the outer edge of the parking area, as you
 7 defined it, in any direction?
 8 A. Depends on where you're asking on Shilshole.
 9 Q. Well, I'm asking anywhere.
 10 A. Yeah, I mean, I -- we have measured that. It's
 11 the 12- to 1,600 range depending on what part of angle
 12 you're at.
 13 As you can look -- I mean, up on Market Street,
 14 it's within 1,600 feet easy to 58th Street. And, then,
 15 Shilshole is kind of at an angle; so I'm -- I'm confused
 16 by your question, I guess, but --
 17 Q. I'm asking where a reader of your report is going
 18 to be able to determine what those distances are.
 19 A. We have a scale on the bottom corner of the
 20 graphic. I guess we didn't identify exact distances on
 21 the study area showing you every possible distance from
 22 Shilshole to -- or the other alternatives from that
 23 distance to each side of the study area.
 24 Q. So you talked about there being parking near
 25 Shilshole. Isn't all the parking off of Shilshole metered

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1 parking? The on-street parking?
 2 A. No, that's not true.
 3 Again, I -- I need a location. I mean, there is
 4 identified paid parking. So if you look at the graphics I
 5 can walk you to them. In Chapter 4 of existing conditions
 6 identifies what is paid parking by a symbol and versus
 7 what is free parking by another symbol.
 8 Q. Okay.
 9 A. So that would --
 10 Q. Take us to the specific --
 11 A. I'll take you to one just to orient us.
 12 Q. You need to let me finish.
 13 A. Yup.
 14 Q. Take us to the page you're referring to so we are
 15 not talking over one another for the record.
 16 So, again, just take us to the page, please.
 17 A. Figure 14, which is on Page 4-4.
 18 Q. Okay. So all of the solid lines are paid
 19 parking?
 20 A. Correct.
 21 Q. And the parking loss that Mr. Bishop documented
 22 on the north or -- excuse me -- on the south side of
 23 Shilshole, which -- I mean, your chart -- and I apologize
 24 for flipping, but your figure 5-1 shows all of the parking
 25 at the north end of Shilshole being removed; correct?

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1 Fifty spaces in that segment?
 2 A. Sorry. Let me go to 5-1 real quick.
 3 That -- that one is 50, yes.
 4 Q. Okay. Great. And if we look, then, back at
 5 Figure 4-2, it shows that all of the on-street parking, if
 6 you move away from Shilshole is paid parking in that
 7 northern stretch; correct?
 8 A. You have parking right across from you. The 38
 9 is --
 10 Q. I'm sorry?
 11 A. That 38 on the north side is still free. I mean,
 12 unpaid -- excuse me -- not free, but unpaid. There are
 13 other segments that are -- the one -- one block over
 14 for -- that would be paid, but, you know, the adjacent,
 15 opposite side of the street is unpaid.
 16 Q. And did you gather any data on how -- on who used
 17 these parking areas?
 18 A. Types of users or --
 19 Q. Yes.
 20 A. No.
 21 Q. Okay. So if the users of the 50 spaces that are
 22 lost in the portion of Shilshole are the blue collar
 23 workers of the sort that Salmon Bay employs, is it -- they
 24 would have to find -- I mean, they can't use paid street
 25 parking -- can they? -- because of the two or three hour

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1 limit. The truck drivers can't go feed a meter every
 2 couple of hours.
 3 A. I have no idea what their schedule is, if they
 4 can come back to the office and move or feed the meter.
 5 Q. Okay. So, given the fact that -- and you don't
 6 disagree -- I haven't heard any disagreement with the
 7 numbers in Mr. Bishop's one-page evaluation.
 8 Am I correct that you agree he's done his math
 9 correctly?
 10 A. Generally. We were a little different on one of
 11 the -- I guess it's the south side that our numbers were
 12 slightly different. But it's four or five, it doesn't
 13 matter, big picture-wise, of the south side versus the
 14 north side.
 15 Do we have that? Could I look at it really
 16 quick, again?
 17 Q. Sure.
 18 A. Is it in the --
 19 Q. It's in a different volume. It's Exhibit A1 --
 20 and I think it's the last page?
 21 A. I think I got it.
 22 Q. Yeah.
 23 A. Okay. Yes.
 24 Q. Okay. So Mr. Bishop calculated that 92 percent
 25 of the parking stalls on the south side of Shilshole would

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1 be lost and 18 percent on the north side for a total of
 2 66 percent; is that correct?
 3 A. For the most part. As I mentioned, I think our
 4 north side numbers were slightly different. The south
 5 side, I think, he, you know, read the graphics the same
 6 way I read the graphics.
 7 Q. Okay.
 8 A. So give or take a percentage here or there, it's
 9 roughly the same.
 10 Q. Okay. And then if -- within that give-or-take
 11 limit you just discussed --
 12 A. Mm-hmm.
 13 Q. -- then you would also agree that there's -- with
 14 his excess of supply overutilization being the negative
 15 numbers of 154 for the south side and 145 total?
 16 A. Yeah. With that plus or minus a little bit off.
 17 But, yes, the bottom of that table you're talking about?
 18 Yes.
 19 Q. Okay. And in terms of -- you're aware, are you
 20 not, that the Economic Discipline Report relied on your
 21 Parking Discipline Report for its conclusions? There
 22 wouldn't be any significant adverse impacts to the
 23 businesses along there?
 24 A. I'm not aware of what they did. I mean, I follow
 25 along, but I don't read every report.

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1 Q. Okay. But you're not -- you didn't do any --
 2 conduct any interviews with the businesses or with the
 3 using those parking spaces in order to determine what the
 4 actual impact upon the real people and businesses involved
 5 would be; correct?
 6 A. Not necessary -- I mean, I did talk to a few
 7 during the open house after the EIS where I talked to a
 8 few employee owners who were talking about how parking
 9 works for them and they were, you know, impacted by the
 10 conversion to paid parking. But then they liked that for
 11 the retail component of their business. But, you know, I
 12 understood the realism for their employees. So I have
 13 talked to a few of the people at the open houses, but I
 14 did not go out and conduct interviews.
 15 Q. Okay. And it's -- it's your opinion that the
 16 losses that Mr. Bishop quantified were there's a -- a need
 17 that exceeds the supply of 145 spaces does not -- would
 18 not constitute a concentrated and substantial loss of
 19 parking?
 20 A. Correct.
 21 Q. Now, you -- you referred to the report that
 22 Mr. Kuznicki testified to. That report is actually
 23 referred to in your document; correct?
 24 A. Yes.
 25 Q. As something you used?

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1 A. As something we reviewed. In starting, when we
 2 were coming up with our methodology, we reviewed and
 3 looked at previous parking studies for the area similar to
 4 what we were doing with SDOT and saying what available
 5 data is out there. So we reviewed his -- let's see -- I
 6 don't know if it's his, or -- I reviewed those two
 7 reports.
 8 Q. Okay. So you, again -- correct me if I misheard
 9 your testimony, but I understood in response to a fairly
 10 specific question from counsel that your conclusion that
 11 the impacts here are not significant because the loss to
 12 the total parking area is between 2 and 9 percent
 13 depending on the alternative?
 14 A. Correct.
 15 Q. And you would agree, would you not, that the
 16 numbers that Mr. Bishop has given us here, those numbers,
 17 those calculations, those percentages, those totals, are
 18 not to be found in your Parking Discipline Report?
 19 And by that, I mean, in order to come up with
 20 those numbers, Mr. Bishop had to go along and -- and add
 21 up all of the little numbers that you have -- it's
 22 actually Exhibit 5.1 where you got a little red number and
 23 a little black number along each segment. So in order to
 24 come up with these numbers, he had to go through street
 25 block by street block and do these calculations because

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<p>1 you didn't do them in the Parking Discipline Report.</p> <p>2 A. We did -- we did them in the Parking Discipline</p> <p>3 Report. In Table 5-3, on the previous page, right before</p> <p>4 this figure, talks about the total loss by that</p> <p>5 alternative. He came up with a specific study area he</p> <p>6 wanted to look at and he summarized it in that case just</p> <p>7 along Shilshole just along between Market and 45th, I</p> <p>8 think is what is clarified on the top. So he had to do</p> <p>9 the math for that specific study area.</p> <p>10 Our alternative is summarized right there in</p> <p>11 similar fashion. We summarized all of the build</p> <p>12 alternatives in the same way, showing the paid and unpaid</p> <p>13 parking as well as off-street loss.</p> <p>14 Q. And your table, 5.3, the difference being is for</p> <p>15 the entire study area as opposed for the Shilshole segment</p> <p>16 or the preferred alternative and its impact on Shilshole.</p> <p>17 Is that the distinction?</p> <p>18 A. That is his -- the way he did his math was just</p> <p>19 showing the north side and the south side which is, you</p> <p>20 know, that street, not the adjacent streets at all.</p> <p>21 Ours was for the entire study area, correct.</p> <p>22 Q. Okay. And -- and your conclusion, again, that</p> <p>23 it's not significant because it's a 2 to 9 percent loss is</p> <p>24 based on the entire study area; correct?</p> <p>25 A. That is correct.</p>	<p>1 A. I, again, disagree. I think you can have a large</p> <p>2 study area. If it has zero parking in areas, that would</p> <p>3 change that calculation; correct?</p> <p>4 Q. Okay. Let's talk about your study area.</p> <p>5 By making it extend all the way, for example, in</p> <p>6 the north to north of Northwest 58th Street, you -- the</p> <p>7 parking supply up there has nothing to do with the</p> <p>8 businesses along Shilshole.</p> <p>9 Isn't that a fair statement?</p> <p>10 A. Again, it depends on which alternative you're</p> <p>11 looking at. I mean, for businesses along Shilshole, I'm</p> <p>12 not positive exactly where they're parking. They could be</p> <p>13 parking in those neighborhoods. I -- I don't know where</p> <p>14 people are parking for different businesses.</p> <p>15 Q. So, again, you -- there was no inquiry into the</p> <p>16 specific effect on specific businesses?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. Excuse me just a moment, please.</p> <p>19 MR. SCHNEIDER: That's all I have.</p> <p>20 EXAMINER VANCIL: Anything further? I</p> <p>21 don't have any questions.</p> <p>22 MR. KISIELIUS: Oh, I -- I have just a</p> <p>23 couple -- a few clarifications based on Mr. Schneider's</p> <p>24 questions.</p> <p>25</p>
Page 1140	Page 1142
<p>1 Q. Okay. And isn't it fair to say the bigger the</p> <p>2 study area, the more insignificant the loss will be?</p> <p>3 A. Can you say that one more time for me to be sure</p> <p>4 I'm understanding?</p> <p>5 Q. Yeah. Isn't it fair to say that by defining the</p> <p>6 size of the study area, using your methodology, you're, in</p> <p>7 effect, predetermining the significance of an impact</p> <p>8 because if it's a big study area, the loss is going to be</p> <p>9 less significant than if it's a small study area?</p> <p>10 A. I don't think that's necessarily true. It</p> <p>11 depends on the amount of parking along that street. You</p> <p>12 know, if you're coming up with a hypothetical scenario of</p> <p>13 what this could look like in a different area, I'd have to</p> <p>14 look at the results to be able to make that analysis or</p> <p>15 conclusion.</p> <p>16 His analysis, Mr. Bishop's, is just along one</p> <p>17 street that is showing the impact to that street, not the</p> <p>18 impact. You have available adjacent parking one street</p> <p>19 over as well as perpendicular streets, as I've mentioned,</p> <p>20 kind of showing where they can go. So his is a very</p> <p>21 minute kind of just looking at the specific street which</p> <p>22 we've never done in any EIS that I've ever done.</p> <p>23 Q. But, again, my question was the bigger the study</p> <p>24 area, the less significant the impact.</p> <p>25 Isn't that a fair statement?</p>	<p>1 REDIRECT EXAMINATION</p> <p>2 BY MR. KISIELIUS:</p> <p>3 Q. Mr. LeProwse, I'd ask you to look at Figure</p> <p>4 again.</p> <p>5 A. Yes.</p> <p>6 Q. I want to make sure, because I think there was a</p> <p>7 back and forth between you and Mr. Schneider, and I want</p> <p>8 to make sure the record is clear.</p> <p>9 The area shown in red is the preferred</p> <p>10 alternative and appears to include parkings on both sides</p> <p>11 of the street. Can you tell us whether the preferred</p> <p>12 alternative will affect the -- how it will affect the</p> <p>13 parking that's shown on the north side of the street</p> <p>14 that's within the bounds of the preferred alternative?</p> <p>15 A. There will be some loss on the north side, as</p> <p>16 well.</p> <p>17 Q. Okay. How much?</p> <p>18 A. Only nine spots, it looks like, would be lost.</p> <p>19 Excuse me.</p> <p>20 Just on Shilshole or all the way on the north?</p> <p>21 Q. I'm -- right now, I'm just looking on the north</p> <p>22 side of Shilshole?</p> <p>23 A. Okay. So, yeah, 29 looks like -- if I'm doing my</p> <p>24 math correct.</p> <p>25 Q. And out of how -- can you talk about where we</p>

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<p>1 look to see the numbers that are on there?</p> <p>2 A. So the number on the right-hand side -- so the</p> <p>3 red is the loss and the black past the slash is what's</p> <p>4 remaining. So there would be 8; so we'd be losing 24</p> <p>5 spots around the north side. There would be 18 remaining</p> <p>6 on that block face.</p> <p>7 Q. So, for example, the north end of Shilshole where</p> <p>8 that number is in black in 38, that reflects 38 --</p> <p>9 A. -- remaining.</p> <p>10 Q. And are those paid or nonpaid parking?</p> <p>11 A. Nonpaid.</p> <p>12 Q. Okay. Now, I want to broaden beyond the specific</p> <p>13 confines of the area shown in the preferred alternative.</p> <p>14 All of those green stars throughout, just a</p> <p>15 couple blocks off of Shilshole going north, and you pick a</p> <p>16 location, what do those represent?</p> <p>17 A. Those are free parking.</p> <p>18 Q. Okay. So now going back to A1, which is</p> <p>19 Mr. Bishop's chart, Page 53 of A1 for the record.</p> <p>20 You were looking -- Mr. Schneider was asking you</p> <p>21 questions about the numbers that are there.</p> <p>22 A. Yes.</p> <p>23 Q. I want to focus on the percentages that he</p> <p>24 calculates.</p> <p>25 Do his percentages consider the spots that are</p>	<p>1 time from the appellants or from the parties, that would</p> <p>2 be helpful. If you discussed it, that's going to be</p> <p>3 easier.</p> <p>4 And, then, here's how I'm proposing on</p> <p>5 going forward with the problems that we're having with the</p> <p>6 technology. I've been informed that FTR, the provider,</p> <p>7 needs several hours to come in and work on this. The</p> <p>8 Hearing Examiner's Office has limited time for hearings.</p> <p>9 We've set aside today, tomorrow, and Tuesday.</p> <p>10 Going into -- after that, there's the</p> <p>11 University of Washington Master Plan, and we simply don't</p> <p>12 have time on the calendar simply to stop the hearing and</p> <p>13 wait till this problem is fixed. So what I'm proposing is</p> <p>14 that we proceed with the hearing. Continue with the risk</p> <p>15 that the clock is going to stop. We all maintain</p> <p>16 diligence to ensure that we catch ourselves and have to</p> <p>17 rehear.</p> <p>18 I will also make sure that we always do</p> <p>19 have a backup there. I still think even if we have it on</p> <p>20 a backup, I'd rather go back and recreate the record</p> <p>21 because I don't have full confidence in these to create a</p> <p>22 backup record. We'll do it for double diligence, but I</p> <p>23 think it's the best we can do.</p> <p>24 That's the method I'm proposing going</p> <p>25 forward. I wanted to inform counsel so that you're aware</p>
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<p>1 shown outside the areas in red on Figure 5-1?</p> <p>2 A. They do not.</p> <p>3 Q. Do you think it's appropriate to include, in the</p> <p>4 percentage of what's available, those spots that are shown</p> <p>5 outside of the areas marked in red?</p> <p>6 A. Yes. It would be appropriate.</p> <p>7 Q. Okay. And then one last question based on, I</p> <p>8 think, methodology that Mr. Schneider was asking.</p> <p>9 I just want to ask again: Is the approach that</p> <p>10 you used consistent with the approach that you've used in</p> <p>11 other EISs that compare alternatives such as this one?</p> <p>12 A. Yes.</p> <p>13 MR. KISIELIUS: I have no further</p> <p>14 questions.</p> <p>15 EXAMINER VANCIL: Mr. Cohen?</p> <p>16 MR. COHEN: Nothing. Thank you.</p> <p>17 EXAMINER VANCIL: Anything further?</p> <p>18 MR. SCHNEIDER: No.</p> <p>19 EXAMINER VANCIL: Thank you, Mr. LeProwse.</p> <p>20 THE WITNESS: Thank you.</p> <p>21 EXAMINER VANCIL: We only have seven</p> <p>22 minutes before I was going to take the break. So six,</p> <p>23 seven minutes, I think taking the break now would be good.</p> <p>24 Two things before we go. If, when we come</p> <p>25 back from the lunch break, I could have a proposed list of</p>	<p>1 of it. And if there's any concerns or other suggestions,</p> <p>2 I would take those at this time.</p> <p>3 MR. KISIELIUS: I -- I intend to try to</p> <p>4 keep a closer eye on that clock.</p> <p>5 EXAMINER VANCIL: Yeah. No, thank you</p> <p>6 Ms. Ferguson for the last one because that was -- when you</p> <p>7 get into 30 minutes or so it's really -- you know, a</p> <p>8 minute, it's inconvenient. 20 minutes is a real impact on</p> <p>9 a case. And I do apologize for that impact. And I</p> <p>10 appreciate your accommodation of it. I will keep working</p> <p>11 on it to the degree that we can, and I will see you all</p> <p>12 again at 1:45.</p> <p>13 Thank you.</p> <p>14 (Whereupon the midday recess was taken.)</p> <p>15 EXAMINER VANCIL: Okay. The City's next</p> <p>16 witness?</p> <p>17 MS. FERGUSON: You asked us to report back</p> <p>18 on time.</p> <p>19 EXAMINER VANCIL: Oh, yes, I'm sorry. We</p> <p>20 have some procedural items. I was jumping over that.</p> <p>21 MR. SCHNEIDER: Well, my understanding</p> <p>22 is -- and I invite corrections -- that we have gone</p> <p>23 through our best estimates of how long people will take</p> <p>24 and how long the cross and -- and direct will be and have</p> <p>25 concluded that it's highly likely we can get through all</p>

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<p>1 of the witnesses except for Mr. Mazzola by the end of day</p> <p>2 tomorrow.</p> <p>3 EXAMINER VANCIL: Mm-hmm.</p> <p>4 MR. SCHNEIDER: And, so, I think the</p> <p>5 expectation is, to the extent we're not done with him, the</p> <p>6 parties are agreeable to continuing that on Tuesday. And</p> <p>7 then whatever time is left over after that would be</p> <p>8 devoted to rebuttal.</p> <p>9 EXAMINER VANCIL: Okay.</p> <p>10 Any more from the City or?</p> <p>11 MR. KISIELIUS: Only I think when we were</p> <p>12 looking at the hours, I think if we're, maybe, overly</p> <p>13 optimistic that we might even be able to get through</p> <p>14 Mr. Mazzola tomorrow with the time remaining.</p> <p>15 EXAMINER VANCIL: Oh, okay.</p> <p>16 MR. KISIELIUS: So just in terms of the</p> <p>17 hours, and the way they've lined up, but we will -- we</p> <p>18 will try.</p> <p>19 MR. SCHNEIDER: Optimism is good.</p> <p>20 EXAMINER VANCIL: With that -- with that, I</p> <p>21 know that we had a commitment to dividing to time. The</p> <p>22 purpose of that commitment was to assure efficiency and</p> <p>23 not to overwhelm the record with exhibits and/or</p> <p>24 witnesses. And I -- that developed, I believe, in part</p> <p>25 due to preliminary exhibit lists from the appellants,</p>	<p>1 that the preference would be to have -- of our order of</p> <p>2 witnesses, to have Cascade's witness go last.</p> <p>3 EXAMINER VANCIL: Tomorrow?</p> <p>4 MR. KISIELIUS: Yeah. And so, again, I</p> <p>5 think we're just --</p> <p>6 MR. COHEN: Well, I think far more likely</p> <p>7 Tuesday, if we don't get through everybody tomorrow.</p> <p>8 EXAMINER VANCIL: Oh, okay. I'm -- I'm</p> <p>9 going to leave that to counsel. Whether it -- unless</p> <p>10 there's a dispute over why someone doesn't go at a certain</p> <p>11 time because they need a rebuttal witness there or</p> <p>12 something along those lines, I'm perfectly willing to have</p> <p>13 the parties manage that witness schedule.</p> <p>14 So, let's see. So we anticipate maybe</p> <p>15 getting through how many more today? We've got about half</p> <p>16 the day left.</p> <p>17 MR. KISIELIUS: The issue will be that if</p> <p>18 we're anticipating the next two will be, potentially, on</p> <p>19 the longer side of examining witnesses.</p> <p>20 EXAMINER VANCIL: Mm-hmm. So, potentially,</p> <p>21 two today with the second probably -- possibly going into</p> <p>22 tomorrow morning.</p> <p>23 MR. KISIELIUS: Correct.</p> <p>24 EXAMINER VANCIL: And then that would leave</p> <p>25 us with the -- maybe a couple more to get a couple, three</p>
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<p>1 which were broad in scope. They were, essentially,</p> <p>2 identifying everything they might use, not everything</p> <p>3 necessarily that they would use.</p> <p>4 And, so, it strikes me that we're going to</p> <p>5 move into normal hearing mode, as it were, as far as the</p> <p>6 time is, and not necessarily be trying to track minute by</p> <p>7 minute, but try to just get through the witnesses and use</p> <p>8 the time that we have.</p> <p>9 I -- how many -- let me ask: How many</p> <p>10 witnesses do we have so that I can have some sense of</p> <p>11 what -- what you mean when you think you can get through</p> <p>12 possibly only one remaining Tuesday?</p> <p>13 MR. KISIELIUS: The City has five remaining</p> <p>14 witnesses.</p> <p>15 EXAMINER VANCIL: Mm-hmm. Okay.</p> <p>16 MR. COHEN: Cascade has one.</p> <p>17 EXAMINER VANCIL: Okay. And of those five</p> <p>18 and one, how many of those are also direct for appellant?</p> <p>19 MR. SCHNEIDER: One or two? I -- we never</p> <p>20 discussed that but one for sure and maybe a little bit of</p> <p>21 direct for another one.</p> <p>22 EXAMINER VANCIL: Okay. So several. We're</p> <p>23 about halfway through the direct witnesses that -- that</p> <p>24 were joint direct witnesses?</p> <p>25 MR. KISIELIUS: And Mr. Cohen reminded me</p>	<p>1 more to get completed on Friday, and the remainder, then,</p> <p>2 on Tuesday.</p> <p>3 How -- so how I will approach this -- there</p> <p>4 is some loss to the -- to the appellants in this as we are</p> <p>5 cutting into what we set aside for rebuttal time on</p> <p>6 Tuesday. But what we'll do is simply proceed into that</p> <p>7 time unless, for some reason, we're looking at exceeding</p> <p>8 that whole day and not having any rebuttal, which doesn't</p> <p>9 sound like a problem, yet.</p> <p>10 We're just going to go ahead through the</p> <p>11 hearing. We'll keep an eye on this to make sure it's --</p> <p>12 it's working that way. But I'm not going to stop a clock</p> <p>13 until somebody, you know, you have only got so many more</p> <p>14 minutes left to do your cross, or something like that, for</p> <p>15 the witnesses for the next day and a half. I'm not -- I</p> <p>16 just don't have a -- a clock to go off of, at this point.</p> <p>17 Now, we're winging it because they've got one hour left</p> <p>18 and that's obviously not what's contemplated and that's</p> <p>19 not what's going to happen. And I think that's fine.</p> <p>20 We've done well and had a good, efficient hearing.</p> <p>21 So if everyone is clear on what we're</p> <p>22 doing, then we'll just go ahead and proceed. We'll go</p> <p>23 into Tuesday morning. Hopefully, that will get us to</p> <p>24 about midday and you'll have at least half a day left for</p> <p>25 rebuttal. Sounds like rebuttal is only for about four of</p>

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1 the City witnesses because others were your direct,
 2 anyway. So half the day -- you can handle rebuttal
 3 however you want. But if you called them on direct, I'm
 4 not necessarily expecting you to call somebody to rebuttal
 5 to them. I'm not going to stop you from doing that, but I
 6 would not have normally thought you would do that and,
 7 so --
 8 MR. SCHNEIDER: Well, I think we will be
 9 recalling one of our witnesses. But, so far, I think only
 10 one; so I don't think there's going to be a time issue
 11 with rebuttal.
 12 EXAMINER VANCIL: Excellent. All right.
 13 With that, then, let's proceed, then, to the City's next
 14 witness.
 15 MS. FERGUSON: The City calls Mark Johnson.
 16 EXAMINER VANCIL: Please state your name
 17 and spell your last name for the record.
 18 THE WITNESS: It's Mark Johnson,
 19 J-o-h-n-s-o-n.
 20 EXAMINER VANCIL: Do you swear or affirm
 21 that the testimony you'll provide in today's hearing is
 22 the truth?
 23 THE WITNESS: I do.
 24 EXAMINER VANCIL: Thank you.
 25

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1 MARK JOHNSON, having been called as a witness on behalf
 2 of Respondent after being first duly
 3 sworn, was examined and testified as
 4 follows:
 5
 6 DIRECT EXAMINATION
 7 BY MS. FERGUSON:
 8 Q. Good morning. Or good afternoon, Mark.
 9 Can you state your name and how you're employed?
 10 A. Yes, my name is Mark Johnson and I am an
 11 environmental consultant with the firm, Environmental
 12 Science Associates.
 13 Q. And can you describe your primary
 14 responsibilities at ESA?
 15 A. I am a Director of the Community Development
 16 Group for the Northwest which is -- my responsibilities
 17 include both managing projects as well as managing this
 18 group of planners that do environmental work.
 19 Q. And can you describe, for me, your educational
 20 and professional background?
 21 A. Yes. I have a degree in landscape architecture
 22 and received my license as a landscape architect in 1985.
 23 I have worked, since 1985, in planning and
 24 landscape architecture professionally to a certain degree,
 25 but primarily in urban planning and environmental
 planning. And that has included working for King County
 as a -- as a planning intern, as a landscape architect.

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1 When I was out of school for a few years, from 1990
 2 to 2000, I worked for the City of Seattle as a planner in
 3 the -- in Current Planning. And then I went into
 4 consulting and I've worked for two different consulting
 5 firms since 2000. The past eleven years, I've worked for
 6 ESA.
 7 Q. I'm going to hand you a copy of your résumé.
 8 MS. FERGUSON: I'd like to mark that as
 9 R17.
 10 EXAMINER VANCIL: Mm-hmm.
 11 Q. (By Ms. Ferguson) Mr. Johnson, can you tell me,
 12 is this an accurate representation of the experience you
 13 just shared with us?
 14 A. Yes.
 15 MS. FERGUSON: I'd like to move to have
 16 that admitted.
 17 MR. SCHNEIDER: No objection.
 18 EXAMINER VANCIL: R17 is admitted.
 19 (Exhibit No. R17 Admitted)
 20 Q. (By Ms. Ferguson) Can you briefly describe your
 21 prior experience working on preparing or reviewing EISs?
 22 A. Yes. I have worked on environmental impact
 23 statements since my time that I worked at the City of
 24 Seattle.
 25 During the ten years that I worked at the City, I

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1 worked on approximately ten environmental impact
 2 statements. In the way that -- that those were prepared,
 3 it was in a review role where I was -- a consultant was
 4 preparing an EIS and my job was to make sure that it was
 5 adequate for the City's purposes.
 6 And since 2000, I've worked as a project manager
 7 and also as a -- an analyst on, approximately, 20
 8 environmental impact statements. Twelve of those, I was a
 9 project manager. The others I was either a principal
 10 author or a principal reviewer.
 11 Q. And do you recall if those have been -- well, am
 12 I correct in understanding that some of those have been on
 13 behalf of the agency and some of them on behalf of an
 14 applicant?
 15 A. That's correct.
 16 Q. And have you also worked on projects undergoing
 17 NEPA review?
 18 A. Yes.
 19 Q. In the preparation of an EA?
 20 A. Yes.
 21 Q. And can you describe the differences between an
 22 EA and an EIS.
 23 A. So an EA, which stands for an environmental
 24 assessment, is prepared -- under NEPA is prepared when the
 25 agency does not anticipate that there would be a

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1 significant impact associated with a project but there --
 2 there may be some controversy about that -- that question.
 3 And, typically, an EA is prepared by developing the -- a
 4 project as -- as the design is being developed and
 5 focusing, eventually, in on a single alternative that is
 6 taken through the environmental assessment process. So
 7 there's a sort of a screening process and then the actual
 8 final product is focused on a single alternative.
 9 Whereas, an environmental impact statement is
 10 prepared when there are significant impacts that are
 11 anticipated and then there's a process by which
 12 alternatives are developed in order to explore ways of
 13 providing -- meeting the purpose and the need of the
 14 project with lesser environmental costs.
 15 Q. And do those differences impact the analysis of
 16 an EA versus an EIS?
 17 A. They do in that in afternoon EA, typically, is
 18 focused on just a single alternative and a no-action
 19 alternative, if you will. So there's a baseline and then
 20 there's the individual, as opposed to there's a comparison
 21 in an EIS. But, otherwise, the depth of analysis can be
 22 very similar.
 23 Q. And have you worked on EISs that did not identify
 24 any probable significant adverse environmental impacts?
 25 A. Yes.

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1 Q. Can you give me a couple examples?
 2 A. Well, I worked on the Mukilteo Ferry Project for
 3 WSDOT.
 4 I also worked on the -- as an analyst on the
 5 Central Link EIS, North Link Supplement -- Supplemental
 6 EIS. So that was a project that was broken up into
 7 several projects, and I worked on the -- the North Link
 8 segment as a -- as a principal author of the neighborhood
 9 section. But that EIS by Sound Transit was covering two
 10 segments from downtown -- downtown to Northgate, and we
 11 concluded there wouldn't be any significant impacts.
 12 Q. So, in your experience, is it unusual to not
 13 identify any significant impacts?
 14 A. In my experience, it's -- it is common for
 15 agencies that are -- an agency that's building a -- a
 16 project, to strive to eliminate the significant impacts
 17 through their design. And, so, on WSDOT projects and on
 18 Sound Transit projects, it's not unusual for them to
 19 continue to develop a design and make sure that they're --
 20 the design -- the level of impact that they're having is
 21 below a level of significance in their judgment; so I
 22 would say it's common in that regard.
 23 Among all the EISs that I've done, it's -- I
 24 would say, in many of them, did have significant impacts
 25 that were found as well; so --

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1 Q. Okay. And, so, let's move to this project, in
 2 particular.
 3 What was your role related to this project?
 4 A. So I -- I managed the preparation of this EIS.
 5 Q. And in that role, what were your
 6 responsibilities?
 7 A. Beginning with the formation of the team to
 8 prepare the EIS when -- when the City announced that it
 9 was interested in hiring someone to prepare this EIS, I
 10 was involved in finding a group of subconsultants to put
 11 together a team to be able to do -- do the analysis that
 12 would be necessary. And, then, once we were selected for
 13 that purpose, then I was involved in negotiating the scope
 14 with the City and ultimately in ensuring that the whole
 15 team was executing that scope through the process.
 16 Q. And were you also responsible for the Land Use
 17 chapter and Discipline Report?
 18 A. Yes.
 19 Q. You worked with other people?
 20 A. Yes, I did. Yes.
 21 Q. And then let's take a little step back.
 22 Can you describe how you generally approach
 23 conducting a land use analysis in an EIS? How do you get
 24 started?
 25 A. So the two components of developing analysis, one

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1 is just understanding what land uses are in the area where
 2 the project would be. And, so there's a, kind of,
 3 inventory process of looking at zoning and existing uses
 4 in the area. And then there's also looking at what the
 5 policies and plans are for that particular area to
 6 understand what are they -- what is the -- the City's
 7 vision and -- and goals for that particular area.
 8 Q. And then what do you do with that information?
 9 A. So the -- with regard to the use information, I
 10 mean, typically, what we do is try to map it out and
 11 understand what the -- what are the, sort of, adjacencies
 12 and try to understand how the project would interact with
 13 those land uses, if there was any degree of
 14 incompatibility of the project, and what was the nature of
 15 those -- that incompatibility. And then working with that
 16 through the lens of -- of the policies. We look to see
 17 whether or not the -- the project would be consistent or
 18 inconsistent with those plans and policies that the City
 19 had adopted.
 20 Q. And is it your understanding that a project must
 21 be consistent with all comp goals -- or comprehensive
 22 plans, goals, and policies?
 23 If I slip when I say "comp plan" I mean
 24 comprehensive plan.
 25 A. Yes. It's my understanding that it's -- it's

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1 common that a project won't be consistent with all
 2 policies and -- and plans.
 3 Q. Okay. Can I have you turn to Tab 3 in the City's
 4 notebook?
 5 A. Which is this?
 6 MS. FERGUSON: And I would ask to mark this
 7 as R18.
 8 Q. (By Ms. Ferguson) All right. And if you would
 9 turn to --
 10 EXAMINER VANCIL: This is just an excerpt;
 11 right?
 12 MS. FERGUSON: It is.
 13 EXAMINER VANCIL: Okay.
 14 MS. FERGUSON: Yes. It's marked at the
 15 bottom, COS00060.
 16 Q. (By Ms. Ferguson) Well, first, I should ask, are
 17 you familiar with what this document is?
 18 A. Yes.
 19 Q. Can you tell me what it is?
 20 A. Yes. This is the Seattle Comprehensive Plan that
 21 was adopted in 2016.
 22 Q. Okay. And then turning to page 060?
 23 A. Mm-hmm.
 24 Q. Can you read, for me --
 25 MR. BROWER: I'm sorry, which page?

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1 MS. FERGUSON: The City's No. 60.
 2 EXAMINER VANCIL: Are you referring to the
 3 Bates number?
 4 MS. FERGUSON: I am.
 5 MR. BROWER: Okay.
 6 Q. (By Ms. Ferguson) What I would like you to read
 7 is the last paragraph of that page.
 8 Actually, I would like you to start a little
 9 farther. What I'm trying to get a sense of is how the
 10 comprehensive plan is intended to work. And, so, if you
 11 see something on this page that you'd like to show me or
 12 point me to.
 13 A. So, really, the --
 14 Q. So let's start with the last paragraph on
 15 Page 60.
 16 A. Last paragraph. Some policies use the words
 17 shall, should, insure, encourage, and so forth. In
 18 general, such words describe the emphasis that the policy
 19 places on the actions but do not necessarily establish a
 20 specific legal duty to perform a particular act, to
 21 undertake a program or project, or to achieve a specific
 22 result.
 23 Q. And then can you go on and read the next page --
 24 or the next paragraph?
 25 A. Yes.

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1 Some policies may appear to conflict with each
 2 other, particularly in the context of a specific situation
 3 or when viewed from the perspectives of people whose
 4 interests may conflict with a given policy. A classic
 5 example is the often referenced conflict between policies
 6 calling for preservation of the environment and policies
 7 that promote economic development. Because planned
 8 policies do not exist in isolation and must be viewed in
 9 the context of all potentially relevant policies, it is
 10 largely implying these policies that the interests are
 11 reconciled and balanced by the legislative and executive
 12 branches of City government.
 13 Q. And is that the way that you tend to apply the
 14 comp plan policies and goals?
 15 A. That is the way I understand that they are to be
 16 applied, yes.
 17 Q. Okay. In looking at consistency with the
 18 comprehensive plan, is it always clear whether a goal is
 19 consistent? Are they written as requirements?
 20 A. They are -- as was stated, they aren't written as
 21 requirements and -- and I would say, it isn't always very
 22 clear whether something is consistent or isn't consistent.
 23 Q. If you find some ambiguity, how -- how do you
 24 deal with that? Do you err on the side of saying it's
 25 consistent or inconsistent?

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1 A. Because our purpose in doing this analysis is to
 2 alert the decision -- decision-makers to the possibility
 3 of some inconsistency, we err on the side of bringing it
 4 to light even if it's not a certainty that it would be
 5 inconsistent. But if there's some possibility, we try
 6 to -- to bring those things to light. So those are the
 7 policies that we tend to focus on.
 8 Q. And how does your analysis of the project's
 9 consistency or inconsistency with the comprehensive plan
 10 inform your decision whether a project will have probable
 11 significant adverse impacts? Is that a separate analysis
 12 or related?
 13 A. It is related in so far as the policies help us
 14 to understand what the City's priorities are. And, so, if
 15 a project would have an effect that was inconsistent
 16 with -- that was -- that would, in some way, adversely
 17 affect a priority or a preferred land use or a preferred
 18 direction of land use development, then that would be --
 19 that would figure into how -- how adverse we would
 20 consider the impact to be.
 21 Q. You just described your general approach to doing
 22 a land use analysis. Did you use that same approach
 23 related to this project?
 24 A. Yes.
 25 Q. And was there anything unique about your land use

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1 analysis for this project?
 2 A. The primary thing that was unique, for me, was
 3 this was the first time that I've done a land use analysis
 4 where a -- an economic analysis was part of that
 5 preparation of the -- of the -- the land use analysis or
 6 used for that purpose.
 7 Q. And the Coalition has raised some concerns about
 8 the project's consistency with the land use goals and
 9 policies.
 10 How did you go about identifying which plans to
 11 consider here?
 12 A. So we were charged with looking at all plans and
 13 policies that are applicable. So part of that was just
 14 identifying which documents were -- contained those plans
 15 and policies, and we compiled a list and then compared
 16 notes with the City to see if there were any others that
 17 we should be aware of, and we ultimately arrived at a list
 18 which is included in the EIS.
 19 Q. Can you point me to where that list is?
 20 A. Yeah, I can. If I can find --
 21 MS. FERGUSON: I'm just going to help
 22 everyone follow along with you. We're going to go to R3
 23 which are the appendices. This time it's Appendix F.
 24 THE WITNESS: Okay. So, I'm sorry, maybe I
 25 didn't understand the question. I thought you were asking

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1 me where the list of the -- the plans was.
 2 Q. Oh, let's start here. Let's start there.
 3 A. All right.
 4 Q. I was pointing to you to this specific policies
 5 document. So we're actually going to go to R1, Chapter 4.
 6 A. Correct. We're in Chapter 4 on Page 4-8. And
 7 continuing on to Page 4-9, there's a list of plans,
 8 policies, and regulations that apply to the study area.
 9 So these are the ones that we reviewed to look for plans
 10 and policies that we needed to evaluate in the EIS.
 11 Q. Okay.
 12 A. And then the ones that we actually included
 13 discussion of and analysis of are shown in the technical
 14 appendix.
 15 Q. Okay. And we'll get to that later; so --
 16 A. Okay.
 17 Q. Was there a new comprehensive plan that was
 18 adopted between the issuance of the draft EIS and the
 19 final EIS?
 20 A. Yes.
 21 Q. Let's just quickly go through and identify the
 22 documents in the City's binder. We'll turn you to Tab 4.
 23 MS. FERGUSON: And I would ask for this to
 24 be marked.
 25 Q. (By Ms. Ferguson) And, then, can you describe

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1 for me what that is?
 2 A. That is the transportation section of the newly
 3 adopted comprehensive plan.
 4 EXAMINER VANCIL: And that will be R19.
 5 Q. (By Ms. Ferguson) And Tab 5?
 6 A. That appears to be the Crown Hill/Ballard
 7 Policies.
 8 Q. And then Tab 6?
 9 EXAMINER VANCIL: And Tab 5 will be R20.
 10 THE WITNESS: And Tab 6 is the Ballard
 11 Interbay Northend Manufacturing and Industrial Center or
 12 BINMIC.
 13 EXAMINER VANCIL: And that will be R21.
 14 Q. (By Ms. Ferguson) And are those portions of the
 15 comprehensive plan that you relied on in your analysis?
 16 A. Yes.
 17 Q. Are those the only ones that you relied on?
 18 A. No. There are others that we also cite to.
 19 Q. Okay. And where would those be reflected?
 20 A. Those include some of the general growth strategy
 21 policies and some of the Parks and Recreation policies.
 22 Q. Would those be listed in the table in Appendix F
 23 to the EIS?
 24 A. Yes.
 25 Q. And how did you address the updates to the

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1 comprehensive plan?
 2 A. Well, in the draft EIS, we had an appendix like
 3 the one that's in the final EIS that listed out the
 4 policies that we were evaluating. And we looked at those
 5 policies, again, at the final EIS stage and basically
 6 looked for the corresponding policy in the new
 7 comprehensive plan.
 8 And in most cases, the policy was unchanged just
 9 except for possibly the numbering was different. In some
 10 cases, a word or two was different. And in a couple of
 11 cases, the policy was removed all together. So what we
 12 did in the Technical Appendix F for the final EIS is we
 13 created what we call a crosswalk that shows the -- the
 14 policy that we're -- that we looked at in 2005.
 15 Q. I'm going to interrupt you really fast so that we
 16 can catch up with you.
 17 A. Oh, yes.
 18 Q. And I think we are now, finally, going to
 19 Appendix F in R3.
 20 A. So that's on Page 27 of Appendix F.
 21 Q. It's towards the back.
 22 A. Oh, it's towards the -- towards the front.
 23 Q. Oh, towards the front?
 24 A. Yeah.
 25 EXAMINER VANCIL: Appendix F?

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1 THE WITNESS: Yes.
 2 EXAMINER VANCIL: Is there a -- do you have
 3 a contents page in there? What's its title?
 4 MS. FERGUSON: It should say Land Use.
 5 There you go.
 6 Q. (By Ms. Ferguson) And Page 27?
 7 A. Page 27, correct.
 8 Q. Can you -- is this what you were just describing?
 9 A. Yes.
 10 Q. Okay.
 11 A. So is -- I guess I'll -- shall we wait until
 12 everyone has gotten to the page there?
 13 Q. Looks like we're good.
 14 A. Okay. So on Page 27, just to illustrate here, we
 15 show Policy UVG 3 from the 2005 Comprehensive Plan and
 16 then the corresponding policy that we found in the 2016
 17 Comprehensive Plan which is numbered GS 1.7. And, so,
 18 what we found was that was the closest corresponding
 19 policy and we -- and it appeared to sort of serve the same
 20 purpose; so we put that.
 21 Then we -- we have a, sort of, general rating for
 22 each of the alternatives including the no-build and all
 23 the build alternatives of whether it's consistent or
 24 inconsistent. We also used the term "neutral"
 25 and "partially consistent" for some -- some of the

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1 policies.
 2 Q. Can you quickly describe for me -- I'm guessing
 3 the page that everyone is looking at has X's and O's?
 4 A. Correct. And at the bottom of each page there's
 5 some notes that explain those. The X means that the
 6 alternative is consistent with the goal and the O means
 7 that it's inconsistent with the goal.
 8 Q. And then you mentioned you also described some
 9 things as neutral.
 10 A. Yes.
 11 Q. Or partially consistent.
 12 A. Correct.
 13 Q. Can you describe what you meant by those two?
 14 A. Yes, so the -- if it's neutral, meaning it's
 15 neither supportive nor contrary to -- you know, one
 16 particular alternative, for example, might be neutral
 17 where another alternative might have some effect. So we
 18 would have included it because there was -- there were
 19 differences, but we're -- but there were some that were --
 20 there was some alternatives that were neither supportive
 21 nor contrary, and so we just put those in a neutral mode.
 22 Partially consistent, the distinction there would
 23 be that in some cases, a -- the alternative would be
 24 somewhat or, you know, would do some of what the policy
 25 was asking for but might also be, in part, contrary to the

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1 policy.
 2 Q. And did the new Comprehensive Plan change any of
 3 your conclusions about the impacts in this project?
 4 A. No, it did not.
 5 Q. And, in your opinion, does the EIS inform
 6 decision-makers about the consistency and inconsistency
 7 with the project?
 8 A. Yes.
 9 Q. There has been prior testimony regarding the
 10 maritime industrial nature of the project area.
 11 Can you describe what you did to consider that in
 12 your land use analysis?
 13 A. Yes. So the land use analysis has, in its The
 14 Effect to the Environment section, a description of the
 15 general land use setting and, of course, the -- this area
 16 is along the -- the waterway that leads to Salmon Bay
 17 that's been a part of the maritime industrial history of
 18 Seattle; so that background is provided. And there's a
 19 description there of -- of the kinds of industries that
 20 are present both along the waterfront as well as
 21 supportive businesses that may not be along the waterfront
 22 but they're part of that general maritime industry.
 23 Q. Could you point us to where, in the EIS, we might
 24 be able to find that?
 25 A. Oh, let's see. Which one do I got here?

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1 So we have a discussion beginning on Section 4.2.
 2 And, in particular, looking at -- well, I should actually
 3 say some of the background is in Section 4.1, some of that
 4 general background that I just described is -- is there.
 5 And then we get into more about the specific uses in
 6 Section 4.2.
 7 Q. Just do be clear, that's in the final EIS, which
 8 is Exhibit 1 -- R1.
 9 And are those -- is that the only place that you
 10 take into account this nature of the area or are those
 11 just examples of --
 12 A. Those are examples. And, as I said, we talk
 13 about that in The Effect of the Environment. And then as
 14 we get into the impacts, we talk a lot more specifically
 15 about the uses that are adjacent to the particular
 16 alternative that's being evaluated where the -- where the
 17 trail would be crossing alongside the -- the -- those
 18 particular uses.
 19 Q. And, in your analysis, did you take into account
 20 that Shilshole Avenue Northwest is a major truck street?
 21 A. Yes.
 22 Q. And how did that impact your analysis?
 23 A. The -- some of the policies that I was referring
 24 to earlier specifically talk about the importance of
 25 maintaining freight mobility and so on. And, so, part of

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1 our concern in terms of consistency is whether or not the
 2 project is going to adversely affect a major truck street
 3 and whether that's going to, therefore, be consistent or
 4 inconsistent with the policies.
 5 Q. And was that documented in the EIS?
 6 A. Yes.
 7 Q. Can you point us to where?
 8 A. So we have a discussion of the Freight Master
 9 Plan that's just under the general discussion of -- of
 10 impacts. Looking, first of all, into the no-build
 11 alternative on Page 4-14, we make reference to the
 12 importance of that street. And, then, for the build
 13 alternatives, we have a section that we referred to as
 14 impacts common to all build alternatives that has a
 15 discussion of effects on freight mobility that's found
 16 in -- on Page 4-18.
 17 And then when we get into actual -- each
 18 individual alternative, we have specific discussion about
 19 whether or not a project is -- or not a project, an
 20 alternative is on a major truck street or not and the
 21 effects.
 22 For the -- the actual impacts of those -- those
 23 facilities, we do refer to the transportation analysis
 24 that -- so we're not -- we're not reanalyzing the effects
 25 on the -- the transportation infrastructure in this

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1 section. But we're making reference to those -- those --
 2 those effects that are identified in other sections of the
 3 EIS.
 4 Q. And did you also consider the project's
 5 consistency with the City's shoreline goals and policies?
 6 A. Yes.
 7 Q. And did that include identifying any
 8 water-dependent or water-related uses?
 9 A. Yes.
 10 Q. And why does that matter?
 11 A. Well, both the -- the -- well, in the shoreline
 12 there is a clear preference for water-oriented uses
 13 specifically for water-dependent, water-related, and
 14 water-enjoyment uses. And the two categories that are of
 15 particular interest here are the water-related and
 16 water-dependent ones because those are called out not only
 17 in the shoreline as preferred uses but also in the BINMIC
 18 policies as being priorities.
 19 Q. And for purposes of your analysis, what's the
 20 difference between water-dependent and water-related?
 21 A. In this analysis, we did not draw a distinction
 22 although we do enumerate what the definitions are between
 23 them. But in terms of what we were looking at, we just
 24 considered them both priority uses, co-equal.
 25 Q. So would it matter for your analysis whether one

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1 was labeled dependent or related? When you -- did your
 2 analysis -- they were treated the same? Is that your
 3 understanding?
 4 A. Well, we would still call them out and show them
 5 on the maps --
 6 Q. Right.
 7 A. -- as such so one could see that they were
 8 priority uses and where they were present.
 9 Q. All right. And what conclusions did you draw
 10 about the impacts of the project to water-dependent uses?
 11 A. Well, first of all, the project does not displace
 12 any existing land uses. It's taking place entirely within
 13 the street right-of-way. But we did conclude that the
 14 project, you know, would have some adverse effects on some
 15 of the water-dependent uses that exist along --
 16 particularly along Shilshole Avenue.
 17 Q. Okay. So, more generally, did you identify any
 18 goals or policies that the project was inconsistent with?
 19 A. Yes.
 20 Q. Let's turn to the table you mentioned before; so
 21 that'll be R19.
 22 A. Okay.
 23 Q. And can you give us an example of the policy that
 24 you found to be inconsistent?
 25 EXAMINER VANCIL: Let me make sure that

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1 we're -- is this the --
 2 THE WITNESS: So we're back at Appendix F.
 3 MS. FERGUSON: R3.
 4 EXAMINER VANCIL: R3, Appendix F, Page 27,
 5 Table F-1?
 6 THE WITNESS: Yes, though we're going to go
 7 past Page 27, here.
 8 So, on Page 41, policy -- let me just get
 9 the new Comprehensive Plan number, Policy BIP15, which was
 10 unchanged from the 2005. That policy said, "Support
 11 commuting to work by BINMIC employees by bicycle and
 12 walking for safety and operational reasons; however,
 13 support locating recreational and commuter trails
 14 through -- commuter through-trails away from industrial
 15 areas."
 16 So in this case, we determined that the --
 17 the project -- well, that the no-build would be -- would
 18 not be consistent because it doesn't do the first part of
 19 the policy, but all of the other alternatives do involve
 20 placing the trail within the -- the BINMIC area. So we
 21 said the policy discourages through-trails in the BINMIC.
 22 Alternatives with less trail in the BINMIC would be more
 23 consistent with this policy than those with more trail in
 24 the BINMIC.
 25 Q. (By Ms. Ferguson) And did you identify other

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<p>1 goals or policies that the project was consistent with?</p> <p>2 A. Yes.</p> <p>3 Q. Can you give me an example of one?</p> <p>4 A. Sure. So maybe turning back to Page 38, for</p> <p>5 example, at the top of that page, Policy BIG8 said,</p> <p>6 "Maintain major truck routes to and within the BINMIC in</p> <p>7 good condition."</p> <p>8 And the -- we said both the no-build, which would</p> <p>9 basically leave things as they are, would -- would</p> <p>10 maintain major truck routes. And we also said that all of</p> <p>11 the build alternatives would maintain major truck routes.</p> <p>12 Q. And did you determine whether any of the</p> <p>13 alternatives analyzed in the EIS would be generally more</p> <p>14 or less consistent with the Comp Plan?</p> <p>15 A. Like -- you mean overall?</p> <p>16 Q. Yeah.</p> <p>17 A. I think we have a, sort of, summary. I don't</p> <p>18 remember the exact way that we did that at the end here.</p> <p>19 I feel like we had a -- help me to remind myself where --</p> <p>20 where -- what the -- where we had just a general summary</p> <p>21 in the -- I want to say it's in the executive summary that</p> <p>22 we have a, kind of, comparison table but I'm not sure if</p> <p>23 that's what you're referring to when you're talking</p> <p>24 about --</p> <p>25 Q. How did the consistency or inconsistency factor</p>	<p>1 in the context of a land use analysis for an EIS?</p> <p>2 A. So what we're concerned with in a land use</p> <p>3 analysis is whether or not there's going to be a change</p> <p>4 that's consistent or inconsistent with the -- the plans</p> <p>5 and policies for the cities. So we do look at what uses</p> <p>6 are present and also try to consider whether the --</p> <p>7 something about the project is going to cause those to --</p> <p>8 to change. But we're not -- we're looking at that in</p> <p>9 terms of if there's, like, such an incompatibility, say,</p> <p>10 for example, that a use that was a priority use could no</p> <p>11 longer be there. Then that would be -- we would consider</p> <p>12 that to be, you know, something that would be adverse to</p> <p>13 the policies and to the direction that the policy was --</p> <p>14 was going.</p> <p>15 Is that -- have I answered your question?</p> <p>16 Q. Yes, that was my question. Thank you.</p> <p>17 For purposes of this analysis, I think you've</p> <p>18 explained, but how did you define what a probable</p> <p>19 significant adverse impact would be?</p> <p>20 A. So we describe that in the beginning of the land</p> <p>21 use chapter. I just want to sort of -- I think probably</p> <p>22 the best way would be just to read it verbatim because we</p> <p>23 actually spent some time trying to be very precise about</p> <p>24 what we -- what our intent was going to be in terms of</p> <p>25 what would be a threshold that would be considered</p>
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<p>1 into your determination here about the significance of any</p> <p>2 potential impacts?</p> <p>3 A. So, again, because we were focused on whether or</p> <p>4 not the -- the impacts would be sufficient to change the</p> <p>5 land uses in the area -- to permanently change the land</p> <p>6 uses in the area, we -- we were looking at these as, you</p> <p>7 know, what -- whether the priority uses would be adversely</p> <p>8 effected and if -- and we considered a significant impact</p> <p>9 if there would be a permanent change to those that would</p> <p>10 result from the project. And, so, in that way, we</p> <p>11 determined that -- based on that, we determined that there</p> <p>12 wasn't likely to be any significant impact in this area.</p> <p>13 Q. And we're going to talk now a little bit about</p> <p>14 economics.</p> <p>15 Were you here for the testimony of Mr. Cohen?</p> <p>16 A. I think I was here for at least most of it. I</p> <p>17 don't know if I was here for all of it.</p> <p>18 Q. Okay. How do you typically use information</p> <p>19 regarding individual properties or businesses in the</p> <p>20 context of a land use analysis for an EIS?</p> <p>21 A. Well --</p> <p>22 EXAMINER VANCIL: I'm sorry. I didn't -- I</p> <p>23 didn't hear your question.</p> <p>24 Q. (By Ms. Ferguson) How do you typically use</p> <p>25 information regarding individual properties or businesses</p>	<p>1 significant.</p> <p>2 So I'm going to go to --</p> <p>3 Q. Can I direct you to the FEIS, 4-1?</p> <p>4 A. 4-1. Thank you.</p> <p>5 Q. And that would be Exhibit R1, Page 4-1.</p> <p>6 A. All right. So, I think it's the paragraph at the</p> <p>7 bottom of the page.</p> <p>8 And we said, "In this evaluation, an alternative</p> <p>9 is considered to have the potential for significant</p> <p>10 adverse impacts if it would likely cause the permanent</p> <p>11 loss of land uses that are priority such as</p> <p>12 water-dependent, water-related and industrial uses under</p> <p>13 adopted City policies."</p> <p>14 Q. And what --</p> <p>15 MR. SCHNEIDER: I apologize. I haven't</p> <p>16 caught up to the page.</p> <p>17 THE WITNESS: Oh, I'm sorry. We're on</p> <p>18 Page 4-1, and that was actually the last paragraph on the</p> <p>19 page, and I just started with the second sentence.</p> <p>20 MR. SCHNEIDER: Which begins how?</p> <p>21 THE WITNESS: "In this evaluation an</p> <p>22 alternative is considered..."</p> <p>23 MR. SCHNEIDER: Okay. Sorry. Thank you.</p> <p>24 THE WITNESS: That's all right.</p> <p>25 Q. (By Ms. Ferguson) And then why was that an</p>

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1 appropriate way to define significance in this context?
 2 A. Well, as I said, the -- the -- both the shoreline
 3 policies and the BINMIC policies have identified these
 4 priority uses. And what we were concerned about, from a
 5 land use perspective, is whether or not the -- the project
 6 was likely to be, as I said, so incompatible that it
 7 would -- I mean, that these priority uses would no longer
 8 be -- be able to persist or remain. And, so, that was --
 9 that was our threshold for what we thought would be a
 10 significant impact, recognizing that there could be lesser
 11 impacts that would still be impacts, but that was what we
 12 considered to be a significant impact.
 13 Q. And we've talked through your analysis
 14 determining the consistency and inconsistency with the
 15 Comprehensive Plan's goals and policies. What else did
 16 you rely on in coming to a conclusion about the impacts or
 17 in analyzing the land use impacts of this project?
 18 A. Sorry. I got lost in part of your question.
 19 Q. That was a long question.
 20 So moving on from looking at the Comprehensive
 21 Plan --
 22 A. Okay.
 23 Q. -- and policies, what else did you look at to
 24 analyze the land use impacts of this project?
 25 A. So, as I said, we took into account the uses that

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1 are present that we determined both by looking at data
 2 available from the assessor in terms of what uses are
 3 present as well as field observation of -- of the
 4 businesses there. And we took into account the
 5 transportation analysis and the Economic Considerations
 6 Report that was included as part of the EIS.
 7 Q. Did you also look at the parking analysis?
 8 A. Yes, we did. I'm sorry. That's -- lumped those
 9 two together.
 10 Q. No problem.
 11 And how did the Transportation Discipline Report
 12 inform your analysis?
 13 A. So the transportation analysis talks about
 14 effects on delays and coming and going from the
 15 businesses, the ways on the street from using the streets
 16 around the -- the project area, and also talks about
 17 loading and effects on loading docks. And then the
 18 parking analysis talks specifically about the loss of
 19 parking that would occur as a result of the project.
 20 Q. And how did the economics report inform your
 21 analysis?
 22 A. And the -- the economics analysis plays in in
 23 trying to understand whether or not the project is likely
 24 to affect the viability of the industrial area.
 25 We're -- we're concerned about whether this is

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1 going to have such an adverse effect that it would
 2 start -- you know, cause the unraveling of a -- of a
 3 important part of the -- the business community that --
 4 the industrial community in Seattle. And, so, the
 5 policies are focused on that; so we're interested in is
 6 there something that this project would do that would --
 7 would effect that viability of the -- of the businesses in
 8 the area.
 9 Q. And did the information in the transportation,
 10 parking, and economics report support your conclusions in
 11 the Land Use Report? Did they also conclude that there
 12 were no significant impacts?
 13 A. That is correct, yes.
 14 Q. And that informed your determination?
 15 A. Yes.
 16 Q. Okay. And did you have enough information about
 17 this project and the project design to be able to evaluate
 18 the potential land use impacts?
 19 A. Yes.
 20 Q. And for purpose of your analysis, what did you
 21 need to know?
 22 A. Well, what we needed to know largely is the
 23 alignment that the project would be along and what --
 24 which gives us the ability, then, to determine what are
 25 the adjacent uses that are being effected. And we needed

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1 to know enough about what the -- the sort of capacity of
 2 the -- the facility would be, what kinds of users are
 3 expected to be on, and that sort of thing; so -- but just
 4 in terms of design, the primary thing that we needed to
 5 know was its -- its location, sort of, on the surface,
 6 where it would be.
 7 Q. And did you determine that this project will
 8 change the land use designation of any property?
 9 A. No. It wouldn't change the land use designation
 10 of any property.
 11 Q. And absent any land use change, would there be
 12 any change based on incompatibility?
 13 A. We did not anticipate that there would be any
 14 change based on incompatibility.
 15 Q. Was there any reason to believe that the project
 16 is likely to cause blight in the area?
 17 A. Because we don't think that it would cause the
 18 adverse -- significantly adversely effect the vitality of
 19 the area, no, we don't think that there would cause any
 20 kind of blight.
 21 Q. And, in your opinion, does the EIS adequately
 22 disclose the potential land use impacts related to this
 23 project?
 24 A. Yes.
 25 MS. FERGUSON: No further questions.

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<p>1 EXAMINER VANCIL: Mr. Cohen?</p> <p>2 MR. COHEN: None. Thank you.</p> <p>3 EXAMINER VANCIL: Okay. Mr. Schneider, is</p> <p>4 this your witness?</p> <p>5 Thank you.</p> <p>6 CROSS-EXAMINATION</p> <p>7 BY MR. SCHNEIDER:</p> <p>8 Q. Mr. Johnson, you started out by talking about</p> <p>9 other EISs you've done. And you mentioned -- and correct</p> <p>10 me if I misstate anything you've said -- you mentioned a</p> <p>11 couple of EISs where you said there was a conclusion that</p> <p>12 there was no significant adverse environmental impact;</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. And are those cases where the EISs identified</p> <p>16 significant adverse environmental impacts but then</p> <p>17 concluded after analyzing proposed mitigation that the</p> <p>18 impacts could be reduced to a level that was less than</p> <p>19 significant?</p> <p>20 A. What I know -- and I'm not -- in either case, I</p> <p>21 was not managing either of those EISs, so I only know what</p> <p>22 was in, you know, the final published product. But there</p> <p>23 are no impacts that were identified as significant and</p> <p>24 therefore requiring mitigation and being able to be</p> <p>25 mitigated below a level of significance. They, literally,</p>	<p>1 Q. Okay. And is this the first transportation</p> <p>2 project for which you were the project manager?</p> <p>3 A. Yes. Yes, it is.</p> <p>4 Q. Okay. In this case, you knew, did you not, that</p> <p>5 the prior design that was the subject of Hearing Examiner</p> <p>6 Watanabe's decision had been at a 20 to 30 percent level</p> <p>7 design?</p> <p>8 A. I knew that the design had been advanced. I</p> <p>9 actually thought it was at a further level of design than</p> <p>10 that but when -- but I --</p> <p>11 Q. In fact, you were shown 90 percent designs,</p> <p>12 weren't you?</p> <p>13 A. Yes, I was.</p> <p>14 Q. Okay. But, here, it was SDOT, not you, that made</p> <p>15 the decision to use the 10 percent level of design?</p> <p>16 A. Well, I'll say the term, "10 percent level of</p> <p>17 design," was something that was used here to -- to sort of</p> <p>18 say we were gonna -- we were gonna take all the</p> <p>19 alternatives to a particular level that was going to be a</p> <p>20 relatively early conceptual level design.</p> <p>21 Q. And, in fact, in the final EIS, SDOT specifically</p> <p>22 referred to a 10 percent level of design, did it not?</p> <p>23 A. Yes.</p> <p>24 EXAMINER VANCIL: Do we know where that is</p> <p>25 in the EIS?</p>
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<p>1 do not identify any impacts as being significant.</p> <p>2 Q. Okay. You -- you described how, I think, in</p> <p>3 referring to EISs where the agency preparing the EIS is</p> <p>4 also the project proponent such as Sound Transit, or in</p> <p>5 this case, SDOT; that the agency typically strives to</p> <p>6 eliminate impacts by design?</p> <p>7 A. Correct.</p> <p>8 Q. And -- but don't they do that for -- Sound</p> <p>9 Transit, for example, don't they do that in the EIS by</p> <p>10 advancing the design of the preferred alternative to a</p> <p>11 level where that determination can be made?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And, so, that's why Sound Transit, as you</p> <p>14 know, takes its preferred alternatives to approximately a</p> <p>15 30 percent level of design; correct?</p> <p>16 A. It -- it takes -- they sometimes refer to that as</p> <p>17 a 30 percent level of design. Sometimes they prefer to --</p> <p>18 they refer to it simply as a preliminary engineering</p> <p>19 conceptual design.</p> <p>20 Q. Okay. But they take it to a level where the</p> <p>21 design is far enough along so that they can determine</p> <p>22 whether the impacts will be mitigated or not; is that</p> <p>23 fair?</p> <p>24 A. Yes. I will say they -- they still don't always</p> <p>25 have every detail of the mitigation designed.</p>	<p>1 MR. SCHNEIDER: Yes. It is in the response</p> <p>2 to the comment letter from the Ballard Coalition and we</p> <p>3 can provide a page number for that.</p> <p>4 Q. (By Mr. Schneider) You're -- isn't it fair to</p> <p>5 say, Mr. Johnson, that you were not informed by SDOT about</p> <p>6 the studies that had been presented to Hearing Examiner</p> <p>7 Watanabe about two-way cycle tracks being inherently</p> <p>8 dangerous?</p> <p>9 A. Correct. I was not informed by SDOT to that</p> <p>10 effect.</p> <p>11 Q. In fact, when the FEIS was published in this</p> <p>12 case, you were unaware of those studies; correct?</p> <p>13 MS. FERGUSON: Objection. That issue about</p> <p>14 cycle tracks has been dismissed.</p> <p>15 MR. SCHNEIDER: I'm talking about the</p> <p>16 studies that we've been talking about for this entire</p> <p>17 hearing.</p> <p>18 MS. FERGUSON: About this project?</p> <p>19 MR. SCHNEIDER: The studies that show that</p> <p>20 cycle tracks are two- to three times more dangerous. I</p> <p>21 asked the witness that he was unaware of those studies</p> <p>22 when the FEIS was published.</p> <p>23 MS. FERGUSON: Okay. Make sure the</p> <p>24 question is asking about this.</p> <p>25 THE WITNESS: To be -- to be clear --</p>

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<p>1 EXAMINER VANCIL: Withdrawing?</p> <p>2 MS. FERGUSON: I'll withdraw.</p> <p>3 THE WITNESS: -- the question that I</p> <p>4 thought I was answering was whether SDOT had made me aware</p> <p>5 of studies having to do with cycle tracks.</p> <p>6 Q. (By Mr. Schneider) Well, that was the earlier</p> <p>7 question. And then I think the question to which I got</p> <p>8 the objection, and this is the question I'd like you to</p> <p>9 answer --</p> <p>10 A. Yeah.</p> <p>11 Q. -- is: Isn't it true that when the FEIS was</p> <p>12 published, you were unaware of those studies? Of any</p> <p>13 study talking about the additional danger from cycle</p> <p>14 tracks -- two-way cycle tracks?</p> <p>15 A. I -- I -- to be honest with you, I'm not sure if</p> <p>16 I can say I was aware or unaware. I think -- because I</p> <p>17 can't really remember when I first heard about the</p> <p>18 existence of those kinds of studies.</p> <p>19 Q. Okay. And so -- I apologize. Did you have a</p> <p>20 chance to review your deposition before today?</p> <p>21 A. Yes.</p> <p>22 Q. And do you recall me asking you this question in</p> <p>23 your deposition?</p> <p>24 A. I feel like it's a slightly different question;</p> <p>25 so maybe you can refresh my memory here.</p>	<p>1 you got?</p> <p>2 THE WITNESS: Oh, boy.</p> <p>3 Q. (By Mr. Schneider) So I'd like to direct your</p> <p>4 attention to the bottom of Page 68.</p> <p>5 A. Okay.</p> <p>6 Q. The last question on that page that I asked you.</p> <p>7 A. Yes.</p> <p>8 Q. So you want to read that over and see if it</p> <p>9 refreshes your recollection?</p> <p>10 A. So the question -- so I have looked it over.</p> <p>11 Q. Okay. And is -- is your memory today different</p> <p>12 then at the time you -- that we did your deposition?</p> <p>13 Why don't -- why don't I read the question asked</p> <p>14 and you can answer.</p> <p>15 A. You know, I -- I'm gonna -- maybe I can clarify</p> <p>16 my -- so, I do remember this question. And maybe if you</p> <p>17 want to restate the question, that would be good.</p> <p>18 Q. Okay. The question was: Are you aware,</p> <p>19 Mr. Johnson, of the literature that describes how two-way</p> <p>20 cycle facilities are more hazardous than both other kinds</p> <p>21 of facilities and riding on streets?</p> <p>22 A. And, so, as of today, I am aware of that --</p> <p>23 Q. Right.</p> <p>24 A. -- literature.</p> <p>25 Q. But do you want to read your answer?</p>
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<p>1 Q. Okay.</p> <p>2 MR. SCHNEIDER: So, Mr. Examiner, I think</p> <p>3 we've foregone the formality of publishing the deposition</p> <p>4 transcripts. Can I -- should I do that or can we just use</p> <p>5 it?</p> <p>6 EXAMINER VANCIL: We've already popped one</p> <p>7 open. I think that's what we did earlier, but I do leave</p> <p>8 that to the discretion of counsel how you want to address</p> <p>9 that.</p> <p>10 MR. SCHNEIDER: Okay.</p> <p>11 Q. (By Mr. Schneider) So there's a copy of your</p> <p>12 deposition.</p> <p>13 A. All right. Thank you.</p> <p>14 EXAMINER VANCIL: They're not being</p> <p>15 introduced into the record; is that right? I haven't</p> <p>16 gotten any. I mean, if you have to change all of a</p> <p>17 sudden, but so far nobody's been introducing depositions.</p> <p>18 MR. SCHNEIDER: And I don't -- I don't</p> <p>19 expect that to be necessary here. I just want to refresh</p> <p>20 the witness's recollection.</p> <p>21 EXAMINER VANCIL: Okay.</p> <p>22 THE WITNESS: So I don't know. Do I just</p> <p>23 rip this open? I've never had to do this before. It's</p> <p>24 like Christmas. Okay.</p> <p>25 EXAMINER VANCIL: Are you happy with what</p>	<p>1 A. What -- but my answer at the time, and I would</p> <p>2 say that is correct. My answer, at the time, was, "No,</p> <p>3 I'm not."</p> <p>4 Q. Okay.</p> <p>5 A. At the time of the deposition.</p> <p>6 Q. And, so, the question I asked you is when the</p> <p>7 FEIS was published, which was before your deposition.</p> <p>8 A. Yes.</p> <p>9 Q. A considerable amount of time.</p> <p>10 A. Right.</p> <p>11 Q. You, then, also were unaware; correct?</p> <p>12 A. Yes, this is correct. Right.</p> <p>13 Q. Okay. And the reason you're aware of those</p> <p>14 studies today is because you've been participating in this</p> <p>15 hearing and preparing for it?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Oh, okay. So in response to the Hearing</p> <p>18 Examiner's question about the 10 percent level of design,</p> <p>19 it's in Volume 2 of the FEIS.</p> <p>20 MR. SCHNEIDER: Is that part of the record</p> <p>21 yet?</p> <p>22 EXAMINER VANCIL: It's Exhibit R2.</p> <p>23 MR. SCHNEIDER: Okay.</p> <p>24 EXAMINER VANCIL: Mm-hmm.</p> <p>25 Q. (By Mr. Schneider) Then the statement about 10</p>

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<p>1 percent level of design, specifically, approximately 10</p> <p>2 percent level of design for each of the build alternatives</p> <p>3 is on Volume 2, Page 26 of the -- of Volume 2. And in</p> <p>4 terms of the red numbering, it's Page 034. And it's in</p> <p>5 the right-hand column, the second paragraph.</p> <p>6 MR. KISIELIUS: And Mr. Examiner, just to</p> <p>7 be clear, your version won't have the red numbering.</p> <p>8 EXAMINER VANCIL: Right.</p> <p>9 MR. KISIELIUS: You'll just have the</p> <p>10 original numbering.</p> <p>11 EXAMINER VANCIL: I see it.</p> <p>12 Q. (By Mr. Schneider) Now, Mr. Johnson, isn't it</p> <p>13 correct that the conclusions that you reached in your Land</p> <p>14 Use Report depend on the analysis and conclusions in the</p> <p>15 Traffic Discipline Report and the Parking Discipline</p> <p>16 Report and the Economic Considerations Report?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. So if, for example, there are significant</p> <p>19 traffic hazards that cannot be mitigated, that change in</p> <p>20 the Transportation Discipline Report could lead to a</p> <p>21 change in your Land Use Report; correct?</p> <p>22 A. It could if they were of a nature that would end</p> <p>23 up changing the land use.</p> <p>24 Q. Right. And you've talked quite a bit this</p> <p>25 afternoon about how the -- how you did not anticipate, in</p>	<p>1 Q. (By Mr. Schneider) It -- isn't it fair that</p> <p>2 the -- let me break the question apart. It was compound.</p> <p>3 EXAMINER VANCIL: That was the only problem</p> <p>4 I had with it. Make it simpler for him.</p> <p>5 Q. (By Mr. Schneider) For all our sakes, isn't it</p> <p>6 true that the first draft of the Economic Discipline</p> <p>7 Report provided more information to readers and,</p> <p>8 therefore, to decision-makers?</p> <p>9 A. There was more analysis that was done. Whether</p> <p>10 or not that was information that was reliable was part of</p> <p>11 what we were dealing with when we were looking at that</p> <p>12 draft and reviewing that draft.</p> <p>13 Q. So you agree that the first draft provided more</p> <p>14 information?</p> <p>15 A. It had -- yes, it had tables that were not</p> <p>16 present in the final draft.</p> <p>17 Q. Okay. And it has more analysis in the terms of</p> <p>18 quantification of impacts; correct?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And that information that was in the</p> <p>21 initial draft of the Economics Consideration Report was</p> <p>22 removed at the direction of SDOT; correct?</p> <p>23 A. It was removed when we discussed, as a team,</p> <p>24 whether or not it was supportable analysis.</p> <p>25 Q. It was SDOT that made this decision, not you;</p>
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<p>1 the report, any changes in land use; correct?</p> <p>2 A. Correct.</p> <p>3 Q. And that, again, in part, depends on the</p> <p>4 conclusions in the Economic Discipline Report that there</p> <p>5 are not going to be significant economic impacts; correct?</p> <p>6 A. Correct.</p> <p>7 Q. And you're -- you're aware that there were</p> <p>8 multiple drafts of the Economic Discipline Report?</p> <p>9 A. Yes.</p> <p>10 Q. And the initial first draft that was prepared by</p> <p>11 Mr. Shook did discuss significant adverse impacts and at</p> <p>12 least the potential for them and did quantify impacts and</p> <p>13 did provide more information --</p> <p>14 MS. FERGUSON: Objection; testifying.</p> <p>15 MR. SCHNEIDER: I'm sorry?</p> <p>16 MS. FERGUSON: I think you're testifying</p> <p>17 instead of answering your -- you're asking a question. If</p> <p>18 you want to ask him to make some assumptions that those</p> <p>19 things are true, that's fine. But if you're going to tell</p> <p>20 him that those things are true, I object.</p> <p>21 MR. SCHNEIDER: It's cross-examination and</p> <p>22 I think I can ask a question and ask whether he agrees</p> <p>23 with it or not.</p> <p>24 EXAMINER VANCIL: I'll overrule that and</p> <p>25 allow the question.</p>	<p>1 correct?</p> <p>2 A. I -- I would say that when we -- once we</p> <p>3 discussed -- discussed it with ECONorthwest, it was</p> <p>4 actually ECONorthwest that said we will take that out.</p> <p>5 Q. Okay. Sorry, Mr. Johnson. Could you turn to</p> <p>6 Page 102 of your transcript. And I'm going to read the</p> <p>7 first question on the page and ask you to read the answer</p> <p>8 that you gave.</p> <p>9 A. Okay.</p> <p>10 Q. Question: So the removal of information, the</p> <p>11 removal of the qualification and all that, that was at</p> <p>12 Mr. Mazzola's direction?</p> <p>13 A. Can you help me? I'm sorry. I didn't find the</p> <p>14 place.</p> <p>15 Q. Right at the top of the page.</p> <p>16 A. Oh, right at the top. Okay.</p> <p>17 Q. You want me to read the question again?</p> <p>18 A. Uh-huh.</p> <p>19 Q. So the removal of information, the removal of the</p> <p>20 qualification and all that, that was at Mr. Mazzola's</p> <p>21 direction?</p> <p>22 Answer?</p> <p>23 A. And the answer was: That's my recollection. I</p> <p>24 will say we had -- there was a project manager, Ron Sharf,</p> <p>25 that was involved and I can't remember exactly where this</p>

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1 falls in relation to when he was or became unavailable and
 2 wasn't involved in the project for the remainder.
 3 So I don't remember if he was in the discussion
 4 or not or whether it was solely Mark because there was
 5 some time in that -- in there that that occurred. I just
 6 don't remember the timing.
 7 Q. And both Ron Sharf and Mr. Mazzola are SDOT;
 8 correct?
 9 A. Correct.
 10 Q. And they were the people to whom you reported?
 11 A. Correct.
 12 Q. And, so, it was at the direction of Mr. Mazzola
 13 that the first draft of the Economic Discipline Report
 14 remove that additional information and analysis?
 15 A. I can agree with that, as I said, to the extent
 16 that it was a discussion about whether or not it was a
 17 supportable analysis.
 18 Q. So how is an EIS supposed to be used once it's
 19 completed?
 20 A. The decision-maker is supposed to take into
 21 account the conclusions that are found in the EIS in
 22 deciding whether to go forward with the project and what
 23 sort of measures that should be included to minimize
 24 impacts on the environment.
 25 Q. So --

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1 EXAMINER VANCIL: Mr. Schneider, can I ask
 2 you -- occasionally, you're sitting back to ask the
 3 question, that's fine. But if I could move the microphone
 4 to about where your sticky notepad of blue is, then I'll
 5 be sure to get those questions as well.
 6 MR. SCHNEIDER: Thank you. Sorry.
 7 EXAMINER VANCIL: All good. Mm-hmm.
 8 Q. (By Mr. Schneider) Is it fair to say that the
 9 decision-maker, after being informed by an EIS, after
 10 actually reading it and being informed, then makes a
 11 policy decision where other factors can be taken into
 12 account?
 13 A. Yes.
 14 Q. Okay. And you had a discussion of the applicable
 15 City policies in your EIS; correct?
 16 A. Correct.
 17 Q. But that discussion, again, depends upon the
 18 conclusion which is derived from the other reports we've
 19 been talking about that there isn't going to be any of the
 20 water-dependent maritime industrial businesses being put
 21 out of business; correct?
 22 A. I'm not sure I completely understand.
 23 Q. It was a terrible question.
 24 So it's fair to say that your report concludes,
 25 in providing the policy discussion to the decision-maker,

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1 that there is not going to be any change of land use;
 2 correct?
 3 A. We did conclude that, yes.
 4 Q. And, so, none of the maritime industrial
 5 businesses are going to be significantly adversely
 6 effected; correct?
 7 A. That's what we determined, yes.
 8 Q. Yeah. So that determination, again, depends on
 9 the Economic Considerations Report and on the traffic
 10 safety analysis, does it not?
 11 A. Yes. As I answered earlier, yes.
 12 Q. And, similarly, we heard testimony yesterday that
 13 the changes to the railroad will not involve removal of
 14 track that is used by the railroad. If that is, in fact,
 15 incorrect, that would also affect the analysis of impacts
 16 on existing uses, would it not?
 17 A. Yes. If we have incorrect information about
 18 whether or not tracks will be removed that are, you know,
 19 still in use for something, that could change a
 20 conclusion.
 21 MR. SCHNEIDER: Thank you, Mr. Johnson.
 22 That's all I have.
 23 EXAMINER VANCIL: Mr. Johnson, I just have
 24 a few questions for you.
 25 THE WITNESS: Okay.

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1 EXAMINER VANCIL: Just need to get to the
 2 materials.
 3 What is the standard for showing a
 4 significant negative land use impact that's caused or
 5 influenced by economic considerations, in this case? I
 6 heard Ms. Ferguson, for example, refer to blight. And
 7 that's a concept I'm familiar with, under SEPA, is that if
 8 you -- if -- if the studies show that there's going to be
 9 blight to an area, then there's a land use impact that's
 10 caused by economic factors.
 11 Is -- is that the threshold standard that
 12 you're looking for? Does the business have to go away
 13 completely to show an economic impact that's influencing
 14 land use or is it something less than that?
 15 THE WITNESS: So in this instance, we
 16 talked about whether or not we would use the threshold of
 17 causing economic or industrial blight, you know, in other
 18 words if -- if that -- it would have to go that far in
 19 order for it to be a significant impact. And -- and what
 20 we landed on was the -- the language that we set in the --
 21 in that -- that was the part that I read from Page 4-1
 22 where we actually made -- made that threshold a bit higher
 23 for what -- this analysis because we said that there were
 24 priority uses here.
 25 EXAMINER VANCIL: Or lower maybe?

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1 THE WITNESS: Right. In other words, that
 2 you didn't -- it didn't have to cause the entire
 3 industrial area to go blank, you know, go out of business
 4 for it to be a significant impact, that we considered if
 5 it was going to cause the -- the -- a -- to be very, you
 6 know, clear about it, if it would likely cause the
 7 permanent loss of land uses that are a priority, that's
 8 what we considered to be -- so we were trying to
 9 articulate a threshold that was specific for this context.
 10 EXAMINER VANCIL: What's the difference
 11 between a permanent -- and I don't want to misstate, but
 12 I'm not sure I got the exact vocabulary -- permanent
 13 change in the -- in the land use as opposed to blight.
 14 Blight, I -- I get it.
 15 THE WITNESS: So --
 16 EXAMINER VANCIL: It's ugly. It's empty.
 17 There's nothing there.
 18 THE WITNESS: It's the emptiness --
 19 EXAMINER VANCIL: Mm-hmm.
 20 THE WITNESS: -- I think is part of the --
 21 the issue --
 22 EXAMINER VANCIL: Mm-hmm.
 23 THE WITNESS: -- here. That blight is --
 24 means it goes away and there's just -- you've got nothing
 25 left.

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1 EXAMINER VANCIL: Mm-hmm.
 2 THE WITNESS: What we were saying is, you
 3 know, if this were to cause, you know, cascading of, like,
 4 different kinds of uses, if it was -- different uses were
 5 gonna displace something, or, you know -- so if -- or
 6 water-dependent uses couldn't use the place anymore and
 7 so, you had to have some other kind of use there because
 8 it was no longer viable to have water-dependent uses. You
 9 might still have something else, but we would consider
 10 that to be a significant adverse impact if you couldn't
 11 have water-dependent uses there anymore.
 12 See the difference?
 13 EXAMINER VANCIL: Yes. Yes.
 14 And within that envelope, is it -- is it --
 15 it seems as though -- so tell me if this is correct or
 16 not. If a business or several businesses went out of
 17 business, that would not necessarily meet that threshold?
 18 Or would it?
 19 THE WITNESS: An individual business?
 20 EXAMINER VANCIL: Mm-hmm.
 21 THE WITNESS: I'm not sure but we --
 22 whether it -- I would think that you would have to be
 23 certain that it wasn't going to be replaced by another,
 24 you know, water-dependent, water-related use.
 25 EXAMINER VANCIL: Mm-hmm.

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1 THE WITNESS: So I guess what -- what --
 2 the way, you know, I was thinking of it in terms of
 3 this -- this threshold is that there is something inherent
 4 where the preferred priority uses couldn't come back.
 5 EXAMINER VANCIL: Mm-hmm.
 6 THE WITNESS: So if it was just one
 7 business and it was -- but it was no way that that
 8 water -- you could have another water-dependent use there,
 9 perhaps it would be a significant impact.
 10 EXAMINER VANCIL: Mm-hmm.
 11 THE WITNESS: And that, to me -- that
 12 was -- I mean, we were trying to articulate here, I have
 13 to say, what these policies were stating, you know, and
 14 this was our best estimate at trying to get at that. So
 15 this was -- as I said, this was done in collaboration with
 16 the City and looking at the policies and, sort of, to set
 17 this -- this threshold. This wasn't something that we
 18 could go look up in a book.
 19 EXAMINER VANCIL: Okay. And I'm going to
 20 ask this two-part because this -- this is -- this is part
 21 of the tension of -- of this case is businesses concerned
 22 that they're going to be impacted and go out of business
 23 or reduce business. And -- and then there's the threshold
 24 of what you have to do under SEPA, as far as analysis,
 25 particularly in the realm of economics, which is typically

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1 not much.
 2 Is -- is there any requirement that there
 3 be any type of cumulative impact, for example, if -- if
 4 the trail is distraught, it breaks the camel's back on
 5 something, as opposed to it being the significant impact?
 6 Is there any requirement for it? And, then, did you do
 7 that? So that's the two-part question.
 8 THE WITNESS: So I'm not sure if that --
 9 that requirement -- I'm not sure I understand the
 10 question. I'm sorry.
 11 EXAMINER VANCIL: It's a cumulative impact
 12 question.
 13 Could you -- did you do a cumulative
 14 impacts analysis as far as economic impacts in the context
 15 of this land use analysis that you did?
 16 THE WITNESS: So we did discuss the
 17 cumulative impacts in the EIS and talked about the fact
 18 that there are a number of other pressures --
 19 EXAMINER VANCIL: Mm-hmm.
 20 THE WITNESS: -- on businesses in this
 21 area. And so there's a recognition that there -- that
 22 there are a lot of things that are at play that are
 23 certainly factors for this. We -- in terms of the
 24 economic analysis, I would direct you to ask more
 25 specifically our economic expert on this question to the

<p style="text-align: right;">Page 1203</p> <p>1 extent to which their analysis takes into account a 2 cumulative effect because they're really looking at a 3 cumulative analysis altogether. I mean, that's the kind 4 of analysis that they did was -- was cumulative in trying 5 to say what, in the context of this particular business 6 district, and this -- this group of industrial users, what 7 the impacts are. So, in a sense, their analysis is 8 cumulative, not, like, property by property. 9 EXAMINER VANCIL: Mm-hmm. 10 THE WITNESS: So I'm not sure if that 11 answers your question -- 12 EXAMINER VANCIL: That does. Yes, it does. 13 THE WITNESS: -- but, hopefully, it gets 14 you a little bit closer to it. 15 EXAMINER VANCIL: That even helps me with 16 the next one. I was going to ask if you were the right 17 person to ask. 18 Who is this? The economic expert that 19 you're referring to, and are they going to be a witness? 20 MS. FERGUSON: Yes, Morgan Shook. 21 EXAMINER VANCIL: Morgan Shook. Okay. 22 Very good. I'll save my next question for them. 23 Thank you. 24 THE WITNESS: Okay. 25 EXAMINER VANCIL: Do you have additional</p>	<p style="text-align: right;">Page 1205</p> <p>1 agency under SEPA, that -- it is common that we would have 2 those kinds of discussions. 3 When we're working with a private applicant in a 4 third-party review, we, in my experience, have not shared 5 the impact analysis and discussed impact analysis other 6 than trying to identify mitigation measures. We haven't 7 those things with an applicant. 8 Q. And how is the City involved in your work for 9 this project? 10 A. In this case, the City worked closely in talking 11 about what kinds of impacts we were identifying and are 12 there things that we could do that we could incorporate 13 and we could describe in the EIS that would be able to 14 address the impacts. 15 Q. And in that role, did the City make you change 16 any of your professional opinions? 17 A. No. 18 Q. And we've been talking a lot about significant 19 impacts. I'm going to read you a definition. 20 SEPA defines probable as likely or reasonably 21 likely to occur. As in a reasonable probability of more 22 than a moderate effect on the quality of the environment. 23 Probable is used to distinguish likely impacts 24 from those that merely have possibility of occurring but 25 are remote or speculative. This is not meant as a strict</p>
<p style="text-align: right;">Page 1204</p> <p>1 questions from the City? 2 MS. FERGUSON: I just have a few. 3 THE WITNESS: Okay. 4 REDIRECT EXAMINATION 5 BY MS. FERGUSON: 6 Q. In your prior experiences working on EISs, was 7 the lead agency or project applicant involved in your 8 work? 9 A. Yes. 10 Q. And did the lead agency or project applicant 11 typically review your work and offer comment? 12 A. Well, your -- you're using two different -- so 13 the lead agency or project applicant, let me just make 14 clear that I -- I have worked on third-party EISs where 15 there's an applicant that is applying for something and we 16 are working for an agency that was reviewing it. And, 17 so -- and I've worked also in the context, like I have 18 here, where the agency is -- is -- the client, the 19 proponent of the project is also the lead for SEPA 20 purposes. So if you could, maybe, clarify, for me, what 21 your question is. 22 Q. I guess in either of those circumstances, is it 23 common for the person asking you to do the EIS to offer 24 opinions and comments on your work? 25 A. So when we're working on an EIS with a public</p>	<p style="text-align: right;">Page 1206</p> <p>1 statistical probability test. 2 That's long, so if you need me to re-read it, let 3 me know. But would you consider the potential land use 4 impacts from this project to be probable based on that 5 definition? 6 A. The -- the -- the impacts of the project to be 7 probable? 8 Q. Yeah. And probable is used to distinguish likely 9 impacts from those that are -- that merely have a 10 possibility of occurring; so I guess I could also reframe 11 the question. 12 Do you think that these are likely or possible? 13 A. Well, I think what we've tried to describe is the 14 impacts that we think are probable for this -- in this 15 EIS. 16 Q. Okay. But there are no significant impacts that 17 are probable? 18 A. Correct. 19 MS. FERGUSON: Okay. No further questions. 20 EXAMINER VANCIL: Mr. Cohen? 21 MR. COHEN: None. Thank you. 22 EXAMINER VANCIL: Mr. Schneider? 23 MR. SCHNEIDER: Yes, in response to a few 24 of the Hearing Examiner's questions. 25</p>

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1 REXCROSS-EXAMINATION
2 BY MR. SCHNEIDER:
3 Q. Mr. Johnson, the discussion of the question and
4 answer that you had with the Hearing Examiner about, you
5 know, how many land uses would change and priority land
6 uses would be significant or when would a threshold be
7 crossed.
8 A. Mm-hmm.
9 Q. Were you here for the testimony of Spencer Cohen?
10 A. I -- I was here for most of it, I think. I was
11 out for part of it.
12 Q. Okay. Before Mr. Cohen testified, were you aware
13 of the studies he referenced about the maritime -- the
14 maritime industry and its -- his conclusions about its
15 fragility?
16 A. I -- I don't know that I knew any of the
17 specifics studies, but I had heard the discussion. I -- I
18 was -- when I was involved as a planning commissioner with
19 the City of Seattle, I had -- we had discussions about
20 those very issues.
21 Q. Okay. Is it -- is it fair to say that those
22 kinds of issues, the -- the fragility, or otherwise, of
23 the maritime industrial uses, the effect of losses of a
24 business to a cluster, that that was not part of your
25 analysis because it was not included in the Economic

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1 Considerations Report?
2 A. No, that's not fair to say at all.
3 Q. Okay. So how did you incorporate the fragility
4 of the -- as Mr. Cohen described, that analysis of the
5 cluster? Where is that reflected in the analysis in the
6 EIS?
7 A. It -- well, first of all, it's reflected in
8 the -- in the Economic Considerations Report where it
9 talks about the importance of these businesses and
10 reliance that they have on each other. And those are
11 all -- those same -- that same kind of discussion is found
12 in the land use analysis.
13 Q. Okay. Can you quickly point us to the
14 discussion?
15 A. I can. Let me get my finger on it. I thought I
16 put my finger on it. I know I was just reading it
17 earlier; so I would just know that it's there, but I have
18 to remember where it is.
19 Q. Can you tell us what chapter you're looking at?
20 A. Oh, I'm in the Land Use chapter. And we --
21 sorry, just trying to read fast.
22 So the reference begins, I guess, in the -- in
23 Page 4-2 where we talk about the waterfront.
24 EXAMINER VANCIL: And just to slow you
25 down, Mr. Johnson, this is 4-2 of which?

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1 THE WITNESS: 4-2 of the final EIS.
2 EXAMINER VANCIL: That's R1.
3 THE WITNESS: And we -- we discuss the
4 waterfront industry and we talk about the
5 interrelationship between those -- in the shoreline
6 district and other support and water-dependent uses that
7 are related.
8 Q. (By Mr. Schneider) Can you --
9 A. I'm sorry. The last paragraph on the page, on
10 4-2, is sort of the beginning of that discussion.
11 And, sorry, I --
12 EXAMINER VANCIL: I'm going to give
13 Mr. Johnson a moment to look for that. And just ask -- we
14 don't have, yet, our 18, 19, 20, and 21 admitted.
15 MS. FERGUSON: I'd ask that they be
16 admitted.
17 EXAMINER VANCIL: Okay.
18 MR. SCHNEIDER: No objection.
19 EXAMINER VANCIL: All right. R18 through
20 21 are admitted.
21 (Exhibit Nos. R18, R19, R20, and R21 Admitted)
22 THE WITNESS: I apologize. I can't put my
23 finger on it just so quickly.
24 MR. SCHNEIDER: If -- if this would be the
25 time for a break, we could let Mr. Johnson look.

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1 EXAMINER VANCIL: We could do that. We're
2 five minutes from the break; so we will come back at 20 to
3 and resume.
4 Thank you.
5 (Whereupon a brief recess was taken.)
6 EXAMINER VANCIL: And we're back with
7 continued -- I think we're in cross with Mr. Johnson by
8 appellants.
9 Before we do that, there's two items I want
10 to make sure -- exhibits -- items that I wanted to address
11 before I forget. I was going to get a list of driveways
12 used in the analysis from Ms. Ellig and I just wanted to
13 check on timing for that.
14 MS. FERGUSON: I haven't gotten to it.
15 MR. KISIELIUS: We -- we will ask. I'm
16 sorry. We don't have an answer for you right now.
17 EXAMINER VANCIL: Okay. By Tuesday is
18 fine. Just make sure we get it.
19 And, then, there was going to be a revised
20 video from appellants.
21 MR. BROWER: We're working on it.
22 EXAMINER VANCIL: Excellent.
23 Okay. Mr. Schneider?
24 Q. (By Mr. Schneider) Mr. Johnson, over the break,
25 did you have time to find the pages you were remembering?

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<p>1 A. Yes. So I'm gonna -- it's a bit of a walkthrough</p> <p>2 here, but there -- as I was starting to say, on Page 4-2</p> <p>3 the paragraph at the bottom sort of introduces the</p> <p>4 presence of the fishing, shipbuilding industry in the</p> <p>5 Ballard area.</p> <p>6 Q. So, if you could, just as you go, identify not</p> <p>7 only the page but the paragraph.</p> <p>8 A. Oh, excuse me.</p> <p>9 Q. So it's the last paragraph.</p> <p>10 A. The last paragraph on Page 4-2.</p> <p>11 EXAMINER VANCIL: Exhibit R1.</p> <p>12 THE WITNESS: R1, thank you.</p> <p>13 And then on Page 4-7, the first</p> <p>14 paragraph -- beginning with the first paragraph is a --</p> <p>15 also a graphic that displays some information about the</p> <p>16 general discussion, but this discusses the -- the changes</p> <p>17 that have occurred over the years and the -- the economy,</p> <p>18 and the reflection of Ballard's, sort of, unique</p> <p>19 characteristics of its commercial growth and the</p> <p>20 importance of water-dependent and marine uses is reflected</p> <p>21 in that discussion, as well. And, then --</p> <p>22 Q. (By Mr. Schneider) So are we talking about that</p> <p>23 whole page or --</p> <p>24 A. Oh, I'm sorry. Just the first couple of</p> <p>25 paragraphs or the primary discussion about the -- the uses</p>	<p>1 two paragraphs on 4-7, and the last paragraph on 4-17?</p> <p>2 A. Correct.</p> <p>3 Q. And --</p> <p>4 A. In terms of pointing to the priority that's</p> <p>5 given, that the -- the emphasis that's given to</p> <p>6 water-dependent uses and -- and water-related uses and</p> <p>7 their presence in the study area and the priority that</p> <p>8 they're given in the Comprehensive Plan.</p> <p>9 Q. And I understand all that. But my question, at</p> <p>10 least as I intended it, was specific to studies of the</p> <p>11 fragility of these businesses in the sense that Mr. Cohen</p> <p>12 was discussing, that the two prior studies his firm had</p> <p>13 done has referred to.</p> <p>14 So I -- I recognize the importance, that you've</p> <p>15 acknowledged the importance, but what I'm asking is: Is</p> <p>16 there any discussion of this clustering effect, the fact</p> <p>17 if you remove one business, it could have a domino effect</p> <p>18 in other businesses that are glomerated together?</p> <p>19 MS. FERGUSON: I'm going to actually</p> <p>20 object. I think he's asking the witness to ask or talk</p> <p>21 about an analysis that he didn't do. We've already</p> <p>22 identified that we will be calling the economics expert</p> <p>23 and I also think that it's exceeding what was raised in</p> <p>24 cross.</p> <p>25 MR. SCHNEIDER: I'm asking the witness for</p>
Page 1212	Page 1214
<p>1 and the -- the importance of those uses in the -- as a</p> <p>2 prevalent part of that area.</p> <p>3 And, then, in the impact analysis --</p> <p>4 Q. On page?</p> <p>5 A. -- on Page 4-17, there's a discussion of the --</p> <p>6 the policies. And the -- the policies are sort of</p> <p>7 particular. Oh, I'm sorry.</p> <p>8 In the bottom paragraph on that page begins</p> <p>9 Comprehensive Plan policies for the BINMIC support</p> <p>10 commuting to work, et cetera. And, then, that discussion</p> <p>11 talks a lot about the importance of water-dependent and</p> <p>12 water-related uses as being the priority uses for the</p> <p>13 area. And that is a reflection of the findings in the</p> <p>14 Comprehensive Plan which are around the -- the importance</p> <p>15 and the fragility of the businesses in that area. So</p> <p>16 that's sort of the context in which I think that this is</p> <p>17 set up. And then there is -- within each alternative,</p> <p>18 there is a discussion of the effects on specific</p> <p>19 water-dependent and water-related uses.</p> <p>20 Q. Okay. So you've called our attention to the last</p> <p>21 paragraph on Page 4-17.</p> <p>22 A. Mm-hmm.</p> <p>23 Q. Is there anything other -- is there any other</p> <p>24 specific language you want to call our attention to? I</p> <p>25 think we have the last paragraph on Page 4-2, the first</p>	<p>1 what is in the EIS, and I described what Mr. Spencer Cohen</p> <p>2 had described in order to make sure that Mr. Johnson and I</p> <p>3 were looking for the same thing in the EIS. I don't think</p> <p>4 it's even arguably inappropriate.</p> <p>5 EXAMINER VANCIL: At this point, I'll over</p> <p>6 rule it. If Mr. Johnson is able to respond, it -- it</p> <p>7 seems to be identifying what's in the EIS as opposed to</p> <p>8 his personal knowledge of what went into it.</p> <p>9 MR. SCHNEIDER: Yes. Right.</p> <p>10 EXAMINER VANCIL: And he's expressing -- so</p> <p>11 I think that's adequate.</p> <p>12 THE WITNESS: Now, I'm lost on the question</p> <p>13 again. I'm sorry.</p> <p>14 Q. (By Mr. Schneider) Don't be. I just wanted</p> <p>15 to -- the three pages -- portions of the three pages</p> <p>16 you've identified, in my quick scan of them, I didn't see</p> <p>17 that they addressed that agglomeration issue, the</p> <p>18 clustering issue that Mr. Cohen discussed, and that is</p> <p>19 what I'm asking is: Are you aware of anywhere in the EIS</p> <p>20 where that issue is addressed?</p> <p>21 A. I am not aware of a specific place where the</p> <p>22 question of a, sort of, domino effect or a discussion of a</p> <p>23 cluster analysis that --</p> <p>24 Q. Okay. Thank you.</p> <p>25 A. -- Mr. Cohen --</p>

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1 Q. Thank you.

2 MR. SCHNEIDER: That's all.

3 EXAMINER VANCIL: I think -- any other

4 questions?

5 MS. FERGUSON: No more questions.

6 EXAMINER VANCIL: Thank you, Mr. Johnson,

7 for you testimony.

8 THE WITNESS: Thank you. I'm assuming that

9 all belongs up here.

10 EXAMINER VANCIL: City's next witness?

11 MR. KISIELIUS: We would like to call Bill

12 Schultheiss.

13 EXAMINER VANCIL: Would you please state

14 your name and spell your last name for the record?

15 THE WITNESS: My name is William

16 Schultheiss. William, W-i-l-l-i-a-m, Schultheiss,

17 S-c-h-u-l-t-h-e-i-s-s.

18 EXAMINER VANCIL: We'll get you some water.

19 Do you swear or affirm the testimony you

20 provide in today's hearing will be the truth?

21 THE WITNESS: I do.

22 EXAMINER VANCIL: Thank you.

23 Here, you can take this one.

24 THE WITNESS: Thank you.

25 MR. KISIELIUS: Thank you, Mr. Examiner.

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1 EXAMINER VANCIL: Mm-hmm.

2 THE WITNESS: Appreciate that.

3 WILLIAM SCHULTHEISS, having been called as a witness on

4 behalf of Respondent after being

5 first duly sworn, was examined and

6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. KISIELIUS:

9 Q. Mr. Schultheiss, could you please tell us your

10 occupation?

11 A. I'm a licensed professional engineer.

12 Q. And by whom are you currently employed?

13 A. I work for Toole Design Group.

14 Q. And what are your primary responsibilities there?

15 A. I'm the vice president with the company, and the

16 principal and partner with the firm responsible for

17 overseeing our engineering practicing staff. I'm

18 frequently a strategic advisor in key projects and lead a

19 lot of our research and design guide efforts.

20 Q. Okay. I want to ask you a couple questions to

21 describe your professional background as it pertains to

22 bicycle or non-motorized transportation projects.

23 Have you been involved in drafting and reviewing

24 design standards or guidelines pertaining to bicycle or

25 non-motorized trails?

A. Yes, I have.

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1 Q. Can you please explain?

2 A. Sure. So I've been working at Toole Design Group

3 for 15 years, and our firm focuses on the design of

4 bicycle/pedestrian facilities and streets.

5 Our pioneering expertise area is non-motorized

6 travel: People walking, people bicycling. As part of

7 that work, we developed extensive expertise in this area

8 of transportation and we are frequently asked and hired to

9 write design guidelines of which I am a member of those

10 teams that do that.

11 So I've personally been involved in writing the

12 AASHTO Bicycle Design Guide in 2012. I actually authored

13 it in 2010, and it was officially adopted by AASHTO in

14 2012. And I'm currently the lead project manager for

15 updating that very same manual to a revised edition.

16 We've gone through two drafts of that edition so far.

17 I've been hired to do design guidance for local

18 agencies, including SDOT. I helped to work on the

19 right-of-way improvement manual. I've been hired to

20 develop design guidelines for state DOTs in Maryland and

21 Massachusetts. One of the design guides I helped lead the

22 authorship of was the Massachusetts DOT Separated Bike

23 Lane and Design Guide.

24 Q. Okay. Any Federal Highway Administration

25 guidelines?

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1 A. As part of our work, we're frequently hired by

2 Federal Highway Administration to lead research projects

3 and develop design guidelines. A recent guide that we

4 wrote is the Multimodal Conflicts, designing for

5 flexibility to reduce conflicts in non-motorized users in

6 2016.

7 Q. Okay. Have you designed bicycle trails or

8 non-motorized trails?

9 A. Yes.

10 Q. Approximately how many?

11 A. Worked and designed about 50 separate trails.

12 Q. Have you evaluated streets to improve the safety

13 of pedestrians, bicyclists, and motorists?

14 A. Yes, I have.

15 Q. Okay. How many?

16 A. That number is quite substantial and I estimate

17 it to be somewhere between 5,000 and 10,000 miles of -- of

18 streets that I've evaluated throughout my career.

19 Q. Okay. So in that type of work, on those kinds of

20 projects, have you reviewed projects for safety and

21 conflict issues between motorized an non-motorized

22 transportation projects?

23 A. All of my work has been focused entirely in that

24 area.

25 Q. Let me -- let me ask about technical literature.

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1 As part of your professional responsibilities, do
 2 you keep up to date on technical literature and
 3 evaluations of design treatments and other techniques
 4 related to non-motorized transportation projects?
 5 A. I do. We're considered the -- the leading, if
 6 not the expert, the top firm in the United States that
 7 focuses on walking and cycling. And, so, there's a lot of
 8 pressure for us to keep up and be aware of research, not
 9 only in the U.S., but around the world. To bring those
 10 research practices into the profession, to make sure that
 11 they are part of the projects that we work on.
 12 So, for example, today, I led a training. I had
 13 to step away but I -- I did a Vision Zero training that I
 14 developed and led for the Institute of Transportation
 15 Engineers. I conducted a webinar this afternoon to -- to
 16 share the knowledge with the profession because what we've
 17 come to experience -- what I've experienced, is that our
 18 profession hasn't -- through the different focus areas in
 19 the past, they're not fully aware of the state of the
 20 practice when it comes to bicycling and walking safety.
 21 Q. So let me ask you, in terms of keeping up to date
 22 on the state of the technical literature, does that
 23 include, specifically, technical literature and analysis
 24 of design treatments and other techniques to improve
 25 safety and reduce conflicts?

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1 A. Yes, absolutely.
 2 Q. It sounds pretty specialized. Are you aware of
 3 other transportation professionals that have developed a
 4 similar area of expertise?
 5 A. There's only one other firm in the United States
 6 that really specializes in this area and we compete with
 7 quite a bit. So I'd say there's only able 100 people in
 8 the United States that share my level of expertise.
 9 Q. Okay. You mentioned some work that you did for
 10 the City as part of the range of things that you've done.
 11 I want to ask you if that's -- if you've had any other
 12 experiences working for the City in your professional
 13 capacity?
 14 A. I've been working with the City almost
 15 continuously since 2005. Our first project was the
 16 Bicycle Master Plan, or the efforts. I was the lead
 17 engineer for that project and my role was to assess the
 18 city streets, including some of the streets in this
 19 neighborhood, in the Ballard neighborhood, for bicycle
 20 accommodations and improvements as part of that 2007
 21 Bicycle Master Plan.
 22 And, subsequently, we continued to do work. I
 23 worked on the Pedestrian Master Plan that was issued
 24 in 2009. We personally worked on the Vision Zero Project
 25 Master Plan that was issued last year. Worked on the Safe

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1 Routes To School Project providing engineering support for
 2 countermeasures for that -- for that master planning
 3 effort and programming effort.
 4 I was hired to evaluate the Chief Sealth Trail,
 5 all of the intersections along its entire alignment to do
 6 an assessment of safety at each of the intersections
 7 including an evaluation of the traffic control applied.
 8 Q. Okay. I'm going to hand you a -- hand you a copy
 9 of your résumé.
 10 MR. KISIELIUS: I ask that to be marked as
 11 R --
 12 EXAMINER VANCIL: -- 22.
 13 MR. KISIELIUS: Thank you.
 14 Q. (By Mr. Kisielius) Mr. Schultheiss, do you -- is
 15 this an accurate representation of your background and
 16 experiences?
 17 A. This is a good summary of my experience and
 18 background.
 19 MR. BROWER: Mr. Examiner, Mr. Schultheiss
 20 has notes in front of him.
 21 Can we see them, please?
 22 EXAMINER VANCIL: Yeah.
 23 MR. BROWER: Thank you.
 24 MR. KISIELIUS: Mr. Brower, do you mind if
 25 we proceed while you're looking at them?

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1 MR. BROWER: Sure. Certainly.
 2 Q. (By Mr. Kisielius) I want to ask you -- before
 3 getting into the analysis of the project here, I want to
 4 ask you whether your firm is involved in the current
 5 design of the Missing Link Project?
 6 A. Our firm is involved in the design. They are
 7 subconsultant to Perteet doing the final design of the
 8 Missing Link.
 9 Q. Okay. And have you been involved in that?
 10 A. I've had very minimal involvement. I've been
 11 asked for my opinion on a couple instances, but it's quite
 12 limited.
 13 Q. Okay.
 14 MR. BROWER: Thank you.
 15 THE WITNESS: Do you need a copy or did you
 16 get a picture? Good.
 17 Q. (By Mr. Kisielius) And I'm just going to put
 18 this out there because I think there was some statements
 19 made during counsel's opening remarks about conflicts of
 20 interest.
 21 So does the fact that the company is working on
 22 the design inform or influence your opinion that you're
 23 about to provide?
 24 A. No.
 25 Q. Would you let financial gain to your company

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1 influence your expert opinion in any situation?
 2 A. No, absolutely not.
 3 Q. Why?
 4 A. I hold myself to a high ethical standard. And as
 5 one of the owners of the company, we strive to set a good
 6 example for our staff. Our -- our firm is very focused on
 7 having a high ethical standard in our work, in our care,
 8 and I take my responsibilities for the health, safety and
 9 welfare of the public very seriously.
 10 Q. You take the -- so that -- you weigh that higher
 11 than the financial gains of your company?
 12 A. Absolutely.
 13 Q. Okay. So let's focus, then, on your work related
 14 to this EIS.
 15 What -- what did you evaluate related to the EIS
 16 for this project?
 17 A. I reviewed the draft EIS and the final EIS
 18 focusing on the transportation elements; the alternatives
 19 chapter, Chapter 1; the transportation reports that were
 20 appendices to the analysis; and I took a particularly
 21 focused view in looking at the conceptual design that was
 22 developed.
 23 Q. Okay. And did you look at any opponent expert
 24 reports?
 25 A. I reviewed the materials provided by the

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1 opponent's experts, yes.
 2 Q. Okay. And were you here for the testimony of the
 3 opponent's experts?
 4 A. I've been here all week to -- to listen to their
 5 testimony, yes.
 6 Q. And have you ever visited the site?
 7 A. I have visited the site.
 8 Q. Okay. When?
 9 A. Let's see. It's been occasional. So that 2005
 10 Master Plan effort, I visited the site as part of the
 11 evaluation of those streets for the bike plan; so I
 12 visited Ballard, Leary, Shilshole.
 13 We actually spent -- I was asked by my client, at
 14 the time, to spend a little time at the -- under the
 15 Ballard Bridge at the railroad crossing because that was
 16 a -- a known safety challenge. There are a lot of bike
 17 crashes there and, so, my opinion was asked of how we
 18 could resolve that safety challenge.
 19 Then we developed some preliminary ideas of how
 20 to adjust the bicycle alignment to cross the tracks to cut
 21 down on the crashes.
 22 While there, I did -- one of the business owners
 23 stopped by and visited and just asked what we were doing.
 24 So we had a brief conversation about his knowledge and he
 25 really conveyed that there had been a lot of crashes at

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1 that location for bikes. And that the emergency response
 2 was -- was there somewhat regularly. And I think I saw
 3 the evidence of that when I reviewed the EIS, that
 4 emergency response, that was a hot spot.
 5 Q. Have you been there more recently?
 6 A. I was there a few weeks ago. I was in the city
 7 for a different purpose, and, so, I went and visited the
 8 site with Dongho Chang. We drove the corridor. I was
 9 there for, maybe, about an hour. Didn't stop and talk to
 10 anybody, but just observed the existing conditions today.
 11 Q. So you'd mentioned you were looking at the design
 12 and -- to -- to inform your opinion.
 13 In your opinion, was the project sufficiently
 14 designed to be able to understand the potential conflicts
 15 between motorized and non-motorized transportation?
 16 A. Yes, it was.
 17 Q. Why?
 18 A. So I do a lot of design work, do a lot of safety
 19 analysis, but half my professional practice and half my
 20 time has been design work, trails, on-street bikeways and
 21 cycle tracks. And, so, looking at the 10 percent design
 22 that was developed, that concept design that was
 23 developed, it was sufficient for me to understand the key
 24 issues at play for evaluating bicycle safety, number one.
 25 The EIS presented information about the traffic

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1 characteristics of each of the streets, of the
 2 alternatives of the corridors of Leary, Ballard,
 3 Shilshole. They'd done analysis of how many driveways
 4 were at each location -- was articulated.
 5 And, so, when I'm looking at understanding
 6 bicycle safety, I want to understand their interaction
 7 with traffic. So knowing where the driveways are, the
 8 street intersections, what type of traffic control they
 9 have, sight-distance challenges, what's happening with
 10 parking. Parking is a significant source of conflict and
 11 danger for bicyclists.
 12 And then, lastly, looking at the alignments
 13 proposed. You know, what side of the street and the
 14 geometric width of the facility and then it's potential
 15 offset to the street.
 16 Q. Okay. I'm going to ask you some questions about
 17 the -- some of the opponent's testimony and get your
 18 response to them.
 19 So, first, I want to ask you: Did you review
 20 Ms. Hirschey's memo on safety issues?
 21 A. I did.
 22 Q. I'm going to get you a reference to that and
 23 maybe have that in front of you, if you need it.
 24 MR. KISIELIUS: And it'll just take me a
 25 second to look for mine. So we're looking at Exhibit A3,

<p>Page 1227</p> <p>1 for the record. 2 EXAMINER VANCIL: Okay. 3 Q. (By Mr. Kisielius) So there's been some 4 discussion -- I just want to, maybe, ask a framework 5 question, first, before we delve in. 6 There's been a discussion about whether there's a 7 single methodology for determining safety of a 8 non-motorized transportation facility. 9 Do you believe that there is a single 10 methodology? 11 A. No, there's no single methodology that takes you 12 from Step A to Z in a certain order. It's left to 13 engineering judgment and knowledge to develop a 14 methodology. 15 Q. Okay. And how is that developed? 16 A. The way I approach it, and the way my colleagues 17 approach it, is, you know, relying on design guidance, 18 which is the AASHTO guide which has a section on 19 evaluating safety and it has a section on evaluating 20 trade-off choices in choosing different types of bicycle 21 facility options to improve safety. So it gives you 22 general principles to follow, mainly looking for key 23 characteristics of doing a safety evaluation, such as I 24 described earlier: What's the traffic volume of the 25 street? What's the conditions of the street? Truck</p>	<p>Page 1229</p> <p>1 MR. KISELIUS: Okay. 2 EXAMINER VANCIL: So we're at your Tab 15? 3 MR. KISELIUS: Yes. 4 EXAMINER VANCIL: And, so, we're marking 5 that R23. 6 MR. KISELIUS: Thank you. 7 EXAMINER VANCIL: Mm-hmm. 8 MR. KISELIUS: And I'll be going through 9 15 through 19. 10 EXAMINER VANCIL: Mm-hmm. 11 Q. (By Mr. Kisielius) So, first, did you 12 recognize -- 13 EXAMINER VANCIL: Do you want to know which 14 are in now? 15 MR. KISELIUS: Sure. That might be more 16 efficient. Thank you. 17 EXAMINER VANCIL: 16 and 17 will need to be 18 marked. Well -- 19 MR. KISELIUS: Your Honor, 17 is 13. 20 MR. BROWER: Yeah, 17 is 13. 21 EXAMINER VANCIL: 17 is R13. Sorry. I 22 skipped that. 23 What I'm going to do is let's just mark 24 them all now. 25 MR. KISELIUS: Okay. Thank you.</p>
<p>Page 1228</p> <p>1 volumes. How many driveways are there? What's the 2 parking situation for the street? How many users are 3 using the facility? Things of that nature. 4 Q. I'm going to ask you to -- to turn, now -- sorry, 5 you're going to have to juggle some binders. I want you 6 to keep that one open because we're going to come back to 7 that, but there's a separate binder of City exhibits and I 8 just want you to look at Tabs 15 through 19. 9 MR. KISELIUS: And some have been 10 admitted, so I'll have a record of those in just one 11 second. 12 THE WITNESS: Okay, C-15. Okay. I've 13 reviewed 15 through 19. 14 Q. (By Mr. Kisielius) Okay. Just give me a second 15 to get organized. I apologize for making you wait. 16 A. Yeah. No problem. 17 Q. So, first, do you recognize 15? 18 A. Yes. This is the planning chapter. 19 EXAMINER VANCIL: Ones that haven't been 20 marked, let's mark them now just so, again, a listener 21 knows -- can track this as we go. 22 MR. KISELIUS: And, Mr. Examiner, I 23 apologize. Our notes on -- there's several of these that 24 have been admitted and I think we were -- 25 EXAMINER VANCIL: I can tell you as we go.</p>	<p>Page 1230</p> <p>1 EXAMINER VANCIL: So we've got -- 15 will 2 be marked R23. 3 16 will be marked R24. 4 17 is already marked or is admitted as R13. 5 18 will be R25. 6 19 is already admitted as R12. 7 MR. KISELIUS: Yes. Okay. 8 Q. (By Mr. Kisielius) So let's start with Tab 15 in 9 your notebook which is Exhibit R23. 10 A. I'm sorry. Tab 15? 11 Q. Yes. 12 A. Okay. I have it open. 13 Q. Do you recognize that? 14 A. Yes. 15 Q. Tell us a little bit about it. 16 A. It's the planning chapter of the AASHTO bike 17 guide 2012. 18 Q. Does this include the standards that you were 19 describing that you would look to to develop? 20 A. Yes, it does. It actually provides some of the 21 overview of considerations. 22 So if you look at Page 2-8, it actually gives you 23 some thoughts to -- to look to when evaluating the type of 24 bike facility; so -- so bicycle demand; connectivity, is 25 it direct?</p>

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1 EXAMINER VANCIL: I'm sorry. You
 2 referenced?
 3 THE WITNESS: 2-8. And if you look at the
 4 bottom of the page there is long-term projects, which is
 5 what I considered this.
 6 EXAMINER VANCIL: Oh, I see. Yeah. All
 7 right.
 8 THE WITNESS: And it gives you some factors
 9 to consider of evaluating -- high level factors of what
 10 you start to think about if you're choosing an
 11 accommodation.
 12 And, so, if you're thinking about its
 13 travel demand, where bikes want to go, what are the
 14 generators? So places like: Golden Gate Park; the
 15 Ballard Locks; things that we know people like to get to;
 16 the trail -- the Burke-Gilman Trail, itself; the Ballard
 17 neighborhood.
 18 The directness and connectivity. Is it --
 19 is it a direct easy route that is natural that people want
 20 to do?
 21 What are the barriers? So a barrier
 22 example would be that railroad crossing under the
 23 Burke-Gilman is -- is a barrier because it's a safety
 24 hazard. Use of implementation and other things.
 25 But if you actually move on to look at the

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1 pages that follow, on 2-14, it -- and 2 -- well, actually,
 2 let me repeat that.
 3 It's 2- 12, 13, and 14 that actually gives
 4 you a lot of these considerations that you'd do in an
 5 analysis. So, like I mentioned, traffic volumes, speeds
 6 of traffic. Overcoming these barriers such as coming up
 7 with solutions for the railroad track crossing;
 8 connections; domain uses; directness of route; logical
 9 routes; intersections or streets, which are crucial.
 10 Intersections and streets are a primary
 11 source of conflict with cyclists. And, then, safety,
 12 security, and overall feasibility. And overall
 13 feasibility being a very crucial aspect of this
 14 assessment.
 15 Q. (By Mr. Kisielius) I ask you to turn to Tab 16,
 16 now, marked R24.
 17 Tell us a little bit about this.
 18 A. So this, Chapter 3, is, again, a chapter from the
 19 2012 AASHTO bike guide. It gives you some basic design
 20 parameters that you need to be familiar with as a
 21 designer, the size of the bicyclist, their shape, the
 22 types of vehicles they ride.
 23 And it gives you some -- a broad overview of the
 24 causes of bicycle crashes which begins on Page 3-6. And
 25 it gives some common types of crashes that occur, and that

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1 description continues on 3-8 and 9.
 2 And I think what's interesting is -- what's
 3 important to understand about this data is it comes from
 4 research. I helped write this section in 2010. It comes
 5 from research studies that were written in the early 2000s
 6 but actually relied on studies that were written in the
 7 1990s because, unfortunately, in our business, there
 8 hasn't -- there wasn't a lot of research on bike safety in
 9 the 1980s, 90s, and up to 2000. And, so, we had to rely
 10 on some older, dated information when it came to crashes.
 11 And, so, this reflects that older data.
 12 Some of these characteristics still carry through
 13 as issues now, but some of those factors we know through
 14 more recent research has changed.
 15 Q. Is that -- are you -- is that among the things
 16 that you're working on the update to?
 17 A. Yeah. So as I'm updating the -- the version
 18 which we're nominally calling the 2018 version of the
 19 AASHTO guide -- that's when we expect it to be issued --
 20 we spent the last two years reading and evaluating recent
 21 research and there's been a substantial amount of new
 22 research in the last ten years.
 23 Since the research we had to rely on writing this
 24 guide, like I said, was written in 2008 to '10, you know,
 25 basically, we were relying on research that was from 2007

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1 and prior. It's been ten years. Since then, there's been
 2 a lot of new studies.
 3 Q. I'm going to ask you about those studies in just
 4 a little bit, but I want to keep going with the AASHTO
 5 guidelines.
 6 So can you turn to Tab 17, which has already been
 7 admitted as Exhibit R13.
 8 A. Tab 17 is the design of shared-use paths. Again,
 9 from that same document, the 2012 AASHTO bike guide.
 10 Q. And then Tab 18, which has been marked as R25.
 11 A. Tab 18 is a specific discussion from Chapter 4,
 12 which is the on-road bike chapter that speaks to the
 13 specific hazards of railroad-grade crossings which is
 14 exactly what the issue was under the Ballard Bridge.
 15 Q. Okay.
 16 A. That low-angle crossing of a railroad track
 17 produces a high rate of bike crashes.
 18 Q. Okay.
 19 MR. KISIELIUS: So I'm going to pause there
 20 and ask to admit R23, R24, and R25.
 21 MR. SCHNEIDER: No objection.
 22 EXAMINER VANCIL: No objection. All right.
 23 R23, 24, and 25 are admitted.
 24 (Exhibit No. R23, R24, and R25 Admitted)
 25 EXAMINER VANCIL: I don't think we got the

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1 résumé.
 2 MR. KISIELIUS: I was just asking that.
 3 So I'd ask for that to be admitted, as
 4 well.
 5 THE WITNESS: You want this one?
 6 MR. SCHNEIDER: No objection.
 7 EXAMINER VANCIL: All right. R22 is
 8 admitted.
 9 (Exhibit No. R22 Admitted)
 10 MR. KISIELIUS: Okay.
 11 Q. (By Mr. Kisielius) So -- so let's -- appreciate
 12 the overview for AASHTO.
 13 I want to ask you, in reviewing Ms. Hirschey's
 14 memo, and in her testimony, do you agree with how she
 15 interpreted and applied the AASHTO guidelines?
 16 A. I do not.
 17 Q. Okay. Why?
 18 A. It's -- as I reviewed her memorandum, I think
 19 she -- she paid a lot of attention to drivers, which was
 20 important. It's a very important consideration. And she
 21 analyzed the driveways with her own methodology for doing
 22 that, and she sourced a number of research documents that
 23 I've looked to, and looked at some that I hadn't seen,
 24 that I reviewed. There's one from Finland I hadn't seen
 25 before, but it's great to see a new study.

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1 So I looked at those, and then I -- what I didn't
 2 agree with is that she completely discounted existing
 3 conditions as a -- as an issue.
 4 Q. Why is that important?
 5 A. It's crucial. I mean, the purpose of this
 6 project as its purposing need is to improve safety of
 7 bicyclists. And, so, you're evaluating all your
 8 alternatives against the existing conditions.
 9 Q. Okay. And what about the consideration of
 10 crossings in her analysis?
 11 A. The crossing one --
 12 Q. And, here, I'm talking about intersections.
 13 A. Oh, the intersections?
 14 Q. Yeah.
 15 A. She didn't do any analysis of the intersection
 16 crossings other than to state that there were a certain
 17 number of intersections.
 18 Q. Okay. And are any of the alternatives, do they
 19 present unique intersections that present unique conflict
 20 issues?
 21 A. Yes. Each alternative alignment has its own
 22 unique challenges due to the geometry of the streets, the
 23 angle of intersection in those streets. And those are two
 24 factors. And the third one is the -- the most obvious one
 25 is the traffic volume. Turning traffic to cross your path

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1 is -- is the real issue of -- of safety.
 2 And, so, we know, through research, that the
 3 angles of intersections and the legs at common
 4 intersections, and the volume of turning traffic across
 5 your path are the most important factors when evaluating
 6 bicycles and pedestrian safety.
 7 Q. So here we're -- again, just to distinguish,
 8 we're talking about intersections. I want you to compare
 9 that to driveways.
 10 A. So intersections with streets -- so an
 11 intersection, as we just discussed it, is an intersection
 12 with street as a street. And, so, separately, when you
 13 look at an intersection with a driveway, intersection with
 14 a street with a driveway to a private property, I still
 15 think of it as an intersection. But for purposes of this
 16 testimony, we'll describe it as a driveway.
 17 And for purposes of her -- my review of her work,
 18 she -- she focused on the driveways.
 19 Q. Okay. And of those two -- I mean, of those two
 20 the streets versus the driveways, which do you believe
 21 present the -- the bigger risk?
 22 A. Streets present the largest risk in -- through
 23 the only data in the studies that she cited, NCHRP 500,
 24 that -- that fully documents that the highest crash hazard
 25 for bicyclists is in the street at intersections. About

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1 58 percent of crashes, based on that data. This is dated
 2 crash history stuff, but 58 percent of crashes were at
 3 intersections. And of 58 percent of the crashes, only
 4 20 percent were at driveways. So 58 percent of all bike
 5 crashes were at intersections. And, so, she's completely
 6 misstated the findings of that research and is implying
 7 that 58 percent of all crashes are equally apportioned to
 8 intersections and driveways and that's not factually
 9 accurate. The reality is only 20 percent of intersection
 10 crashes, of that -- that 58 percent number, occur in
 11 driveways; so intersections with streets are the most
 12 dangerous to bicyclists.
 13 Q. So I'm going to ask you -- you started describing
 14 some of the studies that you relied on. I'm going to ask
 15 you about a couple and ask you about your opinion of their
 16 reliability.
 17 Starting with the sidepath rating system from the
 18 Chicagoland Bicycle Federation, are you familiar with
 19 that?
 20 A. I am familiar with that.
 21 Q. How would you characterize the reliability of
 22 that?
 23 A. It's not reliable. It's a comparative tool.
 24 It's not based on science. It was a made-up tool to
 25 address a problem at that time.

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<p>1 I talked to the person who developed that tool, 2 Randy Neufeld, who was employed at the Chicagoland Bicycle 3 Federation at the time. I asked him why he developed a 4 tool and the reason that he did or just why -- what was 5 his process for developing it. He developed it with one 6 other colleague that worked with him at the time and this 7 was developed in the early 1990s in Chicago. 8 Chicagoland Bike Federation is an advocacy 9 organization in Illinois that -- that did more than 10 Chicago. They're sort of an Illinois activity. And 11 during that period of time, there were a lot of agencies 12 trying to build sidepaths. And the understanding of 13 research at that time was that sidepaths were less safe 14 than bike lanes or other alternatives. And the reality 15 was what was happening is the sidepaths that were being 16 built is they were being poorly built. They were built up 17 against the street. There was no separation between the 18 edge of the path and the road. It was basically a 19 sidewalk against a curb. There were utility poles in the 20 way of the path because agencies weren't spending money to 21 move them. 22 They were not -- because the path was immediately 23 adjacent to the roads, it made designing driveways very 24 difficult with ramps and changes. There was no offset to 25 the street to -- which makes driveway design a lot easier.</p>	<p>1 A. There isn't. Not a standardized methodology. 2 Q. Okay. Let's switch, now, to a different 3 background information that Ms. Hirschey relied on, the 4 Commute Orlando information. 5 Are you familiar with that? 6 A. Yes, I'm familiar with that organization. 7 Q. Okay. Can you -- do you believe that their 8 information is reliable for -- 9 A. No. I actually know some of the leaders of that 10 organization, personally, through my professional work. 11 They are an advocacy organization in Florida. 12 They have a very strong point of view that comes from 13 the -- something that I think a lot of people that don't 14 do bicycle design all the time are aware of. There's been 15 about a 50-year debate in our business about how to 16 accommodate bicyclists. It's around this theory that 17 bikes are vehicles and they belong in the road with trucks 18 and cars versus bikes should be separated from bikes and 19 cars because they're vulnerable users. 20 This theory centers around this gentleman out of 21 California, John Forester, that invented this style, as he 22 calls it, of bicycling, called "effective cycling" 23 or "vehicular cycling." And he basically operated a 24 bicycle as a vehicle. 25 His contention is that we're safest if you</p>
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<p>1 And, so, then, they ended building without consideration 2 for (inaudible) needs, and so a lot of these types of 3 sidepaths were coming -- the older ones were not being 4 taken care of. 5 So their -- their objective -- and these guys 6 weren't engineers, they were just two advocates. They 7 developed this model intentionally to create a system 8 where they could put pressure on agencies to build bike 9 lanes in the street instead of doing the sidepaths and 10 that was the purpose of that -- that model. 11 Q. Okay. So you said they weren't engineers, they 12 were just two advocates. 13 Do you -- do you consider the science behind 14 that -- that approach? 15 A. No, there's no science. It's their opinion. So 16 they just got together and thought, Now, let's look at 17 stuff around and we'll just pick some numbers and see how 18 it works and score them and see if it kind of gets the 19 result we're looking for, basically, to encourage agencies 20 and put pressure on agencies by making a safety argument 21 that bicyclists should be accommodated in the street with 22 bike lanes. 23 Q. So is -- is there -- can you reduce to a 24 single-standard methodology some way of evaluating 25 sidepath safety?</p>	<p>1 operate your bicycle in traffic as a vehicle and then 2 you'll be treated with respect more than others if you 3 operate in that manner. His methodology wasn't based on 4 science. It was just he was a strong advocate in 5 California in the 1970s when bike lanes were being 6 invented and he was opposed to all efforts to separate 7 bicyclists from traffic. He was a bicycle racer, an 8 amateur bicycle racer, and he was very concerned that 9 bicyclists were losing the right to the road and that they 10 were going to be pushed over and be forced to ride on the 11 sidewalks; so he created this technique called "effective 12 cycling." 13 He published books on it, and he inspired a 14 legion of advocates throughout the United States to, kind 15 of, follow his lead. And bicycle -- and Commute 16 Orlando -- I'm misstating their name -- but they are of 17 his point of view on this issue. They're very opposed to 18 all types of bike facilities, generally. They say, 19 nominally, they support safe ones, but when you actually 20 look at their work and research and their PowerPoints and 21 their trainings -- they offer training courses 22 called "Cycling Savvy" which is basically repackaged 23 vehicular cycling. They're opposed to infrastructure that 24 separates bicyclists from traffic. 25 Q. Okay. I'm going to turn my attention eventually</p>

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<p>1 to the stuff that you would rely on, but I'm going to ask</p> <p>2 you one more because you mentioned the -- the Pasanen</p> <p>3 study from Finland.</p> <p>4 A. Yeah.</p> <p>5 Q. Tell me about your thoughts on that.</p> <p>6 A. So I hadn't seen it before and found it</p> <p>7 interesting. And, so, I -- I read it in great care and</p> <p>8 interest. The gentleman is a PhD of some sort working in</p> <p>9 the traffic agency in -- in Helsinki, I think, in a</p> <p>10 transportation department. So I assume he had, you know,</p> <p>11 good knowledge. And I don't know if he's an expert, but</p> <p>12 I -- you know, I'm just trusting that his work is good.</p> <p>13 So I read the paper. His assertion in the paper</p> <p>14 was interesting. He said that the two-way or the two-way</p> <p>15 and separated bike lanes were less safe than riding in the</p> <p>16 street. So kind of supporting some of this stuff that</p> <p>17 John Forester was saying that bicyclists were better in</p> <p>18 the street and may be safer.</p> <p>19 So, then, I was looking at it and thinking about</p> <p>20 it, but the thing that caused me a lot of concern about</p> <p>21 his paper is he had a very strange perspective. He was</p> <p>22 approaching it from a Vision Zero perspective, and that</p> <p>23 was what I was doing my training on today, and his</p> <p>24 assertion is that the safest mode of transportation is</p> <p>25 transit -- and I agree with that -- trains, buses do not</p>	<p>1 Europeans have pretty extensive networks of high-quality</p> <p>2 separated facilities separated from traffic; so that's</p> <p>3 where the vast majority of cyclists are riding, on the</p> <p>4 streets that have higher volume. So it's very logical, to</p> <p>5 me, that there's probably very low volume of cyclists in</p> <p>6 the street. So, naturally, if more people are riding in</p> <p>7 the paths, then the volumes would be higher, so the</p> <p>8 crashes would be higher.</p> <p>9 So I don't think that that's a very good</p> <p>10 conclusion. And I really found that surprising because</p> <p>11 without giving a rate, you can't make a fair comparison.</p> <p>12 Q. Okay. Let's switch to the sources you believe</p> <p>13 she cited that are reliable.</p> <p>14 What do you think of the NCHRP 500 study?</p> <p>15 A. I believe that study is good work for its time.</p> <p>16 It was 2008 or so, I believe, when it was printed. Again,</p> <p>17 it was referenced to earlier. It's relying on data, the</p> <p>18 studies from 1990s to inform it. It's -- it's pretty</p> <p>19 solid work.</p> <p>20 Q. Okay. Any downsides to that study?</p> <p>21 A. There's a few. I mean, the one is it's dated</p> <p>22 now. Crashes -- crash patterns have changed a little bit.</p> <p>23 It -- it -- it kind of brought in this perception -- and</p> <p>24 I've got to say, I mentioned this History of Cycling</p> <p>25 because it's -- it infiltrated our design guidance for the</p>
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<p>1 have a lot of crashes; so people are safe. And he's</p> <p>2 really concerned that bicycling was competing with</p> <p>3 transit, and that to achieve Vision Zero we shouldn't</p> <p>4 necessarily be promoting people to bicycle, we need to get</p> <p>5 them to be using transit. And I don't know that we can</p> <p>6 force people to pick a mode that -- in that way. And it</p> <p>7 was kind of, to me, a peculiar way to view the safety</p> <p>8 (inaudible).</p> <p>9 So many have taken his -- his paper as sort of</p> <p>10 this theoretical exercise of, well, how can we just toss</p> <p>11 this interesting idea to investigate and I'll write a</p> <p>12 paper about it. But the thing that I saw that was</p> <p>13 troubling was -- for me, it was troubling is that this</p> <p>14 gets printed and then people take it and they don't</p> <p>15 understand the ramifications of what he wrote. And, so,</p> <p>16 he said that bicycling on these paths is more dangerous</p> <p>17 than the street. Okay.</p> <p>18 Based on looking at the evidence, there are more</p> <p>19 crashes occurring on the bike paths than on the street, so</p> <p>20 that's how he concluded that they were more dangerous.</p> <p>21 But he provided no information on the volume; so we have</p> <p>22 no understanding of the rate.</p> <p>23 And, so, if there were 20 crashes on the path,</p> <p>24 and two in the street because no one rides in the streets.</p> <p>25 And I've been in Europe numerous times, the fact is the</p>	<p>1 last 40 years.</p> <p>2 The first succeeding editions of the AASHTO guide</p> <p>3 got very strong recommendations discouraging sidepaths, in</p> <p>4 part, because of some of the efforts of John Forester and</p> <p>5 citing his, sort of, misrepresentations of data. And we</p> <p>6 didn't have a lot of research to counter that because it</p> <p>7 wasn't our focus to do research throughout the 70s and 80s</p> <p>8 on bike crashes.</p> <p>9 So there's some of that legacy that carries</p> <p>10 through into that research project and some of their --</p> <p>11 their findings. But I would say, overall, it's a</p> <p>12 pretty -- pretty good study.</p> <p>13 Q. Okay. I'm going to ask you about one more before</p> <p>14 switching to some other studies. The one other study --</p> <p>15 or the other one that she referred to the -- I think it's</p> <p>16 titled, "Why Can't We Be Friends?" from 2012?</p> <p>17 A. Right.</p> <p>18 Q. Are you familiar with that?</p> <p>19 A. Yeah. That was an interesting one. And -- and I</p> <p>20 liked it because it gave a summary and -- and it was a</p> <p>21 one-stop shopping of -- of some literature review of</p> <p>22 safety studies between trucks and bicyclists, (inaudible)</p> <p>23 of other studies. They actually took some time and they</p> <p>24 actually called city agencies and spoke to them. Cities</p> <p>25 with large ports and lots of shipping similar to Seattle.</p>

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<p>1 So that study is pretty good and it gave a good</p> <p>2 summary of understanding that there -- there is elevated</p> <p>3 risk of fatality injuries by bicyclists getting hit by</p> <p>4 trucks. It makes sense, they're larger, heavier,</p> <p>5 vehicles. And, so, that study just put, kind of,</p> <p>6 one-placed that -- that information.</p> <p>7 There's another piece of that study that I</p> <p>8 thought was -- unfortunately, that study is a good example</p> <p>9 of how, I think, at times, you can mischaracterize the</p> <p>10 results.</p> <p>11 Q. What do you mean?</p> <p>12 A. So the reality is, in the studies that -- that</p> <p>13 are discussed and the different cities and the facts and</p> <p>14 the ground in those different cities is you can make a</p> <p>15 broad assertion that -- that trucks are more dangerous to</p> <p>16 bikes. And it's true that you can have a higher risk of</p> <p>17 injury and fatality if you get hit by a truck but, again,</p> <p>18 what's the relative rate of those crashes occurring? How</p> <p>19 often are they happening? And where are they occurring?</p> <p>20 So none of those studies said where bicyclists were</p> <p>21 riding. They didn't say they were riding on sidepaths.</p> <p>22 They didn't say they were riding in the street. They</p> <p>23 didn't say they were riding in bike lanes. And my</p> <p>24 knowledge of those cities and infrastructure and these</p> <p>25 dates that these happened, and in similar ports, they did</p>	<p>1 City of Seattle data and they said (inaudible) crashes</p> <p>2 actually happened in the City between truck and bicyclist.</p> <p>3 What they found in ten years, there was 61 crashes in ten</p> <p>4 years. And out of those 61 -- this is 61, and let's</p> <p>5 compare that to the crashes with bikes and vehicles, cars,</p> <p>6 you know? 3,700 in that same time period. So 61 with</p> <p>7 trucks, 3,700 with vehicles; so it's a very small percent.</p> <p>8 And out of the 61 crashes with what they said</p> <p>9 were trucks, a truck is a broad definition of what that</p> <p>10 means. And I think as we saw the team discuss the truck</p> <p>11 classification, all the different sizes, trucks are</p> <p>12 anything from a UPS delivery truck to a WB-67. So the</p> <p>13 reality is that of 61 crashes in ten years, only 16 and</p> <p>14 one-sixth were with large trucks -- truck or trailer</p> <p>15 trucks; so the vast majority of those trucks were with</p> <p>16 UPS-type trucks. And those are the ones that are most</p> <p>17 problematic, that we now see data of injuring and killing</p> <p>18 people because they operate closer to cars, faster speeds,</p> <p>19 they turn at faster speeds, and they're higher up and so</p> <p>20 bikes can get caught and pushed around and pulled under</p> <p>21 the wheels. So I think that's an important thing to</p> <p>22 understand.</p> <p>23 So now that we've discussed that all, there was</p> <p>24 no context provided in Ms. Hirsche's testimony and within</p> <p>25 her document of that risk difference.</p>
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<p>1 say -- there's a couple that did specify that the vast</p> <p>2 majority of cycling was in shared lanes, and so that makes</p> <p>3 sense.</p> <p>4 And that's based on what I see around in crash</p> <p>5 studies is the vast majority of bicycle fatalities are</p> <p>6 occurring with bicycles operating in traffic with trucks.</p> <p>7 They're operating alongside trucks and they get hit by</p> <p>8 trucks turning right because they're immediately adjacent</p> <p>9 to them with the truck being two or three, four feet away</p> <p>10 from them while the truck begins to turn. And that's the</p> <p>11 classic blind spot right-hook truck crash which I've seen</p> <p>12 illustrated in the hearing with the blind spot diagram.</p> <p>13 Q. And I -- I misspoke. There was one more I wanted</p> <p>14 to ask you about that was -- that she referred to and</p> <p>15 that's the Boulder study.</p> <p>16 A. Well, I think I'd like to add one last thing in</p> <p>17 sort of the truck -- the trucking for Seattle is -- the</p> <p>18 truck study is great because it looked at studies across</p> <p>19 the United States. But there was a key point made in</p> <p>20 there, and I thought this is important because I think</p> <p>21 it's so important to look at actual data and facts when it</p> <p>22 comes to -- to risks, to evaluate risk. And, so, yes,</p> <p>23 trucks are a higher risk of fatality injury if hit, but</p> <p>24 you also have to look at what are the -- what is the risk?</p> <p>25 So they actually took the data for ten years of</p>	<p>1 Then you just mentioned the Boulder study.</p> <p>2 Q. Tell us about that. I think she said it was a</p> <p>3 good representative one of potential conditions for the</p> <p>4 Burke-Gilman because of the high rate of bicycling in</p> <p>5 Boulder.</p> <p>6 A. Yeah. And I believe that this entire testimony,</p> <p>7 she said that it was -- it was kind of a perfect analysis</p> <p>8 because Boulder has a lot of sidepaths as a default</p> <p>9 treatment in a lot of the city. It's a college town. You</p> <p>10 get a lot of use. University of Colorado, I've been there</p> <p>11 multiple times. We have an office in Denver.</p> <p>12 So, in my traveling around Boulder and looking at</p> <p>13 these, it's the classic designs. It's decent quality</p> <p>14 design. But, generally, instead of being adjacent to the</p> <p>15 road, like the people were struggling with in Illinois,</p> <p>16 they actually were separated a few feet from the road.</p> <p>17 But the more important thing is they had a continuous</p> <p>18 network that circulates the city. But the thing that's</p> <p>19 different about Boulder -- and, so, what Ms. Hirsche had</p> <p>20 stated is that it proved -- the Boulder -- Boulder study,</p> <p>21 because it's recent. And, like, as I mentioned, we have a</p> <p>22 long history of not having the best research, not up to</p> <p>23 date. And the biggest problem in some of the historical</p> <p>24 research is that we didn't have numbers of people cycling</p> <p>25 so we need to calculate rates.</p>

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1 But the good thing in Boulder is that -- what she
 2 said is that we know that it's a cycling town and it has a
 3 lot of people bicycling, and I totally agree. It's one of
 4 the top bicycle cities in the United States. They have
 5 bicycle road shares that -- depends on what you glean or
 6 believe from the data, they say from 10 percent to
 7 25 percent of trips are by bicycle. That's very, very
 8 high. So there's a lot of cycling that occurs there.
 9 And, so, her statement is that because there's a
 10 lot of cycling in Boulder, because there's a large number
 11 of crashes in the sidepath system there, that it proves --
 12 you know, she was quite definitive in considering it -- it
 13 proves their dangerous and not appropriate because if
 14 we're going to have a sidepath (inaudible) it should have
 15 higher use because Seattle's a cycling town, more so than
 16 other big cities.
 17 And, so, to her, she saw it as a direct
 18 correlation that because Boulder has high crashes, it just
 19 proves that it won't work in Ballard. But, again, I think
 20 this is an example of misrepresenting the data. I mean,
 21 it's fine to talk about the crashes, but you always have
 22 to present it in context.
 23 So what is the context of this study? I looked
 24 at it, reviewed it. It was a Vision Zero study published
 25 last year; so very recent. So they analyze bike crashes

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1 over a period of years, and they found -- I think it was
 2 five or six years.
 3 And, so, as they evaluated they found that in
 4 Boulder, the city with a lot of bicycling, has 180 bike
 5 crashes a year. Not that high really when you think about
 6 the fact there's thousands of people bicycling every day.
 7 So 180 bike crashes in a year, of those 180 bike crashes,
 8 there were 80 on sidepaths; so not even 50 percent were on
 9 sidepaths. So we're talking about 80 crashes on side
 10 paths.
 11 Of those, and this is where she bases her
 12 assertion and definitive statement that this proves their
 13 dangerous and not appropriate, she said, you know, well
 14 two-thirds of them are in the contraflow direction. Well,
 15 that's true. So 54 of those crashes out of 80 were in the
 16 contraflow direction. There is evidence that's consistent
 17 that shows that contraflow movement is an elevated risk
 18 but to assert and state flatly that a sidepath is more
 19 dangerous than any other alternative is flatly wrong and
 20 inappropriate because you have to take in the context of
 21 the whole environment.
 22 So, again, as I stated, 180 bike crashes in a
 23 year, 80 were sidepaths. Out of those 180 crashes, only
 24 30 caused serious injuries, and there were only -- it
 25 didn't say clearly -- this is an average per year, 180, 30

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1 serious injuries. In five years, there were two
 2 fatalities.
 3 So Vision Zero is all about not eliminating
 4 crashes, necessarily, to zero, because that's quite
 5 challenging. Vision Zero in safety is about preventing
 6 serious injury or death, and Boulder has achieved that.
 7 So she also failed to -- so she didn't
 8 acknowledge and put this in the proper context in her
 9 document or in her testimony. She made a definitive
 10 statement saying this proves they're dangerous, which I
 11 don't think is the appropriate conclusion to take from
 12 this data. And she failed to mention that if -- if
 13 this -- if this proves as dangerous, then why is Boulder
 14 the safest city for bicycling in the state of Colorado by
 15 the statistics? Why is Boulder one of the safest cities
 16 in the United States for bicycling if the sidepath system
 17 is so dangerous? It doesn't make sense.
 18 Q. So let me ask you -- a lot of -- on the study
 19 that she cited to you, I want to ask you if you'd refer
 20 the Examiner to studies that you think are more reliable
 21 than those that she relies on.
 22 A. I would say that Boulder study is reliable. It's
 23 a great study. It's just the conclusion she took from
 24 them were totally inappropriate.
 25 So for studies that --

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1 Q. Let me point you to one. We'll try to do this.
 2 Can you go to Tab 23 in your binder? The City's
 3 binder?
 4 MR. KISIELIUS: I'd ask that to be marked.
 5 EXAMINER VANCIL: This will be Exhibit R25.
 6 Q. (By Mr. Kisielius) Do you recognize that?
 7 A. I do. This is a study that's produced -- they
 8 try to produce it annually, by NHTSA, National Highway
 9 Traffic Safety -- institute -- I'm saying it wrong, but --
 10 association -- Administration.
 11 So they -- they put out traffic safety facts.
 12 It's basically a summary. Their -- their role as part of
 13 the federal government is just to assess safety in the
 14 United States and basically give summaries of how they're
 15 doing when it comes to roadway safety for people driving,
 16 walking, biking, safety in general.
 17 So one of the reports that they issue is this
 18 annual report on traffic safety facts. And if you look in
 19 the upper-left corner, you see it's 2015 data, but it's
 20 published in 2017. So there's -- there's a lag in getting
 21 data, getting it into the system, and then generating the
 22 reports. But, so, this is, essentially, the most recent
 23 data available because it was just printed that gives us
 24 some facts about crashes that are coming now for people
 25 walking and bicycling as recent as 2015.

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1 Q. Is it -- you talked earlier about, sort of,
 2 improvements in data since the earlier batch that you were
 3 working on.
 4 Is this -- does this demonstrate anything about
 5 the more recent data?
 6 A. It's getting better. And, still, they are
 7 hostage to the data provided to them by the local cities
 8 and local states and how good a job are they doing in
 9 their databases. So the NHTSA (inaudible) is going to be
 10 high-level summaries of -- of aggregated data. And, so,
 11 that's what we see if you flip to Page 2 they give you
 12 very general characteristics, of, like, 70 percent of
 13 crashes happen in urban areas, 30 percent are in rural
 14 areas.
 15 You can look at the pedal cyclist location and
 16 you can look at this one in the middle. So at the bottom
 17 of the page in the middle, there's three circles. The
 18 first one is weighing the use, 70 percent of all crashes
 19 are in urban areas; the middle circle says that 61 percent
 20 of all bad crashes occur not at intersections but between
 21 intersections and that's because we have a serious problem
 22 with crashes between bicyclists and vehicles in a roadway
 23 environment which is contrary to all the history of the --
 24 the people advocating for bikes being in the street from
 25 the 1970s on. And that's why this has been in this, sort

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1 of, contentious debate in our business for the last 50
 2 years.
 3 Q. Let's turn to Tab --
 4 MR. KISIELIUS: Oh, let me first ask for
 5 this to be admitted.
 6 MR. COHEN: No objection.
 7 EXAMINER VANCIL: R26 is admitted.
 8 (Exhibit No. R26 Admitted)
 9 THE WITNESS: One thing I can add is --
 10 that supports this data is a contributing --
 11 MR. COHEN: Can we have a question instead
 12 of just a soliloquy, please?
 13 Q. (By Mr. Kisielius) Would you like to add
 14 anything about that document?
 15 A. Sure. One thing I'd like to add is that this
 16 report, it reflects change in conditions that are
 17 happening since crashes in the 1990s, 1980s. Nowadays,
 18 we've had a dramatic strike in bike and pedestrian
 19 fatalities in the last five years.
 20 When I presented in the webinar this afternoon,
 21 it's gone up 40 percent. We went from about 5,000 bike
 22 and pedestrian crashes five years ago. It's increased by
 23 2,000, in total, and it's a factor of the fact that we
 24 have a dramatic increase in destructive driving, and we
 25 have more vehicles that have technology installed in the

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1 (inaudible) and the wayfinding. We have a dramatic
 2 increase of bicyclists being hit on the roadway system,
 3 being hit from behind, being sideswiped; so that's part of
 4 our AASHTO guide update.
 5 We ran the (inaudible) data which is baked into
 6 this. And we did an assessment, and it's approximately
 7 47 percent of all bicyclists deaths in the United States
 8 in the last, I don't know, 2015, 2016, with bicyclists
 9 being rear-ended by cars and trucks; sideswiped;
 10 (inaudible) and in parallel just sort of passing weird and
 11 bizarre (inaudible). So, generally, that's a lot.
 12 And the advocates that Commute Orlando and these
 13 other sort of vehicular cyclist mindset have been saying
 14 repeatedly from the 70s on that bicyclists shouldn't be
 15 worried about these crashes, but those crashes are only 5
 16 or 10 percent of the crashes and, so, all these efforts to
 17 separate bikes from traffic are unwarranted because all
 18 the crashes occur at driveways and intersections when the
 19 facts are very different from their assertions.
 20 And, so, then, it's supported, also, by the
 21 Governor's Highway Safety Association in their report that
 22 are now kind of parallel-point from this data. Again,
 23 it's the same as you saw in Page 2, that 61 percent of all
 24 crashes are not at intersections in driveways, they're in
 25 between them. And that's where this real serious effort

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1 and attention is to be spent to address these safety
 2 problems.
 3 Q. And let me just ask you for a second. I want to
 4 turn to some other studies but that -- that distinction
 5 you're making between crashes in the roadway as compared
 6 to crashes in the intersection.
 7 On existing conditions, where along the corridor
 8 now is that risk in the roadway experienced? How much of
 9 the corridor?
 10 A. The entire roadway. So the entire length of
 11 Shilshole, the entire length of Leary, the entire length
 12 of Ballard. You look at Shilshole, in particular, it's
 13 the most dangerous environment of the three from the
 14 standpoint of the parking that is completely unregulated.
 15 You have people parking on the railroad tracks almost
 16 continuously. You have people parking right up to the
 17 driveways of these businesses because it's completely
 18 unregulated. There's no definition to the driveways. You
 19 can't tell where they are.
 20 You've got narrow pavements where the bicyclists
 21 are operating in close proximity to the trucks, the
 22 concrete trucks on that roadway today. You have railroad
 23 tracks that are in very close proximity to the shoulder
 24 that bicyclists -- there's, like, sections of that, two,
 25 three-foot shoulders and some of them don't. So if

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1 bicyclists are operating in close proximity to parallel
 2 railroad tracks, which is a known safety problem. And so
 3 all these things combined creates a very chaotic
 4 environment. As Mr. Kuznicki testified yesterday, it's a
 5 very chaotic, unregulated environment, and that has a lot
 6 of potential for -- for crash risk.
 7 And the parking being the most dramatic because
 8 we have angled parking, which is people parking in their
 9 kind of crazy way that they do down there, blocking sight
 10 lines. And that creates a lot of challenges for people,
 11 for drivers pulling out of driveways that can't see. But
 12 the fact of the matter is it's a -- it's -- it's not a
 13 good environment. And it is not, you know, (inaudible)
 14 bicyclists today, but it's not a good environment for
 15 people walking. There's no sidewalks. You know, all of
 16 the employees down there, you know, they're coming in and
 17 out of their cars, they walk to their business. You know,
 18 they're surprising drivers on the road because they walk
 19 up from their car and cross wherever they walk. It's
 20 totally unrefined. And, so, I think there's all
 21 (inaudible). You have all the ingredients of a risky
 22 environment because it's undefined.
 23 Q. I'm going to want to return to what defining that
 24 would do in a second, but let's -- let's stick with the
 25 studies.

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1 Turning to Tab 24 -- oh, excuse me. Yes, Tab 24.
 2 MR. KISIELIUS: This needs to be marked.
 3 That would be R27?
 4 EXAMINER VANCIL: Yes.
 5 Q. (By Mr. Kisielius) And are you familiar with
 6 this document?
 7 A. I am familiar with this document.
 8 Q. So does this tell us anything more about, sort
 9 of, crash patterns and what's been happening with them
 10 since the 90s?
 11 A. Yes. This is an updated study. It was published
 12 in 2012. So even this one is getting a little dated. I
 13 mean, the piece -- the cities that are installing bicycle
 14 infrastructure has been very strong in the last ten -- ten
 15 years. But this study is an excellent study. It wasn't
 16 included in the 2012 AASHTO guide because it hadn't been
 17 printed, but this was one of the first better studies done
 18 by a real data analyst and researchers that looked at
 19 safety conditions of different types of bike facilities,
 20 bicyclists operating in the streets, operating on
 21 separated bike lanes, shoulders pass. And it looked at
 22 what people want, prefer to ride, where they would like to
 23 ride compared to their choices and whether they're
 24 actually safe.
 25 We found that people have obviously a very strong

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1 preference to be separated from traffic, the vast majority
 2 of the population, and that those facilities that
 3 separated bicyclists from traffic were, in fact, safer
 4 than the shared traffic conditions in the cities that they
 5 looked at.
 6 Q. Okay. Let's turn to Tab 26 in your book.
 7 MS. FERGUSON: I'm sorry. I'd ask to have
 8 that admitted.
 9 EXAMINER VANCIL: Mr. Cohen?
 10 MR. COHEN: No objection.
 11 EXAMINER VANCIL: R27 is admitted.
 12 (Exhibit No. R27 Admitted)
 13 THE WITNESS: You said 26?
 14 MR. KISIELIUS: 26.
 15 And I would ask that this be marked as 28.
 16 EXAMINER VANCIL: And not 25 -- 26? So
 17 this is the Achieving Multimodal Networks?
 18 MR. KISIELIUS: Yes.
 19 EXAMINER VANCIL: Marked R28.
 20 Q. (By Mr. Kisielius) Are you familiar with this
 21 document?
 22 A. I am. If you look on Page 2, you'll see my name
 23 as the author of the guide.
 24 Q. Okay. So tell us what we're -- tell us how you
 25 use this or what it stands for, the proposition.

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1 A. So, again, as I have been testifying to, there's
 2 been a lot of changes in new research that's come to
 3 light. And there's a recognition that we have a serious
 4 safety problem, not just in roadways, bikes operating in
 5 traffic, but pedestrians in a built environment because
 6 we've had an increase in people walking as well as
 7 bicycling. And I think you see that in the city of
 8 Seattle with the development of South Lake Union. There's
 9 a lot of more people in the urban environment moving
 10 about. There's an emphasis on health and alternative
 11 modes of transportation, emphasis on transit; so we have a
 12 lot of people hiking and walking.
 13 Federal Highway was getting a little frustrated
 14 that agencies and designers were not implementing best
 15 practices to address the safety issues that are out there
 16 and that we have this enormous spike in crashes occurring
 17 and we need to be very proactive to manage them and get
 18 ahead of it. And, so, they looked at the existing design
 19 guides. They don't have the ability, the Federal Highway,
 20 to change the AASHTO manual, that's not their mandate.
 21 What they can do is issue guidance like this that kind of
 22 pushes the practitioner, such as myself, public agencies,
 23 to keep up because it's hard to update an AASHTO guide and
 24 they're not updated on a regular basis; so Federal Highway
 25 can issue reports like this in a faster manner to push the

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1 practice forward.
 2 So the purpose of this guide was to give us the
 3 most up-to-date approaches to considering strategies that
 4 can reduce conflicts between motorists and bicyclists and
 5 pedestrians; to get that information out there to the
 6 practitioners and to start to deploy them on projects.
 7 And I think it's -- a couple of the things that are
 8 applied -- a number of the things that were applied in
 9 this guide, are actually been -- were recommended in the
 10 FEIS to mitigate safety challenges that result from
 11 bikeways for this project.
 12 Q. And, on that, I'm going to ask you to turn to
 13 Page 20 of the document.
 14 There was some testimony about truck aprons. Is
 15 that an example of a truck apron?
 16 A. Yes. So if you look at Page 20, this whole
 17 context of this is a discussion of intersections
 18 (inaudible) that starts on Page 17. Page 20 shows you
 19 examples of these truck aprons and how they're applied.
 20 So Federal Highway sees these as a very, very
 21 important strategy in our toolbox, something that is
 22 relatively new that's taking the lessons learned from
 23 roundabouts. And I think as Mr. Bishop testified, we know
 24 that the truck aprons have been very, very helpful in
 25 improving roundabout safety so that -- we have this

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1 ongoing challenge, which has been part of the conversation
 2 this entire time, that we have a challenge in designing
 3 intersections especially in cities for large trucks to
 4 accommodate them at the same time when 95 percent of the
 5 traffic is the smaller vehicles.
 6 So if we designed all of our intersections for
 7 large trucks, we're making really large intersections
 8 which are going to cause safety problems.
 9 Q. Why?
 10 A. For non-motorized -- for everybody: Motorists,
 11 bicyclists, pedestrians.
 12 When you have very large intersections, your
 13 large radii so a truck can turn, it allows the other
 14 95 percent of the traffic to drive at faster speeds that
 15 are inappropriate to turn too fast. We're now having
 16 drivers turn at speeds over 20 miles an hour and they
 17 don't prefer to yield to people turning. And, so, a large
 18 geometry radius is -- leads to drivers turning at speeds
 19 that are too high for them to yield, which is what their
 20 duty is when they turn.
 21 Q. And so does that -- briefly, do you just want to
 22 tell us how the truck apron addresses that?
 23 A. I'm sorry. Could you repeat the question?
 24 Q. Briefly, could you tell us how the truck apron
 25 addresses that -- that risk?

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1 A. So, if you look at the -- the third example on
 2 the very bottom, I'll start with a roundabout because I
 3 think people are even more familiar what a roundabout is.
 4 So with a large circular eye in the middle in
 5 this photograph, you can see the surface area in red
 6 color. That's the mountable truck apron of the roundabout
 7 on the interior of the circle; so there's an extra circle
 8 that the trucks can track on. And, now, what we've
 9 learned through the roundabouts is -- is people in normal
 10 cars, don't drive on that. It's super uncomfortable. It
 11 causes your car to really shift. They avoid it.
 12 So now they're driving in that bigger circle.
 13 They've -- we've constricted the space for the smaller car
 14 so they actually drive slower, which is the purpose of a
 15 roundabout. And the larger that the mountable part of the
 16 roundabout, the truck can track over, and it doesn't
 17 affect them; so we know this. We can build thousands of
 18 them in the United States.
 19 If you look in that photograph, you'll also note
 20 that it's been applied now on the approach to the
 21 roundabout because we have a significant problem with
 22 roundabout design of drivers coming into the circles too
 23 fast because we had to design for the truck and the angle
 24 of the trailer sweeping through. And, so, the throat
 25 entrance of that approach ramp to the roundabout circles

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1 are, in many cases, too big, and allows all the 95 percent
 2 of those smaller cars to come into the roundabout too fast
 3 which causes the roundabout to fail and causes safety
 4 problems in the roundabout.
 5 So, now, we have practitioners installing these
 6 truck aprons to narrow down the approach ramp to slow them
 7 down. Cars who are avoiding that, pedestrians aren't
 8 standing on it, and trucks are -- can track over it as
 9 needed, but it's achieving that safety objective of
 10 slowing people down without conveying large trucks.
 11 So this same idea, now, is being expanded to
 12 intersection -- regular intersections. So the city of
 13 Portland, Oregon, is the photo you see in the middle. And
 14 you can see that the way it is, it's kind of subtle. You
 15 have the two -- what you're looking at in that photo,
 16 let's start with the telephone pole for a point of
 17 reference. Go to the bottom of that pole, you'll see a
 18 yellow rectangle. That's where the pedestrian stops and
 19 waits and that's the normal, detectable warning to meet
 20 ADA regulations. And then if you look to the left side of
 21 that photo, you'll see another yellow rectangle and that's
 22 where pedestrians wait to cross the street.
 23 And then outside of that, you see the concrete
 24 area. That's the mountable truck apron area. And, so,
 25 visually, it looks different. It kind of looks different

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1 to the driver of -- of a car, so they stay on the pavement
 2 when they're making that right turn and that slows them
 3 down so they will yield to people in the crosswalk.
 4 The trucks, as you can see tire marks, they're
 5 clearly in that photograph. The tire marks aren't on the
 6 sidewalk. The tire marks are going over the apron because
 7 the design was properly designed to accommodate the truck.
 8 And, so, there is a huge concern when intersections are
 9 not designed properly for trucks to turn. They can track
 10 over the sidewalk and there's instances where they've
 11 killed people because you think you're safe on a sidewalk.
 12 So, fundamentally, what this tool is going to
 13 allow us to do is design what we want to do, tighter
 14 intersections for safety and the most vulnerable users
 15 that slow down 95 percent of the traffic while still
 16 accommodating the large trucks. This is going to have
 17 huge crash-reduction benefits in our cities as they
 18 expand, and that's why Federal Highway put it into this
 19 manual to encourage practitioners to install them.
 20 MR. KISIELIUS: I'd ask to have R29
 21 admitted -- or R28.
 22 MR. SCHNEIDER: No objection.
 23 EXAMINER VANCIL: R28 is admitted.
 24 (Exhibit No. R28 Admitted)
 25 Q. (By Mr. Kisielius) Can we turn to Tab 29?

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1 A. Yes. It's Risk of Injury for Bicycling on Cycle
 2 Tracks.
 3 Q. Yes.
 4 MR. KISIELIUS: And I'm going to ask to
 5 have this marked as R29.
 6 MR. COHEN: For the record, this has
 7 already been admitted in prior hearings so we have no
 8 objection to it coming in again.
 9 MR. KISIELIUS: Okay.
 10 EXAMINER VANCIL: Not this hearing?
 11 MR. COHEN: No, not this hearing.
 12 Q. (By Mr. Kisielius) Are you familiar with this
 13 document?
 14 A. Yes, I'm very familiar with it.
 15 Q. Okay. And --
 16 EXAMINER VANCIL: I'll go ahead and admit
 17 R29.
 18 (Exhibit No. R29 Admitted)
 19 MR. KISIELIUS: Okay. Thank you.
 20 Q. (By Mr. Kisielius) So tell us what this says
 21 about cycle tracks.
 22 A. So cycle tracks are facilities that separate
 23 bicyclists from pedestrians but also separate the
 24 bicyclists from traffic.
 25 Q. Okay.

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1 A. So if you can imagine a street, there's moving
 2 traffic, and then there's bike traffic that's separated by
 3 parking, a barrier, or a curb, somewhat of a sidepath.
 4 And then you have a sidewalk that's adjacent to that. And
 5 it's also a condition, if you're familiar with the
 6 Westlake Cycle Track, it's similar to that in the
 7 waterfront. And then Second Avenue with the protected
 8 bike lanes. There's also been co-protected bike lanes.
 9 Q. I'm going to ask you what it says more
 10 specifically about riding in shared streets.
 11 A. So this study is an interesting study because
 12 it's -- it talks about -- again, this history of saying
 13 that separating bikes from traffic is dangerous from these
 14 advocates from the 70s that persists to today; this
 15 research is kind of looking at that issue directly. Is
 16 that true? People assert this all the time. Is it true?
 17 So this study studied the separated facility, (inaudible)
 18 and compared it to the safety of other streets where
 19 bicyclists were operating in shared traffic.
 20 It's a two-way cycle track. All the cycle tracks
 21 in Montreal were two-way; so they evaluated the cycle
 22 track for safety. What's interesting about this, and I
 23 saw references from Ms. Hirschey about Montreal that said
 24 they don't build two-way facilities anymore because
 25 they're dangerous. And -- and I can see that that can

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1 come up when people are searching online for what you see.
 2 And the first things you often find when you're searching
 3 online is advocate websites. And, so, there's a permanent
 4 advocate in Montreal that asserts that the bike lanes in
 5 Montreal -- and this -- the reason (inaudible) in
 6 particular the two-way is dangerous. In fact, he says
 7 it's the second most dangerous bike lane in the entire
 8 city.
 9 This is an example of how people misuse data
 10 because he's using a fact that it has the second highest
 11 crashes in the city. In saying that, that proves,
 12 therefore, it's the most -- second most dangerous bike
 13 lane in the city. The fact of the matter is, he ignores
 14 the context of the volume of use. So that cycle track
 15 which was studied in this project, the end results of this
 16 proved that it is, in fact, possibly one of the safest
 17 facilities in the city.
 18 So even though -- that it has some facts about
 19 it, again, kind of similar to Boulder and, sort of the
 20 misrepresentations that were happening with the Boulder
 21 data, the reason that it has the second highest number of
 22 crashes in the city over a year, there are 150 crashes on
 23 average between bicyclists and motorists in a year. This
 24 is against a volume of users that's approximately 4,000
 25 bicyclists per day, and they have permanent counters on

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<p>1 this trail. They know how many people use it.</p> <p>2 One million bicyclists in a year; so to</p> <p>3 (inaudible)) with one million bicyclists crossing this</p> <p>4 facility, 150 of them are hit. If you took 150 people and</p> <p>5 divided it by 1 million, you get close to zero as a crash</p> <p>6 risk. And, so, these folks that did the analysis, they</p> <p>7 didn't compare that high level data, the million trips and</p> <p>8 all that, they actually just looked at a micro level.</p> <p>9 Let's compare these blocks downtown to some parallel,</p> <p>10 adjacent streets of shared traffic, and they found the</p> <p>11 fact of the matter is these separated facilities are</p> <p>12 30 percent safer than bicyclists out there in the shared</p> <p>13 lanes even though they're two-way facilities, which I've</p> <p>14 been hearing are the most dangerous facilities throughout</p> <p>15 the city. It's factually not accurate to say that based</p> <p>16 on the data and evidence.</p> <p>17 EXAMINER VANCIL: And I'm going to stop you</p> <p>18 there.</p> <p>19 Mr. Schultheiss?</p> <p>20 THE WITNESS: Schultheiss.</p> <p>21 EXAMINER VANCIL: Is there an "L" in there?</p> <p>22 THE WITNESS: I'm sorry, what?</p> <p>23 EXAMINER VANCIL: Is there an "L" in there?</p> <p>24 THE WITNESS: Schultheiss, yes.</p> <p>25 EXAMINER VANCIL: That's the part I missed.</p>	<p>1 MR. COHEN: Thank you very much.</p> <p>2 MR. BROWER: Certainly.</p> <p>3 And, Mr. Examiner, I emailed that to you,</p> <p>4 as well.</p> <p>5 Your email didn't pop up, so --</p> <p>6 MR. KISIELIUS: I'm hoping it hit the spam</p> <p>7 folder because I don't it yet.</p> <p>8 EXAMINER VANCIL: All right. We're</p> <p>9 adjourned. I'll see you all tomorrow at 8:30.</p> <p>10 Thank you.</p> <p>11 MR. BROWER: Thank you.</p> <p>12 MR. COHEN: Thank you.</p> <p>13 MR. KISIELIUS: Thank you.</p> <p>14 (Whereupon the proceedings were adjourned.)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 THE WITNESS: I have to think about it</p> <p>2 sometimes, especially after testifying.</p> <p>3 EXAMINER VANCIL: All right. So, we'll</p> <p>4 return tomorrow at 8:30. We'll continue with</p> <p>5 Mr. Schultheiss with the City.</p> <p>6 If I could ask, I know that you came off a</p> <p>7 webinar and, so, you've been speaking a lot today, and</p> <p>8 that you have a lot of expertise and interest in this</p> <p>9 area, but if I could ask that the -- we narrow the</p> <p>10 responses to the questions, that's important for the</p> <p>11 record in this -- this constraint.</p> <p>12 THE WITNESS: Okay. I apologize.</p> <p>13 EXAMINER VANCIL: That's more his</p> <p>14 responsibility than yours. So when we come back, if we</p> <p>15 could just tighten that up, I think we're kind of towards</p> <p>16 the end of that, anyway.</p> <p>17 So I think we're all set for procedural</p> <p>18 issues. Is there anything else we need to address before</p> <p>19 the end of the day?</p> <p>20 MR. BROWER: Are you guys okay with that?</p> <p>21 MS. FERGUSON: I haven't had a chance to</p> <p>22 look because we've been going.</p> <p>23 EXAMINER VANCIL: Okay. It's the videos.</p> <p>24 MR. BROWER: And, Mr. Cohen, I emailed it</p> <p>25 to you.</p>	

1 C E R T I F I C A T E

2 STATE OF WASHINGTON)
) ss.
3 COUNTY OF FRANKLIN)

4
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