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SNOHOMISH COUNTY HEARING EXAMINER

BSRE POINT WELLS, LP,)	
Appellant,)	
		11-101457 LU/VAR
vs.)	11-101461 SM
		11-101464 RC
SNOHOMISH COUNTY PLANNING)	11-101008 LDA
		11-101007 SP
AND DEVELOPMENT SERVICES,)	
Respondent.)	

VERBATIM REPORT OF RECORDED PROCEEDINGS

HEARING DAY 3

BEFORE HEARING EXAMINER PETER CAMP

MAY 18, 2018



RECORDING TRANSCRIBED BY:

ELEANOR J. MITCHELL, RPR, CCR 3006



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EVERETT, WASHINGTON; MAY 18, 2018

--oOo--

(Recording begins at 9:04 a.m.)

(Proceedings begin at 9:04 a.m.)

THE HEARING EXAMINER: Good morning, everyone. Let's get started again with the open-record hearing on the Point Wells project.

This morning, what we have scheduled is to continue with public comments. So -- I don't know if anybody's signed up, but...

THE CLERK: [Unintelligible] people.

THE HEARING EXAMINER: Sorry. We have t-- we have two signed up, I know. Who's -- who's next? Who -- who wants -- who's going next?

MR. GREGG: [Unintelligible].

THE HEARING EXAMINER: Go ahead. You're first. Come on down, sir, as they say.

MR. GREGG: [Unintelligible].

THE HEARING EXAMINER: You have to guess -- you have to guess the price right first.

MR. GREGG: Well, I --

THE HEARING EXAMINER: And that --



1 MR. GREGG: I've already guessed a price
2 on this one.

3 THE HEARING EXAMINER: And that table
4 moves up and down, so you can actually adjust it.

5 THE CLERK: There's a lever on the
6 right-hand side.

7 MR. GREGG: [Unintelligible].

8 THE CLERK: Here.

9 MR. GREGG: [Unintelligible].

10 THE CLERK: You can kind of adjust it.

11 MR. GREGG: All right.

12 THE CLERK: How's that?

13 MR. GREGG: All right.

14 THE CLERK: Is that okay?

15 MR. GREGG: That's fine. Thank you.

16 THE HEARING EXAMINER: And that microphone
17 is always on.

18 And were you here yesterday? Did I swear you
19 in yesterday?

20 MR. GREGG: Yes. No. No, I was here --

21 THE HEARING EXAMINER: Oh, let's --

22 MR. GREGG: -- in the morning --

23 THE HEARING EXAMINER: All right. Well,
24 let's --

25 MR. GREGG: -- but not in the afternoon.



1 THE HEARING EXAMINER: Let's swear you in.

2

3 (ROBERT GREGG sworn.)

4

5 THE HEARING EXAMINER: Name and address,
6 and then tell me what I need to know.

7 MR. GREGG: And is this on? Can you hear
8 me?

9 THE HEARING EXAMINER: Yes.

10 MR. GREGG: Oh, okay. My name is Robert
11 Greg. I live in Edmonds, Washington. And --

12 Is that all you needed? My name and Edmonds
13 close enough?

14 THE HEARING EXAMINER: An add- --

15 MR. GREGG: [Unintelligible].

16 THE HEARING EXAMINER: An address. And
17 address.

18 MR. GREGG: 165 --

19 THE HEARING EXAMINER: It's just like a
20 courtroom.

21 MR. GREGG: Yeah. 16550 76th Avenue West,
22 Edmonds, Washington 98026.

23 So my name is Bob Greg. I'm a certified
24 construction manager, and I have over 30 years of
25 experience in multifamily and mixed-use developments,



1 most of it here in the Northwest. I'm also a LEED
2 Accredited Professional for building design and
3 construction.

4 My experience includes the first urban village
5 that was done at Green Lake, which encountered many of
6 the same issues that this project has, which kind of
7 explains why I'm interested in this project. It was a
8 rezone. It involved much taller buildings, much higher
9 density.

10 THE HEARING EXAMINER: I'm sorry.
11 Which -- which project was it?

12 MR. GREGG: Green Lake. At Green Lake.

13 THE HEARING EXAMINER: Oh, at -- but, I
14 mean, is that the name of the project? Green Lake.

15 MR. GREGG: Yes, it actually is. Yeah, by
16 Green Lake. At Green Lake.

17 THE HEARING EXAMINER: Is that the one at
18 the north end of Green Lake.

19 MR. GREGG: It's on the east side, right
20 across the street from the bicycle store.

21 THE HEARING EXAMINER: Okay.

22 MR. GREGG: And it was a hundred-unit
23 condominium over a commercial development.

24 THE HEARING EXAMINER: Okay.

25 MR. GREGG: And it involved a lot of the



1 same issues, much smaller scale, of course, but views,
2 traffic, parking, cleanup of a contaminated site, an
3 extensive, well-organized, well-funded, and
4 well-meaning opposition, which we worked with and
5 against -- against and with -- for considerable time.

6 And I am currently working on three,
7 hundred-plus unit multifamily projects, two of which
8 are urban centers, both of which are in Snohomish
9 County, both before PDS this morning. Or today.

10 So I have every reason to argue in favor of
11 PDS's request. And I may or I may not; you don't know
12 yet. I'm not sure I know yet.

13 So my point is is that I've come to know
14 Mr. Countryman quite well. We've never had lunch or
15 dinner or even a drink, but I do consider him a friend,
16 so I thought I should disclose him. I highly respect
17 Mr. Countryman. It's hard to call him Mr. Countryman
18 instead of Ryan, but --

19 THE HEARING EXAMINER: He's been called
20 worse.

21 MR. GREGG: So in any case, I was
22 intrigued when I first heard about Point Wells in 2011,
23 and I have been following it very closely -- some would
24 say obsessively -- ever since through the growth
25 management hearing board, through the vesting trials,



1 through the traffic corridor studies, all of which I
2 attended at Shoreline and the EIS scoping meetings.

3 And over the last seven years, I need to
4 disclose, I've also gotten to know Mr. Huff. So my
5 testimony today feels like I'm between two friends on
6 the verge of a breakup. You don't want to take either
7 side, but you do want to see them stick together at
8 least a little longer and try to work things out.

9 So when the October 6, 2017, review completion
10 letter came out, I looked at it in great detail but
11 from a developer's standpoint and from a construction
12 manager's point of view. And I'm not turning this in
13 as an exhibit 'cause it's nothing other than the review
14 completion letter itself and my tracking of the -- of
15 the various issues.

16 So when I got the letter, all three hundred
17 and -- almost 400 pages of it, I sat down and broke it
18 down. It's 32 prior comments still needing answers;
19 43 issues of concern; 13 comments on the drawings
20 themselves, all of, you know, which I've printed and
21 looked at; ninety, nine-zero, questions of consistency
22 with codes for which the County also provided the
23 actual codes referenced in the remaining 201 pages of
24 the letter. They were the actual codes.

25 As I said, I've been at this for 30 years, and



1 this was the best review completion letter I've ever
2 seen. Excellent. From a developer's standpoint, thank
3 you for the road map; I know exactly what you need and
4 want me to do.

5 My conclusion was and remains: There are
6 actually not any issues that cannot be resolved. Many
7 of these issues actually have multiple practical
8 solutions. And, again, I'm not looking at it from a
9 planner's standpoint or from a land use attorney's
10 standpoint; I'm looking at it strictly from a
11 developer's standpoint.

12 Yesterday, Mr. Countryman addressed five areas
13 of substantial conflict with code. I do not want to
14 get between Mr. Countryman and Mr. Huff on the merits
15 of those five issues. I would like to make the
16 observation that that does represent considerable
17 progress from the 90 issues that were identified in the
18 County's October 6th review completion letter as
19 consistency with adopted codes.

20 On Wednesday, the applicant argued against a
21 continuance for the hearing based partially on
22 additional cost. You stated that considering the
23 amount of money the applicant has spent so far, that a
24 little more money to avoid a continuance was not a
25 persuasive argument.



1 The applicant is asking for a little more
2 time. Given all of the time that both sides have
3 spent, PDS's argument to deny a little more time seems
4 equally unpersuasive.

5 Sorry, Ryan.

6 I believe I understand the frustrations of
7 both sides. But if you can find the legal authority to
8 grant a little more time, I believe the two parties
9 will be able to address the answers to all of the
10 questions, including the few remaining substantial
11 conflicts with the code.

12 Yesterday, I believe I heard the legal
13 authority you need was presented by the county
14 prosecutor. I only took one law class in college, but
15 I don't recall the principle of arbitrary
16 capriciousness, but hopefully that gives you the legal
17 latitude, in addition to the very real prospects of
18 resolving the remaining issues, to grant this
19 application a little more time. Then the processes
20 that have multiple public hearings still to come can
21 proceed with determining whether the project will or
22 will not ultimately be approved.

23 Okay. Thank you.

24 THE HEARING EXAMINER: Can I ask you just
25 one question? When you say "a little more time," what



1 do you think a little more ti- -- I mean, a -- "a
2 little" means different things to different people --

3 MR. GREGG: That's why I chose those
4 words.

5 THE HEARING EXAMINER: [Unintelligible]
6 projects. Yeah. And -- and I -- I'm sure, when you're
7 sitting there talking to your -- in ver- -- in your --
8 your current role as a project manager, depending upon
9 whether you're talking to the contractor who wants a
10 little more time or the owner who wants a little more
11 time or the regular -- each one, "a little more time"
12 means something different with different consequences.

13 So when you're supporting a little more time,
14 what's that mean?

15 MR. GREGG: Well, I a hundred percent
16 concur with Mr. Countryman's frustration that this has
17 taken longer than it -- it should or could have. Let's
18 say could have.

19 I also worked for ten years earlier in my
20 career for a foreign-controlled company. I know that,
21 sometimes, things take a lot longer than you want.

22 In this case --

23 THE HEARING EXAMINER: Even sometimes, for
24 domestic-controlled companies, it's true.

25 MR. GREGG: And this -- this has both.



1 This has elements of both 'cause that -- as you know,
2 the -- the ultimate owner is -- is overseas.

3 I think we're down to five major conflicts of
4 the code. I -- I have not spoken to either of my two
5 friends. I don't know how much time either one wants
6 or doesn't want. I'm going to go out on a limb here --
7 and I don't know whether we're talking about extending
8 the permit or --

9 THE HEARING EXAMINER: It's not a permit.
10 So it'd be -- it would be a ti- -- the -- the
11 applica- -- the land use development application for
12 the urban center -- the site plan basically -- is
13 the -- is the expiration deadline. There are no
14 permits yet.

15 MR. GREGG: Right.

16 THE HEARING EXAMINER: Not even appli- --
17 not even applied for yet because we don't have a site
18 plan.

19 MR. GREGG: Well, here's a very
20 self-serving comment for my industry: If they had an
21 arbitrator or someone with my development skills
22 onboard -- not me, but someone -- I think they could
23 talk about 90 days. Without it, six months.

24 THE HEARING EXAMINER: Okay. Okay. Thank
25 you.



1 Who's next? Did I swear you in yesterday
2 perhaps? Is that --

3 MR. MAILHOT: You did not.

4 THE HEARING EXAMINER: Then let's do it
5 today.

6

7 (TOM MAILHOT sworn.)

8

9 THE HEARING EXAMINER: Thank you. Name
10 and address, please.

11 MR. MAILHOT: Can I take a few minutes to
12 put a couple of --

13 THE HEARING EXAMINER: Oh, of course.

14 MR. MAILHOT: -- exhibits up?

15 THE HEARING EXAMINER: You bet.

16 MR. MAILHOT: I probably should have done
17 this in alphabetical order.

18 THE HEARING EXAMINER: Computer's make
19 things faster.

20 MR. MAILHOT: [Unintelligible]. This darn
21 comment list is so long. Okay. Maybe I can find them
22 all again.

23 THE HEARING EXAMINER: Sure.

24 THE CLERK: [Unintelligible].

25 MR. MAILHOT: [Unintelligible]. Okay.



1 Thank you.

2 THE HEARING EXAMINER: So name and address
3 and --

4 MR. MAILHOT: Yep.

5 THE HEARING EXAMIENR: -- school name.

6 MR. MAILHOT: Good morning. My name is
7 Tom Mailhot. I am a resident of the Richmond Beach
8 neighborhood in the city of Shoreline at two --
9 2432 Northwest 201st Place.

10 I want to spend a few minutes this morning
11 revisiting some of the comments made by Mr. Huff in his
12 presentation on Wednesday afternoon. Mr. Huff offered
13 several excuses why, after seven years BSE- -- BSRE has
14 still not completed their application.

15 Mr. Huff stated that the project plans were
16 delayed because almost half the seven years were spent
17 in litigation.

18 Let's look at Exhibit 71 on page 69.

19 THE HEARING EXAMINER: It's which one now?

20 MR. MAILHOT: N-1.

21 THE HEARING EXAMINER: N-1. And page 69,
22 you said, right?

23 MR. MAILHOT: Yep. [Unintelligible] drag
24 this thing...

25 THE HEARING EXAMINER: Do you have the



1 mouse over there? Is it faster for you to drag...

2 MR. MAILHOT: So if we look at this page,
3 we can see that --

4 THE HEARING EXAMINER: This is page A-1,
5 right? Yep.

6 MR. MAILHOT: 69.

7 THE HEARING EXAMINER: [Unintelligible] --

8 MR. MAILHOT: It's N -- N-1.

9 THE HEARING EXAMINER: Okay.
10 [Unintelligible] --

11 MR. MAILHOT: Page 69.

12 THE HEARING EXAMINER: Hang on. Let's --
13 let's -- let's be clear about this. That's the PDF
14 page; that is not the page it is on the -- as its
15 paginated. So just for -- so I want the record to be
16 clear that it's page 69 of the PDF.

17 If you look at the documents at the bottom, at
18 the foot, you know, the old-school paper kind of thing?
19 Yeah, see, A-1.

20 THE CLERK: [Unintelligible].

21 THE HEARING EXAMINER: So just so the
22 record is clear, let's be con- -- and I'm okay if you
23 want to refer to the PDF page number, but let's just --
24 I want the record to be clear that, when you're
25 referring to page numbers, which one you're referring



1 to. It also helps me when I go back and look for it.

2 MR. MAILHOT: Where are you seeing the 81?

3 THE CLERK: A-1.

4 THE HEARING EXAMINER: A-1 --

5 MR. MAILHOT: Oh, A-1.

6 THE HEARING EXAMINER: -- at the bottom.

7 MR. MAILHOT: A-1. A, okay.

8 THE HEARING EXAMINER: Yes.

9 MR. MAILHOT: Or --

10 THE HEARING EXAMINER: It's the
11 chronology. Got it.

12 MR. MAILHOT: So we see here, on
13 November 23, 2011, the superior court order enjoining
14 Snohomish County from processing the applicant's Point
15 Wells urban center application. That's the first point
16 where any kind of legal action stopped this process.

17 If we look just a little bit further down
18 here, we can see January 7, 2013, the Court of Appeals
19 decision invalidating the King County Superior Court
20 injunction. At that point, processing began again.

21 So that's not half of the seven years. That's
22 actually 13, 14 months -- 13 and a half to 14 months --
23 barely more than one of the seven years since the
24 application has been filed. It's not half the time.

25 If we look a little further, here's the first



1 review of completion letter that the County sent out.

2 We have to look a lot further down here...

3 Whoops. Yeah, still going. Oh, there it is.

4 April 17, 2017, the f- -- the reply to that first

5 review letter finally gets sent in four years later.

6 So what took up more than half the seven years

7 wasn't litigation. It was actually BSRE's dilatory

8 efforts to submit a reply to the County's first review

9 letter.

10 Mr. Huff complained, also, that the

11 transportation corridor study undertaken with Shoreline

12 delayed project completion because they spent 18 months

13 working on it. Well, the MOU that started the project

14 was signed in April of 2013. The final public wrap-up

15 presentation one -- was one year later in April

16 of 2014. That's a year, not 18 months.

17 And why hasn't it been completed in the last

18 four years since that last wrap-up meeting? It's

19 because the study showed that traffic coming from the

20 development broke Shoreline's level-of-service

21 standards, and all of BSRE's mitigation suggestions

22 were unacceptable to the city.

23 In the four years after the end of the study,

24 BSRE still hasn't proposed an acceptable traffic

25 mitigation. Furthermore, any complaint about the TCS



1 slowing the process ignores the fact that work on the
2 TCS did not prevent BSRE from completing their work on
3 every other part of the application.

4 Mr. Huff claimed that the project completion
5 has been delayed because the County's requiring an
6 unreasonable level of detail, mentioning parking plans
7 and the second access road as examples.

8 Mr. Huff claims that, since the second access
9 road was in Woodway, Woodway should be the one --
10 should be the entity reviewing the road design, not the
11 County. What Mr. Huff ignores is that it is the County
12 that has the requirement that there must be a second
13 road. The County should not have to bear the risk of
14 approving an application that shows nothing more than a
15 potential road location only to find out later that the
16 planned second road cannot be constructed.

17 BSRE must be able to prove to the County that
18 the second road is buildable before the County approves
19 the application. Seven years into the process, they
20 still haven't even attempted to do that.

21 Mr. Huff im- -- implied that the project was
22 delayed because the issue of the second access road has
23 been a moving target. Well, take a look at
24 Exhibit M-7, a letter from Darrell Easton [phonetic],
25 2014: Two ac- -- two road access points are required



1 to the Point Wells project. It says right there.

2 The letter from the County clearly states a
3 second road will be required unless BSRE obtains a
4 deviation. When it comes to the second access road,
5 the only moving target in the last four years has been
6 the various arguments BSRE has used to try to avoid
7 complying with that requirement.

8 After offering these excuses, Mr. Huff claimed
9 the County had not given BSRE enough time to respond to
10 the County's review lev- -- letter. It's true that the
11 County did not give BSRE much time to respond to the
12 October 2017 second review letter, but Mr. Huff seems
13 to have forgotten about the four years that went by
14 between the County's April 2013 first review letter and
15 BSRE's feeble reply.

16 I say "feeble" because the first review letter
17 identified over 40 issues, and after four years of
18 waiting, and three deadline extensions, BSRE's second
19 submission resolved exactly one of those issues.

20 If BSRE had actually worked to resolve those
21 issues in a timely manner, the problem with the short
22 time to respond to the second review letter would not
23 have happened.

24 Mr. Huff has also offered solutions to several
25 issues that, on closer examination, just don't hold up.



1 Mr. Huff claimed that the regulations requiring
2 building height setbacks from adjacent zoning areas did
3 not need to be enforced because the tall buildings in
4 the upper village were at the bottom of a 220-foot
5 bluff and, thus, would effectively be hidden from view.

6 If you look at Exhibit B-8, assuming I can
7 make this bigger, you can see that the base of the
8 upper village is at a 50-foot elevation. There is a
9 steep slope here, but it tops out at a hundred feet.
10 So it's a 50-foot slope, not a 220-foot slope, and,
11 above that, is this gently sloping area where the
12 mythical second road is actually designed. So it can't
13 be very steep. It's got a second road on it. It can't
14 be more than 15 percent.

15 So what is it that's upslope from the upper
16 village? I mean, it could be that there's nothing up
17 there, so it really doesn't matter whether it's a steep
18 slope or not. Is anybody going to see those buildings
19 that are in the upper village?

20 Well, if you go further up the slope, what's
21 actually up right in this area is the new Woodway Point
22 development. This portion of [unintelligible] goes to
23 one of the building lots. So there are houses right
24 here -- will be -- when that development is done.

25 If we go here -- here is the upper village --



1 there's also existing houses right above just a little
2 bit to the southeast. These houses will see those
3 towers.

4 The buildings in the upper village are up to
5 15 stories. Far from being hidden, these buildings
6 will be very visible from both the current and future
7 upslope residences, which is exactly why the zoning
8 setbacks must be enforced.

9 Mr. Huff maintained that the County's
10 objections about inter- -- internal capture rates could
11 be resolved by establishing a vehicle trip cap. That
12 may be true. That may be a true statement, but it
13 doesn't get us any closer to a resolution today because
14 BSRE has not established the trip cap that any of
15 Shoreline, Woodway, or the County has agreed to.

16 The trip cap that BSRE keeps mentioning -- the
17 11,587 included in the -- included in the MOU signed
18 with Shoreline is not actually a trip cap. It's just a
19 study number for the TCS, which, by the way, the study
20 concluded was considerably too high since it caused a
21 level-of-service failure on Shoreline streets.

22 If BSRE wanted to rely on a trip cap to
23 resolve the issues with the transportation portion of
24 the DI- -- DEIS, they first need to get agreement on a
25 reasonable cap number that Shoreline and Woodway



1 believe works for them as well. Four years after the
2 end of the traffic study, they still haven't attempted
3 to do that.

4 I'm sure many of the issues identified by the
5 County could eventually be resolved given a reasonable
6 amount of time, but the real problem is that there are
7 also some unfixable problems with the application.

8 For example, BSRE has had four years to come
9 up with a traffic mitigation plan that satisfies
10 Shoreline. They haven't been able to do that because
11 there is no mitigation for the large amount of traffic
12 the current design adds to Shoreline's already crowded
13 streets. No extension is going to solve that problem.

14 For example, BSRE wants buildings over 90 feet
15 in height, but they need to have high-capacity transit
16 already in place at the site to meet code requirements
17 for taller buildings. They have -- they've had seven
18 years to get transit service in place, but they haven't
19 been able to do that because no transit provider is
20 going to agree to service while there are no residents
21 at the site. No extension is going to solve that
22 issue.

23 You earlier asked for guidance on how to
24 decide whether to grant extension. I have two points
25 of guidance. First, over the 1- -- past five years



1 following the County's April 2013 first review letter,
2 BSRE has not shown a good faith effort to respond to
3 the County's concerns. Yes, they've been busy lately,
4 but where was that level of activity five years ago
5 when it would have been more productive.

6 The County's 2013 review letter assigned some
7 homework to BSRE with a year to complete. BSRE asked
8 for and was granted three extensions, giving them
9 almost four additional years, to get that homework
10 done. It's like they finally started to seriously work
11 on it the night before it was due, and now they're
12 crying that the County didn't give them enough time.

13 I don't think so. BSRE's dilatory response to
14 the County's request has not earned them the right for
15 yet another extension.

16 Second, don't waste the developer's time, the
17 County's time, Shoreline's time, Woodway's time, the
18 public's time by granting an ex- -- an extension when
19 we already know there are issues that no amount of time
20 is going to allow for a solution.

21 Thank you for your attention.

22 THE HEARING EXAMINER: Thank you very
23 much.

24 MR. MAILHOT: I have copies.

25 THE HEARING EXAMINER: Sure. Thank you



1 very --

2 MR. MAILHOT: [Unintelligible].

3 THE HEARING EXAMINER: That'll be P-5 and
4 -6.

5 THE CLERK: P-4.

6 THE HEARING EXAMINER: Sorry.

7 THE CLERK: P-4.

8 THE HEARING EXAMINER: P-4. Those will be
9 Exhibit P-4.

10 MALE VOICE: McCormick gets credit for
11 putting these in a better order than I did.

12 THE HEARING EXAMINER: Y- -- actually,
13 you're one of the most skilled people at that I've had
14 in this hearing room. So prop -- I mean, credit to
15 you.

16 MR. McCORMICK: [Unintelligible]. That's
17 just one of them. [Unintelligible] to get them to
18 open.

19 [Unintelligible discussion.]

20 THE HEARING EXAMINER: Mr. McCormick, have
21 I sworn you in yet? Let's do it --

22 MR. McCORMICK: Let's do it again --

23 THE HEARING EXAMINER: -- just -- just
24 for -- just for grins.

25



1 (TOM McCORMICK sworn.)

2

3 THE HEARING EXAMINER: Name and address,
4 please.

5 MR. McCORMICK: Hello, Your Honorable
6 Mr. Examiner. My name is Tom McCormick. I'm a
7 Richmond Beach resident and retired attorney -- or I
8 thought I was retired --

9 THE HEARING EXAMINER: We -- we never
10 retire.

11 MR. McCORMICK: -- until this all
12 started -- working with others who, like me, oppose
13 BSRE's proposed Point Wells urban center.

14 Oh, by the way, I live at
15 24444 Northwest 201st Place, just up the road from
16 Mr. Mailhot, and I can see Point Wells from my
17 property.

18 A person I'll call Mary says she's looking to
19 buy a house in the city of Shoreline or the town of
20 Woodway located near a mass transit route or station.
21 Now where might that be? Perhaps near Aurora Avenue
22 and 185th where the bus rapid transit stops? Or maybe
23 down by the Edmonds train station? Or maybe Point
24 Wells? BSRE may have a house to sell Mary. I'll speak
25 more about this later.



1 BSRE's proposed development conflicts with and
2 fails to satisfy county code requirements in
3 substantial ways. Its applications deserve to be
4 denied and must be denied to avoid wasting everyone's
5 time and resources.

6 BSRE has had ample time to get things right,
7 to demonstrate to PDS that the project can meet code
8 requirements, but BSRE has failed to do so repeatedly
9 after being given multiple chances and do-overs.

10 Now they say again, to you, this time,
11 Mr. Examiner, not PDS: Pretty please, just give us one
12 more chance. We'll get it done right the next time.
13 Promise. No defective application materials coming
14 from us anymore, huh-uh. Trust us. We really mean it
15 this time. Please, just one more chance.

16 Mr. Examiner, please do not granted them an
17 extension.

18 I'll speak first to three code conflicts and
19 compliance failures, substantial ones. There are many
20 more, of course, and you'll find detailed coverage of
21 the issues in my two prehearing memorandum,
22 Exhibits I-392, and I-408, as well as many other
23 exhibits that have been submitted. Search for the name
24 McCormick, and you'll find quite a few.

25 THE HEARING EXAMINER: I have re- -- and I



1 have read all of them at this point.

2 MR. McCORMICK: Thank you. I am major
3 impressed. That's a lot of words.

4 After discussing the conflicts and failures,
5 I'll move on and discuss my view as to why an extension
6 should not be granted.

7 Now, when applications are submitted to PDS,
8 they review them as submitted. PDS doesn't review
9 hypotheticals, including hypothetical waives of
10 establishing code compliance. And I re- --
11 respectively submit, nor should you, Mr. Examiner.

12 PDS has reviewed the application materials
13 that have been submitted and resubmitted and
14 resubmitted and, just a few days ago, resubmitted. And
15 PDS recommends denial on account of five substantial
16 conflicts or failures.

17 Any one substantial conflict or failure is
18 grounds for denial. So if you have no reasonable doubt
19 that PDS is correct on one or two of the five conflicts
20 of failures, then you can and should deny BSRE's
21 applications.

22 Now I'll talk about landslide hazards, BSRE's
23 defective traffic study focusing on a road capacity
24 problem that's impossible to fix, and then the maximum
25 building height -- BSRE's failure to comply with the



1 maximum building height, which is 90 feet and not
2 180 feet.

3 The landslide hazard issue, as PDS staff
4 recommendation explains, BSRE has not come close to
5 demonstrating compliance with the county's landslide
6 hazard regulations. I agree. But BSRE's compliance
7 failures are even worse than what PDS says.

8 PDS was too lenient, wrongly using the
9 outdated 2007 landslide hazard regulations to evaluate
10 the project, when it should have used the more
11 protective 2015 post-Oso rules. Here's just one
12 example of the difference.

13 Under the two thous- -- 2007 outdated rules,
14 the landslide hazard area reaches from the top of the
15 bluff overlooking Point Wells just down to the tracks.
16 Under the post-Oso rules, the landslide area reaches
17 far out into the water and includes virtually all of
18 Point Wells, all of the property west of the tracks.

19 As my prehearing memorandum explains, because
20 safety trumps vesting -- that is, no developer has a
21 vested right to jeopardize the public's health or
22 safety -- BSRE is not vested to the outdated
23 regulations.

24 BSRE itself has commented in one of its
25 submission that there are exceptions where public



1 health can trump vesting. And it seems to me, if
2 public health can trump vesting, you would think that
3 safety, particularly being safe from landslide hazards,
4 could trump vesting. This, of course, is a legal
5 argument, and one that I respectfully request the
6 Examiner to rule on and find that safety does trump
7 vesting when it comes to the landslide hazard
8 regulations.

9 But now moving on to the second access road,
10 there's another reason why the post-Oso rules should
11 apply. The second road is in a landslide hazard area.
12 Now, the second road was not included -- it should have
13 been, but was not included by BSRE when it submitted
14 its applications back in 2011. And you heard
15 Mr. Mailhot mention that they were advised in 2014 that
16 they're going to need a second road.

17 Well, quite frankly, it wasn't until six years
18 later from 2011 -- six years later that, kicking and
19 screaming about it, did BSRE finally submit plans for a
20 second road. The 2015 post-Oso rules naturally were in
21 effect, then, when they submitted in 2017, so those
22 tougher regulations are the ones that should apply to
23 the landslide hazard risks attendant to the second
24 road, not the old outdated 2007 rules.

25 Traffic study. Now both -- you heard from the



1 City of Shoreline yesterday, and both I and the City of
2 Shoreline argue that there's an additional substantial
3 compliance failure that PDS is not talking about at
4 this hearing that the examiner should take into
5 account, and that's BSRE's traffic study.

6 PDS concluded that the traffic study is
7 defective in its original staff recommendation but,
8 upon reconsideration, seems now to think it's more of a
9 SEPA issue than a compliance failure that's not the
10 subject of this hearing.

11 I respectfully disagree with that position, as
12 does the City of Shoreline. We believe a tr- -- the
13 traffic study, of course, is not only defective, but
14 that it represents a substantial compliance failure.
15 And this failure gives you an additional reason --
16 independent reason to deny BSRE's application.

17 And one failure deserves special mention, and
18 that's Richmond Beach Road and all the issues
19 surrounding it. As BSRE acknowledges in its traffic
20 study, Richmond Beach Road has virtually no spare
21 capacity. It's impossible to fix the capacity problem.
22 This road capacity dilemma alone really sounds the
23 death knell for the project.

24 Now if I can figure this out. Let's see here.
25 I need to get to page 97 of the PDF. This is a



1 5,000-page document or something like that.

2 THE HEARING EXAMINER: And that's C-29?
3 C-28?

4 MR. McCORMICK: C-28.

5 THE HEARING EXAMINER: Thank you.

6 MR. McCORMICK: I am not having any luck
7 here.

8 MALE VOICE: It may speed things up if --
9 I think you can type in the page number in that box.
10 But...

11 MALE VOICE: He's got the keyboard.

12 THE HEARING EXAMINER: Yeah, if you type
13 a -- the page number in the box up there at the top and
14 let --

15 MR. McCORMICK: Okay. [Unintelligible].

16 THE HEARING EXAMINER: There, yep.

17 MR. McCORMICK: [Unintelligible]. Ah,
18 there we go. Thank you, Ryan. That'll make life much
19 easier.

20 THE HEARING EXAMINER: Is there a teenager
21 in the house?

22 MR. McCORMICK: Okay. That should be
23 good enough.

24 THE HEARING EXAMINER: And so what PDF
25 page are we on now?



1 MR. McCORMICK: Close enough. Thank you.

2 THE CLERK: [Unintelligible].

3 MR. McCORMICK: Pardon me?

4 THE CLERK: [Unintelligible].

5 THE HEARING EXAMINER: Yeah. And -- and,
6 Mr. McCormick, what PDF page number are we on now?

7 MR. McCORMICK: This should be PDF
8 page 97.

9 THE HEARING EXAMINER: 97. Thank you.

10 MR. McCORMICK: Now this is talking about
11 the Richmond Beach Road rechannelization, and the City
12 of Shoreline recently converted Richmond Beach Road,
13 which is the primary access road that -- to Point
14 Wells. Virtually all Point Wells traffic will travel
15 by Richmond Beach Road, which heads -- from Point
16 Wells, it heads south along the water, and then it
17 turns east and we, in Richmond Beach, call it up the
18 hill into the main part of Shoreline.

19 It was a four-lane road, extremely unsafe.
20 The city council voted to rechannel to create three
21 lanes -- to have three lanes there instead of four
22 lanes, and that's been accomplished.

23 BSRE was well aware of the City of Shoreline
24 plans, which have been in place for many, many years,
25 and indeed, back in April of 2014, when BSRE and the



1 City presented the draft of a traffic corridor study to
2 the public, the three-lane configuration was presented,
3 sp- -- and all the PowerPoint slides spoken about as
4 the preferred approach, etc., etc. So, you know,
5 the -- the writing was on the wall that three lanes --
6 it was going to happen. And it did. So we now have
7 three lanes.

8 And here, it says that, while a segment -- and
9 this is BSRE's study: While a segment of the VC of --
10 of point -- oh, point -- 0.90 or less would not be
11 achieved for stretches of the corridor, if a
12 rechannelization project were implemented as planned,
13 the project would still meet the l- -- level of service
14 for intersections except for one intersection.

15 Well, let me just, you know, translate: The
16 VC -- volume over capacity. The City of Shoreline has
17 established two level-of-service standards. One of
18 them is a 0.90 -- or 90 percent -- of capacity
19 standard, and the second is the level of service D for
20 intersections.

21 And so this is saying that, Yeah, yeah, the
22 90 percent won't be achieved. You know, they're
23 admitting it: It won't be achieved.

24 And, in fact, they're even saying, under their
25 study, that -- and somewhere on this page, it says



1 that -- right here: One existing segment of the
2 corridor will also not meet the City's VC requirement.
3 So not only will -- well, if any point will -- well,
4 for that one segment, with any level of Point Wells
5 traffic, with zero Point Wells traffic, they're al- --
6 it's already at capacity. And for some other stretches
7 of the road, there is a little -- little margin for --
8 for error.

9 So we have BSRE admitting in its study that
10 they have a dilemma. There's no capacity on Richmond
11 Beach Road. So how do we solve the dilemma? What did
12 they tell us? They offer three mitigations to solve
13 the dilemma.

14 Now, one of those mitigations -- there we go.

15 One of these mitigations right here, this
16 paragraph says, and I'll translate it: Let's get the
17 city council -- let's do some politics. Let's get the
18 city council to change their mind and take a road,
19 which is now three lanes, that they converted to three
20 lanes for safety reasons with the existing volume of
21 traffic, and let's go back to them and ask them if they
22 will convert it back to four lanes with even more
23 traffic, which, of course, makes it more -- even less
24 safe.

25 So that's one mitigation. But that's not



1 mitigation, of course.

2 So the next one, what they want to do is --
3 again, we're going to go back to the city council and
4 try something else politically. Let's ask the city
5 council if they'll just change that 90 percent
6 [unintelligible] capacity standard. Let's just ask the
7 city council if they will just grin and bear it and
8 accept traffic that is just going to be congestive just
9 because.

10 So we've got a road at capacity, and the
11 solution, the mitigation offered is to have the city
12 council accept congestion to increase the VC standard
13 to 110 percent, maybe 120. You heard yesterday from
14 the City of Shoreline that, in their own study --
15 excuse me, in BSRE's study, one of the scenarios is the
16 traffic will achieve 144 percent of capacity.

17 So, again, that's not mitigation, just trying
18 to politically ask the council to do something that
19 never in a million years they would do. It's trying to
20 squeeze traffic from a size 16 development into a
21 size 3 shoe. What's that shoe? Our side street road
22 network.

23 They do offer one further mitigation, and this
24 is in addition to tweaking a few intersections; you've
25 got a roundabout here or there, but none of those can



1 achieve any -- any -- any significant fix to this
2 problem.

3 The third mitigation that they offer is -- is
4 to take a stretch of the road between 3rd and 8th, and
5 let's make it five lanes, where there's a 60-foot right
6 of way and the city has promised under no conditions
7 whatsoever will they condemn property to convert that
8 stretch to five lanes. They've made that abundantly
9 clear many, many, many times over.

10 So, again, they're seeking for a political
11 solution to have the City condemn property when the
12 City said they'll never do that. And you need far more
13 than 60 feet to have five lanes with -- with the
14 amenities of sidewalks as well as bike lanes.

15 So I call this out because this is part of
16 their traffic study. The traffic study is defective in
17 so many ways -- I articulate some of the ways in my
18 memorandum. But, ultimately, we just talked about two
19 issues that, in my view, are totally unsolvable
20 contrary to any -- what anybody else may have said
21 yesterday, today, or you're going to hear next week.

22 The landslide hazard risks are too great. In
23 my view, they are unsolvable. And the traffic issue,
24 there simply is a lack of road network to handle this
25 development, and that, again, to me, sounds the death



1 knell for this development. And I believe it is
2 totally appropriate, Mr. Examiner, for you to take into
3 consideration the traffic study and the failure of
4 Richmond Beach Road and the -- and the totally
5 nonmitigation mitigation solutions that have been
6 offered by BSRE. This is a nut that cannot be cracked.

7 Now, let me move on to maximum building
8 heights. And before I do that, Mr. Examiner, one
9 thing -- I don't know if you do this or not, that I
10 might suggest, or maybe you already have done it, is
11 a -- not a site visit, but just a visit of the roads
12 and just to kind of do a little drive-around and --

13 THE HEARING EXAMINER: Actually, I will --

14 MR. McCORMICK: [Unintelligible] --

15 THE HEARING EXAMINER: I will address that
16 at the close of today's session.

17 MR. McCORMICK: Oh, okay. Great.

18 THE HEARING EXAMINER: Because I do plan
19 on doing a site visit. And maybe not so much down into
20 the tank farm because that would require a whole bunch
21 of things, but to go down into the area. And I --

22 I am familiar with the area generally, but
23 it's been a while. So I do plan to do that. But we'll
24 talk about that.

25 And I do that unaccompanied, by the way, so



1 we'll talk about that at the -- today's session.

2 MR. McCORMICK: Oh, terrific. Thank you.

3 Maximum building height, the reason we're here
4 is because BSRE got its application filed in 2011, just
5 before the growth management hearing board -- and when
6 I say "just," we're talking, I can't remember, weeks or
7 just a couple months, just before the growth management
8 board invalidated the county council's 2009 decision to
9 redesignate Point Wells as an urban center.

10 Now, a major reason that the board
11 invalidated -- a major reason was -- invalidated the
12 designation was because it concluded that Point Wells
13 did not have high-capacity transit access. This was a
14 big issue in the -- in the -- in the decision, as you
15 probably know from reading my materials.

16 BSRE, along with the County at the time,
17 argued that Sound Transit might stop there someday when
18 enough people live there, and therefore, that qualifies
19 as high-capacity transit. The board didn't buy it.
20 They said trust us. That's not good enough. There has
21 to be high-capacity transit. There isn't a --
22 high-capacity transit access. You just haven't proven
23 to us such a thing exists. So on that basis, they --
24 they invalidated -- largely on that basis -- some other
25 bases as well -- they the invalidated the



1 redesignation, sent it back to the -- to the County.
2 The County didn't appeal that, by the way, so they
3 accepted the -- the board's decision, and then went
4 back to the drawing board to try to comply with the
5 growth board's order to fix their -- to fix their
6 regulations and so that they comply with the
7 comprehensive plan.

8 Now, I mentioned that the redesignation
9 occurred in 2009, so let's kind of go back to 2009 and
10 just -- just quickly set some pa- -- benchmarks of --
11 of things that have happened.

12 Back to the fall of 2009, after the county
13 council redesignated Point Wells as an urban center,
14 three organizations -- or three cities, the City of
15 Shoreline, the Town of Woodway, and Save Richmond
16 Beach -- filed a petition with the growth management
17 board. And Tom Mailhot, who you just heard from, is
18 president of Save Richmond Beach, so he's been in this
19 for quite a while.

20 And one of the major contentions was the
21 redesignation was not consistent with the comprehensive
22 plan, and it called out particularly -- there's no
23 high-capacity transit access there, as the -- as the --
24 as the comprehensive plan requires. And as you just
25 heard me say, the -- the board agreed with -- with that



1 and invalidated.

2 So with that in mind -- and let me -- and
3 then, at this time, by the way, so right after the
4 redesignation, we're talking a lot of things happening
5 in 2009, the -- the county council shifted its focus on
6 getting some urban center regulations put together.
7 You know, they did the redesignation, so now let's --
8 let's get some urban center regulations put together.
9 There was an expired -- expiring urban center ded- --
10 demonstration project, and so that had to be replaced.
11 So they're working on it. And they've got pro- -- a
12 proposal before it, already gone through the planning
13 commission.

14 So in December of 2009, the council submits
15 its own draft amendment to those regs that are pretty
16 far along, and that ended up being what is in the 2011
17 version that -- that we're reviewing now, and that's
18 30.34A.085, the subparagraphs (1) and (2). That's what
19 council introduced.

20 And sub (1) -- and this was -- this whole
21 provision was -- and it's entitled Access to Public
22 Transportation. So the council, I think, you know,
23 they were aware of this lawsuit going -- or this
24 petition going on, and there -- there was a lot of
25 discussion at the meetings about somehow we've got to



1 make sure there's access down there. So the -- the --
2 so they added this stuff. And they ultimately adopted
3 it.

4 And number (1) says: Business -- buildings
5 down there in the urban center will be constructed
6 within a half mile of existing or planned stops or
7 stations for high-capacity transit.

8 Then there's a second one -- second option
9 that all -- also that they put in. Or they shall
10 provide for new stops or stations for high-capacity
11 transit and coordinate with transit providers to assure
12 usage.

13 Well, BSRE not satisfied -- not just not
14 satisfied. BSRE very nervous about this -- now we're
15 into the spring of 2010 -- said -- probably was saying
16 to itself, Golly gee, we can't really satisfy these two
17 things for Point Wells.

18 So they get submitted to the council an
19 amendment which council ends up adopting, and that's
20 actually now in the sub -- that's the -- the sub (3).
21 So there are three subsections, three ways to satisfy
22 access to public transportation. I read -- I mentioned
23 two of the them or, you know, kind of read excerpts
24 from the first two, and the one that BSRE got council
25 to adopt as a way to avoid a potential trap, as it put



1 it, is public transportation can be satisfied by
2 providing a mechanism such as van pools or other
3 similar means of transporting people on a regular
4 schedule in high-capacity vehicles to operational stops
5 or stations.

6 So that's the van-pooling provision that
7 you've heard people talk about, and you heard Shoreline
8 talk about yesterday, that even their van-pooling
9 proposal that they put forward doesn't satisfy this
10 'cause there's no regular schedule. It doesn't go
11 during the middle of the day. But that -- that's an
12 aside. I'm not focusing on that.

13 So we have van-pooling. So now let's go
14 back -- now let's go back today and look at the
15 provision we're talking about, which is 30.34A.040(1).
16 And it says that the maximum building height is 90
17 feet. But then there's a clause that gives a developer
18 an opportunity to seek an additional 90 feet of height
19 when the project is located near a high-capacity
20 transit route or station. And that's the phrase
21 that's -- the clause that's at issue here.

22 Now, I get really disgusted when I think about
23 what could happen at Point Wells, and there's nothing I
24 can do about part of it. And there's nothing you can
25 do about part of what disgusts me and disgusts most



1 urban planners, and that's this: As long as they
2 satisfy the other requirements -- of course, there's a
3 lot of nuts to crack; you know, landslides, Richmond
4 Beach Road, all that. But as long as they satisfy all
5 the other requirements, this developer can build
6 90-foot towers at Point Wells and have no high-capacity
7 transit. That's the way it is. All they need to do is
8 have, you know, Tom's Shuttle Service taking people up
9 to Aurora, up and down, back from the -- from Point
10 Wells.

11 No high-capacity transit access, 90-foot
12 towers, and that is supposed to be an urban center.
13 There's nothing you can do about it. There's nothing I
14 can do about it. I'm disgusted that we've got a
15 situation where that is even possible, but that's where
16 we're at.

17 But it's not good enough. BSRE wants more.
18 They want more. They want 180 feet. And they say that
19 they should get 180 feet because Point Wells is located
20 near high-capacity transit. Of course, back in the
21 growth management days, they -- the language there was
22 on a high-capacity route, and that got booted, 'cause
23 you have to have transit access. But the language in
24 .040 is even more restrictive; it's not just on a
25 route, it's near a high-capacity route or station. And



1 I presented my statutory construction arguments in my
2 memorandum. You can read those. I'm not going to go
3 through that again.

4 But just in general, the -- the phrase "route
5 or station" connotes that there's going to be access
6 because, if you have a -- if you -- if you -- if you
7 have a station, you're going to have access at that
8 station, it is -- it is a -- when read in the totality
9 of all the provisions in the urban code, it is assumed
10 that there is access.

11 Look at the provision we just looked at, .085,
12 Access to Public Transportation, and there's multiple
13 other provisions. Urban centers, you have to have
14 access that's contemplated.

15 So, now back to Mary, who's looking to buy a
16 house in the city of Shoreline or the town of Woodway
17 located near a high-capacity transit route or station.
18 I don't think she'd be looking to buy a house at Point
19 Wells. There's no high-capacity transit with access
20 now. And that's what .040 requires: High-capacity
21 transit with access now.

22 She's not saying she wants to buy a condo near
23 the railroad tracks so she can sit on her deck and
24 watch the commuter trains fly by at high speeds. She
25 wants high-capacity transit with access now.



1 Now, all the talk you're going to hear about
2 BSRE is trying to reach out to Sound Transit and -- and
3 maybe they -- you know, and maybe they can stop there
4 someday, and they've told us that they'd be really
5 interested if we can -- once we get a thousand
6 residences down there that they might really provide
7 the service.

8 It's noise. It's nothing but background
9 noise. I respectfully submit, Mr. Examiner, you should
10 ignore that noise. It's irrelevant babble.

11 What .040 requires is clear: It is a
12 bright-line high-capacity transit with access now. We
13 have to have the assurance that there can be no
14 possibility, not even the remotest of possibility that
15 we could ever end up with a situation with 180-foot
16 towers at Point Wells with no high-capacity transit
17 access. And this developer cannot guarantee that.

18 As I said earlier, when PDS reviews
19 applications, they are called upon to take what is
20 before them and review applic- -- application materials
21 as they have been submitted. What is submitted is an
22 application with 21 towers taller than 90 feet. And
23 there is no high-capacity transit with access now at
24 Point Wells, which is what is required to get that
25 extra 90 feet, to unlock the extra 90 feet.



1 So PDS has made the correct decision in
2 recommending denial on this basis. This is not, at
3 this point in time, a solvable problem because the
4 applications have been submitted. PDS has made its
5 recommendation.

6 Now, it could have been solved if they would
7 have backed off and if they would have submitted plans
8 with 90-foot buildings. But no, they kept pushing.
9 They kept doing what Mr. Countryman was referring to
10 the other day about trying to do what they can to bend
11 the code to fit the project rather than bringing the
12 project into compliance with the code.

13 So there must be this high-capacity transit
14 with access now. It's not there. So based on the
15 materials submitted, I respectfully request that you
16 agree with PDS.

17 There's absolutely no doubt, let alone a
18 reasonable doubt, that their applications violate code
19 section 30.34A.040(1).

20 And when I say, by the way, it can't be
21 solvable, it could have been solvable, but at this
22 point, we're here, and what's up for decision is deny
23 or extend. And as you'll see in a few minutes when I'm
24 going to start talking about extension, I -- that
25 shouldn't be granted. They've had plenty of



1 opportunity to do things right.

2 So now let me go to the extension part. This
3 will be faster, but it's equally important as to why
4 the Examiner should not grant an extension. I've
5 witnessed a pattern in practice of unreasonable
6 resistance by BSRE to accept and do what PDS has
7 reasonably requested over the years.

8 I mean, heck, I've personally witnessed, been
9 the subject of BSRE resisting. They actually submitted
10 a public records protocol designed, of course, to stop
11 me from having access to public records, or having them
12 greatly delayed, where they -- where they had proposed
13 to require PDS, when they get a records request and
14 they get a -- and they're about ready to transfer
15 documents to the requester, to give them a copy of the
16 request, plus a copy of all the documents that PDS was
17 about to send, so that BSRE could review them, and then
18 10 days later -- then they have 10 days to do this, and
19 then maybe they can file a lawsuit to stop the
20 disclosure, obviously just trying to delay, to prevent
21 the public from having access to know what's going on
22 about this development. PDS just jumped on it like
23 that and said, Sorry, we're not going to have any part
24 of that stuff.

25 And then -- this was in 2015, in early 2015,



1 and they came back at the end of the year and tried
2 again. And PDS again said no.

3 Well -- but about resistance to PDS. First,
4 something -- we'll start with Richmond Beach Saltwater
5 Park. I don't know if you've been down in that area or
6 not, but when you do your drive-around, take a look at
7 Richmond Beach Saltwater Park, Mr. Examiner, and go
8 down and park in the lower parking lot. And walk
9 across the bridge to the beach. That beach down there
10 is almost exactly the same length as the beach at Point
11 Wells; about three-quarters of a mile, roughly.

12 There are 114 parking stalls at Richmond Beach
13 Saltwater Park, the lower lot. So in 2017, when BSRE
14 s- -- resubmitted its plans, they show the big number
15 of 14 parking stalls for beach parking for public
16 access.

17 Now, the law requires, of course -- you know,
18 shoreline management and -- it requires that we're
19 going to have beach parking. So they put in 14 stalls.
20 Now, of course, that's ridiculous, but that's not the
21 point I want to make about resistance.

22 PDS called them out on this and said there was
23 a lack of nonresident parking, not just beach parking
24 but store parking; you know, just nonresident parking.
25 So they called them out on this. So -- and that was --



1 when I say "they called them out," the review
2 completion letter in the fall of 2017.

3 So then we get PDS's latest submission in
4 April, just this past April, and, drumroll, they
5 increased the number of parking spots to 20. So we go
6 from 20 -- I mean from 14 to 20. So we've increased
7 parking by six.

8 Now, is that a reasonable response? I mean,
9 of course not. We go from fourteen to six [sic], and
10 it just shows how they deal, how they've been dealing,
11 and why PDS is just tired of this, I think.

12 And even worse, there's no traffic study -- I
13 mean, no parking study, which they were asked to
14 provide. So they go from 14 to 20 and provide no
15 parking study. Well, hey, I -- look, I'm not a parking
16 expert, but I just counted the number of stalls at
17 Saltwater Park. And I said, 114 with kind of a lousy
18 beach, rocky, and -- you know, it's not too --
19 you'll -- you should go down there. It's not too cool,
20 but I love going there anyway.

21 And now, we have -- you saw the pictures the
22 first day of the flyby, and the beautiful beach. You
23 commented about all this sandy -- and how beautiful. I
24 mean, it looks great. You've got this beautiful pier.
25 And then you have a promenade, which is, I guess -- I



1 don't know -- 10, 20 feet, whatever it is wide thing
2 you can walk down along the beach. Then you have an
3 amphitheater. I mean, this place is, you know, as --
4 it's pretty cool. But we have 20 parking spaces.

5 You get the idea. This is not reasonable.
6 It's the -- it's -- it's just a nudging. Let's just
7 wear them down. Maybe they'll accept it.

8 Resistance No. 2: Cleanup. Now, they've been
9 asked to provide details of a clean-up plan and, Give
10 us some timelines. And that hasn't been provided.
11 Now -- and why is that important? Was that a
12 reasonable request?

13 Well, of course, it was. Why? The traffic
14 study right now, if you read it, you'll get a kick out
15 of it. It says Phase I is going to be completed by
16 2020. And I'm not talking starting; I'm talking it's
17 going to be completed by 2020. They made the statement
18 in -- oh, I guess it's 2016, less than two years ago.

19 And then it says the whole project's going to
20 be done, and this stac- -- traffic study, it's the same
21 one that's up here on the screen that's C-whatever it
22 is. C-28.

23 And then they say the whole darn thing is
24 going to be done in 2035. Of course that's not going
25 to happen.



1 Now, I have -- and it's one of -- it's -- I
2 don't have the exhibit number, but I will just mention
3 it. And that -- when I put together a follow-up piece
4 that kind of summarizes what I'm saying now, I will put
5 the exhibit number in there.

6 But I've got a record of -- and I've
7 incorporated this in one of my -- the documents that
8 you read in sending requests to Ecology. There's an
9 exhibit w- -- between David South at Ecology and Mark
10 Wells, the Point Wells guy that Mr. Huff referred to
11 him -- him as the future mayor of -- or the Future
12 Mayor Wells.

13 So anyway -- he's the environmental manager
14 down there.

15 And they're going back about what David South
16 might be saying about the clean-up situation, and he
17 was [unintelligible] and -- and he was saying that it
18 could take years -- you know, up to five years to get a
19 clean-up plan approved. Or it might have even been
20 five or more; I can't -- you know, I'll -- I'll -- I'll
21 give you that, but it's a -- it's a big number.

22 And then -- and he said, And it could take
23 decades -- based on his experience, decades for the
24 cleanup to be completed. And his recent experience,
25 he's the guy that was overseeing the cleanup of the



1 Point Edwards site that was an oil tank farm up there,
2 and it's been converted to Point Edwards, and they have
3 cur- -- right now, I think 261 or 263 condos that were
4 built on that site of about 21 acres.

5 So -- so, you know, he's -- obviously, he
6 knows what he's -- what he's talking about. And so he
7 said that the actual cleanup could take decades. And
8 then there was an exchange, and Mr. Wells said, Well,
9 can you change that to several instead of decades.
10 And -- and, you know, the response was, Well, I'll
11 see -- I'll see a -- you know, it's -- I'll see what
12 I'm going to say. And -- or something of -- to that
13 effect. You know, just trying to minimize the clean-up
14 issues is how I clearly read that.

15 So we need this information. We need to know
16 how long it's going to take. Because in the traffic
17 study, you have to assume some background traffic
18 will -- if construction -- you know, they -- they --
19 they're saying construction's going to be completed by
20 2020 or 2035. No, those dates are obviously wrong.

21 So what is the build-out date going to be? I
22 think it's probably more likely to be 2060. And I
23 think that's an extremely reasonable number when you
24 factor in the -- when you factor in the rest of the
25 permitting process, assuming you could -- you know, we



1 get that far, and you factor the cleanup. And -- and
2 there's talk, of course, about cleaning up by phase.
3 Maybe they can do it; maybe not.

4 There's always infiltration, and there's
5 always a resting period that has to take place before
6 you can build to make sure that the -- the infiltration
7 hasn't occurred from another adjacent s- -- site that
8 is in a -- a -- that is contaminated.

9 So the traffic study, of course, becomes even
10 more defective because of this. There's a tie-in. But
11 the point I'm making is: This is a reasonable request
12 to give us timelines. You're the ones that own the
13 property. Figure it out. Give us something that we
14 can rely on so we know your traffic study has some
15 semblance of reality. Because 2020, completion of
16 Phase I certainly isn't reality.

17 So then the answer was, Sorry -- and this was
18 a letter earlier this year: Sorry. You know, we don't
19 have control over that because it's the oil company
20 that leases the facilities, and they're the ones that
21 have the clean-up obligation, and they're the ones that
22 have the control.

23 Well, wait a minute, I said. So then I went
24 back, and I said, Well, that may be. And that's --
25 according to what I've found, that's true from some



1 Securities & Exchange Commission filings, and it's some
2 of the documents you've read. And -- and so the
3 clean-up obligation is on the oil company.

4 And this, by the way, is the same oil company
5 that, under contract that was entered into in 2010,
6 just days or weeks after the council approved its urban
7 center regulations, the oil company enters into a
8 contract with BSRE, which sprung up at that time into
9 existence, and that contract provides that the oil
10 company is to -- is going to lease the -- the -- it's
11 the -- the land, 'cause they still own the facilities,
12 the pipes, and the tank -- it's going to lease the land
13 and pay 1.7 million a year, roughly.

14 So that -- that's fine. You know, they're a
15 property owner. They sh- -- need to get some money.
16 But then the oil company is going to pay, in addition
17 to that, one -- roughly 1.7 million a year as a
18 development fee.

19 Now, you -- I'm going to connect the dots. So
20 they're paying it as a development fee. And the way it
21 worked under this agreement, this is just a -- I don't
22 have the full contract, but I have the -- the summary
23 of it in the Ex- -- Securities & Exchange Commission
24 filing. So the way it works is, You know, what are
25 they getting for what they're paying? You know,



1 they're paying 1.7 million a year. And so BSRE
2 undertakes the obligation, the contract says, to try to
3 secure a permit to build at least 2,000 units at Point
4 Wells.

5 And then it says that if the -- you know, if
6 they hit the jackpot and they get to do that, they --
7 they get this permit, then the oil company gets to
8 share in the profits. There's some formula, and who
9 knows what it says. But that's why they're paying the
10 1.7. Because the oil company, at, probably, you
11 figure -- they know there's a clean-up issue, and it's
12 a way to help pay for cleanup. They cleaned it as to
13 get this off the books and cleanup.

14 And so then they -- they've -- they've entered
15 into this agr- -- agreement. They're paying
16 1.7 million. So when they say the -- BSRE, that
17 they're -- they're spending a lot of money, sure, they
18 are. But it's -- ultimately, it's the oil company
19 money.

20 And what's also interesting, back in 2010,
21 this oil company --

22 THE HEARING EXAMINER: So -- so how
23 does -- how does -- while I find commercial
24 transactions fascinating, I -- I've done a lot of
25 securities fraud work and other things, I'm having



1 problems connecting the dots between that and extension
2 of time or is --

3 MR. McCORMICK: Yeah. I will.

4 THE HEARING EXAMINER: -- reasonable doubt
5 for conflicts with county code.

6 MR. McCORMICK: Yeah. So the
7 connection -- the connection is this, and the reason I
8 mention the development agreement, and you just -- you
9 know, you're going right there, is that they said they
10 have no control. They can't put together a -- any kind
11 of a clean-up plan. They can't get you a timeline --
12 PDS, sorry, we just can't do the timelines. It's not
13 our ballpark; that's the oil company.

14 And what I'm saying, Mr. Examiner, is, you
15 know, that's poppycock. They -- there's this
16 agreement. The oil company's paying 1.7 million a
17 year. Come on, there's got to be something in there
18 that says -- you know, that BSRE can ask the oil
19 company to try to figure out what -- some timelines.
20 But yet --

21 So it's just a stonewalling saying we can't
22 give you the timelines 'cause it's the oil company.
23 But what they don't tell us but the Securities &
24 Exchange Commission filings tell us, is there's this
25 deal, they're paying this money, so there's still



1 some -- you know, there's a little contractual
2 relationship.

3 THE HEARING EXAMINER: The bottom line is
4 you're suggesting there's some kind of contractual
5 obligation [unintelligible] --

6 MR. McCORMICK: I'm not suggesting. I'm
7 saying there is.

8 THE HEARING EXAMINER: Okay.

9 MR. McCORMICK: That's straight out of the
10 Securities & Exchange Commission filing.

11 THE HEARING EXAMINER: But no, you're
12 saying -- you have not seen the agreement.

13 MR. McCORMICK: Correct. Let me make
14 clear. I'm saying that there is --

15 THE HEARING EXAMINER: [Unintelligible]
16 seen a summary of it in the EDGAR database with the
17 SEC, right?

18 MR. McCORMICK: Yeah.

19 THE HEARING EXAMINER: And you believe --

20 MR. McCORMICK: No, no, no. That's not a
21 summary in the database. It's the actual -- it's a
22 Securities & Exchange Commission filing, the full --

23 THE HEARING EXAMINER: Right.

24 MR. McCORMICK: -- text of the filing.
25 And what I'm saying that it says, to be real clear, is



1 that oil company is paying 1.7 million a year, and --
2 and -- and there is a filing that says --

3 THE HEARING EXAMINER: [Unintelligible].

4 MR. McCORMICK: -- oil company has the
5 clean-up obligation.

6 Now, I have not seen any clause, 'cause I
7 haven't seen the contract, that says, Hey, if BSRE asks
8 us to give timelines, we will do that.

9 THE HEARING EXAMINER: But -- but you --

10 MR. McCORMICK: I haven't seen the
11 contract.

12 THE HEARING EXAMINER: But you infer from
13 that there is probably a clause that requires
14 cooperation --

15 MR. McCORMICK: Exactly.

16 THE HEARING EXAMINER: --
17 [unintelligible]. So I get it. Okay.

18 MR. McCORMICK: So they do have control.
19 But again, it's just a resistance -- they -- reasonable
20 request, resistance. How can a traffic study be
21 validated? Bad assumption dates, yada, yada, yada.

22 Okay. Let me move to the next resistance, and
23 that's the second road and the second road letter. So
24 back -- so in Exhibit C-21 is a letter that they sent
25 to the County when the County said, Yes, you really do



1 need to have a second road. It's an August 2015
2 letter.

3 And in that letter from their consultants, and
4 it -- it -- it basically says, after they s- -- the
5 consultants studied the situation, that -- and there's
6 a section on -- excuse me, there's a section on -- in
7 that letter, Environmental and Engineering Constraints.
8 And under that section, it says that a second road
9 connecting to 116th is not feasible. Or they use the
10 word "infeasible." Okay?

11 And then it says, in a conclusory fashion, the
12 second road is not viable, and it's not warranted. So
13 that's the position in two th- -- August of 2015. And
14 in this same letter -- and in the exact phrase, when I
15 said "infeasible," it's -- it's on page 6 of that
16 document. It says: Geotechnical considerations may
17 render alignment infeasible.

18 And in that same document, it says, under the
19 heading of Public Safety, Emergency Services, how --
20 they talk about fire. And Snohomish County and
21 Shoreline Fire Department, as well as the sheriff's
22 office, have indicated that they have the ability to
23 serve the site. Okay. Fair enough.

24 But then it says: Neither has yet required
25 that a second vehicular access be provided.



1 Well, I pointed this out to the Shoreline Fire
2 Chief, Matt Cohen, and he says, Hey, I never said that.

3 So he sent a letter to clarify the record to
4 say he never made any such -- any such statement that a
5 second road was not required. But, again, kind of an
6 obfuscation, resistance, you know, whatever.

7 But eventually, they come up with pushback by
8 the County, and says, Hey, rubbish; we don't accept
9 that. Get back to the drawing board. A second road,
10 yes, indeed, is required.

11 So finally, in 2017, as I said earlier,
12 kicking and screaming, they submit the second road
13 plans. And the second road plans were better than
14 nothing, but they were incomplete. So the County, in
15 its fall 2017 review completion letter said, You've
16 gotta do better, you gotta do this, you gotta do that.

17 So they resubmit in 2018. Still not good
18 enough, and as -- as part of staff's recommendation,
19 they found that the developer has not proven that a
20 second road is feasible, and on that basis, they are
21 recommending denial.

22 Now, I find it kind of interesting here how we
23 have this developer -- we have the County saying a
24 second road's needed. In a 2015 letter, the developer
25 says, It's not feasible. It's not doable -- or not



1 warranted rather. The County pushes back, and now, we
2 have kind of a reversal of roles.

3 Now, BSRE says it's feasible. It's doable.
4 And the County's saying it's -- you haven't proven it,
5 so the Coun- -- now it's kind of like the County is
6 saying it's not feasible. It's -- that's where we're
7 at on this one.

8 But the point I'm making about the road is the
9 pushback, the -- the resistance to have a second road.
10 They moved the bar a little bit with their 2018
11 submission but far from complying.

12 Number four, the three-lane Richmond Beach
13 Road. The developer knew all along, as I alluded to
14 earlier, back -- back in April of 2014, even earlier,
15 that the third -- the three-lane Richmond Beach Road
16 conversion was going to happen.

17 They submit a revised traffic study in May of
18 2016; no studying of a three-lane Richmond Beach Road
19 and what the impacts would be. Everyone jumped on
20 them, including the City of Shoreline. You know, I
21 jumped on the County; the County jumped on them. And
22 finally, you know, they revised it to get to the -- to
23 get to the August 2016 letter that I had -- that are --
24 or study that I had on the screen called the Expanded
25 Traffic Incon- -- Impact Analysis.



1 So, finally, they -- they got around to doing
2 it, but again, after resistance, they have studied it.

3 Then the last point is this: And that's the
4 90-foot resistance. So I first raised this issue back
5 in 2015, and I remember speaking with Mr. Countryman
6 and how he was saying kind of, Hmm, that could -- that
7 could be a serious issue.

8 And anyway, I followed up. I think the
9 first -- my first email on this was Exhibit I-138, on
10 May 12, 2015. Following that, there were other emails,
11 and there were a series of meetings, then, that were
12 called where the 90-foot -- possible 90-foot limit was
13 discussed maybe in ten meetings that summer. And
14 that's summarized in my Exhibit I-222, which is my
15 presentation to the design review board.

16 And how do I -- let's see. Wake this thing
17 up.

18 THE HEARING EXAMINER: And -- and --

19 MR. McCORMICK: Thank you, Chris.

20 I'm almost done. I've got probably about --

21 THE HEARING EXAMINER: [Unintelligible].

22 MR. McCORMICK: -- another five minutes --

23 THE HEARING EXAMINER: Yeah, because
24 you've gone --

25 MR. McCORMICK: -- maybe, maximum.



1 THE HEARING EXAMINER: I've given you
2 almost an hour, which is extraordinarily generous.

3 MR. McCORMICK: Okay.

4 THE HEARING EXAMINER: So let's --

5 MR. McCORMICK: Let me wrap up.

6 THE HEARING EXAMINER: -- be efficient.

7 MR. McCORMICK: All right.

8 So it's the nine- -- 90-foot -- so I bring
9 this issue up, and here's the developer's response.
10 They put together -- I've just got to go to this
11 exhibit. What did I say?

12 MALE VOICE: 222.

13 MR. McCORMICK: Okay.

14 They say -- and it's interesting the name, by
15 the way. They come back and they have their world
16 renowned experts, Perkins Will, come back and put
17 together a 90-foot maximum height scheme. And I love
18 the word "scheme" because that's kind of what we got
19 going there.

20 The idea is, Well, let's just put something in
21 the record, put -- pay some lip service to it. Let's
22 chop down all the buildings that are over 90 feet, and
23 let's just kind of -- kind of cut and paste. Chop them
24 down and put them all to the buildings in the front --
25 or scatter them, so we now have a dormitory-style



1 development that's all one -- kind of all the buildings
2 are pretty much -- pretty much -- pretty much the same
3 size, con- -- con- -- contradicting what BSRE has said
4 for years. For example, here's one from Exhibit I-426,
5 that says: A related goal is the avoidance of an
6 unappealing mass of uniform buildings with uniform
7 heights.

8 I will show you Exhibit 419, which is a short
9 one. This is Perkins Will early 2011, I think this one
10 was, and you can see how they -- they're bragging about
11 how you have tall building -- tall buildings at the
12 back, and they're scaled down to the water. And
13 that's, you know, a normal design when you have a big
14 development and you're near the water.

15 And then -- and -- and then, to make the point
16 even clearer, you know, they have the -- this nice
17 beautiful approach with tall buildings in the back, and
18 we don't want this kind of dormitory-style
19 block-building approach.

20 But that's what they submitted. So instead of
21 taking this seriously and doing more, they submit
22 something that Perkins Will should be totally ashamed
23 of. And how they could have submitted it, because it's
24 so contrary to best practices, it's -- it's
25 unbelievable. But that's what was submitted.



1 And so, what do we have then? This was all
2 talked about, brought up in 2015. They resubmit in
3 2017 still with 180 feet, and they say they assume they
4 meet the requirements.

5 They resubmit in 2018, still 180-foot towers.
6 They say they assume they -- they assume they meet the
7 requirements, which they have not met. And for that
8 reason, they are in violation of 30.34.040[sic], and
9 their applications should be denied, and there should
10 be no extension.

11 And so as a very closing remark, the -- I
12 think perhaps more directed at BSRE, than to -- than to
13 you, and that's, you know, we don't know what's going
14 to happen. There's going to be a decision here. I'm
15 very hopeful that there will be a decision to deny
16 because I think that's what this development deserves
17 for the reasons I and many others have mentioned,
18 not -- and what PDS is going to be pushing, of course.

19 And it was presented in the beginning as a
20 binary situation: We have ugly pollution tanks and a
21 site, and we can put a big development and make it
22 wonderful. Well, there's an in-between, perhaps. We
23 know, for example, that the Trust for Public Lands has
24 approached the developer about possible -- you know, do
25 you want to talk, maybe, acquisition, and we can talk



1 park? You know, that's out there as a -- as a -- as an
2 avenue.

3 We have -- and we can certainly be cooperating
4 in that venture. It's possible you could take the
5 north village and you can convert that into a small
6 Point Edwards-style development and have the rest of
7 the site be a park. And perhaps east of the tracks,
8 where the urban village is, have a cultural resources
9 center, an education center, where you can be talking
10 about the cultural values, honoring the tribes that
11 have -- that have resided there in the past, and
12 possibly having a center where the children can go on
13 the buses and learn about the ecology that's right in
14 front of Point Wells, and then go on negative tides and
15 walk down there.

16 There's another vision. It's not just a huge
17 development as a way to solve this problem. And we
18 would do everything as a community group --
19 [unintelligible] coalition to work with that. We have
20 a lot of attorney power and -- and resources to bear on
21 this issue. Thank you very much.

22 THE HEARING EXAMINER: You're welcome.
23 And I -- and I'm -- I know you know that I have n- --
24 those are not factors I will consider. Other
25 possibilities are not a factor in my -- in my decision.



1 MR. McCORMICK: Yes, I understand that,
2 Your Examiner. And that's why my comment was it's more
3 directed to BSRE.

4 THE HEARING EXAMINER: As long as we're
5 on -- we understand that, great.

6 Who else would like to speak? Mr. Gregg?

7 MR. GREGG: I worked -- I worked hard to
8 cut mine down to three to five minutes at best. I left
9 out a few things. [Unintelligible] --

10 THE HEARING EXAMINER: Okay. You got me.
11 But can we make it less than an hour?

12 MR. GREGG: I can keep it down to less
13 than five minutes.

14 THE HEARING EXAMINER: Awesome. Come back
15 up, Mr. Gregg, and just repeat your name and -- on the
16 record, and you've been sworn at. So tell me --

17 MR. GREGG: Thank you. My name is --

18 THE HEARING EXAMINER: Tell me what you
19 omitted.

20 MR. GREGG: -- is Robert Gregg. My
21 comments, sir, are directed to you in regard to your
22 decision whether to add more time -- or not more time,
23 deny or add the time.

24 And if you choose to deny more time, I'm only
25 asking you based on the previous discussion not to base



1 it on the access issue. And the reason I say -- to
2 high-capacity transit. And the reason I say this, this
3 is now lapping over into my world, my development
4 world, my other clients.

5 And by "other," I mean, other clients. I
6 don't mean either one of these -- the applicant or PDS
7 are my clients. But when my clients look for property
8 to develop, they look to the County for what the
9 document standards are and what the bonuses are.

10 And the height bonuses in an urban center --
11 as I said, I have two currently under construction
12 right now. I work hard with my clients to actually
13 take advantage of those bonuses.

14 Bonuses are offered by the County because
15 they're good planning issues. And the -- the idea of
16 extra height being the developer's benefit is only half
17 the story.

18 The reason the County offers additional height
19 bonuses is because it's better planning. It helps them
20 with their growth management; it helps them with the
21 density. There are, you know, just numerous issues, in
22 terms of when the Growth Management Act is put
23 together, to stop urban sprawl, to have higher-density
24 developments.

25 So the -- the issue of -- and -- and



1 Mr. McCormick touched on it in the end: A developer,
2 such as Point Wells, can choose to do a -- they've got
3 to cut -- they've got a density issue. And they've --
4 the -- it's based on the flooring -- floor-area ratio,
5 which has been brought up, and there is a minimum
6 number of square feet that needs to be developed on
7 the -- a site of any size and, particularly, this size.

8 So they have two choices. They have good
9 design, which is to use the maximum height bonus the
10 County has offered, or poor design, which is to -- or,
11 you know, in this case poor design because they have to
12 meet the minimum density, but they may be denied the
13 extra height.

14 That's a -- that's a factual issue those guys
15 will work out amongst themselves. Either they're going
16 to agree that the -- the code, as written, says that
17 it's near high capacity or they're going to decide that
18 it means it has access to high capacity. That's an
19 issue that they can work out. I'm hoping you'll give
20 them a little bit more time to work that out.

21 But where that affects me and my other clients
22 and the bigger world is we're out looking for property
23 and decide that we want to have higher density, and so
24 we look for where that bonus is offered. It's offered
25 along I- -- Interstate 5, n- -- not necessarily because



1 there's an on- and off-ramp there. But because it's
2 near I-5. And once we get two, three, four thousand
3 people living there, there's reason to add the -- the
4 on-ramp and off-ramp.

5 And that's a very analogous situation to --
6 and I think that point has been missed a lot here, that
7 the code actually says near. And I don't want to get
8 into the head of who wrote the code, or if they've
9 changed their mind since then, but as the development
10 community, when we read that, we look for sites that
11 are near so that we have the potential to -- to add
12 that in the future. That's one.

13 My only other comment is this height issue:
14 If you look at Smart Growth, Leed, everybody is looking
15 for more efficient energy, lower carbon footprints, and
16 there are ultimately going to be allowed, through
17 negotiations, a certain number of units to be built on
18 this piece of property.

19 What that number -- final number is they need
20 more time, maybe, to work out. But whatever it is, you
21 know, I argue that it needs to be in as few buildings
22 as possible and as tall as is allowed.

23 And with or without the high-capacity transit
24 issue, I just want to make the point that: Height is
25 not a developer's -- the benefit of the height is not



1 just for the developer. It's for the -- the -- for the
2 benefit of -- it's a major issue in Leed, and it's a
3 major issue in -- in -- in -- in density to -- to avoid
4 urban sprawl. They're more efficient, etc., etc.

5 The -- it's confused over with -- people
6 confuse, well, the height, there might be people behind
7 it that might have their views blocked. And while
8 that's an issue that I can certainly understand, I've
9 been personally involved in numerous litigations over
10 the years, and the case law is quite clear that you
11 have a right to the views for which you have acquired
12 that right.

13 And I don't think this project will block any
14 views more than the tanks that are there already do,
15 but if you deny the time, don't do it based on height,
16 please, and don't do it based on this whole access or
17 nonaccess issue.

18 That's all I wanted to add. Thank you.

19 THE HEARING EXAMINER: Thank you,
20 Mr. Gregg.

21 Anyone else? Okay. So we'll close public
22 comment at this point, and the next phase of this --
23 and we'll be in recess until Monday at 1:00, I believe.
24 Monday at 1:00 -- we'll start up again at Monday at
25 1:00 with testimony.



1 Anything that needs to be discussed further --
2 I have one issue. But Mr. Otten?

3 MR. OTTEN: Yeah, just one issue to
4 clarify. I believe Mr. Examiner stated earlier that
5 the open -- the record will remain open for written
6 comments --

7 THE HEARING EXAMINER: Yes.

8 MR. OTTEN: -- through the duration of the
9 hearing.

10 THE HEARING EXAMINER: Yes. Tho- -- I --
11 I will still accept written comments until the final,
12 final close of the op- -- of the open-record hearing.

13 MR. OTTEN: Okay.

14 THE HEARING EXAMINER: But we just won't
15 have any more verbal public comments between now and
16 then.

17 MR. OTTEN: Okay. Thank you.

18 THE HEARING EXAMINER: And I will do -- I
19 do intend to do a site visit. It won't be actually on
20 the tank farm itself, but I will familiarize myself
21 with the area and the road network and what the
22 community looks like and feels like. I do that
23 unaccompanied. That avoids needing to bring along a
24 recording apparatus.

25 I also don't tell people when because you



1 never know when I might strike. The reason I do that
2 is because I don't want community members to walk up to
3 me and say, Hey, what about this? And then there's
4 ex parte contact that's not on the record, so I don't
5 let people know.

6 It can lead to some awkwardness, like the time
7 I was outside of a sc- -- elementary school for hours,
8 worried that the cops would think I was there for the
9 wrong purposes. And actually [unintelligible] did
10 complain, but they thought I was from school district
11 administration in response to a complaint about the
12 buses.

13 So -- but I will do that. In my formal
14 decision, I always identify when I did my site visit so
15 that the -- the public and the applicant and PDS knows
16 when I did it. And sometimes how many times I did it:
17 I've done -- I've done some site visits more than once,
18 sometimes. So I will do that, but, again, you won't
19 know when or where. Okay?

20 So have a great weekend. I'll see many of you
21 on Monday. Thank you. We'll be in recess.

22 (Proceedings recessed at 10:38 a.m., to be
23 reconvened May 21, 2018, at 1:00 p.m.)

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TRANSCRIPTION CERTIFICATE

I, ELEANOR J. MITCHELL, the undersigned Certified Court Reporter in and for the State of Washington, do hereby certify:

That the foregoing transcript was transcribed under my direction; that the transcript is true and accurate to the best of my knowledge and ability to hear the audio; that I am not a relative or employee of any attorney or counsel employed by the parties hereto; nor am I financially interested in the event of the cause.

WITNESS MY HAND and DIGITAL SIGNATURE this 7th day of January, 2019.



ELEANOR J. MITCHELL, RPR
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