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SNOHOMISH COUNTY HEARING EXAMINER

BSRE POINT WELLS, LP,)
 Appellant,)
 vs.) 11-101457 LU
 SNOHOMISH COUNTY PLANNING AND)
 DEVELOPMENT SERVICES,)
 Respondent.)

VERBATIM REPORT OF PROCEEDINGS
 BEFORE THE HEARING EXAMINER
 PETER CAMP

MAY 23, 2018



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 CHERYL J. HAMMER, RPR, CCR 2512

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(BEGINNING OF TRANSCRIPTION)

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

THE HEARING EXAMINER: It's your turn.

CROSS-EXAMINATION

BY MS. KISIELIUS:

Q. Thank you. Good morning, Mr. Bingham, Laura Kisielius from the prosecutor's office. You provided a lot of great new information for us yesterday, so I appreciate giving us the evening to look over it, to come back to ask you some questions today.

Can you start just by telling us when you first learned that a second access road was being proposed by the applicant?

A. I will admit, my history on the project is more limited, since I started in 2017, but I was aware that there was a 2015 report of ours that had the secondary access included.

Q. A report from your firm?

A. Yeah, that's correct.

Q. Okay. And when did you personally learn about the second access road?



1 A. I don't remember exactly. It would have
2 been sometime in 2017.

3 Q. About what? About which month?

4 A. I don't recall.

5 Q. Was the purpose of your April 20, 2018
6 report to support a preliminary design of the second
7 access road?

8 A. It was to specifically look into the
9 geotechnical aspects, slope stability related to the
10 secondary access road.

11 Q. Okay. And when were you given the
12 authority to start working on that report?

13 A. I don't recall specifically. I think it
14 would have been 2017, late 2017, early 2018, but I
15 don't recall specifically.

16 Q. Okay. December, Januaryish time frame,
17 2017, 2018?

18 A. I'm going to guess early 2018, but I don't
19 recall a specific date.

20 Q. Okay. And then, when were you asked to
21 prepare the deviation request from landside hazard
22 area regulations?

23 A. That would have occurred probably about --
24 it was like probably in April of 2018.

25 Q. What, what part of April of 2018?



1 A. I don't recall the specific date, you know,
2 the date of the document. It was sometime before
3 that, and I don't recall the specific date.

4 Q. Okay. What was the date of your first
5 deviation request submittal?

6 A. That was, if I recall correctly, the first
7 version of one of -- it was one of the exhibits. I
8 think that was April 24th, but I'm guessing. But I
9 don't -- if I recall correctly, I think that was the
10 date of the first version, and the second version, I
11 believe, was May 15th.

12 Q. Okay. So April 24th. And it does appear
13 that as Exhibit C-27 is dated April 24th. And you
14 were first asked to prepare that deviation request in
15 April?

16 A. That's what I recall, yes.

17 Q. Okay. And then, what is the date of your
18 supplemental deviation request?

19 A. I believe it was May 15th. It's also one
20 of the exhibits.

21 Q. And then, what was the purpose of the
22 supplemental request submitted on May 15th?

23 A. That was addressing -- attempting to
24 address any clarifications for county comments by Mr.
25 Sleight. On May 9th, there was a letter submitted by



1 the county.

2 Q. Okay. And then, in your supplemental
3 request do you address the first criterion regarding
4 no alternate location for structures other than the
5 road?

6 A. We -- as noted in the exhibit, based on
7 information from the project architect, we had
8 indicated our understanding of the reasoning for the
9 buildings needing to be located where they are, in the
10 upper plaza, which is where the deviation was
11 requested for the buildings.

12 MS. KISIELIUS: Okay. And A-37,
13 please. Thank you. And then, I am looking at page 6
14 of that document. And then, could you please scroll
15 to where it says alternate -- exactly. Right there is
16 great.

17 Q. (BY MS. KISIELIUS) So this is the -- this
18 is the paragraph that you're referring to?

19 A. Yes.

20 Q. Okay. And, when you say we understand from
21 the project architect, that means you've obtained
22 information from the project architect. This isn't
23 your own analysis?

24 A. Correct. We had discussions with Perkins
25 Will about the building locations in the upper plaza.



1 Q. And did you -- did you personally talk to
2 anyone at Perkins Will?

3 A. Yes.

4 Q. You did. Okay. And is there anything in
5 writing from Perkins Will regarding an alternatives
6 analysis?

7 A. Here in this exhibit we referred to the
8 other, I believe it was the zoning variance by Perkins
9 Will. It was the other document referenced we
10 understood might have some more information on that
11 topic.

12 Q. Okay. Did you read that variance request?

13 A. To be honest, I am not sure that I read
14 that one. It was just based on my discussion with
15 Perkins Will referenced that document.

16 Q. Okay. Does this paragraph address any of
17 the residential structures in phase two?

18 A. It's referencing the buildings that are in
19 the urban plaza area.

20 Q. Okay. And it references the buildings,
21 though, in the context of the transportation center?

22 A. Yes. But there is three buildings and I
23 understand they're kind of mixed between what
24 different uses are. Basically, different elevations
25 of buildings tend to be more the residential versus



1 the transit tend to be lower levels, is my
2 understanding.

3 Q. Okay. But this doesn't explain why the
4 residential portions of those buildings need to be
5 located in this location?

6 A. No, I didn't get into that level of detail.

7 Q. Okay.

8 A. Outside of my area of expertise.

9 Q. Okay. So if you wouldn't mind in that same
10 exhibit going to figure 23(b), which I think is the
11 last, the last page of that document. So we spent a
12 lot of time on this figure yesterday.

13 When did you first provide this figure to
14 the county for its review?

15 A. There was an earlier form. This is an
16 updated figures that were included in our report that
17 was issued April 20th. There are some additional
18 information added based on comments we'd received from
19 the county.

20 Q. Okay. And then yesterday when you had
21 testified you provided a lot of additional information
22 about this figure. Is that correct?

23 A. Correct.

24 Q. Okay. Would you agree that that
25 information that you provided yesterday would have



1 been perhaps useful for Mr. Sleight prior to his
2 testimony yesterday?

3 A. Based on the comments that we received, my
4 understanding was, yes, and that's the reason for our
5 update, to provide additional insight and
6 clarifications.

7 Q. Okay. If you were to characterize this
8 figure as a percentage in design development, you
9 know, 10 percent, 30 percent, 60 percent design, what
10 level of design would you characterize this figure as?

11 A. Well, it's a report figure, not a design
12 drawing. So it would be hard for me to clarify what
13 stage in design, since it's not really intended to be
14 a design drawing, but just to show feasibility of
15 retaining wall concepts to address slope stability
16 considerations.

17 Q. So it's more of a concept level of design
18 or concept level schematic, not a design drawing?

19 A. In my opinion, it has to -- its purpose is
20 to show feasibility of a landslide remediation
21 alternative.

22 Q. Okay. Now, you mentioned that this figure
23 was intended to supplement a figure that was provided
24 in your April 20th report. Is that correct?

25 A. That's correct.



1 MS. KISIELIUS: Could I have you go to
2 Exhibit C-33 and it's figure 23, and I, unfortunately,
3 do not have a page number for you. But I think the
4 report. Mr. Bingham might be able to locate that very
5 easily.

6 Q. (BY MS. KISIELIUS) Okay. So this is the
7 original figure, and then 23(b) was meant to
8 supplement this, this figure?

9 A. That's correct.

10 Q. Okay. And in this figure 23, do you depict
11 tiebacks or tieback calculations?

12 A. There's not tieback or tieback calculations
13 in this figure because we were just illustrating a
14 wall load needed to provide the required factors of
15 safety, and our report lists a variety of different
16 alternatives for landslide repair that could be used.

17 Q. Okay.

18 A. To achieve the load indicated.

19 Q. Okay. And does it -- does it depict where
20 you anticipate ground water drainage to occur?

21 A. It shows where the -- this blue -- this
22 blue line depicts where the ground water level would
23 be under this concept, which was further clarified in
24 the Exhibit 37.

25 Q. Okay. Do you have any explanatory notes in



1 this figure?

2 A. Regarding?

3 Q. Anything.

4 A. There's -- not on this figure. There's
5 some discussion in the text about different conceptual
6 retaining wall alternatives and/or slope stabilization
7 alternatives.

8 Q. Okay. And the soldier pile wall depicted
9 in this figure, does it extend 20 feet below the base
10 of excavation level?

11 A. As mentioned, this is kind of a generic one
12 that's not depicting a specific type of earth
13 retention method, which is there -- specific methods
14 are discussed in the report text, but not specifically
15 indicated here on the figure.

16 The subsequent figure had an additional
17 concept that we -- we picked one of those alternatives
18 mentioned in the text and elaborated on it more to
19 address the comments we received.

20 Q. Oh. So in the text of the report you
21 provide some alternatives, and then figure 23(b) you
22 picked one specific alternative and enhanced that in
23 23(b)?

24 A. In order to clarify what was indicated in
25 the text in this report, but until it's specifically



1 diagrammatically depicted in this figure, in the
2 exhibit -- the later Exhibit A-37. That's where we
3 elaborated and picked one of the alternatives from the
4 text and showed more of the details on the figure to
5 address the comments we received.

6 MS. KISIELIUS: Okay. Could we go
7 ahead and go to that figure 23(b). So that's, again,
8 that A-37, the last page.

9 Q. (BY MS. KISIELIUS) Okay. Now, note 2
10 indicates that the building basement floor is going to
11 support lateral earth pressures below the existing
12 grade. Was it yesterday that you disclosed for the
13 first time that this note was only meant to apply
14 after phase two was constructed or underway?

15 A. That we maybe had specifically stated that.
16 I felt that it was implied from our figure, which,
17 again, was kind of a conservative estimate showing
18 feasibility, which is -- reflects some worst case
19 scenarios as far as deepest excavation. There wasn't
20 specific text in the prior one clarifying that.

21 Q. So you've -- or have you indicated in any
22 of your submission materials that the resisting force
23 of the phase two building foundation or what that is
24 in comparison with the resisting force of the soils
25 that will not be excavated in phase one?



1 A. Is this -- can I see the first page of this
2 exhibit? I'm trying to remember which. May 15th.
3 Was -- there was -- I'm not sure if it was admitted as
4 an exhibit. There was another document where we
5 clarified some more of that, but I don't believe it
6 got in in time for an exhibit. It's a May 18th
7 geotechnical report letter addendum.

8 Q. So there's another report that you drafted
9 in tandem with this figure in this report that you
10 have not provided to the county?

11 A. That is my understanding.

12 Q. Okay. Could you generally describe what's
13 in that report, please?

14 A. It was -- again, it was attempting to
15 clarify some of the questions that were in -- this
16 document was attempting to clarify the questions from
17 Mr. Sleight's May 9th memo -- I believe it was a memo
18 -- with specific questions, and the May 18th letter
19 that we were attempting to draft in tandem was
20 addressing some of the supplemental -- I'm trying to
21 remember the title.

22 It was, I think, supplemental staff
23 recommendations. It was also a May 9th document that
24 had some other comments related to geotechnical
25 topics.



1 Q. So it addresses several of the questions
2 that Mr. Slate has regarding the design of this wall
3 or other types of geotech considerations regarding the
4 hillside?

5 A. It was attempting to provide -- actually,
6 the May 18th was addressing other comments that were
7 independent of Mr. Slate's May 9th document. I don't
8 know who the author of the specific comments in the
9 staff supplemental recommendation were.

10 Q. Okay. Do you know why that report wasn't
11 provided to the county?

12 A. I think essentially we didn't get it
13 finished in time to be submitted.

14 Q. Okay. Do you think that would be
15 information Mr. Slate would find relevant or helpful
16 in his determination whether to grant a deviation
17 request?

18 A. Potentially could provide some additional
19 clarification.

20 Q. Okay. Let's stay on this, this figure for
21 a moment and talk about the tiebacks. You indicated
22 the tiebacks were not depicted in figure 23
23 originally?

24 A. No. There was just general concepts
25 discussed in the text.



1 Q. Okay. And so, can you explain how many
2 tiebacks are going to be needed to support the wall in
3 phase one prior to excavation of the basement for the
4 foundation of phase two buildings?

5 A. We haven't done that analysis, because we
6 felt that was a later design detail that could be
7 provided because of the different options as far as
8 when tiebacks are installed and sequencing. There's
9 different flexibility in a soldier pile and tieback
10 design and how you can do that and that would just, in
11 my opinion, be something that would be a later design
12 detail.

13 Q. And that would be the same then after
14 excavation of the foundation for the phase two
15 buildings, you haven't determined the number of
16 tiebacks you would need to add to the wall at this
17 point?

18 A. We determined the number of tiebacks to
19 provide the load needed to achieve the county required
20 factor of safety, which is what we understood was the,
21 you know, the feasibility question needing to be
22 addressed, not the details of what needed to be done
23 when.

24 Q. So you've determined what the load is
25 required, but not details about how to accomplish



1 that?

2 A. We have detailed, because of the comments
3 we received, how those loads could be provided.
4 Haven't detailed that we need two rows before this is
5 excavated versus one row later. We didn't get into
6 that level of detail.

7 Q. Okay. So that will be all information that
8 you'll provide later?

9 A. That would -- in my experience, that's
10 typically been provided at a later stage in design.

11 Q. And when you say later stage in design, are
12 you talking building permit stage or prior to building
13 permit?

14 A. I would definitely expect it to be by
15 building permit, but whether it's sometime before that
16 or not, I'm not as familiar with Snohomish County's
17 expectations for those types of submittals.

18 Q. How does it typically work in other
19 jurisdictions?

20 A. It would typically be a building submittal
21 unless there was a separate earthwork permit.
22 Sometimes the shoring can -- sometimes temporary
23 shoring can be done under an earthwork permit in my
24 experience in King County.

25 Q. Okay. If we could talk a minute about the



1 driving forces and fill surcharges that Mr. Slate
2 discussed yesterday. You did testify yesterday that
3 you factored in the fill surcharge in your model,
4 correct?

5 A. That's correct.

6 Q. Okay. And you also testified that you did
7 not factor in the traffic surcharge?

8 A. That's correct.

9 Q. Okay. I don't -- I don't recall. I could
10 have missed it. Did you discuss whether you factored
11 in the hydrostatic surcharge?

12 A. We did not discuss that, but based on this,
13 we indicated with one of our notes, I believe, that
14 basically it was going to require permanent drainage,
15 and so that would take care of not having hydrostatic
16 pressures added there.

17 Q. Does that mean that you are going to be
18 dewatering the hillside?

19 A. It means in this particular area you would
20 have to drop the water surface from this light blue
21 line down to the dark blue line below the building,
22 and that would have to be a permanent drainage method
23 used to do that.

24 Q. And is that -- is that considered -- is
25 that considered dewatering? I've heard that term used



1 a lot.

2 A. Dewatering, drainage probably in this
3 context could be used synonymously. It's lowering the
4 water table, and it has to be lowered permanently so
5 that you don't have to design for the additional
6 hydrostatic or water force that would be pushing on
7 that area between the light blue and the dark blue
8 lines.

9 Q. Okay. So you either need to consider the
10 hydrostatic surcharge or drain, so it eliminates the
11 need to consider it?

12 A. Correct.

13 Q. Okay. Did you factor in a rain on snow
14 surcharge?

15 A. In my opinion, that's kind of related to
16 the drainage, because rain on snow, you're going to
17 get more ground water and/or surface water that
18 relates to that. You might get some -- that would
19 probably be one of the main ones. You might get a
20 little bit of increase in unit weight of the soil from
21 that.

22 We have a ground water table that's quite
23 high already, but that was not something that we
24 specifically looked at. I don't know that that's a --
25 in my opinion, something that is a feasibility level



1 issue, given the margin that we have between this
2 particular existing load versus what we've seen done
3 on other projects that a lot higher loads can be
4 provided by similar systems.

5 Q. But right now, you're planning to design a
6 wall that's going to carry a particular load?

7 A. We're not designing. We're trying to show
8 feasibility of a certain wall type in order to
9 illustrate that it is a feasible method to provide
10 this resisting force for slope stability.

11 Q. For the potential landslide surcharge, did
12 you factor in or were you considering a shallow or
13 deep seated landslide?

14 A. We basically put the inputs in and let the
15 model -- it basically runs through several searches
16 and it searches for shallow and/or deep. So we were
17 basically considering both types and just let the
18 model pick out what the critical or minimum surfaces
19 were, and we've depicted the two minimum surfaces.
20 One that's more related to this retaining wall, one
21 that's related to other excavation west of the
22 railroad.

23 Q. So would this one be considered a shallow
24 landslide?

25 A. I think it probably depends who you talk to



1 and what you consider shallow versus deep. There's
2 probably some -- but I would consider this kind of a
3 moderately deep landslide. This is about 30 or 40
4 feet. Shallower slides you might consider and some of
5 -- some of the slides documented in the area tend to
6 be what I would consider more shallow, upper five
7 feet, something like that.

8 Q. So the green, that green layer there is a
9 fat clay layer or lawton, lawton clay. The model
10 didn't factor in a landslide that would take in those
11 -- that layer of soil, correct? It doesn't appear
12 that way?

13 A. It didn't. Based on our explorations, we
14 didn't see indications of -- as a geotechnical
15 engineer, when you're doing explorations, you're often
16 looking for signs of instability, which might -- in
17 the lawton clay it's typically see more fractured or
18 slick and sided zones.

19 There was not -- in the three borings that
20 we did at the bottom, middle, and top of the slope, we
21 didn't see much indication of that at this location.
22 It is something that happens in locations in the
23 general area around Puget Sound, but we didn't see
24 those in our explorations. So we didn't attempt to
25 try to capture that based on our explorations.



1 Q. Okay. Don't the boring logs, though,
2 suggest that there's a potential for lack of strength
3 in this lawton clay layer?

4 A. As was discussed yesterday and mentioned
5 some of our strength parameters were lower at this
6 particular section above the access road, secondary
7 access road, than further north.

8 And again, since we're trying to illustrate
9 feasibility of concept, we tended to pick conservative
10 simplifying assumptions for our model and we had some
11 lower cohesion values that's quite lower in this
12 particular layer here at the location than it was
13 further north. So we were picking conservatively
14 lower strengths than we had in other locations.

15 Q. So you depict the load that you're focused
16 on here at 78,000 pounds per foot. I said that -- I
17 said that correctly?

18 A. Yeah.

19 Q. Do you anywhere here or in the text of this
20 report, on this figure and the text report explain how
21 you arrived at that figure; that is, show the
22 calculations for how you got there?

23 A. As far as how we got the 78,000?

24 Q. Correct. Yeah.

25 A. In the -- I'm maybe confusing which



1 exhibits. I believe that we had discussed this in our
2 original report that this appeared in the fact that we
3 developed it in order to achieve the target factors of
4 safety, but I'm not remembering exactly which exhibit.
5 I think it might have been C-33, but I don't recall
6 specifically.

7 Q. Okay. And I do recall seeing in C-33 talk
8 about the use of the Morgan stern price model, kind of
9 a generalized discussion about the modeling. But I
10 don't remember -- recall seeing any, any calculations
11 regarding how you arrived at this number. Does that
12 sound right?

13 A. The calculations are implicit in the slope
14 stability analysis. In other words, we're running the
15 slope stability analysis and we're increasing this
16 load here until we achieve the county factors of
17 safety required. So it's...

18 Q. So you're kind of -- so that's --

19 A. It's kind of in the model as opposed to a
20 separate hand calculation.

21 Q. All right. So 78,000 is the answer, but we
22 don't know how you did the math to get there, but what
23 you're saying is that it's the model got you that
24 number?

25 A. In my experience in running slope stability



1 with geotechnical engineers looking for earth
2 pressures, it's a fairly common practice to apply a
3 load that would represent a retaining wall until you
4 get to the target factors of safety, and then,
5 depending on which retaining wall type you select in
6 order to get those loads, you run through other
7 calculations to just demonstrate that, okay, we can
8 achieve that kind of load with practical methods.

9 Q. Monitoring well 122 suggests liquefiable
10 soils in the vicinity of the retaining wall, correct?
11 I think you actually mark monitoring well 122 on this,
12 and does that indicate liquefiable soils around the
13 area of that monitoring well?

14 A. In that particular exploration, there was
15 conditions that would be typical for liquefaction.
16 Some other ones nearby, as Mr. Slate mentioned, do not
17 indicate liquefaction.

18 Q. Okay. Have you done -- did you do any
19 boring analysis at the location of the retaining wall?

20 A. At this retaining wall?

21 Q. Yes.

22 A. We have this other boring HC-12 down at
23 that location.

24 Q. But none at the site of the retaining wall?

25 A. I guess in geotechnical terms, the boring



1 12 is probably as close as you're going to get to --
2 it's close, adequately close to the retaining wall.

3 Q. Okay. And what did HC12 show? Any
4 potential for liquefaction of soils?

5 A. In that particular boring, to be honest,
6 I'm not remembering off the top of my head the results
7 we had for that particular boring.

8 Q. So do you know how far down the retaining
9 wall will have to go subsurface in order to avoid
10 liquefiable soils?

11 A. This lower unit is of a density such that
12 we would not anticipate -- this orange layer is of a
13 density we would not anticipate having liquefaction.
14 We depicted here that the soldier pile wall going
15 about 20 feet below that just based on typical -- our
16 experience what we've seen in other soldier pile walls
17 that have been designed.

18 So it's going probably more like 20 or 30
19 feet into nonliquefiable material based on the density
20 of that underlying material, glacial outwash that
21 would be glacially overridden and dense. Actually,
22 it's mostly, you know, the density, you get something
23 dense enough and then it wouldn't liquefy.

24 Q. And aren't there other areas onsite where
25 the liquefiable soils go down 47 to 50 feet?



1 A. Not at this location, but when you get
2 further over to the off site area west of the railroad
3 tracks, those conditions are a bit different
4 subsurface conditions, looser soils.

5 Q. Would you plan on doing more boring
6 analysis? I know you said HC12 is really, really
7 close. Would you do more boring analysis at the
8 location of the retaining wall when designing the
9 wall?

10 A. That would be something that -- quite
11 possibly something we would look at once the final
12 location of that wall is certain that we might need to
13 do some other borings there for final design.

14 Q. Would that be prudent?

15 A. Yeah.

16 Q. Okay. And so, can you tell us once again
17 what that blue dashed line is?

18 A. This light blue?

19 Q. Yes.

20 A. That's where the ground water originally
21 was before we depicted this excavation. So, would you
22 like me to flip to another exhibit to try to --

23 Q. Sure. Go for it.

24 A. So you can notice the dark blue line here
25 is reflecting having to be lowered.



1 Q. And you're looking at, just for the record,
2 that was Exhibit 20 -- oh.

3 A. C. Yeah, it's --

4 Q. Figure 20 --

5 A. -- basically the same in terms of the
6 ground water, but it was figure 22.

7 Q. Of Exhibit C-33?

8 A. Correct.

9 Q. Okay.

10 A. I'm trying to get up to an existing
11 condition, and they're not overlaid, but this blue
12 line is basically higher than where that light blue
13 line was in Exhibit 37. So we're just trying to
14 depict the fact that this existing ground water
15 condition is higher, represented by that light blue
16 line. The dark blue line is it's been dropped down
17 from the light blue line to go underneath the
18 basement.

19 Q. Oh, I see. And you explained that earlier,
20 that the blue line is where you would be essentially
21 lowering the ground water level to?

22 A. Correct. With a permanent drainage.

23 Q. Have you quantified how much water needs to
24 be collected and drained from that area?

25 A. No, we haven't at this stage in showing



1 feasibility. That's, again, something that in my mind
2 is a later drainage design when you're trying to size
3 pipes and figure out your permanent drainage system.

4 Q. And have you presented a plan for how to
5 dewater the area -- well, I guess it would be around
6 the retaining wall or underneath the surface of the
7 phase two building foundation?

8 A. No. Building permanent basement wall
9 drainage is pretty common. In my opinion, it's just a
10 matter of depicting what kind of pipe sizes you might
11 have to pick a method on, depending on how much you're
12 lowering and what your flows are, whether you can
13 gravity flow or whether you have to have something
14 that's actually got a pump.

15 But again, in my opinion, that's something
16 that's a later design stage type of design element.

17 Q. Okay. On page 35 of Exhibit C-33 -- you
18 don't have to pull it up, but you're welcome to if you
19 want to -- you state that ground water pore pressures
20 are a key factor in estimating slope stability and
21 that additional investigations or analyses should be
22 performed to estimate how ground water pore pressures
23 vary perpendicular to the bluff face and along its
24 length?

25 A. Could I get 35, please.



1 Q. Okay. Report 35. Thank you. So that
2 would be --

3 A. Sorry. Could you...

4 Q. -- PDF 40, I believe.

5 A. Oh, PDF.

6 MS. KISIELIUS: No, no, no, you got
7 it. You're right. I was saying you're on PDF 40.
8 It's page 35 of the report.

9 Q. (BY MS. KISIELIUS) Yeah, and the section
10 7.1.1, landslide hazard areas.

11 A. Okay. Right here.

12 Q. So my question would be, if ground water
13 pour pressures are a key factor in estimating slope
14 stability, would the results of those studies be
15 relevant to Mr. Slate's decision whether to grant a
16 deviation from safety standards?

17 A. In our 2018 explorations we did three new
18 borings and installed five vibrating wire piezometers
19 in order to gather further information, and that
20 information's been included. It was included in the
21 original report. We got some updated -- we're still
22 monitoring it, I guess, and so, but the original
23 information was included in table 2 in Exhibit 33 for
24 those new -- those three new explorations for the
25 secondary access road.



1 Q. But, but this -- so this is your April 20th
2 report, and you indicate additional investigations or
3 analyses should be performed, which indicates that you
4 haven't conducted those studies yet. Maybe we're
5 talking apples and oranges.

6 A. Well, for the secondary access road we've
7 got these new explorations for other site locations.
8 Like, for example, to the north, there may be a need
9 for getting more -- attempting to get more ground
10 water information for later design on those locations.

11 Q. So, and where is the information you
12 obtained for the second access road? Okay. That's
13 what you were demonstrating --

14 A. This information here.

15 Q. -- demonstrating yesterday.

16 A. This boring was done back in 2015. These
17 three borings were done for the secondary access road
18 in 2018.

19 MS. KISIELIUS: Okay. So then, on
20 page 38 of the report, so 38 of the -- yeah, actually,
21 if you... We're about 10 pages off.

22 A. PDF page?

23 MS. KISIELIUS: Report page. Thank
24 you. So PDF page 43.

25 Q. (BY MS. KISIELIUS) You state that drainage



1 of ground water and slopes with potentially
2 liquefiable soil could be used to mitigate
3 liquefaction, because liquefaction will not occur if
4 the soil is not saturated.

5 This refers -- we talked a little bit about
6 dewatering the hillside. Is that what you're
7 referring to with this mitigation, potential
8 mitigation measure?

9 A. Yes, and I would say that there's differing
10 information about, you know, liquefaction in the
11 slopes. There's several borings that don't indicate
12 much potential and other ones that maybe indicate a
13 little potential. They tend to typically be in very
14 thin, saturated sand zones.

15 Q. Is that why you indicate that you need to
16 study the effectiveness of this potential mitigation
17 measure? It might mitigate in some areas of the
18 hillside, but not -- hillside, but not others?

19 A. I think that's generally accurate. To the
20 north, again, the section B that was looked at slope
21 stability, that additional information, I think, would
22 be beneficial at that location.

23 Section B, above the secondary access road,
24 we've gained, you know, a fair bit of additional
25 information there, and we've kind of conservatively in



1 our slope stability model included a high ground water
2 level.

3 Q. But do you believe it would be prudent to
4 attempt to dewater the hillside near the secondary
5 access road?

6 A. So, in our stability analysis, based on how
7 we conservatively modeled the ground water and
8 included basically the highest results from those
9 vibrating wire piezometers as opposed to putting in
10 the fact that there's kind of a layer cake of
11 different layers that are water bearing and have
12 perched water.

13 Instead of picking a whole bunch of
14 different ones, we picked the highest one and assumed
15 that the ground water pore pressures apply to every
16 soil unit below that, which is a conservative
17 simplifying assumption for our analysis, to indicate,
18 you know, feasibility of slope stabilization methods.

19 So we feel like we've kind of
20 conservatively modeled the ground water conditions.

21 Q. And you don't believe then that dewatering
22 the hillside would prevent potential slides?

23 A. It could help improve the stability, but
24 based on the analysis we've done, based on the ground
25 water levels included in the analysis, those analysis



1 indicate that we wouldn't need to dewater off site of
2 the property.

3 Q. Okay. So that that would not be --
4 dewatering the hillside is not something the applicant
5 is proposing?

6 A. Not at this time.

7 Q. All right. So you mentioned yesterday that
8 you're familiar with the requirements of what's
9 required in a geotechnical report, correct? And
10 that's in 3063B140?

11 A. Yes.

12 MS. KISIELIUS: Okay. Could I bother
13 you to pull up Exhibit K-31, page 313. It is. Yes.
14 And if you could scroll down to 140. Thank you.

15 Q. (BY MS. KISIELIUS) So this is the section
16 containing geotechnical report requirements?

17 A. Yes.

18 MS. KISIELIUS: Okay. And could you
19 scroll down to subsection 2(j).

20 Q. (BY MS. KISIELIUS) Could you read that,
21 please.

22 A. The proposed method of drainage and
23 locations of all existing and proposed surface and
24 subsurface drainage facilities and patterns and the
25 locations and methods for erosion control.



1 Q. So this is something that's required to be
2 contained in a geotechnical report?

3 A. Based on the code, yes.

4 Q. Okay. And does your report provide that
5 information?

6 A. We depict the location of where the creek
7 comes into the diversion structure on our site plans.

8 Q. That's that one blue dashed line that comes
9 out of the wall?

10 A. No.

11 Q. No?

12 A. As far as the drainage locations, let me
13 flip back to. Might not be specifically labeled as
14 such, but... Chevron, Chevron Creek's depicted here,
15 the diversion structure -- I'm sorry -- is this little
16 box right there.

17 Q. So that's one, one point of drainage?

18 A. That's one point of drainage. There's
19 about four drainages along the slope that are labeled
20 -- labeled them drainage one, two, three, and four.

21 Q. Those are all existing drainage points?

22 A. Yes. Well, drainages as in drainage
23 basins.

24 Q. Drainage basins. Okay.

25 A. This, this actually has a Chevron Creek



1 that is -- I'm not certain on perennial versus.
2 That's kind of not my area, but there's -- from my
3 knowledge, there's definitely more water flowing
4 through this one all the time.

5 MS. KISIELIUS: Okay. Could you go
6 back to K-31, please. I think it's on the far right.
7 And J again.

8 Q. (BY MS. KISIELIUS) The proposed method of
9 drainage and locations of all existing and proposed.
10 So you indicated where existing is and where the
11 drainage basins are. In this, your report, do you
12 provide the proposed methods of drainage?

13 A. We might not specifically mention the types
14 in those other exhibits we talked about, you know, the
15 permanent drainage being required for the difference.
16 That's an area where it's often included in, you know,
17 other drawings and design. It's an area we could
18 clarify in our geotechnical report if that's needed to
19 demonstrate the feasibility.

20 Q. Or comply with the report requirements?

21 A. Yeah.

22 Q. Yesterday Mr. Vasquez asked you to compare
23 the amount of information the county is requesting
24 with the amount of information that is often requested
25 by other jurisdictions. Do you recall that question?



1 A. Vaguely.

2 Q. Are there jurisdictions that ask for
3 similar or more information than what the county's
4 asking for when that jurisdiction's asked to deviate
5 from safety standards?

6 A. I think it's an important thing to clarify,
7 you know, at what stage in a submittal process it is,
8 and that, in my experience, has been a little
9 different on this particular development project, in
10 that it's -- a lot of our work had been to address
11 feasibility and EIS items.

12 And I realize there's also kind of a
13 permitting side that gets into design plans. So it's
14 difficult for me to answer that question without the
15 context of exactly where we fall on this.

16 Q. Well, you submitted two deviation requests
17 to the county asking the county to deviate from
18 landslide hazard area safety regulations. So I guess
19 that's -- I'd like you to consider that phase of this,
20 this process.

21 When other jurisdictions are asked to
22 deviate from safety standards, do they ask for the
23 similar -- for similar type of information that the
24 county's asking for?

25 A. I think, in my experience, those types of



1 things have been done at a later stage in the design
2 process, but that the information would be generally
3 similar to what is being required for the deviation.

4 Q. Do you know, is there anything in the
5 county's code that limits what the county can request
6 when being asked to deviate from safety standards?

7 A. Would you mind repeating that question?

8 Q. Yeah. Is there anything in the county code
9 that limits a request for information that the county
10 can give the applicant?

11 A. I guess I'm -- I'm uncertain. I'm focused
12 mostly on the geotechnical geologic hazard areas of
13 the code for the work that we were doing.

14 MS. KISIELIUS: Can you just scroll
15 down to N. Just like... You're almost there.

16 Q. (BY MS. KISIELIUS) And what does N say?

17 A. Any other information necessary to
18 determine compliance with this chapter.

19 Q. Do you understand what Mr. Slate's primary
20 concern is when determining whether to grant these
21 requested deviations?

22 A. My understanding is that it's based on the
23 code requirements, that the two indicated, the second
24 one being basically showing that equal protection is
25 being provided in comparison to code setbacks.



1 Q. And the purpose of that provision is to
2 protect the safety of buildings and people, correct?

3 A. That is my understanding of the intent of
4 the code.

5 Q. Do you know how many people might live or
6 work in the proposed buildings that are within the
7 landslide hazard area or setback?

8 A. I don't know the specific number in the
9 three towers, no.

10 Q. So you and Mr. Slate are both engineers.
11 You're both math people, right? Like numbers,
12 figures?

13 A. Both engineers, yes.

14 Q. Yes. You don't like math, though?

15 A. Well, kind of not either like or dislike
16 for math.

17 Q. Do you think it's unreasonable for Mr.
18 Slate to ask for additional information or to seek
19 calculations before making a decision to allow the
20 applicant to deviate from safety standards?

21 A. No.

22 Q. If you were Mr. Slate, would you like to
23 see the information he's requested or calculations
24 prior to granting the requested deviations?

25 A. I think if I were in his position, I



1 probably would have similar response.

2 Q. Thank you. I really appreciate your time
3 this morning.

4

5 REDIRECT EXAMINATION

6 BY MR. VASQUEZ:

7 Q. Thanks, Mr. Bingham. Just a couple
8 questions. The deviation requests, are they usually
9 done in the feasibility part of the project?

10 A. In my experience for King County and
11 Seattle specifically, when we've requested deviations
12 from -- and their designation is in environmentally
13 critical areas, it's been done at a later stage in the
14 design process, and more of the design information is
15 available to draw from this answering those types of
16 deviation requests.

17 Q. Okay. There was some questions about
18 complying with the deviation requirements, the
19 alternate location, and a geotechnical report that
20 demonstrates the alternative setbacks provide
21 protection which is equal to that provided by the
22 minimum standard setbacks.

23 What's the difference between stabilizing a
24 slope and the setbacks?

25 A. I would say that the intent of a setback is



1 to keep structures away from slopes that are unstable
2 versus landslide stabilization is actually changing
3 the stability of the slope versus a setback would
4 really be changing the stability of the slope, but
5 rather relocating -- or not relocating -- excuse me --
6 but preventing a structure from being within an area
7 that might be impacted by an unstable slope.

8 Q. Thanks, Mr. Bingham. That's all I have.

9 MR. VASQUEZ: One clarification, Your
10 Honor. That May 18, 2018 letter, we're not submitting
11 it for purposes of the hearing, but we're going to
12 submit it for the application record and obviously
13 give the county a chance to look at it. But we're not
14 going to talk about it at the hearing.

15 THE HEARING EXAMINER: Okay.

16 MR. VASQUEZ: We'd like to call our
17 next witness, Mark Davies.

18 THE HEARING EXAMINER: Do you solemnly
19 swear or affirm the testimony you are about to give in
20 this proceeding is true and correct?

21 MR. DAVIES: I do.

22 THE HEARING EXAMINER: Thank you.
23 Name and address, please.

24 MR. DAVIES: My name's Mark Davies.
25 Address. I work for MIG SvR, located at 615 Second



1 Avenue in Seattle.

2 MR. VASQUEZ: Mr. Davies, you're kind
3 of tall, so you might have to adjust your microphone a
4 little bit.

5 THE HEARING EXAMINER: Just pull a
6 little harder. There you go.

7 MR. VASQUEZ: Not that tall.

8

9 DIRECT EXAMINATION

10 BY MR. VASQUEZ:

11 Q. Mr. Davies, can you please tell me what
12 your occupation is?

13 A. I'm a licensed civil engineer.

14 Q. Do you have any specialization?

15 A. Professional engineer for civil
16 engineering.

17 Q. Okay. And when did you receive your
18 degree?

19 A. Bachelor of science degree from the
20 University of Washington from 1994.

21 Q. Okay. Have you got any other degrees or
22 certifications or anything like that?

23 A. I have a couple of other accreditations.
24 Lead AP and also DBIA associate.

25 Q. Can you tell me what those are, what those



1 mean?

2 A. So lead is a lead for buildings, so it's a
3 certification program. I'm a design -- DBIA stands
4 for design build. It's another type of way to proceed
5 with projects. So, you know, on design bid build,
6 it's design build where you work with contractors.

7 Q. Okay. And you said your currently employed
8 at SVR. Is that correct?

9 A. MIG SvR. That's correct.

10 Q. M-i-g-s-v-r?

11 A. Yeah.

12 Q. Okay. And how long have you been employed
13 there?

14 A. I started with MIG SvR at that time in
15 1997. I did take two years off, from 2006 through
16 2008, when I thought I wanted to be -- work for a
17 contractor, and at that period I realized I like the
18 design side and went back to SvR.

19 Q. Okay. I thought you were going to say you
20 did something fun for two years. What is your current
21 did -- what is your current role at SvR?

22 A. Current role is director of infrastructure
23 and Seattle operations.

24 Q. Are you familiar with this project, the
25 Point Wells development project?



1 A. Yes.

2 Q. And how are you familiar with this project?

3 A. I started on the project from 2009 as the

4 civil engineer designer working with the architect on

5 the infrastructure onsite.

6 Q. And when you're talking about the

7 infrastructure, what specifically are you talking

8 about?

9 A. Infrastructure would be roads, utilities,

10 drainage, grading.

11 Q. Have you provided or prepared any reports

12 with respect to this development project?

13 A. I have. The targeted drainage report.

14 Q. C-31. Is this the report you've prepared?

15 A. It's one of them. It's the short plat, and

16 there's also another one for the urban center.

17 Q. Okay. And is that the other one?

18 A. Yes.

19 Q. Okay. And from what I see, the report was

20 originally authored in March of 2011. That's correct?

21 A. Correct.

22 Q. And you have subsequent or supplements or

23 revisions to that report?

24 A. That is correct.

25 Q. Okay. What's the reason or basis for those



1 revisions?

2 A. The revisions is response to the county
3 comments throughout the years.

4 Q. Okay. So you have either communicated with
5 the county or reviewed comment -- written comments and
6 you provided?

7 A. That's correct.

8 Q. Just in general, in your opinion or
9 understanding, have you responded to all of the
10 county's comments?

11 A. We have to date.

12 Q. Okay. Let me ask you this. You have said
13 that part of your responsibility is the drainage
14 design?

15 A. That's correct.

16 Q. Correct. And did you have any
17 responsibility for the drainage design in the second
18 access road?

19 A. Yes, we did.

20 Q. Okay. And what exactly was your
21 responsibility with the drainage on the second access
22 road?

23 A. Drainage access road would be the
24 collection of the surface water from that new
25 impervious surface and landscaped area, and collecting



1 and conveyance and water quality treatment for
 2 conveying and discharge to Puget Sound.

3 Q. Okay. Is that contained anywhere in this
 4 report that's been marked as C-32?

5 A. We do highlight that we have included those
 6 areas in the report, yes.

7 Q. Okay. Can we turn to those pages?

8 A. It would also be in the appendix. We have
 9 the basin areas.

10 Q. Which would it be subbasin summary, or...?

11 A. If I can find it for you. Doesn't seem to
 12 be. Looks like we broke it. Maybe we need to close
 13 it and reopen it.

14 MR. VASQUEZ: I think we're going to
 15 have to -- I think we might have to restart this, Your
 16 Honor.

17 A. Go back up. Let's start on --

18 Q. There we go. Okay. Back to the question.
 19 Do you have a depiction of the drainage as it relates
 20 to the secondary access road?

21 A. So, this diagram shows the basin areas,
 22 which includes the second access within outfall number
 23 two. Our sheets C300 series shows the grading and
 24 drainage plans, identifies that conveyance system.

25 Q. Okay. And can you briefly describe the



1 conveyance system for that drain location?

2 A. For the second access?

3 Q. For the second access. Correct.

4 A. If you pull up the grading sheets, it's
5 highlighted more clearly in those drawings.

6 Q. In which drawings are they?

7 A. That would be the urban center application
8 plans.

9 Q. And it's the C series of?

10 A. Correct.

11 Q. Okay.

12 A. Here we go.

13 Q. Okay. Show us where the drainage location
14 is.

15 A. So apparently we show on the second access
16 we have the conveyance system coming down collecting
17 in the storm drain system (unintelligible) just in
18 sheets, crosses the secondary access bridge, down
19 through a water quality facility, conveyance down into
20 -- discharges to outfall number two.

21 Q. That is Chevron Creek drainage?

22 A. That is not Chevron Creek.

23 Q. Okay.

24 A. That is just the onsite collection drain
25 system. There's another bypass system.



1 Q. Oh. I'm talking about the actual drainage
2 area that's affecting the secondary access road.

3 A. So for Chevron Creek, there was questions
4 yesterday. You can see right here, this is the
5 existing sediment basin where the creek is currently
6 being conveyed from a creek into a pipe system. We
7 had kind of moved that up to the second access, and
8 then that's being routed around to its current
9 location at the north, North Creek.

10 Q. Okay. So let me make sure I get this
11 right. What is the current description of the Chevron
12 Creek drainage collection system?

13 A. Repeat the question.

14 Q. Can you describe for me the Chevron Creek
15 drainage system that's currently on the property?

16 A. Currently on the property, comes in as a
17 creek in a conveyance swell and then being picked up
18 in a concrete base, and I know from there it's being
19 piped and discharged to outfall number one.

20 Q. Okay. So there's ground water or surface
21 water collecting in the creek at some point on the
22 hillside; is that correct?

23 A. Correct.

24 Q. Okay. And what is your plan for drainage
25 for the secondary access road with respect to that



1 Chevron Creek drainage?

2 A. So where we bisect it, that's where we are
3 moving kind of that collection culvert location up to
4 the edge of the new wall, collecting that. Then on
5 our section for the roads you'll see where the wall
6 collects.

7 It's working with a geotechnical engineer
8 on that drainage wall, which can be conveyed -- at the
9 right elevations can be conveyed to that pipe system
10 or conveyed further to the west.

11 Q. Okay.

12 A. We also have, as shown on basically
13 upstream of the road, anything that comes through will
14 be collected into a infiltration system. That's kind
15 of per the county's typical upstream of kind of
16 concrete sidewalk locations.

17 Q. Okay. So you're not changing the character
18 of the creek or the drainage at all, are you?

19 A. We're not changing the character, no.
20 We're just relocating where it's being picked up and
21 redirected around the facility.

22 Q. Okay. And the relocation of that area
23 where the water's being picked up, is that on the east
24 side of the road or is it on the road? Where exactly
25 is it?



1 A. So where we're picking up Chevron Creek
2 would be north of the road.

3 Q. Oh, north of the road?

4 A. Correct.

5 Q. Okay.

6 A. North. North.

7 Q. And that drainage goes all the way under
8 the railroad tracks, correct, the pipe?

9 A. There's a short section. It does go
10 underneath the road, but there's a short section
11 currently where it's daylighted and then repicked up
12 in culverts.

13 Q. Okay. And then your design plan is to
14 redirect all that water into a underground collection
15 system somewhere further on the property?

16 A. For Chevron Creek, it's reconnecting to the
17 same location east of the tracks.

18 Q. Do you recall what particular comment by
19 the county you were responding to with respect to the
20 Chevron Creek collection redesign or design
21 recommendation?

22 A. I'm not sure if there's a particular
23 question as more on the drainage of the second access
24 and how we are collecting, conveying, including the
25 second access, in our conveyance water quality



1 facility treatment.

2 And then, just as part of the engineering
3 design, we had to accommodate offside flows through
4 and around our site.

5 Q. Okay. There's also questions raised about
6 drainage at that monitoring well 122, and have you
7 thought about how that drainage might work or how that
8 drainage might be accomplished?

9 A. That drainage is subsurface, and that would
10 be really accommodated with the building development.

11 Q. Okay. And is that a fairly common or not
12 unusual drainage system?

13 A. That's a common, typical system, correct.

14 Q. Okay. I think that's all the questions I
15 have for you, Mr. Davies.

16

17 CROSS-EXAMINATION

18 BY MS. KISIELIUS:

19 Q. Good morning. Just a couple, Mr. Davies.

20 A. Sure.

21 Q. Can you confirm whether the purpose of the
22 targeted drainage plan is to demonstrate collection
23 and conveyance of surface water?

24 A. It is technically surface water drainage
25 collection, yes.



1 Q. Okay. And your report doesn't cover the
 2 collection and distribution of ground water at the
 3 retaining wall or anywhere else onsite, correct?

4 A. Correct.

5 Q. That's all I have. Thank you.

6 THE HEARING EXAMINER: Thank you, Mr.
 7 Davies.

8 MR. HUFF: Your Honor, it might take a
 9 few minutes for our next witness to bring up exhibits
 10 that will be relevant. Does now make sense for a
 11 break?

12 THE HEARING EXAMINER: Sure. Okay.
 13 We'll come back in 15 minutes. It will be 10:25.
 14 Does that work?

15 MR. HUFF: Thank you.

16 THE HEARING EXAMINER: We'll be in
 17 recess until 10:25.

18 (Break in recording.)

19 THE HEARING EXAMINER: Are we ready to
 20 get restarted?

21 MR. HUFF: We are.

22 THE HEARING EXAMINER: Mr. Huff,
 23 what's next?

24 MR. HUFF: We would like to call
 25 Carsten Stinn, please.



1 THE HEARING EXAMINER: Okay. Do you
 2 solemnly swear or affirm the testimony you are about
 3 to give in this proceeding is true and correct?

4 MR. STINN: I do.

5 THE HEARING EXAMINER: Name and
 6 address, please.

7 MR. STINN: Carsten Stinn. I work
 8 with Perkins and Will Architects. The address is 1301
 9 Fifth Avenue in Seattle.

10

11 DIRECT EXAMINATION

12 BY MR. HUFF:

13 Q. And what is your job title with Perkins
 14 Will?

15 A. I'm a senior project architect.

16 Q. And can you talk about your educational
 17 background, please?

18 A. I have a diploma engineering degree from
 19 Germany, which is equivalent to a master's degree in
 20 architecture, University of Alin, and I studied at the
 21 University of Washington for two quarters in an
 22 exchange program. And I have lived in Seattle since
 23 1991.

24 Q. How long have you been with Perkins Will?

25 A. Since 2009.



1 Q. Can you describe generally your job
2 responsibilities, please.

3 A. I'm a project designer, project architect.
4 I straddle both roles. And I've worked on this
5 project in 2009. I direct large teams on and from all
6 facets of architecture in our office.

7 Q. And you prepared the variance request for
8 the high limit, correct?

9 A. That is correct.

10 Q. Before we get to that specific document,
11 can you please talk about some of the thinking that
12 went into the design and why the building,
13 particularly these buildings in particular are at the
14 location that they are?

15 A. In regards to the upper plaza?

16 Q. Yes.

17 A. The -- I'm sorry. The location -- I'm
18 sorry. I'm going to go over so you can see this. The
19 location that we chose for the buildings of the upper
20 plaza was a long exploration. There were many
21 alternatives that we looked at in our office.

22 As you all have pointed out, there are
23 quite a few choke points, one being the single access
24 road from Richmond Beach Drive, then having to
25 accommodate now a second access road on a relatively



1 small parcel of the entire site.

2 We saw this as a very important component
3 of the entire development, because it connects the
4 plan -- master plan back to the community. It was
5 important to the design team, and it was also pointed
6 out by the county, there should be public amenities.

7 So we had a first responder office located
8 at the entry of the site where police and EMT could
9 have a location, a -- there was a retail podium
10 planned that is equally -- could equally be servicing
11 the surrounding community as well as the Point Wells
12 development.

13 On top of that, or below all that, is a bus
14 turnaround that would connect in a multimodal fashion
15 the planned light rail station or rail station through
16 the buses and allow -- allow the inhabitants or
17 tenants of this development to go north to Bellingham
18 or south to Seattle.

19 The buildings themselves were located in a
20 way that we wanted to mitigate and minimize the view
21 impact on the surrounding communities. As it
22 currently stands, the hillside east of the urban plaza
23 is fairly steep, and as we heard about, prone to
24 landslide hazards.

25 So currently, there aren't -- there aren't



1 many residences in that area. The first ones that
2 appear are -- don't quote me on it, but there are 150
3 feet higher than this development. So our design
4 intent was to minimize the views of the parcels that
5 are located to the southeast, that are looking across
6 the site, and the parcels that are located directly
7 east would be looking over this, this area.

8 We did view studies to show that locating
9 some bulk here is less of a view impact than having
10 buildings located in this area because of the view
11 angle of the upland parcels.

12 The location for the rail station and the
13 two platforms is mandatory to be somewhere in this
14 vicinities -- vicinity. The guide rail has to be --
15 there has to be a straight line. The tracks need to
16 be straight in an area for the train to stop next to a
17 platform.

18 We combined the second access road as a
19 concourse type overpass to the proposed rail station
20 so there would be elevators and escalators for ADA
21 accessible access down to the southbound and
22 northbound platform.

23 Q. So if I understand you correctly, there is
24 very little flexibility in terms of where the commuter
25 rail station is?



1 A. That is correct.

2 Q. While it could be further to the north,
3 there are some negative impacts for moving it in that
4 direction, correct?

5 A. That is -- that is correct. If, if the
6 station -- the station could be moved further to the
7 north, that is absolutely right, and that could be --
8 I'm sorry. There could be a point somewhere here
9 where the station connects to the site. That would
10 imply that traffic would have to cross over into the
11 site, and it would include the amount of traffic on
12 the entire Point Wells property.

13 The initial design concept was -- the
14 intent was to minimize the amount of car traffic on
15 the site and encourage biking and pedestrian traffic
16 patterns. So the logical point for us was to pick a
17 location for bus train access that is all concentrated
18 at this upper part of the site.

19 Q. And by concentrating it on the upper part
20 of the site, you minimize the distance vehicles need
21 to go to get to the station, or pedestrians, correct?

22 A. Correct.

23 Q. And there is no other practical location
24 for the transit center, the bus aspect, correct?

25 A. That's correct.



1 Q. Can you explain briefly how that bus
2 transit station works?

3 A. Yes, I can. There's a Richmond Beach Road
4 enters the site. The property line is about here. At
5 this point, the road is being split into four roads,
6 one on the east side that leads up to the site, to a
7 turnaround. You enter across the bridge, along the --
8 along the big access center road and from there on,
9 depending on what location somebody wants to go to,
10 they can enter the south village, the central village,
11 or the north village.

12 On the way out you basically use the
13 southern, the southernmost part of the bridge, turn to
14 the right, there's a ramp that goes down and connects
15 back onto Richmond Beach Drive in order to access the
16 parking garage.

17 There's an area in between which is
18 basically two lanes that lead into a parking garage as
19 well as a bus hub. So the bus hub is located directly
20 underneath this turnaround area on the first parking
21 level. So for --

22 Q. Just so I'm oriented. You said earlier
23 that the property line is there on the right-hand side
24 of that exhibit. Is that currently where the gate is
25 and there's, I think, like a scale house or something



1 like that just outside that gate?

2 A. I believe so.

3 Q. Okay. So we're oriented.

4 MALE VOICE:: As do I. I believe it's
5 there.

6 Q. (BY MR. HUFF) Are there other design
7 issues that require the both the bus and the -- this
8 potential Sound Transit station to be at that
9 location?

10 A. The goal was to create this, this transit
11 hub in an area where it is a connector to the
12 surrounding community. I mentioned that before.
13 Having the transit center located on the -- on the
14 east side of the property would create another choke
15 point at bridges, at these two bridges, and the -- I
16 mean, the site as it currently stands, we're barely
17 meeting the county requirements of an FAR of 1.0.

18 Not having any buildings here would force
19 the design to create more bulk and locate more of the
20 building bulk towards the west of the property, which
21 would further increase building height and impede
22 views or affect views of the upland parcels.

23 Q. You may have heard Mr. Countryman from the
24 county talk about the possibility of relocating the
25 density in the upper plaza down into wider buildings.



1 What would be the impact of wider buildings in the
2 main part of the project?

3 A. Well, from our experience, the building
4 size as is currently shown, they're indicative. These
5 are not design buildings. I want to qualify that.
6 These are, these are towers that we have built similar
7 projects. Perkins Will has several projects that look
8 very similar in size and configuration as to these.

9 They accommodate somewhere between eight
10 and 11 units per floor for light and sun or light and
11 air requirements for the individual units to create
12 deeper flow plates leads to an undesirable tenant
13 environment. The units become very deep. There's no
14 cross-ventilation, and they're just not -- they're
15 just not very pleasant residences for people to live
16 in.

17 The other, the other thing that was
18 important to us was that there's ample air and light
19 circulating throughout the buildings. They're spread
20 apart further than you would see on a typical city
21 grid, for example, and the goal was to have the
22 buildings be situated in a more gardenlike atmosphere
23 and less than a, you know, a sort of strict urban
24 environment with roads and blocks and no green in
25 between.



1 I mean, in the previous iteration of this
2 design we had a lot more green, and that was changed
3 because we enlarged the roads to comply with the
4 requirements that the county had.

5 Q. What role do view corridors play in the
6 design?

7 A. The view corridors are very important to
8 maintain the market value of the units. Obviously,
9 the better the views, the higher the value of the
10 units.

11 On top of that, it would be the -- we
12 believe that the views that the site has to offer
13 would entice the number of people to come to the site
14 and, you know, wanting to live there and, you know, we
15 located the building in a way that the views are sort
16 of, for lack of a better word, democratically
17 oriented. There's views from multiple units. We try
18 to give everybody a view of the water, because this is
19 sort of the beauty of this whole project.

20 Q. How about view corridors for the
21 neighborhood to the south?

22 A. So we studied the view corridors neighbors,
23 and in essence, the majority of the views of the
24 adjacent neighbors here go across the south village,
25 which is, you know, the smallest, the smallest one



1 there.

2 The view corridors in between the
3 buildings, we try to -- we tried to not locate
4 buildings in a north-south direction. The buildings
5 are fanned out so that there would even be views
6 through the buildings that are quite sizeable, just
7 about 120 feet, and the -- the bulk of this village,
8 the central village, is larger than the south village,
9 so we tried to stagger the building bulk from the
10 south to the middle to the north.

11 The upland parcels from Woodway, I think
12 the bluff that was mentioned yesterday is about 200
13 feet high, so they would look clear over the top of
14 these buildings. We've studied that.

15 MR. HUFF: Can you go to A-29, your
16 variance request, please, and scroll down to the next
17 page. There.

18 Q. (BY MR. HUFF) So, can you explain this
19 diagram?

20 A. Yes, I can. So per code, the -- I mean, if
21 we're just looking at the setbacks, the setbacks
22 required there was a -- there was a judgment made by
23 the county that the UR zone that is east of the site
24 is a residential zone equivalent to other residential
25 zones in the area that require the setback.



1 So when this judgment was made, we looked
2 at alternative massing options for this, and what you
3 see here is the property line is as the thick line and
4 in 20 foot intervals, the dashed lines, just to give a
5 guide on how far away we are from the property.

6 So the zone in yellow here is the zone
7 where we are at 180 feet offset from the property
8 line, and assuming, assuming that the designation as a
9 transit -- a transit oriented location is approved,
10 this would allow us to build 180 foot building. So in
11 our variance request we've shown a massing envelope.

12 It's into the building, by all means, but
13 this is a potential envelope in which a building could
14 be built that can go up to 180 feet in this area and
15 has to step down at half the distance to the property
16 line in height. So we would go 90 feet from this
17 point and then it would go in 10 foot increments along
18 these dashed lines, and that's -- there's a zoning
19 envelope that's just a big bulk that exemplifies what
20 I'm talking about. I think it's a --

21 Q. How far is it from the property line to
22 each of the three currently designed buildings?

23 A. We've dimensioned them on the site plan,
24 but about 90 feet. I mean, as you see, they're arched
25 to allow this access road behind it. So these, these



1 buildings are about -- about 10 -- this one's 120 feet
2 away. I think the closest we got was at this point.
3 This is 90 feet away. So between 90 and 120 feet.

4 Q. So within those areas, strict compliance
5 with the setback would allow buildings half of that
6 distance, correct?

7 A. That is correct.

8 Q. So if it's 100 foot -- 100 feet from the
9 property line for the north building, that would be
10 limited to 50 feet?

11 A. That's correct.

12 Q. But in the yellow area there would be no
13 height restriction?

14 A. That's correct.

15 Q. To duplicate the density from those three
16 buildings in that yellow area, that would require a
17 fairly massive structure, correct?

18 A. Yes, it would. I mean, what you see here,
19 the yellow line roughly represents the bulk of these
20 three buildings combined. I take that back. It's
21 slightly less than this area would be the -- similar
22 area that was showing in these three single buildings
23 as one, as one tower, or it could be two towers, with
24 a slot in the middle or something.

25 As I said, we didn't design an alternative



1 scheme per se. We wanted to -- we wanted to show that
2 the reasoning -- the reasoning for this was not by
3 accident. It's chosen on purpose.

4 There was another -- there was another
5 constraint or a way for us to look at it. When the
6 landslide area, you know, from what we learned from
7 our consultant team, is that having the second access
8 road would improve the landslide potential of this
9 area, and we have another retaining wall right here
10 and that's the one that John was talking about.

11 So basically, there are two layers of
12 defense for these buildings and then a fairly large, a
13 25 foot wide driveway, separating the podium of these
14 buildings from this retaining wall. So, you know,
15 with our consultants, we felt that this is a safe
16 location for the buildings the way we designed them.

17 Q. And the residences of the neighbors are
18 largely to the south. Which design scheme of these
19 two has the least impact on views of neighbors?

20 A. In my opinion, this has a lesser impact on
21 the neighbors. This one we've chosen in a few
22 different views from, from particular residences up on
23 the, you know, southeast of this location. We've
24 shown that this would be a far larger visual impact.

25 Q. Is part of the intent here to move



1 buildings as close to the hillside as possible so as
2 to minimize views?

3 A. That is the intent. In addition to that --

4 Q. Minimize impacts. Excuse me.

5 A. Minimize view impact. In addition to that,
6 there's an impact of the shear traffic and the noise
7 associated with it. Our intent was that if we locate
8 the traffic, the turnaround as well as the bus
9 turnaround below and the parking garage towards the
10 train tracks, these buildings effectively built
11 somewhat of a buffer to not have the sound travel up
12 the hill and affect the upland parcels.

13 And having -- and if we flip this diagram
14 around, if all the traffic was over here, we would
15 have to come through the building, where now these are
16 all pedestrian environments, and in our renderings
17 we've shown retail and cafe phase, it would be a
18 different -- it would be a different design if we
19 flipped this diagram around.

20 Q. Apart from residential uses in those three
21 towers, what other uses do you have designed for
22 there?

23 A. We have -- there's about 30,000 square feet
24 of retail at the ground floor. And again, this is not
25 -- this is a building. It could be a retail space as



1 this curvy line indicates. So there are two larger
2 retail spaces that together make up 30,000 square
3 feet.

4 There's also an office podium that sits
5 above this 15 -- there's a 15 foot retail podium
6 one-story building and there's an office level above
7 that. So we're thinking of medical offices, small
8 commercial uses that can accommodate or help this
9 community as well as the upland parcels. And then
10 there would be the three towers with residences above
11 that.

12 Q. And the retail uses, while not large, and
13 the medical-dental, those are available to
14 nonresidents also, right?

15 A. That's correct.

16 Q. So visitors have the shortest trip and
17 least drive-through traffic for the community in this
18 location, correct?

19 A. Yes, that is correct, because they would
20 not have to cross the bridge, unless they wanted to.
21 Anyone can cross the bridge, because there's also --
22 there's another parking opportunity and the esplanade
23 is a public amenity, so it would be possible. But for
24 shopping purposes, you could park in the parking
25 garage, take an elevator, go into a grocery store, and



1 go back.

2 Q. And does it make sense to have those uses
3 located as close to the bus turnaround in the Sound
4 Transit station as possible?

5 A. Yes, it does, because the assumption is
6 that travelers would take the bus, come to this
7 location, make it across -- we have -- we've shown a
8 pedestrian bridge. Not on this document, but on other
9 drawings, there's a connection from the upper plaza to
10 this road, and they could then walk on to either one
11 of the platforms and take a train to go north or
12 south.

13 MR. HUFF: Let's go back to one page,
14 to the request for zoning variance.

15 Q. (BY MR. HUFF) Mr. Stinn, did you complete
16 this application?

17 A. I did.

18 Q. So this application includes the four
19 criteria by which variance requests could be measured,
20 correct?

21 A. That's correct.

22 Q. Could you read the first one, please.

23 A. Point one, the criterion is, describe the
24 special circumstances that apply to your property
25 and/or your intended use, such as shape, topography,



1 location or surroundings, which generally do not apply
2 to other properties in the use -- or uses in the
3 vicinity.

4 Do you want me to read the second portion
5 as well?

6 Q. Well, we'll get to that.

7 A. Okay.

8 Q. So is the Point Wells site different in
9 topography from surrounding properties?

10 A. We think it is. It is. It is very
11 different. It is -- we look at it as an island of an
12 urban center amongst the residential surrounding sea,
13 and the -- our -- yes, it is.

14 Q. Could you please tell us how you responded
15 to this point one in your application?

16 A. So if we looked at this from an urban
17 design perspective, the intent, the intent of this
18 urban center is to connect it and integrate it into
19 the community, and we felt that the up -- the upper
20 plaza as a site is instrumental in connecting back to
21 the community.

22 It is not -- is not adjacent to other urban
23 centers, so we felt that there needed to be, you know,
24 this sort of node that IA allows traffic to, you know,
25 -- people to come in and out of this development,



1 connect to the train, and also create an urban feeling
2 with a plaza with cafes and, you know, a place where
3 people can meet and sit that looks more like a place
4 in a denser urban environment.

5 In addition to that, we're well aware of
6 the fact that there are a number of constricting,
7 constricting sort of environmental issues around the
8 site. I mean, we have talked about the wetland.
9 We're well aware of that, and we believe that the --
10 improving the area as we suggested would mitigate the
11 landslide hazard and hopefully, you know, stabilize
12 the hillside rather than just leaving this condition
13 as it is.

14 Q. One of the criteria listed here is the
15 shape of the property. Now, in terms of shape, the
16 only area that's east of the railroad tracks is the
17 urban plaza, right?

18 A. Yes.

19 Q. And that's at the entrance?

20 A. Yes.

21 Q. And you've testified that that, you
22 believe, is the appropriate location for both the bus
23 and transit station and for the commercial and office
24 uses?

25 A. Yes.



1 Q. There's no other place on the site that
2 works as well for those locations -- or those uses,
3 correct?

4 A. No, there isn't.

5 Q. And the topography also comes into play?

6 A. It does. As mentioned, the hillside, the
7 hillside to the east is -- it's a unique condition,
8 because it does help mitigate the view impact that
9 this will undisputedly have.

10 Q. And in terms of the surroundings, that's
11 another factor that's listed under point one. I think
12 you've already said, but this design and these
13 building locations are intended to minimize the impact
14 on the surrounding neighborhood?

15 A. Yes.

16 Q. How about point two, could you read that,
17 please.

18 A. (Unintelligible) necessary to preserve --
19 preserve and/or enjoy a substantial property right
20 that others in the vicinity have, but because of
21 special circumstances is denied to your property.

22 So the argument that we would like to make
23 is that there is a unique set of site features. This
24 is not a very common site. It's very challenging in
25 terms of its topography, the surrounding environmental



1 critical areas, and also its connectivity to rail and
2 surrounding neighbors as well as the bridge that
3 connects it to the site that is yet to be developed.

4 We believe that that set of constraints on
5 a site makes a development very challenging and our
6 proposal of the building types that go on there with
7 the type of mit -- mitigation and engineering seems
8 like a prudent way to develop this, this part of the
9 site.

10 Q. As far as you're aware, is there any
11 similar height restriction in the neighboring zones,
12 the residential zones?

13 A. There are height restriction -- or
14 restrictions on residential properties.

15 Q. But it's a maximum building height.
16 There's no similar restriction that would require a
17 reduction of this magnitude along property lines?

18 A. To be honest with you, I have not studied
19 the residential zone height requirements.

20 Q. It is a right, is it not, to be able to
21 develop to the extent that the zoning code otherwise
22 allows?

23 A. That is correct.

24 Q. And also a right to try and design your
25 project in a way that best fits with the site and



1 minimizes impacts on the surrounding community?

2 A. Yes.

3 Q. This language talks about in the same
4 vicinity or zone, but there is no other urban center
5 zone in the area, right?

6 A. There is no urban center zone in close
7 proximity to the site.

8 Q. And special circumstances can also include
9 the fact that the purpose of this regulation isn't
10 really relevant to this site, because there is no
11 residences up the hill. You're not -- complying with
12 this has no benefit on eastern homeowners. Is that
13 correct?

14 A. Yes.

15 Q. And in fact, if we were forced to redesign
16 the project in a way that you showed on the map, that
17 would increase the impacts on the neighboring
18 properties?

19 A. Yes, it would.

20 Q. And we have a vested application, that's
21 not in doubt, and being able to develop under the
22 vested code is another substantial right?

23 A. Yes. And as I mentioned before, when we
24 designed the project and we located buildings and we
25 were not -- we were hardly able to fulfill the floor



1 area ratio requirement that is set forth by the
 2 county, so we feel that we've -- we have not maxed out
 3 the site, so to say in architectural terms, which we
 4 would usually do on any other development.

5 Q. And eliminating towers from the urban plaza
 6 and trying to squeeze them in below the railroad track
 7 also carries obvious negative consequences, correct?
 8 And can you describe those again?

9 A. Could you rephrase that question?

10 Q. If we had to take the density from the
 11 urban plaza --

12 A. Uh-huh.

13 Q. -- and fit that in below the railroad
 14 tracks.

15 A. Yes.

16 Q. There are -- are there negative
 17 consequences to the neighbors and the project from
 18 doing that?

19 A. There are, there are negative consequences,
 20 mainly as to views and, as I mentioned before, as to
 21 the bulk of the buildings. So currently the way the
 22 project is designed is that the larger buildings are
 23 situated towards the east and towards the water the
 24 buildings step down in height.

25 That allows -- excuse me -- it allows to



1 maximize the view for the inhabitants of the property
2 as well as locate -- it locates the higher buildings
3 towards the hillside and therefore kind of follows the
4 view angle down to the water.

5 If we had to -- if we had to locate more of
6 the -- more of the bulk of the building towards the
7 east, it would effectively build a wall of buildings
8 on the east side of the -- sorry -- on the west side
9 of the railroad track.

10 Q. I believe you testified that given the
11 distances from the property line to the three
12 buildings, it would be possible to build approximately
13 five stories in that location.

14 A. That's correct.

15 Q. And to the extent that there are view
16 impacts on the neighbors, those impacts arise in those
17 five floors. Isn't that correct?

18 A. They do arise.

19 Q. So building taller doesn't increase the
20 view impact. It's those floors that we have a right
21 to build in any event that would represent the
22 obstruction, if any?

23 A. Yes. It's a factor of building taller and
24 building wider and the direction of the building and
25 our intent was to direct the buildings in a way to



1 leave as many views and sun and air available to
2 upland parcels as well as buildings that are higher up
3 on our site.

4 Q. Now, PDS testified that we haven't
5 demonstrated how other designs might accomplish the
6 same and be in compliance with the code. Have you
7 considered other design alternatives?

8 A. We have considered other design
9 alternatives. For the variance request we have shown
10 a -- it's not a design. It's an indicative design.
11 It's a possible design solution. It's obviously not
12 the one that we favor, but it is one way how the site
13 could be developed.

14 Q. Could you show us that, please?

15 A. Sure. Could you go to the -- stay in this
16 document. If you could just scroll down a little bit.
17 Okay. Just a second.

18 So what you see here is a -- in this
19 variance request, the yellow structures are the ones
20 that would interpret the code as it's written. The
21 red are the -- you know, if you go to the one above,
22 that's the preferred solution.

23 So this is the -- this is sort of a
24 simplified model of the current design and all of this
25 is overlay to a Google map, so it's fairly accurate as



1 to what's there right now. We've left the tanks on
2 here just to give an idea of scale, and we have shown
3 this as the preferred solution. And the yellow
4 massing shows an envelope in which a compliant design
5 could be constructed or planned.

6 Q. And in your opinion, is -- what is your
7 design opinion of this alternative?

8 A. There are a few things that are less
9 favorable in this alternative. As I mentioned, there
10 are views of -- if you see this entire residential
11 area here, views directed towards the northwest that
12 go across the south village, they will be impacted by
13 -- by the bulk of the high rise here.

14 There is also the additional -- additional
15 issue that I mentioned that the traffic would have of
16 to be located on the east side of this, this building,
17 and then we would have to somehow cut through the
18 building or split two buildings apart, have a bridge
19 come over, and complete the access as it's currently
20 shown.

21 It also, it doesn't -- it doesn't make for
22 a good public space, because we -- we do believe that
23 this is a front porch for the development and for the
24 community. If we were locating a plaza on the east
25 side of the -- on the east side of this building, it



1 would be in shade for most of the day and it would not
2 be a pleasant atmosphere.

3 Not to mention that there wouldn't be any
4 views of the water, which you would actually get in
5 this current configuration.

6 Q. And again, to take that bulk and move it
7 waterward would further -- have further few impacts on
8 the surrounding community?

9 A. That's correct. I mean, if we were to
10 enlarge the footprints of these towers and sort of --
11 if we didn't step them as we currently do, then the
12 view impact -- impact would be larger on the
13 community.

14 Q. Let's go back to the first page, the
15 variance application, and go to number three. Could
16 you read that, please.

17 A. The variance I'm requesting will not be
18 detrimental to the public well for -- welfare or
19 injurious to the properties or improvements in the
20 vicinity and zone in which my property is located,
21 because.

22 Q. Could you explain your answer there?

23 A. The answer is that we interpreted the
24 intent of the code, which is to step the bulk and the
25 height from adjacent residential zones up to the urban



1 center site. And that is based on the -- a low, low
2 density zone being directly adjacent to a higher
3 density urban zone.

4 If we strictly applied that code, we felt
5 that the impact on the adjacent site would be -- would
6 be worse. So the variance request is a -- is an
7 attempt of the design team to have a better design in
8 place.

9 Q. So in terms of impact on the public, does
10 the plan with which we've -- for which we've applied
11 enhance or diminish the -- does it maximize or
12 minimize impacts on the surrounding community?

13 A. If you look at the -- if you take all the
14 effects that we talked about into account, we believe
15 that the current proposed or preferred design offers
16 the highest value to the surrounding public, and from
17 a functionality standpoint, it built the best
18 connection to traffic, which is desirable, and
19 therefore we think it's -- it's a higher value to the
20 public.

21 Q. So in terms of whether the granting of this
22 variance, whether it would be materially he
23 detrimental to public welfare, your answer is no, it
24 would not, and it enhances the public welfare. Is
25 that correct?



1 A. That is correct.

2 Q. Now, PDS says that we have assumed only one
3 alternative design, but you considered more than one
4 alternative, correct?

5 A. That's correct.

6 Q. And is it not true that in any other
7 possible design scenario the view impacts on the
8 neighboring properties would be increased?

9 A. The view impacts would be increased as well
10 as when we tested other solutions, there were -- there
11 were imperfect outcomes as to the traffic and the
12 organization of the garage below.

13 So from the different versions that we
14 looked at, we felt that the -- the preferred solution
15 that we put forward was the best one that came out of
16 our alternatives upon evaluating all of them.

17 Q. Let's go to point four. Could you read
18 that one, please.

19 A. Why would a variance approval not adversely
20 affect the comprehensive plan.

21 Q. Does this proposal enhance or adversely
22 affect the comprehensive plan? It implements the
23 plan, does it not?

24 A. It addresses some of the issues that the
25 comprehensive plan puts forward as desirable, so it



1 enhances it.

2 Q. And part of that enhancement is placing
3 units in a way that maximizes views, both for our
4 residents and the neighborhood, correct?

5 A. Correct.

6 Q. In your opinion, would moving the density
7 from the upper plaza elsewhere on the project
8 represent good or bad planning?

9 A. In my opinion, placing all the functions
10 that we've shown on the west side on the other side of
11 the property would create a separation of the
12 development, and it would be a less desirable design
13 solution from an urban planning perspective.

14 Q. And in your opinion, would strictly
15 complying with the setback requirements when there are
16 no residences to the east be consistent with the
17 comprehensive plan?

18 A. I can't answer that.

19 Q. Thank you.

20 MR. HUFF: I think we're done, for
21 now.

22 THE HEARING EXAMINER: Mr. Otten.

23

24 CROSS-EXAMINATION

25 BY MR. OTTEN:



1 Q. Hi. Good morning, Mr. Stinn. For the
2 record, Matthew Otten, the prosecutor's office.

3 MR. HUFF: Excuse me just a second.

4 MR. OTTEN: Sure.

5 MR. HUFF: I meant to start out with
6 the fact that to confirm that PDS no longer says or
7 believes that there are buildings above 180 feet and
8 that the parking issue is no longer in dispute. There
9 was language in the staff report about accessible
10 parking, but Matt and I talked before the hearing and
11 we've agreed, and I'd just like confirmation on the
12 record that that's not a substantial conflict.

13 MR. OTTEN: Yeah, the accessibility
14 issue wasn't a substantial conflict. We did raise the
15 inconsistency issue with senior units and what's in
16 the application as a substantial conflict.

17 THE HEARING EXAMINER: Okay.

18 MR. OTTEN: And I don't -- we don't
19 say there's now buildings under 18 -- over 180 feet.
20 I think there was some inconsistent application
21 material, but that was not an issue that we raised in
22 this hearing.

23 MR. HUFF: Okay. You mentioned in the
24 staff report, but that's fine. Now, we had testimony
25 from before that assuming, which we have, adopted the



1 county's senior housing definition, then the parking
2 issue is gone, correct?

3 MR. OTTEN: Well, I'm not sure. Right
4 now there's two application materials that's before
5 the examiner.

6 THE HEARING EXAMINER: Okay. So let's
7 do this.

8 MR. OTTEN: Are we trying? I'm not
9 understanding the purpose of this.

10 THE HEARING EXAMINER: When we come
11 back after the lunch break, let's talk about whether
12 parking is still a substantial conflict issue, because
13 there are elements to the substantial -- the
14 substantial conflict on parking, one of which, and the
15 driver as I understood it, was senior housing
16 definition. And my understanding is is that BSRE has
17 now acceded to the county's definition of that, and I
18 understood from the county before that probably
19 removes the parking issues from substantial conflict.

20 So let's -- over the lunch hour, let's
21 come back after the lunch hour and what Mr. Huff is
22 asking, which I think is a reasonable request, is
23 confirm is this still an issue or not. If the parking
24 is still a substantial conflict issue, well, that's
25 fine. I mean, that's your right to do that. But,



1 let's figure out whether it's still an issue.

2 Fair enough on that?

3 MR. OTTEN: Yeah, if I can just
4 clarify now.

5 THE HEARING EXAMINER: Okay.

6 MR. OTTEN: Yeah, the only substantial
7 issue of conflict under parking with the senior
8 housing, assuming that the applicant has acceded to or
9 agreed that it complies with the county's definition
10 and doesn't include that, where they can change the
11 units in the future, which would result in a deficient
12 parking, then there wouldn't be a substantial
13 conflict.

14 THE HEARING EXAMINER: Mr. Huff.

15 MR. HUFF: That's fine.

16 THE HEARING EXAMINER: Okay. So, what
17 I hear is that BSRE has just acceded to the county's
18 definition of senior housing for the purpose of
19 parking and the units cannot be changed in the future,
20 which would then change the parking formula. So
21 that's where we are.

22 MR. HUFF: Yes.

23 THE HEARING EXAMINER: Mr. Huff? He
24 says yes. You say yes? I'm sorry.

25 MR. OTTEN: Yes. It would be nice to



1 have that writing in the application file, though.

2 THE HEARING EXAMINER: Well, I --

3 MR. HUFF: We'll provide that.

4 THE HEARING EXAMINER: They'll provide
5 that.

6 MR. OTTEN: Okay.

7 THE HEARING EXAMINER: I suspect we're
8 not going to be done today, I'm guessing.

9 MR. HUFF: No.

10 THE HEARING EXAMINER: That will be
11 taken care of. Okay.

12 MR. OTTEN: Continue?

13 THE HEARING EXAMINER: Are we good to
14 go?

15 MR. OTTEN: I think so.

16 THE HEARING EXAMINER: Great.

17 Q. (BY MR. OTTEN) Hello, Mr. Stinn.

18 A. Uh-huh.

19 Q. For the record, Matthew Otten, with the
20 prosecutor's office.

21 So Perkins and Will was first retained to
22 design this site, is that correct, the project?

23 A. That's correct.

24 Q. At what point in time were you -- was your
25 company or you first retained to provide design?



1 A. I believe that was in 2009.

2 Q. Okay.

3 A. I couldn't tell you the exact date.

4 Q. Okay. And was that -- you've been here for
5 the duration of the hearing, or most of it?

6 A. For most. This is my second day.

7 Q. Okay. So the fly-through, was that
8 prepared by your company, the --

9 A. Yes.

10 Q. Okay. I guess we can turn to the variance
11 criteria.

12 MR. OTTEN: Can we scroll up to point
13 one, please.

14 Q. (BY MR. OTTEN) And you testified earlier
15 that you were responsible for preparing this document?

16 A. Yes.

17 Q. And when -- you said you initially designed
18 the site back in 2009. When were you asked to put
19 this variance criteria together and submit it to the
20 county?

21 A. I just want to -- I did not design the
22 site. There was a team of 10 to 15 architects that
23 worked on this project.

24 Q. Okay. Did your company design the site in
25 2009?



1 A. That's correct.

2 Q. When were you asked to put together this
3 variance request?

4 A. We put this variance request together about
5 two months ago.

6 Q. Okay. Do you remember the date? Or I
7 guess we can scroll up and look at the date on the
8 document. Does April 24th sound about right?

9 A. It was submitted on the 24th, correct.

10 MR. OTTEN: Can we scroll down to
11 around the first point.

12 Q. (BY MR. OTTEN) So in one sentence, could
13 you describe the special circumstances which apply to
14 the property?

15 A. It starts here. Do you want me to read it,
16 or...?

17 Q. Well, earlier you mentioned preferred
18 design was the special circumstances, I thought I
19 heard you say.

20 A. That's correct, yeah.

21 Q. Okay. Is that one of the considerations in
22 the criteria?

23 A. The special circumstances question above
24 applies or asks about shape and topography, location,
25 and surroundings, and the answer is yet to answer that



1 point.

2 Q. Okay. So is preferred design one of those
3 included in the criteria?

4 A. No, it's not.

5 Q. And are the properties close to the point,
6 located next to the railroad tracks and next to steep
7 slopes?

8 A. Not as close as this one, as far as I can
9 tell.

10 Q. Okay. And you mentioned that the variance
11 criteria taken into consideration other zones or
12 similar zones, but where does zones appear in that
13 criteria there?

14 A. The criteria is asking for circumstances.
15 So zones are circumstances. Zones are a criterion
16 that needs to be applied when planning a development.

17 Q. Okay. But, okay. In planning a
18 development, but it's not actually set forth in the
19 criteria there?

20 A. Correct.

21 Q. Okay. So criteria two focuses on why the
22 variance is necessary to preserve or enjoy a
23 substantial property right. What is that property
24 right that you have identified?

25 A. The property right is that it's a fairly



1 large parcel. It is zoned as an urban center zone,
2 and therefore it has a -- it has a potential for
3 development, and in my opinion that's the property
4 right.

5 Q. So if you didn't get this variance, it
6 couldn't be developed?

7 A. I'm sorry. Could you... I couldn't hear.

8 Q. If this variance wasn't granted, you're
9 saying the property could not be developed?

10 A. The property could not be developed in the
11 same way.

12 Q. Okay. So if you don't get this variance,
13 your preferred design wouldn't work. Is that correct?

14 A. That's correct.

15 Q. Okay. Is preferred design a substantial
16 property right?

17 A. No, it's not.

18 Q. Okay. Can we turn to the third variance
19 criteria. It looks like it's focusing on not being
20 detrimental to the public welfare or injurious to the
21 properties or improvements. How do you satisfy that
22 criteria?

23 A. We satisfy that by locating buildings and
24 minimizing view impacts to surrounding properties in
25 the vicinity.



1 Q. Okay. And that's what the illustrations
2 were?

3 A. Correct.

4 MR. OTTEN: Can we scroll down to the
5 illustrations. Keep going a little bit further.
6 Thanks. To the yellow one.

7 Q. (BY MR. OTTEN) So you provided one
8 alternative to illustrate this?

9 A. Correct.

10 Q. Did you provide any other alternatives that
11 didn't involve buildings on the upper bench?

12 A. Not in this variance request.

13 Q. Okay. And was your one alternative -- I
14 guess, one way to put it, is the most impactful
15 alternate design possible for purpose of views?

16 A. It's a literal interpretation of the zoning
17 code as it stands.

18 Q. But alternative would be to place buildings
19 on the lower bench too, right, instead of --

20 A. Yes, that's correct.

21 Q. -- placing one mass? Okay.

22 MR. OTTEN: Can you scroll up one, one
23 illustration.

24 Q. (BY MR. OTTEN) So that red building is the
25 current proposal, right?



1 A. Correct.

2 Q. And you're asking -- right now that's not
3 allowed under the code without a variance. Is that
4 correct?

5 A. That's correct.

6 Q. So, how is that building not detrimental to
7 the person that's living in those, those structures
8 there, less so than a code compliance building of half
9 the height?

10 A. Could you tell me what structures you're
11 talking about?

12 Q. It looks like there's a residence there.

13 A. Here?

14 Q. Yeah. So if there was a building that
15 complied with the code, wouldn't that be less
16 detrimental?

17 A. Well, we can go to the same view for the
18 code compliance scheme.

19 Q. No, I know, but I'm saying, if that was a
20 code compliant building, if that was cut in half and
21 the density was moved elsewhere on the site -- you
22 just looked at one alternative, correct?

23 A. If the density was moved somewhere on the
24 site, it would have detrimental effects somewhere
25 else.



1 Q. Did you document that in the variance
2 request?

3 A. We did not.

4 Q. Okay. So, in reviewing a variance request,
5 is PS tasked with deferring to the applicant's
6 preferred design or is its role to ensure that a
7 project complies with the county code?

8 A. Could you repeat that question, please?

9 Q. Yeah, sitting in PDS's shoes, is it their
10 role to select the applicant's preferred design or is
11 it to apply the county code to a project?

12 MR. HUFF: I object, Your Honor. This
13 is a decision for the examiner, not for PDS.

14 THE HEARING EXAMINER: Actually, Mr.
15 Otten, what do you think?

16 MR. OTTEN: I could say is the
17 examiner tasked with.

18 THE HEARING EXAMINER: I haven't been
19 sworn in yet. I'll just observe that the variance is
20 not before me for decision at this point.

21 MR. OTTEN: Uh-huh.

22 THE HEARING EXAMINER: And as I
23 understand it, PDS addressed it in their staff report,
24 and too for the hearing examiner's informational
25 purposes. So I understand that BSRE is kind of



1 responding to that.

2 But I will just note for the record
 3 that from my perspective, unless you guys talk me off
 4 this ledge, I'm not going to make a decision on the
 5 variance as part of this proceeding. This is merely
 6 kind of the back story or context the res justici of
 7 the...

8 MR. OTTEN: May I?

9 THE HEARING EXAMINER: Oh, go ahead.

10 MR. OTTEN: Yeah, I believe the
 11 variance is applicable here because this hearing is
 12 whether the application as currently submitted
 13 substantially conflicts with the county code. It does
 14 without this variance.

15 THE HEARING EXAMINER: Okay. So let's
 16 --

17 MR. OTTEN: Yeah.

18 THE HEARING EXAMINER: -- talk about
 19 that, because you saw me writing my notes today. I
 20 was going to ask you this in closing argument.

21 MR. OTTEN: Yeah.

22 THE HEARING EXAMINER: So, it is
 23 typical, is it not -- well, first off, the variance is
 24 a hearing examiner decision in a type two land use
 25 application, right?



1 MR. OTTEN: Uh-huh.

2 THE HEARING EXAMINER: And so, and
3 there's only -- under the local project act there's
4 only one open recording hearing, so typically, and
5 what PDS has in the past, is they've presented me with
6 a project type two application for approval, with a
7 variance at the same time.

8 Is it your position that the -- that
9 every time someone asks for a variance it's a
10 substantial conflict, and if so, how come those other
11 projects weren't in substantial conflict and therefore
12 shouldn't have been presented? So, I'm confused.

13 MR. OTTEN: Well, in those other
14 hearings I'm assuming they're consolidated, right?

15 THE HEARING EXAMINER: Well, yeah,
16 they have to be.

17 MR. OTTEN: Yeah. And PDS is either
18 granted or not granted the variance -- or recommended,
19 issued recommendation.

20 THE HEARING EXAMINER: And in those
21 cases they've recommended it.

22 MR. OTTEN: Uh-huh.

23 THE HEARING EXAMINER: Recommended
24 approval.

25 MR. OTTEN: Yeah. In this case,



1 because of the timing of the variance application, we
 2 weren't able to provide public notice as required by
 3 the code in time to issue a recommendation on the --

4 THE HEARING EXAMINER: I don't think
 5 you could at this point have a hearing, an open
 6 hearing.

7 MR. OTTEN: Yeah, but that was the
 8 issue.

9 (Cross-talk.)

10 THE HEARING EXAMINER: But I guess my
 11 point is, how is a variance request a substantial
 12 conflict, when all these other cases have been
 13 variances with an application?

14 I mean, arguably in all those other
 15 cases I could have rejected the variance, which would
 16 have then screwed up the project design and required a
 17 remand to redesign the project, right?

18 MR. OTTEN: Yes.

19 THE HEARING EXAMINER: So I'm just
 20 very confused as to how a variance request is
 21 necessarily, as a matter of law, a substantial
 22 conflict.

23 MR. OTTEN: That's a good question. I
 24 think it's something we can address.

25 THE HEARING EXAMINER: You can bring



1 it up later.

2 MR. OTTEN: Yeah, I think we will.

3 THE HEARING EXAMINER: But that's,
4 that's what's running through my mind right now.

5 MR. OTTEN: Yeah. I think we'll
6 address that further.

7 THE HEARING EXAMINER: Okay.

8 MR. OTTEN: But if it met the variance
9 criteria, PDS would be recommending approval, and then
10 the design based on PDS's representation and an
11 opinion would not substantially conflict with code.
12 So that's the difference between a --

13 THE HEARING EXAMINER: Run that by me
14 again.

15 MR. OTTEN: If the variance
16 application had time to be reviewed, PDS recommended
17 approval of that variance because it complied with the
18 county code's variance criteria.

19 THE HEARING EXAMINER: But because you
20 haven't had time to review it, therefore it's a
21 conflict because you haven't had time to review it,
22 and if PDS doesn't recommend approval, it's a
23 substantial conflict.

24 MR. OTTEN: I think we'll brief that
25 further, but aside from this.



1 THE HEARING EXAMINER: Okay. Fair
2 enough.

3 MR. OTTEN: I'm also setting this
4 foundation for questions on the deviation, because
5 this request's to the deviation from landslide hazard
6 areas.

7 THE HEARING EXAMINER: I'm sorry. I
8 think I've taken us far afield from the question and
9 the objection, and I apologize for that.

10 MR. HUFF: Your questions were all
11 part of my objection. That's what we've been thinking
12 too.

13 MR. OTTEN: Well, I'll start with some
14 more questioning.

15 THE HEARING EXAMINER: Okay. And I
16 will say that you did call the witness, not the
17 county, on the variance, and so to that extent you
18 opened the door. By the same token, I would take and
19 ask that we all be respectful to the brevity of human
20 life and keep things as compact --

21 MR. OTTEN: Okay.

22 THE HEARING EXAMINER: -- without a
23 variance for setbacks on the massing of the questions
24 as possible.

25 MR. OTTEN: Okay.



1 Q. (BY MR. OTTEN) Mr. Stinn, is it possible
 2 to design the site to avoid locating the residential
 3 structures and bus facilities on the upper bench?

4 A. It's possible.

5 Q. Okay. I think before you said it's not
 6 practicable, but you didn't say it was impossible,
 7 right?

8 A. I hope I didn't say it was impossible.

9 Q. No, you didn't.

10 A. Okay.

11 Q. Have you attempted to design the site to
 12 avoid locating residential structures and bus
 13 facilities on the upper bench?

14 A. We have in the beginning of the project in
 15 the design process.

16 Q. Did you submit those application materials
 17 to the county?

18 A. We did not.

19 MR. OTTEN: Can we pull up Exhibit
 20 K-31 and then page 319, please. And can you scroll
 21 down.

22 THE HEARING EXAMINER: Is that PDF
 23 page 319?

24 MR. OTTEN: It is, yes.

25 THE HEARING EXAMINER: Thank you.



1 MR. OTTEN: A little bit further. So
2 to 340.

3 Q. (BY MR. OTTEN) Okay. So 30.62B.340
4 provides development activities requiring project
5 permits and clearing shall not be allowed in landslide
6 housing areas or the required setbacks unless there's
7 no alternative location on the subject property.

8 Have you submitted anything to show that
9 there's no alternative location for those buildings on
10 the upper bench?

11 A. We have not.

12 Q. So the variance criteria did not address
13 that?

14 MR. HUFF: Your Honor, we're talking
15 about a variance from the height limitations, not the
16 a variance -- not landslide issues. These are
17 separate questions.

18 MR. OTTEN: Mr. -- the previous
19 witness testified that he relied on the variance
20 criteria reports to justify the landslide hazard
21 deviation. So I wanted to see if he wrote the report
22 with that in mind.

23 THE HEARING EXAMINER: Overrule.

24 Q. (BY MR. OTTEN) When did you submit the
25 variance request?



1 A. On April 24th.

2 Q. Did you know that it was going to be used
3 for the deviation request for the landslide hazard
4 area at that time?

5 A. I did.

6 Q. You did? Did you identify an alternative
7 location on the subject property for those structures,
8 as required by the code provision?

9 A. I did not.

10 Q. Okay. Is that what the code requires?

11 A. Can you point that out to me where you see
12 that?

13 Q. Sure. It's sub 1 and it's after the
14 unless. It's also under sub BI, 2BI, at the bottom of
15 the page there. Can you read that?

16 A. So if I have to answer to that, there is no
17 alternate location that fulfills the requirements that
18 I talked about earlier.

19 Q. What requirements were those?

20 A. The attachment and adjacency to the train,
21 the connection to the neighborhoods.

22 Q. Is there any caveats on that requirement
23 for alternative location?

24 A. There aren't any listed.

25 Q. Okay. I want to change, move to floor area



1 ratio, which you talked about earlier. Is this the
2 only site design that can meet the minimum floor area
3 ratio for an urban center at the site?

4 A. No.

5 Q. So there's other possibilities that can
6 meet the floor area ratio?

7 A. Correct.

8 Q. Has the applicant asked you to perform
9 analysis or submit a report that shows the alternative
10 designs that meet floor-air ratio? For example, if
11 you move the buildings off the upper bench, did you
12 provide an analysis of an alternative design that met
13 the floor-air ratio?

14 A. That was not a question that was asked --

15 Q. Okay.

16 A. -- the way you're describing it.

17 Q. Okay. So they didn't ask you to provide an
18 alternative design that met floor-air ratio?

19 A. That's a different question. We have
20 provided different designs that provided the adequate
21 floor-air ratio in the beginning of the project. We
22 only went into -- we submit only one design solution.
23 We didn't submit many alternative designs.

24 Q. Okay.

25 (Cross-talk.)



1 Q. I guess a better way to ask the question
2 is, you can't say that there's no alternative design
3 that satisfy the floor-air ratio?

4 A. There is no -- there are alternative
5 designs that satisfy the floor-air ratio, but before
6 you asked me about designs that satisfy the reasons
7 why we applied for the variance, the adjacencies.

8 Q. Yeah, I'm talking about the floor-air
9 ratio.

10 A. Okay.

11 Q. So I think the answer to the question --

12 A. Yeah, I agree with that.

13 Q. Okay. And I think earlier you testified
14 that the applicant is allowed to develop the site to
15 the full extent provided in the zoning code, correct?

16 A. Correct.

17 Q. On what basis do you make this assertion?

18 A. The assertion is made under the assumption
19 that as architects and planners, we use the zoning
20 code to determine the maximum allowable yield of the
21 site for an owner.

22 Q. Are you allowed to maximize the yield of
23 the site despite constraints on the site, like
24 critical areas, landslide hazard areas, shoreline?

25 A. We would attempt to do so.



1 Q. Okay. When you first designed the site,
2 were you made aware of the site constraints, such as
3 the geological hazard area, the buffers, the shoreline
4 buffers, and the height setbacks from residential
5 zones?

6 A. Yes, we were.

7 Q. You were aware when you first designed it
8 in 2009?

9 A. When we first designed it, we -- I mean,
10 define first designed it. We had a team of a surveyor
11 and there was investigation about the areas describing
12 was concurrent with the design. So in the process we
13 were made aware of those, those areas.

14 Q. So you knew about the site constraints in
15 2009?

16 A. I would say we knew about some of them.

17 Q. Okay. Has the design changed substantially
18 since 2009?

19 A. Substantially in which way?

20 Q. Were buildings moved out of the landslide
21 hazard areas away from the shorelines?

22 A. Not substantially, but to some degree.

23 MR. OTTEN: Okay. I don't think I
24 have any further questions.

25



1 REDIRECT EXAMINATION

2 BY MR. HUFF:

3 Q. Real quickly, Mr. Stinn. When were you
4 made aware that the county would re -- deemed the
5 residential zoning in Woodway adjacent to the property
6 as requiring the setback?

7 A. That was -- it was a comment in a comment
8 letter from after the April 2017 submittal. I forget
9 the date.

10 Q. The October?

11 A. Yeah.

12 Q. October 2017?

13 A. Correct.

14 Q. So that was the first time that was raised
15 as an issue?

16 A. Yes.

17 Q. And you were asked in looking at the four
18 points for the variance criteria whether or not zoning
19 was listed as being within one of those -- it was one
20 of those factors. You specifically said it wasn't in
21 point two, but let's look at point three. Can you
22 read point three, please.

23 A. The variance I'm requesting will not be
24 detrimental to the public welfare or injurious to the
25 properties or improvements in the vicinity and zone in



1 which my property is located, because.

2 Q. So zone is in fact listed as one of the
3 factors to be considered?

4 A. Yes.

5 MR. HUFF: Nothing further.

6 MR. OTTEN: Nothing further.

7 THE HEARING EXAMINER: Thank you, Mr.
8 Stinn.

9 MS. ST. ROMAIN: I believe our next
10 witness is out there. Should I go bring them in?

11 THE HEARING EXAMINER: Sure.

12 MR. VASQUEZ: Thank you, Your Honor.
13 BSRE calls Mr. Gray Rand.

14 THE HEARING EXAMINER: Do you solemnly
15 swear or affirm the testimony you are about to give in
16 this proceeding is true and correct?

17 MR. RAND: I do.

18 THE HEARING EXAMINER: Name and
19 address, please.

20 MR. RAND: My name is Gray Rand. Work
21 address?

22 THE HEARING EXAMINER: Sure.

23 MR. RAND: 14432 Southeast Eastgate
24 Way, Bellevue, Washington.

25 THE HEARING EXAMINER: Thank you.



1 Your witness.

2

3

DIRECT EXAMINATION

4 BY MR. VASQUEZ:

5 Q. Yes. Mr. Rand, can you please tell me who
6 you are employed by?

7 A. I'm employed by David Evans and Associates.

8 Q. And what do you do at David Evans and
9 Associates?

10 A. I am a senior scientist.

11 Q. What is your degree in, if you have one?

12 A. I have a bachelor's of science degree in
13 biology from Washington Lee University in Virginia,
14 1991, and I have post-graduate studies in
15 environmental science from Washington State
16 University.

17 Q. Okay. How long have you been with David
18 Evans and Associates?

19 A. Thirteen years.

20 Q. Do you have any professional licenses?

21 A. I am licensed by the Society of Wetland
22 Scientists as a professional wetland scientist.

23 Q. Okay. And what exactly is a professional
24 wetland scientist?

25 A. A professional certification to conduct



1 analyses and impact assessments for wetlands.

2 Q. Okay. With this project, we've been
3 referring to it as a entitlement process. Do you
4 understand what that means?

5 A. Yes.

6 Q. And have you been involved in projects
7 where entitlement is the main focus?

8 A. Yes. I have conducted and prepared many
9 technical studies in support of the entitlement
10 process.

11 Q. Okay. And what do your studies support as
12 far as the entitlement process is concerned?

13 A. I conduct a variety of technical studies
14 assessing the impacts of projects on wetlands,
15 streams, and fish and wildlife habitat.

16 Q. And as part of your work on these
17 entitlement projects, are you familiar with the
18 environmental codes that apply to these projects?

19 A. Yes.

20 Q. And you're familiar with the Point Wells
21 project, correct?

22 A. Yes.

23 Q. And when did DEA start working on this
24 project?

25 A. I believe DEA started working on this



1 project in about 2007.

2 Q. Okay. How about your role in this project?
3 When did you start that?

4 A. I started in 2014.

5 Q. And what is your specific -- what was your
6 specific assignment or role for this project?

7 A. I took over from a previous biologist as
8 the lead author on the critical areas report.

9 Q. So let me understand this correctly. Was
10 the critical areas report already authored by the time
11 you started working on this project?

12 A. Yes, the original version of the report was
13 authored in 2011.

14 Q. Okay. And what were you asked to do with
15 respect to that 2011 report?

16 A. Beginning in 2015, I've prepared, I
17 believe, three separate versions of the report to
18 respond to county comments.

19 Q. Okay. Just for our benefit, what is a
20 critical areas report?

21 A. A critical areas report, also known as a
22 critical area study, is required by Snohomish County
23 code to evaluate impacts of a proposed project to
24 critical areas in general, but specifically in my
25 case, wetlands, streams and fish and wildlife habitats



1 conservation areas.

2 Q. So you have prepared revisions of that 2011
3 report; is that correct?

4 A. That's correct.

5 Q. Okay. What's on the screen right now is an
6 April 2018 critical areas report. Do you see that?

7 A. Yes.

8 Q. And what role did you have in preparing
9 this report?

10 A. I was a senior author.

11 Q. Okay. Did you have other people working
12 with you?

13 A. I did.

14 Q. Okay. And what were their duties and
15 responsibilities?

16 A. I had a primary assistant, Richard Pratt,
17 another individual, a David Evans, he conducted most
18 of the field work in support of the revision.

19 Q. So this critical areas report, it was meant
20 to comply with the Snohomish County environmental
21 codes, correct?

22 A. Correct.

23 Q. What about with respect to the shoreline
24 management master plan?

25 A. It's also intended to adhere to that in



1 terms that Snohomish County, when you're within the
2 shoreline management zone of 200 feet, the shoreline
3 management code is the managing code with regard to
4 critical areas.

5 Q. Okay. Mr. Rand, you were here during the
6 testimony of Mr. Middaugh; is that correct?

7 A. That's correct.

8 Q. And did you hear that he had some
9 criticisms about the application submitted by BSRE?

10 A. I did.

11 Q. Okay. And could you characterize for me
12 what your understanding of those criticisms are?

13 A. From my perspective, I noted that there
14 were three primary issues raised. One was with the
15 delineation of the ordinary high water mark relative
16 to the mean high high water mark, and also issues are
17 raised regarding the habitat management plan, and then
18 issues were raised regarding innovative development
19 design in our proposal under that piece of code.

20 Q. Okay. Let's talk about this ordinary high
21 water mark versus a mean high high water mark first.
22 What is meant by ordinary high water mark?

23 A. Ordinary high water mark is defined in the
24 WAC as an area where the occurrence and motion of
25 water is of such a regular nature that it leaves a



1 physical mark upon the shoreline.

2 Q. Is that something that's easy to determine?

3 A. It can be. In tidal waters it is not
4 always easy to do.

5 Q. Okay. And what is the mean high high water
6 mark?

7 A. The mean high high water mark is usually a
8 defined elevation that represents the typical water
9 elevation that is -- that is based on a tidal datum
10 and not on a physical observation in the field.

11 Q. Did the county have some comments about the
12 ordinary high water mark versus the mean high high
13 water mark?

14 A. Yes.

15 Q. And when did those comments first occur?

16 A. Well, there were comments provided by the
17 county in April, in their October 2017 letter,
18 relative to the plans and figures in multiple
19 locations not being consistent about the use of the
20 terms ordinary high water mark and mean high high
21 water mark.

22 Q. Okay. Is it the only comment that you're
23 aware of regarding the ordinary high water mark and
24 the mean high high water mark in the October 2017, was
25 it October or September? October 2017 comment letter?



1 A. I believe so in that letter. That's all I
2 remember.

3 Q. Okay. And what did you do in regards to
4 that particular comment?

5 A. We attempted to make all of the figures in
6 the critical areas report consistent with the use of
7 that term which we changed them all to mean high high
8 the water mark. So that was the elevation that was
9 referred to in those reports.

10 Q. Okay. Have there been recent comments
11 regarding the mean high high water mark and the
12 ordinary high water mark?

13 A. Yes. In the county's most recent response
14 to BSRE submittals, they commented that the ordinary
15 high water mark and the mean high high water mark are
16 not shown correctly.

17 Q. Any other comments?

18 A. That was the main gist of their comments.

19 Q. Okay. Have you done any other evaluation
20 or any other work regarding the ordinary high water
21 mark?

22 A. Yes. When we became aware that the --
23 there was an issue with the mapping of the mean high
24 high water mark and ordinary high water mark, we
25 attempted to identify that line in the field in March



1 of this year.

2 Q. Okay. Did any of your critical area report
3 change because of that identification of the ordinary
4 high water mark?

5 A. We identified the line on several maps, but
6 otherwise, no.

7 Q. Okay. Have you had time to do anything
8 else with respect to that issue?

9 A. Not really. We attempted to identify that
10 line in time to get design changes done, but there was
11 not enough time to get changes done based on the
12 design based on the location of the ordinary high
13 water mark.

14 Q. Okay. Let's go back to this redevelopment
15 project critical areas report. Does it include
16 explanation of the applicant's proposed innovative
17 development designs?

18 A. It does.

19 Q. Okay. Does it include a description of the
20 habitat and management plan and fish and wildlife
21 mitigation or inspection?

22 A. It includes a description of the habitat,
23 proposed habitat management plan, yes.

24 Q. Okay. Just give us a general overall sort
25 of high concept of what the plan is for this site from



1 an environmental perspective and how it will change
2 the site.

3 A. Well, the proposed project is going to have
4 a range of significant environmental benefits. The
5 benefits include, obviously, the remediation of the
6 site, which is a significant improvement to the
7 environment. It's also going to include enhanced
8 storm water treatment and removal of a significant
9 source of potential contamination with the
10 hydrocarbons that are currently stored on the site,
11 and it's also going to restore approximately seven
12 acres of marine shoreline beach habitat.

13 Q. As a foundational issue, is there any
14 current habitat management or habitat protection or
15 fish and wildlife protection on the site?

16 A. Currently?

17 Q. Yeah.

18 A. Very little. The site is almost completely
19 and fully developed.

20 Q. Okay. Let's talk about the innovative
21 development design criticism from the county. Can you
22 just briefly describe what your understanding of their
23 criticism is?

24 A. If I understood Mr. Middaugh's testimony
25 correctly, the criticism is that we do not provide a



1 sufficient step-by-step functional analysis of how the
2 proposed innovative development design on the site
3 would offset the functions and values of each of the
4 critical areas on the site.

5 Q. Okay. What did you do with respect to
6 showing how the innovative development design will
7 affect or improve the site?

8 A. We provided a step-by-step explanation of
9 how each of the criteria of the development design
10 would be met, and we provided a general overview of
11 the improvement that will be provided to the logical
12 benefits of the site as a whole.

13 Q. Let me just ask you about this innovative
14 development design standard. Is there a written
15 specifications or standard as to what is innovative
16 development design and what qualifies as innovative
17 development design?

18 A. Yes. Section 30.62A.350 of the code
19 specifies what the criteria are for approval of
20 innovative development design, but in my opinion, the
21 process of innovative development design is a
22 negotiation with the county staff. The code does not
23 provide about benchmarks for when for a given site
24 innovative development design is achieved.

25 Q. Have you ever been involved in these



1 entitlement procedures where you've recommended
2 innovative development designs before?

3 A. This is the first time I've been involved
4 with an entitlement process of this size with
5 innovative development design.

6 Q. Okay. And in your report, where is it
7 contained -- where is that innovative development
8 design explanation contained?

9 A. It is contained near the end of the report,
10 I believe, in section 9. Do you want me to --

11 Q. Yes, please.

12 A. -- go to it?

13 Q. Okay. Can you give us a general
14 explanation of what that -- or just a brief
15 explanation of that section?

16 A. Well, this section gives an overview of how
17 the overall improvements to the site are going to
18 offset the impacts that the project is having in the
19 prescribed buffers of the critical areas.

20 Q. Okay. Because the design calls for
21 construction in the environmental buffer zones,
22 correct?

23 A. Yes.

24 Q. Okay. Now, Mr. Middaugh's criticism was
25 that there were no real specifications or no



1 explanation of the functions and values of your
2 innovative development design. Do you recall that?

3 A. I don't recall his exact wording, but
4 something to that effect, yes.

5 Q. Okay. Well, have you addressed those
6 issues in your report?

7 A. Yes, I believe I have, in general, for the
8 size of the whole.

9 Q. And in general, let me just make sure I
10 understand this. Have you provided enough information
11 for the county to understand what the innovative
12 development design is and how they would impact the
13 buffers and maybe make your design take into account
14 the effects on the buffers?

15 A. Yes, I think I've provided enough
16 information for where we are today with the project.

17 Q. Okay. And where we are today is the --
18 what's the term we'd call it? The feasibility of the
19 project, correct?

20 A. Yes.

21 Q. Okay. Show me where you've done that.

22 A. So this is a narrative form here. We talk
23 about the -- in this location we talk about some of
24 the overall environmental benefits of the project,
25 such as the remediation they referred to. The



1 restoration of 7.3 acres of the (unintelligible)
2 habitat, and then table 22 addresses each of the
3 individual criteria.

4 And we talk about how the marine
5 restoration in lieu of some of the other buffers will
6 allow significant improvement in the ecological
7 function for the near shore Puget Sound, and then that
8 table continues to address the other criteria in the
9 code.

10 Q. Of the IDD?

11 A. Yes.

12 Q. Okay. By the way, have you supplemented or
13 revised this report in any way whatsoever with respect
14 to the IDD?

15 A. No.

16 Q. Okay. And just remind me, when was this
17 report authored and submitted?

18 A. April.

19 Q. Of 2018?

20 A. Yes.

21 Q. Okay. Now, with respect to Mr. Middaugh's
22 criticism that there wasn't enough specification or
23 content, do you have a response to that criticism?

24 A. In general, or relative to a specific
25 topic?



1 Q. In general.

2 A. In general, I would say that our report had
3 a very large amount of detail, particularly on impacts
4 and analysis of existing conditions. We spent a lot
5 of time discussing the potential impacts to all of the
6 primarily affected fish and wildlife habitat species
7 in particular, such as salmon and the various other
8 species that use the marine environment.

9 Q. Well, let's just talk about the habitat
10 management plan in general, and does that encompass
11 protection of fish and wildlife?

12 A. Yes.

13 Q. Okay. Did you in your report investigate
14 what fish and wildlife existed on the property and
15 identify those in the report?

16 A. Yes.

17 Q. Where in the report did you do that?

18 A. The existing conditions for fish and
19 wildlife habitat are in section 6. This is the
20 overall section of existing conditions, and we go
21 through a review of background information that was
22 reviewed for the report.

23 And if you scroll down you will find
24 there's separate sections for affected fish and
25 wildlife species organized by general (unintelligible)



1 groups as well as special species of special
2 significance, such as state and federal list of
3 species.

4 Q. Where did you obtain that information from?

5 A. From a variety of sources, such as the
6 county databases, Washington Department of D&R, the
7 Washington Department of Fish and Wildlife.

8 Q. Did you do the same for, I guess, habitat,
9 vegetation, that kind of thing?

10 A. Yes.

11 Q. Okay. And that information is also
12 provided in the report, correct?

13 A. Yes.

14 Q. Okay. Did you actually do any other
15 physical investigation of fish and wildlife on the
16 property?

17 A. We conducted -- well, since the original
18 fieldwork on the site, which has been a number of
19 years ago at this point, we've done wetland and stream
20 delineations on the site, but we have not conducted
21 any, for example, any specific species soil surveys on
22 the site.

23 But we have investigated, you know, we've
24 looked at the different species assemblages that occur
25 in the near tidal area. We've observed any fish and



1 wildlife species that are on the site and documented,
2 you know, presence of fish and wildlife during those
3 surveys.

4 Q. And do you plan on or is it prudent to do
5 any additional work with respect to identification of
6 at least the fish and wildlife?

7 A. No, this is -- this is, you know, general
8 standard of care for this type of project at this
9 time, yes.

10 Q. Is it compliant with the code?

11 A. Yes.

12 Q. Okay. And did you provide -- I think there
13 was a criticism that you did not identify did --
14 identify at all in your report where the fish and
15 wildlife were located on this property.

16 A. Well, as I recall, the criticism was about
17 the statement Mr. Middaugh made about the reason I
18 identify where the primary association areas were for
19 as part of the habitat management plan.

20 Q. And did you actually do that?

21 A. We did.

22 Q. Tell me where.

23 A. In section 8, please.

24 Q. First of all, why don't you give me a
25 general description of what section 8 is.



1 A. So section 8 is following the county
2 comments that the habitat management plan was not
3 provided. We added this to the report to address
4 those concerns. So this is the habitat management
5 plan section. Scroll down. So this -- do you want me
6 to just --

7 Q. Yes, go ahead.

8 A. -- give an overview? So this is a list of
9 the critical species that are required by county code
10 to be addressed as to which ones occur and don't occur
11 on the site. So this is a table that identifies those
12 species and which ones do and do not occur on the site
13 or have a primary association area.

14 And so there's 11 of those species
15 identified in this table and then a short description
16 of how that occurrence -- where those occurrences are.

17 Q. When you say primary association area, what
18 exactly do you mean?

19 A. Well, in county code primary association
20 areas are defined as those areas where the species
21 occur and are important for one or more of their life
22 stages.

23 Q. So you're looking at this property and
24 trying to find where these species are probably
25 located in the project area?



1 A. Yes.

2 Q. Okay. And you're identifying the location
3 and mapping the location?

4 A. Yes, mapping is -- is in some cases only in
5 a general sense. If, for example, almost all of the
6 critical species that occur on this site are
7 associated with the marine waters of Puget Sound. So
8 the mapping for the primary association areas is only
9 to the extent of it is the mean high high water mark
10 that represents Puget Sound.

11 Q. Okay. So let me make sure I get this
12 right. The primary association area for the wildlife
13 on this project is the Sound, the water itself?

14 A. Yes.

15 Q. Okay. Are there any areas located on the
16 property itself that are associated with wildlife that
17 needs to be protected?

18 A. Well, part of that tide land is on the
19 property, but other than that, no.

20 Q. Okay. And where is that contained in your
21 report?

22 A. So that table addresses which species occur
23 on the property and does not, and then here in table
24 21 I state that the primary association of those
25 species is with Puget Sound.



1 Q. Okay. Do you believe this provides enough
2 information to the county to understand what your
3 habitat management plan involves as far as species and
4 association location, that kind of thing?

5 A. Yes.

6 Q. Okay. How about the wetlands? Was there
7 any criticism about your identification and protection
8 of the wetlands?

9 A. As I recall, there was no criticism of our
10 identification of the wetlands. I recall that there
11 was a discussion by Mr. Middaugh of the -- how or
12 criticism of how the functions and values of some of
13 the wetlands were explained relative to innovative
14 development design.

15 Q. By the way, does your report contain a map
16 of the wetlands?

17 A. It does.

18 Q. And can you identify where that is?

19 A. Yes, in figure 10. Sorry. Figure, figure
20 10. Keep going. There you go. Right there.

21 Q. Okay. And can you point out the wetlands
22 that you've identified?

23 A. Yes. So the black and white hatched lines
24 represent the wetlands that have been identified off
25 site. There are no documented wetlands on the site.



1 All of the documented wetlands are off site. This map
2 also shows the documented streams.

3 Q. And the documented streams would include
4 the Chevron stream, correct?

5 A. Chevron Creek is located right here.

6 Q. Let's make sure I know exactly what you're
7 talking about. Is it the blue line that goes up and
8 down?

9 A. Yes, it's the blue line that flows down to
10 the red line, which represents the project boundary.

11 Q. Okay. And it appears that there are at
12 least two or three or four wetlands that are close to
13 the stream. Is that correct?

14 A. Yes, generally speaking, there is a wetland
15 immediately south of Chevron Creek and then there's a
16 number of large wetlands on the slope to the north.

17 Q. The wetlands on the south of the creek,
18 what is that designated as? What's the name of that
19 wetlands?

20 A. Well, in this most recent report it's
21 designated as Wetland T.

22 Q. Okay. Now, what we're talking about is
23 building within the buffer zone of those wetlands,
24 correct?

25 A. The impacts that are identified in the



1 report, there's only -- there are no direct impacts to
2 wetlands. There are direct impacts to wetland
3 buffers, and those impacts are primarily from the
4 second access road.

5 Q. And would it be the buffer for Wetland T?

6 A. Yes, the buffer for Wetland T here and
7 buffer for Wetland R.

8 Q. Okay. Now, the buffer for Wetland T, does
9 it provide any protection for the wetlands?

10 A. It does provide some functions. It
11 provides habitat functions. It also provides some
12 hydrologic function, but the hydrologic function and
13 the water quality function in that location are
14 limited because it's downslope of the wetland.

15 Q. What about Wetland R? Is that the same
16 situation?

17 A. It's a similar situation, although it's --
18 it's not -- the topography is not as pronounced.

19 Q. Okay. But Wetland T, that's the one that's
20 closest to the secondary access road, correct?

21 A. Yes, the secondary access goes around it.

22 Q. And that's really the only wetland buffer
23 that's being affected by the development, correct?

24 A. And Wetland R. The buffer of Wetland R is
25 also being affected.



1 Q. Okay. So where --

2 A. Yeah, if you go to figure 16, that's the
3 impact figure.

4 Q. Okay. Good.

5 A. It's got to be in the impact section, a
6 different section, section 7. There you go. Right
7 there. So Mr. Middaugh referred to this figure in his
8 testimony as well, but this map shows the proposed
9 wetland and stream buffer impacts from the project,
10 which are here.

11 I apologize. This picture is a little bit
12 low resolution, but you can see that the buffer
13 impacts are located on Wetland R and Wetland T as well
14 as the buffer of Chevron Creek.

15 Q. Okay. What -- how is the impact
16 delineated? I just want to make sure I understand
17 this visually.

18 A. It's a crosshatch.

19 Q. It's the crosshatch. Okay. I got you.
20 Okay. And so, have you -- your innovative development
21 design is designed to minimize or at least take into
22 account the impact on those wetland buffers, correct?

23 A. Yes. So we are proposing the use of
24 innovative development design as mitigation for these
25 and other impacts.



1 Q. And what is the innovative development
2 design you are proposing?

3 A. It's the total package, which I referred to
4 earlier, is the restoration of the marine shoreline as
5 well as the remediation of the site, improvement to
6 water quality, and in some cases expansion of existing
7 buffers.

8 Q. Improvement to water quality. Can you
9 describe exactly what those improvements are and how
10 you propose to achieve those improvements?

11 A. So the proposed, as we've heard from Mark
12 Davies and others, the proposed water quality
13 improvements on the site -- well, they're twofold.
14 One is related to the remediation of the site.
15 There's existing contaminated ground water on the site
16 that will be remediated and also the current site will
17 receive -- the proposed site will receive enhanced
18 storm water treatment as part of the proposed project,
19 which it doesn't currently receive.

20 Q. Okay. What else -- other than enhanced
21 water quality, what are the other items that you're
22 planning or proposing?

23 A. For innovative --

24 Q. For innovative --

25 A. -- development design?



1 Q. -- development design, correct.

2 A. Those are the primary things that are
3 proposed at this time. However, I will say that we
4 anticipate that as design progresses there are other
5 measures that may be able to be created, but they're
6 not proposed at this time.

7 Q. At this point in time, do you think you've
8 provided enough information as to the innovative
9 development design for the county to know what the
10 plan and purpose of the design is?

11 A. Yes.

12 MR. VASQUEZ: Okay. Mr. Examiner, I
13 see I've gone over my time a little bit. What do you
14 want to do?

15 THE HEARING EXAMINER: Yeah, I'm just,
16 my stomach's growling.

17 MR. VASQUEZ: Okay. Can we take a
18 break now?

19 THE HEARING EXAMINER: Do you want to
20 take our lunch break now? Does that work?

21 MR. VASQUEZ: That's good.

22 THE HEARING EXAMINER: All right.
23 Then you're done, you think?

24 MR. VASQUEZ: Probably another half
25 hour.



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THE HEARING EXAMINER: Another half hour?

MR. VASQUEZ: Yeah.

THE HEARING EXAMINER: So let's take a break now, come back at 1:15. Fair enough?

MR. VASQUEZ: Great.

THE HEARING EXAMINER: Thank you.

MR. VASQUEZ: Thank you.

THE HEARING EXAMINER: In recess.

(Proceedings recessed at 12:15 p.m.
To be reconvened at 1:15 p.m.)



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AFTERNOON SESSION

1:22 p.m.

--oOo--

MR. VASQUEZ: Thank you. I want to just let you know, I keep wanting to stand up every time you come into the room, so in case I do, you'll know.

THE HEARING EXAMINER: It's a little kind of, you know, but it's all good. All good. As my father said, I don't care what you call me, as long as it's time for dinner. It's your witness.

CONTINUING DIRECT EXAMINATION

BY MR. VASQUEZ:

Q. Mr. Rand, you had in your testimony earlier talked about the benefits to the site pursuant to the innovative development designs, and one of the other things you talked about was restoration of marine shoreline. Is that correct?

A. That's correct.

Q. Can you please describe what you're talking about there?

A. What I'm talking about is the proposal to restore approximately 7.3 acres of area that is



1 currently above the mean high high water mark, but
2 occupied by developed land above the existing bulkhead
3 and the proposal is to have that area laid back at a
4 suitable slope to restore a more natural beach slope
5 and beach function.

6 Q. Okay. What about the expansion of the
7 existing shorelines? Is that the same thing or is
8 that something --

9 A. Yes.

10 Q. -- that's different? Okay. By the way,
11 have you prepared a critical areas site plan yet?

12 A. A critical areas site plan has not been
13 submitted to the county, but we have prepared one in
14 draft form.

15 Q. Okay. Are you finished with the draft form
16 of the critical areas site plan?

17 A. It is complete in draft form, yes, as where
18 the design is today.

19 Q. Okay. And just so I'm sure, in the
20 feasibility process is the critical areas site plan
21 one of those documents that are necessary for the
22 feasibility of this project?

23 A. In my experience, no. In my experience,
24 the critical area site plans have been submitted near
25 the end of the project when design is finalized.



1 Q. Okay. And why, why is that?

2 A. Well, because the critical areas site plan
3 is a legal document that establishes in perpetuity the
4 protected areas on the site. The buffers, the
5 setbacks, and those areas, it's difficult to establish
6 those areas set in stone, so to speak, before your
7 design is finalized.

8 Q. By the way, under the shoreline management
9 master plan and the city code, how would that -- the
10 beach currently on property be designated?

11 A. Can you clarify your question? Do you mean
12 a shoreline designation, or...

13 Q. Is it a protected area, is it a --

14 A. Yes.

15 Q. Is it a buffer area or what?

16 A. It's a protected area. Marine shorelines
17 are protected areas under county code.

18 Q. And as a protected area, what uses or what
19 activity are allowed on that?

20 A. Well, I don't want to speak to the
21 shoreline code. That's not my area of expertise. But
22 in general, under the critical areas code, the marine
23 shoreline is a protected area like other critical
24 areas and development is precluded or managed and you
25 have to, you know, analyze impacts to that area if you



1 affect it.

2 Q. What about pedestrian access to the beach
3 under that?

4 A. In general, pedestrians have access. If
5 there are public access points on the shoreline, they
6 have access to the beach.

7 Q. Let's go back to the issue of this ordinary
8 high water and mean high high water mark. Can you
9 bring up G-14. You talked about when you first kind
10 of heard or saw comments from the county about the
11 mean high high water and ordinary high water mark,
12 correct? This is in the October 2017 letter. Is that
13 what you're referring to?

14 A. Yes, the October of 2017 letter. That
15 looks correct.

16 Q. And what is your understanding of that
17 comment there?

18 A. Well, the comment indicates that the use of
19 the two terms ordinary high water mark and mean high
20 high water mark is inconsistent.

21 Q. What did you do in response to that?

22 A. We made all figures refer to the mean high
23 high water mark.

24 MR. VASQUEZ: Okay. Can you show me
25 what's been marked as N-2.



1 Q. (BY MR. VASQUEZ) Do you know what the date
 2 -- let's go to the date of this letter, the beginning
 3 of this letter. I can't see. What's the date on this
 4 letter?

5 A. May 9th is the date, I believe, this letter
 6 was submitted.

7 Q. Okay. Go to that. Now, is this the --
 8 first of all, have you seen this letter?

9 A. Yes.

10 Q. Okay. And have you read that comment on
 11 the marine shoreline buffer?

12 A. Yes.

13 Q. And what is your understanding of that
 14 comment?

15 A. My understanding of this comment is that
 16 the applicant incorrectly measured the marine
 17 shoreline buffer from the mean high high water mark
 18 instead of the ordinary high water mark.

19 Q. And is that the first time you've seen this
 20 issue in writing from the county?

21 A. Yes.

22 Q. Okay. And have you got a response to that
 23 or have you got a plan to respond to that?

24 A. Yes, this -- the ordinary high water mark,
 25 we have a draft ordinary high water mark that's



1 mapped, as I said earlier, but that line needs to be
2 vetted with the agencies, particularly the Washington
3 Department of Ecology, given that it's in one of these
4 tidal areas that is more difficult to map than
5 ordinary high water mark.

6 Q. Okay.

7 A. Prior to design being changed.

8 Q. Okay. And would it be anticipated that the
9 design may change as a result of this?

10 A. It would be my assumption that, yes, the
11 design would change as a result of this, at least in
12 some areas. Not the all areas. The difference
13 between the two lines, as was pointed out by the
14 county, varies between zero and 50 feet, roughly.

15 Q. Okay. And again, you haven't had time to
16 do the analysis because you just saw this on May 9th,
17 correct?

18 A. Yes.

19 Q. Okay. I think that's all the questions I
20 have. Thanks, Mr. Rand.

21

22 CROSS-EXAMINATION

23 BY MS. KISIELIUS:

24 Q. Hi, Mr. Rand. Laura Kisielius from the
25 prosecutor's office.



1 If I could just first start by asking you
2 what the purpose of the critical areas report is?

3 A. The purpose of the critical areas report?

4 Q. Correct.

5 A. So, evaluate impacts to the county's
6 designated critical areas by a proposed project, by
7 this proposed project.

8 Q. Is it also to demonstrate that the project
9 complies with county code?

10 A. Yes, I would agree with that.

11 Q. Okay. You and Mr. Vasquez had an exchange
12 about this stage of the project being the feasibility
13 stage of this project. Do you recall that?

14 A. I do.

15 Q. What is your understanding about the
16 purpose of this hearing?

17 A. My understanding of the purpose of this
18 hearing is to determine if the -- there are
19 substantial conflicts with county code that the
20 project EIS cannot -- can or cannot continue.

21 Q. Okay. If we could start by talking about
22 the habitat management plan. Your testimony, if I
23 understand it correctly, is that table 21 of your
24 report contains the habitat management plan content.
25 Is that correct?



1 A. No. My testimony is that the section of
2 the report that that table is within contains the
3 habitat management plan. The table is one piece of
4 the habitat management plan.

5 Q. Okay. If we could turn to the habitat
6 management plan in your report, and I believe it is --

7 A. C-30.

8 Q. -- C-30. Correct.

9 MS. KISIELIUS: Page 102 of the
10 report. Sorry. Not the... Keep going. Right there.
11 You GOT it. Yeah.

12 A. There you go.

13 Q. (BY MS. KISIELIUS) Could you just walk us
14 through I believe it's pages 102 to 104 is the habitat
15 management plan. Can you describe the content of your
16 plan?

17 A. Yes. So this section of my report
18 identifies the code that the plan is addressing, which
19 is the 3062A (2007) code for the habitat management
20 plan. It describes the species that are affected. It
21 describes primary association areas.

22 Then it describes a list of critical
23 species that would be applicable under this code, and
24 then that -- sorry. I did it again.

25 Q. Uh-huh.



1 A. And then, as I said earlier, this table
2 describes which species occur on the site or have
3 primary association areas with the site.

4 And then, the next section of the report
5 describes the criteria of the habitat management plan
6 code.

7 Q. Okay. And it's that table is titled
8 habitat management plan content, correct?

9 A. Yes.

10 Q. So does this table then refer the reader to
11 various other parts of the critical areas report to --

12 A. It does.

13 Q. -- obtain that content?

14 A. Yes.

15 Q. Okay. Could you walk us through an
16 example? I think on page 102 you indicated that the
17 gray whale is a species that would be required to have
18 a habitat management plan?

19 A. I believe so. Let me stop right there,
20 please. Yes, I did.

21 Q. Okay. And then, looking at how the reader
22 again is supposed to refer to other provisions in the
23 report to determine what the habitat management plan
24 content is for the gray whale, could you just walk us
25 through as an example how you would find that in this



1 report?

2 A. Yes. So the table 21 refers the reader to
3 primarily two sections, section 6 of the report, which
4 talks about -- could you go to section 6, please --
5 existing conditions on the site.

6 MS. KISIELIUS: Stop there. Stop
7 there. Sorry. Keep going. I wasn't sure where you
8 were. Section 6. Okay.

9 A. So section 6, for example, describes the
10 occurrence of federal species of significant
11 importance, gray whale being one of them. So it
12 describes the status of the gray whale in this area,
13 and then it describes the -- if you go up a few more
14 pages here, I think I can get to it quickly enough.
15 This section here, 6.12.2.9, describes the known
16 occurrence and documented presence of gray whales in
17 Puget Sound in the vicinity, both generally and in the
18 vicinity of the project.

19 And then, if you go down to section 7.
20 Let's see. So section 7 describes for those -- I keep
21 doing this -- the federally listed species, it
22 describes the impacts to those species. I'm looking
23 for the gray whale. Section on impacts to marine
24 mammals, 7.2.4, and that's the section that would
25 apply to gray whale for impacts.



1 Q. (BY MS. KISIELIUS) Okay. But the
2 provision you're pointing to right now is just a
3 general discussion of marine mammals?

4 A. Yes. It's not specific to the gray whale.

5 Q. Okay. Do you discuss the gray whale in
6 your critical areas report?

7 A. Yes.

8 Q. Do you discuss the impacts specifically to
9 the gray whale in your critical areas report?

10 A. I discuss impacts to marine mammals, which
11 would include the gray whale.

12 Q. Okay. But again, you don't specifically
13 discuss impacts to the gray whale?

14 A. Not as a separate section, no.

15 Q. Okay. Do you discuss then specific
16 mitigation measures that would apply to the gray whale
17 during construction of the project?

18 A. No.

19 Q. Okay. Would that be required under the
20 county's code as to habitat management plans for the
21 gray whale?

22 A. Could you rephrase, restate the question,
23 please?

24 Q. Sure. The county's code with regards to
25 the requirements for a habitat management plan, does



1 this critical areas report meet those requirements as
2 to the gray whale?

3 A. I believe this report meets the
4 requirements of habitat management plan for gray whale
5 at this stage of the project.

6 Q. At this. This being the feasibility stage
7 --

8 A. Yes.

9 Q. -- of the project?

10 A. Yes.

11 Q. Let's move on to innovative development
12 design. Do you agree that 30.62A.350 requires the
13 applicant to demonstrate how the design of the project
14 will achieve protection equivalent to the treatment of
15 the functions and values of the critical areas that
16 would be obtained by applying the standard
17 prescriptive measures of the critical area -- critical
18 areas code?

19 A. Do I agree that's what it says?

20 Q. Yes.

21 A. Yes.

22 Q. Okay. Can you show us where in your
23 discussion of innovative development design there's a
24 discussion of the functions and values that would be
25 provided by the standard buffers of either marine



1 shorelines, wetlands, or streams?

2 A. No, that is not in my report at this time.

3 Q. Can you explain where in your report
4 there's a discussion of how the functions and values
5 of the proposal provide equal or better functions and
6 values than the standard buffers?

7 A. I believe I just answered that question.
8 Something very close enough to it. I can't.

9 Q. Close. Probably close enough. And the
10 answer was no to that?

11 A. Yes.

12 Q. Okay. Do you discuss in the report how the
13 restoration of the marine shoreline provides better
14 function and values than the 25,000 square feet of
15 wetland buffer that will be impacted by the
16 construction of the second access road?

17 A. I talk about it generally. I don't talk
18 about it specifically by each resource.

19 Q. Okay. Would you agree that the functions
20 and values of a marine shoreline are different than
21 the functions and values of a wetland or stream?

22 A. Yes.

23 Q. Let's go ahead and move on to a discussion
24 of the ordinary high water mark. Now, you said that
25 you weren't aware that shoreline jurisdiction and



1 marine shoreline buffers are required to be measured
 2 from the ordinary high water mark. Is that correct?

3 A. I don't believe I said that, no.

4 Q. Okay. So you have always known that marine
 5 shoreline buffers are required to be measured from the
 6 ordinary high water mark?

7 A. Could you be more specific with your
 8 question? What do you mean by always?

9 Q. In Snohomish County is a marine shoreline
 10 buffer to be measured from the ordinary high --

11 A. Yes.

12 Q. -- water mark?

13 A. Yes.

14 Q. And did you just learn that in October --
 15 or sorry -- May 9th --

16 A. Yes.

17 Q. -- of this year? You knew that? Okay.

18 Did your critical areas report reflect a
 19 marine shoreline buffer from an ordinary high water
 20 mark?

21 A. No. It was based on the mean high high
 22 water mark.

23 Q. Okay. Why did it not reflect a marine
 24 shoreline buffer from the ordinary high water mark?

25 A. The marine -- the ordinary high water mark



1 was not mapped in time for it to be reflected in that
2 version.

3 Q. When was the ordinary high water mark
4 measured?

5 A. March of 2018.

6 Q. March of 2018. And what's the date of your
7 report?

8 A. April.

9 Q. April of 2018. What was the date of your
10 first critical areas report?

11 A. First one produced for the project?

12 Q. Yes.

13 A. 2011. March 2011, I believe.

14 Q. Okay.

15 A. I don't remember the date.

16 Q. And I know that was your predecessor. That
17 was not, not you. However, that report did not
18 measure marine shoreline buffer from the ordinary high
19 water mark?

20 A. No.

21 Q. Okay. And you're saying that you -- it was
22 never mapped from the ordinary high water mark until
23 March of 2018?

24 A. I'm sorry. Can you repeat that question?

25 Q. Sure. You're saying that you -- the first



1 time the marine shoreline buffer was measured from the
2 ordinary high water mark was in March of 2018?

3 A. The first time that the -- an attempt was
4 made to map the ordinary high water mark in the field
5 was March of 2018.

6 Q. Why, why wasn't it attempted to be mapped
7 before then?

8 A. We were not authorized to map that prior to
9 that time.

10 Q. Were you the only entity that mapped the
11 ordinary high water mark? I mean --

12 A. Yes.

13 Q. -- any consultant. Were you the only
14 consultant for this project that mapped the ordinary
15 high water mark?

16 A. To my knowledge, yes.

17 Q. Okay. And you were not authorized to
18 measure that until March of 2018?

19 A. Yes.

20 Q. But you knew the marine shoreline buffer
21 was required to be measured from the ordinary high
22 water mark?

23 A. Yes.

24 Q. Can I assume that your predecessor knew
25 that in 2011?



1 A. No. I believe at that time the -- the
2 ecology guidelines have changed since that time, and I
3 believe the original mean high high water mark was
4 mark -- and field work conducted, I believe, in 2008
5 and 2009.

6 So, so I believe at that time the mean high
7 high water mark was believed to be the correct line of
8 demarcation?

9 Q. Okay. Do you know what version of the
10 critical areas code this project is vested to?

11 A. 2007.

12 Q. 2007. And do you know in 2007 was the
13 marine shoreline buffer required to be measured from
14 the ordinary high water mark?

15 A. I believe so.

16 Q. Okay. You mentioned that this new
17 information -- with this new information, you
18 anticipate that the design of the project will change.
19 How will that change?

20 A. Oh, I can't exactly say, because I'm not
21 the architect, but I would anticipate that some
22 structure locations might have to change. But that's
23 speculation on my part, because I'm not the designer.

24 MS. KISIELIUS: Could you please pull
25 up P-16 for me. Oh, I'm sorry. P-15.



1 Q. (BY MS. KISIELIUS) And can you see the
2 yellow line demarcates a marine shoreline buffer
3 measured from the mean high high? Does that
4 accurately reflect --

5 A. I believe so. I can't exactly tell what's
6 labeled and what's not on this map, but that appears
7 to be the case.

8 Q. Okay. And then, the ordinary high water
9 mark -- so that indicates that buffer's measured from
10 that kind of brownish-red line below?

11 A. Yes.

12 Q. All right. And then, the blue line
13 demarcates the ordinary high water mark, correct?

14 A. Yes, it appears to.

15 Q. And that would be as you mapped it?

16 A. Yes.

17 Q. Okay. But which needs to be confirmed with
18 the agencies --

19 A. Yes.

20 Q. -- to the best of your knowledge? Okay.

21 So if the marine shoreline buffer were to
22 be measured from that ordinary high water mark, are
23 those residential structures now within the marine
24 shoreline buffer?

25 A. It appears to be the case, yes.



1 Q. So would you say that today, based on this
2 information, it appears that the project is in
3 substantial conflict with the code because of the
4 location of these structures within the marine
5 shoreline buffer?

6 A. No, I guess I wouldn't say that. I'm of
7 the opinion that in this location you're talking about
8 an area that is previously developed and developed
9 land, and this area is going to be restored. That's
10 part of the purpose of our innovative development
11 design plan is to allow the encroachment of some of
12 this development into the proposed buffers.

13 MS. KISIELIUS: Q. Okay. I don't
14 have any further questions.

15

16 REDIRECT EXAMINATION

17 BY MR. VASQUEZ:

18 Q. Just one follow-up, Mr. Rand. There was
19 some testimony about other agencies and the ordinary
20 high water mark. Who is responsible -- or how is that
21 ordinary high water mark determined?

22 A. The ordinary high water mark under the
23 state WAC, Washington Administrative Code, is -- I
24 think I testified to this earlier -- is defined as the
25 location where water -- the passage of water is of



1 such a frequency that it leaves a mark, a physical
2 mark upon the land.

3 Typically -- well, the Department of
4 Ecology, Washington Department of Ecology's the
5 primary agency responsible for producing guidance on
6 this topic. They have a lot of guidance on this
7 topic. The guidebook is pretty significant, but a
8 couple of the key points are you look for things like
9 where there is perennial vegetation growing, where
10 there are log rafts, you know, other, other
11 measurements of water passage.

12 Q. Now, excuse me. In the 2007 code or, I
13 guess, whatever code applies to this application, are
14 there exceptions to using the ordinary high water
15 mark?

16 A. There is. There's an exception that in
17 areas where the physical features that I just
18 referenced can't be found, you can use the mean high
19 high water mark.

20 Q. And you have to go talk to the Department
21 of Ecology and other departments to try and figure all
22 this out?

23 A. Well, you can make an assessment in the
24 field, but typically in an area certainly of this
25 significance you would want to get confirmation from



1 the Department of Ecology.

2 Q. So that line you've marked there, the blue
3 line, is that sentence (unintelligible), so to speak?

4 A. I wouldn't, I wouldn't describe it that
5 way, because I would consider it a draft line until
6 it's been vetted with the agencies, because that line
7 is subjective, and where one person puts it today,
8 those -- you know, another person could put it
9 somewhere else tomorrow.

10 And that has to do with the type of wave
11 action you've had in the intervening time, and
12 ultimately, I would want to get an agreement by the
13 Department of Ecology about where that line was before
14 we made important design changes.

15 Q. By the way, counsel asked you about issues
16 regarding functions and values. Do you remember those
17 questions?

18 A. Yes.

19 Q. And you said that they weren't in your
20 report. Is there a reason why they're not in your
21 report?

22 A. The discussion of innovative design in my
23 report is of a general nature, because at this
24 feasibility stage of the project I considered it too
25 early to finalize this detailed discussion of



1 functions and values. But that -- that information
2 can easily be provided, but it was not provided in
3 this report.

4 Q. Don't you need to know where the buildings
5 are going to be definitively located before you can do
6 all that?

7 A. It would certainly help.

8 MR. VASQUEZ: Okay. That's all the
9 questions I have. Thanks.

10 MS. KISIELIUS: I just have one
11 follow-up question.

12

13 RE-CROSS-EXAMINATION

14 BY MS. KISIELIUS:

15 Q. In your professional judgment, does that
16 blue line indicate where the ordinary high water mark
17 is?

18 A. In my professional judgment, yes.

19 Q. Thank you.

20 THE HEARING EXAMINER: Want to ask any
21 more?

22 MR. VASQUEZ: No, I don't have any
23 more. Thank you.

24 BSRE would like to call its next
25 witness, Mr. Mark Dagel.



1 THE HEARING EXAMINER: Swear you in.
2 Raise your right hand.

3 Do you solemnly swear or affirm the
4 testimony you're about to give in this proceeding is
5 true and correct?

6 MR. DAGEL: I do.

7 THE HEARING EXAMINER: Name and
8 address, please.

9 MR. DAGEL: Mark Dagel, Seattle,
10 Washington.

11 THE HEARING EXAMINER: That's not an
12 address.

13 MR. DAGEL: Home address or work
14 address?

15 THE HEARING EXAMINER: Work address is
16 fine.

17 MR. DAGEL: 311 Elliott Avenue,
18 Seattle.

19 THE HEARING EXAMINER: Thank you.

20

21 DIRECT EXAMINATION

22 BY MR. VASQUEZ:

23 Q. Mr. Dagel, thank you. You have to actually
24 be pretty close to that microphone.

25 A. Okay.



1 Q. You can lower the table if you need to.

2 A. No, this is good.

3 Q. Mr. Dagel, tell me who you're employed by.

4 A. I work for Hart Crowser. It's an
5 environmental engineering and geotechnical engineering
6 firm.

7 Q. And what is your title at Hart Crowser?

8 A. I'm a senior associate hydrogeologist.

9 Q. And what does a senior associate
10 hydrogeologist do?

11 A. In my case, my practice is generally the
12 investigation and cleanup of contaminated sites under
13 state and federal laws.

14 Q. How long have you been at Hart Crowser?

15 A. Nine and a half years.

16 Q. Okay. And is that primarily what you've
17 been doing for nine and a half years?

18 A. Yes.

19 Q. Do you have a undergraduate degree?

20 A. I do. I have a undergraduate degree in
21 geology and a master's degree in geology.

22 Q. Okay. And when did you obtain those?

23 A. Bachelor's degree in 1980, master's in '85.

24 Q. Do you have specific experience with the
25 what we're calling the entitlement process for these



1 development projects?

2 A. That's not something I'm familiar with, or
3 that word, I should say.

4 Q. Entitlement?

5 A. Well, I mean, not in this context.

6 Q. Okay. Do you have experience with
7 remediation on projects of this type?

8 A. Yes.

9 Q. Okay. And approximately how many?

10 A. Oh. I mean, cleanup sites, you know,
11 dozens probably over the years. This is a
12 particularly large one. So, you know, two or three in
13 the last 10 years, something like that.

14 Q. You're essentially involved in the cleanup
15 process of the site, correct?

16 A. Correct.

17 Q. Okay. So tell me, what's your -- the
18 general schedule of events involved in that process?

19 A. So, under the state cleanup regulations,
20 the model, the regs promulgated under the Model Toxics
21 Control Act, it lays out sort of a multi-step process.
22 So the general, general progression of the cleanup
23 activity is initially once a site is discovered or
24 deemed to be contaminated, the cleanup process starts
25 with a remediation investigation and a feasibility



1 study.

2 So the remedial investigation determines
3 the nature and extent of contaminated soil, ground
4 water, whatever. Once that's determined to an
5 adequate degree, a feasibility study is conducted and
6 that is a -- I'd say it's a high level, high level
7 look at -- it's a step wise process prescribed under
8 the regs to evaluate a number of cleanup alternatives
9 and to select at a conceptual level the preferred
10 alternative.

11 Q. When does the Department of Ecology get
12 involved?

13 A. It depends. For sites of this size, they
14 would typically get involved early on. The party
15 doing the cleanup would come to an agreement with the
16 Department of Ecology, either in the form of a --
17 typically in the form of a consent decree or an agreed
18 order that would stipulate how the investigation and
19 then the evaluation of alternatives and then finally
20 the cleanup would proceed.

21 That's a typical, typical scenario for a
22 site like this.

23 Q. When you involve Department of Ecology in
24 negotiating an agreed order or consent decree, what
25 happens to the operations on the site?



1 A. Well, a site like this, to do a remedial
2 investigation would involve trying to determine again
3 the nature -- nature and extent of contamination in
4 the soil and ground water.

5 At this site, much of the property is
6 covered physically by tanks and other petroleum
7 related infrastructure. So those would need to come
8 down or be removed in order to really figure out what
9 is where at the site.

10 Q. Do you have an opinion as to whether those
11 tanks can come back online and the property be used
12 commercially for the same -- for the same use after
13 that process begins?

14 A. No, I don't. I don't see how it could.

15 Q. And how come?

16 A. Well, during -- so, so during the
17 investigation and remediation of the site, we would
18 need access to the physical ground that the tanks are
19 currently occupying. So there would be no way to
20 really sort of put them back during that process.

21 Q. So basically, you shut down the commercial
22 operation, correct?

23 A. It would -- yeah, it would have to be shut
24 down to be cleaned up.

25 Q. Okay. What about future use of the site



1 once that process has begun?

2 A. Well, depending on the cleanup levels
3 agreed to in the order with ecology, it could range up
4 to residential use. Typically, that's, that's what
5 clean-ups are designed to achieve, except in some very
6 specific circumstances.

7 Q. Well, so you understand that this is a oil
8 storage facility, correct, and an asphalt processing
9 plant, correct?

10 A. Yes.

11 Q. Once the process with ecology starts, can
12 it ever be used as that again?

13 A. I would have a hard time seeing that it
14 could be. Typically, once you start the process of an
15 agreed order, you are -- you're bound to carry out
16 what's in the agreed order, and even if let's say the
17 agreed order takes you through the first step of an
18 investigation and feasibility study, it's my
19 experience would be unlikely that if you found
20 significant contamination, which you would at the
21 site, that ecology would say, well, that's nice.
22 We're done.

23 You know, I think realistically, you would
24 need to carry on through, through the -- through some
25 sort of remediation.



1 Q. So then, in your experience, would it make
2 sense to begin the remediation process with ecology
3 while the project has not been approved by the county?

4 A. Well, assuming the that objective is to --
5 is an either, either/or, essentially, if it's not
6 going to be developed, you know, for residential use,
7 it's desired to keep it operating as a -- in its
8 current configuration. Right. I don't think it would
9 be advisable to start down a cleanup path. That would
10 be incompatible with maintaining existing operations.

11 Q. Do you have any idea of magnitude how much
12 cleanup of this site would be?

13 A. Well, it hasn't been fully characterized.
14 I mean, this is very, very rough, but typically it's
15 not like this would be in the tens of millions of
16 dollars. You know, more than ten, less than a
17 hundred, you know, something in that range.

18 Q. Okay. What stage of the remediation
19 process are you in at this point?

20 A. So at this point, the site has the site
21 operator or its predecessors have done I would call it
22 sort of a preliminary investigation. So they're not
23 currently under any sort of a formal order or even a
24 voluntary cleanup program with the Department of
25 Ecology, but they have taken some independent



1 investigations.

2 So there have been soil borings, ground
3 water monitoring wells installed in areas that are
4 accessible, and there have also been some free product
5 recovery wells and a sheet pile ground water barrier
6 has been put in under -- under the independent --
7 independent pathway under the Model Toxics Control Act
8 regs.

9 Q. Do you know if anybody from our
10 representative of the owner has actually spoken to
11 ecology about this site?

12 A. Yeah, my understanding is that the operator
13 did approach ecology and had some initial discussions
14 about -- about putting the site under an agreed order,
15 a few years ago maybe, three years ago.

16 Q. But do you know if an agreed order was
17 reached or entered into?

18 A. No, it was not.

19 Q. Okay. That's all the questions I have.
20 Thank you.

21 A. Okay.

22

23 CROSS-EXAMINATION

24 BY MS. KISIELIUS:

25 Q. Good afternoon, Laura Kisielius from the



1 prosecutor's office.

2 A. Hi.

3 Q. I don't think you discussed it. Did you
4 prepare a memorandum dated April 20th for the project
5 applicant regarding a proposed environmental read --
6 remediation approach?

7 A. Correct.

8 Q. Okay. And I believe that's Exhibit C-29.
9 And again, that was dated April 20, 2018. When did
10 the applicant request that you prepare that report?

11 A. I don't have the exact date. I would say
12 three or four months ago, roughly, time frame.

13 MR. VASQUEZ: Your Honor, I'm going to
14 object at this point. This goes beyond the scope of
15 direct. We didn't discuss the report or any of those
16 issues.

17 THE HEARING EXAMINER: No, but you did
18 discuss the --

19 MR. VASQUEZ: Schedule.

20 THE HEARING EXAMINER: -- order and
21 sequence of remediation, schedule, and the process.

22 MR. VASQUEZ: Okay.

23 THE HEARING EXAMINER: So I think
24 that's fair.

25 MS. KISIELIUS: Thank you.



1 Q. (BY MS. KISIELIUS) And on page 4 of that
2 report you mention the steps of the MTCA process that
3 have already been completed. Do you recall what the
4 last step completed was and when it was completed?

5 A. So I remember discussing the steps in the
6 MTCA process, sort of what I'd laid out here, but it
7 wasn't meant to portray that the site itself had gone
8 through that process yet, and in fact it hasn't.

9 MS. KISIELIUS: Okay. Sorry I'm
10 putting you to work today. Could you pull up C-29 for
11 me, please. And I'm looking at page 4 the report.
12 And scroll down to where it says MTCA cleanup process.
13 Right there.

14 A. Right. Okay. So these, these sites, I
15 thought you were talking about the sites, the steps I
16 just went through. So these, these steps are
17 preliminary to the remedial investigation. So these
18 are back in sort of the site discovery phase, the
19 initial hazard ranking by.

20 I didn't talk about those, but those sort
21 of kick the whole thing off. So yeah, those site
22 discovery initial hazard ranking have been completed,
23 correct.

24 Q. (BY MS. KISIELIUS) And would the hazard
25 ranking have been the last, the last of those steps?



1 I'm assuming they're in order of progression?

2 A. I would assume that, but I don't actually
3 know, know that. It's possible. I think that the
4 hazard ranking -- I'm guessing a little bit, but I
5 think there was probably some initial evaluations of
6 the site.

7 It was ranked by ecology, and then since
8 then, actually, I do know that since it was ranked,
9 there have been some additional investigations done.
10 So I think the last one, or the -- the initial
11 investigation, you know, probably spanned the hazard
12 ranking on both sides of it.

13 Q. Okay.

14 A. So it's not, not always a simple, you know,
15 a straightforward or a straight line process.

16 Q. Okay. So do you then know the date or the
17 last date that one of those items was completed was,
18 ballpark year?

19 A. Yeah, I think that the last soil borings
20 that were done on the site were probably -- again, I'm
21 guessing a little bit, but 2011, something like that.
22 Probably five years ago or more.

23 Q. So that was the last time any step in this
24 MTCA cleanup process has occurred for this particular
25 site, to the best of your knowledge?



1 A. Correct.

2 Q. Okay. So the next step then would be the
3 remedial investigation feasibility study?

4 A. Correct.

5 Q. Okay. And has that process begun yet?

6 A. No.

7 Q. Okay. Do you know when that process will
8 begin?

9 A. Well, it's a little chicken and the egg.
10 So to do the remedial investigation, especially if you
11 entered into an order with ecology, would require
12 discontinuing use of the property for its current use.
13 The tanks and a lot of the infrastructure would need
14 to come down, so, so that hasn't been done because
15 it's still an operating facility.

16 Q. Okay. So it has to stop operating as a
17 facility before you can even begin this remedial
18 investigation feasibility?

19 A. Correct.

20 Q. Okay. Do you know if there are any plans
21 to stop operating the facility so this process can
22 begin?

23 A. Well, it's -- I mean, to the extent that
24 there's a planned development there, yeah, I guess it
25 is. It would occur. The concept is that it would



1 occur in stages, as the -- as the development
2 proceeds. So there is definitely a plan.

3 Q. And by planned development, are you talking
4 about this proposed project?

5 A. Correct.

6 Q. Okay. So if I understand you correctly,
7 you're saying this proposed project would have to be
8 approved before operations would cease and this next
9 step could occur?

10 A. That's my understanding, yes, of how the
11 parties intend to proceed. Yes.

12 Q. Okay. Do you know how long approximately,
13 in your experience, the remedial investigation
14 feasible -- feasibility study part of this process
15 takes?

16 A. So that, that initial, yeah, the remedial
17 investigation feasibility study could be a year or
18 two, would be my guess.

19 Q. And then, following that, looking at page
20 5, the next page of your report, then comes the
21 cleanup, cleanup action plan process. So the
22 feasibility study informs the cleanup action?

23 A. Correct.

24 Q. Okay. And can you describe generally that,
25 that process?



1 A. The feasibility study process or the
2 cleanup?

3 Q. Oh, the cleanup action plan. How do you
4 select -- who selects the process and how does that
5 typically take place?

6 A. Right. So the -- as you said, this is
7 informed by the feasibility study. The feasibility
8 study is typically the more extensive document in
9 terms of laying out the various alternatives that have
10 been looked at, the ones that have been screened out,
11 how they're each evaluated against the various
12 criteria under the regs, and then a preferred
13 alternative selected.

14 So the cleanup action plan often refers to
15 that and it is more -- and summarizes the selected
16 cleanup plan. And it is a -- so typically, the entity
17 conducting the investigation would prepare the draft
18 cleanup action plan.

19 Ultimately it comes out as an ecology
20 document subject to public comment.

21 Q. And in your experience, for a site of this
22 size, how long does the cleanup action plan selection
23 process take, including public comment?

24 A. Well, it can go pretty fast from the time
25 you're done with the feasibility study to the cleanup



1 action plan. So it would be several months, but not
2 two years. So somewhere in that, in that range. So,
3 you know, I think a year would be long, but two months
4 would be short, so...

5 Q. Okay. And is it your understanding that
6 the applicant is proposing to phase this development
7 project in conjunction with phasing cleanup of the
8 site?

9 A. Correct.

10 Q. Is that typical? Have you seen that
11 before?

12 A. Yeah, it is. It is. It's, I guess,
13 neither typical nor atypical. It can happen. There
14 would be, yeah. I'm thinking of, I wasn't personally,
15 but like the Skykomish cleanup, where the City of
16 Skykomish was basically picked up and the contaminated
17 soil removed under it and put back down again.

18 That sort of was on a rolling schedule, and
19 so that's --

20 Q. Okay. And then, do you know, with that
21 project or any others, does environmental review of
22 the proposed development usually happen in
23 coordination with environmental review of the cleanup
24 plan?

25 A. So the typical process that I'm familiar



1 with and is laid out in the cleanup -- or in I guess
2 it's the SEPA regs, is that -- and to some extent, I
3 guess, under MTCA, ecology typically does the
4 environmental review, and I believe it needs to occur
5 sometime between the RIFS and the final cleanup action
6 plan.

7 So they'll do whatever environmental
8 review, whether it's a just a checklist or a full-on
9 EIS. Typically done during that phase of the process.

10 Q. And will ecology review the impacts of
11 remediation on the proposed development and including
12 individuals who already are living onsite?

13 A. Yes, I think the latter especially. If
14 there was -- whatever the existing environment is at
15 the time that the cleanup would be done, that they
16 would -- that would be considered.

17 Now, as far as some proposed development in
18 the future, I don't know that they could evaluate
19 impacts or would. I guess that's a little bit outside
20 my experience. But my familiarity is is that they are
21 typically focused on the action of the cleanup itself,
22 not, not some other action.

23 Q. Okay. So when would the -- where would it
24 be best to evaluate the impacts of a dual phased
25 approach be? Would it be the SEPA review? Or, I



1 guess, the remediation on the proposed development.
2 Would that be in the SEPA review for this project or
3 the SEPA review for the cleanup action plan?

4 A. It would be the SEPA review for the
5 cleanup.

6 Q. For the cleanup. So this project would
7 have to be approved without being able to evaluate the
8 environmental cleanup -- the environmental impacts of
9 the cleanup action on this proposed development plan,
10 which is phased?

11 A. Yeah, I think that the assumption, at least
12 in the draft EIS for this project, is consistent with
13 what I'm familiar with, and that is that the EIS
14 contemplates that the site will have been cleaned up
15 prior to development. So that that's the baseline
16 condition.

17 Q. Uh-huh. So but, so phase one of this
18 project would assume that phase one of the
19 remediation, and I guess I'm assuming that there --
20 the polygons are the same for the different phases.
21 That phase one of the remediation has taken place and
22 the site is clean for phase one of this particular
23 development?

24 A. I think that's one, one way to do it, yeah.
25 Yeah.



1 Q. And is it possible then that remediation of
2 the rest of the site will have impacts on the
3 individuals living on the site in phase one?

4 A. Yeah, I think that clearly would.

5 Q. Okay. Would those be impacts that you
6 would expect this jurisdiction to evaluate when
7 considering whether to approve this project?

8 A. Could you try that again?

9 Q. Yeah, it's a little convoluted.

10 A. Yeah.

11 Q. So you have people in phase one of this
12 project living onsite already. You have remediation
13 happening on other portions of the property. You have
14 potentially the incineration of materials onsite. You
15 might have to truck them off site, so you have
16 materials coming on and off site.

17 You have potential air impacts, noise
18 impacts, view impacts from the remediation for the
19 folks living in phase one. Would those impacts be
20 something that you would expect this jurisdiction to
21 review prior to approving the entirety of this
22 development project?

23 A. I guess not. I mean, so the way I'm
24 envisioning this would work is that so, so in the
25 scenario you laid out, ecology would be lead agency



1 for SEPA and so they would conduct their environmental
2 review.

3 So say, it's phase two. So, the existing
4 environment now includes perhaps people living in
5 phase one. So their review would, would encompass
6 that. That's impacts to that.

7 Q. But they would review the cleanup action as
8 a whole, not necessarily in phases with people living
9 on the site?

10 A. Yeah, that -- that I -- that's a nuance
11 that I don't -- I don't know. I think that's, you
12 know, a negotiated coordination with ecology as to how
13 that, you know, how they would choose to evaluate it,
14 if they want to phase the -- phase their environmental
15 review or look into the future as, you know, and do it
16 all at once.

17 Q. So that that would be a discussion that the
18 county should probably have with ecology sooner rather
19 than later in terms of coordinating that environmental
20 review, before approving this project?

21 A. I can't speak for the county. I mean, I
22 don't -- I can't. I can't say. I mean, the SEPA
23 process, if ecology were the (unintelligible) agency,
24 involves -- you know, requires public comment and
25 perhaps, although I can't cite the section, involves



1 coordination with the local jurisdiction.

2 So I think there is -- there are provisions
3 for, you know, interacting as ecology does their
4 review. But, yeah.

5 Q. All right. Thank you very much.

6 MR. VASQUEZ: I don't have anything
7 further.

8 THE HEARING EXAMINER: Thank you, Mr.
9 Dagel.

10 MR. HUFF: BSRE will call Dan Seng
11 back to the stand.

12 THE HEARING EXAMINER: Mr. Seng, I
13 think I already swore you in.

14 MS. SENG: I believe you did. I was
15 presenter.

16 THE HEARING EXAMINER: I'll just
17 remind you, you're under oath.

18 MR. SENG: My name is Dan Seng, with
19 Perkins and Will.

20

21 DIRECT EXAMINATION

22 BY MR. HUFF:

23 Q. You beat me to it. Can you tell us your
24 office address, please, and job title.

25 A. Yes. My job title is associate principal,



1 and our address is 1301 Fifth Avenue in Seattle.

2 Q. Can you describe your educational
3 background, please.

4 A. I have a bachelor of science in
5 architectural studies from the University of Illinois,
6 and I have received a fellowship from them in 2011 to
7 travel. And I wrote a book about that, about
8 sustainable urban development after that fellowship.

9 Q. And what's been your association with this
10 project?

11 A. I have been involved since 2010 as a
12 project manager for the project, on and off throughout
13 the years.

14 Q. And have you been involved in similar urban
15 center type developments in other locations?

16 A. Personally, no, I have not.

17 Q. But your firm has?

18 A. That's correct. Part of the reason we were
19 selected for this project was based on our experience
20 with the Dockside Green development.

21 Q. Could you generally describe Dockside
22 Green, please?

23 A. Dockside is a development in -- on
24 Vancouver Island, and it is approximately a 15 acre
25 site and it was a multi-family mixed use development



1 on a shoreline. It was a brownfield development,
2 where it was a highly sustainable design approach that
3 utilized social and economic and sustainable benefits
4 to come to a ultimate design solution.

5 Q. Was that any easier than this one? Not a
6 serious question.

7 Now, in their May 9th response letter, the
8 county listed two areas that you thought you would
9 like to and we also think would like to respond to.
10 The first was area 7. The first part of that being
11 whether -- about commercial uses on the pier.

12 The language that from the county's letter
13 says that conservancy environmental regulation
14 (unintelligible) provides a commercial development
15 shall not -- or shall be prohibited on conservancy
16 shorelines except for those low intensity recreational
17 developments which do not substantially change the
18 character of the conservancy environment.

19 And they further state that the pier's
20 water dependent, but that small craft rental, fishing
21 supplies, cafe use, public art, art, and access to the
22 boat launch and potential ferry services are uses
23 which at least come into question.

24 Kind of doesn't really take a position on
25 those. They say, to the extent these proposed uses



1 are considered commercial development, they are
2 prohibited.

3 In your view, was there any intent to have
4 commercial uses on the pier?

5 A. My intent was to provide the recreational
6 uses and to have them be water dependent and the --
7 after hearing some of the testimony yesterday, I can
8 see how there's some interpretation on what, what is
9 justified as a recreational use and what constitutes a
10 commercial use.

11 So it wasn't my intent to have commercial
12 uses to generate profits, for instance.

13 Q. Cafe use clearly would fall into that
14 categories. There is no current intent to have a cafe
15 on the dock, correct?

16 A. That's right. This was an item that we had
17 intended to strike out of the report and there were
18 apparently more in there than we were -- than I found.
19 So one of them got through.

20 Q. If it is eventually determined that any of
21 the uses are in fact commercial, I assume you are of
22 the opinion that those uses should also be removed?

23 A. That's right.

24 Q. We had also testimony yesterday about
25 residential development that's dependent on shoreline



1 protection measures. With general regulation five,
2 residential development providing residential shall
3 not be approved for which flood control, shoreline
4 protection measures, or bulkheading will be required
5 to protect those residential lots unless a variance is
6 obtained.

7 We don't have flood control; is that
8 correct?

9 A. That's right.

10 Q. In your opinion, do we have bulkheading?

11 A. No. I see where you're going with this,
12 this questioning. I don't consider the esplanade a
13 bulkheading or the elevation of the residential units
14 to be considered a bulkhead or a flood protection.

15 Q. Is that the same for shoreline protection
16 measures?

17 A. That's correct. The shoreline protection
18 is provided by the beach, not by the wall that's
19 designed to support the esplanade. That's my
20 understanding of the information from Moffatt Nichol.

21 Q. Now, there is the caveat in here: Unless a
22 variance is obtained. When did you first hear of that
23 potential requirement that a variance be obtained? Do
24 you recall?

25 A. No, I don't recall the first time I heard



1 that, but I did hear that yesterday in some of the
2 testimony.

3 Q. Do you see any reason why a variance
4 application couldn't be prepared and submitted by the
5 close of this hearing?

6 A. No, I don't. That seems reasonable.

7 I want to go back. One of the things I
8 mentioned about the esplanade not being flood
9 protection.

10 Q. Uh-huh.

11 A. I said in my presentation that the
12 esplanade is at an elevation that could serve as a
13 levy, and this is something that it will by nature of
14 where it is serve as flood protection, because it's
15 higher than the elevations that we've determined from
16 the studies that Moffatt and Nichol have done. But I
17 don't feel like it is designed as -- with the purpose
18 of being a levy or to reinforce the shoreline.

19 Q. Is there any substantial correlation
20 between tidal action, waves, and the purpose of this
21 esplanade wall?

22 A. I would say no.

23 Q. I don't think you were here to hear earlier
24 testimony this afternoon about measurement of the
25 shoreline jurisdiction, the 200 feet, and whether



1 that's the mean high high or ordinary high water mark,
2 but do you have an objection to rewriting -- redrawing
3 the lines to use ordinary high water, if that's what
4 the county requires?

5 A. If that's what the county requires, no, I
6 don't have any objection to that.

7 Q. When did you first learn that the county
8 wanted ordinary high water mark used to measure the
9 shoreline jurisdiction?

10 A. The code is pretty clear on that. So I was
11 aware of that back in 2010. The information that we
12 had in our drawings, the survey did not include an
13 ordinary high water line until very recently. So we
14 used the mean high high water as the line from which
15 we set back to generate the shoreline boundary.

16 Q. And in fact, the county's comments, I
17 believe, dated May 9th just note that there was --
18 that both lines were used. And what did you take to
19 be the direction from those comments?

20 A. My understanding is that the expectation of
21 the county is that the ordinary high is the line from
22 which we're to offset the 150 foot buffer and the 200
23 foot shoreline jurisdiction.

24 Q. In their letter the county also talks about
25 lack of an analysis of applicable shoreline master



1 program regulations. Would you respond to that
2 statement? It was in fact the submittal of an
3 analysis of shoreline regulations, was it not?

4 A. There were multiple documents that
5 reference the shoreline management responsibilities of
6 the project, and the project narrative did describe
7 that what our intentions were in regards to that
8 shoreline management, and we relied heavily on the
9 critical area report from DEA to further summarize
10 what was being done there and the information from
11 Moffatt Nichol in that report.

12 Q. Now, you communicated with me to tell me
13 which exhibits you wanted available on the screen.
14 I'm not sure for what purpose exactly you wanted those
15 available, but here is the project narrative. Can you
16 use that as you anticipated to help fill us in?

17 A. Yeah, I can show you where that reference
18 was to the shoreline. So the section of the narrative
19 describes where we intended to -- how we address the
20 various codes that apply on the project.

21 So within this section, the development
22 limits other regulations affecting developable --
23 developable area on page 17, we refer to the shoreline
24 management 30.44 of the Snohomish County code, and the
25 limits that are and the restrictions that are



1 indicated there and there indicates the ordinary high
2 is the offset.

3 And then, we also indicate on earlier pages
4 the requirements for the state Shoreline Management
5 Act and the critical area regulations in 30.62A.

6 Q. Moving on to number 8 from the county's
7 recommendation. Most of these have already been
8 addressed by prior witness, but -- witnesses, but to
9 the extent you had anything to add, it would be
10 appreciated.

11 With respect to landslide hazard areas
12 deviation request, have you done an analysis of
13 whether those buildings can -- in the urban plaza can
14 or should be relocated to other parts of the site?

15 A. It has been considered as an alternative,
16 understanding that there's a risk of landslide in
17 there, in that area.

18 What we had considered was that we would
19 increase the density on the lower bench site to
20 accommodate for the residential units in the
21 commercial area on the urban plaza to lower those
22 buildings and maintain the required FAR for the site.

23 It was a bit of a balancing act we were
24 trying to achieve and work with the buffers on the
25 waterfront and on the hillside and maintain the



1 required open space and work within the design
2 concepts, and ultimately the decision to keep those
3 residential units on the urban plaza was something
4 that was a direction from the client and as a team we
5 felt was worthwhile based primarily on the urban
6 design decision circulation and phasing of the project
7 and density of the project.

8 Q. Could you talk about the consequences to be
9 anticipated if that density was moved waterward onto
10 the site, on the west side of the railroad?

11 A. The consequences that I saw, the pro would
12 be that we would have lower density and lower towers
13 on the residential side and that would help us meet
14 code on that, that portion of the site.

15 The downside of moving those towers and
16 moving the residential units to the lower bench would
17 mean that the higher density would lead to more
18 buildings of the same, same height. It would feel --
19 there would be a higher contrast between the low
20 buildings and the high buildings.

21 I think it would erode some of the
22 connections that we have just between the communities
23 based on the building height and the stepping of the
24 buildings that we designed in for visual interest and
25 for access to daylight and for access to the views.



1 Q. We heard testimony from the county that
2 this could be achieved by making the buildings on the
3 lower part of the property wider. How do you respond
4 to the advisability of that kind of a design
5 alternative?

6 A. I'm not sure what aspect of the building
7 would be wider, but the buildings as they're designed
8 are apportioned such that the units don't become too
9 dense so that they -- all of the residential units
10 have access to daylight, but also so that there's a
11 access to views between the buildings and so that the
12 development can be broken up into building sizes far
13 more typical for construction.

14 Q. Now, I took wider buildings to mean longer
15 in a north-south direction. Would that have
16 consequences for the neighboring -- the neighborhoods
17 adjacent to the property?

18 A. It would have some impact. We were trying
19 to make the -- to space the buildings so that the --
20 there were view sight lines between the buildings as
21 well as over them.

22 But the -- the other concept is to locate
23 the taller buildings closer to the hillside so that
24 we're not impacting the views of the residences on the
25 -- on the bluff so that the length of the building



1 wouldn't be impacted because the views are over the
2 building.

3 Q. So leaving the building as planned is
4 beneficial from a view perspective for the
5 neighborhood properties in your mind?

6 A. For the neighboring properties to the
7 south, yes.

8 Q. There are no properties to the north or for
9 quite a distance to the east, correct?

10 A. There are -- that's correct.

11 Q. Do you have anything else that you had in
12 mind to discuss?

13 A. No, I think you covered the few things that
14 I wanted to cover.

15 Q. Thank you.

16

17 CROSS-EXAMINATION

18 BY MR. OTTEN:

19 Q. Hi, Mr. Seng. Matt Otten, with the
20 prosecutor's office.

21 A. Hello, Mr. Otten.

22 Q. Did I hear you correctly say that you did
23 consider adding density to the lower bench that could
24 maintain the FAR?

25 A. Yes, I did.



1 Q. Okay. So would you agree with your
2 colleague that testified earlier that said it's not
3 impossible to add density to the lower bench and
4 maintain the FAR while not having the residential
5 towers on that upper bench?

6 I could restate it if it's...

7 A. I would say that I may be more optimistic
8 than my associate, but I -- but I think that anything
9 is -- that there are possibilities for increasing the
10 FAR on the lower bench. I'd have to verify that we
11 could meet the requirement by locating those units.

12 Q. Okay.

13 MR. HUFF: Just in the form of an
14 objection, I don't believe the testimony was that it
15 was impossible.

16 MR. OTTEN: No, I said he didn't say
17 it was impossible. So he's agreeing with his
18 colleague.

19 Q. (BY MR. OTTEN) All right. Just one final
20 question for you, Seng. I think you sort of
21 dovetailed into this one. So, do you believe
22 architectural redesign can address many of the site
23 constraints and code compliance issues? But my
24 understanding what I heard from you is you got
25 direction from the client not to submit any of those



1 alternative designs to the county?

2 A. You've got two questions labeled in there,
3 so I'm not -- I'm going to answer each one of them.

4 Q. Okay.

5 A. So that the first one was about the being
6 able to address the architectural concerns of the
7 county, and I do feel like we could address the
8 architectural concerns of the county with redesign,
9 yes.

10 The second comment about directing the
11 direction from the client and not submitting those
12 because of the direction from the client, that I
13 wouldn't characterize it that way. I would say that
14 the team -- design team and the client reviewed
15 options and ultimately made a decision that this was
16 the most appropriate solution and we submitted that
17 with the variance.

18 Q. Okay. So you decided not pursuing other
19 site options would be a more fair characterization?

20 A. We decided not to submit that, yeah.

21 Q. That specific --

22 A. For that upper bench. We had to make a
23 decision, and we've made a decision on the one that we
24 submitted.

25 Q. Okay. Thank you.



1 THE HEARING EXAMINER: Thank you, Mr.
2 Seng.

3 MR. SENG: Thank you.

4 MS. ST. ROMAIN: I think our next
5 witness is out there. Would this be a good time to
6 take our afternoon break?

7 THE HEARING EXAMINER: Okay. Come
8 back at 3:00. We'll be in recess.

9 (Break in recording.)

10 MR. VASQUEZ: Your Honor, just a
11 housekeeping issue. We have Mr. Molver as our next
12 witness. He might not go two hours, and
13 unfortunately, because it seems like we've been
14 efficient, we don't have another witness other than
15 Mr. Molver today.

16 THE HEARING EXAMINER: Do you want me
17 to ask a bunch of questions to try to drag it out?

18 MR. VASQUEZ: You may if you would
19 like, but just a warning that --

20 THE HEARING EXAMINER: Your help.

21 MR. VASQUEZ: -- we might be done with
22 Mr. Molver before 5:00.

23 THE HEARING EXAMINER: If you're
24 suggesting we'll be done before 5:00, I'm just
25 devastated, just devastated, but, you know, let's go.



1 MR. VASQUEZ: Other judges have been
2 devastated. That's why I --

3 THE HEARING EXAMINER: Well, you know,
4 judges were all lawyers, so we're all idiosyncratic.
5 I've had a federal judge get upset because I put my
6 briefcase on counsel desk to unload it and load it at
7 the end of trial. That's not in the local rules that
8 you can't put your briefcase on top of the counsel
9 table, but that judge didn't like it, so...

10 MR. VASQUEZ: Yes, the last federal
11 judge I had had a clock.

12 THE HEARING EXAMINER: A chess clock.

13 MR. VASQUEZ: Yes.

14 THE HEARING EXAMINER: Yeah.

15 MR. VASQUEZ: And he told me I had a
16 minute left with a witness and that was it, so just to
17 be safe and sure.

18 THE HEARING EXAMINER: I appreciate
19 that, but I respect what all you folks are doing here
20 and so, you know, it's a team effort. Right? So call
21 your next witness and we'll just press on. Although,
22 perhaps, the county might grill your witness for you a
23 lot so that it might help you out.

24 MR. VASQUEZ: Thank you. BSRE calls
25 Mr. Jack Molver.



1 THE HEARING EXAMINER: Mr. Molver,
2 could I have you raise your right hand, please.

3 Do you solemnly swear or affirm that
4 the testimony you're about to give in this proceeding
5 is true and correct?

6 MR. MOLVER: I do.

7 THE HEARING EXAMINER: Name and
8 address, please.

9 MR. MOLVER: Jack Molver, 1620 West
10 Marine View Drive, Everett, Washington.

11

12 DIRECT EXAMINATION

13 BY MR. VASQUEZ:

14 Q. Mr. Molver, can you tell me, who are you
15 currently employed by?

16 A. I'm employed by David Evans and Associates
17 here in Everett.

18 Q. And how long have you been employed by
19 David Evans and Associates?

20 A. Over 20 years.

21 Q. And what is your position at David Evans
22 and Associates?

23 A. I'm a vice president. I am a civil
24 engineer and a land use consultant.

25 Q. So I take it you have an undergraduate



1 degree, at least?

2 A. Yes, I do. I have a undergraduate degree
3 from the University of Washington.

4 Q. In what field?

5 A. Civil engineering.

6 Q. Okay. Do you have a civil engineering
7 license or a professional license?

8 A. I do.

9 Q. And in what state?

10 A. Washington.

11 Q. With David Evans and Associates, what
12 exactly is it that you do?

13 A. Well, I basically focus primarily on land
14 use issues, land entitlement issues. I provide a lot
15 of consultation services to a lot of different
16 clients, to include Snohomish County, and I've served
17 as a subconsultant to the town of Woodway on some
18 drainage issues on the upper bluff portion of this
19 property.

20 But at this stage in my 40-some-odd year
21 career, I am focusing mostly on the high level
22 entitlement strategies to basically get a project
23 heading in the right direction and pass it off to
24 others to implement.

25 Q. Okay. Now, you've used the term



1 entitlement, and just so we're clear and everybody
2 knows what you're talking about, describe to me what
3 your understanding of the entitlement process is.

4 A. Basically, the various permits that one
5 requires in order to develop a piece of property or to
6 construct a building.

7 Q. And your consultation involves all the work
8 that's needed to reach that phase?

9 A. It involves -- well, yes, it does. We
10 don't do all the work ourselves. There's certain
11 specialties that are typically required, such as
12 geotechnical engineering, that we rely on other
13 consultants to provide.

14 Q. Does DEA provide professional services
15 other than consulting? And I'm talking about
16 technical services.

17 A. Oh, well, we provide surveying, we do
18 environmental work, structural engineering,
19 transportation engineering, and that's, well, pretty
20 much it.

21 Q. Okay. Other than the entitlement
22 consulting that you provided on this project, has DEA
23 provided any other services on this project?

24 A. Yes, we've provided survey, environmental,
25 transportation planning, and some structural.



1 Q. Did you have any involvement in any of
2 those services?

3 A. All of it.

4 Q. In what respect, or how were you involved
5 in those?

6 A. I was responsible for reviewing documents
7 and also to make sure that the various disciplines
8 were doing what they needed to do to meet the project
9 and client needs.

10 Q. When was DEA first retained to work on this
11 project?

12 A. I was first contacted in November of 2004.

13 Q. And for this particular project?

14 A. Not this project, but this property.

15 Q. Okay. And what for this property were you
16 asked to do?

17 A. I was asked to do some very high level
18 assessment of the upper bluff portion of the property,
19 basically the portion of the property west of the rail
20 -- east of the railroad tracks to look at it for
21 potential development.

22 Q. In looking at the upper bluff development,
23 did you also do any evaluation of the lower bluff or
24 any of the particular property that we're talking
25 about now?



1 A. Not at that time.

2 Q. Okay. At what time did you become involved
3 with the development of the Point Wells property?

4 A. That would have been in 20 -- basically,
5 around the same time the purchaser of the property
6 Paramount Petroleum purchased it from Chevron
7 Texaco, they recognized the significant potential of
8 the property, and so discussions commenced with
9 Snohomish County to make a docket application to
10 change the comprehensive plan.

11 Unfortunately, or fortunately, depends on
12 your perspective, at the time that process was too far
13 down the road and so we were not able to get it on the
14 docket, but we were able to get language inserted that
15 allowed staff to consider a docket application in the
16 future.

17 Q. Okay. Can you describe what -- that docket
18 application, was it to change the designation of the
19 property for use?

20 A. Yes.

21 Q. And what was it designated for at the time?

22 A. It was urban industrial or heavy
23 industrial. I can't remember.

24 Q. Okay. And what was the intent or what was
25 the plan to change the property designation to?



1 A. Urban center.

2 Q. Okay. Had the urban center code been in
3 existence at that time?

4 A. No, there was just the demonstration --
5 urban center demonstration program that was available.

6 Q. Okay. And when you say there was
7 discussions with Snohomish County to put it on the
8 docket, who, who or -- who was involved in these
9 discussions?

10 A. Well, it would have been the director of
11 planning and development services, Craig Ladiser. I
12 remember a lot of meetings with Mary Lynn Evans.
13 Those are two names that come to mind.

14 Also, there were conversations with certain
15 members of the executive branch, administration. I
16 didn't participate in those discussions, but there was
17 quite a bit of discussion.

18 Q. So let me ask you this. Did you
19 participate in any discussions regarding the change in
20 use of the property?

21 A. Yes, I did.

22 Q. Excuse me. Again, this was in 2004?

23 A. 2004-2005 era.

24 Q. When was the change in designation finally
25 put on the docket?



1 A. That that was leading up to the 2010 comp
2 plan update. So I'm not clear as to what specific
3 year, but it would have probably been 2009, I'm
4 thinking.

5 Q. Did DEA provide any assistance in drafting
6 the docket change or the change in the comp plan?

7 A. We would have -- we would have prepared the
8 application, the docket request.

9 Q. Okay. So after that, what did you do for
10 the owner of the -- of this particular property with
11 respect to the development?

12 A. So the initial phases, there was a period
13 of while we were waiting for the zone change and
14 comprehensive plan change where we were doing
15 feasibility. We did assessment of utilities. We had
16 conversations with purveyors of the various utilities,
17 sewer, water.

18 There were conversations that went on with
19 Woodway And shoreline, conversations with the various
20 fire districts to see about essential services, and we
21 did some very preliminary level assessments of traffic
22 capacity of existing road networks that serve the
23 site.

24 One of the things that I recall in 2005 is
25 I recognize that there was going to be a potential



1 need for a second access, so I recall sketching up
2 some concepts for how that might occur.

3 MR. VASQUEZ: Your Honor, may I be
4 excused for a second to get some water?

5 THE HEARING EXAMINER: Okay.

6 MR. VASQUEZ: Thanks. That really
7 wasn't a stall tactic, Your Honor.

8 Q. (BY MR. VASQUEZ) Your traffic analysis,
9 your high level traffic analysis, do you recall when
10 that occurred?

11 A. It might have been 2007-'8.

12 Q. Okay. And then, you said the comprehensive
13 plan was changed sometime in 2010-2011?

14 A. I believe it happened in 2010.

15 Q. 2010. Did your work on the project stop at
16 any time after 2010-2011?

17 A. I specifically don't recall. I recall that
18 there was a challenge to the comprehensive plan
19 change, that that might have caused something to stop.

20 Q. Okay. A challenge to the comprehensive
21 plan. What do you recall about that?

22 A. Well, basically, the urban center
23 designation was adopted without implementing rules,
24 and so there was basically -- I know that that was a
25 part of the reason for the lawsuit. But also, I think



1 -- well, I do recall that the outcome of these
2 lawsuits was that designation was changed to -- or the
3 property was changed to urban village.

4 Q. Before the lawsuit, had the owner of the
5 property filed a application for a project or
6 development?

7 A. Yes. That was the urban center application
8 and short plat.

9 Q. And do you recall that was in what year?

10 A. I think it was March 2011.

11 Q. Okay. And then, after March 2011 is when
12 the lawsuit occurred?

13 A. I specifically don't recall the dates of
14 that. I just, I just recall that basically things got
15 put on hold.

16 Q. And they got put on hold until the lawsuit
17 was resolved, correct?

18 A. Right.

19 Q. And do you know when that lawsuit was
20 finally resolved?

21 A. I don't specifically recall. I think it
22 was 2012.

23 Q. Would it refresh your recollection if I
24 told you that the supreme court affirmed the Court of
25 Appeals decision in April 10, 2014?



1 A. Yes.

2 Q. Okay. So in that interim period, nothing
3 really happened on the project?

4 A. No.

5 Q. And why not?

6 A. Well, there's too much risk with advancing
7 any efforts to permit something that was being
8 challenged.

9 Q. Okay. So after that lawsuit was resolved,
10 did work begin again on the application?

11 A. Yes.

12 Q. And what work commenced after that?

13 A. I think it was primarily just focused on
14 traffic primarily and trying to follow up with both
15 the City of Shoreline and Woodway to try to come to
16 some sort of agreement regarding issues such as
17 traffic.

18 Q. And DEA or David Evans and Associates
19 worked on the traffic issue?

20 A. Yes.

21 Q. Did they work or did they communicate or
22 negotiate with the City of Shoreline? Was that part
23 of their job?

24 A. Not negotiate, not negotiating, but, but --
25 well, to negotiate the scope of the study was



1 definitely a part of that, but ultimately the
2 objective was to try to achieve a memorandum of
3 understanding with the city on how traffic would be
4 managed and mitigated.

5 Q. And how long did that process take before
6 you reached -- or let me strike that.

7 Was a memorandum of understanding ever
8 reached with the City of Shoreline?

9 A. No.

10 Q. And how come?

11 A. Well, I think Kirk Harris would be a better
12 person to testify to that, but just it seemed as if
13 there were changes in the administration, new mayors
14 that came in, differences of opinion. It seemed as if
15 it was a moving target.

16 Q. Were traffic studies taking place at the
17 time or was just -- was the traffic evaluation just
18 essentially limited to negotiating with the City of
19 Shoreline?

20 A. There was a whole lot of analysis. I have
21 probably never seen such a thorough traffic study with
22 so many intersections that were required to be
23 analyzed.

24 Q. And was the traffic study and traffic
25 analysis a necessary prior activity before you were



1 able to do any other work on the project?

2 A. I don't know specifically.

3 Q. Well, let me ask you this. Was it
4 important to know how much traffic could go through
5 there before you could do work on any other part of
6 the project?

7 A. Well, absolutely. I mean, it was a prudent
8 approach to a project to -- as a part of your due
9 diligence -- basically, my approach to most projects
10 is to seek out the fatal flaws and deal with those
11 first and don't waste the client's money on doing
12 unnecessary studies that -- well, basically, studies
13 that would not be necessary if you couldn't first take
14 care of that, that most obvious fatal flaw.

15 And so, that was the -- the traffic was and
16 is a big, big issue and so it was very important to
17 try to come to terms with the various -- the county
18 and the municipalities affected by the project.

19 Q. And what you just described, is that the
20 advice that you gave to owner of the property at the
21 time to deal with the traffic before -- or the fatal
22 issues before proceeding?

23 A. I personally don't know that I gave that.
24 I did when I had my first involvement with the
25 original Paramount Petroleum owner suggest that an



1 approach to the project was to first do an inventory
2 of the capacity of the existing road network and maybe
3 use that as the starting point for what the capacity
4 of the project might be.

5 Q. Do you know how long that traffic analysis
6 took in your -- in the negotiations with Shoreline?

7 A. Years.

8 Q. So in those years, were you doing -- or was
9 other project development work taking place?

10 A. No, not to my knowledge. There may have
11 been things going on that I was not aware of, but as
12 far as David Evans and Associates is concerned, we
13 were pretty much in a holding pattern on other -- on
14 other issues until that got resolved.

15 There were some things that happened with
16 the Brightwater tunnel, Brightwater portal project
17 with King County. They were condemning a portion of
18 the property, and we had involvement with that.

19 Q. By the way, I think your testimony earlier
20 was that a memorandum of understanding with Shoreline
21 was never reached. I just want to make sure I
22 understand, and we clarify that.

23 Was there an agreement with Shoreline on
24 how the track study would be performed?

25 A. At one point I believe there was, but I



1 think that may have changed with time.

2 Q. Okay.

3 A. I don't know if they abided by what was
4 once agreed upon.

5 Q. So years before the traffic study was
6 completed, did DEA ever complete that traffic study?

7 A. Yes.

8 Q. Okay. And do you know when that traffic
9 study was completed?

10 A. No, I couldn't give you a specific date.

11 Q. Okay. Let me just get a general
12 understanding from you of, you've talked a little
13 about the process of how to get this project
14 permitted. You've talked so far about the
15 investigation of the potential development, which
16 included some of the early traffic studies, correct?

17 A. Yes.

18 Q. And then, the next phase in the entitlement
19 process. What would you call that next phase of the
20 entitlement process?

21 A. Well, the development of the site plan, so
22 that's when the architect was brought on board and
23 then getting the design team together, to include the
24 various consultants that would be necessary to support
25 a land use application.



1 Q. Okay. And that part of the process, it's
2 to determine whether a project is feasible or not?

3 A. Yes.

4 Q. Okay. And in your experience, what's the
5 level of detail that's required in that part of the
6 process that you've normally seen?

7 A. Well, typically for a project of this
8 magnitude, it's prudent to approach it as a master
9 plan and have a template and blueprint design
10 guidelines to move forward, and so you would do 30
11 percent level plans, I'd say, to get -- so that you
12 can identify what the critical elements of the project
13 are and what issues need attention and to what extent.

14 Some issues need more than others. This is
15 a very complicated project because of context, and so
16 that's it.

17 Q. Have you ever worked on a urban center
18 project in Snohomish County before this one?

19 A. I had some involvement with one of the
20 earlier urban center demonstration projects back in
21 the very beginning, when that, that demonstration
22 program first came out.

23 Q. And is this project, in your opinion,
24 unique from the -- that urban center project and other
25 urban center projects you're aware of?



1 A. This project is probably the most unique
2 project I've worked on in 40 years of doing consulting
3 in Snohomish County.

4 Q. Just give me a general idea. Tell me why
5 this project is so unique.

6 A. As I mentioned, the context. Another
7 interesting aspect of that is it's been Snohomish
8 County jurisdiction, yet access comes from King
9 County, essentially, Shoreline.

10 The fact that it's a brownfield site and it
11 is basically a potentially transformative project that
12 we're taking a degraded industrial contaminated site
13 and returning it to the people, and in the process
14 creating a whole lot of opportunity for jobs.

15 Q. Now, much has been made about the fact that
16 it's now 2018 and this project began in 2011, and
17 seven years later we still don't have a plan that's
18 approvable by the county. You're aware of that
19 criticism, correct?

20 A. Yes.

21 Q. And do you have any response to that
22 particular criticism?

23 A. Yeah, I think it's completely unfounded.
24 We're working on subdivisions that received approval
25 prior to 2007, and they're given until -- because of



1 the recession, they were given special dispensation to
2 be completed, I believe, in July of 2019, for example.

3 The county has numerous projects, such as
4 the motorcross track, Bakerview, which was just
5 referenced, (unintelligible) Estates, the list goes on
6 and on.

7 But when I first started working in 1977,
8 one of the projects I began working on was Silver Firs
9 was one of the first, probably the first master
10 planned community in Snohomish County, and I've always
11 felt that that model that was used contract rezone for
12 Silver Firs, Snohomish Cascade, and Harbor Pointe, all
13 three of those master plan communities that I did
14 extensive work on was probably a more appropriate
15 model.

16 For a project such as this with a, you
17 know, a 10, 15 year permitting process and then a 25
18 to 30 year build-out process, we all know that
19 conditions will change, market forces will change
20 through the life of this project. It needs to be a
21 template. It needs to be something that can be
22 adjusted to conform to changes in demographics in
23 society and technology in order for it to be
24 successful; otherwise, it will never move forward,
25 because there will be some -- at some point where the



1 model that is -- if it's a hard-and-fast model, it
2 won't fit the marketplace. There will be no demand.

3 And so, basically, what's happening, if you
4 look at all the urban centers in Snohomish County,
5 they're basically apartment complexes, four stories
6 over a wood frame construction over one or two stories
7 of concrete at grade parking.

8 Q. And that's not what we have here, correct?

9 A. Nothing at all like that. Yeah, the other
10 side of the coin with the urban village designation,
11 the inventory of urban village designated property,
12 which the placeholder zone is neighborhood business,
13 those things are all getting consumed for small lot
14 subdivisions for the most part.

15 That's what I'm seeing, townhomes, small
16 lot subdivisions. They're referred to as fee simple
17 townhomes, and I'm not seeing a lot of planner
18 versions of urban villages being constructed in
19 Snohomish County.

20 Q. So in your experience, there's nothing of
21 this scope in Snohomish County?

22 A. No.

23 Q. Has there ever been anything of this scope
24 in Snohomish County?

25 A. Not -- no, not on a multi-family basis.



1 The master plan communities in the county for the most
2 part have all been single family detached housing.

3 Q. By the way, let's go back to that timeline
4 for a second. 2011 is when the application was filed,
5 correct?

6 A. Yes.

7 Q. Yeah. And there's been three years of
8 litigation, correct?

9 A. Yes.

10 Q. And there was several years of actual
11 traffic issues with Shoreline, correct?

12 A. Yes.

13 Q. Now, PDS issued a determination of
14 significance and a request for comments on the scope
15 of EIS in February 2014. Do you recall that?

16 A. Yes.

17 Q. What's the significance of that
18 determination of significance and request for comments
19 on scope of EIS on the timeline?

20 A. Well, at the time, when that happened, the
21 code was such that the so-called 120-day clock would
22 stop to allow for the preparation of the environmental
23 impact statement, the draft environmental impact
24 statement.

25 I just recently was advised that there was



1 some code change in 2016, I believe it was, where they
2 put a 18-month time period on the preparation of
3 environmental impact statement, which is not very much
4 time for a project such as this.

5 Q. Are there exceptions to those timelines?
6 Are there ways of getting around those timelines?

7 A. I don't know.

8 Q. Okay. So, this feasibility stage, your
9 testimony is that it's approximately 30 percent of
10 completion or 30 percent design is what's reasonable
11 and in your opinion to determine feasibility of a
12 project?

13 A. Yeah, not only in my opinion, but the
14 guidance that ecology gives for the preparation of an
15 environmental impact statement, that's the level that
16 -- they don't say 30 percent, but they say a level
17 that's sufficient to identify the issues to be
18 analyzed within the EIS is what would be necessary.

19 Q. So after this feasibility stage, after the
20 stage where the county approves the project and -- and
21 when I say approve the project, there's no actual
22 permits involved or any permits submitted in that
23 feasibility stage, correct? The project is not
24 permitted --

25 A. Well...



1 Q. -- for construction?

2 A. Oh, no, no.

3 Q. So after the feasibility stage, what's the
4 next step and what has to happen to the property
5 before you can move forward?

6 A. Well, in this particular instance, you're
7 going to have to get a no further action determination
8 from ecology for the cleanup.

9 Q. And have you been involved in that process
10 before?

11 A. Yes.

12 Q. And in your opinion, how long does that
13 process usually take?

14 A. It's project specific. It depends upon the
15 complexity of the -- of the project. A lot of it
16 depends upon -- frankly, a lot of it's political
17 sometimes. But the -- and then there's the, you know,
18 the -- there's probably three sides to the story.
19 There's the ecology, there's the parties responsible
20 for the cleanup, and then there's the local agency
21 that would be involved in the whole thing. But it
22 could take three to seven years.

23 Q. Before you get a no further action letter?

24 A. Yes.

25 Q. Were you in the room today during the



1 testimony of Mark Dagel?

2 A. Yes.

3 Q. And were you here when cross-examination
4 took place regarding the phasing and the effect on
5 cleanup and things like that?

6 A. Yes.

7 Q. Okay. So one of the criticisms was that
8 there would be potentially residents onsite while
9 cleanup of the second phase was going to be taking
10 place. Did you -- is that what you understood part of
11 the criticism to be?

12 A. I heard that.

13 Q. Okay. Do you have a response to that, Mr.
14 Mulver?

15 A. I find it very, very unlikely for many
16 reasons that that would occur.

17 Q. And what reasons would that be?

18 MS. KISIELIUS: I would like to
19 object. Could you qualify the witness to speak on
20 this issue? His involvement perhaps in past
21 remediation projects or involvement with ecology.

22 Q. (BY MR. VASQUEZ) Go ahead, Mr. Mulver.

23 A. Well, I have worked on various projects
24 that required cleanup and, you know, there's the issue
25 of not being able to obtain a building permit until a



1 letter of no further action is received from ecology,
2 and in this particular instance, while phase is being
3 -- trying to achieve that --

4 MS. KISIELIUS: Mr. Vasquez, would you
5 like to qualify the witness?

6 MR. VASQUEZ: Sure.

7 Q. (BY MR. VASQUEZ) Mr. Mulver, are you --
8 are you familiar with the permitting process -- the
9 process from cleanup to permitting to construction to
10 actual occupancy?

11 A. Yes.

12 Q. And how are you familiar with that process?

13 A. From working on projects that we're
14 required to go through that process.

15 Q. So you've worked on other projects before
16 where there's been cleanup on the property, correct?

17 A. Yes.

18 Q. And permits can't be acquired until no
19 further action letters are submitted, correct?

20 A. When there's a change, proposed change in
21 use such as this.

22 Q. Okay. And you are familiar with the length
23 of time it takes to get a construction permit issued
24 in Snohomish County, correct?

25 A. Yes.



1 Q. And how are you familiar with that process
2 and timeline?

3 A. Through 40 years of processing commercial
4 building permits in Snohomish County.

5 Q. Okay. And then, after the permitting
6 process, are you familiar with the next steps of a
7 project towards completion?

8 A. Yes.

9 Q. And what would that next step be?

10 A. There's -- well, of course integral to --
11 nothing happens without financing. That's something
12 that the developer has to figure out, but there's --

13 Q. Absent financing.

14 A. There's the construction side of things,
15 and the county only handles the building and
16 structures, but in this particular instance there
17 needs to be a license from the Burlington Northern
18 Railroad to construct a new bridge and demolish
19 existing bridge. There's --

20 Q. Well, now wait a second. I'm just talking
21 about your general experience. We'll go back to the
22 specifics of this site in a second.

23 A. Basically, the -- you need to obtain the
24 building permits to do what you want to do and then
25 you have to build them and have the construction to be



1 inspected and accepted.

2 In this particular instance, you have some
3 -- the backbone infrastructure that's necessary to
4 support the residents within there. You need the
5 roads, the bridges, the sewer systems, the electrical
6 systems, the water systems. Those all have to be
7 constructed even before you can start to build the
8 building.

9 So, there's quite a long period of time.
10 Typical fast track commercial building permit in
11 Snohomish County is probably a year for a complex
12 project such as this --

13 Q. And how do you know that? How do you know
14 it's a year?

15 A. I've been doing it for 40 years.

16 Q. Okay. And you've been involved in
17 application of permits and trying to obtain permits,
18 correct?

19 A. Yes.

20 Q. Okay. And again, in your experience, how
21 long does it take to get a typical building permit
22 here in Snohomish County?

23 A. Typical commercial building permit is, I
24 guess I would say, one for a site that's zoned
25 already, is a year.



1 Q. Is there any way to rush that or increase
2 the availability of that permit?

3 A. I have seen things rushed through political
4 pressure, and I have seen things rushed because it's
5 something that is appropriately deemed very important,
6 like a public school that's prioritized.

7 Q. So let's go back for a second. You said
8 before anything can happen there has to be a no
9 further action letter, correct?

10 A. Right.

11 Q. And have you been involved in the process
12 of trying to obtain a no further action letter from
13 ecology?

14 A. No. I rely on other consultants to --
15 typically it's a ge -- technical engineer specializing
16 in cleanup that takes the lead in the effort of
17 obtaining the letter.

18 Q. But do you have any idea how long something
19 like that takes?

20 A. My experience is that from the time the
21 discussions about the cleanup with ecology commence to
22 the time where you get the letter, or actually even
23 put the plan together, can take as much as four years.

24 Q. Okay.

25 A. And then the actual cleanup efforts begin



1 to commence. So, so it's, again, site specific. The
2 particular pollutants that you're trying to deal with
3 can come into play as to how much time it might take.

4 So --

5 Q. It's at least --

6 A. -- it varies.

7 Q. -- a year or two or more than that,
8 correct?

9 A. Oh, yes.

10 Q. Okay. And then, the permitting process.
11 Based upon your experience, do you have an opinion as
12 to how long it might take to permit that first phase
13 of this development?

14 A. Because it's a complex -- this, of course,
15 would happen after the shoreline substantial
16 development permit was issued. Then you could file
17 for your building permit applications.

18 A complex project like this, I'd say year
19 and a half, two.

20 Q. And then, I think your testimony was that
21 infrastructure construction takes place?

22 A. Correct.

23 Q. And then, after infrastructure,
24 construction would be actual building construction?

25 A. Yes.



1 Q. So let's just say from the time of applying
2 for the permit to the time that buildings can be
3 occupied, do you have an opinion as to how long that
4 would take?

5 A. For -- well, it varies with the buildings
6 that I see on the site plan. Some of the towers I
7 would think that they would take probably two years to
8 construct. Some of the other buildings might be a
9 year, 18 months, the smaller buildings.

10 Q. So overall, let me ask you that question,
11 overall from application of the permit until
12 occupancy, do you have an opinion as to how long that
13 process would take?

14 A. Three to five years.

15 Q. Three to five years. Before you get the
16 NFA for phase one, your understanding of this process,
17 is it the owner's intention to not begin cleanup work
18 on phase two or phase three?

19 A. I don't know what the owner's intention is
20 as far as the cleanup is concerned. I'm sure that's
21 premature if they haven't. As I understood Mr. Dagel
22 testify, they haven't actually entered into formal
23 discussions with ecology.

24 Q. As a consultant in the entitlement process,
25 would you have a recommendation for the owner as to



1 whether they should continue the cleanup process while
2 the development of phase one is taking place?

3 A. Absolutely. I would recommend that they --
4 once they commence, they don't stop.

5 Q. And is it possible that cleanup of phase
6 two would be complete before any residents are
7 actually living in phase one?

8 A. I find that very hard to believe. This
9 project had a market study in which they estimated a
10 rate of absorption of about 140 units a year. So
11 you're talking with throwing a little recession now
12 and then, it's a 25 to 30 year build-out, and so, so
13 if you were to cut it up into phases of, say, four
14 phases or three phases, say, a thousand units per
15 year, by the time -- well, they're probably not going
16 to pull the trigger on phase two construction until
17 they have a pretty clear idea about when phase one's
18 going to be built out.

19 And they'll then be market for phase two.
20 So, you know, there's going to be 12 years of building
21 and selling in phase one that will have passed by
22 while the phase two is being cleaned up. All the
23 demolition, all the noise, smells, stuff will have
24 passed by the time phase one is essentially ready for
25 occupancy for the first building at phase one.



1 Q. And so essentially what you're saying is
2 that the county -- or the property owner gets a no
3 further action letter, the permitting process begins,
4 the construction of the infrastructure, the
5 construction of the actual buildings, then occupancy,
6 correct? Is that the process?

7 A. Yes.

8 Q. And at the same time demolition and cleanup
9 are taking place on the other phases?

10 A. Correct.

11 Q. Okay. By the way, was DEA at all involved
12 in the analysis of the shoreline master management
13 plan or anything related to the shoreline?

14 A. For the master program we provided a
15 consistency narrative that was submitted and concluded
16 at the original SEPA checklist in 2011. That was
17 prepared by Dennis Derickson, who authored the
18 original 1972 Snohomish County Master Program. He was
19 a former employee of ours.

20 Q. By the way, you just talked about the SEPA
21 checklist. What exactly are you talking about?

22 A. The project had an expanded SEPA checklist
23 that was prepared. The standard state SEPA checklist
24 embellished with some additional information pertinent
25 to the context of this, this property, to include the



1 shoreline narrative.

2 And I believe there's some traffic
3 information in there as well. That's above and beyond
4 what you would normally have within a standard SEPA
5 checklist.

6 Q. Who, who produces or creates this SEPA
7 checklist?

8 A. In this particular case, I think it was
9 Denny Derickson that handled the lion's share of that.

10 Q. Okay. Did that SEPA checklist, did that
11 include any -- or did that involve any input from
12 Snohomish County?

13 A. No.

14 Q. Okay. The SEPA checklist is just a
15 checklist of items to be completed for the SEPA
16 process. Is that what you're -- is that what you're
17 saying?

18 A. The SEPA checklist is a state Department of
19 Ecology document. They include guidelines for how to
20 fill it out, but it asks generalized questions about
21 the project. There's a SEPA checklist for nonproject
22 actions such as a zone change, but there's for
23 projects involving construction or development.

24 It's more in-depth. Asks you questions
25 about is there sewer availability, water availability,



1 who provides it, asks questions about surface water,
2 ground water, wildlife, and the SEPA checklist will
3 just take little snippets out of this supporting
4 documents that typically accompany a land use
5 application to give a brief description of that
6 particular subject.

7 Q. This SEPA checklist, it involved -- or it
8 included a instruction or requirement to address
9 shoreline management master plan?

10 A. Well, it more asks -- well, we included an
11 analysis, a narrative, consistency narrative, in this,
12 in the SEPA checklist, but it does ask, does the
13 project involve shorelines of the states. That's one
14 of the questions that you have to answer.

15 Q. And a consistency narrative, exactly what
16 are you talking about?

17 A. Well, basically the shoreline master
18 program has goals and policies that you're supposed to
19 adhere to and you're supposed to select which ones you
20 feel are applicable to the project and then provide an
21 answer as to how, how your project is consistent with
22 those goals and policies.

23 Q. Now, have you had any involvement in that
24 narrative?

25 A. Well, yes, when the project was recently



1 revised to change a few things, I updated the original
2 2011 narrative.

3 Q. And how did you update that narrative?

4 A. Well, I basically just scrubbed certain
5 things that were no longer applicable and added things
6 that were.

7 Q. Do you recall what it is that you scrubbed
8 from that original narrative?

9 A. The original one talked about some
10 commercial uses on the pier, which I guess became a
11 problem because the master program wouldn't allow them
12 because of the designation as conservancy.

13 There was originally the desire to daylight
14 Chevron Creek or have a open water component to the
15 project, but that was removed from the project, so
16 that discussion of doing that was taken out. There
17 might have been some other things. I don't -- oh, one
18 of the things that it did specifically say was that
19 the sea wall would be basically deconstructed and that
20 another sea wall would be constructed further inland
21 to allow for the beach restoration.

22 But the plan now is not to reconstruct or
23 build a sea wall, so I scrubbed mention of the
24 construction of a sea wall.

25 Q. But there is a walkway, correct? And I



1 can't remember what the term is that's used for that.

2 A. Esplanade.

3 Q. Esplanade. Okay. But that's not included
4 in the narrative, correct, that you -- that you
5 changed or updated?

6 A. The esplanade remains in the narrative.

7 Q. Was it originally in the narrative?

8 A. Yes.

9 Q. I'm trying to figure this out.

10 A. Yes, yes, yes.

11 Q. Okay.

12 A. I think the discussion was whether the
13 esplanade constituted a sea wall. I heard Randy
14 Middaugh's testimony the other day, and that's not the
15 intent of the design.

16 And what Mr. Gerken from Moffatt Nichol and
17 the wind and wave analysis that was done, is that the
18 intent is to push the esplanade sufficiently far away
19 from the shore so that natural wave action will have
20 the ability to run up the shore, even in, you know, a
21 storm environment, without risking erosion of the
22 esplanade.

23 Q. Okay. And let me make sure I got that
24 correct. It's in your updated narrative, correct, the
25 esplanade?



1 A. Yes.

2 Q. Okay. But your updated narrative does not
3 contemplate any commercial use for the dock or piers,
4 whatever it's called?

5 A. No, it does not.

6 Q. And if it does, it's a mistake or
7 incorrect?

8 A. That would be correct.

9 Q. By the way, now, DEA, were they also
10 involved in the determination of whether you use a
11 ordinary high water mark or a mean high high water
12 mark?

13 A. Yes.

14 Q. And when did that occur?

15 A. Well, I need to rephrase that. When the
16 original fieldwork was done in November of 2009, the
17 guidance was that the shoreline would be -- in areas
18 where it's difficult to determine, would be the
19 appropriate default was to use mean high high water.

20 Q. And when was this?

21 A. In November of 2009.

22 Q. Okay.

23 A. I do recall around that era hearing from
24 our biologist that there were differences of opinion
25 from various regulatory agencies, such as ecology and



1 fish and wildlife, as to what the appropriate -- how
2 to appropriately define the shoreline location.

3 So, because of the fact that three-quarters
4 of this property had a sea wall and then the south
5 corridor was basically open beach for the most part,
6 sand, it was very difficult to point to something and
7 say that's where the shoreline is.

8 And so, we did what many did at the time
9 and just used the elevation, mean high high water, and
10 that contour as the basis.

11 The ecology came out with guidelines in
12 March of 2010 for determining the shoreline. That
13 included some of the procedures that Gray Rand
14 testified to earlier today, and they recently updated
15 them in 2016.

16 Q. Okay. So the original study or report was
17 done in 2009, correct?

18 A. The first draft came out in 2009. That's
19 correct.

20 Q. And that's before the application was
21 filed, though, right?

22 A. Yes.

23 Q. Okay. But it was used for the application?

24 A. Yes.

25 Q. Okay. And that report wasn't updated until



1 --

2 A. There's minor -- there must have been some
3 minor updates in 2010. That was the date on the
4 cover, but that was the date of the application.

5 Q. Okay. So, your understanding, and make
6 sure this is clear, were there guidelines at the time
7 of that 2009 report to determine the ordinary high
8 water mark?

9 A. What my understanding is from speaking to
10 our biologist at the time, he was following the
11 appropriate procedures for determining the shoreline
12 location.

13 Q. And the appropriate procedures were
14 contained where or were they contained anywhere?

15 A. I don't know. I could only speculate that
16 they were as part of the WAC.

17 Q. I don't want you to speculate, but, okay.
18 And I believe it was Mr. Derickson that did that
19 analysis in 2009, correct?

20 A. Denny was a planner, shoreline planner.
21 Denny Derickson. He did the consistency narrative,
22 which is a planning document, but the actual location
23 of the shoreline, that was conducted by Scott Swarts,
24 a former biologist with David Evans and Associates.

25 Q. So the biologist, he is the equivalent of



1 Gray Rand today?

2 A. Yes.

3 Q. Okay. So he did that work in 2009?

4 A. Correct.

5 Q. Based on the generally accepted guidelines
6 and principles at the time?

7 A. Yes.

8 Q. Okay. And at some point that changed,
9 correct?

10 A. Yes.

11 Q. Okay. And you believe it was sometime in
12 2010?

13 A. Yes.

14 Q. Okay. But the mean high high water mark
15 stayed on the report until -- well, it's still on the
16 report, correct?

17 A. Yes.

18 Q. And do you have any idea why?

19 A. Well, we were asked to address comments
20 received from the county recently and they were
21 talking about the discrepancy on some of the various
22 exhibits. Some said OHWM and some said MHHW, and they
23 just wanted it to be consistent. So in order to make
24 it consistent, we just went back to the default of
25 2011 with the original application --



1 Q. Okay.

2 A. -- to which the project was -- rules and
3 regulations which the project was vested.

4 Q. So just going back to the timeline really
5 quickly. The determination of significance was in
6 2014. What happens after that determination of
7 significance is issued by PDS? What's the next step
8 that happens?

9 A. The next step is scoping for the
10 preparation of a draft environmental impact statement.

11 Q. Okay. So before then, because of this
12 lawsuit and the traffic issues, nothing has really
13 taken place, correct?

14 A. Correct.

15 Q. Okay. So in 2014 is when the actual
16 legislation, pejoratively put, action starts?

17 A. Yes, and I would characterize that as
18 actions internally for figuring out what the next
19 steps would be for advancing the project.

20 Q. Okay. So even though the -- the permit
21 application was filed in 2011, really, that February
22 2014 date is a significant date, correct?

23 A. Absolutely.

24 Q. Okay. And that's when the actual project
25 design and development begins, correct?



1 A. Yes.

2 Q. Okay. What is, in your opinion, the
3 appropriate percentage of the design to allow the SEPA
4 process to proceed?

5 A. Thirty percent.

6 Q. Okay. In your opinion, are we or -- sorry.
7 Not we -- is the client at 30 percent?

8 A. I'd say in some areas they're at 30
9 percent, and then there's other areas that they are
10 far in excess of 30 percent.

11 Q. Far in excess of 30 percent. Is that
12 because the client wanted you to be far in excess of
13 30 percent or is there a reason why they're far in
14 excess?

15 A. No, the client wouldn't have asked us to do
16 anything more than what was necessary to receive
17 approval of -- or comply with the requirements for the
18 application, but in order to deal with the traffic
19 issues, for example, there was, as I stated
20 previously, a monumental amount of work that was done
21 to analyze the road systems.

22 Q. You think the traffic issue is over 30
23 percent?

24 A. Yes.

25 Q. Are there any other aspects of this project



1 that are over 30 percent that you can think of?

2 A. Well, the whole -- what 30 percent means to
3 me means something different to another consultant.

4 So I'd say that --

5 Q. I'm only asking for your opinion. So, go
6 ahead.

7 A. I'd say that the site plan is -- the latest
8 version of the site plan is probably in excess of 30
9 percent.

10 Q. Are you aware that the SEPA process or the
11 environmental impact study process has been stopped by
12 the county?

13 A. Yes.

14 Q. And do you have an understanding as to why?

15 A. Yes.

16 Q. What is your understanding?

17 A. Ryan Countryman informed me that there's
18 been some issues with projects that had gone forward
19 without having a very detailed site plan. He didn't
20 go into details, and I didn't ask what they were, but
21 he felt that it was absolutely necessary to have this
22 site plan airtight to include questions such as is
23 there enough headroom in the underground parking
24 garage for the pneumatic garbage collection system. I
25 thought that was over the top.



1 Q. Any other examples where perhaps the design
2 requirements were more than you've experienced in the
3 past? For the DE -- the SEPA process, I'm talking
4 about.

5 A. Well, generally, I think that for the
6 purposes of SEPA, the EIS, the -- you need to do
7 enough to prove the project is feasible. And again,
8 that's a subjective call, but possibly we meet or
9 exceed all those thresholds with the work product that
10 has been submitted to date.

11 Q. And that's the phase of the project that
12 we're in, correct, the feasibility stage?

13 A. Yes.

14 Q. Okay. Was there ever any written comments
15 from the county as to what would be necessary to
16 restart the SEPA process, do you recall?

17 A. Well, in December of 2004, I attended a
18 meeting with Ryan Countryman and Gary Huff and others.

19 Q. Well, let me just stop you right there.
20 You said December of 2004.

21 A. Oh, excuse me. '14.

22 Q. Okay.

23 A. At that time, my notes indicate that Ryan
24 had agreed to move -- authorized the EIS consultant to
25 move forward with preparation of the EIS on the basis



1 of the materials that had been submitted to date, the
2 site plan materials that had been submitted to date.

3 Subsequently, in I believe it was January
4 of 2015 that was taken off the table and things -- it
5 never -- they never did authorize a restart.

6 Q. Did they advise you of conditions necessary
7 to restart?

8 A. Yeah, and that was basically to --
9 basically, bring the site plan up to a level of a site
10 plan sufficient to support a commercial building
11 permit application, is the way I put it, just like the
12 other apartment complex type urban centers that the
13 county has approved.

14 Q. To the level -- and I don't know if I
15 misheard you. To the level of a commercial building
16 permit application, correct?

17 A. No, right.

18 Q. Is that what you said?

19 A. Right.

20 Q. And those were the terms that Mr.
21 Countryman used?

22 A. No, but that is the basically the -- for
23 example, there's -- there's a site plan checklist that
24 we're being asked to use that is prepared by the
25 county. It tells you what they want to see on your



1 site plan to support a commercial building permit
2 application. We're basically being told that this is
3 the same checklist that we're supposed to use.

4 Q. Was that site plan checklist provided to
5 you by the county?

6 A. Yes.

7 Q. Okay. And that was the requirement for
8 moving forward with the SEPA process?

9 A. Well, there were -- there were -- the
10 project team felt that they had complied with that,
11 but staff is asking for more detail.

12 MS. KISIELIUS: I'm going to object.
13 There's been a whole lot of hearsay about meetings.
14 Unless there's some evidence that you can provide
15 regarding meeting notes or anything that reflects
16 these meetings, I'm going to object on the basis of
17 hearsay.

18 MR. VASQUEZ: I think to the extent
19 that he was at the meeting and I'm asking him for his
20 understanding based upon his attendance at the
21 hearing, I think those are appropriate questions. And
22 also, I believe that the hearing examiner has a little
23 bit of leeway with respect to hearsay.

24 Q. (BY MR. VASQUEZ) Yeah, I'm not asking for
25 any meetings that you weren't present at, Mr. Molver.



1 I'm asking for meetings and conversations you've had
2 with the county. Do you understand that?

3 A. That's what I'm testifying to. And I do
4 have notes.

5 Q. Okay. Regardless of the notes, from your
6 memory. So let's go back to the site plan checklist
7 issue. You said that the county provided the
8 applicant, BSRE, with a site plan checklist, correct?

9 A. Correct.

10 Q. And the purpose of that site plan checklist
11 was to ensure that once those items were checked off,
12 the SEPA process could continue. Is that correct, or
13 am I misunderstanding?

14 A. The typical process is that the checklist
15 is used for the purposes of determining whether or not
16 an application is complete. Staff reserves the right
17 to ask for additional information.

18 Q. Okay. I get it. And then, was it your
19 understanding or based upon your knowledge that staff
20 asked for more or additional information?

21 A. Yes.

22 Q. And in your opinion, based upon your
23 experience, that additional information amounted to
24 the information required for a commercial permit --
25 commercial building permit? Sorry.



1 A. Yes.

2 Q. Okay. But we're not in the permitting
3 stage, are we, Mr. Mulver?

4 A. We're in the land use permitting stage.

5 Q. Oh, okay. What's the difference, though,
6 between the land use permitting stage and the building
7 construction permitting stage as far as completion of
8 design plans?

9 A. The land use permits are required prior to
10 taking action on the construction permits. So the
11 typical process is to obtain land use permits that are
12 typically based upon more generalized information and
13 that's followed up with commercial building permit
14 application site plans that have more detailed
15 information.

16 Q. So at the end of this process, the
17 feasibility process, we get -- do we get a land use
18 permit, or what do we get?

19 A. The site plan approval by the hearing
20 examiner, we get a shoreline permit approval. There's
21 various variances that have been applied for that
22 would require approval. There's S deviations that
23 require approval.

24 Q. But we're not even at that stage yet,
25 correct?



1 A. No.

2 Q. We have to have a EIS performed, correct?

3 A. Right.

4 Q. Okay. And is there a checklist for what is
5 necessary for the EIS or SEPA process to take place?

6 A. Well, that -- there's a part of the scoping
7 process as to, you know, what the environmental impact
8 statement needs to include, what additional studies,
9 what supporting documents, and so forth.

10 Q. And who provides that checklist or who
11 compiles that checklist?

12 A. The Department of Ecology prepares, has
13 guidelines for the preparations of environmental
14 impact statement.

15 Q. Okay. That's not something that's provided
16 to you by a county, is it?

17 A. Well, they have adopted the ecology
18 guidelines.

19 Q. Okay. And in your opinion, has the
20 applicant satisfied that particular checklist to get
21 the SEPA process moving forward?

22 A. Well, I think that there's sufficient
23 information to allow the environmental impact
24 statement preparation to proceed. I understand that
25 the county's environmental consultant has indicated



1 that they were ready to proceed.

2 Q. Now, how do you understand that?

3 A. I've been involved with the correspondence
4 with Gary Huff on that matter.

5 Q. Have you communicated directly with the
6 environmental consultant?

7 A. I've been on conference calls with them and
8 in meetings with them in the past, but I didn't attend
9 a meeting or participate in a phone conversation with
10 them as to whether or not they're ready to proceed.

11 Q. Okay. You didn't, you didn't participate
12 in that meeting at all?

13 A. No.

14 Q. Okay. But it's your understanding that
15 that happened?

16 A. Right.

17 Q. Okay. Have you evaluated or -- start over.
18 Have you read the various comments and recommendations
19 submitted by the county to the applicant in this
20 project?

21 A. I've read some of them, not all of them.

22 Q. And what was the purpose for you to read
23 those comments and recommendations?

24 A. Primarily to understand what my coworkers
25 and myself were obligated to do to respond.



1 Q. Did you have any involvement in responding
2 to any of those comments or recommendations?

3 A. I have routine conversations with the
4 project team and my coworkers about that.

5 Q. On any particular area or any -- or, yeah.
6 Is there any particular area that you were focused on
7 in responding to the comments of the county?

8 A. No.

9 Q. So you have a general understanding of the
10 county's position, correct?

11 A. I believe I do.

12 Q. Okay. Now, the county has recommended
13 denial of the application. You're aware of that,
14 correct?

15 A. Yes.

16 Q. And they've recommended denial of the
17 application because of a substantial conflict with the
18 code based upon the applicant's submissions. Do you
19 understand that?

20 A. Yes.

21 Q. Okay. Have you ever been involved in a
22 process where the county has requested denial because
23 of a substantial conflict with the code?

24 A. Once.

25 Q. In how many years?



1 A. Forty.

2 Q. And do you recall what that particular
3 issue was?

4 A. Yeah, it was -- it was somebody who wanted
5 to basically do a gravel extraction in an area
6 exhibiting residential characteristics.

7 Q. So they wanted to do a gravel plan in a
8 residential area. Is that what you're saying?

9 A. They wanted to do some -- they wanted to
10 mine some gravel in a semirural residential area.

11 Q. So based upon your experience, are you
12 surprised at the county's position that they are
13 seeking denial of this application because of a
14 substantial conflict with the code?

15 A. Yes.

16 Q. Why?

17 A. Well, a project of this significance, it
18 just, it just, it doesn't make sense to me that it
19 would be asked to comply with the same procedures as a
20 shopping center, for example, with a -- or a rather,
21 an apartment complex with a token commercial component
22 to it. It's nonsensical. And a 30-year build-out,
23 it's nonsensical.

24 Q. But the code is the same for all these
25 projects, right?



1 A. Yes.

2 Q. The code applies to all of these projects,
3 correct?

4 A. Yes.

5 Q. Is there something in the code that allows
6 for any flexibility or any kind of response to the
7 complexity of a project?

8 A. Well, there are provisions for modifying a
9 project, but once it's -- once it's permitted, an
10 urban center project, once it's permitted, the
11 thresholds are very minor for allowing that, without
12 having to go back to the hearing examiner and the
13 architectural review board for approval of
14 modifications.

15 Q. So, basically, your kind of surprise is
16 with the interpretation or construction of the code as
17 it applies to this project. Is that what you're
18 saying?

19 A. I think a better way to describe it is that
20 my personal opinion, my professional opinion, is that
21 the code as written is not well suited for a project
22 of this magnitude.

23 Q. And what code are we referring to? Are we
24 referring to the building code, or...?

25 A. The urban center code.



1 Q. Oh, okay.

2 MR. VASQUEZ: Can I have about five
3 minutes, Your Honor?

4 THE HEARING EXAMINER: What's that?

5 MR. VASQUEZ: Can I have about five
6 minutes?

7 THE HEARING EXAMINER: Sure.

8 MR. VASQUEZ: I might be at the end of
9 the testimony here.

10 THE HEARING EXAMINER: Okay. Let's
11 come back at 4:30.

12 (Break in recording.)

13 Q. (BY MR. VASQUEZ) We talked about the code
14 and possible ways to work with the code. Do you know
15 what a variance is, Mr. Mulver?

16 A. Yes, I do.

17 Q. And can you tell me, in your experience,
18 what is a variance? What's it for?

19 A. Well, when you encounter a circumstance
20 that the code as written cannot easily be complied
21 with, reasonably be complied with, and yet you have a
22 certain element of a project that is essential for the
23 project, the code provides a variance procedure where
24 it outlines the criteria that need to be met and under
25 which the hearing examiner would approve the variance.



1 You have to provide justification as to
2 basically why -- how the request meets those criteria.

3 Q. What about a deviation? And pretend I'm
4 the village idiot. What's the difference between the
5 variance and a deviation?

6 A. Well, a variance is typically something
7 that's related to the unified development code, a
8 zoning issue, whereas deviations are typically related
9 to engineering standards.

10 The code also has provisions for the urban
11 center -- or excuse me -- the urban development code,
12 Unified Development Code, UDC, has provisions for
13 something they refer to as modifications.

14 Also, waivers that are used is another term
15 that's used for -- these are all mechanisms to
16 basically have your -- a certain element of your
17 project be different than what the code explicitly
18 states.

19 Q. And is it typical on a project of this
20 size, maybe not complexity, for a number of variances
21 and deviations to be applied for?

22 A. Oh, yes.

23 Q. By the way, there's been a lot of testimony
24 about the secondary access road. Do you have any or
25 did you participate at all in any aspect of the



1 secondary access road?

2 A. Yes, I had a lot of involvement with that.

3 Q. And can you describe what your involvement
4 in that is?

5 A. Early on, I participated in a meeting with
6 Carla Nichols, the mayor of Woodway, to discuss how
7 the town would feel about having a second access,
8 because I identified early on that if ever there was
9 to be one, it would have to pass through a portion of
10 the town of Woodway, and so it was important to have
11 conversations about that.

12 The response we got was that they might
13 consider it, but only for emergency vehicles and
14 pedestrian use. And I also specifically recall that
15 because they had a record of drainage issues on the
16 hillside, that they would want to use low impact storm
17 water techniques. She was the mayor speaking.

18 Q. When did you -- or were you always aware
19 that a second access road was necessary for this
20 project?

21 A. I was always aware that the county has a
22 unique threshold of 250 average daily trips on a dead
23 end road. Woodway doesn't have that threshold.
24 Shoreline doesn't have that threshold. It's unique to
25 Snohomish County.



1 So that is an issue that I knew was there
2 from the get-go, but the code also has the engineering
3 standards -- rather, the EDS has provisions for
4 deviations, and if ever there was an opportunity to
5 meet the criteria for approval, this would be one of
6 them because of topographical constraints,
7 geotechnical constraints, the railroad, shorelines, a
8 lot of reasons why, and let alone the reluctance of
9 the other municipality that would be involved in a
10 decision-making process to allow it.

11 So it seemed as if working up to making the
12 land use application that the responses that we got
13 from county staff were that they were somewhat
14 ambivalent as to whether it should be needed or not.

15 So that's why when the application came in
16 there was no secondary access included.

17 Q. Okay. So your discussion about the
18 deviation was for a deviation from requiring the road
19 altogether. Is that correct?

20 A. Right.

21 Q. And these discussions took place between
22 you and who?

23 A. The county staff.

24 Q. Okay. And when did these discussions take
25 place?



1 A. Well, they were -- they bounced back and
2 forth from prior to the 2011 application up until
3 December of 2015, when I was informed thou shalt have
4 a second access.

5 MS. KISIELIUS: Your Honor, Mr.
6 Examiner, if you're going to allow hearsay, can he at
7 least identify which staff members told him what,
8 when, so we can clarify that on our end?

9 THE HEARING EXAMINER: Well, I was
10 going to say, ask on cross.

11 MALE VOICE: I was going to ask that.

12 THE HEARING EXAMINER: I'll just throw
13 this out. I'm not quite sure. I have no authority to
14 grant the deviation, for example, so I'm not quite
15 sure what the utility of this is at this point. But
16 now, if you want to clear things up on cross, that's
17 why God made cross-examination.

18 Q. (BY MR. VASQUEZ) Who told you that a
19 secondary access road was needed?

20 A. Jim Bloodgood, the county traffic engineer.

21 Q. And this was again in December of?

22 A. 2015.

23 Q. Up to that point, had there been any work
24 done on a second access road?

25 A. Just concept, sketch level concepts that I



1 came up with to see whether or not it might be
2 feasible to do so.

3 MR. VASQUEZ: Q. Okay. That's all
4 the questions I have for this witness, Your Honor.

5

6 CROSS-EXAMINATION

7 BY MS. KISIELIUS:

8 Q. Mr. Mulver, Laura Kisielius, from the
9 prosecutor's office. I'll see if we can get you out
10 by 5:00 so you don't have to come back tomorrow if you
11 don't want to.

12 I'm trying to understand exactly what your
13 role is on this project. Would you consider yourself
14 a project manager?

15 A. No. I'm a land use consultant.

16 Q. Okay. Do you consult with your client on
17 project management, overall aspects of the project,
18 how to interact with the county and other
19 jurisdictions?

20 A. I wouldn't characterize it that. I'm a
21 project manager, but I'm lending advice to help assist
22 through this entitlement process.

23 Q. And do you provide a role in coordinating
24 the various consultants from different firms on this
25 project?



1 A. No.

2 Q. You had mentioned that you started looking
 3 at the feasibility of developing the site pretty,
 4 pretty early on. Could you state again what year it
 5 was you started looking at feasibility issues?

6 A. 2004.

7 Q. 2004. And I think you noted that in 2005
 8 you recognized the need for a second access road?

9 A. In 2005, I prepared an exhibit as to how a
 10 second access road might be aligned.

11 Q. What was that exhibit prepared for?

12 A. To demonstrate to the then owner how a
 13 second access might, might be constructed.

14 Q. And is that because, again, you had
 15 identified the need for a second access road?

16 A. I recognized that it was likely that there
 17 would be a call for a second access, not that there
 18 was actually a need.

19 Q. Okay. So, so you recognize that the code
 20 required a second access road and that's why you
 21 recommended determining whether one might be feasible?

22 A. I recognized that there was a good chance
 23 that there would be a call for a second road, so I
 24 tried to express a concept as to how that might be
 25 done.



1 Q. And why would there be a good -- good
2 chance that there would be a call for a second access
3 road?

4 A. Well, you know, even before 1992, when the
5 county adopted the 250 ADT threshold, it was very
6 common experience for me to have neighbors throw out
7 this issue of reasonable, safe access, and if there
8 was a project that had only one point of access, it
9 was a common, common thing that we encounter in land
10 use consulting world.

11 Q. In 2015, did you prepare a report
12 explaining why a secondary access road would not be
13 required or feasible?

14 A. Yes.

15 Q. You're not now asking for a deviation from
16 the requirement for a second access road, are you?

17 A. No.

18 Q. And you're aware that geotechnical reports
19 prepared by the applicant's consultant says that a
20 secondary access road is feasible?

21 A. Yes.

22 Q. And that differs from your analysis in
23 2015?

24 A. I would call that my opinion in 2015, which
25 was -- I'm not a geotechnical engineer, but I knew



1 that because of the Heberlein slide in that vicinity,
2 well, just general knowledge about the bluffs along
3 Puget Sound, that it would be a challenge. So I was
4 making a point that there were grounds to approve a
5 deviation to not require one.

6 Q. Okay. When were project applications
7 submitted for this project?

8 A. 2011.

9 Q. And at that time, did the applicant
10 consider the project feasible?

11 A. Yes.

12 Q. I guess I'm a little confused about the
13 description of this process that we're in. I believe
14 you've described it as a, we're trying to determine
15 whether the projects feasible at this point?

16 A. It's more we're trying to convince the
17 county that it's feasible.

18 Q. But you believed it was feasible as of 2011
19 when you submitted the project applications?

20 A. The project was feasible?

21 Q. Uh-huh. Uh-huh.

22 A. Oh, yes.

23 Q. So is this process here to convince the
24 county that a hypothetical project could be built or
25 is it to determine whether there are substantial



1 conflicts between the project application and county
2 code?

3 A. The procedures that we're undergoing today?

4 Q. This hearing, correct.

5 A. I understand that it is to seek a
6 determination from the examiner for additional time to
7 complete whatever information is necessary and to
8 complete the EIS.

9 Q. Okay. So you don't understand this process
10 to be about determining whether the application
11 materials submitted to date substantially conflict
12 with code?

13 A. Well, I think that's a part of the process
14 that we're in, yes.

15 Q. It's not to determine feasibility of the
16 project, but whether the project, as submitted,
17 conflicts substantially with code?

18 A. Ask that question again.

19 Q. Uh-huh. Is this process about trying to
20 determine whether the project is feasible or is it
21 about trying to determine whether the project, as
22 submitted by the applicant, conflicts substantially
23 with code?

24 A. Today we're talking about whether it
25 conflicts with code.



1 Q. And what is your understanding about the
2 project approvals? If this project is approved
3 through this process, what project approvals will come
4 out of this process?

5 A. This process today?

6 Q. The submission of the development
7 applications. If those are approved, what process --
8 what approvals or permits will be received by the
9 applicant?

10 A. If staff recommends approval, it moves to
11 the hearing examiner for approval of the urban center
12 site plan, the shoreline substantial development
13 permit, and whatever variances are necessary to
14 support the land use application.

15 Q. And then, subsequent to that, the only
16 thing the applicant will need to obtain are building
17 permits and construction permits for the project,
18 correct?

19 A. From Snohomish County, yes.

20 Q. Right. So, so this application process
21 that we're in right now is the only opportunity for
22 the county to determine whether this project complies
23 with county code regarding urban center requirements.
24 Is that correct?

25 A. I don't believe so.



1 Q. You don't believe so? Do you believe that
2 happens during the building permit process?

3 A. I believe if there's a building permit
4 application that is inconsistent with the code, staff
5 will advise the applicant of that and require --
6 require the building application and the building site
7 plan to be made to conform.

8 Q. If the building permit application is
9 inconsistent with the approved urban center approval?

10 A. Yes.

11 Q. Okay. But this is the only opportunity for
12 the county to determine whether the project, the site
13 plan, the concept, the design of the project, height
14 requirements, traffic requirements, whether all of
15 those comply with the urban center's code?

16 A. Yeah, the concepts, I agree.

17 Q. So did you testify that the traffic study
18 with the City of Shoreline has been completed?

19 A. I don't believe -- I don't believe that it
20 ever got completed, because there was an impasse.

21 Q. And do you know the subject matter of that
22 impasse?

23 A. I believe it had something to do with the
24 number of lanes on Richmond Beach Road. But Kirk
25 Harris, who was the traffic engineer would be most



1 appropriate to testify to that.

2 Q. Okay. And I believe you also testified
3 regarding an MOU with the City of Shoreline. Do you
4 recall that testimony?

5 A. Yes.

6 Q. What MOU were you talking about?

7 A. Well, there was an effort at one time to
8 try to come to terms with Shoreline as to how
9 mitigation for traffic impacts would be administered,
10 implemented.

11 Q. Wouldn't that MOU follow completion of the
12 traffic study, because the traffic study would
13 identify impacts?

14 A. I would think -- I would think that the
15 traffic study would have to be -- well, if you would
16 like for me to speak as a, you know, somebody who
17 would negotiate. If I was Shoreline, I'd say, I want
18 a traffic study that I can live with before I'm going
19 to sign a MOU.

20 Q. Okay. I believe you testified, though,
21 that the MOU wasn't reached with the city because of
22 changes in administration and political issues. Is
23 that correct?

24 A. I believe I said something to that effect,
25 yes.



1 MR. VASQUEZ: Your Honor, Mr. Mulver
2 wasn't really involved in this. I can fill this in.

3 THE HEARING EXAMINER: (Inaudible) for
4 this witness? It's usually (indecipherable), one
5 witness.

6 MR. VASQUEZ: We'll redirect.

7 THE HEARING EXAMINER: I'm sorry.

8 MR. VASQUEZ: We'll just redirect.

9 Q. (BY MS. KISIELIUS) I believe you testified
10 that you advised your client not to proceed with other
11 aspects of the project until the traffic study was
12 completed. Is that correct?

13 A. I don't believe I recommended that, but
14 that would be my advice to the client. I think that
15 the -- they decided that because it's such a big
16 issue, that it needed to make sure that it was -- that
17 there was mutual agreement with Shoreline.

18 Q. You didn't advise your client that it would
19 be prudent to resolve traffic issues before working on
20 other aspects of the project?

21 A. I don't specifically recall giving them
22 that guidance.

23 Q. Do you know whether the applicant has in
24 fact or did decide to proceed with only pursuing the
25 traffic impacts of the project before working on other



1 aspects of the project?

2 A. No.

3 Q. You don't know that the applicant decided
4 to defer other aspects of the project until completing
5 the traffic study?

6 A. There may have been other things going on
7 that I was not aware of.

8 Q. Do you know whether there is an expiration
9 period for an urban center approval?

10 A. I believe construction needs to commence
11 six years from the date of approval, and then I don't
12 know that there's -- once the -- once the date -- the
13 urban center has been approved, I believe that it can
14 continue to go under -- undergo construction until
15 completion.

16 But it has to commence within a certain
17 date of approval of the urban center site plan.

18 Q. Okay. So your understanding is that
19 construction has to commence within a certain number
20 of years --

21 A. Yes.

22 Q. -- after approval?

23 A. Yes.

24 Q. Okay. You testified regarding how the
25 phasing of remediation would be coordinated with the



1 phasing of the project. Is that information contained
2 anywhere in the application materials?

3 A. I don't think so.

4 Q. You also mentioned that the WAC guidelines
5 for determining the ordinary high water mark were
6 changed in 2010. Is that accurate?

7 A. No.

8 Q. When did you testify that the WAC
9 guidelines had changed?

10 A. I didn't. What I said is that ecology came
11 out with guidelines in March of 2010.

12 Q. Okay. Ecology guidelines in March 2010.
13 What was the date of the first critical areas report
14 submitted for this project?

15 A. 2009.

16 Q. So, 2009. What was the date of the next
17 critical areas report submitted by the applicant?

18 A. The first submitted was dated 2011.

19 Q. Okay. So, are you saying that one was
20 prepared in 2009, but one was not submitted to the
21 county until 2011?

22 A. Correct.

23 Q. Okay. So why weren't the new ecology
24 guidelines utilized in the critical areas report
25 submitted to the county in 2011?



1 A. I could only speculate as to why that was.
2 I didn't have any direct involvement, to my
3 recollection, that there was a discussion of it at
4 that time.

5 Q. Okay. And I think --

6 A. Other than in the report. Excuse me.

7 Q. Sure.

8 A. I know that -- I know that it was a topic
9 of discussion amongst agencies as to the appropriate
10 -- as I testified previously, there's appropriate --
11 the appropriate method to use to determine the
12 location of a shoreline, and the 2011 report submitted
13 states that there was the potential for other agencies
14 having a different view on the methodology that was
15 used on the basis of that report.

16 Q. I think you -- I think you characterized
17 the project as being at approximately 30 percent
18 design at this point. Is that correct?

19 A. Yes.

20 Q. So you have -- or the applicant has about
21 70 percent of additional work to do before it can be
22 approved by the county? It seems like simple math,
23 but it might be a more complicated answer.

24 A. Changes. For the purposes of continuing
25 the environmental impact statement, I feel that



1 there's -- it's sufficient.

2 Based on the level of information that I
3 have observed on other urban center projects in
4 Snohomish County, I think we're very close to having
5 the level of detail that was approved on other urban
6 centers.

7 Q. That was approved urban center project
8 approval?

9 A. Correct.

10 Q. So what percent design do you think those
11 other projects were at that received urban center
12 approval?

13 A. I'd say they were -- well, they were
14 approved. So I'd say that they were a hundred percent
15 -- deemed to be a hundred percent, because they were
16 approved. I obtained records from the county of
17 approved urban center projects.

18 Q. Okay. So, we're assuming that you have to
19 be at a hundred percent to be approved, but you've
20 testified that this project is at approximately 30
21 percent, but you're almost there to meeting project
22 approval. I want to make sure I understand how this
23 works.

24 A. Talking about -- it seems to me -- forgive
25 me. I'm confused, in that --



1 Q. So am I.

2 A. -- you know, I'm trying to -- I'm trying to
3 talk about what would be necessary to advance this
4 environmental impact statement, and, you know, my
5 thought, and this goes into the consolidated review
6 process, which I think, you know, I understand the
7 history of that whole process, but if -- and it has,
8 definitely has merits, and it was probably created at
9 the behest of the development community.

10 But perhaps this particular project,
11 because of its complexity, warrants culminating the
12 environmental review process before moving to the next
13 stages.

14 Q. What are the next stages?

15 A. Hearing examiner approval of the site plan,
16 hearing examiner approval of the shoreline substantial
17 development permit and supporting variances.

18 Q. Well, right. The SEPA process would have
19 to conclude before the examiner could grant approval,
20 correct? Okay.

21 If the examiner were to grant an extension
22 for the permit application, how long would you
23 recommend that extension be, given the complexities of
24 this project and where it is right now in design
25 stage?



1 A. I could -- honestly couldn't answer that
2 question without consultation with the team.

3 Q. In your experience, because you've been
4 doing this for a very long time, you've seen other
5 urban center's applications, you've testified about
6 the complexity of this project, what would be your
7 best guess?

8 A. A year and a half.

9 Q. A year and a half? To complete the SEPA
10 process and get from 30 percent design to 100 percent
11 for approval?

12 A. Yeah.

13 MS. KISIELIUS: I don't have any
14 further questions.

15 MR. VASQUEZ: Just one follow-up.

16

17 REDIRECT EXAMINATION

18 BY MR. VASQUEZ:

19 Q. Ms. Kisielius asked you about the county's
20 opportunity to review this project before approval.
21 Doesn't the county have an opportunity to review it
22 after the DEIS process is completed?

23 A. Well, yes, I mean, the project is going to
24 be subject to comments from the issuance of the draft.
25 So they will be required to review it. The project



1 will have to respond potentially to whatever comments
2 are received.

3 So there will be changes that need to be
4 reviewed by the county.

5 Q. Well, this isn't the only opportunity for
6 the county to review this project before
7 (unintelligible), right?

8 MR. VASQUEZ: That's all I have.
9 Thanks, Your Honor.

10 THE HEARING EXAMINER: Thank you, Mr.
11 Mulver.

12 MR. MULVORD: Thank you.

13 THE HEARING EXAMINER: I was going to
14 say, Mr. Vasquez, you said one more question and you
15 asked two, but kudos to you, because I usually used to
16 say only one or two more questions. It took me two
17 hours to finish. Kudos to you.

18 MR. OTTEN: Sorry, Mr.
19 (unintelligible). I have one procedural request.
20 We've had members of the -- members of the comment --
21 members of the public approach both PA's office and
22 PDS staff requesting that the written record be made
23 open for 48 hours following the last witness and so
24 we'd like to make that request at this time.

25 THE HEARING EXAMINER: (Inaudible.)



1 MR. HUFF: Your Honor, my
2 understanding was that this proceeding would have to
3 be kept open, because we're only allowed one open
4 record hearing and we're going to -- assuming we get
5 the opportunity, we're going to have to resume that
6 hearing after the EIS.

7 THE HEARING EXAMINER: Depends on how
8 I rule, of course.

9 MR. HUFF: I said assuming.

10 THE HEARING EXAMINER: Right.

11 MR. HUFF: Yes.

12 THE HEARING EXAMINER: If I -- you're
13 right. There's only one open record hearing. If I
14 were to grant more time in remand, then it remains
15 open until it's just one long hearing. Sometimes you
16 may feel that way. We're not there yet.

17 On the other hand, if I were to accede
18 to the county's request to just deny it out of hand,
19 if you will, then it's over and the open record
20 hearing is over unless and until there's an appeal
21 that reverses me.

22 MS. KISIELIUS: And I think, Mr.
23 Examiner, I think perhaps the question came out of --
24 I think you'd mentioned at the beginning of the
25 hearing that the written record would remain open



1 until the close of the hearing.

2 THE HEARING EXAMINER: Right.

3 MS. KISIELIUS: So I think that that's
4 the give and take here.

5 THE HEARING EXAMINER: I will consider
6 it, I guess. The deadlines tend to concentrate the
7 mind wonderfully, both for the lawyers and nonlawyers,
8 and leaving things open may not provide greater
9 illumination on the issues.

10 Certainly I think that both parties
11 are well represented, both the county and the
12 applicant. I would be somewhat surprised if there
13 would be information coming in from the public after
14 the close of witnesses that would be different or
15 useful. But I'll think about it.

16 I'm not -- what I -- what happens
17 after that is then applicants can say, well, I want to
18 be able to respond to what, and we have this ping
19 pong, this infinite tennis match. It's Zeno's
20 paradox, and I don't know what to do about that, other
21 than to say no, we're going to be done.

22 Certainly, you know, the public can
23 put in handwritten comments they have (unintelligible)
24 just at the close of testimony. So I'll think about
25 it overnight. But I'm inclined to say no, but I have



1 been talked off that ledge. But my initial
2 inclination is to say no. There has to be an end to
3 the hearing.

4 MS. KISIELIUS: Or to this phase of
5 the hearing, perhaps.

6 THE HEARING EXAMINER: Well, it
7 depends. We have to have SEPA on the hearing and then
8 we have to see whether we bifurcate. Yeah, so, I
9 think, I note the request. Let's leave it at this.
10 Unless otherwise explicitly said, no, when we close
11 testimony -- and I'm not sure.

12 I would have to go back and look at my
13 notes. Did we discuss how we're going to do closing
14 on this?

15 MS. KISIELIUS: We have not.

16 MR. VASQUEZ: We have not, Your Honor.

17 THE HEARING EXAMINER: I'm sorry?

18 MS. VASQUEZ: We have not, I don't
19 think.

20 THE HEARING EXAMINER: We have not.
21 And also, probably need to talk about post findings
22 and conclusions and when those will be due. And those
23 wouldn't be due until the end anyway, right?

24 MR. VASQUEZ: Correct. And also, you
25 requested briefing on the issue of discretion and



1 abuse of discretion and --

2 THE HEARING EXAMINER: Right.

3 MR. VASQUEZ: -- things like that.

4 THE HEARING EXAMINER: What I said
5 about the post findings and conclusions was, please,
6 optional, please do so by the close of the open record
7 hearing. I have had in some cases where counsel have
8 asked to have a couple of days after that to be able
9 to provide that.

10 In fact, I have one hanging fire now
11 that I'm not attending to because I'm doing this.

12 MR. VASQUEZ: We would request that,
13 Your Honor.

14 THE HEARING EXAMINER: That gives you
15 a chance to sit and think and go through your notes
16 and figure that out.

17 MS. KISIELIUS: The county would
18 appreciate that as well.

19 THE HEARING EXAMINER: Yeah, let's
20 kind of plan on that. And we'll talk more at the end
21 of the week when you know, you know, are we going next
22 week, are we going to be done this week. I'm not sure
23 if you can make that determination now, but certainly
24 by Friday you'll know.

25 MR. VASQUEZ: Will we have access to



1 the hearing transcripts?

2 THE HEARING EXAMINER: We don't do
3 transcripts. You have the verbal, the audio
4 recordings. And I'm just going to give a shout out
5 here to Ms. Davis, who has done a awesome job of
6 putting, yes, putting up the exhibits and putting
7 everything online for people.

8 So it's the audio recordings are
9 available to you, but we don't do transcripts.

10 MR. VASQUEZ: Okay. Thanks.

11 THE HEARING EXAMINER: What struck me
12 crazy, I noticed earlier, is that the system we use
13 for the record, which also the court uses and the
14 clerk's office uses, it's three minutes off from
15 Internet time.

16 You know, the Internet syncs up with
17 the national naval observatory. This FTR thing is
18 like my alarm clock at home. It runs a little fast,
19 so it's always like three minutes off, but...

20 So, why don't you talk to Ms. Davis
21 about when the audio recordings will be available.

22 MR. VASQUEZ: Okay.

23 THE HEARING EXAMINER: And we can
24 certainly figure things out so that it's in my
25 interest to let you have the time to help me help you,



1 help me help you, that whole Jerry Maguire thing.

2 So let's figure that out and think
3 about it by the end of the week. You know, if we're
4 going next week with testimony, you know, that's one
5 thing. On the other hand, if we're going to be done
6 this week, that's different. So we'll figure that
7 out.

8 MS. KISIELIUS: I believe the parties
9 are motivated to conclude this week.

10 MR. VASQUEZ: Our intention is to
11 finish our testimony with witnesses tomorrow.

12 THE HEARING EXAMINER: Okay.

13 MR. VASQUEZ: They might spill over
14 early into Friday, but otherwise, no.

15 THE HEARING EXAMINER: Right.

16 MR. VASQUEZ: And then I think
17 probably a discussion on how you want to handle
18 closing would be appropriate.

19 THE HEARING EXAMINER: Okay. Let's
20 talk about that tomorrow, then.

21 MR. VASQUEZ: Okay.

22 THE HEARING EXAMINER: Think about it
23 overnight as to how to. I want to be as efficient as
24 possible for all of our sakes. I'm also not keen on
25 making junior associates work through holiday



1 weekends. I've been there, done that, and I'm not
2 keen on making that happen.

3 So, but I also want to get -- these
4 projects are not wine. They don't get better with
5 age, is my experience. So promptly finishing and
6 trying to get a decision out, which, by the way, I'll
7 just tell you right now, 15 business days, it ain't
8 going to happen.

9 You know, I know that's what the
10 ordinance says, but -- and you know what my decisions
11 look like on cases like this. They tend to be Russian
12 novels, so...

13 But I do want to attend to it as soon
14 as possible. So let's think about that tomorrow and
15 talk to Ms. Davis about when you can get the audio
16 recordings, how you want to adjust your workload.

17 Does that all make sense? I mean, I'm
18 trying to work with you guys too, so it's kind of a
19 team effort. Okay?

20 MR. VASQUEZ: I assumed you were going
21 to rule from the bench.

22 THE HEARING EXAMINER: Sorry?

23 MR. VASQUEZ: I just assumed you were
24 going to rule from the bench.

25 THE HEARING EXAMINER: I'll do what



1 Judge Tue used to, just denied/granted, with no
2 explanation. Let you figure out.

3 MR. VASQUEZ: Yeah, that all makes
4 sense, Your Honor, and I think we can work with the
5 county and figure out a good scheduling.

6 THE HEARING EXAMINER: If you have --
7 if you would agree on it, great. I'll probably live
8 with it. If you can't agree on it, that's fine, and
9 that's why I'm here, is to help figure those things
10 out.

11 Okay. So we'll be in recess until
12 9:00 tomorrow morning.

13 MR. VASQUEZ: Thank you, Your Honor.

14 MS. KISIELIUS: Thank you.

15 (Proceedings adjourned at 5:12 p.m.)

16 (END OF TRANSCRIPTION)

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I, CHERYL J. HAMMER, the undersigned
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2019.



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Certified Court Reporter
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