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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 24, 2018



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A P P E A R A N C E S

FOR THE APPELLANT:

JOSE DINO VASQUEZ
JACQUE E. ST. ROMAIN
GARY HUFF
Karr Tuttle Campbell
701 Fifth Avenue, Suite 3300
Seattle, Washington 98104
206.223.1313
dvasquez@karrtuttle.com
jstromain@karrtuttle.com
ghuff@karrtuttle.com

FOR THE RESPONDENT:

MATTHEW A. OTTEN
LAURA COLTHURST KISIELIUS
Snohomish County Prosecutor's Office
3000 Rockefeller Avenue
Everett, Washington 98201
motten@snoco.org
laura.kisielius@snoco.org



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(BEGINNING OF TRANSCRIPTION)

(Proceedings begin at 9:02 a.m.)

MR. VASQUEZ: Yes, Your Honor. For housekeeping purposes, and for the record, I'd just like to advise the court that the parties have agreed to a submission of closing arguments in writing as opposed to oral arguments.

THE HEARING EXAMINER: Okay.

MR. VASQUEZ: And we've agreed to have those submissions by Friday, June 1st, correct?

MR. OTTEN: Yeah, close of business.

MR. VASQUEZ: Close of business. And limit the pages to 15 pages, which would also include the legal memorandum regarding your authority to grant the -- or your discretion to grant the extension.

THE HEARING EXAMINER: Okay.

MR. VASQUEZ: Also, findings of facts and conclusions of law, we've agreed that we've also submit them on June 1st.

MR. OTTEN: And those won't count towards the 15.

MALE VOICE: No, no.

MR. VASQUEZ: Those are separate.



1 THE HEARING EXAMINER: If you can
2 squeeze that in 15 pages, the font will be about point
3 2 font. Yeah. Okay. That sounds good.

4 I would like to save some time
5 tomorrow. Whenever we finish with testimony, I would
6 like some colloquy, because I would like to explore,
7 give you the benefit of some of my questions and
8 thoughts, so that otherwise I'm just looking at the
9 paper. I can ask questions of the paper and it's not
10 going to talk back to me.

11 MR. VASQUEZ: Okay. BSRE is
12 anticipated to end their testimony today probably
13 around lunchtime, just so that you know.

14 THE HEARING EXAMINER: Don't threaten
15 me. Okay. But at some point this week I would like
16 to have some colloquy to explore discussions.

17 Now, the question with respect to
18 additional public comments, I'm going to say close of
19 business June 1st, but let me also warn people that it
20 is un -- and I will read it, because I read
21 everything, because that's my job. That's, I'm
22 supposed to read everything you tell me.

23 It is unlikely in my view, my
24 experience, that I'm going to hear anything different
25 there than I've already heard or will hear from



1 counsel for the parties, but on the off chance that
2 there is, I will accept it, and because that's part of
3 the job. Okay?

4 MR. OTTEN: Just clarification. Close
5 of business?

6 THE HEARING EXAMINER: What is close
7 of business?

8 MR. OTTEN: Yeah.

9 THE HEARING EXAMINER: Well, typically
10 we accept things by -- I assume you'll want to send
11 them electronically as opposed to getting ABC to rush
12 something over or you folks to walk down from the 7th
13 or 8th Floor. By 4:00.

14 MR. OTTEN: 4:00.

15 THE HEARING EXAMINER: Pacific
16 Daylight Time.

17 MR. OTTEN: All right.

18 THE HEARING EXAMINER: Since you don't
19 have to fly off to Singapore to be the advanced team
20 for the Summit, which is now off, you'll have time to
21 do that.

22 Okay. Anything else for the way of
23 the order before we get started? No. Are we good?

24 Okay. Well, I'll turn it over then to
25 BSRE. Who's next?



1 MS. ST. ROMAIN: BSRE calls Bill
2 Gerken.

3 THE HEARING EXAMINER: Thank you. Mr.
4 Gerken, would you raise your right hand, please.

5 Do you solemnly swear or affirm the
6 testimony you're about to give in this proceeding is
7 true and correct?

8 MR. GERKEN: I do.

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

11 MR. GERKEN: William Gerken, 600
12 University Street, Suite 610, Seattle, Washington.

13

14 DIRECT EXAMINATION

15 BY MS. ST. ROMAIN:

16 Q. Jacque St. Romain, from Karr Tuttle
17 Campbell, on behalf of the applicant.

18 Mr. Gerken, would you please give us your
19 job title?

20 A. Senior coastal engineer, (unintelligible)
21 team lead Moffatt Nichol, Seattle.

22 Q. And how long have you been with Moffatt and
23 Nichol?

24 A. A year and a half.

25 Q. Could you give us the description of your



1 education?

2 A. Ocean coastal engineering degree from Texas
3 A&M, 1993. Prior to that, year in an aerospace
4 program, but I was stayed, two and a half years in a
5 general physics engineering program.

6 Q. Where did you work before Moffatt and
7 Nichol?

8 A. I was with AECOMA engineers for five and a
9 half years, led their coastal engineering group in
10 Seattle, and then for the 18 years prior to that, I
11 was with a general engineering firm by the name of
12 Bradfitch Noddingham and Drage[phonetic]. I was their
13 coastal engineer, coastal engineering lead.

14 Q. With Moffatt and Nichol, could you give us
15 a description of what your job entails?

16 A. Project lead, project manager, technical
17 lead on a variety of coastal engineering, urban
18 waterfront projects, including shore protection,
19 channel modifications, large hydrodynamics, sediment
20 transport studies, marine reconfigurations,
21 breakwaters. Kind of, if it's in or near the water, I
22 seem to get my feet into it.

23 Q. What has been your involvement with the
24 Point Wells project?

25 A. Point Wells project, we were brought on the



1 first week in March to take a look at the stability of
2 the existing beach and develop a concept to ensure the
3 proposed beach profile was stable and adequate.

4 Q. Who brought you on to the project?

5 A. John Bingham, Hart Crowser. We have worked
6 with -- I've worked with him on previous projects.
7 Probably most recently prior to this one was the sea
8 wall project in Seattle.

9 Q. What documents did you prepare related to
10 the Point Wells project?

11 A. We prepared the coastal engineering
12 assessment report.

13 Q. Were there any other documents?

14 A. I prepared a follow-up memo in response to
15 comments.

16 Q. Okay. In doing your work, what documents
17 from the county did you review?

18 A. We reviewed a portion of the initial letter
19 and then --

20 Q. By letter, you mean the October 2017
21 comment letter?

22 A. October '17 comment letter and then also
23 the two follow-on staff recommendations.

24 Q. Okay. But the coastal assessment report --
25 this is Exhibit C-25 -- what was the purpose of that



1 document?

2 A. The general purpose was twofold. First, it
3 was to take a look at the existing shoreline, make an
4 assessment on whether existing shoreline was stable or
5 how it was evolving, and then second was to basically
6 do a metocean analysis, determine the wave
7 environment, which is the driving force for shoreline
8 sediment transport, sediment erosion, and use that
9 information to help in the development of a concept
10 level, stable shoreline.

11 Q. What sort of specific questions were you
12 answering in preparing this report?

13 A. Again, initially, twofold, you know, is the
14 existing shoreline stable and second is providing
15 concept for a stable, expanded, enhanced shoreline per
16 the proposed project.

17 Q. When you say concept, is that sort of
18 related to a feasibility stage?

19 A. It's, yeah, feasibility level, preliminary
20 level of design.

21 Q. Okay. What kinds of studies or analysis
22 did you to prepare the coastal engineering assessment?

23 A. For data acquisition we gather relevant
24 wind record, which were necessary to develop wind
25 generated waves available (unintelligible) topography,



1 vessel passage information, to assess whether ship
2 wakes were an issue.

3 FEMA flood information, tsunami impact
4 information. That fed into the analysis, and the
5 numeric model to determine wave heights, wave periods
6 from various directions that would impact the point.
7 That was all related to development of a stable
8 shoreline profile.

9 And then on the assessment of existing
10 conditions, went back and looked at decades of
11 historical aerial photography as well as historical
12 lidar survey of the point and did an assessment of
13 beach evolution based on aerial photography and lidar
14 survey.

15 Q. Did you suggest any changes to the design
16 of the project based on your assessments?

17 A. Based on our assessment, we did recommend
18 that the beach crest elevation or elevation of the S-1
19 (unintelligible) be set at 16, and that recommendation
20 was based on eliminating overtopping for the 50-year
21 design wave condition at a high water level, with
22 inclusion of sea level rise.

23 Q. In your coastal engineering assessment, you
24 have a discussion of recommended shoreline protection.
25 Would you give a little bit of an explanation of that?



1 A. Well, first, maybe I should say that
2 there's a bit of a mischaracterization there as far as
3 the terminology. The intent of the design wasn't to
4 provide shoreline protection. It was to provide a
5 stable, expanded, enhanced shoreline, with a
6 sufficient crest elevation and crest setback to
7 prevent overtopping.

8 Q. What sort of shoreline protection measures
9 are currently in place on the site?

10 A. Currently the site has bulkheading and
11 large stone revetment throughout much of portions of
12 the project.

13 Q. Will those protection measures be removed
14 as part of this project?

15 A. Yeah. The intent of the design is to
16 remove those protection measures and excavate, lay
17 things back, to provide an expanded contiguous beach.
18 Right now, the beach ends at that revetment bulkhead,
19 and then perched above that behind that you have
20 existing upland infrastructure.

21 Q. So you said that you reviewed the May 9th
22 supplemental staff report. Did you have any general
23 thoughts after reading the comments?

24 A. You know, I think there's a little bit of a
25 -- and this is my opinion. There's a little bit of a



1 misinterpretation here between shoreline stabilization
2 and creation of an expanded, stable shore that will
3 attenuate your wave energy naturally as a natural
4 beach would.

5 And so, after reading that, my general
6 impression was, like I said, that there's a little bit
7 of a misunderstanding on interpretation here and
8 perhaps semantics, the difference between shoreline
9 stabilization and a stable shoreline.

10 Q. Did you believe that the issues brought up
11 in the May 9th staff report related to shoreline
12 management regulations number five and the shoreline
13 stabilization had been addressed in your coastal
14 assessment report?

15 A. Yes, I believe they were addressed, and I
16 believe they were better clarified in my follow-up
17 memo.

18 MS. ST. ROMAIN: Okay. Could you go
19 to G-24.

20 Q. (BY MS. ST. ROMAIN) When you say follow-up
21 memo, you mean this document? This --

22 A. Yes.

23 Q. -- May 15th letter?

24 A. Correct.

25 Q. So in this letter it looks like you



1 identified two issues brought up by the county in
2 their May 9th supplemental staff recommendation.
3 Would you read general regulation number five, right
4 there.

5 A. (Unintelligible) number five for
6 residential development provides residential
7 development shall not be approved for which flood
8 control shoreline protection measures of the
9 bulkheading will be required to protect residential
10 lots unless a variance is obtained.

11 Here, the applicant has provided plans for
12 shoreline protection for residential development.

13 Q. What is your response to the county's claim
14 that the applicant has provided plans for shoreline
15 protection for residential development?

16 A. Again, I don't believe that we're looking
17 at traditional or conventional shoreline protection.
18 What we're providing is a natural, stable beach
19 profile, with the crest elevation set back far enough
20 and at a sufficient height for this natural beach to
21 provide wave attenuation as a regular beach would.

22 It's not -- we're not looking at providing
23 any kind of conventional or traditional shoreline
24 protection. To the contrary, we're taking out the
25 traditional shoreline protection that's in place at



1 this time.

2 Q. Looking at P-17, which you have on your --
3 on the table right there.

4 A. Uh-huh.

5 Q. Would you sort of explain what these images
6 are?

7 A. Basically, these are concept level
8 schematics of what we are proposing to do at the site.
9 If you look at the (unintelligible) schematic, you'll
10 see that we're removing the existing sea wall and
11 revetment and excavating out to provide a flat,
12 contiguous, expanded upper beach area.

13 That upper beach area provides natural wave
14 attenuation and provides sufficient distance and
15 elevation to allow for wave run-up to dissipate and to
16 not have overtopping at the crest elevation of the
17 beach.

18 On the left-hand side of that figure you'll
19 see the esplanade with edge beam and separation wall.
20 That's a piece of the project infrastructure, and the
21 edge beam separation wall is provided. Edge beam is
22 structural for the edge of the esplanade.

23 Then the separation wall is basically
24 provided aspiration between large grain porous
25 material that constitutes your beach, which isn't



1 compacted, and the subgrade materials that are
2 underlying your esplanade. You know, that wouldn't
3 even have to be a concrete wall. Done similar design
4 proposals where that was a geotextile system.

5 And then if you look at the beach, you'll
6 see that that is labeled with a layer one and a layer
7 two. At this concept level, to provide a stable beach
8 profile, your upper layer, layer two, is a coarse sand
9 gravel, small cobble. Depending upon where you are on
10 the site, the gradation will change a little bit.

11 That's intended to be stable, dynamically
12 stable through most wave conditions, storm conditions.
13 And then underlying that is layer one, and that is
14 composed of a larger cobble gravel, with all the
15 interstitial spaces basically filled with a coarse
16 sand pea gravel, and that's intended to be stable, if
17 necessary, up to and beyond your design wave
18 conditions.

19 Now, this is -- this is a concept level
20 design I've used other places. I think we need to
21 realize that this is concept level, and moving into
22 final design additional analysis and numerical
23 modeling will refine these gradations and also likely
24 the thickness and spacial variation of potential
25 layering.



1 Q. Are these images drawn to scale?

2 A. No, actually, that's another thing to keep
3 in mind. Your vertical scale is skewed twice your
4 horizontal scale. So if you're looking at a real
5 world image, imagine stretching that out to your right
6 twice as far. Everything would appear, you know, far
7 flatter and thinner in scale.

8 Q. Okay.

9 A. So this, this scale tends to exaggerate the
10 slope of the beach and the thickness of the project
11 elements.

12 Q. So there have been some questions about
13 this separation wall. Do you consider that separation
14 wall to be a shoreline protection measure?

15 A. No.

16 Q. In your expert opinion, does the esplanade
17 or the wall supporting the esplanade constitute a
18 shoreline protection measure?

19 A. No. They are a piece of project
20 infrastructure.

21 Q. If you removed the esplanade, would the
22 shoreline still be stable?

23 A. Yes, you can remove the esplanade and the
24 separation wall and create a stable crest for the
25 beach.



1 Q. Is the esplanade a levy?

2 A. No.

3 Q. In your opinion, does this development
4 include residential development for which flood
5 control, shoreline protection measures, or bulkheading
6 will be required?

7 A. No.

8 Q. What is the purpose of the shoreline
9 modifications that are proposed?

10 A. The intent of the design is to provide the
11 expanded, enhanced, stable shoreline where the crest
12 elevation or the esplanade is, set back far enough and
13 at a sufficient elevation so that wave energy run-up
14 can be dissipated throughout, you know, the range of
15 design, wave heights, and water levels that were
16 considered.

17 Q. Okay. If we scroll down a little bit,
18 their other comment was on the shoreline
19 stabilization, and they say that the project shall be
20 cited and designed to prevent the need for shoreline
21 or bank stabilization and structural flood hazard
22 protection measures.

23 Do you believe that has been done?

24 A. Yes. The -- if I can expand a little bit.
25 Again, the crest elevation of the proposed beach is



1 where the esplanade is located is sighted such that it
 2 allows for sufficient setback elevation and slope
 3 run-up distance.

4 Q. In your expert opinion, do you believe
 5 there's a substantial conflict with the county code
 6 related to that regulation number five we were
 7 discussing?

8 A. No, I do not believe that.

9 Q. Do you believe there's a substantial
 10 conflict with the county code related to the shoreline
 11 stabilization measures?

12 A. No, I do not believe that.

13 MS. ST. ROMAIN: That's all I have.

14

15 CROSS-EXAMINATION

16 BY MS. KISIELIUS:

17 Q. Good morning, Mr. Gerken. Laura Kisielius,
 18 from the prosecutor's office.

19 A. Good morning.

20 Q. Hopefully just a few questions for you. I
 21 think I heard you say that you were first retained by
 22 the applicant in March of 2018?

23 A. Correct.

24 Q. Okay. And what was the date -- I don't
 25 think I saw a date -- on the coastal engineering



1 assessment report that you prepared?

2 A. There should be a date in the submission
3 block. I believe the final one was towards the end of
4 April.

5 Q. Toward the end of April. Oh, I see. Thank
6 you.

7 A. It should be in the revision. Rev block,
8 on the front.

9 Q. Okay. Got it. Thank you. So, prior to
10 the date of this report, the county had not received
11 any concrete plans for shoreline restoration?

12 A. Not to my knowledge. That would have been
13 before we were engaged.

14 Q. Did you propose the location of the
15 esplanade or was that a feature you were provided and
16 needed to work around?

17 A. Horizontally, spacially, it was a feature
18 that we were working with. We recommended a design
19 elevation for the esplanade.

20 Q. And that was the 16, the 16-foot design
21 elevation?

22 A. (Inaudible.)

23 Q. And why did you -- I think you mentioned
24 that that 16 feet was recommended to eliminate
25 overtopping. Could you explain what that is?



1 A. Run-up. So we looked at design level wave
2 event, 50-year wave, and high water level and sea
3 level rise, and you take all those things combined,
4 and if you've been on a beach when a wave approaches
5 shore, it will break in various forms or not break and
6 the water will run up the beach.

7 So we recommended that elevation based on
8 eliminating or eliminating all except for the run-up
9 from the highest one percent of waves. So it's --
10 basically, it's that elevation to which you will get
11 water running up from wave action.

12 Q. Would that then prevent and -- and by
13 overtopping, that means then that the wave wouldn't
14 run --

15 A. The wave could --

16 Q. Except for the one percent, it wouldn't run
17 up and over the esplanade?

18 A. Yeah.

19 Q. So does it affect --

20 A. Up and on to the esplanade, because by the
21 time you get up to that level, between your highest
22 one percent and maximum, that run-up is so frequent
23 and the volume that is actually entailed by the time
24 you reach that elevation is so small --

25 Q. Okay.



1 A. -- that you will not have any significant
2 amount of water, particularly water over time --

3 Q. Uh-huh.

4 A. -- passing that upper elevation.

5 Q. And is that just at that one percent wave
6 or we're talking about the most extreme?

7 A. That's like the maximum to one percent. So
8 if you look at a wave spectrum, you have a broad range
9 of wave heights and periods within a given wave field,
10 and here we're talking about the maximum wave that you
11 would anticipate in a storm event or the upper one
12 percent.

13 Q. Uh-huh.

14 A. So that's, you know, less than one out of
15 every 100 waves that impinges the beach.

16 Q. Okay. So even if the esplanade wasn't
17 originally intended to serve as a levy, does it in
18 effect act as a levy, even particularly given that 16
19 foot elevation you suggested?

20 A. No. The esplanade -- the esplanade does
21 not need to be there for the stable expanded beach
22 shoreline to function to dissipate wave energy.

23 Q. So the esplanade -- okay. So the esplanade
24 would not need to be there to deal with issues related
25 to flood protection or climate change sea level rise?



1 A. No.

2 Q. Okay. I know you mentioned that there
3 might be an issue of -- I forget how you termed it --
4 vernacular or semantics, I think, but as lawyers we
5 tend to deal in semantics.

6 Could you take a look at page 48 of your
7 report and that's the -- that is C-25, and that final
8 paragraph there, could you read that, please?

9 A. Finally, a concrete wall is recommended to
10 be placed below grade at the edge of the proposed
11 esplanade extending down at least one foot deeper than
12 layer two, paren, undermining of esplanade if erosion
13 occurs under time -- over time under repeated extreme
14 storms.

15 Q. So I'm focusing on the term erosion there.
16 Could you -- can you explain that?

17 A. I will expand on that. That is -- I'll
18 admit to a mischaracterization. The text in the
19 report, again, based on this elevation and appropriate
20 gradation of layers one and layers two and what you do
21 at the crest, that wall is not necessary as erosion
22 protection, and in fact, it could be removed and you
23 could provide an alternate design that would still
24 maintain the stable slope and a stable crest
25 elevation.



1 Q. Okay.

2 A. The thing, you know, I will add is, like I
3 said, you do need some separation there between the
4 coarser material and layers that are comprising your
5 beach and the finer grained and compacted layers that
6 are underneath your esplanade, but you don't need to
7 provide a concrete wall to do that. That is just one
8 option.

9 Q. Could you explain, if not a concrete wall,
10 what another option might be?

11 A. I mean, you can slope your subgrade that's
12 underneath your esplanade once you get below the
13 esplanade edge beam and do it with geotextile.

14 Q. I'm sorry. What was the last term?

15 A. Textile.

16 Q. What is that?

17 A. They're construction fabrication, typically
18 of polypropylene or other plastics that are -- they're
19 a design fabric to provide strength filtration or a
20 variety of other functions when used in construction
21 applications.

22 So here it would simply be a geotextile
23 fabric to provide a filter barrier and some
24 stabilization between your upland subgrade and your
25 shoreline beach material.



1 Q. Would the concrete wall be considered hard
2 shore armoring, or...?

3 A. No.

4 Q. No, it wouldn't be?

5 A. It's not necessary to provide a stable
6 shoreline.

7 Q. But even if it's not necessary, it still
8 exists, and it's a concrete wall, would that meet the
9 definition of hard shore armoring?

10 A. No.

11 Q. No?

12 A. To be hard shore armoring, my
13 interpretation is to meet that, that's function based.
14 So if you have a piece of infrastructure that you're
15 considering hard shore armoring, that's based on a
16 function that it's providing, not just the fact that
17 it exists. So if that wall is not providing an
18 armoring function, it's not shoreline armoring.

19 Q. So even though it's the same concrete wall,
20 it's not considered hard shore armoring if it's not
21 for the purpose of stabilizing the beach?

22 A. No.

23 Q. Okay. That's all the questions I have.
24 Thank you.

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REDIRECT EXAMINATION

BY MS. ST. ROMAIN:

Q. I just have one question. You were initially contacted by John Bingham because he determined he needed your assistance to respond to some October 2017 comment. Is that correct?

A. Correct.

MS. ST. ROMAIN: Okay. It was actually just one.

THE HEARING EXAMINER: Well played. Well played. Anything else, Ms. Kisielius?

MS. KISIELIUS: No thank you.

THE HEARING EXAMINER: Thank you, Mr. Gerken. And Mr. Gerken, I'm not a tea sip[phonetic], so it's okay. Tea sip. It's old Southwest conference thing, folks.

MR. HUFF: BSRE will call Kirk Harris.

THE HEARING EXAMINER: Mr. Harris, give me a moment while I get my computer back to where it was.

Do you solemnly swear or affirm the testimony you're about to give in this proceeding is true and correct?

MR. HARRIS: I do.

THE HEARING EXAMINER: Thank you.



1 Name and address, please.

2 MR. HARRIS: My name is Kirk Harris.

3 My work address is 14432 Southeast Eastgate Way,
4 Bellevue, Washington.

5

6 DIRECT EXAMINATION

7 BY MR. HUFF:

8 Q. Mr. Harris, could you please describe your
9 job and by whom you're employed.

10 A. My job, I am a senior project manager for
11 transportation with David Evans and Associates.

12 Q. And could you describe your educational
13 background, please.

14 A. Yes. I graduated from the University of
15 Washington in 1992 with a bachelor's of science in
16 civil engineering.

17 Q. Are there transportation-related additional
18 certifications? I don't know.

19 A. Yes, I mean, I've taken a number of other
20 courses during the course of my 20 years of working in
21 the transportation field, but not necessarily a
22 certification for transportation. I do have a
23 certification in project management professional from
24 the Project Management Institute.

25 Q. How long have you been involved with the



1 Point Wells project?

2 A. I was -- began being involved either, I
3 think, late 2012.

4 Q. And what has your experience with the
5 project included?

6 A. At that time I was asked to begin the
7 process coordinating with the City of Shoreline on a
8 transportation corridor study and developing
9 alternatives and working through a public involvement
10 process with Shoreline.

11 Q. Had there been transportation work done
12 prior to your involvement?

13 A. There had been. In 20 -- April 2011, there
14 was a expanded traffic impact analysis report that was
15 prepared by our office and several of my colleagues
16 and submitted, you know, in April of 2011, and a year
17 later or so, a year and a half later, that's when the
18 conversation or the project task involved coordinating
19 more with the City of Shoreline, even though the
20 report was submitted to the county, because the --
21 because of the traffic going through that
22 jurisdiction.

23 Q. Now, transportation impact analysis is
24 known as TIA; is that correct?

25 A. That's correct.



1 Q. So that's what those initials stand for.

2 Can you describe what a TIA is?

3 A. A TIA is developed for all proposed
4 projects to identify what traffic is coming to or
5 generated from the project, coming to the project,
6 from the project, and impacts that it would have to
7 the surrounding areas.

8 Q. So that's a part of the application
9 requirement with the county?

10 A. Correct. That was submitted in 2011 along
11 with a checklist from the Snohomish County on elements
12 that were investigated for that TIA in 2011.

13 Q. And you described being involved in
14 Shoreline-related -- City of Shoreline related
15 transportation issues. When did those begin?

16 A. Yeah. So, those began -- the applicant
17 BSRE and Shoreline had been in a dialogue in coming to
18 a memoranda of understanding of what would be involved
19 in a more extensive track impact analysis.

20 So in -- on April 1, 2013, they reached an
21 agreement between the applicant and Shoreline of what
22 would be included, and from that point on, we worked
23 on both the public involvement, the traffic corridor
24 study, as well as updating and providing a more
25 extensive TIA.



1 Q. You prepared a timeline of your efforts
2 involved in these transportation matters; is that
3 correct?

4 A. That's correct.

5 MR. HUFF: And can we mark that P?

6 THE HEARING EXAMINER: P-18.

7 Q. (BY MR. HUFF) Can you tell from your
8 timeline when discussions with Shoreline began
9 regarding this process?

10 A. From my memory, it began prior to the MOU
11 being executed in 20 -- April 1, 2013. Thank you.
12 Yeah, so those discussions would have occurred
13 between, quite frankly, between BSRE and the City of
14 Shoreline and some -- and some other colleagues of
15 mine at David Evans and Associates late 2012 through
16 early 2013.

17 Q. Your timeline shows meeting on October 19,
18 2011 with Shoreline?

19 A. Correct. Yeah, actually. Thank you. I
20 was going through my emails and I had added that in
21 there because I did see some correspondence from you
22 about discussions you'd had with the city, Scott
23 McCall with the City of Shoreline.

24 Q. And the MOU was signed April 1, 2013?

25 A. Correct.



1 Q. Can you describe what that MOU says and
2 what it is attempted to accomplish?

3 A. Right, right. So the guidelines in the
4 county's checklist for the TIA is rather generic,
5 talking about what trip generation or what level of
6 service needed to be calculated, peak hour traffic
7 trips.

8 The MOU went into a lot more detail as far
9 as what background growth should be assumed, what
10 specific intersections should be analyzed on the
11 project, and what the process would be for the public
12 involvement process for this traffic corridor study.

13 Q. There's not much road network in Snohomish
14 County that serves our project, correct?

15 A. That's correct.

16 Q. And the impacts are largely within the city
17 of Shoreline?

18 A. Correct.

19 Q. So is it correct to say that this effort
20 was designed to come to an agreement with Shoreline
21 about first how things would be studied, traffic would
22 be studied?

23 A. Uh-huh.

24 Q. And then also, how impacts would be
25 mitigated?



1 A. That's correct.

2 Q. And what was the process by which this
3 effort was to be undertaken?

4 A. So the process -- so this was in April of
5 2013. The process began with Shoreline on the traffic
6 counts that they had already taken within their city
7 for these 48 intersections, which, by the way,
8 actually through the process coordinating with
9 Shoreline, expanded to 64 intersections.

10 Q. Sixty-four intersections?

11 A. Sixty-four. Right. So we changed the MOU
12 at the request to continue on, you know, evaluating
13 other intersections within their jurisdiction. So a
14 part of it was using traffic counts a.m. and p.m. The
15 original report only identified p.m. traffic counts as
16 required by the county, but with Shoreline we wanted
17 to look at the morning commute hours as well.

18 So over the course of 2013, it was taking
19 counts from the city as well as augmenting them for
20 those intersections that they did not have counts for
21 outside of their jurisdiction as well. The City of
22 Seattle had had an intersection, the City of Edmonds,
23 WSDOT had intersections along Highway 99. So we had
24 to augment the existing information there.

25 And then part of that, late 2013 was



1 developing a strategy for preparing the public
2 involvement process -- or conducting a public
3 involvement process.

4 Q. Can you describe the public involvement
5 process?

6 A. Sure. The City of Shoreline also hired a
7 public involvement consultant to help facilitate this
8 enviro issues, but we looked at -- well, not looked
9 at. We developed what would be a series of meetings,
10 settled on in the MOU six public involvement meetings,
11 which is identified, but not necessarily what would be
12 the content associated with each one of those
13 meetings, whether it's exhibits or, you know,
14 soliciting information from the public.

15 We ended up actually doing seven public
16 involvement meetings. You know, one, one more was
17 added at the request of the public to kind of have
18 another chance to provide input, but that was
19 occurring in summer-fall of 2013.

20 At that time, it was decided -- a lot of
21 times for public involvement project -- or public
22 involvement processes on major projects, you want to
23 give the public ample opportunity to comment. It's
24 generally not recommended to do it during the holiday
25 months, you know, essentially from Thanksgiving



1 through Christmas to the New Year's because of just
2 people's busy lives.

3 So the decision was made at that time to
4 start that in February of 2014 and have a series of
5 meetings that were every two or three weeks, just so
6 it's still fresh in people's minds when we're having
7 them.

8 So we had those, all of those meetings,
9 except for one, at City Hall of Shoreline. The other
10 one was at the library in Shoreline along the project
11 corridor.

12 Q. What did those meetings involve?

13 A. Each one of the meetings was set up a
14 little different. The corridor was broken into two
15 segments, segment A, which essentially was from the
16 beginning of the project site along Richmond Beach
17 Drive and then the first turn of 196th is about a mile
18 and a half of a corridor or so.

19 It's more -- it's a lower volume road today
20 and it has a certain character. The upper part of the
21 corridor, which is another three or four miles, is
22 Richmond Beach Road, and so that was considered
23 segment -- segment B.

24 So some of the meetings were focused on
25 segment A, some were focused on segment B. At the end



1 we brought them together, but the first sets of
2 meetings were basically soliciting input and ideas of
3 what the design might look like should the -- should
4 the road design -- should the traffic influence how
5 the road design would be changed or mitigated.

6 Q. What was -- at the end of these seven
7 meetings, what was the outcome of this process?

8 A. The outcome of the process was essentially
9 a preferred alternative helped shaped by the public.
10 Richmond Beach Drive currently is a two-lane road with
11 narrow shoulders, not really any place for pedestrians
12 to walk very safely. There's a narrow shoulder on one
13 side.

14 Q. There's no shoulder on the shore, on the
15 beach side, right?

16 A. Correct. Yeah, most of the shoulder is on
17 the east side of the road.

18 Q. Yeah, what little shoulder there is, is on
19 the uphill side?

20 A. Yeah, yeah. It's pretty minimal.

21 Q. Okay.

22 A. At the end of the process, this preferred
23 alternative, essentially, the City of Shoreline has
24 kind of a standard roadway segment sections based upon
25 the roadway classification, which would be like a



1 standard five foot sidewalk on both sides of the road,
2 maybe some landscaping buffer on it, but through this
3 process it was preferred, both by staff and by the
4 city, to not have it on both sides of the road, but
5 actually have, I think, a 10 foot wide -- primarily, a
6 10 foot wide multi-use path on the east side of the
7 road separated as much as possible with a landscape
8 buffer and no walking source on the west side, on the
9 west side.

10 Q. The City of Shoreline has standards for
11 their roads, correct?

12 A. That's correct.

13 Q. Could you describe those?

14 A. Each of the standards relates to various
15 roadway functional classifications. So Richmond Beach
16 Drive has a functional classification that's different
17 than Richmond Beach Road, but...

18 So when we were -- when we were proposing
19 to develop an improved roadway section for Richmond
20 Beach Drive and this first section on the south
21 portion, or, I should say, on the west portion of
22 196th, it was, how would it change -- how could we
23 change to accommodate traffic as well as pedestrian
24 improvements.

25 How the traffic standards are for each one



1 of the classifications, I'm not -- you know, without
2 referring to the Shoreline standards, knowing, but I
3 do know that in general they require if you were to
4 build a new road, sidewalks or pedestrian facilities
5 on either side -- on both sides.

6 Q. I had in mind their level of service
7 standard, or LOS.

8 A. Oh, sure.

9 Q. Can you describe what that is, please?

10 A. Sure, sure. Yes. Each one of their
11 classifications through as part of their
12 transportation plan has assigned what they desire to
13 have the allowable capacity for a road. So typically,
14 I think a minor arterial, 600 vehicles per hour in a
15 peak hour versus a major arterial would have 800
16 vehicles per hour as their preferred capacity.

17 Richmond Beach Drive, through conversations
18 with the staff, they had said the way this is
19 designed, being that it's a little bit better than
20 this minor arterial standard, that they -- that they
21 would allow 700 vehicles per hour on Richmond Beach
22 Drive and 196th.

23 Q. So that plays into the volume over capacity
24 --

25 A. Correct.



1 Q. -- standard? And can you explain that?

2 A. Correct. So, so when we develop traffic
3 models for projects when we do a traffic impact
4 analysis, those models identify what the capacity is
5 for a roadway segment based upon speed limits,
6 classifications, delay, but yet when a city has its
7 own prescriptive capacity limits, they trump and we
8 have to actually revise the model to say, hey, you
9 know what? While the model says this roadway segment
10 can handle more, more traffic the city's requirements
11 trump that. So we have to revise that.

12 Q. So the city requirement is based on the
13 classification of the road, not its actual capacity.
14 Is that correct?

15 A. Correct.

16 Q. And so the calculation -- or the number
17 that goes into the calculation is based on the
18 terminology used for the road rather than what can
19 actually be accommodated?

20 A. That's correct. And then the city also has
21 a requirement that this volume-to-capacity ratio, they
22 also have a requirement for each one of the links
23 within their system that this point nine VRT.

24 Q. So can you explain volume to capacity,
25 please?



1 A. Sure, sure. So the volume of traffic is
2 the volume of traffic calculated using our models to
3 or from the site based upon the development, the plan
4 development mix of Point Wells site. So we would
5 calculate what that development is coming out of or
6 drawn to the site, divided by the capacity of the road
7 as codified by City of Shoreline.

8 So the City of Shoreline then takes that
9 number and says, okay, the number cannot exceed a
10 point nine volume to capacity.

11 Q. But there is a methodology where under
12 certain circumstances that can be exceeded; is that
13 correct?

14 A. That's correct. The city does have in its
15 transportation management plan, it's Policy T-39, that
16 says in limited circumstances, with the council's
17 approval, they can exceed the point nine V over C.

18 Q. Can you explain the level of service
19 standard?

20 A. The level of service standard. So there's
21 essentially when we -- when we do a model, we model
22 links, which I have been describing, just volume to
23 capacity links and nodes, and then the nodes would be
24 the intersections within the network. So the nodes in
25 our case, we had 64 nodes that we analyzed.



1 So the City of Shoreline has standards for
2 level of service within their jurisdiction, both for
3 overall intersection delay and delay is measured level
4 of service A through F score. Each one of the level
5 of services has a corresponding number of seconds of
6 delay for that.

7 So their level of service standard is D
8 along their corridor.

9 Q. So the level of service standard measures
10 intersections?

11 A. Correct.

12 Q. And volume over capacity is intended to
13 measure the flow of traffic between the intersections?

14 A. That's correct.

15 Q. Based on your analysis, does the project
16 comply with level of service standards, Shoreline's
17 level of service standards?

18 A. Yes. For the intersection, for the
19 intersection level of service standards, yes.

20 Q. And same question with respect to volume
21 over capacity.

22 A. Volume over capacity, we had some tables in
23 our report to identify that that level of service
24 standard of point nine V over C was also one of the
25 was exceeded within certain links of the Richmond



1 beach road corridor.

2 Q. And the report, your final report, also
3 included proposed mitigation measures. Is that
4 correct?

5 A. That's correct.

6 Q. And do those mitigation measures largely
7 solve the locations where V over C is exceeded?

8 A. They largely solve. I mean, some of them
9 we knew that we were going to have to coordinate or
10 work with the City of Shoreline to see if certain
11 links would be allowed to exceed the point nine V over
12 C.

13 There is a particular stretch within the
14 corridor, it's kind of a commercial corridor between
15 3rd and 8th kind of midway where there's a lot more
16 traffic coming in from the side streets, where with a
17 four-lane configuration and a three-lane configuration
18 it exceeded the point nine V over C a fair amount.

19 However, we had been also coordinating with
20 the City of Shoreline with their staff along the way,
21 where there had been longer range plans to widen that
22 stretch of the corridor to a five-lane section, two
23 lanes in each direction, with a center turn lane, to
24 accommodate the commercial traffic, and then --

25 Q. And that's -- whose proposal is it to widen



1 to five lanes?

2 A. Well, that would have to be from the city.
3 I mean, the applicant could partner with them for
4 that, but they couldn't necessarily propose it.

5 Q. But in your understanding, does Shoreline
6 intend to do that on its own, to widen to five lanes
7 --

8 A. Yes.

9 Q. -- in that area from 3rd to 8th?

10 A. At some point, yes.

11 Q. And if that in fact occurs, what is the V
12 over C resulting calculation?

13 A. That was closer to point seven.

14 Q. So with the city's own road expansion
15 proposals in that one area, what is the before and
16 after V over C?

17 A. Could you rephrase that?

18 Q. What's the V over C before the road is
19 expanded?

20 A. It's like 1.4.

21 Q. And after the road goes to five lanes?

22 A. Point seven. Each lane that you add
23 obviously adds a significant more capacity to the
24 road, following Shoreline's capacity standards.

25 Q. Shoreline officials testified earlier in



1 the hearing about the fact that the Richmond Beach
2 Road corridor had been converted from four lanes to
3 three, and implied that we had the chance to oppose
4 that and didn't.

5 Can you speak to your view on the
6 advisability of the four to three lane change?

7 A. Well, and actually, you know, so it's been
8 four lanes for a long time, and we had actually
9 analyzed the three-lane alternative, and that was the
10 preferred alternative even after this traffic corridor
11 study.

12 So we were well aware that Shoreline had
13 wanted to do that. There were some pros and cons.
14 You know, citizens that didn't want the change kind of
15 testified to that factor in our corridor study and
16 then more recently.

17 But, but ultimately, there was also several
18 benefits to doing a four to three-lane conversion,
19 primarily, principally from a standpoint of providing
20 more buffer for pedestrians walking the sidewalks.
21 There's actually no buffer between the sidewalks and
22 the existing road. So we were aware of it.

23 Q. And does our -- does BSRE's road plan and
24 mitigation alternatives incorporate the three-lane
25 road system?



1 A. Yes. Yes, it did.

2 Q. Let's move to the what we can call the
3 methods and assumption process with Snohomish County.
4 Can you describe that, please?

5 A. Yeah. So, so after we had concluded the
6 traffic corridor study, which was spring of 2014, we
7 turned our attention to updating the traffic impact
8 analysis report for the site in general.

9 So the public involvement process, the
10 traffic corridor study, was just focused on City of
11 Shoreline issues, but obviously we needed to then take
12 the MOU and then analyze all the intersections. So as
13 we started that -- or before we started that, we
14 coordinated with the county and their traffic
15 consultant for the EIS, the Transpo Group, on how that
16 would be documented.

17 Before we do all the analysis, let's just
18 all come to the table, come to an agreement on what
19 those methods and assumptions would be for
20 (unintelligible) report.

21 Q. What was the time frame for those methods
22 and assumptions memos or agreement?

23 A. Sure. So, we -- maybe let me even back up
24 here a bit. So we concluded looking at this, we
25 concluded our last public meeting with the City of



1 Shoreline in April, on April 16, 2014, and then we had
2 met with Shoreline.

3 They had their traffic consultant, DKS,
4 provide review comments to us, so then we knew we were
5 going to be revising our methods a bit based upon
6 their input.

7 So we had developed a draft ETI, or
8 expanded traffic impact analysis, for Shoreline,
9 submitted that to them in July of 2014, and then we
10 said, you know what? Let's take a step back. We met
11 with Transpo Group, who was Shoreline's traffic
12 consultant for the EIS.

13 Q. Shoreline's traffic consultant?

14 A. I'm sorry. Snohomish County's. Snohomish
15 County's traffic consultant for the EIS. So we said,
16 let's take a step back. Let's memorialize what those
17 methods and assumptions were, and gained the approval
18 of Snohomish County. So the first time we submitted
19 that --

20 Q. Let me stop you there for just a second.

21 A. Of course.

22 Q. You mentioned that the last meeting with
23 Shoreline was in spring of 2014. Shoreline
24 characterized the reason for the process ending at
25 that point was that we came to an impasse. Do you



1 believe that's an accurate characterization?

2 A. I don't believe so, no.

3 Q. Would you describe your view as to what
4 happened then?

5 A. Well, we continued to submit things
6 formally to the City of Shoreline, with copies going
7 to -- submit things formally to Snohomish County, with
8 copies going to Shoreline for their review as well.

9 So over the next year plus we did continue
10 to receive comments from Shoreline on the either
11 methods and assumptions, or the TIA, as well.

12 Q. Were you aware of BSRE being told that
13 there weren't the votes on the Shoreline council at
14 that point to proceed with the process?

15 A. I had heard that.

16 Q. And that was the reason for ending
17 discussions at that point?

18 A. That's my understanding.

19 Q. But you still completed the analysis and
20 prepared a list of necessary mitigation to resolve the
21 traffic issue. Is that right?

22 A. That's correct.

23 Q. Let's go back to the methods and
24 assumptions memo now.

25 A. Okay. So in order to memorialize the



1 methods and assumptions, we submitted it formally
2 three times to the City of Snohomish County between
3 April 2015 and December of 2015. So after each time
4 we did receive comments from the county on how we
5 could revise it or, you know, strengthen it or, you
6 know, improve it to address their comments.

7 Q. When was the first submittal to the county?

8 A. April 17, 2015.

9 Q. And do you recall when comments were
10 received?

11 A. I see here from my notes they were received
12 about six weeks later, on May 27, 2015.

13 Q. And then you revised the methods and
14 assumption memos and resubmitted at what point?

15 A. July 6, 2015.

16 Q. And when were comments received on that?

17 A. September 8, 2015. I'm sorry. October 14,
18 2015.

19 Q. And when was the third submittal made?

20 A. December 14, 2015.

21 Q. And what happened then?

22 A. At that point we were understanding that we
23 had addressed all of the county's comments, and their
24 traffic consultant, the Transpo Group, did continue to
25 provide us some review comments and primarily adding



1 some clarifications on a few land use codes that
2 aren't specifically called out in the instituted
3 transportation engineer's manual.

4 Q. So, I'm sorry. You said December 14th.
5 What year was it?

6 A. 2015.

7 Q. 2015. Okay. So when did you receive the
8 county -- the comments of the county's peer review
9 consultant?

10 A. January 18, 2016.

11 Q. And at that point, was there agreement
12 between the county and you as to how the further
13 transportation analysis would proceed?

14 A. There's an agreement that, yeah, you're --
15 to my understanding, yes.

16 Q. So that occurred. That occurred at what
17 point?

18 A. That would have been in the following
19 Transpo's review comments. They were relatively minor
20 at that point, the January 18, 2015 -- 16 submission.
21 So then we basically, we proceeded with the more
22 extensive analysis.

23 Q. And how long did it take to do that more
24 extensive analysis?

25 A. It took us about three plus months to do.



1 Q. So when was the expanded transportation
2 impact analysis submitted to the county?

3 A. The next expanded TIA was submitted on May
4 5, 2016.

5 Q. And what happened next?

6 A. Then we -- looking here, we received some
7 comments from the City of Shoreline over the next
8 month or so, comments from the City of Shoreline, from
9 Transpo, the peer reviewer for the EIS, and Snohomish
10 County, all within, within that month of May 2016.

11 We met with Shoreline to kind of discuss
12 their review comments in person. And I'm trying to
13 see if we've met with... Yeah. So, basically we
14 reviewed a bunch of comments and provided responses to
15 them before we submitted our next, next version.

16 Q. Did you make a formal written response to
17 comments that had been received?

18 A. We did. We did provide formal emailed
19 responses in a comment, comment response matrix format
20 to Transpo and to Shoreline.

21 Q. And then, Transpo commented again. Is that
22 correct?

23 A. Yes, that's correct.

24 Q. When were those comments received?

25 A. July 1, 2016.



1 Q. 2016?

2 A. Correct.

3 Q. So were you then in a position to complete

4 the expanded transportation impact analysis?

5 A. Yes.

6 Q. And when was that submitted to the county?

7 A. That was submitted September 1, 2016.

8 Q. Was there any further discussion with the

9 county about your impact analysis?

10 A. There was. It was much later. On May 10,

11 2017, we did receive comments from Snohomish County;

12 however, they were on the May 5th submittal, not on

13 the September 1st submittal.

14 Q. So what was the date you received county

15 comments?

16 A. May 10, 2017.

17 Q. And this was after the -- that was on the

18 -- they made comments on which submittal?

19 A. They made comments on the May 5, 2016

20 submittal.

21 Q. So a year later, you received county

22 comments on the May 5, 6 -- 2016 submittal?

23 A. Correct.

24 Q. Were there further county comments?

25 A. Following that, that letter, memo from the



1 county, on May 10th, we had a conference call with
2 Snohomish County to discuss the traffic comments and
3 where I pointed out that unfortunately they'd reviewed
4 the wrong version of the report, or an older version
5 of the report.

6 So we had that conference call on June 1,
7 2017. We met a couple weeks later, where I -- on June
8 16th, where we met with, you know, staff at Snohomish
9 County for me to kind of formally or informally walk
10 through the report, the September 1st report, and just
11 discuss what was in it and how -- how kind of even
12 going back, as like, here's our methods and
13 assumptions, and then, here's the outcome of, you
14 know, of the analysis.

15 Q. So on what dates did you receive further
16 county comments?

17 A. So following that, following the conference
18 call and then the in-person meeting, we did receive
19 comments on July 14, 201.

20 Q. And then again on August 1st?

21 A. Yes, and again on August 1st. Correct.
22 When we -- in between there, we'd actually -- so we
23 received comments on July 14th and then we met with
24 the county and senior staff, where, again, to kind of
25 walk through.



1 There was some other additional staff, so
2 didn't walk through quite as extensively, but I
3 probably talked to her a few hours on what was in the
4 report.

5 I'm sorry. The June 16th meeting was one
6 where I think I talked for a good two hours straight
7 going through what the report was. When we met July
8 31st to receive the kind of second set of comments, it
9 was a shorter meeting, but we had received comments
10 from a few folks, and then the next day they realized,
11 oh, we didn't -- we left out one of the memos.

12 So when we say I received more comments, it
13 was because they were kind of inadvertently left out
14 of the July 14th memo to us.

15 Q. Was one of the topic of discussion the
16 capture rate?

17 A. Yes. Yeah, multiple times.

18 Q. And that had -- that concept had initially
19 been approved by the county early on; is that correct?

20 A. Correct. So the discussion of internal
21 capture rate was actually first raised in the 2011
22 report. There was a particular methodology that was
23 standard at the time in 2011 that was used in our TIA,
24 where there's internal capture rate calculated, which
25 basically identifies how much traffic you expect to



1 stay onsite and not go elsewhere for services.

2 So there's a relationship between
3 residential uses, commercial uses, and retail uses,
4 sort of a triangular fashion, and the old style, there
5 was a little bit more engineering judgment on what
6 that relationship -- the percentage relationship was
7 between those three uses.

8 When we actually prepared the methods and
9 assumptions memo, before then, there had been a kind
10 of fundamental change in the traffic engineering
11 community, where there was an established report
12 prepared by the National Cooperative Highway Research
13 Program, that, that developed a method to more
14 empirically identify what that internal capture rate
15 would be.

16 So when we worked with and coordinated with
17 the Transpo Group on how to develop our methods and
18 assumptions memo, they suggested that, hey, let's use
19 this new empirical formula, because it's more
20 nationally accepted for mixed unit development
21 projects.

22 Q. So the county's peer review consultant for
23 traffic suggested that we use this new methodology?

24 A. That's correct.

25 Q. Which you did?



1 A. Correct.

2 Q. Yet, did the county accept that
3 methodology?

4 A. I wouldn't -- I wouldn't characterize it as
5 that they accepted it. They acknowledged that that is
6 a way to calculate it. In my opinion, really, the
7 most widely accepted way, but yet there was not really
8 a --

9 Q. They did not agree to --

10 A. They didn't agree.

11 Q. Yeah.

12 A. I mean, they thought, you know -- they
13 didn't really think that the numbers coming out of the
14 formula were appropriate or accurate.

15 Q. And to be fair, Shoreline had concerns
16 about --

17 A. Correct.

18 Q. -- that too?

19 A. There's a concern, yeah.

20 Q. So what approach did you decide to use to
21 address this issue, since it appeared that agreement
22 on the internal capture rate could not be achieved?

23 A. Well, in our document we acknowledge that
24 there was -- in our traffic impact analysis document
25 we acknowledge that this is really the accepted way to



1 calculate it.

2 The county had suggested, well, maybe there
3 should be a range of internal capture rates we could
4 calculate for that, but yet, the formula that's used
5 we're only allowed to actually put in certain inputs,
6 such as how much res -- how many units there are, how
7 much commercial, how much retail, walking distances,
8 transit use, you know, various factors that we're
9 allowed to put in, and essentially, a number for what
10 that certain capture rate is calculated, not a range
11 of numbers.

12 Q. Is it correct to say that we proposed the
13 trip limit as a way to avoid arguments over the
14 capture rate?

15 A. Yeah, yeah. That even goes back as far as
16 the MOU and between the City of Shoreline and -- and
17 BSRE, that it was agreed upon at that time that, okay,
18 no matter how you calculate the numbers, we just don't
19 want your number of trips on Richmond Beach Road to
20 exceed a certain number. And so that was written into
21 the MOU.

22 We used that as well as the V over C
23 calculations as well as the intersection level surface
24 calculations, but the daily trip limit as well was
25 another factor that we needed to factor in.



1 Q. Did you have an opinion, based on your
2 conversations with Transpo, as to whether Transpo
3 agreed that a trip limit was a reasonable solution to
4 this problem?

5 A. Yeah, yeah, we -- they did. It's where it
6 all sort of culminated after submittals and meetings
7 and conference calls and comments and responses. Kind
8 of the meeting I thought we -- was really a
9 break-through meeting, if you will, with county staff
10 and myself and a member of Transpo Group, was on
11 September 13, 2017, where we met with them.

12 Transpo Group had looked through our
13 analysis, the county had looked through our analysis,
14 and the county engineer said, okay, we actually -- we
15 find no fault with the traffic analysis. We're
16 interested to move forward on it. So I was working
17 with Jim Bloodgood or who said that.

18 We think between the analysis kind of
19 following industry standards as well as monitoring
20 trip limits, sort of a monitoring program, so that
21 after each phase of development or along the way to
22 validate that trips coming in, out of and into the
23 site match the forecasted trips.

24 Developing a monitoring program at the --
25 essentially the two proposed access points, the second



1 access in Richmond Beach Drive, that was an
2 appropriate way to validate and manage the traffic.

3 Q. Do you recall attempts to get the county to
4 consult with their own peer reviewer on this issue?

5 A. There was a number of times where we, we
6 requested -- had requested that they consult with
7 them, just because Transpo Group does have an
8 extensive background in developing mixed unit sites.

9 Q. What kind of reaction did we get from the
10 county to those requests?

11 A. I think the preference was just to kind of
12 review it until a certain point where they felt
13 comfortable.

14 Q. But finally, in September of 2017, less
15 than a year ago, there was finally agreement from the
16 county on your traffic study?

17 A. Correct. So on October 6th, there was a --
18 the county's review completion letter, which I
19 actually felt, again, pretty good. I felt good in the
20 meeting on September 13, 2017, and then saw it in
21 writing in October 6, 2017, where there was
22 essentially a passages.

23 We see there are differences in the April
24 2017 land use configuration proposed by the applicant
25 and the land use uses in your September 1, 2016, but



1 it was characterized as they're relatively minor and
2 they're things that can be addressed at the FEIS
3 stage.

4 MR. HUFF: I think that'll do it for
5 now.

6
7 CROSS-EXAMINATION

8 BY MR. OTTEN:

9 Q. Hello, Mr. Harris. Matthew Otten, for the
10 prosecutor's office.

11 So you testified you became involved with
12 the Point Wells project late 2012. Is that correct?

13 A. Yes.

14 Q. Okay. And when again did you start
15 negotiations with the City of Shoreline regarding
16 traffic?

17 A. It would have been about that same time.

18 Q. Okay. And was it -- two of the major
19 issues that you worked on, it sounded like you said
20 traffic assumptions and then mitigation of impacts?

21 A. Correct. Yeah, both of those are in the
22 larger report.

23 Q. Okay. In your testimony earlier you said
24 mitigation measures were largely solved. What does
25 that mean?



1 A. In our -- we have a chapter in our report
2 -- well, I should say, we proposed mitigation measures
3 for all deficiencies within -- within the corridor
4 study area.

5 Q. Okay. So, largely solved doesn't mean
6 completely solved, right?

7 A. Meaning we recommend -- I have heard the
8 term feasibility analysis. We recommended -- based
9 upon the impacts that we see at this point, we
10 recommend, this is how you would -- you would resolve
11 this deficiency at a particular intersection or on
12 along a corridor, yes. And, but we knew that there --
13 it was not -- that those recommendations were not --
14 how do I say?

15 Their recommendations -- until something is
16 actually built, you know, it's solved. So we
17 recommended, you know, here's ways to approach it.
18 There might be other ways that you can mitigate the
19 impacts as well.

20 Q. Okay. You mentioned that Skykomish --
21 Snohomish County roads -- I can't even pronounce my
22 own county -- are not really impacted by this
23 development, correct? Not the primary jurisdiction
24 impacted?

25 A. That's correct.



1 Q. Okay. So Shoreline is the primary
2 jurisdiction that will be impacted by the proposed
3 development's traffic?

4 A. Yeah, they had the most number of impacts.

5 Q. Okay. And then you said you had put
6 together, I think, the methods and assumptions. I
7 don't know if it was a chapter, or...

8 A. It was we included as an Appendix B. It's
9 like 120-page appendix. But, yes.

10 Q. Okay. And Snohomish County is the
11 jurisdiction tasked with -- because the project's in
12 Snohomish County, it's tasked with reviewing the
13 traffic submittals. Is that correct?

14 A. That's correct.

15 Q. And then, why is Shoreline involved in the
16 review of the traffic study and the traffic corridor?

17 A. It's my understanding, and I wasn't, say,
18 at this meeting, but, say, in that 2012 range, after
19 the 2011 report was submitted, there was a point
20 where, you know, because Shoreline has the greatest
21 amount of impacts, why don't you coordinate with them
22 and kind of come to an agreement or understanding of
23 how you will mitigate traffic impacts from the project
24 with them.

25 So that's why it was basically a approval



1 of the county to coordinate directly with the City of
2 Shoreline.

3 Q. Has either Snohomish County or Shoreline
4 agreed with all your methods and assumptions including
5 the traffic assumptions and mitigation?

6 A. The letter in -- to answer your question.
7 Shoreline, I would say no, because we have never
8 really resolved as far as having a final meeting.

9 We've met with them even a few other times,
10 with the city traffic engineer, Kendra Dudinski, the
11 city attorney, and a few other times afterwards, just
12 to go through it. But I would never say that
13 everything was resolved.

14 With the Snohomish County, the letter dated
15 October 6th, again, gave me a sense that they were
16 largely resolved and that certain inconsistencies
17 between the, say, the amount of retail or office that
18 we had in our report in 2016, it was like 119,000
19 square feet, and then I think in the April 17th
20 submittal, in 2017, there was 3,000 square feet more
21 of accommodation at commercial and retail.

22 And even this most recent with one in April
23 2018, there's maybe 4,000 square feet accommodation of
24 commercial and retail that's different than what we
25 had in the assumptions. Relatively small, you know,



1 less than five percent difference of commercial, and
2 we would at the FEIS stage need to reconcile that.

3 Q. So it would change later?

4 A. It would change later somewhat, yeah.

5 Q. So you mentioned a --

6 A. Sorry. Then it was also, again, one other
7 thing I felt good about, is that on the letter dated
8 -- from the county, May 9, 2018, traffic, traffic was
9 dropped as one of the reasons for denial of the
10 extension. So it was like, okay, good. Even though
11 we said we'll move it on to another stage full -- to
12 fully resolve everything. But it wasn't one of the
13 reasons for denial.

14 Q. Okay. You mentioned a September 27th
15 meeting with DPW staff. Is that correct?

16 A. Which year?

17 Q. 2017.

18 A. September 13th, yes.

19 Q. Yeah. And in that meeting you said that
20 the Department of Public Works said that the model was
21 performed correctly. Is that accurate?

22 A. Correct.

23 Q. Did they object for the model being
24 inappropriate for this location?

25 A. No, not at that meeting. No.



1 Q. Did they object later?

2 A. No.

3 Q. Okay. Does the -- there's many assumptions
4 made in a traffic study, correct?

5 A. There is.

6 Q. Do you know what the assumption that's
7 included in the traffic study for when phase one
8 development will come online?

9 A. I'm sorry. I need to go back to your
10 previous question. I was kind of thinking.

11 Q. All right.

12 A. And, and so, when you said did they object,
13 I would say that, yes, they have objected multiple
14 times over the course of the project. However, I
15 still maintain that Jim Bloodgood saying we find no --
16 we don't like the methodology you're using. We
17 recognize it's the only methodology that's nationally
18 accepted to follow this, this process using this NCHRP
19 684 report, the National Cooperative Highway Research
20 Program, which is done through the transportation
21 research board.

22 It's kind of a national study. They
23 recognize that's the only thing. They don't -- the
24 county said, we don't like it, but we accept it. So,
25 so, again, I try not to mischaracterize when I say,



1 hey, the county thought it was great.

2 They just said they -- there was just sort
3 of an acknowledgement that's the only thing you have
4 at your disposal to use and it's better than what was
5 available back in 2011.

6 Q. Okay.

7 A. Sorry. So, going back, I thought of
8 something there. So if you could repeat your last
9 question.

10 Q. Yeah. The September -- where was I? Oh.
11 When did -- you said your traffic -- the traffic
12 studies make assumptions?

13 A. Correct.

14 Q. What assumption did the traffic study make
15 with regards to when phase one would come online and
16 have residents, you know, creating traffic?

17 A. Yeah. So, when we sat down with Shoreline
18 before we started doing our traffic work -- excuse me
19 -- there were a number of years, forecast years for
20 that, and at that time, the dates, the forecast dates
21 that we were to use for phase one through four were
22 2020, 2025, 2030, and 2035, every five years.

23 Q. Okay. Given where we are right now, do you
24 think those dates are inaccurate?

25 A. I don't believe those are accurate,



1 correct.

2 Q. Okay. And that would have an impact on the
3 -- on this -- if the assumptions change, it's going to
4 have impact on the outcome of the study, right?

5 A. If it did take 15 years to build out,
6 correct. There was a background -- primarily, this
7 affects the background traffic that you add on to the
8 traffic from the site.

9 Q. Uh-huh.

10 A. In the MOU, there was an assumption added
11 in that the city had wanted to include, which is a
12 quarter percent growth background growth within the
13 area, that was added into our model. So you would
14 have to extend that quarter percent background growth
15 beyond 2035 to whatever that final build-out year is.
16 It's relatively minor.

17 Actually, when we did an analysis when we
18 first started, there was actually sort of the
19 recession period. There was actually negative growth
20 of traffic through there and that -- that wasn't
21 acceptable to use as a background growth. So we said,
22 let's just settle on a quarter percent.

23 Q. Okay.

24 A. And then also because much of -- much of
25 Rich -- I'm sorry -- much of Shoreline in this



1 Richmond Beach northwest area of Shoreline is
2 primarily single family residential and not
3 multi-family residential, there's really not a lot of
4 growth of traffic within the neighborhoods that are
5 adjacent to Richmond Beach Road.

6 Q. Okay.

7 THE HEARING EXAMINER: So my
8 understanding then is Shoreline either proposed or
9 agreed to the quarter percent annual growth?

10 MR. HARRIS: Yeah, that's correct. It
11 was in the -- the MOU assigned between BSRE and
12 Shoreline.

13 Q. (BY MR. OTTEN) Is that assumption equally
14 applicable? You mentioned the lower Richmond Beach
15 Drive is mostly single family. Once you get closer to
16 99, is that growth rate still acceptable?

17 A. I think that background growth was across
18 all of Shoreline. So it wasn't, here's a background
19 growth in the residential areas and a background
20 growth in 99. It was kind of across our entire model.

21 Q. Okay. You sort of spoke -- you went
22 through the timeline with interactions you both had
23 with the county and Transpo and the City of Shoreline.
24 When was the date of the last conversation you had
25 with the City of Shoreline regarding the study?



1 A. I might not have included one particular
2 meeting, you know, a meeting in there, but the last
3 one I have written down was July 2017. In fact I know
4 that was -- that was receiving comments.

5 I know that Gary Huff and myself met with
6 Kendra Dudinski and the city attorney to discuss kind
7 of next steps. I didn't really put that in the
8 schedule. So that would have been less than six
9 months ago.

10 Q. When was the last one you have listed on
11 your schedule?

12 A. July -- June 7, 2016.

13 Q. Okay. And when do you anticipate to have
14 -- having a traffic study with the City of Shoreline
15 being completed and approved?

16 A. I don't know. I don't know that process.
17 It would -- it would follow kind of the county process
18 here and then kind of resuming coordination with them.

19 One of the things we talked about was, you
20 know, new, new forecast years for that. One of the
21 things we discussed with the traffic engineer was
22 providing new background traffic counts at the 64
23 intersections. Since now they're getting a little bit
24 dated, we would need to have new data in there to give
25 us a new baseline.



1 Q. Do you have no way to predict when this
2 traffic study will be?

3 A. It was my understanding that that would
4 occur after the DI -- DEIS was issued and before the
5 FEIS was issued.

6 Q. Okay.

7 A. Would be issued.

8 Q. But in terms of timeline --

9 A. It would be between the DEIS and FEIS.

10 Q. I have no further questions for you. Thank
11 you.

12 A. You're welcome.

13

14 REDIRECT EXAMINATION

15 BY MR. HUFF:

16 Q. Mr. Harris, you were just asked about
17 county objections to methodology. The whole point --
18 what was the point of the merger -- or the methods and
19 assumption memos was to agree on that in advance,
20 correct?

21 A. That's correct. Before we did all of the
22 analysis for -- all the specific analysis for 64
23 intersections for the a.m. and p.m., for the existing
24 year and the four forecast years, we wanted to lock
25 down what the methods and assumptions were going to



1 be.

2 Q. And the discussion you had -- or your
3 testimony earlier regarding the newly recognized
4 approach to internal capturing?

5 A. Uh-huh.

6 Q. And to the extent that the county objected,
7 it was with respect to the use of that new
8 methodology; is that correct?

9 A. Yes. Yeah, the -- I mean, the -- we had
10 discussed -- so the study that this -- this NCHRP 684
11 report is based upon three mixed unit developments in
12 Florida, two in Texas, and one in Georgia, and they're
13 all different in and of themselves and also quite
14 different than Point Wells.

15 However, the document recognizes that
16 coming up with a internal capture rate can be
17 politically contentious, so they wanted to develop an
18 empirical formula that would apply for all mixed unit
19 developments that have commercial, residential,
20 retail, movie theaters, and civic things.

21 Q. To the extent that the county objected to
22 that new methodology, was that resolved by the
23 incorporation of a trip limit?

24 A. Yes. Yeah, they felt -- kind of the folks'
25 way of saying it was sort of the belts and suspenders.



1 Like, okay, you got your belts for the traffic impact
2 analysis, but the suspenders were the monitoring
3 program that would sort of ensure that whatever was
4 calculated for the TIA would be followed, would be
5 adhered to in the monitoring program.

6 MR. HUFF: No further questions.

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

9 MR. HARRIS: You're welcome.

10 THE HEARING EXAMINER: Let's take our
11 morning break. Come back at 10:45.

12 (Break in recording.)

13 THE HEARING EXAMINER: Who's next?

14 MS. ST. ROMAIN: We would call Doug
15 Luetjen.

16 THE HEARING EXAMINER: Do you solemnly
17 swear or affirm the testimony you're about to give in
18 this proceeding is true and correct?

19 MR. LUETJEN: I do.

20 THE HEARING EXAMINER: Name and
21 address, please.

22 MR. LUETJEN: My name is Doug Luetjen,
23 attorney at Karr Tuttle Campbell, representing
24 applicant. My address is 701 Fifth Avenue, Suite
25 3300, Seattle, Washington 98104.



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THE HEARING EXAMINER: Thank you.

DIRECT EXAMINATION

BY MS. ST. ROMAIN:

Q. Jacque St. Romain, on behalf of the applicant.

Would you please tell us your involvement with BSRE.

A. I am the client manager for originally it was Paramount Petroleum Corporation and then became BSRE Point Wells.

Q. How long have you been working on this project?

A. I've been working on the site in various -- on various elements of the project since 2004.

Q. Would you like to provide a disclaimer here?

A. I would. I'm providing answers to question of a factual nature. Nothing that I'm about to say should be intended as a waiver of the attorney-client privilege, as I am one of the attorneys representing BSRE.

Q. So first, I would like to ask you a couple of questions about Sound Transit. Can you give us sort of an overview of your history with Sound Transit



1 for this project?

2 A. Yes. Prior to the filing of the
3 application, we started discussions with Sound Transit
4 as to the feasibility possibility of having a transit
5 station at the site, because of the fact that the
6 Sounder, the commuter rail as opposed to the light
7 rail, the commuter rail runs through the site.

8 We worked with a firm, Shiels Oblatz
9 Johnsen, SOJ. They have extensive experience working
10 with railroad issues. They principally, it's my
11 understanding, were accredited with the fact that the
12 Mariners Stadium straddles over the top of the
13 Burlington Northern tracks, and that was a significant
14 undertaking. So that was one of the reasons we were
15 interested in having them work on this.

16 Brad Tong is particular -- is the person at
17 SOY that works with us on this project. So he and I
18 and Steve Ohlenkamp and Mark Wells, who was with
19 Paramount -- or is with Paramount Petroleum
20 Corporation, had several meetings with the various
21 transit agencies -- that included King County Metro
22 and Community Transit as well as Sound Transit -- to
23 discuss transit-related issues for the development.

24 Sort of the first major milestone was we
25 were able to get a letter, I believe, behind me, the



1 April 2010 letter addressed to Mark Wells from David
2 Beal of Sound Transit, where they essentially provided
3 an overview of what would be required to have a
4 Transit Station there, and explained that as a quasi
5 or governmental agency, that they would -- this was
6 all subject to their board's approval at a time far
7 down the road when it was appropriate.

8 That we had expressed to them that the
9 client was committed to including a station at their
10 expense on the site, and the letter makes reference to
11 the fact that this letter -- or that that commitment
12 would have an impact on the ability to have a site or
13 have a station at the site.

14 Q. So just to clarify, this is the letter
15 that's in Exhibit H-24, and the proposal was that the
16 site would be built at BSRE's expense or the
17 applicant's expense?

18 A. Yeah. Yes, that the station would be built
19 at the applicant's expense.

20 Q. What happened in response to the April 2010
21 letter?

22 A. Well, at that time that was sort of what we
23 needed, we felt, to continue with the project.
24 Ultimately, Sound Transit, I believe, and Sound
25 Transit II, there was a environmental impact statement



1 being conducted, and my colleague, Gary Huff, had
2 written a letter to Sound Transit that, I believe, is
3 back down.

4 There we go. July 28, 2014 letter was
5 submitted as part of the EIS process, and it
6 essentially requested that reference be made with
7 regards to the Point Wells being a possible site for a
8 station, and that that -- Mr. Huff's letter was
9 included in the final report, and that it was included
10 a comment, which I believe is also on this -- in this
11 exhibit, that makes reference to the fact that this is
12 still a possibility.

13 Q. Uh-huh.

14 A. Well, it was included in the document --
15 included in the document, and it was the -- on the
16 document was included their comment, that was a
17 positive comment, and it was included as an exhibit or
18 appendix to the final EIS. It was in 2014.

19 Q. And was the Point Wells site listed on the
20 long range plan in Appendix A?

21 A. The specifically a -- the possibility of a
22 station in the Richmond Beach Area, which would
23 include the Point Wells site, was referenced, again,
24 sort of reaffirming the fact that a station at the
25 Point Wells site was a possibility.



1 Q. And was it included in Sound Transit III?

2 A. It was not included in Sound Transit III.

3 It's my understanding that Sound Transit III was
4 submitted to the voters to approve actual expenditures
5 for sites that were going to be built. It was not
6 used as a planning tool.

7 If you will, it was an approval tool. So
8 we were not concerned that there was no reference to
9 Point Wells in the Sound Transit III documentation.

10 Q. What steps have you taken to work with
11 Sound Transit since ST-III was issued?

12 A. We have made recent inquiries of Sound
13 Transit as a result of comments and documentation
14 provided by the county, but really, once we received
15 the letter in 2010 and from the Sound Transit with the
16 statements they made about the feasibility of the
17 project and the possibility of the -- of our project
18 having a Sound Transit station, and the fact that we
19 were included in the 2014 EIS appendix, we do not
20 believe that any further work needed to be done at
21 this time, because we were not aware of any changes
22 that had occurred, in the sense that Sound Transit is
23 still operating a route from Seattle to Everett.

24 They are still looking to increase
25 ridership. We understand that their ridership numbers



1 in the north corridor are not what they want them to
2 be, that there are heavy subsidies that have to be
3 provided because of the lack of ridership.

4 And so, again, and then seeing that in the
5 Sound Transit III that they are still making
6 improvements and adding facilities and operations for
7 the north corridor, supported the concept that the
8 Sound Transit was still be in the business of
9 providing high capacity transit in the north corridor
10 and that we're on that north corridor and that
11 presumably we'll have a project that will be a source
12 of customers for Sound Transit.

13 Q. Have you reviewed the email provided by
14 Sound Transit to Mr. Countryman earlier this month?

15 A. I have.

16 Q. And is that surprising, that email
17 surprising to you in any way or contrary to your
18 understanding of the process with Sound Transit?

19 A. No. The email points out things that we
20 have known all along, one of which is that any station
21 that has to be built at the site has to be built to
22 Sound Transit standards, also to Burlington Northern
23 standards. It is my understanding that in doing the
24 preliminary design of the station that the architect
25 took that into consideration. So that was not a



1 surprise.

2 We understand and have understood that one
3 of the issues any time you have a stop along the
4 tracks, there's not sitings for these stations,
5 they're actually along the main line, is that slows or
6 potentially can slow the railroad traffic, and
7 therefore Burlington Northern has to agree to that
8 stoppage.

9 And we've known all along that either a
10 stop is included in the existing agreement with
11 Burlington Northern, or, if it's not, that it would
12 have to be subject to negotiation with Burlington
13 Northern. So the fact that that was in the email was
14 not a surprise to us.

15 And the fact the concept that this would be
16 a difficult task we've known all along too. There's
17 nothing about this project that's easy, and that's in
18 part why it's taken so long to address so many of the
19 difficult issues.

20 Q. Do you have any indication that it will not
21 be possible to have a Sound Transit station at the
22 Point Wells site?

23 A. We've received no information that would
24 tell us that it's not possible.

25 Q. Okay. And with respect to the design



1 guidelines, is it your understanding that Perkins and
2 Will has incorporated those design guidelines into the
3 plans?

4 A. Yes.

5 Q. All right. I would like to move to Exhibit
6 P. This is the timeline that you have. I think a lot
7 of discussion has occurred this morning about what
8 happened with traffic, so let's just skip ahead to
9 November 15th of 2016.

10 What happened at that point in time?

11 A. The county submitted a letter to us, in
12 which they identified issues that they had with the
13 project and indicated that there were four specific
14 issues that had to be addressed.

15 As a result of that, we employed the
16 consultants for the project to come up with a
17 response. That response was submitted April 17, 2017.

18 Q. What happened after that response was
19 submitted to the county?

20 A. The response was submitted and I believe we
21 were initially told that we would have a response by
22 June 30th.

23 Q. A response, as in county comments?

24 A. County comments back telling us -- I'm
25 sorry. I should have said that about that time the



1 county had said that they were stopping the EIS,
2 preparation of the EIS, because they felt that these
3 were four significant issues.

4 And so, our task or consultant's task was
5 to prepare a response that would address those issues
6 so the EIS could be restarted. So we had to wait for
7 the county to review that document, comment, and then
8 to tell us whether or not the EIS could be restarted.

9 Q. When did you expect to receive those
10 comments from the county?

11 A. I believe the first promise date was June
12 30th.

13 Q. Did you receive comments on June 30th?

14 A. We did not.

15 Q. When did you receive those comments from
16 the county?

17 A. It was in their October 2017 letter, and
18 that was after repeated promises of providing
19 responses and then failure to provide the responses.
20 Understanding it was a lots of material to work with,
21 but it pushed us out until October.

22 Q. What happened after receipt of the October
23 6, 2017 comment letter?

24 A. The materials were distributed to the
25 consultants and asked to provide a preliminary



1 analysis of what needed to be done. Even though it
2 was over 300 pages, the question was how much work
3 would need to be done, who would be doing that work,
4 and what time frame would that work be available.

5 Q. Did you meet with the county to discuss the
6 October 6, 2017 letter?

7 A. We did. We met on November 13, 2017, here
8 in Snohomish County. We met and the county had in
9 attendance Ryan Countryman, Michael Dobesh -- I
10 apologize if I say these names wrong -- Mike McCrary,
11 and Paul MacCready -- I might have those backwards.
12 Sorry -- and the prosecuting attorney for the county,
13 Matt Otten.

14 Q. What was discussed at that November 13th
15 meeting?

16 A. So one of our concerns was that we had
17 looked at the ability to provide answers to those
18 questions, and the preliminary review said that had we
19 started on November 1st, we would not be able to
20 provide the information until January, and that was
21 just based on a preliminary review.

22 Also, there were parts of the comment
23 letter that really hadn't been reviewed in great
24 detail by then, but we just knew that it was going to
25 take us beyond the deadline the county had improved.



1 Q. The January 8th deadline?

2 A. The January 8th deadline. So then the
3 discussion was, is the January 8th really a deadline
4 or is that just a date the county picked.

5 Q. What information did you receive about the
6 January 8th date?

7 A. So the county explained that the January
8 date wasn't a deadline in the sense there was no
9 statutory requirement to do anything by that date, but
10 it was based on the current application expiration
11 date of, I think, June 30th of 2018.

12 They said they had worked back and figured
13 they needed the answers by that January date to be
14 able to do their work in time so that their work was
15 done before the expiration of the application
16 deadline.

17 Q. Did you discuss the expiration date?

18 A. We did. One of the things the county had
19 said was, well, go ahead and you tell us when you can
20 get the materials submitted and, you know, tell us
21 what that date will be.

22 And the assumption that we had was that we
23 would be getting an extension, and therefore that went
24 into our thinking about what would be the -- what
25 would be the new deadline and would a extension



1 request be asked.

2 Q. Why would you make the assumption that you
3 would receive the extension?

4 A. Well, we did at the time, because at the
5 meeting when this was being discussed I made a point
6 of sort of stopping the meeting and saying to the
7 county representatives, are any of you aware of any
8 reason we will not get an extension.

9 Q. What was the county's response?

10 A. There was no response that there was any
11 reason that any of them thought that we would get an
12 extension.

13 Q. Not get an extension?

14 A. Not get an extension, yes. Then we
15 continued the conversation of then, okay, how is this
16 going to play out, and the county made the commitment
17 that if we would get the materials in whenever date we
18 said we would get them in, they would then promptly
19 get a team together and review those materials and
20 that we would expedite this process as the best they
21 could and as we would.

22 Q. Did they give any recommendation on the
23 length of time you should request for an extension?

24 A. The comment was made that we should make
25 one final request, and that the discussion was that



1 the request would be either 18 or 24 months, somewhere
2 in that range, but that we would make one more
3 request.

4 Q. With the assumption that this might be the
5 final extension?

6 A. I think everyone assumed that that would be
7 true.

8 Q. Okay. If the extension is granted today,
9 or whenever it's granted, if whenever if ever it's
10 granted, what is the time period that you would
11 request that the extension be for?

12 A. I believe the request would be -- our
13 request would be for 18 months.

14 Q. And that would be consistent with what the
15 county suggested that you request previously?

16 A. That would be consistent with our prior
17 discussions, yes.

18 Q. Okay. And in response to that November
19 meeting and the January 8th target, when did you
20 inform the county that -- in writing that you wouldn't
21 be -- that we wouldn't be able to meet the January 8th
22 target?

23 A. I believe that there was a letter that was
24 sent to the county prior to the January deadline
25 saying that -- confirming that we would not be able to



1 reply, because by then getting -- after getting more
2 input from our consultants, we understood that this
3 was going to take several months, much longer than
4 what we'd originally anticipated, and that it was
5 going to be a rather expensive endeavor, and that
6 therefore we would have to get contracts negotiated
7 with consultants and that whole process was going to
8 take a while.

9 So, so I believe -- so prior to the
10 deadline we told them we would not be able to provide
11 a response, but unfortunately at that time we were not
12 able to tell them the exact date. We had thought it
13 would be April 30th, but we did not want to provide
14 them with a date that wasn't an absolute.

15 And so, it was, I think, within days after
16 that that we provided them with confirmation that it
17 would be April 30th.

18 Q. It was an April 30th date that you said you
19 would --

20 A. Yes.

21 Q. -- provide the information by?

22 And when was the information responsive to
23 the October 2017 letter submitted to the county?

24 A. I believe it was on April 27th, I believe
25 was the date.



1 MS. ST. ROMAIN: Okay. No further
2 questions.

3

4 CROSS-EXAMINATION

5 BY MR. OTTEN:

6 Q. Mr. Luetjen. Did I get the name right,
7 wrong?

8 A. Luetjen, kitchen.

9 Q. I think I have mispronounced it the past
10 several months. Matt Otten, for the prosecutor's
11 office.

12 So you mentioned the November 13th meeting,
13 which has been a big subject of contention in this
14 hearing. Just to clarify, did the county promise to
15 give an app -- give the applicant an extension?

16 A. No one in the room had the authority to do
17 so, is my understanding.

18 Q. So the answer's no?

19 A. Correct.

20 Q. Okay. And you talked about the materials
21 that you -- that the applicant submitted by April
22 30th. Actually, I think you said April 27th. Did the
23 county review the materials that were submitted on
24 April 27, 2018?

25 A. That's my understanding.



1 Q. Okay. Is it your understanding that the
 2 county is still recommending denial of the application
 3 based on substantial conflict with the county code,
 4 based on a review of those April 27th materials?

5 A. I can say it's my understanding that the
 6 county is continuing to recommend a denial.

7 MR. OTTEN: Okay. No further
 8 questions.

9 MS. ST. ROMAIN: Nothing further.

10 THE HEARING EXAMINER: Thank you, Mr.
 11 Luetjen.

12 MR. LUETJEN: Thank you.

13 MS. ST. ROMAIN: That's all we've got.

14 THE HEARING EXAMINER: That's it?

15 MS. ST. ROMAIN: That's it.

16 THE HEARING EXAMINER: Okay.

17 MR. OTTEN: The county does have one
 18 rebuttal witness. I'm expecting it not to last more
 19 than 20 minutes. Mr. Countryman.

20 THE HEARING EXAMINER: Thank you. Mr.
 21 Countryman, I'll remind you, you're still under oath.

22 MR. COUNTRYMAN: Understood.

23

24 DIRECT EXAMINATION

25 BY MR. OTTEN:



1 Q. Good morning, Mr. Countryman.

2 A. Good morning.

3 Q. You've been present for each day of this
4 hearing, correct?

5 A. Correct.

6 Q. All right. You've heard -- over the past
7 few days, have you heard quite a bit of testimony from
8 the applicant's witnesses regarding whether the
9 county's being reasonable in what application
10 materials it's requiring from the applicant?

11 A. Yes.

12 Q. Okay. I guess, could you explain the
13 nature of the urban center site plan application in
14 the context of those complaints?

15 A. Yeah. So urban center site plan
16 application is a request to develop a specific site
17 plan with certain specific design criterias proposed
18 by the applicant. Once that site plan is approved,
19 then the applicant would have authorization to proceed
20 with proposing building permits and land disturbing
21 activities and such that comply with that site plan.

22 If the applicant were proposing changes to
23 that site plan, then there would be a whole process
24 for reviewing amendments to the site plan, and
25 depending on the nature of those amendments, many of



1 which the applicant has proposed during this hearing,
2 such changes would require additional design review
3 board and a new hearing with the hearing examiner in
4 order to be approved.

5 Q. So, an urban center site plan, does it
6 provide a mechanism for a developer to build a general
7 development proposal that can be modified at a later
8 date or is it a means of developing a specific urban
9 center development as explicitly depicted on the site
10 plan?

11 A. Yeah, it's the latter. An urban center
12 site plan is for a specific development. There is no
13 general conceptual approval, as several of the
14 applicant's witnesses have spoken to. That kind of a
15 conceptual approval, the type that was described by
16 Mr. Molver in his testimony yesterday, would require a
17 development agreement from Snohomish County. That has
18 not been requested by the applicant.

19 Q. So I'd like to touch on, there's been
20 discussion of the SEPA review and the EIS process.
21 Have you -- over the past few days, have you heard a
22 lot of mention of the term feasibility stage as a
23 justification for not providing certain application
24 materials and not meeting certain code requirements
25 that PDS has requested?



1 A. Yeah, we have heard a lot of testimony
2 about feasibility and what the applicant believed was
3 necessary. This is kind of the nature of the problem
4 with reviewing this project to date, is that all of
5 these materials that have been introduced this year
6 are responsive to requests that were made in the
7 county's first review completion letter back in 2013.

8 That's Exhibit K-4, and so it took four
9 years for the applicant to respond and then the
10 response took a very long time to review, because the
11 response was not developed to comply with code. It
12 was not developed with internal consistency. There
13 are lots of drafting errors and conflicts between the
14 supporting reports and the plans that were submitted
15 to the county.

16 So that's why it took so long, is because,
17 frankly, it takes longer to review plans that have a
18 lot of flaws than it does plans that are well prepared
19 and prepared carefully with internal consistency.

20 And then, the additional third submittal
21 that came in this year is now still being argued by
22 the applicant to be conceptual and feasibility level,
23 but what we require is something that is demonstrating
24 compliance with county code for a specific urban
25 center site plan, not for a general conceptual



1 feasibility question.

2 Q. And what's your understanding of the SEPA
3 review and the EIS process? What's the purpose of
4 preparing a EIS?

5 A. Right. So for a project level EIS, which
6 is what the EIS for this proposal would be, the
7 purpose of SEPA is to determine mitigation measures
8 for that specific action, which would be consistency
9 with, or the specific action would be the applicant's
10 proposal.

11 The scoping was done based on the 2011
12 application. Work was begun with the expectation that
13 the applicant would be submitting a second revised set
14 of plans by April of 2014, but we did not receive
15 those plans until three years later, in April of 2017.

16 And as I just described, they still weren't
17 of a nature that could be used to put -- prepare a
18 defensible environmental impact statement. By
19 defensible, I mean one where the project would
20 identify adequate mitigation measures and have a
21 likelihood of withstanding appeal, and based on that,
22 we felt that it still wasn't able to move forward with
23 the environmental impact statement because there was
24 so many aspects of the project that were not in
25 compliance with county code.



1 Q. So if the application materials for a
2 project are too vague or incomplete, does the EIS
3 serve the purpose for which it is intended?

4 A. No, vague application materials do not
5 allow an EIS to identify adequate mitigation for the
6 impacts of the proposed action.

7 Q. What would be the result moving forward on
8 a EIS for an application that substantially conflicts
9 with the code and is incomplete?

10 A. Well, there's two possible scenarios there.
11 One is that we'd warn the applicant repeatedly many
12 times documented in the exhibits for this hearing that
13 a supplemental draft environmental impact statement
14 would be necessary because the plans needed to be
15 revised in a substantial way to show conformance with
16 county code.

17 The other scenario is that you publish a
18 draft EIS that identifies a whole bunch of impacts
19 that could have possibly been mitigated by compliance
20 with county code. Then you go to a final impact
21 statement, publish that, and then you have a hearing
22 on the project where the project ultimately gets
23 denied.

24 And that's the out -- those two, the first
25 scenario, there was a lot of additional work that



1 seemed very unnecessary, when it's really the
2 applicant's responsibility to provide plans and
3 reports that comply with county requirements.

4 And the second scenario would have been a
5 huge, frankly, waste of time for both the applicant
6 and the county.

7 Q. That sort of dovetails into my next
8 question. What's the purpose of a proceeding under 36
9 -- 30.61.220?

10 A. Yeah, 30.61.220 allows denial without
11 completion of an environmental impact statement on the
12 basis of substantial conflicts with county code in
13 order to avoid needless county and applicant expense.

14 What we've described throughout this
15 hearing is that the applications received from the
16 applicant contain several substantial conflicts with
17 county code. The applicant has asserted the right to
18 revise those later, but as I've described, there would
19 be no purpose in proceeding through the environmental
20 impact statement process, because the result would be
21 either, A, rework of the EIS indefinitely until the
22 plans complied with county code, or B, denial of the
23 project at a SEPA-based hearing.

24 Q. All right. Could I have you turn real
25 quick --



1 MR. OTTEN: Ask you to bring up
2 Exhibit Number -- that one's not marked -- K-31.
3 Thanks for pulling all the stuff up for us. Page 248.
4 That's not PDF page; it's page number 248. I don't
5 know if it's different than this one. It's going to
6 be sub B. Is that the right one? Above 190.

7 Can you read that?

8 MR. COUNTRYMAN: We're both trying to
9 change it at the same time. Yeah.

10 MR. OTTEN: It shifted a lot faster
11 than I thought. What page are we on now?

12 Q. (BY MR. OTTEN) Can you read from sub E?
13 Oh, I guess, what is this document?

14 A. So, this is the October 6, 2017 review
15 completion letter, and I was looking for the code
16 section that sub B is from, so I could identify that
17 for the record, but moving pages and messing it up.
18 Could I borrow the mouse?

19 Q. 248, 247. This is out of order.

20 A. All right. So it was just there. So this
21 is the former version of 30.34A.180 urban center code
22 review process and decision criteria; and then is it
23 section 3(b) that we're looking at?

24 Q. Correct.

25 A. Subsection 3(b).



1 Q. What does that say?

2 A. Hold on. I jumped. Maybe I missed it.
3 Now we're on a totally different page.

4 Q. It keeps jumping from 248.

5 A. Yeah. So it says, any revision which
6 substantially alters the approved site plan is no
7 longer vested and a resubmittal of a complete
8 application is required pursuant to SEC 30.34A.170.
9 Revisions not requiring resubmittal are vested to the
10 regulations in place as of the date of the original
11 application.

12 Q. Okay. What's your concern here in the
13 context of this application?

14 A. So my concern here in the context of this
15 application is that many of the changes that the
16 applicant has described or promised that they could
17 make in response to the issues raised at this hearing
18 would require a full new submittal and loss of
19 vesting.

20 Q. Okay. And just to --

21 A. In other words, a new application.

22 Q. Okay. And that's in testimony we've heard
23 in this hearing the applicant has actually promised to
24 of provide additional studies and reports?

25 A. Yes.



1 Q. That haven't been provided to date that
2 might require substantial alterations?

3 A. Yeah, so for instance, we've heard promise
4 of a May 18th geotechnical memo that was prepared
5 during this hearing. One of the issues of concern
6 there is that the technical memos with respect to that
7 retaining wall and the second access road, the site
8 plan shows the retaining wall as taking up two feet in
9 the horizontal distance.

10 If the design of the wall were to require
11 anything more or less -- well, it wouldn't require
12 less, so it would be more, then you'd be shoving
13 either the second access road into a new location
14 potentially further on to the neighboring property
15 line or other changes.

16 Q. Is it --

17 A. We have had conversation of about moving
18 units out of the urban plaza phase into the lower
19 bench portion of the project, which would be a
20 substantial change to the site plan.

21 We've talked about how the applicant's own
22 witnesses testified to the likely need to adjust the
23 location, possibly phasing of several of the units in
24 the south village in response to the setback from the
25 ordinary high water mark issue, which the applicant's



1 own experts testified to being aware of that
2 requirement, but said that they were not authorized by
3 the client to include that information in the original
4 submittal.

5 Q. Okay.

6 A. Et cetera.

7 Q. And what's -- looking at the big picture,
8 30.61.220, what is PDS tasked with review of an
9 application at this point? Is it whether the project
10 is feasible? I think we've heard a 30 percent design
11 stage. Is that the standard on which your
12 recommendation and decision is based?

13 A. No, feasibility is not the standard for our
14 recommendation. Compliance with county code is the
15 standard for our recommendation.

16 Q. Okay. And just to clarify, the provision I
17 pointed to is when we get to the approval stage for an
18 urban center site plan?

19 A. Right.

20 Q. So it would be after review and approval,
21 if there's substantial alterations at that point.

22 A. That's correct.

23 Q. Correct? But at this point we're tasked
24 with seeing what -- how the application and if the
25 application doesn't substantially conflict with the



1 county code, correct?

2 A. That's correct, yeah.

3 Q. And what -- and in PDS's role can it only
4 evaluate the application materials provided to it?

5 A. That's correct. Our job is to review what
6 we've received from the applicant.

7 Q. Okay. And aside from, I think, we had,
8 just to sum up, there was five areas of substantial
9 conflict identified?

10 A. That's correct.

11 Q. Okay. And there was a mention, I think we
12 touched on the parking issue and assuming that the
13 applicant agrees to the county's interpretation, what
14 was the outcome of that?

15 A. Yeah, so the outcome of that discussion was
16 that if the applicant were committed to providing
17 senior housing, that we would not identify that as an
18 issue of substantial conflict with code and then that
19 would just be one where there were details to be
20 sorted out later.

21 Q. Okay. On the remaining issues of
22 substantial conflict, I guess on the remaining four
23 issues identified in the most recent supplemental
24 staff recommendation -- or I guess four areas.

25 A. Right.



1 Q. There's additional issues. Do you believe
2 the applicant's witnesses have established any
3 reasonable doubt?

4 A. No, I do not. I still have a lot of doubt
5 as to whether the application materials that were
6 provided could be modified in such a way that this
7 site plan could be brought into compliance with county
8 code.

9 Q. Okay. And is it true that any one of those
10 grounds can be an independent grounds for denial?

11 A. Yes, all of the four remaining areas of
12 substantial conflicts represents an independent
13 grounds of possible denial for the project.

14 Q. Okay. Thank you, Mr. Countryman.

15

16

CROSS-EXAMINATION

17 BY MR. HUFF:

18 Q. Mr. Countryman, you've been addressing
19 30.34A.183 as the basis for your concern that if we
20 make changes -- if BSRE makes changes to the
21 application that we would lose our project vesting,
22 but the language of that section says any revision
23 which substantially alters the approved site plan. So
24 we're not at that stage?

25 A. Right. And, I agree with that, and that



1 was the context that I was discussing that in, is that
2 if there were some kind of approval of the current
3 site plan, then bringing the current site plan into
4 conformance with county code, again, hypothetical
5 scenario.

6 Q. But the anticipated scenario, and the one
7 that's necessary if changes are to be made, are to do
8 those before this goes back to the hearing examiner
9 and have them included in the -- as part of the
10 environmental review, correct?

11 A. That that -- in the scenario that you're
12 proposing, that's how it would work. But the reason
13 that we -- part of the reason that we remain in doubt
14 that that's how it would play out is because we've had
15 repeated extension requests from you that were granted
16 in which you had promised that BSRE would submit
17 revised plans to comply with first the 2013 review
18 letter, and then more recently the comments received
19 in 2017.

20 Q. We can disagree with the history, but you
21 now have substantial information before you that's
22 responsive to all comments received to date. We are
23 not now in a position where the EIS process could be
24 resumed and have this eventually get back before the
25 examiner for the kind of approval down the road that



1 sets the time limit for when changes can be made?

2 A. The new information provided responds to
3 but not -- does not adequately address the substantial
4 remaining four areas of concern, and our task is to
5 decide whether substantial conflicts with county code
6 remain, and I believe the answer is yes.

7 Q. And part of those concerns have to do with
8 the fact that variances and deviations have not yet
9 been approved?

10 A. That's correct.

11 Q. But they wouldn't have been approved by
12 this point in a normal review cycle, correct? Those
13 come later?

14 A. Well, those variances and deviations would
15 have -- in a normal procedure, would have been applied
16 for in 2014 or 2015 in order to have feedback from
17 county staff on maybe the necessity to modify some of
18 them or additional subsequent changes, but that was
19 not the case here.

20 Q. Isn't it likely that, and isn't it almost
21 always the case, that there are changes in a project
22 that are made following the publication of a draft
23 impact statement and the receipt of comments to then
24 be included in the final impact statement?

25 A. It is sometimes the case that there are



1 additional changes, but the nature of those changes
2 that occur between a draft and final environmental
3 impact statement are usually not significant changes
4 that materially alter the project application.

5 Q. So there are pending variance requests that
6 have not been approved or denied, correct?

7 A. Correct.

8 Q. Your assumption is, or based on your staff
9 recommendation appears to be, that PDS gets to decide
10 now whether that can happen rather than let the
11 examiner make that decision?

12 A. We've made a recommendation to the
13 examiner. We haven't --

14 Q. But you don't decide that, correct, the
15 variances?

16 A. Yeah, for a type two project, which this
17 is, the variances are determined by the hearing
18 examiner. We've made our recommendations.

19 Q. You've made your recommendations, but there
20 is no conceivable way in a project like this that at
21 this point those decisions would have been made?

22 A. After seven years and three extensions --

23 Q. Answer my question.

24 A. -- most projects are already approved.

25 Q. Answer my question.



1 A. Repeat the question.

2 Q. At this stage of the proceeding, is it --
3 you would not expect decisions on variances?

4 A. We're not expecting the hearing examiner to
5 make decisions on the variances during this
6 proceeding.

7 Q. Correct. So how can you use the lack of a
8 variance decision as a basis for asking the examiner
9 to terminate the application?

10 A. It's a part of our recommendation to deny
11 rather than to remand.

12 Q. Based on actions that can't have happened
13 yet?

14 A. Based on county recommendations that we
15 would almost certainly be maintaining the same
16 recommendation to the hearing examiner.

17 Q. But it's not your decision?

18 A. It's the hearing examiner's discretion on
19 how to interpret those recommendations.

20 Q. The same applies for deviation requests,
21 correct?

22 A. Well, let's be more specific, because the
23 Title 30 deviations are not a hearing examiner
24 decision, nor are deviations made by the public works
25 department.



1 Q. Understood. But those have not been made
2 yet?

3 A. You've gotten your answer on the Title 30
4 deviation request from Randy Sleight regarding
5 landslide hazard areas.

6 Q. We have received a decision from him?

7 A. You applied at a date where could not fully
8 process.

9 Q. So there is no decision yet. Has there or
10 has there not been a decision on deviation request?

11 A. Yeah, there's not a formal written decision
12 yet on the landslide hazard deviation.

13 Q. And we don't have site plan approval, so
14 changes can be made without losing vesting, correct?

15 A. Correct.

16 Q. And we are not currently in this proceeding
17 requesting approval of a site plan, correct?

18 A. That's correct.

19 Q. And after going through the SEPA process,
20 you still maintain the -- PDS still maintains the
21 ability to recommend denial. That's true, correct?

22 A. That's also correct.

23 Q. Let's look briefly at what the urban center
24 code says is required for an application. Section
25 30.34A.170 lists the submittal requirements. The



1 first item listed is a graphic representation
2 depicting conceptual layout and design of the proposed
3 project. That's correct, right?

4 A. Right.

5 Q. That doesn't say anything about near final
6 building plans?

7 A. I didn't assert that we needed near final
8 building plans.

9 Q. You've asked such detailed questions as,
10 what is the headroom in the parking garage where the
11 end vac piping would be. That's, that's a fairly
12 detailed request that isn't contemplated as a
13 submittal requirement, correct?

14 A. Well, first of all, that request is not an
15 issue for this hearing, and then second, that request
16 was made to show compliance with the parking chapter
17 3026, because there was concern that the proposed
18 design would not be able to provide the amount of
19 parking proposed by the applicant.

20 Q. But that issue is now behind us, correct?
21 We've provided enough parking?

22 A. It has been agreed that it is no longer an
23 issue of substantial conflict with county code.

24 Q. Then section 170 says that the graphic
25 representation should also include the size of the



1 proposed development. We've complied with that.

2 Proposed mix of land uses, including the
3 square footage, the number of dwelling units and the
4 amount of nonresidential square footage. We've told
5 you how many units and what the nonresidential square
6 footage is, correct?

7 A. Correct.

8 Q. Proposed building parts and FAR. We have
9 complied with that?

10 A. Well, you've told us what's proposed.

11 Q. Well, that's what this says, proposed
12 building heights.

13 A. Your question was, we've complied with
14 that. So you've complied with --

15 Q. We have complied with the requirement to
16 submit?

17 A. To submit, yes. We accepted a submittal in
18 2011. That's not in dispute. We often turn away
19 submittals that are incomplete when an applicant
20 brings in something that is clearly so deficient that
21 we cannot process it, tell them what they need to do,
22 and then invite them to come back in a few days or a
23 few weeks when they're ready.

24 Q. Rather than me going through every item
25 listed in section 170, can you point to any language



1 that supports your contention for the level of detail
2 that's required -- that you're requiring?

3 A. Yeah, the level of detail we're requiring
4 is the same standard that every other urban center
5 applicant provides, which is compliance with the
6 applicable codes, which include parking, shorelines,
7 geologically hazard geotechnical reporting, if
8 necessary, if there are geologic hazards onsite, et
9 cetera.

10 Q. We've provided all that information. What
11 this doesn't require, and which I don't think there's
12 a basis for you to require, is the fine tuning that
13 normally happens at the design stage. This has been
14 an ongoing disagreement between us. But show me where
15 that's required.

16 A. Yeah, that fine tuning is necessary before
17 the project can receive an approval, and any approval
18 would be based on a draft environmental impact
19 statement. But the degree of existing conflicts with
20 code and internal conflicts in the application are
21 such that the draft environmental impact statement
22 would have had to have been redone through a
23 supplemental draft environmental impact statement.

24 And that's a big part of why after all
25 these years in extensions we're recommending denial,



1 because we have reasonable doubt that the application
2 would ever be revised to address the substantial
3 conflicts with code.

4 Q. I don't disagree with the fact that
5 internal consistency should be eliminated, and we've
6 done our best to do that. But there is enough
7 information with PDS now to proceed with environmental
8 review of the project, is there not?

9 A. That's a decision for the hearing examiner
10 to make.

11 Q. You, as PDS, have enough information to
12 have EA recommence work and complete a draft impact
13 statement, do you not?

14 A. If we were to proceed based on the
15 information provided to date, the draft environmental
16 impact statement would say that a supplement -- a
17 revised plan and supplemental draft environmental
18 impact statement were necessary. I've said that
19 before and we would be saying that again.

20 Q. By the time a draft is published, it is
21 also possible, likely, that those kind of refinements
22 that you're saying might require a supplemental EIS,
23 those can be handled before the publication of a DIS,
24 can't they?

25 A. That's a question on timelines, but based



1 on prior written commitments from the applicant to
2 provide revisions and the length of time it took to
3 receive those revisions and the low quality of said
4 revisions received, we do not believe that this is
5 likely to ever get fully resolved.

6 Some of this is things that are outside the
7 application directly, such as getting some kind of
8 written agreement with Sound Transit on what it would
9 take to provide commuter rail service from the site.

10 Q. You said in your earlier testimony that an
11 agreement with Sound Transit, an agreement, is not
12 necessary, is no longer necessary as a condition to
13 proceeding --

14 A. MOU or something like that.

15 Q. -- OR evidence that their design standards
16 have been incorporated into station design. Your
17 words. Correct?

18 A. Correct. And we have no such evidence in
19 the record.

20 Q. But it wasn't until this hearing when you
21 first stated that that would be an acceptable
22 approach, correct?

23 A. I don't believe that's the case.

24 Q. When would you have told us that, that
25 incorporation of their design standards satisfies this



1 requirement at this stage?

2 A. We'd be looking back at the project record,
3 but that kind of communication would have likely been
4 coming from the county public works department.

5 Q. There's been a question that if an
6 extension is granted, what's the appropriate length.
7 How long -- let's assume for this discussion that BSRE
8 and its consultants timely respond and provide any
9 additional information that you might require. What
10 is your best estimate as to how long it would take PDS
11 with -- in working with EA, to publish a draft
12 environmental impact statement?

13 A. Well, the question isn't how long it takes
14 to publish the draft environmental impact statement.
15 It's, how long does the project have before the
16 project expires, because even if a draft were
17 published, the project could still expire.

18 Q. I'm asking this one step at a time. How
19 long would it take PDS to publish a draft
20 environmental impact statement?

21 A. Well, we'd have to confer with EA to
22 determine their availability and timing on resuming
23 work as part of that.

24 Q. And there would be a comment period and a
25 final EIS?



1 A. Correct.

2 Q. And then, resume the hearing before the
3 examiner. So, assuming full compliance on the part of
4 BSRE, what's your best guess as to how long that would
5 take?

6 A. Well, first, we would need a fourth
7 submittal to address issues identified with the
8 current project application. So part of that question
9 goes back on to the applicant for how long it would
10 take the applicant to prepare a fully responsive
11 fourth submittal, and then the county would need time
12 to review that and then proceed.

13 Q. But my question was based on the
14 presumption that we fully and timely perform. So if
15 that is the case, how long would it take the county to
16 perform its part of the process?

17 A. Yeah, our prior review, as much as you
18 complained about that, took approximately six months,
19 and then the publication of the draft environmental
20 impact statement based on that is probably in the
21 neighborhood of a year.

22 It's a lot of what had been preliminarily
23 drafted would have to be revised and edited.

24 Q. Okay. But my question goes to we need to
25 get this done within the life of the permit. So how



1 long do you expect it might take to get through the
2 exam proceeding, so that we have everything done
3 during the life of the extension, if there is one?

4 A. Okay. I'm sorry. I think I understood the
5 question. It's how long to publish a draft
6 environmental impact statement, not for the whole
7 length of the project.

8 Q. I'm asking about the whole length.

9 A. Well, again, that's -- you're asking me to
10 speculate on something.

11 Q. I am asking you to speculate.

12 A. Yeah.

13 Q. But I'm asking for your best guess.

14 A. Right. So six months to review a fourth
15 submittal, a year to prepare and publish a draft
16 environmental impact statement. EA engineering in
17 their own internal scope of work, as I recall, said
18 that they figured they would need a year to respond to
19 the comments expected during the comment period.

20 Q. A year?

21 A. That's what I recall.

22 Q. That seems highly unusual.

23 A. Well, they were, as I -- as I remember it
24 anyway, there were two estimates for the number of
25 public comments, with two different time periods



1 associated with that. The longer of those two, as I
2 recall, was a year for EA engineering to respond to
3 the comments on the draft.

4 Then, creation of a -- at that point then,
5 there's a question on whether a fifth submittal of the
6 application was necessary, and then followed by --
7 follow that up with publication of a final
8 environmental impact statement and educational
9 background, then additional revisions, if necessary,
10 to the application before a recommendation to the
11 hearing examiner.

12 Q. Best guess as to overall time frame?

13 A. Yeah, I mean, at that point you're looking
14 at several years' worth of work, and we would not be
15 recommending an extension of several years to
16 completion. We suggest that if there were some kind
17 of extension, that the extension be based on submittal
18 of a fourth application -- fourth submittal, rather,
19 and then review of that and before a determination was
20 made as to whether to proceed.

21 Q. So in your view it is at least conceivable
22 to have an extension of sufficient duration to get
23 through the EIS -- the DEIS and then make a decision
24 as to whether an additional extension is available?

25 A. Well, the hearing examiner has the



1 authority to grant an extension, but that's not what
2 our recommendation is.

3 Q. What would your -- I know your current
4 recommendation is to deny the project. But if some
5 extension is to be granted, what --

6 A. Then our recommendation would be for a
7 period of time either long enough to review a fourth
8 submittal and determine whether we should proceed with
9 a draft environmental impact statement or deny the
10 project at that point.

11 So the question that I have to admit that I
12 don't know is, under what authority, if -- what I'm
13 discussing is worst case scenario. If an extension
14 were granted to the project, is it possible to put in
15 some kind of performance milestones before additional
16 extensions were granted, and I off the top of my head
17 don't know if that's a hearing examiner authority for
18 subsequent extensions or if that's a PDS director
19 authority.

20 MR. HUFF: I think that is enough
21 questioning from me.

22 MR. OTTEN: I have some redirect.

23

24 REDIRECT EXAMINATION

25 BY MR. OTTEN:



1 Q. You just, Mr. Countryman, just spoke about
2 extensions and a lot of speculation on how that would
3 work and who would do that. Would that be part of a
4 decision maybe like PDS staff team, including
5 discussion with the director, not a decision you make
6 on your own?

7 A. That's correct.

8 Q. All right. And there was some discussion
9 about deviations and variances. I think -- and this
10 is in context of probably the structures on the upper
11 bench. I think there was some misinformation on the
12 variance and deviation.

13 Who approves a deviation request from
14 landslide hazard regulations?

15 A. Yeah, that's an approval granted by the PDS
16 director.

17 Q. Okay. And the PDS director, in this case
18 Mr. Sleight would be the person making that decision?

19 A. Right. So the PDS director would defer to
20 the chief engineering officer.

21 Q. And you were in the hearing when Mr.
22 Sleight testified, right?

23 A. Right.

24 Q. What was Mr. Sleight's conclusion regarding
25 whether he would grant the deviation request from the



1 landslide hazard regulations?

2 A. Yeah, Mr. Sleight said he would not be
3 granting the deviation for the buildings in the
4 landslide hazard area, but would require additional
5 information with respect to the second road.

6 Q. Okay. And that deviation request is
7 totally difference from the variance request
8 (unintelligible)?

9 A. That's correct.

10 Q. Mr. Huff asked where PDS has identified how
11 the application, their application, fails to satisfy
12 the code. Doesn't PDS identify those reasons in
13 detail in both the staff recommendation and the
14 supplemental staff recommendation?

15 A. That's correct.

16 Q. Okay. No further questions. Thank you.

17 THE HEARING EXAMINER: Thank you, Mr.
18 Countryman. What else you got?

19 MR. OTTEN: No further witnesses.

20 THE HEARING EXAMINER: Okay. It's
21 just before noon. What I propose is, let's take a
22 lunch break and come back and let's talk. I have some
23 questions, and you may want to tell me some things. I
24 don't want to treat this as a formal closing argument
25 kind of a thing, but at least, if nothing else, I'd



1 like to run through some of my questions for counsel
2 on this, because it really should be my last
3 opportunity to do that until I get your written
4 submissions next week.

5 Does that make sense? Fair enough?
6 Great. Okay. We'll be in recess until 1:00, then.
7 Thank you.

8 (Proceedings recessed at 11:53 a.m.
9 To be reconvened at 1:00 p.m.)

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AFTERNOON SESSION

1:00 p.m.

--oOo--

THE HEARING EXAMINER: First, I'd like to thank everyone for their hard work on this. Both counsel have done a great job, and I really appreciate that. As from a (unintelligible) perspective, it's a pleasure to watch good lawyers work. I know you've got more work to do, and I do appreciate that, but I just want to let you know that I very much appreciate the work you've done so far.

I also, I've got these some questions for you, and it's okay to tell me, you know, we'll answer that in our closing papers. That would be fine. Some of my questions are legal and some of them are factual. And it's also okay if you want to elaborate further in your closing papers next week.

So I want to start by picking on the county a bit. So, am I correct -- and I could be wrong -- that at this point traffic is not identified as a substantial conflict issue? That from the county's perspective, at this point in the proceedings, it appears that is a solvable, potentially solvable problem? There's not a basis for



1 denial at this point?

2 MS. KISIELIUS: It is not a basis of
3 denial in this proceeding.

4 THE HEARING EXAMINER: Right. That
5 doesn't mean that it's fixed or solved or it's not
6 going to be an issue later, if, but --

7 MS. KISIELIUS: That's correct.

8 THE HEARING EXAMINER: -- right now
9 it's not an issue in this proceeding.

10 MS. KISIELIUS: Correct.

11 THE HEARING EXAMINER: And this may be
12 a metaphysical question. Is the county's argument
13 that it reasonably doubts whether BSRE can comply with
14 county code or is it there is no reasonable doubt that
15 BSRE can comply? And maybe there's no difference
16 between the two. I want to make sure I understand
17 this reasonable doubt substantial conflict test you're
18 trying to...

19 MR. OTTEN: Yeah. Just, I think that
20 was misstated by some of our own witnesses in the
21 testimony. If you look back at 30.61.220, it's the
22 county has to establish a substantial conflict and it
23 speaks to whether you uphold it or uphold the denial
24 recommendation.

25 I don't want to misquote the code, but



1 it speaks of, is there reasonable doubt to any of
2 these issues of substantial conflict.

3 THE HEARING EXAMINER: Right. And
4 what I'm struggling with --

5 MR. OTTEN: Uh-huh.

6 THE HEARING EXAMINER: -- putting
7 aside this feels like a Law and Order, you know,
8 reasonable doubt kind of a thing, is my impression is
9 that when an application first comes in to PDS, it is
10 not uncommon that there be substantial conflicts in
11 that initial application with county code, in one or
12 more places.

13 And through the iterative process of
14 review, those get squeezed out, so that by the time it
15 gets to either a type one decision or administrative
16 decision or quasi-judicial decision, those things are
17 ironed out.

18 I suppose it's theoretically possible
19 to have applicant and PDS be at loggerheads about it
20 and coming to a decision by the director, by the
21 hearing examiner, to go one way or the other, but the
22 fact that an application initially has a substantial
23 conflict as a practical matter isn't a basis for
24 denial, it seems to me.

25 Maybe I'm wrong on that, but if that



1 were the case, then pretty much every -- not every,
2 but a lot of applications that come in should be and
3 could be denied. And where's the principal basis for
4 saying these applications will be denied because
5 they're a substantial conflict and these won't be, I
6 mean?

7 MS. KISIELIUS: I think that could --
8 that is correct. However, in this particular process,
9 we're seven years into it, so I think that's the
10 distinction between if it comes in on day one and
11 there's substantial conflict in the application
12 materials is different than seven years later where
13 there still substantial conflicts after a reasonable
14 opportunity to have worked out those substantial
15 conflict.

16 THE HEARING EXAMINER: An urban center
17 application by code expires after three years absent
18 any extensions, right? Isn't it three years?

19 MR. OTTEN: Yeah, I know that a new
20 expiration code was adopted two years ago? So the new
21 period -- without looking at it.

22 THE HEARING EXAMINER: Yeah, I don't
23 know what the new period is. I'm just thinking. But
24 in this one, for 2011.

25 MR. OTTEN: Uh-huh.



1 THE HEARING EXAMINER: Was it three
2 years?

3 MS. KISIELIUS: No. In 2011, that
4 code did not -- that --

5 THE HEARING EXAMINER: It didn't say.

6 MS. KISIELIUS: -- that code did not.
7 Right. At the time, it didn't in 2011. The new code
8 was adopted -- and this is actually in our prehearing
9 briefing materials.

10 THE HEARING EXAMINER: Right, right.

11 MS. KISIELIUS: Was adopted several
12 years ago. However, the parties have both talked
13 about vesting and whether that provision applies, and
14 the county's position is, because expiration dates are
15 procedural, not substantive, under the state's vesting
16 doctrine, I think it would apply.

17 THE HEARING EXAMINER: It would?

18 MS. KISIELIUS: Yeah.

19 THE HEARING EXAMINER: Would apply.
20 Although currently, and I'll get to this, but I know
21 you've got an issue right now with the director on
22 this. I'll get to you.

23 MS. ST. ROMAIN: Oh, I was just going
24 to give you the original expiration date if you wanted
25 that.



1 THE HEARING EXAMINER: Let's take
2 turns. Let's take turns.

3 MS. KISIELIUS: And I think if I may
4 on that, then the question comes down to what three
5 years from when and that's where there is a dispute
6 between the parties on that.

7 THE HEARING EXAMINER: It doesn't have
8 a date stamp best if used by.

9 MS. KISIELIUS: Right.

10 THE HEARING EXAMINER: Okay. Is it
11 the county's position that if a variance is needed
12 there is necessarily a substantial conflict? And the
13 reason I ask is because, you know, I've been hearing
14 quite a bit about this variance thing, and which is
15 clearly in a type two proceeding a quasi-judicial
16 proceeding.

17 If the county's position is that if
18 there's a variance needed, therefore there is
19 automatically by definition a substantial conflict,
20 then why wouldn't you then kind of automatically deny
21 pretty much every project? Otherwise, you're usurping
22 the quasi-judicial process.

23 MS. KISIELIUS: Right. We haven't --
24 an initial answer to that, we might want to follow up
25 in briefing on that, but I just want to make sure that



1 there's a clear distinction between a variance and the
2 deviation request that applies to landslide hazards.

3 THE HEARING EXAMINER: Understood.
4 And I have no authority over deviations. I understand
5 that.

6 MS. KISIELIUS: Okay. So we're just
7 addressing the variance issue.

8 THE HEARING EXAMINER: This is not the
9 deviations.

10 MS. KISIELIUS: I understand the
11 quandary. Part of the problem here is that when staff
12 made its recommendation, based on substantial
13 conflict, there was no variance request.

14 THE HEARING EXAMINER: Right.

15 MS. KISIELIUS: Again, that's part of
16 the frustration in this process, is it took seven
17 years, in April 27th, before a variance was submitted.
18 So as of right now, staff's recommendation was based
19 on a substantial conflict with code.

20 As of now, the position of the county
21 would be that there is still a substantial conflict
22 with the code because a variance has not been granted.
23 And again --

24 THE HEARING EXAMINER: But a variance
25 couldn't be granted until -- I mean, because that's



1 not an administrative issue. That's a -- I mean,
2 saying that it hasn't been granted kind of puts you --
3 the applicant in a catch-22 situation that, we're
4 going to deny you because you don't have a variance,
5 but you don't get a variance until you get past to
6 quasi-judicial decision.

7 MS. KISIELIUS: Right. Again, and
8 understand the -- understand the situation, and again,
9 just ask you to consider that that variance was not
10 even requested until --

11 THE HEARING EXAMINER: Oh. I'm going
12 to beat them up --

13 MS. KISIELIUS: -- seven years into
14 the project. Right?

15 THE HEARING EXAMINER: -- about a few
16 things in a few minutes.

17 MS. KISIELIUS: Right.

18 THE HEARING EXAMINER: They'll get
19 their turn at the barrel next.

20 MS. KISIELIUS: So, so it is an
21 awkward situation, but PDS's position at this point in
22 time has to be that there is a substantial conflict
23 with the code, because of a variance --

24 THE HEARING EXAMINER: Okay.

25 MS. KISIELIUS: -- hasn't been



1 granted.

2 THE HEARING EXAMINER: Well, I'm going
3 to quote Emerson. That a foolish consistency is the
4 hobgoblin of little minds, and what I look for is a
5 principled basis to distinguish between things.

6 So, I try to be consistent with these
7 kinds of decisions or decide it this way if they fall
8 into that bucket, and so one of the things I would be
9 looking for the county to explain is what's the
10 principle distinction between this versus virtually
11 every other case I've had which has a variance
12 attached to it, other than staff thought the variance
13 was a good idea in those situations.

14 Maybe it is simply that the timing is
15 not -- I don't know. But that's one of the things I'm
16 looking for.

17 Assuming -- now, is the degree of
18 specificity of the design required for site plan
19 approval explicit or implicit in county code? And
20 that may be something you want to address in your
21 closing, because as a practical matter, the county
22 has, in my experience, taken the position that there
23 needs to be a demonstration that they will likely
24 comply with county code to get approval.

25 In other words, that the -- while you



1 don't need to know the invert elevation of every pipe
2 sort of thing, you do need to be able to demonstrate
3 that, yeah, you've got at least a schematic and a
4 design that we might not have the exact elevation to
5 the inch, but it's going to comply with code.

6 MS. KISIELIUS: And we can address
7 this further, but I think there's -- I think the level
8 of specificity needs to be enough to demonstrate
9 compliance with code. Not likely compliance with
10 code.

11 THE HEARING EXAMINER: Okay. Good.

12 MS. KISIELIUS: Compliance with code.

13 THE HEARING EXAMINER: But that it
14 will comply. Okay.

15 MS. KISIELIUS: That's correct.

16 THE HEARING EXAMINER: Fair enough.
17 Good point.

18 MS. KISIELIUS: And to the extent
19 you're talking about pipes and other things, that
20 could be deferred to the building permit stage.

21 THE HEARING EXAMINER: That's when the
22 actual elevations, invert, you know, slopes are all
23 dealt with. As long as the -- that everyone is
24 satisfied at the quasi-judicial stage, that, yeah, it
25 can be done. It will be done.



1 MS. KISIELIUS: Well, again, it's not
2 -- it's the concept of feasibility.

3 THE HEARING EXAMINER: Well, I want to
4 stay away from the F word right now.

5 MS. KISIELIUS: Yeah, I know. So at
6 building permit stage you are really only looking to
7 determine whether there's compliance with the building
8 codes. So you're not looking at land use principles.
9 You're not revisiting --

10 THE HEARING EXAMINER: Well, but...

11 MS. KISIELIUS: -- the urban center
12 code.

13 THE HEARING EXAMINER: Right. But
14 LDA, you know, let's just take the LDA, the land
15 disturbing activity phase. When we're doing the site
16 work prep, putting in the utilities, rough grading,
17 you know, may not have finish grading for all the
18 pads, but at least you got rough grading. You've got
19 your road work done, you've got your storm water, your
20 domestics, potable water, electricity, sewer, all that
21 kind of stuff laid in there, and at that point in
22 construction review then it's, yeah, it's, folks are
23 going over that with their engineering scales to make
24 sure that, yeah, there's enough gravity flow.

25 If there's not, then it needs to be a



1 force main or a pump of some kind, and then what that
2 looks like sort of thing.

3 But I guess my question is -- I know
4 that has been the practice of PDS to require that
5 level of detail to assure that it will meet code when
6 it is built. The question is, and this is a part of,
7 I think, Mr. Huff's questioning of Mr. Countryman,
8 where do you find that in the code. Is it explicit,
9 and if it's not explicit, it must be implicit, because
10 that's how PDS has been doing it, and how do you get
11 there. What's the causal chain in the code that gets
12 you to that implication.

13 MS. KISIELIUS: Yeah, and I think
14 we'll have to --

15 THE HEARING EXAMINER: You'll have to
16 --

17 MS. KISIELIUS: -- look into that.
18 But, but I do -- I would stand by the assertion that
19 there probably is -- it's implicit in the code that
20 the level of specificity is what is required to
21 demonstrate com -- actual compliance with the code.

22 THE HEARING EXAMINER: That's -- I
23 understand that's the county's position.

24 MS. KISIELIUS: Uh-huh.

25 THE HEARING EXAMINER: I honestly do



1 not know what I'm going to do with this case yet, but
2 let me ask you question. And you can say, no, we're
3 not going to answer that.

4 If I were to grant an extension, does
5 the county want to offer a time period of what that
6 should look like?

7 MS. KISIELIUS: The county would
8 definitely need to meet with staff and the director in
9 order to contemplate that.

10 THE HEARING EXAMINER: That's a
11 strategic choice by the county to respond to that.
12 It's in every case where -- it's an alternative
13 damages scenario. Do you offer -- you know, you know,
14 the plaintiff is asking for X zillion dollars in
15 damages, and do you even respond to that.

16 I'll caution you that to me the
17 apocryphal case for that was Pennzoil versus Texaco,
18 where Texaco made a strategic choice not to present to
19 the jury any alternative measure of damages, and as a
20 result, all the jury had in front of it was Pennzoil's
21 damages proof of 3 billion dollars, which then was
22 doubled in punitive damages, because you -- any tort
23 gets you punitive damages. So it was a 9 billion
24 dollar award, upheld all the way up.

25 So, it's a choice, it's a strategic



1 choice, but think about whether you want to -- if, if
2 I go down that road, and I may not, but if I go down
3 that road, what do you think that should look like,
4 so...

5 MS. KISIELIUS: And I do -- so staff,
6 the county will confer on that. I do think the
7 complicating issue is that it's a two-way road and the
8 county can only do --

9 THE HEARING EXAMINER: It's
10 understood.

11 MS. KISIELIUS: -- its side with the
12 information that it has.

13 THE HEARING EXAMINER: Understood. I
14 totally get that.

15 MS. KISIELIUS: Okay.

16 THE HEARING EXAMINER: But I just --
17 and by the way, I'm going to unilaterally exercise
18 command authority to increase the page limit to 20,
19 just in case, because I'm throwing out more stuff here
20 you may want to add into it. So, I'll give you 20
21 pages.

22 BSRE, kind of procedural question. My
23 understanding is that the director refused to grant an
24 extension and that you're asking me to grant. So am I
25 giving you an extension, if I give an extension, based



1 on my own authority or on my overruling the director's
2 refusal to give you an extension?

3 MR. HUFF: The statute, under -- the
4 statute under which the county is proceeding gives the
5 director the authority to recommend denial. We come
6 to you, and then that gives you the authority to make
7 this decision. So I think it's your independent
8 decision --

9 THE HEARING EXAMINER: Yeah. That --

10 MR. HUFF: -- not one that --

11 THE HEARING EXAMINER: It's good.
12 It's de novo. It's not, am I reviewing the director's
13 refusal to grant an extension --

14 MR. HUFF: Correct, correct.

15 THE HEARING EXAMINER: -- for abuse of
16 discretion. That's what I thought.

17 And I also understand there is
18 potentially a dispute that is not before me over when
19 the application -- the current application expires?

20 MR. HUFF: Correct.

21 THE HEARING EXAMINER: All right.
22 Which may or may not come in front of me at some
23 future time. So we're not going to go any farther on
24 that.

25 It is my sense that as the plan stands



1 today no one's asking me for approval and, frankly,
2 it's not really approvable yet. It hopefully will be
3 soon, but as of today it's not approvable.

4 You want to plead the Fifth Amendment
5 on that?

6 MR. HUFF: Pardon?

7 THE HEARING EXAMINER: Or do you want
8 to plead the Fifth Amendment on that?

9 MR. HUFF: Looks like my partner has
10 something to say.

11 MS. ST. ROMAIN: Well, the very fact
12 that the EAS hasn't been done makes it not approvable.

13 THE HEARING EXAMINER: Right. Yeah, I
14 mean.

15 MS. ST. ROMAIN: It's not approvable.

16 MR. HUFF: Yes.

17 THE HEARING EXAMINER: That makes it
18 easier.

19 MS. ST. ROMAIN: Yes.

20 THE HEARING EXAMINER: Okay.

21 Actually, I'd like -- I'm going to walk back in a
22 moment. The last thing I want to talk about is the
23 height setback issue, and what I would like is both
24 sides to walk me through that factually again.

25 So just heads-up, I want you to walk



1 me through it, and you to walk me through it, because
2 I want to make sure I have got the height setback
3 issue and the landslide hazards firmly in my head.

4 It sure looks like several of the
5 buildings behind the esplanade may need to be -- their
6 footprint may need to be adjusted based upon the
7 ordinary high water mark.

8 MR. HUFF: Well, waterward, yes.

9 THE HEARING EXAMINER: Right.

10 MR. HUFF: Below the railroad track.

11 THE HEARING EXAMINER: Right. It's --

12 MR. HUFF: It does appear that way.

13 THE HEARING EXAMINER: It certainly
14 looks that way. Okay. So, changing subjects.

15 Assuming that approval of the urban center site plan
16 requires a demonstration that the proposal complies
17 with county code requirements, it sure looks like it's
18 taken seven years to get to where it's reasonably
19 close to that, without being quite there.

20 MR. HUFF: We disagree with the seven
21 year contention. The first design review letter
22 wasn't until 2014. So that's the starting point.

23 THE HEARING EXAMINER: So from 2014 is
24 where you'd say, look at, because you were locked up
25 in litigation for the first couple years.



1 MR. HUFF: Right. And it wasn't until
2 we got that first design review letter that we had
3 anything to react to.

4 And then, you've heard the chronology
5 in dealing with the traffic issues. So, we strongly
6 disagree with the seven year characterization.

7 THE HEARING EXAMINER: Okay. Let's
8 say four years.

9 MR. HUFF: Okay.

10 THE HEARING EXAMINER: And the four
11 years, let me anticipate the answer then. The reason
12 for the four years is because it is a large project on
13 a challenging brownfield site, with a number of
14 significant constraints, and so four years is not an
15 unreasonable time from your perspective, I'm going to
16 guess, to work through these issues.

17 MR. HUFF: Absolutely.

18 THE HEARING EXAMINER: Okay.

19 MR. HUFF: Yes.

20 THE HEARING EXAMINER: All right. So
21 can you walk me through the height setback issues in
22 the landslide hazard zone from your perspective, just
23 factually?

24 MR. HUFF: Sure. So, the code, that
25 section of the code says within 180 feet of the



1 property line where the site is adjacent to low
2 density residential uses, the buildings have to be no
3 taller than half the distance to the property line.

4 So the three buildings that are in
5 question in the upper plaza are between 80 and 100
6 feet from the property line. So, strictly applied,
7 that would mean that the portions of the buildings
8 that are within 180 feet, which it's most all of the
9 buildings, can't be more than 40 to 50 feet in height.

10 THE HEARING EXAMINER: Okay. And
11 that's where the variance comes in?

12 MR. HUFF: Yes.

13 THE HEARING EXAMINER: Okay.

14 MR. HUFF: Yes.

15 THE HEARING EXAMINER: Or the
16 deviation?

17 MR. HUFF: That's a variance.

18 THE HEARING EXAMINER: That's a
19 variance. Okay. And the reason for the variance is
20 because it's a better planning solution, with less
21 impact on the neighbors, et cetera, et cetera, et
22 cetera.

23 MR. HUFF: Yes.

24 THE HEARING EXAMINER: Got it. Okay.
25 A hundred and eighty feet issue. Walk me through



1 that.

2 MR. HUFF: The code sets a base height
 3 of 90 feet, with the authority for an approval of up
 4 to 180 feet when certain conditions are met, and the
 5 height transit -- high capacity transit is one of
 6 them, view analysis is one of them, and those things
 7 are all to be addressed in the DEIS.

8 So, if the satisfactory showing is
 9 made that those conditions are complied with, then
 10 there is the authority for the county to approve up to
 11 180 feet.

12 THE HEARING EXAMINER: Does the
 13 footprint -- is the footprint likely to change whether
 14 it's 90 feet or 180 feet tall?

15 MR. HUFF: That's beyond my pay grade.
 16 But if we --

17 THE HEARING EXAMINER:
 18 (Unintelligible.)

19 MR. HUFF: If we could build buildings
 20 there.

21 THE HEARING EXAMINER: Right, right.

22 MR. HUFF: One solution, I believe, is
 23 to just make them shorter.

24 THE HEARING EXAMINER: Right.

25 MR. HUFF: I think that's doable, but



1 I'm not a reliable witness on that aspect.

2 THE HEARING EXAMINER: Let me ask the
3 county. Could you walk me through the height setback
4 thing or just basically say that that's an accurate
5 summary, Mr. Huff?

6 MR. OTTEN: I think in terms of
7 distance to height, it's accurate. There is -- we
8 focused on the three residential towers. I believe
9 there's two other buildings that are also in violation
10 of that that are shorter, but it's close enough to
11 trigger the need for a variance.

12 THE HEARING EXAMINER: And are those
13 two on the upper bench as well?

14 MR. OTTEN: Yes.

15 THE HEARING EXAMINER: Are those two
16 in front of those three?

17 MR. OTTEN: Yeah.

18 THE HEARING EXAMINER: Wasn't there
19 three was the --

20 MR. OTTEN: I think to the south,
21 right.

22 MR. HUFF: They're to the south?

23 MR. OTTEN: Yeah.

24 MR. HUFF: The two, the emergency
25 vehicle first responder.



1 THE HEARING EXAMINER: All right.

2 MR. HUFF: Those.

3 THE HEARING EXAMINER: Those are to
4 the south, kind of the entrance to the property.
5 They're on Richmond Beach Drive.

6 MR. OTTEN: Can I clarify one thing?

7 THE HEARING EXAMINER: Sure.

8 MR. OTTEN: I think those are
9 mistakenly identified. The review completion letter
10 was in April 2013, so not 2014. So it's five years
11 instead of four.

12 THE HEARING EXAMINER: Five years
13 instead of four years. Got it.

14 MR. OTTEN: Yeah.

15 THE HEARING EXAMINER: Okay. Well, I
16 know you guys have put a ton of work into this.
17 You're almost done with your stage. Now I got to put
18 a ton of work into it. I'm keenly aware that the
19 alleged expiration is June 30th. The ordinance says I
20 have 15 business days to make a decision, which is
21 going to be tough, but I will get you an answer as
22 early in June as possible. I look forward to your
23 summations.

24 Is there anything else you want to
25 tell me at this point? Start with the county. You



1 guys want me to deny them?

2 MS. KISIELIUS: No. I was just going
3 to say, I appreciate you wanting to adhere to the 15
4 days, but I guess from the county's perspective the
5 real deadline is June 30th to make a decision before
6 expiration. So I know from our position, if you need
7 the extra time, we're certainly amenable to that.

8 THE HEARING EXAMINER: I will do the
9 very best I can to get an answer as quickly as I can,
10 but you know that I like to do very detailed
11 decisions. One of the challenges in writing these
12 decisions is I'm writing for -- I'm writing for you
13 folks and for the clients. I'm writing for the
14 public. I'm writing for the electeds, and I'm writing
15 for the court, and those are very different audiences
16 that have very different levels of understanding of
17 things legal and things planning and things.

18 So that's why I try to make it as
19 detailed as I can, because it provides context for
20 everyone.

21 So, anything further from BSRE you'd
22 like to throw in the mix?

23 MR. HUFF: We appreciate your
24 statements about how much work has gone into this. We
25 just want to recognize that sitting here and listening



1 to all of this by both of you is a considerable effort
2 too. So thank you for your part.

3 THE HEARING EXAMINER: Thank you. And
4 Ms. Davis has done a marvelous job of getting things
5 up on both on the website so it's visible to everyone,
6 and I think that transparency's really important for
7 what we do.

8 And I recognize that people may not --
9 somebody's not going to like my decision. Guaranteed.
10 I get that. That's why I have to show my work. But
11 what Ms. Davis does so well is providing the public
12 and the parties access to all the information and I
13 really appreciate that, so...

14 MR. HUFF: One of the lessons that we
15 have learned is that we need to be more familiar with
16 the SMART Board so that goes smoother.

17 THE HEARING EXAMINER: I'm told that
18 actually there aren't many -- that someone from
19 Seattle or King County said they don't actually have
20 something like that down there, and we actually did
21 this a year or two -- about two years ago now, I
22 think, about two years ago.

23 We don't fully control this room. We
24 were able to convince public works and the planning
25 department to help pay for it, and I did that by



1 analyzing who uses this room and how much they use it
2 and then going with my hat in hand, saying, please,
3 sir, could I have some more, because we fight budget
4 battles that you folks don't have to worry about as
5 much.

6 You have your own budget worries. We
7 deal with a different budgetary context. And I didn't
8 even bother asking the prosecutor's office. That
9 would have been a fool's errand. Actually, the
10 superior court is the one. They had this room tied up
11 on Monday mornings for jury overflow even if they
12 aren't going to use it.

13 And that might have been mitigated by
14 the new courthouse had one been built, but now all
15 they're getting is new elevators and that's pretty
16 much it. And bathrooms. 65 million dollars for
17 bathrooms and elevators. Well, thank you.

18 MS. ST. ROMAIN: Wait. One last
19 procedural issue.

20 THE HEARING EXAMINER: Yes, ma'am.

21 MS. ST. ROMAIN: Just, because we are
22 asking for an extension, which would require another.
23 For a continuation of the open hearing, we would just
24 ask that it's not -- that the hearing isn't closed.

25 THE HEARING EXAMINER: Oh, it's



1 recessed.

2 MS. ST. ROMAIN: Okay. Thank you.

3 THE HEARING EXAMINER: I am firmly of
4 the belief that -- well, let's take Bakerview, where I
5 upheld the SEPA appeal and remanded it and then we
6 came back two years later on that, I think, roughly.
7 Mr. MacCready's starting to twitch over in the corner.
8 It was his project. And I believe legally that was
9 one hearing --

10 MS. ST. ROMAIN: Okay.

11 THE HEARING EXAMINER: -- with a two
12 year gap between.

13 MS. ST. ROMAIN: Perfect.

14 THE HEARING EXAMINER: Kind of like a
15 Japanese litigation, where you meet once a month for
16 years. That's kind of how that... Now, that hasn't
17 (unintelligible) no published appellate decisions on
18 that, but that's my story and I'm sticking to it. So
19 yes, thank you.

20 MS. ST. ROMAIN: Thank you.

21 THE HEARING EXAMINER: That's my
22 position, is that any further quasi-judicial hearings
23 will be a continuation of this open record hearing.

24 MS. ST. ROMAIN: Excellent.

25 THE HEARING EXAMINER: Thank you.



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MS. ST. ROMAIN: Thank you.

THE HEARING EXAMINER: Have a great
Memorial Day weekend.

MS. ST. ROMAIN: Thank you.

MR. HUFF: Thank you.

MR. OTTEN: Thank you.

MS. ST. ROMAIN: You too.

(Proceedings adjourned at 1:27 p.m.)

(END OF TRANSCRIPTION)



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