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BEFORE THE HEARINGS EXAMINER
FOR THE COUNTY OF SNOHOMISH

BLUE SQUARE REAL ESTATE POINT)
WELLS,)
Appellant,)
vs.) CASE NO.: 11 101457 LU
SNOHOMISH COUNTY DEPARTMENT OF)
PLANNING & DEVELOPMENT)
SERVICES)
Respondent.)

HEARING BEFORE EXAMINER
PETER CAMP
VOLUME IV



1:00 p.m.
May 21, 2018

Office of the Hearing Examiner
3000 Rockefeller Avenue
Everett, Washington 98020

TRANSCRIBED BY: JACQUELINE L. BELLOWS, CCR 2297



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Everett, Washington; May 21, 2018

1:00 p.m.

--oOo--

THE HEARING EXAMINER: Good afternoon, everyone. This is a continuation of the Point Wells open-record hearing. Today is Monday, May 21st, 2018. First, cell phone phones, let's please turn them off or set them to vibrate so we're not interrupted.

Any housekeeping things to take care of before we start? Nope? Good.

MR. OTTEN: Not housekeeping, Mr. Camp, but some additional exhibits.

THE HEARING EXAMINER: Let's have them marked and deal with them as --

MR. OTTEN: Okay.

THE HEARING EXAMINER: Do you want to deal with them as they come up with the witness, or do you want to deal with them --

MR. OTTEN: It might be easier to just provide them now.

THE HEARING EXAMINER: Okay. Why don't you get them marked and --

MR. OTTEN: Okay.



1 (Hearing Exhibits No. P-5 through P-12
2 marked for identification.)

3 MR. OTTEN: P-5 will be next but will -- it's
4 multiple ones. Let's get them sorted first.

5 Does there need to be a second copy?

6 THE HEARING EXAMINER: Yeah. So the P-5 will
7 be the Point Wells Mixed Use Redevelopment Project Draft
8 EIS with a time line. P-6 is on Karr Tuttle letterhead
9 to Mr. Otten, dated April 16, 2018. P-7 is an email
10 from Mr. Otten to Ms. Davis regarding the Point Wells
11 application. P-8 is a letter from Ms. Mock, director of
12 PDS to Mr. Huff, dated February 5 2018. Exhibit P-9 is
13 an email from Steve Ohlenkamp to Paul MacReady and
14 Mr. Otten. P-10 is a letter from Mr. MacReady to
15 Mr. Huff, dated January 19, 2018. P-11 is a letter from
16 Darryl Easton of PDS to Mr. Huff, dated May 15, 2014.
17 And then P-12 is a copy of the Snohomish County
18 Shoreline Management Master Program. It looks like
19 through 1993.

20 Are we good? Okay. So let's get started.
21 Mr. Otten?

22 MR. OTTEN: The county would like to call its
23 first witness, Mr. David Killingstad.

24 THE HEARING EXAMINER: So one of the things
25 that I know, these long hearings, the table can -- you



1 can sit down if you want. You don't have to stand. So
2 whatever your preference is, if you want to sit down,
3 grab a chair and just move the table down.

4 Although while you're still standing, let's
5 swear you in.

6

7 THE HEARING EXAMINER: Do you solemnly swear
8 or affirm the testimony that you're about to give in
9 this proceeding is true and correct?

10 THE WITNESS: I do.

11 THE HEARING EXAMINER: Thank you. Why don't
12 you adjust the table and give us your name, rank, and
13 serial number.

14 The other side.

15 MR. HUFF: I'll be fine.

16 THE WITNESS: For the record, David
17 Killingstad, Snohomish County Planning and Development
18 Services.

19

20 DIRECT EXAMINATION

21 BY MR. OTTEN:

22 Q. Mr. Killingstad, will you please state your
23 name and occupation for the record.

24 A. David Killingstad, principal planner.

25 Q. All right. How long have you been with PDS?



1 A. Approximately 24 years.

2 Q. What division of PDS are you in?

3 A. I work in the Long-range Planning Division.

4 Q. What does the Long-range Planning Division do?

5 A. We implement aspects -- various aspects of the
6 Growth Management Act. We develop plans and policies.
7 We amend and adopt -- amend and draft development
8 regulations. We process annexation requests, process
9 docket proposals, amendments to the county's
10 comprehensive plan.

11 Q. All right. How does the Long-Range Planning
12 Division differ from the Permitting Division of PDS?

13 A. The most notable difference is that we do not
14 process development applications or building permits.
15 That's the responsibility of the Permitting Division.

16 Q. Okay. And what are the job duties associated
17 with your position in Long-Range Planning?

18 A. So as a principal planner, I'm responsible for
19 basically leading various complex code projects, policy
20 projects. I may be asked to sit on various committees
21 or interact with various agencies including the Puget
22 Sound Regional Council, cities, towns.

23 Q. As a principal planner, are you familiar with
24 the Washington Growth Management Act, also known as the
25 GMA?



1 A. Yes. I am.

2 Q. Okay. And can you provide a very high-level
3 overview of your understanding of the GMA and how it
4 guides the county's planning.

5 A. So the GMA is a planning framework that
6 establishes goals and policies to which counties, cities
7 and towns that are subject to the act must complete
8 comprehensive plans and implement development
9 regulations. There also is sort of the concept of
10 protecting rural areas and urban areas through use of
11 Urban Growth Boundaries. And there is, within the act,
12 a goal of creating consistency between local
13 jurisdictions' plans and the act itself.

14 Q. Okay. Then could you provide a general
15 overview of how Snohomish County's plan, particularly
16 its comprehensive plan, zoning designations, and
17 development regulations fit together.

18 A. Yes. So the kind of the frame -- phrase that
19 a lot of us use in the GMA vernacular is "internal
20 consistency." So the policies that we establish in our
21 plan have to be consistent with the countywide planning
22 policies, the multicounty planning policies, and the GMA
23 itself. But it also works down as well. So the plan
24 level, the plan has to be consistent with our code which
25 also has to be consistent with the plan so that you



1 can't have a plan policy be inconsistent with the code
2 and vice versa.

3 Q. How do the development regulations fit into
4 that?

5 A. So the development regulations, then, are what
6 implement the goals and policies within the county's GMA
7 comprehensive plan. So the development regulation needs
8 to be consistent with whatever the policy is in the plan
9 itself.

10 Q. Okay. Are you familiar with the county's
11 various zoning designations?

12 A. Yes, I am.

13 Q. Are you in particular familiar with the
14 county's urban center designation?

15 A. Yes, I am.

16 Q. All right. And were you actually involved in
17 the development of the urban center?

18 A. Yes, I was. I was one of the principal
19 authors of the urban center development regulations.

20 Q. Can you provide us with a brief overview of
21 your involvement with the development and adoption and
22 implementation of the urban centers designation and
23 comp. plan policies?

24 A. Yes. So following -- so kind of going back a
25 little bit of history here, so in 2001 the county



1 adopted a demonstration program that was basically used
2 to try out the concept of mixed-use development. And
3 from that, in 2000 -- beginning in about 2008, I led an
4 effort to develop a permanent set of regulations,
5 permanent both development regulations as well as
6 creation of a new zone called urban center or, as it's
7 oftentimes abbreviated, UC.

8 That was adopted in 2009 and went into effect
9 in 2010. I often refer to that as the 2010 version of
10 the code. There was a subsequent revision to the code
11 which occurred in 2013 that I was involved in that
12 effort to update the regulations.

13 Q. Okay. And you mentioned that you were
14 involved with the development and adoption of the urban
15 center areawide rezone and development regulations?

16 A. Yes, that's correct.

17 Q. All right. Moving over to sort of a separate
18 item, I'm going to hand you what's been marked as
19 Exhibit P-5. Could you explain what this document is?

20 A. So this is a chronology of events
21 associated -- the title of it is Point Wells Mixed-Use
22 Redevelopment Project Draft EIS. This is a chronology
23 of events beginning in 2005 through January of 2013. It
24 includes the initial designation of Point Wells as an
25 urban industrial site with heavy industrial zoning in



1 2005 as part of -- there were changes as part of the
2 2005 comprehensive plan update -- moving through a
3 series of both county-adopted changes as well as some
4 changes that were the result of appeals to -- during
5 the -- over the life of this chronology here.

6 Q. Okay. You previously mentioned that you were
7 involved in the adoption and implementation of both the
8 comp. plan policies regarding urban centers and
9 development regulations. Is that correct?

10 A. Yes.

11 Q. Could you briefly describe the adoption of
12 ordinances 09038 and 09051. Like what were those? What
13 did those actions implement?

14 A. Yes. So in leading up to August of 2009, the
15 then applicant of the Point Wells property initiated
16 a -- an amendment to the county's comprehensive plan
17 through the docket process to change the designation to
18 urban center with the implementing zoning of planned
19 community business. That was reviewed under our
20 criteria for a docket process including environmental
21 analysis. That was then presented through the planning
22 commission. And the county council ultimately adopted
23 the change which then changed the property to urban
24 centers.

25 Simultaneous with the changes to the



1 comprehensive plan, we were developing these permanent
2 set of regulations to implement the urban center
3 policies including regulations as well as to -- a
4 creation of the new UC zone. And kind of, as the Point
5 Wells docket application was sort of finalizing at the
6 council, it hitched a ride to the code project. And
7 ultimately it was rezoned to PCV. But then
8 subsequently, just literally a few months later, the
9 zoning was changed to UC. The council had, toward the
10 end, decided that it made sense for consistency to
11 rezone it to UC. So by early 2010 the property was
12 designated urban center and zoned for UC, urban center.

13 Q. You mentioned that the legislative action that
14 created a new UC zone and development regulations. Can
15 you identify where on that time line those are and what
16 ordinance numbers?

17 A. So that is the May 2010 adoption of ordinances
18 09079 and 0980.

19 Q. And in total how many ordinances did the
20 county council adopt in relation to the Point Wells
21 urban center?

22 A. So there were four total: 09038, 09051, 09070
23 and 09080.

24 Q. Was the county's adoption of, I guess, the
25 first two ordinances you mentioned, the comprehensive



1 plan policies and designation, challenged by any
2 parties?

3 A. Yes, they were.

4 Q. Which parties challenged them and under what
5 ord.?

6 A. So under the Growth Management Hearings Board,
7 those ordinances were challenged by the City of
8 Shoreline, the Town of Woodway, and an organization
9 called Save Richmond Beach.

10 Q. How about the county's adoption of the urban
11 center areawide rezone and development regulations?
12 Were those challenged?

13 A. Yes, they were. They were also appealed to
14 the Growth Management Hearings Board. And the same
15 parties -- the Town of Woodway, the City of Shoreline,
16 and Save Richmond Beach -- they were -- filed appeals on
17 those ordinances as well.

18 MR. OTTEN: All right. I'm going to ask you
19 to, if the screen still works, if we can get to the
20 exhibit list. Find someone tech savvy. Could you pull
21 up exhibit, 0-4(a)? I think we're -- yes. Just go to
22 the hearing examiner's website.

23 UNIDENTIFIED SPEAKER: Is that labeled
24 Appendix A?

25 MR. OTTEN: We're going to look at Appendix C.



1 UNIDENTIFIED SPEAKER: Appendix C. 0-4(a)?

2 MR. OTTEN: Correct.

3 UNIDENTIFIED SPEAKER: That's Appendix A
4 through C; right?

5 MR. OTTEN: A through C, yeah. Sorry.

6 Q (By Mr. Otten) All right. Do you recognize --

7 MR. OTTEN: Let's see. You're still on A. I
8 think we're on page 36 of the pdf if that helps.

9 There's a keyboard on the -- all right. Can you shrink
10 that a little bit? Thanks.

11 Q (By Mr. Otten) So you have an exhibit. This
12 is 0-4(a), Appendix C. Do you recognize this document?

13 A. Yes, I do.

14 Q. And could you describe what that is?

15 A. So this is the Final Decision and Order of the
16 Central Puget Sound Growth Management Hearings Board in
17 the matter of Shoreline, Woodway, Save Richmond Beach,
18 et al, v. Snohomish County and Point Wells LLC,
19 intervenor, which was known as -- the hearings board
20 cases were known as Shoreline 3 and Shoreline 4.

21 Q. Okay. Is this the decision that was reached
22 on the four ordinances that you just described earlier?

23 A. Yes, this was.

24 Q. What was your recollection of the outcome of
25 the growth board appeal?



1 A. So the hearings board, they invalidated the
2 ordinances which affected the policy and designation
3 change to Point Wells and remanded the entire set of
4 ordinances back to Snohomish County for correction to --
5 in essence, they found that the county was not
6 consistent or not in compliance with the Growth
7 Management Act on several different points.

8 Q. Specifically, the first two ordinances that
9 are described as Shoreline 3, what ordinance does those
10 refer to?

11 A. So those refer to the 09038 and 09051.

12 Q. Okay. And the board -- did the board find GMA
13 noncompliance on those in addition to SEPA issues? Or
14 do you recall?

15 A. Yes. So they found, they found that we
16 weren't in compliance with the Growth Management Act.
17 They also found that we were not in compliance with SEPA
18 and requested that the county go back and basically do
19 additional SEPA on the proposed change to -- the
20 proposed changes to Point Wells.

21 Q. With regards to Shoreline 4, what does
22 Shoreline 4 -- which ordinances does that encompass?

23 A. So Shoreline 4 encompasses ordinance 09079 and
24 09080, which were the regulations and the
25 county-initiated area-wide rezone.



1 Q. What did the board find in regards to those
2 ordinances?

3 A. While they didn't invalidate those ordinances,
4 they did find that they weren't -- that sufficient SEPA
5 wasn't done. So they remanded those ordinances back to
6 the county for -- on remand.

7 Q. So to sum it up, were all four ordinances sent
8 back for remand and compliance by the board?

9 A. That's correct.

10 Q. All right. And what actions did the county
11 take on remand to obtain compliance with the growth
12 board order?

13 A. So the county ultimately did several changes.
14 We amended the policies in the comprehensive plans
15 specific to our centers, our urban center section. We
16 completed an additional environmental analysis through
17 the issuance of a SEPA addendum that analyzed an
18 additional alternative.

19 What the board had concluded was that just
20 doing a no-action alternative and an action alternative
21 was not sufficient to create enough distinction for the
22 decision-making body, in this case the county council,
23 to be able to render a decision. So they asked us to
24 do, in essence, a middle alternative between the book
25 ends and what was the upper-end alternative, which was



1 representative of a project of about 3,000 units. We
2 also changed -- created a new set of regulations
3 specific to urban villages. And we changed the
4 designation of Point Wells from urban center to urban
5 village. And we changed the zoning from urban center or
6 UC to planned community business or PCF. So that was a
7 package of things that was ultimately adopted by the
8 counsel and then sent back to the hearings board to
9 determine if we were compliant or not.

10 Q. I have two follow-up questions on that: You
11 said you did additional -- the county did additional
12 SEPA and a middle-of-the road alternative. Can you
13 explain what the no-action alternative is in relation to
14 the, I guess, full-action alternative and then the
15 middle of road. Can you go into details on those three
16 options.

17 A. So the no-action alternative was the status
18 quo, which was the property at the time was designated
19 as urban industrial. So it looked at just maintaining a
20 status quo as the property being industrial versus what
21 was proposed as part of the docket application, which
22 was the redesignation to urban center and a rezone to
23 planned community business. There was -- that
24 alternative looked at a -- considered approximately
25 3,000 units and an amount of square footage for



1 commercial retail uses that was analyzed as part of that
2 environmental impact statement.

3 We looked at a middle alternative that came in
4 somewhere around 2,000 units and a bit less in terms of
5 commercial development. There were actually were some
6 different -- the addendum actually looked at a couple of
7 different variants of the -- of units relative to how
8 many were considered one form of residential versus
9 another. These things are coming off the top of my
10 head. It looked at essentially a middle alternative
11 that was intended to satisfy what the board had put in
12 their order.

13 Q. Okay. And can you -- was this a project-level
14 or programmatic-level SEPA analysis?

15 A. That was a programmatic-level SEPA analysis.

16 Q. Can you describe the difference between those
17 two?

18 A. In sort of SEPA terms, programmatic is sort of
19 looking at things at the high level, kind of like the
20 50,000-, 100,000-foot level, whereas a project-level
21 SEPA gets much more down at the ground level. The level
22 of detail is going to be much greater, particularly on
23 issues related to the various elements of the
24 environment from the built to the natural.
25 Transportation is much more detailed and specific based



1 on a project level versus what you might see at a
2 programmatic or that -- again that of high kind of
3 gross-scale level.

4 Q. Is a programmatic SEPA done for legislative
5 actions when a local jurisdiction is considering
6 areawide rezones? Is that the context of the
7 programmatic?

8 A. Yes. Typically we do programmatic
9 environmental impact statements when we are amending,
10 doing like a comprehensive plan update, doing major
11 changes to the comprehensive plan. And historically,
12 we've done environmental impact statements as part of
13 changes. Individual requests for county-initiated
14 rezones we do at the programmatic level.

15 Q. Okay. Then you mentioned that the site was
16 redesignated as urban village. Can you briefly describe
17 what an urban village is and how it compares to an urban
18 center?

19 A. So the county has different levels of or kind
20 of hierarchy of urban centers, the urban center being
21 the largest, kind of most intense. The urban village is
22 smaller in scale, smaller intensity. So it's not going
23 to have as much density in terms of kind of what you
24 would expect relative to an urban center.

25 The locations of urban village tend to be kind



1 off a little bit of your -- for example, we have two
2 urban centers along I-5 at 128th and 164th. We have
3 urban villages such as Point Wells. We have other urban
4 villages like out at Cathcart. We have an urban
5 village -- a couple of urban villages off of 35th
6 Avenue, so much small and a little more off kind of the
7 main spine of I-5 or along state highways.

8 Q. The Shoreline 3 and Shoreline 4 ordinances
9 that are described in the growth board decision, how
10 many -- I guess, Shoreline 3, how many areawide -- how
11 many areas are rezoned urban center countywide?

12 A. So there was three -- two locations along
13 Highway 99, the aforementioned 128th and 164th along
14 Bothell-Everett Highway and a location at -- off of 44th
15 Avenue near the city of Lynnwood. Then at the time
16 Point Wells was -- I think that makes seven locations
17 that were rezoned.

18 Q. And the two appeals that you referenced
19 earlier, did they -- were they appealing the county's
20 urban center zoning and development regulations
21 generally speaking or just as applied to one specific
22 site?

23 A. They were applied just to one specific
24 location. That was where their arguments were made.

25 Q. What location was that?



1 A. That was Point Wells.

2 Q. Okay. And then can you look back at
3 Exhibit P-5 and walk us through from what happened after
4 the growth board ruling in May of 2011. That was the
5 handout.

6 A. Oh, the handout. I'm sorry. Could you please
7 repeat the question.

8 Q. Yes. Could you walk us through the events
9 that occurred post May of 2011 after the growth board
10 ruled on the ordinances.

11 A. Yes. So after the county had completed its
12 work on what we referred to as "the remand," that was
13 sent back to the growth board. The growth board deemed
14 that we were compliant with GMA. Separately, however, a
15 different appeal had been initiated which looked at the
16 question of vesting of an application when it's in
17 context of an action that had been invalidated on the
18 comprehensive plan.

19 So what -- in November of 2011 in King County
20 Superior Court, Judge Lum ruled that, no, that the
21 application was not vested to the code. And
22 subsequently that decision was appealed to the Court of
23 Appeals, who overturned Judge Lum's decision and ruled
24 that, no, the application was vested to the regulations
25 in place in 2010. That decision was then appealed to



1 the Washington State Supreme Court, and the Supreme
2 Court upheld and found that the application was vested
3 to the code in place as of 2010.

4 Q. Is it your understanding, as a result of the
5 litigation, that the Point Wells development
6 applications are vested under the former urban centers
7 regulations?

8 A. Yes.

9 Q. And so, if an application came in today on the
10 Point Wells site, what can an applicant develop under
11 what code?

12 A. So the applicant would be required to develop
13 under the urban village designation. And they have one
14 of two choices. They can develop it under the planned
15 community business zone, which establishes various
16 setbacks, bulk requirements, uses. Or they can develop
17 under a set of what we call the "optional performance
18 standards" for urban village found in Chapter 30.31A.
19 That provides for some additional density, additional
20 building height, reduced setbacks. The tradeoff is that
21 there are requirements for additional public process
22 including a neighborhood meeting; a hearing; an approval
23 by the hearing examiner; and, in the case of Point
24 Wells, the negotiation of various interlocal agreements,
25 as part of the development application.



1 Q. All right. And is urban center the highest
2 density zone that Snohomish County has in its use
3 matrix?

4 A. Yes, it is.

5 Q. Switching topics, I was going to have you pull
6 up Exhibit M-1 on the screen. First -- you got it.
7 Okay. All right.

8 Could you describe who this communication is
9 between and the date of the document.

10 A. Yes. This is, this is an email from myself to
11 Gary Huff, attorney for Blue Square Real Estate, dated
12 Monday --

13 Q. I'm sorry.

14 A. -- October 11th. Oh, okay. Sorry about that.

15 Again, this is an email from myself to Gary
16 Huff. It is dated October 11th, Monday, October 11,
17 2010.

18 Q. All right. What is the communication
19 regarding?

20 A. So it is regarding an inquiry that Mr. Huff
21 made about terminology or a definition of "transit
22 sponsor."

23 Q. Where does the term -- or in what context is
24 the term "transit sponsor" used?

25 A. So in the context of this email, "transit



1 sponsor" refers back to a Public Works administrative
2 rule regarding a concept called "transit compatibility"
3 that is linked back to Chapter 36 -- 30.66B, which is
4 the county's concurrency requirements.

5 Q. The term comes from the DPW rule?

6 A. Yes. The term, the term originates from a
7 Department of Public Works administrative rule.

8 Q. Okay. And up above, is there -- there's
9 reference to a George Godley. Who is he?

10 A. So George Godley is a former Department of
11 Public Works employee.

12 Q. Okay. So the question was initially sent to
13 Public Works as a Public Works question?

14 A. Yes. Public Works is the administrator of
15 that rule. They are the ones that process the
16 requirements under which the --for the rule, the
17 requirements of transit compatibility or the
18 responsibility of Public Works to implement and approve.
19 So Mr. Godley was an employee at the time who was in
20 charge of that process.

21 Q. This is a question in the context of, you
22 said, Chapter 30.66B. What does that reference again?

23 A. So the 30.66B is county's concurrency
24 requirements. The concept of transit compatibility
25 relates back to concurrency. And the idea of transit



1 compatibility gives somebody the ability to get sort of
2 a reduction in some of their requirements under 30.66B.

3 Q. So in relation to traffic?

4 A. It is related to traffic.

5 Q. Is the term "transit sponsor" or this email,
6 is it in any way related to the provision of the urban
7 center code regarding building heights?

8 A. No. No, it is not.

9 Q. Okay. Let's -- moving on, I want to talk to
10 you a little bit about Sound Transit or have you speak
11 to Sound Transit. As a long-range planner with PDS, do
12 you work on transportation planning issues?

13 A. I do.

14 Q. All right. And what kind of transportation
15 planning projects or issues have you worked on as a
16 principal planner?

17 A. I have worked -- I've worked jointly with
18 Public Works on projects that involve coordination with
19 our respective transit agencies, including Sound
20 Transit, Community Transit, Everett Transit. I've
21 worked with them on, in some cases, on some roads as it
22 relates -- long-range planned as it relates to
23 implementation and amendments to the transportation
24 element, which is the 20-year document that covers
25 future transportation needs for Snohomish county.



1 Q. Can you describe any -- are you working on any
2 project right now that involves transportation planning?

3 A. Yes, I am. I am co-lead on a joint project
4 with Public Works to plan for the extension of light
5 rail from Lynnwood to Everett. I'm involved a project
6 that is looking at doing station-area planning for the
7 centers at 164th and 128th. It's one of the major
8 projects that our two departments are involved in. It's
9 a multi-year project that is going to continue out to
10 the year 2023, lots of coordination with various
11 agencies, stakeholders.

12 Q. Okay. You mentioned you're working in
13 conjunction with the county's Department of Public
14 Works. Is that correct?

15 A. That's correct.

16 Q. What other agencies are also participating in
17 that project?

18 A. So all of our transit agencies, Community
19 Transit; Sound Transit, of course, because they're the
20 ones bringing the light rail; Everett Transit. We're
21 working with various utilities, public service providers
22 as well.

23 Q. Okay. Through your background and experience
24 with regional transportation planning, are you familiar
25 with Sound Transit and their long-range planning?



1 A. I am.

2 Q. Could you just provide a brief overview of
3 Sound Transit, its structure and purpose and how it fits
4 into transportation in the Puget Sound area.

5 A. So Sound Transit is the regional transit
6 provider for King, Pierce, and Snohomish County. They,
7 they provide three primary modes of transit. Light rail
8 is probably the most visible that they provide. They
9 also provide Sounder commuter service, both North Link,
10 which is from Seattle to Everett, and South Link, which
11 runs from Tacoma to Seattle. And they provide regional
12 bus service to various points: Everett to Seattle,
13 Everett to Bellevue, and other parts throughout the
14 region.

15 Q. Okay. Thank you. As part of the Sound
16 Transit long-range planning, does the agency adopt
17 documents concerning planning and capital improvements
18 to be made in the future?

19 A. They do.

20 Q. All right. I'm going to ask you to use the
21 technology again. Could you turn to Exhibit H-27. All
22 right. Can you explain what this document is?

23 A. So this document is referred to as the Sound
24 Transit 3 Regional Transit System Plan for Central Puget
25 Sound. It is the document that encapsulates the what is



1 known as ST -- what is -- the package of improvements
2 that Sound Transit is constructing as part of what is
3 commonly known as ST3.

4 Q. Could you step back and explain what ST3 is.

5 A. So Sound Transit 3 is the third expansion of
6 high-capacity transit in the Puget Sound region. The
7 initial package was known as Sound Move was the package
8 that brought light rail out to SeaTac airport. That was
9 followed by the voter approval of Sound Transit 2, which
10 is bringing light rail up to Lynnwood, south to Federal
11 Way, and eastwards out to Bellevue. And so that's --
12 then Sound Transit 3 is the extension of that beyond
13 bringing light rail to Everett, light rail to Tacoma,
14 light rail out to Redmond.

15 At its conclusion it will -- the entire light
16 rail system at the full build out of Sound Transit 3
17 will be 160 miles, which more than doubles the existing
18 service system today.

19 Q. Do you know how far the planning horizon is
20 for Sound Transit 3?

21 A. So the last project that is shown in Sound
22 Transit 3 is light rail to the city of Issaquah, which
23 is scheduled to be in service around the year 2041.

24 Q. All right. Can you turn to -- it's going to
25 be pdf page 6 of that document. It's also labeled



1 page 3 on the actual. All right. Can you describe what
2 this is, what this illustration depicts.

3 A. So this illustration depicts the current Sound
4 Transit system under the original Sound Move as well as
5 the -- as well as Sound Transit 2 improvements and the
6 ultimate full build out at Sound Transit -- at Sound
7 Transit 3.

8 Q. And can you point out where the Sounder North
9 commuter rail is depicted on that map?

10 A. Yes. It's depicted as this kind of green,
11 green arcing line.

12 Q. Okay. What stations on the Sounder North
13 commuter rail are located in Snohomish county?

14 A. So there are stations in the city of Edmonds,
15 the city of Mukilteo, and then the end-of-the-line stop
16 here in downtown Everett, the Everett station.

17 Q. Is there any stations located at Point Wells
18 or the Shoreline/Richmond Beach area on that map?

19 A. No, there is not.

20 Q. Could you turn to the pdf. It's page 19 of
21 that document. Could you enlarge the map portion.

22 A. Oh, you want --

23 Q. Yeah. All right. What does this illustration
24 depict?

25 A. So this illustration depicts the various



1 subareas for the purposes of funding within what's
2 referred to as the Regional Transit Authority or RTA.
3 There are five subareas: The Snohomish County subarea
4 in the north, North King County, East King County.
5 South King County, and Pierce County subarea.

6 Q. What's the purpose of these subareas?

7 A. So the purpose of -- the subareas were created
8 initially to -- basically from an equity standpoint,
9 such that revenue that was collected within the
10 particular subarea would be utilized for projects within
11 that subarea. So if it was tax dollars were collected
12 in Snohomish county, for example, the intent was that
13 they would be used within Snohomish county.

14 Q. Okay. And on that map -- I know it's not very
15 detailed. But roughly where would -- if there was a
16 station at Point Wells or Shoreline/Richmond Beach,
17 where would that station be located on that map within
18 the district?

19 A. It would be located just, just -- there's kind
20 of a line, kind of a greenish line, horizontal line that
21 depicts the county line between Snohomish and King
22 county. So it would be just north of that and just west
23 of the word -- kind of underneath the word "Woodway,"
24 north of the word "Shoreline" on this, on this
25 particular map.



1 Q. So if the station was located at Point Wells,
2 what side of the line would that . . .

3 A. So if it was located at Point Wells, it would
4 be located in the Snohomish county subarea.

5 Q. What if it was located in the
6 Shoreline/Richmond Beach area?

7 A. Then it would be located in the North King
8 county subarea.

9 Q. That would be a different subarea for purposes
10 of Sound Transit funding and sub equity issues?

11 A. Yes.

12 Q. Okay. And let's turn to another exhibit,
13 H-28.

14 I have one follow-up question on the subarea
15 issue. What's the significance of a station being
16 located on one side of the line or the other in terms of
17 Sound Transit's considerations?

18 A. So the -- it goes back to the issue of subarea
19 equity that the -- it was envisioned, if the station is
20 located or a project is located in one subarea or the
21 other, it's presumed that the funding for that project
22 would come out of that subarea itself. So if the
23 project is King County, in that North King County
24 subarea, it was assumed that the funding for that would
25 primarily come from that subarea itself.



1 Sound Transit uses a lot -- there's a lot of
2 different funding mechanisms. I'm not an expert on
3 their various means. And their projects are funded
4 through a variety of sources. I don't have the
5 expertise to get into that level of detail.

6 Q. Okay. Thanks. So can you describe what
7 Exhibit H-28 represents.

8 A. So H-28 represents an appendice (sic.) to the
9 document that we were just looking at, which was the
10 Sound Transit 3 System Plan. This is an appendice that
11 details out the specific facilities that are included in
12 the Sound Transit 3 proposal along with the estimated
13 cost of the individual projects.

14 Q. Okay. Could you turn to -- it's page AA or
15 pdf page 11 in that document. What does this page
16 represent?

17 A. So this page represents the list of projects
18 within the Snohomish County subarea, a summary of
19 estimated SP3 program costs and revenue by individual
20 mode that Sound Transit provides.

21 Q. Okay. What does -- what's identified under
22 the "Sounder Commuter Rail" heading?

23 A. So there is one project listed: Sounder North
24 Parking.

25 Q. What does that include?



1 A. So as I understand it, that project is looking
2 at some additional parking enhancements and access
3 enhancements for the commuter rail stations at Edmonds
4 and the commuter rail station at Mukilteo.

5 Q. Okay. And is the Point Wells transit station
6 identified under that heading?

7 A. No, it is not.

8 Q. What's the significance of it not being listed
9 in this document?

10 A. This significance is that it means that Sound
11 Transit is not doing any planning, design, engineering,
12 or construction.

13 Q. Is it also -- you said ST3 was sent to the
14 voters?

15 A. Yes; that's correct, in November of 2016.

16 Q. If it's not included in this document, is it
17 an assumption that it was not included in the package to
18 voters?

19 A. Yes, that would be correct.

20 Q. Let's turn to -- what's the planning horizon,
21 again, for ST3?

22 A. The planning horizon for all of ST3 is, as I
23 mentioned earlier, is -- goes out to the extension of
24 light rail to Issaquah which ends in 2041.

25 Q. Okay. You said that the North Parking applies



1 to which two stations?

2 A. It applies to Edmonds and Mukilteo.

3 Q. Both -- so do both of those stations include
4 parking for users of the commuter rail?

5 A. They currently -- there's currently parking
6 there today.

7 Q. Okay.

8 A. Yeah.

9 Q. The funding, do you know, is that going to
10 expand the parking? Or --

11 A. Yes. This would include some additional -- as
12 I understand the project, it would include some
13 additional parking as well as some additional access
14 enhancements to make getting around and getting access
15 to the station more convenient.

16 Q. Okay. I'm going to continue to test your
17 technology skills. Can you turn to Exhibit H-26. What
18 does -- what's this document represent?

19 A. So this document is another appendix to the
20 Sound Transit Final Supplemental Environmental Impact
21 Statement that was completed as part of the leadup to
22 putting together the actual package of amendments that
23 was voted on by the voters known as Sound Transit 3.

24 Q. Okay. What does inclusion of projects in this
25 document, what's the significance of that?



1 A. So inclusion of this means that Sound Transit
2 looked at it under SEPA with the idea that they were --
3 wanted to look at the -- analyze the impacts and provide
4 the Sound Transit board with additional information from
5 which the board, then, could make final decisions about
6 which projects they wanted to move forward into the
7 package known as Sound Transit 3.

8 Q. Okay. Could you turn to pdf page No. 10, also
9 identified as A-6. Could you enlarge it. And could you
10 scroll down to the heading "Sounder." Under the fourth
11 entry, could you read that line?

12 A. Yes. The first column says "station." The
13 middle column says "Shoreline/Richmond Beach." The last
14 column says "King," for King county.

15 Q. Okay. What is the significance of including
16 the mention of the Shoreline/Richmond Beach station in
17 the "Sounder" subheading?

18 A. So again, this was, this was the detailed list
19 of all projects. It's one of several tables that's in
20 this appendice that was intended to provide the board
21 with additional information from which to render a
22 decision about which projects should or should not be
23 included in the package for Sound Transit 3.

24 Q. Okay. What -- this was part of a SEPA
25 analysis?



1 A. Yes. This was part of the SEPA analysis.

2 Q. And you testified earlier to the difference
3 between a programmatic SEPA and a project-level SEPA.
4 What type of SEPA was this?

5 A. This would be an example of -- well, this
6 would be part of a programmatic environmental document.

7 Q. And so there's many other stations or other
8 improvements listed there; is that correct?

9 A. Yes, that's correct.

10 Q. Are there, are there other alternatives listed
11 there that are not part of ST3?

12 A. Yes. I mean there are a lot of -- this was a
13 laundry list, in effect, of things that -- call it a
14 "wish list" that was analyzed. And ultimately the
15 package that was adopted was narrowed down.

16 I am not an expert on this. But I do know,
17 for example, that a commuter rail station at Ballard,
18 for example, is not part of Sound Transit 3. That's one
19 that sort of stands out in my head. It was not included
20 as part of Sound Transit 3.

21 Q. So the inclusion -- does the inclusion of
22 these improvements for these stations or improvements to
23 other portions of the Sound Transit system, does that
24 mean that they're going to be built at any time? What's
25 the purpose of SEPA in this document in terms of the



1 Sound Transit board?

2 A. It -- again, it merely is intended to provide
3 the board with more information from which to render a
4 decision. It doesn't imply that it is or isn't going to
5 be constructed, rather it's Here's additional
6 environmental information from which -- for the board to
7 be able to make a more informed decision.

8 Q. Under SEPA, is a local jurisdiction or agency
9 required to consider a range of alternative actions?

10 A. Yes, they are.

11 Q. Okay. So does the inclusion of the station at
12 Shoreline/Richmond Beach or any other station listed
13 there mean that a station will be built at the
14 designated location in the short term?

15 A. No, it does not.

16 Q. Does it mean that a station will be built at a
17 location under ST3?

18 A. No, not.

19 Q. So I'm trying to see where the Sound Transit
20 outlines its list of stations or improvements that they
21 have committed or guaranteed to be built. Where would
22 those be listed if they're not listed here?

23 A. So that was back in the exhibit that we
24 formerly were looking at here for -- again just for the
25 Snohomish subarea. This is that appendice to --



1 Q. What exhibit was that?

2 A. That's in H-28. That's the appendice to
3 Exhibit H-27.

4 Q. So those are the actual improvements
5 identified to be built under ST3?

6 A. Yes.

7 Q. Okay.

8 A. 'Cause that -- this is based -- this is the
9 document that was before the voters when they voted in
10 November of 2016.

11 Q. Okay. So what would be -- is there -- I
12 guess, is there an ST4 that you're aware of?

13 A. No, I'm not aware of -- again Sound Transit's
14 focus is completing work on Sound Transit 2. And, for
15 example, that's bringing light rail to Lynnwood in and
16 around the year 2024. And they're focused on Sound
17 Transit 3. I can't speak to whether or not they're
18 contemplating a Sound Transit 4. I know they're working
19 on ST2, finishing out ST2 and working on -- beginning
20 work on Sound Transit 3.

21 Q. What would be required to build a station on
22 the Sounder North commuter rail line that is not
23 currently documented in the long-range plans as you've
24 identified as H-27 or H-28?

25 A. There would be board -- Sound Transit Board



1 approval would be needed because it's something that's
2 not previously been -- that wasn't part of Sound
3 Transit 3.

4 Q. What is the Sound Transit Board?

5 A. The Sound Transit board is made up of elected
6 officials that represent jurisdictions within King,
7 Pierce, and Snohomish County. Snohomish County has
8 three representatives on that board: That's Council
9 Member Paul Roberts from the City of Everett; County
10 Executive Dave Somers, who is the chair of the Sound
11 Transit Board currently; and Mayor of Edmonds Dave
12 Earling.

13 Q. In addition, would a funding source have to be
14 identified for any station that's built?

15 A. Yes, it would. In fact, if you -- on this
16 document here, it notes at the bottom not only the
17 summary of the program costs but also what Sound Transit
18 had estimated for the possible sources.

19 Q. Okay. And is there -- for the improvements in
20 ST3, was there a requirement for the Sound Transit board
21 to obtain voter approval?

22 A. Yes. That's a requirement set out in state
23 law.

24 Q. Okay. If someone was to propose privately
25 financing a station, have you ever been aware -- to your



1 knowledge, has that been done with any of the Sounder
2 infrastructure?

3 A. To the best of my knowledge, I'm not aware of
4 a project that has been funded privately.

5 Q. Okay. Does Sound Transit own the tracks of
6 that the Sounder North commuter rail operates on?

7 A. No, they do not.

8 Q. Who does own the tracks?

9 A. Burlington Northern Santa Fe owns the tracks.

10 Q. So what is the relationship between -- how
11 does Sound Transit use the tracks owned by BNSF?

12 A. So Sound Transit entered into a long-term
13 agreement with Burlington Northern that basically
14 they're buying rights to run a set number of trips on
15 those tracks.

16 Q. Okay. And if there's changes to the Sounder
17 commuter rail service, either be it the number of trains
18 or stops, does that require renegotiation of the
19 existing agreement with BNSF?

20 A. That's my understanding.

21 Q. Do you have any examples of that in regards to
22 the Sounder commuter rail?

23 A. Yes. So, for example, the South Link or South
24 Sounder service has a very high ridership. And Sound
25 Transit has had ongoing conversations with Burlington



1 Northern about trying to increase the number and
2 frequency of trips in that very high-ridership corridor.

3 Q. Based on your knowledge about Sound Transit
4 and BNSF, is there any significant preliminary steps
5 that would be required before a station could be added
6 anywhere on the Sounder North commuter rail line?

7 A. So, again, the aforementioned board approval
8 because that would sort of initiate that work. But
9 also, again, because the line is owned by Burlington
10 Northern Santa Fe, they would be in a position to govern
11 not only the use of those tracks but also in terms of
12 the design of any stations.

13 Q. Okay. So would those preliminary steps still
14 be necessary even if a private party offered to cover
15 the entire cost of the station?

16 A. Yes.

17 Q. So even if someone was willing pay all of the
18 upfront cost, would the decision to add the stop
19 somewhere along the line be stopped by either one of
20 those two parties, speaking of Sound Transit or BNSF?
21 If they didn't come to agreement on it, it couldn't
22 occur; is that correct?

23 A. Yes.

24 MR. OTTEN: I have no further questions for
25 you Mr. Killingstad.



1 THE HEARING EXAMINER: Make sure you have the
2 microphone on and close to you, please.

3

4 CROSS EXAMINATION

5 BY MR. HUFF:

6 Q. I'm not sure how interesting that was for a
7 lot of people because they're not all that involved in
8 Sound Transit. And while we're interested, we have
9 never said that this would be funded by Sound Transit.
10 Correct? You are not aware --

11 MR. OTTEN: Objection. Is this a question?

12 THE HEARING EXAMINER: Let him finish what
13 he's saying first. Then you can object if you want
14 there.

15 Q (By Mr Huff) What you've said largely deals
16 with Sound-Transit-funded projects; right?

17 A. Correct.

18 Q. It doesn't -- except for approval of the Sound
19 Transit Board and Burlington Northern, it wouldn't apply
20 to privately funded projects?

21 A. I would approach that in this way: As I
22 stated, to the best of my knowledge, I'm not aware of a
23 project that was entirely funded privately that is part
24 of either -- any of the Sound Transits package. So I
25 can't -- I can only say that, if something is being



1 added to the Sound Transit system, irregardless of how
2 it's been financed, Sound Transit Board would need
3 approval because ultimately they are serving that.

4 Q. Of course.

5 A. And, since it's on a rail line that is owned
6 by Burlington Northern Santa Fe, they control the use of
7 those rails. That's the extent that I can sort of
8 comment on that.

9 Q. Are you familiar with the Spring District stop
10 on the 520 extension in Bellevue?

11 A. I'm familiar, yes, with the -- for the East
12 Link light rail?

13 Q. Yes.

14 A. I have a little bit of knowledge of that.

15 Q. And that is a Wright Runstad project; correct?
16 The Spring District project?

17 A. I believe that there is a -- sorry. So, yes,
18 the Wright Runstad folks have been involved with Sound
19 Transit. That is somewhat of a complicated project
20 because part of that is also looking at the -- has
21 looked at the siting of an operations and maintenance
22 facility as well in the Spring District which is near
23 where the Wright Runstad property has been. I know that
24 there were -- that's a long history there. I'm not --
25 I'm not intimately familiar with the actual financing



1 mechanism of that. But I know of the station. I know
2 that's there been history in that location.

3 Q. Would it surprise you to learn that Wright
4 Runstad is financing that station?

5 A. It would. Again because I'm not -- you know,
6 I'm more familiar with Sound Transit system in -- as it
7 pertains to Snohomish county than as it pertains to the
8 East Link.

9 Q. You can't say that that's not happening,
10 though? You just don't know?

11 A. I just -- I don't know. I'm not as -- as I
12 said, I'm not an expert on the East Link. But I do know
13 overall, big picture of Sound Transit. And I know what
14 their plans are here in Snohomish county.

15 Q. You emphasize the point that there is no
16 station at Point Wells shown on the plan maps.

17 A. Within -- on the Sound Transit 3 maps that are
18 in the exhibits that we've previously mentioned.

19 Q. There's no reason for a station to be shown
20 there yet; correct, because no one lives there? Why
21 would a plan be shown on a long-range plan if there's no
22 current demand?

23 A. Well, Sound Transit has, in both Sound
24 Transit 2 and in Sound Transit 3, does have provisional
25 stations that are included but are part of their design.



1 But in the case of one here in part of ST 3, we have a
2 provisional station proposed at Airport Road and 99.
3 It's not funded, but it is listed in Sound Transit 3 as
4 a provisional station, meaning Sound Transit 3 does have
5 to design it. But until funding is available, they
6 won't construct that station.

7 Q. In the original Sound Move proposal, there was
8 a station, a provisional station, at Point Wells for
9 Richmond Beach; correct?

10 A. Correct. Per exhibits from Sound Transit.

11 Q. And that was not included in the actual
12 construction plan because there's no demand; correct?

13 A. I believe the record -- the correspondence
14 from Sound Transit in 2010 from a Mr. Beal stated that
15 it was provisional because there was no funding to
16 construct the station.

17 Q. But there was a provisional station --

18 A. It was a provisional station.

19 Q. -- there?

20 You spoke of the agreement between Sound
21 Transit and BNSF. There is an additional stop available
22 to Sound Transit under that agreement, is there not?

23 A. I don't know the details of the agreement. I
24 just know that Sound Transit entered into an agreement
25 where compensation was made to Burlington Northern for



1 the right to utilize those -- their tracks for a certain
2 number of trips per day. And I believe the agreement is
3 in perpetuity.

4 Q. But you don't know whether or not additional
5 stops are allowed under that agreement?

6 A. No, I have not seen nor have I read the
7 agreement.

8 Q. You testified that you were the principal
9 author of the urban center code to which we're vested;
10 correct?

11 A. That's correct.

12 Q. Also the urban village code?

13 A. That's correct.

14 Q. And the revisions to the urban center code
15 that are now effective?

16 A. Yes; that's correct.

17 Q. So under the current or the vested plan, in
18 Section 03.01, the minimum FAR -- density is determined
19 by FAR; correct?

20 A. Correct.

21 Q. Could you explain briefly what FAR is.

22 A. So FAR is an abbreviation for floor-area
23 ratio. It's sort of the relationship of the growth site
24 area to the building area or building volume on it.

25 Q. And there's a minimum FAR required under the



1 code of 1.0?

2 A. Under the --

3 Q. For a mixed-use project.

4 A. Yeah. I don't have the code in front of me.

5 But working off the top of my head, the 2010 version of
6 the code, to which the project vested, did set a minimum
7 amount of FAR based on different categories of uses,
8 whether it was residential or whether it was mixed use
9 or whether it was nonresidential, I think. Or
10 ground-floor retail, I think, was one of them. Then it
11 has a maximum. Then there's a column for FAR bonuses
12 and FAR super bonuses.

13 Q. And assuming that the minimum is 1.0, what
14 we've applied for is the smallest possible urban center
15 development?

16 MR OTTEN: Mr. Cameron, I have an objection.
17 It's outside the scope of direct, and it pertains to the
18 application.

19 THE HEARING EXAMINER: It is beyond the scope.
20 But at the same time, he can simply recall
21 Mr. Killingstad. So I'll just -- are you willing to
22 just have him recalled?

23 MR OTTEN: I have another witness that can
24 speak to this as well.

25 THE HEARING EXAMINER: Mr. Huff has the right



1 to call whatever witnesses he wants to make his case.
2 So your choice is whether he goes outside the scope now
3 and calls Mr. Killingstad later or you let it go.

4 MR OTTEN: He can recall him later.

5 THE HEARING EXAMINER: Okay. I'll sustain the
6 objection.

7 MR HUFF: Could we have a brief recess to
8 locate in the exhibits the --

9 THE HEARING EXAMINER: Sure. Anything to make
10 this more efficient, I'm all over that. So do you want
11 to come back two at 2:10? 2:15? What's good?

12 MR. HUFF: No more than ten. Five would
13 probably do it.

14 THE HEARING EXAMINER: I'll say 2:15, then,
15 just to give ourselves a little slack.

16 MR. HUFF: Thank you.

17 THE HEARING EXAMINER: We're in recess.

18 (Brief recess.)

19 MR. HUFF: Well, we had some success but not
20 complete success in finding what I was looking for.
21 But . . .

22 THE HEARING EXAMINER: Technology is supposed
23 to make our lives easier; right?

24 MR HUFF: Right. Not at my age.

25 Q (By Mr. Huff) So David, this is part of



1 Exhibit H-24, I believe it is. And this is a letter
2 that I wrote to Sound Transit in response to their draft
3 supplemental impact statement. We had heard a lot of
4 criticism that there was no plan shown in any long-range
5 document for Sound Transit showing a station at Point
6 Wells. So the letter suggests there is one.

7 And the comment on the right, 493-1, could you
8 read that, please?

9 A. So it says "493-1, A Sounder station in the
10 general vicinity of Shoreline/Richmond Beach is included
11 in Appendix A of the Final Supplemental Environmental
12 Impact Statement as a," quote/unquote, "'representative
13 project' under the current plan alternatives. See Table
14 A-6 in the final SEIS."

15 Q. Excuse me just a second. That's the document
16 that you showed that listed the station as a
17 possibility? That's that table A-6 that's being
18 referenced; correct?

19 A. Yes. Yes. These projects that -- "these are
20 projects that could be implemented along the corridors
21 that comprise the current plan alternative regardless of
22 whether service is already in operation along those
23 corridors. The list represents the type of projects or
24 support facilities that could be implemented along a
25 corridor if funding is identified. The City of Edmonds



1 and other stakeholders would have additional
2 opportunities to comment on potential station locations
3 as projects are implemented in the future."

4 Q. The obvious meaning of that, do you agree, is
5 that a station at Richmond Beach or Point Wells need not
6 be shown on the plan for it to eventually happen if the
7 correct circumstances come into play?

8 A. I wouldn't necessarily read it that way. It
9 isn't expressly stated. It just is -- it is stating
10 that it was included, that the current plan alternative
11 doesn't -- that that terminology isn't what we refer to
12 as the package of Sound Transit 3. So I guess my
13 interpretation would be different than yours, Mr. Huff.

14 Q. Well, it's not listed. It's not included in
15 the financing of projects. That specifically says that
16 the development of a station there is possible under the
17 existing plan authorization; correct?

18 A. No, I would go back to the fact that, again,
19 the purpose of the, of the environmental impact
20 statement was to look at a broad list, a laundry list,
21 of projects to be included, ultimately, in a final
22 package. Again, under SEPA, a SEPA EIS doesn't in and
23 of itself mean that something is going to be adopted or
24 approved. It just means that we've looked at that
25 analysis.



1 Q. I didn't say "adopted" or "approved." The
2 language says these are projects that could be
3 implemented along the corridors that compromise (sic.)
4 the current plan alternative, regardless of whether
5 service is already in operation. Doesn't that say a
6 future station is a possibility under the existing plan
7 if financing becomes available?

8 A. But that would be true for any -- that's, I
9 think, a general statement that's applying to any, any
10 project. There were other projects listed on that
11 corridor including Ballard and Interbay.

12 Q. True.

13 A. So I wouldn't -- again, these are Sound
14 Transit's words. So you know, this is a question for --

15 Q. I'm not saying that that authorizes
16 development. But it is a possibility under the existing
17 plan that a station could be developed.

18 Later in that same document is a 2010 letter
19 from Sound Transit to Mark Wells at Paramount Petroleum
20 Corporation which follows meetings between Paramount,
21 then the active applicant, and Sound Transit about a
22 station.

23 A. That's correct.

24 Q. And it talks in the second paragraph that
25 "Point Wells is on the Seattle-to-Everett Sounder line



1 and that the property's urban center designation lends
2 support to the concept of including a commuter rail
3 station within the development. Such a station has the
4 potential to increase ridership on the Seattle line."

5 Thank you.

6 In the next paragraph that confirms that a
7 provisional station was located at the site in part of
8 the original Sound Transit plan; correct?

9 A. That's correct.

10 Q. With "provisional" defined as subject to
11 funding availability from the North King County subarea.
12 Because funding did not become available, that was never
13 constructed. That goes without saying. And it goes on:
14 "Sound Transit 2 didn't include us in the funding."

15 But it concludes by saying: "Since Point
16 Wells falls immediately north of the Richmond Beach
17 provisional station identified in the Sound Move, a
18 Point Wells station would be located in the Sound
19 Transit Snohomish County subarea. Any Sound Transit
20 costs related to Point Wells would be evaluated against
21 the board priorities for that subarea. Should Paramount
22 propose to fund the commuter rail station without Sound
23 Transit financing, this could clearly influence the
24 review and the timing of the development of a station at
25 Point Wells."



1 You don't disagree with that statement, I
2 assume?

3 A. No. I mean these are Sound Transit's -- this
4 is Sound Transit's words. This isn't Snohomish
5 County's --

6 Q. I know. But your presentation implied that
7 since we weren't listed as a station in the long-range
8 plan, that it couldn't happen. This says the opposite.

9 A. I didn't say -- my testimony wasn't to say
10 that it was in the long-range plan. My testimony was to
11 say that it wasn't in Sound Transit 3, the Sound
12 Transit 3 plan, which is -- this was Sound Move, which
13 was the original. Call it Sound Transit 1.

14 And the question that I was asked was Is this
15 included in Sound Transit 3? And my answer was no, it
16 is not included. A station at Point Wells is not
17 included in Sound Transit 3.

18 Q. Which does not mean that it couldn't be built
19 with private funding. That's an entirely different
20 thing; right? And that indicates the possibility of
21 that happening.

22 A. Per Sound Transit's words, they seem to
23 indicate, in that last sentence, that, yeah, that a
24 station funded by some other means than Sound Transit
25 funding, they state it could clearly influence the



1 review and timing of the development. That's their
2 words, not mine.

3 Q. And their words are more decisive and
4 determinative in this matter; correct?

5 A. Yes. But again, the other context of this
6 letter is this is from 2010 and the decision on Sound
7 Transit 3 was 2016. So certainly, as we all know, the
8 passage of time can lead to a lot of different decisions
9 and post 2010 with Sound Transit 2 and then ultimately
10 Sound Transit 3. So yes, Sound Transit made the
11 statement in 2010. But their correspondence since then
12 might lead them to draw a different conclusion or
13 there's a different process in which to consider adding
14 a station to the line, which, as I mentioned earlier,
15 would still require board approval and working with
16 Burlington Northern Santa Fe.

17 Q. I didn't say it would be easy. But it's
18 possible?

19 A. And I wasn't making any indication that it
20 would be easy or hard but just that the process would
21 mean going to the board and working with Burlington
22 Northern.

23 MR HUFF: Thank you. No further questions.

24 THE HEARING EXAMINER: Mr. Otten?

25 MR OTTEN: I have a few questions on redirect.



1 REDIRECT EXAMINATION

2 BY MR OTTEN:

3 Q. On that same -- we'll stick to that same
4 letter. Can you scroll up to the second paragraph.
5 We've omitted to read a portion of that that's relevant.
6 Can you read about five lines down on the right side,
7 the sentence that starts "While your property."

8 A. Sure. It says: "While your property may have
9 adequate room to integrate a station into a multimodal
10 transit center, there are other issues and constraints
11 that would affect our ability to provide commuter rail
12 service at that location."

13 Q. Can you continue reading the duration of that
14 paragraph.

15 A. "At our meeting with you in December 2009, we
16 provided you information regarding Sound Transit's
17 design guidelines for rail stations. It would be
18 critical for us to work with adjoining jurisdictions
19 prior to determining the feasibility of such a station
20 and service in the future and with the Burlington
21 Northern Santa Fe Railroad -- Railway to establish the
22 Sounder Everett to Seattle line's capacity to
23 accommodate an additional station. It's important to
24 note that BNSF would ultimately need to approve the
25 design and location of any new station and platforms."



1 Q. So in the letter, Sound Transit says that
2 "prior to determining feasibility." So it sounds like
3 Sound Transit hasn't even determined if it's feasible
4 yet. Is that an accurate -- like, what's required prior
5 to determining feasibility?

6 A. Well, I think, I think the -- if I were to
7 interpret that statement, I think they're talking about
8 the feasibility, the wherewithal, whether it's possible
9 and -- but I think the key is they work with adjoining
10 jurisdictions. I think it would be sitting down and
11 having the -- the adjoining jurisdictions, we would
12 presume, would include City of Edmonds, Town of Woodway,
13 the City of Shoreline in that conversation.

14 Q. Okay. Are you aware if BNSF -- BSRE has any
15 agreements with the adjoining jurisdictions regarding
16 the station?

17 A. Not to my knowledge.

18 Q. Do you know if they've have any agreement from
19 BNSF with regard to using the tracks?

20 A. No. Not that I'm aware of.

21 Q. What's the date of this letter?

22 A. So the date of this letter was April 13, 2010.

23 Q. So over eight years have passed since they
24 notified BSRE of these issues to determine feasibility?

25 A. Yeah. I mean that's the date of the --



1 Q. Is it your -- I just want to clarify: Your
2 testimony isn't that a station is impossible at Point
3 Wells; correct?

4 A. That's correct.

5 Q. Just that there's significant things that the
6 applicant needs to do to get it approved by Sound
7 Transit and work with BNSF to make it feasible?

8 A. Yes. I mean that's -- I mean -- let me
9 characterize it: It's no different than any other
10 project that's included with Sound Move, Sound Transit
11 2, or Sound Transit 3. They all go through a fairly
12 extensive process, feasibility process, if you want to
13 call it, to determine location, siting, costs, funding,
14 environmental factors. There's a range of things that
15 are looked at prior to the board ultimately deciding
16 whether to give the go or no go.

17 Q. Okay. And I think much has been made of the
18 inclusion of the station in this FEIS document.
19 Maybe -- earlier you spoke of the middle-of-the-road
20 alternative, the programmatic asked for the Point Wells
21 redesignation. Could you just illustrate what that was,
22 again. It was a . . .

23 A. Yes. So as part of our remand by the hearings
24 board, we completed a SEPA addendum which looked at a
25 middle alternative between the no-action and the action



1 alternative that had previously been considered.

2 Q. That was the pragmatic SEPA?

3 A. That was at the programmatic SEPA.

4 Q. Is that similar to this SEPA -- the SEPA
5 document that's just been referenced by the applicant?

6 A. Yes. Yeah, the document that we looked at
7 previously about the H -- or I guess I don't know if we
8 have it up here or not.

9 Q. Does the inclusion of the middle-of-the-road
10 alternative or the full-action alternative on that
11 programmatic SEPA for the Point Wells redesignation mean
12 that the fact that it was included in the EIS document
13 mean that it was going to get approval when the
14 project's proposed?

15 A. No. No. Just because something -- just
16 because SEPA's been done at the programmatic level,
17 doesn't automatically make any assumptions relative to
18 it. It may be approving the action associated with that
19 programmatic SEPA, which might be a change, for example,
20 in the comprehensive plan. But ultimately there's a
21 separate threshold decision that would occur at the
22 project level to determine any additional SEPA that
23 might be required.

24 Q. Okay. And in fact, we wouldn't be at this
25 hearing if that was the case; right? Okay.



1 THE WITNESS: (Laughing.)

2 MR OTTEN: I have no further questions.

3

4 RECROSS EXAMINATION

5 BY MR. HUFF:

6 Q. There is language, as you've discussed, there
7 about project feasibility. And that determining
8 feasibility, it requires the participation of a number
9 of entities like Sound Transit --

10 A. Uh-huh.

11 Q. -- like the jurisdictions. Would it be
12 surprising to you if Sound Transit said We need to know
13 that this is a real project before we'll expend the
14 energy to do feasibility? How could you do a
15 feasibility now is my question.

16 A. Well, again, if -- you know, if we draw from
17 this letter that's in the next paragraph that there was
18 a provisional station at Richmond -- Shoreline/Richmond
19 Beach, one could presume that, as a lead up to Sound
20 Move, that Sound Transit had completed a similar
21 exercise to which that they completed as part of Sound
22 Transit 3 and determined that there was a market for a
23 station at that location. If they didn't feel there was
24 a sufficient market to put that station in there, then
25 it wouldn't have ended up in the final package.



1 MR HUFF: I think that should do it. We'll
2 have testimony later on regarding more recent
3 conversations with Sound Transit.

4 THE HEARING EXAMINER: Mr. Otten?

5 MR OTTEN: Nothing further.

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

8 MR HUFF: We do reserve the ability to recall
9 Mr. Killingstad.

10 THE WITNESS: I'm not going anywhere.

11 MR OTTEN: The county's next witness is
12 Mr. Ryan Countryman.

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

16 THE WITNESS: I do.

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

19 THE WITNESS: Ryan Countryman, Snohomish
20 County Planning and Development Services, 3000
21 Rockefeller, Everett, Washington.

22
23
24
25



1 DIRECT EXAMINATION

2 BY MR OTTEN:

3 Q. All right. Mr. Countryman, can you please
4 state your name and occupation for the record.5 A. Yeah. My name is Ryan Countryman. I'm a
6 supervisor in Planning and Development Services in the
7 Permitting Division.8 Q. All right. What is -- how long have you been
9 with PDS?10 A. Well, I started with the PDS in June of 1998.
11 So next month will be 20 years.

12 Q. What roles in PDS have you held?

13 A. Oh, I've started out kind of at the bottom in
14 the Long-Range Planning Group as a planning technician,
15 worked my way up through long-range planning, and then
16 moved over into permitting where I spent quite a while
17 as the acting project manager for Point Wells before I
18 moved into a supervisory capacity.19 While in Long-Range Planning, I worked on
20 things like policy writing, working with the Department
21 of Public Works on traffic analysis for comp. plan
22 updates. I did a lot of work on public outreach, code
23 writing, buildable lands, managed the project that
24 updated the countywide planning policies in 2011 before
25 moving into the permitting group where I reviewed a

1 variety of projects, some small short plats up to Point
2 Wells. So I had a variety of size of projects that I
3 worked on and then moved into a supervisory position and
4 have continued with a limited amount of project review
5 during that time period as well.

6 Q. Okay. And so now that you've moved over to
7 the permitting side of things, what kind of job duties
8 are associated with that?

9 A. Well, in permitting, it's primarily reviewing
10 projects for consistency with county code. We also do a
11 small amount of code writing and other process-type
12 work. But the day-to-day function of a project manager
13 in permitting is to coordinate a team of technical
14 experts and then also doing technical review oneself.
15 The planner's technical review is more compliance with
16 parts of the county code, like uses and setbacks and
17 parking requirements, that sort of thing. Then the
18 technical reviews that I mentioned are things like
19 experts that look at the engineering functions that
20 we'll be hearing about from Mr. Randy Sleight and then
21 critical area review, which Randy Meadow is going to be
22 testifying to later on.

23 Q. Okay. With the Point Wells project
24 application, who was the first planner to review that?

25 A. Yeah. The first planner on Point Wells was



1 Darryl Easton. He was the project manager from 2011
2 until, I think, sometime in 2014.

3 Q. Okay. And at what point in time did you take
4 over -- or did you take over project review?

5 A. Yeah. I took over project review in early
6 2015 after Darryl retired.

7 Q. Okay. Is it safe to say you're pretty
8 familiar with the project application history?

9 A. Yeah. Yeah. I've got a pretty good idea.

10 Q. You've spent many hours working with the
11 applicant, reviewing application materials for this
12 project?

13 A. Right.

14 Q. So I'm going to have you open to Exhibit N-2.

15 A. Okay. It's Exhibit N-2, "Supplemental Staff
16 Recommendation."

17 Q. Yes. Could you scroll down to page 16.

18 A. Okay.

19 Q. Could you briefly summarize the issue with
20 regard to this section.

21 A. Yes. So the issue with this section is titled
22 "Six, failure to provide adequate parking." Primarily
23 at issue is that the application doesn't provide enough
24 parking for the proposed uses.

25 Q. Can you scroll down to the table that you have



1 inserted there. So what are we specifically -- what's
2 the issue that's at issue?

3 A. Yeah. So the biggest issue with the number of
4 parking stalls is compliance with the 2010 version of
5 SCC 30.34A.050, table 050 (1), the parking ratios
6 required for development.

7 Q. Okay. And what's the issue with in this
8 Supplemental Staff Recommendation that focuses on the
9 senior housing element?

10 A. Right. So the Supplemental Staff
11 Recommendation for parking really focuses on the
12 proposed senior housing. The applicant proposes nearly
13 1100 of the slightly over 3,000 units would be senior
14 housing. So for those 1100 units, the plans would
15 include just one half a parking stall per unit. And the
16 problem here is the applicant provided materials
17 describing what are proposed as senior housing units
18 that don't comply with the county's usage of that for
19 the parking ratios, which rely on compliance with either
20 a retirement apartment or retirement housing category.
21 The result being the project is missing more than 500 of
22 the required parking stalls.

23 Q. Could you pull up Exhibit G-15.

24 A. Sure. I'm going to get back to that list.

25 Okay. I'm sorry. What exhibit again?



1 Q. G-15.

2 A. Right. So this is titled the "Supplement to
3 Urban Center Development Application." It's Exhibit
4 G-15 and dated April 5th of 2018.

5 Q. That was submitted by the applicant?

6 A. Submitted by the applicant.

7 Q. Can you scroll down to page 4, section 4. Can
8 you read under "Senior Housing" what -- how the
9 applicant defines "senior housing."

10 A. Yeah. So here the applicant, under section 4,
11 is defining "senior housing" as "Of the dwelling units
12 proposed in the urban center application, not less than
13 1,093 units are planned to be designated for occupancy
14 by families or individuals where at least one adult
15 shall have attained the age of 55 years. Senior units
16 are currently planned to be constructed at the locations
17 depicted in the revised plan submitted herewith."

18 Q. I'll stop you there, and we'll address that.
19 So under this interpretation -- I guess you have this
20 exhibit opened up as well. Can we go back to the
21 parking ratio?

22 A. Yeah.

23 Q. Let's say there's a family of four that's
24 going to live down at Point Wells, two adults of driving
25 age, two children of driving age, in a unit that's under



1 1,000 square feet each. What's the minimum parking
2 stalls for that unit?

3 A. Well, for that unit, it would be one parking
4 stall per unit.

5 Q. Okay. So let's take that scenario and add
6 something else. Let's say grandma or grandpa decides to
7 move in with that family of four and is a senior. What,
8 under the applicant's interpretation of the county's
9 code, would they -- what would -- would they get a
10 reduction of parking stalls?

11 A. Yeah. It appears that that's what the
12 applicant is proposing.

13 Q. So by adding a driving adult senior, you
14 actually get a relaxation of the parking standards?

15 A. That's the way that the supplement would seem
16 to read, yes.

17 Q. Okay. Does that make sense? Looking at the
18 parking ratios and the intent behind the parking code,
19 what's the intent of having senior housing with a lesser
20 requirement of stalls than other residential units?

21 A. Yeah. The intent of senior housing with fewer
22 stalls than other units is for basically units that are
23 constructed as kind of akin to assisted living where
24 you've got no children, one or two adults who are --
25 where at least one is of the age of 62 or over, living



1 at the residence.

2 Q. Okay. Was the term "senior housing" defined
3 by the county code when the application came in?

4 A. No. Unfortunately the term "senior housing"
5 was not defined until 2013, but the application came in
6 in 2011.

7 Q. Okay. When there's an undefined term in the
8 code, does the provision in 30.90.010 provide guidance
9 on how it is to be interpreted?

10 A. That's correct.

11 Q. What -- generally speaking, what guidance does
12 that provide?

13 A. Well, that guidance is that you use the common
14 usage of the term or find the nearest fit under county
15 code. And, if it's a completely unusual use, then you
16 would provide a parking study.

17 Q. Okay. Then in addition, when the planning
18 department's asked to interpret a provision, does it
19 interpret it the in context of the surrounding
20 provisions?

21 A. That's correct.

22 Q. Okay. In this case the parking ratio table?

23 A. Right.

24 Q. All right. Can you turn to Exhibit A-38.

25 A. Okay. A-38 is a revised supplement to the



1 urban center application that's dated May 10 of 2018.

2 And it would appear to supercede Exhibit G-15.

3 Q. So this is an updated version of what we just
4 saw?

5 A. Right.

6 Q. Can you just scroll down to page 3, section 4.

7 A. Okay. So page 3, section 4, returning, again,
8 to senior housing.

9 Q. Okay. Could you read from that section?

10 A. Yes. So it says: "Of the dwelling units
11 proposed in the urban center application, not less than
12 1,093 are planned to be designated as retirement
13 apartments as defined in SCC 30.91(R)180 or as senior
14 housing SCC 30.91(D)190," which is actually a typo. It
15 should refer to senior apartments, I believe, not senior
16 housing. And the reference likely is intended to be
17 30.91(R)190, not 30.91(D)190.

18 Q. Does it look like the applicant has adopted a
19 different interpretation with revised materials?

20 A. It appears that way.

21 Q. Okay. And assuming that they adopted the
22 definition that -- of senior housing or senior
23 apartments, would their parking be sufficient? Just
24 focus on the first part.

25 A. Well, if they adopted those definitions, then,



1 yeah, the parking may be sufficient.

2 Q. Okay. Could you go to Exhibit G-25.

3 A. Okay. So Exhibit G-25 is a memo from Kirk
4 Harris of David Evans & Associates, traffic consultant
5 for the applicant. And the memo's to Paul MacReady,
6 principal planner at Snohomish County PDS. Paul's
7 currently the acting project manager for this.

8 Q. What's the date on that again?

9 A. May 15th of 2018.

10 Q. How does it compare to the last document we
11 looked at?

12 A. Yeah. So this is five days newer 'cause
13 Exhibit A-38 was dated May 10th. Exhibit G-25, the memo
14 from Kirk Harris, is dated May 15th.

15 Q. Okay. Can you summarize what information is
16 provided in this application material.

17 A. Yes. So this memo is proposing a different
18 definition of senior housing. It's different than what
19 the more recent urban center supplement showed. And the
20 newest definition that's dated May 15th proposes to
21 match the Institute for Transportation Engineers'
22 category for the project. The ITE category is not
23 recognized in the parking requirements. It is used for
24 traffic modeling.

25 Q. Okay. Can you scroll down to page 3.



1 A. Okay.

2 Q. Then the top of that third paragraph.

3 A. So it says: "The county's definitions of
4 senior housing, by way of retirement housing and
5 retirement apartments, is generally different from the
6 ITE's definition of senior housing in two principal
7 aspects: One, the difference in age restriction for
8 housing, 62 years under Snohomish County code versus 55
9 years for ITE, and two, the difference in demographics
10 between retired or senior citizen in Snohomish County
11 code and," quote, "'active adult communities' from ITE."

12 Q. Okay. So where are the parking requirements
13 included? Are they in county code?

14 A. Yes. The parking requirements are in county
15 code.

16 Q. Does the ITE definition change the parking
17 requirements in the county code or supersede them?

18 A. No. The ITE definition has no effect on
19 county parking requirements.

20 Q. Does it look like this application material,
21 which was submitted more recently than the May 10th
22 material, contradicts the previous statement that the
23 applicant's going to comply with the interpretation
24 given by PDS for senior --

25 A. Right. This is a case where we've received



1 contradictory application materials from the applicant.

2 Q. Okay. So what -- so given there's
3 inconsistent or contradictory application materials in
4 the file, is it your opinion that the parking in the
5 application substantially conflicts with the county's
6 urban center parking requirements?

7 A. Yes, it is.

8 Q. And just briefly summarize why that is.

9 A. Yeah. So the largest conflict with the
10 county's parking requirements is the proposed senior
11 housing units, still based on this most recent
12 information from the applicant, don't comply with how we
13 apply the 1/2 parking stalls. So it would not be
14 counted as the retirement-apartment parking rate. As a
15 result, each of those units would need a full parking
16 stall per unit, making the project more than 500 parking
17 stalls short on its design. And then there's additional
18 minor or less important issues with parking as well.

19 Q. And the ITE, can you briefly explain. I think
20 you touched on it earlier. Briefly explain what that
21 stands for and how that's used.

22 A. So the Institute for Transportation Engineers
23 is a trade body that studies traffic and traffic
24 patterns. What they do is they kind of isolate
25 developments to find out how much traffic is generated.



1 Then that information gets used by traffic engineers in
2 doing projected traffic volumes coming from future
3 development. So in this case ITE studied a number of
4 active adult communities then proposed a trip-generation
5 rate that fit what ITE studied. But that was a
6 different definition than under Snohomish County code
7 for parking ratios.

8 Q. Okay. So the definition that they are using
9 is from the traffic analysis that they are trying to
10 apply to parking?

11 A. That's correct.

12 Q. Okay. Can you turn back to Exhibit A-38.

13 Before we leave this, can I ask a clarifying
14 question, please, to make sure I understand what you're
15 saying? Are you saying that if you limit the
16 residences, the units, to the county definition for
17 senior, then if -- I'm sorry. If you do not limit --

18 If the applicant does not limit the residences
19 to the county definition for seniors, then you need 1.0
20 parking stalls per unit, which makes them short 546.
21 But if they do limit those residences to the 2013
22 definition, then you only need 0.5 parking stalls per
23 unit. Therefore it would comply in that circumstance?

24 A. That would be correct, yeah.

25 Q. Thank you.



1 MR HUFF: Your Honor, I think I can simplify
2 this and maybe shorten it. I was not aware of this
3 additional language in Mr. Harris' memo. The intent had
4 been to have him confirm, as we did in the supplement,
5 that we are adopting and accepting the county definition
6 of senior housing. We do not intend to use for this
7 purpose the ITE numbers. We realize that there's a
8 difference, and we're not arguing. We accept the
9 county's decision.

10 THE HEARING EXAMINER: My understanding, then,
11 is what you're saying is that the applicant's position
12 is you're going to use the county definition?

13 MR HUFF: Yes. We will provide a supplemental
14 letter that corrects that to confirm that point.

15 MR OTTEN: Just to respond, PDS is tasked with
16 reviewing the application materials.

17 THE HEARING EXAMINER: Of course they are. Of
18 course they are. But the applicant just said they are
19 going to confirm that you're right.

20 MR. OTTEN: We have one more issue on this,
21 too.

22 THE HEARING EXAMINER: Okay.

23 Q (By Mr. Otten) Could you go to -- what did I
24 say? -- A-38, that same section that speaks to senior
25 housing.



1 A. On page 4?

2 Q. Whatever section 4 is.

3 A. This is Exhibit A-38.

4 Q. Yeah, A-38.

5 A. Yup.

6 Q. Could you start with the sentence that says
7 "those units."

8 A. Yes. So the revised supplement to the urban
9 center application, Exhibit A-38, continues: "Those
10 units are allocated by phase as shown in Exhibit C." If
11 the project -- I'm sorry. "If the projected project
12 trips are 90 percent or less than the applicable project
13 trips for that phase of the development, the SRE may
14 lessen the number of senior units so long as the
15 projected project trips remains less than the applicable
16 trip limit."

17 Q. What are they -- is that a reference to the
18 transportation or traffic impacts?

19 A. Right. So it is a reference to how the
20 applicant was proposing to establish a project trip
21 limit in their work with the City of Shoreline. The
22 city staff had testified as to having reached an
23 impasse. And --

24 Q. Is there a code conflict issue if units that
25 were initially designated senior units are subsequently



1 moved by the applicant to general use?

2 A. Right. Yes, that would create a code conflict
3 if what were allocated as senior-only units were changed
4 in tenure to general occupancy because those units would
5 have been established with just 1/2 parking stall per
6 unit. Then, when you open that up to anybody living
7 there, you have a greater parking demand but no ability
8 to add additional parking. And therefore you remain in
9 shortage of parking.

10 It also conflicts with the county's
11 requirements for how revisions to an approved plan would
12 take place because it takes the county out of the
13 process for reviewing that.

14 MR OTTEN: So to facilitate saving time,
15 Mr. Examiner, does the applicant want to address this?

16 THE HEARING EXAMINER: I'm sure they'll let us
17 know if they do.

18 MR OTTEN: Okay.

19 Q (By Mr Otten) So is this a substantial
20 conflict with the code in terms of parking demand as
21 well?

22 A. Yeah. I would say that it is because it means
23 that we couldn't confirm whether sufficient parking was
24 provided.

25 THE HEARING EXAMINER: So if I'm understanding



1 correctly, what you're saying here is that, if the
2 applicant's proposal for project cap -- project trip cap
3 is reached and then future senior units or a future
4 phase would then be switched to general units, that it
5 would then be short on the parking overall?

6 THE WITNESS: That's correct.

7 THE HEARING EXAMINER: I confess I'm not quite
8 understanding how switching senior units to general
9 units helps with the project at trip cap. But that's
10 what I'm sure will be addressed later. So when you ever
11 you want to. But that's an issue that I'm not fully
12 understanding that.

13 THE WITNESS: If it would help illustrate, I
14 could give a couple of examples on how this might work.
15 But . . .

16 THE HEARING EXAMINER: I think I've -- did I
17 express it correctly?

18 THE WITNESS: Yeah, I think so.

19 THE HEARING EXAMINER: In that case I think
20 I've got it.

21 MR. HUFF: I would disagree about the accuracy
22 of the characterization.

23 THE HEARING EXAMINER: Okay. Mr. Huff, I'm
24 sure we'll clear this up on cross or otherwise. I'm
25 just trying to summarize his testimony, not that I agree



1 with it. I'm just trying to summarize, make sure I'm
2 clear on that. I'm sure that Mr. Huff will explain
3 things further.

4 MR. HUFF: Sure.

5 Q (By Mr Otten) Just to clarify, your testimony
6 is about the parking requirements? We're not talking
7 about traffic?

8 A. That's correct.

9 Q. I'm going to move you onto a different issue
10 or take you back to Exhibit N-2, page 11.

11 A. Okay.

12 Q. All right. Could you read the provision
13 SCC -- I guess first, what is N-2?

14 A. So N-2 is the Supplemental Staff
15 Recommendation.

16 Q. Okay. And on page 11, what code provision is
17 identified there?

18 A. So we're looking at a variance request under
19 SCC 30.34A.040 sub 2A.

20 Q. Okay. Can you read that code provision.

21 A. Right. So that provision requires that
22 "Buildings or portions of buildings that are located
23 within 180 feet of adjacent R9600, R8400, or R7200T,"
24 which stands for townhouse or low density multiple
25 residential zoning, "must be scaled down and limited in



1 building height to a height that represents half the
2 distance of the building or that portion of the building
3 is located from the adjacent zones." I'm not going to
4 read them all again.

5 Q. Okay. Could you pull up Exhibit K-4.

6 A. Yes. So Exhibit K-4 is a review completion
7 letter that the first project manager, Darryl Easton,
8 sent to the applicant on April 12 of 2013.

9 Q. Could you scroll down to page 4, Urban Center
10 Comment V, as in victor?

11 A. Yeah. So among the comments that Darryl had
12 made with respect to the urban center site plan, comment
13 V reads: "Several proposed buildings will be located
14 near adjacent residential properties in the town of
15 Woodway that are zoned R14.5," which is 14,500 square
16 foot lot zoning, "and R9600," which refers to what at
17 the time was unincorporated Snohomish County zoning.
18 It's now been annexed by the Town of Woodway and zoned
19 UR. It's equivalent single-family zoning. Then comment
20 V continues: "These buildings will need to comply with
21 the building height and setback requirements of SCC
22 30.34A.040."

23 Q. What was the date of this?

24 A. It's dated April 12 of 2013.

25 Q. So PDS first notified the applicant of this



1 issue about five years ago?

2 A. It was a little over five years ago.

3 Q. Could we go to the variance application,
4 Exhibit A-29.

5 A. Sure. So the variance application, Exhibit
6 A-29.

7 Q. What is the variance application dated? I
8 think there's a date stamp at the top.

9 A. It's dated April 24, 2018.

10 Q. Okay. So how many years after the applicant
11 was first notified?

12 A. Five years after the applicant was notified of
13 this issue.

14 Q. How many weeks before this hearing? You have
15 to do the math.

16 A. Now you're making me do math in my head. So
17 it's about eight weeks before the hearing, seven or
18 eight weeks before the hearing started.

19 Q. Seven or eight? I think your math's off.

20 A. Is it? I don't know, yeah. So I put an extra
21 month in there and then subtracted a week. You're
22 right.

23 Q. Can we go -- what is -- so this came in
24 roughly end of April. What's the status of the variance
25 application in terms of process?



1 A. Yeah. The variance application could not be
2 fully processed in time for the hearing because a
3 variance requires a notice and comment period which ran
4 past the hearing date.

5 Q. All right. So -- and you're in the process of
6 doing a notice?

7 A. Yes, the notice is in process.

8 Q. In the event of a remand of this application,
9 what would happen with the variance ap., like
10 application?

11 A. In the event of a remand, we would finish
12 processing the variance and make a recommendation on the
13 variance.

14 Q. Okay. In the case of a denial, what would
15 happen with the variance application?

16 A. Then the variance application would become
17 moot.

18 Q. Okay. So let's look at the substance of this
19 variance application. And I'm going to point you to
20 Exhibit N-2, which you've already pulled up, the
21 supplemental staff report.

22 A. Uh-huh.

23 Q. Pages 11 and 12.

24 A. Uh-huh.

25 Q. What -- can you summarize what is provided



1 there.

2 A. Yeah. So pages 11 and 12 kind of walk through
3 the four criteria for a variance and what the county's
4 kind of initial response to the variance request.
5 Again, because there wasn't time from the time when the
6 variance came in to provide proper notice, the county's
7 preliminary comments on the variance request are without
8 the benefit of any public comments that might be
9 received on the variance.

10 Q. Okay. I guess before jumping into the
11 substance of the variance -- I had you read the code
12 provision. But could you, in plain speak, sort of
13 explain what the setback requirement in that code
14 revision requires.

15 A. Yes. So in plain terms, if you're proposing
16 an urban center project adjacent to low density zones,
17 your buildings can only be half the height that that
18 building is of the distance. If you've got 100 -- if
19 your building is 180 feet away from a low density zone,
20 then your maximum height at that location is 90 feet,
21 half the distance.

22 Q. Okay. So what's the first criteria for a
23 variance application --

24 A. The first of the four criteria is whether
25 there are special circumstances applicable to the



1 variance request, such as site, shape, topography,
2 location, or surroundings that do not apply generally to
3 other properties or classes of use in the same vicinity
4 and zone.

5 Q. Okay. What is PDS's analysis of that?

6 A. Yeah. Our analysis of that, we found that the
7 applicant fails to demonstrate how there are special
8 circumstances applicable to the subject property or the
9 intended use. Most of the properties along Richmond
10 Beach Drive are located between the railroad and steep
11 slopes. None of the structures located there exceed the
12 height limit of the applicable zone.

13 The proposed urban center would be the only
14 one in the general vicinity. No other urban centers
15 within the southwest urban area have received variances
16 to alter applicable height restrictions.

17 Q. Okay. Can you turn back. I'm going to have
18 you jump between exhibits N-2 and A-29. At the tail end
19 of the applicant's variance application, under 0.1, it
20 says in connection -- it says: "A connection to
21 Richmond Beach Drive retail offerings for project area
22 and surrounding neighborhoods." At the tail end, what
23 are they -- what reasons are they citing for the special
24 circumstances?

25 THE WITNESS: Well, I'm going to grab and move



1 this thing. I don't know how to undo what I just did.

2 That's a first. Let me see.

3 THE HEARING EXAMINER: I have the same
4 problem.

5 THE WITNESS: Oh, boy. I'm going to close
6 this without saving and then reopen. Let's try that.

7 THE HEARING EXAMINER: You break it, you
8 bought it.

9 A. That was A-29; right?

10 Q (By Mr Otten) Yes.

11 A. Yeah. All right. So there's always something
12 new to look forward to in every day. Okay. So
13 I'm sorry.

14 Q. Don't click on anything.

15 A. I will be carefuller this time. Thank you.

16 Q. Can you cite, I guess, the "As an urban
17 center." It's about the fourth line from the bottom.

18 A. Okay. So on the applicant's variance request
19 it says "As an urban center, the Point Wells site and
20 especially the urban plaza as its front address, will
21 have to offer seamless connections and various amenities
22 for the surrounding zones to become an integral party of
23 the county plan." I believe that meant part of the
24 county plan. "Amongst these are a connection to
25 Richmond Beach Drive, retail offerings for the project



1 area and surrounding neighborhoods, a transit hub with
2 busses and access to rail-guided commuter platform."

3 Q. So they cite retail, the transit hub, and like
4 design elements?

5 A. Correct. It's --

6 Q. What's this variance application for? What
7 specific structures?

8 A. So this variance application is cited for the
9 three towers proposed in the urban plaza.

10 Q. What use is proposed -- what's the majority of
11 the use proposed for most of those towers?

12 A. Most of those towers would be residential.

13 Q. They're citing to retail and transit as a
14 reason for locating the residential towers?

15 A. Yes. That's correct.

16 Q. Okay. Let's go to criteria No. 2. I guess
17 you can just read it from their variance criteria
18 application.

19 A. Yeah. So criteria two, "Why is this variance
20 necessary to preserve and/or enjoy a substantial
21 property right that others in the vicinity have but,
22 because of special circumstances, is denied to your
23 property?"

24 Q. Can you -- let's see. You can go back to
25 the -- I think it was N-2.



1 A. Yeah.

2 Q. So what was PDS's analysis of this?

3 A. So our analysis of that is that the applicant
4 fails to demonstrate how meeting the required setback
5 would deny them the same substantial property right or
6 use possessed by other properties in the same vicinity
7 or zone. The constraints on the property -- streams,
8 wetlands, steep slopes, and the railroad -- are the same
9 constraints endured by neighboring properties that meet
10 the height restrictions of their zone. These
11 constraints may be challenging for the applicant. But
12 the applicant has not demonstrated how other site
13 designs could accomplish code compliance. Blocking view
14 corridors is not a reason to exempt height restrictions
15 in code. Logically, reducing the height of a building
16 would enhance the view and sunlight.

17 Q. Okay. Can you jump back to the variance
18 application.

19 A. Okay.

20 Q. Then, halfway down, there's the word
21 "concentration" on the right side. Can you read that
22 sentence.

23 A. Yeah. "Concentration of the bulk and height
24 in this particular area would block large view corridors
25 from adjacent properties and result in a mediocre urban



1 design solution."

2 Q. So has the applicant identified a substantial
3 property right that's being taken away by complying with
4 the county code?

5 A. No.

6 Q. Have they said that they're not able to
7 develop their site?

8 A. No.

9 Q. Have they said they're not able to maximize
10 their unit count?

11 A. No.

12 Q. And in fact, is maximizing unit count
13 necessary for a variance to be granted?

14 A. No.

15 Q. Is this one of those situations, as I think
16 you said in your opening, where, instead of modifying
17 the development plans to meet the code, they're trying
18 to bend the code to meet their design plans?

19 A. Yes. That's how I put it in my opening
20 remarks at the beginning of the hearing.

21 Q. Can you take a look at the illustrations
22 attached to the variance application. This is
23 exhibit -- still with Exhibit A-29.

24 A. Right.

25 Q. Can you explain what information this is.



1 A. Yeah. So the first illustration shows the
2 planned urban plaza buildings. These are the three
3 towers that I referred to that the variance request
4 appears to apply to.

5 Q. What's the -- I guess, not to belabor the
6 point -- the three red structures?

7 A. Yeah. These red structures, what these would
8 be would be primarily residential towers. But there
9 would be retail and office on the first two floors.

10 Q. Okay. What's the yellow highlight mean?

11 A. The yellow area, it's really not clear what's
12 intended by this because it says "Setback compliant
13 zone, 180-foot maximum height."

14 Q. What -- is that setback -- so this is the
15 alternative that the applicant provided?

16 A. Right. So this is -- according to the
17 applicant's variance request, this is a location where
18 an 180-foot building could be allowed. And, then, on
19 later drawings, they sort of depict how that might look
20 on the third illustration here with this big yellow
21 building. But I'm going to return now back to the
22 first --

23 Q. Yeah.

24 A. -- that first illustration in this and get
25 back to the point that I had that the setback



1 requirement is that the maximum building height is half
2 the distance to the neighboring low density zone.

3 Q. It's a little hard to read. But can you
4 read -- there's little dashed lines --

5 A. Right.

6 Q. -- identifying how far the yellow zone is from
7 the property line?

8 A. These dashed lines are distances from
9 neighboring properties. The yellow area would be
10 180 feet. Or kind of the perimeter of the yellow area
11 facing the low density zones is showing where 180 feet
12 from those neighboring zones are. So being that that's
13 180 feet from the low density neighboring zones, that is
14 an area where a 90-foot tall building could be permitted
15 according to 30.34A040.

16 However, the applicant is proposing here that
17 their alternative would be a 180-foot building, which
18 still would not be compliant with the same section that
19 the variance is attempting to vary from.

20 Q. Okay. So even the alternative proposed by the
21 applicant also violates the county code in terms of
22 setbacks from residential zones?

23 A. That's correct. The alternative provided by
24 the applicant still violates and is in substantial
25 conflict with county code.



1 Q. Okay. Did the applicant provide any other
2 alternatives that are code compliant?

3 A. No. The applicant has not provided any other
4 alternatives.

5 Q. Is there any illustrations depicting what the
6 structures would look like, those three structures, look
7 like if they complied with the setback requirements?

8 A. Yeah. I think that was in here.

9 Q. There isn't any?

10 A. Well --

11 Q. Did they provide --

12 A. Not with the variance request, no.

13 Q. Did the applicant provide analysis of putting
14 the towers -- another option to comply would be moving
15 the towers elsewhere on site; right?

16 A. That's correct, yes. So there are other ways
17 that you could comply by moving those units and uses to
18 other portions of the site that are further away from
19 the low density zones.

20 Q. So the standard says: "Is it necessary to
21 preserve or enjoy a substantial property right?" Is
22 that the --

23 A. That's correct.

24 Q. And to show that the variance is necessary,
25 has the applicant demonstrated there's no other design



1 solutions possible?

2 A. No. The applicant has not explored other
3 design solutions.

4 Q. They didn't propose moving some of the units
5 to other buildings on the site?

6 A. No.

7 Q. How could that be done? Is that possible?

8 A. Well, yeah. Elsewhere on the site one could
9 make some of the buildings wider to accommodate more
10 units. You could also make some of the shorter
11 buildings taller as long as they stayed height compliant
12 at those locations. So there's a number of ways that
13 one could move units away from the urban plaza phase
14 into other parts of the project. But the applicant
15 hasn't attempted to show how that could work.

16 Q. That's what would be required to establish
17 that it's necessary to have this variance; correct?

18 A. That's correct.

19 Q. All right. Could we jump to criteria No. 3.
20 Could you read that.

21 A. Criteria No. 3, the criteria is: "The
22 granting of the variance will not be materially
23 detrimental to the public welfare or injurious to the
24 properties or improvements in the vicinity and zone in
25 which the subject property is located."



1 Q. What was PDS's analysis on that point?

2 A. Yeah. Our analysis said that the applicant
3 fails to demonstrates that exceeding the height limit is
4 not materially detrimental to the public welfare or
5 injurious to properties or improvements in the vicinity
6 and zone in which the property is located. The
7 applicant's argument that the view corridor of adjacent
8 properties would be blocked assumes only one alternative
9 design. The applicant has not demonstrated how other
10 site designs could accomplish code compliance.

11 Q. Okay. Could you go to the illustrations that
12 they provided in Exhibit A-29.

13 A. Uh-huh.

14 Q. The standard's materially detrimental to other
15 properties? Is that --

16 A. Right. So we're kind of looking in here. So
17 model 1 and model 2 are examples of how the Point Wells
18 project with the variance request could be viewed from
19 an adjacent property.

20 Q. So those red buildings are not --

21 A. Right.

22 Q. The reason why we're here is that those red
23 buildings are not compliant with the setback
24 requirement?

25 A. So under model 1, it shows the three red



1 towers. And, then, under model 2, it would show the
2 alternate single larger tower.

3 Q. That one's still not code compliant?

4 A. Correct.

5 Q. Have they attempted to illustrate adding units
6 to buildings elsewhere on the site that aren't even in
7 the view corridor there?

8 A. No.

9 Q. So would you conclude that the applicant has
10 not shown that the variances -- that the variance is not
11 detrimental or injurious to neighboring properties?

12 A. Yeah. The applicant has not demonstrated
13 compliance with the third criteria.

14 Q. So based on review of the county code and
15 their application materials, is it your conclusion that
16 the application is in substantial conflict with the
17 requirements of SCC 30.34A040?

18 A. Yes. The application is in substantial
19 conflict with SCC 30.34A040 as would the alternative
20 proposed as part of their variance request would remain
21 in conflict with that same section.

22 Q. They provided no other materials that are code
23 compliant?

24 A. Correct.

25 Q. All right. Let's move on to Exhibit K-31.



1 A. Okay.

2 Q. I'm going to direct you to page 319. You
3 probably want to type it in, not scroll.

4 A. Here we are on page 319.

5 Q. Can you scroll down to SCC 30.62B340.

6 THE HEARING EXAMINER: Could you give me a
7 chance to catch up to you. What exhibit number are you
8 on?

9 MR. OTTEN: Sorry?

10 THE HEARING EXAMINER: What exhibit number are
11 you on?

12 MR. OTTEN: K-31.

13 THE HEARING EXAMINER: K-31. I'm sorry. That
14 explains it.

15 THE WITNESS: That's the October 6, 2017,
16 review completion letter based on the second submittal
17 received in April of 2017.

18 Q (By Mr. Otten) Okay. To clarify,
19 Mr. Countryman, this is your -- PDS's review completion
20 letter. And, at the end of that review completion
21 letter, did you provide all of the applicable county --
22 most if not all applicable county codes to this
23 application?

24 A. Right. Yes. Roughly half that review
25 completion letter is simply just compiling all of the



1 relevant codes that we reviewed against.

2 Q. That's because the project's vested to the
3 codes that may have changed since then?

4 A. Right. Yes. So because the project is vested
5 to the 2011 version of the code and it's fairly
6 cumbersome to track down the applicable versions of the
7 code, we just compiled all of that into kind of an
8 appendix to the review letter so it would be a lot
9 easier to refer to as you're going through and reviewing
10 the project and then also understanding the review
11 comments.

12 Q. Okay. And so could you look at former SCC
13 362B340 sub one. Could you read subsection 1.

14 A. Yes. So this is dealing with landslide hazard
15 areas. And subsection 1 reads: "Development
16 activities, actions requiring project permits and
17 clearing shall not be allowed in landslide hazard areas
18 or their required setbacks unless there is no alternate
19 location on the subject property."

20 Q. Okay. Could you pull up exhibit -- you might
21 already have it. It's K-4.

22 A. Yup. So that's the first review completion
23 letter from April of 2013.

24 Q. When was that dated, again?

25 A. It's April 12 of 2013.



1 Q. And could you go to -- I believe it's page 7
2 of the document, comment No. 3.

3 A. Yes. So comment No. 3, made by the drainage
4 reviewer, Paul Drago, spoke to landslide hazard areas.
5 And it said: "Three, landslide hazard areas.
6 Development activities and clearing are not allowed
7 within landslide hazard areas or setbacks unless there
8 is no alternate location on the property. Therefore,
9 the proposal to locate buildings, grading, and retaining
10 walls within the setback and the landslide hazard areas
11 east of the railroad tracks appears in violation of SCC
12 30.62B.340. Please address."

13 Q. So this was dated April 12, 2013?

14 A. That's correct.

15 Q. So that's when PDS provided notice to the
16 applicant of this concern?

17 A. That's correct.

18 Q. Could you pull up Exhibit A-37. It's a big
19 one.

20 A. A-37 is the request for a landslide area
21 deviation. It's dated May 15 of 2018.

22 Q. So what was the time period between when PDS
23 notified the applicant of its concern and the time
24 period in which they responded?

25 A. More than five years.



1 Q. Okay. Could you turn to -- I'm going to make
 2 you turn back to Exhibit K-31. And can you walk us
 3 through what exactly an applicant must establish in
 4 order to request a deviation. I guess look at 340 sub 1
 5 and 340 sub 2. You already read the first part.

6 A. So 30.62B.340 sub 1 was the one that talked
 7 about "unless there's no alternate location on the
 8 subject property." Sub 2 --

9 Q. Let's focus --

10 A. -- continues. And it says: "Structures shall
 11 be set back from landslide hazard areas unless the
 12 department approves the deviation as provided below."
 13 2A reads: "Setbacks shall be established as follows."
 14 Then there's three sub bullets there. One is the
 15 minimum --

16 Q. I'll just focus you on B2B --

17 A. Okay.

18 Q. -- and 2B1 or I.

19 A. Okay. So 2B is "Deviations from setbacks may
 20 be allowed when the applicant demonstrates that the
 21 following conditions are met." And sub i or 1 is:
 22 "There is no alternate location for this structure on
 23 the subject property and, 2, a geotechnical report
 24 demonstrates that, a, the alternate setbacks provide
 25 protection which is equal to that provided by the



1 standard minimum setbacks and, B, the proposal meets the
2 requirements of SCC 30.62B.320.

3 Q. I'll just have you focus on the section sub B,
4 sub i. It looks like it's important that there's no
5 alternate location for the structure on the subject
6 site.

7 A. That's correct.

8 Q. Is that an essential part of a deviation
9 request?

10 A. Yes, that is an essential part of a deviation
11 request.

12 Q. In other words, if the applicant does not
13 submit an analysis showing that there's no alternative
14 location on the site, PDS cannot grant the deviation.
15 Is that correct?

16 A. That's correct.

17 Q. All right. Let's go back to Exhibit A-37,
18 which is the applicant's deviation request.

19 A. Uh-huh.

20 Q. What -- I guess scroll down to -- where are we
21 at? Go to page 6, please. So in this section what --
22 let's see. What specific development structures under
23 this section is the applicant seeking a deviation on?

24 A. Yeah. So again the applicant was seeking a
25 deviation on their three towers, which were primarily



1 residential buildings.

2 Q. Okay. And could you read the -- I guess the
3 two paragraphs under the heading "Urban Plaza Buildings
4 Including Sounder Station."

5 A. Yes. So the first paragraph with respect to
6 alternate locations reads: "We understand from the
7 project architect that buildings in the urban plaza,
8 including the Sounder station, need to be located in the
9 front part of the site because the multimodal
10 transportation center for busses, trains, and cars has
11 to be located here by the railroad's existing entry road
12 and proposed secondary access road." Additional
13 buildings -- "Additional building siting considerations
14 are noted in the April 24, 2018, urban center zoning
15 variance request by Perkins Will."

16 Q. The urban center zoning variance request, was
17 that the document we just looked at with the --

18 A. That's correct. That's the building height
19 variance request we were looking at.

20 Q. So this is the Hart Crowser report that they
21 are relying on to grant the deviation from landslide
22 hazards; is that correct?

23 A. That's correct.

24 Q. And is subsection 2 the only analysis provided
25 for the deviation for these structures?



1 A. That's correct.

2 Q. All right. So it looks like they're -- I mean
3 is that analysis? Or is it just relying on what the
4 project architect put in the variance application?

5 A. Yeah. It's not analysis. It's saying that
6 the project architect envisioned the project to look
7 this way; therefore, we can't change it.

8 Q. Okay. Is there any site plans or reports or
9 analysis documenting why the building and the Sounder
10 station can't be located elsewhere on the 61-acre site?

11 A. No.

12 Q. Okay. Is there any site plans, reports, or
13 analysis in the variance request they're relying on to
14 show why it can't be moved anywhere else on the 61-acre
15 site?

16 A. No.

17 Q. And the Hart Crowser report uses the terms
18 "need to be located" and "has to be located" to justify
19 the current location of the buildings and Sounder
20 Station. But does the Hart Crowser report actually
21 provide evidence why?

22 A. No, there's no evidence supporting the need to
23 locate those uses at that part of the site.

24 Q. Okay. Let's go back to the zoning variance
25 request that Perkins . . .



1 A. Okay.

2 Q. Is there anywhere in those -- how many pages
3 is that document?

4 A. It's seven pages long.

5 Q. Does it include any analysis or description of
6 buildings proposed anywhere else on the site?

7 A. No.

8 Q. And aren't those considerations -- are any of
9 the considerations in the zoning variance request
10 establish that there's no alternative location for the
11 Sounder station or for the three residential towers?

12 A. Yeah. The variance request is silent on the
13 Sounder station.

14 Q. The Sounder station's not even mentioned at
15 all?

16 A. Not even mentioned.

17 Q. And does the variance request show alternative
18 locations for -- I guess these three structures violate
19 both the landslide hazard and the setback?

20 A. That's correct.

21 Q. And they don't show an alternative location?

22 A. That's correct.

23 Q. Okay. And is the yellow building in the
24 landslide hazard the proposed alternative? Is that --

25 A. Yeah. So this the proposed alternative. That



1 was on model 2 and going on back to model 1.

2 Q. The alternative also is in the landslide
3 hazard area?

4 A. That's correct.

5 Q. All right. So the applicant hasn't proposed
6 at all moving the towers or moving the units west of the
7 tracks, which would be outside the landslide hazard
8 area?

9 A. No, they have not.

10 Q. So based on your review of the applicable
11 landslide hazard regulations, specifically the deviation
12 requirements or criteria, is it your opinion that the
13 application substantially conflicts with the county
14 code, specifically SCC -- former SCC 30.62B.340 on this
15 issue?

16 A. Yeah. It is my conclusion that the
17 application is in substantial conflict with that
18 provision.

19 Q. Okay. So other than offer a redesign that
20 would address both the setback variance and the
21 landslide hazard area, they didn't -- there's no
22 redesign submitted to address either of those concerns?

23 A. No. There's been no redesign submitted to
24 address those concerns that were originally raised in
25 2013.



1 Q. Okay. I'll move you on to another issue.
2 Let's go back to Exhibit K-31, page 79. Let's see.
3 Scroll down a little bit. All right. So could you read
4 the floor area ratio provision.

5 A. Yeah. So this part of the review says, for
6 30.34A030, the 2010 version of floor area ratio: "The
7 Point Wells proposal is a mixed-used development under
8 this section. Mixed-used developments have a minimum
9 floor area ratio of 1.0 and a maximum floor area ratio
10 of 2.0 unless modified by bonuses."

11 Q. Okay. You've put more explanation in that
12 letter. But in plain-speak, can you sort of describe
13 what the concept of floor area ratio is for us folks
14 that aren't planners.

15 A. You mean not everybody knows what floor area
16 ratio is? Okay. So floor area ratio is just kind of a
17 concept for the massing and bulk of a project. Under
18 urban center zoning, we use it to ensure that the site
19 is not being underbuilt. Snohomish County adopted a 1.0
20 floor area ratio, which in plain terms could be mean a
21 building -- a one-story building that covers an entire
22 property. Or you could have a four-story building that
23 covers a quarter of the property. Either way, you still
24 have a floor area ratio of one.

25 Q. Okay. In terms of the floor area ratio



1 adopted for urban centers, what's the purpose behind
2 setting a maximum floor area ratio?

3 A. Good question. So the purpose behind setting
4 the minimum floor area ratio was to prevent under
5 building. The urban center designation occurs in places
6 where you have access to high capacity transit and a lot
7 of other infrastructure. Our two largest urban centers
8 are at I-5 and 164th and I-5 and 128th.

9 The FAR floor area ratio requirement is to
10 prevent things like strip malls or walk-up apartments
11 where you have, you know, a two- or three-story building
12 with a sea of parking surrounding it. What we were --
13 by using floor area ratio, you're trying to get a much
14 more urban form of development.

15 By setting a minimum, you're precluding things
16 like strip malls, which usually have a floor area ratio
17 around 0.25 because it's just a building, a one-story
18 building, with a whole bunch of parking around it. Some
19 of the lower density apartments, you get like a, you
20 know, a 0.3 or a 0.4 floor area ratio because the
21 majority of the land is actually taken up by parking and
22 landscaping.

23 Q. Do you know what FAR the Point Wells
24 application is at?

25 A. Yeah. The most recent version of the Point



1 Wells application is just over 1.0 FAR.

2 Q. Okay. So they're pretty close to the minimum?

3 A. Right.

4 Q. In his opening, Mr. Huff described how the
5 application barely satisfies the county's minimum FAR.
6 If they're unable to build the proposal as currently
7 designed, for example, due to no buildings over 90 feet
8 being allowed or buildings that violate landslide
9 setbacks or zoning setbacks, it would automatically
10 result in the project not being able to meet the minimum
11 FAR. Do you think this statement is accurate?

12 A. No. I don't think that that statement is
13 accurate because we have lots of projects that come in
14 well above the 1.0 FAR. But they do it through other
15 mechanisms of site design. They've got -- wider
16 buildings is a common solution. Even though for
17 Snohomish county in our unincorporated areas we haven't
18 yet built anything over 90 feet, we've still had
19 projects that came in comfortably above a 1.0 FAR.

20 Q. How many different towers are proposed at the
21 site?

22 A. I think it was 20 on the most recent
23 revisions.

24 Q. Twenty total or?

25 A. Twenty total towers out of something like 46



1 total buildings.

2 Q. How many buildings, I should say.

3 A. Yeah.

4 Q. You can give me a rough number.

5 A. So the rough number is about 20 of the 46
6 total buildings, I think, something like that. The
7 revision submitted this year consolidated a couple
8 buildings in the urban plaza and a couple buildings in
9 the north village. My memory was based on the older
10 versions of the plans.

11 Q. Okay. So could -- would wider buildings
12 provide more floor area and square footage?

13 A. Yes.

14 Q. How about the buildings that are well under
15 90 feet? Could be they be increased in height to meet
16 that floor area ratio?

17 A. Yeah. Some of the buildings are proposed to
18 be like 45 feet. Those could be increased up to 90, and
19 that would also increase the floor area ratio.

20 Q. Okay. Has the applicant provided any
21 information in the record showing that a redesign
22 without buildings over 90 feet would be unable to
23 satisfy the minimum FAR?

24 A. No. That has not been demonstrated.

25 Q. Based on your review of the application and



1 the FAR regulations, is BRSE's claim that if its current
 2 design is not approved, it will be unable to meet FAR a
 3 red herring issue in your opinion?

4 A. Yes, it is 'cause that's a nonconcern because
 5 there's so many other examples of projects that have met
 6 the 1.0 FAR requirement with buildings less than 90 feet
 7 that I don't see that as a challenge.

8 Q. Okay. I'm going to move you on to another
 9 issue. There's been -- in the opening, there was a lot
 10 of comments made about a meeting held in November of
 11 2017 between the applicant's representatives and PDS
 12 representatives. Are you familiar with what I'm
 13 referencing?

14 A. Yeah. I was in attendance at that meeting.

15 Q. The issue at the meeting was whether an
 16 extension for the permit application, a fourth
 17 extension, was discussed and what had been discussed
 18 about it. And you said you were in that meeting?

19 A. Yes.

20 Q. Can you pull up -- I guess it's Exhibit P-10
 21 that we submitted today. And I'll walk it over you to
 22 you because it's not in the electronic record.

23 THE HEARING EXAMINER: Thank you.

24 A. I've got Deposition Exhibit P-10 in my hands.

25 Q (By Mr Otten) Could you describe what that

1 letter -- what the date is and who it is sent to and
2 from.

3 A. Yes. The letter is dated January 19 of 2018.
4 And it's sent to Gary Huff. And it's sent by Paul
5 MacReady, the current project manager.

6 Q. Okay. And could you go to page 2, the fourth
7 full paragraph that starts with the word -- let's see --
8 "finally."

9 A. Yes. So the fourth paragraph on page 2 reads:
10 "Finally, in the November 13, 2017, meeting you are
11 correct that PDS representatives did reference SCC
12 30.70.140 sub 2A as a potential option for BSRE to
13 pursue if it was to decide to submit a request for an
14 extension of the June 30, 2018, application expiration
15 deadline.

16 "PDS did not, however, offer support or
17 suggest that one is appropriate in this case. Rather
18 PDS responded to your inquiry of whether there is a code
19 provision for seeking an extension. SCC 30.70.140 sub
20 2A provides the PDS director with authority to grant a
21 discretionary extension of an application expiration
22 period. However, PDS did not make any promises or
23 assurances verbally or in writing that an extension
24 request would be granted. And we note that your
25 January 12, 2018, letter makes no claim that BSRE was



1 promised or assured of being granted a further
2 extension.

3 "As set forth in the county code and
4 previously communicated by PDS staff, the extension is a
5 discretionary decision by the PDS director."

6 Q. Is that description of the meeting discussion
7 of the extension consistent with your recollection of
8 that meeting?

9 A. It is.

10 Q. What's the -- I guess is there context for the
11 extension provision? Did the -- was that a new
12 provision? Is that why it was cited?

13 A. That's correct.

14 Q. Okay. And then did -- to your knowledge, did
15 BSRE ever respond to this letter and contest the
16 statement that PDS never promised a fourth extension
17 orally or in writing?

18 A. The first I remember hearing about BSRE
19 recalling some kind of promise from that meeting was in
20 Mr. Huff's opening testimony for the hearing.

21 Q. Did their communications say that PDS never
22 indicated that the extension was not going to be
23 granted?

24 A. No. We haven't had any such.

25 Q. Is that different than saying that an



1 extension was promised?

2 A. Can you repeat the question.

3 Q. Is the allegation that PDS never indicated an
4 extension wouldn't be forthcoming different than the
5 allegation that PDS promised an extension would be
6 granted?

7 A. Yeah, that is different.

8 Q. Different? Okay.

9 A. Yeah.

10 Q. And has the applicant been granted previous
11 extensions?

12 A. Yes, the applicant has been granted three.

13 Q. How many?

14 A. Three previous extensions.

15 Q. And were those requests for extensions
16 submitted in writing?

17 A. Yes.

18 Q. Were they granted in writing?

19 A. Yes.

20 Q. Okay. And did the applicant eventually submit
21 an application extension, a fourth application
22 extension?

23 A. They did.

24 Q. What was the result of that request?

25 A. The PDS director denied their most recent



1 application extension.

2 Q. And both of those were in writing?

3 A. Correct.

4 Q. Okay. All right. I'm going to turn you to
5 Exhibit N-2. I think you might already have it open.

6 A. All right.

7 Q. Could you turn -- I guess what is it this
8 again?

9 A. This is the "Supplemental Staff
10 Recommendation."

11 Q. Could you turn to page 14.

12 A. Okay.

13 Q. All right. When did -- let's see. What's the
14 title of that section?

15 A. Yeah. This is "Issue 5, Failure to furnish
16 information on contamination necessary to determine
17 approvability of drainage proposal and compliance with
18 critical area regulations."

19 Q. Okay. What agency is responsible for
20 overseeing MTCA environmental cleanup in SEPA?

21 A. Yeah. So the agency responsible for
22 overseeing cleanup under the Model Toxic Control Act is
23 the Washington State Department of Ecology.

24 Q. Okay. Could you open Exhibit C-29.

25 A. Exhibit C-29 is a memo from Hart Crowser to



1 Doug Lucian and Gary Huff. The memo's from Mark Dagle
2 of Hart Crowser. It's on the subject of Point Wells
3 urban center environmental remediation approach.

4 Q. Okay. Can you turn to pages 4 and 5 of that
5 document. What does that section summarize?

6 A. Yeah. This section summarizes the process for
7 cleanup under the Model Toxic Control Act.

8 Q. Could you just go through -- I'm not going to
9 make you read it -- just the headers of the different
10 overall phases of each step of the cleanup process.

11 A. Yes. So the first phase is remedial
12 investigation and a feasibility study. The second step
13 is selection of a cleanup action or development of a
14 cleanup action plan. Third step is environmental
15 review. Fourth is permitting. Then finally you get to
16 the fifth step which is site cleanup.

17 Q. Could you turn to Exhibit P-6 -- oh sorry.
18 You have to turn to the hard copy.

19 MR. HUFF: Your Honor, this was specifically
20 said by PDS is an issue they would not be addressing in
21 this hearing.

22 MR OTTEN: It goes to the extension, and it
23 goes to information we need for the application. It's
24 not for the purposes of the DOE cleanup. If you grant
25 me a few more questions, you'll see how it applies.



1 THE HEARING EXAMINER: So wait a minute. So
2 it's not an issue of substantial compliance, but it is
3 an issue for extension? Is that what you're saying?

4 MR OTTEN: Yes. The timing of what has or
5 hasn't been done is very pertinent to the examiner's
6 consideration of what additional SEPA review will be
7 required if the examiner decides that a remand is
8 necessary.

9 THE HEARING EXAMINER: Comments, Mr. Huff?

10 MR. HUFF: The prior documentation all said
11 the site should be assumed to be clean, DOE will handle
12 the SEPA review of the action plan, and that this
13 wouldn't be discussed at this hearing.

14 THE HEARING EXAMINER: I guess what I'm trying
15 to understand is how -- can you elaborate a little
16 further how this relates to the extension. Clearly, if
17 it is remanded, they'll need more time to deal with the
18 environmental issues. But that's kind of good.

19 MR OTTEN: Now, their proposing, the
20 applicant's proposing to do a phased cleanup with phased
21 development. So it's relevant to the application of the
22 SEPA process. And the next exhibit that's in the record
23 that I'm citing to speaks to what statements the
24 applicant has made in regards to what should have been
25 done and hasn't been done and how that relates to the



1 application moving forward.

2 THE HEARING EXAMINER: Well, let's focus --
3 let's limit this to -- if what you're saying is they've
4 been dilatory, if that's your argument, then let's focus
5 on whether they've been dilatory.

6 MR OTTEN: Okay.

7 THE HEARING EXAMINER: But let's not focus
8 on -- because what Mr. Huff is saying and I kind of have
9 some sympathy with that is it's a little bit of a
10 surprise here. They were not being prepared to respond
11 to the substance.

12 MR OTTEN: Yeah. I'm not going to substance.

13 THE HEARING EXAMINER: Then let's keep it
14 limited, then, to whether you contend they were
15 dilatory. I have no idea whether they were or they
16 weren't. Let's limit it to whether -- your argument
17 they were dilatory.

18 MR OTTEN: Okay.

19 Q (By Mr Otten) Could you go to P -- what
20 exhibit did I just reference? P-6?

21 A. P-6.

22 Q. What is that?

23 A. Yes. So P-6 is a letter dated April 16 of
24 2018 that was transmitted by email from Karr Tuttle to
25 you.



1 Q. Okay. Me, being for the record?

2 A. Being you, Matt Otten. It was sent by Gary
3 Huff of Karr Tuttle.

4 Q. Could you go to Page 3 of that document.

5 A. Okay.

6 Q. There's an email communication embedded in the
7 letter. Could you identify who is that between and when
8 it was dated.

9 A. Yeah. So the email that's embedded in this
10 letter is from Rich Schipanski. Rich was the project
11 manager for an environmental impact statement that was
12 started for the project but not completed. The email is
13 to Darryl Easton who was the original project manager
14 and David Leviton who was another county reviewer at the
15 time with Snohomish County PDS.

16 Q. Okay. Could you look at just the third
17 paragraph down with the bolded language. This is from
18 the applicant, right, this email, the consultant to the
19 applicant?

20 A. Right.

21 Q. Could you read from that?

22 A. Yes. So "SEPA rules allow for environmental
23 review under the MTCA," which is the Model Tonic Control
24 Act, "process for sites associated with development,
25 proposals to be conducted under a combined SEPA



1 document, EIS, environmental checklist, et cetera." And
2 the consultant, Rich Schipanski continued: "However,
3 our experience has been, due to the potential
4 substantially longer time period associated with the
5 MTCA process, that the development project and MTCA
6 process undergo separate but coordinated SEPA processes.
7 We propose to follow this approach for the Point Wells
8 mixed-use project EIS."

9 Q. Okay. So this document touches on the fact
10 that the MTCA process can take, according to their own
11 consultant, much longer than the actual development
12 environmental review process?

13 A. Right. Yes. So --

14 Q. Then you spoke to the phases that the
15 applicant identified?

16 A. Yup.

17 Q. Has the applicant submitted anything that
18 shows they have started the environmental review process
19 for the environmental cleanup?

20 A. No. We have nothing in the record that would
21 show that the applicant has started this first phase
22 which was remedial investigation and a feasibility
23 study.

24 Q. Okay. Does PDS require, while not full, any
25 type of full analysis or information on an environmental



1 cleanup as part of reviewing phased development that's
2 contingent upon environmental remediation? Is there any
3 applications that PDS has reviewed recently where they
4 need information on the cleanup to inform the review
5 process for the development application?

6 A. Yeah. This does happen from time to time.
7 The kind of highest profile recent examples are a
8 project call Bakerview, which was a proposed subdivision
9 around the perimeter of a landfill. The landfill has
10 not been in active operation for a long time, but it has
11 also not been formally closed.

12 Q. Who is involved in that cleanup?

13 A. Yeah. So that cleanup, the agency overseeing
14 the cleanup would be the Health District of Snohomish
15 County, which is actually a separate entity from
16 Snohomish County government. In that case, they would
17 be acting analogous to the Department of Ecology for the
18 Point Wells project.

19 Q. So for this cleanup, what kind of information
20 would you need to review the project in terms of code
21 compliance and phasing?

22 A. You're talking with respect to --

23 Q. With respect to Point Wells.

24 A. For Point Wells, some of the information we
25 would need with respect to phasing would be information



1 such as the amount of material to be removed and the
2 method for removing contaminated material from the site.

3 Q. How about --

4 MR. HUFF: Your Honor, this goes back to the
5 same objection.

6 THE HEARING EXAMINER: I'm going to kind of
7 agree with Mr. Huff on this. It sure sounds to me like
8 we're talking about compliance with development regs. as
9 opposed to whether they've been dilatory. I mean I
10 understand the point you're trying to make is you don't
11 have information from which to do a proper drainage or
12 critical areas review at this point because you don't
13 know what the remediation plan is. I got that. And you
14 contend or you believe that they haven't gotten far
15 enough along so that you can start your review. Got
16 that.

17 But I'm going to sustain the objection unless
18 you convince me otherwise.

19 MR OTTEN: No. I'm submitting it for the
20 purpose not -- as you're correct, not for substantial
21 conflict. It speaks to the extension and whether that
22 is a reasonable request given where we're at this point
23 in time.

24 THE HEARING EXAMINER: I think it's clear --
25 I'm going to sustain the objection. It's clear that



1 they haven't submitted enough information to do that
2 yet. But of course you're getting into the
3 chicken-or-egg problem here.

4 MR OTTEN: Yes.

5 THE HEARING EXAMINER: I get that. And of
6 course I have PTSD from the Bakerview project already.
7 So the real question here -- so I'm going to sustain the
8 objection.

9 MR OTTEN: Okay. I'll move on to the next
10 issue.

11 THE HEARING EXAMINER: Thank you.

12 Q (By Mr Otten) All right. I'll move you along
13 to Exhibit P-3. That's one of the paper -- no, it's
14 actually in the record, I think. That's your . . .

15 A. All right. So Exhibit P-3 is the most recent
16 version of the applicant's phasing plan. This was
17 submitted two days before the hearing. So it was
18 submitted May 15, and then it's been marked up by PDS to
19 reflect the proposed building heights for the tower
20 buildings by phase.

21 And then this does have the answer -- I knew
22 it was in here somewhere -- for how many tower
23 buildings. And it's 20 in the total, down in the lower
24 left.

25 Q. By "tower," you mean buildings over 90 feet?



1 A. Buildings over 90 feet; correct.

2 Q. Could you turn back to Exhibit K-31 at
3 page 234.

4 A. Okay. So K-31, again, was the October 2017
5 review letter. And you said page 234?

6 Q. Correct.

7 A. Okay.

8 Q. All right. Could you read just subsection 1,
9 there.

10 A. Yeah. So what's identified as former
11 30.34A040 which is elsewhere identified as the 2010
12 version of that same section, subsection 1 reads: "The
13 maximum building height in the urban center zone shall
14 be 90 feet. A building height increase up to an
15 additional 90 feet may be approved under SCC 3034A.180
16 when the additional height is documented to be necessary
17 or desirable when the project is located near a high
18 capacity transit route or station and the applicant
19 prepares an environmental impact statement pursuant to
20 chapter 3061 SCC that includes analysis of the
21 environmental impacts of the additional height on a
22 minimum." And then it lists a number of things.

23 Q. Okay. So in other words, what is the maximum
24 height allowed in the UC zone with either no high
25 capacity transit route or station?



1 A. Yeah. The base maximum height is 90 feet.

2 Q. And an additional 90 feet, up to 180, is
3 allowed under what conditions?

4 A. It's allowed when you do an EIS that looks at
5 the visual impacts and when you have access to a high
6 capacity route or station.

7 Q. Okay. So with this project, are the key words
8 at issue in this matter "when the project is located
9 near a high capacity transit route or station"?

10 A. That's correct.

11 Q. Okay. I'm going to turn you to Exhibit G-14.
12 It's another big one.

13 A. So G-14 is the applicant's response to our
14 October 6, 2017, review completion letter.

15 Q. Okay. Did the applicants submit basically
16 inline responses to the issues raised by the --

17 A. Right. Yes. This is where the applicant took
18 our letter and, then, after each of the issues we
19 identified, followed up with their explanation of their
20 response.

21 Q. I'll have you turn to page 31.

22 A. Okay.

23 Q. Could we look at the second paragraph there.
24 And could you read from that one.

25 A. So "While the literal language of SCC



1 30.34A040 sub 1 is satisfied by the fact that the
2 project site is bifurcated by the Sound Transit commuter
3 rail line, BSRE does not rely on this adjacency to
4 justify a height increase to 180 feet. Instead BSRE's
5 project plans specifically include both a bus
6 turnaround, allowing for the extension of Metro routes
7 304 and 348, which now start on their routes just over a
8 half mile from Point Wells and, more importantly, a full
9 Sound Transit station.

10 Q. Go to page 32, please, the fourth paragraph.

11 A. "BSRE"?

12 Q. "Intends to satisfy," yes.

13 A. "So BSRE intends to satisfy the requirements
14 of SCC 30.34A.040 sub 1 in multiple ways. BSRE
15 recognizes that Sound Transit will likely not agree to
16 provide service at Point Wells until approximately 1,000
17 persons reside on-site. Nor will Sound Transit likely
18 enter into a service contract with BSRE until the
19 project has obtained approval from the county.

20 "Thus, until Sound Transit service becomes
21 available, BSRE shall provide a privately funded bus or
22 shuttle service from the project to the Edmonds Sound
23 Transit station, to the Shoreline Park and Ride station
24 at 192nd and Aurora, and, when it becomes operational in
25 2023, to the new light rail station in Shoreline at



1 185th and I-5."

2 Q. Could you turn to Exhibit G-15, please.

3 A. I don't think I have that one open yet. Oh, I
4 did. So G-15 was the Urban Center Supplement that was
5 received on April 27, dated April 25th of 2018.

6 Q. Okay. Could you go to page 4, section 6.

7 A. Okay. Section 6 is "Commitment to fund Sound
8 Transit commuter rail station." It says: "Sound
9 Transit has expressed an interest in providing commuter
10 rail service at Point Wells once an efficient on-site
11 population is achieved. It is expected that Sound
12 Transit's interest in providing such a commuter rail
13 station will be contingent on BSRE's willingness to
14 fully fund the construction of the on-site commuter rail
15 station. If required by Sound Transit, BSRE agrees to
16 provide such funding."

17 Q. Okay. So your review of Exhibit G-14
18 narratives and the G-15 narrative, does it appear that
19 the applicant is arguing it has satisfied SCC 30.34A.040
20 (1) through several different approaches?

21 A. That's correct.

22 Q. Does BSRE first claim it complied with the
23 literal language; in other words, mere proximity to the
24 Sound Transit commuter rail line?

25 A. That's correct.



1 Q. Secondly, does the applicant claim that the
2 inclusion of a bus turnaround -- I'm looking at G-14.
3 If you could, turn back to that on G-14, at page 31,
4 second paragraph. Does the applicant claim that the
5 inclusion of a bus turnaround satisfies this provision?

6 A. That's correct.

7 Q. Third, does the applicant argue that it
8 complies with this provision -- or where's that? Let's
9 go to G14, page 32, the fourth paragraph. Is that in
10 there? Is there a mention -- oh, wait. There we go.
11 Fourth paragraph, "in addition," the paragraph that
12 starts "in addition." I'm not good with numbers,
13 either. Yeah, that one.

14 A. Okay.

15 Q. Okay. Can you read from it.

16 A. Do you want me to read the whole paragraph?

17 Q. Unfortunately, yes.

18 A. That's fine. "In addition, until at least
19 such time as BSRE and Sound Transit shall have entered
20 into a binding contract for the construction of the
21 Sounder station at Point Wells with service to be
22 provided by Sound Transit, BSRE shall provide and
23 operate a water taxi for service between the project and
24 the Edmonds Sounder station. Passenger-only ferries are
25 included within the definition of 'high capacity



1 transit'" -- that's in quotes -- "under SCC 30.91H.108.
2 Thus, under either scenario, Point Wells will be served
3 by high capacity transit and the requirements of SCC
4 30.34A.040 sub 1 shall therefore have been satisfied."

5 Q. Okay. On the third account, does the
6 applicant argue that it complies with the provision of
7 high capacity transit by relying on water taxi service?

8 A. Yup. This is a new way that they're saying
9 We'll do that.

10 Q. And then fourth, does the applicant claim that
11 it is located near a high capacity transit station or
12 will be in the future as a means to satisfy the
13 provision?

14 A. Yes.

15 Q. Okay. Let's go to Exhibit H-24 that was
16 previously opened.

17 A. I've got so many open, I've got to maybe
18 figure out when I can close some again. H-24?

19 Q. Yes.

20 A. Sound Transit long-range plan.

21 Q. Okay.

22 A. This is the response to comments by Sound
23 Transit that were included in their long-range plan.

24 Q. So is this the sole exhibit that you're aware
25 of that the applicant is relying on in attempts to



1 satisfy the sort of, I guess, point four?

2 A. Yeah.

3 Q. Potential future --

4 A. Right. This is what the applicant has used to
5 argue that they satisfy the access to high capacity
6 transit with a potential future Sounder station.

7 Q. So can we go back to the diagram that was
8 created based on their site. It's P-3.

9 A. Yup.

10 Q. How many of the towers are above 90 feet?

11 A. Yes. So the Exhibit P-3 shows that 28 of the
12 46 total buildings would be greater than 90 feet.

13 Q. So roughly --

14 A. Close to half.

15 Q. Close to half? Okay. Do you know roughly how
16 many units are in those buildings above the 90 -- so
17 assuming that 90-foot -- they was sliced in half, cut
18 off at 90 feet, how many units would fall outside of
19 that?

20 A. Right. I haven't done the math. As this is
21 nearly half the buildings and these would be the largest
22 buildings on the site, the majority of the units would
23 be in such buildings, even though probably less than
24 half of the units would be at floors higher than
25 90 feet.



1 Q. So it would be a significant number of units?

2 A. It would be a significant, material part of
3 the project design.

4 Q. And in order to get the significant number of
5 units, the applicant is relying, aside from the
6 narrative that we just went through, solely on H-24,
7 which is those two letters?

8 A. Right.

9 Q. Okay. Can we go back to H-24.

10 A. Yup.

11 Q. Could you scroll to the letter from Sound
12 Transit dated April 13, 2010.

13 A. So the April 13, 2010, letter from Sound
14 Transit to Mark Wells.

15 Q. Okay. I'll bring you back to that. We'll
16 save that. First, the claim -- I'm going to move you to
17 G-14. Sorry for --

18 Does BSRE seem to propose that, even without a
19 stop, mere proximity to a station might be one grounds
20 of satisfying heights above 90?

21 A. Yeah, that is one of BSRE's claims.

22 Q. Okay. And if you scroll up -- let's see.
23 Does it say something about the county's position
24 historically? I think you have to keep scrolling up.

25 A. Yeah. So it says on page 30 that "Snohomish



1 County has historically taken the position that Point
2 Wells' adjacency to Sound Transit rail line satisfied
3 comprehensive plan and code locational criteria.

4 "The county successfully argued this issue
5 before the Growth Management Hearings Board."

6 Q. Can you scroll down to the next page, at the
7 top of the next page. Can you read that -- it's the
8 second sentence, the second paragraph there or the only
9 sentence in that second section.

10 A. It says: "While not being entirely
11 comfortable with the county's interpretation, the board
12 determined that deference to the county's interpretation
13 is appropriate."

14 Q. Okay. I'm going to make you read more. So
15 I'm going to bring you to Appendix 04A.

16 A. What page would that be on?

17 Q. Do you have 040?

18 A. I thought you said "appendix." You want
19 Exhibit 04?

20 Q. Yeah. Sorry. I probably misspoke.

21 A. I might have misheard.

22 Q. And we're going to go to Appendix C, which I
23 believe is page 45 of the pdf.

24 A. Appendix -- oh, I've got it, 17 pages.

25 Q. 0A there's a 4A -- sorry -- 04A. It's not



1 complicated at all. Scroll down to Appendix C.

2 A. What page was that?

3 Q. I believe it's 45.

4 A. All right.

5 Q. Okay. I guess that partway through the -- do
6 you recognize what this document is?

7 A. Yeah.

8 Q. You can go to the header page if you want.

9 A. Up to the top.

10 Q. It's actually Appendix C. So it would be like
11 page 35 of the pdf.

12 A. All right.

13 Q. That's just a guess, though.

14 A. Good job. Okay. So Appendix C, this is the
15 Central Puget Sound Growth Management Hearings Board on
16 the case of The City of Shoreline, Town of Woodway, and
17 Save Richmond Beach, et al, v. Snohomish County and
18 BSRE, Point Wells.

19 Q. Okay. This is -- is this the decision?

20 A. Yes, the Corrected Final Decision and Order by
21 the Growth Management Hearings Board.

22 Q. In regards to the Point Wells designation and
23 development regulations?

24 A. That's correct.

25 Q. Could you -- now could you scroll down to



1 page 45, which is, I think, page 10 of that specific
2 document.

3 A. Okay.

4 Q. Could you look at the bottom paragraph that
5 starts "BSRE generally contends."

6 A. Yes. So the bottom paragraph on that page
7 reads "BSRE generally contends its project will over
8 time meet the transit-access criteria of LU3A2 and
9 LU3A3." Those are policies in the county's
10 comprehensive plan. Then the paragraph continues:
11 "BSRE points out transit agencies will not plan to
12 provide additional service until population growth is
13 assured. BSRE states it is negotiating with King County
14 Metro to extend local bus service a half mile into Point
15 Wells where BSRE proposes to provide a transit center.
16 Metro's present routes provide all-day, half-hour
17 service to Northgate and peak hour runs to downtown
18 Seattle.

19 BSRE also provides a letter from Sound Transit
20 expressing interest in serving Point Wells if the
21 developer funds construction of the commuter rail line.
22 However, it is undisputed: As of today, there's no
23 regional transit solution in the plans of any transit
24 agencies to serve an additional population of 6,000 at
25 Point Wells."



1 Q. Can you read the next paragraph on the
2 following page.

3 A. Yeah. The next paragraph continues: "The
4 board does not find BSRE's assurances persuasive. The
5 board agrees with petitioners that, A," quote, "'highly
6 effective transportation system linking major centers',"
7 end quote, "is not satisfied by providing van pools to a
8 Metro park and ride 2 1/2 miles away. Nor is," quote,
9 "'high capacity transit'," end quote, "satisfied by an
10 urban center on a commuter rail line without a stop.

11 "There's nothing efficient or multimodal about
12 an urban center designation that could result in an
13 additional 12,860 car trips per day through a two-lane
14 neighborhood street or that relies on high capacity
15 transit on an unusable commuter rail line and van pools.

16 "The board concludes the county's construction
17 of GPP LU3A3 is not consistent with the land use
18 objective 3A in Vision 2040."

19 Q. Okay. Now, to be clear, in the last sentence
20 the growth board was interpreting the county's land use
21 policies, not the particular language of 040(1); right?

22 A. Right. That's correct. So the LU3A
23 references are to the county's general policy plan.

24 Q. Okay. But did the growth board rule or --
25 rule on the issue of proximity to the high capacity



1 transit that also appears in .040 sub one?

2 A. Yeah.

3 Q. And the potential of having a large urban
4 center on a commuter rail line with no stop?

5 A. Yeah. The board ruled that an urban center
6 reliant on access to high capacity transit where the
7 rail went through the middle of the site but did not
8 stop did not satisfy that requirement.

9 Q. Okay. And was the -- was the development
10 regulation sent back on remand for -- to the county to
11 adopt a legislative fix?

12 A. Right. So these were -- this was the remand
13 that came back to the county that resulted in the 2013
14 revisions to the urban center regulations that
15 Mr. Killingstad spoke about in his testimony.

16 Q. So going back to G-15 at page 31, BSRE -- and
17 I quote -- says: "While not being entirely comfortable
18 with the county's interpretation, the board determined
19 that deference to the county's interpretation is
20 appropriate." Do you think, based on your reading of
21 the growth board decision, that the board deferred to
22 the county's interpretation of having a rail line bisect
23 a site is sufficient for access to transit?

24 A. No, I don't think that having a rail line
25 bisecting the site is sufficient for access to transit.



1 Q. Okay. I guess -- so it's not sufficient to
2 satisfy 30.34A.040 sub one?

3 A. Right.

4 Q. Is this based in part on the growth board's
5 previous decision that was not appealed by the county or
6 BSRE?

7 A. That's correct.

8 Q. Is the county's interpretation also consistent
9 with the intent and purpose that increased building
10 heights and density above the standard 90-foot limit if
11 and only if impacts are evaluated by and EIS and actual
12 access to high capacity transit supports this taller,
13 more dense development? In other words -- that was a
14 long question. What's the purpose of having -- allowing
15 additional density if and only if access to high
16 capacity transit is available?

17 A. Yeah. You allow the higher density if and
18 only if you have access to high capacity transit partly
19 to mitigate impacts such as traffic and also because, in
20 areas where you have access to high capacity transit,
21 you tend to have a different kind of building style and
22 construction. It's a compatibility issue with the
23 surrounding neighborhoods.

24 Q. And you said "mitigate," which is also
25 typically a SEPA term --



1 A. Right.

2 Q. But this is also a code compliance --

3 A. Yes. This is a code-compliance requirement
4 because, in this case, in order to have buildings over
5 90 feet, one has to have a access to high capacity
6 transit.

7 Q. Would you conclude that mere proximity to a
8 rail line without a stop does not satisfy 040 sub one?

9 A. Yeah. That's correct. Having no stop does no
10 good for providing access to transit.

11 Q. Okay. On BSRE's second claim, is there any
12 information that a bus turnaround satisfies 040 sub 1?

13 A. No. They haven't provided any
14 supporting . . .

15 Q. It's just something that's mentioned in one of
16 the narratives?

17 A. Yeah.

18 Q. There seems to be some confusion between
19 040 and 085. Do you know 30.34A.085, do you know what
20 085 covers?

21 A. Yeah. 085 was access to transit but not
22 building heights.

23 Q. Okay. But every application has to satisfy
24 085?

25 A. That's correct.



1 Q. Okay. Regardless of heights?

2 A. Right. Regardless of heights, you have to
3 have access to transit for urban center development.

4 Q. What does the applicant propose in regards to
5 085?

6 A. For 085, the applicant is proposing van pools
7 and other things.

8 Q. Is that an issue that the county decided to
9 proceed on substantial conflict?

10 A. No. That's an not issue of substantial
11 conflict.

12 Q. It seems like sometimes there's, I guess, a
13 confusion of regarding 085 and 040. But they're
14 separate code requirements?

15 A. Right. The conflict is with 040 and not with
16 085.

17 Q. Okay. And 040 only requires access to high
18 capacity transit for buildings over 90 feet?

19 A. Correct.

20 Q. So if there was a proposal with buildings
21 under 90 feet, there would be -- you wouldn't have to
22 satisfy that requirement?

23 A. That's correct.

24 Q. Let's go to a third claim, water taxis. Could
25 we go --



1 THE HEARING EXAMINER: Why don't we take our
2 afternoon break now?

3 MR OTTEN: Okay.

4 THE HEARING EXAMINER: It's 4:15. Let's come
5 back at 4:30.

6 MR. OTTEN: Okay. Thanks.

7 THE HEARING EXAMINER: We're in recess.

8 (Recess taken.)

9 THE HEARING EXAMINER: Fire away, Mr. Otten.

10 MR OTTEN: All right.

11 Q (By Mr Otten) Mr. Countryman, on the third
12 claim, water taxis, could we look at -- where does BSRE
13 propose water taxis as satisfying 040 sub 1? Let's look
14 at G-14.

15 A. All right. What page is that on?

16 Q. It's on page 3, third paragraph from the
17 bottom.

18 A. Are you sure it's page 3 of G-14?

19 Q. Not -- we'll see.

20 A. G14, is the review completion letter response,
21 I believe.

22 Q. Let's go to A-32.

23 A. A-32 is the Point Wells Development project
24 narrative, dated April 24, 2018, received by PDS on
25 April 27 of 2018.



1 Q. On page 31.

2 A. All right. I've lost my tool bar. How do I
3 get that back? I don't even -- we were just talking in
4 the break about technology. And now I've got this
5 opened up, and I don't know how to -- there you go.
6 Click on the side, you said? I'm open to suggestions
7 here unless anyone wants to see me scroll the hard way
8 to get my -- yeah. But that's on a different exhibit.

9 THE HEARING EXAMINER: Is there a teenager in
10 the house?

11 MR OTTEN: If you close out and open again,
12 will that help?

13 THE WITNESS: Well, I'm thinking about that.
14 Hey, there's a read out loud option. I hadn't noticed
15 that before. That would save me a lot of time.

16 A-32, that was -- no. Okay. We're going to
17 scroll the hard way, I guess. What page?

18 MR OTTEN: 300. Sorry. It's 31.

19 THE WITNESS: Okay. I'm at 11.

20 THE HEARING EXAMINER: There only appears to
21 be one paragraph on that page.

22 MR OTTEN: Oh-oh.

23 THE WITNESS: That's the thing, I was looking
24 at "view," "tools."

25 MR OTTEN: You're almost there; right?



1 THE WITNESS: That made it -- that zoomed way
2 in.

3 THE HEARING EXAMINER: I guess we're done. I
4 guess so.

5 THE WITNESS: That's one way to do it. Thank
6 you. Now I've got to undo that mark he zoomed. So
7 let's go zoom.

8 THE HEARING EXAMINER: There we go.

9 THE WITNESS: Here we are.

10 THE HEARING EXAMINER: At least that's what
11 I've got on that page.

12 THE WITNESS: I'm going to stop touching it.
13 So page 31 has one paragraph.

14 Q (By Mr Otten) I'm not going to make you read
15 the whole paragraph. The fourth-from-last line, "as a
16 water dependent," can we start there.

17 A. Okay. So it says -- this is, again, the
18 updated project narrative, dated April 24 of 2018. "As
19 a water-dependent building, it will have existing
20 structures" -- "existing structures renovated. These
21 might potentially incorporate small rental craft,
22 fishing supplies, cafe use, public garden, and access to
23 a boat launch. It could also offer potential docking
24 for local ferry service."

25 Q. And you identified there is the portion in



1 G-14 -- it's actually page 32. On page 3 -- and I think
2 you've already spoke to it, but let's look at it again
3 real quick. It's the third paragraph from the bottom.

4 A. Sound transit -- from the bottom?

5 Q. Okay. "In addition."

6 A. "In addition, until such time as BSRE and
7 Sound Transit shall have entered into a binding contract
8 for the construction of a Sounder station at Point Wells
9 with service to be provided by Sound Transit, BSRE
10 shall" operate -- "shall provide and operate a water
11 taxi for service between the project and the Edmonds
12 Sounder station."

13 Q. Then let's go to A-40 which is the updated
14 urban center project narrative. That's page 31, I hope.
15 There we go.

16 A. So the updated narrative -- and this is the
17 one that was received on May 14 -- received on May 15th
18 but dated May 14th -- says --

19 Q. Just go to that one sentence you read before.

20 A. "It will be" -- regarding the pier, "It will
21 be visually upgraded while retaining some of its key
22 marine features and character. The pier will
23 incorporate water-dependent uses utilizing the existing
24 renovated structures which could include small water
25 craft rental, fishing supplies, cafe, public art walk,



1 and access to the floating dock used by nonmotorized
2 watercraft."

3 Q. So it looks like the -- was there reference to
4 the taxi or local ferry service removed from that?

5 A. Yeah. There's no mention of ferry service.

6 Q. But it's still retained in Exhibit G-14, which
7 is the applicant's response to the review completion
8 letter?

9 A. Right.

10 Q. As to the pier, does BSRE own the land the
11 pier or the shore lands on which it is located?

12 A. No. The pier is located on submerged land
13 that is leased by the Washington department -- or leased
14 from the Washington Department of Natural Resources.

15 Q. Okay. Can you pull up Exhibit D-11.

16 A. Sure. Exhibit D-11 is the aquatics land lease
17 for the area that BSRE leases from the Department of
18 Natural Resources.

19 Q. Can you turn to section 2.1. I think it's on
20 page -- it might be page 4 of the pdf.

21 A. Okay. So 2.1?

22 Q. Yeah.

23 A. That wasn't page -- there you go.

24 Q. Can you read what -- describe what section 2.1
25 is.



1 A. So section 2.1 describes the permitted uses on
2 the main dock. And it says: "Permitted use, tenant,"
3 which in this case is BSRE, "shall use the property for
4 commercial ship," slash, "barge berthing and loading,
5 offloading, and bunkering of cargo," then parens, "(the
6 permitted use) and for no other purpose."

7 Q. You can stop there. Is water taxi or ferry
8 described in this lease?

9 A. No. They are not described in the lease.

10 Q. I think you misspoke. Can you go back to who
11 the party is in this lease.

12 A. Okay.

13 Q. You were right there. That one page
14 identified the two parties. Try to go up right there.

15 A. So the lease -- I'm sorry -- is made between
16 the State of Washington, acting through the Department
17 of Natural Resources, and Chevron U.S.A., Inc., which
18 was a Pennsylvania corporation.

19 Q. Okay. But it doesn't change the fact that the
20 scope of this lease does not include water taxi or ferry
21 use?

22 A. Yeah. It does not include water taxi or ferry
23 use.

24 Q. Did BSRE provide any other permits, approvals,
25 agreements, or MOUs regarding operating a ferry or water



1 taxi, including any information on docking rights in
2 Edmonds where they say they're going to land?

3 A. No.

4 Q. So the entirety of what they provided is in
5 that urban center project narrative and in the review
6 completion letter?

7 A. That's correct.

8 Q. Okay. Is there any information on frequency
9 and capacity of the service?

10 A. No.

11 Q. Do they identify what permits and approvals
12 from which jurisdictions and agencies they would need to
13 get to have that type of service?

14 A. No.

15 Q. Okay. Does PDS consider the water-taxi ferry
16 proposal well documented, planned by the applicant to
17 comply with 0401?

18 A. No.

19 Q. Okay. But did PDS review it, nonetheless, and
20 determine whether or not it satisfied code?

21 A. Well, it's new information. But I would say
22 that it does not satisfy code.

23 Q. Okay.

24 THE HEARING EXAMINER: By "not satisfying
25 code," do you mean not satisfying 040?



1 THE WITNESS: Yes. Right. It doesn't satisfy
2 040 because it doesn't provide the relevant information
3 other than just an assertion that there will be a water
4 taxi service.

5 Q (By Mr Otten) Let's move on to -- let's see --
6 on to the fourth claim. Does BSRE claim that they've
7 satisfied 040 sub one and the bonus 90-foot height under
8 the high capacity transit station requirement based on
9 its correspondence with Sound Transit?

10 A. So yeah. They claim that they get the bonus
11 height for a number of ways including Sound Transit, the
12 water taxi, other means.

13 Q. Okay. Can you identify -- I guess go to H-24
14 again.

15 A. H-24 was the Sound Transit -- the response
16 from Sound Transit to BSRE that is found in the Sound
17 Transit long-range plan.

18 Q. Okay. Can you go to the -- so there's two
19 letters in there. Can you just identify what two
20 letters -- who they are from and to and the dates on
21 each?

22 A. Yeah. The most recent letter is dated July 28
23 of 2014. And it's to Karin Ertl, who was at Sound
24 Transit and was probably -- yeah, it's from Gary Huff.
25 And then the second letter in the exhibit is actually



1 the older letter. And that one is from Sound Transit to
2 Mark Wells. Its dated April 13 of 2010. And that's
3 from David Philip Beal of Sound Transit.

4 Q. Okay. Could you look at that 2010 letter.
5 Could you go to the second paragraph.

6 A. Okay.

7 Q. And could you read from the "While your."

8 A. "While your property may have adequate room to
9 integrate a station into a multimodal transit center,
10 there are other issues and constraints that would affect
11 our ability provide commuter rail service at that
12 location. At our meeting with you in December of 2009,
13 we provided you information regarding Sound Transit's
14 design guidelines for rail stations. It would be
15 critical for us to work with adjoining jurisdictions
16 prior to determining the feasibility of such a station
17 and service in the future and with Burlington Northern
18 Santa Fe railway to establish the Sounder
19 Everett-to-Seattle line's capacity to accommodate an
20 additional station.

21 It is important to note that Burlington
22 Northern Santa Fe would also need to approve the design
23 and location of any new station and platforms.

24 Q. Okay. Is there any guarantee -- this is the
25 sole letter from Sound -- sole written letter from Sound



1 Transit, I guess, that the applicant has provided?

2 A. That's correct.

3 Q. Okay. Is there any guarantee of a station?
4 Is there any commitment by Sound Transit in any form or
5 fashion to build a station at Point Wells?

6 A. No. Sound Transit is not making any
7 commitments.

8 Q. But they're not saying it's an impossibility
9 either?

10 A. No they're not saying its impossible. They're
11 merely describing what would be required.

12 Q. Does Sound Transit indicate there might be
13 some hurdles or issues that must be addressed before
14 they can determine whether it's feasible or not to have
15 a station there?

16 A. Yeah. They've described what some of those
17 steps would be.

18 Q. Can you identify what they are?

19 A. Yeah. So it would be including work with
20 adjoining jurisdictions prior to determining feasibility
21 and work with Burlington Northern to establish the
22 capacity for additional station. And then earlier it
23 spoke of their -- Sound Transit's design guidelines for
24 rail stations.

25 Q. Okay. Has the applicant provided any



1 communications -- well, I guess has it provided any
2 specific plans on the design requirements that Sound
3 Transit has for construction of rail stations?

4 A. No, the applicant has not provided any
5 information on that.

6 Q. So Sound Transit hasn't provided, like, a
7 preliminary approval --

8 A. No.

9 Q. -- of a conceptual design?

10 A. No. There's no conceptual design that's been
11 approved.

12 Q. It also points out that BNSF would also need
13 to approve design and location. Is there any
14 communications that the applicant has provided that BNSF
15 has, at least in a preliminary fashion, even seen a
16 conceptual design or approved or made any indication
17 that they are okay with what's been proposed?

18 A. No. The applicant has not provided any of
19 their communications with Burlington Northern.

20 Q. "In addition, Sound Transit says it's critical
21 for us to work with adjoining jurisdictions prior to
22 determining feasibility." Is there any evidence in the
23 record that Sound Transit has been asked to approach
24 local jurisdictions such as Snohomish County, Town of
25 Woodway, Shoreline, regarding a station at that location



1 and reached any agreement on that?

2 A. No. We haven't received any such information
3 from the applicant.

4 Q. When was this letter dated?

5 A. In 2010.

6 Q. So --

7 A. It's dated April 13 of 2010.

8 Q. Okay. So in the past eight years, the
9 applicant has been unable to provide PDS with any
10 additional information that Sound Transit identified
11 eight years ago that would be required to determine the
12 feasibility of a station at that location?

13 A. That's correct.

14 Q. All right. Can you go to Exhibit G-15.

15 A. Okay.

16 Q. Page 4. And just read that first sentence
17 there.

18 A. "Sound Transit has expressed an interest in
19 providing commuter rail service at Point Wells once an
20 efficient on-site population is achieved."

21 Q. So it says "Once the sufficient on-site
22 population is achieved." So is there a presumption that
23 Sound Transit has not expressed an interest to serve the
24 site until there's a sufficient on-site population? Is
25 that the inference there?



1 A. That's the inference, yes.

2 Q. Can you look at Exhibit G-14, page 32.

3 A. Okay.

4 Q. Paragraph 4.

5 A. All right.

6 Q. Can you read the first two sentences there.

7 A. Yeah. "BSRE intends to satisfy the

8 requirements of SCC 30.34A.040 sub one in multiple ways.

9 BSRE recognizes that Sound Transit will likely not agree

10 to provide service at Point Wells until approximately

11 1,000 persons reside on-site. Nor will Sound Transit

12 likely enter into a service contract with BSRE until the

13 project has obtained approval from the county."

14 Q. You can stop there. So is in fact BSRE

15 admitting that, until a certain density is reached,

16 Sound Transit hasn't even agreed to serve the site?

17 A. That's correct.

18 Q. Okay. Is that why BSRE proposed to use the

19 water taxi prior to the opening of a potential high

20 capacity commuter rail station?

21 A. That could be the reason. I don't know.

22 Q. Can you look at Exhibit G-14, page 3, third

23 paragraph. Did I just give you the wrong number again?

24 A. Yeah, it looks like it.

25 Q. I think that was supposed to be, like,



1 page 32.

2 A. Okay.

3 Q. Which is probably the one you were just on.

4 A. Third paragraph?

5 Q. 31 or 32.

6 A. Okay. The "While the literal language"

7 paragraph?

8 Q. The one that includes the reference to water
9 taxis. Scroll -- let's see. How about page 32, the
10 third paragraph from the bottom? Sorry.

11 A. Okay. I've found it. Do you want the whole
12 paragraph or part of it?

13 Q. Just the reference to the water taxi.

14 A. Okay. "In addition, until such time as BSRE
15 and Sound Transit have entered into a binding contract
16 for the construction of the Sounder station at Point
17 Wells, with service to be provided by Sound Transit,
18 BSRE shall provide and operate a water taxi for service
19 between the project and the Edmonds Sounder station."

20 Q. So is the applicant admitting that they're
21 relying on the water taxi to bridge the gap, either due
22 to density, or until a contract is entered between the
23 two entities?

24 A. Yeah. That appears to be their intent.

25 Q. Okay. But now, based on what you just read in



1 the urban center narrative where they've dropped use of
2 the water taxi from the pier, does that mean that,
3 according to their own information, that they'll be no
4 high capacity rail transit during at least a certain
5 portion of the development where there's not a
6 sufficient density?

7 A. That could mean that, yeah. There's a lot of
8 conflicts in the most recent versions of what the
9 applicant's given us.

10 Q. Has BSRE provided any more recent evidence
11 post 2014 or post 20 -- well, 2014, that -- of any
12 commitment by Sound Transit to have and serve commuter
13 rail station that Point Wells?

14 A. No. We haven't seen anything newer than 2014.

15 Q. Okay. Has the county received information
16 from Sound Transit recently whether or not BSRE has
17 interacted with Sound Transit? I'm specifically
18 referring you to Exhibit H-30?

19 A. Yeah. So we did receive Exhibit H-30 recently
20 from Sound Transit.

21 Q. Could you summarize --

22 A. Yeah.

23 Q. -- who this communication is from and when it
24 was dated?

25 A. I'm trying to get it open. So H-30 from RN



1 email from Sound Transit's North Corridor Project
2 director, Kamuron Gurol. The email is dated May 8th of
3 2018. It was sent to me in response to a query that I
4 sent him or her.

5 Q. That query was -- what was the response to the
6 Sound Transit North Corridor -- could you just read the
7 response he provides?

8 A. Yeah. So his response -- I had a two-part
9 question. His response that's relevant here is response
10 No. 1 which says that "Sound Transit staff are not aware
11 of additional recent contact between BSRE and the agency
12 since the long-range plan FEIS. The Sound Transit 3
13 package approved by voters in 2016 does not include a
14 station at Point Wells. To construct a station there or
15 any additional location along that corridor would
16 require an additional easement from Burlington Northern
17 railroad, something that likely would be very
18 challenging to obtain."

19 Q. What's the second paragraph reference?

20 A. The second paragraph references the design of
21 the station. And it says: "Sound Transit does not
22 utilize design guidelines for Sounder stations. Our
23 staff are able to respond to specific questions from
24 Snohomish County staff." And then it provides the
25 contact information for the corridor design manager.



1 Q. Okay. So -- and the applicant hasn't provided
2 any indication that the current proposed conceptual
3 design for the Sounder station or platform is acceptable
4 to the Sound Transit agency?

5 A. No. We don't have anything like that from the
6 applicant.

7 Q. There's no evidence of any type of agreement
8 between or contact between BNSF and applicant?

9 A. That's correct.

10 Q. Okay.

11 MR. HUFF: Your Honor, we've been over this
12 multiple times. What's the point?

13 THE HEARING EXAMINER: I guess the direction
14 is that the horse has been flogged.

15 MR OTTEN: Okay. I'll move on.

16 THE HEARING EXAMINER: Okay.

17 MR OTTEN: It's just an important aspect of
18 this project.

19 THE HEARING EXAMINER: And I hear your
20 arguments that you contend that there's inadequate
21 factual basis for an extension as well as the design
22 issue, the compliance issue with respect to Sound
23 Transit and the high capacity transit issue.

24 MR OTTEN: I'll stop flogging the horse.

25 THE HEARING EXAMINER: Thank you.



1 Q (By Mr Otten) The Sound Transit station that's
2 depicted in the applicant's site plan, what
3 jurisdictions does it fall within?

4 A. Yeah. So the Sound Transit station shown on
5 the site plan is in both Snohomish County and the Town
6 of Woodway jurisdiction.

7 Q. So the station is actually is located in more
8 than Snohomish County's jurisdiction?

9 A. That's correct. The Town of Woodway recently
10 annexed some property that came down. And included in
11 that annexation was a portion of the rail right of way
12 where the station is proposed. A portion, not the
13 entirety, of the station would have split jurisdiction
14 between Snohomish County and the Town of Woodway.

15 Q. Okay. Is there any information in the file
16 that the applicant has contacted the Town of Woodway
17 regarding whether that's -- an application is in or
18 whether that's an allowed use?

19 A. We have nothing from the applicant on that
20 topic.

21 Q. Do you have anything from Woodway?

22 A. We do have a letter from the Town of Woodway.

23 Q. What does that provide?

24 A. It provides that we have had any -- that BSRE
25 has not contacted the Town of Woodway for their



1 requirements.

2 Q. Do you have happen to know the exhibit number
3 offhand?

4 A. I don't. It was a very recent exhibit,
5 probably in the -- one of the Ps.

6 Q. Okay.

7 A. No.

8 Q. But it was recently submitted by --

9 A. It was recently by the mayor, Carla Nichols,
10 from the Town of Woodway.

11 Q. Okay. Is there other commuter rail stops on
12 the Sounder north line that are located in the vicinity,
13 specifically in Snohomish county?

14 A. Well, the closest commuter rail line is in
15 Edmonds, near the Edmonds ferry terminal.

16 Q. Is there another one north of that?

17 A. Yeah next one north of that is in Mukilteo.
18 And then the third one is in downtown Everett.

19 Q. Do those, at least the Mukilteo and Edmonds
20 stations, do those two stations provide parking for rail
21 commuters?

22 A. Yes, both stations provide parking for rail
23 commuters.

24 Q. Is it just a couple spots? Do you know the
25 specific number or general?



1 A. I don't know the specific numbers of spots.
2 But as Mr. Killingstad testified in his testimony, Sound
3 Transit phase three includes funding for additional
4 parking at both of those stations beyond the level of
5 parking provided today.

6 Q. Okay. And you just referenced the letter
7 submitted by Town of Woodway. Could you pull open
8 Exhibit I-375.

9 A. I-375. So I-375 is the letter from the Town
10 of Woodway. It's dated May 14 of 2018, and it's from
11 the mayor of Woodway, Carla Nichols.

12 Q. That's the one you're referring to, that they
13 haven't had any contact with the applicant in terms of
14 applications?

15 A. Yeah.

16 Q. Okay. So have you reviewed the site plan
17 submitted by the applicant, in specific the rail
18 station?

19 A. Well, yeah.

20 Q. You've seen it?

21 A. Yeah. I've seen the site plan with the
22 various versions of the rail station shown on the site
23 plan.

24 Q. The latest version or any of the versions, has
25 the applicant provided any parking stalls dedicated to



1 the commercial rail users?

2 A. No. The applicant has not provided any
3 parking for the users of rail.

4 Q. Okay. Is there supplemental parking provided
5 in the applicant's current plans?

6 A. No.

7 Q. Are they near the minimum parking
8 requirements?

9 A. Right. The plans provide either the very
10 minimum or, as the county says, less than the minimum
11 required amount of parking for the project.

12 Q. Okay. Did the applicant -- do they set aside
13 reserve area of sufficient size to provide future
14 commuter rail parking similar to that -- what is
15 available in Mukilteo or Edmonds?

16 A. No. There is nowhere on the site plan that
17 additional parking could be added for rail.

18 Q. Has BSRE submitted anything in documentation
19 from Sound Transit that excuses or explains why there's
20 no commuter rail parking for their proposed rail
21 station?

22 A. Yes. We have seen nothing from the applicant
23 explaining that.

24 Q. Until recently, what phase of the development
25 had the applicant proposed to construct the station?



1 A. Yeah. Until recently the station was proposed
2 to be built during phase three or four.

3 Q. Okay. And was that -- were there new plans
4 submitted that modified that?

5 A. Yeah. Which one was that? Yeah. We did
6 receive that new phasing plan. I don't remember the
7 exhibit number.

8 Q. Was there a justification the applicant
9 provided for including it in phase three instead of
10 earlier in the process?

11 A. I believe that the applicant had included it
12 because we had commented that buildings taller than
13 90 feet would not be allowed during phase one absent a
14 high capacity transit station. So the station got moved
15 to Phase one.

16 Q. Okay. Was there a reason? Did they, in their
17 application materials, identify originally why it was in
18 Phase three because there wasn't sufficient density to
19 serve that Sound Transit committed to?

20 A. That's correct.

21 Q. But now they've moved it to Phase one, and
22 they don't bring up the density issue?

23 A. That's correct.

24 Q. Okay.

25 A. Yeah. I don't have that exhibit number. It



1 was the revision to sheet A-056 that was received on
2 May 15th that moved the commuter rail station to Phase
3 one.

4 Q. Okay. So you briefly, in your opening
5 statement a couple days ago, you mentioned that
6 obtaining a Sound Transit high capacity station is a
7 precondition to getting the additional feet. What did
8 you mean by precondition or requirement?

9 A. Well, I meant that the project as proposed
10 depends on having a high capacity transit station. It's
11 an important material part of the application. And the
12 absence of a feasible mechanism for providing high
13 capacity transit is a substantial conflict with
14 Snohomish County code.

15 Q. Okay. There's another way the term
16 "precondition" is used in the context of certain
17 applications where the examiner has authority to
18 "precondition" an application. Can you explain what
19 that means.

20 A. Yes. So sometimes, if a project gets
21 approved, it's approved with preconditions that take
22 care of nonsubstantive, as far as the project design
23 issues. But sometimes these are things that have to
24 take place. For instance, if I'm going to subdivide a
25 piece of property but I need a portion of my neighbor's



1 property to get access, there will be a precondition
2 that a boundary line adjustment get recorded in order to
3 provide that access. So it's not a substantial issue of
4 the project design. It's substantial in the sense that
5 it has to happen before the project can move forward.

6 But preconditions do not include substantial
7 revisions to design of -- another example where I've
8 used preconditions before is where a project had an
9 out-of-date legal description on the last version of its
10 plans and one of the preconditions was simply: Give me
11 some plans that correct that now out-of-date legal
12 description so that we're approving the right set of
13 legals for the plan. But that had nothing to do with
14 the layout of the project.

15 Q. So precondition, would PDS recommend a
16 precondition that an applicant that -- that basically
17 hinges on a third of the applicant's project that they
18 comply with code at some date in the future? Basically
19 is a precondition appropriate in PDS's view on future
20 compliance with 040 sub one?

21 A. No. I don't believe a precondition on future
22 compliance with this is -- would make for an acceptable
23 precondition. It's a basic requirement for the project
24 that's proposed today.

25 Q. And is the high capacity -- the provision of a



1 high capacity station at Point Wells, it's also
2 dependent on the independent actions of two
3 independent -- Sound Transit and BNSF; right?

4 A. Right. To that I would add also the Town of
5 Woodway.

6 Q. Okay. And are applicants entitled to a
7 precondition if they fail to satisfy code? Is it an
8 entitlement required to be given to them?

9 A. No. Preconditions are not an entitlement.
10 It's just a mechanism to solve minor things that need to
11 be taken care of as part of the approval process.

12 Q. Okay. Just wrapping up here. Let's look back
13 at the language of 30.34A.040 sub one. Do you have
14 that? I think it was in -- it would probably be in G-14
15 or E. There we go.

16 A. Okay.

17 Q. Is it your understanding that the applicant is
18 asking for approval to build buildings of twice the
19 90-foot height otherwise allowed? I mean they are
20 asking for approval to build up to 180 feet.

21 A. Right. So the applicant is asking for
22 approval to double the height limit.

23 Q. And the sole information that the applicant
24 has provided to the planning department for approval on
25 these grounds is exhibit -- is it H? The two letters?



1 A. That's correct.

2 Q. Okay. Then they have narrative that explains
3 why they think those are sufficient.

4 A. Right.

5 Q. Is that correct? Do you think those two
6 letters are sufficient to satisfy 040(1) as a
7 representative of PDS?

8 A. No, those two letters do not satisfy the
9 requirement of 040 sub one.

10 Q. What kind of application materials would PDS
11 require in order to satisfy this code provision?

12 A. Well, we'd want to see some kind of memorandum
13 of understanding or at least a letter describing what
14 Sound Transit was looking for in the sequencing for
15 provision of such transit. But we've got nothing like
16 that in the record. We need written documentation of
17 communication and agreement or at least agreement on
18 what would be involved in a later finalized agreement
19 between BSRE and Sound Transit.

20 Q. So more details, more commitment by the
21 agencies involved?

22 A. Yeah. We'd need a lot more details and
23 commitment.

24 Q. Now, what's the contrast between what you just
25 outlined and the items you just -- that BSRE provided?



1 A. Well, it's a lot of work that BSRE would need
2 to do involving Sound Transit, Burlington Northern, and
3 the Town of Woodway in order to document compliance with
4 section 30.34A.040 sub one in that we don't have
5 anything like in the record from the applicant.

6 Q. Can you go back to Exhibit P-3.

7 A. Okay. P-3 is that revised phasing plan that
8 was received on March 15th. It's sheet A-056 of the
9 architectural plans.

10 Q. So how many of the buildings are over 90 feet?

11 A. Twenty of the buildings are over 90 feet.

12 Q. And the applicant is asking that the approval
13 of 20 of the 46 buildings be approved based on those two
14 letters?

15 A. That's correct.

16 Q. Okay. Given your review of the application
17 materials, is it PDS's position that the application
18 substantially conflicts with SCC 30.34A.040 sub one?

19 A. Yeah. The absence of information documenting
20 progress with Sound Transit is a substantial conflict
21 with SCC 30.34A.040 sub one.

22 MR OTTEN: Okay. Thank you, Mr. Countryman.
23 No further questions.

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CROSS-EXAMINATION

BY MR. HUFF:

Q. Mr. Countryman, what comes first, the chicken or the egg? That's really what this boils down to. On one hand, Sound Transit says Come back when you've got a project approval and you say No project approval without binding commitments from Sound Transit. How do you resolve that conflict?

A. Well, you know, I see compliance with this code section as climbing a ladder, 'cause on the one hand or one leg rather, the Snohomish County leg, you're climbing one rung at a time. And on the other leg, the Sound Transit, you're climbing one rung at a time. If you want to get to the point where you are 90 feet or higher, you have to climb rungs with both legs.

Climb on up. You need to make progress in two directions.

Q. But what if you don't have that opportunity available till after county approval?

A. I don't understand the question.

Q. Let's just assume Sound Transit says We're interested; looks great; come back when you've got county approval. That's never going to happen.

So in that circumstance, doesn't it make sense to condition approval, to condition a building permit on



1 having the -- having an agreement with Sound Transit to
2 provide service? What's the downside of that?

3 A. Well, for one, the conditioning of an approval
4 is such -- as such would take us beyond the scope of
5 what we're discussing here. But the length of time
6 involved in getting those approvals would put the
7 traffic report and other mitigation measures way out of
8 date. So that's a problem of SEPA noncompliance which
9 this isn't a SEPA hearing.

10 But also an approval for the design of the
11 station may require revisions to the site plan, which
12 would then require additional rework. So, you know, the
13 lack of having parking associated with the transit
14 station is likely a fairly big deal. I can't speak for
15 Sound Transit. But their 1999 EIS for Sound Move 1 --
16 give me a moment, and I'll find the exhibit for that. I
17 finally pick my own exhibits.

18 We put that under environmental. While I'm
19 scrolling around, the 1999 EIS for Sound Move, Sound
20 Transit had looked at a number of station possibilities
21 in the general Richmond Beach area. One of the four in
22 that general vicinity was at Point Wells, all of which
23 Sound Transit was look informing for a minimum of 120
24 stalls in parking.

25 So revisions to the site plan, if BSRE were,



1 after talking to Sound Transit, to find out that they
2 needed at least 120 parking stalls for the public, would
3 really require a lot of rework on the site design. So
4 that's where I'm saying you're going to make progress on
5 one side of that ladder. To climb up, you've got to
6 step up with the other leg on that same rung or the next
7 rung before you get to the 90-foot height.

8 Q. With respect to parking, those people, those
9 commuters, that are generally Shoreline residents, what
10 if Shoreline tells us: We don't want you to have
11 parking because we don't want the trips on our road
12 system? So the solution then, the only available
13 solution, is the shuttle service we talked about where
14 we pick up with our private bus service Shoreline
15 residents up down the corridor, taking them to and from
16 the station.

17 A. Well, I can't speak for the City of Shoreline.
18 But that seems like an unlikely scenario because, if
19 people were driving to Point Wells to catch the train
20 into Seattle, they would be going the opposite direction
21 of the majority of traffic at the time when the traffic
22 was leaving Point Wells in the a.m. or the reverse in
23 the p.m. So the traffic flow for people driving from
24 the neighborhood to park and catch the rail service at
25 Point Wells would be in the opposite direction of the



1 bulk of traffic and the opposite direction of where the
2 level of service problems would be.

3 Q. That may be. By it's in fact what the City of
4 Shoreline told us they want.

5 A. I don't know that I've seen anything like that
6 in the project record.

7 Q. We've been told that. Doesn't the Sounder
8 station, under your interpretation, have to be in
9 Phase one in order to comply with 040?

10 A. Yes. That's our interpretation.

11 Q. So we made the change to Phase one.

12 A. Uh-huh.

13 Q. Is there something wrong with that? You've
14 apparently been critical because we made that change.

15 A. I don't have a problem with the Sounder
16 station being proposed in Phase one. But we don't have
17 the required level of information to provide us any
18 confidence that that would actually take place during
19 that phase. And it's also now in conflict with other
20 aspects of your proposal, such as the narrative and the
21 description where you argue that it has to be postponed
22 until later because there's not sufficient population.

23 Q. Okay. We think it makes sense to postpone it
24 till there are -- till there's sufficient population.
25 But you say no. So the only solution, based on the



1 varying positions you've taken, is to have to build the
2 station in Phase one. It may not get used until there
3 are 1,000 residents. But, given the constraints that
4 you're imposing, that's the only way to deal with this
5 that we can see. That's a rather inefficient solution,
6 but that's the only choice you've left us.

7 A. There may be other design solutions such as
8 not having buildings taller than 90 feet in the earlier
9 phases.

10 Q. We'll get to that. Have we proposed double
11 the height without complying with 040? No, we haven't,
12 have we?

13 A. Well, up until now, the phasing plan would
14 have had buildings tall -- at double the height for up
15 to 10 years or more based on the original phasing
16 which --

17 Q. I'm talking about now.

18 A. -- I believe changed that.

19 Q. I'm talking about now. You just said we've
20 proposed double the height. But we haven't, have we?

21 A. Okay. I suppose, with that change, it's not a
22 concern.

23 Q. I want to make sure I understand what would be
24 sufficient in terms of documentation from Sound Transit
25 to move this forward. You talked about an MOU.



1 A. Either an MOU or some other kind of
2 documentation of what Sound Transit would be looking for
3 and acknowledgment from both parties that that was
4 acceptable. And then that information would be reviewed
5 by Snohomish County Planning and Development Services
6 and Public Works to see if we required additional
7 information on that topic.

8 Q. So you don't -- wouldn't require a binding
9 contract at this point?

10 A. Not at this point. But we would need to know
11 what the likely contents or the general framework for
12 such a contract would look like. And we would need that
13 to -- some documentation that that kind of contents or
14 framework had been agreed to by both parties and not
15 just proposed by one.

16 Q. You have made mention of the fact that you're
17 not aware of BSRE having Sound Transit design guidelines
18 for the Sound Transit station or for a Sound Transit
19 station?

20 A. Right.

21 Q. We in fact have those. We have incorporated
22 them into the plan. If we document that we have those
23 design guidelines, does that objection go away?

24 A. Well, we have to look at the design guidelines
25 and then also confer with the Town of Woodway, whether



1 that satisfied their requirements for the portion that
2 was in the Town of Woodway. It would be helpful to have
3 something from Sound Transit that said, yeah, this meets
4 our intent.

5 So again, looking at that Sound Transit 1999
6 EIS for Sound Move, in addition to 120 parking stalls
7 for the Sounder stations in the area, Sound Transit also
8 wanted the ability to have 1,000 feet of commuter
9 platform. And the plans that have been provided by BSRE
10 shows 400 feet of commuter platform.

11 So, you know, we don't have Sound Transit's
12 guidelines. Sound Transit's recent letter said, Here's
13 who you contact because they said they don't have
14 guidelines. But what appears on the plans is less than
15 half the length of what was previously studied by Sound
16 Transit for the platform.

17 Q. Do you -- you've talked about Growth
18 Management Hearing Board decision and adjacency to the
19 station. That was dealing with the comprehensive plan
20 issues; right? It didn't have to do with development
21 regulations or the urban center code?

22 A. Right. So yeah, that was the issue that was
23 being appealed as . . .

24 Q. That language or that decision was rescinded
25 upon the county coming into compliance with the board



1 order; correct?

2 A. Yeah. I think that's a fair understanding.

3 Q. So the county adopted amendments to the urban
4 center code in 2013 to comply with the growth board
5 order; correct?

6 A. Right.

7 Q. And so the current 30.34A.040, dealing with
8 building height, says that the maximum building height
9 in the UC zone shall be 90 feet?

10 A. Uh-huh.

11 Q. And that an increase of an additional 35 feet
12 may be approved when the project is located within 1/8
13 of a mile of a high capacity transit station, major
14 transit corridor, or transit center?

15 A. Right.

16 Q. That still has language about 1/8 of a mile to
17 a corridor. How is that different than a route?

18 A. Our read on the 2010 version of that section
19 has been modified by the court decision. And so, based
20 on that, mere proximity of having a corridor that
21 bisects the property is not sufficient access.

22 Q. No. But then the county went ahead and, again
23 in response to the growth board, order adopted a height
24 limit in equivalent to 0401 that says to be within a 1/8
25 of a mile of a high transit corridor. That doesn't



1 require a station there? That's the same adjacency
2 requirement.

3 A. Well, I wasn't working on that code amendment.
4 So I can't really speak to why it was phrased that way.

5 Q. "High capacity transit station, major transit
6 corridor, or transit center," that seems like backing
7 away from the prior version. But we'll argue about
8 that.

9 There was discussion about Mr. Schipanski and
10 his email. He was referenced as being our consultant.
11 He is not a BSRE consultant, is he?

12 A. No. He works for EA Engineering which is --
13 actually, the relationship is such that it's a contract
14 with Snohomish County that BSRE pays for their work.

15 Q. We get the pleasure of paying. But he was
16 responding to the county in his role as your EIS
17 contractor; correct?

18 A. You could look at it that way. But he's also
19 responding as an expert in the field that has worked on
20 a large of number of complicated projects including EISs
21 that had to be coordinated between a local jurisdiction
22 and the Department of Ecology. And in that email, he
23 provided some examples of other kind of bifurcated work
24 that's been done in the past.

25 Q. You also testified about how, in my opening



1 statement -- or that my opening was the first time you
2 had heard a representation about statements made in the
3 November 13th meeting.

4 A. That's correct.

5 Q. Did you take notes of that meeting?

6 A. I did.

7 Q. You have exhibits L-7 to L-15, -16 which are
8 meeting notes. But interestingly that meeting is not
9 included. Do you know where they are?

10 A. Yeah. Would you like me to pull them up?

11 Q. I'd like to see -- well, I'd like to see what
12 you have to say.

13 A. Okay. I think I can get to that location.

14 MR OTTEN: It's not an exhibit right now;
15 right?

16 THE WITNESS: We'll have to enter this in.

17 THE HEARING EXAMINER: I don't think you have
18 access.

19 THE WITNESS: Right.

20 (Several people speaking at once.)

21 THE WITNESS: We could enter that. But --

22 Q (By Mr. Huff) You are testifying that there
23 was no discussion about another extension?

24 A. There was discussion about an extension, but
25 no commitments were made.



1 Q (By Mr. Huff) Do you recall Doug Luetjen
2 saying to the group Is there any reason to expect that
3 an extension would not be granted?

4 A. I don't remember that.

5 Q. Well, he can testify to that. You don't
6 remember what the response, then, was if you don't
7 remember the question.

8 With respect to the setback from single-family
9 property lines, is aesthetics at all a consideration in
10 that determination?

11 A. Well, I'm not sure what you mean by
12 "aesthetics." You know the intent of setback was
13 compatibility with lower density zones and was something
14 that county council introduced into the code when the
15 code was being adopted.

16 Q. And the purpose of that section, what is the
17 purpose of that setback requirement?

18 A. Well, as I recall from the hearing, it was
19 introduced by Councilman Dave Gossett over his concern
20 about the urban center designation that was proposed
21 along the Bothell-Everett Highway which did abut some
22 low density zones.

23 Q. And I assume those low density zones actually
24 had some residences there?

25 A. Right; they did.



1 Q. There aren't residences to the east of these
2 towers, are there?

3 A. Not currently. But there are proposed
4 residences east of those towers.

5 Q. And partial partway down the hill. But at
6 present, there are none?

7 A. Right.

8 Q. And that's a 220-foot bluff behind a potential
9 180-foot building; right?

10 A. Well, you're speaking of part of the area.
11 We're discussing that area that was recently annexed
12 into the Town of Woodway. But south of that, there are
13 also residences.

14 For instance, one that was shown in the visual
15 impact analysis for your variance request appeared to
16 reflect one of the existing homes that's fairly close to
17 the Point Wells site that's not at the top of that
18 bluff. It's at a much lower elevation, closer to the
19 project.

20 Q. But we do not have 180-foot towers in front of
21 that building, that home?

22 A. Not immediately adjacent to that building.
23 But the proposed two retail buildings in that phase,
24 which were not mentioned in your variance request, also
25 exceed the half-the-height-to-the-distance setback



1 requirement as documented in our October 6, 2017, review
2 completion letter. And that was not responded to in
3 your variance request.

4 Q. Now, you testified that even buildings beyond
5 180 feet from that property boundary, adjacent to low
6 density development, those were limited in height, even
7 beyond 180 feet?

8 A. Yeah. That's what the code reads is that
9 buildings shall be scaled down to to half the height of
10 the distance.

11 Q. But it says: "Buildings or portions of
12 buildings that are located within 180 feet of adjacent
13 low density shall be scaled down." "Within 180 feet,"
14 that limits this provision to buildings within 180 feet
15 of the property line; correct?

16 A. Yeah. Actually I take that back. I think
17 you're right on that point.

18 Q. So some of the examples that you showed
19 earlier in buildings that are outside that 180 feet,
20 your testimony that those would also have to comply was
21 in error?

22 A. No. The only building that that would apply
23 to would be the proposed single building as the
24 alternative to your variance request. The other
25 buildings in the urban plaza are all less than 180 feet



1 from the neighboring property lines.

2 Q. I don't dispute that. Those buildings that
3 are less than 180 feet, if this applies, they're subject
4 to it. But outside of the 180 feet, they're not?

5 A. Yeah. I would concede that point.

6 Q. But do you recall conversations with me that I
7 referenced in my opening where you said the typical
8 project often goes through seven or eight reviews?

9 A. I don't remember saying seven or eight
10 reviews. But yeah, the typical project would go through
11 several reviews. And a large project like this would --
12 might be seven or eight. But a typical project also
13 tends to respond to the review completion letters a
14 little bit faster than four years.

15 Q. Now, the council designated this site as an
16 urban center; correct?

17 A. Correct.

18 Q. So following on the council's action, isn't it
19 reasonable to expect that an urban center project could
20 be developed on this site?

21 A. Yeah.

22 Q. And this is, at least based on FAR, the
23 smallest possible urban center project?

24 A. I wouldn't read it that way. But that's the
25 position that you've taken.



1 Q. And you've said, you've testified, that
2 substantial portions of the proposal are in violation of
3 the setback requirement. So that would reduce
4 substantial square footage or FAR. You've said that
5 second access is required, which we don't dispute. But
6 that will have an impact.

7 Do you think it's possible to develop an urban
8 center at this site given the constraints that PDS is
9 imposing?

10 A. Yes, I think it is possible to revise or
11 submit a plan that were compliant with the urban center
12 requirements.

13 Q. Does it make sense, from a design standpoint,
14 to place the tallest buildings up against a hillside in
15 the back of the project so they don't block more
16 people's views?

17 A. That's a subjective question.

18 Q. Is there any purpose to applying 040 to this
19 scenario when there are no residences behind the
20 building? Wouldn't that be potential grounds for a
21 variance?

22 A. My job is to review the project that's been
23 submitted and not talk about hypothetical ways that it
24 might be changed or could potentially have been designed
25 differently.



1 Q. I didn't ask to you redesign the project. I
2 asked you, if the fact that there are no residences
3 eastward of the towers and that having those in a
4 position where they have minimal view impacts, can that
5 be a factor in a variance application?

6 A. You could have proposed that.

7 Q. We did propose that.

8 A. But you didn't document the reasons why it met
9 the variance criteria. I mean there's four variance
10 criteria. And the application did not respond much to
11 those variance criteria. It just asserted that this
12 would be a better design, to oversimplify what was said.

13 Q. We talked a little bit about the 2013
14 revisions to the urban center code. And it has language
15 in 040 sub two similar to this setback. But now it's
16 limited to buildings within 90 feet. Why the difference
17 between -- the distance wasn't a problem before, at
18 least in the litigation. Why did the county decide to
19 reduce that requirement to 90 feet?

20 A. Right. Like I said, I wasn't involved in the
21 revisions in 2013. So I don't know.

22 Q. And the urban village code has no setback
23 requirement from residential homes; right?

24 A. Right.

25 Q. So we could convert the application to an



1 urban village and go ahead and build towers in that
2 location?

3 A. Well, I wouldn't use the word "convert the
4 application." You could submit a new application under
5 the urban village code and propose that, yes.

6 Q. Actually, your code allows us to send a letter
7 to PDS, asking that it be converted. It's the
8 applicability section of the urban village adoption
9 ordinance.

10 A. Okay. I have to go look at that. That hasn't
11 been done before.

12 Q. But if we were to do that, we could build
13 those building in those locations, not as tall, I
14 acknowledge, because there's a different height limit.

15 A. We would have to re-review the whole project
16 under the applicable codes. One of the issues with the
17 buildings in that location was the landslide deviation
18 request that Mr. Sleight will be talking about probably
19 tomorrow.

20 Q. Isn't it true that the current applicable 040
21 doesn't contemplate our situation? You talked about
22 Councilman Gossett's concern. That's not our situation.
23 It really shouldn't apply to this situation, should it?

24 A. You know, I can't speak to what the councilman
25 was thinking at the time. But my job is to review the



1 code that gets adopted, review projects per the code
2 that is adopted.

3 Q. But there should be some flexibility in
4 applying that code. And there are mechanisms available,
5 not to bend your code or to fit our project but to
6 provide flexibility in circumstances that were
7 unanticipated?

8 A. Right. The flexibility is through mechanisms
9 like the variance request. And we kind of walked
10 through our review of the variance request that was
11 submitted. And that variance request was not responsive
12 to the requirements or documenting of the reasons why
13 that variance should be granted.

14 Q. So 040(1) in the current code allows for
15 additional height when documented to be necessary or
16 desirable when the project is located near a high
17 capacity transit route or station and the applicant
18 prepares an EIS which includes, among other items,
19 aesthetics.

20 A. Right.

21 Q. Do you recall the view analysis that was
22 prepared for inclusion in the EIS?

23 A. Yes.

24 Q. So that has been done?

25 A. Right.



1 Q. We've had the discussion about adjacency to
2 the transit. But the language here does say "when the
3 project is located near a high capacity transit route or
4 station." Well, the station, by definition, is on a
5 route. So the other language must have a purpose. What
6 is the purpose, other than its obvious meaning to say
7 located near a high capacity transit route? It's got to
8 be something different than a station.

9 A. Well, again, when you're asking me to
10 interpret something in code, also having written code
11 although not this section, sometimes one gets carried
12 away and inserts meaningless clauses. And the access to
13 high capacity transit would imply having a station.
14 Otherwise anything along that same Burlington Northern
15 rail corridor in unincorporated Snohomish County could
16 rezone to urban center and make use of that. And that
17 just doesn't make sense.

18 Q. Yet the same concept was carried forward of
19 being adjacent to a transit corridor as satisfactory in
20 the 2013 amendment. So that's still the equivalent of
21 the same requirement. That's got to have a some
22 meaning. If the station has to be there, why say "high
23 capacity transit station, major transit corridor, or
24 transit center"?

25 A. Why change the Sounder platform to Phase one



1 if that's --

2 Q. Because we're trying to comply. But the
3 county throws up obstacles, tells that there are certain
4 meanings to things that were changed. But they weren't
5 really changed. If this was the issue, why isn't the
6 code language reflective of that?

7 A. Well, the county's interpretation of that
8 section was revised based on a court decision. And, as
9 you know, that legal precedence carries a lot of weight.

10 Q. A Growth Management Hearing Board decision
11 that's been rescinded does not carry a lot of
12 precedential weight. Now, in the -- excuse me.

13 In the urban village code, the uses are
14 similar to an urban center; right?

15 A. That is correct.

16 Q. There's no single family?

17 A. No single family.

18 Q. No duplexes?

19 A. No duplexes.

20 Q. So it has to be condos or apartments?

21 A. Yeah. I mean commercial uses. It's just a
22 difference of scale.

23 Q. In an urban village, the FAR requirement is
24 gone; right?

25 A. That's correct.



1 Q. And density is instead determined on a
2 units-per-acre basis?

3 A. Yes. That's correct.

4 Q. Do you recall the minimum and maximum?

5 A. If you use the optional urban village
6 standards, then it's maximum of 44 units an acre. And
7 the minimum was either 12 or 20.

8 Q. You were right the first time: It's 12. So
9 for round numbers, assume a 60-acre site. The density
10 range in an urban village would be between 720 units and
11 2,640, approximately?

12 A. Yeah.

13 Q. And the code, the urban village code, provides
14 for building heights of a 75 instead of a 90-foot base
15 with an additional 50 available for the same kind
16 of view?

17 A. Yeah.

18 Q. So we could go to 125? There's no high
19 occupancy transit requirement at all in an urban
20 village, is there?

21 A. No.

22 Q. There's no setback from single family zones?

23 A. There are a setbacks, but they're -- it's
24 not --

25 Q. But there's not the same --



1 A. It doesn't have the same provision that we've
2 been talking about.

3 Q. So even at the least dense development
4 possible, 720 units, that's going to generate more than
5 250 average daily trips; right?

6 A. Right.

7 Q. So any development at this site would require
8 second access?

9 A. Most likely, yeah.

10 Q. So any applicant will have to obtain approval
11 for a second access. I don't see that as us bending the
12 code to fit our design. The smallest possible project
13 on this site will have to meet -- will have to get
14 approval for a second access; correct?

15 A. That's correct. But it's also taking what I
16 was saying out of context because, when I was speaking
17 about the second access and bending the code, I was
18 speaking to the length of time and some of the issues
19 raised in the prehearing brief that you submitted with
20 respect to, you know, time and expense. But, you know,
21 there were years where there was no information provided
22 in response in the requirement for a second access.

23 Q. That's not bending the code. Maybe we weren't
24 as responsive as we should have been. Nor was the
25 county. I'm talking about what you're requiring under



1 the code of our project versus the least possible --
2 least dense scenario possible. It's still would require
3 second access.

4 A. Yeah. Almost any likely development would
5 probably require a second access.

6 Q. So that's not us bending the code. We intend
7 to comply with that just as anybody would proposing
8 anything on there. If a second access isn't approved,
9 there's no use possible of the property, is there?

10 A. There's a lot of ways that a second access
11 could be approved. And so depending on --

12 Q. You reviewed --

13 A. -- the project as proposed.

14 Q. You reviewed the analysis of the secondary
15 access possible alternatives that was submitted;
16 correct?

17 A. Correct.

18 Q. And the first conclusion was that none of them
19 could feasibly be done. When we knew that we had to
20 come up with some alternative, something that would
21 work, we did further geotechnical work and identified
22 this one. Do you recall any other possible second
23 access that's feasible?

24 A. Well, there used to be Heberlein Road which
25 connected down a different alignment to the project



1 site.

2 Q. That slid, had geotechnical problems; correct?

3 A. Yeah. It had geotechnical problems as would
4 any second road. However, geotechnical problems are an
5 engineering issue. And we haven't received adequate
6 documentation of the engineering for your second access
7 road.

8 Q. You mentioned earlier that parking was still
9 an issue. You thought we were short 500-some stalls.
10 And we pointed out in the revised project narrative that
11 we accepted your definition. Then there was discussion
12 about Mr. Harris' memorandum. My understanding of what
13 he was attempting to do is show why, for traffic study
14 purposes, it was necessary to use the ITE definition but
15 for county purposes, for determining parking count, we,
16 both Mr. Harris and I and the whole project team, accept
17 your -- the county definition of senior housing.

18 Now, if you want us to have Mr. Harris revise
19 his letter to that effect, we will. But assuming that
20 that's the case, has the parking issue been satisfied?

21 A. Not fully because there are other issues with
22 parking as we've talked about the Sound Transit, lack of
23 parking for Sound Transit. We've also previously
24 identified and requested a parking study for the beach
25 parking. We've identified a number of issues with the



1 layout of the parking garages themselves that make us
2 question the ability to provide the full amount of
3 parking shown in those garages. But the senior units
4 issue was the largest issue relating to parking.

5 Q. And that hopefully will have gone away now;
6 correct?

7 A. I'm making my recommendation based on the
8 plans that we have and not on possible future changes.

9 Q. I'm not talking about possible future changes.
10 I'm talking about the accepting county definition of
11 "senior housing." That should eliminate what you view
12 as the discrepancy at number of units provided. Does it
13 not?

14 A. Well, if we were at this point providing a
15 review letter for your third submittal, the review
16 letter would say, Hey, what you've submitted is not
17 internally consistent; please clarify. And so that's
18 not something where we would say, Hey, we approve this
19 parking change. We've agreed on where one of the major
20 inconsistencies is.

21 Q. I'm going to try this with no guarantee I'll
22 find it for you. Can you scroll down to the end of the
23 page.

24 We'll have testimony later on about what was
25 said and not said in the November 13th meeting. But



1 this is -- this letter from Director Mock denying our
2 request for an extension is important in that I think it
3 evidences an inappropriate purpose behind what we view
4 as a change in county position. She says, at the
5 bottom, starting on the left, fourth line up: "BSRE's
6 request must also be weighed against the public's
7 interest in having an application evaluated against
8 regulations that are currently in effect."

9 Do you recall discussions with Director Mock
10 or within PDS about trying to force us to reapply under
11 current regulations and urban village?

12 A. No. That was not part of our conversations.

13 Q. That was never discussed?

14 A. Not with respect to the extension request.

15 Q. Why does she say You should reapply, Basically
16 you should reapply under the current regulations?

17 A. Well, I can't speak for the director. But
18 this is a discretionary decision of the department
19 director on granting a --

20 Q. But it's not an appropriate exercise of
21 discretion if she decides on her own to away with our
22 project vesting and force us to reapply under a code
23 we're not vested in.

24 A. At this point we had had a second submittal
25 that barely responded to a review completion letter from



1 several years earlier. And there was no interest in
2 having a project linger for many more years, potentially
3 a decade or more, before it got brought into compliance
4 or before the issues were sharpened enough that we could
5 decide that it could not meet code.

6 Q. Now, if we were to follow the director's
7 wishes and reapply, however that was brought about, we
8 would need to go through the same review steps that
9 we've already done -- correct? -- because the urban
10 village code follows the urban center process. So we'd
11 have to have another community meeting, consultation
12 with cities, more SEPA scoping, declaration of
13 significance, hiring of a new EIS consultant, drafting a
14 new EIS. Those are all things that would be repeats if
15 this application was terminated, repeats of steps that
16 have already been taken; correct?

17 A. Well, they would be -- the steps would be
18 repeats. But they would be based on new information and
19 possibly expedited because a lot of the information
20 generated to date could be reused.

21 Q. It would still be a time-consuming process, a
22 repeat of steps that have had already been performed?

23 A. Well, the alternative would be to wait
24 indefinitely for BSRE to begin working with the
25 Department of Ecology, the Town of Woodway, the City of



1 Shoreline, and Burlington Northern on what their
2 requirements and expectations would be, too.

3 Q. Director Mock talks about a balancing of
4 interests. But isn't that balance done and accomplished
5 if an EIS looks at a range of alternatives? There's the
6 urban development -- urban center scenario. And you
7 remember that we have an alternative in the EIS of an
8 urban village.

9 A. That's correct.

10 Q. So isn't the purpose of an EIS to examine
11 alternatives and decide which is the most appropriate in
12 a given situation?

13 A. Well, yeah. That is the purpose of an EIS.
14 But also as I -- and many of the records and many of the
15 exhibits in the record will attest to this: I warned
16 you on multiple occasions that the insufficiency of the
17 application would mean that a supplemental draft EIS
18 would be necessary before we could move on to a final
19 draft EIS.

20 And if you're concerned about the time and
21 expense, then that is also a very time consuming and
22 wasteful exercise because, for instance, when we started
23 scoping out the draft EIS, we had expected a resubmittal
24 from BSRE by April of 2014, one year after the review
25 completion letter. That resubmittal would have included



1 a second road, presumably a geotechnical report
2 supporting that second road, and other important design
3 elements including the erosion report that was finally
4 submitted.

5 But, you know, you end up in a process where,
6 if you move forwards based on a very -- an application
7 that still has substantial conflicts with code, then
8 your draft EIS says that the project has to get revised
9 in order to bring it into compliance or it simply cannot
10 be approved.

11 Q. And identifying those circumstances and what
12 still needs to be done is a part of the draft impact
13 statement. The whole point of the draft is to identify
14 issues that can be resolved and published in the final;
15 correct?

16 A. Yeah. That's correct. But code compliance is
17 also by definition mitigation for a lot of things. And
18 for instance, one of the issues that we dropped, where
19 we were talking about needing more information on
20 contamination, was because the project at that time had
21 proposed to infiltrate surface water through
22 contaminated soil. By revising the plans to do on-site
23 treatment and discharge to Puget Sound, that issue went
24 away. But what we would have had is a draft EIS that
25 said that infiltration was not possible, therefore the



1 project can't move forward.

2 Q. If you want, we can go through the history on
3 both sides and talk about who didn't respond in a timely
4 manner. The point now is today, you got our attention.
5 And you've seen a lot of activity over the past months
6 to the point where your 179 concerns are down to a
7 handful. So given that progress, isn't it more
8 efficient to complete the EIS with the urban development
9 alternative and let the examiner in an open-record
10 hearing decide which is more appropriate?

11 A. My recommendation is that there are continuing
12 substantial conflicts with county code. We've
13 identified five substantial areas of conflict. When you
14 speak of 179 issues, some of those are very minor issues
15 that we're not arguing at this hearing that remain in
16 conflict with county code. And efficient to move
17 forward is not the case if the project cannot be
18 approved.

19 And BSRE has not demonstrated the key aspects
20 of the project that are currently in substantial
21 conflict with code.

22 Q. You provided your supplemental response
23 letter. We were down to 11 issues. Then last week, an
24 additional submittal was made which was intended to
25 address those remaining issues. Yet we have not seen a



1 response to any of those, and there's been no lessening
2 of the number of issues that you claim are outstanding.

3 So have you reviewed those and will we get a
4 response from PDS as to whether or not any of those
5 issues have been eliminated?

6 A. Yeah. We've been discussing that, and we'll
7 continue to discuss those issues in this hearing and
8 where substantial conflicts remain. As I said in my
9 opening remarks, any one of those areas would constitute
10 sufficient grounds for denial of the project. Any one,
11 whether it's the lack of engineering for the second
12 access road; the parking issue, which may be partially
13 addressed but not fully addressed. But there's
14 shoreline management issues. There's still the question
15 on Sound Transit. So, you know, take your pick. Any
16 one of those is sufficient grounds for denial of the
17 project at this stage.

18 Q. Any one could do it. Sound Transit is one of
19 those. So if you truly to insist on commitment from
20 Sound Transit, we might as well be done now at this
21 point because they have told us it's too early. How do
22 we get around that?

23 A. Like I said, we would need to see some kind of
24 written documentation from Sound Transit showing the
25 steps necessary to working with them to proceed and a



1 basic understanding of their requirements, county
2 requirements. And then the county would weigh in and
3 say, Okay, well, now this is how it's got to work and
4 it's gotta be triangulated. And that hasn't happened.

5 Q. What you're suggesting now is short of a
6 commitment from Sound Transit to provide service. Yet
7 is it now your position that that would be adequate for
8 these purposes to --

9 A. We would need to see what an outline of that
10 commitment was and to know that both Sound Transit and
11 BSRE were onboard with that outline of that commitment.
12 Then Snohomish County would have to review it to see
13 what additional requirements we would have. And then
14 likewise, the Town of Woodway would also have to weigh
15 in on that.

16 Q. Today's the first day you've mentioned this
17 possibility; correct? Up until today you have wanted
18 signed commitments.

19 A. I'm not sure I ever said we wanted signed
20 commitments. What I am saying is that we need
21 documentation that BSRE has been working with Sound
22 Transit, demonstrating substantial progress on that
23 issue, showing how this can take place and not just
24 vague assurances of, Well, the owner's going to build it
25 and then Sound Transit will pay to maintain it and that



1 there will be no parking or other aspects of the design.

2 Q. Among the reasons you gave for recommending
3 termination is to save time and money for the county,
4 for the developer, and the public; right?

5 A. Right.

6 Q. Thank you for your concern about our
7 expenditures. But we think we can handle those
8 ourselves. You have to acknowledge that much of the
9 county expense was paid by BSRE under a staffing
10 agreement; correct?

11 A. Right. So BSRE did pay for small amount of
12 county staff time. But, again, that was for one
13 position that was executed for a short period in time.

14 Q. It was for 1 1/2 positions for one year and 3
15 months.

16 A. I'm not sure that we ever executed the half
17 position.

18 Q. But it was authorized under the agreement?

19 A. Perhaps. You know, I know the agreement
20 existed for a period of time. But that the agreement
21 predated my involvement in the project. And I
22 didn't . . .

23 Q. It was from the last quarter of 2014 through
24 2015.

25 A. Right. So the signing of the agreement



1 predated my involvement. And then, during the period
2 where it was discussed, after the agreement expired, I
3 was not directly involved in those conversations 'cause
4 I didn't feel it would be appropriate. But in any
5 event, you know, you mentioned that, if Snohomish County
6 shouldn't be concerned about the applicant's expenses to
7 date, then why was that included in the prehearing
8 brief?

9 Q. When you get to 10 million plus, that gets a
10 little more interest. And to have gone this far and
11 then have a recommendation of denial from PDS without
12 the opportunity to solve the issue like Sound Transit
13 because they have told us Don't come back, that's of
14 concern. But the costs of going forward to finish this
15 process, that's in a whole different ballpark.

16 Now, do you know why the staffing agreement
17 wasn't extended past 2015?

18 A. I don't.

19 Q. It was because PDS couldn't get Public Works
20 to agree. Regardless, we have a signed copy of an
21 extension of the staffing agreement which, if the county
22 will agree to cover both departments, we can go ahead
23 and your costs will be covered.

24 MR OTTEN: Is there a question for the
25 witness?



1 THE HEARING EXAMINER: Was there a question?
2 I mean can you respond to his -- I mean he objected to
3 your --

4 Q (By Mr. Huff) Isn't that right?

5 A. Well, that's a little bit different than my
6 understanding.

7 THE HEARING EXAMINER: Overruled.

8 A. That's a little bit different than my
9 understanding of the staffing agreement and my
10 secondhand understanding of the issue going forward,
11 'cause the staffing agreement was only with Planning and
12 Development Services. It was never with Public Works.
13 And so there was no reason for Public Works to have been
14 a hang up on the staffing agreement.

15 Q (By Mr. Huff) Well, our experience was that
16 Public Works in particular was not very responsive. So
17 we wanted them included. Do you recall that?

18 MR OTTEN: This seems to be venturing into
19 attorney testifying instead of asking questions.

20 THE HEARING EXAMINER: Well, he does get to
21 lead because he's cross-examining. By the same token, I
22 confess I'm a little bit unclear as to -- I believe this
23 is going to the issue whether an extension should be
24 granted at this point. Or . . .

25 MR. HUFF: If the part of the reason for



1 terminating the application is because it will cost the
2 county money, we are willing to renew the staffing
3 agreement.

4 THE HEARING EXAMINER: So if it helps, from my
5 perspective, the issues are simply the five -- whether,
6 whether substantial conflicts, if they exist, with
7 county code is grounds for denial at this point. And I
8 don't recall the expense being one of those five areas
9 of disagreement with county code.

10 MR. HUFF: No. But it was a reason offered by
11 PDS and repeated by numerous community members.

12 THE HEARING EXAMINER: Mr. Huff, you're
13 absolutely right. He did say that. But, by the same
14 token, just from my perspective just to give you a
15 little bit of insight into what I'm thinking about this
16 which is, the cost, the relative costs that have been
17 borne aren't a legal factor in the decision making
18 process.

19 I understand the public's concern. I
20 understand that people might be concerned about equity.
21 But as an administrative law judge, I have zero -- I
22 repeat zero -- equitable authority and power. So if
23 that helps you at all, other than that, ask away.

24 MR. HUFF: Okay.

25 Q (By Mr. Huff) Now, if we -- if Director Mock's



1 preference that we reapply as an urban village comes
2 into play, we're going to have to deals with these same
3 issues all over again; right?

4 A. Yeah. There will be largely the same issues.

5 Q. So doesn't it make sense, from an efficiency
6 point of view, to complete an EIS covering both
7 possibilities so the balancing can take place between
8 the two and it can be determined which is most
9 appropriate for this site?

10 A. Well, from an efficiency standpoint, the
11 purpose of my July 2015 letter to you, asking for
12 clarification on the plans, saying, Hey, the plans don't
13 add up to the 3,080 units that you had on the plans, and
14 your reply that came in December of 2015 saying that you
15 didn't think that you needed to revise the plans because
16 they've been designed strictly to code is an efficiency
17 issue.

18 It's the same issue because, based on the 2011
19 plans that we were both discussing at that point in
20 time, my best guess on the number of units was 2,740.
21 But because of conflicts within the plans, it was
22 impossible to actually confirm because in one place you
23 have "town house units," at another place, you're
24 calling them "flats." Floor plans didn't add up to the
25 number of units proposed in buildings.



1 So as we had discussed at that time, revised
2 plans would have lowered the number of units and taken
3 some heat off of the traffic issues, especially the --
4 some of the traffic assumptions that are not the subject
5 to this hearing but which have been an area of
6 long-going dispute between BSRE and Snohomish County and
7 the City of Shoreline.

8 Then it was another year and a half until we
9 got revised plans in April of 2017 that still did not
10 show the number of units at all accurately. And it was
11 only apparently this year -- but we haven't had time to
12 confirm those tables. We've just spot checked them and
13 haven't found the kind of obvious flaws that were there
14 in the 2011 and 2017 plans.

15 Q. This goes back to the level of detail that you
16 have required that goes well beyond, in our mind,
17 conceptual site plans.

18 A. It's the same level of detail that every other
19 urban center applicant is held to.

20 Q. Let's get back to your staff recommendation.
21 You take the position and make the argument that this
22 can't be approved because there are pending variances
23 and requests that have not yet been acted upon. Doesn't
24 it make sense to assume what the outcome is -- rather
25 than assume what the outcome is to let those be



1 determined so that we have -- we understand what is
2 going to be feasible and what isn't?

3 For example, the deviation request on the
4 second access, that either has to be granted or there's
5 no project. I would think the county would be very
6 concerned with the situation where you've designated an
7 urban center and then said even an urban village or less
8 dense project can't be built because you don't have
9 second access. Doesn't it make more sense to have that
10 determined?

11 A. Well, that is one of the purposes of this
12 hearing. And, as our chief engineering officer, Randy
13 Sleight's going to testify on that issue, I'll preview a
14 little bit of what he'll have to say, which is that,
15 yeah, the second access aspect of the deviation would
16 probably be granted because that's a code requirement.
17 However, insufficient documentation has been provided to
18 support that deviation. And the landslide deviation for
19 the buildings in the urban plaza phase would not be
20 supported because it hasn't been adequately documented.

21 Q. Aren't variances and deviation requests
22 standard in most applications?

23 A. I don't know if most. But complicated
24 applications often have some deviation requests. But
25 deviations vary all over the place for what their



1 purpose is. Sometimes you've just got a road with a
2 really steep curve to it. So your speed limit, instead
3 of being your standard 25, gets dropped to 15 or 20.
4 That's a deviation request, and we see those on a
5 regular basis.

6 THE HEARING EXAMINER: May I ask a procedural
7 question about this very topic? My understanding -- and
8 correct me if I'm wrong -- is that deviations are
9 granted by Public Works.

10 THE WITNESS: Right. So it's a good question
11 to clarify.

12 THE HEARING EXAMINER: But the variance thing,
13 that's a hearing examiner decision, isn't it?

14 THE WITNESS: Yeah. So there is -- actually
15 this is one where I know you'll lecture us on our code
16 construction. There's two kinds of deviations that
17 we're talking about.

18 THE HEARING EXAMINER: It's deviant code.

19 THE WITNESS: So the first kind of deviation,
20 actually the example that I just gave of the curved road
21 where you lower the speed limit, that is a Public Works
22 engineer deviation.

23 THE HEARING EXAMINER: Right.

24 THE WITNESS: The landslide hazard deviation
25 is a Title 30 deviation determined by the PDS director.



1 And so Chief Engineering Officer Randy Sleight is going
2 to speak to that, that Title 30 deviation.

3 THE HEARING EXAMINER: Okay.

4 THE WITNESS: Then, the variance is something
5 where, depending on how the project itself is decided,
6 it's either a decision by Planning and Development
7 Services or, when it's a Type II project like this, then
8 the variance request is your decision based on our
9 recommendation.

10 THE HEARING EXAMINER: So on this project, in
11 this context, if PDS cannot grant the variance, what PDS
12 would do, if it recommended approval, is it would
13 include that in the recommendation for approval of the
14 project. It would include a recommendation of the
15 variation, an approval of the variation. In the last
16 four years, that's what I've seen from PDS in the
17 decisions -- in the recommendations, with one exception.
18 I had one request for a variation as a stand-alone.

19 But typically if the variation comes in, it's
20 bundled with the Type II, which means it comes to the
21 hearing examiner with your recommendation.

22 THE WITNESS: Right. In a case like this, the
23 variance request relating to building heights is
24 probably a large enough aspect of the project that,
25 instead of making a recommendation for a condition, we



1 would probably have to recommend a remand on that
2 variance issue. But given the substantial nature of
3 redesign of the project -- and you're really looking at
4 a wholly new project at that point, where you're moving
5 your bus center, a large share of your commercial uses,
6 several hundred residential uses, into other parts of
7 the project site, that a new project.

8 THE HEARING EXAMINER: So just to recap, my
9 understanding is there are two types of deviations.

10 THE WITNESS: Uh-huh.

11 THE HEARING EXAMINER: There's the type done
12 by Public Works; there's the type done by PDS. The
13 transportation deviations are handled by Public Works.
14 Title 30 deviations non-66B, non -- everything other
15 than the 30.66B deviations --

16 THE WITNESS: Right.

17 THE HEARING EXAMINER: -- are handled by PDS.

18 THE WITNESS: Right.

19 THE HEARING EXAMINER: Then variances are a
20 hearing examiner decision?

21 THE WITNESS: Right.

22 THE HEARING EXAMINER: Unless it's a Type I
23 decision. If it's a Type II, which an urban center is
24 obviously Type II, it's a hearing examiner decision.

25 THE WITNESS: Yeah.



1 THE HEARING EXAMINER: Got it. Okay. Thank
2 you. I don't know if that helps or confuses things
3 further. At least I'm clear on it.

4 THE WITNESS: We'll figure it out later.

5 THE HEARING EXAMINER: I think that's enough
6 for today.

7 THE WITNESS: I'm good with that.

8 THE HEARING EXAMINER: I think we're all a
9 little punchy. I'm deviating from the norm here. So
10 why don't recess then. Mr. Otten?

11 MR OTTEN: Can I have a chance to redirect if
12 there's chance to get that in?

13 THE HEARING EXAMINER: But I was going to say
14 we could start tomorrow morning at 9:00 o'clock when
15 we've freshened up a little bit and had a chance
16 actually eat and sleep and feel a little more coherent.

17 MR OTTEN: Are we wrapping up cross exam for
18 now?

19 THE HEARING EXAMINER: That's a question I'll
20 let you ask Mr. Huff. Are we done with cross? Or will
21 we resume cross in the morning?

22 MR. HUFF: No, I don't have any plans for
23 further cross. We'll see what happens.

24 THE WITNESS: There might be recross?

25 MR. HUFF: Yes. Absolutely.



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THE HEARING EXAMINER: Understood. Fair
enough. Let's go ahead and recess until 9:00 o'clock
tomorrow morning. Okay? Thank you all for hanging in
there.

(Deposition continued at 6:26 p.m.)



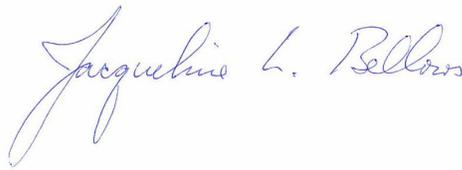
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I, JACQUELINE BELLOWS, the undersigned Certified Court Reporter in and for the State of Washington, do hereby certify:

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WITNESS MY HAND AND DIGITAL SIGNATURE this 8th day of January 2019.



Jacqueline L. Bellows
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