

**People for an Environmentally Responsibility Kenmore (PERK)
Appeal of Brier's Sunbrook Project
Day Three – August 4, 2009**

Hearing Examiner: It's now Tuesday August 4, 2009. It's 9 AM. This is the continuing hearing on Sunbrook and the related SEPA appeal. Issue V06-001. We are taking the appellates direct testimony. Miss Bowers, good morning. Who's your next witness?

Miss Bowers: Daryl Banks.

Elizabeth Mooney: Can we have one three minute flat hearing? Connor Norton is here.

Hearing Examiner: Again, which one of you ladies is the spokesperson this morning?

Miss Bowers: I was.

Hearing Examiner: Miss Bowers.

Miss Bowers: Yes. I understand there might be a couple of citizen comments that are coming here today ** and they couldn't come on Friday either because of their work schedules. Will there be a time at any point today that...

Hearing Examiner: Yes.

Miss Bowers: Do you have a sense of when?

Hearing Examiner: It depends on how long your witnesses go and how long the city's witnesses go.

Miss Bowers: So potentially it could be at the end of the session?

Hearing Examiner: I hope the end of the session is the end of the hearing, which is after all the rebuttal and everything else. So no, it should be in the middle. If you are thinking of today as the session, it should be in the middle of the session.

Miss Bowers: Okay, one of the people that we have is a youngster, our young person and others have a couple of job schedule things to worry about.

Elizabeth Mooney: Chris, you have got to stop that.

Miss Bowers: One of the people who is a teenager who wanted to comment... There are a couple of others because of employment situations may not be able to be here this afternoon. So that's my only comment.

Hearing Examiner: Let's see how we go this morning and if we get near the noon hour and you have people that can't come back this afternoon, then I will consider taking them out of order. Who is your next regular witness?

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Miss Bowers: Daryl Banks.

Hearing Examiner: Good morning. Do you swear or affirm the testimony that you will be offering in this hearing will be the truth, the whole truth and nothing but the truth?

Daryl Banks: I do.

Hearing Examiner: Thank you. Please start with your name and spell your last.

Daryl Banks: Daryl Banks. Banks.

Hearing Examiner: I should probably ask you to spell your first as well.

Daryl Banks: Daryl.

Hearing Examiner: Thank you. Your witness Miss Bowers...

Miss Bowers: We will be referencing ** as P20 and P21... And P30 and P33...
Daryl what are you credentials based on your experience?

Daryl Banks: I have lived at the Harbor Village Condominiums for five years. I have been president of the homeowner's association for four and a half years. I have been attending Kenmore City Council meetings two to three times a month for four and half years where I was very vocal... The detention facility that the city finally approved for ** 0056 was eventually stopped by the ** Fish and Wildlife... I've been on the downtown task force at Kenmore for a year and a half. I was on the citizen advisory council for the ** line master plan and have spent a lot of time studying streams both locally here and around the country... I was on a committee that the city of Kenmore had allocated \$15,000 to study the issues around 0056 and ** of it... This consultant Martha Bean with collaborative focus was to meet the property owners and the mouth of the stream. And we spent three months and maybe nine meetings and took a report back to the city. And also I am a home owner...

Miss Bowers: Could you redefine where your condominium is in relationship to ** ...

Daryl Banks: Harbor Village Condominiums are at the mouth of 0056. 0056 flows through our property and then out onto Lake Washington. And lastly I am also a property owner in the Harbor Village Marina although I am not here representing the marina.

Miss Bowers: I know you are on the board, right? Concerning East Penbrook, what documents have you looked at with **...

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Daryl Banks: I have been by the site. I have looked through several documents. I don't have them all listed. A half a dozen documents... The tree plan, the **...

Miss Bowers: Did you get a chance to read the Brier staff report?

Daryl Banks: Yes, I have.

Miss Bowers: Did you see **...

Daryl Banks: Yes, I have. Very familiar with that...

Miss Bowers: What aspects of Sunbrook do you have concerns?

Daryl Banks: Stream 0056 over the years has, I call it ** at the mouth of it, violently increased in water flows... Every since 2004, the waters have been increasing. The property damage has been increasing. The pollution, the silt... It seems like a little stream, which is not as little in the summer as it was as just becoming increasingly... And the flooding has gone from once or twice a winter to three or four times a winter. It's caused a lot of property damage on our site. The city park and the shoreline has been eroding. Our last two winters, overflow ** county put in has eroded out and is taking our property with it... Our swimming pool gets flooded three or four times every year. We've had to replaster it. We've had to put walls around it. We've had to replace pumps and filters. We have selling issues on our property with our storm drainage and cracks and buildings and patios.

Miss Bowers: And the photographs that you submitted for P20. What type of situation is going on there?

Daryl Banks: These are photos of two 36" culverts. The first one there, referencing this one there... Yes. These are two 36" culverts which are totally overfilled with water. This particular picture of the water was splashing up over the top of the culvert. In 1996 this same culvert overflowed. The water came over top of the street down into our parking garage. We have 16" inches of water down there. Several cars floating and totaled and then it went out and flooded all the ground floor units in the building beyond it. And this is just two winters ago. It fills up and does this just every winter now.

Miss Bowers: You mentioned 1996. What's special about that year?

Daryl Banks: That was the start of the first major flooding that we had. And there was a ** rock in there that might have been part of it just because of the amount of the flow of water that was taken out... So this particular culvert, although it fills up it hasn't overflowed. And now what's happened is our property has eroded and now the waters are pushing through the other end of the property.

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Miss Bowers: When the other P21 are showing photographs of a similar time frame and those are connected to the harbor which is next door to the condos, correct?

Daryl Banks: Yes. This is all water from the mouth of the stream that overflowed our property and then was just finding every place that could go into the marina. It was overflowing the boardwalk. Flooding the marina offices... Flooding the marina restrooms... There is a utility... In one of these pictures, there's power ** that were 6" under water... It's getting really nasty down there. What's happening with the water?

Miss Bowers: Have you found with the costs involved, are they increasing, staying about the same with each of these episodes? Are there changes with the costs?

Daryl Banks: No. The last two winters... Three winters ago, we had the big damage to the pool. We spent \$55,000 on replastering it because there was three inches of silt in the bottom of our pool by the end of the winter. And it was all stained. Then the winter before, this overflow started to wash out, which is the same time ** and the shoreline started washing out all the new irrigation parking that they had put in with the parking ** exposed at the shoreline from erosion there... And this past winter, we weren't able to do anything with that erosion being a stream and everything and it really blew out and took a part of our detention pond out. So now we have a 6" deep, 10' wide crater in our yard that it's probably going to be hundreds of thousands dollars to fix that.

Miss Bowers: And in your opinion, as president of the condo organization, what do you feel is causing some of this flooding?

Daryl Banks: Everybody sees and feels it's just increased development. Our concern is that there's more and more development going on upstream. This stream is a utility same as developments get put in and you put power in and telephone in and natural gas in and sanitary sewer in and fresh water in the streams are a utility. And all these other utilities are 100% taken care of by somebody. Cities or utilities... And the stream, people are putting more and more water in these streams. They are not making the streams able to handle the water. They widen roads. They put in sidewalks. They put in intersections. They put in crosswalks. But nothing is being done with this stream. It cannot handle all the water that's being put into it every year.

Miss Bowers: Do you know offhand how many developments have been permitted to go in on this water shed already?

Daryl Banks: I don't know all the permits. We've watched the Trillium (ph. sp.), the Lake Forest Flat, Westbrook... We've watched several go in and the more we see go in the more flooding and the more water we see every winter. And if more people were seeing what was going on on our property, they'd be more aware of what's happening to the stream. Aside from upstream where trees are dying and falling into the streams and streets and the river port has pictures and photos and reports in it

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where the sidewalk is cantilevered hanging over top of the stream. I think that's been fixed recently. The stream is eroding within 15 feet of other buildings up stream. It's a serious problem.

Miss Bowers: I know that you've had issues with Kenmore. How has the city attempted to help you with these situations?

Daryl Banks: The first major thing was approving this detention ball that's just north... Between 175th street and 522 there's a little bit of land there. They had a detention... Fish-friendly detention facility to catch silt and they approved it. Then they had a meeting with agencies and the ** and the Fish & Wildlife says, if you're going to do this much work here, we want to see the rest of the stream made fish-friendly... So there was a halt put on there. The city said, okay to go further now we want to get a sense of the three property owners, the marina, the condo next door and ourselves feel is the right repair. Because everybody is pointing fingers at everybody else... The marina has silt issues. Fine, we had to spend \$75,000 to get silt out of there now. Now they've lost 5 slips on dock 5 from all the erosion this past winter that can't be used. And so they allocated, I think it was \$15,000 I said earlier for this consultant to meet with everybody. And we came up with what we thought was a good plan to resolve all this water that is hitting the ** and causing all the problems... Although not enough has happened yet, they've been pretty helpful so far.

Miss Bowers: Given that you have been working with the city of Kenmore and it's been brought up about upper water shed, how do you feel ** impact on what they're already showing in their storm drainage and storm waterfall...?

Daryl Banks: Well, it's a big development. It's 29 homes. It's the biggest one that we've seen go in yet. That's what we're really worried about and fearing. And the stream doesn't have any good detention facilities on it itself. And the little bit I've heard about setbacks and buffers and Brier and that they're less than they are in Kenmore and that that's all they have to do because that's what they're regulations are. I feel badly that here's a stream that go through Kenmore. They're putting water into that stream. They should be needing the same regulations because they're taking part in putting that water from this development into this stream. And the stream is already stressed with the regulations that it has on it so how can it be lesser if they're going to use the same stream.

Miss Bowers: Are there other issues that Sunbrook could potentially be raising besides flooding issues downstream for you?

Daryl Banks: Water quality is a big issue too. I don't know what you're asking there. If it's the same as flooding...

Miss Bowers: You mentioned something with the marina development.

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Daryl Banks: We've seen a lot of blowouts from the developments that are there during construction before they're done. There's been a lot of issues with an awful lot of sediment coming downstream from at least two or three major issues over the last three winters.

Miss Bowers: Do you know if it's possible to track the sediment from where it's coming from?

Daryl Banks: I don't know how to do that.

Miss Bowers: In your opinion, are there any solutions that you feel could eliminate the potential for future flooding?

Daryl Banks: Something seriously needs to be done with this stream. It needs to be a collaborative effort with Kenmore, Brier, Lake Forest Park, Snohomish County. It's a real small stream that people are putting more and more water into it. And I think that a lot more study needs to be done on it. EAIS repaired. I think it's any time to shortcut best management practices, Federal Clean Water Act, EPA storm water rules. There needs to be an inter-local group to get together to solve the issues with this stream. I wouldn't even mind seeing a moratorium on all building until something's looked at and done with this stream. I've seen what Lake Forest Park has done with Lion's Creek over there. The swamp creek has been a lot of issues too, but this stream is really hidden when it comes down 61st street. And people don't see it and then all of a sudden it levels out right where it enters the lake and there's a huge problem. There's problems upstream as I said. It's right in the ** all the erosion... You read about the amount of unstable banks within the city of Kenmore, but that's from water coming upstream as well as damaging those.

Miss Bowers: In your opinion, do you feel that Sunbrook's development will raise a significant adverse environmental impact on you?

Daryl Banks: Most definitely that there will be... There has to be with the size of the project, definitely there is going to be a serious adverse effect on this stream, on the environment, property owners, citizens and... I don't know if you're getting close to the end here, but it's... We don't feel it's fair that these developments can keep going in. Cities are collecting storm water. Money is for it and the stream is not being taken care of. Or they're allowed to put this water in there until something better is done with the stream. If the city of Brier is putting in a big development and the stream can't handle it, maybe they should pipe the water down to the lake themselves through their own pipes instead of using the stream. But there is a lot of property owners that are affected. A lot of property damage going on. I've heard that the Federal government is on ** to make sure they're taking care of their citizens and their private property owners... And I think with these developments, we really need to keep that in mind.

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Miss Bowers: Two questions to clarify... How many condos are in your apartment building **...

Daryl Banks: There's 37 units.

Miss Bowers: And how many in the other condo unit?

Daryl Banks: I believe 34 next door.

Miss Bowers: And how many marina boat slips?

Daryl Banks: 128 or 130...

Miss Bowers: I have no further questions.

Hearing Examiner: Just to clarify before I turn you over for cross examination. You said there are 34 units in Harbor Village or 37 and 34 next door. What's next door?

Daryl Banks: Marina Cove...

Hearing Examiner: Is that another project?

Daryl Banks: They are on the opposite side of the street and the stream is completely on our property, but their property butts up to the stream. And they're also highly concerned with the flooding.

Hearing Examiner: Marina Cove Condo...? Thank You. Cross examination from the applicant.

Courtney Kaylor: This is Courtney Kaylor. Just briefly, Mr. Banks do you know when the Harbor Village condos were constructed...?

Daryl Banks: 1985, I believe.

Courtney Kaylor: Do you know how far the Harbor Village Condo buildings are set back from the stream?

Daryl Banks: I don't have exact footage on that, no. 75' or 50'...

Courtney Kaylor: And the area between the stream and the buildings, what's there.

Daryl Banks: Lawn.

Courtney Kaylor: Mr. Banks looking at Exhibit P20. Do you have a copy of that?

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Miss Bowers: Yes.

Courtney Kaylor: Did you take these photographs?

Daryl Banks: Yes.

Courtney Kaylor: Looking at the second photograph in the packet...

Daryl Banks: That's the culvert under 175th Street entering our apartment.

Courtney Kaylor: Exhibit P20.

Hearing Examiner: The packet that was submitted to me by the appellate, I did not assemble this has different pictures in P20 and P21 than you folks are looking at. Which is not necessarily good... I have that picture. That picture for me is the third sheet in P21. I think I've got your pictures. They're just in different places.

Courtney Kaylor: Okay.

Hearing Examiner: I am not...

Courtney Kaylor: I will then hold up the photo so that everybody knows what I'm talking about. This is a black and white photograph labeled Harbor Village in the lower right hand corner.

Hearing Examiner: It's my P21 sheet 3. My photos are labeled in the corners. I don't see a number in yours.

Courtney Kaylor: It's labeled number 3.

Hearing Examiner: Same with mine...

Courtney Kaylor: Except for me it's labeled Exhibit P20.

Hearing Examiner: Mine's P21. I have the feeling yours should be P21. Because P20 is a one page letter from Mr. Banks with one page of photos behind it...

Daryl Banks: Those are probably the marina photos for 21 and the others... Probably the photos just got reversed.

Hearing Examiner: Whoever numbered the pages... Anyway between 20 and 21, I think we've got them all. Okay you're looking at that picture that...

Courtney Kaylor: Mr. Banks is the building shown in this photo one of the Harbor Village Condos?

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Daryl Banks: The one in the background there, that's the Marina Cove condos next door.

Courtney Kaylor: Okay. Do you know how far back the Marina Cove condos are set from the stream?

Daryl Banks: I don't know. I'm sorry.

Courtney Kaylor: Do you know when the Marina Cove Condos were constructed?

Daryl Banks: I am thinking around 1996, but I'm not sure. I'm sorry.

Courtney Kaylor: Looking at the next photograph in my exhibit P20.

Hearing Examiner: Yes, that's my page 4 and P21 with the label Harbor Village and Marina Cove – Utilities Flooded.

Courtney Kaylor: Yes.

Hearing Examiner: Okay. Everybody found that one? Everybody that cares anyway... Yes, that's it.

Courtney Kaylor: Where are the Harbor Village Condos in this photo?

Daryl Banks: The left side here.

Courtney Kaylor: They're on the left side? And on the right side, is that the Marina Condos?

Daryl Banks: Yes. And the stream is normally just on the other side of this fence here. The stream is normally on the far side of the fence. So what you're seeing here is a lot of flooded water. So you can't see where the stream is in that picture obviously.

Courtney Kaylor: But typically it's on the other side of that fence.

Daryl Banks: Just on the other side of that fence, yes. So that's probably a good 75' or maybe 100' feet because it's on the other side of our pool from that building.

Hearing Examiner: Can I ask a relational question if you don't mind? If we go back to picture 3... In picture 4, is this concrete wall or whatever this thing in picture 3 is that what I'm seeing back there?

Daryl Banks: Yes.

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Hearing Examiner: Okay.

Courtney Kaylor: Can you describe for me again where your swimming pool is?

Daryl Banks: This fence here is around the pool. So you can see a ladder for the pool right there.

Courtney Kaylor: So your swimming pool is within this setback that you're discussing?

Daryl Banks: Yes.

Courtney Kaylor: So in the setback there's lawn and a swimming pool?

Daryl Banks: Yes.

Courtney Kaylor: Let me just take a quick look through these photographs. Do you know where the 100 year flood plan is located on the Harbor Village Condo property?

Daryl Banks: No, I don't.

Courtney Kaylor: So looking again at the photograph that we were just viewing that shows the fence and you had described the location of the pool, how far from the fence is the pool?

Daryl Banks: This fence here?

Courtney Kaylor: From the wood fence that you described as being the point as the stream usually is located.

Hearing Examiner: Before you answer, I sort of have the same question you do. Which fence? There are two fences? There is one that has white posts and a white top rail and there's a second fence that has just black vertical posts that are a little thinner and has not top rail. Which fence are you asking him to talk about?

Courtney Kaylor: Thank you for the clarification. I am asking him to talk about the fence that has white posts and a white top rail. Is that the fence that you were talking about when you said it was the point to which the stream usually goes.

Daryl Banks: No, the near fence to you here. The mesh wire that's the fence around our pool... This wire mesh fence is where the stream normally meanders just on the other side of that. So it could normally be 25' from the pool. But so much silt has built up over the years. There's a big argument over who's responsibility that is, but none of our roof, driveway goes into the stream. We have our own vaults and stuff on

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the other side of the building. So the silt is built up and kind of pushed the stream around over the years.

Courtney Kaylor: Just going back to this fence. So the fence that's the white fence, borders your pool?

Daryl Banks: Yes.

Courtney Kaylor: I have to say that the copy of the photo I have isn't entirely clear so excuse me if it takes me a minute to figure out where things are. But it appears to me that the fence that is located in the center of the picture is...

Hearing Examiner: You mean the one with the black posts?

Courtney Kaylor: With the black posts...

Daryl Banks: That's the property line between us and the neighbors and there's normally in the summertime maybe a 4' or 5' stream just on the other side of that fence.

Courtney Kaylor: And you said that the white fence is approximately 25' from the black fence, is that right?

Daryl Banks: No, it's more than that. It could be 50' and then the stream is just on the other side of the fence. Then you've got more distance between the stream and the pool fence.

Courtney Kaylor: How is your lawn maintained?

Daryl Banks: Clarify.

Courtney Kaylor: Do you use fertilizers on your lawn?

Daryl Banks: I don't know if we do. We have gardeners that cut the grass and I'm not sure what they're putting on there for fertilizer.

Courtney Kaylor: Since 1985 has the condo association retrofitted its storm water retention facilities?

Daryl Banks: What do you mean storm water retention facilities?

Courtney Kaylor: The storm water detention facilities for the condos. Have you upgraded those since they were initially constructed in 1985?

Daryl Banks: Not anything to do with the stream, right?

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Courtney Kaylor: Just your storm water detention facilities for your building.

Daryl Banks: They haven't been improved or increased. They've been cleaned and maintained. We have the same amount of pavement and roof as we've always had for the runoff.

Courtney Kaylor: I have no more questions, thank you.

Hearing Examiner: Mr. Knutson.

Mr. Knutson: Thank you. I am Craig Knutson. I'm the city's attorney for this proceeding for Mr. Banks. Good morning.

Daryl Banks: Good morning.

Craig Knutson: Just a few questions for you. You say you are the homeowner's association president for the Harbor Village condominiums?

Daryl Banks: Yes.

Craig Knutson: I have been a homeowner's president for our subdivision so I sympathize. I am wondering how familiar you are with your subdivision storm water facilities. You testified just a minute ago that those facilities are cleaned and maintained regularly. Is that correct?

Daryl Banks: Yes. we have got a system that goes down through underground garage and out into some catch basins and then there is a small, little vault before it goes out toward the... I don't know where it goes from there. It must go towards the lake or maybe the tail end of the stream beyond our property or right at the edge of our property.

Craig Knutson: How long have you been the homeowner's association president?

Daryl Banks: Four and a half years since late 2004.

Craig Knutson: How long have you lived in Harbor Village Condominiums?

Daryl Banks: Since March of 2004.

Craig Knutson: Are you familiar with current storm water regulations in the state of Washington?

Daryl Banks: I have been studying them and somewhat trying to... Yes, a little bit.

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Craig Knutson: Do you know if the Harbor Village storm water facilities comply with the 2005 department of ** storm water manual...?

Daryl Banks: I do not know.

Craig Knutson: You testified that you are concerned about flooding that has been occurring in the condominium property in the last several years. Is that correct?

Daryl Banks: Yes.

Craig Knutson: Would you agree that it's typical of properties that have developments in Western Washington along rivers that flooding is a problem that properties located on streams in Western Washington have to deal with?

Daryl Banks: Yes, sure.

Craig Knutson: Would you agree that in the last few years there has been significant severe flood and storm events that have occurred in Western Washington.

Daryl Banks: Yes.

Craig Knutson: Would you agree that those events have been abnormally severe?

Daryl Banks: Not paying much attention to them in the past not living near a stream before, it's hard to say. I read lots of things about hundred year storms. The same way being asked if our own storm water stuff has been increased or meets the standards... The stream hasn't been increased ** or armored or put any facilities on the stream to handle the water that's going into the lake so I can definitely see this stream getting more violent and causing a lot of problems...

Craig Knutson: I see. You're concerned about solutions being developed to deal with those problems as I understand it from your testimony and response to Miss Bowers's questions. You mentioned some solutions that you thought would be worth applying to stream 0056.

Daryl Banks: Yes. It's the same as they widen highways and widen streets and put in traffic lights for safety and crosswalks for safety. They put power cable. All these other utilities in the neighborhood, but I don't think enough's being done by developers and these developments to care for the water that's being released from these developments. Who that's up to, I am not to say. But there's just more and more developments are going in and everybody likes to turn their spending four and a half years at city council meetings and study sessions, people are quick to say it's not our water. It's not our problem. And if they want to do something, they've got 12 other agencies. Fish & Wildlife and ** and EPA and ecology and all these people saying don't touch that stream... But what about the people that are having property damage and

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being flooded...? They almost seem to care about fish more than people and their properties. If that stream was left alone and it was still this natural rainfall and go stand under any big tree in a major rainstorm and the ground is going to be dry. You can almost stay dry like an umbrella. And you take trees out and put streets in and driveways in and rooftops in and that's not a natural stream anymore. So it should be developed. It should be able to handle it. Why 522? Why 405 **...?

Craig Knutson: What I was concerned about... My question had to do with solutions that you had testified to.

Daryl Banks: Some solution needs to be done.

Craig Knutson: I would like to focus on one of the solutions that you mentioned. You mentioned complying with the EPA storm water regulations. So wouldn't that be the best way of controlling storm water runoff from the development that's going to possibly contribute runoff into stream 0056?

Daryl Banks: I am trying to be aware of all this stuff and I am bit of a lay person to it. I don't know if that's more on quality of water. The quality of the water plus the other quantity of water so I think that one of the big issues here is the quantity of water is going to be released into the stream from all the impervious surface that's going to go there. Right now there is even a lot of trees that are even slowing the water from hitting the ground to do its natural run off.

Craig Knutson: We're talking about your testimony which had to do with EPA storm water regulations.

Daryl Banks: Okay.

Craig Knutson: So if a project is compliance with EPA storm water regulations that should be the way of the solution for controlling storm water runoff from that particular development. Isn't that correct?

Daryl Banks: Well there's others that should be... I am not a professional in this. I am pretty educated citizen and volunteer. But there are other regulations, critical ordinance and flows that need to be looked at as well.

Craig Knutson: Thank you. just one last question or two that I have with regard to your testimony about subdivisions that you mentioned that have been approved while you've been a homeowner's association president. Do you know which jurisdiction approved those subdivisions that you're referring to?

Daryl Banks: Which cities?

Craig Knutson: Yes.

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Daryl Banks: Okay. I think the majority of them are... Some are Kenmore. Some are Lake Forest Park. That's the first major one, I think, with Brier.

Craig Knutson: Thank you. That's all the questions that I have.

Hearing Examiner: I have, I think, probably just one question. And that has to do with my page 3 in P21. And again you and I looked at this one and page 4, the very next picture and agreed where page 3 is in relation to the larger distance picture. What I am trying to understand in page 3 is which direction is the stream coming from? Where is it coming from in this picture?

Daryl Banks: It shooting out of those culverts. That's where the stream first daylight our property.

Hearing Examiner: So where the concrete is, if it weren't flooding, I would see two culverts?

Daryl Banks: For some reason it's a big rectangular opening there. On the other side, the north side of 175th street there are two big round 36 or 40" pipes and somewhere...

Hearing Examiner: So the pipes are on the entry side and then it's like a box culvert on the outlet side.

Daryl Banks: That may just be the... The pipes could be just a few feet back from that. That's just an opening.

Hearing Examiner: Did you write the legend things that are on here?

Daryl Banks: **

Hearing Examiner: Then right on this concrete beam, it says Northeast 175th street and 61st street exit.

Daryl Banks: That's the water. That water is exiting from the intersection of 175th and 61st street right where the entrance to Loglin (ph. sp.) park is. Where that stop sign is where you... I am just giving you an idea of where that water is coming from and we have...

Hearing Examiner: The Herrera Report, B24, I think it is. Yes, B24. Mentions ponds on the Harbor Village condo side and it spends a fair amount of time talking about how these ponds have silted up etc, etc. Are these ponds in any of the pictures that you've provided?

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Daryl Banks: They are completely covered up by all that water, yes. But they are there.

Hearing Examiner: They're in picture #4? Are they on the far side of the black wire fence?

Daryl Banks: Yes. On the top is a pond.

Hearing Examiner: I'll let you write on mine because this is...

Daryl Banks: The pond here... Right here this is what we call the upper pond there, an all asphalt lined pond. Then the stream just comes under this little bridge, meanders around here, comes out over here and then there's a ** going into one part of the Marina and then over here there is a bigger pond... So there's a north pond and a south pond. So there's a pond that starts about here and then this is just a stream that runs through to it and out the weir. We're back up in the **...

Hearing Examiner: So where the pond is... Are the decorative during the regular time of the year? Are they just cute little ponds and the stream or were they dug for some special engineering purpose or don't you know?

Daryl Banks: here is the upper stream that is... That's just coming out of the overflow. Anyway, I think they were put in mainly to catch silt before the stream goes into the Marina and ** is what they were **... The ** fish weir or something there and anyway... They're decorative ponds, but I think they're really silt catchers for the marina.

Hearing Examiner: I guess I do have one other question. And I am not sure whether you can answer this or not. There has been discussion in various documents here about how there was a blockage. Some sort of structural blockage at the mouth of the stream that was removed after 2007... And I am just thinking maybe because you're the home owner's association president of the property owner through whose property the stream goes maybe you might know something about that.

Daryl Banks: Structural blockage removed...?

Hearing Examiner: One of the reports says that there was a weir at the mouth of the stream. There is one document in here and I can't remember right now which one it is and I am not going to take the time to try find it, but there is one in here that says something like it blew out in 2007. There's another letter or something that says it was removed after 2007. And then there's one, I think that mentions it that almost makes it sound like maybe it's going to be removed. And I'm just wondering. You represent the property owner. Can you help me with understanding that?

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Daryl Banks: Nothing was removed. There's an overflow that King County installed after the 1996 event that was pretty catastrophic for us. And there was some cattails and some crab grass and weeds growing up at the entrance of that, which were cleaned out during that storm event to let the water flow. But mainly just plucked out the grass and the weeds and stuff... And then through the course of the rest of the winter with all the water that came through, it started back by the lake... I don't think everybody has been along the park, but the bridge that used to go from the park and the marina has been ** float away into the lake the erosion has been so bad down there... But the channel has just the last two winters; the channel has undercut our bridge. It's just unbelievable. And then ** this past winter once it started eroding away at the banks and it kept moving itself further and further back toward our pond and the asphalt line of our pond even fell into this thing. So we put some rock back in there to stop to hold the pond up a little bit. But it's just a temporary fix. Who knows what's going to happen this winter. We're all fearing that.

Hearing Examiner: Thank you Mr. Banks... Any redirect?

Miss Bowers: Yes we have a few short questions, sir.

Hearing Examiner: Miss Bowers...

Paula Swisher: Before you start, Mr. Banks I need you to keep the same volume that you used when you start a sentence for the entire sentence. You trail off at the end.

Miss Bowers: First we want to thank you for being such a concerned citizen and doing so much research to benefit the organizations. I do want to clarify briefly, are you a storm water or hydrology expert?

Daryl Banks: No.

Miss Bowers: And are your conclusions from direct observations or from something else about the flooding and the sediment and all those things. Are they connected to direct observations?

Daryl Banks: Definitely from direct observations, yes.

Miss Bowers: Are you familiar with the Growth Management Act?

Daryl Banks: Somewhat, yes.

Miss Bowers: Do you know approximately when it was approved?

Daryl Banks: I don't know the exact year. I know that it states in there that part of Growth Management Act is to improve utilities and streams and so forth.

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Miss Bowers: Were these facilities built before or after the Growth Management Act?

Daryl Banks: Before.

Miss Bowers: And do you remember who the permitting groups were? Was Kenmore...

Daryl Banks: For which? The condominiums...?

Miss Bowers: Yes.

Daryl Banks: Probably city of Seattle ** unappropriated King County...

Miss Bowers: Would your organizations be interested in potentially restoring the stream so that salmon could be reintroduced.

Daryl Banks: We've made offers ** to the city of Kenmore to participate in a fix to this stream, yes... Whether it's moving the stream or just putting in high flow bypasses where the Burt Gilman (ph. sp.) Trail is that go over into the park, something needs to be done...

Miss Bowers: Okay. Thank you very much for all your work.

Hearing Examiner: Any further cross?

Courtney Kaylor: No.

Hearing Examiner: Thank you Mr. Banks... Who's next?

Miss Bowers: Jim Myers.

Hearing Examiner: Mr. Myers...

Jim Myers: I'll be taking **...

Hearing Examiner: Don't talk from the back of the room. You've got to get sworn in. Or did I swear you in last week?

Jim Myers: No.

Hearing Examiner: All you did was cross examine last week, that's right. Do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

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Jim Myers: I do.

Hearing Examiner: Thank you. Please start by telling us your name and spelling your last.

Jim Myers: My name is James Myers.

Hearing Examiner: Thank you. Your witness...

Miss Bowers: Okay. Hopefully these are in the correct order for you Mr. Grout. Jim, during this testimony may be referencing exhibits P4, P5, P10, P23 and P24 and P11. Mr. Myers can you state your qualifications.

Jim Myers: I have a Bachelor of Science in biology. I have a Master's of Science in fisheries from the University of Washington and I have a PhD in fisheries from the University of Washington. For the past 15 years, I have been employed by the National Marine & Fisheries service as a fishery biologist. I've worked for the conservation biology program. Now is a good time to say that I am not here representing my agency. They asked that I say that. And that

Hearing Examiner: They probably did more than ask you to say that.

Jim Myers: And that I can certainly my professional opinion as to technical fisheries questions, but cannot really address National Marine Fisheries' policy **. For the past nine years, I have been involved in the lower Columbia technical recovery team working on developing an initial recovery plan for the listed salmon species in the lower Columbia River. And for the past two years, I have been working on the Puget Sound steelhead technical recovery team. I've also been a resident of Kenmore for going on 15 years now. And live adjacent to the stream 0056 and so have a lot of firsthand knowledge about the stream.

Miss Bowers: Did you get a chance to visit the Sunbrook site?

Jim Myers: I was one of the lucky three to do the inspection of the site. We had an hour to look at the site. I know it's been sort of classified having barbed wire fences and junk on site, but it really is a... I think from a wildlife standpoint, I think they would not mind that as much. It's a mostly forested site and relatively good condition from a habitat standpoint.

Miss Bowers: Could you mention the date by which you got to be on site?

Jim Myers: I actually can't recall the date.

Hearing Examiner: Can you tell her what year or month it was.

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Jim Myers: It was just two weeks ago that we were allowed access on site.

Miss Bowers: Can you go in and describe now the 0056 basin?

Jim Myers: If you look at the entire watershed basin here, this is the map that we've been using from the Herrera report. The entire basin is about 1200 acres. It is mostly typified by high and median gradient stream. From the stream angle there, there are some low gradient angles farther above. At the mouth of the stream where the condominiums are, you just heard, there is a major culvert that is at 522 which is an overhanging shelf culvert which was actually specifically built to block fish passage. Below that since this overflow channel blew out, I guess nature finds a way, this lower portion is open to access from the lake. Relatively speaking, this photograph was taken in 2002 and several of the forested areas that are still on the map, this one here which has now been clear cut, the Lake Forest Park flat. This area has been cut and is the West Brook flat. Based on the numbers that were provided by the Herrera report although the site represents say slightly more than 1% of the entire basin, if we consider that most of that area is forested based on the Herrera Report using numbers that are a couple of years old now, only 15% of the basin was forested. So the one acre of the site actually represents a fair amount of what remains of the forested area within the basin. I guess the other thing that I would like to point out. It was discussed earlier. This tributary as it moves up through and I am not sure which way you drove in, but as one moves up from Botheway (ph. sp.) 522 up through this canyon area which contains steep slopes. Those are designated steep slope areas that run along this base. As we get up to this fork here, we have this sort of two options for the stream course. This basin here, by my looking at the lay of the land, if Brier Road provides something of a topographic in the flexion point that would really give this... And from the cemetery if slopes down this way... So this Abbey View Pond drainage for want of a better word really represents the larger portion of this upper basin. And just by sort of looking at the lay of the lay of the land would have to presume that this would have been the larger channel predevelopment.

Miss Bowers: Given that you have said that ** drainage is of the larger, would you have expected more water be conveyed through to 0056...?

Jim Myers: I would imagine that historically that that would have provided the bulk of the stream flow.

Miss Bowers: At this time of the year is the Abbey View drainage dry and is the tributary dry?

Jim Myers: At this time of year right now, this water course, it's dry. There are some damp spots in it. The other channel conveys some water, but that also is very low flow, which is fairly typical of when you get a lot of development in an area, you tend to get high winter flows and reduce summer flows.

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Miss Bowers: From your knowledge of your work with streams, what aquatic species have you noticed and been aware of?

Jim Myers: most of the work that's been done and we were working with a lot of the local school programs, we did a fairly complete survey throughout this lower course here. We actually went in as a demonstration project and related it to some research that people were doing on native ** trout... We electro-fished several sites and collected cutthroat trout... We also collected Western brook lamp prey, which I should point out for those who don't know, Western brook lamp prey or holy freshwater species, they get about 6 to 8 inches long. They're non-pericidic (ph. sp.) although they look like these seagoing ones that attach to fish. I've also observed sickle backs and skull fins in this site. And really throughout the site and since we've lived there and every evening or almost every evening, I go for a walk with my dog... And nighttime is the best time to observe fish. The road goes right along the stream. And with a flashlight and I did it last night so I could say I did, observe fish really... I am trying to see. Our house is in here. And really in this upper course just below the branch observed cutthroat trout in the stream... In May, I observed 40 to 50 millimeter young of year really emerged or hatched cutthroat trout in the stream. So there is a self-sustaining cutthroat trout population that is still hanging on. And I guess, although the impassable culvert down at 522 prevents upstream passage and prevents any adagenous (ph. sp.) fish from moving high up into the basin, although I said they do have access down at the bottom part. What this culvert means is that this is an isolated population. It has no way to sustain itself if it becomes impacted. Most other streams in the area that have access to the lake, some of the population resides in the lake and they move back and forth. So if you had a traumatic event, some of your population is still out in the lake or if they get washed out in the lake they can return. But of course, here they're at a much higher risk because they could only sustain themselves with the populations on site.

Miss Bowers: Historically would have there been any species that would have been further up stream?

Jim Myers: Williams in the 1975 Stream catalog lists that it's possible that there were Coho in the stream. A lot of interests that the Muckleshoot tribe had originally was for Coho production. And going even farther back there is a very good record of freshwater sockeye cokonie being in the all these streams in the North lake Washington area.

Miss Bowers: Would the cokonie have been a salmon fish that would have historically been up further or just the cutthroat?

Jim Myers: Cokonie would have spawned lower down because when they hatch they move into the lake. They rear into the lake as juveniles. Coho because this is a manmade culvert, if they had access... Like I said, this is a much lower gradient

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area and is probably more attractive to fish if they did have access. Lower gradient areas, they potentially would have gone up that far and that would have provided fairly good spotting habitat then they rear in stream. Coho rear in the stream for a year and then move out.

Miss Bowers: Concerning Abbey View pond, it's also called Lost Lake, can you give me some... In your opinion, what is going on with Abbey View?

Jim Myers: That's certainly been a point of contention in the different reports. I've been up there a couple times. I did not sample the lake. I think the large no fishing signs that are around the lake probably at first gave me some indication that there were likely fish. I have since talked with Brier residents who have confirmed that there are fish in the lake and ultimately I drove to Abbey View cemetery and talked with Randy who is the head groundskeeper and I said are there any fish in the lake? And he goes, yes. We stock fish in the lake. We stock bass in the past. He couldn't say how many fish are in here. They don't stock them for recreational purposes. They're mostly stocking fish in there for insect control. Mosquito control... But bass are a recognized game fish by Washington Department of Fish & Wildlife. And he also said that there were carp and I guess goldfish. He said they have a lot of hunting pressure in the lake so he wasn't sure what the standing biomass, but that were indeed fish there. And I guess...

Miss Bowers: How important is the hydraulic connection for fish in this area between the site and Abbey View?

Jim Myers: Anytime you have a water course between fish bearing waters when that is wet and for the duration that it's wet, fish will normally take advantage of it. Salmon, which I know... Salmon and trout which I know probably better than game fish, certainly when they're young will move upstream. Will take advantage of areas to forage... And then of course they smolt (ph. sp.) and they make the transition to saltwater and then move downstream. Trout will do the same thing. There is a lot of migration where possible... Actually there's probably a lot of migration here from trout moving out the system and moving down to the lake. The problem is that when they come back, they can't get home again. But these water courses, these streams even if they are intermittent are very important to fish so that they can move around so that they can redistribute. I mean, it's not just this water course. There are much larger rivers around the state like Metile (ph. sp.) River on the east side goes subsurface for several miles and during dry periods. That's in part because that's how our normal hydrology goes with low rain in the summertime and it's made even more dramatic by the impervious surface which prevents water recharge, but also the cemetery withdraws water to water their grounds. Which I understand that they do have a permit for... I am not questioning that. I am trying to figure out where the water is going.

Miss Bowers: With the ** project continue or acerbate the dewatering of this stream area?

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Jim Myers: From what I understand of it, some of the things they're doing is they're taking water on site and moving it to this other channel. So they're taking storm water that would infiltrate some and then that would be released more directly into... I have got to think of a name for this side piece, but into here. But instead that's being shunted over into the other channel here on 60th. So they are taking some of the water, moving it offsite and altering it from its natural path.

Hearing Examiner: If it would help any, if I recall correctly the Herrera Report refers to the Abbey View drainage as the West tributary and thing that goes more northerly as the East tributary. If that's a non-politically loaded pair of terms, it works for me. Because I know there is some sensitivity as to where 56th and what's 56th and what isn't. Which I think is semantic nothingness at this point. But if that would help you, and if you don't want to call it Abbey View drainage, you can call it the West tributary and I'll know what you mean.

Jim Myers: Okay.

Miss Bowers: What concerns do you have about the fish and the drainage area?

Jim Myers: As I said for the trout that are downstream and the brook**, they all have their place... My concern is at the current moment, they have a lot of factors that work against them that put them at a high risk. One that they're isolated because of the culvert and two that they exist in this basin, which the Herrera report has... I think their estimate was about 44% estimated impervious area and when you get to those kinds of levels and I should say that that was based on data that's a couple of years old now. And as I pointed out, there has already been some additional development. When you get to that level, you start to get into a lot of stream processes where we'd see this flashiness in the stream. We see summer low flows, high temperatures, I believe that there are some pictures in there that I took of rock ** that was removed off from the side of the stream and was eroded out... As a flood issue that's one thing, but if you can appreciate that a resident cutthroat trout is about 8 inches long and can only dig a bed a couple of inches deep that doesn't hold up well against the kind of scouring floods that are moving boulders around. And then the only thing that happens then is that the fish are only able to, this is the cutthroat trout, are only able to spawn once these scouring flows have sort of letdown in the late spring. But they also have to be able to get the eggs in the ground and the eggs have to develop and hatch before we get into the high temperature and the low summer flows. So when we get into these high levels of basin development, the spawning windows for these fish begins to shrink. So they really have a very small opportunity to successfully reproduce.

Miss Bowers: Concerning buffers...

Hearing Examiner: Could I make a suggestion? Mr. Stewart is consulting with you constantly during your witness's answers. If you would like to have Mr. Stewart ask the

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questions of this witness as he did of a witness yesterday, last session. It might have been in cross examination. But frankly, if it would be easier for you to yield to him and let him ask this witness the questions, I'm all for it. I don't think what he is saying is getting on the record, but frankly I'm getting a little tired of hearing out of my right ear, which is my better ear this constant hum over here as he's telling you what to ask next because his instructions are lasting just as long as the witnesses answers. So you folks decide what you want to do, but it's becoming disturbing. Which way are we going?

Miss Bowers: He will finish the more technical aspects of it.

Hearing Examiner: Mr. Steward go ahead.

Cleveland Steward: Okay. Mr. Galt...

Hearing Examiner: Remember the clerk is going to want us to speak up **...

Cleveland Steward: I will.

Paula Swisher: ** by this blue chair...

Cleveland Steward: Okay thank you... We do have this young man who has to leave for another appointment before noon.

Elizabeth Mooney: No, he has to be in Redmond by 11 and he's part of the stream adoption that Jim just mentioned.

Cleveland Steward: I misspoke. Is there any way that we can't get him on directly after Mr. Myer...

Elizabeth Mooney: Or just for one minute? It's just for one minute.

Hearing Examiner: Mr. Myer will you yield?

Jim Myers: Oh happily...

Elizabeth Mooney: And Mr. Galt...

Hearing Examiner: Miss Kaylor.

Miss Kaylor: While were discussing scheduling our witness, Mr. Haggly (ph. sp.) needs to leave at 2 today. And so I am hoping that appellants will be through with their presentation before then so that if needs to get up and speak again, he's able to do that. But I wanted to let everyone know that we do have a scheduling constraint as well.

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Hearing Examiner: Does the city have any scheduling concerns of which I need to be aware. Put in proper grammar. Raise your right hand please sir. Do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

Connor Norton: Yes.

Hearing Examiner: Thank you... And please tell me who you are.

Connor Norton: My name is Connor Norton. That's Norton.

Hearing Examiner: The first name Connor is spelled how?

Connor Norton: Connor.

Hearing Examiner: Okay, thank you... I'm glad I asked. I would have spelled it wrong. Go ahead.

Connor Norton: I live on 193rd street right off 61st right by the stream. And I just wanted to say I've gone down there a lot as a kid throughout elementary school. We kind of adopted the stream, cleaned it up and took a lot of tests on it. It seemed to be pretty healthy. There's lots of fish in it. And I think it's a valuable part of our community sort of. I've learned a lot from it and I think we should try to keep it healthy.

Hearing Examiner: Okay, thank you very much.

Connor Norton: That's about it.

Hearing Examiner: Okay drive carefully to Redmond.

Connor Norton: Thanks a lot.

Hearing Examiner: Back to Mr. Myers and Mr. Steward is going to pick up from here with the questions.

Cleveland Steward: Okay. Jim you're familiar with the proposal the developers put forth. And specifically what they are requiring or proposing ** four buffers surrounding sensitive areas on site...?

Jim Myers: Yes.

Cleveland Steward: Would you describe those and by extension what the potential impacts of those are and the adequacy of them as protected measures.

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Hearing Examiner: If I could interject. There's no need for him to describe the buffers. They've been described by at least one witness and they speak for themselves in the plans. The second half of your question would be quite appropriate, but don't take the time to go through and describe it.

Jim Myers: In looking at a 25 foot buffer for a stream or wetland that is related to that stream, my reading of the scientific literature from things like the best available science documents that we submitted. I apologize. They are both lengthy. The documents, but potentially what's of interest is that both King County and Snohomish County is their review really seemed to be in fairly good agreement about what our current understanding is. And of course, that's an ever changing process. Without going into great detail because it isn't in the documents, buffers provide a lot of different functions both for the hydrology of the stream and for the benefit of the organisms including fish that rely upon them. What you find is that the tables and the best available science documents really project distances that go well beyond 25 feet and even beyond 50 or 100 feet as recommended by different jurisdictions. And it appears that a 25 foot buffer based on the understanding that this stream when wetted does provide... I guess without actually picking up a fish and showing that there's a fish in there at the time, there's a very high probability that fish would access that stream passage. And my concern would be one, that even the Kenmore code and the Snohomish code for non** which is what we know we have up in Abbey View Pond, they all provide 50 foot buffers even for intermittent streams... And it's because of the functions that those buffers need to provide. Given the fact that the cutthroat trout ** exist really almost immediately down a few hundred feet... I won't argue the distance. Downstream of the site, the water that's being conveyed through the site would need to really have attributes that are fish friendly before it gets to the fish. It won't change instantaneously. So I am very concerned about the ordinance as written is... I guess the fact that it was written in 1992; it reflects some very out of date science. And I guess and in my rereading, it's interesting that the ordinance as written only applies because there isn't independent stream typing in the Brier code. It only applies to drainages going from the pond and so therefore as the code is written, any streams that go into the pond aren't provided any buffers at all. And I know the Washington Department and Fish & Wildlife has identified some type 4 non-fish bearing streams that are above the pond. But they're not even covered in this ordinance. So it's hard to imagine that that sort of combination of small buffers below the pond and no buffers above the pond is going to provide fish in the basin with the kind of protection that they need.

Cleveland Steward: Would you then describe the current condition, that is the current ordinance as being adequate to protect the functions and values of the West ** area...

Jim Myers: Based on my understanding of the scientific research that's been accumulated that it is inadequate. We have to remember that even the buffer codes as they're written when we compare the codes with the science is telling us provides full functioning wetlands, that buffers are really floors, but people treat them as ceilings.

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They're always being nibbled away at for various reasons. And what we've seen over time that the size of these buffers have gone up as the understanding of the needs of the aquatic systems has improved over time.

Cleveland Steward: Is it your opinion then that the project will have a significant adverse impact on the receiving stream and wetlands.

Jim Myers: I would say that yes as good as my crystal ball that there will be significant impacts. And I think in part that's also because and part of that is based on the understanding of the downstream of 0056. I think there's any number of any references we've had to severe flooding downstream and really the inability of this stream to handle this level of development that these impacts will only tend to get worse over time. Tom Holts (ph. sp.) who brought up some of May's (ph. sp.) work. It's also in the best available science document says that really when you get... There's a sort of triage system and I hate triage systems because the third leg is where you write things off. But that middle ground on the triage system is where stream ecosystems can be recovered. Can be helped, but when you start getting near that 40% to 60% range, you get into a lot of hydrological, biological processes and there's a cascading effect. And generally at that point, we see systems start to degrade very rapidly. And from what the Herrera Report says on their level of impervious area and granted those are older numbers and it hasn't gotten any better, they are on that inflection point between how much more can they take? It's clear that the stream is having more and more major flooding. We have not had major increase in rainfall that I'm aware of. But we have had larger flood events and that this system is not adequate to those kinds of impacts.

Cleveland Steward: Okay I'm going to read one statement from the Herrera Report and I think this will be my last question. And I just want you to comment on it. And this is unrehearsed by the way. It won't be difficult. I'll read two sentences that appear at the head of the second paragraph on page 55. During the process of reviewing permanent applications for development project sites, the city focuses its attention on maximizing the infiltration and dispersion of storm water runoff at those sites. Do you agree that this is a bonafide storm water control measure that would have some applicability to this site?

Mr. Knutson: I object. This testimony isn't qualified. This witness isn't qualified to testify about storm water facilities.

Hearing Examiner: I will allow him to testify with respect to fisheries issues vis-à-vis that quote.

Jim Myers: I think any time that you can keep the water on site and really retain as much as the natural storm water controls... I would actually say that the storm water controls, they are a technical fix. They become very expensive. If you have an existing natural storm water control is the form of wetlands, people have tried for decades to produce artificial wetlands. To recreate them and the record on them has been very

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poor. They've been trying hard. But it's hard to recreate a forested wetland and all its functions when you've got a 50 year old tree that's in the middle of a wetland. You can't engineer that. So I would say that the concept of maintaining water on site so that you get more natural flows is probably the best thing that one can have.

Cleveland Steward: That's all I have.

Hearing Examiner: Thank you... Cross examination from PDI. Miss Kaylor...

Courtney Kaylor: Yes, we have a couple of questions.

Jim Myers: Of course.

Courtney Kaylor: Mr. Myers in your experience what months of the year is the Abbey View drainage and perhaps I should use Mr. Galt's suggested term which I believe was the West tributary. In your experience, what months of the year is that dry?

Jim Myers: Well, depending on the rainfall... I was out there in May of this year and it was down to being pretty muddy and damp so certainly by that point. And usually we start picking up our rains latter part of September, early October. Because of the way that this basin has been developed, I would imagine that our first significant rain would probably get the water moving downward again. And it depends on the weather.

Courtney Kaylor: So more or less May to September...

Jim Myers: Yes. I would think so.

Courtney Kaylor: You testified that you did a fish survey with some children.

Jim Myers: Yes.

Courtney Kaylor: And you electro-fished at several locations.

Jim Myers: Yes.

Courtney Kaylor: Were all those locations in the main stem of stream 0056 downstream of where the West tributary joins it?

Jim Myers: Yes. At the permit that we had the time from WDFW was in connection with the city of Kenmore so we didn't go outside of Kenmore bounds.

Courtney Kaylor: Okay. When did you do that?

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Jim Myers: I believe that was in 2005. There are some pictures in the back that have a date. There are some pictures of some of the fish. And I believe there was a date with that.

Courtney Kaylor: You testified about buffers that are adopted by King County and Snohomish County.

Jim Myers: By the city of Kenmore.

Courtney Kaylor: I thought you also referenced King County and Snohomish County buffers?

Jim Myers: I may. If I did, I meant the Kenmore City code and the Snohomish County code.

Courtney Kaylor: As being 50 feet...

Jim Myers: It's 50 feet in both codes for Type 3 stream that carries non-salmonids. In the Snohomish code it specifically states game fish. In the Kenmore code it just says non-salmonids.

Courtney Kaylor: And so is it your testimony that a 50 foot buffer would be adequate? It was your testimony that this project shouldn't play a buffer such as present in those codes, which is 50 feet. Isn't that right?

Jim Myers: What I testified was that this was the code and the conditions. I also mentioned because of the proximity of the downstream salmonids one could... My personal recommendation would be to go beyond the 50 feet. At a minimum there are conditions that exist there on site that would warrant 50 foot buffer.

Courtney Kaylor: So the minimum buffer you would say would be 50 feet from the stream.

Jim Myers: Based on the conditions on site.

Courtney Kaylor: Thank you.

Jim Myers: That would also include the riparian wetland would also be classed if one were to independently type it as a Type 3.

Courtney Kaylor: You're not a wetland biologist are you?

Jim Myers: No, I am not. I have an interested in wetlands when they're attached to streams because of the function that they provide.

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Courtney Kaylor: Looking at exhibit PO3 and I know you don't have a copy there. It is the revised draft summary of best available science for critical areas for Snohomish County. I'm just going to note that this is a draft. So you are understanding that this entire document is a draft document?

Jim Myers: Right. They actually issued the code based on the document, but they never put out a final document that I'm aware of.

Courtney Kaylor: Would you agree with the statement that there's no consensus in the scientific literature regarding single buffer widths for particular stream functions or to accommodate all functions?

Jim Myers: Consensus...?

Courtney Kaylor: There's no scientific consensus on buffer widths.

Jim Myers: I would agree. I think the table that's in both that document and the other one said that depending on the author, there are some...

Courtney Kaylor: My question was, do you agree with the statement that there's no scientific consensus on buffer widths?

Jim Myers: That there's any one number that defines a buffer for them, that would be true.

Courtney Kaylor: You testified about a concern relating to fish and I believe your concern related to the quantity of water in the stream. One of your concerns... You listed a number of them, but one of your concerns related to the quantity of water in the stream at different times.

Jim Myers: Right. Too much or too little...

Courtney Kaylor: If a site were to maintain existing flows to a stream, would that address that concern?

Jim Myers: If a site were to maintain...? I guess from a... If a site were to maintain existing flows... I think given the state of the basin, I would still be concerned about the fish in the stream.

Courtney Kaylor: Okay. Thank you, I don't have any other questions.

Hearing Examiner: Mr. Knutson **...

Mr. Knutson: I have a few questions.

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Hearing Examiner: You'll have to share the microphone.

Mr. Knutson: I'll stand up if that's alright. Good morning Mr. Myers.

Jim Myers: Morning.

Mr. Knutson: With regard to that last answer to the question you were just asked, you're saying that you would have additional concern besides the flows effective... Flows on the fish that you're concerned about... But with regard to your prior testimony on direct that you're main concern was with regard to the flow level in 0056 being affected by this project, if the site were to maintain existing flows to that stream then you would have not that concern with regard to the fish. Is that correct?

Jim Myers: I think there were a lot of concerns. Also I think I addressed water
** ...

Mr. Knutson: With regard to that concern. I understand that you have other concerns, but with regard to flows, which is what you testified was your main concern. If the project keeps the flow levels as they currently are than that concern would be addressed. Isn't that correct?

Jim Myers: I still ** that it was my main concern... It was one of my concerns, but...

Mr. Knutson: With regard to the fish that you're concerned about, you testified about some native cutthroat in 0056. You testified about not having seen or sampled fish yourself in Abbey View pond, is that correct?

Jim Myers: That is correct.

Mr. Knutson: But you also testified that you talked to the cemetery manager and that he said that the cemetery had planted some bass in Abbey View pond. Is that correct?

Jim Myers: That... Yes.

Mr. Knutson: So with regard to your statement that a 50 foot buffer would apply using other jurisdictions, regulations because this would be a fish-bearing stream, are you talking about the bass. What non-salmonid fish are you talking?

Jim Myers: I would be talking about the bass. The Brier code makes no distinction between wild and planted fish. It talks about a need to protect game species, which bass are a recognized game species. So when I discussed the 50 foot buffer that was in regard to the bass. Randy has been there for a couple of years. Dennis who was the previous one that I was unable to contact... Other residents have described

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fish as croppy which are another recognized game species that look a little bit like bass. So there could be some... The distinction between the two is probably not relevant to this case.

Mr. Knutson: But you, yourself have not seen fish in Abbey View pond and you don't know yourself whether there are any or not. Isn't that correct?

Jim Myers: I have not seen them. I interviewed someone who I believe to be a very competent person and who would obviously have... Who would obviously be able to answer the question with a fair amount of credibility? We review a lot of anecdotal and other information in my work and we... You can normally tell when people are speaking with some clarity.

Mr. Knutson: With regard to the presence of spiny ray fish in Abbey View pond, isn't it correct that that would tend to mean that there would not be salmonid type fish in that pond do the predation effect of the spiny ray fish.

Jim Myers: Lake Washington is full of small mouth bass and we have a very good cutthroat population. Lake Washington... They tend to sort themselves out. The bass are not normally stream fish and certain not the kinds of stream that 0056 is. Right now the stream is very low and bass tend to get much too big. They're much more deep bodied and they wouldn't be very happy in the stream right now.

Mr. Knutson: You testified on direct when you were describing the basin. If there was a subdivision that resulted in an area being clear cut and I think you referred to that as the Lake Forest Park subdivision.

Jim Myers: Well, there's the Lake Forest Park plat here and the Himmelman (ph. sp.) which is adjoined to it, which I forget what the acreage is. There was 5 or 6 acres and then the other one, which was the West Brook site.

Mr. Knutson: And those subdivisions were clear cut you testified?

Jim Myers: They probably had 90% of the trees on site removed, which is I think is pretty close to being clear cut.

Mr. Knutson: And which city approved those subdivisions?

Jim Myers: There's a good piece of history. Both were... The Lake Forest Park plat initially vested under unincorporated King county. And then later worked through the city of Kenmore process during which Kenmore did provide 100 foot buffer for the Lake Forest Park plat because it does adjoin stream 0056. The Himmelman (ph. sp.) plat is not adjacent to the stream. That was done later. That was done through the city of Kenmore and the... I keep getting... There are so many developments. The Naval Brook (ph. sp.) one was Lake Forest Park.

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Mr. Knutson: Thank you. No further questions.

Hearing Examiner: Thank you Mr. Myers... You have more redirect?

Unidentified male: I do.

Hearing Examiner: Let's make it as short and concise as you can. You have a lengthy direct. There shouldn't be much more to ask.

Unidentified male: Right. We heard testimony from PDI's fisheries consultant Carl Hadley that the proposed 25 foot buffer would provide for the West ** would provide 90% of the normal functions and values...? Is that what you understood him to say?

Jim Myers: To the best of my recollection.

Unidentified male: Would you agree that a 25 foot buffer would provide 90% of the normal functions and values.

Jim Myers: No. I would disagree with that.

Unidentified male: Would you consider that estimate to be moderately high, wildly exaggerated or where would you put that in the general scale?

Jim Myers: I think that would be very much on the high side.

Unidentified male: Would the project as it's currently conceived affect the amount of water entering the west tributary at points that are within and adjacent to the project site and extending down to the delivery point 0056 where the water is to be discharged from the site? So will the project affect flows, the hydrology within the area that's adjacent to the site?

Jim Myers: My understanding of the plan to divert water, yes would indicate that.

Unidentified male: Okay. I have no other questions.

Hearing Examiner: Thank you... Cross...

Elizabeth Mooney: None.

Hearing Examiner: None...?

Unidentified male: No.

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Hearing Examiner: None...? Thank you Mr. Myers...

Jim Myers: Thank you.

Hearing Examiner: Miss Bowers are you back in the lead chair?

Miss Bowers: We'll find out.

Hearing Examiner: Okay. We will find out. Who's next?

Miss Bowers: Cleveland Steward.

Cleveland Steward: I'll ask myself my own questions. Just kidding...

Hearing Examiner: Make your answers short. Do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

Cleveland Steward: I do.

Hearing Examiner: Thank you.

Cleveland Steward: My name is Cleve Steward. I'm employed by AMEC Earth and Environmental... I'm a fisheries biologist. I have roughly 28 years of experience both as a former government employee and fisheries consultant. I serve on the same ** recovery for the lower Columbia ** that Jim mentioned... I am a director of a non-profit called The Sustainable Fisheries Foundation. I also serve on the WRIA 8 Puget Sound recovery council. I have a Bachelor of Science in wildlife biology and a Master of Science in Fisheries from UW. I am going to try to avoid redundancy in hitting on some of the same points although our expertise overlaps considerably, Jim's and mine. My personal and direct experience with the stream is both in the sampling of the fish populations and actually observing the conditions, the habitat that exists especially in the downstream areas. I have visited the site. The periphery... I did that as recently as last week and I formed a pretty good impression of what the channel conditions are both up and down stream of the site from visiting. I also visited Abbey View pond. Didn't see any fish... I do believe it sustains populations of spiny rays. What Jim said about the current fish assemblage and the history of utilization of 0056 by different fish species and its current condition and the threats that face those fish, I concur with. It is a highly degraded system. The Herrera Report attests to that. 44% impervious surface is well above the impact thresholds identified for these kinds of drainages. Not only locally, but nationally... I think the statistics indicated that 78% of the entire stream bank, the lineal link, the stream bank was in a moderately or greater degraded state of 0056 and west and east tributary. And we heard from Mr. Daryl Banks and we've got plenty of photographic evidence. I have seen it myself, what the direct effects of high run off in that system are both in property damage and on fish habitat. I feel based on my

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professional opinion and I've worked extensively. I did my Master's degree on urban stream Kelsey (ph. sp.) creek in the drainage. So I have studied this. I feel that it's the hydrology that really sets things in motion and any alteration of the normative condition, the magnitude duration time and frequency of the flows is going to cause a series of chain reactions. We've seen in the Herrera Report what that means in terms of sedimentation (ph. sp.) and transport and deposition in the lower drainage and how that exacerbates flooding. All of these physical processes and the outcomes affect the prospects of long term survival of these fish. And so we're very much looking at a watershed scale, a landscape scale impact, not just at a project or a separate site. It has to be viewed in the context I believe. So I want to reiterate Jim's point about the condition of the stream, west tributary. I do feel from observing the contours of the stream that there's sufficient to conclude that it has conveyed water in the past. We saw while we were touring on two separate occasions water being withdrawn from Abbey View pond. Significant amounts like six or eight sprinklers going full bore in the cemetery. That water is drawing down the pond. It's no longer recharging the stream. Whether it historically flowed throughout the year or was temporarily intermittent during the summer, I can't say for sure. But it's my opinion that it did just based on the relative size of the few drainages. The west drainage is dry. The east drainage currently conveys water. I think the same would have happened historically in the west tributary were it not for the water being withdrawn from Abbey View pond. I think the development is going to actually add to the problems of dewatering because we're going to intercept flows. I think the Sunbrook drainage report identified a reduction in the amount of area on site from its current level of 7.64 acres to this... That area on site that currently drains to the water features, the wetland or the tributary... Once developed the site will take all but the equivalent of 2.1 acres away from those receiving waters so the reduction of the amount of area that intercepts precipitation and conveys it to the adjacent wetland and stream is going to be reduced by over a third... I feel that is an impact that hasn't been adequately addressed and it is significant because it directly affects the functions of the ** courses and wetlands... Okay I'm going to just reiterate Jim's point that the proposed buffer is inadequate. I've looked at buffers. I'm familiar with a best available science. I have worked on wetlands and streams and it's rare that any knowledgeable scientist whether they're apiarian, terrestrial or aquatic would agree that a 25 foot buffer even for an intermittent stream such as this one would be adequate for the purpose of maintaining normative conditions. I feel that 50 foot buffers would be marginally adequate. 100 foot would be much better. And I think I want to mention that the point raised by the OTAC (ph. sp.) wetland biologist, I forget her name, she stated that the runoff from lots 110 and 111 these are the ones where there won't be collection and conveyance of runoff to the storm water detention vault. That runoff, there's no provision for treatment before it runs directly into the adjacent wetlands and stream. I think there should be. I feel as an extension to what I was saying about the effects of the hydrology of the adjacent stream. I feel that water should be directed back into the west tributary at multiple locations and not just by the spreaders but trying to infiltrate as much as possible and use the natural process and where that is impossible to use spreaders and other LID (ph. sp.) techniques to retain water onsite and deliver it directly to the stream. I feel that there should be some

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provision for large ** this is an important feature of the buffer that we haven't really talked about... We've talked its filtration, its capacity, its shade. But it does supply wood which in turn provides habitat. It stores sediment in these smaller systems. These were very messy. They were crisscrossed by logs that would affect the plant form of the stream, the number of pools and undulations in the channel. It's habitat as its value of habitat as fish habitat... My recommendation is that they not only address impacts that occur onsite, but if possible they try to ameliorate impacts that they are contributing to downstream. And the Herrera Report sites many ** priority sources ** even if within the west tributary that could be addressed... So that's just an idea of how can we not only prevent further harm, but how can we bring this system back into health. And I think as good neighbors, the developer should consider taking that extra step and helping to restore the stream to health. I want to also point out that based on my review of current literature, it's my understanding and I have not seen this addressed within the storm water report or elsewhere in that project documents that not all the water quality impacts are being prevented or mitigated. And I'm not talking solely about sediment. This obviously is a major concern. And one of our previous experts Doug Beyerlein testified that the sediment control or abatement that the detention vault would provide was inadequate, but what I am also focused on is the other things. The contaminants that would be collected and transported along with the flue vehinal (ph. sp.)... Anything that hits the streets really into the stream and based on recent scientific literature that I've reviewed, the percentage of those contaminants expressed as total suspended sediment, total nitrogen, total phosphorous... These are the nutrients that we want to keep out of the stream and Lake Washington range from a low of 32% for total nitrates to 52% for total phosphorous and 80% for total suspended sediment. Like I say, I have not seen this addressed, analyzed in the project documents. But based on this comprehensive literature survey, the prospect of a significant impact related to those water quality constituents is real. And I would like to see those addressed. And if they are significant to be mitigated... I think that's probably enough.

Hearing Examiner: Thank you Mr. Steward... Cross examination from PDI.

Courtney Kaylor: No questions.

Hearing Examiner: No questions... Cross Examination by the city.

Unidentified male: I don't have any questions either.

Hearing Examiner: No questions... Thank you Mr. Steward.

Cleveland Steward: Thank you.

Hearing Examiner: Who's your next witness?

Miss Bowers: I was going to call Janet Hays

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Hearing Examiner: How many more witnesses? Come on up ma'am.

Miss Bowers: I think two.

Hearing Examiner: Pardon me.

Miss Bowers: Two.

Hearing Examiner: Counting this lady?

Miss Bowers: Yes.

Hearing Examiner: Okay. Do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

Janet Hayes: I do.

Hearing Examiner: Thank you. Please state your name and spell your last.

Janet Hayes: Janet Marie Hays.

Hearing Examiner: Thank you Miss Hays... Miss Bowers is this going to be your witness?

Miss Bowers: Yes.

Hearing Examiner: Okay. Go for it.

Miss Bowers: Janet can you briefly run through your credentials?

Janet Hayes: I don't have any credentials.

Hearing Examiner: That's perfectly legitimate.

Janet Hayes: I was a resident of ** and I am not a resident of Kenmore...

Miss Bowers: What are your concerns about the Sunbrook property?

Janet Hayes: My concerns when I first heard about it were the affect that it would have on Kenmore and the emptying of 556 into Lake Washington and the damage downstream that it would do. But then I realized that I was connected to it in a more personal level and that was that I had lived on 35th at 23700 35th West in Brier. Which as you go down the hill as you come up 61st and take Alaska Road and go to Abbey View cemetery, you turn right on 35th and I lived on a home on the left hand side. We had a creek in our front yard. And there were many times during the year that that

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creek overflowed. There were many times nephews and come and play in it and we would catch frogs. We would catch little fish. Little fish in a cup you could... And then we would walk down to Abbey pond because that's the way the water ran and we'd put them down in that pond just thinking they'd come from there. And it's not really a pond. It is a lake. It looks like a pond from the road, but if you go back behind, you see that it angles around and it's a pretty big body of water. My husband at that time was... My ex-husband, he was a sports fisherman. And a lot of fishing in Lake Washington and out in the sound, but of course a sports fisherman fishes anyplace there might be fish. And he would fish in the Abbey View cemetery lake and many other people fished there that lived on the lake. Some that didn't. We received either a notice or in it was in a local paper, not the PI Times, I mean. But a local... I don't recall Brier having a local paper, but it was one of the Woodenville (ph. sp.) weekly has or the Botheville (ph. sp.) north shore paper... But it was a Snohomish County... But it was a warning in that paper and then a warning flyer that was sent out by the cemetery, don't fish in the lake. Don't eat the fish that are caught in the lake. We believed that was due to pesticides. But people continued to fish in that lake. That never stopped anyone. When I found out about this involvement with Sunbrook and started putting that together, I decided to go up and visit the property that I'd lived on. When I went there, they were building a culvert. We had a little bridge that went over the creek. And that had apparently rotted and the new owner was building a culvert and having the ground worked on. He wasn't there. I talked to the people that were doing the digging. And they said that he was putting in a culvert underneath and I could see the four pipes from the culvert next door that had been there when I lived there. And it was dry and I knew we had all sun because we got an early sun this year. You know, an early summer. And but I thought this is really dry because it wasn't dry when I lived there. So I had an appointment at Tina's Beauty Salon in Brier later and I thought well I'm going to find the top part of that creek. I went down by Brier Elementary School and they were doing a lot of dirt work there and changing their parking lot and I followed that creek all the way down to where I had lived and it was dry from that point on. I didn't go further north. But as I got closer to Abbey View Cemetery Lake it got... At the third house from the last house that abuts the cemetery, it was probably five feet wide winding through their yard going into that lake. So then I decided to make a stop at the gal who lives next to the cemetery. She's right on the north end abutting the property and I had not met her before, but we visited. And I asked her about people fishing in the lake now. She said that there were people fishing in the lake this morning. They still fish the lake whether there's signs that say no fishing or not. And I realized well how do they get up there? And I'm figuring it's barely, but they do. It's not just bass. Because my husband caught... Well he said it was trout. And there was another fish that he caught, but he said it was too bony. So I am not a fisherman and I don't know... I just knew that he ate the trout. I don't like to clean them or cook them. Sorry. That's what I have to say.

Hearing Examiner: Thank you Miss Hays...

Janet Hayes: That's good. Okay.

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Hearing Examiner: Don't go away. Although granted, she's not testifying as an expert, but she is testifying **... You have no questions.

Unidentified male: No.

Hearing Examiner: No questions...

Elizabeth Mooney: **

Hearing Examiner: I have only one Miss Hays. I just want to make sure I understand. Your former home, was it upstream of the lake or downstream of the lake?

Janet Hayes: Upstream of the lake.

Hearing Examiner: That's what I thought.

Janet Hayes: Counting six houses.

Hearing Examiner: Okay. Thank you. And who is ** last witness on direct...?

Miss Bowers: Elizabeth Mooney.

Hearing Examiner: Come on up please.

Elizabeth Mooney: My name is Elizabeth Mooney.

Hearing Examiner: Let me swear you in. Do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

Elizabeth Mooney: I do.

Hearing Examiner: Thank you. Go ahead Miss Mooney. We have your spelling a number of places.

Elizabeth Mooney: These are some notes that I took. I don't need to read it, but I'll give it to you. It was just one... You don't want to have me reading all of this.

Hearing Examiner: I don't want to have you read it. That's right. We will enter Miss Mooney's hearing notes by pages as Exhibit A17.

Courtney Kaylor: This is Courtney Kaylor. Miss Mooney, did you happen to bring an extra copy of that.

Elizabeth Mooney: I did. I just lost it.

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Unidentified male: Is that it?

Elizabeth Mooney: This is really they were...

Hearing Examiner: You don't have to explain what they are if you have a copy that you want to give her.

Elizabeth Mooney: Can I give you a copy after I sort of look them over and **...

Courtney Kaylor: Certainly. Thank you.

Hearing Examiner: Does Miss Kaylor, do you want to follow it as you go. If that's what you'd like to do you can use my copy?

Elizabeth Mooney: I want to be concise. And my role in the stream has been anything but concise. I run from the bottom to the top to Brier to Kenmore to the citizens and I go in a hundred different directions. I talk to grownups and I talk to the children at Lockwood. When Connor Norton was here, he's obviously a young adult. He started as a 5th grader. His father is one of the mentors of the stream, Chip Norton. And in the time that we have gotten to know this stream, Chip Norton has passed away. But it was Chip and other people like Jim Myers and Cleve Steward, Orlay (ph. sp.) Johnson, the Vaughns (ph. sp.)... There are all sorts of people that have been connected. Dawn Watson (ph. sp.) up by Brier Elementary... Daryl Banks, Dennis Wick (ph. sp.) who showed you the bridge that has fallen out. All of these people have issues mostly good because they're good people. But I have become the connector. So when Sunbrook came to my attention, it was about three years ago, as a result of being in Justine Hurley's (ph. sp.) classroom and one of the kid's dads came up to me... Anyway Frank Bruney (ph. sp.) his letter is in the city exhibits. And he said to me, Elizabeth if this is the stream that I think it is that the class is adopted, Phoenix Development is going around our neighborhood and if they do what they're planning to do, it is going to destroy the ability to have these fish thriving in this stream. Now, I didn't know if Frank was telling me something that is truth or not. It was the first time I had met him. But I tried to do some research. So bit by bit as I got to know the stream and the upper watershed sometimes I would come in and say hi to Mr. **... Sometimes I would see Mr. Maug (ph. sp.). Meanwhile down in the lower watershed, I was watching the degradation as a result of the impervious surfaces that had grown. So I am part of an adopt a stream program. I have a Master's in fisheries from the University of Washington. I have a BA in philosophy from Pomona College. And I believe in the hope that this stream represents. I want the developers who we've visited last September to try their hardest to settle with us volunteers. I want Lockwood Elementary to continue to be able to have a stream adoption project where the children can go to the city of Kenmore and they can now start going to the city of Brier talking about bringing salmon through the new opening which is at Log Boon (ph. sp.) park. When you asked about what had come down at Log Boon (ph. sp.) park, what happened is

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that the stream due to its fervor blew out the flood rerouting area at Harbor Village condo and opened it up again to its natural area at Lake Washington. So Brier's code and I will give you the right code. But Brier's code includes a provision for this stream being a laboratory. An outdoor laboratory... Applied science learning of people getting together and having healthy water, of supporting the clean water act... And just as a lay person with a Master's of science in fisheries, I've become a mom and I go around talking to people and I think that this stream's value is in connecting people, improving mathematical abilities through what Mark Phillips talked about through the ** invertebrate analysis... We have taken Connor Norton and the other kids in Lockwood and I should say that Lockwood includes Brier and Kenmore children. So we've taken those kids and it would include the children that would come to Sunbrook. The site would have hopefully houses that don't take up the almost the entire area, hopefully we would preserve habitat and those children at the Sunbrook site would learn about how to go forward in this new world of trying to be greener. And I don't know what that will take, but I know it would take working together, being creative and I know that we've already done it once. PERK did it with another developer. We wrote grants. We partnered up with people in Lake Forest Park who are articulate more than I and we wrote grants to the tune of \$200,000 that we brought to the city of Kenmore. We worked with a staff, the community development director. The last thing that I wanted to do is say damning things about Nicole Gaudette or Jim Cutts or Mr. Thorpe, but if I have to point out the errors that they have made in assessing this watershed than for me it's worth it. I don't know why they didn't look down deeper and up the watershed at Abbey View. I don't know why they didn't come to the meetings that we invited them to down at Lake Forest Park and at the marina. Brier, though I believe is a small city full of really good people. They want to protect their trees, their horses and that rural life. If you want to do that then I think this particular site needs a little bit of redesign. So I really think that I could talk for another hour and I won't. There is one thing. I put it on my hand. When the city attorney brought up an issue, it had to do with the number of houses that Sunbrook would bring to the city. And I don't know everything about that. I would have gone to ask Ms. Dare (ph. sp.) because she knows so much about Brier code and or I would have gone to ask Jim Abbey the former council member who said that this site had been a mink farm. But what I gleaned from what Mr. Knutson said was that Brier because they don't want to have... They don't want to be all squished up like Kenmore is. They want to preserve the integrity of the 12,500 square foot lots. So what they need to do is to get a higher density of houses. But at what cost...? Having a clear cut on one of the last remaining gorgeous pieces of Brier that even a person as articulate and intelligent as Dr. Gordon Orienz (ph. sp.) notes is a wonderful habitat for pileated woodpeckers, band tail pigeons... Does Brier think it's really going to be their citizens' benefit to cut down most of those trees? And I want to support what I think the kids in that class would have wanted, which is adopting a stream. You take care of it. You be a good steward. You teach the kids to do the right thing and that would include some kind of redesign that protects the integrity of those fish. Because without the fish, the Brier code that says that this is going to be a community asset for environmental education, it's not going to be any fun at all to get into a creek that has nothing living in it.

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Miss Bowers: Can I interrupt with one question? Do you feel that the results of Sunbrook are going to create a significant adverse environmental impact on spring 0056?

Elizabeth Mooney: Yes. I definitely believe that as designed, the Sunbrook property would cause a significant adverse environmental impact.

Miss Bowers: And can you tell me how long you've been working with 0056? About how many years...?

Elizabeth Mooney: It started in 2000... We moved here in 1995 and I just thought it was just a silly old stream at the time. And it was in about 2000 when Doug Henick (ph. sp.) who came to the Lake Forest Park plat told me that the reason that the water was all coming down is that there'd been an illegally diverted stream. And that was what started us down the road and then Justine Hurley (ph. sp.) at Lockwood Elementary asked me one day if I wanted to turn that kind of hassle into a good, happy project with children. So out of the ashes of disaster grow the roses of success.

Miss Bowers: Okay, thank you. That's all the questions that we have.

Hearing Examiner: Cross Examination by PDI.

Courtney Kaylor: No questions.

Elizabeth Mooney: Thank you.

Hearing Examiner: Mr. Knutson?

Mr. Knutson: None.

Hearing Examiner: No questions...

Elizabeth Mooney: Oh, bless you.

Hearing Examiner: I don't have any either Miss Mooney. Thank you. So that's P** last witness on direct...? Why don't we do this before we start with the city? It is 11:15 unless somebody objects, I propose we take... And if you object, you better have a darn good reason. I propose we take an early lunch today so that when we start with the city, we can just do it and march right on through it.

Courtney Kaylor: Mr. Galt.

Hearing Examiner: Miss Kaylor.

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Courtney Kaylor: Our fish expert Carl Hadley (ph. sp.) does need to leave at 2 and Ray Coglas our soils guy also does need to leave early. We have very, very brief rebuttal from the two of them. And I would request from you and the city and all the parties that we be allowed to take them out of order. We have probably 5 minutes for each of them if we could take them before lunch and then let them go home, I'd appreciate it.

Hearing Examiner: Works for me.

Miss Bowers: Fine with us.

Unidentified male: That's fine.

Hearing Examiner: Okay.

Courtney Kaylor: Thank you.

Hearing Examiner: Bring them on.

Courtney Kaylor: Carl Hadley and...

Hearing Examiner: Let's see. Mr. Hadley you have testified before. You are still under oath.

Carl Hadley: Okay.

Courtney Kaylor: Can we get the average stream separation exhibit. Mr. Hadley what buffer does this project provide from the stream, the Abbey View drainage?

Carl Hadley: Right. Well technically there's a 25 foot buffer required by the city. That results in an average 59 foot separation of the project from the creek.

Courtney Kaylor: Yesterday you testified that that 59 foot average separation provides an adequate buffer. Is that correct?

Carl Hadley: Given the existing conditions of the buffer that was my testimony not yesterday, but last week.

Courtney Kaylor: Yes, of course. We weren't here yesterday thankfully. And so when Mr. Myers and Mr. Steward testified that you had testified that a 25 foot buffer was adequate, was that an accurate characterization of your testimony?

Carl Hadley: No that was not.

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Courtney Kaylor: Mr. Steward, do bass eat cutthroat trout? Mr. Hadley... I'm sorry. We have had too many days of testimony obviously.

Carl Hadley: Us fish people all look alike.

Courtney Kaylor: That's right.

Hearing Examiner: I am glad we're not videoing this. We'd really raise the credibility question about this witness wouldn't it?

Carl Hadley: Yes, bass are well known predators of cutthroat trout.

Courtney Kaylor: So is it a good idea to stock predators in a stream such as this?

Carl Hadley: Not at all. As Dr. Jim Kelley (ph. sp.), anyway he testified that there's quite a bit of cutthroats ** going on downstream and bass are voracious predators of juvenile cutthroat trout... If they were to get out of the pond and migrate down downstream that would probably have devastating effects on the cutthroat population.

Courtney Kaylor: Can you discuss... Were you here for the testimony earlier about the Harbor View Village property down at the mouth of 0056?

Carl Hadley: I was, yes.

Courtney Kaylor: Can you comment on the location of that property in relation to the flooding that they've been experiencing?

Carl Hadley: Yes. The Harbor Village Project was built on what was historically an alluvial fan. It's the location where previous development... The land was probably created by deposition from the stream 0056 drainage basin. Historic deposition that would have come down and been deposited as the gradient lowered. Typically sediment migrates downstream in steeper reaches and then as the gradient gets less and less sediment falls out and deposits and it's how you form alluvial fans. Historically the creek would have migrated back and forth across that alluvial fan as the sediment built up, the channel moves and deposits more sediment and then moves again. And it migrates out slowly into the lake. Well unfortunately the Harbor View Village took advantage of this flat land right next to the lake to build their project on and as a result they were forced to basically channelize the creek to keep it in one place. They still have to deal with all the sediment coming downstream. And so they do that by possibly dredging. There's been sedimentation ponds built that have to be dredged out. I think the testimony was that they've been trying to get permits to keep those sediment ponds dredged. Fish spawn in sediments so it's not a good idea to keep removing sediment from creeks. But if you're going to live in that kind of location that's something that has to be done continuously...

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Courtney Kaylor: I think those are all the questions that I have for you.

Hearing Examiner: Cross examination.

Cleveland Steward: Just for my identification...

Hearing Examiner: Mr. Steward is going to ask the questions for PERK.

Cleveland Steward: Would you restate the statement that you made the other night regarding the 90% value. Are you familiar with what I am talking about? Would you please restate the statement you made the other night regarding the 90% functions and values of **...

Carl Hadley: Sure. To the best of my ability... I can't state word by word. But as and it's basically written in the report I provided, which is Exhibit S too. But I think the way that I summarized it or as close as I can get to it is that given the 25 foot buffer requirement of the city of Brier's code, the project site provides between 25 and 110 feet of separation from the creek with an average of 59 feet. Given that 59 foot separation and given the existing condition of what remains within that 25 to 110 feet, the repairing conditions, slope, the channel and the fish use of that Abbey View pond drainage, it's my opinion that separation will provide upwards of 90% of the function of that existing buffer width or separation width.

Cleveland Steward: Okay. Last question, are you aware of any streams in the Lake Washington drainage that sustain viable populations of largemouth bass that would be predators on **...

Carl Hadley: Am I aware of any streams tributary Lake Washington...?

Cleveland Steward: Streams of the size and gradient and characteristics of 0056 that sustain self-perpetuating populations of largemouth bass?

Carl Hadley: There's Lake Washington itself and the ship canal has a population of bass that are well known predators of sockeye, cutthroat, Chinook.

Cleveland Steward: But any streams...? Are largemouth bass stream dwelling fish?

Carl Hadley: Generally not. They are lake dwelling fish.

Cleveland Steward: Okay. Thank you.

Hearing Examiner: Mr. Knutson any cross?

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Mr. Knutson: Yes, just a couple of questions. Mr. Hadley, I believe that during your prior testimony you concluded that the Sunbrook project would not have significant adverse impacts on the... Can you hear me? On the fish or other habitat concerns with regard to the west tributary, the Abbey View drainage, is that correct?

Carl Hadley: That is correct.

Mr. Knutson: And you heard the testimony of the appellants' fisheries' biologists' experts today is that correct?

Carl Hadley: Correct.

Mr. Knutson: Has anything that you've heard changed your opinion about the adverse impacts of Sunbrook?

Carl Hadley: No. No, it hasn't.

Mr. Knutson: Do you have any concerns about contamination in the runoff that will be related to the Sunbrook project?

Carl Hadley: Water quality is one of the issues that I took into account when I was reviewing functions of the separation between the project and the creek. And so yes, it's a potential concern. I believe that given what is proposed and the distance of the average distance of the houses... The nearest house is to the creek that that buffer will provide not all, but the vast majority of the functions of an intact buffer in this situation.

Mr. Knutson: When you say based on what is proposed and the buffer, are you referring to the storm water facilities as well as the buffer separation?

Carl Hadley: No. Well, sorry there are two issues. There is the line of houses that are closest to the Abbey View Pond drainage. There will be a small amount of direct runoff possibly from those backyards that will be filtered through the remaining buffer there. Then there's the rest of the site probably 23 – 24 of the sites and all the new impervious surface which water will then go through the wetlands be infiltrated there and in the yards and then be treated to the ecology 2005 standards. And the ecology 2005 standards as I testified previously were designed almost specifically deal with fish and fish habitat as well as human use of water. But they were upgraded for the purpose of protecting fisheries and streams. So I do not have a concern that the effluent from a project that's treated to the ecology 2005 standards will have water quality impacts on a stream.

Mr. Knutson: Thank you. No further questions.

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Hearing Examiner: Mr. Hadley, Mr. Myers this morning talked of an overhanging shelf culvert where stream 56 passes under SR 522. Do you recall him using that term?

Carl Hadley: He did. Yes.

Hearing Examiner: Are you familiar with that culvert under 522?

Carl Hadley: Not personally, no. I read about it in the Herrera Report. But I have not seen that culvert.

Hearing Examiner: So you could offer nothing beyond what I have already read in the Herrera Report?

Carl Hadley: That is correct.

Hearing Examiner: Then I won't ask you anything.

Carl Hadley: Nothing...?

Hearing Examiner: Not about that. Since you're going to be leaving, I want to be sure that any questions that I have that are fish related, I've had a chance to ask. There is Exhibit B9 which is... Let's see what B9 is. B9 is Sewell's (ph. sp.) Wildlife Habitat report. On pages 3 and 4, he says... It's a sentence that begins the bottom two lines on page 3. "Near the south edge of the property a natural cascade is present in the stream which appears to be a natural blockage to any fish that could potentially be in this stream." Do you know what he's talking about? This natural cascade...?

Carl Hadley: Yes. And I talked to Mr. Sewell (ph. sp.) about that. From his description... I have not personally seen it. From his description, I would say it's probably is a blockage at very low flows. But I would not characterize that a permanent blockage to fish. From his description, I'd say it's probably a temporary blockage. It may not even be a blockage year round. If flows get high enough, it's possible that fish could get past that, but...

Hearing Examiner: Is it in the reach of the west tributary that flows parallel and south of the property or is it further east. In part, I was confused about even where it was.

Carl Hadley: Could you ask that of Ed Sewell (ph. sp.). I have not seen it.

Hearing Examiner: I can do that. Have you looked at stream 56 anywhere significantly south of this site?

Carl Hadley: I have.

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Hearing Examiner: Then my question would be and you can clarify what parts you've looked at as you feel appropriate in answering the question, is there anywhere along stream 56 between its mouth and its site where a 100 foot native buffer exists or has been legally preserved?

Carl Hadley: I believe there has. At least along one side of the creek and to tell you the truth, I didn't measure it, driving up and I believe it's 61st there's the four lane road paralleling the west side of the creek. There is a relatively intact buffer on the east side of the creek. I don't know that it's a 100 feet wide and I don't know how intact it is. I've only seen it from the edge of the creek. I've stood and looked up at it and I've driven past it. From the aerial photo it looks like portions are intact and it may reach or exceed 100 feet in places. I have not walked it or examined it closely. It may be a solid blackberry thicket for all I can tell.

Hearing Examiner: But do I understand correctly from what I've heard and what I've read that for much of its run, it would appear to a layperson as a roadside ditch? At least the upper reach...?

Carl Hadley: And we're talking the main stem of 0056...?

Hearing Examiner: Yes.

Carl Hadley: Or up to the confluence...? I guess it would be fair to say that all the sections of it that I have seen could be characterized as a roadside ditch. That's correct.

Hearing Examiner: I think that's it. Thank you. And did you want to bring another witness on rebuttal before we break for lunch?

Courtney Kaylor: I would like to yes.

Hearing Examiner: And who might that be?

Courtney Kaylor: Ray Coglas.

Hearing Examiner: Did Mr. Coglas previously?

Courtney Kaylor: No.

Hearing Examiner: I didn't think so. Raise your right hand please sir. Do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

Raymond Coglas: I do.

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Hearing Examiner: Thank you. Would you please start by stating your name and spelling your last?

Raymond Coglas: Raymond Coglas.

Hearing Examiner: Thank you. Your witness...

Courtney Kaylor: Mr. Coglas, can you please briefly summarize your qualifications and your experience?

Raymond Coglas: I am a professional engineer. I have a Master's degree in Geo-technical engineering.

Courtney Kaylor: Were you here for the testimony last Thursday and Friday?

Raymond Coglas: Yes, I was.

Courtney Kaylor: Did you hear the concerns that were expressed regarding earth's stability in the approximate location of lot 4?

Raymond Coglas: Yes.

Courtney Kaylor: Can you please respond to those concerns?

Raymond Coglas: We prepared a geo-technical study for the project. Part of that involves revealing maps and soil surveys as well as onsite subsurface explorations. Part of that process involves reviewing the city of Brier municipal code as it relates to sensitive areas. The focus of our study as far as the site explorations largely was I guess what you would characterize as a ridge feature along the south boundary of the property and the detention vault area. At that time, the proposed detention vault area in the southeast corner of the site. We excavate I believe 6 test kits to depth just to assist in characterizing the soil characteristics at the project. We completed our geo-technical engineering study. Our main conclusion, our primary conclusion... Well... The soil characteristics can be characterized as classified as glacial till primarily. We reviewed the city of Brier municipal code as far as landslide hazard areas which is defined in chapter 1812. Our conclusion is that, no this is not a landslide hazard area. And in fact, overall the stability throughout the site, I would characterize as good based on our investigation and our study.

Courtney Kaylor: And so in your opinion, will the project have any significant adverse impacts relating to slope stability.

Raymond Coglas: No. Our conclusion is that overall soil strength characteristics primarily due to the glacial till deposit which possesses good soil strength characteristics and also supported by observations at the site. Looking for signs of

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signs of homokey (ph. sp.) terrain or any indication of slide scars (ph. sp.)... Any indication of soil movement... I guess everything combined; our characterization is that site stability is good so we don't foresee any adverse impacts related to this development.

Courtney Kaylor: Thank you.

Hearing Examiner: Cross examination by PERK.

Cleveland Steward: Are you familiar with the Herrera Report?

Raymond Coglas: I am. I have not read it thoroughly.

Cleveland Steward: In Table 10 of that report, they identify a site on the west tributary. The Table is captioned, descriptions of current priority sediment sources. I am going to read the description of this and all I need to know is if you have observed it directly. That will lead me to my next question. The description is "significant right bank undercutting ** 1 foot deep undercut, 140 cubic feet scar volume. Left bank sloughing... Located in reach just downstream of Brier Road culvert." Are you familiar with that?

Raymond Coglas: I am not.

Cleveland Steward: Did you observe while you were onsite any evidence of seepage to the north banks of west tributary?

Raymond Coglas: No, I did not.

Cleveland Steward: Do you believe that seepage occurs as stated by one of the other witnesses?

Raymond Coglas: Yes, I do.

Cleveland Steward: You do. Do you feel that this project will alter seepage characteristics and therefore the stability of slope in anyway?

Raymond Coglas: I suppose in terms of seepage forces, there is always consideration given in terms of stability as to the effect of seepage forces on soil stability. And the application of this development... And it all depends on the proposal. What's being proposed? This proposal not to minimize, I guess, what is being proposed in terms of grading, but it is... In my perspective, a fairly minimal amount of alternation occurring. There's some fills throughout the site kind of in the upland area... In fact the majority of it, there's fills occurring; I think that elevates some of the roadway areas. Very minimal cuts and I guess in terms of seepage, in terms of how we look at how gradient is going to impact seepage and quite frankly when we look at seepage, we look at it through the eyes of the developer. Through the construction... Are they going to be some

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challenges through the construction process with groundwater seepage? This project very little. I don't anticipate we are going to have any challenge with respect to get the plat constructed and having seepage creating a problem for us. That's kind of the way that I view things as a geo-technical engineer.

Cleveland Steward: Okay. Do you think that spreaders that are proposed for those south boundary lots are going to affect in any way the stability of the adjacent slope?

Raymond Coglas: No, I do not. I think the spreaders... I think it's a great application. And I guess you can get philosophical about some of the LID techniques. The primary thing that is important and the thing to remember about spreaders is they're not just an element that is going to focus, although it is being spread out over some alignment. Some type of storm waters being captured, because they actually have a capacity for storage as well. So there's a trench there that's excavated that the civil engineer will design and it will be filled with drain rock. I think that's the standard detail. It has the capacity for storage, which is great for what we would characterize as your normal flow events. And even those soils, I would not characterize as high capacity infiltration soils, they do have some capacity for infiltration. It's probably maybe an inch an hour in a till or weather till until it gets down to the hard pan. So the capacity for storage generally you consider a benefit during what I would characterize as a normal flow... A typical rain event in the northwest... I don't know. It rains for 8, 10, 12 hours... There's maybe 18 hours between storms. During the heavy flow events, certainly our Pineapple Express could get maybe two, three of them a year. Heavy flow event, certainly that capacity is going to be filled and then your level spreader is going to engage and it's going to disperse the water over a vegetative flow path. And I think that's the key in any of the systems. You certain don't want it to discharge out over bare soil. So to the extent possible, you want to preserve vegetation or create a vegetative flow path along that pathway where the water exits. Those things combined, I think are the key to the success of the level spreaders. I like them as an element in combination. Not all sites are going to be able to fully infiltrate. And sites were you do have the benefit of some kind of vegetative flow path, I think they're a great application.

Cleveland Steward: Okay. Are you aware of any monitoring and maintenance provisions to in fact evaluate the efficacy of these structures or for that matter stability? Are you aware of any monitoring or maintenance provisions to determine whether these proposed structures or the mitigation that might affect slope or stability on site actually does do that?

Raymond Coglas: I'll answer the maintenance part first. Certainly any... Even your downspouts on your house or your splash block, which is really sort of a modified version of a dispersion system if you have a splash block leading out to your lawn. You have a vegetative flow path. There's maintenance in your gutters. There's maintenance in your downspouts. Certainly a level spreader would require periodic maintenance. You certainly don't want it to get plugged at the top. In terms of monitoring, I have been involved in several projects where we've used them and they're

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being used more and more. In terms of monitoring, I have not had any callbacks personally. ** jobs, hey what happened...? The level spreader failed or the ground below the spreader is sagging or sloughing. I have not personally experienced that. And I am not saying that has never happened. Certainly if it's a poor application, if you have 8 or 10 houses hooked up to one spreader and maybe the spreader is 25 feet and it's in the corner above a 40% slope, you might have a problem. But I am not aware of any failures personally. But I don't discount that they're certainly could be.

Hearing Examiner: Thank you.

Unidentified male: No questions.

Hearing Examiner: Nothing. Mr. Coglas is the copy of the Herrera Report that your associate handed to you as you were being asked that question, is it one that has... Is it an original one with colored graphics?

Raymond Coglas: No.

Hearing Examiner: Is this...

Courtney Kaylor: That is the color exhibit that you referenced in your list of questions that you ** to the parties...

Hearing Examiner: This is B24, figure 13...? Thank you. I won't ask you the question. The document will speak for itself. I'll just insert this in my copy in the right place. I think that was going to be the only question that I had for you Mr. Coglas. Thank you. Now, anybody else or can we go to lunch? It's 11:50 plus or minus. Did the hour and a half work okay for everybody? Okay. Let's stay with it. Hour and a half from now, is 1:20, is that right? Am I doing my math right? We shall restart at 1:20. So we are at recess until that hour and you've been great coming back early in the past. Keep it up.

Hearing Examiner: Thank you. Welcome back to the afternoon session on August 4th. It is now 1:21. We are ready to begin with the city's presentation of its case in chief.

Mr. Knutson: Thank you. The city is going to be calling four witnesses. The first will be Nicole Gaudette, city planner. The second will be Jason Henry, city engineer. The third will be Jim Cutts, former city planner and current city planning consultant. And the fourth will be Bob Thorpe, city SEPA responsible official. Before we begin with Miss Gaudette, I would like to introduce an exhibit that's based on testimony that was given in the last day of testimony and that relates to the pollution control hearing board's decision in PCHB numbers 07-22 and 07-23. I understand that the appellant has a copy of this and intended to introduce it also. But I am glad to provide a copy for the Hearing Examiner. I don't know if the... I am sure the applicant has access to one.

Courtney Kaylor: I am sure I have access. Thank you.

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Hearing Examiner: Do you wish it to be entered as an exhibit?

Mr. Knutson: I would like to refer to it in my closing statement. So whichever you prefer.

Hearing Examiner: Let's make it an exhibit. We will assign Exhibit A18.

Mr. Knutson: Thank you.

Hearing Examiner: Do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

Nicole Gaudette: I do.

Hearing Examiner: I think you are going to have to speak up. Your witness Mr. Knutson.

Mr. Knutson: Thank you Mr. Hearing Examiner. Miss Gaudette would you please state your name for the record and also state your qualifications and your current position.

Nicole Gaudette: I'm Nicole Gaudette, city planner city of Brier. 8 years experience as a planner. I have a BA in physical geography from HUXY (ph. sp.) College of Western Washington University...

Mr. Knutson: Next would you state what your role has been with this project and would you explain to the Hearing Examiner your preparation of Exhibit B-1 staff report and summarize the relevant portions that you would like to emphasize and rebutting prior testimony.

Nicole Gaudette: I have been working on Sunbrook's subdivisions since August of 2008. I started with the project when we were part way through the first SEPA review, I believe. And Jim Cutts was the lead planner at the time, but I assisted him through the remainder of the work up until this point. I also assembled the Hearing Examiner's staff report along with Jason Henry, city engineer and Jim Cutts, consultant planner. The staff report states that this is a 13.7 acre 29 lot subdivision with a residential zoning of minimum lot size 12,500 per lot. The property is forested. Contains wetlands and a creek, formerly contained residents, has some out buildings still, has evidence of a Filbert orchard and livestock grazing through barbed wire and such. There is a creek that flows through the property known as Abbey View drainage. Also a number of names, also stream 122, 6347515 or also known as west tributary of 0056. This is an intermittent stream that runs through the western portion of the property, exits the property near the southwestern border of the property line, enters into the city of Kenmore. Runs east along the southern border of the plat, but never reenters the plat

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or city of Brier. There are three delineated wetlands on the property, A, B, and C. And wetlands C contains intermittent flow from west tributary of 0056. These wetlands and buffers will be set aside as open space and native growth protection **... The Army corp. of engineers have verified the wetland delineations and made determinations for jurisdictions of wetlands and the property. Wetlands A and B were considered isolated. And wetlands C was connected to that unnamed west tributary.

Mr. Knutson: Can you explain how the project complies with the Brier municipal code with regard to the wetlands **...?

Nicole Gaudette: Sure. Well, first of all the project does comply with the wetland provisions of Brier municipal code. Our code states that all wetlands associated with Abbey View drainage shall have a 25 foot buffer and 15 foot setback and that has been provided by the applicant. And then wetlands A and B were isolated and also determine that 25 foot buffer with 15 foot setback was adequate for those.

Mr. Knutson: Could you also explain how the project complies with the Brier municipal code regulations for stream protection?

Nicole Gaudette: Sure. Brier municipal code does state that Abbey View drainage itself should have a 25 foot buffer with a 15 foot setback. This has been provided through the developer as previous speakers have stated. It actually ends up being an average of a 59 foot buffer because most of the stream near the property is actually south within the city of Kenmore and not within the property itself.

Mr. Knutson: With regard to the wetland buffer, how did you determine that 25 feet was the appropriate width? ** okay I'll ask you one specific question I wanted to address, which has to do with as I understand it category 4 wetland width, buffer widths can be either 50 feet or 15 feet or 25 feet. How did you determine that 25 feet was appropriate?

Nicole Gaudette: Yes, the code does state that isolated wetlands, category 4 will have a 50 foot buffer it's high intensity and use and 25 foot if low intensity use. And according to Brier city code, let me find the section for you, it's BMC18.12.030. There's a definition of high intensity land use and low intensity use. And 12,500 square foot zoning, residential on sewer facilities are considered low intensity land use. So the 25 foot buffer is appropriate.

Mr. Knutson: What is your recommendation to the Hearing Examiner with regard to how the Sunbrook primary plat application meets the requirements of the Brier municipal code?

Nicole Gaudette: The application meets all appropriate titles of Brier municipal code, chapter, title and chapter 16.16, 16.20, title 17, zoning 17.24, 17.29 as well as title 18

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which is the SEPA chapter. It has been reviewed for compliance with all of these distinct titles. It's also in compliance with the comprehensive plan.

Mr. Knutson: Could you explain how the project complies with the comprehensive plan and in doing so could you refer to the portion of your staff report that sets forth what you, as I understand it, deem to be the most relevant comprehensive plan provisions here on pages 7, 8, and 9 of exhibit B1.

Nicole Gaudette: Yes. There are several goals and policies throughout the comprehensive plan. And I provided a sample of a few that this project does comply with. It complies with more too, but this is a sample. Goal R5 that the development would contribute a fair share to parks, street improvements, signalization, sidewalks for project litigation. Goal SF1 that it will preserve and protect the existing residential character of the city with large lots consistent with the established minimum lot size of 12,500 square feet... Goal RD2 site characteristics that enhance residential developments such as trees, water courses, and similar amenities should be preserved through creative design. Goal W5 require that all development adjacent to streams protects and preserves and undisturbed corridor to maintain a natural state. Goal W12, protect natural vegetative buffers along waterways to the maximum extent possible. Policy UT1.1, design and install utilities with sufficient capacity to meet anticipated land use intensity... Policy TR4.8, recognize the needs of and incorporate designs for emergency vehicle, refuse collection and public transportation in city road design and construction. Policy PR3.5, protect and enhance existing natural resources and environmentally sensitive areas.

Mr. Knutson: Are there any other comprehensive plan policies that are not listed in your staff report that you think should be emphasize based on testimony that you've heard in this proceeding.

Nicole Gaudette: There is one additional. It's within the land use section of our comprehensive plan and Growth Management Act requires cities to take population. The idea is that you concentrate population in the cities to protect what's out of the cities. You keep that in a more natural state. So ever city has a population goal to meet... Our city has been told that we need to provide an additional 436 houses by the year 2025. This was written in 2008. We may be out of five houses this year so we have about 431 to go to meet what the state has told us to do. Has mandated us to do...

Mr. Knutson: So how does this project relate to that comprehensive plan policy?

Nicole Gaudette: This project would provide 29 of those houses.

Mr. Knutson: Could you also address the clustering issue as it relates to the city's land use regulations?

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Nicole Gaudette: Yes. Clustering has been adopted by the city within the comp plan as a possible future option. The city has not yet written an ordinance to set forth the regulations involved with a cluster housing development. So therefore there is no way to do it right now. If the applicant wished to provide cluster housing, they would literally have to withdraw their application, wait years until we are able to adopt a plan. It's just not a possibility right now. It is not part of ** zoning... It is in the comprehensive plan. It is something the city hopes to do in the future, but it is not an adopted zoning practice right now.

Mr. Knutson: I believe that the other city witnesses are going to discuss this next question I am going to ask you. But I was wondering if you could tell us what your impression has been of the city's working relationship with the applicant on this project and I would like you to refer to the earlier testimony of Mr. Egge with regard to the number of iterations that this project has gone through?

Nicole Gaudette: Yes. Of course, I've said that I have been on this for one year been involved with this. But I have seen previous plans that were first submitted by the city and they were completely different from what is here now. The applicant has worked with the city and redesigned... Completely redesigned this plat included measures from the tree ordinance to help preserve trees. Previously they had... The first plan was to fill wetlands A and B because the findings were these wetlands were diminimous (ph. sp.). So they could be filled with proper mitigation. They're no longer filling wetlands. There's one less access into the plat which means less impervious surface. Those are just a few of the items, but yes there have been many changes to make what I consider a much better well thought out plat.

Mr. Knutson: Exhibit B or are numbered B that have been submitted and introduced and in this proceeding have a number of comment letters from citizens and from other jurisdictions. Can you summarize your impression of how or your understanding of how the city has responded to those comment letters in this permitting process?

Nicole Gaudette: Yes. The city has looked into those issues and those... The comment letters are mostly about the stream, wetlands, LID practices. And the city has worked with the developer and tried to address those as much as is feasible for this particular property. But most of all, we've ensured that the Plat complies with Brier city code.

Mr. Knutson: You've been present during all of the testimony in this proceeding, is that correct?

Nicole Gaudette: Yes.

Mr. Knutson: Have you heard any testimony that has caused you to deviate from the recommendation that you're making to the Hearing Examiner in your staff report?

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Nicole Gaudette: No, I have not.

Mr. Knutson: So is it still your conclusion that the project complies with the city subdivision requirements?

Nicole Gaudette: Yes it is.

Mr. Knutson: No further questions.

Hearing Examiner: Does PERK wish to cross examine?

Miss Bowers: Yes.

Hearing Examiner: Miss Bowers.

Miss Bowers: Okay. Looking at page 7 of your staff report and looking at goal W5, it states there should be an undisturbed corridor to maintain a natural state.

Nicole Gaudette: Yes.

Miss Bowers: On the property of Sunbrook where is this undisturbed corridor?

Nicole Gaudette: That would be the 40 feet along it. The 25 foot buffer plus the 15 foot building setback where nothing is allowed to be built, but more directly the 25 foot buffer...

Miss Bowers: Okay. And there will be no trees removed from that buffer?

Nicole Gaudette: Correct.

Miss Bowers: There will be no understory (ph. sp.) removed from that buffer?

Nicole Gaudette: No.

Miss Bowers: Blackberries.

Nicole Gaudette: I do not believe any work will occur in that buffer. Well, I'll have to look at the mitigation. I believe that some... Actually some blackberries will be removed for mitigation because blackberries are invasive.

Miss Bowers: And square footage-wise, how big will this corridor ultimately be approximately?

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Nicole Gaudette: You know I have not figured out the whole square footage yet. It would be the 25 feet from the existing culvert down to the city limits, the property line. So that's approximately 200 feet times 25 feet. So 4500 square feet...

Miss Bowers: I'm kind of envisioning the fact that it currently is approximately 13.7 acres and the majority of it is wildlife habitat. Do you feel that that square footage is adequate to substitute?

Nicole Gaudette: I am not an expert witness to talk about wildlife habitat. After hearing though the testimony of all involved of PERK and the applicant, I do believe that yes that is adequate.

Miss Bowers: So that fits in with Brier's comprehensive plan of providing some wildlife corridors and ultimately satisfies this goal W5?

Nicole Gaudette: I am not sure what you're referring to as to providing wildlife corridor.

Miss Bowers: My brain kind of lost it. Are you going to be...? Is Brier going to be doing any methods of monitoring to preserve that corridor and that is left undisturbed during construction?

Nicole Gaudette: Yes, Brier always inspects during construction throughout all stages of construction and even after construction is over, we regularly move throughout the city. We regularly give out stop work orders for any work that is being done illegally. We do enforce our laws.

Miss Bowers: And how often do you anticipate the inspections happening? Are they going to be daily? Once a week...? Once a month...?

Nicole Gaudette: I do not know at this point. I am not the construction inspector, but I would imagine that because it is a sensitive area several days a week.

Miss Bowers: Moving on to policy PR35 which is further down. Protect and enhance existing natural resources and environmentally sensitive areas. Given that your sensitive areas ordinance has not been updated since 1992, how did you determine on the ** property that it had limited sensitive areas to be protected...?

Nicole Gaudette: They are following the buffers set up by code. I could give you my understanding of our code. How it works... As you've heard from witnesses, I have yet to hear any testimony of any fish in this particular branch of 0056. There may be some bass in the stream. As Jim Myers himself said, highly unlikely that they would be in the stream because they're not a stream dwelling fish. Trout obviously cannot get upstream from some major... From a few major ** especially across 204th place and just downstream there's at least there obstacles that I've counted in my own observation

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that would be difficult for fish to pass... So when you look at our code, it's saying bigger streams with known fish have 100 foot buffers, 200 foot buffers. If you looked at the main branch of 0056 going north, there is a little bit in the city right up here. We don't have a straight out classification for that. What you do, how we determine those is we look at... Let me find my section here. We look at ** code 18.12.070 and we determine okay is there fish? What type of flow is it? It would probably be a category 2. And then you refer to 18.12.110 and look at that. Category 2 low intensity development, 100 foot buffer. We would probably give that section of 0056 100 foot buffer. We haven't, not that I have been here, we have not had any projects in there or a need to pre-classify that, however this section, this particular tributary is a little different. We have not seen any signs of fish and that's how this 25 foot buffer was developed. And even if you look in Kenmore's code, which has been brought up many times they even state that an intermittent stream without fish is a 25 foot buffer. So that matches the observations that previous people in the city who have written our code made. It actually matches. So that's how we have determined a 25 foot buffer is adequate.

Miss Bowers: Okay could you briefly point one more time to that little section of stream that you were just now talking about.

Nicole Gaudette: Right up through here. Here's the main branch of 0056. Here is the Sunbrook development. But if you go through the unincorporate (ph. sp.) Snohomish County up here, kind of the head waters or just some ground water up here in Brier... So if two branches within the city of Brier 0056.

Miss Bowers: Since you brought up the growth management act, one of the things that growth management requires is that cities have to update for sensitive area codes and Brier has chose not to do that. Kenmore has chosen to update their codes and as a result of reevaluations changed a lot of their rules, established many more sensitive areas than they had 15 years ago, 12 years ago. How does Brier justify not doing something comparable.

Nicole Gaudette: I am not justifying the fact that we missed an update. We are currently working on updating our code. However, you state that Kenmore has done all sorts of studies and that's how they've determined this 100 foot buffer. I have had a conversation with the city of Kenmore. They stated their concerns with our buffer and that they had a 100 foot buffer. I said, wow share with me your science. I'd love to see it. Our science doesn't say that. If you're science does, please send it to me... They have yet to provide it to me. They even spoke here at the hearing and never presented stating why they needed a 100 foot buffer for this particular section of Abbey View drainage. So I don't believe their science actually shows this particular branch of 0056 needing a 100 foot buffer.

Miss Bowers: The constant restoring sensitive areas is frequently astronomical. Should Brier find itself in the position of having to redefine this in the future?

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Courtney Kaylor: Mr. Examiner this is Courtney Kaylor.

Hearing Examiner: Miss Kaylor.

Courtney Kaylor: I'd like generally to object to this line of questioning. We are here to talk about the Sunbrook plat not generally the city of Brier's GMA compliance with updating their codes or general questions relating to the city of Brier's ordinances that are unrelated to the plat.

Hearing Examiner: I am going to sustain your objection. I hemmed and hawed only when you got to the last clause that said ordinances that unrelated to the plat. The subdivision code is related to the plat. The critical areas code is related to the plat etc, etc. I would disagree with that last clause, but otherwise I sustain your objection.

Courtney Kaylor: Thank you.

Hearing Examiner: And my disagreement doesn't change the outcome.

Miss Bowers: Okay. Moving on, Brier code 12-1220 addresses educational and scientific research.

Hearing Examiner: When you say 12.12.20 do you mean 020.

Miss Bowers: I have 12-1220.

Hearing Examiner: Now you're really confusing me.

Miss Bowers: Okay, I'm sorry. It has to do with educational and scientific research.

Hearing Examiner: Title 12 is street sidewalks and public places. 12.12 is right of way use permits. Could we be talking about some other title and chapter in the code perhaps?

Elizabeth Mooney: Can we confer here. We can find it.

Hearing Examiner: Does the witness have any idea of what they're trying to site here?

Nicole Gaudette: I think it might be 18-12 maybe is it 200? Is it loud activities? 18.12.080...?

Hearing Examiner: The problem ladies is when you give me a code citation that is not accurate, I can't find it. And if I can't find it, I can't reference it. And the city code doesn't have dashes in their numbering system. That's the state ** that uses dashes in their numbering system...

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Miss Bowers: I will have to go through and find it and I don't want to take the time to do that at this point.

Hearing Examiner: Okay another question.

Elizabeth Mooney: Can we just find the subdivision letter because that has it in it, I believe.

Miss Bowers: I will rephrase the question and if I find it later on, I'll submit it. Among the various agencies that you contacted about Sunbrook and provided information concerning Sunbrook, did you contact the North Shore School districts and particularly Lockwood elementary?

Nicole Gaudette: We contacted North Shore School district. There was some misunderstanding which I believe... I believe Bob Thorpe will talk about this later and clear it up as a SEPA official. There was a misunderstanding of email versus snail mail I believe. But Bob Thorpe can clear that up when he's speaking.

Miss Bowers: Okay than I'll reserve and ask my question for him.

Hearing Examiner: You haven't been asked a question. I wouldn't volunteer an answer.

Nicole Gaudette: I was going ** I am going to let Bob address it...

Hearing Examiner: Rule number 1...

Miss Bowers: In the comprehensive plan, the goal of Brier is to preserve wetland and fish habitat. How have you been able to accomplish this with the Sunbrook properties?

Nicole Gaudette: First of all, which goal are you referring to so that I can state specifically.

Miss Bowers: I hope this is the right code, 18.12.120.

Hearing Examiner: That's a municipal code. I'm guessing that's in the municipal code and not the comprehensive plan.

Nicole Gaudette: Yes.

Hearing Examiner: With your pauses, I would say you were sighting 18.12.120. And that section is entitled Fish and Wildlife habitat conservation areas.

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Miss Bowers: Correct.

Nicole Gaudette: All that says is that ponds, wetlands and streams shall be considered fish and wildlife habitat conservation areas.

Miss Bowers: Okay. And in previous testimony, Mr. Hadley mentioned that in the state of Washington it is presumed that a stream has fish whether it exists or not.

Hearing Examiner: I am going to object to that characterization of Mr. Hadley's testimony. That's not quite what he said and with subtle differences are rather important.

Nicole Gaudette: Yes.

Hearing Examiner: What he basically said was that streams that have certain characteristics are presumed to be fish bearing. There is a presumption of fish bearing under the, I think it's the Fish and Wildlife classification system. Not all streams, just ones that have certain physical characteristics there's a presumption of potential fish use.

Miss Bowers: And within this Brier code are you presuming that there's no fish and so therefore you don't have to preserve it.

Nicole Gaudette: That's two questions basically. And yes, under the code it does presume no fish use. We do not presume that we don't have to preserve it. We do require a 25 foot buffer and a 15 foot building setback.

Miss Bowers: Okay. Have you physically gone to Abbey View to confirm the fish existence or lack of?

Hearing Examiner: In what? In their lake or their pond...?

Miss Bowers: Yes, their pond/...

Nicole Gaudette: I have not gone there and spoke to them. I have heard stories of fish being present such as bass in the pond. As Carl testified earlier, yes they have planted bass in the pond.

Miss Bowers: Given that Abbey View cemetery uses irrigation and withdraws water from the lake, in your figuration of the preserved area of wetland buffer and stream buffer did you take to that loss of water at any level?

Nicole Gaudette: That's beyond my expertise to answer. I did not look into storm water or runoff issues. That would be Jason Henry, the city engineer for...

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Miss Bowers: Okay. Have you looked into dewatering the stream?

Elizabeth Mooney: I.e. no water for the fish to swim in. Have you looked up at Abbey View cemetery to see whether or not the people...?

Mr. Knutson: Objection **...

Elizabeth Mooney: Sorry

Mr. Knutson: One questioner, I thought was the rule.

Hearing Examiner: Yes.

Miss Bowers: Would it be okay since we lost our expert volunteers if we could work together.

Hearing Examiner: No. You can work together, yes. Absolutely... You have been doing that since we started four or five days ago. But you can you keep swapping back and forth asking questions, no. Can you start it and she finishes it, no. Can she start a question and you finish it, no.

Miss Bowers: So how can we...?

Hearing Examiner: I don't need to say that again. One of you per witness...

Miss Bowers: Okay. I will try to rephrase this question. When you were evaluating Sunbrook's water situations, did you take into consideration that Abbey View cemetery uses a great deal of water during the dry months that could be potentially contributing to the dewatering of the stream?

Nicole Gaudette: I believe what you're getting at is a water rights issue. And it has to do with how much water Abbey View takes out of the stream and to whether or not that affects fish flow. That is the beyond the scope of what the city deals with. That is a water rights or fully department of ecology issue. The amount of water they can take, that is up to the department of ecology. The city has no control over that whatsoever.

Miss Bowers: Okay. And then I have one last question that's general and specific as well. When I was going through the Brier code and going through it, I saw only a few references to codes connected to financial aspects of development and subdivisions. Could you briefly explain how you determine the bond?

Nicole Gaudette: I'm...

Miss Bowers: ** not the money for the bond...

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Nicole Gaudette: Which particular bond is it?

Miss Bowers: I think I was looking for a total figure not just specific per se.

Nicole Gaudette: Well, we have not calculated all bonds at this point. Most bonds are calculated closer to the time of issuing building permits or tree permits. There are several types of bonds and they're calculated closer to the time of construction.

Miss Bowers: Are there any additional codes that address the foreclosure aspects that seem to be very common these days in development?

Nicole Gaudette: No, that's not a normal thing to be addressed in codes. Some jurisdictions, cities or counties have been adopting temporary measures to allow developers extended timeframes to get past these economic timeframe. The city of Brier has made it a policy to take it one at a time. We have granted some extended time frames to developers as they have asked them rather than shutting down their project unnecessarily because their permit would expire at a particular time. We have extended to make sure we don't have those dead subdivisions.

Miss Bowers: Have you had to do anything like that with Sunbrook at this point?

Nicole Gaudette: No.

Miss Bowers: I think maybe this will be the last question. Earlier there was a citizen named Jim Abbey who discussed historical aspects of Sunbrook. Did you at any point give MDNS (ph. sp.) notice to the department of archaeology and historical preservation about Sunbrook?

Nicole Gaudette: No. And this is going to be a question for Robert Thorpe the SEPA official. He is going to talk about our SEPA procedure and how they were handled.

Miss Bowers: Okay. Did you at any point discuss through emails with Elizabeth Mooney the historical aspect of the old mink farm on the property?

Nicole Gaudette: There was, I believe two emails between us about historical aspects of the property.

Miss Bowers: Okay. And did you say unequivocally that there was no mink farm historically?

Nicole Gaudette: No. What I said is I have never heard of a mink farm there. I had heard a separate subdivision in town at one time had a mink farm and I asked if she may have been confusing the two and that I had never heard of a mink farm.

Miss Bowers: Okay. Thank you, that's all.

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Nicole Gaudette: Okay.

Hearing Examiner: Cross examination by the applicant, Miss Kaylor.

Courtney Kaylor: Yes, we have just a couple of questions. Miss Gaudette, I just want to be sure that I understand your testimony with regard to the buffer on the Abbey View pond drainage. Section 18.12.060.E states the drainage basin from Abbey View pond shall have a 25 foot buffer zone from the ordinary high water mark of the stream plus a 15 foot building setback or a 25 foot buffer zone from the edge of its recurring wetlands plus a 15 foot building setback whichever is greater. So the 25 foot buffer on the Abbey View drainage isn't dependent on whether there are fish there or not, is it?

Nicole Gaudette: No. I believe historically that's how it was developed possibly. I was not here.

Courtney Kaylor: So your testimony about fish presence in relation to that buffer simply related to your understanding of the city council's rationale when it adopted that section although you don't have any personal knowledge about that. That was just your understanding.

Nicole Gaudette: Yes.

Courtney Kaylor: But in terms of the plain language of the city code as it stands today, it really doesn't matter whether there are fish present or not in this section of the stream. The same buffer would apply regardless, correct?

Nicole Gaudette: Correct.

Courtney Kaylor: Thanks. That's all.

Hearing Examiner: That's it. Miss Gaudette can you get Exhibit B22? It's the MDNS plus other stuff as well. But I'm interested in the pages that are the MDNS. The latest... Page 8 of that exhibit which if you don't have a numbered MDNS, if you just happen give you an MDNS. Page 8, I think you would find is the third page of the MDNS. Okay. Mitigation measure number 6... It's an MDNS question, but it's really a planning question derived from the MDNS. Mitigation measure 6 requires the applicant essentially to pay for park facilities or pay mitigation fees as determined by the city council based on recommendation of the staff, consultants, and planning commission. I am sitting in the stead of the planning commission. Is there anything in the staff report or elsewhere in the documents that provides me a basis to fulfill my obligation under measure 6 to make a recommendation to the city council on how much park fees if any the applicant should pay? And if not, why not...? Why not isn't it there? And why not wouldn't they pay any if that's the...?

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Nicole Gaudette: That's a good question. I hope not to lose you in this.

Hearing Examiner: I'll try to follow ** it's still early in the afternoon so I should still be with it...

Nicole Gaudette: From what I understand, we do have a section in Brier municipal code in title 16 about park mitigation. It's either land or fees in lieu of land. We do have park mitigation fees. City council's, so far is what I've been told preferred to work that out on a case by case basis looking at the type of dedication provided by the developer. I have been actually doing some studies on that because one thing that I was told to do is figure out what is appropriate mitigation fee per lot. If it's just a straight up mitigation fee, no land dedication and that is per lot would be \$4,825 per lot.

Hearing Examiner: What's that number now?

Nicole Gaudette: That would be a...

Hearing Examiner: Is that from code or something?

Nicole Gaudette: Yes. What the code says is the developer shall provide land or fees in lieu of land to provide parks as... To meet the park level of service as defined in the comprehensive plan. And so it takes a bit of math juggling, but you look at the comprehensive plan and it's 12 and a half acres of park land per 1,000 people. And then...

Hearing Examiner: Now, which version of the comp plan are you looking at?

Nicole Gaudette: 2000**... It hasn't been changed. It has been the same for many... As far as I know probably back to 2000 plan. It's been the plan for many years.

Hearing Examiner: I am back to this... When you said that the council prefers to work this out on a case by case basis, were you basically trying to politely tell me that it's none of my business and that I should leave it to them?

Nicole Gaudette: No. What I was saying is that's why it wasn't directly laid out in the staff recommendations. But...

Hearing Examiner: But the mitigation measure says that planning commission and I'm acting in their stead in this case, is to make a recommendation. I need a basis upon which to do that other than pulling something out of the ether.

Nicole Gaudette: And then the code also says that land can be given. And then there are some calculations for land. If it's unbuildable like wetland, it counts, I believe as a quarter of the... Let's say, I believe they have about 2 acres of wetland, streams like that. So a quarter of that would be half an acre dedication. You know you multiply

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it by a quarter that's what it counts as towards mitigation I believe. It's really confusing and that's why city council works it out.

Hearing Examiner: I told you that I would stay with you, but you are losing me.

Nicole Gaudette: Okay.

Hearing Examiner: Let's go back a bit. You gave me a very specific number a few minutes ago. \$4,825 per lot for park mitigation... Will I find that in the BMC?

Nicole Gaudette: No.

Hearing Examiner: No I will not.

Nicole Gaudette: You will not find it...

Hearing Examiner: Where will I find that number?

Nicole Gaudette: You will not find it.

Hearing Examiner: So it is not an adopted number.

Nicole Gaudette: And it's not an adopted number...

Hearing Examiner: We get in trouble when we apply unadopted numbers.

Nicole Gaudette: That's why I said this is...

Hearing Examiner: Brier knows that.

Nicole Gaudette: Yes. This is what we've figured out doing some research. It's not adopted. What was adopted was a dedication for land or money in lieu of land. And it refers you back to the comprehensive plan. And then when you... But state law... I don't know how far to go into this. We can't take a 100% dedication. We would be in violation of state law because whenever a house sells, we get real estate excise tax or REIT money. So if we charge 100% compensation for parks and then took REIT we would be in violation. So what I did, we came up with a formula and we figured out this is the amount of parks that we have to acquire in the future. This is the amount of average REIT money we collect from developments. We subtracted that out and then considered that the city will have some other funds to make up for some park mitigation as well and that's where this number has come from. So you will not find it any particular place.

Hearing Examiner: So the \$4825 is not the 100% number. It's a discounted number.

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Nicole Gaudette: Yes.

Hearing Examiner: And has city staff discussed with PDI and/or its agents compliance with mitigation measure 6?

Nicole Gaudette: We have discussed it a certain amount about whether or not this open ** track should be city park or privately ran and... They were willing to work with us on that.

Hearing Examiner: Now's the time.

Nicole Gaudette: This is one thing that we have not worked on specifically.

Hearing Examiner: When my recommendation goes up to the city council, I do not want to say to them, gee I had three and a half days of hearings or however many it's going to be and after all that time, I can't give you recommendation on a certain part of this project. You're just going to have to sit up here and stew over it yourselves. I am not going to do that to them whether they were paying me what they're paying me or paying me absolutely nothing per hour. I would not do that to them. That's not who I am. I am going to give them a recommendation. And I hope a well thought out one. And my well thought out recommendation can be even better if I have good evidence on which to base it. I need help.

Nicole Gaudette: I have discussed this with the mayor and he's unsure of whether he wants the actual land dedication because it's kind of separated from the rest of the city. He's not sure if it will serve the residents of Brier. So were open to a monetary dedication.

Hearing Examiner: Brier's legislative and executive system is the mayor a member of the council or is the mayor is elected separately as the mayor?

Nicole Gaudette: He's elected separately.

Hearing Examiner: So he's the city's chief executive office.

Nicole Gaudette: Yes.

Hearing Examiner: He's not a member of the council.

Nicole Gaudette: Well he is on the council as a tie breaking vote, but he is separately elected.

Hearing Examiner: So he does get to participate in the legislative process but not necessarily dictate its results.

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Nicole Gaudette: Correct.

Hearing Examiner: Only if it comes up 3 to 3 or 4 to 4 or whatever the number is.

Nicole Gaudette: Yes.

Hearing Examiner: Does he put his oar in the pond...

Nicole Gaudette: Yes.

Hearing Examiner: Okay. So the mayor's position is that the city not ought seek dedication of any of this land or he's not sure?

Nicole Gaudette: He'd rather no.

Hearing Examiner: Okay. So his preference would be a fee in lieu.

Nicole Gaudette: Yes.

Hearing Examiner: And his preference for that fee \$4825 per lot?

Nicole Gaudette: I have not spoken to him in particular about that.

Hearing Examiner: You have not discussed this. Okay. Let me move on. Same document, next paragraph number 7. To mitigate etc, etc, etc the planning commission upon recommendation of the city engineer and community development director, I believe that's you shall further consider a site construction limitation during winter months, (i.e., November 1 to April 1, during preliminary plat review). We are in preliminary plat review. I am acting in the stead of the planning commission still and it is again time to discuss this mitigation measure. Does the community development director have any recommendation regarding winter construction limits?

Nicole Gaudette: I would like to refer that to Jason Henry, the city engineer while he is testifying.

Hearing Examiner: Okay so community development will yield its recommending authority to the city engineer.

Nicole Gaudette: Yes.

Hearing Examiner: Okay. I said yield, you'll defer to the city engineer. Okay. So I'll ask that one again. In the staff report, D1... Let me get there. On pages 5 and 6, in the middle page 5 I think this is a typo, but I do want to ask. in the middle of page 5 the paragraph discussing section 16.16.150 references made to the DOE manual parent (ph. sp.) 2005 ** on the next page at the end of the paragraph near the top of the page

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discussing section 17.29.010, it says as required in the 1995 Department of Ecology storm water management manual. Is that a typo or are there actually two manuals and we're actually talking about two different things.

Nicole Gaudette: It is a typo. We are supposed to be talking about 2005 for both things.

Hearing Examiner: Thank you. On page 7 in the same document, I think mention was made by me last week that I had three versions of the comp (ph. sp.) plan. The 2000 version, the 2006 update which actually says 2004 on it, but it wasn't adopted until 2006 and the 2008 version which actually was adopted in 2008 and actually says 2008. Which version... Let me preface this question with another question because it may make a difference. It may not. Does the city concur with Mr. Egge's testimony if you could remember way back when this started Thursday night, his testimony on completeness. Does the city agree with PDI that the application has to be considered complete back in 2006 because the city never advised PDI of an incompleteness?

Nicole Gaudette: I believe we have to, yes. To the RCW...

Hearing Examiner: Then my question is which version of the comp plan are we quoting here on page 7?

Nicole Gaudette: This is mistakenly quoted out of 2008, but I believe the only that might be different that is changed is that goal FS1 where it mentions 12,500 square feet. The city previously had a handful of properties that were zoned 20,000 square feet and we had to get rid of that to comply with the GMA housing requirement or we never would have met our housing requirement with 20,000 square foot lots. This property was never zoned 20,000 square feet so it didn't affect this at all. There were a few properties in the northern portion of the city.

Hearing Examiner: Okay. On page 8 of the staff report, in paragraph G I am unclear about some of what we're talking about here. The developer will report a covenant against the adjoining lots. I need to understand what that refers to that will A – place responsibility for maintaining the road. And I need to understand what that refers to. What are the adjoining lots and what is the road.

Nicole Gaudette: First adjoining was left in there from a previous version so scratch adjoining. It's just the developer will record a covenant against the lots. All of the lots in the subdivision... And when they talk about the road, it's the private road referred to in F. Private road, road D on the plat... The 34 foot road...

Hearing Examiner: Now there is and now with lack of manual dexterity, I am holding my finger where we just were and I've gone to Exhibit B18 which is the plat map. You can probably do it more easily because I am sure you've got a plat map that is not bound in a ** like mine is... And you're going to want to look at sheet 4 of 8. It's almost

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a monument marker. It's the circle with the... Well up in road D. There is one in the middle of road D. Do you see that?

Nicole Gaudette: This one?

Hearing Examiner: No. There you are, right there. Just to the left of the word that says road D. Just to the right of that little circular monument marker or I suppose it actually is marking the end of the tangent section in the beginning of a curve. Just to the right of it there is a line that goes perpendicularly across road D. Do you see that?

Nicole Gaudette: Yes.

Hearing Examiner: Does that line represent... What does that line represent?

Nicole Gaudette: That represents the width of the road.

Hearing Examiner: I see. Okay. Road A is public?

Nicole Gaudette: Yes.

Hearing Examiner: Road B is public?

Nicole Gaudette: Yes.

Hearing Examiner: Road C is public?

Nicole Gaudette: Yes.

Hearing Examiner: Road D is which I now just frankly realized for the first time is a lot more than the little stub, it's the whole north/south segment of the loop is road D and that's listed as all private.

Nicole Gaudette: Yes.

Hearing Examiner: Where is the dividing line between public and private?

Nicole Gaudette: I'd like to refer that to the city engineer just because he's more familiar with where these lines have been divided.

Hearing Examiner: Okay. So I can see some very interesting practical questions as time passes. Where does the city's maintenance end and where does the homeowner's association maintenance begin. So back to this thing on page 8 of the staff report in paragraph G, the covenant is going to be against all the lots so that all lots have to maintain have the private road?

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Nicole Gaudette: Yes. We decided that was...

Hearing Examiner: Even the lots that are not served by the private road...

Nicole Gaudette: Well, in all reality especially since it's a loop road, all the people will be using that road and the price for maintenance could be prohibitive if only 8 lots are paying for that. So it's better chance of having it maintained correctly if it's spread out among all the homeowner's. Like I said, it's circles. They will all be using it. Their guests will be using the roads.

Hearing Examiner: I don't know if I've got this as a question that I ever wrote down. Yes, question 43. You've already answered the first part of it. The cluster of lots presently allowed in Brier, your testimony on direct was no. I would then ask how does the lot potential mitigation provisions of 18.12.100 fit into this whole exercise that we're going through.

Nicole Gaudette: Yes, the lot potential mitigation was basically used throughout the redesign of the plans. As we mentioned there were several designs and once the factored in the reality that okay they weren't going to fill in the wetlands. They were going to try and do a more natural setting, they pulled back development from those areas and however they were able to get in the amount of lots they wished without needing to decrease the lot sizes. If needed, they could have decreased the lot sizes to as little as 8,000 square feet. However that was not needed.

Hearing Examiner: That was partly what I was kind of wondering. Why is the vertical segment of road D...? Strike that... Why does the vertical segment of road D have to be private?

Nicole Gaudette: Because city standards call for a 50 foot wide road. Private roads can be narrower. So to lessen the impact on wetland A, which Army Corp of engineers said yes, you can fill it. You know they decided not to fill it. They made it a private road and pulled it back and preserved the wetland.

Hearing Examiner: Let me play devil's advocate. If it were a public road and if one used the benefits of LPM, than for example lots 9 and 10 would not have to contain over 12,500 square feet. They could be shrunk to keep them out of the wetland. And the road could be public, could it not? Or am I missing something?

Nicole Gaudette: I believe that is correct.

Hearing Examiner: I call them native growth protection areas or tracks; I frankly can't remember what your critical areas ordinance calls them, but areas that we're preserving as buffers from critical areas. Are they to be set aside in separate tracks or can they be handled as easements over residential lots.

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Nicole Gaudette: They're supposed to be set aside as tracks.

Hearing Examiner: In the again B18, sheet 4, lot 5 shows a 15 foot setback from a stream buffer. But there's no track there that would create a stream buffer.

Nicole Gaudette: Okay that's the...

Hearing Examiner: Would there not need to be one? It says that the stream buffer is supposed to be a separate track and if that's not a separate track than it would not legally provide protection from the stream that's passing close by on the south, would it?

Nicole Gaudette: Can I have a minute to double check the code?

Courtney Kaylor: This is Courtney Kaylor. If could direct Miss Gaudette to 18.12.170A. I have to say that this section could possibly be worded a little bit clearer, but there is a sentence in this section that says sensitive area tracks are integral part of the lot on in which they are created are not intended for sale, lease or transfer separate from the parent lot. So I believe although the Brier city code does use the term sensitive area tract, it is not using that term in the way that it's commonly understood. Later on in that section under subsection E, note all lots containing adjoining separate sensitive area tracts identified as native vegetation protection easements or protected by deed restriction. So I think the use of the term tract is somewhat confusing in the code, but read overall it's clear that these tracts quote unquote can be applied as easements or deed restrictions on the lot of which they are a part. And the code goes on to provide specified language for the deed restriction in 18.12.170C.

Nicole Gaudette: I have just reviewed the code and I concur with that.

Hearing Examiner: It is not terribly clear because the note that's to appear on the plat says all lots adjoining separate sensitive area tracts. You didn't highlight that word. Not containing, but adjoining... So now we've got it the other way. We are looking back and forth here from one paragraph to the next in terms of how we're dealing with these. Let me ponder that in due course. What's the intent with respect to Lot 5? Is there to be a sensitive area tract on Lot 5...

Nicole Gaudette: Yes. Well not a... What we have proposed if you look at E, staff recommendation E page 8 in staff report is on both lots 5 and 6 that there would be a... First there would be a rail fence established along the buffer line. That's actually recommendation D. Recommendation E that there would be a wood or metal sign one on each lot along this rail fence that would state... Something that's in the code about protection of the sensitive area... So those areas would be fenced off from the remainder of the property of lots 5 and 6.

Hearing Examiner: Is that all that would happen or is the city saying there would be something recorded in a legal fashion that would tell the owner, hey dude you can't go

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in there and mess up that stuff? If you just gave a fence across the middle of my yard and if my real estate agent told me where my four lot corners were and they were on the other side of the fence, it might not be very long before I moved the bloody fence.

Nicole Gaudette: Yes. The building setback is defined on the plan which would be recorded that conditions of the final plat would be recorded.

Hearing Examiner: So you don't see it as a recorded tract?

Nicole Gaudette: No, I don't see it as a separate recorded tract.

Courtney Kaylor: Mr.** ...

Hearing Examiner: Miss Kaylor maybe in rebuttal you might want to address this...

Courtney Kaylor: I apologize, yes certainly.

Hearing Examiner: Oh jeepers here. I am going to leave B1. What's B19? Who is responsible for B19? Is that a city document? No. But maybe you can help me anyway. That's probably scary. I am going to ask you to help me with a question that was written by a citizen I believe, yes. The gentleman who wrote B19 on page 2, talks about Matthews Park. It's the third paragraph from the bottom. To gain even a foothold of understanding what Mr. Vick (ph. sp.) and company has in mind a good number of us here on this side of the green belt, whatever that is, have seen Matthews Park and the park at Creek Side and this is what we do not want here. Do you have any clue?

Nicole Gaudette: I can only guess it's in Kenmore or Lake Forest Park when they're saying this side of the green belt meaning the other side of Abbey View drainage. I'm guessing.

Hearing Examiner: I was guessing it was either referring to a park somewhere in the world or the name of a project somewhere in the world that was maybe called Matthews Park, but I don't know. I am just trying to figure out what the man's talking about. You can't help me. That's okay. Don't worry about it. It wasn't anything you did. The photos in B26 say Abbey View drainage pictures. Did the city generate those?

Nicole Gaudette: Yes.

Hearing Examiner: Okay. Are you familiar with them?

Nicole Gaudette: Yes.

Hearing Examiner: Okay. Tell me what I'm looking at.

Nicole Gaudette: You took them or put them in here.

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Hearing Examiner: I hate to do it, but I'd kind to like know where I am when I'm looking at these pictures. I know they're Abbey View drainage. That's what you say they are, but help me understand the rest of it.

Nicole Gaudette: So the first picture... These were taken, first of all, in October 2008 this first... The first two were taken in October 2008. The first one, with Exhibit B26 on the front of it, that one is when you're standing on the existing entrance road to the plat looking down. And this is the most water that I've ever seen there because there happened to be some rain at the time. But that is looking basically straight down at Abbey View drainage.

Hearing Examiner: Hold on a minute. So this is from that existing graveled access driveway looking south.

Nicole Gaudette: Yes.

Hearing Examiner: Now in the middle of that picture it looks like there is a weir (ph. sp.).

Nicole Gaudette: I believe that's just sticks and things going across.

Hearing Examiner: Just a board...?

Nicole Gaudette: Yes.

Hearing Examiner: Okay.

Nicole Gaudette: It's debris.

Hearing Examiner: I was thinking a very regular looking plankish looking object crossing the creek.

Nicole Gaudette: That's just a board.

Hearing Examiner: Okay just a board. Now what's page 2?

Nicole Gaudette: Next picture, same location but looking straight down. As I said there's kind of a perched culvert there. You can see the aluminum that culvert how high it is. There is another one, I think maybe below the set off moss covered bricks. But that's what's currently there that stacked culverts. If you're standing on top of the... This is the next one. Standing on top of that existing road, but you turn to the north, I believe one of the public testimonies was about this pond to the north, which really is the result of these culverts that are just kind of blocked from what I can see and it just doesn't drain out. It's not really a... It's not a natural feature from looking at it.

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Hearing Examiner: So when we replace the existing stacked culverts with the open bottom fish friendly culvert that fisheries has authorized, will the pond to the north go away?

Nicole Gaudette: I am not sure. I imagine some of that will and there will be actually more historic correct flow to the stream rather than this blocked up area.

Hearing Examiner: So page number 3 here, I'm still on that entry drive and I'm looking up stream?

Nicole Gaudette: Yes.

Hearing Examiner: Okay.

Nicole Gaudette: Because that is technically a fish barrier right there. If there were to ever be fish in the stream that would be one barrier.

Hearing Examiner: Okay. Now number 4...

Nicole Gaudette: The next one is kind of a little marshy pond and then kind of a stream channel beyond that. I think that's the next one in line. Is that the correct one?

Hearing Examiner: Okay.

Nicole Gaudette: And that is just north of this pond and the next property north and you can see the stream again up north of this pond is pretty small and there's kind of this wetland area up there. That was just showing what's coming down to the pond.

Hearing Examiner: so this is one property removed to the north?

Nicole Gaudette: Yes. It's right here actually. So this is the pond that I was looking at the top of the barrier and this is the property and this is the ** picture...

Hearing Examiner: Okay. Number 5...

Nicole Gaudette: Number 5 is further down. This is now in the city of Kenmore where the Abbey View drainage comes down here and it goes like this and then right here it enters a culvert and cross 204th place. This I am standing basically on top of the culvert on top of 204th looking upstream and you can see the owner's of the property have concreted this in narrowed the channel, sped up the flow. As you saw from the rest of the pictures, there was water but it was real slow. And I measured this drop. It's a good drop of probably about a foot and a half just before they hit the culvert.

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Hearing Examiner: So I am looking at concrete walls and a footbridge going across in the far background, is that right?

Nicole Gaudette: Yes that's it.

Hearing Examiner: Number 6.

Nicole Gaudette: And then that water goes across the street.

Hearing Examiner: Which way am I supposed to look at number 6 by the way?

Nicole Gaudette: Like that. now I've walked across 204th street where the culvert exits and this is looking down and so that's probably about 6 feet down which tells you the grade difference between the top of the culvert where it's all concreted in across the street down to where it hits the stream on the other side of the road.

Hearing Examiner: So you are saying it's about a ** 6 foot drop from across the street...?

Nicole Gaudette: From the top of the road which is where the culvert starts on the other side down to the stream on the south side of 204th place. And I have two pictures at this location. So this first one is just looking directly down at the stream...

Hearing Examiner: Okay. Is that number 7?

Nicole Gaudette: Yes. And the second one, I've walked down by the stream and I've turned and I've looked back at the culvert where it's come out which is about 3 feet above the top of the road.

Hearing Examiner: That's not my number 7. That's my number 8.

Nicole Gaudette: I wish you had colored pictures. I didn't realize you didn't get color.

Hearing Examiner: This is the one that you are showing me now.

Nicole Gaudette: Yes. And you can kind of see it there so where that culvert comes out, it hits the shelf where these logs are resting against and drops about 2 ½ to 3 feet down to the stream. So the culvert itself is angled and then it comes out and it drops again.

Hearing Examiner: And this is the culvert over here?

Nicole Gaudette: Yes. Here's the culvert. It comes out and there's this shelf and then it drops again.

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Hearing Examiner: And so number 8 is looking upstream.

Nicole Gaudette: Yes upstream standing on the south side of 204th looking at the culvert.

Hearing Examiner: How deep is this shelf drop?

Nicole Gaudette: About 3 feet.

Hearing Examiner: So let me sure I am understanding this correctly. We come into the culvert in picture 5.

Nicole Gaudette: Yes.

Hearing Examiner: And between picture 5 and 6 where we exit the culvert, you're telling me there's about a 6 foot drop?

Nicole Gaudette: Yes.

Hearing Examiner: And then after we've exited the culvert in picture 8 there's another 3 foot drop off that shelf?

Nicole Gaudette: Yes.

Hearing Examiner: Okay.

Nicole Gaudette: No, it's about a 6 foot drop total. Probably a 3 foot drop from where it enters the culvert on the north side of 204th to where it exits on the south side and then about another 3 foot drop there.

Hearing Examiner: Now, my picture number 7...

Nicole Gaudette: I don't have a good locational picture, but just south of 204th it's now meandering south slightly southeast. It goes through this kind of wetland area. This is standing on a private driveway. This is better. So basically what I'm doing is I'm following down to where it intersects the main branch of 0056. So here is where it crosses that 204th Place right there. Then it flows through kind of a channel and kind of a wetland area and then there's a private driveway which crosses here. It comes in from 64th. 1st avenue is a gravel driveway kind of comes in and kind of crosses over.

Hearing Examiner: So this is before we get to 61st.

Nicole Gaudette: Yes. If you stand on that private driveway looking northeast, that's where I took this picture kind of looking at the wetland it flows through after the drop out

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of that culvert and just before it enters another culvert. And then I turn around and go to the other side of that private driveway looking southeast and that's the next picture.

Hearing Examiner: This is the one that is in my book at number 9.

Nicole Gaudette: Actually it got put in backwards. It's actually number 10.

Hearing Examiner: Well, we're not going to change my book.

Nicole Gaudette: But that's fine. So number 10 is the next on in actual order. And that's the culvert going under that private driveway and it was too thick a brush to stand back there, but there's another foot or so of drop out of that culvert into this kind of... And then page 11 shows you I am now looking at southeast but over directly towards 61st avenue and that shows you what it drains through. Again it's kind of a lot of vegetation. Channel is not... It's kind of covered over, but it's there.

Hearing Examiner: So number 11 is looking towards 61st. That's the last picture I've got. We haven't talked about number 9 yet.

Nicole Gaudette: And that brings us to 9. I walked out to 61st avenue. Where the confluence of this branch of 0056 and the main branch is I'd say 30 feet upstream so north of that telephone pole in picture 11. That's where they run together finally. And so then I walked over again about 30 feet north of that telephone pole and looked straight down and this is 0056 right there. So I kind of ** pictures and went the whole way...

Hearing Examiner: So this would be the east tributary just north of the confluence.

Nicole Gaudette: Yes.

Elizabeth Mooney: Could Miss Gaudette clarify is it 61st or 60th that you've been looking at.

Nicole Gaudette: Actually 24th Place, 60th... Yes.

Hearing Examiner: Thank you.

Elizabeth Mooney: Could you clarify where the confluence is on this?

Nicole Gaudette: Yes. I'd say it's best shown on picture 11 and it's about maybe 30 feet north of that telephone pole. So to the left of that picture... That's approximately where they run together. It's hard to see because there's so much vegetation there.

Elizabeth Mooney: So it would be north of 204th street?

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Nicole Gaudette: South of 204th street.

Elizabeth Mooney: So the confluence is... I'm sorry not the confluence of the detention vault. You're talking about the confluence of the stream.

Nicole Gaudette: Of the different branches, yes.

Hearing Examiner: Okay thank you...

Elizabeth Mooney: Thank you.

Hearing Examiner: This is question 35. Why is the staff proposing Exhibit B28 a concomitant agreement? The requirement for a concomitant agreement has not existed in city code for a couple of years.

Nicole Gaudette: Yes. That was...

Hearing Examiner: I can give you precise quotes and ordinances and all kinds of things if you care.

Nicole Gaudette: Yes, we've talked about that. That form had been used for many years and just kind of started with the draft of another form. We can take out the wording concomitant. Really a concomitant is an agreement as a way the city can set forth conditions for the developer can go forward with. But we can change wording in this resolution and take out anything that would be related to a concomitant agreement. It's not an issue for the city. We'll just clean it up.

Hearing Examiner: Okay. I would as the city clerk if she could to provide me a Word version of B28. Thank you. I have got unfortunately a whole series of questions about B28. I say unfortunately only because I am afraid it will take some time for which I apologize. B28, page 3, section 5. It's talking about bonding. Maybe I can make this quicker by telling you my philosophy of conditions and plats and for the benefit of the appellant, I ask questions in a hearing presuming both that the opponents and that the supporters are going to win because if I don't I never get another chance to ask the question. So I don't know which way this is going to come out, but I am now going to start asking a whole series of questions that essential presume that I am going to be recommending that the council approve the plat. Do not presume that you know what I am going to do because I am asking these questions because you don't know and I don't know. Okay. My philosophy of conditions on a plat is that the conditions which really restate mandatory requirements of the municipal code do not need to be special conditions on a plat approval. I've worked for some jurisdictions who vehemently adhere to a radically different philosophy which is you load up the approvals with everything on the kitchen sink. And I've done plats in jurisdictions not much bigger than Brier where I have 70 or more conditions on a plat. And if I actually sat down with that staff and talked with them about it, I would find that probably 60 to 65 of them are

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merely repeating what's required by code or what's in there in engineering standards that have been adopted by the city council and so on and so forth. All of which I think is a ridiculous waste of time, but I can't convince to let me do it any differently and so I just roll over on my back like a little turtle in those commercials and flap my legs in the air and give up. I don't consider Brier to be in that situation. I don't have a long track record with you and so I want to get into this, how many of these are really just copying what's already in code. Section 5 is all about bonding. As best I could figure it out coming into the hearing, part of what's in this condition is copying 16.24.050 subsection A and part of it's not. Am I right?

Nicole Gaudette: Probably so. I'd have to look back and look at the exact code, but probably right. The code does talk about bonding. Some of that though, the tree bonds are actually in title 18. But they are in there.

Hearing Examiner: That's right. Line 130 on page 4 starting with the tree replacement fee, I couldn't find that in code for the bonding amount. Am I right that that's not in code?

Nicole Gaudette: I'll have to look at that again. I don't know if those exact numbers are there or not. They are in code, yes.

Hearing Examiner: The 300% and the 150%...?

Nicole Gaudette: Yes.

Hearing Examiner: This is also in code. Is there any reason that the city believes that that information from the code needs to be a special condition of approval?

Mr. Knutson: At this point as a city's attorney, what I would recommend is that the city address that question in its closing statement.

Hearing Examiner: Okay. Very good... Let me just then run through these, raise the question and you can address it in your closing statement and that will probably speed this up rather significantly. In section 6 is that process part of adopted code or adopted city regs. Does it have to be a special condition of approval? Starting on page 6, let's just do this... The next series of pages through 13 have items labeled from A to LL. My question is the same for all of them. How many are covered under existing regulations of mandatory applicability and if they are, do they need to be special conditions of approval? If they are covered by standards adopted pursuant to regulation, same question. Do they need to be special conditions of approval? A specific question for paragraph H which is on page which is on page 8, this one talks about every lot being provided with a stub connecting all footing and downspout runoff into the collection and detention system. If that's true than the applicant would be barred from having the footing and downspout levels spreaders that are being proposed. My question is, does condition H adequately reflect what the city and I think the applicant are intending? I

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question the applicability of paragraph R which is on page 9 to the subject of plat and I would like the applicant to address that. And I would just note in passing that paragraph CC begins on the bottom of page 11 and finishes at the top of 12 in part duplicates section 1 because it incorporates by reference the MDMS. And the notion that we're incorporating as conditions, comments in a staff report and comments in the hearing examiner's report in my opinion would be way too vague. And so I wouldn't buy that CC. Probably not at all... HH ends with XXXXX. That's obviously a placeholder for something. If I am going to recommend to the city council, it would be kind of nice to know what place its holding. A question regarding KK, page 12, does KK duplicate BB? And I would note in passing that there are two LL paragraphs. Don't worry about that because I never letter conditions just because they're usually more than 26 or there are frequently are more than 26 and if I'm recommending conditions to the council, they'll be numbered and not lettered. So I'll be changing all of them anyway. Does the director exercise tree permit authority under 18.20.030 before or after subdivision approval by the city council?

Nicole Gaudette: It would be before subdivision approval. Before final approval is when it would be. It would be... The permit would be given at the time that utilities and such requirements for final subdivision are allowed to be constructed.

Hearing Examiner: Done before construction...

Nicole Gaudette: Yes.

Hearing Examiner: Of improvements... Okay. A philosophic question... We're in question 37 if you're following my question list. Since the code makes it very clear that its community development director who has the authority to grant the tree permit or the tree cutting permit or whatever you want to call it, what role does subdivision review have in that process? Has the city traditionally, essentially allowed the council to usurp your authority and impose limitations on the plat which essentially would then force your hand in terms of how you and what you approve as a tree permit?

Nicole Gaudette: We did not have a tree ordinance previous to about a year ago and I would like to refer that to Jim Cutts to deal with when he's up here speaking. He can speak to that a lot better.

Hearing Examiner: Okay. 18.20.040 gives the director authority to adopt tree preservation guidelines. Have you done so?

Nicole Gaudette: Yes.

Hearing Examiner: And are they readily available?

Nicole Gaudette: They are actually in the code.

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Hearing Examiner: They're in the code? So the council adopted them, not the director.

Nicole Gaudette: I supposed you could say that, yes.

Hearing Examiner: You don't have the authority to adopt a code.

Nicole Gaudette: Yes.

Hearing Examiner: Okay. I am going to skip Q40 because I already figured the answer to that out. I think that's the last question that I had, but let me just... Exhibit P1; let me ask you this question. Exhibit P1 PERK's hearing statement, their opening statement rather, the bottom of page 6... It says the city of Brier has required only a 15 foot buffer for the stream? Do you have any idea...?

Courtney Kaylor: That's a typo.

Hearing Examiner: That's a mistake? Okay. Should it have been 25?

Courtney Kaylor: Yes.

Hearing Examiner: Okay. Thank you. I have no other questions. Any redirect...?

Mr. Knutson: Yes. Miss Gaudette with regard to the park impact fee issue is this something that you worked on with the SEPA responsible official Mr. Thorpe?

Nicole Gaudette: No.

Mr. Knutson: Is this something that he would be able to speak to since it is set forth in an MDNS condition?

Nicole Gaudette: Yes he could to speak towards this.

Mr. Knutson: Under cross examination by the appellants, you were asked about communications with the city of Kenmore. Could you also discuss the communications you had with the Department of Ecology's representative with regard to wetland issues?

Nicole Gaudette: Yes. In the September letter from Paul Anderson, I believe which was after SEPA comment period had closed. Paul Anderson had provided just a general Plat comment letter where he spoke about the catowallows (ph. sp.)/potential wetland where he believed that it was a wetland and needed to be delineated. So we asked the applicant to contact Paul Anderson and work that out and come to a conclusion. Ed Sewell wrote a letter to Paul Anderson, dated I believe November 2008 and he gave his reasons for why he believed it was not a wetland. And Paul Anderson never responded. Then March came along. We sent out the second... In January we repealed the previous SEPA. We sent out the second SEPA still no response from Paul

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Anderson whatsoever. And in June, I believe and I think it was even after our preconference hearing, Elizabeth Mooney calls me and said Paul Anderson still believes that's a wetland. I said I believe that was worked out. And I called Paul Anderson and he said, "No I disagree with Ed Sewell's letter". I said, did you tell anyone. No I didn't call anyone. I didn't write a letter. I didn't respond. I said okay, what do you want us to do about this? And so I called the applicant can you work with Paul Anderson again. He still believes it is not a wetland. And this is of course after the fact. After the developer had been working on this for a long time... We enclose our SEPA comment period and so the developer was working, has been working with Paul Anderson constantly for probably the last month since that last phone call tree occurred. And they have since proposed mitigation for the loss of water storage and wetland function overall. But yes, Paul Anderson did not reply. He finally got a letter to us I believe it was dated July 21st. So it took about 7 months, 8 months for him to reply. He had multiple chances. And I'd also like to state as far as 50 foot wetland buffer he spoke about, I never once heard about that. We have about 3 letters total from Paul and never once discussed that with us. Never said it was an issue. The first that we heard about it was during his testimony. As you know the state has mandated cities to process plats in 120 days. There are timelines. We can delay a plat. We give adequate time for comments and we work with agencies and the public as well as we can, but...

Mr. Knutson: And with regard to Mr. Anderson's testimony about the 50 foot wetland buffer, he was basing that on his opinion that the land use was high intensity, isn't that correct? And you've already explained why it's low intensity under the city code.

Nicole Gaudette: That is correct. He quoted it needed a 50 foot buffer because it was high intensity land use. When you look at the code, this housing falls under low intensity land use. It's residential 12,500 square feet with sewer hook ups.

Mr. Knutson: Thank you no further questions.

Hearing Examiner: I actually did have another one. Do you have any documentation that you might be able to submit into the hearing record relating to my appointment by the council to serve in this capacity?

Nicole Gaudette: Yes. I believe that has been Paula Swisher's; city clerk/treasurer has that available and will be providing it for the record.

Paula Swisher: **82...

Hearing Examiner: Have we already numbered it?

Paula Swisher: Yes. We gave it a number at the beginning.

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Hearing Examiner: Okay, thank you. Further cross examination of the witness based on what she just testified to?

Miss Bowers: Elizabeth will do it because I don't have anything.

Elizabeth Mooney: Is that alright.

Hearing Examiner: That's okay. Miss Mooney.

Elizabeth Mooney: Thank you. This is Elizabeth Mooney. Miss Gaudette, I believe you were testifying... I am just taking notes here about what you just were saying and I believe you were talking about a September letter from Paul Anderson when you were working here and that it came in, I believe you said... Can you just explain what you remember about Paul Anderson commenting to city of Brier about his concerns about the Sunbrook property and...

Hearing Examiner: I am going to ask you to be more specific because that's what she just spent the last 5 minutes doing.

Elizabeth Mooney: Okay. Are you aware of any conversations that Paul Anderson had with Jim Cutts prior to the deadline about the Sunbrook property.

Nicole Gaudette: No I am not.

Elizabeth Mooney: Are you aware that Paul Anderson was told by Jim Cutts that he could get his letter into city of Brier on Monday.

Mr. Knutson: Objection assuming facts that aren't in evidence.

Hearing Examiner: Sustained.

Elizabeth Mooney: Have you asked Jim Cutts about the letter that Paul Anderson supplied to Brier?

Nicole Gaudette: Yes.

Hearing Examiner: I am going to ask you to be more clear. There are at least two Anderson letters, maybe three in the record. Please tell her which one you want to ask her about.

Elizabeth Mooney: The letter that came in one weekend after the deadline.

Nicole Gaudette: Yes.

Hearing Examiner: Which one's that?

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Nicole Gaudette: That would be the September...

Hearing Examiner: The September one?

Nicole Gaudette: Yes.

Elizabeth Mooney: Did you have any information from Paul Anderson about being frustrated that he was not given information so that it could get in under the deadline?

Nicole Gaudette: No.

Elizabeth Mooney: If you knew that he had been told that he could have until Monday, would that have changed your opinion about wetland 4?

Nicole Gaudette: No it would not have. Even though it wasn't an official SEPA comment, it was still a Plat comment. We still paid attention to it. As I said, we asked the applicant to address it. It doesn't matter when it came in. We were still concerned with the letter and did what we needed to address it.

Elizabeth Mooney: If you had been told by an official that you had until Monday and you were an agency and your letter was not admitted, would you feel frustrated with that city?

Nicole Gaudette: Like I just said, his letter was admitted **...

Hearing Examiner: Wait a minute... You asked a question now give her a chance to answer it. If you don't like the answer than ask her another one...

Mr. Knutson: I am going to object whether this witness would feel frustrated about something that's really not relevant to this proceeding.

Elizabeth Mooney: The reason that I think that it's relevant is that Paul Anderson is not here and I was privy to his conversations while I was driving cross country. I knew...

Mr. Knutson: I object to this witness testifying about conversations. This is cross-examination not testimony.

Hearing Examiner: Objection sustained.

Elizabeth Mooney: What would have Brier had done differently if the letter had come in on Friday if anything?

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Nicole Gaudette: Nothing different... We would have still addressed the applicant to take care of the issue, to communicate with the ecology and determine if this area was a wetland.

Elizabeth Mooney: Thank you.

Hearing Examiner: PDI...?

Courtney Kaylor: No questions.

Hearing Examiner: Thank you Miss Gaudette. Who's next?

Mr. Knutson: Jason Henry.

Hearing Examiner: Mr. Henry, do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

Jason Henry: I do.

Hearing Examiner: Thank you. Please be seated, state your name and spell your last.

Jason Henry: Jason Henry.

Hearing Examiner: Thank you. Your witness Mr. Knutson.

Mr. Knutson: Thank you. Mr. Henry could you state what your qualifications as city engineer and how long you've held that position for the city of Brier...?

Jason Henry: I am the consultant city engineer for the city of Brier. I've been that for a couple years now. I am licensed professional engineer in civil engineering. I have a BS in civil engineering from Washington State University. I have been performing plat reviews using ecology manual and King County's surface water design manual for going on 10 years now and have been doing just that activity for the city of Brier for up to 8 years now.

Mr. Knutson: Did you participate in developing a staff report that's set forth in Exhibit B1?

Jason Henry: Yes I did.

Mr. Knutson: And does that staff report accurately reflect your conclusions and recommended conditions regarding infrastructure requirements for this subdivision?

Jason Henry: Yes it does.

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Mr. Knutson: Could you please summarize for the Hearing Examiner the storm water system and how it relates to the issues that have been raised by the appellants in this proceeding?

Jason Henry: Certainly. Where to start? The storm drainage system initially was designed to collect everything on site and convey it to the detention vault. We worked with the applicant to attempt to maintain hydrology within the wetlands by using dispersion trenches on subsequent revisions of the storm drainage report and plans. We did that on several lots. The applicant analyzed the flow rates tributary to the wetlands both pre-developed and developed and accounted for those areas that are bypassing the vault accordingly with... Point of concentration where the two flow paths meet from the bypass water and the detained water, that's where the peak flows and the durations must match the pre-developed condition. So the vault is much larger than it would be if they were to direct all the water to the vault without any bypass water.

Mr. Knutson: Could you explain why a vault was used in this project rather than a wet pond?

Jason Henry: A vault is required by code on subdivisions with greater than 5 lots where feasible.

Hearing Examiner: A vault is...? Aren't you backwards...?

Jason Henry: Yes, I am backwards. An open wet pond is required by code for subdivisions greater than 5 lots where feasible and with review of the trees on site, it was determined that it was more feasible for a wet vault to reduce the footprint and impact 2 trees.

Mr. Knutson: So it's correct to say that this is a situation where the city code had provisions encouraging a wet pond, but allowing for a wet vault except that because of the other city ordinance regarding tree preservation that there was a need to adjust the standard requirement accordingly?

Jason Henry: I would say that would be correct. And the wet vault provides equivalent treatment to a wet pond according to the department of ecology's storm water management manual.

Mr. Knutson: Could you also explain how low impact design features have been included in the storm drain system for this project.

Jason Henry: Yes there are a couple of low impact design features. Those being the dispersion trenches to disperse the water and allow some infiltration and recharge of the wetlands... I'd just like to also address some other conversation about low impact development techniques. The city does not allow pervious pavement because of the

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structural deficiencies in the increased maintenance. The city doesn't have the equipment or manpower to maintain a pervious pavement.

Mr. Knutson: Do you have any comments that you would like to make in response to comments that were submitted by the public or any other jurisdictions or experts regarding the storm drainage system?

Jason Henry: Yes, I would like to address... I'll start out with the city of Kenmore comments they submitted a couple of memos that were incorporated into the exhibits. I believe they are A8C and A8D, but I may be mistaken. They brought several points, but I just also want to point out that this is a preliminary plat hearing. The storm drainage report is preliminary. There still needs to be some finer details worked out for the final storm water design plan that would be implemented prior to construction permits.

Mr. Knutson: Is that typical of how storm drainage systems are designed and approved on projects like this?

Jason Henry: Yes it is.

Mr. Knutson: Could you explain that a little more?

Jason Henry: Just some of the details that require fine tuning, I guess would be a better way of putting it from preliminary to final plat. Some things may change. Impervious surfaces may change location or...

Mr. Knutson: What is the ultimate goal or requirement going to be ** for this project...?

Jason Henry: The ultimate goal or requirement would be compliance with Brier municipal code and the 2005 storm water management manual for western Washington.

Mr. Knutson: And arriving at that goal, were you starting to indicate that you are going to be taking into account comments that have been received during this proceeding.

Jason Henry: Yes we would. And some of those comments from Kenmore were that the water quality of pollution generating impervious surfaces and pollution generating pervious surfaces from driveways on lots abutting the south property line of the plat would not be receiving treatment because they would not be draining into the detention vault and water quality vault. And they stated that it needs to flow through a 100 foot native vegetation buffer for treatment and I believe this to be incorrect. And that BMP's T5.11 and T5.12 apply to driveways and pollution generating pervious surfaces and allow for a much shorter flow path through lawn vegetation and other

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landscaping vegetation as opposed to native vegetation and would provide treatment of the pollution generated impervious surfaces up to a certain threshold of 700 square feet.

Mr. Knutson: Are you going to be recommending or are you recommending at this point any additional conditions with regard to storm water?

Jason Henry: Yes. And again this is kind of the same light of fine tuning the design just to comply with the manual. The subdivision shall revise storm drainage plans and report to comply with minimum requirement number 5 on site storm water management and shall provide downspout dispersion on all lots that are determined to be feasible for dispersion.

Mr. Knutson: Would it be reasonable to include this in the city's closing statement?

Jason Henry: Yes.

Mr. Knutson: We will do that. Were there any other conditions that you would like to recommend regarding storm water at this point?

Jason Henry: In the same light, all pollution generating impervious surfaces and pollution generating pervious surfaces bypassing ** water quality structure shall provide water quality treatment before allowing the surface water runoff to leave the site... And that would be just documenting the fact that the dispersion from the driveways and/or pollution generating impervious surfaces that do not go to the detention vault are receiving water quality treatment before leaving the site.

Mr. Knutson: Thank you. With regard to other public comments besides those from Kenmore regarding storm water...

Jason Henry: Can we stick with Kenmore?

Mr. Knutson: Yes we can stick with Kenmore until you are done with them.

Jason Henry: The last, they brought up the issue of vault length to width ratios and the water quality vault. This is an issue that can be addressed during final design and can be... Internal walls can be used to create the required flow path within the vault. And the last one peak flow rates at the point of compliance, they noted that there were a couple of storm events from the mitigated condition that exceeded the peak flow rates for the pre-developed condition and these were minor exceedances (ph. sp.) of I think a couple hundredths of a CFS. But those to reduce the impacts to the stream, those should be at or below the pre-developed condition and this also could be addressed in the final design and by fine tuning their detention structure.

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Mr. Knutson: Okay, thank you. If that's all for Kenmore could you go onto other comments regarding storm water. For example the surface water runoff to the east onto parcels located in the county.

Jason Henry: Yes, there was some public concerns that runoff from the east would be increased and they have generally experienced flooding or observed surface runoff on their property and adjacent properties. The plat is required to maintain hydrology to the wetlands therefore we have to direct some water to the wetlands. The remainder of the water will be directed to the detention vault and we will try to... The applicant has matched the flow rates to the wetlands.

Mr. Knutson: Did you hear Mr. Beyerlein's testimony regarding storm water?

Jason Henry: Yes I did.

Mr. Knutson: Do you have any response to his comments?

Jason Henry: Yes. One of his comments was water quality storage is not shown on the plans. The report calls for 7/10 acre feet of storage required. The drainage report in section 4.4 addresses storm water quality and it will be provided in the vault with three feet below the live storage volume for the full width and length of the vault equivalent to the required storage volume. And they also mentioned the minimum require number 8 maintaining wetland hydrology, they need to analyze the wetlands pre-developed and post development using hydro period instead of peak flow rates. As I mentioned earlier, the applicants at the request of the city directed some water from roof runoff to the wetlands to maintain flow rates. Doug pointed out that or Mr. Beyerlein pointed out that the correct analysis would be a hydro period. I feel that this could be provided in final design. And the amount of impervious area that is dispersed towards the wetlands can be fine tuned and adjusted to maintain the hydro period of the wetlands.

Mr. Knutson: Do you have any response to Mr. Holtz' comments regarding storm water?

Jason Henry: Yes, Mr. Holtz said that predevelopment runoff from forested sites, pre-developed surface runoff from sites is zero from forested sites. The department of ecology's definition of surface water includes shallow ground water often referred to as interflow. The department of ecology model includes interflow and its calculations of the runoff from pre-developed and developed sites.

Mr. Knutson: So the DOE model will take into account what Mr. Holtz was concerned about?

Jason Henry: I believe it does, yes.

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Mr. Knutson: Moving on to your recommendations for conditions on other infrastructure requirements, could you briefly describe the conditions with regard traffic, streets and sidewalks and if you have additional recommendations regarding that subject matter?

Jason Henry: I'll start with the recommendation F in the staff report. It states the private road will be constructed to city street standards. I think this is a little bit vague. If it were constructed to city street standards, it would be wider, provide curb and gutter and sidewalk on both sides which we didn't require. I believe the word would have been ** off saying that the pavement section should be constructed to city street standards so that the pavement does not become degraded quicker than a public street would.

Mr. Knutson: While we're on the subject of the private road, in response to the hearing examiner's question to Mr. Gaudette, she indicated that you could also address Road D. Could you show us where you understand the road D to begin at it's the southerly end of it?

Jason Henry: I would say the private road maintenance would start at station 1+50 on road D, which is at the south end of road D. As lot 25 begins the point of curvature onto road A and the private would extend to the terminus in the hammerhead and then road C, the public road would end at station 8+20 roughly at the point where it intersects road D.

Mr. Knutson: In general with regard to traffic issues for this development, as the city's engineer are you satisfied that straight ** sidewalk infrastructure will meet the requirements of the city subdivision and engineering standards...

Jason Henry: Yes I am. They've provided internal plat roads that generally meets city requirements for width with the exclusion of the private road D. the frontage improvements typically require a curb ** and sidewalk along the frontage of the property and this would impact the wetland and the stream and be within the buffer so we have the applicant look at providing a crosswalk to the west side of Brier road so that we can provide pedestrian egress and ingress from the plat via safe route. The applicant has also worked with the school district to provide a walking path to the bus pick up location. And as far as traffic volumes and turning movements, the impacts are... The traffic volumes do not impact the level of service and therefore no additional requirements are needed.

Mr. Knutson: Did the city have any concerns expressed by adjacent jurisdictions with regard to traffic issues?

Jason Henry: I had a conversation with the city Lake Forest Park inquiring about traffic concerns and volumes coming from the plat and they reviewed the report and through a conversation with myself and the planning director, Steve Bennett, they did not have any concerns.

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Mr. Knutson: Referring back to the conditions that you're recommending the Hearing Examiner impose on this subdivision as set forth in the staff report, you just testified about clarifying condition F on page 8 of Exhibit B1. Are there any other conditions that you would like to clarify or are there any that you would like to add?

Jason Henry: Other than the two storm water conditions that I previously addressed, I believe there are none.

Mr. Knutson: Okay, thank you. Could you tell us briefly what your involvement...? Could you describe for us your involvement with the applicant and the applicants' consultants on this project and how it came to be that you are now making the recommendations that you are making to the hearing examiner?

Jason Henry: We've been working with the applicant and their engineers for quite some time. Going back and forth with preliminary plat drawings and reports to develop a design that we felt met city code... I believe that we have done just that. Not sure if that's where you were going with that.

Mr. Knutson: Yes so to wrap things up, is it your opinion that... Or what is your opinion with regard to how this subdivision complies with the requirements of the city code?

Jason Henry: It is my opinion that the development complies with city code and the 2005 storm water management manual for Western Washington.

Mr. Knutson: Thank you, no further questions.

Hearing Examiner: Thank you. Cross examination from PERK?

Miss Bowers: Yes.

Hearing Examiner: Miss Bowers, go ahead.

Miss Bowers: Yes, Miss Bowers speaking. Who's going to be maintaining the storm water vault?

Jason Henry: The city of Brier?

Miss Bowers: And how are you going to get their across the private road deed?

Jason Henry: We will probably require the easement to be extended to the public road.

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Miss Bowers: So potentially if private road D is not maintained correctly by the homeowner's association, the city of Brier possibly may not... Where would that be easement be located? Let me back up. Which lot would that easement be located on? 7, 8, 9...?

Jason Henry: There's an easement across lot 8 to provide access from road D to the tract where the detention vault is located.

Miss Bowers: Okay. So if the homeowner's association for whatever reasons doesn't maintain road D adequately, how will Brier get to that easement if you have to take large equipment in or something like that?

Jason Henry: Yes typically vaults are cleaned out with factor (ph. sp.) trucks. I believe the city would have the ability to maintain the road if the homeowner's association failed to do so and would be able to bill the homeowner's association for those improvements.

Miss Bowers: In speaking about Mr. Holtz, he suggested that since this is basically a loop road that the possibility of turning it all into one way going in one direction would then allow those roads to be narrower because you don't have to have two sets of traffic on there. Is there anything in the Brier code that would eliminate that idea?

Jason Henry: The Brier code does not allow for one way streets.

Miss Bowers: And why?

Jason Henry: I do not know.

Miss Bowers: A couple of questions concerning, I think it's concerning storm water. What will be the percentage of impervious surface on the total developed site?

Jason Henry: That is not a number that I have on the top of my head. I don't know.

Miss Bowers: Can you come up with a rough estimate?

Courtney Kaylor: I am going to object. She's asked the witness to speculate. He's just testified that he doesn't know off the top of his head.

Hearing Examiner: And I am going to sustain. What you're asking for is a number that is as a practical matter totally impossible to tell today. Because you are asking him to decide today how big every house is going to be that will be on every one of those 29 lots. He might be able to take the time and calculate the maximum impervious surface area based on the maximum allowance of city code. But in my experience that would

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be as misleading as saying there won't be any impervious surface there. Because the maximum impervious surface is what 35 or 40% of the lot ** which most people with 12,500 square foot lots don't come anywhere near it... Most people don't...

Miss Bowers: Okay let me try this question. Are you aware of the thresholds of imperviousness for percentages for impacted and degraded watersheds?

Jason Henry: No, I am not aware of that.

Miss Bowers: Is there anybody in Brier who might be aware of it, Brier staff?

Jason Henry: I am not sure.

Miss Bowers: Do you consider a BMP that retains average 31% of TN, 52% of TP, and 80% of TSS to be effective?

Jason Henry: I believe those are...

Hearing Examiner: It must be total phosphorous, total nitrogen, and total suspended solids.

Jason Henry: Yes. I believe that if the storm water vault meets department of ecology criteria for a water quality BMP and I believe that is the requirement that is held to this plat.

Miss Bowers: Okay. I think that's the last question.

Hearing Examiner: Okay, thank you. Any questions from PDI...?

Courtney Kaylor: We just have a couple of questions just to clarify some of your testimony. First does the 2005 DOE manual require a project to meet predevelopment duration or predevelopment duration and peak flow **...

Jason Henry: It requires both. In volume 1, the requirements it leaves out peak flows, but in the volume 3, I believe, it requires peak flow matching.

Courtney Kaylor: I just wanted to ask you about if I can find the section in volume 3 that addresses this issue. Do you happen to have a copy there?

Jason Henry: I do.

Courtney Kaylor: Excellent.

Jason Henry: I believe it's 3-1. Chapter 3 of volume 3...

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Mr. Knutson: I'm sorry is there a question there?

Courtney Kaylor: There is going to be a question. I apologize. I just need to find the section in the DOE manual that references this.

Jason Henry: No, I believe that's the wrong reference, sorry.

Mr. Knutson: She hasn't asked the question yet.

Hearing Examiner: He's trying to help her find what she's going to ask him the question about. This is kind of an interesting **... He's going tell the section of the question that she's going to ask him about.

Courtney Kaylor: That's right. You read my mind.

Hearing Examiner: Let me say that while I am watching them look through this that I am watching them look through what I guess is the DOE manual. If it is, it's about as big as King County's manual. And it's about a 3 inch stack of paper.

Courtney Kaylor: I am going to move onto another question while we find that section. I am sure you are happy about that. I wanted to talk about briefly about the hydro period analysis. You had testified that initially the storm water report didn't address, didn't direct any storm waters to wetlands on site, correct?

Jason Henry: Yes that was the initial submittal.

Courtney Kaylor: The city than requested some analysis about recharge of the wetlands on site.

Jason Henry: Correct.

Courtney Kaylor: And the applicant in the revised storm water report which is one of the exhibits that the city has provided, did provide that analysis.

Jason Henry: Correct.

Courtney Kaylor: And in your review of that analysis did you determine if that was an adequate analysis?

Jason Henry: Yes I did at the time.

Courtney Kaylor: Thank you. And eventually I am going to have to give up on my question here and just have my witness testify about this so I think that's what I'll do. Thank you very much.

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Jason Henry: I'll continue to look for it as well. I did see it.

Hearing Examiner: Mr. Henry I probably could have asked any number of witnesses this question, but you're the first one that's been storm drainage related since the question came into my brain... We have seen pictures in this record of what I think probably most if not all of us would agree in the room are serious urban flooding situations occurring in December of 2007. There's the pictures down at the marina and the condos. There's the pictures of the 2 projects in Lake Forest Park. They're probably some other pictures. My question to you is this; I have a vague recollection from having lived here in 2007 that there were some unusual situations that occurred that winter relating to storm drainage. Are you aware of any such thing or am I just remember something that's I have gotten the wrong year at the wrong time and the wrong part of the world?

Jason Henry: No, the December 3 event was an extreme rainfall event. And rainfall, I don't know the exact stats, but they do toss out the 100 year storm term, but I can't say that it was or was not. But you also brought up a good point in something I wanted to address in my direct testimony on the Lake Forest Park plat site. The pictures there show a clear cut site from property line to property line. This plat is not going to be doing that because of the phase grading and we're only going to be grading for the roadway construction, utility construction which will reduce the amount of disturbed soil and hopefully we do not have no occurrence of nature on that site.

Hearing Examiner: Do you happen to know if the city of Lake Forest Park, strike that. Let me ask that this way. Do you happen to know what drainage standard the city of Lake Forest Park follows?

Jason Henry: I do.

Hearing Examiner: And what is that?

Jason Henry: I do drainage review for the city of Lake Forest Park as well and...

Hearing Examiner: Ah, it's your fault. It's not Mr. Sewell's fault. It's your fault.

Jason Henry: They are currently using the 2005 King county surface water design manual and are going through code revisions to adopt the 2009.

Hearing Examiner: At the time these two or three plats that we had pictures of that are in Lake Forest Park were vested in going through review, was that the manual that was being used?

Jason Henry: I believe it was the 1998 manual at that time. 1998 King county manual...

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Miss Bowers: Can I clarify one point? In the Lake Forest Park plat which is in King county and actually in Kenmore, due to the... It was ** in unincorporated King county however due to a suit filed by PERK and in the settlement they had to bring their detention pond and the storm water stuff up to 2002.

Jason Henry: I believe I am only testifying for the plats in Lake Forest Park which would be West Brook and Trillium.

Hearing Examiner: Okay.

Jason Henry: I am not aware of the plats in Kenmore.

Hearing Examiner: It's the MDNS mitigation measure 7 requires me to consider winter construction limits. Does staff have any recommendation with respect to how I should comply with that requirement of the MDNS?

Jason Henry: The MDNS that is often on subdivisions with critical areas. This one being the wetlands and stream buffers and critical areas... Typically we do... We consider limitations on wet season grading because of impacts that can occur similar to what you saw in those photos from December and October storms.

Hearing Examiner: Maybe I didn't express my question clearly enough. The MDNS wants me to make a recommendation to the city council about whether it ought to do it in this case not what you do typically. If I mislead you, I apologize. Does the city have a recommendation? Does staff have a recommendation about what it wants me to recommend to the city council about this topic on this particular plat?

Mr. Knutson: Mr. Henry can answer that, but I would just like to let the Hearing Examiner know that we have another witness that will also address that. Bob Thorpe, SEPA responsible official who is requiring that condition 7. But if you have something to say...

Hearing Examiner: This sounded like the city engineers bailyrip (ph. sp.) so... I wondered what the city engineer's recommendation was?

Jason Henry: Yes it would be for areas around the critical areas we would require that then not do what her ** construction during wet season...

Hearing Examiner: And you would define the wet season as...? From when to when...?

Jason Henry: Typically as ecology defines it from I believe October 1 through April 31st... No.

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Hearing Examiner: April is one of those 30 day months... Whatever, the last day of April... Now...

Miss Bowers: I just have one...

Hearing Examiner: If there's no redirect than there's no further cross. Unless you want to ask him a question directly related to one of the ones that I asked him. If you do then I will certainly allow that.

Miss Bowers: I think it's directly related to one of yours.

Hearing Examiner: I have got my notes here so go ahead.

Miss Bowers: You can stop me with mid-question then. Given that the Department of Ecology issues their winterizing statements in the middle of October so that winterizing can go into effect by November 1 and given that the Trillium damage was done in early October before the winterizing occurred, if we have a 100 year rain incident. And this is moving to speculation, does Brier have any protections to neighbors for flooding before winterizing occurs?

Jason Henry: I don't think this is on the same lines.

Hearing Examiner: I am going to advise that you could probably answer just the last clause and that's the core question.

Jason Henry: Yes, the city requires a temporary ** and control plan B and install and maintained throughout construction...

Miss Bowers: And if those should fail is there a backup plan?

Jason Henry: Yes, the developer is required to have a certified erosion and sediment control lead on site and on call and they are responsible for observing and maintaining and implementing additional erosion control BMP's as necessary.

Miss Bowers: And will the neighbors adjoining have access to any phone numbers that would be necessary or if it ever occurs on a Saturday or Sunday or something?

Jason Henry: I believe so. I am not 100% sure, but they could call the city.

Miss Bowers: And there is staff that can handle it on the weekend?

Jason Henry: Yes.

Miss Bowers: That's all.

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Hearing Examiner: Thank you. Before Mr. Knutson calls his next witness, let's take a 10 minute break and during that break I'd like to meet with Mr. Knutson and Miss Kaylor and Miss Bowers and the city clerk.

Hearing Examiner: Okay we're back in session. We extended our 10 minute break for an additional 10 minutes so we could discuss scheduling and submittal of closing briefs etc, etc. Let very quickly let me indicate that the parties want to try and finish tonight so we are going straight through. We are not having a supper break. I think it will work. In fact, I'm optimistic for a not too horribly late ending of the proceedings. Number 2 in terms of closing, we are going to follow the following schedule. The due dates are 5 PM on the dates that I will state. A signed original copy of each of the things is to be provided to the city clerk for inclusion into the official record. Each item will be assigned an exhibit number that will be the next in sequence in the A series when it gets here. And by August 11, the city will provide what I am calling for lack of a better term a restatement of conditions or revised conditions or whatever you folks want to call it in writing. By August 18, the applicant will submit its closing brief. By September 1, the respondent will submit its closing brief. By September 15, the appellant will submit its. It's two weeks and two weeks and two weeks with the city crossing the restated conditions out one week ** so the applicant has one week after they become of record to integrate anything they want to say about that into the closing... And that's the schedule. I am not going to repeat that at the end of the evening just because I am not going to want to take the time to do it. So another city witness.

Mr. Knutson: The city's next witness will be Jim Cutts and Mr. Cutts will be testifying with regard to a revised exhibit I'm passing out.

Elizabeth Mooney: Mr. Galt just one question...

Hearing Examiner: Miss Mooney, wow.

Elizabeth Mooney: We do have one citizen witness who has been waiting much of the day and has a commitment at 5:30. Would it be possible to let her do her three minutes?

Hearing Examiner: What say you? Any objection.

Mr. Knutson: No.

Hearing Examiner: Okay we'll take the citizen out of order.

Elizabeth Mooney: Thank you. No, I did want to hear what more witnesses said, but...

Hearing Examiner: Well then did you want to sit down and listen?

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Elizabeth Mooney: I'll wait. I would like to wait until 5:30 if that's okay.

Hearing Examiner: 5:30...? That's an hour from now. Sure. You need to coordinate these things better here folks.

Elizabeth Mooney: I'm sorry.

Hearing Examiner: We will await the witness later. Come on back sir. I have been handed a revised Exhibit B01A. In the interest of keeping the record clean, we will enter this as Exhibit A19.

Mr. Knutson: I'll ** that...

Hearing Examiner: Would you raise your right hand please sir? Do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

Jim Cutts: I do.

Hearing Examiner: Thank you.

Jim Cutts: Thank you. My name is Jim Cutts. Just a quick review of my background... I have a Bachelor's and a Master's with a focus on planning. I've been doing this for... I was in planning for 38 years, 31 of which I was the director so... And now I'm working as a planning consultant, but briefly. It's not going to live very long.

Mr. Knutson: Could you explain your role in this particular project for the city?

Jim Cutts: I was the community development director here starting in May of 2006 and I terminated my employment with the city in December 31, 2008 of which I was the community development director at that time.

Hearing Examiner: Are you going to ask him questions or are you just going to let him run?

Mr. Knutson: I asked him a question; he hasn't gotten to the answer yet. So what has been your role in this project?

Jim Cutts: My role in this project has been as community development director. This project was started when I walked in the door in May of 2006. And we've been working on it ever since and since the end of the year I have been working as a planning consultant with the city working with the applicant.

Mr. Knutson: What have you been focusing on?

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Jim Cutts: I have been focusing on the tree ordinance primarily.

Mr. Knutson: Does this revised exhibit that's been numbered A19 reflect what you've been doing on the tree preservation issue?

Jim Cutts: Yes sir.

Mr. Knutson: Could you explain it please. And also explain how it's different from what's in B1.

Jim Cutts: Basically what this is is an outline of what has taken place with the tree removal application that was submitted by the applicant and it notes in there a number of things in terms of the total number of trees, the size of the site, what trees are going to be removed, and how many trees are not. Basically what some of the changes and I'll go through this page by page and talk about what's in this staff report ** attachment to the staff report... As we've noted through a couple different plans, we've gone through several plans. Actually the latest one that has not in the report is dated July 1, 2009 and that could be added to the third paragraph down. There are 791 trees. The change is 791 there was originally 794 trees surveyed. It was a complicated process because of the number of trees involved. At one point we had over 800 trees involved. At one point we had over 800 trees and there's been several surveys and a lot of conversation taking place as a result of the different plans that have been prepared and it became refined as we went along. I also noted in the original report that there was 30 acres. It's 13.7 acres and I did that in a couple places. As far as the tree removal and application, as I mentioned there is 791 trees. Of the 562 of that non-significant trees there are 562. And the applicant wishes to remove 383. Previously I had mentioned that was 447. There are an additional 179 non-significant trees that will possibly remain on the site. The 179 before was 115. There are a total of 229 significant trees. Previously noted it was 232 on the 13.7 acres and also before I noted it was 15 acres as I mentioned. 16 of those trees are significant. So let me just run down to make it real simple. There are of the non-significant tree category there are 383 trees that are non-significant that are scheduled to be removed. Of that and there's 179 non-significant trees that are to be retained. So that's a total of 562 trees. It becomes a real numbers game. As far as significant trees to remain there are 15 of them originally. There were 8 that were noted in the staff report. There are 87 significant trees possible to be retained and significant trees to be removed are 111 and 16 existing significant trees were either dead, diseased or dying as noted by the arborist. So those have to go. So there's 229 significant trees all total and of those 15 for sure will remain and 87 possible to be retained. What the non-significant possible to be retained and the 179 to be retained which is non-significant... I'm sorry. And then 87 significant trees possibly retained is a matter of the developer and the city getting together and determining what trees are going to stay and what not. Some of them are problematic right now basically because of site design. It depends on what the site design is for each of the sites. For example, some of them are problematic because it might be sitting in the middle of what's shown in the plan right now as a driveway.

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Where possible if we can move the driveway to the opposite side of the lot and retain that tree that's what we'd like to be able to do. And the applicant has accepted that as a possibility. I think the applicant has been very cooperative. We've gone through three, maybe four different sets of plans and we've had constructive conversation with regard to those plans.

Mr. Knutson: Why did we have to go through so many sets of plans?

Jim Cutts: For one thing, we were getting different totals. There were a couple of different landscape architects who we were working with and as time went on, it became more refined. And that's one of the reasons why we have different totals. Plus there's over 800 trees. Originally there was well over 800 trees that were noted, but 37 of those were off site. They were on a different location. So those were taken off and that's how we got to 791 eventually.

Mr. Knutson: Can you explain how the sequence of tree removal and retention or replacement will occur?

Jim Cutts: The sequence of the tree removal...

Mr. Knutson: Yes, how it will be decided and when it will be decided.

Jim Cutts: That will be decided at the time when we receive the plans and we'll go over the plans with the developer at that time and then make the decision as to what can stay and what needs to go.

Mr. Knutson: And when will that occur?

Jim Cutts: Whenever we receive the proposed set of plans and the location of the buildings on the lots. So hopefully that will answer one of your questions in terms of running through the numbers on these. I think the question that you asked earlier had to do with the tree preservation guidelines. That's 16.16.160. I would point out that there's a may associated with the tree preservation guidelines and we want to be able to do those as quickly as possible.

Hearing Examiner: That's 16.16 what...

Jim Cutts: That's... I'm sorry I'm looking at the wrong one, 18.20.040. 18.20.040 the tree preservation protection guidelines, the way that the code reads right now the director may adopt tree preservation protection guidelines to further the purpose of this chapter. And A the specie of tree recommended and preferred to be planted, preserved, replaced and replanted on the streets of public properties of the city. Nothing has happened on that as of yet. So that still remains open. The procedure and criteria for applying and improving tree fund grants, we haven't had the opportunity to do anything with that. And then C any other tree preservation and protection and planting

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procedures that the director deems necessary... Chapter 18.20.130 which deals with the protection is in the code now. And 18.20.150 which deals with tree preservation is also in the code.

Unidentified female: Could you repeat those numbers one more time?

Jim Cutts: Sure. For tree protection 18.20.130 and preservation is 18.20.150.

Mr. Knutson: What is your conclusion with regard to how this project will or will not comply with the city's tree ordinance requirements.

Jim Cutts: My conclusion is that it complies with the tree ordinance and any and every form. We have been working with the applicant and it meets the code. There are still other steps that we need to go through in terms of bonding and that sort of thing for the preservation and protection sections that I was talking about, but that wouldn't be something that you'd do right now.

Mr. Knutson: Thank you. Next could you refer to pages 4 and 5 of your revised report, Exhibit A19? And is there any information there that would be of relevance regarding the SEPA appeal issues that have been raised by the appellants in the context of tree removal?

Jim Cutts: I don't think that there's anything that's that relevant. I just address some of the issues that were brought up and I think there was some... There was just an educational process as far as I was concerned in terms of what to look for the appellant on suitable for retention trees and trees unsuitable for long term retention and how we deal with that. The appellant also expressed a concern that new owners of individual lots have the ability to cut down trees. That was a decision that the city council made so we could go forward with the application. Everybody comes in. The plat is done; the houses are built, if somebody wants to cut down a tree they can cut down a tree. The council's concern was that the homeowner should have the ability to have that flexibility simply because there might be some need for maintenance or the tree creates a problem for one reason or another. So that was left in the code.

Mr. Knutson: Thank you. Unless you have anything further that you'd like to add, I don't have any more questions.

Jim Cutts: I don't think so.

Hearing Examiner: Any cross examination from PERK?

Elizabeth Mooney: I'll attempt it. Hi Mr. Cutts. Elizabeth Mooney.

Unidentified female: Speak up.

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Elizabeth Mooney: Okay. I am just starting off here welcoming you back. I am a little still confused about where I'm going with this, but it seems like you were taking of this property for a while and then it transferred to Nicole.

Jim Cutts: It's because I retired.

Elizabeth Mooney: Okay. So you retired in December. When did you retire in December? I think I heard you say that... Could you clarify, the council said that the public would have the flexibility to cut down their trees on their own property. Is that correct?

Jim Cutts: Right.

Elizabeth Mooney: Do you know a Brier resident named Wendy Abbey?

Jim Cutts: Wendy Abbey. Sounds familiar...

Elizabeth Mooney: Wendy Abbey is a friend of mine and she talked to you about a year ago and I just want to compliment you because she said that you were a really nice person and that you had a tree ordinance.

Jim Cutts: I think she's right.

Hearing Examiner: On which part?

Elizabeth Mooney: I trust my friend Wendy Abbey.

Jim Cutts: So do I.

Elizabeth Mooney: And so what I would like you to tell me is that I'd like to have you say that everything's going to be fine when this plat goes through and your tree ordinance is there. is it true or not that the Sunbrook property with your "tree preservation" plan with that intact, is it possible that that Sunbrook property would be able to be a virtual clear cut visible from Brier Road by the time everybody's finished buying their lots, cutting down their trees on their own private property?

Jim Cutts: Not if it's adopted the way it is right now. For one thing, the area that abuts Brier Road south of the 243rd entrance that I'm assuming that eventually that's what it will be called, the whole area the trees will be retained in there. There's a couple in there that might go, but for the most part... And that includes non-significant trees as well at the very southwest corner before you get to Lot 1. So as far as the comment about being able to see through from Brier Road... And I would say that the other part of it is that the applicant has been very good in working with the city to try to retain as many insignificant trees as they possibly can. Insignificant trees are Black Locust Alders, Cottonwood, Lombardi Poplars and trees that are 8 inches in diameter, 4

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½ feet high. They've gone a long way to work with us. There's going to be situations where some of those trees might have to be removed for one reason or another, but an estimate would be of the insignificant trees that anywhere from... Let me rephrase that. Significant trees possible to be retained will range anywhere from... That will be saved could range anywhere from 200 to 280 trees. And they have a right to cut those down, but they said they would work with the city.

Elizabeth Mooney: I would like to refer to Brier municipal code 18.12.020 and that would be our position that the city code states an intent that activities affecting sensitive areas should not threaten sites needed for educational research and living classroom.

Hearing Examiner: That's a very long code section. It has three subsections and each subsection has four or five... One of them has got nine and one's got 10 and one's got four subsections. Can you help us find what you're quoting a little closer?

Elizabeth Mooney: I'll make it even simpler here.

Hearing Examiner: Just give us the full citation and that will make it perfectly simply.

Elizabeth Mooney: Okay. Can I just ask...?

Hearing Examiner: 18.12.020 what? Where did you quote from?

Elizabeth Mooney: Our letter...

Hearing Examiner: You didn't quote from the code.

Elizabeth Mooney: If it's the... Right now I'm just trying to make reference to ** education and the site... In my most feeble volunteer method, find out whether Mr. Cutts in his community development director position would consider this property to be more valuable to education, research and living classrooms intact almost all cut down?

Mr. Knutson: I am going to object to the question because it refer as it was originally phrased and I am not sure what the intent is exactly now, but it refers to a city code provision that discusses destroying a site. And there's no evidence in this proceeding that this site is going to be destroyed in anyway. The site as 18.12.020B9.

Hearing Examiner: I don't see that citation as being relevant to this property at all. So I am going to sustain the objection. This piece of privately owned property is not an outdoor via physical laboratory. It is not a living classroom. It is not a training area. It is a privately held piece of property. That provision doesn't apply.

Elizabeth Mooney: Is one of the developers the Vaughns, Mr. Cutts?

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Courtney Kaylor: I am going to object to this question. The hearing is about the impacts of this proposal not about particular individuals who may or may not be developing.

Elizabeth Mooney: I was trying to relate it to the scientific classroom and the relevance to the owner, that's all.

Hearing Examiner: Objection sustained.

Elizabeth Mooney: Okay. Did you give the environmental checklist to the former owners of the property to find out if it had ever been a mink farm?

Mr. Knutson: Objection. Beyond the scope of the direct...

Hearing Examiner: I've been fairly lenient on that so far, I'm not going to change now. Overruled.

Jim Cutts: No.

Hearing Examiner: No, I don't want to know where you're going with this, but I think you asked him entirely the wrong question, but he gave you an answer to the question you asked and that's what you got.

Elizabeth Mooney: What I'm wondering is whether the citizens and children that live in Brier that are part of Lockwood Elementary would feel that there had been a significant adverse... Would know that there had been a significant adverse environmental impact if the trees that are on here are cut down and the old buildings that used to have mink farms were destroyed?

Hearing Examiner: Which of you is going to object first? I am not laughing at you, but that question is so loaded?

Courtney Kaylor: Mr. Examiner, I am going to object. It calls for speculation as to what folks who are not here in the room may or may not feel or think or believe.

Hearing Examiner: You are asking him to speculate on what somebody else is going to think about something. Absolutely sustained... Besides the multiplicity of the elements of the question, I don't even think that we have to get there. He can't tell you what somebody else would think about something any more than you can tell me what he would think about something. See that's what's wrong with your question.

Elizabeth Mooney: I guess in terms of notification, did you take the checklist that was prepared and ever distribute to the people who would have known about the history of the land, i.e. the people who lived on the land that was purchased by the Sunbrook group so that they could answer the questions accurately about whether or not there

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had been a historical significance on this property? Did you distribute the checklist to people that would be knowledgeable?

Hearing Examiner: I am going to stop this line of questioning. I'm waiting for council to do it, but they're taking too long to jump in on this. Nothing in your appeal challenges any aspect of historic preservation. It's beyond the scope of the appeal.

Elizabeth Mooney: Okay. I get that. I'm sorry.

Hearing Examiner: Stick with what Mr. Cutts testified to about trees and we may get somewhere.

Elizabeth Mooney: Can I defer to my partner here in this one little... Okay.

Hearing Examiner: Miss Bowers are you willing to take it back?

Elizabeth Mooney: Now, okay, alright... So on the Black Locusts, do they hold a large column of water so that if they were cut down...?

Hearing Examiner: Why don't you stop at the first one? Let him answer that and then go on with the next part of the question. Multiple questions get everybody upset, especially attorneys and judges and witnesses. Do Black Locusts hold a large column of water? You can interpret that anyway you want.

Jim Cutts: I don't know. I don't know what a large body of water is. Column of water... I don't know how big of a Locust that you're talking about. I don't know enough about Locusts to know how much water they retain on this lineal foot anyway. All I know is that it's an insignificant tree as defined by the code and as a matter of fact there aren't a lot of Locusts out there anyway. There's a lot of Cottonwoods. There's a lot of Alders out there.

Elizabeth Mooney: So is it possible that as they cut down some of these "insignificant trees" that these trees could cause a significant adverse environmental impact due to water being released?

Jim Cutts: I suppose I would defer to Mr. Thorpe to answer that question.

Elizabeth Mooney: On Lot 4 is it in your opinion a possible danger to downstream residents in Kenmore to be cutting down all of those white trees?

Courtney Kaylor: Objection. This is outside the scope of direct and outside... This witness has not testified about storm water.

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Hearing Examiner: I'd allow it on the basis that's it's just outside the scope of direct because I haven't tied people tightly to that. Are you asking him a storm water question?

Elizabeth Mooney: I'm asking him as community development director if he considered the consequences downstream and if he'd talked to...

Hearing Examiner: That isn't the question you asked him.

Elizabeth Mooney: Well I was leading to...

Hearing Examiner: Is that the question that you wanted to ask him?

Elizabeth Mooney: I'd like to ask him that question.

Hearing Examiner: Consider you've been asked.

Jim Cutts: So what's the question?

Hearing Examiner: As former community development director did you consider the impacts downstream when you were reviewing the plat I guess. Is that the question?

Elizabeth Mooney: Yes.

Jim Cutts: I wouldn't have considered what impact it would have had downstream, no.

Elizabeth Mooney: Okay.

Jim Cutts: I would leave that to the SEPA official and the engineer.

Hearing Examiner: Just to clarify, it's not your testimony... Is it your testimony that the city would not consider downstream impacts at all?

Jim Cutts: She asked if I would consider and I would say no. It's the job of others to do that.

Hearing Examiner: Others within the city...?

Jim Cutts: Right.

Hearing Examiner: Okay.

Jim Cutts: That question may be asked of a SEPA official.

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Hearing Examiner: Okay. ** lot of questions here...

Jim Cutts: I would say that there are on Lot 4 that there are about 8 trees, 4 of which are being saved and 2 others of which are under consideration.

Elizabeth Mooney: For the record what it is the total number of trees potentially to be retained.

Hearing Examiner: Significant or insignificant or both...?

Elizabeth Mooney: Both.

Jim Cutts: Well in the neighborhood of... Non-significant trees to be retained as 179 and significant trees to remain is 15 significant trees. Possible to be retained is 87.

Elizabeth Mooney: Okay. Of those trees that are left and they're on individual lots when the new property owners purchase their lots, under Brier code, how many trees can they cut down in a year.

Jim Cutts: It doesn't specify in the Brier municipal code.

Elizabeth Mooney: There's no limitations?

Jim Cutts: No.

Elizabeth Mooney: So if there were 8 trees on a particular lot under the Brier code they could take all 8 out at once?

Jim Cutts: Correct.

Elizabeth Mooney: So that means potentially with the exception of the green trees that are on the northeast and the green trees on the southwest all the rest of the trees could be totally eliminated if those homeowners chose including any new ones that might be planted?

Jim Cutts: We haven't even talked about that part. But since you mentioned, I will mention something about that. The first part of your question is could they cut down all the trees? That's what the code allows. If they want to cut down the trees on their lot, they can. The other part of the question is those trees that are significant trees to be removed; they have to be replanted at 3:1 basis. The trees especially like you mentioned a lot of those are going to go into at the northeast. I forget exactly how many trees are on that northeast quadrant in between lots 10 and 11 and east of lot 9, 8.

Elizabeth Mooney: So conceivably just looking at the tree plan...

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Jim Cutts: You are not considering the street trees I presume because those are the cities.

Elizabeth Mooney: Yes, I was going to ask that question so thank you. So within the structure of all the lots that are left with the exception of the street trees that will be planted, potentially the homeowners could remove everything else?

Jim Cutts: Yes ma'am.

Elizabeth Mooney: And there's no definition of a hazardous tree that they have to limit it to hazardous trees or anything?

Hearing Examiner: He just answered your question.

Elizabeth Mooney: I was just going to clarify.

Hearing Examiner: You ladies have gone back and forth once. I am not going to let you bounce back and forth.

Elizabeth Mooney: I'll quit from now on. I won't do it again.

Hearing Examiner: You're not doing it this time.

Elizabeth Mooney: My last question would be connected to the various wetlands, if these trees are potentially left on the lots do you see a potential significant adverse environmental impact by the new homeowner's on the protection of the wetland. Their removal of trees...

Jim Cutts: Do I see any potential environmental impact? I don't know.

Hearing Examiner: Significant.

Jim Cutts: Significant. I am not prepared to answer that question.

Elizabeth Mooney: I'm done.

Hearing Examiner: Any cross from the applicant?

Courtney Kaylor: Yes. Very briefly Mr. Cutts, I just wanted to clarify that our understanding is accurate about the tree permit requirements. It's the applicant's understanding based on 18.20.060 that only tree removal on a developed single family lot is exempt from a permit requirements and that in this case the builder of new homes on these undeveloped single family lots would need to obtain a tree permit prior to removing trees. Is that correct?

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Jim Cutts: Correct.

Courtney Kaylor: And in order to obtain a tree permit, the developer would need to comply with all the requirements relating to tree permits contained in the city code, correct?

Jim Cutts: Right.

Courtney Kaylor: And those requirements include the requirement in 18.20.070B that the removal will result... That the plan will result in the removal of no more trees or vegetation than is necessary to achieve the proposed development, correct?

Jim Cutts: Say it again. What's the site?

Courtney Kaylor: It is 18.20.070B and I am looking at the second sentence is that section which says that if the staff determines that the plan is a compliance with the provisions of this section and will result in the removal of no more trees or vegetation than is necessary to achieve the proposed development the permit shall be approved. So then finally the tree replacement requirements of 18.20.110 would apply to any trees removed on individual lots in the subdivision, correct?

Jim Cutts: Yes.

Courtney Kaylor: Thank you. Those are all my questions.

Hearing Examiner: I have a question. Can you relate the tree removal numbers to the phasing of the clearing and the grading in any easy way or is that even more complicated than just trying to summarize the numbers?

Jim Cutts: I think summarizing is the easiest way **... I can't tell ** is going to be exactly...

Hearing Examiner: For example, the tree numbers X number of trees will be removed according to this plan which is B17 is the exhibit. Are those trees in phase 1, phase 1 and 2 or phase 1, 2, 3?

Jim Cutts: I don't know what the phases are going to be.

Hearing Examiner: And the ones where it says they may be saved are they in phase 1 or phase 2 or phase 3 or don't we know?

Jim Cutts: We don't know.

Hearing Examiner: Okay. Thank you.

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Mr. Knutson: No further questions.

Hearing Examiner: Nothing further? Thank you Mr. Cutts. I think it's time.

Mr. Knutson: Bob Thorpe.

Hearing Examiner: And then remember that your dear friend city clerk is going to yell at you through the whole thing she told me.

Bob Thorpe: I want to note for the record this was my chair and I expect rent from anybody else that's been sitting in it during this proceeding.

Hearing Examiner: Raise your right hand sir. Do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

Bob Thorpe: I do Mr. Galt.

Hearing Examiner: Thank you.

Bob Thorpe: Thank you.

Hearing Examiner: And your name for the record please.

Bob Thorpe: Robert W. Thorpe.

Hearing Examiner: Thank you. Your witness Mr. Knutson.

Mr. Knutson: Mr. Thorpe can you tell us what your background and qualifications are as the city's SEPA's responsible official for this project?

Bob Thorpe: Yes. I appeared before Mr. Galt so he's familiar with this, but for the record I have two Bachelors' of Science in business and economics. Mine are in architecture, two Masters one in urban design and one in land economics from the University of Washington. I am certified planner and for the last 35 years, I've been teaching at 7 to 10 western universities and institutes like the Master Builders and the Appraisal Institute on land planning, SEPA and land economics. I have my recent history leading up to working for... My professional experience with Washington was that I worked for an engineering firm in the late sixties doing plats and conference of plans. In the early 1970's, I worked for Mercer Island. I was their SEPA official during the I90 litigation and I helped with two staff Members helped write the model shorelines program and then later served on a task force to write the Green book for SEPA for DOE. I was one of three or four key staff members that worked on that. I served as responsible official from 1971 to 1976. And since then for 10 jurisdictions doing as

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SEPA official or as on a committee and for the examiner and for the... I forgot to do this, I'm sorry. For the examiner and for the appellants have already provided a copy of an outline of what I'm speaking to... This would go to the appellants. I have already provided this to the city attorney and to the applicant's attorney.

Hearing Examiner: We will enter Mr. Thorpe's outline as A20.

Bob Thorpe: I think it's kind of appropriate to tell a story. In the early 1970's right after SEPA and shorelines was passed there was a group that cleared 40 acres on the south end of Mercer Island's commonly known as Scalzo's Scar (ph. sp.) and it drained into one of the most challenging drainage districts on the island. It was part of a study for ** that... At that time there was a plat by Black and Caldwell (ph. sp.) called Maple Ridge at one by Quadrant entitled Island Furs (ph. sp.). The neighborhood outcry was significant. We were drafting one of the first tree clearing ordinances and some of the first critical areas, sensitive areas regulations. And that kind of burned in me the sense of how uneasy the community was about this type of development and kind of set a pattern in school and other things taking environmental law classes to think about these issues and try to be use a lot of different resources to review these things. My background includes a list of cases approximately 50 appellant cases on SEPA all of which are decisions ** that have been upheld... There have been about 12-15 in the city of Brier in the last 25 years working here, before the hearing examiner, before the planning commission, council and today the SEPA MDS or NDS or requirements for EIS have been upheld. Thank you very much. So I think maybe the way to cut to the chase is to talk about the appropriate how we approach this, the team. This is a collaborative effort. The applicant's consultant team who I think know many of them professionally not by working directly with them, but they assembled a very good team with very good experts. We have our own staff and experts. The city engineer, the planning staff and others so as it needs to be appropriate and complete environmental studies and all site where we rejected one and asked for another. Use SEPA for public input that's what we did thus the three different issuance of MDS and withdrawal to make sure the record is complete. Use SEPA to establish impacts that are appropriate and mitigation measures for approval and permits. I think the standards are as the examiner knows, mitigation under 197.11.768 to avoid or reduce the term significant is important and the term is probable as important. I think what's very important for a SEPA official or somebody is to use deductive logic. In this hearing, I've heard a lot of inductive logic. Assume it's an adverse impact and demonstrate why it is. That's inductive logic. Me as a SEPA official, I have to take all the information, synthesize it and remember judge ** mediation things don't assume some fact... You have to know the facts. You have to move through a logic process just like the examiner does. The facts and what is available and the detailed analysis bring good conclusions and bring good law. So my graduate thesis was in acquiring and preserving open space under Washington statutes. Worked on a bond issue on Mercer Island... So I have a little bit of a passion about this. I've been a fisherman since 1945 when I was 3 years old fishing with my grandfather here at Yellowstone. I am a member of the Washington fly fishing club. So I am not an expert, but I do understand what salmonids and bass eating them and

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what's good when I go out to fish for cutthroat or fish the streams of the state. So I do understand that. The Sunbrook process is important that the SEPA official not only look at the technical reports, but be knowledgeable in the conference plan and the buildable lands and the critical areas. The 2000 conference of plan is our work. The build most reasonable lands is our work. To comply with the state standards is part of the comp plan update and we've been involved in the shoreline and critical areas ordinances in the past and have advised the city on it. So we think about those things. I interact with the mayor and ask for direction for the council on policy and to ensure that we're doing that. So this process I would say is what it is really important that you've heard from Mr. Egge, the experts and the city is when they came in the first time there was a proposal. And it was pretty brutal. It had three levels with 8 to 10 foot retaining walls in between with no trees. So that's where we started. And I informed the applicant that they were likely to do an IS if they pursued that. I don't think they were totally pleased with that answer, but we started on a journey. And the journey was to look at the draft tree inventory that Mr. Cutts has talked about. Look at the issues that Nicole has talked about and that the city engineer has. And first when they did the tree inventory, their first arborist... We have three registered landscape architects. We looked at it. Thought it wasn't as fair. Maybe there was a little bias in the trees that should be taken out. So we asked for peer review and we told them they needed another arborist that was from our list. So we've gone through that process and questioning our landscape architects. They have looked at the information just like I have. The wetlands, we have gone back three times. Mr. Sewell has been asked questions. He has come back with additional information. There was a clarification on... I've been to the site. I spent a lot of time on ranches in Wyoming. To me it was what you typically see. It's where cattle or horses lay down to get away from the flies. It's kind of a wallow. And so walking the site, it didn't appear to me to be wetlands, but I am not the expert. I have been on the site 5 times. 3 times we listened to the comments from neighbors. We looked at the traffic for mitigation, the drainage, how to control and mitigate and use it to enhance the wetlands. The geo-tech is a part of the design. The landscape and engineer from mitigation and safety and as I said the arborist, we did look at the farm issue and determined that that was not an issue. Or the other issues have been raised and are not part of the appeal had no merit or standing because of the things we did. We reached out to every state agency. It's hard to figure out where the school line was the first ** determinations what the Edmonds ** but the last one went to the North Shore the appropriate... And that's where the site ** mitigation came from; it's working that out with them... So they were fully involved. We went not only responded when we got an email. We would call representatives ** Muckleshoot's and ask for their input... We asked and talked to planners from Snohomish County from Kenmore and in fact one that is not listed that is been anecdotal, but Michelle Whitfield who is a staff member at Lake Forest Park was involved as an officer in the ** planning association... I was present and she was the newsletter editor and asked her if they had any comments and she said no. Elizabeth Mooney approached them, wanted to get involved and there had been a similar issue down there that she didn't ** at... She said we don't have any comment. We don't have an issue. That's the planner telling me by reaching out. But it was based on some approach by the appellants to get them involved and she said no

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and repeated that. She said, no I am not going to send you a letter but that's out position that we don't have an issue with this particular application. So the goal is to address all issues. Adequate detail to determine potential impacts and establish appropriate mitigation measures ** the condition of plat approval... So and you asked a very good question, are some of the things in the SEPA appeal also in the code. Yes, they are but the council because of ** plats has asked myself and the city engineer to put some things in there about drainage and other things are code... But they are also very clear because they tell somebody at a state agency without having to read the codes; these are significant things about drainage or tree protection or that. So there is a reason it's a policy that's been set forth by the council and by the mayor and given to me as direction as to what we should put in. And it is selective depending upon the circumstances. So the steps were and I review all the studies, visit the site 5 or 6 times, listen to the tribes, the state agencies, agencies with expertise. We probably had 5 or 6 or 7 meetings with the applicant and the thing was evolving. We worked on the tree inventory and the phasing and as I said, I helped craft one of the first tree ordinances in the state and many other communities. Washington, Oren (ph. sp.) and there is some of that flavor when ** with **... I think it's a good model. And you asked the question about what trees? It's hard to say, but the intent is that you go out and you just cut for the road and the right of ways. And if you're out there and there is a big fir and all of a sudden you can miss it and leave it, that's what you're doing. And once they set those stakes and they start doing that, a couple of people from the city likely the planning director and myself go out and talk about that and **... And then you cut for the utility areas and then the intent is on the lots is to work with the builder like we did on Mercer Island even before we had the regulations with ** and say can you move this house around...? We know now that lots with trees are worth a lot more money than those without. The market tells you that. It's not wise for developers to take those trees out. They are going to keep them if they can so you flip the driveway or you flip the model. So the intent is to use those trees that are there. There's ways to design with nature. So that's the intent of what the process were trying to set up with each building permit. The tree inventory will be phased and the three steps. There is one error that the appellants picked up on and one of my memos that talked about two different plats and the ** questions raises... There was never any intent to phase SEPA and I misused that term in one of my letters. The intent was to phase the tree removal. SEPA was never intended to be phased. That was a misstatement by me and that was not the intent. So SEPA was intended to be all of these conditions and the phasing was... The MDS after we got the letter from PERK, we went back, we looked, we advised the conditions, tried to do everything that we possibly could to address their issues so that they might consider not pursuing the appeal. And so the MDS with the conditions, addresses in my mind all the PERK issues. I think the additional wetland, additional in the fisheries report, I have reviewed the fisheries report after the SEPA and it's consistent with what I knew. There is nothing in there that would have changed my mind. I think before you Mr. Examiner on the appeal on SEPA the last page speaks to that. The standards for SEPA official as you know the language in 680.3D8 is very clear. Procedural determination made by the responsible ** shall be entitled to substantial weigh... Is it a conference of plant analysis, is it appropriate conditions, is it

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full disclosure and do the procedures follow ** 197-11...? I would submit to you they do. I have been doing this for 35 years. I think I am very, very careful in knowing there was a probably a potential for appeal. I think there was a great deal of caution and a great deal of involvement of team members. I think mitigation; the appellants would like to make it something else. But the six things, avoiding, minimizing impact, rectifying impact, reduce or eliminate the impact over time, compensating for impact, and monitoring impact which is going to go on trees, on wetlands **... You go out there. They post bond. You go out every couple of years. They have to replace trees and that. And the 3:1 replacement for the trees... I think they also the appellants would like to not have you look at 782 which is probable. It means that likely or reasonably likely to occur and reasonable or probably or more than a moderate effect on quality. They want to just hang on significant impact and not use the term probable. And finally 794 talks about significant. It has to be talked about in the context and the intensity and the severity. This is a site that is consistent with growth management act. It is consistent with the conference of plan. And it's inside an urban boundary and in fact Brier when we added the cottage element and we added the potential for clustering and we added ADA's to meet housing goals so requirements to the plan would be approved by CETA (ph. sp.). ** acre it's not a right line, but the guideline of 4.8 is low and anything less than that puts them in the woodland situation as you are well aware... So three, you could say... 5 or 6 lots somebody could challenge that that Brier is approving something that isn't consistent with their buildable lands ** and I think the application is presented is a reasonable balancing of all the conference of plan goals, the city's regulations and the environmental regulations... And I think it meets, having been here for 25 years, the intent and spirit of what the citizens of Brier, the planning commission council of ** that I've said... And I want to close by saying that I worked for an engineering firm in 1968, 1969... I've done this for a lot of years. I don't know of a 28 lot plat in any jurisdiction in the last 20 years that's been vetted more than this one. It's had more studies, more discussion and more ** from the applicant... I think it has been a good process. It's a good model of people working together. I think the city now needs to take those standards and ensure that things are done right. One last comment on the months of operation... That's my language. My thought is and we use that all the time is the applicants working with the city, what they want to do is have it buttoned up. But if it's dry and they can go in another week in November and finish things up, they should have their hydro seeding done, their mitigation, their trees planted. They should have things done and buttoned up. They're not dropping the cat off on October 1st and arguing they still ought to be pushing dirt on January 1st. But it's intended to be a little bit flexible. If it dries out a little bit early, the middle of March, than there's some flexibility. But my thing is that should be a condition that is set that there can only be minimal work during that time period. But it should have some degree of flexibility so I think that's largely my language. So I think the other thing about timing is important. I think the applicants ** receiving and it was vested and think there is under regulatory reform and a case called Westmark versus Buriem (ph. sp.) speaks a great deal to doing a timely response to somebody's application... And that's an appellant court decision. So that's a pretty good bright line case that says you can't just keep this applicant in waiting forever. And I think the city and the applicant did a balanced job of proceeding

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cautiously with full detail, full disclosure but at the same time to try to be cognizant of their objectives.

Mr. Knutson: Thank you very much Mr. Thorpe. Just a few follow up questions... As I understand it, you based your determination with regard to the probability of significant adverse impacts on the submittals that you and other city officials required the applicant to make?

Bob Thorpe: Yes.

Mr. Knutson: And those addressed the issues of storm water runoff, wetlands, fisheries impacts, wildlife impacts, and all the issues raised in the appellants SEPA appeal, is that correct.

Bob Thorpe: Yes that's correct.

Mr. Knutson: And have you been present and listened to all of the public comment and all of the appellants' witnesses in this proceeding?

Bob Thorpe: Yes except for a few in minor breaks. I go down the hall.

Mr. Knutson: Have you heard anything that's led you to change your opinion with regard to the probability of significant adverse environmental impacts?

Bob Thorpe: No. And I think the additional conditions suggested by the city planner and the engineer address issues that have been raised. So I am comfortable with the conditions and the SEPA conditions.

Mr. Knutson: Based on the information that you've reviewed and listened to, do you think the analysis of this project took into account impacts downstream from this site.

Bob Thorpe: Yes and I forgot to say that we had a plat about four years ago that was upstream from here and there was some concern so I drove much and got out and walked and went to the beach in Kenmore. So I'm aware of these downstream conditions from previous plats of going down there. I didn't do it this time, but I've done it within recent years so I generally know the condition of the stream corridor and the situation of the beach in Kenmore.

Mr. Knutson: Do you have an opinion based on the input that you've taken into account in this proceeding with regard to the impact of tree removal on wetlands on this site?

Bob Thorpe: I think if you look where the green trees are around the wetlands in A, B, and C, they've kept the trees. And I might know we have landscape architects

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and there's a little bit of a misconception here. The tree doesn't hold the water. Those trees evaporate at a faster rate. Yes, there's a larger cambium layer on a cottonwood, but they aren't like a big tank. They hold more water, but they transpire it a lot faster than the conifers do. so I think this pattern of trees here particularly with the types that will be in the 3:1 replacement and I think the wetland mitigation accompanying the understory can do a lot to allow the hydrological functions to continue and those to function well with the trees that they're going to keep and the ones that they're replacing and the vegetation.

Mr. Knutson: With regard to the impacts on wildlife and the identification of the species that are present in this site, as a SEPA responsible official would you take into account information presented in the studies as well as information included in the environmental checklist?

Bob Thorpe: And the citizen comments... Yes, I am aware of. I have seen the pileated woodpecker's what ** asked there and that... But and I've studied this and written DES's on it, the heron's down at Black River Office park and Yeshiva high school on Mercer Island. You can't do certain months of the years because you have eagles. I have eagles nesting, not nesting but foraging in my yard on Mercer Island, West Mercer Way and I see hawks and I see paragon falcons and I see all of that. So this is not going to... Yes it's going to diminish their habitat, but in the urban environment they will still come and be there. I don't see a significant impact or correlation to either mammals or fish from this proposal as proposed.

Mr. Knutson: And then finally with regard to storm water runoff, you've indicated that you reviewed the reports and the plans that have been done in regards to dealing with storm water on this site. are you satisfied that the requirements of the DOE 2005 storm water manual are going to be complied with and that all environmental impacts related to storm water including contamination and flows are going to be addressed.

Bob Thorpe: I am not the expert so as an expert I'm relying on the city engineer and the applicants engineer who is a well qualified firm, has a very good reputation and I think the balance of those two and what they propose and just my understanding from doing plat applications, I believe that yes it will both in terms of quantity and quality address those issues and there will not be a significant impact. I could argue that the way dispersal is going to the stream and the wetlands; it may actually enhance the wetland functions and make them better over time with the tree replacement.

Mr. Knutson: Thank you. No further questions.

Hearing Examiner: Thank you. Cross examination by PERK?

Miss Bowers: Yes. Miss Bowers speaking. You mentioned that you have been down to the Kenmore log bloom park area. Are you familiar with where the condos are down there?

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Bob Thorpe: It's been about three years ago, three and a half years ago. I am generally familiar with that area. I haven't done it recently.

Miss Bowers: So you have not seen where the weir blew out and where 0056 reestablished its new mouth?

Bob Thorpe: If that occurred in the last three years, no I haven't.

Miss Bowers: In the MDS, I see 1 through 8 and yet I don't see anything in there that shows me what you're going to do in protecting the fish.

Bob Thorpe: I think the tree retention program and the replacement program and those related to drainage in terms of volume and water quality address the fish issue because the impacts come from the either taking vegetation away or not properly taking care of drainage in terms of quantity, temperature, and pollutants. And I think those three are all addressed in the detention program.

Miss Bowers: Which specific steps would you take to protect fish?

Bob Thorpe: All of the ones that are listed in there, I think address that issue particularly 2, 3, 4, 5, 7, and 8 all address that issue directly or indirectly.

Miss Bowers: Where in your written determination did you specifically discuss the mitigating the impact on fish? You've mentioned these things, but they don't mention fish by name.

Bob Thorpe: I respectfully, you're making a statement that I don't agree with. I think these do address fish and they were taken into consideration. So I am just disagreeing with your conclusion. I think these do and I've told you that I have visited the stream. I've looked at that. I've looked at the reports that have been available over the years about the stream court order and have studied it in three or four other plats and short plats up stream and is part of when we were developing the shore line's program and the critical areas. I think as a fisherman, a member of the Washington fly fishing club, I am very cognizant. I want to see the fish return. It's a paramount thought in my mind of how do we do things that protect fish corridors and wildlife habitat.

Miss Bowers: Within the structure of these 1 through 8 can you show me a sentence that has the word fish in it.

Mr. Knutson: Objection. The witness has answered this same question essentially three times now.

Hearing Examiner: Sustained.

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Miss Bowers: And I just wanted to clarify within your testimony, you said you were out on the Sunbrook property several times and that you have seen pileated woodpecker nests out there.

Bob Thorpe: I've seen signs of where they may have been nesting. I didn't see any active... I am educated person in that, but I'm not a... It's not my area of expertise.

Miss Bowers: So therefore you wouldn't feel comfortable commenting on the size of the buffer area of the two distinct wetland areas as being sufficient to support pileated woodpecker habitat?

Bob Thorpe: I'd be happy to comment on that. That's one thing that I left off. Thank you for asking that question. There's been a misconception that buffer widths has something to do with quality. That's what Miss Kaylor asked and I think the best available science, you can do as much in 25 feet as you can in 100 if you properly plan it. We had a case at CTAC (ph. sp.) where there was a 14 acre lake, which DOE approved a 25 foot buffer rather than a 100 because we so intensely did that next to an Avis parking lot with 80%, 90% site approval. And DOE approved that because of the level of tree planting what we did in that 25 feet. So I think what you're asking are the buffers adequate to protect fish, to protect wildlife, to protect the woodpecker and I think they are because it's not the width. It's the quality of the buffer and we as landscape architects do wetland... We will rely on a wetland person to do the wetland mitigation plan just like Weisman (ph. sp.) did and I think the type of buffer that's there, how it's planted is more important than the width. And I think 25 feet is adequate both for the stream and for the wetlands protection for fish and wildlife.

Miss Bowers: Are you familiar with the bird studies that are coming out of the University of Washington in the last year?

Bob Thorpe: I didn't testify to that. I don't think it's part of my original testimony and I don't think it's relevant to what somebody studied at the university.

Miss Bowers: Are you advocating only replacement of trees or are you also going to consider replacement of the understory.

Bob Thorpe: My understanding is the wetland mitigation plan calls for wetland ** plant materials that are grown in a nursery and placed there per the plan that Weisman (ph. sp.) brought up so it would be ground cover... It would be understory. It would be bushes with berries for wildlife and it would be conifer trees that are part of that replacement program.

Miss Bowers: Is this including 100% native species in those areas?

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Bob Thorpe: I think most people now use zero scape or native species because they're much more drought tolerant. That's generally what landscape architects propose. That's my understanding of what they're proposing here.

Miss Bowers: Could you look at exhibit P30?

Bob Thorpe: It's the one that's entitled Trillium Project.

Miss Bowers: Yes, it's the Trillium Project which is located in Lake Forest Park approximately less than a third of mile from Sunbrook.

Bob Thorpe: You're giving me facts that I don't know to be facts. And you're going to understand as an expert, I am not going to accept your facts as an expert because to do so and comment on them would mean I would impeach myself. So I'm not going to do that. So just that we understand that...

Miss Bowers: Let me clarify this in this way. Are you familiar with the Trillium Subdivision?

Bob Thorpe: No.

Miss Bowers: When you were discussing with Lake Forest Park planning director, I think you said?

Bob Thorpe: No it was Michelle Whitfield was the senior planning at the time.

Miss Bowers: Did she happen to mention the two projects that are located just south of Sunbrook.

Bob Thorpe: No. Our conversation was strictly about does Lake Forest Park have an interest? Do you want to comment about Sunbrook? And her answer was no. I polled my staff. We don't have an interest and despite Miss Mooney's encouragement to enter, we are not entering this conversation.

Miss Bowers: Looking at the photograph of Trillium Project, P30...

Bob Thorpe: Why don't I stipulate that I don't know squat about that project so you're not going to get anything from me about that project because I don't know the project. And I don't think it's relevant to my decision.

Miss Bowers: Can you comment on the photograph just looking that photograph?

Bob Thorpe: No. It is what it is. It's a picture of some storm water runoff. It speaks for itself. I haven't looked at it. I haven't been there so I have no opinion about it, sorry.

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Miss Bowers: So you can't state that you think that this could be a significant...

Bob Thorpe: Asked and answered. Asked and answered. I'm objecting.

Hearing Examiner: You don't get to object.

Bob Thorpe: No pro se, my attorney's not here.

Hearing Examiner: your attorney is sitting right behind you.

Miss Bowers: I am just going to attempt this one more time. Would you in looking at the Trillium picture and P30, would you consider that a significant adverse impact?

Courtney Kaylor: I will object because we're here today to talk about the Sunbrook project not Trillium.

Hearing Examiner: Sustained.

Miss Bowers: That's all.

Hearing Examiner: Cross examination by PDI?

Courtney Kaylor: No questions.

Hearing Examiner: Is there any authority in the Brier municipal code to allow the city to require larger buffers than set forth within the BMC. And I am here referring to chapter 18.12 the critical areas ordinance. I looked the other night and in a quick perusal I didn't see it. I thought I would ask someone that's worked with a lot more than me before I go back and waste a lot of time trying to find something that may or may not be there.

Bob Thorpe: My understanding is that the code doesn't provide for that. Theoretically in SEPA if it was totally canary grass or buttercup, you could say we need a large area to make it work but that's never been my experience in the last 25 years in the city.

Hearing Examiner: I don't have any other questions. Any redirect for this witness?

Mr. Knutson: No.

Hearing Examiner: Thank you Mr. Thorpe. Does that conclude the city's case in chief?

Mr. Knutson: It does.

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Hearing Examiner: Is there any member of the public present who wishes to offer testimony before she leaves? Would you raise your right hand first? Do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

Ann Hurst: I do.

Hearing Examiner: Thank you. Your name please and spell your last name.

Ann Hurst: Ann Hurst. I live in South Kenmore. I'm an officer and citizens for St. Edwards state park which is a member of the Snow King watershed council of which PERK is also a member. I find this very interesting that parallel situations citizens have faced and it's good to have a hearing and citizen activism or you would have missed a wetland. Also I do know that Black Cottonwoods are extraordinarily valuable in maintaining wetlands. They absorb water in the winter so they slow flooding and they aspirate in the summer. They cool the air. They cool the wetland plants. They make the wetlands healthy. I don't know why Brier calls them insignificant. They're one of your best friends in a wetland and I know this from first hand experts having done the measurements of how much water a black cottonwood of a certain size absorbs and then respirates. So I was kind of surprised that was kind of glossed over. I wanted to go back to Miss Gaudette running through some policy numbers. She gave the policy number before the meat so I don't know the number, but it was that the city strives to achieve the maximum setback when they can. When it's possible... That's what you said. I think that I see nothing to make it impossible to achieve a maximum setback. 25 feet is minimum and maybe even illegal by today's standards. 25 feet is not going to protect a wetland. It's not going to allow enough of a buffer. So I would like for the city to follow its policy of achieving maximum setback as a citizen. Also as a citizen, I was pleased that the city of Kenmore became involved and helped with the design of the vault. I think you have a better product. And finally I appreciated what you said about the native growth easement. I think that these tracks should be part of the property. They are appealing to property owners. I have all this property and with that deed, I cannot cut down the trees or the shrubs or the things that the birds and the deer and the raccoon need to survive. So I would advocate that you include that in the deed restrictions. And also that you make their homeowner's covenants a little bit strong as far when homeowner's have trees they want to cut; they have to go to their homeowners' association. It's not just between the home site owner and an architect. And the city who has kind of made themselves kind of powerless in this situation... And I had something else to read to you that was really a lot sweeter, but that's my three minutes I'm sure. And I thank you all and I thank you for your three days. I think this has been a really good process and I thank PERK, but I know it cost the city a lot of money.

Hearing Examiner: Thank you Miss Hurst. Does the applicant have any rebuttal testimony or witnesses that it would like to present.

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Courtney Kaylor: We do have some rebuttal witnesses. We will try and be brief in light of the hour. First I will call Ken Lowzen (ph. sp.).

Hearing Examiner: Mr. Lowzen, you're still under oath sir.

Ken Lowzen: Okay.

Courtney Kaylor: Were you here on either Thursday or Friday to hear the testimony of Doug Beyerlein.

Ken Lowzen: Yes I was.

Courtney Kaylor: And subsequently were you able to review his written memorandum.

Ken Lowzen: Yes I did.

Courtney Kaylor: Can you respond to that specifically first with regard to the issue of water quality treatment?

Ken Lowzen: Yes, he brought up two items that he felt did not comply with the 2005 DOE manual and he provided a letter reiterating those. The first that he said was regarding water quality treatment. He said it was not provided for in our design. And that is an error. It may not have been completely clear in our report, but it is proposed in the bottom of the vault as three feet beneath the live storage in the vault.

Courtney Kaylor: And that meets the requirements of the 2005 manual?

Ken Lowzen: Yes. And there is a section in our report that discusses it. Again it's a little bit of final engineering design issue to show more detail. It will be detailed. I think the city when they approve our preliminary design report noticed that it was included in there as well.

Courtney Kaylor: Thank you. Can you also address the second comment regarding a hydro period analysis?

Ken Lowzen: He said that a hydro period analysis for the wetland recharge was not performed. I am going to let Ed Sewell expand a little bit on the hydrolic conditions of specific wetlands that outline how you do that. But in general the DOE manual, the section on the hydro period analysis that's in the appendix 1D of volume 1, it's a guideline. It's not a requirement. There are several different methods that can be used to complete wetland recharge. We used a different method. It is an industry standard calculation that we've used before and again this was discussed with the city during design and approved for them at that time.

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Courtney Kaylor: And using that industry standard method, did you identify the basin drain to the wetlands.

Ken Lowzen: Yes.

Courtney Kaylor: Can you describe a little bit what that industry standard method involves and the mitigation that's provided as discussed in your report?

Ken Lowzen: It's in section 5 of our report. And what we did is we measured the peak flows that would be going to this wetlands. There's different methods you can use. You can use duration, you can use peaks, you can use hydro period analysis. Again I'll defer to Ed Sewell when he comes up to discuss a little bit more why that was an appropriate measure. And that was for wetlands A and B and also there was a different rationale for wetland C and I'll let him get into the details of that. I am not an expert in wetland expert.

Courtney Kaylor: Then moving along, were you here to hear the testimony on either Thursday or Friday of **...

Ken Lowzen: Yes.

Courtney Kaylor: And did you have a chance to review the memos that OTAC provided.

Ken Lowzen: I did.

Courtney Kaylor: Can you respond to the items raised relating to storm water in those memos?

Ken Lowzen: Yes, I will. There were three memos that they submitted. I don't know the exhibit numbers. I specifically looked at two of them. One dated June 18, Sunbrook plat review water quality by Russ Gaston and Kate Rhodes.

Courtney Kaylor: That is A8C.

Ken Lowzen: They raised a couple of issues. First they stated that water quality treatment is not provided for the bypass area and in their first bullet, first sub bullet, they discuss a ** from lots 4, 5 and 6 that must be fully dispersed through 25 feet of native of vegetation... We do show that. And that's part of... Our level spreaders are 25 feet from any property line and that doesn't even include the additional area that would be off site within the buffer. So that bullet's addressed there. The second one, they state that the entire photos from lots 110 and 11 are proposed to be bypassed and driveways are considered pollution generating and require treatment. That was not communicated clearly in our preliminary drainage report. It was correct in our SEPA checklist which was done at a later date. But the driveway as far as those three lots, as well as lots 4, 5

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and 6 but they're all proposed to go to the street which would then be collected and routed through the proposed detention water quality vault and treated. So I think that's a non-issue. It was an unclear in our report, but corrected in our SEPA checklist.

Courtney Kaylor: And were there any other items that OTAC raised in their memos on storm water.

Ken Lowzen: Yes, do you want me to keep going? Then they discussed the 3:1 length to width ratio. Again it was a preliminary design issue that we do show walls. They weren't detailed by any means. The intent is there. It's actually going to be more like a 6 ½: 1 ratio and they state in here that ideally walls should not be used to lengthen the flow path. That's actually incorrect. And there's actually a section in the manual that discusses how they can be used and the intent would be that we will use walls to lengthen the flow path in the manner that they discussed. Do you want me to go into more detail why or the section?

Courtney Kaylor: I think that's sufficient detail on that point.

Ken Lowzen: They also mentioned that our vault is not identified required ventilation areas. Final engineering detail, we don't show control structure, walls, anything at this point. The ventilation will be provided in final design. We will submit that. The city will review it. And then the last thing in this memo that they go and discuss is a couple of the BMP requirements. Downspout dispersion as well as post construction soil quality and depth, they're required where applicable with the phase clearing and grading of this site. You can't do downspout dispersion. You can't design it at this point. It will be provided if applicable later on. And sort of either a final design issue or a building permit issue depending on how the phasing works out for both of those items. I believe that's it for the first memo. And the second memo is dated June 19, 2009, Sunbrook preliminary plat city of Brier review of storm water issues by Russ Gaston.

Courtney Kaylor: That is A8D.

Ken Lowzen: The first item that they talked about is how existing detention did not account for wetland A as a depression and our existing conditions model does not include it. It's irrelevant that areas not included in existing or proposed or developed conditions. The flows are going there are modeled separately. That has nothing to do with our detention vault. Then he talks about the dug pond that's fed by the intermittent stream that's north of our road entrance. There's a couple things there. We are going to be matching the existing culvert invert so we won't be draining it. The flows that are going in there, it doesn't provide flow attenuation. For several reasons, I can get into details if we want, but I was even out there last year on November 12, 2008 which was a day that flood warnings were issued. Lori sent me out there to look at some things. And there was no obvious build up there. Putting in a fish-friendly culvert there will not drain the pond. It's an unnatural blockage that's man-made; unintentional that does not

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serve any purpose if there is any attenuation at all. There's other culverts all along the stream that provide... It doesn't do anything additional on purpose.

Courtney Kaylor: So there are other culverts that would restrict flow is that what you're saying?

Ken Lowzen: Yes, it's not like by reducing that you're going to be sending a flood of water down the stream. And then the last thing that they say, increase in peak flows... Can I read a couple of things from here?

Courtney Kaylor: Sure. Does the last point then relate to the requirements for duration and peak flow under 2005 storm water manual?

Ken Lowzen: Correct.

Courtney Kaylor: Can you please describe for us the requirements of the 2005 storm water manual with regard to limitations on duration or peak flow if any?

Ken Lowzen: On volume 1 of the storm water manual, it's says Volume 1, page 1-5. It states the 92 ecology manual focused primarily on controlling peak flow release rates for recurrent intervals of concern. This level of control did not adequately address the increased duration at which those high flows occur because the increased volume of water from the developed condition as compared to the pre-developed conditions. To protect stream channels from increased erosion is necessary to control the duration over which a stream channel experiences geomorphically significant flows such that energy imparted to the stream channel does not increase significantly. This target will translate into lower release rates and significantly larger detention ponds than the previous ecology standard. So that's one item in here. What I am getting at and I believe it's something that we've going with all along that the 2005 DOE manual, you match durations. You don't match peak flows. And I believe that was a misstatement by the city engineer when he stated that. Another section states, storm water discharges shall matched developed discharge durations to pre-developed durations for the range of pre-developed discharge rates from 50% of the two year peak up to the full 50 year peak flow.

Courtney Kaylor: What page is that on?

Ken Lowzen: I'm sorry. That's volume 1, page 2-33. And then finally last thing I will read from here, on page B-11 of volume 3. It's in the appendix B. Minimum requirement 7 specifies that storm water discharges to stream shall match developed discharge durations to pre-developed durations for the range of pre-developed discharge rates from 50% of the two year peak flow up to the full 50 year peak flow. In general, matching discharge durations between 50% of the two year and 50 year will result in matching the peak discharge in this range. So it's saying that generally when you do this and you match durations, you're peak flows are going to kind of fall in line

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and you're going to match those. We don't in this case. We're very close. For the 50 year flow it's about .159 CFS which according to...

Courtney Kaylor: Let me just back up. So is it accurate to say that the 2005 DOE manual requires that you meet durations but not peak flows?

Ken Lowzen: Correct.

Courtney Kaylor: But the requirement of meeting durations ** limit peak flows...

Ken Lowzen: Correct.

Courtney Kaylor: Then looking at this subdivision, comparing... Under the 2005 DOE manual, are modeled existing conditions equivalent to actual existing conditions?

Ken Lowzen: No.

Courtney Kaylor: Can you explain the difference under the DOE manual?

Ken Lowzen: Yes. According to the 2005 DOE manual, you have to model existing conditions as forested when actually out there there is some existing buildings, some cleared areas, the road leading in and such.

Courtney Kaylor: So does that result then in existing conditions in the model showing less storm water runoff than actual existing conditions?

Ken Lowzen: Yes.

Courtney Kaylor: When you performed your calculations consistent with the 2005 storm water manual, what is the difference between post development peak flow and this theoretical forested pre-development peak flow.

Ken Lowzen: For the 50 year peak flows it's about .159 CFS.

Courtney Kaylor: Can you give us an idea of the scale of that difference in the context of storm flows in this location?

Ken Lowzen: In the Herrera report, I believe it was page 38. I don't have that in front of me, but it was a table that was referenced maybe Mr. Beyerlein showing some of the Herrera Report's cubic feet per second flows throughout the basin. At the downstream end of the basin...

Courtney Kaylor: I am finding that. This is Table 14, on page 38 of the Herrera Report which is exhibit B24.

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Ken Lowzen: What they show is modeled storm flow results for tributary 0056 in cubic feet per second. They show a pre-developed scenario and then a developed scenario. And the developed scenario is what they're basing some of their numbers off of showing why there's sediment downstream. For using the 50 year storm down at the mouth of tributary 0056, they show a flow frequency of 113.7 CFS. Then they divided into three sub-basins. I am not sure exactly where the sub-basins are, but one is down near the mouth of the stream and it's 112.8 CFS. Sub-basin two is further up stream and it's 83.3 CFS and sub-basin three which is up generally near the Sunbrook site is or just downstream of it I believe according to their map, shows a CFS of 60.9. So I don't know... I can't testify to how this report, how the numbers were calculated, but a relative... But we're potentially increasing the flows based on the modeling of existing conditions as forested on our site by .159 CFS relative to a basin that's anywhere from 60 to 113 CFS.

Courtney Kaylor: Thank you. Will the development increase actual peak flows from the site.

Ken Lowzen: No, I don't believe so. We modeled that as well so even though the manual requires to assume existing as forested, we did a run on it to try and use more actual conditions. And all of our flows were beneath... The durations still match... When we matched durations, the peak flows end up beneath the levels of the developed condition and even up to the 100 year flow, the peak flow was actually .03 more than existing. Which again on the scale of things is very insignificant.

Courtney Kaylor: Mr. Galt asked the question either on Thursday or Friday, I am not remembering which one, but I am going to ask it again today. How can you both meet duration and peak flow?

Ken Lowzen: I didn't answer this very well the other day. It's very theoretical. There's mathematical models that show this, but you use the example of the bell curve. That is for a single flow event. More recent manuals go with more of a continuous model so it's not exactly using the same... You combine different bell curves. There is no way I could draw it, but basically if we play it down to a single flow event you have your bell curve in the developed condition. So you have your bell curve where... This is over time and this is the amount of flow. In the developed condition, you're going to get to near a peak sooner and then you're going to be releasing and it's going to be flattened. That's going to be your release rate. And then it will slowly taper off. So the volume under your curve is the duration. So you don't exceed the peak flow and the duration, you're staying... Again I may not have drawn this correctly, but you're matching your durations. The volume does increase because any time you develop, you're increasing it. So I hope that's a little better than what I explained the other day.

Courtney Kaylor: Thank you. Moving on to another subject... Were you here for the testimony of James Steward, I believe that was on Friday where he expressed concern about runoff from lots 4 through 6 being directed into the yards of adjacent properties?

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Ken Lowzen: Yes, I was here. I don't remember specifically.

Courtney Kaylor: Can you respond to that concern?

Ken Lowzen: Yes. Was he one of the neighbors in Maple Brook?

Courtney Kaylor: Yes.

Ken Lowzen: He was concerned that because of the level spreaders being just upstream of his house he might get flooded out. And the level spreaders are taking some of the runoff from lots 4, 5 and 6. They're dispersing them through... The runoff from the yards and I believe roof and footing drains from those lots goes in the level spreader. It provides some infiltration and then the water that does come out over the level spreader disperses over the distance however it is to the stream. We did that in an attempt to match some of the existing water that is going there, but because the majority of our site water is going to the storm drainage vault I don't see how that could flood.

Courtney Kaylor: So to clarify, is that water being discharged onto neighbor's properties?

Ken Lowzen: No, not directly. Level spreaders and then it's at least 25 feet from the property line to where it will infiltrate or disperse through the vegetation.

Courtney Kaylor: There has been some testimony expressing a concern about the location of the discharge point for the storm water system in this project being somewhat downstream from the location of the project. Can you address this concern?

Ken Lowzen: Yes that is correct. We looked at many different options for this. We looked at just an outlet to the vault with a level spreader in the southeast corner there. It would just go down straight to Kenmore. We discussed with the city engineer with the city of Kenmore. And in the end we felt that bringing the water to the east to where we could control it, public right of way, outfall, rip rap pad, connecting to that drainage course was a much better solution. With the level spreaders from lot 1 - 4, 5 and 6 were not taking all the water or the water that's around the detention vault. We're not taking it all away from that area. And then also so those are counted as bypass flows in our modeling and it's downstream point of compliance where the two join up. And we just felt this was a much better design and again relative to the overall size of the amount of water that's going there that's missing this little stretch is not significant.

Courtney Kaylor: Thank you, those are all my questions.

Hearing Examiner: Cross Examination by PERK?

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Elizabeth Mooney: One question.

Hearing Examiner: One question, go for it...

Elizabeth Mooney: Are you taking some of the water that is going toward Kessner's? Sue Kessner testified on Thursday night and I can show you where she lives.

Ken Lowzen: Okay. I don't recall specifically.

Elizabeth Mooney: Her property is where the tree house...

Hearing Examiner: Northeast corner. She is one of the two acreage pieces in the Northeast corner.

Ken Lowzen: She's up here somewhere?

Elizabeth Mooney: Yes on a large piece. Are you familiar with that property?

Ken Lowzen: When we did our downstream analysis, we looked at where some of the water potentially goes over there. So vaguely... We looked over the fence and then we were over the cul de sac in 243rd trying to figure out specifically where water goes.

Elizabeth Mooney: Did you know that the Kessner's are part of the Lockwood Adoption project?

Ken Lowzen: No.

Elizabeth Mooney: Did you know that they have a pristine... I don't know if you'd call it headwaters because there is a **... But did you know they have a pristine portion of the stream?

Courtney Kaylor: I'm going to object. This is not about the Kessner's property. This is about the Sunbrook property and the storm water drainage design for that property.

Hearing Examiner: Everybody's got to speak up except me? To the extent that she's testifying that's grounds in of itself to sustain an objection.

Elizabeth Mooney: Are you taking water that would be going to the Kessner's to put into the detention unit?

Ken Lowzen: We are attempting to model the flows that go to the existing wetlands in the northeast corner of the site as best we can to match existing conditions. The flows that... I don't believe we are. The intent is not to take away any water from any of the existing drainage channels. We're trying to match it as best we can.

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Elizabeth Mooney: Without testifying, did you analyze the groundwater that goes from that section down to the Kessner's?

Courtney Kaylor: I am going to object on two grounds. First this witness did not testify about ground water and secondly we have no allegation in the appeal document about impacts to neighboring properties resulting from removal of water. And I think this is outside the scope of the appeal.

Hearing Examiner: It may well be outside the scope of the appeal. It's not outside the scope of consideration of a preliminary subdivision. Ground water flow at least to the extent that what she's really talking about is interflow which would be through the weathered layers of till above the hardpan. I believe is something that they have to consider in doing storm water modeling and ergo I am overruling the objection.

Ken Lowzen: I do believe that some of the flow that gets to their property is sheet flow off the east side of our property. And in the sense that there's a large open space tract there that's going to remain basically undeveloped with the trees remaining and stuff the same amount of water as best I know should still be going there. We're not attempting to alter those flows in any way. Does that answer your question?

Elizabeth Mooney: I believe that there's a picture of a water course that's in your exhibit and I'm wondering if that... If I could put my hand on it... in your storm water drainage report, there's several pictures.

Ken Lowzen: Is that the picture taken over the fence with a truck in the picture?

Elizabeth Mooney: Yes it is. And if we could look at that one then I'll have my question answered and we'll be on the same page literally.

Hearing Examiner: Would it be B15 that we're looking for?

Elizabeth Mooney: Yes.

Hearing Examiner: I remember the picture with the truck in the field. Where is it?

Elizabeth Mooney: Page 8 north basin downstream drainage picture.

Ken Lowzen: Yes. Page 8...? It says 3-2.

Elizabeth Mooney: Yes. Page 3-2 and then labeled 8. Is that the water course that would be going toward the Kessner property?

Ken Lowzen: If the Kessner property is the house in the distance than yes.

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Hearing Examiner: I am looking northeast, but am I on the site.

Ken Lowzen: Yes, I am looking over the fence somewhere in this area looking northeast taking the picture.

Hearing Examiner: I am sorry to break in and belabor our proceedings, but is there anything in the picture that I am looking at that's actually on the Sunbrook property?

Ken Lowzen: No.

Hearing Examiner: Okay we're looking over a fence and the Kessner property is beyond the next fence.

Elizabeth Mooney: To the left and down the hill, I believe.

Hearing Examiner: Beyond the next fence... So this is a piece of property that would be south of Kessner. Must be...

Elizabeth Mooney: I believe the Kessner's property...

Hearing Examiner: Because that lady told us that she has one of those big acreage pieces that goes east to west. She's lot 2 where the existing tree house is. I don't think you're looking at Kessner's property. I think you're looking across lot 2 at lot 1. Well, no... Lot 27...? Is that the number?

Ken Lowzen: I am looking at lot 21 looking over the fence at lot 21.

Hearing Examiner: And the fence in the background is the fence between 21 and what looks like on my drawing lot 1.

Ken Lowzen: Yes, I believe that was correct.

Hearing Examiner: That was a short plat. So Kessner would be off to the left of this picture someplace.

Ken Lowzen: Maybe back where the smaller trees are in the distance.

Elizabeth Mooney: Yes, okay.

Hearing Examiner: It depends on the angle that you're looking at. I'm an old photo interpreter and Master's in geography. I think Kessner is way off to the left here.

Elizabeth Mooney: Over... So you think the Kessner's might be like that direction.

Ken Lowzen: Yes.

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Hearing Examiner: I think it's left, but that's okay.

Ken Lowzen: What's the question?

Elizabeth Mooney: Do you know whether that's the stream that Sue Kessner was saying comes down into her property?

Ken Lowzen: I do not know.

Elizabeth Mooney: Is this the stream that would be going into the vault, this source of water into the vault?

Ken Lowzen: No. This is off site.

Elizabeth Mooney: So this stream or watercourse will just be continuing... Where would this continue?

Courtney Kaylor: I am going to object. This calls for speculation

Ken Lowzen: We're not touching this.

Elizabeth Mooney: Thank you.

Hearing Examiner: Is that it?

Elizabeth Mooney: That's it. Thank you.

Courtney Kaylor: No more questions for this witness. I do have a couple more quicker than this witness. Ed Sewell.

Hearing Examiner: You're still under oath sir.

Ed Sewell: Okay.

Courtney Kaylor: Mr. Sewell can you add to the response that we just hear to Mr. Beyerlein's comment about a hydro period analysis?

Ed Sewell: Typically for wetlands in some sort of development, you want to try to maintain the same hydrologic inputs you have before you do the development. And there's various ways to come up with those numbers and the method that the Blue Line Group used is a common and appropriate method and seems to work well on most projects. The only time where I have ever seen a really detailed hydrologic analysis like Mr. Beyerlein spoke of in his testimony is when a wetland is being used with direct discharge of storm water essentially using a wetland like a storm pond. That's the only

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time that I have ever seen that analysis done. Or if you're talking about sending water to a type of wetland that's very sensitive to hydrologic impacts or water quality and that would be more like sphagnum bog, a fen, possibly one that had a rare or sensitive amphibian population breeding in there. And we don't have either of those conditions in this wetland nor are we using it as a storm pond.

Courtney Kaylor: Can you respond with regard to wetland C?

Ed Sewell: Wetland C is a small riparian wetland along the edge of the drainage of Abbey View Pond. My observations of that wetland are most of the hydrologic inputs to it are from the stream back flooding into that area and just sitting in the micro-topography of the wetland. It's not a wetland in my opinion that is driven by groundwater. There's some input from the slope, I'm sure but that will be maintained with the dispersion trench bringing clean water from those abutting lots down to that area. So I don't see that that is going to change the hydrology of that wetland in anyway.

Courtney Kaylor: Thank you. Is this site a designated wildlife corridor?

Ed Sewell: No it's not.

Courtney Kaylor: There is a question from earlier today was deferred to you. The question is I believe your report identified in the stream a cascade that would be a barrier to fish movement upstream. Can you describe where that is located?

Ed Sewell: Yes. I don't have the exact position, but it's some place close to the south boundary of the site and what occurs there is the stream at that point has eroded down to the hardpan to the till material and is basically kind of like a 45 degree slope on hardpan. And I brought... I went down and looked at that with Ginger Holzer (ph. sp.) our fish and wildlife to see if she thought it was a fish barrier. And she looked at it and said it's right there on the border and when in doubt she's going to assume that they could get by but she was pretty doubtful that they could. It's almost the equivalent of concrete slope coming down there where it's eroded away.

Hearing Examiner: I didn't see where you were pointing.

Ed Sewell: It's right in this area close to the south property line.

Hearing Examiner: Along Brier Road.

Ed Sewell: East of Brier Road.

Courtney Kaylor: Were you here for the testimony of Dr. Orienz (ph. sp.) regarding birds and other species on the site?

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Ed Sewell: I was.

Courtney Kaylor: During your review of this project in connection with the MDNS issued on November 25, 2008 which is exhibit 7... I am sorry not the MDNS, the SEPA checklist. It's getting late. Did you provide information for this checklist with regard to in particular the pileated woodpecker and the bandtail pigeon?

Ed Sewell: I did.

Courtney Kaylor: Can you generally describe your observations and conclusions with regard to those species?

Ed Sewell: I spoke a little bit the last time I was up here on the pileated woodpecker use of the site. We did observe excavations which appeared old on some of the snags on the site at that time. A recent site visit, I saw a couple that looked like they had some recent excavations. We did not see any nests or have we seen any nests on the site nor do we ever seen pileated woodpeckers on the site, but it's clear that foraging pileateds pass through and use this area. In regards to bandtail pigeons, we never saw bandtails pigeons on the site. It's possible they go through there. In the SEPA checklist information, we included a discussion of what's the important habitat feature for bandtail pigeons and it's not just the forested habitat. The real crucial habitat feature for them are mineral seeps and those are what fish and wildlife will identify as a priority habitat important location for the species and none are known in this area.

Courtney Kaylor: So does anything about Dr. Orienz's testimony change your conclusion that there will be no significant adverse impacts to habitat and species on this site.

Ed Sewell: No.

Courtney Kaylor: I have no further questions.

Hearing Examiner: Any cross examination?

Elizabeth Mooney: Did you review the letter that was sent by Army Corp of Engineers?

Ed Sewell: Regarding this site?

Elizabeth Mooney: Did you review the letter that was sent by Army Corp of Engineers?

Ed Sewell: The one regarding their jurisdiction on the wetlands on the site?

Elizabeth Mooney: Yes.

Ed Sewell: Yes, I did review it.

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Elizabeth Mooney: Are you aware that Army Corp of Engineers does not type wetlands or recommend buffers or address impacts to wetlands?

Ed Sewell: I am aware that the Army Corp of Engineer only protects waters of the US and they don't really have any interest in buffers. As far as protection, they have no jurisdiction over buffers.

Elizabeth Mooney: So is it your opinion that the Army Corp of Engineers only checks where the boundaries are?

Ed Sewell: The Army Corp of Engineers when they're doing a jurisdictional determination as they did on this site, typically goes out and makes sure all the wetlands on the site were located and that the ones that were located were delineated correctly using the 1987 manual which was in place at the time this work was done. The Corp uses a different manual at this time, which was recently adopted but at that time it was the 1987 manual which is the same as the Washington State wetland delineation manual.

Elizabeth Mooney: Is there any indication in the letter that the Army Corp of Engineers did additional surveys on site and saw the fourth wetland?

Ed Sewell: When they went out and reviewed the site, they had a copy of the site plan which is different than today's site plan, but they had our critical area report which described that area. And they're normally going to verify that anything that's potential or suspicious is or is not wetland. And Matt Bennett (ph. sp.) from the Army Corp of Engineers reviewed the entire site and said the only wetlands that were on the site were the ones we identified. And the only one they took jurisdiction on was wetland C along the drainage of Abbey View.

Hearing Examiner: I said earlier that in overruling an objection from Miss Kaylor that I had been fairly lenient in cross examination up to this point and I wasn't going to change. That's true; however, when you get to questions that were asked and answered at length on Friday, I think it was, I am going to hold to a tighter standard. That subject was discussed for probably 5 or 10 minutes in the hearing before. I see no reason to plow the ground again since he did not talk about it at this time.

Elizabeth Mooney: Do you believe the presence of fish is important in Abbey View drainage?

Ed Sewell: I am not sure what you really mean by that.

Courtney Kaylor: I am going to object to the question as outside the scope of Mr. Sewell's testimony of this evening. This is rebuttal. The appellants had full opportunity and I think did take advantage of that opportunity on Thursday and Friday to ask a lot of

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questions on the issue of fish and at this point, I believe it's appropriate to restrict cross examination to the subject of rebuttal testimony.

Hearing Examiner: I am going to at least restrict it to the subject for which is putting himself forward as an expert and that's wetlands. He's not the fisheries dude so objection sustained. I don't know Mr. Hadley so I don't know if whether he's really a dude or not. I guess it is getting late.

Elizabeth Mooney: Do you think that the presence of water in this stream course coming from Abbey View cemetery is important to wetland C?

Ed Sewell: It's a hydrologic input to wetland C. At times when it flows, we're assuming that water is going into wetland C and hydrating it so in that respect, it's related to wetland C.

Elizabeth Mooney: Did Ginger Holzer support that fish would be able to utilize the stream on the Sunbrook site?

Courtney Kaylor: Again I am going to object. This witness is not discussing fish?

Hearing Examiner: Sustained.

Elizabeth Mooney: The culvert near the riparian wetland...

Paula Swisher: I am going to ask that we stop for a second and that we put Elizabeth right next to a microphone because she keeps doing the trailing off thing and I am getting frustrated having to remind her.

Hearing Examiner: Miss Mooney, slide up to the blue chair. Don't let the presence microphone cause you to lower your voice. Some people do that.

Elizabeth Mooney: I am trying to stay within the redirect here or the rebuttal which is wetlands.

Hearing Examiner: So what do you want to ask him about the entry street culvert replacement?

Elizabeth Mooney: When you had the meeting with Ginger Holzer, do you think that Ginger Holzer was supporting fish in the area near the wetland...

Courtney Kaylor: I am going to object. I presume that the area near the wetland is the stream. I don't think this is truly a question about the wetland.

Elizabeth Mooney: Well he talked about the fish culvert and Ginger Holzer and that's all about the stream. So I think he's handling streams and wetlands.

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Hearing Examiner: It turns out that the stream cascade term was in his report and I had asked the fisheries guy about it if I am recalling now that he's turned from a dude to a guy. I had asked for the fisheries person for them about it and he didn't know and on rebuttal Miss Kaylor was trying to fill in the answer to the question that I didn't get the other day. It was just about the cascade. Where was this cascade that I said I read somewhere?

Elizabeth Mooney: Okay. I am pretty much just wondering whether or not this particular water wetland riparian zone has connectivity to Lake Washington and could support healthy ecology?

Hearing Examiner: You were doing pretty well until the last phrase.

Elizabeth Mooney: I am trying to find out what's left of the property around it that's suitable to ask Mr. Sewell that will establish there being fish and whether or not there would be a significant adverse environmental impact to this site?

Hearing Examiner: The fisheries person has come and gone twice. And you sought to ask all kinds of questions of the fisheries person about fish sighted in this water course, the west tributary. And so far, to the best of my recollection there has not one shred of evidence in the record that's true evidence that anybody has ever seen a fish on this property or in this segment. People have seen fish in the lake. People have seen fish down below the confluence of the tributaries. Fisheries according to Mr. Sewell or Mr. Hadley, I don't remember which is operating on a presumption that there may be fish just because of the physical characteristics of the channel. They don't know whether there are fish there. they're making a presumption which is the way fisheries operates because by presuming that there might be fish than they can make you like when you do things like replace culverts, they can make you do nice big culverts instead of little pipes. I think that's why they make the presumption. Now that's my presumption of why they make their presumption. But that's what they get out of it. They get to make people put big open arch culverts, gravel-lined bottom in culverts when they replace things. And maybe someday when we're all dead and gone, fish may actually get into that stream.

Elizabeth Mooney: So based upon the aerial photographs, is it your opinion...

Hearing Examiner: Remember he's the wetland guy.

Elizabeth Mooney: I can't do that. The aerial photographs of the wetlands... Based on the aerial photographs or maps of the wetlands in the Abbey View Cemetery is it your professional opinion that this supports a fish population in the past?

Courtney Kaylor: Objection.

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Hearing Examiner: Sustained. You can't ask him about fish populations.

Elizabeth Mooney: Period.

Hearing Examiner: Period. You are not going to get around me even though it's going on 7 o'clock; you're not going to get around me on that. He is not the fisheries man.

Elizabeth Mooney: I could give up, but that...

Hearing Examiner: It would be the nice thing to do and move onto another subject because this is becoming...

Elizabeth Mooney: Irritating... I will supply it for you. I will quit.

Hearing Examiner: For the first time in three days, the question is becoming irritating.

Elizabeth Mooney: I'm quitting. Thank you. I'm done.

Hearing Examiner: Cross examination by the city?

Mr. Knutson: No.

Hearing Examiner: None. Thank you Mr. Sewell.

Courtney Kaylor: We have two more people about five minutes each.

Hearing Examiner: That's what you told me about Mr. Sewell.

Courtney Kaylor: I did. Dan Harvey.

Hearing Examiner: Mr. Harvey. You are still under oath sir.

Courtney Kaylor: Mr. Harvey, the first time you were up here we had a question about why there's a one tree discrepancy between various plans, can you tell us why.

Dan Harvey: Just to rephrase. We had 826 trees that were listed on the original survey which was done by Summit. And we knew that 37 of those trees are off of the site meaning that we had 789 when I subtract that. However our plan shows 791 and the arborist report showed 792. So to real quickly, the arborist report which is by SA Newman (ph. sp.) 1808 and their tree inventory had 792. However in going through that, there were two trees were 805 and 806 that were actually in fact off site. Those were at the property with the tree house. And then an additional tree that they added on that Summit didn't have in their survey. So that explains why there was three additional trees on the arborist report from the survey. And then our plan, I have been looking into

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-this... Our plan with 791 trees, I just want to make sure we clarify that we are looking deep into this.

Hearing Examiner: I am the one who asked why there was ** numbers... I did ask for this.

Dan Harvey: It will be five minutes. We'll do it quick here. Our plan being 791, I did find a tree that was counted twice. It was counted as a green. It was a non-significant tree that was counted both as being possibly being retained and it was counted as being removed. What it would be is a possible to be retained at this time and that was 334. And the last tree that makes it is from my observation there was one tree that was on the original summit plan that we were counting that actually doesn't a number associated. There's a symbol. I don't know if it's a tree. That's why our number... So what I have is 789 and that's for all the summit survey, that's for the Newman arborist report and that would be for ours as well. Our exhibits of course at this time don't reflect those exact final numbers.

Hearing Examiner: So how many trees?

Dan Harvey: 789 on site.

Hearing Examiner: Thank you.

Courtney Kaylor: There was some testimony about a city requirement that at least 50% of replacement trees be placed on site. In your opinion is this feasible and is this the intention when you develop the final tree replacement plan?

Dan Harvey: Yes so that would be 50% of the replacement trees that's actually in the ordinance as a minimum would be required to be on site and we've already talked about how we would do those on the open space on the site.

Courtney Kaylor: Can you briefly describe for us the phasing of the tree removal and I am going to ask you a couple of questions about that? You're tree plan, does it generally contemplate two stages of tree removal. One at the time of the development of plat infrastructure and tow at the development of individual lots...?

Dan Harvey: Yes it does.

Courtney Kaylor: The trees that are identified as possible to be retained with non-significant and significant are those trees that will be addressed at development of individual lots?

Dan Harvey: Yes individual lots.

Courtney Kaylor: Thank you that was all my questions.

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Hearing Examiner: Cross examination.

Elizabeth Mooney: No.

Hearing Examiner: City.

Mr. Knutson: No.

Hearing Examiner: Thank you Mr. Harvey.

Courtney Kaylor: We're going to let Mr. Egge have the last say on a few clean up items.

Hearing Examiner: Mr. Egge you are still under oath.

Mr. Egge: Yes. Did you want to ask me questions?

Courtney Kaylor: Mr. Egge could you briefly address there was some public comment regarding connectivity either road or trail connectivity to other sites. Can you address that?

Mr. Egge: Yes. And I'm not sure which exhibit I'm referring to. It's by Miss Dare (ph. sp.). It's in her handout and it's the third page of a document that was part of her submittal that was titled Sunbrook Hearing, Peggy Dare and then her address and individual comments and also representing the Brier Horse network that's dated July 20, 2009.

Courtney Kaylor: Exhibit A16.

Mr. Egge: I thought it might be part of A16.

Hearing Examiner: It's part of A16 and my page number of that particular letter begins on page 4 of the exhibit.

Mr. Egge: Under D street layout indicated comments on behalf of the Brier Horse network; she references title 16.16.040 which is essentially a section in the subdivision code that deals with connectivity to adjacent properties. And she note in her letter that this site is part of a "super block" bound by 236th street southwest which would be to the north, Dunlop Road, Mr. Gaudette is also known as 23rd avenue which is several hundred feet east of the subject property. A road south in Kenmore which I am sure which road she was referring to. Maybe the plat road in Maple View or Maple Brook and Brier Road which would be on the west... She goes on to state that this project should do its fair share in contribution to the street network by continuing the internal street to the eastern boundary to the plat for eventual connection. The code

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section that she sites talks about continuity and connection to adjacent streets where they're provided and where it's appropriate. As you know that the subject property is surrounded on the north by a plat off 241st that has no road connections to this property. The stream corridor and the plat to the south in Kenmore that has provided no road stubs to the property... Plats to the east and short plats to the east that are unincorporated Snohomish County that have provided no roadways to the subject property. She did mention to the northeast, I think the Kessner property has been mentioned as a large acreage short plat lot. If you look at the map that's on the wall, you can see the Kessner short plat scenario that stubs west from 23rd avenue. There are four lots in that short plat. And a private road hammerhead determinates part way into the development. It would not be feasible nor advisable to extend a roadway to the northeast corner as suggested by Miss Dare of this property. Number one it would not be feasible to connect via a public road through four lots that have already developed there to 23rd avenue. The other thing is if you would be able to do that in some manner where they condemned the property and created a public road, it would essentially because of the separation of 236th further north which is really the only east/west segment within about a half a mile of this site between 23rd avenue which is a main collector that runs north and south through Brier and then down into Lake Forest Park or Kenmore. I'm not sure which. Would effectively create a shortcut through this subdivision that would act as a collector road at a minimum and perhaps an arterial... And this interior plat road system would not handle those volumes of traffic just by the sheer numbers of them all. Just for your information the plat of Matthews Park was mentioned. And that plat lies immediately north and east. Accesses of the east side of 23rd avenue and approximately 241st street, a familiar area with that plat, it was a Snohomish County plat that was approved several years ago and it accesses via a loop road system from 23rd avenue. So what their issues were with that, unstated but that's the location of that plat. It is neither downstream from this subject property nor involved in any way. I've mentioned the reasons why connectivity is neither feasible nor wise on the looped road system and any potential extensions that would be needed to the adjoining properties.

Courtney Kaylor: Will the offsite walkway for school children prevent the development of the Brier horse trail?

Mr. Egge: No it will not. It will be certainly a feature that will lie along the east boundary of Brier Road. It will be a raised asphalt walkway that can be used by horses if they want to come up and down that segment of the roadway. It will not preclude use of it as a horse trail.

Courtney Kaylor: Did you consult with the appropriate school district regarding this plat?

Mr. Egge: Yes the comment was made that the school district boundaries in this area are somewhat confusing and I would go on to say that when we met with the North Shore School District and we did meet with them several times to negotiate this

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offsite walkway, the first meeting that we had the North Shore folks weren't even sure if it was in their district. It was an interesting discussion that took place in district offices which I was able to witness. Once we got the maps out and they believed us that they were indeed the recipient of our children from this site, then were able to get down to business and solve the issues at hand. So yes, we did meet with North Shore. We had a good working arrangement with them on what their needs were to get kids to the school bus pick up point at 241st and Floral Way and that's what we have proposed in this subdivision.

Courtney Kaylor: We have no further questions.

Hearing Examiner: Thank you. Cross examination to Mr. Egge.

Miss Bowers: I have one. Given the way that this is designed at this moment and that you're saying that roads A, B and C are public, how is the public supposed to get out when they hit private road D?

Mr. Egge: If the this that you're referring to is the plat design that we have the... When you say out, do you mean out to where?

Miss Bowers: At this stage there is no way for the public to go... The public can come in on Road A, Road B and Road C but when they get to Road D that's private and technically they're supposed to be on it.

Mr. Egge: Actually that's not the case. This is a private roadway that is going to be built to public standards under the city of Brier's construction standards. And it will be open to public traffic and private traffic as well.

Elizabeth Mooney: So in essence Road D is really going to be public as opposed to private?

Mr. Egge: No it's really going to be private with an allowed use to the public.

Elizabeth Mooney: Would there be an overlying easement on that to that effect?

Mr. Egge: It would be described in whatever way the city of Brier would determine appropriate at the final plat stage and on that document in terms of restrictions and encumbrances. But if the public feared traveling up road D, they could always turn around in the bald and go back out. It's a two way street if they want to go out directly west.

Elizabeth Mooney: It just seems kind of odd to have a loop road and to plunk it in on one section and have it be private. I can see Fed Ex having a huge problem getting stuff there to people. But and I understand the rationale for having that narrower so that there is more buffer zone.

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Mr. Egge: We eliminated a sidewalk on the west side of it which reduced the impervious as well.

Elizabeth Mooney: Okay. It just seems rather awkward. And I'm done.

Hearing Examiner: No more questions. City, no more questions. Thank you Mr. Egge.

Courtney Kaylor: No more witnesses.

Hearing Examiner: I actually have to think where we are here. Appellant rebuttal.

Elizabeth Mooney: No we don't have anything. None.

Hearing Examiner: City rebuttal.

Mr. Knutson: One very brief rebuttal. Jason Henry.

Hearing Examiner: Mr. Henry you are still under oath. Approach a mike I think.

Mr. Knutson: Mr. Henry did you hear Mr. Lowzen's testimony about duration and peak flow analysis and the 2005 DOE storm water manual? Do you have any comments about that?

Mr. Henry: I did. Yes I concur that peak flows matching is not required under the 2005 ecology manual. I believe I grabbed the 2001 manual off the book shelf yesterday morning. And I reviewed the 2005 today and I did not see the peak flow matching criteria.

Mr. Knutson: So you concur with his testimony.

Mr. Henry: That is correct, I concur.

Mr. Knutson: Thank you, that's all

Hearing Examiner: Any cross examination from either of you two?

Elizabeth Mooney: No.

Courtney Kaylor: No.

Hearing Examiner: Thank you Mr. Henry. Does that conclude the city's rebuttal?

Mr. Knutson: It does.

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Hearing Examiner: Then we are at the point where we would normally do closing statements. The party have agreed to do them in writing. There is a schedule that we set for that way back several hours back there. I am not going to take the time now at ten minutes of 7 to go back through that, but I hope you all wrote it down. I want to thank you all very much for a most interesting hearing. I thank you all very much for your promptness in coming back from breaks and coming here in the morning so we could get cracking right on time. I do appreciate that. My written recommendation or recommendations to the city council will be forthcoming sometime before the end of the year. I say that in joking because if I remember correctly, I think the record is not closing until the 15th of September. So it will be after that before you see anything from yours truly. And the parties have all agreed that when you do your closing, you will send me my copy via email attachment. That would be much appreciated. It will let me get to work quicker. And with that I again thank you all very much and as I always say at the end of a hearing, please drive safely wherever you're going from here. We are adjourned.