

**PROPOSED ISSUES, WITNESSES & EXHIBITS**  
**REVISED By PETITIONERS FEBRUARY 7, 2017**

SHORELINES HEARINGS  
BOARD STATE OF  
WASHINGTON

Laurelhurst Community Club,  
Montlake Community Club,  
Portage Bay Roanoke Park Community  
Council and  
People for Environmentally Responsible  
Kenmore (PERK)

(McAleer)

Petitioner

v

City of Seattle Daniel B. Mitchell Asst. City  
Atty 701 Fifth Ave, Ste 2050 Sea, WA 98104  
Ph 206 684-8202 Fax 206 684-8284

**SHB NO. 17-002**

**PETITIONER'S LIST OF PROPOSED  
LEGAL ISSUES, WITNESSES & EXHIBITS  
FOR PRE-HEARING CONFERENCE**

Daniel.Mitchell@seattle.gov

**A. PROPOSED LEGAL ISSUES.**

- 1) If the Hearings Board determines that it is unable to consider Petitioner's legal issues due to untimely filing, should the shoreline revision decision be invalidated and remanded to the City of Seattle for correction because Petitioner's filing is clearly consistent with the public notice issued by the City of Seattle which indicates that appeals may be filed by January 20, 2016?
- 2) Was the Notice issued by the City relating to issuance of the permit revision defective?
- 3) Was the City of Seattle clearly erroneous in approving the permit revision by failing to apply any rigor or a "hard look" to WSDOT's application for a permit revision as required by WAC 173-27-100(2), RCW 90.58, SMC 23.60A and SEPA RCW43.21C?
- 4) Were WSDOT and the City clearly erroneous in not providing adequately detailed description and analysis (either in application materials, staff report or in NEPA and SEPA documentation) of demolition activities proposed subsequent to the Master Use Permit in their review of the shoreline permit revision?
- 5) Were WSDOT and the City clearly erroneous in decisions to avoid testing sediments and bridge materials prior to issuance of the Shoreline Permit revision?
- 6) Is the City clearly erroneous in their compliance with the requirements of Sediment Cleanup Decision Process and Policies in WAC 173-204-500 because of the increased sediment disturbance of the current proposal over that reviewed in the January 2012 staff report?
- 7) Is the City clearly erroneous in their compliance with the requirements of Water Quality Standards for Surface Waters of the State of Washington in WAC 173-201A because of the increased sediment disturbance of the current proposal over that reviewed in the January 2012 staff report?

- 8) Is WSDOT following a clearly erroneous SEPA compliance process, subsequent to the Record of Decision, that does not meet the requirements of SEPA guidelines, and did this result in Seattle acting on an incomplete application for permit revision?
- 9) Is the City clearly erroneous in not evaluating the cumulative impact of newly installed lighting on the bridge structures which may have substantially greater impact on fish and adjacent properties than was evaluated in environmental documents prepared by WSDOT?
- 10) Is the City clearly erroneous in its approval of the Permit Revision and in violation of the WAC 173-27-100 because its decision is merely conclusory?

## **B. PETITIONER'S WITNESSES**

List the names of the people who have personal knowledge of the facts related to your case that you plan to have testify at your appeal hearing.

Petitioners' investigations are ongoing. Petitioners expect to find witnesses who will provide testimony related to their specialties. Furthermore, Petitioners have not made a final determination regarding the witnesses they may call at the hearing in this matter. Petitioners reserve the right to amend their witness list at the time they submit their final witness list or as otherwise authorized by the Board. Petitioners reserve the right to call any witness identified by any respondent in either a preliminary or final witness list. Petitioners further reserve the right to call rebuttal witnesses as allowed by the board.

1. Ben Perkowski shoreline plan reviewer from the City of Seattle
2. Scott White, Confluence Environmental, WSDOT Environmental Lead
3. Rebecca McAndrew, Corps of Engineers Permit Reviewer
4. Water quality/sediment expert.
5. Health Department Staff Member (To be determined)
6. Allison Hanson Director of Environmental Services, Mega-Projects, WSDOT

## **C. PETITIONER'S EXHIBITS**

List the exhibits that you plan to submit in support of your case at your appeal hearing. Exhibits may include documents (such as letters, receipts, etc.) or other physical evidence (such as photographs, drawings, etc.). You do not need to send the exhibits at this time, just list them. (*Example:* the Shoreline Permit application; Shoreline permit.)

Petitioners' investigations are ongoing. Petitioners have not made a final determination regarding the exhibits it may offer at the hearing in this matter. Petitioners reserve the right to amend their exhibit list at the time they submit their final exhibit list or as otherwise authorized by the Board. Petitioners reserve the right to offer any exhibit identified by any respondent in either a preliminary or final exhibit list. Petitioners further reserve the right to offer rebuttal exhibits as allowed by the board.



1. City of Seattle Master Use Permit (MUP) 3012587, City of Seattle Analysis and Decision of the Director of the Department of Planning and Development, January 17, 2012.
2. Hazardous Materials Discipline Report Addendum and Errata, WSDOT May 2011
3. Final Environmental Impact Statement and Section 4(f) and 6(f) Evaluations SR 520 Bridge Replacement and HOV Program, SR 520, I-5 to Medina: Bridge Replacement and HOV project, FHWA, WSDOT June 2011. Especially Project Effects and Mitigation Hazardous Materials.
4. Public Notice of Application for Permit NWS-2008-1246 dated September 23, 2016.
5. Plan set: SR 520 - I-5 to Medina, I-5 to Medina: Bridge Replacement and HOV Project. Permit Drawings, Reference NWS-2008-1246 Applicant WSDOT.
6. Plan set: SR 520 - I-5 to Medina, I-5 to Medina: Bridge Replacement and HOV Project. Shoreline Substantial Development Permit Application. City of Seattle, May 20, 2016. West Approach Project.
7. Plan set: SR 520 - I-5 to Medina, I-5 to Medina: Bridge Replacement and HOV Project WSDOT, Permit Drawings October 7, 2016
8. SR 520, I-5 to Medina: Bridge Replacement and HOV Project Record of Decision, August 4 2011
9. City of Seattle Notice of Shoreline Revision Approval (undated sent by email with appeal date shown of at least January 20, 2017.
10. Email from Ben Perkowski January 5, 2017
11. Email from Rebecca McAndrew November 23, 2016
12. June 30, 2016 Letter from Scott White to Ben Perkowski requesting Seattle concurrence that design changes comply with the provision of the original approval.
13. West Approach Bridge Environmental Critical Areas, Technical Amendment 4 prepared for Washington State Department of Transportation, Chris Berger, Confluence Environmental Company, June 2016.
14. Testing data from the US Army Corps of Engineers requested under Freedom of Information Act, (requested, not yet received)
15. Testing data from WSDOT, (public disclosure request made, data not received).
16. SR 520, I-5 to Medina: Bridge Replacement and HOV Project NEPA/SEPA Environmental Reevaluation (West Connection Bridge) February 1, 2013
17. SR 520, I-5 to Medina: Bridge Replacement and HOV Project NEPA/SEPA Environmental Reevaluation (Floating Bridge Demolition) April 20 2016
18. SR 520, I-5 to Medina: Bridge Replacement and HOV Project NEPA/SEPA Environmental Reevaluation West Approach Bridge South and Montlake Lid Design Refinements October 31 2016
19. Letter from Julie Meredith to Perkins Coie December 6, 2016
20. SR 520 Evergreen Point Floating Bridge and Landings Project, Environmental Compliance Plan, Appendix I Construction Water Quality Monitoring and Protection Plan (Order No. 9011) prepared for WSDOT by Floyd/Snyder on behalf of Kewit/General/Manson, A Joint Venture, August 25, 2016. Revision 7 Released for Construction
21. SR 520 bridge Replacement and HOV Program, Environmental reports, practices and



correspondence (on WSDOT website, updated November 7, 2016), especially reportable events in Environmental Compliance and Assurance Procedure.

22. SR 520 West Side Final Concept Design Report WSDOT February 2016.
23. CSO Control System Plan, Webpage found at <http://www.kingcounty.gov/services/environment/wastewater/cso/projects/system-plan.aspx>
24. Ship Canal Water Quality Project, Final Supplemental Environmental Impact Statement, Seattle Public Utilities, January 7 2017.

**25. Water and Sediment Quality Reports**

- a. White Paper, Untreated Highway Runoff in Western Washington Prepared for Washington State Department of Transportation, May 16 2007 Herrera Environmental Consultants
- b. Effects of Seattle Area Highway Storm water Runoff on Aquatic Biota Prepared for the Washington State Department of Transportation Highway Runoff Water Quality Research Project. January 1982, Gerald J. Portele, Brian W. Mar, Richard R. Horner, Eugene B. Welch.
- c. The Effects of Highway Runoff on Aquatic Biota in the Metropolitan Seattle Area A thesis submitted in partial fulfillment of the requirements for the degree of Master of Science, University of Washington, 1981, Gerald J. Portele.
- d. Sediment Triad Analysis of Lakes Sammamish, Washington, Washington and Union, 2004 Kari L. Moshenberg - King County Department of Natural Resources and Parks, Science Section. (extensive bibliography of reports, sampling included a site near the 520 outfall in Portage Bay but specific data on individual locations is not included.)
- e. Survey of Contaminants in Sediments in Lake Union and Adjoining Waters (Salmon Bay, Lake Washington Ship Canal, and Portage Bay) Prepared for Deborah North Union Bay Action Team Northwest Regional Office Washington State Department of Ecology, August 1992 (92-e10)
- f. Creation and Analysis of Freshwater Sediment Quality Values in Washington State Washington State Department of Ecology, James Cubbage, David Batts, Scott Breidenbach, July 1997 Publication 97-323a

**D. OTHER**

If you have other issues or questions you would like to discuss at the pre-hearing conference, please list them here or on a separate page:

1. Will there be a separate shoreline permit amendment for the Portage Bay Area? When will that be submitted?
2. Why is WSDOT not testing sediments that will be disturbed by demolition activities? Review of literature provides strong likelihood that sediments are contaminated by 50 to 100 years of roadway runoff, the WSDOT 2011 Hazardous materials discipline report and Final EIS recommends testing prior to construction yet the Contractor has not been required to test sediments.

3. Given that WSDOT reports indicate that sediments are likely contaminated (Page 9 Exhibit 4 of 2011 Hazardous materials Discipline Report), why is WSDOT not providing a description of existing impacts and mitigating measures for sediment disturbance from demolition activities, as is required by SEPA (WAC 19711 -60) for impacts that are "likely"
4. Please describe how WSDOT is in compliance with the Sediment cleanup decision process and policies in WAC 173-204-500
5. Please describe what the approach to shoreline permit compliance will be for the Portage Bay segment. If the intention is that the original shoreline permit will cover work in Portage Bay, petitioner requests that this current appeal be considered to cover the Portage Bay area as well as Union Bay.

Dated this 7th Day of February, 2017.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'Carl Stixrood', is written over a horizontal line.

By Carl Stixrood on Behalf of  
Colleen McAleer for  
Laurelhurst Community Club,  
Montlake Community Club,  
Portage Bay Roanoke Park Community  
Council  
People for Environmentally Responsible  
Kenmore (PERK)  
North Capitol Hill Neighborhood Association