

**People for an Environmentally Responsibility Kenmore (PERK)
Appeal of Brier's Sunbrook Project
Day Two – July 31, 2009**

Hearing Examiner: Good Morning. Our hearing is back in session. This is a continuation of the Sunbrook preliminary plat and SEPA appeal hearing. The file number is issue B06-001. It is 10 A.M. straight up on July 31st, 2009. Three very short preliminary kind of procedural things... Number one, having taken the public testimony out of sequence last night at the close of our time, we're going to back and pick up where we broke off in order to do that. So we will be starting with any additional witnesses from the applicant here momentarily. Number two, I intend to have a lunch break for you all. I didn't give you a potty break last night, but I will be nice and give you a lunch break today. And I have talked to the city clerk about this. Some of you know that I tend to say, you can eat anything you need to eat in about 20 minutes and be back here in about a half hour. However, I have been advised we are in an essentially no restaurant zone here in Brier and that I need to be much more generous to you because you're going to have to take a hike one direction or another to get to most of the restaurants. I guess there is one here in Brier. But since I don't want to go to the restaurant that you're going to, I am not suggesting that we all go to the same restaurant. We kind of stultify conversation. So you can figure that I'm probably going to give us about an hour a half for lunch. At about noon time, depending on where we are, if we are in the middle of working with a witness we'll keep going until we finish. But about noon, we'll break for an hour and a half. Third thing, we are scheduled to end at five tonight. There are people here that have places to go and things to do that I am aware of. If it looks like we're real gosh darn close to finishing, I may try to keep you here a little longer and see if we just can't get it done. If it looks like we're a long ways from finishing than we are going to have a chore on our hands. We're going to have to figure out a continuation date. And third thing, time limits. I mentioned them last night at the start. I think what I want to do, because I do think that we need to be cognizant of our time and yet I realize that you may have some witnesses... You being the three principle parties, you may have some witnesses that right off the bat, you know you are not going to have speak for much more time because they don't have a lot of things that they have to say. It may be important, but it's not going to take a lot of time to say it. You have others that may take quite a bit of time. For example, the way the applicants worked last night, Mr. Egge's was much longer than any of the others because he was sort of the foundational guy. And so it occurs to me that at least as a starting point to see how this will work and I know it puts the onus sort of on all of us to be honest; I am going to be looking for an average of your witnesses of about 20 minutes each average. So if you have somebody that needs to go for 35 or 40 minutes in order to properly present what they've got, that's fine. But I am then going to be looking to you, to have some shorter witnesses that will balance that. And I am not setting it up as a hard and fast thing right now. Please, I would just beg all the witnesses, don't push me to the point where I feel that I have to. Cause I can and I have and I will. Okay...

Miss Bowers: I have one fast question. Chris Bowers. I was just double-checking, are we going to incorporate any more public testimony during this time? Was it officially over last night...? Are we...

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Hearing Examiner: I don't consider it officially over. When we get to the point in the regular flow of things, I'll ask again. And if there's somebody that's here, fine. If there's not, so be it.

Elizabeth Mooney: Elizabeth Mooney. I do know that one of our plat hearing fireman/volunteer presenters is here and I was just wondering if there might be a possibility for him to speak at the beginning. He's not a witness. So it would be...

Hearing Examiner: He's not a witness but he's going to speak. If he's going to speak, he's a witness. You can't have it both ways unless he's going to stand up here and mime.

Elizabeth Mooney: He's a public citizen. In the interest of the time, the three minutes that happened last night in forty five minutes with all those people, I am just thinking that if we were to begin the day with some of those quick short presentations that...

Hearing Examiner: Unless there is some very special reason why this witness that you're going to call can't wait until you're presenting your case, we are going to go with the regular flow. So your request, I guess is denied.

Elizabeth Mooney: He's saying it's okay. Thank you.

Hearing Examiner: Another question, Mr. Knutson.

Mr. Knutson: Thank you. With regard to the public testimony, I was noting that in the rule that we're following for the conduct of the hearing that there is rebuttal testimony available for the general public. Is that you're understanding?

Hearing Examiner: Absolutely.

Mr. Knutson: So that would be an opportunity for members of the public to testify again if they wanted.

Hearing Examiner: Yes, but I am... When we get through the point on direct testimony it says members of the public, I'll still ask if there's any that want to be heard because I believe, don't hold me to this because I haven't listened to the transcript but I believe that I said last night that we're going to break off to try and take care of those people who came last night who couldn't come today. I do not believe I said I'm taking all the public testimony and moving it from where it usually is and cramming it in here. And another question...

Mr. Knutson: Yes, we have one witness who can only be here until 2 o'clock today. He has a commitment that will mean that he has to leave at that time. That's Jim Cutts who is going to be testifying as the previous city planner and the current city planning consultant and his main area of testimony will be about the tree preservation

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issues. So that's going to be important testimony so we would like to be able to make sure that testimony gets on the record before 2 o'clock if that's alright.

Hearing Examiner: Okay, I will keep that in mind. Thank You. Miss Kaylor, do you have additional witnesses and if so let's call the next one?

Courtney Kaylor: Yes we have three additional witnesses and our next witness is Ed Sewell.

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?

Ed Sewell: I do.

Hearing Examiner: Please start by telling us your name and how to spell your last.

Ed Sewell: My name is Ed Sewall.

Hearing Examiner: Thank you, your witness.

Courtney Kaylor: Mr. Sewell can you please summarize your education experience?

Ed Sewall: I have a Bachelor of Science degree from Maine Maritime Academy and a Master of Science degree in Natural Resource Science from University of Rhode Island.

Courtney Kaylor: What was your role in this project?

Ed Sewall: Our role in this project was to conduct the critical areas study, identify wetlands and streams on the site as well as identify wildlife habitat and do analysis for any listed threatened or endangered species for the site.

Courtney Kaylor: Can you describe your evaluation of wetlands on this site?

Ed Sewall: What we found on the site were three regulated wetlands. Wetlands A and B on the northeast, we rated those at categories 4. And wetland C, a small riparian wetland on the southwest corner of the site... go back to wetland A and B, categories 4 with a 25 foot buffer based on the city code. Wetland C as part of the drainage from Abbey View basin, the code specifically identifies wetlands on that drainage as having a 25 foot buffer also.

Courtney Kaylor: Can you describe why you rated A and B as category 4?

Ed Sewall: They were isolated features, single wetland class, less than an acre and they met the criteria in the code.

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Courtney Kaylor: And did the Army Corp of Engineers review your work?

Ed Sewall: They did. We sent a letter to the Corp with our notice of intent to fill based on the original plan which included filling of wetland A and B. The Corp responded to us. We coordinated a site visit which we did not attend. They went out in Spring of 2006 and made a determination that the only... They reviewed the whole site; Matt Bennett of the Army Corp of Engineers determined the only regulated feature was the stream on the southwest corner as well as the wetland. And the other two wetlands that we had identified A and B were isolated and not under federal jurisdiction.

Courtney Kaylor: Can you describe the project in relation to the wetlands and its buffer?

Ed Sewall: The current project protects all the wetlands on the site. It protects all the buffers on the wetlands of the site. Wetland A has a minor buffer intrusion on the northwest for the reduced section of road, but there's larger buffer areas to the south of the wetland that make up for that intrusion. There's no other impacts to any wetlands or buffers or streams or buffers on the site.

Courtney Kaylor: Is there any buffer enhancement proposed in connection with the project?

Ed Sewall: There is. We've proposed doing plantings around the reduced buffer on wetland A. We've also got some mitigation related to that depression Mr. Anderson spoke about on the south side of wetland A. And at the storm water outfall or into wetland A we will propose enhancement and native vegetation in that area of the course faults flash pad.

Courtney Kaylor: According to the conditions of approval, when is the final plan of mitigation due to the city.

Ed Sewall: It's usually before the permits issued as condition of approval. A final mitigation plan would be provided.

Courtney Kaylor: For construction.

Ed Sewall: Correct.

Courtney Kaylor: Not the preliminary plat...?

Ed Sewall: Correct.

Courtney Kaylor: Were you here yesterday to hear the testimony from Paul Anderson at Department of Ecology.

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Ed Sewall: I was.

Courtney Kaylor: Can you review for us your observations with regard to the 450 foot depressional area in the center of the site and your conclusions?

Ed Sewall: The 450 square foot area that was in discussion last night was something that we noticed on our first site visit to the area in December of 2004. We looked at it. It had some characteristics that we thought well we ought to take a look at this and just confirm whether it is or isn't a wetland. It was in an area that had old agricultural evidence of fences, some old broken boards that looked like old watering type trough things near the barn. It really appeared to be some area where livestock used to congregate and be watered or just a resting area for livestock. So when we looked at it December of 2004, there was some wetland vegetation in there. Invasive wetland type vegetation such as nightshade and some buttercup... And the soils were somewhat marginal like you'd see in a lot of agricultural areas where you'd have livestock wallowing around, manure falling. That sort of thing... but there was no wetland hydrology so when we proceeded into 2005 and we made visits to the site in the middle of March, middle of April and beginning of May when we finally made our delineations, we never saw hydrology in that area. And by hydrology we're talking about what is considered wetland hydrology under the 1987 Army Corp of Engineers manual, which is inundation or saturation within 12 inches of the surface for a percent of the growing season. Which is normally 12 ½ percent but could be down as low as 6 ½ percent...

Courtney Kaylor: So Mr. Sewall if there's inundation for one day, does that qualify the area as a wetland under the manual?

Ed Sewall: It doesn't confirm it's a wetland. It could be an indicator, but it does not confirm that it's there long there enough to meet the hydrology criteria.

Courtney Kaylor: Can we back up a little bit and could you explain to us what the criteria are for delineating a wetland?

Ed Sewall: The criteria are a preponderance of hydrophilic vegetation and indicators of hydric soil and the most important indicator is the presence of wetland hydrology at the right time of year.

Courtney Kaylor: How many site visits did you make and observe this depressional area.

Ed Sewall: We made one in December 2004 as well as March, April and May of 2005. And then we've made some subsequent visits in 2008 and 2009 when this issue re-arose regarding this depression.

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Courtney Kaylor: On any of those occasions did you observe wetland hydrology?

Ed Sewall: We never have.

Courtney Kaylor: Did you make visits at the time of the year when you would expect to see wetland hydrology if it were present?

Ed Sewall: We did. Typically in Western Washington, wetland hydrology... It doesn't matter if you see wetland hydrology in the winter when a lot of areas have high ground water or potentially inundation because that's not considered the growing season. The growing season generally starts middle of March although the interpretation by the Corp has been more towards the end of February in this area because it's based on a soil temperature. The wettest part of the growing season is usually the spring from the end of February, March, April and then a lot of wetlands are starting to dry out in May. So we did look at it at the wettest time of year. The wettest time of the growing season typically wettest growing season in a normal year and we never saw wetland hydrology...

Courtney Kaylor: If hypothetically there were a question about wetland hydrology, what role would monitoring play.

Ed Sewall: When you have wetland hydrology, to meet the criteria it has to be continuous for that percent of the growing season. If you were to consider the growing season from February to October, you're basically talking about continuous period of saturation within a foot of the surface for about 16 days. And so you could go and I've seen it in a lot of wetlands when we've monitored hydrology. Where monitoring is typically done is where you have some feature that's had some disturbance that may have changed the natural hydrologic regime. If you were out in the middle of undisturbed forest and you found wetland plants and soils in the summer, you would make the assumption there's hydrology. But if you're out in an agricultural field, something that's been ditched, altered in anyway, you don't know what the historic changes to hydrology have been. So typically you are going to monitor them. because if something was wet previously those plants may still remain in that area and those hydric soil indicators will still remain in that area and even potentially some hydrology indicators may remain in that area even though the area could be no longer wet. So monitoring is typically done in a disturbed or questionable area to see if the hydrology does remain long enough to meet the criteria.

Courtney Kaylor: What are the different forms of monitoring that are available?

Ed Sewall: The typical way that people monitor wetlands is to put in, they call them pesometers (ph. sp.). They're really just ground water monitoring wells to monitor where free standing water would be in a wetland. The way we usually when we do monitoring, we put the wells in. We also did soil pits, so we can see the height of the capillary fringe in the soil because you may have standing water at one depth but

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depending on the soil type, capillary fringe will bring saturation higher than that standing water. So in our typical monitoring, we do both wells and pits.

Courtney Kaylor: What was your conclusion about the characteristic of this depressional area based on your multiple visits during the growing season?

Ed Sewall: Based on seeing in December which is the winter and that was a fairly wet fall before that and through that spring and the wettest part of the growing season, in a fairly normal rainfall year we never saw hydrology even close to 12 inches of the surface. So we made the determination it was not a wetland.

Courtney Kaylor: You were here for the testimony of Paul Anderson yesterday. Does anything in his testimony change your conclusion?

Ed Sewall: No, it doesn't.

Courtney Kaylor: In your opinion, would the fill of this area cause a significant adverse environmental impact?

Ed Sewall: No it would not. It has very low... As any sort of natural feature, it has low value. It's just some weedy invasive species in a small area surrounded by blackberry and there's no evidence of any special characteristics of it that would be lost by its fill in.

Courtney Kaylor: Despite the fact that you've concluded this is not a wetland, has the applicant voluntarily to provide compensation to provide mitigation for the filling of this area?

Ed Sewall: Yes, they have and in several forms. One was enhancement of an equal area of wetland around wetland A and its buffer with native trees as compensation for the vegetation and habitat function of this depression. We've also compensated for it in the storm water system as well now provided a conceptual mitigation plan to Department of Ecology during our discussions showing a 1:1 wetland creation on the Southside of wetland A.

Courtney Kaylor: I am going to hand out an exhibit.

Hearing Examiner: The document being handed out will be marked as exhibit A10.

Courtney Kaylor: Using exhibit A10, can you indicate where the mitigation area would be.

Ed Sewall: As shown on this conceptual mitigation plan, which we've prepared it. It shows it on the south side near the central portion of wetland A and what it would be doing is expanding the size of wetland A by 450 square feet. This area would be

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excavated out to a similar elevation to the bottom of wetland A and then top soil would be put in to bring it to grade as the elevation of the bottom of wetland A. And then it would be planted with native trees and shrubs, potentially some habitat features put in there like a log and that sort of thing.

Courtney Kaylor: In your opinion, would that compensate for the filling of this area?

Ed Sewall: Yes. It would create a feature that was of higher value than would be filled.

Courtney Kaylor: So it would provide a net benefit.

Ed Sewall: Correct. In our opinion, it would increase the amount of wetland on the site than is there today.

Courtney Kaylor: Can you discuss your chronology of your communications with Paul Anderson on this **...

Ed Sewall: Our first contact with Paul Anderson was in June of 2008 when he sent a letter to the city with some of his comments on the review of our study. He had questions about whether the wetland delineation had been verified. Whether the wetlands at the time we were proposing a fill were jurisdictional and had a jurisdictional been made by the Corp. And then he had some questions about the culvert on the stream that the stream crossing. And I think some questions on the dispersion trench and there was brief mention in that letter about... He'd seen an area that he thought potentially could be wetland behind the barn which was this depression we were talking about. So after we saw that letter, we wrote a response of July of 2008 and then went back to the city reiterated our findings on that depression and answered those other questions that he had asked about. Then I believe I had a phone conversation after that because we hadn't heard from him and he expressed... He wanted some data sheets for that area for the depression to see just some further analysis on that because our data sheet for that depression wasn't in the report he had. So we provided another letter detailing our findings and including the data sheets with exhibit shown where those data sheets were taken. And that was in November 2008. That was sent to Paul. Following that we never heard anything about it until... We never heard any response. Never had any response until June of this year...

Courtney Kaylor: I am just going to back you up a bit. I am handing you exhibit B11. Is this the letter that you're referring to that you sent to Paul Anderson in November?

Ed Sewall: That's it, yes.

Courtney Kaylor: At the end of that letter do request a prompt response from Mr. Anderson?

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Ed Sewall: Yes. Basically what I said was, hopefully this letter and attachments respond to the questions containing your June 4 2008 review letter. However if you have any questions, please feel free to contact me with my phone number and we'd appreciate a follow up response from your office as soon as possible.

Courtney Kaylor: Did you receive that response before June of this year?

Ed Sewall: No.

Courtney Kaylor: What was your assumption based on the lack of response from Mr. Anderson?

Ed Sewall: That he was in agreement with our findings.

Courtney Kaylor: Moving away from the subject of wetlands and to habitat in general on the site, can you describe the habitat that's present on the site?

Ed Sewall: It's a site forested as most of the site is forested as most people know. A mix of third growth, acidulous trees, scattered coniferous trees on the site. A lot of a mature alders particularly in the northeast corner... There is a dense canopy throughout a lot of the site which has just increased since we started working on the site. I know when I was there in 2004; the blackberries seemed a lot less than there is today. And it's fairly substantial. Kind of removed some of the habitat value that understory since a lot of the native shrubs have been shaded out... There is a lot of evidence of one time cattle or livestock of some sort used to wander through this forest because that's typically what happens in an area where once they're taken out, they've grazed a lot of things down. Weedy species start to come in. We did a review of the priority habitat database as well as the Washington Department of Natural Resource, Natural Heritage database and no rare plants, priority habitat species were noted on or near the site. We didn't see any state or federally listed on or near the site. I talked at one point to Chris Anderson at the Department of Fish & Wildlife who is one of the habitat biologists there that specializes in birds. Because we'd seen evidence there had been a barn own on the site and I asked him what sort of protective measures they'd be concerned with on that. He said there was no special protection, but if we wanted to provide some nest boxes on the site that might be helpful so they could relocate into those. We talked a little bit about the snags. He said if there is any significant snags you take out, you may want to mitigate by creating or relocating snags into the areas that we're protecting.

Courtney Kaylor: Are the nest boxes and snag creation proposed?

Ed Sewall: Yes, they were proposed. There's also been discussion about pileated woodpeckers on the site. Pileated woodpeckers is a state candidate species which doesn't afford it any special protection under that designation. There is evidence that pileated woodpeckers occasionally forage on this site. Most of the cavities we saw

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at the time when we first did the study, were old. Didn't appear there had been any recent excavations. I made another visit recently. I saw a couple of cavities that looked like there'd been some recent excavation, but no nests. No heavy amounts of evidence of foraging in the snags that are there. A lot of the snags are small. There are alder snags primarily. There's one conifer snag that I saw that had some evidence of some cavities, but pileated woodpeckers in an urban area like this, they have a large home range. A 1,000 to 2,000 acres and they'd be going all around to different whatever remnant patches there are and this would represent a fairly small amount of what habitat they used. Since we didn't see any evidence of nesting on the site, we assume it's just used for occasional foraging.

Courtney Kaylor: Can you describe a little bit more of the snag creation proposal?

Ed Sewall: The proposal would be either to girdle selected trees that looked like they'd create appropriate snags in some of the wetland buffers or to relocate some of the snags or cut timber that would make appropriate snags and create snag features in the buffers.

Courtney Kaylor: In your opinion, would that provide sufficient mitigation for impacts to pileated woodpecker habitat to ensure that there's no significant adverse impact.

Ed Sewall: We feel that it would, yes.

Courtney Kaylor: Overall do you believe that this project will have a significant adverse impact on habitat?

Ed Sewall: I do not. With any development there will be some relocation of wildlife and most of the wildlife on this site are fairly used to be in close proximity to humans. They're tolerant of that. They will either relocate into some of these buffer areas or move into other areas. So we don't feel that there would be... There's always some impact when you do anything, but nothing significant.

Courtney Kaylor: Were you here yesterday for the testimony of Suzanne Anderson with OTAC?

Ed Sewall: I was.

Courtney Kaylor: And subsequent to her testimony, did you have the opportunity to review the OTAC memorandum dated June 22, 2009 which has been admitted as part of Exhibit A8?

Ed Sewall: I have gone through it some this morning.

Courtney Kaylor: Can you respond to the points made in that memorandum ** testimony...?

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Hearing Examiner: If it's the Anderson memo that you're going to talk about that one is at least by my listing, I just mark them in the order that they showed up, it would be A8E.

Ed Sewall: The first point that they bring up in this memo is point 2B on page 3. It's in regards to the wetlands C boundary and rating. They asked... It's unclear whether the Corp had verified the wetland boundaries. They did verify the wetland boundaries. I wasn't with the Corp, but I have been on site visits with Matt Bennett from the Corp several times and I know it's his standard procedure to go to a site entirely, verify the delineations and he also looks at other areas that he thinks might have been wetland that may have been missed. So I feel confident that he made a fairly thorough review of the site and did confirm those boundaries. They also talk about whether the culvert widening would impact wetland C. There is no proposal for the culvert widening to encroach into wetland C. They also ask whether the wetland C delineation has changed because of recent storm events and I have actually walked in that of June this year and it looks the same as it always did. It doesn't appear any different.

Courtney Kaylor: They made some comments on the buffer for wetland C. Does the buffer assigned to wetland C comply with the Brier municipal code?

Ed Sewall: It does.

Courtney Kaylor: And in your opinion is it a sufficient buffer to ensure that there will be no significant adverse impacts to wetland C?

Ed Sewall: I do. There next point was on the ratings of wetland A and B. And they talk about some comments made in the drainage report about how these could be connected to something to drainage to the east and that the Corp may not have looked at it because they were in June of 2006. There is no surface connection of these wetland features to anything to the east. There's a ditch in a yard located 50 to 60 feet east of these wetlands and that may be taking yard drainage. But there's no direct connection with any channel to any other hydrologic feature on or near the site from wetland B or A... And then there next point was on impacts to wetland A's buffer and wetland A hydrology. There is some minor encroachment into the buffer for the road on the north side of wetland A. And that is being done through the lot potential mitigation process and the road width in that area has been reduced to attempt to minimize impacts in that area. We don't feel that it will have an impact on this wetland. It's a low rated, fairly low value wetland. The wall itself on the road will actually prevent people from going down into the wetland in that area. The wetland itself looks it already has flashy hydrology. If you were to go into that wetland, there is very little vegetation growing in the bottom. There's shrubs and a few trees along the edge, but it's primarily bare soil in there because ponds in it and it just drains out and I think it's flashy enough that you don't get a lot of vegetation growing in it. So we don't see that this encroachment in the buffer or the outfall of storm water into the buffer to try to replicate

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wetland hydrology is going to impact this wetland at all. There was concern in this same comment about where the storm water outfall would be because it's in a smaller section of the buffer would cause some erosion and that has been designed with a splash pad which we would propose to put willow state plantings which would further bind the whole thing in a more natural feature and would prevent... In addition to the rock would help prevent any erosion from water seeping into the wetland from that area. They have a discussion on a potential impacts of the offsite wetland upstream of the road crossing and we originally delineated that area when that was going to be part of the project. So we've looked at that fairly closely. It's basically an existing impact in the stream where someone dammed it and landscaped it and dug it out and it's really a decorator pond that someone built in the stream channel and is not a natural feature. I know that when I looked at that feature with Ginger Holzer (ph. sp.); one of her questions was...

Courtney Kaylor: I am just going to interrupt you. Who is Ginger Holzer (ph. sp.)?

Ed Sewall: Fish & Wildlife area habitat biologist. When we were out reviewing the ordinary high watermark location of the stream and looking at the culvert replacement requirements and she saw that area being... When she looked at the pond, one of her questions whether we had checked oxygen levels in the pond to see... Because in her opinion it looked like it was so degraded that fish probably couldn't survive in that pond. So the placing the culvert back in at a natural elevation should not... The culverts in there now are already at a certain elevation where the pond is stabilized and I don't think the new culvert is going to change that much, but it's not a pristine area. It's a landscape disturbance in the stream channel. So we don't see that as a very significant impact. The 2F on page 5 was again in relation to the level spreaders causing erosion around wetland A and as we said before, I think the planted splash pad should protect that area so there should be no erosion. And that was all they had in there regarding wetlands.

Courtney Kaylor: Thank you, those were all my questions.

Hearing Examiner: Cross examination by PERK.

Miss Bowers: Yes. Chris Bowers speaking. You mentioned that you've had an assortment of site visits on this property. Can you give me an estimate of the total amount?

Ed Sewall: Probably a dozen.

Miss Bowers: And this is over a five year period?

Ed Sewall: Starting in December 2004 so.

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Miss Bowers: How many of them were actually done between October and February of any of those years?

Ed Sewall: We have December 2004 and I think the next visit we may have done was in March of 2005. So I don't recall whether we have any between October and February.

Miss Bowers: In the other years...?

Ed Sewall: I don't recall.

Miss Bowers: So the majority of them have been in late spring since that time or early summer.

Ed Sewall: Right because we were dealing with wetlands and that's the time of concern for delineated wetlands and it just happened to be the timing of our work on the project.

Miss Bowers: Just for our record to clarify when was the last site visit that you dealt with the wildlife habitat issues?

Ed Sewall: The last site visit I made was two days ago.

Miss Bowers: Okay. Have you worked in any other developments in the watershed of 0056 either in Snohomish County or King County?

Ed Sewall: I have.

Miss Bowers: Which ones?

Ed Sewall: I believe it was called the Himmelman (ph. sp.) plat and then Lake Forest Park plat.

Miss Bowers: Can you describe where those were located?

Ed Sewall: Roughly I guess maybe a thousand feet south. Both plats butt up to each other. A thousand feet to the south...

Miss Bowers: We have a map as one of our exhibits. Could we show that so he could point it out?

Hearing Examiner: Sure. It's one of the exhibits that you've already pre-filed?

Miss Bowers: Yes.

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Hearing Examiner: Which one is it? He probably could look at it in a bound version. Which exhibit is it?

Miss Bowers: I am looking fast here. It's P24. It's out of the Herrera report.

Hearing Examiner: So it's one of the city exhibits, not one of your exhibits.

Miss Bowers: B24. Yes. Can you show the Lake Forest plat please?

Ed Sewall: I believe this is the Lake Forest plat.

Miss Bowers: And then the Himmelman (ph. sp.).

Ed Sewall: That's right next door.

Miss Bowers: For the record, are you familiar at all with the two developments across the street from Himmelman (ph. sp.), the Trillium and Westbrook?

Ed Sewall: No.

Miss Bowers: One of your other texts said you did work with... Not your... One of the witnesses Slausen (ph. sp.) mentioned that he worked on the Westbrook as well. When you were doing your soil samples in the wetlands on A and B, how many soil samples did you take and how deep were there?

Ed Sewall: On A and B on the site?

Miss Bowers: Yes.

Ed Sewall: Standard depth that we would normally dig. A 16 inch soil pit... I'd have to take a look. We may have recorded... We usually record one or two in the wetland and one just outside, but we'll dig around all through there and not necessarily have a data sheet for every pit.

Miss Bowers: When you're mitigating the 450 feet, you said foot by foot ** to the southern section of wetland A, correct? On your map, there is a soft path that goes through those two wetlands as well. Is this mitigated area south of the path or north?

Ed Sewall: On our exhibit you can see the mitigation is north of the trail.

Miss Bowers: Where have you mitigated the square footage of the path?

Ed Sewall: The path through the buffer isn't allowed impact in the buffer. There's no specification that mitigation is required for that that I'm aware of.

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Miss Bowers: None of that path is crossing wetland B?

Ed Sewall: No.

Miss Bowers: Okay. When you were discussing monitoring, have you started taking any temperature monitoring at 0056 within a quarter mile of Sunbrook?

Ed Sewall: No, I have been doing no temperature monitoring of the stream.

Miss Bowers: Is there any particular reason why you guys haven't started the monitoring to get a baseline?

Ed Sewall: I am not working on the stream aspect. Carl Hadley is our expert on that. You can talk to him about that.

Miss Bowers: You mentioned you were discussing monitoring so that's why I wanted to double-check. And how much work do you anticipate doing on wetland A and C when you're designing this project?

Ed Sewall: On A and C?

Miss Bowers: A and B.

Ed Sewall: When you say work, do you mean designing the mitigation?

Hearing Examiner: That's a, pardon me, a pretty vague question.

Miss Bowers: I'm trying to figure out a way to say it that I'm not bringing in additional testimony at the same time based on past experiences. Since wetlands are supposed to be left undisturbed and yet when developments are happening, can you predict at this particular moment whether you will have to go and disturb any section of the wetland in order to produce your mitigation, produce the road, the little hammer piece that goes up there?

Ed Sewall: Typically construction, erosion control fences are put at the limits of clearing. No intrusion into the wetland or buffer occurs there. In our final design of the mitigation, we'll need a temporary access into the wetland creation area on the south side of the wetland as part of the mitigation plan. We'll show restoration for that and we'll also design it to avoid any trees to minimize the impact.

Miss Bowers: Are you going to be fencing the trees at their drip line?

Ed Sewall: I personally won't be. There may be some fencing if our access area is within drip lines. So we'll take that into consideration when we look at how we're going to get into to do that creation excavation.

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Miss Bowers: Trying to keep this all in one thing and not jumping around too much. You mentioned that you would be doing some monitoring?

Ed Sewall: The only monitoring that would be proposed right now is in regards to mitigation monitoring.

Miss Bowers: Have you created a baseline on that so you will be able to see any differences?

Ed Sewall: Mitigation monitoring has to do with what our mitigation plan is and it may... It's not in a final form. It's just conceptual so that hasn't evolved at this point, but typically it's going to have for this kind of thing, survival standards for the plantings, standards on removal of invasive species, hydrology monitoring the creation area to make sure we've created wetlands successfully since that's what we're proposing. Those would be the typical things that we'd have in there.

Miss Bowers: Given that there's been several comments from Department of Ecology as well as others about the delineation of the isolated wetlands and that possibly that is inaccurate, have you at any point chose to comment Army Corp to have them come out again and repeat their visit.

Ed Sewall: We have not contacted them again. They made their review of the site. That was pointed out in the report that they reviewed the site. I was not there with them. But as I said before, Matt Bennett does very thorough inspections of sites and typically looks and anything that's questionable and I'm assuming he had looked in that area and had no questions on it.

Miss Bowers: How many years is that report good?

Ed Sewall: I believe the delineation reports are good for five from the Corp.

Miss Bowers: Okay. Do you live in this area?

Ed Sewall: Not in this immediate area, no.

Miss Bowers: Are you part of Snohomish County or King?

Ed Sewall: No. I lived in King County previously but now I actually live in Snokohomie (ph. sp.) Pass so technically I'm in Kidatask (ph. sp.) County. I am just over the border. But I lived in King County until four years ago since 1991.

Elizabeth Mooney: Is it okay if I talk or not.

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Hearing Examiner: Remember what I told you yesterday that for any number of reasons, it's best if cross examination is done by one person for each party. Not a tag team exercise where it's three or four different people or two or three different people. You ask a question. She asks a question. That's just nuts. And I let you ladies get away with a little bit of it last night. I don't want to start down that road again today. So the answer's no.

Elizabeth Mooney: Okay then I'll just **...

Miss Bowers: I have to exhibits that I want you to look at. Exhibit 33. P33.

Hearing Examiner: Thank you. That's a multiple page exhibit, which page do you want to look at?

Miss Bowers: Page 2.

Ed Sewall: The one with the three photographs?

Hearing Examiner: Yes that's the right page.

Miss Bowers: Correct. And there are three separate photographs there and the top one is the Lake Forest Plat that you worked on.

Hearing Examiner: There are two top photos, so which one do you mean?

Miss Bowers: The one to the right and the left, they are both of the same thing. Those particular ones, that was a project that you worked on.

Ed Sewall: I did do some work on that project.

Miss Bowers: That flooding occurred and do you understand how that happened and what could have been done to prevent it?

Courtney Kaylor: I am going to object. This is not the project that is the subject of review in this **...

Hearing Examiner: I understand, but I also think I understand the direction and the reason for their question. If I am understanding it right, it's not an unreasonable topic to explore at least briefly so I am going to overrule your objection. You may answer the question.

Ed Sewall: That's an interesting feature because on the Lake Forest Park plat which was essentially a rectangle oriented east/west. There was a drainage ditch that was determined to be a drainage ditch at the time. We first worked on that, I believe it was 97 or 98. It was unincorporated King County. This ditch came down onto the site

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and crossed from the north to the south and it was flooding out the neighbors to the south of the Lake Forest Park plat. So the owner of the Lake Forest plat was being sued because of this floodwater that was coming on. We did delineations on that site and this feature at the time; we assessed and called a drainage ditch because it comes from storm water off towards Brier Road, 56. King County came out. They agreed with us. The final design of the plat was supposed to pipe that across to the east towards 056 with an outfall. But in the meantime to alleviate the flooding of the neighbor, a temporary drainage ditch was dug across the site which is the orientation of this line right here. And then the project was brought into city of Kenmore. And the city of Kenmore had Adolphsen (ph. sp.) start reassign things that have already been approved by King County including our wetland delineations. We brought the Corp of Engineers out there. The Corp of Engineers agreed with our delineations. Corp of Engineer had no issue with the ditch as I recall though I wasn't completely... I wasn't involved all the way through this project. But what I am aware is that through the work of PERK on this project, they brought a person from Fish & Wildlife. I forget his name who no longer works there. And he changed his mind. But his determination was this ditch was a stream. King County's determination was it was a storm water ditch. There was no evidence it was a stream. So in the end this plat was stuck with this temporary drainage ditch across the site called a stream under a new jurisdiction for something that was dug a year or so ago. And then it had... It was not in an ideal location and it was left in this configuration and left with a buffer on it and so it was not the ideal situation. Originally it was going to be piped through that area with some sort of control structure I would imagine over on 056. But I wasn't involved in the engineering and I was only involved up to a certain point. Though we are still doing some monitoring of the mitigation on that site... so that's my background.

Miss Bowers: Concerning that when you speak about the drainage ditch, what permits were taken out by the property owner before the drainage ditch was done?

Ed Sewall: I don't recall. That was 11 years ago.

Miss Bowers: Do you know offhand the name of the person that came out that created the fact that this was a stream and waters of the US as opposed to a drainage ditch?

Ed Sewall: No, I don't recall.

Miss Bowers: Can you recall the name of this gentleman who no longer works at the Department of Fish & Wildlife?

Ed Sewall: No, I can't.

Miss Bowers: I also need you to look at exhibit P21.

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Ed Sewall: It looks like condominium and a dock with some boats and that sort of thing.

Miss Bowers: These photographs were taken at the same time as the photographs at Lake Forest Park in exhibit 33 from the same December episode. The damage found to those condominiums and to the mouth of the stream, this is the harbor, caused the stream actually to blow out its weir and create a new mouth.

Hearing Examiner: You're testifying.

Miss Bowers: There is also one other exhibit I want you to peek at.

Hearing Examiner: So you are not going to ask him any questions about 21?

Miss Bowers: 21 and 20 are connected. They are in the same location. The photographs in 20 are of the condominium area and 21 is the harbor.

Hearing Examiner: 20 looks like the harbor to me. It's got boats in it.

Miss Bowers: The properties are adjacent to each other.

Hearing Examiner: 21 has some boats in it so they must be close to each other.

Miss Bowers: The gentleman that submitted these is not able to attend.

Hearing Examiner: So what's your question to this witness about these pictures?

Miss Bowers: The Lake Forest Park plat picture in 33 shows the amount of water going through it flooded. Do you know how much effect on the street 60th?

Ed Sewall: No.

Miss Bowers: Did Kenmore contact you at any point about the damage to 60th?

Ed Sewall: Not that I'm aware of.

Miss Bowers: Do you consider that with these three sets of pictures that would be significant adverse impact?

Hearing Examiner: Don't answer that. What's the antecedent of the word this in the question? Do you know what I mean when I say that?

Miss Bowers: The evidence that...

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Hearing Examiner: What would be a significant adverse impact? The things that are shown in the pictures or having looked at this pictures is this plat going to be a significant adverse impact?

Miss Bowers: The second.

Hearing Examiner: Having looked at these pictures, does he think that this plat will create the current... That Sunbrook will create a significant adverse impact? Is that the question?

Miss Bowers: My first question is that with the water from the Lake Forest Park where you were involved with that work, do you see after looking at these three whether there was significant adverse impact from this development which is a few hundred feet away from Sunbrook?

Hearing Examiner: And again the antecedent of this the Lake Forest Park plat.

Miss Bowers: Right.

Courtney Kaylor: And I will again renew my objection. This has nothing to do with the plat that's before us today and a second objection, Mr. Sewell actually didn't testify about stream flow. So perhaps this is outside the scope of his direct examination?

Hearing Examiner: Since she's going to ask another question, I don't have to rule on your objections.

Elizabeth Mooney: Aren't you going to rule?

Hearing Examiner: It happens all the time where attorneys don't wait for me to rule. They just decide they want to try it a different way. They don't want to gamble on what I'm going to say and I thought that's what she was going to do.

Paula Swisher: And if Miss Mooney is going to ask you questions and talk, she needs to talk loud enough that it gets picked up on the record.

Hearing Examiner: You can consult quietly with Miss Bowers. That's no problem. But what the clerk is worried about when you're addressing questions more directly to me, you've got to make sure they're loud enough that these mikes pick you up.

Elizabeth Mooney: No offense intended to the court here or anybody else, but what I think we're trying to figure out is whether Ed Sewell and what he represents in the Sunbrook preparation... We are wondering right now that the job that Ed Sewell is a part of is going to cause a significant adverse environmental impact based upon his having been involved in the Lake Forest Park plat and the wetland delineations and wildlife work and...

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Hearing Examiner: Is it your root contingent that the wetland delineations and the Lake Forest Park plat caused the drainage problem that we see in the pictures?

Elizabeth Mooney: Yes.

Hearing Examiner: Would it not be more logical to think that the storm drainage design and implementation on those plats caused the problem? Where is your evidence? I realize you got to give your evidence later today, but let me tell you ladies right now that delineating a wetland doesn't change the wetland. It's what people do when they do construction work that alters the sight. I have the feeling that if we got into this enough, we would find that it's a storm drainage issue and not a wetland delineation issue. I haven't seen anything yet that's going to lead me to believe that you can link these problems from that plat to the wetland delineations in the Sunbrook plat.

Elizabeth Mooney: I think it has to do with the ethics of the organization and what they deem is significant adverse environmental impact in an urban area. If the company believes that it is acceptable to increase impervious surface than they may feel that it causes no significant adverse environmental impact to pave over wetlands, divert streams illegally and ** trees...

Hearing Examiner: Is there any evidence whatsoever in anything that any of the three parties have filed that shows that anybody in this plan is proposing to pave over any wetlands or divert any streams? Is there any evidence in Sunbrook?

Elizabeth Mooney: The stream that Mr. Sewell spoke about that I believe is in the northeast section of Sunbrook...

Hearing Examiner: He said there is no stream in the northeast section.

Elizabeth Mooney: I would disagree with that. That is...

Hearing Examiner: Than you can produce evidence later on to show the existence of a stream there.

Elizabeth Mooney: It's in there, the evidence. A picture of it, but he can considered it not a stream. Whereas in the Lockwood adoption program, one of the kids that lives on that stream in their report, Jordan Trompler (ph. sp.) considered it a stream... Told me about it... I visited it. And it was part of our program.

Hearing Examiner: You'll have to produce the evidence to show that because it's not in anything that I read in preparation for this hearing.

Elizabeth Mooney: I believe that is the case. It's in their report and I will check it out later.

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Hearing Examiner: Do you have more questions for Mr. Sewell.

Miss Bowers: I don't at this time. After we present some of our witness, can we recall Mr. Sewell if we need to?

Hearing Examiner: That's the same question that you asked last night and I made Miss Kaylor unhappy with my partial ruling on it. I am still going to make her unhappy and leave it partial because I don't understand the context in which you might want to do that. I am going to withhold saying yes or no. I don't know. It will depend on what's going on.

Miss Bowers: Potentially we may need to when we have two other testimonies that go. That's all.

Hearing Examiner: And you could call him as a rebuttal witness anyway. That's it for now. Thank you. Mr. Knutson questions.

Mr. Knutson: Mr. Sewell I have a question that I would like to clarify about your testimony regarding wetland mitigation. As I understood it, you testified that there's three parts to the applicants wetland mitigation proposal. Planting native trees, the storm water system and the creation of compensatory wetlands, is that correct?

Ed Sewall: Correct.

Mr. Knutson: Could you just clarify for me what you're referring to with regard to the storm drainage system in terms of wetland mitigation. I think you mentioned further on in your testimony some certain design aspects of the storm drainage system. Is that what you were referring to?

Ed Sewall: They're just compensating for any storage value that depression would have had.

Hearing Examiner: Mr. Sewell, I know it's rude as the dickens, but after he asked the question, you're going to have to turn around and face the microphone.

Mr. Knutson: Could you hear me alright?

Paula Swisher: You need to talk a little bit louder Craig. It's picking you ** than it was last night, but you still need to project more.

Mr. Knutson: I'll just repeat the question and make sure it's on the record. I would just like you to clarify what the storm drainage system aspects that are the applicant considers to be mitigation features for the wetland impacts of this project?

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Ed Sewall: That would be compensatory storage for any storage value of that depression in the storm water system. Mr. Lauzen (ph. sp.) will be able to talk a little bit more about it ** question...

Mr. Knutson: Thank you. That's all.

Hearing Examiner: Mr. Sewell if the 450 square foot area sometimes referred to as the cattle wallow is not a wetland, why is then the applicant offering any mitigation for it at all?

Ed Sewall: It essentially was to get some agreement with Department of Ecology that we would mitigate for any value of that depression and to move the process along instead of going back and forth on it. Both Paul and I discussed it. In my phone conversation with Paul, he agreed that he thought it was some sort of old agricultural feature whether it was a watering area or a wallow for livestock. And that it had little value and so we just said that we got the area to mitigate. If wet mitigate it would that move this process along. And he said, yes he would be happy with that. So that's why we provided it. It wasn't an admission on our part that it is a wetland. We're just... We've got the room to do the mitigation. It doesn't hurt anything to do the mitigation. We're doing some plantings in that area so we offered that.

Hearing Examiner: The appellants argued at least I would say based on their exhibit P1, their opening arguments that a 25 foot wetland buffer is essentially a priori (ph. sp.) a significant adverse environmental impact. That it can't help but be that. Since you're the wetland person for the applicant, could I ask you to respond to that notion?

Ed Sewall: That the 25 foot buffer is...

Hearing Examiner: By definition it's going to create a significant adverse impact because it's not in agreement with BAS, best available science.

Ed Sewall: I guess first off, we work within the code limitations. And if the code says that type of wetland has a 25 foot buffer that's what we propose on it. These are low value wetlands. They're isolated. They rate as the lowest value wetlands and the functions...

Hearing Examiner: What about wetland C?

Ed Sewall: Wetland C, they've got a separate designation in the code for that. So we didn't rate it other than by the way the code rates it with a 25 foot buffer.

Hearing Examiner: So are you saying than that in determining whether an impact would be adverse and significant, you rely on the standard contained in the local municipalities' code?

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Ed Sewall: That's what we use to determine the buffer width, but it's my opinion that these 25 foot buffers should adequately protect these low value wetlands because the functions of these wetlands are quite low. There's not sensitive species. There's not sensitive plant species that would require extra large buffers. There's no unique features in these wetlands that would require an extra large buffer. We don't see the functions of the wetlands being enhanced with a larger buffer or impacted by the proposed by the 25 foot buffer.

Hearing Examiner: Thank you. Redirect if any.

Courtney Kaylor: No redirect.

Hearing Examiner: Okay thank you. Thank you Mr. Sewell. Who's next?

Courtney Kaylor: Our next witness is Carl Hadley.

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?

Carl Hadley: I do.

Hearing Examiner: Thank you. Have a seat. If you want to testify from over there and start by telling us your name and since there are at least two ways to spell your first name, you probably ought to spell them both for me.

Carl Hadley: My name is Carl Hadley.

Hearing Examiner: Thank you.

Carl Hadley: I'm with Cedar Rock Consultants. 19609 244th avenue in northeast Woodinville (ph. sp.) Washington. 98077.

Hearing Examiner: Your witness.

Courtney Kaylor: Mr. Hadley can you describe your education and experience please.

Carl Hadley: Yes I am a professional fisheries biologist. I have got a Bachelor's degree in ecology. I have been a professional fisheries biologist here in the Seattle area for over 20 years now.

Courtney Kaylor: What was your role in the Sunbrook project?

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Carl Hadley: I was asked to evaluate the potential that the proposed Sunbrook project would have on impacts to aquatic habitat, particularly fish, fish habitat, fish species in the stream 0056 system.

Courtney Kaylor: Can you please describe existing conditions on the site?

Carl Hadley: Well I completed a site visit in early June. I walked portions of the 0056 stream corridor. I walked portions of the Abbey View pond drainage. I walked through the buffer just a little bit to get an idea of what existing conditions like both to the north and south of primarily Abbey View Pond drainage. I did a fair amount of research just what the existing literature says about these two stream basins. Well actually the whole 0056 basin in entirety, I went through it. There are a lot of federal, state, local documents of prior survey work. Just information... It's nothing about this area. I guess probably the first thing is that and this gets at a question that the hearing examiner asked in the written comments and Paul Anderson brought it up a little bit, it gets to how these streams are numbered. And I think that Paul Anderson did a pretty good job at explaining that. back in the late sixties and early 1970's Department of Fisheries at that time was getting a lot of questions on what fish use was like in some of these streams. What are these streams worth? There was no real comprehensive mapping of streams. So the Department of Fisheries hired a mapping firm called Walker and Associates. They back then did a lot of mapping and aerial photos of the area. And they basically got together a lot of maps, a lot of aerial photos and people that were familiar with various areas. And as Paul said they basically started at the ocean and worked their way up to the head waters of pretty much ever stream in the state. And they started with the bigger basins and gave those numbers ** 1, 2, 3, 4, 5, 6, 7 etc... And then with the mainstream river, which usually got the 001 connotation, they'd work up and they started numbering tributaries to the left and the right. And if it was a major tributary they'd walk up those or at least walk up on a map. Maybe not physically, but they did most of it from 10,000 with aerial photos and maps. The maps that they had and the best that they could get in the late sixties and the early seventies... Streams like this small one here... There probably wasn't much know about stream 0056. And it was really typical that they just give the whole system one number and none of the tributaries would get separate numbers. Since then with more and more development and more known about this kinds of systems, it's been typical that you need the mainstream with the common number that was given. In this case 0056... The mainstream being defined as where the majority of basically water is... The channel that has the majority of water... And then as you move up stream, you give each tributary another number. What was historically done is you take 0056 and the first tributary that you came to would be 0056A. The next one would be 0056B etc. And you kind of work your way up the headwater that way. Paul mentioned more recently what's now the state department Fish & Wildlife has started a new numbering system and you get these really long and complicated 10 number designations for tributaries that are based on location. In this case, the question kind of came is what the city of Brier refers to as the Abbey View Pond drainage actually stream 0056. And it's kind of semantics. If this stream was being typed in the old days, I would say no. If you stand

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downstream of where the Abbey View Pond drainage branches off to the west, there is a certain amount of flow in the 0056 stream basin... There is almost the exact same amount of flow upstream of that point in the 0056. And so typically what you'd say is that the main stem continues due north along 60th street... This Abbey View Pond drainage is a tributary because it presents much less of the total amount of flow to the 0056 channel. When I looked at it in early June, in fact there was no flow coming out of the Abbey View Pond drainage. 100% of the flow was coming from the north down along that channel that goes along 60th street. So I would call that channel along 60th street the main stem of 0056 and Abbey View Pond drainage would just be a tributary of 0056. I think it's about the fourth or fifth tributary, so you could call it 0056D if you wanted. Fish & Wildlife has their new connotation with the long complicated number. It is certainly part of the 0056 stream system. Like I said, it's kind of semantics what you want to call it. I would not consider it the main stem of 0056.

Courtney Kaylor: Is it your understanding that the stream system dry part that Abbey View Pond drainage is dry part of the year?

Carl Hadley: Yes it's dry now. From everything I see it goes dry from maybe three to five months out of the year. Typically beginning in late May or mid to late May and working its way through into September or October or so.

Courtney Kaylor: Can you describe the habitat quality in the Abbey View Pond drainage?

Carl Hadley: Yes, it is obviously strongly affected by flow characteristics. Given that the Abbey View Pond drainage only flows for part of the year, that obviously strongly affects fish habitat quality. You cannot have a permanent fish population in the Abbey View Pond drainage. Any fish that do reside there would have to move up from more permanent populations in the main stem of tributary 0056 or the stream channel 0056. Or possibly downstream from these cemetery pond... But it is a well-defined channel. It's probably been there since the glaciers moved out. There's obviously been flow for quite a bit of time. It is typical that a channel like that if there is access would get fish use for the short amount of time there's water. It would be temporary and short term fish use. And I don't think that it's unreasonable that an occasional fish might get into the Abbey View Pond drainage. There is a well documented cutthroat population in 0056. I don't think there's any doubt about that. If the population of individual fish get into Abbey View Pond drainage, like I said it would be temporary and short term. There are a number of barriers currently in Abbey View Pond drainage. So they're not going to get very far. If there are fish in the cemetery pond and it's possible they occasionally get flushed out work their way downstream. If they don't get to the main stem of 0056 before the pond dries up they're going to parish in there else they could reside just fine in 0056. I went through the literature. I went through the federal, state, local and tribal literature. I tried to find anything that I could on fish ever having been observed Abbey View Pond drainage and I didn't see anything. Any credible reports... There some anecdotal reports here and there, but it gets a little confusing because of terminology

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and exactly where the fish were seen. But as far as mapping, credible reports of people actually electro-fishing or observing in Abbey View Pond drainage, I didn't find anything. I haven't done any surveys myself. It's kind of a hopeless cause. You can't prove absence. You could spend years and not see a fish. It doesn't mean there's not a fish there, but in this state there's a presumption of fish presence rule. It's commonly used by most jurisdictions. It's one that Ginger Holzer (ph. sp.) used to apply to the permits that were issued to this project. It's the reason that a fish passable culvert is being provided by the applicant. The state department of Fish & Wildlife would presume there's fish whether or not there's actually fish in there, they would presume there's fish and they use that to condition the project to provide the fish passable culvert. And the outfall is being installed has to meet certain fish criteria.

Courtney Kaylor: And regardless of whether fish are present or not, what buffer does the city of Brier code assign to the Abbey View Pond drainage?

Ed Sewall: The city of Brier's does not look at whether or not there are fish in a stream. The city of Brier's code is interesting in that what they have done is taken pretty much every stream in their city and said here is the buffer for this particular stream. And so big rivers like Swamp Creek, they've given 200 foot buffers. They took a look at the Abbey View Pond drainage and gave it a 25 foot stream buffer.

Courtney Kaylor: And have you reviewed the plans for the Sunbrook development?

Carl Hadley: I have.

Courtney Kaylor: Do you believe that the Sunbrook development will have a significant adverse impact on habitat in Abbey View Pond drainage?

Carl Hadley: I do not. And it's explained in detail in my report which is exhibit S2. So I am not going to go through that. I think the hearing examiner indicated he's read it already. But in general, my conclusion is based on a number of facts. There's approximately 1350 feet or so of the Abbey View Pond drainage that runs along the southwest and south side of Sunbrook. Approximately 450 feet or so is actually on the site. It's here and... I don't even think it touches the site here. It may for a few feet. And then there's roughly 900 feet of stream channel that is offsite in the city of Kenmore. The 25 foot buffer for most of the Abbey View Pond drainage does not come into play for this channel. Because a lot of the stream channel is offsite and it ranges between zero feet offsite here to over 110 offsite here. When you look at the average separation from the proposed plat to the Abbey View Pond drainage, you end up with average separation of almost 60 feet. 59 feet... So the 25 foot buffer only comes into play in a couple of small spots for maybe 100-200 feet. Maybe about 100 feet and maybe 50 feet here... So again for the Sunbrook plat, the 25 foot buffer just doesn't come into play. What's actually being provided is more than double that. Secondly, I took a look at what trees would be removed from that riparian buffer. As has already been described, the forest in this area has been strongly impacted. This isn't revisional

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(ph. sp.) growth timber. This is an old farm. It's been logged at least twice. It's coming back as young alder and blackberry. There are some big trees in there. There's a number of them been mapped within 100 feet. The proposed action ends up removing only 4 large trees from within 100 of Abbey View Pond drainage. Up to an additional 6 trees may be removed in the future. But during the actual development, the removal of those additional 6 trees would have to be discussed with the city. I think this was talked about before. They just can't be removed. They have to discuss... The individual developers need to discuss it with the city and they would be mitigated. But there is potential for up the removal of 10 trees. That's 10 trees over 1300 feet so about maybe 1 tree every 130 feet. The channel is dry between 3 to 5 months out of the year, which strongly influences my opinion of no adverse significance **... A lot of the functions and values that a riparian buffer normally provides are essentially absent when a stream goes dry that long. You don't need temperature protection of stream in the summer for example. It doesn't influence water quality downstream. In an urban setting, you don't get woody ** recruitment from 150 feet... You don't grow an old growth tree in an urban setting and allow it to fall and hope it goes towards the creek. There is too much risk of hitting a house or whatever else. So that function doesn't come into play. And then finally pretty much the most stringent water quality and water quality protection measure you can impose on the site isn't being imposed on Sunbrook and that's the Ecology 2005 standards. So given those 4 major points, I don't think the rules promulgated by the city of Brier have a potential to significantly adverse aquatic habitat.

Courtney Kaylor: About what percentage of the current buffer function and value do you believe would be preserved with the proposed development?

Carl Hadley: This isn't old growth timber. It's a fairly strongly disturbed riparian buffer. If you look at existing functions and values of that buffer, I estimated based on the best available science that is available for urban forests that roughly 90% of the function, maybe upwards of 95% of that function would remain after the proposed development is put in place.

Courtney Kaylor: Were you here yesterday to hear the testimony from OTAC's representative?

Carl Hadley: Suzanne...?

Courtney Kaylor: Yes and did you have the opportunity to review the portion of her memorandum that related to streams?

Carl Hadley: Very briefly...

Courtney Kaylor: I'll allow you to review it again. The first section to A... as you take a look at it, I will just let you know what my question will be whether anything in this memorandum changes your conclusions...?

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Carl Hadley: No. She points out how the stream is rated by various jurisdictions and I think it's all consistent. King County rates it as one way. Kenmore rates it another way based on fish presence. The city of Brier's calling it... They don't have a stream rating that takes fish into account. As I mentioned, they just give the rating. And that's purposely consistent with the other ratings. So I didn't see anything in here that was particularly problematic. She says that a 25 foot buffer is not appropriate. That's her opinion. 25 foot buffer provides a certain amount of functions and values. There is not requirement to provide 100% of functions and values on a stream. But in this case as I mentioned before, the 25 foot buffer hardly comes into play for the Sunbrook development given the separation from the plat and the creek for most of its length. So no, no inconsistencies...

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

Hearing Examiner: Cross examination by PERK. Remember ladies that you can have somebody other than Miss Bowers do the cross examination. If you've got a fisheries expert that you want to have cross examine this witness that's fine. You just can't have all two or three of you asking questions. It doesn't have to be Miss Bowers all the time. Having people yell in her ear as she tries to ask the questions...

Miss Bowers: One of the comments that I was going to say is we do have a number of questions of this witness, would you maybe consider starting lunch at this time rather than...

Hearing Examiner: No. No, I would not consider starting lunch now. I may be starving to death, but we're not going to start lunch now.

Jim Myers: Good morning, my name is Jim Myers.

Hearing Examiner: Okay Mr. Meyers I am not going to swear you in because you're not testifying. You are just asking questions.

Jim Myers: Yes sir. To go over your testimony, how many times did you visit the site?

Carl Hadley: Once.

Jim Myers: And that was when?

Carl Hadley: It was early June of this year. June 9th maybe...

Jim Myers: What was the purpose? And the purpose was to establish... To do a fish survey...?

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Carl Hadley: No. No, I wanted to just get a brief glance of the stream location relative to the plat. To take a brief look at riparian conditions, to take a look at the channel upstream and downstream and see what conditions were like to verify that it indeed goes dry. So there was no attempt to look for fish or anything like that. There was no electric-fishing work or whatever.

Jim Myers: You commented that different month ranges that the stream bed was dry. Do you have evidence to back that up or is that just your impression?

Carl Hadley: No, one of them was your letter. Your letter provided, I think you said it goes typically dry between June and October and something like that. There was a letter you submitted and I believe you had a comment about the stream going dry. And if it wasn't you, I apologize. But I have talked to the wetland biologist, Ed Sewell who has seen it dry. Ginger Holzer's (ph. sp.) reported it dry. I have seen it in a couple of other reports that it's dry.

Jim Myers: Did you in your site survey interview anyone with the Abbey View cemetery?

Carl Hadley: No.

Jim Myers: Were you aware that Abbey View cemetery uses water from the pond to irrigate their property?

Carl Hadley: I am, yes.

Jim Myers: Would you think that that would influence stream flow downstream?

Carl Hadley: Certainly.

Jim Myers: So the fact that it is dry is artificial in part ** artificial...

Carl Hadley: I think that's a fair statement.

Jim Myers: You said that you have reviewed a number of different mapping sites and maps to look for stream presence. I'm sorry, fish presence.

Carl Hadley: Correct.

Jim Myers: Are you aware of the Department of Natural Resources F pars (ph. sp.) mapping system?

Carl Hadley: Yes, that's one that I rarely use when I'm in an urban setting. They don't update it for urban settings. The Department of Natural Resources did some mapping a long time ago. They don't really update it in urban settings anymore. The

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Department of Natural Resources is primarily associated with forest practices in this state. And I find more often than not that the fairly old data that they provide is not all that accurate for urban settings. They admit themselves. There's no reason for them to update their data for urban settings.

Jim Myers: Would you like to take a look at... I am little unsure of the protocol. I have a map here which is generated from the Department of Natural Resources ** practice map and I was wondering if you could take a look at it...?

Hearing Examiner: Is it one of the exhibits that was pre-filed?

Jim Myers: It is not one of the exhibits that was pre-filed.

Hearing Examiner: It's not one of the exhibits.

Miss Bowers: We were hoping to...

Hearing Examiner: Was this one of the five pages extra that you talked about last night?

Miss Bowers: Yes.

Hearing Examiner: Because of the wonderful rule that the state has forced on us where we have to consolidate a hearing on the merits which is truly open record with a hearing on the appeal which in many jurisdictions would be much more tightly clamped down, I am in the awkward position of having to accept the additional material. I don't necessarily have to consider it when I'm evaluating the appeal. So do you have some copies of this map?

Jim Myers: One color one here.

Hearing Examiner: Well the one color one will do for a start.

Paula Swisher: We don't have a color copier so **...

Jim Myers: I would like to submit those. It's a three page report. The first two are the same map, but just blown up at different scales. The third one is a legend for interpreting the map.

Hearing Examiner: Good, I am glad to have the legend. I note that the appellant has presumed to mark it with their Exhibit number. I am going to throw your logic into a cocked hat because we're going to enter it as Exhibit A11. And then it will be pages just 1... The order you gave them to me would be the best way to look at them.

Jim Myers: Yes.

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Hearing Examiner: So we'll have A11 pages 1, 2 and the legend is down on 3. I will give the official copy to our witness so he can follow along as you ask him your question.

Jim Myers: You mentioned that you have some familiar with this site, but if you look at the image of Abbey View Pond or Lost Lake as it's also known on some maps, there's a designation that's in the middle of the lake. And that is?

Carl Hadley: There is an F, which typically would be fish bearing. I'm looking on the maps legend here. It probably says that somewhere.

Jim Myers: On the legend it gives an F...

Carl Hadley: There it is.

Jim Myers: So would you presume that the F in your understanding would represent a fish bearing water?

Carl Hadley: That's correct.

Jim Myers: They have not typed the water course, the stream from the pond to... Can you see if they have typed the stream from the pond to where stream 0056 is on 60th avenue northeast?

Carl Hadley: They don't even show the stream Abbey View Pond drainage.

Jim Myers: So they have not typed it.

Carl Hadley: They haven't typed it because it's not on their maps.

Jim Myers: Right.

Carl Hadley: Correct.

Jim Myers: What part of stream 0056 they do represent, there with what designation?

Carl Hadley: I think I see what you're talking about. There is a fragment of a channel that kind of heads to the north and then off to the west a little bit here. And it's sort of ends where the proposed Sunbrook plat is and they have an F on that.

Jim Myers: Okay, thank you. Those are all the questions that I have if you want any copies.

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Hearing Examiner: No further questions.

Jim Myers: No, I'm just saying I was done with the maps.

Hearing Examiner: Keep asking. You don't have to tell me when you're through with a particular exhibit. You just have to keep moving.

Jim Myers: Okay. Have you reviewed the documents that were submitted by PERK?

Carl Hadley: Some of them. I can't say I've read through all of them.

Jim Myers: Did you have a chance to look at the 1936 and 1944 aerial photos of this area?

Carl Hadley: Yes. There was a very grainy photo that I looked at. I think it purported to show a channel... The Abbey View Pond drainage channel... Is that the one that you're referring to?

Jim Myers: Yes.

Carl Hadley: Yes, I glanced at it.

Jim Myers: Were you aware that Abbey View Pond was excavated from a peat bog in the late 1940's?

Carl Hadley: So I've read. It's a man-made lake.

Jim Myers: So from those earlier photographs there was a stream channel on site present prior to the construction of the pond.

Carl Hadley: I can't testify to that.

Jim Myers: In reviewing the old aerial photographs, did you see a stream channel that corresponded with the existing stream channel on site?

Carl Hadley: No. I looked at that aerial photo. I wouldn't... I couldn't say one way or the other. I could see some trees and what may be was a low spot where the existing Abbey View Pond drainage is. But I couldn't see a channel through the trees. And it may have just been the quality of the photo. If that was your question, if I saw a channel... No, I didn't. I didn't see a channel.

Jim Myers: It was your contention that this spur of stream 0056 was a tributary and not the main stem?

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Carl Hadley: Correct. The Abbey View Pond drainage...?

Jim Myers: Yes.

Carl Hadley: Yes, in my opinion that would meet the classic definition of a tributary based on the flow characteristics.

Jim Myers: If it's possible, could we have the Herrera Map? In looking at that from where the stream forks just south of the site, there are two channels. There's one that goes more or less due north. And then there's one that goes off to the west. Now in general since you have a sense of it, could you describe the relative basins that those two spurs would drain?

Carl Hadley: No, I can't.

Jim Myers: So it's your opinion that the channel going to the west that goes all the way out to Lost Lake, Abbey View Pond is not the major stem, but is minor to the channel that goes just directly north?

Carl Hadley: Based on my observations of channel character and flow, when standing right here this channel from what I saw has the exact characteristics of this portion of the channel. When I looked at this channel contained 100% of the flow in this channel. This channel was somewhat smaller physically and has no flow and that is classically how I would describe a tributary to a main channel.

Jim Myers: Given that you made this observation in June when irrigation may have already been going on.

Carl Hadley: That's right. That's the only time that I've seen the channel is June. Since you're referring to the Herrera report, if you look at figure I think it's A7 in the Herrera Report, they classified it as a tributary as well. In fact what they've done is called this the main stem 0056 and they've called both of these channels tributary.

Jim Myers: When you were referring to the Williams ** Washington stream catalog and their stream typing, do you recall how far up they did their ** map...?

Carl Hadley: How far up they mapped it? I'm looking. Offhand, I do not recall that.

Hearing Examiner: I'm wondering if we're all perhaps including me because I have a question on my question 5, what's the stream number and what have you... I'm wondering if perhaps we're all getting bogged down in the semantics of this thing and we're just beating a dead horse. Whether it's the tributary or the main stream is not op priori, going to prove significant adverse impact to anything by anybody, anywhere, anyhow. So aren't we sort of wasting our time?

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Jim Myers: I'll make one comment without testifying. It's our contention that the definition Abbey View drainage is an ambiguous and undefinable area because it describes... It incorporates part of stream course that existed before the pond even existed. There is no detailed description of what it encompasses. Is it just the pond and the immediate stream courses? Is it everything that goes down? Is it hypothetically everything between Abbey View Pond and Lake Washington? One could define it as that if it were all under Brier code. So it becomes a little bit... Because Brier has decided not to type streams on a stream typing basis, what they've done is they said this area regardless of its merits deserves this level of protection. And in doing so, and establishing that part of the stream onsite is in fact not part of Abbey View drainage not part of the construct of an artificial lake, but is indeed a natural water course that existed prior to that point. That is the point that we're trying to underscore.

Hearing Examiner: But there are a couple of fundamental things that I think the appellants need to recognize. Number 1 in terms of the SEPA appeal, you have to prove that this project as proposed as mitigated would have with respect to streams a significant adverse impact on and I'm going to call it a stream... I know in the code it says Abbey View drainage, but I'm going to call it a stream because everybody, I think in the room, is calling it a stream. Most people are calling it an intermittent stream or seasonal stream. But that's what you have to prove and debating what it's classified as is not going to win your case. Number 2, the 25 foot buffer that's called for by the city code is something that I not only can - - would have to recommend to the council that it force on this project. That they have to comply with that because that's the city code... So we've got the plat and the city code on the one hand and we have the environmental impact on the other. And the city code standard does not inherently answer the question of whether there will be a significant adverse environmental impact. It lots of times does. In some cases it doesn't. so I still think that this focusing on what this thing is is missing the point of is this project going to create a significant adverse impact to this thing, whatever we want to call it.

Jim Myers: I will not ask any more questions about that then.

Hearing Examiner: Okay.

Jim Myers: So looking at the ** map and actually in your report, you even state that it's likely that are fish out there so during wetted times there will be fish present in the stream... Or it's likely that there will be fish present in the stream.

Carl Hadley: It's certainly possible on occasion, yes.

Jim Myers: So that stream functions as a downstream migratory corridor. If fish are in it and moving downstream, wouldn't it be functioning as migratory corridor?

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Carl Hadley: That's a lot of ifs that I haven't been able to verify. But you're asking if there is say a cutthroat trout population that's in the cemetery pond could fish be migrating downstream when the stream is wet?

Jim Myers: As you point out the D and R map indicates that it's a fish bearing water. And Brier code doesn't discriminate between fish other than anagomous (ph. sp.) fish and other fish. So there are fish that are in the head waters. There are fish below there is a wetted stream channel. So would not one normally consider that as a migratory corridor when the channel is wetted?

Courtney Kaylor: I am going to object. It calls for a lot of speculation. And as the witness has testified, he doesn't know whether there are fish above.

Hearing Examiner: Sustained.

Jim Myers: In your report, you did say that it was possible that fish would move downstream is that correct?

Carl Hadley: Yes.

Jim Myers: So if they did move down stream then it would be functioning as migratory corridor?

Courtney Kaylor: Once again it's a hypothetical question. If it's specifically recognized as a hypothetical question than I suppose that's a hypothetical. But as an actual question about physical conditions, I think we've established that the witness doesn't have the information to respond to this question.

Hearing Examiner: Do you want to try and rephrase it or do you want me to rule on her objection first?

Jim Myers: I'll let you rule. I'm sorry.

Hearing Examiner: Let's take lunch. The problem that I have with the way the question is being asked is the use of the term migratory corridor, which to me has a meaning beyond just simply that an occasional fish may get swept downstream in some water. And that's causing me a problem in deciding whether to sustain the objection or not because I think we're getting some terms mixed here that are judgmental that may be problematic. For example, we have not established and I'm not sure that I want to have anyone take the time to establish, but we haven't established whether there is a flow control structure at the outlet of the pond. If there is, is it natural? Is it manmade? If it's even natural or manmade is it even possible for fish to get over it or through it or under or whatever? So this whole thing that fish may migrate downstream, I think is predicated on a whole bunch of unknowns. At this point, I'm not sure that this witness

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from what he said, I don't think this witness is going to be able to answer those specific things. I don't think he's looked at the lake to see. Have you?

Carl Hadley: No. I've looked at the lake, but I have not looked to verify any number, quantity of barriers or absoluteness of fish barriers.

Hearing Examiner: I don't think he's going to be able to help you at least on that one.

Jim Myers: For fish bearing waters for waters that fish occupy, would one on best available science would one consider a 25 foot buffer adequate?

Carl Hadley: This is a very general question. It depends on if your existing conditions adjacent to the stream. It depends on the size and type of the stream and how often fish are there. The quantity and quality of existing habitat... With respect to this little portion of Abbey View Pond drainage right here would 25 feet be adequate? That also... You have to look at what's already there. A lot of that 25 feet in the city of Kenmore is lawn. So I guess I could answer very generally. I can't answer too specifically to the Sunbrook project. I haven't done a detailed survey of what the existing vegetation looks like along the Abbey View Pond drainage in this area. I've looked at some of the upstream sights and downstream and there's almost zero buffer on a lot of that. So adding five feet of buffer is actually a benefit in some places and 25 feet would be great. If this was virginal growth timber than 150 feet... Going from 150 feet of that to 25 feet probably would be an adverse effect, but that's not the case here. So it's a little hard to answer.

Jim Myers: Would you have difficulty answering because of the way the entry road is designed that buffer would be reduced to 10 feet for the riparian wetland which is connected to the stream. Do you think that would be adequate?

Courtney Kaylor: And I'm going to object simply because the question assumes facts that are actually contradictory to the evidence in the record.

Jim Myers: I believe that Mr. Sewell had state that there would be a reduction in the buffer.

Hearing Examiner: I think Mr. Sewell was talking about wetland A. The 10 foot buffer that he talked about was wetland A.

Jim Myers: I'm sorry. Is it correct that Fish & Wildlife, the department has asked for a fish friendly culvert on site?

Carl Hadley: That is correct, yes.

Jim Myers: Would it be unusual to have a fish-friendly culvert if there were no fish present?

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Carl Hadley: No. There's a presumption rule again in this state. Whether or not if it's known if there is fish in the stream channel, the presumption rule would apply here... Because we have a known population downstream... We have no permanent barriers between that known fish population and where this culvert is. This culvert is an existing fish barrier not a permanent one, but it's a fish barrier. So it's very standard for the Department of Fish & Wildlife to go in and use the presumption rule to ask for a fish passable culvert. Whether or not they knew that there was fish in the stream. It's a conservative act on their part.

Jim Myers: About how far is it from the site down to stream 0056 where there are cutthroat trout present.

Carl Hadley: The site at its closest point is 330 feet from stream 0056 and there's an intervening plat in between those two.

Jim Myers: Would you think that in the 300 feet of stream course going from stream onsite to salmonid bearing waters that that amount of area would be enough to improve... Would there be any change in water quality in that span?

Hearing Examiner: There's a problem here. I think you gentleman are miscommunicating at this point. You asked him the previous question what's the distance between the plat and 0056 or the other part of it or whatever we want to call the darn thing. And I think the answer he gave was 300 feet. And that's the distance roughly between the southeast corner of the plat property and that stream. That's not the amount of stream channel from where it exits this property over to there. The stream channel doesn't come out the southeast corner of the plat because it's down in Maple Brook at that point. So the south line of the plat is 900 feet long. And then you have 300 feet beyond that to get over to 60th so there's at least 1200 feet give or take.

Jim Myers: But the plat will be influencing the stream all along that course. That drainage from the plat would potentially have an influence on conditions in the stream along that course.

Courtney Kaylor: That's testimony.

Jim Myers: It's just **...

Hearing Examiner: It's his layman's attempt to ask the question. I am going to give him a little bit of flexibility on that. Do you now understand what he's getting at?

Carl Hadley: Yes.

Hearing Examiner: Can you answer it?

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Carl Hadley: Yes. It's part of what I evaluated in this report. There is roughly 900 feet of stream channel offsite in the city of Kenmore down here that runs along south of the Sunbrook property. And I think what your question was what they do at this sort of southern edge of the Sunbrook plat. Can that influence water quality in the Abbey View Pond drainage? Is that...?

Jim Myers: My question is more that the downstream effect of the property on the known fish population that's downstream.

Carl Hadley: Okay. So what's the effect of the work here on what we're calling stream 56 down here?

Jim Myers: Right, given that they've asked for... That the ordinance puts forward a 25 foot buffer, how would... And normally in Kenmore in a type 2, they give it a 100 foot buffer because it's a salmonid stream. In the Brier code they give a 50 foot buffer to parts of Lion's Creek which also contains trout and salmon. So what I'm asking is going from this code which has a 25 foot buffer, how will that impact downstream fish? Will that impact the downstream populations of fish?

Carl Hadley: I guess a couple of things. The 25 foot buffer once average as I mentioned before results in a 59 foot separation. Average 59 foot separation of the site from Abbey View Pond drainage. Given that, when you then separate the typical functions and values that a riparian buffer would provide and what you get with an average 65 foot riparian buffer and given that there is no flow during the hottest time of the season so one of the typical functions being shade or temperature control is irrelevant. Given that the large woody debris component goes out because you're not growing old growth trees. They're not falling towards the creek. They're not being passed through the culverts and under the bridges that would take them to the fish bearing population and stream 0056. My assessment as it's detailed in S2, is that yes and given that the riparian condition is currently pretty degraded and a lot of these properties along here in Kenmore have their ** and across the stream and that's going away... That's not affected by the Sunbrook property. It's my opinion that there will be some effect of what goes on here. The removal of 4 trees and possibly 10 trees and that's why I think my conclusion was that you're stilling going to get roughly 90% of the existing function of that riparian buffer. There's going to be a slight affect of what they do. But it's not a significant adverse effect.

Jim Myers: You just mentioned below the site there it's open lawn. And do you think open lawn functions as a good buffer?

Carl Hadley: No, it does not.

Jim Myers: You were earlier comparing 65 foot of riparian buffer when you made that statement; you're referring to a buffer that's intact. Or were you referring to a buffer that's intact.

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Carl Hadley: If I said 65 foot buffer... I said there's a 65 foot separation...

Mr. Knutson: 59.

Carl Hadley: 59 foot separation from the plat.

Jim Myers: But that's not the same as a functioning 59 foot buffer.

Carl Hadley: That's correct.

Jim Myers: It was your opinion that what was provided would give a 90% of functions and values as designed here?

Carl Hadley: Well sort of. My opinion is that roughly 90% of the existing functions and values of the area north of the Abbey View Pond drainage would be preserved by the proposed Sunbrook plat.

Jim Myers: What changes would it need to effectively have no net impact or no net loss of function?

Carl Hadley: I couldn't tell you without more site specific work. There's no requirement for no net effect. That's a pretty high standard. That would take some site specific study.

Jim Myers: What in your opinion does constitute a significant impact? What function loss would you think as percentage-wise you stated this doesn't have a significant impact?

Carl Hadley: It could be sort of an average culmination of level of loss of all the functions and values or I suppose if and again I'm kind of getting to speculation. If for example this was a known Chinook spawning stream and the action was to destabilize a significant source of gravel or something, you might have a significant adverse effect. There's no level when you say there's one significant adverse effect. It's usually a specific effect. Cutting of a major of source of flow to a particular creek might be an example. When I did my analysis of this specific site, I did not come across anything I thought would be a significant adverse effect. But I didn't set out to determine what specifically would be a significant adverse effect for this site. I just really don't know how to answer your question.

Jim Myers: Okay thank you.

Hearing Examiner: Cross examination by the city, Mr. Knutson.

Mr. Knutson: No questions.

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Hearing Examiner: The Abbey View drainage path through the Maple Brook path is largely lawn. We've got pictures that were submitted last night by one of the citizen witnesses. He said these were pictures of his backyard which was Maple Brook. Do those pictures look characteristic of...? Granted the stream's flooding in this picture, but in terms of the vegetation around the stream, does this look like what you were describing?

Carl Hadley: Yes, it does. I am not sure I said largely lawn. I have not walked the entire thing. I've walked several sections and I did see large stretches of lawn just like that.

Hearing Examiner: When I did my site visit yesterday. I drove up 60th until it became 24th and then went to the end of the cul de sac at 243rd Place. Looked up 204th Place... Actually I drove into 204th Place from the west side which I discovered later is the only way you can get into it because it's barricaded. And so I looked at it again from the 60th Avenue side of the east end of it. When I was along 60th, where was stream 0056 compared to where I was on the public street?

Carl Hadley: If you were near the tributary where the Abbey View Pond drainage comes in, 0056 was immediately to the west in a roadside channel there. It crosses under downstream.

Hearing Examiner: We've had a lot of mention made at various times both in the documents... Perhaps more in the documents than in the testimony in question so far, but comments about Kenmore requiring a 100 foot buffer for this stream in Kenmore. The impression that I think is left by all of that discussion is that Kenmore has in fact provided a 100 foot buffer for this stream and Brier is doing a horrible thing in not providing a 100 foot buffer that Kenmore has done to the south. Can you tell me from your personal knowledge where there are 100 foot buffers provided within Kenmore on stream 0056?

Carl Hadley: There are probably some areas. I have not walked all of 0056. I spot checked it here and there. there are locations and I believe it's 60th or 61st where there is a four lane highway immediately adjacent to the stream channel so there's zero buffer in a lot of that stream channel. That said on the other side, which would be the east side, there did look to be a pretty intact riparian buffer. As you drive further up again, the road in this case a two lane road was immediately adjacent to the stream. So there's effectively no buffer. And right, saying you're requiring a 100 foot buffer is very different than actually providing a 100 foot buffer. This basin was pretty much fully developed by the time that buffer requirement was made. It's almost irrelevant. Saying you're providing a 100 foot buffer along the Abbey View Pond drainage when houses have already built with 30 feet of the stream channel is very different than actually providing a 100 foot buffer there.

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Hearing Examiner: I am pretty sure although I never met you until you sat down in that chair that you would probably agree with me that the fact that we never protected a natural resource properly in the past is not an excuse for not protecting it properly now and in the future.

Carl Hadley: Yes, I agree 100%.

Hearing Examiner: Okay. Viewed from that perspective and in the context of what you know about the stream, is this proposal that PDI has is this providing adequate protection for the stream.

Carl Hadley: In my opinion, it is given what I stated earlier. Part of the proposal is some mitigation. Some additional planning that will go along and that's sorely needed along some of this Abbey View Pond drainage... As Ed Sewell mentioned previously a lot of this is just turning into blackberry and once you get a solid blackberry hedge, it's hard to grow anything through that. so part of the mitigation proposal for the tree removal is to come in and do a fair amount of that tree mitigation work in that riparian buffer and that's going to provide a net benefit. Certainly there's going to be some tree removal. Again up to 10 trees will be removed. But with some of the mitigation that's being offered, I think you'll see a net benefit to some of the riparian functions and values in some of the locations here where the stream channel is actually closest to the plat and not in the city of Kenmore. My opinion might be different if this was virginial growth forest.

Hearing Examiner: Okay. I guess I have one last question. It's my question Q8. I am choosing to not ask some of the others purposefully. Does a stream carry a single classification from its headwaters to its mouth under any of these stream classifications used in Washington with which you're familiar?

Carl Hadley: Very rarely. Some of the very smallest tributaries do. Some of the very small tributaries for example Lake Washington may consist of single thread in which case, they would have a single number. But other than that, typically no. They have multiple numbers. Tributaries would be numbered separately than the main stem.

Hearing Examiner: Okay. If the main stem... Let's say for the sake of argument, we have a single thread stream, but it's very long and it's very big at its mouth and teensy trickle at its headwater and we can even for the sake of my hypothetical will even assume that it's headwater is a seat. It's not even a pond. It's just water that oozes out and finally forms a channel. Is that stream going to have one classification from the mouth that say is 50 feet wide to this little trickle at the headwater?

Carl Hadley: No. Typically it wouldn't. For example DNR, the water typing 1 through 5, that creek might go through ever single water type. It may be a type 1 at the bottom where it meets the definition of shoreline ** state... AS you work up your basin, typically the gradient increases and you've got tributaries feeding more water in so the

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amount of flow will decrease. Your channel width decreases. Typically when you get above a gradient of about an average 20% of the stream channel with less than two feet, your fish start to drop out. Your fish presence starts to drop out where upon it would change from maybe a class type 3 to type 4 and when it gets less than 2 feet wide it would be historically called a type 5. We used to in this state, use that type, the 5 point classification everywhere. Now it seems like ever city, every county has their own way of typing water unfortunately and it's getting kind of confusing.

Hearing Examiner: This type of F and NP and all that stuff that's what? That's WDFW?

Carl Hadley: Yes there using that DNR **... DNR uses that.

Hearing Examiner: DNR uses it also?

Carl Hadley: Yes. King County uses it. There's a variety of jurisdictions that use it.

Hearing Examiner: Okay.

Carl Hadley: And again the ** stream channel would change as you go through it. Part of that's perennials. So once you get above your spring, you'd be a seasonal stream, an NS. Downstream would be MP. When you finally get to fish, you'd be an F. Below that... Yes.

Hearing Examiner: Okay. Thank you. It is lunchtime. As I indicated, I am going to give us an hour and a half for lunch. It is now using round numbers and the clock on the wall 12:20. And an hour and a half after that would be 1:50 if I'm doing my math correctly. So I will gavel us back into session at 1:50 this afternoon.

Mr. Knutson: One point of clarification with regard to my earlier statement that Jim Cutts need to testify before 2 o'clock we now have some additional time. He has checked and he has until 3:30, but we definitely to need to get him in by then.

Jim Cutts: A reprieve.

Hearing Examiner: Does the applicant mind if we tuck him in when we get back from break.

Courtney Kaylor: We do not mind.

Hearing Examiner: Okay. We will begin this afternoon with Mr. Cutts and then we'll go back to Miss Kaylor and her witnesses.

End of Morning Session

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Hearing Examiner: We are back in session. If I may have quiet please... Thank you. It is 1:50. This is the continuation of our Sunbrook hearing process. I have three procedural announcements to make. First, I met with a representative of each of three principal parties at the start of the luncheon recess. All four of us agreed without really a great argument or dispute, we all agree that there's no chance that we're going to be able to finish this hearing today. We also agreed to continue it and we have chosen the date and time. And that is next Tuesday, August 4th beginning at 9 AM here in the council chambers. Since this is a continuation to a date, time and place certain, which I am announcing on the record of the hearing no public notice is required nor will any be given beyond what I just said. Number two, the principal parties... Actually there was no discussion or debate on this. All of them agreed they would like to do their closing arguments in writing. We did not set a schedule for doing that. I would like you folks to be thinking about that. Philosophically, my concept is if you do a closing orally, the applicant goes first. The respondent gets to hear the applicant. Then the respondent goes. And the appellant gets to hear the respondent before they go. I think that written closing ought to have that same opportunity to see what the other person said as you would have if it were done orally. So be thinking about that. That doesn't mean you can't be starting to write your closing before you've read the other guys, but I think you should have some time to refine it and fine tune it after you've seen the party in front of you as it were. So we'll be doing closing in writing. We'll figure out the schedule for that next Tuesday. Third and final, remember we were going to start this afternoon with Mr. Cutts testimony because he had to leave early today. We have agreed that it is highly unlikely that the appellants will finish their testimony today so the city's presentation is probably isn't going to start until sometime on Tuesday and therefore we have said that Mr. Cutts will testify Tuesday. He can come back on Tuesday so we don't need to put him in out of order right now. In fact, I don't even see him. He may have already gone to what he was going to go to. So that's the end of the introductory stuff. And Miss Kaylor, I think you said that you have at least one more witness.

Courtney Kaylor: We have one last witness on our initial presentation, Rob Long.

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?

Rob Long: I do so.

Hearing Examiner: Thank you. Give us your name and spell your last please.

Rob Long: Robert L. Long.

Hearing Examiner: Thank you. Your witness.

Courtney Kaylor: Mr. Long can you describe your qualifications and experience.

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Rob Long: I'm a registered professional engineer in the state of Washington. I am a principal engineer at Lovell, Souderlain Associates (ph. sp.). The address is 19217 36th Avenue West, Suite 106, Lynnwood, 98036. I want to mention that we did move in November, 2008 so the address on our report is old. I have a Bachelor of Science in Civil Engineering and I am a member of the Institute of Transportation Engineers.

Courtney Kaylor: What was your role in this project?

Rob Long: I was retained by PDI as the projects transportation engineer. I have prepared a traffic impact study that originally dated May of 2006 and the latest revised update of September 2008.

Courtney Kaylor: Can you briefly describe the conclusions that you reached in your study?

Rob Long: I'll give a brief outline of the items valuated and then a summary. Basically the report, we went through and evaluated existing street conditions and the neighborhood road system in the area. Looked at the proposed street circulation that was proposed for the plat, the access point and the trip veneration and distribution that would be created by the project... We evaluated the access point in relationship to a crosswalk that was requested by the city. And even a potential requirement for a left turn ** out on Brier road, which was subsequently determined not necessary for the proposed project... The review determined that for the access point of the crosswalk that there was adequate visual sight distance and that it could properly installed in the proposed location which aligns with 234th I believe.

Courtney Kaylor: It looks like 243rd.

Rob Long: 243rd sorry, on the west side of Brier Road... In conclusion, we... I made a conclusion that there was no significant adverse impact on traffic related issues to the local street systems. And if there are any questions or clarifications, I can answer those.

Courtney Kaylor: Thank you. Those are all my questions.

Hearing Examiner: Cross examination by the appellant.

Miss Bowers: In the Snohomish County rules, they discuss the quarter mile rule. A quarter mile distance that needs to be evaluated when you're doing your report. Did you cross the county line and go a quarter mile into King County, what becomes 55th as opposed to Brier Road to evaluate there.

Rob Long: Following the county rules, no. We looked at the... You're talking about the distribution of our trips?

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Miss Bowers: Just what the impact of what your development traffic would produce a quarter of a mile away, which to the south is King County.

Rob Long: We just looked at our projected distribution and created trips. They were relatively insignificant after you get south of... I'll generally describe our distribution. We had 40% of the trips heading north on Brier Road. Immediately south of our project, we had the remaining 60% heading south. Once across the county line, the King County line, we had a 10% heading West on 197th and the remaining 50% heading south. At that general local distribution break down, it was determined that the trips in the peak hours were below 10 peak hour trips, we did not continue further analysis past that threshold of 10 peak hour trips.

Miss Bowers: During the morning hours and during the late afternoon hours, at that juncture of 197 and 204th, it's basically the only cross street south of Sunbrook... One piece is in Lake Forest Park. The corresponding road is in Kenmore because 55th is the dividing line. There are three different school districts that come down 197 and make turns and go into the cul de sac of 2004th. Did you guys do any evaluations to determine how many bus trips were going through that particular intersection?

Rob Long: No I did not analyze any traffic impacts on school districts.

Hearing Examiner: I would only interject to have the record show, you said 2004th. I think you meant 204th.

Miss Bowers: Correct. Yes, sorry about that. In speaking with the Lake Forest Park who owns 55th Avenue and the easements on there as well, traffic speeds in that area coming out of Brier and going down there are frequently over the 30 mile an hour limit. And many, many citizens have complained about the traffic going through there very quickly. Did you find anything that could create a traffic calming (ph. sp.) effect within your report that would slow that traffic down with the addition of a 50% more trips coming through?

Rob Long: It's 50% of our project nets trip that we project which is under 10 trips. But, no we didn't look into an enforcement of speed limits or anything like that with our evaluation of our traffic impacts.

Paula Swisher: I am going to ask that Chris, bring your volume back up please.

Miss Bowers: I think that's all the questions.

Hearing Examiner: Any cross examination from the city?

Mr. Knutson: No.

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Hearing Examiner: I have no questions either. Thank you Mr. Long.

Rob Long: Thank you.

Courtney Kaylor: Mr. Long is our last witness for PDI's direct presentation and therefore we'll pass the baton along to the next party.

Hearing Examiner: Okay, thank you.

Miss Bowers: I have one fast question. Weren't you guys going to have the geo-tech guy speak?

Courtney Kaylor: At this point, we don't think it's necessary to have him speak.

Miss Bowers: Okay.

Courtney Kaylor: We obviously reserve the right to call any of our witnesses on rebuttal.

Miss Bowers: If we feel that there are some questions that we need to ask him, can we arrange to have him be here on Tuesday.

Courtney Kaylor: He is at this point intending on being here on Tuesday, but if it at the close... At this moment in time he's intending on being here Tuesday, but we may reevaluate that at the end of day and if so we can talk about it.

Miss Bowers: Okay.

Hearing Examiner: Let's proceed and see how far we get and what we're doing here. Now, let me just make sure you folks in PERK understand, everything that you have seen to date has been an attorney questioning her witness. And a couple of them, she has just let them talk. Many of them, she's asked questions and gotten answers and question and answer and so on and so forth. My honest opinion, for a group of lay participants that's not the way to go... I hope that you have planned to just call your witnesses and unleash them on us. Let them say what they need to say that's important and pertinent. If they forget something, then by all means ask them to talk about the thing they forgot. But I hope you are not planning to do the Q&A format because I think you'll find it very awkward and troublesome.

Miss Bowers: It will be limited, I'm sure.

Hearing Examiner: You can call your witnesses in any order that you want. It is my understanding from something Miss Mooney said to me during the lunch recess that

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you've got a couple of folks that have to leave by a certain time today. As far as I'm concerned it's up to you folks to get them before they leave.

Jim Myers: I was just wondering if people wanted to contribute public comments that we can **...

Hearing Examiner: This is not the time for public comments... We have already discussed that Miss Bowers and I >

Miss Bowers: Okay. I don't need to read our opening statement?

Hearing Examiner: You do not need to read your opening statement. You can indicate that your opening statement is contained within your pre-filed exhibits and that yours truly the hearing examiner has entered it as Appellants Exhibit P-01 if you really feel the need to say that. You guys have to get your program organized here and figure out who's in charge.

Miss Bowers: I thought we needed to read and submit this opening statement for the sub ** which we haven't really done...

Hearing Examiner: Are you telling me that you have a second opening statement? You have got one. The first one that you pre-filed is entitled opening statement. Precisely what it says it is.

Jim Myers: There is an additional for the subdivision portion **...

Hearing Examiner: Okay do you want to submit it.

Jim Myers: Yes please.

Miss Bowers: Do you want me to read it or just hand it to you.

Hearing Examiner: In the interest of time, I would vastly prefer that you just submit it. I can only guide you so far on this road without appearing to be bias so I can't tell you whether in my opinion whether you should read it or not. I can tell you what I'll hope you'll do and that is just turn it in.

Miss Bowers: That is fine with me.

Hearing Examiner: Okay, we will enter PERK's... A letter from PERK dated July 30, 2009. Did you intend to submit the exhibit list on the back?

Miss Bowers: No.

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Mr. Knutson: Before it's entered could we have a chance to look at it? Or at some point ** could we raise objections...

Hearing Examiner: This has represented as a letter about the subdivision in a subdivision hearing or in a conditional use permit hearing or variance hearing, it is more often and not the case that citizens show up at the hearing and turn things in. People don't get to review them and object to them. And I will say that this one is all the subheadings all talk about subdivision issues.

Courtney Kaylor: Mr. Examiner, we would just like a copy at some point.

Hearing Examiner: That you will get...

Mr. Knutson: I guess in my mind, I was understanding that the appellants had appealed this SEPA determination ** made and that they filed an appeal statement setting forth the issues that they... It was my understanding that the appellant was appealing the SEPA determination that the city made and that they have already submitted an appeal statement that sets forth the issue that they intended to raise with regard to the SEPA determination. And I just want to understand what this related statement relates to. If it doesn't relate to the SEPA appeal, it relates to the second part of this consolidated hearing which is the preliminary plat determination.

Hearing Examiner: Yes. The opening sentence is people for an environmentally responsible Kenmore, PERK ** submit these comments for your consideration in your review of PDI's application for the Sunbrook preliminary subdivision file number...

Mr. Knutson: So again in my mind, I would view this as related not to the SEPA appeal but more the public comment portion of the hearing related to the preliminary plan.

Hearing Examiner: Correct.

Mr. Knutson: Thank you.

Hearing Examiner: And when we look at the rule of procedure that's applicable which is in B2 I think. Yes, B2, rule 304E indicates that in the direct testimony the appellant is presenting on the appeal and on the merits of the case. So there combining the whole enchilada and it is quite appropriate therefore for them to enter a statement regarding subdivision.

Mr. Knutson: Okay, thank you.

Hearing Examiner: Which will be entered as exhibit A12. It's not a P exhibit because it's not part of the pre-filed. A12 is entered. Okay Miss Bowers.

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Miss Bowers: Our first witness will be Gordon Orians.

Courtney Kaylor: Mr. Examiner, I believe this testimony will relate to primarily birds on the site. Appellants on their SEPA appeal did not challenge the adequacy of the SEPA analysis with regard to birds and so we would ask that this witness' testimony if in fact that is what it is on, be excluded from consideration as part of the SEPA appeal. We understand that anything can come in on the subdivision merits **...

Mr. Knutson: The city joins in that objection and we would have a continuing objection to any testimony on SEPA that is not set forth in the appellants SEPA appeal statement.

Hearing Examiner: Again the way I have chosen to structure not only this hearing, but any other consolidated appeal hearings that I handle has the testimony merged. And I do it for the very simple reason that except for maybe a topic like birds, if we're talking about the stream and the wetlands, I'd be hearing the same people testify twice if I separated it. And a hearing that's going three days would then be taking us five days to get through. And I have elected to deal with the problems that we're going through right now because they're usually shorter than listening to the testimony twice. So I understand that he may be talking to me about an issue which is not part of the SEPA appeal, but he is testifying as part of their package of witnesses. 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?

Dr. Orians: I do.

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

Dr. Orians: My name is Gordon Orians.

Hearing Examiner: Thank you. Miss Bowers, I am going to do the your witness thing like I did with Miss Kaylor and if you know that he just has a presentation to speak to me just tell him to go ahead.

Miss Bowers: Two direct questions that I wanted to ask. Could you please explain your background and your experience?

Dr. Orians: Okay I am a professor emeritus of biology at the University of Washington. I have degrees in zoology from the University of Wisconsin in Madison and PhD in zoology from the University of California Berkeley. I spent my entire life on the campus of the University of Washington. I'm an ecologist. The vast majority of my research over the years has been on birds, but I have also published some on both mammals and plant ecology as well. Even one paper on slugs too...

Hearing Examiner: That's your problem.

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Dr. Orians: I understand that's the city of Brier honorary animal.

Miss Bowers: Were you allowed to visit the site?

Dr. Orians: Yes, I spend one hour on the site last week, July 22nd, walked around the site...

Miss Bowers: What documents when you were getting a chance to review this, what documents have you been able to **...

Dr. Orians: Prior to visiting the sites, I looked at the consultants reports on habitat and wildlife issues. And I also looked at the plat maps of what was planned for the development. Where the roads would go...? Where the lots would be...? Which trees would be removed...? That sort of thing... so I had that information I had looked at before I walked onto the site.

Miss Bowers: Did you by any chance have any chance to look at Brier's critical areas ordinances?

Dr. Orians: No, I have not.

Miss Bowers: You may go ahead.

Dr. Orians: I spent only one hour on the site, but I have lived in Lake Forest Park for the last 40 years. And I am intimately familiar with the vegetation and ** vegetation of the area as well as the birds... So I can make a fairly good habitat when I arrived. In walking around, one of the things that immediately became obvious is that the list of vertebrates observed on the site likely to use it was seriously deficient. That there were many species that some of which I saw there, which were not listed at all as being present. In addition, the report from the consultant suggested that certain species would be there that are almost certainly are not. There would have been way out of habitat or out of range. So I noted even before I went onto the site that there were some serious errors in the report and this became even more apparent when I got onto the site. Let me give a couple of examples. There are two species that are large, easily observed and almost impossible to miss on the site both of which happen to be species of concern neither of which were listed in the consultant's report as present or likely to use the site. That is the pileated woodpecker and the band tail pigeon. You can't walk more than 15 minutes into the site without seeing signs of pileated woodpecker workings. It's also an excellent band tail pigeon habitat. The consultant report indicated that morning doves were probably present. This is extremely unlikely. This is not morning dove habitat at all. The ** pigeon that's there is the band tail pigeon... It's obviously common there. I saw one flew over as I was walking around that hour. Neighbors have reported and I believe you heard last night from Neil Zimmerman that the band tail pigeon is quite regular there. During my walk around we found a

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hummingbird nested two eggs. So the site is obviously used by two species of hummingbirds. I don't know which one the nest belonged to, but no hummingbird is listed on the consultant's report about the species on the site. when I got back off the site, I quickly made myself a quick list and immediately came up with about 25 species not on the list at all of things that are listed as likely to be using the site that almost certainly are. And that list was just a quickie that included a couple of owls. The most likely owls are not the barn owl, but the Western screech owl and the ** owl but there are fly catchers, warblers, bushtits, other sparrows... A large number of species... The king litz (ph. sp.) that others almost certainly use the site on a regular basis that were not listed at all on the report... So I found it in terms of providing a viable and accurate picture of the avian resources of the site, it was seriously deficient. And in addition some of the species on the list like the morning dove also the casten finch (ph. sp.) on the list, which is a bird of the high cascades and dry eastern forest it's accidental in the Puget Sound lowlands. The purple finch or the house finch which are closely related are the species almost certainly using the site. The wren on the site is almost certainly the beelix (ph. sp.) wren which is the "house" wren of the Puget Sound lowlands not the house wren. So these sort of errors indicated that the person who drew this up was not familiar with birds, their habitats and have made a rather seriously inadequate effort to characterize the resources of the site. The same is true to a lesser degree of the mammal list which is deficient. The consultant says that he observed only a raccoon and ** rat burrows... Those two species are certainly there, but you can't walk very long in there without realizing you have real trouble avoiding mountain beaver burrows. And it's likely to support striped skunks, a couple species of bats, ** mole, other species of shrews possibly squirrels... So the mammal list was also relatively deficient. In addition the report describes these as human tolerant species. And to the extent that they indeed persist in habitats that are around where there are people and if we don't poison them or shoot them or molest them, we will become relatively tolerant to our presence that's true. That does not mean if we seriously alter the habitat that there still going to be there. and the implication of the report and it doesn't say so directly, but it can be read to imply that there's just a bunch of human tolerant species there and in the course of development, they may have moved around a little bit, have to shift their positions a little bit, but they will find places somewhere. And this is emphatically not true. The development of this proposal of 29 lots with most of the trees being gone will certainly mean the loss of a substantial number of those species. It's hard to tell exactly which ones. What will be left after the development is a much reduced list of species that are regular users of the site. so my position is that the city of Brier has been provided a very inadequate picture of the biological resources of the area and what could be lost if development proceeds in certain ways and therefore the city is not provided with an opportunity to assess if other patterns of development on the site might be more wildlife friendly. Other options could be explored to look at whether interests of undevelopment as they might proceed could be done in more wildlife friendly way. So I don't believe that the city of Brier has been presented in this analysis with an adequate assessment of its biologic resources and therefore it's not in a good position to make decisions about how they will be affected and how they might want to treat them in the

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future. I have written copies basically summarizing what I have said here, which I happy to provide to the hearing examiner and anybody else that wants one.

Hearing Examiner: I am sure the applicant will want one. We will enter it as exhibit as A13. Miss Bowers to you have other items that you want to talk about before I turn him over for cross examination.

Miss Bowers: Yes I do. Given the proposed buffers for the wetlands and the stream area, how would you interpret their ability to service these diverse species that are there?

Dr. Orians: It's a bit difficult to say because the amount of the riparian that's in the corner of the plat is very, very small. There's not much there. The wetlands now have... We walked around and I was able to get a view of some of the wetland vegetation. To the extent that it does support some wetland oriented species and I am not sure the extent to which it does, the ability of those wetlands to continue to support that would obviously be affected by the development going as close as it does even with a small buffer.

Miss Bowers: If the wetland buffers were larger, would it change your opinion?

Dr. Orians: I haven't looked closely enough and examined it than I would offer an opinion on that.

Miss Bowers: Did you get a chance to look at the tree plan and the schedule replacements?

Dr. Orians: I did look at the plan as to the trees that would be cut and there are not... It's the second and third growth, but there are fairly substantial, fairly big Douglas firs, a couple of hemlocks and they're bearing big cone crops... Most of those as I was looking around are scheduled to be gone and therefore species that would use those like red cross bills that come in and eat cones are certain to be lost from the site so that the forest characteristics such as if to the degree that it has it because there is sufficient present of fairly large trees would be totally lost as far as I can tell by the plan. as planned with most of the trees being cut as I looked at which ones would be left and which ones definitely cut and which ones might be cut depending on how the roads and the property lines went which have authorized further cuts. There won't be many trees left.

Miss Bowers: Going on with the bird habitat situation, a lot of best science available is coming out of the University of Washington and some of it is fairly recent in discussing the types of habitat that can be replaced onto suburbs and new developments. Are you familiar with any of that research?

Dr. Orians: I am familiar with some of it, yes.

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Miss Bowers: And do you feel that Sunbrook is proposing to do anything that's close to what they recommend.

Dr. Orians: This issue of asking the question to what degree could development proceed and maximize the amount of wildlife habitat and the number of species that could be supported would be left, I saw no analysis. Anything like that in this report...

Miss Bowers: Okay. Are there any low impact development techniques that you see that would be very beneficial to the wildlife in this area?

Dr. Orians: The most obvious thing that preserves a lot more wildlife habitat with allowing the same number of residential units is clustered. And there's a lot of work that has been done on that. I haven't looked into detail on that, but it would... Certainly the option for the city to examine what would be the wildlife consequences of different patternings of development on the site would be very important if the city is really serious about wanting to preserve as much wildlife heritage as it can.

Miss Bowers: Connected with that, the city of Brier in their codes mention wildlife corridors and there are a couple of them that Sunbrook kind of sits in the middle of. Do you feel or can you explain further about the loss of the corridor with the Sunbrook development ** effect...?

Hearing Examiner: Before you answer, I am going to say that this is the second or third question where you've actually offered testimony as you've gone. Miss Kaylor hasn't objected. Mr. Knutson hasn't objected. But I do want the record to just simply show that I am aware when you make statements like there are wildlife corridors that affect Sunbrook, but there is at this point no evidence in the record to support that. It's an assertion in the form of a question and unless it's objected to, I am going to let it fly.

Miss Bowers: There are maps in the Brier code and the Brier code has been submitted as part of the evidence.

Hearing Examiner: Nobody's talked about this. Nobody suggested that there are designated wildlife corridors that cross this property. That's all I'm just trying to get at. If they don't argue, I am going to let the questions go. But I just want any... If this has to get reviewed by anybody higher than me, I want them to understand that I'm aware certain things are being said in the form of a question for which there's no foundation yet. Anyway if you remember the question, you can answer it.

Dr. Orians: I will do my best. I have not made an analysis of the corridor situation. Looking at just the general aerial maps, this property stands out. It's very conspicuous because it's surrounded by pretty dense urban development. Therefore during migration times, bird migration times, it will be a very attractive oasis. And I

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would imagine that if I were visiting there early in the morning in April and May and again in September and October there would be a fair number of migrant birds that would be stopping in there. They would have overflow the dense areas and landed in there to rest. Refuel a little bit before going on. Most of the resident urban and suburban birds wander widely through this matrix and will find the place. So in terms of its "corridor" function, it would be as a place for stopping of migrants. And there are a fair number of migrant species that come through that would use that sort of site if it were developed and 39 lots spread out, there would be probably be that opportunity for them would be lost.

Miss Bowers: My last question as I know, can you speak the biodiversity of species not only from the animal standpoint, but also from the plant standpoint that would make Sunbrook be effective?

Dr. Orians: I am able to comment about the biodiversity specifically only about the vertebrates. The birds and the mammals and the reptiles and amphibians... The reptiles and amphibians there aren't very many in this area. I know of no data and I am certainly not qualified to talk about the insect diversity which there would be a lot there. I do know something about plant ecology and made some observations of the vegetation in part to see what sort of birds that it would support. I looked at the fruiting shrubs and other things. So there is a substantial biological diversity in all of these ** on the site... And I think in all taxa (ph. sp.) invertebrates, vertebrates and plants and probably microorganisms which we don't see that the loss of a rather substantial part of the forest over story cover there will result in the loss of species in all those taxa on the site.

Miss Bowers: One last question. Is there any type of replacement that can be...? Can this loss be mitigated on Sunbrook by any replacement situations?

Dr. Orians: Are we talking about replacements where you built some habitat somewhere else or something that you're going to do on the site?

Miss Bowers: I was thinking on the site.

Dr. Orians: On the site... As indicated there... One of the things that came up earlier, you can provide nest boxes for the things that need them. Lake Forest Park where I live, we are certified as wildlife friendly. My yard is certified wildlife friendly. Our plants, our shrubs provide food for wildlife. So you can do a lot of that sort of thing on a site, both at the level of the individual homeowner and also if you do clustering and have other areas set aside. One can do active vegetation management to enhance the ability of the remaining pieces of land that isn't directly built on and have lawns to enhance wildlife. So yes, there's a lot that can be done to make an area more friendly is that is one of the objectives that you want to have for it. There's a lot you can do.

Miss Bowers: I'm done, thank you.

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Hearing Examiner: Cross examination from the applicant.

Courtney Kaylor: Just a couple of questions Dr. Orians. Did you have the opportunity to review the environmental checklist that was submitted for the property dated November 25, 2008?

Dr. Orians: I don't know. I don't think I saw that, no. The list of wildlife... The habitat and wildlife lists were I think were the July 21st, 2008 memo that provided those lists. That's what I based my comments on, yes.

Courtney Kaylor: So your testimony does not include a review of this environmental checklist?

Dr. Orians: Did not include a review of this document, no it did not.

Courtney Kaylor: Thank you. Do you know if the city of Brier has a zoning ordinance that permits clustering?

Dr. Orians: I do not know.

Courtney Kaylor: Thank you those are all my questions.

Hearing Examiner: Thank you. Cross examination from the city.

Mr. Knutson: I have a few question. Mr. Orians this forest that you visited where the project is going to be located, does it have any unique aspects to it?

Dr. Orians: Okay, it is unique in that sense that no two sites are alike. So every place is unique. That's not terribly useful, okay. My yard is unique too. Come in and see it. If it isn't you get a free beer.

Hearing Examiner: Can we sit around the table in the late afternoon and...

Dr. Orians: We could do that. Is it unique in the sense that it's a different vegetation type than it is fairly widespread in what Puget Sound lowlands, the answer is no. Is it unique in the sense that there's almost nothing else left like it in Brier? Yes. So that I have to qualify my uniqueness... But there's a lot of stuff that is not too dissimilar to this in Western Washington. As far as I could tell from roaming around Brier, you haven't got much.

Mr. Knutson: Are there any threatened or endangered species on the property?

Dr. Orians: Not to my knowledge.

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Mr. Knutson: Those are all the questions that I have.

Hearing Examiner: Thank you. Thank you Mr. Orians.

Dr. Orians: You have none?

Hearing Examiner: I have none. Who's next?

Miss Bowers: Our next witness will be Doug Beyerlein and Cleve Steward is going to ask the questions because it's beyond my technical skill.

Hearing Examiner: Okay. Let's get the witness up here. 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?

Doug Beyerlein: I do.

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

Doug Beyerlein: My name is Douglas Beyerlein.

Hearing Examiner: Thank you and who's going to be asking the questions?

Cleveland Steward: I will.

Hearing Examiner: And your name?

Cleveland Steward: Cleve Steward.

Hearing Examiner: Go ahead Mr. Steward.

Cleveland Steward: Doug could you just describe your qualifications and experience please?

Doug Beyerlein: I am a storm water engineer/hydrologist with 35 years of experience. I am the principal engineer at Clear Creek Solutions Incorporated. And I have a Bachelor's degree in Civil Engineering from the University of Washington and a Master's Degree in Civil Engineering from the University of Washington in the water resources program.

Cleveland Steward: Could you summarize your familiarity with this project including any project documents, site visits, any other information that you might provide.

Doug Beyerlein: I reviewed the applicant's storm drainage report dated July 25, 2008. And I visited the site on July 22nd of this year.

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Cleveland Steward: On the basis of that, did you develop any material or findings related to your observations?

Doug Beyerlein: I reran the applicant's calculations for the storm drainage plans. And basically compared that to the requirements in the Washington State Department of Ecology storm water management manual for western Washington as I understand it is used by the city of Brier.

Cleveland Steward: We will return to that, but before we do that would you just generally describe since this subject came up last night's testimony, what the general effects of development of this type are on the hydrology of the receiving stream? Just generally what would one expect under an unmitigated and the proposed mitigated scenarios?

Doug Beyerlein: The site will be changed from basically a totally pervious land area, which means that there's no impervious surfaces of any significance to something that will have considerable amounts of impervious area in the form of streets, rooftops, sidewalks, driveways and the like. And the runoff then will for portions of the watershed, portions of this project site be then directed to a storm water vault and then released to the adjacent drainage system. And then one portion of the site that is approximately 1.8 acres will not be directed to the storm water vault, but instead to what are called spreaders to be basically spread over adjacent land areas.

Cleveland Steward: And the stream that traverse the property, we have yet to settle on a name for it, but it's a tributary to 0056 which is the main stream that's in question here, what would the effects be on the tributary to 0056 of one diverting apparently the dominant major of flow collected onsite to 0056. In other words, bypassing that 1200 foot segment of stream... So what would be the effect on that tributary and in your opinion, what is the net effect on the hydrology of 0056 of the proposed storm water treatment?

Doug Beyerlein: Well the stream is going to get more total annual volume of runoff. That's just a fact of having impervious area increases your total runoff volume. Now as to exactly how that will impact stream 0056 downstream, I can't say because I haven't done an analysis of the downstream area.

Cleveland Steward: Are you familiar with what is referred to as the Herrera Report that was published in 2005?

Doug Beyerlein: I've read it. That's extent of my knowledge of it.

Cleveland Steward: There was a table in that report that listed the estimated peak flow volumes, discharge associated with different recurrence intervals. Are you familiar with that?

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Doug Beyerlein: I remember seeing it. I couldn't tell you what the numbers are.

Cleveland Steward: May I just cite a couple of the numbers from that table and ask him his opinion whether the differences between the undeveloped, the predevelopment condition and the current condition is significant?

Hearing Examiner: The better way to do what you want to do is to provide him a copy of the document, tell him what page to open it to then ask him questions about the document since you're not a sworn witness. We'll keep you out of trouble that way. Let's see, the Herrera Report is B24. That's what I thought. As soon as you find the page, then let all of us know then those of us who have it can look it up.

Cleveland Steward: This is page 38, table 14 from the Herrera Report.

Hearing Examiner: Let the record show that it's report page 38, it's exhibit page 46 if you're using the handwritten numbers in the lower right hand corner.

Cleveland Steward: Table 14 lists... I will have you describe just generally what information is conveyed in that table.

Doug Beyerlein: In the Herrera Report on page 38 there's a table that shows the stream flows in tributary 0056 for what they call pre-developed scenario and for the developed scenario. And it shows how the flood flows in terms of the flood frequency between the two year up to the 100 year increase from the pre-developed scenario to the developed scenario. And according to the report here, it says that the two year recurrence flows exhibit more than a 370% increase in magnitude compared to the pre-developed water shed. Now I haven't checked those numbers, but this is what the report says.

Cleveland Steward: That's fine. I just wanted in your professional opinion whether you consider the magnitude different between the pre-developed and the current state in terms of the two and the 100 year occurrence intervals is that significant in your mind? And would you describe the current condition of the stream of the 0056 basin as being severely or moderately or not degrade at all?

Doug Beyerlein: If you compare for example the 100 year pre-developed flow at the mouth, it's about 42CFS. If you look at for the developed scenario for that same location, you find that the two year is 57CFS. So in other words, what used to be occurring once in a 100 years on average now is occurring basically every other year.

Cleveland Steward: May I have him look at the two photographs that were introduced by the landowner last night please? They were the small... I am not sure that I can accurately characterize the exact location these photos were taken.

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Hearing Examiner: The witness last night gave me his lot number, but I am not going to take the time to try and find it. They are pictures taken someplace between here and there on the run of what I am going to call the Abbey View stream or Abbey View drainage. I am going to stay out of the number dispute. Between the southwest corner of the property and the southeast corner, it meanders along there just south of the plat. And this gentleman lives in one of those lots and he told me that the little bridges that you see there are going from one side of his yard to other side of his yard and same for a couple of the neighbors up or down from it. But that's where it is. It's in that area just south of the plat.

Cleveland Steward: In your opinion, do these show evidence of significant runoff?

Doug Beyerlein: Yes, you can see that basically in this particular location and this particular time the stream is flowing full. It's up to the top of the banks where the vegetation is.

Cleveland Steward: Would those flows be considered destructive of either habitat or property? Could they potentially do that?

Doug Beyerlein: I don't see any structures other than these small private bridges over the stream in these two photos, but you can see from the color of the water that it's carrying a significant amount of sediment so that erosion is taking place. So that is going to cause damage both in terms of where the water is eroding and also where this sediment ends up being deposited down the stream.

Cleveland Steward: Okay, I want to return to the subject of the model runoff in the proposed storm water treatment. I'll take this. In the analysis... Why don't you just describe the basic elements of your analysis and your conclusions if you would?

Doug Beyerlein: Basically in my review of these storm drainage reports, I found that the applicants calculated the size of the mitigation that would be required to keep the flows in the range from half of the two year up to the 50 year those are the flows that generally cause erosive damage. They have kept those flows from increasing compared to the pre-developed condition. So however, they did not do an analysis of the flows going to the adjacent wetland areas and that's a specific requirement in the Washington State Department of Ecology manual where it's called a hydro period analysis. And basically what a hydro period analysis looks at is how the increased volume and here we're more concerned about volume than we're concerned about flow rates, but how the increased volume can potentially change the water surface fluctuations in the wetland area itself. And this can either cause drowning or the opposite, too little water in the wetlands. And that affects potentially the wetland communities, the plants and the animals.

Cleveland Steward: Did you conduct any type of hydro period analysis?

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Doug Beyerlein: No I did not.

Cleveland Steward: Are you familiar with the water collection system as well as the water of that is going to be directed to the wetlands and via the spreaders offsite?

Doug Beyerlein: I am familiar with it as much as it's described in their storm drain report.

Cleveland Steward: Is the amount of water that's going to the either the wetlands or the adjacent streams, tributary, going to be equivalent, more or significantly less than the water that is currently directed to those features?

Doug Beyerlein: There will be more water running off the site in general. So in that context there's going to be more water overall.

Cleveland Steward: But to the actual wetlands onsite and to the stream that parallels the southern boundary of the property traverses the southwest corner, will the amount of water delivered to those features be the same, more or less than is currently delivered?

Doug Beyerlein: On the annual basis, it will be more water.

Cleveland Steward: Was there anything else that you noted related to the analysis, the conclusions, your interpretation of the results or their proposed application?

Doug Beyerlein: The other thing that I noted was while they talked about water quality treatment in the report, which they specified that they would need what we call a dead storage volume. This is basically a volume of water that doesn't change over time; they needed basically 7/10 of an acre foot. And this is basically to allow pollutants to settle out into this volume of water. But they did not show how that would be incorporated into their storm water vault design. And in their computer model that they show the results of, it was not included in their results. So it leads me to then question or are they actually going to do this?

Cleveland Steward: Does any alternatives to what is being proposed that might be more efficiently achieve the objective and ensure compliance, does anything come to mind that you would like to just identify as a potential alternative? Low impact development, a different detention system, anything that in your experience might be suitable for this site...?

Doug Beyerlein: There's a variety of best management practices or what we call low impact development practices that they could employ on the site. The use of the spreaders is actually one. But in addition, they could do far more. Basically if you don't want the water to runoff there's really only two other places the water can go. It either has to go deep into the ground as infiltration or it goes back into the atmosphere as

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evapotranspiration (ph. sp.). And so the more vegetation that you retain onsite in particular trees, the more evapotranspiration (ph. sp.) you're going to have. And certainly if you can find opportunities to take, especially the runoff from the impervious surfaces and infiltrate that onto adjacent pervious areas that it is going to decrease the total amount of volume also. So there are those sorts of opportunities that they could certainly maximize to reduce the total runoff volume.

Cleveland Steward: And you mentioned spreaders as a potentially mitigating type device. Could you describe how they function and specifically how they are to be used in this context?

Doug Beyerlein: The idea is pretty simple. What you're doing is you're taking runoff from impervious surfaces and instead of tight lining it directly into some sort of storm water collection system and then sending it to a vault or dumping it into the nearest stream, what you're doing instead is you're allowing this water to basically spread out over adjacent pervious areas, soils in particular where it can then have an opportunity to first of all slow down so it doesn't immediately get off the property site. And then in the process some of that water can then infiltrate into the soil and some of that water can also evaporate or transpire later back to the atmosphere. So depending on the size of the adjacent impervious area and the amount of water of you're dumping onto it, you can get some significant effects of reducing the total runoff volume.

Cleveland Steward: Under what slope conditions are they recommended or not? Does anything preclude their use?

Doug Beyerlein: Although I don't have the ecology manual here with me to specifically point out what specific slope requirements there are, obviously the flatter the slope the better. The theory behind it is that you're getting what we call sheet flow. So in other words, the water is spreading out uniformly across the surface. If it's fairly steep that water will then instead be concentrated into basically small little streams and start eroding and that's not what you want to have happen. So you want basically relatively shallow slow areas to do this on.

Cleveland Steward: Do you have an opinion as to their efficacy on this site related to what you just described?

Doug Beyerlein: I don't have the specific information as to what the slopes are, where the spreaders are going to make a judgment on that.

Cleveland Steward: Last question, the 2005 storm water manual has been cited and used by the developer consultant as the guiding document and methodology in their analysis. And they claim that that is sort of the state of the science in terms of storm water control management. Is that your opinion as well or are there more current guidance documents? Has the 2005 manual been criticize in any way as being deficient in that regard?

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Hearing Examiner: That's a whole series of questions.

Cleveland Steward: I am trying to give him enough room to work with here.

Hearing Examiner: Wiggle room.

Cleveland Steward: Just comment generally on your overall opinion on the 2005 manual.

Doug Beyerlein: Let me put it this way, the 2005 manual is better than anything that we had prior to that. So in that context, it's certainly doing a much better job. But even ecology realizes in of itself that manual is not the total solution to solving all of our problems related to storm water and water pollution in the Puget Sound region. So while it's a useful tool and it's something that will go a long ways to preventing future damage, it certainly has room for improvement.

Cleveland Steward: Does it say anything specifically about low impact development techniques?

Doug Beyerlein: The 2005 manual does not specifically discuss what we call LID's. It does talk about what they call best management practices, BMP's. And some of it's just a matter of terminology. Whether you want to call something like a spreader a VMP or an LID so they kind of got their toes wet. But it's just the first step. And there's certainly plenty more than they can recommend. And ecology is moving in that direction, but it's not been put into an official document yet.

Cleveland Steward: I better stop while I'm ahead here. If that's an accurate characterization... Thank you Doug.

Hearing Examiner: Thank you. Cross examination by the applicant.

Courtney Kaylor: Just a couple of questions. You mentioned three LID techniques, spreaders, tree retention, and directing storm water to pervious surface. Spreaders as we heard are being used in this project. Are the other two techniques you mentioned mandatory under the 2005 DOE manual as LID techniques?

Doug Beyerlein: None of those techniques are mandatory, no.

Courtney Kaylor: Thank you, no more questions.

Hearing Examiner: Cross examination from the city.

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Mr. Knutson: Thank you. Mr. Beyerlein is it your understanding or your testimony that this project will divert all storm water around the Abbey View drainage that's this property?

Doug Beyerlein: That's not my understanding, but I'm not sure what you mean by the Abbey View drainage.

Mr. Knutson: The reason that I asked that question was because you were asked a question during your direct testimony that was based on the premise that all storm water would be, as I understood the question, all the storm water would be diverted around the creek. So I just wanted to understand if that was your knowledge about the project or what you're basing your answer on.

Doug Beyerlein: It's my understanding that the entire project site, one way or the other gets into stream 0056.

Mr. Knutson: Are you very familiar with the design of storm water facilities during a course of a project of this scope?

Doug Beyerlein: Could you clarify what you mean by the design of?

Mr. Knutson: Are you familiar with the process where we begin with the preliminary design of facilities and we end up with the final design of storm water facilities?

Doug Beyerlein: Yes.

Mr. Knutson: Are some of the things that you have mentioned during your direct testimony that you recommend as possibilities for inclusion in a storm water plan for this project, could they be included in the final design of a storm water facilities for this project?

Doug Beyerlein: I think it's more than included in the design. For example, the use of the spreaders to basically send the water into the adjacent wetlands may not work out from the standpoint of causing adverse impacts to the wetland hydro period. And so it may require a redesign if that is the case. So in that circumstance, I think it's more than just kind of a step from going from the preliminary to the final. You're going to have to back track.

Mr. Knutson: In your opinion having viewed the storm water plan for this project, does it comply with the 2005 DOE storm water manual?

Doug Beyerlein: Yes, it does.

Mr. Knutson: Thank you, no further questions.

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Doug Beyerlein: Except, I should say, for the hydro period analysis being not included.

Mr. Knutson: Thank you.

Hearing Examiner: I didn't learn short hand anywhere along the way. If I had known what my ultimate was going to be, I would have. I was little too late to try and learn that. Let me start with the very last answer you gave about the lack of the hydro period analysis as being the one identified shortcoming in terms of compliance of the 2005 DOE manual. I have to be honest and say I am more familiar with the King County 2005, I think it is, than I am... Maybe 1998, I can't remember. They have two or three of them anyway. I am more familiar with the King County manual than I am with the DOE manual. Does the DOE manual have certain requirements that are to be done what I think you engineers usually call the preliminary phase? And then insert other requirements are to be met at the final engineering phase? You do your preliminary drainage plan and then before you actually build anything, you come back with the final. Does the 2005 DOE manual mirror that construct?

Doug Beyerlein: I suspect that it does. In this particular case, this is something that I think fundamentally do right up front for the preliminary phase because it will then make a big decision on how you proceed with your project. The King County 1998 level 2 standard does not have a wetland hydro period requirement in it.

Hearing Examiner: Staying along that same vein, how do the 2005 DOE manual flow control requirements compare with the 1998 King County level 2 flow control? Are they about the same? Are they entirely different concepts?

Doug Beyerlein: They're based on approximately the same methodology and the produce similar answers in terms of the size of storm water mitigation facilities, but they are not identical.

Hearing Examiner: Do I understand we cut to the chase that the only shortcoming you see in the applicant storm drainage plan is the lack of preparing a wetland hydro period analysis?

Doug Beyerlein: There was one other that I mentioned and that was the fact that I did not see where they were going to incorporate in their water quality treatment of 7/10 of an acre foot of water storage.

Hearing Examiner: The dead storage...?

Doug Beyerlein: Yes.

Cleveland Steward: Mr. Galt.

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Hearing Examiner: Mr. Steward.

Cleveland Steward: We have a two page letter prepared by Mr. Beyerlein relating to the two points that were just raised. I am not quite sure how to give this to you. Should it be through him? Can we do that as his written...?

Hearing Examiner: Yes, when you had him testifying, you should have said did you prepare something to give to the examiner? And he would have said, "You bet I did".

Cleveland Steward: Is it too late to ask him that?

Hearing Examiner: No because you can always come back on redirect and do it. I don't care how I get it. Do you have something for me Mr. Beyerlein?

Doug Beyerlein: Yes, I do. I submit this two page letter documents.

Hearing Examiner: We will enter Mr. Beyerlein's statement as Exhibit A14. As an aside to the applicant and the city, I kind of glad that we aren't going to finish today because this is going to give you folks an opportunity to review this before we get back together to finish the hearing. There is a lot of stuff here that we'll be able to get copies for you and send you on your merry way to read this weekend. Mr. Beyerlein, I don't know how to exactly ask this. Let me ask you the question the way I wrote it. If it's a question that is not appropriate for you to answer than just say so... Don't flail away trying to answer something that you really think you shouldn't. The question is is PERK arguing that the compliance with the 2005 DOE storm water manual will not adequately keep run off impact the level of significance? If so what regulatory guidance does PERK believe should be followed?

Doug Beyerlein: I think that question would be more appropriately answered by a PERK representative.

Hearing Examiner: Okay that's fair. And one or two last questions... Going back to the Herrera study and that Table 14 that you were shown. When I read this table in context of what the rest of the Herrera Report is saying, it's saying that the old way of controlling storm drainage didn't work real well. Is that the general take that you get from that information in the report?

Doug Beyerlein: Yes.

Hearing Examiner: Is the Herrera Report a condemnation of the 2005 DOE manual concepts which I grant you is 10 years after the report was written, but is it condemning the concepts that are in the new manual?

Doug Beyerlein: No.

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Hearing Examiner: Okay, redirect.

Mr. Knutson: We have no further questions of Mr. Beyerlein.

Hearing Examiner: Thank you very much sir, appreciate it. Who's next?

Miss Bowers: Mr. Tom Holz.

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?

Tom Holz: I do.

Hearing Examiner: Please start by telling us your name and how to spell your last.

Tom Holz: Thomas W. Holz.

Hearing Examiner: Thank you, your witness Miss Bowers. How do you want to handle it? Questions or just letting go...

Miss Bowers: Mr. Steward is going to continue on.

Hearing Examiner: Mr. Steward, okay.

Tom Holz: Mr. Hearing Examiner I have something for you.

Cleveland Steward: Could you describe that.

Tom Holz: It's a 9 page letter report summarizing, actually expounding upon what I'm going to say today.

Hearing Examiner: So you are going to summarize what's in here.

Tom Holz: I am going to summarize. I am not going to read the 9 pages.

Hearing Examiner: Thank you. We will enter Mr. Holz's letter as Exhibit A15.

Courtney Kaylor: Mr. Examiner, this is Courtney Kaylor. We've had this discussion before about a number of other exhibits. This exhibit was not provided to the parties in connection with the disclosure of exhibits that occurred last week and as such should not be considered as part of the SEPA appeal although I understand that it can be considered as part of the subdivision. And I'd like to make just a continuing...

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Hearing Examiner: Why don't you make that a continuing objection and I will give you the same answer I did before and we'll make that a continuing answer and then we don't have to do it again.

Miss Bowers: Can I interject one comment. Mr. Holz was out of country until this Wednesday so he wasn't able to submit during the time that we had.

Hearing Examiner: We'll leave it at that. I don't want to get into whether he's been out of the country since this appeal started which was several months ago or not, but we're not going to get into that. Mr. Holz, I don't know whether they are going to ask you questions or just turn you loose.

Cleveland Steward: I want to let him go for it, but first I want to ask you about your qualifications and experience and then secondarily I would like you to comment on your familiarity with the site, the project documents and then you can go ahead to your memo there.

Tom Holz: I have a Bachelor's and Master's Degree in Civil Engineering. My career has been spent in water resources related engineering. For the last 15 years or so it has been focused on urban drainage and that has morphed into a low impact development design and analysis.

Cleveland Steward: Have you visited the site?

Tom Holz: I have not been on the site, but I have been around it.

Cleveland Steward: Have you had opportunity to read any project related documents?

Tom Holz: I have had the opportunity to read many documents. I chose to read only the ones that were relevant to my testimony.

Cleveland Steward: And I was wondering have you had a chance to look at Mr. Beyerlein's report.

Tom Holz: Yes I have. Looked at it is the right phrase.

Cleveland Steward: I just encourage you if it's relevant to your testimony if you have any comments that relate to that report feel free to make them. Go ahead and describe the content of your memorandum there.

Tom Holz: I have made three points. It took 9 pages to make three points. The first one that the design criteria for the project is to match predevelopment run off and I claim that they have not done that in the discharge from this project. My second point is that high impact development such as this project is detrimental to downstream water quality and aquatic life. And my third point is that low impact development could

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be construed as now the law of the land in the state of Washington and low impact development would solve a lot difficulties that people are having with this project. So starting with the first one, the Brier municipal code defers to the state Department of Ecology's storm drainage manual as its standard for drainage design. And in volume 2, the minimum flow requirement is stated as "storm water discharges shall match developed discharge duration to pre-developed durations from the 50% of the two year peak up to the full 50 year peak flow. That's minimum requirement 7. So just to say that in English, it means that you have to match predevelopment flow... In fact you have to reduce the two year flow by 50%. The point I would like to make is the scientific literature has been cleared for at least 30 or 40 years. That in most projects there is not thing as pre-developed runoff. And I've quoted from a number of references maybe I would just cite the first one. Chow (ph. sp.) Handbook of Hydrology 1964 that's probably before most people in this room were born and it states that rarely under forest condition are evidences of overland flow are visible except in those areas that have been disturbed and compacted by roads for logging. And then I have several more quotations from the literature which reaffirm that finding way back in 1964. I would venture to say that most senior hydrologists in the state of Washington know this to be true. I have talked to most of them. They all understand that pre-development runoff; overland flow runoff is a myth. So the point is that if this project really was going to adhere to the spirit of the Department of Ecology manual and limit their discharges to the predevelopment runoff then there would be zero discharge from this project. And I have quoted the Brier municipal code and also the Department of Ecology manual on that. Secondly a traditional high impact development causes stream health to decline. And this is not late breaking news, Christopher May (ph. sp.) wrote one of the landmark papers back in 1996. It was his doctoral thesis and I have copied a chart not from that paper but from another paper that was derived from this work and I've shown it as Figure 2. And it describes the relationship of index of biotic integrity with increasing imperviousness of a watershed.

Unidentified Male: I believe this is entered as P11 exhibit **... The document that he's referring to **... I may have misspoke if you're referring just to his doctoral thesis.

Hearing Examiner: He's referring to the chart that's in the middle of his page which doesn't look at all like the chart that you just held up to me. We'll let the witness derive his own work.

Tom Holz: This is derived from May's work and May actually did it. I am not sure which paper he published it in, but I can testify that in fact it is his chart. And the chart just by looking at it tells you that with increasing impervious area that biotic integrity goes down which is to say that the health of the stream goes down. And for the highest levels of impervious surface, which on this chart are 60-70%. The streams are totally lost. And the point is the other point that you can take from this chart is that it takes very little impervious area. Looking at the left side of the chart, you can see that the first 5% or so of impervious area causes almost half the loss of the health of the stream. So the conclusion that I draw from this is allowing excessive clearance of

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property and allowing excessive drainage from excessive impervious area causes decline in the health of the stream. Not only does that happen over a broad spectrum, but it is particularly effective, dangerous, harmful in the first 5% of impervious area and in the first 20-30% of clearing. And finally, the Pollution Control Hearing Board ruled and I guess it's a little over a year ago now that low impact development after hearing all the arguments that I have just made, the Pollution Control Hearing Board concluded that low impact development must be the first alternative when the land development is proposed.

Mr. Knutson: Objection. I think that mischaracterizes the Pollution Control Hearing Board's decision.

Tom Holz: I don't think it does.

Hearing Examiner: The witness is entitled to his own opinion of it. You certainly are entitled to put on witnesses who have a different opinion.

Mr. Knutson: How about introducing a decision itself.

Hearing Examiner: That would be wonderful.

Mr. Knutson: Thank you.

Tom Holz: I have cited it. Actually I didn't know how to cite legal documents so I may have gotten that wrong, but I have a copy of it and I'd be happy to send it to you.

Hearing Examiner: Sounds like I can get it from some other source and save you having to mail it to the city.

Tom Holz: I can email it to you.

Hearing Examiner: I don't want to give you my email address. It's not a secret, but I don't want to give it to you. I give it to alleged drug dealers and never worry about getting spam from them. I hate to give it to land use people because they sometimes forget that they're not supposed to communicate with me ahead of time. So I know it doesn't make much sense.

Tom Holz: My interpretation of the Pollution Control Hearing Board decision is that low impact development must be the first alternative providing it's feasible. And right now the Department of Ecology is going through the process of deciding what's feasible. But what I propose for consideration is in this interlude before the Department of Ecology decides exactly what feasible means, that projects are still going on and are still destroying habitat and destroying public streams. And it is not whether can the applicant, the proponent, do this project in a high impact way, but should they. And I

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have no answer to that except my opinion and my opinion is that if low impact development is now the law of the land, the first alternative than why shouldn't we introduce it for this project. With that I'm finished.

Hearing Examiner: Do you have questions for your witness?

Cleveland Steward: If we assume that the goal is to obtain all precipitation on site that is to prevent any runoff from the site, is such a goal feasible?

Tom Holz: Yes. The question is low impact development feasible and particular on this site.

Cleveland Steward: Is the retention of 100% precipitation actually feasible?

Tom Holz: Yes, I have several projects now that have been completed where 100% of the precipitation has been retained. One of the projects was on very poor soil. Soils even worse than found on this site... it has been online for five years and there has been no runoff from this project. So I can state without qualification that at least for the projects that I have designed that 100% retention is feasible.

Cleveland Steward: And what particular LID techniques would lend themselves to this project if that was the goal?

Tom Holz: The Puget Sound Water Quality Authority, they're not that anymore, Puget Sound Partnership has a document out called low impact development guidelines and it's a pallet of practices... Low impact development practices that could be used on any site... Pick any site and all of them could be used. Or at least not the ones that are not incompatible with each other. For instance, pervious pavement is a dominant theme in that guideline. And pervious pavement can be used almost anyplace you use hard pavement. This allows water to sink right through the pavement and be distributed into the soil for infiltration. Vegetative rooftops can be used anywhere. And if the soil is deep enough and the vegetation is correct, they are remarkably proficient at removing water from the discharge end of the pipe. Cisterns as a way of harvesting rain from roofs and allowing that portion of the hydro draft be removed from the discharge end of the pipe is very effective and been in use for thousands of years. One of the easiest ways and the most effective ways to do low impact development or the first step is to actually reduce impervious area to the extent possible. Narrowing roads is an easy one. Most roads in the state of Washington are far wider than are needed for functionality. The driveways are often 30 or 40 feet wide because you have a driveway that matches of the 3 or 4 car garage that is built adjacent to the home. Just an enormous amount of impervious area that's not necessary. As I say everything in that Low Impact Development Guideline could possibly be applied to this project.

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Cleveland Steward: You heard Mr. Beyerlein comment on BMP's as opposed to LID techniques. Are they the same? If not are they complementary? Are they mutually exclusive?

Tom Holz: I think Doug put some words into his mouth. I think Doug was saying that in the Department of Ecology Manual they haven't called out a difference between best management practices related to what I call end of pipe engineering and best management practices related to low impact development. But in fact, they're both in there. One BMP in volume 5 of the manual T5.30 if I remember correctly is a practice which would result in full dispersion and full retention of runoff on property which is low impact development. So I guess the short answer is yes, they're both in there.

Cleveland Steward: Have you examined the site drawings to understand how the road system works in the proposed development?

Tom Holz: I looked at it enough to understand what kind of project this was.

Cleveland Steward: I believe this drawing actually shows the road on the proposed site. Is there anything related to this road or two roads in general that could be redesigned to more closely approximate LID?

Tom Holz: I would say there's enormous amount of room to modify this project. Some of them might require variance from the city of Brier. For instance there is a loop road which serves 29 properties, something like that. With that few number of properties that could be a one way road. You could reduce it from whatever it is 25-30 feet down to 12 feet with turnouts. And then make the road out of pervious materials and associated with it rain gardens and you've eliminated all runoff from that road.

Cleveland Steward: That's the last of our questions for now.

Hearing Examiner: Thank you. Cross examination from the applicant.

Courtney Kaylor: Thank you. Mr. Holz I am just trying to understand your testimony. Is it your testimony that the 2005 DOE manual mandates retention on site of all storm water flow?

Tom Holz: Well in effect it does. The Department of Ecology manual says that discharge from the property has to meet predevelopment discharge. And for this site and for most sites in western Washington, predevelopment discharge is close to zero. So if you were to adhere to that standard literally, which the Department of Ecology doesn't. If you were to adhere to that standard literally than it basically says all runoff has to be retained. The only really practical way to do that is through low impact development.

Courtney Kaylor: That is your interpretation of the 2005 DOE manual, is that correct?

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Tom Holz: That's my interpretation. It's logic. It says if you can't exceed predevelopment runoff and predevelopment runoff is zero than there's not much room there for interpretation, I don't think.

Courtney Kaylor: But isn't it true that the Department of Ecology does not interpret its own document in the same way?

Tom Holz: They do and they don't. In volume 1 they state that the manual will not protect receiving waters and they go through a number of analyses of documents from the literature. One of them was this May paper that I quoted. Another one from Derrick Booth (ph. sp.) of 2002 I think. And pointed out what I just said. That very little impervious area can have greatly deleterious effects downstream and that very little clearing of a watershed can lead to destabilization of the creek. After the Department of Ecology finished this analysis and might have come to the same conclusion that I did, they then turned around with the other four volumes and ignored that their own analysis.

Courtney Kaylor: So in fact the Department of Ecology did not reach the same conclusion that you're reaching today.

Tom Holz: Yes they did and they didn't. They had reached the conclusion, but they ignored it. So how would you characterize that?

Courtney Kaylor: The last three volumes of the 2005 DOE manual ignore your conclusions is that your testimony?

Tom Holz: Yes ** 4 out of the 5...

Courtney Kaylor: Does the Department of Ecology manual mandate the LID techniques that you have listed?

Tom Holz: No. They don't mandate anything.

Courtney Kaylor: No further questions, thank you.

Hearing Examiner: Cross examination by the city.

Mr. Knutson: Thank you. Mr. Holz with regard to the Pollution Control Hearing Board's decision, which decision are you referring to?

Tom Holz: As I said earlier, I am not sure how to cite these things, but I've...

Mr. Knutson: I can ask a follow up question then. Do you know if this decision that you're referring to deals with the phase 1 or the phase 2 NDPS permit jurisdiction?

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Tom Holz: It's the phase 1.

Mr. Knutson: Do you know what type of jurisdiction the city of Brier is?

Tom Holz: I'm sure it's phase 2.

Mr. Knutson: So the decision that you're referring to does not apply to the city of Brier, isn't that correct?

Tom Holz: Well as I said not yet. None of these decisions apply to either jurisdiction until the Department of Ecology rules... Provides definitions of these things...

Mr. Knutson: Were you aware that the Pollution Control Hearing Board did render a decision for the phase 2 cities that dealt with LID techniques?

Tom Holz: Yes I am familiar with it.

Mr. Knutson: Are you aware that that decision does not mandate LID techniques at this time.

Tom Holz: Not at this time.

Mr. Knutson: Thank you. Just so I understand your testimony with regard to the zero retention requirement of runoff. Are you saying that all the runoff has to be surface water runoff that's retained on the site?

Tom Holz: Yes all over limb flow runoff would be prohibited which is to say as Doug Beyerlein said either infiltrated or envirotranspired. Those are the only two ways to get rid of it except overflow limb discharge.

Mr. Knutson: Thank you. I just wanted to make sure that I understood that.

Hearing Examiner: Mr. Holz, my understand of the current state of land use law is that decision makers in a quasi-judicial capacity such as I am, such as the council will be when they get this case given to them in due course are required to apply existing laws to proposed developments. In fact where required to apply the laws that existed at the time that the developer applied for the application to the application no matter how many years it's taken us to get from there to here. And essentially that developers have the right to rely on these regulations. That if the law says you can build a 2000 square foot house; I'm real hard pressed to tell you, no that's too darn big. We're building too many darn big houses in this country. You are only going to be allowed to build a 750 square foot house. I don't think I could do that. There are some very rare circumstances where I might be able to do that. It seems to me that what you're saying here is sort of along that same line. That the law says one thing, but I really shouldn't

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do that because it's for everyone's betterment if I made the developer do something different... to the extent that that perception is right on my part, can you give me any thoughts as to the legal ability to make a developer do that?

Tom Holz: I wish I was an attorney. Why did I say that?

Hearing Examiner: I was going to say that I'm glad you're not, but that would have been even worse to say.

Tom Holz: What my attorney friends tell me is that what you're hanging this one is protection of health, safety and welfare. Now I could respond by saying that in fact the spirit or maybe even the letter of the law says that you have to match predevelopment runoff. It's just we recently discovered that predevelopment runoff is zero. So I guess that's a question for the legal system. If an error is discovered in the standard, does that mean you still allow the old standard or the mistake standard to be adhered to when the consequences are so costly. The consequences of allowing a watershed to get developed at this level of intensity means the loss of resources.

Hearing Examiner: Then in your opinion, would it be fair to say virtually all current development in all cities, towns and counties in Western Washington is absolutely destroying the environment and none of it should be allowed because all the regulations that everybody's using are inadequate? Not just this plat. You're not saying that this plat by itself is destroying the world. You're saying if I'm understanding you right and don't let me put words in your mouth, but I think you're telling me that all plats that are complying with all existing drainage regulations are absolutely destroying the world.

Tom Holz: I think that's what the data is telling us and that is what the argument is what we made to the Pollution Control Hearing Board and the board exceeded to argument. I hate to say it such dramatic fashion, but in fact development, the way we do it today and the way we have been doing it for many, many years is highly destructive. The way this project is proposed is really not much different than the way projects were proposed 30 years ago. The only difference being the size of the pond or the detention facility. And we have lots of data to show that regardless of the size of the detention facility, once you've committed those acts to a piece of property it can't be mitigated anymore.

Hearing Examiner: Okay. And one last question. I have an civil not structural engineer but a highway type engineer friend who made the passing comment to me a couple of months ago not at all relating to this case but we were talking about pervious pavement. And he said a lot of jurisdictions are finding that they don't like pervious pavement because it isn't as stable. It's not as strong. It deteriorates faster. They don't like people use it any kind of high volume situations. Parking lots are great. Out in the streets, no he wouldn't recommend it. Can you... I know that every engineer has different opinions. Are you suggesting that Brier should start requiring pervious pavement on all of its new streets?

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Tom Holz: No and in the sense that I agree with your engineering friend. There are places where the traditional pervious pavements have a very short life. From the strength standpoint, I think you could solve that simply by making the prism, the depth of pavement thicker. And you can solve that. But I would not use pervious asphalt or porous concrete on an arterial. But having said that, there are still alternatives... There are still designs that you could use that would accomplish much the same thing even on an arterial or even a state highway. In fact, I've seen a state highway where they sort of accidentally employed a pervious road section that would work quite well everywhere.

Hearing Examiner: Okay. Thank you. Any redirect.

Cleveland Steward: So you cited a standard protection of health safety and welfare as something that might be invoked in decisions of this type whether the condition of proposal, propose development to include for instance LID. Have you been involved in any proceedings where a hearing examiner or someone of their type has helped **... Where that has actually been applied and used to modify proposed development.

Tom Holz: Other than the Pollution Control Hearing Board I can't think of one.

Cleveland Steward: I wanted to ask you about the Phase 2 ruling that was referred to with the Water Pollution Control Hearing Board and ask you is it your understanding that that ruling determined that LID was not mandated for phase 2 jurisdictions?

Tom Holz: I am going to stretch now and say that my interpretation was that it was delayed. That there was a certain amount of time that Phase 2 jurisdictions were going to get them. The phase 1 jurisdictions will not get... There may be some nuances in that decision that I'm missing.

Cleveland Steward: Do you recall why the delay was granted?

Tom Holz: Phase 2 jurisdictions presented to the Hearing Board that it would be very expensive for them to switch over their development code and all their enforcement practices that quickly and wanted more time.

Cleveland Steward: I guess the final question. You just mentioned the expense of switching over. The actual implementation of LID, the cost of using that in lieu of more conventional... Are you aware of any comparative studies or LID techniques particularly expensive?

Tom Holz: Yes, there are many studies that show that at least for a certain standard of low impact development that it's less expensive than high impact procedures. In fact all of the projects that I have done that have been built turned out to be less expensive for the developer than high impact project that accomplished the

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same thing. And that's the only reason I got the work because they weren't mandated to do something that's more expensive just because it was good.

Cleveland Steward: And so it's your opinion that the adoption implementation of LID techniques in this context would measurably improve the health, safety and welfare and the environmental conditions associated with this project?

Tom Holz: Yes I think so. And I think if the... Well we're talking about standard too. What's the standard for low impact development? If the highest standard that's been proposed so far were selected than we could see where development projects such as this could be done with a considerably lower risk of destroying aquatic habitat and water quality. Yes, I think that clearly stream 0056 could be benefited by low impact development.

Hearing Examiner: Even though the basin is 80, 90% developed apparently much of it in the time period where there was virtually no drainage control whatsoever? I think that's the argument that the appellants are making is we've got to save stream 0056 by doing something serious to this plat. I'm still not exactly sure what they want done to this plat, but that's the gist I'm getting. We are going to save stream 56 by doing something to this because this plat's going to destroy stream 56.

Tom Holz: I'll have to warn you that I have a minor in philosophy.

Hearing Examiner: I took one course in logic when I was at the judicial college and it was about all I could handle so be easy on me.

Tom Holz: We are venturing out beyond engineering opinion here, but... I think the argument hinges on what kind of city does Brier want to have and what's the long range outlook for urban streams. What would be the hundred year vision for urban streams? And the choices do nothing and leave them in the terribly degraded state they are or eventually begin to restore watersheds. I guess I'm optimistic enough to believe that the human soul wants to see restored watersheds. If that's the case than why mess up this one and have that one to redo as well.

Hearing Examiner: Let me suggest that no matter how this hearing comes out that you and others who hold the same philosophic view should participate in the legislative process to see whether or not that the powers that be in this city and other cities agree with you and want to change the law. I am not an elected official. I have always described myself as being what in the judicial world would be called a strict constructionist. Nobody elected me to make the law. I was appointed to implement somebody else's law. You don't get John's view of the world. You get the Brier council's view of the world. So we don't change regulations by having a hearing in front of me.

Tom Holz: I've been warned.

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Hearing Examiner: Encouraged is what I'm doing. Encouraging... Did you have other questions for him? I jumped in. Cross examination.

Cleveland Steward: One follow up question based on the last discussion. Isn't it true Mr. Holz that with the type of decisions being made by the Pollution Control Hearing Board and a shift towards low impact development techniques being encouraged and ultimately maybe being required? There's coming out to be some disagreement in the scientific community as to a wholesale shift... To the desirability of a wholesale shift to low impact development and throwing detention and water control or water quality control of storm water out the window?

Tom Holz: Sure. There's always controversy. There was controversy with every increase in the standards for drainage we've made for as long as I've been in the business. Department of Ecology and Pollution Control Hearing Board and every city and jurisdiction has to decide. Which is the real science and which is the tobacco science and how am I going to go. Pollution Control Hearing Board has made the first step.

Cleveland Steward: And a final step as yet to be taken. And isn't it true that the jury is still out as to what you're advocating in terms of a wholesale shift to low impact is the right thing to do for Puget Sound?

Tom Holz: Again it depends on who you talk to. There's no doubt in my mind what's the right thing to do, but the jury is certainly still out.

Cleveland Steward: Thank you very much.

Hearing Examiner: Thank you Mr. Holz. Are we going back to Miss Bowers?

Miss Bowers: Peggy Dare.

Hearing Examiner: Miss Dare. I think I called you Miss Hoff yesterday. I apologize. I know that's the middle name. I did another misstatement yesterday and I might as well get this on the record. I said Brier Way and I meant Brier Road. That was hours and hours and hours ago, but it's been bothering me ever since. Would you raise your right hand please? 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?

Peggy Dare: I do.

Hearing Examiner: Thank you. She's probably going to tell you to speak up.

Paula Swisher: Probably. It would probably be better if you just go sit in the little blue chair now Peggy because we've had issues **... It will just save us time.

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Hearing Examiner: Begin by giving us your name and spelling your last please.

Peggy Dare: Peggy Dare. 22320 Hickory Way, Brier, Washington, 98036.

Paula Swisher: And you're going to have to speak up even sitting that close to the mike.

Peggy Dare: Okay.

Hearing Examiner: Pretend that you're yelling to Mr. Meyers over there. And he's going further and further away so you've got to talk louder and louder. Miss Bowers are you going to ask her questions or just turn her loose?

Miss Bowers: I am going to ask her a few questions and turn her lose at the same time. You are a resident of Brier.

Peggy Dare: Yes I am.

Miss Bowers: Can you just briefly run through beyond that what your credentials are?

Peggy Dare: I am an active citizen of Brier. A resident for 22 years... I am a former chair of the Brier Park Board and former member of the Brier city council. During the formation of the 1989 conference of plan and when the SEPA ordinance was first adopted...

Hearing Examiner: I have a suggestion. I don't know whether this would help you are not. Some people would be panicked by this, but would you like to take the microphone out of the holder and just hold it?

Peggy Dare: I have to shuffle my papers, but I can sit closer.

Paula Swisher: That is better. There's a slight delay on the recording so I have to wait until you pop in.

Peggy Dare: I'll try and do better. I have two sets of comments regarding the SEPA appeal. I am sorry this procedural thing here. I thought there would be a plat hearing and then a SEPA appeal and I didn't understand. I kind of wrote up two different sets of things and they kind of blended. So I hope I'll be able to go back and forth without getting in trouble when I start talking about horses during the SEPA question or something. My background is an architectural and civil engineering planner and designer. I worked as a civil engineering specialist for the city of Seattle engineering department, Seattle City Light, Transfer (ph. sp.) Engineering group and the city of Mount **... I'm retired now. Most of my career has been in government.

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Miss Bowers: Did you see any of the documents connected to Sunbrook?

Peggy Dare: Yes I did.

Miss Bowers: Could you enumerate a couple? Did you see lots of them or just...

Peggy Dare: I saw a staff report. I saw the SEPA checklist. I saw the mitigating measures that were put out. I saw the tree plan. I've looked at some plans over the counter and briefly the grading plan just during lunch. I read the appeal, parts of it.

Miss Bowers: From the examination of your work, what major concerns do you have about the Sunbrook development?

Peggy Dare: I'm concerned that the project is not in conformance with the conference of plan and the code. Brier stated goals are for maximization of natural open space and preservation of trees. And the goals also support horse keeping and mobility for equestrians. I'm concerned that the project's not being designed according to code in regard to public access to and through the plat and with the use of an underground vault rather than a planted wet pond for storm water quality and detention. And in regard to the wet pond, I see that there's no wet pond incorporated into the site plan and that without it, I don't see a complete application. The code clearly states in 16.16.150 flood control, geologic conditions Brier municipal code that plats of 5 or more shall use a wet pond design were feasible. Brier adopted the use of "shallow open ponding." And added language to the comprehensive plan... when I was on the city council in 1989... This goal was later codified into title 16. Underground vaults are known to be less effective at mitigating water quality impacts than are properly built wet ponds. I have an attachment supporting that.

Hearing Examiner: Are you going to be submitting what you're reading later?

Peggy Dare: Yes. I am not going to read the whole thing, don't worry.

Hearing Examiner: If I know that you're going to turn it in than I start slowing down on the notes I take because I'm going to get it to read over and over again.

Peggy Dare: Okay. Underground vaults are known to be less effective at mitigating water quality impacts than are properly built wet ponds. Wet ponds are commonly built with park features offering open space, planting areas, and wildlife habitat. They control nutrients better than vaults do and the plants within the pond remove pollution and the runoff water. That is why Brier adopted the code to use "open shallow ponding" as well as the fact that vaults are difficult to maintain and Brier does not have staff or funds to maintain them as we have experience as I've seen in Brier. Guidelines for low impact development advocate the use of open drainage systems and wet ponds. References, brier ** land use element W10 encourage shallow open

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ponding on slopes with less than 3.1 for storm water detention and multiple use. In other words, play fields, parking, etc. In the staff report we see "the code generally requires open pond design for storm water facilities, but because an open pond design would require excess tree removal within the plat an underground vault was allowed for this project. This is not a plausible reason to allow an underground vault and it does not relate to whether or not a wet pond is feasible. Trees are not saved by the Brier decision. Lots 6, 7, and 8 where wet pond would be located in the lowest area of the site are shown to be cleared of trees except for one tree. Besides the destruction of existing large trees in the proposed vault area, the vault would preclude any planting of substantial vegetation over the top of it. In reference to low impact, please require that the project be designed using low impact design techniques. I'm sorry. I'll go back to this. Title 18.08.04 ** SEPA policies overview states in A1, it is the city's policy to protect the environment, provide for the reasonable property developing while enhancing the predictability of land use regulation. In order to provide predictability it is the city's intent to incorporate environmental concerns into its codes and development regulations to the maximum extent possible. However, comprehensive land use controls and other regulations cannot always anticipate or effectively mitigate all adverse environmental impacts. This is the foundation statement for the SEPA ordinance which was pretty much just blanketly stolen from the city of Seattle or borrowed from the city of Seattle. Very comprehensive and it lists all the impacts that you see in an environmental checklist such as glare, light, noise. And lists for each one of them what the city has a possibility to do within their authority. And these are from that ordinance. With careful analysis and rationale, Brier's SEPA allows that the city can impose mitigation such as reducing the size or scope of the project, phasing of project construction, monitoring of performance of the project, requiring landscaping and/or retention of existing vegetation, requiring additional drainage control or drainage improvements either on or off site. This is in the ordinance. Including limitations on the flow to mitigate all impacts up to a 100 year flood of 24 hour duration... Now DOE might override that at this point, but these others apply. Stabilization measures already partially covered, permeable paving these are types of things that I added. Traction surfaces for horse traffic, parks maintained by homeowner's associations, covenants running with the land giving the city an independent right to recover expenses for remedying deficient drainage systems. That's in the code under drainage title 18. Also limiting the height of the development... Repositioning the development on the site, modifying setbacks, screening, landscaping, or other techniques to offset the appearance of incompatible height, bulk and scale of neighboring properties... Properties to the north are low scale ramblers. What will these houses look like? Are they compatible? Modifying the bulk of the development... That's in 18.08.130 height, bulk and scale. So you can do this according to this law. Relocation of the project on the site, preservation of specific onsite habitats, such as trees or vegetative areas, limitations on the uses allowed on the site... and under the traffic and transportation section, for all traffic related safety issues require that any unsafe roadway or identified unsafe condition be completely mitigated as a condition of approval. I'll stop there with that one.

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Miss Bowers: With all your experience with working with the Brier city and helping them design rules and regs and that kind of thing, have you had a chance to work with LID methods within the city code?

Peggy Dare: I have advocated LID for years. I've written notices or correspondence to the city. I've testified in front of the city council. I've asked for low impact design to be required. And if it's cheaper, I think it is truly a matter of health, welfare and safety for the city of Brier because Brier is so strapped for money. I do think it should be mandated. Anyhow, yes I have listened to a presentation by Dean Franz (ph. sp.) of Petite Engineering (ph. sp.) which was orchestrated by city council member ** LID with her goal that the city should use it... I've had numerous presentations I've listened to as a planning commission for Snohomish County. I've view C streets (ph. sp.) projects in Seattle. I've seen Peggy Gainor (ph. sp.) landscape architect's project and the Greenwood area and have used all this background I have to be a proponent of it here. I've redesigned a number of plats and proposed in Brier for cluster concept.

Miss Bowers: From that have you found any experience where when you've been working and visiting some of these other options, did the monetary costs change dramatically between using the low impact development methods as opposed to standard traditional practices or where you aware of any?

Peggy Dare: That isn't something I experienced although the presenters of the information said that the costs could be less or more at first, but would certainly pay for itself within a short time. With the lack of a storm water vault size that you would need or less paving you're putting down, less utility runs. All kinds of reasons to reduce the footprint...

Miss Bowers: Are there any additional aspects of this particular project Sunbrook connected to the city of Brier's decision that you feel should be more thoroughly looked at by the city staff?

Peggy Dare: Yes. Brier needs to work with official agencies more such as the Department of Wildlife, Department of Ecology and low impact experts. Brier needs to be more proactive ** itself with the code updates that are long overdue... Brier codes have been strengthened lately to make sense as they were confusing as outdated procedures for decades with past administrations, but now the substance of the codes still needs to be further **... Brier's conference of plans states the need for better laws throughout the document such as tree inventory is overdue, design incentives for developers are in the conference of plan but we haven't developed those yet, design review board is needed, but hasn't been use, more public involvement would help... Brier does not notify neighbors when there is a notice of application even posting the property for that would help. So much information has come forward in this hearing that I don't think our SEPA official or our even city staff has had the chance to learn. I think it's been invaluable to hear the comments that they should have been using that

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information before making... Having a chance to review it before making their decision so that this doesn't have to... We don't have to appeal things. Less paving needs to be considered. Less structure, less auto impacts those are all stated goals throughout Brier's comprehensive plan are exactly what low impact development is all about. I've asked the city of Brier for moratoriums so we can get these things... Moratorium on the subdivision of land as a citizen... Coming before the city council ** can we get the codes in order because the goals are there... The support is there. The city council all ran on platforms of preserving Brier and its historical character and its country charm. So citizens are going, what's happening with this? And my other concern is that plans that must be properly prepared by highly qualified and unbiased experts who oversee the entire project and do the inspections. And I say this because a project... Numerous projects that I've seen happen through the years, especially for a project in my neighborhood, the Brier detention pond and 17 acres of development where the inspection... The plans were changed. There is a long story with that, but the follow through is very important. The maintenance, performance bond, monitoring, and I'd like to see Brier do that.

Miss Bowers: Have you found that the Brier city staff is consistently reliable about enforcing their own codes and following through with the spirit as well as the letter of the codes?

Peggy Dare: Brier staff has been a revolving door and there are... Rich ** in public works has been there a long time doing public works things... The construction inspector's come and gone. Applying director has come and gone. Often it's people like me, my neighbors, or former city councils that come to try and keep continuity going to try to remind you that, they dumped garbage in that site... For years it was a garbage dump. People on staff don't know Brier as well as what would be really helpful for the review of these projects.

Courtney Kaylor: Mr. Examiner, I am just going to interrupt for a moment. We have about an hour left today and I haven't heard, I don't think so far yet any testimony about the project before us. I would for one would appreciate it if the witnesses would address the project before us so we can get through our hearing.

Hearing Examiner: Fine with me. Miss Bower's is the one asking you the questions and you've been running with them. So I do agree with Miss Kaylor. Much of what you've been talking about is interesting philosophy, but clearly does not go to the SEPA appeal issues and only tangentially addresses the approvability of the subdivision. What the city council may choose to do to change its ordinances or impose moratoria in the future has no bearing on what we're doing here today and you know that.

Miss Bowers: We did discuss at the beginning about major concerns that you had about the Sunbrook property, so would you like to reiterate and expand on what you think the Sunbrook should be?

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Peggy Dare: The project should have a wet pond. The wet pond would provide open space, recreational value, wildlife habitats and help the ** it would also require less lots because it would take more space than the vault... I've also have a concern, they'd probably remove two of the lots to do it properly. This is not a new thing. It's been done before in Brier. Remove lots, do the wet pond. My other concern was about the street system and the lack of continuity to the boundary of the plat. The comments below are on behalf of the Brier Horse Network of which I am a member. We strive to provide a network of trails in the city. We seek a horse-friendly project that allows equestrians to ride comfortably in the plat. Historically agricultural use of the site has been ignored by the applicant. The SEPA checklist does not show that the site was formerly used by agriculture despite the question the site has the site been used for agriculture? The applicant says, not that we know of. So we feel that's an error. Brier's goals are to honor the country character and agricultural roots of the city, we request that there be something done with the design to reflect this. Requirements for special signage, fencing, architectural design, and to set aside area for possible keeping of livestock would be reasonable. We also seek a wide safe dedicated unencumbered trail connection through this property to the east to property that will become annexed to Brier in the future. There are two acreage parcels on the east boundary of the plat that are capable of being subdivided. Someday, somehow this is likely. A network of trails and public access ways within the goals of both unincorporated Snohomish County of Brier... Title 16.16.040 items A, B, J, K... I'll attach those. We're developed to prevent super blocks. Areas where public walkways and also driving access for emergency vehicles are so limited that no one can get from here to there without great travel distances and inconvenience. This site is part of a super block bound by 236th Street, Dunlop Road, a road south ** in Kenmore going east/west and Brier road... There is a need for east/west connections in the area. The project should do its fair share of contribution to the street network by continuing the internal street to the eastern boundary of the plat for eventual connection if not for road than for utility, water, service lines, open space, trail purposes... A staff report says they think everything's fine. We disagree. We do not find that adjacent connectivity is addressed. The code reads layout of streets shall conform to the most advantage development of adjoining areas and the entire neighborhood and shall provide for the following: street continuity of appropriate streets, streets continuing to boundaries of tract (ph. sp.), streets generally following country line. Nothing less than full street right of way width also stated. Gateway image, please see the conference of plan goal below. This property sits at a gateway to Brier from the south. We'd like to see a choke point along Brier road to identify the city, slow down traffic and to alert drivers that they're entering into an area of horses and walkers and children. On the east side of Brier road is the official Brier horse trail dedicated as "east 8 feet of Brier Road/Poplar way from the south city limits to the north." We request the city consider the impacts to the trail system and require a raised cross walk with a resilient surface for equestrian safety across the entrance road to the site in the alignment of the trail. The new road going into the plat... I have marked up drawings here showing a cluster concept. We seek that cluster... Brier's code title 18 allows for reduced lot sizes down to 8,000 square feet when there's an environmental sensitive area involved. We see great advantages to doing that to

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provide larger buffers, to consolidate open space areas, to allow for saving of the trees and less storm water runoff. So I've done a little redesign. This is not my usual fine style, but it works and it still removes two lots because you need a wet pond. But the lots that are removed because of the road going off to the northeast corner of the plat for eventual connection and the removal of lots 1, 5, 6, 7 can be made up without going to great trouble for the developer by turning those four lots in the middle to six. 12,000 lots to 8,000 that's... Two lots can become three. It works. I'll turn it in. It also consolidates driveways, it shows wider planning strips. Instead of just these silly bumps, these bulb outs, continue those. No on street parking is needed in Brier. I think pretty much at all. No on street parking is needed in Brier. I submit also an inventory I did on parking spaces in recent plats in Brier. I went to several subdivisions looking at on street parking, lots that had not just three car garages but two car garages and I found onsite parking spaces ranged from four to more like nine. In the most recent plats, nine or ten... The mayor should be listening to this. And the 9 or 10 off-street parking spaces per home and as part of this inventory, I observed at 9 PM at night, for some of them. The others were I was just driving through 109 homes, 250 homes so I didn't get an accurate count, but I found for example this one. 8 lots, 2 cars parked on the street. This one 4 cars parked on the street. One car parked on the street and that's because the kids were playing a game in the driveway so the driveway was being used by kids. So Brier has plenty of streets with no parking just 20 foot wide pavements. The ** could save a lot of money with using a lot less pavement... I fully agree with using permeable surfaces or possible... And this is a wet vault description. It shows that it does not remove pollutants as the wetlands do. It does remove organics, bacteria or hydrocarbons. It removes 60% of the sediment and the limitations state it does not provide the level of water treatment associated with wet ponds... This is vaults. Vaults do not provide the level of water treatment associated with wet ponds or constructed wetlands. Also underground tanks are difficult to maintain and inspect. Access to tanks for maintenance and repair is limited. They really need a plat to be redesigned. I've got some citations of the code of other things that I found missing from the submitted plans. And then I went to the Snohomish County website and this is an aerial photograph the site and I've drawn around the tree canopy. These trees... The size show on the tree plan of the actual tree canopy of the existing trees which is where the protection fencing would go if they were to be protected, this needs to be on the plan and it's not. You can see here and I'm not saying this is 100% accurate, but it sure shows that the tree plan showing a dot as a tree is not showing the significance of what you're losing by taking out that tree. You can see these large, large cottonwoods that would span two times the street width and on plan they show as a small little circle. I think it's important for Brier to be able to review things properly by having better information and I think that's all. This is an overview map I did for the convenience of the hearing examiner if he wants to see the overview. It shows the drainage courses and the plat to the south of the project. I took it from county website sources. And last thing is that I believe that the mitigation measures as I said they are totally inadequate. We've got a developer. Finally we have a good developer in Brier who's capable and do regional things and this could be a really neat project. I'd like to see it redone. The mitigating measures simply recite the code. Why even have a SEPA review if the

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mitigating measures simply recite the code. And I know I just made a terrible generalization because there are a couple of them that are specific to the plat, but I think we can do better in Brier. Thank you.

Hearing Examiner: Thank you Miss Dare... I think for simplicity purposes, I am just going to enter all of the documents that Miss Dare handed me as one exhibit and then in keeping what all you folks did with things like this that have multiple documents in them, I'll work with the clerk and we will mark on the lower right corner a sequential page number so that the various pages can be referenced. So Exhibit A16 is the submittal materials from Miss Dare. Did the appellants have any further questions?

Miss Bowers: We do not.

Hearing Examiner: Miss Kaylor do you wish to ask any questions of Miss Dare?

Courtney Kaylor: No, no questions.

Mr. Knutson: I have a few. Miss Dare with regard to the notice that was given by the city for this project, did I understand you to say that you believe that the notice was inadequate?

Peggy Dare: Yes.

Mr. Knutson: Are you aware that the city did give notice as required in the city code by sending letters to property owners within 300 feet by posting the property in two locations and by publishing legal notice in the newspaper?

Peggy Dare: I didn't see the posting on the property notice of application. Did that happen in 2005?

Mr. Knutson: I am not sure exactly when it was, but the documents are in the record and it's my understanding that they do comply with the city code. But you're testifying that you don't believe that that's the case.

Peggy Dare: I have not seen that done in Brier before posting of the property. The big 4 x 8 signs, the clue to the neighborhood to get your comments in. I haven't seen that in Brier.

Mr. Knutson: Then you also testified, I believe that you think this project is inconsistent with the cities comprehensive plan is that correct?

Peggy Dare: That's correct.

Mr. Knutson: Are you aware that the comprehensive plan has policies with regard to housing?

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Peggy Dare: Yes.

Mr. Knutson: Are you aware that those polices contain goals that the city is supposed to be meeting is that the city is not currently meeting those housing goals?

Peggy Dare: I am very familiar with that.

Mr. Knutson: Isn't it correct that this project would help the city meet its housing goals as set forth in the comprehensive plan?

Peggy Dare: Yes, but at what cost? It could be done with far less cost, with far less impact, with something more in keeping with the spirit of Brier.

Mr. Knutson: Thank you, that's all.

Hearing Examiner: Thank you. I don't have any questions at this point. Thank you Miss Dare. It is 4:25. Do you have, I was going to say a short witness but that kind of statement's always misunderstood. Do you have a witness whose testimony who you think will be short no matter how tall or what stature the witness is? The reason I ask is this. I kept you all late last night. There are some of you that have to go places this weekend. One has to drive to eastern Washington.

Paula Swisher: It got canceled.

Hearing Examiner: But since I held everybody late last night and since this is Friday night, number one I don't want to keep us beyond 5 at the absolute latest and number two, I don't want to leave somebody hanging. I don't want to break a witness over the weekend and have it just sit and get stale. So if we've got somebody that's a quickie, we can spend the next 30 minutes with that person. If you don't think that's likely than maybe we just ought to wrap it up for today and come back Tuesday next.

Miss Bowers: What we have is our fisheries person, potentially our questions won't be 15, 20 minutes, but I can't predict what the cross examination will be.

Hearing Examiner: If you're going to take 15 to 20, it'll take more than a half an hour by the time we're through.

Miss Bowers: We only have I think three, four more witnesses at the most. Three of them are for sure, will be able to come on Tuesday and the fourth one, I'm not sure about yet.

Hearing Examiner: So is the fourth one here?

Miss Bowers: No.

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Hearing Examiner: Well we couldn't hear them today anyway. Okay so it doesn't sound to be me like we have a quick witness, is that right? This isn't complex rocket science. You ought to know how long your testimony is going to be. Sir, they are talking about you. Do you think that your testimony is going to be short?

Mark Phillips: I believe it will be.

Hearing Examiner: We'll take a gamble with you. Can 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?

Mark Phillips: I do.

Hearing Examiner: Your name please.

Mark Phillips: My name is Mark Phillips.

Hearing Examiner: Would you spell both of them for us.

Mark Phillips: Mark Phillips. I live in Lake Forest Park. I want to speak about a very specific point that's actually raised by Tom Holz a few minutes ago. My qualifications to speak to this specific point are experiential and not educational. I have a Bachelors' degree in anthropology and I have two Master's degrees in Education. I'm a member of the Lake Forest Park stream keepers group actually for the last 13 years and for the last 7 or 8 years, I've been either the chair or the co-chair of that group. We monitor streams in Lake Forest Park for water quality. We do a number of basic things. And one of the tests that we do is called BIBI. Benthic (ph. sp.) inventory of biotic integrity... And so we have been doing that test for the last four years.

Miss Bowers: One second before you get into it. He is also our Exhibit P40. His letter that he submitted already...

Mark Phillips: Although my remarks right now are in a very small part of that overall statement. So I just want to say quickly what BIBI is. It's a measure of an inventory of small organisms that live in the stream beds. And it's a process, a method that was developed by a University of Washington professor maybe a decade ago. It's widely used in western Washington right now. There's a database that King County has recently put up of BIBI scores or ratings of streams throughout western Washington. BIBI looks at small organisms called macro invertebrates that live in the stream beds that include flies different ** may flies ** beetles, worms and even some mollusks that live in stream beds... And the idea is that it gives a very direct and kind of a compelling measure of the overall stream health based upon what kind of creatures are able to live in that stream or in the stream bed. So we've done a Lake Forest Park... BIBI looks takes a sample from a 1 foot square area of the stream bed and then analyzes that

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sample against 10 specific characteristics total number of taxa that are found in the samples. So you get a high score if you get a good richness of varieties of creatures. You get a low score if you have a smaller variety. And altogether 10 characteristics it looks at. It comes up with an overall rating between 10 and 50. 50 would be pretty much be the primeval forest kind of condition. 10 would be highly urbanized conditions. Lake Forest Park our scores run in the poor... And that score of 10 to 50 translates into a general kind of rating, a five point rating of very poor to excellent. So in Lake Forest Park, we tended to be in the poor range or the very poor range. We used to have a couple of years ago a couple of fair ratings which would be the midpoint on the scale. And what I've become aware of is that there is one rating that's... And that's typical really of urban streams unfortunately. What I found recently is there has in fact been some BIBI testing of stream 0056. It was conducted by King County in 2008. And so that BIBI score was 18 on that scale between 10 and 50. And that falls in the poor range as well. It's the highest score you can get and still be poor. If you fell to 16 you'd be in the very poor range. There is pretty much a consensus about the causes of poor BIBI scores that have to do obviously with the lack of those organisms living in the stream. And the consensus is that storm water runoff is the major cause of declines in those populations. And that would happen from several ways. It could certainly happen from the toxic loads that are introduced into the streams from storm water runoff. And it also happens as a result of sedimentation. The sedimentation that fills in the spaces around the rocks and the stream beds and essentially suffocates and destroys the habitat area that those creatures live in... so what I would like to say is that if storm water from the Sunbrook site is not adequately controlled or if it increases, the storm water runoff into stream 0056, I think is very likely that you could predict and expect that that already impaired the stream from the sense of the creatures that live in the stream, which by the way are obviously the foundation that support the higher order kind of creatures. The fish... They're the food for the fish and other creatures that live in the stream. But the storm water runoff is not adequately controlled from this development. You very likely would find that the macroinvertebrates would decline even further. That deterioration would become more pronounced. You could expect to see BIBI scores lower than 16. The lowest BIBI score that I've heard, the lowest score you can get is 10. It's a scale of 10 to 50 and that was probably other streams, but the one that I know of is Thornton Creek which runs from just west of I-5 underneath North Gate down into Lake Washington and it received a score of 10. Recent steps have been taken to renovate that stream. That's really all I wanted to say.

Hearing Examiner: Okay. Thank you. Any questions for your witness...

Miss Bowers: No. He covered everything.

Hearing Examiner: Cross examination from the applicant.

Courtney Kaylor: No questions.

Hearing Examiner: Cross examination from the city.

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Mr. Knutson: No thank you.

Hearing Examiner: Thank you Mr. Phillips.

Miss Bowers: The only other comment that I do have is that I do know that there is one public person that still has not had a chance to speak.

Hearing Examiner: And is that person here.

Miss Bowers: Yes. Mr. **...

Hearing Examiner: Three minutes. Same rule as last night. 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?

Eric Adman: I do. My name is Eric Adman. I'm the chairperson of a volunteer and environmental coalition known as the Smoking Watershed Council.

Hearing Examiner: How do you spell your last name?

Eric Adman: Last name is Adman. We're a coalition of environmental and neighborhood groups, scientists and interested citizens. We're primarily interested in protecting watersheds in North King and South Snohomish County. We include promoting best storm water management practices, species and habitat protection, outreach and education. There's been a little bit of discussion with regard to the large context of this project which is that within the scope of the efforts that are out there right now, there is a couple of major efforts. One is efforts to restore Puget Sound. Puget Sound partnership has been established. One of the key things that it has identified as a contributing to the poor health of the sound is storm water runoff. Additionally along the same lines, there's the Chinook salmon recovery effort that is going on right now. Again, storm water control is identified as a major... Being very important for the success of that recovery effort... Those are just kind of the general context. With regard to the specifics in Brier, Brier's own city SEPA policy states that one of its goals is it protect streams, lakes and property from adverse drainage impacts. And I think if you take a look at the stream 0056 that we're talking about; it's got well documented flooding and habitat issues which you could argue are primarily due to adverse drainage impacts. So my concern here and the comment that I wish to offer is I'm not convinced that the project has adequately addressed or assessed potential environmental impacts primarily contribution to runoff over baseline conditions. So I think that what ought to be done at a minimum is to model the high ** conditions that would come off this project and what the effects would be on 0056... I think there should... We should make sure that we do that analysis adequately up to and including potentially and environmental impact statement and I think the proposal should be modified to incorporate adequate buffers and storm water BMP's including low impact design. So that's my comment.

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Hearing Examiner: Thank you Mr. Adman. Okay it is 4:35. We are going to adjourn for the day or recess, whichever way you want to look at it. We will be reconvening at 9 am next Tuesday August 4, 2009 here again in council chambers at which time we will pick up again with the appellants and their remaining witnesses. And then move on to the city and do rebuttal which almost always goes faster than direct. I've hardly ever seen it take longer. But I suppose it's possible and with any amount of luck, we will wrap it up next Tuesday. Then you're going to do written closing statements so be thinking about time each of you is going to want. The applicant will have the first closing statement so be thinking how many days after next Tuesday do I want to have before I turn in my closing? And then the respondent will come next and then the appellant. So each of you two can be thinking how much time do I want after the other person has had? Now let me make it very clear to you, if you ask for a number that I think is absolutely ridiculous and off the scale, I'll say no thank you. Let's try another number. So if somebody wants a month to write their closing argument, you won't get it. So bear that in mind. Okay see you next Tuesday morning as many of you as want to come back.