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THE SUPERIOR COURT OF THE STATE OF WASHINGTON
 IN AND FOR THE COUNTY OF SKAGIT

KEITH WELCH, an individual, and)
 PREMIER LAND DEVELOPMENT, INC.,)
 a Washington Corporation,)
) No. 08-2-02096-0
 Plaintiffs,)
)
 v.)
)
 PROPERTY INVESTORS, LLC, a)
 Washington Limited Liability)
 Company; CITY OF BURLINGTON,)
 WASHINGTON, a municipal)
 corporation; and DANIEL MADLUNG,)
 an individual and as part of a)
 marital community,)
)
 Defendants.)

DEPOSITION UPON ORAL EXAMINATION BEFORE TRIAL OF
 MARGARET FLEEK

Date Taken: Thursday, October 3, 2012
 Reported By: Deanna M. Ellis, CCR No. 2511

CORPOLONGO & ASSOCIATES
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52	Color Photographs (9) A through I	5
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A P P E A R A N C E S

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ALSO PRESENT: KEITH WELCH

Deposition upon oral examination before trial of
 Margaret Fleek in the above-entitled cause, taken at the
 instance of Plaintiff, pursuant to Notice, at 833 Spruce
 Street, City of Burlington, County of Skagit, State of
 Washington, before Deanna M. Ellis, a Certified Court
 Reporter on Thursday, October 3, 2012.

Whereupon the following proceedings were had:

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1 Burlington, Washington
2 9:00 a.m.
3
4 (Exhibits 1 through 56 were marked for identification.)
5 DIRECT EXAMINATION
6 BY MR. SEGUINE:
7 Q. Good morning. Can you tell us what your name is,
8 please.
9 A. Margaret Fleek.
10 Q. Ms. Fleek, can you spell your last name --
11 A. F-L-E-E-K.
12 Q. Okay. Have you ever been deposed before?
13 A. In the 70s I was deposed lots of times. Since then,
14 things have been going on the record.
15 Q. That's fine. I just want to make sure that before we
16 started talking here we have a sense of some of the
17 ground rules. If you've done a deposition -- if I
18 ask a question you don't understand, you just need to
19 say you don't understand, and I'll try and rephrase
20 it and make it -- phrase a better question for you,
21 okay. And you need to answer verbally, too. That's
22 another thing about a deposition. If you nod your
23 head, I ask that you respond verbally; do you
24 understand that?
25 A. Yes.

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1 Q. Okay. We're here to try to figure out some facts or
2 affirm some facts that happened in this case. We're
3 not here to speculate or guess about things. So if
4 there is anything you feel you have to guess or
5 speculate about, I would ask that you respond to me
6 and say that's a matter of speculation. Along those
7 same lines, if you don't really believe you have the
8 ability to answer, can you tell me --
9 A. Sure.
10 Q. If you experience any discomfort at any point, any
11 personal discomfort, if you tell me that, we can take
12 a break and go out and get some water. Do you
13 understand that?
14 A. Yeah.
15 Q. Okay. Have you prior to coming today ingested any
16 type of controlled substance that --
17 A. Coffee.
18 Q. Okay. Anything else that would impair your ability
19 to remember things or recollect things?
20 A. Well, salad.
21 Q. No drugs no alcohol?
22 A. Please. Get over it.
23 Q. No prescription drugs or anything like that?
24 A. I have asthma.
25 Q. But you're not taking any medication that would

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1 affect your ability --
2 A. I would hope not.
3 MR. SEGUINE: I would like to get a stipulation.
4 She's appearing her as an agent of the City of Burlington.
5 I think that's pretty clear. We certainly subpoenaed her
6 in that capacity. So any answers that she would provide
7 would be on behalf of the City of Burlington.
8 MR. THOMAS: Counsel, are you characterizing her as
9 a 30(b)(6) witness.
10 MR. SEGUINE: Yes, I think we would.
11 MR. THOMAS: Well, that was not the -- that was not
12 the notice we were -- we received. You provided us with a
13 notice of deposition, and it refers to Margaret Fleek. It
14 doesn't refer to a 30(b)(6) witness. It doesn't identify
15 the topics we'd cover. We'd object to that.
16 MR. SEGUINE: Well, it does indicate she's the
17 planning director for the City of Burlington.
18 MR. THOMAS: She can testify as to her knowledge of
19 that.
20 MR. SEGUINE: That's what we're asking to you
21 stipulate to.
22 MR. THOMAS: We'll stipulate she's the planning
23 director.
24 MR. WINSLOW: I would make the same stipulation. I
25 would say she's an agent, except to the extent and scope of

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1 her employment as to her capacity of a planning director.
2 That's fine.
3 MR. SEGUINE: Okay.
4 BY MR. SEGUINE:
5 Q. Ms. Fleek, I'm going to slide over to you a stack of
6 documents, okay. This is a set of exhibits prepared
7 for today. They're numbered, and I'm going to ask
8 you to flip over to the first one which is Exhibit
9 No. 1. Do you see Exhibit No. 1?
10 A. Yeah.
11 Q. Okay. That's a notice of deposition for you. Did
12 you receive that notice, a copy of that?
13 A. Yes.
14 Q. And it indicates that you're the planning director
15 for the City of Burlington?
16 A. Yes.
17 Q. How long have you had that position?
18 A. Since January of 1991.
19 Q. Can you briefly describe what your duties are or have
20 been for the City of Burlington?
21 A. We manage the permit center. So we issue all the
22 construction related permits and land use permits.
23 We staff the Planning Commission and board of
24 adjustment. We give public information. We write
25 staff reports. We conduct public hearings. We're

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1 responsible with compliance, with land use laws, SEPA
2 action, zoning, procedural compliance.
3 Q. And is it your understanding that you are appearing
4 here today in that capacity as the planning director
5 for the City of Burlington?
6 A. Right.
7 Q. Okay. Prior to coming to Burlington in 1991 --
8 A. Um-hum.
9 Q. -- where did you work?
10 A. City of Seattle.
11 Q. And what position did you hold with the city of
12 Seattle?
13 A. I had seven different jobs over the years.
14 Q. Can you briefly summarize --
15 A. I started out in the environmental section, became
16 code compliance, then code research, code
17 administrator, then I was the manager of the
18 environmental section, and then after that I was the
19 director of the plans examination section and
20 permits.
21 Q. How many years of experience did you have --
22 A. Seventeen years there.
23 Q. And so now you have been with Burlington since '91.
24 So that's a total of how many years in this field?
25 A. I don't know. Long enough. Thirty-some years.

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1 Q. Over 30 years; is that correct?
2 A. Um-hum.
3 Q. I'm going to ask you to turn over to Exhibit No. 2
4 now.
5 MR. WINSLOW: Tom, as you go, will you please
6 indicate what the exhibits are because the next thing I
7 have in the stack is the subdivision ordinance, and there
8 is no numbering.
9 MR. SEGUINE: That's actually a problem. I think
10 the copy service made a problem. I'll clear that up.
11 BY MR. SEGUINE:
12 Q. You're looking at a document that's marked Exhibit
13 No. 2 in the upper right hand corner. It appears to
14 be a section of the Burlington Municipal Code. Do
15 you see that?
16 A. Sure.
17 Q. Are you familiar with the Burlington Municipal Code?
18 A. Sure.
19 MR. THOMAS: Object to form.
20 Q. How are you familiar with the Burlington Municipal
21 Code?
22 A. We use it every day, in doing our work.
23 Q. And this particular section is 16.08, entitled
24 Subdivisions. Do you work with that?
25 A. Sure.

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1 Q. How often over the course of your career have you
2 worked with this particular subsection of the
3 Burlington Municipal Code?
4 A. Whenever there is an application for a subdivision.
5 MR. THOMAS: Object to form.
6 Q. Can you give us an idea how many times that's
7 occurred since you have been with the City of
8 Burlington?
9 A. I have no idea.
10 Q. Is it a daily type of thing?
11 A. Probably not. This town is not that big.
12 Q. Since 1991, do you have any idea how many subdivision
13 applications there have been?
14 A. Nope.
15 Q. Have you worked on subdivision applications prior to
16 working for the City of Burlington?
17 A. Yep.
18 Q. What is your role in terms of working on subdivision
19 applications --
20 MR. THOMAS: Object to form.
21 Q. You can answer the question. The objection is made
22 for the record.
23 A. We take in the applications. We process them. If
24 there is a public hearing, we conduct a hearing. We
25 write staff reports. We coordinate the comments from

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1 the other places with jurisdiction, like Public Works
2 or fire. So we basically coordinate the comments,
3 and then take it to the Planning Commission or if it
4 goes to the City Council also. If it's a plat, like
5 a full plat, not a short plat, then we have a public
6 hearing with the Planning Commission, and then the
7 preliminary plat is approved by the City Council.
8 Then the Public Works Department is responsible for
9 making sure that all of the civil engineering work is
10 done. Then the final plat goes back to the City
11 Council for final approval.
12 Q. When you were hired by the City of Burlington in
13 1991, was your title planning director at that time?
14 A. Actually, there wasn't even an ordinance on the books
15 about our department until several years later.
16 Q. What year would that have been?
17 A. I couldn't tell you. It's in the Municipal Code.
18 Q. So did you have a title when you were hired by the
19 City of Burlington?
20 A. I'm sure I was hired as the planning director.
21 Q. Okay. And in terms of subdivisions, is there an
22 approval role that you played as the planning
23 director?
24 MR. THOMAS: Object to form.
25 A. As I stated earlier, we managed the process and make

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1 sure that all the comments are coordinated and that
2 the proper authority puts their stamp of approval on
3 it.
4 Q. Okay. So my question --
5 A. If there is environmental review required, then we
6 require the SEPA checklist to be submitted and that
7 process to be completed before the Planning
8 Commission hears it.
9 Q. And as the planning director, were you or have you
10 been responsible for coordinating that process?
11 A. With my co-worker.
12 MR. THOMAS: Object to form.
13 Q. With your co-worker, is what you said?
14 A. Yes.
15 Q. Who is your co-worker?
16 A. Kim O'Hara. She's the permit center manager.
17 Q. Did you have any responsibility for signing any
18 documents as part the subdivision process?
19 MR. THOMAS: Object to form.
20 A. The document that gets signed is -- the only document
21 that actually gets signed is the mylar of the final
22 plat, and I do sign those, along with the Public
23 Works Department, the Finance Department.
24 Q. Is there a permit issued for a subdivision?
25 A. The final plate is the permit.

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1 Q. Okay. That's my question.
2 A. It's a land use permit, but we don't usually issue a
3 piece of paper.
4 Q. Okay. Now, in some circumstance when there is
5 activity involving land, you do issue permits; is
6 that correct?
7 A. Our department does.
8 Q. Yeah. What types of activities do you issue permits
9 for?
10 A. Car sales at the mall, mobile vendors, use permits
11 sometimes.
12 Q. What about building permits?
13 A. We review -- my co-worker reviews building permit
14 application for compliance with the Zoning Code. So
15 she's in charge of that plan review piece.
16 Q. And she reports to you?
17 A. Yes.
18 Q. In any case, you are familiar with this section of
19 the Burlington Municipal Code, 16.8, Exhibit No. 2;
20 is that correct?
21 A. Yep.
22 Q. Okay. And this is sort of an overview of what you've
23 just described to us. Would that be a fair way of
24 talking about this?
25 MR. THOMAS: Object to form.

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1 A. Are you talking about this table of contents?
2 Q. Sure. We can talk about that.
3 A. Yeah. This basically goes through it. It doesn't
4 cover environmental review, but -- most of the
5 procedural land use stuff is in the Zoning Code.
6 Q. Okay.
7 A. So this goes with that. It doesn't stand alone.
8 Q. Okay. Those different parts of the City Code and the
9 environmental process have to be coordinated?
10 A. Um-hum.
11 Q. Is that one of the things that you do
12 A. Yes.
13 Q. Could you turn to Exhibit No. 3, please.
14 A. (Complies.)
15 Q. Now, Exhibit No. 3, just for the record, here is, I
16 think, a segment of the Burlington Municipal Code,
17 Chapter 17.68. Can you just --
18 A. This is a section on public notice.
19 Q. There is nine pages of that, just so --
20 A. It's the section on public notice.
21 MR. SEGUINE: And, again, counsel, I'm not sure why
22 this number is not include in there.
23 MR. THOMAS: So counsel, just to clarify, there is
24 not a divider.
25 MR. SEGUINE: Right.

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1 MR. WINSLOW: So we're talking about a nine page
2 document?
3 MR. SEGUINE: Yes.
4 MR. WINSLOW: On Chapter 17.68 Land Use Permit
5 Process.
6 MR. SEGUINE: Yes.
7 MR. THOMAS: And further clarification, the first
8 page, the first sentence at the top starts: B, types of
9 public notice. Is that document?
10 MR. SEGUINE: Correct. Correct.
11 MR. THOMAS: Thank you.
12 BY MR. SEGUINE:
13 Q. Ms. Fleek, are you familiar with this section of the
14 Burlington Municipal Code?
15 A. Sure.
16 Q. It talks about public notice. You've already talked
17 about public notice. What is public notice as you
18 understand it?
19 A. It depends on the type of permit, what type of public
20 notice is given. It can be anything from a notice in
21 the newspaper to individual mailed notice to property
22 owners to posting signs on the property. It depends
23 on the type of permit.
24 (Ms. Smith joined deposition in progress.)
25 Q. It just depends on what's going on in terms of the

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1 land use application --
2 A. The type of permit.
3 Q. Right, and it varies from --
4 A. Yes.
5 Q. And just as an example, if someone wants simply a
6 building permit for a residential structure, is that
7 something for which there would be any type of public
8 notice --
9 A. Not unless --
10 MR. THOMAS: Object to form.
11 Q. I guess I want to make sure the court reporter hears
12 the answer.
13 THE COURT REPORTER: Yes. Can you repeat your
14 answer, please.
15 A. A building permit for a single family dwelling does
16 not require notice, unless they are seeking a
17 variance from the code. Straight building permit,
18 no.
19 BY MR. SEGUINE:
20 Q. Okay. Generally speaking, what are the types of land
21 use activities for which some form of public notice
22 would be required?
23 A. There is a list in the code. You didn't bring that
24 section, but there is a list of the permits that
25 tells what kind of notice is required for each one.

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1 It's in this same chapter, but it's not this part. I
2 did not memorize it.
3 Q. Okay. I'm just looking at Page 2 of the exhibit.
4 There is some language in there about -- Page 1 going
5 to Page 2 and 3. There seems to be some indication
6 of the types of notice required. Is that different
7 than what you're referring to.
8 MR. THOMAS: Counsel, I'm going to object. Can you
9 point us to what you're talking about.
10 MR. SEGUINE: Yeah, I can. Page 1 of 9 at the
11 bottom under subsection "D" going over to Page 2, Page 3,
12 Page 4, and Page 5.
13 A. Yeah. So this is a list of the types of notice
14 required for different land use actions.
15 Q. Is that what you were referencing a little earlier?
16 A. You lost me in -- I don't know what I was referencing
17 a little bit earlier. No. The different types of
18 permits, there is a different place in this chapter.
19 This is the type of notice required for each kind of
20 review. It's a different thing.
21 Q. So earlier when you answered and you said there is a
22 different section of the code, is it different from
23 the one that we're looking at, is my question?
24 A. Yes. It's in this same chapter but it's earlier in
25 the chapter.

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1 Q. Okay, if you could turn to Exhibit 4. Hopefully you
2 have a divider somewhere along here. Exhibit 4 is a
3 one-page document entitled "C" Environmental Review?
4 MS. SMITH: Do you have another set?
5 MR. SEGUINE: I made one set for the City, and I
6 left it up to Scott to -- Can we go off the record.
7 (Conversation had off the record.)
8 MR. SEGUINE: Back on the record.
9 BY MR. SEGUINE:
10 Q. So we're looking at Exhibit No. 4.
11 MR. WINSLOW: That's a single page document?
12 MR. SEGUINE: Yes.
13 Q. And you mentioned earlier environmental review.
14 That's something that you're involved with?
15 A. Right.
16 Q. And can you -- have you had a chance to look at this
17 document?
18 A. So what's your question.
19 Q. I'm just asking if you had a chance to look at it?
20 A. I'm looking at it now.
21 Q. This talks about the standards that are in place in
22 the City of Burlington for some form of environmental
23 review?
24 A. Dares to define the different types of environmental
25 reviews, it looks like.

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1 Q. The last sentence talks about something called
2 threshold. Does that phrase mean anything to you, in
3 terms of your job.
4 A. If it's not exempt, then you'd have to do a minimum
5 of a SEPA checklist. So this sets the threshold when
6 you require the SEPA checklist.
7 Q. Okay. Can you just read that sentence into the
8 record for us, the threshold.
9 A. "The threshold for requiring environmental review is
10 the construction of more than four dwelling units,
11 grading more than 500 cubic yards, the construction
12 of more than 4,000 square feet of commercial space,
13 construction of a parking lot for more than 20 cars,
14 or as further defined by Washington Administrative
15 Code 197-11-800 and Chapter 15.12, Burlington
16 Municipal Code.
17 Q. And so if someone were going to move more than 500
18 cubic yards of -- well, I guess I should say, this
19 says, grading more than 500 cubic yards. That would
20 trigger an environmental review of some form. Am I
21 reading that correctly?
22 A. Yeah.
23 MR. WINSLOW: Mr. Seguine, excuse me. This Exhibi
24 4 at the top indicates it's part of Chapter 17.68.
25 MR. SEGUINE: Correct.

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1 MR. WINSLOW: But the notation here says that it's
2 Subsection C. So what section of the Land Use Permit Code
3 is this actually from?
4 MR. SEGUINE: I believe it's from 17.68, counsel.
5 MR. WINSLOW: So there is no subsection.
6 MR. SEGUINE: I don't have it in front of me, but I
7 can define that at a later point in time.
8 MR. WINSLOW: All right.
9 BY MR. SEGUINE:
10 Q. I ask you to turn to the next exhibit, please. For
11 the record, this is Exhibit No. 5. This consists
12 of -- if you would help me with this. I think there
13 are five pages. I need you to answer because you
14 have the actual exhibit.
15 A. Okay. Well, you didn't ask the actual question.
16 Q. Okay. How many pages are there in that exhibit --
17 A. Five pages.
18 Q. Okay. And this is another subsection of the
19 Burlington Municipal Code, I think you're familiar
20 with; is that correct?
21 A. To the Zoning Code --
22 MR. THOMAS: Object to the form. Counsel, can you
23 identify what we're talking about here because I don't have
24 a divider on mine. 17.48, Performance Standards?
25 MR. SEGUINE: Yep.

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1 MR. THOMAS: Thank you.
2 BY MR. SEGUINE:
3 Q. Are you familiar with this portion of the Municipal
4 Code?
5 A. Sure.
6 Q. Why, if you know what it means to say performance
7 standards?
8 MR. THOMAS: Object to form.
9 A. It says is right here in intent. "The intent of this
10 chapter is to establish the following performance
11 standards that specifically govern industrial,
12 manufacturing, processing, assembly and similar type
13 uses typically found within the industrial zones.
14 These standards also apply to multifamily, commercial
15 or industrial development when abutting a residential
16 zone. These performance standards are intended to
17 reduce the visual, physical, and environmental
18 impacts of new development when on existing
19 single-family, duplex and multifamily residences and
20 the character of the neighborhood. These standards
21 may also apply to other uses and activities in other
22 zones which are not otherwise governed by other
23 regulations."
24 Q. So you've just read from the intent section on Page
25 1; is that correct?

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1 A. Yes. We never assume we memorize the Zoning Code.
2 It's not done.
3 Q. I'm not suggesting that you do. Is this a section
4 that you've worked with over the years?
5 A. Sure.
6 Q. How so?
7 A. If it applies, then we look at it and figure out how
8 to take care of it in a particular case.
9 Q. I'm not going to go through all of them, but there is
10 a number of subcategories here relating to that
11 different types of activities, correct?
12 A. Yes.
13 MR. THOMAS: Object to form.
14 Q. And part of your job is to monitor, I guess in a
15 loose sense these activities?
16 MR. THOMAS: Object to form.
17 A. I don't know what you mean by that.
18 Q. Okay. If there was a complaint about some form of
19 pollution, for example, would that -- within the
20 city, would that end up coming to you in one form or
21 another?
22 MR. THOMAS: Objection; hypothetical, incomplete.
23 A. You're talking about a whole different thing here.
24 This has nothing to do with permit processing.
25 You're talking about, am I in charge of code

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1 enforcement. Two different things.
2 Q. Okay. This a code enforcement issue?
3 A. We get complaints, and we refer them to the
4 appropriate entity for action.
5 Q. And you mentioned code enforcement?
6 A. (Shakes head up and down.)
7 Q. Can you tell us what code enforcement is here on the
8 record, please.
9 A. I just did. We get complaints. We refer them to the
10 appropriate entity for action and take it from there.
11 Q. When you say you get complaints, you're talking about
12 you would periodically --
13 A. We, the City.
14 Q. The City, okay. And they could be complaints about
15 the things that are in here; pollution, for example?
16 A. Could be.
17 Q. Or a use of a property which is not in compliance
18 with maybe the Zoning Code?
19 MR. THOMAS: Counsel, I'm going to object. If she's
20 going to testify from this document, she needs to have a
21 chance, an opportunity to review the document in its
22 entirety. I'm not going to allow her to testify blank
23 without knowing what's in the document.
24 MR. SEGUINE: Would you take a few minutes look at
25 it, please.

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1 A. (Complies.) There is a whole bunch of difference
2 things in here, not just one thing.
3 Q. I understand. Let me ask you this question, maybe
4 you've already answered it, do you participate in the
5 regulation of land use activities pertaining to these
6 types of things? And if you want me to point to a
7 specific one, I can do that.
8 MR. THOMAS: Object to form.
9 A. It depends on what it is.
10 Q. How about let's start with Page 2, Odorous gases and
11 matter, under Burlington Municipal Code 17.48.040.
12 A. That would not be something we'd do. We'd refer that
13 to the appropriate agency, like Air Pollution.
14 Q. Okay. And how about the next section, .050: Smoke
15 and particulate matter emission?
16 A. Same story. Says right there. DOE, Air Pollution.
17 Q. How about the next one, .060? I'll just read it into
18 the record. Dust, dirt, fly ash or air-borne solids?
19 A. That's definitely not ours.
20 Q. How about .070, Waste storage?
21 A. That would be considered a nuisance, which would be
22 regulated under the Nuisance Code.
23 Q. Of the City?
24 A. Um-hum.
25 Q. Okay. How about .080, Toxic gases and matter?

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1 A. Again, that's an air pollution issue.
2 Q. How about section .100, hazardous substance and
3 waste?
4 A. We would coordinate with the appropriate agency.
5 Q. Okay. And when you talk about the appropriate
6 agency, I guess just focusing on that one, what would
7 it be, if you know?
8 A. Depends on what it is. Could be Department of
9 Ecology. Could be EPA. It's hard to say.
10 Q. Okay. Can you go to Exhibit No. 6, please. This is
11 another section of the Burlington Municipal Code, and
12 I think this relates back to Exhibit No. 2 which is
13 the subdivision code. Are you familiar with this
14 provision?
15 MR. THOMAS: Object to form.
16 MR. SEGUINE: I'll rephrase the question.
17 Q. Exhibit No. 6 contains an excerpt from the Burlington
18 Planning Code, Burlington Municipal Code 16.08.050
19 entitled Topographical and surface hazards --
20 Protective improvements. Ms. Fleek, have you had
21 opportunity through your career with the City of
22 Burlington to examine this code section?
23 A. Yeah.
24 Q. What does it mean?
25 A. It means what it says. "Land having topographical or

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1 subsurface conditions hazardous to the health, safety
2 or general welfare of persons or property in or near
3 a proposed subdivision shall not be subdivided unless
4 the construction of protective improvements will
5 eliminate the hazards or unless land subject to the
6 hazard is restricted to uses which will not expose
7 persons or property to the hazard. Protective
8 improvements consistent with the standards
9 established in Subchapter VI shall be constructed,
10 prior to final plat approval unless a performance
11 bond acceptable to the city engineer is filed in lieu
12 of any improvements.
13 Q. Have you had cause to, I guess I want to say, use
14 this section of code during your career with the City
15 of Burlington?
16 A. The construction of improvements to finalize the
17 subdivision is the responsibility of the Public Works
18 Department. They oversee that work. We do not.
19 Q. So the answer to my question is that you have not had
20 cause to employ this provision during your career
21 with the City of Burlington?
22 A. We coordinate with the departments that are
23 responsible.
24 Q. Are you aware that in working with the Public Works
25 Department whether it has ever had cause to

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1 implicate or -- that's not the right word, but to
2 make reference to this provision?
3 A. I have no idea. If they've ever reviewed this
4 provision of the code, I have no idea. That's not...
5 Q. And that's not quite my question. Maybe I'm not
6 asking it correctly. Are you aware of any
7 circumstances under which the City of Burlington, I
8 guess I will put it that way, has used this provision
9 in regulating any land use activities within the
10 city?
11 MR. THOMAS: Object to form.
12 A. This fits together with other code provisions. It's
13 not used by itself. So I don't know what to tell.
14 Q. This is pertaining to a subdivision, though, correct?
15 A. Right.
16 Q. And your where the person, I think you described
17 earlier, that is involved in the approval process for
18 a subdivision?
19 A. We coordinate the approval process for subdivisions.
20 Q. Okay. Go to Exhibit 7.
21 MR. SEGUINE: Again, counsel, I don't know what's
22 going on with this thing. There is another missing
23 divider.
24 Q. Exhibit 7 is a document from the Skagit County
25 Auditor. If you look at the bottom of the pages, it

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1 starts at Page 440 and goes to 448.
2 MR. THOMAS: Counsel, you say it starts at Page 440
3 and goes to 448. What are you referring to?
4 MR. SEGUINE: Right down here at the bottom.
5 MR. THOMAS: Oh, the Auditor's numbers, that row?
6 MR. SEGUINE: I guess that's what we're looking at.
7 MR. WINSLOW: It's the page number for the Auditor's
8 reportings.
9 MR. THOMAS: Thank you.
10 BY MR. SEGUINE:
11 Q. Can you tell me whether you are familiar with this
12 document?
13 A. It appears to be a recorded copy of the bylaws of the
14 Burlington Hill Business Park Owner's Association.
15 Q. Have you seen this document before?
16 A. Probably. Not lately.
17 Q. If you turn to the first page, I'm just going to use
18 the Auditor's numbers -- actually the first page, it
19 indicates that, on Page 1 under the term grantors,
20 your name is listed.
21 MR. THOMAS: Object to form.
22 A. I don't even know what this is for. This looks like
23 it's from 1997. This isn't even -- if this is from
24 1997, this is for the business park, not for
25 Burlington Hill. This is north of the hill. It

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1 looks like it anyway. I couldn't swear to it, but
2 that's what it says. Bylaws. Burlington Hill wasn't
3 annexed 'til late '98.
4 Q. Okay. So what was going on with the north side of
5 the hill --
6 A. Industrial park.
7 Q. The industrial park, was that annexed before Tinas
8 Coma?
9 A. It was annexed many, many years ago, long before I
10 came to work here.
11 Q. Okay. In case, your name appears on the first page
12 of this as a grantor. Am I correct?
13 A. I guess.
14 Q. Well, I'm asking you to read the first page. It has
15 your name on it.
16 A. Okay.
17 Q. Do you see that under item number 4 --
18 A. Yeah, I see that. Yeah. Yeah. It's '97. This has
19 nothing to do with Tinas Coma.
20 Q. At the end of the document there's a signature on
21 there. It says, Margaret S. Fleek. Is that your
22 signature?
23 A. I'm sure it is.
24 MR. THOMAS: Object to form. What are you referring
25 to?

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1 MR. SEGUINE: Page 448 of the Auditor's number.
2 Q. Do you see that?
3 A. Yeah, I see that.
4 Q. Can you explain to me why you are listed as a member
5 of the board of directors, I guess, of the Burlington
6 Hill Business Park Owner's Association.
7 MR. WINSLOW: That assumes facts not in evidence.
8 Objection.
9 MR. SEGUINE: I'll rephrase the question.
10 Q. Why is your signature on this document?
11 A. I have no idea. It's 1997. I do not remember.
12 Q. Were you at that point in time a person who owned
13 property there?
14 A. No.
15 Q. Did the City of Burlington own property there?
16 A. Nope.
17 Q. Do you have my recollection of the circumstances
18 surrounding your signature on this document?
19 A. Nope. It's definitely not about Tinas Coma.
20 Q. There is two other signatures one there at the end.
21 One appears to for a Mr. Brown, Allen Brown. I'm
22 asking a question. Can you answer the question,
23 please.
24 A. It says that.
25 Q. Okay. There is another signature on there that

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1 appears to be that of Dan Madlung?
2 A. Yeah.
3 Q. Does that help refresh your recollection at all as to
4 why your signature would appear on this document?
5 A. Honestly, no. I just know it's not about Tinas Coma,
6 and I assumed that that's why we were here.
7 Q. That's part of why are here, yes. Just so I'm clear,
8 you have no recollection of the circumstances
9 surrounding your signing of that document?
10 MR. THOMAS: Object to form; asked and answered.
11 A. Business park. That's what this is about, is the
12 business park.
13 Q. I understand that.
14 A. So I -- I -- there must have been a reason at the
15 time. We got a lot of big drainage facilities, got a
16 big bunch of wetlands that were donated to the City.
17 I have no idea.
18 Q. I guess that's my question. Do you know whether you
19 would have been signing that as an individual or as a
20 planning director?
21 A. No. It would have been as a function of our
22 responsibilities in the planning department.
23 Q. And that document doesn't say that anywhere, does it?
24 A. I have no idea. I haven't read the thing.
25 Q. Well, can you take a minute and look at it.

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1 A. I'm not going to read this whole thing. It doesn't
2 have anything to do with what we're here for. It's
3 ridiculous. It's about members and meetings and
4 voting rights, board of directors. It's typical home
5 owner's association meetings.
6 Q. Did you attend any meetings of the owner's
7 association for the Burlington Business Park?
8 A. Nope.
9 Q. No recollection of ever doing that?
10 A. Nope.
11 Q. Did you ever receive notices from anyone about
12 meetings for the Burlington Hill --
13 A. I have no idea.
14 Q. Okay. If you can turn to Exhibit No. 8, please.
15 Do you recognize this document, Ms. Fleek?
16 A. Yes.
17 Q. This is a declaration you filed with the Superior
18 Court here in Skagit County, it looks like about a
19 year ago. Do you recall that declaration?
20 A. I'm reading it right now.
21 Q. All right. If you can just review it for a second.
22 MR. WINSLOW: Is this No. 9?
23 MR. SEGUINE: This is 8.
24 A. Okay, I read it.
25 Q. So this was pertaining to some court proceedings that

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1 were happening at that time, but in this document you
2 indicate that you were the planning director at the
3 time that Tinas Coma subdivision was proposed,
4 correct?
5 A. Yep.
6 Q. And prior to or maybe contemporaneously with the
7 Tinas Coma subdivision being proposed, there was an
8 annexation issue, is that correct?
9 A. Burlington Hill was annexed in late 1998.
10 Q. Okay. And that's what this document is kind of
11 about, right? It gives a summary of that?
12 A. I guess.
13 Q. Can you tell me what it means for a city to annex
14 property?
15 A. At that time I believe it was requirement that 75
16 percent of the assessed value file a petition for
17 annexation. Then the petition goes through a public
18 hearing processing. A bunch of paperwork is filed
19 with the Boundary Review Board. At that time the
20 Boundary Review Board had a lot of power. So they
21 -- action was appealed to Boundary Review Board.
22 They spent like a year on it.
23 Q. And they being who?
24 A. The Boundary Review Board for Skagit County.
25 Q. Okay.

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1 A. At the end of that time, they make a final decision
2 on what you get to annex, and then you basically
3 annex the land. Then you zone the land for the city.
4 Q. And you mentioned a petition by 75 percent, is that
5 what you said, of the assessed value?
6 A. Of the assessed value.
7 Q. And at that point in time who, if you know, filed
8 that petition?
9 A. It would be a matter of record. I definitely did not
10 memorize that, and you did not provide a copy of
11 that, so I don't have the answer.
12 Q. Well, Let me ask you this, was it the City of
13 Burlington?
14 A. No.
15 Q. It wouldn't have been the City?
16 A. It has to be the property owners.
17 Q. And does the City of Burlington get to take a
18 position with respect to an annexation proposal?
19 MR. THOMAS: Object to form.
20 A. We go through the process. It's a lengthy process.
21 So, of course, the final action is up to the City
22 Council.
23 Q. And the City can choose to adopt or go along with it
24 or not go along with something like that, is correct?
25 A. Yeah.

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1 Q. And the process that you're talking about is I guess
2 what I'm referring to. There is sort of a give and
3 take that goes on for a while, while the annexation
4 is being considered?
5 MR. THOMAS: Object to form.
6 A. I wouldn't put it that way at all.
7 Q. How would you put it?
8 A. Petition is filed for annexation. We conduct a
9 public hearing. We do whatever we do. I didn't
10 bring a copy of the annexation procedure with me.
11 Q. That's fine.
12 A. Action gets taken. And if it's appealed to the
13 Boundary Review Board, then they go through their
14 process. At the end of all that, then the City
15 Council passes an ordinance the land.
16 Q. That's what happened with Tinas Coma on the Hill; is
17 that correct?
18 A. That's what happened with Burlington Hill.
19 Q. Okay, because Burlington Hill was not within the city
20 limits; is that correct --
21 A. Right. It was in the urban growth area but not in
22 the city limits.
23 Q. The urban growth area, I know you know a lot about
24 this and I know a little bit, but that means what in
25 terms of --

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1 A. Areas that you're allowed to annex under the state
2 Growth Management Act.
3 Q. And that's by a map that's drawn by some other folks,
4 right?
5 A. The County.
6 Q. Okay. So at the same time that was happening there
7 was also a proposal for a subdivision; is that
8 correct?
9 A. The subdivision proposal could not be done until the
10 land was annexed. So annexations were exempt from
11 environmental review. So after it was annexed, then
12 we did an environmental impact statement on the
13 development of Burlington Hill.
14 Q. Did you know before the annexation process was
15 complete what the plans were for Burlington Hill by
16 the developers?
17 MR. THOMAS: Object to form; speculation.
18 Q. You're shaking your head no. I'm just asking.
19 A. I believe they changed their minds a lot, so we had
20 to wait until they had figured what they were going
21 to do before we did the EIS.
22 Q. When I talk about the developers here, are you
23 talking about Property Investors, the party who is
24 mentioned her in the declaration?
25 A. People that did the subdivision.

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1 Q. Did you have any primary contact with those folks?
2 MR. THOMAS: Object to form.
3 A. What does that mean?
4 Q. You were aware that property investors was intending
5 to develop the hill?
6 A. They were the applicant.
7 Q. The applicant for the subdivision?
8 A. As far as I know, yeah.
9 Q. So who was the lead person, the property investors
10 that you maintained contact with, if there was
11 anybody, the main person?
12 MR. THOMAS: Object to form.
13 A. Probably Madlung. It's been a while.
14 Q. Is that Dan Madlung?
15 A. Um-hum.
16 MR. THOMAS: Counsel, there is no question pending.
17 Let's take a break.
18 MR. SEGUINE: Okay.
19 (Recess taken.)
20 MR. SEGUINE: Back on the record.
21 Q. Ms. Fleek, can you turn to Exhibit 9, please. Take a
22 minute and look at Exhibit 9 and tell me whether you
23 recognize Exhibit 9.
24 A. It looks like a geotech report before the site was
25 annexed, 1996.

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1 Q. Okay.
2 MR. WINSLOW: How many pages are we talking about
3 here?
4 MR. SEGUINE: Well, let's see. I'm going to get
5 really upset here in a minute because the copy service --
6 Can I just see the last --
7 A. Letter to Leonard Boudinot Skodje, August 13, 1999.
8 MR. SEGUINE: Counsel, we're talking about the face
9 pages AGRA Earth & Environmental at the bottom, and last
10 page is --
11 MR. THOMAS: The next exhibit after this is the WAC
12 197-11.
13 MR. SEGUINE: Correct. Correct.
14 MR. THOMAS: Counsel, if you could flip to the next
15 page, is that a 1996 date on your exhibit?
16 MR. SEGUINE: Yes. Yes, it is.
17 MR. WINSLOW: So this is Exhibit 10?
18 MR. SEGUINE: 9.
19 BY MR. SEGUINE:
20 Q. So do you have my recollection of ever seeing this
21 document?
22 A. Nope, not really. I have heard of it.
23 Q. Okay. How have you heard of it?
24 A. By looking at the exhibit, and it appears to be the
25 geotech report for the initial construction of the

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1 Burlington Hill roadway. So this must be the report
2 they used when they built the road before it was
3 annexed.
4 Q. Do you have any recollection today, and I know it's a
5 long time ago, of receiving this document, I guess I
6 would say around this time, around the time it was
7 issued in 1996?
8 MR. THOMAS: Object to form.
9 A. Nope.
10 Q. Do you have my recollection of seeing this document
11 prior to the submission of the subdivision plan for
12 the Tinas Coma subdivision?
13 A. Not really. I don't get much involved with the
14 details of the geotech reports. This would go to,
15 depending on what it is, Public Works or Building
16 Department.
17 Q. Do you have a recollection of seeing it at any time
18 prior to today?
19 A. Not really. I probably have, but I don't remember
20 it. I remember this name, AGRA. I remember that
21 they did build those roads when they did the logging.
22 Q. Okay. Did you -- I guess you made a statement that
23 this would ordinarily not be part of what you would
24 look at in terms of looking at this subdivision
25 application?

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1 A. Let's say for example we did an environmental impact
2 statement on this project, for this subdivision,
3 which we did, then basically the EIS consists of
4 about 15 pages of forms with certain format. Then
5 you attach the technical reports that are submitted
6 for whatever the discipline might be. This one I
7 don't recall for this, but it could have been an
8 exhibit. Basically that's what it is. It's a format
9 for presenting technical reports for whatever is
10 relevant. So there could be two or three geotech
11 reports, the soils report. There could be a traffic
12 study, a wetland analysis. I have no idea.
13 Q. And in this particular one, you just don't recall
14 having seen this one?
15 A. Nope.
16 Q. You don't know whether the City of Burlington ever
17 got a copy?
18 A. It doesn't look like it's totally relevant. It was
19 before we annexed the land, but maybe it is. I don't
20 know.
21 Q. Okay. And then just to clarify on the exhibit here,
22 at the end there is a couple of letters, the first
23 one I'm looking at is August 4th, 1999.
24 MR. WINSLOW: Are we still on Exhibit 9.
25 MR. SEGUINE: Yes.

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1 Q. This appears to be a letter from a firm called Geo
2 Engineers to Leonard Boudinot & Skodje.
3 MR. THOMAS: Could you hold up, counsel. I'm trying
4 to find out where this is at. What was the date again?
5 MR. SEGUINE: It's August 4th.
6 MR. WINSLOW: It's about three quarters of the way
7 through the stack.
8 BY MR. SEGUINE:
9 Q. Do you have my recollection of seeing this at any
10 point in time?
11 A. Nope.
12 Q. Finally there is another letter in this exhibit dated
13 August 13, 1999 from the same firm, Geo Engineers to
14 Leonard Boudinot & Skodje.
15 A. Yeah. This really wouldn't come to me, as far as I
16 know.
17 Q. That would go to the public works or the engineering
18 department?
19 A. Um-hum.
20 Q. You need to help me here. Is engineering part of
21 public works or how does that work here?
22 A. Public works has a city engineer, and they look at
23 road construction.
24 Q. Okay. The next exhibit, No. 10, I believe is a table
25 of contents for the Washington Administrative Code?

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1 A. I didn't memorize --
2 Q. That's okay. Chapter 197-11, that's the section of
3 the Administrative Code that deals with the State
4 environmental Policy Act. Have you --
5 A. I'm very familiar with it.
6 Q. So you'd be familiar with these various provisions --
7 A. Sure.
8 Q. Just because of your job. How many times during your
9 tenor, I guess, here at Burlington have you had to
10 consider the provisions of the State Environmental
11 Policy Act?
12 A. For any project that's non-exempt from SEPA or even
13 if it is exempt, too. We screen all projects for
14 environmental review, whether or not it's needed and
15 what kind is appropriate.
16 Q. And when you say -- I'm just asking, when use the
17 term "project," are you using that term different
18 than say -- we talked earlier about like a permit to
19 build a house?
20 A. Proposed action, whatever it might be. Sure. All
21 projects, permits, land-use applications are screened
22 to determined whether or not they're subject to
23 environmental review.
24 Q. Anything that kinda comes through the door, you have
25 to make sure you're looking at this?

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1 A. Um-hum.
2 Q. Okay. I'm going to ask you to flip over to Exhibit
3 11. Can you look at Exhibit 11.
4 MR. WINSLOW: Excuse me, counsel, which is?
5 MR. SEGUINE: Two pages, I believe. I'll let the
6 witness confirm that. One is WAC 197-11-928, and the other
7 is WAC 197-11-926.
8 MR. THOMAS: And those are out of order, I see.
9 MR. SEGUINE: Yeah, I have the first one correct.
10 Right.
11 BY MR. SEGUINE:
12 Q. You've seen those provisions before?
13 A. Um-hum.
14 Q. I want to focus on the first one, Section 928. It
15 talks about situations, I believe, and I'm going to
16 ask you to help me here, where a -- there is a
17 possibility that an agency as opposed to a private
18 party would be a lead with respect to a proposal. I
19 guess they use the word proposal here which I think
20 might be a substitute for project. Are you familiar
21 with this?
22 A. Says, Lead agency for public and private proposals.
23 Q. Correct?
24 A. I can read it. It's either public or private.
25 That's basically all this says. It doesn't say much.

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1 Q. In the case of Tinas Coma, you were the lead -- City
2 of Burlington was the lead agency; is that correct?
3 A. Yes.
4 Q. Okay. I'll leave it at that. So let's go to the
5 next one which is Section 926. It says, When an
6 agency -- Section 1 says, "When an agency initiates a
7 proposal, it is the lead agency for that proposal."
8 MR. THOMAS: Counsel, I'll object. Can you identify
9 where you're reading from.
10 MR. SEGUINE: Yep. Yep. This is on Page 2 of
11 Exhibit 11; WAC 197-11-926, Subparagraph 1. That first
12 says, "When an agency initiates a proposal, it is the lead
13 agency for that proposal."
14 A. Yeah.
15 Q. Have you been involved in projects with the City of
16 Burlington where it has been the lead agency?
17 A. Sure.
18 Q. How often does that happen?
19 A. Construction of new City Hall, construction of the
20 fire station, construction of the library, site
21 selection.
22 Q. Okay. So it's not uncommon, is my question?
23 A. Street projects, sewer plant upgrades.
24 Q. Okay. And so the city, if I understand you
25 correctly, itself is responsible for complying with

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1 SEPA?
2 A. Yep.
3 Q. Now, Paragraph 2, I'm going to read it into the
4 record. It says, "Whenever possible, agency people
5 carrying out SEPA procedures should be different from
6 agency people making the proposal." Are you or have
7 you been aware of that provision?
8 A. Sure.
9 Q. What does it mean to you?
10 A. Let's say the Public Works Department is building
11 something. I would not be working on the project,
12 but I would probably review their environmental work
13 or maybe do it for them. It depends on what it is.
14 Q. So that is suggestive of a possible conflict of
15 interest?
16 A. Not really.
17 MR. THOMAS: Object to form.
18 A. Nope. I disagree. It's not a conflict of interest.
19 I'm not building the bridge. I'm not doing the road
20 project.
21 Q. I'm sorry. I'm going to rephrase the question. The
22 principle, which you have just talked about, is the
23 same people doing the work should not be the people
24 who are --
25 A. It says, "Whenever possible agency people carrying

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1 out SEPA procedures should be different from agency
2 people making the proposal."
3 Q. Correct. And I'm asking you, that provision, not
4 what you've just described to me, in terms of a
5 hypothetical is suggestive of principle of a conflict
6 of interest?
7 A. I don't know. I don't actually get that part, what
8 you're talking about, about conflict of interest.
9 Q. Okay. Let's go to Exhibit No. 12 now, please. Take
10 a minute and look at Exhibit No. 12.
11 MR. THOMAS: This is a one-page document?
12 MR. SEGUINE: Two, actually.
13 Q. Tell me if you recognize that document.
14 A. It's a Determination of Significance and Request for
15 Comments on Scope of environmental Impact Statement
16 Q. And in the upper right-hand corner there is a stamp
17 from the Department of Ecology; do you see that?
18 A. Yeah.
19 Q. Can you explain to me what this document is.
20 A. It's basically stating that we're going to do a
21 detailed environmental impact statement on the
22 proposal, as described, and we're asking for comments
23 on the scope of that document.
24 Q. What proposal would that be?
25 A. It says, "Amend City of Burlington Comprehensive

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1 Plan, establish Zoning Districts, plate the land,
2 construct roads and utilities, develop single family,
3 duplex and multi-family dwellings units, establish
4 public open space, construct telecommunication
5 facilities and occupy the site over a period of
6 several years."
7 Q. Is this a refers to the Tinas Coma project?
8 A. This is a reference to all of Burlington Hill, the
9 whole area that was annexed.
10 Q. Okay. The next paragraph indicates who the
11 proponents of this are.
12 A. Do you wish me to read that?
13 Q. Could you do that, please.
14 A. "Burlington Hill Associates by Dan Madlung regarding
15 development of the eastern portion of the hill, and
16 the City of Burlington relative to zoning and
17 comprehensive plan amendments for the area."
18 Q. Okay. And then I guess a couple of paragraphs down
19 there, the lead agency is lifted as the City of
20 Burlington?
21 A. Yeah.
22 Q. Why is the City of Burlington listed as the lead
23 agency as opposed to Property Investors? I guess you
24 call them Burlington Hill Associates.
25 A. There is no point in doing the environmental review

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1 twice. You do it as broadly as you can, whether it's
2 public and private, what ever it might be. More
3 detail than less detail. You do it once. You don't
4 do it ten times. That's a problem that a lot of
5 jurisdictions have, why they don't ever get anything
6 done.
7 Q. I might have misstated because the lead agency could
8 not be Burlington Hill Associates, correct?
9 A. No. The City of Burlington is the lead agency.
10 Q. Right. I misspoke because Burlington Hill Associates
11 was a private party.
12 A. There are many projects that have both private and
13 public components.
14 Q. Sure. I'm just saying, I made a mistake because
15 Burlington Hill Associates is not an agency that can
16 provide that review. Am I correct in saying that?
17 A. Right.
18 Q. Okay, so excuse me. And you say in this in document
19 that an EIS is required. And for the record, that's
20 an environmental impact statement.
21 A. Yes.
22 Q. And just generally, for the record here, tell us what
23 an environmental impact statement, that phrase means.
24 A. It's basically a more detailed procedure, where you
25 go into much greater public process with better

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1 public notice, public hearing. You have the scoping
2 process, where you get early comments from the public
3 and from agencies. You have the draft EIS, where you
4 take, again, comments from everybody. Then the
5 final, you respond to the comments.
6 Q. What is the purpose of all of that?
7 A. Full disclosure, evaluation of alternatives, looking
8 at possibilities for mitigation.
9 Q. Okay. And then done below, the next section reads,
10 "The lead agency has identified the following areas
11 for discussion in the EIS." There is a list of seven
12 items. Where did those seven items come from.
13 A. A review of the concepts for what could be done on
14 the hill and what the major environmental issues
15 would likely be.
16 Q. Now, you've signed this document; is that correct?
17 A. Yep.
18 Q. Did you participate in the identification of those
19 seven issue, I guess is what we might call them?
20 A. Sure.
21 Q. Did you write this letter? I guess it's not a
22 letter. It's a -- it is what it is.
23 A. I solicit comments from the different departments and
24 ask if there is -- and try to figure out what the
25 issues are and then prepared this.

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1 Q. So ultimately are you the person that typed this?
2 A. Probably.
3 Q. And then at the bottom there is a section called
4 scoping. You've mentioned that. What does scoping
5 mean?
6 A. It's an opportunity for agencies, tribes, members of
7 the public to comment on contents of the document,
8 what the scope.
9 Q. Then at the bottom just below that it says, the
10 responsible official is you?
11 A. Yeah.
12 Q. Okay. So in this particular with respect to this
13 particular proposal, you were writing this on behalf
14 of the lead agency which was the City of Burlington?
15 A. Yeah.
16 Q. And you were the responsible official?
17 A. Yep.
18 Q. And the proponent of the proposal in part was the
19 City of Burlington; is that correct?
20 A. Yep.
21 Q. Okay. And that's your signature at the bottom?
22 A. Yep.
23 Q. December 14th, 1998?
24 A. Um-hum.
25 Q. And you remember this document?

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1 A. It's part of the process.
2 Q. And as far as the stamp on the top, the Department of
3 Ecology environmental Review, is this a document that
4 needs to be transmitted to some place?
5 A. Did you get this from the DOE? Is that where you got
6 this? Must have.
7 Q. I'm asking you whether you needed to send this
8 document or file --
9 A. We file all that stuff with Ecology.
10 Q. So there looks like there is a date there, December
11 15, 1998. It appears as though you or a membership
12 of your staff would have sent this document to the
13 Department of Ecology?
14 A. Sure.
15 Q. Then the next page of this is just a map. Does that
16 mean anything to you?
17 A. Nicely done in auto CAD, I might add. It's the
18 exhibit of the hill, of where the actions were being
19 taken.
20 Q. And the purpose of sending this document to the
21 Department of Ecology, if you know, is what?
22 A. It's a required procedure under the WAC Rules.
23 Q. If we can go to Exhibit No. 13, please. Thank you.
24 This is a -- I'll just -- for the record, this is a
25 copy of, a one-page copy of the Administrative Code,

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1 Section 197-11-400. You've already testified that
2 you're familiar with the SEPA process. I think this
3 is within the same code section. Are you familiar
4 with this part of the Code?
5 A. Sure.
6 Q. Okay. And it sort of summarizes the things that
7 you've talked about here already, correct?
8 A. Right. But the rules changed a lot. So I don't know
9 if this was in effect at that time or if it might
10 have changed this. Today's --
11 Q. Right. Right.
12 A. At least it's got today's date on it.
13 Q. Okay. According to your understanding, has the
14 purpose of the SEPA procedures changed over the
15 years?
16 A. Kind of.
17 Q. How so?
18 A. It has changed over the years.
19 Q. How so?
20 A. Example, hear it says -- they used to go on weight
21 tests. Five, ten pounders were always good. This
22 says -- and obviously some publication said that's
23 ridiculous. So it says, "Purpose is best served by
24 short documents." So this is a later version.
25 Q. Okay. And under Section 2, it says, "An EIS shall

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1 provide impartial discussion of significant
2 environmental impacts and shall inform decision
3 makers and the public of reasonable alternatives,
4 including mitigation measures, that would avoid or
5 minimize adverse impacts or enhance environmental
6 quality." Is that principle sort of been in place
7 since the beginning?
8 A. Sure.
9 Q. Okay. Go to Exhibit 14, please. I believe this is a
10 two page or one page?
11 A. One page.
12 Q. Okay. For the record, this is a one-page exhibit,
13 Washington Administrative Code 197-11-535. This is a
14 provision, again, of the SEPA process, that talks
15 about providing notice. Are you familiar with that?
16 A. Um-hum.
17 Q. Okay. This is kind of consistent with the City Code
18 almost in the sense that one of the goals of the
19 process here is to provide notice to the folks who
20 might be impacted by certain activities?
21 MR. THOMAS: Objection; there is no question.
22 A. What are you asking me.
23 Q. Okay, this document --
24 A. Is a WAC rule.
25 Q. Correct. And this talks about the public policy --

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1 well, it talks about public hearings and meetings
2 under SEPA, correct?
3 A. Yeah.
4 Q. It talks about the need for having public hearings or
5 some form of public notice?
6 A. Well, this needs to be in context -- if this is about
7 environment impact statements, that's going to have
8 public hearings. Is that what this is about? This
9 is really out of context, this piece of paper.
10 Q. Well, take a minute and look at it.
11 A. Well, I'm just saying. Just some vague stuff about
12 public hearings and meetings.
13 Q. I guess you've already testified that one of the
14 purposes of SEPA is to make sure that people receive
15 notification when these kind of things are going on
16 --
17 A. We have a public hearing on environmental impact
18 statements.
19 Q. Look at Exhibit No. 15, please. For the record, it's
20 a one-page document, WAC 197-11-510. Are familiar
21 with this provision?
22 A. Right.
23 Q. And this again is, I guess, more or less consistent
24 with some of the things you have been talking about
25 with SEPA, that there is a public notice process

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1 that's involved?
2 A. Right.
3 Q. And just for the record here, what types of public
4 notices is the City of Burlington capable of making?
5 MR. THOMAS: Object to form.
6 A. Like it says right here, posting the property, for
7 site-specific proposals. Publishing in a newspaper
8 of general circulation... Notifying public or private
9 groups with known interest... or in the type of
10 proposal... Notifying the news media. ...notices in
11 appropriate... journals. ...notices in agency
12 newsletters and/or agency mailing lists. And that
13 would put it in our procedures, and ecology.
14 Q. And, in fact, the City of Burlington does have these
15 types provisions in its City Code.
16 A. Sure.
17 Q. Yeah, okay. We can go to number 16, please.
18 MR. SEGUINE: I hope that they divided this one.
19 One second, counsel. It looks like there is no divider in
20 here.
21 MR. THOMAS: We're showing -- just for
22 clarification, we're showing this as the last page of this
23 exhibit.
24 MR. SEGUINE: Give me a second here.
25 MS. SMITH: Appendix F?

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1 MR. SEGUINE: Correct.
2 MR. WINSLOW: Included in Appendix F, is there a
3 letter of February 12th, 1999, City of Burlington?
4 MR. THOMAS: No. It was the page before that.
5 MR. SEGUINE: Right. Yep.
6 MR. WINSLOW: And that's that Parks and Rec. Yes.
7 All right. Thank you. So this is Exhibit 16?
8 MR. SEGUINE: 16.
9 BY MR. SEGUINE:
10 Q. That's a big document, Ms. Fleek. Can you look at
11 that for a minute.
12 A. It's the draft EIS for rezoning and development of
13 Burlington Hill, issued January 13th, 1999.
14 Q. Who was the author of this document?
15 A. Me. We do our EISs in-house. We don't hire
16 expensive consultants because as you can see this is
17 the 10, 15 pages of forms, and these are all the
18 technical reports and exhibits.
19 Q. Again, there is a stamp on the top of this, in the
20 upper right-hand corner of the first page, which
21 seems to say the Department of Ecology. Is this a
22 document that would have been filed with the
23 Department of Ecology?
24 A. Yep.
25 Q. I'm going to ask you some questions about this. Turn

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1 to page 3.
2 A. The Fact Sheet?
3 Q. Yes. The project title, it says, Tinas Coma Plate
4 and Zoning for Burlington Hill. So we already talked
5 about, this was sort of a joint presentation between
6 you and the folks who wanted to develop Burlington
7 Hill?
8 A. That would not be correctly worded, sir.
9 Q. Well, correct me.
10 A. The City is responsible for environmental review.
11 The applicant is require to provide information on
12 their proposal, but it's not their document. It's
13 the City's.
14 Q. Okay, very good. On the earlier document, you made
15 reference to Burlington Hill Associates. Is that the
16 correct name for the development group that was, that
17 you were working with at the time?
18 MR. THOMAS: Object to form.
19 Q. If you know. We can go back and look at the
20 document, too.
21 A. I don't know. That's the project. That's the hill.
22 One outfit did the project. Whether they changed
23 their name or not doesn't really matter to me.
24 Q. Okay. The one outfit that did the project, you refer
25 to as who in this document?

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1 A. This is Burlington Hill Properties.
2 Q. You don't know today whether there was any company or
3 entity named Burlington Hill Properties?
4 A. The representative of the development was Dan
5 Madlung, as stated in earlier stuff.
6 Q. Now, at this point in time, had you spent a fair
7 amount of time with Mr. Madlung working on these
8 things?
9 MR. THOMAS: Object to form.
10 A. I doubt it. I mean we require them to submit
11 information. We write reports. We review what they
12 submit. If we need more information, we ask for it.
13 Q. So there was certain segments of, pieces of
14 information in here which were supplied by
15 Mr. Madlung, correct?
16 MR. THOMAS: Objection; assumes facts not in
17 evidence.
18 MR. SEGUINE: I'm asking the question.
19 Q. You can answer the question.
20 A. The appendixes have the traffic studies; the wetland
21 reconnaissance; the comment letters; their proposal
22 for what they're doing. I guess I'm not clear on
23 what you're wanting to know here.
24 Q. Well, you've testified that the -- I want to say this
25 the right way. I guess Mr. Madlung was the person

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1 that you were dealing with primarily, is that
2 correct?
3 A. Well, there were other people, too, because there was
4 thee is the traffic consultant and the wetland
5 consultants, but he was the lead for the project.
6 Q. Right. Was there anybody else with the project that
7 you had contact with at this point in time?
8 A. Obviously, we had contact with Leonard, Boudinot &
9 Skodje because their maps are in here. They did the
10 preliminary plat work. So whoever was involved.
11 Q. Would you have had contact with the folks at Leonard,
12 Boudinot & Skodje?
13 A. Sure.
14 Q. You would, okay. And would you personally have
15 contact with them it?
16 A. Undoubtedly, over the time.
17 Q. What kind of contact would that be?
18 A. Ask them for documents, commenting on documents,
19 stuff like that.
20 Q. Okay. When this project was proposed to you, did you
21 have any concerns?
22 MR. THOMAS: Object to form.
23 A. That's why we do environmental impact statements,
24 because there are lots of issues with a large
25 development proposal.

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1 Q. This was a large development proposal?
2 A. That's why we did an environmental impact statement.
3 Q. In terms of the City of Burlington, how would you
4 rank this, in terms of proposals?
5 MR. THOMAS: Object the form.
6 A. I guess I don't know what you mean.
7 Q. Well, you said it was a large proposal. What do you
8 mean by that?
9 A. It's 192 acre area. That's large
10 Q. So you're talking about the geography in one sense.
11 A. It's a large site. It's a lot of proposed
12 development activity.
13 Q. And we talked about annexation. When annexation
14 occurs, there is other issues that come long with
15 that for the city; is that correct?
16 A. Yeah. We increase our tax base.
17 Q. What does that mean?
18 A. Once you annex the land, you get tax property tax
19 revenue and you get development opportunity. I'm not
20 really clear what you're getting at here.
21 Q. I'm just asking you to explain it to me. That's all.
22 So one of the things that is considered is tax base?
23 A. You have to go back to growth management. If you're
24 talking annexation, the whole world changed a lot
25 with the Growth Management Act, so I don't really

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1 feel like there is a need to go through the 20 year
2 history of GMA.
3 Q. I don't want you to, but there are other things
4 besides tax base that come into play when you're
5 talking about a subdivision of this size, is there
6 not?
7 A. It's a critical area. It's a geologically hazardous
8 site.
9 Q. A critical area, is that something that you had
10 defined it as going in this?
11 A. You don't have to define it. It's defined in the
12 critical area ordinance.
13 Q. Which is part of the City Code, I believe?
14 A. Yes.
15 Q. What made this particular site a critical area?
16 A. Steep slopes.
17 Q. What was the thing you said? Oh, and a geologically
18 hazardous area?
19 A. That's one of the identifying features -- that is a
20 critical area definition.
21 Q. And that's within the Burlington Municipal Code, as
22 well, is it not?
23 A. Yep.
24 Q. So those were two primary concerns you had about this
25 development, just going into, I guess?

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1 A. Well, traffic. Lots of stuff. The list is in here,
2 Significant impacts.
3 Q. What I want you to tell me here, as best you remember
4 --
5 A. Well, I don't memorize these things. I'm old. I
6 don't have to memorize them.
7 Q. But certainly --
8 A. You want to go here under major conclusions --
9 Q. Ms. Fleek. Ms. Fleek, I'm asking you a question
10 about what you remember. And I understand you can
11 look at a document. You can refresh your
12 recollection. I'm just asking you, do you remember
13 what your concerns were with this project when it was
14 first introduced to you?
15 MR. THOMAS: Object to form.
16 Q. If you remember. If you don't remember, then --
17 A. The issues were a traffic; storm water; impact on
18 schools, impact on public safety; impact of housing
19 density on quality of environment of Burlington Hill;
20 impact on wetlands, steep slopes; impact and
21 development on public open space and greenbelts;
22 impact of existing old city dump site on
23 environmental quality.
24 Q. And just for the record, you're reading from a
25 document within this exhibit; is that correct?

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1 A. This is from the draft environmental impact statement
2 summary.
3 Q. And what pages of the document are you reading from?
4 A. 7 and 8. It's the major conclusions and significant
5 areas of controversy and uncertainty --
6 Q. Okay. That's ahead. I see it now. So this was a
7 preliminary document, correct or draft?
8 A. This is the draft environmental impact statement.
9 Q. What is a draft environmental impact statement?
10 A. It's -- after you complete the scoping process, then
11 you put out the draft environmental impact statement
12 for comments. You lay out the format per the
13 Washington Administrative Code Regulations and
14 conduct a public hearing, and that's what this is.
15 Q. So it's a preliminary document?
16 A. It's not a preliminary document. It's the draft EIS.
17 I don't know what you mean by preliminary document.
18 That's not a term that's used for these.
19 Q. I thought I heard you use the term preliminary a
20 minute ago, but I may have been mistaken. I'm sorry.
21 In the fact sheet on Page 3, under the project title,
22 I think the first sentence says that the subdivision
23 proposal pertained to the eastern section of the hill
24 and was to include approximately 76 lots and 5 duplex
25 lots and a multifamily development in the old rock

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1 quarry site. Do you see that?
2 A. Yeah.
3 Q. Now, you said earlier that things changed from time
4 to time with the developer. This called for 76 lots.
5 Is the number of lots that are purposed in a
6 particular subdivision important to you?
7 A. Nope.
8 Q. Why
9 A. Because you're looking at the overall land use
10 issues. It's not -- it doesn't matter if it's 50
11 lots, 100 lots, you're evaluating the impact of that
12 proposal, whatever it is.
13 Q. Maybe I'm jumping around a little here, but the size
14 of a lot in the City of Burlington is important, is
15 it not?
16 A. The size of a lot?
17 Q. Yes.
18 A. Burlington was platted based on Burlington, Vermont.
19 The old plat of Burlington has 3,000 square foot
20 lots.
21 Q. So the answer to my question is, the size of a lot is
22 important?
23 A. Not so much.
24 Q. Can be a factor?
25 A. I don't see it as a particular factor, no.

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1 Q. Well, if someone decided that they wanted to build a
2 house on 100 square feet, would you take issue with
3 that?
4 A. You look at the Zoning Code and see if it's allowed.
5 Q. And is it in the City of Burlington?
6 A. You can build on a 3,000 square foot lot in
7 Burlington. If you have an existing smaller lot, it
8 depends on whether -- we'd have to determine if it's
9 a legal building site.
10 Q. Generally speaking, do you think that you would allow
11 construction of a residential structure on a 100
12 square foot lot?
13 Defendant's Attorney: Object to form.
14 A. The Zoning Code, as I stated earlier, has a minimum
15 of 3,000 square feet.
16 Q. So the question to my question would be, generally
17 speaking, you would.
18 A. If you were in a commercial zone and had a small
19 building on it, I mean that doesn't really have any
20 -- it depends --
21 Q. I'm asking you about a residential lot?
22 A. As I stated, the minimum lot size is 3,000 square
23 feet.
24 Q. Under the first section there, it talks about
25 purposed actions and alternatives. What does that

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1 section mean, on Page 3 of the --
2 A. It's the proposed action and the alternatives.
3 Q. Well, I would like you to walk me through those, if
4 you could please, and explain them to me.
5 A. I'm not exactly clear what's to explain. Proposed
6 action is the subdivision. The alternative that we
7 look at is -- the purposed action is the subdivision
8 and Zoning, the roads, etcetera. The other
9 alternatives that you look at are no action. You
10 look at alternatives for public street design. Then
11 Zoning alternatives, there is a series of those.
12 Then the fifth one is public pocket parks.
13 Q. Let's start with No. 1. What does that mean?
14 A. It says, "Burlington Hill Properties proposal and
15 subdivision design for approximately 82 lots on
16 eastern Burlington Hill, and potential buildout of
17 west of Burlington Hill and PUD and Bendtsen property
18 on the east side, for an approximate additional 70
19 lots, with a road network, utilities, and public
20 parks and open space as feasible."
21 Q. So Let's stop there. Is that different or the same
22 than the original proposal that's presented above
23 that?
24 A. It's the same.
25 Q. So that's the proposal?

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1 A. It's a summary.
2 Q. Okay. Now, it seems to be there's a difference
3 between the number of lots between two proposals?
4 A. Five duplex lots. That's two times five is ten. It
5 just depends on how you...
6 Q. It's just a different way of saying the same thing?
7 A. It doesn't matter. I don't think it matters.
8 Q. I'm just trying to understand here, okay. No. 2
9 would be no action which means that there is no
10 development of the site whatsoever?
11 A. "Site to remain as is at this time -- Forest
12 Practices Permit for Waldon site will continue to be
13 processed." That's what this says.
14 Q. Do you know what that means?
15 A. Yeah. DNR issues Forest Practices Permits.
16 Q. Now, the property -- actually, I need to ask you, was
17 the property annexed at this point in time?
18 A. We did not put this out until after the property was
19 annexed.
20 Q. So in terms of the City of Burlington, no action
21 would mean it would remain in its, more or less,
22 natural state, as a wooded hill, correct?
23 MR. THOMAS: Object.
24 A. Well, there was logging happening. It's not been in
25 its natural state for a hundred and some years.

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1 Q. But in terms of --
2 A. Means no development. Says, "Site to remain as is at
3 this time."
4 Q. And so people could still go in and cut trees. Trees
5 could still grow there. The vegetation would
6 otherwise be undisturbed for the most part. That's
7 what you anticipated --
8 A. There is still telecommunication towers at the top of
9 the hill.
10 Q. Correct, and the cross.
11 A. Okay, yeah.
12 Q. So it would just sort of stay the way it was?
13 A. Yeah. No action means no action.
14 Q. Okay, No. 3. What does No. 3 mean?
15 A. Alternatives for public street design. It means
16 alternatives for public street design.
17 Q. Well, I don't know what that means in terms of --
18 A. Including street width, location of sidewalks, bike
19 paths. It means linking the existing roads on the
20 hill to the proposed new development.
21 Q. Ms. Fleek,, I just don't understand what that means.
22 Can you tell me what it means.
23 A. Street width. How wide are the streets going to be?
24 Are they going to have sidewalks? Is there going to
25 be a bike lane? How are the roads going to connect?

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1 It says what it means.
2 Q. So you're presenting that to the Department of
3 Ecology as an alternative?
4 A. Alternatives -- it's a sub alternative. How the
5 streets are designed is one of the things that you'd
6 be looking at.
7 Q. As a variation of the project proposal?
8 A. Yeah.
9 Q. Okay. I just wanted to understand. No. 4, Zoning
10 Alternatives for Burlington Hill include, and then
11 there is -- it looks like five bulleted items. Is
12 that an alternative or is that part of the proposed
13 action because I guess that title up there is
14 confusing me a little bit?
15 A. It's not confusing to me. I mean, you've got --
16 you've got alternatives on how you set your Zoning.
17 Single family. Open space. Duplex multifamily,
18 industrial, those are an array of different zoning
19 choices.
20 Q. Within the proposal for the subdivision?
21 A. No. The purpose is this is not just the subdivision.
22 It's the Zoning following annexation, and the
23 subdivision, developing streets and utilities,
24 provide open space and public access. It's all of
25 that stuff.

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1 Q. So these are just sort of different things that could
2 be considered in developing an overall plan to
3 develop the hill?
4 A. These are the things that are on the table for the
5 development of the hill.
6 Q. Okay. No. 5, construct public pocket parks in
7 appropriate locations. Is that an alternative or is
8 that part of the proposal?
9 A. It is definitely an alternative. That stuff has
10 basically never happened.
11 Q. It's never happened because it just wasn't --
12 A. No. It never happened because the ownership, the guy
13 that owned this stuff died, and the property
14 transfers got all screwed, and it's never happened.
15 Q. Was that Mr. Welts, by the way?
16 A. Um-hum.
17 Q. And then below there is a number of additional
18 alternatives considered, including a gated community?
19 Is this list down here, is this like different from
20 those above?
21 MR. THOMAS: Object to form.
22 A. They are in addition to, as it states.
23 Q. Okay. Okay. Can you walk me through those,
24 establish a gated community, what would that mean?
25 A. Locked gates to get in. I mean this isn't Bellevue,

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1 but you've probably been there.
2 Q. A time or two, thank you.
3 A. Provide reasonable access to properties that they
4 don't own. It could become land locked. Options for
5 consideration by west side property owners, and then
6 the industrial Zoning. We're going to have more
7 towers, the location, whatever.
8 Q. This document is given to the Department of Ecology
9 for one, correct?
10 A. The draft environmental impact statement, there a
11 list of the agencies that it goes to. It's in one of
12 these appendixes.
13 Q. Let's look at that now, if we could
14 A. The distribution list. Appendix A.
15 Q. Would this be part of the scoping procedure --
16 A. No. This is the circulation list for the --
17 distribution list for the agencies for the draft
18 environmental impact statement.
19 Q. That's different from scoping?
20 A. Um-hum.
21 Q. Scoping is then?
22 A. Asking for comments.
23 Q. Okay.
24 A. It probably went to the same group. I don't have
25 that in front of me.

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1 Q. So the scoping -- when you use the term scoping,
2 you're talking about them responding to --
3 A. To the City, what issues -- are there more issues
4 that should be covered, that stuff.
5 Q. So this document would have been sent to all those
6 folks there, as far as you know?
7 A. Sure.
8 Q. By mail?
9 A. Yeah.
10 Q. Okay. Now at the bottom of Page 4, if you turn to
11 page 4, there is a section called Authors and
12 Principal Contributors. Do you see that?
13 A. Yep.
14 Q. And you already said that you probably prepared this
15 document. Would you have typed it?
16 A. Yeah. There is no such thing as a secretary anymore.
17 You do it on a computer, but then my work is all
18 reviewed.
19 Q. Okay. So you would have typed this stuff in. So we
20 have there David Hamlin and Associates who is a
21 traffic consultant? And I think in this there is a --
22 MR. THOMAS: Counsel, you're not allowing my client
23 an opportunity to answer the question.
24 MR. SEGUINE: I'm sorry. Do you see the section I'm
25 talking about on Page 4?

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1 A. Um-hum.
2 Q. Do you see where it says David Hamlin and Associates?
3 A. Right. He's a traffic consultant.
4 Q. And would probably have to be a contributor as
5 opposed to an author since you wrote this, part of it
6 at least?
7 A. I think there is a traffic study attached to this.
8 Q. I think you're right. Can we just identify that for
9 the record there.
10 A. Appendix C, Traffic Study.
11 Q. Can you turn to Appendix C. Do you have it there?
12 A. Yeah.
13 Q. And that was actually prepared for Mr. Madlung. Do
14 you see that from the first page?
15 A. Yeah.
16 Q. And then that is included in this -- apparently
17 included in this set of documents as an exhibit?
18 A. Yeah.
19 Q. So I guess maybe he is an author, too.
20 MR. WINSLOW: Wait a minute. Who is "he" in your
21 sentence that you just made? When you say he is author --
22 MR. SEGUINE: Mr. Hamlin. I'm talking about
23 Mr. Hamlin.
24 MR. THOMAS: All right.
25 BY MR. SEGUINE:

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1 Q. Then below that on Page 4, there is an indication
2 that Aqua-Terr Systems, Inc. was an author or
3 contributor. I know you see that as well, correct?
4 A. Right. They did a preliminary wetland review.
5 Q. And they're in there as an exhibit somewhere, right?
6 A. Um-hum.
7 Q. I think I'm going to find it in just a second here.
8 Appendix D. Do you agree with me that that's there?
9 A. Yeah.
10 Q. Okay. The last party that's mentioned here is Agra
11 Earth and Environmental, a Geotechnical Engineer as a
12 author or contributor. Do you see that?
13 A. I believe, as you pointed out earlier, they did the
14 geotech work for construction of the roads, that was
15 done before it was annexed.
16 Q. And my question to you earlier was -- well, let me --
17 would you agree with me that, that particular report
18 is not included in this set of documents that I have
19 presented to you and it's not directly referenced?
20 A. No. It's not in here.
21 MR. THOMAS: Counsel, what are you referring to?
22 What's not included?
23 MR. SEGUINE: Page 4.
24 THE DEPONENT: He's talking about this thing, this
25 way back when exhibit.

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1 MS. SMITH: Exhibit 9 is the Agra geotech report of
2 '96. And your question is: Is That not listed or not
3 included in exhibit --
4 A. Right. They built the roads before the site was
5 annexed.
6 MS. SMITH: Not included in Exhibit 16, that's the
7 question?
8 MR. SEGUINE: The question is -- yes. I'm sorry.
9 Let me rephrase it.
10 MR. THOMAS: Would the court reporter read back the
11 question, please.
12 (Requested question was read back.)
13 Q. On Page 4, do you see that?
14 A. Yeah.
15 Q. Just to make the record clear here, there is no
16 appendix referencing any report from Agra Earth and
17 Environmental, is that correct?
18 A. Correct.
19 Q. Is it your testimony that, that -- well, I'll
20 actually I'll rephrase it. Do you know why they
21 would be listed as a author but not be included in
22 the report by way of their report or study -- by way
23 of Appendix, I guess, is the way I'm going to need to
24 say it here?
25 A. What I said earlier was that, that report that you

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1 had in here earlier from '96, that was the report
2 that was done when they built the roads for the
3 logging. So the roads were already done.
4 Q. So your testimony is that the roads were conducted in
5 1996?
6 A. Yeah. That's what this map shows, roads.
7 Q. Just so we're clear here. We are looking at, tell me
8 what you just pulled out.
9 A. It's an exhibit that shows Burlington Hill trails and
10 roads.
11 Q. I need to know which part of the exhibit you pulled
12 that out from, excuse me.
13 A. It's right before Appendix C, Traffic Study. It's
14 the last item in Appendix B, which is maps. It's
15 right there. (Indicating.)
16 Q. Just so we're all in the same place here. We would
17 be under Appendix B of this document, and I believe
18 what you're referencing would be Exhibit No. 5 which
19 would be the 1985 topographic map of trails and
20 roads, I think -- if everybody can agree on that.
21 A. Just looking through this thing like you are. It's
22 not like I memorized it.
23 Q. I guess I'm just asking counsel that just so we're
24 sure on the record here.
25 MR. SEGUINE: Counsel, do you agree? Everybody is

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1 shaking their heads.
2 MR. THOMAS: I'm not sure what I'm agreeing to.
3 MR. SEGUINE: Just that I'm identifying the map
4 she's looking at. That's all.
5 A. If this is '85, then that's not their work. This
6 would be reflected on these two maps here.
7 Q. Hold on. You're jumping ahead of me here.
8 MR. THOMAS: Yeah. There is no question.
9 MR. SEGUINE: On Appendix B of the -- there's -- in
10 Exhibit 5 which is called 1985 Topographic Map of Trails
11 and Roads, and the document that she pulled out says,
12 Burlington Hill Trails and Roads.
13 A. This is before the geotech work.
14 MR. THOMAS: I would agree that there is a document
15 entitled Burlington Trails and Roads. It seems to be the
16 last page of Appendix 5. You read a title, and I don't
17 know where that came from.
18 MR. SEGUINE: Okay. Well, the map says Burlington
19 Hills Trails and Roads. Do you see that?
20 MR. WINSLOW: Yes. And it's referenced in the
21 exhibit list of this Appendix B, Maps, Exhibit 5.
22 MR. SEGUINE: Right.
23 MR. THOMAS: I see that now.
24 A. So this is before they built the roads. These maps
25 are after they built roads.

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1 MR. THOMAS: There is no question.
2 BY MR. SEGUINE:
3 Q. You're making reference to the other maps that are
4 provided by, I believe, Leonard, Boudinot & Skodje?
5 A. Yep.
6 Q. When you come across something like this, do you
7 spend some time looking at maps, is that important?
8 A. What do you mean, when you come across something like
9 this?
10 Q. When you come across a large subdivision, I think
11 that's the term you used earlier for a site such as
12 this, that has critical areas and geologically
13 hazardous areas, are maps important?
14 MR. THOMAS: Object to form.
15 A. Maps are important for every project.
16 Q. How so?
17 A. So you can figure out where it is, what the
18 topography is. Whatever.
19 Q. What is whatever?
20 A. Is it on a map that you locate the project. I'm not
21 getting what you're asking me.
22 Q. I'm trying to get a sense for how you as a planner
23 use maps when you're presented with a proposal or a
24 project like this.
25 A. So that you can have a visual representation of the

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1 project, the proposed action.
2 Q. Any other purposes that you might use maps for?
3 A. Whatever it might be, topography, lot layout.
4 Q. And we just talked about this map being from 1985,
5 and you said that that's from 1985. So that's
6 clearly before the time of the study, at least, 1996?
7 A. Right.
8 Q. Do you ever use maps to look at the history that
9 surrounds a particular site?
10 MR. THOMAS: Object to form.
11 A. If they're available.
12 Q. So if they're available, what kinds of things would
13 you do with maps?
14 A. This is an example. This is the existing condition
15 before the development, before the roads were built.
16 This is an example of the proposal to develop the
17 site.
18 Q. Are you also concerned with, in this process, looking
19 at prior uses of property?
20 A. Prior uses?
21 Q. Prior use of property.
22 A. Sure. This site has a garbage dump on it.
23 Q. And that's actually referenced in here, I think, in a
24 couple places?
25 A. We did the bump closeout.

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1 Q. Do you remember where the dump was on the hill?
2 A. Yeah.
3 Q. Where was it?
4 A. You got up from the Skagit Street side, it's right on
5 the right. It was a burn dump.
6 Q. Okay. And I don't really know what means, a burn
7 dump.
8 A. They burned the garbage. Dump.
9 Q. Now, you're showing me one the Leonard, Boudinot &
10 Skodje maps and you're pointing to a point on the map
11 where you say there is a dump, right?
12 A. Yeah. That's why it's open space.
13 Q. Thank you for showing me that. How did you know that
14 there was a dump there?
15 A. It's matter of record.
16 Q. What type of record?
17 A. Health Department, City of Burlington. It was a --
18 there is a report called the Dumps of Skagit County.
19 I happen to have a copy of that, truly.
20 Q. I believe you. Where does that report come from?
21 A. I don't know. I got it from the Health Department.
22 Q. And in terms of a dump being located there, what
23 concerns, if any, did you have?
24 A. Broken glass, debris, not a good place to live.
25 Q. Why?

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1 A. Contamination. It's a dump. Why are you asking?
2 Common sense is still in the dictionary.
3 Q. Okay. So it's not a healthy place to live, meaning
4 what?
5 A. If you don't clean it up and remove everything -- you
6 certainly don't want to make it into a legal building
7 site.
8 Q. And if you did, that would place the folks who are
9 living on the dump site in risk, would it not?
10 A. In theory.
11 Q. Because there could be health issues associated with
12 the dump site?
13 A. As I said, broken glass, possible other kinds of
14 hazardous waste.
15 Q. Did you do any research into what types of materials
16 were placed in this dump?
17 A. We coordinated that with the Health Department.
18 Q. Is there a reference to that in here?
19 A. I'm sure that was -- the dump closure was done long
20 after this was written.
21 Q. Why later?
22 A. What difference does it make? It's not a building
23 site. Dump closure is a separate process.
24 Q. What does it involve?
25 A. Coordinating with the Health Department and figuring

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1 out the best plan for the long-term closeout of the
2 site.
3 Q. Is that sometimes referred to as remediation?
4 A. I have no idea.
5 Q. You just call it clean up?
6 A. I call it dump closeout.
7 Q. And that entails making sure that there are no health
8 or environmental factors --
9 A. No, it doesn't. You do the best you can with what
10 you got, and you try to keep it from people walking
11 around in it. I mean whatever. It varies from site
12 to site.
13 Q. And you said that this was going to be retained as
14 open space?
15 A. What else would you do with it?
16 Q. I'm not the planner, Ms. Fleek. You are. So what
17 does that mean, open space, in terms of what's up
18 there today?
19 A. Prickly bushes are planted on it. That's basically
20 it.
21 Q. That's the form of mitigation?
22 A. They cleaned up what they could. "NASA" went in
23 there and picked up all the broken glass, cans,
24 whatever they could. Then we let it overgrow with
25 prickly bushes.

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1 MR. SEGUINE: Do you want to take a break.
2 (RECESS WAS TAKEN.)
3 BY MR. SEGUINE:
4 Q. If we can go back to that document. We're looking
5 Exhibit 16, Page 6. There is a heading at the top of
6 the page that says Introductory Note. And I'm
7 focusing on the bottom paragraph, the first sentence
8 there says, "Everyone on the mailing list within 600
9 feet of the site will receive notification of the
10 public hearing on the draft EIS." Now, I don't have
11 the follow-up materials to this, but I'm assuming
12 that's what the City of Burlington would have done.
13 A. That's the City ordinance.
14 Q. Okay. So presumably, as you said before, it's a
15 draft. So the idea is to get it out there for
16 everyone to comment on, and part of that process is
17 to, according to this, mail to everybody who's living
18 within 600 feet of the site some form of public
19 notification?
20 MR. THOMAS: Objection; there's no question.
21 Q. That's part of the process, correct?
22 A. Yes. It's not everyone living. It's property
23 owners.
24 Q. Oh, okay, like people that hold title to property,
25 that kind of a thing?

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1 A. Um-hum.
2 Q. And you get that information off of what, the
3 Auditor's website or something like that?
4 A. No. The County Assessor's --
5 Q. The County Assessor, excuse me. Then you use the
6 United States Postal Service to send out a notice?
7 A. Yep.
8 Q. I don't have it here, but that notice would have
9 disclosed that this document was -- what would it
10 have said, I guess, if you know?
11 A. It says here, "Notification of the public hearing on
12 the draft EIS and of the public hearing on the
13 purposed Zoning and subdivision, before the Planning
14 Commission."
15 Q. And it probably wouldn't include a copy of this
16 document, right? It would probably tell them --
17 A. It tells them where you can get a copy.
18 Q. And this document -- actually, it would available for
19 inspection at your office, I guess?
20 A. Sure.
21 Q. Is that any -- other places?
22 A. I don't know if we had a website at this time --
23 probably not -- but today it would be on the website
24 also.
25 Q. Any other places besides your office and the website

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1 at that time?
2 A. Probably not.
3 Q. Would there be a notice in the paper for this?
4 A. Yes.
5 Q. And that's published where?
6 A. In the legal notices.
7 Q. And at that time did the City of Burlington use any
8 particular newspaper?
9 A. Honestly, it was either the {Hearld or the {Argus or
10 both. I mean there's not that many choices.
11 Q. Would you be the person responsible for making sure
12 that those things happen?
13 A. Yes.
14 Q. So I'm just assuming that all that happened here.
15 A. It's a matter of record.
16 Q. And as far you recall, you followed through with
17 that?
18 A. Absolutely.
19 Q. Okay, very good. There is a -- I'm looking for --
20 Appendix A is the distribution list, and this is
21 different from the mailing list, I take it?
22 A. That's the agency distribution list.
23 Q. Just so I understand, there is this list and then
24 there is the mailing list that would --
25 A. Right.

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1 Q. Okay, great. And this Appendix B, with the maps,
2 would this be a set of maps that you would have
3 assembled for this project?
4 A. Sure.
5 Q. And I'm going to just focus on this one under -- I
6 guess I'm looking at -- under Appendix B, Exhibit No.
7 2, I think -- I'm not sure if it's marked here -- is
8 the proposed Zoning.
9 A. Um-hum.
10 Q. Can you see that?
11 A. Yeah.
12 Q. In this case when you use talk about mailing everyone
13 within -- was it 500 feet?
14 A. 600.
15 Q. 600 feet, what is the boundary that you would use to
16 define that mailing list?
17 MR. THOMAS: Object to form.
18 Q. If you know.
19 A. The site is the whole hill, so it's everybody within
20 600 feet of the hill, plus the property owners on the
21 hill.
22 Q. It would include the people on the hill?
23 A. Sure.
24 Q. Okay. If you flip over a couple more pages to, two
25 pages past the Zoning map. There is a, I guess,

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1 another Zoning map from Leonard, Boudinot & Skodje.
2 Can you just tell us what that is according to your
3 understanding.
4 A. That is the plat map.
5 Q. For the subdivision?
6 A. For the subdivision.
7 Q. And that shows on there the number of lots that are
8 there?
9 A. Um-hum.
10 MR. THOMAS: Object to form.
11 Q. Maybe I asked you this before, but is the number of
12 lots being proposed for a particular location
13 something that is important to you?
14 A. It's based on the Zoning.
15 Q. And the Zoning will define that to some degree?
16 A. Gives the minimum lot size.
17 Q. So if you're looking at a proposed subdivision, that
18 would be -- I don't know if you do it or someone else
19 in your department does it -- looking at the proposed
20 lot sizes?
21 MR. THOMAS: Objection; asked and answered.
22 A. The purposed --
23 Q. Maybe my question isn't -- who reviews this when it
24 comes through?
25 A. We do.

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1 Q. Who is "we"?

2 A. Me and Kim.

3 Q. And do you, in doing that, look at the lot sizes that

4 are proposed?

5 A. A cover sheet would have a layout of all the lot

6 sizes right on it. It's the surveyor's

7 responsibility to lay that out.

8 Q. Okay. And you'd be looking at that cover sheet to

9 determine whether the minimum lot sizes -- you've

10 used that phrase from the Burlington Municipal

11 Code --

12 A. Yep.

13 Q. -- is complied with?

14 A. Yep.

15 Q. And if there are lots which are less than the minimum

16 size, that would be something that you would do what

17 with?

18 A. Make them change it.

19 Q. The developer.

20 A. Um-hum.

21 Q. As long as we're focusing on that map, there is also

22 in here a condominium site. It looks like it's Lot

23 46?

24 A. Yeah.

25 Q. What was the plan for the condominium site, if you

Page 90

1 knew?

2 MR. THOMAS: Objection; speculation.

3 Q. If you knew?

4 A. It's whatever is stated in this document. It is a

5 proposal for future multifamily structure.

6 Q. Appendix C in this document is the traffic study

7 which we already kind of made reference to. And I

8 take it that part of your duties here was to look

9 through that traffic study?

10 A. Yeah.

11 Q. Okay. And then --

12 A. Traffic study review is primarily the responsibility

13 of public works, but we also look at it.

14 Q. You kind of look at it. Then Appendix D is a wetland

15 reconnaissance. Did you require a wetland

16 reconnaissance in this case?

17 A. Yes.

18 Q. Why?

19 A. It affects the layout of the subdivision, if there

20 are wetlands on the site. You can't eliminate

21 wetlands when you're building houses.

22 Q. Is that -- I don't know -- standard operating

23 procedure when you're talking about a big

24 subdivision?

25 A. Sure.

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1 Q. Looking at Exhibit D, this is a letter to

2 Mr. Madlung. So I assume that you told

3 Mr. Madlung and the developers that the

4 responsibility of getting that study done

5 belonged to them?

6 A. All studies are the responsibility of the applicant.

7 The City does not pay for studies like that.

8 Q. And when the study comes in, you review it --

9 A. Um-hum.

10 Q. And if there are things that you think are deficient,

11 you would let them know about that?

12 A. Yep.

13 Q. So in this case did you look through this particular

14 study yourself? Do you have any recollection of

15 doing that?

16 A. Undoubtedly it's in here.

17 Q. Okay. And this is one of the authors of the report,

18 as you've described it, correct?

19 A. Right.

20 Q. Did you also look at the maps that were supplied?

21 A. I have reviewed the entire document.

22 Q. Including all of the maps?

23 MR. THOMAS: Object to form.

24 A. At the time it was written, of course.

25 Q. All right. And then finally, Appendix C are the

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1 comment letters received to date.

2 A. Those are the comment letters that were received

3 during the scoping process.

4 Q. Now, is that different from the other thing we were

5 talking about a few minutes ago, with the mailing

6 going out to folks?

7 A. Many exhibits ago we talked about the scoping notice.

8 People send letters in response to that. Then they

9 send letters in response to this.

10 Q. So these letters here are from the scoping procedure?

11 A. Any comment letters that we received up to the point

12 of publications, those are included.

13 Q. Okay. And this indicates that in 1997, at least,

14 there was a public hearing, and this kind of talks

15 about the annexation, correct?

16 A. Are you looking at the minutes of the Planning

17 Commission.

18 Q. I'm sorry, yes.

19 A. These are the minutes of the public hearing on the

20 rezoning for annexation. It's the minutes. You

21 don't want me to read these, do you?

22 Q. No. I don't want you read them. I just want you to

23 confirm. There is a mention of Fleek in there, and

24 I'm assuming that's you?

25 MR. THOMAS: Object to form.

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1 A. Yes.
2 Q. On Page 2 there were some comments noted from various
3 people about what was being purposed at that time?
4 A. It's a public hearing.
5 Q. Right.
6 A. These are the minutes.
7 Q. Okay. There is a section in here where
8 Mr. Madlung speaks, on Page 2. Do you recall
9 Mr. Madlung being at that meeting?
10 A. I do not remember this meeting at all. You see what
11 you see. That's what you got.
12 Q. You probably go to a lot meetings, don't you? Now, I
13 want to flip over a couple more pages. There is a
14 letter dated December 28th, 1998, and there is a
15 letter from Skagit County Health Department. Do you
16 see that?
17 A. Sure.
18 Q. That's about the dump?
19 A. (Shakes head up and down.) Yes.
20 Q. So the Health Department, they received a notice
21 prior to this
22 A. They received the scoping Notice. this is a comment
23 on the scope.
24 Q. All right. Okay. And they just, in this letter,
25 indicated that the scope should be expanded to the

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1 include dump?
2 MR. THOMAS: Counsel, can we hold on a minute. I
3 don't think I've got a copy of that.
4 MR. WINSLOW: We have the minutes. Then we have the
5 Determination of Significance, and then we have the Health
6 Department.
7 MR. THOMAS: Do you have the minutes?
8 MS. SMITH: We have a minutes that end on page two.
9 We have a map, and then we go into a --
10 THE DEPONENT: No, this is after.
11 MR. SEGUINE: It's in the preliminary. Are you sure
12 you're looking at the right one because they look the
13 same --
14 MS. SMITH: It doesn't matter as long as we're not
15 going --
16 MR. SEGUINE: No. No. No. No.
17 MS. SMITH: -- to tear it apart in excruciating
18 detail.
19 MR. SEGUINE: Any way, I'll just move on.
20 BY MR. SEGUINE:
21 Q. If we could go to Exhibit 17, please, which is not
22 divided but starts with a letter of February 12th,
23 1999?
24 MR. THOMAS: And this is Exhibit 17.
25 MR. SEGUINE: Correct.

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1 Q. Ms. Fleek, can you take a minute just to look at
2 that?
3 A. It's the final EIS
4 Q. And it's for the project, for Tinas Coma, correct?
5 A. For Rezoning and Development of Burlington Hill.
6 Q. Okay. Which included Tinas Coma; is that correct?
7 A. Yes.
8 Q. It looks like this was received by the Department of
9 Ecology February 18 of 1999. So that would have been
10 transmitted by you folks?
11 A. Yep.
12 Q. And this letter on the front indicates that -- well,
13 it's called a distribution list, so this is actually
14 sent to the Department of Ecology and maybe some
15 other folks; is that correct?
16 A. It's sent to everybody who filed a comment letter,
17 all of the agencies on the initial list which you
18 looked at earlier.
19 Q. All right. Does it go to any of the property owners?
20 A. It goes to everybody who commented on the draft EIS.
21 Q. So if somebody didn't comment, they would not receive
22 notice of this?
23 A. I couldn't swear to that one way or the other right.
24 I'd have to go back and look at the Code. We follow
25 the Code and the WAC rules.

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1 Q. I'm just asking you if you remember if it would have
2 been mailed out to anybody besides the folks --
3 because we looked at the distribution list and you
4 talked about the mailing, which are kind of two
5 different things.
6 A. (Shrugs shoulders.) At a minimum it goes to all
7 those that submitted comments and to the agencies.
8 It may also go out to the original list, but I don't
9 know why I would. If they didn't participate, there
10 wouldn't be much point.
11 Q. I've kind of looked through this, and it looks a lot
12 like the other document. I'm not going to try and go
13 through each and every one, but there could be some
14 changes in this based upon some of the comments?
15 MR. THOMAS: Objection; foundation.
16 A. As I indicated earlier, it includes the fact sheet
17 which is the same fact sheet in the draft and the
18 comment letters and response to comments. That's
19 what the final EIS consists of.
20 Q. And there is not attached to this, at least the copy
21 that I have which is stamped by the Department of
22 Ecology, any additional -- well, wait a minute here.
23 Are there any appendices to this?
24 A. You're asking me?
25 Q. Yes.

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1 A. It is what it is. It's the fact sheet, comment
2 letters and responses, the table of contents.
3 Q. So the reports that we talked about earlier are not
4 sent in again, I guess?
5 A. No. You do not republish everything over again.
6 Q. Okay. Okay. And the purpose of filing this document
7 or submitting this document as you've described is to
8 complete the SEPA process, is that what I'm
9 understanding?
10 A. Yep.
11 Q. So purposes of anybody who wants to know, we followed
12 SEPA and we get to the end of this, and what does
13 that mean when this document is filed?
14 A. It means we've prepared the environmental Impact
15 Statement for the project and we've looked at
16 alternatives and mitigation.
17 Q. Can a project proceed before this process is
18 completed?
19 MR. THOMAS: Object to form.
20 A. What do you mean, a project?
21 Q. Could this project proceed before this --
22 A. You mean the subdivision?
23 Q. Yes.
24 A. No.
25 Q. Let's go to Exhibit 18. What is the last photograph

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1 in there?
2 A. The last photograph --
3 MR. THOMAS: This is 18?
4 Q. I'm going to ask you to do something for us,
5 Ms. Fleek. Maybe we can just on the front of these
6 -- do you have a pen there -- in the lower right-
7 hand corner I'm going to have you -- first
8 photograph that I'm looking at is this one.
9 (Indicating.) Can you pull that one out, please.
10 Let's just in the right corner mark that as A.
11 We'll talk about that one first. Did you inspect
12 the site after the approval had occurred?
13 A. No.
14 MR. THOMAS: Object to form.
15 Q. Why not?
16 A. I not a public works person. I'm not a geotech. I'm
17 not an engineer. I do not have any involvement with
18 site inspections.
19 Q. So I'm going to represent to you that this is a
20 photograph of some of the work that was being done on
21 Burlington Hill after the project was approved, okay?
22 A. Whatever.
23 Q. Let's go to the next one. The next one I have is B.
24 I'll call that B. If you can mark that at the bottom
25 as B. What's the next one you have there? This one

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1 which we'll call C. Then that one will be D. The
2 next one will be E. The next one would be F, and the
3 next one would be G. I'm going to represent to you
4 that each of these photographs, A through G, are
5 photographs of actual work that's happening on
6 Burlington Hill shortly after this project was
7 approved?
8 A. You mean the subdivision?
9 Q. Yes. Your testimony is that you didn't have any
10 responsibility for doing inspection --
11 A. No, absolutely not.
12 Q. If you were advised of a -- do you believe that this
13 type of activity was disclosed in -- to you?
14 MR. THOMAS: Objection; foundation.
15 A. Sure. Construction of roads on a hill.
16 Q. Okay. And do you believe that this activity is
17 disclosed in the environmental impact documents that
18 we've just provided?
19 MR. THOMAS: Objection; form.
20 A. Sure. It's construction of roads. Construction of
21 roads is construction of roads.
22 Q. Now, we earlier looked at some threshold requirements
23 for environmental review, correct?
24 A. Yeah.
25 Q. And some of those included the movement of more than

Page 100

1 500 cubic yards of material?
2 A. Yeah.
3 Q. Do you think -- just based on your examination of
4 these photographs, do think that there is more than
5 500 cubic feet of material being moved?
6 A. That's why we did the EIS, because there's a lot of
7 grading involved with road construction. That's one
8 of the reasons.
9 Q. So can you show me where in your environmental
10 documents there is any disclosure of movement of this
11 type of material?
12 A. It says construction of the roads. The initial roads
13 were already constructed by the time we did the EIS.
14 They were constructed when the land was still in the
15 County.
16 Q. So your testimony is that these photographs of the
17 road and that was in existence at the time of the --
18 MR. THOMAS: Objection; foundation.
19 A. No. That's not what I said.
20 MR. THOMAS: Let me state my objection, for the
21 record. There is no indication of the date of those
22 photographs. There is no foundation for them.
23 MR. SEGUINE: That's fine.
24 BY MR. SEGUINE:
25 Q. So your testimony is that someone can just come in

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1 and say that they're going to build a road, and
2 that's all the disclosure that needs to be made, and
3 it would be okay for them to move that type of
4 material.
5 A. I don't believe you have been listening, sir. There
6 have been geotech reports. There is engineers on the
7 job. They're responsible for design and construction
8 of the roads. That's what they do for a living.
9 That's why they have the stamp and seal. All we do
10 is provide public notice and opportunity for comment,
11 laying out alternatives, have public hearings.
12 That's how it works.
13 Q. So you didn't have any responsibility for inspecting
14 this activity?
15 A. Nope. Nope. Nope. That's the responsibility of
16 Public Works and the consultants of which there are
17 usually many.
18 Q. Okay. Let's go to Exhibit 19. Exhibit 19 is a one-
19 page photograph, I believe of the hill.
20 (Conversation had off the record.)
21 Q. This is a photograph of the hill prior -- or I guess
22 after the installation of Hillcrest Drive. Would you
23 agree that this is a fair representation of that?
24 A. I guess. It's photograph.
25 MR. WINSLOW: This is 19. Objection; lack of

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1 foundation.
2 Q. Go to Exhibit 20, please.
3 MR. THOMAS: 20 is what?
4 MR. SEGUINE: 20 is a report of Zipper Zeman.
5 MR. WINSLOW: June 10, 2002; is that right.
6 MR. SEGUINE: Yes. I think are the last page of
7 that is this. (Indicating.)
8 A. I seem to have two of these. Both 20 and 21 appear
9 to be the same.
10 Q. They're similar, but they're not the same. They have
11 different dates on them.
12 MR. SEGUINE: So I'm looking at -- Counsel, there is
13 a Zipper Zeman report dated June 10th, 2002. It
14 concludes -- the first page of the next exhibit is also a
15 Zipper Zeman report dated July 31st.
16 MS. SMITH: We have neither, counsel. Looks like we
17 jump straight to October of 2002. This is probably worth
18 getting us a copy of.
19 MR. THOMAS: 2002?
20 MR. SEGUINE: 2002.
21 MS. SMITH: June 10.
22 MR. THOMAS: I have got an October 2nd.
23 MR. WINSLOW: Okay. June 10, 2002 is the exhibit
24 we're looking at, and then the next one is July 31st, 2002?
25 MR. SEGUINE: That would be the next one, yes.

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1 MR. WINSLOW: All right.
2 MR. SEGUINE: And then I think we go to 22, if you
3 have a copy of it -- is an August 7th, 2002 letter from the
4 City of Burlington.
5 MR. THOMAS: Hold on just a second counsel.
6 (Conversation off the record.)
7 MR. SEGUINE: Tell me when you're ready.
8 MR. THOMAS: We're set.
9 BY MR. SEGUINE:
10 Q. Ms. Fleek, did you have a chance to look through --
11 at is this document?
12 A. What, the Zipper Zeman report?
13 Q. Yes.
14 A. Request for qualifications?
15 Q. Yes.
16 A. It's a request for qualifications they are asking to
17 be employed.
18 Q. Right. I know the letter is not addressed to you.
19 Do you know what this letter is about? Have you ever
20 seen it before? Do you have a recollection of seeing
21 it?
22 A. Not really. I might probably did. I don't know.
23 Q. Do you know what was going on at this point --
24 MR. THOMAS: Objection.
25 Q. -- why the City would need to be in touch with this

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1 firm?
2 A. Landslide mitigation, it says right at the end of
3 Paragraph 1.
4 Q. Is that how you know it or were you working in the
5 City and did you become aware of any issues with
6 respect to Burlington Hill?
7 A. Yes.
8 Q. What happened on or around June 10, 2002, if you
9 remember.
10 A. I don't have anything about June 10th of 2002.
11 Q. Okay. I'm just trying to trigger your memory here.
12 A. There were two years performance standards for the
13 roads before they were turned over to the City, very
14 dry years, no problems. Right after the roads were
15 turned over to the City, we had really bad rainy
16 weather, and the problems with the roads became
17 apparent. So this was an attempt to move forward
18 with fixing the loads.
19 Q. It looks like the City had contacted this firm and
20 wanted them to help them with that, those things?
21 A. Um-hum.
22 MR. THOMAS: Objection; foundation.
23 A. I would not have been involved in that. I'm not Rod
24 Garrett.
25 Q. So let's go to the next exhibit, which should be 21.

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1 Am I counting right? This is another letter that
2 went off to Mr. Garrett. By the way, who is
3 Mr. Garrett? Did you know him at that time?
4 A. He was a city engineer.
5 Q. Had you ever seen this document at that time?
6 A. I have no idea.
7 Q. Were you aware that Mr. Garrett was contacting these
8 folks to try to look at some of these issues?
9 A. Right. There was an issue -- as I stated earlier,
10 there were landslide issues with the hill after the
11 roads had be returned to the CITY.
12 Q. Did any of those issues involve you as the planning
13 director, excuse me?
14 A. Just to make sure that they had adequate coverage
15 under the Land Use Codes to move forward with the
16 work.
17 Q. What do you mean by that?
18 A. See if they needed to do more environmental review or
19 whether it was needed, any kind of land use
20 permitting issues.
21 Q. Additional environmental review. What do you mean
22 additional environmental review?
23 A. So that it would be procedurally acceptable to move
24 forward with the work. Just procedural compliance,
25 that's all I'm involved with.

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1 Q. So I guess I'm not completely understanding here.
2 How would that come about, the procedural part of it?
3 MR. THOMAS: Object to the form.
4 A. Well, typically we'd adopt the environmental impact
5 statement that had already been done as adoption of
6 existing environmental document. There's a form for
7 that.
8 Q. This is in 2002/2003?
9 A. Whatever. It could be today. We would not do -- if
10 there was a new project that came up, we'd take a
11 look at the EIS and see if it was good enough. If it
12 was, we'd adopt it using the WAC form.
13 Q. And with respect to the issues that you've talked
14 about with the road, you think that that might have
15 involved some sort of environmental impact type of
16 analysis?
17 A. We would probably have adopted the existing document,
18 under the WAC rules.
19 Q. Okay. If you would please look at the next exhibit
20 which I believe is Exhibit No. 22. Tell me if you
21 recognize that document.
22 A. I don't actually recognize it, but I'm sure it
23 happened.
24 MS. SMITH: Hang on just a minute. We've got an old
25 document next in line.

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1 MR. SEGUINE: Fire the copy service.
2 MR. THOMAS: What was the on date? Are these
3 roughly chronological?
4 MR. SEGUINE: That's what I was trying to do, yeah.
5 August 7th, 2002.
6 (Conversation had off the record.)
7 Q. Do you recognize this document?
8 A. It's a letter from the Mayor.
9 Q. This was Mayor Tjeerdsma?
10 A. Tjeerdsma.
11 Q. Excuse me. I noticed that it's on the letterhead
12 from the Planning and Permit Center.
13 A. I probably drafted it.
14 Q. That was one of my questions. Do you think you would
15 have drafted this for Mayor Tjeerdsma?
16 A. I would have probably coordinated it with the other
17 departments.
18 Q. Okay. What was the purpose of this letter?
19 A. "There are several issues that need to be resolved
20 prior to continued issuance of permits for
21 development in the Tinas Coma Plat. The first is a
22 final closeout of the dump... Second... with the
23 continued development is apparent slide activity on
24 the two primary access roads... not in the City's
25 budget or CIP." I'm just reading the beginning

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1 paragraphs. There is a list of five problems.
2 Q. Okay. And I guess, just focusing on the second
3 paragraph -- well, I guess I need to -- are you sure
4 you drafted this letter for the mayor?
5 MR. THOMAS: Objection; asked and answered.
6 A. I did answer that. I said probably in coordination
7 with the other departments.
8 Q. But in terms of typing it -- I have some questions
9 about typing it -- do you think you would have typed
10 this letter?
11 A. Probably a draft.
12 Q. Now, I don't know this for a fact, but I have been
13 made to understand that Mayor Tjeerdsma did not read
14 or write that well. Do you know whether that is true
15 or not?
16 A. That has nothing to do with it. Mayors don't write
17 letters, none of them.
18 Q. Thank you. So do you know whether that's true or
19 not?
20 A. He read slowly, but he was careful. He would read
21 something, and he would pick out an error, whether
22 you saw it or not.
23 Q. So you helped him draft this letter, is my
24 understanding.
25 A. Quite likely.

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1 Q. And probably you're the one who typed it?
2 A. Quite lightly.
3 Q. So in the second paragraph you start to talk about
4 the slide activity in the two primary access roads:
5 "This is not in the City's budget or the capital
6 improvement plan." Were you, on behalf of Mayor
7 Tjeerdsma taking out a position that property
8 investors or what you call here Burlington Hill
9 property investors was going to pay for whatever
10 needed to happen here to fix the roads?
11 MR. THOMAS: Objection. It mischaracterizes the
12 prior testimony.
13 A. I think it speaks for itself.
14 Q. Well, I want to make sure I don't misinterpret it?
15 A. So what is it that you wanted to ask me?
16 Q. Who was going to pay to fix the road, if there were
17 expenses involved with the road?
18 A. At the end of this second paragraph it says, "The
19 City of Burlington is not purposing to pay for your
20 design and construction errors and deficiencies."
21 Q. And then earlier in that paragraph there is a
22 suggestion that the City relied upon the
23 geotechnical --
24 A. It says, "The Burlington Hill Property Investors was
25 responsible for the employment of geotechnical

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1 consultants and licensed engineers who prepared the
2 design and inspected the work in the field."
3 Q. Okay. And the City never did that? The City didn't
4 employ any geotechnical experts?
5 A. When property is developed, it's their
6 responsibility. They provide reports to the City.
7 Q. I understand. Did you require them to provide any
8 geotechnical reports to you --
9 A. That's not my job. If it's road construction, it's
10 Public Works' responsibility. If it's work on a
11 construction site, it's the responsibility of the
12 building officials.
13 Q. So when this proposal would have come through to you
14 for the original subdivision, that aspect of it would
15 have been routed to the Engineering Department or the
16 Public Works Department?
17 A. Um-hum.
18 Q. And are you aware that there was ever any
19 geotechnical report required?
20 A. For what.
21 Q. The road?
22 A. I think this goes into it. It says right here,
23 "Burlington Hill Property Investors was responsible
24 for the employment of geotechnical consultants and
25 licensed engineers who prepared the design and

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1 inspected the work in the field."
2 Q. So to the best of your knowledge, there was nothing
3 submitted to you?
4 A. You provided a copy of a report at the very beginning
5 here which is the report that was done in 1996 for
6 those roads.
7 Q. Correct.
8 A. So it was undoubtedly provided to somebody.
9 Q. Well, I'm asking if it was provided to you?
10 A. I do not recall.
11 MR. WINSLOW: She's already testified that it's not
12 her job to even look at it.
13 MR. SEGUINE: Thank you.
14 Q. You also state in this, "It is likely that the
15 roadway problems stem from the original design and
16 construction of the logging roads while the property
17 was still in Skagit County." What did you mean by
18 that?
19 MR. THOMAS: Objection; mischaracterizes the prior
20 testimony. Counsel, she testified that she coordinated
21 documents. She didn't say that she wrote it.
22 Q. Well, did you write that sentence?
23 A. I doubt it. The bottom line is we undoubtedly had
24 discussions about the problems. We laid it out. I
25 probably took a shot at it and sent to other people

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1 to add their stuff. That's typically the way it
2 works.
3 Q. The third photograph talks about some action that the
4 City is going to take with respect to the problems on
5 the road. Did you type that section of the letter?
6 A. We don't type here. We use computers, so I
7 undoubtedly drafted it, took comments, edited it. I
8 don't know what else to tell you.
9 Q. Did you keyboard it?
10 A. I don't know. If you would like me to look at the
11 archives in my computer, I could probably find it, if
12 it's in there.
13 Q. In any event, there is a suggestion here that --
14 there's an awareness that the geotechnical firm that
15 we've already seen some records for is going to be
16 retained by the City, and that the City is going to
17 charge what is called here the Burlington Hill
18 Property Investors for that work?
19 MR. THOMAS: Counsel, is that a speech or a
20 question?
21 MR. SEGUINE: I'm asking her.
22 Q. You see that line in there?
23 A. Yeah.
24 Q. Is that the position that the City was taking at that
25 point in time with respect to the defects on the

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1 road?
2 A. This letter is the letter was signed by the Mayor.
3 It reflects the City's position.
4 Q. Okay. On the last page of the letter there is a
5 paragraph that says, "The City is seriously concerned
6 about your liability as well as the City's and the
7 future safety of the property owners, residents, and
8 the general public with respect to the use of the
9 public streets located in Tinas Coma Plate." Do you
10 remember whether you would have prepared either by
11 typing or keyboarding that sentence in this document?
12 A. I'd be willing to bet you money that the City
13 Attorney at the time was involved in this letter, but
14 I have no idea.
15 Q. All right. Thank you. Can we go to Exhibit No. 23,
16 please. It should be a one-page document, August
17 13th, 2002. Can you take a minute and look at this,
18 Ms. Fleek. Are you ready? This is a letter which
19 appears to be signed by you. Do you recall this
20 letter?
21 A. No, but it's definitely signed by me.
22 Q. And for the record, this is a letter to Burlington
23 Hill Property Investors and specifically to
24 Mr. Madlung who, I think you've testified has been
25 the primary contact for you with respect to the

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1 subdivision, correct?
2 A. Yep.
3 Q. And it reflects there was a meeting that morning of
4 some type with Mr. Madlung. Do you recall
5 participating in that meeting?
6 A. No. But I believe it was the meeting that was called
7 for in the letter from the mayor, wouldn't you guess.
8 Q. And I'm assuming, because of the way the letter is
9 written, that you met with Mr. Madlung?
10 A. Would not have been me by myself. It would have been
11 other people at the meeting, at least the Public
12 Works Department, whoever else.
13 Q. Do you remember anything about the meeting?
14 A. No.
15 Q. So this document is the best record we have of that,
16 as far you know?
17 A. Yeah.
18 Q. The letter recites that the investigation of the
19 landslide activity on the two primary access roads is
20 continuing, and that Mr. Madlung billed or Burlington
21 Hill Property Investors for the consultant studies.
22 As far as you recall, is that an accurate description
23 of what happened during that meeting between you and
24 Mr. Madlung --
25 A. As a stated earlier, I do not remember the meeting at

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1 all. This letter is what it is.
2 Q. So what is recited in here is accurate and true?
3 A. Undoubtedly.
4 MR. THOMAS: Objection; mischaracterizes testimony.
5 MR. SEGUINE: That's what she said, counsel.
6 A. It's the record.
7 Q. And the City at that point in time was trying to
8 reach some agreement with Mr. Madlung about how to
9 handle this situation?
10 A. That's what it looks like.
11 Q. The situation being the fact that the roads were
12 creeping on the hill; is that correct?
13 A. Well, there were five issues raised. This kind of
14 goes through those; the dump, the landslides, the
15 drainage, the permit process, pump station. This
16 basically is discussion of the five issues that were
17 raised. I'm just reading this like you are.
18 Q. And landslide according to your recollection meant
19 what?
20 A. It's not my recollection. It says right here:
21 "Public Works Department is coordinating the
22 investigation of the landslide activity on the two
23 primary access roads."
24 Q. So was there a discussion during that meeting --
25 A. As a stated earlier, I do not remember the meeting at

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1 all.
2 Q. I guess you don't remember. That's fine.
3 A. It was ten years ago.
4 Q. Can you go to Exhibit 24, please.
5 MR. WINSLOW: Zipper Zeman, October 2.
6 MR. SEGUINE: Correct. The next exhibit is the
7 November 22nd, 2002 letter.
8 MR. WINSLOW: You said November 22?
9 MR. SEGUINE: The next exhibit after this one.
10 MR. WINSLOW: November 21 of 2002.
11 MR. SEGUINE: Yeah. The last page of this document
12 is that map.
13 BY MR. SEGUINE:
14 Q. Ms. Fleek, this is another letter from Zipper Zeman
15 to the City of Burlington Engineering Department.
16 This appears as though it's not addressed to you in
17 any way. Do you have any recollection of seeing this
18 document at any point in time?
19 A. Nope.
20 Q. Okay. Let's go to Exhibit No. 25. Can you take a
21 minute and look at Exhibit No. 25 and tell me if you
22 have any recollection of ever seeing that document.
23 MR. WINSLOW: 25 is the City of Burlington letter of
24 Bob Boudinot from Rod Garrett, November 21, 2002?
25 MR. SEGUINE: Yes.

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1 A. Nope. I obviously heard about it. I didn't hear
2 about the letter, but I heard about the problem.
3 Q. The problem being what we've been calling the
4 landslide in the other letter, that kind of thing?
5 A. Yes.
6 Q. 26, please.
7 MS. SMITH: Which is?
8 MR. SEGUINE: LBS letter.
9 MR. THOMAS: June 1, 2004?
10 MR. SEGUINE: Yes.
11 Q. Do you have my recollection of ever seeing this
12 document?
13 A. Nope, but I heard about it.
14 Q. How did you hear about it?
15 A. I heard that the hillside was continuing to creep at
16 a fairly constant rate.
17 Q. You heard that from Mr. Garrett or other folks?
18 A. From Mr. Garrett.
19 Q. Okay. Now, we're two years past the time period of
20 the those other earlier letters. Were you aware of
21 the fact that this problem was continuing over the
22 course of two years?
23 A. Yeah.
24 Q. Next one, 27, which is a Shannon & Wilson report, for
25 the record.

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1 MR. THOMAS: Mine is dated December 22nd, 2004.
2 MR. SEGUINE: Correct.
3 Q. Ms. Fleek, have you any recollection of ever seeing
4 this document?
5 A. Nope.
6 Q. No?
7 A. Nope.
8 Q. Okay. Why don't we -- do you want to take a lunch
9 break?
10 A. No. I just want to get finished.
11 Q. The court reporter might need one.
12 MR. THOMAS: Yeah. Let's take a lunch break.
13 (Lunch recess was taken.)
14
15
16
17 AFTERNOON SESSION
18
19
20 CONTINUED DIRECT EXAMINATION
21 BY MR. SEGUINE:
22 Q. We're back on the record. Ms. Fleek, I'm going to
23 keep Marching through these exhibits, I'm afraid.
24 Will you look at Exhibit 28th, please.
25 A. Are we skipping 27?

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1 Q. No. I think we went through 27.
2 MR. WINSLOW: All that you established on 27 is that
3 she'd never seen it.
4 MR. SEGUINE: Right, and that's all I wanted.
5 Q. Exhibit 28 is a letter January 2005 from Mr. Madlung
6 to Mr. Thomas, I guess, which references the Shannon
7 and Wilson report. I'm assuming that you've never
8 seen this letter before?
9 A. It's not to me.
10 Q. Right. Right. But it seems to suggested that the
11 Shannon and Wilson report was sent to the City at
12 some point. Anyway, let's go to Exhibit No. 29,
13 please. For the record, Exhibit 29 appears to be
14 some minutes from a council meeting on May 12th of
15 2005. The exhibit should be just the council minutes
16 and the -- there is an ordinance, ordinance 1570,
17 it's a two-page document at the end of that. Did I
18 get that right, what you're looking at there?
19 A. Um-hum.
20 Q. Have you ever seen that document before?
21 A. Sure.
22 Q. Do you have any recollection of that meeting because
23 it looks like you were there?
24 A. Well, the minutes are clear.
25 Q. Okay. I'm asking you tell me if you remember

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1 anything about the meeting.
2 A. What? I mean...
3 Q. Do you remember going to the meeting?
4 A. Of course. It was a contract rezone. It expired
5 before anything was done, so they came back to move
6 it forward again. I think they might have made a
7 minor change or two.
8 Q. And that was for the condominium which was to be in
9 the old quarry site, I believe?
10 A. Yep.
11 Q. Did you at that point in time participate in any
12 discussion on behalf of the City about how you or the
13 City were going to respond to this request?
14 A. Do you mean?
15 Q. With any other people within the City, the planning
16 department, the mayor prior to this meeting?
17 A. I'm sure we did. Because it was a contract rezone
18 amendment. The procedure is a 600 foot mailed notice
19 to all the property owners adjacent to the site,
20 public hearing at the Planning Commission, and then
21 action by the council. So this would be following up
22 on that. This would be the last step.
23 Q. So all of that stuff would have happened?
24 A. Yes.
25 Q. Just because the permit had expired for the

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1 condominium, am I understanding that correct?
2 A. Or if they were changing the conditions. Anything
3 like that would go back through the process.
4 Q. Why you would go back through the process if there
5 were changing the conditions?
6 A. Because it's a contract rezone.
7 Q. I'm not trying to trick you. I just don't know those
8 terms that well.
9 A. See this? These are the conditions. So if you
10 change the conditions, you go back through the
11 process. You get three years to get started. If you
12 don't get started, then you gotta go back.
13 Q. And the process in this case consisted of what --
14 A. 600 foot mailed notice, public hearing at the
15 Planning Commission, action by the Council.
16 Q. And so this pertains only to the condominium, as I
17 understand it, correct?
18 A. Yes.
19 Q. And you're pointing to the ordinance. Did you
20 participate at all in the drafting of this ordinance?
21 A. We always draft our own ordinances, and then they are
22 reviewed by the City Attorney. Then they make
23 whatever changes they feel are appropriate.
24 Q. So those seven items that you talked there, those
25 would --

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1 A. Those are the conditions that came out of the
2 Planning Commission recommendation.
3 Q. That process that you described earlier?
4 A. Yes.
5 Q. So there was a public meeting?
6 A. Public hearing at the Planning Commission, public
7 meeting at the Council. It's usually closed record,
8 unless there is a request for further consideration,
9 which there was not.
10 Q. And again, the notice here is to mail to the people
11 who are around there?
12 A. Um-hum.
13 Q. So those seven items, are those -- is your testimony
14 that those are modifications or alterations of the
15 original plan?
16 A. Let's take a look at the minutes here. Don't know
17 if there was any changes in this or not. The change
18 here is adding Condition No. 7, no building permits
19 will be issued until the streets serving the site are
20 repaired to City standards.
21 Q. And that goes back to this issue we were talking
22 about earlier?
23 A. Yep.
24 Q. But numbers one through six are --
25 A. Just a quick perusal of the minutes, I do not see a

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1 change.
2 Q. No. 3, it says -- I'm not sure if I understand the
3 sentence. I don't know if you do either. It says a
4 tot lot --
5 A. It's a children's play area.
6 Q. oh, a tot lot shall be constructed on the site, okay.
7 You note at the top there on Page 2 -- not you, but
8 there is a report that you said you noted that each
9 building project must have geo-tech studies prior to
10 construction.
11 MR. THOMAS: Object to form.
12 Q. On Page 2 of the minutes here. Do you see that
13 sentence right at the very top?
14 A. Yeah.
15 Q. Do you recall making that statement?
16 A. It's a requirement on a hill. It's in a critical
17 area. We do require a geo-tech study on all houses
18 up there.
19 Q. And what is a geo-tech study?
20 A. You hire a geotechnical engineer or a soils engineer,
21 whatever you want to call it, and they'll do soil
22 samples, test pits or whatever, and then they'll make
23 recommendations on soil conditions. Then that goes
24 to the structural engineer who designs the building.
25 Q. And that's for the structure itself?

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1 A. Sure.
2 Q. Just to see what the composition of the soil and the
3 earth is in terms of putting a structure up there?
4 A. Right.
5 Q. Okay. There's also a paragraph in there that talks
6 about Mr. Brown speaking to the group. Do you
7 remember Mr. Brown speaking at all?
8 A. I can only read what's in the minutes. I really
9 don't have seven-year-old, total recall.
10 Q. Okay. And at Page 3 of the document there is a
11 reference to a street closure under knew business; do
12 you see that?
13 A. Berry Dairy Days Parade.
14 Q. Yeah. Do you or your department participate in
15 issues concerning street closures?
16 A. We put them on the council agenda. Street closures
17 require approval by the City Council, so we put it on
18 the agenda.
19 Q. So if someone -- when you're talking about we, you're
20 talking about your department?
21 A. Yeah.
22 Q. So how would that work? Someone would come in and
23 say they want to close down all or part of the
24 street?
25 A. We handle temporary use permits. That's events,

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1 activities, car sales at the mall, stuff like that.
2 Q. Can you explain to me if someone has to come in and
3 file an application?
4 A. Just put it on the Council agenda. Basically the
5 issue is about -- like Burlington Boulevard or
6 Fairhaven Avenue, it's about having an event and
7 closing the street, so it's a big problem for the
8 police and traffic.
9 Q. Do you have an application form that folks are
10 supposed to fill out when they do that?
11 A. Not really.
12 Q. So how do they apply?
13 A. Fill out the Council agenda form and put it on the
14 agenda.
15 Q. So if I wanted to do that, for example, I would call
16 you up on the phone and say on such and such a date
17 --
18 A. You'd bring in a map showing what you wanted to do
19 and the description of the hours it was to be closed.
20 Q. And talk to you or one of the people on your staff?
21 A. Just come to the permit center, um-hum.
22 Q. Okay. And if I were to do that, then you would take
23 that item and you would place it on the agenda for
24 the City Council?
25 A. Yeah. Berry Dairy Days, the Farm Worker's Solidarity

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1 March. That's about it.
2 Q. Those are the only ones you're familiar with?
3 A. That's pretty much -- it's really related to special
4 events. It has nothing to do with anything else.
5 Q. Okay. That's what your experience has been?
6 A. Special events.
7 Q. Okay. All right. I think we go now to the next
8 exhibit, which I don't have a divider for, which
9 would be 31.
10 A. What about 30?
11 Q. Did I skip 30? I might be re-numbering.
12 (Conversation had off the record.)
13 Q. Exhibit 30, this is again a letter from ZZA to the
14 City of Burlington Engineering Department. Do you
15 have any recollection -- take a minute to look at
16 this -- whether you have ever seen it before.
17 A. I have no idea. I doubt it. I mean I've heard about
18 the project. But as far as specific reports, go...
19 Q. This is addressed to the Engineering Department which
20 you are not part of?
21 A. If Mr. Garrett chose to share it with us, we would
22 have seen it. Otherwise, not.
23 Q. This is dated April of 2006. Would you have up to
24 this point in time been communicating at all, if you
25 remember, with the folks at Zipper Zeman?

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1 A. Not me personally, no. It all has to go through
2 Public Works. They are responsible for the right of
3 way, the roads.
4 Q. Okay. The next one, 31, I believe is dated June 2nd
5 of 2006, For the record. This is a document which
6 has draft stamped on it. In the subject line it
7 says, "Summary of Planning of Level Opinion of
8 Cost -- Draft." Did you -- have you ever seen this
9 document before?
10 A. I doubt it.
11 Q. Okay. You're looking through the whole thing? How
12 many pages do you have there? There are quite a few,
13 aren't there?
14 A. Planning Level Opinion of Cost Summary. Spread sheet
15 deals.
16 Q. Um-hum.
17 A. (Shrugs shoulders.)
18 Q. You don't recall seeing ever?
19 A. No.
20 Q. Very good. 32, please. Can you look at Exhibit No.
21 32. This is an October 6, 2006 letter from Zipper
22 Zeman Associates to Mr. Mike Harmon, P.E., which I
23 think --
24 A. Principal Engineer.
25 Q. Okay. I knew it was engineer.

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1 MR. THOMAS: So this is the June 2nd.
2 MR. SEGUINE: October 6.
3 MR. WINSLOW: The June 2nd is 31.
4 Q. Have you ever seen this document before, if you
5 remember?
6 A. I doubt it. I mean I heard about what they were
7 doing, but pretty much...
8 Q. You said there is you and another person in your
9 department?
10 A. Yes.
11 Q. Has it been that way since you started?
12 A. Yeah.
13 Q. How many people are in the Engineering Department or
14 Public Works, I guess?
15 A. They're responsible for a lot of different
16 departments, including the Sewer Department. They
17 are also in charge of buildings and grounds and city
18 maintenance, so they have a lot of different
19 functions under them. I don't know how many people
20 are in their department. When they're fully staffed,
21 they had two principal engineers and an engineering
22 technician.
23 Q. Um-hum.
24 A. Now they have one engineer and a technician.
25 Q. It looks like these letters -- when you talk about

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1 Public Works, you're talking about the Engineering
2 Department?
3 A. Um-hum.
4 Q. Over this time period, they were staffed with two
5 people?
6 A. When Rod Garrett was here, it was just him and the
7 technician. This letter to Mark Harmon, that's when
8 Chal Martin took over, and he hired a second
9 engineer.
10 Q. So there were three people total?
11 A. Yes.
12 Q. So let's go to 33, please. Can you me tell whether
13 you recognize Exhibit No. 33.
14 A. I didn't get the total recall thing, but I may have
15 seen it, quite likely, since there is a long-term
16 summary here.
17 Q. And for the record, it's a document with the title of
18 Tinas Coma road problem. It's on City of Burlington
19 letterhead, and it says Engineering and Public Works.
20 A. Did you have a question?
21 Q. I wanted to make sure you were done looking at it?
22 A. Okay. So this is a summary of the whole problem with
23 the road.
24 Q. And is it your recollection that you might have seen
25 it before?

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1 A. Oh, I'm sure I probably did.
2 Q. I'm assuming because it's on the Engineering, Public
3 Works letterhead that you did not prepare it?
4 A. No. Especially the handwritten in part at the end.
5 We're not big on that.
6 Q. Do you have any knowledge about whose handwriting
7 that would be?
8 A. I'm assuming that it was -- I don't know. It says
9 Rod's at the top.
10 Q. Rod in this case would be Mr. Garrett?
11 A. Yes.
12 Q. Do you know why this document would have been
13 prepared or shared with you?
14 A. I had a role in this to some degree. I see it
15 referenced in here. I'm sure everybody involved
16 would have looked at it.
17 Q. Okay, thank you. We can go to 34. I just need you
18 to look at 34 and tell me whether you recognize that.
19 I know this is looking like the other documents, but
20 I just want to ask you whether you have seen this
21 before or recognize it.
22 A. I doubt it. You know I'm familiar with what they
23 were doing.
24 Q. Okay. "They" being the Engineering Department?
25 A. And the contractor.

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1 Q. And the --
2 A. Geotech, all of those people.
3 Q. You were aware of that just because you work in a
4 small -- you kind of know.
5 A. It's hard not to be aware of it. There is not that
6 many people that work here.
7 Q. Exhibit 35, please. For the record, these are
8 minutes of the City Council, dated October 26, 2006,
9 and I think there is some suggestion in hear that
10 maybe you were present for this. Maybe I'm wrong.
11 Actually, on Page 1 it says, Planning Director Fleek
12 announced that the new FEMA elevation maps would be
13 presented. It looks like you were present. And at
14 the top, called to order, your name is listed, last
15 name. Do you have any recollection of this meeting?
16 A. I was on the agenda under "UNFINISHED BUSINESS
17 Continued Public Hearing on Proposed North Skagit
18 Street Annexation."
19 Q. Indeed you were. Do you have any independent
20 recollection of this meeting?
21 A. I go to a lot of meetings.
22 Q. I know you do. So the answer to that is you don't?
23 A. No.
24 Q. At the end of that document on Page 4, there is a
25 heading which says, AGREEMENT WITH PROPERTY

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1 INVESTORS, LLC REGARDING REPAIRS to HILLCREST DRIVE.
2 Do you see that?
3 A. Um-hum.
4 Q. Were you present when that occurred?
5 A. Clearly I was at the meeting.
6 Q. Do you recall having information about that proposed
7 agreement prior to the meeting?
8 A. Quite likely. I do not remember all those things
9 that happened, exactly what date what happened.
10 Generally, sure. We all communicated about stuff.
11 Q. And there was a conflict that had developed between
12 the City and the developers on the hill?
13 MR. THOMAS: Objection. There is no question.
14 A. A? Conflict. I'm not aware of that
15 Q. There was a disagreement between them about who
16 should pay for all of the things that need to be done
17 with the road --
18 MR. WINSLOW: Objection; assumes facts not in
19 evidence.
20 MR. THOMAS: Objection.
21 MR. SEGUINE: I don't think it does. I believe
22 she's testified --
23 A. You're reading the minutes. These are the minutes.
24 It says here, An agreement with Property owners --
25 Investors, LLC. It's in the minutes.

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1 Q. And I asked you about prior to this time whether
2 there was a disagreement?
3 A. Yeah. I wasn't involved in those negotiations about
4 who paid for what. That was Public Works, and it's
5 not a planning thing.
6 Q. Okay. Did you witness the vote on this particular
7 part of the --
8 A. I assume I was at the meeting. It's in the minutes.
9 I don't remember.
10 Q. Go to the next exhibit, which is 36, and tell me if
11 you recognize this document.
12 MS. SMITH: Is that the one that starts, THIS
13 AGREEMENT?
14 MR. SEGUINE: Yes. It should be -- there is 13
15 pages of the agreement. Then I believe there is -- the
16 last page is a map that looks like that. (Indicating.)
17 Q. Are you familiar with this document?
18 A. I knew they had one, that's about it.
19 Q. When you say, "they," who are you talking about?
20 A. City of Burlington and Property Investors.
21 Q. And how, if at all, did you participate in the
22 production of this document?
23 A. I didn't participate in the production of this
24 document.
25 Q. How, if at all, did you first become aware of this

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1 document?
2 MR. THOMAS: Objection. I'm going to object on the
3 ground of privilege.
4 You can answer to the extent it doesn't reveal any
5 communications myself and you.
6 A. It was on the Council agenda. This is the one that's
7 referred to in the minutes. That's how I know about
8 it.
9 Q. Was that the first time that you saw this document?
10 A. I don't actually know if I read the darn thing. It's
11 not really our thing. This is the City working it
12 out with the developer to fix the roads. It's not
13 really a Planning Department thing.
14 Q. So do you think the first time you would have seen
15 this document in this form would have been on or
16 around that time?
17 A. I received copies of the Council packet, so I'm sure
18 that if it was in there, I would have received it.
19 Q. And did you review it at that time?
20 A. Other than a quick review as part of just reading
21 through the packet, that's probably all that would
22 have happened.
23 Q. You're talking about the Council meeting at that
24 point?
25 A. Um-hum.

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1 Q. Did you after the Council meeting receive a copy of
2 the document in the form that it appears here today?
3 A. I doubt it. If it's in our files, it's in our files.
4 I didn't see it in our files when I looked through
5 them in preparation for this meeting today.
6 Q. Incidentally, did you do any preparation for today's
7 deposition?
8 A. I looked through the file.
9 Q. What file would that be?
10 A. The file of the EIS. That's about it.
11 Q. At the Planning Department?
12 A. Yes.
13 Q. So the Planning Department has a file?
14 A. We'd have to have files.
15 Q. The Planning Department maintains a so-called
16 planning file?
17 A. Sure.
18 Q. And you looked at that file prior to today's
19 deposition?
20 A. I looked at some of it.
21 Q. Was this document in this file?
22 A. Nope. It doesn't mean it didn't exist. I only
23 looked through the EIS stuff and procedural stuff.
24 Q. This particular document has signatures on it from,
25 looks like four people. If you can look at that on

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1 Page 11. Was Mr. Loving the Mayor at that point in
2 time?
3 A. Mayor have been out of town, so he was pro tem.
4 Q. So he was one of the Council people that served as
5 pro tem mayor
6 A. Yes.
7 Q. And then the finance director, is that Richard
8 Patrick?
9 A. Yep.
10 Q. And then Mr. Thomas who is the attorney who is
11 sitting next to you and then Mr. Madlung?
12 A. Yeah.
13 Q. Do you recall ever receiving a signed copy of this
14 document in this form?
15 A. No.
16 Q. After the meeting did you ever review the document?
17 A. There would be no reason to do that.
18 Q. So the answer to my question is no?
19 A. Right.
20 Q. Do you know that the document talked about a variety
21 of issues related to the work that was to be done on
22 the road going up -- on Burlington Hill?
23 A. I'm reading it now. It looks like it.
24 Q. Okay. I'm going to ask you to turn to Page 2 under
25 Project Permit. The first sentence there says, "The

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1 DEVELOPER shall submit an application for
2 improvements described in the attached Exhibit "A,"
3 obtain any required approvals for those improvements,
4 and construct the improvement upon receiving such
5 approvals in accordance with the approved design of
6 those same improvements." Do you see that sentence?
7 A. Yeah.
8 Q. If you could turn with me to Exhibit A, please.
9 A. Wow.
10 Q. Exhibit A, for the record, is a document which is
11 entitled Legal description for failing portion of
12 roadways. Without going into the detail, it says
13 North side And South Side; do you see that?
14 A. Yep.
15 Q. Okay. Is it your testimony that you were not aware
16 that the developer was to submit applications for
17 those improvements?
18 MR. THOMAS: Objection as to form.
19 A. The procedure is very simple. It's not a permit
20 thing. For road repairs, at that time they would get
21 civil engineering drawings, signed civil engineering
22 drawings approved by the Public Works Department.
23 That's all they got. That's all they needed.
24 Q. So it's your testimony that the developer never
25 submitted an application for improvements to your

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1 office?
2 A. It would not have been required.
3 Q. Can you turn to page 3, please. Second paragraph
4 from the top, I'm going to read it into the record:
5 The DEVELOPER shall obtain written approval of the
6 final Project design by the City Engineer and through
7 the City's usual processes, which approval shall not
8 unreasonably be withheld.
9 MR. WINSLOW: Excuse me. You misquoted sentence.
10 You add the word "and" between the word Engineer and
11 through.
12 MR. SEGUINE: I did? I didn't mean to. I'm sorry,
13 Counsel. I did realize I did that. I'll read it again.
14 Q. "The DEVELOPER shall obtain written approval of the
15 final project design by the City engineer through the
16 City's usual processes, which approval shall not
17 unreasonably be withheld." So, again, is it your
18 testimony, I guess, that the usual processes in this
19 particular circumstance did not include your
20 department?
21 A. That's correct. This is repair of a public street.
22 It's not a private project. It's a partnership to
23 fix the public street. Signed civil engineering
24 drawings was the requirement approved by the City
25 Engineer.

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1 Q. Can you look at page 5, please, under Paragraph D.
2 I'm going to read it into the record: The DEVELOPER
3 shall comply with all applicable federal, state, and
4 local laws, ordinances, rules, and regulations. Do
5 you see that phrase?
6 A. Yeah.
7 Q. Is it your testimony that you were not responsible in
8 any manner for regulating or overseeing any of the
9 activity which was occurring with respect to the road
10 work which was being done Hillcrest Drive under this
11 agreement?
12 A. My responsibility was stated much long time ago here.
13 I reviewed the purposed action and adopted the
14 existing environmental documents on behalf of the
15 City, using the form provided in the WAC Rules.
16 That's the extent of my role.
17 Q. All right. We'll get to that. I'm going to ask you
18 to look at Page 6 of the agreement under Roman
19 Numeral IV. There is a reference to the issuance of
20 a building permit in here. And that building permit
21 pertained to the condominium site; is that correct?
22 A. It says, The CITY shall issue a building permit to
23 Developer for the condominium Project.
24 Q. Correct. So the building permit aspect of the
25 condominium project was your responsibility, was it

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1 not?
2 A. No. The building permit is the responsibility of the
3 Building Department. We do the zoning plan check on
4 building permits.
5 Q. Okay. There is also language in here that says,
6 PROVIDED that the DEVELOPER has complied with all
7 other land use and building permits of the CITY
8 applicable to the condominium project. Do you see
9 that there?
10 A. Yep.
11 Q. Did that portion of this agreement, would you read
12 that as implicating or involving, I guess is a better
13 word, your department in this process?
14 MR. THOMAS: Objection as to form.
15 Q. If you can answer --
16 A. Contract rezone, we through that earlier, our job.
17 Zoning plan review, our job. That's it.
18 Q. Paragraph B here talks about a certificate of
19 occupancy for the condominium project. Who would be
20 responsible for issuing, from the City, a certificate
21 of occupancy, if it's the City?
22 A. Building department issues the certificate of
23 occupancy. If it's new construction, it's typically
24 signed by Fire, Public Works, Planning for their
25 pieces on the project.

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1 Q. So the Permit Department is not part of the Planning
2 department?
3 A. That's not correct. The Planning Department runs the
4 consolidated permit center. We issue sewer permits,
5 street cut permits, building permits, Zoning stuff.
6 The Building Department is responsible for the
7 building permit, but they do the inspections and
8 review the plans. They get everything organized.
9 What is that you're not getting here?
10 Q. Well, I just asked you whether the permit center is
11 part of the Planning Department.
12 A. The permit center is part of the Planning Department.
13 The Building Department is separate, but we issue
14 their permits for them. We take the money, do the
15 receipts, keep the records.
16 Q. So who is responsible for issuing the permit, a
17 building permit, let's just say?
18 A. The Building Department is responsible for putting
19 the permit form together, getting all the exhibits
20 together. Then we write the receipts and double
21 check their work and make sure everything is correct,
22 as far as the fees go.
23 Q. So your department's role has just a financial one?
24 A. And the zoning plan review.
25 Q. Section 5 of this agreement. I guess you're

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1 testifying today, you're saying that you really
2 didn't read this document. You didn't really have
3 any exposure to this document that you can remember,
4 so you're kind of working off the questions that I'm
5 asking you and reading it as you go?
6 MS. SMITH: Object to the form; mischaracterizes the
7 testimony. She said she saw it as part of the packet for
8 counsel.
9 MR. SEGUINE: I'd like you to designate one attorney
10 to make objection.
11 MR. THOMAS: I'll make that objection.
12 MR. SEGUINE: Okay. Fine. I'll rephrase the
13 question.
14 BY MR. SEGUINE:
15 Q. Do you see Section V, Independent Contractor Status?
16 A. Yeah.
17 Q. Okay. Did you at any point in time, and if you don't
18 know, you don't know, I suppose, have any
19 understanding about what the precise relationship was
20 that existed between the City and the developer in
21 this case?
22 A. For the road repairs?
23 Q. Um-hum.
24 MR. THOMAS: Object as to form.
25 A. We really weren't that involved in it. The fact that

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1 they had an agreement, sure.
2 Q. So the answer to my question is you don't really
3 know?
4 A. Huh-uh.
5 Q. Okay. Under Section D there it says, Subject to the
6 city's undertaking the developer at it's sole expense
7 shall obtain and keep enforce any and all necessary
8 licenses and permits. What role, if any, did your
9 department or you take in making sure there was
10 compliance with that portion of the agreement?
11 A. Doesn't have anything to do with us. This is a road
12 project. We have been through that.
13 Q. That's not the question I asked you. I asked what
14 role, if any, did you or your department have in
15 making sure that there was compliance with that
16 portion of the agreement?
17 A. None.
18 Q. None, okay. This document -- let me see if can I
19 find a spot in here. If we can go back to Page 2,
20 please. Under Paragraph A of Scope and Schedules of
21 work?
22 MR. THOMAS: Go ahead.
23 Q. Do you see the, I guess it would be the second full
24 sentence. It says, The city agrees that it has
25 reviewed the conceptual design of these improvement

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1 or those improvements?
2 A. I see it.
3 Q. And believes that such conceptual design will be
4 cable of meeting applicable City design standards.
5 Do you see that?
6 A. Yeah.
7 Q. So the reference to design standards, I guess if I am
8 understanding you correctly, was none of your
9 business?
10 A. It's Item B was the standards, "AASHTO -- Geometric
11 Design of Highways and the Streets..." Public Works
12 Department standards, street standards.
13 Q. And my understanding of your testimony is that your
14 department because this was a road project had
15 nothing to do with this?
16 A. That's correct.
17 Q. And if you look at the end of this document where
18 there are a series of conceptual drawings, you would
19 have never reviewed those documents?
20 MR. THOMAS: Objection as to form. It's vague.
21 A. I'm not responsible for Public Works standards.
22 Q. So when they talk about a conceptual design here and
23 they provide maps and things of that nature, that's
24 just not your responsibility?
25 A. Public Works.

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1 Q. All public works?
2 A. (Shakes head up and down.)
3 Q. So at the time that this was going on, is it your
4 testimony that you never reviewed any of these
5 so-called conceptual designs?
6 A. That's correct.
7 Q. And that later as worked progressed, you did not
8 monitor in any way --
9 A. Nope.
10 Q. -- the activity which was occurring there?
11 A. Nope
12 Q. Let's go to exhibit, if you would please, No. 37.
13 I ask you to review Exhibit No. 37 which is two
14 pages. Tell me whether you have any familiarity --
15 let's just start with the first one, which for the
16 record is RCW 39.06.010.
17 A. Sure. I'm familiar with the contractor licensing
18 law.
19 Q. And this particular profession says that it is
20 unlawful for a --
21 A. Um-hum.
22
23 Q. -- political subdivision to execute a contract with
24 an unlicensed contractor?
25 A. That's common knowledge.

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1 Q. Then the next section, if you flip the page there,
2 also prohibits a city from issuing permits to
3 unregistered contractors.
4 A. That's the Building Department's responsibility to
5 verify that. It goes right on the permit for work on
6 private property. Public property, back to Public
7 Works.
8 Q. So you're not responsible for that part of the
9 oversight?
10 A. No.
11 Q. Your testimony would be it is the Public Works
12 Department?
13 A. If it's a licensed contractor doing a Public Works
14 job, that's their responsibility. If it's a licensed
15 contractor doing a building permit, then it's the
16 building --
17 Q. Do you happen to have some awareness of what is a
18 Public Works project and what is not a Public Works
19 in your job?
20 A. This would be work on public property. This is a
21 street project. That's a Public Works project. A
22 street project is Public Works project. Public
23 street, Public Works.
24 Q. Well, if don't administer this, I'm not going to ask
25 you the question.

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1 A. I don't.
2 Q. So you would have no knowledge as to whether any of
3 the work which was being done on Burlington Hill,
4 this repair work was being done by a registered or
5 unregistered contractor?
6 A. No.
7 Q. And it would not be your responsibility to try to
8 figure that out at any point in time, ever?
9 A. No, Public Works.
10 Q. Okay. Let's go to 38, please. I don't thin you've
11 ever seen this document, but I'm not sure. Have you?
12 A. I doubt it.
13 Q. If you determined that an unlicensed contractor was
14 doing work for the City through whatever channels,
15 what action, if any, would you take?
16 MR. THOMAS: Objection. The hypothetical is
17 incomplete.
18 A. We really wouldn't be involved in that. I don't see
19 -- we don't check contractor's licenses. We make
20 sure they have it on their building permits, that's
21 for work on private property.
22 Q. Yes. So is it your testimony that you would not
23 check at all if it concerned work on public property?
24 A. That's the responsibility of the Public Works
25 Department

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1 Q. So if it's private, somebody is putting up a house
2 somewhere and they have a contract, you want to make
3 sure that they at least a number down?
4 A. Right. Building Department is responsible for that.
5 Q. And you rely upon them to figure that out?
6 A. Yes. Public information is available on contractor's
7 --
8 Q. Right. Right. Let's go to 39, please. I don't
9 imagine you have seen this before either?
10 A. Nope.
11 Q. Let's skip over that one. Let's go to 40.
12 MR. WINSLOW: So we did not talk about Exhibit 39?
13 MR. SEGUINE: No.
14 MR. WINSLOW: Or 38?
15 MR. SEGUINE: Right. Just going straight to 40.
16 BY MR. SEGUINE:
17 Q. For the record, this is RCW 58.17.215. Have you ever
18 seen this provision of the Washington Statutes, the
19 Revised Code of Washington?
20 A. Probably. I haven't read it lately.
21 Q. Have you ever had an opportunity to work with this
22 section?
23 MR. THOMAS: Objection as to form.
24 A. I'd like to read first --
25 Q. Sure. Sure. That's fine.

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1 A. So this is about altering the subdivision.
2 Q. Um-hum.
3 A. So you're asking me if I have ever seen this before.
4 Q. I did ask you that, and you said you had. And I
5 asked you whether you have had my experience working
6 with this section of the Revised Code of Washington,
7 in your experience as the city planner.
8 MR. THOMAS: Same objection.
9 A. Well, amendments to subdivisions, if that's what
10 you're talking about. It happens once in a while.
11 Q. Have you ever had any situation in which you have
12 received signatures of the majority of people having
13 an ownership in a subdivision?
14 A. Not really. Not really. Typically they build their
15 houses, and later they might do a boundary line
16 adjustment or something like that. Not this extent,
17 no.
18 Q. And earlier we looked at that ordinance. There was
19 some variation to that. And you said you had mailed
20 out notices to folks because the condominium project,
21 the permit had expired?
22 A. That's a contract rezone, not a subdivision. It's a
23 lot in a subdivision. It was the project being
24 altered, not the subdivision.
25 Q. Do you have any -- well, if you haven't had any

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1 experience doing this, you may not be able to answer
2 my next question. What does the word altered mean to
3 you in there?
4 A. Change, I guess. Burlington is not that big of a
5 town. It's not like we had a ton of subdivisions. I
6 mean we got flat ones, and we got the one on the
7 hill. That's it.
8 Q. So what you -- just as a practical matter, I guess,
9 when you use the word change, what would that mean to
10 you, altered?
11 A. Move a property line around or something like that, I
12 guess.
13 Q. Okay. All right. Let's move onto the next one which
14 I think is 41, but I'm missing a cover page here.
15 MR. THOMAS: Can you describe it.
16 MR. SEGUINE: Memorandum dated November 17th, 2006
17 from ZZA.
18 MR. WINSLOW: 41?
19 MR. SEGUINE: 41, yes.
20 BY MR. SEGUINE:
21 Q. Do you see that document? Can you tell me whether
22 you would have seen that at any point in the past.
23 A. I doubt it. I heard about it, though. I heard about
24 the inclinometers.
25 Q. You didn't know what an inclinometer was or --

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1 A. No. Meters incline, right --
2 Q. I guess. I don't really know. This was not a
3 document that was sent to you? This is something
4 that was going on with the Public Works Department?
5 A. Yep.
6 Q. You didn't have any role in this?
7 A. Nope.
8 Q. Now we go to 42, I believe. Are you familiar with
9 this document?
10 A. Yeah.
11 Q. Can you explain what this document is, please.
12 A. Basically adopting the existing EIS as being
13 sufficient to cover the work on the road repairs.
14 Q. Okay. And it has your signature at the bottom, so
15 I'm assuming that you would have completed this?
16 A. Um-hum.
17 Q. And under the description of the current proposal --
18 and again, I'm assuming that you would have maybe not
19 typed but used a word processor or a computer to type
20 this text in here. Am I correct about that?
21 A. Sure.
22 Q. A lot of it is underscored. Would that be the stuff
23 that you put in there?
24 A. Right. This is a standard form.
25 Q. So would you have written in there under the

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1 description of the current proposal is to excavate
2 and stockpile material, construct haul road,
3 reconstruct street to repair the landslide, correct?
4 A. Yes.
5 Q. And this is an illustration of a document that you
6 thought you were required to complete as part of the
7 road reconstruction process, if I may use that term?
8 MR. THOMAS: Objection; foundation.
9 MR. SEGUINE: I'll rephrase it.
10 Q. Why did you use that language here?
11 A. What do you mean, why did I use that language here?
12 That's what they did.
13 Q. Okay. Now, this is dated 11/28 of '06. Do you know
14 whether work had already begun on the project at that
15 point in time?
16 A. I -- not really.
17 Q. Where did you get the information about what was
18 going to be happening up there?
19 A. I'm sure I got it from the Public Works Department.
20 Q. Yeah. I think you testified you didn't go up and
21 independently look at what's going on or make any
22 inspection yourself?
23 A. No. But it doesn't require a rocket scientist to
24 drive down Highway 20 and see stuff happening on the
25 hill.

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1 Q. Is that what your testimony is, that you were driving
2 down Highway 20 and you saw that happening?
3 A. Why are you asking -- what are you asking me? Please
4 be clear. I really don't understand.
5 Q. I'm asking you how you acquired that information.
6 A. From the records, from the Public Works Department.
7 Typically you don't even have to do environmental
8 review at all on road repairs. I just felt that we
9 should at least adopt your existing document by
10 reference because it was a landslide situation. So
11 typically road repairs don't require any
12 environmental review at all. This was a courtesy
13 because it was a -- the size of the project, we want
14 to make sure we had plenty of paperwork.
15 Q. A courtesy to who?
16 A. For the record, just to make sure it was in the
17 record.
18 Q. Okay. The second paragraph here says the proponent
19 is Burlington Hill Property Investors and the City of
20 Burlington. That's kind of consistent with those
21 earlier documents we had looked at?
22 A. Yeah.
23 Q. And that's also consistent with the agreement that we
24 just had looked at?
25 A. Yeah.

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1 Q. Was it your understanding that the Burlington Hill
2 Property Investors and the City of Burlington had a
3 partnership with one another?
4 MR. THOMAS: Objection foundation.
5 A. That's what the agreement says.
6 Q. The answer was that's what the agreement says; is
7 that correct?
8 A. It's on the council packet.
9 Q. Under the next paragraph, the document says, Location
10 of the current proposal is the North side of
11 Burlington Hill; access road and adjacent land. You
12 wrote that correct?
13 A. I already said that.
14 Q. Now, this project was broken down into two phases.
15 Were you aware of that?
16 A. Yep.
17 Q. The north side and south side?
18 A. Yeah.
19 Q. You were aware of that?
20 A. Yeah.
21 Q. Because that's where the problems were with the road.
22 There's one set of problems on the north and one set
23 on the south?
24 A. Yep.
25 Q. And this document applied to the north side of the

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1 hill?
2 A. Don't really remember the schedule of the whole
3 thing, how that all came down.
4 MR. THOMAS: Counsel, there is no question pending.
5 MR. SEGUINE: Do you want to take a break?
6 MR. THOMAS: Yeah.
7 (RECESS WAS TAKEN.)
8 MR. SEGUINE: Back on the record.
9 Q. Ms. Fleek, I also want you to look down on this
10 document. Were still on Exhibit No. 42. It says the
11 document is available to be read at the Burlington
12 Planning Department which would be your office,
13 correct?
14 A. Yep.
15 Q. And then below that there is a sentence which says,
16 we have identified and adopted this document as it
17 being appropriate for this proposal after independent
18 review. I don't think you typed, if I'm correct?
19 A. I'd have to go back and look at the form.
20 Q. Okay. In any case, you did affix your signature to
21 the bottom of document, correct?
22 A. Yep.
23 Q. What independent review were you making reference to
24 there?
25 A. We looked at what was proposed, a change from the

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1 original project or whatever. That was it.
2 Q. You're shrugging your shoulders, for the record. You
3 said "we," who is we?
4 A. Me. I'm the responsible official.
5 Q. Okay. And that's what is indicated down below
6 there. A couple paragraphs down it says, you are the
7 responsible official.
8 A. Um-hum.
9 Q. So is it your testimony that you were the only person
10 who conducted the independent review which is
11 referenced here?
12 A. Right. Consulted with project manager, whatever?
13 Q. Okay. If you can go to Exhibit 43, please, which
14 should be a copy of the Administrative Code
15 197-11-965. You earlier testified that you were
16 working off a form. Is this, in fact, the form you
17 were working from?
18 A. It's not very nicely printed out, but it looks like
19 the form.
20 Q. And the language I was talking about down below --
21 A. Yeah. It's right down here.
22 Q. I'm sorry.
23 A. It's right there.
24 Q. The sentence that I just discussed which talked about
25 independent review is down there?

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1 A. Um-hum.
2 Q. So it looks like you would have just used that off of
3 the form?
4 A. Right.
5 Q. Let's go to 44, please. For the record, 44 is the
6 Administrative Code 197-11-600. Are you familiar
7 with this?
8 A. Yep.
9 Q. Can you tell us what this is. We're going to focus
10 on this page right here, Section 600. What is this?
11 A. It's called When to use existing environmental
12 documents.
13 Q. Correct. What does it mean or what is it about?
14 A. "This section contains criteria for determining where
15 an environmental document must be used unchanged and
16 describes when existing documents may be used to meet
17 all or part of an Agency's responsibilities under
18 SEPA."
19 Q. Okay. So there are circumstances, I think you made
20 reference to this earlier, when you may do that?
21 A. Lots of times.
22 Q. And in this case you had these prior documents.
23 We've already talked about the draft Environmental
24 Impact Statement and then the final Environmental
25 Impact Statement?

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1 A. Yep.
2 Q. And if I'm understanding your testimony correctly,
3 when activity began on the hill after this agreement
4 had been reached between the City and the development
5 group, you took it upon yourself to prepare that
6 document?
7 A. Filled out the form.
8 Q. And make reference to the earlier environmental
9 impact statement?
10 A. Yep.
11 Q. And that's what you were using, I think you were
12 saying adopted.
13 A. Yeah. Whatever it says on that form.
14 MR. WINSLOW: Counsel, in your question are you
15 referencing the settlement agreement between the City and
16 the developer after the road slide.
17 MR. SEGUINE: Yes. Yes.
18 MR. WINSLOW: All right.
19 A. The document adopted is for the road repairs, not for
20 some agreement. It has nothing to do with agreement.
21 This has to do with the road repairs.
22 Q. Right. I was just trying to place it in time for you
23 because we saw the date of the agreement was in
24 October, and this document that you signed --
25 A. November 28th, 2006.

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1 Q. -- was after the agreement?
2 A. Yes.
3 Q. In your judgment at that point in time, though, there
4 needs to be something in the record, I guess is what
5 you testified to earlier, about this activity?
6 A. It's always good to do something like that.
7 Q. And you said you did it for the courtesy of the file,
8 if I understand you correctly.
9 A. To make sure it was clear in the record.
10 Q. The record being your file?
11 A. Right.
12 Q. Okay. And if we look at this document here, Section
13 600, it says, There are circumstances under which it
14 is inappropriate to use an existing document. Are
15 you familiar with those?
16 MR. THOMAS: Objection as to form. It's vague.
17 Q. If you could read Section 3.
18 A. "Any agency acting on the same proposal shall use an
19 environmental document unchanged, except in the
20 following cases." And it goes through a bunch of
21 different stuff.
22 Q. Okay. And we're just going to walk through those.
23 For DNSs, which is --
24 A. That's not a DNS. That's a declaration of
25 non-significance.

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1 Q. So subsection -- I lost my place here. They are
2 numbered with the letter -- hold on here. Subsection
3 A does not fit, condition fit because there was an
4 EIS prepared, correct?
5 A. Yep.
6 Q. Section B, can you read that into the record, please.
7 A. For DNSs and EISs, preparation of a new threshold
8 determination or supplemental EIS is required if
9 there are (1) substantial -- do you want me to read
10 --
11 Q. Stop there. DNSs is the determination of
12 non-significance, so that's not what applies here.
13 And the other one is Environmental Impact Statements
14 which we do have in this case, correct?
15 A. Yep.
16 Q. So if we go to the subsection which is numbered as in
17 (i)
18 A. 1.
19 Q. Okay.
20 A. "Substantial changes to a proposal so that the
21 proposal is likely to have significant adverse
22 environmental impacts (or a lack of significant
23 impacts if a DS is being withdrawn); or."
24 Q. So I assume you sort of went through this process
25 when you were making the decision to complete this

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1 form over here?
2 A. Yeah.
3 Q. Because you know how to do that because you probably
4 have done that many times during your career?
5 A. Yeah.
6 Q. So from your standpoint, this proposal or this
7 activity which was going to be occurring up on
8 Burlington Hill, in terms of the north side of the
9 hill, did not fall within the scope of that language
10 there.
11 A. When we're doing road repairs, it's not a substantial
12 change to the project. We're fixing existing roads.
13 Q. And I'm going to focus on the second part which is
14 likely to have significant adverse environmental
15 impacts. That's part of the definition, correct?
16 A. Right.
17 Q. So your testimony here today and I think your
18 judgment at that time was that there were not going
19 to be any significant adverse environmental impacts
20 from the activity on the north side of the hill?
21 MR. THOMAS: I'm going to object. I think that
22 mischaracterizes the testimony. I don't believe she
23 referred to the north side of the road.
24 Q. Well, I am referring to the north side of the road.
25 A. We did not see any reason -- whatever -- we, me,

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1 whoever. Road repairs, even if they are huge road
2 repairs, we did an environmental impact statement.
3 Didn't see any reason to do another one.
4 Q. So the answer to my question is your judgment at that
5 point in time was that the proposed activity which
6 you describe in the document as excavate, stockpile
7 material, construct haul road, reconstruct streets to
8 repair landslide, did not pose any significant
9 adverse environmental impacts?
10 A. Nothing worse than we already covered in an EIS.
11 It's not about whether it had any impacts. It's
12 whether or not they were sufficiently covered in an
13 EIS.
14 Q. If we go to the next one, it's sort of related. It's
15 the (ii)
16 A. Item 2?
17 Q. Yes.
18 A. "New information indicating a proposal's probable
19 significant adverse environmental impacts."
20 Q. And as far as you were concerned, this activity on
21 the north side of the hill, according to the document
22 that you created, did not fall within the scope of
23 that?
24 A. Right.
25 Q. So in that case, if I'm reading this correctly, it

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1 would be permissible for you to make reference to the
2 older document?
3 A. Did not require a knew threshold determination. Did
4 not require a supplement --
5 Q. Right. Right. So we agree on that. Skip down to
6 (4)(a) there. Can we just read that into the record.
7 It's pretty short.
8 A. "Adoption" where an agency may use all or part of an
9 existing environmental document to meet its
10 responsibilities under SEPA.
11 Q. And then the next sentence.
12 A. Agencies acting on the same proposal for which an
13 environmental document was prepared are not required
14 to adopt the document; or -- it goes on to
15 "Incorporation by reference" or an addendum or a
16 supplemental EIS --
17 Q. They have some different titles for kind of the same
18 thing --
19 A. No. They're not the same thing.
20 Q. But in this case you choose this document which is an
21 adoption?
22 A. Yes.
23 Q. And that's a specific thing under this profession of
24 the Administrative Code.
25 A. Yes.

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1 Q. As opposed to incorporation by reference or addendum
2 or a supplemental environmental impact statement?
3 A. Yes.
4 Q. If you turn to the next page, please. This should be
5 part of the same exhibit.
6 A. Not in mine.
7 MR. THOMAS: You were previously referring to
8 197-11-600. The following document --
9 MR. SEGUINE: Is 630. Excuse me. Next exhibit, and
10 this would be --
11 MR. WINSLOW: I show the next exhibit as 46 so there
12 seems to be a gap in numbering.
13 MR. SEGUINE: The next exhibit should be 45, and it
14 should be WAC 197-11-630.
15 MR. WINSLOW: Just missing a divider.
16 Q. Can you look at Exhibit No. 45 and tell me whether
17 you recognize that.
18 A. It's copy of the WAC Rule.
19 Q. Pertaining to adoption which is the process that you
20 followed with respect to this Exhibit No. 42,
21 correct?
22 A. Yep.
23 Q. Okay. And so this tells you as a planner, I guess,
24 or any other person involved in this type of thing
25 working through SEPA what you are supposed to do when

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1 you decide that you are going to, quote, adopt,
2 unquote, a preexisting document, correct?
3 A. Yeah.
4 Q. Um-hum. Well, let's talk about Section 1. It says,
5 "The agency adopting an existing environmental
6 document must independently review the content of the
7 document and determine that it meets the agency's
8 environmental review standards and needs for the
9 proposal." So you've testified that's what you did,
10 correct?
11 A. Right.
12 Q. Section 2 tells you that you need to?
13 A. Fill out the form.
14 Q. The form, which is what you did, correct?
15 A. Um-hum.
16 Q. We already looked at that. We looked at the form.
17 Then it goes on to say, "The adopting agency shall
18 ensure that the adopted document is readily available
19 to agencies and the public by:" There are two
20 sections in there, and I'm going to start with the
21 first one. "Sending a copy to agencies with
22 jurisdiction that have not received the document as
23 shown by the distribution list for the adopted
24 document." Now this is the only copy of this item,
25 No. 42, that I have received. Are you aware of any

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1 "so-called" distribution list, unquote for --
2 A. I think you're incorrect, sir. That's not what this
3 says.
4 Q. What does it say? Actually, I asked you a question.
5 A. Well, then hit is again because I didn't get it.
6 Q. Okay. It says, "The adopting agency," which in this
7 case would be the City of Burlington, correct, and
8 you?
9 A. Right.
10 Q. "Shall ensure that the adopted document," which would
11 be Exhibit No. 42, correct?
12 A. I have no idea what Exhibit 42 is. No. It's the
13 Environmental Impact Statement, the original
14 document. It's not the original document goes. That
15 it has to be available.
16 Q. I'm reading from this with you. It says that "the
17 adopted document is readily available to agencies."
18 A. Which is the EIS It's not that form.
19 Q. Okay. "Is readily available to agencies and the
20 public."
21 A. And it's already been distributed.
22 Q. "(a) Sending copies to agencies with jurisdiction
23 that have not received the document as shown by the
24 distribution list for the adopted document." So that
25 would be the original distribution list?

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1 A. Yep.
2 Q. And so you'd done that?
3 A. Yep
4 Q. In this case --
5 A. Back when.
6 Q. -- six years before?
7 A. Yes.
8 Q. So your testimony is that that would be the notice
9 which is required by this section --
10 A. Yes.
11 Q. -- for knew activity of the type --
12 A. This is talking about -- yeah. It's about where the
13 EIS is already distributed.
14 Q. And Section B says, "Placing copies in libraries and
15 other public offices or by distributing copies to
16 those who request one." Did you place a copy of
17 Exhibit No. 42 anywhere besides your own file?
18 A. There is a -- there is a distribution for
19 Environmental Impact Statement documents. I do not
20 have that memorized, and I surely don't exactly where
21 that original document was distributed. But you
22 don't have to redistribute the EIS. You just adopt
23 the dang thing by reference, and you're done.
24 Q. So is it your testimony that you did not provide any
25 notice to any other person anywhere?

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1 A. I provided whatever notice was legally required. I
2 do not have a million percent memory. You have to
3 look at the record.
4 Q. I'm asking you about the record, Ms. Fleek, and
5 Exhibit No. 42.
6 MR. THOMAS: Objection. you're not asking about the
7 record --
8 A. You're asking about something completely different.
9 I don't think you're understanding this.
10 Q. I'm going to show you Exhibit No. 42 again.
11 Actually, you have a copy of it there. I'll show you
12 my copy. Where, if anywhere, besides the file in
13 your own office did you distribute Exhibit No. 42.
14 A. I'm telling you that this isn't about Exhibit 42.
15 This is about where the original EIS was distributed.
16 So... we complied with all the legal requirements.
17 Q. Is the answer to my question that you did not
18 distribute to any other place --
19 A. What is "it?" It's the EIS. It's not that piece of
20 paper. That goes wherever the RCWs says it goes,
21 wherever the WAC Rules say it goes.
22 Q. So is your testimony that you did not distribute this
23 to any other place besides your file, Exhibit No. 42?
24 A. No. My testimony is that was sent wherever it is
25 supposed to go by the WAC Rules. We're talking about

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1 two different things here.
2 Q. How do you know it would have been sent to where ever
3 it has to go by the WAC Rules?
4 A. If you want to come down and look through the files
5 -- I don't have time to do that right now.
6 Q. So prior to coming to today's deposition --
7 A. I didn't check my distribution list for God sakes. I
8 mean that's ridiculous.
9 Q. Is your testimony now that you think that this was
10 distributed to some other places?
11 A. Two different things. You don't get what this says.
12 Q. Ms. Fleek, I'm asking you a specific question?
13 A. You're asking me a question that doesn't make sense.
14 Q. I think it's a really simple question.
15 A. No, it isn't. "The adopting agency shall insure that
16 the adopted document" -- that's the original EIS. It
17 was already distributed. You don't send out new
18 ones.
19 Q. And you didn't?
20 A. Send out new ones of the EIS, no. We followed
21 whatever procedures were required for that form.
22 Q. Would you look at Section 3 of the Administrative
23 Code here. Would you agree with me that we are in
24 the first "phrase" here when an existing EIS is
25 adopted?

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1 A. Yeah.
2 Q. And Section (a) says -- I'm going to read it into the
3 record -- "A supplemental environmental impact
4 statement or addendum is not being prepared --" and
5 that's what was happening here, correct?
6 A. Yep.
7 Q. "The agency shall circulate its statement of adoption
8 as follows:" Would you agree with me, that we are
9 now talking about Exhibit No. 42?
10 A. Yep. That piece of paper, yep.
11 Q. The next section under the designation (i) says, "The
12 agency shall send copies of the adoption notice to
13 the Department of Ecology." Did you send copies of
14 that document to the Department of Ecology?
15 MR. THOMAS: Objection.
16 A. I have not memorized the record. We comply with the
17 rules every time we do it, is all I have to say.
18 Q. Is it your testimony that you don't know whether it
19 was sent to the Department of Ecology?
20 A. My testimony is that we comply with these rules
21 whenever we file out those forms.
22 Q. There is some other parties listed there. It would
23 be your testimony that, as far as your know, this
24 particular adoption notice, Exhibit 42, would have
25 been distributed to anybody else who fell within

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1 those terms there? Of course there would not be
2 other cities or counties, correct? I suppose --
3 A. My testimony remains the same. We comply with the
4 WAC Rules when we adopt these notices.
5 Q. The next section talks about "The agency is
6 encouraged to send the adoption notice to persons or
7 organizations that have expressed an interest in the
8 proposal or are know by the agency to have an
9 interest in the type of proposal being considered."
10 Now, again, we're talking about the adoption notice,
11 Exhibit 42, would you agree with me on that?
12 A. For the road repairs.
13 Q. That would be Exhibit 42?
14 A. Yeah.
15 Q. Do you know whether you, as the person in charge of
16 the lead agency, announced the adoption in a news
17 letter or through any other means?
18 A. I'd have to go back and check.
19 Q. So right now you don't know, you'd have to go back
20 and look at the file?
21 A. I don't know.
22 Q. And under Section (iii) -- and it's triple i -- "No
23 action shall be taken on the proposal until seven
24 days after the statement of adoption has been
25 issued." Do you see that language?

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1 A. Yeah.
2 Q. Do you know if there was any work going on Burlington
3 Hill prior to the date that you signed that document,
4 if you know?
5 A. Depends on what you mean by that. Obviously, they
6 identified that there was a problem.
7 Q. Okay. Okay.
8 A. Stuff like that.
9 Q. But you don't know if there was any actual moving
10 activity or construction or any of that sort of
11 thing?
12 A. No.
13 Q. And would you -- if you can look at that again. It
14 says, "The date of issuance shall be the date the
15 statement of adoption has been sent to the Department
16 of Ecology and other agencies and is publicly
17 available." Is it possible this document was not
18 sent to the Department of Ecology?
19 A. I doubt it.
20 MR. THOMAS: Objection; asked and answered.
21 Q. Now, we're in your building today, right, just for
22 the record here.
23 A. What's your point?
24 Q. Your office is downstairs, correct?
25 A. Yeah.

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1 Q. How long would it take you to look through your file
2 and determine whether this particular had been sent
3 --
4 A. About four or five hours. There is several boxes
5 involved here. It's not just a little tiny thing.
6 Q. But is it your testimony that you believe that that
7 was sent to the Department of Ecology?
8 A. We comply with the rules.
9 Q. You're shrugging your shoulders. Does that mean you
10 don't really know as you're testifying here today?
11 A. I already said it ten times. We comply with the
12 rules when we do the notices.
13 Q. But in is particular case --
14 A. As far as I know, we complied with the rules.
15 Q. Okay. Would you agree with me, that if you had not
16 filed it with the Department of Ecology, then no
17 action should have been taken?
18 MR. THOMAS: Objection. You're looking for a legal
19 conclusion.
20 MR. SEGUINE: She's been providing plenty of them.
21 A. I would go as far as saying we didn't even need to
22 file the form. It was a courtesy. Road repairs are
23 road repairs. They are exempt from SEPA.
24 Q. So In this particular case with document -- you
25 talked about the contract rezone earlier with the

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1 condominium, and you testified that because there was
2 some alterations of that, you mailed out letters to
3 all the people who were living around the condominium
4 site?
5 A. We filed the notice requirements for an amendment of
6 a contract rezone.
7 Q. And you testified, I think, that at that point in
8 time you would have sent out notices to all the folks
9 that were living around up there, to give them notice
10 that this activity was occurring?
11 A. I probably did.
12 Q. You are department, excuse me?
13 A. Yeah, whatever. This has been going on for a long
14 time today. I have not memorized everything that
15 happened here today. I'm just saying that we do
16 comply with the laws, and we follow the rules of the
17 codes.
18 Q. Do you have my recollection of, at this point in
19 time, mailing this document out, Exhibit No. 32?
20 A. There is no way that I would remember exactly how I
21 mailed that document out.
22 Q. Do you have any memory of any type of public notice
23 with respect to this?
24 A. I already said I don't remember what exactly was
25 done. If you want me --

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1 Q. I just want to make sure we don't have a
2 misunderstanding in the record here. Okay. Let's go
3 to Exhibit 46.
4 A. Oh, my God. This is unbelievable.
5 Q. Ms. Fleek, I have not received and I have made many
6 requests to the City of Burlington for documents of
7 this type, and I just recently received this form,
8 "Exhibit 32"?
9 A. Exhibit No. 32? This is Exhibit 46
10 Q. 42. 42.
11 A. I thought we were on 46?
12 Q. We are. We are. We are. But Exhibit 42 is the
13 adoption notice, and that was referencing the north
14 side of Burlington Hill. You're aware that this
15 projection was broken down distinctly into two
16 segments, correct?
17 A. Yep.
18 Q. What steps, if any, did you take to apprise -- let me
19 rephrase the question. What steps, if any, did you
20 take to bring the City of Burlington in compliance
21 with the State Environmental Policy Act with respect
22 to the activity which was to occur on the south side
23 of Burlington Hill?
24 A. If it's not on that form, it's not on that form. I
25 don't have anything else to add to that.

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1 Q. So is the answer to the question, as far as you know
2 you did not do anything?
3 A. The record is what it is. I could go back and look
4 at more paperwork.
5 Q. Do you have my recollection of filling out any type
6 of an adoption notice or anything along those lines
7 for the south side of Burlington Hill?
8 MR. THOMAS: Objection as to form.
9 A. I'd have to go back and look through the boxes. The
10 first time I looked through these boxes was last
11 week.
12 Q. But right now you don't really remember?
13 A. No.
14 Q. So this exhibit, No. 46 is another section of the
15 SEPA which talks about categorical exemptions. I
16 know you talked about those earlier. You were aware
17 or became aware that there was a lot of activity
18 which occurred on the south side of the hill as well
19 as the north, correct?
20 A. Um-hum.
21 Q. I guess my question to you -- and reason I put this
22 in front you -- is do you believe that the activity
23 as you know it which occurred on the south side of
24 the Burlington Hill was categorically except from
25 SEPA.

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1 A. Repair, remodeling, and maintenance activities. The
2 repair, remodeling, or maintenance for minor
3 alterations existing private or public structures --
4 typically we don't do environmental review on any
5 type of road repairs.

6 Q. Okay. You're looking at one section, right? I think
7 you are. Are you reading from a document?

8 A. Yeah. Page 2, item 3.

9 Q. Okay. Page 2, item 3. So is it your testimony that
10 that is something which might possibly apply to the
11 south side off the hill?

12 A. Yep.

13 Q. But you did not reach that conclusion with respect to
14 the work on the north side?

15 MR. THOMAS: That mischaracterizes her testimony
16 objection. She's already testified that it wasn't
17 required.

18 Q. Maybe we'll just let the record sit there for that.
19 Let's go to 47, please. Do you have 47 in front of
20 you?

21 MR. SEGUINE: Are they numbered correctly here,
22 counsel?

23 MS. SMITH: What is it?

24 MR. SEGUINE: It's a daily observation report.

25 MS. SMITH: Assuming it's dated January 18 --

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1 MR. SEGUINE: Yes. Yes.

2 BY MR. SEGUINE:

3 Q. Have you ever seen this document or anything like it,
4 Ms. Fleek?

5 A. Nope.

6 Q. Just state for the record, these are documents that
7 were produced during the activity which was occurring
8 on Burlington Hill, and I know you testified that you
9 were not up there on a day-to-day basis. I guess my
10 question is just whether you had ever had a chance to
11 review any of these?

12 A. Nope.

13 Q. Okay. Back to 47. If you look at this under the
14 first paragraph where it says 0715, it talks about a
15 plan to move 3,000 cubic yards of material from that
16 location. Do you see that? Right in the middle of
17 the page. It says "cy" actually.

18 A. Okay.

19 Q. Do you see that?

20 A. Yeah.

21 Q. Okay. You've never seen this document?

22 A. No.

23 Q. And is it my understanding that when this activity
24 was occurring there was nobody reporting to you about
25 what was going on up there on a day-to-day basis?

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1 A. Absolutely not.

2 Q. Was there anybody reporting to you at all about what
3 was happening on up there?

4 A. Not really. General conversation. It's not my job.

5 Q. You mentioned earlier a code compliance officer or
6 code compliance or something like that, correct?

7 A. Yeah.

8 Q. Did you and -- you said that wasn't what you did,
9 code compliance. Did I understand that correctly?

10 A. Yes.

11 Q. Did Burlington have any type of code compliance
12 personnel?

13 A. That is a person who responds to complaints; rats,
14 garbage, chickens, roosters.

15 Q. Did Burlington have --

16 A. Yes. We had a code compliance officer at that time.
17 This is not their job.

18 Q. That's my question. So this is not something --

19 A. Strictly for the engineers, the certified inspectors,
20 all that stuff. It has nothing to do with code
21 enforcement.

22 Q. Okay. This is for the north side of the hill. So
23 this indicates that there is work -- okay. Let's go
24 to 48, please. This where there is an actual
25 mistake. So we can skip 48 and go to 49 which is --

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1 A. Another one of those?

2 Q. Yes. This one is it dated September 7th, 2007. This
3 concerns the north side of Burlington Hill, and there
4 is a reference in here to blasting. Do you see that?

5 MS. SMITH: A reference as to who set the charges?.

6 MR. SEGUINE: Actually, yes.

7 Q. If you look at the first entry on 0845, there is a
8 reference that indicates that the plan for the day is
9 to drill as much of the ditch today and set charges.
10 "Then Tarry plans on cleaning up the slope by
11 dragging it with a cable. That should remove any of
12 the lose materials... from the side slope." Do you
13 see that?

14 A. Yep.

15 Q. Were you advised or told that there was blasting
16 going on, on the north side of Burlington Hill at
17 this point and time?

18 A. It would not matter. It has nothing to do with me.

19 Q. That's my question. No one would have contacted you
20 to tell you that?

21 A. No.

22 Q. Is there any procedure in Burlington for someone to
23 engage in blasting activities?

24 A. Again, you get -- if it's a civil engineering
25 project, you get your plans reviewed and approved by

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1 the Public Works Department. That's it.
2 Q. And so as far as what was going on up at the hill,
3 that was Public Works. That was not you. You
4 weren't monitoring --
5 A. Road repairs, all Public Works.
6 Q. Okay. Let's go to 50. This is actually a pretty big
7 exhibit. Have you seen this document before?
8 A. Nope, not as far as I know. It's always possible.
9 Q. This is another document from Geotech about the
10 condition of the roads and that sort of thing. And
11 this is addressed, actually, to Property Investors,
12 so I wouldn't expect that necessarily you would have
13 seen it. I just wanted to make sure. The documents
14 suggest that there was drilling going on, on the
15 hill.
16 MR. THOMAS: Objection; foundation.
17 Q. If you can turn to the back part the document, it's
18 called Site exploration plan.
19 MR. THOMAS: Where is that in the document?
20 MS. SMITH: It's the second map.
21 Q. So you don't think that you've seen this before?
22 A. Doubt it.
23 Q. Were you aware of the fact that there was drilling
24 going on at the hill around -- I guess the date of
25 this letter is July 27th, 2007?

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1 MR. THOMAS: Objection; foundation.
2 MR. SEGUINE: I'm just asking her if she was aware
3 of it.
4 MR. THOMAS: You haven't demonstrated there was
5 drilling going on.
6 MR. SEGUINE: I'm asking her if she knew there was.
7 Q. Was there drilling going on?
8 A. Well, they had test borings.
9 Q. Did you know anything about that?
10 A. That they did borings, of course. How else would you
11 figure out what was wrong with the soil.
12 Q. What participation, if any, did you have with the
13 decisions, I guess, to engage in that activity?
14 A. Nothing. It's road repair. It's not my job.
15 Q. Okay. Let's go to 51.
16 MR. THOMAS: 51 is a Daily Observation Report?
17 MR. SEGUINE: Correct, dated September 13th, 2007.
18 Q. I assume from your prior testimony you never saw this
19 document?
20 A. Nope.
21 Q. There is a reference in here under Item 3 to traffic.
22 There is a discussion about closing the road to all
23 traffic. Do you see that down there?
24 A. Yep.
25 Q. Did you -- if I understand your testimony from

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1 earlier, you did not participate in any activities
2 involved in closing the road?
3 A. Nope.
4 Q. That was all Public Works?
5 A. Yep.
6 Q. And who at Public Works would that have been at that
7 time? I think you said Mr. Martin was working there.
8 A. I don't know. This went on for so long, I'm assuming
9 this was probably Joe Martin. I don't know.
10 Q. As you look through that exhibit, did you see
11 photographs of some blasting?
12 MR. THOMAS: Objection; foundation.
13 MR. SEGUINE: Just asking her about the photograph
14 MR. THOMAS: You asked her if she'd seen the
15 photographs of blasting. There is no evidence of blasting
16 as far as I can tell.
17 MR. SEGUINE: Hum.
18 A. This looks like a bunch of people out in the dirt to
19 me.
20 Q. Okay, fair enough. Let's just number all these so
21 that we understand that. If you could take your pen
22 and go along with me and mark these each. The first
23 one, let's mark that as A, if you could do that,
24 please. Next one we'll mark as B. We need to slow
25 down there so we don't get them marked the same here.

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1 A. C.
2 Q. Show us the one that you're marking.
3 A. There's nothing on it, except some dust. It's the
4 one that's got two guys out in the road.
5 Q. I'm getting confused here.
6 A. C.
7 Q. All right. Hold on.
8 A. Too cheap to get color copies, huh?
9 Q. Yep, that's right.
10 A. D.
11 Q. Okay.
12 A. E.
13 Q. E.
14 A. F is the street.
15 Q. Um-hum.
16 A. G is the pile of rocks.
17 Q. Okay.
18 A. H is the thing with the guy in the dirt. I guess
19 that is it. (Indicating.)
20 Q. We'll call that I. Okay, thank you. Let's go to
21 52. I assume you've never seen 52?
22 A. Nope.
23 Q. I'm going to ask you to slowly. I think there is
24 one, two three photographs. Will you do those A, B,
25 and C

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1 A. Sure.
2 Q. So A is?
3 A. A bunch of machines.
4 Q. That's A.
5 A. B is a bunch of machines, and C is a bunch of
6 machines.
7 Q. Did you ever drive up there when the project was
8 going on?
9 A. Good Lord, no.
10 Q. Never?
11 A. While the road repairs and the landslides were going
12 on?
13 Q. Yeah.
14 A. Why? Why would I?
15 Q. Because your the planning director, and maybe you
16 just want to see?
17 A. Nope.
18 Q. Or maybe because you were curious?
19 A. Nope.
20 Q. I'm going to go back to this. So you don't know --
21 from day-to-day you had no idea what was going on up
22 there?
23 A. You always know what's going on in Burlington. This
24 is not a big city. This is a small city. There's
25 four or five people working on this stuff. You get

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1 the gossip every day, whether you need it or not.
2 Q. Generally?
3 A. Yeah, you do.
4 Q. Did you understand what was going on with the road?
5 A. Yes.
6 Q. What was happening with the road, as far as you
7 understand?
8 A. Stuff like this.
9 Q. And you're holding up Exhibit A. That's Photograph
10 A?
11 MR. WINSLOW: Are we talking 51 A?
12 MR. SEGUINE: I think we're talking 52 A.
13 Q. Can you show me that photograph again, please.
14 MR. SEGUINE: That's the one she is looking at.
15 Q. Looking at that photograph, you said stuff like this,
16 do you consider that to be significant activity?
17 A. The development of Burlington Hill was significant.
18 Once you've gone up there and built a giant
19 project -- that's why we did the EIS
20 Q. And do you think that this type of activity that
21 you're looking at here was described in the EIS that
22 you submitted originally.
23 A. Road repairs or just road development? Development
24 on a steep hill is not a gentle activity. That's why
25 we did the EIS in the first place.

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1 Q. That wasn't my question. I asked whether you believe
2 this type of activity that we're looking at in this
3 photograph was described in the original EIS
4 statement.
5 MR. THOMAS: Objection; foundation. There is no tie
6 into this photograph --
7 MR. SEGUINE: She testified that's the kind of stuff
8 that was going on up there.
9 MR. THOMAS: But she didn't testify this stuff was
10 going on.
11 MR. SEGUINE: She pointed right at the photograph,
12 counsel.
13 MR. THOMAS: She said this kind of stuff.
14 A. What are you asking?
15 BY MR. SEGUINE:
16 Q. I'm asking whether that type of activity which we're
17 witnessing in that photograph was described in the
18 origin Environmental Impact Statement.
19 A. It describes the development of roads, the
20 development of houses, the development of an old rock
21 quarry on a very steep hill. So, yeah. I think it's
22 covered.
23 Q. Okay. Let's go to 53. Again, I'm going to ask you
24 to put letters next to these, if you could, the
25 photographs. I think that one is going to be A. The

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1 second one is B. The third one is C. E, F, G, H.
2 So there is eight. If we go back to the first part
3 of this, it appears this is a report for the south
4 side of the hill for October 9th of 2007. Do you see
5 that?
6 A. Yeah.
7 MR. THOMAS: Objection as to form.
8 Q. Okay. Once again, it appears as though there is a
9 reference to some blasting activity related to the
10 so-called road repair. Do you see that?
11 A. Yeah.
12 Q. And do the photographs depict that?
13 A. Yeah. They depict a bunch of work going on.
14 Q. Do you have any skills in estimating fill or cubic
15 yards, that sort of thing?
16 A. What's your point? Skills in estimating cubic yards?
17 Q. Correct.
18 A. I don't go out and inspect dirt pills, but we do
19 measure how much fill there is on all the flood
20 plains in Burlington. We do monitor that.
21 Q. But you don't do it yourself?
22 A. No.
23 Q. You have other people that do for you?
24 A. We add up all the fill in all the different permits
25 and keep a record of it.

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1 Q. So you have no way of talking about, for example, if
2 we talked about Exhibit C, how much material is being
3 moved there?
4 A. Nope.
5 Q. Now, were you aware -- I'm talking about Exhibit C
6 that there was a need for the City of Burlington to
7 -- well, I should say for property Investors to buy
8 two lots to complete this project?
9 A. I don't remember the exact details, but I know there
10 was some land that became unusable.
11 Q. Unusable meaning what?
12 A. Unbuildable for a house, as far as I know. I'm not
13 certain on the details.
14 Q. But that information was provided to you?
15 A. I heard about it.
16 Q. Would you consider that in any way to be an
17 alteration of a subdivision?
18 A. Not really.
19 Q. Why?
20 A. I don't see what reference it makes, have less land
21 that they are building less houses. I don't see that
22 as really relevant to anything.
23 Q. And if the road is moved into a place where there was
24 private property, would you consider that the
25 alternate of a subdivision?

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1 A. Not really. I, I -- are you suggesting that this was
2 supposed to go through some different procedure? Is
3 that what you're getting at?
4 Q. I'm just asking you a question.
5 A. We would not do any procedural thing on something
6 like that, that I can think of.
7 Q. Now --
8 A. Still talking about repairing a landslide. That's
9 what we're talking about here.
10 Q. And your testimony is that Exhibit C is repairing a
11 landslide?
12 A. That's what the report says.
13 Q. Go to 54, please. Take a minute and look at that,
14 please. Looks like you already did, huh? Let's put
15 letters on these photographs. I think there is only
16 three of them? Were you aware that these types of
17 activities were occurring up there as depicted in the
18 photograph.
19 MR. THOMAS: Object as to form.
20 A. Right, repairing these landslides.
21 Q. So there were excavators up there moving all sorts of
22 materials around. You were aware of that generally?
23 A. Yep.
24 Q. On there document, do you know who Alex Hildreth is?
25 A. Nope.

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1 Q. Do you see in the middle of the page there is a
2 section called discrepancies noted?
3 A. Yeah.
4 Q. I'm going to read the sentence in. It says,
5 "Inspector has not seen any City approved plans and
6 specifications. Inspector has not seen any
7 construction schedule." I'm assuming, based on your
8 testimony, that whatever City approved plans he's
9 talking about were not plans that you would be
10 responsible for?
11 A. Nope.
12 Q. That would be the Public Works Department or the
13 Engineering Department?
14 A. Yep.
15 Q. Okay. Go to 55, please. Is this another document
16 which you haven't seen?
17 A. That's correct.
18 Q. This would have been prepared -- do you know who --
19 let me just see here. Do know who ERD Construction
20 is? That's one of the contractors represented above
21 or referenced above?
22 A. Not really.
23 Q. Or Jason? There is a name Jason there. Do you know
24 who that is?
25 A. Nope.

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1 Q. There is a reference to some sidewalk closed signs
2 and some other signs. Do you know anything about
3 those?
4 A. Nope.
5 Q. And the photographs, I'm not going to have you number
6 those. Exhibit No. 56. Do you recognize Exhibit No.
7 56?
8 A. I don't recognize it, but it's a letter to the
9 Burlington Hill residents.
10 Q. And it appears to be authored by Mr. Martin?
11 A. Yep.
12 Q. Did you participate in the production of this letter
13 at all?
14 A. Nope.
15 Q. He basically says that -- he's apologizing for not
16 getting the road construction completed sooner.
17 Would you agree with that?
18 A. That's what it says. "First, I want to apologize for
19 not providing a letter like this earlier." (Shrugs
20 shoulders.)
21 Q. So as far as any notices to the folks who are on the
22 hill, as far as you were concerned, all that notice
23 was up to him?
24 A. Yes.
25 Q. As the director of that department at that point in

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1 time?
2 A. Yes.
3 Q. Whatever legal requirements might have existed, he
4 was responsible for overseeing all that, not you?
5 A. Legal requirements for what?
6 Q. Well, what was going on up there?
7 A. Road repairs are the responsibility of the Public
8 Works Department.
9 Q. But in terms of notice, you didn't have any
10 responsibility to notify anybody of anything that was
11 going on up there?
12 A. Nope.
13 Q. He also has a sentence in here that talks about --
14 did you ever have any conversations with Mr. Martin
15 about this situation?
16 A. Undoubtedly.
17 Q. A lot?
18 A. I have no idea.
19 Q. Did he ask for your opinion with respect to certain
20 things?
21 A. Probably not. He didn't really like planning all
22 that much.
23 Q. He in here talks about, in the third paragraph, "From
24 the beginning, we encountered difficulties with
25 respect to the south side of the hill." Did you just

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1 read that? You're looking at me.
2 A. The whole hill is funny -- this wierd rock. It's not
3 -- this is not new news.
4 Q. That's what he sort of says here, right? It became
5 obvious to us that the -- "our search for bedrock has
6 proven to be difficult. The rock we expected to find
7 is inconsistent and uneven." That was common
8 knowledge?
9 A. Oh, yeah. The whole hill is funny rock. That's why
10 we have the geotech reports.
11 Q. Okay. I have another small set of exhibits here, and
12 I'm going to skip ahead on some exhibit numbers.
13 A. That's all I have.
14 Q. I know. I'm going to give you some more. There is a
15 series of photographs. There is an original around
16 here. That has color pictures on it. I just want
17 to, again, clarify some things here, Ms. Fleek.
18 (Conversation had off the record.)
19 Q. So Exhibit 67, looks like a series of photographs, if
20 you can look through those. There are a number of
21 different photos of the road being closed on the
22 south side of the hill. I know you've kind of
23 already testified to this, but I think just to make
24 sure, you played no role whatsoever in the decision
25 to place these signs up or these barriers, whatever

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1 it happens to be.
2 MR. THOMAS: Objection; foundation. There is no
3 testimony as to what these pictures relate to.
4 Q. Do you recognize -- let's start with Photograph 1.
5 You have been up on the hill, have you not?
6 A. Sure.
7 Q. Does that look like the south side, the segment that
8 we're talking about?
9 A. Probably.
10 Q. And if you flip to the next page, there is a gate or
11 an entrance to the Tinas Coma subdivision?
12 MR. THOMAS: Objection; mischaracterizes the
13 picture.
14 Q. Do you see the Tinas Coma sign?
15 A. Kind of.
16 Q. Have you been up there before?
17 A. I already said I have.
18 Q. Does that look like the entrance from the south side?
19 A. Not really. It's different now. It's probably
20 Skagit Street.
21 Q. Then if we go to the third page, does that appear to
22 be a photograph of the south side of the hill?
23 A. I couldn't tell you. That's a photograph of a side
24 hill. I mean, I'd have to go up and verify.
25 Q. Okay. Well, I guess your testimony has been that you

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1 did not in any case participate in decisions which
2 were made to shut down that road?
3 A. Nope.
4 Q. Planning Department had nothing to do with it?
5 A. No.
6 Q. Not a thing?
7 A. No.
8 Q. Nobody talked to you about it, asked you your advice?
9 A. No.
10 Q. It was all Public Works?
11 A. They never ask our advice about road repairs.
12 Q. Is it like that in the City?
13 A. That they don't ask our advice about road repairs, of
14 course it's like that. They don't ask for our advice
15 about new projects either, and I've got lots of
16 objections to those.
17 Q. Let's go to 68. This is a section of the City Code
18 that pertains to the use of the streets. I guess I'm
19 going to direct your attention to the first two
20 sections.
21 MR. SEGUINE: Page 2 of 5, counsel, if you can see
22 that.
23 Q. The first one is 12.24.030, and the second one is
24 12.24.040. Do you see those?
25 MR. THOMAS: What was that again?

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1 MR. SEGUINE: Next page, Counsel
2 A. Definitions and the permit required --
3 MR. SEGUINE: Yes. That's what I'm looking at.
4 MR. THOMAS: Thank you.
5 Q. Are you a person who has been involved -- maybe you
6 testified to this, but I just want to make sure I
7 understand. It says here that it's unlawful for
8 anyone to use public places, which seems to include
9 streets, etcetera, for private purposes without a
10 written permit from the City. You testified earlier
11 that if people wanted to use, I guess like Burlington
12 Boulevard --
13 A. Like a block party or whatever?
14 Q. Yeah, that kind of thing. Do they come in to talk to
15 you?
16 A. Yeah. They go to -- that's why we send those to the
17 Council.
18 Q. Okay. And so in this case, I believe that your
19 testimony is -- but I don't know -- that you never
20 received any type of permit application from any
21 person to close down the streets on Hillcrest Drive
22 at any point in time?
23 A. There would not be a permit required.
24 Q. So the answer to my question is that you have no
25 recollection --

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1 A. There is no permit required for that.
2 Q. And that's a legal conclusion, isn't it?
3 A. I don't really care. You guys make up whatever is
4 legal, however you want to think about it. You guys
5 are the ones that invent this junk, so you live with
6 it.
7 Q. But this section seems to say that there is a permit
8 requirement?
9 A. Not to me.
10 Q. Would you agree that the second section says that it
11 is unlawful for anyone to use a public place without
12 a written permit?
13 A. It says a public place for private purposes. This is
14 a road repairs. That's not private purposes.
15 Q. And I'm not focusing on that. I'm saying in general.
16 This contemplates some form of a written permit?
17 MR. THOMAS: Objection as to form, vague.
18 A. Whatever.
19 Q. And it's your testimony that the City, to your
20 knowledge, does not issue written permits --
21 A. Not for street projects.
22 Q. Okay. But for use of the streets?
23 A. This is a 1978 code. It's not really -- it's way out
24 of date. I have whined about it in the past. It's
25 basically useless, out-of-date junk is what it is.

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1 Q. Going back to the south side of Hillcrest Drive, you
2 said that you were aware of the fact that Lots 83 and
3 84 or two lots over there became unusable?
4 A. I was aware that something became unusable. I didn't
5 memorize the details.
6 Q. And do you have any knowledge today as to whether
7 those lots were used to make the road improvements?
8 A. If you're talking about those pictures, obviously the
9 road was moved over closer to the hill, so I'm
10 assuming some of that land was used for the road
11 improvements.
12 Q. Do you know whether the City of Burlington owned
13 those lots at that point in time?
14 A. It's my understanding that none of the stuff that the
15 City was supposed to own ever got turned over to the
16 City. We talked about that hours and hours ago. As
17 far as I know, the City has nothing but public
18 right-of-way up there.
19 Q. So those lots that were involved with that, as far as
20 you know, are still --
21 A. Somebody's ownership.
22 Q. Okay. Okay. If we could go to 69, please. 69, this
23 is again follow up from some of the other stuff. Are
24 you familiar with this Statute?
25 A. Nope.

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1 MR. WINSLOW: What is 69?
2 MR. SEGUINE: It's RCW 47.48.020 -- Oh, no 68.
3 excuse me. Did I say 69? Well, I got two 69s marked here.
4 I got two of them.
5 MR. WINSLOW: I have a 68, but I don't have a 69.
6 MR. SEGUINE: Do you have it, Scott?
7 MR. THOMAS: I have got a copy of RCW 47.48.020. Is
8 that what you're speaking of?
9 MR. SEGUINE: Yep.
10 Q. Have you seen that before?
11 A. No.
12 Q. In any case -- again, according to your testimony,
13 you're not responsible from the Planning Department
14 for insuring that there is any type of notice issued
15 when a road is closed?
16 A. Nope.
17 Q. Are you aware of whether the City of Burlington has
18 -- the Public Works Department issues public notices?
19 A. I guess -- I mean they do some, sort of, I guess.
20 Q. I don't know. I'm just asking. Do you know if they
21 do that from time-to-time?
22 A. There is notices issued like if the water main
23 breaks, but I don't know who they're issued to.
24 Q. Do you know who in the department would be
25 responsible for doing that?

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1 A. The City Engineer.
2 Q. Beyond that, you don't know?
3 A. There isn't anybody else.
4 Q. Okay. And in terms of the City engineers department
5 and what was going up on Burlington hill, it would
6 have been Mr. Martin, and I think Mr. Harmon's name
7 was in there quite a bit. Is he still employed by
8 the City?
9 A. No.
10 Q. I think Mr. Kitter's name was in there. Is Mr.
11 Kitter still employed by the City?
12 A. Um-hum.
13 Q. Is there anybody else in the Engineering Department
14 that you know of who would have been involved in this
15 work?
16 A. Not really. There isn't anybody else in the
17 Engineering Department except --
18 Q. It's small?
19 A. (Shakes head up and down.)
20 Q. I'm going to have a few more questions for you. I
21 want to take a break right now. Maybe ten minutes.
22 (RECESS WAS TAKEN.)
23 Q. Ms. Fleek, I can going to ask you to look back at
24 Exhibit No. 9, please. Do you recall that document?
25 A. Right.

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1 Q. That was the -- what do they call themselves? AGRA
2 Earth & Environmental. That was the document that
3 was referenced in the Draft Environmental Impact
4 Statement and later in the Final Environmental Impact
5 Statement?
6 A. Right.
7 Q. That was not included, at least in the packet that I
8 received from the Department of Ecology. So it would
9 appear to me that this document was at some point in
10 time prior to the submission of those items, the
11 Draft Environmental Impact Statement in your
12 possession. Would you agree with me on that?
13 A. Probably.
14 Q. So you would have had an opportunity to review it,
15 correct?
16 A. Probably.
17 Q. Presumably. You indicated that they were
18 contributors and authors, I think is the phrase that
19 was used?
20 A. Right. They did the road construction before it was
21 annexed into the City. That was the geotech report.
22 MR. WINSLOW: What exhibit number are we on?
23 MR. SEGUINE: It's Exhibit 9.
24 Q. I may have asked you this before, but I -- maybe I
25 can't remember the answer. Why would you not have

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1 submitted this to the Department of Ecology?
2 MR. WINSLOW: When you say this, you mean Exhibit 9?
3 MR. SEGUINE: Yes, Exhibit 9.
4 Q. If you know.
5 MR. THOMAS: I think I'm going to object. I don't
6 think there's been any testimony that she did not submit it
7 to the Department of Ecology. I think the testimony, if
8 you can call it that, was your observation that she did not
9 receive a copy.
10 MR. SEGUINE: That is correct. That's what I said.
11 Q. I guess I'm asking you then, do you recall whether
12 you submitted it to the Department of Ecology?
13 A. No.
14 Q. You don't recall? Is that what your answer is?
15 A. Yeah.
16 Q. And the document that we looked at had a set of
17 appendices, correct. We can go back and look at
18 that, if we want?
19 A. No. This work was already done. Before this site
20 was annexed, this work was done.
21 Q. I understand, but I'm may be confusing you in the way
22 I'm talking about the documents. The Draft
23 Environmental Statement which is taken away from me
24 for the moment which is going to be Exhibit No. 16
25 contains, even on Page 2, the table of contents.

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1 I'll just hold it up for you. At the bottom there,
2 there is a reference to appendix -- appendices, I
3 guess is what it says. And this document that we're
4 looking at right here is not included on that list;
5 is that correct?
6 A. Yep.
7 Q. So it would be my presumption that it was not
8 submitted to the Department of Ecology. You can look
9 at that, if you want?
10 A. No. I can see it. I already read it.
11 Q. So my question to you is: Can you remember why it
12 would not have been submitted to the Department of
13 Ecology, if you remember?
14 A. I don't remember, but I can give you the reason why I
15 think it wouldn't have been.
16 Q. Okay.
17 A. Because the work was already done. If there is some
18 discussion about it in here, that's... that's one
19 thing.
20 Q. Now, the work for the other items here was also
21 already done, was it not, the wetlands survey and the
22 traffic study? That was also work that was already
23 been done, wasn't it?
24 A. No. That's work in anticipation of the subdivision
25 of the hill. This report was about building the

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1 roads.
2 Q. You make a distinction there?
3 MR. THOMAS: Is that a question?
4 MR. SEGUINE: Yes, it's a question.
5 Q. You make a distinction --
6 A. -- to the EIS, impact on wetlands, steep slopes.
7 Q. Slow down, slow down for me so I can keep up with
8 you. You've gone to the draft document. Is that
9 what you're looking at?
10 A. Right.
11 Q. And you're on Page 8. Tell me where you're reading
12 from, please.
13 A. It says, Impact on wetlands steep slopes.
14 Q. Okay, and why you --
15 A. "A geotechnical report has been completed and
16 utilized in the design of the roads that will be
17 accepted as public right of away." I assume this
18 probably references that report.
19 Q. So you didn't feel as though it was necessary in any
20 way to send this report to the Department of Ecology,
21 apparently?
22 A. Nope. Department of Ecology doesn't actually read
23 anything. You know that, don't you? Just a
24 repository of stuff. And now they make you send it
25 electronically because their warehouses must be full.

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1 Q. That was your belief at that point in time?
2 A. It's still true.
3 Q. So from 1999, when this was done, until -- your
4 testimony is that Department of Ecology doesn't read
5 anything?
6 A. Back in the '70s we used to get comments from the
7 Department of Ecology. We have not received a
8 comment letter from them on anything in years, except
9 for Shoreline Master Program because their reviewing
10 it. That's just how it is.
11 Q. That's the way it is in those circles, so to speak.
12 So that's why you made that decision, I guess. If we
13 can go back to the report, did you look at the
14 report -- I guess --
15 A. I already told you I don't remember the date thing.
16 Q. If you turn to the back page of the report -- I know
17 you've jumped ahead to the other exhibit here which
18 we're going to shift around a little bit on this --
19 there is -- at the back of this there is a
20 description of some test pit logs.
21 A. Yes.
22 Q. Looks like they're separately numbered, if you look
23 at them carefully, up in the upper right-hand corner.
24 I'm sorry. This is Exhibit 9. So keep flipping
25 there. Right there. That's Page 1 you're looking

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1 at. Then you go to Page 2, 3, 4, straight through
2 to, I guess, 7, 8. Okay. Those are, as I understand
3 it and hopeful you do, too, these are results of
4 tests which were conducted with some form of drilling
5 into the hill. Would you agree with me on that? It
6 says, Test Pit Logs, at least?
7 A. Yeah.
8 Q. So someone was drilling down and trying to figure out
9 what was down there, right?
10 A. Yeah.
11 Q. And this report was apparently, as you understand it,
12 produced for purposes of assessing those materials
13 for the construction of a road?
14 A. Yep. That's what it says, Preliminary Geotechnical
15 Engineering Evaluation Burlington Hill Roadway
16 Alignment.
17 Q. Okay. Prior to this time, had you had any training
18 in geology?
19 A. Training in geology?
20 Q. Um-hum.
21 A. Probably took a class in it once.
22 Q. This report makes reference to different types of
23 rock here. Do you see that?
24 A. It's not my responsibility to review geotech reports
25 for road construction. This is the responsibility of

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1 the engineers. That's what they're licensed to do.
2 Q. You might be answering my question, that's fine. My
3 question was do you see that this report does
4 contain, at each of the test sites it contains an
5 analysis of the type of rock which was encountered.
6 Can you see --
7 A. Yeah, I saw it.
8 Q. It looks like 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,
9 13, 14, 15, 16, 17, 18 different so-called test pits,
10 right?
11 A. That's what you're saying.
12 Q. That's what I'm reading in the document. So you're
13 not contradicting that, right? Now, a number of
14 these test pits indicated that the rock in there, it
15 gave description of the type that was found, did it
16 not?
17 A. Right.
18 Q. I'm looking at the first one. It talks about Highly
19 weathered, weakly foliated, brown/gray SCHIST. Do
20 you know what SCHIST it?
21 MR. THOMAS: Objection. She already testified she's
22 not a --
23 MR. SEGUINE: Well, I just want to make sure.
24 A. It's some kind of rock.
25 Q. Then below there it says, moderately weathered,

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1 weakly foliated, fractured, greenish gray SCHIST.
2 Same word, and that word appears in capital letters
3 for some reason.
4 A. I'd have to get the dictionary out which is online
5 today.
6 Q. Okay. And that phrase appears in Test Pit No. 2,
7 Test Pit No. 2, Test pit No. 3, Test Pit No. 4, Test
8 Pit No. 5. It appears as though it does not appear
9 in Test Pit No. 6 or Test Pit No. 7. It appears in
10 Test Pit No. 8, Test Pit No. 9, 10, 11, 12, 13, 16,
11 17, and 18. So almost all of those samples had a
12 material called green weathered SCHIST.
13 A. Okay.
14 Q. And your testimony is that prior to this point in
15 time, you did not have any specific training in
16 geology, correct?
17 A. Yeah.
18 Q. And if today I were to ask you that question you'd
19 have to pull out dictionary and find out what green
20 SCHIST is?
21 A. Yeah. Some kind of rock. I haven't said that.
22 Q. I'm going to go back to the preliminary Draft
23 Environmental Impact Statement, Exhibit No. 16, if
24 you can look at that for a minute with me again. Can
25 you look at that with me for a minute, please, on

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1 Page 3. In the first paragraph, the first sentence
2 you have placed in here a reference to an old rock
3 quarry site. Do you see that?
4 A. Should it be an old SCHIST quarry site? Oh, sorry.
5 Q. That's the word that you used in there, correct?
6 A. Yeah.
7 Q. I think I could probably go through this document --
8 I think even further down on the same page there is
9 reference to a multifamily residential duplex, I
10 guess it says under Item 4 in the rock quarry. You
11 wrote that, correct? That was part of the plan?
12 A. Um-hum.
13 Q. What action, if any, did you take at the time of this
14 environmental review to determine what the prior uses
15 were of the rock quarry?
16 A. To determine what the prior uses were?
17 Q. Um-hum.
18 A. I'm not getting it. What do you mean?
19 Q. Well, you used the word quarry. Where did that word
20 come from?
21 A. Basically that's what it's always been called. I
22 believe it was an old -- they used to mine rock out
23 of that. That's the story.
24 Q. That's my question. That's the story --
25 A. On the history of that area, and it certainly looks

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1 like that.
2 Q. And when you say, that's the story, because you've
3 worked here since '91 or '92 that's sort of the way
4 people have referred to it?
5 A. Sure.
6 Q. When you wrote those words and you thought about
7 that, did you feel as those it was important for you
8 at any point in time to determine what type of
9 quarrying was actually occurring at that site?
10 A. No.
11 Q. Why not?
12 A. Because it's an empty site right now with a steep
13 cliff behind it. It's over with. It was not in any
14 kind of industrial use. It was in no use.
15 Q. Now, you were in working with Mr. Madlung at that
16 point in time on and off?
17 A. Well, he was applicant, if that's what you mean.
18 Q. Would Mr. Madlung have told you it was an old quarry?
19 A. Just the story of Burlington Hill. We had a dump,
20 We had a rock quarry, the cross on the top. Story of
21 Burlington Hill, that's all it is.
22 Q. I asked you earlier --
23 A. Is that relevant --
24 Q. I asked you earlier if it was important for you as
25 the person who is looking at a subdivision, which is

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1 a large subdivision for Burlington, to understand
2 what the prior uses are of a property, did I not?
3 A. I actually do not remember.
4 Q. I think at that point in time you started to talk to
5 me about the dump site. Do you recall us talking
6 about the dump?
7 A. Okay. Whatever.
8 Q. You talked about the dump being a place where people
9 can't live?
10 A. Right. Broken glass is never been a popular spot for
11 living, especially if it has rats under it.
12 Q. And the reason why you did that was because you felt
13 as though you had an obligation to the people who
14 might be living there --
15 A. No. The Health Department regulates Dump. We worked
16 with Brit Path at the Health Department to close out
17 the dump site. It's against the law to just put
18 houses on dump sites. It's a health issue.
19 Q. So part of your role there was to kind of make sure
20 that public health issues were addressed?
21 A. I wouldn't go that far. It's the Health Department's
22 job. We work with the Health Department.
23 Q. Right. It's part your function as the lead agency?
24 A. We coordinate with whatever else is out there.
25 Q. That's what the scoping process is about?

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1 A. Right.
2 Q. And we talked about the dump and the possibility that
3 there could be toxic materials located at the dump,
4 yes?
5 A. Yes.
6 Q. And that would be a concern to you?
7 A. Yeah.
8 MR. THOMAS: Objection; foundation.
9 Q. As you testified here today, do you have any specific
10 knowledge as to what type of activities were
11 conducted in the quarry prior to the subdivision
12 application?
13 A. Besides rock quarrying?
14 Q. Um-hum.
15 A. Why would I?
16 Q. Just -- so the answer is no, you don't, correct?
17 A. Yes, as far as I know.
18 Q. Would you agree -- we already talked about the quarry
19 was the site for condominium, correct?
20 A. Right.
21 Q. I'm going to ask you to look at Exhibit No. 57. Have
22 you ever seen Exhibit No. 57?
23 A. Nope.
24 Q. It's a two-page document. For the record, I'll
25 describe it as a Bulletin No. 33 nonmetallic Mineral

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1 resources for Washington with statistics for 1933.
2 The author is a Sheldon L. Glover. And it bears a --
3 it's under the heading State of Washington Department
4 of Conservation and Development JB Fink, Acting
5 Director Division of Geology. Your testimony is that
6 prior to this moment, you have never seen this
7 document?
8 A. Right.
9 Q. Turn to the second page of the exhibit, please.
10 There should be a portion which is highlighted in the
11 middle of that page, page 14 of the manual. Do you
12 see that?
13 A. Yeah.
14 Q. I'm going to read it into the record. It says, The
15 Asbestos-Talc Products of Washington, Inc., of
16 Burlington, Skagit County mines a somewhat fibrous
17 soapstone-actinolite mixture that has developed in
18 shear zones cutting greenstone. It is ground, mixed
19 with asbestos and used for special cements. Is it
20 your testimony that you've never seen that document?
21 A. Right. I already said that twice.
22 Q. Okay. Go to exhibit 58, please. Tell us whether
23 you've ever seen Exhibit 58. For the record, I'm just
24 going to recite here. This is a Bulletin 552 from
25 the Bureau of Mines, the United States Geological

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1 Survey Library out of Denver. The Title page is
2 called The Asbestos Industry. The author is an
3 Oliver Bowles. This is dated 1955. There is a stamp
4 from the Us Geological Survey, dated October 31,
5 1960. It's followed by a second page from the same
6 book, Page 28. Then there is another document after
7 that, I will get to in a minute, but just focusing on
8 the first two pages. Have you ever seen this
9 document, these two pages before?
10 A. No.
11 Q. Now, on Page 28, do you see that there is a reference
12 to a -- a similar reference to a company called The
13 Asbestos-Talc Products Company of Burlington,
14 Washington?
15 A. If you go back to this first bulletin, it basically
16 says they mine a fibrous soapstone-actinolite
17 mixture. Then they grind it and mix it with
18 asbestos. It doesn't say it's grown on the site.
19 I'm thinking you're making a huge interpretation
20 here, sir.
21 Q. Okay, that's fine. I'm actually not asking you about
22 that. I'm asking you about the next exhibit.
23 A. No, I haven't -- the Asbestos Industry thing?
24 Q. Yes.
25 A. Nope.

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1 Q. Nope meaning you haven't seen it before?
2 A. Right. I already said I hadn't seen it before.
3 Q. Now, on Page 28 there is a reference there. I'm
4 going to read it into the record. "The Asbestos-Talc
5 Products Co. developed a property near Burlington,
6 Skagit County, and produced a small tonnage of mixed
7 talc, serpentine, and asbestos about 1930. The
8 milled product was used in boiler coverings, roofing,
9 and acoustic plaster. The company also manufactured
10 'Asbesto-fill,' a heat insulating building material
11 'Asbestocite,' a compound of asbestos fiber and talc
12 used in roofing, paints, and plastics. No production
13 has been recorded during recent years." Do you see
14 that?
15 A. Right.
16 Q. You've never seen that document prior to this moment?
17 A. Nope.
18 Q. Same exhibit going -- there is a page called -- from
19 the STATE of Washington Article on Archives. Do you
20 see that?
21 A. Right.
22 Q. Have you ever seen these documents before?
23 A. No.
24 Q. For the record, these are Articles of Incorporation
25 for the Asbestos-Talc Products of Washington, Inc.

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1 There various documents here of the articles of
2 incorporation themselves, about three pages long --
3 four with an affidavit. You've never seen these
4 documents before?
5 A. No. No.
6 Q. If you turn to the first full page of the Articles of
7 Incorporation, you see Item 3 under Article 3.
8 A. We can just cut to the chase, I haven't seen any of
9 this stuff before.
10 Q. I just want to make sure here because that's part of
11 what we have to do here. Item No. 3 talks about the
12 purposes of this corporation, and Item 3 says, "To
13 conduct mining operations of mineral, ores, stone,
14 talc, asbestos, coal or any other deposits, and to
15 produce and manufacture any and all of the products
16 or by-products therefrom and, to sell, ship and
17 convey the same to any market by any means of
18 transportation suitable for the purpose." Will you
19 to page 59, please. Ask you if you've seen that
20 document before.
21 A. Can't even read it.
22 Q. Can you try to read it, please.
23 A. Something from 1931. No, I have not read it.
24 Q. Can you see at the top that there is a reference to
25 the Asbestos-Talc Products of Washington, Inc.?

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1 A. There is Asbestos-Talc Products --
2 Q. It's a little bit cut off. And I know that you're
3 not a lawyer and you don't do real estate deals, but
4 this is a document, in any case, that you were not
5 aware of prior to this moment in time?
6 A. Right.
7 Q. At the bottom of that document there is a reference
8 to a C.E. Maiben. Do you recognize the Maiben name
9 in anyway.
10 A. Maiben Park.
11 Q. And that's a park in Burlington, I believe.
12 A. Um-hum.
13 Q. If you can turn to 60, please.
14 A. Um-hum.
15 Q. I don't suppose you would recognize Exhibit No. 60 --
16 A. Hardly.
17 Q. For the record, this is a segment of a
18 grantor/grantee index from the State of Washington,
19 Skagit County Auditor's office recording property
20 transactions in Washington and in Skagit County.
21 There is some highlighted portion of that which
22 refers to the Asbestos -Talc Products of Washington,
23 Inc. Do you see that?
24 A. Yeah.
25 MR. THOMAS: Objection; foundation, counsel. None

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1 of these documents -- there is no testimony as to any of
2 these document.
3 MR. SEGUINE: Not yet.
4 Q. Can you turn to 61, please.
5 MR. SEGUINE: I'm just establishing that she hasn't
6 seen them before.
7 MR. THOMAS: We don't even know what they are.
8 There is no testimony as to whether --
9 MR. SEGUINE: Well, unless we're going to have a
10 trial, we have to bring in people to lay a foundation for
11 that. For the record, I'm describing what they are.
12 A. It doesn't even say at the top what they are. It's
13 been cut off.
14 Q. It has. You're right. In any case, you've never
15 seen Exhibit 61?
16 A. (Shakes head side to side.) Nope.
17 Q. I'm going to ask you to turn to Exhibit No. 62.
18 Would you agree with me that this is a fairly
19 accurate representation of the Burlington Hill as it
20 exists today?
21 A. Well, it says it was 2012 Google, so it must be
22 today.
23 Q. And that shows a variety of the houses that appear on
24 the hill. It also shows the condominium site, does
25 it not?

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1 A. Yeah.
2 Q. I'm going to ask you -- you have a red pencil over
3 there. Could you please place a circle around the
4 condominium spot, as you know it.
5 A. Right in this area.
6 Q. And that would be, according to the documents that
7 we've already talked about, that would be the site of
8 the quarry, correct?
9 A. Yes.
10 Q. Okay. So I want to go back here now, Ms. Fleek, and
11 ask you, if you had knowledge of this information in
12 1999, how, if at all, would it have affected your
13 decision making process?
14 MR. WINSLOW: Objection. The question is vague.
15 MR. THOMAS: Yeah, what knowledge. What do you mean
16 this.
17 Q. Okay. Let's go back and talk about, first of all,
18 the -- maybe start with the annexation. Would this
19 have -- information, if you had been aware of it
20 impacted in any way the decision of the City to annex
21 Burlington Hill
22 MR. THOMAS: Same objection. Speculation.
23 MS. SMITH: What information have their changed
24 their decision, that's the question.
25 MR. SEGUINE: Okay. I'll rephrase it.

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1 Q. Would you agree with me, Ms. Fleek, that these
2 documents would provide reason to believe, reason to
3 believe that there was an issue with the quarry site
4 which needed to be resolved?
5 MR. THOMAS: Objection; speculation. The testimony
6 is that the City Council is the one that performs
7 annexation and makes the decisions that you references.
8 Ms. Fleek has testified she does not do that.
9 Q. Ms. Fleek, you testified that you participated in the
10 annexation process to some degree, correct?
11 A. I'm responsible for the paperwork.
12 Q. You coordinate the paperwork?
13 A. Public hearings, whatever.
14 Q. Do you provide counsel to the City Council and to the
15 Mayor?
16 A. (Shakes head side to side.)
17 MR. THOMAS: Objection as to form.
18 Q. You're shaking your head no. You provide no counsel
19 whatsoever to the City Council?
20 A. You're playing word games here, dude. Counsel means
21 legal, right? You guys are playing all these little
22 games. We write reports. We process the paperwork.
23 Q. Do members of the City Council from time to time come
24 to you with questions about planning?
25 A. Not much.

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1 Q. Do City Officials come to you with questions about
2 planning?
3 A. Whatever.
4 Q. Are you within the City of Burlington the most
5 knowledgeable person about planning-related issues?
6 A. Probably not.
7 Q. Who would be number one?
8 A. The chairman of the Planning Commission. I mean it's
9 not rocket science.
10 Q. Okay. So would you agree with me that this
11 information I presented to you gives you reason to
12 believe that there may be an issue at this site with
13 asbestos?
14 MS. SMITH: Objection. Still vague. Still haven't
15 identified which information as opposed to give her
16 concern.
17 MR. SEGUINE: Okay. We'll go back and do that.
18 MS. SMITH: I mean, if you want to say Exhibits 57
19 through 63, that's all I'm asking, but let's make the
20 question clear.
21 MR. SEGUINE: Okay. Okay. That's fine. That's
22 fine. Thank you, counsel.
23 Q. Ms. Fleek, I have shown you Exhibits 57 -- let's
24 start with 57. If you can go back and look at 57,
25 please. 57 is this directory of mineral resource in

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1 Washington, and it contains a reference to this
2 company in Burlington, Washington. Would that
3 document in and of itself, I guess is a way of saying
4 it, give you any concern about placing or approving
5 or permitting, whatever term you want to use
6 development on Burlington Hill?
7 MR. THOMAS: Objection; foundation. Exhibit 57 is
8 no way related to Burlington Hill.
9 Is there a question pending, counsel?
10 MR. SEGUINE: Do you want to take a quick break?
11 MR. THOMAS: Yeah.
12 MR. SEGUINE: That's fine.
13 (RECESS WAS TAKEN.)
14 MR. THOMAS: Counsel, before we begin, I need to say
15 that we're so far out of the pleadings. There is no
16 allegations of asbestos in any of your complaints. You're
17 going so far that I'm going to move for a protective order,
18 if you go down this path any farther.
19 MR. SEGUINE: I'm going to go down this --
20 Put this on the record, please.
21 I'm going to go down this path as far as I can
22 possibly go, and if you're going to ask for a protective
23 order, than I would object -- I want to continue the
24 deposition right now because I don't believe it's outside
25 of scope of the pleadings at all.

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1 MR. THOMAS: And why do you think that? Because I
2 sees nuisance. I see misrepresentation. I don't see
3 anything having to do with asbestos in the pleadings. I
4 mean this is nonsense.
5 MR. SEGUINE: This is part of the discovery process,
6 counsel, and I'm entitled to ask questions which relate to
7 any theory which is in the complaint, including the
8 nuisance.
9 MR. THOMAS: What's your theory in the complaint
10 because I'm not finding it?
11 MR. SEGUINE: Well, my theory is that the City
12 created nuisance. I've argued that before --
13 MR. THOMAS: And you lost that argument.
14 MR. SEGUINE: No. I didn't lose that argument. I
15 didn't prevail on that argument, in terms of a summary
16 judgment. It still exists in the complaint. And I'm
17 entitled, as a part of discovery, to ask any question which
18 I think is relevant to the discovery of admissible
19 evidence.
20 This information establishes that not only was the
21 road falling off the side of the hill, the activity of the
22 City actually aggravated and exposed asbestos in a manner
23 in which it threatens the safety of my client, of his
24 children, of everyone else who is living up there.
25 And in addition to that, he received no notice of this

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1 activity. And if he received notice of this activity,
2 there would have been an opportunity to look at some of
3 these documents in an appropriate fashion, and there would
4 have been a chance to make objections. And the due process
5 argument is clearly articulated in the pleadings.
6 MR. THOMAS: Counsel, we'll go into notice later. I
7 don't agree with that statement, and I think we can prove
8 that. But as to asbestos, your claim is one of nuisance.
9 You've argued that nuisance claim. You put facts on the
10 record. And as I pointed out earlier, you lost that
11 motion. Now we're going into an air pollution theory that
12 I don't know the bounds are, I don't understand, and I
13 don't think there is any support. This is a frolic.
14 MR. SEGUINE: I don't go it's frolic, counsel,
15 because if you look at the complaint, I actually made
16 specific allegations of materials flying through the air.
17 And this issue raises the issue of whether -- this
18 situation raises the issue of whether the air was
19 contaminated by these activities.
20 MR. THOMAS: As I recall your allegations of things
21 flying through the air, which you haven't been able to
22 address on discovery when I asked about it, was one of
23 small blasting activities. That's, again, a nuisance.
24 It's not an air pollution or a health impact. You haven't
25 alleged that as damages. It's not in the claim for damages

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1 that you filed preceding the complaint. Would you agree
2 with me --
3 MR. SEGUINE: No. I wouldn't agree with you at all.
4 I would not agree with you at all. And even if that were
5 partially true, which it is not, I am entitled, as part of
6 discovery, to ask these types of questions. The case has
7 not been resolved. There's been no ruling indicating that
8 the nuisance claim is gone, as you know. So I'm entitled
9 to conduct discovery at this point in time on any theory
10 that I discover during the course of the pendency of the
11 case. And I can further move to amend the pleadings, if I
12 choose to, which I don't think I need to. So if you want
13 to try to get a protective order, I guess you can try to
14 get a protective order, but I'm here to do this deposition.
15 I want to finish it today, and I want to ask this witness
16 more questions.
17 MR. THOMAS: Counsel, if we go down this path much
18 further, I'm going to recess this deposition. It's 4:00.
19 We have enough time to get a judge on the phone, and that's
20 what I'm going to seek to do.
21 MR. SEGUINE: Well, I am definitely not agreeing to
22 stop the deposition at this point in time.
23 MR. THOMAS: Understood.
24 MR. SEGUINE: So what do you want to do?
25 MR. THOMAS: Ask your question. I'll make a

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1 decision at that time.
2 MR. SEGUINE: Okay.
3 Q. Ms. Fleek, I want to take you back to the exhibit
4 that dealt with the Draft Environmental Statement?
5 MS. SMITH: 9.
6 MR. SEGUINE: 9, thank you.
7 Q. And if you would please turn to the exhibit --
8 Appendix D, Wetland Reconnaissance.
9 A. Yeah.
10 Q. And if you turn to -- I might be confused here. I
11 am missing something here. I think the previous
12 objection was that -- what was the previous
13 objection, besides your Mr. Thomas?
14 MR. THOMAS: I made my objection, counsel.
15 MR. SEGUINE: Can you repeat what the previous
16 objection was.
17 (Previous objection was read back.)
18 MR. SEGUINE: Do you have your Exhibit 9 with you?
19 Can I look at that for a second?
20 A. Sure.
21 Q. I'm going show it you exhibit -- maybe this is water
22 under the bridge. This is Exhibit No. 16, and there
23 is a map as part of the report on the wetlands which
24 is entitled Figure 4. NWI map of subject parcel.
25 That was a document that you would have had at that

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1 point in time, in 1999.
2 A. Is that a question?
3 Q. Yes.
4 A. It's in the EIS. It's part of the wetland report, so
5 of course we have it.
6 Q. If you can look at that, and if you look at the map,
7 there is actually an indication there that there was
8 a quarry there. Do you see that?
9 A. Yeah.
10 Q. And you've testified that there was a quarry,
11 correct?
12 A. (Shakes head up and down.)
13 MR. SEGUINE: I guess the objection to the question
14 is that it's hypothetical. Is that what the objection is,
15 counsel?
16 MR. THOMAS: The objection is that -- well, wait a
17 minute. What are we talking about?
18 A. Good question. We're talking about this map that
19 says quarry on it. Is that what you're talking
20 about?
21 MR. THOMAS: If you're referring to the objection I
22 made to a number of these documents, including the title
23 documents, including Exhibit 64, I see that's out on the
24 table, the objection was there is no foundation. These are
25 vague references to asbestos, but they're not tied in any

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1 quarry, let alone the one on top of Burlington Hill.
2 MR. SEGUINE: Well, I guess I disagree with you in
3 the sense that this is not a trial, and part of what goes
4 on in discover, I believe, is that -- you know, it would be
5 up to you to make those objections at trial, if it turned
6 out that that later turned out to be the case. I think I'm
7 entitled to ask these questions. I will make clear what I
8 am referencing to, as your co-counsel has suggested. In
9 such case, you'd be able to present your argument to the
10 judge about whether these answers, if any, would be
11 admissible.
12 MR. THOMAS: Counsel, I think we're on two different
13 topics. I objected to the point that we are on a frolic at
14 present, and that this has nothing to do with the lawsuit.
15 That's one objection, and that was my latest objection. My
16 earlier objection was that there's been no foundation laid
17 as to any of these documents. I'm able to make that
18 objection.
19 MR. SEGUINE: Okay, that's fine. Then I think I'm
20 entitled to ask the witness to answer the question
21 notwithstanding that.
22 MR. THOMAS: And I don't disagree. If you want to
23 ask the question, you can, but I'm still gonna make the
24 objection.
25 MR. SEGUINE: I understand. I think the witness is

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1 supposed to answer. Is that the way this is supposed work,
2 I think?
3 MR. THOMAS: (Shakes head up and down.)
4 MR. SEGUINE: You're nodding your head.
5 MR. THOMAS: To the best of her availability.
6 MR. SEGUINE: Yes. Yes.
7 Q. So, Ms. Fleek, I'm going to ask you to assume -- I'm
8 going to ask you a hypothetical question here -- that
9 these documents all pertain to activity which
10 occurred in the quarry and around the quarry on
11 Burlington Hill. Would you agree with me that those
12 documents -- maybe I'll take them one at a time --
13 would create some reason to believe that there was an
14 issue with that site with respect to asbestos?
15 A. No.
16 Q. Why not?
17 A. I don't see what the difference -- I don't get what
18 it's related to. I don't get the relevance of your
19 discussion here.
20 Q. Do you know what asbestos is?
21 A. Monitored by the air pollution agency for materials
22 in buildings.
23 Q. Have you ever had any training or experience in
24 asbestos?
25 A. It's an air pollution issues.

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1 Q. I understand that. That's not my question. Have you
2 --
3 A. I'm not a air pollution person. I know something
4 about air pollution, took a class in it in college.
5 Whatever.
6 Q. Do you have any knowledge now as to how asbestos is
7 produced, I guess?
8 A. It's required to be removed from buildings prior to
9 demolition.
10 Q. Do you know where asbestos comes from?
11 A. Nope.
12 Q. Did you have any understanding then or now that
13 asbestos was a naturally occurring mineral?
14 A. Obviously it's a naturally occurring mineral.
15 Q. Why do you say obviously?
16 A. It's a compound that's found somewhere on the planet.
17 It's not made in the lab, I don't think.
18 Q. Do you have knowledge of any type as to the toxicity
19 of asbestos?
20 A. Nope.
21 Q. Never received any training with respect to those
22 kinds of things?
23 A. Air Pollution is notified any time there is an issue
24 with that, and they deal with it. That there job.
25 Q. So in this particular circumstance, if you had been

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1 apprised of this information -- again, I'm working of
2 a hypothetical -- you had been provided information
3 that that quarry had been used as a site for asbestos
4 mining, what steps, if any, would you have taken at
5 that time --
6 A. I have no idea.
7 Q. Okay. Do you think that you might have reported it
8 to the Health Department?
9 A. It is not a Health Department issue. It's Puget
10 Sound Air Pollution issue. It's a Northwest Air
11 Pollution issue. Northwest Clean Air has an office
12 in Mount Vernon. They are in charge of air
13 pollution. I don't know that they are in charge of
14 rocks though.
15 Q. In 1999, were they around?
16 A. Yes. They're an agency that's on a disruption list.
17 If you'd read the document, you'd know that.
18 Q. I did read the document. I don't have a photographic
19 memory either, so thank you for offering that. And
20 do you think that at that point in time you might
21 have notified them?
22 A. We circulated the EIS to them.
23 Q. Okay. And would you agree with me that there's no
24 indication in your Environmental Statement of any
25 asbestos types of asbestos issues?

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1 A. Never heard of them being involved with rocks.
2 Q. Okay. Have you been involved in projects where there
3 were issues about toxicology, I guess is what I'm
4 going to say or toxic conditions?
5 A. Sure. There is lot of toxic stuff.
6 Q. I guess like the dump, for example. Did you have any
7 testing of the soils at the dump done?
8 A. No.
9 Q. Why not?
10 A. There was no reason to do it.
11 Q. Why?
12 A. Because it was a burn dump, and it wasn't being
13 developed. It's open space.
14 Q. So if the place is being developed, then there is a
15 higher degree of concern?
16 A. We don't develop dumps. We restore them.
17 Q. Do you have any experience in making remediation
18 after there is some known asbestos exposure?
19 A. No.
20 Q. You mention that sometimes you became aware of it --
21 A. No. We require that -- there is a certified asbestos
22 person that goes and looks at all buildings to be
23 demolished, and make sure the asbestos is removed.
24 They identify it, remove it before they get a
25 demolition permit. Building Department does that.

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1 Q. I'm going to ask you to look again at Exhibit No. 6,
2 if you would, please. Title 16 is the portion of the
3 Code dealing with subdivisions, I think. We looked
4 at that earlier. This particular provision talks
5 about subsurface conditions that are hazardous to the
6 health or safety of people or property. I think you
7 testified, I think, that you didn't really remember
8 applying this. I could be wrong about that. Can you
9 tell me whether you have applied this provision since
10 you have been the planning director in Burlington?
11 MR. THOMAS: Objection, asked and answered.
12 A. It says you have to do protective improvements
13 consistent with the standard before you subdivide,
14 unless they do a performance bond -- topographical or
15 subsurface hazards for conditions hazardous.
16 Q. And you would be the lead agency in this case. You
17 are or were. So you'd be responsible for making sure
18 that there was compliance with this section of the
19 Code; is that correct?
20 A. I guess.
21 Q. And in this case?
22 A. Yes. We required the geotech reports and all of
23 that.
24 Q. But the geotech reports did not address the
25 subsurface conditions in the manner that we're

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1 talking about here; is that correct?
2 A. It's not a subsurface condition. You're saying it
3 was something in the rocks.
4 Q. Well, the rocks were --
5 A. Exposed.
6 Q. If we look at the picture of the hill, there is a lot
7 of rocks that weren't exposed originally, would you
8 agree with me there?
9 A. This is a subdivision. We did all the right reports
10 that we always do for subdivisions, nothing was
11 identified. It was processed. What else do you want
12 to know?
13 Q. I want to know if you knew that there was asbestos in
14 those rocks, whether that would have affected your
15 decision making in any manner --
16 A. I don't have 20/20 hindsight. I don't know the
17 answer to that.
18 Q. Well, let's talk about today. If someone came up
19 there and proposed doing some work up there today,
20 what position would you take now, now that you have
21 this information?
22 A. I don't know that much about the information. I
23 don't know how accurate it is. I don't have all the
24 information.
25 Q. And what --

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1 A. I'm not in a position to make that statement.
2 Q. But it's something that you would think about and
3 consider?
4 MR. WINSLOW: She's already testified -- in answer
5 to the question if the site had been used as an asbestos
6 mine, would she have acted differently, and she says, I
7 don't know. I don't know is her answer.
8 MR. SEGUINE: Thank you.
9 Q. Have you ever been involved in any project where you
10 require mitigation?
11 A. Sure.
12 Q. What is mitigation?
13 A. Depends on the situation.
14 Q. Can you give me an example?
15 A. Sure. The closure of the Olive View Mine in
16 Hamilton. There's a big -- there's an example.
17 Q. You participated in that?
18 A. Yeah. I work for the Town of Hamilton, too.
19 Q. I didn't realize that.
20 A. I work for them for free.
21 Q. Okay. Good. What happened there? I'm not familiar
22 with that?
23 A. Spent a year trying to get a state or federal agency
24 to require them to remove the hundreds of thousands
25 of yards of extremely fine, flour-like substance

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1 that's sitting in the floodway next to the endangered
2 fish waters, and no one would do anything, nothing.
3 So we ended up having a company plant a bunch of
4 plants on it and hope for the best.
5 Q. Okay. And that would be a form of mitigation?
6 A. Not really. Nobody cared. And I can guarantee you
7 that nobody would care about rocks either. They're
8 just not out there. You're thinking of a whole
9 different system that doesn't exist here.
10 Q. Okay.
11 MR. SEGUINE: You want to take a break?
12 A. Can we go home at 5:00 today -- I have to go home at
13 5:00 and take care of my dogs.
14 (RECESS WAS TAKEN.)
15 MS. SMITH: Counsel, I didn't hear your answer about
16 when we were going to finish.
17 MR. SEGUINE: I didn't give an answer. I know you
18 got a kid issue. I'm hoping 10 or 15 minutes, okay.
19 MS. SMITH: Then let me make a phone call before we
20 jump back on.
21 BY MR. SEGUINE:
22 Q. I'm going to skip Exhibit 64.
23 MR. SEGUINE: Back on the record.
24 Q. Exhibit 65, if you could look at that, Ms. Fleek,
25 Did I just say 65? I meant 64. 64 is a section of

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1 the Burlington Municipal Code. Ms. Fleek, do you see
2 that?
3 A. Yeah.
4 Q. You earlier talked about geologic hazard indicators
5 in critical areas. That's part of your role here as
6 the planner, to look at whether projects fall within
7 those types of areas?
8 A. Right.
9 Q. And this particular section of the Code which is
10 highlighted -- there's a red box around it --
11 indicates that one of things you're supposed to look
12 at is whether they're -- proposed development is
13 within 200 feet of any other current or historic mine
14 operations determined to be geologic hazards. Did
15 you -- I mean I know you did an EIS for this, but I
16 want to make sure I understand this. You had no
17 awareness whatsoever that this quarry was used
18 potentially as a site for mining asbestos.
19 A. No.
20 Q. And this document makes reference to a Department of
21 Natural Resources Map; Coal Measures of Skagit
22 County. Is that a document that you're familiar
23 with?
24 A. I'm sorry. I didn't hear what you said. I do have a
25 hearing aid. I thought you said it wasn't a coal

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1 mine?
2 Q. I did say that. I'm just asking whether this other
3 reference -- Department of Resources Map; Coal
4 Measures of Skagit County, 1924, I'm just asking
5 whether that's a document that you're familiar with?
6 A. No.
7 Q. The Code seems to indicate that that's a source that
8 could be --
9 A. For coal mines.
10 Q. And this particular statute was adopted in 2002, if
11 I'm reading this correctly?
12 A. Right.
13 Q. So this would not have applied in 1999 if it doesn't
14 exist?
15 A. We had an interim critical areas ordinance. We've
16 always considered Burlington Hill to be a geologic
17 hazardous area because of the steep slopes. So it
18 falls under that chapter, whatever the details are.
19 Q. From a couple different perspectives, right?
20 A. Yeah, steep slopes.
21 Q. All right. I'm going to go to Exhibit No. 66, and
22 I'm going to ask you whether you've ever seen that
23 document before? Exhibit 65, right?
24 A. I thought you said 66?
25 Q. I just got myself confused here.

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1 MR. WINSLOW: Counsel, I'm not even finding an
2 Exhibit 66.
3 MR. SEGUINE: I may have mis-numbered here.
4 MR. WINSLOW: I do have it. Excuse me.
5 MR. SEGUINE: Do you go straight for 64 to 66?
6 A. No.
7 MR. WINSLOW: No. There is 65 which is the Seattle
8 asbestos --
9 MR. SEGUINE: Okay.
10 MR. THOMAS: Pardon me. We have a 63 and a 65. I
11 don't see a 64.
12 A. 64 was the one he was just blabbing about.
13 MR. WINSLOW: 64 is the ordinance -- or the geologic
14 hazards.
15 MR. THOMAS: Oh, okay. I see that now, and from
16 there we go to 65 and 66. 65 appears to be a chain of
17 custody document.
18 MR. SEGUINE: Correct, two pages.
19 MR. THOMAS: And something entitle Analytical
20 Laboratory Report.
21 MR. SEGUINE: Correct.
22 MR. THOMAS: And that's the exhibit you're asking
23 about now.
24 MR. SEGUINE: Yes, it is.
25 MR. THOMAS: So that's your 65.

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1 BY MR. SEGUINE:
2 Q. I assume you've never seen this document before.
3 A. It's not a City document.
4 Q. Right. If you turn to Page 2, have you every done
5 any work with the Seattle Asbestos Test, LLC?
6 A. I don't do asbestos tests. The Building Department
7 is responsible for requiring them for a private
8 applicant that has to have the work done.
9 Q. Well, I would tell you by way of offer of proof here
10 that page 2 shows the results of five samples of rock
11 taken off Burlington Hill in the last two months, and
12 three of those samples test positive for what's
13 called Actinolite. Did you know that Actinolite is a
14 form of asbestos?
15 MR. WINSLOW: Counsel is testifying.
16 MR. THOMAS: Yeah.
17 MR. SEGUINE: Okay. I'll rephrase it.
18 BY MR. SEGUINE:
19 Q. Do you know what Actinolite is?
20 A. No.
21 Q. And the column above there -- those words appear
22 under the column asbestos fibers.
23 A. And your point?
24 Q. I'm just asking whether you see that. You're do,
25 right?

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1 A. Yeah.
2 Q. And then there is a percentage in the column next to
3 that of 2 percent. Do you know what the guidelines,
4 the safety guidelines are for the Department of
5 Ecology or the EPA for asbestos content? Do you have
6 any idea? Have you ever looked at any of that kind
7 of stuff before?
8 A. Nope.
9 Q. Let's go to Exhibit No. 66, please. It's another
10 two-page document. Do you see the second page there?
11 This document under the column asbestos fibers
12 indicates that there is something called Actinolite.
13 And the percentage columns, it says that there is 3
14 percent in each of these two samples. Is this
15 information important to you in terms of any further
16 development of Burlington Hill?
17 MR. THOMAS: Objection; foundation. We don't know
18 that either of these documents relate any way to Burlington
19 Hill.
20 MR. SEGUINE: I'm making as an offer proof here that
21 they do, that they were take from rock fragments that were
22 taken from Burlington Hill and were tested in the last 30
23 to 60 days.
24 Q. So to question to is going forward, now having
25 received this information, is it of any import to

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1 you?
2 A. I'm not qualified to address that subject. That's a
3 Air Pollution issue.
4 Q. Which means what?
5 A. If you wanted me to take these results and give it to
6 Air Pollution and ask if it meant anything, I'd be
7 happy to, but that's about it.
8 Q. Well, I'm going to ask you, if someone were to come
9 through the door tomorrow and say that they wanted to
10 build or develop a piece of property in Burlington --
11 it could be anywhere -- and you had in your hand
12 these documents which affirmatively indicate that
13 there is asbestos on the site --
14 A. Same thing we do now.
15 MR. THOMAS: Objection --
16 Q. I'm sorry.
17 A. Same thing we do now. You have to have a report from
18 a qualified lab.
19 Q. And do you think that's something you might have done
20 back in 1999, if you'd been aware of it with the
21 subdivision?
22 A. I have no idea. This is about rocks. And what rocks
23 have to do with air pollution, I have no idea.
24 Q. What about in November of 2006 when you created the
25 document relating to the work being done on the north

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1 side of the hill? If you had receive this
2 information at that point in time, would it have
3 impacted your decision to use the adoption form as
4 opposed to any of the other alternatives which you
5 had there?
6 MR. THOMAS: Objection; foundation. There is no
7 relationship between these documents and the north side of
8 the hill.
9 MR. SEGUINE: Well, as an offer proof, and I am
10 asking a hypothetical question.
11 Q. If you knew that these rocks were taken from the
12 north side of the hill prior to your creation of that
13 document, would you have followed the same procedure?
14 A. Required them to have an asbestos expert look at it
15 and coordinate with Air Pollution?
16 Q. Yes?
17 A. I don't know that much about rocks. I'd have to have
18 more information. I don't have enough information at
19 all. This is not information that is really very
20 useful.
21 Q. But you would investigate the matters further, it
22 sounds like?
23 A. I don't know. I don't have enough information.
24 Q. Okay. In testifying today, have you tried to be
25 truthful?

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1 A. I already said that at the beginning, and I'm
2 insulted that you even said that.
3 Q. I'm not trying to insult you?
4 A. You have insulted me.
5 Q. Have you thought about any of the answers that you
6 provided today that you think you may want to change.
7 A. This has been going on -- I don't even remember. We
8 started at 9:00, for God's sakes. That's a long time
9 ago.
10 Q. Okay.
11 MR. SEGUINE: I guess I'm going to be done. I don't
12 know if any other counsel has any questions.
13 MR. THOMAS: Let's take a break.
14 (RECESS WAS TAKEN.)
15 MR. THOMAS: Back on the record.
16
17 CROSS-EXAMINATION
18 BY MR. THOMAS:
19 Q. Ms. Fleek, I just have a few questions. I want to
20 clarify. For the past few minutes we have been
21 talking about asbestos conditions and asbestos on the
22 site. Were you aware that there was any form of
23 asbestos on this hillside?
24 A. No.
25 Q. You never heard that before --

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1 A. Never.
2 Q. You testified previously to that effect, correct?
3 A. Yes.
4 Q. You had no knowledge whatsoever that there could have
5 been any type of risk?
6 A. Nope.
7 Q. Now, I'm going to ask you to pull up Exhibit 36.
8 A. Okay. Agreement.
9 Q. Now remind us again, what is Exhibit 36?
10 A. It was the Agreement with the City of Burlington and
11 Property Investors, LLC.
12 Q. Did you participate in any fashion in negotiating
13 this agreement?
14 A. No.
15 Q. Did you have my recollection of sitting in on
16 meetings in which this agreement was discussed while
17 it was being discussed?
18 A. No.
19 Q. It was your testimony, was it not, that the first
20 time you'd seen this agreement was when it was the
21 Council packet; is that right?
22 A. That's correct.
23 Q. Now, counsel used the term partnership. Do you have
24 any idea what the relationship was between the City
25 of Burlington and Property Investors?

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1 A. Not really.
2 Q. They could have been something such as a contractor,
3 two separate parties --
4 A. Could have been any of that stuff.
5 Q. Okay, thank you. And then finally, if you could pull
6 up Exhibit No. 42. And again, refresh my
7 recollection. What is Exhibit 42?
8 A. Adoption of existing environmental document.
9 Q. Now, I believe your testimony was that you
10 distributed this document in accordance with the
11 Washington Administrative Code Rules, whatever those
12 were?
13 A. Yes.
14 Q. And you couldn't remember exactly where you
15 distributed it, but you did distribute it, correct?
16 A. Yes.
17 Q. So it could have been gone to libraries. It could
18 have gone to your office and other locations that
19 were relevant?
20 A. Definitely.
21 Q. If you were a reasonably prudent business person,
22 would you be looking for those types of areas for
23 that document and other types of documents that may
24 relate to your business?
25 A. Absolutely. I'd be right down here at the City Hall,

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1 for starters. Yes. I would look at all -- yes. I
2 would do the research.
3 Q. And if you were a homeowner, would you also look for
4 those types of documents if you were going to
5 purchase a property?
6 A. Absolutely.
7 MR. SEGUINE: I'm going to object as a matter of
8 form because I think these are highly speculative
9 questions.
10 MR. THOMAS: Objection noted.
11 Q. Did you see Mr. Welch at your office asking about any
12 of these types of documents?
13 A. No.
14 MR. THOMAS: No further questions.
15
16 REDIRECT EXAMINATION
17 BY MR. SEGUINE:
18 Q. If you had sent out public notices, do you keep a
19 record of that?
20 A. Most of it.
21 Q. So mailings?
22 A. Distribution lists for the EIS --
23 Q. Right. And then, as we were talking about with the
24 contract rezone, is there some record of the actual
25 mailing that occurred in an affidavit or something

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1 that's filed?
 2 A. Yeah. There is a copy of the mailing list.
 3 Q. There would be for the rezone?
 4 A. Um-hum.
 5 Q. If that occurred with respect to Exhibit 42, we would
 6 expect to find such a document in the planning file?
 7 A. Possibly. That file had been through a lot.
 8 Q. Okay. I guess the answer is you would expect that
 9 there would be some record of those things happening?
 10 A. Yep.
 11 MR. SEGUINE: I guess that's all I have.
 12 (Whereupon the deposition concluded at 4:50 p.m.)
 13 (Signature was reserved.)
 14 (Exhibits 57 through 69 were marked for identification.)
 15
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 25

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1 STATE OF WASHINGTON)
 2) ss: CERTIFICATE
 3 COUNTY OF SNOHOMISH)
 4 I, DEANNA M. ELLIS, a certified Court
 5 Reporter in and for the State of Washington do hereby
 6 certify;
 7
 8 That the foregoing is true and correct
 9 transcript of the proceedings held on October 3, 2012.
 10 That I am not related to any of he parties
 11 to this litigation and have no interest in the outcome of
 12 said litigation;
 13 In WITNESS WHEREOF, I have hereunto set my
 14 hand and affixed my seal this 17th day of October, 2012.
 15
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 25

Deanna M. Ellis, CCR 2511
 In and for the State of
 Washington, Residing in
 Marysville

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1 THE SUPERIOR COURT OF THE STATE OF WASHINGTON
 IN AND FOR THE COUNTY OF SKAGIT
 2
 3 KEITH WELCH, an individual, and)
 4 PREMIER LAND DEVELOPMENT, INC.,)
 a Washington Corporation,)
) No. 08-2-02096-0
 Plaintiffs,)
 5)
 v.)
 6)
 7 PROPERTY INVESTORS, LLC, a)
 Washington Limited Liability)
 8 Company; CITY OF BURLINGTON,)
 WASHINGTON, a municipal)
 9 corporation; and DANIEL MADLUNG,)
 an individual and as part of a)
 marital community,)
 10)
 Defendants.)
 11
 12 TO: Scott G. Thomas,
 Burlington City Attorney
 833 Spruce Street
 13 Burlington, WA 98223
 Please have Margaret Fleek read and sign the
 14 deposition noting any errors that may have been made in the
 transcript, and return the signed correction sheet within
 15 30 days from the date of this letter, pursuant to the
 Washington Reports 34A, Rule 30(e), or three days prior to
 16 trial, whichever occurs first.
 If the signed correction sheet is not
 17 returned within the specified time period, the original
 transcript will be filed with the questioning attorney.
 18 Your prompt attention in this matter is
 greatly appreciated. If there are any questions I can
 19 assist you with, please feel free to call.
 20
 21
 22
 23
 24
 25

Wendy Raymond, Owner
 Corpolongo & Associates
 114 W. Magnolia Street, Suite 429
 Bellingham, WA 98226
 (360) 671-6298
 October 17, 2012

cc: Tom Seguine
 Jill Smith
 Michael Winslow

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1 TO THE WITNESS:
 2 PLEASE READ YOUR DEPOSITION CAREFULLY. On this correction
 sheet make notes of any errors I have made. Please sign
 3 this sheet at the bottom and return this to me at 114 West
 Magnolia Street, Suite 429, Bellingham, WA 98225. If you
 4 have any questions, please feel free to call me at
 360-671-6298.
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 25

page-line correction

Signed and dated this ____ day of _____, 2012.

See: Wash. Reports 34A, _____
 Rule 30(e) USC 28 Margaret Fleek

1 THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT

2 KEITH WELCH, an individual, and)
3 PREMIER LAND DEVELOPMENT, INC.,)
a Washington Corporation,)
4) No. 08-2-02096-0

5 Plaintiffs,)

6 v.)

7 PROPERTY INVESTORS, LLC, a)
Washington Limited Liability)
8 Company; CITY OF BURLINGTON,)
WASHINGTON, a municipal)
9 corporation; and DANIEL MADLUNG,)
an individual and as part of a)
10 marital community,)

11 Defendants.)

12 RE: Deposition of: Margaret Fleek
13 Taken on: October 3, 2012
Filed on:

14 Please be advised that the above-referenced deposition
will be filled with: Tom Seguine,
15 Attorney At Law
1023 S. Third Street
16 Mount Vernon, WA 98273

17 _____ The Deponent Waived Signature.

18 _____ The deposition has been read and signed by
the deponent.

19 _____ No changes have been made to the
deposition.

20 _____ The attached CORRECTIONS sheet reflects
the changes.

21 _____ The Deponent failed to appear at our
office or notify us pursuant to CR
26.30(e).

22 _____ The Deponent refused to sign the
deposition.

23 _____ Other.

24 _____
Wendy Raymond, Owner
Copolongo & Associates
25 (360) 671-6298