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17 **BEFORE THE CITY COUNCIL FOR THE CITY OF SEATTLE**
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20 In re Proposed Final Assessment Roll for
21 Local Improvement District No. 6751
22 (“Waterfront LID”)
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Hearing Examiner File No. CWF-0416

NOTICE OF APPEAL OF HEARING
EXAMINER’S FINDINGS AND
RECOMMENDATION ON MARTIN
APARTMENTS LLC’S OBJECTION TO
WATERFRONT LID NO. 6751 PROPOSED
FINAL ASSESSMENT FOR PARCEL NO.
0696000055

33 TAXPAYER, (“MARTIN APARTMENTS LLC”) files this appeal pursuant to RCW
34 35.44.070, Seattle Municipal Code 20.04.090, City of Seattle Resolution 31915, the notice
35 of the Seattle Office of the City Clerk dated December 30, 2019, and the Hearing
36
37 Examiner’s Findings and Recommendation issued September 8, 2020 (“Examiner’s
38 Recommendation”).
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43 **I. Martin Apartments LLC / Appellant**
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45 The taxpayer filing this appeal is:
46
47

1 MARTIN APARTMENTS LLC
2 ATTN: Tax Manager
3 PO Box 847 Carlsbad, CA 92018
4 (425) 635-1400
5 JLutz@perkinscoie.com
6

7 **II. Martin Apartments LLC's Representatives**

8 MARTIN APARTMENTS LLC'S representatives in this matter are:
9

10
11 Clark R. Nichols, WSBA No. 8662
12 CNichols@perkinscoie.com
13 R. Gerard Lutz, WSBA No. 17692
14 JLutz@perkinscoie.com
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18 Bellevue, Washington 98004
19 Telephone: 425.635.1400
20 Facsimile: 425.635.2400
21

22
23 Robert L. Mahon, WSBA No. 26523
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26 Seattle, Washington 98101
27 Telephone: 206.359.8000
28 Facsimile: 206.359.9000
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32 **III. Statement of Martin Apartments LLC's Interest**

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34 MARTIN APARTMENTS LLC owns the property that is subject to the proposed
35 final assessment described in Section IV. The Martin Apartments LLC property is a 188 unit
36 apartment building with ground floor retail. The basis of the proposed assessment is a Final
37 Special Benefit/Proportionate Assessment Study for Waterfront Seattle Local Improvement
38 District ("Final Study"), dated October 1, 2019 and prepared by Robert Macaulay with ABS
39 Valuation (the City's appraiser). The Final Study proposes assessments that are purportedly
40 limited to paying for the LID-funded components—namely, the Promenade, Overlook Walk,
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1 Pioneer Square Street Improvements, Union Street Pedestrian Connection, Pike/Pine
2 Streetscape Improvements, and Pier 58 (together, the “LID Improvements”). The Final
3 Study purports to exclude charges for other improvement projects in the Central Waterfront,
4 and specifically those WSDOT had already agreed to pay for and construct: viaduct
5 demolition, the new Alaskan/Elliott Way surface street, the new/improved Seawall, the State
6 Route 99 Tunnel, the Pier 62 rebuild, Bell Street improvements, and parking spaces
7 WSDOT planned fronting piers between Pike and Madison (together, the “WSDOT
8 Improvements”). But because construction was not complete on the LID Improvements or
9 the WSDOT Improvements at the time the Final Study was prepared, Mr. Macaulay’s
10 October 1, 2019 “Before” and “After” valuations are both based on hypothetical conditions
11 rather than actual facts. On February 4, 2020, Martin Apartments LLC timely filed an
12 objection to the assessment, which was based on the Final Study.
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15 **IV. Matter Under Appeal**

16 MARTIN APARTMENTS LLC appeals the Hearing Examiner’s recommendation to
17 deny Martin Apartments LLC’s objection to the City of Seattle’s Waterfront Local
18 Improvement District No. 6751 proposed final assessment dated December 30, 2019 against
19 the following property:
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22 King County Parcel No. 0696000055
23 Site Address: 2105 5th Ave., Seattle, Washington
24 Proposed Final LID Assessment for Parcel: \$197,086
25

26 See Examiner’s Recommendation at 61-62, 104. To avoid repetition, Martin Apartments
27 LLC incorporates the evidence and arguments raised before the Hearing Examiner into this
28 appeal. In particular, Martin Apartments LLC points the City Council to Martin Apartments
29 LLC’s initial Appeal Petition, *Frye* motion, Closing Brief submitted at the close of its case-
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1 in-chief (dated 4/16/2020), and supplemental Closing Statement submitted at the close of the
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3 City's case-in-chief (dated 7/7/2020).¹
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5 As discussed more fully below, Martin Apartments LLC specifically appeals the
6
7 following Findings and Recommendations in the Hearing Examiner's September 8, 2020
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9 Recommendation: Pages 61-62, 104, Sections II.6, II.7, II.14, II.15, II.18, II.19, II.20, II.21,
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11 II.22, II.23, II.24, II.25, II.26, II.27, II.28, II.29, II.30, II.31, II.32, II.33, IV.A, IV.B.1,
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13 IV.B.2, IV.B.3, IV.B.4, IV.B.5, IV.B.6, IV.B.7, IV.B.8, IV.B.9, IV.B.11(a), IV.B.11(a)(i),
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15 IV.B.11(a)(ii), IV.B.11(a)(iii), IV.B.11(a)(iv), IV.B.11(c), IV.C.3, IV.C.4, IV.C.5, IV.C.8,
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17 IV.C.9, IV.C.11, IV.C.12, IV.C.14, and IV.C.18
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19 Martin Apartments LLC also appeals the Hearing Examiner's failure to make
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21 findings of fact or recommendations on material issues raised during Martin Apartments
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23 LLC's appeal that were supported by law, expert testimony, and fact. The Final Study fails
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25 in numerous ways to satisfy the basic requirements of a LID assessment study, and the
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27 Examiner's Recommendation ignores the many deficiencies in the Final Study. In fact, the
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29 only instances in which the Examiner recommended anything other than denial of objectors'
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31 appeals were where the City's appraiser confessed error. The appraiser's proposed
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33 assessments, and the Examiner's Recommendations, would have the City impose arbitrary
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35 and capricious Waterfront LID special assessments based on "fundamentally wrong
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37 methods."
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40 ¹ Because the City has not provided "metered index numbers," our appeals cannot reference
41 them. See SMC 20.04.110. However, as part of the prehearing conference, we recommend that the
42 Public Works committee secure and provide appellants with such a record, so that the appeals can
43 then be supplemented with that additional information, so as to make the Committee's consideration
44 of each individual appeal more efficient and fair. Until that is provided, unless otherwise stated,
45 citations to the record before the Hearing Examiner are to the record for CWF-0233. Based on the
46 Examiner's electronic records, it appears most of the materials submitted on behalf of all objectors
47 retained by Perkins Coie are part of this case file.

1 The special benefit for which special taxes are assessed must be “actual, physical and
2 material and not merely speculative or conjectural.” *Heavens v. King Cty. Rural Library*
3 *Dist.*, 66 Wn. 2d 558, 563, 404 P.2d 453 (1965). For a proposed assessment roll to comply
4 with the law, the assessments may not materially exceed the actual special benefit conferred
5 by the LID Improvements. *Id.* The special benefit assessment cannot include charges for
6 general benefits enjoyed by the public at large. *Id.* Further, LID assessments must be
7 proportionate. *Id.* Failure to meet any one of these legal requirements is fatal to the
8 assessment. In this case, the proposed assessment fails each of the legal requirements for
9 special assessments and must be annulled as arbitrary or capricious, or founded on
10 fundamentally wrong methods.
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22 **Legal Requirement:** Actual, non-speculative special benefit

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24 **ABS Study:** Estimates a hypothetical benefit based on “Before” values that increase
25 “actual 2019” values (unstated) assuming the WSDOT Improvements were in place in
26 October 2019 (they were not), and an “After” value purporting to assess the value of
27 properties with the LID improvements in place at least five years before anticipated
28 completion.
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31 **Legal Requirement:** Cannot materially exceed the special benefit

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33 **ABS Study:** ABS calculates a special benefit of \$503,000 assuming the LID
34 Improvements were in place and providing benefit in October 2019. However, the LID
35 Improvements will not be completed until the end of 2024 if the City meets its current
36 schedule, and many of WSDOT’s alternative improvements will not be built. The present
37 value of future improvements deliverable in five years is significantly lower than the
38 current value of improvements that already exist. Further, ABS’s own materials show that
39 benefits may not accrue for at least five years after they are completed, in 2029. If the
40 hypothesized special benefits are discounted to present value, the assessments materially
41 exceed the hypothesized special benefits.
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45 **Legal Requirement:** Actual, non-speculative special benefit—Date of valuation/COVID
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1 **ABS Study:** The City has not finalized the assessment roll. After the City’s appraiser
2 prepared his Final Study in October 2019, and the City issued its preliminary roll in
3 December 2019, COVID devastated downtown hotel and retail properties. The Hearing
4 Examiner finds that COVID is irrelevant because it happened after ABS’s appraisal and
5 the City’s preliminary roll. On the contrary, the City’s assessments have yet to be made
6 and must be based on actual special benefits. While that does not mean ABS’s appraisal
7 was wrong when completed, values and benefits need to be reanalyzed before assessments
8 are finalized in light of the unprecedented changes to the downtown real property market.
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11 **Legal Requirement:** Actual benefit that cannot materially exceed special benefit—
12 Assessment cannot include value attributable to future WSDOT Improvements.
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15 **ABS Study:** The City’s appraiser asserts that the City is not collecting assessments “based
16 on the value of WSDOT’s planned improvements.” See Final Study at 3. However, the
17 City’s own expert, Mark Lukens, acknowledged that was false. In the “Before” condition,
18 the City’s appraiser increased 2019 property market values as though WSDOT had
19 completed its work by 2019. The proposed assessment is against this hypothetical
20 WSDOT-enhanced “Before” value, which ABS acknowledges is (to some unstated extent)
21 higher than actual 2019 market values. The City is collecting an assessment against both
22 the 2019 current values and the phantom 2019 WSDOT market value lift, in direct
23 contravention of law and the City’s promise not to impose an assessment based on the
24 value of viaduct demolition and the other components of WSDOT’s planned work.
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27 **Legal Requirement:** Benefits must be special, not general
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30 **ABS Study:** The City’s appraiser fails to determine or explain what general benefits arise
31 due to the LID Improvements. However, the far-reaching and public nature of the
32 improvements make any benefit arising from them general—not special.
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34 **Legal Requirement:** Benefits must be “physical and material and not merely speculative
35 or conjectural”
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38 **ABS Study:** Not only are the improvements not yet “physical or material,” but
39 environmental review and permitting for the City’s proposed LID Improvements is not
40 complete, and the LID improvements are not anticipated to be complete until the end of
41 2024. The appraiser nevertheless hypothesized that they were all completed as of 2019 in
42 a manner consistent the City’s then-current proposals, which were in many respects merely
43 conceptual designs.
44

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46 **Legal Requirement:** Must comply with appraisal standards
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1 **ABS Study:** ABS's valuation methodology cannot be tested. It is a hybrid of "Individual"
2 and "Mass" appraisal techniques, but fails to meet USPAP requirements for either. Until
3 the Examiner admonished ABS, ABS even asserted its analysis was "confidential and
4 proprietary." ABS's analysis and conclusions can neither be tested nor replicated. The
5 Final Study fails to meet basic standards for admissibility and must be remanded.
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8 **Legal Requirement:** Actual and measurable special benefit
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10 **ABS Study:** ABS's proposed assessments are assigned rather than measured, as
11 demonstrated by formulas in ABS's spreadsheets. The percentage assignments are based
12 on a host of "micro-judgments" that are not supported by any documentation, nor capable
13 of replication or quality assurance/quality control. The assessments are undocumented,
14 unreliable, and not supported by empirical studies, data, or reports.
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17 **Legal Requirement:** Actual and measurable special benefit—Park benefits must be
18 supported by empirical evidence
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20 **ABS Study:** Dr. John Crompton, the world's preeminent expert regarding the economic
21 value of parks and other public amenities and on whom ABS purported to rely, testified
22 that ABS had completely misapplied his work and dramatically overstated both the
23 distance to which economic benefits might extend from the LID Improvements and the
24 extent of any anticipated benefit within the potentially benefited area.
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27 **Legal Requirement:** Actual special benefit—Must take into account potential
28 disamenities
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30 **ABS Study:** The appraiser ignores the negative value impact of five years or more of
31 construction, as well as other potential disamenities associated with public places.
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34 **Legal Requirement:** Cannot prematurely commit to build
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36 **ABS Study:** The City has not completed NEPA review or other entitlement process for its
37 Pier 58 plans or planned Pike Pine or Pioneer Square improvements for which assessments
38 are being imposed. But finalizing the roll is a commitment by the City to build the
39 improvements, which is a violation of legal process and commits the City to build things it
40 may not secure permission to build.
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1 In addition to these general objections, there are property-specific issues raised by
2 Martin Apartments LLC as to which the Examiner also erred, discussed in the course of the
3 appeal statement below.
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7 **V. Standard of Review**
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9 “When considering the assessment roll, the city council sits ‘as a board of
10 equalization.’” *Hasit, LLC v. City of Edgewood*, 179 Wn. App. 917, 948, 320 P.3d 163
11 (2014) (quoting RCW 35.44.080(2)). “As such, the council or hearings officer ‘will consider
12 the objections made and will correct, revise, raise, lower, change, or modify the roll or any
13 part thereof or set aside the roll.’” *Id.* at 949 (quoting RCW 35.44.080(3)).
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16 The proposed assessments are presumed correct, “unless overcome by clear, cogent
17 and convincing evidence.” *Hasit*, 179 Wn. App. at 948. This standard is less deferential
18 than the heightened presumption of correctness on judicial appeal because “applying these
19 elevated standards at the municipal hearing would afford unwarranted deference to a report
20 prepared under contract by a private appraisal firm.” *Id.* at 949. Importantly, “a
21 presumption is not evidence and its efficacy is lost when the other party adduces credible
22 evidence to the contrary.... The sole purpose of a presumption is to establish which party has
23 the burden of going forward with evidence on an issue....” *In re Indian Trail Trunk Sewer*
24 *Sys.*, 35 Wn. App. 840, 843, 670 P.2d 675 (1983). In other words, because objectors have
25 presented credible evidence showing that the City’s proposed assessment is arbitrary,
26 capricious and founded on a number of fundamentally wrong foundations, the burden shifts
27 to the City to prove the assessments are actual, measurable, special, non-speculative and
28 proportionate. The City failed that burden.
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1 **VI. Grounds for Appeal**

2 MARTIN APARTMENTS LLC appeals the Hearing Examiner's Findings and
3 Recommendations on the following grounds.
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5 **Martin Apartments LLC Not Required to Provide A Special Benefit Study**

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7 1. Contrary to the Examiner's findings and recommendations, there is no
8 requirement that experts or property owners provide an alternative special benefit
9 calculation under these circumstances—to do so would also require the same improper
10 speculation the City's expert engaged in, given the timing and information provided. *See,*
11 *e.g.,* Decl. of Anthony Gibbons ISO Closing Stmt., ¶ 3(dated 7/7/2020); *see also* Decl. of
12 Ben Scott ISO Closing Stmt., ¶ 3(dated 7/7/2020). A Washington court has explained:
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14 "[W]e have explicitly rejected an argument that, because certain protestors 'failed to offer
15 expert testimony at the city council hearing[,], the presumptions [in favor of the assessment]
16 were still operative as to their property.'" *Hasit*, 179 Wn. App. at 946 (quoting *In re Indian*
17 *Trail Trunk Sewer*, 35 Wn. App. at 843); *see also Kuskay v. City of Goldendale*, 85 Wn. App.
18 493, 933 P.2d 430 (1997) (although appraiser did not submit an appraisal, he provided
19 expert opinion showing that improvements actually diminished value of the property). Here,
20 Ben Scott testified that he is an expert in reviewing mass appraisal reports and analyzing
21 their impact on individual properties - precisely the matter at issue in this appeal. *See*
22 3/5/2020 Hrg. Tr. at 13:1-4 (laying foundation as expert witness while testifying on behalf
23 of a different appellate represented by Perkins Coie). The Hearing Examiner erroneously
24 dismissed the weight of Mr. Scott's testimony, given his professional expertise and
25 experience. In fact, no independent evidence is required at all if, for example, objectors
26 show that the assessment was grounded on a fundamentally wrong basis due to an error in
27 the City's appraiser's methods—as is the case here. *Hasit*, 179 Wn. App. at 947 (citing
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1 *Doolittle v. City of Everett*, 114 Wn. 2d 88, 106, 786 P.2d 253 (1990)). As a simple example,
2 a property owner could simply point out that the square footage assumed in the City's
3 appraisal was incorrect. For these reasons, Martin Apartments LLC appeals the following
4 portions of the Examiner's Recommendation: Sections II.14, II.15, IV.A, IV.B.11(a),
5 IV.C.8, IV.C.9, and IV.C.11.
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11 **No Actual, Measurable, Non-speculative, Proportionate, Special Benefit**

12 2. RCW 35.43.040 provides cities and towns authority for ordering local
13 improvements and for levying and collecting special assessments "on property specially
14 benefited thereby[.]" The cost and expense of the local improvement "shall be assessed
15 upon all the property in accordance with the special benefits conferred thereon." RCW
16 35.44.010.
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22 3. No analysis of general benefits. Special assessments have been "held valid
23 for the construction and improvement of streets, curbs, gutters, sidewalks, and for the
24 installation of sanitary and storm sewers, drains, levees, ditches, street lighting, and water
25 mains." *Heavens*, 66 Wn. 2d at 563. "All such assessments have one common element:
26 they are for the construction of local improvements that are appurtenant to specific land and
27 bring a benefit substantially more intense than is yielded to the rest of the municipality." *Id.*
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34 4. Martin Apartments LLC's property is not specially benefited by the LID
35 Improvements. The primary purpose and effect of the LID Improvements are to benefit
36 "members of the whole community" and the public at large. *See, e.g., id.* at 565 ("it is plain
37 that a public library is for the benefit of the members of the whole community individually
38 and collectively who may be served by it"). Mr. Macaulay's own chapter of the LID
39 Manual states clearly that appraisers should "[c]onsider general benefits as well as special
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benefits” (Hrg. Exhibit 117 (LID Manual) at 58²) and he admits that “general benefits probably accrue to the LID area” as well (*see* 6/23/2020 Hrg. Tr. at 22:4-12). Martin Apartments LLC’s expert confirmed that if an appraiser “identifies both general and special benefits, these benefits should be clearly distinguished and explained, and only special benefits should be included in the After assessment.” Gibbons Decl. ISO Closing Stmt., ¶ 4 (dated 7/7/2020); *see also* 3/3/2020 (A. Gibbons) Hrg. Tr. at 96:6-97:4. It is undisputed that Mr. Macaulay did not analyze or measure general benefits, including those arising from construction necessary to meet basic design standards. *See* Hrg. Exhibit 117 (LID Manual) at 58 (“[c]onsideration may also be given to those construction costs related to meeting design standards which may be general benefits as distinct from construction costs emanating from requirements of the LID project”). To the extent Martin Apartments LLC’s property may benefit from the LID improvements, the benefit is general and incidental, and failure to consider general benefits was a fatal flaw in the City’s methodology. For these reasons, Martin Apartments LLC appeals the following portions of the Examiner’s Recommendation: Sections IV.B.7, and IV.B.11(a)(i), IV.B.11(a)(iv), and IV.C.4.

5. LID Improvements not necessary. Unlike typical LID projects, the Waterfront LID improvements are largely unnecessary to the functionality of any particular property, including Martin Apartments LLC’s property. *See In re Schmitz*, 44 Wn.2d 429, 433, 268 P.2d 436 (1954) (assessment levied for the purpose of raising the grade of a road by 16 to 18 feet held invalid where owners would have benefitted equally from increase of

² “Hrg. Exhibits” refer to exhibits that were submitted on behalf of multiple objectors represented by Perkins Coie during its seven days of hearing before Hearing Examiner Vancil (March 3, March 5, March 11, March 12, April 13, April 14, and April 16, 2020) and during the two days of cross-examination of the City’s witnesses (June 23, 25 and 26, 2020). For ease of reference, Martin Apartments LLC has attached a master list of the hearing exhibits as Attachment A to this appeal notice.

1 only 9 feet); *Appeals of Jones*, 52 Wn.2d 143, 324 P.2d 259 (1958) (assessment against land
2 at intersection for new water main for hydrant held invalid because land was already
3 afforded functional hydrant at nearby street). Here, Martin Apartments LLC provided
4 testimony through Elton Lee, taxpayer representative, who testified that the Martin
5 Apartments LLC building caters to Denny Triangle and South Lake Union, rather than the
6 waterfront area. *See* 3/11/2020 (E. Lee) Hrg. Tr. at 117:13-118:16. The building has brief
7 tenancies averaging approximately six months to a year with demand driven primarily by
8 Amazon employees desiring to live near Amazon's South Lake Union employment centers.
9 *Id.* There is simply no special benefit to the Martin Apartments LLC building for additional
10 access to the Seattle waterfront. The fact that there is no case law differentiating between
11 binary improvements and parks does not change the law prohibiting assessments on
12 properties already adequately served by existing amenities. *See* Examiner's
13 Recommendation at IV.C.3 (reasoning that "no case law is provided to support the
14 differentiation between a hardscape benefit and the more ephemeral benefits of park"). Nor
15 does the Examiner's reasoning excuse the City's failure to account for existing amenities as
16 part of the special benefit calculation. As Dr. Crompton testified, existing view amenities
17 may in fact diminish the incremental effect of new park improvements on the value of
18 properties, much like turning on a weak light in an already brightly illuminated room. *See*
19 Hrg. Exhibit 94 (Crompton's Report) at 12-13.

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39 6. To the extent benefits can be considered "special" as opposed to general, they
40 are nominal or nonexistent for many properties even in the Central Waterfront, which
41 already has a promenade, viewpoints, as well as connecting streets and bridges. *Douglass v.*
42 *Spokane Cty.*, 115 Wn. App. 900, 64 P.3d 71 (2003) (properties' fair market value did not
43 change due to expansion of sewer service *near* owners' parcel which were already
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1 connected). Here, again, Martin Apartments LLC provided testimony that the primary
2 reason tenants choose its building is not proximity to the water, but instead proximity to
3 major employment centers like Amazon in the South Lake Union area. Even if the City
4 could assess for a view change (and it has promised not to assess for viaduct removal), the
5 fair market value of MARTIN APARTMENTS LLC'S property has not changed because
6 the LID Improvements have not improved the property's waterfront view or access to the
7 waterfront, nor will they when the City anticipates completion in 2024. For these reasons,
8 Martin Apartments LLC appeals the following portions of the Examiner's Recommendation:
9 Sections IV.C.3, IV.B.9, and IV.C.3.
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18 7. No analysis of special detriments. The Final Study fails to properly account
19 for special detriments. *See Kusky*, 85 Wn. App. at 501 (city failed to consider the costs to
20 owners for removal and cleanup of underground storage tanks discovered during the
21 improvement project). Mr. Lee testified that because tenancies are relatively brief, the
22 market would not support increasing rental rates today to absorb the LID assessment when
23 the special benefits, to the extent any exist, will not be effective until at least 2024, well past
24 when many tenants will have moved. 3/11/2020 Hrg. Tr. at 124:21-125:13. Therefore, the
25 LID assessment in an immediate expense that comes with no immediate increase in revenue,
26 thereby decreasing the property value. This was not accounted for by the Mr. Macaulay.
27 Although Mr. Macaulay claims he analyzed impacts on the City's planned elimination of
28 450 parking stalls on a parcel-by-parcel basis, there is no explanation of how lost parking
29 might be a detriment, and no property-specific parking analysis in any of his materials.
30 6/23/2020 Hrg. Tr. at 185:20-24; 186:14-187:12.
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44 8. Likewise, there was no analysis of the risks associated with disamenities such
45 as increased crime, homelessness and unsanitary conditions, and Mr. Macaulay did not
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1 quantify the risk that the waterfront will not in fact be maintained. 6/23/2020 Hrg. Tr. at
2 193:21-194. Instead he relied on the maintenance ordinance (Ordinance 125761) to dismiss
3 these concerns. However, Mr. Foster explained that although the ordinance anticipates that
4 City Council will appropriate \$4.8M each year for waterfront operation, it does not bind any
5 future city councils or guaranty funding. 6/26/2020 Hrg. Tr. at 12:7-20; 15:2-10.³ And if
6 the City fails to appropriate that baseline funding, there is an option to suspend or terminate
7 the maintenance agreement. *Id.* at 13:4-14:2.
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15 9. There was also no consideration of negative impacts from another four-plus
16 years of construction (at least). Mr. Macaulay reasoned that construction impacts are not
17 compensable in eminent domain cases. However, there is nothing in the LID statutes or case
18 law allowing him to dismiss these actual, non-speculative impacts. Because future special
19 benefits calculations are inherently speculative, Washington's eminent domain statute
20 specifically allows condemnees to postpone special benefits assessments until improvements
21 are in place. RCW 8.25.220; *State v. Green*, 90 Wn.2d 52, 56, 578 P.2d 855 (1978).
22 Moreover, the studies that Mr. Macaulay relied on demonstrate that construction disamenity
23 is real and does have a near-term negative effect on property values. *See* Gibbons Decl. ISO
24 Closing Stmt. (dated 7/7/2020), Ex. C at 24 (during construction of Rose Kennedy
25 Greenway, the Greenway district "significantly" lagged in value). For these reasons, Martin
26 Apartments LLC appeals the following portions of the Examiner's Recommendation:
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³ The Examiner suggests that the issue of whether future City Councils are bound is not at issue. However, the issue of maintenance was part of Mr. Macaulay's special benefit analysis and therefore the assessment amounts.

1 10. Special benefit estimate is speculative. When calculating a special benefit,
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3 “[f]air market value cannot include a speculative value.” *Bellevue Plaza, Inc.*, 121 Wn.2d at
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5 411. “When an appraiser uses a factor ‘beyond the knowledge of reasonable certainty’, it
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7 becomes pure speculation.” *Id.* (quoting *In re Local Imp.* 6097, 52 Wn.2d 330, 335–36, 324
8
9 P.2d 1078 (1958)).

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11 11. Assuming without conceding that one day, the City’s planned LID
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13 Improvements might increase the value of neighboring properties to some extent, that
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15 potential benefit is many years away and speculative. While appraisers tolerate some degree
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17 of estimation and judgment, Martin Apartments LLC’s expert testified that Mr. Macaulay’s
18
19 Final Study is far too speculative to satisfy industry practices and standards.

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21 12. Although LIDs are sometimes finalized prior to completion of improvements,
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23 this is typically just six month or a year prior, and the assessments are otherwise supported
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25 by the near-term construction of the improvements. *See* 3/3/2020 (A. Gibbons) Hrg. Tr. at
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27 117:20-118:9; 119:5-120:9; 122:15-124:9. By contrast, the estimated special benefits here
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29 will not be realized for four or five years. In the meantime, there is permitting risk,
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31 construction risk, and general economic risk (e.g., COVID), which renders ABS’s 2019
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33 hypotheticals inherently speculative and unreliable because it is impossible to predict which,
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35 and to what extent, different factors will impact value. *Id.* at 51:13-53:5. Ultimately, Mr.
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37 Macaulay concedes that there is inherent uncertainty in valuing the future delivery of
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39 projects because “we can’t read the future.” 6/23/2020 Hrg. Tr. at 79:18-80:8. As he
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41 testified: “I just don’t know what the market value would be as of the date the project would
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43 be finally constructed” because “[t]here could be a lot of elements in the market that did
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45 occur between now and then that impact value.” 6/25/2020 Hrg. Tr. at 212:9-13; *see also id.*
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1 at 211:8-20 (no way to know if his estimates will be higher or lower than comparable sales
2 in 2024 because “markets tend to fluctuate over time” and “I can’t predict the future”).
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5 13. The record is clear that while no one can know what “special benefit” might
6 accrue to these properties in four years (if any), we do know that there are no actual benefits
7 now. The LID improvements provide no immediate special benefit to property owners
8 because the bulk of the components are still in design stages. *Cf. Hasit*, 179 Wn. App. 917
9 (assessments calculated on a fundamentally wrong basis by including costs for an oversized
10 sewer system for future users).
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13 14. Further, there are no “plans and specifications” on file with the Clerk’s Office
14 for the LID Improvements, and it is unlawful to move to final assessments without such
15 “plans and specifications.” Ordinance 125760, Section 3; *Local and Road Improvement*
16 *Districts Manual for Washington State 6th Edition*, pp. 3, 19, 31, 44 (2009). It is also
17 unlawful to bind future City Councils and future budgets to spend hundreds of millions of
18 dollars on projects still early in the design process. *See* Washington Attorney General
19 Opinion 2012 No. 4 (May 15, 2012)); *cf. City of Seattle v. Rogers Clothing for Men, Inc.*,
20 114 Wn.2d 213, 787 P.2d 39 (1990) (assessment upheld because City has apportioned costs
21 of programs and included “only so much of the overall costs” that took place within and
22 benefitted the assessed properties).
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25 15. The COVID-19 crisis highlights how fundamentally speculative and unfair it
26 would be to base a special benefit assessment on twin 2019 hypotheticals for improvements
27 anticipated to be delivered five years later. Even before COVID, it was speculative to
28 assume that market highs experienced in October 2019¹ would be sustained through 2024,
29 after an already extraordinarily long expansion period. *See, e.g.,* 3/3/2020 (A. Gibbons)
30 Hrg. Tr. at 117:6-118:9, 119:17-120:9. And Mr. Macaulay conceded: “[W]hen I was doing
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1 my analysis in October 2019, who would have thought that this COVID issue would
2 happen?” 6/23/2020 Hrg. Tr. at 80:3-8. At his deposition in late February, his “thought
3 process was that the market was going to continue to go up.” See Gibbons Decl. ISO
4 Closing Stmt. at ¶ 12 (dated 7/7/2020). Although COVID does not change actual values as
5 of October 2019 (see Examiner’s Recommendation at 109), the pandemic has impacted
6 current values and rendered the hypothetical October 2019 Final Study valuations outdated.
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12 16. As another example of how future events could affect the accuracy and
13 reliability of the City’s 2019 proposed assessment, Martin Apartments LLC recently
14 requested the Hearing Examiner re-open the record to allow the City to explain whether the
15 assessments against property owners within the LID are, in fact, being used by the City to
16 fund the emergency dismantling and reconstruction of Pier 58.⁴ It has been reported that the
17 City plans to use LID funding to pay for the expedited, emergency repairs and replacement.⁵
18 If true, the City would be improperly imposing costs on property owners within the LID for
19 improvements that are required to maintain the safety of Pier 58 and to remove a threat to
20 critical salmon habitat and City infrastructure—this does not provide any special benefit to
21 LID property owners.
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33 ⁴ Associated Press, *Seattle mayor approves ‘emergency dismantling’ of waterfront Pier 58* (King
34 5, Aug. 15, 2020), available at <https://www.king5.com/article/news/local/seattle/seattle-mayor-approves-emergency-dismantling-of-waterfront-pier-58/281-f6b7c7d0-78f2-4826-97c8-0b60d4097aa3>; See Aug. 21, 2020 Memo from R. Holtz et al. to L. Arber re HPA Request for Pier
35 58 (Waterfront Park) Emergency Demolition Project, available at
36 <https://www.govonlinesaas.com/WA/WDFW/Public/EnSuite/Shared/pages/util/StreamDoc.ashx?query=UxFpa3XqI8020u5QdaIfpJXX0C+FjfKT5/OpyMkto74=>; see also Aug. 13, 2020 Ltr. from H.
37 Burton to D. Graves et al. re Review of Pier 58 Movement Observation Report & Recommendations,
38 available at
39 <https://www.govonlinesaas.com/WA/WDFW/Public/EnSuite/Shared/pages/util/StreamDoc.ashx?query=EvGV09Syk1HCKYhwoN5Gqo5VpGOk5QBr3KFzTsfO4Lw=>.

40 ⁵ Asia Fields, *‘Substantial’ pier shift closes Seattle’s Waterfront Park* (Seattle Times, Aug. 8,
41 2020), available at <https://www.seattletimes.com/seattle-news/substantial-pier-shift-closes-seattles-waterfront-park/>.
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1 17. There is also no certainty the improvements will be delivered on time. Mr.
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3 Foster testified that 2024 is not a hard deadline for delivery of the improvements, and a
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5 delay in construction schedule would not constitute a “material change” under the City
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7 Council’s ordinance authorizing the improvements. In other words, the City cannot
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9 guarantee that the LID Improvements will be delivered as expected in 2024 or any time after
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11 that. 6/26/2020 Hrg. Tr. at 18:5-13. Meanwhile, Martin Apartments LLC’s experts Reid
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13 Shockey and Richard Shiroyama testified via declaration as to the City’s permitting gauntlet,
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15 and potential delays and project changes inherent in those processes, that call into question
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17 the assumption that the City can deliver the LID Improvements by 2024. Hrg. Exhibits 110
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19 (Shockey Decl., dated 4/15/2020); 111 (Shiroyama Decl., dated 4/15/2020); 107 (Anderson
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21 Decl., dated 4/15/2020).

22 18. Unsurprisingly, of the over one hundred LIDs Mr. Macaulay has worked on,
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24 he could not point to a single one where the assessment roll was finalized five years in
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26 advance of the anticipated project completion. *See* 6/23/2020 Hrg. Tr. at 16:1-22. Likewise,
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28 he has never recommended final special assessments based on designs less than 30 percent
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30 complete, other than in this case. *Id.* at 17:22-18:2. Nevertheless, he proceeded with his
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32 2019 hypothetical before, hypothetical after analysis because the City “wanted to get
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34 moving ahead with the project” and gave him assurances that designs would not change. *Id.*
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36 at 66:17-25. He performed no independent due diligence to determine the reliability of the
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38 City’s estimates for completion of the LID Improvements, or to ensure that proposed
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40 designs or cost estimates were not going to materially change. *Id.* at 78:14-79:13. Yet he
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42 agreed that if any of his assumptions are incorrect, his opinion of market value would need
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44 to be revised. 6/23/2020 Hrg. Tr. at 68:19-69:8; *see also id.* at 64:13-65:12; 67:10-16;
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46 68:11-18.
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1 19. The City has cited no authority—and Martin Apartments LLC is aware of
2 none—that affirms the use of hypothetical, anticipatory Before and After values in order to
3 estimate and assess taxes for “actual” special benefits that will not accrue for another five
4 years (if all goes off without a hitch). To the contrary, the hypothetical assumption that all
5 of the Before and After Improvements are constructed as of October 1, 2019 allows Mr.
6 Macaulay to base his estimates on “pure speculation.” *Bellevue Plaza, Inc.*, 121 Wn.2d at
7 411. For these reasons, Martin Apartments LLC appeals the following portions of the
8 Examiner’s Recommendation: Sections II.6, II.7, II.33, IV.B.1, IV.B.2, IV.B.3, IV.B.5,
9 IV.B.6, IV.B.11(c), IV.C.12, IV.C.14, and IV.C.18.

10 20. Failure to discount special benefit estimates to account for risks and present
11 value. Due to the inherent uncertainty, Martin Apartments LLC’s expert opine that the Final
12 Study should have accounted for risks associated with delivery of the improvements
13 (including permitting risk, construction risk, general economic risk) and any special
14 damages associated with interim construction. 3/3/2020 (A. Gibbons) Hrg. Tr. at 119:17-
15 120:9, 59:20-60:20. In addition, as is typical appraisal practice, Mr. Macaulay should have
16 discounted the anticipated 2024 benefit to account for the time value of money. *Id.* at 54:17-
17 55:1; *see also* Gibbons Decl. ISO Closing Stmt., ¶ 13, 16 (dated 7/7/2020) (“Appraisers
18 routinely consider the impact of future conditions [through] discounted cash flow
19 analysis.”).

20 21. Mr. Macaulay acknowledged that appraisers can discount the value of a
21 future condition not in place at the date of valuation and can discount for the time value of
22 money. 6/23/2020 Hrg. Tr. at 74:1-75:1. And he agreed that if improvements are not built
23 until 2024, “[y]ou would be discounting it back to a present value.” *Id.* at 77:2-19.
24 Discounting would also have been consistent with his approach for analyzing special

1 benefits to vacant land. He testified that the difference between similarly situated vacant
2 sites slated for development and already developed sites was that the labor, capital and risks
3 associated with development had not yet been borne for those vacant sites. Therefore, the
4 vacant land was not valued as highly and received a smaller assessment. 6/19/2020 Hrg. Tr.
5 at 28:1-13; *see also* 6/18/2020 Hrg. Tr. at 205:9-12. *A fortiori*, a project that has not been
6 fully permitted, has not completed environmental review, and has not reached full design is
7 presently worth significantly less.
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15 22. The City's hotel expert, Mr. Lukens, likewise explained that to calculate
16 present value, an appraiser would consider discount rates for land development to account
17 for inflation, entitlement risks, cash flow issues, construction, etc. 6/26/2020 Hrg. Tr. at
18 184:5-185:22. And Mr. Lukens agreed that it would be reasonable for an appraiser to refer
19 to the PricewaterhouseCoopers Korpacz study for applicable discount rates. *Id.* at 187:18-
20 189:23; *see also* Gibbons Decl. ISO Closing Stmt, ¶ 17 (dated 7/7/2020).
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27 23. Applying the Q19 Korpacz rates and assuming *arguendo* that Macauley's
28 total estimated special benefit is correct, \$447,908,000 discounted to 2019 present value for
29 raw land to be developed by 2024 is approximately \$153,600,000. *See* Gibbons Decl., ¶ 17,
30 Ex. A. Notably, this is lower than the City's proposed \$171,000,000 assessment. Thus,
31 ignoring momentarily all of the other methodological and other flaws discussed here and in
32 Martin Apartments LLC's case-in-chief, and assuming that the LID Improvements provide
33 special benefits as soon as they are complete in 2024, Mr. Macaulay's hypothetical
34 assessment materially exceeds special benefits when reduced to present value. Further, to
35 the extent the City is arguing that because they are permitted to assess 100% of the special
36 benefit, the special benefit estimate can be off by 60.8% because they only assess 39.2% of
37 that benefit, the City is again wrong. After applying proper discounting, the City's proposed
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1 special benefit assessment is far more than 39.2% of the total estimated special benefit, and
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3 in fact exceeds 100% of the total estimated special benefit.

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5 24. But even the assumption that the LID improvements would deliver benefits
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7 as soon as they were complete in 2024 is not supported by the studies Mr. Macaulay relied
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9 on. Rather, those studies demonstrate that a discount period of five years is conservative.
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11 *See* Gibbons Decl. ISO Closing Stmt., ¶ 18 (dated 7/7/2020). In particular, HR&A’s study
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13 on the Rose Kennedy Greenway in Boston (included in Mr. Macaulay’s backup files)
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15 indicates that during the construction period, the Greenway district “significantly” lagged in
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17 value (i.e., construction disamenity). *Id.*, Ex. C at 24. That study also recognized that the
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19 “reorientation of development to capture value takes time”—specifically, 12-13 years. *Id.* at
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21 30-31 (discussing New York City High Line and San Francisco Embarcadero
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23 improvements). Given the lengthy delay, any prediction of future special benefits is
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25 speculative, especially during the construction phase where values are likely to decline. And
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27 assuming the LID Improvements take a similarly long period of time after they are complete
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29 to start producing tangible property value benefits, each additional year of delay results in
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31 further discount to the present value of any future alleged benefit. Gibbons Decl. ISO
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33 Closing Stmt., ¶ 19, Ex. A.

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35 25. Applying the same discounting methods described above and in Mr. Gibbons
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37 declaration, the 2019 net present value of ABS’s estimate for benefits that actually start
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39 accruing in 2029 is just \$42,204,597, only 9.4% of the benefits ABS hypothesized, even
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41 before applying the 39.2% percentage assessment. *Id.* For Martin Apartments LLC, this
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43 means at most the 100% assessment should be no more than \$47,382.60. Anything more
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45 would permit the City to assess Martin Apartments LLC based on a hypothetical assumption
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47 that these improvements are in place and providing benefit, and ignore the risks,

1 construction disamenity, and time value of money that normal appraisal principles would
2 take into account. *Id.*, ¶ 20. Proportionality would counsel that the assessment should be
3 only 39.2% of that assessment cap, or \$18,573.98.
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6 26. Attachment C includes two Excel spreadsheets applying these discounting
7 methods to Martin Apartments LLC's assessment. It is undisputed that special benefits will
8 not actually accrue until the LID Improvements are complete in 2024. Accordingly, the first
9 spreadsheet demonstrates that discounting the City's hypothetical October 2019 special
10 benefits to present value would reduce Martin Apartments LLC's assessment to \$67,618,
11 exclusive of any other flaws in the City's proposed assessment. The second spreadsheet
12 shows even more drastic reductions after taking into account: (1) a rough discount for
13 property value loss due to COVID-19 and (2) discounting to present value for 5 years (*i.e.*,
14 from 2024 when the City anticipates completing the LID Improvements) and 10 years (*i.e.*,
15 from 2029 to account for the time it takes for the improvements to capture property value).
16 After such reductions, Martin Apartments LLC's assessment would be just \$59,166 (for the
17 5-year discount) or \$16,257 (for the 10-year discount). Further, the spreadsheet concludes a
18 "zero" benefit for this property because, based on Dr. Crompton's testimony, Martin
19 Apartments LLC's property is more than 2,000 feet from the core "park" improvements and
20 therefore too distant to receive any special benefit. Neither of these spreadsheets address
21 other issues raised by Martin Apartments LLC's appeal, but are intended to help
22 demonstrate how unfair and inflated the City's proposed hypothetical assessment is. The
23 Hearing Examiner's Recommendation simply dismisses Martin Apartments LLC's
24 discounting argument without legal or factual analysis; that failure is error.
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1 **Appraisal and Assessment Calculation Methods Are Flawed**

2 27. The “general rule is that each lot, piece, or parcel of land should be assessed
3 separately” for purposes of local improvement district special assessment. *Doolittle*, 114
4 Wn.2d at 97.
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8 28. It is proper to sustain a challenge to an assessment, even without the appraisal
9 testimony from the owner, where the objector’s expert establishes that the assessment was
10 “clearly grounded upon a fundamentally wrong basis” due to an error in the method
11 employed by the City’s appraiser. *See, e.g., Doolittle*, 114 Wn.2d at 106.
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15 29. The City’s appraiser purports to utilize the income method of valuation but
16 relied on inaccurate revenue and market data, as discussed further below.
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20 30. The City’s appraiser purports to utilize the comparable sales method of
21 valuation, but no City witness attempted “to characterize any one, or all of them, as
22 comparable to [Martin Apartments LLC’s property].” *See Bellevue Plaza*, 121 Wn.2d at 406
23 (finding “several serious flaws” in ABS’s LID analysis in that case, including that the
24 appraiser “attache[d] a list of a number of land sales within the CBD, but ma[de] no attempt
25 to characterize any one, or all of them, as comparable to any particular property within the
26 LID”). And no City witness could explain how specific adjustments were made to these sales
27 to account for value increases due to the hypothesized Before and After Improvements. For
28 this reason, Martin Apartments LLC appeals Section II.23 of the Examiner’s
29 Recommendation.
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40 31. Special assessment improperly includes value lift from the Before
41 Improvements. Mr. Macauley is required to exclude (and claims to have excluded) any
42 assessment based on value attributable to demolition of the viaduct and the planned WSDOT
43 Improvements, which WSDOT had independently committed to fund. However, Mr.
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1 Macaulay did not calculate the actual market value of LID properties in October 2019, and
2 did not separately analyze the hypothetical increase to property values attributable to
3 WSDOT's planned improvements. *See* 6/23/2020 Hrg. Tr. at 41:11-18 (did not estimate a
4 current value and then separately calculate a hypothetical "With WSDOT" Before value);
5 Gibbons Decl. ISO Closing Stmt., ¶ 8 (dated 7/7/2020); *see also* Gibbons 1/30/2020 Letter
6 (attached to Appeal Petition) at 4; Gibbons 5/2/2018 Letter (attached to Appeal Petition) at
7 3-4. Without any documented basis or support, Mr. Macaulay simply "ma[de] a judgment a
8 call" on what occupancy and rates would have been for the commercial properties assuming
9 all of the WSDOT Improvements are completed as of 2019. Macaulay Depo. at 129:19-
10 130:11. This outright omission precludes any independent evaluation of the true market
11 "Before" values. *See* 6/23/2020 Hrg. Tr. at 44:25-45:9. It also fails to meet professional
12 appraisal standards; if an appraiser uses current sales data to infer values, then the appraiser
13 must explain how he analyzed that data and other information to come up with the
14 hypothetical value. 3/3/2020 (A. Gibbons) Hrg. Tr. at 128:1-130:4. This includes not just
15 removal of the viaduct, but also other road, pedestrian and landscaping improvements
16 WSDOT had already committed to make.

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33 32. However, because Mr. Macaulay testified that he did include some WSDOT-
34 related value-lift in the "Before" values, it follows that part of the special assessment
35 improperly is based on value attributable to the WSDOT Improvements. As shown by
36 mathematical formulas in his spreadsheets, Mr. Macaulay applies a special benefit
37 percentage to Before values. So for example, if Mr. Macaulay believed the WSDOT
38 Improvements would add \$10,000,000 in value, then his method of analysis assuming a 3%
39 special benefit assignment would result in \$300,000 of over-assessment. *See* Gibbons Decl.
40 ISO Closing Stmt., ¶ 9 (dated 7/7/2020). At a minimum, the Final Study should be redone
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1 to properly exclude the value of Before Improvements from the assessments. For these
2 reasons, Martin Apartments LLC appeals the following portions of the Examiner's
3 Recommendation: Sections II.19, II.29, and IV.B.11(a)(ii)
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6 33. Special benefits were assigned rather than measured. Mr. Macaulay
7 arbitrarily "assigns" special benefits to Before values instead of measuring them for each
8 property. See 1/30/2020 Gibbons Letter (attached to Appeal Petition); 3/3/2020 (A.
9 Gibbons) Hrg Tr. at 88:25-89:3; 90:8-91:13. Based on formulas in spreadsheets that Mr.
10 Macaulay used to analyze the commercial properties, Martin Apartments LLC's experts
11 concluded that Mr. Macaulay based adjustments on hypothesized very small increases to
12 property revenue and very small reductions to cap rates to "calculate" an "After" value due
13 to the coming 2024 LID Improvements. Attachment B (ABS Spreadsheet). These series of
14 micro adjustments were based on "professional judgment" that are neither shown nor
15 replicable.
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18 34. For these reasons, Martin Apartments LLC appeals the following portions of
19 the Examiner's Recommendation: Section II.19, IV.B.11(a)(iii).
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22 35. Special benefit falls within margin of error. The Final Special Benefit Study
23 applies an estimated value enhancement of less than 4%, which is generally within the
24 margin of error for appraisals and, therefore, not a reliable difference. See *Bellevue Plaza,*
25 *Inc.*, 121 Wn.2d at 401 (must substantiate use of percentages when allocating assessments).
26 Martin Apartments LLC's experts explained that if two appraisers independently arrive at
27 values within 5% of one another, this difference is considered reasonable as it falls within
28 the standard margin of error accepted in the profession. 3/3/2020 (A. Gibbons) Hrg. Tr. at
29 164:2-9. Because Mr. Macaulay's micro-special benefit percentages fall far below that 5%
30 margin, "there is no way of authenticating" such incremental changes because "[m]arket
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1 forces completely obliterate any tiny little noise factor like that.” See 3/3/2020 (A. Gibbons)
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3 Hrg. Tr. at 160:23-161:5. Mr. Macaulay agreed during his deposition that 0.25% is too
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5 small to measure. Macaulay Depo. at 25:17-25. Yet, Mr. Macaulay assigned or purported to
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7 measure a difference in cap rates for Martin Apartments LLC’s property within that margin.
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9 Additionally, the fact that “Before” values are also based on a hypothetical that adds some
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11 unstated incremental value to actual 2019 values exacerbates this issue—the ability for an
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13 appraiser to discern the micro-value differences between hypothetical conditions that are so
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15 similar (the WSDOT improvements compared to the LID improvements) “verges on being
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17 ludicrous.” 3/3/2020 (A. Gibbons) Hrg. Tr. at 89:4-90:7.

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19 36. Even if it were possible to accurately tease out such a miniscule hypothetical
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21 value change due to improvements coming five years later, experts testified that there is no
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23 data to justify the mathematical adjustments—they are just the appraiser’s guesses as to
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25 what he felt the changes (hypothetically) would be. 3/3/2020 (A. Gibbons) Hrg. Tr. at 88:21-
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27 88:24 (“you cannot measure one percent difference in a high-rise building for this kind of a
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29 medium ... it’s simply assigned to a before value”). For these reasons, Martin Apartments
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31 LLC appeals the following portions of the Examiner’s Recommendation: II.27 and IV.B.4.

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33 37. No analysis of value increase attributable to individual components of the
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35 LID Improvements. The Final Special Benefit Study lacks clarity to fairly estimate a small
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37 percentage difference between hypothetical Before and After conditions. Throughout his
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39 testimony, Mr. Macaulay could not explain what benefit arose from specific Before/After
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41 descriptions in the Addenda even though he testified that he relied on these to calculate
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43 special benefits. 6/23/2020 Hrg. Tr. at 26:21-30:10. When asked where in his report
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45 someone might be able to determine how he attributed value to After conditions described in
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47 the Addenda, he answered that that was “not the scope of the assignment” because he was

1 asked to look at all of the projects as a whole. 6/23/2020 Hrg. Tr. at 30:3-8. But he admitted
2 that the six components were not actually a continuous project, that he was viewing them
3 together because the City asked him to, and that if he were to view them independently,
4 there was a low probability that properties in the north would specially benefit from
5 improvements in the south and vice versa. See 6/25/2020 Hrg. Tr. at 27:18-28:5.
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10 38. Not only did he fail to analyze benefits from each of these non-contiguous
11 improvements, his familiarity with descriptions as whole was tenuous at best. See, e.g.,
12 6/23/2020 Hrg. Tr. at 26:21-30:10 (Mr. Macaulay could not explain what specific benefit
13 arose from specific Before/After descriptions in the Addenda); cf. *Anderson v. City of*
14 *Issaquah*, 70 Wn. App. 64, 851 P.2d 744 (deprivation of due process where building design
15 objectives that guided regulators' assessment of architectural plans for buildings along a
16 "signature street" were so vague that they amounted to ad hoc review based on the
17 regulators' subjective impressions and feelings).⁶ It became clear through his testimony that
18 even though he used the renderings as "visual aid[s] in appraising the property in the before
19 and after" to "visually see what the differences would be," he could not explain what
20 specific elements in the visuals added or reduced value. *Id.* at 36:3-39:12. For example,
21 when shown a rendering of a two-lane road going down to one-lane in the After condition
22 near the Pike Street Market, he dismissively reasoned there would be no potential impact on
23 traffic because cars could still technically get through. *Id.* at 171:11- 173:11. When shown a
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41 ⁶ As an aside, this admission suggests that there should have been an explicit City Council
42 finding that properties within the LID would benefit from the improvements as a whole. See RCW
43 35.43.050. Without this finding, the cost and expense of each component must "be ascertained
44 separately, as near as may be, and the assessment rates shall be computed on the basis of the cost and
45 expense of each unit." *Id.* In other words, Mr. Macaulay should have estimated the benefit to each
46 property from each component separately, consistent with the law and in recognition of his testimony
47 that not all properties benefit from all components.

1 rendering of street improvements on Pike/Pine, he posited absurdly that seasonal variation
2 could explain the depiction of the same trees in the After condition nearly twice as tall as in
3 the Before. *Id.* at 173:17-175:4. For these reasons, Martin Apartments LLC appeals the
4 following portions of the Examiner’s Recommendation: II.27 and IV.B.4.
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8 39. Special assessment is not supported by comparable studies, data or reports.
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10 Mr. Macaulay’s references to empirical research do not justify his fundamental assumption
11 that the LID Improvements will lead to meaningfully increased real estate values for Martin
12 Apartments LLC. Indeed, no City witness was able to explain how ABS Valuation used
13 comparable sales or information from the “over twenty-five studies and reports” to arrive at
14 very precise special benefit increases for the commercial properties, including Martin
15 Apartments LLC’s property. For example, although Mr. Macaulay stated that no single
16 report or study was directly on point due to the unique nature of the LID Improvements (*see*,
17 *e.g.*, 6/25/2020 Hrg. Tr. at 146:21-147:8), he could not explain how he made specific
18 adjustments in his parcel-by-parcel analysis other than to say that the studies generally
19 provided “some background to base decisions on.” *See* 6/23/2020 Hrg. Tr. at 161:5-162:12;
20 *see also* 6/26/2020 Hrg Tr. at 118:7-19 (did not make any specific adjustments to account
21 for similarities and differences between these improvements and the comparable parks he
22 looked at).
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26 40. Mr. Macaulay purports to rely on Dr. Crompton’s research to justify the
27 assignment of incremental increase of 0.5% to 4% to property values within the LID.
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29 However, among other critiques, Dr. Crompton testified that Mr. Macaulay’s reliance on his
30 research misinterprets his work in critical ways, including because the LID Improvements
31 manifest the characteristics of a parkway (not a park), and his research indicates that most of
32 a *park*’s impact on single-family home values occurs within a 500-foot range (or 1.5 blocks
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1 in Seattle). *See* Hrg. Exhibit 94 (Crompton’s report). Further, updated research shows park-
2 related value increases are in fact smaller; that estimated increases are “best guesses” rather
3 than predictions of property value increases in a particular city; and that percentages do not
4 account for diminishing returns after taking into account water views, which would be the
5 driving value enhancer. The latter is especially true in a city like Seattle where the sloping
6 topography grants most properties in downtown a water view.
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12 41. Rather than addressing Dr. Crompton’s critiques, Mr. Macaulay simply states
13 that this was just one source of information that was not entirely relevant because, among
14 other things, Dr. Crompton’s research dealt with parks and not streetscapes. However, Dr.
15 Crompton’s critiques were based on Mr. Macaulay’s own testimony that the core “park”
16 improvements are the Promenade, Overlook Walk, and Pier 58. Macaulay Depo. at 178:15-
17 180:2 (explaining that for purposes of “drawing boundaries around a park” he was
18 considering only at Overlook Walk, Promenade, and Pier 58). Based on this testimony, Dr.
19 Crompton concluded that 500 feet via road from “park” improvements is just one or two
20 Seattle blocks and that Mr. Macaulay “inappropriately extend[ed] the LID impact
21 significantly beyond that which the park study indicated (even if it was legitimate to use the
22 park review’s findings).” Hrg. Exhibit 94 (Crompton’s Report) at 7. Indeed, the LID area
23 extends even past 2,000 feet from the core “park” improvements, which is the outer limit of
24 impact applicable to “community parks”—which the LID Improvements are not. *Id.* Martin
25 Apartments LLC’s property is not within 2,000 road network feet from the “park”
26 improvements. *See* Hrg. Exhibit 104 (Ellen Kersten Decl.) at Exs. E, F.
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42 42. Further, Mr. Macaulay’s testimony that he analyzed streetscapes, parkways,
43 greenways, and park-amenities separately contradicts his insistence that he viewed all of the
44 six LID components together as one entity. *See* 6/23/2020 Hrg. Tr. at 167:15-180:16. And
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1 based on the attention given to Dr. Crompton's work in the Final Study and supporting
2 materials, it was clearly an important—if not *the* most important—source of information for
3 estimating special benefits (especially with respect to the condos).⁷ No City witness
4 adequately explained exactly how Dr. Crompton's research informed ABS Valuation's
5 parcel-by-parcel analysis.
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11 43. The destination parks discussed in the Final Special Benefit Study do not
12 provide reliable, comparable, and valid support for the calculation of special assessments
13 here. *See* Gibbons 5/2/2018 Letter at 4. None of the parks cited in the Final Special Benefit
14 Study were funded by a LID. And in virtually all of those cases, the park improvements
15 dramatically restored unimproved or blighted areas, and properties evaluated were within
16 two or three blocks of the park.
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23 44. ABS's claimed reliance on three economic studies to support property value
24 increase is also flawed. The HR&A study does not inform what value increases are
25 expected from the LID Improvements because it projects increases to tourism from *all* of the
26 Waterfront Projects (not just those funded by the LID) and is based on tourism data from
27 dissimilar parks in other cities,⁸ making the methodological application to the LID
28 speculative. Further, Mr. Macaulay appears to have selectively ignored the HR&A Study's
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37 ⁷ Of the 62 files in Mr. Macaulay's "2019 Report Info" folder, which he explained contains all of
38 the studies he relied on to prepare the Final Study (*see* Hrg. Exhibit 122 at ¶ 12; 6/23/2020 Hrg. Tr.
39 at 152:10-154:18), 10 are authored by Dr. Crompton and 9 cite Dr. Crompton. Further, it appears
40 Dr. Crompton's study is the only one that found property value increases up to 2,000 feet from a
41 park (or streetscape) improvement—other studies estimated premiums for real estate only much
42 closer or cited to Dr. Crompton.
43

44 ⁸ These included distinct destination parks like Golden Gate Park, Hudson River Park, Rose
45 Kennedy Greenway, and Millennium Park where tourist "capture rates" varied from 5% (Rose
46 Kennedy Greenway in Boston) to 44% (Golden Gate Park in San Francisco). Further, the calculated
47 expected tourists visiting the LID park was calculated using data from only from New York City, a
notorious tourist destination.

1 conclusion that there would be *no new net visitors* from downtown residents as a result of
2 the LID Improvements and could not explain how this impacted his condo analysis.
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4 6/25/2020 Hrg. Tr. at 152:15-153:21. The Texas A & M study on “The Impact of Parks on
5 Property Values” primarily focused on whether the benefits accrue to the larger community
6 rather than properties adjacent to the park. And the 2014 New York City Department of
7 Transportation study is not based on real estate transactions and market sales and fails to
8 substantiate any link between increased retail sales and property values. Moreover, this
9 study only looked at impact either directly abutting the streetscape improvement, or a couple
10 hundred feet for plaza-like improvements.
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18 45. Meanwhile, Mr. Macaulay decided not to include the Trust for Public Lands
19 (TPL) Study in the Final Report even though it is Seattle-specific. *Id.* at 171:21-17; Hrg.
20 Exhibit 124. One explanation of that this omission could be TPL’s estimate of the economic
21 impact of the *whole park system* on the Seattle economy is much lower—\$30 million as
22 compared with HR&A’s estimate of \$191 million for just the waterfront improvements, and
23 thus would counsel a much lower assessment. Hrg. Exhibit 124 at 3. Regardless, when
24 asked whether he considered that HR&A’s estimated LID impact is six times greater than
25 TPL’s assessment of Seattle’s entire park system, he surmised that it was because the
26 HR&A Study came out in 2019, whereas the TPL Study came out in 2011. *See* 6/23/2020
27 Hrg. Tr. at 172:19-173:10. But, he did not do any additional analysis and did not adjust his
28 assumptions to account for this difference, which may be partly explained by the fact that
29 the TPL study is Seattle-specific. *Id.* at 173:11-174:1. The TPL Study also estimated that
30 approximately 3.44% of King County tourists visit Seattle primarily because of the city
31 parks, whereas HR&A estimated that 55% of visitors would visit primarily because of the
32 waterfront improvements.
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1 46. Although proximity to the improvements is a key factor in all of these
2 studies, Mr. Macaulay could not explain in what circumstances he measured distance as the
3 crow flies or via travel routes. *See* 6/23/2020 Hrg. Tr. at 180:17-182:19. And he seemed to
4 not understand that for both the Trust for Public Lands study and Dr. Crompton's study,
5 benefits extending out 2,000 feet were only observed for community parks that exceeded 40
6 acres. *See* 6/25/2020 Hrg. Tr. at 145:2-21. By contrast, the total size of the LID
7 Improvements is approximate 20 acres and it is not a community park.⁹

8 47. There is no explanation in the Final Study or the supporting materials of how
9 the studies or comparable sales were used to derive values for Martin Apartments LLC's
10 property. For these reasons, Martin Apartments LLC appeals the following portions of the
11 Examiner's Recommendation: Sections II.18, II.20, II.21, II.22, II.23, II.24, II.26, II.30,
12 II.32, and IV.C.5.

13 48. Failure to comply with USPAP. Martin Apartments LLC's assessment also
14 rests on a fundamentally wrong basis due to the City's appraiser's decision to utilize a
15 hybrid mass-appraisal method. Randall Scott, a former mass appraiser responsible (and
16 professionally recognized) for developing the MAI standards for mass appraisals, testified
17 that the Final Study does not meet mass appraisal standards nor allow for independent
18 assessment of the accuracy of Mr. Macauley's conclusions.

19 49. Specifically, because the parcel-by-parcel approach is not a mass appraisal,
20 Mr. Macaulay was required to comply with USPAP Standards 1 and 2 which govern direct
21 appraisals. *See* Decl. of Randall Scott ISO Closing Stmt., ¶ 4 (dated 7/7/2020). However,
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23 ⁹ *See*
24 https://waterfrontseattle.blob.core.windows.net/media/Default/pdf/2019_0208_Waterfront_LID_FA_Qs_Final.pdf ("Waterfront Seattle will create about 20 acres of improved parks and public spaces
25 connecting Seattle's central waterfront to downtown.").

1 the Final Study does not purport to comply with Standards 1 and 2. And Mr. Macaulay's
2 testimony suggests that he incorrectly believed that the only difference between direct
3 appraisals and mass appraisals is the reporting. *See* 6/23/2020 Hrg. Tr. at 207:7-208:12;
4 6/25/2020 Hrg. Tr. at 140:23-141:7 (explaining that he does not have to comply with
5 USPAP Standards 1 and 2 because he has not written an actual report on any condo unit); *id.*
6 at 205:8-14 (explaining that his mass appraisal simply uses "limited techniques, such as
7 Gordon uses in doing his limited restricted report").
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10 50. But the difference is not only in reporting—mass appraisal techniques must
11 instead comply with substantive standards in USPAP Standards 5 and 6. For example, as
12 Paul Bird (City's witness) testified, the mass appraisal approach is distinct from a parcel-by-
13 parcel approach:
14

15 The mass appraisal technique is an appraisal method used to evaluate
16 a group of properties that are subject to similar market forces as of a
17 certain date through the use of market data, statistical analysis and
18 testing. As a result, the mass appraisal technique does not require or
19 involve analysis of each individual property's specific data.
20

21 Second Decl. of Paul Bird ¶ 20 (dated 6/26/2020).
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23 51. Indeed, USPAP's definition for "mass appraisal" is "the process of valuing a
24 universe of properties as a given date using standard methodology, employing common data,
25 and allowing for statistical testing." Appraisal Foundation, Uniform Standards of
26 Professional Appraisal Practice at 5 (2020-2021). And the definition for "mass appraisal
27 model" is "a mathematical expression of how supply and demand factors interact in a
28 market." *Id.* Mr. Scott explains that a mass appraisal must use a model that is suitable for
29 statistical testing—otherwise, there would be no way to assess the accuracy or validity of the
30 mass appraisal. R. Scott Decl. ISO Closing Stmt., ¶ 4 (dated 7/7/2020).
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1 52. Regardless of client direction, Mr. Macaulay is required to comply with
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3 USPAP. So if, as he determined, a “[p]arcel-by-parcel direct appraisal” would not have been
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5 economically feasible because it would have taken “an incredible amount of time and cost”
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7 (6/18/2020 Hrg. Tr. at 125:15-10), then ABS Valuation should have conducted an appraisal
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9 consistent with USPAP Standards 5 and 6. *See also* Hamel Decl. at ¶ 8 (“performing an
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11 individual appraisal of each [condo] parcel would have been cost and time prohibitive”).

12 53. But Mr. Macaulay’s methods fail to comply with USPAP Standards 5 and 6
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14 because, *inter alia*, he fails to develop a model structure that reflects characteristics affecting
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16 value, fails to calibrate the model structure to determine the contribution of the individual
17
18 characteristics affecting value, and does not review the mass appraisal results against actual
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20 sales/data as a quality assurance/quality control check. *See* 3/3/2020 Hrg. Tr. at 216:18-
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22 217:1;¹⁰ Decl. of Randall Scott ISO Closing Stmt., ¶ 4 (dated 7/7/2020).

23 54. Mr. Macaulay explained that factors like “aesthetic change in the area, the
24
25 proximity to the elements, the increase in market rent, market vacancy changes,
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27 capitalization rate changes, and things of that nature” drove value increases. 6/23/2020 Hrg.
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29 Tr. at 211:14-212:3. But he could not specify how these factors were considered in his
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34 ¹⁰ Standard 5 requires mass appraisals to develop a model structure that conceptualizes the
35 relationship between characteristics that affect value, and to calibrate that model to specify how
36 individual characteristics affect value. *See* USPAP Standard 5: Mass Appraisal, Development (2020-
37 21). The purpose is to rationally determine what characteristics will create value, and by how much.
38 This allows the mass appraiser to not only generate outputs, but also to test the reliability of the
39 model (and allow others to do so) by comparing the results of the model with actual sales. *See*
40 3/3/2020 (R. Scott) Hrg. Tr. at 197:7-15; 203:21-205:13 (explaining that it is typical to test output
41 against actual sales). USPAP Standard 6 sets forth the mass appraisal reporting requirements, which
42 include explanation of the model specification, data requirements, calibration methods, and
43 mathematical form of the final model. *See* USPAP Standard 6: Mass Appraisal, Reporting at 6-2(i)-
44 (o). Without this reporting, it is impossible for users of the appraisal report to determine how the
45 appraiser determined value, and this omission renders the report not credible. *See* 3/3/2020 (R. Scott)
46 Hrg. Tr. at 206:15-207:17.
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1 “parcel-by-parcel” approach, and no one reviewing his work would have a clue. And he did
2 not calibrate his approach to determine how each factor contributes to value. *Id.* at 212:8-
3 213:5. As for reviewing the mass appraisal results, there were no criteria governing the
4 internal review process. *Id.* at 104:24-105:20. And because both the Before and After values
5 were hypothetical, it was not possible to identify matched pair sales and no City witness
6 explained how ABS Valuation made adjustments to “comparable” sales in order to check
7 their conclusions. Finally, Mr. Macaulay failed to comply with Standard 6 which requires
8 him to explain his model structure.
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11 55. For these reasons, Martin Apartments LLC appeals the following portions of
12 the Examiner’s Recommendation: Sections II.28, II.31 and IV.C.8. In addition, Martin
13 Apartments LLC renews Objectors’ Motion To Exclude The Expert Testimony of Robert J.
14 Macaulay, filed on April 8, 2020, and appeals the Examiner’s denial of that motion.
15

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17 56. Finally, Martin Apartments LLC’s property is not appurtenant—or even in
18 close proximity—to any proposed improvements. *See Hasit*, 179 Wn. App. at 947 (“the
19 burden of proving special benefit” shifted to the City because the protestors’ parcels merely
20 stood “in close proximity to the property on which expert testimony was given”). Indeed,
21 Martin Apartments LLC’s property is not even within 2,000 road network feet from the core
22 park improvements. And, as described above, the special assessment is overstated because
23 the Final Study makes no attempt to determine general benefits, existing amenities for
24 Martin Apartments LLC’s specific property, or special detriments. In addition, it is
25 speculative due to the fact that, as of October 2019, improvements were not in in place—
26 and, in fact, much of the waterfront is a construction zone following removal of the viaduct
27 and now Pier 58 demolition. Under these circumstances, rather than relying on entirely
28 imaginary income and shaky hypotheticals, Mr. Macaulay at the very least should have
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1 discounted the special benefit estimates or waited to perform the Study until the
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3 improvements were at least close to complete.
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5 **Erroneous Pre-Improvement Valuation**

6 57. The proposed final assessment erroneously overstates the pre-improvement
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8 value of Martin Apartments LLC's property as of October 1, 2019 and, as a result,
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10 overstates the special benefit to the Martin Apartments LLC's property. This variation in
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12 pre-improvement valuation calls into question the City's assessments because the City's
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14 Final Benefit Study uses the pre-improvement valuation to then calculate the assessment
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16 amount.
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18 58. Thus, aside from multiple other reasons why computation of the special
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20 benefits was flawed (discussed further below), the assessment is based incorrectly on pre-
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22 improvement values that do not accurately reflect market data. For these reason, Martin
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24 Apartments LLC appeals the following portions of the Examiner's Recommendation:
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26 Section III.
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28 **Erroneous Computation of Special Benefit**

29 59. "Special benefit" is "the increase in fair market value attributable to the local
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31 improvements." *Doolittle*, 114 Wn.2d at 103. "A benefit that a particular piece of property
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33 may receive by reason of the improvement is not measured alone by the physical character
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35 or cost of that portion of the improvement upon which the property abuts. *La Franchi v. City*
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37 *of Seattle*, 78 Wash. 158, 165, 138 P. 659, 662 (1914). "The question is: To what extent is
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39 the particular tract or property benefited by the entire improvement, and is it assessed
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41 proportionately with the other property included within the assessment district?" *Id.* 165–
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1 60. The proposed final assessment erroneously overstates the special benefit of
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3 LID improvements in a number of ways.

4 61. Spreadsheets show arbitrary changes to revenue and capitalization rates. For
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6 the Martin, Mr. Macaulay assumed rental rates would increase by 0.20% (low) and 0.60%
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8 (high) due to the 2024 LID Improvements. Based on formulas in the spreadsheets, Mr.
9
10 Macaulay then uses these same percentages (0.20% and 0.60%) to increase retail and
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12 parking income. He then uses this hypothesized increased revenue to calculate a new net
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14 operating income for the commercial properties and capitalizes that to come up with an
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16 “After” valuation.
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18 62. For changes to capitalization rate (“cap rate”), Mr. Macaulay assumes the net
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20 operating income remains the same as in the hypothetical “Before” condition, but changes
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22 the cap rate. For the Martin, the cap rate goes from 4.25% to 4.22% (low scenario, creating
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24 a bigger value increase) and 4.24% (high scenario, creating a lower value increase).
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26 63. Mr. Macaulay then averages his four “After” values to arrive at a final special
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28 benefit conclusion. For the Martin, this is an increase in property value of 0.40% due to the
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30 LID Improvements.
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32 64. Mr. Macaulay offered little justification for his micro adjustments to revenue
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34 and capitalization rates. When asked precisely what the basis is for his special benefit
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36 percentage increases to revenue for each commercial property, he could not point to
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38 anything specific other than his judgment. 6/23/2020 Hrg. Tr. at 113:24-115:24. There also
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40 is nothing in the report to allow a reader to understand how he came up with these
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42 percentages. *Id.* at 112:24-113:3. And there is no model or equation that he relied on—
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44 again, just his “judgment.” *Id.* at 113:4-6. Although he claims that the spreadsheets explain
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46 the basis for his belief that certain factors—liked increased connectivity—will increase
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1 property values (*id.* at 50:7-25), he could not explain how he went from general principles to
2 very specific percentage adjustments to revenue and capitalize rate. *Id.* at 115:10-24. And
3 for the first two “Scenarios” in the spreadsheet, he applied percentage changes to all revenue
4 sources equally even though there was no separate analysis done for food and beverage or
5 parking. *Id.* at 116:14-25, 117:11-21. Thus, he has not rebutted Martin Apartments LLC’s
6 expert’s conclusion that the adjustments are arbitrary and fall below generally accepted
7 margins of error, and that there is no actual, measurable, non-speculative special benefit to
8 Martin Apartments LLC’s properties.
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11 65. Mr. Macaulay testified that he used comparable sales as a reasonableness
12 check for commercial properties. But as explained above, no City witness has explained
13 how anyone, or all, of the sales are comparable to any particular commercial property within
14 the LID. *Compare Bellevue Plaza*, 121 Wn.2d at 406. Further, Mr. Macaulay testifies that
15 in order to make sales “comparable,” he would have had to make adjustments to account for
16 Before and After conditions, but there is no way to understand how adjustments were made
17 because he “didn’t do a separate sales comparison approach where we showed adjustments
18 and whatnot.” 6/23/2020 Hrg. Tr. at 128:25-129:24. When asked how he determined that
19 his adjustments were reliable, he said it would have simply been a “test of reasonableness.”
20 *Id.* at 127:10-128:24.
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23 66. It also bears noting that any “internal review” of the special benefit estimates
24 would have been largely arbitrary given Mr. Macaulay’s testimony that there is no margin of
25 error. Indeed, given all the same information, he seemed to suggest that it would be
26 perfectly reasonable for another experienced appraiser to come up with special benefit
27 estimates that were five times higher than his estimates. 6/23/2020 Hrg. Tr. at 93:2-12; *see*
28 *also id.* at 89:20-90:2 (testifying that it might be reasonable for two appraisers with the exact
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1 same quality of data to be 50% off). Ultimately, his repeated insistence that there is no
2 margin of error conflicts with the testimony of Martin Apartments LLC's experts and
3 reaffirms that there are absolutely no standards governing his process. *See id.* at 91:6-94:5.
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5 Even if the typical margin of error (5%) is a "rule of thumb" and not a "hard legal standard,"
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7 there are still reasonable and unreasonable variations within the appraisal field. *See*
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9 Examiner's Recommendation at IV.B.4. Thus, the special assessment is not actual,
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11 measurable or special because it is arbitrarily assigned; and it is too small to realistically be
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13 supported by appraisal techniques.
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16 67. No evidence of special benefit. Meanwhile, there is "no actual evidence from
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18 any seller or purchaser that the price was higher because of the LID improvements."
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20 *Bellevue Plaza, Inc*, 121 Wn.2d at 409. As in *Bellevue Plaza*, the City's appraiser "has not
21
22 identified any seller or buyer, or any particular property where the existence of the LID
23
24 improvements had an effect on the market price." *Id.* at 410-11. Meanwhile, Martin
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26 Apartments LLC has explained that the property has not increased rental rates or revenue
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28 due to the forthcoming LID Improvements, because, among other reasons (and apart from
29
30 COVID), the improvements ABS believes will generate value do not exist, and will not for a
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32 number of years to come. There are no comparable sales because the LID Improvements are
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34 not in place, nor will they be until the end of 2024 if completed on schedule.
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37 68. The fair market value of MARTIN APARTMENTS LLC'S property has not
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39 changed due to increased waterfront view. *Cf. Appeals of Jones*, 52 Wn.2d 143 (property
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41 was not specially benefited from installation of new water main and fire hydrant where it
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43 was already adequately supplied with water and afforded adequate fire protection). And in
44
45 any event, any value attributable to removal of the viaduct was to be excluded from the
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47 assessment calculation.

1 69. There is no special benefit because LID improvements in fact diminish the
2 value of Martin Apartments LLC's property by drawing visitors away towards
3 improvements that do not abut the property, increasing competition for the retail component.
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7 *See Kusky*, 85 Wn. App. 493 (testimony of owners' expert that LID actually diminished
8 value of property was sufficient to rebut presumption that assessment was proper).
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10 70. Moreover, the assessment formula is an attempt to distribute costs that do not
11 relate to special benefits. *See Bellevue Plaza, Inc.*, 121 Wn.2d at 416 (model cannot be
12 "merely a mathematical model that distributes costs").
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15 71. The Special Benefit Study fails to address whether the \$346,000,000
16 estimated LID project cost takes into account the investment that would have occurred in the
17 LID area anyway. Furthermore, there is no spatial presentation concerning where dollars are
18 invested. This is a critical component of estimating which properties receive a direct benefit
19 from the improvements, versus more incidental benefits further from the park.
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22 72. Mr. Macaulay also included personal property in his valuation of hotels even
23 though none of the assessment notices were for personal property (*see* Hrg. Exhibit 130) and
24 he did not include personal property values for any other types of property. 6/23/2020 Hrg.
25 Tr. at 62:5-11. This is contrary to an explicit disclosure in the Final Study stating that the
26 "[a]ppraisal applies to the land and building improvements only" (C-17 at 197). *See also*
27 Gibbons Decl. ISO Closing Stmt., ¶ 10 (dated 7/7/2020). This also resulted in hotels
28 receiving a disproportionately high LID assessment in comparison to other property types,
29 since hotels were the only property type subject to personal property LID assessments.
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1 notice procedures because hotel property owners only received notice that their real estate
2 was being assessed. *See* Fourth Decl. of Gordon ISO Closing Stmt., ¶ 12 (dated 7/7/2020).

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4 73. The proposed final assessment substantially exceeds the special benefit to the
5 property and is grossly disproportionate to similarly situated properties within the LID. For
6 these reasons, Martin Apartments LLC appeals the following portions of the Examiner's
7 Recommendation: Sections II.22, II.23, II.27, IV.B.4 and IV.B.11(a)(iii).
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12 **State Environmental Policy Act and Other Environmental Permitting**

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14 74. While this appeal is not challenging the City's environmental review and
15 permitting processes, those processes are relevant in determining the legality of the
16 assessments, and to assessing the delivery risk, the present value of the City's plans, and
17 ultimately the amount of the assessment. If the roll is finalized, the City will commit to
18 pursue projects that have not yet undergone environmental review (thus limiting the choice
19 of reasonable alternatives to those projects). For example, if the roll is finalized, the City is
20 committed to build all of LID Improvements, even though NEPA review of Pier 58 (and 63)
21 is just beginning. Further, the City has segmented environmental review, and still has a
22 gauntlet of federal, state and tribal review processes to complete before it will be clear what
23 the City can legally build, and when. *See Summary and Fiscal Note*, Sea. City Council Bill
24 No. 119447 at 3 (Jan. 28, 2019); *see also* SMC 25.05.070(A), SMC 25.05.440(D)(2)(b),
25 SMC 25.05.406 and their counterparts in the SEPA Rules, Chapter 197-11 WAC. Either the
26 City is violating SEPA and chapter 25.05 SMC by finalizing the assessment roll and
27 committing to reconstruction of Pier 58 and major street improvements without
28 environmental review, or the City's Final Special Study has improperly included and is
29 proposing to assess the Martin Apartments LLC the costs and special benefits of
30 improvements that may not get built. Either way, it is faulty process.
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Due Process Rights

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3 75. The City's failed to notify MARTIN APARTMENTS LLC sufficiently in
4 advance of the hearing to allow MARTIN APARTMENTS LLC to obtain evidence and
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6 prepare to properly challenge the assessments. Because LID assessments involve a
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8 deprivation of property, affected owners have the right to a hearing as to whether the
9
10 improvement resulted (or will result) in special benefits to their properties and whether their
11
12 assessments are proportionate, which necessarily includes the right to adequate notice of the
13
14 hearing. *Carlisle v. Columbia Irrigation Dist.*, 168 Wn.2d 555, 569–70, 229 P.3d 761
15
16 (2010).

17
18 76. The LID statute specifies that cities must mail notices giving the time and
19
20 place of the hearing to the affected owners “[a]t least fifteen days before” the hearing and
21
22 publish the notice once a week for 2 consecutive weeks in the city’s official newspaper, with
23
24 the final publication at least 15 days prior to the hearing. RCW 35.44.090. However, strict
25
26 compliance with the statute does not necessarily satisfy due process. *Hasit*, 179 Wn. App. at
27
28 956. The key inquiry is whether the owner had sufficient time to gather evidence (and
29
30 secure their own appraisal), evaluate proportionality of the proposed assessments, and
31
32 whether the owner asked for more time. *Id.* (noting that 15 days was entirely “insufficient
33
34 for anybody to get an appraisal”).

35
36 77. The City’s Notice of Assessment was sent on December 30, 2019. And the
37
38 Final Special Benefit Study has only been available for public review since January 7, 2020.
39
40 Due to this short time frame, MARTIN APARTMENTS LLC requested a prehearing
41
42 conference and scheduling order that would preserve and protect Martin Apartments LLC’s
43
44 right to analyze and respond to the Final Study, obtain expert appraisal testimony, conduct
45
46 depositions, and to accommodate preliminary motions (*e.g.*, with respect to the interplay
47

1 between SEPA and the City's assessment of taxes for Pier 58 and Pike/Pine improvements).
2
3 The Hearing Examiner erroneously denied that request. For this reason, Martin Apartments
4
5 LLC appeals the following portions of the Examiner's Recommendation: I.B.
6

7 **VII. Relief Requested**

8
9 MARTIN APARTMENTS LLC respectfully requests that the City Council:

- 10
11 1. Reject the Hearing Examiner's recommended denial of Martin Apartments
12
13 LLC's objection; and
14
15 a. Cancel the Waterfront Local Improvement District No. 6751 proposed final
16
17 assessment dated December 30, 2019; or
18
19 b. Revise Martin Apartments LLC's Waterfront Local Improvement District
20
21 No. 6751 proposed final assessment to \$0 (zero), or such amount as Martin
22
23 Apartments LLC establishes at the hearing in this matter; or
24
25 c. Remand the matter to the Hearing Examiner or City appraiser to recalculate
26
27 and reduce Martin Apartments LLC's assessment using recognized appraisal
28
29 techniques consistent with USPAP and:
30
31 i. Excluding any property value increase attributable to viaduct removal
32
33 and other planned WSDOT Improvements;
34
35 ii. Taking into account the effects of the COVID-19 pandemic on the
36
37 value of Martin Apartments LLC's property and other relevant
38
39 developments since October 2019;
40
41 iii. Accounting for and excluding (1) any special benefits from existing
42
43 or planned improvements that already provide similar benefits to
44
45 Martin Apartments LLC's property, and (2) any special detriments
46
47 from construction and other anticipated LID-related disamenities;

- 1 iv. Accounting for and including only those actual benefits anticipated to
2 accrue to Martin Apartments LLC's property based on its location
3 relative to Pier 58, Overlook Walk, and the Promenade, and specific
4 elements of the LID Improvements;
5
6 v. Discounting anticipated special benefits to present value, based on
7 reliable estimates regarding when special benefits will start accruing
8 following completion of the LID Improvements; and
9
10 vi. Accounting for such other issues specific to Martin Apartments
11 LLC's property relevant to calculation of such assessment; and
12
13 2. Grant such further relief as the City Council deems just and proper.
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