BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In re Proposed Final Assessment Roll for Local Improvement District No. 6751 ("Waterfront LID") Parcel Nos.: 6094670010; 6094670020; 6094670030; 6094680050; 0660000740; 0660000708; 2285130010; 6792120010; 6195000030; 0942000430; 6792120020; 7683890010; 1976200070; 1976200075; 1976200076; 7666202465; 7666202345; 1975700365; 0696000015; 1974700175; 1117080020; 1975700235; 0696000055; 0660000540 0660000545; 066000-0575; 2538831460; 2538831480; 0939000240; 1974600025; 1974600035	Case Nos. CWF-0318, 0410, 0411, 0412, 0413, 0414, 0415, 0416, 0417, 0418, 0420, 0421, 0422, 0423, 0425, 0426, 0427, 0429, 0430, 0431, 0432, 0433, 0434, 0435, 0436, 0437, 0438, 0439, 0440, 0441 **DECLARATION OF REID SHOCKEY**

I, Reid Shockey, declare as follows:

1. I have personal knowledge of the facts stated below and am competent to testify regarding the same.

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2. I am the Principal of Shockey Planning Group, have 52 years of experience as a professional planner, and was the former SEPA Responsible Official for the City of Everett.

3. Attached as Exhibit A is an Opinion Letter I co-authored, with Camie Anderson, that accurately reflects our testimony regarding the environmental review process and permits the City of Seattle must go through for the LID Improvements.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Everett, Washington, on April 15, 2020.

Reid Shockey

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EXHIBIT A

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April 15, 2020

R. Gerard Lutz, Partner
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OPINION LETTER
Permits and Entitlements
Seattle Waterfront Park ULID

Dear Mr. Lutz,

You have asked for our opinion on matters related to environmental review and permitting of the Seattle Waterfront LID project in the City of Seattle, including Pier 58 (formerly referred to as "Waterfront Park"). The overall Waterfront improvement includes the so-called AWPOW[1] elements, plus Union Street access improvements and road improvements extending from Pioneer Square to the waterfront and along the Pike/Pine corridor to I-5. The LID's stated commitment is to complete all six LID components by 2024 (the "Seattle Waterfront LID Improvements"). Your specific request of Shockey Planning Group (SPG) is to identify the status of environmental review and permitting of these LID components under State, and where required, federal law and to give our opinion on the ability of the City to meet the requirements and the schedule outlined in the LID without material project changes or schedule impacts. Of these, Pier 58 is the most complex permitting regime, but the City has not commenced environmental review or permitting for the Pike/Pine or Pioneer Square improvement either.

Summary Opinion

Three "points in time" form the basis for our opinion: 1) when the City Council committed to move forward with the LID improvements (January 28, 2019), 2) the Appraiser's completion of the Final Benefit Study (October 2, 2019); and 3) the City's issuance of proposed final assessment notices (December 30, 2019). At Point 1, when the LID was created and costs were distributed, no permits had been applied for, much less reviewed or issued. At Point 2, the appraiser lacked several reports which could have allowed a more refined view of the overall project's scope in developing estimates of benefits to individual property owners and LID contributors. And at Point 3, the City determined the benefits and assessments to property owners based on information with certain shortcomings discussed below. The City had not commenced environmental review for Pier 58, Pike/Pine or Pioneer Square at any of these points, nor submitted permit applications for those Seattle Waterfront LID project components.

On the question of permit timing, the record indicates that the City intends to complete Pier 58 by December 2023[2], one year prior to the overall Seattle Waterfront LID project completion date

[1] Alaskan Way Promenade Overlook Walk
[2] Source: Hydraulic Project Approval Application February 19, 2020

of December 2024. The construction time for the Park as estimated by Hainline is 22-24 months. Using the longer estimate, a Notice to Proceed (NTP) would need to be issued by December 2021 to ensure timely completion. That is about 21 months from now. To complete that component by December 2024, the NTP would need to be issued by December 2022. Given that permitting has just commenced for Pier 58, and has yet to commence for the Pike Pine and Pioneer Square project components, and given the controversies surrounding the LID, we believe there is a reasonable probability of material changes to the project and the project's overall schedule which would extend the completion date for the LID improvements past 2024, perhaps significantly.

Permit Status

We have one overarching comment on federal permitting before a discussion of specific permits. The Seattle Waterfront LID project extends the length of Alaskan Way from the Stadium through Pioneer Square along the waterfront, up to the Public Market then east along the Pike/Pine corridor from the Market to I-5. With its LID, the City has committed to build all six Seattle Waterfront improvements as a package.

In a different setting, some improvements, if developed as separate freestanding projects, might not require SEPA or NEPA review as a package[3]. But when two or more projects cannot or will not proceed unless other actions proceed or are interdependent parts of a larger action and depend on the larger action for their implementation; or when taken together the projects have potential cumulative impacts that might be missed if the project's environmental impacts are analyzed separately, then both SEPA and NEPA may require the scope of environmental review be broad enough to consider those impacts together, not segmented[4].

In that regard, the City prepared an Environmental Impact Statement (EIS) for this project under SEPA in 2016. More recently the City issued a SEPA Determination of Nonsignificance (DNS) for Pier 58 in February 2020, essentially as a freestanding document, i.e. not as an Addendum or Supplement to the 2016 EIS. The City's permit matrix document (attached) notes that SEPA has not been completed by the City for the Pike/Pine or Pioneer Square improvements. Moreover, the City has just commenced federal permitting. Under NEPA, a federal agency must participate in the preparation of an environmental review (the analysis and documentation) in order for it to satisfy NEPA (42 U.S.C. § 4332(2)(D)(ii)). Furthermore, a federal agency may not use a completed SEPA document to meet its own NEPA requirements until the federal agency has reviewed the SEPA document and accompanying administrative record and determined that it satisfies all the agency's NEPA requirements. (SEPA allows use of federal documents through the adoption process, WAC 197-11-610, under most circumstances). On a related note, a public notice was issued in March 2020 by the Corps of Engineers (NWS-2019-703-WRD) for Pier 58 and improvements to Pier 63. There is discussion in the notice of future reviews (both federal and State) that may be required for historical and cultural resources, endangered fish species and threats to habitat, among others.

On a local level, historical site impacts have been evaluated by at least three historical review committees, but additional review is anticipated. On a State level, the Corps public notice

[3] See, e.g., WAC 197-11-060 and 40 CFR 1508.25

[4] For a list of federal cases addressing the segmentation issue, see https://elr.info/subject-matter-index-cases/segmentation-to-avoid-eis-requirements/4296

indicates current and future consultations with the Department of Ecology under at least the Clean Water Act and Coastal Zone Management Act.

The overarching comment: it is apparent that the Seattle Waterfront LID Project has been segmented into separate projects with some being studied in depth under SEPA, others not at all, still others by a separate freestanding DNS. Few projects, if any, have been studied under NEPA. It is not clear whether the Corps will choose to scope environmental review for Pier 58 and 63 to remain limited, or alternatively expand the scope of review. The Corps' initial public comment period for Public Notice NWS-2019-703-WRD concluded on April 14, 2020.

This is a classic case of where a project, along its entire length, would normally be reviewed under an integrated SEPA/NEPA process, following a detailed scoping process where the interrelationships of these numerous environmental, cultural and historical topics are defined, and consideration of the "no action" alternative is legally required. Given that status, there is potential for material modifications to LID components to be required as conditions of those reviews.

Segmenting environmental review poses a serious likelihood of schedule delays and revised costs due to potential material project changes. This is especially true when the prospect of potential legal challenges for improper segmentation or other environmental review procedural error are considered. It is worth noting that both SEPA and NEPA prohibit certain actions pending completion of environmental review, and specifically actions that would limit the scope of environmental review (WAC 197-11-070; 40 CFR 1506.1).

Federal Permits

As noted, the Corps of Engineers issued a public notice on March 16, 2020 soliciting comment on its project reference NWS-2019-703WRD, the overwater improvements to Piers 58 and 63. The notice summarizes potential impacts to certain Endangered Species, Essential Fish Habitats, Cultural Resources, and mitigation measures proposed by the City. It specifically invites responses from Native American Tribes or tribal governments; federal, State, and local agencies; historical and archeological societies. It further cites the potential for a public hearing if requested by commenting parties. Any hearing would add an indeterminate amount time to the permit schedule.

The Notice states that comments received will be used "to determine whether to issue, modify, condition or deny a permit for the work". They will be used "in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act". Any of these follow up actions by the Corps could add considerable time to its approval processes.

The final date for responses to this Public Notice was April 14, 2020. It will be followed by a significant review time prior to issuance of Section 401, 404 and/or Coastal Zone Management permits. Three other reviews[5] will occur as part of these approvals. The Corps usually cites a 120 day review period for its permits; however our estimate to our other clients typically ranges between six to eighteen months for fairly routine permits, which these are not. Review times are

[5] NOAA Incidental Take authorization, Marine Mammal Protection Act, ESA Biological Opinion.

affected by Corps staff availability, redesign of permit elements, tribe consultations and other processes.

Shockey Planning Group submitted a request for a Freedom of Information Act to the U.S. Army Corps of Engineers to obtain a copy of the submitted materials for review. This request was submitted March 18, 2020. The Corps was unable to produce the responsive materials before the close of the public comment period.

It also bears mention that the City has identified eight threatened or endangered species in the project area, and that Pier 58 and 63 work is likely to affect six of those species or their critical habitat. Corps consultation will be required with both NOAA Fisheries and US Fish and Wildlife Service, which are required to issue biological opinions and incidental take authorizations with respect to each of the six species for the work to proceed. These consultation processes can be time consuming, and are reasonably likely to affect overall schedule and cost of the Pier 58 work, even though Hainline has factored known "fish windows" into its schedule analysis.

While Pier 58 and Pier 63 are somewhat less complex, a noteworthy point of comparison for analysis is WSDOT's Mukilteo Ferry Terminal reconstruction project. From WSDOT's request for Corps review and approval to completion, even using a joint NEPA/SEPA documentation process, the environmental and permitting work has taken more than a decade[6].

State

Several State permit requests are reviewed in concert with the federal permits discussed above. These will generally follow the same timelines. Of special note however is the Section 401 Water Quality Certification which evaluates discharges to waters such as Elliot Bay under Section 404 of the Clean Water Act and the Corps' permit for construction of an obstruction of navigable waters under Section 10 of the Rivers & Harbors Act. Ecology's decision is grouped with the federal permits, however Ecology has up to one year to certify, condition or deny the requests. EPA has encouraged States not to wait for completion of NEPA to make Section 401 decisions. We do not anticipate Ecology will ultimately deny certification, although it could extend the December 2024 completion of the LID components.

The one purely State permit related to Pier 58 is the Hydraulic Permit Approval (HPA) issued by the Washington Department of Fish and Wildlife (WDFW). However, WDFW has also proposed to use the HPA process to manage tribal consultation for Pier 58. Based on WDFW's initial response to the HPA[7] application, WDFW's process is reasonably likely to materially affect overall schedule and cost. When the City's Pier 58/63 HPA application was submitted, the City's design was insufficiently developed for WDFW to review. The only completed environmental review as of "point in time" #3 was the 2016 Final EIS which, in our view, paid little attention to the water quality, fisheries and other physical impacts usually studied as part of Section 401,404 and HPA permits. The City's recent DNS (issued February 20, 2020, which is the same date the HPA was submitted to WDFW) appears to have been completed to fill a procedural gap in the review of these issues, but has specifically deferred identification of any significant environmental issues and development of mitigation to the federal and State permitting processes, including the HPA.

[6] https://www.wsdot.wa.gov/Projects/Ferries/mukilteoterminal/multimodal/timeline.htm
[7] Hydraulic Project Approval

It is our understanding that the City asked WDFW to place this permit application on hold pending tribal consultations[8] , to await a 60% design the City anticipates sometime this month (April 2020) to better define various HPA issues that may require more discussions[9]. Because of this potential delay, and the relationship of the HPA permit to the federal, State and tribal reviews which will be proceeding, it is our opinion that the December 2021 NTP target, and quite possibly the fallback 2022 NTP target, will likely be missed.

Historic Preservation and Cultural Resource Protection

As noted at the outset, many resources along the waterfront and other Seattle locations are listed or eligible for listing under federal, State and City of Seattle historic preservation and cultural resource preservation laws. In addition to the Pier 58/ Pike/Pine/ Pioneer Square segmentation issue, these laws can occasionally result in major schedule disruptions, project modifications and cost overruns. The most dramatic example was the discovery of a large Native American village during reconstruction of the Hood Canal bridge[10]. Given the amount of work WSDOT has done in connection with the tunnel, demolition of the Viaduct and its own planning for Alaskan Way, there is likely to be a significant amount of existing study material that should narrow those types of risk for Pier 58, Pier 63, the Pike Place Market and Pioneer Square. Nevertheless, these risks of material project modification and schedule impact are possible.

Local Permits

No specific analysis of local permits was conducted for this report. The 2016 Environmental Impact Statement identified the following, which we assume will be obtained in a timely manner according to City of Seattle regulations:

- Major Public Projects Construction Noise Variance (City of Seattle)
- Seattle Landmarks Board Approval (City of Seattle)
- Pioneer Square Preservation Board Certificate of Approval (City of Seattle)
- Pike Place Market Historical Commission Certificate of Approval (City of Seattle)
- Street Use Permit (City of Seattle)

Two other permits were listed in the Final Environmental Impact Statement (FEIS):

- Clean Water Act Section 402 National Pollutant Discharge Elimination System (NPDES) Construction Stormwater General Permit (Washington State Department of Ecology)
- Master Use Permit for Shoreline Substantial Development (City of Seattle)

Each of these permits has a nexus to State or federal permits and could result in material project modifications or delays if those other permits are delayed, and again especially if any of them are appealed. In whole, the permits discussed in this opinion, none of which have been issued yet,

[8] E-mail: Jill Macki – City of Seattle to Laura Arber (WDFW), March 10, 2020
[9] E-mail: Jill Macki – City of Seattle to Laura Arber (WDFW), March 3, 2020
[10] https://en.wikipedia.org/wiki/Tse-whit-zen

have the opportunity to be denied, conditioned or have issues arise causing material project changes or delay in the schedule.

Expert Witness Qualification

This opinion is co-authored by Shockey Planning Group Principal Reid H. Shockey, AICP and Senior Associate Camie Anderson. Mr. Shockey has 52 years' experience as a professional planner. He is the former Community Development Director and SEPA Responsible Official for the City of Everett; and founded his planning firm in 1980. Over the past 40 years, Mr. Shockey has served clients both as an author of environmental documents and as a contract SEPA official for public clients – cities, counties, school districts – on compliance issues. He currently serves as the contract planner for the City of Algona. His LID experience includes coordination of the Road Improvement District (LID) that resulted in construction of the street and utility systems in the 128th Street/4th/8th Avenue West in Snohomish County in the 1980s. The area became and is a major commercial center in Puget Park. He participated in several LID projects as Community Development Director for the City of Everett in the 1970s.

Camie Anderson has 20 years' experience as a professional planner, all of it with Shockey Planning Group. She currently is the contract planner for the City of Newcastle and assists the Auburn, Edmonds and Lake Stevens School Districts in their role as Lead Agency under SEPA as well as assisting with federal, State and local permitting as necessary for specific projects.

Shockey Planning Group is a consultant to the Washington Municipal Risk Pool, advising on land use and SEPA issues for the cities of Richland, Spokane Valley; and the counties of Jefferson and Chelan.

Respectfully,
SHOCKEY PLANNING GROUP

Reid H. Shockey, AICP
President

Camie Anderson
Senior Associate

Enclosure: Attachment A Permit Matrix

Attachment A - City Permit Matrix

LID-Funded Element	Description in LID Ordinance	Potential Environmental Review, Permits, and Approvals to Be Obtained as of 9/11/19	Staff Lead
Promenade	A continuous public open space extending along the west side of Alaskan Way from King Street to Pine Street.	Possible additional SEPA documentation in the form of an environmental impact statement (EIS) "Note to File" or addendum Possible revision to existing Shoreline Substantial Development Permit	Katherine Chesick
Overlook Walk	An elevated pedestrian bridge situated at the terminus of the Pike/Pine corridor, would include several buildings, an elevated lid over the surface street, open space with excellent view amenities, and an accessible pedestrian pathway with many connections between the Pike Place Market and the waterfront.	Possible federal Clean Water Act National Pollutant Discharge Elimination System (NPDES) permit Possible King County wastewater discharge permit	Katherine Chesick & Mike Cawrse
Pioneer Square Street Improvements	Streetscape and new roadway/ sidewalk improvements to portions of S Main Street, S Washington Street, Yesler Way and S King Street from Alaskan Way/First Avenue east to 2nd Avenue S. The improvements would create pedestrian-friendly links from Pioneer Square to the waterfront.	Pioneer Square Preservation District Board Certificate of Approval (COA) Additional SEPA documentation in the form of an EIS "Note to File" or addendum Possible revision to existing Shoreline Substantial Development Permit Possible modification to existing Hydraulic Project Approval Possible NPDES permit	Steve Pearce (COA only), Katherine Chesick & Mike Cawrse

		Possible King County wastewater discharge permit	
Union Street Pedestrian Connection	A universally accessible pedestrian link between the new waterfront and Western Avenue. An elevated pedestrian walkway and elevator extends from the southwest corner of Union Street and Western Avenue to the eastern side of Alaskan Way.	Possible King County wastewater discharge permit	Katherine Chesick & Mike Cawrse
Pike/Pine Streetscape Improvements	Pedestrian improvements along Pike and Pine streets from First Avenue to Ninth Avenue, providing enhanced pedestrian access to and from the Pike Place Market and waterfront.	Possible SEPA categorical exemption or threshold determination and any required environmental review, such as a DNS and Environmental Checklist Possible National Environmental Policy Act (NEPA) Categorical Exclusion with associated Endangered Species Act, Cultural Resources Section 106 and 4(f) evaluations Possible NPDES permit Possible King County wastewater discharge permit	Katherine Chesick & Mike Cawrse
Pier 58 (Waterfront Park)	A rebuilt pier park located at the base of Union Street, would provide a unique atmosphere for social gathering/performance spaces with excellent view amenities.	US Army Corps of Engineers Individual Permit (NWS 2019-703-WRD) Washington Department of Natural Resources (DNR) Right of Entry Washington Department of Fish and Wildlife (WDFW) Hydraulic Project Approval (HPA) SEPA	Jill Macik

		Seattle Department of Construction and Inspection (SDCI) Building Permit, SDCI Shoreline Permit Marine Mammal Protection Act (MMPA) Washington Department of Ecology (DOE) Section 401 Water Quality Certification	