

**Pyle, David**

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**From:** Karen Walter [KWalter@muckleshoot.nsn.us]  
**Sent:** Thursday, July 21, 2011 5:02 PM  
**To:** Pyle, David  
**Cc:** 'Pete.Jilek@dot.gov'; TaylorT@wsdot.wa.gov  
**Subject:** NE 4th Street/120th Avenue NE Corridor Project, 120th Ave NE from Northup Way to NE 4th Street, 11-114971-LM, Optional Determination of Non-Significance Notice Materials

David,

The Muckleshoot Indian Tribe Fisheries Division has reviewed the threshold determination, the environmental checklist, the Fisheries, Wildlife, and Vegetation Technical Report; the Biological Resources Technical Report; the Wetland and Stream Delineation Technical Report; and the Water Quality Technical Report for the above referenced project. We offer the following comments in the interest of protecting and restoring the Tribe's treaty protected fisheries resources:

1. Project area culverts

We recommend that all culverts with the project area that convey streams that are or could be used by salmon (based on physical criteria from WAC 222-16-031) that are currently fish passage barriers be replaced with fish passable structures, preferably bridges or at a minimum culverts that meet or exceed the fish passage stream simulation design method from WDFW's 2003 Fish Passage Guidelines. The Fisheries, Wildlife, and Vegetation Technical Report (dated April 15, 2011, page 4-3) describes two culverts conveying the West Tributary of Kelsey Creek underneath 120<sup>th</sup> Avenue NE; however, it appears that only one culvert will be made fish passable to an unknown design standard.

Please clarify the proposed culvert work and provide us with a copy of the conceptual culvert design.

2. Stream impacts and mitigation measures

If the West Tributary of Kelsey Creek meets the physical criteria from WAC 222-16-031 upstream of known human-create barriers, then it should be treated as potential fish bearing waters and any impacts to the stream and its buffer assessed accordingly. It is not clear from Table 6-1 in the Wetland and Stream Delineation Technical Report the basis for the West Tributary of Kelsey Creek impact numbers shown. If they are based on a Type N classification, instead of a Type F classification, then they may be underestimated. In addition, for any stream buffer impacts, we recommend that they be mitigated at a minimum of 2:1 impacts. Furthermore, any tree that is 4 inches in diameter or greater and within 200 feet of the project' impacted streams should be placed back into the impacted stream as partial mitigation for impacts to future wood recruitment. Finally, addition, we would like to see the conceptual or draft drawings for the proposed stream mitigation measures, including the potential daylighting of West Tributary Kelsey Creek (Fisheries report, page 5-2).

3. Please note that we will not accept the project's proposal to use the WRIA 9 Springbrook Creek mitigation bank for this project or any other mitigation bank outside of WRIA 8 (see Wetland and Stream Report, page 6-3).

4. Wetland impacts and mitigation

Please provide a copy of the draft wetland mitigation plans for impacts to Wetlands A, B, and C. We cannot assess the adequacy of the proposed mitigation for unavoidable impacts without this information.

5. Potential water quality impacts

The project should evaluate potential impacts to juvenile salmon that may be found in Sturtevant Creek and West Tributary Kelsey, including areas that could be accessible to salmon once existing barriers are removed. From our review of the Water Quality Technical Report and the Biological Resources Report, only adult salmon were considered based on timing (September through November) for the HI-RUN calculations. See page 5-2 of the Biological Resources report. Both dissolved zinc and copper will increase as a result of the project (Table 5-2 of the Water Quality Technical Report) which can be harmful for juvenile salmon. These pollutants are highly toxic to salmonids ([http://www.fish4thefuture.com/pdfs/Copper\\_Abstracts.pdf](http://www.fish4thefuture.com/pdfs/Copper_Abstracts.pdf); Meador et al., 2006). Recent research has found that levels of copper as low as 2µg/l can cause sublethal effects on coho and other salmonids. Low copper concentrations are shown to impair sensory physiology and predator avoidance in salmon ([http://www.fish4thefuture.com/pdfs/Copper\\_Abstracts.pdf](http://www.fish4thefuture.com/pdfs/Copper_Abstracts.pdf)). Additional pollutant loading reductions may be necessary.

NE 4th Street/120th Ave NE Corridor Project SEPA Review

11-114971-LM

6. ~~Public Comment Letters~~ Chinook Salmon have been observed in Sturtevant Creek per Kit Paulsen with the City of Bellevue. Chinook were also observed in Sturtevant Creek via the Salmon Watchers program in 2005. See <http://your.kingcounty.gov/dnrp/library/archive-documents/wlr/waterres/salmon/Maps/2005/0605distElakeWA.pdf>. The Fisheries and Biological Resources Reports are both missing this information. Kit Paulsen may also have additional information regarding salmon use in both streams.
7. Please note that the project is within the Muckleshoot Indian Tribe's Usual and Accustomed Fishing Area. The Fisheries report (page 4-4) implies that it is not.
8. We would appreciate a copy of Bellevue's electro-fishing work conducted in 2001 (cited on page 4-4 of the Fisheries report as City of Bellevue 2002b).

We appreciate the opportunity to review this project and look forward to the City's responses. Please let me know if you have any questions.

Thank you,  
Karen Walter  
Watersheds and Land Use Team Leader

*Muckleshoot Indian Tribe Fisheries Division*  
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City of Bellevue  
Development Services Department  
Environmental Coordinator  
450 110<sup>th</sup> Ave NE., P.O. Box 90012  
Bellevue, WA 98009-9012

July 20, 2011

Attention Mr. David Pyle:

Re: File Number 11-114971-LM  
NE 4<sup>th</sup> Street/120<sup>th</sup> Ave NE Corridor Project  
SEPA Review/ 120<sup>th</sup> Ave NE from Northup Way to NE 4<sup>th</sup> Street

The purpose of this letter is to outline our concerns and offer important information regarding the above referenced project.

For the purposes of SEPA, this letter is submitted within the 14 day minimum time period for public comment. We understand from our communications with you that the City of Bellevue regards all comments received during the staff review period prior to decision as timely submitted and part of the SEPA record. Your estimate of that review period extends for at least another two weeks from today, and so we will be transmitting additional comments and information over the coming days.

We would appreciate a phone call to 425-260-0975 when you are getting close to decision so that we can ensure that all of our information has been submitted.

We appreciate your approach to public participation. We share your view that information from the public is useful and helps ensure the best possible outcomes.

**Outline of Substantive Concerns:**

1. Lake Bellevue is an important and valuable resource. The proposed project will have negative impacts by isolating this open space resource from the surrounding community, and precluding the creation of future park, open space and trail opportunities. Additionally, the proposed project will impair the current function and values of the lake, and harm the properties that surround it.
2. Lake Bellevue is the headwaters for a creek system that has connectivity to Lake Washington, and Puget Sound. The Lake is a critical source of cool water flows to that system, and also performs a crucial water quality role. The proposed project will have negative impacts by reducing the quantity and quality of water inputs into the Lake and downstream.
3. Lake Bellevue is particularly vulnerable to urban pollution. The project will generate additional chemical, petroleum, heavy metal, and organic pollution. Additionally, the grading and soil disturbance will expose contaminated soils and cause their pollutants to migrate to the lake. The project's reliance on a

Construction Stormwater Pollution Prevention Plan (CSWPPP) and a Temporary Erosion and Sediment Control (TESC) is insufficient without analyzing the unique local conditions and establishing performance standards including monitoring and emergency response. Moreover, the documented contamination of soils that will be exposed during construction require special consideration that go well beyond the scope of a CSWPPP or a TESC.

4. Lake Bellevue has a small, but critical watershed. The proposed project will fill one of its last remaining wetlands. The proposed project will intercept subsurface water flows and de-water the construction site, further reducing water inputs into the lake.
5. Lake Bellevue and its associated wetland and upland areas are a rare and fragile habitat for wildlife. Numerous resident and transitory bird populations use the area. Beaver and Western Pond Turtles are among the water dependent species that use the lake. The proposed project will have negative impacts by reducing and degrading available habitat.
6. Lake Bellevue Village Condominiums is a residential community with unique characteristics and special vulnerabilities. The proposed project will have negative impacts as follows:
  - The current road access is a substandard single access “weave” through a busy commercial parking area. This substandard access poses important public safety issues including limited emergency access, serious pedestrian-vehicle hazards, and limited sight distances. The proposed project will exacerbate these problems by moving the road access even further south and thereby extending the distance and increasing the hazards of this extremely unsafe route.
  - The turning moments and other access issues for our community onto the newly widened five lane road will require special consideration, especially considering our single access condition. The proposed project has not adequately addressed this issue.
  - The topography and lake surface pose unique sound attenuation issues. There is a documented history of sound amplification in this area. The proposed project will increase noise levels both during construction and after completion, possibly beyond relevant health standards.
  - The soils that underlay our development are unstable and prone to liquefaction. They are also extremely sensitive to changes in ground water and other hydrologic factors. They are potentially vulnerable to even moderate levels of vibration. Our developed upland areas (parking areas and structures) already experience considerable settling and buckling. We have invested large sums in dealing with the technical challenges of this problem. The proposed project poses

risks to the stability of our soils through alteration of groundwater flows and construction vibration.

- The local air quality of our community is affected by our topography. We are in a depression, backed up against a steep slope. The additional traffic created by the project will have local air quality affects. The proposed project appeared to consider regional air quality, but not local impacts.
- The proposed project will increase glare and light pollution.
- The proposed project will pose additional and potentially serious construction related impacts such as access interruption, dust, noise, and sediment flows.

**We Are Also Concerned About Regional and Sub-Regional Impacts As Follows:**

1. The project will negatively impact the open space and natural resource characteristics of the Kelsey Creek watershed system.
2. The project's land use impacts have not been fully considered in previous environmental documents. The project will profoundly alter the long-term land uses of the sub-area, but could also create an opportunity for a redeveloped, mixed use, well planned and designed urban community. The proposed project is an expensive commitment to a huge new auto focused arterial without an evaluation of all of its land use implications and opportunities.
3. The project's specific relationship to the proposed East Link rail route and stations has not been analyzed.
4. The proposed project's segmentation will create negative traffic impacts as each of five separate phases goes through its own project level review and construction.
5. The project will negatively impact pedestrian uses. No consideration has been given to preserve or enhance connections between local residential and business uses.
6. The proposed project will negatively impact existing local businesses. Several businesses will be condemned and parking and access will be reduced along the route.
7. The proposed project will inhibit many kinds of desirable development along its route. The project is a wide auto dependent road that will preclude many potentially viable residential and mixed use development opportunities, even as it seeks to enable one large re-development at the Safeway Distribution Center. In effect, the property rights and quality of life of many individual property owners,

including ourselves, will be sacrificed for a speculative single use and a transportation and planning approach that is becoming increasingly outdated.

**We Are Concerned About the Following Procedural Issues:**

1. The proposed project has been submitted for review as a single phase, the first of five phases. The SEPA checklist is limited to that first phase. However, the attached technical documents appear to analyze the impacts of the entire corridor project including all five phases.

We are puzzled by this approach. Are we to comment on only the impacts of the first phase, or are we to comment on the substance of all of the technical documents that appear to analyze the entire corridor? If we are to comment on the technical documents, where is the associated SEPA checklist for the other four phases?

Will we be given the opportunity to comment on the SEPA checklist for all five of the phases individually, with an associated appeal right for each?!

These questions suggest an important defect in the process that the City is using. The City is segmenting the SEPA review in a manner that is likely inconsistent with the statute. We believe that the City should withdraw its checklist and reissue a new one to cover all five phases of the corridor.

2. We believe that the SEPA Responsible Official should not issue a Determination of Non-Significance for the proposed project. The findings of the technical analysis to date, issues cited here along with additional information that we are preparing to offer, the inadequacy of previously adopted environmental documents, and the massive scope and impacts of this major arterial should require a finding of significance and the preparation of an Environmental Impact Statement.
3. The City's "Alternatives Evaluation Technical Report" cites analysis and a sequence of decision-making that is not complete, and is at times misleading. The fundamental aspect of this corridor project is that the road project is driving the land use, rather than the land use driving the road project. The alternatives examined by the City were too narrow, and appear to be based on a pre-determined outcome.
4. The City's "No Effect" Letter is in error. The Biological Resources Technical Report upon which it is based includes several incorrect facts regarding Sturtevant Creek, fish barriers, and downstream impacts to salmonid species of concern.

5. The City erred in its determination that its stormwater flow control and water quality standards would not apply to most of the impervious areas of the proposed project. This is an error in law as well as policy. It does not make sense to build this project without consideration of measures to address existing water quality problems and without exploring ways to address stormwater treatment requirements of future development. Moreover, the City should consider using its SEPA substantive authority to apply more effective stormwater conditions such as requiring water quality treatment for runoff from all of the project's impervious surfaces.

Thank you for considering our comments, and for your service to the Public.

Sincerely,

Brian Derdowski  
Public Interest Associates  
70 E. Sunset Way #254  
Issaquah, WA 98027

*On Behalf of the Lake Bellevue Village Condominiums, the Lake Bellevue Water Quality Association, the Lake Bellevue Neighborhood Association, and a number of residents of the City of Bellevue*

July 21, 2011

**HAND-DELIVERED AND EMAIL**

Mr. David Pyle  
Development Services Department  
Environmental Coordinator  
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**RE: Comments Regarding NE 4th Street/120th Ave NE Corridor Project - SEPA Review  
(File No. 11-114971-LM)**

Dear Mr. Pyle:

On behalf of our client, Best Buy Stores, L.P. ("Best Buy"), we submit the following comments and objections to the Optional Determination of Non-Significance ("DNS") Notice Materials related to the NE 4th Street/120th Ave NE Corridor Project (the "Project"). Best Buy operates a store and has a long-term lease for the land and improvements at 457 120th Avenue NE, Bellevue, WA (the "Best Buy Property") and will be significantly impacted by the City's proposal. Best Buy believes the City should issue a DS and prepare an environmental impact statement for the proposal, including components of the proposal that are not addressed in the City's environmental checklist (the "Checklist").

The City has not complied with the letter or spirit of the SEPA in its development and review of the Proposal. The City's transportation staff ("Staff") decided several years ago that the NE 4th component of the Project should be extended through Best Buy's property, and has taken a number of steps to commit the City to that course of action without first completing proper environmental review. Ever since, Staff's environmental activities have been exercises in post-hoc rationalization of Staff's route decision. There are reasonable alternatives that could feasibly attain or approximate the Project's objectives at a lower environmental cost. However, Staff is ignoring or dismissing those alternatives because of inertia and the fear of losing federal stimulus funding.

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David Pyle  
Development Services Department  
July 21, 2011  
Page 2

Best Buy also objects to the Responsible Official's issuance of a DNS for other reasons. First, the City's environmental Checklist does not properly define the scope of the proposal because it does not include a study of the options to address NE 5th cut-through traffic mitigation, which City staff hopes to address through a "non-SEPA" process ("NE 5th Traffic Mitigation Planning"), nor does it address the environmental impacts of the City's planned extension of NE 6th Street from 116th Avenue NE to 120th Avenue NE (the "NE 6th Extension"). Second, even the elements of the proposal addressed in the Checklist may have probable significant adverse environmental impacts, and therefore an EIS is required. Finally, Best Buy objects to the scope of the proposed DNS to the extent it focuses on the environmental impacts of "Phase 1" rather than the entire Project or a logical segment of the entire Project.

Best Buy advocates an alternative alignment for the NE 4th Extension, which the City has referred to as the Mutual Materials/School District route, also referred to as the NE 5th route. The City asserts that this alignment affects "more" property owners (2 vs. 1), but in fact, when NE 6th is considered, would affect fewer (3 vs. 2 for both projects). Moreover, as the accompanying report from traffic engineer David Markley shows, the NE 5th route could be designed with a special intersection that would protect the Wilburton neighborhood from cut-through traffic and provide either the same or improved traffic function for cars traveling along the new "120th to NE 4th" route to and from downtown Bellevue and the Bel-Red corridor.<sup>1</sup> Staff have not given this alternative fair consideration, and have instead violated SEPA by pushing forward with a variety of actions that have created bureaucratic inertia in favor of Staff's preferred "Best Buy" route. Best Buy respectfully requests that the City's responsible official put a stop to this, issue a DS and properly assess the probable significant adverse environmental impacts of the extension of NE 4th and reasonable alternatives to the City's preferred alternative.

### **I. Scope of Environmental Review**

The "Project" as Staff have defined it in the Checklist would create a new connecting corridor between Downtown Bellevue/I-405 and SR-520/Overlake. The Checklist defines the Project as having 5 phases for construction:

- Phase 1: 120th Avenue NE widening 300 to 700 block ("120th Stage 1").

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<sup>1</sup> In the fall of 2010, Best Buy retained David Markley and Transportation Solutions, Inc. ("TSI") to review and analyze a special NE 5th/120th intersection alternative for the Mutual Materials/School District route. Mr. Markley's analysis of that intersection alternative can be found at pp. 3-4 and attachment C of the letter from Transportation Solutions, Inc. to Jerry Lutz (Dec. 6, 2010), attached hereto as Exhibit A. Best Buy recently retained Mr. Markley and TSI to review the City's Checklist, and the accompanying transportation and alternatives technical reports. Mr. Markley's review of those reports is attached hereto as Exhibit J.

David Pyle  
Development Services Department  
July 21, 2011  
Page 3

- Phase 2: 120th Avenue NE new construction between NE 8th Street and NE Bel-Red Road, and realignment and widening between approximately NE Bel-Red Road north to NE 12th Street.
- Phase 3: NE 4th Street extension between 116th Avenue NE to 120th Avenue NE (the "NE 4th Extension").
- Phase 4: 120th Avenue NE widening between NE 12th to NE 16th.
- Phase 5: 120th Avenue NE widening between NE 16th to Northup Way.

SEPA requires that proposals or parts of proposals "that are related to each other closely enough to be, in effect, a single course of action" be evaluated in the same environmental document. WAC 197-11-060(3)(b). Actions are considered closely related and must be evaluated together if either they "[c]annot or will not proceed unless the other proposals (or parts of proposals) are implemented simultaneously" or they are "interdependent parts of a larger proposal and depend on the larger proposal as their justification or for their implementation." *Id.* Concurrent review of connected actions avoids making later environmental review of a project element a mere formality. *See Concerned Taxpayers Opposed to Modified Mid-South Sequim Bypass v. State Dept of Transportation*, 90 Wn. App. 225, 231 n.2, 951 P.2d 812 (1998).

To the extent the City's staff is proposing environmental review for Phase 1 alone, the City's project definition is illogical. "Phase 1 and Phase 3" create a logical traffic path for cars traveling to and from downtown Bellevue. Phase 1 alone does nothing. Further, the NE 6th Extension and NE 5th Traffic Mitigation Planning are intended to work in conjunction with the NE 4th Extension and 120th Stage 1, and have collectively been called the "Wilburton Connections"<sup>2</sup> by the City in many forums and discussions. The Wilburton Connections are interrelated, interdependent parts of a larger proposal and depend on the larger proposal as their justification and for their implementation. The Wilburton Connections components are essentially a single course of action and therefore should be evaluated in the same environmental document. Meeting minutes from a Staff NE 4th alternatives workshop state that "Acquisition of land for the Mutual Materials / Bellevue School District alternative would need to be coordinated with requirements for the NE 6th Street extension project," and that "t]raffic impacts of the NE 4th Street extension will vary depending on where it connects to 120th Avenue NE, and how NE

<sup>2</sup> See, e.g., the Wilburton Connections May 25, 2010 Open House mailer pamphlet, describing the various components of the Wilburton Connections, available at [http://www.ci.bellevue.wa.us/pdf/Transportation/wilburton\\_connections\\_open\\_houses\\_0510.pdf](http://www.ci.bellevue.wa.us/pdf/Transportation/wilburton_connections_open_houses_0510.pdf).

David Pyle  
Development Services Department  
July 21, 2011  
Page 4

5th Street is operated in the future."<sup>3</sup> Combined property impacts from 120th Avenue NE, NE 4th and NE 6th could result in a complete take of the Mutual Materials and School District parcels. Staff slowed down design of 120th Stage 1 in order to coordinate with the design of the NE 4th and NE 6th extensions.<sup>4</sup>

In addition, the City started working on NE 5th Traffic Mitigation Planning once it became apparent to Wilburton neighbors that there would be a significant cut-through traffic problem caused by the extension of NE 4th, as currently proposed, at least until traffic heading north on 120th has somewhere to go other than east or west on NE 8th. Therefore, NE 5th Traffic Mitigation Planning is funded through the City's NE 4th Extension budget.<sup>5</sup>

The City should properly define the proposal to include the NE 6th Extension and NE 5th Traffic Mitigation Planning, and update the analyses of environmental impacts once the proposal is properly defined. A DS is appropriate, and the analysis should be documented in an EIS.

## **II. The Proposal May Have Probable Significant Adverse Environmental Impacts.**

The City has identified the Project(as defined by the City, not including the NE 6th Extension or NE 5th Traffic Mitigation Planning) as one of the City's top transportation priorities. It is approximately 1.6 miles long, and is expected to take at least 5 years to construct. The Project may have probable significant adverse environmental impacts and therefore a determination of significance ("DS") should be issued. WAC 197-11-360.

The Project, and specifically the NE 4th street extension component, is expected to significantly impact Best Buy's building, parking lot, and operations. In addition, the project will cause adverse environmental impacts that will affect many people and sensitive areas. First, if NE 4th

<sup>3</sup> See DRAFT Alignment Alternatives Workshop #2, January 13, 2009 -1:00 to 3:00 PM Meeting Minutes, attached as Exhibit B.

<sup>4</sup> See, e.g., City Council Agenda Memorandum Item No. 11(d) at p. 11-151 (Dec. 6, 2010) ("as [120th Stage 1] design progressed, it quickly became apparent that the pace of design would need to be slowed to allow for coordination with design efforts on the NE 4th Street and NE 6th Street projects"), available at [http://www.bellevuewa.gov/pdf/City\\_Council/PacketRegularSession12-6-1011d.pdf](http://www.bellevuewa.gov/pdf/City_Council/PacketRegularSession12-6-1011d.pdf).

<sup>5</sup> City Council Agenda Memorandum Item No. 11(b)(2) (April 19, 2010), available at [http://www.bellevuewa.gov/pdf/City\\_Council/PacketRegularSession4-19-1011b2.pdf](http://www.bellevuewa.gov/pdf/City_Council/PacketRegularSession4-19-1011b2.pdf); see also Minutes of City Council Extended Study Session (April 12, 2010) ("Ms. Lacombe reported that a consultant has been selected to conduct a neighborhood traffic assessment of NE 5th Street. . . . Ms. LaCombe noted that the project is funded through the NE 4th Street extension project, and final design and construction will be completed with the NE 4th Street project"), available at <http://www.ci.bellevue.wa.us/Minutes/MinutesExtendedStudySession04-12-10.pdf>.

David Pyle  
Development Services Department  
July 21, 2011  
Page 5

is extended as proposed, traffic leaving downtown Bellevue is likely to flood the Wilburton residential neighborhood with cut-through traffic unless fairly drastic steps are taken (e.g., closing NE 5th somewhere to block through traffic). The new NE 4th link to 120th will cause worse traffic congestion at key intersections in the Wilburton area, both in the short-term and long-term. Traffic benefits from the proposal may be far lower than anticipated, and, at this stage of environmental review, cannot be used as the basis for a DNS because the threshold determination "shall not balance whether the beneficial aspects of a proposal outweigh its adverse impacts." WAC 197-11-330(5).

The Project is also expected to impact steep slope critical areas and the BNSF railway corridor which, according to the City's reports, is likely eligible for listing on the National Register of Historic Places.

**A. Impacts to the Wilburton residential neighborhood.**

According to a 2010 Transpo Group study prepared for the City and shared with the NE 5th Traffic Committee, the extension of NE 4th street is expected to result in the following significant impacts relevant to NE 5th Street:

**"Traffic volumes on NE 5th Street will increase from 135 to 445 trips during the peak hour, or triple the amount of traffic currently seen today by 2015. This assumes that the NE 4th Street extension and the 120th Avenue widening to NE 8th Street is in place. With the NE 4th Street extension and 120th Avenue NE widened further north to Bel Red Road, traffic volumes are expected to increase from 135 to 350 trips during the peak hour, showing that traffic volumes on NE 5th Street are expected to increase even with completion of segment two of the 120th Avenue NE widening project. The intersection of NE 5th Street and 120th Avenue NE goes from a level of service of C to F, or in other words, the delay goes from 20 seconds to almost three minutes for the westbound left movement by 2015. . . . There will also be more backups getting out from NE 5th Street onto 120th Avenue NE, an intersection that the community has already said is hard to navigate at most times of the day."**<sup>6</sup>

<sup>6</sup> NE 5th Street Traffic Committee Meeting Summary pp. 3-4 (Sept. 28, 2010) (emphasis added), available at [http://www.ci.bellevue.wa.us/pdf/Transportation/wilbur\\_connx\\_ne\\_5th\\_commit\\_summary\\_092810.pdf](http://www.ci.bellevue.wa.us/pdf/Transportation/wilbur_connx_ne_5th_commit_summary_092810.pdf). The "350 trips during peak hour" figure appears to still be the current assumption as it was cited recently in a NE 5th traffic plan newsletter. NE 5th Street Traffic Plan Newsletter (May 2011), available at [http://www.ci.bellevue.wa.us/pdf/Transportation/2011\\_0510\\_NE5thST\\_newsletter\\_FINAL.pdf](http://www.ci.bellevue.wa.us/pdf/Transportation/2011_0510_NE5thST_newsletter_FINAL.pdf).

David Pyle  
Development Services Department  
July 21, 2011  
Page 6

Cut-through traffic on NE 5th appears to have largely been ignored in the Checklist and technical reports<sup>7</sup> despite the fact that it raises significant safety and livability concerns for the Wilburton residential neighborhood, and nearby area. Absent a reasonable solution to the cut-through traffic issue, the Project as defined and proposed is contrary to various Comprehensive Plan policies which discourage cut-through traffic.<sup>8</sup> For example, the City's Comprehensive Plan states that the City should "[e]nsure that roadway improvements do not create a bypass for I-90, I-405, or SR-520 that would adversely affect an adjacent residential neighborhood."<sup>9</sup> However, the NE 4th/120th corridor is designed as a bypass for I-405 and SR-520,<sup>10</sup> and is expected to significantly and adversely affect traffic in the Wilburton residential neighborhood, particularly during the many years between construction of the NE 4th Extension and completion of the 120th NE link to SR 520. At least one policy generally supports the extension of NE 4th Street as a new east-west connection.<sup>11</sup> Reading the policies together, the NE 4th Extension may comport with Comprehensive Plan policies, *provided that* it is designed in such a manner so as to protect the Wilburton residential neighborhood.

However, instead of designing the NE 4th Extension to prevent cut-through traffic, the City is treating NE 5th cut-through traffic as inevitable "collateral damage", and, contrary to SEPA has set up a separate process, outside SEPA for the "Project", through which it intends to develop potential cut-through traffic "mitigation" measures. As discussed more thoroughly below, those measures do not include a NE 4th route alternative (which both Best Buy and a number of Wilburton residents have advocated), but instead focus on such options as closing off NE 5th

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<sup>7</sup> Table 5-1 of the Transportation Technical Report simply assumes that "NE 5th Traffic Calming" is in place. This assumption is misleading as there is no final mitigation plan yet, and the City's NE 5th mitigation assessment process is illegal segmentation under SEPA.

<sup>8</sup> See, e.g., City of Bellevue Comprehensive Plan, Transportation Element Policy TR-48 ("Minimize the amount of through-traffic on local streets in residential areas"), TR-115 ("Preserve the safety of residential streets and the livability of residential neighborhoods by discouraging non-local traffic on streets classified as local"), and Wilburton/NE 8th Street Subarea Plan Policy S-WI-24 ("Preserve the safety of residential streets and the livability of local neighborhoods by discouraging non-local traffic with traffic management methods").

<sup>9</sup> City of Bellevue, Washington Comprehensive Plan, Transportation Element Policy TR-49 (Dec. 6, 2010).

<sup>10</sup> See City of Bellevue 2009 STP/CMAQ Regional Competition Application at p. 7 ("The NE 4th Street extension/120th Avenue NE widening project is the first segment in a series of improvements to create a new connecting corridor between Downtown Bellevue/I-405 and SR-520/Overlake. . . . The link would allow traffic to bypass the worst congestion in the western portion of the corridor including Downtown Bellevue and the I-405 and SR 520 merge"), available at [http://www.psrc.org/assets/3039/01\\_BellevueNE4th.pdf](http://www.psrc.org/assets/3039/01_BellevueNE4th.pdf).

<sup>11</sup> See, e.g., City of Bellevue Comprehensive Plan Wilburton/NE 8th Street Subarea Plan Policy S-WI-25.

David Pyle  
Development Services Department  
July 21, 2011  
Page 7

Street.<sup>12</sup> The City's NE 5th mitigation assessment process is illegal segmentation of SEPA review. The road proposal, reasonable alternatives and mitigation should be assessed in one document that meets SEPA's requirements. A DS should be issued and an EIS prepared.

**B. Other traffic-related impacts have not been properly analyzed or disclosed.**

The NE 4th Street/120th Avenue NE Corridor Project Transportation Technical Report ("Transportation Technical Report") states that the Project is intended to "redistribute" traffic from existing congested corridors to the new NE 4th/120th corridor<sup>13</sup>; however, the report does not examine the system-wide effects of the Project and thus it is impossible to evaluate this claim.<sup>14</sup>

The Transportation Technical Report does predict that the Project will increase congestion along the Project corridor and decreases level of service ("LOS") at key intersections both in the near term and in the long term, such as at NE 4th/116th.<sup>15</sup> In addition, Best Buy's traffic consultant believes there is a reasonable probability of at least interim impacts at the NE 8th/Bel-Red Road, NE 8th/120th Avenue NE and NE 8th/124th Avenue NE intersections that need to be disclosed, analyzed and mitigated.

Also, the increased traffic volume in the Project corridor and proposed medians will likely make it difficult for vehicles to make left-in and left-out turns to Best Buy and other commercial properties along 120th. Again, these impacts should be properly disclosed, mitigation identified and analyzed in the consideration of alternatives.<sup>16</sup>

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<sup>12</sup> See NE 5th Street Traffic Plan Newsletter (May 2011), available at [http://www.ci.bellevue.wa.us/pdf/Transportation/2011\\_0510\\_NE5thST\\_newsletter\\_FINAL.pdf](http://www.ci.bellevue.wa.us/pdf/Transportation/2011_0510_NE5thST_newsletter_FINAL.pdf).

<sup>13</sup> Transportation Technical Report at p. S-2.

<sup>14</sup> See Letter from Transportation Solutions, Inc. to E. Lin at pp. 1-2 (July 21, 2011), attached as Exhibit J.

<sup>15</sup> For example, the Transportation Technical Report predicts there will be significant decreases in LOS at the NE 4th/116th and NE 12th/120th intersections in 2015. See Transportation Technical Report at Table 5-2 (comparing levels of service in 2015 between no build and build). In 2030, the LOS is predicted to decrease significantly at the NE 16th/120th, NE 12th/120th, NE 4th/116th intersections. See *id.* at Table 5-3 (comparing levels of service in 2030 between no build and build).

<sup>16</sup> See Letter from Transportation Solutions, Inc. to E. Lin at pp. 2-3 (July 21, 2011), attached as Exhibit J.

David Pyle  
Development Services Department  
July 21, 2011  
Page 8

**C. BNSF railway corridor.**

Section 14(e) of the Checklist provides that "The proposed extension of NE 4th Street would cross the BNSF corridor . . . [and] would not hinder any potential future uses of the BNSF corridor." According to the Alternatives Evaluation and Screening Technical Report attached to the Checklist ("Alternatives Technical Report"), the right-of-way has been "proposed to be potentially used for train, bicycle and pedestrian uses in the future."<sup>17</sup> If a future rail or trail corridor needs to cross over the NE 4th Extension, such a cross-over would likely require significant additional construction. The probable impacts from the NE 4th extension on such future uses are not adequately described in the Checklist. Also, according to the Alternatives Technical Report, "[t]he railroad tracks are likely eligible for listing on the National Register of Historic Places."<sup>18</sup> There is inadequate discussion of whether the NE 4th Extension will impact the historic attributes of the tracks.

**D. Impact to Steep Slope Critical Area.**

The NE 4th Extension along the City's preferred route would cross a steep slope critical area as the topography rises approximately 55 feet in elevation and exceeds a 40% slope. According to the City's Land Use Code ("LUC"), new or expanded facilities are allowed in critical areas only if "no technically feasible alternative with less impact on the critical area or critical area buffer exists." LUC 20.25H.055.C.2(a). An analysis of "technically feasible alternatives" must show that "no alternative location or configuration outside of the critical area or critical area buffer achieves the stated function or objective, including construction of new or expanded facilities or systems outside of the critical area." LUC 20.25H.055.C.2(a)(iii). To Best Buy's knowledge, the City has not included such an analysis with the Checklist and has not evaluated locations outside the steep slope critical area that could achieve the stated function or objective. Moreover, Best Buy believes that the "NE 5th route" alternative that Best Buy and others have advocated might have less impact on the critical area by traversing the hill in a location where it is not as tall or steep.

The slope and elevation change along the western side of the BNSF railway corridor decreases as one proceeds north from the City's preferred location for the NE 4th Extension, and it appears that there is little if any steep slope critical area along the proposed NE 6th Extension. The City

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<sup>17</sup> Alternatives Technical Report at p. 3-1 (June 29, 2011).

<sup>18</sup> Alternatives Technical Report at p. 5-3 (June 29, 2011).

David Pyle  
Development Services Department  
July 21, 2011  
Page 9

might be able to achieve its objectives with less or no impact on the steep slope critical areas by moving the NE 4th Extension to the north or combining it with the NE 6th Extension.<sup>19</sup>

### III. Timing of Environmental Review.

A fundamental purpose of environmental review is to improve decision-making, which is why it should be done early in the planning process. SEPA, NEPA, and the Bellevue Environmental Procedures Code all require the City to consider and address environmental impacts at the earliest stage possible such as during the planning stage, and not after committing to a particular course of action. See WAC 197-11-055(1); WAC 197-11-070; Bellevue Environmental Procedures Code § 22.02.031(D). It defeats this purpose when environmental studies and analysis are done after critical design and planning decisions have been made, which often result in SEPA review becoming an exercise in post-hoc rationalization.

#### A. The Checklist incorrectly states that the Project is in "conceptual design phase."

Section 8(k) of the Checklist provides that "[t]he project is currently in the conceptual design phase and as it progresses through preliminary and final design stages, efforts would be made to minimize impacts to the extent possible." In fact, the City has already completed or "essentially completed" design of 120th Stage 1, is already acquiring property for 120th Stage 1,<sup>20</sup> and will have designed NE 4th to 100% in the second or third quarter of this year.<sup>21</sup>

#### B. 120th Stage 1 has and will improperly prejudged the NE 4th route.

Based on documents made available to Best Buy through public records requests and other public processes, Best Buy has learned that City staff had completed 30% design plans for 120th Stage

<sup>19</sup> See, e.g., 1996 NE 8th Bypass Study at p. 5 (showing a NE 4th extension going to the north and connecting with a NE 6th extension), attached as Exhibit K.

<sup>20</sup> See Summary Minutes of Bellevue City Council Extended Study Session at p. 11 (May 9, 2011) (statement of Director Sparrman that the City is "in the process of securing the needed right-of-way" for 120th Stage 1). The City has filed a petition in eminent domain to condemn certain real property and property rights from the Best Buy property at 457 120th Avenue NE for 120th Stage 1. See City of Bellevue Petition in Eminent Domain, King County Superior Court Case No. 11-2-18100-6-SEA (filed May 19, 2011).

<sup>21</sup> On May 9, 2011, Transportation Director Sparrman stated that 120th Stage 1 design was "essentially complete" and that NE 4th was at roughly 60% design. See Summary Minutes of Bellevue City Council Extended Study Session p. 11 (May 9, 2011), available at <http://www.ci.bellevue.wa.us/Minutes/MinutesExtendedStudySession05-09-11.pdf>. In the Council agenda, city staff stated that NE 4th design would be advanced to 100% during the second and third quarters of 2011. Bellevue City Council Study Session Agenda Item 3(e) at p. 3-50 (May 9, 2011), available at [http://www.bellevuewa.gov/pdf/City\\_Council/PackageExtendedStudySession5-9-113e.pdf](http://www.bellevuewa.gov/pdf/City_Council/PackageExtendedStudySession5-9-113e.pdf).

David Pyle  
Development Services Department  
July 21, 2011  
Page 10

1 and had a draft Traffic Operations Analysis Report for 120th Stage 1 prepared in November of 2009 (just as Staff began looking at the different routes for NE 4th). Both the design plans for 120th Stage 1 and the related traffic report apparently assume a NE 4th route similar or the same as the one ultimately "recommended" five months later.

**C. The NE 4th Route improperly prejudices the NE 5th mitigation process.**

The City's NE 4th alternatives analysis was "pro forma". Moreover, the NE 4th design process improperly eliminates consideration of some of the best potential NE 5th mitigation. Staff's process has improperly isolated or "segmented" assessment and review of NE 5th mitigation options from the NE 4th design process. That is irrational, and violates the mandated environmental review process. As discussed below, there are alternative NE 4th designs that could better prevent cut-through traffic which Staff have not properly analyzed.

**D. Later portions may be delayed or never built due to lack of funding.**

The Alternatives Technical Report states that the M&II Plan "presents a specific financing plan to effectively implement the transportation improvements, including those in the NE 4th Street/120th Avenue NE Corridor Project."<sup>22</sup> However, the M&II Plan assumptions are no longer accurate.<sup>23</sup> The Checklist and Alternatives Technical Report (and other supporting analyses) are misleading to the extent that they assume that the Project will be fully funded and built based on the M&II Plan.

**E. The City rushed design of certain elements (and stopped considering alternatives) to meet federal grant deadlines.**

City staff rushed the design and timeline for certain elements of the Wilburton Connections (specifically 120th Stage 1 and the NE 4th Extension), first to improve its chances of receiving federal grants and then to meet the federal grant obligation timelines for grants it secured. For example, Staff either miscalculated or misrepresented the "shovel readiness" of 120th Ave Stage

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<sup>22</sup> Alternatives Technical Report at p. 2-11.

<sup>23</sup> See generally Summary Minutes of Extended Study Session at pp. 10-14 (May 9, 2011) (discussing history of the M&II Plan which did not account for the downturn in the economy), available at <http://www.ci.bellevue.wa.us/Minutes/MinutesExtendedStudySession05-09-11.pdf>.

David Pyle  
Development Services Department  
July 21, 2011  
Page 11

1 to "maximize competitiveness" when applying for a federal grant.<sup>24</sup> When the grant was awarded to the City, this meant Staff had to rush the design process or risk losing the grant.

Similarly, in February, 2010, City staff submitted an application to Senator Cantwell for \$2 million in appropriations for the NE 4th extension. In the request, Staff explained that the NE 4th extension was "In design - 30% plans and preferred alignment expected by May 2010. Right of Way negotiations in process." Staff also explained that the NE 4th extension had been placed #1 on a STP grant contingency list and that the City was reapplying and "expect[ed] the project to be even more competitive because the design phase will be complete."<sup>25</sup>

In April 2010, Staff presented to City Council their "preferred alternative" for NE 4th and requested authorization to spend \$1.3 million for final design. Best Buy requested that Council defer action until the studies regarding NE 6th Street and NE 5th Street traffic mitigation options were completed and could be reviewed in conjunction with NE 4th design issues.<sup>26</sup> Transportation Director Sparman's response was that any delay in the project schedule would jeopardize the federal funding.<sup>27</sup> City Council then approved expenditures for final design of the NE 4th Extension along the preferred alternative route.<sup>28</sup> However, making a final decision about the NE 4th route in April of 2010, before environmental review had even started, in order to maximize competitiveness for federal grants or for other funding options<sup>29</sup> is contrary to the

<sup>24</sup> See City Council Agenda Memorandum Item No. 11(d) at p. 11-151 (Dec. 6, 2010) (explaining that the 120th Stage 1 federal grant is in past due status because "The grant application requires agencies to establish a date by which all requirements to obligate the grant will be completed (in this case design, environmental, and right of way activities). The goal is to select a reasonably aggressive date to maximize competitiveness while also not hindering project development. In the application the City committed to an October 1, 2010 obligation date. However, as the project design progressed, it quickly became apparent that the pace of design would need to be slowed to allow for coordination with design efforts on the NE 4th Street and NE 6th Street projects, both of which began after the 120th design phase"), available at [http://www.bellevuewa.gov/pdf/City\\_Council/PacketRegularSession12-6-1011d.pdf](http://www.bellevuewa.gov/pdf/City_Council/PacketRegularSession12-6-1011d.pdf).

<sup>25</sup> U.S. Senator Maria Cantwell FY2011 Appropriations Request Form at section 35 and Part J, attached as Exh. C.

<sup>26</sup> See April 19 2010 letter to City Council from Best Buy, attached as Exh. D.

<sup>27</sup> Summary Minutes of Regular Session at pp. 22-23 (April 19, 2010) ("[Mr. Sparman] explained the consequences for the project schedule, which includes the loss of the opportunity to secure federal dollars for the project").

<sup>28</sup> Best Buy appealed City Council's decision to the City's Hearing Examiner on the basis that it prejudged the other alternatives before environmental review was complete. The Hearing Examiner dismissed the appeal on jurisdictional grounds and did not reach the merits of the appeal. Portions of that docket are attached as Exh. E.

<sup>29</sup> Staff also rushed the NE 4th Extension and 120th Stage 1 design process to meet the schedule for formation of the City's proposed local improvement district ("LID"), which was expected to fund \$10 million or more of the NE 4th Extension and 120th Stage 1 elements. In preparation for the LID formation hearing the City retained an expert

David Pyle  
Development Services Department  
July 21, 2011  
Page 12

SEPA process, resulted in a flawed analysis of alternatives and impacts, and will likely result in unnecessary environmental impacts, higher costs, and a less desirable project result.

#### **IV. Staff's Analysis of the NE 4th Street Alignments Was Severely Flawed.**

The four alignments that Staff presented to the public for the NE 4th extension in spring 2010 were named the "Best Buy Alternative," the "Mutual Materials/Bellevue School District Alternative," the "Home Depot/Best Buy Trench Alternative," and the "Home Depot/Best Buy Surface Alternative." The four alignments are discussed in the Alternatives Technical Report and referred to as alternatives #4 through #7.<sup>30</sup>

On April 12, 2010, Staff recommended the "Best Buy" alternative (alternative #4) to City Council and providing the following reasoning:

- Least overall cost
- Most compatible with Wilburton Village vision
- Community input (some community members believed that an alignment connecting directly to NE 5th would worsen cut-through traffic)
- Least number of parcels impacted (KG Investments to the west and Best Buy to the east)
- Ability to modify the existing Best Buy structure for continued retail use.<sup>31</sup>

The above reasoning was based upon City staff's scoring matrix, which is included in Table 5-2 of the Alternatives Report.<sup>32</sup> **It is important to note that the four design alternatives scored equally in terms of traffic operations.**

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appraiser who based his analysis on the "preferred alternative" design. During the LID formation hearing on October 28, 2010, Best Buy argued that a different route (such as the NE 5th route) could affect the appraiser's analysis. Nancy LaCombe, Wilburton Connections Program Manager, responded and explained that the City was moving forward with the "preferred alternative" design for the NE 4th Extension even though environmental review was not complete and that all other "alternatives" were "off the table". See LID Formation Hearing Transcript at pp. 58, 65 (Oct. 28, 2010), attached hereto as Exh. F.

<sup>30</sup> The Alternatives Report provides that alternatives #1 through #3 were conceptual-level only and not presented to the public. Alternatives #8-10 were later developed. Alternatives #8 and #9 are essentially the same as alternative #4 in terms of road design, at least on the eastern half of the NE 4th extension affecting Best Buy. Alternative #10 is similar to alternative #7.

<sup>31</sup> See City Council Study Session Item No. 3(d), at p. 3-89 (April 12, 2010), available at [http://www.bellevuewa.gov/pdf/City\\_Council/PacketExtendedStudySession4-12-103d.pdf](http://www.bellevuewa.gov/pdf/City_Council/PacketExtendedStudySession4-12-103d.pdf).

David Pyle  
Development Services Department  
July 21, 2011  
Page 13

And, as shown below, Staff's reasoning was severely flawed and largely based on fundamental misconceptions about redevelopment of certain parcels into a "retail village".

**Least Cost Overall:** It appears that the Staff analysis overlooked millions of dollars in sales tax impacts and potential savings to the 120th project if the Mutual Materials/Bellevue School District option was chosen. Also, if the Mutual Materials/School District route were chosen then widening of 120th would only need to extend to the 400 block (instead of all the way to the 300 block), which could provide a significant reduction in right of way acquisition and construction costs for 120th. If the tax impacts and savings are fairly taken into account, the Mutual Materials/Bellevue School District option might well provide the least cost overall.

**"Wilburton Village Vision":** Staff stated in their analysis that the route impacting Mutual Materials and the Bellevue School District is least "compatible" with the Wilburton Village "vision" and that the alternative which impacts Best Buy is most compatible with that vision. In an email Best Buy questioned Staff about their analysis. Although Best Buy never received a direct response from Staff, public records show that **Staff admitted to one another that their analysis was not supported by any specific written policies, goals, or objectives in the Comprehensive Plan.**<sup>33</sup> It is arbitrary, fails to provide any notice to the public, and defeats the purpose of the Comprehensive Plan when staff make determinations and recommendations based on their own secret and unwritten comprehensive plan vision.

Moreover, Staff's reasoning was unsound. Staff recognized that Mutual Materials and School District bus parking uses are inconsistent with the City's long-term retail vision for the area.<sup>34</sup> If an existing use is inconsistent with the long-term vision then that use should be impacted rather than Best Buy's retail use, which is perfectly consistent with and would complement any future retail village. Staff reasoned that the remnants of the parcels impacted by the Mutual Materials/Bellevue School District Alternative would be

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<sup>32</sup> Alternatives Report at p. 2-11.

<sup>33</sup> See March 28, 2010 email from Jerry Lutz to Gwynne Johnson and Mary Kate Berens noting that Best Buy could not find anything in the Village Vision supporting staff's assertion that the NE 5th option conflicts with the vision, and March 30, 2010 email from Paul Inghram to Nancy Lacombe articulating staff's reasoning (email chain attached as Exh. G).

<sup>34</sup> See January 13, 2010 Alignment Alternatives Workshop # 2 Draft Meeting Notes § 4(h) (discussion led by Ken Oswell "Mutual Materials and the Bellevue School District bus parking area are not uses that are consistent with the City's vision for this area"), attached as Exh. B.

David Pyle  
Development Services Department  
July 21, 2011  
Page 14

hard to redevelop and therefore was inconsistent with the retail village vision. However, Staff's redevelopment vision is based upon fundamental misconceptions. First, the Best Buy and Home Depot parcels have limited redevelopment potential, in part because of covenants, conditions and restrictions restricting use of those properties.<sup>35</sup> Second, neither Mutual Materials nor the School District want to relocate (and thus impacting and acquiring the Mutual Materials and School District bus barn sites is the only way that those parcels will be redeveloped in the foreseeable future). Over the long-term, continuation of the Mutual Materials and School District uses will likely discourage and delay redevelopment of the Wilburton retail village – Best Buy survival will not.

**Public Comments:** Staff rejected the Mutual Materials/School District Alternative in part because, according to Staff, Wilburton residents were concerned that the route would cause greater cut-through traffic than other routes. Some Wilburton residents may have expressed concern that an intersection leading from NE 4th east straight into the Wilburton neighborhood would be worse than the Best Buy route. However, that was a false choice as there are ways that the intersection could be designed to protect NE 5th even if NE 4th lined up with NE 5th. As discussed below, the Wilburton Community Association has advocated numerous NE 4th design alternatives which appear to have been ignored by City staff and are not recognized in the Checklist or reports.

**Parcels impacted:** The Staff analysis treats the Mutual Materials/Bellevue School District alternative as impacting two properties and the Best Buy alternative as only impacting one. However, the Mutual Materials and School District parcels will be impacted by the NE 6th street extension. Thus when looking at the Wilburton Connections as a whole (rather than just NE 4th in isolation) the Mutual Materials/School District route impacts the fewest parcels (two instead of three).

Best Buy respectfully requests that the City's Responsible Official issue a DS and require the City to renew its analysis of alignment alternatives, without prejudgment of other options due to the advanced design of the "preferred" alignment alternative. In that regard, on February 7, 2011, Staff presented two new "options" to City Council. These options were not "new" designs or alignments for NE 4th, but rather were ideas for mitigating adverse impacts to Best Buy or Home Depot. "Option 1" was the same road design as the Best Buy Alternative but included rebuilding part of the Best Buy store to the north. "Option 2" was essentially the same alignment as the "Surface Alternative" but included structured parking for Home Depot.<sup>36</sup> Staff predicted

<sup>35</sup> See Declaration of Covenants, Conditions and Restrictions, King County Recorder #20020619000897.

<sup>36</sup> City Council Study Session Item No. SS 2(b) (Feb. 7, 2011), available at <http://www.bellevuewa.gov/pdf/CityCouncil/PacketStudySession2-7-112b.pdf>.

David Pyle  
Development Services Department  
July 21, 2011  
Page 15

that either option would cost millions less than the preferred alternative, but noted that there was little time to study the options because of the impending federal grant deadline for 120th Stage 1. Two months later, Staff recommended to City Council that they continue with "Option 1" (which has the same design as the "preferred alternative" and would allow Staff to continue with that design work) and drop "Option 2" (which would slow down design and jeopardize the federal grant). Best Buy submitted comments to City Council that Staff was again allowing the impending grant deadline and "administrative inertia" for Staff's "preferred alternative" to prejudice other reasonable alternatives.<sup>37</sup>

#### V. Reasonable Alternatives and Possible Solutions Deserve Proper Consideration

The Wilburton Community Association has advocated alternatives that would result in a NE 4th connection with 120th north of the 120th/NE 5th intersection. One alternative proposed by the Wilburton residents is a route through the Mutual Materials and School District properties coupled with a modified intersection design that prevents cars leaving downtown from traveling east of 120th along NE 5th, resulting in a "sweeping" intersection. Best Buy first learned of this concept from Robert Shay, president of the Wilburton Community Association.<sup>38</sup> Best Buy asked its traffic engineering consultant, Mr. Markley, to consider Mr. Shay's concept. Mr. Markley's work demonstrates that with minor modifications, Mr. Shay's concepts would outperform City staff's proposal on a number of criteria.<sup>39</sup>

Wilburton residents also support a single crossing of the BNSF railroad right-of-way at NE 6th Street, instead of dual crossings at NE 4th and NE 6th Streets.<sup>40</sup> It is noteworthy that a crossing near NE 6th crossing appears to have little if any steep slope critical areas. Under LUC

<sup>37</sup> See Letter from J. Lutz to Bellevue City Council (April 4, 2011), attached as Exh. H. A follow-up letter to Councilmember Wallace was sent on April 25, 2011, also included in Exh. H.

<sup>38</sup> Mr. Shay's diagram is attached as Exh. I.

<sup>39</sup> See Letter from Transportation Solutions, Inc. to J. Lutz at pp. 3-4 (Dec. 6, 2010), attached as Exh. A. The letter was submitted by Mr. Markley to City Council during the regular session on December 6, 2010.

<sup>40</sup> See City Council Summary Minutes of Regular Session at p. 2 (summarizing comments of Robert Shay and David Baumgart, President and Treasurer of the Wilburton Community Association respectively) (Dec. 6, 2010), <http://www.ci.bellevue.wa.us/Minutes/MinutesRegularSession12-06-10.pdf>; see also NE 5th Street Traffic Committee Meeting Summary p. 6 (May 25, 2010) ("I was hoping a different alternative for NE 4th Street would be selected, so NE 4th Street would connect to 120th Avenue NE north of the bus barn. If we are stuck with the current 'Best Buy' alternative, then we need to look closely at eliminating the NE 4th Street to NE 5th Street movement, and/or sweep NE 4th Street north of NE 5th Street"), available at [http://www.ci.bellevue.wa.us/pdf/Transportation/wilburton\\_connex\\_5th\\_street\\_traff\\_comm\\_summary\\_052510.pdf](http://www.ci.bellevue.wa.us/pdf/Transportation/wilburton_connex_5th_street_traff_comm_summary_052510.pdf).

David Pyle  
Development Services Department  
July 21, 2011  
Page 16

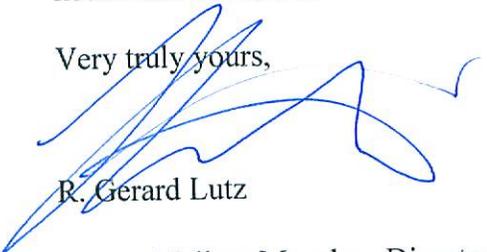
20.25H.055.C.2, the City should provide an analysis of whether a NE 6th crossing is a technically feasible alternative. The City should consider making the NE 6th Extension the new route for vehicular traffic, either in conjunction with or as an alternative to the HOV plan for the NE 6th Extension.

SEPA and NEPA require a proper environmental analysis of reasonable alternatives for 120th Stage 1, NE 4th, NE 5th and NE 6th. The SEPA/NEPA process should analyze in sufficient depth whether the NE 5th Sweep route or a single NE 6th crossing can be designed to minimize cut-through traffic on NE 5th east of 120th Ave NE and provide similar intersection level of service in the NE 4th/120th corridor. That analysis should also study other reasonable alternatives such as the timing and sequencing of construction of 120th Stages.

#### VI. Conclusion.

The Project may have probable significant adverse environmental impacts. City staff have consistently ignored or dismissed better alternatives that would have fewer, less significant environmental impacts in their rush to secure and protect federal grants. Best Buy respectfully requests that the City's Responsible Official issue a threshold determination of significance. The Project should be redefined to include the NE 6th Extension and NE 5th Traffic Mitigation Planning, and at a minimum, the environmental impacts of the "Wilburton Connections" components of the Project (and reasonable alternatives to those components) should all be analyzed in a single environmental document that provides sufficient and accurate information regarding probable adverse impacts, and through an EIS process providing for further public notice and comment.

Very truly yours,



R. Gerard Lutz

cc: Melissa Moseley, Director Real Estate Best Buy  
Monica Buck, Deputy City Attorney  
Nancy Lacombe, Wilburton Connections Project Manager  
Paul Krawczyk, Project Manager  
Robert Shay, President, Wilburton Community Association  
Trevin Taylor, WSDOT Highways and Local Programs Division

## EXHIBIT A

**Best Buy Comments Regarding NE 4th Street/120th Ave NE  
Corridor Project SEPA Review (July 21, 2011)**

**Development Services Department File No. 11-114971-LM**



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December 6, 2010

Jerry Lutz  
Perkins Coie LLP  
10885 N.E. Fourth Street, Suite 700  
Bellevue, WA 98004-5579

Subject: Best Buy NE 4<sup>th</sup> Street – NE 5<sup>th</sup> Street Alternative Assessment

Dear Mr. Lutz:

Thank you for asking TSI to assist you in evaluating the proposed NE 4<sup>th</sup> Street Extension from 116<sup>th</sup> Avenue NE to 120<sup>th</sup> Avenue NE on behalf of your client, Best Buy. It is our understanding that Best Buy believes that the City's apparent preferred option (NE 4th Street across the southerly edge of the Best Buy property) will have probable significant adverse traffic impacts for the neighborhood, as well as causing damage to Best Buy's Bellevue store. Best Buy prefers the NE 5<sup>th</sup> Street alignment believes that the City's review of the NE 5<sup>th</sup> Street Alternative not been analyzed in sufficient detail for the City to make a reasoned choice among staff's preferred NE 4<sup>th</sup> Street alternative and other alternatives at lower environmental cost.

This letter briefly summarizes our understanding of the analyses that have been prepared by the City to date and provides a summary and comparison of these studies, including findings and conclusions that do not appear to have been seriously considered as part of the City's decision to move forward. As part of this review, we also have provided a statement of the benefits of an extension along NE 5th Street including one intersection design alternative that is favored by neighbors along NE 5<sup>th</sup> Street.

#### **REVIEW OF CITY TRAFFIC STUDIES AND GENERAL ROAD SYSTEM ANALYSIS**

The City and its traffic consultants have prepared numerous traffic studies. Those made available through the public disclosure process include the following:

- Revise the Wilburton Alternative Modeling With/Without NE 4<sup>th</sup> Extension, City of Bellevue, Jin Ren and Sean Wellander, February 14, 2006.
- Additional Network Alternative Modeling for Wilburton/NE 8<sup>th</sup> Study, Jin Ren and Sean Wellander, May 18, 2006.
- Traffic Operations Analysis - 120th Avenue NE, Phase 1 (NE 3<sup>rd</sup> St. to NE 7<sup>th</sup> St.), INCA Engineers, Inc., November, 2009.
- NE 4th Street Extension Project Transportation Discipline Memo, Parsons Brinckerhoff, August, 2010
- Transportation Benefits for NE 4<sup>th</sup> Street and 120<sup>th</sup> Avenue NE LID, Perteet Engineers August 18, 2010
- Summary of the Wilburton Traffic Modeling Project, Transpo, August 18, 2010.

A detailed summary is presented in Attachment A.



Jerry Lutz  
December 6, 2010  
Page 2 of 5

The City has performed substantial analysis but there appear to be wide ranges in the findings generated by each of these studies, even where the horizon year, land use and road improvement assumptions appear to be consistent. An example is the difference between the levels of service at NE 4<sup>th</sup> Street at 116<sup>th</sup> Avenue NE where Transpo forecasts a LOS F with 97 seconds of delay compared with the Parsons Brinckerhoff analysis which shows a LOS F with 134 seconds of delay in 2030 with full road improvements. At the same intersection in the year 2015 (2015 Alternate 2 in the Transpo study), Transpo finds the level of service is LOS D (51 seconds of delay) while the Parsons Brinckerhoff study finds the level to be LOS E (82 seconds of delay). These discrepancies and inconsistencies call into question whether the analysis is sufficiently consistent to support a decision to move forward with property acquisition for the NE 4<sup>th</sup> Street Extension and 120<sup>th</sup> Avenue NE Phase 1 Widening.

The purpose of most street improvements is typically to reduce congestion and improve safety. Yet comparing the level of service results in the Transpo analysis for 2030, Alternate 0 (Full Wilburton Development but *without* the NE 4<sup>th</sup> Extension and 120<sup>th</sup> Avenue NE widening) and 2030, Alternate 3 (Full Wilburton development but *with* the NE 4<sup>th</sup> Extension and 120<sup>th</sup> Avenue NE widening), we find that all of the intersections in and around the Wilburton area operate at a poorer level of service *with* the proposed road improvements as compared to conditions *without* the road improvements. See Attachment B. While there may be general road network benefits elsewhere, they do not appear to be occurring along roads and major intersections that serve Best Buy. Based on our review of the information the City has shared with you, the City does not appear to have not demonstrated system-wide level of service benefits that justify the expected costs.

#### **SIGNIFICANT ADVERSE TRAFFIC IMPACTS TO WILBURTON BUSINESSES AND RESIDENTS**

In addition to intersections mentioned operating at a poorer level of service in and around Wilburton, there is concern that, without extension of 120<sup>th</sup> Avenue NE north of NE 8<sup>th</sup> Street, traffic will cut-through the Wilburton neighborhood on NE 5<sup>th</sup> Street and 124<sup>th</sup> Avenue NE. In this event, traffic will shift to 124<sup>th</sup> Avenue NE via NE 5<sup>th</sup> Street and to NE 8<sup>th</sup> Street at 120<sup>th</sup> Avenue NE (a 'T' intersection until 120<sup>th</sup> Avenue NE is extended north).

Traffic forecasts prepared by Transpo as part of the NE 5<sup>th</sup> Street Neighborhood Traffic Plan show that with extension of 120<sup>th</sup> Avenue NE, north of NE 8<sup>th</sup> Street to Northup Way there will be extensive traffic diversion onto the existing segment of NE 5<sup>th</sup> St - an increase from 135 vehicles per hour (vph) during the PM peak hour in 2010 and 445 vehicles per hour in 2015 - a threefold increase in volume. These forecasts assume that 120<sup>th</sup> Avenue NE is extended north of NE 8<sup>th</sup> Street to Bel-Red Road. The traffic forecasts show another 150 vph increase on NE 5<sup>th</sup> Street and 124<sup>th</sup> Avenue NE without 120<sup>th</sup> Avenue NE being extended to Bel-Red Road. Since these traffic forecasts have only considered the NE 4<sup>th</sup> Street alignment, we believe the diversion though the neighborhood could be even greater if there is not significant traffic calming, partial restriction, full restriction on NE 5<sup>th</sup> Street or some other alignment of the NE 5<sup>th</sup>/NE 4<sup>th</sup> Street Extension between 116<sup>th</sup> Avenue NE and 120<sup>th</sup> Avenue NE. While these impacts have been discussed with the neighbors, full vetting of alternative alignments have yet to be explored but should be prior to moving forward with a more alignment and design studies along NE 5<sup>th</sup> /NE 4<sup>th</sup> Streets.



Jerry Lutz  
December 6, 2010  
Page 3 of 5

**Access Impacts Specific to Best Buy** – In addition to loss of Best Buy's loading dock, reduction in store size, and loss of parking, the NE 4<sup>th</sup> Street Alternative will cause customer access issues for Best Buy as currently proposed. It will require traffic to make left turns across a heavy flow of opposing uncontrolled traffic in order to enter or leave the Best Buy site. With a NE 4<sup>th</sup> Street alignment, access patterns will adversely affect customer perception of the Best Buy site versus other comparable retail opportunities. Also, the impact of cross access to Home Depot will be virtually eliminated as a result of the currently preferred NE 4<sup>th</sup> Street Alternative. This is because traffic crossing between Best Buy and Home depot will need to compete with 1400 vehicles per hour traveling east and west along NE 4<sup>th</sup> Street.

Site access for Best Buy would be better with the NE 5<sup>th</sup> Street alternative as compared to a NE 4<sup>th</sup> Street Alternative. This is because traffic leaving downtown during the afternoon peak period (a peak retail shopping time period, particularly for pass-by customers) will be able to access the site by making right turns in and right turns out with the NE 5<sup>th</sup> Street Alternative. Cross access with Home Depot would be retained the same as it is today with the NE 5<sup>th</sup> Street alignment.

**THE NE 5TH ST. ALIGNMENT WAS NOT ANALYZED IN THE CITY'S TRAFFIC STUDIES**

One of the most significant observations is that none of the traffic studies reviewed appears to analyze a NE 5<sup>th</sup> Street Alternative. The Parsons Brinckerhoff study does acknowledge a NE 5<sup>th</sup> Street Neighborhood Traffic Plan but assumes that the east-west crossing of the Burlington Northern Railroad occurs along a NE 4<sup>th</sup> Street alignment. Subsequent study by Transpo analyzed traffic calming along NE 5<sup>th</sup> Street but that study did not analyze conditions with a potential NE 5<sup>th</sup> Street alignment. Accordingly, it seems premature to move forward with final design or construction of the NE 4<sup>th</sup> Street alternative before other alignments have been comparatively evaluated, that such a comparative analysis is fully disclosed, and mitigation options and potential for each alternative is clearly defined.

We are aware that the City has made a cursory review of four alternative alignments for extending NE 4<sup>th</sup> Street from 116<sup>th</sup> Avenue NE to 120<sup>th</sup> Avenue NE. The level of detail in these studies implies that these were concept level comparisons. We are not aware of any documented comparative analysis or environmental documentation supporting these drawings. The City's analysis did not appear to find that the NE 5th (Mutual Materials/Bus Barn) option would be worse from a traffic perspective than the "Best Buy" alternative. It appears the City made its recommendation based on other factors. We believe that from a transportation perspective there could be some benefits to a NE 5<sup>th</sup> Street Alternative that the City does not appear to have fully considered.

**NE 5th Intersection Design Alternative** - You have made us aware of an alternative design to the NE 5<sup>th</sup> Street/120<sup>th</sup> Avenue NE intersection that was offered as an alternative to the City's traditional four-legged intersection concept by the Wilburton community. I have refined this concept which is schematically illustrated on Attachment C. This design provides a sweeping curve connecting the proposed NE 5<sup>th</sup> Street extension at its intersection with 120<sup>th</sup> Avenue NE.

The advantage of this design is that it more effectively serves the eastbound to northbound left turn movement and the southbound to westbound right turn movement – the primary movement linking Bel-Red to Downtown Bellevue. This is important because the level of service analysis performed by Transpo shows that the southbound to westbound right turn movement at the intersection with the proposed NE. 4<sup>th</sup> Street Extension/120<sup>th</sup> Avenue NE operates at LOS F. We



Jerry Lutz  
December 6, 2010  
Page 4 of 5

are unaware that this alternative has been studied as part of the NE 5<sup>th</sup> Street Neighborhood Traffic Plan or any other study made available to us by the City and believe its benefits should be evaluated.

While this design represents a nontraditional intersection design because it separates the two legs of NE 5<sup>th</sup> Street (the east leg shifted south of the west leg), it does provide the benefit of minimizing cut-through traffic along NE 5<sup>th</sup> Street east of 120<sup>th</sup> Avenue NE which we understand to be in an important objective of the residents living in the neighborhood. Further, this alternative would significantly reduce volumes on NE 5<sup>th</sup> Street east of 120<sup>th</sup> Avenue NE (a reduction of up to 390 vph) and in turn moderate volumes on 124<sup>th</sup> Avenue NE to retain its character as a residential arterial. This intersection design only prevents cut-through traffic if located to the north of the current NE 5th intersection with 120th.

We acknowledge that this intersection alternative should not allow southbound to eastbound left turns from 120<sup>th</sup> Avenue NE to NE 5<sup>th</sup> Street. This restriction is a negligible shortcoming because less than 15 vph are expected to make this left-turn movement during the PM peak hour. There would also be the need for coordination between the proposed signals at NE 5<sup>th</sup> street and NE 6<sup>th</sup> Street to ensure that queuing is effectively managed. Fiber optic will be available in the street to provide that coordination.

#### SUMMARY

Based on the discussion above and review of all of the City's studies that they provided you and others through public disclosure requests, we find that there does not appear to be a consistent comprehensive analysis of traffic operations that support moving forward with final design, property acquisition, or construction of a preferred alternative along NE 4<sup>th</sup> Street. We believe that a more comprehensive review of alternatives should be considered before further design or construction of a preferred alternative is authorized. Our conclusion is based on the following findings:

- City and consultant traffic analyses of traffic operations are inconsistent and do not appear to support the extensive public investment associated with the proposed NE 4<sup>th</sup> Street extension and 120<sup>th</sup> Avenue NE widening.
- Where comparative analysis results do exist, the intersection levels of service in the vicinity of Best Buy worse rather than better with the proposed NE 4<sup>th</sup> Street Extension and 120<sup>th</sup> Avenue NE widening.
- A NE 5<sup>th</sup> Street alignment alternative does not appear to have been analyzed and compared in sufficient detail to make a reasoned decision regarding a preferred alignment.
- There appears to be substantial traffic impacts on Best Buy with the NE 4<sup>th</sup> Street Alternative that are mitigated with a NE 5<sup>th</sup> Street Alternative including reduction in ultimate right-of-way costs, improved customer access, improved cross access with neighboring retailers, reduced parking stall loss, and no building area impacts.
- There are significant traffic impacts on NE 5<sup>th</sup> Street east of 120<sup>th</sup> Avenue NE and on 124<sup>th</sup> Avenue NE north of NE 5<sup>th</sup> Street (a threefold increase in volume). This impact will be even greater if 120<sup>th</sup> Avenue NE is not extended north of NE 8<sup>th</sup> Street prior to construction of NE 4<sup>th</sup> Street (a fourfold increase in volume).



Jerry Lutz  
December 6, 2010  
Page 5 of 5

- There appears to be at least one intersection design option for a NE 5<sup>th</sup> Street alternative that could substantially mitigate traffic impacts to neighborhoods east of 120<sup>th</sup> Avenue NE but which has yet to be analyzed.

There may be system-wide benefits associated with these proposed improvements but they do not appear to be clearly defined by the different analyses performed by the city and/or their traffic consultants. We believe this type of comparative analysis should be performed prior to authorizing further design or construction on the City's preferred design of a NE 4<sup>th</sup> Street Alternative.

If you or the city would like to discuss these items further, I encourage you to contact me.

Sincerely,  
Transportation Solutions, Inc.

A handwritten signature in blue ink, appearing to read "David D. Markley", is written over the typed name and title.

David D. Markley  
Principal

Attachments

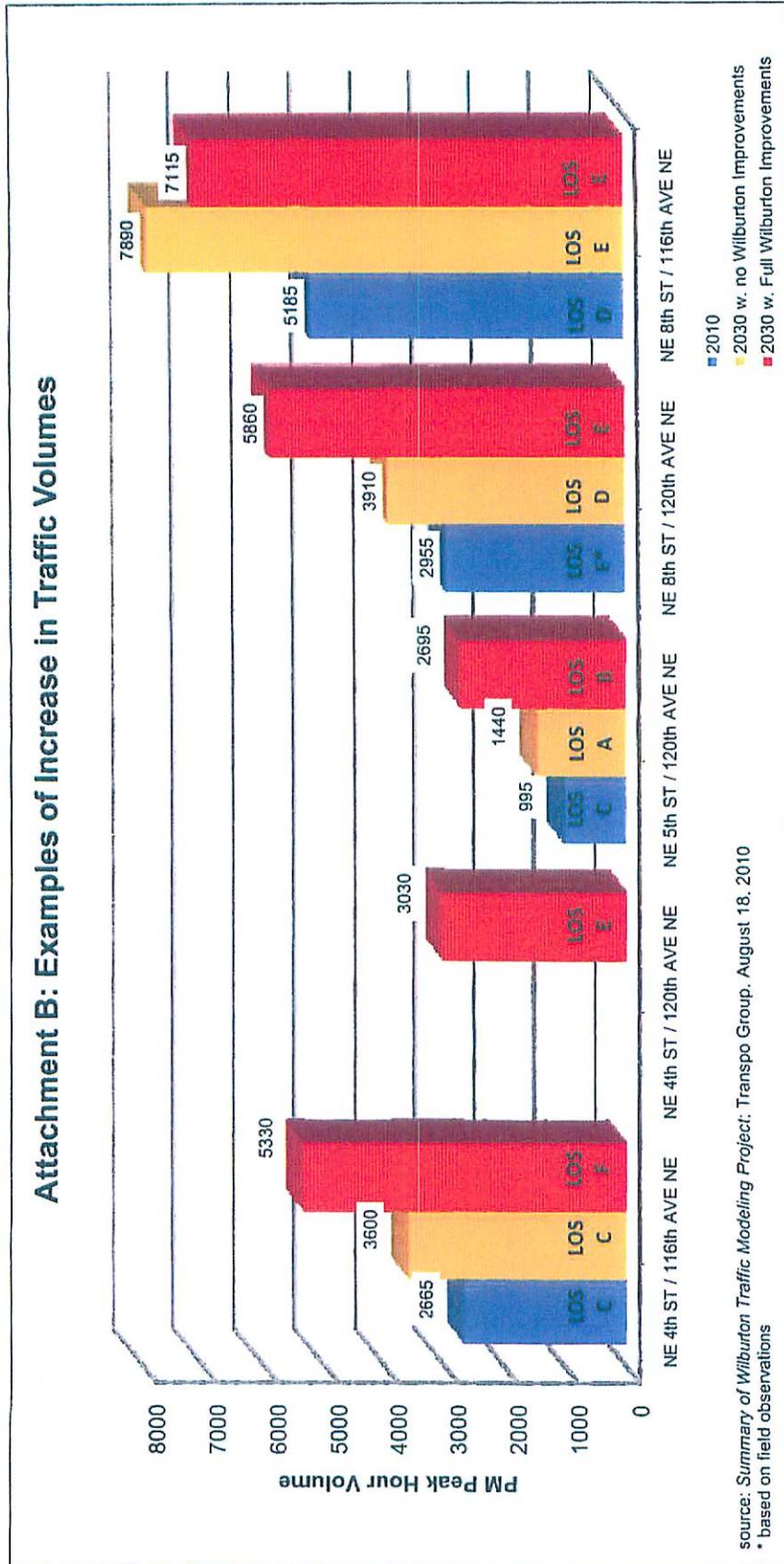
- A – Detailed Summary of City and Consultant Study Findings
- B – Simple Summary of Level of Service
- C – Concept NE 5<sup>th</sup> Street/120<sup>th</sup> Avenue NE - Neighborhood Proposal

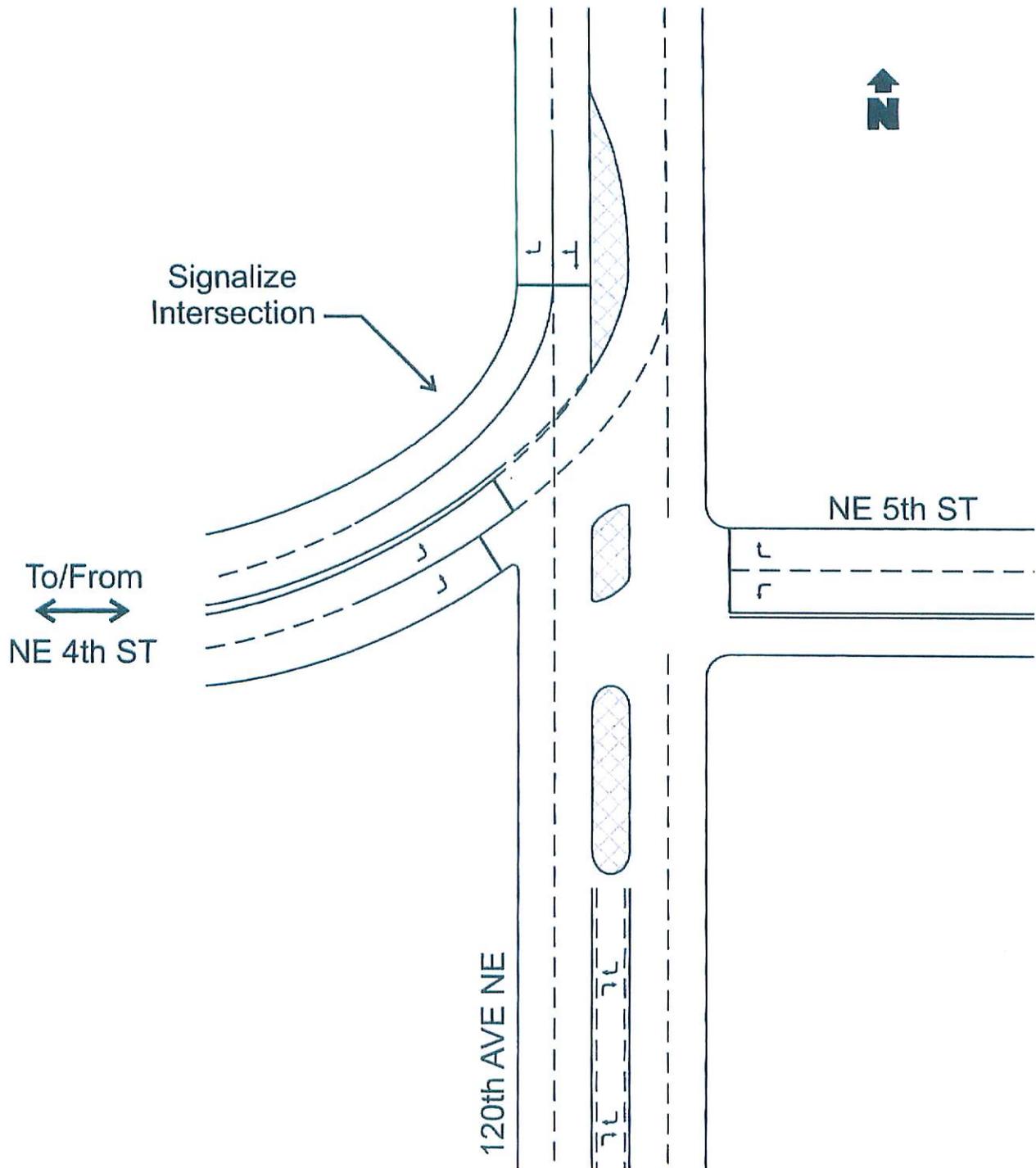
Attachment A  
 Comparative Review of Traffic Studies

Study	Alternative/ Scenario	Forecast Year	Key Intersections Level of Service (Sec. Delay)						Land Use Assumptions	Road Improvement Assumptions
			NE 4th/ 116th C (27)	NE 4th/ 120th NA	NE 5th/ 120th C (15)	NE 8th/ 116th D (46)	NE 8th/ 120th B (20)	NE 8th/ 120th D (43)		
Summary of the Willbourn Traffic Modeling Project Transpo Group 2010-08-18	Existing 2010 Conditions	2010						2009 Traffic Data from Bellevue Transportation Dept	Current transportation network with no improvements	
	2030 Alternative 0	2030	C (34)	NA	A (8) [5g]	E (62)	D (43)	Comprehensive Plan	Current transportation network with no improvements	
	2030 Alternative 3	2030	F (97)	E (66)	B (14)	E (66)	E (63)	Comprehensive Plan	All Willbourn and Bell-Red Connections projects:	
	2015 Alternative 1	2015	D (52)	D (38)	F (118)	D (50)	D (53)	Land use growth through 2015	I-405 Northbound Braided Ramps SR 520 Tolling I-90 Two-Way Transit/ HOV NE 8th Street Bus Rapid Transit (BRT) NE 4th Street Extension 120th Ave NE Widening between NE 4th Street and NE 8th Street NE 5th Street Neighborhood Traffic Plan 120th Ave NE Widening between NE 4th Street and NE 8th Street	
Transportation Benefits for NE 4th Street & 120th Avenue NE LID; #20090037 Petteet 2010-08-18	2015 Alternative 2	2015	D (51)	D (50)	F (173)	D (51)	D (49)	Land use growth through 2015	with NE 4th Street/120th Ave NE Improvements, to identify traffic shift	
	2009 PM Peak Hour	2009	na	na	na	na	na	BKR Model post processed by Transpo Group	comparative baseline condition against 2015 changes	
	2010 PM Peak Hour	2010	na	na	na	C (25)	C (16)	BKR Model post processed by Transpo Group	without NE 4th Street/120th Ave NE Improvements, future baseline	
	2015 PM Peak Hour	2015	na	na	na	F (111)	E (62)	BKR Model post processed by Transpo Group	with NE 4th Street/120th Ave NE Improvements	
	2015 PM Peak Hour	2015	na	na	na	D (42)	D (46)	BKR Model post processed by Transpo Group	with and without NE 4th Street/120th Ave NE Improvements (not used for this analysis)	
	2030 PM Peak Hour	2030	na	na	na	na	na	BKR Model post processed by Transpo Group	Current conditions	
NE 4th Street Extension Project (DRAFT) Parsons Brinckerhoff 2010-08	Existing PM Peak Hour	2010	C (24)	na	na	na	na	Volumes provided by City of Bellevue (Consistent with Transpo Group data)		
	2015 Build	2015	E (82)	C (23)	na	na	na	Volumes consistent with Transpo Forecast	120th Ave NE Widening (NE 3rd Street to NE 8th Street) NE 4th Street Extension NE 5th Street Neighborhood Traffic Plan I-405 Northbound Braided Ramps	
	2030 Build	2030	F (134)	D (41)	na	na	na	Volumes consistent with Transpo Forecast	120th Ave NE Widening (NE 3rd Street to Northup Way) NE 4th Street Extension NE 5th Street Neighborhood Traffic Plan NE 6th Street Extension NE 15th Street Multi-Modal Corridor Improvements LINK Light Road Transit (East Link) I-405 Northbound Braided Ramps	

Attachment A  
 Comparative Review of Traffic Studies

Study	Alternative/ Scenario	Forecast Year	Key Intersections Level of Service (Sec. Delay)				Land Use Assumptions	Road Improvement Assumptions	
			NE 4th/ 116th	NE 4th/ 120th	NE 5th/ 116th	NE 6th/ 120th			
DRAFT Traffic Operations Analysis Report 120th Avenue NE, Phase 1 (NE 3rd Street to NE 7th Street) 2006-05-18 INCA Engineers, Inc.	Future Conditions	2030	na	na	E (42)	na	F (149)	Volumes derived from Bellevue staff (not consistent with Transpo)	NE 4th Street Extension
	Existing	2004	A	na	A	B	B	Existing Zoning Auto Row	NE 6th Street Extension Realign 120th Ave NE/ NE 8th Street Extend 120th to the north 2011 CIP Projects
	2030 Baseline	2030	B	na	A	C	F	Existing Zoning Auto Row (assumed)	HCT and other major regional capacity projects on I-405
	2030 With. Alt. 3C	2030	F	C	A	C	F	Major New Mixed Retail on Auto Row; Retail Village to East	HCT and other major regional capacity projects on I-405; NE 4th Street Extension (5 lane facility)
	2030 With. Alt. 3D	2030	B	na	A	D	E	Major New Mixed Retail on Auto Row; Retail Village to East	HCT and other major regional capacity projects on I-405; NE 6th Street connection (5 lane facility)
	2030 With. Alt. 3E	2030	D	D	B	C	E	Major New Mixed Retail on Auto Row; Retail Village to East	HCT and other major regional capacity projects on I-405; NE 4th and NE 6th Streets
	2030 With. Alt. 4C	2030	F	C	C	C	F	Major New Mixed Retail on Auto Row; Larger Retail Village to East	HCT and other major regional capacity projects on I-405; NE 4th Street Extension (5 lane facility)
	2030 With. Alt. 4D	2030	B	na	A	D	E	Major New Mixed Retail on Auto Row; Larger Retail Village to East	HCT and other major regional capacity projects on I-405; NE 6th Street connection (5 lane facility)
	2030 With. Alt. 4E	2030	D	E	A	D	E	Major New Mixed Retail on Auto Row; Larger Retail Village to East	HCT and other major regional capacity projects on I-405; NE 4th and NE 6th Streets
	Existing	2004	A		B	B	B	Existing Zoning Auto Row	
	2011 Baseline	2011	A		C	C	B	Existing Zoning Auto Row (assumed)	2011 CIP Projects
	2011 Alt 1	2011	A		C	C	C	Existing Zoning Auto Row	2011 CIP Projects
	2011 Alt 2	2011	A		D	D	C	Long Term viability of Auto Row; Retail Village to East	2011 CIP Projects
	2011 Alt 3	2011	B		D	D	C	Major New Mixed Retail on Auto Row; Retail Village to East	2011 CIP Projects
2011 Alt 4	2011	B		D	D	C	Major New Mixed Retail on Auto Row; Larger Retail Village to East	2011 CIP Projects	
2011 Alt 3 with 4th	2011	D		D	D	B	Major New Mixed Retail on Auto Row; Retail Village to East	2011 CIP Projects; NE 4th Street Extension (3 lane facility)	
2011 Alt 4 with 4th	2011	D		D	D	B	Major New Mixed Retail on Auto Row; Larger Retail Village to East	2011 CIP Projects; NE 4th Street Extension (3 lane facility)	
2030 Baseline	2030	B		C	C	F	Existing Zoning Auto Row (assumed)	HCT and other major regional capacity projects on I-405	
2030 Alt 1	2030	A		D	D	F	Existing Zoning Auto Row	HCT and other major regional capacity projects on I-405	
2030 Alt 2	2030	A		D	D	F	Major New Mixed Retail on Auto Row; Retail Village to East	HCT and other major regional capacity projects on I-405	
2030 Alt 3	2030	B		D	D	F	Major New Mixed Retail on Auto Row; Larger Retail Village to East	HCT and other major regional capacity projects on I-405	
2030 Alt 4	2030	B		D	D	F	Major New Mixed Retail on Auto Row; Retail Village to East	HCT and other major regional capacity projects on I-405	
2030 Base with 4th	2030	D		C	C	E	Existing Zoning Auto Row	HCT and other major regional capacity projects on I-405; NE 4th Street Extension (3 lane facility)	
2030 Alt 3 with 4th	2030	E		C	C	E	Major New Mixed Retail on Auto Row; Retail Village to East	HCT and other major regional capacity projects on I-405; NE 4th Street Extension (3 lane facility)	
2030 Alt 4 with 4th	2030	E		C	C	E	Major New Mixed Retail on Auto Row; Larger Retail Village to East	HCT and other major regional capacity projects on I-405; NE 4th Street Extension (3 lane facility)	





## **EXHIBIT B**

**Best Buy Comments Regarding NE 4th Street/120th Ave NE  
Corridor Project SEPA Review (July 21, 2011)**

**Development Services Department File No. 11-114971-LM**

**DRAFT**

**Alignment Alternatives Workshop #2**

January 13, 2009 – 1:00 to 3:00 PM

**Meeting Minutes**

**NE 4<sup>th</sup> Street Extension**  
City of Bellevue

**1. Introduction (Marina Arakelyan)**

- Marina gave an update on the project status.
- Marina explained that seven alignments had been considered for the project to date.
- Marina noted that four alternative alignments representing the most viable options for the project were selected for evaluation.
- Marina noted the purpose of this workshop was to identify a preferred alignment for the project based on data developed for the four representative alternatives.

**2. Presentation of Alternative Alignments (Ken Oswell)**

- Ken described the project area:
  - A. Plan is for a lot of urban upgrading of the project area.
  - B. Project area is intended as a buffer between major downtown development and residential area.
  - C. Other key area projects in the area include the 120<sup>th</sup> Avenue NE Widening and NE 5<sup>th</sup> Street Traffic Assessment.
- Ken described the alternative alignments:
  - A. *Best Buy Alternative*: This central alignment would be on fill on the west end, pass over the 72" Metro sanitary sewer line, sever the BNSF tracks, and strike a portion of the Best Buy building.
  - B. *Mutual Materials / Bellevue School District Alternative*: This north alignment would be on fill on the west end, pass over the 72" Metro sanitary sewer line, sever the BNSF tracks, impact the properties north of the Best Buy property and connect to 120th Avenue NE at the existing NE 5th Street intersection.
  - C. *Home Depot / Best Buy - Trench Alternative*: This central alignment would be essentially in a trench from 116th Avenue NE to 120th Avenue NE and pass under the Metro sewer line and BNSF tracks, and under/through the Best Buy and Home Depot parking lots, with a reduced roadway section passing between the Best Buy building and the existing detention vault in the Home Depot parking lot.
  - D. *Home Depot / Best Buy - Surface Alternative*: This central alignment would be on fill on the west end, pass over the 72" Metro sanitary sewer line, sever the BNSF tracks, and pass through the Best Buy and Home Depot parking lots.
- Ken described the key information, issues and constraints for the project:
  - A. Parking for existing businesses is critical. The Best Buy and the Home Depot / Best Buy – Surface and Trench alternatives have substantial impact on business parking.
  - B. The 72" Metro sanitary sewer line in the BNSF right-of-way (ROW) has to be accommodated. This adds substantial cost to the Home Depot / Best Buy Trench alternative which would have the greatest potential of impacting the sewer.

- C. Future rail uses may need to be accommodated. Could require raising the track elevation by about 11 feet (for all alternatives except the Home Depot / Best Buy –Trench alternative)
- D. Project will impact Sturtevant Creek Basin and possibly Mercer Slough.
- E. We will possibly need to use a large vault for drainage detention, sized approximately 285' x 36' x 7'-10' deep.
- F. The NE 4<sup>th</sup> St project will also likely receive some water from the adjacent 120<sup>th</sup> Ave NE project.
- G. Best Buy and Home Depot share an existing drainage detention vault on Home Depot site.

- Ken described the preliminary cost estimates:

- A. Construction, design and right-of-way (ROW) components of each alignment range from \$16.0 to \$46.6 million. Costs are comparable three alternatives (\$16.0 to \$19.1 million), but the Home Depot /Best Buy – Trench alternative is more than twice as much due to the cost of the excavation and complex walls required.
- B. For substantial costs associated with potentially having to accommodate other future uses of the BNSF corridor. Costs would be substantial and similar for three alternatives (\$13.4 to \$18.9 million), but the Home Depot /Best Buy – Trench alternative would be only about \$1.0 million due to not having to raise the track elevation to restore the rail connection.
- 3. The Home Depot /Best Buy – Trench alternative would be the most expensive alternative under all conditions. Costs for the other alternatives could vary by a few million dollars, but would be roughly comparable under most conditions.

- Ken described primary risks for the project:

- A. Determining a cost-effective solution for the Sturtevant Basin drainage issues.
- B. Obtaining the needed ROW in a timely manner.
- C. Accommodating the existing 72" sanitary sewer line.
- D. Accommodating other uses of the BNSF railway corridor in the future.
- E. Impacting the existing Best Buy/Home Depot shared drainage detention vault on the Home Depot site.

**3. Presentation of Alignment Evaluation Process (Ken Oswell)**

- Ken presented the criteria being considered for evaluating the alternative alignments:

- A. Roadway geometry
- B. Railroad Track Impacts
- C. W all Conflicts with Existing Structures
- D. Impacts to Best Buy / Home Depot
- E. Impacts to KG Investments (2 parcels)
- F. Impacts to Mutual Materials, Bellevue Schools, & 3 parcels north of KG investments.
- G. Access to Adjacent Properties
- H. Impacts to Existing Vault
- I. Construction Cost
- J. Right-of-Way Related Cost

- Ken presented the scoring rationale for the criteria:

- A. All criteria are equally weighted.
- B. All criteria are scored from 1 (low) to 3 (high), depending on impacts and benefits associated with each alternative.
- C. Thresholds are defined for how to score each criteria.

#### 4. Discussion of Alternative Alignments (Ken Oswell)

- A. The Mutual Materials / Bellevue School District alternative could require relocating both the bus parking area and the bus maintenance building now located east of 120<sup>th</sup> Avenue NE and south of NE 5<sup>th</sup> Street.
- B. Acquisition of land for the Mutual Materials / Bellevue School District alternative would need to be coordinated with requirements for the NE 6<sup>th</sup> Street extension project.
- C. Traffic impacts of the NE 4<sup>th</sup> Street extension will vary depending on where it connects to 120<sup>th</sup> Avenue NE, and how NE 5<sup>th</sup> Street is operated in the future.
- D. The Home Depot /Best Buy – Trench alternative could be the most difficult to provide connections to adjacent parcels.
- E. The Best Buy alternative is proposed to allow Best Buy an option to remain on the site in a smaller building, but it could be necessary to purchase the entire property and resell the remainder.
- F. The Home Depot / Best Buy – Trench and Surface alternatives would have substantial parking impacts that would be difficult to mitigate.
- G. If the existing detention vault serving the Best Buy and Home Depot properties is disturbed, it may be necessary to upsize the vault to meet different standards.
- H. Mutual Materials and the Bellevue School District bus parking area are not uses that are consistent with the City's vision for this area.
- I. It is not likely the 72" sewer can be easily realigned in any manner to improve the operating characteristics of the NE 4<sup>th</sup> Street extension.
- J. Home Depot has expressed an objection to constructing structured parking to mitigation lost parking.
- K. Consider whether weighting the criteria would add value to the evaluation process.
- L. Show the costs separately from the scoring matrix.
- M. Consider criterion for Traffic Operations.
- N. Consider a criterion for Construction Duration.
- O. Consider a separate criterion for each affected parcel.

#### 5. Selection of Preferred Alignment (Ken Oswell)

- Selection of a preferred alternative was postponed pending incorporation of the above discussion items into the evaluation process, and the opportunity to share the alternatives with the Wilburton area stakeholders at a public open house (now scheduled for March 2, 2010).

## EXHIBIT C

**Best Buy Comments Regarding NE 4th Street/120th Ave NE  
Corridor Project SEPA Review (July 21, 2011)**

**Development Services Department File No. 11-114971-LM**

## U.S. Senator Maria Cantwell FY2011 Appropriations Request Form

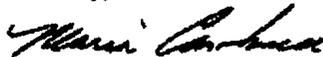
**Project Title:** (fill in)

**Sponsor:** (fill in)

Dear Washingtonians,

As your United States Senator, part of my job is to help critical priorities in our state receive attention from the federal government so we can reinvigorate our economy, create high-paying jobs, and help working families. During the annual budget process, I submit requests to the Senate Appropriations Committee for congressionally directed spending that benefits Washington State. Every year, I receive thousands of requests for assistance from cities, counties, water and utility districts, transportation agencies, and others. I carefully review these requests but am only able to submit a select few projects for the Appropriations Committee to consider for inclusion in their final bills. Please follow the instructions below carefully so my staff and I can consider your request.

Sincerely,



Please follow all instructions and fill out this form in its entirety – questions 1-41. Requests for the Transportation, Housing and Urban Development Subcommittee, the Defense Subcommittee, or within the EPA STAG account, must be sure to fill out questions **1-41** as well as the corresponding additional section at the end of this document.

Unfortunately, due to the volume of requests we receive, we cannot review applications that are incomplete or submitted after the deadline. If you have questions, contact Senator Cantwell's Appropriations Clerk Matthew Souza in our DC office at 202.224.3441.

**Deadline:** This form must be completed and submitted electronically, along with any additional information, no later than **February 12, 2010 11:59PM Pacific Time.**

**How to submit:** E-mail the completed form along with any supporting documents to [appropriations@cantwell.senate.gov](mailto:appropriations@cantwell.senate.gov). Please indicate the Appropriations Subcommittee relevant to your request in your email subject line (i.e. "Labor-HHS Appropriations Request").

**What not to do:** Applications mailed, dropped off or delivered in hard copy will **NOT** be accepted.

**Who to contact:** The ultimate point of contact for all appropriations requests is Matthew Souza, but we suggest that you also contact one of the following individuals to discuss your project:

Name	County Responsibilities	Phone	Email
Nate Caminos	King	(206)220-6400	<a href="mailto:nate_caminos@cantwell.senate.gov">nate_caminos@cantwell.senate.gov</a>
Mike English	Clallam, Grays Harbor, Jefferson, Kitsap, Mason, Pierce, Thurston	(253)572-2281	<a href="mailto:mike_english@cantwell.senate.gov">mike_english@cantwell.senate.gov</a>
Sally Hintz	Island, San Juan, Skagit, Snohomish, Whatcom	(425)303-0114	<a href="mailto:sally_hintz@cantwell.senate.gov">sally_hintz@cantwell.senate.gov</a>
Kimberly Pincheira (Starts Jan. 22)	Clark, Cowlitz, Lewis, Pacific, Skamania, Wahkiakum	(360)696-7838	<a href="mailto:kimberly_pincheira@cantwell.senate.gov">kimberly_pincheira@cantwell.senate.gov</a>
David Reeploeg	Benton, Chelan, Columbia, Douglas, Franklin, Grant, Kittitas, Klickitat, Yakima	(509)946-8106	<a href="mailto:david_reeploeg@cantwell.senate.gov">david_reeploeg@cantwell.senate.gov</a>
Marcus Riccelli	Adams, Asotin, Ferry, Garfield, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman	(509)353-2507	<a href="mailto:marcus_riccelli@cantwell.senate.gov">marcus_riccelli@cantwell.senate.gov</a>

**Project Information**

1. **Date of Request:** 2/12/2010
2. **Appropriations Bill** (Agriculture, Commerce-Justice-Science, Defense, Energy-Water, Financial Services, Homeland Security, Interior-Environment, Labor-HHS-Education, Legislative Branch, Military Construction-VA, State-Foreign Operations, or Transportation-Housing and Urban Development): Transportation-HUD
3. **Please provide the priority ranking for this project if your organization is requesting more than one project. If this is your only request, please list "only":**  
1 of 3
4. **Washington State county or counties benefited:** King

**5. General Information**

Project Title	Project Sponsor	Amount Requested (full figure, i.e. \$150,000 NOT \$150k)	Federal Agency	Account, Directorate, or Program (if applicable also list the Activity name)	Other Senators Requesting From	House Members Requesting From
NE 4 <sup>th</sup> Street Extension	City of Bellevue	\$2,000,000	USDOT -FHWA	Surface Transportation Program	Murray	Reichert

**6. Project Sponsor**

<b>Organization Name</b>	City of Bellevue
<b>Address</b>	450 110 <sup>th</sup> Avenue NE, Bellevue, WA 98004
<b>County</b>	King
<b>Phone Number</b>	425-452-4225
<b>Website</b>	<a href="http://www.bellevuewa.gov">http://www.bellevuewa.gov</a>

**7. Project Recipient (if different than sponsor)**

<b>Organization Name</b>	
<b>Address</b>	
<b>County</b>	
<b>Phone Number</b>	
<b>Website</b>	

**8. Location of Project:**

<b>Address</b>	NE 4 <sup>th</sup> Street from 116 <sup>th</sup> to 120 <sup>th</sup> Avenues NE
<b>City</b>	Bellevue
<b>County</b>	King

**9. Point person at your organization our staff may contact regarding this project**

<b>Name</b>	Diane Carlson, Director of Intergovernmental Relations
<b>Business Number</b>	425-452-4225
<b>Cell Number</b>	XXX-XXX-XXXX
<b>Email Address</b>	dcarlson@bellevuewa.gov

**10. Head of your organization (If different than your point person)**

<b>Name</b>	Don Davidson, Mayor
<b>Business Number</b>	425-452-7810
<b>Cell Number</b>	XXX-XXX-XXXX
<b>Email Address</b>	ddavidson@bellevuewa.gov

**11. D.C. based point of contact, if applicable (typically your D.C. area advocate)**

<b>Name</b>	Vicki Cram, Ball Janik LLP
<b>Business Number</b>	202-638-3307
<b>Cell Number</b>	XXX-XXX-XXXX
<b>Email Address</b>	vcram@dc.bjllp.com

**12. Clearly state what funding would do in one sentence (Maximum 150 characters)**

(e.g. For the design and construction of a pedestrian overpass in Spokane, WA; To implement a traumatic brain injury treatment program at Springfield Hospital.)

Construct a 4-5 lane extension of NE 4<sup>th</sup> Street from 116<sup>th</sup> to 120<sup>th</sup> Avenues NE, with sidewalk, planter strips, and bike lanes, to connect growth centers .

**13. Problem/Issue Statement (Limit to no more than 200 words)**

(Describe the problem or issue to be addressed through this request. Be as detailed as possible, and explain why the problem or issue cannot be addressed without an appropriation.)

The main east-west routes connecting Downtown Bellevue to employment centers to the east are plagued with congestion. NE 4<sup>th</sup> Street Extension is the first segment of an alternative route between downtown and the evolving Wilburton and Bel-Red areas, allowing vehicles to bypass the congested I-405 and SR 520 interchange. With more than one viable east-west connection to/from downtown, traffic volumes on downtown streets, such as NE 8<sup>th</sup> Street, will be more balanced and congestion will be reduced creating a better environment for development.

In 2008, the City updated its Wilburton subarea plan to promote re-development of this former auto row immediately to the east of downtown. NE 4<sup>th</sup> Street is required to "unlock" enhanced zoning in the area, which will allow the development of an urban village providing urban amenities within a neighborhood context. In 2009, the city completed a plan to transform the 900 acre Bel-Red Corridor into one of the nation's largest transit-oriented developments around Sound Transit's *East Link* light rail line. NE 4<sup>th</sup> is a gateway to this emerging area.

NE 4th Street also extends the non-motorized system to the diverse neighborhoods east of I-405 with arterial standard sidewalks and bike lanes. Residents will be able to walk or bike to services downtown and access many transit routes and the future light rail line.

The project must be built for these development and connectivity benefits to accrue to the region. Due to economic conditions, construction of the NE 4<sup>th</sup> Street Extension will be delayed without additional support.

**14. Project Description (Limit to no more than 250 words)**

(Describe in detail the project, what it will do, and why it is necessary IN LAYMAN'S TERMS. This question is aimed at understanding the project and the reason for your request.)

The NE 4<sup>th</sup> Street Extension project will construct a 4-5 lane roadway with arterial standard sidewalks (including planter strips) and five-foot bike lanes on both sides. The project is being designed to provide a grade separated crossing of the former BNSF rail corridor, which can be adapted to meet future trail uses or re-establishment of a rail corridor over the new NE 4<sup>th</sup> Street extension.

The project connects Downtown Bellevue, a regional growth center, to the emerging activity centers along the Bel-Red Innovation Corridor and other employment centers east of I-405, such as the Redmond and Overlake centers (home to Microsoft's Headquarters). The NE 4<sup>th</sup> Street Extension is critical to the economic development of three sub-areas in the city of Bellevue:

- 1) Downtown Bellevue – the project provides an alternative east-west outlet that balances traffic circulation in the downtown grid and reduces congestion at gateway intersections along NE 8<sup>th</sup> Street.
- 2) Wilburton – the project unlocks new zoning capacity that will allow this former auto row to prosper into a vital urban village – a pedestrian and bicycle-friendly community with retail, neighborhood-oriented, and residential uses.
- 3) Bel-Red Corridor – the project provides a logical connection to 120<sup>th</sup> Avenue NE, which serves as the north-south spine in a planned enhancement to the street grid for the corridor. NE 4<sup>th</sup> becomes a convenient gateway to a direct route from downtown to the Spring District, a new transit-oriented development planned around a proposed Sound Transit Light Rail Station in the western end of the Bel-Red Corridor.

**15. Project Goals and Results (Please describe measurable goals and expected results, and describe how the project will be evaluated and performance tracked):**

The end goal of the project is to create a multi-modal transportation system to support the future growth of the Downtown, Wilburton and Bel-Red areas in Bellevue. Seeing development projects advance that fulfill the vision for these areas is the primary result.

In terms of measuring the performance of the transportation system with the addition of the NE 4<sup>th</sup> Street Extension, the city will monitor its annual concurrency report that assesses the balance of traffic delays/congestion with the number of trips generated by new development. For example, the 120<sup>th</sup> Avenue NE and NE 8<sup>th</sup> Street intersection

currently operates at a Level of Service (LOS) B today, but without NE 4<sup>th</sup> Street, the intersection will be operating as a D- by 2020. The situation is even more severe at the intersection of 120<sup>th</sup> Avenue NE and NE 12<sup>th</sup> Street, which currently operates at an LOS A and will worsen to an LOS F by 2020. The concurrency report will monitor the Level of Service at those and other intersections to demonstrate the effectiveness of the project.

- 16. Project Benefits** (Please provide specific and supported estimates)  
 (If this is a Transportation or Economic Impact Initiative project, please answer this information on the corresponding form): SEE TRANSPORTATION FORM
- a. Jobs Created or Maintained Directly or Indirectly** (Please list the type of jobs and where those jobs are located)
  - b. Other Economic Impact**  
 (i.e. stimulates private investment in community, etc.)
  - c. Community Impact** (expansion or improvement of social services, community facilities, health services, etc.)
  - d. Other Impacts** (environmental, safety, or other impacts)

**Funding Information**

- 17. Dollar amount of FY 2011 request:** \$2,000,000
- 18. Total estimated cost of this project:** \$40,000,000
- 19. Is this project authorized? If yes, please note bill or law number and section:** No
- 20. Is this project in the President's FY 2011 Budget?** (If applicable please list the agency, section, and amount. Note: The President's Budget may not be available before our deadline in which case we ask that you check back with us if you are included.): No
- 21. If you are requesting bill, report, or bill and report language, please designate which and list the request here:**
- NE 4<sup>th</sup> Street Extension – City of Bellevue, WA
- 22. If this project was funded in an FY 2010 appropriations bill please list the exact title that was included in the bill:** NA

**23. Previous federal appropriations for *this* project**

	Appropriations Bill	Account	Amount Requested (full figure)	Amount Received (full figure)	Percentage of Total Project Cost

<b>FY10:</b>	NA				
<b>FY09:</b>	NA				
<b>FY08:</b>	NA				
<b>FY07:</b>	NA				
<b>FY06:</b>	NA			N/A	0%
<b>Total:</b>					

**24. Other secured sources of federal funding for *this* project (grants, loans, loan guarantee, etc.)**

	Federal Agency	Funding Instrument (Grant, Loan, etc.)	Name of Funding Program	Amount Received (full figure)	Percentage of Total Project Cost
<b>FY10:</b>	None				
<b>FY09:</b>					
<b>FY08:</b>					
<b>FY07:</b>					0%
<b>FY06:</b>					
<b>Total:</b>					

**25. State or local government, or private funding for *this* project:**

	Name of Funder	Funding Instrument (Grant, Loan, etc.)	Name of Funding Program	Amount Received (full figure)	Percentage of Total Project Cost
<b>FY10:</b>	State of Washington	Tax Increment	Local Revitalization Funding (LRF)	\$12,500,000 (Shared with 120 <sup>th</sup> Project – NE 4 <sup>th</sup> to receive \$10 million)	25%
<b>FY09:</b>	City of Bellevue	Capital Investment Program (CIP)	2009-2015 CIP – Transportation Plan No. PW-R-160	\$3,600,000 (for design)	9%
<b>FY08:</b>					
<b>FY07:</b>					
<b>FY06:</b>					
<b>Total:</b>					

**26. Partners working on this project (if applicable. Note- you can press "tab" at the last cell if you need more rows.)**

Name of Partner	Type of Contribution (Financial, In-Kind, Written Support)	Contribution Amount/Value (if applicable)	Contact at Partner Organization	Telephone Number	Email Address
None					


**27. Current Status of this project:**

In design – 30% plans and preferred alignment expected by May 2010. Right of Way negotiations in process.

**28. Phase this funding is for (e.g. planning, design, construction, implementation):**

Construction

**29. Expected completion date of this phase and subsequent phases:** December 2012

**30. Expected completion date of project:** December 2012

**31. If there is a matching requirement, can you provide the required match, and is the match in hand?**

Yes, the LRF program allows the city to bond for \$12.5 million, \$10 million of which can be used to match this appropriation.

**32. If this requested appropriation is enacted, by approximately what date do you anticipate spending these funds? (Please include month and fiscal year)**

December of FY 2012-2013

**33. Does the funding requested complete this project? (Y/N) No**

**34. If No, what are the expected future federal appropriations requests?**

None anticipated

**35. If No, what other sources of funding do you plan to pursue?**

In 2009 the City Council approved an aggressive Mobility and Infrastructure Finance Plan to generate funding for high priority projects including NE 4<sup>th</sup> Street. The plan combines incremental property tax increases, enhanced developer impact fees, grants, and local improvement districts as means to fund these projects. The plan was generated in the off year of the Capital Investment Program cycle and staff expects funding from tax and impact fee sources to be dedicated to this project when a new CIP is approved in December 2010. The city will also pursue additional grants for this project, including competing for 2011 federal funds through the county STP competition. (In 2009, a \$5.6 million project request scored above the funding line in the King County 2009 STP competition, but was dropped to #1 on the contingency list to allow for regional equity.) We expect the project to be even more competitive because the design phase will be complete. Also, the city is currently conducting a feasibility study on whether a Local Improvement District could be formed. Staff estimates that the LID could generate up to \$10 million for the project.

**36. Did this project receive funds from the American Recovery and Reinvestment Act? If so, please list how much, how it was distributed (i.e. grant, contract, etc.), and through which agency and program. No**



Information included in this form may be used to help our office fully explain your efforts to Washingtonians on our website or in the media. Since January of 2009, the Senate Appropriations Committee has required each Senator to post information on their websites at the time appropriation requests are made in order to explain the purpose of their requests and why they are a valuable use of taxpayer funds. As a result information provided in this appropriation request form may be used or distributed by Senator Cantwell's office without prior notice.

**37. Please clearly describe the most direct positive impacts this project will have on the surrounding community and state, as it could be stated to the general public. (No more than 250 words). If, for example, your project creates or retains family-wage jobs, improves local infrastructure or spurs economic growth, be sure to include which communities will be affected and how local quality of life will be improved. Please be sure to provide specifics about the people and areas that will be served by this project:**

The project will unlock new zoning capacity in the Wilburton area allowing a new mixed-use "village" with urban amenities adjacent to traditional single family neighborhoods to be developed in place of the mostly abandoned auto row. Residents and future employees will benefit from complete sidewalk and bike lane connections to downtown and regional trails. Wilburton is also home to East King County's largest (and still growing) medical district, which employs more than 2,500 people and serves more than 265,000 patients each year. The extension improves access/ reduces delays for emergency vehicles and patients alike.

Downtown Bellevue generates more than \$50 million in tax revenue for the state with more than 35,000 employees and 5,000 residents. PSRC's 2020 growth forecasts estimate employment jumping to 61,000, which will produce an 85% increase in vehicle trips and increased congestion on NE 8<sup>th</sup> Street, which connects to the regional freeway system. NE 4<sup>th</sup> Street Extension serves as a relief valve to that congestion by providing a viable alternate route into and out of downtown and easing congestion on the ramps leading to I-405.

Through a rezoning and incentives package approved in 2009, the city plans the development of mixed-use, transit-oriented communities centered on key light rail stations within the Bel-Red Corridor east of I-405. A new street grid is needed to support these communities. The NE 4<sup>th</sup> Street Extension will connect downtown Bellevue to 120<sup>th</sup> Avenue NE, which will be the north-south spine of the enhanced street grid supporting development within the Bel-Red corridor.

**38. Please summarize in one or two sentences why this project is a worthy use of taxpayer dollars:**

The NE 4<sup>th</sup> Street Extension is necessary to support and promote development that will strengthen the region's economy. It also provides better connections between travel modes including access to the planned extension of light rail to East King County and provides a relief valve for congestion at the I-450 and SR 520 interchange

**39. Quote** (Please include a quote from the appropriate member of your organization about the importance of this project and identify that person by full name and title or position.):

"The NE 4th Street extension is Bellevue's highest priority transportation project. It will connect downtown Bellevue, the region's second largest employment center, with the Wilburton and Bel-Red areas of the City. Over the next 20-years, the Bel-Red area is expected to house up to 4.5 million square feet of commercial uses and 5,000 units of housing. Not only will this project provide a vital connection to these two emerging areas, also, it will reduce congestion along NE 8th and 116th Streets. With this project, Bellevue will be better positioned to accommodate the estimated 20,000 jobs that are projected over the next two decades."

Councilmember Grant Degginger

**40. Press Contact** (Appropriate contact within your organization for our press office to contact. Please include, name, email address, and phone numbers, including a cell phone number):

Tim Waters, Communications Director  
PO Box 90012, Bellevue, WA, 98009  
(phone) 425-452-4090  
(cell)  
(e-mail) TRwaters@bellevuewa.gov

**41. Website Posting:** (Please fill out the following information describing your project. Please note that this will be made public.)

**Project Title:** NE 4<sup>th</sup> Street Extension

**Recipient:** City of Bellevue

**Amount:** \$2,000,000

**Location:** (Including all cities and counties.) City of Bellevue in King County, WA

**Project Description:** (One to two sentences describing the specific action items federal funding will pay for.)

The NE 4<sup>th</sup> Street Extension project will construct a four to five lane roadway with arterial standard sidewalks (including planter strips) and five-foot bike lanes on both sides from 116<sup>th</sup> to 120<sup>th</sup> Avenues NE.

**Importance:** (One to two sentences describing the importance of your project.)

**Planned economic growth will not occur if the transportation system offers gridlock as the only option. This project is the cornerstone of the city's commitment to providing the transportation infrastructure necessary to support nearly 40,000 new jobs for the region in the next 15-20 years.**

## Transportation Requests

**\*\*\*\*Only fill out this section of if you are making a Transportation request\*\*\*\***

### **Description of project benefits**

- A. **Economic Impact:** Describe the economic impact of this project in terms of the total number of jobs (new and maintained), and where those jobs are located.

Three categories of jobs will be created and/or maintained as a result of this project. The first are the immediate construction and related supply chain jobs (estimated at 250 – 300) created by the implementation of the project.

The second category is the jobs that will become housed within the new developments built in response to the increase in transportation infrastructure. Each of the areas served by the project will see growth in development supporting job creation. Downtown Bellevue: From 2004-2009 fourteen new developments added 2.3 million square feet of new leasable office space. Another four projects adding nearly 1.5 million square feet of new office space are in the development review pipeline to begin in 2010 and beyond. These new office buildings and others early in the planning pipeline will attract an estimated 20,000 new jobs to downtown Bellevue over the next 10-15 years. By improving access to the downtown, the NE 4<sup>th</sup> Street project promotes the downtown as a convenient place for employers to locate their businesses.

The Bel-Red area could add up to five million sf of additional office space to accommodate a significant portion of new jobs, many anticipated in the high tech industry. The first planned development is the Spring District on the old Safeway Distribution site and that has the capacity to build enough office space to accommodate 15,000 new jobs. Because the project will unlock zoning in the immediate Wilburton area, it will allow new land uses supporting new jobs. One developer, who has controlling interest in five adjacent parcels in the Wilburton area, has completed the pre-application process for improvements that would add 900,000 square feet of new commercial/retail development and 600 new residential units. The development is projected to bring 2,400 new employees and 1,200 new residents to the area.

A third category of jobs are the service industry jobs that will be created as retail, restaurant, and services locate near new residential and employment densities to be created in both the Wilburton and Bel-Red areas.

- B. **Safety:** Describe safety enhancements associated with this project. Please include statistics.

The safety benefits of the project will be derived from reduced congestion producing fewer rear-end and side swipe accidents along NE 8<sup>th</sup> and NE 12<sup>th</sup> Streets. Modeling reflects that the addition of the NE 4th Street Extension will immediately pull approximately 8 percent of the volume from the segment of NE 8th Street between 116th

and 120th Avenues NE – resulting in a reduction of 5-7 accidents each year, at least 2 of which are likely to be injury accidents.

The addition of sidewalk and bike lanes will provide a continuous connection from the neighborhoods immediately to the east of I-405 to the downtown center. Currently, the logical option would be to walk into town via NE 8<sup>th</sup> Street, but the sidewalk has gaps on both sides making the trip uninviting. With the extension, pedestrians and bicyclists will have safe, direct access to downtown employment, service, retail, entertainment and regional transit destinations.

**C. Congestion Relief: Describe mobility enhancements associated with this project. Please include statistics.**

The NE 4<sup>th</sup> Street Extension will attract between 13 and 15 percent of the future (2030) volume from the parallel segment of NE 8<sup>th</sup> Street (116<sup>th</sup> to 120<sup>th</sup> Avenues NE), which improves the function of five major intersections in the vicinity including NE 8<sup>th</sup> and 116<sup>th</sup> Avenue NE – the most congested intersection in the area and the most direct connection to the Overlake Medical Center. This balancing of system capacity will result in congestion relief for automobile, transit, emergency vehicle, and freight traffic heading to and from Downtown Bellevue.

The Extension will also provide a connection between I-405 and activity centers east of I-405 that bypasses the heavily congested interchange of I-405 and SR 520. The Bellevue-Kirkland-Redmond travel demand model forecasts that of the more than 3,000 PM peak hour trips (2030) that would use any portion of the NE 4<sup>th</sup> Street Extension, nearly fifty percent of the trips (1,472) would be destined for locations outside of the City of Bellevue.

**D. Freight Movement: Describe freight mobility enhancements associated with this project. Please include statistics.**

Currently there is no east-west access to downtown between NE 8th Street and Main Street, a 0.5 mile distance, despite a full diamond interchange at I-405/NE 4th Street and major traffic volumes generated by Home Depot and Best Buy (near the 400 block of 120th Avenue NE). The commute transition from the large grid to the east of downtown to the smaller grid of the downtown street network creates natural chokepoints and increased congestion for cars, buses, and freight entering on downtown Bellevue's east-west arterial gateways (NE 8th and NE 12th Streets). NE 4<sup>th</sup> Street provides capacity to balance the traffic demand and thereby results in congestion relief for automobile, transit (five Metro routes making over 220 trips/day currently cross I-405 on NE 8<sup>th</sup> Street) and freight traffic (the section of NE 8<sup>th</sup> Street near I-405 is designated a T-2 truck route) heading to and from Downtown Bellevue. For example, a truck traveling west on NE 8<sup>th</sup> Street and turning south on 116<sup>th</sup> Avenue NE to reach a downtown destination would be able to make the trip 70 seconds faster due to the congestion relief produced by the proposed project. In addition, the new extension –in conjunction with other planned improvements –will provide an alternative connection from I-405 to SR 520 with service to the emerging Wilburton and Bel-Red activity areas.

- E. Environmental Protection: Describe environmental benefits associated with this project. Please include statistics.

The NE 4<sup>th</sup> Street Extension will reduce emissions through a significant reduction in arterial congestion and intersection delay. This section of NE 8<sup>th</sup> Street has an annual weekday volume of 46,700 vehicles and is used by nine Metro Transit routes providing more than 420 daily trips crossing I-405 between Downtown Bellevue and points east on arterials that will benefit from the NE 4<sup>th</sup> Street Extension.

By balancing the utilization of the roadways within and around the Downtown Bellevue center, the project reduces travel time. For example:

- NE 4<sup>th</sup> Street when paired with improvements to 120<sup>th</sup> Avenue NE, which will be constructed in the same timeframe, will reduce the delay at the NE 8<sup>th</sup> Street and 116<sup>th</sup> Avenue NE intersection by 43 seconds per vehicle.
- With just NE 4<sup>th</sup> Street in place, the east to west travel time into Downtown Bellevue on NE 8<sup>th</sup> Street from 120<sup>th</sup> Avenue to 116<sup>th</sup> Avenue is decreased by 16 seconds per vehicle in the PM peak period.

#### State Information

- F. Does the Washington State Department of Transportation (WSDOT) support the project (Y/N)? If yes, please include a letter of support from WSDOT.

Yes

- G. Is the project included in the State Transportation Improvement Program (STIP)? Not yet, first needs inclusion in the regional TIP.

#### Other Information

- H. Has the project been endorsed by a Metropolitan Planning Organization (MPO) or Regional Transportation Planning Organization (RTPO)?

Yes – The project has been included in the constrained program for Destination 2040, which will be adopted by the PSRC General Assembly in April, 2010.

- I. Is the project included in a Metropolitan Transportation Improvement Program Plan (MTIP)?

Pending. The project cannot be adopted into the TIP until it is part of the approved regional plan, which will occur in April, 2010.

- J. Current status of project (alternatives analysis, environmental impact, design, construction, etc.):

In design – 30% plans and preferred alignment expected by May 2010. Right of Way negotiations in process.

- K. IF this is a Federal Aviation Administration Airport Improvement Project (FAA AIP), list the Airport Name (as defined in the FAA National Plan of Integrated Airport System (NPIAS)- no abbreviations please): NA
- L. If this is a Federal Transit Administration (FTA) project, list the appropriate transit authority: NA
- M. Have you confirmed either with the U.S. Department of Transportation (USDOT) or a regional USDOT office that this project is eligible for funds provided under the requested account?

The Northwest Region Engineer (Washington State Department of Transportation) has confirmed eligibility under CFDA #20.205 on behalf of the Federal Highway Administration, Region 10.

## EXHIBIT D

**Best Buy Comments Regarding NE 4th Street/120th Ave NE  
Corridor Project SEPA Review (July 21, 2011)**

**Development Services Department File No. 11-114971-LM**



R. Gerard Lutz  
PHONE: (425) 635-1403  
FAX: (425) 635-2403  
EMAIL: JLutz@perkinscoie.com

The PSE Building  
10885 N.E. Fourth Street, Suite 700  
Bellevue, WA 98004-5579  
PHONE: 425.635.1400  
FAX: 425.635.2400  
www.perkinscoie.com

April 19, 2010

**HAND-DELIVERED**

The Honorable Don Davidson, Mayor  
The Honorable Conrad Lee, Deputy Mayor  
The Honorable Grant Degginger, Councilmember  
The Honorable Claudia Balducci, Councilmember  
The Honorable John Chelminiak, Councilmember  
The Honorable Jennifer Robertson, Councilmember  
The Honorable Kevin Wallace, Councilmember

Bellevue City Council  
450 – 110th Avenue N.E.  
Bellevue, WA 98004

**RE: NE 4th Extension (CIP# PW-R-160): Request to Postpone Final Design Contract  
(Proposed Res. 8080)**

Dear Mayor, Deputy Mayor and Councilmembers:

On behalf of our client, Best Buy, we request that the Council table the proposed resolution before you regarding the letting of a contract for final design for the NE 4th Street Extension – 116th to 120th Avenues NE (the "NE 4th Extension") capital improvement project. We request that the Council only authorize the final design to proceed after preliminary design for NE 6<sup>th</sup> Street improvements and NE 5<sup>th</sup> traffic calming measures have been completed, and the related NEPA and SEPA assessments of the preferred and other alternatives is also complete. If the City of Bellevue ("City") proceeds with final design of the extension of NE 4<sup>th</sup> Street now, it will be prejudging the alternatives in violation of NEPA and SEPA, and the City's public commitments regarding environmental review for these projects. We believe that a more thorough study will demonstrate that the costs of the "Best Buy" alternative are higher, and the benefits lower, than staff's presentations to Council have suggested, and that a better alternative can be found that protects Best Buy and its neighbors.

65555-0006/LEGAL18117135.1

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Perkins Coie LLP and Affiliates

Bellevue City Council  
April 19, 2010  
Page 2

As previously indicated, Best Buy remains concerned that the City has been misinformed regarding the probable significant adverse environmental impacts of the "Best Buy" and other alternatives for the NE 4th Extension, including but not limited to impacts to Best Buy's Bellevue location (which will be substantial under current proposals), neighboring properties and businesses, and the Wilburton community. The proposed alignments currently under consideration indicate as "unavoidable" some impacts that may well be avoidable if alternatives were further considered and impacts of the NE 4th Extension in the context of connected transportation actions in the vicinity were better understood.

**A. Alternative Alignments for the NE 4th Street Extension Project Must Be Further Evaluated by the City Before a Final Design Is Selected.**

As reflected in the City's current Capital Investment Program, the NE 4th Extension has been studied in a citywide programmatic environmental review, but *"a project specific environmental determination, consistent with federal requirements, will be made during the project design phase."* (Emphasis added.) Given that the City has indicated that project specific analysis has not yet been conducted, it is incongruent to find in the staff report for tonight's meeting that:

The alternatives analysis is completed, a preferred alternative has been identified, and 30% plans drafted in support of the preferred alignment. The alternative, known as *the "Best Buy Alternative" was selected* because it limited impacts to the least number of parcels possible, is the most cost effective, and is compatible with the overall long term vision for the Wilburton commercial district, including the proposed urban village concept.

City Council Agenda Memorandum for April 19, 2010 Regular Meeting at p. 11-15 (emphasis added). Selection of a preferred alternative at this juncture is inappropriate and inconsistent with the environmental review requirements of the State Environmental Policy Act, Chapter 43.21C RCW ("SEPA") and the National Environmental Policy Act, 42 U.S.C. §§ 4321-4327 ("NEPA") and the administrative standards of the Administrative Procedures Act, Chapter 34.05 RCW, which require an adequate environmental statement discussing alternatives and substantial evidence regarding impacts before an option is selected.

SEPA requires that reasonable alternatives for a project action be examined on a project-specific basis during the environmental review process. "Reasonable alternatives" include any actions that "could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation." WAC 197-11-786; *see also King County v. Central Puget Sound Board*, 138 Wn.2d 161, 184-85 (1999). Reasonable alternatives must be evaluated to ensure that decision-makers have information available to properly consider opportunities to avoid, minimize and/or mitigate environmental impacts of a proposed action. *See, e.g., Kiewit Construction Group, Inc. v. Clark County*, 83 Wn. App. 133 (1996). NEPA also

Bellevue City Council  
April 19, 2010  
Page 3

requires that the decision-maker take a "hard look" at environmental and ecological factors in reaching decisions, including reasonable alternatives. *See, e.g., National Audubon Society v. Department of the Navy*, 422 F.3d 174, 184 (4th Cir. 2005).

Best Buy believes that the City's analysis of alternatives has been improperly biased from the start by the information received from the competing landowners, Home Depot and Best Buy's landlord, KG Investments Management. City staff has informed us that Home Depot took the position that any impacts to its parking would substantially damage its business. At the same time, the City was wrongly informed by Best Buy's landlord, KG Investment Management, that Best Buy was amenable to relocation. This is not the case and, as reflected in my letter of April 14, 2010 to the City's counsel (attached), the landlord has no authority to offer the City the existing Best Buy site without Best Buy's consent. As a result of this incorrect assumption, the relative costs and impacts of reducing parking at Home Depot versus cutting off part of Best Buy's building has not been fully assessed, to Best Buy's knowledge. This initial misinformation has created inertia in the City's review processes so that alternatives such as the NE 5th alignment and relocation of the City's stormwater detention vault have not yet been adequately analyzed as alternatives.

The impacts of alternatives have not yet been sufficiently analyzed and the City must have this information (and complete related federal and state environmental review processes) to make a reasoned choice regarding the alignment of the NE 4th Extension.

**B. Impacts of Reasonably Foreseeable Improvements to Extend NE 6th Street Should Be Considered Along with Design of the NE 4th Extension.**

Both SEPA and NEPA require that project-specific environmental analysis not be "piecemealed" such that later environmental review would seem a mere formality, as construction of later segments of the project would have already been effectively predetermined by earlier actions. *See Concerned Taxpayers Opposed to Modified Mid-South Sequim Bypass v. State Dep't of Transportation*, 951 P.2d 812 (1998). SEPA and NEPA also mandate review of a project's cumulative impacts, taking into consideration other reasonably foreseeable actions in the project vicinity. *See, e.g., WAC 197-11-060(4)* (EIS is to analyze cumulative impacts); *Cheney v. City of Mountlake Terrace*, 87 Wn.2d 338, 344 (1976) ("Implicit in [SEPA] is the requirement that the decision makers consider more than what might be the narrow, limited environmental impact of the immediate, pending action. The agency cannot close its eyes to the ultimate probable environmental consequences of its current action."). These acts also require decision-makers to consider the long-range impacts of their decisions as well as the short term benefits. *Newaukum Hill Protective Association v. Lewis County*, 574 P.2d 1195 (1978).

Here, the NE 6th Street extension is interrelated with the proposed action and ultimate coordination between the projects is imperative to ensure that each meets the City's purposes and

Bellevue City Council  
April 19, 2010  
Page 4

needs. As one example only, one reason the "Best Buy" NE 4<sup>th</sup> alternative is advocated by staff is that only one property owner will be affected. However, if Mutual Materials, the School District Bus Barn or both must move anyway as a result of the NE 6<sup>th</sup> project, then the damage to Best Buy could be avoided with no additional impact to surrounding property owners by siting the NE 4<sup>th</sup> extension through those properties. That route would present other opportunities for minimizing environmental impacts. Segmentation of NE 4<sup>th</sup> review would "avoid present consideration of proposals and their impacts that are required to be evaluated in a single environmental document." WAC 197-11-060(5)(d)(iii). Proposals required to be evaluated in one document are those "that are related to each other closely enough to be, in effect, a single course of action." WAC 197-11-060(3)(b). The probable adverse environmental impacts of the NE 4th Street extension must be considered in the context of the broader impacts of the foreseeable NE 6th Street extension, NE 120th Avenue improvements, and Wilburton neighborhood traffic improvements.

Under SEPA, environmental review for proposed actions must include a detailed statement on any "irreversible and irretrievable commitment of resources." RCW 43.21C.030(2)(c)(v). This environmental analysis has not yet been done for the NE 4th Extension and the City should not undertake any action that would irreversibly or irretrievably commit resources to the project or have a coercive effect on subsequent decision-making until project-specific environmental analysis is complete. Executing a contract for final project design could make the currently preferred design a *fait accompli* without having completed the appropriate detailed statements of environmental impacts.

**C. Compliance with Federal Laws Will Require Environmental Impact Analysis Beyond What Is Necessitated by SEPA.**

To comply with NEPA, the environmental review for the NE 4th Extension must also analyze the proposed action's socioeconomic impacts, including effects on City sales tax revenues and the business environment. Best Buy projects that the impacts of the "Best Buy" alternative (that takes a portion of Best Buy's store and eliminates truck loading) would diminish the sales capacity at the Best Buy Bellevue location. If Best Buy determines it could effectively operate, and chooses not to terminate its lease and move, Best Buy forecasts that the impact of the proposed reduction of store area and loss of loading and access would decrease its sales significantly, resulting in reduced sales tax revenues of almost \$11,000,000, and reductions to the City's share of sales taxes and B&O taxes of approximately \$1,300,000 over the five-year period beginning next year.

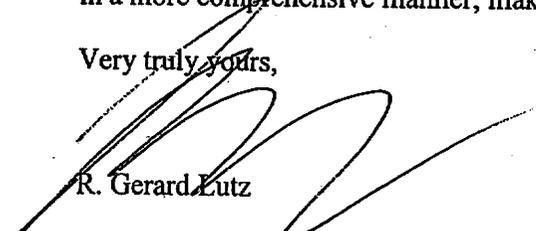
Federal standards for relocation of properties and land uses also must be met in pursuing the NE 4th Extension consistent with federal law. Section 106 of the National Historic Preservation Act of 1966 will also require that the NEPA element of environmental review conducted for the NE 4th Extension include consideration of impacts to historic and cultural resources, including listed

Bellevue City Council  
April 19, 2010  
Page 5

and or eligible properties located within the Wilburton neighborhood. Federal transportation siting standards, such as Section 4(f) of the Transportation Act, may also prohibit siting through parks (such as rail-banked trails) or historic properties. Such analysis is not sufficiently developed under the existing programmatic record to enable the City to select a preferred alternative for the NE 4th Extension.

**Conclusion.** As a neighbor and stakeholder in the Bellevue business community, Best Buy appreciates the City's efforts to improve transportation and relieve congestion. However, Best Buy urges the City Council to table the final design of the NE 4<sup>th</sup> extension until preliminary design of NE 6<sup>th</sup> and NE 5<sup>th</sup> traffic calming measures are complete, and more thorough assessment of relative parking impacts of different routes between Best Buy and Home Depot can be undertaken, and the costs and impacts of modifying the storm water vault are better assessed. The staff's proposal to move forward now is inconsistent with NEPA, SEPA and the City's commitments to perform site specific environmental analysis before a preferred alternative is selected. Moving to final design of NE 4<sup>th</sup> now improperly prejudices alternatives that have not been sufficiently reviewed. We urge the Council not make hasty choices; Best Buy is confident that if the contract is tabled for now, additional opportunities to minimize environmental impacts, project costs and business disruption will become evident in reviewing the NE 4th Extension, the NE 6th Extension and NE 5<sup>th</sup> pass through traffic mitigation together in a more comprehensive manner, making a City taking of the Best Buy property unnecessary.

Very truly yours,



R. Gerard Lutz

Cc: Melissa Moseley, Director Real Estate Best Buy  
Kate Berens, Deputy City Attorney  
Marina Arakelyan, Senior Project Manager, Transportation Department  
Bob Shay, President, Wilburton Community Council



R. GERARD LUTZ  
Direct Phone: 425.635.1403  
Direct Fax: 425.635.2403  
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April 14, 2010

Mary Kate Berens  
Deputy City Attorney  
City of Bellevue  
PO Box 90012  
Bellevue, WA 98009-9012  
United States

**Re: Best Buy - Bellevue Store**

Dear Kate:

During his presentation at Monday night's Council study session, the City's transportation director, Goran Sparrman, stated that because Best Buy is a tenant, the City's primary obligation is to deal with the landowner, KG Investment Management. Mr. Sparrman further informed the Council of discussions between the City and the landowner whereby the landowner would dedicate the right-of-way to allow the City to take the Best Buy site right-of-way in exchange for LID or other credits. As we have previously discussed, these statements are not accurate. Best Buy is entitled to receive just compensation in the event of a taking, and KG Investment Management has no authority to offer the City right of way across the Best Buy site without compensation or without Best Buy's consent. I have again attached the applicable lease provisions for your review. If the City is involved in ongoing negotiations with KG Investment Management in this regard, it should stop the negotiations. Best Buy has notified the landowner that it does not have the authority to negotiate such a transaction and by copy of this letter will do so again.

Very truly yours,

  
R. Gerard Lutz

RGL:GSW

cc: Goran Sparrman  
John C. McCullough  
Nancy Lacombe  
Gwynne Johnson  
Melissa Moseley

65555-0006/LEGAL18089202.1



## EXHIBIT E

**Best Buy Comments Regarding NE 4th Street/120th Ave NE  
Corridor Project SEPA Review (July 21, 2011)**

**Development Services Department File No. 11-114971-LM**

RECEIVED  
*Michelle Murphy*  
MAY 03 2010  
@ 3:30 PM  
CITY CLERKS OFFICE

OFFICE OF THE HEARING EXAMINER  
FOR THE CITY OF BELLEVUE

BEST BUY STORES, LP, a Virginia  
limited partnership,

Appellant,

v.

CITY OF BELLEVUE, a municipal  
corporation,

Respondent.

No. \_\_\_\_\_

NOTICE OF APPEAL TO HEARING  
EXAMINER

This document, filed pursuant to the State Environmental Policy Act, Chapter 43.21C RCW ("SEPA"), the City of Bellevue's ("City's") Environmental Procedures Code, Chapter 22.02 Bellevue City Code ("BCC"), the City's Land Use Code ("LUC") provisions governing review and appeal of land use decisions, Chapter 20.35 LUC, and the City's Hearing Examiner Rules ("HE Rules"), constitutes an appeal of the City's action to irrevocably commit to and limit reasonable choices for development of the Northeast 4th Street extension from 116th to 120th Avenues NE (CIP Plan No. PW-R-160) (the "NE 4th Extension Project") without proper environmental review or substantial evidence.

BEST BUY'S NOTICE OF APPEAL TO CITY  
OF BELLEVUE HEARING EXAMINER - 1

65555-0006/LEGAL18177112.1

COPY

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Phone: 425.635.1400  
Fax: 425.635.2400

**I. Identification of Appellant**

Appellant is Best Buy Stores, LP, a Virginia limited partnership ("Best Buy"). Appellant is represented by the undersigned counsel at Perkins Coie LLP whose address is 10885 NE 4th Street, Suite 700, Bellevue, Washington 98004. The telephone number of Perkins Coie LLP is (425) 635-1400, and its facsimile number is (425) 635-2400. Copies of communications should also be provided to Melissa Moseley, whose contact information is provided at the conclusion of this document.

**II. Decision Appealed**

Appellant appeals the decision ("Decision") of the City of Bellevue ("City") to select the "Best Buy Alternative" for final design of the NE 4th Extension Project without appropriate compliance with the State Environmental Policy Act, Chapter 43.21C RCW ("SEPA"). The City's Decision authorized execution of a Consultant Agreement with PB Americas, Inc. to "complete the final design and prepare plans, specifications, and estimates to advance implementation" of the "Best Buy Alternative" for NE 4th Extension Project. A copy of Resolution 8080, authorizing this contract execution, is attached hereto as Exhibit A and incorporated herein by this reference, which authorizes City staff to proceed as recommended based on the information presented in the City Council Agenda Memorandum for April 19, 2010 Regular Meeting, attached hereto as Exhibit B, and at the Council hearing. The Decision authorizes the consultant to proceed with final design for one preferred route alternative - the "Best Buy Alternative" – out of four reasonable alternatives the City identified. The route for the "Best Buy Alternative" is depicted in the City's aerial photo figure, attached hereto as Exhibit C. The other three alternative routes for extension of NE 4th Street are depicted in the aerial photo figures attached hereto as Exhibit D.

BEST BUY'S NOTICE OF APPEAL TO CITY  
OF BELLEVUE HEARING EXAMINER – 2

65555-0006/LEGAL18177112.1

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**III. Statement of Facts as to Appellant's  
Significant Interest**

1  
2  
3  
4 The City's Decision, prejudging the route selection for the NE 4th Extension Project  
5 to commit resources to implementation of the "Best Buy Alternative" prior to completing a  
6 site-specific SEPA review, has a direct impact on Best Buy. Best Buy owns an  
7  
8 approximately 45,000 square foot store located at located at 457 – 120th Avenue NE,  
9  
10 Bellevue, WA 98005 (the "Bellevue Best Buy Store"), identified in attached Exhibit C on  
11  
12 leased property. The Bellevue Best Buy Store has been serving Bellevue and other Eastside  
13  
14 residents, businesses, and other customers at this location for a number of years. The store  
15  
16 generates significant sales revenue, resulting in significant sales tax revenues for state and  
17  
18 local governments, including the City.  
19  
20

21  
22 As depicted on Exhibit C, the "Best Buy Alternative" would take the southern  
23  
24 portion of the Bellevue Best Buy Store, as well as a row of parking supporting use of that  
25  
26 store. In addition, the road will preclude Best Buy's customers from parking in the parking  
27  
28 lot of the adjacent Home Depot store, pursuant to a reciprocal parking easement (and  
29  
30 likewise will prevent Home Depot's customer's from parking in Best Buy's lot). The  
31  
32 proposed road will block access to the Best Buy loading dock area. The proposed reduction  
33  
34 in floor space, parking, and loading facilities would adversely impact Best Buy's operations  
35  
36 within the existing Bellevue Best Buy Store, and may very well prevent Best Buy from  
37  
38 making reasonable use of the property unless additional, replacement property can be  
39  
40 incorporated into the Bellevue Best Buy Store site. The mix of products that could be  
41  
42 offered and the business operations model would at the least need to be changed.

43  
44 Best Buy anticipates that, at a minimum, sales would be reduced by at least one-third  
45  
46 in such a scenario, which represents a multi-million dollar annual loss for Best Buy.  
47

1 Accordingly, Best Buy is aggrieved by the City's Decision to proceed with the "Best Buy  
2 Alternative" without performing adequate environmental review of, and without substantial  
3 evidence in the record to support, the Decision.  
4  
5  
6

7 **IV. Statement of Explicit Exceptions and Objections**  
8 **Regarding Appealed Matter**  
9

10 The City's 2009-2015 Capital Investment Program ("CIP") summary for the NE 4th  
11 Extension Project (CIP No. PW-R-160) indicates that "[a] project specific environmental  
12 determination, consistent with federal requirements, will be made during the project design  
13 phase."<sup>1</sup> No such project-specific environmental determination has been made.  
14  
15 Nevertheless, contrary to its commitment in the CIP summary, the City's Decision was  
16 based on City staff's report that "alternatives analysis is completed," a preferred alternative  
17 identified, and the "Best Buy Alternative" as the one "*selected*" because it limited impacts to  
18 the least number of parcels possible, is the most cost effective, and is compatible with the  
19 overall long term vision for the Wilburton commercial district, including the proposed urban  
20 village concept."<sup>2</sup> This is error. At the time the City Council made this Decision, the only  
21 analysis performed for other reasonable alternatives was a cursory review, not compliant  
22 with mandated environmental processes. Information about the environmental impacts of  
23 foreseeable connected actions (e.g., extension of NE 6th Street, and the need to mitigate  
24 flow-through traffic in the Wilburton neighborhood) was not available or considered. If that  
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41 <sup>1</sup> Best Buy also reserves the right to pursue claims under National Environmental Policy Act,  
42 42 U.S.C. §§ 4321-4327 ("NEPA"), the National Historic Preservation Act, 16 U.S.C. § 470 *et seq.*  
43 ("NHPA"), the Transportation Act of 1966, 49 U.S.C. § 303, and the Administrative Procedures Act,  
44 16 U.S.C. § 551 *et seq.* Such issues are not addressed here due to the Hearing Examiner's lack of  
45 jurisdiction to render decisions regarding these federal law issues.

46 <sup>2</sup> City Council Agenda Memorandum for April 19, 2010 Regular Meeting at p. 11-15  
47 (emphasis added).

1 information is properly considered, Best Buy believes that such analysis will support other  
2 alternatives for the NE 4th Extension alignment.  
3

4  
5 The City's transportation director urged immediate action, notwithstanding these data  
6 gaps and procedural errors, because this project is the "first alternate" in a federal funding  
7 process, and he did not want the City to lose its place in the queue for that possible,  
8 contingent funding opportunity. That is not a legitimate reason to ignore the City's  
9 environmental responsibilities under law. The record demonstrates the City made only a  
10 superficial review of relative impacts of the identified alternatives, that the City acted on  
11 misinformation about impacts to the Bellevue Best Buy Store, and that the City's decision to  
12 proceed with final design of one alternative before completing a environmental review of the  
13 reasonable alternatives specifically conflicts with the City's commitment to complete  
14 environmental review before it selected the final route for the extension of NE 4<sup>th</sup> Street.  
15 The Decision was issued in violation of SEPA and is not supported by substantial evidence  
16 in the record.  
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29 Proceeding with final design of the NE 4th Extension Project under such a directive  
30 from the City Council constitutes an irretrievable commitment of resources. The City is  
31 facing multi-million dollar capital improvement budget shortfalls, and is spending almost  
32 \$1.35 Million to design the "Best Buy Alternative" for NE 4<sup>th</sup> Extension, and is also  
33 spending almost \$100,000 to develop conceptual mitigation plans to reduce the traffic  
34 impacts this alternative will create for the Wilberton neighborhood. It would not be credible  
35 for the City to assert that it will spend this much money to design the road extension, and yet  
36 keep an open mind in subsequent SEPA and NEPA review of other, reasonable alternative  
37 routes. To comply with the requirements of SEPA and the City's own Environmental  
38 Procedures Code, "the procedural requirements of SEPA and this code shall be  
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BEST BUY'S NOTICE OF APPEAL TO CITY  
OF BELLEVUE HEARING EXAMINER – 5

65555-0006/LEGAL18177112.1

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1 undertaken . . . prior to the city's . . . committing to a particular course of action, or taking  
2  
3 action that would either have an adverse environmental impact, or limit the choice of  
4  
5 reasonable alternatives." BCC 22.02.031(D). The City's Decision will have a coercive  
6  
7 effect on subsequent decision-making and should have been undertaken only after project-  
8  
9 specific environmental review was complete and reasonable alternatives examined. Any  
10  
11 subsequent environmental decision-making process will simply be an exercise in *post-hoc*  
12  
13 rationalization.

14  
15 Given the environmental review and decision-making record available as of the  
16  
17 rendering of the Decision on April 19, 2010, the Decision does not meet the requirements of  
18  
19 SEPA, the City's own municipal and land use code provisions, or the Washington  
20  
21 Administrative Procedures Act, Chapter 34.05 RCW ("APA"), because it:

- 22  
23 • improperly prejudices and irretrievably commits City resources to the "Best Buy  
24  
25 Alternative" without project-specific SEPA analysis;  
26  
27 • does not provide adequate examination of reasonable alternatives, including but  
28  
29 not limited to the NE 5th Street alternative;  
30  
31 • "piecemeals" or improperly segments environmental review from, at a minimum,  
32  
33 the environmental review for NE 5<sup>th</sup> mitigation and NE 6<sup>th</sup> projects;  
34  
35 • does not consider the project's cumulative impacts, taking into consideration  
36  
37 other reasonably foreseeable actions in the project vicinity (e.g., the extension of  
38  
39 NE 6th Street); and,  
40  
41 • is not supported by substantial evidence.

42 Had the City undertaken a "hard look" review of the project's specific environmental  
43  
44 impacts and reasonable alternatives and examined connected actions and cumulative  
45  
46 impacts, it would see that its rationale for selection of the "Best Buy Alternative" is flawed  
47  
48 and that other alternatives for the City's planned traffic improvements between 116<sup>th</sup> Street  
49  
50 NE and 120<sup>th</sup> Street NE would meet or approximate the City's goals with lower

BEST BUY'S NOTICE OF APPEAL TO CITY  
OF BELLEVUE HEARING EXAMINER – 6

65555-0006/LEGAL18177112.1

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1 environmental impacts, less traffic impacts on the Wilburton neighborhood, fewer displaced  
2 businesses, and less effect on City tax revenues. This decision is penny-wise and pound  
3 foolish.  
4  
5

6  
7  
8 **V. Request for Relief**

9 Best Buy respectfully requests that the Hearing Examiner stay the City's continued  
10 final design implementation of the NE 4th Street Alignment and remand the issue to the City  
11 for fulfillment of SEPA, local code, and APA obligations. In light of the procedural and  
12 factual complexities presented, Best Buy also moves the Hearing Examiner for a prehearing  
13 conference pursuant to Hearing Examiner Rule 1.8.  
14  
15  
16  
17

18  
19 DATED: May 3, 2010

20 **PERKINS COIE LLP**

21  
22  
23 *Kristine R. Wilson*

24  
25 R. Gerard Lutz, WSBA No. 17692  
26 JLutz@perkinscoie.com  
27 Kristine R. Wilson, WSBA No. 33152  
28 KRWilson@perkinscoie.com  
29 **Perkins Coie LLP**  
30 The PSE Building  
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33 Telephone: 425.635.1400  
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35  
36 Attorneys for Appellant Best Buy Stores, LP

37  
38  
39 **Send copies of all communications to:**

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45  
46  
47  
Melissa Moseley  
Director of Real Estate  
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(604) 922-6068 (business)

**BEST BUY'S NOTICE OF APPEAL TO CITY  
OF BELLEVUE HEARING EXAMINER - 7**

65555-0006/LEGAL18177112.1

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The Honorable Gordon Crandall  
Hearing Date: June 14, 2010  
Without Oral Argument

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OFFICE OF THE HEARING EXAMINER  
FOR THE CITY OF BELLEVUE

BEST BUY STORES, LP, a Virginia  
limited partnership,

Appellant,

v.

CITY OF BELLEVUE, a municipal  
corporation,

Respondent.

Cause No. AAD 10-73

RESPONDENT CITY OF BELLEVUE'S  
MOTION TO DISMISS APPELLANT  
BEST BUY'S SEPA/LAND USE APPEAL

**I. RELIEF REQUESTED**

Respondent City of Bellevue ("City") requests that the Hearing Examiner dismiss Appellant Best Buy Store, LP's ("Best Buy") Notice of Appeal. There exists no underlying "action" as defined by SEPA or other land use decision which can be the subject of a timely administrative appeal by Appellant. Consequently, there is no matter over which the Hearing Examiner has jurisdiction.

**II. FACTUAL BACKGROUND**

Best Buy's appeal involves a challenge to the City's proposed extension of NE 4th Street from 116th Avenue NE to 120<sup>th</sup> Avenue NE. This proposed extension

COPY

1 has been outlined in several studies and has been the subject of amendments to  
2 Bellevue's Comprehensive Plan.

3 In early 2006, the City's Planning and Community Development and  
4 Transportation Departments proposed a project (the Bel-Red Corridor Project) that  
5 would adopt new policies, land use designations, and zoning for redevelopment in  
6 the Bel-Red Corridor within the city of Bellevue. This project also proposed a new  
7 transportation infrastructure to support that redevelopment.

8 The City's Environmental Coordinator, Carol Helland, evaluated the environmental  
9 impacts of adopting this planning proposal through a programmatic or "nonproject"  
10 analysis. Redevelopment of the Wilburton/NE 8<sup>th</sup> Street Subarea Plan was  
11 included in this planning proposal which was reviewed by Carol Helland. A Draft  
12 Environmental Impact Statement ("DEIS") was prepared in compliance with SEPA  
13 (RCW 43.21) and the Bellevue Environmental Procedures Code (BCC 22.02) and  
14 issued on January 25, 2007. A Final Environmental Impact Statement ("FEIS") was  
15 issued on July 19, 2007. Traffic improvement projects identified and studied as  
16 part of this project included a NE 4<sup>th</sup> Street extension from 116<sup>th</sup> to 120<sup>th</sup> Ave. NE  
17 and the widening of 120<sup>th</sup> Ave. NE between Northup Way and NE 4<sup>th</sup>. (See Exhibit  
18 1, excerpts from the DEIS and FEIS.) Best Buy did not file an appeal challenging  
19 the environmental analysis or the FEIS.  
20  
21

22 On December 28, 2006, the City's Comprehensive Planning Manager  
23 forwarded the Bellevue Planning Commission proposed amendments to the City's  
24 Comprehensive Plan. The proposed amendments would allow the extension of NE  
25 4<sup>th</sup> Street from 116<sup>th</sup> to 120<sup>th</sup> Avenues NE and the widening of 120<sup>th</sup> Avenue NE.

1 Previous adopted policies had explicitly prohibited the extension of NE 4<sup>th</sup> Street in  
2 this manner. On February 25, 2008, the Bellevue City Council approved Ordinance  
3 No. 5803 amending the Wilburton/NE 8<sup>th</sup> Street Subarea Plan to include an  
4 east/west extension of NE 4<sup>th</sup> Street. (See Exhibit 2)  
5 Best Buy did not file an appeal challenging these amendments to the City's  
6 Comprehensive Plan.

7 On March 23, 2009, the Bellevue City Council adopted the City of Bellevue  
8 2009-2020 Transportation Facilities Plan ("TFP"). This is a 12-year transportation  
9 improvement program by the City's Transportation Department that reflected the  
10 results of a comprehensive citywide study that identified, among other things,  
11 emerging transportation facility needs and opportunities. This plan was reviewed by  
12 the City's Environmental Coordinator, Carol Helland, and a programmatic or "non-  
13 project" FEIS was issued on March 5, 2009. Again, the FEIS examined the  
14 extension of NE 4<sup>th</sup> from 116<sup>th</sup> to 120<sup>th</sup> Avenue NE and the widening of 120<sup>th</sup>  
15 Avenue NE, and the TFP included both of these projects on the TFP project list.  
16 (See Exhibit 3, excerpts from the FEIS). Best Buy did not file an appeal challenging  
17 the environmental analysis, the FEIS or the adoption of the TFP.

18 In moving forward with its Transportation Facilities Plan (TFP), the Bellevue  
19 City Council authorized the execution of a consultant agreement in October 2009 to  
20 prepare an Engineering Design Report and to identify the preferred alignment for a  
21 new east-west extension of NE 4<sup>th</sup> Street from 116<sup>th</sup> to 120<sup>th</sup> Avenues NE consistent  
22 with the planning actions described above. On February 1, 2010, the City Council  
23 authorized the creation of a new CIP project "NE 4<sup>th</sup> Street Extension 116<sup>th</sup> to 120<sup>th</sup>  
24 Avenues NE" (CIP Plan No: PW-R-160), again, consistent with the planning actions  
25 described above. (See Exhibit 4.)

1 The consultant in fact developed an Engineering Design Report which  
2 identified horizontal and vertical alignments for the new NE 4<sup>th</sup> Street extension. An  
3 analysis of the alternate roadway designs was completed, and an alignment for  
4 additional engineering and design work was identified. The alternative which is  
5 known as the "Best Buy Alternative" was chosen as the alternative for further design  
6 work.

7 On April 19, 2010, the City Council authorized the execution of another  
8 consultant agreement to complete the final design and prepare plans,  
9 specifications, and estimates for the road project proposal for the NE 4<sup>th</sup> Street  
10 extension described as the "Best Buy Alternative." (See Exhibit 5).

11 Best Buy filed this appeal challenging that the City's decision to enter into the  
12 consultant agreement to prepare final design plans for the "Best Buy Alternative".  
13 Best Buy contends that the City's decision to hire this consultant to prepare final  
14 designs for the "Best Buy Alternative" violated SEPA (RCW 43.21C), and the City's  
15 Environmental Procedures Code (BCC 22.02).

### 16 III. ISSUES

17 1. Does the Hearing Examiner Have Jurisdiction? NO

18 2. Is There a "Decision" Ripe for Review? NO

### 19 IV. LEGAL ARGUMENT

20 The City contends that there is no underlying SEPA action or other land use  
21 decision which can be the subject of an appeal to the Hearing Examiner at this point  
22 in time.

23 1. The Jurisdiction of the Hearing Examiner.

24 The Hearing Examiner may only hear matters and issue orders in those  
25 matters and on those issues where ordinance or other appropriate authority grants

1 the Hearing Examiner the authority to do so. See RCW 35A.63.170. The Bellevue  
2 City Code, chapter 3.68, creates the Office of the Hearing Examiner, and grants the  
3 Examiner authority to hear appeals or issue decisions and recommendations over:

- 4 • Applications for reclassifications
- 5 • Applications for conditions uses
- 6 • Applications for conditional uses in shorelines overlay districts;
- 7 • Applications for planned unit developments;
- 8 • Applications for plats;
- 9 • Appeals of administrative short plat decisions;
- 10 • Appeals of State Environmental Policy Act *threshold determinations*  
11 (emphasis added); and
- 12 • Any other matter designated by this code or other city ordinance.

13 BCC 3.68.250.A. The City Council's decision to execute a contract with a  
14 consultant for engineering and design work on a road project does not fall under this  
15 limited scope of authority, nor has Best Buy pointed to any other provision of the  
16 Bellevue City Code that would indicate that an administrative appeal from an action  
17 to hire a consultant is appealable.

18 Turning to the City's Environmental Procedures Code, again, the scope of  
19 the Hearing Examiner's authority is limited. BCC 22.02.080 reiterates the  
20 Examiner's authority over appeals of threshold determinations. Best Buy's  
21 challenge is not an appeal of a threshold determination. BCC 22.02.150 allows for  
22 an administrative appeal (to the Hearing Examiner under Process II described in the  
23 Land Use Code) for "other administrative decision of the applicable department  
24 director approving a proposal with or without SEPA conditions or denying a  
25 proposal . . ." Here, Best Buy is challenging adoption of a resolution by the City

1 Council authorizing execution of a consultant contract. That action does not fall  
2 within the scope of administrative appeals described in 22.02.150. No other powers  
3 are delegated to the Hearing Examiner in the Environmental Procedures Code.

4 Best Buy asks that the Hearing Examiner “stay the City’s continued final  
5 design implementation of the NE 4<sup>th</sup> Street Alignment and remand the issue to the  
6 City for fulfillment of SEPA, local code and APA obligations.” Very simply, there are  
7 no provisions of the Bellevue City Code or any ordinance which provides for an  
8 appeal of the City’s decision to proceed with design plans for the NE 4<sup>th</sup> Street  
9 extension.

10  
11 2. There is no Underlying Decision Ripe for Review.

12 Best Buy challenges that the City’s authority to execute a consultant contract  
13 to complete the final design and prepare plans, specifications, and estimates for the  
14 “Best Buy Alternative.” Best Buy contends that the City failed to obtain “proper  
15 environmental review” prior to contracting with a consultant to complete final design  
16 and plans for the proposed extension of NE 4<sup>th</sup> Street. Best Buy boldly states that  
17 the City selected the “Best Buy Alternative” without appropriate compliance with the  
18 State Environmental Policy Act (SEPA), 43.21C RCW. However, there is no  
19 requirement under SEPA that the City to submit the “Best Buy Alternative” for  
20 separate review under SEPA prior to the development of final plans and the filing of  
21 a development application.  
22

23 A general programmatic level environmental review of the proposed  
24 extension of NE 4<sup>th</sup> Street from 116<sup>th</sup> to 120<sup>th</sup> was studied under the Bel-Red  
25 Corridor Project. A SEPA review was undertaken and an FEIS was issued on July

1 19, 2007. That SEPA review examined the environmental impacts of all proposed  
2 traffic improvement projects discussed in that study. Furthermore the FEIS for the  
3 Transportation Facilities Plan clearly states that the environmental impacts of any  
4 specific public transportation improvement will be evaluated in much greater detail  
5 at the time of the development application or project design, pursuant to SEPA.

6 The City is not ignoring its environmental responsibilities under the law as  
7 Best Buy has alleged. There is no requirement under SEPA or the Bellevue City  
8 Code that a site-specific environmental review occur prior to the development of  
9 final plans or the submittal of a development application. When an actual  
10 development application is submitted to the City, a site specific environmental  
11 review will be undertaken as part of the development review process.<sup>1</sup>

12  
13 SEPA contemplates environmental review of legislation and other major  
14 actions that significantly affect the quality of the environment. RCW  
15 43.21C.030(2)(c). However, that does not mean that every action or every  
16 governmental recommendation requires preparation of an EIS. *Marino Property*  
17 *Co., v. Port of Seattle*, 88 Wn.2d 822 (1977). The courts have held that it is only  
18 those actions which involve tangible use, development, or environmental  
19 modification consequences which fall within the category of "other major actions"  
20 requiring environmental review. In *Marino*, the court held that the issuance of bonds  
21 to finance reacquisition of property, the reacquisition itself and a restrictive  
22

23  
24 <sup>1</sup> At this point in time there is no federal funding associated with the proposed NE 4<sup>th</sup> Extension, and  
25 thus no requirement for compliance with National Environmental Policy Act ("NEPA"). However, in  
anticipation of potential federal funding, the City has met with WSDOT to address the process  
required for NEPA review. Assuming federal funding will be used, the project will be submitted for  
NEPA review..

1 conveyance of a portion of the parcel were not "actions" requiring environmental  
2 review. Similarly, in *Lassila v. City of Wenatchee*, 89 Wn.2d 822, (1977), the court  
3 distinguished between the various preliminary steps towards possible development  
4 of a civic center from the more definitive undertakings.

5 Preparing final design plans is a condition precedent to the application for the  
6 road improvement. The plans themselves have no impact on the environment and  
7 do not constitute a tangible action as to the use of the property.

8 3. The City's Role as a Project Proponent is Different from Its Role as an  
9 Environmental Reviewer.

10 Best Buy has confused the City's role as a project proponent with its role and  
11 obligations as the reviewer of development proposals. In its Notice of Appeal, Best  
12 Buy has erroneously cited to BCC 22.02.031(D) as requiring the City to consider  
13 "reasonable alternatives" prior to the City committing to a course of action. In other  
14 words, Best Buy claims that BCC 22.02.031(D) requires the City to undertake a site-  
15 specific SEPA environmental review prior to entering into a contract for final design  
16 for the "Best Buy Alternative."

17 However, Best Buy is confusing the City's role as a project proponent with  
18 the City's role as the reviewer of development proposals. BCC 22.02 addresses the  
19 City's role and obligations **as the reviewer of development proposals**. BCC  
20 22.02.031(D) addresses how the City (as the reviewer) shall undertake the review  
21 process, which includes an analysis of whether the proposed action would have an  
22 adverse environmental impact or limit the choice of reasonable alternatives.

23 BCC 22.02.031(D) does not require that the City (in the role of the potential  
24 applicant) undertake project specific environmental review prior to submitting its  
25

1 application and/or undertake an exhaustive analysis of all alternatives. The City has  
 2 the right to choose its course of action among the various alternatives available to it.  
 3 The City, like any other development applicant, must apply for a development  
 4 permit. At that time, the City (as the reviewer of that application), will have to  
 5 undertake all appropriate state, federal and local review required. Prior to the City's  
 6 issuance of a final permit, Best Buy will have the opportunity to challenge the City's  
 7 final review and determination on the "Best Buy Alternative." Until then, there is no  
 8 matter over which the Hearing Examiner has jurisdiction.

9  
 10 4. Best Buy Simply Wants to Thwart the City's Alignment Choice.

11 The appeal by Best Buy is simply an attempt to thwart the City's choice to  
 12 proceed with the development of plans for the "Best Buy Alternative" for the  
 13 extension of NE 4<sup>th</sup> Street. It is clear that Best Buy does not like the "Best Buy  
 14 Alternative" because that alternative directly impacts its current operation.<sup>2</sup> Best  
 15 Buy had the opportunity to address its concerns about the environmental and other  
 16 impacts of an extension of NE 4<sup>th</sup> Street when the Bel-Red Corridor Project was  
 17 adopted, when the Transportation Facilities Plan was adopted, and/or when the City  
 18 adopted changes to the Wilburton/NE 8<sup>th</sup> Street Subarea Plan to include a east/west  
 19 extension of NE 4<sup>th</sup> Street. However, Best Buy failed to challenge any of those  
 20 actions.

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 24 <sup>2</sup> As stated in its Notice of Appeal, Best Buy does not like the "Best Buy Alternative" because it will  
 25 affect the size of its current store, its customer parking, and the location of its loading dock.  
 However, none of these potential changes even affect the environment as defined by WAC 197-11-  
 444. Best Buy's attempt to create environmental concerns when none really exists is additional  
 evidence that this appeal is merely an attempt to derail the roadway alternative chosen by the City.

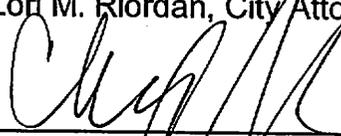
1 Best Buy now wants to force the City to consider other alternatives for the  
 2 extension of NE 4<sup>th</sup> Street. However, calling the City Council's authorization of a  
 3 consultant contract a "decision" does not provide the Hearing Examiner with any  
 4 authority to review the City's retention of a consultant to proceed with the  
 5 development of final plans and design for an extension of NE 4<sup>th</sup> Street. The City  
 6 Council's authorization was not an "agency action" requiring SEPA environmental  
 7 review. WAC 191-11-704. Even if such authorization were an "action," the Hearing  
 8 Examiner's limited authority does not extend to legislative actions by the Council.

**V. CONCLUSION**

10 The Hearing Examiner has no authority to review the City's execution of a  
 11 contract with a consultant. Best Buy has put the cart before the horse. No project  
 12 specific environmental determination has been made with respect to the "Best Buy  
 13 Alternative." There is no requirement that one be undertaken at this point in time.  
 14 Once final plans are complete, a development application has been filed, and  
 15 findings have been made, Best Buy will have the opportunity to challenge those  
 16 findings before any final permit is issued. Best Buy's appeal should be dismissed  
 17 by the Hearing Examiner.

19 DATED this 28<sup>th</sup> day of May, 2010.

21 CITY OF BELLEVUE  
 22 OFFICE OF THE CITY ATTORNEY  
 23 Lori M. Riordan, City Attorney

24   
 25 Cheryl A. Zakrzewski, WSBA No. 15906  
 Assistant City Attorney  
 Attorney for Respondent City of Bellevue

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OFFICE OF THE HEARING EXAMINER  
FOR THE CITY OF BELLEVUE

BEST BUY STORES, LP, a Virginia  
limited partnership,

Appellant,

v.

CITY OF BELLEVUE, a municipal  
corporation,

Respondent.

No. AAD 10-73

APPELLANT BEST BUY STORES, LP'S  
RESPONSE IN OPPOSITION TO CITY OF  
BELLEVUE'S MOTION TO DISMISS

I. INTRODUCTION

The City of Bellevue's ("City's") Motion to Dismiss Appellant Best Buy's SEPA/Land Use Appeal ("Motion") should be denied. The City's decision to select one of several alternative road routes for the NE 4th Extension,<sup>1</sup> and fund final design of the selected "preferred" route alternative (and spend over \$1.3 million dollars to do so), was for practical purposes a final route selection. The City's decision to fund and proceed with final design of the NE 4th Best Buy alternative limits the choice of reasonable alternatives for the road. It was an action requiring prior environmental review under the State Environmental Policy Act, Chapter 43.21C RCW ("SEPA")<sup>2</sup> to help inform the City's selection. Practically speaking, any future SEPA review of

<sup>1</sup> (CIP Plan No. PW-R-160) (the "NE 4th Extension Project").

<sup>2</sup> A decision to "license, *fund*, or undertake any activity that will directly modify the environment" is a project action. WAC 197-11-704(2)(a)(i).

1 that route selection decision, e.g., at the time the City's Transportation Department requests a  
2 construction permit from the City's Planning Department to build NE 4th along the Best Buy  
3 Alternative route, will be an exercise in post-hoc rationalization.  
4  
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6  
7 The City's Environmental Procedures Code, Chapter 22.02 Bellevue City Code ("BCC")  
8 and Land Use Code ("LUC") provisions governing review and appeal of land use decisions,  
9 Chapter 20.35 LUC, do not clearly specify the process for appealing the City's failure to timely  
10 perform required environmental review in connection with City-initiated action. However, Best  
11 Buy believes that the Hearing Examiner has jurisdiction under SEPA and City code, and the  
12 Hearing Examiner's office is a better forum for the expeditious resolution of Best Buy's  
13 challenge than a LUPA appeal, writ of certiorari or mandamus action, or other court challenge.  
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## 20 21 II. ARGUMENT AGAINST DISMISSAL

### 22 23 A. The City's Decision Was an Action for Purposes of SEPA.

24 The City's selection of one particular roadway alignment out of four identified  
25 alternatives for more specific study and related authorization of a \$1.3 million dollar contract for  
26 *final* design of that one route was an "action" for SEPA purposes. SEPA rules define "action"  
27 broadly to include "virtually everything government agencies do." R. Settle, *The Washington*  
28 *State Environmental Policy Act: A Legal and Policy Analysis*, § 8.01 (2009) (citing WAC 197-  
29 11-704) (hereafter "*SEPA: A Legal and Policy Analysis*").<sup>3</sup> Moreover, it is not "action" that  
30 triggers SEPA's requirements, but rather the "proposal" of an action, which ensures that  
31 decision-makers know about the environmental ramifications of proposed action before it occurs.  
32 *Id.* A "proposal" exists when an agency *has a goal* and *is actively preparing to make a decision*  
33 *on one or more alternative means of accomplishing that goal, and the environmental effects can*  
34 *be meaningfully evaluated.*" WAC 197-11-784 (emphasis added). Here, the City has a goal of  
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<sup>3</sup>The City has adopted the SEPA definitions of "action" and "agency." See BCC 22.02.020.

1 extending NE 4th Street (and more broadly, to create a new route for traffic to leave downtown  
2 Bellevue), and actively prepared to decide a "final" route for the extension (although the City  
3 still characterizes that final route as only the "preferred" alternative) among four alternatives. In  
4 preparing to make its decision, the City analyzed financial and land use aspects of each route.  
5 But, the City failed to analyze the environmental effects of each route, and failed to follow  
6 SEPA's specified procedures to make the decision (by issuing, publishing and circulating a DNS,  
7 MDNS or Determination of Significance and Scoping Notice/EIS).<sup>4</sup>

8  
9 The City plan to postpone project-specific SEPA review until the Transportation  
10 Department submits an "application" to the Planning Department is contrary to SEPA and City  
11 Code. BCC Chapter 22.02 imposes numerous affirmative obligations on the City when acting as  
12 the project proponent. For example, an "initiating department" should contact the environmental  
13 coordinator at initial proposal formation, BCC 22.02.031(C), and determine whether a proposal  
14 is potentially subject to SEPA, BCC 22.02.032(A). More importantly, BCC 22.02.031(D)  
15 requires that "the procedural requirements of SEPA and this code shall be undertaken in  
16 conjunction with decision making on the underlying proposal and prior to the city's issuance of  
17 a permit, committing to a particular course of action, or taking action that would either  
18 have an adverse environmental impact, or limit the choice of reasonable alternatives."

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<sup>4</sup>Contrary to the City's assertions, Best Buy seeks to raise important environmental issues in its appeal – issues the City should have considered before selecting the Best Buy Alternative from among its options. As one example only, until 120th Ave NE is extended to at least NE 16th, the City's projects extending NE 4th from 116th to 120th Ave NE and widening 120th Ave NE from NE 4th to NE 8th will simply move a portion of downtown Bellevue's traffic jam a few blocks east unless the commuters leaving downtown Bellevue use the cut-through neighborhood streets. The extension of NE 4th along the Best Buy route, rather than the School District/Mutual Materials route, significantly limits the City's ability to mitigate neighborhood cut through-traffic. Rather than assess that environmental impact- neighborhood cut through traffic impacts - in a current environmental document assessing the pros and cons of different NE 4th extension route alternatives, the City has instead improperly segmented mitigation review, funding a future study of "potential NE 5th mitigation options." But by preemptively ruling out the School District/Mutual Materials route, the City has effectively precluded study of the mitigation option with the best possibility of actually reducing neighborhood through-traffic. There are other serious, substantive, environmental issues at stake in Best Buy's appeal, too.

BEST BUY'S RESPONSE IN OPPOSITION  
TO CITY OF BELLEVUE'S MOTION  
TO DISMISS – 3

Perkins Coie LLP  
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1 (Emphasis added). This limitation does not apply just to actions of the City's Planning  
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3 Department. As defined in Chapter 22.02 BCC, "city" means "the municipal corporation of  
4  
5 Bellevue and all departments and divisions thereof." BCC 22.02.025(B). In other words, the  
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7 City's "practice" of letting the Transportation Department select a particular route (here the NE  
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9 4th Best Buy Alternative) for a project, and practically limit the choice of other reasonable  
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11 alternative routes, *before* the City undertakes environmental review is inconsistent with  
12  
13 Bellevue's own environmental procedures as well as SEPA. A Planning Department review of  
14  
15 the Transportation Department's decisions – after the Transportation Department has spent  
16  
17 millions of City dollars and made multiple City Council presentations to secure the imprimatur  
18  
19 of Council approval – does nothing to cure this problem.  
20

21 **B. Because the City Is Using Phased Review for the NE 4th Extension Project, It Must**  
22 **Not Take Actions That Irretrievably Commit or Limit Reasonable Choices**  
23 **Available During Later Review.**  
24

25 In this matter, the City is using phased environmental review, moving from nonproject to  
26  
27 project-specific SEPA review for the various road improvements it is planning, including  
28  
29 extension of NE 4th.<sup>5</sup> WAC 197-11-060(5). While a preferred alternative can be identified as a  
30  
31 proposal, an agency cannot select an alternative before project-specific SEPA review is  
32  
33 conducted to determine whether the alternative, at a minimum, is likely to cause probable  
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35 significant adverse environmental impacts. The City's present actions, however, prejudge later  
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37 project-specific environmental review processes.  
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41 \_\_\_\_\_  
42 <sup>5</sup> Final Environmental Impact Statement for the City of Bellevue Bel-Red Corridor Project p. 1-3 (July 19,  
43 2007) ("This is a programmatic, or 'nonproject,' EIS, as described in Chapter 197-11-442 of the State Environmental  
44 Policy Act (SEPA) Rules. . . . When specific development and/or transportation projects are proposed in the  
45 corridor, they will be defined in greater detail and their impacts evaluated in separate SEPA documents. . . .  
46 *Depending on the magnitude of the projects, project-level environmental review could range from a SEPA*  
47 *Checklist and Declaration of Nonsignificance (where impacts are minor) to a project-level EIS (where*  
*significant, unmitigatable impacts are likely to occur)*" (emphasis added).

1 The City's 2009-2015 Capital Investment Program ("CIP") summary for the NE 4th  
2 Extension Project (CIP No. PW-R-160) states that "[a] project specific environmental  
3 determination, consistent with federal requirements, will be made during the project design  
4 phase."<sup>6</sup> The City's most recent transportation programmatic EIS specifically contemplates the  
5 City performing project-specific SEPA review prior to design funding.<sup>7</sup> No such project-specific  
6 environmental determination has been made with respect to the route for NE 4th. Nevertheless,  
7 contrary to the City's commitment in the CIP summary, the City's Decision was based on City  
8 staff's report that "alternatives analysis *is completed*," a preferred alternative identified, and the  
9 "Best Buy Alternative" as the one "*selected* because it limited impacts to the least number of  
10 parcels possible, is the most cost effective, and is compatible with the overall long term vision  
11 for the Wilburton commercial district, including the proposed urban village concept."<sup>8</sup> Making  
12 these decisions without the benefit of project-specific SEPA review was error.

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25 **C. The City's Decision Is Ripe for Review Now.**

26 The City's Decision is ripe for review now if it was made in violation of SEPA. Contrary  
27 to the City's Motion, given the implications in the City's process of selecting its "preferred route  
28 alternative" (million dollar plus investments, design or implementation of other projects based on  
29 the route selected, etc.), the City's Decision will inevitably tip the scales of decision in any future  
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<sup>6</sup> Best Buy also reserves the right to pursue claims under National Environmental Policy Act, 42 U.S.C. §§ 4321-4327 ("NEPA"), the National Historic Preservation Act, 16 U.S.C. § 470 *et seq.* ("NHPA"), the Transportation Act of 1966, 49 U.S.C. § 303, and the Administrative Procedures Act, 16 U.S.C. § 551 *et seq.* Such issues are not addressed here due to the Hearing Examiner's lack of jurisdiction to render decisions regarding these federal law issues.

<sup>7</sup> See Final Environmental Impact Statement 2009-2020 Transportation Facilities Plan (March 5, 2009 cover letter)("This programmatic or 'non-project' FEIS is part of a phased environmental review as defined under SEPA. *Specific projects listed in the plan will undergo separate project level environmental review as they are funded for design and/or implementation*").

<sup>8</sup> Exhibit B to Best Buy's Notice of Appeal, City Council Agenda Memorandum for April 19, 2010 Regular Meeting at p. 11-15 (emphasis added).

1 review of the environmental impacts of the Transportation Department's and City Council's  
2 choice of the Best Buy Alternative, contrary to SEPA's mandates.  
3

4  
5 "[T]he clear mandate of SEPA . . . is consideration of environmental values based on full  
6 information before a decision is made." *Norway Hill Pres. and Prot. Ass'n v. King County*  
7 *Council*, 87 Wn.2d 267, 279, 552 P.2d 674 (1976) (emphasis added). Environmental factors  
8 need to be considered "at the earliest possible stage." *King County v. Washington State*  
9 *Boundary Review Bd. for King County*, 122 Wn.2d 648, 663-664, 860 P.2d 1024 (1993). The  
10 City's argument that it is not required to consider environmental factors until *after* it finalizes the  
11 design plans because the plans themselves do not impact the environment has been rejected as  
12 contrary to the language and purposes of SEPA. *See id.* at 662-663 (rejecting line of cases,  
13 including *Lassila v. Wenatchee*, 89 Wn.2d 804, 576 P.2d 54 (1978)).<sup>9</sup> Rather, the Court has  
14 stated:  
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25 Decision-making based on complete disclosure would be thwarted if full environmental  
26 review could be evaded simply because no land-use changes would occur as a direct  
27 result of a proposed government action. Even a boundary change, like the one in this  
28 case, **may begin a process of government action which can "snowball" and acquire**  
29 **virtually unstoppable administrative inertia.** *See* Rodgers, *The Washington*  
30 *Environmental Policy Act*, 60 Wash.L.Rev. 33, 54 (1984) (the risk of postponing  
31 environmental review is "a dangerous incrementalism where the obligation to decide is  
32 postponed successively while project momentum builds"). Even if adverse  
33 environmental effects are discovered later, **the inertia generated by the initial**  
34 **government decisions (made without environmental impact statements) may carry**  
35 **the project forward regardless. When government decisions may have such**  
36 **snowballing effect, decisionmakers need to be apprised of the environmental**  
37 **consequences before the project picks up momentum, not after.**  
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39 *Id.* at 664 (emphasis added).  
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43 <sup>9</sup> *Marino Property Co. v. Port of Seattle*, 88 Wn.2d 822, 567 P.2d 1125 (1977), cited by the City is also  
44 distinguishable. The question in *Marino* was whether certain actions would have had more than a moderate effect  
45 on the quality of the environment. *Id.* at 830. The court noted that issuance of bonds and reacquisition of property  
46 were categorically exempt under the then newly-issued SEPA guidelines and that a challenge to existing uses at the  
47 Port of Seattle piers was barred under the doctrine of laches. *Id.* at 830-31. Unlike *Marino*, the dispute here is not  
*whether* a SEPA analysis is required; the only dispute is *when* the SEPA analysis should occur.

1 Environmental considerations are to be part of the decision-making process, not an after-  
2 thought. See *SEPA: A Legal and Policy Analysis*, § 8.01 (citing WAC 197-11-402(10), -406);  
3 BCC § 22.02.031. In *Metcalf v. Daley*, the Ninth Circuit stated that the "hard look" mandated by  
4 NEPA "must be timely, and it must be taken objectively and in good faith, not as an exercise in  
5 form over substance, and not as a subterfuge designed to rationalize a decision already made."  
6  
7 214 F.3d 1135, 1142 (9th Cir. 2000). A City SEPA analysis of route alternatives prepared after  
8 the City has let a contract to spend over a million dollars to design one route will not be objective  
9 or unbiased – it will be a "post-hoc" rationalization for the City's earlier decisions.<sup>10</sup>

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17 In *Loveless v. Yantis*, 82 Wn.2d 754, 513 P.2d 1023 (1973), the court held that an  
18 environmental review should occur at the preliminary plat stage, stating:

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21 In this case, it will be of benefit to the public and the developer that an environmental  
22 review can be made on the 'design' matters revealed in preliminary plats. Choices exist  
23 and crisis decision making and catastrophic environmental damage can be avoided by  
24 early deliberation here. Also, given this early stage, the application of SEPA would  
25 result in minimizing investment costs if the decision is abandonment or alteration.

26  
27 *Id.* at 765. These same arguments support early review of the environmental impacts of NE 4th  
28 route selection here and now. It would benefit the public and the City to address environmental  
29 concerns at the preliminary design phase. And, it would be more efficient to address  
30 environmental concerns now, before significant investment (i.e., the \$1.3 million project design  
31 contract) sinks costs into and creates inertia around a single course of action.<sup>11</sup>

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37 <sup>10</sup> "Post hoc" rationalizations are generally an unacceptable ground upon which to uphold agency decisions.  
38 See *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 419 (1971).

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47 <sup>11</sup> There are many cases in which courts have enjoined highway construction and more preliminary  
financial expenditures, such as land acquisition and preliminary engineering and design, pending the preparation of  
an environmental impact statement under NEPA. See *Stop H-3 Ass'n v. Volpe*, 353 F.Supp. 14, 17 (D.C. Hawaii  
1972) (citing cases). The court in *Stop H-3* explained that the purpose of NEPA is to inform decision-making,  
which "may lead to a decision to abandon or substantially alter the project." *Id.* at 17. Thus, while environmental  
review is ongoing, "there should be (1) no continuing commitment to the project as if it were a *fait accompli*, for it is  
not; and (2) no action undertaken which makes it more difficult for the reviewing agency to impartially review and  
subsequently, if warranted, alter the project. Certainly the halting of construction, pending the review, is critical.  
But so, as well, is the halting of the continued expenditure of money." *Id.*

1 **D. The City's Code Provisions Regarding Appealing an Action Lacking Appropriate**  
2 **SEPA Review That Is Not Issuance of a Permit or Threshold Determination, While**  
3 **Not Expressly Addressing the Question, Provide Hearing Examiner Jurisdiction.**  
4

5 Best Buy acknowledges that the BCC, LUC, and the Hearing Examiner Rules do not  
6 clearly speak to the process for local administrative review of a City-initiated SEPA action taken  
7 without a threshold determination or related land use or quasi-judicial decision. This is not  
8 surprising given the complexity of (and apparent conflicts within) the SEPA appeal provisions  
9 adopted by the BCC and the wide range of underlying governmental actions to which they apply.  
10 *SEPA: A Legal and Policy Analysis*, § 19.01[3]; see also WAC 197-11-680(1) (noting that the  
11 SEPA appeal regulations may not be consistent with corresponding statutes). However, Best  
12 Buy believes the Hearing Examiner's authority to hear "[a]ny other matter designated by this  
13 code or other city ordinance," BCC 3.68.250(A)(8), combined with the Hearing Examiner's  
14 jurisdiction to hear appeals of threshold determinations, BCC 3.68.250(A)(7), provide the  
15 Hearing Examiner with jurisdiction in this case, even though the list of specific grounds for  
16 jurisdiction in BCC 3.68.250 is silent with respect to appeals of a lack of a threshold  
17 determination.  
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31 **1. A SEPA Action Occurring Outside of a Permit Process Should Be Treated as**  
32 **a Type II Permit Decision.**  
33

34 Pursuant to BCC 20.35.015(C)(11), a "review under SEPA when not consolidated with  
35 another permit" is treated as a Process II permit. Process II decisions are appealable to the  
36 Hearing Examiner by "any person who submitted written comments prior to the date the decision  
37 was issued." BCC 20.35.250. Best Buy submitted written comments to the relevant City  
38 departments and City Council before the Decision was made. The Code also notes, however,  
39 that Process II decisions are administrative land use decisions made by the Director of the  
40 Development Services Department, threshold determinations under SEPA made by the  
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1 Environmental Coordinator, and Sign Code variances. BCC 20.35.015(C). The Code is not  
2 plainly stated. However, the BCC should be interpreted to further the purposes of SEPA. The  
3 failure to make a threshold determination is appealable. See *Juanita Bay Valley Cmty. Ass'n v.*  
4 *City of Kirkland*, 9 Wn.App. 59, 510 P.2d 1140 (1973) (invalidating permit issued when no  
5 threshold determination made). The City's SEPA appeal rules, which contain broad "catch all"  
6 provisions, should be interpreted to allow for timely administrative review at the local level.  
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13 **2. City-Adopted SEPA Rules Argue for Early Administrative Review**

14 RCW 43.21C.075(2)(b) provides that "appeals of environmental decisions made (or  
15 **lacking**) under this chapter shall be commenced within the time required to appeal the  
16 governmental action which is subject to environmental review." Moreover, WAC 197-11-  
17 680(3)(vi)(B) affirms that *an appeal need not be consolidated with a hearing or appeal on the*  
18 *underlying governmental action* if it is  
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25 [a]n appeal of a procedural determination made by an agency when the agency is a  
26 project proponent, or is funding a project, and chooses to conduct its review under SEPA,  
27 including any appeals of its procedural determinations, prior to submitting an application  
28 for a project permit. Subsequent appeals of substantive determinations by an agency with  
29 jurisdiction over the proposed project shall be allowed under the SEPA appeal procedures  
30 of the agency with jurisdiction[.]  
31  
32

33 The City has adopted this SEPA appeal rule. BCC 22.02.020. The City has made a procedural  
34 determination under SEPA – that for now, the Transportation Department may rely on its prior  
35 non-project EIS and that the City will have a different City department perform project-specific  
36 SEPA environmental review of the NE 4th Best Buy Alternative at a later time. Because SEPA  
37 allows for appeals for a City's procedural determination to fund and proceed with a project, and  
38 allows such appeals to move forward without consolidation with the appeal on the underlying  
39 governmental action, current review of the City's decision to select the final route for its NE 4th  
40 Extension Project and fund final design is authorized by the SEPA Rules, as adopted by the City.  
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1 It is in the City's and public's interest to have this matter heard before the Examiner rather  
2 than in another slower, costlier forum. The Examiner's office can take evidence efficiently. The  
3 hearing will be less expensive for both the City and Best Buy. The Hearing Examiner can render  
4 a decision quickly, rectifying the City's mistakes before they seriously disrupt the City's  
5 transportation planning and implementation programs.  
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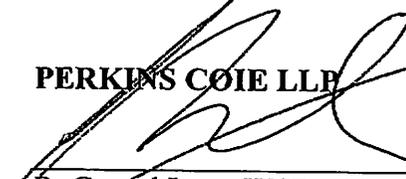
10 For the foregoing reasons, the Hearing Examiner has jurisdiction to hear this appeal  
11 under the Bellevue Code, and acceptance of such jurisdiction is in the public interest.  
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### 15 III. CONCLUSION

16 The City's decision to select the Best Buy Alternative route for Extension of NE 4th was  
17 an action for SEPA purposes and environmental review must be completed before such action  
18 may be taken. The "catch all" jurisdictional provisions of City code provide the Hearing  
19 Examiner with jurisdiction. Best Buy respectfully requests that the Hearing Examiner deny the  
20 City's Motion and afford the parties an efficient administrative opportunity to present their  
21 evidence and arguments on the merits.  
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28 DATED: June 9, 2010

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41 Attorneys for Appellant Best Buy Stores, LP  
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BEST BUY'S RESPONSE IN OPPOSITION  
TO CITY OF BELLEVUE'S MOTION  
TO DISMISS – 10

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**BEFORE THE HEARING EXAMINER FOR THE CITY OF BELLEVUE**

In the Matter of	)	
	)	
<b>BEST BUY STORES LP,</b>	)	<b>FILE NO: AAD 10-73</b>
	)	
Appellant,	)	
	)	
v.	)	<b>ORDER GRANTING</b>
	)	<b>MOTION TO DISMISS</b>
<b>CITY OF BELLEVUE</b>	)	
	)	
Respondent.	)	

This matter is an appeal to the Hearing Examiner filed on May 3, 2010 by Best Buy Stores, LP (Appellant), alleging that the City of Bellevue has selected the "Best Buy Alternative" for final design of the Northeast 4<sup>th</sup> Extension Project without appropriate compliance with SEPA. Appellant contends that the action of the City Council authorizing execution of a consultant agreement to complete final design and proposed plans, specifications and estimates for implementation of the Northeast 4<sup>th</sup> Street Extension from 116<sup>th</sup> to 120<sup>th</sup> Avenues (the Best Buy Alternative) without making a site-specific SEPA threshold determination was unlawful. Appellant asks the Hearing Examiner to stay the City's continued final design implementation of the Northeast 4<sup>th</sup> Street alignment and to remand the issue to the City for fulfillment of SEPA, local code and APA obligations.

Appellant requested a prehearing conference under the Hearing Examiner's Rules, which was held on June 1, 2010. In the meantime the City of Bellevue moved to dismiss the appeal, contending that there was no underlying "action" as defined by SEPA or otherwise which can be the subject of a timely administrative appeal by Appellant. "Consequently, there is no matter over which the Hearing Examiner has jurisdiction."

Argument on the motion was held on June 14, 2010. The City argued that the Hearing Examiner has no jurisdiction over the appeal, and that there was no "decision" of the City that was ripe for appeal. Best Buy argued that the selection of one particular roadway alignment of

6/28/2010

1 four identified alternatives for more study and related authorization of a 1.3 million dollar  
2 contract for final design of that one matter was "action" for SEPA purposes. Allowing the  
3 Transportation Department to select a particular route for a project and practically eliminate the  
4 choice of other reasonable alternatives before it undertook environmental review was  
5 inconsistent with Bellevue's own environmental procedures as well as SEPA. Best Buy argues  
6 that Bellevue must make a threshold determination under SEPA now (whether or not an EIS  
7 should be prepared) and not at a later date. "The dispute here is not whether SEPA analysis is  
8 required; the only dispute is when the SEPA analysis should occur." (Best Buy's Response,  
9 page 6, footnote 9). A "threshold determination" is a decision by the responsible official of the  
10 lead agency whether or not an EIS is required for a proposal that is not exempt. WAC 197 11  
11 797.

12 The general rule as to the jurisdiction of a hearing examiner or other administrative body  
13 is stated in *Chaussee v. Snohomish County*, 38 Wn.App. 630 (1984): "*The general legal*  
14 *principles which apply to appeals from lower to higher courts do not apply to administrative*  
15 *review or of administrative determinations. The scope and nature of an administrative appeal or*  
16 *review must be determined by the provisions of the statutes and ordinances which authorize*  
17 *them.* In that case the court of appeals held that a Hearing Examiner had no jurisdiction to  
18 consider equitable issues. See also: *Exendine v. City of Sammamish*, 127 Wn.App. 574 (2005),  
19 (constitutional issues).

20 In *Skagit Surveyors, vs. Friends*, 135 Wn 2d 542 (1998). the Supreme court said:  
21 *Where the language to fashion a remedy is broadly stated and the statute at issue is to be*  
22 *liberally construed, we have cautiously interpreted the statutory authority of the agency to allow,*  
23 *in limited circumstances, orders for relief that may not be specifically set forth in the statute*  
24 *creating the agency and defining its powers.* The Bellevue Hearing Examiners Office was  
25 created by Chapter 3.68 of the Bellevue City Code which grants to the Hearing Examiner the  
26 authority to hear appeals and issue decisions or recommendations of the following specific  
27 matters: (1) applications for reclassifications; (2) applications for conditional uses; (3)  
28 applications for conditional uses in shorelines overlay districts; (4) applications for planned unit  
29 developments; (5) applications for plats; (6) appeals of administrative short plat decisions;(7)  
30 appeals of State Environmental Policy Act threshold determinations; and (8) any other matter

6/28/2010

1 designated by this code or other city ordinance.” While the examiner may hear an appeal of a  
2 threshold determination, there is no express authority to hear an appeal alleging a *failure* to issue  
3 a threshold determination. This is not surprising since SEPA’s rules regarding administrative  
4 appeals allows appeals of only two procedural determinations: a final threshold determination  
5 and the adequacy of a final EIS. See WAC 197-11-680(3). See also: Schneider, Administrative  
6 Appeals and Judicial Review under SEPA, Law Seminars International, January, 2010.”

7 Best Buy concedes that the City’s ordinances do not clearly express a process for  
8 appealing the City’s failure to timely perform required environmental review in connection with  
9 City-initiated action. It argues that the examiner’s authority under subsection 8 to hear “any  
10 other matter designated by this code or other city ordinance...” combined with the Hearing  
11 Examiner’s authority to hear appeals of threshold determinations provides the examiner with  
12 jurisdiction in this case.

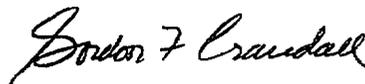
13 Neither WAC 197-11-680(3) nor BCC 3.68.250A contain a provision that directs that  
14 they should be liberally construed. The subject matter of the Examiner’s jurisdiction is not  
15 broadly stated, but is specific. The catch-all provision of BCC 3.68.250A(8) provides the  
16 Hearing Examiner with jurisdiction when another ordinance authorizes it, such as BCC 3.68.255  
17 regarding assessment reimbursement contracts for street improvements. It was not intended to  
18 provide jurisdiction where none was specifically authorized.

19 The Examiner concludes that the Bellevue Hearing Examiner has no jurisdiction to  
20 consider an appeal alleging a failure to issue a threshold determination. This conclusion makes it  
21 unnecessary to determine whether or not there has been an “action” ripe for review. The motion  
22 to dismiss the appeal should be granted.

### 23 DECISION

24 The appeal of Best Buy Stores LP of the City’s alleged failure to issue a SEPA threshold  
25 determination before it committed resources to the “Best Buy Alternative” is dismissed for lack  
26 of subject matter jurisdiction.

27 DONE this 28<sup>th</sup> day of June 2010.

28 

29 Gordon F. Crandall, Hearing Examiner 

30 6/28/2010

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**APPEAL TO SUPERIOR COURT**

**This decision is the final administrative decision of the City. For appeals to superior court of land use decisions of the Hearing Examiner, see Chapter 36.70C RCW. For all other appeals, a petition to review the decision of the Hearing Examiner must be filed with the superior court within 20 calendar days from the date the decision was mailed to the person to whom the notice of civil violation was directed, or is thereafter barred, pursuant to BCC 1.18.050.F.**

6/28/2010

## **EXHIBIT F**

**Best Buy Comments Regarding NE 4th Street/120th Ave NE  
Corridor Project SEPA Review (July 21, 2011)**

**Development Services Department File No. 11-114971-LM**

**WILBURTON CONNECTIONS LOCAL IMPROVEMENT DISTRICT  
FORMATION HEARING**

**OCTOBER 28, 2010**

**HEARING EXAMINER: CHRISTOPHER MATHEWS**

Hearing Examiner: Good evening, everyone, and welcome again to the Bellevue Examiner's session for October 28<sup>th</sup>, 2010. This is a continuation of a hearing that began a week ago in connection with the Wilburton Connection Local Improvement District. I mentioned last time there was no file number, there still isn't and I was just informed by staff that file numbers are not assigned to LIDs, only appeals, but there may be an LID number for this case at some point, I'm not sure. Our format for the hearing this evening will be substantially the same as it was last week. I invited at the end of last Thursday's session the staff to reply to the comments that were made by those who spoke and by those who offered documents. And after a quick huddle, they decided to wait until today so that they would have an opportunity to review that information before they responded. And so, it's my understanding that tonight we will have a PowerPoint which is intended to be a response. Is that correct, sir?

Bruce Disend: That is correct.

Bruce Disend: Uh-huh. It was also suggested that the environmental review is still going on and that that review was considering a number of alternatives. Could you comment on that?

Nancy LaCombe: Yes, I can. The environmental review, that's correct, is still going on. However, it is only analyzing one alternative for NE 4<sup>th</sup> and one alternative for 120<sup>th</sup>.

Bruce Disend: That's one that's been identified as the preferred.

Nancy LaCombe: Preferred. That's correct.

Bruce Disend: Were there any other comments that you heard this evening that you wish to respond to?

Nancy LaCombe: Yes, there is. One comment in particular about that, I don't remember what exhibit it is. It's the Ordinance No. 5898 that was introduced by Mr. Lin, talks about specifically including the downtown in that local revitalization financing. It's a little complicated to explain but basically, what I'd like to go back to the slide and the funding mechanisms is that we, there's the State, Federal, local financing that is paid. The City gets to retain a portion of the sales tax that is generated to be able to help pay back that particular financing

essentially makes that southern end of 120<sup>th</sup> work much, much better.

Brent Carson: And what does it do to 116<sup>th</sup> and the NE 4<sup>th</sup> intersection? Doesn't it take that to level service F?

Kris Liljeblad: Yes, it does.

Brent Carson: No further questions. Thank you.

Eddie Lin: Eddie Lin from Perkins Coie on behalf of Best Buy and I just have a couple follow-up questions. So, earlier you said that the environmental review for the NE 4<sup>th</sup> extension-

Hearing Examiner: Who are you directing your questions to?

Eddie Lin: Oh, sorry. Ms. LaCombe. Earlier, you stated that the environmental review of NE 4<sup>th</sup> and 120<sup>th</sup> that there's really only one alternative being reviewed, is that correct?

Nancy LaCombe: That is correct.

Eddie Lin: Are the other alternatives off the table then?

Nancy LaCombe: That's correct.

Eddie Lin: Regarding the local revitalization financing, you mentioned that downtown generates a large

## **EXHIBIT G**

**Best Buy Comments Regarding NE 4th Street/120th Ave NE  
Corridor Project SEPA Review (July 21, 2011)**

**Development Services Department File No. 11-114971-LM**



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April 4, 2011

**HAND-DELIVERED**

The Honorable Don Davidson, Mayor  
The Honorable Conrad Lee, Deputy Mayor  
The Honorable Grant Degginger, Councilmember  
The Honorable Claudia Balducci, Councilmember  
The Honorable John Chelminiak, Councilmember  
The Honorable Jennifer Robertson, Councilmember  
The Honorable Kevin Wallace, Councilmember

**RE: Options for NE 4th Street Extension**

Dear Mayor, Deputy Mayor and Councilmembers:

We represent Best Buy which has a store located at 457 120th Avenue NE. City staff has provided you a management brief discussing two "options" for NE 4th, both of which are millions of dollars less expensive than staff's "preferred alternative".<sup>1</sup> Best Buy appreciates staff's efforts to develop a solution to maintain Best Buy's store under option 1, but the recommendation to abandon option 2 is premature and improperly influenced by bureaucratic and financial inertia for staff's preferred alternative.

**A. Background**

In April 2010, City staff recommended, and City Council approved, a \$1.3 million contract to complete "final design" for staff's preferred alternative. Best Buy objected that the action was contrary to the State Environmental Policy Act (SEPA), and that proceeding with final design would improperly prejudice the route and later environmental review would be an exercise in post-hoc rationalization. Best Buy also objected to "piecemealing" or segmenting environmental review of the "Wilburton Connections", which consists of the NE 4th and NE 6th street extensions, NE 5th traffic plan, and 120th Stage 1 widening. Director Sparrman suggested that delaying final design of NE 4th to allow for environmental review would somehow jeopardize

<sup>1</sup> "Option 1" is the same as staff's preferred alternative, but would reconstruct the Best Buy building to the north provided that there is voluntary cooperation by the property owners to the north. "Option 2" would extend NE 4th through the parking lot between Best Buy and Home Depot, just along the southern border of the Best Buy store.

City of Bellevue Mayor, Deputy Mayor and Councilmembers  
April 4, 2011  
Page 2

federal funding and he assured City Council that staff would engage in value engineering if cheaper alternatives were later discovered.

In October 2010, City staff proposed formation of the Wilburton Connections Local Improvement District to the Hearing Examiner. Among other objections, Best Buy argued that LID formation was premature given that alternative routes could affect the special benefit analysis. City staff responded that there were no other alternatives being studied, and thus there would be no impact on the LID analysis.

In November 2010, Best Buy was informed that WSDOT's environmental review coordinator agreed that the City's proposed National Environmental Policy Act (NEPA) review had improperly segmented the projects, and as a result NEPA review for 120th Stage 1 was "on the shelf". It is our understanding that City staff subsequently decided to combine the review processes for 120th and NE 4th.<sup>2</sup> In December 2010, City Council asked why the 120th Stage 1 grant was in "past due" status. City staff admitted that they had under-estimated the time for design.<sup>3</sup>

On February 7, 2011, City staff presented the two new "options" for the NE 4th street extension. According to staff's analysis, *both options* are millions of dollars less expensive than staff's preferred alternative. Staff now proposes to abandon one of these less expensive options.

## **B. Administrative Inertia Does Not Justify Abandoning Option 2**

SEPA and NEPA require cities to conduct environmental review at the earliest stage possible, at a time when designs and plans for the proposal can still be altered or revised to minimize impacts. The SEPA and NEPA laws recognize that delaying environmental review can create a "snowballing" effect whereby a proposal improperly achieves administrative inertia such that later discovered impacts are not properly accounted for or considered. See, e.g., Magnolia Neighborhood Planning Council v. City of Seattle, 155 Wn. App. 305, 316, 230 P.3d 190 (2010) (citing King County v. Washington State Boundary Review Bd. for King County, 122 Wn.2d 648, 665, 860 P.2d 1024 (1993)).

<sup>2</sup> Because all of the Wilburton Connections are inextricably linked and are supposed to be designed to work together, NE 6th and NE 5th should also be combined with NE 4th/120th for purposes of environmental review.

<sup>3</sup> See December 6, 2010 City Council Agenda Memorandum: "Why is the grant [for 120th] in past-due status? . . . In the application the City committed to an October 1, 2010 obligation date. However, as the project design progressed, it quickly became apparent that the pace of design would need to be slowed to allow for coordination with design efforts on the NE 4th Street and NE 6th Street projects, both of which began after the 120th design phase."

City of Bellevue Mayor, Deputy Mayor and Councilmembers  
April 4, 2011  
Page 3

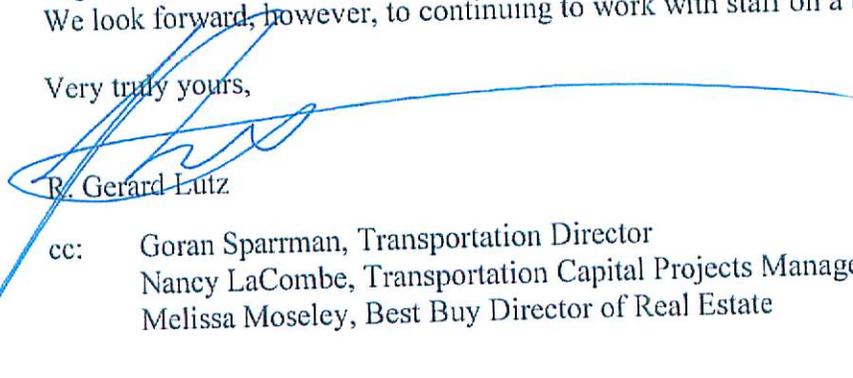
Staff is recommending removing Option 2 from consideration, stating that this would "sav[e] on engineering costs" and avoid "scheduling impacts". The engineering costs would not outweigh potential savings. The policy reason option 2 is being abandoned is because of improper administrative inertia for staff's preferred alternative. Simply put, staff has spent over \$1 million on designing its preferred alternative, staff incorporated its preferred alternative design into the Wilburton Connections LID analysis too soon, and staff tried to avoid a proper review of alternatives, creating potential "scheduling impacts" with the federal grant deadlines when it was caught by WSDOT.

Administrative inertia for staff's preferred alternative is not a valid justification to abandon studying option 2 or other reasonable alternatives. The impending grant deadlines (the "scheduling impacts") could and should have been avoided if staff had properly studied alternatives and conducted environmental review back in April of 2010 before moving forward with final design.

### C. Conclusion

Option 2 could save the City millions of dollars in costs. City staff's recommendation in April 2010 to complete final design for NE 4th has resulted in a chain of errors which are now being compounded. The City is more likely to lose its federal grants if it tries to rush the process and feign compliance with SEPA and NEPA. We request that staff's recommendation be rejected. We look forward, however, to continuing to work with staff on a better solution.

Very truly yours,



R. Gerard Lutz

cc: Goran Sparrman, Transportation Director  
Nancy LaCombe, Transportation Capital Projects Manager  
Melissa Moseley, Best Buy Director of Real Estate



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April 25, 2011

The Honorable Kevin Wallace, Councilmember  
Bellevue City Council  
450 – 110th Avenue N.E.  
Bellevue, WA 98004

**RE: Options for NE 4th Street Extension and Prior Environmental Review for 120th Stage 1 (300 to 700 blocks)**

Dear Councilmember Wallace:

Thank you for your inquiry regarding our April 4, 2011 letter to City Council submitted on behalf of Best Buy. To respond to one of your questions, you are correct that City staff had developed a NE 4th option with a parking garage over the Home Depot garden center. In the February 7, 2011 City Council study session materials, staff explained that "option 2" for NE 4th would shift the route to the south from staff's preferred alternative and would impact Home Depot parking. Staff discussed two structured parking alternatives for "option 2": one alternative built structured parking over the Home Depot garden center and another built structured parking adjacent to the contractor entrance. They are planning to drop further study of both, because both would move the road, which is what staff wants to avoid considering further.

You also asked us to elaborate upon and provide the basis for our statement that WSDOT's environmental review coordinator agreed in November 2010 that the City's proposed National Environmental Policy Act (NEPA) review had improperly segmented 120th Stage 1. As detailed below, our statement was based upon conversations, voicemails and emails we had with staff from WSDOT, which oversees that process, and informal discussion with Bellevue staff. Please note we have not been able to obtain the documents for the 120th Stage 1 NEPA review process, which were still in draft stage, nor correspondence (intra-agency memorandum between the City

The Honorable Kevin Wallace, Councilmember  
April 25, 2011  
Page 2

and WSDOT).<sup>1</sup> Although we do not have the draft NEPA documents, we recommend that you follow up with City staff to see if there are any documents bearing on your question.

The following is a timeline and summary of both the State Environmental Policy Act (SEPA) and NEPA review processes for 120th Stage 1, based on the information and documents we obtained to date:

- On April 23, 2009, the City Transportation Department met with the City's Development Services Department for a pre-application conference for 120th Stage 1. The permit file indicates consideration of whether the 120th widening might be exempt from SEPA review under WAC 197-11-800(2)(c) and consideration of how 120th Stage 1 related to NE 4th and NE 6th.<sup>2</sup> Development Services concluded that a clearing and grading permit, with SEPA review, would be required.
- On July 27, 2010, the Transportation Department submitted a clearing and grading permit application along with an environmental checklist for 120th Stage 1.<sup>3</sup> The environmental checklist acknowledged that 120th Stage 1 was part of the Wilburton Connections, but stated that those projects are "independent" of each other. The checklist did not describe or include impacts from NE 4th and NE 6th. On August 26, 2010, the City published notice of the application and that a determination of non-significance (DNS) was likely.
- On September 9, 2010, Best Buy submitted comments regarding the environmental checklist ("SEPA comment letter"), a copy of which is attached. One of Best Buy's comments was that the Wilburton Connections are essentially one project and thus it would be improper to conduct environmental review for 120th Stage 1 separately from the other pieces, and in particular the NE 4th extension (without which 120th widening provides no transportation benefit).
- In September 2010, we contacted WSDOT and learned from its staff that the City had recently initiated the NEPA review process. We submitted a copy of our SEPA comment letter to WSDOT and asked that our comments be considered as part of the NEPA review process.<sup>4</sup> We also asked for copies of the NEPA files but were told by WSDOT that the

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<sup>1</sup> This is consistent with the Public Record Act exemption for inter-agency memorandums and preliminary drafts. RCW 42.56.280 ("Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended are exempt under this chapter").

<sup>2</sup> See attached files for permit # 09-110080 XM.

<sup>3</sup> See Development Services Department files for permit # 10-119799 GC.

<sup>4</sup> Because SEPA was patterned after NEPA and the two acts have many of the same requirements, the majority of Best Buy's SEPA comments apply equally under NEPA.

The Honorable Kevin Wallace, Councilmember  
April 25, 2011  
Page 3

documents were still in draft stage and that we could obtain copies only when they were final.<sup>5</sup>

- In November 2010, I called Trevin Taylor, WSDOT's NEPA permit lead for 120th, to check on the status of NEPA review. On November 17, 2010, Mr. Taylor left me a voicemail stating that:

Right now as far as NEPA goes [for 120th Stage 1] it's in a holding pattern until [City staff] resolve some project descriptions with the definition of what they want to do, and some alignment things and stuff like that. So, technically, it is literally on my shelf until those things are resolved, and until those are resolved I don't really have the true alignment as to where they're wanting to go from point A to point B. In the meantime, I suppose if you want to track anything else, once again I'm going to have to send you back to the City until I get something that's actually solid and what they are projecting as the actual project. They had it segmented up in some sections that I wouldn't accept so I'm having them break it down and basically make a very clear project description from point A to point B that will lay out the alignment for my NEPA, and we can go from there.<sup>6</sup>

- I then contacted Mr. Taylor to obtain more details of WSDOT's NEPA review status. In response, on November 30, 2010, Phil Segami who is also with WSDOT sent me an email stating that "The city is looking at several options regarding the NEPA documentation for NE 4th St and 120th Ave NE projects. Therefore, we are not processing any NEPA documentation for either project at this time."<sup>7</sup> Shortly thereafter, we heard indirectly that City staff had decided that the environmental review process for 120th and NE 4th would be combined.

It is currently our understanding that staff intends to commence the SEPA process for that combined review sometime soon, and complete it by August, 2011. At the February 7, 2011 City Council study session, Nancy LaCombe explained that staff needed alignments for NE 4th and 120th identified by mid-March because environmental approval hinges upon the alternatives being in relatively final condition and approval must be obtained by August 2011 to secure the grant funds for 120th Stage 1.<sup>8</sup> Ms. LaCombe further explained that staff had revised and

<sup>5</sup> See attached Nov. 17, 2010 email from T. Taylor to E. Lin.

<sup>6</sup> See attached file memorandum transcribing the Nov. 17, 2010 voicemail.

<sup>7</sup> See attached Nov. 30, 2010 email from P. Segami to E. Lin.

<sup>8</sup> See February 7, 2011 City Council Study Session minutes at p. 7.

The Honorable Kevin Wallace, Councilmember  
April 25, 2011  
Page 4

"repackaged' environmental approvals so that the review would now combine NE 4th and 120th Stages 1, 2 and 3 into one document.

To our knowledge, there was never a determination made for the 120th Stage 1 environmental checklist; however, according to the Development Services Department, the 120th Stage 1 clear and grade permit application with SEPA was withdrawn or cancelled by the applicant on or about January 5, 2011.

We hope the above answers your questions. Please let us know if you have any further questions or concerns. Thank you.

Very truly yours,



Edward Lin

Enclosures

cc: Monica Buck, Deputy City Attorney  
Melissa Moseley, Best Buy Director of Real Estate

City of  
Bellevue



Post Office Box 90012 • Bellevue, Washington • 98009 9012

RE: **Preapplication Conference of April 23, 2009**  
**120<sup>th</sup> Ave NE (NE 300-700 Block)**  
File Number: 09-110080-XM

**Land Use Division, Planning & Community Development**

Staff contact- Drew Folsom, 425-452-4441, [dfolsom@bellevuewa.gov](mailto:dfolsom@bellevuewa.gov)

The project as described will widen the existing right of way, add a south bound lane to NE 4<sup>th</sup> Street, add sidewalks and increase the arterial capacity. As described the project would need SEPA review. No critical areas are mapped or observed in the field by staff.

**Permits Required:**

- Clearing and Grading permit with SEPA (or Preliminary SEPA Permit).

**Permit Process:** SEPA is a process II application which will require public notice.

**Environmental Review:** SEPA is required. Please fill out list completely addressing all transportation impacts, disturbance issues, and noise.

The information provided in this letter is an assessment of your proposal based on the information provided by you at our meeting. This information and direction is applicable for six months or until the Codes, standards or policies of the City are amended, whichever occurs first. Please be aware that this correspondence is not intended as a formal development review, but simply as informal feedback about potential development opportunities at the subject site.

(c) The construction or installation of minor road and street improvements such as pavement marking, freeway surveillance and control systems, railroad protective devices (not including grade-separated crossings), grooving, glare screen, safety barriers, energy attenuators, transportation corridor landscaping (including the application of Washington state department of agriculture approved herbicides by licensed personnel for right of way weed control as long as this is not within watersheds controlled for the purpose of drinking water quality in accordance with WAC 248-54-660), temporary traffic controls and detours, correction of substandard curves and intersections within existing rights of way, widening of a highway by less than a single lane width where capacity is not significantly increased and no new right of way is required, adding auxiliary lanes for localized purposes, (weaving, climbing, speed change, etc.), where capacity is not significantly increased and no new right of way is required, channelization and elimination of sight restrictions at intersections, street lighting, guard rails and barricade installation, installation of catch basins and culverts, and reconstruction of existing roadbed (existing curb-to-curb in urban locations), including adding or widening of shoulders, addition of bicycle lanes, paths and facilities, and pedestrian walks and paths, but not including additional automobile lanes

PROGAMATIC SEPA?

→ SEPA DEFINITELY

NE 4th

PART OF OVERALL PROJECT

→ EIS

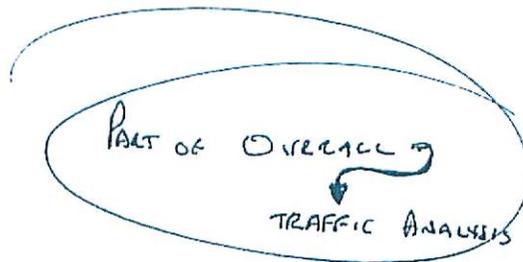
↳

ENVIRONMENTAL IMPACT STATEMENT  
→ WAS SEPA ALREADY DONE?

?

NE 4th

2011





DEVELOPMENT SERVICES DEPARTMENT  
ENVIRONMENTAL COORDINATOR  
450 110<sup>th</sup> Ave NE., P.O. BOX 90012  
BELLEVUE, WA 98009-9012

**OPTIONAL DETERMINATION OF NON-SIGNIFICANCE (DNS) NOTICE MATERIALS**

The attached materials are being sent to you pursuant to the requirements for the Optional DNS Process (WAC 197-11-355). A DNS on the attached proposal is likely. This may be the only opportunity to comment on environmental impacts of the proposal. Mitigation measures from standard codes will apply. Project review may require mitigation regardless of whether an EIS is prepared. A copy of the subsequent threshold determination for this proposal may be obtained upon request.

File No. 10-119799-XD  
Project Name/Address: 120th Ave NE/ Right of way of 120th Ave NE between 300 and 700 blocks)  
Planner: Drew Folsom  
Phone Number: (425) 452-4441

**Minimum Comment Period: September 9, 2010 5 p.m.**

Materials included in this Notice:

- Blue Bulletin
- Checklist
- Vicinity Map
- Plans
- Other:

Portions of Permit File # 10-119799-AD/GC Attachment 17

City of Bellevue Submittal Requirements	27a
<b>ENVIRONMENTAL CHECKLIST</b>	
7/23/2010	
<p>If you need assistance in completing the checklist or have any questions regarding the environmental review process, please visit or call Development Services (425-452-6800) between 8 a.m. and 4 p.m., Monday through Friday (Wednesday, 10 to 4). Assistance for the hearing impaired: Dial 711 (Telecommunications Relay Service).</p>	
<b>BACKGROUND INFORMATION</b>	
Property Owner:	City of Bellevue
Proponent:	City of Bellevue, Transportation Department
Contact Person:	Steve Costa (If different from the owner. All questions and correspondence will be directed to the individual listed.)
Address:	450 110th Ave. NE P.O. Box 90012 Bellevue, Washington 98009
Phone:	(425) 452-2845
Proposal Title:	120 <sup>th</sup> Avenue NE Phase 1 (300 block to 700 block)
Proposal Location:	120 <sup>th</sup> Avenue NE, extending approximately 750 feet north and 600 feet south of NE 5 <sup>th</sup> Street (Street address and nearest cross street or intersection) Provide a legal description if available.
Please attach an 8 1/2" x 11" vicinity map that accurately locates the proposal site.	
Give an accurate, brief description of the proposal's scope and nature:	
1. General description:	The proposed 120 <sup>th</sup> Avenue NE project will include widening the existing three- to four-lane roadway to five lanes (two lanes in each direction with center turn lane/turn pockets). The proposed roadway improvements also include curb and gutter, sidewalks, and 5-foot wide bike lanes on both sides of the roadway. These roadway improvements will begin within the 300 block of 120 <sup>th</sup> Avenue NE (south of the new intersection associated with the proposed extension of NE 4 <sup>th</sup> Street) and end within the 700 block (south of NE 8 <sup>th</sup> Street).
2. Acreage of site:	2.7 acres
3. Number of dwelling units/buildings to be demolished:	None
4. Number of dwelling units/buildings to be constructed:	None
5. Square footage of buildings to be demolished:	None
6. Square footage of buildings to be constructed:	None
7. Quantity of earth movement (in cubic yards):	Approximately 5,500 cubic yards (5,300 cubic yards cut; 200 cubic yards fill)

**Received**  
 JUL 27 2010  
 Permit Processing

JA 8/19/10

8. Proposed land use:	Transportation Improvements (roadway/sidewalk/bike lanes)
9. Design features, including building height, number of stories and proposed exterior materials:	No buildings will be constructed as part of the project.
10. Other	

Estimated date of completion of the proposal or timing of phasing:

Construction is planned to begin in December 2010 and last approximately 10 months.

Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.

The proposed project is part of the Wilburton Connections. Wilburton Connections is a group of high priority transportation projects in the west section of the Wilburton area. These projects are independent of each other but also support increased connectivity between Wilburton, Downtown Bellevue, and the Bel-Red neighborhoods. They are:

- 120th Avenue NE Widening: 300 block to the 700 block
- 120th Avenue NE: NE 8th to NE 12th
- NE 4th Street Extension: 116th Avenue NE to 120th Avenue NE
- NE 5th Street Neighborhood Traffic Plan
- NE 6th Street Extension: I-405 to 120th Avenue NE

List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.

- Geotechnical Investigation Report
- Air Quality "Hot Spot" Analysis Technical Memorandum
- Noise Technical Report
- Phase I Environmental Site Assessment Technical Memorandum
- WSDOT Local Programs Environmental Classification Summary (ECS) checklist
- No Effect Letter (demonstrating responsibilities under Section 7c of the Endangered Species Act)

Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain. List dates applied for and file numbers, if known.

None known.

List any government approvals or permits that will be needed for your proposal, if known. If permits have been applied for, list application date and file numbers, if known.

1. City of Bellevue Clearing and Grading Permit
2. NPDES Baseline General for Construction
3. TESC Plans
4. ROW Use Permit
5. Developer Extension

Please provide one or more of the following exhibits, if applicable to your proposal.  
(Please check appropriate box(es) for exhibits submitted with your proposal):

- Land Use Reclassification (rezone) Map of existing and proposed zoning

*DA 8/15/10*



R. Gerard Lutz  
PHONE: (425) 635-1403  
FAX: (425) 635-2403  
EMAIL: [J.Lutz@perkinscoie.com](mailto:J.Lutz@perkinscoie.com)

The PSE Building  
10885 N.E. Fourth Street, Suite 700  
Bellevue, WA 98004-5579  
PHONE: 425.635.1400  
FAX: 425.635.2400  
[www.perkinscoie.com](http://www.perkinscoie.com)

September 9, 2010

**HAND-DELIVERED AND EMAIL**

Drew Folsom  
Development Services Department  
Environmental Coordinator  
450 – 110th Avenue N.E.  
Bellevue, WA 98004  
[dfolsom@bellevuewa.gov](mailto:dfolsom@bellevuewa.gov)

**RE: Comments Regarding Widening of 120th Ave NE/Right of Way Between 300 and 700 Blocks (File No. 10-119799-XD)**

Dear Mr. Folsom:

On behalf of our client, Best Buy Stores LP ("Best Buy"), we submit the following comments and objections to the City of Bellevue's Optional Determination of Non-Significance ("DNS") Notice Materials related to the 120th Avenue NE Segment 1 (between the 300 and 700 blocks) proposal ("Segment 1 Proposal"). Best Buy operates a store at 457 120th Avenue NE and it appreciates the City's efforts to improve transportation and relieve congestion. However, Best Buy is concerned that the City is rushing the Segment 1 Proposal without proper consideration of possible alternatives or the full environmental impacts of connected transportation actions. The City has not completed environmental review of the NE 4th extension alignment. The Segment 1 Proposal prejudices that process; the improvements to 120th south of NE 5th Street only make sense if a NE 4th Street alignment is selected. Because of this mistaken assumption regarding the NE 4th Street extension design, the current Segment 1 Proposal unnecessarily proposes to take Best Buy's NE 120th frontage and improve lanes south of potential NE 4th extension alignment alternatives.

This haste to move forward with a dependent part of a bigger proposal is contrary to the State Environmental Policy Act, Chapter 43.21C RCW ("SEPA"). SEPA requires that connected actions be concurrently reviewed in order "to avoid the adverse impact upon the environment which takes place when various phases of a project, or a series of projects, are authorized by

65555-0006/LEOAL19074560.1

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Perkins Coie LP and Affiliates

Drew Folsom  
Development Services Department  
September 9, 2010  
Page 2

governmental agencies in a piecemeal fashion without regard to the cumulative impact of the total development." *Juanita Bay Valley Cmty. Ass'n v. City of Kirkland*, 510 P.2d 1140, 1149 (1973).<sup>1</sup> SEPA also requires consideration and analysis of alternatives to proposed action. See, e.g., WAC 197-11-060(3)(a)(iii) ("Proposals should be described in ways that encourage considering and comparing alternatives"). During the pendency of environmental review, SEPA prohibits any action that would limit the choice of reasonable alternatives. WAC 197-11-070(1). Finally, Environmental Checklists must accurately describe projects and their impacts. WAC 197-11-960. As discussed further below, the current Segment 1 Proposal fails to meet each of these requirements.

Given that the Segment 1 Proposal will likely have a significant adverse environmental impact, Best Buy respectfully requests that a determination of significance be issued or, alternatively, that additional information be required before issuance of a threshold determination. In either case, the City should be required to properly define the scope of the proposed action to include the entire Wilburton Connection Actions (or, at a minimum, the Segment 1 Proposal and the NE 4th Street extension), provide sufficient and accurate information regarding likely adverse impacts, and then provide for further public notice and comment.

More specific comments regarding the inadequacies and inaccuracies in the current DNS notice are below.

**A. The Segment 1 Proposal is Not Independent of the Other Wilburton Connections, Particularly the NE 4th Extension.**

SEPA requires that proposals or parts of proposals "that are related to each other closely enough to be, in effect, a single course of action" be evaluated in the same environmental document. WAC 197-11-060(3)(b). Actions are considered closely related and must be evaluated together if either they "[c]annot or will not proceed unless the other proposals (or parts of proposals) are implemented simultaneously" or they are "interdependent parts of a larger proposal and depend on the larger proposal as their justification or for their implementation." *Id.* Concurrent review of connected actions avoids making later environmental review of a project

<sup>1</sup> SEPA was patterned after the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq.*, ("NEPA") and the two acts have many of the same requirements. *Juanita Bay Valley Cmty. Ass'n*, 510 P.2d at 1146. NEPA also prohibits improper "piecemealing" of environmental review, *Thomas v. Peterson*, 753 F.2d 754, 758 (9th Cir. 1985), requires that an agency "[r]igorously explore and objectively evaluate all reasonable alternatives," 40 C.F.R. § 1502.14(a); *Ilio 'aokalani Coalition v. Rumsfeld*, 464 F.3d 1083, 1095 (9th Cir. 2006), and provides that the agency must "independently evaluate the information submitted" and "shall be responsible for its accuracy," 40 C.F.R. § 1506.5.

Drew Folsom  
Development Services Department  
September 9, 2010  
Page 3

element a mere formality. *See Concerned Taxpayers Opposed to Modified Mid-South Sequim Bypass v. State Dep't of Transportation*, 951 P.2d 812 (1998).

Here, the NE 4th Street extension, the NE 6th Street extension, the NE 5th Street mitigation efforts, and the Segment 1 Proposal (collectively, "Wilburton Connection Actions") are not only interrelated but are essentially one project. Coordination of the Wilburton Connection Actions is imperative to ensure that the overall results meet the City's purposes and needs. The primary purpose of the Segment 1 Proposal is to accommodate the NE 4th Street extension. Thus, work on both pieces has been scheduled to occur simultaneously or in close succession. In addition, the Segment 1 Proposal is closely related to improving "Segment 2" of 120th Avenue NE (from just south of NE 8th Street to south of NE 12th Street) and "Segment 3" (from NE 12th Street to Northup Way). Accordingly, the probable adverse environmental impacts of the Segment 1 Proposal must be considered in the context of the broader impacts of the foreseeable Wilburton Connection Actions. At a minimum, the probable adverse environmental impacts of the Segment 1 Proposal should be considered simultaneously with the NE 4th Street Extension impacts.

Such concurrent review of the Segment 1 Proposal and the NE 4th Street extension action is consistent with the City's previous planning documents. For example, in a 2009 federal grant application, the City described how the Segment 1 Proposal and the NE 4th Street extension are one project and combine to create the first link in a new route between I-405 and SR 520.<sup>2</sup> The City requested funding for construction of both activities, with funding to be obligated on a coordinated timeline. The City was awarded \$2.6 million for Segment 1 construction, but was placed on a contingency list for the NE 4th Street construction.

Now, page 2 of the Environmental Checklist states that the Wilburton Connections Actions are "independent of each other." This statement is factually incorrect and also inconsistent with the grant application and other prior statements by the City and the Transportation Department. Attached Exhibit A provides a list of examples, including some of the City's own statements, showing that the Segment 1 Proposal is interdependent with and a part of other Wilburton Connections proposals.

It appears the advancement of Segment 1 permitting before review is complete for connected actions is being driven by financing objectives, not by design, function or environmental purposes. The City cannot isolate environmental review of the Segment 1 Proposal from the NE 4th action (or other connected proposed actions) simply because the City received funding for one element but not the other. Such review of the Segment 1 Proposal in

<sup>2</sup> 2009 STP/CMAQ Regional Competition Application pp. 2-3, available at [http://www.psrc.org/assets/3039/01\\_BellevueNE4th.pdf](http://www.psrc.org/assets/3039/01_BellevueNE4th.pdf)

Drew Folsom  
Development Services Department  
September 9, 2010  
Page 4

isolation improperly avoids discussion of cumulative impacts, avoids present consideration of proposals required to be evaluated in a single document under WAC 197-11-060(3)(b), and is illogical considering interconnected design and impact issues.

In sum, the Environmental Checklist is inadequate and misleading as it isolates the effects of the current proposal from the overall Wilburton Connections project. The primary purpose of the Segment 1 Proposal is to accommodate the NE 4th Street Extension, which in turn is part of a larger project connecting downtown with the Bel-Red and Overlake areas. Without the NE 4th Street extension or other Wilburton Connections pieces, the widening of 120th Avenue NE between the 300 and 700 blocks in preparation for these extensions is akin to a "road to nowhere." Separating the current proposal from the other Wilburton Connections pieces (particularly the NE 4th Street extension) for purposes of environmental review violates SEPA and is contrary to the City's own prior transportation planning.

**B. The City Has Not Examined Alternatives That Are Necessary to Determine the Scope of the Segment 1 Improvements.**

SEPA requires that reasonable alternatives for a project action be examined on a project-specific basis during the environmental review process. "Reasonable alternatives" include any actions that "could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation." WAC 197-11-786; *see also King County v. Central Puget Sound Board*, 138 Wn.2d 161, 184-85 (1999). Reasonable alternatives must be evaluated to ensure that decision-makers have information available to properly consider opportunities to avoid, minimize and/or mitigate environmental impacts of a proposed action. *See, e.g., Kiewit Construction Group, Inc. v. Clark County*, 83 Wn. App. 133 (1996).

In April 2010, the City chose a "preferred route" for the NE 4th Street extension; however, the City has not yet conducted proper environmental review for the NE 4th action. Despite the lack of SEPA review for NE 4th, the current proposal not only incorporates the preferred route, but also limits the choice of reasonable alternatives for extension of NE 4th Street. For example, the Segment 1 Proposal is inconsistent with the "Mutual Materials/Bellevue School District" alternative for NE 4th. That alternative would provide the best mitigation and design for flow through traffic when the City designs and implements a NE 5th Street neighborhood traffic plan and improves the 120th/NE 8th intersection. Thus, Best Buy objects to the current proposal as it creates significant inertia to the NE 4th route choices such that later environmental review and consideration of alternatives will become an exercise in post hoc rationalization.

Drew Folsom  
Development Services Department  
September 9, 2010  
Page 5

Also, the City has failed to consider alternatives to the timing of the Segment 1 Proposal with other interconnected proposals. For example, there is no need for or purpose in widening 120th Avenue NE south of NE 5th Street unless it is certain that the NE 4th Street extension will intersect 120th south of NE 5th Street. It would be a waste of City resources and would result in unnecessary adverse impacts to construct the current proposal if the related extensions are not completed or are significantly altered during SEPA review.

In addition, construction of the NE 4th/120th Segment 1 section prior to the NE 8th/120th Segment 2 improvements will likely create a bottleneck and encourage traffic to cut through the Wilburton residential area. In order to minimize cut through traffic, the City should consider constructing the 120th/NE 8th improvements prior to the Segment 1 Proposal.

The impacts of alternatives have not yet been sufficiently analyzed and the City must consider this information to make a reasoned choice regarding coordination of the current proposal with the NE 4th and NE 6th street extensions, the NE 5th mitigation, and the NE 8th/120th intersection improvements.

**C. Portions of the Environmental Checklist are Inaccurate, Misleading or Inadequate.**

In addition to the above, parts of the Environmental Checklist ("Checklist") appear to be inaccurate or lacking in sufficient detail. The Checklist includes numerous conclusory determinations that Segment 1 will have little or no environmental impact, but it does not cite supporting studies or analysis. For example, sections 8 (Land Use) and 12 (Transportation) are inaccurate or at least misleading in that they suggest that there is no adverse impact from the current proposal. It is Best Buy's understanding based on past discussions with City staff that the widening of 120th Avenue NE will require taking and impacting parking spaces from adjacent properties.<sup>3</sup> Accordingly, section 14(c) of the Checklist, which states "[t]he project does not create or eliminate parking spaces," appears to be incorrect. Also, section 8(c) states that "[t]here are no structures within the project alignment," and does not clarify that there are parking lots in the alignment.<sup>4</sup> Sections 8(j) and (k) state that no persons will be displaced and that there are no displacement impacts. This is misleading because the City will have to compensate affected property owners for lost parking and restoration damages.<sup>5</sup> The Checklist also fails to describe

<sup>3</sup> For example, meeting notes prepared by the City from a January 28, 2010 meeting with Best Buy and other stakeholders memorializes that "Nancy [LaCombe, City of Bellevue Transportation Department,] mentioned how the 120th Avenue project will have some impact on parking and plantings in the front."

<sup>4</sup> The term "structures" is "not limited to buildings, but can include bridges, cell towers, fuel tanks, pipelines, etc." Washington Dept. of Ecology, SEPA Guide for Project Applicants p. 20 (Ecology Publication #02-06-018, revised August 2002).

<sup>5</sup> The SEPA Guide for Project Applicants instructs applicants for section 8(j) to "[d]escribe the current use of the site as well as the number of persons displaced. Include both the people that use the site formally (reside, work, etc.)

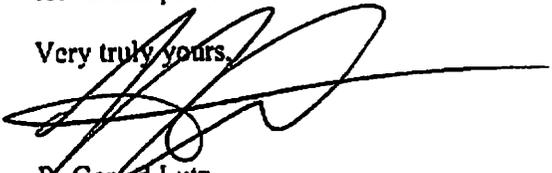
Drew Folsom  
Development Services Department  
September 9, 2010  
Page 6

or mention impacts to local businesses and residents during construction or the increased traffic due to the related NE 4th and NE 6th street extensions. The incomplete, misleading or inaccurate information provided in the Checklist does not provide the basis for issuance of a threshold determination.

**Conclusion.**

The Segment 1 Proposal will likely have a significant adverse environmental impact and thus a determination of significance should be issued. Alternatively, additional information should be required before issuance of a threshold determination. In either case, the City should be required to properly include the entire Wilburton Connections project (or, at a minimum, the Segment 1 Proposal and the NE 4th Street extension) in the same environmental review process, provide sufficient and accurate information regarding likely adverse impacts, and then provide for further public notice and comment.

Very truly yours,



R. Gerard Lutz

Cc: Melissa Moseley, Director Real Estate Best Buy  
Kate Berens, Deputy City Attorney  
Steve Costa, Senior Project Manager, Transportation Department  
Marina Arakelyan, Senior Project Manager, Transportation Department  
Bob Shay, President, Wilburton Community Council  
Trevin Taylor, WSDOT Highways and Local Programs Division  
Phil Segami, WSDOT Northwest Region

and informally (recreation, transportation, etc.)." SEPA Guide for Project Applicants at p. 21. The City failed to describe current uses of the road and the parking spaces for transportation and parking.

Drew Folsom  
Development Services Department  
September 9, 2010  
Page 7

### **EXHIBIT A**

The following is a list of examples--from the City's own documents, public statements, or documents in the City's planning processes--showing that the current proposal is interrelated and interdependent with other pieces of Wilburton Connections, and more particularly with the extension of NE 4th.

- TFP-207 of the City's 2009-2020 Transportation Facilities Plan ("TFP") describes the current proposal, the extension of NE 4th Street, and the NE 5th Street neighborhood traffic plan as one project. Similarly, the City's Final Environmental Impact Statement 2009-2020 Transportation Facilities Plan describes the TFP-207 project as follows:

The 4th Street Extension will consist of 5 vehicle lanes, bike lanes, sidewalks and will require construction of a sunken roadway and bridge(s) for BNSF RR tracks and Pedestrian over crossings. Neighborhood traffic mitigation will be evaluated to discourage cut through traffic on NE 5th Street east of 120th. 120th Avenue NE will be widened to five lanes with bike lanes between the 4th St. Ext. and NE 8th Street. This project does not include improvements to the intersection with NE 8th St. This project will be coordinated with potential private development in the immediate vicinity.

(Emphasis added).

- The City's CIP Plan No. PW-R-161 for Segment 1 (adopted in February 2010) describes the rationale behind Segment 1 as follows: "The 120th Avenue Improvements project in association with the extension of NE 4th Street, the planned extension of NE 6th Street, the planned NE 15th/16th Street multi-modal corridor, and improvements to 124th Avenue NE will support increased connectivity between Downtown Bellevue, the new Bel-Red transit-oriented-development node, and the Overlake regional growth centers. The new route will provide an alternate to and relieve congestion at key intersections including NE 8th Street and 112th Avenue NE and NE 8th Street at 116th Avenue NE." Segment 1 alone does not relieve congestion at the key intersections mentioned. The rationale for the improvements only makes sense when viewing the proposals together. A nearly identical rationale is stated for the CIP Plans for the NE 4th and NE 6th street extensions (No. PW-R-160 and No. PW-R-162), which further shows that the proposals are essentially parts of a larger project.

Drew Folsom  
Development Services Department  
September 9, 2010  
Page 8

- Until completion of the 120th Avenue NE/NE 8th Street intersection improvements (Segment 2), there will be nowhere for increased traffic to go once the NE 4th Street and NE 6th Street extensions are complete, except for into the Wilburton neighborhood. A Draft Traffic Operations Analysis Report conducted for the City describes the 120th/NE 8th intersection and states "Without the addition of capacity at this intersection the poor existing level of service at this intersection would be exacerbated as additional traffic volume is introduced from growth and network improvements through the intersection in coming years."<sup>6</sup> Similarly, the Report describes the 120th/NE 5th intersection and states "In a potential future condition of excessive travel delay at the intersection of 120th Avenue NE and NE 8th Street cut-through traffic to 124th Avenue NE via NE 5th Street could occur. Any significant increase in use by commuter cut-through traffic will present concerns over community livability, safety, and complicate intersection operations at both the intersections of NE 5th Street at 120th Avenue NE and NE 5th Street at 124th Avenue NE."<sup>7</sup> Similar concerns have been raised by Wilburton residents.<sup>8</sup>
- The City staff advocated the "Best Buy" NE 4<sup>th</sup> alternative alignment on the assumption that only one property owner will be affected. However, if Mutual Materials, the School District Bus Barn or both must move anyway as a result of the NE 6th extension project, then the damage to Best Buy could be avoided with no additional impact to surrounding property owners by siting the NE 4<sup>th</sup> extension through those properties. That route would present other opportunities for minimizing environmental impacts. For example, several commenters at the NE 5th Street Traffic Committee Meeting No. 1 expressed that the NE 4th Street extension should connect north of the 120th/NE 5th intersection so as to reduce cut-through traffic. See Summary of NE Fifth Street Traffic Committee Meeting No. 1 at p. 6 (May 25, 2010) ("The City should consider connecting [NE 4th and NE 6th] just north of NE 5th Street, to avoid traffic "sweeping" from NE 4th onto NE 5th Street").<sup>9</sup>

<sup>6</sup> INCA Engineers, Inc., *Draft Traffic Operations Analysis Report: 120th Avenue NE, Phase 1 (NE 3rd Street to NE 7th Street)* at p. 12 (November 2009).

<sup>7</sup> *Id.* at 9.

<sup>8</sup> See, e.g., Summary of NE Fifth Street Traffic Committee Meeting No. 1 (May 25, 2010) ("The city is essentially adding 'two more pipes' with the NE 4th Street and NE 6th Street extensions into a funnel that is already at capacity. There will be nowhere for the extra traffic to go except for into our community and particularly on NE 5th Street").

<sup>9</sup> Available at [http://www.ci.bellevue.wa.us/pdf/Transportation/wilburton\\_conn\\_5th\\_street\\_traff\\_comm\\_summary\\_052510.pdf](http://www.ci.bellevue.wa.us/pdf/Transportation/wilburton_conn_5th_street_traff_comm_summary_052510.pdf).

Drew Folsom  
Development Services Department  
September 9, 2010  
Page 9

- A January 20, 2009 City Council Agenda Memorandum regarding Resolution No. 7874 (endorsing the Mobility and Infrastructure Finance Plan) described the NE 4th Extension and improvements to 120th Avenue NE (from NE 4th all the way to NE 10th) as one project:

NE 4th extension, from 116th to 120th Avenue NE (\$50M). This project will construct a 5 lane arterial street, connecting the NE 4th Street/I-405 interchange with 120th Avenue NE. The project includes realignment of the 120th/NE 8th intersection with lane transition on 120th to NE 10th Street.

(Second emphasis added).

- In conjunction with the 2009 Mobility and Infrastructure Finance Plan, a February 2, 2009 City Council Agenda Memorandum discusses Resolution No. 7876, which authorizes a feasibility analysis of a proposed Local Improvement District to help pay for the combined NE 4th Street Extension and widening of 120th Avenue NE "from the [NE 4th] extension through the intersection with NE 8th Street." It describes the NE 4th Street Extension/120th Avenue NE widening "as the first leg of a new connection" between downtown and the Bel-Red area's redevelopment.

**Lin, Edward C. (Eddie) (Perkins Coie)**

---

**From:** Taylor, Trevin [TaylorT@wsdot.wa.gov]  
**Sent:** Wednesday, November 17, 2010 4:19 PM  
**To:** Lin, Edward C. (Eddie) (Perkins Coie)  
**Subject:** RE: 120th Avenue NE Widening Project (300-700 blocks) NEPA Review

Yes after they are out of the Draft Stage. All NEPA documentation is draft at this time and subject to change. Bellevue may be able to share their current plans although I do not know Bellevue's policies on what documents they share.

---

**From:** Lin, Edward C. (Eddie) (Perkins Coie) [mailto:ELin@perkinscoie.com]  
**Sent:** Wednesday, November 17, 2010 4:14 PM  
**To:** Taylor, Trevin  
**Subject:** RE: 120th Avenue NE Widening Project (300-700 blocks) NEPA Review

Mr. Taylor,

Thanks for calling me back today. Would it be possible to get copies of the NEPA file (including copies of the Environmental Classification Summary and your responses) or do I need to obtain that from the City? Thanks.

Eddie Lin



November 19, 2010

TO: File  
C/M #65555-0006

FROM: Edward C. Lin

RE: **Voicemail Received from Trevin Taylor, Highways and Local Programs,  
WSDOT Re City of Bellevue 120th NEPA review  
November 17, 2010, 11:21 a.m.**

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Hello Mr. Lin, this is Trevin Taylor, Highways and Local Programs, just getting back to you on the NEPA for your, lets see which project this is again, Bellevue, 120th Avenue. Right now as far as NEPA goes it's in a holding pattern until they resolve some project descriptions with the definition of what they want to do, and some alignment things and stuff like that. So, technically, it is literally on my shelf until those things are resolved, and until those are resolved I don't really have the true alignment as to where they're wanting to go from point A to point B.

In the meantime, I suppose if you want to track anything else, once again I'm going to have to send you back to the City until I get something that's actually solid and what they are projecting as the actual project. They had it segmented up in some sections that I wouldn't accept so I'm having them break it down and basically make a very clear project description from point A to point B that will lay out the alignment for my NEPA, and we can go from there. But in the meantime, they're in a holding pattern as far as I go.

Feel free to call me with anything else, and sorry for the long message. Have a good day.

**Lin, Edward C. (Eddie) (Perkins Coie)**

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**From:** Segami, Phil [SegamiP@wsdot.wa.gov]  
**Sent:** Tuesday, November 30, 2010 4:41 PM  
**To:** Lin, Edward C. (Eddie) (Perkins Coie)  
**Cc:** Taylor, Trevin; JBenn@bellevuewa.gov  
**Subject:** RE: 120th Avenue NE Widening Project (300-700 blocks) NEPA Review

Mr. Lin,

The city is looking at several options regarding the NEPA documentation for NE 4<sup>th</sup> St and 120<sup>th</sup> Ave NE projects. Therefore, we are not processing any NEPA documentation for either project at this time. In the future, please contact Jen Benn to coordinate review of NEPA documentation for these projects. Thanks.

Phil

Phil Segami  
Local Programs  
WSDOT NW Region  
P.O. Box 330310  
Seattle, WA 98133  
206-440-4736

CITY OF BELLEVUE  
CITY COUNCIL

Summary Minutes of Study Session

February 7, 2011  
6:00 p.m.

Council Conference Room  
Bellevue, Washington

**PRESENT:** Deputy Mayor Lee and Councilmembers Balducci, Chelminiak, Degginger, Robertson, and Wallace

**ABSENT:** Mayor Davidson

1. **Executive Session**

Deputy Mayor Lee called the meeting to order at 6:04 p.m., noting that Mayor Davidson was absent because he was not feeling well. There was no Executive Session.

2. **Study Session**

- (a) Continued discussion of the Hearing Examiner's Findings, Conclusions and Recommendation regarding the proposed Wilburton Connections Local Improvement District (LID) for the purpose of constructing an extension to NE 4<sup>th</sup> Street between 116<sup>th</sup> and 120<sup>th</sup> Avenues NE and constructing improvements to 120<sup>th</sup> Avenue NE between the NE 4<sup>th</sup> Street extension and NE 8<sup>th</sup> Street.

*[Previously discussed with Council on September 13 and 20, and December 6, 2010. Further discussion postponed to tonight's meeting. Staff seeks Council direction on whether to initiate formation of the proposed LID tonight or at a future Council meeting.]*

Councilmember Degginger recused himself from consideration of this matter, noting that his law firm has been representing a party potentially involved in the proposed LID.

City Manager Steve Sarkozy noted that both agenda items relate to the Wilburton Connections NE 4<sup>th</sup> Street extension project. He recalled that on September 20, 2010, the Council approved Resolution No. 8141 declaring the intent to consider the formation of the Wilburton Connections LID (Local Improvement District). The public hearing was held in October, and the Hearing Examiner's report was submitted to the Council in December.

February 7, 2011 Study Session  
Page 7

the purchase of Mutual Materials as well as a portion of the Bellevue School District site. Option 2 maintains the Best Buy structure but moves the loading dock to the north end of the building. It requires a garage structure for Home Depot, the purchase of Mutual Materials, and a portion of the BSD property. Ms. LaCombe noted that the future extension of NE 6<sup>th</sup> Street would have greater impacts for the Mutual Materials and BSD sites.

The estimated cost of the current NE 4<sup>th</sup> Street preferred alternative is \$31.3 million. Option 1 is estimated at \$27.9 million, and Option 2 is estimated at \$29.1 million. Ms. LaCombe said the alignments need to be identified by mid-March because the environmental approvals hinge upon the alternatives for both NE 4<sup>th</sup> Street and 120<sup>th</sup> Avenue NE being in relatively final condition. Environmental approval must be obtained by August in order to secure the grant funds for the 120<sup>th</sup> Avenue project.

Ms. LaCombe reviewed the LID project schedule. She described the splitting of NE 4<sup>th</sup> Street into two construction stages. Phase 1, 116<sup>th</sup> Avenue to the Burlington Northern right-of-way, could begin as early as February 2012. Project completion is scheduled for 2013, but the LID special benefit analysis and assessments would not begin until 2014/2015. Staff continues to work closely with affected stakeholders to refine the options. Next steps are to engage in relocation assistance to address property impacts and mitigation, complete the environmental process, and to provide Council updates on the project status.

Ms. Buck said staff is seeking Council direction about whether to bring back an LID Formation Ordinance for the February 22 Council meeting. There is a 30-day protest period following adoption of the Formation Ordinance, which would end on March 24. There is then an additional legal challenge period of 30 days, which would end on April 23. The City cannot apply for bonds until the challenge period expires.

Ms. Buck summarized that LID formation preserves the City's authority to utilize LID funding for the NE 4<sup>th</sup> Street and 120<sup>th</sup> Avenue NE Stage 1 projects, positions the City for bond issuance, and supports the Mobility and Infrastructure Initiative Finance Plan. The LID is included in the 2011-2017 Capital Investment Program (CIP) Plan, and the Council will need to consider property owner impacts and benefits.

Councilmember Chelminiak said that February 22 is too soon for making the decision. He would like to proceed with more staff work related to the formation of the LID. He noted that staff is developing options to reduce project and right-of-way costs. However, he suggested that some modifications under consideration could add costs.

Mr. Chelminiak would like staff to look at parcels 104 and 105 (North side of NE 8<sup>th</sup> Street), which are affected by the new intersection going through them. He wondered whether it makes sense to include them in the LID. He would like language in the ordinance indicating that the maximum amount to be funded by future LID assessments is 20 percent of overall project costs. However, he acknowledged that a future City Council will make the final decision.

## **EXHIBIT H**

**Best Buy Comments Regarding NE 4th Street/120th Ave NE  
Corridor Project SEPA Review (July 21, 2011)**

**Development Services Department File No. 11-114971-LM**

**Inghram, Paul**

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**From:** Inghram, Paul  
**Sent:** Tuesday, March 30, 2010 4:11 PM  
**To:** LaCombe, Nancy; Mattar, Mike; Arakelyan, Marina; Johnson, Gwynne  
**Subject:** RE: NE 4th Street extension project

I wouldn't call the redevelopment of the remnants a Comp Plan requirement, but it is important to achieving the Comp Plan vision. The southern alternatives leave a more usable and larger site to the north to facilitate future development. A 5<sup>th</sup> Street option may save the current Best Buy, but it reduces the size of the redevelopment site to the north and leaves a difficult to redevelopment remnant to the south.

Paul

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**From:** LaCombe, Nancy  
**Sent:** Monday, March 29, 2010 10:02 AM  
**To:** Mattar, Mike; Arakelyan, Marina; Johnson, Gwynne; Inghram, Paul  
**Subject:** RE: NE 4th Street extension project

My understanding is that one of the reasons the NE 5<sup>th</sup> wasn't as desirable with the village vision was the size of the remnant parcel that was left. I'm not sure how we capture that – taking verbiage straight from the Comp Plan doesn't necessarily address the size of a parcel. I don't think we ever said it conflicted with it, we just noted it wasn't consistent with the vision.

Paul? Any thoughts?

Gwynne, et al – was there a meeting prior to our meeting in January with Best Buy? I recall there was one previous to Melissa Moseley coming down from BC, but I don't see any minutes from that meeting.

Nancy LaCombe  
Capital Projects Manager  
City of Bellevue Transportation  
450-110th Avenue NE  
P.O. Box 90012  
Bellevue, WA 98009-9012  
425-452-4382  
Fax 425-452-2874

Please consider the environment before printing this e-mail.

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**From:** Mattar, Mike  
**Sent:** Monday, March 29, 2010 8:01 AM  
**To:** Arakelyan, Marina; LaCombe, Nancy; Johnson, Gwynne  
**Subject:** FW: NE 4th Street extension project

Maybe Paul can address the Village Vision issue. --Mike

---

**From:** Johnson, Gwynne  
**Sent:** Monday, March 29, 2010 7:39 AM  
**To:** Arakelyan, Marina; Oswell, Kenneth

Public Comment Letters

Attachment 17

**Cc:** Mattar, Mike; Berens, Mary Kate; Jacobs, Max  
**Subject:** FW: NE 4th Street extension project

Below FYI

(my yellow highlight)

I wonder if we could refer them to some general written information, guidelines, planning concepts, or, perhaps, Council direction, regarding the efficacy of a "grid" as we have discussed throughout this process? I could see where this might be so general and understood as not to be referenced directly in the "Village Vision". However, we might help ourselves if we could forward them a concise explanation that is easily understood by the public.

Gwynne

**From:** Lutz, Jerry (Perkins Coie) [mailto:JLutz@perkinscoie.com]  
**Sent:** Sunday, March 28, 2010 8:40 PM  
**To:** Johnson, Gwynne; Berens, Mary Kate  
**Cc:** Moseley, Melissa; Shmel, Dwayne; Helper, Cara  
**Subject:** RE: NE 4th Street extension project

Dear Gwynne (and Kate):

I understand that my comments at the City's open house are being misquoted, in particular with respect to Best Buy's ability to remain in Bellevue if the City condemns a portion of the current Best Buy location (e.g., "Option 1"). To be clear, Best Buy has not made any decision, and need not yet make a decision, regarding its options if a portion of the building is to be condemned, and Best Buy has no reasonable alternative Bellevue location to which to relocate. At present, Best Buy is investigating its options, and has not located a suitable alternative, should the City decide to proceed with a NE 4th Option that condemns a portion of the Best Buy store. Depending on how much of the building, parking and other infrastructure are taken, the Best Buy property may become unusable for the purposes of Best Buy. In that case, Best Buy may have no alternative but to close and move, potentially out of Bellevue. However, this is an extremely successful store, and if Best Buy is truly without other options, it remains conceivable that Best Buy could find a workable solution at the site.

Of the options presented at the City's open house, Best Buy's strong preference is the NE 5th Street option, which would preserve the store. We will be providing further comments and information in support of the NE 5th option, which we also believe can be designed to provide the best protection to the Wilburton neighborhood against flow through traffic, particularly if the City's planned improvements north and east of the 120th NE/NE 8th Intersection are not completed first. (Note also, we have yet to find any provision in the Village Vision supporting staff's assertion at the open house that the NE 5th option would conflict with that vision.)

Both Best Buy and Home Depot have reciprocal parking rights and detention facilities that would be affected to a greater or lesser degree by Option 1 and other the alignments that split their two stores. However, recognizing that each alternatives the City is considering present challenges, Best Buy has asked Dwayne Shmel to prepare and send City staff a conceptual plan for expansion of the Best Buy store and parking to the north, of equivalent size to the scope of the take proposed for Option 1. The idea behind this concept would be for the City to acquire for and provide to Best Buy property to the north (a portion of the Mutual Materials site and a portion of the School District bus yard). We were informed by City transportation staff at the City's open house that the adjacent Mutual Materials property may become available because Sound Transit has determined it must take the northerly portion of Mutual Materials' property for the NE 6th extension, and has determined that the remainder would be an uneconomic remnant to Mutual Materials. As we discussed the possibilities with staff, it appeared the City might be able to acquire from Sound Transit and convey to the Bellevue School District the northerly portion of the Mutual Materials remnant to be used as replacement school bus yard, and then to convey to Best Buy the remainder of the remnant, and a strip along the southerly boundary of the School District bus property extending to NE 120th Street. This is, for Best Buy, far less desirable than the NE 5th option, but might be a workable option for Best Buy if the appropriate contractual and land use arrangements can be made.

Public Comment Letters

Attachment 17

Other options shown at the Open House had other problems. For example, the City's attempt to provide an access from NE 4th (extended) for delivery truck access to the westerly side of the store does not appear workable without rights and a path for the trucks to exit the site to the north and east. It would not be realistic to plan for trucks to leave the store by backing into NE 4th.

I hope these comments help clarify Best Buy's position. Any changes to the Best Buy site challenge and impact the continued success of the store. Best Buy looks forward to continuing to work with the City to find a solution that allows Best Buy to remain in business and to be successful in this location, that meets the City's transportation and planning goals, and that is compatible with the desires and wishes of Best Buy's residential, commercial, and public neighbors.

**Jerry Lutz | Perkins Coie LLP**

The PSE Building  
10885 N.E. Fourth Street  
Suite 700  
Bellevue, WA 98004-5579

☎: 425.635.1403 (work)  
425.765.1816 (cell)  
360.863.2142 (home)

☎: 425.635.2403

✉: [jlutz@perkinscoie.com](mailto:jlutz@perkinscoie.com)

[www.perkinscoie.com](http://www.perkinscoie.com)

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**From:** Moseley, Melissa [<mailto:Melissa.Moseley@bestbuy.com>]  
**Sent:** Wednesday, March 10, 2010 7:41 AM  
**To:** [GJohnson@bellevuewa.gov](mailto:GJohnson@bellevuewa.gov); Lutz, Jerry (Perkins Coie); Shmel, Dwayne; Helper, Cara  
**Subject:** Re: NE 4th Street extension project

Gwynn,

There is some confusion around what you state Jerry Lutz has told the City and I have asked him to clean up the confusion today. Best Buy has never said we could operate out of Option 1 with the City taking 10,000 sq ft of our building. We would be unable to do the same volume and this Option eliminates our loading. There is not another option for our loading. What Dwayne Shmel was drawing at the Open House was an extension of our building to the North (Bus Barn and Mutual Materials). If the expansion to the North worked and the City was to obtain these lands, then we would be able to operate as we would still have loading and 45,000 sq ft. Frankly, I'm shocked at the miss communication that is occurring around this with within the City. Let me be very clear, if the City chooses Option 1 and eliminates 10,000 sq ft of our building as proposed, Best Buy will NOT be able to operate as a result of no loading, reduced parking and a smaller store.

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Sent from my BlackBerry Wireless Handheld

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**From:** [GJohnson@bellevuewa.gov](mailto:GJohnson@bellevuewa.gov) <[GJohnson@bellevuewa.gov](mailto:GJohnson@bellevuewa.gov)>  
**To:** Moseley, Melissa  
**Sent:** Wed Mar 10 09:30:10 2010  
**Subject:** RE: NE 4th Street extension project  
Melissa,

Just to confirm our telephone conversation this morning. We ARE interested in seeing sketches of a possible expansion of the Best Buy building to the north.

Thanks,  
Gwynne

---

**From:** Shmel, Dwayne [mailto:Dwayne.Shmel@bestbuy.com]  
**Sent:** Monday, March 08, 2010 12:39 PM  
**To:** Arakelyan, Marina  
**Cc:** Johnson, Gwynne; LaCombe, Nancy; Maltzen, Andrew  
**Subject:** RE: NE 4th Street extension project

Marina,

Can you send me a CAD file(s) for the road extension plan so I can draw up a floor plan proposal "shifting" the building to the north (expanding to the north and then demolishing a portion of the south side of the building).

I have attached the PDF file for the CAD plan that I need.

Thanks.

**Dwayne Shmel**  
Best Buy Company, Inc.  
7601 Penn Avenue South  
BBE Properties, Building B-6  
Richfield, MN 55423-3645  
Phone: (612) 291-7509 (Direct)  
Fax: (952) 430-4556 (Direct)  
Cell: (612) 867-3300

---

**From:** MArakelyan@bellevuewa.gov [mailto:MArakelyan@bellevuewa.gov]  
**Sent:** Friday, January 29, 2010 12:44 PM  
**To:** Shmel, Dwayne  
**Cc:** GJohnson@bellevuewa.gov; NLacombe@bellevuewa.gov  
**Subject:** NE 4th Street extension project

Dwayne,

Per your requested, attached are pdf's of four alternatives that were presented to you yesterday.

Thanks,

*Marina Arakelyan, PE*  
Senior Project Manager  
City of Bellevue  
Transportation Department  
ph. 425-452-4632  
marakelyan@bellevuewa.gov

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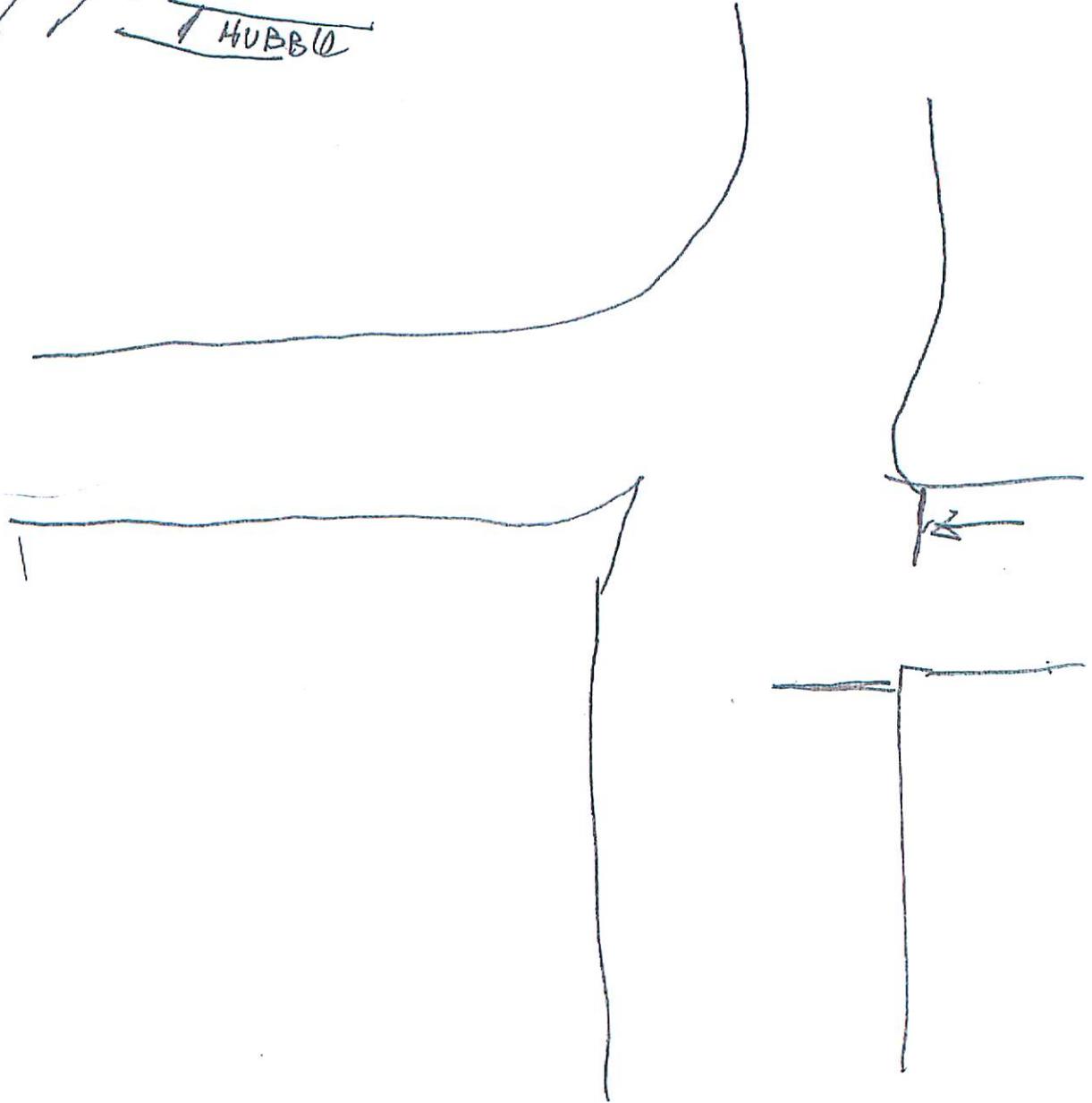
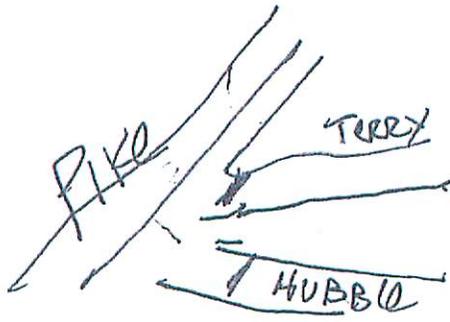
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## **EXHIBIT I**

**Best Buy Comments Regarding NE 4th Street/120th Ave NE  
Corridor Project SEPA Review (July 21, 2011)**

**Development Services Department File No. 11-114971-LM**

Attachment 17  
Bob Shay sketch  
Belleve hearing  
side-meeting



11

## EXHIBIT J

**Best Buy Comments Regarding NE 4th Street/120th Ave NE  
Corridor Project SEPA Review (July 21, 2011)**

**Development Services Department File No. 11-114971-LM**

8250 · 165th Avenue NE  
Suite 100  
Redmond, WA 98052-6628  
T 425-883-4134  
F 425-867-0898  
www.tsinw.com

July 21, 2011

Edward C. Lin  
Perkins Coie LLP  
10885 N.E. Fourth Street, Suite 700  
Bellevue, WA 98004-5579

Subject: NE 4<sup>th</sup> Street – 120<sup>th</sup> Avenue NE Environmental Review

Dear Mr. Lin,

Thank you for asking Transportation Solutions Inc. (TSI) to assist you in reviewing the transportation and alternatives analysis associated with the proposed NE 4<sup>th</sup> Street/ 120<sup>th</sup> Avenue NE Corridor. This letter is based on a review of the following three documents:

- NE 4<sup>th</sup> Street/120<sup>th</sup> Avenue NE Corridor Project, Transportation Technical Report, Parsons Brinckerhoff, April 15, 2011.
- NE 4<sup>th</sup> Street/120<sup>th</sup> Avenue NE Corridor Project, Alternatives Evaluation and Screening Technical Report, Parsons Brinckerhoff, June 29, 2011.
- Optional Determination of Non-Significance (DNS) Notice Materials, July 21, 2011 including the SEPA checklist.

In addition, TSI has reviewed prior analyses as part of a review of our letter to Jerry Lutz dated December 6, 2010.

This work has been prepared on behalf of your client, Best Buy. Best Buy prefers the NE 5<sup>th</sup> Street alignment and believes that the City's review of the NE 5<sup>th</sup> Street Alternative not been analyzed in sufficient detail for the City to make a reasoned choice among staff's preferred NE 4<sup>th</sup> Street alternative and other alternatives at lower environmental cost.

This letter briefly summarizes our review of the reports and documents listed above identifying potential inconsistencies and/or limitations that may not have permitted a full disclosure of impacts and potential mitigation.

### **NE 4<sup>TH</sup> STREET/120<sup>TH</sup> AVENUE NE CORRIDOR PROJECT, TRANSPORTATION TECHNICAL REPORT**

The Transportation Technical Report evaluates conditions within the NE 4<sup>th</sup> Street/120<sup>th</sup> Avenue NE corridor alone and does not examine the system-wide effects on the street network that are claimed, but not disclosed, to be benefited by the proposed corridor improvement. Without disclosing comparable information of other system-wide benefits and/or impacts along parallel corridors like NE 8<sup>th</sup> Street, NE 12<sup>th</sup> Street, and 116<sup>th</sup> Avenue NE, it is impossible to evaluate whether the proposed corridor improvements are in fact reducing congestion and improving level of service. We believe the level of service associated with these parallel corridors should be disclosed as part of the analysis to determine if the benefits claimed by the road improvement do in fact accommodate the forecasted population and employment growth in the Downtown and Bel-Red subareas. Likewise, if there remain impacts of these intersections, it seems reasonable that a plan for mitigating those deficiencies be disclosed.

The transportation analysis examines the 2015 and 2030 time frames but does not analyze the time frame associated with the impacts and/or mitigation associated with construction of Stage 1 (NE 4<sup>th</sup> Street extension) and Stage 2 (120<sup>th</sup> Avenue NE widening from NE 4<sup>th</sup> Street to NE 8<sup>th</sup> Street) of the comprehensive corridor improvement program alone. Accordingly, impacts and mitigation associated with this interim phase of development have not been considered. We believe there is a reasonable probability of interim impacts at the intersections of NE 8<sup>th</sup> Street at Bel-Red Road and NE 8<sup>th</sup> Street at 120<sup>th</sup> Avenue NE that need to be disclosed and mitigated. Such analysis may not have been within the scope of this technical analysis but should be analyzed in greater detail as part of an expanded traffic analysis supplementing the environmental checklist.

We note that a traffic signal is assumed to be installed at the intersection of NE 5<sup>th</sup> Street at 120<sup>th</sup> Avenue NE but not included at the intersection of NE 6<sup>th</sup> Street at 120<sup>th</sup> Avenue NE. Considering that side street approach volumes are higher at NE 6<sup>th</sup> Street as compared to volumes at NE 5<sup>th</sup> Street, this assumption appears to be inconsistent particularly in light of plans to preclude left turn access at NE 7<sup>th</sup> Street at 120<sup>th</sup> Avenue NE.

### **NE 4<sup>TH</sup> STREET/120<sup>TH</sup> AVENUE NE CORRIDOR PROJECT, ALTERNATIVES EVALUATION AND SCREENING TECHNICAL REPORT**

While the approach outlined in this report responds to some of our prior concerns regarding an objective and comprehensive evaluation of road alignment alternatives, a number of considerations do not appear to be reasonably evaluated.

The alternatives analysis appears to quickly dismiss several alternatives including one preferred by Best Buy that extends NE 4<sup>th</sup> Street to align with NE 5<sup>th</sup> Street at 120<sup>th</sup> Avenue NE (Alternative #5). It appears that right-of-way acquisition and business location costs associated with this alternative may be a perceived limitation that could be resolved as part of the NE 6<sup>th</sup> Street improvements. We believe consideration of these longer-range opportunities should be included and discussed before dismissing this alternative.

The likelihood of NE 6<sup>th</sup> Street improvements appears to be a base assumption associated with development of a more complete road network. We recognize that the City believes WSDOT will be responsible for this improvement. Nonetheless, consideration of its impacts on the Bus Barn and Mutual Materials with the NE 6<sup>th</sup> Street improvement should be incorporated in the alternatives analysis. It seems clear that the combination of improvements to NE 6<sup>th</sup> Street and NE 4<sup>th</sup> Street will have significant impacts on these two entities such that one and/or both may need to relocate. This consideration should be folded into the alternatives analysis even if the NE 6<sup>th</sup> Street improvement is not constructed concurrent with the NE 4<sup>th</sup> Street improvement.

Further and consistent with comments in our December 6, 2010 letter, we believe there are intersection design options at NE 5<sup>th</sup> Street at 120<sup>th</sup> Avenue NE that could improve the level of service for the heavy southbound to westbound right turn movement. This option will also serve to noticeably reduce potential cut through traffic along NE 5<sup>th</sup> Street east of 120<sup>th</sup> Avenue NE and could be considered among the options for managing neighborhood traffic impacts. We believe that this type of a design option should be considered when evaluating the kinds of alternatives examined in the June 29, 2011 Parsons Brinkerhoff Alternatives study.

While we observe there is consideration of business access from a technical constructability perspective, we do not believe the impact on businesses due to the ease or difficulty of ingress and egress for customers has been recognized by the analysis that focuses on driveway geometry. The additional volume forecast along the NE 4<sup>th</sup> Street/120<sup>th</sup> Avenue NE corridor in combination with raised medians will restrict left turns in and out of several properties along this corridor including the Best Buy store. We believe these restrictions should be disclosed; mitigation identified and be considered in the evaluation of alternative alignments.

#### **DECLARATION OF NON-SIGNIFICANCE AND SEPA CHECKLIST**

As noted above, the Transportation Technical Report and the Alternatives Evaluation and Screening Technical Report consider 2015 and 2030 time horizons. The Declaration of Non-Significance (DNS) and SEPA Checklist appears to be

evaluating Stage 1 and Stage 2 at an interim timeframe when extension of 120<sup>th</sup> Avenue NE and NE 8<sup>th</sup> Street to NE 12<sup>th</sup> Street is not proposed to be in place.

From a transportation perspective, we believe there are likely to be noticeable impacts at the intersection of NE 8<sup>th</sup> Street at 120<sup>th</sup> Avenue NE where much of the eastbound and westbound traffic forecast in 2015 on 120<sup>th</sup> Avenue NE will be forced to make turns onto NE 8<sup>th</sup> Street. We believe there will also be increased congestion at 124<sup>th</sup> Avenue NE and NE 8<sup>th</sup> Street. We believe disclosure of this information is appropriate as part of the SEPA Checklist and that some mitigation of this condition will be appropriate.

At a minimum, the mitigation recommended in the Transportation Technical Report at the intersection of 116<sup>th</sup> Avenue NE at NE 4<sup>th</sup> Street should be included. These improvements may be assumed but are not specified in Section 14.g of the checklist. We believe such mitigation should be disclosed. Likewise, if improvements at NE 8<sup>th</sup> Street/ 120<sup>th</sup> Avenue NE and/or at 124<sup>th</sup> Avenue NE/ NE 8<sup>th</sup> Street appear warranted from further analysis, this mitigation should be included as part of the proposed improvement.

From an environmental review perspective, it seems clear that these first two road segments of the corridor are the first phase of a longer-range plan. Because impacts associated with this first phase have not been analyzed in the Transportation Technical Report, the environmental review is piece-mealing unless an interim analysis corresponding with the Stage 1 and Stage 2 improvements is added to the SEPA Checklist.

## **SUMMARY**

Based on the discussion above we believe further refinements to analysis of this corridor or the SEPA Checklist should be pursued. Specifically these include:

- Expand the study area to include parallel corridors including 116<sup>th</sup> Avenue NE, NE 8<sup>th</sup> Street, and NE 12<sup>th</sup> Street to understand the system wide effect of this road improvement.
- Either as an expansion of the Transportation Technical Report or as part of an expanded SEPA Checklist and Mitigated Declaration of Non-Significance (MDNS) analyze conditions for the proposed Stage 1 and Stage 2 improvements alone without extension of 120<sup>th</sup> Avenue NE north of NE 8<sup>th</sup> Street.
- Expand the alternatives analysis to incorporate consideration of the right-of-way taking and traffic operations associated with NE 6<sup>th</sup> Street improvements so alternatives like Alternative #5 can be more objectively reviewed.
-



- Expand the alternatives analysis to consider alternative intersection design options at the intersection of NE 5<sup>th</sup> Street at 120<sup>th</sup> Avenue NE to improve intersection level of service and reduce cut through traffic on NE 5<sup>th</sup> Street east of 120<sup>th</sup> Avenue NE.
- Expand the alternatives analysis to consider site access considerations including installation of intermediate traffic signals at locations where such access is critical to adjacent properties.

I trust this provides you with an understanding of transportation elements of the analysis that we believe warrant improvement or inclusion in the final consideration of the technical and environmental review. If you or the City would like to discuss these items further, I encourage you to contact me.

Sincerely,  
Transportation Solutions, Inc.

A handwritten signature in blue ink, appearing to read "David D. Markley", is written over a light blue circular stamp.

David D. Markley  
Principal

## **EXHIBIT K**

**Best Buy Comments Regarding NE 4th Street/120th Ave NE  
Corridor Project SEPA Review (July 21, 2011)**

**Development Services Department File No. 11-114971-LM**

*welcome to the*

## **NE 8th Bypass Study**

**Open House  
September 18, 1996**

*with information on:*  
**Public Involvement  
Decision Making Process**



*sponsored by:*  
**City of Bellevue**

**NE 8th Bypass Study  
Open House Meeting  
September 18, 1996**

**Why Have You Been Invited Here Today?**

- \* To learn more about the study.
- \* To convey to us your comments and concerns.
- \* To learn about the key milestones anticipated in the next year.

**Do We Want Your Involvement?**

Yes, we do want your involvement and we also need your involvement to conduct this process in a successful manner. There will be future opportunities for formal public comment; however, providing your comments and suggestions to us today will be very beneficial as we begin this evaluation process. Please help us today by doing the following:

- \* Complete the Questionnaire/Comment Form provided at the welcome table.
- \* Drop the form in the Comment Forms box at the welcome table or send it to: Jonathan Dong, NE 8th Bypass Study Project, City of Bellevue Transportation Department, P.O. Box 90012, Bellevue, WA 98009-9012. They should be submitted in a timely manner to be included in the evaluation process.
- \* If you would like a more detailed explanation or further information, please feel free to contact the project managers of the study. They are available to meet with you, your business, or your community group upon request. The Transportation Department staff members associated with this study are:

Jonathan Dong, Associate Transportation Planner	453-4894
Tom Noguchi, Planning and Programming Manager	462-4073
Hank Howard, Engineering Manager	455-6867
Rick Logwood, Project Manager	455-6858

## **NE 8th Bypass Study Open House Meeting #1 September 18, 1996**

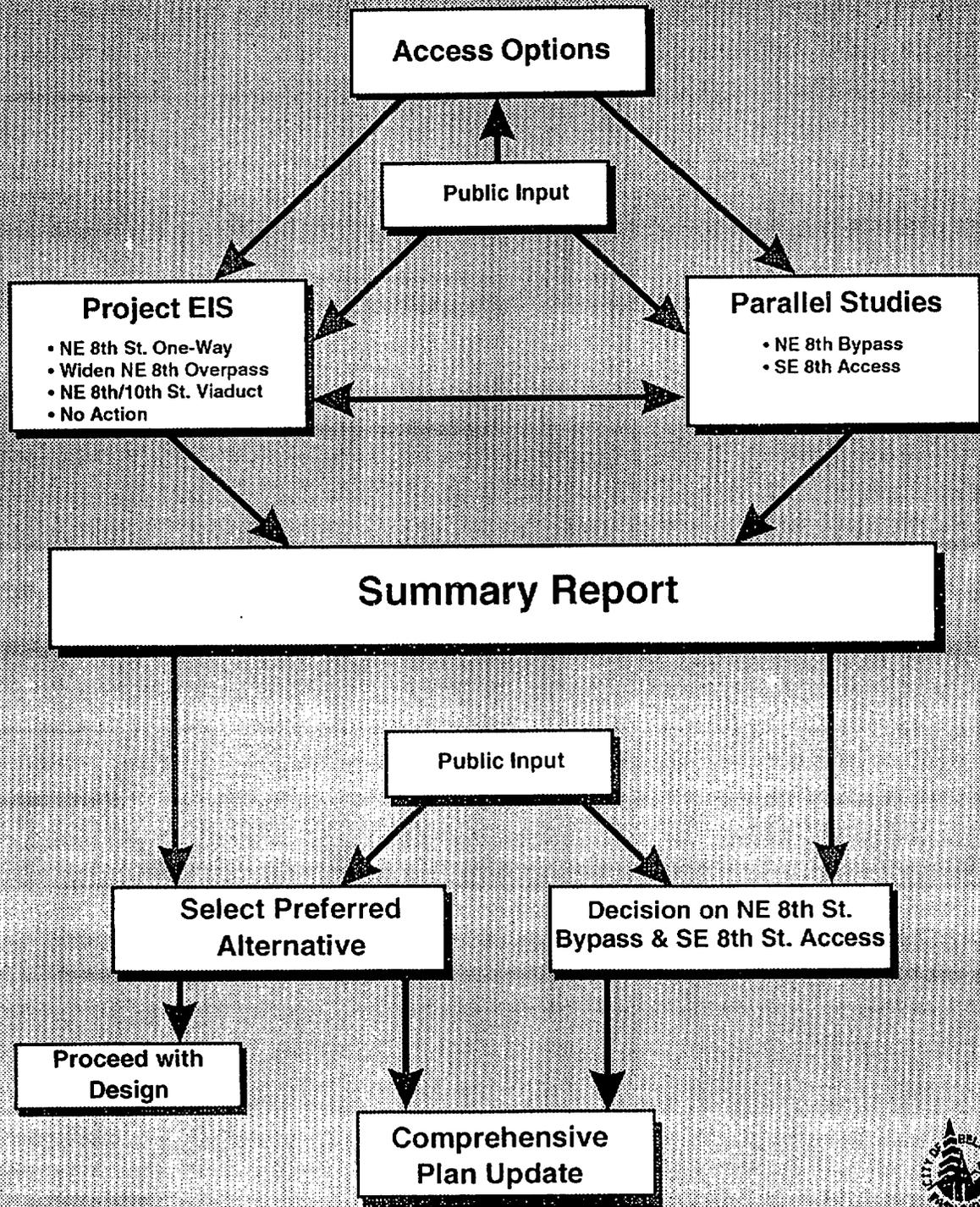
### **Purpose of the Proposed Roadway Improvement:**

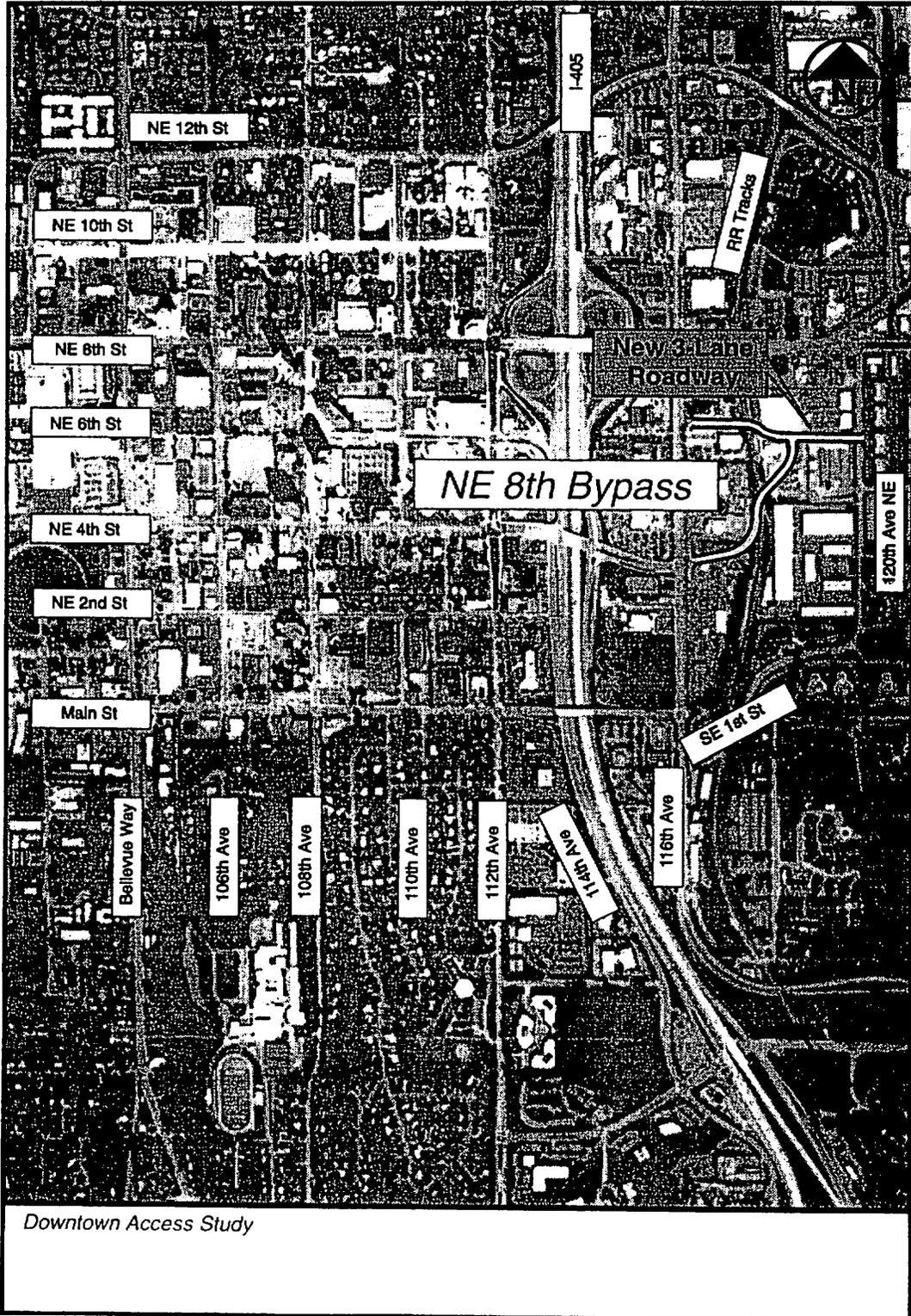
- **A new east-west roadway connecting 116th Ave. with 120th Ave. near NE 4th/5th Street.**
- **Alleviate congestion on NE 8th Street between 116th Ave. and 120th Ave.**
- **Different alignments will be evaluated.**

### **Objectives of the Proposed Roadway Improvement:**

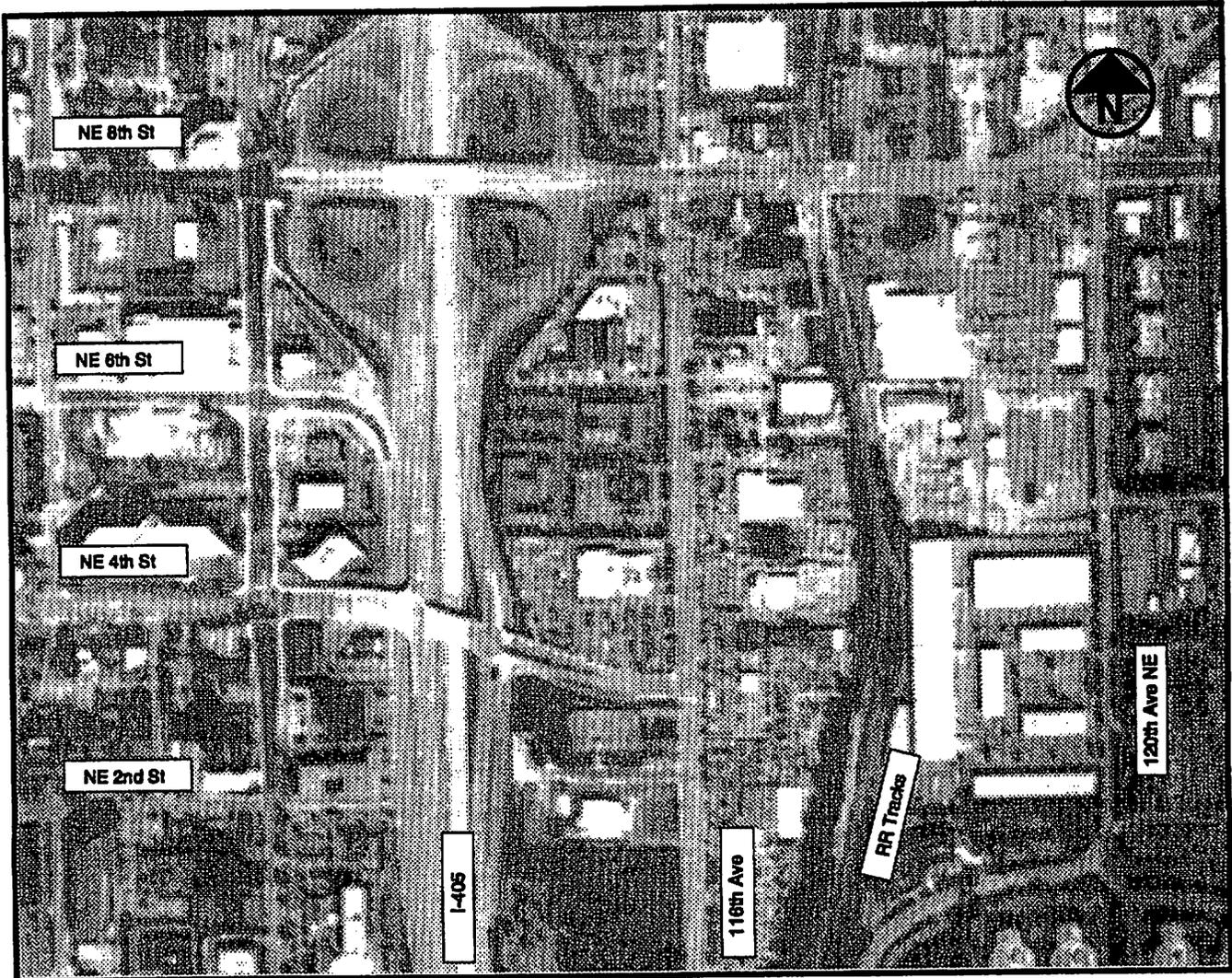
- **Relieve traffic congestion on NE 8th Street between 116th Ave. and 120th Ave.**
- **Provide an alternative access into Downtown Bellevue.**
- **Provide additional access to the Wilburton neighborhood and businesses.**

## Decision Making Process









**NE 8th Bypass Study**

**NE 8th Bypass Study  
Open House Meeting  
September 18, 1996**

**Questionnaire for participants**

1. Do you think building a new road in the vicinity of NE 4th/NE 5th Street between 116th Avenue and 120th Avenue is needed?  
 yes       no
2. Do you think this new road would relieve congestion on NE 8th Street?  
 yes       no
3. Do you think additional access to the businesses located along 116th Avenue and 120th Avenue NE is needed?  
 yes       no
4. Do you think this new road would improve access to the businesses located along 116th and 120th Avenue NE?  
 yes       no
5. If this road is built, how often would you expect to use it to access Downtown Bellevue from east Bellevue?  
 everyday  
 twice a week  
 never  
 other (please specify) \_\_\_\_\_
6. If this road is built, do you think that it will:  
 change the character of the Wilburton neighborhood (i.e. bring more traffic through the neighborhood, encourage denser development, etc.)  
 have no effect on the Wilburton neighborhood  
 help businesses along 116th Avenue and 120th Avenue  
 improve traffic in the Wilburton neighborhood  
 don't know

(continued on reverse side)

7. What are some of the concerns you have about the proposed road?

will create additional traffic in the Wilburton neighborhood

will negatively impact the neighborhood with additional noise and air pollution

will cause property values to decrease

will encourage denser development

other, please explain: \_\_\_\_\_

8. Name \_\_\_\_\_

Address \_\_\_\_\_

City, Zip \_\_\_\_\_

9. How long have you been at this location?

years

10. Do you wish to be put on the mailing list for the NE 8th Bypass Study?

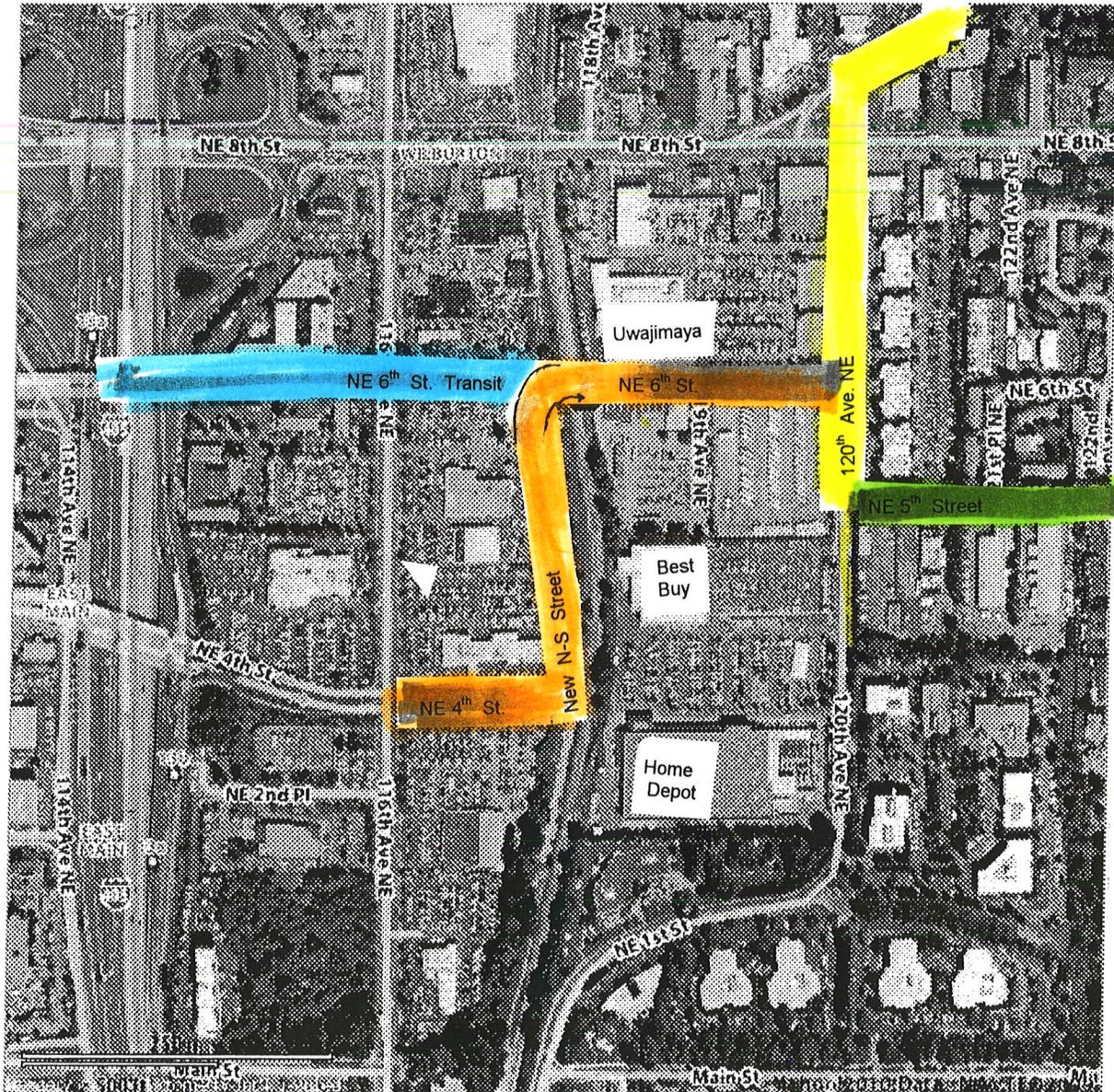
yes       no

Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_

Thank you for responding to this questionnaire!

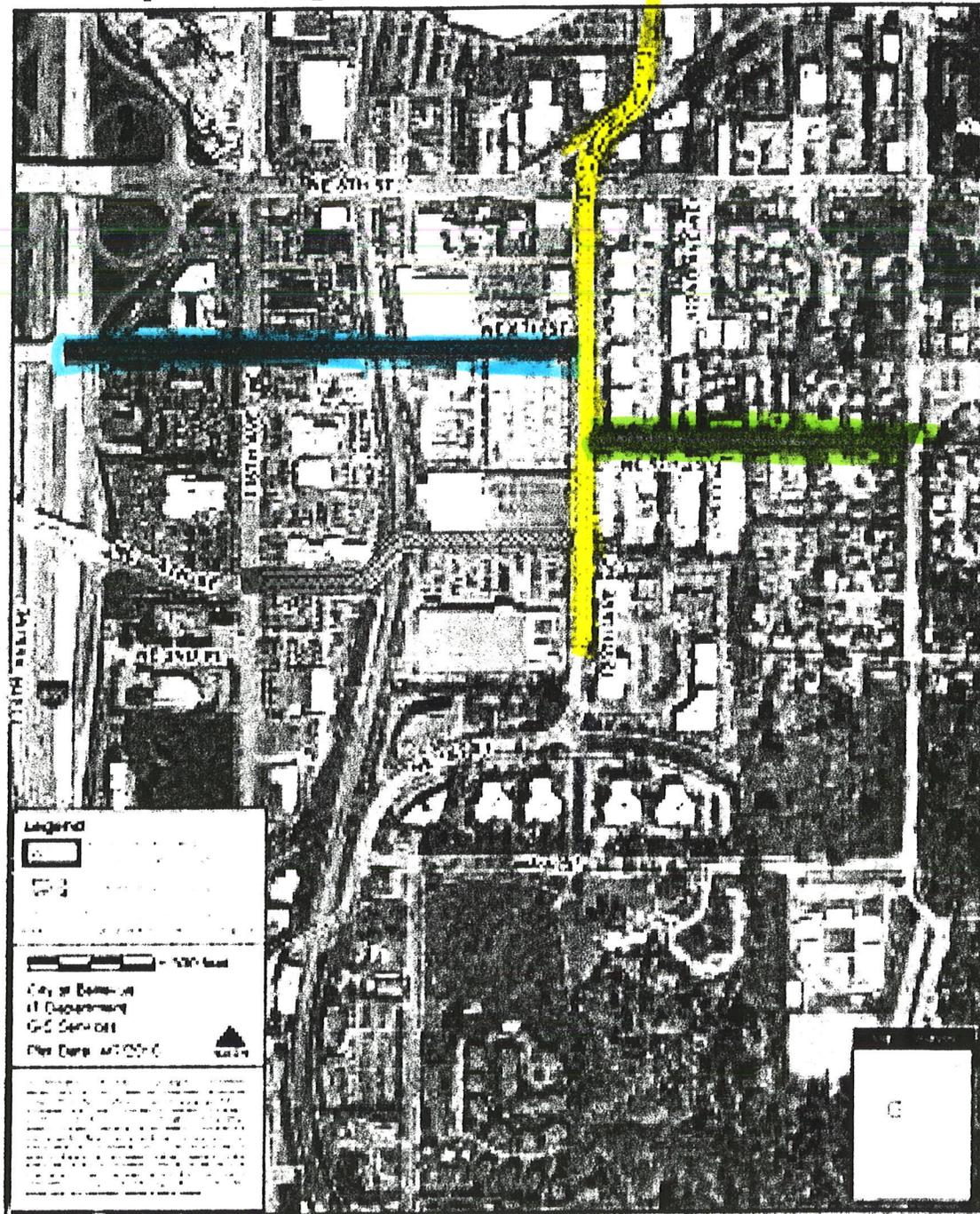
## Improved Layout for Wilburton Connections



This improved routing for N.E. 4th St. connection from 116th Ave to 120th Ave. N.E. would extend N.E. 4th Street from 116th only to the west side of the BNSF Rail Corridor. This plan would add a North-South Street from N.E. 4th Street to N.E. 6th Street, just west of the rail corridor. This would allow traffic to use N.E. 6th to cross the rail corridor to access 120th Ave North of N.E. 5th Street. This saves the cost of the second rail crossing. It reduces the tendency for neighborhood cut thru traffic on N. E. 5th Street. This route also leaves the expensive property of Best Buy and Home Depot undisturbed and saves money while improving traffic flow.

Submitted by: Daniel Renn, V.P. Wilburton Community Association & N.E. 5th Committee  
603 129th Pl. N. E., Bellevue, WA 98005 Phone: (425) 455-9990  
E-Mail: Dan\_Sabina@Yahoo.com

# Conceptual Layout for Wilburton Connections



An aerial map shows the conceptual layout of the projects.

## The City's proposed layout has at least 3 major problems!

- 1) The City needs to mitigate traffic on N E 5<sup>th</sup> Street to reduce cut-through traffic into the Wilburton Neighborhood.
- 2) The City needs to reimburse Best Buy and Home Depot for the land required. The city must also keep both companies whole so that they will continue business in their present location and continue to collect Bellevue Sales Tax.
- 3) The City needs to fill the monetary hole left by the failed LID, which failed because the local businesses do not want the plan that is presently being proposed.

February 13, 2012

To: Paul Krawczyk, David Pyle, Steve Costa, Carol Hamlin  
From: Carolyn Maxim, MPA 425 454 0917

Re: **Impacts of New Projects: NE 4<sup>th</sup>/120<sup>th</sup> Corridor and Spring District**

A review of the SEPA document (10-20-11) and the technical transportation analysis for the NE 4<sup>th</sup> Street/120<sup>th</sup> Avenue NE Corridor Project, as well as plans for the Spring District Project, raises my concerns about adverse environment impacts, especially those related to traffic. It isn't clear that those impacts will be mitigated in a timely, comprehensive way and that later contingencies may not jettison them. Residents look to the city to provide logical sequencing of development and protection from large new projects, particularly those designed to move traffic through the area, not into residential neighborhoods.

### **Community's Integrity**

Because the Wilburton neighborhood lies on the very eastern boundary of the NE 4<sup>th</sup> extension/120<sup>th</sup> corridor and to the south of the proposed Spring District redevelopment and outside of its direct study area, the community has received little attention in the documents cited above. But it is obvious that cut through traffic could pour through this residential neighborhood from both of these new projects and that we will need mitigation of the impacts of both. Some plans do exist for the area's western edge located at 120<sup>th</sup> Avenue NE and NE 5<sup>th</sup>. Can the city implement something analogous along 124<sup>th</sup> Avenue NE for the neighborhood's northern edge? *The city needs to look at the changes in the 120<sup>th</sup> corridor/Spring District as a whole and implement umbrella mitigations for the existing residential neighborhood rather than go along with piecemeal development claims that each piece needs no mitigation.*

### **Loss of trees**

389 significant, 8" diameter trees will be removed to build NE 4<sup>th</sup> and expand 120th. Some will be replaced by snags and others by newly planted street trees or landscaping 6 feet high (~2" diameter). While this replanting meets legal requirements, as mitigation it is inadequate because the volume and effect of the replacements won't be commensurate to the lost mature trees. Bellevue should expand that replanting with more and larger trees, wider planting areas -- and perhaps wider ROWs to accommodate them, median plantings, or a combination of these. That approach would improve the urban landscape; would more closely maintain a reasonable natural environment; would abate noise; and would ameliorate the effect of the 3 acres of impervious roadway that will be added to the corridor. Bellevue should adhere to its policy saying it will "design streets [to] contribute to the community's character, open space, and environmental enhancement".

### **Appropriate Timing**

Of course 120<sup>th</sup> Avenue NE between NE 8<sup>th</sup> and NE 12<sup>th</sup> should be expanded before NE 4<sup>th</sup> Street is extended to 120<sup>th</sup> Avenue NE to avoid awful blockages of eastbound traffic at 120<sup>th</sup> Avenue NE and south- or northbound on 120<sup>th</sup> at NE 1<sup>st</sup> or NE 8<sup>th</sup> Streets. The effect of either bottleneck on narrow, steep NE 5<sup>th</sup> Street into the Wilburton neighborhood is not mentioned but should be noted and planned for. In fact, 120<sup>th</sup> Avenue NE will have trouble with the increased volume of its

northbound traffic until it 1) is improved as far as Northup Way and 2) has more westbound turn lanes allowing cars to proceed onto NE 12<sup>th</sup> toward the freeways. It is clear that delays and backups will reduce the efficiency of the new transportation corridor and worsen air quality as cars idle in traffic. Air quality should not go backwards as a result of creating better roads.

### **Problems During Construction**

Noise: If needed to maintain flow of traffic, permits can allow “after hours” construction. Residents who live nearby in Wilburton or between NE 8<sup>th</sup> and NE 12<sup>th</sup> Streets will hear the racket. What protection will the city offer regarding hours of construction?

Cut-through Traffic: During construction of 120<sup>th</sup> Avenue NE between NE 3<sup>rd</sup> and NE 8<sup>th</sup> Streets, when crews will probably limit travel to one way, eastbound Main and NE 5<sup>th</sup> Streets need protection from drivers looking to cut their delays. Will the city commit to providing it? It is not only businesses that should “be protected to minimize disruptions” from construction.

### **Uncertainties about Future Developments**

Spring District: When will NE 15/16<sup>th</sup> Street NE be built? What other westbound streets will exit the Spring District onto 120<sup>th</sup> Avenue NE? If none is built, all the redeveloped area’s traffic will dump onto 124<sup>th</sup> Avenue NE, which doesn’t have the capacity southbound to absorb the anticipated cars, especially south of NE 8<sup>th</sup> Street. The city should either insist that the Spring District offer street-level exits onto 120<sup>th</sup> Avenue NE or else provide buffers that will impede the southbound flow of cars along 124<sup>th</sup> Avenue below NE 8<sup>th</sup> Street, or do both.

Effect of new NE 6<sup>th</sup> Street: The SEPA document notes that if NE 6<sup>th</sup> Street is extended from I-405 to 120<sup>th</sup> Avenue NE, that intersection will need a stoplight. The current plans show stoplights on 120<sup>th</sup> Avenue NE at NE 4<sup>th</sup>, NE 5<sup>th</sup> and NE 8<sup>th</sup> Streets. Will the one at NE 5<sup>th</sup> Street -- essential to protect the adjacent residential Wilburton neighborhood -- be protected if NE 6<sup>th</sup> later requires a light at 120<sup>th</sup> Avenue NE?

I am hopeful that all these concerns will be addressed in both planning and actuality. I look forward to hearing how that will occur.

To: David Pyle  
From: Carolyn Maxim

**RE.: Further Concerns about Impacts of NE 4<sup>th</sup> - 120<sup>th</sup> Corridor and the Spring District**

Thank you for your recent, careful response to my 2/14/12 memo. I have a few comments and remaining questions.

Traffic on 124<sup>th</sup> Avenue NE south of NE 8<sup>th</sup> St.

As a member of the NE 5<sup>th</sup> Street Wilburton Traffic Committee, I can see that at best its product will only partly mitigate the cut-through traffic aimed at Wilburton from the two huge pending projects (the new NE 4<sup>th</sup> Street / expanded 120<sup>th</sup> Avenue NE and the Spring District). Neither project looks at effects of that traffic on 124<sup>th</sup> Avenue south of the Bel-Red Road. But 124<sup>th</sup> runs into an established neighborhood south of 124<sup>th</sup>, whose character would be hurt by the vehicular flood.

Question: Who on city staff will direct the study of this matter and propose appropriate mitigations to protect the Wilburton neighborhood?

Replanting on 120<sup>th</sup> Avenue NE north of Bel-Red

I understand that the city will follow its standards for planting trees. I am asking that it exceed them. An exceptional proportion of wetland will be affected by extending 120<sup>th</sup> at the same time a lot of traffic will be brought to it. The bulk of greenery to be removed far exceeds what would be routinely newly planted. If Bellevue is serious when it touts itself as a city in a park, the plantings on 120<sup>th</sup> should be increased. A look at recent new roadsides (116<sup>th</sup> just north of NE 8<sup>th</sup> Street, for one example, Richards Road for another) suggests the city isn't serious about walking its talk.

Construction timing for NE 15<sup>th</sup>/NE 16<sup>th</sup>

You say regarding your point #3 that construction of 120<sup>th</sup> Stage 3 and the 15/16<sup>th</sup> corridor are funded only for design by 2017 in the CIP. You note re. your point #4, that steps prior to construction of NE 15/16<sup>th</sup> will take two to three years, contingent on funding. Two to three years from *when*? Can you be more specific about a probable timeline?

New Turn Lanes on 120<sup>th</sup> Avenue at NE 12th

Are there plans and funds to construct 120<sup>th</sup> Avenue with additional westbound turn lanes onto NE 12<sup>th</sup> so that westbound traffic will be able to head for the freeways from it? If not, why not?

Minimizing Construction's Impacts on Neighbors

To whom should one take concerns about construction noise and routes for vehicles carrying gravel, etc., and when?

Thank you for your attention and time thus far. I look forward to further information you may give.