



August 5, 2011

Paul Krawczyk  
Transportation Department  
City of Bellevue  
450 110<sup>th</sup> Ave NE  
Bellevue, WA 98004

RE: NE 4<sup>th</sup> Street/120<sup>th</sup> Ave NE SEPA Review  
Supplemental Information Request  
File Number: 11-114971-LM

Paul-

Thank you for submitting application for preliminary SEPA review of the NE 4<sup>th</sup> Street/120<sup>th</sup> Ave NE corridor project. In accordance with the City of Bellevue Land Use Code (LUC) section 20.35.210, a notice of application advertising the review of the proposal was placed in the City's Permit Bulletin on July 7, 2011. A minimum comment period of 14 days was observed and during that time three public comment letters were received. Comment letters are included with this letter as **Attachment 1**. Comments were received from:

- 1) Brian Derdowski of Public Interest Associates representing the Lake Bellevue community
- 2) Karen Walter of the Mukleshoot Indian Tribe Fisheries Division (MITFD)
- 3) Gerald Lutz of Perkins Coie representing Best Buy

Review of the project plans and documentation submitted as part of the application and review of the public comment letters received during the comment period has identified areas where supplemental information is required to continue SEPA review. To simplify the preparation of supplemental information, we have organized the requested information by topic. Please prepare the following information and submit it directly to the City's Permit Center as a revision to file # 11-114971-LM following the submittal instructions at the bottom of this letter.

**Supplemental Information Requested:**

- 1) Procedural Issues
  - a. Corridor Review vs. Phased Review: Please revise the SEPA checklist to remove emphasis on "Phase 1". Although Phase 1 is likely the first to be built and is most mature in level of design completed, the SEPA checklist should be oriented at analyzing all phases equally.
  - b. SEPA Process and Project Review: Project design and engineering has progressed to an advanced level and construction permits have been submitted for two of the 5 phases. Please clarify that applications have been made with the understanding that changes may be required as a result of environmental (SEPA) review and that it is the intent of the design team to hold project level design at a point where changes to the project can be made to ensure consistency with SEPA findings.
- 2) Stream, Wetland, Habitat, and Slope Documentation - Impacts, and Mitigation

- a. Stream Typing and Buffers: The west tributary of Kelsey Creek should be classified as a Type F stream (LUC 20.25H.075.B.1) and should include a 50 foot buffer (LUC 20.25H.075.C.1.c). Impacts and mitigation measures taken should reflect the status as a Type F stream.
- b. Stream Impacts: Please provide a clear site plan that includes the stream top of bank (see LUC 20.50), stream buffer, and the proposed alignment (depicted as an overlay). The site plan must demonstrate where impacts are expected with the current alignment and quantify estimated square footage of impact to the stream and stream buffer.
- c. Stream and Stream Buffer Impact Mitigation: Please provide additional detail on how conceptual stream impact mitigation measures will comply with City of Bellevue stream mitigation preference and mitigation ratios found in LUC 20.25H.085. Please note that use of an out of basin and out of jurisdiction mitigation bank or in-lieu payment is only permitted through the preparation of a Critical Areas Report and is not considered a preferred option under LUC 20.25H.085.A. Complete mitigation details may be deferred to the point of critical areas and construction permit review, although program level details are needed at this point.
- d. Existing Stream Culverts: Please review and clarify the existing conditions summary for the culvert that conveys the west tributary of Kelsey Creek under 120<sup>th</sup> Ave NE (see Fisheries, Wildlife, and Vegetation Technical Report Section 4.1.3. This section is confusing and it is unclear if there is one culvert that conveys the stream under the roadway, or two different culverts.
- e. Proposed Culvert Improvements: Please clarify that the culvert that conveys the west tributary of Kelsey Creek under 120<sup>th</sup> Ave NE is planned for replacement with a new fish passable culvert. Please also clarify if this culvert replacement will affect the entire culvert leading to a newly aligned stream channel that is day-lighted on both ends of the new culvert.
- f. Wetland Impacts: Please provide a clear site plan for each wetland (A-D) that includes the wetland boundary, wetland buffer, and the proposed alignment (depicted as an overlay). The site plan must demonstrate where impacts are expected with the current alignment and quantify estimated square footage of impact for each wetland.
- g. Wetland and Wetland Buffer Impact Mitigation: Please provide additional detail on how conceptual wetland impact mitigation measures will comply with City of Bellevue wetland mitigation preference and mitigation ratios found in LUC 20.25H.105. Please note that use of an out of basin and out of jurisdiction mitigation location is not considered a preferred option under LUC 20.25H.105.B. Complete mitigation details may be deferred to the point of critical areas and construction permit review, although program level details are needed at this point.
- h. Slope Impacts: Please provide a clear site plan for the NE 4<sup>th</sup> alignment that includes the delineated steep slope boundary, top of slope buffer, and the proposed alignment (depicted as an overlay). The site plan must demonstrate where impacts are expected with the current alignment and quantify estimated square footage of impact for the slope and associated buffer.
- i. Slope and Slope Buffer Impact Mitigation: Please provide additional detail on how conceptual slope impact mitigation measures will comply with City of Bellevue slope mitigation requirements found in LUC 20.25H.225.J.
- j. Habitat Resources – Tree Removal: The primary feature driving habitat viability for many species is the structure provided by mature trees. Please clarify plans for tree removal and replanting for areas that have been identified as providing habitat, and for areas of stream and wetland buffers to be impacted. To maintain the effect of canopy succession and augment wood recruitment in areas near aquatic resources, it is recommended that all trees located within a stream or wetland buffer or within a

habitat patch that are larger than 4 inches in diameter either be retained, or if removed be mitigated at an advanced ratio in an appropriate location.

- k. Preliminary Technical Feasibility Analysis: Please prepare a preliminary program level technical feasibility analysis that follows the requirements of LUC 20.25H.055.C.2 and demonstrates that the selected alignment and identified impacts are supported through the analysis. A complete analysis of technical feasibility will be required with future critical areas and construction permit submittal. A preliminary analysis that considers impacts to streams, wetlands, slopes, buffers, and habitat features is required at this point to avoid future conflict by ensuring that the proposed alignment and identified impacts under review are consistent with applicable facilities and systems siting requirements.
- 3) Stormwater Detention and Water Quality Treatment
    - a. Flow Control – Flow control is identified as required in Section 5.1.2 of the Water Quality Technical Report, although there is no discussion of the actual requirement. Please clarify how flow control is applied to the project.
    - b. Water Quality Treatment - Please clarify which water quality treatment practices will be utilized. Will the entire surface (new and retrofit) be treated?
    - c. Lake Bellevue – Groundwater vs. Surface Water – The project Water Quality Technical Report identifies possible impacts the groundwater (aquifer impacts) due to an increase in the quantity of impervious surface and the addition of a more effective conveyance system. Please provide additional detail on the current surface and ground water sources that support Lake Bellevue. How do these sources compare with the proposed use of bio-infiltration and natural drainage practices (LID)? Are infiltration rates estimated to be the same?
    - d. Elevated levels of zinc and copper – impacts to fish populations. Section 5.1.2 of the Water Quality Technical Report identifies an elevated level of dissolved metals in stormwater that will flow into Kelsey and Sturtevant Creek. Both of these streams contain fish habitat and have a documented fish presence. Please clarify expected levels of dissolved metals and identify what measures are being taken to abate impacts to fish populations.
  - 4) Fisheries Documentation, Impacts, and Mitigation
    - a. Sturtevant Creek Fish Presence/Absence: Please verify the point of fish presence/absence documentation in Sturtevant Creek.
    - b. Documentation Requested: Please provide a copy of the City of Bellevue 2001 Electro-Fishing Survey.
    - c. Treaty Rights: Please clarify if the project area is within the Muckleshoot Indian Tribe's treaty areas.
  - 5) Alternatives Analysis
    - a. Inclusion of Mitigation – Best Buy Building: The alternatives report includes reliance on mitigation measures in alternatives 8, 9, and 10. The report identifies a preference for alternatives 8 and 9 and suggests mitigation measures will be included in the design of the selected NE 4<sup>th</sup> alignment. Are the mitigation measures identified with alternative 9 in the alternatives report included in the project? If so, please provide details of the mitigation effort and how it will be implemented with Phase 3 (NE 4<sup>th</sup> extension).
    - b. Inclusion of Mitigation – NE 5<sup>th</sup> Traffic Abatement: A program intended to reduce cut through traffic on NE 5<sup>th</sup> has been referenced in documentation submitted. Please

indicate the status of the NE 5<sup>th</sup> Street traffic mitigation program. Is this program being considered as mitigation for the NE 4<sup>th</sup> extension? If so, more detail may need to be included.

- c. NE 4<sup>th</sup> Street Vs. NE 6<sup>th</sup> Street: Please clarify why NE 6<sup>th</sup> and NE 4<sup>th</sup> are non-comparable corridors to provide an east/west connection (difference in function – i.e. what value the connection provides). Please also provide a summary of any planned expansions within the NE 6<sup>th</sup> corridor.
- 6) Long Term Impacts – Operation
- a. Albedo: With additional vehicles utilizing the 120<sup>th</sup> Ave NE corridor, an increase in the intensity of albedo from vehicles may be a factor. Has analysis of albedo been completed to date? What mitigation measures intended to reduce albedo are anticipated (i.e. landscaping)?
- 7) Short Term Impacts – Construction Activity
- a. Vibration and Lake Bellevue Pile Supported Structures: Please verify that impacts to Lake Bellevue pile supported structures were considered within the Noise and Vibration Technical Report. Please summarize potential impacts to these types of structures and what measures will be taken to minimize vibration in Phase 2 of the project.
  - b. Access During Construction: Please clarify how access during construction will be managed for each Phase. Will final project plans include an private property access plan to be implemented during construction?
- 8) Transportation Elements
- a. Lake Bellevue Community Access: Please compare expected delays at the new signalized intersection that will provide access to Lake Bellevue businesses and residents with existing conditions. Are delays due to light timing expected to increase with project implementation?
  - b. Staged Construction: The corridor project includes five phases that could be built as individual projects dependent on funding. Please clarify how each of the five phases may be built independently of each other without negatively impacting the transportation network. Has each phase been designed to be forward compatible with the other phases? What interim measures are required to avoid negative impacts?
  - c. Funding and Mobilization: Please clarify what the status of each of the phases is with funding and level of design. Are any of the phases at full design?
  - d. Coordination with East Link: Please clarify if how coordination with the East Link project has been approached. Is there ongoing cross-project coordination? If so, how has this coordination influenced the project alignment?

### **Revision Submittal Instructions**

- Submit a consolidated package of all the above revisions requested to Permit Processing within 60 days of this request.
- Submit the same number of copies of the revised drawings or reports as you did for the original submittal.
- Submit the revisions package with a complete Revisions/Additions Submittal form.
- Submit a copy of this letter with your revisions/additions. Permit Processing will perform a cursory “completeness check” for response to all items requested prior to accepting the revisions/additions. A transmittal memo referencing the above required revisions to sheet numbers or designations of drawings which have been changed is helpful to the Permit Processing staff.

Please contact me at (425)452-2973 or at [dpyle@bellevuewa.gov](mailto:dpyle@bellevuewa.gov) with any questions you may have.

***Sent Via Email***

Sincerely,

David Pyle  
Senior Land Use Planner

**Attachments:** Public Comment Letters

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*

**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

- Revisions Request Letter Attachment 10
6. 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*  
39015 172<sup>nd</sup> Ave SE  
Auburn, WA 98092  
253-876-3116

July 21, 2011

**HAND-DELIVERED AND EMAIL**

Mr. David Pyle  
Development Services Department  
Environmental Coordinator  
450 – 110th Avenue N.E.  
Bellevue, WA 98004  
[dpyle@bellevuewa.gov](mailto:dpyle@bellevuewa.gov)

**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.

65555-0006/LEGAL21287209.3

David Pyle  
Development Services Department  
July 21, 2011  
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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  
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- 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 Dep't 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).

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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>.

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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).

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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.

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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.

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**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).

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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).

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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>.

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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

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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/PackageExtendedStudySession4-12-103d.pdf](http://www.bellevuewa.gov/pdf/City_Council/PackageExtendedStudySession4-12-103d.pdf).

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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.

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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>.

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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).

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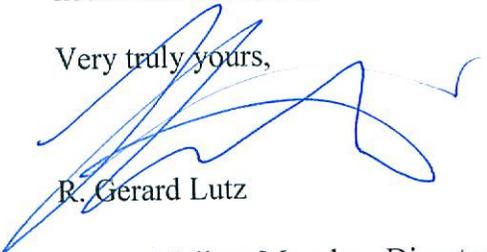
20.25H.055.C.2, the City should provide an analysis of whether a NE 6th crossing is a technically feasible alternative. The City should consider making the NE 6th Extension the new route for vehicular traffic, either in conjunction with or as an alternative to the HOV plan for the NE 6th Extension.

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