

BEFORE THE HEARING EXAMINER FOR  
THE CITY OF KENMORE

In the Matter of the SEPA Appeal of:  
  
THE LODGE AT ST. EDWARD

FINAL SITE PLAN RECOMMENDATION  
AND DECISION ON FEIS APPEAL  
NO. CSP16-0077

**APPENDIX A: SUMMARY OF ORAL TESTIMONY**

This summary will cite to the transcript about every five pages. Testimony begins at Tr. 27. This summary should not be considered a part of the Examiner's Recommendation and Decision. It is solely provided for the convenience of the reader, for an overview of testimony and easy access to needed transcript comments. Nothing in this summary should be construed as a Finding of Fact or Conclusion of Law, or signifying any priority or importance to the comments of any individual. No representations are made as to warranty. For an accurate rendition of the testimony, the reader is referred to the recording of the hearings, available at City Hall, or the transcripts of the proceeding.

**Site Plan**

**Mr. Bryan Hampson, Development Services Director and SEPA Officer, City of Kenmore**

Mr. Hampson summarized the proposed project, noting that Daniels Real Estate filed a Type 4 Site Application on June 30, 2016 to establish a hotel with accessory uses in the St. Edward seminary building located at St. Edward State Park. The site and the park, which lie between Juanita Drive and Lake Washington, are State Park property and are owned by the State Parks and Recreation Commission.

Mr. Hampson reported that the proposed application would rehabilitate the historic St. Edward seminary building to provide up to 100 guest rooms as well as meeting and conference rooms (a portion of which could be used by a nonprofit or public organization), administrative spaces, an exercise facility, a wellness spa, a restaurant, and a café.

Mr. Hampson stated that after a unanimous vote on January 9, 2017, the Washington State Parks and Recreation Commission approved and executed a 62-year lease with Daniels Real Estate. In exchange for the Commission allowing adaptive reuse of the seminary, Daniels agreed to purchase a 9.7-acre private property adjacent to the park along Lake Washington and transfer that property to the State Parks.

Mr. Hampson described the lease area and its proposed use. The lease area is a pentagonal 5.5-acre area in the central portion of St. Edward State Park. This area contains the seminary building (approximately 80,000 square feet), a swimming pool building (14,000 square feet), gymnasium (10,000 square feet), volleyball court, and surface parking. The lease area is bounded on all sides by park property including forest, streams, and wetlands, as well as a ballfield and ballfield parking just east of the site. The Lake Washington shoreline is about 1500 feet west of the site. Access to the site is by private drive off Juanita Drive. The area surrounding the park is primarily residential. Tr. 30.

Mr. Hampson noted that the project would provide on-site parking in a below-ground structure as well as in an existing surface lot. Existing surface parking would be improved, including resurfacing and restriping a lot east of the seminary and expanding a parking area northeast of the gymnasium. There would be no net loss of parking for the general public and that there would be no changes to site access.

Mr. Hampson noted that the site is zoned “parks.” The proposed hotel use is not a designated, permitted, conditionally permitted, or prohibited use in the city’s Parks Zone Use Allowance Table, so the proposal had to undergo a site plan review. The City of Kenmore was designated nominal lead agency for purposes of a State Environmental Policy Act (SEPA) review. A draft Environmental Impact Statement (EIS) was issued for review and comment on October 14, 2016. A Final EIS was issued on December 16, 2016, with an addendum issued on December 30, 2016. The City extended the appeal deadline 14 days, from January 6 to January 20, 2017. He averred that the EIS documents were all prepared using appropriate methodology and that they “adequately analyzed the probably significant adverse environmental impacts of the project.” Tr. 33:9-11.

**Ms. Eilean Davis, City Planner, City of Kenmore**

Ms. Davis recounted the milestones for the project so far. The Land Use Application was submitted on June 31, 2016, and the application was determined to be complete on July 6, 2016. She listed, with reference to Mr. Hampson’s testimony, several milestone dates for the EIS process. Tr. 35.

Ms. Davis argued that the project complied with several objectives of the city's comprehensive plan, which she quoted and discussed in turn:

- Land Use Policy 1.1.1: Ms. Davis argued that the project will further this policy by providing jobs, preserving the historic seminary building, and protecting the natural environment through repurposing an existing structure.
- Land Use Objective 1.4: Ms. Davis argued that the plan will contribute to the city's quality of life by bringing a new business to Kenmore and providing a restaurant and social opportunities for residents.
- Land Use Policy 1.4.2: Ms. Davis noted that the park zone provides the "Type 4" site review process to establish classified land uses not otherwise permitted in the park zone. This process meets the policy by ensuring a wide range of appropriate uses can be considered.
- Land Use Objective 2.5: Ms. Davis noted that the existing seminary building has service and utility connections, which the project would upgrade as necessary.
- Land Use Policy 2.5.1: Ms. Davis testified that the project is a "quality redevelopment" for a building with significant deferred maintenance needs.
- Land Use Objective 3.2: Ms. Davis testified that this project preserves and adaptively reuses the historic seminary building
- Land Use Policy 3.2.2: Ms. Davis notes that the historic fabric of the seminary will be retained to the extent possible, and that the use of the building will be enhanced since the building will be open to the public for the first time in years.
- Land Use Policy 12.1.3: Ms. Davis testified that the proposal here is one example of private reinvestment in a historic site.
- Natural Environment Subelement (LU 13.3.2): Ms. Davis noted that the project provides "careful" and "appropriate" lighting designs for its location.
- Economic Development Subelement (LU 25.2): Ms. Davis testified that, as a historic rehabilitation, the construction phase will employ more local labor than a new structure. And the project will bring a new business to Kenmore.

With respect to environmentally critical areas, Ms. Davis testified that the city reviewed watershed reports and concluded the project complies with the Kenmore Municipal Code. Because there are no listed species or critical areas, there are no impacts. The city reviewed geotechnical reports and found that the project would have no impact on the nearest geological hazard, located 500 feet offsite.

Ms. Davis reiterated Mr. Hampson's testimony that the park is zoned as a park, and the proposed lodge is classified as a hotel under the city's zoning code (definition 18.20). Allowed uses under the hotel classification include, among other facilities: a central kitchen, dining room, and accessory shops and services (such as meeting rooms, exercise facilities, and spas). Use of building space for a nonprofit organization is an allowed accessory use. Allowed accessory uses to an established park use may also be permitted.

Ms. Davis testified that the application meets the design standards based on Kenmore Municipal Code 18.50.01. The application complies with design requirements for specific uses set out in Kenmore Municipal Code (KMC) 18.51.80 and 18.50.20. Tr. 40.

**Mr. Zack Richardson, Civil Engineer, City of Kenmore**

Mr. Richardson testified that he is a Professional Engineer with ten years' experience in development in the City of Kenmore.

Mr. Richardson stated that the City has recommended site plan approval with a condition that the project must comply with KMC 13.35 before the engineering permit would be issued. Consistent with the NPDES (National Pollutant Discharge Elimination System) permit the City has with the Department of Ecology, KMC 13.35 requires that the project comply with the 2009 King County Surface Water Design Manual. The project will need to use flow control or detention to mitigate for additional runoff from new roads or parking lots. The final mitigation requirements will depend on the final site design, but he opined that the project will be able to comply with KMC 13.35 as conditioned.

Mr. Richardson then took up the transportation issue. He noted that the project must comply with KMC 12.50 (road standards), 12.80 (transportation impacts), and 18.40 (parking impacts). He testified that the project qualifies as an adaptive reuse site under KMC 12.50 so it is exempt from frontage and access road improvements as long as the project can show safe site access.

Mr. Richardson referred to the Heffron traffic report (Ex. 14). He testified that the Heffron report shows that project complies with KMC 12.50, because the traffic light at Juanita Drive and NE 145<sup>th</sup> Street will still meet city level-of-service standards and the project provides safe site access. The report includes an independent fee assessment per KMC 12.47, and the project is conditioned to pay traffic impact fees for any mobility units it creates. But because the projected traffic will not exceed the city's available mobility units, the project satisfies KMC 12.80 without further mitigation.

Mr. Richardson then addressed the parking analysis contained in the report. He testified that KMC 18.40.030 typically requires one parking stall per bedroom for hotels—so with 100 rooms, 100 stalls would be required. He stated that the report found the project should have more parking than the minimum, and that the 153 stalls provided are anticipated to meet full capacity parking demands. The project is conditioned on providing these 153 stalls as well as maintaining the total number of stalls available for park users. The developer's lease with State Parks also requires this. Two other conditions require the project to provide bicycle parking (KMC 18.40.030.E) and to upgrade a pedestrian trail to ADA standards. With all these conditions, the project will meet the transportation requirements.

**Ms. Eilean Davis**

Ms. Davis called attention to Exhibits 15 and 16 (the Certificates of Availability from Northshore Utility District for water and sewer service) and Exhibit 17 (a Northshore Utility District letter containing the fire department recommendation)

Ms. Davis then testified about the project proposal's compliance with code requirements. She noted that the proposed use is as a hotel (temporary lodging) with accessory uses, in conformity with city and state rules and regulations as well as park standards. The project site is located in St. Edward State Park, so the project will only move forward with the Washington State Parks and Recreation Commission's authorization after considering the input of interested parties. Tr. 45.

Ms. Davis testified that the project is compatible with the character and appearance of development in the vicinity. The project is to be located in a building listed on the Washington Historic Register and the National Register of Historic Places. The temporary lodging use is generally consistent with the building's historic use as lodging for seminary students, and that the project will maintain the historic character of the seminary while making necessary updates and alterations. Ms. Davis denied the project would intrude into the public open space, trails, or park areas beyond the site. The project is expected to be compatible with the nearby Bastyr University campus, which is also surrounded by St. Edward State Park. Ms. Davis noted that the university could collaborate with the proposed project restaurant. The two sites share an access road but there are expected to be no traffic impacts to Bastyr. The environmental impact review will study this issue further.

Ms. Davis also noted that the city has proposed expanding the ballpark facilities near the site, and that the city expects the projects will be compatible and will not share parking facilities.

In response to questioning from Mr. Kaseguma, Ms. Davis agreed that the latter part of her comments on the record were summarizing the aspects of the application that meet Kenmore Municipal Code 18.105.050. At the request of Mr. Kaseguma and the hearing examiner, Ms. Davis read aloud KMC 18.105.050A. She stated that in her opinion the application meets the five requirements of 18.105.050A.

Ms. Davis stated that the application is for a hotel classified use consistent with the definition of "hotel" in KMC 18.20.1335. She also read aloud KMC 18.28.030, which allows for parks zone accessory uses consistent with definitions in 18.10 and 18.20 as determined by the city manager. She agreed that the proposed uses are consistent with those definitions, and should be determined by the city manager to be accessory uses. Tr. 51.

Mr. Kaseguma then asked Ms. Davis to consider a comment letter (part of Exhibit 45) that argued the application use should be a conference center use under KMC 18.25.60, not a hotel use. Ms. Davis read KMC 18.25.060 aloud. Based on the Draft EIS, Ms. Davis concluded that the third and fourth floor are primarily sleeping quarters. She reported that the first floor would contain about 4,400 square feet of meeting space, with the largest room being 1,357 square feet. Mr. Hampson chimed in that the largest room was approximately 20 by 50 feet. Ms. Davis stated

that she believes the meeting rooms are too small for a large conference and would primarily be used for smaller meetings by hotel guests or daytime users who stay offsite. Tr. 55.

**Mr. Bryan Hampson**

Mr. Hampson concluded the city's presentation by noting his recommendation, in his capacity as designee of the city manager, that the application be approved.

On cross-examination by Ms. DeWeese, Mr. Hampson agreed that KMC 18.100.60 and 18.100.070, which allow for existing building nonconformities to continue and expand, could apply to this project if there were an existing nonconformity such as a height nonconformity.

**Mr. Zack Richardson**

On cross-examination by Ms. DeWeese, Mr. Richardson elaborated on the city's use of mobility units for traffic impacts. Kenmore has looked at how development will affect its whole transportation network over time and assessed a cost for those impacts. The city can handle development up to a certain limit using just these impact fees—this is what the city calls its bank of mobility units. Because the project won't exceed the available units, the project meets concurrency requirements by paying the impact fees. No physical improvements (such as lane widenings) to increase the city's bank of mobility units will be required.

Regarding parking, Mr. Richardson stated that he did not believe it would be appropriate under the city's code to calculate minimum parking requirements based on both primary and accessory uses. Typically, parking minimums are based on the primary use only. In addition, the ITE Manual that the city uses for calculating these minimums defines a hotel as including all the proposed secondary uses as well. Mr. Richardson reported that though areas surrounding the state park have neighborhood transportation programs, there is no city program for the park or for 145<sup>th</sup> Street. Tr. 60.

**Ms. Abby DeWeese, Attorney for the Applicant**

Ms. DeWeese, on behalf of the developer, enumerated the criteria in KMC 18.105.050 that they seek to satisfy: 1) conformity with city and state codes; 2) consideration of the recommendations and comments of interested parties and agencies; 3) compatibility with character and appearance of existing or proposed development; 4) compatibility with plans for existing or proposed pedestrian and traffic corridors; and 5) conformity with the comprehensive plan.

**Mr. Kevin Daniels, President, Daniels Real Estate**

Mr. Daniels is the founder, majority owner, and president of Daniels Real Estate. The firm focuses on adaptive reuse of landmark structures as well as related community development projects. Mr. Daniels listed a number of previous Daniels projects including the Starbucks Center, Union Station, and a number of other projects in Seattle, including one project involving collaboration with the National Park Service. He has a personal interest in historic preservation.

He is currently a trustee emeritus for the National Trust for Historic Preservation and sits on the boards of directors of the National Trust Community Development Corporation and the National Main Street Center. He recently founded and cochairs the Alliance for Pioneer Square. He has a personal connection to the St. Edward Seminary project; he was married in a chapel at what is now Bastyr University. Tr. 65.

Bastyr hired Daniels in 2014 to look at expanding the university into the St. Edward seminary building. After they chose not to move ahead, his team explored other options for the building, and have proposed what they feel is the most appropriate and cost-justified use. Daniels Real Estate intends to obtain all the legally required permits and entitlements for the proposed project.

Daniels Real Estate signed a lease with State Parks that allows operation of the lodge facility within an area of about five and a half acres. It covers the seminary, gymnasium, and pool buildings, and permits a new garden and a parking structure. Mr. Daniels testified that as partial compensation, a 9.9-acre parcel of undeveloped lakefront property (the McDonald property) would be transferred to State Parks. Mr. Daniels testified that the McDonald property was about to be sold for residential development when his firm contacted the owners. If this project does not go through, the McDonald property may be sold and developed.

Mr. Daniels testified that the lease requires that the property be publicly-owned and that all public areas (including the lobby, food service, and spa) will be publicly-accessible. Access would be restricted for the upstairs lodging areas. Mr. Daniels denied that the project would put up fences around the leased area.

At the insistence of the Parks Commission, a public use area ranging from 250 to 2,000 square foot will be set aside for a use (such as an education facility) determined by State Parks. They have not decided what to use the space for, and Daniels Real Estate has no say in their decision. Tr. 70.

Mr. Daniels testified that there are no current plans for the gymnasium and pool buildings, and that the gymnasium will not be included in the project lease until an existing lease expires in 2021. He acknowledged the public comments about what they would like to see in those buildings, but their hands are full right now with the seminary building.

Aside from access and utility easements, the developer will have no authority over parts of the park outside the leased area. The project will be required to advise guests that they must comply with park rules both within and beyond the leased area.

Mr. Daniels said he believes the project will be compatible with Bastyr University based on his understanding of their goals from when they brought him in to look at the seminary. There may also be opportunities for spa education, herbal medicine and farming, and work study. They have voiced support for the project. He also believes the project will be compatible with the surrounding public and that the park and the lodge will enhance each other. This project is an ideal example of protecting the cultural landscape of a historic building and letting more people

use it. There is great interest in using state parks, and this project would let people stay overnight, hike trails, and provide jobs and a place to go on weekends.

**Ms. Trevina Wang, Vice President and Project Manager, Daniels Real Estate**

Ms. Wang is a vice president at Daniels Real Estate and is the project manager for this project. She has worked at Daniels for 2 ½ years. She submitted the site plan application for this project. Tr. 75.

Ms. Wang stated that the site plan application originally was for temporary lodging use, but the city believes that a hotel use is more appropriate, and Daniels Real Estate agrees.

Looking at the site plan document (Exhibit 13), Ms. Wang described the proposed parking element. Alternative One proposes two levels of parking: one in a restriped triangular parking lot north of the gymnasium, and the other a covered parking garage in the middle of the lease area. The covered parking garage is a structured parking garage. The seminary sits higher than the proposed structure, though Ms. Wang did not describe it as an underground structure.

Ms. Wang testified that the park currently has 220 stalls for parking (including the two parking areas that are part of the lease), and the project is required to ensure there is no net loss in the number of parking spaces available to the general public. The State Parks lease also requires that the project charge for parking in the garage available to lodge guests. The project will provide 13 stalls for bike parking and two loading spaces, as required in the Kenmore code.

Regarding emergency safety precautions, Ms. Wang testified that Northshore Fire Department has participated in all meetings with the City. They recommended that the access road from Juanita Drive to the seminary property stay open, and that a monitoring plan be used to ensure the road stays open. The monitoring plan will be similar to Bastyr's but with the latest technology. With respect to light and glare, Ms. Wang stated that the project will comply with city codes requiring downward shields and other standards. Tr. 80.

Ms. Wang then addressed the comments heard at public meetings before the State Parks Commission on January 5 and 9, 2017 (Exhibits 25 through 27). She testified that all seven park commissioners were very supportive of the project. The minutes of the meeting also contain a letter from the National Park Service stating that the proposed uses are compatible and are in compliance with the Land and Water Conversion Fund Deed requirement of the original property sale from the NPS to State Parks.

Ms. Wang believes that the site plan as recommended by the City complies with all Kenmore code requirements. She has no objection to the conditions the City has placed on the project.

**Mr. Rod Wright, Principal, Rod Wright & Associates/Architects**

Mr. Wright's firm has worked for 25 years on historic preservation and special-needs projects such as the Pioneer Square pergola and Washington Hall in Seattle. Mr. Wright is the consultant providing architectural design services for the project. Tr. 85.

He believes that the lodge design complies with the standards set for buildings on the National Register of Historic Places. Complying with these standards helps ensure that the adaptive reuse is consistent with the historic use. Adaptive reuse is encouraged to maintain usage of historic buildings that can no longer be used for its original purpose.

**Mr. Tim Brockway, Project Manager, Coughlin Porter Laudeen Civil Engineering Group**

Mr. Brockway has been a project manager for 23 years. He works at Coughlin Porter Laudeen (CPL), which was involved in upfront planning of the site plan application documents.

Regarding water and sewer availability, Mr. Brockway testified that the water pipeline that comes down to the development area will probably need extension and upgrades. Those designs have not been officially presented, but the Water Availability Certificate indicates that the system can be made to support necessary fire flows. There is a joint sewer system that also serves Bastyr, and the specifics of complying with the sewer district requirements will be assessed.

Construction of the structured parking garage and reconfiguration of existing lots will increase the impervious surface on the site by approximately 2.3 percent. This will trigger drainage requirements to prevent harm to the site and areas downstream, and CPL will work with the city on the specific requirements of city and state code for the site. Mr. Brockway agreed with Mr. Richardson that the project will be able to comply with the 2009 King County Stormwater Design Manual. The project would also be able to comply with the 2016 version of the manual. Tr. 90.

**Ms. Jennifer Barnes, Civil Engineer, Heffron Transportation.**

Ms. Barnes is a licensed civil engineer specializing in transportation. She has worked in transportation for over 20 years, has worked in environmental impact analysis for about 14 years, and has worked at Heffron Transportation for about 6 ½ years.

Ms. Barnes led the transportation and parking analysis for the project. The traffic analysis followed standard best practice methods established by the Institute of Transportation Engineering (ITE). The analysis used traffic rates based on data collected a few years ago at Cedarbrook Lodge in SeaTac, Washington. Cedarbrook Lodge was used because at the time of collection it was very similar in size and type to the proposed lodge, had about the same number of rooms, had meeting and banquet rooms, and included a restaurant and ancillary uses onsite.

The analysis looked at future conditions for when the project would be complete and occupied, in the year 2020. It included cumulative background growth from regional development, Bastyr University, and the ballfield expansion. After the background growth was analyzed, the added

trips from the lodge project were added in and analyzed. The analysis assumed full hotel occupancy with a conference occurring. The City's standard requires Level of Service (LOS) D (meaning 35 to 55 seconds of average delay) based on Highway Capacity Manual methods. Under the conservative assumption of full hotel occupancy, the peak hour traffic operations would not exceed LOS C, which is within the city's standard. Juanita Way is a designated arterial in the City's comprehensive plan. Tr. 94.

For the parking analysis, Ms. Barnes' study looked at rates established by ITE and at Cedarbrook Lodge. The rates were a little different but of similar magnitude, so the analysis used the higher rate from each analysis to be more conservative. For instance, the ITE rate for overnight parking was higher, and overnight is expected to be the period of peak parking demand. The study projects demand well below the number of spaces proposed, so it identified no parking impacts for overnight parking. For peak midday parking demand with a conference, Ms. Barnes' study used the Cedarbrook data because it was detailed enough to analyze both conference and no-conference midday demands. The study assumed full hotel occupancy plus a conference (with nobody from the conference also staying at the hotel). Under these conditions, the study projected that the onsite parking could accommodate a "midsized" conference with about 120 participants.

But for a larger event, parking demand could exceed supply. In that case, the analysis proposes mitigation measures such as valet parking (to stack cars more tightly) or working with Bastyr to arrange for overflow parking. Shuttling may be required. Ms. Barnes believes that Daniels Real Estate is committed to fulfilling these mitigation measures.

In response to questioning from Ms. Mooney, Ms. Barnes stated that she is aware of some large events that happen in St. Edward Park. Though she knows events can fill the park's parking, she does not believe that issue is related to this project because this project is responsible for avoiding overspill. If the project cannot accommodate parking onsite, then the hotel will mitigate the issue by finding parking offsite, at Bastyr or elsewhere. Tr. 101.

Though Cedarbrook is in an urban environment and not a parklike setting, Ms. Barnes testified that the traffic analysis is intended to create a rate of trips per occupied room for a similar hotel and then apply that rate to this project. The potential environmental learning center was not analyzed specifically, but the trip rates capture the ancillary hotel uses including restaurants, meeting and banquet rooms, and other supporting services.

#### **Mr. Zack Richardson**

In response to questioning from Ms. Anderson regarding child safety, Ms. Barnes did not know how the proposed parking configuration would relate to the park's castle playground. Mr. Richardson stepped in to answer, stating that the new parking will not be by the playground, though the existing lot by the lower access road would be rehabbed and remain public parking. He was not sure if any trees would be removed near that lot. Tr. 105.

#### **Ms. Jennifer Barnes**

On questioning by Ms. DeWeese, Ms. Barnes noted that she does not understand a specific environmental learning center to be part of this project. The traffic and parking analysis was not required to use the Cedarbrook data, and could have proceeded on ITE data alone. The Cedarbrook data was used to create a more conservative analysis.

**Ms. Abby DeWeese**

Synopsizing the testimony so far presented, Ms. DeWeese stated that the city and developer's witnesses have testified that there is adequate water and sewer capacity; that all drainage improvements will comply with the King County design manual; that the development will meet park zone standards; that the increased traffic impacts will meet city standards; and that more than the minimum parking will be provided. The City has also made a determination of adequacy under SEPA.

Ms. DeWeese pointed out the support the project has received from the State Parks Commission, historic preservation groups, and Bastyr University. The rehabilitation will comply with the Secretary of the Interior's historic preservation standards, which will ensure the lodge is consistent with the existing development, with the building's historic nature, and with the cultural landscape surrounding it. The project will be compatible with existing and proposed vehicular patterns, as it will use an existing access road and will not alter the circulation patterns. The project will also provide increased ADA trail access. No other pedestrian plans or the like are applicable to this site. The project is consistent with the city's comprehensive plan. Tr. 110.

**Ms. Ann Aagard**

Ms. Aagard argued that the lodge proposal should be denied for failure to meet the criteria of KMC 18.105.050. She noted that the State Parks lease is granted under RCW 79A.050.025, which states that "the associated property immediately adjacent to the area is covered by the lease." She stated that there the site plan includes a half-acre organic farm that is not immediately adjacent to the areas under lease. The area was associated with a picnic area and volleyball court that are culturally significant. The lease also includes expanding parking and the pedestrian path, which also are not immediately adjacent to the building. Kaleen Cottingham's November 2016 letter (part of her Exhibit 46) uses the same language. Tr. 120.

Ms. Aagard referred to a statement from the Department of Archaeology and Historic Preservation (DAHP) that recommended the parking structure be constructed to minimize cultural and historical impacts. She then noted the National Park Service's 2008 St. Edward Seminary and Cultural Landscape Inventory (included as an addendum to the Final EIS), as well as a color map, "The Great Lawn and Contemplative Garden," compiled by Ms. Aagard and a group of citizens. She testified that these documents show a Nun's Garden on or next to the site proposed for the 53-stall parking lot. The site was a contemplative retreat for nuns when the seminary was in operation. The parking use is not compatible with the site features present there today, with the guidelines for preservation, or with the cultural landscape inventory. In addition, the cultural inventory recommended that a certain view, marked with a red dashed arrow on the

map, should be closed. The proposed structured garage entrance would conflict with this recommendation.

Referring back to the November 2016 DAHP letter, the agency recommended that the mitigation, impacts, and affected resources should be more clearly defined. The site plan now shows that the Nuns' Garden will be covered or obliterated. She believes the site plan shows they are probably removing ten large cedar trees there, contrary to the DAHP letter and cultural inventory. The Final EIS notes but does not address the content of the DAHP letter.

Ms. Aagard believes the underground parking is not compatible with the cultural landscape. In addition, the access road from the parking for the lodge (shown on her map of the site plan) is out of character and should not be allowed. The new public parking on top of the Nuns' Garden would also make people who park there cross the access road twice as well as the landscaped top of the parking structure to get to the main part of the park. Tr. 125.

Ms. Aagard's supporting documents, including the map she and other members of the Friends of St. Edward State Park created for a park sign, were admitted as Exhibit 46.

### **Ms. Susan Gardner**

Ms. Gardner is thrilled that State Parks leased the property to Daniels, and that people will be able to make this a destination. Ms. Gardner lives in the Arrowhead neighborhood, which has road access via Juanita Drive. The small traffic impacts from the lodge will be nothing compared to the traffic created by diversion from toll roads, from Bastyr University, and from park events. Arrowhead residents just have to account for the time it takes to get out of the neighborhood. The beer festival is no longer held in St. Edward State Park, so there is no concern there.

Regarding wildlife, Ms. Gardner stated that she frequently sees deer in the neighborhood, in yards and on decks. They have figured out how to live in the areas between the golf course and the park, and the hotel won't make any difference. Other animals, like owls, have also already adapted to human habitation in the Arrowhead neighborhood. Tr. 130.

### **Ms. Elizabeth Mooney**

Ms. Mooney, along with Macy Ratliff, prepared a petition regarding the project that was submitted as part of Exhibit 45. Ms. Mooney believes the project would be more consistent if the City were not "piggy-backing" an artificially-lighted turf ballfield into the standalone Daniels seminary project. It is hard to discuss the site plan and make comments about the seminary building and its impacts without knowing about the ballfield controversy. A confidentiality agreement between the City, State Parks, and Daniels will decrease public transparency. Ms. Mooney also believes that the project should adopt a leave-no-trace policy for its use of the project site.

Ms. Mooney feels that the biological assessment is consistent with the site's peacefulness and sanctity. Maintaining the seminary building's cultural significance includes everything around it.

If Daniels is not responsible for protecting that, then he needs to hire someone to do so. Ms. Mooney referred to a presentation by Ms. Susan Carlson to the State Parks Commission regarding an environmental learning center. The 2,000 square feet allotted for that use is insufficient to protect the peacefulness or the wildlife of the site. Even assuming Daniels fulfills its proposals for water and drainage mitigation, the project won't be sustainable unless it partners with an environmental steward who teaches from the facility and maintains a leave-no-trace mission. Eventually there won't be any more of the animals on site because the city is going to take away the darkness with the lighted ballfield. Though the lodge project assumed the ballfield would mostly operate during daylight hours, the city is actually proposing lighting that will extend hours to at least 10:00PM. This will kill any bird or amphibian that relies on circadian and seasonal daylight rhythms to breed. This effect is not consistent with site plan criteria regarding spirituality of the park. Tr. 134.

Ms. Mooney met a former seminary student who studied there in 1947 and recalled the site as a peaceful, spiritual place of learning. Even if Daniels can keep that ambience, what the City is adding won't work with that, which makes her not support the Daniels project. The City said Mr. Daniels supports the ballfield lights, but park staff said he is neutral. And his own staff said he supports whatever the city wants. She believes the City has a conflict of interest and that the confidentiality agreement between the City, State Parks, and Daniels Real Estate (approved at a February 27, 2017 meeting) will keep people from knowing what's going on.

Ms. Mooney pointed to a presentation made to park commissioners exploring options for the site's environmental program. An effective environmental program will need more than 2,000 square feet. Promoting ecotourism would be an alternative to "profit-making hotel guests" and would be compatible with a leave-no-trace mission. Ms. Mooney read from the habitat conservation element of the City's comprehensive plan. The element describes three major habitat areas, and also mentions that St. Edward Park is the largest publicly-owned natural area in Kenmore.

Ms. Mooney believes that State Parks staff and the City have worked out a deal that the grant to protect the shoreline will only be pursued if the City gets the artificially lighted ballfield. There are already sixty-plus ballfields within five miles of Kenmore City Center, so they don't need an artificially-lighted ballfield. It was disappointing to read correspondence to the mayor and city council that Mr. Daniels expects the ballfield to be woven into the development and zoning agreements for the lodge. Ms. Mooney read from the correspondence to which she referred. Mr. Daniels and the City have been public about approving whatever the City wants, including a noisy, artificially lighted ballfield that will replace a naturally dark, grassy bird habitat. Mr. Daniels refuses to take leadership on environmental protection and, instead of working with Ms. Mooney, has only looked forward to the renovation and its unsustainable impact on the environment. Tr. 140.

The EIS addressed cumulative impact but ignored the environmental impacts, only addressing parking impacts. It is abuse of nature, a special-interest, profit-making venture in a public park. Ms. Mooney is optimistic, but she hates the tit-for-tat trade of the zoning change for support for

the ballfield. The evidence for that is sketchy, but an email from Doug Levy suggests it might be a factor.

Ms. Mooney wants to preserve the bird habitat, wetland, and stream, as well as the seminary's cultural flavor. To do that, the site must not allow so much car access. Unless the new use is environmentally friendly, natural habitat will dwindle exponentially due to noise, traffic, artificial light, and people eating, drinking, and reveling. Ms. Mooney is not against alcohol per se, but she is against losing the natural atmosphere, against letting profit trump environmental protection. Mr. Daniels must make it his duty to protect the park's nature. Ms. Mooney would like to increase the 2,000 square foot proposed for public use (such as an environmental education program). Tr. 143.

On questioning from Mr. Kaseguma, Ms. Mooney stated that she has a B.S. in zoology and a master's degree in fisheries from the University of Washington. She is an at-home mom and a volunteer who does grant writing. She is president of People for an Environmentally Responsible Kenmore (PERK), which has received a grant for an interactive map of Lake Washington. She had paid work performing ecosystem modeling for fisheries and marine mammals in the Bering Sea in 1982, but has not prepared a habitat assessment or wildlife assessment for an agency or for pay in the past ten years.

Ms. Mooney's written documents were later admitted as Exhibit 47.

#### **Ms. Ann Anderson**

Ms. Anderson heard during the parking testimony that there was a tree plan for the site. In her opinion and experience working with the City of Kenmore, tree plans are often an afterthought. Kenmore does not have regulations to save old-growth trees. Ms. Anderson would like to see the tree plan because it's all tied together in one project inside a state park. After Ms. DeWeese noted that the "tree plan" may be the arborist's report (Exhibit 40), Ms. Anderson asked that the hearing examiner review that report.

#### **Mr. Carl Michelman**

Mr. Michelman is a resident and local businessman who chairs the Kenmore Business Alliance, affiliated with the Greater Bothell Chamber of Commerce. The park system wants people to come to the park, and this landmark project will bring more people in from locally and across the country. Tr. 150.

When the archdiocese gave the park, they wanted all people to enjoy the building. The state doesn't have the money to restore the building or tear it down. Mr. Daniels has come to the table to make this project happen. It's a win-win for the community and the state. The Business Alliance and the Chamber of Commerce endorse this project.

#### **Mr. Bryan Hampson**

At the request of Mr. Kaseguma, Mr. Hampson discussed the email to which Ms. Mooney earlier referred. He stated that the email from Doug Levy was prior to the current application. The previous developer was thinking about putting in some ballfields as a public benefit.

**Ms. Abby DeWeese**

Ms. DeWeese objected to the allegation raised that the State Parks regulations are inconsistent with the lease approval. The applicant believes the State Parks process was proper. Ms. DeWeese pointed to the testimony of Mr. Daniels and Ms. Wang that the ballfield proposal is not part of this project and has no relevance; their only commonality is their adjacency to each other.

With respect to the environmental learning center, Ms. DeWeese stated that the proposal is for a hotel and accessory uses. There is space reserved for parks programming, but the applicant doesn't know what State Parks will program there so the programming is not part of the proposal.

Regarding salmon impacts, the EIS discloses impacts and identifies mitigation measures. One of those measures is compliance with the stormwater design manual, which as Mr. Brockway testified is intended to improve runoff conditions.

As for contentions that removing elements of the cultural landscape would violate the Secretary of the Interior's historic preservation standards, those standards are flexible guidelines, and the project architect will address the issue further during the second appeal hearing. Tr. 160.

**Ms. Jessica Logan, Environmental Program Manager, Washington State Parks**

On examination by Ms. Wehling, Ms. Logan stated that she is an environmental program manager and the SEPA-responsible official for Washington State Parks. Looking at the State Parks lease (Exhibit 43), Ms. Logan notes that tree removal must be consistent with State Parks policy. There is no current proposal for the ballfields before the Parks Commission.

With respect to parking and the Nuns' Garden, Ms. Logan pointed out the Nuns' Garden and proposed parking on a map from the Draft EIS (Exhibit 19, Appendix G, page 3, figure 1-2). She testified that the final parking plan has not been cemented, but there are no planned impacts to the Nuns' Garden. There is a good deal of space between the Nuns' Garden and the existing parking that will be improved.

Turning to the Cultural Landscape Inventory to which Ms. Aagard referred, Ms. Logan stated that State Parks sought that report from the National Park Service so they would better understand what they were working with. The report includes treatment recommendations, but there is nothing binding.

**SEPA Appeal (Tr. 163)**

**Ms. Rebecca Hirt, for SEPA Appellant**

Ms. Hirt has lived in the area for almost 44 years. She went to public meetings back when the state park was being discussed, so she knows the park and its history. She and her family have a park pass and use the park often. She is an elected hospital commissioner at Evergreen Health, which helped keep the pool open for about three years as a community benefit.

**Ms. Tracy Hendershott**

Ms. Hendershott lives in Kirkland and has hiked the trails at St. Edward State Park for 19 years. She sometimes photographs the wildlife and has included some of the photos in her prehearing brief. She feels that many of her comments regarding the project's wildlife impacts were unsatisfactorily addressed in the Final EIS.

In particular, the Final EIS did not really address the effects of night trail use at all. Currently the park is closed at dusk, giving wildlife a rest from human activity. This lodge would lead to trail use by walkers and bicyclists. The resulting noise, lighting, and human presence can result in animals being displaced and their natural eating, sleep, and breeding behaviors disturbed. Circadian rhythms are also a concern. Tr. 170.

Ms. Hendershott stated that great blue herons are highly vulnerable to human activity; though she has photographed these birds in the park, they are not assessed in the Final EIS. As a keystone species, pileated woodpeckers' habitat also deserves special attention. The watershed company's January 2016 report found no active bald eagle nests in the park and one past nest outside the construction zone. Ms. Hendershott has seen bald eagles on trees in the park on multiple occasions; with other habitats disappearing, the bald eagle could nest in St. Edward State Park again.

Ms. Hendershott is also concerned that the park now only has one part-time park ranger, with no onsite ranger at night. If this continues and the lodge is built, there will be less enforcement of illegal trail use or activities harmful to wildlife. The EIS should protect these animals and their environment; they should not have to adapt to an unnecessary nighttime invasion, just as we would not want more visitation, lights, and noise in our own neighborhoods at night. As a frequent trail walker, Ms. Hendershott feels it is her duty to speak for the wildlife. This development will have effects on wildlife even experts don't know about. She hopes the EIS will cover this more.

Ms. Hendershott objected to trees being cut for parking. The Douglas firs and cedars are wildlife habitat and include heritage trees and trees in good shape. She would like to see a tree ordinance in the state park like the one in Kirkland. She reminded Daniels Real Estate of the Migratory Bird Act's requirements regarding tree removal. Tr. 174.

Under examination by Ms. Hirt, Ms. Hendershott testified that many answers in the Final EIS were vague. She has been to the park two or three times a week for many years. She does not have photos of the bald eagles because she sees them while swimming. She is aware that the

hotel would have to give its patrons the park rules, but she is concerned about how the rules would be enforced.

Under cross-examination by Mr. Murphy, Ms. Hendershott stated that she is not an expert on trees. She was a general science major, which included courses on plants and wildlife. She has not issued or contributed to a formal report on these issues. Mr. Murphy directed Ms. Hendershott's attention to her letter and the response as contained in the Final EIS, as well as passages from the Draft EIS regarding the use of recreational amenities, impacts to animals by noise and light. Tr. 180.

Ms. Hendershott is concerned about all illegal trail use, including the creation of social trails off the formal trail as well as nighttime use. She does not know whether State Parks will change its enforcement practices. Tr. 185.

Mr. Murphy drew Ms. Hendershott's attention to a letter from the Audubon Society and to passages of the Draft EIS relating to light pollution mitigation. Ms. Hendershott does not have information about how the proposed project will affect night lighting outside the leased area; she has read what was written but there did not seem to be any details. She does not have her own evidence about how much light pollution the project will create, as she lacks the relevant lighting design information.

On cross-examination by Ms. Wehling, Ms. Hendershott testified that none of her wildlife photographs were taken inside the seminary building, and none of the wildlife have habitat inside the seminary building (though she cannot vouch for the butterflies and bugs).

On cross-examination by Mr. Kaseguma, Ms. Hendershott stated that she lived in the Norkirk neighborhood of Kirkland, about seven miles away from the park. She does not believe light and noise from this project will invade her own neighborhood. She has seen bald eagles while swimming at Lake Washington two or three times in the last five years. She could not see the seminary or the construction zone from the water, but she has seen them land on trees at the water's edge. Tr. 192.

On redirect by Ms. Hirt, Ms. Hendershott clarified that the wildlife she has seen are on the trails, as that is where she generally walks. She has not necessarily seen wildlife in the construction zone. She agreed with Ms. Hirt that her concern is not about the people in the hotel building but people on the trails at night and at other times. With the building there comes the activity around it extending all the way to the water and disturbing wildlife. Wildlife are already disturbed here during the day and we should not add to it. Tr. 195.

### **Dr. David Bain**

Dr. Bain obtained his Ph.D. in biology from the University of California, Santa Cruz in 1989. He has done over 10,000 hours of fieldwork in marbled murrelet habitat. He has not published his own work on the marbled murrelet but has assisted in a publication on reducing marbled murrelet entanglement in gill nets. He is one of about 70 certified marbled murrelet observers.

This certification requires field experience and identification skills as well as annual training, including information on the effects of disturbance. Dr. Bain has also attended Forest Management Plan meetings addressing marbled murrelet concerns. He has previously been qualified as an expert witness for habitat disturbance of marine mammals, and has worked on that issue for both the United States and Canada. He has spent 34 years studying marine life disturbance. He submitted declarations on the Maury Island gravel mining expansion proposal. He has also been involved in grant writing for proposals to protect the marbled murrelet.

The Draft EIS for this project has the same flaws as the Maury Island project, as it fails to consider disturbance to species listed under the Endangered Species Act. The marbled murrelet is listed as threatened, and it is a priority species in Washington. The greatest threat to the species is loss of nesting habitat. They breed in stands of trees greater than 60 acres in size, in trees greater than 100 years old that are less than 15 miles from running water. The trees at St. Edward State Park are currently too young to be nesting habitat, but they will be good breeding habitat for the species before the expiration of the Daniels lease. And because the St. Edward site is much closer to their feeding waters in Puget Sound than other known nesting sites, so birds will save energy nesting there. Marbled murrelet reproductive success is an order of magnitude lower than before due to the loss of coastal breeding habitat. Tr. 200.

Dr. Bain testified that the U.S. Fish and Wildlife Service is updating its marbled murrelet recovery plan, and they, the state Department of Natural Resources, and State Parks should consult with each other. Given the nexus with the Land & Water Conservation Fund, Mr. Bain believes Fish and Wildlife should perform a Section 7 consultation before the EIS is completed.

Dr. Bain stated that there are a number of threats to marbled murrelets. Food scraps attract predators such as crows, so any increasing use poses a threat. Murrelets spend their day out at sea, leaving and returning to their nests in low light so they are not observed. Increased light levels might allow owls to observe these movements and predate upon the chicks in the unprotected nests. Vehicle collisions are another concern.

Dr. Bain believes that consulting with DNR is important because they are considering a range of forest plan alternatives and have not picked a preferred solution. The planned alternatives for the nesting area that includes St. Edward State Park range from a 1,000-acre reduction to a 21,000-acre increase in the breeding habitat. If this project exacerbates a planned loss of habitat, that would be a big deal. State Parks and DNR need to decide if State Parks is going to share in the responsibility of recovering the species. State Parks' actions have a predictable effect on what will happen with marbled murrelets in this area. The plans of Fish and Wildlife, DNR, and State Parks all should be considered before the EIS can be considered complete.

Protecting forests includes speeding up the creation of new habitat and improving the distribution of nesting habitats. Essentially all the coastal breeding habitat has been lost, but patches of forest logged in the 20<sup>th</sup> century (such as St. Edward State Park) are close to becoming new habitat. Having new habitats will protect the species and allow it to recover if its current breeding habitat in the foothills were destroyed by wildfire. In the shorter term, objectives include maintaining potential and suitable habitat in large, contiguous blocks and enhancing

buffer habitat. Nest disturbance should be minimized. For noise, yelling is a concern, but normal conversations would not be an issue. For visual disturbance, it is a concern if people are close enough for murrelets to see them. Currently a 300-foot buffer is recommended, though the science is not necessarily adequate to support that. Tr. 205.

With respect to bald eagles, Dr. Bain testified that a 660-foot buffer is required around eagle nests. The seminary is further away than that, but the impacts of hikers passing within 660 feet of the nest is something that the Washington Department of Fish and Wildlife should be consulted about. Great blue herons are also a priority species for the state but were not considered in the EIS. The shoreline along the park is a foraging area that needs to be protected; the possibility of hikers going down to the water and disturbing herons should have been considered in the EIS.

Under examination by Ms. Hirt, Dr. Bain discussed the levels of concern and protection for endangered and priority species. Salmon are potentially a concern; there is a strong suspicion that excess lighting contributes to predation on juvenile salmon, but that research is not complete. If the seminary itself, or visitors with flashlights at the beach, adds to the light levels across the lake then it could increase salmon mortality. Without enough salmon to eat, killer whale populations would decline as well.

Dr. Bain testified that a species can be dying a death of a thousand cuts by many small but cumulative impacts. Where many small impacts are threatening a species, then each of those impacts has to be dealt with even if each one on its own would not result in extinction. Tr. 209.

On cross-examination by Mr. Ranade, Dr. Bain testified that he did not submit written comments on the EIS and did not speak at the Draft EIS hearing, though he did speak at the January public hearing. Dr. Bain is primarily a marine mammal biologist. Killer whales and murrelets share the same habitat, so he collects data on both species and their interactions. He takes data on their locations, usually just noting their presence rather than the number. He did more detailed fieldwork on their presence in Prince William Sound, and in the last couple years he has done monitoring for Fish & Wildlife, including noting their behavior, their location, and human activities in the vicinity.

Dr. Bain repeated that he has not published on the marbled murrelet. He stated he is not a lobbyist. He does not have a forest practices management degree. He agrees that marbled murrelets and killer whales are not the same species. Dr. Bain played a small role in a study of using noisemaking painters to cause murrelets to avoid gill nets when diving for fish. He has not personally done studies on the effect of building construction or operation on murrelets, but he has reviewed the studies of others. His work in opposition to the Maury project focused on the impact on Chinook salmon and killer whale habitat. Tr. 215.

Mr. Ranade directed Dr. Bain's attention to an aerial site map from Exhibit 19. Dr. Bain does not believe any of the construction projects would have a direct effect on murrelets. The concern is the increased number of people going to and from the site. He understands that the site is not currently murrelet habitat and the project would likely be complete long before the site would be habitat. Like the Maury Island project, a small project area here can have effects on a wide-

ranging population. Though there are no tugs or barges or gravel shipping docks in this project, there are people with flashlights and screaming kids. Dr. Bain assumes that people will be able to leave the lodge at night and go outside. He is aware that some night events are now held in the park.

Dr. Bain has not seen any marbled murrelets in St. Edward Park. He reiterated that marbled murrelets do not currently nest at St. Edward State Park because they have specific nesting requirements that St. Edward will not meet for a couple decades. If DNR goes all out protecting murrelet habitat on DNR's land, then impacts to St. Edward Park are not a worry. But if DNR decides it can rely on future habitat in state parks, then the impacts to this park will be important. This discussion should have happened as part of the EIS process. Dr. Bain has not personally conducted a marbled murrelet nesting habitat study, and he has not geotagged any birds. Dr. Bain believes that DNR will be changing policy with its Draft EIS out for comment now. Tr. 220.

Asked to consult another aerial map from Exhibit 19, Dr. Bain testified that the McDonald property is wooded. He is not aware of any difference between the trees on that property and those in the park. Kenmore's grant application to purchase that property was very highly rated. Returning to the other map, Dr. Bain testified that he does not believe any of the trees within the project area could one day support a marbled murrelet nest. He does not know the closest old-growth tree to the seminary. The park was logged in the 1920s.

Dr. Bain agreed with Mr. Ranade and the Draft EIS that development of the lodge would not increase habitat fragmentation, because the area is already built on. Regarding the EIS' comments on construction noise and wildlife, Dr. Bain said he could not argue that construction noise would be a problem. He agreed with statements in the EIS that increased nighttime traffic may reduce the abundance and diversity of reptiles and amphibians within in next to the project site. These animals do not have the same legal protections that marbled murrelets do. Tr. 225.

Dr. Bain agreed that the land-based project area did not include fish habitat, and his concerns focused on the traffic to and from the project area and between the project area and the water. He agreed that the EIS notes that people visiting the lodge will use the trails. He believes that however the lodge is ultimately lit, that light will spill onto Lake Washington. The trees in the park are over 100 feet tall, taller than the lodge, but light will be reflected off of clouds and snow at night. He suspects the light from the lodge will not be materially different from the light of the surrounding development, but somebody should measure that.

Dr. Bain stated that because the EIS fails to consider marbled murrelets, it also fails to consider the effects of noise on them. They are more easily disturbed than many other birds. Because impacts to future marbled murrelet populations are a reasonably foreseeable cumulative effect of this project, those impacts should have been studied. The same logic applies to any other threatened or endangered animal that could set foot in the park in the next 20 years or longer. Tr. 229.

In response to questioning from Ms. Wehling, Dr. Bain stated that the project would modify the presence of humans on the shoreline, which would affect great blue herons. With respect to

eagles, the impacts would be increased use of existing trails; Dr. Bain understands that about 200 people would stay at the lodge, though he does not know the average daily number of park users. Dr. Bain did not put together a list of scientific literature on which he relied to form his opinions.

In response to Mr. Kaseguma, Dr. Bain agreed that the park is heavily used and said he would not disagree with Mr. Kaseguma's assertion that the park has about 865,000 visitors a year. He did not know how many visitors park in the parking areas, park at Bastyr, or walk in to the park. There are likely many visitors who park there. Marbled murrelets do not like to nest where there are human visual or noise disturbances, so the project site itself is not a potential nesting site. But it is reasonably foreseeable that the traffic the project site creates in the park and on the surrounding trails will affect potential murrelet habitat in the park. Stormwater and lighting must be done properly. Tr. 236.

Dr. Bain agreed with Mr. Kaseguma that 100 extra trail users a day would be about a 4.2% increase over 850,000 visitors a year. But the timing is important; trail users at night or within two hours of dawn or dusk would have more impacts than people using the trails at lunch.

On redirect examination by Ms. Hirt, Dr. Bain testified that he has read more about marbled murrelets than most students would be assigned in a course. He has done research on them equivalent to a master's level thesis, and he has talked with colleagues who study marbled murrelets full-time. There are noise standards based on Navy studies, but the painter study suggests a much lower level of noise would affect murrelet behavior. Maybe studies on their sensitivity should be done. Dr. Bain would consider himself one of the best in the world on killer whales. He is not there for marbled murrelets, but he believes his knowledge meets the threshold for an expert. There are no quick fixes for the species; you have to think 50 or 100 years ahead to recover them. There won't be impacts to them during construction, but the future impact on them needs to be weighed. Tr. 240.

**Mr. Peter Lance (Tr. 248)**

Mr. Lance has been a resident of Bothell and Kenmore for 64 years. There seems to be a source of contention about whether this is a conference center or a hotel with meeting rooms. Under KMC 18.040.030, parking is required for a conference center at the rate of "one per three fixed seats plus one per 50 square feet used for assembly." The Heffron report says there is 16,600 square feet of conference space, so that would come to about 333 parking stalls required under Kenmore code. Tr. 250.

Mr. Lance believes the SEPA official exceeded his authority by defining this project as a hotel rather than a conference center. It seems clear to him that for a big hotel with a small conference center you count the bedrooms, while for a big conference center you count the square feet, and you take the higher of the two. The citizens' concern is really that the traditional park user will be pushed out when the lodge and conference areas are running fully. If you compare this project with the Cedarbrook Lodge, there could be over 1,000 visitors in the park. Daniels' own numbers in the Final EIS anticipate 550 people at conferences on a busy day and 240 people in the

restaurant at full capacity—a total of 790 people. Using the 0.9 cars-per-person multiplier, there are still hundreds of cars left to park.

Mr. Lance obtained a graduate economics degree in 1974 with an emphasis on statistics, and a graduate degree from the University of Denver in market research, real estate, and construction management. There are a lot of cars Daniels is going to need to park, and there's no evidence that Bastyr can accommodate these cars. Daniels has not said where offsite cars will be parked. And hotel users using public parking is a concern; the SEPA official acknowledged they cannot prevent people who are visiting the hotel from using public parking, though he noted some options to discourage that behavior. People are going to find a shuttle inconvenient and can just use their Discover pass instead. This was acknowledged but not studied. There's no parking plan except a shuttle to a nonexistent lot. Cedarbrook has a lot within 2,000 feet that people can use; it doesn't have to compete with a public parking lot. Tr. 255.

He wants to ask the person who prepared the Heffron report how the numbers would have been different if Cedarbrook was more or less busy. And the Cedarbrook study was in January so it does not address seasonality.

In response to Ms. Hirt, Mr. Lance stated that the park is quiet in the winter, especially on rainy and cloudy days, and it is quite busy from late spring to fall. He does not believe Cedarbrook and St. Edward are very comparable properties. Though the meeting room capacities are similar, there are market differences given Cedarbrook's proximity to SeaTac. Tr. 260.

Mr. Lance wondered who was expected to come and attend the conferences. They could be Eastside high-tech people coming in and tying up parking during the day. The SEPA official should have asked about the different sort of people going to Cedarbrook versus St. Edward. People can walk to Cedarbrook from the SeaTac lots or can take the airport shuttle, invalidating the numbers here.

Under cross-examination by Mr. Ranade, Mr. Lance stated that he is not a traffic expert. He has not conducted an independent traffic-flow study around the park. He has not spoken to anyone from Daniels Real Estate about the project. He has no information on whether the hotel will allow people to stay there only if they are renting the conference facilities as well. He agreed that there is overlap between the different uses. Tr. 265.

Mr. Lance would like to see the SEPA official investigate this issue in greater depth. He did not come with specific solutions, and it is a hard problem to figure out. The SEPA official should have required more information on the plan for offsite parking. He agreed that ITE is the industry standard for analyzing traffic and parking, but there would still be problems with the Heffron analysis even if Cedarbrook were not mentioned at all. He did not speculate how the SEPA official would have worked with just the ITE data and not the Cedarbrook data. He does not know how often a full-capacity scenario would occur. He calculated the results in his figures himself. The Cedarbrook building is similar to St. Edward, but the location is different. Tr. 271.

Mr. Ranade drew Mr. Lance's attention to the EIS statements regarding steps to mitigate overflow parking. Mr. Lance stated that Bastyr's parking is often full, so they will not always be the go-to overflow opportunity. If Bastyr's lot is full, then relying on Bastyr is not a reliable, practicable solution, it's just a dream. Mr. Lance has read the comment letter by Phyllis Finley and the SEPA official's response, including the part about cost-of-convenience incentives for guests to use lodge parking instead of public parking. He agrees that 220 public parking spaces will be available both before and after the project is built. Tr. 275.

In response to Mr. Kaseguma, Mr. Lance testified that his visual review of the floor plans shows about the same square footage of lodging as of meeting rooms. The meeting rooms will have more people going in and out at full use—200 in the hotel rooms and 800 in the meeting rooms and restaurants. ITE probably has a standard for daily operational use of these facilities, and he would refer to that for a basic usage percentage. The Kenmore code spells out when to use the square footage metric and when to use the number of rooms metric. This project seems to fall under the conference center category. They're trying to do the right thing for the park and have a solid traffic and parking solution, but this proposed solution hasn't been thought through. Tr. 286.

After reviewing the floorplans, Mr. Lance did not dispute Mr. Kaseguma's statement that the square footage for lodging was half again that of the meeting area. He is not in a position to tell the project how to run the tests, he's pointing out things that were not investigated, a lack of numbers about the day-to-day, season-to-season, year-to-year usage. Mr. Kaseguma directed Mr. Lance's attention to the Heffron report; Mr. Lance noted that Cedarbrook Lodge reported its daily hotel occupancy rate and the average number of conference attendees per day, but not the percentage conference occupancy. The numbers on their website they could have 1,000 people at capacity, so according to the Heffron report they were only averaging 15% conference capacity during the study period. Tr. 290.

The use of the higher ITE rates in the Heffron report does not satisfy Mr. Lance's objections to the projection. St. Edward does not have nearby large parking lots like Cedarbrook does. He has been to St. Edward for concerts when people are parking all over the place, on the lawns and the grass ballfield. The park opens these grass areas for parking in these overflow situations, but that is public parking. Tr. 294.

On questioning from Ms. Hirt, Mr. Lance noted 6,000 square feet of meeting rooms and 3,200 square feet of dining room on the first floor. The basement is all meeting rooms, offices, and mechanical. Most of the meeting space is on the first floor and basement levels. The meeting rooms are the dominant use; you see them as you enter. He does not know whether people will have to stay at the hotel to rent meeting space. He does not know what the standard conference space at a 100-room hotel would be. In the summer, the park sometimes doesn't have any parking spaces free, and people are hovering and waiting for others to leave. On most nice Saturdays and Sundays the parking lot is at capacity.

Mr. Lance believes the parking and traffic analysis should be based on the truly anticipated needs for the hotel and conference center. It should look at both disparate and overlapping activities

throughout the seasons. With 550 people showing up to conferences and 240 to the restaurant, the conference room daytime impacts will be greater than those of the hotel in the evening or whenever there is not demand for public parking. Tr. 301.

**Ms. Hirt**

At the end of the first day, Ms. Hirt summarized that the project includes 16,000 square feet of conference space and 100 beds. The parking is inadequate for the size of the building and for keeping the promise that there would be no net parking loss.

At the start of the second day, Ms. Hirt stated she has long been involved with the park, including spending two years on the advisory committee of CAMP. Any use of the seminary building must be subordinate and complementary to the park as a natural sanctuary and outdoor recreation area. Instead of supporting outdoor recreation and traditional park activities, the project brings in new activities. And facilities in the building have great public value but this project doesn't really open them up to the public, just to paying customers. The project should not alter the seminary grounds or remove the historic volleyball court. There is no indication if fees charged will be reasonable; the project seems like it is aimed at high-income people, not the general public. This building will overtake the park, even with the additional 9.9 acres. Tr. 316.

Ms. Hirt referred to standards from a market feasibility study regarding meeting space in a hotel that she believes suggest this project has more meeting space than that standard. Tr. 320.

Referring to the arborist's report (Exhibit 40), she noted that 11 trees would need to be removed for the proposed parking garage, and two other trees to be removed for poor structure. These trees are a beautiful part of the park, so the project should look at how to accommodate the parking needs without removing trees.

On questioning from Mr. Ranade, Ms. Hirt testified that currently access to the seminary is by appointment only. After the project was completed she could walk in and get coffee, but the hotel would be welcoming to paying customers. Tr. 325.

Ms. Hirt stated she does not personally play volleyball. She has not done an independent study or traffic analysis. She has not personally stood at the park entrance and counted the visitors, though she has seen data from 2016 counting the number of cars coming in. She is concerned about the cultural change of the lodge overtaking the park. She agreed that Alternative 2 of the plants element of the EIS contemplates protecting trees from removal for parking. Tr. 332.

On cross-examination by Ms. Wehling, Ms. Hirt clarified that while she spoke at the hearing on behalf of Citizens for St. Edward State Park, she is also a founding member of a separate State Parks-sponsored group called Friends of St. Edward State Park. Citizens for St. Edward State Park has not presented a funded proposal for use of the seminary building. Currently, the public has to pay a parking fee at the park, and the dining hall also charges a fee. Tr. 335.

On redirect of herself, Ms. Hirt stated that Citizens for St. Edward State Park has come up with ideas for using the seminary for a long time, but State Parks has resisted. Funds cannot be raised if nobody knows whether the project will go through, and none of us get paid to do this on our own. The group would have sought donor funding if State Parks had shown any kind of encouragement for their ideas. She further discussed the differences between Citizens for St. Edward State Park and Friends of St. Edward State Park.

Ms. Hirt's concern for the volleyball court stems not from personal interest in volleyball but from its recognized historical character. The area around the court that will be replaced with a garden is where Friends of St. Edward State Park holds their kids' day in the park. Mobility is also a concern, as many people use the park core for exercise, and the hotel might discourage that. Tr. 339.

**Ms. Elizabeth Mooney**

Ms. Mooney views the EIS as a sort of parenting plan between Daniels, State Parks, and the City. The wildlife are the children of the park. The confusion between the seminary project and the ballfield project has confused the issue of protecting the metaphorical children. The proposed seminary building will cause a significant adverse environmental impact to wildlife, plants, and lichens because, due to the confusing nature of these projects, the EIS was not done properly. Tr. 345.

Ms. Mooney is concerned that the cumulative impacts of the seminary project and the ballfields were not evaluated in the EIS. The wildlife are not being protected because of confusion between the parties about the impacts of the ballfield project and whether the ballfield project is even a project at all.

On cross-examination by Mr. Murphy, Ms. Mooney stated that the ballfields were the straw that broke the camel's back. She has not pursued fisheries as a profession since she received her master's degree in fisheries. Lichen is a symbiotic relationship between algae and fungus with grows on trees; air quality is a factor in whether and what kind of lichens grow. She did not study lichen as part of her fisheries degree. She has noticed that there are lichens in the park and has suggested that a study be conducted on them with the University of Washington. She did not remember looking for or finding lichen growths within the project site itself. Tr. 351.

Ms. Mooney agreed that the Draft EIS does note that this project plus other projects in the vicinity (such as the ballfields or Bastyr) may have cumulative impacts on light, noise, and vegetation removal. But the treatment is not specific and does not address other sorts of population impacts, such as those from car traffic, though car traffic is mentioned elsewhere. Tr. 355.

On cross-examination by Ms. Wehling, Ms. Mooney stated she had spent a few hours reviewing the Draft EIS, but not many.

In elaboration of her earlier statements, Ms. Mooney stated that she was not the expert who went through the Draft EIS. She relied on State Parks staff (specifically Michael Hankinson) to provide what she believed was neutral information about how to approach a baseline study of the wildlife at the park. She later learned that the proposed grant to mitigate impacts to wildlife in the park would only be pursued if the ballfields get lighting and turf. She relied on her state and city to do the right thing, and they have failed miserably in protecting the animals that are the treasure of the park. If Mr. Daniels can create a project with minimal impact that does not harm the park, that would be better. Tr. 360.

**Mr. Ron Wright**

Mr. Wright reiterated that he is the principal of his own architectural practice, focusing on historic restorations, housing, restaurants, and other specialized projects. Some of his projects have won national awards. His firm designed the plans for the seminary in accordance with Department of the Interior standards, which he has also used in several previous projects since 1996. These standards outline a methodology for restoring buildings, districts, and historic elements are viable for the next century. The rules do not require strict compliance.

Turning to the Nuns' Garden, Mr. Wright testified that it was identified as overgrown and virtually nonexistent. He did not notice the garden in his walk around the site. In his opinion, the Nuns' Garden is not so critical to the site that the Interior standards would strictly apply to it. The project as proposed therefore complies with the standards with respect to the Nuns' Garden. Tr. 375.

Mr. Wright testified that the parking structure would replace the paved parking with a vegetated green top that would be at grade, so people would be able to walk across that instead of a lot.

Mr. Wright explained the difference between fire code capacity and general facility operation capacity. Under the international building code, which Washington has adopted, the size of the room and its proposed use are used to calculate a capacity (for instance, 15 square feet per person for a meeting space); this number is used to determine the life safety requirements for that space. Fire code capacity would be higher than the actual capacity. The code calculates each room separately, and does not consider whether rooms are being used at the same time or not. Mr. Lance's testimony referred to the fire code capacity; it is highly unlikely that the lodge would be at fire code capacity when operating a conference. Tr. 380.

According to Mr. Wright's calculations, approximately 35,000 square feet of the seminary building is lodging space, and 16,000 square feet is meeting room and conference space.

On cross-examination by Mr. Lance, Mr. Wright consulted the seating charts for the Cedarbrook Lodge (part of Exhibit 23). He did not know whether Cedarbrook's listed capacities were fire code or functional capacities. The 550-person capacity proposed by Daniels for this project is most likely a functional capacity. Tr. 385.

On cross-examination by Ms. Hirt, Mr. Wright stated that the 16,000 square feet of conference space does not include mechanical, support, restaurant or kitchen space. This project does not have an unusually large amount of conference space; the standard for conference space to hotel rooms is entirely based on the client's functional requirements and what they would like to have. A determination of how much conference space would be needed for a specific project would be based on a feasibility report for the specific project, not an industry standard that applies to all projects. He is not aware of such an industry standard. Decisions about whether to provide conference space are made before beginning a design. Tr. 390.

Mr. Wright has walked the site, including around the buildings and through the trails. The last time he was on site was three months ago; the last time he was outside walking was six months ago. He was not aware of any recent volunteer efforts to clean up the Nuns' Garden and remove overgrowth. Theoretically, there is enough conference space provided to have both a local conference and a hotel-guest conference at the same time, but that is a functional decision made by the operator.

Under questioning from Mr. Murphy, Mr. Wright stated that it would be highly unlikely for there to be 100% occupancy of the space with no guest overlap, as that would tax the restrooms and support space. Even if the Nuns' Garden has been rehabilitated, the Interior standards still allow for a historic aspect to be removed for the good of the whole. Sometimes things have to be sacrificed to get the project through. This also applies to life safety requirements and code updates. The Interior standards are just guidelines. Tr. 395.

### **Ms. Jessica Logan**

On examination by Ms. Wehling, Ms. Logan reiterated that she is the environmental program manager and SEPA-responsible official for State Parks. The state's efforts to repair and maintain the park since its acquisition in 1977 are described in Exhibit 13. Ms. Logan also read out the estimated costs for the various management options for the site. These costs are significant impacts to the State Parks budget.

Turning to Exhibit 26, Ms. Logan explained that a classification and land management plan (CAMP) is a long-term State Parks plan that includes a park's internal zoning and management plans. St. Edward Park's CAMP was adopted in 2008 after gathering input from an advisory committee of stakeholder representatives. The CAMP classifies the seminary as a heritage area, with other areas of the park having different classifications (such as resource recreation and natural forest). These are defined in the document. Tr. 400.

Ms. Logan would not describe the seminary as the dominant use of the property. Even with the seminary were operating at full capacity, those users would not exceed the number of users of the rest of the park. The Daniels project would add space in the seminary dedicated to outdoor recreation; that space is not designated now. The project will not decrease outdoor recreation. State Parks had no viable way to dedicate the building to outdoor recreation uses. She believes the lodging use on the upper floors is consistent with the building's historical use as dorm rooms. The building is now only open by appointment; there is no fee for tours but there is a fee to rent

the dining hall. There is a fee to park at the park. She agreed that this project would increase public access to the building beyond what State Parks has provided.

The volleyball courts will be turned in part into a culinary interpretive garden. There will likely be mitigation in the form of interpretive signs to document the volleyball court site. The Interior standards do not prohibit removal of the courts. The CAMP anticipated parking development concurrently with development of the seminary. The Parks Commission can change a CAMP if it wants to. Tr. 405.

Ms. Logan affirmed that this is not the first use or proposed use of the seminary in its history with State Parks. None of these earlier proposals were self-sustaining, and the rehabilitation costs are a limiting factor. State Parks determines viability based on the agency mission, city zoning, feasibility studies, and other factors. The Parks Commission directed staff to seek out public or private partnerships to rehabilitate the seminary, and later ordered that the building be vacated at the end of 2014 if a partnership was not found. The Daniels proposal was the only viable proposal even after the consideration period was extended.

Turning to Exhibit 3, Ms. Logan described the nature of legislation permitting the Parks Commission to offer a lease of up to 62 years, contingent upon a commerce study and Commission vote finding no economically viable nonprofit uses for the building. The baseline cost to restore the building was identified as \$23.4 million. Those conditions were met. Tr. 410.

Ms. Logan testified that State Parks relied on the EIS for its decision to lease to Daniels. The EIS was completed by the time the Commission made its decision on January 9, 2017, after public comment on January 5<sup>th</sup>. The EIS included all the potential impacts for the lease decision. No other viable proposals were before the Commission on January 9<sup>th</sup>. Per Exhibit 25, the Commission took all the actions requested or required of it to complete the lease by January 9<sup>th</sup>. Now that the Daniels lease is signed, the Commission will not consider other options for the building.

With respect to nighttime trail use, Ms. Logan agreed that hours of trail use in state parks are governed by WAC 352-32-050. State Parks is not likely to change its rules to encourage nighttime trail use. State Parks will not reduce the current level of trail maintenance as a result of this project, and the acquisition of the McDonald property will allow users to continue to use those trails. The Nuns' Garden cleanup had nothing to do with the Daniels project.

In response to the hearing examiner, Ms. Logan testified that State Parks does manage endangered species. State Parks relies on the Department of Fish and Wildlife and the U.S. Fish and Wildlife Service to identify endangered species habitat in state parks. There is no marbled murrelet habitat identified at St. Edward State Park.

In response to Mr. Murphy, Ms. Logan reiterated that she is the SEPA-responsible official for State Parks, and that she concluded the EIS adequately disclosed all likely environmental impacts. Tr. 415.

In response to Ms. Hirt, Ms. Logan testified that she cannot speak to past programming use of the park. State Parks has historically only allowed the dining hall area to be used because they were sure of its safety for public use. Much of the building is considered safe for public use, including the dining hall, office space, and some lodging that has been used by State Parks. She did not know the status of the first floor classrooms or whether they are usable or could have been used by the public. She is personally aware of the building being used for weddings, ranger lodging, and office space. She has read that it was used as an environmental school. Tr. 420

Ms. Logan identified where the Nuns' Garden was located on the aerial photograph of the site. She did not know where the proposed parking depicted in the site plan would sit on the aerial photograph.

Asked about the limitations of the Department of Commerce study for the site, Ms. Logan noted that time was one constraint, and other parameters for the study. State Parks has not received an application for a ballfield project. There is not yet an agreement as to who will monitor and enforce nighttime trail use rules; the only agreement right now is to give hotel guests the park rules. Tr. 426.

On further questioning by Mr. Murphy, Ms. Logan testified that the trees within the yellow box on a map of the site (part of Exhibit 19) were the trees, and only trees, that may be removed. The Legislature was responsible for placing any restrictions that existed on the Commerce study. If State Parks had an unlimited budget, it would rehabilitate and use the building by itself, but it does not have the money to do that, and the Daniels proposal is the only funded proposal. Tr. 428.

### **Ms. Trevina Wang**

Ms. Wang reiterated that she is Daniels' project manager for this project. Daniels is neutral on the ballfield project and believes the seminary project should be considered independently on its merits. She repeated the proposed programming for the lodge. The developer tried to figure out a way to use the spaces with as few alterations as possible, so the existing layout and doors inform the allocation of space among the different uses. Ms. Wang is aware of but has not fully read the JLL feasibility study. The study is intended to ensure certain assumptions will pencil out economically. The proposed space allocations do pencil out and are economically feasible. The project is not changing the trails or other facilities outside the lease area. Tr. 435.

The estimated cost of rehabilitating the building will be \$40 to \$45 million. The project is funded. In Ms. Wang's opinion, the conference rooms are an accessory use to the primary lodging function. The developer has no plans to exclude the public going into the building, and Ms. Wang pointed to other projects where Daniels has invited the public to use its facilities. She was not aware there was a Nuns' Garden onsite and does not know who would use it. The proposed organic garden would produce ingredients for the restaurant and café, possibly in partnership with Bastyr to provide maintenance and public tours. Daniels has no objection to documenting the existence of the volleyball site. Tr. 439.

If the McDonald property could be developed into many building lots. If this project does not go through, the McDonalds will retain the property. When Ms. Wang first contacted the McDonalds about the property, they were preparing to sell it for development. Whether State Parks uses its space for an environmental learning center use is completely up to State Parks.

On cross-examination by Ms. Wehling, Ms. Wang stated she does not know where the Nun's Garden is, but it lies outside the leased area. Directed to Exhibits 1 and 19, Ms. Wang agreed that the Nuns' Garden is a resource listed in Exhibit 19. Tr. 444.

On questioning by Ms. Hirt, Ms. Wang noted that the volleyball court is listed as a resource as well. Members of the public will be able to use the first floor and basement of the seminary. In the basement, that will include the restrooms and restored interior spaces. In her experience, the public is interested in looking at historic buildings. Ms. Wang described her experience with restoring and allowing public viewing of Union Station. The current upstairs rooms are not big enough to be a reasonable hotel room, so they and the architect will consider merging rooms. They have not decided how many suites to create, and suites would have a larger configuration, which is why the proposal is for 80 to 100 rooms.

There are no fences in the park except for the playground barrier. The developer is planning to fence the garden to keep dogs out, while providing gates the public can open. The project could have an education component that would show how the upper-floor rooms were used historically, and the developer would love to work with the appellants to figure out a way to share the history of the building with the public. Tr. 451.

**Ms. Nel Lund**

Ms. Lund has a bachelor of science in biology, a professional wetland management certificate from UW in 2006, and is a certified professional wetland scientist with the Society for Wetland Scientists. She worked in the biomedical field before earning her wetland management certificate. She has worked at the Watershed Company as an ecologist for ten years doing wetland and stream studies and peer review for public and private clients. Ms. Lund works routinely with staff who have a wildlife background, and they incorporate wildlife habitat observations and priority species screening. Wildlife staff participated in Watershed's work on the proposed project. Watershed mostly provides technical reports for EIS documentation, but they are sometimes involved with EIS studies. Ms. Lund has participated in a handful of these. The level of analysis employed is beyond the expertise of somebody with a bachelor's degree in general science. Tr. 455.

Watershed was retained to look at the wetlands and study the impacts of the project on plants and animals. The Draft EIS discussion on these issues is consistent with Watershed's conclusions, and Ms. Lund and Watershed were involved in preparing responses to the comments received.

Ms. Lund discussed the methodology of the Watershed study. The existing conditions study used different study areas for different study elements. For wetlands and streams, the study area extended 300 feet beyond the lease area to take in any potential buffers required under city code. For wildlife, the study used WDFW recommendations to select a 900-foot buffer, to address

priority species mapped in the area as well as other species, such as herons, that require higher buffers. Before conducting field work, they consult public domain information (including the priority species habitat mapping from WDFW, the U.S. Fish and Wildlife national inventory, and the Natural Resources Conservation Service (NRCS) soil maps) to identify areas that might need further scrutiny in the field. Ms. Lund and Jasmine Palmer (one of the wildlife staff) walked the site and evaluated the forest from a habitat perspective, but Watershed did not do an arborist assessment.

The Watershed study was focused on the area around the leased area (and not the entire 316-acre park), which Ms. Lund judged to be thorough and appropriated. Some research information, including an identified bald eagle nest outside the buffered study area, was also noted in the report and in the Draft EIS. Fieldwork was limited to the within 900-foot buffer area. Tr. 460.

On the outer fringe of the 300-foot buffer, the study identified three wetland areas and two streams. No wetlands or streams are located inside the project area. The intact forested portion of the park is mixed conifers, with patches of invasive species. There are snags and woody debris present. The lawn area and lease area are well-maintained mowed lawns with some landscape-style trees. She agreed that there are two or three large trees, but the rest is shrubs, lawn, pavement, and building. No endangered or threatened animal or plant species were mapped or encountered in the study area. The pileated woodpecker, which WDFW has management recommendations for, is present but outside the lease area. No bald eagles were observed during the fieldwork, and the study team assumed they stick to the shoreline, though they may fly over periodically. There was no sign of marbled murrelets in the study area.

The study found no impact to the wetlands. The identified stream segments do not bear fish. The impact areas are mostly mowed lawns at present, so those impacts would remain intact. Ms. Lund took into account the trees that might be removed in Parking Alternative One. Vegetation would remain as is under Alternative Two. Since the forested part of the study area will remain intact, there will not be significant impacts to wildlife. The EIS reflects Watershed's findings that construction noise, operational noise and light, and increased nighttime car traffic could affect the wildlife near the site. Tr. 466.

Ms. Lund agrees with the EIS' statements regarding cumulative effects of the seminary project, Bastyr, and ballfield project. If the EIS' policy to avoid or limit construction from February to July is followed, there should not be a significant impact to breeding birds.

In response to the hearing examiner, Ms. Lund explained that she does not have hard data on how far out into the forest there would be nighttime impacts from noise and light. Based on a preliminary overview, ambient noise would have to increase 20 to 25 decibels to disturb species such as the marbled murrelet. It's unlikely there would be an impact at the shoreline. She speculated that, were marbled murrelets to nest at the park, they would likely prefer areas nearer the shore and away from frequently-used trails. The arborist would be better able to answer whether marbled murrelet might nest at the park in the future. Ms. Lund stated they need trees at least 150 to 200 years old meeting specific criteria. It's a big question if those conditions develop. Tr. 470.

In response to Ms. Hirt, Ms. Lund testified that car headlight movement is likely to cause wildlife to avoid the corridor, though she does not have hard data on the effects of extra light in the park aside from around the building. The light impacts around the building are to be mitigated with downcast lighting to the extent feasible, which Ms. Lund assumes would incorporate public safety considerations.

On cross-examination by Dr. Bain, Ms. Lund agreed that it would be logical for birds trying to avoid developed areas to nest in the northwest corner or south-central portion of the park. The eagle nest the study noted was in the northwest corner, a quarter mile from the project site, and the south-central part of the park is even further than that. Tr. 475.

In response to Ms. Hirt, Ms. Lund testified she would expect some animals, primarily nocturnal ones, would avoid the area and move further into the forest because the increased use and light could affect foraging and production, communication, and other behaviors.

On redirect examination by Mr. Ranade, Ms. Lund testified that maintaining the McDonald property (adjacent to the northwest corner of the park) as intact forest would be better for wildlife than developing it.

On cross-examination by Mr. Kaseguma, Ms. Lund testified that identified light mitigation measures, including turning off lights as feasible and after the first hours of the evening, would make a difference in the impacts on wildlife. Tr. 479.

### **Mr. Scott Baker**

Mr. Baker has 40 years' experience in arboriculture, with a specialty in urban forest issues. He is the founder and a principal consultant at Tree Solutions, Inc. in Seattle. He obtained his bachelor of arts from the Evergreen State College. He started out as a commercial arborist in college. He is a registered consultant arborist through the American Society of Consulting Arborists, which required proving education equivalent to a master's degree. He is a board-certified Master Arborist, which is the International Society of Arboriculture's highest credential. He is a qualified tree risk assessor and is an instructor for the international qualification in tree risk assessment. He holds a Washington pesticides consultant permit. Mr. Baker's firm prides itself on being neutral, strict science-based consultants.

Tree Solutions, Inc. created the arborist's report (Exhibit 34). Mr. Baker testified that the methods used in the report are typical methods used and accepted by arborists, except that some portions used high-level technology most arborists do not have access to. The report concluded that even with the ten trees removed for parking, the project would still exceed Kenmore requirements for tree density. Mr. Baker visited the site personally several times. He did not find any threatened or endangered species in the study area. The statements in the EIS regarding tree impacts are consistent with his firm's report. Tr. 486.

Mr. Baker is familiar with the marbled murrelet from his background in forest management and preservation in the Northwest. He was fascinated to have the issue come up in this project. They require old-growth forests with trees “hundred plus, 250 years old” to nest. He is a user of the park and also has Bastyr as a client. There are no trees in the lease area that could become old-growth in the next 50 years, and probably none ever will unless the landscaped leased area reverts to forest. It would probably be a little bit more than 30 years before any trees in St. Edward State Park could be murrelet habitat. The forest has issues with surrounding development and invasive species. Invasive species such as English ivy outcompete other vegetation; though he cannot be sure, these species may make the forest a less attractive habitat for the marbled murrelet. Without management, the forest will still lack features that would be normal in an older forest. Old growth refers more to the broader forest than to a single tree. If the forest does eventually support murrelet habitat, they would avoid the lodge area and nest in the peripheral areas or along the water. Mr. Baker does not have other projects concerning the marbled murrelet, but he does have projects that require determining whether or not a forest is old-growth. Tr. 490.

Mr. Baker agreed that mitigation measures listed in the EIS that suggest installation of native vegetation and other features to encourage wildlife use would mitigate the loss of the trees. Mr. Baker referred to other mitigation measures listed in the EIS that would effectively protect critical root zones and preserve trees. The biggest issue in sites like this is grading or disturbance of nearby surface soils.

Under cross-examination by Ms. Wehling, Mr. Baker testified that he believes that the St. Edward State Park forest naturally regenerated after logging in the 1920s, as replanting was uncommon at that time. One of the key components of old-growth forests is that there has been no logging, so no biomass has been removed from the forest. Biomass from trees that have grown and fallen over is key. So it might take a little longer for St. Edward State Park to get back to old-growth; the logs were removed, and he would bet they burned the debris.

In response to Mr. Kaseguma, Mr. Baker testified that from his reading on the subject, murrelets like a lot of privacy when they nest, and the trail use probably has an impact on wildlife in the park. This is an urban park due to its surroundings, but it doesn't feel urban inside. If the birds do show, they will nest as far from humans as they can get. Tr. 495.

On questioning by Ms. Hirt, Mr. Baker testified that of the trees that would be cut down for parking in Alternative One, two have high structural risks and the others are in good condition. The cedars could be up to 90 years old; the hemlock trees are the shortest lived native conifer. A cedar would be appraised as worth more than a hemlock, for no real good reason, but both trees' contributions would be as a component of the forest system and as eventual habitat for epiphytic plants like lichens. Taking down these trees does disturb some habitat; there is always impact when trees are removed. The team makes sure to remove trees carefully to prevent damage to nearby trees. The removal of these trees may have some effect on the Nuns' Garden outside the project site, but Mr. Baker doesn't think it will negatively affect the garden's growth.

In response to Dr. Bain, Mr. Baker identified other patches of older trees in Denny Park and Seward Park. Seward Park is starting to have the necessary characteristics for murrelet habitat, but it is heavily used and smaller than St. Edward so there is nowhere to hide. Mr. Baker stated that if the park is managed to minimize use (particularly off-trail use) and keep out invasive species, eventually marbled murrelets and other wildlife may return. The renovation of the leased area would probably have no impact on that, except impacts from people going to and from the site. Tr. 500.

In response to Mr. Murphy, Mr. Baker testified that his concern about minimizing use is not necessarily related to this project; he expects higher population in the area will lead to greater use of the park. He did not know if the current number of park visitors would be minimized use that would support the marbled murrelet.

### **Ms. Jennifer Barnes**

Ms. Barnes is a Washington-licensed civil engineer specializing in transportation. She received her bachelor's degree from Iowa State University and a master's degree in civil engineering from the University of Washington. Tr. 506.

She has done environmental analysis projects for about 14 years, including about 100 projects. Her firm wrote the Heffron Report. Her job is not to calculate code requirements for parking spaces but to evaluate potential parking demand and assess adequacy of the parking. When assessing how many parking spots a project needs, she begins by asking how many can be built and assessing code requirements. Heffron evaluates the demand and the adequacy for the proposed parking. Ms. Barnes wrote the transportation section of the Draft EIS and prepared responses to many transportation and parking comments. Tr. 509.

Reviewing the transportation alternatives in the Draft EIS, she explained that the level of service analysis is based on peak hours to evaluate the worst-case condition. The current LOS is B, and in 2020 with no action on the seminary (but assuming other growth) it will be LOS C. The level of service analysis was conducted in September 2016 based on vehicle counts taken by Heffron in January 2016 (for morning peak) and by Kenmore in May 2016 (for evening peak). The Kenmore count was done on a nice day with a lot of activity in the park and at the ballfields. The 2020 area growth was based on Kenmore's comprehensive plan and Bastyr's master plan. It also took into account a traffic study for the potential ballfield project. This establishes a baseline from which to view the alternatives. Tr. 515.

Looking at Alternative One, Ms. Barnes stated that the trips generated by the project would add delay, but the intersection would still operate at LOS C so no mitigation is required for traffic impacts. The study methodology used ITE rates to calculate trip generation, except for the peak hour in which the Cedarbrook rates were higher. The ITE rates are based on counts of driveway trips at similar facilities for hundreds of categories of land use; thus, the ITE rate for hotels is based on hotels (defined as have sleeping accommodation and supporting facilities like meeting rooms, restaurants, and a pool). Any two hotels will have different allocations of these different uses. The study was looking for the high end of the reasonable range. The Cedarbrook data

allowed them to drill down and look at traffic for conference and non-conference days, whereas conferences are implicit in the ITE figures. Even if the report had just relied on ITE rates, it would have been a very solid analysis. Generally Ms. Barnes looks first to the ITE when conducting a traffic analysis. The ITE and Cedarbrook rates are calculated as cars per room, so they can be scaled to different hotel sizes. Seasonality does not affect these rates because the analysis assumes a fully occupied hotel. Tr. 520.

Ms. Barnes stated that the number of rooms is the best measure for the size of a hotel for traffic analysis. Since the trips counted are driveway trips, they reflect not just those guests but also any other conference guests, restaurant patrons, and the like. She recognized that Cedarbrook was in a different environment close to SeaTac, but she testified that the increased use of taxis and shuttles probably results in a higher trip rate, since their departures and arrivals are each counted as a trip. Ms. Barnes discussed the trip rates her analysis used: 8.92 cars daily per occupied room, with an AM peak hour rate of 0.67 (based on ITE), and a PM peak hour with (0.83) or without (0.70) a conference. Applying that to a high-end estimate of 100 rooms at the seminary, that is 892 cars per day. Ultimately the additional traffic will cause some delay but not enough to change the level of service from the no-action alternative. Ms. Barnes testified that Alternatives One and Two are the same from a traffic standpoint, as the facility would be the same either way. Tr. 525.

She concluded that there are enough parking spaces in this project to accommodate daytime and overnight parking in most situations for a fully occupied hotel. If the parking is a little over capacity, valet parking can be used, as Cedarbrook did on one day of the data collection. For a large overspill offsite parking would be needed. The analysis discloses the possibility of the 1,000-person scenario. The ITE rates reflect a suburban hotel setting, and the Cedarbrook rates reflect a setting that had more stuff around it. For parking analysis, the ITE rates were higher (since Cedarbrook had more use of taxis and shuttles), so the ITE rates were used to be more conservative. The Cedarbrook rate was 0.74 vehicles per room. The Cedarbrook data allowed the team to estimate a vehicle-per-conference-attendee rate. The study assumed a fully occupied room and then, looking at the spaces remaining, tried to calculate how many additional conference attendees could be supported with the rest of the spaces. That was how the study concluded that the hotel could support 120 conference attendees on top of full hotel occupancy with no overlap. It is likely that parking mitigation will be needed far short of the 1,000-person scenario, so the analysis would not change. Tr. 531.

Reviewing the statements in her report, Ms. Barnes provided some additional information regarding them. Currently there are 220 public parking stalls in the park. The project ensures no net change in public parking, so there will still be 220 parking stalls. Alternatives One and Two are the same in this respect; the only difference is the configuration of parking. The traffic report expects that lodge guests will take advantage of the recreational trails at the park, but they will generate very little motorized demand on the surrounding street system. The report assumes all generated trips would be by car, except for the trail use. Offsite parking could include not just at Bastyr but also on the ballfields, if there is an agreement. A lot of the larger events like weddings would happen on weekends when parking demand at Bastyr is lower. The mitigation is a

condition of the State Parks lease, so if Bastyr is not practical then the applicant would have to find an equivalent. Tr. 536.

In response to the hearing examiner, Ms. Barnes testified that there is not an ITE parking generation category for conference centers or convention centers. When evaluating something that doesn't fit an ITE category, they need to look for a something similar. Here, Ms. Barnes felt she had no need to look beyond the ITE hotel category because this proposal fits the textbook definition.

On cross-examination by Mr. Kaseguma, Ms. Barnes testified that she had not evaluated where people currently park for events in the seminary dining hall, but she assumes it would be in available public parking. After the project is completed, activities there would have to be accommodated by the lodge parking. Tr. 539.

On cross-examination by Mr. Lance, Ms. Barnes explained that even if visitation had been double at Cedarbrook it would not have changed the numbers of trips per conference attendee. She repeated that they used ITE rates or Cedarbrook rates, whichever was more conservative. The report could only calculate against what it observed, so Ms. Barnes could not say what the numbers would have looked like with different conference attendance at Cedarbrook. If attendance doubles, trips would also double, so the rate remains the same. She could not say whether her recommendations for St. Edward parking would be the same if Cedarbrook had had twice as many attendees during the study period. The study identified a conference guest parking rate of 0.9 per attendee. ITE does not provide standards for what percentage of the time a facility should be able to accommodate all visitors with parking. She does not know how often the lodge will have a spillover event, and the market research for that is outside her purview. She would consider it atypical to have the facility filled shoulder to shoulder with no overlap of hotel, conference, and restaurant guests. But you can't predict who will book a hotel that doesn't exist yet. Tr. 546.

It's in everybody's best interest to have adequate parking for the demand, which is why mitigation has been identified.

On questioning by Ms. Hirt, Ms. Barnes stated that though the Kenmore-Kirkland city line is at the edge of the park on NE 145<sup>th</sup>, Kenmore's comprehensive plan accounts for future traffic growth not only in Kenmore but regionally as well. The City took into account the traffic coming to the Juanita/NE 145<sup>th</sup> intersection from the south (outside of Kenmore), so the traffic report used Kenmore data. The study measures midday peak (worst-case) demand from 11:45AM to 3:45PM, though some conferences may start earlier or run later past this peak. Tr. 550.

Ms. Barnes further described how she employed both ITE and Cedarbrook data. She believes the hotel will know when big events are coming, and it will be their responsibility to mitigate any overflow. Valet parking can increase lot capacity by 40 to 70 percent. The trip rates include people coming just for the restaurant; the trip counts cannot tell whether a car is there for a hotel room or the restaurant. Tr. 557.

In response to Mr. Lance, Ms. Barnes stated that if there were less parking, the tipping point to an overflow would be lower.

In response to the hearing examiner, Ms. Barnes stated that she concluded the parking will be sufficient under typical conference conditions (without yet knowing how many people will actually attend conferences at St. Edward) based on conference attendance at Cedarbrook, which ranged from 100 to 200 and had an average attendance of about 150. In her view, this isn't the sort of large hotel that will hold 500-person conferences. Tr. 560.

In response to Mr. Lance, Ms. Barnes stated that they did not take seasonality into account because the analysis always assumed the hotel rooms would be fully occupied. Typical attendance was not used in the calculations; the conclusion was that 120 guests was a conservative scenario. And for the purpose of the EIS, Ms. Barnes' report identified the potential impact and the potential mitigation. The lodge guests have no reason to park in the public spaces, and it's bad business if somebody using the lodge can't park there. Tr. 565.

On redirect by Mr. Ranade, Ms. Barnes repeated that the data is expressed as a rate of parking or trips per room. If attendance increases, the number of trips would be expected to increase, but the rate of increase will be basically the same. She believes that the eight days of data consistent with the nationally recognized rate indicates the reliability of the data. For overnight parking, the rates indicate 89 cars would be parked, so there is enough space. Ms. Barnes agreed that to calculate the 120-person conference tipping point, the analysis took the 153 spaces, removed those for the 89 guest cars and any employee cars, and then divided the difference by the conference rate. This represents the conservative scenario where the hotel is fully booked and the conference is unrelated. The possibility of lodge guests using public parking has been proposed and mitigation strategies have been identified, but the lodge cannot prohibit guests from parking in the public spaces. Tr. 571.

### **Mr. Jeff Ding**

Mr. Ding has a bachelor's degree in geography from the University of Washington. He has been doing land-use planning for about 16 years, mostly doing environmental review for EA Engineering. He has done about 60 EIS statements for EA. Along with another colleague, he was the project manager for this EIS.

When beginning the EIS, Mr. Ding started with a scoping process to determine what elements would be in the document. As part of the process, the team identified air quality in response to scoping comments, and they added Parking Alternative Two to provide comparison for Alternative One in terms of environmental impact. He and his colleagues have never had child safety as an EIS element. The data collection for this EIS, like his others, involved a site visit and gathering technical expertise for various elements of the environment. When looking at cumulative impacts, the EIS is looking for impacts most proximate to the site that are likely to occur. The most proximate uses are most likely to have cumulative impact. For transportation, cumulative impacts look at a wider range. Tr. 574.

Mr. Ding stated that mitigation is identified to address the impacts identified in the EIS. They usually become binding as part of conditions of approval or the like. When responding to comments, the typical process is to go through and read each one, and then divide up each discrete comment in each letter for the most appropriate person to answer. One comment letter was inadvertently omitted from this Final EIS and thus an addendum was produced to ensure a response was given.

Mr. Ding performed a qualitative evaluation light and glare impacts from the project. This evaluation looks at the existing light conditions on site. For this project there is vehicle lighting, but after dusk the park is closed so there is minimal light currently on site. Then he identified what types of new light sources could be generated. This process is typical to his other projects. Mr. Ding read from the EIS disclosures for construction light spillage and operational light and glare, and their impacts on wildlife. The lighting and glare under Alternative Two would be the same or slightly less than that for Alternative One. He reviewed EIS statements for the cumulative light and glare impacts of the project plus the ballfield and Bastyr. The mitigation identified is sufficient to mitigate the impacts of light and glare. Tr. 580.

On cross-examination by Ms. Hirt, Mr. Ding testified that though the EIS acknowledges potential for light spillage, it is not classified as a significant impact because of the mitigation measures identified. These are mitigation measures typical for parking lots to limit light spillage to forests or residential areas.

### **Mr. Bryan Hampson**

Mr. Hampson testified that he was the SEPA-responsible official for Kenmore on the EIS. He concluded from the EIS that they adequately disclosed the environmental impacts and responded to comments received. He notified the public and federal and state agencies of the issuance of the documents. He did not hear anything from the U.S. Fish and Wildlife Service; he is not obligated to contact them if they do not respond to the notice.

There is no requirement to maintain a passive park use in the seminary area. The City will insist on code compliance before issuing approvals or permits. The hotel designation was appropriate for the project. The ballfield is entirely separate and if necessary will be subject to its own SEPA process. Tr. 586.

In response to Ms. Hirt, Mr. Hampson stated that there is nothing in the city code requiring the site to be a passive park, an active park, or a community park.

### **Mr. Zack Richardson**

Mr. Richardson graduated from the University of Washington with a bachelor's degree in civil and environmental engineering. He is a licensed professional engineer with ten years' practice experience, six of them doing development work with the City of Kenmore. Mr. Richardson observed Ms. Barnes' testimony and generally concurs; the industry standard was well-followed

and her level of care was above what he typically observes (by using Cedarbrook as well as ITE). Tr. 590.

Mr. Richardson stated that parking design does not assume peak times always, but balances the environmental impact. Parking lots are viewed as unaesthetic and invasive on the environment, so the goal is not to create the largest parking lot possible. The hearing room at City Hall is one example of parking mitigation, as it can hold 550 people (the exact number being discussed for the lodge) and is set up for 100, but there aren't that many parking stalls available at City Hall so they have taken mitigation measures such as shared parking agreements on other city-owned land, emails to get staff to park offsite, and scheduling to avoid times when employees fill the lots. This is similar to what is proposed with Bastyr. The parking mitigation is not a condition of approval for the examples Mr. Richardson cited; they manage it like a business would.

In response to Ms. Hirt, Mr. Richardson stated that conferences will not want to book somewhere they can't park guests. Tr. 594.

### **Mr. Rod Kaseguma**

In closing, Mr. Kaseguma reviewed the standards that apply to the appeal as set out in the prehearing order. Put another way, the question is whether the environmental impacts sufficiently disclose and substantiate (with support of opinion and data) what is in the EIS itself. The EIS must provide the city council with enough information to allow it to make an informed decision. Referring to Exhibit 14, he stated the City's position that every allegation made by the appellants with respect to the environment has been adequately addressed and discussed in the EIS. The exhibit shows that for every single allegation made by the appellants, the mitigation identified or the significant adverse environmental impacts have been identified.

Mr. Kaseguma argued that the EIS meets the requirement of providing the city council with enough information to make an informed decision. He asked the hearing examiner to deny the appeal and let the EIS move on to the city council.

In his view, the appellants are making three essential arguments. The first is that the mitigation identified is not complete or enforceable because the descriptions use words like "could" and "would." They misunderstand that the nature of the identified mitigation is to allow the city council to take the suggested mitigation and apply it if they decide to do so. The city can expand or change the mitigation. Mitigation subject to a future agreement does not mean the EIS is inadequate.

The second argument is that the information in the EIS analysis is wrong, which he takes to mean that they are admitting the information and discussion is adequate. The appellants have not produced a single report, technical memo, or expert opinion, except for Dr. Bain. Dr. Bain's testimony was speculative and remote, such as his estimate of 100 users per day. This is typical of the arguments made by appellants Tr. 600.

The third argument or arguments they have made are misunderstandings or wrong conclusions drawn from the EIS or report.

In response to the hearing examiner, Mr. Kaseguma stated that a parking monitoring plan to assess whether parking is adequate on the project's biggest conference days could work. But if it was not addressed in the EIS, it does not mean the EIS is inadequate, but is something the City could consider when presenting the hearing examiner's recommendation to the city council.

**Ms. Martha Wehling**

In closing, Ms. Wehling stated that the appellants failed to testify to any undisclosed impacts. The only issue left is issue 17, regarding the consistency with CAMP. Ms. Logan addressed these concerns and explained why the project is consistent with the 2008 CAMP. The hearing examiner should defer to the agency interpretation.

Citizens' concerns about nighttime trail use and marbled murrelet are speculative, and an EIS need not include speculative or remote impacts. Where there is insufficient casual relation, likelihood, or reliability to influence decision-makers, the impacts are remote and speculative. The City and Parks did not err by declining to include every conceivable future impact. Citizens have not identified an element of the natural environment that was not adequately addressed in the cumulative effect analysis. Ms. Wehling requested that the hearing examiner recommend to the city council that the EIS be upheld.

**Mr. Amit Ranade**

Mr. Ranade heard a lot of concerns over the last two days, but it's not anybody at the hearing's job to decide what to do about this concerns. Ultimately it is the city council's job. The role of the EIS is to disclose, not dispose of, issues. He methodically took witnesses through each concern and took them to the relevant disclosure in the EIS. And the witnesses agreed that the statement in the EIS reflects that concern.

The burden here is on the appellant. Mr. Richardson testified that the City already found the EIS to be adequate. That finding is entitled to substantial weight under RCW 43.21C.090, and there was nothing in the evidence to tip that scale. Tr. 605.

Mr. Ranade noted that Mr. Lance was concerned that the project should be designated a conference center rather than a hotel. This issue is relevant both for applying Kenmore land use code and for performing the parking analysis. Referring to KMC 18.20.375 (defining hotel) and KMC 18.20.560 (defining conference center), Mr. Ranade argued that the hotel definition matched this project. It is a hotel with an accessory conference use because 35,000 square foot will be hotel space and 16,600 square feet will be conference space. Renting a hotel room is not conditioned on going to a conference; the conference rooms are just another amenity like the restaurant or spa. Mr. Lance had no information on such a condition. The appellants' analysis ignored all the floors with the rooms on them.

For the traffic and parking analysis, everybody who talked about the issue acknowledged that the ITE standards are the industry standard. The ITE's definition of hotel was appropriate for this project, as Ms. Wang testified. Though Mr. Lance was concerned about data not collected at Cedarbrook and about the amount of analysis of off-site parking options, the EIS does not have to address every possible scenario. And it is not uncommon in Kenmore to find off-site parking to deal with this situation, as Mr. Lance testified about the ballfield. Tr. 610.

Mr. Ranade echoed Mr. Kaseguma that there is no competing traffic report. Mr. Lance is a layperson. The Cedarbrook data was not necessary to perform an appropriate traffic study, and not using it would not have changed the conclusion. The City found the study analysis and conclusion to be adequate, and that finding is entitled to substantial weight. The data is expressed in rates that don't change substantially with the seasons. The EIS asks how many extra people the hotel could accommodate on top of full guestroom occupancy. That is adequate information the city council can take into account. The 1,000-person scenario is a very remote one, as Mr. Lance and the experts testified. But the EIS still provides for mitigation such a scenario by using offsite parking. There will be no net loss of public parking. Nobody is saying that no lodge guests will use public parking, but it's only required that we disclose the possibility so the city council and State Parks have that information.

With respect to Ms. Hendershott's testimony, Mr. Ranade argued that her chief concern is trail use at night. Her arguments rest on the unfounded assumption that there's no nighttime use now. She mentioned social trails that might indicate nighttime use from the neighbors. Assuming lodge guests are using the trails at night requires an assumption that lodge users alone will break the rules and Parks will do nothing about it or change its rules. The assumption that only lodge guests will break the rules is unreasonable. Increased use of the trails from lodge guests is disclosed. And if Dr. Bain's estimate of 100 new users per day holds, that is only 36,500 more users a year over an existing 865,000 users a year now—a 4.2% increase. These new users are also members of the public at a public park. Having more users is not a bad thing. Tr. 615.

Regarding lights at night, Mr. Ranade pointed to the Draft EIS disclosures as all that is required. For noise impacts, the Final EIS states the noise analysis used Washington state standards. Nobody alleged those standards were inappropriate. Ms. Hendershott didn't dispute that the impacts were disclosed, she just doesn't like the impacts. That's fair, but it's not the issue here.

With respect to Dr. Bain, Mr. Ranade noted he is a killer whale expert. The hearing officer need not make a determination of his expert status on marbled murrelets because the scenario of marbled murrelets nesting in the park in the future is remote and speculative. Fish are the same, and Dr. Bain admits that if the project complies with stormwater requirements that will resolve issues affecting fish outside the project area. The scenario he mentioned of people shining a flashlight on the water and exposing fish to predators is remote and speculative. He acknowledged he would like to see the project brainstorm the impacts on every possible endangered or threatened species, but that is not the standard here. Ms. Lund used state standards to determine a study area, and used data to identify the eagle nest outside the study area. So her study meets and even exceeds the state standards. The study does not need to assess the entire

park, just the project area. The issue is not if the impacts are valid but if they were disclosed, and they were. Tr. 619.

Mr. Ranade reviewed in sequence the 24 issues presented in the appellants' initial appeal statement, and provided arguments for each:

- For issues 1 and 2, the appellants listed a long list of elements, some (but not all) of which are consistent with WAC 197-14-44. But the evidence was focused mostly on parking. The child safety issue was only raised by Ms. Anderson, who withdrew it when she learned the new parking area was on the other side of the building from the playground. And parking is addressed more elsewhere.
- For issue 3, the testimony from Ms. Hendershott and Dr. Bain was speculative, and the impacts to wildlife aside from the marbled murrelet were disclosed.
- For issue 4, no evidence was presented on trail erosion.
- For issue 5, concerning competition for public parking, a lot of people who use public parking for the existing rental dining hall will be able to use the new lodge space instead, freeing up space. The same number of public parking spaces will remain. The impacts are not understated in the EIS.
- For issues 6 and 7, the Heffron study was appropriate and was accepted by the City. Nothing heard indicates an undisclosed impact. The appellants don't like the impacts disclosed, but they are disclosed.
- For issue 8, the discussion of parking mitigation feasibility is optional. There is testimony that offsite parking already occurs in Kenmore.
- For issue 9, there is no evidence the city council will not require the mitigation condition to provide offsite parking.
- Issue 10 was dismissed.
- For issue 11, the EIS covers even the 1,000-person occupancy scenario
- For issue 12, Mr. Lance conceded this point.
- For issue 13, the potential cumulative impacts of the ballfield were disclosed, and the ballfield is a separate project.
- Issues 14, 15, and 16 were dismissed.
- For issue 17, Mr. Ranade relied on Ms. Wehling's arguments.
- For issue 18, the law does not require that impacts be mitigated to nonsignificant levels. Testimony that the proposed parking mitigation would be ineffective is speculative.
- For issue 19, Ms. Hendershott was the only witness to argue she received an inadequate response from the SEPA-responsible official, but her attention was directed to where they were actually addressed in the comments and in the EIS.
- Issues 20, 21, and 22 were dismissed.
- Issue 23 could be read to go to adequacy, but it is broad and should be dismissed because the rest of the appeal ought to be dismissed.
- Issue 24 was withdrawn.

Mr. Ranade concluded that almost all of the appellants' evidence is based on speculation. There is no disagreement that the EIS discloses the impacts. The disagreement is that they don't like the impacts, and that is not the issue here, so the appeal should be dismissed. Tr. 626.

### **Ms. Rebecca Hirt**

In closing, Ms. Hirt stated that the real issue for public parking is the loss of access for park users whose spots may be taken up by people using the lodge. There is no way to keep lodge users from using the parking spaces. And with just 220 spots for 865,000 people a year, this is already a very tight parking situation. When people are now circling the lot looking for spaces, there are concerns about the additional impact of the lodge. Even though the parking report was conservative, there are weaknesses in it. She does not trust that the mitigations will happen, aside from valet parking. Bastyr has its own weekend events to accommodate. The applicants argued that it was speculation people would be walking in the parks, but they too are speculating that neighbors walk in the park at night.

There have not been very many lights in the area for 40 years, and she doubts there were many in the seminary years, so this is a new thing. Ms. Hirt is not the one to determine if it is completely covered in the EIS. The response that something “is duly noted” means nothing; it’s a nonresponse to the public. It should be written so a layperson can understand it. Tr. 630.

Dr. Bain testified that he has previously testified as an expert on marbled murrelets. He has qualifications, to the level that he’d be writing a master’s thesis on the bird. You don’t have to be a professional expert to know and learn things. Ms. Hirt read a statement from Dr. Bain arguing that the project should look out for the future and should discuss murrelets with the U.S. Fish and Wildlife Service during the SEPA process while design changes can prevent future mitigation costs. When Ms. Hirt worked on the CAMP, they were looking at the park’s future for 10 or 20 years. The project will be there a long time and will change the character of the park. If we do all this development today, what quiet place will be left for future generations?

Where the lease requires compliance with mitigation in the EIS, it is essential that the EIS is comprehensive. The parking mitigation could happen but we don’t know it’s going to happen, so that issue should not be dismissed. This should be solved to give more direction to what will happen. Laypeople should be able to pick up the EIS and understand what’s behind it. This one is not understandable in some aspects, and that is why the appellants are here.

As far as the management plan and the CAMP, the Parks Commission can do what they want to, but until the rescind the plan, that is what is in use. So concerns about the project overtaking the park and not complying with the management plan are valid.

### **Conclusion**

After the hearing examiner made preliminary statements and the parties addressed scheduling issues, the hearing was adjourned.