

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE THE HONOURABLE J. WILTON-SIEGEL
held via Arbitration Place Virtual
on Wednesday, June 8th, 2022 at 10:00 a.m.

VOLUME 26

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Heather McIvor Colin Bourrier	For Province of Ontario
Chris Buck	For Dufferin Construction
Jennifer Roberts	For Golder Associates Inc.

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1 Arbitration Place Virtual

2 --- Upon resuming on Wednesday, June 8th, 2022

3 at 10:00 a.m.

4 MS. LAWRENCE: Good morning,
5 Commissioner.

6 JUSTICE WILTON-SIEGEL: Good
7 morning.

8 MS. LAWRENCE: May I proceed?

9 JUSTICE WILTON-SIEGEL: Please
10 proceed.

11 GEOFF LUPTON; PREVIOUSLY AFFIRMED

12 EXAMINATION BY MS. LAWRENCE (CONT'D):

13 Q. Good morning, Mr. Lupton?

14 A. Good morning.

15 Q. So yesterday we were
16 speaking about a period of time as you were
17 attempting to -- your group was attempting to
18 finalize the 2015 CIMA report and the 2015 staff
19 report that was related to that.

20 A. Hm-hmm.

21 Q. So we're going to jump
22 back into that?

23 A. Registrar, bring up
24 OD chapter 7, page 46. In fact, Registrar, can
25 you bring up page 45 and 46 as two images. Thank

1 you.

2 And, Mr. Lupton, just checking
3 how is your Zoom screen? Can you see both of
4 these images side by side --

5 A. Yes.

6 Q. -- plus our tiles?

7 A. Yes.

8 Q. Great. Okay. So we were
9 talking at the end of yesterday about a meeting
10 that you recall with Mr. Moore, and you weren't
11 sure when that occurred. Looking at -- just at
12 the timeline, so CIMA provides the City with a
13 final report, they call it, of the 2015 CIMA
14 report and the 2015 LINC report on October 7, and
15 then on October 20 CIMA -- I'm looking at
16 paragraph 139 now -- CIMA met with Mr. Moore,
17 Mr. Ferguson and Mr. White to discuss the two CIMA
18 reports.

19 Registrar, can you go to
20 image 46 and 47. Thank you.

21 Do you recall having any
22 discussions with Mr. White or Mr. Ferguson or
23 Mr. Mater about inviting Mr. Moore to meet
24 directly with CIMA about the CIMA reports?

25 A. No.

1 Q. So this meeting was not
2 held with Mr. Moore and CIMA at your direction?

3 A. No, I don't believe so,
4 not that I recall.

5 Q. Okay.

6 Registrar, could you call out
7 the five bullet points at the top of page 47,
8 please.

9 So this is an excerpt from the
10 meeting minutes that were prepared of this
11 meeting, and it says:

12 "BM summarized the findings of
13 the Red Hill report." (As
14 read)

15 At the top, that's Brian
16 Malone from CIMA.

17 A. Hm-hmm.

18 Q. This excerpt does not
19 include -- they also talked about the LINC report,
20 but we're just focusing on the Red Hill section of
21 the minutes, and:

22 "Mr. Moore stated that
23 friction testing was conducted
24 recently following standards
25 and resulted satisfactory."

1 Did Mr. White or Mr. Ferguson
2 who were at that meeting report back to you after
3 the meeting that Mr. Moore had conveyed to them
4 that friction testing had been complete following
5 standards and that the results were satisfactory?

6 A. I don't recall.

7 Q. At this time -- and this
8 is just to orient you before the Public Works
9 committee meeting. In fact, I think before you
10 may have even seen a draft of this CIMA report;
11 it's not finalized. Did you at that time
12 understand from Mr. Moore that friction testing
13 had been completed?

14 A. So what date are we
15 talking now?

16 Q. October 20.

17 A. October 20. I think
18 sometime in that range, you know, plus or minus
19 five, six, seven days, we had a meeting with John
20 and I and Betty Matthews-Malone to talk about
21 this, and it might have been a result of this
22 particular meeting with CIMA. I'm just not sure.
23 But we did get together as a group of directors to
24 talk about, you know, this issue with Gary. And
25 so we were aware somewhere around this timeframe

1 that he had conducted some friction testing, and
2 so it's somewhere around this timeframe. It was
3 probably after this meeting.

4 Q. Okay. And were you aware
5 either from your staff or from Mr. Moore directly
6 that the friction testing that was conducted had
7 satisfactory results?

8 A. I don't believe so. I
9 think more the discussion was on the lack of
10 comparable information out in the marketplace
11 to -- you know, in terms of -- what's the word I'm
12 looking for -- standards in which to compare it
13 to. So that was more I think of the conversation
14 at the time, at least to the best of my
15 recollection.

16 Q. Okay. In that meeting,
17 the meeting minutes report in the third bullet
18 here that:

19 "CIMA clarified that actual
20 weather conditions occurring
21 on the RHVP may exceed typical
22 testing conditions and more
23 rigorous testing could be
24 undertaken in order to rule
25 out pavement friction as a

1 problem and that speeding is
2 definitely contributing
3 factor, but the contribution
4 of pavement should not be
5 ruled out." (As read)

6 Did your staff convey CIMA's
7 view that pavement friction -- a problem with
8 pavement friction should be ruled out through
9 friction testing?

10 A. I don't believe so. Not
11 to my recollection.

12 Q. Okay.

13 Registrar, can you close this,
14 and if you could call out paragraph 40 -- pardon
15 me, 140 and 141.

16 So this is the same day,
17 4:00 p.m., and CIMA e-mailed two attachments.
18 They called them the final draft of the CIMA
19 report and the CIMA LINC report. And Mr. White
20 flipped that e-mail and those attachments to
21 Mr. Mater to Mr. Moore and to you.

22 A. Okay.

23 Q. And, Registrar, could you
24 close that out.

25 And Mr. Moore says -- pardon

1 me, Mr. White says, "gents, the latest rev of the
2 final draft attached."

3 Do you see that in
4 paragraph 141?

5 A. Hm-hmm.

6 Q. Did you review a draft of
7 the CIMA RHVP report when you received it?

8 A. Probably sometime around
9 there. Might not have been that specific day, but
10 it would have been, you know, within the next few
11 days. I more likely would have sat down with
12 Martin and Dave and John at some point to kind of
13 talk about the details and come up with, you know,
14 a plan in terms of what to report, what
15 recommendations we should be looking to ask for
16 and basically helping move the report forward and
17 helping it evolve to where we eventually got it to
18 a final version.

19 Q. Okay. When you reviewed
20 did you note that pavement friction testing was
21 a -- was specifically noted as something the City
22 could undertake?

23 A. I don't recall that. It
24 wouldn't have been by primary focus. I would have
25 focused more on the traffic issues and the overall

1 recommendations of the report. I would have
2 assumed that Mr. Moore and his team would've done
3 some further digging into that in terms of
4 response and based on their, you know, knowledge
5 and expertise in that area.

6 Q. Okay. Mr. Moore was
7 copied on that e-mail from --

8 A. Yes.

9 Q. -- Mr. White. So he has
10 a copy, and in fact the following week he does
11 make comments.

12 A. Okay.

13 Q. Registrar, can you go to
14 pages 49 and 50, please.

15 And if you see at the bottom
16 of page 49, paragraph 150, Mr. Moore e-mailed
17 Mr. Ferguson his comments on the LINC report, and
18 you -- and Mr. Ferguson forwarded those to you.
19 And then the next day you responded to
20 Mr. Ferguson, Mr. Mater and Mr. White and said
21 let's -- and maybe a little call this out.

22 Registrar, the top of page 50,
23 please.

24 A. Okay.

25 Q. "Let's ensure we provide

1 Gary responses to his questions and comments."

2 And then you say:

3 "Taking from one of Gary's
4 comments from the meeting,
5 it's sometimes how we say it,
6 helps puts things into the
7 right context."

8 A. Okay.

9 Q. So this is the 28th of
10 October. What meeting -- when you say "from the
11 meeting," what meeting are you referring to here?
12 Do you recall?

13 A. Specifically, no. My
14 assumption would be that it would be from the
15 meeting that John and Betty and Gary and I had
16 about this particular topic. Whether there was a
17 meeting after that, I don't recall --

18 Q. Okay.

19 A. -- or a conversation --

20 Q. Okay.

21 A. -- with Gary
22 specifically.

23 Q. Okay. So just so that
24 I -- just trying to narrow down the time of this
25 meeting with Ms. Matthews-Malone and Mr. Mater and

1 Mr. Moore. It was just the four of you, right?

2 A. Yes.

3 Q. And it was after a DMT
4 meeting? You just stayed in the same room
5 together?

6 A. I believe so, yes.

7 Q. Okay. There was a DMT
8 meeting on October 27.

9 A. Okay.

10 Q. How often in October
11 of 2015 or in the fall of 2015 did DMT meet?

12 A. I don't recall.

13 Q. Like weekly? Monthly?

14 A. Well, again, I don't
15 know. Sometimes DMT met weekly or every couple
16 weeks. We were invited to DMT meetings typically
17 once a month, you know, the directors below John
18 and the directors below Dan.

19 Q. Okay.

20 A. So for, you know,
21 whatever particular reason, I would have been at
22 that meeting. So that's probably the date or the
23 timeline that you're looking for in terms of when
24 we met after DMT. It sounds about right. I just
25 can't verify for sure because that calendar is

1 long gone.

2 Q. Right. Okay.

3 Registrar, can you close that
4 down, and can you go to page 56, paragraph 168,
5 please.

6 So this is just a couple days
7 later on October 30th, 2015, and Mr. Ferguson is
8 e-mailing with Mr. Murray, Chris Murray, about a
9 public comment about the safety of the RHVP, and
10 he says -- and they were discussing the upcoming
11 Public Works committee meeting. And he says:

12 "I will discuss with our
13 senior team. We had a meeting
14 last week with John Mr. Mater
15 and Gary Moore."

16 And then goes on to speak
17 about some timing.

18 Was there another meeting in
19 which you attended with Mr. Mater and Mr. Moore
20 and Mr. Ferguson around the same time?

21 A. Not that I recollect.

22 Q. Do you recall being in
23 any meeting with Mr. Mater, Mr. Moore and
24 Mr. Ferguson?

25 A. No.

1 Q. Okay. All right.

2 You can close that down. And,
3 Registrar, if you can go back to page 150, please.
4 If you can call -- sorry, I said page 150, I meant
5 paragraph 150. Can you pull up the callout at the
6 top of page 50, please. Thank you.

7 So we were just looking at
8 this a moment ago. This is from October 28, when
9 you say here:

10 "Taking from one of Gary's
11 comments from the meeting. It
12 sometimes how we say it, helps
13 puts things in context."

14 What do you mean by that?

15 A. I think what I meant by
16 that is really conveying through to council about
17 Gary's concerns with the whole friction testing,
18 you know, status in the industry. The lack of
19 relevant information to compare it to. And so in
20 terms of that I think it would have been important
21 for council to hear and understand that from the
22 engineer's perspective what friction testing was
23 all about and what were some of the limitations of
24 it -- or some of the limitations that we felt at
25 the time or he felt at the time.

1 Q. Okay. So you and I have
2 been talking a fair bit about friction testing
3 even just this morning. This back and forth is
4 about the -- Mr. Moore has sent his comments on
5 the LINC report. And so just to give you that
6 orientation, there's nothing in this e-mail that's
7 about friction testing in particular, and I can
8 tell you there's nothing in the LINC report about
9 friction testing in particular.

10 A. Okay.

11 Q. Is there something else
12 or something more that you can -- that you can say
13 about what you meant where "it's sometimes how we
14 say it." Because I'm going to suggest to you that
15 that's actually not just about friction testing,
16 but about sort of the broad issue of these two
17 reports?

18 A. I don't know.

19 Q. Okay.

20 A. Been a long time.

21 Q. Sure.

22 A. There would've been a lot
23 back and forth around this time especially after,
24 you know, Mr. Murray's interest in moving the
25 report forward. So it would have been a full

1 court press in trying to get things, you know,
2 organized and put together so that we could meet
3 the deadlines of I think it was the
4 December 9th --

5 Q. That's right.

6 A. -- 9th meeting, yeah. So
7 there would have been a heck of a lot of back and
8 forth between staff just trying to push to get it
9 done.

10 Q. Okay. What did you mean:
11 "We need to consider liability
12 risk to the City with what we
13 say and how we say it."

14 A. Yeah. I think that was a
15 reflection of Mr. Moore's concerns about friction
16 testing in general; at least what was conveyed to
17 us. Again, not having a standard to compare it
18 to, not a lot of information out there, so I think
19 he was quite concerned with, you know, putting out
20 information in terms of, you know, the friction
21 testing results without, you know, a context or
22 examples to compare it to. So that would be my
23 impression.

24 Q. Okay. Mr. Moore had
25 raised with members of your team concerns about

1 illumination and concerns about the median barrier
2 as well. You recall that e-mail from Mr. White
3 where he said these are the things that we are
4 interested in?

5 A. Hm-mmm.

6 Q. What about those issues
7 as they related to liability risk? Did Mr. Moore
8 raise concerns with you about liability that
9 related to illumination or to the median barrier?

10 A. Yeah. I don't think he
11 raised specific concerns, at least to me, about
12 those two particular things, but he did talk
13 about, you know, a need to understand what the
14 different types of barriers, the -- you know, what
15 is the best approach. You know, he had expressed
16 some concern about with the wire guide median that
17 the -- you know, was there the possibility of
18 catching it and throwing a car back into the lane
19 and maybe causing another accident. It would've
20 been areas that would've needed further
21 exploration in terms of what's the best option to
22 go with for the City.

23 In the end of all of this a
24 lot of those measures were put into the medium and
25 long-term aspects of the report, and I think a lot

1 of it at the time had to do with waiting for the
2 transportation master plan to come into place. So
3 depending on what the recommendations would have
4 been of the master transportation plan or
5 transportation master plan, you know, it may have
6 involved additional construction on the Red Hill
7 and the LINC of an additional lane.

8 And with that -- if that were
9 to be the case, that would have had an impact in
10 terms of probability placement of some of this
11 equipment, whether it be the lights or the
12 guardrails, whichever type was select in the end.

13 With something like this it --
14 you know, once we got past that issue, each of
15 these things would have had to have been looked at
16 in greater detail to make sure we understood the
17 risks and opportunities with each option.

18 Q. Okay. Mr. Moore later
19 sent comments on the CIMA Red Hill report. He had
20 previously just consistent LINC report.

21 Registrar, can you close that
22 callout and bring up callout 153, please. Thank
23 you.

24 Do you recall seeing
25 Mr. Moore's edits or comments. There's a mix of

1 edits and comments in the document that he sent
2 back to Mr. Ferguson.

3 A. I think I probably would
4 have.

5 Q. Okay.

6 Registrar, can you bring up
7 HAM690, the native version.

8 A. Martin and David were
9 pretty good about sharing information most of the
10 time.

11 Q. Sure. And to the extent
12 that a director was making comments on a
13 consultant report, that's the kind of thing that
14 they would have raised with you, right?

15 A. Often.

16 Q. And in this case you
17 think they did?

18 A. Probably.

19 Q. Mr. Lupton, this is a
20 different format of document, so we don't have the
21 callout options, but if you have any problems
22 seeing anything, just let me know.

23 Registrar, can you go to
24 image 34, please, and can you expand the sticky
25 note callout box.

1 Okay. So this is the CIMA
2 report, and you'll see it says "G. Moore." He's
3 made both sticky note comments in this PDF and
4 also he has done some red strikethroughs.

5 A. Yes.

6 Q. This is in respect of
7 CIMA's commentary on slippery when wet signs?

8 A. Hm-hmm.

9 Q. At point in October 2015
10 to your knowledge had slippery when wet signs been
11 installed anywhere on the Red Hill or its ramps?

12 A. I don't recall. I don't
13 think so, but I don't recall.

14 Q. Okay.

15 A. I think when you speak to
16 Martin and Dave or Chris, they would have a better
17 handle on that.

18 Q. Okay. Just as a general
19 proposition, would you have accepted Mr. Moore's
20 deletions, the strikethrough, as an appropriate
21 way to provide instruction to consultants?

22 A. I think it depends on how
23 you view these things. I would view these things
24 in terms of, okay, he's gone through and he's
25 raised his concerns or his ideas or suggestions in

1 terms of where you move forward on this stuff. I
2 know slippery when wet signs, you know, had been a
3 concern that he had expressed before, and I think
4 he's outlined the reasons there. What ultimately
5 ended up in the report -- did we accept all of his
6 changes or no? Or did --

7 Q. Well, no, but I'm asking
8 at the time when you received these changes if you
9 would have considered just accepting those
10 changes -- telling CIMA to just delete whatever
11 Mr. Moore wanted.

12 A. No, no. I look at this
13 as a work in process. You know, it's something
14 that he's been asked to review. He's given us
15 comments and his thoughts and then, you know,
16 further discussion would take place amongst the
17 appropriate parties on something like this.

18 Q. Okay. And to the extent
19 that any of his changes -- once you went through
20 that discussion process, that to the extent that
21 any of his changes were to actually ask CIMA to
22 change or remove a recommendation that they were
23 making, did you view -- would you view that to be
24 an appropriate course of action for City staff?

25 A. I think that would have

1 to be a discussion around that. You know, if
2 there was a reason for it, let's understand what
3 that particular reason is and see if it's valid.
4 I'm not big on -- well, I don't -- you know, you
5 hire a consultant to make recommendations. You
6 know, the only time that you would kind of -- you
7 wouldn't change a consultant's recommendations,
8 but you may challenge them to make sure that they
9 are viewing all the appropriate information that
10 may be available. And there may be some things
11 that they may or may not have taken into account,
12 and this is part of the building process of their
13 report and the City report. So you never come in
14 and take, you know, something that an expert said
15 and pull it out unless there's a darn good reason.

16 Q. Okay.

17 Registrar, can you go to
18 image 41, please. And if you can expand the
19 comment box as well so that we have the entire
20 comment.

21 Mr. Lupton, does this help
22 refresh your memory about whether you actually
23 reviewed Mr. Moore's comments at the time? Do you
24 remember seeing this deletion of an entire section
25 of the report?

1 A. Yeah. I do not recall
2 seeing the deletion. I do know that Gary had
3 expressed this in the comment section that he had
4 had a couple times, you know, about the basis in
5 terms of comparing. And, you know, in this case
6 he uses the MTO as an example. So I've heard this
7 issue before. I don't know -- I don't recollect
8 seeing the changes in the report.

9 Q. Okay. And when you say
10 you "don't recollect seeing the changes in the
11 report," is your evidence that you might have seen
12 them and reviewed them; you might not and you just
13 today cannot remember either way?

14 A. I don't remember seeing
15 it, so I probably not -- didn't.

16 Q. Okay. So are you more --

17 A. I don't know.

18 Q. -- confident than not --

19 A. I don't know.

20 Q. -- that you didn't?

21 A. To be fair I don't know.
22 I would just be speculating.

23 Q. Okay. Do you have a
24 recollection today that Mr. White or Mr. Ferguson
25 told you that Mr. Moore had proposed to delete the

1 references to friction testing from the CIMA
2 report?

3 A. I think we probably had a
4 conversation about it at the very least. You
5 know, that would have been an area that they
6 probably would have wanted to have -- I should
7 say, it's probably an area they would have had
8 some concern and want to have some direction on
9 it, and it's probably something that we talked
10 about as a group, you know, including John, in
11 terms of how do we proceed with these things and
12 what does it mean.

13 Q. Okay. I think your
14 evidence just now, just a few minutes ago, was
15 that in the comment box, that you had received
16 comments from Mr. Moore consistent with what he
17 puts in this comment box here?

18 A. Yes. Those were his
19 concerns. That's what he brought up at the
20 meeting too that we had.

21 Q. During your conversation
22 or conversations with Mr. Moore, did he ever tell
23 you that there were friction test results that --
24 for the LINC and the Red Hill? Did he make that
25 clear?

1 A. No, no. I was aware of
2 the Red Hill. I don't recall discussion about the
3 LINC.

4 Q. Okay. And did he ever --
5 he didn't ever sort of compare and contrast those
6 two sets of results for you?

7 A. No.

8 Q. And at this time there's
9 this reference to MTO. Were you aware that the
10 MTO had done friction testing on the Red Hill at
11 some earlier point?

12 A. Through looking at the
13 evidence the last few days, I understand that
14 there was some testing that was conducted by the
15 MTO around the time of the opening of the Red
16 Hill. Where that testing took place and how that
17 testing was done, I couldn't tell you. I do
18 understand from reviewing some of the evidence too
19 that the way that the MTO did the testing in 2007
20 was different than the way the testing was done at
21 a later date. What that means in terms of
22 comparators, I don't have the expertise to say
23 whether that's a relevant comparator or not.

24 Q. Okay. I understand it's
25 sometimes hard to separate out what you learn in

1 preparation from what you knew at the time. But
2 just focusing back in -- when you were looking --
3 when you were having these discussions with your
4 staff about Mr. Moore's comments around friction
5 testing, were you aware then that the MTO had done
6 friction testing at some point prior to 2015?

7 A. I don't recall. It's
8 hard for me. I've been gone for over five years
9 from the City, and I haven't looked at a lick of
10 traffic since, so it's kind of something that's
11 not been on my list of things that I like to keep
12 tabs of.

13 Q. Fair enough. So sitting
14 here today you just can't remember if you knew
15 about the MTO?

16 A. I can't remember.

17 Q. Okay. All right.

18 Registrar, you can close this,
19 and if you can open OD7, pages 56 and 57, please.
20 Thank you.

21 So through October 30th
22 there's some more back and forth.

23 And, Registrar, if you can
24 call out paragraph 170, please.

25 So Mr. Mater by October 30th

1 says in order to meet the December timeframe we
2 really need to push this along. He also said:

3 "I know you gents are working
4 on a draft cover report for
5 Gary and Ito review with
6 Gerry." (As read)

7 Recognizing this isn't your
8 e-mail, but is there -- does draft cover report,
9 is that a staff report or is that something else?
10 Is that a term that you're familiar with?

11 A. Draft cover report. I
12 don't think the word "cover" meant to be in there.

13 Q. Okay.

14 A. I think the way I would
15 have taken it is let's get moving on that draft
16 report, so we can get everybody to review it, get
17 their comments in, and so we can get it completed
18 and finalized and sent into GMs on office in time
19 for the rotation to get it into Clarkson and meet
20 that December timeline. That's how I probably
21 would have taken it.

22 Q. Okay. So to -- this --
23 you're not copied on this e-mail in particular,
24 but to your recollection did -- your team didn't
25 do some special covering memo or covering report

1 for Mr. Moore?

2 A. I don't think so.

3 Q. Okay.

4 A. It would have been
5 unlikely.

6 Q. Okay.

7 A. Not normal.

8 Q. Not common practice to do
9 that?

10 A. No, we would have
11 probably had a conversation or two along the way.

12 Q. Okay. But you would have
13 wanted Mr. Moore to review the draft staff report
14 once it --

15 A. Absolutely.

16 Q. Okay.

17 A. Yeah. We can't commit to
18 another group's work. They have to be part of
19 that equation.

20 Q. Right. "Ito review with
21 Gerry," is that a type or is "Ito" --

22 A. Where is the "Ito"?

23 Q. It is:

24 "I know you gents are working
25 on the draft cover report for

1 Gary and -- "

2 Maybe that's a capital I, ITO

3 review with Gerry.

4 A. And I with Gerry. I

5 don't see the t-o. Oh, okay. I get it.

6 Q. I think it might just be
7 a typo. I just want to make sure I'm not missing
8 any special City acronyms.

9 A. I think what he is saying
10 there is he's going to review it with Gerry --

11 Q. Okay.

12 A. -- which is good.

13 Q. Can you close that down,
14 Registrar, and you go to callout at the top of 157
15 (sic). Thank you. And can you move the callout
16 so that we can still see page 156 (sic). Perfect.
17 Thank you.

18 So at -- you'll see at the
19 bottom of page 156, Mr. White forwarded
20 Mr. Mater's e-mail, the one we were just looking
21 at, to Mr. Ferguson and to you, and he said in
22 very first paragraph:

23 "Dave, make those minor
24 changes to the rec section and
25 to read the actions are by the

1 GM public works and send it to
2 me again cc Geoff." (As read)
3 Were you involved in any
4 decision making around how to characterize the
5 recommendations? Maybe just to provide context,
6 you'll recall yesterday, we went through the draft
7 staff report that had the recommendations by
8 department.

9 A. Right.

10 Q. And now Mr. White is
11 saying to read the actions are by the GM PW. Were
12 you involved in that move to....

13 A. I'm not sure.

14 Q. Okay.

15 A. I'm not sure. I know
16 John stepped in and provided leadership at this
17 point and, you know, was obviously working with
18 the general manager on this stuff too because it
19 was the tight timeline, and we had to get it, you
20 know, in and clarified properly. So I probably
21 would have come in and out of this depending on
22 what was going on. I don't know what else in
23 terms of -- was going on at the time for me as
24 well.

25 Q. Sure. Mr. White also

1 says there's a draft written and "Dave is going to
2 make some changes." And he says:

3 "After that I'm not sure what
4 to say. It recs the guiderail
5 and the lighting review and
6 the asphalt testing. All the
7 things Gary argues against."

8 (As read)

9 So just stopping there. At
10 this point you understand, you personally
11 understand that Mr. Moore has issues with CIMA's
12 recommendations about the guiderail or the median
13 barrier, the lighting view and asphalt testing.

14 A. Yes, I would say he had
15 concerns.

16 Q. Sure. Okay. Mr. White
17 then says:

18 "Despite that, I believe them
19 to be prudent and required
20 that we do this ethically and
21 technically responsibly."

22 Did you agree with that
23 statement from --

24 A. Absolutely.

25 Q. -- Mr. White?

1 A. I don't -- did I see this
2 e-mail? But I would have agreed that approach for
3 sure.

4 Q. So to the extent that
5 Mr. Moore had concerns about CIMA's
6 recommendations around the guiderail, the lighting
7 review and the asphalt testing, what was your
8 group's plan to address -- or to finalize the CIMA
9 report given Mr. Moore's concerns -- issues I
10 think is the word you used?

11 A. So I would assume that
12 there were some conversations that went on with
13 Gary, probably John and Gary at the time, on how
14 we were going to deal with those things. I think
15 they probably would have been some conversation
16 about the transportation master plan as well and
17 the potential impacts on some of these things.

18 Usually when you get into a
19 high dollar, you know, technical recommendation
20 more so in terms of example the guiderails,
21 typically what you would want to do is do some
22 further research on that and report back at a
23 later date in terms of what those findings were
24 and what the actual costs were going to be.

25 At this point it's just a, you

1 know, a recommendation to look into it as far as
2 I'm concerned. But because it fell into the
3 medium to longer term, that also would have been
4 dictated by the transportation master plan which
5 may or may not have had recommendations in there
6 on that. I don't know. I think I was gone by the
7 time the transportation master plan came out.

8 So it's just like if you were
9 to do the lighting as well, you would have to do a
10 detailed design, you know, recommending the
11 lighting at certain spots and things. Then you
12 would to have go in the next stage and do the --
13 you know, an engineering document. And how would
14 we go about installing these, how would we deal
15 with the electrical, where would it be fed from,
16 you know, what's the right positioning of the
17 lighting. And it would also have to deal with
18 that other issue that we've talked about a few
19 times. Given this was part of the original
20 negotiations of the Red Hill, what would the City
21 have to do in terms of getting the green light to
22 go ahead and do lighting if that's what it desired
23 to do.

24 So was there an additional
25 negotiation that would have had to take place, or

1 would there be a requirement for an environmental
2 assessment. I think in the CIMA report it did
3 reference environmental assessment when it talked
4 about the lighting.

5 So those are all things that,
6 even though they recommended it to go forward,
7 outside of the simple things that we can do, the
8 more technical things still need to be properly
9 engineered and reviewed.

10 Q. Okay. So then is it fair
11 to say one way to assuage concerns that Mr. Moore
12 might have had was to make it really clear that
13 that was going to be deferred until after the
14 transportation master plan addressed the issues of
15 widening of the lanes?

16 A. I think that's what we
17 ended up on --

18 Q. And --

19 A. -- and I think in that --
20 with -- given that particular issue, I think that
21 was wise. You know, again, it would've been silly
22 to go forward and put in millions of dollars worth
23 of assets that may have to be removed or moved,
24 you know, within a few years time.

25 After the transportation

1 master plan would've been completed and gone
2 through its proper channels of review with, you
3 know, the public and council and things like that
4 and received whatever approval was ultimately
5 received, then there would be some indication in
6 terms of what's the best path forward. Hopefully
7 by that time, or close to that time, the initial
8 things under the short-term part of the project
9 would have been completed, or mostly completed.

10 So, again, it deals with
11 mostly signage and things like that, vegetation,
12 and I think it might have dealt with the rumble
13 strip issue too which would have come out of
14 operations, so those kinds of things.

15 I think it was a logical path
16 forward given some of the uncertainty on the
17 bigger picture at the time. And it would have
18 given engineering additional time to kind of
19 digest some of these issues.

20 Q. Okay.

21 A. But if the transportation
22 master plan had recommended adding additional
23 lighting, then all those things would have had to
24 have been captured in the engineering design of
25 those changes. So that would've been a good time,

1 at least in my opinion, to look at the details of
2 those and the impacts of those. So that would
3 have been future reports to council.

4 I think with this
5 particular -- well, I know with this particular
6 project, it was always important for us to
7 communicate back in terms of how things were
8 progressing with council. They wanted it, and the
9 public wanted to know as well. And so I don't
10 think -- you know, I think we would have reported
11 on those short-term results, and I think that the
12 questions would have been, okay, here's where we
13 are with the medium term and here's what we're
14 looking at for the longer term. So this is the
15 new schedule or priorities that we're recommending
16 as Public Works through to council. So that's
17 typically how those things would move.

18 Q. Okay. And in this case
19 it also had the benefit of being able to defer
20 potentially difficult discussions with Mr. Moore?

21 A. Yeah. I don't know it
22 was -- well, that's fair, yes. But I don't think
23 it would have ever changed the need to have those
24 discussions.

25 Q. Okay.

1 A. You know, it's like --
2 yeah, you know, certainly there would have to be
3 more work done.

4 Q. Okay.

5 I'm going to ask the Registrar
6 now to close that out and go to page 58,
7 paragraph 178, please.

8 So the staff report, as it is
9 well into its drafting, and there is some e-mails
10 that are circulating drafts.

11 Registrar, can you close that
12 and go to page 59 to see the rest of 178. Right
13 up at the top if you can call out -- yeah. That's
14 perfect. Thank you. So here, "Martin has
15 reviewed the report, is in agreement." (As read)

16 I'm going to go there in a
17 moment.

18 "Please have Geoff review and
19 approve. Note section under
20 legal implications Geoff to
21 comment after discussion with
22 legal." (As read)

23 So just on that point, was it
24 common practice to involve legal in recommendation
25 reports?

1 A. Only if there was a need
2 to.

3 Q. Okay.

4 A. It's just the same as we
5 would involve finance if there was a need to
6 involve finance, and probably with the -- some of
7 the concerns that had been raised publicly at the
8 time, it was probably good practice just to say,
9 hey, what do you guys think, any thoughts or
10 observations on it. And I think they gave us --
11 from what I've read in the last few days, they
12 gave some good comments back on how to structure
13 things properly in the report itself.

14 Q. Okay.

15 Registrar, you can close this
16 out. And I'll get into the actual report. The
17 report is not actually attached to that e-mail,
18 only the appendices are. You have some -- you'll
19 see in the next paragraph some minor changes,
20 including combining some of the tables and adding
21 a 25 percent contingency. Do you remember
22 reviewing a draft staff report around this time
23 and making these comments back to Mr. Ferguson?

24 A. Likely I would have. We
25 were probably trying to follow the same or a

1 similar format to what we had done in 2013.

2 Q. Sure.

3 A. Here's the stuff we can
4 do now short-term, and, again, the short-term for
5 us was different than CIMA. Ours was the zero to
6 two years; medium term for us was two to five
7 years; and CIMA short-term was zero to five years.

8 So, again, we were trying to
9 move forward and -- in an actionable way for some
10 of this stuff. We didn't want to sit on our
11 hands. You know, I think it was something that
12 council wanted to see in the public as well. So
13 that's probably why we structured it this way.

14 Q. Okay.

15 A. And the contingency would
16 have been probably because we just didn't know all
17 the costs at the time.

18 Q. Sure. At this point,
19 just looking at your notes, the -- in fact I
20 should probably bring it up just so you can see
21 it.

22 On the other image, Registrar,
23 can you bring up HAM52372.

24 So this is the appendix that
25 was attached to the e-mail that you then comment

1 on in paragraph 179. And you'll see at the top it
2 says:

3 "Short-term/medium-term
4 options and estimated costing
5 for the LINC and the Red
6 Hill." (As read)

7 And they're on the same page.

8 And one of your comments is the title, "Short-Term
9 Safety Options For Consideration and Estimated
10 Costing for Red Hill and the LINC."

11 So at this point, at least as
12 I see it, you're suggesting using the term
13 'options for consideration'?

14 A. Yeah. I think that --

15 Q. It's not a huge
16 difference. I just -- that's -- is that -- is
17 that your --

18 A. Yeah. I don't know where
19 that came from in the end, but that's ultimately
20 what we went with in the report, wasn't it?

21 Q. Yeah. Options for
22 consideration is language that Mr. Moore had
23 suggested using.

24 A. Okay.

25 Q. Were you aware of that?

1 A. I think I'm aware of it
2 from discussions last couple days. If you had
3 asked me before that, I wouldn't have
4 remembered --

5 Q. Okay.

6 A. -- who said it or where
7 it came from.

8 Q. Fair enough. Did you
9 have any concerns with using the phrasing 'options
10 for consideration' when the CIMA report spoke
11 about their recommendations?

12 A. I guess it would depend
13 on what context it was. You know, if it was -- in
14 some cases where an option would have been
15 identified -- some of these things you know and
16 you can just go ahead and do. Some things you
17 might need to do a little bit more work and study
18 on to, you know, finalize them and move forward
19 with. (Indiscernible) speed study and consider
20 variable speed limiting system. So I assume
21 that's like a speed camera.

22 There another one in here that
23 kind of -- the slippery when wet rain activated
24 flashing beacon. So that's an estimated cost. It
25 would have been something that we would've had to

1 do, you know, more work on it and study, but it
2 doesn't mean we wouldn't have done it.

3 Q. Right.

4 A. Medium term was delayed
5 anyways but....

6 Q. I'm going to suggest to
7 you that CIMA as a consultant makes
8 recommendations. From a number of different
9 options that they might consider as
10 countermeasures, they recommend particular options
11 to staff. Whether staff accept those options or
12 those recommendations or not is a different thing,
13 but that's what they are doing; they're
14 recommending.

15 A. Recommending options,
16 that's good terminology.

17 Q. And then the staff who
18 have some safety experience, they recommend maybe
19 the same options, maybe different options, to
20 council or to the Public Works committee to have
21 completed.

22 A. Right.

23 Q. Do you view the term
24 options for consideration as softer and less
25 directive than recommendations?

1 A. I guess it could be
2 viewed that way. It would depend on what verbiage
3 was around it. You know, options to implement
4 would be okay by me. Options for implementation
5 or options for review or further review, that
6 would have been okay. Options for consideration,
7 yeah, it probably could have been a little
8 stronger.

9 Q. Okay.

10 Registrar, this document,
11 HAM52372 hasn't been marked as an exhibit, and
12 it's not in the overview document, so I think we
13 should mark that as the next exhibit which by my
14 count is Exhibit 66.

15 A. Is this what was in the
16 final report?

17 Q. No, this is just a draft.
18 This is a draft that went to you for your comment?

19 A. Yeah. I always look
20 towards what we ultimately end up saying because
21 there's a lot of back and forth with drafts.

22 Q. Of course and we'll get
23 there.

24 A. You know, like I see a
25 mistake in the midterm stuff here where we said

1 zero to five years. You know, did we adjust that
2 in the final report to say two to five years
3 because that's what it should have been.

4 Q. I actually did have a
5 question about that.

6 EXHIBIT NO. 66: Short
7 Term/Medium Term Options & Estimated Costing for
8 LINC and RHVP; HAM52372.

9 BY MS. LAWRENCE:

10 Q. You said internally your
11 short-term is zero to two years, you medium term
12 is two to five years and your long-term, I think
13 you said, is over five years; is that right?

14 A. Yes.

15 Q. And is there some --

16 A. That's what we had come
17 across for this particular project.

18 Q. Okay.

19 A. That's how we structured
20 it in 2013, so I think that was the intent, you
21 know, to kind of follow in that path.

22 Q. Sure. Did you ever
23 communicate that back to -- up to Public Works
24 committee that that was the timelines that you
25 were using?

1 A. It would have been in the
2 report.

3 Q. Okay.

4 A. As you see here, and
5 hopefully we corrected the medium term on the
6 final report at least that still gives a range in
7 terms of what we're looking at.

8 Q. You can close down the
9 HAM document, Registrar, and if you can go in the
10 OD to page 60, and if you can call out 183,
11 please. Thank you.

12 So here Mr. Ferguson e-mailed
13 Mr. Malone at the -- at CIMA, and he attached a
14 revised version of the draft staff report. So not
15 the CIMA report, but the City staff report, and
16 said:

17 "Further to my call, here's
18 the report we have compiled
19 for PWC." (As read)

20 And he says:

21 "With respect to the reports,
22 we are asking that the wording
23 that states recommendations be
24 changed to option for
25 consideration."

1 Were you aware that
2 Mr. Ferguson asked CIMA to make language changes
3 within its report?

4 A. I don't recall. I know
5 there was some done from discussion the last few
6 days, but I don't recall at the time whether I saw
7 this or not.

8 Q. Okay. And in the third
9 paragraph he also says:

10 "You will see in the
11 attachment I have identified
12 short-term options and
13 long-term options. Could the
14 reports have a similar
15 layout?" (As read)

16 A. Yeah, to me that's fine.
17 We're not asking to change the recommendations.

18 Q. Okay.

19 A. Just saying, you know,
20 can you structure it so it can be followed easier.

21 Q. Okay. I'm going to
22 suggest to you that -- so the staff report has
23 those appendices that we were just looking at
24 where it has the short term and medium term.

25 A. Right.

1 Q. I'm going to suggest to
2 you that CIMA took this e-mail as a request to
3 change the friction testing recommendation which
4 they had as short term to medium term, and they
5 assessed that and decided not to do it. Was that
6 under your direction that Mr. Ferguson make such
7 an ask?

8 A. No. But for
9 clarification for me, please, when CIMA
10 recommended it -- so you said they recommended it
11 for the medium term?

12 Q. No, they recommended it
13 for the short term?

14 A. And their short term was
15 zero to five years. Was that not correct?

16 Q. That's right.

17 A. So our medium term was
18 two to five years, so technically it's the same
19 kind of timeframe.

20 Q. I understand. That's not
21 my question. My question is, did you direct
22 Mr. Ferguson to ask CIMA --

23 A. No.

24 Q. -- to make a change
25 within their report to reference --

1 A. No.

2 Q. -- medium term?

3 A. I don't believe so.

4 Q. Okay. Okay.

5 Let's go to HAM24700, please.

6 A. So this is a draft as
7 well, right?

8 Q. So this is the -- as I
9 understand it, the final version that Ms. Harbin,
10 who is your assistant; is that right?

11 A. Yes, she was at the time.

12 Q. That -- she sent what was
13 your sort of final version to Mr. Moore?

14 A. For his review. Okay.

15 Q. For his review.

16 A. Now, I don't believe this
17 was the final version. I think the final version
18 was signed off by Mr. Davis. I could be
19 incorrect, but it's probably -- I think he would
20 have, and I don't know -- just as a -- flagged
21 for, you know, everybody look at, was there any
22 changes between this report and what ultimately
23 went to committee. And that -- just so we make
24 sure we're looking at apples to apples.

25 Q. Sure.

1 Registrar, can you bring up
2 the first and second page -- first and second
3 image, please. Okay.

4 So this is -- it's quite a
5 lengthy staff report; it's eight pages. And just
6 looking at the recommendations sections first.

7 Registrar, if you can call out
8 the recommendations. Okay.

9 So the first recommendation
10 (indiscernible) the general manager implement all
11 the safety options on -- in appendix A -- and
12 we'll go to that appendix A in a moment -- from
13 the red light camera reserve.

14 A. Okay.

15 Q. The second is that:

16 "The design with request to
17 medium and long-term items in
18 appendix B will be deferred
19 pending the outcome of the
20 transportation master plan."

21 (As read)

22 And I think you gave some
23 evidence about that being the approach that you
24 thought would be prudent.

25 A. Yes.

1 Q. And then there's the --
2 that the police undertake some speed and
3 aggressive driving enforcement and that the report
4 go to the joint stewardship board.

5 A. Hm-hmm.

6 Q. Registrar, can you close
7 that down, and can you go to --

8 A. Well, before we leave
9 that --

10 Q. Sure.

11 A. -- if you look at
12 recommendation A.

13 Q. Yes.

14 A. Not to be too picky, but
15 if in the recommendations, you know, it was
16 requested that the GM implement the short-term
17 measures in appendix A, the word "option" is less
18 of an issue because it's already saying in there
19 that, you know, the direction is to implement
20 those.

21 Q. Sure.

22 A. That list of options that
23 were identified would be based on council
24 approval. This would be, you know, something we
25 would have to do.

1 Q. Okay. Let's go to
2 appendix A.

3 Sorry, I think -- Registrar, I
4 think you actually need to go to a different doc
5 ID for that, which is 24701. There we go.

6 So this is the appendix that's
7 attached.

8 A. Okay. So that's the last
9 draft we looked at.

10 Q. Exactly. So it's been
11 revised, and it's just the short-term options now,
12 and it has estimated costs. It has your
13 contingency to add in, and it has at the top
14 "short-term option zero to two years."

15 A. Okay.

16 Q. And then can we go to,
17 Registrar, 24702.

18 This is appendix B and it has
19 short-term options. It now says two to five
20 years --

21 A. Oh, we fixed it.

22 Q. -- and long-term options
23 six-plus. And you'll see that under the
24 medium-term options it says "conduct pavement
25 friction testing"?

1 A. Hm-hmm.

2 Q. How did conduct pavement
3 friction testing end up as a recommendation to --
4 or pardon me, an option to occur in the two- to
5 five-year range?

6 A. I think it's still
7 consistent with what CIMA's recommendations
8 were --

9 Q. Mr. Lupton, I don't want
10 to interrupt you, but that wasn't my question.

11 A. Oh, I'm sorry.

12 Q. My question is, how did
13 it end up as a medium-term option? What was the
14 process to get it into a medium-term option on
15 this staff report?

16 A. I don't recall
17 specifically, but it would've been something that
18 would have been conveyed through -- from
19 engineering because that would have been on --
20 based on their timelines. We wouldn't dictate
21 what their timeline should be without their buy-in
22 or, you know, comments in terms of what that
23 should be.

24 Q. Okay.

25 A. Is that what you're

1 looking for?

2 Q. Yeah. I was looking
3 internally the process. That's helpful.

4 A. Okay.

5 Q. So you don't remember,
6 but you wouldn't have put it on in here like this
7 without approval from Mr. Moore; is that fair?

8 A. Correct.

9 Q. Okay.

10 A. And if he had a big
11 problem with it, he would have expressed it.

12 Q. Sure. Do you recall
13 whether he asked you to move it from the zero to
14 two-year range to the two- to five-year range?

15 A. I do not recall.

16 Q. Okay.

17 Registrar, can you bring up
18 2700, the first page, side-by-side to this one.
19 Thank you.

20 So looking again at
21 recommendation B, am I correct here that friction
22 testing as a medium-term option doesn't need to
23 occur until and pending the outcome of the
24 transportation master plan?

25 A. Based on this, yes,

1 that's correct.

2 Q. So friction testing was
3 going to -- was wrapped up in those other things
4 you were talking about earlier that we're going to
5 need much more design consultation and discussion;
6 is that right?

7 A. Yes. Based on this, yes,
8 it certainly would have fallen under that
9 timeframe.

10 Q. Well, not just timeframe,
11 if the transportation master plan made some other
12 analysis about whether to proceed with widening,
13 those things could actually never come back up for
14 discussion, right?

15 A. Yeah. So how would you
16 like me to respond to that? I'm not quite sure
17 what your question is. I'm sorry.

18 Q. That's all right. My
19 question was, is that -- was that one of the
20 potential consequences that illumination and
21 median barriers might never come back up for
22 discussion --

23 A. No.

24 Q. -- at the PWC?

25 A. No, I don't see it that

1 way.

2 Q. Okay.

3 A. I don't see it that way.

4 Q. It was just a deferral?

5 A. I think it was an

6 obligation for staff to come back after the

7 results of the transportation master plan were

8 known. You know, the transportation master plan

9 might have recommended repaving, you know, the

10 whole thing. I don't know. I've never read the

11 transportation master plan.

12 Q. Fair enough.

13 A. But there would have been

14 an obligation and expectation that I think that

15 staff would have come back and said, okay, here's

16 what we're recommending we do in the timeframes

17 with, you know, the options listed in appendix B.

18 Q. Okay.

19 A. And if there was any

20 changes to those recommendations or how they would

21 be approached, that would be highlighted, you

22 know, as part of the information that would go

23 through to council. That would be my expectation.

24 Q. Okay. What about

25 friction testing was related to the outcome of the

1 transportation master plan, if anything?

2 A. I can only speculate on
3 that. The only thing I don't -- I don't know.
4 If --

5 Q. It sounds like you don't
6 know, but --

7 A. I think that's fair. My
8 guess would have been, you know, what if they
9 repaved the whole thing when they add another lane
10 what the transportation master planner -- or
11 redesign something or are required to redesign
12 something, it's beyond my technical knowledge in
13 terms of what would happen there. I'm just trying
14 to give you, you know, my estimate of maybe what
15 might be involved.

16 Q. Sure.

17 A. It's fair to say I can't
18 give you a definitive answer on that.

19 Q. Okay.

20 A. I don't know for sure.

21 Q. Okay.

22 Let's go to -- close these out
23 and go to OD page 74, please.

24 So the final version of this
25 report goes to PWC on December 15, 2015.

1 A. Was that PWC or council?

2 Sorry, you said December 15 --

3 Q. I did.

4 A. -- that's 7?

5 Q. Yes, it is. Apologies.

6 As I was saying it, it did not sound correct.

7 A. Okay. One for me.

8 Q. It is December 7, 2015,
9 not December 15 -- I just misspoke. December 7 it
10 goes to PWC, and then thereafter it goes to
11 council for ratification. Did you attend the PWC
12 meeting on December 7?

13 A. I'm assuming I probably
14 was there.

15 Q. Okay. Are you not -- you
16 don't have a recollection of being there?

17 A. It's probably 99 percent
18 likely that I was there unless for some reason I
19 was, you know, pulled away for some other
20 instance. This would have been an important
21 report --

22 Q. Yeah.

23 A. -- and so that would have
24 been important to have all the key players at
25 committee that particular day, so it's highly

1 unlikely that I wouldn't have missed the meeting.
2 John would have insisted we be there.

3 Q. Okay. Mr. Ferguson and
4 Mr. Cooper were the ones who actually presented
5 the report. Does that refresh your memory either
6 way?

7 A. Yes, that does help. I
8 do remember that.

9 Q. Okay. So you were there,
10 and you do remember them presenting?

11 A. Yes.

12 Q. Great. During the
13 discussion at PWC on this -- on the report,
14 because it was also the LINC report, you'll see in
15 the overview document we've summarized some of the
16 discussion. Councillor Merulla asked Mr. Moore
17 about the quality of the asphalt used, and
18 Mr. Moore referenced that it was using SMA which
19 is stone mastic asphalt. Do you remember that?

20 A. I remember it from
21 reading the notes the last few days. I don't know
22 that I would have recalled it --

23 Q. Okay.

24 A. -- from then, but it's
25 good that they, you know, capture these things.

1 Q. Yes. Mr. Moore also
2 informed PWC that MTO had performed initial
3 friction testing and had received results at or
4 above what MTO typically expected from high grade
5 friction mixes. Do you remember him conveying
6 that to --

7 A. Not specifically, no.

8 Q. -- the councillors?

9 A. Not specifically, no.

10 Q. Okay. He also informed
11 PWC that -- that they had performed -- I'm just
12 going to put the "they" in quotations -- had
13 performed subsequent testing five years after
14 approximately 2012 or 2013. Do you recall
15 Mr. Moore expressing that to the councillors at
16 PWC?

17 A. No. Not to say he
18 didn't, I just don't remember it.

19 Q. Okay. But this would not
20 have been the first time you were hearing that if
21 he did express it then, right?

22 A. Yes, he --

23 Q. Before this point?

24 A. He had been expressing
25 that kind of information at different points. You

1 know, I think we saw it back when, you know, there
2 was discussions about what the road (ph) material
3 was and what people thought it was versus what it
4 actually was.

5 Q. Yes. Do you recall him
6 expressing to you that the testing that he had
7 told you about had happened in approximately --
8 approximately five years before in 2012 or 2013?

9 A. I think we knew that.

10 Q. You knew the timeframe
11 when the testing had occurred?

12 A. Well, I think it was
13 around the 2013 mark because that's when we had
14 the discussion about it --

15 Q. Okay.

16 A. -- where I think he had
17 said he had had it done.

18 Q. Okay.

19 A. So it was likely in that
20 timeframe.

21 Q. Okay. Are you putting
22 those pieces together having prepared for this
23 inquiry and sat through all of my questions, or is
24 that something you actually remember thinking and
25 knowing at the time?

1 A. I think it's more so the
2 first part.

3 Q. Okay. Did you or any of
4 your staff follow up with Mr. Moore after this
5 Public Works committee meeting to obtain copies of
6 the friction test results that he referenced at
7 the meeting?

8 A. I believe that did
9 happen. Again, from reading the information
10 that's been collected.

11 Q. Okay.

12 A. I don't think that I
13 would have remembered that.

14 Q. Let's say -- I'll break
15 it out. Did you personally ask Mr. Moore after
16 this meeting for friction test results?

17 A. I doubt it.

18 Q. And did you direct your
19 staff to ask Mr. Moore for friction test results?

20 A. Not that I recollect.

21 Q. Did you receive any
22 information from your staff that they had asked
23 Mr. Moore for friction test results?

24 A. Only from what I've read
25 the last few days. In my view of things, I

1 probably wouldn't have been as hot to trot on it
2 because it was, A, not my area of responsibility
3 or knowledge, and more importantly it was on the
4 appendix B, the things would be deferred until the
5 transportation master plan came out. I think
6 once -- you know, if I was -- remained at the City
7 that would have come up again, but I think I --

8 Q. But for the --

9 A. -- I think it was long
10 gone.

11 Q. Right. But for the
12 moment at this point in late 2015, it's off your
13 plate and your team's plate?

14 A. Yeah.

15 Q. Okay. Before
16 ratification by council the Lakewood Beach
17 Community Council wrote to council about the
18 report. Do you remember that?

19 A. From what I've read the
20 last few days, yes.

21 Q. Okay.

22 Let's bring it up. It's
23 page 77, paragraph 246, please. If you can
24 actually -- oh, it continues on to the next image,
25 Registrar, and it's quite lengthy. Great. Thank

1 you, Registrar.

2 So they say -- because they're
3 sending this to the mayor and to council because
4 it's coming up for -- before council.

5 We're too late to have this as
6 an agenda item so we're writing to you directly.

7 And, Registrar, could you move
8 the -- yeah. Thank you.

9 Based on the review, the
10 consultants are recommending a pavement friction
11 test be conducted at a cost of 40,000:

12 "It's not on the short-term
13 list, we feel that the
14 cost/benefit of conducting
15 this test would be money well
16 spent."

17 And they reference some of the
18 collisions, and at the very end respectfully
19 request that this be added to the list short-term
20 recommendations.

21 A. Okay. I'm assuming this
22 is after they read the report that went in for
23 committee?

24 Q. Yes. And just for
25 clarity -- so the staff report has been given to

1 PWC on the 7th, the consultants report was also,
2 as I understand it, publicly available, and this
3 is a commentary in advance of going to council on
4 the 9th.

5 A. Okay.

6 Q. Is that helpful just in
7 terms of time?

8 A. Hm-hmm. Yes. Thank you.

9 Q. Do you recall any
10 discussions with your staff about this request?

11 A. I think we did speak
12 about it, yes.

13 Q. Okay.

14 A. I think it -- you know, I
15 saw from the notes of course that Dave responded
16 to them, but I do recall that.

17 Q. Okay. All right.

18 Let's close that out and go to
19 page 111, paragraph 350, please. Actually, sorry,
20 just stopping, Registrar, before you go anywhere.
21 Just stay right there.

22 You'll see Councillor Jackson
23 responds and says, thank you for this we're going
24 to push it back to PWC for discussion. Which, am
25 I correct, that that makes sense in terms of the

1 appropriate place to have this discussion rather
2 than at council ratification?

3 A. It probably would have,
4 but they could have done it at council too if they
5 really wanted to. But it's not uncommon. You
6 know, if they want to get into more robust
7 discussion on a particular issue, they sometimes
8 push it back to committee.

9 Q. And Jackson -- Councillor
10 Jackson is on the Public Works committee, right?

11 A. I believe he was at the
12 time.

13 Q. Okay.

14 All right. Thank you,
15 Registrar, for pausing for a moment. Now if you
16 can go to page 111, paragraph 350.

17 So in February Mr. Ferguson
18 writes back to the LBCC, the Lakewood Beach
19 Community Council, copying the mayor, copying you,
20 copying Mr. Mater and copying Mr. Moore and
21 says -- just for timing, this is an upcoming --
22 this is just before an upcoming PWC meeting, in
23 the second paragraph your e-mail requesting a
24 friction test -- was requesting the friction test
25 be considered a short-term testing, and he says:

1 "I am pleased to inform you
2 that this testing will be
3 completed by engineering
4 services in 2016. We are
5 confident this testing along
6 with other short-term measures
7 will assist in raising
8 awareness and educating
9 motorists." (As read)

10 Do you recall discussing with
11 Mr. Moore -- pardon me, Mr. Ferguson this response
12 before he sent it?

13 A. No. And if I had my
14 typical suggestion to Dave on this would have
15 been, we should get Gary to respond to the issue
16 of the friction testing really because that's
17 under his area. I think based on this, he
18 obviously spoke to Gary about it, and Gary moved
19 up his timeline, but it would have been nice if
20 Gary had at least jumped in with the whole group
21 and confirmed that, you know, so it's --

22 Q. Sure.

23 A. -- straight from the
24 horse's mouth.

25 Q. Right. So in this case

1 Mr. Ferguson is making a promise on behalf of
2 another departments to do, you know, another
3 department's work?

4 A. Yes.

5 Q. Did you recall having any
6 discussions with Mr. Moore about Mr. Ferguson's
7 response?

8 A. I think Mr. Moore
9 responded.

10 Q. He did. He says
11 "perfect." But I'm asking if he had any
12 conversations with you.

13 A. So I wouldn't have had
14 conversation after that.

15 Q. Okay.

16 A. So Gary saying "perfect"
17 would have been my confirmation that Dave had
18 spoken to him and that was the timeline that he
19 agreed to.

20 Q. Okay. Did you learn over
21 the course of 2016 that friction testing had, in
22 fact, been completed in accordance with
23 Mr. Ferguson's statement here?

24 A. I don't think I knew
25 that.

1 Q. Registrar, can you close
2 that out and go to page 112, paragraph 255 (sic).
3 Actually, sorry, just I want to orient Mr. Lupton
4 a little. Can you close that callout just for a
5 moment.

6 So this is -- we're still in
7 the same -- we actually in the very same period of
8 time when Mr. Ferguson has sent that e-mail to the
9 LBCC. And then there's Ms. Leduc at the very top
10 says there's an "attached delegation request" that
11 is in respect the LBCC. And in 354 you say:

12 "Guys, let's make sure we
13 attend. I think we have some
14 history this one."

15 And then Mr. White responds to
16 you and says, "without looking at it, it's RHVP
17 safety stuff" and he says:

18 "The issue is mostly" --
19 Actually now we can call it
20 out, Registrar, 355.

21 "The issue is mostly the
22 asphalt friction test which
23 Gary says is done. We have
24 asked for a copy of the
25 results but haven't seen it

1 Ms. Cameron's e-mail to Mr. Ferguson copying you.
2 So this is not Mr. White's e-mail we were just
3 looking at, but the e-mail before that in respect
4 of the delegation.

5 A. Hm-hmm.

6 Q. And he says to

7 Mr. Ferguson copying you:

8 "FYI, some roughness/skid
9 resistance/friction testing
10 has been done. However, I'm
11 still trying to get an
12 analysis on it and put it into
13 context. MTO is very guarded
14 with this information and does
15 not share a numbers due to
16 liability." (As read)

17 Do you remember receiving this
18 e-mail from Mr. Moore?

19 A. I think so.

20 Q. Did you personally ask
21 for a copy of the tests that Mr. Moore is
22 referencing saying has been done?

23 A. Again, I would have taken
24 a different tact with that. If we did have a
25 conversation, the conversation would have been,

1 Gary are you or one of your staff going to be
2 there to answer any questions that comes up on
3 this area, and it's probably, you know, for you to
4 explain, you know, your concerns or share whatever
5 information you felt was appropriate.

6 Q. Okay. So --

7 A. My team should not be
8 answering for something that is not something that
9 falls within their area of expertise. That should
10 be the group that does it.

11 Q. Okay.

12 A. The same thing I wouldn't
13 sit down and speak for legal or finance on any
14 issue as well. We would want to have the
15 appropriate people there.

16 Q. Okay.

17 A. What ended up happening
18 with the meeting itself? Did anybody show up
19 there to speak to it or....

20 Q. Sure, in fact, let's go,
21 and I'll just take you through what happens.

22 You want to close this down,
23 Registrar, and if you can go to the next page and
24 call out the first four paragraphs, please.

25 So you forward the e-mail to

1 Mr. White and Mr. Mater. Mr. Mater says can we
2 reach out to the LBCC and ask what they want
3 basically. And Mr. White responds give her a
4 call, see what she wants.

5 And then a couple of days
6 later the LBCC (sic) advised Mr. Ferguson that
7 their delegation request before PWC was not
8 related to Red Hill improvements.

9 A. Okay.

10 Q. So having received that
11 e-mail from Mr. Ferguson that friction testing was
12 going to be completed in 2016, they said that the
13 delegation request that they were making was
14 not --

15 A. They said it was going to
16 happen. Okay.

17 Q. Just pausing and going
18 back to that e-mail where Mr. Moore told you and
19 Mr. Ferguson that some friction testing has been
20 done, was his words. Separate and apart of
21 dealing with the LBCC in this delegation request,
22 did you direct your staff to take steps to follow
23 up to have a copy for other purposes?

24 A. I don't think I would
25 have.

1 Q. Okay.

2 A. You know, what other
3 purposes would there be for us? It -- yeah.

4 Q. In your view the -- your
5 group didn't have any other -- there was no other
6 benefit to obtaining friction test results from
7 Mr. Moore?

8 A. It's not, as I say, an
9 area that fell under our expertise or
10 responsibility. Road construction and all the
11 things that go with, you know, pavement and those
12 kinds of issues, that doesn't fall under us. Ours
13 is strictly traffic safety, but when you get into
14 construction and construction materials and
15 roadway designs, that does not fall under us. The
16 only way that I could see that it would come up
17 again is if they were getting into next stages for
18 reporting back to council on the appendix B stuff.
19 And I don't think that was quite the timeframe to
20 do that.

21 Q. Okay. So at this time in
22 your view friction testing didn't relate to
23 traffic safety such that you were interested or
24 your team was interested in receiving the results?

25 A. No, because I don't know

1 that we would understand how to evaluate those
2 results. You know, if there was not -- if the
3 engineer that understood this stuff had concerns
4 and didn't have enough comparators to, how would
5 my team be able to evaluate those results? It was
6 not something that we would have known or
7 understood. It's not -- it wouldn't fall under
8 our area of expertise, let's put it that way.

9 Q. Okay.

10 A. Designs and pavement
11 markings and street lights, yeah, we'd have all
12 kinds of knowledge on that. So, you know, it
13 would be the same that I would have. I wouldn't
14 be able to make a call on what was a good number
15 or bad number or satisfactory number. We wouldn't
16 know.

17 Q. Okay. Registrar, can you
18 go to page 124, please.

19 So we've jumped ahead in time.
20 We're in May of 2016, and Mr. White e-mailed you
21 and Mr. Moore and Ms. Matthews-Malone attaching a
22 draft staff report information update. I think
23 you told me yesterday, information update, that's
24 different than an information report and different
25 than a recommendation report; is that right?

1 A. Yeah. If it doesn't go
2 straight to committee. It goes out to all members
3 of council and, you know, members of Public Works
4 and anybody else that might have been involved.

5 Q. Okay. And you'll see --
6 Registrar, can you call out
7 the excerpt of -- in that paragraph, please.

8 So John has asked an
9 information update goes to council to advise them
10 of the timing of the safety improvements that are
11 going to be made. It involves works by operations
12 and engineering, so Mr. White was circulating it
13 to them.

14 If you can close that down,
15 Registrar, and if you can go to the next page,
16 125, please. And then this was a chart that was
17 attached to that information update.

18 A. Okay.

19 Q. And you'll see there's
20 some timelines for the completion of the
21 short-term measures from that 2015 staff report?

22 A. Hm-hmm.

23 Q. And at this point are you
24 still trying to push your group to ensure that
25 these -- that those aspects of the short-term

1 options that were under your control were done in
2 a fairly timely way?

3 A. Definitely.

4 Q. You're still feeling
5 pressure from members of council and the public --

6 A. I wouldn't say pressure.
7 It's more so we made a commitment to do something,
8 so let's make sure we remain proactive and get
9 things done within a reasonable timeframe. If
10 there's something that falls off the table for
11 some particular reason, we need to be cognizant of
12 it and be prepared to explain why and, you know,
13 if it's coming at a later date. You know,
14 sometimes that happens with technology.

15 Q. Okay. Gary responds
16 you'll see in paragraph 197 (sic). If you could
17 bring that up, please. He says:

18 "The only comment I have is
19 that we're looking at pavement
20 rehab -- possibly looking at
21 pavement rehab work on the Red
22 Hill in 2017." (As read)

23 Is this the first that you had
24 heard that engineering services was possibly
25 looking at pavement rehab work in 2017?

1 A. Probably. We wouldn't
2 have seen the capital budget yet, so he would have
3 had it still in its planning stages. So if he had
4 moved anything or changed anything on his capital
5 budget, that would have come up later in terms of,
6 you know, late December, November/December 2016.

7 Q. The capital budget for
8 2017, you would see that for other departments?
9 You would see that in December of 2016?

10 A. Yeah. We would see it
11 for Public Works, November/December timeframe.
12 Usually capital budget was approved, if there was
13 (indiscernible) you could approve 50 percent of
14 the budget expenditure.

15 Anyways, without getting into
16 all of that, because I probably don't remember all
17 the exact details, the capital budget was usually
18 approved for the most part in that year, and the
19 operating budget was typically approved by council
20 in the March/April timeframe of the following
21 year --

22 Q. Hm-mmm. Okay.

23 A. -- if that helps.

24 Q. It does. Thank you. So
25 we're in May of 2016.

1 A. So this would have been
2 new to us, I'm pretty sure.

3 Q. And is it fair to say
4 having this information is helpful to your team to
5 the extent that there are aspects of the
6 countermeasures that can be correlated or can be
7 done at the same time as rehab work?

8 A. Possibly. You know, I
9 think most our stuff didn't involve the actual
10 pavement rehab work because it was off to the
11 side. It would have certainly impacted things
12 like tigers eyes in the pavement, and some of the
13 pavement marking work that we may have planned
14 that particular year. So that would have -- yes,
15 it would've been important for us to know. I
16 think it would've -- you know, council obviously
17 would want to know that this was coming as well.

18 Q. Sure. So just on the
19 cat's eyes or tigers eyes, am I correct that there
20 had been some installed, but everyone understood
21 that there was going to be -- they were going to
22 hold off the permanent installation until the next
23 round of resurfacing?

24 A. My recollection is that I
25 think the rehab work that they were looking at was

1 further out, you know. Whether it was 2019 or
2 2020 or whatever, I think it was further out. So
3 I think based on that at the time we elected to
4 move forward and get the tigers eyes in, at least
5 in the section that we said we would -- sections
6 that we said we would. And so they would be in
7 there, and we could get a good sense of how they
8 were working out. You know, whether we were
9 able to -- you know, did they improve things for
10 the driver especially at night and did we have any
11 issues with, you know, things like snow plows and
12 that popping them out, you know, how many do we
13 actually have to repair. Do we have to replace
14 them all, or was it just two or three or that kind
15 of thing.

16 Q. So just for clarity on
17 timing, so --

18 A. Yeah.

19 Q. -- the rehab work was a
20 ways out. So are you talking about in 2014 after
21 the 2013 CIMA report, that installation of cat's
22 eyes or tiger eyes?

23 A. Yeah, that's probably
24 what I'm thinking of.

25 Q. Okay. And at that time

1 you understood the rehab work was scheduled for
2 2019 or 2020 or 2021 --

3 A. I think it was five or
4 six years out at the time, so I think that's why
5 we just said let's go ahead and put them in --

6 Q. Okay.

7 A. -- and see what we can
8 learn from it.

9 Q. Okay. And so --

10 A. It certainly would have
11 made sense for us to coordinate with Gary's team
12 when they were going to do some major rehab
13 work --

14 Q. Right.

15 A. -- and we probably would
16 have asked them to include them as part of their
17 scope of work to move forward. That would have
18 made a lot of sense.

19 Q. Okay. And so you're now
20 learning in 2016 that rehab work is going to
21 happen in 2017?

22 A. Correct.

23 Q. And Mr. Moore says here,
24 "note that the raised pavement markings" (as
25 read) -- that's the cat's eyes or the tigers eyes?

1 A. Yes. Tigers eyes I think
2 they are.

3 Q. That they can be
4 coordinated. So that's to install for the rest of
5 the Red Hill?

6 A. Or at least in the areas
7 that we were going to install them.

8 Q. Right.

9 A. We wouldn't have put them
10 on the full length of the Red Hill.

11 Q. Right.

12 A. We would have typically
13 put them in areas where there was significant
14 turns where visibility had been raised as an
15 issue.

16 Q. Sure. Where CIMA had
17 recommended?

18 A. Yeah.

19 Q. Okay.

20 A. Thank you.

21 MS. LAWRENCE: Commissioner, I
22 see it is 11:30. Recognizing we started a little
23 late today, I would like to propose that we take
24 our morning break now. I don't anticipate I have
25 very many more questions for Mr. Lupton.

1 JUSTICE WILTON-SIEGEL: Okay.
2 That will be fine. Let's take a 15-minute break
3 and return at a quarter to 12:00.

4 MS. LAWRENCE: Thank you.
5 --- Recess taken at 11:31 a.m.
6 --- Upon resuming at 11:45 a.m.

7 MS. LAWRENCE: Thank you,
8 Commissioner. I don't see Mr. Lupton.

9 THE WITNESS: My apologies. I
10 forgot to click on the appropriate --

11 MS. LAWRENCE: No problem. It
12 happens to the best of us.

13 BY MS. LAWRENCE:

14 Q. So I just have one more
15 series of questions for you.

16 A. Sure.

17 Q. Can you tell us again
18 when you retired from the City?

19 A. February 2017.

20 Q. And what have you been
21 doing in your retirement in terms of other
22 professional pursuits?

23 A. So I haven't been
24 retired, though, I did have a lot of trouble
25 finding work during COVID. I did a project at the

1 town of Oakville for about six months writing
2 their energy policy. I worked for another
3 consulting firm for -- just right up until COVID
4 hit, in the energy business, and I also did some
5 consulting, and I continue to do some consulting
6 for other consultants. And I did some consulting
7 work for all AMO, Association of Municipalities
8 for a period of that time as well. So it's kind
9 of been hit and miss.

10 Q. Okay. Thank you. In
11 March 2018 an anonymous, unsigned letter was sent
12 to the City auditor and to the mayor.

13 A. Wasn't me.

14 Q. You didn't even let me
15 ask my question. You're not the author of that
16 letter?

17 A. No. I don't even know
18 what the letter was.

19 Q. Okay. Thank you. And I
20 believe I asked this yesterday, but I'm just going
21 to reiterate. Did you ever, during your tenure at
22 the City, see a copy of the Tradewind report?

23 A. I don't think I did. I
24 don't remember.

25 Q. And the Golder report?

1 Pardon?

2 A. I don't think I did. I
3 don't remember either.

4 Q. Okay. And did you ever
5 receive any written results of friction tests from
6 Mr. Moore and Mr. Moore's office?

7 A. I don't think so.

8 Q. Okay. Thank you. Those
9 are my questions for you, Mr. Lupton. Thank you
10 very much for your time.

11 A. Thank you.

12 JUSTICE WILTON-SIEGEL:

13 Ms. Lawrence, which counsel wish to question
14 Mr. Lupton?

15 MS. LAWRENCE: Thank you. I
16 inadvertently did not connect with counsel during
17 the break to confirm, but I understand that
18 several counsel reserved short periods of time.
19 Ms. Roberts, may I call on you first.

20 MS. JENNIFER ROBERTS: Thank
21 you. Commissioner, I have no questions.

22 MS. LAWRENCE: I also
23 understand that the MTO had reserved a short
24 period of time but was going to confirm at the end
25 of my examination if they had questions.

1 MR. BOURRIER: Commissioner, I
2 don't have any questions as well.

3 JUSTICE WILTON-SIEGEL: Thank
4 you, Mr. Bourrier.

5 MS. LAWRENCE: Thank you. And
6 I had understood that Dufferin similarly had
7 reserved a very short period of time subject to
8 the end of my examination. Mr. Buck?

9 MR. BUCK: That's correct. We
10 have no questions.

11 MS. LAWRENCE: And I
12 understand that the City does have questions. I
13 understand it was a relatively short period of
14 time that Ms. Roberts would need, but of course I
15 turn it over to her to provide you with an
16 estimate of your time and confirmation that there
17 are questions for Mr. Lupton.

18 MS. JENENE ROBERTS: Thank
19 you, Ms. Lawrence and Mr. Commissioner. Yes, the
20 City does have a few questions. I expect it will
21 be 15, 20 questions as most. So we won't take
22 much time. May I proceed?

23 JUSTICE WILTON-SIEGEL: Yes,
24 please proceed.

25 EXAMINATION BY MS. JENENE ROBERTS:

1 Q. Good morning, Mr. Lupton.

2 I just have a few questions for you following up
3 on the discussion we've had with the commission
4 counsel over the last on two days.

5 I want to start off talking
6 about consultants' reports, and you've discussed
7 at length with commission counsel the 2013 and the
8 2015 CIMA reports. And in 2013 and 2015 was there
9 a policy that you were aware of with respect to
10 city staff having to provide a copy of a
11 consultant's report along with a staff report that
12 referenced that report?

13 A. Not that I'm aware of. I
14 don't believe so.

15 Q. Okay. Thank you. And in
16 the absence of such a policy how did staff decide
17 whether or not to include a copy of the
18 consultant's report with the staff report to
19 council?

20 A. I think it was more
21 common to take excerpts from a consultant's report
22 and include them in City staff reports. If there
23 had been an interest expressed particularly from
24 members of council in seeing a consultant's
25 report, it would have been provided as part of the

1 report if we knew in advance of. Otherwise,
2 unless there was some issue with confidentiality,
3 you know, legal aspects of a report, those reports
4 could be made available to anybody that asked for
5 them.

6 Q. Okay. And so that would
7 include if a councillor asked for a report after
8 receiving the staff report that referenced the
9 consultant's report then?

10 A. Sure.

11 Q. And I believe you said
12 yesterday that the public would also be able to
13 make a request for copies of consultants' reports?

14 A. Yes.

15 Q. And how would they go
16 about making such a request?

17 A. They would either go to
18 the -- I think in most cases they would go to the
19 author of the report. You know, probably easier
20 for them to go through the general manager, or if
21 they had a relationship with staff, they could go
22 to them. Barring that, if all else failed,
23 there's always the Freedom of Information route
24 which is, you know, a little more lengthy and
25 complicated going through, but that option

1 certainly is always available to members of the
2 public should they be seeking additional
3 information.

4 Q. Okay. And would the
5 option also be available for constituents to
6 contact their councillor and ask for reports?

7 A. Most likely.

8 Q. Thank you.

9 A. Yeah.

10 Q. And then if -- we're
11 talking specifically about the 2013 CIMA report
12 now. You recall commission counsel asked you
13 about that report being provided to Councillors
14 Collins, Clark and Jackson?

15 A. I think it was in a draft
16 format.

17 Q. Correct. And if I
18 understood your evidence correctly, you made some
19 comments about concerns with draft reports, but
20 you didn't have any concerns with respect to a
21 report only going to a subset of the interested
22 councillors as opposed to all of the councillors,
23 correct?

24 A. No, I never had an issue
25 with that. I think we had good communication.

1 Q. Great. And was there a
2 policy about whether staff was required to provide
3 a copy of consultants' reports to all members of
4 council as opposed to just the members of council
5 that expressed an interest in the report?

6 A. Not that I'm aware of.

7 Q. Okay. And was it at all
8 unusual to provide a copy of a report just to the
9 interested councillors as opposed to all
10 councillors?

11 A. No, I don't think so.
12 It's similar to going to speak to councillors.
13 You know, that was encouraged, especially if they
14 had particular interests in an issue. It gave an
15 opportunity for them to get updated on the
16 situation and also for staff to get feedback from
17 a councillor in terms of any other information
18 that they had or any other concerns that they may
19 have had.

20 So when we came to the
21 committee meeting, they'd -- you know, usually the
22 chair would refer to whoever had made the original
23 motion or had the particular interest in a topic,
24 and then they would, you know, ask whatever
25 questions they chose to, if they did, and it would

1 also give staff kind of a heads up in terms of --
2 so we could be prepared to respond to any
3 questions that they may have.

4 Q. Okay. With respect to
5 that 2013 CIMA report again, commission counsel
6 asked you about the November 2013 PWC meeting that
7 you attended. Do you recall that?

8 A. Yes.

9 Q. Okay. And during that
10 committee meeting, or at any time afterwards, do
11 you recall any of the other councillors who didn't
12 receive a copy of the report expressing any
13 concerns with respect to the fact that staff were
14 discussing a report that only some of the
15 councillors had seen?

16 A. No, but that wouldn't
17 have happened.

18 Q. Okay.

19 A. Councillors were used to
20 staff, especially if there was an interest near
21 and dear to their hearts or, you know, even budget
22 stuff, you know, they'd quite often say, you know,
23 come talk to me.

24 Q. Okay. Great. Thank you.
25 And I want to ask you a little bit now about

1 council motions. Am I correct that when council
2 is bringing a motion, the councillors are looking
3 for staff recommendations in response to that
4 motion generally?

5 A. Well, they're asking for
6 staff -- a staff response or staff information on
7 a particular topic. It could be, you know,
8 information at the particular -- well, sorry, let
9 me step back. If it's a motion, they could be
10 asking for an information report or they could be
11 asking for a more comprehensive recommendation
12 report.

13 Q. Okay. Great. So they're
14 asking for staff to either provide an information
15 report or a recommendation report depending on --

16 (Speaker overlap)

17 A. -- action yes.

18 Q. And you've talked about
19 the two particular motions with commission counsel
20 here. First, there was the 2013 motion relating
21 to the visibility in the vicinity of the
22 Mud/Stone Church Road interchanges on the Red Hill
23 Valley Parkway, correct?

24 A. Correct.

25 Q. Okay. And,

1 Mr. Registrar, could you please pull up overview
2 document 6, image 8, please. And then I'm looking
3 sort of at the middle of the page, the excerpt
4 here with respect to the motion language. If you
5 could call that out, please.

6 And, Mr. Lupton, am I right
7 that this motion was directing staff to take
8 certain steps?

9 A. Correct.

10 Q. Okay. And here the
11 particular steps were to investigate lighting,
12 signage, lane markings, et cetera, and also to
13 present full costing back to committee?

14 A. Correct.

15 Q. Okay. And am I right
16 that in response to this motion councillors were
17 looking for staff to provide a response with
18 information as to those directions?

19 A. Yes.

20 Q. Okay. And if we could
21 also look at the 2015 motion that led to the 2015
22 CIMA report.

23 Mr. Registrar, could you bring
24 up OD7, please, image 10. And there -- if you
25 call out, it's in the middle of the page, the

1 excerpt there. Thank you.

2 And, Mr. Lupton, we see
3 wording there, the last paragraph. Am I right
4 that here this motion is directing staff to take
5 steps, again?

6 A. Hm-hmm.

7 Q. And the particular steps
8 that are being asked to be taken by staff are to
9 investigate additional safety measures on the Red
10 Hill and the LINC?

11 A. Yes.

12 Q. And am I -- is it correct
13 that, again, similar to the 2013 motion
14 councillors were looking for staff to provide a
15 response to the motion?

16 A. Yes.

17 Q. Okay. And with respect
18 to any motion does staff then decide whether or
19 not they need to retain a consultant as part -- in
20 order to provide a response to the motion?

21 A. To appropriately respond
22 to a council motion sometimes it requires the --
23 to have some outside expertise brought in to
24 investigate certain situations. And that could
25 be, A, because we don't have the time internally

1 to do it because we're loaded up with, you know,
2 our annual plan, or, B, it's good to have an
3 outside party give an unbiased review of what they
4 think it should be and retaining somebody with the
5 appropriate expertise to do that work.

6 Q. And that's what's
7 happened in response to both the 2013 and the 2015
8 motions, correct, staff retaining --

9 A. Correct.

10 Q. And the consultant in
11 both cases was CIMA?

12 A. Yes.

13 Q. Okay. And then am I
14 right that when City staff is retaining a
15 consultant to provide advice, they are relying on
16 the expertise of the consultant?

17 A. Yes.

18 Q. Okay. But at the same
19 time City staff can also have some technical
20 expertise depending on their position?

21 A. Hm-hmm. There's always
22 back and forth.

23 Q. Okay. So is it the
24 expectation that staff will use their own
25 judgment, rely on their own judgment, in

1 conjunction with relying on the advice and
2 expertise of consultants?

3 A. Staff judgment will come
4 into play? If there is a -- typically as you're
5 going through the drafting of the report, if
6 there's concerns raised, it's a good opportunity
7 to have a discussion with the consultant or the
8 consulting team to understand, make sure you are
9 both on the same page in terms of understanding
10 what that particular issue may be. And if the
11 City staff had more information that would help
12 the consultant in finalizing their report and
13 their recommendations so it was more wholesome,
14 that would typically take place.

15 Q. Okay. Great. And I
16 believe you had mentioned earlier that staff could
17 challenge consultant recommendations?

18 A. Yeah, we could ask about
19 them. You know, it all goes down to, you know,
20 what was your assumptions or what basis did you
21 come to that conclusion. You know, let's help us
22 understand and let us share with you what our
23 thoughts, what our concerns might be, and let's
24 figure it out.

25 Q. Okay. And you said that

1 City staff sometimes has more information than the
2 consultants do. And so what type of information
3 would -- could City staff potentially have that
4 consultants wouldn't necessarily have insight
5 into?

6 A. It could be information
7 that helps them with their report. It could be,
8 you know, in these cases collision information as
9 an example or the issue with the Red Hill and the
10 environmental aspect of the lighting for that --
11 for the Red Hill in particular. And so, you know,
12 that's important information for a consultant to
13 use. It also helps them to do their appropriate
14 review and calculations whatever they need to do
15 to come up with their set of recommendations.

16 Q. Thank you. And then
17 could other factors include -- or other
18 information include things like budgeting and
19 prioritization issues that are within City staff's
20 knowledge?

21 A. Yeah. I think what I
22 would lend it to is -- so I think it would be
23 important for studies like these for a consultant
24 to know really what was on the schedule for the
25 City's capital plan and operating plans. So if

1 they were going to do some major work in a
2 particular area in the next year or two or
3 whatever, that may change the consultant's
4 recommendation to say, for example, you know, as
5 you go through and make these changes, please
6 include -- we recommend that you include, you
7 know, this with that particular aspect.

8 Q. Okay. And then would you
9 expect that City staff, particularly those in, you
10 know, leadership positions, would then use their
11 judgment and knowledge in applying the advice
12 that's contained in a consultant's report?

13 A. I think we'd want to
14 understand it for sure. If there was an area that
15 we had concerns about or didn't agree with, we
16 would want to understand between consultant and
17 our internal experts, you know, what the
18 reasons -- why we're behind a particular issue.
19 We would not change the consultant's report if
20 they were keying on a specific recommendation or
21 a -- that they wanted to include in the report.
22 If we didn't agree with it as staff, we would then
23 typically reference what the consultant's
24 recommendation and why we weren't recommending it.
25 Usually it's a time issue, but there may be other

1 factors that come no play. So consultant
2 recommended this, City staff understands this,
3 here's what City staff has concerns about moving
4 forward with this right now. It might be that
5 we're trying a staged approach as well and we want
6 to review and measure results on the way through
7 with that.

8 You know, when you don't agree
9 with a consultant's recommendation, you have to be
10 clear about why.

11 Q. Okay. So then when staff
12 is reporting back to council, I take it that what
13 council is looking for is staff's recommendation
14 which takes into consideration the consultant's
15 advice contained in nor report?

16 A. Yes.

17 Q. Okay. So I want to ask
18 you now a little bit more about the 2013 CIMA
19 report itself, and in particular a couple of the
20 statements that are contained in there.

21 First, do you recall yesterday
22 commission counsel was asking you about the
23 reference to high friction pavement contained in
24 the 2013 CIMA report and the staff report?

25 A. Yes.

1 Q. And if you recall,
2 commission counsel took you to a table that showed
3 reference to install high friction pavement
4 approaching in through curve in relation to I
5 believe it was the Mud Street interchange and ramp
6 6?

7 A. Yes.

8 Q. Okay. So I'm going to
9 just take you into the CIMA report itself.

10 And, Mr. Registrar, if you
11 could call up Hamilton 41871, please.

12 And, Mr. Lupton, you see here
13 this is the 2013 CIMA Red Hill Valley Parkway
14 safety review.

15 A. Hm-hmm.

16 Q. And, Mr. Registrar, if
17 you could take us to image 4, please. And sort of
18 in the middle of the page there, there's the --
19 each of the tables has a recommendation. Yes, if
20 you could take that and the -- exactly and call
21 that out. Thank you.

22 And, Mr. Lupton, you see
23 here -- I know you've had some discussions with
24 commission counsel about timelines, CIMA's
25 timelines, the City's timeline. And here we see

1 CIMA is making recommendations for timing for
2 implementation of short, medium and long-term
3 timelines; is that right?

4 A. Yes.

5 Q. Okay. And short term
6 zero to five years?

7 A. Hm-hmm.

8 Q. And what did you
9 understand CIMA to be recommending with respect to
10 the timing when something is said to be short
11 term?

12 A. So exactly that. In
13 their view any options or recommendations that
14 were made for them to move forward with a
15 particular project, they would recommend that the
16 City tackle it within that zero to five year
17 timeframe at the very least.

18 Q. Okay. And so that --
19 would that mean it was at some point between
20 immediately, if we call zero years immediately,
21 and at the long end of the range it would be five
22 years?

23 A. Correct.

24 Q. Okay.

25 If we could go now to image

1 58, Mr. Registrar. And right at the top here, if
2 you could call out sort of the first half of the
3 page. Perfect. Thank you.

4 And, Mr. Lupton, you see here
5 the section "Install high friction pavement on
6 approach to and through curve." (As read)

7 A. Hm-hmm.

8 Q. If you could review that
9 section, please.

10 A. Okay.

11 Q. Okay. And then the --
12 I'm looking in particular at the last sentence of
13 the first paragraph. It says there:

14 "The City could consider
15 install --" I think that's a
16 typo "-- consider installing
17 an HFS "-- which they've
18 defined as high friction
19 surface "-- treatment on
20 approach to and through the
21 curve at the end of the ramp."

22 (As read)

23 You see that?

24 A. Yes.

25 Q. And what did you

1 understand CIMA to be recommending with respect to
2 high friction pavement when it said the City could
3 consider it?

4 A. I think it's just a --
5 sorry, from my perspective it would be an
6 observation that they made that might be something
7 that we would want to look into further and, you
8 know, which may help us in terms of dealing with,
9 you know, future collisions in the area.
10 Especially I think they had identified, you know,
11 nighttime stuff, and I don't think it was actually
12 that much difference. But bottom line it was,
13 we've looked at a number of things, here's one of
14 the recommendations that you could look into
15 further and consider doing it at some point down
16 the road.

17 Q. Okay.

18 A. That's how I'd view it.

19 Q. Okay.

20 And then if we go to image 7,
21 and sort of the bottom half of the page again.
22 Thank you.

23 And we see sort of in the
24 middle there, Mr. Lupton, this is similar to what
25 commission counsel took you to yesterday. Do you

1 see the reference there to "install high friction
2 pavement approaching and through curve." (As
3 read)

4 A. Yes.

5 Q. Okay. And the last
6 column, we don't have the heading anymore but I
7 can tell you it's term, and you see "ST" there?

8 A. Yes.

9 Q. And that's short term?

10 A. Yes, I believe so.

11 Q. Okay. And so what did
12 that timeline tell you about CIMA's recommendation
13 for a high friction pavement?

14 A. Have a look at it within
15 the next five years.

16 Q. Okay. Great. Thank you.

17 So I want to ask you now about friction testing,
18 again, in the context of the 2013 CIMA report.
19 And I know you've discussed that with commission
20 counsel already, and you mentioned I believe
21 yesterday a few times that you understood CIMA to
22 have recommended that the City could conduct
23 friction testing; is that right?

24 A. In this particular
25 report, yes, that's my understanding.

1 Q. Okay. So I would just
2 like to take you to the discussion of friction
3 testing in the report just so we can see what the
4 language was.

5 If we can go to image 50 now,
6 Mr. Registrar. And if you could call out
7 section 6.1 there. Thank you.

8 And if you could review that
9 section, Mr. Lupton, and then looking again at the
10 last sentence here in particular. Okay.

11 A. Okay.

12 Q. And the last sentence
13 says:

14 "Because of the high
15 proportion of wet surface
16 condition in SMV collisions,
17 the City could consider
18 undertaking pavement friction
19 testing on the asphalt to get
20 a baseline friction
21 coefficient for which to
22 compare to design
23 specifications."

24 And is this what you were
25 referring to yesterday when you said CIMA -- you

1 understood CIMA to be advising the City that it
2 could do friction testing?

3 A. Yes, from this report,
4 that's correct.

5 Q. Okay. And what did
6 CIMA's use of the language "could consider" tell
7 you about their recommendation regarding friction
8 testing?

9 A. So to me it would very
10 similar to the last one. It's something that they
11 observed and it's something that they are
12 suggesting that the City look into as an option
13 and that may help improve things in that
14 particular area.

15 Q. Okay. Do you recall what
16 the timeline was on friction testing in the 2013
17 CIMA report?

18 A. I think in the CIMA
19 report it was in that short term zero to five
20 years, if I'm correct.

21 Q. Okay. And we can pull it
22 up just so you don't have to test your memory.

23 Mr. Registrar, if you could
24 just put -- go to image 5 now.

25 And the top table here, just

1 to confirm the reference here to friction testing,
2 and I think your recollection is correct there,
3 the timing is short term; is that right?

4 A. Yes.

5 Q. Okay. And what did this
6 timeline tell you about CIMA's recommendation for
7 friction testing?

8 A. So it's something that
9 the City didn't say should/could. So it's a
10 recommendation the City look into friction testing
11 in this particular area sometime within the next
12 five years.

13 Q. Okay. And did you
14 understand CIMA to be telling the City that
15 friction testing was required?

16 A. No.

17 Q. If you had understood
18 this to be an urgent or significant issue to
19 investigate, would you have expected CIMA to
20 identify a shorter timeline in which to conduct
21 friction testing?

22 A. I think that would be a
23 fair assessment.

24 Q. Okay. So change of
25 topics now. I want to ask you about illumination,

1 and talking about the 2013 report still.

2 Are you aware any written
3 direction from the City telling CIMA not to review
4 continuous illumination in the study area of the
5 2013 report?

6 A. No, I'm not.

7 Q. Okay. And are you aware
8 any verbal direction from the City telling CIMA
9 not to review continuous illumination in the study
10 area of the 2013 report?

11 A. No, not from my team.

12 Q. Okay. Are you aware of
13 any other team directing CIMA not to review
14 continuous illumination?

15 A. No.

16 Q. Okay. Thanks. Okay.
17 We're going move forward now to 2015. And if we
18 could go to the 2015 CIMA report. Mr. Registrar,
19 can you call up Hamilton 702, please.

20 And you'll see here,
21 Mr. Lupton, this is the November 2015 final
22 version of the Red Hill Valley Parkway detailed
23 safety analysis.

24 A. Yes.

25 Q. Okay.

1 If you can go to image 41,
2 please. And, Mr. Registrar, if you could call out
3 the whole of section 7.1.2, pavement friction.

4 And, Mr. Lupton, I'm looking
5 at -- you're free to, of course, review the whole
6 section, but I'm looking at the second paragraph
7 under that heading. And the first sentence here,
8 it says:

9 "Because of the high
10 proportion of wet surface
11 condition and SMV collisions,
12 the City could consider
13 undertaking pavement friction
14 testing on the asphalt to get
15 a baseline coefficient for
16 which to compare to design
17 specifications." (As read)

18 Do you see that?

19 A. Yes.

20 Q. And then, Mr. Registrar,
21 is it possible to have that callout side by side
22 with image 53. And if you could call out just
23 9.1.3 at the bottom of -- perfect. Thank you.

24 And, Mr. Lupton, I just wanted
25 to have both of these in front of you since there

1 are a couple references here to friction testing.

2 And can you see those okay, Mr. Lupton?

3 A. Yes.

4 Q. Okay. So in -- now in
5 section 9.1.3 we see another heading "Conduct
6 Pavement Friction Testing." And here you see
7 CIMA -- first sentence says:

8 "In order to determine whether
9 low pavement friction may be
10 contributing to collisions
11 especially wet surface the
12 City should consider
13 conducting pavement friction
14 tests under normal conditions
15 as well as under typical wet
16 pavement conditions
17 encountered on the RHVP." (As
18 read)

19 A. Right.

20 Q. Okay. And can you tell
21 us what you understood CIMA to be recommending
22 with respect to friction testing in light of, you
23 know, these two sections and statements contained
24 in the 2015 CIMA report?

25 A. So the key word here is

1 should versus could. So I think my view of it
2 would be that they are recommending that the City
3 should conduct the friction testing --

4 Q. Okay.

5 A. -- in the areas that they
6 recommended.

7 Q. And if we're talking
8 about timelines, again -- I don't think I need to
9 bring it back to you but I think you already
10 discussed with commission counsel the
11 recommendation in the report was short term for
12 friction testing again?

13 A. Yes.

14 Q. And you understand the
15 definition of short term here to be zero to five
16 years again?

17 A. Correct.

18 Q. Okay. And so what did
19 you understand about the timeline that CIMA was
20 suggesting for conducting friction -- pavement
21 friction testing?

22 A. Sometime within the next
23 five years.

24 Q. Okay. One last topic I
25 just wanted to address with you. You were asked

1 yesterday about concerns that your staff raised
2 with you about interactions with Mr. Moore. Do
3 you recall that discussion?

4 A. Yes.

5 Q. Okay. And did you ever
6 speak with Mr. Moore about the concerns -- any of
7 the concerns that your staff raised to you?

8 A. Oh, yeah, yeah. If there
9 was an issue that couldn't be resolved or -- you
10 know, it typically would get elevated.

11 Q. And in elevating those
12 issues, as you said, did you resolve the issues
13 that staff had brought to you?

14 A. Where I couldn't resolve
15 the issue, then it would be my responsibility to
16 elevate it from there. So the logical step would
17 be to talk to John about it and then go -- you
18 know, if that didn't work out, then to take steps
19 to further elevate it, and that may be sitting
20 down and discussing it as directors, and in a more
21 extreme case sitting down and involving the
22 general manager as part of that discussion.

23 Q. And in the context of the
24 work that your group was doing with Mr. Moore and
25 his group on the Red Hill, do you recall any

1 situations where you were unable to resolve any of
2 the issues or any of the concerns that staff
3 brought to your attention?

4 A. I can't think of
5 specifics. I know there was certainly differences
6 of opinion, but, you know, I think, you know, as a
7 result of some of that stuff we went, you know --
8 an example would be we sat down after that DMT
9 meeting between a few directors and we had some
10 discussions about areas of concern and
11 understanding. You know, one, so we could
12 understand what they were, but, two, figure out
13 how we were going to tackle a particular issue or
14 that particular issue.

15 Q. Okay. And as I
16 understand it that post DMT meeting discussion did
17 end up I guess in a valuable dialogue with
18 Mr. Moore where he set out his views and the
19 managers were able to discuss and address that?

20 A. And I believe there was a
21 meeting further between John, Gary and Gerry to
22 talk about this.

23 Q. Okay. But --

24 A. Mr. Mater would have to
25 confirm that.

1 Q. Okay. But if I'm
2 understanding correctly, that meeting had nothing
3 to do with -- or you weren't at the meeting, so I
4 guess I --

5 A. No, I wasn't.

6 Q. -- won't, as you to
7 speculate. Yesterday when you were asked about
8 concerns your staff raised with you about
9 interactions relating to lighting, you said that
10 eventually you got to where you needed to go. Do
11 you recall that?

12 A. Yes.

13 Q. And I take it that means
14 that despite any concerns raised by staff about
15 interacting with Mr. Moore, it didn't affect the
16 final work product in that case?

17 A. No. And I think it's
18 important to note with part of that, I think the
19 concerns that were raised were valid by Mr. Moore,
20 having the history and knowledge of, you know, of
21 the Red Hill parkway and the environmental
22 aspects. And I think we reflected those concerns
23 in the council report in terms of saying, A, well,
24 let's move forward and do these short-term
25 measures and see the impact with those, and, B,

1 here's the issue or the concern with the history
2 of the Red Hill and the environmental aspects so
3 that council was aware of it. And then council of
4 course, you know, chose to keep it on the
5 outstanding business list item because it was
6 something they didn't want to lose sight of.

7 Q. Okay. And was it true
8 for all of your staff's interaction with Mr. Moore
9 during the Red Hill and LINC work, you mentioned
10 that he could be direct, but I take -- or his
11 staff had told you that he could be direct. I
12 take it you didn't have any concerns that the
13 quality of the work was negatively affected by
14 their -- your staff's interactions with Mr. Moore?

15 A. No. You know, those are
16 things you have to work through. You know,
17 sometimes there's people that we work with and we
18 love working with, and sometimes we have different
19 personalities at play. At the end of the day, you
20 need to come through professionally and deal --
21 you know, provide the best information back to
22 council that you can.

23 MS. JENENE ROBERTS: Thank
24 you, Mr. Lupton. Thank you, Mr. Commissioner.
25 Those are all my questions.

1 JUSTICE WILTON-SIEGEL:

2 Ms. Lawrence, do you have anything further?

3 MS. LAWRENCE: I do.

4 EXAMINATION BY MS. LAWRENCE (CONT'D):

5 Q. Mr. Lupton, hello again.

6 A. Hello.

7 Q. I have some questions
8 arising out of the questions -- arising out of
9 your answers just now with Ms. Roberts.

10 You were speaking about the
11 2015 CIMA report with Ms. Roberts and she asked
12 questions about the definition of short term, and
13 she suggested to you in your definition you
14 understood short term to be zero to five years.

15 A. That was CIMA's.

16 Q. This was in respect of
17 the 2015 report.

18 A. Yes.

19 Q. I'm going to suggest to
20 you the 2015 CIMA report doesn't say anything
21 about definitions of short term, medium term or
22 long term in terms of years, unlike the 2013
23 report that Ms. Roberts took you to. What was the
24 basis for your understanding that short term in
25 the 2015 report was defined by CIMA as zero to

1 five years?

2 A. I just would have assumed
3 that it would have been the same as the 2013
4 report --

5 Q. Okay.

6 A. -- unless it said
7 otherwise.

8 Q. Did you ask your staff to
9 clarify with CIMA what they meant by short term?

10 A. I don't think I would
11 have thought of it.

12 Q. Okay.

13 A. I think at the end of the
14 day we had in our own minds, you know, in 2013 and
15 2015 that we wanted to accelerate some of the
16 aspects of the work that was to be done to show
17 that we were, you know, providing leadership and
18 moving forward, and so that's why we changed our
19 definitions for short term and medium term.

20 Q. Okay.

21 A. That was the important
22 piece for me.

23 Q. Okay. Ms. Roberts asked
24 you about circumstances when you -- when City
25 staff might not agree with a consultant's

1 recommendation. Do you remember those questions?

2 A. Yes.

3 Q. To your knowledge did
4 councillors expect staff to make clear to them if
5 there were circumstances where there was some
6 divergence between staff's views and a
7 consultant's views?

8 A. I think that would be the
9 expectation, yes. You've got to be open and
10 honest about these things.

11 Q. Thank you. Ms. Roberts
12 asked you about -- she asked, did you speak to
13 Mr. Moore about concerns that your staff raised
14 with you, and your answer was, oh, yes. Do you
15 remember -- remember that?

16 A. Hm-mmm.

17 Q. And then you went on to
18 describe escalating to Mr. Mater, and you said in
19 extreme circumstances go to the general manager.

20 A. Yes.

21 Q. Can you describe the
22 nature of the concerns that your staff raised with
23 you that you took to Mr. Moore?

24 A. I think a lot of it -- I
25 shouldn't say a lot of it. I think the concerns

1 that were raised really came down to drafting the
2 report for council and what to include in it and
3 what not to include in it. And the concerns would
4 be that we would want to make sure that things
5 like the lighting, you know -- that we put in the
6 report and identified for council, which they
7 didn't know at time, most of them, I'm sure, about
8 some of the environmental aspects of the lighting.
9 So, one, we would have to identify this was an
10 issue or concern, and, two, this is the way that
11 we proposed to handle it at least for the short
12 term. Let's move forward with some of these
13 items. Let's see how they perform; if they
14 improve things adequately. And then, you know,
15 the lighting would have other challenges to
16 overcome, that it's not just processes going
17 through and doing, you know, let's design a street
18 lighting solution to it, where the other aspects
19 of it that would have to be considered.

20 Q. Okay. Were there
21 concerns apart from the consultation reports that
22 we've discussed over the last two days, other
23 kinds of concerns that your staff raised about
24 Mr. Moore that you raised with Mr. Moore?

25 A. I think it would be in

1 sorry, Commissioner, but I don't see what the
2 relevance is to asking Mr. Lupton about concerns
3 that he may have had or heard with respect to
4 issues outside of the LINC and the Red Hill given
5 the ambit of this inquiry.

6 JUSTICE WILTON-SIEGEL: Yeah.
7 I'm inclined to agree, Ms. Lawrence. I think we
8 have to restrict the issue of Mr. Moore's
9 involvement with other staff members to the
10 reports in question.

11 MS. LAWRENCE: Thank you.

12 JUSTICE WILTON-SIEGEL: To the
13 issues in question. If you're asking --

14 MS. LAWRENCE: May I
15 provide --

16 JUSTICE WILTON-SIEGEL: --
17 beyond that then --

18 MS. LAWRENCE: May I
19 provide -- pardon me. Sorry.

20 JUSTICE WILTON-SIEGEL: Now if
21 you are asking beyond that, if there's something
22 specific that you have in mind that in some way
23 relates to this inquiry, then that can certainly
24 be closed, but if it's a general question of the
25 nature of what's just been put to Mr. Lupton, I

1 think that that goes beyond this inquiry.

2 MS. LAWRENCE: My question,
3 and just so I understand your direction,
4 Commissioner, my question was to understand if
5 Mr. Lupton had any evidence about concerns that
6 staff members, the staff members we've been
7 talking about, had concerns with Mr. Moore that
8 could provide context to their interactions around
9 the Red Hill. So just to be more specific, I did
10 mean the same relevant staff members we're dealing
11 with here.

12 JUSTICE WILTON-SIEGEL: Well,
13 perhaps you can put the question again in a manner
14 which connects it back to the Red Hill.

15 MS. LAWRENCE: Sure. Thank
16 you.

17 BY MS. LAWRENCE:

18 Q. Mr. Lupton, in terms of
19 staff members who we have been discussing over the
20 last two days, Mr. Ferguson, Mr. Worrton,
21 Mr. Cooper, Mr. White, did any of them raise
22 concerns with you about Mr. Moore which you then
23 took to Mr. Moore that didn't relate to the Red
24 Hill but related to those staff members?

25 MS. JENENE ROBERTS: Again --

1 JUSTICE WILTON-SIEGEL: I
2 think we have to rule that question out.

3 MS. LAWRENCE: Thank you,
4 Commissioner, I understand. Those are all of my
5 questions in re-examination. Thank you.

6 JUSTICE WILTON-SIEGEL: Okay.
7 Mr. Lupton, thank you very much for attending the
8 inquiry, and thank you in particular for adjusting
9 your schedule to accommodate the change in ours.
10 You're excused.

11 THE WITNESS: Thank you.

12 JUSTICE WILTON-SIEGEL:
13 Ms. Lawrence, how do you wish to proceed?

14 MS. LAWRENCE: I'm in your
15 hands, Commissioner. It's 12:30. I understand
16 that Mr. White was going to be available to start
17 his examination today, and maybe I'll just confirm
18 with counsel for the City on that, but I do
19 understand he's available.

20 I am in your hands if you
21 would like to start that examination now and go to
22 our usual 1:00 p.m. lunch, or if you would like to
23 take an earlier lunch and then start fresh with
24 Mr. White after the lunch hour.

25 JUSTICE WILTON-SIEGEL:

1 Perhaps we can ask Ms. Roberts how easy it is --
2 it would be to slot Mr. White in now?

3 MS. JENENE ROBERTS: Mr. White
4 is ready to go. Maybe we need five minutes to
5 just get a switch over between Mr. Lupton and Mr.
6 White.

7 JUSTICE WILTON-SIEGEL: Why
8 don't we do that. Take a five-minute break and
9 return at 25 to 1 o'clock, and we'll proceed until
10 1 o'clock or roughly there.

11 --- Recess taken at 12:30 p.m.

12 --- Upon resuming at 12:37 p.m.

13 MS. BRUCKNER: Hello,
14 Mr. White.

15 THE WITNESS: Hello, Counsel.

16 MS. BRUCKNER: Commissioner, I
17 don't believe Mr. White has been sworn.

18 MARTIN WHITE; AFFIRMED

19 EXAMINATION BY MS. BRUCKNER:

20 Q. Hello, Mr. White. Thank
21 you for joining us today.

22 A. Thank you for having me.

23 Q. My name is Hailey
24 Bruckner and I'm commission counsel. We're going
25 to be going through a series of questions with

1 reference to the overview documents that the
2 Inquiry has prepared. Did you have a chance to
3 review those documents?

4 A. I've seen them.

5 Q. Thank you. I'm going to
6 start with your background. Can you tell me a
7 little bit about your professional qualifications?

8 A. Yes, I'm a graduate of
9 Mohawk College from the transportation engineering
10 program in 1981, dean's honors. I'm a standing
11 member of OACETT, Ontario Association of Certified
12 Engineering Technicians and Technologists. I hold
13 several management diplomas. And I worked for the
14 City of Brantford upon graduation and then moved
15 to the City of Hamilton in 1981, July 13th and
16 proceeded to go through a number of positions
17 there. I can itemize them for you if you wish.

18 Q. That would be great. My
19 understanding is that as of 1987 you were a
20 transportation planning technologist?

21 A. I was a transportation
22 planning technologist. I was a transportation
23 operations technologist. I was a traffic
24 legislative technologist. I was the coordinator
25 of the school crossing program. I was the

1 superintendent of traffic operations.

2 Q. And that was 2009 to
3 2010?

4 A. It was a lot longer than
5 that. I was in that position for a number of
6 years.

7 Q. So I understand that as
8 of 2010, that your title changed to manager
9 traffic operations; is that right?

10 A. That's correct.

11 Q. (Indiscernible) 2013?

12 A. Yes.

13 Q. And then in 2013 your
14 position changed to manager traffic operations and
15 engineering, and you were in that role from 2013
16 to April 28, 2019 when you retired?

17 A. Correct.

18 Q. Can you tell me a little
19 bit about what your responsibilities were as
20 manager traffic operations and engineering?

21 A. Well, I managed the field
22 operational end of the business, the sign
23 installation, pavement marking installation,
24 contractual services and traffic signal network,
25 electrical and civil construction and operation of

1 the traffic signal network.

2 And on the traffic engineering
3 side I covered off the traffic signal engineering
4 portion of the signal network. And we were
5 developing an artificial intelligence to traffic
6 signal system. We were -- that was a large
7 priority that we were working on in those days.
8 As well, I had community traffic services, which
9 went through various names, but essentially it was
10 the local complaint section where the public would
11 call in and say my road is unsafe. It was the --
12 it became the safety section essentially. And I
13 had an administration section as well that did
14 procurement, budgets, communications, dispatch,
15 stock handling and that sort of thing.

16 Q. And so that was the role
17 you held as manager traffic operations and
18 engineering as of 2013?

19 A. Correct.

20 Q. How was that position
21 different from your earlier role as manager of
22 traffic operations, which I think was 2010 to
23 2013?

24 A. That's approximately
25 correct. In that scenario I did not have any of

1 the engineering component. I had a predecessor
2 Hart Solomon who retired, and when he did, they
3 divided the department up amongst a few places,
4 and the traffic engineering component went
5 someplace else. So I had no responsibility
6 towards the engineering of traffic facilities,
7 simply the operations and maintenance of signs,
8 signals and pavement markings.

9 Q. So the change in your two
10 roles, then, was the result of a restructuring
11 that the City did?

12 A. Well, all the changes in
13 my role were a result of some restructuring or
14 another, so yes. I'm not sure if you refer to the
15 2013 one or the 2010 one. They were both a result
16 of restructuring.

17 Q. Okay. And when the City
18 restructured, did you generally have a sense of
19 what your roles and responsibilities would be
20 going forward?

21 A. After I was told what my
22 position would be, then I understood my role.

23 Q. My understanding is that
24 as of 2009 you reported to Geoff Lupton; is that
25 right?

1 A. That's correct.

2 Q. Okay. And who did

3 Mr. Lupton report to?

4 A. John Mater.

5 Q. And I understand that

6 after John Mater, Betty Matthews-Malone would have

7 held the role that he was in from 2018?

8 A. Yes, that's true. I
9 think at that point Geoff was no longer with us.

10 I reported to John directly for a little while,

11 and then I reported to Betty Matthews-Malone.

12 Q. Okay. And you had

13 superintendents and senior project managers

14 reporting to you in your role as manager of

15 traffic operations and engineering; is that right?

16 A. I had three

17 superintendents. The senior project managers

18 reported to the superintendents.

19 Q. Okay. And who were your

20 superintendents?

21 A. Chris Jacobson was the

22 superintendent of traffic operations, David

23 Ferguson was the superintendent of traffic

24 engineering, and Kimberly Wyskiel was the

25 superintendent of business services.

1 Q. And can you tell me who
2 reported to Mr. Ferguson?

3 A. Well, there's a large
4 number of people, but in context of this hearing
5 there would be Stephen Cooper, Jason Worrone was
6 the senior project manager, reporting to him was
7 Stephen Cooper and several other project managers,
8 and then front line technologists.

9 Q. Thank you very much. So
10 I'm now going to take us into overview document 6.

11 Registrar, if I can ask you to
12 pull up OD6, image 8. I misspoke. Image 7.

13 So as of 2013 were you aware
14 of complaints from citizens or the police about
15 slippery conditions on the Red Hill Valley
16 Parkway?

17 A. Does it say here? What
18 am I looking at first, please?

19 Q. Registrar, can you call
20 out paragraph 10. Thank you.

21 So this is an e-mail from
22 Councillor Chad Collins in which he is referencing
23 a number of complaints that he has received.

24 A. Yes. And I would believe
25 that's the first time I had any official complaint

1 about the operation of the facility.

2 Q. Okay. At this time had
3 you heard anecdotal complaints about slippery
4 conditions on the Red Hill Valley Parkway?

5 A. I had none personally,
6 directly.

7 Q. Did you have any concerns
8 about the safety of the Red Hill Valley Parkway?

9 A. I had no concerns.

10 Q. Registrar, if you can
11 take us to paragraph 11 and call out the motion.

12 So this is a motion that is
13 passed in relation to the Red Hill Valley Parkway.
14 I'm just going to give you an opportunity to
15 review that.

16 A. Okay.

17 Q. Do you recall this
18 motion?

19 A. Yes. This was made by
20 Councillor Collins, I believe.

21 Q. Registrar, can you take
22 us to paragraph 12. And I think it goes on to the
23 next page. If you can do both images. Thank you.

24 So on January 16th, 2013 you
25 e-mailed Gord McGuire and Rob Gallo about the

1 motion we were just looking at.

2 A. Okay.

3 Q. And I'm actually going to
4 ask, Registrar, can you call out HAM41413. And if
5 you can put the second page of this document up as
6 well. So, Mr. White, you'll see the final e-mail
7 on the first page of this e-mail as an e-mail from
8 you to Mr. McGuire and Mr. Gallo.

9 Registrar, can call that
10 e-mail out.

11 A. Okay.

12 Q. So you'll see that in
13 this e-mail you effectively ask Mr. McGuire to
14 report on lighting upgrades, and then you send a
15 separate list of items to Mr. Gallo and say, "I'm
16 thinking we should hire a consultant to review."
17 (As read)

18 Am I correct that Mr. Gallo
19 reported to you during this time period?

20 A. Yes. We hadn't had our
21 final organization in place from the 2013 at that
22 point.

23 Q. Okay. And what was
24 Mr. Gallo's role?

25 A. He was the senior project

1 manager at the time.

2 Q. Okay. And Mr. McGuire,
3 my understanding is he was manager of geomatics
4 and corridor management?

5 A. Yes, I believe that's
6 true --

7 Q. Okay.

8 A. -- including street
9 lighting and a few other things.

10 Q. And that would have meant
11 that he was in the engineering services group?

12 A. That's correct.

13 Q. And ultimately reported
14 to Gary Moore?

15 A. That's correct.

16 Q. Why did you ask
17 Mr. McGuire to report on the lighting upgrades as
18 compared to your direction to Mr. Gallo, which I
19 take as two separate directions?

20 A. Yes. Mr. Gallo worked
21 for me, and I had just put all my thoughts into
22 that e-mail about things for him to consider, and
23 basically we moved forward with hiring a
24 consultant. I had no oversight over the street
25 lighting asset, nor the engineering of it, nor the

1 maintenance of it, and didn't have any background
2 or knowledge of how it worked, and Gord did. And
3 so this would become a shared response to the
4 council motion with Gord holding the
5 responsibility for the street lighting components.

6 Q. So at the time of this
7 e-mail did you think that there would be two
8 separate reports, one from engineering services
9 and the lighting and one from your group on the
10 items that you set out for Mr. Gallo here?

11 A. I don't recollect how I
12 felt at that time. It ultimately became one
13 report.

14 Q. Registrar, can you take
15 down these callouts and call out the top e-mail in
16 this chain. Thank you.

17 So in response to this e-mail
18 Mr. Gallo forwards it to Mr. Field who then
19 replies. You're not copied on this chain, just
20 for your reference.

21 Mr. Field, my understanding is
22 that he's the project manager street lighting,
23 electrical engineering at this time period; is
24 that right?

25 A. I believe so.

1 Q. Okay. And so he would
2 also be in engineering services?

3 A. Correct.

4 Q. And ultimately reporting
5 to Mr. Moore?

6 A. Yes.

7 Q. Did Mr. Gallo or anyone
8 else reporting to you advise you of this exchange
9 that engineering services felt safety issues
10 should be reviewed holistically and the consultant
11 retained should be looking at lighting as well as
12 the items that you had put to Mr. Gallo in your
13 e-mail?

14 A. I don't recollect that
15 happening.

16 Q. Okay. So there's a
17 reference here that effectively says a couple
18 lines in:

19 "Adding lighting would be
20 supremely expensive. Before
21 we consider it, we should
22 consider what is the best
23 solution." (As read)

24 Did you agree with that
25 assessment of lighting?

1 A. Well, he's just -- yes,
2 because he's suggesting that it is expensive, so
3 we should quantify the need for it, and the -- and
4 certainly the cost benefit of it. That's how I
5 read that.

6 Q. And did you agree with
7 the suggestion that both lighting and the items
8 that would fall more within your group's scope
9 should be addressed by the consultant in a single
10 report?

11 A. I do agree with that.

12 Q. Okay.

13 Registrar, you can close this
14 callout and take us to OD6 at image 9. So the
15 bottom paragraph there, paragraph 15.

16 So on January 23rd, 2013 you
17 met with other public works staff to review a
18 motion, and the minutes of that meeting are at
19 HAM427.

20 Registrar, if you could pull
21 that up. Thank you.

22 So you'll see a couple lines
23 down under "Assigned Project Manager," it looks to
24 me like you assigned Steve to be project manager.

25 A. Yes.

1 Q. Is that Mr. Cooper?

2 A. Yes.

3 Q. Why did you assign

4 Mr. Cooper to be the project manager?

5 A. Well, he was of senior --

6 he was the senior project manager, and he was

7 available to me to assign that work to, and he

8 would have been the appropriate technical person

9 to conduct that work.

10 Q. Okay. As the project

11 manager Mr. Cooper would be responsible for

12 assigning an engineering firm to the project?

13 A. He would recommend one,

14 yes.

15 Q. Okay. Were you involved

16 in that selection process?

17 A. I don't believe so.

18 Q. Okay. It would have been

19 through the City's roster?

20 A. Yes, that's correct.

21 Q. So there are a number of

22 individuals in attendance at this meeting. One of

23 them is Mike Field. And there's a -- you'll see

24 at the very bottom of this page on the third --

25 sorry, fourth column, it says:

1 "Mike Field to provide street
2 lighting review strategy to
3 Steve."

4 A. Yes.

5 Q. Was that your
6 understanding of Mr. Field's role in this project?

7 A. Yes.

8 Q. And so you'll see that in
9 that -- so the top of that row that we were just
10 looking at, the project is described as a:

11 "Broad safety audit which will
12 identify shortcomings in
13 lightings, markings." (As
14 read)

15 And then are a number of other
16 items listed. What was your -- sorry, go ahead.

17 A. That's fine. No, I agree
18 with what you said.

19 Q. What was your
20 understanding of the primary focus of this report?

21 A. The primary focus of the
22 report was to do an audit of all the safety
23 aspects of the facility in the scope of the
24 locations that were defined originally, which was
25 Dartnall to Greenhill ramp, and to basically do a

1 safety audit on that section of roadway.

2 Q. So there's a reference
3 there a couple of lines down to horizontal
4 alignment. What is that a reference to?

5 A. Well, road alignment has
6 an impact on any kind of collision history, and so
7 it would have been used to take into account the
8 operation of the roadway. When you're doing any
9 of those sorts of things, you're looking at all
10 the conditions of the road.

11 Q. So we've seen in the
12 documents, and I'm going to take you to a couple
13 of them in a minute, reference to something that's
14 referred to as the kink. Is that reference to
15 horizontal alignment there, a reference to the
16 kink?

17 A. I don't recollect.

18 Q. Okay.

19 Registrar, can you pull up
20 HAM40053 and put the second image up as well,
21 please. And call out the first e-mail on
22 image 2 -- sorry. I'd like the first e-mail in
23 the chain, so the May 4 one. Thank you.

24 So this is an e-mail exchange
25 that you were copied on from May of 2010 which

1 references a kink in the pavement markings in the
2 area of the curve that joins the LINC and the Red
3 Hill Valley Parkway. And I will give you a minute
4 to just review that e-mail.

5 A. All right. I know what
6 this is.

7 Q. Do you recall this e-mail
8 exchange about the kink?

9 A. Not this particular one,
10 but I do recall the kink and the discussions, but
11 I was remote from it.

12 Q. Yes. My understanding is
13 that this would have been 2010, so you were at the
14 time superintendent traffic field operations?

15 A. Correct.

16 Q. Okay. What was
17 Mr. Solomon's role in 2010?

18 A. Mr. Solomon was manager
19 of traffic engineering and operations.

20 Q. And so am I correct that
21 it would have been Mr. Solomon and others on his
22 team that would have been responsible for
23 assessing the kink referenced in these e-mails,
24 and then it would be your team responsible for
25 implementation and any solutions?

1 A. That is correct.

2 Q. So I note that Mr. Moore
3 is also copied on this e-mail exchange. Do you
4 know what Mr. Moore's role would have been in
5 assessing the kink in 2010?

6 A. Engineering services
7 would have been the department or division through
8 their asset management group for any kind of
9 remedial action or maintenance of the road itself.

10 Q. Registrar, could you take
11 us to HAM400 -- sorry, can you take us to image 1
12 of this document and call out Mr. Solomon's e-mail
13 to Mr. White at the very top, so the May 12th
14 e-mail. Yeah. Perfect.

15 So the bottom e-mail that's in
16 this callout, you'll see Mr. Solomon sends you an
17 e-mail. He says:

18 "We have a neat drawing that
19 shows there is indeed a flat
20 spot where there should be a
21 pure circular curve. However
22 the appropriate path would
23 place the traffic almost out
24 of the edge of the existing
25 shoulder and likely over the

1 edge of the line rumble strip.

2 Therefore an immediate fix

3 through alternate markings is

4 not viable." (As read)

5 I'm hoping that you can break

6 that down a little bit for me. So what does

7 Mr. Solomon mean that there's a flat spot where

8 there should be a pure circular curve?

9 A. In geometric terms it

10 means that instead of the curve being continuous

11 and likely have a noted radius, it kind of went --

12 turned, and then it went straight, and then it

13 went -- then it turned again, the flat spot being

14 sort of the short straight spot in the middle

15 between the curves.

16 Q. And my understanding is

17 that that is just past the Pritchard Road overpass

18 on the Red Hill; is that right?

19 A. That's my understanding

20 as well.

21 Q. So in practical terms

22 how, if at all, could that kink in the roadway

23 impact drivers on the Red Hill?

24 A. I don't know that it had

25 a significant impact on drivers at all. Other

1 than if you're turning a corner, you tend to hold
2 your steering wheel. In this case you would just
3 back off a bit and then continue along the curve.
4 I don't think anybody considered it unusually
5 unsafe. They just noted that it was there and it
6 could be corrected. I think that's where we were
7 at the time, but, again, I wasn't involved in the
8 analysis of the thing or any engineering that went
9 into it.

10 Q. Okay. So Mr. Solomon
11 says in his e-mail that "it can't be addressed
12 without reconstruction." (As read)

13 A. That's what he says.

14 Q. Registrar, can you take
15 us to HAM40184 and call out Mr. Solomon's e-mail,
16 so the second half of this page.

17 Mr. Solomon sends you this
18 e-mail on July 21st, and he says:

19 "The changes to the markings
20 on the LINC main line cannot
21 be achieved without pavement
22 shoulder widenings
23 reallocating the edge line
24 rumble strip. The collision
25 history does not justify this

1 cost, plus we do not have time
2 to design it, implement it
3 even though the error in the
4 layout is clear on the ground
5 and air photos. So
6 unfortunately no action." (As
7 read)

8 And so it's my understanding
9 that the kink, then, comes up again in 2013 in
10 relation to the CIMA reports. So that's three
11 years later.

12 Who, if anyone, would have
13 been responsible for monitoring the collision
14 history for the kink over the time between 2010
15 and 2013 to assess if and when it needed to be
16 addressed?

17 A. I don't think there was
18 any further monitoring of it. I think we -- when
19 we moved -- when I got engineering, it was not on
20 their radar until it came back around I believe.

21 Q. Okay. So to your
22 knowledge there was no consistent monitoring of
23 the kink between 2010 and 2013 until it --

24 A. Not specifically, yes.

25 MS. BRUCKNER: I notice that I

1 have gone slightly past our lunch break, and I'm
2 about to move to another topic.

3 JUSTICE WILTON-SIEGEL: Well,
4 then let's take our lunch break now. It's almost
5 five past, so we'll come back at 2:20.

6 MS. BRUCKNER: Thank you.

7 --- Recess taken at 1:03 p.m.

8 --- Upon resuming at 2:20 p.m.

9 MS. BRUCKNER: Commissioner,
10 may I proceed?

11 JUSTICE WILTON-SIEGEL: Yes,
12 please do.

13 MS. BRUCKNER: Thank you.

14 BY MS. BRUCKNER:

15 Q. Mr. White, before we took
16 the lunch break we spent a bit of time in 2010,
17 and I'm going to step back now and return to 2013.
18 Registrar, could you pull up OD6, image 10,
19 paragraph 17.

20 Mr. White, are you able to
21 read that?

22 A. Yes.

23 Q. Thank you. On
24 January 24th, 2013, Diana Cameron, who I
25 understand is the administrative assistant to Gary

1 Moore --

2 A. Correct.

3 Q. -- advised Mr. Field and
4 Mr. McGuire, copying Mr. Moore, that John Mater's
5 group would take the lead in responding to the
6 motion that would result in the 2013 CIMA report.
7 John Mater's group. That is a reference to your
8 group, correct?

9 A. It's correct, yes. I was
10 part of John's group.

11 Q. Thank you. What did it
12 mean that your group would take the lead in
13 responding to the motion and reporting to council?

14 A. Well, I understood it to
15 be that traffic operations and engineering would
16 in essence be the lead; in other words, to make
17 the -- hire the consultant to work with Gary
18 Moore's group, to come up with a terms of
19 reference for the study and to liaise with the
20 consultant during the ongoing parts of the report
21 preparation.

22 Q. My understanding from
23 your comments earlier was that it was your view
24 that lighting was outside your group's scope of
25 responsibilities; is that right?

1 A. I did not have light --
2 street lighting in my portfolio at the time.

3 Q. So when you say that
4 you're going to work with Mr. Moore's group in
5 responding to the motion, what aspects of the
6 motion did you expect you would need to work with
7 his group?

8 A. I think street lighting
9 was the primary portion at that point in time. So
10 Mike Field, and the manager was Gord McGuire, were
11 brought on board to get their expertise into the
12 report and into the discussions with the
13 consultant.

14 Q. And was it your
15 understanding that they would take the lead in the
16 project with respect to lighting?

17 A. It's my understanding
18 that they would participate. This was a joint
19 report in my opinion, and that they would be
20 responsible for all commentary regarding the
21 street lighting.

22 Q. Were you involved in the
23 day-to-day work around the 2013 CIMA report?

24 A. No.

25 Q. Did you ask your staff to

1 report progress to you?

2 A. I had progress reports on
3 an informal basis, yes.

4 Q. How regularly would you
5 get a status update?

6 A. At various key points I
7 think I would discuss with Mr. Cooper, and I
8 think, as you know, we bring on Mr. Ferguson later
9 in the year and he takes over the full
10 administration of the project.

11 Q. So my understanding is
12 that Mr. Ferguson joins the City as superintendent
13 traffic engineering in August 2013; is that right?

14 A. That sounds right, yes.

15 Q. And from the time that
16 Mr. Ferguson joined the City, what did you
17 understand his role was with respect to the 2013
18 CIMA report?

19 A. Well, my understanding --
20 my assignment to David was that he would head up
21 the traffic safety engineering group, which would
22 include the safety section, and therefore he was
23 responsible for all aspects of the creation of
24 the -- or not the creation, but the ongoing report
25 that we were undertaking with CIMA, and that he

1 would direct Steve Cooper, or whoever he wished
2 within his section, to accomplish the preparation
3 of the council report to respond, as well as to
4 vet out the consultant's report, with engineering
5 services speaking to the street lighting and any
6 other portions that were not traffic.

7 Q. Understood. So it was
8 Mr. Ferguson's responsibility to bring the 2013
9 CIMA report to completion?

10 A. That is correct.

11 Q. And did you expect your
12 staff, so I believe that's Mr. Cooper and
13 Mr. Ferguson, to raise any issues or concerns that
14 came up on the project --

15 A. Yes.

16 Q. -- as it progressed?

17 A. That is correct.

18 Q. Registrar, can you take
19 us to OD6, image 47, paragraph 111. Thank you.

20 Mr. Cooper sends you a draft
21 of the 2013 CIMA report on August 23rd, 2013. Did
22 you review this report when you first received it?

23 A. I really don't recollect.

24 Q. Registrar, can you take
25 us down to paragraph 113. I believe it's the same

1 page.

2 So there's a meeting scheduled
3 for September 4th, 2013 with you, Mr. Ferguson,
4 Mr. Cooper, Mr. Gallo, Mr. Field and a Mr.
5 Kirchknopf?

6 A. Kirchknopf, yes.

7 Q. Just stopping there.

8 What was Mr. Kirchknopf's role?

9 A. He worked in engineering
10 services under Gary. I'm not sure what his direct
11 report was. I think he reported directly to Gord
12 McGuire.

13 Q. This meeting was
14 scheduled for September 4th, 2013. Would you have
15 reviewed the draft 2013 CIMA report that Mr.
16 Cooper sent you in advance of this meeting?

17 A. I would say that would be
18 a likely -- yes.

19 Q. It would have been --

20 A. I don't remember doing
21 it, but I can't imagine I would have gone into a
22 meeting unprepared like that. So I will say it's
23 probable.

24 Q. Registrar, can you take
25 us to HAM41675.

1 And just for your reference,
2 Mr. White, this is the draft that Mr. Cooper sent
3 you, just to refresh your memory. Can you take us
4 to image 40, please, and call out the summary of
5 findings there, just so that it's a little bit
6 more visible.

7 I just want to give you a
8 chance to take a look at the summary of findings
9 here and let me know if it refreshes your memory
10 as to whether or not you had reviewed the report
11 as of September 4th, 2013.

12 A. Well, yes, I recollect
13 these -- yes.

14 Q. Registrar, can you close
15 this call out and call out the final paragraph
16 that starts "The TAC illumination."

17 So there's a reference in the
18 draft report under "Summary of Findings" that
19 says:

20 "The TAC illumination warrants
21 are examined as part of this
22 study, and it was determined
23 that the Mud Street
24 interchange would meet the
25 justification for interchange

1 illumination, although only by
2 a small margin; however, just
3 because a warrant has been
4 achieved does not mean that
5 illumination must or can be
6 implemented. Environmental
7 constraints and approvals must
8 be considered before pursuing
9 the recommendation to
10 illuminate."

11 Registrar, can you put up
12 across from this image OD6, image 43,
13 paragraph 98, and call out -- yes, thank you.

14 So you'll see this is an
15 e-mail that Mr. Field sends to Mr. Cooper -- and
16 just for your reference, you're not copied on this
17 e-mail -- on August 2nd, 2013, before CIMA
18 circulates the draft of the 2013 CIMA report that
19 we were just looking at. And you'll see at .3
20 Mr. Field says to Mr. Cooper:

21 "The illumination of the main
22 line has been excluded. This
23 is a -- this is decision is
24 based upon information that we
25 provided to CIMA. The

1 exclusion is not well
2 explained. Considering that
3 illumination of the main line
4 is the first request in the
5 council motion to review, I
6 think that there should be far
7 more explanation as to why it
8 was excluded." (As read)

9 Were you aware that
10 illumination of the main line had been excluded
11 from the 2013 CIMA report based on information
12 that the City provided to CIMA?

13 A. Well, I don't know what
14 information was provided to CIMA in that regard,
15 but I do know that the final report only included
16 a recommendation or a suggestion, I would say, for
17 lighting on the ramp.

18 Q. Do you recall if
19 illumination of the main line was discussed at the
20 September 4th, 2013 meeting?

21 A. I do not recall that. I
22 just don't think anybody actually said from my
23 group or from Gord's group that we should exclude
24 it. I think they just provided information and
25 CIMA made that decision.

1 Q. Were you advised by Mr.
2 Cooper or anyone else that illumination of the
3 main line would be excluded from the 2013 CIMA
4 report in or around September 2013?

5 A. I don't believe so.

6 Q. You don't know what the
7 basis or the information that was provided to CIMA
8 that led to that exclusion was?

9 A. I do not.

10 Q. Do you know who provided
11 CIMA with the information that led to the
12 exclusion of illumination on the main line?

13 A. I do not.

14 Q. So as Mr. Field notes in
15 this point, illumination is the first item that is
16 raised in council's motion. Were you concerned
17 that excluding illumination on the main line would
18 make the 2013 CIMA report non-responsive to the
19 motion?

20 A. No, because I believe
21 that when properly explained, that the
22 illumination was not considered for legitimate
23 reasons, and I believe it goes back to the EA for
24 the development of the freeway, and that the
25 street lighting component related to the actual

1 study area was on the ramp where there was
2 collision problems.

3 Q. Just going back to your
4 earlier answer, I think you had said that it was
5 your understanding that CIMA made the decision to
6 exclude illumination on the main line based on
7 information that the City provided?

8 A. That's how I feel about
9 it, yes.

10 Q. Did anyone advise you
11 that that was the case, that it was CIMA's
12 decision?

13 A. No, that's my conclusion
14 based on the things I read.

15 Q. Registrar, you can close
16 this callout.

17 Although just as a last
18 question, was it your understanding as of
19 September 2013 that the environmental assessment
20 on the Red Hill prohibited lighting on the main
21 line?

22 A. I had been told that,
23 correct, so I believed that.

24 Q. Who told you that?

25 A. I believe that was Gary

1 Moore, or Mike Field possibly. Gary Moore for
2 sure.

3 Q. And that would have been
4 before September 2013?

5 A. You know, I can't
6 spatially put that into context. I know he had
7 told me that. I just don't know at what point.
8 Before or after this point, I don't know.

9 Q. Were you ever provided
10 with a copy of documents or the environmental
11 assessment that substantiated that?

12 A. No.

13 Q. You relied on the
14 information that Mr. Moore provided to you?

15 A. That is correct.

16 Q. Registrar, can you please
17 take us to OD6, image 48, paragraph 114.

18 On September 5th, 2013
19 Mr. Ferguson e-mailed a draft of the 2013 CIMA
20 report to Councillor Collins and he offered to
21 meet with him to discuss the report. Did
22 Mr. Ferguson send this e-mail to Councillor
23 Collins at your direction?

24 A. No.

25 Q. Do you know why he sent

1 it to Councillor Collins?

2 A. Because Dave's job was to
3 coordinate the response to the motion made by
4 Councillor Collins. Traffic had a history and
5 record of open conversation with councillors. We
6 would meet with them to discuss how we were
7 handling the items they brought forward that were
8 of traffic -- that required traffic input.
9 There's nothing worse than surprising a councillor
10 at a committee meeting with information that they
11 were not anticipating. So oftentimes we would
12 meet with councillors on a routine basis to
13 discuss our findings and what we were going to
14 say. Doesn't mean we were influenced by them; it
15 means that we were trying to communicate with them
16 in an open forum so they knew where their issues
17 were heading.

18 Q. Registrar, you can close
19 this call out and call out paragraph 115.

20 Later the same day you respond
21 to the e-mail chain that -- to the e-mail that
22 Mr. Ferguson sent to Councillor Collins and advise
23 him that Councillors Merulla and Jackson had also
24 expressed an interest in the results of the
25 traffic safety audit on the Red Hill Valley

1 Parkway and LINC, and you directed Mr. Ferguson to
2 share his findings with these councillors,
3 provided that it was agreeable to Councillor
4 Collins.

5 A. Sorry, that's Councillor
6 Clark, not Councillor Merulla.

7 Q. You're right. Thank you.
8 That's my error.

9 A. No problem.

10 Q. Councillor Clark and
11 Councillor Jackson. Why did you want confirmation
12 that it was agreeable with Councillor Collins
13 before he shared the draft report?

14 A. Simply because Councillor
15 Collins was the primary person who had the
16 concern. Most of complaints were at the time
17 going to him, and he was the person, the
18 councillor who made the motion, so he at that
19 point owned the council motion to do the work that
20 we were doing. I thought it was fair that he be
21 made aware that other councillors were interested
22 in it, and both these councillors have wards that
23 are adjacent to the facility.

24 Q. In your view, is it
25 important that all members of a committee are

1 operating with a shared set of information?

2 A. You're talking about a
3 formal committee of council?

4 Q. Yes.

5 A. I would say this. At the
6 time of reporting to council -- to committee
7 completely, then it would be appropriate for them
8 to be able to know what information we had. At
9 this point, we were dealing with Councillor
10 Collins primarily because he was the person who
11 made the motion. There was no intent to withhold
12 the information from other councillors. We were
13 communicating with Councillor Collins directly in
14 order to facilitate the council report and to make
15 sure that we didn't shock him or surprise him with
16 any information once we got there.

17 Q. So the copy of the CIMA
18 report that Mr. Ferguson shares with the
19 councillors is a draft. Do you have any concerns
20 about staff sharing a draft of a report?

21 A. No, I don't think so. It
22 was a talking point really. And there was no rule
23 to say we couldn't send certain things to
24 individual councillors. I feel we were within
25 our -- doing our job, frankly, by doing what we

1 did.

2 Q. How common was the
3 practice in the Public Works department around
4 sharing draft reports or draft consultant reports
5 with some but not all councillors on a committee?

6 A. I have no idea. I have
7 no experience with that beyond this.

8 Q. So you can recall doing
9 it on this occasion. Any others?

10 A. No, I can't recollect
11 sending a draft report to a councillor on any
12 other occasion, but there's nothing to say I
13 couldn't. There's no policy or procedure.

14 Q. Registrar, could you
15 please take us to OD6, page 50, paragraph 153.
16 I'm sorry, Registrar, you were at the right spot
17 before. Thank you.

18 On September 17th -- and maybe
19 you can call out the exchange between Mr. Lupton
20 and Mr. Ferguson and put the next image up that
21 continues it, so the next page of the OD. Thank
22 you.

23 Mr. White, can you see that?

24 A. I can.

25 Q. So on September 17th,

1 2013 Mr. Lupton comments to you and Mr. Ferguson
2 in an e-mail exchange that he does not like
3 sending councillors --

4 A. Can you clarify, was I on
5 this e-mail? Because I don't see --

6 Q. Yes, you are on this
7 e-mail, and if you'd like, I can take you into the
8 original e-mail if that's preferable.

9 A. Yes, it would be, please.

10 Q. Registrar, call out
11 HAM4306. So you will see, Registrar, if you go
12 down to the first -- actually, put both pages of
13 the e-mail up.

14 So you'll see that you are
15 copied on this e-mail exchange, and the first
16 e-mail is the very top of the second image.
17 Registrar, I don't know if you can call that out
18 with the e-mail information for us.

19 You'll see Mr. Lupton is
20 asking about the meeting that Mr. Ferguson had had
21 with the councillors about the 2013 report, and he
22 says a couple lines into that first paragraph:

23 "I generally don't like
24 sending councillors thick
25 technical reports, especially

1 in draft, without our thoughts
2 and recommendations. They can
3 be open to misinterpretation,
4 and one never knows where
5 these get sent after."

6 What are your views on
7 providing consultant reports to councillors?

8 A. My view is that in this
9 particular case there was no harm in doing so
10 because the consultant report was addressing
11 Councillor Collins' concerns. It was a long read
12 and it was full of technical data, and we
13 generally didn't send those, but I think that they
14 backed up the conclusions in the report.

15 Q. In your experience did
16 councillors read the consultant reports that were
17 provided to them?

18 A. I have absolutely no idea
19 what councillors did with the reports.

20 Q. In terms of appending a
21 consultant report to a staff report, what factors
22 did you think it would be appropriate to take into
23 consideration in making that decision?

24 A. Sorry, you'll have to
25 clarify that question for me, please.

1 Q. So in terms of the
2 decision whether or not to append a consultant
3 report to a staff report, what factors did you
4 take into consideration in making that decision?

5 A. I'll answer the question
6 this way. I had never seen a -- sorry. I had
7 never seen a consultant report ever attached to a
8 committee report in all the years that I had
9 attended Public Works committee. It was not a
10 practice exercised by anybody in the Public Works
11 department that I'm aware of.

12 Q. Do you know why it wasn't
13 a practice?

14 A. I certainly don't. I
15 think it would likely be because of the technical
16 nature of these reports, but each individual
17 department might have had their own rationale.

18 Q. If a consultant's report
19 is attached to a staff report, does it become a
20 public document that is posted on the City's
21 website?

22 A. I think -- well, I'm not
23 completely clear on my FOI stuff, but I think once
24 it becomes approved by committee and it's going to
25 council, then the council agenda contains that

1 report, if it's part of the committee report, and
2 at which time I believe that's public information.
3 I'm not the FOI expert nor the City clerk, so I
4 don't know that for 100 percent.

5 Q. If a consultant's report
6 is not attached to a staff report, how does the
7 public access it?

8 A. I would imagine they can
9 FOI it.

10 Q. If a consultant report is
11 not attached to a staff report, how important is
12 it that staff report accurately and completely in
13 describing that consultant's report?

14 A. I feel that it's
15 important for staff to interpret the consultant
16 report and to provide council their best
17 recommendations or course of action based on the
18 data in the consultant's report.

19 Q. Can you expand on what
20 you mean when you say "interpret"?

21 A. Well, I think not always
22 do they provide information that is in line with
23 the City's direction, and you have to always read
24 them to make sure that they are not recommending
25 something that is untenable or that council has

1 ruled out in the past or that council would not be
2 favourable to. You might want to suggest that
3 that is there, or certain things, but it needs to
4 be interpreted by staff. Council wants to hear
5 staff's recommendations based on the consultant's
6 analysis.

7 Q. If a consultant's report
8 did contain a recommendation or information that
9 staff consider to be untenable, how should that be
10 addressed in the staff report?

11 A. You could mention it and
12 say why you didn't recommend it. That would be
13 the likely course.

14 Q. The likely course. Is
15 there an alternative --

16 A. I don't know that I
17 encountered that, quite frankly.

18 Q. In your view, are staff
19 obliged to provide a comprehensive overview of the
20 consultant's report in the staff report?

21 A. Staff are obliged to
22 provide an accurate accounting of the consultant's
23 report and represent the needs of the City
24 properly.

25 Q. Are they obliged to

1 ensure a staff report is a fair and accurate
2 summary of the consultant's report, including with
3 respect to any concerns raised by the consultant?

4 A. Yes.

5 Q. Registrar, you can close
6 that call out. If you could please take us into
7 OD6, image 51, paragraph 126.

8 So, Mr. White, on
9 September 9th, 2013 Mr. Cooper wrote an e-mail to
10 you and to Mr. Ferguson regarding Mr. Moore's
11 reaction to the 2013 CIMA report. And he says:

12 "I was speaking to Mike Field
13 this morning and he said that
14 Gary Moore saw the report and
15 was not pleased with the
16 recommendations provided by
17 CIMA. Have either of you
18 spoken to him about this? Are
19 you aware of anything in
20 particular that he does not
21 like or agree with?"

22 Just as a starting point, do
23 you know how Mr. Moore came to review a copy of
24 the draft 2013 CIMA report?

25 A. Not directly, but his

1 staff were involved in the entire project with us,
2 and he's entitled to read a copy of the report
3 that would cover off his assets. I don't know who
4 gave it to him. It could have been my staff or it
5 could have been Mike Field's.

6 Q. Understood. As of
7 September 2013, had Mr. Moore expressed any
8 concerns to you about the content of the draft
9 2013 report?

10 A. No.

11 Q. Prior to this e-mail from
12 Mr. Cooper, did anyone tell you that Mr. Moore had
13 any concerns about the draft 2013 CIMA report?

14 A. I don't believe so.

15 Q. Do you have any knowledge
16 about what recommendations from the 2013 CIMA
17 report Mr. Moore was not pleased with?

18 A. No.

19 Q. Registrar, you can take
20 down this callout and call out paragraph 127.

21 Thank you.

22 So you'll see we're a bit cut
23 off at the bottom, but you respond -- thank you,
24 Registrar -- but you respond to this message by
25 forwarding it to Mr. Lupton and Mr. Ferguson. So

1 you remove Mr. Cooper from the e-mail chain, and
2 you write:

3 "In confidence, see below.
4 Geoff, Gary has a vested
5 interest in this from the
6 beginning and has influenced
7 it somewhat already. Off the
8 record, I think he even spoke
9 to CIMA. I'm asking if you
10 can schedule a meeting with
11 him for us to talk as we
12 cannot afford staff issues as
13 we report to council. He was
14 on the original team that
15 built the roadway. There was
16 nothing wrong with the review
17 or recommendations from the
18 consultant." (As read)

19 Sorry, "there is nothing
20 wrong." That's my error.

21 "I deem this extremely
22 sensitive, as I don't need any
23 nonsense related to our
24 actions on Councillor Collins'
25 motion. Your thoughts,

1 Geoff."

2 Why did you label this e-mail
3 "in confidence"?

4 A. Well, quite frankly, I'm
5 speaking to a director about another director and
6 I don't report to the other director. And to me,
7 I was just being very cautious that I reported to
8 Geoff appropriately, and I felt we needed to have
9 a conversation in confidence about it.

10 Q. Were you concerned that
11 your comments would get back to Mr. Moore?

12 A. I don't really recollect
13 that being my concern. I was discussing
14 performance of another individual and how they
15 interact with something that I was working on or
16 traffic was working on.

17 Q. So you go on to say "Gary
18 has a vested interest in this from the beginning,"
19 what do you mean by that?

20 A. I meant that Gary had
21 been working on this facility from its inception
22 to the end, so he has a vested interest in the
23 entire facility.

24 Q. So you would describe Mr.
25 Moore's interest in the Red Hill Valley Parkway as

1 vested?

2 A. He is involved. He has
3 been involved with it from the very beginning.

4 Q. Did you ever have
5 concerns that Mr. Moore's interest in the Red Hill
6 Valley Parkway interfered with the advice he
7 provided to the City or steps he took in his role
8 as engineering services director?

9 A. Please ask me that again.

10 Q. Did you ever have any
11 concerns that Mr. Moore's interest in the Red Hill
12 Valley Parkway interfered with the advice that he
13 provided to the City or the steps that he took in
14 fulfilling his role as director of engineering
15 services?

16 A. Quite frankly, I believe
17 that Gary gave his best engineering advice at all
18 times.

19 Q. So you say in this e-mail
20 that you believe he has influenced it somewhat
21 already. What did you mean by that?

22 A. Well, he is entitled to
23 speak to the consultant. I just didn't know if he
24 did or what he might have said. So I didn't know
25 that, but at the end of the day this e-mail was to

1 make sure that we didn't have opposing commentary
2 when we got to committee. We have one general
3 manager and we should put forward a unified face
4 to council and to the public, and if Gary had
5 problems with what we were writing, Geoff being
6 the director needed to consider that, along with
7 John, and have that discussion with Gary because,
8 you know, I was the manager, those guys were the
9 directors. I wanted to be sure that when we got
10 there we weren't infighting at committee level.

11 Q. Was it your view that
12 those discussions had to be -- had to occur at a
13 level above you as a manager, that they had to be
14 between directors?

15 A. I believe that's true. I
16 mean, the directors have meetings, they discuss
17 these things in their own management teams, and I
18 believe they needed to vet out Gary's concerns.

19 Q. Did you feel that you
20 would have been able to have a conversation with
21 Mr. Moore to discuss his concerns?

22 A. If I thought it was
23 appropriate that I have that conversation, I would
24 have had it.

25 Q. So you say here, "off the

1 record, I think he even spoke to CIMA." Why would
2 that be off the record?

3 A. Because I had no firm
4 evidence that he did. I had a suggestion to me, I
5 don't know by whom, but like I said earlier, he
6 was part of the -- his group was part of the City
7 team doing this work, and it wouldn't preclude him
8 from having a conversation with a consultant that
9 the City hired for our work.

10 Q. You said you had a
11 suggestion to you that Mr. Moore had spoken to
12 CIMA but that you don't know who it was from. Did
13 you have any sense of what he had said to CIMA?

14 A. No, I have no idea. I
15 don't even know if he did.

16 Q. Did you have any concerns
17 about comments that you believe Mr. Moore had made
18 to CIMA?

19 A. No.

20 Q. So at the end of this
21 e-mail, you say:

22 "I deem this extremely
23 sensitive, as I don't need any
24 nonsense related to our
25 actions on Councillor Collins'

1 motion."

2 What did you mean it was
3 extremely sensitive?

4 A. Well, politically at the
5 time the number of complaints that councillors
6 were getting were increasing. We went from
7 Councillor Collins to Councillor Clark, then we
8 had Councillor Jackson with complaints coming in.
9 So it was a sensitive issue because the
10 councillors were becoming involved as a result of
11 complaints from the public. Again, this was to
12 make sure that we provide a unified front when we
13 presented our information to council -- to
14 committee and council.

15 Q. So it was sensitive
16 because there was a particular political interest
17 in it from the councillors?

18 A. Yeah, probably more than
19 most safety issues. Usually the normal course of
20 action is they got a complaint, we investigated
21 it, it was pretty small, and we went on. But this
22 is a larger segment of roadway, and they were -- I
23 don't know how many complaints they were getting.
24 Councillor Collins made it seem like he was
25 getting quite a few at that point. So, again,

1 it's politically sensitive.

2 Q. So councillors were
3 getting a significant number of complaints about
4 the Red Hill Valley Parkway from their
5 constituents?

6 A. Well, I don't know if the
7 word "significant" applies. I know they were
8 getting complaints, because that's how they
9 presented them to me.

10 Q. Registrar, you can close
11 this call out. Thank you. If you can take us to
12 paragraph 128 and 129, which is on the next page,
13 and call those out.

14 You'll see this e-mail chain
15 is forwarded to Mr. Mater, who responds --

16 A. When John is on the stand
17 tomorrow he likes his name to present -- be
18 pronounced Mater.

19 Q. Thank you very much.

20 A. Just as a matter of
21 course, but it doesn't matter to me.

22 Q. So there is a reference
23 to a direction from Mr. Mater, who responded and
24 recommended speaking to Mr. Moore and bringing in
25 CIMA if needed. Were you involved in any

1 discussions with Mr. Moore, Mr. Lupton,
2 Mr. Ferguson, Mr. Mater or CIMA about the 2013
3 CIMA report after this exchange?

4 A. I'm hesitating to answer
5 only because I can't remember -- I met with these
6 people a few times and I don't know where it fits
7 in the scope of the entire issue that we're
8 discussing here today. So if we have any evidence
9 that I did, please put it up but --

10 Q. I'll take you --

11 A. I mean, I met with them a
12 few times. I just don't know when it fit with
13 this September 2013 timeframe.

14 Q. Did you ever attend a
15 meeting where Mr. Moore's concerns about the 2013
16 CIMA report were discussed?

17 A. I attended a meeting with
18 John and the GM, and I'm not even sure who it was
19 at the time. Gary. That might have been after
20 the 2015 report, though, is what I'm saying. I
21 don't remember where things fit in time and space.

22 Q. Fair enough. I don't
23 want you to guess.

24 Registrar, you can close this
25 down. If you could please take us to OD6, image

1 52, paragraph 131. Actually, I think it would be
2 easier if we went directly into this e-mail chain.
3 Could you call out HAM8636. Thank you. And
4 take -- add image 2 here as well. Thank you.

5 So you'll see -- if you can
6 call out the very first e-mail on -- sorry, the
7 last e-mail. Sorry, Registrar, I know that's not
8 the clearest direction. The one from Mr.
9 Capostagno (ph), which I'm sure is not the correct
10 pronunciation.

11 A. Capostagno.

12 Q. There you go.

13 On September 22nd, 2013,
14 Mr. Capostagno e-mails Terry McCleary, who I
15 believe is in operations?

16 A. Roads operations, yes.

17 Q. About some concerns that
18 have come up on the Red Hill, and as we go through
19 this e-mail chain, you'll see that it is
20 eventually forwarded to you. But just starting
21 with the e-mail that initiates it. So he says:

22 "Hi Terry, Saturday, due to
23 heavy rain, we have had some
24 issues with the Red Hill due
25 to heavy rain. Police call us

1 saying that the ramps and road
2 is very slippery. There was
3 quite a few accidents, cars
4 slipping. We checked the
5 ramps and road and it was very
6 slippery. There is not much
7 we can do. Every time it
8 rains heavily, this is an
9 ongoing issue. I feel it's a
10 pavement problem and a speed
11 problem. I told the officer
12 it's a speed problem and when
13 it rains, it's the pavement,
14 and if we put sand down it
15 washes away. This is an
16 ongoing issue and it's
17 frustrating. The public gets
18 upset with us, and there is
19 nothing I can do to prevent
20 these road conditions. There
21 is no flooding. It was just
22 the conditions of the road."

23 (As read)

24 Registrar, if you can close
25 that for us. So just as a starting point,

1 operations is responsible for the day-to-day
2 operations on the Red Hill; is that correct?

3 A. Snow plowing, roadside
4 mowing, picking up debris on the road.

5 Q. So responding to
6 collisions?

7 A. Well --

8 (Speaker overlap)

9 A. Sorry. Responding to
10 collisions is the police's responsibility. Roads
11 might have been a cleanup if there's a spill or
12 something.

13 Q. Thank you. So you'll see
14 that after Mr. Capostagno comments, this e-mail is
15 commented on again by another member of
16 operations, Tammy Blackburn. And if you can call
17 out the blue text at the top of the
18 (indiscernible) Registrar.

19 So she comments on this
20 e-mail:

21 "If I can add to Sam's e-mail,
22 due to the Superpave products
23 they used allowing the asphalt
24 to last 20 to 30 years, with
25 this mix it contains more

1 liquid asphalt and small glass
2 shards, which for obvious
3 reasons makes it slippery when
4 wet. If I could recommend
5 that slippery when wet signs
6 be placed throughout the Red
7 Hill, especially on ramps, to
8 maybe help alleviate the City
9 of some potential claims and
10 accidents, this may bring a
11 little more awareness to
12 drivers. Not all but some."

13 (As read)

14 Registrar, you can close that.
15 On September 23rd, 2013, Mr. Shynal, who is the
16 director of operations, forwards this e-mail to
17 you, Mr. Moore, Mr. Mater and Mr. Lupton. Do you
18 recall receiving this e-mail?

19 MS. CONTRACTOR: Sorry. Mr.
20 Commissioner, I'm sorry to interrupt, but to the
21 extent that commission counsel wants to track the
22 chronology of the exchanges on this topic, there
23 is another e-mail that's --

24 MS. BRUCKNER: Yes, and I'm
25 going to take him to that.

1 MS. CONTRACTOR: Okay, but it
2 was sent prior to this e-mail, so to the extent
3 that you want to show him the chronology, it might
4 make sense to turn to it there, but just wanted to
5 raise that.

6 MS. BRUCKNER: Sure, we can do
7 that.

8 BY MS. BRUCKNER:

9 Q. So there is an e-mail
10 HAM41728. You'll see that Mr. McCleary sends you
11 a request that's at the bottom of this chain, also
12 on September 23rd, 2013. And, Registrar, if you
13 can call that out. You'll see he e-mails you
14 directly, and he says:

15 "Roads has a big issue
16 whenever it rains on these
17 class roadways, ramps and
18 along the driving portion.
19 The pavement surface has more
20 tar than normal, as they
21 designed it to last 25 to
22 30 years. Now with the water
23 sits on top of surface,
24 causing hydroplane of cars
25 going at high speeds on ramps

1 and the roadway." (As read)

2 And he asks you if traffic can
3 look at getting slippery when wet signs on every
4 ramp and along this route.

5 Do you recall receiving that
6 e-mail chain?

7 A. Yes.

8 Q. So this is in
9 September 2013, which is around the same time that
10 CIMA is working on the 2013 CIMA report.

11 A. Correct.

12 Q. We had discussed earlier
13 that Mr. Cooper sent you a draft of the 2013 CIMA
14 report on August 23rd, 2013. Do you know if you
15 had reviewed that report by September 2013?

16 A. I don't know when I
17 reviewed that report.

18 Q. Registrar, could you call
19 out HAM41675 at image 40. Registrar, we're
20 turning briefly to the summary of findings in that
21 August draft. Registrar, could you call out the
22 second paragraph from the bottom, "it is
23 noteworthy."

24 Just to refresh your memory,
25 there's a line in the summary of findings in the

1 2013 -- in August 2013 draft that says:

2 "It is also noteworthy that
3 the collisions that are
4 occurring on the Red Hill
5 Valley Parkway show an
6 atypically high proportion of
7 SMV --"
8 which I believe is single
9 motor vehicle.

10 A. Correct.

11 Q. Thank you.

12 "-- wet road surface and
13 non-daylight collisions when
14 compared to the provincial and
15 City of Hamilton averages."

16 In light of this report and
17 the e-mail chains that we were just looking at,
18 did you have any concerns about the safety of the
19 Red Hill Valley Parkway in September 2013?

20 A. The two things are
21 completely different. This is a snapshot of a
22 portion of the facility, and the highlight from
23 this information was there was no huge safety
24 concern, except there was an abnormal collision
25 experience on one of the ramps, I think they

1 called it ramp 6. The complaint or the concern
2 expressed by the road staff, who are lay people
3 really, they are people who would clean up oil and
4 cut the grass and that sort of thing, was
5 basically -- and if you read the last e-mail you
6 showed me, it said RHVP and LINC -- they were
7 encompassing the entire facility. And to me,
8 that's a completely different animal than this
9 limited report that we put forward that we were
10 working on at the -- concurrently with the
11 complaint coming in.

12 Q. Just to make sure I have
13 that right. The distinction you're drawing, aside
14 from the operations folks are lay people, is that
15 the 2013 CIMA report looks at specific areas
16 rather than the entire Red Hill?

17 A. That is correct, and the
18 LINC. If you read that last e-mail it was
19 entitled Red Hill and LINC. And they were asking
20 for slippery when wet signs to be signed along the
21 entire facility, and that would be an
22 inappropriate use of a slippery when wet sign. It
23 should be used only when there's a noted problem,
24 but not facility wide. So it would become ignored
25 basically if we were to sign it every half a

1 kilometre along the length of it. And, you know,
2 the other thing I would say is when it rains you
3 should drive with caution, and all roads a little
4 slippery when -- more slippery when they are
5 wet --

6 Q. So I think this may
7 re-tread some ground that we have just gone over.
8 But, Registrar, could you take us back to
9 HAM41728. If you can call out the top e-mail from
10 Mr. White.

11 So you'll see you forward the
12 request for slippery when wet signs from
13 operations to Mr. Ferguson, copying Mr. Jacobson,
14 and you say:

15 "This is an extraordinary
16 request, and in my opinion
17 should be substantiated by a
18 collisions history."

19 So it is extraordinary for the
20 reasons that you were just highlighting?

21 A. -- yes, you don't sign an
22 entire facility just because somebody thinks, or
23 the police say something. You have to
24 substantiate it and have empirical evidence for
25 whether it really is providing any kind of safety

1 issue. So hence I asked Dave to go forward with
2 providing collision analysis on this.

3 Q. So then there's a line
4 where you say:

5 "When we are ready to respond,
6 please advise, as I believe
7 this is precedent setting and
8 conceptually may not be
9 substantiated by facts."

10 Did you mean it would be
11 precedent setting to sign the entire Red Hill?

12 A. I did.

13 Q. So you go on to ask --

14 A. In the industrywide I'm
15 referring to, not just Hamilton.

16 Q. Understood. So you go on
17 to ask Mr. Ferguson to review the collision
18 history facility wide for statistically
19 significant time period, and review for a
20 percentage of collisions on wet pavement.

21 A. Yes.

22 Q. Can you just break down
23 for me why you wanted Mr. Ferguson to perform that
24 collision history review?

25 A. Well, it would respond to

1 the concern expressed by -- in that e-mail chain.
2 Is there really a wet -- is there really a wet
3 roadway condition contributing to collisions and
4 what was the percentage of collisions on wet
5 pavement versus dry, and you have to do a lot of
6 fact finding to find some of that stuff out
7 because it also relates to other facilities and
8 how -- what are the rates on those facilities as
9 well. Dave did go ahead and do that.

10 Q. Do you recall what the
11 outcome of that review was?

12 A. I recall reading the
13 outcome and there were -- and I used the term
14 "statistically significant" in a different e-mail,
15 I believe to Geoff or John, that there was many
16 more, and I don't remember percentages now, wet
17 weather collisions on the RHVP than on the LINC.

18 Q. When you say you remember
19 reading it, it's your recollection that Mr.
20 Ferguson's review was in writing?

21 A. I remember seeing a
22 chart. That chart eventually ends up -- the data
23 from this ended up becoming a part of the City of
24 Hamilton collision report that we were trying to
25 get going again. We weren't able to do it in

1 2013. It hadn't been done for a few years since
2 Hart left. And when we put that back together and
3 started that up again when we had the right staff
4 replaced, that information is contained in that
5 report. Don't ask me what year we did it. It
6 seems to me '18 maybe, but I don't have a specific
7 recollection.

8 Q. Do you recall when you
9 reviewed the chart of the collision history that
10 Mr. Ferguson prepared?

11 A. It would have been
12 certainly after this e-mail chain. I don't know
13 exactly how long after.

14 Q. Within a year?

15 A. I don't know. Take me to
16 the e-mail where I tell Geoff or John. I forget
17 who I sent it to, maybe both.

18 Q. I will actually take you
19 to that e-mail. But before we do that, I want to
20 cover off a couple more things on the slippery
21 when wet signs.

22 A. Sure.

23 Q. So, Registrar, can you
24 please take us to GOL2641 at image 3. Call out
25 Mr. White's e-mail to Mr. Shynal.

1 On September 25th you advised
2 Mr. Shynal that traffic engineering will analyze
3 the collision history on the entire Red Hill
4 Valley/LINC and Red Hill Valley Parkway system to
5 determine if there's a proven record -- a proven
6 recorded collision history related to the impacts
7 of the weather and road surface of the collision
8 rate and to determine the higher incident
9 locations.

10 And you go on to say, and I
11 know this is a bit of a bulky e-mail, you go on to
12 say:

13 "In my opinion, simply signing
14 the entire freeway system
15 slippery when wet will have
16 virtually no impact on the
17 situation and does not change
18 the conditions, and to the
19 best of my knowledge, has not
20 been done system wide on any
21 freeway anywhere in Ontario."

22 Can you expand on that for me?

23 A. Well, it's what I was
24 saying before, that simply that that would be a
25 misuse of the slippery when wet sign. If you open

1 the manual and you read what the slippery when wet
2 sign is, it's to define a local condition, not a
3 system. Not a -- sorry, not a facility. It would
4 be like signing the 401 as all slippery when wet.

5 Q. Understood. In your view
6 that wouldn't have any substantial impact on
7 drivers or on the collision history?

8 A. Yes, it would also weaken
9 the impact of the slippery when wet sign when it's
10 actually required. If people start to see them
11 all over the place they ignore them, then they are
12 going to ignore them in circumstances where you
13 want them to be aware that the road is slippery
14 when wet.

15 Q. Registrar, can you pull
16 up HAM41675 at image 17 and put it side-by-side.

17 So I'm taking you back to the
18 August draft of the 2013 CIMA report. Registrar,
19 can you call out the very bottom of that. Yes,
20 the study overall.

21 And this continues to the next
22 page, but there's a reference in the draft 2013
23 CIMA report that you received that says:

24 "The study area overall,
25 average of collisions that

1 occurred under wet road
2 surface conditions is
3 45 percent. When compared to
4 provincial average of
5 17.4 percent and the City of
6 Hamilton average of
7 13 percent, the proportion of
8 collisions under wet road
9 surface is significantly
10 higher." (As read)

11 Just to circle back on an idea
12 that I think you've already put forward today, the
13 reason that you wanted Mr. Ferguson to perform a
14 subsequent collision history was because the 2013
15 CIMA report's collision history was focused on
16 those specific areas rather than the entire
17 facility?

18 A. It was a very limited
19 portion of both facilities, yes, and we were
20 working on -- at the time, I think we were
21 actually starting to upgrade the signing. I'm not
22 sure exactly at what point, but we were starting
23 to act on the CIMA's recommendations as soon as we
24 could.

25 Q. Registrar, can you take

1 us to image 44 of the CIMA report, 41675.

2 A. Sorry, are we still in
3 the draft?

4 Q. This is the August draft
5 that Mr. Cooper sent to you. Registrar, can you
6 pull out the perform friction testing section,
7 6.1.1, and include -- yeah, perfect, thank you.

8 So you'll see that in the
9 draft of the 2013 CIMA report that Mr. Cooper sent
10 you in August, there's a reference to friction
11 testing, and at the very bottom of this first
12 paragraph, Registrar, if you could highlight from
13 "because of the high proportion of wet surface
14 conditions" to "the end of design specifications."
15 Just direct your attention it to Mr. White.

16 At the end of the perform
17 friction testing recommendation, it says:

18 "Because of the high
19 proportion of wet surface
20 conditions and single motor
21 vehicle collisions, the City
22 should consider undertaking
23 --"

24 A. Sorry, it doesn't say
25 "should"; it says "could."

1 Q. You're right.
2 "-- the City could consider
3 undertaking pavement friction
4 testing on the asphalt to get
5 a baseline friction
6 coefficient for which to
7 compare to design
8 specifications."
9 Registrar, can you close this,
10 please, and take us down to image 45.

11 So it crosses over a bit, the
12 install WC105 slippery when wet, and we may have
13 to take down the Golder document and put up the
14 second page of the report. And then if you can
15 call out the section under install WC105 slippery
16 when wet signs through to cost-benefit ratio.

17 Mr. White, are you able to see
18 that?

19 A. Yes.

20 Q. So you'll see that under
21 "slippery when wet signs," there's also a
22 reference to wet weather skid resistance. So it
23 says:

24 "The purpose for slippery when
25 wet signs is to advise drivers

1 that the surface of the
2 roadway has a significantly
3 reduced wet weather skid
4 resistance. Competent drivers
5 are aware that the friction of
6 the road surface is reduced in
7 wet weather; therefore, this
8 sign is reserved for use where
9 the skid resistance of the
10 road is reduced to an
11 expectantly low level."
12 Then it goes on to say:
13 "Given the high proportion of
14 wet surface collisions, it may
15 be determined through friction
16 testing that the skid
17 resistance of the roadway
18 surface is lower than normally
19 encountered in some areas. If
20 this is determined, the City
21 could examine the installation
22 of WC105 sign for the
23 northbound and southbound
24 directions in relation to any
25 areas identified through

1 friction testing."

2 As a starting point, do you
3 agree with the suggestion here from CIMA that
4 slippery when wet signs are reserved for instances
5 in which the skid resistance of a road is reduced
6 to an expectedly low level?

7 A. I agree that slippery
8 when wet signs should be used when vehicle
9 collisions point to the fact that vehicles are
10 sliding on the asphalt, and I'm not an expert in
11 skid resistance whatsoever.

12 I would also state that in
13 isolation this isn't good enough. You have to
14 look at the geometrics of the roadway, the
15 curvature. You have to look at the weather
16 conditions, the -- friction items such as roadside
17 hazards and primarily speeding because speeding
18 impacts a vehicle's ability to stay on the
19 roadway. The inertia of speeding pulls them off
20 the road, and I think in isolation you can't just
21 use some sort of friction testing; you have to
22 look at the entire situation and include all the
23 factors that could contribute to collisions in wet
24 conditions.

25 Q. Would you agree --

1 A. Friction testing is one
2 portion of it.

3 Q. So friction testing is
4 one element that you might look at in considering
5 whether or not to put slippery when wet signs on a
6 roadway?

7 A. The friction -- vehicles
8 running off the road, that's how I look at it.
9 Are they running off the road and what is the
10 evidence to show that the roadway itself is
11 contributing to that.

12 Q. Just backtracking on
13 something you had said earlier, I think you said
14 that you don't have experience with friction
15 testing?

16 A. None whatsoever.

17 Q. Can you tell me, what did
18 you know about friction testing as of September
19 2013?

20 A. Nothing.

21 Q. You had never come across
22 friction testing in your role in traffic safety?

23 A. That is correct.

24 Q. It wasn't a consideration
25 that the City or other municipalities were looking

1 at with respect to roadways?

2 A. It was not something that
3 I had encountered in my career at that point.

4 Q. Prior to seeing this
5 section of the draft 2013 CIMA report, did you
6 have an understanding that friction levels could
7 have a connection to a roadway being slippery when
8 wet?

9 A. Well, I think that's
10 intuitive, yes.

11 Q. Registrar, you can take
12 this down, thank you. So just turning now back
13 to -- sorry, Registrar, you can take us out of the
14 report.

15 So you said that Mr. Ferguson
16 did complete a facility collision history review
17 for the Red Hill Valley Parkway, and I believe you
18 said that it indicated that there were a
19 significantly higher proportion of wet surface
20 collisions on the Red Hill as compared to the
21 LINC?

22 A. That's my recollection.

23 Q. On seeing that
24 information from Mr. Ferguson, did you install
25 slippery when wet signs throughout the Red Hill

1 Valley Parkway?

2 A. No. We went to another
3 complete safety review through CIMA to validate
4 the data in relationship to the actual geometrics
5 of the roadway and to try to understand what was
6 happening overall. We did the RHVP as well as the
7 LINC so that we had a holistic view of the entire
8 issues of collisions versus speeding versus
9 geometrics, because at that time we weren't
10 convinced that the slippery when wet was caused by
11 the wet. We wanted to see if it was caused by the
12 speed or other factors in operating a road system.
13 So we sent it back to the experts to enhance.

14 That's what -- then we also
15 had Councillor Collins express some additional
16 interest, and we eventually went to CIMA for the
17 2015 reports on our RHVP and LINC. And that's how
18 that manifested itself into whatever action we
19 needed to take.

20 Q. So in your view, the 2015
21 CIMA report was the result of that collision
22 history that Mr. Ferguson did?

23 A. It was a portion of it,
24 not a result of it. It was a result of Councillor
25 Collins' request us to examine the entire

1 facility. I don't know -- you'll have to pull up
2 the motions of council again, but we included that
3 information in that study. I don't have a clean
4 recollection of Councillor Collins' motion at the
5 moment.

6 Q. Registrar, could you take
7 us into GOL2641, please. I'm just going to take
8 us back to the e-mail chain that we were looking
9 to about the slippery when wet signs.

10 A. Hm-hmm.

11 Q. Registrar, could you put
12 up image 2 as well, please. So you'll see that on
13 September 26th, 2013, and that's the darker blue
14 text on image 2.

15 Registrar, if you would call
16 out the e-mail from Mr. McClennan. So Mr.
17 McClennan sends an e-mail responding to this
18 e-mail chain in which he says that:

19 "Off the top of my head, I
20 would say there is not a
21 significant claims history for
22 slippery conditions on the Red
23 Hill Valley Parkway.

24 Certainly no more than any
25 other mountain cut, if I can

1 call it."

2 And then just moving down, at
3 the second paragraph he goes on to say:

4 "What we do have is a
5 situation of which we, the
6 City, are aware and also the
7 general public. In the event
8 of a serious accident in
9 future, this experience will
10 be cited and the allegation
11 will be that we knew of the
12 problem and ought to have done
13 something about it."

14 He goes on to say lawyers love
15 to use the word "ought."

16 Registrar, you can close out
17 this e-mail, please, and take us to Mr. Moore's
18 response, which is the e-mail directly above on
19 image 2. So.

20 Mr. Moore responds to
21 Mr. McLennan's e-mail on September 30th, and
22 you'll see that you're still copied on this chain,
23 and he says:

24 "As part of the ongoing
25 pavement monitoring, traffic

1 loading, pavement response,
2 condition assessment for asset
3 management purposes, we will
4 have skid resistance testing
5 completed on both the LINC and
6 Red Hill." (As read)

7 He goes on to say:

8 "There is a standard by which
9 we can report on the relative
10 level of resistance and by
11 which we can gauge the
12 performance of each mix and
13 road surface. This should be
14 sufficient for any due
15 diligence required,
16 eliminating the ought to have
17 knowns, as well as dealing
18 with the we think it was
19 slippery issues. I'll let you
20 know when we get this." (As
21 read)

22 So was it your understanding
23 as of September 2013 that Mr. Moore was going to
24 have engineering services perform friction testing
25 on the Red Hill Valley Parkway and LINC?

1 A. We will have skid
2 resistance testing completed. Those are his
3 words.

4 Q. He says at the end of
5 this e-mail "I'll let you know when we get this."
6 Did Mr. Moore ever let you know that he had
7 received friction testing results from the Red
8 Hill Valley Parkway or LINC?

9 A. He let me know verbally
10 that he had the testing done.

11 Q. When would that have
12 been?

13 A. Long time after this, I
14 would think. I'm not sure when.

15 Q. What did he tell you
16 about the testing results?

17 A. He told me that the
18 testing results couldn't be -- now I'm
19 paraphrasing. I don't really remember his
20 wording. He just said that they were based on a
21 UK or British standard, and that there was no
22 Canadian or Ontario standard for him to use to
23 compare it to.

24 Q. Did he ever provide you
25 with a copy of the friction testing results from

1 the Red Hill or LINC?

2 A. No, I haven't seen them
3 to this day.

4 Q. Did you follow up with
5 Mr. Moore about the friction testing results?

6 A. Yes, at a meeting.

7 Q. Did you do it in
8 connection with the 2013 CIMA report which
9 contained a recommendation that the City could
10 conduct friction testing?

11 A. Well, that's what was all
12 going on at the same time. So if you read that
13 report, it says zero to five years. So I was
14 waiting for Gary to come forward with this
15 information. It was only a small component of the
16 entire suggestions from the report, and traffic
17 was moving forward with implementing all the
18 remedial measures we could as fast as we could as
19 soon as -- in fact, we had a lot of it done prior
20 to going to council. At that point in time, I
21 simply was waiting for Gary to provide the
22 information from his portion of the study.

23 Q. So it was your
24 understanding that this commitment from Mr. Moore
25 to conduct friction testing on the Red Hill and

1 LINC would be in fulfillment of the recommendation
2 in the 2013 CIMA report?

3 A. Well, again, they are
4 coming from two different places. This is coming
5 I believe from the e-mail from the roads group
6 about the slippery and he's going to do the LINC
7 and the Red Hill, and that's what it was really --
8 that's what it says this is related to. But I --
9 those are Gary's words, not mine, again.

10 The 2013 CIMA report, he had
11 five years to provide that information. It was a
12 zero to five year short-term solution -- sorry,
13 it's not a solution, it's a data collection item.
14 It doesn't provide a solution at all.

15 Again your question is what?
16 I'm sorry, I kind of digressed.

17 Q. No, actually it's fine.
18 Recognizing that this commitment is coming from a
19 different source, it's in response to those
20 e-mails from the folks in operations about their
21 observations of the Red Hill, in your view had Mr.
22 Moore conducted friction testing after
23 September 2013 in response to the commitment in
24 this e-mail, would that have addressed the
25 recommendation in the 2013 CIMA report as well?

1 A. Yes.

2 Q. Did you see friction
3 testing as a data point that might assist in
4 improving safety on the Red Hill Valley Parkway?

5 A. I saw friction testing as
6 one component of a series of data collections that
7 we could use to assess the operation of the
8 facility.

9 Q. In terms of dealing with
10 safety on any roadway, did you consider friction
11 testing to be a factor that helped to ensure -- or
12 friction and skid resistance and good levels of
13 friction and skid resistance, as something that
14 would help to ensure people could drive safely
15 on the Red Hill Valley Parkway?

16 A. Generally speaking,
17 roadways are built to standards by using -- I know
18 nothing about asphalt mixes, but they are using
19 standard mixes on these roadways, and these
20 roadways operate -- because you asked me
21 generally, these roadways operate generally
22 safely, but when you get icing or you get pooling
23 or anything that reduces the ability of the rubber
24 tire to meet the roadway, then you get situations
25 where it's appropriate to use slippery when wet

1 signs.

2 I've never seen skid testing
3 used or friction testing used. I think they are
4 two different things, but they are used
5 interchangeably here, but I don't know, to
6 quantify the need for remedial measures.

7 Q. On receipt of this
8 e-mail, did you direct your staff to tell CIMA
9 that Mr. Moore had committed to perform friction
10 testing on the Red Hill Valley Parkway?

11 A. I don't recollect. I'm
12 sorry, I just don't remember.

13 Q. Do you recall if you
14 told -- if you told CIMA about it directly?

15 A. I never spoke to CIMA
16 directly about anything to do with the report. I
17 let David do all that because too many cooks, too
18 many chefs spoil the broth sort of an idea. I let
19 Dave do the lead, do the correspondence, do the
20 communications.

21 Q. Did you think that it
22 would be helpful for CIMA to know that Mr. Moore
23 was considering conducting pavement friction
24 testing on the Red Hill Valley Parkway in light of
25 the analysis in the 2013 CIMA report?

1 A. Well, the 2013 CIMA
2 report had already been completed, had it not, by
3 this point?

4 Q. It's in draft at this
5 point.

6 A. Pardon?

7 Q. It's in draft at this
8 point.

9 A. In draft at that point.
10 It couldn't have hurt them to know it.

11 Q. In hindsight do you think
12 that advising CIMA that the City was going to
13 conduct friction testing on the Red Hill Valley
14 Parkway would have assisted or changed their
15 analysis in the 2013 CIMA report?

16 A. I don't think it would
17 have changed their analysis, no.

18 MS. BRUCKNER: I am slightly
19 over the time for our break, so thank you very
20 much for the indulgence, and I'm about to move on
21 to another topic of conversation, so I would
22 suggest that we may wish to take the afternoon
23 break now.

24 JUSTICE WILTON-SIEGEL: That's
25 fine. It's 3:35, so let's come back at 10 to 4.

1 MS. BRUCKNER: Thank you.

2 --- Recess taken at 3:36 p.m.

3 --- Upon resuming at 3:50 p.m.

4 MS. BRUCKNER: Commissioner,
5 may I proceed?

6 JUSTICE WILTON-SIEGEL: Yes,
7 please proceed.

8 MS. BRUCKNER: Thank you.

9 BY MS. BRUCKNER:

10 Q. Mr. White, just before
11 the break we were speaking about the e-mail in
12 which Mr. Moore indicated that he would conduct
13 friction testing on the Red Hill Valley Parkway in
14 September 2013, and I asked you if you had advised
15 CIMA of that commitment, but I think I omitted to
16 ask you if you had advised anyone in your own
17 group.

18 So Mr. Ferguson, Mr. Cooper,
19 Mr. Jacobson, anyone else reporting you to of that
20 commitment by Mr. Moore?

21 A. I don't recollect. You
22 might to have show me that e-mail again. I just
23 want to see who was on it now.

24 Q. Sure, we can pull it up
25 again. Registrar, the e-mail is GOL2641, and it's

1 on image 2. The very top e-mail, if you can call
2 it out so Mr. White can take a look at who is
3 copied.

4 A. Okay, thank you. I don't
5 recollect if I told anybody or not.

6 Q. Thank you, Registrar, you
7 can close that out.

8 So moving on to a new topic.
9 Registrar, could you pull up RHV668. So I'm going
10 to ask you a couple of questions about staff
11 report PW13081. This is the information report
12 that is submitted to the Public Works committee in
13 November 2013 on the 2013 CIMA report.

14 Do you recall -- so this is
15 the final version. I'll take you through a couple
16 of prior versions, but this is the final version.
17 Do you recall reviewing this report and having
18 discussions about it with members of your group?

19 A. Not really, but I've
20 since read it. I don't recollect back that far
21 certain things. I don't remember the final
22 report.

23 Q. Was it your expectation
24 that this staff report would accurately summarize
25 the 2013 CIMA report and the recommendations in

1 that report?

2 A. It was my expectation
3 that it would accurately provide council with the
4 analysis provided by CIMA.

5 Q. So that's a distinction
6 that I think you've made before around the
7 analysis. You don't think it was necessary that
8 it included all of the CIMA recommendations?

9 A. It depends on what they
10 are. If they were -- you know, in context, if
11 they were outrageous, then we wouldn't want to put
12 them forward, or if council had already made a
13 decision on something, we would not necessarily
14 recommend it. So in this particular report there
15 was nothing altogether problematic about it. So
16 it would have been an accurate reflection of the
17 way we saw the report presented.

18 Q. And if a recommendation
19 was outrageous, in your view should that be noted
20 in a staff report?

21 A. It could be. That's not
22 what we were dealing with here, I don't think.

23 Q. Understood. But you're
24 saying it could be but it doesn't necessarily have
25 to be?

1 A. Correct.

2 Q. In this case, so the case
3 of this particular information report, who were
4 you counting on to ensure that the staff report
5 summarized the CIMA report accurately?

6 A. Well, first I note I'm
7 not on this, and I'm struggling to remember why
8 that is.

9 (Speaker overlap)

10 A. -- but having said that,
11 ask your question because I'm sure I can answer
12 it.

13 Q. Just to clarify, when you
14 say you're not on it, do you mean in reference to
15 the section that says prepared by and submitted
16 by?

17 A. Yes, that is correct.

18 Q. Would it --

19 A. I don't know if I was
20 actually there when it was written. I might have
21 seen it but I can't verify that.

22 Q. So I can take you into a
23 couple of versions of this so you can get your
24 grounding a little better.

25 Registrar, can you take us to

1 OD6, image 62, paragraph 157, please.

2 So you'll see that on
3 October 7th, 2013 Mr. Cooper sends a 10-page draft
4 of this report to Mr. Field. Mr. Field circulates
5 it to Mr. McGuire, Mr. Kirchknopf and Peter Locs,
6 who I believe is also in engineering services.

7 A. Yes.

8 Q. You're not copied on this
9 e-mail, just for your reference.

10 A. Thank you.

11 Q. Do you recall whether or
12 not you reviewed a copy of the draft staff report
13 that Mr. Cooper prepared?

14 A. Offhand, I don't
15 remember.

16 Q. Would it surprise you to
17 learn that Mr. Cooper lifted text directly from
18 the 2013 CIMA report in the report that he
19 prepared?

20 A. No.

21 Q. Was that a fairly common
22 practice?

23 A. It's a practice that
24 could be -- could use, yes.

25 Q. Registrar, could you

1 please take us to OD6, image 62, paragraph 159,
2 which is -- I think continues on to the next page,
3 if you can pull up the next image.

4 A. Sorry, this is from who
5 to who?

6 Q. This is an e-mail
7 exchange between yourself, Mr. Ferguson and Mr.
8 Lupton between October 11th and 14th, 2013.

9 A. Thank you.

10 Q. I will give you a second,
11 just because it's a little bit lengthy, to review
12 it. Let me know when you're done.

13 A. Okay, go ahead.

14 Q. Thank you. So you'll see
15 the first e-mail is Mr. Lupton, and he says:

16 "Can you please summarize for
17 me the actions we want to do
18 on the Red Hill Valley Parkway
19 from the safety report and how
20 we propose to proceed."

21 He goes on to say:

22 "I would like to get a sense
23 of this before we arm wrestle
24 Gary."

25 Did you understand that

1 reference to Gary to be a reference to Mr. Moore?

2 A. Yes.

3 Q. Why would Mr. Lupton need
4 to arm wrestle Mr. Moore?

5 A. I don't know.

6 Q. At this point in time, so
7 this is October 11th to 14th, 2013, had you been
8 advised of concerns raised by Mr. Moore about the
9 2013 CIMA report?

10 A. Well, where does this fit
11 in context with the e-mail from Mr. Cooper to me a
12 little -- we reviewed a little while ago? You
13 will have to give me those dates because I don't
14 remember in what order things occurred.

15 Q. The e-mail exchange with
16 Mr. Cooper is I believe in September and this is
17 in early October.

18 A. Your question again then,
19 please.

20 Q. At this point, so that's
21 in early October 2013, were you aware of concerns
22 that Mr. Moore had about the 2013 CIMA report?

23 A. All I know is the
24 information from that e-mail that he wasn't happy
25 with the report, but I don't know what he wasn't

1 happy with.

2 Q. So you hadn't heard
3 anything about if there were particular
4 recommendations in the CIMA report that he was
5 concerned with?

6 A. That's correct, I hadn't
7 heard, no.

8 Q. So Mr. Ferguson responds
9 to this e-mail from Mr. Mr. Lupton, and he
10 effectively says there will be a phased approach
11 in terms of the recommendations in the 2013 CIMA
12 report, and you can take a look at that.

13 My understanding of this is
14 that you were proposing to address easy items like
15 sign modifications and line markings first and
16 only to pursue items like lighting on the Red Hill
17 Valley Parkway if you later determined that those
18 earlier items didn't resolve the issue?

19 A. I think that represents
20 it correctly.

21 Q. So you then respond to
22 this mail from Mr. Ferguson and you say:

23 "Thanks, Dave. I would prefer
24 we keep the next safety review
25 separate."

1 And that is in reference to
2 the little paragraph at the end of Mr. Ferguson's
3 response in which he says:

4 "Councillor Collins would also
5 like to see a review of the
6 entire LINC and remaining
7 portions of the Red Hill
8 Valley Parkway."

9 Why did you want to keep the
10 review of the LINC and the remaining portions of
11 the Red Hill Valley Parkway separate.

12 A. Because there's a bigger
13 scope of work than the traffic safety report in
14 its entirety, and it also followed the report we
15 had just done and included - you know, one of the
16 things I'll say is that traffic staff were experts
17 in local residential roadways, arterial roadways,
18 but operating on essentially a parkway halfway
19 between an arterial roadway and a freeway or a
20 highway, we didn't have a lot of experience with.
21 And I think it was prudent to hire a consultant
22 who could assess those things from a much higher
23 perspective and had more knowledge and expertise
24 in that.

25 So, you know, I think that's

1 -- you know, you put into context the complaints
2 from the roads, that we did some analysis, we saw
3 some collisions statistics, and we had already
4 used CIMA to analyze a portion of this facility,
5 it would be reasonable to have them continue to
6 analyze it based on the fact that they had a lot
7 of data already, traffic volumes and that sort of
8 thing, so it made sense.

9 Q. Registrar, can you pull
10 out just Mr. White's response so that we can read
11 it a little bit better.

12 Mr. White, in response to this
13 e-mail from Mr. Ferguson, you say that you would
14 prefer to keep the next safety review separate,
15 and you go on to say:

16 "... especially in light of
17 the recent collision
18 statistics we determined for
19 wet conditions. We have to
20 resolve that matter now too.
21 Let's chat early in week
22 before the meeting with Gary
23 Moore. Geoff, basically there
24 are statistically significant
25 number of collisions in wet

1 conditions identified that
2 tells me we may need to do
3 something."

4 Is that a reference to the
5 collision history that you had directed
6 Mr. Ferguson to perform?

7 A. Absolutely, yes.

8 Q. Did you think that
9 something separate and apart from the
10 recommendations in the 2013 CIMA report would need
11 to be done at this point?

12 A. Well, we were looking at
13 kilometres of roadway instead of a short section
14 at the top of the RHVP. They are completely
15 different characteristics along the length of both
16 these facilities, and we needed to do a
17 comprehensive safety audit of them, not just limit
18 it to the top portion of the RHVP.

19 Q. So in your view something
20 further needed to be done in response to this
21 collision pattern that you'd identified?

22 A. Absolutely.

23 Q. And I see that you
24 specifically refer Mr. Lupton to the statistically
25 significant number of collisions?

1 A. Yes.

2 Q. Did you have further
3 conversations with him about the results of that
4 collision history?

5 A. Oh, gosh, I'm sorry, I
6 just don't remember. I spoke to Geoff on a fairly
7 regular basis, so one can assume I did, but I
8 can't pinpoint it.

9 Q. What steps did you take
10 in October 2013, you or your group, to address the
11 statistically significant number of collisions in
12 wet conditions that you'd identified on the Red
13 Hill Valley Parkway?

14 A. Well, that wasn't enough
15 to make recommendations, and that's why we brought
16 it -- we were talking about bringing it forward to
17 CIMA to do a proper safety audit of the facility.
18 I didn't have enough information to draw any
19 conclusions, and we didn't have enough expertise,
20 I think, on a high speed, high volume roadway to
21 bring forward adequate recommendations for
22 remedial works, and that's why we sent it to CIMA
23 eventually.

24 Q. Registrar, you can close
25 that out, thank you.

1 Can you take us please to OD6,
2 image 64, paragraph 162. Thank you.

3 So Mr. Ferguson sends you and
4 Mr. Lupton a copy of the draft staff report on the
5 2013 CIMA report on October 23rd, 2013. Do you
6 recall if you would have reviewed this staff
7 report when you received it from Mr. Ferguson?

8 A. I don't recall reading
9 it, but I'm sure I must've.

10 Q. It would have been your
11 practice to do so?

12 A. It would have been my
13 practice to do so.

14 Q. Registrar, could you
15 please call out HAM454.

16 Just for your reference, Mr.
17 White, this is the draft version of the report
18 that Mr. Ferguson sent to you.

19 A. Yes.

20 Q. And could you take us to
21 image 6 and call out the paragraph that's just
22 above the second chart that starts "in addressing
23 number 3 above."

24 So could you please highlight
25 from "further, the engineering division." I think

1 it's two lines in. Just so Mr. White can see it.

2 Thank you.

3 So in this staff report that
4 Mr. Ferguson sends to you, there's a reference
5 that says:

6 "Further, the engineering
7 division will be conducting
8 friction testing on the Red
9 Hill Valley Parkway."

10 Why did Mr. Ferguson include
11 that information in the draft staff report?

12 A. I don't have a clear
13 recollection of why. I'm sure he must have known
14 that Gary said he would do it, but I think perhaps
15 that's a question for Dave.

16 Q. You don't recall if at
17 this time --

18 A. I don't recall why he
19 wrote that.

20 Q. And you don't recall if
21 at this time you had advised him that Mr. Moore
22 had undertaken to perform friction testing at the
23 Red Hill Valley Parkway?

24 A. I don't remember -- yeah,
25 counsel, I'm sorry, I just don't remember that.

1 Q. Registrar, you can close
2 this out for us, thank you. Could you take us,
3 please, to OD6, image 64, paragraph 162. Thank
4 you.

5 So on October 23rd, 2013,
6 Mr. Ferguson -- sorry, on October 23rd, 2015, you
7 advise Mr. Ferguson and Mr. Cooper that:

8 "There will be a rush revision
9 from John and Geoff for us to
10 make today. The approach is
11 changing from an info report,
12 not a -- to an info report,
13 not a recommendation report.
14 We have to finish it today.
15 Geoff will be sending
16 directions shortly." (As
17 read)

18 Do you recall having to do
19 rush revisions on the staff report covering the
20 2013 CIMA report?

21 A. I recall being told to
22 rush the revision based on Geoff and John's input.

23 Q. And Geoff and John here
24 would be Geoff Lupton and John Mater?

25 A. Correct.

1 Q. Why did they want to
2 change the staff report from a recommendation
3 report to an information report?

4 A. Well, my understanding is
5 that there was no item that we were bringing
6 forward that required council's approval. If you
7 look at the final version, all the items that were
8 recommended for traffic to conduct were within my
9 current budgeting and within my existing sphere of
10 works that I could do without council approval.
11 It was current budget work. It was remedial work
12 on signing and pavement markings primarily.

13 Q. Can you expand a little
14 bit on the difference between an information
15 report and a recommendation report?

16 A. An information report is
17 filling council in with what you are going to do
18 based on the facts and based on the findings. A
19 recommendation report is something that a
20 department needs to do something, whether it be
21 something council needs to approve because it
22 requires funding or it requires a bylaw change or
23 it requires some legislative change. Then you
24 must write a recommendation report.

25 In this particular case, all

1 the works traffic was conducting did not require
2 any legislative requirement or approvals.

3 Q. Do you recall what the
4 source of the funding for the works that your
5 group was going to conduct was?

6 A. It was my current budget.
7 It was in scope of my current budget at that time.

8 Q. Did it have any
9 connection with the red light camera fund?

10 A. Not at this point. That
11 comes later.

12 Q. Registrar, you can close
13 this, and if you could call out paragraph 163,
14 which I believe is right below and onto the next
15 page.

16 Mr. White, I will give you an
17 opportunity review this, as it's fairly lengthy.
18 It's my understanding that these are Mr. Lupton's
19 revisions to the staff report. Let me know when
20 you've had a chance to review.

21 A. (Witness reviews
22 document). Okay, this is Geoff's direction to us.

23 Q. Registrar, could you
24 please highlight the second callout from "did Gary
25 agree" and just to the end of that paragraph.

1 So you'll see that there's a
2 reference there where Mr. Lupton says:

3 "Did Gary agree to the
4 frictionless piece? If not,
5 take it out. If so, we should
6 be clear that this
7 implementation would be to
8 their schedule."

9 A. Yes, I see that.

10 Q. So my understanding is
11 that the frictionless piece may be a typo. Did
12 you understand this to be a reference to the
13 friction testing recommendation in the 2013 CIMA
14 report?

15 A. That would be logical.

16 Q. Was Mr. Lupton directing
17 you to remove the reference to friction testing if
18 Mr. Moore didn't agree to it?

19 A. That's what it says. I'm
20 sorry, the images of -- our faces are over top of
21 the right-hand side of that paragraph and I can't
22 read the one-third of it to the right. Could you
23 move that to the middle of the screen?

24 Q. Registrar, could you do
25 that for Mr. White. Mr. White, if you minimize

1 your view on zoom, you can limit the number of
2 people that you see, which may help you to see the
3 screen more fully, or switch it to gallery view.

4 A. Thank you. That's the
5 first time I've encountered that. Everything else
6 has been legible. Okay. I can see it and I've
7 read it.

8 Q. On receiving this e-mail
9 from Mr. Lupton, did you speak to Mr. Moore about
10 the friction testing recommendation in the 2013
11 CIMA report and referenced in the staff report
12 that we were looking at earlier?

13 A. I did not, no.

14 Q. Did you direct any of
15 your staff to speak to Mr. Moore about it?

16 A. I do not recollect that.

17 Q. To your knowledge did any
18 of your staff speak to Mr. Moore about that
19 recommendation?

20 A. I really don't remember.

21 Q. Would you have taken the
22 friction testing reference out of the staff report
23 if Mr. Moore wouldn't agree to it?

24 A. What did the friction
25 testing piece say? You'll have to remind me of

1 that. It says should and gave you five years?

2 Q. In the CIMA report it
3 says could. In the staff report that we were just
4 looking at, Mr. Ferguson had written that
5 engineering services would be conducting friction
6 testing.

7 A. Right. So the answer to
8 that is I would have left it in unless that was
9 requested to take it out.

10 Q. By Mr. Moore?

11 A. By my boss. I don't take
12 direction from Mr. Moore. I took it from Mr.
13 Lupton and Mr. Mater, and they would have to be
14 the ones who would direct me to do that.

15 Q. Did you understand the
16 section that is highlighted there above, "did Gary
17 agree," from Mr. Lupton to be a direction from
18 your boss that Mr. Moore's agreement to the
19 friction testing recommendation in the staff
20 report was a pre-condition to its inclusion?

21 A. I don't think we took it
22 out, though. You'll have to show me the final
23 report again because I don't remember if it was
24 in. But I really think we didn't take it out. It
25 was part of the chart that said short term.

1 That's my recollection of it. So it stayed in.

2 Q. So why don't we pull that
3 up actually. Registrar, could you take us to
4 RHV668 and put us on image 2 of that report, so
5 that is the final version of the staff report.
6 And if you could please split the screen and put
7 it up beside HAM454, which is the version that
8 Mr. Ferguson had sent you to, at image 6.

9 If you could pull out the call
10 out, call out this second full paragraph of the
11 RHV document. Yes, that's right, thank you.

12 A. Counsel, you'll have to
13 tell me again which two pieces of paper I'm --

14 Q. I will. I'm just going
15 to pull up the callouts and then I'll phrase it a
16 little better.

17 A. Because I got a little
18 confused there.

19 Q. Maybe we can make sure
20 that that is in front of the report, just so that
21 there's no confusion about where each callout is
22 coming from. And, Registrar, if you can just
23 highlight the final sentence of that paragraph
24 from "staff will review." Thank you. Then the
25 corresponding paragraph in Mr. Ferguson's draft is

1 "in addressing number 3 above." If you could call
2 that out. And highlight the section that we had
3 highlighted earlier which is a couple lines in,
4 "further, the engineering division will conduct
5 friction testing". Thank you, Registrar.

6 So, Mr. White, just to orient
7 you. The document that the Registrar just
8 finished highlighting is the draft that
9 Mr. Ferguson had circulated to you.

10 A. Okay.

11 Q. And the document that we
12 have just pulled up that says "staff will also
13 review further countermeasures such as friction
14 testing with construction engineering" is the
15 final version of this staff report. That was to
16 the Public Works committee.

17 A. Okay.

18 Q. So on reviewing this,
19 there is a revision between Mr. Ferguson's draft
20 and the final version that changes the statement
21 "engineering service division will be conducting
22 friction testing" to "staff will also review
23 further countermeasures such as friction testing
24 with construction engineering."

25 A. Okay.

1 Q. Why was that edit made to
2 the staff report?

3 A. I cannot answer that
4 question. I do not know.

5 Q. Was it in response to the
6 direction from Mr. Lupton to take out the
7 frictionless piece if Mr. Moore wouldn't agree to
8 it?

9 A. I'm sorry, I just don't
10 remember how that flowed.

11 Q. In your view, does
12 including the phrase "staff will also review
13 further countermeasures such as friction testing
14 with construction engineering" give Mr. Moore a
15 veto over whether or not friction testing would
16 take place on the Red Hill Valley Parkway?

17 A. It would still mandate
18 him to do it if we thought it was necessary as far
19 as I'm concerned.

20 Q. So when you say "we," who
21 is the "we" in that sentence?

22 A. Well, I think the "we" in
23 that sentence would be using the consultant's
24 report and discussing it amongst the directors. I
25 can't direct Mr. Moore to do anything. And David

1 Ferguson certainly can't either.

2 Q. So in your view if it was
3 determined that friction testing was necessary,
4 your director, so that --

5 A. And the GM and Gary would
6 have to get together and decide what they were
7 going to do.

8 Q. Okay.

9 A. You know, as I say, we
10 were working collaboratively on this report.

11 Q. Registrar, can you take
12 down HAM454 and pull up in its place HAM41871.
13 Take us to image 50. Just for your reference,
14 this is again the 2013 CIMA report.

15 A. Is this the final
16 version?

17 Q. So this is the October
18 2013 version, yes.

19 A. Sorry, can you confirm,
20 is that the final version of the report as
21 submitted?

22 Q. Yes.

23 A. Thank you.

24 Q. So we're at image 50.
25 Registrar, could you please call out the friction

1 testing section again. We looked at this before.
2 It's very similar to the earlier draft that we
3 were looking at?

4 A. Yes.

5 Q. Would you agree that the
6 staff report does not detail the basis for the
7 friction testing recommendation in the 2013 CIMA
8 report?

9 A. Give me a moment to
10 absorb it, please.

11 Q. Absolutely.

12 A. Sorry, your question
13 again then?

14 Q. So the perform friction
15 testing section in the 2013 CIMA report links that
16 recommendation to the high proportion of wet
17 surface collisions and single motor vehicle
18 collisions on the Red Hill Valley Parkway. Would
19 you agree that that rationale for the
20 recommendation is not set out in the staff report?

21 MS. CONTRACTOR: I wonder,
22 Counsel, if we could also show him the appendix to
23 the report.

24 MS. BRUCKNER: Absolutely. I
25 believe, Registrar, if you scroll down, that the

1 appendices are in the version of RH668 that we
2 have up. So if you go up one, you'll see that
3 there's the general short-term countermeasures
4 identified as well. So there is friction testing
5 listed there. And then if you scroll down to the
6 next appendix, you'll see that they are much more
7 detailed and it is not particularly legible.

8 Registrar, can you call out a
9 couple of those sections just for Mr. White's
10 review. So these are the countermeasures that are
11 specific to the segments that were looked at in
12 the 2013 CIMA report.

13 A. Right. Sorry, is this
14 out of the CIMA report or out of the --

15 Q. So this is out of the
16 staff report.

17 A. Okay, good. So if you go
18 up again you'll see the short-term measures.

19 Q. Registrar, I think that
20 Mr. White needs to take it up to the general
21 recommendations, which is --

22 A. Yes, right there. So,
23 you know, I'm not sure -- you're trying to link
24 one thing to the other. It's very clear to me
25 that the short-term countermeasures include

1 friction testing. As a short-term measure which,
2 if I recollect correctly, was -- provided zero to
3 five year time period to implement. So to me,
4 clearly that is included in the report.

5 Q. Understood.

6 A. Does it directly tie it
7 to the collisions? Not directly. But as I said
8 earlier, there are all kinds of factors involved
9 with collisions. You know, I don't want to
10 itemize them again, but speeding and all those
11 things that I spoke of earlier.

12 Q. Do you think that it
13 would've been important for councillors to know in
14 assessing this report that the friction testing
15 recommendation was made based on the high
16 proportion of wet surface collisions and single
17 motor vehicle collisions on the Red Hill Valley
18 Parkway?

19 A. I really think it's
20 intuitive, friction testing, as it relates to the
21 road and as it relates to collisions.

22 Q. I think you told me
23 earlier that you didn't have much experience with
24 friction testing?

25 A. That is correct.

1 Q. You think that the
2 councillors would have been able to make the
3 connection between that recommendation, like, that
4 they would have understood it was connected to a
5 collision history or a pattern on the Red Hill?

6 A. Oh, gosh, I just don't
7 know.

8 Q. So just returning,
9 Registrar, to image 6 of this -- I'm sorry, image
10 2 of this report, and the statement about friction
11 testing. You can take down HAM41871, Registrar.
12 If you could highlight again "staff will review
13 further countermeasures such as friction testing."
14 Yes.

15 A. Okay.

16 Q. Could you please describe
17 for me in as much detail as possible the review of
18 friction testing that your staff completed with
19 construction engineering after this report was
20 submitted to the Public Works committee?

21 A. We did not have any
22 friction testing available to us, so I had --
23 didn't have -- sorry, your question again is what
24 did we do with it?

25 Q. So in reading this

1 report, it says "staff will also review further
2 countermeasures such as friction testing with
3 construction engineering." I'm reading "staff" in
4 that sentence to be a reference to your group. Is
5 that accurate?

6 A. That's -- I think that's
7 implied by that, yes.

8 Q. What, if anything, did
9 your staff do to review further countermeasures
10 such as friction testing with the construction
11 engineering group after this report went to the
12 Public Works committee?

13 A. Well, again I'm
14 challenged by the sequence of events here, but I
15 certainly know we had meetings with -- at the
16 higher end, with Gary and his group and friction
17 testing was brought up. I just don't know when
18 that is in relation to this report and to the
19 subsequent analysis that we did, because Gary also
20 was talking about doing friction testing sometime
21 later on as well, or some other point in time.

22 Q. Did you assign someone in
23 your group to conduct this review with
24 construction engineering?

25 A. I do not believe so.

1 Q. A hypothetical question.

2 If you had assigned someone to conduct this
3 review, who would it have been?

4 A. David.

5 Q. Do you have any sense as
6 to why your staff didn't include in this report
7 the fact that Mr. Moore had undertaken to complete
8 friction testing on the Red Hill Valley Parkway as
9 of September 2013?

10 A. I'm going to ask a
11 question because I don't know when it occurred.
12 When did he hire his consultant to do the friction
13 testing? Because I don't remember. I think it
14 was Golder, but I was not party to that whole
15 thing.

16 Q. I actually am going to
17 take you in to a couple of e-mails with Golder and
18 the friction testing recommendation, but I think I
19 can pull it up now. Give me just one second to
20 find the reference.

21 MS. CONTRACTOR: Might it be
22 GOL47?

23 MS. BRUCKNER: That is not the
24 one that I was thinking of, but I think that GOL47
25 includes it as well. Registrar, why don't we pull

1 up GOL47. Actually, Registrar, can you take us in
2 to HAM63707.

3 THE REGISTRAR: Sorry,
4 Counsel, do you mind repeating that?

5 MS. BRUCKNER: Yes, HAM63607.

6 THE REGISTRAR: 63707?

7 MS. BRUCKNER: Yes, HAM63607.

8 THE REGISTRAR: Sorry, I don't
9 have that document.

10 MS. BRUCKNER: Why don't we
11 try HAM63706. It's part of the same chain. I'm
12 sorry, it's 36706.

13 THE REGISTRAR: This is 36706.

14 MS. BRUCKNER: Thank you very
15 much. So you'll see -- Registrar, if you can call
16 out for Mr. White the middle e-mail on this chain.

17 So this is November 19th,
18 2013, and Mr. Moore copies you into an e-mail
19 chain on which he has also copied Dr. Vimy
20 Henderson of Golder, and at the bottom of the
21 e-mail he says:

22 "Marco, Rich, Martin, Golder
23 is going to do friction
24 testing. As below, they will
25 need traffic control

1 coordination. Please contact
2 Vimy in this regard." (As
3 read)
4 Do you remember receiving that
5 e-mail?

6 A. Well, I do now,
7 certainly. I remember also at the time that I
8 read it, it didn't sort of register. It was
9 because I was busy as hell, and I just knew Gary
10 needed help, and I flashed it over to Chris and
11 said, provide whatever he needs. And so I kind of
12 just moved it off my plate and didn't think about
13 it again.

14 Q. So you assigned Chris
15 Jacobson to do the traffic control coordination
16 for this testing?

17 A. Correct.

18 Q. Did you ever hear
19 anything from Mr. Jacobson about the results of
20 this testing or that it had been conducted?

21 A. No.

22 Q. So this is in
23 November 19th -- November 19, 2013. And,
24 Registrar, I think if you can take us back to
25 RHV668.

1 You will see that the
2 information report on the 2013 CIMA report goes to
3 the Public Works committee on November 18th, 2013.
4 So that is the day before you receive that e-mail
5 from Mr. Moore about friction testing on the Red
6 Hill Valley Parkway.

7 A. Okay.

8 Q. Does that help to orient
9 you a bit in time?

10 A. Somewhat. This is still
11 all a very long time ago and I'm struggling with
12 the timelines constantly. I remember the facts,
13 but when things occur is difficult to piece
14 together sometimes. But you've clarified this
15 particular one. We reported and then I got an
16 e-mail to do traffic control.

17 Q. So you got an e-mail to
18 traffic control for the friction testing the next
19 day. Does that help you to recall why there's no
20 reference to Mr. Moore's commitment to conduct
21 friction testing on the Red Hill Valley Parkway in
22 this staff report?

23 A. No, it doesn't clarify it
24 in my mind at all. I'm very sorry.

25 Q. Thank you. I see that I

1 am a couple minutes past our -- the end of the
2 hearings for today. So I think now would be an
3 appropriate time to take a break, if the
4 Commissioner is agreeable.

5 JUSTICE WILTON-SIEGEL: Yes,
6 that's fine. I don't know whether we need to have
7 counsel attend a breakout room.

8 MS. BRUCKNER: I think it
9 might assist.

10 JUSTICE WILTON-SIEGEL: Well,
11 then I will have to Registrar do that. For the
12 rest of us, we will stand adjourned until 9:30
13 tomorrow morning.

14 --- Whereupon at 4:33 p.m. the proceedings were
15 adjourned until Thursday, June 9, 2022 at
16 9:30 a.m.

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