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**IN SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT**

State of Washington,)	
	)	Cause No.: PL16-0097, PL16-0098,
Plaintiff,	)	PL22-0142
)	
vs.)	
	)	PERMIT HEARING 8-26-22 9:00 AM
Name,)	
)	
Defendant)	

Transcription Date: April 5th, 2024

Present: Andrew Reeves, Unidentified Male, Brandon Black, Bill Lynn, Russ, Keith Luna, Damion Koontz, Jason D'Avignon, Kyle Loring, Tom Ehrlichman, Leah Forbes, Mona Kellogg, Unidentified Male 1-3, Unidentified Female 1

REEVES: All right. Uh, and the recording is started on Teams. Is there a separate recording in the room or am I good to go?

BLACK: Uh, you're, you're good to go.

REEVES: O-, okay. Well, then we'll get my gavel out and make it official. [Gavel pounds twice.] And good morning, I'm going to go ahead and call this session of the Skagit County Hearing Examiner to order. For the record, today is August 26th of 2022, just after 9:00 a.m. We have one item on the agenda.

1 This is numbers PL16-0097 and PL16-0098. And, uh, as well as the appeal,
2 which is number PL22-0142. And these involve a request for approval of a
3 Special Use Permit or SUP and Associated Forest Practice Conversion
4 Application to allow the development of a proposed gravel mine and quarry on
5 three properties totally approximately 77 acres, in terms of the size of the
6 properties. Uh, approximately 1.5 miles north of Grip Road and south, uh,
7 southwest of the, uh, Samish River. My name is Andrew Reeves. I'm a Hearing
8 Examiner with Sound Law Center, who the County has selected to hold certain
9 hearings like this one. And today, it will be my role to collect evidence in
10 the form of exhibits and testimony to determine, with the SUP portion of the
11 hearing, uh, whether the proposal complies with the County's Comprehensive
12 Plan, Zoning Ordinances, Critical Areas Ordinances and then the specific
13 requirements for an approval of a Special Use Permit, uh, under the Municipal
14 Code. And those criteria are located in Section 146900 of the Municipal Code.
15 And then recognizing, as well, that this does involve a min-, mineral
16 resources overlay, or MRO, uh, there's additional, uh, requirements, uh,
17 there that, uh, we look at. Um, so, that's the basics, uh, sort of in terms
18 of what we'll be analyzing and with the, uh, Special Use Permit. Uh, but I
19 note, as well, uh, that, and also, that the permit itself was, I think
20 originally deemed complete all the way back in 2016. Uh, and there, so this
21 process has been, uh, quite involved. And, uh, there have been several, uh,
22 sort of changes in staff, including myself, in terms of, uh, serving as the
23 hearing examiner. Uh, but ultimately, we have arrived here today. And the
24 County had issued a Mitigated Determination of Non-significance, under the
25 State Environmental Policy Act, or SEPA, and that MDNS was appealed. Uh, and

1 under Washington Administrative Code, uh, 19711683, um, Sub 5, essentially,
2 uh, such appeals are consolidated with the underlying permit, uh, and so, we
3 have two things that are happening today. So, ultimately, um, these are
4 separate to the extent that I will produce two decisions and theoretically,
5 uh, were the appeal to end up being successful, all the hard work, uh, that
6 folks have put in, in terms of, uh, taking the time to testify for the SUP
7 portion of the hearing, uh, would sort of be for not, to the extent that, uh,
8 if the SEPA appeal were to be granted, uh, that kind of invalidates, uh, the
9 rest of the process, uh, an additional environmental review would occur. But
10 this is the process we have under State Law, um, and so because there is an
11 appeal, uh, there are several, again, attorneys that are involved. And that
12 we have had, I think, three pre-hearing conferences, uh, just to address
13 procedural matters, nothing of substance, um, but through the course of doing
14 that, uh, we've made every effort to try to insure that the process of the
15 hearing, uh, for both the, uh, Special Use Permit and for the SEPA appeal is,
16 uh, is sensible and, and economic, uh, streamlined as, as can be. Uh, so to
17 that end, we've sort of set up the order that we're going to do things in.
18 And so following my remarks, I think the plan, then, is that County staff has
19 as PowerPoint presentation, uh, that will give an overview of the proposal,
20 uh, for the Special Use Permits. Uh, and then the Applicant, uh, has their
21 own summary and opening statement. Then, we'll hear from, uh, the Appellant
22 to give a brief overview themselves on, uh, the appeal issues they hope to
23 address later in the hearing. Uh, then, we have an additional attorney
24 involved, uh, with Cougar Peak, uh, which is another group, uh, they, there
25 was an attempt to intervene in the SEPA appeal, that was denied, uh, but

1 ultimately, it was determined that, of course, as part of the SUP hearing,
2 they would be able to participate. And so we were going to give them that
3 opportunity. Following that, then, we are going to take comments, uh, from
4 members of the public. And then, after that, uh, expert testimony, that will
5 sort of wrap up the SUP portion of things. And then, uh, the idea is then the
6 sort of legal nitty gritty on the SEPA aspects would occur later. And at the
7 end, I, and I note that, in terms of public testimony, um, again, two
8 portions of this, so with the SUP hearing, anyone that wishes to testify,
9 members of the public, will have that opportunity. Um, in terms of the SEPA
10 portion, uh, folks are certainly welcome to watch, but, uh, with that, and
11 any appeal, uh, ultimately, only those witnesses that have been identified,
12 or called upon, uh, by the parties to the appeal are able to actively
13 participate. Um, so, those are the basics. And then, just in terms of how
14 things will work procedurally, again, once I am done, uh, we'll turn to
15 County staff. Uh, and I, we'll hear from them. And then when we do get to
16 the, the public comment portion, we try to limit public comments to
17 approximately three minutes, uh, as often occurs at a Council Meeting. Um,
18 and I note there's not going to be an opportunity for a sort of question and
19 answer session, unlike a Council Meeting. Uh, so if folks sort of have
20 questions, I ask that they phrase it as, you know, my name is so and so and
21 I'm hoping someone can provide additional information on whatever their topic
22 is. Uh, we'll be taking notes and then after we've heard from all members of
23 the public interested in participating, uh, we'll try to get answers, uh,
24 from the, uh, Applicate team and County staff in relation to those questions.
25 Uh, there's only going to be sort of one opportunity for each person that's

1 interested in testifying to do so, in terms of member of the public. Um, and
2 also, let's see, all testimony will be under oath or affirmation, I point
3 that out because, uh, any decision I ultimately make, uh, were appealed under
4 our State's Land Use Petition Act, or LUPA, the recording of the hearing, as
5 well as the admitted exhibits and, uh, the recording, the admitted exhibits
6 and my decision would serve as the foundation for any such appeal. There were
7 several exhibits that the County had sent and identified in advance of the
8 hearing. And the number we started with, I believe, was 43, in terms of the
9 Special Use Permit, or SUP hearing. There have been a few additional exhibits
10 that have come in just in the, sort of, last few days and we'll get numbers
11 for those. Uh, but we're keeping a separate sort of, separate track of
12 exhibits, in terms of the SUP versus SEPA. And so, the, for folks that are
13 following along at home, from the County's website, there's a 3913 page PDF
14 that has those initial 43 exhibits, for folks that would like to review
15 those. And then when we get the Appeal portion, I can, uh, verify, but I did
16 ask the attorneys involved in the appeal, in advance, about the documents
17 they were hoping I would review and the Appellant submitted 58 exhibits, the
18 Applicant submitted 92, uh, and the County staff submitted what is numbered
19 as 47, but there is some overlap. Uh, so, uh, ultimately, it's slightly less
20 than that. But those were the Appeal exhibits that will ultimately be under
21 review in terms of SEPA. Uh, finally, I note, obviously, there's, uh, strong
22 feeling about a project, uh, of, of this type, uh, no matter it occurs. But I
23 ask that everyone treat everyone else involved in the proceeding with, uh,
24 respect and dignity and I'm confident folks can do that. And, uh, if not,
25 though, uh, we will figure out, uh, how best to move forward. But, uh, I

1 thank everyone, I know obviously this was originally scheduled previously and
2 I do apologize for those that took time out of their busy schedules to try to
3 participate on July 11th. I ended up quite ill, uh, so we had to, uh,
4 reschedule to today. And ultimately, we do have six days, uh, potentially set
5 aside related to this matter, uh, just in case. As it were, uh, I believe the
6 next day after today would be Monday, uh, and the thought process is, uh, for
7 those members of the public, that are testifying and want to testify, uh, if
8 there are folks that, that for access reasons or, uh, other reasons, uh,
9 really need to have that physical space to testify from, uh, we would ask
10 that those folks identify themselves to County staff that are in the room
11 today, uh, because would like to hear from them first, when we get to the,
12 uh, testimony portion of the hearing. Because we only have a physical space,
13 uh, for folks to participate from for the first two days of the hearing. And
14 I just see Brandon Black [phonetic] walking into the picture. Was there
15 something related to that, Mr. Black?

16 BLACK: Yeah. I was just not, not related to that, I was just notified
17 that the call-in feature function is not working. So there may be some
18 technical issues with that.

19 REEVES: Sorry, the call-in feature, meaning rather than joining Teams,
20 itself, the call, um, okay. Um, well, let me ask, let me start with, I guess
21 Bill Lynn [phonetic], uh, on behalf of the Applicant, uh, uh, any thoughts on
22 what you would like to do? I know that [inaudible] and you're muted.

23 LYNN: Yeah. Um, I, I thought there were some people on earlier, by
24 phone, uh, at least according to my list of participants, there were, it
25 looked like there were some that were only there by phone. But I, I may be

1 wrong. As, uh, so you're asking me whether we want to wait or, I mean, I
2 guess I don't know what the problem is with the County so it's a little hard
3 to assess what we should do about it.

4 REEVES: Ult-, ultimately, what I was asking, because, uh, you know, I am
5 fully aware of how none of want to have to do a redo or, or move things, um,
6 but Mr. Black, do we have any further information on what the issue might be?

7 BLACK: I am currently asking for that advice.

8 REEVES: Okay.

9 RUSS: This is, uh, Russ [phonetic], the, uh, conference number that is
10 posted on the, um, or that was published is incorrect. So that, that's the,
11 the problem.

12 REEVES: Sorry, that was published in the newspaper?

13 RUSS: Uh, correct.

14 REEVES: What about on the County's website?

15 RUSS: On, on the County website, sorry.

16 REEVES: Okay.

17 BLACK: Since we published one [inaudible] is that one okay?

18 RUSS: I don't have that with me.

19 BLACK: Okay. I have, whether I can look.

20 LYNN: So, I, could I just ask if there are several people who have
21 called in to comment on that, do you have a list of the people who have
22 called in and expressed, uh, difficulty?

23 REEVES: I think that was for you, Mr. Black. Uh, how did we, how was it
24 determined that this was a problem and has, uh, folks identified this as an
25 issue somehow?

1 BLACK: I was just notified, I'm, I'm asking for advice right now.

2 REEVES: Sure. Okay.

3 BLACK: Yeah. How did we find that out?

4 LUNA: Yeah. Andrew, is this is Keith Luna [phonetic], um, we had
5 several people call the Records Management Office saying that they could, the
6 phone number was working, but the conference ID number is that is on our
7 website, and it's the same number that we've had for a long time, um, isn't
8 being accepted.

9 BLACK: Uh, oftentimes with that, it's been my experience you have to try
10 again, um, re-log in, so that might be part of the issue as well. Not us,
11 them. They need to call back in. If you could try it from the...

12 KOONTZ: I, this is Damion Koontz [phonetic], I did try it from the
13 website, that's how I'm here, 'cause I was sent the wrong one via email. But
14 I went to their website, found this one and it is working, best I can tell.

15 REEVES: But that, I think that's the link to participate in Teams, versus
16 those that are using, uh, a rotary phone to dial in or whatnot.

17 LYNN: Well, uh, this is Bill Lynn again, I guess my suggestion is that
18 we go ahead and proceed. Uh, people have, will have a chance to participate
19 one way or the other and I'm sure we can guarantee that to the extent that
20 they need to see the staff presentation, it's exhaustively set forth in the
21 PowerPoint, so it should be, I don't think we're doing anything that will
22 impair people's ability to participate fully.

23 REEVES: Okay. Uh, so, Mr. Black...

24 MALE: Mr. Examiner, I, if, if people aren't actually allowed to provide
25 public comment, though, that does seem to impair their ability to

1 participate. So, I, I do just want to make sure everybody has a chance to
2 weigh in.

3 REEVES: That I agree with. I think that, my hope that this issue can be
4 resolved, you know, in the next few hours. I, you know, I don't think we're
5 going to be at the point, I mean, the way we all as, as, during the pre-
6 haring conferences, the sort of thought or intent was that we would have
7 almost two days set aside in which folks would be able to particulate, in
8 terms of providing public comment. Um, and in terms of, you know, if they're
9 not able to, you know, use the computer or come down to where the meeting is,
10 you know, hopefully, they can sort it out quickly, but [inaudible] the room
11 there, Mr. Black?

12 BLACK: Uh, you, you just, we just lost your audio and now you just cut
13 in and out. So whatever you just said, we did not hear.

14 REEVES: Okay. The joy...

15 BLACK: There you...

16 REEVES: You can hear me now? Okay.

17 BLACK: Yes. Yes.

18 REEVES: What I was trying to point out is that ultimately, I do concur,
19 uh, I think with Mr. Lynn to the extent that I think we can get started. Uh,
20 I will ask, you know, maybe after the staff PowerPoint presentation, uh, if
21 there's an update on where things stand. And then, you know, if, I'm assuming
22 if folks can't get through there's someone they're calling at the County and,
23 and maybe the County can advise them to try calling back, use the, the
24 computer rather than just the phone, um, you know, but also, if, if, let
25 folks know that they will certainly have ample, uh, you know, opportunity.

1 We're, we're not going to be at the point of folks participating with public
2 testimony for, uh, another probably hour and a half to two hours before we,
3 we start on the public testimony. So the hope is we can solve that problem,
4 uh, prior to that. So, that, that would be, uh, my thought. My. Lynn, you,
5 you look like you wanted to say something?

6 LYNN: Uh, no, thank you for that thought. I wanted to make sure that it
7 was being worked on in the background at least, if we're moving forward with
8 the rest. So I was, I was making sure we were confirming that so we can make
9 sure people can gain access and provide them the right codes, et cetera.

10 REEVES: Absolutely. So, uh, we've got a crack team working on it there,
11 Mr. Black, is that right?

12 BLACK: That's my understanding.

13 REEVES: All right. Nothing instills confidence like a Hawaiian shirt. So,
14 I think with that, we, we, can move forward. Uh, so, sorry, I, where was I in
15 my thoughts? I, sorry if I'm rambling. I, I was trying to point out,
16 ultimately, that, again, there are two processes involved, ultimately. We've
17 got a hearing on the Special Use Permits, uh, which is the one subject to,
18 you know, the open, uh, public meeting where we will take, uh, testimony from
19 the public. Uh, but then there is, as well, the, uh, SEPA appeal. Um, so
20 before we, we dive right in, I guess, with, with, uh, Mr. Cricchio, I would
21 just quickly ask to have our team of attorneys, uh, just introduce
22 themselves. 'Cause, uh, folks are going to be hearing from them. I believe I
23 introduced myself, Andrew Reeves, uh, but next, I'll go quickly to, uh, Bill
24 Lynn on behalf of the Applicant, if you could say hi.

25

1 LYNN: Thank you, uh, William Lynn here on behalf of the Applicant,
2 Miles Sand & Gravel.

3 REEVES: Thank you. And then for the County?

4 D'AVIGNON: Uh, Jason D'Avignon, Civil Deputy Prosecutor, uh, for Planning
5 and Development Services.

6 REEVES: Thank you, Mr. D'Avignon. And then for the Appellant?

7 LORING: Yes, good morning, uh, Mr. Hearing Examiner, my name is Kyle
8 Loring and I'm here representing Central Samish Valley Neighbors.

9 REEVES: Great. And then, uh, on behalf of, uh, the additional group,
10 Cougar Peak?

11 EHRLICHMAN: Good morning, Mr. Examiner, Tom Ehrlichman, from the Dykes
12 Ehrlichman Law Firm, representing Cougar Peak LLC and the Neil McLeod
13 [phonetic] family.

14 REEVES: All right. Thank you. And, uh, before we move on, sorry, I got
15 feedback there, again. Before we move to Mr. Cricchio, uh, those four
16 attorneys, does anyone have something they feel like we need to address
17 before we, we start with, uh, the presentation on behalf of the County? If
18 so, please wave your hand at me. Okay. I think, then, we are ready. Um, I, I
19 would ask, whoever is in charge of our Team Meeting, we have folks, when they
20 call in sometimes, are not immediately muted, so there is someone on here
21 that I'm definitely getting feedback from, if we can mute Terry Wild
22 [phonetic], I believe. Okay. There we go. Thank you. Okay. So, Kevin
23 Cricchio, thank you, uh, for being here. I'm going to get you sworn in. And
24 do you swear or affirm to tell the truth of the testimony you give here
25 today?

1 CRICCHIO: I do.

2 REEVES: And can you just clearly state and spell your name for the audio
3 and explain your role here at the County?

4 CRICCHIO: Sure. Uh, Mr. Examiner, uh, my name is Kevin Cricchio, K-e-v-i-n,
5 Cricchio is spelled C-r-i-c-c-h-i-o. And for the record, I work as a Senior
6 Planner with Skagit County's Planning and Development Services Department.

7 REEVES: Great. Thank you, Mr. Cricchio. So, we have informally referred
8 to the 3913 page PDF that you, you compiled as the Cricchio file. But that
9 includes Exhibits 1-43, uh, and then in addition to that, I know we've had
10 some additional things come in. Uh, could we assign some of those exhibit
11 numbers, uh, what would make mo-, the most sense to you, uh, we can do 44 as
12 the additional public comments? Uh...

13 CRICCHIO: Sure.

14 REEVES: If that makes sense?

15 CRICCHIO: Were, were you accepting those two comments that came in late,
16 that I forwarded to you about 8:30ish?

17 REEVES: I, I have no issue with comments that come in prior to the start
18 of the hearing, so...

19 CRICCHIO: Okay. Then we can...

20 REEVES: I, I...

21 CRICCHIO: Include that as 44, if that's what you wanted to do.

22 LORING: Mr. Hearing Examiner?

23 REEVES: [Inaudible.]

24

25

1 LORING: I would just sug-, suggest since we've, um, made an effort to,
2 uh, have some consistency between the SEPA Exhibit numbering and the Special
3 Use Permit numbering, that the numbers actually start, I think, on 48.
4 REEVES: Right.
5 CRICCHIO: I think I have 43, don't I?
6 REEVES: I just really downloaded what I call the Cricchio file and it was
7 still up to 43.
8 LORING: That is correct. And when I amended the, the SEPA Exhibits, I
9 changed them to match the Cricchio file. There were additional documents in
10 the SEPA Exhibit list that were then 44, 45, 46, 47. So if we want to
11 continue to avoid having the same County Exhibit be, have two different
12 documents.
13 REEVES: But these are not County Exhibits, these are the SUP Exhibits.
14 LORING: I, I understand that.
15 REEVES: Okay. Help me, should we have omitted Exhibit 44-something and
16 then move forward from there? I, I'm confused.
17 LORING: That, that would be my suggestion. I, I...
18 REEVES: Okay. So, Mr., okay, so, okay. So the Amended Exhibit List, again
19 for the SEPA appeal runs C1-C47 with several omissions. Your suggestion is I
20 immediately do 44-47 on the SUP Exhibits as omitted and then these, these new
21 documents go from 48 on and they automatically become part of the County's
22 SEPA appeal documents?
23 LORING: No, not, not part of the SEPA, but just to avoid any confusion
24 with the documents, um, which is why we amended the SEPA Exhibits so that the
25 same documents that are part of the SEPA have the same number for the Special

1 Use Permit. I omitted in the SEPA where there, there wasn't the same and then
2 added on the back end. So this would just ensure that any document from the
3 County, whether Special Units Permit or SEPA, uh, there's no confusion as to
4 what document we're referring to.

5 REEVES: Okay. Mr. Ehrlichman, you have a thought? We're off to a, a
6 cracking start here. Uh...

7 EHRLICHMAN: Uh, Mr. Examiner, uh, as it was discussed at length between the
8 parties, uh, Counsel and some at the pre-hearing conference, I think the
9 intent of everyone was that we have one set of exhibits for both proceedings
10 with the same exhibit numbers. In other words, any document that is in the
11 SEPA appeal is part of the SUP exhibit record. We weren't going to bifurcate
12 the record in the two portions.

13 REEVES: Do you mean to say the, the County's exhibits for SEPA should be
14 the same as the SUP exhibits? Because I never thought the intent was the 90
15 something exhibits that Mr. Lynn submitted on behalf of the Applicant
16 automatically relate to both and that all of Mr. Loring's exhibits
17 automatically relate to both. Did I completely misunderstand what the parties
18 were, were intending?

19 EHRLICHMAN: Um, if I may...

20 REEVES: I know there as a joint motion to allow, sort of overlap, but
21 let's not get in the weeds. I, I'm fully willing, uh, uh, to sort of allow
22 reference to those, I just, I don't want to renumber all of the exhibits that
23 everyone has already submitted at this point. But go ahead, Mr. Ehrlichman.

24 EHRLICHMAN: I think this effort to keep the two segments of a, uh, single
25 proceedings separate has led to this confusion. And our wish would be that

1 the Examiner have one exhibit list and then it gets used in both proceedings.
2 However you manage that, that's the, the intent.

3 REEVES: Happen, but thank you. Uh, Mr. Loring, your thoughts?

4 LORING: I, I just wanted to say that I do support having, um, only one
5 set of numbers throughout both proceedings so that we're not confused about
6 which C44 applies in the SEPA appeal and which C44 is in the SUP.

7 REEVES: There's, there's only one C44. The SUP exhibits are 1 through
8 whatever. They, they're not C something through C something. They're 1, 2, 3,
9 4, et cetera. That has been what we, has been the entire time, at least
10 that's how it was intended to be. And then there are three sets of Appellant
11 exhibits. The A Exhibits are the Appellant, the B are the Applicant, uh, and
12 C are the County Exhibits specific to SEPA. But now I'm worried that the four
13 attorneys, plus myself, did not actually ultimately agree on this in the last
14 several months. Bill Lynn, do you have any thoughts?

15 LYNN: Well, uh, I guess one thought I have is that we need to have a
16 clearer record. And I do think that the, the, if anything, we should err on
17 the side of including more exhibits in both proceedings. I mean, that's just,
18 uh, a basic, and really from that on, it becomes more of an administrative
19 issue, what's the easiest way to administer it. Seems like we can agree that
20 they all ought to have the same numbers. Um, you know, there should be a
21 document that's referred to by only one number, not a separate number in the
22 administrative, or the CU, SUP process from the number that it has the SEPA
23 process. Um..

24 REEVES: Here's a thought, I mean, I asked the parties, if everyone
25 remembers, to submit document list. I want to keep those numbers are they

1 are. In terms of the SUP, which is separate, my thought is we can add these
2 exhibits in, they'll go, you know, at this point, I guess, 44-47 is omitted.
3 We'll go 48 on as needed. But in terms of my decisions, you know, uh, as they
4 were, you know, because it's likely that there were ultimately be sort of two
5 decisions. But the idea being that the documents will relate to all of it,
6 just as the intent is that, you know, uh, any testimony heard for the SUP
7 portion, uh, does not, need not be repeated, uh, in the SEPA portion. I think
8 we all agreed the intent was to have sort of all the expert witnesses, all
9 the public testimony, all of that is the SUP and then really, once we get to
10 SEPA, you know, we're not really looking to have expert witnesses that are
11 SEPA specific, I don't think. But it would be more legal argument at that
12 point. But what I would end up doing, especially with this much information,
13 is I do an, uh, an attachment at the end of these and I'll just say, you
14 know, exhibits 1 through 50-wahtever, you know, on the SUP and then here is
15 what the, uh, Appellant's provided, here's what the Applicant provided,
16 here's what the County provided for the appeal and all of that relates to
17 everything. That, that's my thought, but, because, otherwise, are we saying
18 we're going to now re-number everything from, and just have one master
19 exhibit list? Because I wish we had thought of that a month ago.

20 LYNN: My understanding would be that, um, Mr. Loring's exhibits would
21 continue to have his A numbers, uh, our exhibits would consider, continue to
22 have the B numbers and the County's would continue to have the C numbers and
23 then basically just make the County's exhibits, um, in-, incorporate the SUP
24 numbers, too. And I think what, I think what Mr., I think, I think what Jason

25

1 may have done is just try to make them all C numbers and correspond with the
2 numbers they were previously assigned, if I'm correct.

3 REEVES: And I...

4 EHRLICHMAN: And, and that's my understanding from his August the 3rd list,
5 yes.

6 REEVES: Okay. So, with that, I think, hopefully, so the thought is we'll
7 do 44-47, we'll call those currently omitted, and then what we're about to do
8 is include Mr. Cricchio's PowerPoint and those, uh, you know, public comments
9 that came in later, we're going to give them exhibit numbers that go 48
10 onward. Is that what your intent was, Mr. D'Avignon?

11 D'AVIGNON: Yes, Mr. Hearing Examiner. It was simply just so, when referring
12 to a document from the County, we wouldn't have to say, this is SUP Document
13 A and this is SEPA Document C, they would just have the same number, whether
14 there's a C or not a C in front of it. Uh, just to avoid any confusion to
15 have that consistency.

16 REEVES: Okay. I think we're good. Mr. Ehrlichman, you still have your ha-
17 , oh, there we go. Are you done with your hand raised feature? Were, were you
18 good to move on? Okay. So I think we're good to move on. So back to Mr.
19 Cricchio, before I confused everyone apparently. Um, so the additional public
20 comments, why don't we make those, uh, 48? Mr. Cricchio, are you there? There
21 you are. Okay. So Exhibit 48 will be those additional comments that were
22 received. Um, and then, Cougar Peaks additional, sort of S1-S8, that, that
23 exhibit group we can make 49?

24 CRICCHIO: Mr. Reeves, did you want to include the presentation as well as
25 49?

1 REEVES: I was going to make that 50.

2 CRICCHIO: Okay. Whatever works.

3 REEVES: So 49 we'll do Cougar Peak pleading with exhibits, and I think
4 that came in yesterday. And then, uh, Exhibit 50 will be, uh, Staff
5 PowerPoint Presentation. And I believe then we're up-to-date on exhibits,
6 hopefully.

7 LORING: Mr. Examiner, Mr. Ehrlichman mentioned earlier, he suggested
8 excerpting out the Central Samish Valley SUP comments and we'd request that
9 that be 51 and that be pulled out. Just because it is a, a sizeable document,
10 we'd like it all in one place and easy to access.

11 REEVES: No issue for me. Uh, so Exhibit 51, we'll call it the CSVN July
12 memo with attachments.

13 LORING: Thank you.

14 REEVES: Okay. With that, I believe we are ready, uh, for the PowerPoint
15 and just a tech, tech things, uh, I'd point out that if you're having
16 trouble, anyone, uh, you can always turn your video off, uh, and that usually
17 will solve most of the problems in terms of bandwidth. Uh, and if my video or
18 audio goes off at any point, uh, I haven't gone anywhere, it's a bandwidth or
19 I'm blowing my nose or I'm just trying not to distract while others are, uh,
20 have the floor. Uh, so with that, Mr. Cricchio, I'm going to, I know you've
21 got a PowerPoint and I'll let you get started.

22 CRICCHIO: All right. Let me try to share my screen. And can you see me now?
23 Can you see my screen now?

24 REEVES: Uh, we can. It's not launched, oh, there it is.

25 CRICCHIO: Okay. Is that good?

1 REEVES: We'll, we'll see on the second slide, but so far, it looks good.

2 CRICCHIO: Okay. Let me see if I can, um, how do I stop sharing, can I stop

3 sharing my camera, but still share, if that makes sense?

4 REEVES: Uh...

5 CRICCHIO: Can you see my, can you see my screen?

6 REEVES: I would stop sharing screen to start, period.

7 CRICCHIO: Okay.

8 REEVES: To start and then what I think you're going to want to do is

9 you're going to want to, um, launch the PowerPoint, then hit share screen.

10 CRICCHIO: Okay. Can you see that now?

11 REEVES: I can, yep.

12 CRICCHIO: Okay. All right. Are we ready?

13 REEVES: Uh, as ready as we're going to be, I think.

14 A: All right. Sounds great. All right. Mr. Examiner, um, members of the

15 public, County staff, good morning. For the record, my name is Kevin

16 Cricchio, I work as a Senior Planner in the Current Planning Division of

17 Skagit County Planning and Developmental Services Department. So, uh, I will

18 proceed. I, I'm going to go ahead and, uh, start, uh, going through my

19 presentation. I have 55 slides. I am not going to read everything. So I'm

20 going to be skipping around and reading portions of, of, of my presentation.

21 So, what's before you, uh, is a Special Use Permit to permit a proposed

22 gravel mine or quarry on the subject property. Proposed gravel mine would

23 remove approximately, approximately 4,280,000 cubic yards of gravel from

24 three parcels over a period of 25 years. Three parcels total approximately 77

25 acres, of which 68 will be cleared, however the mining will occur on

1 approximately 51 of the 68 acres. Gravel would be removed from the site by
2 truck and trailer, generating an average of 46 trips per day. And the
3 material would be transported to market or to one of Concrete Nor'West's
4 nearby facilities for processing. The site is accessed off of Grip Road on an
5 existing private gravel haul road located approximately 0.7 miles east of the
6 Prairie Road/Grip Road intersection. Again, operations is limited to
7 excavation only. In addition to the Special Use Permit application, the
8 Applicant also has applied for a Forest Pra-, Practice Conversion application
9 to facilitate the proposed mining or quarry operation onsite, the applicant
10 proposes to harvest approximately 50,000 board feet of timber on 68 acres,
11 removing the stumps and converting the parcels to a gr-, a graveling mining
12 operation. Both applications, um, so this, this, the two applications came
13 back in, um, 2016, uh, they were submitted to the County. Uh, they were
14 determined to be complete on March 22nd of 2016. The proposed, uh, gravel
15 mine, uh, the three parcels involved in that, that where the gravel mine
16 would be, if, if approved, are located approximately 1.5 miles north of Grip
17 Road. Uh, this slide right here, uh, details the parcels involved. So where
18 the proposed gravel mine quarry would be includes these three parcels. Uh,
19 there is a private road, otherwise called a haul road, um, which is graveled.
20 Uh, which would be used, uh, to gain ingress and egress to the proposed mine.
21 And so, these, all these three, all these parcels within this category
22 include the haul road and then contiguous parcels owned by the same owner
23 would include all of these parcels. And so for noticing purposes, we use all
24 of these parcels, whether it's the, the parcels involved in the mine itself,
25 the haul road or the contig-, contiguous subject parcels that are not part of

1 the mine or not part of the haul road. The Applicant is Concrete Nor'West,
2 otherwise known as Miles Sand & Gravel located in Mount Vernon, Washington.
3 Land owner is Li-, Lisa Incorporated. And they are addressed out of Puyallup,
4 Washington. The land surveyor for the Applicant or the land owner is John
5 Semrau of Semrau Engineering and Surveying out of Mount Vernon, Washington.
6 The Applicant's attorney is William T. Lynn, Reuben Schutz of Gordon Thomas
7 Honeywell out of Seattle, Washington. Give me one sec as I move forward with
8 my paper copy as well. Okay. I'm going to slip over this slide, skip over
9 that slide. All right. Uh, the underlying zoning district, uh, where the
10 three parcels involved in the proposed gravel mine would be, uh, is located
11 in the Rural Resource-Natural Resource Land Zoning District & Comprehensive
12 Plan Land Use Designation of Skagit County. And these three parcels also
13 happen to lie within what's called a Mineral Resource Overlay. Surrounding
14 zoning and land uses, to the north, the zoning is Rural Resource Natural
15 Resource Lands, along with Agricultural Natural Resource Lands. To the south,
16 the zoning is Rural Resource Natural Resource Lands. To the east, uh, the,
17 the surrounding zoning is Rural Resource Natural Resource Lands, along with
18 the Agricultural Natural Resource Lands and Rural Reserve. And to the west,
19 the surrounding zoning is Rural Resource Natural Resource Lands, Rural
20 Reserve and Agricultural and Natural Resource Lands zoning districts. Present
21 land uses, uh, surrounding the, uh, subject property. To the north, uh,
22 predominately forestry, sporadic single-family residences, as well as
23 agriculture. To the south, present land uses are forestry and sporadic
24 single-family residences. To the east, present land use, forestry, sporadic
25 single-family residences, along with farms and agriculture. And then to the

1 west, uh, the present land use is forestry, sporadic single-family residences
2 and farms/agriculture. So some graphics, taken from, uh, Skagit County's
3 iMap, uh, showing the three subject parcels where the, uh, proposed gravel
4 mine would be located at. Um, this shows the mineral resource overlay, as
5 well as the underlying zoning district. An aerial, um, you can see the three
6 parcels here highlighted in yellow. Um, and moving onto acreage. Okay. So
7 according to Skagit County Assessor's records, the three, uh, subject parcels
8 where the mining is proposed, uh, consists of, uh, 37 acres, 20 acres and 20
9 acres respectively, or accumulatively, 77 acres. According to the Applicant's
10 submitted narrative and SEPA environmental checklist, is 68 acres sand and
11 gravel mine is proposed within the three subject parcels. The SEPA
12 environmental checklist, on page 4, further states that mining will be within
13 a 51 acre portion of that. Consistent with both the Assessor's records and
14 the Applicant's application materials submitted, the issued SEPA MDNS, in
15 2022, stated that the three parcels total approximately 77 acres, of which 68
16 acres will be cleared, however, the mining will occur on approximately 51
17 acres of the 68 cleared. And then on March 11th of this year, uh, we received
18 a letter from the Applicant, which should be in Exhibit 3, um, the Applicant
19 stated that the acreage that was listed in the issued 2022 SEPA MDNS,
20 consisting of 77 acres of the subject mine is incorrect. Instead of the 37
21 acres, acres, uh, which, uh, includes, um, Parcel P50155, it's more
22 accurately 29.6 acres in size.

23 REEVES: Mr. Cricchio?

24 CRICCHIO: Yes.

25

1 REEVES: Sorry to interrupt, I normally would not do this, but Mona
2 Kellogg [phonetic], as the Clerk, uh, does have her hand raised, I just want...
3 CRICCHIO: Oh...
4 REEVES: To see...
5 CRICCHIO: Sure.
6 REEVES: If there's an issue. Ms. Kellogg, is there an issue that needs to
7 be addressed or? [Pause] I just was pointing out Mona Kellogg, who serves as
8 our Clerk, h-, has used the hand-raised feature, and I just want to verify
9 that there isn't a technical issue. So I, I don't know if she, where she is
10 at this point, but if Mona Kellogg or Brandon Black, someone knows what's
11 going on in the room there, can tell me what the hand raised might be about?
12 [Pause] Well, I hope we didn't lose the room entirely. Is there a member of
13 County staff that can tell me what's happening?
14 CRICCHIO: I can attempt to call.
15 REEVES: And maybe stop sharing your screen for a minute. I just saw
16 someone in the room there. I think...
17 CRICCHIO: There she is.
18 REEVES: We're, we're just trying to verify what's going on. I, uh,
19 [pause]...
20 CRICCHIO: Mona, can you hear us? Mona?
21 REEVES: I don't know if they've lost...
22 CRICCHIO: They're muted.
23 REEVES: The audio. They're muted. I just...
24 CRICCHIO: I mean, we can see her, so you think that they haven't lost the
25 audio.

1 REEVES: Yeah. Uh, we sort of stopped doing what we were doing because
2 there's a hand raise up, uh, from a member of staff who, did the audio
3 equipment in the room stop working entirely?
4 CRICCHIO: Let me try to call Brandon Black on his cell.
5 REEVES: Sure. And can you maybe stop sharing your screen just for a
6 minute, there, Mr. Cricchio? If possible. I can't tell who's in charge
7 anymore, but [pause] uh, I see a staff member.
8 FORBES: Okay. We're back up.
9 REEVES: Okay. But, okay. So there was a hand raised, uh, by Mona Kellogg.
10 But I was trying to verify, did someone happen?
11 FORBES: Sorry about that.
12 REEVES: No, no. But did something happen? Have you heard..
13 FORBES: Yes. The, the public computer that is being shown on the
14 television screens in here shut down for some reason.
15 REEVES: So did folks not hear Kevin Cricchio's presentation?
16 FORBES: Yeah.
17 REEVES: Sorry, yeah, they did not hear it or yeah, they did hear it?
18 KELLOGG: They did not, the, the computer here stopped at 9:56.
19 REEVES: Okay.
20 FORBES: So we missed six minutes.
21 REEVES: Do you have an idea of what the last slide you saw was?
22 FEMALE 1: [Inaudible.]
23 MALE 1: The graphic.
24 FEMALE 1: Development..
25 MALE 1: It was the graphic.

1 FORBES: It was a graphic.

2 REEVES: Okay. And, and...

3 FORBES: A map.

4 REEVES: And who is, who is in charge of, I mean, who is running the Teams
5 meeting?

6 A: Uh, Mona, Mona Kellogg has, Mona Kellogg has the initial log-in, but
7 the, it wa-, so her work station stayed up and running, it was the one that
8 the folks in the room were watching was what shut down.

9 REEVES: Okay. And h-, for whatever reason, it's still got the raised hand
10 up. If we can, I, in a way, I'm glad I interrupted, because, uh, you know, we
11 want to make sure folks can see everything.

12 FORBES: Yeah.

13 REEVES: So what I would ask is, you know, whoever is in the room, you
14 know, if someone is able to monitor and, and do some-, hit the raised hand or
15 whatnot, if tehre's an issue. Uh...

16 FORBES: That would be Mona.

17 REEVES: All right. So, what we'll do is we'll have Mr. Cricchio go
18 back to sort of where the visuals started. And if you can just stay on for
19 one sec to make sure this is going to work. Yeah. The thing about the tech,
20 if everyone is using it, it usually works, it's the hybrid stuff where
21 everything falls apart, in my experience. It was...

22 CRICCHIO: All right. Are we ready again?

23 REEVES: We think. So did you hear all that, Kevin? So...

24 CRICCHIO: Yes.

25

1 REEVES: Essentially, when, when you brought up your hi-def photographs or
2 something, it crashed the computer in Burlington or where, wherever,
3 whichever room they're in today.

4 CRICCHIO: Okay. So I'll go back to, uh, my first, uh, picture of zoning or,
5 or of the subject property, I should say.

6 REEVES: And...

7 CRICCHIO: Okay. Hopefully, you can see my screen?

8 REEVES: We can't, again, you might want to launch the pow-, there you go.

9 CRICCHIO: Okay. And you see that and hear me...

10 REEVES: [Inaudible.]

11 CRICCHIO: Hear me okay, now?

12 FORBES: Yes, we can see your screen.

13 CRICCHIO: Okay. Awesome. All right. So going back, uh, a few pag-, a few, a
14 few pages from my presentation. So the yellow is the highlight...

15 FORBES: Kevin, can you make it full, Kevin, can you make it full-screen,
16 go to presentation mode?

17 CRICCHIO: I am not sure how to go about doing that. I am not sure how to do
18 that, Leah. Are, are you...

19 BLACK: Just to when, I think, I think the version you're using is a PDF,
20 just...

21 CRICCHIO: Yes.

22 BLACK: A PDF doesn't do a presentation. It would need to have been made
23 in PowerPoint.

24 D'AVIGNON: Kevin, if, if you go under view, it goes file, edit, view, there
25 should be a full screen mode, not in Teams, in Acrobat.

1 CRICCHIO: File, edit, what now?
2 D'AVIGNON: Go over to view, a few over...
3 CRICCHIO: Okay.
4 D'AVIGNON: And it has full screen mode.
5 CRICCHIO: Okay. Is that better?
6 D'AVIGNON: Yes.
7 FORBES: All right. Much better. Thank you.
8 CRICCHIO: Okay. I lost my pane view, though, so, but whatever works. Uh,
9 okay. So this is the three subject parcels involved, where the gravel mine
10 would be if approved. Underlying zoning, uh, Rural Resource, Natural
11 Resource, uh, Land Zoning District, uh, along with the Mineral Resource
12 Overlay. Uh, please interrupt me if there's any further issues. Um, aerial
13 photograph, um, showing the three subject parcels and then going back to
14 acreage. So according to Skagit County records, uh, Skagit County Assessor's
15 records, uh, specifically, the three subject parcels are 37 acres, 20 acres
16 and 20 acres respectively, which total 77 acres. Um, and, but, according to
17 the Applicant's submitted narrative and SEPA environmental checklist, uh, 68
18 acres sand and gravel mine is proposed within the three subject parcels, uh,
19 identified above. SEPA environmental checklist, specifically page 4, further
20 states that the mining will be within a 51 acre portion of the site. Um, and,
21 uh, consistent with, uh, the, uh, the Assessor's records, uh, we used, that
22 information, stating that the three parcels total 77 acres, of which 68 acres
23 will be cleared, however, the mining will only occur within 51 acres of the
24 68. And then we received, on March 11th, 2022, um, that the acreage that we
25 put in our noticing was incorrect, consistent, uh, uh, that the acreage that

1 was listed in the issued 2022 SEPA MDNS, consisting of 77 acres of the
2 subject mine is incorrect. Instead of the 37 acreage, acres, which the
3 Assessor's records indicates for Parcel P5011-, excuse me 155, it's more
4 accurately 29.6 acres. And then, additionally, Parcel P125644 and P125645 are
5 said to be more accurately 19.6 acres in size, for a total, accumulatively,
6 or which is 39.2 acres. Instead of what was 20 acres, uh, in the Assessor's
7 records. And, uh, these, uh, corrected acreages are based on a land survey
8 that the Applicant had done. So, the Applicant further states that the
9 Project Description more accurately should state that the acreage of the mine
10 is approximately 60 acres, 68 acres, with an area to be cleared, mined and
11 reclaimed at 51. So, staff analysis, um, we used, uh, the, uh, uh, Assessor's
12 records acreage, um, and we also based, we also, uh, used what was submitted,
13 um, in the narrative, as well as the SEPA environmental checklist, et cetera.
14 And if anything, we over-estimated the acreage, not under-estimated it.
15 Which, as far as noticing purposes, is a good thing, over-estimating versus
16 under-estimating. Shoreline jurisdiction, the Samish River flows along the
17 eastern border of the project site. Um, there are shoreline associated
18 riparian wetlands that have been delineated. Shoreline environment
19 designation for this portion of the Samish River is rural. All proposed
20 mining ac-, activities will be located outside of shoreline jurisdiction and
21 thus no shoreline permit is required. Critical areas, so over the years, uh,
22 like I said, this, this Application came back in in 2016, there have been
23 numerous, uh, environmental reports, uh, with regard to critical areas. And
24 so I'm not going to go through all of it, but, um, just touch on, uh,
25 essentially what has been submitted. In all of the reports that have been

1 submitted, uh, from 2016 to date, um, we have, uh, used the recommendations,
2 uh, for the respective reports in the SEPA MDNS that was, um, issued in 20-,
3 2022. So, um, in 2015, August 21st of 2015, a hydro-, hydrogeologic site
4 assessment and map was submitted that was prepared by Earth Sciences. Let me
5 move forward a little bit. Okay. And then December 20-, uh, December 16th of
6 2021, uh, the Applicant submitted, uh, a geologic hazard, they submitted
7 response to Skagit County Geologic, Geologic Hazard requirement, uh,
8 regarding geologic hazards to the haul road, that was prepared by Associated
9 Earth Sciences. And again, that was dated December 16th of 2021. That, that
10 had to do, uh, mostly with, with the haul road. Wetlands and Fish and
11 Wildlife Habitat Assessment, um, as part of the submittal, the Applicant
12 included what's called a Samish River Ordinary High Water Mark/Wetland Edge
13 Determination, that should be found in Exhibit 4 of your staff report, Mr.
14 Examiner. That was prepared by Graham-Bunting and Associate, Associates,
15 dated May 18th of 2015. R-, um, the report concluded that it is our opinion
16 that the area of shoreline management jurisdiction extends 200 feet landward
17 of the ordinary high water mark as identified in the field and depicted on
18 the site plan prepared by Semrau Engineering and Surveying. The Applicant
19 also submitted, um, August 20th of 2015, a Fish and Wildlife site assessment
20 that was also prepared by Graham-Bunting and Associates. Page 7, 7 of that
21 report, uh, it provide reasoning for allowing, uh, the use of the moderate
22 land intensity buffer, rather than the high land use intensity buffer,
23 pursuant to Skagit County Code 14.24.240(3)(A). And then it lists some, um,
24 some, some of the criteria there. April 18th of 2017, the Applicant submitted
25 an addendum to the Fish and Wildlife Site Assessment, that also was prepared

1 by Graham-Bunting and Associates. That looked at, uh, some critical, uh,
2 habitat, uh, endangered, threatened or sensitive species. And then December
3 of 2021, the Applicant submitted, um, both a Critical Area Assessment, um,
4 Wetland Delineation and Fish and Wildlife Habitat Conservation Area. And an
5 Impact Assessment and Mitigation Plan. That can be found in Exhibit 8 of your
6 Staff Report, Mr. Examiner. Uh, that was prepared by Northwest Ecological
7 Services, and that also is specific to the haul road. Floodplain, uh, there,
8 there is no floodplain here. Moving on from Critical Areas, uh, employees of
9 the Applicant has stated that they anticipate one to two employees would be
10 working on site. No offices are proposed and potable water would be brought
11 in, um, for drinking purposes by the employees. Restrooms, uh, it is
12 anticipated that, uh, there be a port-a-potty on site. And then moving on to
13 Proposed Hours, uh, of, of and Days of the Operation. So the Applicant
14 proposes, or proposed, that the days and hours of operation generally limited
15 to Monday through Saturday from dawn to dusk. And that the Applicant further
16 states that the hours of operation potentially be expanded based on market
17 conditions and seasonal demands. Skagit County Code 14.16.440 (10) (i)
18 requires that hours of operation vary according to the zoning district
19 designation of the site, but may be shortened by the hearing examiner based
20 on site-specific circumstances. Uh, proposed mine is located, again, in the
21 Rural Resource Natural Resource Land Zoning District, mining operations, uh,
22 on the Rural Resource Natural Resource Land Zoning District designate,
23 designated land may be granted unlimited hours of operation. However, the
24 Hearing Examiner may limit hours of operation to daylight hours or to such
25 other reasonable limitation deemed necessary to address potential significant

1 adverse impacts to existing adjacent land uses on any portion of the mining
2 site where mining activity is proposed or occur less than one quarter mile
3 from the existing, from existing rural intermediate, rural village or urban
4 growth area designated lands. Proposed mine site is located greater than one,
5 uh, quarter acre from the rural intermediate, rural village and urban growth
6 desi-, designated, uh, lands, however. Okay. So, moving onto, uh, uh,
7 planning and development services limitation of hours and days of operation.
8 So in order to mitigate potential impacts of the quarry on the neighborhood,
9 the hours of operation were limited by Planning and Development Services
10 Department in, in the issued SEPA MDNS, issued in 2022, hours were limited to
11 Monday through Friday, from 7 o'clock a.m. to 5 o'clock p.m. No mining
12 operations, uh, are permitted outside of these times, including holidays. If
13 seasonal/temporary demand indicates a need for extended hours, or Saturdays
14 or Sundays, Applicants shall submit a request for a temporary deviation to
15 these permitted hours to the Planning and Development Services, Services
16 Department. If permitted by PDS, such, such operations may be subject to
17 additional conditions. Project access, uh, so, again, uh, the three parcels
18 involved in the mining site, uh, approximately 1.5 miles north, along, uh,
19 north of Grip Road on haul road, that can be found in your Plan Stat Exhibits
20 19 and 40, Grip Road is an existing private, graveled forestry road, which
21 extends north from Grip Road. There is an internal bridge, uh, that, uh, haul
22 road crosses and so in order to access the three parcels where mining would
23 occur, you would have to go across this internal bridge. This internal bridge
24 crosses, is, uh, crossed over an approximately 14 foot by 40 foot bridge,
25 which spans Swede Creek. Uh, the bridge has been evaluated, uh, for, um,

1 weights. So the, the dump trucks going over it, it has been evaluated for it,
2 um, as far as it being able to handle the weights. That can be found in
3 Exhibits 20 and 21. Traffic, so, since this project came in in 2016, there
4 was a number of memos that were, uh, were provided by the Applicant, from,
5 uh, the Applicant's Consultants. Um, these memos addressed, uh, possible
6 traffic impacts, and then, uh, eventually, the Applicant did submit a Traffic
7 Impact Analysis, although I don't believe that Skagit County, uh, uh, Public
8 Works Department triggered it, uh, based on, on Standards. So according to
9 this Traffic Impact Analysis, uh, Skagit County Road Standard Level of
10 Service, otherwise known as LOS, requirements are met for each intersection
11 impacted by the traffic generated by Grip, by the proposed mine. No
12 mitigation level of service measures were required based on the TIA. However,
13 to mitigate traffic related site distance issues, a flashing, a flashing
14 beacon and signing system were proposed and agreed upon for traf-, traffic
15 generated by the Grip Road Mine. Um, these recommendations, uh, uh, in the
16 TIA were incorporated as mitigation measures in the 2022 SEPA MDNS, which can
17 be found in Exhibit 27. Let me proceed with my papers, please. So, uh, this
18 slide, just wanted to point out again, according to the TIA, uh, it's
19 anticipated, uh, that there be 23 full truck loads or 46 trips per day.
20 Third-party review of the traffic impact analysis.

21 REEVES: Hold on one sec. Uh, we're getting quite a bit of noise from the,
22 uh, room there.

23 CRICCHIO: Sure.

24 FORBES: Uh, will you guys go back...

25 MALE 1: Go back one slide.

1 MALE 2: Go back one slide.

2 FEMALE 3: Page 38.

3 CRICCHIO: Sure. Are, are you ready?

4 FEMALE: Yeah.

5 MALE: All right. Hold on.

6 CRICCHIO: All right. I can, I can go ahead and read this. Uh, this is in
7 the traffic impact analysis. In order to maintain the level of service, uh,
8 which is a C, maximum operation limit may not exceed 30 full trucks, 60
9 trips, per hour, with a maximum operation limit of 720 full truck trips per
10 day.

11 REEVES: [Background noise] okay. Hold on one sec.

12 CRICCHIO: Sure.

13 REEVES: Mona Kellogg, is there a technical issue that we need to address?
14 Who...

15 KELLOGG: No. Everyone just wanted, um, Kevin to go back a page.

16 REEVES: Okay. I, I'm worried that this is not going to ultimately, uh, be
17 an effective way to move forward. I, I, these, the PowerPoint, I believe is,
18 is, now, is, is this available, ultimately, on the, on the City's web-, I'm
19 sorry, on the County Website, Mr. Cricchio?

20 CRICCHIO: That's correct, Mr. Reeves. It's on the, uh, portion of the
21 Skagit County's website, uh, dedicated to, uh, the Concrete Nor'West Gravel
22 Mine.

23 REEVES: So what I would suggest, folks, I, I, if you feel like you would
24 like more information about something, A) you know, uh, later today or if you
25 have a device you, you can use to download this PowerPoint, you can look at

1 it, uh, at leisure, uh, but B) if you feel like, you know, something was
2 missed, when we get to the point, uh, when you are able to provide public
3 comment, uh, we will, uh, you, you can mention it and, and we can, uh,
4 address it at that time. I'm just worried that if we have Mona Kellogg raise
5 her hand every time, uh, someone says something or something comes on the
6 screen, uh, we'll, we'll have problems. So, uh, we're going to limit the
7 raised hand feature to technical issues, uh, and maybe Mr. Cricchio, just try
8 to be, you know, wary of moving too quickly, uh, through, through your
9 slides, I know you have another 100 or so in this deck. But, uh, we'll, we'll
10 get through them. So, with that, if, uh, we can turn the raised hand off on
11 the Mona Kellogg computer, uh, again, I'm trying not to interrupt unless
12 there's a major technical issue.

13 CRICCHIO: Okay.

14 REEVES: I think we're okay. If would ask, at some point, if someone
15 could, there we go, there's the raised hand feature off. Go ahead, Mr.
16 Cricchio.

17 CRICCHIO: All right. Thank you, Mr. Reeves. So, the section, uh, on, on my
18 slides, uh, specific to, uh, reports are taken right out of the reports. So
19 it's essentially copy/paste from the report, for the most part. Um, and if
20 there's any questions about, uh, environmental impacts that are perceived,
21 that can be directed to the Natural Resource Staff. Um, that, um, is also
22 representing Skagit County. And, additionally, if there's any, uh, questions
23 or concerns about traffic and, and perceived traffic impacts, that can be
24 addressed by the Public Works Department that's also, also is representing
25 the County here.

1 REEVES: And, Mr. Cricchio, I just want to note for everybody, uh, that is
2 here, that, uh, traffic is one of the major concerns that was raised, I
3 believe, the Appellant has traffic experts that, that they're going to bring
4 on later, I believe, uh, we're going to hear from, uh, uh, Mr. Ehrlichman's
5 experts on that. And I think the Applicant has experts on that. So for those
6 that are trying to keep track of what's happening, uh, the, sort of the two
7 very big issues, environment impacts and traffic, if we treat those...

8 CRICCHIO: Sure.

9 REEVES: As separate, there are going to be expert witnesses, uh, that are
10 going to testify, uh, potentially for days on, uh, several days on these
11 specific issues. Uh, so, so just know, for folks there in the room, that, uh,
12 we're all aware of, of the worries and concerns that members of the public
13 have raised, in terms of traffic, and environmental, uh, concerns and the,
14 the hearing has, has certainly been designed to have a more thorough review
15 than the one deck of slides on the PowerPoint that Mr. Cricchio is, is
16 presenting right now. So with that, Mr. Cricchio, please continue.

17 CRICCHIO: All right. Thank you, Mr. Reeves. So moving onto third-party re-,
18 review of the traffic impact analysis, as well as the memos, um, Skagit
19 County, uh, Planning and Development Services, as well as the Public Works
20 Department, uh, did hire, uh, third-party review, um, specifically, uh, GTC,
21 as well as HDR, performed third-party review. That can be found in Exhibits
22 15 and 16 of your staff report, Mr. Reeves. And third-party review, uh,
23 looked at, uh, the Applicant's traffic information, their memorandums, as
24 well as their analysis. And third-party review essentially resulted in
25 revisions to the Applicant's traffic memos and analysis. And, uh, ultimately,

1 those recommendations, um, um, were incorporated, uh, from the traffic impact
2 analysis into the SEPA MDNS. And then during the 2022 issued SEPA MDNS, um,
3 during the comment period associated with that, one comment was received by
4 Kyle Loring, uh, representing the Central Samish Valley Neighborhood, um,
5 and, um, appealing the County's issued SEPA MDNS. Parking, um, I don't think
6 I've gone over that, I think I'm progressing in the correct way. Uh, parking,
7 essentially, all parking would be on-site. Noise and emissions, I don't have
8 too much more, uh, it's on 55 slides. Uh, and so essentially, any, any, the
9 mining operation, uh, the Applicant has indicated that the mining operation
10 is anticipated to be in compliance with both, both day and night, uh, noise
11 regulations. Um, not to, not expected to generate excessive emissions or
12 odors, with the exception of dust generation. Um, the Applicant, as part of
13 the application submittal, did submit a Fugitive Dust Control Plan, Plan,
14 which can be found in Exhibit 22, uh, 22 of your Staff Report. Which includes
15 the spraying of water on roads and equipment to control fugitive dust. That
16 also has been compliance with the fugitive dust control has been, uh, made a
17 condition of approval or a mitigation measure. So moving on from that. Oops.
18 Okay. So findings of fact, uh, property is located in Rural Resource Natural
19 Resource Land Zoning District, uh, and Comprehensive Plan Designation subject
20 property is located in the mineral, Mineral Resource Overlay, gravel mines
21 are allowed in the Rural Resource Natural Resource Land Zoning District
22 Mineral Resource Overlay with a Hearing Examiner Special Use Permit. March 7th
23 of 2016, uh, the Planning Department received both an application for a
24 Special Use Permit and a Forest Practice Conversion Permit. Applications were
25 deemed complete on March 22nd of 2016. A Notice of Development Application was

1 published in the Skagit Valley Herald on March 31st of 2016. This notice was
2 posted on site and mailed to neighboring land owners within 300 feet of the
3 subject property. There was a comment period with it, with that, uh, Notice
4 of Development Application, which ended on the 15th of April of 2016. A SEPA
5 mitigated determination of non-significance was issued on May 26th of 2016.

6 REEVES: [Background noise] hold on. Uh, um...

7 CRICCHIO: Is there a way to mute that?

8 REEVES: Yeah. Can we mute Sarah Day [phonetic], anyone that is not the
9 podium or Cricchio should be muted. Identified as Sarah Day having a
10 conversation. Great. Okay. Okay.

11 CRICCHIO: Okay.

12 REEVES: All right. Go ahead, Mr. Cricchio.

13 CRICCHIO: Sure. Thank you. Uh, so a SEPA, uh, mitigated, a SEPA MDNS was
14 issued on May 26th of 20-, 20-, 2016, uh, Notice of Public Hearing was issued
15 on, on November 16th of 2016. Um, however, uh, the Planning Department
16 determined that the proper notice of the subject application was not given.
17 Um, uh, this did go before a public hearing and, on 20-, November 16th of
18 2016. But the Planning Department, uh, realized that not proper notice was
19 given. So according, accordingly, the Hearing Examiner opened the hearing,
20 but decided to continue it, uh, to a future date, which is where we are
21 today. Uh, the Planning Department issued a second Notice of Development
22 Application, which was published in the Skagit Valley Herald on December, uh,
23 15th of 2016. Uh, neighbors within 300 feet were notified and then there was a
24 new public comment period associated with that. Which was December 30th of
25 2016. Um, okay. G. So, during the public comment periods, um, there has

1 actually been two, um, uh, so far, um, we've re-, the County received
2 numerous public comments. And then subsequently, or consequently, the
3 Planning Department requested additional information from the Applicant on
4 March 14th of 2017. The Applicant provided this information, but the Planning
5 Department did not believe it was sufficient or complete, so the Planning
6 Department, uh, made an administrative decision on April 5th of 2018 to deny
7 the subject applications for failure to timely submit the requested
8 information. The Applicant appealed this administrative decision, PL18-0200
9 on April 16th of 2016. And then on April, October 17th of 2019, Hearing
10 Examiner denied the County's motion for summary judgement, reversing the
11 Planning Department's denial and ordering the Application, Application to go,
12 uh, to the Hearing Examiner for a decision on merits. Following the appeal,
13 the Applicant submitted, uh, continued to provide additional information. On
14 April 15th of 2021, the Planning Department, however, withdrew the SEPA MDNS
15 and issued a new more substantial MDNS, addressing the concerns raised about
16 this particular project. But then, again, on May 11th of 2021, the County
17 withdrew the SEPA MDNS. This action was appealed. On June 17th of 2021, Sk-,
18 uh, the Planning Department for Skagit County informed that the Applicant
19 that they were required to obtain critical areas review for the entire
20 private haul road that would be used for ingress and egress to the proposed
21 quarry. On June 24th of 2021, an appeal from the application, from the
22 Applicant, excuse me, was received, requesting the Hearing Examiner reverse
23 this decision, um, requiring critical area review on the h-, on, on, on, on
24 the haul road. Uh, a SEPA mitigated determination of non-signif-,
25 significance was issued on February 2-, 22nd of this year. The SEPA MDNS was

1 published in the Skagit Valley Herald newspaper, posted on site and, uh, uh,
2 mailed to neighbors, as well as parties of record. During the appeal, again,
3 one, one appeal was received on March 25th of 2022.

4 REEVES: Sorry, Mr. Cricchio?

5 CRICCHIO: Sure.

6 REEVES: Just for those that are trying to follow along at home, or in the
7 room, can we go back to Slide I?

8 CRICCHIO: Yes.

9 REEVES: Uh, so here at the bottom, you say on June 24th there was an
10 appeal that was received, it requested the former Hearing Examiner something.

11 CRICCHIO: Sure.

12 REEVES: What happened? What was the outcome? That was not included in the
13 slide here.

14 CRICCHIO: Sure. My, my fault. So...

15 REEVES: That's okay.

16 CRICCHIO: Uh, as a result of, of, of that appeal, the, uh, Hearing Examiner
17 ruled in favor of the County. So, um, essentially, the appeal was, was
18 reversed and, uh, the County, uh, the decision was, was in favor of the
19 County and Critical Area Review of the haul road was required. And that is
20 what resulted in the Critical Area Reports that were submitted in December of
21 2021.

22 REEVES: Sure. So that was the 2.1 miles or so of haul road..

23 CRICCHIO: Yes.

24 REEVES: Right there and then, uh, now, I think we're up-to-date on J, so...

25 CRICCHIO: Sorry about that.

1 REEVES: No problem at all.

2 CRICCHIO: My apology. So, moving onto J, uh, SEPA MDNS was issued on
3 February 22nd of 2022, it was published in the Skagit Valley Herald, posted on
4 site, uh, as well, as well as emailed and mailed to the parties of record and
5 to, uh, uh, neighbors within 300 feet. That resulted in appeal, um, uh, of
6 the SEPA NDMS, um, and that was filed by the Appellant on March 25th, 2022.
7 And then, moving forward to a Notice of Public Hearing. The Notice of Public
8 Hearing was published in the Skagit Valley Herald, posted on site, mailed,
9 emailed to the parties of record, uh, as well as mailed to neighbors within
10 300 feet. So, uh, as, as you know, Mr. Examiner, um, we've received a lot of
11 public comment on the subject proposal before you, um, going back to 2016.
12 And I think it would be fair to categorize the majority of the, uh, public
13 comments we've received, um, falling into the, um, category of perceived
14 impacts to County roadways or, or traffic, as well as, um, potential
15 environmental impacts that the quarry may have.

16 REEVES: Sure. And I agree with that.

17 CRICCHIO: Um...

18 REEVES: I think the number I sort of guesstimated was approximately 2,000
19 pages of, of, uh, of public comment related materials, is the number I, my
20 math might be a little off, but...

21 CRICCHIO: It, it's a lot. I, I've done my best to put all of the pieces
22 together, uh, to get this, uh, project, uh, to you. Um, and to provide a, uh,
23 complete record. There's a possibility there could be some redundancy in this
24 public comments, um, but I wanted to make sure that all public comments, um,
25 are, are represented and get before you.

1 REEVES: Thank you. I'd rather have, uh, redundancy than miss anything,
2 so...

3 CRICCHIO: Thank you. So routing, as part of any project, um, uh, whether
4 it's a Special use Permit or any other type of, uh, land use permit, uh, some
5 types of land use permits, uh, require public noticing, whereas other don't.
6 Um, this is a Hearing Examiner Special Use Permit, um, so this, uh, does
7 require noticing. So, and then, in addition to noticing, we have both
8 internal and external routing. And so we solicit comments to departments of
9 jurisdiction as well as agencies of jurisdiction, um, so whether it be, uh,
10 the Natural Resource people, uh, in, in Skagit County's Planning Department,
11 Public Health, Public Works, Fire Marshall, um, and there's many others, we
12 solicit for comment. And any comment that we have received, um, has been
13 incorporated as, um, uh, conditions of approval if, if they're requesting
14 something. And as you know, the Applicant is requesting a Special Use Permit,
15 um, and a Forest Practice Conversion Permit. Uh, it's being consolidated
16 review and so that's what's before you today. It's a Level type, Level 2 type
17 of review process. Hearing Examiner, uh, is the decision maker on this.
18 Special Use Criteria, that can be found in your Staff Report, Page 19-27.
19 Mining Operations Criteria of Approval, that can be found in, in your Staff
20 Report, pages 27-28. And then Hearing Examiner Review Criteria, pages 28-20
21 of your Staff Report. And so, based on the applications materials submitted,
22 um, all the reports, uh, the Traffic Impact Analysis, the SEPA MD-, MDNS, the
23 Findings of Fact, um, and, um, the Planning Department would recommend
24 approval to you, Mr. Examiner, that the subject, uh, Special Use Permit and
25 Forest Practice Conversion Permit be approved, subject to Staff's, uh,

1 conditions of approval that is listed in your Staff Report, including the
2 SEPA MD-, MDNS. So, if I can get out of this, um, I don't know if I can do
3 that. I think I can. Okay. I'm going to fast forward to, just want to give
4 you some visuals, uh, or pretty much done as far as my portion. Okay. Okay.
5 Jason, are you there?

6 D'AVIGNON: It's under View.

7 CRICCHIO: It's under View. Thank you. Okay. Thank you. Okay. So, um, this,
8 uh, was a site visit that, uh, myself, as well as, uh, John Semrau and Dan
9 Cox, uh, with, uh, Miles Sand and Gravel, met, on site, uh, in recent months.
10 And so I've taken a number of pictures, uh, just to give you a visual of what
11 it looks like out there. Um, so as you can see, uh, we've done lots of
12 noticing over the years. Um, currently, there is, um, a locked gate here, um,
13 keeping people out, um, obviously, we're, we're there, so it's opened. And
14 so, when you, so this is Haul Road, um, and then Grip Road is up here. Um,
15 when you, um, look to the left, as you're looking towards the gate, from the
16 inside looking out, this is the, uh, view that you're looking at. So, uh,
17 there is a curve up here a little ways. Um, it's...

18 REEVES: Sorry.

19 CRICCHIO: And then...

20 REEVES: To clarify what you were trying to get us to visualize, I'm in my
21 car, where, where is my car and did I just leave the haul road and turn a
22 certain direction?

23 CRICCHIO: So, if you are looking, if, if, if you're facing the street, Grip
24 Road right here.

25 REEVES: Yep.

1 CRICCHIO: You either look left or your look right. Okay. And then so then
2 as we proceed, this is looking left, so you're looking up the hill. And then
3 there's a curve up here. And this is facing, from the inside facing Grip
4 Road. So, when you look left, you're, you're looking this way. When you look
5 right, you're looking down this way. This is in-, internal to the, uh, so
6 you're looking at Haul Road, um, it's, it's, it's having been on this, it's,
7 it's pretty extensive, um, so Haul Road is quite a ways. Um, there is a,
8 there is a part where you cross over Swede Creek, um, on the bridge that I
9 talked about. Here is the bridge and, again, um, the Applicant has submitted,
10 uh, memos, uh, from qualified professions that have evaluated the capacity to
11 hold, um, hold, um, trucks crossing this that have gravel in them. And so
12 there is, the predominate, uh, landscape that you're looking at, on Haul
13 Road, is forested. It's graveled, pretty remote, there is a few areas where
14 you see this, it has been logged in the past, um, but, again, graveled, very
15 remote. Um, y-, the neighbors are quite a ways away. And, um, at the terminus
16 of Haul Road, that's where they're proposing to, uh, that's where the three
17 parcels are and that's where the proposed, uh, gravel mine would be. Um, and
18 that, Mr. Examiner, is all I have.

19 REEVES: Sure. Um, in terms of just getting us up-to-date in the timeline,
20 Mr. Cricchio, can you speak to what happened after, you know, I was
21 hospitalized and we had to move the hearing, uh, did the, did the County make
22 any effort or how, how is, how is this sort of re-notice so folks knew to
23 show up places or participate or do things? Do you happen to know the answer
24 to that?

25

1 CRICCHIO: Yes, we did re-notice. And so, uh, re-noticing did occur of the
2 Notice of Public Hearing. So, originally, it was scheduled for July, if I
3 recall correctly, Jul-, July 11th, 12th and 13th, I think...

4 REEVES: Yep.

5 CRICCHIO: I'm correct.

6 REEVES: Yep.

7 CRICCHIO: Um, so we did re-notice, uh, to all parties of record, via email
8 and snail mail. And we did, uh, mail out the notices to all the neighbors
9 within 300 feet of all those subject parcels. Uh, we posted the, the, the
10 revised notice, as well, as well as on site and, uh, that revised notice was
11 also published in the Skagit Valley Herald.

12 REEVES: And I assume it was also updated on the website? Did you say that
13 already, I apologize if you...

14 CRICCHIO: That's, that's correct. We did up-, we did update, uh, working
15 with IT, IT did update that, per my request.

16 REEVES: Excellent. Thank you. And, and I know that we're going to hear,
17 in-depth, from, from experts later, um, but just again for sort of the
18 purposes of the bigger picture overview, can, I think you would probably be
19 able to do this, but, can you just very quickly touch on the SEPA sort of
20 process to the extent that while watching your slide show, if I'm not an
21 expert, I might get a little confused to the extent that it seems as if SEPA
22 has occurred, like, three times already? So can you just quickly touch on,
23 uh, uh, you know, what the process looks like and is there some other outcome
24 that, that's possible than say an MDNS, just, and, again, I know we'll get
25 into it in much greater detail later, I'm just trying to...

1 CRICCHIO: Sure.

2 REEVES: Where if I wasn't an expert and I'm trying to follow along at
3 home, kind of, that was something I was wanting to have clarification on.

4 CRICCHIO: Sure. I, I, hopefully I can answer your question, Mr. Reeves. So,
5 SEPA, that stands for State Environmental Policy Act, and SEPA, uh, uh,
6 sometimes, depending upon what an application, applicant is submitting, to
7 whether it's City or County, may require SEPA Environmental Review. Um,
8 whether it's a project action, um, i.e. the Applicant is proposing something
9 or whether it's a project non-action, such as a comprehensive plan, um,
10 amendment or a code amendment. Um, so SEPA can be triggered or, or it can be
11 exempt from being triggered, uh, depending upon what is before a City or
12 County. Um, there's different thresholds that, uh, a City or County could
13 issue when, uh, reviewing, uh, an application for SEPA. One of the threshold
14 determinations can be a Determination of Non-Significance or otherwise known
15 as a DNS, another threshold determination can be what's called a Mitigated
16 Determination of Non-Significance, otherwise known as a MDNS. And then,
17 finally, the last threshold that could be potentially triggered is what's
18 called a Determination of Significance or a DS. A DS would require an
19 Environmental Impact Assessment, whether the two former, DNS and MDNS does
20 not require an Impact Assessment. Uh, so SEPA review has occurred on this in
21 the past. There has been some errors on, on behalf of the County, um, so we
22 have, uh, done our best to cross our Ts and dot our Is and make sure, um, uh,
23 Skagit County Code, as well as State Law is followed. And that this appl-,
24 that this particular, uh, proposed gravel mine is adequately mitigated for.

25

1 REEVES: Thank you. I think that was helpful to the extent that the
2 levels, uh, and so, uh, you know, one of, we'll hear from Mr. Loring here in
3 just a little bit, but one idea under SEPA is, you know, what, what level or,
4 or what, what is triggered and what is required. In this instance, the County
5 determined a Mitigated Determination of Non-Significance was appropriate such
6 that, uh, the County's determination again was that with mitigation measures,
7 required mitigation, this proposal could move forward, such that there would
8 not be significant environmental impacts. Is that right, Mr. Cricchio?

9 CRICCHIO: That's correct, Mr. Reeves.

10 REEVES: Okay. And so, just also to clarify one final thing there, at the
11 other earlier SEPA determinations, are sort of no longer applicable, we've
12 just got the one MDNS that was appealed, uh, by, uh, uh, I'm sorry, I
13 shouldn't just say Mr. Loring, it was not him, it was the Central Samish
14 Valley Neighbors, uh, that appeal, uh, was the one, that's the one MDNS on
15 the table, uh, the other, the other, the others sort of SEPA stuff, if, as it
16 were, has been withdrawn or, uh, overturned, et cetera, is that an accurate
17 way to think about that?

18 CRICCHIO: That's correct. So the previous SEPA's are no longer. This is the
19 SEPA MDNS, um, there has not, no other, uh, threshold determinations are
20 applicable before the July 22nd, uh, 2022, uh, MDNS. So this is the threshold
21 determination.

22 REEVES: Excellent. And then, just in terms of your PowerPoint, Mr.
23 Cricchio, I had said something about a 100-something in the deck, I, I think
24 there was, if you go download this...

25 CRICCHIO: Yes.

1 REEVES: Uh, off of the County's website, there are more slides, but, but
2 quite a few of them are just, you know, property tax information, uh, you
3 know, um, there weren't sort these substantive, uh, slide decks that you
4 wrote out yourself, that you, you bypassed. Is that a fairly accurate
5 assessment?

6 CRICCHIO: Yes. Thank you, Mr. Reeves. That's entirely correct. So, uh,
7 there's a lot of information in there that I included in my, uh, combined PDF
8 presentation. I like to come prepared, uh, uh, instead of not.

9 REEVES: Okay. So, my, and, again, my understanding of, of the intent of
10 everybody is that that sort of is our big picture overview, uh, Staff
11 presentation. Uh, then we were going to hear from, in order, uh, Bill Lynn,
12 then Kyle Loring, uh, then Mr. Ehrlichman, uh, as, again, bigger picture, not
13 a question and answer sort of thing. And then members of the public after
14 that. There will be a break at some point. Uh, but did I, I just want to make
15 sure none of the attorneys had a different understanding and, and I, I didn't
16 believe we were going to be having cross examination of Mr. Cricchio just on
17 his, his basic overview. I hope that was everybody's understanding. That
18 seems to be the case. Okay. Good. So with that, uh, Mr. Lynn, are you ready
19 to move forward? We're about two hours in. I'd be fine, you know, if we, you
20 know, want to push, push through or if folks need a short break, that's fine.
21 Just someone...

22 LYNN: Uh, I'm, I'm ready to move through, but I'm happy to accommodate
23 anybody else if they've got a different idea.

24 REEVES: The longer I do this, the, I try to be a little better about it.
25 But, uh, I'm, I'm fine, I think. So why don't we at least get through, the

1 intent is that Mr. Lynn is, I think he promised 15 minutes or so, I'm not
2 going to limit him, uh, but we'll at least get through Mr. Lynn, uh, so thank
3 you if, and I don't swear him in because he's an attorney. Uh, it's a stayed
4 joke I've overused in this forum and I others, I sometimes swear at
5 attorneys, but I don't swear them in. Uh, but, so, Mr. Lynn, uh, you are just
6 going to give a sort of basic, sort of overview on behalf of the Applicant,
7 is that accurate?

8 LYNN: Yes, thank you.

9 REEVES: Please.

10 LYNN: Uh, happy to represent Miles Sand and Gravel, uh, on this matter.
11 I've represented them on a number of, uh, permit actions, although I think is
12 probably the smallest, although perhaps one of the more controversial. Uh, I
13 think our position could be summarized very quickly, uh, this is property
14 that is, has been designated by the County as appropriate for this use, in
15 fact, it's a priority use for this area. Uh, the second point is that this is
16 a very large site with very small mine. Uh, you can see from the pictures
17 that this is a remote, uh, location, not in anybody's, uh, regular view
18 scape, it's, it's a small area on a big site. The third thing is that this is
19 a very limited operation, uh, basically one or two people with a couple of
20 pieces of equipment, not the full scale, uh, mine that you might otherwise
21 think about. And then, finally, uh, this process has been long and the site,
22 uh, at the end of it is extraordinarily well, uh, mitigated, both by the
23 actions of Miles, in limiting the scope of what's proposed, but also by the
24 regulations imposed by the County and other agencies, and then finally by the
25 conditions of the MDNS that are tailored to this site. I'm going to expand on

1 each of those things, uh, uh, a little bit. I want to start, though, from the
2 proposition that what we're dealing with here is an unique commodity. Uh,
3 some of us might not choose to go to bars, some of us might not choose to go
4 to a particular convenient store or Costco or a particular medical office,
5 but everyone on this call, uh, uses gravel on an ongoing basis. Everybody
6 who's sitting in a house that sits on a foundation, everyone who drives a car
7 or a bicycle, uh, everyone who received tap water, uh, through utilities that
8 are in trenches, uh, each of us uses gravel. And there will be a little bit
9 more about that later. But this an unusual product, in that sense. Uh, gravel
10 can't be mined everywhere, you can locate a medical office whether you want,
11 but gravel mines can only occur where gravel exists. And it's not just any
12 gravel, it has to be gravel of a, of the necessary quality to serve the needs
13 of the community. It has to be in a quantity that is marketable and can be
14 obtained, um, in a, in a feasible manner. It can't be located under
15 development that has already occurred. And this is an important one because
16 there's lots of gravel in our state, some of it, though, is located under
17 cities, like, Lakewood and University Place, down where I come from. It's,
18 it's already developed, it can't be, uh, obtained. Uh, the gravel to be mined
19 has to be, uh, away from critical areas, you can't have areas crossed by
20 creeks and, and streams, it has to be separated from those. And it has to be
21 separated from, uh, ground water and, and surface water. And, uh, it can't be
22 under other unsuitable material that makes it, uh, difficult to obtain. And
23 then, finally, it has to be located in proximity, in proximity to the areas
24 where it will be used. And even the County's policy notes that it must be in
25 close and economic proximity to the market. So, that, uh, dramatically limits

1 where we could even think about proposing this activity. And that, those
2 factors, the combinations of the extraordinary public demand and the
3 limitations that I've just described, are why the Growth Management Act told
4 us all, as a matter of State Policy, that one of the first things we Cities
5 and Counties have to do, in planning their futures, is to identify where
6 natural resources are that are necessary for our society. They did that for
7 agriculture, uh, for timber and for mineral resources. And they said, you
8 have to define those first and protect them and not just provide them, but
9 protect them from encroaching uses. So, the, the normal order of things is
10 reversed as to, uh, mineral resources because they are essential and their
11 preservation and, and excavation, in the case of, of mineral resources, is
12 essential. So, the County has implemented that by, uh, designating mineral
13 resource lands, this is one of them. Actually, you'll see on Maps later that
14 this actual entire site is actually a designated mineral resource land, all
15 700 plus acres, um, but this only concerns the 51 acres that, uh, that we're
16 addressing in this application. Uh...

17 REEVES: Sorry to interrupt, Mr. Lynn.

18 LYNN: Yeah.

19 REEVES: Just, again, try to help folks that might not be experts, when,
20 when you're talking about the order and the designations, is this when
21 implementing the comprehensive plan as required, uh, under the Growth
22 Management Act, or GMA, is that what you mean, what you're talking about when
23 you talk about these designations and things?

24 LYNN: Yes, that was one of the first steps that the County was required
25 to take was to designate these protected areas. And then they had to develop

1 the other allowed uses, kind of working around that. Just in the same manner
2 that the County was required to designate critical areas and make it's
3 planning around that. So it's a primitive or foundational stage in the
4 development of a comprehensive plan.

5 REEVES: Right. I, I hadn't heard the word comprehensive plan, I was just
6 wanted to make sure folks were trying to follow, that they knew where you
7 were in your explanation.

8 LYNN: I appreciate, appreciate the clarification. So, um, so the County
9 has designated this land and has said that this is a priority use, uh, as
10 Special Use Permit is required, but you have to start from the proposition
11 that some level of, of impacts are necessarily are going to result from the,
12 from the use of these mineral resources that are protected. And, and this
13 area is one where that is a, a priority use. So, what is proposed here, um,
14 first of all, physically, it's small in scale, 51 acres very small for a
15 surface mine, and that is the area that's proposed to be cleared and mined.
16 And that's on a 735 acre site. So it represents about 7% of the overall site
17 that's actually going to be used. And it's very well screened and, and
18 buffered as, as you have seen from the pictures. Really, the most noticeable
19 part about that, though, is that the very, uh, the very, the activities that
20 are proposed are very limited. Uh, surface mines can include all manner of
21 processing, uh, not just excavation, but washing and shorting and crushing
22 and asphalt batching, concrete batching, uh, dredging, recycling, this is the
23 other end of the spectrum, what's proposed is that the material will be
24 excavated by a crew of one or two people, using two or three pieces of
25 equipment. No building is proposed, uh, there's nothing of permanence here.

1 This is an interim use, where a couple of people will excavate this mine to
2 be processed, uh, with the gravel to be processed elsewhere. Uh, it's
3 interesting that people characterize this as an industrial use. The things
4 that have industrial, uh, quall-, qualities, potentially, like, crushing, uh,
5 or processing equipment or, uh, sorting and, and this big, uh, bees nest of
6 activities, that's going to occur someplace else. All that's going to happen
7 here is the excavation and transportation of material. It is literally the
8 least you can do in a mineral resource area. This is the low end of the
9 spectrum, not the high one. And the level of, uh, transportation here, again,
10 is very small, 23 loads a day on average is a very small number. Uh, uh, you
11 know, there will be times when that's exceeded, but those will lead to an
12 annual average of 46 trips a day. And I think the, the other thing that's
13 very much worth noting here is that this site is closed in. So while there
14 will be use of rural roads, as there are with every...

15 REEVES: [Background noise] hold on one sec.

16 MALE 3: Hi, how, how are you all doing?

17 REEVES: Good. Uh, we're going to go ahead and mute anyone, anyone that
18 joins us, uh, there will be an opportunity to testify later. But, uh, folks
19 that, that join the meeting are muted until...

20 MALE 3: Hi, glad to meet you.

21 REEVES: Sorry?

22 LYNN: Uh...

23 BLACK: I think you're hearing a phone conversation, Mr. Reeves.

24 REEVES: Oh, if, if, uh, there we go. Thank you. Sorry, sorry to interrupt
25 there, Mr. Lynn.

1 LYNN: Uh, as I was, uh, saying, the, the type of roads here are not
2 uncommon in rural areas. What is a little bit uncommon is the relative
3 proximity of the site. It's a short haul, uh, by gravel, uh, context, and
4 alternative sources of this same material, which is in demand, uh, might well
5 be located farther away and involve a longer haul on similar roads. So, um,
6 for all of those reasons, this is a small scale operation on a big site,
7 well-buffered from, uh, other activities. And then, finally, I want to talk
8 about the process and what it has led to in this case. Uh, you know, there's,
9 there's criticism as you review, review the comments as to the, the changing,
10 uh, context and the, and the length of time. Certainly, we've complained
11 about the length of time that this has taken. Really, a lot of the, the
12 difficulty here has arisen from the fact that the County started off by
13 applying its normal standard to this project. And then, as the public volume
14 has increased, the, the, the level of comments, the extent of comments, the
15 County has, uh, done more and more to try to address those things. And, and
16 I'll give you just a few examples of that. Uh, we started off with a level of
17 traffic analysis that the County thought was commensurate with this type of
18 facility. Uh, by the time we were done, we had submitted a number of
19 different reports, the County had engaged, uh, two different experts to
20 review the material and provide additional input and we had responded to
21 that. Now, that's not the ordinary pro-, uh, process. But because the County
22 was hearing from the public that they didn't trust the County experts to
23 review, the County responded and went out and it got others to parties to
24 participate. So, that's a level of scrutiny not normally applied, but what
25 was here. Um, normally, with a mining operation where all you're doing is

1 excavating, you wouldn't do a noise analysis. But because of the public
2 comments, the County required it here. And then the County went a step beyond
3 that and actually required a vibration analysis where the, the Applicant was
4 required to hire a consultant to look at the vibration from trucks on the
5 homes that they passed. Uh, uh, an extraordinary step that, uh, again
6 reflecting the, the County's effort to be responsive to the public. And then
7 several years into this process, when we thought we were nearing the finish
8 line, the County said, uh, we want you to analyze the haul road as to
9 critical areas. We know you're not proposing to do anything there, uh,
10 physically, you're not alternating it, and, uh, but we want you to analyze
11 the impacts. And then the County went out and hired another review, watershed
12 company from Kirkland, their expert walked both sides of the haul road, from
13 beginning to end, and came out with a list of specific, uh, critical areas
14 that it wanted analyzed. And those, that work was done, their recommendations
15 were incorporated into this. So the project has been under an extraordinary
16 spotlight from the beginning. Uh, uh, it's been a long process. But
17 literally, everything has been, uh, reviewed and, and considered. And on top
18 of those requirements that are incorporated in the MDNS, I just want to note
19 that the County has pretty extensive requirements of its own for any surface
20 mine, all of which are met. And I also finally want to indicate that there,
21 this is not the only source of, of regulation of surface mines. Uh, the, the,
22 uh, mines are extensively, uh, monitored and reviewed by the Department of
23 Natural Resources, the Department of Ecology as a Special Permit, uh, for
24 surface mines. Uh, their requirements have to met, be met, including the, uh,
25 monitoring and, and regulation of water quality. Uh, there's the northwest

1 clean air agency that addresses dust impacts and then finally the, uh, MSHA,
2 the ag-, federal agency that regulates mine safety. So, this is a, an
3 extremely well-regulated project, it's extraordinarily small and it's on the
4 site that is to be devoted to this use. So we think by the end of the hearing
5 you will, uh, have been presented a strong case for approval of the Special
6 Use Permit.

7 REEVES: And, again, just to help, for those trying to follow along that
8 aren't experts, that, just on that, what you were stating at the end there,
9 Mr. Lynn, you know, I know we've got the, you know, Surface Mining Act, which
10 is in Chapter 78.44 of the Revised Code of Washington, for instance. I think
11 you were referencing the County has its own regulations, I don't, did you
12 mean it, Critical Areas Code or, or the Mineral Overlay or...

13 LYNN: Yeah. I, I was talking about the Mineral Resource Overlay or, or
14 the surface mining regulations in general are pretty specific here, unlike
15 some jurisdictions that leave it all to the Hearing Examiner. There are a
16 variety of ways, and we'll talk about those in, in more detail, but, uh, and
17 then let me just make a final point, kind of tying that in with the
18 environmental review, uh, when the County makes its environmental
19 determination as to what level of, uh, further scrutiny is appropriate, they
20 have to take into account not only their own regulations, but the regulations
21 of others. And it's only in those areas that are not regulated by specific
22 codes and regulations that the County has some discretion. And through the,
23 those regulations, plus the additional mitigation, uh, we believe that there
24 are no, uh, even potentially significant environment impacts left and that's
25 why we think the County's MDNS was appropriate.

1 REEVES: Great. And just, just sorry, one final clarification, uh, were
2 this to be approved, again, haven't made up my mind, uh, or anything to that
3 effect, but, uh, based on what you just said, are there other permits that
4 then the Applicant would need to go get from other agencies with jurisdiction
5 to the, I'm asking because I think you were eluding to the fact that in some
6 places, the Hearing Examiner is sort of, you know, this is the end of the
7 process, in some other instances, it's more in the middle of the process, you
8 know, some permits, you know, I have lots of authority, some I, you know, I'm
9 just one of many, usually the lowest on the totem pole. Uh, can you just very
10 quickly touch on that? I, I'm sure we'll get into more detail later, but I
11 think up front it would be helpful.

12 LYNN: Uh, yeah, from the, the work that is done on the site will
13 require permitting from the County, everything from the road entrance, if it
14 hasn't already been approved, to, to the storm water, uh, management and, and
15 certainly any proposed changes to the road in the future, and I don't think
16 there will be any, would require that. The County will be, uh, permitting the
17 improvements that are required through the SEPA process. And, uh, the, all
18 the other agencies I mentioned have their own permit process. We need a
19 permit from the Department of Natural Resources to, uh, operate the mine, we
20 need a, to bring the property within the, the Department of Ecology storm
21 water plan. But I think the, the primary discretionary approval by the County
22 would come through this process.

23 REEVES: Right. Okay. So I, I guess what I was trying to understand is,
24 uh, were this a, were this approved with a SUP later, then DNR would have a
25 separate permit where it reviews other aspects of the project? I, I'm just...

1 LYNN: Yes.

2 REEVES: Trying, by analogy because people don't run into surface mining
3 as often as they run into other things. You know, say under the, with the
4 shoreline, you know, and someone is doing work, you know, with a shoreline
5 permit, often Department of Ecology is involved, and they have a Special
6 Permit and, and, uh, Fish and Wildlife has a Special Permit, sometimes Army
7 Corp, so there's that multiple levels of review. Some of it overlaps
8 significantly. I guess I was just trying to understand that in your mind,
9 they're, DNR, but there are other agencies that have further review to do or
10 they have already done that? I'm, I'm trying to get a sense of where we are.

11 LYNN: None of that can be done until this permit is issued. So in that sense,
12 this is a, this is an early permit, despite the fact that we've been at it so
13 long. So, yeah, there are a series of other permits that will be required
14 that, that will...

15 REEVES: Oh, no. All right. I see other people moving.

16 BLACK: Yeah. It looks like he's frozen.

17 REEVES: All right. I'd like the record to note, I, I got, uh, William
18 Lynn to freeze up and, uh, mid-sentence. It's never happened before. It was a
19 tech issue, I think. You were just concluding, uh, Mr. Lynn, that, uh,
20 essentially, this is one of the earlier permits, ultimately in the process
21 and then you froze up for just a sec.

22 LYNN: Yeah. I, I think that's, if I droned on after that, I was
23 probably wasting everybody's time anyway, so...

24 REEVES: Excellent. Okay. Well, thank you. I know you've got witnesses and
25 experts, uh, you intend on calling later in the process. Uh, but I think,

1 well, first off, I want to go quickly and see if we can go to the room and
2 get Brandon Black back in front of us to see if we have any update, uh, on
3 tech issues. And then while we're waiting on Mr. Black, I think Kyle Loring
4 and, uh, Tom Ehrlichman were each going to speak for, for about as long as
5 Mr. Lynn did, as sort of opening. But, uh, Mr. Black, you're muted there.
6 Muted. No. Can't hear you, Mr. Black. Someone is going to have unmute the,
7 the podium.

8 BLACK: Apologies.

9 REEVES: Hey.

10 BLACK: Here we go.

11 REEVES: Yeah. We can hear you.

12 BLACK: Uh, yes, we do have some updates I was going to give you, but I
13 have Russ who's, uh, stepped up here with me. I think I'll let him speak.

14 REEVES: Okay.

15 RUSS: So, uh, currently, we have someone trying to, uh, set up, uh, a
16 new meeting, essentially, is what we would have to do. The problem is that
17 the phone, uh, number, um, we cannot get one created with a new ID number.
18 Uh, so until I get that update, I really can't add in a phone number right
19 now.

20 REEVES: Okay.

21 BLACK: So, uh, just to follow up on that, what I was instructed, and
22 I'm, I'm hoping this is still the case, is that during the break, we would
23 shut down, re-log in a new number, apparently the number expires if it's not
24 used within 60 days. And I think that, that's what I've been told, that hap-

25

1 has happened. Uh, but we can fix that, it will show up on the Hearing
2 Examiner's website again and folks can go to the same website and link in.

3 REEVES: Wait, wait, wait. Just to be clear, you're saying my intent is we
4 hear from, uh, Kyle Loring, Tom Ehrlichman, then we'll take a, a break, would
5 be my plan, that would be right about lunchtime, I think. And you're saying,
6 then, when we come back, everyone that is participating, I think there's 30
7 of us on Teams right now, we need to go back to the website and, and re-, re-
8 hop on and it will be, however we do that, it should be correct that time?

9 BLACK: I, I am definitely not, uh, technologically advanced, uh, and
10 that's not part of my deal, but that is, uh, potentially what we are working
11 on trying to do. So hopefully we'll have some more updates on that. I'm just,
12 uh, transferring information I've been given.

13 REEVES: Okay. I mean, we, we don't mean to throw you under the bus, but
14 someone's got to get thrown and you're wearing the Hawaiian shirt, so it just
15 seemed, you know...

16 BLACK: Doing my best. Uh...

17 REEVES: No, thank you, Mr. Black, we appreciate it. I, so...

18 BLACK: I did see Leah pop up there for a second, I don't know if she can
19 further clarify, she's more...

20 REEVES: You're going to try to pawn this off on the, the...

21 FORBES: He's totally trying to pawn this off on me right now because I'm
22 the one that gave him the information. Our, our understanding is that because
23 that conference ID number expired for not being used for 60 days, um, it's
24 just that nobody called into our meetings that we've had in the past couple
25 of months, that we need to create a new one. We do have somebody on standby

1 with our, um, our IT department to get that updated, project, um, logging
2 information on the County website, as well as on the Hearing Examiner page.
3 We would put it on the County Home page, as well as the Hearing Examiner page
4 for today.

5 REEVES: But, Ms. Forbes [phonetic], does that impact, so, we all would
6 need to log off during the break and then re-sign, you know, re-click...

7 FORBES: Click on the, yeah, that's my understanding. And that...

8 REEVES: Okay.

9 FORBES: That is kind of a precautionary thing. I'm not sure you
10 absolutely have to, but as a precaution, during the lunch break, it makes the
11 most sense to do it then. Have everybody log off at once. We'll get that new
12 log-in information created and posted online, get folks to both log back into
13 the Teams Meeting as well as have the option of calling in to provide
14 testimony.

15 REEVES: Okay. And, uh, Leah Forms, because you clearly are more competent
16 than the rest of us on these matters, probably several other things, too, can
17 you, are you able to sort of just cut and paste the list of who is currently
18 on Teams? I ask because if we do move forward with this process, uh, when we
19 come back after the break, I would love to go, okay. I'm a little nervous
20 because we had 30 and we're down to nine or something, you know, just to try
21 to keep track? I, I'm afraid, if it was Zoom I'd be a little bit more bold,
22 but Teams and I, as you well know, we, we, we don't get along well, me and
23 Microsoft products. So if you, are you able to do that?

24 FORBES: Yes, I just captured screen shots of the list of folks in the
25 meeting.

1 REEVES: Okay. And, and it should be around 30, that's what I show, so...

2 FORBES: Yeah.

3 REEVES: Okay. So here's the intent, uh, we are going to now move next to
4 Kyle Loring, uh, who's going to give his sort of brief overview on behalf of
5 his clients, uh, then we'll, we'll, uh, same thing with Tom Ehrlichman, uh,
6 and then we'll check in with Leah one more time before we take our break,
7 just to make sure that we all, you know, that she's confident that we should
8 all log off. Uh, but, uh, that is the plan, uh, so thank you everybody. And
9 with that, Mr. Loring, if you can introduce yourself and the group that you
10 represent and then give us your, your overview of where things stand in terms
11 of, uh, the appeal ultimately?

12 LORING: Thank you, Mr. Examiner, I'd be happy to do that. Uh, my name is
13 Kyle Loring and I represent the Appellant in the SEPA Appeal, Central Samish
14 Valley Neighbors, uh, and the individuals who compose that group at the same
15 time. So I, I should mention on the onset that I'm styling this more as an
16 opening and so I'll refer to the evidence that, uh, CSVN intends to adduce
17 per the Hearing Examiner, uh, rather than my own opinions, as part of that.
18 But, uh, I will start by saying that my clients certainly view this
19 industrial mining operation very differently from the extraordinary small
20 characterization, uh, that you just heard from the Applicant here. Um, so,
21 uh, I, I also am not planning to provide legal opinions, but I will recite
22 the issues that are in front of you, in the SEPA Appeal, the two issues that
23 we've set forth in our brief, just as a reminder as we get started, uh,
24 through that process. But I'll focus more on the evidence that you'll hear,
25 uh, from everybody there. Um, and also, you had a question a moment ago about

1 DNR authority, just through I'd start in on that and say they're focusing, of
2 course, on the reclamation, the back end of the mine opera-, or the mine
3 itself and what happens when it's turned back into some other use or
4 converted to another use, not the operations as much here, although there can
5 be small overlap. All right. With that, uh, with that aside, let's jump right
6 in and say that, uh, this, this process has been going for awhile. That is
7 true. And for the past six years plus, uh, the community members, those many
8 community members, including my client, have diligently monitored the two
9 applications for the Special Use Permit and the Forest Practice Conversion.
10 And, uh, and the shifting and incomplete environmental review for a sizeable
11 gravel, uh, mine in their neighborhood. It is a 51 acre mine, 68 acres would
12 be cleared, uh, in addition to those 51 acres that would be cleared and then
13 also excavated into the ground. Uh, they've spent countless hours reviewing
14 applications documents, familiarizing themselves with land use rules,
15 spending their personal resources, uh, for expert analysis of application
16 materials and for legal representation. And when they've learned of factual,
17 procedural deficiencies, which has happened regularly, they've communicated
18 those to Skagit County staff and informed the public about them, playing that
19 role, as well, to try keep the public informed of this process. Which, again,
20 has been lengthy. So, they now appreciate the opportunity to present this
21 information to you, during this consolidated hearing. And, uh, and I'll just
22 start with what they request, and that is, uh, that they respectfully request
23 that that Mitigated Determination of Non-Significance be vacated so that
24 Skagit County can correct the failure to fully evaluate and address the
25 environmental impacts of the mine operations. Including the impacts that have

1 already been caused by converting the private haul road, uh, from forestry to
2 gravel hauling. And, uh, and the incompletely reviewed traffic, geological
3 instability, wetlands, stream, noise and climate impacts. Uh, that as the
4 application states, would occur over approximately the next quarter century.
5 So, this is not, this is not a short-term activity. Uh, it is a, it's been
6 estimated to go 25 years. So, the brief legal segment that I'll add is that
7 the State Environmental Policy Act, we'll call it SEPA, going forward, uh,
8 requires the agencies carefully consider the range of probable impacts,
9 including short-term and long-term effects and a Mitigated Determination of
10 Non-Significance, or MDNS, is only appropriate where there has been a review
11 of the project's full impacts and that review indicates that, with
12 mitigation, the project will result, uh, will not result in probable
13 significant adverse impacts. So, the questions in the SEPA portion of this,
14 uh, the SEPA Appeal that you'll be hearing about, excuse me, are 1) did the
15 County err when it issued an MDNS? And their bear the burden of proving, with
16 that threshold determination, that it was appropriate. Uh, did they err in
17 doing so without examining impacts that you'll hear about during this
18 hearing? Uh, and further, did they err when they declined to issue a
19 Determination of Significance that would lead, then, to an Environmental
20 Impact Statement on some of these specific, uh, targeted impacts? Uh, that as
21 you'll hear from the testimony are likely to cause more than a moderate
22 adverse impact. Again, we're talking about the excavating and hauling of 4.28
23 million cubic yards over 25 years. So, during this hearing, you'll hear
24 formal testimony from four members of Central Samish Valley Neighbors, or
25 CSVN, uh, they won't be dur-, they won't be speaking during the public

1 comment, we'll be taking testimony more directly with them as witnesses. And
2 you'll also hear five subject matter experts. So you'll hear testimony from
3 CSVN's Martha Bray [phonetic], about the public's experience during the
4 permit review process. The challenges in obtaining information. She'll
5 testify to many frustrating delays in the process. Our continuing
6 inconsistencies between application materials and the County's position and
7 its own rules and to be forced to file the SEPA Apple when the MDNS still did
8 not address project impacts, in the end. And this was the third MDNS, uh,
9 these nonetheless, did not address the impacts and did not significantly
10 change, uh, throughout the course of this process either. There were some
11 additional environmental reviews in between those MDNS issuances. But you'll
12 hear testimony that the MDNS also did not significantly change in terms of
13 the conditions, uh, that were applied. You'll hear that it took four years
14 before the Applicant grudgingly conducted a Level 1 Traffic Impact Analysis.
15 Uh, you'll hear that that was still deficient and that a Level 2 Impact
16 Analysis was required for traffic. Uh, you'll hear that nearly six years
17 passed before any reports about the gravel hauling road, uh, occurred. And
18 that was the road that you'll hear was, uh, installed into, not installed,
19 but where the surface was changed to gravel and where it was expanded in
20 2018, during the pendency of these applications and without any County review
21 of the potential impacts of that development there. Along with 2.2 m-, uh,
22 mile long road. You'll hear from Linda Walsh [phonetic], another CSVN member
23 and someone whose family lives next to the proposed mine site. Uh, Ms. Walsh
24 will testify that she and her neighbors do not consider this a remote
25 location. Uh, you'll hear testimony that, uh, about the mine's impacts on her

1 family, uh, including noise impacts, that weren't studied for the property,
2 but instead apparently studied where they might impact the house, which is
3 farther away than areas in the woods where her family spends ample time, uh,
4 recreating and enjoying themselves there. You'll hear from Matt Mahathy
5 [phonetic], an expert in critical areas like wetlands and streams and
6 somebody who has conducted hundreds of site assessments and is intimately
7 familiar with both critical area reviews and SEPA reviews, uh, to the nu-,
8 he'll testify to the numerous emissions in the application's Review of
9 Impacts to the areas, both at the excavation site and along that private haul
10 road. He'll testify that industrial mine that removes all vegetation and all
11 soils and excavates down to within ten feet of ground water qualifies as a
12 high-impact land use, uh, that requires the largest buffers. Uh, and he'll
13 testify that the Department of Ecology reached that same conclusion. Uh, we
14 didn't hear that in the Staff Presentation, but they submitted ongoing
15 comments to that effect and the 300 foot buffers are required for the
16 development that is proposed here, this mining of the full site. Uh, he'll
17 testify that, uh, well, in fact, the County reached that conclusion in 2017,
18 too, with a letter from John Cooper [phonetic]. Uh, he'll testify about steep
19 slopes and the fact that buffers actually need to be increased in areas with
20 steep slopes and he'll testify that based on the surveys that have occurred
21 for this site, and the site plans that show those steep slopes that the
22 buffers should be a little bit larger than that 300 foot, uh, distance as
23 well. He'll also testify to the lack of delineation of wetlands associated
24 with the Samish River. And we heard a moment ago, uh, from Mr. Cricchio, the
25 County's position that they had been delineated. Uh, we'll hear from, again,

1 this expert, Mr. Mahathy, that actually the, the formal delineation process
2 did not occur along that area, and that there isn't evidence that it did
3 along the Samish River wetlands. Um, he'll also testify that the Applicant
4 did not accurately, uh, characterize the streams that are on the site,
5 primarily the streams along the haul road, uh, and, uh, per the Department of
6 Natural Resources and that those streams actually have higher value than has
7 been acknowledged and reported to date, and thus warrant greater protection.
8 And, ultimately, he'll provide his opinion, as an expert, that all of these
9 areas led to the application under-representing the impact that the mine
10 would cause. And that those impacts are significant and require a
11 determination of significance in this, in this instance. You'll hear from
12 Nora Cammer [phonetic]. She'll testify, based on her expertise in Natural
13 Resource Protection Restoration and Management about the ecological
14 importance of the Samish River and Swede Creek and about unexamined mine
15 hauling impacts on them. Uh, she has a history and background in forestry.
16 And so she'll testify that the 2018 expansion and graveling of the private
17 haul road, which has been characterized as a gravel, uh, gravel gravel haul
18 road, essentially, uh, occurred without an permit and isn't necessary for
19 forestry use. And so must have occurred for this project, again, un-reviewed,
20 uh, by the County. Uh, she'll also testify that while the overall site is
21 over 700 acres, uh, there's no indication that the logging of the non-mining
22 areas will be discontinued in those areas. Uh, you'll hear from Dan McSheen
23 [phonetic], who's an expert engineering geologist. He'll testify that the
24 private haul road actually bears numerous [inaudible] slope instability. This
25 is one of the issues about where that haul road, uh, approaches Swede Creek

1 and then crossed over bridge, it comes down a bit of a slope there. And he'll
2 say that those, uh, slope instability issues were apparent through a review
3 of lightdar [sic], uh, notwithstanding the Applicant's consulting the
4 contrary. And he'll testify that no responsible geologist could have reached
5 the, the, sorry, the conclusion put forth by the Applicant's, uh, consultant,
6 that there's no risk of landslide along Swede Creek as a result of traveling
7 with that, uh, heavy gravel truck and pup down those steep slopes. You'll
8 hear from several, uh, witnesses about traffic issues. You'll hear from John
9 Day [phonetic], a member of Central Samish Valley Neighbors, and a local
10 cyclist, who has poured over the applications transportation documents. He'll
11 describe his perspective as a frequent user of Grip and Prairie, Prairie
12 Roads. He'll discuss the limitations of those roads. Uh, he'll discuss the
13 lack of limitation in the MDNS conditions for hauling gravel. Simple things
14 like the lack of an identified haul route, a specified haul route, I should
15 say. Or a lack of, uh, maximum daily trips along these areas. The only number
16 we've seen, primarily, is this 46 per day. That's an average number and he'll
17 testify that the Applicant has acknowledged that an average, average number
18 and that they are unwilling to be limited, uh, to a maximum number for haul
19 trips. You'll be oriented to this corridor, uh, the narrow, windy portions of
20 Grip Road and Prairie Road by Brian Bowser [phonetic], uh, who will use
21 photos and videos to help guide us along the route that those trucks would
22 take in both directions. Uh, in addition to the trip that would travel east
23 of the mine, you saw, that was one of your first questions about the photos,
24 uh, from Mr. Cricchio, which direction you were facing. There was a photo
25 facing left out of the, uh, haul road, that direction has not been evaluated

1 for impact. And so Mr. Bowser will show some of those steep turns and angles
2 and nonetheless higher speeds and what it would look like to travel along
3 those with a truck and trailer. Uh, you'll hear from Phil McCloud [phonetic],
4 who is an experienced cyclist and board member of the Skagit Bicycle Club,
5 about the anticipated impacts of having their trips and there, uh, their
6 bicycling and then their group rides, uh, impacted by gravel trucks, again,
7 along these routes with virtually no shoulder. Um, although the applications
8 materials identified shoulders on Prairie Road and, and, uh, F&S Grade Road,
9 there are virtually no shoulders, uh, as can be seen by photographs and, and
10 other maps of those areas. And last, you'll hear from Ross Tillman
11 [phonetic], who's an expert in transportation planning. And he'll testify to
12 his experience, both in preparing traffic impact analysis and transportation
13 master plans that the application failed to fully evaluate transportation
14 impacts. Including the use of all the haul roads, routes anticipated for
15 operation, uh, impacts the cyclists, impacts related to school bus use and
16 others on the substandard Grip and Prairie Roads that have no shoulders. Uh,
17 impacts to Grip Road from heavy truck and trailer use of its potentially
18 unstable slope, uh, noise impacts of compression brakes on those roads and
19 that steep downhill, uh, on Grip Road. And the lack of a Conflict Analysis
20 that could have illuminated and then led to those concerns being addressed.
21 So, ultimately, uh, and notwithstanding the suggestions by, uh, Miles pre-
22 hearing filings, um, you'll hear that this is not an appeal about whether
23 mining can occur on Mineral Resource Overlay Lands. That's not the appeal
24 here today in front of you. Uh, instead, the appeal is really about whether a
25 mining applicant must fully examine the impacts that are going to be caused

1 by a mine, both on the site and during the ha-, along the full haul route,
2 uh, through that area. And you'll hear that this appeal is about how we
3 balance the potential impacts that are going to be caused by a new use like
4 this, with the community's, uh, with their rights as a community as well and
5 with the burden to bur-, uh, born, burden to be borne by a subset of that
6 community. Uh, and you'll hear that even after six years, this mine hasn't
7 received that full environmental accounting. And the overly modest conditions
8 that would apply to the mine do not address many of those impacts. So it's
9 not about, you know, a certain number of conditions, it's not about a certain
10 weight of paper that has been filed or electronic data, megabytes that have
11 been submitted, it's about whether some of these basic questions about the
12 impacts have been fully evaluated. Consequently, uh, after you hear this
13 evidence, CSVN will ask you, that you grant the appeal, you vacate the MDNS,
14 and you require that full environmental review before revisiting the mine's
15 permit compliance under the Special Use Permit. As you indicated earlier, the
16 SEPA review needs to happen first and it needs to provide all of the
17 information necessary, both for SEPA and for determining compliance with
18 those Special Use Permit criteria. So, I thank you for your time and, uh, we
19 look forward to presenting you with this evidence over the course of the next
20 few days of hearing.

21 REEVES: Great. Thank you, Mr. Loring. Uh, so next, uh, before our break,
22 we're going to hear from one more, uh, party, this is, uh, Tom Ehrlichman,
23 who does represent, uh, another, uh, group of folks there in the area. So, go
24 ahead, Mr. Ehrlichman.

25 EHRLICHMAN: Thank you, Mr. Examiner, can you hear me okay?

1 REEVES: I can hear you fine.

2 EHRLICHMAN: Thank you. Tom Ehrlichman, from the Dykes Ehrlichman Law Firm,
3 representing Cougar Peak LLC. And the caretaker of its 400 acre property, uh,
4 Neil McCloud [phonetic] and his family who reside on that property. Theirs is
5 the first driveway you get to when you turn right, exiting the mining road
6 onto Grip Road. Um, and their driveway entrance out onto Grip Road is, is
7 very close to the mine and it's in a precarious location, as we'll describe
8 during our presentation. Uh, first off, I'd like to thank the, the County
9 staff, actually, for the great job they have done organizing this hearing and
10 making it possible for us to make this presentation. There's been a lot of
11 cataloging of, of exhibits and coordinating of the parties and the
12 conferences and so forth. Uh, that's much appreciated. Um, and Mr. Examiner,
13 we also wanted to thank you for the opportunity to present our argument in
14 this case. Um, we are here to address the Special Use Permit as you pointed
15 out earlier. We're not here as SEPA Appellants or interveners. Um, but we
16 note that the criteria in the Code for approval of a Special Use Permit is
17 actually quite rigorous. And those criteria, uh, do focus on, uh, the traffic
18 impacts that we're concerned about. Um, and, you know, SEPA is a, is a good
19 gap-filler when, uh, the policies or the Code don't address, uh, important
20 impact issues. But fortunately, here in our Special Use Permit proceeding,
21 uh, and our presentation, we do have the tools to present you with the
22 reasons why you should condition this project, um, in a way that's different
23 than the recommendation you see in front of you, with respect to traffic
24 impacts. Uh, our sole focus in this case, as you know, Mr. Examiner, from
25 our, uh, submittals to you, is the traffic impacts on Grip Road that effect

1 the McCloud family, uh, the employees of Cougar Peak, the folks making
2 deliveries there, um, contractors, uh, employees and so forth. Um, honestly,
3 without, um, trying to sound dramatic, literally, their lives, and those of
4 their families, are at risk from this proposal, unless it's conditioned to do
5 something about the high intensity risk from the gravel truck traffic. You
6 know, now, as much as you will hear throughout this proceeding how much work
7 has been done on the project, um, how, how small scale or, um, priority
8 mining uses are in the County, n-, none of those arguments can avoid the
9 plain truth of this application. Which is that it will substantially increase
10 the risk of death or injury to the McCloud family, Cougar Peak, um, folks
11 serving Cougar Peak LLC. We, we can't ignore that in this proceeding. And
12 while your decisions can be appealed, you are the County's decision maker,
13 you are, uh, sorry to say it, you are at the top of the, of the pole, as far
14 as the only, uh, decision maker who can do something to condition the level
15 of heavy truck traffic that will result from this proposal. Um, I, I, I don't
16 mean to be contentious with my colleague, Bill Lynn, but I was astounded to
17 hear the adjective, uh, extraordinarily small, uh, when talking about the
18 impacts of this project. The risk to our clients is not extraordinarily
19 small, it's extraordinarily high. The potential for one truck on Grip Road,
20 where they're traveling every, um, I did the math here, every 6.5 minutes, is
21 not extraordinarily small. These are large gravel trucks, eight feet wide,
22 with a pup trailer. And whether they're loaded or not loaded, they present a
23 risk of harm. Uh, we'll present evidence as to the width of Grip Road at the
24 curves, uh, both Neil McCloud and, uh, Wally Grado [phonetic], will testify
25 on the measurements they took of some of the key curves there, the Applicant

1 can go out and check those measurements, as can the County. But we think
2 you'll find they are experts when it comes to using a tape measure. And, uh,
3 we also, the other experts that we're going to present are actually the
4 experts that the County and the Applicant are going to present on traffic
5 impacts. They will be our witnesses. Um, and we will, in the sense that we
6 will ask them, um, how they did their analysis and why, uh, additional
7 mitigation isn't required under the code. I want to, uh, wrap it up here by
8 saying plainly that you have the authority, under the Comprehensive Plan,
9 under the Skagit County Code, to impose limitations on hours of operation, on
10 the number of truck trips per hour on Grip Road, on the hours that those
11 trucks can travel, for example, when, uh, there's school activity on the
12 road. And nothing in the Mineral Resource Overlay policies limits that
13 authority. In fact, it's the opposite, those policies are implemented in
14 regulations that say you should take the Standards and the Code as minimum
15 Standards and you have the authority to not only limit hours, but also to
16 impose conditions, uh, that protect public safety. And that is not a vague
17 concept here. The increase of heavy truck traffic on Grip Road is your
18 measure. And we ask that during the discussion about studies, traffic
19 studies, you focus acutely on whether the experts are talking about the
20 relative increase in risk. Have they characterized the existing level of
21 risk? Have they accurately characterized the maximum number of truck trips
22 that might be possible under the conditions proposed by staff? And have they
23 weighed the difference, the Delta? I'm not seeing that in the traffic
24 analysis. And I look forward to hearing from the experts if I missed it. But
25 I think you will find, Mr. Examiner, after, uh, our presentation, that you

1 have the facts, you have the evidence, you have the testimony and you have
2 the authority to take care of those who are currently traveling on Grip Road
3 and making sure that their safety is protected as the Mineral Lands policies
4 require. They specifically talk about protecting public safety. They
5 specifically talk about traffic safety and they specifically talk about the
6 County requiring agreements from the Applicant to make road improvements to
7 meet that Standard. So, thank you for the opportunity to, um, make a
8 presentation during these proceedings and, um, we will look forward to it.
9 Thank you.

10 REEVES: Thank you, Mr. Ehrlichman. Uh, so, the plan now, quickly, we are
11 going to go back to Leah Forbes, who I will note is, uh, not the County's
12 tech person. I believe her official title is County Senior Natural Resources
13 Planner. Uh, but we all wear many hats, uh, and I just want to see if she has
14 an update on, uh, how we should move forward in terms of our lunch break.

15 FORBES: So we do have it confirmed, we have new meeting log-in
16 information that includes a, uh, a functioning conference ID number for those
17 folks who want to call in. During the lunch break, if everybody kind of
18 clears out of this meeting, we're going to post the new log-in information on
19 the County's home page, skagitcounty.net, as well as on the Hearing
20 Examiner's page within the County's site.

21 REEVES: So, I'm curious, is it possible, let's say I'm a skeptical human,
22 is it possible I leave this up for, for a minute, then later go hit the log-
23 in that shows up on the Skagit, uh, net and I'd essentially be in two
24 different Teams meetings, but that would be a way I could ensure that, okay,
25

1 it did work and I, you know, do you happen to know? I really apologize, you,
2 you're getting roped in to this, Leah Forbes, but...

3 FORBES: It's all right. Um, like you said, we all wear many hats. Um, I
4 don't know if it's possible to log into two Teams Meetings at once, at least
5 from the same device. It may be that you leave your computer logged into this
6 one and sign in on your phone to log into the new one. Um, but we have had
7 folks outside the meeting, plus the log-in information, plus the call in
8 conference ID Number confirmed that it does work.

9 REEVES: Okay. So someone has tested, I, I guess it wasn't the very few
10 people usually use that call-in number. I, I wanted to verify someone tested
11 the, the link, as it were...

12 FORBES: Yes.

13 REEVES: Um, so you, County staff is confident the link will work?

14 FORBES: Yes.

15 REEVES: So for those that are on and have, you know, been watching,
16 essentially, uh, the plan is, we're going to, we're going to take our lunch
17 break, uh, here shortly, uh, then we need to log out and then if you go back
18 to, uh, the, the County's website, and let me see if I can just, I think I
19 had it pulled up earlier, I know I just always type in Skagit County Hearing
20 Examiner on Google and, you know, it's the first thing I pop onto. But,
21 essentially, there's a link to, that says Click Here to Join Meeting. So you
22 would want to sort of redo that process, uh, because, uh, we needed to employ
23 a new, uh, new link, uh, for when we come back from lunch. Did I accurately
24 describe what we hope that process is going to be, Leah Forbes?

25

1 FORBES: Yes. Yes, you did. We will have that link in two places. In fact,
2 our, our wonderful IT folks have posted it on the homepage at skagitcounty,
3 all one word, county spelled out, .net is the County's homepage and we will
4 also have it on the Skagit County Hearing Examiner page, it will say Click
5 Here to Log In or alternately you could call the number and put in a new
6 conference ID number to listen and, and participate by telephone.

7 REEVES: Excellent. Thank you so much, uh, Leah Forbes clearly should get
8 a raise, uh, wearing both the tech hat and Senior Natural Resources Planner
9 hat. Uh, but with that, um, I think it's 11:45. I was thinking 12:30, is,
10 does that seem reasonable, is that enough time for a lunch break, uh, for
11 folks? I'm getting some nods. Okay. Okay. I'm, I don't want to go too long, I
12 know we have a lot of people that want to participate. But I also know, you
13 know, if folks are, especially folks in the room there might need to run out,
14 uh, but so that's the plan. So we're going to log off. When we come back at
15 12:30, I will try to be very brief when we come back on and then, uh, the
16 plan will be, uh, to, to dive in with hearing from members of the public. Uh,
17 quick favor for Mr. Black, if, if someone, if there's a way to, uh, copy the
18 sign-in sheet there in the room, if someone could just forward that to my
19 email, uh, while we're, uh, on our break, then I'll have names. That, that
20 will make things easier in terms of, uh, calling folks, um, when we come
21 back. So that's the plan. Thank you, everybody. We'll be back, uh, the plan
22 will be 12:30. And if you are struggling to get back on for whatever reason,
23 uh, just, uh, you know, start email County staff, calling County staff. We'll
24 make sure everybody is able to participate. And so we'll see everybody back
25 at 12:30. Thanks, folks.

1 [The tape ends.]

2 **The undersigned being first duly sworn on oath, deposes and says:**

3 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
4 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party
5 to this action. That on April 5th, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves, that
6 took place on 8/226/22 at 9:00 a.m., regarding the above-captioned matter.

7 I certify and declare under penalty of perjury under the laws of the State of Washington that the
8 aforementioned transcript is true and correct to the best of my abilities.

9 Signed at Mount Vernon, Washington, this 5th, April of 2024.

10 Janet Williamson

11 Janet Williamson

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**IN SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT**

State of Washington,	)	Cause No.: PL16-0097, PL16-0098,
	)	PL22-0142
Plaintiff,)	
)	
vs.)	
	)	PERMIT HEARING 8-26-22 9:00 AM
Name,)	
)	
Defendant)	

Transcription Date: April 5th, 2024

Present: Andrew Reeves, Unidentified Male, Brandon Black, Bill Lynn, Russ, Keith Luna, Damion Koontz, Jason D'Avignon, Kyle Loring, Tom Ehrlichman, Leah Forbes, Mona Kellogg, Unidentified Male 1-3, Unidentified Female 1

REEVES: All right. Uh, and the recording is started on Teams. Is there a separate recording in the room or am I good to go?

BLACK: Uh, you're, you're good to go.

REEVES: O-, okay. Well, then we'll get my gavel out and make it official. [Gavel pounds twice.] And good morning, I'm going to go ahead and call this session of the Skagit County Hearing Examiner to order. For the record, today is August 26th of 2022, just after 9:00 a.m. We have one item on the agenda.

1 This is numbers PL16-0097 and PL16-0098. And, uh, as well as the appeal,
2 which is number PL22-0142. And these involve a request for approval of a
3 Special Use Permit or SUP and Associated Forest Practice Conversion
4 Application to allow the development of a proposed gravel mine and quarry on
5 three properties totally approximately 77 acres, in terms of the size of the
6 properties. Uh, approximately 1.5 miles north of Grip Road and south, uh,
7 southwest of the, uh, Samish River. My name is Andrew Reeves. I'm a Hearing
8 Examiner with Sound Law Center, who the County has selected to hold certain
9 hearings like this one. And today, it will be my role to collect evidence in
10 the form of exhibits and testimony to determine, with the SUP portion of the
11 hearing, uh, whether the proposal complies with the County's Comprehensive
12 Plan, Zoning Ordinances, Critical Areas Ordinances and then the specific
13 requirements for an approval of a Special Use Permit, uh, under the Municipal
14 Code. And those criteria are located in Section 146900 of the Municipal Code.
15 And then recognizing, as well, that this does involve a min-, mineral
16 resources overlay, or MRO, uh, there's additional, uh, requirements, uh,
17 there that, uh, we look at. Um, so, that's the basics, uh, sort of in terms
18 of what we'll be analyzing and with the, uh, Special Use Permit. Uh, but I
19 note, as well, uh, that, and also, that the permit itself was, I think
20 originally deemed complete all the way back in 2016. Uh, and there, so this
21 process has been, uh, quite involved. And, uh, there have been several, uh,
22 sort of changes in staff, including myself, in terms of, uh, serving as the
23 hearing examiner. Uh, but ultimately, we have arrived here today. And the
24 County had issued a Mitigated Determination of Non-significance, under the
25 State Environmental Policy Act, or SEPA, and that MDNS was appealed. Uh, and

1 under Washington Administrative Code, uh, 19711683, um, Sub 5, essentially,
2 uh, such appeals are consolidated with the underlying permit, uh, and so, we
3 have two things that are happening today. So, ultimately, um, these are
4 separate to the extent that I will produce two decisions and theoretically,
5 uh, were the appeal to end up being successful, all the hard work, uh, that
6 folks have put in, in terms of, uh, taking the time to testify for the SUP
7 portion of the hearing, uh, would sort of be for not, to the extent that, uh,
8 if the SEPA appeal were to be granted, uh, that kind of invalidates, uh, the
9 rest of the process, uh, an additional environmental review would occur. But
10 this is the process we have under State Law, um, and so because there is an
11 appeal, uh, there are several, again, attorneys that are involved. And that
12 we have had, I think, three pre-hearing conferences, uh, just to address
13 procedural matters, nothing of substance, um, but through the course of doing
14 that, uh, we've made every effort to try to insure that the process of the
15 hearing, uh, for both the, uh, Special Use Permit and for the SEPA appeal is,
16 uh, is sensible and, and economic, uh, streamlined as, as can be. Uh, so to
17 that end, we've sort of set up the order that we're going to do things in.
18 And so following my remarks, I think the plan, then, is that County staff has
19 as PowerPoint presentation, uh, that will give an overview of the proposal,
20 uh, for the Special Use Permits. Uh, and then the Applicant, uh, has their
21 own summary and opening statement. Then, we'll hear from, uh, the Appellant
22 to give a brief overview themselves on, uh, the appeal issues they hope to
23 address later in the hearing. Uh, then, we have an additional attorney
24 involved, uh, with Cougar Peak, uh, which is another group, uh, they, there
25 was an attempt to intervene in the SEPA appeal, that was denied, uh, but

1 ultimately, it was determined that, of course, as part of the SUP hearing,
2 they would be able to participate. And so we were going to give them that
3 opportunity. Following that, then, we are going to take comments, uh, from
4 members of the public. And then, after that, uh, expert testimony, that will
5 sort of wrap up the SUP portion of things. And then, uh, the idea is then the
6 sort of legal nitty gritty on the SEPA aspects would occur later. And at the
7 end, I, and I note that, in terms of public testimony, um, again, two
8 portions of this, so with the SUP hearing, anyone that wishes to testify,
9 members of the public, will have that opportunity. Um, in terms of the SEPA
10 portion, uh, folks are certainly welcome to watch, but, uh, with that, and
11 any appeal, uh, ultimately, only those witnesses that have been identified,
12 or called upon, uh, by the parties to the appeal are able to actively
13 participate. Um, so, those are the basics. And then, just in terms of how
14 things will work procedurally, again, once I am done, uh, we'll turn to
15 County staff. Uh, and I, we'll hear from them. And then when we do get to
16 the, the public comment portion, we try to limit public comments to
17 approximately three minutes, uh, as often occurs at a Council Meeting. Um,
18 and I note there's not going to be an opportunity for a sort of question and
19 answer session, unlike a Council Meeting. Uh, so if folks sort of have
20 questions, I ask that they phrase it as, you know, my name is so and so and
21 I'm hoping someone can provide additional information on whatever their topic
22 is. Uh, we'll be taking notes and then after we've heard from all members of
23 the public interested in participating, uh, we'll try to get answers, uh,
24 from the, uh, Applicate team and County staff in relation to those questions.
25 Uh, there's only going to be sort of one opportunity for each person that's

1 interested in testifying to do so, in terms of member of the public. Um, and
2 also, let's see, all testimony will be under oath or affirmation, I point
3 that out because, uh, any decision I ultimately make, uh, were appealed under
4 our State's Land Use Petition Act, or LUPA, the recording of the hearing, as
5 well as the admitted exhibits and, uh, the recording, the admitted exhibits
6 and my decision would serve as the foundation for any such appeal. There were
7 several exhibits that the County had sent and identified in advance of the
8 hearing. And the number we started with, I believe, was 43, in terms of the
9 Special Use Permit, or SUP hearing. There have been a few additional exhibits
10 that have come in just in the, sort of, last few days and we'll get numbers
11 for those. Uh, but we're keeping a separate sort of, separate track of
12 exhibits, in terms of the SUP versus SEPA. And so, the, for folks that are
13 following along at home, from the County's website, there's a 3913 page PDF
14 that has those initial 43 exhibits, for folks that would like to review
15 those. And then when we get the Appeal portion, I can, uh, verify, but I did
16 ask the attorneys involved in the appeal, in advance, about the documents
17 they were hoping I would review and the Appellant submitted 58 exhibits, the
18 Applicant submitted 92, uh, and the County staff submitted what is numbered
19 as 47, but there is some overlap. Uh, so, uh, ultimately, it's slightly less
20 than that. But those were the Appeal exhibits that will ultimately be under
21 review in terms of SEPA. Uh, finally, I note, obviously, there's, uh, strong
22 feeling about a project, uh, of, of this type, uh, no matter it occurs. But I
23 ask that everyone treat everyone else involved in the proceeding with, uh,
24 respect and dignity and I'm confident folks can do that. And, uh, if not,
25 though, uh, we will figure out, uh, how best to move forward. But, uh, I

1 thank everyone, I know obviously this was originally scheduled previously and
2 I do apologize for those that took time out of their busy schedules to try to
3 participate on July 11th. I ended up quite ill, uh, so we had to, uh,
4 reschedule to today. And ultimately, we do have six days, uh, potentially set
5 aside related to this matter, uh, just in case. As it were, uh, I believe the
6 next day after today would be Monday, uh, and the thought process is, uh, for
7 those members of the public, that are testifying and want to testify, uh, if
8 there are folks that, that for access reasons or, uh, other reasons, uh,
9 really need to have that physical space to testify from, uh, we would ask
10 that those folks identify themselves to County staff that are in the room
11 today, uh, because would like to hear from them first, when we get to the,
12 uh, testimony portion of the hearing. Because we only have a physical space,
13 uh, for folks to participate from for the first two days of the hearing. And
14 I just see Brandon Black [phonetic] walking into the picture. Was there
15 something related to that, Mr. Black?

16 BLACK: Yeah. I was just not, not related to that, I was just notified
17 that the call-in feature function is not working. So there may be some
18 technical issues with that.

19 REEVES: Sorry, the call-in feature, meaning rather than joining Teams,
20 itself, the call, um, okay. Um, well, let me ask, let me start with, I guess
21 Bill Lynn [phonetic], uh, on behalf of the Applicant, uh, uh, any thoughts on
22 what you would like to do? I know that [inaudible] and you're muted.

23 LYNN: Yeah. Um, I, I thought there were some people on earlier, by
24 phone, uh, at least according to my list of participants, there were, it
25 looked like there were some that were only there by phone. But I, I may be

1 wrong. As, uh, so you're asking me whether we want to wait or, I mean, I
2 guess I don't know what the problem is with the County so it's a little hard
3 to assess what we should do about it.

4 REEVES: Ult-, ultimately, what I was asking, because, uh, you know, I am
5 fully aware of how none of want to have to do a redo or, or move things, um,
6 but Mr. Black, do we have any further information on what the issue might be?

7 BLACK: I am currently asking for that advice.

8 REEVES: Okay.

9 RUSS: This is, uh, Russ [phonetic], the, uh, conference number that is
10 posted on the, um, or that was published is incorrect. So that, that's the,
11 the problem.

12 REEVES: Sorry, that was published in the newspaper?

13 RUSS: Uh, correct.

14 REEVES: What about on the County's website?

15 RUSS: On, on the County website, sorry.

16 REEVES: Okay.

17 BLACK: Since we published one [inaudible] is that one okay?

18 RUSS: I don't have that with me.

19 BLACK: Okay. I have, whether I can look.

20 LYNN: So, I, could I just ask if there are several people who have
21 called in to comment on that, do you have a list of the people who have
22 called in and expressed, uh, difficulty?

23 REEVES: I think that was for you, Mr. Black. Uh, how did we, how was it
24 determined that this was a problem and has, uh, folks identified this as an
25 issue somehow?

1 BLACK: I was just notified, I'm, I'm asking for advice right now.

2 REEVES: Sure. Okay.

3 BLACK: Yeah. How did we find that out?

4 LUNA: Yeah. Andrew, is this is Keith Luna [phonetic], um, we had
5 several people call the Records Management Office saying that they could, the
6 phone number was working, but the conference ID number is that is on our
7 website, and it's the same number that we've had for a long time, um, isn't
8 being accepted.

9 BLACK: Uh, oftentimes with that, it's been my experience you have to try
10 again, um, re-log in, so that might be part of the issue as well. Not us,
11 them. They need to call back in. If you could try it from the...

12 KOONTZ: I, this is Damion Koontz [phonetic], I did try it from the
13 website, that's how I'm here, 'cause I was sent the wrong one via email. But
14 I went to their website, found this one and it is working, best I can tell.

15 REEVES: But that, I think that's the link to participate in Teams, versus
16 those that are using, uh, a rotary phone to dial in or whatnot.

17 LYNN: Well, uh, this is Bill Lynn again, I guess my suggestion is that
18 we go ahead and proceed. Uh, people have, will have a chance to participate
19 one way or the other and I'm sure we can guarantee that to the extent that
20 they need to see the staff presentation, it's exhaustively set forth in the
21 PowerPoint, so it should be, I don't think we're doing anything that will
22 impair people's ability to participate fully.

23 REEVES: Okay. Uh, so, Mr. Black...

24 MALE: Mr. Examiner, I, if, if people aren't actually allowed to provide
25 public comment, though, that does seem to impair their ability to

1 participate. So, I, I do just want to make sure everybody has a chance to
2 weigh in.

3 REEVES: That I agree with. I think that, my hope that this issue can be
4 resolved, you know, in the next few hours. I, you know, I don't think we're
5 going to be at the point, I mean, the way we all as, as, during the pre-
6 haring conferences, the sort of thought or intent was that we would have
7 almost two days set aside in which folks would be able to particulate, in
8 terms of providing public comment. Um, and in terms of, you know, if they're
9 not able to, you know, use the computer or come down to where the meeting is,
10 you know, hopefully, they can sort it out quickly, but [inaudible] the room
11 there, Mr. Black?

12 BLACK: Uh, you, you just, we just lost your audio and now you just cut
13 in and out. So whatever you just said, we did not hear.

14 REEVES: Okay. The joy...

15 BLACK: There you...

16 REEVES: You can hear me now? Okay.

17 BLACK: Yes. Yes.

18 REEVES: What I was trying to point out is that ultimately, I do concur,
19 uh, I think with Mr. Lynn to the extent that I think we can get started. Uh,
20 I will ask, you know, maybe after the staff PowerPoint presentation, uh, if
21 there's an update on where things stand. And then, you know, if, I'm assuming
22 if folks can't get through there's someone they're calling at the County and,
23 and maybe the County can advise them to try calling back, use the, the
24 computer rather than just the phone, um, you know, but also, if, if, let
25 folks know that they will certainly have ample, uh, you know, opportunity.

1 We're, we're not going to be at the point of folks participating with public
2 testimony for, uh, another probably hour and a half to two hours before we,
3 we start on the public testimony. So the hope is we can solve that problem,
4 uh, prior to that. So, that, that would be, uh, my thought. My. Lynn, you,
5 you look like you wanted to say something?

6 LYNN: Uh, no, thank you for that thought. I wanted to make sure that it
7 was being worked on in the background at least, if we're moving forward with
8 the rest. So I was, I was making sure we were confirming that so we can make
9 sure people can gain access and provide them the right codes, et cetera.

10 REEVES: Absolutely. So, uh, we've got a crack team working on it there,
11 Mr. Black, is that right?

12 BLACK: That's my understanding.

13 REEVES: All right. Nothing instills confidence like a Hawaiian shirt. So,
14 I think with that, we, we, can move forward. Uh, so, sorry, I, where was I in
15 my thoughts? I, sorry if I'm rambling. I, I was trying to point out,
16 ultimately, that, again, there are two processes involved, ultimately. We've
17 got a hearing on the Special Use Permits, uh, which is the one subject to,
18 you know, the open, uh, public meeting where we will take, uh, testimony from
19 the public. Uh, but then there is, as well, the, uh, SEPA appeal. Um, so
20 before we, we dive right in, I guess, with, with, uh, Mr. Cricchio, I would
21 just quickly ask to have our team of attorneys, uh, just introduce
22 themselves. 'Cause, uh, folks are going to be hearing from them. I believe I
23 introduced myself, Andrew Reeves, uh, but next, I'll go quickly to, uh, Bill
24 Lynn on behalf of the Applicant, if you could say hi.

25

1 LYNN: Thank you, uh, William Lynn here on behalf of the Applicant,
2 Miles Sand & Gravel.

3 REEVES: Thank you. And then for the County?

4 D'AVIGNON: Uh, Jason D'Avignon, Civil Deputy Prosecutor, uh, for Planning
5 and Development Services.

6 REEVES: Thank you, Mr. D'Avignon. And then for the Appellant?

7 LORING: Yes, good morning, uh, Mr. Hearing Examiner, my name is Kyle
8 Loring and I'm here representing Central Samish Valley Neighbors.

9 REEVES: Great. And then, uh, on behalf of, uh, the additional group,
10 Cougar Peak?

11 EHRLICHMAN: Good morning, Mr. Examiner, Tom Ehrlichman, from the Dykes
12 Ehrlichman Law Firm, representing Cougar Peak LLC and the Neil McLeod
13 [phonetic] family.

14 REEVES: All right. Thank you. And, uh, before we move on, sorry, I got
15 feedback there, again. Before we move to Mr. Cricchio, uh, those four
16 attorneys, does anyone have something they feel like we need to address
17 before we, we start with, uh, the presentation on behalf of the County? If
18 so, please wave your hand at me. Okay. I think, then, we are ready. Um, I, I
19 would ask, whoever is in charge of our Team Meeting, we have folks, when they
20 call in sometimes, are not immediately muted, so there is someone on here
21 that I'm definitely getting feedback from, if we can mute Terry Wild
22 [phonetic], I believe. Okay. There we go. Thank you. Okay. So, Kevin
23 Cricchio, thank you, uh, for being here. I'm going to get you sworn in. And
24 do you swear or affirm to tell the truth of the testimony you give here
25 today?

1 CRICCHIO: I do.

2 REEVES: And can you just clearly state and spell your name for the audio
3 and explain your role here at the County?

4 CRICCHIO: Sure. Uh, Mr. Examiner, uh, my name is Kevin Cricchio, K-e-v-i-n,
5 Cricchio is spelled C-r-i-c-c-h-i-o. And for the record, I work as a Senior
6 Planner with Skagit County's Planning and Development Services Department.

7 REEVES: Great. Thank you, Mr. Cricchio. So, we have informally referred
8 to the 3913 page PDF that you, you compiled as the Cricchio file. But that
9 includes Exhibits 1-43, uh, and then in addition to that, I know we've had
10 some additional things come in. Uh, could we assign some of those exhibit
11 numbers, uh, what would make mo-, the most sense to you, uh, we can do 44 as
12 the additional public comments? Uh...

13 CRICCHIO: Sure.

14 REEVES: If that makes sense?

15 CRICCHIO: Were, were you accepting those two comments that came in late,
16 that I forwarded to you about 8:30ish?

17 REEVES: I, I have no issue with comments that come in prior to the start
18 of the hearing, so...

19 CRICCHIO: Okay. Then we can...

20 REEVES: I, I...

21 CRICCHIO: Include that as 44, if that's what you wanted to do.

22 LORING: Mr. Hearing Examiner?

23 REEVES: [Inaudible.]

24

25

1 LORING: I would just sug-, suggest since we've, um, made an effort to,
2 uh, have some consistency between the SEPA Exhibit numbering and the Special
3 Use Permit numbering, that the numbers actually start, I think, on 48.
4 REEVES: Right.
5 CRICCHIO: I think I have 43, don't I?
6 REEVES: I just really downloaded what I call the Cricchio file and it was
7 still up to 43.
8 LORING: That is correct. And when I amended the, the SEPA Exhibits, I
9 changed them to match the Cricchio file. There were additional documents in
10 the SEPA Exhibit list that were then 44, 45, 46, 47. So if we want to
11 continue to avoid having the same County Exhibit be, have two different
12 documents.
13 REEVES: But these are not County Exhibits, these are the SUP Exhibits.
14 LORING: I, I understand that.
15 REEVES: Okay. Help me, should we have omitted Exhibit 44-something and
16 then move forward from there? I, I'm confused.
17 LORING: That, that would be my suggestion. I, I...
18 REEVES: Okay. So, Mr., okay, so, okay. So the Amended Exhibit List, again
19 for the SEPA appeal runs C1-C47 with several omissions. Your suggestion is I
20 immediately do 44-47 on the SUP Exhibits as omitted and then these, these new
21 documents go from 48 on and they automatically become part of the County's
22 SEPA appeal documents?
23 LORING: No, not, not part of the SEPA, but just to avoid any confusion
24 with the documents, um, which is why we amended the SEPA Exhibits so that the
25 same documents that are part of the SEPA have the same number for the Special

1 Use Permit. I omitted in the SEPA where there, there wasn't the same and then
2 added on the back end. So this would just ensure that any document from the
3 County, whether Special Units Permit or SEPA, uh, there's no confusion as to
4 what document we're referring to.

5 REEVES: Okay. Mr. Ehrlichman, you have a thought? We're off to a, a
6 cracking start here. Uh...

7 EHRLICHMAN: Uh, Mr. Examiner, uh, as it was discussed at length between the
8 parties, uh, Counsel and some at the pre-hearing conference, I think the
9 intent of everyone was that we have one set of exhibits for both proceedings
10 with the same exhibit numbers. In other words, any document that is in the
11 SEPA appeal is part of the SUP exhibit record. We weren't going to bifurcate
12 the record in the two portions.

13 REEVES: Do you mean to say the, the County's exhibits for SEPA should be
14 the same as the SUP exhibits? Because I never thought the intent was the 90
15 something exhibits that Mr. Lynn submitted on behalf of the Applicant
16 automatically relate to both and that all of Mr. Loring's exhibits
17 automatically relate to both. Did I completely misunderstand what the parties
18 were, were intending?

19 EHRLICHMAN: Um, if I may...

20 REEVES: I know there as a joint motion to allow, sort of overlap, but
21 let's not get in the weeds. I, I'm fully willing, uh, uh, to sort of allow
22 reference to those, I just, I don't want to renumber all of the exhibits that
23 everyone has already submitted at this point. But go ahead, Mr. Ehrlichman.

24 EHRLICHMAN: I think this effort to keep the two segments of a, uh, single
25 proceedings separate has led to this confusion. And our wish would be that

1 the Examiner have one exhibit list and then it gets used in both proceedings.
2 However you manage that, that's the, the intent.

3 REEVES: Happen, but thank you. Uh, Mr. Loring, your thoughts?

4 LORING: I, I just wanted to say that I do support having, um, only one
5 set of numbers throughout both proceedings so that we're not confused about
6 which C44 applies in the SEPA appeal and which C44 is in the SUP.

7 REEVES: There's, there's only one C44. The SUP exhibits are 1 through
8 whatever. They, they're not C something through C something. They're 1, 2, 3,
9 4, et cetera. That has been what we, has been the entire time, at least
10 that's how it was intended to be. And then there are three sets of Appellant
11 exhibits. The A Exhibits are the Appellant, the B are the Applicant, uh, and
12 C are the County Exhibits specific to SEPA. But now I'm worried that the four
13 attorneys, plus myself, did not actually ultimately agree on this in the last
14 several months. Bill Lynn, do you have any thoughts?

15 LYNN: Well, uh, I guess one thought I have is that we need to have a
16 clearer record. And I do think that the, the, if anything, we should err on
17 the side of including more exhibits in both proceedings. I mean, that's just,
18 uh, a basic, and really from that on, it becomes more of an administrative
19 issue, what's the easiest way to administer it. Seems like we can agree that
20 they all ought to have the same numbers. Um, you know, there should be a
21 document that's referred to by only one number, not a separate number in the
22 administrative, or the CU, SUP process from the number that it has the SEPA
23 process. Um..

24 REEVES: Here's a thought, I mean, I asked the parties, if everyone
25 remembers, to submit document list. I want to keep those numbers are they

1 are. In terms of the SUP, which is separate, my thought is we can add these
2 exhibits in, they'll go, you know, at this point, I guess, 44-47 is omitted.
3 We'll go 48 on as needed. But in terms of my decisions, you know, uh, as they
4 were, you know, because it's likely that there were ultimately be sort of two
5 decisions. But the idea being that the documents will relate to all of it,
6 just as the intent is that, you know, uh, any testimony heard for the SUP
7 portion, uh, does not, need not be repeated, uh, in the SEPA portion. I think
8 we all agreed the intent was to have sort of all the expert witnesses, all
9 the public testimony, all of that is the SUP and then really, once we get to
10 SEPA, you know, we're not really looking to have expert witnesses that are
11 SEPA specific, I don't think. But it would be more legal argument at that
12 point. But what I would end up doing, especially with this much information,
13 is I do an, uh, an attachment at the end of these and I'll just say, you
14 know, exhibits 1 through 50-wahtever, you know, on the SUP and then here is
15 what the, uh, Appellant's provided, here's what the Applicant provided,
16 here's what the County provided for the appeal and all of that relates to
17 everything. That, that's my thought, but, because, otherwise, are we saying
18 we're going to now re-number everything from, and just have one master
19 exhibit list? Because I wish we had thought of that a month ago.

20 LYNN: My understanding would be that, um, Mr. Loring's exhibits would
21 continue to have his A numbers, uh, our exhibits would consider, continue to
22 have the B numbers and the County's would continue to have the C numbers and
23 then basically just make the County's exhibits, um, in-, incorporate the SUP
24 numbers, too. And I think what, I think what Mr., I think, I think what Jason

25

1 may have done is just try to make them all C numbers and correspond with the
2 numbers they were previously assigned, if I'm correct.

3 REEVES: And I...

4 EHRLICHMAN: And, and that's my understanding from his August the 3rd list,
5 yes.

6 REEVES: Okay. So, with that, I think, hopefully, so the thought is we'll
7 do 44-47, we'll call those currently omitted, and then what we're about to do
8 is include Mr. Cricchio's PowerPoint and those, uh, you know, public comments
9 that came in later, we're going to give them exhibit numbers that go 48
10 onward. Is that what your intent was, Mr. D'Avignon?

11 D'AVIGNON: Yes, Mr. Hearing Examiner. It was simply just so, when referring
12 to a document from the County, we wouldn't have to say, this is SUP Document
13 A and this is SEPA Document C, they would just have the same number, whether
14 there's a C or not a C in front of it. Uh, just to avoid any confusion to
15 have that consistency.

16 REEVES: Okay. I think we're good. Mr. Ehrlichman, you still have your ha-
17 , oh, there we go. Are you done with your hand raised feature? Were, were you
18 good to move on? Okay. So I think we're good to move on. So back to Mr.
19 Cricchio, before I confused everyone apparently. Um, so the additional public
20 comments, why don't we make those, uh, 48? Mr. Cricchio, are you there? There
21 you are. Okay. So Exhibit 48 will be those additional comments that were
22 received. Um, and then, Cougar Peaks additional, sort of S1-S8, that, that
23 exhibit group we can make 49?

24 CRICCHIO: Mr. Reeves, did you want to include the presentation as well as
25 49?

1 REEVES: I was going to make that 50.

2 CRICCHIO: Okay. Whatever works.

3 REEVES: So 49 we'll do Cougar Peak pleading with exhibits, and I think
4 that came in yesterday. And then, uh, Exhibit 50 will be, uh, Staff
5 PowerPoint Presentation. And I believe then we're up-to-date on exhibits,
6 hopefully.

7 LORING: Mr. Examiner, Mr. Ehrlichman mentioned earlier, he suggested
8 excerpting out the Central Samish Valley SUP comments and we'd request that
9 that be 51 and that be pulled out. Just because it is a, a sizeable document,
10 we'd like it all in one place and easy to access.

11 REEVES: No issue for me. Uh, so Exhibit 51, we'll call it the CSVN July
12 memo with attachments.

13 LORING: Thank you.

14 REEVES: Okay. With that, I believe we are ready, uh, for the PowerPoint
15 and just a tech, tech things, uh, I'd point out that if you're having
16 trouble, anyone, uh, you can always turn your video off, uh, and that usually
17 will solve most of the problems in terms of bandwidth. Uh, and if my video or
18 audio goes off at any point, uh, I haven't gone anywhere, it's a bandwidth or
19 I'm blowing my nose or I'm just trying not to distract while others are, uh,
20 have the floor. Uh, so with that, Mr. Cricchio, I'm going to, I know you've
21 got a PowerPoint and I'll let you get started.

22 CRICCHIO: All right. Let me try to share my screen. And can you see me now?
23 Can you see my screen now?

24 REEVES: Uh, we can. It's not launched, oh, there it is.

25 CRICCHIO: Okay. Is that good?

1 REEVES: We'll, we'll see on the second slide, but so far, it looks good.

2 CRICCHIO: Okay. Let me see if I can, um, how do I stop sharing, can I stop

3 sharing my camera, but still share, if that makes sense?

4 REEVES: Uh...

5 CRICCHIO: Can you see my, can you see my screen?

6 REEVES: I would stop sharing screen to start, period.

7 CRICCHIO: Okay.

8 REEVES: To start and then what I think you're going to want to do is

9 you're going to want to, um, launch the PowerPoint, then hit share screen.

10 CRICCHIO: Okay. Can you see that now?

11 REEVES: I can, yep.

12 CRICCHIO: Okay. All right. Are we ready?

13 REEVES: Uh, as ready as we're going to be, I think.

14 A: All right. Sounds great. All right. Mr. Examiner, um, members of the

15 public, County staff, good morning. For the record, my name is Kevin

16 Cricchio, I work as a Senior Planner in the Current Planning Division of

17 Skagit County Planning and Developmental Services Department. So, uh, I will

18 proceed. I, I'm going to go ahead and, uh, start, uh, going through my

19 presentation. I have 55 slides. I am not going to read everything. So I'm

20 going to be skipping around and reading portions of, of, of my presentation.

21 So, what's before you, uh, is a Special Use Permit to permit a proposed

22 gravel mine or quarry on the subject property. Proposed gravel mine would

23 remove approximately, approximately 4,280,000 cubic yards of gravel from

24 three parcels over a period of 25 years. Three parcels total approximately 77

25 acres, of which 68 will be cleared, however the mining will occur on

1 approximately 51 of the 68 acres. Gravel would be removed from the site by
2 truck and trailer, generating an average of 46 trips per day. And the
3 material would be transported to market or to one of Concrete Nor'West's
4 nearby facilities for processing. The site is accessed off of Grip Road on an
5 existing private gravel haul road located approximately 0.7 miles east of the
6 Prairie Road/Grip Road intersection. Again, operations is limited to
7 excavation only. In addition to the Special Use Permit application, the
8 Applicant also has applied for a Forest Pra-, Practice Conversion application
9 to facilitate the proposed mining or quarry operation onsite, the applicant
10 proposes to harvest approximately 50,000 board feet of timber on 68 acres,
11 removing the stumps and converting the parcels to a gr-, a graveling mining
12 operation. Both applications, um, so this, this, the two applications came
13 back in, um, 2016, uh, they were submitted to the County. Uh, they were
14 determined to be complete on March 22nd of 2016. The proposed, uh, gravel
15 mine, uh, the three parcels involved in that, that where the gravel mine
16 would be, if, if approved, are located approximately 1.5 miles north of Grip
17 Road. Uh, this slide right here, uh, details the parcels involved. So where
18 the proposed gravel mine quarry would be includes these three parcels. Uh,
19 there is a private road, otherwise called a haul road, um, which is graveled.
20 Uh, which would be used, uh, to gain ingress and egress to the proposed mine.
21 And so, these, all these three, all these parcels within this category
22 include the haul road and then contiguous parcels owned by the same owner
23 would include all of these parcels. And so for noticing purposes, we use all
24 of these parcels, whether it's the, the parcels involved in the mine itself,
25 the haul road or the contig-, contiguous subject parcels that are not part of

1 the mine or not part of the haul road. The Applicant is Concrete Nor'West,
2 otherwise known as Miles Sand & Gravel located in Mount Vernon, Washington.
3 Land owner is Li-, Lisa Incorporated. And they are addressed out of Puyallup,
4 Washington. The land surveyor for the Applicant or the land owner is John
5 Semrau of Semrau Engineering and Surveying out of Mount Vernon, Washington.
6 The Applicant's attorney is William T. Lynn, Reuben Schutz of Gordon Thomas
7 Honeywell out of Seattle, Washington. Give me one sec as I move forward with
8 my paper copy as well. Okay. I'm going to slip over this slide, skip over
9 that slide. All right. Uh, the underlying zoning district, uh, where the
10 three parcels involved in the proposed gravel mine would be, uh, is located
11 in the Rural Resource-Natural Resource Land Zoning District & Comprehensive
12 Plan Land Use Designation of Skagit County. And these three parcels also
13 happen to lie within what's called a Mineral Resource Overlay. Surrounding
14 zoning and land uses, to the north, the zoning is Rural Resource Natural
15 Resource Lands, along with Agricultural Natural Resource Lands. To the south,
16 the zoning is Rural Resource Natural Resource Lands. To the east, uh, the,
17 the surrounding zoning is Rural Resource Natural Resource Lands, along with
18 the Agricultural Natural Resource Lands and Rural Reserve. And to the west,
19 the surrounding zoning is Rural Resource Natural Resource Lands, Rural
20 Reserve and Agricultural and Natural Resource Lands zoning districts. Present
21 land uses, uh, surrounding the, uh, subject property. To the north, uh,
22 predominately forestry, sporadic single-family residences, as well as
23 agriculture. To the south, present land uses are forestry and sporadic
24 single-family residences. To the east, present land use, forestry, sporadic
25 single-family residences, along with farms and agriculture. And then to the

1 west, uh, the present land use is forestry, sporadic single-family residences
2 and farms/agriculture. So some graphics, taken from, uh, Skagit County's
3 iMap, uh, showing the three subject parcels where the, uh, proposed gravel
4 mine would be located at. Um, this shows the mineral resource overlay, as
5 well as the underlying zoning district. An aerial, um, you can see the three
6 parcels here highlighted in yellow. Um, and moving onto acreage. Okay. So
7 according to Skagit County Assessor's records, the three, uh, subject parcels
8 where the mining is proposed, uh, consists of, uh, 37 acres, 20 acres and 20
9 acres respectively, or accumulatively, 77 acres. According to the Applicant's
10 submitted narrative and SEPA environmental checklist, is 68 acres sand and
11 gravel mine is proposed within the three subject parcels. The SEPA
12 environmental checklist, on page 4, further states that mining will be within
13 a 51 acre portion of that. Consistent with both the Assessor's records and
14 the Applicant's application materials submitted, the issued SEPA MDNS, in
15 2022, stated that the three parcels total approximately 77 acres, of which 68
16 acres will be cleared, however, the mining will occur on approximately 51
17 acres of the 68 cleared. And then on March 11th of this year, uh, we received
18 a letter from the Applicant, which should be in Exhibit 3, um, the Applicant
19 stated that the acreage that was listed in the issued 2022 SEPA MDNS,
20 consisting of 77 acres of the subject mine is incorrect. Instead of the 37
21 acres, acres, uh, which, uh, includes, um, Parcel P50155, it's more
22 accurately 29.6 acres in size.

23 REEVES: Mr. Cricchio?

24 CRICCHIO: Yes.

25

1 REEVES: Sorry to interrupt, I normally would not do this, but Mona
2 Kellogg [phonetic], as the Clerk, uh, does have her hand raised, I just want...
3 CRICCHIO: Oh...
4 REEVES: To see...
5 CRICCHIO: Sure.
6 REEVES: If there's an issue. Ms. Kellogg, is there an issue that needs to
7 be addressed or? [Pause] I just was pointing out Mona Kellogg, who serves as
8 our Clerk, h-, has used the hand-raised feature, and I just want to verify
9 that there isn't a technical issue. So I, I don't know if she, where she is
10 at this point, but if Mona Kellogg or Brandon Black, someone knows what's
11 going on in the room there, can tell me what the hand raised might be about?
12 [Pause] Well, I hope we didn't lose the room entirely. Is there a member of
13 County staff that can tell me what's happening?
14 CRICCHIO: I can attempt to call.
15 REEVES: And maybe stop sharing your screen for a minute. I just saw
16 someone in the room there. I think...
17 CRICCHIO: There she is.
18 REEVES: We're, we're just trying to verify what's going on. I, uh,
19 [pause]...
20 CRICCHIO: Mona, can you hear us? Mona?
21 REEVES: I don't know if they've lost...
22 CRICCHIO: They're muted.
23 REEVES: The audio. They're muted. I just...
24 CRICCHIO: I mean, we can see her, so you think that they haven't lost the
25 audio.

1 REEVES: Yeah. Uh, we sort of stopped doing what we were doing because
2 there's a hand raise up, uh, from a member of staff who, did the audio
3 equipment in the room stop working entirely?
4 CRICCHIO: Let me try to call Brandon Black on his cell.
5 REEVES: Sure. And can you maybe stop sharing your screen just for a
6 minute, there, Mr. Cricchio? If possible. I can't tell who's in charge
7 anymore, but [pause] uh, I see a staff member.
8 FORBES: Okay. We're back up.
9 REEVES: Okay. But, okay. So there was a hand raised, uh, by Mona Kellogg.
10 But I was trying to verify, did someone happen?
11 FORBES: Sorry about that.
12 REEVES: No, no. But did something happen? Have you heard..
13 FORBES: Yes. The, the public computer that is being shown on the
14 television screens in here shut down for some reason.
15 REEVES: So did folks not hear Kevin Cricchio's presentation?
16 FORBES: Yeah.
17 REEVES: Sorry, yeah, they did not hear it or yeah, they did hear it?
18 KELLOGG: They did not, the, the computer here stopped at 9:56.
19 REEVES: Okay.
20 FORBES: So we missed six minutes.
21 REEVES: Do you have an idea of what the last slide you saw was?
22 FEMALE 1: [Inaudible.]
23 MALE 1: The graphic.
24 FEMALE 1: Development..
25 MALE 1: It was the graphic.

1 FORBES: It was a graphic.

2 REEVES: Okay. And, and...

3 FORBES: A map.

4 REEVES: And who is, who is in charge of, I mean, who is running the Teams
5 meeting?

6 A: Uh, Mona, Mona Kellogg has, Mona Kellogg has the initial log-in, but
7 the, it wa-, so her work station stayed up and running, it was the one that
8 the folks in the room were watching was what shut down.

9 REEVES: Okay. And h-, for whatever reason, it's still got the raised hand
10 up. If we can, I, in a way, I'm glad I interrupted, because, uh, you know, we
11 want to make sure folks can see everything.

12 FORBES: Yeah.

13 REEVES: So what I would ask is, you know, whoever is in the room, you
14 know, if someone is able to monitor and, and do some-, hit the raised hand or
15 whatnot, if tehre's an issue. Uh...

16 FORBES: That would be Mona.

17 REEVES: All right. So, what we'll do is we'll have Mr. Cricchio go
18 back to sort of where the visuals started. And if you can just stay on for
19 one sec to make sure this is going to work. Yeah. The thing about the tech,
20 if everyone is using it, it usually works, it's the hybrid stuff where
21 everything falls apart, in my experience. It was...

22 CRICCHIO: All right. Are we ready again?

23 REEVES: We think. So did you hear all that, Kevin? So...

24 CRICCHIO: Yes.

25

1 REEVES: Essentially, when, when you brought up your hi-def photographs or
2 something, it crashed the computer in Burlington or where, wherever,
3 whichever room they're in today.

4 CRICCHIO: Okay. So I'll go back to, uh, my first, uh, picture of zoning or,
5 or of the subject property, I should say.

6 REEVES: And...

7 CRICCHIO: Okay. Hopefully, you can see my screen?

8 REEVES: We can't, again, you might want to launch the pow-, there you go.

9 CRICCHIO: Okay. And you see that and hear me...

10 REEVES: [Inaudible.]

11 CRICCHIO: Hear me okay, now?

12 FORBES: Yes, we can see your screen.

13 CRICCHIO: Okay. Awesome. All right. So going back, uh, a few pag-, a few, a
14 few pages from my presentation. So the yellow is the highlight...

15 FORBES: Kevin, can you make it full, Kevin, can you make it full-screen,
16 go to presentation mode?

17 CRICCHIO: I am not sure how to go about doing that. I am not sure how to do
18 that, Leah. Are, are you...

19 BLACK: Just to when, I think, I think the version you're using is a PDF,
20 just...

21 CRICCHIO: Yes.

22 BLACK: A PDF doesn't do a presentation. It would need to have been made
23 in PowerPoint.

24 D'AVIGNON: Kevin, if, if you go under view, it goes file, edit, view, there
25 should be a full screen mode, not in Teams, in Acrobat.

1 CRICCHIO: File, edit, what now?
2 D'AVIGNON: Go over to view, a few over...
3 CRICCHIO: Okay.
4 D'AVIGNON: And it has full screen mode.
5 CRICCHIO: Okay. Is that better?
6 D'AVIGNON: Yes.
7 FORBES: All right. Much better. Thank you.
8 CRICCHIO: Okay. I lost my pane view, though, so, but whatever works. Uh,
9 okay. So this is the three subject parcels involved, where the gravel mine
10 would be if approved. Underlying zoning, uh, Rural Resource, Natural
11 Resource, uh, Land Zoning District, uh, along with the Mineral Resource
12 Overlay. Uh, please interrupt me if there's any further issues. Um, aerial
13 photograph, um, showing the three subject parcels and then going back to
14 acreage. So according to Skagit County records, uh, Skagit County Assessor's
15 records, uh, specifically, the three subject parcels are 37 acres, 20 acres
16 and 20 acres respectively, which total 77 acres. Um, and, but, according to
17 the Applicant's submitted narrative and SEPA environmental checklist, uh, 68
18 acres sand and gravel mine is proposed within the three subject parcels, uh,
19 identified above. SEPA environmental checklist, specifically page 4, further
20 states that the mining will be within a 51 acre portion of the site. Um, and,
21 uh, consistent with, uh, the, uh, the Assessor's records, uh, we used, that
22 information, stating that the three parcels total 77 acres, of which 68 acres
23 will be cleared, however, the mining will only occur within 51 acres of the
24 68. And then we received, on March 11th, 2022, um, that the acreage that we
25 put in our noticing was incorrect, consistent, uh, uh, that the acreage that

1 was listed in the issued 2022 SEPA MDNS, consisting of 77 acres of the
2 subject mine is incorrect. Instead of the 37 acreage, acres, which the
3 Assessor's records indicates for Parcel P5011-, excuse me 155, it's more
4 accurately 29.6 acres. And then, additionally, Parcel P125644 and P125645 are
5 said to be more accurately 19.6 acres in size, for a total, accumulatively,
6 or which is 39.2 acres. Instead of what was 20 acres, uh, in the Assessor's
7 records. And, uh, these, uh, corrected acreages are based on a land survey
8 that the Applicant had done. So, the Applicant further states that the
9 Project Description more accurately should state that the acreage of the mine
10 is approximately 60 acres, 68 acres, with an area to be cleared, mined and
11 reclaimed at 51. So, staff analysis, um, we used, uh, the, uh, uh, Assessor's
12 records acreage, um, and we also based, we also, uh, used what was submitted,
13 um, in the narrative, as well as the SEPA environmental checklist, et cetera.
14 And if anything, we over-estimated the acreage, not under-estimated it.
15 Which, as far as noticing purposes, is a good thing, over-estimating versus
16 under-estimating. Shoreline jurisdiction, the Samish River flows along the
17 eastern border of the project site. Um, there are shoreline associated
18 riparian wetlands that have been delineated. Shoreline environment
19 designation for this portion of the Samish River is rural. All proposed
20 mining ac-, activities will be located outside of shoreline jurisdiction and
21 thus no shoreline permit is required. Critical areas, so over the years, uh,
22 like I said, this, this Application came back in in 2016, there have been
23 numerous, uh, environmental reports, uh, with regard to critical areas. And
24 so I'm not going to go through all of it, but, um, just touch on, uh,
25 essentially what has been submitted. In all of the reports that have been

1 submitted, uh, from 2016 to date, um, we have, uh, used the recommendations,
2 uh, for the respective reports in the SEPA MDNS that was, um, issued in 20-,
3 2022. So, um, in 2015, August 21st of 2015, a hydro-, hydrogeologic site
4 assessment and map was submitted that was prepared by Earth Sciences. Let me
5 move forward a little bit. Okay. And then December 20-, uh, December 16th of
6 2021, uh, the Applicant submitted, uh, a geologic hazard, they submitted
7 response to Skagit County Geologic, Geologic Hazard requirement, uh,
8 regarding geologic hazards to the haul road, that was prepared by Associated
9 Earth Sciences. And again, that was dated December 16th of 2021. That, that
10 had to do, uh, mostly with, with the haul road. Wetlands and Fish and
11 Wildlife Habitat Assessment, um, as part of the submittal, the Applicant
12 included what's called a Samish River Ordinary High Water Mark/Wetland Edge
13 Determination, that should be found in Exhibit 4 of your staff report, Mr.
14 Examiner. That was prepared by Graham-Bunting and Associate, Associates,
15 dated May 18th of 2015. R-, um, the report concluded that it is our opinion
16 that the area of shoreline management jurisdiction extends 200 feet landward
17 of the ordinary high water mark as identified in the field and depicted on
18 the site plan prepared by Semrau Engineering and Surveying. The Applicant
19 also submitted, um, August 20th of 2015, a Fish and Wildlife site assessment
20 that was also prepared by Graham-Bunting and Associates. Page 7, 7 of that
21 report, uh, it provide reasoning for allowing, uh, the use of the moderate
22 land intensity buffer, rather than the high land use intensity buffer,
23 pursuant to Skagit County Code 14.24.240(3)(A). And then it lists some, um,
24 some, some of the criteria there. April 18th of 2017, the Applicant submitted
25 an addendum to the Fish and Wildlife Site Assessment, that also was prepared

1 by Graham-Bunting and Associates. That looked at, uh, some critical, uh,
2 habitat, uh, endangered, threatened or sensitive species. And then December
3 of 2021, the Applicant submitted, um, both a Critical Area Assessment, um,
4 Wetland Delineation and Fish and Wildlife Habitat Conservation Area. And an
5 Impact Assessment and Mitigation Plan. That can be found in Exhibit 8 of your
6 Staff Report, Mr. Examiner. Uh, that was prepared by Northwest Ecological
7 Services, and that also is specific to the haul road. Floodplain, uh, there,
8 there is no floodplain here. Moving on from Critical Areas, uh, employees of
9 the Applicant has stated that they anticipate one to two employees would be
10 working on site. No offices are proposed and potable water would be brought
11 in, um, for drinking purposes by the employees. Restrooms, uh, it is
12 anticipated that, uh, there be a port-a-potty on site. And then moving on to
13 Proposed Hours, uh, of, of and Days of the Operation. So the Applicant
14 proposes, or proposed, that the days and hours of operation generally limited
15 to Monday through Saturday from dawn to dusk. And that the Applicant further
16 states that the hours of operation potentially be expanded based on market
17 conditions and seasonal demands. Skagit County Code 14.16.440 (10) (i)
18 requires that hours of operation vary according to the zoning district
19 designation of the site, but may be shortened by the hearing examiner based
20 on site-specific circumstances. Uh, proposed mine is located, again, in the
21 Rural Resource Natural Resource Land Zoning District, mining operations, uh,
22 on the Rural Resource Natural Resource Land Zoning District designate,
23 designated land may be granted unlimited hours of operation. However, the
24 Hearing Examiner may limit hours of operation to daylight hours or to such
25 other reasonable limitation deemed necessary to address potential significant

1 adverse impacts to existing adjacent land uses on any portion of the mining
2 site where mining activity is proposed or occur less than one quarter mile
3 from the existing, from existing rural intermediate, rural village or urban
4 growth area designated lands. Proposed mine site is located greater than one,
5 uh, quarter acre from the rural intermediate, rural village and urban growth
6 desi-, designated, uh, lands, however. Okay. So, moving onto, uh, uh,
7 planning and development services limitation of hours and days of operation.
8 So in order to mitigate potential impacts of the quarry on the neighborhood,
9 the hours of operation were limited by Planning and Development Services
10 Department in, in the issued SEPA MDNS, issued in 2022, hours were limited to
11 Monday through Friday, from 7 o'clock a.m. to 5 o'clock p.m. No mining
12 operations, uh, are permitted outside of these times, including holidays. If
13 seasonal/temporary demand indicates a need for extended hours, or Saturdays
14 or Sundays, Applicants shall submit a request for a temporary deviation to
15 these permitted hours to the Planning and Development Services, Services
16 Department. If permitted by PDS, such, such operations may be subject to
17 additional conditions. Project access, uh, so, again, uh, the three parcels
18 involved in the mining site, uh, approximately 1.5 miles north, along, uh,
19 north of Grip Road on haul road, that can be found in your Plan Stat Exhibits
20 19 and 40, Grip Road is an existing private, graveled forestry road, which
21 extends north from Grip Road. There is an internal bridge, uh, that, uh, haul
22 road crosses and so in order to access the three parcels where mining would
23 occur, you would have to go across this internal bridge. This internal bridge
24 crosses, is, uh, crossed over an approximately 14 foot by 40 foot bridge,
25 which spans Swede Creek. Uh, the bridge has been evaluated, uh, for, um,

1 weights. So the, the dump trucks going over it, it has been evaluated for it,
2 um, as far as it being able to handle the weights. That can be found in
3 Exhibits 20 and 21. Traffic, so, since this project came in in 2016, there
4 was a number of memos that were, uh, were provided by the Applicant, from,
5 uh, the Applicant's Consultants. Um, these memos addressed, uh, possible
6 traffic impacts, and then, uh, eventually, the Applicant did submit a Traffic
7 Impact Analysis, although I don't believe that Skagit County, uh, uh, Public
8 Works Department triggered it, uh, based on, on Standards. So according to
9 this Traffic Impact Analysis, uh, Skagit County Road Standard Level of
10 Service, otherwise known as LOS, requirements are met for each intersection
11 impacted by the traffic generated by Grip, by the proposed mine. No
12 mitigation level of service measures were required based on the TIA. However,
13 to mitigate traffic related site distance issues, a flashing, a flashing
14 beacon and signing system were proposed and agreed upon for traf-, traffic
15 generated by the Grip Road Mine. Um, these recommendations, uh, uh, in the
16 TIA were incorporated as mitigation measures in the 2022 SEPA MDNS, which can
17 be found in Exhibit 27. Let me proceed with my papers, please. So, uh, this
18 slide, just wanted to point out again, according to the TIA, uh, it's
19 anticipated, uh, that there be 23 full truck loads or 46 trips per day.
20 Third-party review of the traffic impact analysis.

21 REEVES: Hold on one sec. Uh, we're getting quite a bit of noise from the,
22 uh, room there.

23 CRICCHIO: Sure.

24 FORBES: Uh, will you guys go back...

25 MALE 1: Go back one slide.

1 MALE 2: Go back one slide.

2 FEMALE 3: Page 38.

3 CRICCHIO: Sure. Are, are you ready?

4 FEMALE: Yeah.

5 MALE: All right. Hold on.

6 CRICCHIO: All right. I can, I can go ahead and read this. Uh, this is in
7 the traffic impact analysis. In order to maintain the level of service, uh,
8 which is a C, maximum operation limit may not exceed 30 full trucks, 60
9 trips, per hour, with a maximum operation limit of 720 full truck trips per
10 day.

11 REEVES: [Background noise] okay. Hold on one sec.

12 CRICCHIO: Sure.

13 REEVES: Mona Kellogg, is there a technical issue that we need to address?
14 Who...

15 KELLOGG: No. Everyone just wanted, um, Kevin to go back a page.

16 REEVES: Okay. I, I'm worried that this is not going to ultimately, uh, be
17 an effective way to move forward. I, I, these, the PowerPoint, I believe is,
18 is, now, is, is this available, ultimately, on the, on the City's web-, I'm
19 sorry, on the County Website, Mr. Cricchio?

20 CRICCHIO: That's correct, Mr. Reeves. It's on the, uh, portion of the
21 Skagit County's website, uh, dedicated to, uh, the Concrete Nor'West Gravel
22 Mine.

23 REEVES: So what I would suggest, folks, I, I, if you feel like you would
24 like more information about something, A) you know, uh, later today or if you
25 have a device you, you can use to download this PowerPoint, you can look at

1 it, uh, at leisure, uh, but B) if you feel like, you know, something was
2 missed, when we get to the point, uh, when you are able to provide public
3 comment, uh, we will, uh, you, you can mention it and, and we can, uh,
4 address it at that time. I'm just worried that if we have Mona Kellogg raise
5 her hand every time, uh, someone says something or something comes on the
6 screen, uh, we'll, we'll have problems. So, uh, we're going to limit the
7 raised hand feature to technical issues, uh, and maybe Mr. Cricchio, just try
8 to be, you know, wary of moving too quickly, uh, through, through your
9 slides, I know you have another 100 or so in this deck. But, uh, we'll, we'll
10 get through them. So, with that, if, uh, we can turn the raised hand off on
11 the Mona Kellogg computer, uh, again, I'm trying not to interrupt unless
12 there's a major technical issue.

13 CRICCHIO: Okay.

14 REEVES: I think we're okay. If would ask, at some point, if someone
15 could, there we go, there's the raised hand feature off. Go ahead, Mr.
16 Cricchio.

17 CRICCHIO: All right. Thank you, Mr. Reeves. So, the section, uh, on, on my
18 slides, uh, specific to, uh, reports are taken right out of the reports. So
19 it's essentially copy/paste from the report, for the most part. Um, and if
20 there's any questions about, uh, environmental impacts that are perceived,
21 that can be directed to the Natural Resource Staff. Um, that, um, is also
22 representing Skagit County. And, additionally, if there's any, uh, questions
23 or concerns about traffic and, and perceived traffic impacts, that can be
24 addressed by the Public Works Department that's also, also is representing
25 the County here.

1 REEVES: And, Mr. Cricchio, I just want to note for everybody, uh, that is
2 here, that, uh, traffic is one of the major concerns that was raised, I
3 believe, the Appellant has traffic experts that, that they're going to bring
4 on later, I believe, uh, we're going to hear from, uh, uh, Mr. Ehrlichman's
5 experts on that. And I think the Applicant has experts on that. So for those
6 that are trying to keep track of what's happening, uh, the, sort of the two
7 very big issues, environment impacts and traffic, if we treat those...

8 CRICCHIO: Sure.

9 REEVES: As separate, there are going to be expert witnesses, uh, that are
10 going to testify, uh, potentially for days on, uh, several days on these
11 specific issues. Uh, so, so just know, for folks there in the room, that, uh,
12 we're all aware of, of the worries and concerns that members of the public
13 have raised, in terms of traffic, and environmental, uh, concerns and the,
14 the hearing has, has certainly been designed to have a more thorough review
15 than the one deck of slides on the PowerPoint that Mr. Cricchio is, is
16 presenting right now. So with that, Mr. Cricchio, please continue.

17 CRICCHIO: All right. Thank you, Mr. Reeves. So moving onto third-party re-,
18 review of the traffic impact analysis, as well as the memos, um, Skagit
19 County, uh, Planning and Development Services, as well as the Public Works
20 Department, uh, did hire, uh, third-party review, um, specifically, uh, GTC,
21 as well as HDR, performed third-party review. That can be found in Exhibits
22 15 and 16 of your staff report, Mr. Reeves. And third-party review, uh,
23 looked at, uh, the Applicant's traffic information, their memorandums, as
24 well as their analysis. And third-party review essentially resulted in
25 revisions to the Applicant's traffic memos and analysis. And, uh, ultimately,

1 those recommendations, um, um, were incorporated, uh, from the traffic impact
2 analysis into the SEPA MDNS. And then during the 2022 issued SEPA MDNS, um,
3 during the comment period associated with that, one comment was received by
4 Kyle Loring, uh, representing the Central Samish Valley Neighborhood, um,
5 and, um, appealing the County's issued SEPA MDNS. Parking, um, I don't think
6 I've gone over that, I think I'm progressing in the correct way. Uh, parking,
7 essentially, all parking would be on-site. Noise and emissions, I don't have
8 too much more, uh, it's on 55 slides. Uh, and so essentially, any, any, the
9 mining operation, uh, the Applicant has indicated that the mining operation
10 is anticipated to be in compliance with both, both day and night, uh, noise
11 regulations. Um, not to, not expected to generate excessive emissions or
12 odors, with the exception of dust generation. Um, the Applicant, as part of
13 the application submittal, did submit a Fugitive Dust Control Plan, Plan,
14 which can be found in Exhibit 22, uh, 22 of your Staff Report. Which includes
15 the spraying of water on roads and equipment to control fugitive dust. That
16 also has been compliance with the fugitive dust control has been, uh, made a
17 condition of approval or a mitigation measure. So moving on from that. Oops.
18 Okay. So findings of fact, uh, property is located in Rural Resource Natural
19 Resource Land Zoning District, uh, and Comprehensive Plan Designation subject
20 property is located in the mineral, Mineral Resource Overlay, gravel mines
21 are allowed in the Rural Resource Natural Resource Land Zoning District
22 Mineral Resource Overlay with a Hearing Examiner Special Use Permit. March 7th
23 of 2016, uh, the Planning Department received both an application for a
24 Special Use Permit and a Forest Practice Conversion Permit. Applications were
25 deemed complete on March 22nd of 2016. A Notice of Development Application was

1 published in the Skagit Valley Herald on March 31st of 2016. This notice was
2 posted on site and mailed to neighboring land owners within 300 feet of the
3 subject property. There was a comment period with it, with that, uh, Notice
4 of Development Application, which ended on the 15th of April of 2016. A SEPA
5 mitigated determination of non-significance was issued on May 26th of 2016.

6 REEVES: [Background noise] hold on. Uh, um...

7 CRICCHIO: Is there a way to mute that?

8 REEVES: Yeah. Can we mute Sarah Day [phonetic], anyone that is not the
9 podium or Cricchio should be muted. Identified as Sarah Day having a
10 conversation. Great. Okay. Okay.

11 CRICCHIO: Okay.

12 REEVES: All right. Go ahead, Mr. Cricchio.

13 CRICCHIO: Sure. Thank you. Uh, so a SEPA, uh, mitigated, a SEPA MDNS was
14 issued on May 26th of 20-, 20-, 2016, uh, Notice of Public Hearing was issued
15 on, on November 16th of 2016. Um, however, uh, the Planning Department
16 determined that the proper notice of the subject application was not given.
17 Um, uh, this did go before a public hearing and, on 20-, November 16th of
18 2016. But the Planning Department, uh, realized that not proper notice was
19 given. So according, accordingly, the Hearing Examiner opened the hearing,
20 but decided to continue it, uh, to a future date, which is where we are
21 today. Uh, the Planning Department issued a second Notice of Development
22 Application, which was published in the Skagit Valley Herald on December, uh,
23 15th of 2016. Uh, neighbors within 300 feet were notified and then there was a
24 new public comment period associated with that. Which was December 30th of
25 2016. Um, okay. G. So, during the public comment periods, um, there has

1 actually been two, um, uh, so far, um, we've re-, the County received
2 numerous public comments. And then subsequently, or consequently, the
3 Planning Department requested additional information from the Applicant on
4 March 14th of 2017. The Applicant provided this information, but the Planning
5 Department did not believe it was sufficient or complete, so the Planning
6 Department, uh, made an administrative decision on April 5th of 2018 to deny
7 the subject applications for failure to timely submit the requested
8 information. The Applicant appealed this administrative decision, PL18-0200
9 on April 16th of 2016. And then on April, October 17th of 2019, Hearing
10 Examiner denied the County's motion for summary judgement, reversing the
11 Planning Department's denial and ordering the Application, Application to go,
12 uh, to the Hearing Examiner for a decision on merits. Following the appeal,
13 the Applicant submitted, uh, continued to provide additional information. On
14 April 15th of 2021, the Planning Department, however, withdrew the SEPA MDNS
15 and issued a new more substantial MDNS, addressing the concerns raised about
16 this particular project. But then, again, on May 11th of 2021, the County
17 withdrew the SEPA MDNS. This action was appealed. On June 17th of 2021, Sk-,
18 uh, the Planning Department for Skagit County informed that the Applicant
19 that they were required to obtain critical areas review for the entire
20 private haul road that would be used for ingress and egress to the proposed
21 quarry. On June 24th of 2021, an appeal from the application, from the
22 Applicant, excuse me, was received, requesting the Hearing Examiner reverse
23 this decision, um, requiring critical area review on the h-, on, on, on, on
24 the haul road. Uh, a SEPA mitigated determination of non-signif-,
25 significance was issued on February 2-, 22nd of this year. The SEPA MDNS was

1 published in the Skagit Valley Herald newspaper, posted on site and, uh, uh,
2 mailed to neighbors, as well as parties of record. During the appeal, again,
3 one, one appeal was received on March 25th of 2022.

4 REEVES: Sorry, Mr. Cricchio?

5 CRICCHIO: Sure.

6 REEVES: Just for those that are trying to follow along at home, or in the
7 room, can we go back to Slide I?

8 CRICCHIO: Yes.

9 REEVES: Uh, so here at the bottom, you say on June 24th there was an
10 appeal that was received, it requested the former Hearing Examiner something.

11 CRICCHIO: Sure.

12 REEVES: What happened? What was the outcome? That was not included in the
13 slide here.

14 CRICCHIO: Sure. My, my fault. So...

15 REEVES: That's okay.

16 CRICCHIO: Uh, as a result of, of, of that appeal, the, uh, Hearing Examiner
17 ruled in favor of the County. So, um, essentially, the appeal was, was
18 reversed and, uh, the County, uh, the decision was, was in favor of the
19 County and Critical Area Review of the haul road was required. And that is
20 what resulted in the Critical Area Reports that were submitted in December of
21 2021.

22 REEVES: Sure. So that was the 2.1 miles or so of haul road..

23 CRICCHIO: Yes.

24 REEVES: Right there and then, uh, now, I think we're up-to-date on J, so...

25 CRICCHIO: Sorry about that.

1 REEVES: No problem at all.

2 CRICCHIO: My apology. So, moving onto J, uh, SEPA MDNS was issued on
3 February 22nd of 2022, it was published in the Skagit Valley Herald, posted on
4 site, uh, as well, as well as emailed and mailed to the parties of record and
5 to, uh, uh, neighbors within 300 feet. That resulted in appeal, um, uh, of
6 the SEPA NDMS, um, and that was filed by the Appellant on March 25th, 2022.
7 And then, moving forward to a Notice of Public Hearing. The Notice of Public
8 Hearing was published in the Skagit Valley Herald, posted on site, mailed,
9 emailed to the parties of record, uh, as well as mailed to neighbors within
10 300 feet. So, uh, as, as you know, Mr. Examiner, um, we've received a lot of
11 public comment on the subject proposal before you, um, going back to 2016.
12 And I think it would be fair to categorize the majority of the, uh, public
13 comments we've received, um, falling into the, um, category of perceived
14 impacts to County roadways or, or traffic, as well as, um, potential
15 environmental impacts that the quarry may have.

16 REEVES: Sure. And I agree with that.

17 CRICCHIO: Um...

18 REEVES: I think the number I sort of guesstimated was approximately 2,000
19 pages of, of, uh, of public comment related materials, is the number I, my
20 math might be a little off, but...

21 CRICCHIO: It, it's a lot. I, I've done my best to put all of the pieces
22 together, uh, to get this, uh, project, uh, to you. Um, and to provide a, uh,
23 complete record. There's a possibility there could be some redundancy in this
24 public comments, um, but I wanted to make sure that all public comments, um,
25 are, are represented and get before you.

1 REEVES: Thank you. I'd rather have, uh, redundancy than miss anything,
2 so...

3 CRICCHIO: Thank you. So routing, as part of any project, um, uh, whether
4 it's a Special use Permit or any other type of, uh, land use permit, uh, some
5 types of land use permits, uh, require public noticing, whereas other don't.
6 Um, this is a Hearing Examiner Special Use Permit, um, so this, uh, does
7 require noticing. So, and then, in addition to noticing, we have both
8 internal and external routing. And so we solicit comments to departments of
9 jurisdiction as well as agencies of jurisdiction, um, so whether it be, uh,
10 the Natural Resource people, uh, in, in Skagit County's Planning Department,
11 Public Health, Public Works, Fire Marshall, um, and there's many others, we
12 solicit for comment. And any comment that we have received, um, has been
13 incorporated as, um, uh, conditions of approval if, if they're requesting
14 something. And as you know, the Applicant is requesting a Special Use Permit,
15 um, and a Forest Practice Conversion Permit. Uh, it's being consolidated
16 review and so that's what's before you today. It's a Level type, Level 2 type
17 of review process. Hearing Examiner, uh, is the decision maker on this.
18 Special Use Criteria, that can be found in your Staff Report, Page 19-27.
19 Mining Operations Criteria of Approval, that can be found in, in your Staff
20 Report, pages 27-28. And then Hearing Examiner Review Criteria, pages 28-20
21 of your Staff Report. And so, based on the applications materials submitted,
22 um, all the reports, uh, the Traffic Impact Analysis, the SEPA MD-, MDNS, the
23 Findings of Fact, um, and, um, the Planning Department would recommend
24 approval to you, Mr. Examiner, that the subject, uh, Special Use Permit and
25 Forest Practice Conversion Permit be approved, subject to Staff's, uh,

1 conditions of approval that is listed in your Staff Report, including the
2 SEPA MD-, MDNS. So, if I can get out of this, um, I don't know if I can do
3 that. I think I can. Okay. I'm going to fast forward to, just want to give
4 you some visuals, uh, or pretty much done as far as my portion. Okay. Okay.
5 Jason, are you there?

6 D'AVIGNON: It's under View.

7 CRICCHIO: It's under View. Thank you. Okay. Thank you. Okay. So, um, this,
8 uh, was a site visit that, uh, myself, as well as, uh, John Semrau and Dan
9 Cox, uh, with, uh, Miles Sand and Gravel, met, on site, uh, in recent months.
10 And so I've taken a number of pictures, uh, just to give you a visual of what
11 it looks like out there. Um, so as you can see, uh, we've done lots of
12 noticing over the years. Um, currently, there is, um, a locked gate here, um,
13 keeping people out, um, obviously, we're, we're there, so it's opened. And
14 so, when you, so this is Haul Road, um, and then Grip Road is up here. Um,
15 when you, um, look to the left, as you're looking towards the gate, from the
16 inside looking out, this is the, uh, view that you're looking at. So, uh,
17 there is a curve up here a little ways. Um, it's...

18 REEVES: Sorry.

19 CRICCHIO: And then...

20 REEVES: To clarify what you were trying to get us to visualize, I'm in my
21 car, where, where is my car and did I just leave the haul road and turn a
22 certain direction?

23 CRICCHIO: So, if you are looking, if, if, if you're facing the street, Grip
24 Road right here.

25 REEVES: Yep.

1 CRICCHIO: You either look left or your look right. Okay. And then so then
2 as we proceed, this is looking left, so you're looking up the hill. And then
3 there's a curve up here. And this is facing, from the inside facing Grip
4 Road. So, when you look left, you're, you're looking this way. When you look
5 right, you're looking down this way. This is in-, internal to the, uh, so
6 you're looking at Haul Road, um, it's, it's, it's having been on this, it's,
7 it's pretty extensive, um, so Haul Road is quite a ways. Um, there is a,
8 there is a part where you cross over Swede Creek, um, on the bridge that I
9 talked about. Here is the bridge and, again, um, the Applicant has submitted,
10 uh, memos, uh, from qualified professions that have evaluated the capacity to
11 hold, um, hold, um, trucks crossing this that have gravel in them. And so
12 there is, the predominate, uh, landscape that you're looking at, on Haul
13 Road, is forested. It's graveled, pretty remote, there is a few areas where
14 you see this, it has been logged in the past, um, but, again, graveled, very
15 remote. Um, y-, the neighbors are quite a ways away. And, um, at the terminus
16 of Haul Road, that's where they're proposing to, uh, that's where the three
17 parcels are and that's where the proposed, uh, gravel mine would be. Um, and
18 that, Mr. Examiner, is all I have.

19 REEVES: Sure. Um, in terms of just getting us up-to-date in the timeline,
20 Mr. Cricchio, can you speak to what happened after, you know, I was
21 hospitalized and we had to move the hearing, uh, did the, did the County make
22 any effort or how, how is, how is this sort of re-notice so folks knew to
23 show up places or participate or do things? Do you happen to know the answer
24 to that?

25

1 CRICCHIO: Yes, we did re-notice. And so, uh, re-noticing did occur of the
2 Notice of Public Hearing. So, originally, it was scheduled for July, if I
3 recall correctly, Jul-, July 11th, 12th and 13th, I think...

4 REEVES: Yep.

5 CRICCHIO: I'm correct.

6 REEVES: Yep.

7 CRICCHIO: Um, so we did re-notice, uh, to all parties of record, via email
8 and snail mail. And we did, uh, mail out the notices to all the neighbors
9 within 300 feet of all those subject parcels. Uh, we posted the, the, the
10 revised notice, as well, as well as on site and, uh, that revised notice was
11 also published in the Skagit Valley Herald.

12 REEVES: And I assume it was also updated on the website? Did you say that
13 already, I apologize if you...

14 CRICCHIO: That's, that's correct. We did up-, we did update, uh, working
15 with IT, IT did update that, per my request.

16 REEVES: Excellent. Thank you. And, and I know that we're going to hear,
17 in-depth, from, from experts later, um, but just again for sort of the
18 purposes of the bigger picture overview, can, I think you would probably be
19 able to do this, but, can you just very quickly touch on the SEPA sort of
20 process to the extent that while watching your slide show, if I'm not an
21 expert, I might get a little confused to the extent that it seems as if SEPA
22 has occurred, like, three times already? So can you just quickly touch on,
23 uh, uh, you know, what the process looks like and is there some other outcome
24 that, that's possible than say an MDNS, just, and, again, I know we'll get
25 into it in much greater detail later, I'm just trying to...

1 CRICCHIO: Sure.

2 REEVES: Where if I wasn't an expert and I'm trying to follow along at
3 home, kind of, that was something I was wanting to have clarification on.

4 CRICCHIO: Sure. I, I, hopefully I can answer your question, Mr. Reeves. So,
5 SEPA, that stands for State Environmental Policy Act, and SEPA, uh, uh,
6 sometimes, depending upon what an application, applicant is submitting, to
7 whether it's City or County, may require SEPA Environmental Review. Um,
8 whether it's a project action, um, i.e. the Applicant is proposing something
9 or whether it's a project non-action, such as a comprehensive plan, um,
10 amendment or a code amendment. Um, so SEPA can be triggered or, or it can be
11 exempt from being triggered, uh, depending upon what is before a City or
12 County. Um, there's different thresholds that, uh, a City or County could
13 issue when, uh, reviewing, uh, an application for SEPA. One of the threshold
14 determinations can be a Determination of Non-Significance or otherwise known
15 as a DNS, another threshold determination can be what's called a Mitigated
16 Determination of Non-Significance, otherwise known as a MDNS. And then,
17 finally, the last threshold that could be potentially triggered is what's
18 called a Determination of Significance or a DS. A DS would require an
19 Environmental Impact Assessment, whether the two former, DNS and MDNS does
20 not require an Impact Assessment. Uh, so SEPA review has occurred on this in
21 the past. There has been some errors on, on behalf of the County, um, so we
22 have, uh, done our best to cross our Ts and dot our Is and make sure, um, uh,
23 Skagit County Code, as well as State Law is followed. And that this appl-,
24 that this particular, uh, proposed gravel mine is adequately mitigated for.

25

1 REEVES: Thank you. I think that was helpful to the extent that the
2 levels, uh, and so, uh, you know, one of, we'll hear from Mr. Loring here in
3 just a little bit, but one idea under SEPA is, you know, what, what level or,
4 or what, what is triggered and what is required. In this instance, the County
5 determined a Mitigated Determination of Non-Significance was appropriate such
6 that, uh, the County's determination again was that with mitigation measures,
7 required mitigation, this proposal could move forward, such that there would
8 not be significant environmental impacts. Is that right, Mr. Cricchio?

9 CRICCHIO: That's correct, Mr. Reeves.

10 REEVES: Okay. And so, just also to clarify one final thing there, at the
11 other earlier SEPA determinations, are sort of no longer applicable, we've
12 just got the one MDNS that was appealed, uh, by, uh, uh, I'm sorry, I
13 shouldn't just say Mr. Loring, it was not him, it was the Central Samish
14 Valley Neighbors, uh, that appeal, uh, was the one, that's the one MDNS on
15 the table, uh, the other, the other, the others sort of SEPA stuff, if, as it
16 were, has been withdrawn or, uh, overturned, et cetera, is that an accurate
17 way to think about that?

18 CRICCHIO: That's correct. So the previous SEPA's are no longer. This is the
19 SEPA MDNS, um, there has not, no other, uh, threshold determinations are
20 applicable before the July 22nd, uh, 2022, uh, MDNS. So this is the threshold
21 determination.

22 REEVES: Excellent. And then, just in terms of your PowerPoint, Mr.
23 Cricchio, I had said something about a 100-something in the deck, I, I think
24 there was, if you go download this...

25 CRICCHIO: Yes.

1 REEVES: Uh, off of the County's website, there are more slides, but, but
2 quite a few of them are just, you know, property tax information, uh, you
3 know, um, there weren't sort these substantive, uh, slide decks that you
4 wrote out yourself, that you, you bypassed. Is that a fairly accurate
5 assessment?

6 CRICCHIO: Yes. Thank you, Mr. Reeves. That's entirely correct. So, uh,
7 there's a lot of information in there that I included in my, uh, combined PDF
8 presentation. I like to come prepared, uh, uh, instead of not.

9 REEVES: Okay. So, my, and, again, my understanding of, of the intent of
10 everybody is that that sort of is our big picture overview, uh, Staff
11 presentation. Uh, then we were going to hear from, in order, uh, Bill Lynn,
12 then Kyle Loring, uh, then Mr. Ehrlichman, uh, as, again, bigger picture, not
13 a question and answer sort of thing. And then members of the public after
14 that. There will be a break at some point. Uh, but did I, I just want to make
15 sure none of the attorneys had a different understanding and, and I, I didn't
16 believe we were going to be having cross examination of Mr. Cricchio just on
17 his, his basic overview. I hope that was everybody's understanding. That
18 seems to be the case. Okay. Good. So with that, uh, Mr. Lynn, are you ready
19 to move forward? We're about two hours in. I'd be fine, you know, if we, you
20 know, want to push, push through or if folks need a short break, that's fine.
21 Just someone...

22 LYNN: Uh, I'm, I'm ready to move through, but I'm happy to accommodate
23 anybody else if they've got a different idea.

24 REEVES: The longer I do this, the, I try to be a little better about it.
25 But, uh, I'm, I'm fine, I think. So why don't we at least get through, the

1 intent is that Mr. Lynn is, I think he promised 15 minutes or so, I'm not
2 going to limit him, uh, but we'll at least get through Mr. Lynn, uh, so thank
3 you if, and I don't swear him in because he's an attorney. Uh, it's a stayed
4 joke I've overused in this forum and I others, I sometimes swear at
5 attorneys, but I don't swear them in. Uh, but, so, Mr. Lynn, uh, you are just
6 going to give a sort of basic, sort of overview on behalf of the Applicant,
7 is that accurate?

8 LYNN: Yes, thank you.

9 REEVES: Please.

10 LYNN: Uh, happy to represent Miles Sand and Gravel, uh, on this matter.
11 I've represented them on a number of, uh, permit actions, although I think is
12 probably the smallest, although perhaps one of the more controversial. Uh, I
13 think our position could be summarized very quickly, uh, this is property
14 that is, has been designated by the County as appropriate for this use, in
15 fact, it's a priority use for this area. Uh, the second point is that this is
16 a very large site with very small mine. Uh, you can see from the pictures
17 that this is a remote, uh, location, not in anybody's, uh, regular view
18 scape, it's, it's a small area on a big site. The third thing is that this is
19 a very limited operation, uh, basically one or two people with a couple of
20 pieces of equipment, not the full scale, uh, mine that you might otherwise
21 think about. And then, finally, uh, this process has been long and the site,
22 uh, at the end of it is extraordinarily well, uh, mitigated, both by the
23 actions of Miles, in limiting the scope of what's proposed, but also by the
24 regulations imposed by the County and other agencies, and then finally by the
25 conditions of the MDNS that are tailored to this site. I'm going to expand on

1 each of those things, uh, uh, a little bit. I want to start, though, from the
2 proposition that what we're dealing with here is an unique commodity. Uh,
3 some of us might not choose to go to bars, some of us might not choose to go
4 to a particular convenient store or Costco or a particular medical office,
5 but everyone on this call, uh, uses gravel on an ongoing basis. Everybody
6 who's sitting in a house that sits on a foundation, everyone who drives a car
7 or a bicycle, uh, everyone who received tap water, uh, through utilities that
8 are in trenches, uh, each of us uses gravel. And there will be a little bit
9 more about that later. But this an unusual product, in that sense. Uh, gravel
10 can't be mined everywhere, you can locate a medical office whether you want,
11 but gravel mines can only occur where gravel exists. And it's not just any
12 gravel, it has to be gravel of a, of the necessary quality to serve the needs
13 of the community. It has to be in a quantity that is marketable and can be
14 obtained, um, in a, in a feasible manner. It can't be located under
15 development that has already occurred. And this is an important one because
16 there's lots of gravel in our state, some of it, though, is located under
17 cities, like, Lakewood and University Place, down where I come from. It's,
18 it's already developed, it can't be, uh, obtained. Uh, the gravel to be mined
19 has to be, uh, away from critical areas, you can't have areas crossed by
20 creeks and, and streams, it has to be separated from those. And it has to be
21 separated from, uh, ground water and, and surface water. And, uh, it can't be
22 under other unsuitable material that makes it, uh, difficult to obtain. And
23 then, finally, it has to be located in proximity, in proximity to the areas
24 where it will be used. And even the County's policy notes that it must be in
25 close and economic proximity to the market. So, that, uh, dramatically limits

1 where we could even think about proposing this activity. And that, those
2 factors, the combinations of the extraordinary public demand and the
3 limitations that I've just described, are why the Growth Management Act told
4 us all, as a matter of State Policy, that one of the first things we Cities
5 and Counties have to do, in planning their futures, is to identify where
6 natural resources are that are necessary for our society. They did that for
7 agriculture, uh, for timber and for mineral resources. And they said, you
8 have to define those first and protect them and not just provide them, but
9 protect them from encroaching uses. So, the, the normal order of things is
10 reversed as to, uh, mineral resources because they are essential and their
11 preservation and, and excavation, in the case of, of mineral resources, is
12 essential. So, the County has implemented that by, uh, designating mineral
13 resource lands, this is one of them. Actually, you'll see on Maps later that
14 this actual entire site is actually a designated mineral resource land, all
15 700 plus acres, um, but this only concerns the 51 acres that, uh, that we're
16 addressing in this application. Uh...

17 REEVES: Sorry to interrupt, Mr. Lynn.

18 LYNN: Yeah.

19 REEVES: Just, again, try to help folks that might not be experts, when,
20 when you're talking about the order and the designations, is this when
21 implementing the comprehensive plan as required, uh, under the Growth
22 Management Act, or GMA, is that what you mean, what you're talking about when
23 you talk about these designations and things?

24 LYNN: Yes, that was one of the first steps that the County was required
25 to take was to designate these protected areas. And then they had to develop

1 the other allowed uses, kind of working around that. Just in the same manner
2 that the County was required to designate critical areas and make it's
3 planning around that. So it's a primitive or foundational stage in the
4 development of a comprehensive plan.

5 REEVES: Right. I, I hadn't heard the word comprehensive plan, I was just
6 wanted to make sure folks were trying to follow, that they knew where you
7 were in your explanation.

8 LYNN: I appreciate, appreciate the clarification. So, um, so the County
9 has designated this land and has said that this is a priority use, uh, as
10 Special Use Permit is required, but you have to start from the proposition
11 that some level of, of impacts are necessarily are going to result from the,
12 from the use of these mineral resources that are protected. And, and this
13 area is one where that is a, a priority use. So, what is proposed here, um,
14 first of all, physically, it's small in scale, 51 acres very small for a
15 surface mine, and that is the area that's proposed to be cleared and mined.
16 And that's on a 735 acre site. So it represents about 7% of the overall site
17 that's actually going to be used. And it's very well screened and, and
18 buffered as, as you have seen from the pictures. Really, the most noticeable
19 part about that, though, is that the very, uh, the very, the activities that
20 are proposed are very limited. Uh, surface mines can include all manner of
21 processing, uh, not just excavation, but washing and shorting and crushing
22 and asphalt batching, concrete batching, uh, dredging, recycling, this is the
23 other end of the spectrum, what's proposed is that the material will be
24 excavated by a crew of one or two people, using two or three pieces of
25 equipment. No building is proposed, uh, there's nothing of permanence here.

1 This is an interim use, where a couple of people will excavate this mine to
2 be processed, uh, with the gravel to be processed elsewhere. Uh, it's
3 interesting that people characterize this as an industrial use. The things
4 that have industrial, uh, quall-, qualities, potentially, like, crushing, uh,
5 or processing equipment or, uh, sorting and, and this big, uh, bees nest of
6 activities, that's going to occur someplace else. All that's going to happen
7 here is the excavation and transportation of material. It is literally the
8 least you can do in a mineral resource area. This is the low end of the
9 spectrum, not the high one. And the level of, uh, transportation here, again,
10 is very small, 23 loads a day on average is a very small number. Uh, uh, you
11 know, there will be times when that's exceeded, but those will lead to an
12 annual average of 46 trips a day. And I think the, the other thing that's
13 very much worth noting here is that this site is closed in. So while there
14 will be use of rural roads, as there are with every..

15 REEVES: [Background noise] hold on one sec.

16 MALE 3: Hi, how, how are you all doing?

17 REEVES: Good. Uh, we're going to go ahead and mute anyone, anyone that
18 joins us, uh, there will be an opportunity to testify later. But, uh, folks
19 that, that join the meeting are muted until..

20 MALE 3: Hi, glad to meet you.

21 REEVES: Sorry?

22 LYNN: Uh..

23 BLACK: I think you're hearing a phone conversation, Mr. Reeves.

24 REEVES: Oh, if, if, uh, there we go. Thank you. Sorry, sorry to interrupt
25 there, Mr. Lynn.

1 LYNN: Uh, as I was, uh, saying, the, the type of roads here are not
2 uncommon in rural areas. What is a little bit uncommon is the relative
3 proximity of the site. It's a short haul, uh, by gravel, uh, context, and
4 alternative sources of this same material, which is in demand, uh, might well
5 be located farther away and involve a longer haul on similar roads. So, um,
6 for all of those reasons, this is a small scale operation on a big site,
7 well-buffered from, uh, other activities. And then, finally, I want to talk
8 about the process and what it has led to in this case. Uh, you know, there's,
9 there's criticism as you review, review the comments as to the, the changing,
10 uh, context and the, and the length of time. Certainly, we've complained
11 about the length of time that this has taken. Really, a lot of the, the
12 difficulty here has arisen from the fact that the County started off by
13 applying its normal standard to this project. And then, as the public volume
14 has increased, the, the, the level of comments, the extent of comments, the
15 County has, uh, done more and more to try to address those things. And, and
16 I'll give you just a few examples of that. Uh, we started off with a level of
17 traffic analysis that the County thought was commensurate with this type of
18 facility. Uh, by the time we were done, we had submitted a number of
19 different reports, the County had engaged, uh, two different experts to
20 review the material and provide additional input and we had responded to
21 that. Now, that's not the ordinary pro-, uh, process. But because the County
22 was hearing from the public that they didn't trust the County experts to
23 review, the County responded and went out and it got others to parties to
24 participate. So, that's a level of scrutiny not normally applied, but what
25 was here. Um, normally, with a mining operation where all you're doing is

1 excavating, you wouldn't do a noise analysis. But because of the public
2 comments, the County required it here. And then the County went a step beyond
3 that and actually required a vibration analysis where the, the Applicant was
4 required to hire a consultant to look at the vibration from trucks on the
5 homes that they passed. Uh, uh, an extraordinary step that, uh, again
6 reflecting the, the County's effort to be responsive to the public. And then
7 several years into this process, when we thought we were nearing the finish
8 line, the County said, uh, we want you to analyze the haul road as to
9 critical areas. We know you're not proposing to do anything there, uh,
10 physically, you're not alternating it, and, uh, but we want you to analyze
11 the impacts. And then the County went out and hired another review, watershed
12 company from Kirkland, their expert walked both sides of the haul road, from
13 beginning to end, and came out with a list of specific, uh, critical areas
14 that it wanted analyzed. And those, that work was done, their recommendations
15 were incorporated into this. So the project has been under an extraordinary
16 spotlight from the beginning. Uh, uh, it's been a long process. But
17 literally, everything has been, uh, reviewed and, and considered. And on top
18 of those requirements that are incorporated in the MDNS, I just want to note
19 that the County has pretty extensive requirements of its own for any surface
20 mine, all of which are met. And I also finally want to indicate that there,
21 this is not the only source of, of regulation of surface mines. Uh, the, the,
22 uh, mines are extensively, uh, monitored and reviewed by the Department of
23 Natural Resources, the Department of Ecology as a Special Permit, uh, for
24 surface mines. Uh, their requirements have to met, be met, including the, uh,
25 monitoring and, and regulation of water quality. Uh, there's the northwest

1 clean air agency that addresses dust impacts and then finally the, uh, MSHA,
2 the ag-, federal agency that regulates mine safety. So, this is a, an
3 extremely well-regulated project, it's extraordinarily small and it's on the
4 site that is to be devoted to this use. So we think by the end of the hearing
5 you will, uh, have been presented a strong case for approval of the Special
6 Use Permit.

7 REEVES: And, again, just to help, for those trying to follow along that
8 aren't experts, that, just on that, what you were stating at the end there,
9 Mr. Lynn, you know, I know we've got the, you know, Surface Mining Act, which
10 is in Chapter 78.44 of the Revised Code of Washington, for instance. I think
11 you were referencing the County has its own regulations, I don't, did you
12 mean it, Critical Areas Code or, or the Mineral Overlay or...

13 LYNN: Yeah. I, I was talking about the Mineral Resource Overlay or, or
14 the surface mining regulations in general are pretty specific here, unlike
15 some jurisdictions that leave it all to the Hearing Examiner. There are a
16 variety of ways, and we'll talk about those in, in more detail, but, uh, and
17 then let me just make a final point, kind of tying that in with the
18 environmental review, uh, when the County makes its environmental
19 determination as to what level of, uh, further scrutiny is appropriate, they
20 have to take into account not only their own regulations, but the regulations
21 of others. And it's only in those areas that are not regulated by specific
22 codes and regulations that the County has some discretion. And through the,
23 those regulations, plus the additional mitigation, uh, we believe that there
24 are no, uh, even potentially significant environment impacts left and that's
25 why we think the County's MDNS was appropriate.

1 REEVES: Great. And just, just sorry, one final clarification, uh, were
2 this to be approved, again, haven't made up my mind, uh, or anything to that
3 effect, but, uh, based on what you just said, are there other permits that
4 then the Applicant would need to go get from other agencies with jurisdiction
5 to the, I'm asking because I think you were eluding to the fact that in some
6 places, the Hearing Examiner is sort of, you know, this is the end of the
7 process, in some other instances, it's more in the middle of the process, you
8 know, some permits, you know, I have lots of authority, some I, you know, I'm
9 just one of many, usually the lowest on the totem pole. Uh, can you just very
10 quickly touch on that? I, I'm sure we'll get into more detail later, but I
11 think up front it would be helpful.

12 LYNN: Uh, yeah, from the, the work that is done on the site will
13 require permitting from the County, everything from the road entrance, if it
14 hasn't already been approved, to, to the storm water, uh, management and, and
15 certainly any proposed changes to the road in the future, and I don't think
16 there will be any, would require that. The County will be, uh, permitting the
17 improvements that are required through the SEPA process. And, uh, the, all
18 the other agencies I mentioned have their own permit process. We need a
19 permit from the Department of Natural Resources to, uh, operate the mine, we
20 need a, to bring the property within the, the Department of Ecology storm
21 water plan. But I think the, the primary discretionary approval by the County
22 would come through this process.

23 REEVES: Right. Okay. So I, I guess what I was trying to understand is,
24 uh, were this a, were this approved with a SUP later, then DNR would have a
25 separate permit where it reviews other aspects of the project? I, I'm just...

1 LYNN: Yes.

2 REEVES: Trying, by analogy because people don't run into surface mining
3 as often as they run into other things. You know, say under the, with the
4 shoreline, you know, and someone is doing work, you know, with a shoreline
5 permit, often Department of Ecology is involved, and they have a Special
6 Permit and, and, uh, Fish and Wildlife has a Special Permit, sometimes Army
7 Corp, so there's that multiple levels of review. Some of it overlaps
8 significantly. I guess I was just trying to understand that in your mind,
9 they're, DNR, but there are other agencies that have further review to do or
10 they have already done that? I'm, I'm trying to get a sense of where we are.

11 LYNN: None of that can be done until this permit is issued. So in that sense,
12 this is a, this is an early permit, despite the fact that we've been at it so
13 long. So, yeah, there are a series of other permits that will be required
14 that, that will...

15 REEVES: Oh, no. All right. I see other people moving.

16 BLACK: Yeah. It looks like he's frozen.

17 REEVES: All right. I'd like the record to note, I, I got, uh, William
18 Lynn to freeze up and, uh, mid-sentence. It's never happened before. It was a
19 tech issue, I think. You were just concluding, uh, Mr. Lynn, that, uh,
20 essentially, this is one of the earlier permits, ultimately in the process
21 and then you froze up for just a sec.

22 LYNN: Yeah. I, I think that's, if I droned on after that, I was
23 probably wasting everybody's time anyway, so...

24 REEVES: Excellent. Okay. Well, thank you. I know you've got witnesses and
25 experts, uh, you intend on calling later in the process. Uh, but I think,

1 well, first off, I want to go quickly and see if we can go to the room and
2 get Brandon Black back in front of us to see if we have any update, uh, on
3 tech issues. And then while we're waiting on Mr. Black, I think Kyle Loring
4 and, uh, Tom Ehrlichman were each going to speak for, for about as long as
5 Mr. Lynn did, as sort of opening. But, uh, Mr. Black, you're muted there.
6 Muted. No. Can't hear you, Mr. Black. Someone is going to have unmute the,
7 the podium.

8 BLACK: Apologies.

9 REEVES: Hey.

10 BLACK: Here we go.

11 REEVES: Yeah. We can hear you.

12 BLACK: Uh, yes, we do have some updates I was going to give you, but I
13 have Russ who's, uh, stepped up here with me. I think I'll let him speak.

14 REEVES: Okay.

15 RUSS: So, uh, currently, we have someone trying to, uh, set up, uh, a
16 new meeting, essentially, is what we would have to do. The problem is that
17 the phone, uh, number, um, we cannot get one created with a new ID number.
18 Uh, so until I get that update, I really can't add in a phone number right
19 now.

20 REEVES: Okay.

21 BLACK: So, uh, just to follow up on that, what I was instructed, and
22 I'm, I'm hoping this is still the case, is that during the break, we would
23 shut down, re-log in a new number, apparently the number expires if it's not
24 used within 60 days. And I think that, that's what I've been told, that hap-

25

1 has happened. Uh, but we can fix that, it will show up on the Hearing
2 Examiner's website again and folks can go to the same website and link in.

3 REEVES: Wait, wait, wait. Just to be clear, you're saying my intent is we
4 hear from, uh, Kyle Loring, Tom Ehrlichman, then we'll take a, a break, would
5 be my plan, that would be right about lunchtime, I think. And you're saying,
6 then, when we come back, everyone that is participating, I think there's 30
7 of us on Teams right now, we need to go back to the website and, and re-, re-
8 hop on and it will be, however we do that, it should be correct that time?

9 BLACK: I, I am definitely not, uh, technologically advanced, uh, and
10 that's not part of my deal, but that is, uh, potentially what we are working
11 on trying to do. So hopefully we'll have some more updates on that. I'm just,
12 uh, transferring information I've been given.

13 REEVES: Okay. I mean, we, we don't mean to throw you under the bus, but
14 someone's got to get thrown and you're wearing the Hawaiian shirt, so it just
15 seemed, you know...

16 BLACK: Doing my best. Uh...

17 REEVES: No, thank you, Mr. Black, we appreciate it. I, so...

18 BLACK: I did see Leah pop up there for a second, I don't know if she can
19 further clarify, she's more...

20 REEVES: You're going to try to pawn this off on the, the...

21 FORBES: He's totally trying to pawn this off on me right now because I'm
22 the one that gave him the information. Our, our understanding is that because
23 that conference ID number expired for not being used for 60 days, um, it's
24 just that nobody called into our meetings that we've had in the past couple
25 of months, that we need to create a new one. We do have somebody on standby

1 with our, um, our IT department to get that updated, project, um, logging
2 information on the County website, as well as on the Hearing Examiner page.
3 We would put it on the County Home page, as well as the Hearing Examiner page
4 for today.

5 REEVES: But, Ms. Forbes [phonetic], does that impact, so, we all would
6 need to log off during the break and then re-sign, you know, re-click...

7 FORBES: Click on the, yeah, that's my understanding. And that...

8 REEVES: Okay.

9 FORBES: That is kind of a precautionary thing. I'm not sure you
10 absolutely have to, but as a precaution, during the lunch break, it makes the
11 most sense to do it then. Have everybody log off at once. We'll get that new
12 log-in information created and posted online, get folks to both log back into
13 the Teams Meeting as well as have the option of calling in to provide
14 testimony.

15 REEVES: Okay. And, uh, Leah Forms, because you clearly are more competent
16 than the rest of us on these matters, probably several other things, too, can
17 you, are you able to sort of just cut and paste the list of who is currently
18 on Teams? I ask because if we do move forward with this process, uh, when we
19 come back after the break, I would love to go, okay. I'm a little nervous
20 because we had 30 and we're down to nine or something, you know, just to try
21 to keep track? I, I'm afraid, if it was Zoom I'd be a little bit more bold,
22 but Teams and I, as you well know, we, we, we don't get along well, me and
23 Microsoft products. So if you, are you able to do that?

24 FORBES: Yes, I just captured screen shots of the list of folks in the
25 meeting.

1 REEVES: Okay. And, and it should be around 30, that's what I show, so...

2 FORBES: Yeah.

3 REEVES: Okay. So here's the intent, uh, we are going to now move next to
4 Kyle Loring, uh, who's going to give his sort of brief overview on behalf of
5 his clients, uh, then we'll, we'll, uh, same thing with Tom Ehrlichman, uh,
6 and then we'll check in with Leah one more time before we take our break,
7 just to make sure that we all, you know, that she's confident that we should
8 all log off. Uh, but, uh, that is the plan, uh, so thank you everybody. And
9 with that, Mr. Loring, if you can introduce yourself and the group that you
10 represent and then give us your, your overview of where things stand in terms
11 of, uh, the appeal ultimately?

12 LORING: Thank you, Mr. Examiner, I'd be happy to do that. Uh, my name is
13 Kyle Loring and I represent the Appellant in the SEPA Appeal, Central Samish
14 Valley Neighbors, uh, and the individuals who compose that group at the same
15 time. So I, I should mention on the onset that I'm styling this more as an
16 opening and so I'll refer to the evidence that, uh, CSVN intends to adduce
17 per the Hearing Examiner, uh, rather than my own opinions, as part of that.
18 But, uh, I will start by saying that my clients certainly view this
19 industrial mining operation very differently from the extraordinary small
20 characterization, uh, that you just heard from the Applicant here. Um, so,
21 uh, I, I also am not planning to provide legal opinions, but I will recite
22 the issues that are in front of you, in the SEPA Appeal, the two issues that
23 we've set forth in our brief, just as a reminder as we get started, uh,
24 through that process. But I'll focus more on the evidence that you'll hear,
25 uh, from everybody there. Um, and also, you had a question a moment ago about

1 DNR authority, just through I'd start in on that and say they're focusing, of
2 course, on the reclamation, the back end of the mine opera-, or the mine
3 itself and what happens when it's turned back into some other use or
4 converted to another use, not the operations as much here, although there can
5 be small overlap. All right. With that, uh, with that aside, let's jump right
6 in and say that, uh, this, this process has been going for awhile. That is
7 true. And for the past six years plus, uh, the community members, those many
8 community members, including my client, have diligently monitored the two
9 applications for the Special Use Permit and the Forest Practice Conversion.
10 And, uh, and the shifting and incomplete environmental review for a sizeable
11 gravel, uh, mine in their neighborhood. It is a 51 acre mine, 68 acres would
12 be cleared, uh, in addition to those 51 acres that would be cleared and then
13 also excavated into the ground. Uh, they've spent countless hours reviewing
14 applications documents, familiarizing themselves with land use rules,
15 spending their personal resources, uh, for expert analysis of application
16 materials and for legal representation. And when they've learned of factual,
17 procedural deficiencies, which has happened regularly, they've communicated
18 those to Skagit County staff and informed the public about them, playing that
19 role, as well, to try keep the public informed of this process. Which, again,
20 has been lengthy. So, they now appreciate the opportunity to present this
21 information to you, during this consolidated hearing. And, uh, and I'll just
22 start with what they request, and that is, uh, that they respectfully request
23 that that Mitigated Determination of Non-Significance be vacated so that
24 Skagit County can correct the failure to fully evaluate and address the
25 environmental impacts of the mine operations. Including the impacts that have

1 already been caused by converting the private haul road, uh, from forestry to
2 gravel hauling. And, uh, and the incompletely reviewed traffic, geological
3 instability, wetlands, stream, noise and climate impacts. Uh, that as the
4 application states, would occur over approximately the next quarter century.
5 So, this is not, this is not a short-term activity. Uh, it is a, it's been
6 estimated to go 25 years. So, the brief legal segment that I'll add is that
7 the State Environmental Policy Act, we'll call it SEPA, going forward, uh,
8 requires the agencies carefully consider the range of probable impacts,
9 including short-term and long-term effects and a Mitigated Determination of
10 Non-Significance, or MDNS, is only appropriate where there has been a review
11 of the project's full impacts and that review indicates that, with
12 mitigation, the project will result, uh, will not result in probable
13 significant adverse impacts. So, the questions in the SEPA portion of this,
14 uh, the SEPA Appeal that you'll be hearing about, excuse me, are 1) did the
15 County err when it issued an MDNS? And their bear the burden of proving, with
16 that threshold determination, that it was appropriate. Uh, did they err in
17 doing so without examining impacts that you'll hear about during this
18 hearing? Uh, and further, did they err when they declined to issue a
19 Determination of Significance that would lead, then, to an Environmental
20 Impact Statement on some of these specific, uh, targeted impacts? Uh, that as
21 you'll hear from the testimony are likely to cause more than a moderate
22 adverse impact. Again, we're talking about the excavating and hauling of 4.28
23 million cubic yards over 25 years. So, during this hearing, you'll hear
24 formal testimony from four members of Central Samish Valley Neighbors, or
25 CSVN, uh, they won't be dur-, they won't be speaking during the public

1 comment, we'll be taking testimony more directly with them as witnesses. And
2 you'll also hear five subject matter experts. So you'll hear testimony from
3 CSVN's Martha Bray [phonetic], about the public's experience during the
4 permit review process. The challenges in obtaining information. She'll
5 testify to many frustrating delays in the process. Our continuing
6 inconsistencies between application materials and the County's position and
7 its own rules and to be forced to file the SEPA Apple when the MDNS still did
8 not address project impacts, in the end. And this was the third MDNS, uh,
9 these nonetheless, did not address the impacts and did not significantly
10 change, uh, throughout the course of this process either. There were some
11 additional environmental reviews in between those MDNS issuances. But you'll
12 hear testimony that the MDNS also did not significantly change in terms of
13 the conditions, uh, that were applied. You'll hear that it took four years
14 before the Applicant grudgingly conducted a Level 1 Traffic Impact Analysis.
15 Uh, you'll hear that that was still deficient and that a Level 2 Impact
16 Analysis was required for traffic. Uh, you'll hear that nearly six years
17 passed before any reports about the gravel hauling road, uh, occurred. And
18 that was the road that you'll hear was, uh, installed into, not installed,
19 but where the surface was changed to gravel and where it was expanded in
20 2018, during the pendency of these applications and without any County review
21 of the potential impacts of that development there. Along with 2.2 m-, uh,
22 mile long road. You'll hear from Linda Walsh [phonetic], another CSVN member
23 and someone whose family lives next to the proposed mine site. Uh, Ms. Walsh
24 will testify that she and her neighbors do not consider this a remote
25 location. Uh, you'll hear testimony that, uh, about the mine's impacts on her

1 family, uh, including noise impacts, that weren't studied for the property,
2 but instead apparently studied where they might impact the house, which is
3 farther away than areas in the woods where her family spends ample time, uh,
4 recreating and enjoying themselves there. You'll hear from Matt Mahathy
5 [phonetic], an expert in critical areas like wetlands and streams and
6 somebody who has conducted hundreds of site assessments and is intimately
7 familiar with both critical area reviews and SEPA reviews, uh, to the nu-,
8 he'll testify to the numerous emissions in the application's Review of
9 Impacts to the areas, both at the excavation site and along that private haul
10 road. He'll testify that industrial mine that removes all vegetation and all
11 soils and excavates down to within ten feet of ground water qualifies as a
12 high-impact land use, uh, that requires the largest buffers. Uh, and he'll
13 testify that the Department of Ecology reached that same conclusion. Uh, we
14 didn't hear that in the Staff Presentation, but they submitted ongoing
15 comments to that effect and the 300 foot buffers are required for the
16 development that is proposed here, this mining of the full site. Uh, he'll
17 testify that, uh, well, in fact, the County reached that conclusion in 2017,
18 too, with a letter from John Cooper [phonetic]. Uh, he'll testify about steep
19 slopes and the fact that buffers actually need to be increased in areas with
20 steep slopes and he'll testify that based on the surveys that have occurred
21 for this site, and the site plans that show those steep slopes that the
22 buffers should be a little bit larger than that 300 foot, uh, distance as
23 well. He'll also testify to the lack of delineation of wetlands associated
24 with the Samish River. And we heard a moment ago, uh, from Mr. Cricchio, the
25 County's position that they had been delineated. Uh, we'll hear from, again,

1 this expert, Mr. Mahathy, that actually the, the formal delineation process
2 did not occur along that area, and that there isn't evidence that it did
3 along the Samish River wetlands. Um, he'll also testify that the Applicant
4 did not accurately, uh, characterize the streams that are on the site,
5 primarily the streams along the haul road, uh, and, uh, per the Department of
6 Natural Resources and that those streams actually have higher value than has
7 been acknowledged and reported to date, and thus warrant greater protection.
8 And, ultimately, he'll provide his opinion, as an expert, that all of these
9 areas led to the application under-representing the impact that the mine
10 would cause. And that those impacts are significant and require a
11 determination of significance in this, in this instance. You'll hear from
12 Nora Cammer [phonetic]. She'll testify, based on her expertise in Natural
13 Resource Protection Restoration and Management about the ecological
14 importance of the Samish River and Swede Creek and about unexamined mine
15 hauling impacts on them. Uh, she has a history and background in forestry.
16 And so she'll testify that the 2018 expansion and graveling of the private
17 haul road, which has been characterized as a gravel, uh, gravel gravel haul
18 road, essentially, uh, occurred without an permit and isn't necessary for
19 forestry use. And so must have occurred for this project, again, un-reviewed,
20 uh, by the County. Uh, she'll also testify that while the overall site is
21 over 700 acres, uh, there's no indication that the logging of the non-mining
22 areas will be discontinued in those areas. Uh, you'll hear from Dan McSheen
23 [phonetic], who's an expert engineering geologist. He'll testify that the
24 private haul road actually bears numerous [inaudible] slope instability. This
25 is one of the issues about where that haul road, uh, approaches Swede Creek

1 and then crossed over bridge, it comes down a bit of a slope there. And he'll
2 say that those, uh, slope instability issues were apparent through a review
3 of lightdar [sic], uh, notwithstanding the Applicant's consulting the
4 contrary. And he'll testify that no responsible geologist could have reached
5 the, the, sorry, the conclusion put forth by the Applicant's, uh, consultant,
6 that there's no risk of landslide along Swede Creek as a result of traveling
7 with that, uh, heavy gravel truck and pup down those steep slopes. You'll
8 hear from several, uh, witnesses about traffic issues. You'll hear from John
9 Day [phonetic], a member of Central Samish Valley Neighbors, and a local
10 cyclist, who has poured over the applications transportation documents. He'll
11 describe his perspective as a frequent user of Grip and Prairie, Prairie
12 Roads. He'll discuss the limitations of those roads. Uh, he'll discuss the
13 lack of limitation in the MDNS conditions for hauling gravel. Simple things
14 like the lack of an identified haul route, a specified haul route, I should
15 say. Or a lack of, uh, maximum daily trips along these areas. The only number
16 we've seen, primarily, is this 46 per day. That's an average number and he'll
17 testify that the Applicant has acknowledged that an average, average number
18 and that they are unwilling to be limited, uh, to a maximum number for haul
19 trips. You'll be oriented to this corridor, uh, the narrow, windy portions of
20 Grip Road and Prairie Road by Brian Bowser [phonetic], uh, who will use
21 photos and videos to help guide us along the route that those trucks would
22 take in both directions. Uh, in addition to the trip that would travel east
23 of the mine, you saw, that was one of your first questions about the photos,
24 uh, from Mr. Cricchio, which direction you were facing. There was a photo
25 facing left out of the, uh, haul road, that direction has not been evaluated

1 for impact. And so Mr. Bowser will show some of those steep turns and angles
2 and nonetheless higher speeds and what it would look like to travel along
3 those with a truck and trailer. Uh, you'll hear from Phil McCloud [phonetic],
4 who is an experienced cyclist and board member of the Skagit Bicycle Club,
5 about the anticipated impacts of having their trips and there, uh, their
6 bicycling and then their group rides, uh, impacted by gravel trucks, again,
7 along these routes with virtually no shoulder. Um, although the applications
8 materials identified shoulders on Prairie Road and, and, uh, F&S Grade Road,
9 there are virtually no shoulders, uh, as can be seen by photographs and, and
10 other maps of those areas. And last, you'll hear from Ross Tillman
11 [phonetic], who's an expert in transportation planning. And he'll testify to
12 his experience, both in preparing traffic impact analysis and transportation
13 master plans that the application failed to fully evaluate transportation
14 impacts. Including the use of all the haul roads, routes anticipated for
15 operation, uh, impacts the cyclists, impacts related to school bus use and
16 others on the substandard Grip and Prairie Roads that have no shoulders. Uh,
17 impacts to Grip Road from heavy truck and trailer use of its potentially
18 unstable slope, uh, noise impacts of compression brakes on those roads and
19 that steep downhill, uh, on Grip Road. And the lack of a Conflict Analysis
20 that could have illuminated and then led to those concerns being addressed.
21 So, ultimately, uh, and notwithstanding the suggestions by, uh, Miles pre-
22 hearing filings, um, you'll hear that this is not an appeal about whether
23 mining can occur on Mineral Resource Overlay Lands. That's not the appeal
24 here today in front of you. Uh, instead, the appeal is really about whether a
25 mining applicant must fully examine the impacts that are going to be caused

1 by a mine, both on the site and during the ha-, along the full haul route,
2 uh, through that area. And you'll hear that this appeal is about how we
3 balance the potential impacts that are going to be caused by a new use like
4 this, with the community's, uh, with their rights as a community as well and
5 with the burden to bur-, uh, born, burden to be borne by a subset of that
6 community. Uh, and you'll hear that even after six years, this mine hasn't
7 received that full environmental accounting. And the overly modest conditions
8 that would apply to the mine do not address many of those impacts. So it's
9 not about, you know, a certain number of conditions, it's not about a certain
10 weight of paper that has been filed or electronic data, megabytes that have
11 been submitted, it's about whether some of these basic questions about the
12 impacts have been fully evaluated. Consequently, uh, after you hear this
13 evidence, CSVN will ask you, that you grant the appeal, you vacate the MDNS,
14 and you require that full environmental review before revisiting the mine's
15 permit compliance under the Special Use Permit. As you indicated earlier, the
16 SEPA review needs to happen first and it needs to provide all of the
17 information necessary, both for SEPA and for determining compliance with
18 those Special Use Permit criteria. So, I thank you for your time and, uh, we
19 look forward to presenting you with this evidence over the course of the next
20 few days of hearing.

21 REEVES: Great. Thank you, Mr. Loring. Uh, so next, uh, before our break,
22 we're going to hear from one more, uh, party, this is, uh, Tom Ehrlichman,
23 who does represent, uh, another, uh, group of folks there in the area. So, go
24 ahead, Mr. Ehrlichman.

25 EHRLICHMAN: Thank you, Mr. Examiner, can you hear me okay?

1 REEVES: I can hear you fine.

2 EHRLICHMAN: Thank you. Tom Ehrlichman, from the Dykes Ehrlichman Law Firm,
3 representing Cougar Peak LLC. And the caretaker of its 400 acre property, uh,
4 Neil McCloud [phonetic] and his family who reside on that property. Theirs is
5 the first driveway you get to when you turn right, exiting the mining road
6 onto Grip Road. Um, and their driveway entrance out onto Grip Road is, is
7 very close to the mine and it's in a precarious location, as we'll describe
8 during our presentation. Uh, first off, I'd like to thank the, the County
9 staff, actually, for the great job they have done organizing this hearing and
10 making it possible for us to make this presentation. There's been a lot of
11 cataloging of, of exhibits and coordinating of the parties and the
12 conferences and so forth. Uh, that's much appreciated. Um, and Mr. Examiner,
13 we also wanted to thank you for the opportunity to present our argument in
14 this case. Um, we are here to address the Special Use Permit as you pointed
15 out earlier. We're not here as SEPA Appellants or interveners. Um, but we
16 note that the criteria in the Code for approval of a Special Use Permit is
17 actually quite rigorous. And those criteria, uh, do focus on, uh, the traffic
18 impacts that we're concerned about. Um, and, you know, SEPA is a, is a good
19 gap-filler when, uh, the policies or the Code don't address, uh, important
20 impact issues. But fortunately, here in our Special Use Permit proceeding,
21 uh, and our presentation, we do have the tools to present you with the
22 reasons why you should condition this project, um, in a way that's different
23 than the recommendation you see in front of you, with respect to traffic
24 impacts. Uh, our sole focus in this case, as you know, Mr. Examiner, from
25 our, uh, submittals to you, is the traffic impacts on Grip Road that effect

1 the McCloud family, uh, the employees of Cougar Peak, the folks making
2 deliveries there, um, contractors, uh, employees and so forth. Um, honestly,
3 without, um, trying to sound dramatic, literally, their lives, and those of
4 their families, are at risk from this proposal, unless it's conditioned to do
5 something about the high intensity risk from the gravel truck traffic. You
6 know, now, as much as you will hear throughout this proceeding how much work
7 has been done on the project, um, how, how small scale or, um, priority
8 mining uses are in the County, n-, none of those arguments can avoid the
9 plain truth of this application. Which is that it will substantially increase
10 the risk of death or injury to the McCloud family, Cougar Peak, um, folks
11 serving Cougar Peak LLC. We, we can't ignore that in this proceeding. And
12 while your decisions can be appealed, you are the County's decision maker,
13 you are, uh, sorry to say it, you are at the top of the, of the pole, as far
14 as the only, uh, decision maker who can do something to condition the level
15 of heavy truck traffic that will result from this proposal. Um, I, I, I don't
16 mean to be contentious with my colleague, Bill Lynn, but I was astounded to
17 hear the adjective, uh, extraordinarily small, uh, when talking about the
18 impacts of this project. The risk to our clients is not extraordinarily
19 small, it's extraordinarily high. The potential for one truck on Grip Road,
20 where they're traveling every, um, I did the math here, every 6.5 minutes, is
21 not extraordinarily small. These are large gravel trucks, eight feet wide,
22 with a pup trailer. And whether they're loaded or not loaded, they present a
23 risk of harm. Uh, we'll present evidence as to the width of Grip Road at the
24 curves, uh, both Neil McCloud and, uh, Wally Grado [phonetic], will testify
25 on the measurements they took of some of the key curves there, the Applicant

1 can go out and check those measurements, as can the County. But we think
2 you'll find they are experts when it comes to using a tape measure. And, uh,
3 we also, the other experts that we're going to present are actually the
4 experts that the County and the Applicant are going to present on traffic
5 impacts. They will be our witnesses. Um, and we will, in the sense that we
6 will ask them, um, how they did their analysis and why, uh, additional
7 mitigation isn't required under the code. I want to, uh, wrap it up here by
8 saying plainly that you have the authority, under the Comprehensive Plan,
9 under the Skagit County Code, to impose limitations on hours of operation, on
10 the number of truck trips per hour on Grip Road, on the hours that those
11 trucks can travel, for example, when, uh, there's school activity on the
12 road. And nothing in the Mineral Resource Overlay policies limits that
13 authority. In fact, it's the opposite, those policies are implemented in
14 regulations that say you should take the Standards and the Code as minimum
15 Standards and you have the authority to not only limit hours, but also to
16 impose conditions, uh, that protect public safety. And that is not a vague
17 concept here. The increase of heavy truck traffic on Grip Road is your
18 measure. And we ask that during the discussion about studies, traffic
19 studies, you focus acutely on whether the experts are talking about the
20 relative increase in risk. Have they characterized the existing level of
21 risk? Have they accurately characterized the maximum number of truck trips
22 that might be possible under the conditions proposed by staff? And have they
23 weighed the difference, the Delta? I'm not seeing that in the traffic
24 analysis. And I look forward to hearing from the experts if I missed it. But
25 I think you will find, Mr. Examiner, after, uh, our presentation, that you

1 have the facts, you have the evidence, you have the testimony and you have
2 the authority to take care of those who are currently traveling on Grip Road
3 and making sure that their safety is protected as the Mineral Lands policies
4 require. They specifically talk about protecting public safety. They
5 specifically talk about traffic safety and they specifically talk about the
6 County requiring agreements from the Applicant to make road improvements to
7 meet that Standard. So, thank you for the opportunity to, um, make a
8 presentation during these proceedings and, um, we will look forward to it.
9 Thank you.

10 REEVES: Thank you, Mr. Ehrlichman. Uh, so, the plan now, quickly, we are
11 going to go back to Leah Forbes, who I will note is, uh, not the County's
12 tech person. I believe her official title is County Senior Natural Resources
13 Planner. Uh, but we all wear many hats, uh, and I just want to see if she has
14 an update on, uh, how we should move forward in terms of our lunch break.

15 FORBES: So we do have it confirmed, we have new meeting log-in
16 information that includes a, uh, a functioning conference ID number for those
17 folks who want to call in. During the lunch break, if everybody kind of
18 clears out of this meeting, we're going to post the new log-in information on
19 the County's home page, skagitcounty.net, as well as on the Hearing
20 Examiner's page within the County's site.

21 REEVES: So, I'm curious, is it possible, let's say I'm a skeptical human,
22 is it possible I leave this up for, for a minute, then later go hit the log-
23 in that shows up on the Skagit, uh, net and I'd essentially be in two
24 different Teams meetings, but that would be a way I could ensure that, okay,
25

1 it did work and I, you know, do you happen to know? I really apologize, you,
2 you're getting roped in to this, Leah Forbes, but...

3 FORBES: It's all right. Um, like you said, we all wear many hats. Um, I
4 don't know if it's possible to log into two Teams Meetings at once, at least
5 from the same device. It may be that you leave your computer logged into this
6 one and sign in on your phone to log into the new one. Um, but we have had
7 folks outside the meeting, plus the log-in information, plus the call in
8 conference ID Number confirmed that it does work.

9 REEVES: Okay. So someone has tested, I, I guess it wasn't the very few
10 people usually use that call-in number. I, I wanted to verify someone tested
11 the, the link, as it were...

12 FORBES: Yes.

13 REEVES: Um, so you, County staff is confident the link will work?

14 FORBES: Yes.

15 REEVES: So for those that are on and have, you know, been watching,
16 essentially, uh, the plan is, we're going to, we're going to take our lunch
17 break, uh, here shortly, uh, then we need to log out and then if you go back
18 to, uh, the, the County's website, and let me see if I can just, I think I
19 had it pulled up earlier, I know I just always type in Skagit County Hearing
20 Examiner on Google and, you know, it's the first thing I pop onto. But,
21 essentially, there's a link to, that says Click Here to Join Meeting. So you
22 would want to sort of redo that process, uh, because, uh, we needed to employ
23 a new, uh, new link, uh, for when we come back from lunch. Did I accurately
24 describe what we hope that process is going to be, Leah Forbes?

25

1 FORBES: Yes. Yes, you did. We will have that link in two places. In fact,
2 our, our wonderful IT folks have posted it on the homepage at skagitcounty,
3 all one word, county spelled out, .net is the County's homepage and we will
4 also have it on the Skagit County Hearing Examiner page, it will say Click
5 Here to Log In or alternately you could call the number and put in a new
6 conference ID number to listen and, and participate by telephone.

7 REEVES: Excellent. Thank you so much, uh, Leah Forbes clearly should get
8 a raise, uh, wearing both the tech hat and Senior Natural Resources Planner
9 hat. Uh, but with that, um, I think it's 11:45. I was thinking 12:30, is,
10 does that seem reasonable, is that enough time for a lunch break, uh, for
11 folks? I'm getting some nods. Okay. Okay. I'm, I don't want to go too long, I
12 know we have a lot of people that want to participate. But I also know, you
13 know, if folks are, especially folks in the room there might need to run out,
14 uh, but so that's the plan. So we're going to log off. When we come back at
15 12:30, I will try to be very brief when we come back on and then, uh, the
16 plan will be, uh, to, to dive in with hearing from members of the public. Uh,
17 quick favor for Mr. Black, if, if someone, if there's a way to, uh, copy the
18 sign-in sheet there in the room, if someone could just forward that to my
19 email, uh, while we're, uh, on our break, then I'll have names. That, that
20 will make things easier in terms of, uh, calling folks, um, when we come
21 back. So that's the plan. Thank you, everybody. We'll be back, uh, the plan
22 will be 12:30. And if you are struggling to get back on for whatever reason,
23 uh, just, uh, you know, start email County staff, calling County staff. We'll
24 make sure everybody is able to participate. And so we'll see everybody back
25 at 12:30. Thanks, folks.

1 [The tape ends.]

2 **The undersigned being first duly sworn on oath, deposes and says:**

3 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
4 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party
5 to this action. That on April 5th, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves, that
6 took place on 8/226/22 at 9:00 a.m., regarding the above-captioned matter.

7 I certify and declare under penalty of perjury under the laws of the State of Washington that the
8 aforementioned transcript is true and correct to the best of my abilities.

9 Signed at Mount Vernon, Washington, this 5th, April of 2024.

10 Janet Williamson

11 Janet Williamson

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**IN SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT**

State of Washington,	)	Cause No.: PL16-0097, PL16-0098,
	)	PL22-0142
Plaintiff,)	
)	
vs.)	
	)	PERMIT HEARING 8-26-22 12:40 PM
Name,)	
)	
Defendant)	

Transcription Date: April 12th, 2024

Present: Andrew Reeves, Brandon Black, Bill Lynn, Jason D'Avignon, Kyle Loring, Tom Ehrlichman, Leah Forbes, Mona Kellogg, Catherine Fitzgerald, Robert Walsh, Patrick Gould, Katheryn Longfellow, Steve, Kenady, Renee Kenady, Monty McIntyre, Mic Sawatzky, Mr. Eleazer, Dennis Whitcomb, Marie Whitcomb, Tristan Shaffer, Paula Shafransky, Rachel Reim-Ledbetter, Richard Grange, Michael Cole, Russell Feay, Danielle Haugland, Ken Wheeler, Don Jonasson, Leslie Mitchell, Ellen Martin, Mary Kay Barbieri, Frances Woerner, Molly Doran, Jane Zillig, Ingo Lemme, Dawn Benedict, Mike Benedict, Michael Sheedy, James Koran, Debra Anderson, Larry Hedgpeth, Jennifer Aven, Kathy

1 Reim, Amy Boettcher, Richard Brumfield, Kathleen Grimbly, Unidentified Male
2 1-16, Unidentified Female 1-15
3 FEMALE 1: [Background chatter] what's that's noise from?
4 MALE 1: Somebody needs to mute their mic.
5 FEMALE 1: No.
6 MALE 2: Uh, I think it was that you all had actually cleared and
7 everybody start fresh.
8 REEVES: Uh, I refuse to be a jack something, but never a jackhammer. So I
9 just wanted [inaudible] all right.
10 BLACK: Just realized we forgot to [inaudible] for the afternoon session.
11 REEVES: I, I, you know, I, I'm assuming that, uh, you know, uh, Bill Lynn
12 has one ready in his office. I, at home, I have about 40 in my closet, but,
13 uh, you know, probably, for a Wendy's application, regular hearing, uh, I
14 might do it, but, you know...
15 BLACK: I think there's someone's supposed to...
16 FEMALE 2: Uh, Mr. Black...
17 BLACK: Made myself in a respectable manner.
18 FEMALE 2: [Inaudible] we give testimony.
19 BLACK: All right. Let's see, am I, I'm not muted, okay. Because I sit
20 for those things.
21 REEVES: Uh, when you get a chance, if Mr. Black can come to the podium,
22 I'd...
23 BLACK: Yeah. And you'll want to give them to the [inaudible].
24 REEVES: [Inaudible.]
25 FEMALE 2: Okay.

1 BLACK: I work for the Planning Department.

2 FEMALE 2: Okay.

3 BLACK: This is actually their proceeding.

4 FEMALE 2: Okay. All right. Just making sure that someone [inaudible].

5 REEVES: [Inaudible] I certainly have no issue, um, going straight to our
6 County website, right on the first page, so...

7 MALE 3: If, if you have [inaudible] that you want to leave, if you don't
8 want to stick around and talk all of that time...

9 REEVES: [Inaudible.]

10 MALE 3: [Inaudible] Monday. You can leave those with Mona over here with
11 the Hearing Examiner's Office.

12 REEVES: We haven't...

13 KELLOGG: What's your name?

14 REEVES: Yet. I just was going to check in...

15 MALE 4: Yes. Um, it's on the new list there.

16 REEVES: With the room. Uh, I don't believe...

17 MALE 4: Since it's a brand new paper over there.

18 REEVES: I was sent an attendee list, which is fine, we'll make it work. I
19 just, if it was something that was sent, I want to check because then I can
20 read the names off, but...

21 KELLOGG: Thank you.

22 MALE 5: Yeah, why is [inaudible].

23 REEVES: And, Leah Forbes, I just want, oh, here she comes. As our new
24 resident tech expert and, man, you're going to regret that, uh, I think we're
25 all set. I just wanted to check with you and ensure that as far as, uh, you

1 know, uh, and the team you're working with there, that we seem to be in good
2 shape at this point, in terms of folks being able to join?

3 FORBES: Yep. We do. Uh, I see [inaudible] 45 folks, while we started,
4 started out with 30, 31. So it looks like there are a couple of phone numbers
5 on the list now as well, so the phone log-in seems to be working now.

6 REEVES: Excellent. Um, well, again, thank you very much, uh, for the
7 help, it is truly appreciated. And then, when Brandon comes back, and, and
8 just to verify, I don't think I was sent, uh, the list of folks that wanted
9 to testify, right? Which is fine, I just wanted to verify.

10 BLACK: Uh, M-, Mona has the list, uh, of the folks that have signed in
11 here.

12 REEVES: Okay.

13 MALE 5: I want to testify.

14 REEVES: And, well, we'll get started shortly. Uh, uh, at the outset, I
15 had said, you know, if there's anyone there in the room, uh, that is, you
16 know, for whatever reason, uh, would not be able to provide their public
17 testimony in the future, um, and need, need that physical space available, we
18 would like to start with them today, this afternoon. Uh, so you in the room
19 there, if you can, I don't know if that was verified or just as you're
20 working through the list, uh, does that make sense, Mr. Black? I'm sorry if
21 that was confusing. You have a look like...

22 BLACK: That was confusing. At the same time, I was talking to Mona. So
23 far, we have a list of 47 people who have signed up to testify. And then
24 there are four, uh, written, uh, comment letters that are being Exhibited or
25 been submitted thus far. And I did indicate...

1 REEVES: Okay.

2 BLACK: A few minutes ago to folks to leave their written testimony, uh,
3 with Mona, um, if, if they can't stick around. So, we'll collect all of
4 those, Matt [phonetic] is going to give those to you.

5 REEVES: Sure. And so what, what I was asking, uh, Mr. Black, was,
6 essentially, if there's anyone that's physically there in the room, we only
7 have a physical room this afternoon and Monday. Uh, I, I expect we'll get
8 through everything, uh, in terms of members of the public, but can you just
9 quickly, right now, uh, have folks in the room raise their hands so you can
10 go check in with them if, if this is the one day they can be in the room and
11 they can't participate any other way or Monday would be their only option?
12 Because we would like to hear from them first, uh, if you can do that real
13 quick, we'll wait another second.

14 BLACK: Is there anybody here who can only testify today?

15 FEMALE 3: Yes.

16 BLACK: There are about, uh, ten hands.

17 REEVES: Okay. Can you, uh, sorry, I was hoping we can make this easy, but
18 if you want to just, I would hope, if you can direct traffic, or have someone
19 in the room direct traffic for me, another member of County staff, uh, we
20 would like to deal with those ten folks first. I'm going to give a, just a
21 couple of minutes of opening, uh, remarks and, and then we'll work through
22 those folks first and then move on after that. Does that hopefully make
23 sense?

24

25

1 BLACK: Sounds good. Yeah. I can, uh, since Mona is going to be on the
2 other side of the room monitoring this, will help direct traffic for these
3 folks.

4 REEVES: Thank you. Okay. So I think we're recording already, does that
5 seem right?

6 BLACK: Uh, yes, it says it is already.

7 FEMALE 4: Will we go...

8 REEVES: All right.

9 FEMALE 4: [Inaudible] to...

10 REEVES: Good. I'll just gavel us officially back to order. Uh, again, we
11 are here in, in, uh, Skagit County. And it is August 26th, 2022. Uh, after our
12 lunch break, so it's about 12:40. And, uh, we are now moving onto the Public
13 Testimony portion of, uh, this hearing. And so with the outset, I just want
14 to once again note, uh, first off, for those that are participating, would
15 like to participate, uh, I can't stress enough the importance of treating
16 everyone with respect, uh, even if, uh, you're upset about something, just do
17 your best not to, uh, turn, turn things ugly or, or any personal attacks,
18 that would not be acceptable. So that's the on, I, hopefully will not be, be
19 an issue. Uh, the second, just to clarify on who I am, I know I didn't speak
20 at length at the outset, but I'm not an employee of, of the County, I'm, I'm
21 appointed, uh, by the County, uh, to hold hearings like this. And I do this
22 work in about 50 cities and counties. Uh, so, you know, just sometimes I like
23 to clarify for folks that I'm not on one team or another. I, I'm an
24 independent quasi-Judicial Officer. Uh, and my role is to, again, collect the
25 testimony and the evidence, uh, in, in terms of the exhibits. And then

1 ultimately, in terms of the SUP, uh, there are very specific criteria that
2 are laid out, that my decision will ultimately address. And those criteria
3 will serve as the foundation for my decision. Uh, for those that are
4 interested in seeing what those criteria are, uh, it's fairly well delineated
5 in, uh, the Staff Report that, uh, Mr. Cricchio had prepared. Uh, but those
6 criteria can, can be located in, uh, Chapter 14.16.900, uh, and 14.16.440 of
7 the Municipal Code, uh, specific to an SUP and Mining Resource Overlay. Um,
8 SEPA is slightly different, but, but, uh, I just want to stress that and I do
9 also want to clarify that the, I think I noted it was something like 1500 or
10 2000 pages of comments I did review in advance of the hearing. I'll probably
11 look at them again, uh, in the course of lighting my decision. Um, but, and I
12 certainly do not want to, uh, stop anyone or discourage anyone from
13 testifying, but I need to be abundantly clear on the process, such that it is
14 not a weighing process where if 22 people all indicate I'm opposed because of
15 traffic issues, uh, having a 23rd person say the same thing is not ultimately
16 going to impact, you know, it's not a balancing scale, as it were, it's, I'm
17 focused on the criteria. And so, when you testify, I, I would say, you know,
18 for, for you to help me, as it were, uh, if you focus on, sort of, unique
19 aspects that your testimony would provide, especially, if possible, as they
20 relate to those criteria, uh, that is particularly helpful. Uh, in addition,
21 uh, if you have sort of a written, uh, print out or something, uh, I am happy
22 to have that included, uh, in the record, uh, in lieu of having you come up
23 and, and read it off. In, in my experience, that's, in some ways, preferable,
24 because, you know, then I have it to sort of look at as a transcript, as
25 opposed to trying to, uh, keep track of it live. Uh, so that's certainly an

1 option. And then, ultimately, if, if you're later in the day and you agree
2 with, uh, other you heard from, but you'd still like, at least, to because on
3 the record, you certainly can come up and get sworn in and say, I am so and
4 so, I agree with, you know, what I heard from others, you know, thank you,
5 and move on. So that, that's sort of the ground, uh, ground rules as it were.
6 We do try to limit to about three minutes. And I also note this is somewhat
7 unique in that we do have, uh, two attorneys, Kyle Loring and, uh, uh, Mr.
8 Ehrlichman, uh, that, that have sort of experts they'll be putting on later,
9 uh, and, you know, they, they are not specifically representing the public at
10 large, but they are certainly, they have, uh, you know, an opportunity to
11 present information, um, later in the hearing, uh, that, that will elaborate
12 on some of the issues that have been discussed. So, uh, that's kind of how
13 we're going and the plan is to, by the way, to hear from the folks in the
14 room first and then if we have time, we'll go to those that have joined us,
15 uh, via remote access technology. Um, but, again, we, we set out several
16 days, knowing that this is, uh, something with a lot of interest and
17 accommodating that. So, I think with that, we, we're ready to start. I just
18 want to check with our attorneys before we, we dive right back in, to see if
19 anyone had anything they wanted to quickly address? I'll start with, uh, Bill
20 Lynn, anything on your end?

21 LYNN: No.

22 REEVES: No? Okay. Kyle Loring, anything from you?

23 LORING: Nothing here. Thank you.

24 REEVES: Okay. Jason, do you have anything?

25 D'AVIGNON: Uh, no, thanks.

1 REEVES: And, finally, uh, Mr. Ehrlichman? I don't see..

2 EHRLICHMAN: Uh, nothing, nothing here. Thank you.

3 REEVES: Thank you very much. Okay. So, with that, uh, thank you. And, and

4 I also note when you do come up, uh, I don't need you to read your address

5 into the record, I will swear you in and ask you to state and quickly spell

6 your name for the audio recording. Um, but, but no need to, to provide your

7 full address, like at a Council Meeting. So, with that, Mr. Black, if you

8 want to let me know who our first person is, we'll get started.

9 BLACK: Definitely. I will direct traffic. I'm going to start with the

10 front. Folks that had raised their hand saying they can't give testimony

11 another day, come up and then we'll move to the back, so...

12 MALE 6: So you're saying...

13 FEMALE 4: Oh, no, that's okay.

14 BLACK: Get your name and address, sir? I'm going to mark you also off of

15 the list.

16 REEVES: You need their addresses?

17 FITZGERALD: Okay. Catherine, C-a...

18 REEVES: One sec.

19 FITZGERALD: Oh.

20 REEVES: Sorry, I heard Mr. Black just say your address, does the County

21 need me to get those addresses? I should ask that.

22 Male 7: Uh, they wouldn't be a party of record, they wouldn't receive

23 notices if they weren't.

24 REEVES: Okay. So they don't put their address when they sign in. We'll,

25 we'll fix that for future hearings.

1 FITZGERALD: I did put my address.

2 BLACK: Some of them did, yes.

3 REEVES: All right. Just, we'll have you quickly do your address. So I'm
4 going to swear you in. So when you come up, this will be the process, you
5 ready? Hello, do you swear or affirm to tell the truth in the testimony you
6 give here today?

7 FITZGERALD: Yes.

8 REEVES: Now, you can state and then spell your name and quickly give your
9 address. And then go with your testimony.

10 FITZGERALD: Okay. Catherine Fitzgerald, C-a-t-h-e-r-i-n-e, Fitzgerald, F-i-t-
11 z-g-e-r-a-l-d. And then did you say address, too, or not?

12 REEVES: Up here, yes.

13 FITZGERALD: Yeah? Okay. 19328 Prairie Road, Sedro Woolley.

14 REEVES: And then go right ahead with your testimony.

15 FITZGERALD: Okay. Um, so my family resides on Prairie Road, we're on the west
16 end, near Old 99, where's there's two 90 degree, um, corners. We've lived
17 here for seven years, although this property has been in our family from,
18 like, the 1940's. So I have a lifetime of memories of all of the calls from
19 the Sheriff about missing the corner. Um, so my concern is primarily safety,
20 with the traffic, and then also, um, noise. The, um, Proposal, I s-, for my
21 opinion, will cause undue noise, uh, for the surroundings dwellings, and will
22 not maintain the character, landscape and lifestyle of our area, um, as a
23 result of hauling from this mine. Our property borders, um, through these 90
24 degree corners, and then on the straightaway, so we will be impacted by noise
25 from the trucks using their compression brakes as they approach those corners

1 to slow down. In addition to growing across the Friday Creek bridge, I don't
2 know the name for it, but those, like, joints on the bridge, every truck and
3 trailer that goes across those, is, you know, extremely loud, as they bounce
4 over it. So, um, then, in regards to the safety issue, um, so our health and
5 safety is in conflict. Um, my upmost concern is for our community members
6 along this narrow road, which is also shared with bicyclists, pedestrians and
7 farm equipment. Um, again, I can't count how many times people have missed
8 these corners and driven through our fence, in our yard, or landed in our
9 neighbor's hard. Um, people cross over the center line on these corners, they
10 clip bumpers, so we've had many crashes, um, screeching tires and honking
11 horns if somebody with a travel trailer comes around the corner, crosses the
12 line, somebody else in the other direction has had to slam on their brakes
13 from a logging truck. Um, it's dangerous as it stands and to add these
14 additional gravel trucks, um, we are jeopardizing lives. And I'm terrified to
15 add this additional, uh, large vehicles to our road. And it is going to
16 result in fatalities and deadly situation. Um, I don't know, um, Examiner, if
17 you've seen the road firsthand, but I urge you to come and drive this road
18 before you make your decision. To truly, firsthand, see the impacts. Um,
19 think about yourself driving one of these large trucks, um, as you have to
20 navigate these sharp corners with pretty much nonexistent, um, shoulders. Um,
21 think about you round that corner, you hit the straightaway, um, only to find
22 out you've got a farm equipment in front of you, you slam on your brakes, um,
23 people behind you line up, they start to get impatient, these cars want to go
24 around you. They misjudge it right as you're coming up to a blind corner with
25 an oncoming semi. We've had somebody try to pass us when we've driven our

1 tractor. And, you know, lives are more important than the revenue from the
2 gravel pit. Um, we need road improvements if this is going to go through
3 because people's lives aren't worth it.

4 REEVES: Okay.

5 FITZGERALD: And that's it.

6 REEVES: Okay. Thank you so much, Ms. Fitzgerald. She did that perfectly,
7 for everyone else, right about three minutes. Very specific. Uh, all right.
8 Thank you for being here. Do you swear or affirm to tell the truth in the
9 testimony you give here today?

10 WALSH: I do. My name is Robert Walsh, R-o-b-e-r-t W-a-l-s-h. I live at
11 21710 Prairie Road.

12 REEVES: Go ahead, sir.

13 WALSH: Okay. I have lived on Prairie Road since 1991. And I am a
14 professional truck driver. My property shares the border with the gravel line
15 parcels. And I've been driving truck for 40 years, experience, had 16 years
16 working in the mining industry. I've drove dump trucks and trailers, operated
17 heavy equipment such as excavators, dozers and loaders. I know firsthand how
18 loud equipment is combined with the noise of rocks hitting the metal truck
19 beds. Noise is a documented adverse impact. It must be litigated to comply
20 with several Special Use Permit criteria. These combined noises can carry a
21 long distance and they exceed allowable limits. Regardless of the MRO, when I
22 worked in the mines in Skagit County, there were strict regulations put on
23 hours for mining, which include excavation and all transportation of ma-,
24 materials mitigated necessary to be compatible and to protect the Public per
25 County regulations. Even accumulated noise that does not exceed allowable

1 limits can have an adverse impact when we are exposed to it daily. And I am
2 very familiar with those level of noise that Miles Sand and Gravel will be
3 creating during these operations. There, there will be, in our environment,
4 that has so such levels of noise impact before in these areas, that there
5 will be a great deal of on and offsite noise created. Not only by mining
6 operations, but offsite truck transportation. Many of our community members
7 live just feet from the road which these heavy trucks will be using and will
8 definitely shake and be extremely loud. My mom lived on Prairie Road for
9 years, just an occasional large truck going by would rattle her house. And we
10 could hear them coming long before they went by. Level of noise is supposed
11 to be measured at the property owner's line. The noise study did not measure
12 the level at our shared property line, but instead measured the noise level
13 thousands of feet across our property at Prairie Road. As far as truck
14 safety, these high number of trucks, with or without trailers will greatly
15 increase the risk to au-, auto accidents. I drive these roads out there daily
16 and are narrow and many sharp corners, blind intersections and with my years
17 of commercial driving experience, I know these trucks and trailers will not
18 be able to stay in their lanes. Then add the fact that there is no shoulders
19 and the sway of the road, there will be serious wrecks. I am counting on the
20 County to protect my rights to have safe roads and allow transportation when
21 and if it can be done safely. The occasional truck or farm equipment that we
22 use using our roads right now doesn't come close to presenting the safety
23 hazard multiple dump trucks and trailers will burden us with. Even
24 professional truck drivers cannot make up for the fact that rural roads not
25 meet County codes for the US-, SUP and are unsafe for the high intensity use

1 due to the fact that these roads are chip-sealed, they will require a lot
2 more repairs when the heavy trucks and traffic. I am also concerned about the
3 negative impact to my property value, environmental and the quality of rural
4 life. 25 years is not temporary. And this Proposal is not compatible with the
5 current land use. Thank you.

6 REEVES: Thank you, Mr. Walsh.

7 BLACK: Anybody else in these rows that can't be here another day to
8 testify?

9 KELLOGG: I assume you're on the list?

10 GOULD: Yes, that's correct. Yes. I'm on the second paper back there.

11 REEVES: All right. Thank you. Do you swear or affirm to tell the truth of
12 the testimony you give here today?

13 GOULD: Yes.

14 REEVES: Okay.

15 GOULD: My, my name is Patrick Gould [phonetic], G-o-u-l-d. And I'm at
16 22069 Grip Road, and that's Sedro Woolley. Um...

17 REEVES: Okay.

18 GOULD: What I want to bring up is every year I let the fisheries come
19 onto my property to do a salmon count from my property upstream. And I'm
20 upstream from, uh, the Miles job. Uh, this year, they counted 89 salmon, uh,
21 in the month of November. Uh, March 1st, I made a video of steelhead salmon, I
22 mean, steelhead spawning in the creek. So that creek is vital for the salmon
23 and all the others. Um, and then I want to add real quick, when you see the
24 video of Grip Road going down the hill from the proposed mine, I hope you'll
25

1 see and recognize just how dangerous it's going to be. And, uh, someone will
2 get hurt.

3 REEVES: And sorry, Mr. Gould, can you, do you, is the creek you were
4 talking about, is it a named creek or...

5 GOULD: Oh, um, yes, I'm sorry. Swede Creek.

6 REEVES: Okay. Thank you. I, I just wanted, there's quite a few bo-,
7 bodies of water...

8 GOULD: Yeah.

9 REEVES: In the areas and I just wanted to verify.

10 GOULD: Yeah. I know what it is. I just didn't refer to it. But, uh,
11 anyway, Mr. Reeves, thank you for being here.

12 REEVES: Thank you, sir.

13 LONGFELLOW: [Background chatter] hello, I'm Kathryn Longfellow.

14 REEVES: I'm sorry. I can't see, I don't know if it's my screen, but, oh,
15 there you are. Hi.

16 LONGFELLOW: Uh-huh.

17 REEVES: Do you swear or, do you swear or affirm to tell the truth in the
18 testimony you give here today?

19 LONGFELLOW: I do. Kathryn, K-a-t-h-r-y-n, Longfellow, L-o-n-g-f-e-l-l-o-w.
20 5318 Cedar Ridge Place.

21 REEVES: Thank you. Go right ahead.

22 LONGFELLOW: This Proposal does not meet the criteria for a Special Use Permit
23 in many ways, but I'm only going to speak to the statement that the proposed
24 use is not to cause potential adverse effects on the general public health
25 safety and welfare. A few years ago, I was contacted by an employee of Miles

1 asking for help. They had detected damage to their property and asked if I
2 people entering their property. I'm certain I wasn't the only one called.
3 Now, I'm asking you to keep our lives from undue harm. I, my family, friends,
4 neighbors, community members, will be less safe by the addition of the many
5 log and gravel loaded trucks on Grip Road. If you turn right out of Miles and
6 Proof Road, there's a 15 mile per hour curve, I don't think the hauling
7 trucks are designed to efficiently manage a 15 mile per hour curve remaining
8 in their lane. Also, this Prairie Road to the ridge is approximately goes
9 from about 100 feet to 400 feet, the majority of that incline is right there
10 where the mine is proposed or where the road comes out. I've encountered two
11 gravel trucks on Grip, one with a 20 mile an hour curve and one with a 25
12 mile an hour curve, each truck was well over the center line, pushing me off
13 the road, thus endangering myself and passengers. And if the drivers can't
14 keep their trucks and [inaudible] within their lane on a 20 mile per hour
15 curve, how will they ever do it on a 15 mile per hour curve headed downhill
16 on a very, very steep, windy, curvy, sight-impaired road? I ask you to, to,
17 if possible, check out what road looks like. Thank you.

18 REEVES: Okay. Thank you, uh, Ms. Longfellow. Do you swear or affirm to
19 tell the truth in the testimony you give here today?

20 S. KENADY: Yes, I do.

21 REEVES: Okay. Give them your name?

22 S. KENADY: I'm Steve Kenady [phonetic]. I live at 5319 Cedar Ridge Place.

23 Uh...

24 REEVES: Can you just spell your name, for the record as well?

25 S. KENADY: It's K-e-n-a-d-y.

1 REEVES: K-e-n-a-d-y. Thank you. Got it.

2 S. KENADY: So I agree with, uh, everything I've heard so far. And the, the
3 major concern is, is traffic and traffic safety and road maintenance. In, in
4 that regard, one thing I wanted to mention is that in both directions, um,
5 east and west on Grip from the mine, there really isn't any center line. I
6 mean, it wears off, it's not well maintained and I, I think road improvement
7 would be, um, much improved if they'd just put a rumble strip or had some
8 kind of guarantee of where the middle of the road is. Because, uh, uh, it's
9 really hard to judge for some people and it's also hard to prove which side
10 of the road you're on when you had the accident. So that is sure to be an
11 issue. Um, one reason I start to think about that is because this whole mine
12 thing and the traffic, it prompted me to buy a, a dashcam because there are
13 going to be accidents, I want a record of what happened to prove that I was
14 on my way side of the road, if that's necessarily. Um, think a lot of are
15 going to wind up doing the same thing. And when a truck comes toward you,
16 there's no, there's no clear marking on the front of the truck which truck it
17 is and where it's from. So even if have a record of what happened, you don't
18 know if, you know, there's a lot of deniability in that, well, that wasn't
19 out truck that ran you off the road. So, I'd like to see identification
20 requirements on all vehicles that, that use the mine so they can be easily
21 identified. Thank you.

22 REEVES: Thank you, Mr. Kenady. [Background chatter] second pad of paper
23 of the day. Second pad of paper of the day.

24 R. KENADY: [Background chatter] there we go. Sorry.

25

1 REEVES: Do you swear or affirm to tell the truth of the testimony you
2 give here today?
3 R. KENADY: Yes.
4 REEVES: Okay. If you can state and spell your name?
5 R. KENADY: My name is Renee Kenady [phonetic], um, K-e-n-a-d-y. Live at 5319
6 Cedar Ridge Place, my husband.
7 REEVES: Right.
8 R. KENADY: Um, I also...
9 REEVES: Sorry, can you, can you spell your first name? Renee is a name I
10 know can spelled multiple ways.
11 R. KENADY: R-e-n-e-e.
12 REEVES: Okay. Now accent off an e or anything that, uh, you want me to
13 include when I write this up? You're just R-e-n-e-e is good?
14 R. KENADY: Yes.
15 REEVES: Okay. Go right ahead. Thank you.
16 R. KENADY: All right. So I do also agree with everything that's been said to
17 day, but a few things to add. Um, some of this is just a personal response to
18 this and, uh, it has to do with Miles Sand and Gravel and their response to
19 us. In their, uh, communications, I feel like it's been dismissive and
20 patronizing and arrogant and I don't think they care for our community, which
21 brings up a lot more concerns. Um, this is not all farm land and it's not
22 [inaudible] most of us live on five-acre parcels that we bought, that we
23 developed and that we built our dream homes on. Um, my husband and I just
24 retired. We live in our dream home, we don't want to move and we want to feel
25 safe. Um, we drive these roads daily to take care of our personal needs. Our

1 children drive these roads, our grandchildren drive these roads. [Inaudible]
2 drive these roads and buses full of children are driven on these roads. Um,
3 we've talked about how curvy it is, but it's, when you go right and you go
4 down the hill, that's terrifying, but if you go left towards where we live,
5 there are two 90-degree turns that even a school bus can't make. You have to
6 stop when you come across a car that is, uh, pulling a trailer or is too long
7 to navigate that curve. And that happens regularly. I don't mind doing that
8 occasionally, and especially not for school buses. But, um, these are
9 necessarily. Um, even the straightaway, not long ago, a gravel trucks passed
10 us and row flew out, hit our windshield and cracked it. So there's another
11 element, even on a straight stretch, uh, where gravel r-, gravel trucks can
12 impact us. Um, not long ago, when they were working on the Cook Road bridge,
13 I commuted that road to Bellingham every day, uh, for ten years and I watched
14 traffic build and build and build. Um, and then one days I was trav-, uh,
15 following one these trucks up Bow Hill from Prairie, or from Old 99 up to Bow
16 Hill and I videotaped it and I think an average speed might have been ten
17 miles an hour. So it's about the same distance on our Grip Hill, Grip Hill is
18 steeper and it's curvier and I figured at ten miles an hour, it would take
19 about two minutes for a truck to reach the top. And then if you put 30 trucks
20 per hour, where's the, you know, it's going to be a bottleneck. Uh, I also
21 wonder about emergency vehicles and what they're going to do. Um, I also
22 oppose that our tax dollars be paid to approve the roads for this gravel
23 mine. I'm not okay with that. Um, I think the language regarding the
24 extenuating circumstances for them to expand their hours, who's going to
25 monitor that? I don't trust them. I don't think they care about our

1 community. And, uh, I would want to make sure if that happens, that it's
2 closely monitored. It was recommended that they notify the county, it wasn't
3 demanded in the language. Um, we live, like, three or four five-acre width
4 parcels away from this mine. Um, it's going to be noisy, when big trucks back
5 up, they beep, you know, I don't know how you're going to monitor that kind
6 of a noise. Uh, anyway, it's, it's, um, it's just going to be loud. I don't
7 know if they're going to do blasting. Uh, I'm worried, I'm glad that they're
8 not going to be processing gravel on the plan, I wasn't clear about that. But
9 digging within ten feet of our water table is frightening to me. We all
10 depend on wells out there. We're not on City water. If they're contaminated
11 or, or if they use water, then it's just not okay. So I plead with the County
12 to think of us as a community, we are a community, we're not industrial,
13 we're not a bunch of farms. We're a community of people that drive these
14 roads every day for every need. And I just hope that you will protect the
15 value, the sanctity and the serenity of the homes and property.

16 REEVES: Thank you, Ms. Kenady.

17 BLACK: If you wanted to provide those comments in writing, you can take
18 those over...

19 R. KENADY: Yes.

20 BLACK: [Inaudible] is there anybody in this row that can only testify
21 today? Uh, how about you first and we've got this row as well, if you're on
22 this row. Maybe the next person can come up on the stage here when this
23 gentleman is on the floor.

24 MCINTYRE: My name is Monty McIntyre, M-o-n-t-y, M-c-I-...
25

1 REEVES: Whoa, stop, stop, please. I got to swear you in. do you swear or
2 affirm that, I'm just, please, do you swear or affirm to tell the truth in
3 the testimony you give here today?

4 MCINTYRE: Yes.

5 REEVES: Okay. Now, please go ahead.

6 MCINTYRE: My name is Monty McIntyre, M-o-n-t-y M-c-I-n-t-y-r-e, and I am a
7 party of record, I've written a couple of letters. I own property at 22243
8 Grip Road. So far as the truth goes, versus opinion, I note that the, uh,
9 people who did that environmental assessment in May 18th, 2015, August 20th,
10 2015 and then updated in April of 2017, considered that an opinion. They
11 never mentioned 6PPD, which is a very toxic chemical that has been killing
12 Coho salmon, and most likely other salmon, besides other dwellers in those
13 [inaudible] zones. And I wonder why the County has not contacted WDF and
14 gotten an update from them. This, uh, news has been coming out the last
15 couple of years, it's a very timely thing since we're experiencing huge
16 declines in Coho Salmon, in particular, rainbow trout and some of these other
17 ones that live in Swede Creek, Friday Creek and I've heard up to 21 streams
18 that may be, um, affiliated with the proposed site. I urge you to decline
19 these Special Use Permit because of the criteria is not met. The proposed use
20 will create undue noise, odor, heat, vibration, air, a lot of pollution,
21 impacts on serenity [inaudible] potential use. Well, the attorney for Miles
22 talked about gravel, how we all need it so desperately, we also need air and
23 we also need water. And who owns those and who has the right to defile them.
24 Well, if you put six PPD from all the tires on Miles' truck schlepping off,
25 and that's where it comes from, I would like to know if they can have up to

1 720 trips a day, how many tires, how many miles, how many pounds? They say
2 it's 2% of the tire content in six PPD that once it's released in schlepped
3 off rubber, it becomes a [inaudible] which is more resistant to the
4 evaporation that occurs with just six PPD. Again, the County needs to contact
5 the WDF and consult with them over this very important issue at this moment.
6 We talked about heat, well, absolute removal from the treetop down, say you
7 got an 80 foot tree on that site, there's maybe an evening gross peak up
8 there, a couple of likings, some oxygen-producing needles, you got a squirrel
9 in there, down in the ground there's some other trees where birds nest, sure
10 if the birds can fly off, what about the newts and the other things that are
11 living there? Well, then you go down and remove the roots, they're just
12 stumps at that point, why not? You go 60 feet down, you go through gravel,
13 the sand [inaudible] after a, you know, a 1,000 years that's deposited up
14 there, eventually you get ancient gravels. So from an 80 foot greet, you come
15 all the way down 60 feet, everything is gone. That's kind of like when a
16 Putin's bumper busters would do, you go down 60 feet into the ground
17 [inaudible] well, this is even worse, it's more intense than that. It's
18 absolute removal of all living material from the treetop down 60 feet. That
19 is intense. It's not medium, it's intense. In fact, it can be defined as a
20 warzone if you have a Putin bumper buster. Okay. There's a lot of other
21 criteria in here. Adverse effects include lower property values. Some of
22 those people that have built their dream, or me that plan on retiring there.
23 Do I want to be aggravated? Well, there's an unmentionable thing here, it's
24 called mental health. And the criteria is supposed to help and protect the
25 citizens in their health. What about these people have been fighting for six

1 years that have legal fees, how is their mental health? You know, there's a
2 lot of good people here trying to protect what little of a good thing is
3 left. Gravel is everywhere, you can recycle concrete. And one thing about all
4 of this is when that gravel is removed by these one or two people working,
5 the fact that there's 720 trucks a day, what it's going to be put into? We
6 talked about asphalt patching, we talked about concrete patching. Concrete is
7 a heat sink, and in every casing environment that's lower, hotter, less rain,
8 you got that concrete slab, some of you guys have been around here long
9 enough to remember, don't pave over Skagit County farmland.

10 REEVES: I appreciate...

11 MCINTYRE: Did you say something?

12 REEVES: I appr-, I appreciate, I appreciate your passion, we're running,
13 we're running passed our three minutes and...

14 MCINTYRE: Okay. You want to cut me off, that's fine.

15 REEVES: If you've got, sorry. Okay. I wasn't, I was...

16 MCINTYRE: Here is something I'd like to have in. Here are some facts sheets
17 here about, um, bunker busters, how deep they go. There's some facts sheets
18 here about PPD.

19 REEVES: The testimony [inaudible].

20 MCINTYRE: There is three of them and then here are some criteria with some
21 handwritten notes during this meeting that I would like to give you. Thank
22 you very much.

23 REEVES: Okay. Sorry. I, I...

24 MCINTYRE: Yeah. I'm sorry, too.

25 REEVES: [Inaudible] noise.

1 MCINTYRE: [Inaudible] I spent a lot of time here and it seems all so
2 futile.

3 MALE 8: Thanks for your testimony.

4 FEMALE 4: Uh-huh.

5 MALE 9: Thanks.

6 MALE 8: Thank you.

7 REEVES: All right. Folks, we're going, we, we need be quiet so that the
8 new, uh, gentleman that's entered the screen here can testify. Your name,
9 sir, was?

10 SAWATZKY: My name is Mic Sawatzky, that's M-i-c S-a-w-a-t-z-k-y. My
11 concerns, um, are relating, the gravel trucks, trucks seem to have a habit of
12 not putting a net over their load either, which is what busted my windshield
13 that I just replaced like a week earlier. Um, also, debris on the roads, I
14 ride a motorcycle and I don't know exactly how much debris these are going to
15 be releasing. But, um, that provides a significant risk to a lot of the
16 motorcycle riders around this area. It's very common in this area. Um, not to
17 mention the fact that people have a habit of cutting corners and passing very
18 quickly on the highways in this area. And that can, that, that poses a risk
19 for me as a, as a biker, especially because they don't see me coming. And
20 oftentimes, I have to swerve or slam on my brakes to avoid them and this is
21 going to aggravate that. Also, I was born with weak lungs and I don't know,
22 also how much this is going to affect our air quality, but, um, that, that is
23 a concern for me, personally. Um, not to mention noise, dawn to dusk, Monday
24 through Saturday seems fairly consistent, that's a lot of noise all the time.
25 Um, also, my water on my property is on a well. And, um, I'm concerned about

1 water contaminates in my well. Um, it's also going to lower my property value
2 and I'm inheriting my parents' property soon and I don't want to lose what I
3 would think a considerable amount of my property value. Um, and I think, yeah,
4 that, that's it, that's it.

5 REEVES: Okay. Thank you for your time, sir.

6 SAWATZKY: No problem.

7 REEVES: All right. Do you swear or affirm to tell the truth in the
8 testimony you give here today?

9 ELEAZER: Yes. I'm [inaudible] Eleazer, E-l-e-a-z-e-r. I live at 22134 Grip
10 Road. So, I wanted to say that, uh, right now, the way the situation with the
11 road is, the right-of-way is from the, the [inaudible] are in the ditches,
12 both sides of this road. So the roads cannot be widened or improved, the way
13 these are right now. It's the County or the people who own the property, sell
14 the property to Miles Sand and Gravel for the improvement of the roadways.
15 Um, there's a blind intersection there, there's been lots of multiple
16 accidents there, serious injuries. Uh, these roads are not designed for heavy
17 traffic, traffic use. They're for light-duty, they're chipped-sealed roads.
18 Um, there's the, for fugitive dust, talking about water, watering down the
19 dust on the roads, well, that's going to create humidity, which is eventually
20 going to get into creeks and streams and choke out the habitat. So there's a
21 lot more impacts than what's being really said in this Proposal. Okay. That's
22 all I have.

23 KELLOGG: What's your address?

24 ELEAZER: 22134 Grip Road.

25

1 REEVES: Hi. Do you swear or affirm to tell the truth in the testimony you
2 give here today?

3 D. WHITCOMB: I do. Um, I'm Dennis Whitcomb [phonetic], it's spelled W-h-
4 i-t-c-o-m-b. And I live at 19117 Prairie Road.

5 REEVES: Okay. Thank you. All right.

6 D. WHITCOMB: Um, thank you for this time allowing me to speak today. I
7 live on a route that trucks from the proposed mine would regularly take, on
8 the corner of Prairie Road and Highway 99. As a community member, I have
9 serious concerns about the safety of this proposed operation. I also have
10 serious concerns about the mine developers' application documents, in
11 particular their private impact analysis, their geotech report and their
12 critical areas evaluations. Let me start with those documents. To make a long
13 story short, the local community has banded together and employed technical
14 experts to review those documents. And, and it turns out, those documents
15 have a wide range of clear inaccuracies, as well as many important omissions.
16 Do not take my word on this, instead please see the documents submitted by
17 Ross Tillman [phonetic], Dan McSheen [phonetic] and Matt Mahathy [phonetic].
18 Those documents bring out the mine developers' errors and omissions in
19 scientific and technical detail. Now, onto something that which I have more
20 intimate and personal expertise, the safety of the roads I drive every day. I
21 proudly raise my daughter in this community. She took the bus to Burlington
22 Edison High School from 2016 to 2020. In those years, she told me several
23 times about near accidents between school buses and rock trucks. She
24 explained a particularly harrowing one of those near misses in her comments
25 to the County early on, shortly after it happened. Here's what she wrote. I'm

1 a student at Burlington Edison High School. Every day I take the bus to and
2 from school. On the way home, the bus goes down Prairie Road, along the
3 section where it intersects with Grip Road. Last week, the bus was on that
4 curve on Prairie, near the Grip intersection. A gravel truck was coming down
5 the road in the opposite direction. This truck was a bit over the line into
6 our lane and it nearly hit the school bus. The bus driver had to swerve and
7 go as far out on the shoulder as she could. If the travel truck had been even
8 a little bit further over the line, the bus driver would have had nowhere to
9 go and the bus would have been hit. I'm concerned about the safety of
10 children on school buses, if the gravel permit is accepted. That comment was
11 received and recorded by the County in May of 2017, five years ago. It has
12 been publically available ever since. Nonetheless, and amazingly, no mention
13 of school buses appears in the traffic analysis on off from the mine
14 developer. This glaring omission, like many others, is outlined in the
15 technical letters submitted by the scientific experts representing the
16 community. I believe that those letters show that the mine developer has not
17 met the criteria for Special Use Permit under SCC 14.16.900, especially
18 sections E and G. Those sections require that the proposed mine not adversely
19 affect public safety. But it will most certainly do that. I encourage you to
20 deny the mining Special Use Permit on that account. Again, thanks for
21 allowing me to speak here today.

22 REEVES: Thank you for your time, Mr. Whitcomb. Hi. Do you swear or affirm
23 to tell the truth in the testimony you give here today?

24 M. WHITCOMB: I do. Um, my name is Maria Whitcomb [phonetic]. And I also,
25 um, live at 19117 Prairie Road.

1 REEVES: You, you might know that guy.

2 M. WHITCOMB: I might know that guy. Um, thank you for, um, for hearing
3 our comments today. Um, I want to say, um, first of all, that, um, I was born
4 in Skagit County, I'm as local as it gets. Um, I'm a farmer, I'm a parent,
5 I'm a grandparent. And I've lived and worked on my farm on Prairie Road for
6 the last ten years. I care deeply about the safety of our community. I live
7 near the b-, busy intersection of Prairie Road and Old High 99 where it meets
8 Bow Hill Road. It's a main road used by commuters on their way to and from
9 work. The Special Use Permit application says that the Applicant shall have
10 the burden of proof to provide evidence in support of the application. That
11 criteria for approval or denial, shall include the following, and I'm reading
12 on some of this, it says the proposed use will not create a new noise, odor,
13 vibration or air pollution impacts on surrounding building units. It will not
14 cause potential adverse effects on the general, general public health, safety
15 and welfare. It is not in conflict with the health and safety of the
16 community. And it will maintain the character, landscape and lifestyle of the
17 rural area. I have a number of concerns, but since I have limited time, I'm
18 going to address what I believe is most critical in relation to those topics.
19 It astounds me that anyone could assert that hauling gravel in trucks
20 weighing up to 105,000 p-, ton, ton, pounds, rather, sorry, um, will not have
21 the potential to adversely affect me and my neighbors' lives in terms of
22 odor, vibration and air pollution and impacts on our homes, public health,
23 safety and welfare. If this is approved, trucks will pass by my house five to
24 seven days per week. At the intersection, where we regularly serious wrecks,
25 we hear honking, yelling, tires screeching multiple times per day, every

1 single day. The noise from traffic and especially commercial trucks brakes
2 and engine noise is always so loud that I frequently cannot carry on a
3 conversation while sitting on my own back deck. It's a considerable distance,
4 that deck is a considerable distance from the road. Allowing an additional 30
5 large commercial rock trucks trip per hour would absolutely have the
6 potential to adversely affect the public health safety and welfare as
7 outlined in Section C of the Special Use Permit requirements. And it will
8 clearly be in conflict with the health and safety of the community talked
9 about in Section G. I may not be an expert, but I am intimately familiar with
10 the day-to-day activities in my neighborhood. Every day I see the people who
11 live, work and recreate in our community, including farmers, myself included,
12 who have to drive their tractors on the road in order to do our jobs. We see
13 bicyclists riding on our roads. I assure you, people are going to die if this
14 project goes forward as it stands. I urge you to deny the Special Use Permit,
15 unless the Applicant can meet all of the criteria to ensure the safety and
16 wellbeing of the public. Thank you for your time.

17 REEVES: Thank you, Ms. Whitcomb. Hi, do you swear or affirm to tell the
18 truth on the testimony you give here today?

19 SHAFFER: I do. My name is Tristan Shaffer, T-r-i-s-t-a-n S-h-a-f-f-e-r.
20 And I live at 22452 Prairie Road in Sedro Woolley. Um...

21 REEVES: Sorry, was it S-c-h or S-h?

22 SHAFFER: S-h, no c.

23 REEVES: Okay. Okay. Sorry. Thank you. Thank you. We're ready.

24 SHAFFER: Thanks. Um, you know, just to start off, um, Mr. Lynn mentioned
25 the, the Growth Management Act, um, and so I just wanted to relay, um, uh,

1 the little piece of Skagit, uh, history that I learned, uh, recently. So, the
2 GMA was, um, adopted by the, uh, State Legislature in 1990. And Prairie Road
3 was built in the 1880s by a guy named Cap, uh, cap Warner [phonetic] and so
4 this area is named Warner Prairie after, um, his, um, in his name. So, his,
5 um, his actual original, um, uh, homestead is still, uh, there on the north
6 side of Prairie, uh, Road, opposite the, the mine and there's two amazing,
7 um, trees there that he, um, that he planted back in the day. So, I, I think
8 [inaudible] should seek that out if you're looking for a new, um, or
9 something. Um, and also, most of the subject, uh, properties, um, in this
10 area, predate the Growth Management Act by decades. Um, so I'm a newcomer to
11 this area. Um, I'm amazed by the amount of birds and wildlife. Encounters
12 with hawks, eagles and owls are so common that they're no longer a
13 conversation at the dinner table. I didn't know what a night hawk was until I
14 began hearing their evening calls of summer. Last weekend, our Doorbell
15 captured a video of bats hunting insects on the back porch. So I'm concerned
16 about the impacts of excavating and transporting 4.2 million cubic yards of
17 material would have on local wildlife, whether it's endangered or not. I
18 think about what the impacts will be on the users of Prairie and Grip Roads,
19 especially pedestrians and bicyclists. Prairie has no shoulder or turn outs
20 to speak of. The sharp curves and high speed straight sections that make it
21 popular with motorcyclists, make it difficult for large trucks and equipment
22 to navigate without encroaching on the opposite lane or impeding traffic.
23 The first time I drove Prairie Road in the dark was just this past October.
24 As I was approaching F and S Grade from the west, a pickup overtook me at an
25 incredibly high rate of speed. At the time, I didn't realize this was this

1 the last opportunity to pass for the next four miles. I think about my
2 neighbors on Prairie that have seasonal farm stands selling fresh eggs,
3 vegetables and flowers. Will their customers still feel it's safe to stop or
4 will they think about having to merge back into traffic with heavy trucks and
5 trailers, making that not seem worth the risk? Whatever economic and
6 [inaudible] will they face from the increased noise vibration and diesel
7 emissions? These trucks have current emissions controls that control the
8 particular, certainly the rural character and lifestyle they currently enjoy
9 will be affected. These impacts seem hard to measure and the Applicant would
10 argue that they aren't required to measure them. But I'd like to draw
11 attention to a study they had done, particularly the traffic volume study in
12 Exhibit 18. This analyzed peak hour turning movements along proposed haul
13 routes during dates collected between December 17th and December 20th of 2019.
14 Level of service was determined from those values and using a software
15 package to sync. Traffic in Washington State has a degree of seasonal
16 variation, due in part to agricultural operations and earning systems.
17 There's a lot of variations due to school schedules and National holidays. So
18 it's interesting that these dates were chosen for the traffic study,
19 considering the proximity to the Christmas holiday. They, they are also the
20 shortest days of the year, with only about eight hours of daylight. Sunset
21 would have occurred around 4:15 p.m. and the peak hour accounts from the
22 study would have occurred during twilight. This may have effected pedestrian
23 bicycle counts, both of which [inaudible] in the level of service
24 calculation. This study also does not evaluate the interaction at Bow Hill
25 Road and Dark Lane by the casino. The current traffic study doesn't account

1 for population growth [inaudible] it doesn't evaluate traffic impacts during
2 an extend operation and address the current traffic volumes. The comparison
3 to data collected in July of 2013 is inadequate, which I don't have time to
4 explain, but is detailed in my written comments. The Proposal would add
5 300,000 truck trips to County roads over the next 25 years. These decisions
6 need to be made using the best possible data and more comprehensive traffic
7 study is required to address these needs. Thank you.

8 REEVES: Thank you, Mr. Shaffer.

9 BLACK: Is there anybody back here that can't speak at another time? So
10 let's continue on with the row thing. Who will be next after this person to
11 come on up on the stage. Okay.

12 REEVES: Swear to tell the truth in the testimony you give here today?

13 SHAFRANSKY: I do. My name is Paula, P-a-u-l-a, Shafransky, S-h-a-f-r-a-n-s-k-
14 y. I live at 22461 Prairie Road.

15 REEVES: Shafransky. Thank you, go ahead.

16 SHAFRANSKY: Thank you. Um, as a 29-year resident of Prairie Road, I'm here to
17 express my great concerns about the proposed Grip Road Mine Project. Because
18 this mine is my neighborhood, I've been following these developments for six
19 years. I believe the criteria for Special Use Permit are consistently being
20 ignored. In my opinion, this Proposal does not meet at least six of the
21 criteria for Special Use Permit. Um, and I'm going to talk about three of
22 them. The first one, the proposed use will not create undue noise, odor,
23 heat, vibration, air pollution impacts on surrounding existing or potential
24 dwelling units. There is going to be air pollution from diesel exhaust, noise
25 from compression brakes, as well as from the machinery at the pit. Vibration

1 from so many trucks on the road and water pollution from road run off and
2 erosion in Swede Creek. Number two, the proposed use will not cause
3 potential adverse impacts on the general public health, safety and welfare.
4 This is what so many people have spoken about before me. This issue is
5 paramount with safety on the roads will be greatly affected. All you have to
6 do is drive the haul road to see, yourself, what the impact there will be,
7 especially at the intersection of Grip and Prairie Road, as well as along
8 Prairie Road that has, um, a guardrail on the south side. There's no wiggle
9 room, no shoulder if the big truck is over the line. Number three, the
10 proposed use will maintain the character, landscape and lifestyle of the
11 area. I've always had significant concerns about the assessment and
12 application documents to supposedly address the environmental protections
13 from wildlife and fish, as well as our rural landscape. These concerns
14 include substandard buffers on the river and wetlands, disruption to wildlife
15 corridors and specifically the intrusion into the peace and quiet of our
16 community. I don't understand how these criteria can be so blatantly
17 disregarded. Miles's application for this mine was denied in 2018 due to the
18 incomplete application materials and factual inaccuracies. In reviewing the
19 current documents, I have the same environmental concerns in 2018 and these
20 still don't be, don't appear to be being addressed or taken into
21 consideration. My husband and I moved to this area to enjoy a rural setting
22 with quiet living, clean air and wildlife viewing in our backyard. This mine
23 will drastically change all that. I don't believe the County is doing its due
24 diligence in the oversight of this project and it's not following its own
25 critical area of ordinance. This whole project seems to be about ignoring

1 public comments and legitimate concerns in order to facilitate Miles's
2 business interest at the expense of the environment and public safety issues.
3 It doesn't take much digging to discover how Miles's record of ignoring
4 Special Permit reg-, regulations is abysmal. We know this mine doesn't belong
5 in our neighborhood and so does the County. Thank you.

6 REEVES: Thank you for your comment. Do you swear or affirm to tell the
7 truth in the testimony you give here today?

8 LEDBETTER: I do. Uh, my name is Rachel Reim-Ledbetter. It's, uh, R-a-c-h-e-l
9 and R-e-i-m, hyphen, Ledbetter, L-e-d-b-e-t-t-e-r. And I live with my family
10 at 23262 Meadowview Lane, Sedro Woolley, Washington. Uh, I'm a manager at
11 People's Bank in Mount Vernon. And for over ten years, I have driven the
12 entire length, east to west, of Prairie Road at least once a day, usually
13 three or four. Um, we are told in this Application, that the maximum daily
14 traffic of the trucks will be from, uh, the new mine is limited to an average
15 of 46 trips daily, not to exceed 30 trucks per hour, under extended hours of
16 operation. While, I understand my observation, experience and knowledge of
17 this route does not, in the eyes of this hearing, make me an expert, I know
18 average could mean zero trips one day and 92 trips the next. Siting averages
19 does not set a standard of mitigation that makes sense. I'm clear how 30
20 trucks per hour would impact my safety and create adverse effects for me, and
21 my aging parents, and they do live with me, at some of the most dangerous
22 intersections of Skagit County. On winter days, I follow or meet school buses
23 from both Burlington and Sedro Woolley school districts filled with many
24 children who live in this populated Samish Valley. This Permit is not
25 transparent or specific. It lacks the kind of good-faith effort to address

1 clear expectations and strategies for accountability that do not burden the
2 Skagit County taxpayers over the next 25 years. I am requesting, sir, that
3 you make the effort to drive these roads as a part of a fir process and
4 evaluation. This is the kind of expectation I was raised to believe is the
5 essence of good local government. It honors the role of County government to
6 keep those of us who live here safe on our roads. Thank you.

7 REEVES: Thank you. And I trust, uh, you, uh, you understand math and I
8 thank you and appreciate the averaging, no need to be an expert to understand
9 the math concept. Yeah. Averaging concept. Do you swear or affirm to tell the
10 truth in the testimony you give here today?

11 GRANGE: I do.

12 REEVES: These are voluntary. So I apologize, sometimes it's good to laugh
13 a little bit. I, I thought she, she had a good, good math joke, I just wanted
14 to acknowledge it, I will stop interrupting. Please, sir, go right ahead.

15 GRANGE: Richard Grange [phonetic], G-r-a-n-g-e, uh, 20183 Prairie Road.

16 REEVES: Thank you, Mr. Grange.

17 GRANGE: Um, I wrote this down because I get shaken, I can't read. In
18 making your decision on this matter, you have, I would assume, looked at the
19 traffic studies, the ecological impact studies, the water quality impact
20 studies, the salmon level impact studies and all other relevant and required
21 studies that are done, prior to making your determination of feasibility of
22 this project. As opposed to you, I have done, have not done nor read any of
23 those studies, maybe I should have. What I have done is lived along Prairie
24 Road, with my wife, since the mid-1970s. I've watched the area grow in the
25 level of traffic and the traffic noise increase on a yearly basis. Here's

1 where I come down on the project, when we, we could down to our old barn,
2 along the road, in the '70s, stand there and, and work inside the barn doing
3 something, you wouldn't hear a vehicle go by in 30 minutes. I swear you could
4 set a time, a watch now, it wouldn't be 30 seconds and there'd be a vehicle
5 going by. It's only going to get worse. That, that's one of the problems. In
6 all the 50 years that we've lived along Prairie Road, other than a sporadic
7 chip-seal, a ditch clean out or repainting of the road stripes, nothing,
8 absolutely nothing has been done to make the road wider. I did see, this past
9 year, that a minimal bank cut out was done at the intersection of Prairie and
10 Grip Roads. But if that was done to actually impact the safety of that
11 intersection, it has fallen woefully short. A serious widening of those
12 corners at that intersection would be required. I did see, this past year,
13 guardrails installed on the west end of Prairie. Since those guardrails were
14 installed prior to any widening of the road, they have created a safety
15 hazard instead of reducing it. There is nowhere to go. It's a white-knuckle
16 ride. Road safety is my key issue. Prairie Road needs to be widened to have
17 any chance to avoiding real serious accidents if this operation is allowed to
18 start. Money, more money will need to be spent to ensure this project doesn't
19 create multiple serious accidents. The company opposing this project, or
20 proposing this project, has a very long time to recoup the money spent now
21 and still have a big profit, so I say do it right. Until you personally, and
22 I mean, personally, have gone out and driven Prairie Road, and set up a
23 loaded gravel truck coming west when you're driving east, either around the
24 corners by the Grip Road intersection along the, uh, guardrails along toward
25 the west end of that road. Until you've done that, you really haven't done

1 this job justice. That's what needs to be done. It will ensure you, that if
2 you're going to do it, and feel comfortable with it, you got to deal with
3 part of that widening of that road. And that's, that's pretty much it.

4 REEVES: Okay. Thank you.

5 GRANGE: Yeah.

6 REEVES: And if you, for the record, I have driven Prairie Road, never in
7 a gravel truck, but, uh, but...

8 GRANGE: I'm talking about one coming the way, the opposite way of the way
9 you're going.

10 REEVES: I just wanted to point out, uh, I am familiar with, with that
11 area. I, I have served as the Hearing Examiner for, for Burlington and, and
12 Sedro Woolley, in addition to Skagit County, in, uh, quite a few spots up
13 there, pre-COVID. So, I'm familiar, uh, with that area. So, just wanted to
14 note that. Uh, moving to our next person. I, I don't, is he there?

15 COLE: I'm here.

16 REEVES: You're there. I can't see you, but you're, oh, there we are.

17 COLE: Oh.

18 REEVES: That's fine.

19 COLE: I'm Mike Cole [phonetic], I swear that everything I'm about to
20 say is the truth.

21 REEVES: All right. Perfect.

22 COLE: I live at 5236 Park Ridge Drive, which is about a quarter of a
23 mile east of the snake curve that you come off of...

24 KELLOGG: Can you please just state your name? Please state your name.

25 REEVES: Someone was moving the camera...

1 COLE: Michael Cole, C-o-l-e. I got ahead of myself.

2 REEVES: Yeah. I, I apologize, someone was moving the camera. Uh, so one
3 more time, your name, I apologize?

4 COLE: Michael Cole [phonetic], C-o-l-e.

5 REEVES: Thank you, Mr. Cole. Go right ahead, now.

6 COLE: Okay. I live at Park Ridge Place, uh, which is about a quarter
7 mile out of snake curves, coming from 99. I, uh, there's Park Ridge Place,
8 Park Ridge Lane and Park Ridge Court. There's 60 families that live up there.
9 And that just happens to be the turnaround for both Sedro Woolley and
10 Burlington school district school buses. So that's twice a day those buses
11 are turning in there and having to pull out of there. And at noon, there's a
12 bus with kindergarten kids also turning around there. Those semi-trucks are
13 going to be coming down that road because it's a straightaway once you get
14 passed F and S. And they're hauling butt until they get to the curves, that's
15 if they slow down. So we beat the, the, the traffic to death. Well, I'm going
16 to get to something else. Those fields that are east of Prairie Road, those
17 farmers' fields, Skagit County won't let them guys clean out their ditches
18 because they're considered spawning streams for salmon coming out of the
19 river. They come across the river, the road somehow, through the gutter
20 pipes, there is a fish ladder right there in our road so they can get up to
21 Weir Creek [phonetic]. So if they're finding salmon in those ditches, and
22 I've seen them catching rainbow trout fingerlings when the County was
23 cleaning out the ditch to the north, we're going to do a lot of damage with
24 all of those trucks on that road polluting the waterways. Something else we
25 don't need. As far as the noise goes, I'm an ex-Navy airplane mechanic, I

1 lived with that for 20 years. When I first moved to my house and they built
2 that gravel pit across the interstate, I thought I was hearing the jet cell
3 over at Whidbey Island the air was that clean. Turns out, they have a blast
4 furnace over there that they make coal packs with. It's basically a jet
5 engine. And I've had my neighbors complain to me, Mike, did you hear them
6 airplanes flying over the house at night? I said, that ain't airplanes flying
7 over your house at night, it's that blast furnace that's across. So noise
8 travels. If they start working in that gravel pit, and I have never seen a
9 gravel pit that only needed two or three people to load 70 dump trucks. I
10 don't think that's going to work. Add five or six more and maybe I'll start
11 believing. The traffic that's going to be on that road, it's going to be a
12 hazard to all of us. Thank you.

13 REEVES: Thank you, Mr. Cole. And, as Mr. Cole just pointed out, I, I
14 think we've heard quite a bit on noise, traffic, uh, I have written down as
15 well, obviously safety and the 90-degree corners, Prairie Road, noise
16 especially related to compression brakes, noise from going over the bridge,
17 consider neighborhood, neighborhood character, the hours of operation for
18 mining, concern of property values, concern over impacts, in particular to
19 salmon, salmon and others fish, especially protected species. Concern again
20 over road safety. Uh, the water table, the debris that could, uh, come from,
21 uh, the trucks in transit themselves, uh, let's see, uh, concern over impact
22 to neighboring farms, farm equipment, night driving and economic impacts, uh,
23 heard quite a bit already and I just want to point that out. And as we move
24 forward. And you're good, Mr. Cole, you...

25 COLE: I want to add one more thing, sorry.

1 REEVES: Do it quick.

2 COLE: The County charged me \$8 to get a building permit to build my
3 barn where I live. And the reason was, I live in a slide hazard area. Have
4 any of you heard about that?

5 REEVES: All right. We're, Mr. Cole, thank you. We're going to move on.

6 COLE: [Inaudible.]

7 REEVES: [Inaudible] okay, so next person, do you swear or affirm to tell
8 the truth in the testimony you give here today?

9 FEAY: I do. My name is Russell Feay [phonetic], F as in Frank, e-a-y. I
10 live at 3897 Sage Lane of Sedro Woolley. I've been there since 1974. Um, what
11 I want to talk about is emergency services. I spent 30 years with Skagit
12 County Fire District #8, which is the Fire District that serves the north end
13 of, uh, Prairie Road, Sedro Woolley. Um, I would like to remind you or
14 everyone that the fire service in this area is rural and it's all volunteer.
15 The, um, daytime response that we had goes to the city of Sedro Woolley
16 because all of the volunteers are at work, uh, during working hours Monday
17 through Friday. So, when you have an incident, and we've had several at the
18 intersection of Grip and Prairie or F and S and, uh, Prairie, your primary
19 response is going to be coming out of Sedro Woolley. And that's time for
20 those guys to get in those rigs, fire them up and, and travel the, what ten,
21 12 miles out to this place. So I just wanted to, uh, make sure that, that
22 fire service and emergency responses get the attention that, that they
23 deserve. Because it's not like living in town, this is a rural area and it
24 takes, and if we've got somebody that's, that's critical, those critical, uh,
25

1 golden hour of their survival, um, you use a lot of it just getting to them.
2 And that's just what I wanted to say.

3 REEVES: Thank you, uh, thank you for your thoughts.

4 FEAY: Okay.

5 HAUGLAND: Hello.

6 REEVES: Hi, do you swear or affirm to tell the truth in the testimony you
7 give here today?

8 HAUGLAND: I do.

9 REEVES: Okay.

10 HAUGLAND: Hi, Danielle Haugland. I live at 21422 Prairie Road. Uh, my
11 property is immediately adjacent to the proposed mine, so...

12 REEVES: And...

13 HAUGLAND: Definitely...

14 REEVES: Can...

15 HAUGLAND: Have...

16 REEVES: Can you spell your name for me?

17 HAUGLAND: Oh, yes.

18 REEVES: For the...

19 HAUGLAND: Both? First and last?

20 REEVES: Please.

21 HAUGLAND: Danielle, D-a-n-i-e-l-l-e, last name Haugland, H-a-u-g-l-a-n-d.
22 There's a lot of cameras so I'm not sure which way to look, or a lot of...

23 REEVES: All right. That's perfect, the one you were just looking at.

24 HAUGLAND: Okay. Are you good, are we good?

25 REEVES: Yes, we're great. Go right ahead.

1 HAUGLAND: Okay. Um, before I jump into my, um, very modestly prepared
2 remarks there on my, literally on my cell phone, um, I just wanted to really
3 quickly address, um, your statements just a minute ago about all of, you
4 know, you've heard a lot about the traffic, you've heard a lot about the
5 safety, um, to me it sounded kind of like an implication that you don't need
6 to hear anymore. Um, I take great issue with that, because in six years, this
7 is the only opportunity this community has had to come out and talk about how
8 we feel about this proposed mine. In six years. So, please everybody, take
9 the time to come up here and tell us, tell the mine, tell the County how you
10 feel, I don't care if it's repetitive. Every single person, you all have your
11 own reasons for being here. I live immediately adjacent to this property, I
12 have my reason for being here. So please don't tell me, I've heard enough.
13 I've heard enough about traffic, I've heard enough about environmental
14 safety. Please don't tell me that. So everybody in the community, honestly,
15 whether you, you can testify in another day or not, this is our best chance,
16 this is the biggest crowd we're going to get. Everybody get your butt up here
17 and tell us how you feel. Uh..

18 REEVES: I just need to clarify, it is a different process than a Council
19 meeting, that was sort of the point I was trying to make. I am limited in, in
20 my ability and what I'm looking at and there are specific criteria. So, I
21 apologize, I didn't mean to offend anyone.

22 HAUGLAND: No, no.

23 REEVES: Obviously, uh, but go ahead, um..

24 HAUGLAND: I'm just saying that that's how I took it, that you had heard
25 enough of that. So I'm certain that other members of the community took it

1 that way as well. And I wanted to make sure that everybody understood this is
2 your opportunity to get up here and say exactly your piece, whatever that
3 piece is.

4 REEVES: Okay. Please go ahead.

5 HAUGLAND: Okay. Thank you. Um, so, uh, my family has lived at that property
6 for over 40 years. Uh, we took over from my parents. Um, we own, uh, property
7 on both sides of Samish River and we enjoy, um, our time on both sides of
8 Samish River. We are raising our four school-aged children there and hope
9 that, uh, one of our kids is going to take on after us to continue to enjoy
10 the property as much as we have. Um, all of my children have ridden the bus
11 to and from school. My two older girls are now of driving age, so they drive
12 themselves to and from school. My two younger children still ride the bus.
13 Oftentimes they get on the bus in the dark, oftentimes they get off the bus
14 in the dark. I have seen firsthand near misses with my own children on that
15 road, waiting for the bus stop. It is frightening. I genuinely, I walk them
16 out to the bus stop, which is just at the end of our, uh, driveway every
17 single morning, because I am terrified of the traffic on that road. Um, we,
18 we are not opposed to the development itself, but we, as I said, we are very
19 concerned about the impact on our lives and the safety for our children. Um,
20 the roads just aren't built to handle this type of traffic, they're not. And
21 it's not a matter of if somebody is going to get hurt or die, it's a matter
22 of when. It's not a matter of if, it's a matter of when. Um, so, I, I urge
23 you to d-, to deny the Special Use Permit as it stands, like I said, people
24 are going to die otherwise. Thank you.

25 REEVES: Okay. Thank you.

1 WHEELER: Hi.

2 REEVES: Do you swear or affirm to tell the truth in the testimony you
3 give here today?

4 WHEELER: I do. My name is Ken Wheeler [phonetic]. I live at 21199 Grip
5 Road.

6 REEVES: Uh, and if you can just spell your last name, sir?

7 WHEELER: W-h-e-e-l-e-r.

8 REEVES: Okay. Go right ahead.

9 WHEELER: So, bear with me, this isn't easy for me to speak in front of
10 people, it's actually extremely hard, but, uh, obviously, something I'm very
11 passionate about. Uh, this lady here was absolutely correct in what she said
12 with, uh, the fact that people are going to get hurt or die. Uh, I work for
13 municipality, drive a dump truck and trailer. And I travel Grip Road
14 regularly. My kids get on the bus, uh, at the bottom of Grip Road hill and
15 every day there's approximately, on average, I'd say five cars behind the bus
16 that are following the bus that come to a stop. Now, if there is a dump truck
17 and trailer after that, it ends, it ends up extending up the hill, right?
18 I've come down that hill before thinking this as I'm coming down the hill
19 with my j-brake off. If the log truck, or I'm sorry, if the dump truck is
20 loaded and it's hauling a trailer with rock, it's going to be impossible for
21 that truck to stop on that grade, with that many vehicles backed up the hill,
22 impossible. I've been driving a dump truck for a lot of years, I know it's
23 impossible. At the rate that some of these guys go, you know, some of these
24 drivers are, uh, confident in what they do, they're, you know, they do this
25 route every day so they're going at a rate of speed that is maybe safe on

1 normal circumstances, but not necessarily if there's back up. And so that's
2 one thing that I wanted to, uh, touch on. There is going to be an accident
3 there. Uh, so think for the County to allow this to go through is just, I, I
4 can't even believe that we're here. Uh, the other thing I wanted to mention
5 is, uh, going to gravel mines and being around dump trucks and industrial
6 type, uh, industry, I guess, uh, there is a lot of contaminates that are
7 going to be introduced into Swede Creek, into Samish. And they are going to
8 impact fish and residents. Uh, so I just wanted to go on record and say these
9 things. And I hope that the County is, uh, taking these things very
10 seriously. And I urge that they deny this Permit, as well. And that's all I
11 have to say.

12 REEVES: Thank you for your thoughts and your time. And right about 2
13 o'clock, I think we'll hear one more, take a quick restroom break, and then
14 we'll come back for those last couple of hours. Just a quick five-minute
15 break for folks that need the restroom.

16 BLACK: Uh, before this gentleman is coming up, I think there's just
17 three more, uh, two here and one via Teams, so just to note for you.

18 REEVES: Oh, okay. Well, why don't we do those, the room ones, I do need a
19 restroom break, however we do this.

20 BLACK: We will leave that to your discretion. This camera is not
21 operating, here's the next gentleman.

22 REEVES: Okay.

23 BLACK: [Whispering] could you put these in the record, please? Thank
24 you.

25

1 REEVES: Oh, hi, do you swear or affirm to tell the truth in the testimony
2 you give here today?

3 JONASSON: I do. My name is Don Jonasson [phonetic] and w-, I grew up on
4 Prairie Road before, since before the age...

5 REEVES: Sir, Mr. Jonathan?

6 JONASSON: Yes.

7 REEVES: I apologize. Could you spell your name for me?

8 JONASSON: Oh, yes. J-o-n-a-s-s-o-n.

9 REEVES: Thank you very much. Go right ahead. Sorry.

10 JONASSON: Uh, the Grip Road mine proposal generates intrusion on the
11 privacy of surrounding areas 100% without maintaining the character landscape
12 and lifestyle of the rural area. It's, the result of hauling from the mine.
13 The Grip Road mine proposal is also in conflict with the health, safety of
14 our community. As there 100% will be fatalities. It is a question of not, it
15 is not a question of if, but when. Prairie Road does not meet the Standard
16 Use Permit and will cause adverse effect on the general health, safety. Have
17 you come drive the road. Thank you.

18 REEVES: Thank you, Mr. Jonasson. Okay. I am going to institute a five-
19 minute, uh, bathroom brea-, break for those that, uh, need it. And, uh, we'll
20 be back, uh, here at about just shortly before 2:10, it's about 2:03 right
21 now. Thank you.

22 [Background chatter.]

23 FEMALE 5: [Inaudible.]

24 KELLOGG: Thank you.

25

1 FEMALE 5: Tires and this is just about mining and floods and how it all
2 works...

3 KELLOGG: Very good.

4 FEMALE 5: Works together.

5 KELLOGG: Thank you.

6 [Background chatter.]

7 FEMALE 6: Can we turn these into you?

8 KELLOGG: Certainly.

9 FEMALE 6: Okay. There you go.

10 KELLOGG: Thank you.

11 FEMALE 6: Thank you so much.

12 [Background chatter.]

13 FEMALE 7: I spoke, but I can't turn in comments because I don't have it
14 written down.

15 KELLOGG: Okay.

16 FEMALE 7: So, I mean, it's still on the record, right?

17 KELLOGG: People just don't, right. He heard it. Yeah.

18 FEMALE 7: Okay. I just wanted to be clear on that.

19 KELLOGG: What's your email?

20 FEMALE 7: Because my printer died last night, so...

21 KELLOGG: Oh.

22 FEMALE 7: Yeah. It was great. Ten-year old printer. Works great normally,
23 but it's like, so, thank you so much. Have a good day.

24 [Background chatter.]

25 BLACK: Okay. He's coming back on. Back in session.

1 REEVES: [Inaudible] you guys pretty good?

2 BLACK: Looks like we are.

3 REEVES: All right. Hi, do you swear or affirm to tell the truth during
4 the testimony you give here today?

5 MITCHELL: Yes. Uh, my name is Leslie Mitchell, L-e-s-l-i-e M-i-t-c-h-e-l-l.
6 And I live at 4929 Ida Drive in Sedro Woolley. And that's about, uh, 1.5
7 miles east of the proposed, uh, Grip Road mine. Um, first of all, I just want
8 to thank everyone here for putting in the time, the details comments that
9 they give, it's amazing. And I'm really appreciative. And I thank, thank, um,
10 thank you for this opportunity to speak, as well. Um, I moved to this area,
11 I'm kind of a newbie, I moved to this area about two years ago. Um, and I've
12 really enjoyed, I moved from Seattle, so I've enjoyed the peaceful farming
13 community that will be impacted by the mine. The scene up here are marked by
14 the return of eagle and salmon in the late summer and fall and by nourishing
15 rains and snows in the winter and spring. There's a quiet and slow pace of
16 life here that is cherished by long-time and new residents alike. This way of
17 life and the surrounding environment will be impacted significantly by the
18 development of the proposed Grip Road mine. And I'd like to outline these
19 impacts in relation to the requirements of Skagit, Skagit County Special Use
20 Permit, SCC14.16.19-, 900, 900. So, regarding letter L, the proposed use will
21 maintain the character, landscape and lifestyle of the rural area. This is an
22 agricultural area that experiences low level of traffic, at least in my mind,
23 from, you know, coming from Seattle. Um, and development of a 51-acre, 60-
24 foot deep open pit mine just 200 feet from the Samish River, does not
25 maintain the quiet and peaceful character and landscape and lifestyle of the

1 rural area. Prairie and Grip Roads are, as we've heard, a route for school
2 buses, farm equipment, bicyclists, walkers, runner and daily commuters.
3 Prairie and Grip Roads are narrow, two-lane roads with little to no
4 shoulders. These roads are also flooded on an annual basis. The act, the
5 addition of a gravel truck and trailer traffic to these country roads, up to
6 60 truck trips per hour, does not meet the requirements maintain the
7 character and lifestyle of this rural area. Regarding letter E, the proposed
8 use will not cause potential adverse effects on the general public health,
9 safety and welfare. Prairie and Grip Roads are two-lane rural byways, not
10 intended for this industrial use. There are numerous winds, 90-degree turns
11 on these roads. The current proposal allows for more than 5,800 fully loaded
12 truck and trailer combos per year to travel Grip Road and navigate a 90-
13 degree, uphill turn onto Prairie Road. As, as mentioned, this a template for
14 disaster. So in order to maintain at least some amount of the character,
15 landscape and lifestyle, this rural area, and not cause potential adverse
16 effects on the general public health, safety and welfare, as required by the
17 County regulations that already exist, I submit the following request, if
18 indeed this SUP is approved, set firmer limits on hours of operation and
19 daily numbers of gravel trucks. Restrict trucks to a designated haul route,
20 no public roads that haven't been adequately improved for safety. Protect the
21 Samish River with at least a 300 foot buffer as required by County Code for
22 industrial size projects like the Grip Mine Road, the Grip Road mine. Fully
23 protect fish and wildlife habitat along the two, habitat, along the two-mile
24 long interim haul road, especially including where it crosses unstable slopes
25 in Swede Creek gorge. And implement and monitoring, especially and

1 importantly, implement and monitoring enforcement plan with periodic permit
2 review to ensure compliance with permit requirements. And one thing I just
3 wanted to lastly bring up, as somebody mentioned keeping down the dust with,
4 uh, water, well, where was that water going to come from? Was that a ground
5 water source or is that, are they going to take directly from the Samish
6 River. Um, somebody needs to monitor, monitor that and take care of that as
7 well. So, thank you.

8 REEVES: Okay. Thank you. And bravely admitting a recent Seattle
9 transplant, too, that's, hi, do you, do you swear and affirm to tell the
10 truth in the testimony you give here today?

11 MARTIN: I do. I wish you could see me, though.

12 REEVES: I, I stand, I can at least see...

13 MARTIN : All right. My name is Ellen Martin, E-l-l-e-n M-a-r-t-i-n.
14 I live at 4929 Ida Drive. Um, I believe the intensity classification of this
15 Proposal of meeting is inaccurate, according to the Appendix C of Washington
16 DOE Publication number 05-06-08. Strip mining is high intensity and should
17 require a greater buffer to the wetlands, instead of the 200 foot requested.
18 I believe the environmental review is not adequate. The water pollution from
19 the road runoff and erosion to Swede Creek provides risk to fish and other
20 aquatic animals, including the endangered Oregon spotted frog, the salmon
21 bearing streams, including Swede Creek and Samish River will subject, will be
22 subject to much additional contamination from the haul truck tires. The toxic
23 6 PPD leaches out the particles that tires shed onto the pavement. Even small
24 doses can kill a Coho salmon in the lab. This violates the Special Use Permit
25 Paragraph C. Additionally, it is estimated over 700 metric tons of carbon

1 dioxide equivalent per year will be generated by the mining operation, while
2 also removing 68 acres of forest that would help absorb the emissions, 600,
3 or 860 acres of forest would need to be protected in order to observe the CO2
4 admitted. This violates the Special Permit Use Paragraph G. I believe the
5 rural character, landscape and lifestyle of the area will be effected by this
6 proposal. The peace and quiet and the impacts to fish and wildlife of the
7 Samish Valley substandard buffers on the river and wetlands and the loss of
8 wildlife, habitat and wildlife migration corridors violate Special Use Permit
9 Paragraph I. I think there should be firm limit on the hours of operation, on
10 the number of trucks allowed, a designated haul route should be established.
11 All roads should be fixed by miles to meet County standards. A plan to fully
12 protect the fish and wildlife habitat along the haul road, including across
13 the fence of Swede Creek gorge. And a plan to address and mitigate the
14 climate impacts, potentially permanently protecting a portion of the
15 Applicant's adjacent towards, additionally, clear monitoring plan enforcement
16 must be in place. Thank you for your time and consideration.

17 REEVES: Does my, sorry, that very first thing you were talking about was
18 the intensity classification and you, you cited something, but you, you spoke
19 a little too quickly, I wasn't able to write it down, an you restate what
20 that was a little slowly for me?

21 MARTIN: It's Appendix B, Appendix 8C of Washington DOE Publication number
22 05-06-008.

23 REEVES: Great. Thank you very much.

24 MARTIN: Thank you.

25 REEVES: Hi.

1 BARBIERI: Am I on camera?

2 REEVES: [Inaudible] so he sets it up and then nobody else can, can be
3 seen, so, do you swear or affirm to tell the truth of the testimony you give
4 here today?

5 BARBIERI: I do. My name is Mary Kay Barbieri, M-a-r-y K-a-y B-a-r-b-i-e-r-
6 i, good Italian name, lots of vowels.

7 REEVES: Sounds like a good wine, Barbieri.

8 BARBIERI: I agree. I live at 16002 Colony Road in Bow, Washington. Which is
9 a rural community, um, a ways away. I, um, I brought notes and I've, I've
10 submitted written testimony. But I, I'm not going to repeat the really moving
11 and very knowledgeable, detailed statements, um, of my concerns about those
12 statements because you heard clearly and passionately about them. I, I think
13 what I want to say is, I'm here because I care about how my County government
14 functions. I live in Bow, I'm not a neighbor to this project. I do have
15 plenty of occasion to take Bow Hill Road to Prairie Road to Grip Road so I,
16 I've driven the road commonly, uh, and when, when I, um, heard about this
17 mine Proposal, and then as I followed it and saw that the County was not
18 requiring, um, a SEPA hearing, I, I was just stunned. And at that time, my
19 experience was being stunned because I had driven the road and I think it's a
20 scary road. I, and then as I listened to people who live on that road, I
21 just, I cannot understand the way my County is making this decision. So,
22 without listing all of my concerns, environment and otherwise, and I want my
23 County to pay close attention to and not going on and on about the safety
24 concern, which I think is inviting a fatal accident, I'm just going to say

25

1 that I, I want my County to apply the criteria for a Special Use Permit
2 carefully, very carefully. Thank you.

3 REEVES: Thank you, uh, Ms. Barbieri.

4 BLACK: So, bear with me here a second, Mr. Hearing Examiner.

5 REEVES: No problem.

6 BLACK: I'll try to fix the camera, um, and I want to ask, is there
7 anyone else here who is unable to come at another date to speak, as in
8 Monday? One more person. Okay. So we have one more hand up. And we do also
9 have Molly Dorn [phonetic] on, um, on the line who would be the last one,
10 then, apparently, for today.

11 REEVES: Well, I mean, I think we've...

12 BLACK: The c-...

13 REEVES: Ready to go til 4:00, uh, but, yes, and...

14 BLACK: Yes.

15 REEVES: And there's some folks on Zoom, I'm sorry, Teams, that are
16 raising their hand. But you said Molly Dorn on the line, is that the phone
17 number as opposed to, okay.

18 BLACK: Molly...

19 REEVES: So Molly came on as well. Well, here, whoever is in the room
20 with...

21 BLACK: Hang on one sec, we got to fix this camera.

22 REEVES: I, I'm sorry, Mr. Black, I feel like you just keep moving it
23 around on us.

24 BLACK: We think we might have it.

25

1 REEVES: Excellent. Okay. So we're going to hear from this person and then
2 we'll go to, uh, Molly Dorn and, and then sort out, uh, further from there.

3 WOERNER: Hi, can you see me?

4 REEVES: Hi. Yeah. Do you swear or...

5 WOERNER: Oh. I swear.

6 REEVES: Do you swear to tell the truth [inaudible].

7 WOERNER: My name is Frances Woerner, that's F-r-a-n-c-e-s, and Warner is
8 W-o-e-r-n-e-r.

9 REEVES: Thank you for being here.

10 WOERNER: And I hope to make this very short. I am pleased to hear that I
11 agree with 99% of all of you people saying about our roads and our dangers
12 and all of this. But I think that the one thing that we really need to stress
13 is that this is a rural community. We do not want, I do not want, the
14 government, any government or any corporation moving in, taking over and
15 destroying our rural life. Not only does it destroy the rural life of us
16 individuals, it takes away all our wildlife, our trails, our hikes and
17 eventually, if the government, be it the, uh, County, the City, the State or
18 whatever, says, hey, this is great, we can get a Special Permit, and pretty
19 soon our roads will be bigger, our co-, our population will have grown, and
20 we will become the Seattle of Western Washington. We don't need that. We need
21 rural ground to grow our crops, we need places to hunt, we need places to go
22 and be quiet to hear, we need rural land in this Country. In this County, in
23 this State. One of the things that people come, when they visit, they come to
24 Washington State and they see how beautiful we are, how beautiful the Puget
25 Sound is. And then we have a mine, we have, uh, all sorts of stuff. I just

1 want a rural community to live in peace and quiet and have what I read is
2 Skagit County has one of the best agricultural growing ground in the world,
3 in the United States. We need food to eat, also. Thank you.

4 REEVES: Thank you. Okay. So, uh, Brandon Black to me that Molly Doran,
5 Brandon, is that right?

6 BLACK: Yes.

7 REEVES: Okay. So we're going to go to Molly on Teams next and then I'd
8 like to emphasize there are folks patiently waiting on teams that have hit
9 the raise hand feature and I'm, my plan would be, after Molly Doran, I'm
10 going to go to the folks that have already put their hands up, I see two of
11 them on the Teams and then we'll sort it out after that, okay? Okay. So
12 Molly, go ahead. Thank you. I think I see you on the screen there.

13 DORAN: Yeah.

14 REEVES: I'm going to ask, do you swear or affirm to tell the truth to the
15 testimony you give here today?

16 DORAN: I do. Okay.

17 REEVES: Okay.

18 DORAN: Um, my name...

19 REEVES: And if you could...

20 DORAN: Molly Doran, D-o-r-a-n, Molly, M-o-l-l-y. I'm the Executive
21 Director of Skagit Land Trust at 1020 South Third in Washington. Um, Skagit
22 Land Trust also owns a Tope Ryan Conservation Area that's at the corner of
23 Grip Road and Prairie Road. This is also essentially where Swede Creek and
24 the Samish River overlap, they come together at that point. Um, our
25 conservation area has 1800 feet of shoreline. The land was donated to us in

1 two separate transaction from property owners who wanted to conserve wildlife
2 habitat and nature. We're really concerned about the potential adverse
3 impacts of this operation as laid out, both to the Samish River and Swede
4 Creek and also to the safety of the visitors that we had that come to our
5 conservation area because of the number of heavy truck traffic we anticipate
6 passing our, uh, driveway and parking area. The conservation area is accessed
7 off Grip Road and is opened to the public, which includes school groups who
8 use it as a conservation classroom. That's an outdoor classroom where, um,
9 generally, younger school grades come. I agree with many of the comments that
10 I've heard today, but I'm going to, uh, specifically talk about two that have
11 to do with our conservation area. So, Tope Ryan is a wonderful place to see
12 salmon in a natural habitat. And that's why many school children come to see
13 them, because it's easy to get to. This is their first experience seeing
14 salmon often. We're very concerned with the truck traffic impacting the
15 safety of children, and these visitors, who come to enjoy this. And our
16 parking area was not designed to have this many trucks passing by. So we
17 would need to, uh, figure out something to make it safer for our visitors.
18 But, overall, Grip Road, does not appear to be adequately, adequately
19 designed for heavy truck traffic. It doesn't have shoulders, it doesn't have
20 the ability to widen it, and it has many curves and other issues that people
21 have brought up. It just doesn't seem an appropriate road for heavy truck
22 traffic. We're also concerned because of the contaminated water entering,
23 that will enter Swede Creek and thus the Samish River. In front of our
24 property, Swede Creek actually runs in the ditch alongside the road, often,
25 not, not every once in awhile, often. We worked with the County on this

1 problem for decades. So Grip Road and Swede Creek are one in this part of
2 Grip Road. The contaminates from trucks and dust will go right into the
3 Skagit River because of this. The road bed here is also eroding due to this
4 water and this will only be exacerbated by heavy truck traffic. I concur with
5 all the comments about the further view expressed today about the
6 environmental impact and the road and traffic impact of this project. Thank
7 you.

8 REEVES: Thank you, Ms. Doran. Okay. Uh, so moving to, again, some folks
9 on Teams that have patiently been waiting with the raised hand feature. Uh,
10 the first name I see is Jane Zillig and Paul Eagles.

11 ZILLIG: Am I on?

12 REEVES: You're on. Are you ready?

13 ZILLIG: Yay. Yes.

14 REEVES: Do you swear or affirm to tell the truth in the testimony you
15 give here today?

16 ZILLIG: I do. My name is Jane Zillig, J-a-n-e Z as in zebra, i-l-l-i-g.
17 And I lived in the Skagit Valley for over 40 years, oh, my address is 24238
18 Alexander, Sedro Woolley. And I've, uh, lived in the Skagit Valley for 40
19 years and I've been in the Sedro Woolley area for over 30 years. I'm very
20 familiar with this area, while I don't live in the community, we drive it to
21 go get our coffee from our local roaster, we have friends that live up there.
22 So for 30 years, we've used these roads. Um, I object to the Grip Road Gravel
23 Mine as I feel the Applicant has not provided sufficient ev-, sufficient
24 evidence that this project would not, one, cause noise, air and water
25 pollution, two, cause intrusions and financial impacts on surroundings uses

1 of private land, and three, cause pot-, potential adverse effects on public
2 safety. We've gone over the dangers on these roads quite a bit. I still want
3 to be heard, though, so, um, I feel like public safety is a big issue on
4 these narrow roads. And as Molly said, there are, and other speakers have
5 said, there are no shoulders, there are no ways to expand the roadway. Forget
6 about any bicycling or walking along the road should this gravel mine open.
7 The diesel fumes would be bad enough, but there's no possible way a bike
8 could safely be on the road along with the proposed eight-foot wide truck
9 hauling trailers every hour. No one can pass these trucks safely on these
10 curvy roads. Who will pay for the damage to the County roads throughout the
11 gravel truck routes in this area? Who will cover the cost of loss of property
12 and life when emerg-, emergency vehicles are behind these trucks, unable to
13 safely pass and with no place for the trucks to pull over? I strongly feel
14 the Applicant needs to define exactly what route they will use and provide
15 whatever improvements can be done along these stretches of road, until it
16 meets up with an adequate road with shoulders. Applicant, the Applicant
17 should also have some measure, such as required for construction site
18 entrances, for keeping Grip Road free of gravel that will either be carried
19 by truck and trailer tires onto the pavement from the haul road or that fall
20 out of those truck and trailers anywhere along the route. I also am familiar
21 with the topography of this area, as we saw from the County map, it's a very
22 hilly area. These surrounding hills magnify the s-, sounds and carry them
23 long distances. The noise from gravel trucks hauling empty or full trailers,
24 traveling through neighborhoods every six minutes, and applying compression
25 brakes as needed, will be a major impact. The CDC says continual exposure to

1 noise can cause stress, anxiety, depression, high blood pressure, heart
2 disease and many other health problems. I do not believe that the Applicant
3 has proven or provided sufficient evidence that harm will not occur on these
4 above issues and that this Special Use Permit should be denied. Thank you.

5 REEVES: Thank you, Ms. Zillig. The next person that had used the raised
6 hand feature, uh, was waiting was Ingo Lemme, I may have mispronounced that,
7 I apologize. All right. You'll need that...

8 LEMME: Okay. Hi.

9 REEVES: Hi, do you, do you swear or affirm to tell the truth in the
10 testimony you give here today?

11 LEMME: I do. Okay. So I believe...

12 REEVES: Sorry.

13 LEMME: Oh.

14 REEVES: State and then spell your name and give your address?

15 LEMME: Okay. The first name is Ingo, that's I-n-g-o, last name Lemme, L-
16 e-m-m-e. Address 5856 Park Court.

17 REEVES: Thank you. Go right ahead and I'm glad I didn't totally butcher
18 your name, so...

19 LEMME: You did fine. Uh, okay. So, um, I, uh, feel like this project
20 should definitely not be granted a Special Use Permit. It goes against
21 virtually every criteria, uh, every, all of the criteria that I listed. It
22 will create undo noise and odor, uh, odor would be the diesel fumes. These
23 trucks going up and down this, uh, uh, route along Grip Road and Prairie Road
24 and then either up Bow Hill Road or down Old 99, a constant steady stream of
25 trucks, it's, it's just going to be a, a continual, continuous pile of diesel

1 fumes, which are very unhealthy. Um, there are lots of issues with the
2 critical area along the haul route, but I'm not going to address those, but
3 those are there also. Um, the, the criteria that it will not cause potential
4 adverse impacts on health, safety and welfare, I do not believe that this,
5 uh, project will meet that criteria, especially related to the traffic
6 safety. Lots of people have talked about this, Grip Road is a ridiculously
7 narrow, steep, winding road. And the idea of having these heavy trucks and
8 trailers going up and down that road just seems inconceivable to me because
9 of the safety hazards. Prairie Road is narrow, has no shoulders at all. I'm a
10 bicyclist, I ride Prairie Road and it's scary as it is. And the idea of being
11 on the section on, especially where the guardrail is and there's absolutely
12 nowhere to go and a truck is coming and a car is coming and I'm on my bike is
13 really a very scary thought. And then if they go down Old 99, they will have
14 to not have the trailer. If they want to have the trailer, they'll have to go
15 up the Bow Hill Road to I-5. The Bow Hill Road up to I-5 is very steep, you
16 would be, uh, going five to ten miles an hour behind one of those trucks.
17 There's a lot of traffic that uses that, they will get impatient, there will
18 be all kinds of traffic, uh, hazards because of that. Um, the, this, uh,
19 project will definitely change the character, uh, landscape and lifestyle of
20 our rural area. I've lived here for 30 years. I love the quiet, rural area
21 and this is not a small project, 51 acres is roughly about the size, for
22 those of you who know, uh, are in the area, Cascade Mall and its parking
23 area, the whole Cascade Mall and parking area, that's about 50 acres, that's
24 about what the size of this pit. This is not a small pit, this is a huge
25 project. And so I do not feel that this project meets, uh, any, really, of

1 the criteria the Special Use Permit and therefore it should be denied. Thank
2 you.

3 REEVES: Thank you for your thoughts. All right. Next, I'm going to go to,
4 uh, Dawn Benedict.

5 D. BENEDICT: Hi. Oh, there.

6 REEVES: Hi, I don't know why I can't see you, but, uh, I was seeing you
7 and then you moved. Uh...

8 D. BENEDICT: Can you hear me?

9 REEVES: I can hear you so I'm going to swear you in. Do you swear or
10 affirm to tell the truth of the testimony you give here today?

11 D. BENEDICT: Yes, I do.

12 REEVES: And then if you could state and then spell your name and, uh,
13 give us your address for the record, as well?

14 D. BENEDICT: My name is Dawn Benedict, D-a-w-n, Benedict, B-e-n-e-d-i-c-
15 t. I live at 6476 Lillian Lane.

16 REEVES: Thank you. Go right ahead.

17 D. BENEDICT: Uh, we've talked about several things here. Um, and we're
18 worried about our kids, uh, the bus going down these winding roads as it is.
19 I want to bring our attention to our first responders. Do we really need to
20 have them come up on the carnage that would be left behind the bus and one of
21 those double trucks? I don't think it's fair to, to them, to the parents, um,
22 let's think of those people that have to respond to the accidents. And to
23 come up with something with that, to see that, is something we can avoid by
24 stopping this.

25 REEVES: Great. Did that conclude your remarks?

1 D. BENEDICT: That concludes my remarks. Um, Mike Benedict has a
2 statement.

3 REEVES: Oh, I see him in the room with you, then, okay. Perfect.

4 D. BENEDICT: Yeah. Go ahead, Mike.

5 REEVES: Hi. And I'm going to swear you in. Do you swear or affirm to tell
6 the truth in the testimony you give here today?

7 M. BENEDICT: I do.

8 REEVES: And it's Mike, M-i-k-e?

9 M. BENEDICT: Yes.

10 REEVES: And I assume Benedict is spelled the same and the address is the
11 same, is that right?

12 M. BENEDICT: Exactly. Exactly.

13 REEVES: Okay. You two know each other, obviously, go right ahead.

14 M. BENEDICT: Uh, my main concern is, is the road, as well as many of
15 these people. Um, it just, um, there's not enough room around these corners.
16 It, it's, um, I don't know if you've personally you've seen the, uh, roads
17 and driven it, or and the site, but, um, I think it would behoove you to do
18 that, to, to really see how terrible these, this, this is, uh, situation
19 would be. And, uh, I also don't think that it's met the criteria, the 200
20 feet buffers, it should be 300 feet. There's thing that just don't seem right
21 here. And, um, I think they need to be dealt with and, and looked into a
22 little deeper. Uh, that's about all I have to say. Thank you very much.

23 REEVES: Thank you, Mr. Benedict. Okay. And then, we're going to go back
24 to the room, if, uh, there's Brandon Black. Uh, so Brandon, were there other
25 folks there in the room interested in testifying today? I now see another

1 raised hand feature on, on Teams, but my, my intent was to normally folks
2 that have gone to the room, I sort of let them go first, uh, so...

3 BLACK: I've seen one hand.

4 REEVES: Okay.

5 BLACK: Two hands, three hands. Go on up. You ready? Okay.

6 REEVES: Hi. Do you swear and affirm to tell the truth in the testimony
7 you give here today?

8 SHEEDY: I do. My name is Michael Sheedy, uh, it's S-h-e-e-d-y. We live at
9 5203, no, 5043 Wildlife Acres Lane. I'm sorry, 530-, yeah, little bit.

10 REEVES: Just to be sure, make sure that the County gets the right
11 address. But, uh, Mr. Sheedy, go right ahead.

12 SHEEDY: Thank you. Okay. There's two issues that I haven't heard anything
13 about today, that's why I wanted to get it in because my wife can't come back
14 another day. But, uh, where does the material come from and how long will it
15 take to refill this big hole? So is it another 25 years' worth of trucks,
16 trailers to refill and who's going to monitor that material since the water
17 flows right into the Samish, the gravel below where the water table is. And I
18 would like to see some traffic enforcement on Prairie Road because we all
19 know how crazy people drive on Prairie Road. We've all seen very, very close
20 encounters with bicyclists, cars passing on the curves and high rates of
21 speed. So add trucks and trailers into this and it's a forgone conclusions
22 we're going to need more traffic enforcement, I don't see any on Prairie
23 Road. So those are my two comments that I believe, uh, I agree with
24 everything else that's been heard today with testimony. Thank you.

25 REEVES: Okay. Thank you, Mr. Sheedy.

1 D. BENEDICT: I'm sorry.

2 SHEEDY: Good day, sir.

3 REEVES: Do you swear and affirm to tell the truth in the testimony you
4 give here today?

5 KORAN: I do.

6 D. BENEDICT: I'm just trying to get [inaudible].

7 REEVES: Hold on one sec, uh...

8 SHEEDY: Yes, I've already signed in.

9 REEVES: Dawn Benedict, maybe if you could mute yourself. If we can mute,
10 it was, someone was, we're hearing some background. Okay. I think we're good.
11 And I apologize, sir. So you just said you swear to tell the truth. Now,
12 could you state and spell your name, uh, and give us your address?

13 KORAN: My name is James Koran and that's J-a-m-e-s K-o-r-a-n.

14 REEVES: Thank you. Go right ahead, sir.

15 KORAN: And my address is, uh, uh, let's see, 22-, 21655 Prairie Road. I
16 don't use it as the mailing address. I very seldom have to repeat it. So,
17 it's a, uh, uh, south side of Anderson Mountain. So I object on all the noise
18 from everywhere, now we're going to have a gravel pit, uh, within a mile of
19 my house, across the street and the nose is going to improv-, uh, increase
20 dramatically. But, um, I've been living there for 20 years. It's been very
21 nice. The, uh, traffic, I want, uh, go along with all the other, uh, uh,
22 parties that have stated that. And I want to, uh, add my, my two cents worth
23 in. Uh, the road itself, the roadwork, there was a gentleman earlier that,
24 that went through the road work, the fact that there hasn't been any
25 roadwork, a bit of note, in 30 years, and I, I thought I was only going to

1 say 22. But, uh, uh, the posted speed on the road, uh, goes, uh, 50 to, from
2 50 to, uh, 40, in a couple of spots, and then to 35 and 15 or 25 down at the,
3 at the end of Prairie Road. But, uh, so, um, I, I think that should be, if
4 they're going to allow any traffic along this side, I'd like to see the, uh,
5 uh, posted speeds lowered significantly. Uh, 30, 35 throughout the entire,
6 throughout the entire road. Uh, there is a County study that was done, uh,
7 uh, for a quote 9:00 to 5:00 corridor that monitored traffic, uh, on Prairie
8 Road. And, uh, those study notes should be available so they can, they can
9 determine whether the number of trucks that they're to run, uh, in a, in a
10 high, in a high, uh, volume time, time frame would be, uh, even reasonably
11 feasible to, uh, to, uh, be able to do that. Uh, the, the haul route, uh,
12 there has been no designated haul route, and that's, that's a, a problem, one
13 I see. And, uh, if they're going to do a haul route, they need to specify if
14 it Prairie and on Grip, uh, road improvements need to be made for those
15 periods where they're going to be able to do a haul route. There is also no
16 monitoring established, uh, they can run cameras, uh, for the County to
17 determine whether the haul route is being, whether they, the haul activity
18 is, is actually, uh, being, uh, uh, complied with. There's also the, uh, uh,
19 and I, there's nothing stipulated in, in anything that talks about
20 consequences for, uh, not following the guidelines. I, nothing, there's
21 nothing that can be done, that I know of, if, if the permit is, uh, uh,
22 approved, initially. So, and a last comment that there was nothing in any of
23 the studies that I read regarding blasting. And I understand that the County
24 is, uh, to be notified if, uh, by Miles Sand and Gravel if they're going to
25 start blasting or have to, have to do anything, uh, uh, uh, blasting in the

1 area. But that blasting, uh, with the, uh, uh, the, okay, with the, uh, the,
2 the ground that we're on, I live on a hill, as I mentioned earlier, and, uh,
3 the, the, it's a, it's a sand, uh, uh, fill so I could lose my home. So if
4 they blast and there is, uh, repercussions from the blasting. Okay. That's
5 it. Thank you.

6 REEVES: Thank you, Mr. Koran.

7 BLACK: Anybody else in here?

8 REEVES: Yeah. Uh, so while, oh, I was going to say, I'll go to Debra
9 Anderson next on, uh, Teams.

10 BLACK: Yes. And then we have a few more.

11 REEVES: Okay. So Debra Anderson, looks like we're unmuted now. All right.
12 Thank you. Do you swear or affirm to tell the truth in the testimony you give
13 here today?

14 ANDERSON: Um, I swear.

15 REEVES: And if you could state and then spell your name for the audio and
16 give us, uh, your address as the party of record?

17 ANDERSON: Um, Debra, D-e-b-r-a, Anderson, A-n-d-e-r-s-o-n. I live at 7374
18 Herbal Lane. Um, this morning, while I was in the meeting, I heard them
19 mention, um, that there were sporadic family resources in the area. Um, I
20 live in the, in the neighborhood with 18 homes. And my concern was with the
21 ground water. Um, we have, uh, community wells in our area. And this is going
22 to be, they said this morning, down to within ten feet of the ground water.
23 And I'm very concerned about what's going to happen to, um, our wells and our
24 wa-, water quality, which, at this time, we don't have to treat at all, we
25 have good water. And I wanted to mention that concern and make sure it go on

1 the record. Um, secondly, um, I'm already nervous driving Gri-, Grip Road,
2 um, down to the corner where it joins with Prairie, without these big trucks
3 on the road. And I can't even imagine what it's going to be like if, if this
4 Special Permit passed. That's all I have to say. Thank you.

5 REEVES: Thank you, Ms. Anderson. Brandon Black, you said there were a
6 couple more folks in the road?

7 BLACK: Yes, sir. Staging now.

8 REEVES: Staging now. Yeah. Doing a great job with traffic, uh,
9 management, Mr. Black.

10 BLACK: [Inaudible] come up and..

11 REEVES: Oh, never mind, other than the camera, you did a good job, so...

12 BLACK: Yeah.

13 REEVES: Do you swear or affirm to tell the truth in the testimony you
14 give here today?

15 HEDGPETH: Yes, I do. My name is Larry Hedgpeth [phonetic], H-e-d-g-p-e-t-h.

16 I live at 5809 Berkins Road, Sedro Woolley, Washington.

17 REEVES: Okay. Uh, H-e-d-g-p, there's no a...

18 HEDGPETH: H-e-d-g, p like Paul...

19 REEVES: Okay.

20 HEDGPETH: E-t-h.

21 REEVES: Great. Thank you. Sorry. Just want to make sure I get things
22 right. Go right ahead, sir.

23 HEDGPETH: Like a bunch of people here, I am not used to public speaking and
24 it shows so give me some slack. Um, I'm also, uh, feeling a lot of emotions.

25 It's some people have it better than others and I'm not one of the bad ones

1 so I'm going to talk a little bit about my place. And then I want to talk
2 about our County and you, sir, and what I'm hoping from you. So I live on
3 Swede Creek west, uh, 15 years. It runs right through our property. We have
4 a, a driveway that crosses it. We go out there and watch the creek and we
5 didn't watch the fish because we only seen one or two fish, but the creek is
6 beautiful. Well, our property was one of a Hun-, of 475 of lower Skagit basin
7 that was a fish blockage and, um, there are programs for that and they've
8 got, we got another, uh, bridge over it now. You walk down it now and it's so
9 beautiful, I mean, it's just, you know what a culvert looks like, well, a
10 bridge looks totally different and there's a creek now. And there is variety,
11 it's just swarming with fish. And I talked to the people who did the work and
12 she said, yeah, we don't have anything firm or official about it yet, gave
13 them two out of five on, on Swede and they're just chalked full, uh, that's
14 the idea, obviously. Um, so here we're talking about a project that's going
15 to have impact, it's going to have a negative impact. There's no way to avoid
16 it. I mean, it's just too big and too wide spread, Swede Creek goes right
17 through this project, as well as going right through my land. Um, I'm not
18 going to say it's going to be a disaster, it's not going to be, it's not
19 going to help these, any of these fish. So there's Coho in there, that's the
20 ones that I recognize sometimes. Um, there's a couple others, others and
21 there's also a threatened species that I've never heard talk about, that's
22 the, that's the, um, river steelhead, Puget Sound Steelhead. They do use this
23 creek and they are threatened. That's what I've been told, again, by the
24 folks who do the work. Um, and I've, I've done a little bit of numbers, I
25 just, I like to do numbers and so 46 trips a day, that's the average, so even

1 if it's high and low, average out, over 25 years. That is 419,750 trips,
2 that's not typo, that's a lot of traffic over, over that, and I, I know that
3 my bridge is solid, when they put it together, they spent a lot of money on
4 it. But I don't know whether that bridge over the Swede Creek is solid there.
5 It doesn't matter, if the bridge is fine, there's, there's going to be
6 serious impacts. Uh, I'm worried about the safety, I'm worried about a lot of
7 other things besides the, the salmon. Um, but they've all been talked about.
8 Um, we haven't talked very much about how we got here. What we've got here is
9 a room full of people. And everyone who is here, um, could have brought more,
10 we've been doing this for six years and dammit when this started hitting the
11 streets, again, people were telling me, and everybody here that's been
12 active, what's going on, we haven't heard about this. Well, they haven't
13 heard about it because the County has made zero effort to get public input
14 and public buy-in. These questions that we have, perhaps there's reasonable
15 answers. How would I know? Perhaps the County has it all figured out, but
16 they sure haven't written it down to show us. There haven't been any public
17 meetings. They haven't done anything to bring the community along. Nothing.
18 There's been one meeting and we did it and we paid to rent the place we did
19 it in. We, being the, who, Upper Skagit County, Sensible Samish Valley Folks.
20 Yep. We've spent \$40,000 of hours of everywhere we go trying to get this far.
21 And we still haven't had a chance to talk to the County about what they're
22 talking about. They do th-, they seem to just ignore things. It looks like
23 they're just ignoring things that are obvious, and people have brought them
24 up, what does it say, SEPA says, you're not supposed to do any development
25 that's going to do unduly impact public health, safety or welfare. Well,

1 dammit, I would love that if this thing did not impact public health, safety
2 or welfare, I'd be, I wouldn't object to it. But it does impact, so the
3 question is how much and what limits do you put on it. And that's what I
4 leave to you, sir.

5 REEVES: I was going to say, we're getting..

6 HEDGPETH: I want, I want, I'll make it in 30 seconds. You're our only hope.
7 The County won't talk to us. The, the mine never approached us with any
8 effort to have any kind of, we've been, we've been raised like mushrooms over
9 this for six years. And you know what that means, right? You're our only
10 hope. If you take this seriously, shall not, shall not adversely impact
11 public health, safety or welfare. The rural, the environment. If you take
12 that's seriously, sir, we will be pleased with your results. But you're our
13 only hope, really, because we can't afford to go to the next step. We can't
14 afford to appeal you, what you say. We're out of money. We're broke. So,
15 you're our, your our last best hope. And I thank you for coming. And I hope
16 you...

17 REEVES: Thank you.

18 HEDGPETH: I hope you do right by this.

19 REEVES: Thank you, sir.

20 AVEN: Hard act to follow that.

21 REEVES: Hi. Do you swear or affirm to tell the truth in the testimony you
22 give here today?

23 AVEN: I do. Um, my name is Jennifer Aven, first name J-e-n-n-i-f-e-r,
24 last name Aven, A-v-e-n. I live at 6478 Lillian Lane. Um, I've lived there
25 for about 16 years now and my parents live next door. Uh, well, thank you for

1 the opportunity to speak today. I was surprised and a little disappointed
2 that the person from the County that stands by these previous decision to
3 allow this, wasn't physically here in the hearing room today. That seems a
4 little bizarre to me. But I wanted to thank all of the neighbors who have
5 taken the day off and traveled here. Um, and they want to describe us as
6 sporadically populated area, but we clearly have a full and cohesive
7 neighborhood and it's just really nice to see so many people here that live
8 just beyond the tress or down along driveways, like, there's a lot of us
9 buried in the woods back there. Um, so, to decide this project of this size,
10 in the middle of this neighborhood, as non-significant is truly a dereliction
11 of duty. And ignoring the evidence that puts profit over everything else.
12 It's a 51 acre, 60 foot deep, open pit mine 200 feet from the Samish River.
13 Uh, it can potentially add 60 additional 50-ton trucks an hour to our narrow,
14 twisting, winding back roads. And I know this is all redundant, but so will
15 all the trucks be, so here we are. Um, this is significant. I appreciate all
16 the small efforts that they're saying, but the flashing light will not keep a
17 dump truck out of my lane and keep me out of a ditch. I'm asking for more.
18 I'm begging you to listen to my neighbors and all of the experts that they
19 have hired, and not just the ones bought by Miles, who's just a company whose
20 only focus seems to be on money, no matter what the real environmental and
21 safety impact may be. Uh, as a mom, my main concern is the flow of the very
22 large heavy trucks and trailers running along Prairie and Grip, especially
23 along those S curves. Anyone who has driven up and down that hill has seen
24 vehicles cross the center lane when navigating turns. In fact, it happened to
25 me just on my way home to write this statement from the meeting the other

1 week. I had to hit the brakes and swerve out of the way. Uh, sorry, nervous.
2 Um, so, I've personally witnessed trucks and school buses crossing the line,
3 um, all the way from Lillian out to I-5. I've been run off the road several
4 times from oncoming, coming traffic. There's very little room for evasive
5 maneuvers, in many places the road is too narrow for a white fog line, let
6 alone a shoulder. Uh, sometimes there's a deep ditch, a steep hillside or a
7 guardrail. Uh, when an oncoming truck is coming at you, there is little room
8 to get out of the way. It's absolutely terrifying to know that your decision
9 to allow this pit, without mitigating those conditions, would put me, my
10 husband, my parents and my kids, my friends and all my neighbors in danger
11 multiple times a day. My son, he rides the school bus along these roads and
12 I, as far as I can, tell it hasn't even been addressed how a school bus can
13 navigate, especially down that S turn, especially with an oncoming truck. Um,
14 my understanding is there isn't even a designated haul route, so how can you
15 assure us that we will be safe, if we don't even know exactly which direction
16 the trucks will be going? My son will be driving with a learner's permit in
17 18 months and you cannot imagine my fear of having a new driver traversing
18 these narrow winding roads with 50-ton trucks and trailers that cannot manage
19 around the corners. A few years back, about two weeks before my daughter's
20 16th birthday, I received one of those calls that no mother really wants to
21 hear, I could hear her sobbing in the background while my husband assured me
22 that everybody was okay, but the car was totaled. There was almost, they were
23 almost home from a practice drive when an oncoming vehicle came a little too
24 far over the lane and, since there's not even room for a white fog line, when
25 she moved over, she got pulled into the ditch and slammed into a driveway

1 culvert. So turning down that road and seeing flashing emergency lights, a
2 totaled car, airbags, airbags deployed and the windshield shattered, my
3 daughter crying on the side of the road was upsetting to say the least. I'm
4 so grateful that they were able to walk away with bruises and [inaudible] but
5 may not be so lucky next time, especially with the steep hill sides. I'm
6 inviting you to take a few more drives around our neighborhood. It's even
7 changed since COVID because the barrier hasn't been up. And I don't know if
8 you've ever driven on there after a heavy rain, but there's water over the
9 road in multiple places and I don't feel like any of that has even been
10 addressed. Um, and I just need you to imagine what it's like with a truck
11 coming at you, are you going to go into the guardrail, are you going to go
12 into the ditch or are you going to slam into the truck. Clearly, the stuff
13 hasn't been addressed. It needs to. And, uh, yeah, I'm just asking you to
14 really consider the safety of our community. So, thank you.

15 REEVES: Okay. Thank you, Ms. Aven. Hi. Do you swear or affirm to tell the
16 truth in the testimony you give here today?

17 REIM: I do. My name is Kathy Reim, K-a-t-h-y R-e-i-m. And I live at
18 23262 Meadowview Lane, Sedro Woolley, 98284. We built our home 30 years ago
19 at the eastern end of Prairie Road, close to Samish Elementary School. And
20 while I think it, it's very important to note that Prairie is a, is actually
21 a very busy thoroughfare that goes all the way from, uh, Highway 9 over to,
22 um, to the Interstate. I think it's important to say to this group that in
23 1972, Commissioner Howard Miller [phonetic] explained to my ninth grade
24 students that our County Agreement has as its first obligation to protect us
25 from decisions that put the health and safety of the community at risk. And

1 through the years, they have tried to demand and, and create standard to
2 maintain the beauty of this rural area. The burden of proof around this issue
3 is on the mine and what it's going to do to our community. We have worked
4 with a good faith effort as a group of neighbors in a time when the era of
5 cynicism towards government has been so intense. And so I'm speaking to the
6 process as a longtime teacher who stood in front of people and said, let us
7 try to believe in this system and that we're here because we're trying to
8 believe in you and the way this is going to play out. I've had my child here,
9 I have former students here. And I'm speaking to the need to make sure that
10 this process is fair and honest and, and transparent so that we can
11 understand what's going on. These have been long six years that we have been
12 coming together. And there are things about today that I've heard that have
13 been distressing. And I don't understand the use of the work sporadic housing
14 because that's not what our art-, area, area is. And I think that that's, um,
15 is, is a term that's, that denigrates the fact that so many of us live here
16 and the fact that you may not be able to see that is something that needs to,
17 to be addressed. I'm also concerned about the long-term accountability over
18 time. We see things happen here and ten years later, nobody is being held
19 accountable. And that might be something that be placed as part of this
20 process. And lastly, I want to say that Howard Miller would be delighted to
21 see all of us working so hard together, as a community, to make the change
22 and to be heard over all of this time, through all of this effort. And I know
23 you've driven out here and I'm glad that you are a person that lives here
24 locally, but I want to ask you to, uh, to do as Atticus Finch would have

25

1 said, and I'm going to ask you to drive out here again and I'm going to ask
2 you to drive a few miles in our footsteps. Thank you.

3 REEVES: Thank you. I don't recall using the term sporadic housing. If, if
4 I said that, I apologize. I, I think I just was, if I did use that term, I
5 don't recall ever saying that today.

6 FEMALE 8: It wasn't you. It wasn't...

7 MALE 10: That was in the County...

8 REEVES: Sorry, I heard you and I thought it was directed to me. So I just
9 wanted to, I know sometimes I put my foot in my mouth and when I do, I like
10 to apologize right away.

11 BLACK: Is there anyone else here who would like to speak? I think that
12 covers the comments from the public in the room.

13 REEVES: Okay. Uh, thank you. Do we have other folks on Teams that have
14 not yet used the raised hand feature? Uh, if you are interested in
15 participating, please use that raised hand feature. And, actually, while I'm
16 waiting on that, because you can't use the raised hand feature on your phone,
17 I do have one phone caller in and that is a phone number ending in 38. And I
18 believe on Teams, you have to hit *6, I think. So if you're the person that
19 is calling in and your number ends in 38, meaning you're not using your
20 computer to do this, uh, and you wanted to testify, uh, *6 on your phone and
21 this is your opportunity. Give that person a sec. Okay. Well, if you turn out
22 having a tech issue, just keep trying, we'll figure it out. But the next name
23 I see is an Amy, I'm sure I'll butcher this, I'll go with, uh, Becker,
24 probably totally wrong.

25 BOETTCHER: Amy Boettcher.

1 REEVES: Boettcher. I wasn't too bad. Okay. So do you swear or affirm to
2 tell the truth in the testimony you give here today?
3 BOETTCHER: I do.
4 REEVES: Thank you. And can you just spell your name?
5 BOETTCHER: Sorry. Uh, B as in boy, o-e, double t as in Tom, c-h-e-r.
6 REEVES: Thank you. And your address, for, uh, record keeping?
7 BOETTCHER: 1969 Highway 9, Sedro Woolley.
8 REEVES: Okay. Thank you. Go right ahead.
9 BOETTCHER: So, I, uh, where I live is, um, about two-minute drive from
10 Samish. I usually go Upper Samish, you know, to Prairie, pass Grip to Prairie
11 on my way to work. In fact, that's where I'm my car now, I just got off work.
12 Um, and one of the, well, what I want to say is I went through the website
13 and I read as much as possible, all the, the environmental reports,
14 everything that the, uh, Concrete Nor'West has submitted, as much as I could
15 that the Skagit, or the County has submitted. And it's quite extension and
16 I'm, I'm actually really proud of that, as I'm sure a lot of people have
17 said. Um, one thing that I am concerned about is something that we're all
18 concerned about and that is I'm going to say climate change. And the reason I
19 say that is because last year, on my property, the Samish River goes right
20 through it. And I work with the conservation district, I'm profusely
21 protective of doing right by my land, planting trees, following all the
22 rules, keeping everything safe so I can pass it down to my son. But with the
23 flooding last year, the Samish River went 33 feet above the flood line, okay?
24 And I was lucky enough to get a grant to fix some of the damage that was
25 brought. Um, but I know many farmers, especially along Samish going through

1 Prairie, didn't have that luxury. And the reason I bring this up is because
2 when I'm reading the environmental reports, I don't get any sensation or any
3 sense of what happens when, in these 25 years, when the climate or Mother
4 Nature does what it wants, what's going to happen with the accountability
5 from the mine, from the County? Are these, the people that live on Samish
6 River through Prairie, are they going to have their properties cared for? Or
7 are they, is it going to be a situation like in Lyman where, um, you know,
8 flooding and erosion happens and houses go into the river? Um, I, again, I
9 worked with the conservation district, I continue to work with the science
10 and scientists, and nobody predicted the Samish River to flood that bad. So
11 my concern is how do I know in all the environmental reports that this
12 company has submitted through all of their professionals and, and third
13 parties, how do I know that the 25 years isn't going to be, um, you know, all
14 those, those climate changes isn't going to be protected and, and looked at.
15 And we don't know. And I, and practically speaking, we don't know, we can't
16 control acts of God, we can't control these things. Um, but then there's that
17 accountability. Say the Samish River floods, say there's erosion, say there's
18 things that this mine produces on the environment, that nobody can control,
19 if the community, including myself, even though I don't live on Prairie or,
20 or near Grip, that it's going to be out there with the excavator, they're
21 going to be out there with, um, you know, working with the County, working
22 with scientists, whoever we can, to help these disasters, if they come about?
23 And these disasters, these historical floods, they're no longer a long-term
24 philosophical vague entity, they're happening, they happened last year. And
25 when, um, specifically with my farm and through ACME and Sumas, when the

1 County and the State could not come in, when businesses who own those lands
2 could not come in, it was our community, individual people, that were out
3 there doing all the work. So, um, I just wanted to bring that up. I don't, I,
4 I think that wasn't an issue that was talked about enough, um, but I wanted
5 to bring that up, so.

6 REEVES: Great.

7 BOETTCHER: Thank you.

8 REEVES: Thank you very much. Okay. Uh, any other folks there on the Teams
9 meeting, uh, that were interested in testifying? If you hit the raised hand
10 feature. And I also see another call in. We have a number ending in 61. Uh,
11 if you're the number ending in 61 and you were hoping to testify. Okay. And
12 then, sorry, I do see Rick Brumfield using an old-fashioned raised hand
13 feature, I apologize. We can go to Mr. Brumfield. Uh, all right. Thank you
14 for being here. Do you swear or affirm to tell the truth in the testimony you
15 give here today?

16 BRUMFIELD: Thank, thank you, am I on? Can you hear, can you hear me?

17 REEVES: You're on. And you do swear to tell the truth, is that right?

18 BRUMFIELD: I do swear. I don't know where the, I don't know where the raised
19 hand feature is.

20 REEVES: No, no problem at all. No, I figured it out, finally. Uh, could
21 you state and spell your name, uh, for the record and then give us your
22 address?

23 BRUMFIELD: Sure. My name is Rick Brumfield [phonetic], B as in boy, r-u-m,
24 like the drink, rum, and then field, regal name is Richard Bruce [phonetic],
25 but most people go, call me Rick, Rick, go by that.

1 REEVES: Okay. Thank you. Go right ahead, sir.

2 BRUMFIELD: So, uh, I live at 5318 Cedar Ridge Place, uh, you heard from my
3 wife earlier today. Uh, we moved here in, uh, 2003. We live in our house
4 with, uh, Kathy [phonetic], my wife and we have a granddaughter who just
5 turned 18. And she lives with us fulltime and has since, uh, day one, almost.
6 So, anyway, she's with us, she's driving these roads now. Um, I, up front, I,
7 I need to be clear with you that I'm not, uh, in favor of this project at
8 all. Uh, at least as it's currently defined. Um, uh, one of my main, main
9 concerns is about the dangers on the roads, we've heard quite a bit about
10 that today. Um, my issue is primarily with the center line issue and crossing
11 over there. Uh, I think what we've heard and from myself, it's not an
12 exaggeration, it's not hyperbole, uh, we, myself and my wife have, have been
13 run off the road specifically by gravel and, um, gravel trailer combinations.
14 Um, also, uh, we heard from a neighbor, uh, within the last week or two, uh,
15 up here at the next door, uh, that lets us know what's going on in the
16 neighborhood and, uh, one of our neighbors, uh, almost got run off the road
17 also. She lives down by, uh, uh, just before the, uh, Prairie/Grip
18 intersection, I think near that little bridge that's actually on Grip, just
19 little bit south of the, uh, Prairie/Grip intersection. So it, that is real,
20 it's, and, uh, the interplay with the school buses, uh, some of those buses
21 cannot make those turns. So what happens when a truck trailer combination and
22 a school bus try to make the turn at the same time. There, somebody is going
23 to get killed. We're going to have a wrongful death, wrongful injury. And
24 then how, where is the dollars to play, uh, it just takes one person to get
25 multimillion dollar settlement these days. You see it in the news all the

1 time. What's going to happen if you get several children killed or maimed in
2 a bus wreck? Figure that out. Okay. I think we should use that money, if
3 we're going to put this mine in, use the money to improve the roads first, so
4 we don't have to have such a tragedy. Okay. Move on. Good. Different issue,
5 um, somewhere in all this paperwork, I think it was the Traffic Impact
6 Analysis maybe that talks about weight issues with the bridge on Old 99 going
7 southbound from, uh, uh, Prairie/Old 99 intersection, down towards the
8 Bellevue, uh, Belldale, I think is that name of it? Uh, [inaudible] area. And
9 the solution that was suggested, no, go on up over Bow Hill Road, go
10 southbound on I-5 and then get off at the Cook Road exit. That is absolutely
11 crazy and really bad judgement to go that route. Have you ever gone through
12 the intersection of Cook Road, the railroad, Old 99 and I-5? It's an absolute
13 mess right now and that's without adding this traffic that we're talking
14 about. So, today, let's see if we can figure that one out. I'm almost done
15 here. Let's see, the, the, the EI-, or the, the MDNS, it lists, I think, I'm,
16 my awareness is 19 different mitigations, that seems ridiculous that there's
17 that many, it seems like that many called for a full EIS just by itself. So,
18 um, for what it's worth, I think the County is exposed from a liability
19 standpoint, both on, um, on moneywise, from, um, could be on what is
20 significant to the MDNS, says and also for a wrongful injury and, or, uh, uh,
21 wrongful death or injury. So, uh, there's that. Uh, the County does know how
22 to make things safe, we have roundabouts throughout the County. They did an
23 excellent job of fixing the road between, um, Prairie, uh, uh, Bow Hill, Old
24 99 and Prairie/Bow Hill and then up the road, up, up to I-5, they've widened
25 those, they put in, uh, they widened the shoulders, it's much better now. I'm

1 sure that cost a little bit, but, hey, that's a lot better to spend money
2 making the roads safe before having a tragic accident. That's just not worth
3 it. Uh, I'm all done. How am I doing on my minutes?

4 REEVES: Uh, you're over, you're over three for sure. I'll give you one
5 more point, if you'd like to make one more?

6 BRUMFIELD: Uh, I, I think that that's it. Thank you, uh, I really appreciate
7 the opportunity to have this, uh, input. Uh, I'm really hard of hearing and
8 so these mechanics made it so I can hear today. If I was there in, in person,
9 I wouldn't have been able to hear. So, and thank you to my neighbors for all
10 of their input, too.

11 REEVES: Okay. Thank you, Mr. Brumfield. Uh, I see Brandon there in the
12 room. Brandon, were there others in the room or were you just checking in on
13 things?

14 BLACK: Yep. Uh, we're, we've completed all the testimony from the room.

15 REEVES: Okay. Uh, anyone there, uh, on, and if we, let's see, there we
16 go. Anyone else on the Teams meeting, uh, that wanted public, members of the
17 public that wanted to testify, if you hit the raised hand feature, now is the
18 opportunity. And while we're waiting on that. Okay. I have someone identified
19 as Kathleen [phonetic].

20 GRIMBLY: All right. Question, sir, if, um, the testimony is through for
21 the day, does that mean there will not be a Monday meeting in Sedro Woolley?

22 REEVES: Sorry, no, to be clear, there is quite a bit more that will
23 ultimately be happening, it's just the segments of how we'll...

24 GRIMBLY: Okay.

25 REEVES: So, were, were you interested in testifying?

1 GRIMBLY: Sorry, well, I have an email in about testifying on Monday.

2 REEVES: Well, to be clear, the way this process works is we're going to,
3 once we're done with the segment that is public testimony, that's, that's it
4 and then we're moving to expert testimony after that. So...

5 GRIMBLY: So, is, is this the end of public testimony?

6 REEVES: That's what we're trying to sort out. So if you would like to
7 testify, now is certainly the time to do it.

8 GRIMBLY: Okay. Well, I'm not really prepared, but I'll go ahead.

9 REEVES: I'll swear you in. Do you swear or affirm to tell the truth in
10 the testimony you give here today?

11 GRIMBLY: I swear to tell the truth.

12 REEVES: And if you could state and then spell your name for me?

13 GRIMBLY: Kathleen Grimbly, G-r-i-m-b-l-y.

14 REEVES: And Kathleen, uh, with a K, right?

15 GRIMBLY: Yes.

16 REEVES: Okay. And then if you could provide your address, uh, for the
17 folks there at the County that are going to keep that?

18 GRIMBLY: 4658 Blank Road, like drawing a blank.

19 REEVES: Okay. Perfect.

20 GRIMBLY: And named after the Blank family. And, um, I've lived there since
21 1958.

22 REEVES: Thank you. Go right ahead.

23 GRIMBLY: Um, I regret I had to miss the other testimony and from previous
24 in the day, uh, but I haven't seen this addressed in any of the environmental
25 use. There's a lot of talk about wetlands, but there's no discussion about

1 what's going to happen to water quality by moving the forest and the topsoil
2 that is only going to be within 200 feet of the Samish River. I don't see how
3 that's not, anyone knows that if you take out trees, those aren't, those
4 trees aren't up-taking the water. If you take out topsoil and go down 60
5 feet, that's going to become a giant water collection basin for 25 years.
6 Right above a salmon stream that includes fall Chinook runs, they are the
7 most important food for the southern resident killer whales, which are all
8 endangered listed. So, I don't believe that that issue has been addressed. I
9 don't believe the Applicant has shown that, um, water quality is going to be
10 effected by the removal of those materials.

11 REEVES: Okay. And did that conclude your remarks, Ms. Grimbly?

12 GRIMBLY: You've probably heard enough today.

13 REEVES: It's been a long day, uh, I'll, I'll admit it, but, uh, I
14 appreciate you taking the time to testify today.

15 GRIMBLY: Thanks. And I, I admire your patience, I wouldn't have it.

16 REEVES: Wait until the lawyers, the lawyers are the ones that really try
17 my patience.

18 GRIMBLY: I [inaudible].

19 REEVES: [Inaudible.]

20 GRIMBLY: From the beginning and I had a little taste.

21 REEVES: You might see some eye rolling, but it's all, it's, you know,
22 they, they are colleague of mine, I, barely, but sometimes appear on the
23 other side of things and, and so I know how it goes. So, um..

24 GRIMBLY: And I'd like to add, I have all of the other concerns that
25 everybody has been repeatedly talked about. But there are no, I mean, I rode

1 these roads, roads as a kid on my bike and no kids are going to be riding
2 these roads on their bikes. Um, so, thank you.

3 REEVES: Thank you, Ms. Grimbly.

4 GRIMBLY: Okay.

5 REEVES: Okay. So with that, just checking in one final time on the Teams
6 side of the meeting, uh, if you were interested in testifying, use that
7 raised hand feature. Okay. I'm not seeing anyone. Uh, and I believe, Mr.
8 Black clarified that in terms of the room, uh, we've addressed all of the
9 testimony in the room, is that, again, accurate, Mr. Black?

10 BLACK: That is correct.

11 REEVES: Okay. So, um, looking at our plan of attack as it were, I know
12 that the next segment was going to the presentation of witnessed, uh, by the
13 Applicants, and I think there are ultimately, the Applicant had quite a few,
14 Mr. Lynn, I'm verifying my, ultimately will be about 15 folks, potentially,
15 that, that were going to be called by the Applicant?

16 LYNN: There, there will be more, like, half that.

17 REEVES: So...

18 LYNN: Uh, go ahead.

19 REEVES: The question was, uh, I was going to leave it up to you, I think
20 we're actually moving, uh, a bit ahead of schedule, uh, in a, in a good way.
21 But, uh, you, are you ready to move forward? We're, we have about a half hour
22 left on our allotted time for the day. Or if you prefer, I have no issue with
23 starting fresh with, with expert witnesses on Monday, but...

24

25

1 Lynn: Uh, it, it really doesn't matter to me. Our first witness would
2 be Brad Martin from Miles Sand and Gravel, uh, but, and he's available, but
3 we could also just wait until Monday when we're all maybe a little fresher.

4 REEVES: I guess my one concern is, you know, with the experts, the sort
5 of path forward is, obviously, you'll direct questions for your expert
6 witness, but then you'll have, uh, cross-examination from others, uh, and I,
7 I would rather, on a Friday afternoon, not stop mid-witness, uh, then move
8 forward. But, do you have a sense on the timing on this?

9 LYNN: Uh, he will likely be longer than the rest of today. So he would
10 run into Monday.

11 REEVES: Okay.

12 LYNN: So he would be stopping mid-witness, I guess.

13 REEVES: Sure. Mr. Loring, I see you nodding, does that approach make
14 sense in your mind?

15 LORING: It does, it does. It makes sense to me. You know, it always feels
16 like there's more times in the beginning of our series of days for hearing
17 than at the end. Uh, so needless to say, since we go next, you know, there's
18 a little concern, but I, I agree, let's try to make sure we can start with
19 witnesses and keep them together as much as possible.

20 REEVES: Sure. Uh, Mr., uh, D'Avignon, your thoughts there?

21 D'AVIGNON: I concur, I think it would be, uh, better for everybody if we're
22 listening to witnesses all in one chunk.

23 REEVES: Yeah. Okay. And Mr. Ehrlichman, uh, you're still...

24 EHRLICHMAN: No, that, we've all worked hard today. And I just wonder if we
25 can wear [inaudible].

1 REEVES: There might have been a good joke, but I didn't hear it, 'cause
2 you cut out. What was, what was the request, Mr., Mr. Ehrlichman?
3 EHRLICHMAN: [Inaudible] on Monday.
4 FEMALE 9: Hawaiian shirts.
5 REEVES: Hawaiian shirts on Monday? Fine with me. I, I fully support
6 Hawaiian shirts. I certainly never, uh, fault anyone for wearing a Hawaiian
7 shirt whether it's a Friday, a Monday or not. I will admit that at one point
8 in the last, uh, you know, two years, I, I had a period where I was working
9 from Hawaii, uh, and you can, every now and again, I probably forgot, you
10 would see in the background the ocean and, uh, but, uh, not, not the case
11 these days, but, yeah, that would be great. So, uh, in terms of procedures,
12 uh, Mr. Black, if I can get you back, I just want to clarify, the plan had
13 been, and has been this entire time that, uh, we wanted to ensure we had a
14 publicly available space, uh, for witness testimony from the public, uh, in
15 case they were unable to, uh, use the technological aspects. Because we have
16 now, uh, moved through all of the witness, uh, public, uh, testimony, I guess
17 my question is, is the room going to be needed on Monday? Um, my
18 understanding from all of the attorneys, uh, uh, was that their witnesses
19 would all be appearing remotely, along with themselves, um, but can you just
20 speak to what, what would be staff's preference? I, I have no problem if you
21 guys are there on Monday, I just, I just want to make sure we're all on the
22 same page.
23 FEMALE 10: Can I make a comment about that, Brandon?
24
25

1 BLACK: If, if, Andrew, if you're addressing that to me, I wasn't sure if
2 you were, but it has been advertised that we will meet on Monday so, um, we,
3 we probably...

4 REEVES: Which advertisement?

5 BLACK: Well, and, and just the housekeeping item. We've had some, uh,
6 request, is it possible to keep the record opened if there were folks here
7 earlier or that could not, uh, with the technological challenges get their
8 voices heard to be allowed to still submit some testimony? Um, and then along
9 with that, um, this is probably more of a technical issue for the IT folks,
10 or maybe Mona, but folks would be wondering how they can view this recorded,
11 uh, session, or both of them, if it is broken up into two?

12 REEVES: Sure, in terms of if folks, uh, had to leave earlier, uh, and, or
13 had technological challenges, I certainly have no, no issue with them
14 submitting their comments as written comments instead of, uh, in lieu of, uh,
15 the public testimony. To be clear, though, I, I am not inviting or requesting
16 that we had 37 or 8, is the number I had, uh, folks we heard form today, I'm
17 not asking that folks submit additional, uh, uh, written comments. This is
18 more directed toward those that either for a technological reason because we
19 had the call-in issue earlier, uh, that folks had to leave the room earlier,
20 um, that would not be a problem on my end. Um, so, so I, I will grant that.
21 In terms of how the tech works on viewing this, uh, certainly I, I know I
22 [inaudible] but, uh, I don't know if it's actually running the Teams meeting.
23 I know with Zoom the, the link for the meeting, even a long one like today is
24 usually ready by three or four hours after the meeting. Uh, so I suspect,
25 even with Team, that there would be a way once that link is ready, it could

1 be uploaded to the County's website, I would expect. But, please ask your
2 tech team or, worse comes to worse, is our unfortunate techpert [sic]
3 available still, I'm looking online here to see. Ms. Forbes, are you still
4 there?

5 FORBES: I am, I am still here. Uh, I will work with, uh, with our r-, our
6 Hearing Examiner's Office, uh, to see what we need to do to get that
7 available.

8 REEVES: Thanks, Leah. Okay. So, yeah, I believe that, uh, folks would be
9 able to, uh, fairly quickly be able to, uh, get the link to download and
10 watch, uh, what we heard today. Uh, it was so much fun the first time, you
11 want to watch it again tomorrow, you might be able to do that. It might not
12 be until Monday, to be honest. Uh, but, uh, it sounds like the County is
13 certainly, uh, able and willing to do that. Okay. So to be clear, Monday, the
14 plan is, uh, the room will be available for members of the public that, that
15 would like to watch the proceedings, uh, from the room there. Uh, but what
16 will happen on Monday and I think 9:00 is the start time Monday as well, does
17 that sound right? I don't think I have my thing out in front of me.

18 FEMALE 11: Yes.

19 BLACK: Yes.

20 REEVES: I'm getting nods from, the plan is on, uh, on Monday, we'll,
21 we'll get called to order, uh, and we will dive right in with, uh, the
22 Applicant expert, uh, witnesses, uh, as directed by Attorney Bill Lynn. Uh,
23 and that will be the plan. So, I think, and Hawaiian shirts are welcome, I
24 think we already established that. Uh, let me just quickly run around our
25

1 attorneys, uh, uh, Bill Lynn, anything, anything you wanted to cover before
2 we conclude today?

3 LYNN: No, I'm fine. Thanks.

4 REEVES: Thank you. Jason, uh, do you have anything?

5 D'AVIGNON: No, thank you.

6 REEVES: Okay. Uh, Kyle Loring?

7 LORING: Uh, just one quick point, I just want to make sure you're able to
8 get those Exhibits that we had uploaded, so obviously, uh, let's follow up in
9 case somehow it got lost...

10 REEVES: I...

11 LORING: In the ether.

12 REEVES: Uh, 100% will ensure that happens, uh, when this is, for folks
13 wondering what that is in reference to, there was an initial X number of
14 Appellant exhibits, I thought I had everything, and in my review of, uh,
15 everything, uh, last night through this morning, I, I, it occurred, I may be
16 missing just a few things. Uh, we're going to ensure certainly that I have
17 everything. And so we'll make sure that happens, no problem there. And then
18 finally, Mr. Ehrlichman, any, any final, anything you wanted to...

19 EHRLICHMAN: [Inaudible] two, I have...

20 REEVES: Hold, hold on, Mr., Mr. Ehrlichman, you're...

21 EHRLICHMAN: Can you hear me?

22 REEVES: Not very well, maybe turn your, your video feed off, that might
23 free up the bandwidth.

24 EHRLICHMAN: Is that better?

25 REEVES: Maybe. Go ahead and give it a try.

1 EHRlichman: Um, when will the County's traffic experts be on the stand?

2 REEVES: I, I truly couldn't guarantee a time. I, you know, we, we
3 delineated in advance sort of the order things would go in. Um, and so I know
4 that we have several witnesses we'll be hearing from that the Applicant is
5 bringing. Is there a timing issue you're, you're concerned with, Mr.
6 Ehrlichman?

7 EHRlichman: No. I'm just trying to see, um, how the order goes. The Applicant
8 goes and with the County and then the Appellant and then our case?

9 REEVES: Sorry, I know we had, something was printed out, I believe, uh,
10 Jason, uh, D'Avignon has prepared a nice summary of what we talked to and you
11 are included on that email, yeah. So, Applicant, Appellant and then County.
12 So I suspect, I will be amazed and thrilled if, uh, on Monday, we got all the
13 way down to the County's traffic experts. I, I suspect that is not going to
14 be the case, um, but, uh, you'll just have to follow, check in, periodically,
15 I suppose, if, if it is not your intent to participate.

16 EHRlichman: No, I, I just wanting to [inaudible] thank you for that
17 clarification. And the second item is that one of my witnesses would be
18 available Monday and Friday, but more difficult for him the following week.
19 So, uh, his testimony would be brief if you could just keep us in mind Monday
20 or Friday to have him pop up, perhaps out of order.

21 REEVES: Sure. And if you can remind us, uh, Monday, of that issue, uh,
22 that would be great. Um, uh...

23 EHRlichman: Thank you.

24 REEVES: Okay.

25 EHRlichman: Great. Thank you.

1 REEVES: Great. Thank you. Okay. So just, just, I think, I think we're
2 set. So, um, Brandon Black, just to verify the plan over there, you guys are
3 all set? I think we know what's happening, uh, next on Monday, uh, again, the
4 plan is, the expert witnesses, other parties we're going to call will be
5 appearing remotely, but folks are certainly welcome to watch, uh, watch the
6 meeting, uh, from the room, uh, there. I can't remember is it, are you in
7 Burlington today? Where, where did it end up being today?

8 KELLOGG: Mount Vernon.

9 MALE 11: Mount Vernon.

10 KELLOGG: Mount Vernon today.

11 REEVES: Okay.

12 KELLOGG: Sedro Woolley Monday.

13 REEVES: There we go. So...

14 MALE 12: Burlington or Sedro Woolley on Monday?

15 KELLOGG: Sedro.

16 FEMALE 12: Sedro Woolley on Monday.

17 KELLOGG: Sedro Woolley on Monday.

18 MALE 12: Sedro Woolley on Monday.

19 MALE 13: City Council Chambers.

20 MALE 14: Council Chambers.

21 KELLOGG: Metcalf Street.

22 REEVES: Okay. After that, we have, uh, [inaudible] so thank you,
23 everybody, uh, for taking the time to provide, uh, testimony. Oh, Brandon?

24

25

1 BLACK: One, one thing here, uh, and, and give me a second, we have a
2 question come up and I want to make sure I understand the question before I,
3 I ask it. And I think it's...

4 REEVES: Okay.

5 BLACK: Probably the same thing she has as well.

6 MALE 15: Yeah. It's the same question. You were saying that...

7 FEMALE 12: Uh-huh.

8 MALE 15: People that couldn't come back...

9 FEMALE 12: Yep.

10 MALE 15: To testify, to testify today, those who could come back will
11 probably come back Monday to testify.

12 FEMALE 13: They took it as that.

13 BLACK: That is true. So some, some folks may have taken the fact that we
14 wanted to get those that testified today, that couldn't come back, to testify
15 tomorrow, I mean, Monday, I'm sorry, um, some of those folks may have taken
16 that as that they were going to be able to testify on Monday.

17 FEMALE 13: Yes, that's...

18 REEVES: Okay. Unsort-...

19 BLACK: That is the question that has been raised.

20 REEVES: Yeah. That is unfortunate. You have a sign-in sheet, they would
21 have signed in at the beginning.

22 BLACK: A majority of those folks did, uh, speak. There are a few that,
23 just a handful, I believe that, that did not.

24 FEMALE 13: And they would have...

25

1 REEVES: So what I was going to suggest is, we can cross that bridge
2 Monday, but essentially, if folks had signed in today to testify and there
3 was that misunderstanding, you know, uh, they would have an opportunity on
4 the onset Monday, uh, if, if they so desire. Alternatively, uh, you know,
5 those folks would, would be able to submit their written comments in lieu,
6 but, um, I don't know how they're going to know what happened one way or the
7 other, so, but we'll, we'll work against that list to the extent that, uh,
8 you know, process-wise, uh, that, that is what make sense. Does that track?

9 BLACK: Yes, that's, sounds reasonable.

10 REEVES: And if someone could copy that list, at some point, and send it
11 to the Hearing Examiner's Office, uh, and perhaps the, the other parties,
12 just so we have names and everything, that would helpful as well.

13 BLACK: There will also be, Mona will also be scanning in, sending along
14 to you and all the parties, any written comments that were submitted to, to,
15 into the record today, as well.

16 REEVES: Excellent. Okay. So, I think, then, we will conclude things. Just
17 making sure, Brandon, you, you turned your head there. Okay. Uh, Brandon is
18 ready for a Mai Tai, uh, thank you for helping direct traffic, even more,
19 though, uh, I'm going to reiterate, uh, the idea that, uh, Leah Forbes, uh,
20 probably deserves a raise or someone buy her a nice tiki drink of some kind
21 at some point for, uh, doubling up and helping with all the tech issues. I
22 truly appreciate it. And thank you, everybody, for, uh, uh, expressing your
23 thoughts, uh, in, in such respectful ways. It's great to, to work in a
24 community where clearly everyone cares. And, uh, we will come back on Monday,
25 uh, for next sort of stage of process. And Monday we'll be hearing from, uh,

1 the Applicant's, uh, expert witnesses. So, with that, uh, happy weekend,
2 everybody. Uh, stay safe and, uh, we'll end today's meeting. Thank you,
3 everybody.

4 FEMALE 14: Thank you.

5 [Background chatter.]

6 MALE 16: I need to stop the recorder.

7 FEMALE 14: Well, the sheets were all there this morning.

8 FEMALE 15: No, no, the...

9 [The tape ends.]

10 **The undersigned being first duly sworn on oath, deposes and says:**

11 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
12 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party
13 to this action. That on April 12th, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves, that
14 took place on 8/26/22 at 12:40 pm., regarding the above-captioned matter.

15 I certify and declare under penalty of perjury under the laws of the State of Washington that the
16 aforementioned transcript is true and correct to the best of my abilities.

17 Signed at Mount Vernon, Washington, this 12th, April of 2024.

18 Janet Williamson

19 Janet Williamson

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**IN SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT**

State of Washington,	)	Cause No.: PL16-0097, PL16-0098,
	)	PL22-0142
Plaintiff,)	
)	
vs.)	
	)	PERMIT HEARING 8-29-22
Name,)	
)	
Defendant)	

Transcription Date: April 21st, 2024

Present: Andrew Reeves, Brandon Black, Bill Lynn, Jason D'Avignon, Kyle Loring, Tom Ehrlichman, Mona Kellogg, Bill Chambers, Laura Leigh Brakke, Donald Levell, Beverly Faxon, Brad Barton, Mona Green, Nichole Peterson, Automated Voice, Oscar Graham, Matt Miller, Gary Norris, Unidentified Female 1-2, Unidentified Male 1-2

BLACK: Okay. I just started the recording.

KELLOGG: Thank you.

[Background chatter.]

FEMALE 1: Hello. Just one is all we need, yeah.

[Background chatter.]

1 REEVES: Here we go. Can you hear me? Hello? Okay. I don't know what
2 changed between Friday and today, but my computer won't let me log in. So I'm
3 logged in on my other device. My apologies for the delay. And have we tested
4 the audio of our attorneys yet?

5 KELLOGG: Not yet.

6 REEVES: Okay. Why don't we check, uh, Kyle Loring, I see you nodding
7 your...

8 LORING: Good morning. Hello.

9 REEVES: Good morning. Are you okay, Bill Lynn?

10 LYNN: Yes, thank you.

11 REEVES: Jason D'Avignon?

12 D'AVIGNON: Good morning, Mr. Examiner.

13 REEVES: Okay. And Tom Ehrlichman?

14 EHRLICHMAN: Good morning.

15 REEVES: Okay. And then, is Brandon in the room today?

16 KELLOGG: He is.

17 REEVES: Brandon Black in the hearing room or someone there in the hearing
18 room?

19 KELLOGG: He is here. He is here. Brandon is here. Can you not hear me?

20 REEVES: I can hear you fine, Mona. Thank you.

21 KELLOGG: Okay. Thank you.

22 CHAMBERS: Just make sure that anyone in the room, uh, this is Bill Chambers
23 [phonetic]. Just want to give a technical, um, uh, reminder, anyone who is in
24 the room speaking will need to be next to a, a microphone that's unmuted.
25 [Background chatter.]

1 REEVES: Okay. Well, if you want to start the recording, I think, then, we
2 can sort out the procedural issues we had at the end and go from there. So
3 let me know when we're recording, Mona.

4 KELLOGG: We are recording.

5 REEVES: Okay. Get my gavel out and make it official. And good morning.
6 I'm going to go ahead and call this session of the Skagit County Hearing
7 Examiner to order. For the record, today is August 29th, 2022, just after 9:00
8 a.m. Uh, we're here on day two of, uh, the Concrete Nor'West Miles Sand and
9 Gravel matter. And this is numbers PL16-0097 and PL16-0098, along with Appeal
10 number PL22-0142, involving the request for approval of a Special Use Permit
11 and Associated Forest Practice Conversion Application to allow for the
12 development of a proposed gravel mine and quarry, uh, on three properties
13 totally approximately 77 acres total, uh, about a mile and a half north of
14 Grip Road and south/southwest of the Samish River. Uh, my name is Andrew
15 Reeves, I'm a Hearing Examiner with Sound Law Center, who the County has
16 selected to hold certain hearings, like this one. And I will be collecting
17 evidence in the form of exhibits and testimony related to this proposal. And,
18 again, it's day two. So I think, uh, folks are aware of what's going on and
19 this has been going on for quite awhile, so, uh, we'll drive right in. Um,
20 the parties are represented by Counsel. And at the end of day one, we
21 essentially heard testimony from 30 or so members of the public. Uh, at one
22 point, we were trying to ensure that all members of the public that needed an
23 in-person place to testify were able to do so and we thought we got through
24 the list, but Brandon Black, uh, with the County, pointed out that there may
25 have been a few folks that left the hearing early because they thought they

1 would, uh, be able to testify today. And so I wanted to check with Brandon
2 Black and see if, uh, he was able to determine if there are folks in the room
3 today who had signed up on the list, uh, that were not able to testify. So if
4 someone in the hearing room there, Brandon Black or someone else could..

5 BLACK: Yes, Mr. Reeves, uh, Brandon Black, Senior Planner with Planning
6 and Development Services. There are seven folks in the room, one of which has
7 raised their hand that they would like to speak. Are there any others? Two,
8 two folks.

9 REEVES: Okay. So right out of the gate, why don't we hear from them and
10 then we'll move, uh, to hearing from our Applicant's, uh, witnesses as
11 planned. So, uh...

12 BLACK: Mr. Reeves, just a, a brief point, I see there's a hand up online
13 as well. And so I believe there may be a member of the public online who
14 wasn't able to, uh, attend a portion of Friday and speak then, too.

15 REEVES: Okay. So why don't we start with the room, then we'll move to
16 online, uh, and thank you for helping with that. Unfortunately, with the, the
17 Teams, it's a little challenging for me to see who is raising their hands,
18 uh, but we will start with the folks in the room and then we'll, we'll go to
19 the, the person online. So, uh, and I don't, is there video of the room? I
20 don't see video of the room at the moment.

21 KELLOGG: Testing.

22 BLACK: I, I do not believe there is.

23 REEVES: Okay. So, Mr...

24 KELLOGG: Thank you.

25

1 REEVES: Mr. Black, can you let me know when folks are at the mic ready to
2 testify and I'll swear them in?
3 BLACK: Yes. The first, uh, person is at the mic.
4 REEVES: Okay. Whoever this person is, I'm going to envision you have your
5 hand up, do you swear or affirm..
6 BRAKKE: I have my hand up.
7 REEVES: To tell the truth?
8 BRAKKE: I do.
9 REEVES: Okay. Do swear, you swear or affirm to tell the truth in the
10 testimony you give today?
11 BRAKKE: I do, sir.
12 REEVES: Thank you. Can you state and spell your name for the record and
13 give us your address?
14 BRAKKE: Laura Leigh Brakke, L-a-u-r-a L-e-i-g-h B-r-a-k-k-e from Grip
15 Road.
16 REEVES: And, sorry, can you repeat your last name? It popped up a little.
17 BRAKKE: Brakke, B-r-a-k-k-e.
18 REEVES: K-k-e. Thank you. Go right ahead.
19 BRAKKE: You're welcome. Um, I want to thank you for giving me time today
20 to speak. I was reviewing the comments and I was going through the public
21 hearing testimony. The most interesting and important public comment I found
22 on Friday was the one where Howard Miller, who was born and raised in Skagit
23 County was a Commissioner for 13, 16 years, he went in and spoke to
24 elementary school children, telling them that the function of government was
25 to protect public health and safety of its citizenry. Thus, Special Use

1 Permit criteria are meant to do that. And I could go through all of them,
2 people have done that quite eloquently, but if Miles Sand and Gravel says it
3 won't intrude on our privacy and we say it will, they can't tell us what will
4 affect us and what won't. And, um, the C proposed use will not create undue
5 water pollution, impacts on surrounding, well, it will create water pollution
6 and we've talked about the number of gravel trucks crossing streams, the six
7 PPD quinines that come from tires and kill salmon, Coho salmon, specifically,
8 brake dust, diesel exhaust, all those things were not mentioned in the Staff
9 Report. The Staff Report was very myopic, centering only on, seemingly only
10 on the 66 acers, which is disingenuous at best. In that, you have to go from
11 the beginning, where they deforest the acreage, they dig the gravel out
12 above, uh, river, Samish River and Swede Creek and then transport it for
13 miles. Yesterday, when I was driving from Prairie Road to cross Highway 99,
14 there was a tow truck in the middle of the road, trying to clear an accident.
15 The, in my letters I wrote about a Volkswagen in the ditch on its top by
16 Swede Creek on Grip Road. So numerous problems like that. Um, I also, I mean,
17 I, there's so many things to talk about, but, um, the liability cannot be
18 borne by the taxpayers of Skagit County if there is a wrongful death, if
19 there is serious injury. So the liability company of Miles Sand and Gravel
20 must be made totally aware of the of risks they are taking and the Skagit
21 County taxpayers need to be left off the hook for any kind of settlement that
22 may be reached in a wrongful death. The Staff Report relies solely on the
23 Applicant's consultants, and I'm sorry to say this, but I've worked in
24 Whatcom County Public Participation and if you are consultant to an
25 Applicant, if you give any contrary findings, you're not going to get work

1 again. So they're very careful to make sure they support the project. Where
2 the, um, other findings from our g-, from a geologist, from Fish and Game, if
3 you read all the comments, they're very detailed and they contradict a lot of
4 what the Applicant's consultants say. Which, Mr. Cricchio, cut and pasted
5 almost solely in his Staff Report. Um, I just want to acknowledge, like I
6 said, myopic view versus the total view. Pakistan is now flooding because of
7 climate change. We know all of this. So we can't pretend that deforesting one
8 little part of Skagit County and cementing over more farmland, or land, is
9 not creating a heat sink and a problem for the, you know, the world. We need
10 more forest and less concrete if we're going to survive. And I think probably
11 my three minutes is nearly up, is that correct?

12 REEVES: Yes.

13 BRAKKE: Thank you very much.

14 REEVES: That is correct, but thank you for your comments. And there was
15 another, one more person in the room, I think, Mr. Black?

16 BLACK: Yes, sir.

17 REEVES: Okay.

18 BLACK: They are at the mic now.

19 REEVES: Okay. I'm going to imagine your hand is up, do you swear or
20 affirm to tell the truth in the testimony you give here today?

21 LEVELL: I do. My name is Donald Levell, L-e-v-e-l-l. I live at 192-...

22 REEVES: And your address?

23 LEVELL: 287 Prairie Road. Um, my house sits inside the left of the first
24 S-curve as you come off P-, uh, Old 99. I've lived there for 47 years with my
25 wife, Tammy [phonetic]. I've seen thousands of gravel trucks, logging trucks,

1 heavy equipment trucks travel Prairie Road. The one thing most of them have
2 in common is they cannot make the curve without waiting for oncoming traffic
3 to pass so that they can either, they can either drive into the oncoming lane
4 or go across the white line to proceed. This puts the truck driver and the
5 general public at risk. My property borders Friday Creek, I, I can see the
6 bridge from my, from my property. I've got three short videos with some, uh,
7 sound I would like to play for you. You can't see it, but maybe you can hear
8 what I'm trying to tell you.

9 REEVES: [Static noise] I'm not sure this is a procedure that's going to
10 work. We can try one, one quick one, but, but...

11 LEVELL: Could you hear that?

12 REEVES: No. [Static noise] I believe we do have some...

13 LEVELL: I'm sorry?

14 REEVES: Materials that, I believe we have some materials, Mr. Loring's
15 experts have prepared that do involve video, is that right, Mr. Loring?

16 LORING: Uh, that is correct.

17 REEVES: Okay. So I, Mr. Levell, I'm not sure we're going to, this process
18 is...

19 LEVELL: Okay.

20 REEVES: Just, you know...

21 LEVELL: I, I just wanted to say...

22 REEVES: Facilitate playing your videos.

23 LEVELL: I wanted to play for you the, the noises that are coming off of
24 the bridge because of the unlevelness of the bridge and the road. And it's
25 quite dramatic, uh, we hear it all the time, all day long. Not from cars,

1 it's mostly from trucks pulling trailers and all of that rattling that goes
2 on. It's quite dramatic.

3 REEVES: Okay.

4 LEVELL: But anyway, that, that's, you know, I've lived there for 47
5 years. And when I, when I moved there, it was pretty quiet area. Not so quiet
6 anymore. So if you want quiet, don't move to Prairie Road. You have to live
7 somewhere else.

8 REEVES: Okay.

9 LEVELL: Where the mine is, and it, where it meets, where that road comes
10 and meets Grip Road, and when that travel, when that gravel truck makes a
11 right turn, to go down that hill, it encounters three blind corners within
12 four-tenths of a mile and an elevation change of about 120 feet. So you got
13 100,000 pounds of weight behind you and you're going to have to stop that
14 truck if there's an obstacle in front of you, like a school bus, which there,
15 there's school buses all the time during the winter, during school that go up
16 and down that road. So, in my opinion, and when you drive that road, this is
17 the most dangerous part of the whole project. And lives are at risk. I see no
18 way of mitigating this risk on Grip Road, which is why I strong recommend the
19 project not be approved. Thank you.

20 REEVES: Thank you, Mr. Levell. Okay. And then the, uh, hand raised
21 online, uh, person that had difficulty participating, uh, last time was
22 Beverly Faxon [phonetic], name identified.

23 FAXON: Yes, I'm here.

24 REEVES: Hi, I'll swear you in. Do you swear or affirm to tell the truth
25 in the testimony you give here today?

1 FAXON: I do.

2 REEVES: And if you could, uh, state and spell your name and give us your
3 address, please?

4 FAXON: My name is Beverly Faxon, F as in Frank, a-x-o-n. 20757 Anderson
5 Road in Burlington.

6 REEVES: Okay. Thank you. Go ahead.

7 FAXON: I want to thank you for this opportunity since I had difficulty
8 getting on on Friday, I ap-, I appreciate it. There are...

9 REEVES: No problem.

10 FAXON: So many reasons why a Special Permit should not be granted for
11 this mine. Um, I know this area well, I've walked it, I've driven it, my live
12 lives nearby. The traffic safety concerns on these narrow winding roads,
13 alone, with its blind driveways should be enough to prohibit this project.
14 But I really want to focus on the inevitable air pollution, including
15 excessive CO2 emissions, which will further exacerbate climate change. And
16 this is a critical concern that the County has so far overlooked. The Special
17 Permit process states the consideration of a project must include whether or
18 not the proposal will have undue air pollution impacts on surrounding
19 existing and proposed dwellings. Though the Applicant has stated, without any
20 proof that it would not, and so far the County appears to accept the
21 statement without question, if this is not adequate, this is not due
22 diligence. In fact, the gravel mine project will have significant impacts on
23 air quality and on residents' health. This a rural community of family homes,
24 including small farms. It's the kind of community the County administration
25 professes to value and vows to protect. But dozens of rumbling, tandem trucks

1 per day will be pouring diesel fumes and pollutants into the air, posing real
2 risks to the cardiac and respiratory health of our neighbors. The Special
3 Permit process also says the County must consider potential adverse effects
4 to the health, safety and welfare of the general public. And this has to
5 encompass the growing threat of climate change. We know that CO2 emissions
6 are a significant pollutants and they're implicating in the climate change
7 that is putting our valley at risk for higher excessive temperature and sea
8 level rise, of course it's putting entire planet at risk, as other have said.
9 Here's some figures that consultants have generated, as proposed, the mine
10 would involve approximately 5800 roundtrips per year, at an estimated 16
11 miles each way, resulting in approximately 92,000 miles traveled per year,
12 for an estimated 718 metric tons of CO2 per year. That is a lot of CO2 and
13 that doesn't even include any of the emissions at the site itself. And, of
14 course, to add insult to injury, the project would destroy 68 acres of trees.
15 And we know that forests are the most accessible and affordable ways to
16 access carbon dioxide. So all these air pollution effects really have to
17 thoroughly studied. And if, unbelievably the project is allowed to proceed,
18 then it must be with stringent mitigation, um, severely limiting the number
19 of trips per day, reducing the size of the mine, the hours of the operation,
20 requiring the developer to offset CO2 emissions by protecting forest. This is
21 not a small mine. This is not an insignificant mine. And I really hope that
22 County does its due diligence on this project. Thank you.

23 REEVES: Thank you, Ms. Faxon. Okay. Uh, so then, to my understanding, uh,
24 we have now concluded the public hearing portion of, uh, the Hearing, the
25 testimony portion, I apologize. Uh, and we are moving to hearing from, uh,

1 our expert witnesses and those have been identified by the parties. Uh, so we
2 have Attorney William Lynn on behalf of the Applicants, uh, who I believe
3 will be starting with their witnesses. Mr. Lynn, are you ready to start?

4 LYNN: I am.

5 REEVES: Okay. And I know you had several identified witnesses, but you're
6 going to start with Brad Barton, is that still the case?

7 LYNN: Uh, yes, it is. And he is online and so far muted. But, uh, I
8 guess I would start by asking him to take the oath.

9 REEVES: Sure. Yeah. So, if, uh, Mr. Barton, thank you for being here.
10 I'll swear you in. Do you swear or affirm to tell the truth in the testimony
11 you give here today?

12 BARTON: Yes, I do.

13 REEVES: And if you can just state and spell your name for us?

14 BARTON: Brad Barton, B-r-a-d B-a-r-t-o-n.

15 REEVES: Thank you. Go right ahead, Mr., uh, Mr. Lynn.

16 LYNN: Uh, uh, thank you. Now, Mr. Barton, um, you're in the aggregates
17 bu-, uh, business. Could you tell us how long you've been in that business?

18 BARTON: Industry-wise, I've been, well, I'm dating myself here, but over
19 40 years.

20 LYNN: Okay. And you're em-, you're employed by Miles Sand and Gravel?

21 BARTON: Yes, I'm the Vice President General Manager of the aggregate
22 operations for the whole company.

23 LYNN: Uh, so would aggregate operations include all of the mines?

24 BARTON: Yes, it does.

25 LYNN: Okay. How many miles does m-, Miles Sand and Gravel operate?

1 BARTON: Currently we have over 40 permitted mines sites, out of which,
2 about 15 have plant operations on them.

3 LYNN: Okay. We'll, we'll get into the, the difference, uh, between
4 those two. So, uh, when you say 40 have permits, does that mean you're
5 excavating out of 40 different sites?

6 BARTON: Correct.

7 LYNN: Okay. And in your position, uh, as Vice President and General
8 Manager for these operations, what are your areas of responsibility?

9 BARTON: I oversee all of our aggregate operations from start to finish. I
10 acquire property, um, actively participate in mine applications, as of today,
11 or like today, excuse me. So, uh, blanket coverage maybe a better way to
12 explain it.

13 LYNN: Okay. And where do you personally work? What, what is your area
14 of, uh, well, where's your physical location?

15 BARTON: Uh, my physical office is in Burlington, our, where I reside, uh,
16 although I spend a fair amount of time, as you can appreciate, throughout the
17 south Puget Sound region, region, covering the different sites, uh, our
18 corporate office is located in Puyallup, Washington.

19 LYNN: Okay. And are there different divisions within the company?

20 BARTON: Yes, there are. So Baker division, uh, formerly Concrete
21 Nor'West, uh, which the company has held, uh, for the record, since 1979, is
22 the one where this Application resides today.

23 LYNN: Okay. And what does, uh, what does the Baker division cover
24 physically, what areas?

25 BARTON: Uh, Whatcom, Skagit, Island and Snohomish County.

1 LYNN: Okay. And prior to the time that you became responsible for all
2 of the aggregate, uh, operations, uh, what was your position?

3 BARTON: I was the Vice President and General Manager of Concrete
4 Nor'West.

5 LYNN: Okay. So, was that, did that involve these, the same physical
6 area, then, the, the same, uh, four counties?

7 BARTON: Yes. I managed, uh, Concrete Nor'West from, overall, from 2000-
8 20-, approximately 17, until we made it a division.

9 LYNN: Okay.

10 BARTON: Miles made, yes.

11 LYNN: Okay. And, uh, so, you, you mentioned that there are, uh, some of
12 your operations where you have plants, uh, could you tell the Hearing
13 Examiner what you mean by that and differentiating those from others where
14 you can re just excavating?

15 BARTON: You bet. So, as compared to, uh, uh, raw excavation, such as our
16 request on Grip Road, our Bellville site is a wonderful example of a full
17 operation, it's got a state of the art production plant that processes an
18 excess of a 1,000 ton of finished materials an hour. It's also has, um,
19 buckets, or excuse me, a clamshell dredge, uh, that's excavating, uh,
20 roughly, um, the same to feed the plant, uh, we're putting in the finished
21 products, concrete ready mix aggregates, bedding materials, um, crushed rock.
22 Uh, the Bellville site has, um, an asphalt, uh, batch plant on site, we're
23 crushing products for that as well. Um, and the finished aggregates, uh, on
24 the wash side are transported to our ready mix operations, uh, like the one
25 located at our Bellville site.

1 LYNN: Okay. So, um, I'm going to ask that, or, or, or trying to work
2 with the County, I guess, on displaying, uh, Exhibit, uh, B93, which I
3 circulated this weekend. It's just for illustrative purposes, it's just a
4 map. And I don't know how best to do that. Jason, can you, uh, help us with
5 that? I know, I know you have it. I think a copy went to the Hearing Examiner
6 as well.

7 D'AVIGNON: Yeah. I, I do have it, if you want, I can share my screen and put
8 it up there?

9 LYNN: It might be easiest if you did that, rather than labor through me
10 trying to do it.

11 D'AVIGNON: All right. Let me, can you see it?

12 LYNN: Uh, yes. Is there any way to make it, uh, larger? I don't know
13 what the Hearing Examiner is seeing, but it's, uh, yeah, I think, I think
14 that's better. Um, Brad, could you just orient us, specifically talking about
15 the relationship between the proposed site and the Bellville site? You'll
16 just have to use, um, words to describe where those are on this map.

17 BARTON: Okay. Well, the top of the map being north, and maybe Jason can
18 help, help me a little bit, but, uh, where it says site, that is the Grip
19 Road site, uh, that we're discussing today. And then, uh, the orange overlays
20 are the mineral resource overlays in the general area. Um, as you work to the
21 south and west, uh, below the Samish River bridge, um, adjacent to I-5, uh,
22 and the Cook Road interchange, Jason, I don't know if you could point to that
23 with the pointer, um, that area is our Bellville operation.

24 D'AVIGNON: Right here?

25

1 BARTON: Yes, correct. And then if you go east on Kellaheer, uh, uh,
2 directly east, uh, to the other, um, orange area, that is our Butler
3 operation. Jason, you probably know where that's at, uh, just back a little
4 west.

5 LYNN: So, between the Grip proposal and Bellville is a, a large block
6 of mineral resource overlay and within that is the Butler operation?

7 BARTON: Yes.

8 LYNN: Okay. Let's, let's stick with Bellville, if we can, for a minute
9 now that we've sort of oriented ourselves. Uh, so, you crush rock at, uh,
10 Bellville and you wash it and sort it, is that what I understood your
11 testimony to be?

12 BARTON: Yes. Correct. Washing and screening or...

13 LYNN: Okay.

14 BARTON: [Inaudible] for materials.

15 LYNN: And there was a, there was some men-, mention earlier of, uh,
16 from someone, uh, yes-, on Friday who testified that there was, like, a black
17 furnace or some loud noise that was created at Bellville. Do you know what
18 that was in reference to?

19 BARTON: Uh, I don't specifically, Bill, I would assume he was referring
20 to, uh, the asphalt plant. Uh, but it's, of course, under high scrutiny and
21 fully compliant with its own conditions, as well as air pollution, the air
22 pollution agency's conditions.

23 LYNN: Okay.

24 BARTON: But I'm assuming that, yeah.

25

1 LYNN: And, uh, do you know if there is a traffic, uh, truck per day
2 limit on Bellville?

3 BARTON: Uh, yes, I believe it's 550, uh, trips per day.

4 LYNN: Okay. And what is the transportation rou-, uh, route out of the
5 Bellville plant? Not, not specifically, but, uh, in relation to the Samish
6 River, which appears to be located, uh, nearby?

7 BARTON: Well, the, the, the site is immediately adjacent to, uh, the
8 Samish River. Um, you basically cross two bridges, one under I-5, heading
9 east with the trucks, where, uh, we are immediately adjacent, the shore is
10 below the, the bridge, uh, the access bridge that our trucks travel on of the
11 Samish River. And then continue east over a different part, then, of the
12 Samish, um, and the span bridge and then to our stop sign that's located, uh,
13 on Old 99 and our access road.

14 LYNN: Okay. Um, you mentioned a dredge, uh, is that an actual, what we think
15 of as a dredge? Something that floats and, and below the water table, or
16 above...

17 BARTON: Yes.

18 LYNN: The water table?

19 BARTON: Well, yes, the, it, it is, Bill. Um, it's, it's a clamshell
20 dredge, it's on, uh, floats, or what we call pontoons. It has a 16-yard
21 clamshell bucket that's, that's mining below the groundwater, uh,
22 approximately 100 to 125 feet in depth. It's electrical-powered, uh, um, it,
23 it brings the material from below the water table up. Then, it dewater, uh,
24 the material and places it on conveyers that are actually floating and it's

25

1 transported to the transition line at the shoreline and then off to the
2 processing facilities.

3 LYNN: Okay. And in other facilities, you do maintain a separation
4 between the bottom of the mine and, uh, ground water?

5 BARTON: Yes. This, this site obviously is approved, uh, like, five other
6 sites we're currently mining, below the water table. The other sites are, uh,
7 monitored, as well as maintaining the, the ten-foot separation between the
8 ground water.

9 LYNN: And is that kind of an established standard, the 10 feet?

10 BARTON: Yes, it is.

11 LYNN: Okay. Does Miles conduct any safety, uh, I'm sorry, uh, recycling
12 operations?

13 BARTON: Uh, we do, uh, not on this site or proposed at the Grip Road
14 sites. But, we do recycle concrete, uh, at our permitted sites, um, in other
15 areas of our operation.

16 LYNN: Okay. Does Miles do blasting at, at sites?

17 BARTON: Uh, no, we do not. It's all sand and gravel extraction.

18 LYNN: Okay. Now, you mentioned the Butler facility located between the
19 proposed Grip site and Bellville, uh, what, what happens at that site?

20 BARTON: So, that, that site, historically, is a, has been an active mine
21 site. I, it, it goes well beyond, uh, the mine time with the company, uh,
22 back into the '60s and '70s, uh, similar setting to Bellville. It was, we
23 dredged at that particular site and the ground water created a, a lake and
24 there is some remaining reserve, dry reserves, um, we have a, our ready mix
25 facility, uh, central mix of concrete batch plants, where we park our dump

1 trucks and ready mix trucks. We also have an approved ENR fill site to the
2 north, uh, in the old Peterson pit that was mined, uh, and then completed and
3 now it is, uh, permitted fill site to the, on the north end of the site.
4 Adjacent to F and S Grave Road.

5 LYNN: Uh, is there, uh, substantial reserve of mineral material
6 remaining at the Butler site?

7 BARTON: No, it's, it's in its twilight, it's minimal.

8 LYNN: Okay. So when did Miles purchase the Grip Road site?

9 BARTON: Uh, we purchased the site in 200-, late 2009.

10 LYNN: Okay. And, uh, what was the use at the time?

11 BARTON: Uh, commercial forestry, uh, but I will say that it, uh, which
12 sparked our interest to have the MRO overlay existing and obviously this,
13 what we do so that's why, uh, we were interested in the property, originally.

14 LYNN: And y-, and from the map, it appears that the MRO, uh,
15 encompasses the entire p-, uh, parcel, is that correct?

16 BARTON: It does. And I believe it was done in either the late 1990's or
17 early 2000, again, prior to our ownership.

18 LYNN: The, what the, the designation was prior to time you bought it?

19 BARTON: Yes. Correct.

20 LYNN: And, uh, does Miles have demand for the material that you're
21 proposing to extract from this facility?

22 BARTON: We do. We do. And I, uh, as you've heard me say, uh, over the
23 years, uh, you know, this is a non-renewable resource. And, uh, we,
24 unfortunately, can't grow rocks, so we have to go where Mother plac-, nature,
25

1 nature has placed the materials and this is a high quality deposit, uh, to
2 close into the marketplace.

3 LYNN: And, and when you say close into the marketplace, uh, could you
4 elaborate on that a little bit?

5 BARTON: Well, I think when you look, uh, using Skagit County as, as an
6 example, um, this being close to where the majority of, uh, construction
7 projects wrote of and structure are done, uh, this is roughly, I believe,
8 five miles from I-5 to feed Burlington, Mount Vernon and west into the
9 Anacortes areas, uh, perdona [sic], uh, with, with infrastructure projects
10 and, and the like. Versus, um, going further east, uh, and lengthening the
11 transportation routes, um, back to those projects in the core area, or what
12 we would call the urban area of the County.

13 LYNN: Okay. So, is this, uh, how, how does this haul route compare to
14 others, uh, in which you operate?

15 BARTON: I think it's very similar in this County that, uh, if you look at
16 the Butler site historically, um, Kelleher Road is very similar to Grip Road,
17 it's, it is, uh, a County rural road. Um, that site, including F and S Grade
18 Road, that supported the, the Pederson portion of the site, on the north end,
19 um, feeds, uh, again, F and S to Grip Road, uh, Collins Road, uh, very
20 typical to our operations in the County. Um, as well as others, using, uh,
21 the rural infrastructure.

22 LYNN: Okay. Um, so, at the time you purchased the property, the haul
23 road existed, the haul road that we've heard described here and is actually
24 depicted on Exhibit, uh, uh, B94?

25

1 BARTON: Yes. That, that road is the primary, uh, plantation entrance
2 road, uh, north and south and then the, of course, the east/west, uh, roads
3 within our footprint service the balance of the plantation, in a less, to a
4 lesser degree.

5 LYNN: Um, what about the pit itself, was there, uh, some history of
6 mining there?

7 BARTON: Yes. There's a history, the, the service roads for the planation
8 that you see, including, uh, the main north and south route, uh, were built
9 from the deposit that lies on the north end of the site.

10 LYNN: Okay. So, uh, if the whole site is in the MRO desig-, designation
11 within the County, why is the mine site limited to that area in the north?

12 BARTON: Well, I think, the, the, the MRO typically is overlaid on a
13 potential deposit. Um, and, obviously, in this particular case, the
14 accessible sand and gravel deposit lies on the north end of the site. To, uh,
15 prior to us acquiring the property, we assessed the site, we drove the site
16 to establish where the deposit, uh, was and in this example, it, it, it is,
17 as we've applied for, on the northern end, within the 60, approximately 60-
18 acre footprint that we're making the application for.

19 LYNN: So, you indicated that this was a forest, uh, uh, you call it a
20 plantation, is it an active, uh, timber, uh, operation now?

21 BARTON: Yes. Currently, it, it is today. The average growth on the timber
22 is in the 30 year range on the majority of the site, but it is a portion of,
23 uh, our reason of holding onto the bigger parcel is for the overall, uh,
24 forestry side of this as well.

25

1 LYNN: So, is the plan to maintain the balance of the property in the
2 forested condition and under the commercial DNR review process?

3 BARTON: Yes.

4 LYNN: Okay. It will be necessary, uh, for Miles to obtain a permit to
5 convert the use of, uh, this area, the fifty-, the 51 acres from, um, forest
6 to mine, is that, uh, has Miles obtained that permit already?

7 BARTON: We did, uh, apply, which is standard in these type of settings,
8 um, for-, with a Forest Practice Permit Application, I believe it's under a
9 Type 4, which when, in this case, we were, uh, would have been permitted, uh,
10 allows us to convert, convert the use for, uh, the areas, uh, that would be
11 in the active, uh, portion of the mine.

12 LYNN: Okay. And was that permit actually issued by Skagit County?

13 BARTON: Yes, it was.

14 LYNN: Okay. So, uh, you, you talked about, uh, uh, the Bellville
15 operation. Could you, uh, compare and contrast what's proposed here, what
16 activities would actually take place on the proposed mine site?

17 BARTON: Well, vastly different. Uh, the Bellville is, is, as you
18 described earlier and, and appropriately so, is a very complex site, as I
19 said earlier, it has one of our state-of-the-art operating facilities on it,
20 producing finished materials, along with the dredge. Uh, we are extracting,
21 fractionating, producing rock, including the site batching, uh, asphalted
22 concrete, or asphalt. Uh, in contrast to Grip Road, uh, the footprint, uh, is
23 much smaller. Um, the only activity that would be held there would be, uh,
24 you know, post the segmental mining approved plan, being approved, uh, is
25 excavating, uh, the raw resource. Uh, that would be, of course, transported

1 from the site, either to, direct to the marketplace or back to a facility, in
2 this case, Bellville, uh, for process. So, vastly different.

3 LYNN: Okay. So when you say extract, um, can you describe that, what,
4 what equipment is involved?

5 BARTON: In this, at this site, we would use a combination of, um, for
6 clearing, excavator and/or CAT, uh, once that's done and then we would, uh,
7 per the plan, follow, uh, the gravel, uh, as far as load that into the trucks
8 in an active dry mine, um, and remove from the site.

9 LYNN: So, the equipment, would it be a bulldozer and/or an excavator
10 and then loader?

11 BARTON: Yes. Load, loader and/or excavator to load the trucks, excavator
12 to help facilitate, uh, the, the constructing the active, uh, floor of the
13 mine site, expanding on what, in part, is already there. Um, I might add that
14 that's done by plan, uh, that's approved by the DNR and it's a, it's metal,
15 mining and creation plan and we would adhere to that, in this particular
16 case, as we do anywhere else.

17 LYNN: Okay. So, you have two or three pieces of equipment and how many
18 employees?

19 BARTON: Uh, one to two, in this particular case. Uh, the, the loaders
20 that, that we operate today, um, you know, are very capable, uh, of those
21 volumes. Uh, so, again, minimal footprint on the site, uh, as far as
22 employees. Uh, and, and sport equipment. The trucks would come to the site,
23 uh, that are parked, uh, primarily, that, that are ours, would be, that are
24 parked at our Butler operation to, again, take that to marketplace and/or to
25 our own sites.

1 LYNN: Okay. How many people does Miles employ overall?

2 BARTON: Uh, Baker Division, roughly about 150 folks.

3 LYNN: Okay. And then more in the other divisions?

4 BARTON: Uh, significantly more, yes.

5 LYNN: Okay. So, uh, at the end of the day, um, well, let me, let me
6 talk a little bit more about the material first. You indicated that some part
7 of it would be transported to market, what, what do you mean by that?

8 BARTON: Well, to finish to, to meet the needs of, uh, of, of the market
9 in, in, I guess, in this case, fill materials, uh, for construction projects
10 and/or, uh, which would include buildings, homes, foundation, backfill to
11 large projects, uh, warehouse needs, uh, and, and so on.

12 LYNN: So, somebody would just call up and, and you would, uh, provide
13 the materials they requested?

14 BARTON: That's part of the equation. Of course, uh, we also actively
15 participate in bidding, uh, the construction projects as they, um, come up,
16 uh, from, uh, uh, plethora of, uh, types of applications. Again,
17 infrastructure, um, and so on. So, you know, and as an example, uh, you know,
18 if you look at Washington State, statewide, uh, presently, we're, the state
19 is consuming, per capita, about 15 ton per person, whether or direct or
20 indirectly. Um, and about 52% of that, uh, goes into infrastructure projects,
21 um, within the State. And it, of course, that varies from locations, uh,
22 County-wide, but, uh, rule of thumb, it's pretty close, as well as it would
23 be here.

24 LYNN: A 15 ton per person for, for what?

25

1 BARTON: Per year. Or sand and gravel products, or another way to look at
2 it would be a dump truck load per person, per year is consumed.

3 LYNN: And what's, what's the, what's the source of that information?

4 BARTON: That is, uh, from the DOT, from, uh, DNR, as well a study done
5 from PLU.

6 LYNN: Okay. Um, so you indicated that some part of the material would
7 go to market, either through people buying it, uh, in the raw, uh, condition
8 from you or by you contracting to sell it somebody in that condition, uh, and
9 what about the balance of it, where would it go and for what purpose?

10 BARTON: Well, we would take, uh, this material to Bellville and, uh, put
11 it into processing to, again, create the wash products, grain rocks, uh,
12 concrete products, asphalt support procures and so on for processing.

13 LYNN: Okay. Okay. Um, so, can you tell the Hearing Examiner, uh, a
14 little about the Miles Sand and Gravel safety programs, if any, that you have
15 for your, uh, drivers?

16 BARTON: You bet. So, uh, lengthy story, but, but well deserved. So, uh,
17 of course, he, d-, professional drivers, um, are very, um, important part of
18 what we do. Uh, we have a lot of trucks on the road, uh, servicing our
19 customers, um, obviously on a daily basis. So, as far as from a safety
20 aspect, uh, uh, we're proud of what we do. Um, uh, you know, those drivers
21 have a lot of responsibility, uh, at their hands, and rightfully so. So, as
22 far as screening drivers, if I may, you've got they're, they're required to
23 have a CDL, which is a federal, uh, endorsed, uh, driver's license, along
24 with State requirement. Our, our safety programs that include one, a full
25 safety staff, uh, in support of our drivers. Um, we have regular meetings, we

1 have annual meetings. We have regular review of their driving, uh, abilities,
2 safety reviews, um, safety meetings, safety bulletins, um, and we're very
3 proud of our record. Uh, I can tell you, year-to-date, uh, we've traveled a
4 million and a half miles, with, uh, in the Baker Division, and, uh, with our
5 trucks, and no accidents. So lots of scrutiny, and rightfully so.

6 LYNN: What about the, uh, prior year, any serious accidents in 2021?

7 BARTON: No. No serious accidents in 2021 and over two, close to 2.5
8 millions traveled.

9 LYNN: You indicated that there's a safety staff, what does that
10 involve?

11 BARTON: Well, we have a safety director, um, she does a fine job and she
12 has support folks that, uh, uh, provide weekly, uh, safety bulletins. They
13 provide weekly meetings, they review, of course, any incidents, uh, we're
14 very proactive. Um, and, and quite frankly, we're very proud of our safety
15 record and, you know, a lot of people will tell you it's because we have to,
16 no, it's because we want to, and it's a culture. So, you got to create it
17 and, and we're proud of the one we've created with, uh, both, both, uh, on-
18 road and off-road, uh, stellar record.

19 LYNN: Okay. Um, do you have concerns about the, well, first of all, are
20 you familiar with the roads that, uh, that we've been talking about here,
21 Grip Road, Prair-, Prairie Road, F and S Grade...

22 BARTON: Yes, I have, I actually, yes, I've lived in the County for over
23 20 years. I live, uh, uh, between the Butler and the Grip Road operation, um,
24 so I'm very familiar with, with the road infrastructure. Uh, I can you that
25 we've, uh, as I said earlier, we've operated sites in Skagit County under the

1 Miles's ownership since 1979 and looking at these rural roads, it's, really,
2 it's a part of what we do. Um, uh, and I can comfortably state, in my tenor
3 here, uh, of over 20 years, under C&W, working on these rural roads, no
4 serious accidents, um, that I'm aware of. Uh...

5 LYNN: Okay.

6 BARTON: In over 20 years.

7 LYNN: Are these, uh, roads atypical of what you find in rural areas
8 where your, uh, mines are located?

9 BARTON: Yes.

10 LYNN: Okay. If, is it likely that someone would find a mine, uh, site
11 without somewhat similar conditions, narrow, winding roads, limited
12 shoulders, that sort of thing?

13 BARTON: Unlikely in Skagit County.

14 LYNN: Okay. And, uh, what about the hills up and down that were
15 described where traffic is either potentially going too fast or too close, is
16 that, uh, fairly common as well?

17 BARTON: Well, I think the hills are common and, and for, for our trucks,
18 even, even in a fully load configuration that navigate, as an example, Bow
19 Hill Road, their, their horsepower, their configuration is set up to navigate
20 that, that hill safely and, you know, uh, although maybe not at posted speed,
21 close to it going up and, again, with our drivers being professional drivers
22 as they are, it's, you know, they're a part of equation, but, uh, there's a
23 reason for those speed limits. Whether it's motivated by County posting or
24 company policy, uh, so I would say our, our navigation on, whether Grip, Grip
25 and Prairie, uh, to the urban areas, is going to be fine.

1 LYNN: Okay. Um, is it common for your trucks to encounter school buses
2 on rural routes?

3 BARTON: Well, it is common, um, uh, during school, you know, the school
4 time. But I would also tell you that our drivers are, like other heavy, uh,
5 vehicles on the road, and quite frankly, including the bus dri-, drivers, are
6 very cognoscente of that time of year and, and are very courteous as well. We
7 are aware when schools are start, are going to start, obviously, and, uh,
8 that's brought up in our, in our safety meetings, um, and, of course, it's
9 always two-way, the drivers are, are bringing information back. So, I think
10 that I can comfortably tell you, we've never had any interaction with a
11 school bus, uh, during our time, uh, which is lengthy, of operation and, uh,
12 we are very careful when it comes to, not only school buses, but traffic,
13 traffic in general on these rural roads.

14 LYNN: Um, what about, uh, cyclists, is that something you encounter
15 regularly or at all?

16 BARTON: Well, no, we do, on these rural roads, and, and I would, uh, tell
17 you that our trucks are, again, very, very aware of these rural roads, I said
18 earlier, and are very courteous, as well.

19 LYNN: Okay. There were also, uh, concerns expressed about the, um,
20 about in climate weather and what happens in snow and ice. So what, what does
21 the company do during those time periods?

22 BARTON: Well, we, we are very proactive, again, that's, in part in my
23 mind, is why we can tout, uh, the records that we, that we have. But, uh, you
24 know, Western Washington, we're, you know, most folks, uh, whether it's our
25 trucks or the public that are not accustom to snow and ice on the road. So,

1 as an example, our drivers, when we know that an in climate weather is coming
2 in, are put on-call and, uh, until the roads are, are checked out by our
3 supervisors on staff and they get back to dispatch, those trucks don't go
4 out. The only trucks that, uh, and typically it's, again, it's not our
5 comfort-zone, uh, uh, so, the only roads, excuse me, the only trucks that
6 would go out in that case are the roads, or the excuse me, the trucks that
7 are chained up and delivering primarily sand to whether it's State or County,
8 uh, for road sanding purposes. Everything else is, uh, stays in the yard
9 until we deem clear enough to go back to doing our own business.

10 LYNN: And, and when you say check with supervisors, what would the
11 supervisors do to ascertain safety?

12 BARTON: Well, they're going to go out and inspect the, the roads to, to
13 see if, if the trucks can navigate, navigate on them safely, uh, prior to the
14 trucks leaving the site.

15 LYNN: Okay. Um, could you, we've, we've represented to the Examiner, you,
16 Miles has, as part of its Application, that it proposes and average of 23
17 loads a day or 46 total trips, round trips, uh, uh, for loaded trucks, or,
18 I'm sorry, loaded and unloaded trucks. Uh, can you tell the Hearing Examiner
19 how that number was arrived at?

20 BARTON: You bet, so typically, we, we will look at a site, uh, um, first,
21 we obviously have a need, this is what we do, we'll, we'll study the site,
22 uh, look at the route, develop an approach. And in this case, uh, the best
23 way we can do it is, is looking at the sites, um, on an annual basis, in
24 relationship to the overall reserve, and, and fit that into our equation,
25 thus, that's how the annual average, the daily average, uh, are arrived on.

1 In this case, there's 46 trips, uh, per day on an annual average, roughly,
2 about 200,000 ton a year.

3 LYNN: Okay. So, um, does it operate on an average basis or is, are
4 there ups and downs?

5 BARTON: I think it's, it's very common to be up and down, uh, but we
6 can't quite paint that picture. And so, that being said, um, when you look at
7 any of the sites we operate and as well as others in the industry, annual
8 averages are very common, uh, we know it's going to exceed that, or it could,
9 either above or below. But our target is roughly a couple hundred thousand
10 ton a year. But it may exceed that or be slightly below that, based on that
11 lifespan of the mine. That, that, of course, being said, um, we also look, as
12 I said earlier, at, at the infrastructure that would support this mine, in
13 this case, uh, the road inf-, infrastructure as far as public, and look at
14 the level of service that the roads can handle, defer to our, our, uh, con-,
15 traffic consultants and engineers to help us understand what that looks like.
16 And then, again, put our market, uh, uh, expectation into that and then build
17 an, and annual, monthly, daily average.

18 LYNN: Um, how does, how do the seasons effect the demand for the products
19 that would come out of Grip?

20 BARTON: Uh, well, a couple of things, we've got, um, construction
21 typically starts to ramp up, uh, you know, February/March, uh, and start
22 falling off, uh, rule of thumb is sometime after Thanksgiving. Weather plays
23 into that, economic, uh, factures in the marketplace play into that, um, you
24 know, so, quite a few variables, hard to lay out an exact path. But, uh, um,
25 you know, again, as I said earlier, it's a non-renewable resource the

1 community needs, uh, needs the material to feed that, as it's driven, uh, by
2 the local economies.

3 LYNN: Okay. So, there's also a provision for, uh, regular hours and
4 then some opportunity for expanded hours. Could you tell the Hearing Examiner
5 what might drive a request for expanded hours for some period of time?

6 BARTON: Primarily, they come from whether it's a City, a County or the
7 State requiring, uh, work done, uh, on the, on the highway or road system
8 off-hours, uh, out of the peak hours, um, of the more urban areas. A good
9 example would have been, uh, the Home Depot project, quite awhile ago, that
10 was, that, that the City, working with the County and the State, wanted the
11 project done at night. So, uh, to, to avoid the, the, you know, Public during
12 the day, which is what we did. But that's the majority, long answer, but
13 that's the majority of, of, uh, construction projects. Um, and those
14 parameters done off-hours.

15 LYNN: Okay. Are there, uh, emergencies that might require expanded
16 hours as well?

17 BARTON: Yes. Uh, whether it's the, for Skagit County, as we all know,
18 whether it's, uh, if it's reacting to a flood, um, or a major infrastructure
19 failure, um, uh, that's, although uncommon, it can happen, yes.

20 LYNN: Okay. Is it, uh, uh, I take it that, at least with those
21 construction projects, it might be somewhat, uh, uh, there might be some
22 potential to notify, in advance, uh, are, are the others as predictable?

23 BARTON: Well, in a, obviously, an emergency situation, they're not. But,
24 but, as far as a larger project that would demand, uh, some off-hour stuff,
25 they are. And, uh, whether it's a, a large import, uh, project, uh, for

1 materials, whether it's concrete, asphalt or sand and gravel, finished or
2 not, that, that is usually, uh, done, uh, time of bid and with a particular
3 scope. And so those can be, uh, planned around, uh, and the information can
4 be exchanged. And we do that currently with the County, um, via electronic
5 notice, uh, out of the Bellville operation.

6 LYNN: Okay. Um, are you familiar with the, the, uh, two sets of S-
7 curves that are involved here, uh, one of them on Prairie and another on
8 Grip? Let's, let's start with the Prairie S-curves, are you familiar with
9 those?

10 BARTON: Yes, I am.

11 LYNN: And, uh, there's a MDNS condition that requires, uh, improvement
12 of those, could you tell the Hearing Examiner what work goes into determining
13 what the level of improvement is in a situation like that?

14 BARTON: You bet. So, we, through our engineering first, and of course,
15 working with, uh, as far as the result of what's in the, the SEPA, um,
16 documentation, uh, working with a program called Auto-turn, analyzes our
17 trucks, uh, and their length and their turning abilities and takes it and
18 puts that through a program to how that truck can travel through the, uh,
19 right-of-way, of the, of the road. Uh, that's analyzed, um, and then, of
20 course the recommendations from the program and the engineers, uh,
21 understanding of that, uh, in turn is how we develop the widening, um, for
22 that particular intersection or the, the two S-curve corners in, in order to,
23 uh, navigate our, our trucks through with the widening.

1 LYNN: Okay. So, uh, the condition actually requires, then, that the
2 widening occur that is dictated by the, the output of this Auto-turn
3 analysis?

4 BARTON: Correct. So it's an engineered approach.

5 LYNN: Okay. And is, Miles is obligated to do that at its expense 100%,
6 not, not involving the County's expenditure at all?

7 BARTON: Yes, correct.

8 LYNN: Okay. So, would that, uh, potentially address the concern that
9 Mr. Levell described this morning, where even now the, the many trucks that
10 he sees on that route can't get through that, would that improve the
11 condition for the existing traffic as well?

12 BARTON: Yes. It would improve it for our traffic and, and the existing
13 traffic, for everybody.

14 LYNN: Have, uh, are you familiar with the S-curves that have been
15 described on, uh, Prairie?

16 BARTON: Yes, I am.

17 LYNN: Okay. Um, and has Miles undertaken a review of that, uh, with the
18 potential for improvement of that existing condition?

19 BARTON: Yes. So we, we've used the same analysis and engineer, uh,
20 engineering, uh, firm from the County road structure and, of course, Mr.
21 Semrau has performed this and can probably speak to it a little bit better
22 than I can, but, but using that Auto-turn analysis, we've incorporated that,
23 um, there's a few areas on Grip Road on those two corners that can be widened
24 and, uh, we are willing to widen and improve that road at our expense.

25 LYNN: Okay. So, that's not presently a condition of the MDNS, is it?

1 BARTON: It is now.

2 LYNN: So, that's something Miles is willing to volunteer above and
3 beyond what the County requirements have been today?

4 BARTON: Yes, we are.

5 LYNN: Okay. And we'll put that in the form of a written condition that
6 would be presented to the Examiner, but, but, at least, Miles is willing to
7 the do the Auto-turn analysis for that, those curves and make the
8 improvements that are called for by that, is that a summary of it?

9 BARTON: Yes, it is.

10 LYNN: Okay. Um, let, let's talk about the haul road a little bit. Uh,
11 that haul road was in existence when Miles bought the property, is that route
12 that runs from Grip to the mine site itself, uh, sort of a, a, a main road
13 for the entire forest, uh, plantation?

14 BARTON: Yeah. That's the main north/south corridor for the plantation and
15 if you look at an aerial it shows east and west laterals going off of that as
16 well, but it is the main route.

17 LYNN: Okay. And you indicated that it was Mile's, uh, plan to continue
18 the forest use, is that, uh, would that, then, involve this use and the
19 others, the laterals that you described?

20 BARTON: Yes. We, we, of course, with DNR's, uh, uh, approval through the
21 Forest Practices portion of, uh, our, our plantation, uh, we met with them
22 prior to, uh, adding, uh, and improving the main routes, looked at the cross
23 culverts, looked at the status of, of that, uh, they actually, during, uh,
24 one of those inspections, asked that we add more cross culverts. We walked
25 the rest of the site and there's more work to do, but, uh, they, uh, to

1 compliment them, they were very, very helpful in our approach to the main
2 arterial, uh, again, replacing that underlying infrastructure within the road
3 and, uh, had some good suggestions and we planned that with the other lateral
4 roads.

5 LYNN: So, I think we might have, uh, I might not have quite set the
6 full, uh, foundation for that. The, this, you're describing work that Miles,
7 uh, did during the time that this Permit was under review?

8 BARTON: Yes.

9 LYNN: And when was that work done?

10 BARTON: Several years ago, uh, I think in...

11 LYNN: The exact date, I don't think matters. Uh, I think somebody has
12 referred to it as the 2018 work, is that about right?

13 BARTON: Yeah, that's about, about right, but...

14 LYNN: Okay.

15 BARTON: [Inaudible] as well.

16 LYNN: So, you did some, you acknowledge doing some work on the road and
17 that was done on, uh, with the involvement of the Department of Natural
18 Resources?

19 BARTON: Yes, it was.

20 LYNN: And, and why DNR?

21 BARTON: Uh, they're responsible for and have the oversight of the Forest
22 Practice operations on these forest plantations.

23 LYNN: Okay. And so, tell the Hearing Examiner, you indicated you
24 replaced some culverts, why was that, first of all, why would culverts be
25 replaced?

1 BARTON: Well, the, the culverts were steel culverts, um, and they had
2 rusted out. Some of them were failing, uh, and so they were, they were pulled
3 out and replaced, uh, with the new, I don't want to call them just plastic,
4 but the, the better rated, longer lasting, uh, culverts.

5 LYNN: Okay. Um, was there any, uh, clearing associated with this
6 activity or any widening of the road?

7 BARTON: Only within the existing, uh, road prism, uh, and, again, we have
8 DNR with us every step of the way.

9 LYNN: Okay. And when you say within the road prism, did you relocated,
10 are there roadside ditches along these roads?

11 BARTON: There, there are and we, we cleaned the ditches and added, as I
12 said earlier, the cross culverts, uh, again, with DNR's oversight, uh,
13 throughout that main arterial, uh, or the main route in our, in our
14 plantation, added a few more, um, graded, added crushed rocks. Uh, the one
15 DNR's inspector, uh, comment was, I wish everybody could do this.

16 LYNN: Okay. And is that just going to be done on this haul route, um,
17 that, uh, would serve the mine?

18 BARTON: No. Our, our plan is to continue those, those improvements as,
19 uh, again, as I said earlier, the existing culverts are steal, they're
20 starting to fail, um, ditches and such, we, we annually spray for the forest
21 practice standards, we grade. Um, uh, but that program will continue
22 throughout the whole forest planation.

23 LYNN: Okay. We've talked a little bit about other, uh, sources of
24 regulation, um, and you mentioned the DNR, does the DNR have, excuse me,
25 involvement in the mining, uh, regulation as well?

1 BARTON: They do. They oversee mining, uh, as far as the [inaudible] side
2 is, and including the reclamation. So it kind of goes hand-in-hand. Uh, we
3 work, you know, as I said earlier, we have a lot of mine sites throughout,
4 uh, the Puget Sound Region. We are one of two companies, uh, that work with
5 the DNR and their blanket bonding program which sets higher standards for the
6 sites and, and, uh, so, I guess, long answer, but we work very closely with
7 the DNR, with our mining application plans, existing sites and they actually
8 visit our sites, at least once a year, if not more often.

9 LYNN: Okay. So, you mentioned bond, does, does the DNR require a bond
10 to ensure that the site is reclaimed in a certain way?

11 BARTON: Yes, they do.

12 LYNN: Okay.

13 BARTON: Based on...

14 LYNN: And what's...

15 BARTON: [Inaudible] and so, yes.

16 LYNN: Okay. And, uh, you mentioned the blanket bond program that you're
17 involved in, how is that different from what other people in the business,
18 uh, uh, do to bond their properties?

19 BARTON: They, other folks would do it on a, on an individual site basis.
20 We, we take a larger bond and we meet, meet the elevated, uh, criteria, uh,
21 for each of the sites. Uh, they're, they're scrutinized by DNR before they
22 can be accepted into the bond, the blanket bonding program. And, again, as I
23 said earlier, we're one of two companies in the State that are able to do
24 that.

25

1 LYNN: I think you've used the term se-, sequential reclamation, uh,
2 first of all, how would this site be reclaimed, what is the end use, uh, and
3 then how does that reclamation get, uh, reviewed and approved by the DNR?

4 BARTON: So, the, the segmental and mining reclamation, uh, for this
5 particular site, uh, would be submitted, the plans that would be submitted to
6 the Department of, uh, Natural Resources. And, uh, approved, well, once
7 approved, then we would, uh, in this particular site, uh, would mine,
8 basically, this, like, order, uh, we would start in the north, uh, east
9 quadrant, uh, in segment number one, we would, we would mine that, uh,
10 reclaim the slopes and then work to the northwest segment, uh, and southwest
11 segment and out. And the idea behind that was to, uh, which was common with
12 working with DNR, because it's segmental is we're cutting slopes, but we have
13 to, in that Permit, we have to bank enough topsoil in the berms and buffers
14 to, in order to reclamate the, the areas when they're completed. So it's a,
15 it's a planned program that, in our mining approach, that allows us to take,
16 uh, in this case adjacent to the Samish River, uh, we can get in there, we
17 can remove the materials and then reclamate the side slopes and work into the
18 next segment.

19 LYNN: So, when you say bank topsoil, what do you mean by that?

20 BARTON: So, the DNR will, and, and it's a requirement, uh, are the
21 approved, to have the reclamation plans approved, we have to be able to have
22 enough topsoil on site, uh, as we clear, so that, that natural overburdened
23 top soil is placed in berms and, uh, strategic locations within the site and
24 there has to be enough of that material stored to reclaim the site to its,
25 close to its original depth of, uh, top soils.

1 LYNN: Okay.

2 BARTON: And it's a measurement, it's, it's not a, a guess and by golly
3 thing.

4 LYNN: Okay. So, you bank that material and then after you have, uh,
5 mined a segment, what do you do in order to reclaim the site?

6 BARTON: So, the side slopes will be, uh, as the DNR would say, non-
7 wrecked the one year, um, they're curvy and they're at an approved two and a
8 half, two to one, three to one setting. And then that top soil is placed over
9 that, uh, and then ultimately, uh, per a design plan, in this case, it's
10 commercial forestry, uh, the trees would be replanted, uh, uh, symmetrically,
11 um, on those slopes to allow them to, of course, sign off in the reclamation.
12 Uh, the floors of these sites are cross-ripped, re-ripped. The soils are
13 placed on, uh, the floor of the mine and then they're seeded accordingly to
14 whatever the underlying zone takes us to. In this case, again, it's forestry.

15 LYNN: So, once the, the once the materials are extracted, the top soil
16 is replaced and the trees are replaced and then it grows for however long
17 commercial forests grow?

18 BARTON: Right. Right. Then, because this is in a portion, uh, uh, that is
19 part of our interest in this property, you know, once the materials are
20 removed, we want to reclaim and reforest and get the, the trees back into
21 production, as well.

22 LYNN: Okay. Um, Department of Ecology is also, uh, involved in the
23 review of this and there are a couple of Exhibits, uh, 25 and 26, uh, in the
24 County's, uh, documents, I guess those would have a C in the front of them.
25 Um, could you tell the Hearing Examiner all, all, just describe what those

1 are? I, because I'm not sure you have those, uh, I'm not sure you have those
2 in front of you.

3 BARTON: I do not. I can tell you what, what, I'm not sure which 25 and
4 which is 26. Once is a short-term erosion control plan, um, and the other is,
5 uh, um, that includes spill prevention plans. Uh, they were actually done,
6 they're typically not done until post land use approval, uh, but it's another
7 step, uh, and is typically done directly to the Department of Ecology. The
8 second one, uh, would have been an Application, in this case, which has not
9 been made yet, for a sand and gravel NPDS permit, which is our, uh,
10 interaction with the Department of Ecology, which established the permit. We
11 pay annual fees and, uh, adhere to, uh, operating the site to meet the
12 requirements of that permit, um, including having the BMPs in place, uh, to
13 do that.

14 LYNN: Okay. So, uh, tell, tell the Hearing Examiner, if you would, what
15 the, uh, sand and gravel permit is that's administered by the Department of
16 Ecology?

17 BARTON: So, it sets and sites specific, uh, there's rules and regulations
18 that we have to adhere to, that cover our storm water, uh, conveyance, if
19 any, uh, to meet their standards, it covers any processed waters, uh, it
20 covers, um, turbidity in any of those waters. It covers, uh, any potentials
21 for, uh, contaminates, whether it's, uh, spill plans, uh, for fuel, oil, um,
22 and it's obviously reviewed on an annual basis as well.

23 LYNN: So, are there, does the Department of Ecology monitor the water
24 quality at your mines?

25 BARTON: Yes, they do.

1 LYNN: Okay. And, uh, is that done to, uh, at a determined points that
2 they establish?

3 BARTON: Yes. So they'll, in the, in the plan, they will, we'll have
4 monitor, it's in their, that approved, approved plan for the site will have
5 monitoring points and whether they're quarterly or monthly depends on, uh, on
6 the particular type of, uh, sand and gravel permits. Uh, this one, there's no
7 processing slated on site, so, it would be quarterly monitoring and those
8 results are turned into the, the, well, turned in, reported to the Department
9 of Ecology.

10 LYNN: So, Exhibit 25 is the site management plan. And then, um,
11 Exhibit, uh, 26 is the General Permit. That, that's the ladder is the, the
12 one that you would file in order to get, uh, coverage under the Department of
13 Ecology Sand and Gravel Permit?

14 BARTON: Yes.

15 LYNN: And, and so if they're not normally filed this early and if
16 they're not normally filed directly with the County, why is it that the
17 County has them in this case?

18 BARTON: We [inaudible] in the meetings with the County staff, uh, they
19 had asked, uh, for this information, uh, and wanted it on the record,
20 although, it, again, it's a little premature. But, um, so we took our
21 standard templates and, and, uh, created this specific permit supply or for
22 this Grip Road site application and supplied them to the County staff.

23 LYNN: Um, so, you've indicated that Miles has a demand for this
24 material, if, if not, uh, obtained through the Grip proc-, the, the Grip
25

1 Permit, if it were to be denied, what, uh, Miles, uh, have to do to obtain
2 this material?

3 BARTON: Well, I think we'd have to go, in this particular County, we'd
4 have to go further east. Um, and I, you know, I, I, I've got to say, the one
5 that, that happens and, and there's a reason for the MRO in these type of
6 situations, and, yes, we've, we've got to be able to meet the criteria to
7 mine the site, but, but, typically, what you'll see happens in, in, in, well,
8 not typically, but the County's busiest areas for construction projects and
9 the need lies heavily in the ur-, more urban areas, in this case Mount
10 Vernon, uh, Burlington proper area. And as the, as the reserves get further
11 east, it, it, it does probably the thing that most people talk about are
12 trucks, is it intensifies the need for the amount of trucks to service the,
13 the market areas. So, so, uh, whether it doubles it or triples it depends on
14 the distance of the recourse to the east. So, I think it, it also underscores
15 the importance of, uh, using the close in reserves, and, again, as I said
16 earlier, it's mother nature plays, places these, uh, sites, but this is a
17 high quality deposit at Grip Road. It's a nice sand and gravel deposit, and
18 the, and the community, um, has been aware of this overlay, uh, has been
19 placed and I think we, you know, I don't think, we meet the criteria, uh, to
20 be able to, to mine it correctly. So, um, it's got a lot of benefits to,
21 again, uh, a need for the product.

22 LYNN: And then, one, one final question, just in response to some
23 comments that came up about the impact of your roads, uh, your vehicles on
24 the roads, um, does Miles pay license fees that, uh, uh, are commensurate
25 with the weight of its trucks?

1 BARTON: We do. We pay a base license fee and then we pay a rather large
2 per unit tonnage fee based on the size and, and the breadth of our truck, uh,
3 to be utilizing roads within the state of Washington, yes.

4 LYNN: Okay. That's all I have for you, Mr. Barton. Thank you very much.

5 REEVES: Okay. Thank you. I think, process-wise, it would probably make
6 sense to send if the County had any specific supplemental questions and then
7 move to Mr. Loring for cross-examination, does that hopefully make sense?

8 LORING: It does to me, Mr. Examiner.

9 REEVES: Okay. So, Mr. D'Avignon, do you have any supplemental questions
10 for this witness?

11 D'AVIGNON: Uh, yes, Mr. Examiner, I do have just a couple of questions.

12 REEVES: Great. Go right ahead.

13 D'AVIGNON: Uh, so the first is, and I'm, I'm clearly not an expert with, uh,
14 sand and gravel mining, but with an average of 46 round trips or 23 trucks
15 loaded a day, um, by my math, that is loading a truck every 26 minutes, um,
16 can you just maybe explain the practicalities of how one or two employees,
17 you know, excavate and load trucks at that rate?

18 BARTON: Sure. Um, maybe a better way to look at it, Mr. D'Avignon, would
19 be that the loaders run about a nine yard cubic yard bucket and they're
20 capable of loading in excess of 5,000 to 6,000 ton a day. Um, we're, we're
21 establishing a working face, in this particular mine, that's a dry mine and,
22 and the face will be approximately anywhere from 30 to 50 feet high,
23 depending on how we approach it. So, that material being sand and gravel is
24 easily accessed through the loader. The, the excavators, um, maybe used in,
25 at the start of the operation, but, uh, moving forward, the, the more high-

1 capacity loaders will be in play. And so one person able to, to, to load
2 those type of materials is very doable, with one loa-, loader.

3 D'AVIGNON: And then, do you have any anticipation as to what proportion of
4 the products mined will go to processing versus market? For example, we
5 anticipate 95 going to process, going 5% going directly to market, uh, do you
6 have any idea of what that might look like?

7 BARTON: It's always a good question. The market is going to drive that. I
8 think I would tell you that in this case, it's, it's a benefit for us to be
9 able to take it directly to marketplace, whether it's 50/50, 20/80, 80/20,
10 but, but we can use, uh, that approach going to our plan-, actually, to our
11 advantage.

12 D'AVIGNON: Okay. And, just to confirm, it sounded like from your earlier
13 testimony that the intention is that the Bellville site will be handling all
14 of the processing?

15 BARTON: Yeah. Any process that we're doing of this material will go to
16 our Bellville site, yes.

17 D'AVIGNON: Okay. And then, with the, the segment, you know, mining reclaim,
18 you know, and I understand that this mine is anticipated to be 25 years, but
19 how, is there a dif-, should we just divide that by four in terms of how long
20 it would take to mine and reclaim a segment or how would that work?

21 BARTON: Yeah. I think, and I think that's actually in this draft plan,
22 uh, that we, we have for this site, that's exactly how we, basically, well, I
23 say exactly, that's how we did it. We quartered the site, so in the 4.2
24 million yards, roughly, each segment, it's going to vary some, um, but we did
25 it strategically based on, on the slope adjacent to the Samish River for a

1 reason, uh, in our, in our mining sequence. So, although, the side slopes
2 would be done first, as we move through a segment and then the floor, uh,
3 other than the access areas that we need in the floor would be done in the
4 latter.

5 D'AVIGNON: Okay. And then, does, you have to fully reclaim a segment before
6 mining starts on the next segment or is there a bit of an overlap there?

7 BARTON: No, there is some overlap. And, uh, as I said earlier, the one,
8 and working closely with DNR, their, their understanding to that degree. And
9 they, they, aerial photo of the site from an aerial standpoint and review
10 that with us, with permit boundaries and such on an annual basis.

11 D'AVIGNON: Okay. I have no other questions, Mr. Examiner.

12 REEVES: Great. Thank you. So, we'll move next to Kyle Loring on behalf of
13 the Appellant.

14 LORING: Thank you, Mr. Examiner, also, would now be a good time to take a
15 morning break if we're going to take one, between, um, the, the start and
16 lunchtime? I can power through, I'm willing to do that, I just didn't know if
17 others, if we were going to take...

18 REEVES: I...

19 LORING: I, I suspect I got 20, 30 minutes.

20 REEVES: Um, if it's 20 or 30 minutes, if that's what you expect, let's
21 see, I'm trying to do the math here. I mean, I was, we can do just a, a quick
22 five minute-ish bathroom break, come back, work through this and then I think
23 between your questions, just to be clear, Mr. Ehrlichman, I didn't expect to
24 hear from you with this witness because traffic wasn't a major thought, can
25

1 we just hear on Mr. Ehrlichman, if he had planned on asking questions of this
2 witness?

3 EHRLICHMAN: Yeah. I have about, uh, 15 to 20 minutes worth of questions for
4 the Applicant.

5 REEVES: You do? Okay. So, why don't, then, I think based on that, Mr.
6 Loring, I think that's a good suggestion. It's 10:30. Uh, I know we started a
7 few minutes late, on my end, I apologize, with the tech, but I will, uh, take
8 a quick break, uh, for folks to use the facilities, come back and, uh, do
9 cross exam with Mr. Loring, then Mr. Ehrlichman and then see if Mr. Lynn has,
10 uh, follow-up and that will probably put us at the lunch, lunch break, uh,
11 after that. So, uh, why don't we come back at about 10:35ish, uh, will be the
12 plan. Okay.

13 LORING: Sounds good. Thank you.

14 REEVES: Thanks, everybody.

15 LORING: Yeah.

16 [Background chatter.]

17 CHAMBERS: Hey, Mona, your mic is on.

18 KELLOGG: It shouldn't be. Let me just...

19 CHAMBERS: It is. It's Kevin.

20 [Background chatter.]

21 REEVES: And we're back. There's Mr. Loring. Looks like Mr. Barton is
22 ready as well.

23 KELLOGG: Hi, guys.

24 CHAMBERS: Uh, An-, Andrew, this is Bill Chambers.

25 REEVES: Yes.

1 CHAMBERS: Just real quick, um, just to remind Mona that she needs to unmute
2 her [inaudible].

3 REEVES: Uh, you cut out at least for me, Mr. Chambers.

4 CHAMBERS: Just, uh, remind Mona that she needs to unmute her Teams
5 microphone when you're ready to begin.

6 REEVES: Okay. So, we are, we are ready, so I guess if Mona Green can
7 unmute her Teams microphone.

8 GREEN: Unmuted.

9 REEVES: So, are we ready to start again, then, Ms. Green?

10 GREEN: Yes.

11 REEVES: Okay. Uh, so, Mr. Loring, go right ahead.

12 LORING: Thank you, Mr. Examiner. All right. Good morning, Mr. Barton.

13 BARTON: Good morning, Mr. Loring.

14 LORING: So, I, I may bounce around just a little bit as I compare
15 different notes and, and, uh, notes I created prior to your testimony a
16 moment ago, but we'll, we'll try to make sure it's very clear what I'm
17 asking, uh, or when I'm asking a question here today. So, I, I like to start
18 with, uh, what we just heard and then work backward from there because it's
19 fresh in our minds. So you, uh, you stated a moment ago, that the co-, the
20 community was aware of the overlay, uh, that MR overlay. And I just wanted to
21 ask you how you informed yourself that the community members were aware of
22 it?

23 BARTON: It's, it's standard protocol from our standpoint. When it comes
24 to notification of, of a resource area, which is this is one, it's even noted
25 on most folks tax records, is my understanding.

1 LORING: So, so, you don't, you didn't ask people if they were aware of
2 it?
3 BARTON: No, not personally, no.
4 LORING: Okay. And, and you don't know which properties pre-dated the MRO?
5 BARTON: I do not.
6 LORING: And you're not familiar with the designation process?
7 BARTON: I am familiar with the designation process, yes.
8 LORING: Okay. And so then you know that, uh, property owners aren't
9 notified directly of a proposed MRO when, when, uh, when a legislation makes
10 its way to the County?
11 BARTON: Uh, I believe they are, when a piece that is not included, uh, is
12 requested to be included, they are notified, is my understanding.
13 LORING: That's your understanding?
14 BARTON: That my understanding, yes.
15 LORING: Okay. Uh, let's talk, it sounds like you're very familiar with
16 that, uh, forest, the forest operations on the other portion of this larger
17 property that we're discussing, is that cor-, is that an accurate, uh..
18 BARTON: Yes, that is accurate.
19 LORING: Characterization?
20 BARTON: Yes.
21 LORING: Okay. And, and that property is owned by, uh, kind of a sister
22 company to Miles?
23 BARTON: Yes. It's one of our landholding companies.
24
25

1 LORING: Yeah. Okay. Uh, okay. So, are you familiar with the Forest
2 Practice Applications that were submitted for, uh, the road, or not for the
3 road, for the forestry over the last few years for that property?
4 BARTON: Yes. Generally, yes.
5 LORING: Okay. Are you familiar with the 2018 Forest Practice Application?
6 BARTON: Uh, not sure if it's the type, one of the Type Threes when we did
7 some logging on the plantation, if that's what you're referring to?
8 LORING: I'm not sure exactly what logging occurred. I'm, I'm referring to
9 the Forest Practice Application itself and..
10 BARTON: We, we've had several on the site.
11 LORING: Okay. Um, have you had one in 2015, then, as well?
12 BARTON: That one, I believe, uh, I don't have it in front of me, was the
13 one that, as I spoke to earlier, the Type 4 Application, which is subtly
14 different than a Type 3, if I may, alls it does is, again, pro- protect the
15 use change if that happens.
16 LORING: Okay.
17 BARTON: It involves the County rather than just going direct with the
18 Department of Natural Resources, which is the Type 3.
19 LORING: Okay. Are you familiar with the representations made in the 2015
20 and 2018 FPAs, Forest Practice Applications, about whether there is any need
21 for roadwork?
22 BARTON: Uh, not directly, but generally familiar.
23 LORING: Okay. Uh, and are you familiar with the representations made in
24 those Forest Practice Applications about whether any work would be occurring
25 around type streams or other water courses?

1 BARTON: That's part of, that's part of any of the Forest Practice
2 Applications, whether we're doing it directly or, or one of our consultants
3 is doing it is assessing the, the surrounding area that we planned to log in,
4 yes.

5 LORING: Okay. And, and I appreciate that, my question was more
6 specifically whether you're familiar with these specific applications and the
7 representations made in them about whether work would be occurring along, uh,
8 streams and, and other typed water courses?

9 BARTON: Well, I don't have, I don't have them in front of me and it's
10 been quite awhile, but, again, as I just stated, those plans are through the,
11 whether it's the County under a Type 4, or the DNR directly, with those
12 sensitive areas, there's, there's two different standards in play. So, uh,
13 uh, between the Type 4 and Type 3, as you know, the buffers and set back and
14 critical areas.

15 LORING: Okay. Thanks. So, just, but, just to confirm, it sounds like
16 you're not, at this, at this point, you're not familiar with what those, uh,
17 Applications specifically said, but you're familiar with general rules around
18 that forestry, forestry?

19 BARTON: Yes.

20 LORING: Okay. Uh, you were talking, uh, you testified just a moment ago
21 about Department of Ecology review, uh, for this site. And so I just wanted
22 to confirm when, when you're talking about, uh, Exhibit C25 and Exhibit C26,
23 I believe you mentioned that it was unusual to provide Exhibit C26 to the
24 County and that they had asked for it as part of this process, is that right?

25 BARTON: I did state that, yes.

1 LORING: Yeah. C26 is largely boiler plate at this point, right? That
2 specific document?

3 BARTON: They are boiler plate, uh, this one was made to fit that site,
4 should it have been approved, yes.

5 LORING: Okay. But it's not signed by anybody?

6 BARTON: No. No. It's just a draft...

7 LORING: Okay.

8 BARTON: Plan.

9 LORING: And it doesn't identify any, uh, the specific monitoring
10 frequency over the site?

11 BARTON: No.

12 LORING: And it doesn't m-, it doesn't identify the specific, uh,
13 locations where there would be any monitoring?

14 BARTON: Correct. That would be them working with the Department of
15 Ecology, yes.

16 LORING: Okay. So this doesn't provide much in-, this doesn't provide any
17 information about, uh, any of the monitoring that would occur at the site, if
18 this were approved by Skagit County, is that right?

19 BARTON: Correct.

20 LORING: Okay. Uh, you, you also mentioned as part of your testimony that
21 Ecology monitors water quality. Are, is it your understanding that they'll
22 monitor, uh, dr-, neighbor's drinking water quality?

23 BARTON: I'm not sure of your question. I think they monitor specific to
24 this site if it was approved. Our, our water quality programs are geologic or
25 hydrogeologic assessment would, would address any, any surrounding wells, uh,

1 and I think that's obviously been shared with the County. So, if any
2 monitoring would be necessary.

3 LORING: Okay. But you, so, it sounds like, are you suggesting that Miles
4 is going to monitor, uh, neighbors' wells?

5 BARTON: No, what, no, what I'm saying is, if, if, if that was a condition
6 of the permit, we would, but that would come from the Department of Ecology.

7 LORING: Okay. And is that a standard condition from Ecology, to neighbor,
8 uh, monitoring neighboring wells?

9 BARTON: Uh, not typically, no.

10 LORING: Okay. Uh, there was, related to the Department of Ecology
11 interaction, uh, about this mine, are you familiar with their position on
12 their wetland buffers, which would apply to the mining activity?

13 BARTON: I'm generally familiar with the statement, yes, or the comment.

14 LORING: Okay.

15 BARTON: Yes.

16 LORING: And so, you're familiar with their position that a 300-foot
17 buffer should apply along the Samish River wetlands?

18 BARTON: I'm familiar with their, their comment, yes. I don't agree with
19 it, but I'm familiar with it.

20 LORING: I understand. I just, I, yeah. Okay. Thanks. Uh, there was also
21 quite a bit of talk about reclamation of the site. And that reclamation
22 occurs primarily under the review of the Department of Natural Resources,
23 right?

24 BARTON: It is under the review of...

25 LORING: Yeah.

1 BARTON: DNR. Yes.

2 LORING: Okay. And there was some discussion, uh, there was a statement
3 about returning the original depth of top soils. You, you weren't testifying
4 that the actual land would be returned to the original depth, right?

5 BARTON: What I was testifying to was those DNR plans, as they're
6 submitted to DNR for approval, have specific criteria in them, addressing top
7 soils, overburden, depth of mining, et cetera. So, so that is all taken into
8 consideration, with the Application, and then approved by the Department and
9 would be reclaimed to that approved plan set. Which top soils vary from, from
10 zero to one foot, foot and a half, just depends on the particular site.

11 LORING: Okay. But, here with this site, if it's going to be mined down 60
12 to 70 feet, that won't all be refilled going forward, after this reclamation?

13 BARTON: No, no. No, no. What, no, so, the, and I think you, you've seen
14 the, the draft plan set. In this particular site, we have not applied for,
15 uh, importation of, uh, suitable material for backfill. This, this site has
16 been, the, the concept is to mine the site, uh, it's a depression and, and
17 the side slopes, as well as the floor, will be reclaimed to DNR standards,
18 uh, as we complete the mine segmentally.

19 LORING: Okay.

20 BARTON: And replanted with the underlying zoning, in this case, forestry.

21 LORING: Got, so there will be a significant depression that will remain
22 as part of that reclamation?

23 BARTON: Yes. Yes.

24 LORING: Okay. Um, there has been some question, I believe, about the
25 jurisdiction, uh, that Skagit County has in a matter like this and, and also

1 the jurisdiction that Ecology and the Department of Natural Resources have.
2 And, uh, I just wanted to clarify my understanding of your understanding, and
3 that is, uh, it's your understanding the DNR is not evaluating whether, uh,
4 well, they're not evaluating transportation impacts for this site, right?
5 BARTON: No. Their, their scope of work is specific to the mine plan and
6 the reclamation of that plan. Although, it does include, uh, geologic and
7 hydrogeologic considerations.
8 LORING: Okay. But, so they're not evaluating impacts of the haul route?
9 BARTON: Nope.
10 LORING: Uh, okay. And they're not evaluating potential impacts to, uh,
11 critical areas like wetlands or streams for the surface mine?
12 BARTON: No. Not directly. Although, they are aware from a DNR standpoint
13 in forestry associated uses what's going on at that site.
14 LORING: Okay. Going through my notes here. We actually covered some of
15 this. Okay. You mentioned that, uh, the Department of Natural Resources was
16 involved in the, in that work on the private haul road, uh, around 2018, is
17 that right?
18 BARTON: Yes. We consulted with them prior to improving the haul route
19 that you're terming, or the main arterial of the plantation during and after.
20 LORING: Okay. And do you have a documentation from them about any need
21 to, uh, gravel that road, to harden the road and, uh, and to expand it
22 within, I believe you said it was expanded within the road prism earlier?
23 BARTON: Was, it was, it was improved within the road, current road prism.
24 We didn't go outside of that.

25

1 LORING: Okay. And do you have any documentation before and after, uh,
2 surveys to demonstrate that?

3 BARTON: We do have surveys, uh, whether it's pre and post, we do have
4 surveys of the road beds of the site, yes.

5 LORING: Uh, do you know what Exhibit that, uh, is that an Exhibit in this
6 matter?

7 BARTON: I'm sorry, I couldn't answer that.

8 LORING: Okay. Uh, let's see, okay. You mentioned, uh, during your
9 testimony a moment ago, I believe that there was a proposal now to widen, uh,
10 Prairie Road S-curves? Is that right?

11 BARTON: No. I, what, close. So, so, we, through the SEPA process, uh,
12 obviously, that's now a condition, which we will do on the Prairie Road S-
13 curves. We have safety improvements at the Prairie Road/Grip Road, uh,
14 intersection that we will do. What we were talking about was the S-curves
15 using Auto-turn analysis that created to improve between our access, uh, and
16 Prairie Road intersection on Grip Ro-, Grip Road specifically, those S-turns.
17 We've agreed to do that.

18 LORING: Okay. And those are the turns along the hill?

19 BARTON: That's, yes. Those two corners on the hill, yes.

20 LORING: Okay. And do you have, sorry about that, uh, and are you
21 anticipating needing to buy land for that to happen, those fixes?

22 BARTON: No, we are not.

23 LORING: Have you spoken with landowners along that area?

24 BARTON: Not specific to buying land. I think we've looked at the road
25 infrastructure and the engineer plans of Grip Road, again, using the Auto-

1 turn analysis to determine what will accommodate our trucks and what won't,
2 if, if at all and with some simple widening per our engineer, it can be
3 accomplished staying within the County right-of-way.

4 LORING: Okay.

5 REEVES: Sorry, Hearing Examiner, just to break in so I didn't get lost
6 there. Mr. Barton, in terms of Grip Road, my understanding from the direct
7 testimony when Mr. Lynn was questioning you...

8 LYNN: Sorry, that was, trying to turn, sorry, sir.

9 REEVES: Okay. So my understanding was that the Applicant has essentially
10 said the SEPA conditions, the MDNS conditions did not require anything
11 specific in terms of the S-curves on Grip Road, but through the sort of SUP
12 process, the Applicant would be willing to adhere to the condition that such
13 analysis would occur. But are, you, a, is that accurate, my understanding of
14 what you were testifying to in terms of your back and forth with Mr. Lynn or
15 did I misunderstand that?

16 BARTON: Well, I, I believe what I'm saying is the analysis indicated that
17 we can do, within the County right-of-way, some improvements on the S-corners
18 of Grip Road, though, again, through that analysis. And I think the details
19 would obviously have to be approved, uh, through the Public Works and such,
20 to widen the road and we're willing to do that.

21 REEVES: Okay. So...

22 BARTON: As a part of a...

23 REEVES: So that analysis has occurred, but you haven't yet worked through
24 what it all looks like?

1 BARTON: Yeah. We, that, that needs to be shared with the County Public
2 Works and the County as well, the analysis.

3 REEVES: Got it. O-, okay. Sorry to break in there.

4 LORING: No, no worries.

5 REEVES: Please, continue. I just wanted to make sure I understood where
6 we were at.

7 BARTON: And, Mr. Loring, if I, one more thing I failed to add, as far as
8 in the series of improvements that would be done to the infrastructure, uh,
9 between our access point and, and in connection at say, Hi-, Highway 99, so
10 you've got, again, the Prairie Road S-curves, you got the Grip and, and
11 Prairie intersection, you've got what we just talked about in the S-curves
12 and then the improvements at our own access point, which would include, that
13 have not been done yet, include widening, paving and some signalization when
14 it comes to warning signs for the pub-, for the public where, uh, they would,
15 they would see through those warning signs that we have a truck at our, at
16 our entrance getting ready to, uh, turn onto Grip Road.

17 LORING: Okay. Uh, is that a real time warning sign, is that what you're
18 saying, as the trucks...

19 BARTON: Yep.

20 LORING: Approach?

21 BARTON: Yes.

22 LORING: Okay. Uh, it so-, I just wanted to clarify, re-clarify, I guess,
23 on the, uh, Grip Road S-curves that we've talking about just now, you've
24 conducted the analysis, but, but, uh, the County and the public haven't seen
25 the documentation, is that right?

1 BARTON: Correct.

2 LORING: Okay. Also, uh, to clarify, on the Grip Road/Prairie Road
3 intersection improvement, that's, uh, the beacon, is that what you're talking
4 about?

5 BARTON: That's the, the beacons.

6 LORING: Yeah.

7 BARTON: Yeah.

8 LORING: Okay. So, no proposed change to the road or site lines there at
9 this state, is that right?

10 BARTON: Not outside what's already been previously submitted, no.

11 LORING: And, and just to be clear, that previously submitted is the
12 beacon?

13 BARTON: Yes.

14 LORING: Okay.

15 BARTON: Both ways, both sides, it's more than one beacon.

16 LORING: Okay.

17 BARTON: Per the, per the Public Works approval and, and their, their,
18 their design criteria.

19 LORING: Okay. Thank you for that.

20 BARTON: Uh-huh.

21 LORING: Uh, let's see, so, you've, uh, just to follow up a little bit
22 more on this, it sounds like an auto-turn analysis has occurred along Grip
23 Road, um, as it had for Prairie Road, um, none of the transportation
24 documents iden-, or specified a vehicle, uh, that would be used to transport
25 the mining product, is that right?

1 BARTON: I don't recall any, but the auto-turn analysis does. And it's the
2 same analysis, you're correct, that we used on the Prairie Road, we've used
3 on Grip Road.

4 LORING: Okay. When you supply those materials to the County, are you
5 intending to disclose the actual truck that was actually used to model those,
6 well, you know, specify it there?

7 BARTON: Sure. Yeah. We have, we'd have no problem not doing that.

8 LORING: Okay.

9 REEVES: Sorry, and Mr. Loring, just, again, for my elucidation, when you,
10 when you're asking about, uh, sort of revealing what vehicle, are you saying,
11 you know, the model is not, uh, you know, uh, uh, Nissan hatchback can drive
12 the road, it's the, we've got 100, not 100, but, you know, 30 foot long truck
13 or however, that's probably too long, too, but you get what I'm saying?
14 You're, you're trying to ensure that the size of the truck is the, what has
15 been inputted into the model in terms of length and all that, is that what
16 you're asking?

17 LORING: Yes, that's exactly what I'm asking. The, the transportation
18 documents, they, they didn't specify, you know, some of the basic parameters,
19 you know, length of the vehicle exactly, width of the vehicle, uh, so it's
20 been a bit of a guessing game to date and so that's what I'm asking,
21 specifically what vehicle are they using in their model.

22 REEVES: Got it. Okay. Just, I figured, I just..

23 LORING: Yeah.

24 REEVES: Wanted to make sure.

25 LORING: It's all right. Thank you.

1 REEVES: Go ahead.

2 LORING: All right. Thank you. Uh, let's see, you testified a little while
3 ago about in climate weather and actions that would occur where there's in
4 climate weather. Are there written policies for that?

5 BARTON: Detailed on, good question, um, it's regularly stated, uh, I'd
6 have to check, to be, to be candid. Um, but it...

7 LORING: Okay.

8 BARTON: Again, as I said earlier, I guess to restate it, but it's not our
9 normal thing to put 100,000 pound truck out on a rural road in, in in climate
10 weather, we just, we don't go there, so...

11 LORING: Okay. Understood. But there's, there's, uh, it sounds like there
12 may not be a written policy that identifies how you make those judgement
13 decisions?

14 BARTON: Well, no, because each one is subtly different so it would be a
15 heck of a book. It's a good question, but it's, it's common practice, uh, um,
16 in our approach. It's common practice for the industry as well.

17 LORING: Okay. Sounds good. Sorry, if there's some background noise,
18 there's a truck outside. Uh, you discussed the drivers and, uh, you know, or,
19 I guess, company drivers encountering things like school buses or cyclists,
20 uh, those, there were, there were no studies as part of this project to
21 evaluate what would happen with this specific mine as the, as drives did
22 encounter school buses or cyclists, is that right?

23 BARTON: I'm not aware of any specific study, other than the general
24 traffic studies that are done.

25 LORING: Okay.

1 BARTON: For cyclists or, sorry, it's my turn, a train, sorry.

2 LORING: It's all right. Yeah. Uh, school buses, cyclists.

3 BARTON: School buses, yeah.

4 LORING: Yeah. Okay. Um...

5 BARTON: But, again, if I may, we, we've been in business for a long time.

6 And, and, uh, we're proud of our track record, you heard me say that, but,

7 but our drivers, uh, and to give them credit, have a check of a lot of

8 responsibility. And school buses are part of that and recognizing any, um,

9 potential conflicts that may come at them. So, uh, um, is it a concern, sure

10 it is. But so is the car, you know, so the bi-, the bicycle, whether it's a

11 motor-, motorcycle, what have you, um, rural roads present those scenarios,

12 uh, although at lower speeds and, and, and our guys do a good job mitigating

13 them in a proactive way.

14 LORING: Okay. Uh, and you, you've talked about the history and, and I did

15 hear you say that, uh, you know, your understanding of how things have

16 operated over the past 20 years or so, uh, is, is the population the same now

17 in the vicinity that you're going to be hauling this gravel as it was 20

18 years ago?

19 BARTON: Well, I think, I think it's not the same. I think you, you know

20 that. And, and it, it's grown and so have we. Uh, but my point is more, not

21 so much 20 years ago as, as we have literally taken millions of tons of

22 material out of our sites and fed these rural projects on a regular basis,

23 uh, with no serious accidents. That's really my point. So, we have a long

24 history and, uh, I don't mean to be bragging, but I think in this case we

25

1 can. We've got a, we've, we've got a heck of a record and we're very proud of
2 it because we do care.

3 LORING: When you, um, no, I think that's good enough on that. Thank you.
4 Just a few more questions, at this point. Okay. Just wrapping up, running
5 through my notes here. So, just a couple more points about the, the hauling
6 and the length of the hauling here. Uh, one quick question, there's been
7 discussion about the mine site being about a, a mile and a half from Grip
8 Road, uh, but that haul road, into the private haul road, that's about 2.2
9 miles, based on the Application, does that sound right to you?

10 BARTON: Yes, that's correct.

11 LORING: Okay. And Miles is taken the position that they're unwilling to
12 agree to a cap on daily haul trips, uh, for this site, is that right?

13 BARTON: Uh, that's a short summary of it, yes.

14 LORING: Uh, you did testify that there, that Skagit County has applied a
15 limitation on the number of trips to the Bellville property, earlier, is that
16 right?

17 BARTON: There is a, there is a limitation on the Bellville site, although
18 it's quite large, yes.

19 LORING: Okay. Uh, and there's no set fixed haul route for, uh, the gravel
20 that would leave the Grip Road site, is that right?

21 BARTON: Uh, correct. But I can tell you that, other than local
22 deliveries, it's, it is going to the west on Grip Road, down to Prairie, to
23 Highway 99 and at that point the market will dictate, and our needs will
24 dictate our route.

25

1 LORING: Okay. Uh, and, and you mentioned earlier that Market conditions
2 would dictate where the excavated product would go?

3 BARTON: A portion of the equation, correct.

4 LORING: Okay. And you were also talking about expansion, I believe, to
5 the east of this mine site and population grows that direction, is that, was
6 that what you testified to earlier?

7 BARTON: Not expansion to the east, I guess you'd have to clarify, I'm not
8 sure of your question.

9 LORING: So, I, I heard you talking about, uh, just need the demand to the
10 east of this site growing in the future and so supplying that demand as
11 market conditions change as well. Was that...

12 BARTON: Well...

13 LORING: Is that an accurate recitation?

14 BARTON: No, I, what I did say, uh, Mr. Loring, that the County,
15 obviously, is going to grow as far as, uh, overall, but I think I was
16 referring to where the majority of the larger infrastructure projects
17 construction is done is in the Burlington/Mount Vernon proper. And, and my
18 reference to going east was saying to Mr. Bill's question if, in the event
19 that this resource was not approved, where would we go. Uh, I believe that's
20 what I was referring to, which is further east, which only intensifies the
21 need to come back into the market, uh, that's in the Mount Vernon/Burlington
22 proper area to feed and drive truck, trips up in these further east deposit.

23 REEVES: That, that, that was my understanding of the testimony as well.
24 This is the Hearing Examiner. I'm not understanding as, was the reference to
25 the east was if a site, this site were not approved, you know, the Applicant

1 would have to generally seek these resources further to the east. So, you
2 know, longer trips, et cetera. That was my understanding as well. So,
3 hopefully we're all on the same page now. But go, go ahead, Mr. Loring.

4 LORING: Yeah. Thank you, Mr. Examiner. And speaking of other properties
5 to the east, uh, Miles now owns a property on Brookings Road, is that right?

6 BARTON: We do. Yes, we do.

7 LORING: Okay. Uh, I think it's known as the Proctor Pit?

8 BARTON: It is known as the Proctor Pit, yes.

9 LORING: Okay. Uh, my understanding is that the transportation documents
10 don't evaluate any potential accumulative impacts from shipping from that
11 site, or transporting and hauling from that site in addition to the Grip Road
12 site, is that your understanding as well?

13 BARTON: Correct. It's, we, we've purchased that recently. It's a very
14 small, um, was a mom and pop operation with a, a small remaining deposit, um,
15 and we've went in and, and basically cleaned the site up and, and, uh, um,
16 we'll finish that extraction and reclamate the site. And then at some point,
17 whether it's us or a developer, back into the residential setting that, that
18 it lies in.

19 LORING: Okay. So Miles isn't planning to expand into the full 50, fully
20 50 acres of the property there?

21 BARTON: Uh, are you referring to Proctor? No. It's, it's to, again,
22 finish the remaining reserves in the permitted site and, and that's it.

23 LORING: Okay. Um, that's the questions that I have for you at this time.
24 Thank you for bearing with me. And, um, we'll hear from somebody else.

25

1 REEVES: Great. Thank you. So my understanding is, uh, Attorney Tom
2 Ehrlichman has a few questions for you now, Mr. Barton.

3 BARTON: Okay.

4 EHRLICHMAN: Uh, good morning, Mr. Barton.

5 BARTON: Good morning.

6 EHRLICHMAN: Tom Ehrlichman here for Cougar Peak LLC and the Neil McCloud
7 family. And as you know they are neighbors to your, um, Grip Road mine and
8 take their driveway access, uh, from within 500 feet of the mine entrance. So
9 in this proceeding, uh, they are not opposing your requested mine permit, but
10 will be asking the Hearing Examiner to add conditions, uh, that we think
11 would protect them and other uses of Grip Road. So, I wanted to, uh, talk
12 with you to get some more clarity, out, out of all of the thousands of pages
13 on traffic in this, uh, record, there's still some fuzzy areas on truck
14 counts and so forth, what the Applicant has agreed to. So, I'd like to just
15 ask you a series of questions, um, to, to give us greater clarify. Uh, first,
16 a basic sort of math question, um, as I understand it, the trucks arriving
17 and departing with gravel can carry 34 tons, that's, is that the number?

18 BARTON: Some trucks can, yes.

19 EHRLICHMAN: The truck-trailer combinations could carry...

20 BARTON: Varying, but, yes.

21 EHRLICHMAN: Go ahead.

22 BARTON: Sorry, Mr. Ehrlichman, just to give you a little more detail,
23 depending on the truck configurations, some trucks, in their construction,
24 can vary 34 to 36 tons, some of the truck and trailer rigs, uh, are some,
25 somewhat less than that 30 to 32 ton, for specifics.

1 EHRlichman: Oh, thank you. Okay. So we can say 34 to 36, max, is sort of the
2 maximum, right?

3 BARTON: We can say 30, I think what I said is 30 to 36, depending on the
4 truck configuration.

5 EHRlichman: Right. I, my questions are going to mostly refer to a maximum.
6 We're trying to look at what is the maximum pos-, in the range, what sit he
7 maximum possible impact to Grip Road. And so, if there are trucks that will
8 carry more than 36, we'd be interested to know that. But if the truck-trailer
9 combinations max out at 36, we'll use that number.

10 BARTON: Uh, well, let's, let's not use 36 because, again, I know the
11 trucks, obviously, it's, it's my background, so, so truck and trailer
12 combination, their average is more, like, 32 for legal loads and, and the 36
13 are the A&B trains...

14 EHRlichman: Uh-huh.

15 BARTON: That are legally capable of, of hauling that amount, depending on
16 the actual configuration, is why I said 36. Dump truck and trailers don't
17 pack that kind of capacity because of their design.

18 EHRlichman: Is that maximum number of tons that a truck-trailer using Grip
19 Road will, will carry 36 tons?

20 BARTON: No. It's something less than 34, depending on the confi-, the
21 truck and trailer instruction, its box, is it aluminum, is it steel, what
22 kind of axle, is it a five-axle truck, is it a four-axle truck, is it a
23 three-axle trailer. I, I, I'm not trying to evade your question, I'm just
24 trying to answer it correctly.

25

1 EHRlichman: Um, Mr. Barton, I've got a limited amount of time here that the
2 Hearing Examiner has graced me with, so if you could help me by just
3 answering yes or no, that would be great. Is the maximum, uh, load that a
4 truck-trailer combo will carry on Grip Road, under your proposal, 36 tons?

5 BARTON: No.

6 EHRlichman: What is the maximum that possibly would go on Grip Road,
7 associated with your proposed mine?

8 BARTON: To respond to your question, in a truck and trailer
9 configuration, it would probably not exceed 33.2 tons.

10 EHRlichman: Okay. So the answer to my question, then, is no, the maximum
11 would be 33.2 tons?

12 BARTON: Based on the truck and trailer configuration, yes.

13 EHRlichman: Okay. So it won't, none of the trucks serving your mine will be
14 loaded more than 33.2 tons? Is that...

15 BARTON: No. None, none of the trucks, to, to help answer your question
16 and I don't, I'm, I'm, Mr. Ehrlichman, I'm not trying to be argumentative,
17 you're putting words in my mouth, I'm trying to...

18 EHRlichman: No, I don't want to...

19 BARTON: Okay. So I'm trying to give you the details. Whether the truck...

20 EHRlichman: Let me, let me ask...

21 BARTON: Not...

22 EHRlichman: The question differently.

23 BARTON: Let me finish.

24 REEVES: Hold, hold on, Mr. Ehrlichman, everybody, let's have a little
25 order here. Mr. Ehrlichman, please just give him a second to finish. I think

1 the confusion, and I'm a little confused as well, was at one point, we heard
2 a max of 36 as a potential, depending on configuration. I think the question
3 is that a global figure or in terms of Grip Road, are there instances where
4 36 tons would exist? Where a truck with, with a load would be 36 or would it
5 be 33.2 as the max, which is what my understanding was you just testified?
6 So, I, I did get confused myself, but maybe, let's just give, uh, Mr. Barton
7 a second to try to clarify this. And..

8 BARTON: So, as I said earlier, if, if may, sir...

9 REEVES: Yes.

10 BARTON: What I'm speaking to is, and I'm too educated in this, so I
11 apologize. So, I'm speaking to truck capacities. Any truck that leaves that
12 site with be within the legal allowed limit to its design of a hundred and
13 five five [sic] in the best case scenario. So, general speaking, truck and
14 trailers haul less than 34 ton, generally speaking. So, so, if their legal at
15 34 ton, because of their construction, that could happen. But more than
16 likely, based on averages, it's going to be something less than that. So, as
17 an example, if I may, a dump truck and trailer with a heavy steel
18 construction box on it, not a materials handler, handling unit, would be
19 something less than that, in the 30 ton range. Because, although he still
20 could be a hundred and five five [sic], legally, he can't pack that legal
21 load because his truck unit is too heavy. That's, that's all I'm trying to
22 refer to.

23 REEVES: Okay. Mr. Barton, I, and I'm not an expert, obviously, you're an
24 expert on this issue. I guess, can you give me a number, what is the maximum
25 weight of the loads, in your mind, that would occur? Not the legal maximum,

1 the actual, you know, when the, if this were approved and were operational,
2 can you give me the 33.2 tons would be the max operating on Grip Road or is
3 it some other number?

4 BARTON: I think based on averages, sir, it would be 33 ton would be an
5 average number for that type of truck and trailer.

6 REEVES: Okay. And I'm, at least, smart enough, I think math-wise, to
7 understand how an average would work. Could you give me the highest number
8 that would go into that series of numbers that would then be divided on
9 average? What's the...

10 BARTON: A dump truck and trailer, as I said earlier, 33.25 tons would be
11 probably the highest average you could use in that calculation.

12 REEVES: Okay. I'm not looking for an average, I'm saying, what is the
13 heaviest truck, I think was the question. Can you give me a...

14 BARTON: No, that's what I, I, I understood your question, thirty-, the
15 net payload in the truck, with, with that configuration, aluminum box and
16 such, would be 33.25 net tons payload.

17 REEVES: Okay. I don't know if that helped, Mr. Ehrlichman. I was trying
18 to get an answer, so the heavy, my understanding is the answer is the
19 heaviest truck that would be operating, the heaviest load, would be no more
20 than 33.25 tons.

21 BARTON: Payload, the truck would be legal at that payload at 155,000
22 pounds or 105,000 pounds, license. So, payload and overall truck weight. So
23 it's, so the truck is going to weigh, with its' load on, more than 33.25
24 tons.

25 REEVES: Okay. Go ahead, Mr. Ehrlichman.

1 EHRlichman: Uh, Mr. Barton, uh, all of us are trying to understand how many
2 trucks per day and trucks per hour are going to be on Grip Road and your
3 traffic analyst used a figure of tonnage per truck to get there, give us a
4 number. That's why it's important to, um, be clear and then we can divide
5 that number into, you know, 200,000 or whatever, you know, the number is. So,
6 let's, let's move on. Um, I just wanted to kind of get a, uh, dimensions of
7 these trucks. So they're eight feet wide, right? And what is the length of
8 the rig from the truck rail to the pup trailer lights?

9 BARTON: I don't have that exact measurement, but they're less than 75
10 feet, legally.

11 EHRlichman: Okay. Thank you.

12 BARTON: Be legal, yeah, I don't have the exact dimensions.

13 EHRlichman: That's okay. Hey, um, couple of quick sidebar questions, uh,
14 responding to your testimony, or asking about your testimony, you mentioned
15 license fees that you pay, those go to Skagit County for road improvements or
16 do they go to the State?

17 BARTON: They go to the State, Department of Licensing through the..

18 EHRlichman: Okay.

19 BARTON: [Inaudible] and then they're distributed accordingly to the
20 Counties.

21 EHRlichman: Thank you. Uh, but they're not traffic impact fees, right?

22 BARTON: No.

23 EHRlichman: Okay. Thank you. And so, um, when you mentioned emergencies and
24 this mine being important to assess the emergencies, uh, this mine wouldn't

25

1 be the only source of gravel available to respond to emergencies, would it,
2 in Skagit County?

3 BARTON: Depending on where the emergency happened, correct.

4 EHRLICHMAN: I mean, the County is calling you to supply gravel for
5 emergencies without this mine operating, right?

6 BARTON: That's correct.

7 EHRLICHMAN: Okay. So, let's, let's go on it, well, before I go on, uh, could
8 you reconfirm for us that you're appearing today with authority to speak for
9 the three entities involved here, the landowner, Lisa Inc, Concrete Nor'West
10 and, also, uh, Miles Sand and Gravel?

11 BARTON: I am. Yes.

12 EHRLICHMAN: Okay. So, if the Hearing Examiner were to impose to conditions
13 that run with the land and constrain the mine operation and transport, um,
14 you, you have the authority to enter into or agree or disagree with those
15 conditions for them, correct?

16 BARTON: You, yes.

17 EHRLICHMAN: Okay.

18 REEVES: Well...

19 EHRLICHMAN: Thank you.

20 REEVES: To be clear, if I approve this, there's, the only way to disagree
21 with any conditions I impose is through an Appeal process.

22 EHRLICHMAN: Uh-huh.

23 REEVES: It's, there's no bartering with the Hearing Examiner, I want to
24 be clear about that. Um, I'm getting laughs from some of the Attorneys

25

1 because they know, but, I, I just, so there's no misunderstanding on the
2 record. That is not the way the process works. So, go ahead, Mr. Ehrlichman.
3 EHRlichMAN: My, unartful phrasing, Mr. Examiner. So, I'm going to, um, ask
4 you some questions, try to get a picture of what the maximum high end, or the
5 risk continuum is for Grip Road, uh, from truck traffic. What is the maximum
6 tonnage per year that could result from this mine operation? Not the average,
7 not, uh, what you plan to do, but what could you do per year in terms of
8 extraction from this mine, if approved with the conditions that the Staff
9 have proposed?

10 BARTON: Well, you'll have to divine, define maximum for me a little bit
11 because you, you've probably already done the math. But I think the, the
12 level of service, uh, the 30 trucks an hour, uh, which is 15 loads, we, you
13 know, I didn't long math it, you, you could say that, that could be the
14 maximum. But in realistic terms, it's probably not going to happen. Uh, and
15 if you want to go through the math and we can certainly do that. But I don't,
16 I don't have that math. I've to a calculator in front of me. But, but, again,
17 I, Mr. Ehrlichman, I'm just, help me understand exactly what you're asking
18 me? We, we've, the annual average is based on 46 trips, couple hundred
19 thousand ton a year, if you long math that, it actually is higher than that,
20 based on 32 ton loads, but it's, it's something of a mov-, a, a moving
21 target. Um, based on the demands that the market dictates.

22 EHRlichMAN: Is 200,000 tons per year a maximum that you could mine out of
23 that, um, project with the two employees that you mentioned?

24 BARTON: No.

25 EHRlichMAN: Okay. Thank you.

1 BARTON: Yep.

2 EHRLICHMAN: So, I, I believe you testified that a two-person operation could
3 load up to six, 6,000 tons per day, correct?

4 BARTON: I said one, yes, I did say one loader could, I thought I said
5 five, but it's possible to 6,000 ton with one..

6 EHRLICHMAN: Okay.

7 BARTON: Or bucket loader, yes.

8 EHRLICHMAN: Thank you. Well, by my calculator, we would get to 200,000 with
9 only 33 days, at that rate. And so my question is, without a ceiling, isn't
10 there a substantially greater number of trucks on average per year that could
11 service this mine, than the 46 per day that you've proposed?

12 BARTON: If you were, if you were tapping out at those higher numbers, but
13 realistically speaking, that's a, that's why we average. That's not going to
14 happen.

15 EHRLICHMAN: Can you explain why that's not going to happen?

16 BARTON: Well, let's, let's go back to your math, and I was trying to keep
17 up with you, how many, how many tons did you say, 6,000 based on my number..

18 EHRLICHMAN: Uh-huh.

19 BARTON: Total per day, help me understand your question?

20 EHRLICHMAN: Yeah. So, if we take 6,000, if a, if a two-person operation can
21 load 6,000 tons per days, and you have, in this application, described that
22 annually around 200,000 tons per day would be mined, or excuse me, 200,000
23 tons would be mined per year, if we divide 200,000 by 6,000, unless my
24 calculator was wrong, I'm at 33.

25

1 BARTON: But, so, you're saying we're going to do that in 33 days, is what
2 you're, is that, based on what, what the level of service and the 30 truck
3 trips or 15 loads an hour can do, is that...

4 EHRLICHMAN: No. I, I'm, I'm talking, without, without regard to the LOSC
5 limits, without regard to Grip Road limits, just purely in terms of what
6 those two operators can do on the site, they could load substantially more
7 than 200,000 tons per year, correct?

8 BARTON: They could, using that math. If, if it happened every day. But
9 that, in, in the real world, that's not how it works.

10 EHRLICHMAN: Okay.

11 BARTON: [Inaudible.]

12 EHRLICHMAN: But there's some, sorry, go ahead.

13 BARTON: No, I mean, that's, you're saying that, that using that and a 250
14 work day schedule, per year, that's a million and a half ton in one year,
15 based on what you just shared with us. So, I, I mean, that's not real in our,
16 in, in our world that we live in.

17 EHRLICHMAN: Okay. So, where do we get the 200,000 figure from? Where, can you
18 give us the background and the math on why you estimate that only 200,000
19 tons would be mined per year?

20 BARTON: Well, one, we didn't say only, we said approximately. On, based
21 on the annual averages, both by using trip calculations and what we perceive
22 and using that resource going forward.

23 EHRLICHMAN: So, is it the LOSC limit that gets us to the 200,000?

24 BARTON: No. I, not directly, I think indirectly. I think the LOS service
25 shows that we can operate that mine at approximately several, 200,000 ton a

1 year, meeting the cyclical demands of the market well below the top LOS
2 rating for that road complex.

3 EHRLICHMAN: Do you have a sense as to what the LOSC, uh, ceiling would amount
4 to, in terms of hundreds of thousands of tons per year from this mine? If
5 you were at the maximum allowed by LOS, without dropping below LOSC, how many
6 tons per year would you guesstimate, ballpark we're talking about?

7 BARTON: Well, the think the top trip number was in a 24-hour period, if I
8 recall correctly, was 720 trips. So, simple math, you'd take that, divide
9 that by two, turn it into a load, correct?

10 EHRLICHMAN: Correct.

11 BARTON: Let me get to my calculator. So, that's, that's, that's nearly
12 12,000 ton in a 24-hour period.

13 EHRLICHMAN: Okay. And how many, um, loaded trucks and how many empty trucks
14 would that be in that 24-hour period?

15 BARTON: Well, I, I, I, it's 720 trips and to equate that into loads,
16 assuming that that's how we're approaching this, I think I just answered
17 that, that's...

18 EHRLICHMAN: Okay.

19 BARTON: Yeah, yeah, it's 720, divided by 2 and I think I, I used
20 [inaudible] that, that's all I was...

21 EHRLICHMAN: Okay. So, that's, that's where we get the thirty-, uh, 360 loads
22 and so if we divide 360 loads by 24 hours, that would be 15 loads per hour
23 for 24 hours straight, right?

24 BARTON: Using that math, yes.

25

1 EHRlichman: Okay. I mean, we're just talking about the LOSC standard as, as a
2 ceiling on what you could do. And it sounds like it would be 15 loads per
3 hour for 24 hours, is that, do you agree with that?

4 BARTON: That's, to get to that math, yes, that's what it, is what it's
5 saying.

6 EHRlichman: Okay. And then 60 minutes an hour...

7 REEVES: [Inaudible.]

8 EHRlichman: Sorry, go ahead.

9 REEVES: Just for me to understand the point here, I, is the point that
10 that number that was just mathed out right there would be the number, the
11 maximum number without the level of service dropping from C to D, is that
12 what we were trying to determine right there?

13 EHRlichman: Y-, yes, Mr. Examiner. If I may explain the line of questioning
14 here. We are trying to get to a tangible real world ceiling on the number
15 trucks that might possibly be using Grip Road under this Proposal.

16 REEVES: Sure.

17 EHRlichman: We can't get there by the Applicant telling us a maximum number
18 of tons per year, that didn't work. So, now, we're working our way over to
19 okay, what would the theoretical ceiling be if you used the LOSC, which has
20 been discussed in the traffic reports. And they figured out that number and
21 that's the math we just went through.

22 REEVES: Sure.

23 EHRlichman: And that would be 360 loads, 360 empty per hour for 24 hours,
24 that would equate to, my math one truck every four minutes, if you were, if
25 they were going to operate at that level. I'm not asking if whether they

1 would or they will, but we're trying to get a ceiling under this proposal.
2 And it appears that that's the limiting parameter, um, that we can see, at
3 least. But I'll con-, I'll continue with some questions and maybe it will
4 clear up and the Applicant will have the opportunity to talk about what he's
5 actually proposing to do.

6 REEVES: Okay.

7 EHRLICHMAN: Thank you. Um, Mr. Barton, thank you for, um, accommodating me as
8 I go through that probably torturous exercise. But if the Hearing Examiner
9 were to impose limits on the number of trucks per day that are allowed, um,
10 not under and average, but under a specific number of trucks per day, let's
11 say he put the 46 days that's been talked about, you know, 23 empty, 23
12 loaded, in your view, per your company, is there a minimum amount of tonnage
13 per day that is necessary to make the operation of this mine economical? Is
14 there some point there where you would, you would say, oh, Mr. Hearing
15 Examiner, you've set that limit low, this doesn't pay for itself. Because, I
16 mean, as Mr. Lynn pointed out in his opening, you know, there would only be
17 two employees on the site and it sounds like the operational costs are
18 extraordinarily small. So I'm, I guess I'm asking, is there some level, in
19 terms of making this project pencil, where, where the number, a limit on the
20 number of trucks per day would be too low from the company's standpoint?

21 BARTON: Well, I think when we, we modeled this originally, and as you
22 know, uh, as we all do, this was quite a few years ago when we acquired this
23 piece of property. And, and, and the capital investment in this property was
24 quite large, as you can appreciate. So, one, we're way behind schedule in,
25 uh, from a return standpoint. So, it becomes a little bit difficult. But,

1 but, again, uh, without getting into the proprietary information, to answer
2 your question in general, our model of a couple hundred thousand ton a year
3 was based on kind of a minimum, uh, although it's averaged and that's what we
4 do industry-wide and company-wide in, in these type of settings for the, for
5 the return on, on that piece of ground, as well as the operation. I, I would
6 love to be able to tell you that I can control it to a 12 or a 1300 ton a day
7 deal, in, in the industry that we serve, serve, it's, it's not possible. The
8 market demands, demands, unless we're prohibited from exceeding that. But,
9 but, then, I would, to your point, say that's, Mr. Hearing Examiner, that's
10 not fair. So, so, I don't have any other way to tell you, other than if a
11 maximum, I don't want to speak to that because are we going to, could we do
12 more than 46 trips a day, yes, we can.

13 EHRlichman: Okay.

14 BARTON: Because to feed the marketplace. I don't know how to better
15 answer your question. Because...

16 EHRlichman: And I, Mr. Barton...

17 BARTON: Go ahead.

18 EHRlichman: Uh, sorry. I, I appreciate, I want to allow you time to, to
19 answer fully and explain your case, but I have specific questions and it's
20 really helpful if you could just listen to the question and then just get to
21 a quick answer if you can. And the question...

22 REEVES: Mr...

23 EHRlichman: Go ahead.

24

25

1 REEVES: Mr. Ehrlich, the, Ehrlichman, part of the problem is some of your
2 specific questions themselves have been quite long where I'm wondering where
3 the question is.

4 EHRLICHMAN: Uh-huh.

5 REEVES: So, I'll give Mr. Barton a little bit of leeway in the confusion..

6 EHRLICHMAN: Sure.

7 REEVES: Maybe in a quick answer after an one minute long question can be
8 a challenge, so...

9 EHRLICHMAN: Yeah.

10 REEVES: Maybe if you have a few very specific questions, I've been trying
11 to give you leeway to participate, but...

12 EHRLICHMAN: Thank you.

13 REEVES: We have a lot to get through, so...

14 EHRLICHMAN: Thank you.

15 REEVES: If you have a few more, let's go real quick, okay?

16 EHRLICHMAN: Well, Mr. Examiner, I shorten my questions and try to make it
17 easier for the Applicant to answer, I get your point. And I'm, and I
18 apologize. But I do have other questions to cover here. So I'll try to this
19 as efficiently as possible. And Mr. Barton, you could help, I think, if you
20 can zero in on...

21 REEVES: Keep going.

22 EHRLICHMAN: What I'm asking. So, so, thank you. I'm going to rephrase what I
23 heard you answer to that question. 200,000 tons per year, estimate, that your
24 company has provided the County, is the answer to my question of what's the
25 bottom line here, in terms of volume you need to achieve. Is that correct?

1 BARTON: The annual average that we have in our permit is the minimum that
2 we penciled for the return on our investment, if that helps you.

3 EHRLICHMAN: Yeah. It does. Thank you so much.

4 BARTON: Uh-huh.

5 EHRLICHMAN: So, I want to say that our clients are very pleased to see you
6 responding on the Grip Road, um, shoulder question. Um...

7 BARTON: Thank you. I've meet Mr. Swift [phonetic] and we've had several
8 conversations about this piece of property.

9 EHRLICHMAN: Yeah.

10 BARTON: Way a long time ago and I think you know that, so...

11 EHRLICHMAN: Thank you. So, um, I am curious, though, given the positions the
12 Applicant has taken, why you agreed to Prairie Road widening, widening the
13 internal road to meet private road standards, um, and why you would agree to
14 widen Grip Road when, I thought you said that this operation was typical of
15 other mines that you operate in Skagit County and they operate fine on, on
16 narrow, rural roads with no shoulder. So, why, what's different here?

17 BARTON: I don't, I don't, I'm not going to say that anything is
18 different, I think that this has been on, going on for a long time, as you
19 can appreciate. And we've been in-step with the County and, and to the
20 County's credit and our credit, we have been listening. And by incorporating
21 this auto-turn, it allowed us to understand that a little bit better from an
22 engineering perspective. So, long, long time, long answer to your question,
23 that's why after using the auto-turn analysis, is why we're, we're stepping
24 forward to say we will do this.

25 EHRLICHMAN: Thank you.

1 BARTON: Uh-huh.

2 EHRLICHMAN: Um, Mr. D'Avignon, can you put up Exhibit S2, if you have it?

3 REEVES: Sorry, one sec.

4 D'AVIGNON: Yes. Yeah, I'll do that.

5 EHRLICHMAN: And, Mr. Barton, um, the comprehensive plan has specific goals
6 and policies related to mining, uh, within the mineral resource overlay, and
7 minimizing, uh, ensuring safety in minimizing the disturbances associated
8 with truck traffic is one of the major goals that guides the County's
9 decision making. In a policy underneath that goal, 4D5.3, which you see there
10 on the screen, if you read down to the second sentence, it says, existing
11 roads and bridges shall be improved as needed as each new extraction
12 operation is developed. Cost-sharing for the improvement of roads and bridges
13 shall be negotiated between the permitting authorities and the Applicant. Did
14 any such negotiations take place with the County concerning Grip Road?

15 BARTON: Well, I think we've been in-step, as far as negotiations
16 directly, no. Not at this point. But, we've been in-step with, with the
17 County and the Public Works Department as we've studied this route. The S-
18 curves and the safety improvements along the way. So I, I, I guess, to your
19 point, we have been communicating and, uh, discussing the improvements.

20 EHRLICHMAN: Well...

21 BARTON: With the exception of Grip Road, uh, in detail.

22 EHRLICHMAN: Let me ask you whether you would be willing to enter into such
23 negotiations with the County on Grip Road, but let me ask it by first
24 mentioning Exhibit 17, which your project engineer's letter and you were
25 copied on the letter, dated October 8th, 2020. In which the Applicant agreed

1 to widen certain roadway from the enteral roadway, quote to conform to the
2 private road standard. Would you be willing to enter into negotiations with
3 the County on cost sharing to widen Grip Road in order to bring it up to
4 County standards for the six, six foot shoulder width?

5 BARTON: Uh, I think we're willing to use..

6 LYNN: Let me, excuse me, Brad, this is Bill, let me, let me interrupt
7 here. I'm going to object to the question. I, I mean, we're talking about a
8 letter that's not before us. We're talking, I thought he just said private
9 road standard and then now we're talking about improving of public standards
10 and all this is in the context of a County plan policy that says make
11 improvements as needed when there's been no showing that anything is needed
12 as a result of this project. So, I, I...

13 REEVES: Yeah. I'm going to, I'm going to sustain the objection. I feel
14 like I, I'm not quite sure how this is within the scope of where we were. So,
15 if you want to move on, Mr. Ehrlichman.

16 EHRLICHMAN: Yes, Mr. Examiner. Thank you. Uh, let me ask the question this
17 way, you said that you, you are now willing to widen Grip Road in at least
18 two locations, correct?

19 BARTON: Per our, per our auto-turn analysis, yes.

20 EHRLICHMAN: And you told me just now that you have not had negotiations with
21 the County over Grip Road improvements, correct?

22 BARTON: We have not talked to them about the details of this, which they
23 ultimately would have to approve, uh, as they did for Prairie Road.

24 EHRLICHMAN: My question is, whether you would be willing to enter into those
25 negotiations?

1 BARTON: And I, I just answered your question.

2 REEVES: Yeah. That, yeah. Mr. Ehrlichman, the, I sustained the objection
3 that we aren't going down the rabbit hole on this one. If you have another
4 line of reasoning you want to question, fine. But I, I think we're well
5 beyond the scope of, uh, cross here, uh, in terms of what has been asked of
6 this witness and, you know, we got, the amount of leeway I'm granting is, is
7 getting, uh, short, at this point.

8 EHRLICHMAN: Let me move on, Mr. Examiner, I've got a couple more questions,
9 um, on other topics here. Um, has the Applicant agreed to the MDNS condition
10 number 2 that describes, uh, hours of operation from 7:00 to 5:00 Monday
11 through Friday?

12 REEVES: Well, hold on. Uh, did you just ask if the Applicant agreed to an
13 MDNS condition? They don't have a choice. They, they didn't appeal the MDNS,
14 so I will answer, the Applicant has not appealed the MDNS, correct, Mr.
15 Barton?

16 BARTON: Correct.

17 REEVES: Okay. So the answer is they don't get a say in that, at this
18 point. So, let's move on from that line of questioning.

19 EHRLICHMAN: Will the Applicant agree to that condition as part of a Special
20 Use Permit?

21 LYNN: I'm going to object.

22 REEVES: No need to answer...

23 LYNN: All of the conditions of the MDNS are binding on all of us,
24 except to the extent...

25 REEVES: Thank you, Mr. Lynn.

1 LYNN: That they appeal and they weren't appealed.

2 EHRLICHMAN: That's the answer I wanted to hear, thank you.

3 REEVES: Mr. Ehrlichman, sorry, to ahead. Was there another question?

4 EHRLICHMAN: That was the answer I was looking for, thank you.

5 REEVES: Okay. We, we don't need to ask questions that are will the law be
6 upheld. I, I think we didn't have to check common sense when we started our
7 hearing today. Let's, let's have specific questions and get through this.

8 EHRLICHMAN: Mr. Barton, the MDNS condition also talks about allowing you to
9 exceed those thresholds for temporary increases, provided you first obtain
10 County approval, correct?

11 BARTON: Yes.

12 EHRLICHMAN: What are the parameters four County review of that request, that
13 you know of?

14 BARTON: Well, I can, I can speak to what we do presently, at a different
15 operation, it's communication between the County Staff, whether it's Public
16 Works and in part Planning when we have, uh, a need to go outside those
17 permitted hours. And they, which has worked good for the last, since 2008 at
18 Bellville and, and, uh, we've never had an issue. So, that, that's how that
19 works. Um, in the even there, again, is a need to go outside those
20 parameters.

21 EHRLICHMAN: Would the County be within its rights and authority to require
22 additional mitigation if you exceeded those numbers that are in the
23 condition?

24 LYNN: I'm going to object to the question.

25

1 REEVES: I'm going to sustain because this is, this is built into the
2 MDNS, it's going to be built into the SUP, so just other questions, Mr.
3 Ehrlichman, please.

4 EHRLICHMAN: Mr. Examiner, if I may...

5 REEVES: Well, you're asking him what, what authority the County has. I,
6 if there's an identified County witness, that would who to ask, not...

7 EHRLICHMAN: No, no...

8 REEVES: Mr. Barton.

9 EHRLICHMAN: With respect, actually, I asked if he knew of any parameters that
10 the County would use in that review.

11 REEVES: I sustained the objection. I, I, we're going to move on. I, you
12 know, to respond, don't, don't believe that I need to hear that answered to
13 the extent that the County, whether he knows something that the County knows,
14 I just don't find useful. I remind you, I'm the one that is going to have
15 make the decision, so I'm telling you, I don't understand where this question
16 is going so an answer is not going to helpful to me. So, let's move on, Mr.
17 Ehrlichman.

18 EHRLICHMAN: And, and actually, with all due respect, Mr. Examiner, it would
19 helpful to us, in the future, if they did request that increase, and the
20 County s-, granted the increase with a condition, an additional condition and
21 the Applicant appealed that decision by the County. What we're trying to
22 ascertain right now is what is the Applicant's understanding of that SEPA
23 condition?

24 REEVES: Okay. Thank you. We're going to move on, Mr. Ehrlichman.

25

1 EHRlichman: Well, let me look at my notes here for a moment, Mr. Examiner.

2 Mr. Barton, would your, would the Applicant agree to, not to operate trucks,
3 uh, during the time that school buses are operating on Grip Road?

4 BARTON: Uh, no. I think we can soundly, uh, show, through our studies and
5 our operation forward and looking back in history there hasn't been any
6 issues. We're well aware of the buses, our drivers are aware and we've
7 cohabited with them in the County for a lot of years.

8 EHRlichman: Yeah. And, and no disrespect at all meant, uh, at, to your
9 professional truck drivers who do do an excellent job and your track record
10 speaks to that. I just would like to know how far the Applicant is willing to
11 go to ensure that the buses, uh, don't have truck traffic at the time that
12 they're operating. And your, but your answer is no, you would not, uh, agree
13 to a condition like that voluntarily?

14 BARTON: Correct. There's only three buses that service that area and
15 they, and, and we all co-habitat on these roads, log trucks, our trucks,
16 buses and, and such, so, uh...

17 EHRlichman: And why was the auto-turn analysis not done for Grip Road prior
18 to this hearing?

19 BARTON: Well, it was, prior to the hearing to ask, answer your question.
20 I, I think listening, uh, and working internally, as well as understanding
21 the road even better through an engineered analysis led us to that
22 conclusion.

23 EHRlichman: Mr...

24 BARTON: [Inaudible] in this case.

25

1 EHRlichman: Mr. D'Avignon, would you please up Exhibit 18 on the page that I
2 mentioned?

3 REEVES: And can you give me a sense of where we're at, Mr. Ehrlichman, in
4 terms of how many more questions? This has already gone about twice as long
5 as our Appellant, Mr. Loring, so I just want to get a sense?

6 D'AVIGNON: Where did you need this to be?

7 EHRlichman: Down at, uh, page 21, I believe it is. Uh, Mr. Examiner, yes, we
8 are, this is the last, uh, piece here.

9 REEVES: Okay.

10 EHRlichman: At the bottom of page 21 of your Traffic Impact Analysis dated
11 September 10th, 2020, this is Exhibit 18, they noted that potential
12 encroachment of the dump trucks pup combination on the shoulder and center
13 line is a safety concern. Which can be noted that the roadways are not
14 consistent with Skagit County road standards for shoulder width. This is a
15 current issue for County roads, which needs to be addressed by the County.

16 REEVES: Is, was there a question?

17 EHRlichman: That, I'm, I can't win, Mr. Lynn objected to the last question
18 because we didn't have the document. Yes, there is a question. So, the
19 question is, when you knew in Octo-, excuse me, September 2020, that Grip
20 Road was one of those roads that had a crossover potential and was without
21 shoulders, why was the auto-turn analysis not done for Grip Road?

22 BARTON: Well, I, I'm not quite following you, Mr. Ehrlichman, but I can
23 tell you that this is the first time in a long time that we've had, uh, uh,
24 an audience to speak to in detail about what we're willing to do about what's
25 already been planned out. So, so, we have looked at the auto-turn analysis

1 and with some widening, per that analysis, to help get the trucks mitigating
2 those two cor-, or corners, I, I don't know how better to answer that. Why we
3 didn't do it sooner or later or, I mean, this is, we haven't had a hearing,
4 Bill would have to answer, could answer the question as to when, but this is
5 a good platform to say we are willing to do this.

6 EHRlichman: Um, Mr. Lynn perhaps could answer this question, but Mr.
7 Examiner, we would ask that the auto-turn, auto-curve analysis for Grip Road
8 be provided in the record now before the close of the hearing. That concludes
9 my questioning, thank you for your patience. Mr. Barton, you did a great job.
10 And we're done. Thank you.

11 REEVES: Thank you. Uh, I guess, so there was a request just now that that
12 auto-turn analysis be included, Mr. Lynn, your thoughts on that?

13 LYNN: Um, make sure I'm not muted. Yeah, Mr. Semrau will be testifying,
14 he is the civil engineer, he completed it, I'd rather have it come in through
15 his testimony, which will be shortly. Well, not shortly, but...

16 REEVES: Sorry, so, the plan is that that would end up being included?

17 LYNN: Yes.

18 REEVES: But you have a different witness speaking to it?

19 LYNN: Yes.

20 LORING: Mr. Examiner, we're going to object to the introduction of any
21 new evidence at this point. I mean, June, June 13th was the deadline for, uh,
22 exchanging and notifying of Exhibits. We've, we've had some leeway, uh, Mr.
23 Lynn has brought three new exhibits, uh, today, in fact, but an entire new
24 study of part of the road through a witness, uh, when this could have been
25 provided months ago? This is delayed to say the least.

1 REEVES: Hold on. The challenge I have is that under, you know, SEPA
2 itself are part of any, uh, under the case law in SEPA, you know, there's the
3 potential to rectify, you know, inadequacies, as it were, in terms of
4 information through, through any SEPA Appeal itself, unless your
5 understanding of the SEPA case law is different than mine. Uh..

6 LORING: It is.

7 REEVES: To me, this, your understanding is different than mine, Mr.
8 Loring?

9 LORING: Well, my understanding is that the County cannot have reviewed
10 for its threshold determination information that didn't exist at the time
11 that the County issued a threshold determination. And so, for the public to
12 have an opportunity to review and provide comment and have that considered as
13 part of the threshold determination process, prior to determining whether
14 it's significant and requires an EIS, uh, is, is certainly well out of order,
15 at this stage.

16 REEVES: Uh, they're, they're different things, I, that I will grant. But,
17 uh, how about this, we, to me, it's a premature issue because, again, Mr.,
18 uh, Lynn has indicated that he has another witness, that would be the witness
19 where this would come up. So, let's, let's table this for now. And, uh, see
20 where we end up. I do understand Mr. Ehrlichman made a request. We're going
21 to just come back to this with a witness that is the one that prepared the
22 thing that everybody wants to argue about. But, go ahead, Mr. Ehrlichman,
23 very quickly.

24 EHRLIHCAN: Thank you, Mr. Examiner. The Applicant requirements for a Special
25 Use Permit require that the Applicant provide, in the record, a review by

1 County Staff of their traffic analysis. And we do not have either the
2 Applicant's auto-curve analysis or the County review of it and this isn't a
3 SEPA issue, this is a Permit Process issue.

4 REEVES: I...

5 EHRLICHMAN: I don't see how we go forward with a Permit Review where the most
6 essential, from our standpoint, the most essential piece of the Gr-, of the
7 Grip Road Safety Analysis is missing.

8 REEVES: Okay. Thank you. Mr. Lynn just indicated we'll address this with
9 a different witness. Uh, so, I make, am making a ruling, we'll deal with this
10 later. And if I'm wrong, I'm wrong. So, thank you. Let's move on.

11 LORING: Thank you.

12 REEVES: Uh, so, redirect for this witness, Mr. Lynn?

13 LYNN: Uh, very quickly. Mr. Barton, uh, Mr. Ehrlichman asked about
14 negotiation with the County, has the County ever offered to participate
15 financially in any of the improvements they've required you to pay for 100%?

16 BARTON: No.

17 LYNN: Okay. Mr. Ehrlichman asked you a number of questions about
18 hypotheticals where you could take out a lot more material, uh, over the case
19 of a year, uh, is it practical or possible to do that with a condition, un-
20 appealed, that says you have to average no more than 46 per day?

21 BARTON: No.

22 LYNN: Okay. And then, finally, um, as to reclamation, um, I think Mr.
23 Loring asked you whether or not the, uh, whether or not you are going to
24 rectify or mitigate the impact of having dug a hole, uh, if you were to have
25 proposed to fill this site back up to its pre-existing condition prior to

1 planting trees, uh, would that result in more traffic over a longer period of
2 time and delay the mitigation of, uh, the, or, or retain the property longer
3 if cleared and un-treed condition?

4 BARTON: In part, well, in parts from an answer standpoint, in some sites,
5 Bill, as you know, uh, the round robin comes in, we haven't, or effect and
6 where we're backhauling from specific jobs, uh, from the market. The project
7 that's got overburdened that it can't contain. But in this particular
8 situation, we have not applied for that, that's permitted by DNR, as you
9 know, as well as approved in, in certain Counties what, what, as well, so,
10 um..

11 LYNN: So, that's, that's not being proposed here. And if it was
12 proposed here, it would actually extend the level of impacts over a longer
13 period of time?

14 BARTON: Yes, it would.

15 LYNN: Okay. That's all I have, thank you.

16 REEVES: Okay. Uh, I'll give you one brief opportunity, Mr. Loring, if you
17 had anything, uh, final for this witness?

18 LORING: No, I've got no recross, thank you, Mr. Examiner.

19 REEVES: Great. Thank you. So that, then, concludes our testimony for Mr.
20 Barton. Thank you. Um, timing-wise, uh, Mr. Lynn, who, who did you intend on
21 calling as your next witness? And I just want to check with our Attorney's,
22 uh, in terms of if there's any issues we should be aware of and needing to
23 take folks out of order, anything to that, I think now would be a good time
24 to check in on these things. But, Mr. Lynn, I'll start with you?

25

1 LYNN: Uh, we have two biologists, uh, that were going to testify. One
2 of them, about the haul road, our reporter is not available until Friday,
3 she's on a trip. Uh, the other, Oscar Graham [phonetic], is present and he
4 would be our next witness, followed by the geologist and then followed by the
5 traffic engineer.

6 REEVES: Okay. Sorry, so Oscar Graham is your next intended witness,
7 right?

8 LYNN: Yes.

9 REEVES: Okay. And you, you mentioned someone on Friday, but other than
10 that, you don't have any issues about needing folks to go out of order or
11 anything to that extent, is that right, Mr. Lynn?

12 LYNN: No. Uh, well, I'm sorry, uh, we have one other witness who is not
13 going to be available until Friday, but that doesn't, um, it's, she's more of
14 a rebuttal witness and it's Kristen Wallace [phonetic], who's the noise
15 expert.

16 REEVES: Okay. And then, uh, let me check with, uh, I was going to check
17 with Mr. Loring, but Mr. Ehrlichman has used the raised hand feature. Mr.
18 Ehrlichman?

19 EHRLICHMAN: Mr. Examiner, you wanted me to remind you today of my comment
20 Friday about our witness.

21 REEVES: And remind us what that was?

22 EHRLICHMAN: Oh, uh, Neil McCloud is, is available, uh, today and Friday, but
23 is not available next week, as it turns out.

24

25

1 REEVES: Okay. So, I would suggest, if anything, let's look at that on
2 Friday and see where we, we end up with Mr. Lynn, but thank you for the
3 reminder and remind us on Friday if you could, as we're tracking, so...
4 EHRLICHMAN: Will do.
5 REEVES: Uh, next I'll go to Mr. Loring in terms of just timing, where
6 we're at?
7 LORING: Uh, I, I don't think I have any comments, at this point, Mr.
8 Examiner. To the extent I've got any availability issues there are now and,
9 and not later, so as we move later, uh, I'll have more availability of
10 witnesses and things should line up well.
11 REEVES: Okay. We're good is what you're saying? Okay. Uh, and for the
12 County, uh, Mr. D'Avignon?
13 D'AVIGNON: I have the same comment as Mr. Loring, so I'm good.
14 REEVES: Okay. Good. All right. Um, and then folks, do, would folks like
15 to take our lunchbreak now that it's due, uh...
16 PETERSON: Nichole Peterson [phonetic].
17 REEVES: I think probably rather than start...
18 AUTOMATED: Is now exiting.
19 REEVES: With our next witness, that would probably make the most sense.
20 Um, is 45 minutes too long, the right amount of time? My plan would be on
21 short break later in the day for the restroom and that would be it, but, but,
22 is 45 minutes okay for folks?
23 D'AVIGNON: Yes.
24 LORING: Sounds good to me.
25

1 REEVES: Excellent. Okay. We'll come back at 12:45, uh, with, I believe,
2 Oscar Graham, or Mr. Graham, not Oscar Graham. I'm not seeing the first name,
3 but we'll figure it out when we get back, I think is the plan. So thank you,
4 everybody, we'll be back at 12:45.

5 REEVES: Mr. Lynn is ready. Mr. Loring, Mr. D'Avignon. Mr. Ehrlichman. So,
6 in the room, Mona Kellogg, Mona Kellogg has her hand raised. Ms. Kellogg?

7 KELLOGG: I just wanted to say that, um, someone else, did they come in?

8 BLACK: They're not here right now.

9 KELLOGG: Came in and said that they had signed up on the sheet to speak on
10 Friday and then, um, were just here, apparently they stepped back out, but I
11 didn't know what to do about that. Another, um...

12 REEVES: Sorry, and they were signed up Friday, then they came to the room
13 at 9:00 and then they didn't testify at 9:00 when they had the change?

14 BLACK: He was not here at 9:00.

15 KELLOGG: No, he was not here at 9:00.

16 REEVES: I mean, process, I'll, I'll give him a real strict three minutes,
17 but we, this is not what I'm going to continue to keep doing this. There is a
18 process we need to follow and I don't want to get too far off the rails, so.

19 KELLOGG: Perfect. I'll let him know, um, well...

20 REEVES: Wait, are they there now? I mean, I, do we know where this person
21 is?

22 KELLOGG: No, we don't.

23 REEVES: I, I don't want to start with our next witness and then have to
24 stop because this person that wants to testify is, is attempting to do at
25 sort of...

1 KELLOGG: Correct.

2 MALE 1: Do you know a name?

3 MALE 2: David.

4 FEMALE 2: Yeah. Did he give you a name?

5 MALE 2: David Abra [phonetic].

6 FEMALE 2: She's going to look, oh, oh, David [inaudible] Garrett

7 [phonetic].

8 MALE 2: Garrett.

9 MALE 1: Oh, yes. He was here. He was here.

10 FEMALE 2: They, they were out there walking around with [inaudible] sorry.

11 REEVES: So, they're not there at the moment?

12 KELLOGG: No, they are not.

13 BLACK: They just, they're going to check outside.

14 FEMALE 2: I think, I think that's Cathy [phonetic], she's [inaudible].

15 REEVES: Okay. I, I think to allow us to move forward, what I'll do is, if

16 you can verify that person, who they are on the list, uh, please ask, I'll

17 allow them to submit written comments in lieu of public testimony. Because I,

18 I don't know why the window was, was, you know, why they weren't there at

19 9:00 and what happened, but we need to move forward. But I will allow written

20 comment in lieu of public testimony. Please let them know that. Otherwise,

21 uh, right now, we're going to move forward with our next, uh, witness called

22 by, uh, Mr. Lynn.

23 KELLOGG: Thanks.

24 REEVES: Okay. So, Mr. Lynn, you're ready with your next witness?

25 LYNN: Oscar Graham.

1 REEVES: Okay.

2 LYNN: He was on a minute ago.

3 GRAHAM: I can't see him.

4 FEMALE 4: Ask if he can hear you.

5 GRAHAM: Can you hear me?

6 REEVES: Yeah. Yeah.

7 GRAHAM: Yes.

8 REEVES: I'm going to swear you in. Do you swear or affirm to tell the
9 truth in the testimony you give here today?

10 GRAHAM: Yes, I do.

11 REEVES: Okay. And I just want to verify, sorry, recording at this point,
12 Mona?

13 GRAHAM: Oscar Graham, that's G-r-a-h-a-m.

14 REEVES: Thank you. Sorry, one sec. I just want to verify that we're
15 recording?

16 KELLOGG: Yes, we are.

17 REEVES: That can be verified. Thank you very much. Okay. Go ahead, Mr.
18 Graham.

19 GRAHAM: Okay.

20 REEVES: Mr. Lynn.

21 LYNN: Uh, Mr. Graham, can you hear me all right? This is Bill Lynn.

22 GRAHAM: Yes, Bill, I can hear you fine.

23 LYNN: Okay. And, uh, what's your profession, Mr. Graham?

24

25

1 GRAHAM: I am currently retired. But I have worked most of my career, if
2 you can call it that, as an Aquatic Resource Manager and a, uh, Land Use
3 Planner.
4 LYNN: Uh, uh, all right. And your, and your CV is in the record, uh, as
5 Exhibit B92, you provided that to us?
6 GRAHAM: Yes.
7 LYNN: Okay. And you work in tandem with, uh, Pat Bunting [phonetic], is
8 that correct?
9 GRAHAM: That is correct.
10 LYNN: Okay. And, uh, s-, is she there present with you today?
11 PETERSON: Nichole Peterson...
12 GRAHAM: She is not in the office...
13 AUTOMATED: Is now joining.
14 GRAHAM: At this moment. But she will be shortly, yes.
15 LYNN: Okay. And you, and you worked on this matter as a team?
16 GRAHAM: Yes, we did.
17 LYNN: Okay. Um, I'm going to, uh, go through a series of reports that
18 you prepared. Uh, the first one being the determination of where the ordinary
19 high water mark is, um, prior to doing field work on that, uh, report, did
20 you conduct a paper analysis or discuss the issues with anyone else on
21 Miles's team?
22 GRAHAM: Yes. Uh, I met with, uh, Dan Cox [phonetic] and John Semrau
23 [phonetic] on site. Uh, and, uh, we walked the, uh, walked the wetland area,
24 uh, out to the, uh, active channel of the Samish River. And at that time, I
25

1 flagged the ordinary high water mark, uh, which was the associated wetland
2 edge.

3 LYNN: Okay. So, let, let's talk about that. So, first of all, your, I'm
4 getting some echo, is, is, are other people getting echo? I see, Mr...

5 REEVES: I am. I don't know if there are...

6 LORING: Yes.

7 REEVES: Two devices on in the same room? Mr. Graham...

8 GRAHAM: Yeah.

9 REEVES: Is there someone in the room with you is also logged in?

10 LYNN: Did, did you hear that, Oscar?

11 GRAHAM: No, I didn't.

12 LYNN: Is, is there someone else logged in or are you logged in on two
13 devices, a phone and a computer?

14 GRAHAM: No, we are not. It's...

15 LYNN: Okay.

16 GRAHAM: A, a single device my desktop computer.

17 LYNN: Okay. Well, I'll, I'll proceed, so is the report that you
18 prepared determining the ordinary high water mark, uh, dated May 15th, 2015?
19 It's, it's been identified, uh, here as Exhibit 4 on the County's Record, so
20 C4?

21 GRAHAM: The document I have in front of me is dated May 18th, 2015 and our
22 site work that day was, uh, the, the site work itself was done on March 25th,
23 2015.

24

25

1 LYNN: Okay. Uh, and so you indicated that you flagged the ordinary high
2 water mark, could you describe generally the topography in the area where the
3 wetlands and creek are in relation to the mine site itself?

4 GRAHAM: Yes. Uh, the active channel of the Samish River is located
5 between 75 and 250 plus feet from the tow of slope, that tow of slope was,
6 uh, uh, incidental to the ordinary high water mark and the associated wetland
7 edge. The, uh, slope itself, uh, is, uh, fairly steep slope, I believe it,
8 uh, it varies between 30 and maybe 50, uh, uh, degrees. And, uh, the, uh,
9 required buffer that we arrived at was 200 feet from the ordinary high water
10 mark or wetland edge.

11 LYNN: Okay. And so, you were c-, charged with looking to determine what
12 the ordinary high water mark was and you've indicated where the, where the
13 creek is at, so between the creek and the tow of the slope, uh, what, what,
14 what would one find?

15 GRAHAM: Between the active channel of the Samish River and the tow of
16 slope, you would find a mix of vegetation communities dominated by, uh, what
17 is called hydrophilic vegetation, which is, uh, wetland vegetation, uh,
18 vegetation that typically, uh, occurs in wetland environments. Some of which
19 is, uh, called obligate vegetation, such as Swoosh Edge and Skunk Cabbage,
20 which occurs in wetlands, uh, about 99% of the time.

21 LYNN: Okay. And so, the, you elected to, uh, designate the ordinary
22 high water mark, uh, at the tow of the slope. Could you have made a judgement
23 that was less conservative than that? And justified it being, uh, in
24 characterizing it as the ordinary high water?

25

1 GRAHAM: Well, I, I would have felt uncomfortable doing that, uh, a person
2 could have, uh, designated the ordinary high water mark at the top of bank of
3 the Samish River. But I don't believe that that would have been an accurate
4 designation. I worked for a number of years as a shoreline planner, uh, for
5 Skagit County. And, uh, one of the, uh, one of my main duties as Shoreline
6 Administrator was establishing the ordinary high water mark relative to, uh,
7 development proposals and so I'm very comfortable and, I think, fairly
8 knowledgeable on how the ordinary high water mark is identified. So, it was
9 an important, uh, point of reference to me and to, uh, Patricia [phonetic].
10 And, um, uh, it's really the primary reference point in establishing setbacks
11 for fish and wildlife, uh, habitat conservation areas, which is an important
12 part of the review of this project.

13 LYNN: Okay. So that was in May of 2015, what was your next work
14 following that?

15 GRAHAM: My following work, uh, was the preparation of a fish and wildlife
16 site assessment. And I, I guess I would like to just point out that this was
17 conducted, uh, preliminarily as the Fish and Wildlife Site Assessment, under,
18 uh, that section of the County's Critical Areas Ordinance. So, I believe that
19 section is, uh, uh, Section 520, which addresses fish and wildlife habitat
20 conservation areas, which includes waters of the state, such as the Samish
21 River, which is designated as a shoreline of the state. And so that was our
22 next, uh, our next work on this project. We actually visited the site twice,
23 uh, once in March and then a follow-up visit in, uh, July, uh, of the same
24 year, which was 2015.

25 LYNN: And that resulted in your report dated August 20th, 2015?

1 GRAHAM: That's correct.

2 LYNN: Uh, which is, uh, County Exhibit 5. Uh, and did, did you go
3 through the analysis again about where the ordinary high water was and
4 include that discussion and the citations for that?

5 GRAHAM: Since that is the primary point of reference for this analysis,
6 we did, we did go through that, uh, discussion again, in the body of that
7 report.

8 LYNN: And did you also discuss wetlands that were in the area?

9 GRAHAM: We did. Although we looked at this, uh, initially as a, uh, a
10 Fish and Wildlife project, a project associated with the river itself, when
11 we, uh, looked at the site, we recognized immediately that there was a
12 wetland area that laid between the active channel of the river and the tow of
13 slope. And so, uh, we looked closely at the wetland as well.

14 LYNN: Okay. When you say closely, did you dig test pits?

15 GRAHAM: We did not dig test pits. And we did not believe, and do not
16 believe that, uh, the excavation of test pits was necessary based on the
17 presence of hydrology at the soil surface, based on the types of soil that
18 we, uh, uh, had reviewed under the soil survey. And, uh, based on the
19 vegetation communities, both within the wetland and on the adjacent slope,
20 uh, landward of the wetland.

21 LYNN: Okay. Um, did you categorize the wetlands that you discovered?

22 GRAHAM: We did.

23 LYNN: And, and where would the Hearing Examiner find an analysis of the
24 categories into which these wetlands were placed by you?

25

1 GRAHAM: That would be in the, uh, in Exhibit 5, the August 20th, 2015
2 report. And that would be on page, uh, six of that, uh, of that report.

3 LYNN: Okay. Did you, uh, formally delineate the edges of all of the
4 wetlands between the top of the slope and the river?

5 GRAHAM: No, we didn't. We delineated the ordinary high water mark, which
6 we determined to be the associated wetland edge. We saw no, uh, reason to
7 identify any upland areas that were waterward of the ordinary high water
8 mark.

9 LYNN: So, was it your conclusion that there was no possibility that any
10 wetland could be located up the slope?

11 GRAHAM: No. Uh, the upland slope, as we've described it, is, uh, um, is
12 landward of any wetland indicators.

13 LYNN: Okay. So, uh, was, when you say wetland indicators, you've
14 mentioned plants and soils. Did you look at both of those in concluding that
15 the wetlands could be, uh, be landward of the ordinary high water that you
16 had determined?

17 GRAHAM: Yes. Uh, just to be clear, we did not dig test pits in either the
18 wetland area or the upward slope. We relied on the Skagit, uh, County soil
19 survey to make the determination on the soils and the, uh, soils on that
20 slope were determined to be [inaudible] excuse me, I think a gravelly loam
21 and those are upland soils that are not determined under the local, uh,
22 hydric soil survey to be hydric in nature. We also observed the vegetation to
23 be, uh, to include, uh, fac-, uh, facultative upland species such as vine
24 maple and, uh, sword fern. We also, uh, made the observation that there was
25 no hydrology indicator, uh, on the soil surface or near the soil surface.

1 And, uh, in the wetland itself, all three indicators were very strongly
2 indicated, very distinctly indicated.

3 LYNN: Just, uh, strongly indicating an upland and not a wetland
4 community?

5 GRAHAM: Well, uh, on the slope, no indicators were present indicating
6 that it is an upland. Waterward of the slope, that is to say, waterward, uh,
7 towards the active channel of the river, all of the indicators were strongly
8 or distinctly indicated.

9 LYNN: Okay.

10 GRAHAM: And that line of transition was then, the ordinary high water
11 mark or wetland edge.

12 LYNN: So, you've described the steep slope that extends, uh, westward from
13 the ordinary high water mark up to the mine site, is the mine activity
14 proposed on the other side of the top of that ridge?

15 GRAHAM: I believe, largely, it is. There may be one portion that comes
16 fairly close to the top of the ridge, but, uh, yes, it's, uh, the mine site
17 is, uh, across that ridge.

18 LYNN: And, so do you have Exhibit 5, the, uh, the Fish and Wildlife
19 Assessment handy?

20 GRAHAM: I do.

21 LYNN: Um, I'd like to talk about the intensity of the land use, uh,
22 which, uh, testimony had already established is indicative of the type
23 buffer, the extent of buffer required. Could you just tell the Hearing
24 Examiner a little bit about intensity analysis, generally? What's, what's it,
25 what's the purpose of going through that exercise?

1 GRAHAM: Under the County Critical Area Ordinance, um, there is an
2 optional buffer, uh, process where you can look at the wetland rating and
3 look at the proposed intensity or impact of the use and determine what that
4 optional buffer should be, according to code. And so, uh, and so, we did
5 that. Uh, I, I mention all of this, uh, on page 7 of our, uh, Fish and
6 Wildlife Site Assessment.

7 LYNN: And, and you s-...

8 GRAHAM: I describe the rationale for, uh, coming to the conclusions that
9 we came to.

10 LYNN: And what were, what was that conclusion?

11 GRAHAM: Well, the conclusion was, and, and we make a, a comment relative
12 to the potential for it being a high intensity land use. We, uh, recognize
13 that, at face, it appears to be a high intensity land use. But we established
14 a number of items which are bulleted on page 7, uh, which led us to believe
15 that is not a high intensity land use, but a moderate, uh, intensity land
16 use. And we came to that conclusion because, uh, there are no structural
17 developments associated with the Grip Road project. There is no attempt to
18 mine the aquafer or the water table itself. There's no crusher, there's no
19 asphalt batch plant, there's no washer, there's no screening. And so, uh, in
20 short, um, we determined that those were differences, uh, that made a
21 difference. We worked on other, uh, pits, including the Bellville Pit, that
22 includes all of those components that I just mentioned, and, uh, I would
23 characterize that as a, as a high intensity land use.

24 LYNN: And, uh, so your conclusion here was that this was a medium or
25 moderate level, uh, did that County accept that, initially?

1 GRAHAM: Yes, the County did accept that.

2 LYNN: Okay. And then, at some point, I think, Mr. Barton testified that
3 the County issued a, uh, Conversion Permit for the aging activity, do you
4 know about that and do you what that reflected?

5 GRAHAM: I have not reviewed that, uh, forest practice conversion, but I
6 believe that that, uh, uh, that our Fish and Wildlife Site Assessment was
7 used to support that Application. And, and was accepted by the Department of
8 Natural Resources.

9 LYNN: Okay. Does the fact that this, uh, proposed use is, essentially,
10 temporary and the, the site gets reclaimed with a forest practice use, uh,
11 influence your analysis?

12 GRAHAM: It does. It plays into the idea or concept that this is a
13 moderate, uh, land use intensity.

14 LYNN: And, and..

15 GRAHAM: Go ahead.

16 LYNN: No, no, you go ahead?

17 GRAHAM: All right. I, I include that on, uh, the bottom of page 7, under
18 the final bulleted item, which provides the rationale for our determination
19 that is a moderate, uh, intensity land use.

20 LYNN: And..

21 GRAHAM: Maybe...

22 LYNN: Go ahead.

23 GRAHAM: Maybe it's worth mentioning that the language has changed a
24 little bit in the code itself. When we prepared our report back in 2015, the
25 term was, uh, land use intensity and that has since been changed to land use

1 impact. So I, I just want to point that out, in case there's any concern
2 about that language.

3 LYNN: Is it relevant in your mind that, uh, uh, almost all, if not all
4 of the mining would take place separated not only by a horizontal distance,
5 but also behind this ridge that you mentioned?

6 GRAHAM: Yes. And that impact is one of the, uh, items that I include in
7 the, uh, list of bullets on the bottom of page 7.

8 LYNN: Okay. Um, are you familiar with the Department of Ecology
9 publication that came up in testimony and hearing on Friday, uh, regarding
10 land use intensity and buffers?

11 GRAHAM: Yes. I'm familiar with it to the extent that I have recently
12 looked at it. It's a series of, uh, appendances, I believe, and I have, uh,
13 looked briefly at it, yes.

14 LYNN: Uh, does it, uh, is it of significance to you that, uh, ecology
15 has commented that they think this could be construed as or should be
16 construed as a high intensity land use?

17 GRAHAM: Well, yes, it's, uh, it's of interest to me and I understand the
18 rationale that, uh, staff at Ecology are using.

19 LYNN: Does it change your conclusion?

20 GRAHAM: No. It, it doesn't, um, for a couple of reasons, one, because,
21 when we prepared this report, uh, were we addressing the requirements of the
22 County Critical Areas Ordinance that was in effect. And we felt that we were
23 clearly on the right track in establishing both the intensity of the land use
24 and the required buffer of 200 feet. And, secondly, uh, that the documents
25 that, um, Ecology put forth subsequent to our report, were largely guidance

1 documents that were developed to, uh, assist local governments in providing
2 additional, uh, wetland protections.

3 LYNN: Your final, uh, report was, uh, dated April 17th, 27 [sic] and it
4 Exhibit County 6, uh, for what purpose was that prepared?

5 GRAHAM: I believe that some comments were received relative to our
6 initial report, uh, under Exhibit 5, that we had, uh, not addressed a
7 threatened or endangered species, the Oregon Spotted Frog. And so, we wanted
8 to follow up with that since the Critical Habitat for the Oregon Spotted Frog
9 had not been designated on that middle, uh, Samish portion of the river. Uh,
10 when, by, when we prepared our initial report. So we prepared a brief
11 addendum, uh, which addressed the Oregon Spotted Frog, and the Critical
12 Habitat designation that was established for that portion of the river.

13 LYNN: And you also referenced the adequacy of the buffer in terms of
14 that species, uh, what were your recommendations there?

15 GRAHAM: I believe my recommendation was that, uh, the 200 foot buffer
16 would be sufficient to protect that associated wetland located waterward of
17 the ordinary high water mark and that based on that, it would, uh, protect,
18 uh, uh, adequately the Oregon Spotted Frog, as well.

19 LYNN: And you refer in that, uh, I'll just read it, it says lacking a
20 request for additional biological information from a federal agency, it is
21 our opinion that the analysis, prepared by GBA and submitted, provided an
22 appropriate level of detail to address County Code requirements. Did you
23 receive any, uh, request for information from any, uh, federal agency? Have
24 you ever regarding this project?

25 GRAHAM: No, we have not.

1 LYNN: Okay. Uh, have you read the, the comments of, uh, Mr. Mahathy
2 [phonetic], a biologist, I think it's in the record of Exhibit A83, 33,
3 excuse me, he's, he's, Mr., uh, the Appellant's, uh, representative?

4 GRAHAM: Yes, I have.

5 LYNN: Okay. One of his critics is that you used the wrong rating form,
6 do you have a response to that?

7 GRAHAM: Yes. Uh, we used the rating form that was effective at the time
8 that we prepared our report. Um, and that was, uh, that was, uh, on August
9 the 20th, 2015. And that was the rating form in effect at the time that we
10 used, uh, that we, uh, developed our report. Uh, we understand that the, uh,
11 ordinance was subsequently changed. But before it was changed, we actually
12 used the, uh, rating form, the 2014 rating form that, uh, that it would be
13 changed to. We came to the same conclusion that we had earlier, under the
14 effective, uh, code at the time of preparation of our document.

15 LYNN: Okay. Uh, Mr. Mahathy also refers to, uh, an instance in which
16 because of slopes the required buffer is actually to be enlarged by 25 feet.
17 Are you familiar with that provision?

18 GRAHAM: I am familiar with that provision.

19 LYNN: And, uh, is part of your recommendation that that provision be
20 implemented if there are areas where that condition, uh, occurs?

21 GRAHAM: Yes, it is. We, uh, talked about this condition back in April of
22 2015 and, uh, it was well-known to Patricia Bunting and I that this could,
23 could come up. And, uh, we made that, uh, uh, a condition of our discussions
24 with the Applicant and, uh, the surveyor.

25

1 LYNN: Okay. So, is that something that would be determined by survey
2 once the, everything is finally approved?

3 GRAHAM: Yes. We would rely on Semrau Associates to assist with that, yes.

4 LYNN: Okay. And you're referring to John Semrau, the Project Engineer?

5 GRAHAM: That's correct.

6 LYNN: Okay. So, uh, were you present at the hearing on, um, Friday?

7 GRAHAM: Yes, I was.

8 LYNN: Okay. And having heard that, uh, testimony and having reviewed
9 Mr. Mahathy's comments and, uh, and some of the written comments of others,
10 do you stand by the conclusions of your assessment in this case?

11 GRAHAM: Yes, I do.

12 LYNN: Okay. Uh, that's all I have for you, Mr. Graham. I'm going to
13 mute my microphone and let you be questioned by others. Thank you.

14 GRAHAM: All right. Thank you.

15 REEVES: Okay. Uh, next, let's see if Mr. D'Avignon has questions he's
16 like to ask on behalf of the County?

17 D'AVIGNON: I don't have any questions, Mr. Examiner.

18 REEVES: Okay. Thank, thank you. So, we'll then move to Kyle Loring.

19 LORING: Thank you, Mr. Examiner. Yes...

20 REEVES: Sorry, it seems to be getting worse. Are we certain there are not
21 two devices there, Mr. Graham, there somehow or two windows, maybe, it's...

22 FEMALE 4: You're on microphone.

23 GRAHAM: No, there, there's only one device here in my office.

24 REEVES: Okay.

25

1 LORING: I wonder if he can turn off his camera and just try that, anyway,
2 see if that, it's a bandwidth issue.

3 GRAHAM: We'll try that. Does that help?

4 REEVES: Uh, it's usually when one of us is talking. Let's see. Did you
5 hear that okay, Mr. Graham?

6 GRAHAM: I can hear you fine, yes.

7 REEVES: That seemed to be better, so, Mr. Loring, let's see if this
8 works, go ahead, Mr. Loring.

9 LORING: Yeah. Obviously, it's not ideal. Uh, but, but the, uh, feedback
10 was maybe less ideal.

11 REEVES: Well, how about this, why don't we just take two seconds, Mr.
12 Graham, could you just try to log off and log back on and see if that fixes
13 it? That might be the best solution.

14 GRAHAM: I will, I will try to do that. This is my maiden voyage on the
15 Microsoft Teams.

16 REEVES: Uh, it's, I will, normally I would insert a joke there, but
17 we'll, uh, we'll let it go. We know how I feel about Microsoft products,
18 generally, and Teams in particular. So, we're just waiting a moment for Mr.
19 Graham to try to log back on. And while we're waiting for that, I just want
20 to verify, Mr. Ehrlichman, my understanding is this is not a witness you
21 would be cross-examining as this, we're not addressing traffic, is that
22 right?

23 EHRLICHMAN: You know, I've been racking my brain for questions I could ask
24 him related to traffic, I can't come up with a single one.

25

1 REEVES: Excellent. Okay. So, well, Mr. Loring will do his cross
2 examination and, uh, then, once we've done that, we'll, we'll go back to, uh,
3 Mr. Lynn, uh, to see if there's redirect, but I just wanted to check. Thank
4 you, Mr. Ehrlichman.

5 FEMALE 4: [Inaudible.]

6 REEVES: And there's MR. Graham, let's see if that helps.

7 GRAHAM: [Pause] can you hear me?

8 REEVES: Yeah. We can hear you fine.

9 GRAHAM: Yes.

10 REEVES: Seems better.

11 LORING: It does at the moment.

12 REEVES: Well, let's hope yes.

13 LORING: Okay.

14 REEVES: Mr. Loring, please go ahead.

15 LORING: There it went. I think it's the speaker, maybe. Yeah. I think the
16 speaker is coming back through. Anyway...

17 REEVES: Well, now it's worse. We'll sort it out. Uh, Mr. Loring, why
18 don't you try to say something.

19 LORING: Okay. It does seem to work better. No, that, shutting off the
20 video did not improve it.

21 FEMALE 4: Did not. Okay. [Inaudible.]

22 LYNN: Uh, I, I found that if I talked more slowly, like, Lou Gehrig, in
23 his closing remarks at Yankee Stadium that it went better.

24 REEVES: Well, lucky us, this, this man [inaudible] uh...

25 CHAMBERS: I, um...

1 REEVES: We will try our very best. BILL Chambers, did you have a guess,
2 uh...

3 CHAMBERS: Yeah, uh, Andrew, I would, uh, I would recommend that Oscar mute
4 his microphone when he's not speaking.

5 REEVES: Mr. Graham, did you hear that? Well, we'll, we'll try our best.
6 So, Mr. Loring, please, go ahead and, and worst comes to worst, we'll have to
7 think of a solution, but...

8 LORING: Thank you, Mr. Examiner. Uh, this, this may work. Uh, a little
9 bit of a delay, probably, in between, but it's al-, it's certainly much
10 better, so, thank you. Okay. Um, Mr. Graham, hello. I, uh, I've got a few
11 questions, we'll cover a lot of the same ground that you've already covered,
12 but, uh, uh, probably a few twists here and there on the questions you've
13 been asked. So, before we get started, I just want to be very clear about the
14 extent, uh, or your familiarity with the extent of development activities
15 proposed for the site. So, I'll ask you just first, a quick question, are you
16 familiar with the extent of development activities that are proposed for this
17 site?

18 GRAHAM: Can you hear me okay?

19 LORING: Yes.

20 REEVES: Yes.

21 GRAHAM: All right. Just, just for the record, I can hear all of you just
22 fine. Uh, yes, uh, my familiarity with this site is limited to a degree
23 because we only looked at the Samish River, the associated wetland, the slope
24 and that was pretty much the extent, uh, we did not look at the haul road,
25

1 uh, that has been discussed, I think, under another report by another, uh,
2 consulting firm.

3 LORING: Okay. Thank you. Um, and you're familiar that, uh, and I'll just
4 lump some of these together, so I hope that's okay so I don't have to ask the
5 question and do this on and off, but, but you're familiar that all of the
6 trees will be removed in the mining area? Uh, you're familiar that all the
7 soil will be removed in the mining area? Uh, you're familiar that all the
8 rock, or that a significant portion of the rock in that area will also be
9 removed as part of these operations?

10 GRAHAM: Well, I have read the project description, and I did get a
11 briefing on that from, uh, Concrete Nor'West prior to doing our work on the
12 site. So, yes, I'm generally, uh, familiar with that.

13 LORING: Okay. And you're familiar with the fact that the top of the slope
14 above the wetland, part of that would need to come, would come down as part
15 of the mining? Bas-, I should say, based on a 200 foot buffer?

16 GRAHAM: Not based on a 200 foot buffer, I believe that the 200 foot
17 buffer, uh, extends above, uh, the top of slope in almost the entire project
18 site.

19 LORING: Okay. So, you're not familiar with the fact that the top of the
20 slope, some of that would need to come down if there were 200 foot buffer?

21 GRAHAM: No, I'm not.

22 LORING: Okay. You've covered this, but I do want to make sure I
23 understand a little bit of the nuance. You never conducted a wetland
24 delineation at the site?

25

1 GRAHAM: We did not dig soil test kits at the site. We believe that we did
2 conduct a wetland delineation and we, uh, marked the edge of the associated
3 wetland at the tow of slope.

4 LORING: Okay. When you say you conducted a delineation, uh, are you
5 familiar with the 1987 Army Core of Engineers Wetlands Delineation manual?

6 GRAHAM: I am indeed.

7 LORING: I, I thought you would be. Are you familiar with that manual's
8 requirement for delineation to evaluate the soils at a site?

9 GRAHAM: Yes, I am.

10 LORING: And are you familiar with the need to actually understand the
11 soils themselves and not, uh, use a map as a proxy?

12 GRAHAM: In some cases, that is required. In most cases, it's required.

13 LORING: Okay. Here you used a map as a proxy, is that right? For the
14 soil?

15 GRAHAM: We did use the map, yes.

16 LORING: Okay. Uh, and, and you agree that the ordinary high water mark is
17 a different type of, um, indicator than a wetland edge, is that right?

18 GRAHAM: No, I believe that the ordinary high water mark and the wetland
19 edge were coexistent at this location.

20 LORING: And, and I hear you saying that now, uh, but in general, would
21 you agree that the ordinary high water mark is not a, it's not either a legal
22 jurisdictional boundary or a physical characteristic boundary for a wetland?

23 GRAHAM: Uh, no, I wouldn't agree with that. I believe that the ordinary
24 high water mark is a jurisdictional boundary, particularly with regard to,
25 uh, rivering wetlands and marine, uh, marine, uh, bodies that, uh, have an

1 associated, wetland associated with them. It's really common for these, uh,
2 these marks, uh, like an ordinary high water mark, to be used for
3 jurisdictional purposes. And, in fact, the Department of Ecology, has a, uh,
4 section called the Shoreline Management Section that, uh, provides, uh,
5 guidance on how to identify the ordinary high water mark.

6 LORING: Yes, they do. And are you, uh, what is the definition of an
7 ordinary high water mark?

8 GRAHAM: Well, since you asked, I'm going to read you that definition.

9 LORING: I'd, I'd appreciate that.

10 GRAHAM: Ordinary high water mark on all lakes, streams and tidal water is
11 that mark that will be found by examining the beds and banks and ascertaining
12 where the presence and action of waters are so common and usual and so long
13 continued in all ordinary years as to mark upon the soil a character distinct
14 from that of the abutting upland in respect to vegetation as that condition
15 exists on June 1st, 1971 or as it may naturally change thereafter, provided
16 that in any area where the ordinary high water mark cannot be found, the
17 ordinary high water adjoining saltwater shall be the line of mean high tide
18 and the ordinary high water mark adjoining fresh water shall be the line of
19 mean high water.

20 LORING: Okay. And so that referred to lakes, streams and tidal water, is
21 that right?

22 GRAHAM: Yes.

23 LORING: Thank you. Uh, do you know whether that, the ordinary high water
24 mark, uh, that you identified, was surveyed at the site?

25 GRAHAM: Yes, it was.

1 LORING: Uh, and was that a meets and bounds survey?

2 GRAHAM: Well, I believe that was a survey conducted by John Semrau and
3 his crew.

4 LORING: Do you know, uh, how it was surveyed?

5 GRAHAM: You know, I do not know. It, it may have been done through liger
6 or some other means, but I know that on site, uh, John Semrau and Dan Cox and
7 I from, uh, from Miles, uh, uh, looked at that, uh, mark and, uh, I believe
8 that, uh, John Semrau understood very clearly where the mark was.

9 LORING: Okay. So, what you're, you know that what you're describing is
10 not a survey, is that right?

11 GRAHAM: If it was done through liger, I don't believe it would be a
12 survey.

13 LORING: Okay. Or visually looking at, just looking at land, that's not a
14 survey?

15 GRAHAM: Looking at land is not a survey.

16 LORING: Okay. Sorry, so going through my notes a little bit here, uh,
17 we've answered some questions, uh, gotten ahead a little bit of where I was.
18 Okay. You were asked a moment ago about, uh, the land use intensity for this
19 site, and you were discussing an ecology document. And I believe you
20 characterized that document, that's Appendix 8C, right, in the Wetlands in
21 Washington Volume 1?

22 GRAHAM: Yes.

23 LORING: Okay. Uh, and you characterized that, I believe, as guidance, is
24 that right?

25 GRAHAM: Yes.

1 LORING: Okay. Are you familiar with the fact that the Skagit County Code
2 incorporates, uh, those requirements when looking to shrink a buffer?
3 GRAHAM: Yes, I am.
4 LORING: Okay. And are you familiar with the conditions that the
5 Department of Ecology applies for shrinking buffers?
6 GRAHAM: Yes, I should note that those conditions change over time, as the
7 County adopts new code language based on the guidance that Ecology provides.
8 LORING: Okay.
9 GRAHAM: And that, that is the case on this, on this, uh, project as well.
10 LORING: Okay. But are you familiar with the fact that this, this, uh, new
11 legal requirement that incorporated the Ecology standards applied as of 2016?
12 GRAHAM: As of 2016, I believe that is correct.
13 LORING: Okay. So you're not disputing that those are the applicable legal
14 requirements for this matter?
15 GRAHAM: Not currently.
16 LORING: Uh, and not as of 2016, going 2016 though today?
17 GRAHAM: I believe you're correct.
18 LORING: Okay. And are you familiar with the conditions themselves that
19 apply when reducing, uh, a buffer based on reducing the intensity of impact?
20 Sorry about that.
21 GRAHAM: I have not reviewed the appendixes closely.
22 LORING: Okay. We're getting through this here. Uh, you were also asked
23 for, I believe, the timeframe for the mine here was, uh, characterized a
24 moment ago as temporary, uh, do you agree that this mine operation will be
25 temporary?

1 GRAHAM: Well, yes, I do.

2 LORING: Okay. And what standard are you using to reach that conclusion?

3 GRAHAM: Well, I know that it's a relative term, temporary, but I would
4 say that, uh, 25 years is temporary.

5 LORING: Okay. And will the site, in 25 years, provide the same functions
6 for a wetland and its buffers as it does before it is mined?

7 GRAHAM: I don't believe there will be any impact to the wetlands
8 resulting from this project.

9 LORING: So, you believe that taking a third of a buffer and removing
10 that, having just a 200 foot buffer, instead of a 300 foot buffer, will have
11 no impact here?

12 GRAHAM: No, I don't agree with that. I want to be clear that by applying
13 a 200 foot buffer, and this is our opinion, uh, that project impacts would be
14 avoided under the mitigation sequence.

15 LORING: Okay.

16 GRAHAM: And I also...

17 LORING: And...

18 GRAHAM: I'd also just say, just so that, uh, I'm clear on this, we
19 conducted this as a Fish and Wildlife site assessment and the standard
20 riparian buffer is 200 feet as measured from the ordinary high water mark.

21 LORING: Yeah. No, and I appreciate that, Mr. Graham, and that came
22 through very clearly from the records and the reports that you put together,
23 was that the focus was on riparian assessment here at Fish and Wildlife
24 Habitat, uh, and that the wetlands was really an after-the-fact, uh, I guess,
25

1 I, I wouldn't say addition, I don't think it ever made, made its way in.

2 Anyway, let me get back to questioning for you here.

3 GRAHAM: It did take [inaudible]...

4 LORING: So, when you mentioned, when, when you mentioned the word
5 temporary, it, for you, it doesn't matter if this is temporary or permanent
6 because your position is that 200 feet is good enough?

7 GRAHAM: Not good enough, but sufficient to avoid project generated
8 impacts.

9 LORING: Okay. Let's see, we've covered, again, we have covered some of
10 these. Oh, here's a question, I, I heard you, uh, testified a moment ago that
11 you initially used one rating form and then later you checked the conclusions
12 from that rating form that Mr. Mahathy identified as being inappropriate, you
13 did check those with the new rating form and you testified that you reached
14 the same conclusion, is that right?

15 GRAHAM: That is right.

16 LORING: Where would I find that new rating...

17 GRAHAM: In our file.

18 LORING: That you used? So that's in the record here?

19 GRAHAM: I don't believe it's in the record, no.

20 LORING: Okay.

21 GRAHAM: But that was a standard procedure that we used as we got closer
22 to the adoption of a new rating form. We communicated regularly with the
23 County to, one, ensure that the rating, uh, form had not changed, and, two,
24 wanted to confirm when it was going to change.

25

1 LORING: Okay. But we're just supposed to take your word for it that you
2 reached the same conclusion? You don't have anything in writing to, to
3 demonstrate that as part of this Application?

4 GRAHAM: Uh, not from, not aside from my file. I believe that there was
5 another firm that may have looked at the Samish, uh, associated wetland and
6 come up with a similar, if not the same, conclusion that we did. That would
7 be Northwest Ecological Services.

8 LORING: Okay. I'm going to actually move to strike that as speculation,
9 uh, I, obviously, there's a lot of testimony, we're playing this a big looser
10 than usual, but I, it's not helpful.

11 REEVES: Okay. Uh, I'll grant it, I guess.

12 LORING: All right.

13 REEVES: Ultimately, I think we're going to hear from that other firm, so...

14 LORING: Right.

15 REEVES: [Inaudible] on what Northwest Ecological [inaudible] that's fine.

16 LYNN: If I can, if I, and I don't want to belabor this, but, I mean,
17 Mr. Loring asked him if he could take his word and he's offering another
18 source of who could verify his word, if that's not good enough, if his sworn
19 testimony is not good enough there's another way to verify it. That's all I
20 would...

21 REEVES: Let's just move on, gentleman, thank you. Uh...

22 LORING: Yes. Uh, you were asked a moment ago, too, about the 25 foot
23 increase that is part of the recommendation for a wetland buffer and you said
24 that you made that recommendation. Um, do you know whether that's a condition
25

1 in the Mitigated Determination of Non-Significance here? I'm sorry, you muted
2 again, I think, so that we weren't, uh, reverberating too much.

3 GRAHAM: Right. What was the question?

4 LORING: Do you know whether or, here, I'll start fresh, you testified
5 that the 25 foot, uh, increased based on slope, for that wetland buffer, was
6 part of your recommendation. Do you know whether that recommendation made its
7 way into the MDNS as a condition?

8 GRAHAM: I don't know whether it was in the MDNS or not.

9 LORING: Okay. Got a few more questions for you here. No, actually, we, we
10 covered a bit of it. So, uh, I have no further questions. Thank you very
11 much, Mr. Graham.

12 GRAHAM: Thank you.

13 REEVES: Thank you. Mr. Lynn, you have the redirect?

14 LYNN: Uh, a little bit. Um, Mr. Graham, you were asked about the DOE
15 Appendix, uh, and you s-, I think you may have said you hadn't looked at it
16 for awhile, but do you know if it specifically identifies mining or different
17 degrees as mining as being in one category or another?

18 GRAHAM: I don't believe it addresses mining specifically.

19 LYNN: It, it does address and list as moderate activities conversion to
20 moderate...

21 LORING: Objection. He asked the question, now we're, now he's testifying
22 of the witness. I think the testimony should be based on the witness's
23 information. He's testified that he's not familiar with this document.

24 REEVES: S-...

25 LYNN: He said, no, he said hadn't...

1 REEVES: I thought he s-, all right. Hold on, hold on. I thought he said
2 he had some familiarity, he thought that it didn't directly differentiate,
3 did I mishear that?

4 LORING: I'm sorry, I was speaking to his response to my questioning when
5 he testified that he wasn't familiar with the Appendix.

6 LYNN: I don't, I don't think that was his testimony. So, can I ask him
7 that question? Mr., Mr. Graham, are you familiar with the DOE guidance,
8 specifically the Appendix to the wetland manual on...

9 GRAHAM: Yes.

10 LYNN: Buffer? Okay. Is that some...

11 GRAHAM: Yes. Thank you.

12 LYNN: Is that something you've used before?

13 GRAHAM: I have, uh, reviewed it recently, but I am not real familiar
14 with, uh, each of those Appendixes that addresses buffer decreasing.

15 LYNN: Okay. I, I, that's fine, I'll just make the point another way.
16 Uh, one final questions about the temporary nature of, uh, the mine, is it
17 your, uh, recollection that one of the factors you examined in determining
18 this to be a moderate intensity was that the activity within the difference
19 between two and 300 feet was temporary and would occur shortly after mining
20 began?

21 GRAHAM: Yes. And that's, that's one of the items that we considered in
22 arriving at the medium, uh, land use intensity.

23 LYNN: And, and as to that area, then, the mining in that area that
24 would occur first, the, the activity would be much more temporary than even
25 25 years?

1 GRAHAM: Yes, it would.

2 LYNN: That's all I have.

3 REEVES: Okay. Uh, uh, that's pretty limited, but it looks like Mr. Loring
4 might have one follow up?

5 LORING: I do, that, now we're back to the going from 300 to 200, uh,
6 based on what's considered temporary. So, is there a biological definition
7 for what is temporary, Mr. Graham?

8 GRAHAM: I'm not aware of a biological definition.

9 LORING: Okay. And are there species with life spans less than 25 years?

10 GRAHAM: Absolutely.

11 LORING: Okay. Uh, that's all I have. Thank you.

12 GRAHAM: Thank you.

13 REEVES: Thank you. Uh, insert fruit fly joke. Uh, thank you, Mr. Graham,
14 uh, for your testimony. Uh, we're going to mute you now. We hope that will
15 help, uh, with some of the feedback issues. But, uh, Mr. Lynn, I think we're
16 ready for your next witness, at this point?

17 LYNN: Uh, thank you. Um..

18 REEVES: Oh, hold on. We just want to make s-, there, yeah, Mr. Graham is
19 muted, perfect. So, thank you, Mr. Graham. Uh, we're, we've concluded our,
20 our testimony from you. So, Mr. Lynn, go right ahead.

21 LYNN: Uh, Matthew [phonetic], are you on? So, the next witness is Matt
22 Miller.

23 REEVES: Okay.

24 MILLER: Here we go. Now, I'm muted. Can you hear me with no echo?

25 LYNN: Yes.

1 REEVES: Yes. No echoes, so that's great. So, I'll get you sworn in, Mr.
2 Miller. Do you swear or affirm to tell the truth in the testimony you give
3 here today?

4 MILLER: I do.

5 REEVES: And then if you could just spell your name for the audio
6 recording?

7 MILLER: Uh, Matt Miller, M-a-t-t M-i-l-l-e-r.

8 REEVES: Okay. Mr. Lynn, go right ahead.

9 LYNN: Uh, thank you. Mr. Miller, I think your, uh, your, your CV is
10 part of the record, but could you just very briefly tell us what you do for a
11 living and how you're qualified to do that?

12 MILLER: I am a professional Engineer, Geological Engineer, by training,
13 uh, graduated from the University of Idaho and have been with the, the
14 Associated Science now for about 23 years. And..

15 LYNN: Okay.

16 MILLER: In the business for, since '87.

17 LYNN: Okay. And is ev-, evaluation of, uh, geologic conditions relating
18 to development projects part of what you do, uh, every day?

19 MILLER: Yes, sir. For a number of years, all up and won the I-5 corridor.

20 LYNN: Okay. And have you worked on, uh, surface mines before?

21 MILLER: Uh, I've worked with, uh, Concrete Nor'West on this mine and
22 another mine, yes.

23 LYNN: Okay. Um, your first prepared two reports ere, I'm not going to
24 ask you to talk about the first one, I just want to establish for the record
25

1 that you did that, uh, the first was a h-, uh, that your first did that. The
2 first is a hydrogeological site assessment?

3 MILLER: Yes, sir.

4 LYNN: And who, who prepared that from your firm?

5 MILLER: Uh, I don't have it in front of me, but it should have been Chuck
6 Molagic [phonetic] and, uh, DB Chase Nolt [phonetic].

7 LYNN: Okay. And...

8 MILLER: Chuck Lindsay [phonetic], excuse me.

9 LYNN: And, o-, okay. And the, the, and the purpose of that type of
10 report, your business is what?

11 MILLER: Uh, hydrogeological conditions, ground water, ground water fade.

12 LYNN: Okay. And then you were, yourself, involved in a more recent, uh,
13 work to evaluate the, uh, the haul road, is that correct?

14 MILLER: Yes, sir. Uh-huh.

15 LYNN: Okay. And, uh, did you consider, as part of your evaluation, any
16 alteration of the haul road itself?

17 MILLER: It was under our understanding that the haul road would basically
18 remain the same and not to, it was going to stay within the corridor.

19 LYNN: Uh, I'm sorry, I missed the last part of that?

20 MILLER: It would stay within the existing corridor.

21 LYNN: Okay. Uh, but there, but you were aware that there was an
22 increase in traffic associated with that?

23 MILLER: Yes.

24 LYNN: The proposed mining use?

25 MILLER: Yes.

1 LYNN: Okay. And specifically, uh, were you provided a document from the
2 County identifying what areas you were to study as to your area of expertise?

3 MILLER: Yes, I believe there's a, uh, letter from the County dated June
4 17th, 2021.

5 LYNN: Uh, Mr. Examiner, I don't think that this in the record, it's not
6 part of the County file here, I will be offering that, just, just noting
7 that, it's just a two-page letter, uh, but as much as anything trying to
8 remind myself to make sure it's in the record. Um, uh, Mr. Miller, did that
9 identify specifically any, uh, geotechnical hazards that, uh, the County
10 wanted you to identify and, uh, discuss?

11 MILLER: Yes. There was a, an area, we call it just the hairpin, I guess,
12 is maybe a context word here, so, from the Swede Creek bridge, upslope,
13 there's a, an abrupt turn at the top of the hill, that's, it was referred to
14 as the hairpin in our report. And, um, and another document, I believe, and
15 the road proceeds east/west from that section. We had identified, uh, the
16 geologic hazards to investigate from the hairpin to Swede Creek.

17 LYNN: Uh, so, the, the, the County didn't ask you to look at anything
18 other than that, just that one area?

19 MILLER: Correct. That was our understanding from the letter, that that's
20 the only area they identified as a critical area.

21 LYNN: Okay. Uh, what did you find when you investigated that area that
22 the County asked you to look at?

23 MILLER: Uh, in our report, we outlined that, yes, indeed, the, the area
24 of the slopes below the road, uh, classified as, uh, erosion hazard and geo
25 hazard. Um, and we identified those on our own figure.

1 LYNN: Okay. And did you, uh, did you discuss where there were any
2 direct impacts that would result to that hazard area?

3 MILLER: We didn't identify any, uh, direct impacts.

4 LYNN: Okay. I mean, you, so you, you considered that, but found no
5 direct impacts?

6 MILLER: Correct.

7 LYNN: Okay. And, uh, what about indirect impacts?

8 MILLER: Well, we identified some areas, uh, uh, that needed maintenance
9 for drainage, um, to, to maintain that area. Um, so, from, from the, you
10 know, the ditches and the drainage was one of our concerns to maintain, uh,
11 stability.

12 LYNN: Okay. And so what sort of recommendations did you make?

13 MILLER: We identified that, uh, the ditches need to be maintained and,
14 and water needed to be directed to places of safe discharge to be worked out
15 later with, uh, the Civil Engineer.

16 LYNN: And so, just to be clear about this, uh, I am talking about, uh,
17 Exhibit 10, from the County's records, which is the December 2021 Geotech
18 Report, is that the document that you're referring to here..

19 MILLER: Yes.

20 LYNN: Mr. Miller?

21 MILLER: Yes.

22 LYNN: Um, and so, uh, how does the fact that there is no, uh, no
23 alteration of the, uh, the road proposed, is that the kind of thing you
24 normally evaluate through a critical areas review?

25

1 MILLER: Typically, in a, in a, uh, critical areas review, you're looking
2 for disturbances that would go outside the perimeter or new disturbances,
3 areas that are already been disturbed, um, we, we typically look at the use
4 in, in change of use and how that might impact it.

5 LYNN: Okay. And so, in this case where there was, uh, where there's no
6 proposed change in the physical, uh, improvements in the area, no change to
7 the road, how does that effect your analysis?

8 MILLER: We look at past performance and how the road has been maintained
9 and how, what, how stable it is now in the overall area. We didn't perform
10 any subservice evaluations, so, we're looking at indicators from, uh, past
11 use, of stability, any, um, areas that might have failed in the past. Um, and
12 looking at, at future.

13 LYNN: What, what about the weight of the truck, a lot has been made in
14 comments about the fact that, uh, gravel trucks weigh more, uh, than logging
15 trucks, uh, does that impact your analysis of this issue?

16 MILLER: I think there's, there's two things and it, it's the road prism
17 itself and stability to make the, the traffic, uh, the weight of the trucks.
18 And it's, you know, it's maintaining the surface. Uh, we al-, would also look
19 at the weight of the truck and, um, yes, it definitely comes into place and
20 we don't, we didn't feel that the, the additional weight was going to be an
21 issue.

22 LYNN: Okay. In this case, you didn't think the additional weight, even
23 with more traffic volume, would be an issue with the hazard areas?

24 MILLER: Based on what we know at this time, no.

25

1 LYNN: Okay. There is an area that is to be paved, uh, could you, uh,
2 identify for the Hearing Examiner where that is on the site?

3 MILLER: My understanding, um, is from the Swede Creek bridge, up to the
4 hairpin.

5 LYNN: Okay.

6 MILLER: And that's shown in our, our Exhibit, I don't, it, the paving
7 doesn't show, but for reference, our Figure 2 in our report, if that's what
8 we're looking at, um, there's an area, the hairpin is called out.

9 LYNN: Okay.

10 MILLER: And Swede Creek.

11 LYNN: Jason, I know I'm imposing again, but would you mind putting up
12 that Exhibit?

13 REEVES: Is this C10 that I'm looking at?

14 LYNN: Yes, it is.

15 REEVES: Okay.

16 LYNN: And it would be the, the second figure in there, it's a close-up
17 that shows the hairpin turn.

18 REEVES: It's, uh, I think it's one of the attachments.

19 LYNN: Yeah. It's the first attach-, or second attachment.

20 D'AVIGNON: Is it this one?

21 LYNN: Yes.

22 D'AVIGNON: All right. Well, I don't know what the blank area is about, but...

23 REEVES: It's having trouble loading. I, I, I see it, uh...

24 D'AVIGNON: Okay.

25 REEVES: On my screen, well, I'm sorry, I have it independently opened.

1 D'AVIGNON: Oh.

2 LYNN: Yeah. So do I. It looks like it's filling in slowly here. We
3 might want to wait just a second so we make sure we're looking at the same
4 thing.

5 D'AVIGNON: My computer has been yelling at me recently about memory, so that
6 may be the problem.

7 LYNN: Okay. Well, so, so, Mr., uh, Miller, while we're waiting for this
8 to maybe load, uh, what is the, uh, length of the area to be paved?

9 MILLER: I believe in our report we talked about 500 feet.

10 LYNN: Okay. What would the, what would the effect of that be, um, in
11 terms of any erosion issues?

12 MILLER: The advantage of having a paved surface is you can direct water
13 to where you want to be able to control it, um, versus, uh, gravel surface
14 that's in a, you know, you know, you can grade it to put it to direction, but
15 by paving, we can put collection system in that would, uh, actually collect
16 water and, and take it to where we want it, uh, discharged.

17 LYNN: Okay.

18 MILLER: You have a more controlled environment.

19 LYNN: Okay. And is that a recommendation, then, of your firm as to, uh,
20 better controlled drainage?

21 MILLER: It would be an option, yes. Uh-huh.

22 LYNN: Okay. Uh, would that be, that would have to be done to County
23 Standards, to your knowledge?

24 MILLER: Oh, yes. The collection system would have to be, and that would,
25 we would work directly or work hand-in-hand with the Civil Engineer.

1 LYNN: And how would you direct the water if given an opportunity here
2 in a way that would, uh, uh, minimize any potential, uh, geotechnical
3 hazards?

4 MILLER: We'd want to direct it to drain inwards and not allow it to go
5 over the slope, so you can control it from the inside, um, whether it be
6 curves, um, swells, um, the collection points along the way.

7 LYNN: Okay. Uh, how did you find the condition of the road, generally,
8 when you looked at it in preparing this report?

9 MILLER: Well, in, in, in December, when we were out there, it was in good
10 condition, um, well-traveled, there was no indication of movement, any cracks
11 or anything like that. Um, the surface was, um, graveled over, looked like it
12 had been well-traveled.

13 LYNN: In, in one of the, uh, comment letters from Stratum [phonetic],
14 it indicated that there had been some slippage I uphill section, was that,
15 uh, apparent at the time you visited the site?

16 MILLER: Not in December, no.

17 LYNN: Okay. So, if that's the case, it's something that's happened
18 since?

19 MILLER: Correct.

20 LYNN: Okay. Your, uh, report at Page 7 addressed some mitigation
21 recommendations, could we, could you tell the Hearing Examiner what those
22 area and the basis for them?

23 MILLER: So, typically, what, uh, in a, in a geologic hazard area, where
24 we're looking at not having to, um, allow water, you know, landslide hazard,
25 we have a joke in the geotech industry is what's the case of a landslide is

1 water, water and water. So, uh, really controlling that is a, is a big piece
2 of our, our plan. And not clearing the vegetation or maintaining surface
3 vegetation that would collect water, um, erosion hazard, it helps in the
4 erosion hazard as well. Um, maintained your roadside swells and checked amps,
5 cleaned out the materials that's been swept into the swell that could
6 potentially block the surface water, uh, heavily concentrated surface water
7 discharge onto the slopes and that's what we talked about with the paving is
8 we're allowed to, uh, drain away from the slope so we don't have uncontrolled
9 discharge over the slope. And then, again, uh, if we do have, um, Bill or
10 anything that we, that would be side-cast over the edge, uh, minimize that
11 and, and don't compliance, you know, stripping and, you know, a lot of the
12 recommendation would be for, you know, placing any kind of vegetation that
13 you might trim or something over the slope or really trying to maintain the
14 natural environment over the edge of the slope.

15 LYNN: Okay. And, uh, at the end of your report on Page 8, you have a
16 conclusion, what was your conclusion about geologic hazards near the haul
17 road?

18 MILLER: They, they, they do exist, we out-, outline them on our, our map
19 in Figure 2. Um, but we weren't going to alter anymore of the geologic hazard
20 area and the existing condition was suitable, uh, for the, the use
21 [inaudible].

22 LYNN: Okay. So, you've reviewed, um, Exhibit, uh, A50, which is the,
23 uh, Stratum response that the Appellants intend to offer?

24 MILLER: Yes, sir.

25

1 LYNN: You, um, one of the things he identifies is a different geologic
2 hazard that the County did not tell you to study, uh, up on the east/west
3 segment of the road, an incised channel, are you familiar with that?

4 MILLER: Yes, I am. We, after receiving this letter, we made a site visit,
5 um, to look at, uh, the incised channel, to go back and, and look at these
6 different areas, um, to, to be able to respond to that. And yes, we witnessed
7 the [inaudible].

8 LYNN: Okay. And then, so there's a channel on the downslope slide of
9 the road, uh, uh, do you have a, an opinion as to what the cause of that er-,
10 eroded channel is?

11 MILLER: Yes. So we traversed that entire slope, uh, from east to west
12 below the road. And you come across that channel, follow it all the way up,
13 uh, within the channel, all the way up to the edge of the road. And there is
14 a culvert in place at this point in time that discharges about, oh, maybe two
15 feet off the edge of the, um, roadway section. And it's obvious that the
16 incised channel is as a result of erosion from, um, the roadside, or the
17 cross culvert, uh, that directs water from the, uh, northern side of the, the
18 haul road at that point?

19 LYNN: So, that's, that's an existing condition?

20 MILLER: Yes, sir.

21 LYNN: And what would you recommend be done about that, uh, existing
22 condition to avoid any increase in, uh, geologic hazards?

23 MILLER: I think working with, uh, Civil Engineer and working with the
24 drainage, so there's, there's a few alter, alternatives. Uh, we can spread,
25 uh, collected water of a larger area, in areas that we, uh, feel didn't have

1 concerns. Uh, the, uh, pipe could be tight-lined at the base of the slope.
2 Um, we could, uh, collect it, um, and discharge it in more an energy, energy
3 dissipater type situation, where, we're putting it into a spreader and it's,
4 uh, discharging over a larger area. Uh, I guess working with a Civil again,
5 to come up with some ideas of, of where we might discharge that. Where it's
6 logical, because, um, you know, uh, the way things are graded, there are
7 logical places to collect discharge so we can gravity flow everything, so,
8 again, working with them to, to be able to come up with these collection
9 points, if that's the case. Or if there isn't another alternative, then,
10 trying to, um, do something to mitigate that channel in its existing
11 location.

12 LYNN: Okay. So, is this section at the road relatively flat?

13 MILLER: Yes. Very much so.

14 LYNN: Does that make it easier to solve the problem, in that you have
15 more directions you could take the water?

16 MILLER: Uh, yeah, I guess. I guess, not knowing the exact topo, I mean,
17 little changes in elevation can make a big difference for water flow, so, um,
18 I think there's enough up and down here and there that would allow you to
19 collect it. But, uh, again, we'd need to, um, look at that in more detail.

20 LYNN: Okay. So, uh, just to paraphrase what you were saying, you could
21 either redirect it to another place or you could find a way to dissipate the
22 energy of the water by spreading it over more pipes or with, uh, some other
23 erosion management EMPs?

24

25

1 MILLER: Yes. So, trying to spread it out over larger areas so you don't
2 have that large of a volume. Or, again, one of the things that could be, um,
3 considered, would be is to take it to the bottom of the slope in a pipe and..
4 LYNN: Uh, okay. So, are these, uh, fairly routine type issues in your
5 field, the, the need to manage water in avoid geologic hazards?
6 MILLER: Yes. We work with the, the Civils all the time to be able to take
7 water to where it's not going to affect off-site properties or within the
8 existing property.
9 LYNN: Okay. Does anything in the Stratum letter change the conclusions
10 in your December 2021 report?
11 MILLER: No.
12 LYNN: That's all I have, thank you, Mr. Miller.
13 REEVES: Okay. Mr. Loring, cross examination of this witness?
14 LORING: Do we want to allow Mr. D'Avignon the chance to ask any follow-
15 up, just in case he has any?
16 REEVES: Sorry, my apologies, thank you. Mr. D'Avignon, uh, if you have
17 any questions, sir?
18 D'AVIGNON: I, I don't believe I have any questions for this witness here,
19 Mr. Examiner.
20 REEVES: If you ask one or two periodically, it will help us remember
21 you're not just doing tech, but I'm not going to force it on you for the
22 moment. So, with that, Mr. Loring?
23 LORING: Thank you, Mr. Reeves. Good afternoon, Mr. Miller.
24 MILLER: Hello.

25

1 LORING: Got a, a few questions for you here. Uh, I want to confirm right
2 up front, uh, you didn't conduct a LiDAR review of the hairpin turn and
3 vicinity that you've been discussing, did you?

4 MILLER: Uh, uh, Exhibit Number 2 is a, a, um, excuse me, a LiDAR image.

5 LORING: When you say Exhibit Number 2, what are you referring to?

6 MILLER: Or, excuse me, Figure, Figure 2, excuse me, I'm sorry. The one we
7 were just looking at.

8 LORING: Okay.

9 MILLER: That's a LiDAR image.

10 LORING: Okay. That's good to hear. Thank you. Uh, you were, you've talked
11 a couple of times about things that should happen, uh, to address drainage
12 along the site, or I should say, could happen, to address drainage at the
13 site, why weren't those proposed as part of this Application?

14 MILLER: I couldn't answer that question.

15 LORING: Okay. But they weren't proposed as part of the Application?

16 MILLER: I'm not aware.

17 LORING: Okay. You were also asked about, uh, existing conditions and I
18 believe that informed some of your review, the fact that, uh, there's the
19 allegation the road wasn't going to change. Um, is that right?

20 MILLER: I guess I don't understand your question?

21 LORING: Did the fact that, uh, you were told the road wasn't going to
22 change effect your geological review of that site..

23 MILLER: Yes.

24 LORING: At all?

25 MILLER: No, it did not change.

1 LORING: Okay.

2 MILLER: Well, I, I, the fact that its, it doesn't change, it becomes a
3 part of it because, um, we're staying within the corridor.

4 LORING: Okay. And you're not familiar with the changes that occurred
5 during the Application process in 2018?

6 MILLER: No.

7 LORING: Okay. You were also asked about the weight of the truck, um, what
8 is the difference in weight between a loaded gravel truck with trailer and a,
9 uh, logging truck?

10 MILLER: I don't know the exact weight of a logging truck, but, uh,
11 looking, hearing, knowing that, uh, the truck and trailer is 105,000 pounds,
12 I listened to that conversation this morning rather extensively.

13 LORING: Yeah. Yeah. Okay. Um, so you're not sure of the difference in
14 weight?

15 MILLER: I know the gravel truck more.

16 LORING: Okay. But not sure how much?

17 MILLER: I don't know, I don't know the specific pounds, I'll tell you
18 that.

19 LORING: Okay. You were also, uh, you discussed that your opinion wasn't
20 dictated by the volume of gravel truck and trailers traveling along the haul
21 road, is that accurate?

22 MILLER: I think the, the weight and the volume come into play, I think I
23 said that.

24

25

1 LORING: Okay. Um, what is the volume of the, or how does the volume
2 proposed for hauling this travel compare to the volume that occurs right now
3 for forestry at the site?

4 MILLER: I believe it's going to increase.

5 LORING: Okay. How much?

6 MILLER: I'm not aware of the, the numbers of trips per logging, but, um,
7 hearing the, knowing that, uh, the number of trips for gravel was going to be
8 the 45 potentially average a day, that gives me an idea what, what it's going
9 to be.

10 LORING: Okay. So, just to summarize the last few answers, uh, and I'm
11 sure you'll let me know if I mischaracterize you, uh, you don't know the
12 difference in volume of truck traffic and you're not aware of the difference
13 in weight, yet volume and weight are important for evaluating the geological
14 impacts, that was supposed to be the question mark at that point, sorry.

15 MILLER: That would be correct.

16 LORING: You said correct?

17 MILLER: Yes.

18 LORING: Okay. Um, there was, oh, there was a recommendation, or there was
19 a question about a recommendation from your firm to address drainage and, in
20 this vicinity of the hairpin turn, I believe, and I, I was trying to figure
21 out if that is a recommendation that, that was part of the record? Are you
22 referring to the report that you wrote or is there some other recommendation
23 that, that isn't part of the materials we have?

24 MILLER: I'm referring to the report that, uh, I think Mr. Lynn identified
25 that...

1 LORING: Okay.

2 MILLER: As Page 7 in our report.

3 LORING: Okay. I heard that at the end there's mitigation recommendation,
4 I wasn't sure if it was the conversation earlier, thank you. Uh, you also
5 mentioned, there was a question, uh, that was based on the premise that
6 Strat-, Stratum had identified slippage in the hill and whether you observed
7 that. I believe you answered that you had gone back out to the site to look
8 for it, uh, and you had not observed that when you went back out to the side,
9 is that right?

10 MILLER: I did observe it when we went back out to the site. We did not
11 observe it the first time we were there in December. We went back on June
12 21st, after we received a letter from, um, Mr. McSheen and, uh, observed the,
13 the slippage of the curve.

14 LORING: Thank you for that clarification, okay. Um, Mr. McSheen was
15 observing it in, uh, the LiDAR review that he did from a 2017 image, right?

16 MILLER: I wasn't aware. I, there's no way he could that, it's not pointed
17 out on his [inaudible] the slippage that I'm talking about.

18 LORING: Okay. Perhaps, which slippage are you talking about that you
19 observed there?

20 MILLER: We talked about in the fill, in the fill wedge just below the
21 hairpin.

22 LORING: In the fill wedge before the hairpin? Okay. And that's in that
23 Exhibit 2 again, that's the, uh, hatched, not hatched, I guess, but, uh...

24 MILLER: It's within that zone.

25 LORING: The...

1 MILLER: It's not in the specific...

2 LORING: In that zone?

3 MILLER: Area. Yeah.

4 LORING: Okay.

5 REEVES: And att-, attachment two is what we're talking about to this

6 Exhibit we keep talking about, right?

7 MILLER: Correct.

8 LORING: Yes. Figure 2, yeah.

9 REEVES: That, that's what I'm trying to make sure. Okay. Sorry.

10 LORING: So, when, yes, C10, I said, this Exhibit, I mean C10, thank you.

11 REEVES: Yep. Yep.

12 LORING: Yep. Okay. Uh, you mentioned that one of your recommendations for

13 mitigation was no clearing, in, uh, in in a geologically hazardous area. Uh,

14 I assume you mean except the road, you need it for the road itself?

15 MILLER: Well, we're not changing the road so we don't need to clear

16 anymore.

17 LORING: Got it. And you had a question at the end of your testimony a

18 moment ago that these drainage issues being fairly routine issues in your

19 field and you responded yes, is that right?

20 MILLER: Correct.

21 LORING: Okay. Um, but they weren't addressed as part of this Application,

22 is that right?

23 MILLER: I'm not aware of what happened before our report.

24 LORING: Okay. Are you aware of any proposal in the Application before or

25 after your report to address these, uh, fairly routine issues of drainage?

1 MILLER: Not before, but we've, um, in, in conversation, we've talked
2 about the, the drainage along the, the sections that are going to be paved
3 and potential of what we might do there.

4 LORING: Okay.

5 MILLER: And I had described..

6 LORING: And I think you s-...

7 MILLER: That previously.

8 LORING: Thank you. Yes. Uh, have you seen any written, uh, proposal to do
9 that as part of this Application, either before or after...

10 MILLER: No.

11 LORING: Your report?

12 MILLER: No.

13 LORING: Okay. Uh, those, those are all my questions, thank you for your
14 time.

15 MILLER: Sure.

16 REEVES: Thank you. Uh, we'll go back to Mr. Lynn? Well, sorry, the, my
17 understanding this, there's n-, this was not a, an expert witness related to
18 traffic. So, I'm assuming Mr. Ehrlichman would raise his hand if I've
19 mischaracterized, but Mr., so...

20 EHRLICHMAN: Thank you.

21 REEVES: Was I correct, Mr., sorry.

22 EHRLICHMAN: Yes.

23 REEVES: It looks like you might be eating, I apologize. Uh, Mr. Lynn, any
24 redirect based on that?

25 LYNN: Yes. Uh...

1 REEVES: Go ahead.

2 LYNN: Um, Mr. Miller, you were asked whether you knew exactly how many
3 trucks there were before or ac-, or how, how big their loads were, were you
4 focusing on the proposal for 46 trucks per day on average, 105,000, uh,
5 pounds each for your conclusion?

6 MILLER: Yes. Yes.

7 LYNN: Did it matter how many vehicles were there before or what weight
8 they were?

9 MILLER: Well, you, you take it into consideration, but, uh, the specifics
10 weren't taken into consideration.

11 LYNN: Okay. So, you didn't, you didn't need to quantify it?

12 MILLER: Not at this point in time, no.

13 LYNN: So, let me just look at your, uh, mitigation measures, um, on
14 Page 7 of, uh, Exhibit C10, uh, Condition 2 says maintain roadside swells and
15 check them, clear out material that has swept into the swell that could
16 potentially bog surface wa-, water, avoid concentrating surface water
17 discharge into, onto the steep slopes. Would the last sentence encompass the
18 word that might be done, uh, near that incised channel? If, if you were
19 following your own mitigation measures, wouldn't you avoid that kind of
20 concentration of surface water?

21 MILLER: Yes. That's what I talked about in, uh, spreading it out over a
22 larger area to minimize the, the concentrate as well.

23 LYNN: So, if one were to actually follow the mitigation measures that
24 you recommended, they would, Miles, that is, would, in the course of
25 maintaining the road, address that issue?

1 MILLER: That would be our recommendation.

2 LYNN: That's all I have, thank you.

3 REEVES: Okay.

4 LORING: Mr. Examiner, I've got re-cross, if I might?

5 REEVES: I'll, I'll let you have the one.

6 LORING: Thank you. Uh, Mr. Miller, I'm hoping you can provide a little
7 bit of clarification. Uh, just now you were asked whether you needed to
8 quantify the difference in trucks and volumes. Uh, and you said, no, you
9 didn't need to do that. But, earlier, when you were testifying on your
10 initial direct examination, you stated that in doing your review, you're
11 looking for new development and since there was no proposed physical change
12 to the road, uh, you looked at the past performance of that road. Is, is
13 there some past performance other than the logging that you would have looked
14 at?

15 MILLER: We look at potential drainage issues, we look at, um, the, any
16 potential movement that we might see of indications of movement, um, on the
17 slope, cracks in the road, trees, et cetera.

18 LORING: Okay.

19 MILLER: It's all...

20 LORING: Just to...

21 MILLER: Visual at this point in time.

22 LORING: Just to briefly follow up on your direct I heard you to testify
23 that, it's very directly related, Mr. Examiner, I, if you'll indulge me just
24 for a second. Uh, you testified that your review here was based to a large
25

1 extent on the past performance of this road under those conditions. On direct
2 examination, that was your, the jest of your testimony, is that right?

3 MILLER: Yes, that's what we have to go by at this point in time.

4 LORING: Sure. And that past performance would have been with the, the
5 forestry or other uses that were not gravel use, is that right?

6 MILLER: Uh, all I have is what is there now and how it's been, what we
7 understand it's been used as.

8 LORING: And I, I fully understand that. I just wanted to understand
9 because you just now testified, testified that you weren't trying to quantify
10 any past use there. And, and it suggested that the past use was not
11 important. But, my understanding was that that was the full basis of your
12 examination of whether this road, uh, of the condition of this road and of
13 the geologic hazards around it.

14 MILLER: I guess, I, I feel like it's been twisted around. Yes, it, we
15 look at past performance, okay? And what, what, at this point in time, that's
16 all we have to go by, at this point in time, with a visual observation is
17 past performance and how it's been used.

18 LORING: Okay. Thank you. That answers my question. I appreciate that.

19 REEVES: Great. Okay. Uh, based on the time, I would suggest this would
20 probably be a good moment to take a short break and then come back, um, back
21 [inaudible] but, Mr. Lynn, who do you plan on, uh, calling next, just so we
22 know where we're headed?

23 LYNN: Uh, Mr. Norris, Traffic Engineer.

24 REEVES: Okay. Uh, so why don't we shoot to be back at 2:20, uh, to start
25 with, uh, Mr. Norris, everybody. Thank you.

1 LORING: Thank you.

2 EHRLICHMAN: Thank you.

3 [Background chatter.]

4 REEVES: I'm back and I believe we're going to hear next from Gary Norris,
5 according to Mr. Lynn, is that right?

6 LYNN: Yes.

7 REEVES: Okay.

8 LYNN: I, I'd answered clear, only due to [inaudible] Mr. Norris even
9 with us? There he is.

10 REEVES: Hi, Mr. Norris, can you hear me okay?

11 NORRIS: Can you hear me?

12 REEVES: I can hear you. I'm going to get your sworn in, okay?

13 NORRIS: Okay.

14 REEVES: Do you swear or affirm to tell the truth in the testimony you
15 give here today?

16 NORRIS: I do.

17 REEVES: Okay. And if you could just, uh, state and spell your name for
18 the audio?

19 NORRIS: My name is Gary A. Norris, G-a-r-y A. Norris, N-o-r-r-i-s.

20 REEVES: Thank you. Go ahead, Mr. Lynn.

21 LYNN: Uh, thank you, uh, Mr. Norris, uh, you've been listening to the
22 testimony so far today?

23 NORRIS: I have.

24 LYNN: Okay.

25 NORRIS: I have. Uh-huh.

1 LYNN: And, uh, could you tell us, briefly, what your professional
2 qualifications are?

3 NORRIS: Uh, I have a Master's Degree in Traffic Engineering and
4 Transportation Planning from the University of Washington. I'm also a
5 Certified Pro-, Professional Traffic Operations Engineer and also a Road
6 Safety Professional 1, certified by the Institute of Transportation
7 Engineers.

8 LYNN: Okay. And, uh, are, does the, are you familiar with Skagit
9 County's requirements for who can prepare a Traffic Impact Analysis?

10 NORRIS: I am.

11 LYNN: And, uh, do those require that one be an Engineer and a Traffic
12 Engineer?

13 NORRIS: Yes, they do.

14 LYNN: Have you prepared, uh, traffic analysis for Skagit County in the
15 past?

16 NORRIS: Yes, I have.

17 LYNN: Okay. Could you estimate, well, not just for the County, I guess,
18 could you estimate the number of traffic impact assessments you've prepared
19 in your career?

20 NORRIS: Uh, in excess of a thousand.

21 LYNN: Okay. Have you performed, uh, traffic analysis on other surface
22 mines before?

23 NORRIS: Uh, yes, I believe I have.
24
25

1 LYNN: Okay. What, what is the ITE, you mentioned the Institute for
2 Traffic Engineering, but could you tell Hearing Examiner what that, uh, what
3 that organization does?
4 NORRIS: It's a Professional Society of, uh, Traffic Engineers, uh, formed
5 back in the 1930's to promote the Traffic Engineering profession and, uh,
6 the, uh, standards by which we evaluate traffic.
7 LYNN: Uh, and, uh, do they publish a manual which is used as the
8 standard for the preparation of traffic impact analysis?
9 NORRIS: They do.
10 LYNN: Uh, does that organization publish, uh, documents regarding, uh,
11 average traffic from various uses?
12 NORRIS: It does.
13 LYNN: Okay. And how does that come into play in analyzing a mine impact
14 compared to say, a 7-Eleven or a, or a school?
15 NORRIS: Well, uh, there are some uses that are much more typical that
16 there's a lot of studies across the country that have been, uh, used to
17 generate averages of trip generation for, uh, specific uses. In terms of, uh,
18 mines, that's a little more, um, uh, generic in that there isn't a lot of
19 documented studies that, uh, generate, uh, trips for specific mine
20 applications.
21 LYNN: So, in the case of a mine, do you, uh, rely on other information
22 to assess the impacts?
23 NORRIS: Yes. We, we relied specifically on the anticipated traffic
24 generated from the, the use itself.
25

1 LYNN: Okay. And is, is the use of an average, which you've mentioned
2 several times, the, the common way in which traffic impacts are assessed?

3 NORRIS: Yes.

4 LYNN: Uh, so you prepared a number of different reports here, um, how
5 did that come to be? Were those, uh, requested by the County or were those
6 your own ideas about how this should be evaluated?

7 NORRIS: Well, this goes back a long ways to, I think 2013 is when we
8 began, uh, looking at the potential for the Grip Road mine. And working with,
9 uh, Semrau Engineering and the County, uh, we determined that although the,
10 uh, County standards, the Skagit County road standards did not require a
11 traffic impact analysis for this scale of development that was being proposed
12 at that time. That we felt that there were other road implications, uh, most
13 specifically, the site distance issue at the Prairie Road/Grip Road
14 intersection that would warrant some sort of, uh, traffic assignment to
15 determine what kind of, uh, facilities that the gravel operation would be
16 impacting. So, we had done a, uh, initial trip generation and assignment of
17 the trips to the network and, uh, peak hour counts at the critical
18 intersections that would be impacted by, uh, the operation.

19 LYNN: And is that your, the result of that, your report from February
20 of 2016? I think Exhibit 12?

21 NORRIS: Yes.

22 LYNN: For the County.

23 NORRIS: Yeah.

24 LYNN: And, and what generally did that, uh, analysis and conclude?
25

1 NORRIS: Uh, it basically looked at the intersection level of service, um,
2 and concluded that we were well within the acceptable limits of the County
3 Road Standard. It looked at, um, site distance issues and determined that we
4 were really deficient at the Grip Road/Prairie Road, uh, intersection, which
5 would require some form of, of mitigation to address that.

6 LYNN: Okay. And so, you, you mentioned acceptable levels of service,
7 what is the acceptable level of service for a County road?

8 NORRIS: Uh, it's Level Service C.

9 LYNN: Okay. And you concluded that with the traffic from this proposal,
10 the project would be within the County's accepted levels of service?

11 NORRIS: Correct.

12 LYNN: So, you mentioned site distance, can you tell the Hearing
13 Examiner a little bit more about site distance, how that's, uh, determined
14 and, uh, what the deficiency was in this case?

15 NORRIS: Uh, yeah. Um, just a second here, I want to find, uh, that
16 specific, uh, document that summarizes that. I think I have that here. Um...

17 REEVES: I think it's Page 4...

18 NORRIS: Some distant-, yeah. So, let's see, um, yeah, there's, uh, the
19 site distance is composed of two, uh, specific elements. One is the, uh,
20 stopping site distance and that's the base minimum, um, distance for a
21 vehicle to perceive an object, uh, six inches to two feet of height in the
22 roadway to come to a stop. Uh, but what I have to consider the braking time
23 and the perception/reaction time. And then, the other, um, Application is the
24 entering site distance, which is, um, basically, um, is the, uh, time for a
25 vehicle, it's more a capacity analysis, is time for a vehicle to make a turn,

1 uh, in front of oncoming traffic, uh, without the oncoming traffic. Now, the,
2 they dramatically slow down or pass the, uh, um, entering the vehicle. And,
3 in those cases, those distances are, are much longer.

4 LYNN: Okay. And so, you examined those and found deficiencies. And at
5 that point, was there a specific recommendation about what might be done to
6 remedy the situation?

7 NORRIS: Uh, the, um, the initial proposal was to do a, um, a, um, signing
8 application at the Grip Road/Prairie Road intersection. Um, I'm, I'm getting
9 a lot of noise on my, um, system, it's kind of disconcerting, I don't, I
10 don't know. It sounds like people are just shuffling things around or, or the
11 wind is blowing, I'm not sure. That's better. Thank you. Uh, so the initial
12 proposal was to do a, uh, a flashing beacon operation that would alert
13 traffic on, uh, Prairie Road to the presence of turning vehicles, uh, because
14 the, the site distance was so restricted coming around the, the corner from
15 the north. Um, I know the County recently tried to cut back that curve a
16 little bit, but, uh, we visited that here a few weeks ago and it's still,
17 with the, uh, vegetation growing, there's no, uh, mitigation to the site
18 distance deficiency. So, the intent was to be able to notify, uh, traffic on
19 the road, the existing of these large trucks would be turning, which would
20 give them enough time to slow down. And, uh, stop and be aware of that
21 occurring.

22 LYNN: Uh, so, you did investigate the potential to actually make
23 physical improvements that would improve the site distance?

24 NORRIS: Yes.

25 LYNN: And what did you determine about the practicality of that?

1 NORRIS: Uh, I determined it was very practical and we had an initial
2 review from the County and it appeared to be acceptable to them, so we kind
3 of proceeded along those lines.

4 LYNN: Uh, now, I was talking about something other than the beacons,
5 was there another physical solution that you could, where you could alter the
6 terrain or something to, uh, improve site distance?

7 NORRIS: Well, we looked at the possibility of, uh, cutting back the, um,
8 the hillside that created the deficient site distance, uh, consideration and
9 because of right-of-way limitations and costs associated with it, it was
10 determined not to be a practical solution for the, um, impacts that this
11 project would have on that intersection.

12 LYNN: Okay. And you also, in that report, analyzed, uh, a traffic, uh,
13 operation that would be more a 9:00 to 3:00 instead of a 7:00 to 5:00, what
14 was the purpose of that?

15 NORRIS: Well, um, other Applications I worked on, uh, in the urban area,
16 would restrict, uh, traffic during peak hours, uh, for large commercial
17 hauling vehicles. And, so, that was something that we looked at as a
18 potential and, uh, uh, didn't proceed without ideas, we didn't think it was
19 necessary in this Application.

20 LYNN: Is that because there really aren't, uh, traffic capacity
21 problems in the peak hours?

22 NORRIS: That's correct.

23 LYNN: What was the next report that you prepared?

24 NORRIS: Uh, we prepared a report, and this, um, we had the, um, original
25 hearing, uh, with the County and some issues came up, uh, during that

1 process. And then, also, the County determined that they wanted to do a peer
2 review of the work that we'd done. And so it had, uh, both Gibson Traffic
3 Consultants and HDR review our work and make, uh, suggestions for additional
4 elements that could be included. Uh, and that really went beyond, uh, the
5 requirements of the County to provide, uh, a Level 1 traffic study, which is
6 what was the basis of our initial, um, presentation. We didn't even trip the
7 threshold for a Level 1 traffic study of 25 peak hour trips. Uh, but the
8 second study that was a follow one with all of these other, uh, issues
9 incorporated, uh, was dated, uh, I think it's September, uh, 12th of 20-, or
10 September 10th of 2020. And, uh, in that case, we were looking at, uh, uh, if
11 they did a peak, a peak peak operation there, we could generate up to 29
12 trips in the, uh, peak hour, which under that, uh, configuration, it would
13 trip a Level 1, would trip a Level 1 Analysis, uh, and so we did, uh, prepare
14 that based upon that, uh, requirement.

15 LYNN: I think we might need to go back. I might have missed one, uh,
16 wasn't there also a report in November of '16 that looked at the maximum
17 traffic, not just the average daily, but the maximum kind of worst case?

18 NORRIS: Yes, there was. And that was, uh, a specific request by Miles to
19 determine what would the maximum volume of trips that could be generated
20 without impacting the level of service, uh, at the critical intersections.
21 And we determined that to be the Prairie Road/Highway 99, uh, intersection.
22 And based on the exiting volumes that were there, uh, and the addition of
23 truck traffic, we estimated that, uh, the Grip Road site could generate a 110
24 peak hour trips, without, uh, tr-, uh, crossing the level service threshold
25 from Level Service C to Level D. and...

1 REEVES: And, sorry, one sec. Just to make sure I'm tracking. Right now,
2 referencing what I have [inaudible] depending on the record, this is the
3 maximum daily truck traffic memorandum [inaudible] 2016. Is that accurate?

4 NORRIS: Yes.

5 REEVES: And then before we jump backward, we were referencing Exhibit 18,
6 which was September 20th memorandum [inaudible] anyway, you know what we're
7 talking about, is that accurate? Mr. Lynn, is that your understanding that
8 we were having?

9 LYNN: Yeah. Again, yes, I, I was, I was thinking Mr. Norris was going
10 to answer. But, yes, we sort of out of...

11 REEVES: Okay. That's fine.

12 LYNN: Sequence there and got into the TIA from 2020. We're going to get
13 there here shortly.

14 REEVES: Okay.

15 NORRIS: Um...

16 REEVES: Sorry to interrupt.

17 LYNN: No, that's all, that's, I, I appreciate it. I should have been
18 using Exhibit Numbers, frankly, I've gotten a little confused by them, at
19 times, so, I, um, so, then, I want to direct you to Exhibit, uh, 14, which
20 was a June 6th, 2019, uh, analysis. Are you familiar with that, Mr. Norris, or
21 do you recall that?

22 NORRIS: I'm, uh, trying to get to that right now, but...

23 LYNN: [Pause] I, I, yeah, I, I'm not sure it's necessary, uh, if you
24 don't have it handy. It, it was sort of seems to summarize the state of the
25 reports as of that time. So, if you don't find it readily, we can move on.

1 NORRIS: What, what's the date on it?

2 LYNN: Uh, June 6th, 2019. Says, starts the following memorandum was
3 prepared to summarize the traffic studies.

4 NORRIS: Okay. Yeah. I'm not seeing that right in front of me right now.

5 LYNN: Okay. All right. That's all right. We'll move on. So, uh, you
6 indicated at some point that there were two peered reviews, uh, one was from
7 Gibson Traffic Consultants and that's Exhibit 15, that's dated December 18th,
8 2018.

9 NORRIS: Yes.

10 LYNN: Okay. And did you consult with Gibson or did you just receive
11 their feedback, uh, from, through the County?

12 NORRIS: I just received their feedback, I didn't talk with them.

13 LYNN: Okay. So, was the, the commentary that they provided taken into
14 account by you in later studies?

15 NORRIS: Yes.

16 LYNN: Okay. And what about the HDR one? First of all, do you know why
17 the County ended up with two different consultants? This one is Exhibit 16
18 and it's dated April 28th, 2020. Uh, do you know why the County switched
19 consultants or obtained additional input?

20 NORRIS: I, I don't have a, uh, specific, uh, reason why they did that.

21 LYNN: Okay. Uh, were you provided this information as well?

22 NORRIS: Yes, I was.

23 LYNN: Okay. And, and did you take that into account in preparing any
24 additional traffic analysis that was done here?

25 NORRIS: Yes, we did.

1 LYNN: Okay. I want to talk about Exhibit 18, which is the December, uh,
2 I'm sorry, September 10th, 2020 traffic analysis. Is that, that's the study
3 you were referring to a few minutes ago when you said you had gotten the
4 input from the third parties and then prepare da TIA?

5 NORRIS: That's correct.

6 LYNN: Okay. And was it still your conclusion that the, that the actual
7 County standards for a Level 1 TIA had not been triggered?

8 NORRIS: That was my understanding, yes.

9 LYNN: Okay. And so, why was this prepared, then?

10 NORRIS: In response to the, uh, analysis that was done by Gibson and HDR
11 that, uh, we never believed that the information that we had provided up to
12 this point was, um, addressed all the questions that were being asked at the
13 time. And, uh, although we never felt that it was necessary because we never
14 tripped the threshold that the County identified. And as we were playing
15 around with the, the different numbers of the impact of the proposal, uh, we
16 rational, rationalized the case where there may be a number where we
17 actually, uh, could exceed the peak, uh, trips and result in a Level 1
18 traffic study.

19 LYNN: Okay.

20 NORRIS: So, taking in all the information that we had to-date, the issues
21 that had been explained and addressed, we complete this analysis, which we
22 felt was a comprehensive, uh, response to all of the comments that had been
23 received.

24

25

1 LYNN: Was there any question ever in the course of preparing these
2 documents as to what the conditions were on the roads that were to be
3 utilized here, Prairie and Grip, uh, in, in your mind?

4 NORRIS: I'm not sure I understand your question?

5 LYNN: Well, did you understand that those roads didn't have shoulders
6 or didn't have the County Code, uh, required shoulders in, in stretches and
7 that they were curvy and hilly roads?

8 NORRIS: Yes, we did.

9 LYNN: Okay. Did you investigate crash safety as part of the, uh, TIA or
10 earlier?

11 NORRIS: Yes, we did.

12 LYNN: And, and what sort of information do you look at in assessing
13 crash, uh, with the, the safety of the roads?

14 NORRIS: Look at, um, severity of the crash. We look at the, um, the
15 volume of the crashes at a specific location and is there a, uh, very
16 discernable pattern of what might be triggering, um, a crash history. And we
17 look at the, uh, crash rates to, um, determine if it's within the acceptable,
18 well, I'm not going to use the word acceptable, but is it, uh, uh, within a
19 range that is con-, considered a, um, within the limits of what we look at
20 when we're evaluating critical crash history at an intersection.

21 LYNN: Okay. And so, if you find more crashes than you would expect, uh,
22 and can attribute that to some physical condition, is that, that's what
23 you're looking for in a situation like that?

24 NORRIS: That's correct.

25

1 LYNN: Okay. And did you find the locations that had, uh, a crash
2 history that suggested, uh, a problem like physical condition?

3 NORRIS: Uh, we didn't find any location where the, um, crash rate
4 exceeded what would normally be considered, uh, um, competitive for
5 investment improvements. And that's generally a rate of about 1.1 accidents
6 per million entering vehicles.

7 LYNN: Uh, did you note, uh, site distance issues at the entrance of the
8 mine?

9 NORRIS: Yes, we did.

10 LYNN: And what did you propose for mitigation, if anything, as a result
11 of the...

12 NORRIS: What, what we were proposing was the installation, again, of a,
13 uh, notification system, uh, traffic-activated, uh, flashing beacons on
14 approach to the Grip Road access that would alert traffic to trucks entering
15 the roadway.

16 LYNN: And so, tell me, tell us what would happen if a truck starts to
17 come down the haul road, getting ready to enter Grip, what, what would happen
18 there?

19 NORRIS: The truck would, um, cross over a loop, uh, installed in the
20 pavement, on the approach, and that would trip a flashing beacon, uh,
21 appropriate stopping site distances away from the entrance to the, uh, site
22 access.

23 LYNN: Okay. Uh, were, were there other physical improvements proposed,
24 uh, at that location as well?

25

1 NORRIS: Well, I think, uh, uh, Brad and, uh, John will speak more to
2 this, about, uh, paving the approach, uh, in advance of the, uh, entering the
3 roadway to remove any, uh, uh, rocks or debris that might be on the truck
4 that would, uh, impact the roadway.

5 LYNN: Okay. And is a similar looped activated beacon system what is
6 proposed at the Prairie Road/Grip intersection?

7 NORRIS: It is.

8 LYNN: Um, and that's one of the conditions of the MDNS I think we
9 discussed earlier. Uh, uh, was consideration given to making that, uh,
10 Grip/Prairie Road a three-way stop?

11 NORRIS: Um, no.

12 LYNN: Okay. That wasn't something you evaluated. Is that something
13 that's a possibility if the County wanted to, uh, slow traffic there or
14 ensure better site distance?

15 NORRIS: Um, it, it, it's a possibility, but, um, we're very cautious
16 about, uh, using traffic control devices such as stop signs, uh, for, uh,
17 site distance issues if there's not a significant volume to warrant, uh,
18 their use. Because, people, if they don't perceive there being an issue
19 there, they tend to, uh, ignore the traffic control device. So, that's why
20 the Application that we proposed was an activated beacon. It would not be a
21 beacon that would be flashing all the time because, as I said, uh, traffic
22 tends to ignore those things unless they relate that directly to an adverse,
23 uh, situation. So, we want to make it a real time, uh, notice of an issue
24 that might occur.

25

1 LYNN: Okay. Um, so, I, I clumsily referred to auto-turn this morning,
2 could you tell the Hearing Examiner what auto-turn is and how it related to
3 the improvement of these S-curves?

4 NORRIS: Auto-turn is a com-, uh, computer simulation of vehicle travel
5 paths. So, it actually delineates the real path of, in this case, the truck
6 and the pup, uh, through the curves to find out how it encroaches outside the
7 lane configuration. Now, I have to tell you that, uh, a very specific vehicle
8 was designed based upon the information that we were provided by Miles Sand
9 and Gravel in regards to the auto-turn application so that it was a, uh, a
10 real, uh, application of the design of the vehicle that will be used, uh, in
11 this situation.

12 LYNN: So, this auto-turn analysis takes a real, uh, vehicle that Miles
13 would use and then plots its course through a, a given road section through a
14 computer program?

15 NORRIS: That's correct. So, the actual, um, planned view of the roadway
16 is incorporated into the computer model and then, uh, with all of the
17 dimensions of the road accurately represented. And then the commuter, uh,
18 computer model simulates the, uh, wheel patterns as they negotiate the curve.

19 LYNN: And then what happens with that analysis, what do you do with it?

20 NORRIS: Well, what it shows us is where there are, uh, implications where
21 the vehicle will travel outside the lane or across the center line, which
22 would give us, and information to the design engineer to, uh, include lane
23 widening, uh, or modifications to be able to incorporate the, uh, vehicle.

24

25

1 LYNN: Okay. Uh, so the output of the computer model is just handed over
2 to somebody like a Civil Engineer and then they, they would physically design
3 the improvement?

4 NORRIS: Uh, yes, that's correct.

5 LYNN: Okay. Um, I don't have any other questions. Thank you.

6 REEVES: All right. I, I guess on that question, for me, uh, okay. On that
7 last bit of testimony there, uh, stumble with my own question, I guess, you
8 identified that you put parameters in that are, are precise as to the type
9 and length of the vehicle as it traverses the path. Uh, is there any
10 parameters on the driver? I mean, are we assuming the, the model assumes
11 that, uh, a driver with a good safety record that follows the rules of the
12 road and, and the speed limits and stuff? I'm, I'm just trying to understand,
13 you, you reference the computer model saying wheel patterns might show, you
14 know, outside of the lane, I was wondering where that info came from? Is that
15 just based on the physics, I, I'm trying to understand how this all works?

16 NORRIS: Yeah. It doesn't incorporate any, uh, intelligence into who's
17 driving the vehicle, it's just the performance characteristics of a specific
18 vehicle, uh, through a curve.

19 REEVES: Okay. All right. And thank you for clarifying that. Um, okay,
20 Mr., uh, D'Avignon, did you have questions, uh, for this witness?

21 D'AVIGNON: I, I, I do have one and I think it's [inaudible] Mr. Examiner,
22 in, in the computer simulation, was it running at speed limit where, or just
23 the, this truck is, given its length, will always, whether it's going one
24 more miles per hour or 50, it's going to cross the center line?

25

1 NORRIS: No, I believe there's, uh, speed, uh, considerations in the
2 analysis.

3 D'AVIGNON: Okay. Uh, no other questions.

4 REEVES: Thank you. That, that helped kind of flush out what I was trying
5 to understand. So, with that, we'll go to Mr. Loring at this time for cross
6 examination.

7 LORING: Thank you, Mr. Examiner. And good afternoon, Mr. Norris.

8 NORRIS: Good afternoon.

9 LORING: When you say, uh, just to follow up on that, when you say speed
10 is incorporated, what are the, uh, what is the speed that is assumed for
11 these vehicles and other vehicles traveling on the road?

12 NORRIS: The design of the curve.

13 LORING: And how do you reach that speed?

14 NORRIS: That's, uh, incorporated in the overall, uh, design parameters of
15 the roadway.

16 LORING: So, the person running the model decides what number they think
17 makes sense for the curve?

18 NORRIS: Well, it's, uh, a lot of times it's incorporated into the design,
19 what, what's the acceptable speed for a curve like that. And that would be
20 what would be used.

21 LORING: Okay.

22 REEVES: Sorry...

23 LORING: I just may have, yeah.

24 REEVES: I...

25 LORING: Go ahead.

1 REEVES: I apologize. I'll break in because I do have, uh, sort of, uh,
2 leniency to do that sometimes. Uh, the speed of the curve is not, you don't
3 use the speed that is the posted speed for that section of the roadway when
4 we're dealing with an already existing road? It's something else? Did I
5 understand that right?

6 NORRIS: Yeah. It's pretty much the, um, the speed that, that is
7 comfortable for a curve of that nature.

8 REEVES: Okay. So, I guess what I'm asking is if, if there's a posted
9 speed of 30 miles an hour, you're saying that the comfortable speed for a
10 truck of this type might be 15 and that's the speed that's used, not 30, is...

11 NORRIS: That, that would...

12 REEVES: Is that the...

13 NORRIS: That would be correct, yeah.

14 REEVES: Thank you for clarifying that. Okay. Go ahead, Mr. Loring.

15 LORING: Thanks. I, sorry, this, there's a lot of ambiguity here, I guess,
16 you know, we lawyers hate that. Uh, when you say comfortable, it's
17 comfortable to whom?

18 NORRIS: Well, uh, if you're driven along these corridors, you see a lot
19 of curve warning signs and on those signs, oftentimes there are posted limits
20 of what are, uh, warning signs or a speed that's comfortable through the
21 curve. And that speed is determined through the application of a ball bank
22 indicator which, uh, sets certain thresholds for, uh, the comfort of, uh, the
23 forces that act on you as you're driving through a curve. So, it's that kind
24 of an application where they look at, does this make, um, is this consistent
25 with those kinds of, um, speeds.

1 LORING: Okay. And, and who decides what that number is for individual
2 curves? Let's say the Grip Road curves in Skagit County, who decided what
3 number was a comfortable number to use for those curves?
4 NORRIS: That, that would be the County.
5 LORING: Okay. So, you got numbers from the County?
6 NORRIS: Uh, well, I didn't get numbers, specifically, from the County.
7 But those are the numbers that we used that were the basis for an acceptable
8 speed through the curve.
9 LORING: Okay. So the model used numbers that the County has generated for
10 that, those specific curves on Grip Road?
11 NORRIS: As they were posted, yes.
12 LORING: Okay. Thank you for that. Okay. Let's, uh, let's get back to a
13 few other questions here. Uh, you were asked about using the average traffic
14 volume as a standard approach for mines and assessing mine traffic impacts
15 earlier. Uh, the average volume isn't going to capture the full range of
16 impacts, though, right?
17 NORRIS: I don't understand your question?
18 LORING: Well, does a mine ever operate above the average number that is
19 used for the traffic study?
20 NORRIS: Are, are you referring to the ITE Manual suggested number or are
21 you referring to the numbers that we used or, uh...
22 LORING: Yeah. I'm referring to the...
23 NORRIS: Was it just...
24
25

1 LORING: Yeah. I'm referring to that number that you used the, the 46
2 trips per day, number that would be the average over the ten hour period of
3 the day?

4 NORRIS: That's, our number was generated, goes back to the volume of
5 material that, um, Miles estimated they were going to remove from the mine on
6 an annual basis. And so then that was translated into the number of trucks
7 that were required to move that, uh, volume of material. And then we looked
8 at the application of those truck volumes to different operating scenarios,
9 uh, in terms of days and, um, the times of the day that would be impacted.
10 And I think what our analysis was based on was the, um, uh, the peak hour of
11 being from 7:00, or the operational hours being from 7:00 to 5:00, Monday
12 through Friday. And coming up with that over 260 days, that's how we came up
13 with the volume of trucks.

14 LORING: Okay. Um, but on a day-to-day basis, it's not going to follow
15 exactly 46, uh, trips, is that right?

16 NORRIS: I, I think, uh, Mr. Barton discussed that this morning in his
17 testimony about the possible variations. But on the average condition, I
18 believe the 46 is real. And, uh, I, I would say, in the traffic world, we're
19 always working at the average volume scenarios. We don't design our highways
20 for peak conditions, as everybody can tell.

21 LORING: That, that was a great 3:00 p.m. comment, actually, I think right
22 there. Uh, yes. True. So, so here's question for you, though. I, I'm looking
23 at Exhibit C13. And this relates, uh, on this, uh, in Exhibit C13, Page 2,
24 it's a short one, I think it was the, uh, maximum daily truck traffic memo
25 that we were talking about a moment ago. It, it suggests a maximum limit

1 based on the availability of 30 dump trucks, uh, being 60 trucks, truck trips
2 per hour. Would modeling of impacts based on 46 per day, uh, provide
3 information to understand what the impacts of the traffic will be for 60
4 trips per hour?

5 NORRIS: Um, I'm not sure I understand that question.

6 REEVES: Sorry, I, I got lost, too, Mr. Loring. Could you maybe break it
7 up...

8 LORING: Sure.

9 REEVES: A tiny bit or...

10 LORING: Sure. When looking at the, the transportation impacts here an
11 average number of 46 trips per day was used, was that right?

12 NORRIS: Yes.

13 LORING: Okay. Uh, at the same time, another application document
14 identified 60 trips per hour as a potential maximum number of trips that this
15 site would generate, is that right?

16 NORRIS: Um, I'm not totally sure of that, which document are you
17 referring to?

18 LORING: I'm looking at C13. This is your document from, uh, November 30th,
19 2016. It's at Maximum Daily Truck Traffic Memorandum.

20 NORRIS: Yeah. Okay. I have [pause] oh, here we go. So, yeah, this was
21 analysis if we had 30, um, the 30 trucks available, um, maximum hourly
22 restriction was set at seventy-, let's see, 720 trips per day, or 60 trips
23 per hour. That would be the, the maximum.

24

25

1 LORING: Okay. And so my question was, evaluating a 46 per day is not
2 going to give you the traffic impacts, uh, that would be generated by 60
3 trips per hour? Or 720 per day, is, is that an accurate statement?

4 NORRIS: That's an accurate statement.

5 LORING: Okay. Uh, let's see here.

6 REEVES: Are, are you moving off this Exhibit, Mr. Loring?

7 LORING: I am if you have a question on it, Mr. Examiner.

8 REEVES: I just, thank you, while I have it opened, I just want to
9 clarify, uh, for my understanding. My understanding, Mr. Norris, would be
10 that the numbers here, uh, that are identified are the numbers that would
11 trigger a, a drop in the LOS or Level of Service from C to D, is that right?

12 NORRIS: No. That is not correct.

13 REEVES: No.

14 NORRIS: This, we're going, uh, evaluating and balancing a couple of
15 different things here. One, is the ability of Miles to generate these truck
16 in traffic with the equipment and the ability to load these trucks and push
17 them in and out. So, that was one thing. And that's where that 720 trips per
18 day came from. The other analysis that we did was the, uh, number of trips
19 that could be generated per hour if, uh, we were looking at simply the level
20 of service of the critical intersection. And that analysis showed that we
21 could generate 110 trips during the peak hour, uh, to, uh, that we could
22 accommodate, and that's during the peak hour so that's the worst case
23 condition for the intersection. That means that those volumes would be higher
24 at other times of the day and not trip the Level of Service C or D threshold.
25 Yeah. We wouldn't impact the Level of Service C.

1 REEVES: Okay.

2 NORRIS: So...

3 REEVES: Sorry, I conflated the two paragraphs. Okay. So, essentially, one
4 of them says, you know, in a world wherein there were enough dump trucks, uh,
5 you know, out there to, to, to go as, you know, however we wanted, it would
6 take 110 trips, additionally, during the PM peak to, to, to trigger that LOS
7 drop whereas the next portion of the memo is saying, there are not that many
8 dump trucks, we think the maximum limit, uh, would be 60 per hour or 720?

9 NORRIS: That's correct.

10 REEVES: Okay. Sorry to, sorry to confuse things. But, I think it's more
11 clear in my mind now, hopefully. So, Mr. Loring, with that, I'll pass the
12 witness back to you.

13 LORING: Thank you. Uh, just to follow up on that 110 truck trips, is that
14 roughly what it would take to drop from a LOS C or, or sorry, the Level of
15 Service to a, around a D as well for the Prairie Road and Grip Road
16 intersection?

17 NORRIS: Uh, well, that would be an even higher volume, uh, than the
18 Highway 99 because of the volumes that are already existing on, uh...

19 LORING: Okay.

20 NORRIS: Highway 99.

21 LORING: Okay. Gotcha. So, back to the 60 trips per hour, uh, if, if the
22 site were generating the 60 trips per hour, which was suggested to be the
23 maximum, that is a number that exceeds a threshold for needing to conduct a
24 Level 2 traffic impact analysis, doesn't it?

25 NORRIS: Yes, it would.

1 LORING: Okay. All right. Uh, let's see here, oh, you mentioned a moment
2 ago that your document, uh, understands, and your reviews, understands that
3 the ro-, roads that don't have shoulders and that the roads are curvy, and I
4 believe hilly, as well, uh, was that your testimony a few minutes ago?

5 NORRIS: Yes.

6 LORING: Okay. Now, your September 10th, 2020 document, that actually does
7 not acknowledge that there are no shoulders on Prairie Road or F and S Grade
8 Road, right?

9 NORRIS: Um, I believe that we did talk about that.

10 LORING: Let me turn your attention, are, are you in that document? I've
11 got, uh, now, I'm in the wrong document.

12 REEVES: Which, which Exhibit did we jump to?

13 LORING: Well, this is a good question. I was using it as a different
14 number than the, the County one, so, I, I must have also plead a little bit
15 of confusion as Mr. Lynn did earlier, since we've had multiple versions or,
16 you know, multiple numbering. So, it's just going to take me a second here.

17 REEVES: That's okay. What's the date, Mr. Loring?

18 LORING: And that is the challenge. Let me make sure I'm looking at the
19 right one.

20 REEVES: Yeah. Sometimes occurs my, my efforts to be helpful are not
21 helpful at all.

22 LORING: Well, that's not the issue, really.

23 NORRIS: I believe the, uh, report does talk about the shoulder conditions
24 on both of those roads.

25 LORING: Can you point us to that page, then?

1 REEVES: What, what report?

2 LORING: And the document that you're looking at?

3 REEVES: Mr. Norris...

4 LORING: [Inaudible.]

5 NORRIS: [Inaudible.]

6 LORING: I apologize. I'll talk, I'm sorry. I was looking at, I had the
7 PDF number, it's different from the Document number. I'm, I'm there. You're
8 looking at, at Document C18, is that right, Mr. Norris?

9 NORRIS: Uh, I'm looking at the 9/10/20, uh, Traffic Impact Analysis,
10 whatever is...

11 LORING: Yeah.

12 NORRIS: The label on that.

13 LORING: Okay. Exhibit C18, and, uh, I'm looking at Page 5 in the
14 document. If you've got that PDF Exhibit, it's Page 7 in the PDF.

15 NORRIS: Uh, I'm, I'm seeing Page 5.

16 LORING: Yeah. And do you see under Prairie Road where it states that, uh,
17 let's see, that second paragraph under that Prairie Road italicized heading,
18 it talks about generally narrow, two to four foot paved or gravel shoulders.

19 NORRIS: Yes.

20 LORING: Uh, are you aware of the fact that Prairie Road doesn't have
21 shoulders?

22 NORRIS: Uh, I think in some spots it does.

23 LORING: Okay. Your testimony on direct was that you were aware that it
24 didn't, that these roads didn't have shoulders. Is that right?

25 NORRIS: Well, I thought you were talking about Grip Road.

1 LORING: Oh, no, I was talking about Prairie and then I'd like to cover F
2 and S Grade Road as well.

3 NORRIS: Yeah. I, I think, uh, F and S, F and S Grade Road is a two to
4 four foot paved or graveled shoulders and the same thing on, uh, Prairie
5 Road.

6 LORING: Okay. Are, are you familiar with the fact that F and S Grade Road
7 also doesn't have those two foot to four foot paved or gravel shoulders, at
8 least according to the County's bicycle map and, uh, people who travel that
9 routes?

10 NORRIS: Well, um, our site investigation indicated there was locations
11 where those did occur.

12 LORING: Okay. Let's see here, just a few more at this point.

13 REEVES: All right. Hold on. Just so I, again, I got a little confused
14 there. So, the understanding was, I think, please clarify for me, Mr. Norris,
15 your understanding is Grip Road does not have paved shoulders, correct?

16 NORRIS: Correct.

17 REEVES: But your understanding is that both Prairie Road and FS, F and S
18 Grade Road do have two foot paved or gravel shoulders at various points?

19 NORRIS: Yes.

20 REEVES: Is that testimony right?

21 NORRIS: That's my testimony, yeah.

22 REEVES: Okay. Great. Sorry, thank you. Go ahead, Mr. Loring.

23 LORING: No, thank you. Just a couple more questions here. Uh, the, the
24 traffic materials that you put together, those don't evaluate the impacts of
25 hauling material east of the mine road, is that right? Where that

1 intersection where, uh, the internal private road intersects with Grip and
2 then heading east, there's no study of the impacts along those, the curves
3 that way or the road that way, are there?

4 NORRIS: No, that, that volume was, uh, uh, deemed to be pretty
5 insignificant so, it was not any real specific analysis of that.

6 LORING: Okay. Do you, uh, you're not suggesting that the County is
7 limiting the number of trips that can go in any one direction from the site,
8 are you?

9 NORRIS: No. No.

10 LORING: Okay. So, at this point, they're unlimited, there are no
11 specifications about which trips can go where?

12 NORRIS: Uh, not, not that I'm aware of.

13 LORING: Okay. And your traffic documents also did not study the impacts
14 of the hauling material on F and S Grade Road, as well, is that right?

15 NORRIS: That's correct.

16 LORING: Okay. Uh, your transportation documents also state that there are
17 no known bike routes, is that right? In the subject area.

18 NORRIS: Correct.

19 LORING: Okay. Did you review the, uh, Skagit County bike map when you
20 reached that conclusion?

21 NORRIS: I did. And that is a, a map that talks about roadways, but it's
22 not a designated bike route. It's a map of information for bicyclists, but
23 it's not a designated bike route as also exists in that map.

24

25

1 LORING: Okay. Would you consider routes that have been marked as a U.S.
2 Bike Route Number X, Y or Z, uh, a designated bike route or are you thinking
3 about something else when you say designated bike route?
4 NORRIS: Yeah. I believe on the map there's a, uh, a legend that shows
5 that some of these are designated bike routes, either federal or whatever,
6 that, um, identified on the map. And that's not the case with Grip Road or
7 Prairie Road.
8 LORING: Okay. Now about F and S Grade Road, would that apply there?
9 NORRIS: Um, I think that is kind of designated, I'd have to go back and
10 check the map, but I...
11 LORING: Okay.
12 NORRIS: I believe so.
13 LORING: Okay.
14 NORRIS: But I'm looking at Google Map right now and I, I observe all
15 along Prairie Road, uh, significant shoulders either paved or graveled so, I
16 stand by my testimony in that regard.
17 LORING: Okay. And we'll have plenty of other testimony and, and I've been
18 on it on my bike so, I've got my point of view as well about whether there's
19 a shoulder on Prairie Road, uh, I can assure you there's not. Um, you...
20 REEVES: And I, I promise, I'll ignore that, I know that...
21 LORING: Sorry, of course.
22 REEVES: Mr. Loring isn't testifying, so...
23 LORING: Of course.
24 REEVES: No problem, Mr. Lynn, I, I, no need for the objection, keep
25 going.

1 LORING: Uh, what's the grade on that hill on Grip Road? The grade is, uh,
2 near the intersection with the haul road.

3 NORRIS: Um, I don't know exactly what it is.

4 LORING: Okay. Uh, average grade, you don't know?

5 NORRIS: I, I don't know, I haven't looked at it.

6 LORING: Okay. Maximum? Same?

7 NORRIS: Same.

8 LORING: Okay. Uh, the, the traffic documents that we've seen, those don't
9 study, uh, hauling impacts on emergency vehicles, do they?

10 NORRIS: Uh, unless there is extreme, uh, emergency activity and traffic,
11 uh, what I have to tell you, Traffic Impact Analysis don't evaluate, for the
12 most part, extreme conditions. They really focus on what is considered
13 average conditions and, and that's the impact that we have to deal with. And
14 I, I wouldn't say that that there was a significant volume of emergency
15 vehicle traffic on that, on those roads.

16 LORING: Okay. Have you studied the volume of emergency vehicle traffic on
17 those roads?

18 NORRIS: No.

19 LORING: Okay. So, you don't know, you have no idea what the actual number
20 is of emergency vehicle traffic?

21 NORRIS: Uh, I don't know, but, uh, having sat out there for several hours
22 on different occasions, I never saw any emergency vehicle trips on the road
23 while we were doing our counting and daily collection.

24

25

1 LORING: Okay. So you'd say a couple times observing is, is a stat-, uh,
2 statistically significant way to measure the amount of vehicle traffic, uh,
3 for emergency vehicles out there?

4 NORRIS: Uh, it's more than a couple of times, believe me, and it's over a
5 ten year period, so, uh, on several hours on a, on occasion, at very
6 different locations. So, I would say it's probably a good sample of what's
7 going on.

8 LORING: Okay. Uh, did you study the hauling impacts on school buses in
9 your traffic...

10 NORRIS: No, I didn't, but I did, uh, receive notice from the, uh, Sedro
11 Woolley School District and the Burlington-Edison School District, uh, of
12 their bus impact on those roadways and I, I believe that, um, uh, Sedro
13 Woolley said they had three buses and one Special Needs bus, which is a
14 smaller vehicle than the standard school bus. And Burlington-Edison said that
15 they had one, uh, bus on Prairie Road. So, total of about, uh, four or five
16 buses at different times of the day.

17 LORING: Okay. But you didn't study how that would interact with the
18 travel trucks and trailers that would be moving here?

19 NORRIS: Uh, it's pretty much, um, the a.m. condition might have an
20 impact. The p.m., the school trips are normally outside of school times, uh,
21 which would extend into what the, um, the activity would be. But, no real
22 significant impact on the operations or the intersection, uh, considerations.

23 LORING: Okay. So, now, are you now testifying that you did study the
24 impacts?

25 NORRIS: No, I didn't say that.

1 LORING: Okay. So, you...

2 NORRIS: I, I...

3 LORING: Didn't study the impacts, but you concluded there won't be a
4 significant impact, is that accurate?

5 NORRIS: That's correct. That's correct.

6 LORING: Okay. Uh, did you, did your, uh, traffic review study, uh,
7 hauling impacts to these vehicles on bicycles?

8 NORRIS: No.

9 LORING: Okay. And then you mentioned earlier that, uh, the Miles had
10 provided information about a very specific vehicle that was used for these
11 auto-turn simulations, uh, isn't that right you've got specific configuration
12 for the vehicle?

13 NORRIS: Yes.

14 LORING: Is that information, has that been disclosed in any of the
15 Application materials that you're aware of?

16 NORRIS: I don't believe it's disclosed in the Application materials, but,
17 uh, it will be part of the County review because that's what our design, uh,
18 is based on and that's, uh, information will be submitted as part of the
19 design package for those improvements.

20 LORING: Okay. So, prior to actually, or as part of this Application for a
21 Permit or this, this SEPA review, it hasn't been supplied?

22 NORRIS: No.

23 LORING: But you're, but it may be at some point in the future?

24 NORRIS: Yeah. It's not really relevant to a SEPA evaluation.

25

1 LORING: Are, are you saying that the impacts of trucks and trailers on
2 curves throughout the haul route are not, uh, pertinent to the SEPA review?

3 NORRIS: No, I'm saying that the design of the facilities that mitigate
4 the SEPA concerns are not necessarily a part of the SEPA review. That's part
5 of the design review that, uh, is part of the project implementation.

6 LORING: Okay. Uh, I have no further questions and I thank you for your
7 time.

8 NORRIS: Thank you.

9 REEVES: Great. And question, I guess from me, because, you know, it's
10 never really come up, but I might as well ask while I can, but in terms of
11 the TIA like this, uh, I think I heard testimony earlier that these, you
12 know, the trucks with the, the pup as it were, uh, you know, 75 feet maximum
13 length or something, is the length of a vehicle something that is concerned
14 in a TIA? Is there a standard car length that is used? I just, I never
15 thought of it before. But in my mind, I can see how much larger, longer
16 vehicles moving through intersection, sorry, uh, longer, large vehicles
17 moving through intersections are somewhat different than, you know, uh, uh,
18 my Subaru, uh, am I wrong? I mean, I'm not a traffic expert, so that's why
19 I'm asking.

20 NORRIS: No, you're, you're correct. And from a capacity standpoint, uh,
21 those, uh, issues are evaluated in the, uh, computer software that's used to
22 evaluate, uh, capacity.

23 REEVES: Okay. So, when preparing the TIA for this project and we have the
24 46, on average 46 a day, I think was the number, um, when you're inputting
25 that number into the computer program, you're not just inputting a number,

1 you're also inputting, potentially adding, you know, another layer in the
2 computer program that says it's a specific type of bigger truck? Is, is that
3 accurate? I, I've never gone this deep before.

4 NORRIS: The, um, the analysis software evaluates the impact of heavy
5 trucks in the traffic composition and that's generally expressed as a
6 percentage of the overall traffic.

7 REEVES: Right. So, but you're, when you're adding your trip, you're
8 adding them as heavy trucks, is what I'm asking, I...

9 NORRIS: Correct. Correct.

10 REEVES: Okay. Great. Thank you for clarifying that. Okay. Uh, next, uh,
11 we are going to go to Mr. Ehrlichman?

12 EHRLICHMAN: Mr. Examiner, I have a question for you.

13 REEVES: Okay.

14 EHRLICHMAN: Um, uh, from the beginning of this proceeding, we have made clear
15 that our record would be created by calling witnesses who are experts on
16 traffic, who are actually witnesses for the Applicant and the County and if
17 we want to consider it in the sort of hostile witness category, it's of that
18 nature, um, I noted earlier today, uh, you were concerned that my examination
19 was going beyond the limits of cross-examination. And it was. And so, I would
20 propose, uh, if it would be acceptable to the Applicant that I not interrupt
21 the flow of the Applicant's, uh, presentation here, but call Mr. Norris back
22 in whatever time you designated for me to present my case and then ask him
23 the questions that I have, uh, at that time?

24 REEVES: I, I mean, I'm, I is the one that needs to sort of manage this in
25 a judicial economic manner, uh, would prefer not to do that. Maybe I misspoke

1 in terms of the scope. I was putting the kibosh on that line of questioning
2 because I, as the person that needs to make the decision, it didn't seem
3 germane to, to what I was trying to, to understand. So, maybe I misspoke, uh,
4 you certainly can bring that up on any further Appeals, were you to bring
5 them. I just, I was lost where you were headed. But, Mr. Lynn, do you have
6 any thoughts on this? You're...

7 LYNN: Seems like it's a lot easier and for all of us if we just
8 continue now and we're on traffic, we got the witness here, let's just go. If
9 it's beyond the scope, it's beyond the scope. But I'd like to be able to
10 respond to it and it doesn't make sense to divide up my response into first,
11 Mr. Loring's and then Mr. Ehrlichman's.

12 REEVES: So, we'll, we'll just move forward as was planned and, and, uh,
13 I'll try to be more clear on why I, you know, in making the decisions that I
14 make. I apologize.

15 EHRLICHMAN: No, Mr. Examiner, I, I take responsibility because I don't think
16 I was clear in some of my line of questions. I was going somewhere on that
17 particular line of questions to try to clarify the MDNS condition and we can
18 get into that later. But for, if it's, it doesn't disrupt the Applicant to
19 proceed now with my, uh, series of questions, I'm happy to do that.

20 REEVES: Sure. And it might be helpful to say, you know, this is where I'm
21 heading and now here are the questions I'd like to ask related to that.

22 EHRLICHMAN: Yeah.

23 REEVES: And then if Mr. Lynn objects to where you are saying you want to
24 head, I can deal with it. But, I, I...

25 EHRLICHMAN: Very good.

1 REEVES: I think sometimes when we get questions that are a little out of
2 left field, it's unclear, you know, maybe it's an abnormal way to do this,
3 but I [inaudible], uh, to sort of know where you're trying to go, so...

4 EHRLICHMAN: Thank you.

5 REEVES: With that, Mr. Ehrlichman, go ahead.

6 EHRLICHMAN: Thank you very much. Well, um, good afternoon, Mr. Norris. Um,
7 you're doing an admirable, admirable job under fire here. And you have a big
8 job in this case, so I take my hat off to you. Um, I represent, uh, one of
9 the neighbors there across the street from the mine, uh, the Cougar Peak LLC,
10 and their caretaker and his family, Neil McCloud. And our issue is Grip Road,
11 exclusively, uh, public safety on Grip Road. Um, we are trying to make our
12 record in this proceeding of the facts and the testimony that we think are
13 germane to the public safety issue. And so, if I am unclear in my questions,
14 please feel free to, uh, ask me to repeat it or, or clarify, I'm happy to do
15 that. Um, starting out, Mr. Examiner, um, like to request that you take
16 official notice of the County Road Standards in their entirety. And those are
17 identified in our Exhibit 49 S-7A, A as in Apple. Um, Mr. Norris, do you, are
18 you familiar with the County Road Standards? I know that you are, but I have
19 to ask.

20 NORRIS: Yes.

21 EHRLICHMAN: Okay. And do you happen to have them there accessible to you?

22 NORRIS: I do.

23 EHRLICHMAN: Okay.

24 NORRIS: While I'm pulling that up, can I ask you a question?

25 EHRLICHMAN: Absolutely.

1 NORRIS: You used to work for William Sherman?
2 EHRLICHMAN: That was my brother.
3 NORRIS: Oh, okay.
4 EHRLICHMAN: Brother Bob did a lot of subdivisions. Um..
5 NORRIS: Yeah. I used to do some work with him 20 years ago or so.
6 EHRLICHMAN: Oh, yeah. Yeah. Yeah. Thank you. Um, the other document that I'd
7 like to talk with you about and I hope you may have in front of you is that
8 Exhibit 18 that everybody has been talking about, that September 10th, 2020,
9 uh, document that you prepared titled the Traffic Impact Analysis. So, if you
10 have..
11 NORRIS: I do have that.
12 EHRLICHMAN: Yeah. If you could have those two sort of ready at hand, my
13 questions will relate to those in large part. Um, so, we'd like to ask you
14 some clarifying questions about the traffic analysis you did in support of
15 this Application. And, let's, uh, start with the, um, Level 1 Traffic Impact
16 Assessment requirements in the road standards. Um, the County has testified
17 in their opening and I think you did as well, that the County never asked for
18 a level 1, uh, TIA, we're going to call it for short. And I just wondered if
19 you could take another look at the, um, Level 1 requirements, the Traffic
20 Impact Analysis, um, requirements and in specifically, uh, Section 4.02, the
21 Level of Analysis and Warrants that talks about when a Level 1 TIA, Trip
22 Generation Distribution Study is required. And that's on Page 43 of the
23 version 5.2 dated May 26th, 2000. Road Standards, it has not only the 25 p.m.
24 peak hour trip warrant that triggers it, that you talked about, and the
25 County talked about, and one of the third-party reviews talked about, but it

1 also has a second one there and I'll read it and you can follow along or, or
2 read it yourself, if you have it right there. Uh, that would be A2, it says
3 the project is not categorically exempt under the County's SEPA provisions in
4 County Code Chapter 14.12. So, my question is, am I correct in my reading of
5 these road standards that a Level 1 TIA is required when the project isn't
6 SEPA exempt?

7 NORRIS: Um, I could see where you could read it that way, uh, I think
8 that's really, uh, not, I'm, it's a mute question because we actually did a
9 Level 1 and a Level 1, as you can see under 4.02A, a Level 1 TIA, and in
10 parenthesis, Trip Generation and Distribution Study, so, what the intent of a
11 Level 1 study is to identify what the, uh, impact, the magnitude and the
12 extent of the impact of the proposed development. So, that, uh, we did
13 fulfill that requirement right from the, uh, initial engagement that we had
14 dating back to 2013. Uh, and so, you know, that's how we started the process.

15 EHRLICHMAN: Right. Understood. Thank you. Um, yeah, the way I read it, under
16 A, it says the project generates 25 or more p.m. peak hour trips or the
17 project is not categorically exempt. In this project...

18 REEVES: They did a Level 1 analysis, right? Did I miss that I thought I
19 know the record so I, I don't understand how this [inaudible] uh, where are
20 we headed, I guess, Mr. Ehrlichman? I, I, I'm, I'm...

21 EHRLICHMAN: Yeah. Forgive me for not providing the preface and the offer of
22 proof here. This line of questioning, at the beginning here, is about the
23 framework for how the traffic analysis was done throughout the many, many
24 years this project was reviewed. Um, Mr. Norris testified about conversations
25 starting back as early as 2013 with the County. I want to first cover the

1 background of how the thinking progressed between the County and the
2 Applicant as to what needed to be studied and then show you how they somehow
3 omitted a key portion of the analysis. They did trip generation, they did
4 intersection analysis. They did site distance analysis. But they didn't do
5 Grip Road shoulder analysis. They didn't Grip Road crossing analysis. Those
6 are safety analysis that I'll get to here if you all ow me to proceed forward
7 from Level 1 to Level 2. My argument is that they were required not only to
8 do Level 1, although they both said they weren't, they were required to do
9 Level 2. Whether they were required or not, then the question is, did they
10 actually end up doing it and I'll show you that they did not do it in the way
11 that it needed to be done to protect public safety.

12 REEVES: Okay. So, maybe, so your argument, ultimately, is going to be you
13 believe Level 2 analysis was required, whether or not they did Level 2, they
14 didn't, they didn't address this specific concern you and your cl-, your
15 clients have, uh, shoulder and you might have said something else?

16 EHRLICHMAN: Yes. Exactly. It's a two-part argument, if I may. A, they were
17 legally required to do it. And the alternative, b, they were required to
18 analyze public safety with respect to shoulders and crossings and they didn't
19 fulfill that either.

20 REEVES: So, so, I mean, go ahead, I guess, if we can keep the questions
21 sort of, rather than building to a dramatic, uh, you know, ah-ha moment of
22 the impact, you could specifically say, do you believe this was required, if
23 not, why and then point to a specific things in the [inaudible] you know,
24 what led you to your conclusion that they messed up somehow. Does that make
25 sense?

1 EHRlichman: It, it does. I, I also wanted to emphasize the point that both
2 the County and the Applicant's Traffic Engineer had testified incorrectly
3 that the County never required, or they weren't required to do this type of
4 traffic analysis. They ended up doing some of it, but it's incorrect they
5 weren't required to. So, I can't...

6 REEVES: Okay. So, sorry. Okay. So, the way you read that, you believe
7 that the way to appropriately read that document is that it's required, but
8 rather than us dwelling on that, you know, I can make that determination
9 independently if it matters or not, um, you know, hopefully, but that's fine.
10 Okay.

11 EHRlichman: It, it's an important premise because it isn't elective as to
12 what they look at in terms of...

13 REEVES: I get it.

14 EHRlichman: From the shoulder to the crossing. Okay. Let's, uh, I'll speed us
15 through here. Um, so, I appreciate your response that you could see how it's
16 read that way. Then, let's look at the Level 2 requirements. Wasn't it your
17 testimony that starting in 2013 you and the County discussed all of the
18 elements of the road system out there and the County was aware that there
19 were, um, insufficient shoulders on Grip Road?

20 NORRIS: I, I'm not sure I understand your question. Obviously, the County
21 was aware of the, the roadway conditions out there, it wasn't anything that
22 we told them that gave them any new perspective on that. Um...

23 EHRlichman: Okay.

24 NORRIS: And, go ahead.

25

1 EHRlichman: Yeah. Thank you. So, under B6, a Level 2 TIA is required, quote,
2 if there exists any current traffic problems in the local area as identified
3 by the County. Would you agree that a Level 2 TIA was required?

4 NORRIS: Uh, no.

5 EHRlichman: Okay. Thank you. So, when you, um, generated your September 10th,
6 2020 report, it included those Level 1 requirements that are mandated which
7 required you to look at both, Level of Service and Safety as separate
8 analysis. Is that correct?

9 NORRIS: In, in which analysis now?

10 EHRlichman: In your September 10th, 2020 Traffic Impact Analysis, for example,
11 if you look at your Page, uh, 23, where you have conclusions and
12 recommendations, you said according to the Skagit County Road Standards, the
13 purpose of a Traffic Impact Analysis is to determine the safety impacts,
14 establish whether Level of Service is met, determine mitigating measures
15 necessary to alleviate safety issues, I'm paraphrasing. But, so didn't your
16 September 2020 report look at the issues of not only Levels of Service, but
17 also mitigating measures necessary to alleviate safety issues?

18 NORRIS: Yes, it did.

19 EHRlichman: That was the intent, was it not?

20 NORRIS: Yep.

21 EHRlichman: Okay. And just before we move on from there, on the next page,
22 would you mind explaining a sentence there that says, based on a recent
23 count, this is, um, Page 24, Grip Road currently has 3% of the total traffic
24 volume, or 23 vehicles, which have axel combinations which would encroach on
25 the shoulder or into the opposing lane. I'm not sure if that's talking about

1 current conditions or, uh, with the proposed mine. Could you clarify that one
2 for us?

3 NORRIS: Uh, that's on Page twenty-, which page?

4 EHRLICHMAN: I think it's at the top of Page 24. Starts the paragraph, this is
5 a current issue.

6 REEVES: Uh, this is...

7 NORRIS: Um, according to my report, it ends on Page 22.

8 LORING: It's at the top of page 22. Sorry to butt in, there are different
9 numbers for the PDF versus the...

10 NORRIS: Oh, okay.

11 LORING: In document number and so the PDF is 24, uh, the in document it
12 reads at 22.

13 EHRLICHMAN: So, Page 22 at the, um, place where it's, it begins, this is a
14 current issue for County Roads which needs to be addressed by the County.
15 Then it goes on to say, based on a recent count, Grip Road currently has 3%
16 of the total traffic volume, or 23 vehicles, which have axle combinations
17 which would encroach on the shoulder or into the opposing lane.

18 NORRIS: Yeah. That's existing traffic.

19 EHRLICHMAN: And what does that mean, exactly?

20 NORRIS: It means 3% of the total traffic volume out there, uh, is of a
21 magnitude, uh, of the size that would impact the shoulder or the center line
22 of the roadway.

23 EHRLICHMAN: Okay. Thank you. That's good. I was scratching my head on that
24 one. Appreciate that. Was the traffic safety issue that you analyzed in that

25

1 section of the report at the maximum of the 60 trips per hour you and Mr.
2 Loring discussed?

3 NORRIS: What specifically are you referring to?

4 EHRLICHMAN: I'm referring to that portion, on that same section there where
5 it talks about Grip Road and you, you reached the conclusion that this is a
6 current issue for County roads, which needs to be addressed by the County.
7 Were you taking...

8 NORRIS: Uh, sorry, where, where are you reading that?

9 EHRLICHMAN: Let me pull it up here, hold on a second.

10 NORRIS: Oh, that's the first sentence on the last paragraph before
11 mitigating measures.

12 EHRLICHMAN: Uh-huh.

13 NORRIS: That's talking about the, uh, the shoulder width on the, those
14 roads.

15 EHRLICHMAN: Uh-huh. Well, let me back up, where we're going here, you did a
16 Level 1 traffic impact analysis that looked at safety issues and I'm, what
17 I'm going to ask is, when you looked at the safety issues, how did you go
18 about that and..

19 NORRIS: Well, first off, I want to, I want to, I want to clarify. We did
20 more than a Level 1 traffic study.

21 EHRLICHMAN: Okay.

22 NORRIS: A Level 1 traffic study is only for trip generation and trip
23 distribution, is what I said, to show the magnitude and the area of impact.
24 We actually went into a Level 2 type of analysis with more of the details
25 that are identified in the, in the County Standards. The County requirement

1 for a Safety Analysis, uh, I believe if you, you read it, it says, um, going
2 down to, uh...

3 EHRLICHMAN: Appendix A?

4 NORRIS: Uh, let me see, I'm getting...

5 EHRLICHMAN: Yeah. Let's, let's go there, the, the Appendix A in the County,
6 did I interrupt you, I'm sorry?

7 NORRIS: Yeah. You did.

8 EHRLICHMAN: Yeah.

9 NORRIS: Um, Section 4.09 Safety Analysis. Uh, for Traffic Impact
10 Analysis, intersection roadway segments within the influence area shall be
11 evaluated to determine of the probability of accidents will increase with the
12 addition of project traffic. It says conflict analysis, uh, for the accident
13 record research record, accident records are to be analyzed to determine
14 whether patterns of accidents are, are forming within the influence zone and
15 what alternative treatment should be considered to correct the problem.

16 EHRLICHMAN: Okay.

17 NORRIS: And then the conflict analysis is the absence of any kind of
18 records. And we discussed that, uh, before is that we documented the crash
19 history and we didn't feel that there was a significant enough accident
20 pattern to warrant specific improvements to address that.

21 EHRLICHMAN: Oh, good. Thank you. That's very helpful. Um, was it your
22 testimony that you, that you analyzed crash history at intersections?

23 NORRIS: Yes.

24 EHRLICHMAN: And did the analysis of the probability of accident increase also
25 relate to the traffic intersections?

1 NORRIS: Yes.

2 REEVES: I'm picking up feedback from typing somewhere. If someone...

3 EHRLICHMAN: Sorry, that's, that's me, I'm, my bad. And did your crash history
4 and accident increase analysis also include areas that were not intersections
5 on Grip Road?

6 NORRIS: That's what it, what it's for. Our analysis looked at the crash
7 history that was, um, reported in the, um, State Patrol crash records that
8 was available through WashDot. And we summarized those crashes in the report,
9 um, and broke down the number of crash types and what they were. And, uh,
10 that's all included in the summary that you see on Table 3 and Table 4 of
11 that Exhibit. So, uh, that analysis did not give us the indication that the,
12 um, addition of 46 trips a day or about 4.6 trips were going to significantly
13 impact the crash history at these locations.

14 EHRLICHMAN: Thank you. Is it your testimony, then, that there was no data of
15 crashes or collision or accidents, other than at intersections on Grip Road?

16 NORRIS: No, we got the full accident report, uh, for this area, um, that
17 was the basis for our, um, analysis. I'm trying to see if I had that.

18 REEVES: While you're looking it up, Mr. Norris, I guess one way to think
19 about it, in my mind, would be, you know, is WashDot, is the information
20 available from WashDot intersection only specific i.e., there's inter-,
21 there's Intersection A over here and five miles down the straightaway there's
22 Exhibit B and if Mr. D'Avignon and Mr. Loring are racing their bikes down the
23 straightaway and they crash off the side, that, would that show up in the
24 data or only if, you know, uh, Mr. Lynn, uh, runs into them at the

25

1 intersection? I, you know, I guess that's the way I'm trying to understand
2 it. I think that's what Mr. Ehrlichman was heading.

3 EHRLICHMAN: Yeah. Thank you. Exactly.

4 NORRIS: Okay. So, what our analysis was based on, we obtained a detailed
5 crash history from, uh, well, it comes through either WashDot or the State
6 Patrol, uh, and these are Officer-reported crashes that occurred at multiple
7 intersection and road segments in Skagit County between, uh, January 1st, 2015
8 and available data in 2020. And there are a total of, um, I think, uh, 56
9 crashes over that total, total period. Um, so, it does include road segments
10 and intersections.

11 EHRLICHMAN: So, again, is it your professional opinion that the data that you
12 had indicated there were no crashes or accidents on Grip Road if you're not
13 talking about intersections? On the main part of Grip Road?

14 NORRIS: Uh...

15 EHRLICHMAN: That you looked at, that you saw?

16 NORRIS: This is a real quirky way of, uh, of doing it, but, um, according
17 to this record, there were no, that I seen, oh, okay. Here, there are, let's
18 see, shows me there are, have been four, four, four crashes in that five-year
19 period of Grip Road, excuse me, six crashes. And, uh, none of them involved
20 an injury.

21 EHRLICHMAN: Okay. Go ahead.

22 REEVES: My, my understand, sorry, Mr. Ehrlichman, to clarify that, are
23 you saying that those six crashes in that five-year period on Grip Road is
24 the segment between some intersection here and some intersection here where
25

1 the, the proposed entrance to this mine is or all of Grip road, what is the
2 segment you're referring to when six crashes are discussed?

3 NORRIS: Okay. The segment I'm referring to is Grip Road and it's labeled
4 as County Road Number 66,000, Mile Post 0.000 to 1.165, which is from Prairie
5 Road to Lillian Lane.

6 EHRLICHMAN: Great. And so that's heading, uh, east from the Prairie Road
7 intersection with Grip Road, heading east on Grip Road, right?

8 NORRIS: Well, Grip Road terminates at Prairie Road.

9 EHRLICHMAN: Right. So, if you're standing at that intersection, the data you
10 just quoted us is cr-, six crashes over five years on that section of Grip
11 Road heading east or excuse me, uh, I guess it's southeast from that
12 intersection, right?

13 NORRIS: Correct.

14 EHRLICHMAN: It's down, okay. So, we are talking six crashes, five years on
15 Grip Road, excluding the Prairie Road/Grip Road intersection?

16 NORRIS: Correct.

17 EHRLICHMAN: Okay. Excellent. Thank you for that testimony. Now, did your
18 safety analysis compare that rate of crashes, under that five-year period to
19 what it would be projected if you included the proposed truck traffic from
20 this mine?

21 NORRIS: Um, no, we didn't, we didn't look at the roadway segments
22 specifically.

23 EHRLICHMAN: In your professional opinion, is there likely to be an increase
24 in crashes when you add 46 trucks a day to that road?

25

1 NORRIS: Um, based on the testimony that we heard today from Mr. Barton on
2 the safety record of their trucks and their professional drivers, I would say
3 not.

4 EHRLICHMAN: Would you say that the five-year data there, with the six
5 crashes, is sufficient for analysis of that comparison?

6 NORRIS: Yeah. The, uh, the, the most specific location, well, actually,
7 there, no, the most specific location was actually right at Lillian Lane, I
8 think. Right at the term, so there were two crashes at Lillian Lane, uh, no
9 in-, non-injury crash.

10 EHRLICHMAN: Could you look at...

11 NORRIS: But, again...

12 EHRLICHMAN: I'm sorry, go ahead.

13 NORRIS: I was just going to say, that's more of an intersection problem,
14 as opposed to road segment problem.

15 EHRLICHMAN: Right. So, let's, let's take a look at the rules, the, uh, Road
16 Standards for how you analyze safety, uh, in this situation. You, you just
17 testified, correct, that you did a Level 2 Traffic Safety Analysis?

18 NORRIS: We did a, um, a crash analysis that we included in our report.
19 And, um, the impacts of it included some evaluation of what the crash
20 history, although that was not one of the requirements that we were required
21 to make.

22 REEVES: Sorry, and so I don't get confused, my understanding of Mr.
23 Norris's testimony was that they, they did a Level 1 with some aspects of
24 Level 2, including a Safety Analysis, not that they did a full Level 2. But
25 did I misunderstand that, Mr. Norris?

1 NORRIS: I, I think you're correct.

2 REEVES: Okay. Go ahead, Mr. Ehrlichman.

3 EHRLICHMAN: Mr. Norris, do you, do you recall that when Mr. Loring asked you
4 whether a Level 2 analysis would be required for 60 p.m. peak trips you said
5 yes?

6 NORRIS: Yes, I recall that.

7 EHRLICHMAN: And do you recall that the maximum p.m. peak estimate for this
8 project is the 60 trips?

9 NORRIS: Uh, I don't believe that's the estimate for the maximum peak.

10 EHRLICHMAN: Okay. Maybe that's the wrong terminology. In your earlier
11 testimony, uh, during Mr. Loring's questioning, you clarified for the
12 Examiner that there's the potential for 60 trips per hour, correct?

13 NORRIS: Uh, worst case scenario, yes.

14 EHRLICHMAN: Thank you.

15 NORRIS: I also, I also, I also stated that we don't analyze worst case
16 scenarios in traffic impact analysis.

17 EHRLICHMAN: The County requires a Level 2 Analysis, we just read, if there
18 will be more than, I'm scrolling quickly, that will be more than 50 peak hour
19 trips. I'll read it to you, Section 4.02B, A complete Level 2 TIA shall be
20 required if the project generates more than 50 peak hour trips in any one of
21 the following warrants is met. And then we talked about the current traffic
22 problems known to the County. Is it your testimony that this project, it
23 would not generate more than 50 peak hour trips under the 60 trips per hour
24 statement?

25

1 NORRIS: So, as part of the evaluation, there were a lot of different
2 scenarios that were constructed to evaluate what was an appropriate
3 presentation of the operation of the mine. And we looked at the ultimate, uh,
4 impact on the intersections in terms of what, uh, the Level of Service could
5 handle for different trucks and we also looked at the, uh, ability of Miles
6 to generate a Level of volume of trucks to determine what was an appropriate
7 number, uh, to be considered. And that's how we resulted with the 46 trips
8 today, per day and that would be, uh, an average of 4.6 trips per hour, uh,
9 even during the p.m. and a.m. peak hours. And that was the basis of our
10 evaluation. So, in every development scenario, you're going to have peak
11 volumes that exceed the average conditions. We don't have, uh, we don't
12 analyze the peak conditions, and we analyze the average condition. And that's
13 what we did in this particular case. The average condition did not warrant a
14 Type 2 study.

15 REEVES: Uh, one sec. I'm noticing the time, uh, we scheduled til 4:00
16 today? So I'm a little worried. Is there a, um, I want to point out that from
17 the, in the future, when we don't have, uh, in-person component, I have no
18 problem going longer, but I believe the County is using someone else's
19 facilities and I don't think we can impose ourselves beyond 4:00. Um, and so,
20 in terms of moving forward, I think, uh, Mr. Norris is available on Friday,
21 is that right, Mr. Lynn?

22 LYNN: Yes, I think so.

23 NORRIS: Yes.

24 REEVES: Uh, Mr. Norris?

25 NORRIS: Yeah.

1 REEVES: So, I think probably, I, I, you know, Mr. Ehrlichman, is there,
2 is this a good stopping point? I hate to interrupt you. I know we're right
3 sort of at the, is the Level 2 required or not. Uh, but I would suggest this
4 is probably where we need to stop to make sure there's nothing we need to
5 address before we, we end for the day.

6 EHRLICHMAN: If I may, Mr. Examiner...

7 REEVES: Okay.

8 EHRLICHMAN: I would like to leave Mr. Norris with a question that he could
9 think about and come back with an answer, if that would be permissible. To
10 tie a ribbon in this piece right here.

11 REEVES: Sure. Repeat it or us at the beginning on Friday, but we'll all,
12 uh, have a beautiful ribbon of a question hanging above our heads, uh, the
13 rest of our work week, go right ahead.

14 EHRLICHMAN: Mr. Norris, first of all, thank you for your patience and your
15 testimony today. Um, it's a two-part question on what we've just been talking
16 about which is a Level 2 required and part A, is do you recall the testimony
17 to the Hearing Examiner when he asked you about what triggers the LOS C, do
18 you recall that when he said 110 trips is the drop LOS C and then you said,
19 um, but then you're saying Mr. Norris, not that many trucks are available and
20 the maximum would be 60 per hour and you answered, correct. So that's part A
21 to reflect upon is your testimony earlier.

22 REEVES: That's not a question or there was a question?

23 EHRLICHMAN: Well, it's, I, I wanted to share that with Mr. Norris that he had
24 testified earlier what Mr. Lynn...

25 REEVES: Let's get your part B in.

1 EHRlichman: Part B, part B, is it, is it going to be your testimony that when
2 the County applies the road standards, part b, I just read you from 4.02 and
3 it says 50 p.m. peak, or 50 peak hour trips, is it your, going to be your
4 testimony that the County is really talking about an average there, rather
5 than 50 peak hour trips. I hope that's helpful.

6 REEVES: Uh, well, so, you're saying the question is you're going to
7 answer something a certain way when questioned and that's what we have
8 hanging in the air, did I get that right?

9 EHRlichman: Um, that's, that's what, what I think is the question on is the
10 Level 2 TIA required. Is it 60 p..

11 REEVES: Okay.

12 EHRlichman: Is it 60 peak hour trips?

13 REEVES: Well, we'll, we'll come back on, on Friday with the question. I
14 think the question is, is the, the things we're looking at that trigger
15 requirements. Are we looking at averages or are we looking at something else,
16 is that the basic concept? Maybe we dive back in on that Friday, Mr.
17 Ehrlichman?

18 EHRlichman: I, I would phrase it a little differently which is was the
19 testimony...

20 REEVES: Of course.

21 EHRlichman: Was the testimony that it's 60 peak hour trips? If it, if it's 60
22 per hour all day long, then it's in the p.m. peak hour, so that's...

23 REEVES: Okay.

24 EHRlichman: That's the question.
25

1 REEVES: I, I don't, I don't know what's hanging over to my head, I don't
2 think I understood. But we'll come back on Friday and we'll let you start
3 with that. So moving on. Thank you. Um...

4 EHRLICHMAN: Thank you.

5 REEVES: Quickly want to check in with our Attorneys. So, the plan is
6 Friday, we come back at 9:00 and dive, I believe, right in again with Mr.
7 Norris to wrap up, uh, Mr. Ehrlichman questions and then, uh, redirect with
8 Mr. Lynn. But, Mr. Lynn, do you have a different idea in mind or does that
9 work for you?

10 LYNN: That's great.

11 REEVES: And anything you want me to address real quick before we conclude
12 our day today?

13 LYNN: No.

14 REEVES: Okay. Thank you, Mr. Loring? Hold on, Mr. Ehrlichman? We'll come
15 around.

16 LORING: Yeah. I did have a quick question for Mr. Lynn, just to get a
17 general understanding of how long he thinks he's going on Friday so I can
18 help advise people, uh, when they need to make sure they're available and who
19 might need to show up. If you have a rough estimate, at this point?

20 LYNN: Um, so far, it would be Mr. Norris, uh, and then, um, John
21 Semrau. I don't know how long that will take. I'll be talking with them after
22 today, sort of a clean-up witness, so there may be a little more than, um,
23 but, and then we have a, we have Molly Porter [phonetic], who's the, um, the
24 biologist who couldn't be here today and then Kristin Franklin [phonetic],
25 although I'm not sure I'm going to call her, she's the noise person.

1 LORING: Okay. Thanks a lot. That's helpful.

2 REEVES: Potentially one from Ehrlichman, uh, we can only [inaudible] so,
3 keep that in mind, while, uh, Jason, uh, do you have anything that needs to
4 be covered?

5 D'AVIGNON: Uh, nothing from me.

6 REEVES: Okay. Mr. Ehrlichman, quickly?

7 EHRLICHMAN: I recall Mr. Lynn saying that the new auto-curve analysis was
8 going to be presented by Mr. Norris, if you could just clear up for us what
9 the status is that on Grip Road?

10 REEVES: Well, it hasn't been brought up, yet, so why don't we, uh, talk
11 about that on Friday. Mr. Lynn, is that okay with you?

12 LYNN: Yeah. I...

13 EHRLICHMAN: Mr. Examiner, if I may, I'd like to read that before the
14 questioning on Friday.

15 REEVES: Well, I haven't made a ruling so, I'm, uh, going to deny that
16 request. Uh, I apologize, but there's been no ruling made because it hasn't
17 been up, so, you know, we'll move on from there. And the challenge is Mr.
18 Loring told me he would object. Mr. Ehrlichman would like to see it. So, if
19 Mr. Loring has no problem, I'm, I'll let it in right now. I just, you know...

20 LORING: I'm in the same position I was earlier. Thank you, Mr. Examiner...

21 REEVES: Okay.

22 LORING: For remembering that.

23 REEVES: I'll wait til it's offered. Mr. Lynn, was that, are we on the
24 same page, then?

25 LYNN: Yeah.

1 LORING: Thank you.

2 REEVES: Okay. So, in the hearing room, I just want to check, Mona Green,
3 I know you guys need to wrap up in the room.

4 GREEN: Yes, we do.

5 REEVES: Okay. Well, then, thank you. So, I think we can end our
6 recording. Uh, but Friday, am I correct in thinking it's potentially possible
7 to go a little past 4:00 if need be? I don't know, I'm just asking, there's
8 no physical room, I think, involved. I wouldn't want to go too far past, but
9 I, I just want to ask that.

10 GREEN: Right. We can take longer next Friday if we need to do that.

11 REEVES: Okay. I mean, I wouldn't go too far past 4:00 on Friday, but, uh,
12 I recognize the time is limited and we're trying to move through. So, uh, so,
13 we have a plan for, for this Friday at 9:00 a.m. Uh, we'll promptly, I will
14 assume if Teams work Monday, it will work all the very next day, like,
15 happened to me...

16 PETERSON: Nichole Peterson...

17 REEVES: [Inaudible.]

18 AUTOMATED: Is now exiting.

19 REEVES: Sure everything works, but we'll come back on Friday, 9:00 a.m.
20 I'll start back in, um, with Mr. Ehrlichman's questions for Mr. Norris. And I
21 think with that, we can conclude, uh, our hearing today. Thanks everyone.

22 EHRLICHMAN: Thank you.

23 LYNN: Thank you.

24 LORING: Thank you.

25 [The tape ends.]

1 **The undersigned being first duly sworn on oath, deposes and says:**

2 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
3 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party
4 to this action. That on April 21st, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves, that
5 took place on 8/29/22, regarding the above-captioned matter.

6 I certify and declare under penalty of perjury under the laws of the State of Washington that the
7 aforementioned transcript is true and correct to the best of my abilities.

8 Signed at Mount Vernon, Washington, this 21st, April of 2024.

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10 Janet Williamson
Janet Williamson

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**IN SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT**

State of Washington,)
Cause No.: PL16-0097, PL16-0098,
Plaintiff,) PL22-0142
vs.)
Name,) PERMIT HEARING 9-2-22 1:00 PM
Defendant)

Transcription Date: April 29th, 2024

Present: Molly Porter, Andrew Reeves, Bill Lynn, Mona Kellogg, Jason
D'Avignon, Kyle Loring, Tom Ehrlichman, Martha Bray

PORTER: Hello. Can you hear me now?

REEVES: That's...

PORTER: Better, there's a big of an echo, but I think we'll...

REEVES: That was just because my office is empty. Um, [inaudible] so, if
this doesn't work, I can call in.

LYNN: Uh, I think it helps if you do stay a little closer to the, uh,
microphone so if you can do that, that would be great. Are we ready to
continue?

1 REEVES: I, I was going to say, I believe, uh, we are recording, uh, Mona
2 Kellogg, is that right?

3 KELLOGG: Yeah. We are, yes.

4 REEVES: Excellent. And just, timing-wise, I just, I know Kyle Loring has
5 a hard stop at 4:30, which is perfectly respectable. My plan is, uh, 4:15 to
6 sort of stop and, and talk procedure with, with the Attorneys. So, if we can
7 all keep that in mind, I suspect there's going to be lots of questions about
8 wetlands and critical areas, as that was one of the two, uh, sort of big
9 topics. So, with that I will let you, uh, continue with your questioning, uh,
10 Mr. Lynn.

11 LYNN: Okay. Um, thank you. Ms. Porter, I want to focus on the second
12 part of the report, the, uh, impact assessment and mitigation plan. Um, can I
13 ask, first of all, what were your conclusions about whether or not the, uh,
14 well, well, first of all, let me, let me just talk about the, uh, the impacts
15 that you were assessing. What were the impacts that you were looking at?
16 What, what was the aspect of the project that your evaluation focused on?

17 PORTER: So, we focused on the haul road itself, where the apex, uh,
18 [inaudible] haul road to transport material from the mine out. We did not
19 look at any of the area that any of the actions involved directly with
20 mining.

21 LYNN: Okay. So, so your analysis was limited to the haul, haul road and
22 the, and the uses associated with that?

23 PORTER: Correct.

24 LYNN: Okay. And did you, uh, conclude that there were any direct
25 impacts to wetlands as a result of the proposed activities?

1 PORTER: We did not. Um, the, the part of the project that we looked at
2 only involves using [inaudible] on the road, is not expanding the road
3 footprint, we're not doing, doing anything to change [inaudible] patterns to
4 increasing [inaudible] surfaces, there's no vegetation on the road or nothing
5 that would be a direct impact to the buffers.

6 LYNN: Okay. Uh, you know that there is a proposed, uh, paving of a
7 short stretch of the road near the Swede Creek Bridge. Did you consider that
8 in your analysis?

9 PORTER: We did.

10 LYNN: And is that, does that constitute a direct impact to wetlands or
11 buffers?

12 PORTER: It does not. It, the pavement and the place, gravel, the gravel
13 road base is functionally not providing any meaningful buffer [inaudible]
14 therefore it is not changing that surface material would not be an impact.

15 LYNN: So, because it's already a gravel road and you're just changing
16 the surface of it, there's no alteration in the function of the buffer. It's,
17 it's gravel before and it's paving after, is that a fair summary?

18 PORTER: Yep. [Inaudible] conclusion, yes.

19 LYNN: Are there any, uh, impacts that result from that paving that, uh,
20 uh, should be noted? Does that have any benefits or detriments?

21 PORTER: Um, no, I don't think so. I mean, essentially [inaudible] is
22 functioning previous and acts much like pavement.

23 LYNN: Okay. Does the pavement, uh, allow any better control of the
24 drainage than the gravel?

25

1 PORTER: Not, I'm unaware of, of what it would or if there's any
2 [inaudible].

3 LYNN: Okay. So, I want to talk about indirect impacts, which was the
4 focus of most of your analysis. Uh, first of all, have you ever...

5 REEVES: Mr. Lynn.

6 LYNN: Yeah.

7 REEVES: I apologize. Just to be clear, we have some audio issues right
8 before we came back. We are in Exhibit 8 or C8 of the December 2021 report,
9 does everybody agree that that's what we're talking about?

10 LYNN: Correct.

11 REEVES: Okay. Sorry, just being overly cautious to make sure we were all
12 on the same page. Please proceed.

13 LYNN: No, that's, appreciate it. So, we're talking about indirect
14 impacts now. Have you ever, in your, uh, years of experience, been called
15 upon to, uh, assess the change in impacts resulting from more travel on an
16 already existing road?

17 PORTER: I have not.

18 LYNN: Okay. Is there anything that, uh, in the County Code that gives
19 you guidance as to, uh, such an analysis?

20 PORTER: Not specifically, no.

21 LYNN: Is there any discussion of indirect impacts in the County Code
22 that you're aware of?

23 PORTER: Not that I'm aware of.

24 LYNN: Okay. Is there any basis to distinguish between, uh, ten trips a
25 day and 20 trips a day in, in evaluating indirect impacts?

1 PORTER: Not that I'm aware of.

2 LYNN: Okay. So, what were your conclusions about indirect impacts from
3 increased traffic on the haul road?

4 PORTER: So, in our analysis, we broke them down so there's into different
5 functional components and I can look through those without maybe restating
6 everything that we said, but just a little summary, if that would be helpful?

7 LYNN: Yeah. It would be and if you can take each one in turn and then
8 just sort of describe the subject matter and what your conclusions were and
9 that will give us time to, uh, follow along and, and catch up.

10 PORTER: Okay. So the first thing of concern was the water quality and run
11 off filtration function as the wetland and buffers and if the increased trips
12 would indirectly impact those in some way. Um, in our, no, we decided that it
13 would not because generally speaking, the project, again, is not, impacts to
14 especially the water quality happened when the road was install installed
15 some time ago. The road...

16 LYNN: So, just to, can I get you to stop there because you are, I think
17 we'll try to do this maybe in shorter bursts, but, uh, what I understood you
18 to say was that there were no water quality impacts, uh, in direct because
19 whatever impact happened, happened when the road was already, was constructed
20 in the past, is that...

21 PORTER: Correct.

22 LYNN: Okay.

23 REEVES: And, I apologize. Is, is there a, a page number in the, the, the
24 exhibit we can kind of track? I...

25 PORTER: Yes. I, that...

1 REEVES: [Inaudible.]
2 PORTER: Page 13.
3 LYNN: Okay.
4 D'AVIGNON: And in Exhibit C8, that would be 441 of the PDF.
5 PORTER: Okay.
6 REEVES: That, thank you, that's super, okay, so in the, what I like to
7 call the, uh, master Cricchio document, it was what again, uh, Jason? Four
8 hundred something? I apologize, I missed it.
9 D'AVIGNON: I, I don't know what it would be in the, in Kevin's very large
10 document, but in the individual C8 PDF, or whatever was previously number,
11 it's 441.
12 REEVES: Got it. Okay. I think I'm there, but go, go right ahead.
13 LYNN: Um, so that's the first w-, what you just testified to, that the
14 impacts occurred when the road was built is the first sentence under
15 potential impact on that Page 13?
16 PORTER: Correct.
17 LYNN: And then the, the next paragraph, the second sentence is most
18 wetlands in the review area do not receive runoff from ditches adjacent to
19 the road. Uh, could you elaborate on that a little bit and how that's
20 significant?
21 PORTER: So, I want to make sure we're on the same spot and I [inaudible]
22 it's a different paragraph, what page are you on?
23 LYNN: And it's the second sentence of the second paragraph on Page 13.
24 Under Potential Impact.

25

1 PORTER: Oh, okay. Okay. Got it. Correct. Many, uh, many of the wetlands I
2 reviewed did not receive runoff from the roadway and we listed out those that
3 do and those that don't.

4 LYNN: Okay. And your conclusion is why, your, your conclusion is that
5 there isn't an impact. Could you elaborate about why that's the case, in your
6 opinion?

7 PORTER: Because the changing [inaudible] does not do anything that, it
8 doesn't do anything that would normally we consider a large enough impact.
9 There's not [inaudible] surfaces, we're not moving any vegetation that
10 currently has any [inaudible] the filtration, the additional driving on the
11 roadways, I mean, the road was installed for driving on it and impacts to
12 ensure that should have been considered when it was installed.

13 LYNN: Okay. And then, on Page 14, you list mitigation recommendations,
14 um, and, uh, do you know whether those were incorporated in the County's
15 decision or you just know that you recommended them?

16 PORTER: I believe that they were copied into the SEPA decision.

17 LYNN: Okay.

18 PORTER: [Inaudible] condition.

19 LYNN: Okay. The next topic begins on Page 15 and is Hydrology. Could
20 you tell the Examiner what your general conclusions were about in-, indirect
21 impacts on Hydrology?

22 PORTER: Yeah. My understanding was that the existing drainage pathways
23 would be maintained, that there would be no additional culverts or diversion
24 of water that would change the runoff in any way, therefore, there would be
25 no change to [inaudible] wetlands or surface waters.

1 LYNN: Okay. And then you didn't feel it necessary to recommend any
2 mitigation for that indirect impact?

3 PORTER: Correct.

4 LYNN: Uh, and the next topic that starts on the bottom of Page 15 and
5 goes onto 16, is Thermal Protection. Could you tell us what your conclusions
6 were there?

7 PORTER: Yeah. So, Thermal Protection would be vegetation that has the
8 ability to essentially protect and shade to this [inaudible] we're not moving
9 any vegetation that would up function would not be effected.

10 LYNN: So, that function would not be effected, is that the last
11 statement?

12 PORTER: Correct.

13 LYNN: Okay. And then you go on, on the, uh, top of Page 16, to talk
14 about Fish and Wildlife Habitat. Uh, could you elaborate on that a little
15 bit, tell the Examiner what your conclusions were?

16 PORTER: Yeah. So, the, I mean, I feel like I'm repeating myself, but the
17 same reasoning, we're not encroaching upon the wetlands and buffers in any
18 way, there's no vegetation removal or altering, physical altering the habitat
19 in any way. The driving on the roadway does, we concluded, would have some
20 potential to have indirect impact, but more relation to, it could change how
21 the space is utilized, the site, the noise and the traffic and additional
22 trucks present would cause them to erode that area, occasionally. But does
23 not, it doesn't do anything that indirectly impacts the wetland, the buffer
24 functions and it won't alter how the habitat is being used. And I feel like
25 I've been [inaudible] the whole time articulating that in the document.

1 LYNN: Um, so, is, is, so, let me just see if I can try to understand
2 the, so, right now, there's, this, this, uh, road is some, is a barrier of
3 some sort, I guess, for, for wildlife using the site, right? They have to
4 cross the road, uh, uh, to get from one side to the other currently?

5 PORTER: Correct.

6 LYNN: And, and that will continue to be the case, but there'll be more
7 trucks so more, more necessity to avoid crossing?

8 PORTER: Correct.

9 LYNN: Okay. And, and is that the impact that you can identify that with
10 more trucks, there will be more interference with a, a, an animal's desire to
11 get from one side to the other?

12 PORTER: They'd be more likely to avoid crossing the roadway.

13 LYNN: Okay. So, they might avoid it, they might av-, they might cross
14 at off hours, they might use it more, uh, during the evening or morning hours
15 before or after trucks are on the roads?

16 PORTER: Yes.

17 LYNN: Um, did you find species on the property that are subject to
18 protection or have management recommendations, uh, in the County Code?

19 PORTER: Um, other than the Oregon Spotted Frog that are potentially
20 present and the fish that are present in the streams, which we can talk about
21 separately, there are likely to be, or just based on the rural nature of the
22 site, a number of species that utilize the site. But there are not, to my
23 knowledge, any species that are listed protected or any particularly, any
24 species that are particularly not go over the site. So, as far as
25 recommendations to mitigate the impacts to animals that may use the site,

1 there were no specific, um, habitat, there were no specific recommendations
2 on how to maintain that habitat. So, we sort of tried to think about what
3 would make more sense to present as mitigation option to offset those
4 impacts, which are stated fully in the conclusions on the next page that feel
5 like if, if some level of vegetation is maintained around the edge of the
6 roadway and the wetlands and buffers, that would be what would be most
7 beneficial because it would be providing additional screen cover protection
8 for wildlife that are around these edges and provide that screening for the
9 ability for them to be less likely to [inaudible] those areas and are
10 protected so they could use the rest of the site.

11 LYNN: Uh, just so I make sure I got that less likely to be determined from
12 using the areas, was that what you said?

13 PORTER: They'd be more, I mean, just [inaudible] less likely to affect
14 the way they're using the majority of the site.

15 LYNN: Okay. And that's a...

16 PORTER: Because there would be a buffer, dense vegetation around, between
17 them and the [inaudible].

18 LYNN: Okay. And that's, that recommendation is on Page 18?

19 PORTER: Correct.

20 LYNN: Uh, are you aware that the, that the traffic here has been
21 expressed as an average and that there will be days that there are more
22 trucks on the road and other days when there are fewer trucks on the road?
23 And, and if so, does that effect any of your conclusions?

24 PORTER: Yeah. I'm aware of that and it does not.

25

1 LYNN: Okay. Um, uh, a document has been submitted, I think it's Exhibit
2 A33, a s-, a report by Mr., um, Mahathy. Do, do you know Mr. Mahathy, another
3 wetland scientist?

4 PORTER: I do.

5 LYNN: Okay. And, uh, how do you know him professionally?

6 PORTER: He worked as a [inaudible] for Whatcom County and we, we
7 frequently worked with him when he reviews our work for Permit Applications
8 in Whatcom County.

9 LYNN: So, I'm sorry, you said he, he's a, he's an employee of Whatcom
10 County who reviews your work up in that area?

11 PORTER: Correct.

12 LYNN: Okay. Uh, he commended that the County's review of your work was
13 cursory, is, is it your experience that the County does cursory work in
14 reviewing the materials you submit to them?

15 PORTER: That has not been my experience.

16 LYNN: Okay. He also, uh, was critical of your use of agency mapping to
17 determine the, the nature of the streams that you analyzed. Is that a
18 standard practice to use, uh, documents from DNR or the Department of Fish
19 and Wildlife as to, as to fish use of streams?

20 PORTER: That, those are the standard, they report fish use by using Fish
21 and Wildlife or DNR mapping.

22 LYNN: Okay.

23 PORTER: And they were doing that on [inaudible]. Yeah.

24 LYNN: Okay. And so, that would work whether they are, however they're
25 rating it, you would use their documentation as the basis for your review?

1 PORTER: Correct.

2 LYNN: Okay. Uh, have you investigated some of the sources he cited, uh,
3 with reference to potential fish use of any of the streams that were
4 identified as not non-fish bearing streams in your analysis?

5 PORTER: I have. He made reference to, uh, to Forest Practice
6 Applications, um, with DNR that we requested and was there some additional
7 information on fish on site that was not on the online DNR maps, um, portions
8 that what we mapped, the lower portion of Stream 13 and another portion of
9 Stream 20 were identified in those Forest Practice Application as fish-
10 bearing so that, those streams and a couple of others associated with it that
11 also meet the habitat criteria should be, that should be revised, they should
12 be considered fish-bearing and the buffers should be increased accordingly.

13 LYNN: Okay. So one of those was Stream 13 or a segment of 13, what was
14 the other?

15 PORTER: Segment of 20.

16 LYNN: Okay.

17 PORTER: And due to the connectivity, 15, 21 and 22, I believe should also
18 be considered fish-bearing.

19 LYNN: Okay. So if you, if you depart from the normal process and look
20 to these permits, you get additional information and that tells you that you
21 might want, that you should re-categorize these five streams?

22 PORTER: Correct.

23 LYNN: Okay. Does that change any of the conclusions you reached?

24 PORTER: It did not.

25 LYNN: That, that, okay. And, and could you explain why that's the case?

1 PORTER: Because we were always considering the fish downstream to be
2 present in Swede Creek. So, the same rationale conclusions would apply.

3 LYNN: Okay. So, so everything you said about indirect impacts,
4 hydrology, um, thermal protection and so forth are, are, are not changed by
5 the fact that the, that some of these streams might have fish in them?

6 PORTER: They do not change. The only thing that would change would be the
7 buffer. And if vegetation is maintained within that buffer, those should be
8 increased, that area...

9 LYNN: And...

10 PORTER: [Inaudible.]

11 LYNN: And if the buffers aren't present currently, the proposal isn't
12 altering those buffers?

13 PORTER: Correct.

14 LYNN: Okay. Uh, that's all I have for Ms. Porter, thank you.

15 REEVES: Great. Um, I just have one question I wanted to clarify before I
16 move, at the very beginning, Ms. Porter, you had said, you looked at the
17 whole site, not just the, the 300 feet for wetlands or 200 feet for streams
18 that the County short of asked or requested that you look at. Can you clarify
19 what you meant by full site? Because the mine itself is 60-something acres,
20 but then this is the haul road, could you just give me some basic detail on
21 what you meant by that?

22 PORTER: Sure. We didn't look at that. We only looked at the areas around
23 the haul road. We did not look at any of the areas associated with the mine
24 site. It was a portion of the northern extent, where the haul road is, that
25

1 300 feet extends into the mine site and we did not look at that, assuming
2 that was already covered by [inaudible].

3 REEVES: Okay.

4 PORTER: And then...

5 REEVES: But, again...

6 PORTER: This...

7 REEVES: When you say whole site, I...

8 PORTER: That can be...

9 REEVES: So, if the road is two, two miles...

10 PORTER: The entirety of the property that's owned by the Miles Sand and
11 Gravel. There was additional property beyond the 300 feet and by the
12 Applicant that we did not review.

13 LYNN: So, Mr. Examiner, can I try to clarify this? I, I, my question
14 was meant to ask, did you limit yourselves to those features that were on the
15 County's list of things you should look at or did you look at the whole area,
16 meaning the whole area within 300 feet of the road. So, the County's, uh,
17 direction came with a map that identified specific features and I just was
18 asking her if she just looked at those or if they also looked at other, uh,
19 features in the same area.

20 REEVES: Okay. I think that clarifies, but if there's confusion, I'll let
21 Mr. Loring or someone else, uh, ask for further clarify, but I guess the way
22 I was thinking about it, Ms. Porter, was, you know, here's the haul road,
23 there's wetlands and then there's the 300 feet, did you go 500 feet, 800 feet
24 or, or not, but Mr. Lynn seems to be indicating that mostly within the 300

25

1 feet that you were looking at features beyond what was specifically requested
2 by the County, I...

3 PORTER: I think that's a good summary, yes. We looked through the entire
4 300 feet and we looked at features beyond what was in the map provided by the
5 County.

6 REEVES: Got it. Okay. Thank you. And with that, uh, uh, I'll go to, uh,
7 Jason, uh, D'Avignon first.

8 D'AVIGNON: I don't have any questions for Ms. Porter.

9 REEVES: Okay. And then next to Mr. Loring?

10 LORING: Thank you, Mr. Examiner. Uh, good afternoon, Ms. Porter. My name
11 is Kyle Loring, I represent, uh, the SEPA Appellants. And so I have some
12 questions for you about the review that you conducted at the site here today.

13 PORTER: Yes.

14 LORING: Um, you conducted at the site. Questions today. Um, the first
15 question I have for you is whether you are familiar with the road work that
16 occurred in 2018 on this private haul road that we've been discussing?

17 PORTER: I, not, not in detail.

18 LORING: Okay.

19 PORTER: I, I understand there's some resurfacing occurred, but I do not
20 know the details of that.

21 LORING: Okay. And, uh, you wouldn't know whether culverts were swapped
22 out?

23 PORTER: I don't, I did review the site before 2021.

24 LORING: Okay. And you wouldn't know the extent of any resurfacing that
25 did occur?

1 PORTER: No.

2 LORING: Okay. Okay. That cuts down on a few questions so I'm, I'm
3 skimming through my notes and then I'll have a, another document where I just
4 have a brief outline of questions I want to check, too. Uh, you've talked a
5 little bit about the different types of traffic that would occur on the site,
6 on this haul road, connecting the mine to, uh, Grip Road, I believe you
7 report indicated that you did not study the differences in that traffic, from
8 the logging trucks, to the mine and trailers, I mean, the gravel truck and
9 trailers, sorry, is that right?

10 PORTER: Not totally sure what you're asking. As far as...

11 LORING: I'll rephrase it. I'm, I'm thinking of the report and I believe
12 from your report it indicated that you did not evaluate whether there would
13 be a difference based on the volume of traffic that occurred at the site. And
14 a difference meaning a different impact on the streams of the wetlands or
15 their inhabitants, is that right?

16 PORTER: I think so, but, again, I'm not [inaudible] if we're looking at
17 the difference in traffic or the difference in the impact? We di-...

18 LORING: Whether you evaluated whether there would be a difference in
19 traffic and then applied that to determine whether there would be a
20 difference to impacts?

21 PORTER: I'm assuming there's a difference in traffic, in that the haul
22 road will have an additional trips per day under the gravel mining than it
23 did with forestry practices. I don't have an accurate accounting of what that
24 difference is. I'm assuming it's greater, will be greater.

25 LORING: Okay.

1 PORTER: Does that answer your question?

2 LORING: Yeah. It, it starts to, yes. Thanks. If, do you know how much
3 logging traffic is occurring right now on the property? And I should say on
4 the haul road.

5 PORTER: I do not.

6 LORING: Okay. And if there were zero logging trucks traveling along that
7 road on a regular basis, or a daily basis, is it still your position that now
8 having mine traffic, uh, I think I made an assumption there, let me take a
9 step back. Uh, your testimony was that any, the, the change in traffic would
10 not impact the wetlands, the streams or their inhabitants, is that right?

11 PORTER: There, not directly, no. And I, I'm assuming the traffic count as
12 not nothing.

13 LORING: Okay. What is your assumption, then, about the traffic count?

14 PORTER: I, I, I don't have a specific count per day in mind, but I'm
15 assuming there is some traffic. Every day we were there, there was some
16 traffic on the site.

17 LORING: Okay. So your assumption going forward is that there is always
18 logging traffic at that site, on a daily basis?

19 PORTER: Not necessarily.

20 LORING: What is your assumption, then, about daily logging traffic going
21 forward?

22 PORTER: Um, I would normally assume the logging traffic is sporadic. But
23 sometimes it could be something closer to what is happening on the daily
24 average with the mine site and some days it would be very minimal.

25 LORING: Okay. When you say sporadic, do you mean seasonally sporadic?

1 PORTER: Or occasionally when there's a harvest.

2 LORING: Okay.

3 PORTER: Obviously, there's be more traffic some point.

4 LORING: Okay. How many trucks would you imagine to be on site when there
5 isn't a harvest?

6 PORTER: The days we were there, there was not logging trucks, but one or
7 two trips per day.

8 LORING: Okay. So, did you observe any logging trucks on the site?

9 PORTER: No.

10 LORING: Do you know if the traffic you observed was related to the mining
11 activity or preparing for it?

12 PORTER: I do not know what, who it was. We were in the woods, they were
13 on the road.

14 LORING: Okay. So, just to conclude on that point, you did not see any
15 logging trucks while you were there for those nine days?

16 PORTER: No.

17 LORING: Okay. And replacing that zero traffic activity for a logging with
18 up to 46 trucks trips per day does not change your conclusion about the lack
19 of impacts to wetlands, streams and their inhabitants?

20 PORTER: Correct.

21 LORING: Okay. So, traffic doesn't matter for impacts at the site?

22 PORTER: Traffic does matter, but for the reason stated in the report, I
23 believe the, when driving on an existing road that the function of the road
24 is [inaudible] so, there's no, no road expansion, no vegetation, nothing that
25 would have a direct, physical impact to reduce the wetlands and the stream.

1 LORING: Okay. So, just to clarify that, your position is that traffic on
2 this road, uh, won't have a direct impact on streams, wetlands or their
3 inhabitants?

4 PORTER: Correct.

5 LORING: Okay. We've covered some of these as I look through here. Uh, you
6 mentioned that presumably when the road was, um, when the roadwork occurred,
7 the impacts would have been reviewed, is that an accurate, uh, restoration of
8 your testimony a few minutes ago?

9 PORTER: That's my assumption.

10 LORING: Okay. Would it surprise you to learn that they had not been
11 reviewed, those impacts?

12 PORTER: Generally speaking, you have met a Permit to put in the road, so
13 I, I'm, I'm assuming that that was reviewed at the time.

14 LORING: Okay. So you don't know whether or not it was actually reviewed
15 at that time?

16 PORTER: I don't. I was not involved in that part of the project.

17 LORING: Okay. You talked about, uh, and your report talks about,
18 retaining vegetation and that that being important for the functions and
19 values of these streams and the wetlands and their inhabitants, is that
20 right?

21 PORTER: Correct.

22 LORING: Okay. So, if vegetation were removed as part of the roadwork that
23 occurred, um, would that have had a negative impact on the, uh, wetland,
24 streams and their inhabitants?

25

1 PORTER: Yeah. Generally speaking of trees and shrubs, removing that
2 impacts the habitat.

3 LORING: Okay. Okay. Um, let's see, you were asked a, a moment ago about,
4 uh, a report by, uh, Matt Mahathy, who was critical, somewhat critical of
5 your report that you put together on this d-, on this, uh, work. And I
6 believe the question was whether he was critical of your using agency maps.
7 Uh, is it your position that he was critical of you using agency maps?

8 PORTER: I don't know that I would say he was critical, I think he had
9 additional information that we weren't aware of.

10 LORING: Okay. And it was actually additional Agency information about,
11 uh, maps at that site and the sensitivity of the streams that are on that
12 site, isn't that right?

13 PORTER: It was additional agency maps that weren't publically available,
14 you had to request them. They had DNR Forest Practice Application
15 [inaudible].

16 LORING: Okay. W-, these were Forest Practice Applications for this
17 particular property, though, right?

18 PORTER: They were.

19 LORING: And your client didn't provide you with those maps before you
20 conducted your study?

21 PORTER: No.

22 LORING: So, but you say not publically available, but those maps could
23 have been available to you as part of your review of the site, right?

24 PORTER: If I w-, I, to request [inaudible] and I, I mean, I'm assuming
25 [inaudible].

1 LORING: Okay. I, I...

2 PORTER: I just...

3 LORING: Sure.

4 PORTER: I understand the DNR would update where on my map to reflect the
5 information they had so we look up all available information.

6 LORING: Okay. But you could have asked your client for FPA information at
7 this site, right?

8 PORTER: Yes.

9 LORING: Okay. Uh, let me just check my outline here. Uh, I think we're,
10 we're making our way through a lot of this. Uh, just a couple more questions
11 and this is about the, that land use intensity question that I know you're
12 aware of as part of this. Um, have you conducted critical areas work for
13 other mining operations?

14 PORTER: Um, I have not, but we, my firm has.

15 LORING: Okay. And how often does your firm characterize a mine as a
16 medium intensity use?

17 PORTER: I was, that determination was based, I mean, clearly, you're
18 going to ask put them as high intensity in the past and, yes, generally, I
19 would [inaudible] with from what I'm reading, system review that we have done
20 in the past, and I generally would, would say a mine is a high intensity. Uh,
21 but it's also not called out in the Code specifically as the use, whether
22 they were medium or high. So, when that happens, I generally would recommend
23 to my client that the, the Land Use Proposal does not specifically call out,
24 I would contact the County to have a conversation about what, how they would
25 regulate that. Generally, it's best for people to make some sort of argument,

1 provide it to the County for them to agree or disagree. And then [inaudible]
2 that occurred, they had made an argument for it to be moderate intensity. In
3 the past, the County had approved that, so I was using that, assuming that
4 conversation had already happened and using that information on my end as
5 required for this assessment.

6 LORING: Okay. So, you didn't independently reach a conclusion that this
7 should be considered a medium or moderate intensity land use?

8 PORTER: I was under the impression that had already been discussed with
9 the County.

10 LORING: So, you didn't reach your own independent conclusion?

11 PORTER: I did not reach my own conclusion.

12 LORING: Would you have concluded that it was a high intensity land use if
13 you had been asked directly to do that as part of your review?

14 PORTER: I have not put enough thought into it. Generally speaking, I
15 think the record showed that I would, but I, for this particular purpose, I
16 mean, every site is respect specific requirements, but, in the past, I
17 generally would have said high intensity.

18 LORING: Okay. And would that be based on the fact that it's going to
19 review, uh, you know, 60 plus acres of vegetation and soils and actually turn
20 a forest into a gravel pit?

21 PORTER: Yes.

22 LORING: Okay. And a gravel pit doesn't provide much in the way of
23 functions for critical areas in, uh, well, functions and values for critical
24 areas, does it?

25 PORTER: It does not.

1 LORING: Okay. Are you familiar with the Department of Ecology's position
2 that a 300 foot buffer is required based on land use intensity for the site?
3 PORTER: I believe Mr. Mahathy mentioned talking about...
4 LYNN: I'm going to, just a, just a minute, just a minute, Molly. I'm
5 going to object. I mean, I've, I've let this go on. She's not the person who
6 made the determination. She's testified she didn't have enough information,
7 she didn't make the thoughtful analysis she normally would. And now we're
8 getting into another level of, uh, complexity by asking about a Department of
9 Ecology document. And it's...
10 REEVSE: Well...
11 LYNN: Go ahead.
12 REEVES: I, where, where I'm confused is my understanding of this witness
13 is that the report she prepared relates to the haul road. Are you, Mr.
14 Loring, are you contending that the, the haul road requires a 300 foot
15 buffer? I, I just want to make sure I understand the argument.
16 LORING: I was going to get to that point, yes. But, I'm also, I would
17 also contend that you're segmenting a project is inappropriate. And so, I
18 would, although the Applicant has done that here, and they did that for five
19 years effectively, uh, convinced the County not to review haul road impacts,
20 eventually they did acknowledge that the haul road is part of this project,
21 presumably the gravel has to get to market somehow, and so would use this
22 haul road. Uh, in addition...
23 REEVES: Well...
24 LORING: Well, Ms. Porter, she may not have reached this high intensity,
25 or medium intensity land use determination, but she relied upon it for the

1 buffers that she has included in her report. And so that's a, you know,
2 significant amount of acreage that has been impacted by her determination, or
3 her use of somebody's determination.

4 REEVES: And so, I just, I just want to be clear on what the questions
5 relate to, to the extent that if your argument, Mr. Loring, is that, that 300
6 foot buffer is applicable to the haul road, then I, I'll let Mr. Lynn talk
7 here in a sec, then, then in my mind, okay, you know, I get what you're
8 saying, in terms of asking these questions. But, a minute ago, it sounded
9 like you were asking the witness about the determination of the mine itself,
10 on the 66 acers or whatever it. Which I, you know, I, then, I understand Mr.
11 Lynn's objection. But, Mr. Lynn, can you speak, give me a though on that?

12 LYNN: Well, I, I think that's exactly what he was asking. Uh, he was
13 asking about, uh, the intensity..

14 LORING: It is.

15 LYNN: Of a mine, well, can I finish? Uh, he was asking about a mine in
16 general. And that's what I think is objectionable.

17 REEVES: So, my question for you, Mr. Lynn, is, is the argument is that
18 the, that 300 foot base is also applicable to the haul road, do you still
19 have the same objection?

20 LYNN: If he wants to ask her about the haul road, I think that's
21 different. Although, I think buffers are immaterial, since the road already
22 exists.

23 REEVES: Well, that's your, an argument, I certainly understand that. But,
24 you know, uh, I'll give a tiny bit of leeway in terms of if you're asking

1 about the haul road, Mr. Loring, repeat the question and just be very pointed
2 if you could?

3 LORING: Thanks, Mr. Examiner. And, Mr. Lynn, I, I know you may need to
4 object, but I think there's a lot of feedback coming when you're, um, unmuted
5 there.

6 REEVES: Oh.

7 LORING: No, wasn't you, sorry.

8 REEVES: Might be Porter.

9 LORING: My f-, okay. So, I, just to clarify, I was asking about the mine.
10 I'm moving on from that. And so, Ms. Porter, are you aware of the Department
11 of Ecology's latest, uh, guidance on roads and the intensity of land use,
12 that they should be, uh, categorized as?

13 PORTER: What are you referring to? Maybe not.

14 LORING: Uh, I, I don't need to go further, if you're not familiar with
15 it, that's fine. And, and I don't need to dive any, any further into that for
16 this question. So, uh, let me see if I have anything left there. Oh, one last
17 question, do you know whether County staff had reviewed the data sheets from
18 your work, uh, when they issued the mitigated determination of non-
19 significance in this matter?

20 PORTER: I've not had any conversation with County staff, I do not know.

21 LORING: Okay. Thank you. I, I have no further questions. Thank you for
22 your time.

23 REEVES: Okay. Um, and, um, just going to assume, again, Mr. Ehrlichman,
24 this is not specifically the scope of what you were going to address, but I'm
25 trying to be fair and whatnot.

1 EHRlichman: Correct. We have no questions. Thank you.

2 REEVES: Very good. Fair and whatnot. So, I'll go back to Mr. Lynn, uh, to
3 see if he has redirect.

4 LYNN: Uh, thank you. Um, Ms. Porter, you were asked a number of
5 questions about exactly how many trucks there are today and exactly how many
6 trucks there will be in the future, does that matter to your conclusion? Is
7 there a, is there an exact number that would trigger a different conclusion
8 on your part or, or, or is that contemplated by the County Code and its
9 requirements?

10 PORTER: Um, uh, no. No. Knowing the exact difference does not change my
11 opinion. I tried to base my opinion on what my understanding was of there's
12 very little traffic now, this is going to be the average in the future and
13 what that future average may mean [inaudible].

14 LYNN: Okay. Uh, tell us about the, your conclusions and how they're
15 effected by the County required buffers, whether it's from streams or
16 wetlands? Does, how does that play into your analysis of an existing
17 improvement?

18 PORTER: I don't understand the question.

19 LYNN: Well, you, you've been asked questions about the, the fish
20 qualities of certain streams and about the intensity of the, of the use in
21 relation to the buffer requirement. And my question is, do your conclusions
22 about there being very little impact and only indirect impact depend on the
23 County required buffers for either the ha-, for the streams of the wetlands?

24 PORTER: I don't totally understand what you're asking and so...

25

1 LYNN: Uh, uh, I'm just going to withdraw the question, then, it's
2 probably better, it must mean it's an argument question, then, not a real
3 question. So, I'll stop there. Thank you.

4 REEVES: Sorry, and by stop there, do you mean you, you've concluded with
5 this witness?

6 LYNN: I have.

7 REEVES: Excellent. Okay.

8 LYNN: Yes.

9 REEVES: Uh, do you have a question or so, Mr. Loring?

10 LORING: No, I have no questions in response, thank you.

11 REEVES: Okay. Thank you very much, Ms. Porter. All right. So, in terms of
12 where we are, is there another witness you recall?

13 LYNN: I, I had considered that, Mr. Examiner, and then I realized it's
14 really a rebuttal point, it's really from the Graham Bunting Firm and I'll
15 just wait for my opportunity to rebut when the time comes. So, that concludes
16 our case.

17 REEVES: Oh, okay. This throws me off. Okay. So, there was [inaudible] I
18 mean, just make sure I have this right, I think seven of the 15 witnesses
19 that you listed ended up being called, is that right?

20 LYNN: Yes. And if you, I, I should, I should have noted this morning,
21 if you think that any of the other witnesses would be important to your
22 review, we're happy to present them. We were trying to just be, uh, focused
23 on the issues that we thought were of most importance and, uh, on which there
24 had been testimony. So...

25

1 REEVES: Yeah. I, I might, so, tend to rebound a little further on the
2 exhibits, the written word, uh, because I just end up confusing myself when I
3 start talking and asking questions. Uh, so, I don't think I have any, any,
4 uh, other of these witnesses that I was hoping specifically to hear from. Um,
5 so, okay. Sorry. Where were we in terms of the handy folder that I believe
6 Mr. D'Avignon put together? I think next would be the Appellant's witnesses,
7 Mr. Loring's witnesses?

8 LORING: That's what I've got, uh, Mr. Examiner.

9 REEVES: Yeah.

10 LORING: And, and you can imagine the excitement with which I approach
11 starting, uh, our case at 3:00 p.m. on a Friday afternoon...

12 REEVES: Well...

13 LORING: For a holiday weekend.

14 REEVES: I, I, guys, I mean, we set aside six days. I, literally, this is
15 the longest I've, I've never had a hearing go beyond three days in the seven
16 years I've been doing this. I don't want to, you know, just assume, but can
17 we do a quick run through of how many further witnesses we, we expect to hear
18 from? So, I'll start with, with you, Mr. Loring.

19 LORING: Yes. I, and I'm just pulling up our list. We do anticipate asking
20 questions of all of the, all of the witnesses that we identified on our list.
21 Some of them are going to be quite a bit shorter and then, you know, two of
22 them I would anticipate being a little bit longer. Or, or a bit longer,
23 right, obviously, on Matt Mahathy...

24 REEVES: Sure.

25

1 LORING: We anticipate speaking to critical area issues and then also Ross
2 Tillman on traffic issues. And those I would anticipate taking a bit longer.
3 Um, and...

4 REEVES: And I have too many printed out pages at the moment. You had
5 ultimately how many witnesses identified?

6 LORING: I'm sorry. I should have mentioned that. We had, uh, nine listed
7 there. And that's...

8 REEVES: Okay.

9 LORING: That's what I still see. I, I see three of those being pretty
10 quick, uh, and then a few in the middle and then a couple longer.

11 REEVES: So my rule of thumb is, you know, you tell me you expect it will
12 take this long and then I trip or double it. So how long do you think it will
13 likely take?

14 LORING: Well, now, of course, I'm adjusting, but, no, I, I, I hope a day
15 and a half of testimony is, is what I'm hoping. It's always hard to tell with
16 cross examination, of course, just as it was for Mr. Lynn.

17 REEVES: Certainly. Okay. So, uh, about a day and a half. And then in
18 terms of, uh, we'll go to, uh, the County next, uh, Mr., uh, D'Avignon, and I
19 think you had about five or so, is that right?

20 D'AVIGNON: Um, yes, I had five. I would, um, Mr. Black will not be
21 testifying, um, I don't think he'll be needed and he's actually out of town,
22 at the moment. Um, of the remaining four, uh, certainly three of them I would
23 imagine that Mr., the traffic, we have two people on there. I may not need
24 both. I'm hoping that one will be sufficient to cover all of the bases. Um,
25 but I am expecting, uh, particularly Ms. Forbes coming related to critical

1 areas and then the traffic guy's, um, I think particularly with cross
2 examination are going to be quite lengthy.

3 REEVES: So, one, isn't, wasn't Kevin Cricchio the MDNS signer?

4 D'AVIGNON: Yes. And, and, and Kevin. And Kevin will probably be decently
5 lengthy as well, but, um, he doesn't necessarily have the technical expertise
6 that Ms. Forbes and, um, a Public Works gentleman would be providing.

7 REEVES: Okay. So three or four is likely is what you're saying?

8 D'AVIGNON: Yes.

9 EHRLICHMAN: Mr. Examiner?

10 REEVES: Okay. Yeah. I was going to go to you next, Mr. Ehrlichman.

11 EHRLICHMAN: Oh, thank you. I, I was going to comment on the County's
12 announcement that Brandon Black would not be a witness. Um, we would like to
13 call Brandon Black, uh, since he was the senior supervisor over a number of
14 the, um, judgement calls. But, also, um, it's our understanding that he was
15 the ultimate staff member approving the presentation in the power point,
16 which we now see is at odds with the traffic information we heard from Mr.
17 Norris. So, I'd like to ask...

18 REEVES: Well...

19 EHRLICHMAN: Mr. Black, uh...

20 REEVES: Well...

21 EHRLICHMAN: Twenty minutes worth of questions.

22 REEVES: But to clarify, the function of this is, is what? To determine
23 that there's been a lack of oversight or supervision? I mean, how does this
24 relate to traffic safety? What am I missing?

25

1 EHRlichman: What I would like to do, Mr. Examiner, is to get the testimony of
2 the lead County planner under oath as to what the County believes the limits
3 are, uh, based on the MDNS and the PowerPoint. If, if they agree with the
4 testimony we heard today, then I don't have a whole lot to ask them. But, we,
5 we need to understand whether the County has a position that's different than
6 what we heard today.

7 REEVES: Well...

8 D'AVIGNON: I guess I'm unsure why...

9 REEVES: I'm still confused myself. I, to me, this sounds like you're
10 setting up some kind of, I don't know, Section 1983 argument down the road, I
11 don't know. I just don't understand what, what the purpose or function of
12 this is and as I'm sure you're well aware, I struggle with the concept of the
13 Hearing Examiner system being used, uh, you know, as a, uh, preserve every
14 issue. And I just have to sit and listen for hours for issues that I don't
15 have authority to address. So, I, I'm struggling to understand, again, uh,
16 uh, is the expectation that Brandon Black is going to say, even though I
17 reviewed Kevin Cricchio's PowerPoint, I now disagree. Is that what you're
18 trying to elicit, in terms of testimony? I'm, I'm not getting it.

19 EHRlichman: Uh, well, you covered quite a lot of ground in that one question.

20 REEVES: Sorry.

21 EHRlichman: Let me address exactly...

22 REEVES: It a [inaudible] question, I apologize. Clearly I'm not a trial
23 attorney.

24 EHRlichman: Let me, let me describe our case, briefly, and answer the
25 question. Our case is that the Comprehensive Plan and County Regulations

1 adopted by the Commissioners require set standards and require the Hearing
2 Examiner to impose mitigation to protect public safety on Grip Road.
3 Obviously, there are questions as to what they've proposed is adequate,
4 that's your judgement. But, to make that decision, we need to hear from the
5 County planners who wrote the MDNS and approved it and who wrote the
6 PowerPoint explaining it, to provide us with a baseline of what the County's
7 position is under the Comp Plan and the Regs. They made a recommendation to
8 you, I have a right to ask them to explain it. I have never brought a 1983
9 claim. That is not where I go in a Land Use Permit proceeding.

10 REEVES: All right. I...

11 EHRLICHMAN: And this is...

12 REEVES: Got it...

13 EHRLICHMAN: This is exactly germane to the criteria of the, of the Special
14 Use Permit.

15 LYNN: Can I...

16 REEVES: So...

17 LYNN: Can I offer a suggestion even though it may not be welcome, uh...

18 REEVES: Go ahead.

19 LYNN: I have heard a number of questions by Mr., um, Mr. Ehrlichman
20 that's, that talk about, uh, loads verses trips and, and that sort of thing.
21 It think if he were to put together, uh, a, uh, uh, just a request that we
22 stipulate to certain facts, I think we could. I mean, I, we're not proposing
23 more trips than are proposed. We're not proposing more loads than are
24 envisions by the MDNS as we read it. So if Mr. Ehrlichman, I think, would,
25 would just give us a chance to stipulate, I think we could just do that in a

1 short period of time and eliminate the need for some of this examination.

2 Just, just a though.

3 REEVES: I mean, I, I love the idea of stipulating to some things. I, I
4 think the argument he's making about why we need to hear from Brandon Black
5 is more of a sort of big picture Meta issue, which I'm, I'm still conf-, sort
6 of struggling or confused with, to the extent that, you know, the
7 Commissioners were the ones that adopted the, the Comprehensive Plan. It says
8 what it says. The Report is written and says what it says [inaudible] Kevin
9 Cricchio signed the Report that the expert on critical area is Leah Forbes.
10 The other one or two are the traffic experts. So, I'm just, I still don't
11 fully...

12 EHRLICHMAN: Another, if I may.

13 REEVES: Yeah. Go ahead.

14 EHRLICHMAN: And it's, I know it's the end of a long week, so thank you for
15 your patience. You know, this is pretty simple. Um, the County Staff have
16 recommended conditions to you that are not clearly worded, in our view. And
17 we have a right to get them to either clarify that or say they won't. That's
18 the question. And Mr. Lynn's suggestion is a good one if Mr. D'Avignon thinks
19 the County might enter into a stipulation. The second part to that, I would
20 add, though, is that perhaps the County Staff come back and during your
21 presentation, you make some corrections to the PowerPoint that are consistent
22 with, uh, the, the traffic engineer's testimony. Uh, because it is at odds
23 with those. And I'm not trying to hang anybody up, I just think that
24 PowerPoint is a, is a little problematic in terms of the record.

25 D'AVIGNON: Well, I guess I have...

1 REEVES: I, I, I want to say one thing, which is, uh, you know, the Staff
2 Report was prepared by Mr. Cricchio, it says it right in the Staff Report.
3 The PowerPoint was quite long. I, I wonder if maybe you, Mr. Ehrlichman,
4 could put together sort of what you think ought to be, you know, altered in
5 terms of that PowerPoint for posterity and then Mr. Cricchio can, can tell
6 you if he agrees or not. And if he doesn't agree, I guess we can revisit
7 going higher up the ladder to his, his manager, as it were. But, I, I, am I
8 understanding kind of what the hope and thought is? I, I'm still confused,
9 but I'm fine.

10 EHRLICHMAN: I, I think that's fine. I, the, the question of having Mr. Black
11 testify or not testify, he was listed as a witness. Uh, we understood he
12 would be brought to the hearing and we were planning questions for him. Uh, I
13 have a right to call witnesses to present my case. And he is a witness in my
14 case.

15 REEVES: Well...

16 EHRLICHMAN: And, and the question of why, Mr. Examiner, I'm listening and
17 learning, just as we all are, the evolution of the, the Traffic Impact
18 Analysis. The key issue here is whether or not the safety analysis on Grip
19 Road is adequate. And w-, we have heard an offer of mitigation by the
20 Applicant, we haven't seen anything yet, but I guess we will. But, the key
21 issue of what did the County require and what does it require in a safety
22 analysis is, is foremost in my mind. I could give you an example.

23 REEVES: Well...

24 EHRLICHMAN: But if I may, this will help illustrate...

25 REEVES: Go ahead.

1 EHRlichman: Why I want Mr. Black to testify.

2 REEVES: I, I was going to say we'll have legal argument later, but go
3 ahead.

4 EHRlichman: It's my understanding that there's a document where, um, some of
5 the County staff ask whether or not there out to be a third-party review of
6 the Exhibit 18 in-depth traffic analysis that the Applicant finally
7 submitted. It's further my understanding that Mr. Black, um, declined to
8 Staff to have third-party review of that document. That was the only safety
9 analysis ever considered by the County. And we either need a response from
10 the County Public Works folks that it's adequate or we need them to say it
11 wasn't adequate. And Mr. Black is the one who made those decisions. If you
12 need..

13 REEVES: Okay. So..

14 EHRlichman: Proof of that..

15 REEVES: This is not, this is not something in the record, this is not
16 something that we're aware is in the record, this is potentially something
17 that could have been discovered through a PRA request in the last six months
18 or so, but the idea is you want to question him about a decision to not have
19 third-party review about something. And the other folks involved, like,
20 Forest Jones, who's Public Works, wouldn't be able to testify to it and they
21 couldn't s-, I mean, I, because I allow hearsay. Uh, if they say, you know,
22 uh, Brandon Black said, no need. You know, I, but I also think we can cross
23 this bridge later, too, to see what comes out and where we end up. But, um,
24 before you respond, I know Jason D'Avignon had a thought and I keep not
25 letting him talk and this is a County issue, so please go right ahead.

1 D'AVIGNON: Uh, I guess, two, maybe three things. The first is Mr. Lynn's
2 suggestion about, um, a stipulation. I think a stipulation, particularly as
3 to what is the County's understanding of the difference between a trip and a
4 truck in the Traffic Impact Assessment, I think there's been a lot of
5 confusion, um, in how those terms are used. And so, whether 46 means 23 or
6 something different, I think that is something we would easily be able to
7 come to an agreement on what that means.

8 EHRLICHMAN: Uh-huh.

9 D'AVIGNON: I think to the extent that the PowerPoint contains a mistake in
10 the County's understanding, it is a very long document, there are a lot of
11 words, I'm assuming there is some mistake somewhere, uh, we would gladly
12 correct that. I don't know if we need to make a big show out of correcting
13 that, but if, for example, the PowerPoint misstates the number of suggested
14 trips and what those conditions would be, um, we would gladly fix that. I
15 think Kevin, or Mr. Cricchio is the, the gentleman who drafted the
16 PowerPoint, he drafted the Staff Reports. Um, he's the person who's going to
17 be in the best position to answer questions about those documents. Um, Mr.
18 Black might have reviewed them, um, you know, I'm not positive and to what
19 level he dove down into the details of those documents, but he's a busy
20 gentleman, so I can't imagine it was as deeply as Mr. Cricchio. Um, I believe
21 he would be back for the 13th, so Day 6, if he was absolutely necessary.
22 Although, I, I, I tend to fail to see how his testimony is ultimately going
23 to be, uh, useful to you, Mr. Examiner, in, in a determination as to the
24 Special Use Permit or as to the, the County's SEPA review.

1 REEVES: So, I, I guess my suggestion of if Mr. Ehrlichman thinks there's
2 a, some things in the PowerPoint that ought to be fixed for posterity. To be
3 clear, I don't know, maybe it doesn't seem this way, I have been actively
4 listening and following along for three days now and I'm aware of the exact
5 issues, Mr. Ehrlichman, that you are concerned about, in terms of getting the
6 numbers right. And, and I'm the one that makes the decision, but, but I
7 certainly have no problem with, you know, [inaudible] things, I, [inaudible]
8 wrong decisions and sometimes there's mistakes and in a perfect world, I'd
9 like to fix them when possible, but, um, so, I, I would think that...

10 EHRLICHMAN: Mr. Examiner?

11 REEVES: [Inaudible] Brandon Black, he sounds like he'll be back by the
12 13th. Based on this last half hour, I'm confident we will at least need Day 6.
13 Um, so, I think we can table it, although I would suggest, and appreciate,
14 that if the Attorneys can get together and stipulate or agree as to anything,
15 I'm happy to have that become part of the record. I mean, if, if you all can
16 sort out some of the issues, independently, clearly I, you know, it still
17 would need to be an Exhibit and all that, and we would need to talk about it,
18 but, uh, obviously, I think that would helpful. So, I encourage that to
19 happen.

20 EHRLICHMAN: Mr. Examiner?

21 REEVES: Yeah. Go ahead.

22 EHRLICHMAN: That's, that's, uh, something that we'll do, we'll work on the
23 stipulation. I'll provide Mr. D'Avignon with, uh, a specific slide that I
24 think they may want to take a look at for possible correction. Um, all of
25 that is good. Mr. Black is a witness I want to call. Uh, as to the question

1 of where he is, the Public Works review of Exhibit 18. I don't see County
2 review of that document.

3 REEVES: Sure.

4 EHRLICHMAN: And the Application requirement includes, I said earlier in the
5 case, require the Applicant to bring forward the Public Works Review of their
6 traffic analysis. We don't have that. And I'd like to ask Mr. Black where is
7 it, why don't we have it?

8 REEVES: I totally understand...

9 D'AVIGNON: Wouldn't our Public Works people be able to testify to that
10 adequately?

11 REEVES: I, I fully understand the argument. What I'm going to suggest is,
12 again, we will table it for the moment, um, because I don't believe, a) I
13 mean, we're first, you know, I, I doubt Mr. Loring is going to wrap up in a
14 half a day and all of the sudden we'll be ready to, to hear from any of the
15 explicitly identified County witnesses. So, I'm suggesting we can cross this
16 bridge, uh, when we get there. So, that's, that's going to be my ruling, you
17 know, um...

18 EHRLICHMAN: Thank you.

19 REEVES: And, and at a minimum, I would like to hear from the other County
20 witnesses prior to getting to that point. But, we'll, we'll cross that bridge
21 when we get there. So, and was he identified explicitly on your witness list,
22 uh, Mr. Ehrlichman? I just want to be clear whether I missed that.

23 EHRLICHMAN: Well, we're, we're not in the SEPA Appeal, so we didn't have the
24 same kind of exchange of Exhibit and Witness Lists in the Special Use Permit
25 preceding. I'm happy to provide that, but, no, I, I had discussions...

1 REEVES: Well...

2 EHRLICHMAN: With Mr. D'Avignon, uh, about the witnesses that I wanted to talk
3 to from the County and our understanding was that Mr. Black would be produced
4 as a witness.

5 REEVES: I, I guess the challenge is I have is were this not a
6 consolidated hearing, were, were we just here today on a very simple, you
7 know, variance request or something and you came in as an Attorney and said,
8 hey, I want to talk to, you know, these other staff members, would I have to
9 allow that? I'm just trying to understand how that process would work in a
10 different world.

11 EHRLICHMAN: Well, I, I, I would be happy to brief that issue, I just, you
12 know, I've never...

13 REEVES: Let's not do that.

14 EHRLICHMAN: No, I, I agree. Let's, let's see how far we can get with the
15 Public Works staff, maybe Jason is right.

16 REEVES: Okay.

17 EHRLICHMAN: Uh, my suspicion is that Mr. Black supervised them. And so, we,
18 we may need to call him, but let's see.

19 REEVES: Sure. Okay. So, I got off-track here. So I think we were at three
20 or four County witnesses, uh, a day and a half, two days, I guess, day and a
21 half maybe, I don't know. I mean, now we're running out of time today. But,
22 in terms of your witnesses, Mr. Ehrlichman, your thoughts on how long that
23 will take?

24

25

1 EHRlichman: Um, I just have one witness, other than the County staff, um,
2 questions and that is, uh, Wylie Grado [phonetic]. And I think that will take
3 the same time as Mr. Mcleod, not very, not very long, 15 minutes.

4 REEVES: Okay. All right. So, I suppose we, we then would be on track,
5 just to clarify so that we're on the same page, timing-wise, uh, my notes
6 show Thursday, September 8th as the next day, uh, that we all get together and
7 then also the ninth, is that right?

8 D'AVIGNON: That's right.

9 REEVES: Okay. And, uh, same offer as before, either day, I, I am able to
10 go a little bit longer if folks, uh, are as well. Uh, we don't have to sort
11 that out this second. But, uh, throwing it out there. Um, in terms of where
12 we go right now, first off, any procedural issues anyone wants to address?
13 And then, out of curiosity, Mr. Loring, do you have a witness you think you
14 can get started on for half an hour? I mean, I, I, you know, I, I'm trying to
15 be...

16 LORING: I do.

17 REEVES: Realistic. I know we're all...

18 LORING: I...

19 REEVES: Tired, it's a three-day weekend...

20 LORING: Yeah.

21 REEVES: And I don't want to, I forgot that when I offered for everyone to
22 stay late and I truly appreciate you, uh, giving us the hard stops. I, I, you
23 know, I don't want to be frivolous with our time, but I also, you know...

24 LORING: Yes.

25 REEVES: So...

1 LORING: I, I do, I, I have a witness who could, who is, uh, a background
2 witness on, uh, Central Samish Valley and, um, basically their reasons for
3 being in this case and, and some information they want to share about the
4 process that has occurred to date. And, uh, my thought is that that might be
5 a, a good witness to, uh, to wrap up the day with. You know, my guess is we
6 could do that by 4 o'clock.

7 REEVES: Excellent. Uh, that works for me. Uh, real quick, just checking
8 on procedural matters, uh, Mr. Lynn, any, anything you wanted to address?

9 LYNN: No.

10 REEVES: And, Mr. D'Avignon?

11 D'AVIGNON: Uh, n-, none for me, Mr. Examiner.

12 REEVES: And, Mr. Ehrlichman?

13 EHRLICHMAN: No, I think we're good. Thank you.

14 REEVES: Okay. So, Mr. Loring, if you want to call, uh, your, your sort of
15 background witness, as it were?

16 LORING: Thank you, Mr. Examiner. Central Samish Valley Neighbors call
17 Martha Bray.

18 REEVES: Okay. And thank you for being here. I'll swear you in. Do you
19 swear or affirm to tell the truth in the testimony you give here today?

20 BRAY: Yeah. Can you, you can see me and hear me okay?

21 REEVES: Yes.

22 BRAY: Hi. I, yes, I swear to tell the truth.

23 REEVES: Thank you. And can you just, uh, spell your name, uh, state and
24 spell your name for the audio?

25

1 BRAY: Martha Bray, uh, Martha A. Bray, M-a-r-t-h-a, middle init-,
2 initial A, B-r-a-y.

3 REEVES: Great. Thank you. Go ahead, Mr. Loring.

4 LORING: Thank you, Mr. Examiner. And, uh, thank you, Ms. Bray for
5 joining, uh, midafternoon this Friday. Um..

6 BRAY: Yeah.

7 LORING: Let's jump right in. Uh, where do you live?

8 BRAY: I live at 6368 Irwin Lane, that's about, uh, two miles as a crow
9 flies to the mine site, and quite a bit less to the entrance to Grip Road.
10 I've lived here for 17 years.

11 LORING: Okay. Uh, do you have any educational or professional background
12 you'd like to share with us that you bring to bear in this matter?

13 BRAY: Yeah. I have a Master's degree, an MS from the University of
14 Washington in Environmental Planning and, um, worked in that field for most
15 of my career, including the last 20 years as conservation, before I retired,
16 I should say, about six years ago, I was the Conservation Director for Skagit
17 Land Trust for the, for 20 years.

18 LORING: Okay. You're part of a group known as the Central Samish Valley
19 Neighbors?

20 BRAY: I am.

21 LORING: And how long have you been part of that grip?

22 BRAY: Since its inception in 2017.

23 LORING: How did they get started?
24
25

1 BRAY: Um, we, uh, met neighbors who, and friend, uh, people in this
2 vicinity who were also concerned with the gravel mine and one thing led to
3 another and we formed a little group.

4 LORING: Okay. So you're familiar with the, uh, Miles Sand Gravel mining
5 proposal that we've been discussing?

6 BRAY: I am.

7 LORING: Okay. Uh, have you been observing the, uh, the hearing to date?

8 BRAY: I have. Probably, almost every minute of it.

9 LORING: Okay. How did you initially inform yourself about the proposed
10 mine?

11 BRAY: Uh, we've, uh, requested all of the documents that have been
12 submitted by the Applicant. We also have cons-, consistently submitted public
13 requests through this whole process. So, uh, and my husband and I have, uh,
14 reviewed just about every document and some in great length and over and over
15 again.

16 LORING: Okay. Why did you submit public records requests?

17 BRAY: Because it was hard to get answers out of the County and there
18 were big gaps in, um, you know, in information and we actually learned a lot
19 that wasn't be shared with us by doing that.

20 LORING: Okay. Um, it, it sounds like you've been following this process
21 since about 2016 yourself and, and 2017 with the group, is that right?

22 BRAY: Yeah. I, um, I actually happened to notice the, um, the legal
23 announcement in the Skagit Valley Herald in mid-2016 and, um, you know, so I
24 was, I guess I was an early adopter, you'd say.

25

1 LORING: And as you followed the Application process, has it given you any
2 concerns?

3 BRAY: It's given me lots of concerns, yes.

4 LORING: Can you share a few of those with us here today?

5 BRAY: Uh, well, I guess the first things that, you know, jumped out,
6 were the huge numbers of trucks on, on, like, these roads. We all, everyone
7 that lives in this area knows how dangerous these roads are, as they are,
8 with the existing levels of traffic with it, not, you know, without adding
9 dozens, dozens of trucks a day. Um, and, um, in addition, my husband and I
10 are cyclists, so we love to ride these roads and, um, being passed by gravel
11 trucks is, is a really terrifying experience, even when it's just one or two,
12 let alone, many trucks. It would just take the joy out of it and, and be too
13 dangerous to continue to do. Um, we also, as we learned more about the
14 project, had a lot of concerns about environmental impacts as well, you know...

15 LORING: What were some of those?

16 BRAY: Yeah. And I don't want to go into, you know, we, we it's the end
17 of a long day and we've heard a lot about those, but, you know, obviously,
18 the, uh, adjacency to the Samish River and, um, the d-, the impacts to, um,
19 Swede Creek and the fisheries resources in Swede Creek. And that larger, uh,
20 landscape owned by the Applicant that haul road crosses over, um, there's
21 just a lot of environmental impacts associated with that that were not
22 revealed at the beginning of the process.

23 LORING: Uh-huh. And...

24 BRAY: Oh, and, you know, yeah, I, um...

25 LORING: Go ahead.

1 BRAY: Thanks, Kyle. I, I also wanted to mention, I didn't mention at
2 the beginning, that I did work as a, um, Natural Resources Planner for Skagit
3 County for a couple of years in the 1990's. And my job was to develop a, a
4 watershed plan for the Samish River. And, um, that, you know, to this day,
5 there, there's still efforts being made, you know, 30 years later, to restore
6 and protect the Sam-, the resources in the Samish River that own Public Works
7 Department is vigorously doing in helping landowners with livestock fencing
8 and, uh, tree planting via restoration and implement-, implementation of the
9 BMPs on, um, individuals farms. And, um, you know, I just find it pretty
10 frustrating that, you know, one hand invests these public resources to
11 restore and at the same time, the County doesn't apply the Code to, uh,
12 impose the, what the, what should be a, um, decent buffer on the Samish
13 River. So, um, that, that's jumped out at us from the beginning.

14 LORING: Uh-huh. And when you say a decent buffer, are you referring to a
15 300 foot buffer for high intensity use?

16 BRAY: I am, yeah.

17 LORING: Okay. Have you communicated these concerns, uh, to the, to Skagit
18 County?

19 BRAY: We have. We've written many letters, at every juncture, every
20 opportunity.

21 LORING: And h-, has the County addressed your concerns?

22 BRAY: You know, I, I think the County has made some efforts to address
23 our concerns. But I think they fall short.

24 LORING: Okay. And, and we'll discuss how they're falling short in a
25 moment, in your perspective there, um, but, in the meantime, I'd like to ask

1 whether you feel the County has provided a reasonable explanation for not
2 addressing those concerns?

3 BRAY: No. I, um, we, on many, on many occasions, we, um, have requested
4 meetings with pl-, County Planning staff and, um, send inquiries in and very
5 rarely gotten very good answers back. The posture with the Planning staff
6 increasingly, over time, especially, has become we're here to listen, not to
7 answer questions. And so I, you know, this is the first time that we've had a
8 chance to really hear some of the technical explanations about this project.

9 LORING: Uh-huh.

10 BRAY: Um, yeah.

11 LORING: Yeah. Well, I'd briefly like to, uh, just point you to Exhibit A8
12 and I can share my screen to pull this up, this is not something that I
13 intend for us to go through. Um, let's see, why don't I just do that briefly,
14 we'll, we'll test out whether small PDF, my computer can handle that at this
15 stage. I, I appear to have a lot of windows opened, trying to find the right
16 one here. Not showing up. Just a moment. I think that is it there. Okay. So,
17 we will, we will see how this works. Uh, are you seeing that on your screen
18 there?

19 BRAY: I am.

20 LORING: Okay. And, uh, are you familiar with this document?

21 BRAY: Yes, I am.

22 LORING: What, what does it say?

23 BRAY: I, it's an abbreviated, uh, chronology of the permit process that
24 I've kept since the beginning. I, it was, it, the original one is quite more
25 de-, much, much more detailed than this one.

1 LORING: Okay. Why did you put this together?

2 BRAY: Well, it's, it's the, um, permit process has been dragged out
3 and, um, convoluted and confusing and I felt like I needed to keep track of
4 what was happening so I could explain it to, to community members and to
5 identify mistakes that were made. And sort of, you know, keep track of all of
6 that.

7 LORING: Okay. And, uh, like I said, I won't, I won't take us through it,
8 I think you've summarized it there and, and we have it as an Exhibit in the
9 record. So we'll let it, uh, speak for itself, uh, to a large extent. Um, but
10 if you can summarize whether you, uh, experienced any issues with the SEPA
11 review process that the County has conducted during this review, that would
12 be excellent.

13 BRAY: Yeah. Um, where do I begin? So, I, I think I, I just want to say
14 that, you know, this, this permit process has, um, you know, just been
15 plagued with all sorts of, um, issues from the beginning. And I, you know, I,
16 and I don't want to go into that in great detail, but I think it's worth
17 saying that, um, in 2016, the County received the Application materials,
18 deemed it complete when there were a lot of gaps in the information, go, went
19 ahead and issued a, um, Special Determination, a MDNS, um, and then, you
20 know, revealed that they'd made an error in notification to adjacent
21 landowners. So, you know, the hearing was continued at that time, but they
22 didn't withdraw the, that initial MDNS until five years later. And so I think
23 that created an incredible amount of ambiguity in the permit, in the permit
24 process and in the public process, too. Because, because it was really hard
25 to figure out what was going on. Is there still a SEPA process? Is there not?

1 We argued that they should, they should have withdrawn it at the beginning,
2 but th-, but, so, you know, that's, that sort of was the set up for, um, you
3 know, a lot of, um, just really confusing process, I'd say. And then, you
4 know, then, when, uh, after that, they invited pub-, more public comment,
5 hundreds of comments started to come in about very legitimate concerns that
6 the community had. The County recognized that, but, and they asked for more
7 information from the Applicant. The Applicant resisted providing more
8 information, arguing that SEPA was complete and the Application was complete.
9 And that, and that resulted in, you know, a lot of, um, just back and forth
10 between the Applicant and the County arguing about that and, and resulted in,
11 uh, and the first Appeal to the form of Hearing, um, Examiner, um, after the
12 County actually denied the permit for, um, untimely submittal of r-, of
13 material, um, or, you know, not lack of submitting it in time and incomplete
14 application. So, um, you know, that's just part of the roadmap of this permit
15 process.

16 LORING: Uh-huh.

17 BRAY: It, it's just, um, it's been pretty confusing to follow.

18 LORING: Okay. And were there any periods where it appeared that the
19 Application process had paused altogether or stopped altogether?

20 BRAY: Yeah. You know, we, we, yes. There were, um, I think, I'm looking
21 at my version of the timeline here. Uh, in, uh, oh, let's see, I, it, for at
22 least eight months in, um, 2018, when, uh, they were, after that first
23 Appeal, uh, we were told that the Applicant and the County were in settlement
24 discussions. And there was just no information. And, you know, it was just
25 kind of a blackout, you know, I think, even, we even go-, started getting,

1 um, emails from Hellen Hart [phonetic] that said the Attorneys, Attorneys
2 have instructed me not to say anything, essentially. I'm paraphrasing, but
3 that was essentially what we were told. So, that went on and for a long time,
4 but there was never any settlement. Um, and then there was another big blank
5 period in, uh, 2019 for, from July, that extended into the spring of 2020,
6 when there was just no information. And the typic-, when we would send an
7 email inquiries to the County, they would say, no new developments at this
8 time. But, at the, simultaneously, during some of those periods, when we were
9 told there were no new developments, our public records requests would
10 actually show that they had hired a third-party, uh, traffic consultant to
11 review some of the information. So, you know, it was kind of, um, these two
12 parallel universes that we were trying to occupy at the time.

13 LORING: And you felt like the County wasn't completely candid with you as
14 they were conducting their process?

15 BRAY: No.

16 LORING: Okay. Uh, do you, are you aware of any factors that may have
17 contributed to the delays or this process taking the period of time that it
18 did?

19 BRAY: Yeah. I, it, it's clear that staff turnover, um, caused some of
20 that, uh, some of the, the, um, missteps and, um, delays. The, we've had,
21 we're on our third Lead Planner now when we, when this project started, John
22 Cooper [phonetic], was the Lead. He retired in, um, I don't know, 2019, I
23 believe. And then, uh, Michael Surbon [phonetic], a new Planner, I think he
24 was pretty new to the County at the time, too. He was assigned to it, but he
25 didn't last for the year. And now, Kevin Cricchio has been assigned to it,

1 um, so, and that, I don't think he was assigned to it until last year, maybe,
2 so, um, it's pretty clear that staff has had to do a lot of catch up to
3 understand this very complicated project.

4 LORING: And does it appear to you that has effected some of the quality
5 of the review?

6 BRAY: Absolutely. You know, and I, I did mention earlier that, that,
7 you know, the Staff Report that we're currently using, um, really shows that,
8 um, lack of understanding of the project. And lack of probably, you know,
9 understandably lack of, um, time, um, to, to, to do a, a better job of it.
10 But, um, you know, I, it, it appears to me, in that Staff Report, that the
11 Ap-, the County Planner is relying very heavily on the claims made by the
12 Applicant. In fact, quoting them verbatim and, you know, in, even in the
13 Staff Analysis sections, there's, um, narrative that just basically repeats
14 the, um, the Applicant's Application materials, the Special Use narrative, et
15 cetera. So, even when it's not quoted, it's just laid out there as fact or
16 as, as, you know, independent, uh, determination without making any, um,
17 clear, uh, and without them actually independently analyzing or assessing the
18 claims made by the Applicant.

19 LORING: Uh-huh. And, as part of that, do you feel like the County has
20 given the same level of weight to a similar experts in their fields who have
21 submitted, uh, comments and reports to the County identifying concerns with
22 the project?

23 BRAY: I'm sorry, can you, um, repeat that question?

24 LORING: Yeah. I was saying, are, do you feel that the County has given a
25 similar level of weight or deference to well-informed experts in the field

1 who have submitted comments, but who have, uh, expressed concerns, instead of
2 support...

3 BRAY: No, I...

4 LORING: For the project?

5 BRAY: I really don't. It, it, it's, it, no, I don't think they've taken
6 those into consideration. I think they're in a hurry to get this project
7 done.

8 LORING: Okay. A hurry, at this point?

9 BRAY: A hurry at this point. Yeah.

10 LORING: Okay. Uh, did Skagit County and the Applicant acknowledge all of
11 the aspects of the project from the start?

12 BRAY: No.

13 LORING: Did...

14 BRAY: Um...

15 LORING: Do you think that has helped cause some of the delays that have
16 taken the six years, uh, to get us to where we are today?

17 BRAY: Absolutely. Yeah. You know, if, if they, this project, you know,
18 if they had made the Applicant prepare thorough Application from the
19 beginning or required the Applicant to do so, I think it would have been a
20 really different, uh, process now.

21 LORING: Okay. And were some, was some of that related to traffic impacts?

22 BRAY: Yeah. You know, and if, for instance, at the beginning, we had
23 this, uh, three printed page preliminary traffic memo from DM Consultants,
24 you know, that's, that was, the document was labeled, I don't remember exact
25 name or title of it, but it was preliminary and we, from our public records

1 request and from the fact that the County had already issued their letter of
2 complete, completeness on the Application, it was clear that, uh, Public
3 Works was ready to sign off on that without requiring any, uh, really
4 thorough traffic, uh, investigation.

5 LORING: Uh-huh.

6 BRAY: We didn't get the, um, TIA that we're now looking at until, um, I
7 think it was 2020. Yeah.

8 LORING: Okay. Yeah. And, uh, when, at what stage did the County
9 acknowledge that the internal haul road, a 2.2 mile private road, was part of
10 the project?

11 BRAY: That would be 2021.

12 LORING: Okay.

13 BRAY: So, six ye-...

14 LORING: And then...

15 BRAY: Yeah. Six years...

16 LORING: Right.

17 BRAY: After the Application.

18 LORING: Yeah.

19 BRAY: And we...

20 LORING: About five, yeah.

21 BRAY: Five. Thanks. Yeah.

22 LORING: Yeah.

23 BRAY: Um, we've argued from the very beginning that the haul road
24 should be part of the, well, uh, is obviously a part of the footprint of the
25 mine. It's, you know, it's the infrastructure of the mine to, they're going

1 to be hauling, uh, 4.2, uh, cubic yards of material out of that hole, you
2 know, over a 25 year period and they've got to get it out of there somehow.
3 So, this road is a critical piece of the project.

4 LORING: 4.2, uh, .28 million, right?

5 BRAY: 4.-, uh, I don't, 4.2 million cubic yards, I believe is the..

6 LORING: Sure.

7 BRAY: Figure. Yeah.

8 LORING: Yeah.

9 BRAY: Um...

10 LORING: Uh...

11 BRAY: Which, but incidentally, I mean, this is a little aside, but,
12 yeah, um, I guess I'll just go for it now, you know, uh, there, there's been
13 this, um, characterization of this as a small project and there's lang-,
14 language in the Application materials that, you know, say a relatively low
15 level of extraction. My husband did a calculation of the volume of material
16 that's coming out of that mine and it, and it's 26% more than The Great
17 Pyramid of Giza, so, uh, that's just a nice little reference point for, um,
18 what the Applicant claims is a relatively low level of extraction.

19 LORING: Uh-huh. And you attended the, uh, in-person portions of the
20 hearing, uh, last Friday and then Monday, right?

21 BRAY: I did.

22 LORING: And did, did the neighbors express to you, other neighbors
23 express to you that they agreed with the sentiment that it was a small mine,
24 small operation?

25 BRAY: No. No. N-, they did not. They're, yeah.

1 LORING: Okay. I'm going to skip over a couple of things. We'll keep
2 moving along. Just for, so people know, I think we're, we're actually over
3 halfway here, so this is, we're, we're still right on track, uh, for
4 completing this. Uh, has, uh, we talked a little bit about this, but, uh, the
5 Central Samish Valley Neighbors, they've submitted comment letters about the
6 mine to Skagit County, right?

7 BRAY: Yes.

8 LORING: Okay. And, uh, we don't need to go into all of those, obviously
9 we've had some briefing that has, I think, summarized a lot of that, but I,
10 for the record, those are Exhibits A2-A7, um, for the SEPA Appeal. And my
11 understanding is that the Exhibits that we're referred to are, uh, and
12 others, actually, are all considered part of the record, at this point, for
13 this Appeal.

14 REEVES: Yes.

15 LORING: Uh, okay. Thank you, Mr. Examiner. Uh, and so, why did you submit
16 those comment letters over that time period?

17 BRAY: Well, we're trying to get the County to, um, a-, apply the
18 Regulations and the Code appropriately to protect, uh, public safety and the
19 environment and our community from the impacts from this mine. And we don't
20 feel like they've been doing that so far.

21 LORING: And you're familiar with the County's mitigated determination of
22 non-significance that they issued in February of this year?

23 BRAY: I am.

24 LORING: Okay. And do you believe that the County conducted a thorough
25 environmental review before issuing that MDNS?

1 BRAY: I don't. I, I don't believe they did that. Um, I think they've made
2 some efforts to address some of our concerns, you know, in this piecemeal
3 fashion of continuing to, you know, ask for more information over the years.
4 But, um, ultimately, this is pretty much the same Proposal that it was six
5 years ago.

6 LORING: Okay. You know, I'd like to touch on that. Y-, have you heard
7 testimony by, uh, Applicant's witnesses about potential changes to the
8 project over the la-, testimony over the last few days?

9 BRAY: Yeah. I, this is really, um, we've had six years, uh, to address
10 these issues and nothing is new. You know, and now, at, at the 12th hour,
11 we're getting these, you know, little bits of sort of hints at what they
12 might be able to do, but, you know, there was plenty of time to address these
13 issues in the past. And, you know, by doing it this way, we, we don't know,
14 um, what impacts have been studied and what impacts are being addressed by
15 whatever additional offers they're making. And so, you know, it's, there's no
16 way to evaluate it, the public hasn't had a chance to look at any of that.
17 And, you know, and arguably, you know, we have our own experts that we'd like
18 to have look at those things. And so, you know, it, it, it doesn't seem like
19 a, a good way to, um, figure out a way to additionally condition the permit
20 to me. It seems very, um, piecemeal and Helter Skelter.

21 LORING: Okay. Let's assume it weren't piecemeal, do you feel like those
22 Proposals are sufficiently concrete to be able to guide activity going
23 forward regardless?

24 BRAY: No. No, we haven't even seen them. I mean, you know, they, it's
25 just, it's just these vague offers.

1 LORING: Okay. So, what are some of the examples of other, uh,
2 environmental issues that you believe the MDNS, um, I guess, was not reviewed
3 by the County before the MDNS was issued?

4 BRAY: Well, you know, Kyle, we've, um, we, we've, um, presented the
5 County with a, a Hearing Examiner with a detailed list of the issues that we
6 feel have not been adequately addressed. I mean, just to touch on a couple of
7 them, though, um, compression brakes on the Grip Road hill, you know,
8 basically no real off-site studies of noise impacts, um, diesel exhaust along
9 the haul route, I mean, this is a lot of really intensive, um, hauling. There
10 are, despite, you know, the claims, there's a lot of homes along that route.
11 Um, there's, there's been no acknowledgment of air quality impacts
12 whatsoever. You know, and that includes carbon emissions as well. Um, and
13 then, you know, of course, the big one that we've heard a lot about already
14 is that they haven't fully evaluated the conditions of the County road system
15 and, and identified the inadequacies, you know, again, not just a segment
16 here and a segment there, but the full haul route and, um, identified that,
17 what needs to happen to bring the Cou-, bring it up to County Road Standards
18 so that we're protected.

19 LORING: Okay. And you've, you've heard the testimony over the last few
20 days, you heard from Miles' witnesses and as they have explained what they
21 did and how they went about doing that. Has that not answered your questions
22 or addressed your concerns?

23 BRAY: No. It, it hasn't, I mean, I, uh, you know, I, I think, um, you
24 know, in, in my work at the land trust, we, we had to order appraisals pretty
25 regularly, real estate appraisals and, you know, one of the things that, that

1 you learn when you work with somebody that you hire to do a study for you, is
2 that the assumptions are what guides the outcome, right. And I, you know, I
3 feel like these are very carefully, um, designed, uh, uh, cri-, studies that
4 help, um, inform the outcome of the, that the Applicant is looking for.
5 That's, I guess I'm just, you know, that's my opinion, and I guess I maybe
6 strained beyond my area, but I, I do think that the assumptions have played a
7 pretty big role in, um, the fin-, the conclusions that the consultants have
8 come to.

9 LORING: We, we heard a little bit about conditions in the MDNS and, uh,
10 I, do you believe that the conditions that have been created or inserted as
11 part of the MDNS would address the mine's likely impact?

12 BRAY: No. I, I don't. I, I think the County, um, makes an effort to
13 address our concerns with some of those mitigating conditions, but, you know,
14 when you look through that list, I think, you, you, one thing I keep hearing
15 is that the, that 19 mitigating conditions have been imposed on this, um, on
16 this project through that MDNS, but if, when you read through, through those
17 mitigating conditions, at least 12 of them are essentially the Applicant
18 shall comply with existing rules and regulations and laws. There's only a few
19 that are actually applying any kind of site specific conditions. And then,
20 those, you know, we heard a lot this morning about some of those, um, where
21 they're, they're not very tight conditions, I'll say that. Specifically, you
22 know, um, I, I think it's, I'm not going to, like, read the mitigation, the,
23 the condition about truck minutes again, but, I think it's pretty clear this
24 morning that, you know, the, that, that there's a lot of room for
25 interpretation there and it's really hard to create a hard limit by stating

1 an average. You know, so, it, it, and then there's these qualifiers with that
2 one and the hours of operation, that, you know, half this, you know, except
3 for extended hours, you know, at the, to the point where those, um,
4 conditions to us appear to be fairly meaningless, really, as any kind of hard
5 limit.

6 LORING: Well, and as someone with a planning background, when you look at
7 the extended hours conditions, are you clear on the process that would apply
8 if, uh, for those to be triggered and, and for the...

9 BRAY: Yes.

10 LORING: Applicant to be allowed to, to, uh, drive up to, it's hard to
11 tell, 30 or 60 trips per hour?

12 BRAY: Yeah. No, there, and there's no, there's no clear monitoring plan
13 for, um, I, you know, I, I, listening this morning going well, okay, even if
14 it's lim-, only, it's limited to, you know, this 43 average over a year,
15 who's counting, who's minding the shop. And I, that brings me to one of my
16 biggest concerns about the, what's absent from the, from this MDNS is any
17 kind of real compliance and monitoring plan, um, you know, I, I think, and I
18 think it's fairly common, I, I, that, um, a, a project of this magnitude
19 should have a, um, renewal, permit renewal process and a clear compliance and
20 enforcement, uh, process for, and, you know, we're talking about the Special
21 Use Permit conditions. You know, and I think it, there needs to be some kind
22 of a bonding provision and I did hear earlier that Mr. Barton's and Mr. Lynn
23 mentioned that there's, um, you know, that they, they post bonds for, uh,
24 with a DNR, but that, for, for a certain permit conditions, but that is

1 related, as I understand it, to the reclamation plan and DNR. It has nothing
2 to do with the Special Use Permit conditions.

3 REEVES: And...

4 BRAY: So, they, this is a...

5 REEVES: I'm going to hop in.

6 LORING: Hold, hold on a second.

7 REEVES: I apologize. Uh, what I wanted to clarify, I think Ms. Bray,
8 you've done an excellent job of clarifying mitigation measures versus
9 conditions, but I think the language...

10 BRAY: Oh, yeah.

11 REEVES: Can get confusing. My understanding is up until the last minute,
12 you, you, everything you were sort of testifying about was specific to SEPA,
13 I, to avoid confusion, I, myself, had to do what I think you've been doing,
14 which is to refer to them as sort of required mitigation measures. And when
15 we talk about conditions, those would be what would ultimately be related to
16 the SUP. I, I just would like to keep those separate to the extent that it
17 gets confusing, at least for me, otherwise. So, was I correct in you have
18 generally...

19 BRAY: Okay.

20 REEVES: Been specifically addressing the mitigation measures in the MDNS?

21 BRAY: Yes. I, I guess I, I would just say that, um, we, we have
22 submitted a list of conditions that we believe would, um, be sufficient to
23 protect the, um, the environment and public safety. So, I guess I was sort of
24 addressing that. That, you know, because, uh, Mr. Loring is asking me whether
25 I feel, like, whether I believe that the, um, MNDS is adequate. So, I don't.

1 REEVES: Right.

2 BRAY: So I was trying to talk about some of the things that I believe
3 are missing.

4 REEVES: Okay. Sorry to confuse things, Mr. Loring.

5 BRAY: No, that's...

6 REEVES: I just, I...

7 LORING: No, not at all. The, I, I don't think you confused it. Uh, but
8 Ms. Bray, when you mentioned conditions a moment ago, you're thinking of
9 conditions that could apply in that Special Use Permit context and also the
10 SEPA context to some extent, uh, or at least those are the sorts of things
11 that would, I guess, before the MDNS, of helped cure it, to some extent, if
12 that had been applied before it was issued?

13 BRAY: Yeah. Yes. Absolutely.

14 LORING: Okay. So, we've gone through, you've identified, uh, a list of
15 some different issues and, and some examples of conditions that would be
16 helpful for something like this. Uh, at, at this point, you have filed the
17 SEPA appeal, right, your group has filed the SEPA Appeal to the County?

18 BRAY: We sure have.

19 LORING: Yeah.

20 BRAY: Um...

21 LORING: And can you summarize just, uh, in a sentence of two why you've
22 done that?

23 BRAY: Because we don't feel like the impacts have been fully evaluated.
24 And, um, it has pretty significant con-, consequences for us, um...

25

1 LORING: And what, uh, what is the outcome that you'd like to see from
2 this Appeal?

3 BRAY: Well, I, we, we need to see the County road along the entire haul
4 route studied and, um, you know, all the deficiencies identified and a cost
5 share plan developed with the Applicant to bring it up to County Standard
6 sufficient to protect the, for community. Um, and, you know, we need to see
7 far more vigorous mitigation applied to, um, the truck traffic and to the
8 numerous other environmental, um, impacts that, uh, that have been
9 identified. You know, and if the C-, I, we just, we feel that if the County
10 and the Applicant can't step, step up and, and do that appropriately, then
11 the Permit should be denied. Um, yeah. I...

12 LORING: Okay. And, and we've heard just a couple of other things I want
13 to touch on as we wrap up here. Uh, one is that this, that this mine has been
14 characterized as a temporary activity. Uh, do you feel that it's going to be
15 a temporary activity?

16 BRAY: No. And, uh, I don't is all. And I, you know, I just, I have to
17 say that, I just need to comment on that language, it, I, and it, if people
18 would, um, you know, uh, allow me, I, I, I want to read something out of the,
19 um, uh, Staff Report on Page 27. Um, because I, I, I just think this, this is
20 real-, this is really, um, illustrative of a lot of the way that language has
21 been used to minimize the impacts and, and it, um, it, I think it's, it will
22 speak for itself a little bit. So, this is...

23 LORING: And that's Exhibit, Exhibit C47, the Staff Report?

24 BRAY: I actually don't know what the Exhibit number is.

25 LORING: Okay.

1 BRAY: But, yeah, uh...

2 LORING: It's C47.

3 BRAY: Okay. So, this is on Page 27 of 31. And it says...

4 D'AVIGNON: I believe this would be Exhibit 1, the Special Use Permit...

5 REEVES: [Inaudible.]

6 D'AVIGNON: Staff report.

7 LORING: Okay.

8 BRAY: Yes, that's right.

9 LORING: Thank you.

10 BRAY: Thank, yeah. It's not the, um, yeah. It says, uh, as there are no

11 ongoing mining activities in the area, it is anticipated that the Proposed

12 Land Use may temporarily disrupt exist-, the existing character and landscape

13 of this rural area. Noise from mining operation and truck traffic may

14 slightly, slightly alter the quiet lifestyle of this rural area. And then,

15 uh, I'm going to skip ahead a little it. It says, after completion of the

16 mining operations, it is anticipated that the character landscape and

17 lifestyle will return to its previous functions. Um, you know, first of all,

18 there's, there's a paragraph in the Special Use narrative that essentially

19 says the same thing. But this, this is under Staff Analysis in the

20 Application materials. And I, you know, I have to say, that that, along with

21 this character-, characterizing our neighborhood as remote, when we are, um,

22 20 minutes from town, we've, uh, one of our, um, group members did a g-, a

23 simple GIS analysis a couple of years ago and identified, determined that

24 there's over 100 homes within one mile of the radius of the mine and 750

25 homes within three miles of the radius of the mine. I don't think that this

1 is, is a remote site. And, uh, you know, to characterize it as typical of the
2 other places that are mined, this seems to be, um, disrespectful, using that
3 kind of language just seems disrespectful to the community. And, um, I, you
4 know, really unacceptable. You know, and if you, if you use that kind of
5 vague language, you know, it implies that not very many people live here and
6 you don't have to, you know, take care of the impacts. I, so I, I just, I
7 think that it's, um, you know, it's misle-, it's absol-, it's misleading at
8 best.

9 LORING: Thank you, Ms. Bray.

10 BRAY: Yeah.

11 LORING: Is, is there anything else you'd like to share with us today?

12 BRAY: Well, I, you know, I just have to comment on how, um, incredibly
13 hard it has been, how hard for the community to follow this and it, it has
14 taken literally hundreds and hundreds of volunteer hours and tens of
15 thousands of dollars for us to, um, get the County to, uh, pay attention to
16 our legitimate concerns. And I, I feel that is not the way this kind of
17 permit process is supposed to be run. And, so and I really appreciate people
18 hearing me out and thank you.

19 LORING: Thank you. Thank you for your testimony. I have no further
20 questions on direct.

21 REEVES: And I'm wondering, in terms of, uh, cross, the thought process.
22 I'm assuming Mr. Ehrlichman didn't have anything specific is, this is not a
23 traffic safety expert and he had identified he would limit his...

1 BRAY: I, I'd say a lot of community members consider ourselves safet-,
2 com-, traffic safety experts. I bet every time I talk to somebody this issue
3 they say that to us.

4 REEVES: I...

5 BRAY: You know, we're the ones who drive...

6 REEVES: Yeah. I should have been more clear about my language. It had
7 more to do with...

8 BRAY: Yeah. No, I'm just, that's just my...

9 EHRILCHMAN: I do have one question.

10 REEVES: I'll let you...

11 BRAY: Okay.

12 REEVES: I'll let you ask one question.

13 EHRLICHMAN: Thank you, Mr. Examiner. Um, Ms. Bray...

14 REEVES: Ask it.

15 BRAY: I think something just happened.

16 EHRLICHMAN: No, I'm here.

17 BRAY: Oh, okay.

18 EHRLICHMAN: I'm digesting that last comment. Ms. Bray, your, uh, o-, on the
19 outset of your testimony you mentioned public records requests. Um, did you
20 receive replies to those from the County?

21 BRAY: Replies in terms of, um, s-, uh, what do, installments?

22 EHRLICHMAN: Did they provide you with the documents you requested?

23 BRAY: Well, yeah, you never really know exactly, you, you know, I'm sure
24 you're familiar with public records request, you get these giant PDFs that
25

1 with, um, numerous emails and, you, you know, you have to just kind of sort
2 through that. Uh, we, our requests were fairly broad.

3 EHRLICHMAN: My, my question wasn't did you get everything you asked for, my
4 question was, did they ever respond, that's all.

5 BRAY: Yes.

6 EHRLICHMAN: Okay. Thank you.

7 REEVES: Thank you. Uh, just out of cur-, timing-wise, uh, Mr., Mr. Lynn,
8 do you have a sense of how long your cross might take?

9 LYNN: Uh, no more than five minutes.

10 REEVES: Uh, I'll have you go.

11 LYNN: Um, good afternoon. Um, Ms. Bray, I'm sure you're tired of
12 hearing from me, too, since you've been at a lot of different proceedings
13 where I've been, uh, talking. Let me ask you a few questions, though, as an
14 environmental planner, have you ever encountered the County's obligation to
15 plan for the public's demand for mineral resources? Are you familiar with the
16 requirement?

17 BRAY: Yeah. I know you're with, uh, uh, GMA and the Comprehensive Plan
18 process.

19 LYNN: And, and so, uh, that's based on the public's demand, isn't it?

20 BRAY: Well...

21 LYNN: I mean, the size of the pyramids is sort of irrelevant if the
22 pub-, if an urbanizing County demands more mineral resources than that, isn't
23 it?

24

25

1 BRAY: I, I, that doesn't, I don't think that's relevant to one specific
2 mine site. I, I don't, I don't agree that, you know, this, this particular
3 mine site is essential to, uh, the pub-, public benefit.

4 LYNN: Uh, uh, okay. Fair enough. So, you were critical of the County's
5 process and, and, uh, you felt, uh, unheard and thwarted by the County and I
6 will, on behalf of Miles, be able to represent that Miles has not enjoyed
7 this process any more than you have, uh, but, but isn't some part of that
8 delay attributed to the fact that your group requested and got things from
9 the County that it wouldn't ordinarily do, such as a third-party review by
10 two different, uh, traffic consultants. Isn't, didn't, isn't that something
11 you got from this process that delayed it and didn't, and wasn't asked for by
12 Miles?

13 BRAY: Well, I, I would argue that, that if, if the County had, uh,
14 requested the appropriate amount of information at the beginning, that we
15 wouldn't have had to keep pushing for that.

16 LYNN: But, but you ended up getting something that the County does not
17 ordinarily give citizens, that, the review by an independent, in fact, two
18 different consultants. Wouldn't you acknowledge that that's something you got
19 that's outside the, the normal process?

20 BRAY: Uh, well, I guess I can't really speak to every, you know, time
21 that, that, I, I'm aware of many times when third-party desktop reviews are
22 ordered for various pur-, for various reasons. You know, when you bring in
23 the, you know, if you question the quality or the thoroughness of a, of a
24 study, that, that's pretty standard..

25

1 LYNN: Well, well, let's talk about something that isn't very standard
2 there. You heard, um, um, Kristin Wallace's testimony, testimony that she
3 almost never prepares a vibration analysis and never, uh, in circumstances
4 where there's just an increase in traffic on an existing road. And, yet, your
5 group asked for and got that, causing a significant expense and delay in the
6 process. Didn't, weren't you successful there?

7 BRAY: Uh, I, yeah, sure, we were successful there. Uh, there, we, there
8 are, there are houses adjacent to Grip Road, within 20 to 30 feet of that
9 road that they tell us now every time a truck goes by, they feel it in their
10 living room. But I, we didn't specifically request a vibration study. We
11 pointed out that concern and that issue. The County responded at, at the way
12 the County responded to that.

13 LYNN: And, Mr. Examiner, I saw you had...

14 REEVES: Sorry. I was just...

15 LYNN: A comment, are you asking me to...

16 REEVES: Well, I was just curious if there's some criteria related to the
17 SUP or the SEPA that, not liking the process would be something I would have
18 the authority to address, that's all.

19 LYNN: Yeah. Um, and although you were critical, uh, of the County's
20 issuance of the MDNS, in fact, you got them to redraw two previous MDNSs...

21 BRAY: Oh, I didn't know I had so much power.

22 LYNN: Well, it certainly wasn't our suggestion. Uh, uh, just a, I'm not
23 here to belabor this. Let, let me just ask one other question, though.
24 You're, you're critical of the fact that Miles has continued to, uh, uh,
25 offer mitigation measures. Um, or that they're not precise enough. I mean,

1 you're certainly entitled to weigh in and offer, uh, edits or suggestions,
2 but, but isn't that, in fact, the purpose of the SE-, the SEPA process and
3 the Land Use Process to have projects evolve in response to new, uh,
4 information about environmental impacts. Isn't that the goal of this whole
5 process to end up at the end of the day with a process that, uh, with a
6 project that has mitigated its environmental impacts? Just procedurally,
7 isn't that the purpose?

8 BRAY: Well, except that the MDNS was issued in, uh, you know, over, let's,
9 let's see, when was the last one, uh, six months ago, so, it's at, it's out
10 of order. I mean, there's no way to determine the, um, whether there's, you
11 know, those impacts have been thoroughly addressed.

12 LYNN: Uh, but, but aren't you still suggesting mitigation measures?
13 Didn't you, in testimony with Mr. Loring, talk about a list of conditions
14 that you've produced that you think would help mitigate? And isn't, isn't the
15 exchange of those mitigation measures exactly the purpose of this process?

16 BRAY: I, I think we are trying to sort of patch this up by offering
17 that. Because the, the cart, the horse is out of the barn already. So, you
18 know, here we are, you know, at this point in time, this is, you know, we
19 still need to see some things done appropriately so this is the way we were
20 able to do it. You know, is, is to suggest mitigating conditions. We would
21 preferred that it was done really differently and that the County had stepped
22 up earlier.

23 LYNN: Okay. That's all I have. Thank you.

24 REEVES: Okay. Uh, Mr. D'Avignon, any questions for this witness?

25

1 D'AVIGNON: I, I just have one, I think kind of clarifying question. As, as I
2 understand your testimony, you are not inherently opposed to the existence of
3 the mine, but do not believe that there's been sufficient review or
4 consideration and articulation of mitigating measures to allow a mine to go
5 forward?

6 BRAY: I think I probably, I think this is a really difficult place to
7 develop a mine. I don't think it's a typical location. You know, I, I think I
8 would characterize it more as our community kind of feels like we, if we have
9 to live with it, we have to live with it, but it's not, it hasn't been, uh,
10 it's not acceptable the way it is now.

11 D'AVIGNON: Have you taken any steps to, um, have it declassified as a
12 mineral resource overlay?

13 BRAY: We actually looked into that and, uh, it, you know, that, my
14 understanding of that process is that it's, uh, pretty much landowner driven,
15 that the community wouldn't really have the, and wouldn't be, uh, wouldn't
16 prevail in that effort without, you know, I, I think there, it's arguably,
17 arguable that it should have been classified at the beginning when you look
18 at the Comp Plan criteria. Um, some of them hadn't been met. But, you know,
19 that, that, um, that's water under the bridge at this point. And to undo it
20 didn't look feasible.

21 D'AVIGNON: I have no other questions, Mr. Examiner, thank you.

22 REEVES: Mr. Loring, any redirect?

23 LORING: Uh, just a couple of questions. Um, Ms. Bray, you were accused a
24 moment ago by Mr. Lynn of having caused some of the delays in this process,
25 uh, if the County had requested a full review of the environmental impacts

1 and if the Applicant had come forward with that type of analysis at the
2 beginning, would you have felt it necessary to participate?

3 BRAY: No, we would have been, I, I, to part-, well, we would have
4 participated, but I don't, uh, you know, I believe that the delays have
5 mostly to do with the Applicant, um, resisting supplying additional
6 information and then Appealing things in two different times when they were
7 asked to do so. You know, and, again, I, we mentioned earlier that there were
8 these huge dead zones when nothing seemed to be going on. You know, which had
9 to do mostly with staffing levels at the County, I believe. I, you know, I,
10 you know, if you, if you proportioned out delays, uh, I think the issue
11 really has to do with how really the Permit process was managed from the
12 beginning.

13 LORING: Just one more. Um, would it seem abnormal to you to view a 2.2
14 mile long haul road as part of a project environmental review?

15 BRAY: Would it seem normal? Um...

16 LORING: Abnormal. I'm, I'm trying...

17 BRAY: Oh.

18 LORING: To give you some examples, apparently this was an abnormal, uh,
19 process to add in that review. So, I'm asking you, does that seem abnormal to
20 you that you'd study a haul road impact?

21 BRAY: No. You know, I, as I said before, I, they, it seems like
22 critical infrastructure for the mine. And, and we said from the very
23 beginning that it was part of the footprint of the mine. And the County never
24 answered that question for us. They just ignored it. You know, at some point,
25 they responded by, um, you know, telling the Applicant that they needed to

1 bring the road up to current road standards. But that was after the Applicant
2 started, um, uh, you know, improving the road, uh, under their Forest
3 Practices Permit.

4 LORING: Okay. Thank you very much for your time.

5 REEVES: Uh, I believe we are done with this witness, unless, raise a hand
6 if I've missed something. Is that you raising a hand, Mr. Lynn, or was that
7 you scratching your forehead?

8 LYNN: That was me scratching my forehead at an inopportune time.

9 REEVES: Excellent. All right. Well, Ms. Bray, thank you very much for
10 your testimony today.

11 BRAY: Thank you.

12 REEVES: And I think that is a, a great spot to conclude. Uh, just to, uh,
13 speak to a couple of things, so just to clarify and get on the record, our
14 next, excuse me, hearing date would be September 8th, uh, so next Thursday.

15 That will be the 8th and the 9th and, uh, we will be proceeding with Mr.

16 Loring's, uh, witnesses. And at some point, we need to sort out and make sure
17 we're all on the same page about the Exhibits. Uh, I will try to do that.

18 But, uh, if someone has what they feel like is a really good Exhibit list,

19 uh, please send it around, uh, so that that can all be verified. Um, but I

20 think that's all I actually have. I wanted to do our quick round robin and

21 make sure, uh, there isn't anything else. So I'll start with, uh, Tom

22 Ehrlichman?

23 EHRLICHMAN: Thank you, Mr. Examiner. Uh, I guess I'm just, um, thinking about

24 a possible stipulation to facts. If we're able to achieve that in the next

25

1 couple of days, uh, what form would you prefer that that comes into this
2 proceeding?

3 REEVES: Uh, I'd make it an Exhibit, I guess for the SUP, which would then
4 be, I think, applicable for both. But if everyone agrees to the facts, uh,
5 sorry, I don't want to use the word everyone, that's challenging, uh,
6 preferably, but, uh, if the County and your clients agree, I suppose, and,
7 uh, Mr., uh, well, I don't know, I guess it has to be everyone, I haven't
8 thought this through. Preferably everyone agrees to the facts and if that is
9 the case, if you can just either bring something Thursday that everyone sort
10 of electronically signed off on, you know, I don't, I hope that's clear
11 enough. I, I don't expect...

12 EHRLICHMAN: Yes.

13 REEVES: This is going to be...

14 EHRLICHMAN: We can, we can...

15 REEVES: Are you volunteering to put that together, Mr. Ehrlichman?

16 EHRLICHMAN: I, I think I got volunteered by several people here today. But
17 I'm happy to try to take that on.

18 REEVES: Excellent. I, I apologize, I do, uh, often, uh, sort of hoodwink
19 people into volunteering whether they want to or not, but, uh, we appreciate
20 that. So, any, anything further? I know you were thinking about maybe
21 preparing, as it were, sort of errata sheet that related to the Staff Report,
22 is that different from what you just discussed? And if that's the case, I
23 would suggest if you do prepare that, uh, we can talk about it when we get
24 back and whether I admit it or not, we can figure out, but, you know, if that
25 was something for us to do, I wanted to make sure.

1 EHRlichman: Yeah. I, I think, uh, maybe the way to proceed on that is for me
2 to work with the County, um, see, see how the County would want to proceed on
3 that. It, it's, it's limited to that PowerPoint, I think, that one slide. So,
4 I think we can get through that pretty quickly and, and you'll know where we
5 came out on that.

6 REEVES: Yeah. Let's check back in on it next time, okay? Um, Jason,
7 D'Avignon, anything you wanted to touch on before we conclude?

8 D'AVIGNON: Uh, nothing other than to hope everybody has a good holiday
9 weekend.

10 REEVES: You stole my thunder, but excellent. And, uh, Bill Lynn, anything
11 you wanted to touch on before we conclude?

12 LYNN: I was just, if, if Kyle could just let us know, not today,
13 necessarily, but what the order of witnesses, uh, he proposes, just so we can
14 have the right people not listening, but not burning up a bunch of excess
15 time. Would help, that would be helpful.

16 LORING: I'd be happy to do that, lay that out for Thursday and let you
17 know, uh, what it looks like for us. I'll do that tomorrow, probably.

18 LYNN: Great. Thank you.

19 REEVES: Okay. And before we go to Kyle Loring, who I'm going to sort of
20 let conclude, I mean, I, of course, get the last word, but, uh, I do want to
21 note I have not yet received those final Appellant Exhibits. I, I have been
22 digging through the County website, I, I just don't know what happened.
23 They're in a black hole somewhere, I think it had to do again, with different
24 quirks and, and so I'm missing just those last however many. And I would
25 certainly like to review them. I've read everything else, so, um, if, I don't

1 know who the right person to talk to is, if, to avoid ex parte, Mr. Loring,
2 if you're able to just, you know, provide them in an email to all of us. I
3 don't know everybody has it or if there was a link you all had that somehow I
4 didn't, you know, my staff didn't get, that would be great, but I would
5 certainly appreciate the opportunity before Thursday to, to make sure I
6 reviewed the Exhibits, especially now that we're onto your case, so.

7 LORING: Yeah. Uh, yeah, email is going to be a little trouble just
8 because some of them are a little larger. Um, Jason, can we reopen, uh, the
9 site or I don't know if things are still there. I, I don't think I was able
10 to look there last time.

11 D'AVIGNON: You know, I...

12 LORING: Finding them.

13 D'AVIGNON: I did try, when this first became an issue to send, uh, the
14 Examiner, share the link with him so he could access that.

15 REEVES: Yeah.

16 D'AVIGNON: I did, I do apologize because I, I didn't think about it when I
17 shared the link that that was technically an ex parte contact. I did send an
18 email, I think with everybody on afterwards indicating that's what I had
19 done. Um, and I don't know if, Mr. Examiner, if you've been able to check
20 that link? Um...

21 REEVES: Sorry. This was last week or earlier this, I guess, it would have
22 been last week. I, I do not recall receiving that, so, I, I apologize. Um, I
23 will look again and let, let everybody know. We can put it on me, if it
24 already worked, it worked. Um, and I, I would not consider, you know, I would
25 not consider a procedural matter like hearing the link for the Exhibits that

1 I get to review, especially opposing counsel's exhibits [inaudible] ex parte
2 contact with him, one on one. Uh...

3 D'AVIGNON: Um, um, you want to check, like, uh, junk mail because I think it
4 generates it from Microsoft and, very like...

5 REEVES: Got it.

6 D'AVIGNON: End up in a junk email.

7 REEVES: Okay. I will send stuff out if I can't find it and, uh, we will
8 make sure I, we get this sorted before, uh, as long as I can get them by
9 Wednesday, I'll, I'll say something before Thursday, but I will look again. I
10 apologize. I didn't realize that happened. So, uh, with that, Mr. Loring, as,
11 go to you last, uh, any final thoughts?

12 LORING: Yes. Uh, and by, just a quick note, it looks like you probably
13 would have gotten that email last, uh, Friday, the 26th of August, um, around,
14 between 8:53 and 9:05, just to let you know, just kind of trying to part
15 through other correspondents. Um, to try to help out and, yeah, please let us
16 know.

17 REEVES: I appreciate that.

18 LORING: Anyway, I, nothing else, uh, thank you, uh, enjoy your weekend,
19 everyone.

20 REEVES: Oh, and Mr. Ehrlichman, you had another though?

21 EHRLICHMAN: Uh, just flipped through my notes here, I realized one thread
22 still out there is Mr. Lynn, will you be sending all of us the auto-turn
23 Exhibit? You're muted, Bill.

24 REEVES: One last time.

25

1 LYNN: I will be figuring out in the next couple of days what we have
2 and how we can get it to you, so, um, as soon as I can, as soon as I have
3 something that's, that's, uh, stamped and ready to go, I will get it to you.

4 EHRLICHMAN: Thank you much.

5 LYNN: All right.

6 REEVES: Okay. Well, I will be, uh, very brief. Thank you, everybody. Uh,
7 as always, we appreciate everyone taking the time to participate, even if
8 it's just to watch. And thank you to our witnesses who have participated
9 today. And thank you to, uh, County staff, uh, as well as, uh, everyone else
10 participating, our Attorneys for, uh, laughing at my jokes. And with that,
11 please enjoy the three-day weekend and I will, uh, see everybody back at 9:00
12 a.m. on September 8th. And with that...

13 LORING: Yes.

14 REEVES: We can end our, uh, hearing for the day. Thanks, everybody.

15 LYNN: Thank you.

16 LORING: Thank you.

17 EHRLICHMAN: Thank you.

18 D'AVIGNON: Thank you.

19 [The tape ends.]

20 **The undersigned being first duly sworn on oath, deposes and says:**

21 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
22 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party
23 to this action. That on April 29th, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves, that
24 took place on 9/2/22 at 1:00 p.m., regarding the above-captioned matter.

1 I certify and declare under penalty of perjury under the laws of the State of Washington that the
2 aforementioned transcript is true and correct to the best of my abilities.

3 Signed at Mount Vernon, Washington, this 29th, April of 2024.

4 Janet Williamson
5 Janet Williamson

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**IN SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT**

State of Washington,)
Cause No.: PL16-0097, PL16-0098,
Plaintiff,) PL22-0142
vs.)
Name,) PERMIT HEARING 9-2-22 9:00 AM
Defendant)

Transcription Date: April 22nd, 2024

Present: Andrew Reeves, Mona Kellogg, Jason D'Avignon, Tom Ehrlichman, Bill
Lynn, Kyle Loring, Gary Norris, Kevin Cricchio, Unidentified Female 1,
Unidentified Male 1

REEVES: The audio.

KELLOGG: Can you hear me?

REEVES: Yes, yes, I can. Is that Mona?

KELLOGG: Good morning. Yes, it is. Good morning.

REEVES: Good morning. I see Jason D'Avignon, I think that's his
microphone.

D'AVIGNON: Uh, good morning, Mr. Examiner.

1 REEVES: Good morning. And I see Tom Ehrlichman.
2 EHRLICHMAN: Good morning.
3 REEVES: Bill Lynn, I see him if we can test his audio?
4 MALE 1: John Semrau, isn't it?
5 FEMALE 1: Can you turn down your volume for a sec? Audio. Turn it off.
6 REEVES: And, Bill Lynn, I just wanted to check your audio, your mic?
7 LYNN: Uh, can you hear me? I'm here. Good morning.
8 REEVES: Good morning. I can hear you just fine. And then, looking for
9 Kyle Loring. Oh, good, you got the memo, purple tie. Kyle Loring, are you
10 there?
11 LORING: Yes, I am, yeah. Thank you for sending that. I wasn't aware if
12 everybody else was on the email of the time.
13 REEVES: To be clear, I did not [inaudible] related to wearing a purple
14 tie today. It's, it's purely a coincidence, I promise. Okay. Um, I think, and
15 I see Mr. Norris, who I think we're starting with, after we deal with a few
16 procedural matters. So, I think we can go ahead and start the recording,
17 Mona.
18 KELLOGG: All right. It's started.
19 REEVES: Okay. Get my gavel out and make it official. And good morning.
20 I'm going to go ahead and call this session of the Skagit County Hearing
21 Examiner back to order. For the record, today is ni-, September 2nd, 2022.
22 It's after 9:00 a.m. And we are here on Day 3 of the, uh, Miles Sand and
23 Gravel, uh, Special Use Permit and Central Samish Valley Neighbors, uh, SEPA
24 Appeal. And we, again, it's Day 3, I think we all know what's happening. So,
25 I will keep my opening, uh, remarks brief, but for the record, this is Andrew

1 Reeves, serving as the Hearing Examiner. And, uh, we had some procedural
2 matters that sort of came up between, I guess it was Monday, I think, the
3 last day we were together, Monday or Tuesday and today. So, I just wanted to
4 deal with those first. I know that Attorney Tom Ehrlichman had filed, uh,
5 looks like just filed something last minute, but, uh, Mr. Ehrlichman, maybe
6 you can explain? I know one of the matters was sort of a pre-emptive filing
7 as it were, but maybe you can tell us what, what your thoughts are?

8 EHRLICHMAN: Uh, Mr. Examiner, I did just send out an email that has an
9 Exhibit, which is a letter from Neil McCloud, and he is, I think, in the
10 batter's box at some point at your pleasure, uh, to testify today, uh, out of
11 order, if you will, for presentation of our case. The other filing I did was
12 after the discussion on Monday about whether the auto-turn analysis should be
13 introduced into the record.

14 REEVES: And just to clarify what happened there, uh, we had a witness, as
15 part of the Applicant's case, that referenced a study that does not appear
16 to, thus far, be in the record. And, uh, Mr. Lynn was discussing the
17 potential of introducing that and I believe Mr. Loring, uh, had an objection
18 and Mr. Ehrlichman, uh, wanted it in the record so then they're sort of on
19 other opposing sides at the moment. But, uh, let me start with, uh, I guess,
20 Mr. Loring, 'cause he has the objection as it were. So, were you able to see
21 Mr. Ehrlichman's motion and..

22 LORING: I did, yes, thank you, Mr. Examiner, I, I was able to review his
23 motion. Uh, for the SEPA Appeal purposes, Central Samish Valley continues to
24 object to the entry of that document. Um, obviously, we've got a bit of a
25 combined hearing, uh, consolidated with the Special Use Permit hearing and

1 SEPA, uh, but our position continues to be that the County was required to
2 make its threshold determination based on all information before that time
3 and that this would be late information and can't somehow cure the
4 information that the County had in front of it while it was reviewing whether
5 this, uh, project was significant. And the, you know, there are issues under
6 SEPA, of course, uh, the case law is pretty cl-, is clear that the County
7 officials are required to issue that threshold determination based on the
8 information at that time. Uh, there's also the secondary layer and, and I
9 have not briefed this and I have not fully investigated this to be candid,
10 but there's also the procedural due process matter where the public has not
11 had an opportunity to review materials like this that might somehow be used a
12 part of a new threshold determination or to, or to ad hock justify that
13 previously issued MDNS in this matter as well. And so that's a significant
14 one for my client, uh, to not have had that opportunity to review it. Or for
15 the public to have had the opportunity to review it and provide comments as
16 part of the SEPA process, in particular. So, for...

17 REEVES: Sure.

18 LORING: So, for SEPA purposes, we continue to object to it being entered
19 as part of this, uh, hearing or for that review.

20 REEVES: Got it. I, I mean, these things do happen sometimes and I, I
21 certainly acknowledge that temporal problem, as it were, which is, you know,
22 information that comes in after a determination is made, clearly was not made
23 as part of that determination. That part makes sense. In terms of the SUP
24 itself, uh, you know, which is the other part of this hearing, frequently,
25 new information comes in up to and during the hearing and if it's, there's

1 enough or a certain quantity or quanta, as it were, I'll sometimes solve that
2 by leaving the record open for a week or two to allow additional thoughts.
3 But, as a general rule, just like public comments that come, you know, I
4 generally let them during testimony. I'll let Bill Lynn, uh, speak to this as
5 well?

6 LYNN: Well, I, I may have kind of created more of this than needs to be
7 made, uh, by suggesting that this was some big report. Uh, for the record
8 and, and I'm, Mr. Norris is a far better person than I am to elaborate on
9 this, but basically auto-turn is a computer program, uh, into which you
10 provide, uh, inputs and you get an out, the output is then really used to
11 design improvements that will allow a truck to pass through, uh, the road as
12 improved. So, it's really just a computer output. Um, I note that there is a
13 similar condition relating to the S-curves on Prairie Drive, even though that
14 auto-turn analysis is not part of the record. There's just a condition that
15 requires improvements consistent with the auto-turn analysis. And so,
16 frankly, why anybody would need to look at this is kind of beyond me, unless
17 you're a Traffic Engineer. Um, I think I had made the point that I don't
18 think we have an objection to it being reviewed, but I, I think the, it
19 should, somebody is not muted..

20 REEVES: Quite a bit of feedback.

21 LYNN: Yeah. Uh, uh, the condition could be added or the Applicant can
22 add it as an element of its proposal, uh, without the necessity for it to be
23 reviewed now. It really is engineering detail that is, uh, commonly and more
24 appropriately reviewed at the design stage, um, and [inaudible].

25 REEVES: Hello?

1 LYNN: So, somebody just exited and we got an announcement.

2 REEVES: Okay. So, [inaudible] what about the idea that it could be
3 included as an Exhibit related to the SUP, but not considered in relation to
4 SEPA?

5 LYNN: Uh, I, I absolutely think it should be considered as part of the
6 SUP, at least the Proposal. I think we could argue and potentially brief, I
7 guess, whether or not the Examiner has the authority to impose conditions,
8 uh, through the SEPA Appeal. I'm just, I'm just not prepared to talk about
9 that because I really haven't thought about it and we're not really there
10 yet. But, certainly think it should come in and there's no temporal issue in
11 relation to the Special Use Permit.

12 REEVES: Okay. So, I, I would, sorry, Jason, uh, D'Avignon, do you have
13 any thoughts, I apologize?

14 D'AVIGNON: No, that's fine. I, I would tend to agree with Bill that, at this
15 point, for the SUP, I think it goes directly to any possible conditions that
16 the Hearing Examiner could impose. Uh, certainly, uh, Mr. Loring is correct
17 that we can't use new information to pretend like we knew more than we did
18 when we made the determination. Um, it may be that it would be useful in, if,
19 to the extent the Hearing Examiner can amend the conditions of the MDNS. Um,
20 I think to Mr. Lynn's point, that's, I think a bigger issue that we're not
21 really prepared to deal with, at this point.

22 REEVES: Okay.

23 D'AVIGNON: But it certainly should be admitted for the Special Use Permit.

24 REEVES: Yeah. I guess in my mind, my, my ruling would be to allow it in
25 in terms of the SUP because that's a, sort of new decision that I, myself, am

1 going to have to make. Um, disallow it in terms of the SEPA process. And if
2 someone wants to, you know, submit a supplemental brief on that, I welcome
3 it, but, but that would be my ruling, uh, at the moment. So, Mr. Loring, any
4 thoughts on that?

5 LORING: I, I think that ruling makes sense, Mr. Examiner. Uh, to the
6 extent it is allowed to come in through the SUP process, uh, we would ask for
7 the opportunity to provide supplemental comment, uh, from the public, or from
8 my clients, afterwards. That may not even occur, but obviously having a
9 window open for that, uh, would be important.

10 REEVES: I strongly suspect the record is going to end up being left
11 opened, uh, for supplemental things to happen. So, I have no issue with that.
12 So, that would be my ruling, essentially, at the moment, we'll bring this in
13 as a yes, oh, sorry, Mr. Lynn, did you still want to bring this in? I should
14 have asked that to start.

15 LYNN: Yeah. It, it actually wasn't me who suggested it. I think, uh,
16 there was a question from Mr. Ehrlichman about it, uh, and whether or not I
17 could be made available and I said, yes. But it's not proposal to bring it
18 in. My proposal, for purposes of this, would be to take the same condition
19 that's already in the record about the S-curves on Prairie and just
20 substitute Grip [inaudible] that we actually submit the design as part of the
21 condition, just that the Applicant's commitment to make the improvements be
22 part of the record. But, uh, I'll do that more formally so I actually propose
23 wording to you as opposed to just rambling about it on a Friday morning.

24 REEVES: Okay. At a minimum, I'm just trying to get an Exhibit number and
25 would you be okay with it, that information coming in? You had, I, I

1 understand that there was a back and forth that occurred, but, um, I think
2 for simplicity sake, having it come in at this point would be easiest.

3 LYNN: Uh, so, why don't I find out what form it takes and then I, then
4 we can all have it in front of us and look at it? But I, I, at this point, I
5 don't know whether it's a bunch of ones and zeroes or whether it's, uh, an
6 actual record. So, let me talk to Mr., Mr. Norris and, and Mr. Semrau and
7 we'll find out what, whether there is a product you can actually look at.

8 REEVES: There we go, so the concern is that it may look like a function
9 on a calculator, or something to that effect, versus a TIA that we can look
10 at, so you're going to look into that?

11 LYNN: Right.

12 REEVES: I assume Mr. Ehrlichman will remember to remind us, uh, before
13 too long that, that you looked into that, does that make sense?

14 LYNN: And, and, and just one, one more thing, if might, Mr. Norris on
15 the stand, he can certainly ask him what it looks like so we can all hear it
16 at once. And I, that might be good to be included in the record anyway.

17 REEVES: Excellent. Okay. So, I believe, then, Mr. Ehrlichman, that
18 addresses your motion, is that right? I mean, obviously we're going to close
19 the loop, but...

20 EHRLICHMAN: Mr. Examiner, I'm going to go with the flow here, yes.

21 REEVES: I appreciate it. So, and then in terms of the additional
22 information, just to be clear, that you provided recently, it sounded, oh,
23 wait, hold on. Is there any new information here?

24 EHRLICHMAN: Are you asking me a question?
25

1 REEVES: I apologize, yes, that was intended to be directed toward you,
2 Mr. Ehrlichman.

3 EHRLICHMAN: Um, whether there's any new information that we're presenting?

4 REEVES: Right. In the email that was sent right as we were starting.

5 EHRLICHMAN: Oh, I'm sorry. Yes, our request was that Neil McCloud be, um,
6 able to testify today as he is traveling next week. And so, we, uh, submitted
7 his letter to you that is part of his testimony or that summarizes his
8 testimony today.

9 REEVES: Got it. Okay. And, and is this the witness you previously
10 identified as having a scheduling conflict?

11 EHRLICHMAN: Correct.

12 REEVES: Okay. I think everybody agreed to that. So, I think after we
13 finish with Mr. Norris, I have no issue moving out of order for this, this
14 witness and, um, just to be clear, Mr. Lynn, do you have anyone that needs to
15 go out?

16 LYNN: Uh, no, our wetland person, uh, is only available this afternoon,
17 uh, and, but I think we'll, we'll get to her in time.

18 REEVES: We better.

19 LYNN: Yeah. Well, and we can, uh, what I, what I meant to say is we can
20 fill the time until we get to her so, there's no need to create a gap in the
21 hearing.

22 REEVES: Sure. I mean, we can take another witness if need be, I don't
23 know if we need to fill the time with just one or two, maybe we can get three
24 in, but, you know...

25 LORING: I was...

1 LYNN: A filibuster.

2 LORING: I was going to say, you know, Central Samish Valley would be
3 happy to put on a, a witness or two if we get to the point where that were
4 necessary and then take Ms. Porter after that.

5 REEVES: Excellent. Okay. Um, anything else, uh, we'll go round robin,
6 that I need to address before we return to, uh, Mr. Ehrlichman's conclusion
7 and cross-examining Mr. Norris. I'll start with, Mr. Ehrlichman?

8 EHRLICHMAN: Thank you, Mr. Examiner, Tom Ehrlichman, Attorney for Cougar Peak
9 LLC, party to the Special Use Permit proceeding. And, uh, we are asking
10 questions of the Applicant's traffic witnesses and the Applicant, um, as
11 presentation of our case in chief. Um, and Mr. Norris has, uh, been
12 testifying, uh, in response to our questions, which we very much appreciate.
13 So, we'll pick up from there. Um, does the witness need to be sworn in again
14 or is that all taken care of?

15 REEVES: I was going to do a quick round robin to make sure none of the
16 Attorneys had anything they wanted me to deal with first. In terms of Mr.
17 McCloud, uh, we'll deal with the, the potential additional Exhibit when you
18 bring him on, okay?

19 EHRLICHMAN: Oh, thank you. I, I misunderstood.

20 REEVES: That's okay. Uh, next, I'll go to Bill Lynn?

21 LYNN: Uh, nothing.

22 REEVES: Okay. Jason D'Avignon?

23 D'AVIGNON: Uh, nothing from me, Mr. Examiner.

24 REEVES: And Kyle Loring?

25

1 LORING: Uh, nothing directly as part of our case. But I do note that, uh,
2 Mr. Lynn circulated a couple of documents that he's proposing to enter as
3 Exhibit, and, uh, and I don't think that Central Samish Valley will have
4 objection to those, but we would like the opportunity to question Mr. Barton
5 about the document that has been, uh, characterized as a policy on in climate
6 weather.

7 REEVES: Got it. So, that would r-, that would entail recalling the
8 earlier witness, is that right?

9 LORING: Yes. It would and, and I don't anticipate lengthy questioning,
10 but certainly a couple of questions.

11 REEVES: Sure. And Mr. Lynn, is Mr. Barton here today?

12 LYNN: Uh, yes, he is.

13 REEVES: Okay. So, with that, uh, why don't we go to Mr. Ehrlichman to
14 conclude his, uh, cross-examination, as it were, of Mr. Norris and I will
15 swear in witnesses again because it's confusing otherwise. So, Mr. Norris, do
16 you swear or affirm to tell the truth in the testimony you give here today?
17 Oh, we have to unmute you.

18 NORRIS: I do.

19 REEVES: Excellent. And one more time if you can just state and spell your
20 name for the audio?

21 NORRIS: My name is Gary A. Norris, G-a-r-y A N-o-r-r-i-s.

22 REEVES: Okay. Thank you so much for being here. So, go ahead, Mr.
23 Ehrlichman.

24 EHRLICHMAN: Thank you, Mr. Examiner. Uh, good morning, Mr. Norris.

25 NORRIS: Good morning, Mr. Ehrlichman, how are you today?

1 EHRlichman: I'm doing well. Thank you. I hope the same for you.

2 NORRIS: I am.

3 EHRlichman: Uh, thank you again for your testimony on Monday. Um, as you
4 know, uh, my clients are concerned about safety on Grip Road and so I'm going
5 to ask you some, uh, questions that will zero in on, uh, what type of
6 analysis the Applicant did with respect to, um, the shoulders and crossovers.
7 All of my questions, um, focus on those. And we are not, uh, zeroing in on
8 the intersections. I just wanted to explain that as a preface. So, if your
9 answers could, um, be, be focused on that, that narrow scope as well, that
10 would be, um, much appreciated. Um, we left off where we were kind of
11 bouncing around, in my view, on this question of the 60 trips per hour. And I
12 want to just ask you, um, for clarification, um, w-, was it your testimony
13 that the 60 trips per hour estimate, uh, was not the figure, or the average
14 used for your trip analysis or your safety analysis?

15 NORRIS: No, it was not.

16 EHRlichman: Okay. And as I understood it, your testimony was that you used an
17 average of 46 trips per day between, um, I'll just ask that, was that the
18 scope of your traffic, um, analysis?

19 NORRIS: Uh, the term scope is not the correct term, the scope of our
20 analysis was much more broad and extensive than that.

21 EHRlichman: Uh-huh.

22 NORRIS: What was, uh, determined as the 46 came from basic assumptions
23 that were provided by the Applicant in regards to, uh, the amount of material
24 they anticipated mining per year and, uh, spreading that over a five-day week
25 with a 10-hour a day operation led us to that number.

1 EHRlichman: Thank you. I appreciate the clarification. And that is 23 loaded
2 trucks and 23 empty trucks per day, correct?

3 NORRIS: That's correct.

4 EHRlichman: So, the traffic analysis that you did was based on the 46 trips
5 per day, um, not the 60 trips per hour, which is a higher number, correct?

6 NORRIS: That is correct.

7 EHRlichman: Okay. And was it also your testimony that when you looked at
8 safety issues related to Grip Road, shoulders and crossovers, you also looked
9 at it through the lens of 46 trips per day, rather than the higher number?

10 NORRIS: Well, there's no, uh, direct relationship, other than exposure
11 for the volume of trips. The issue with the, uh, encroachment was a geometry,
12 roadway geometry issue, uh, that we were trying to, um, reduce the potential
13 for these trucks to, uh, maneuver off the roadway while they were going
14 through these curves.

15 EHRlichman: Understood. Would you agree that the risk, strike that, would you
16 agree that the potential for crossovers is greater if Grip Road has 60 truck,
17 trips, excuse me, Grip Road has 60 truck trips per hour as opposed to the 4.6
18 trips per hour under the lower number?

19 NORRIS: Uh, the potential for any one truck to go over is, uh, no
20 different.

21 EHRlichman: Let me ask it a different way, if you're driving your car on Grip
22 Road wouldn't you, um, be exposed to, let me, strike that. So, the, the
23 hypothetical here is that trucks may tend to crossover, I believe you
24 identified that as a risk in your, um, Exhibit 18, I think it was, your, um,
25 November 2020 report, isn't that correct?

1 NORRIS: In the, um...

2 EHRLICHMAN: September.

3 NORRIS: September?

4 EHRLICHMAN: 2020, yes, thank you. You did a Traffic Impact Analysis on
5 Exhibit 18 dated September 10th, 2020, correct?

6 NORRIS: Correct.

7 EHRLICHMAN: And you identified crossover as a risk, did you not?

8 NORRIS: Correct.

9 EHRLICHMAN: On Grip Road?

10 NORRIS: Correct.

11 EHRLICHMAN: Okay. So, my question is, if you're in a car traveling on Grip
12 Road, aren't you going to be exposed to a higher risk if you're at the 60
13 trucks per hour as opposed to the 4.6 per hour? I mean, it's...

14 NORRIS: Mr. Ehrlichman, with all due respect to your questioning, uh,
15 it's my understanding the Applicant has already agreed to widen the road
16 sufficiently to eliminate that potential occurrence. So, I don't, it doesn't
17 matter what the volume is, the potential for that occurrence has been
18 eliminated through the, uh, redesign of the road to provide these, uh, extra
19 lane, extra widening to accommodate the truck. And just, just to stay a
20 little bit about the, uh, auto-turn, as it seems to be a big point of
21 discussion here...

22 EHRLICHMAN: Mr., Mr. Norris, could, could we, Mr. Examiner, could I ask the
23 witness to reserve the auto-turn discussion for some questions on that? I do
24 have some specific to that if we can group those in one grouping. I don't
25 want to cut off the witness, but...

1 REEVES: Okay. I'll cut off the witness. Mr. Norris, if you could just
2 wait on the auto-turn...

3 NORRIS: Sure.

4 REEVES: Apparently we'll come to that shortly.

5 NORRIS: Not, not a problem.

6 EHRLICHMAN: Yeah. Thank you, Mr. Norris. So, I understand why you object to
7 the question, but I still need the question answered, the risk is higher,
8 isn't it, at 60 trucks per hour?

9 NORRIS: No, the risk of any one truck is the s-, is the same.

10 EHRLICHMAN: I'm sorry, the risk to a, uh, traveler on Grip Road is higher the
11 more trucks you have on the road, right?

12 NORRIS: The potential conflict between vehicles is higher, but the
13 potential for the truck to maneuver off the road is not any higher than it is
14 one truck versus 60 trucks.

15 EHRLICHMAN: Is it your testimony that the crossover risk will be completely
16 eliminated by the new mitigation on Grip Road that the Applicant is
17 proposing?

18 NORRIS: Uh, could you restate that question, please?

19 EHRLICHMAN: The Applicant, you, you just now testified that the Applicant is
20 proposing mitigation on Grip Road that you believe reduces that risk to an
21 acceptable level, is that a fair paraphrase of your testimony?

22 NORRIS: It's, that's not what I said at all. What I said..

23 EHRLICHMAN: Okay.

24 NORRIS: It eliminated, eliminates the potential. So it eliminates the
25 risk of a crossover and run off the road, so...

1 EHRlichman: Okay. So, your testimony is that the mitigation proposed by the
2 Applicant will completely eliminate the risk of crossover?

3 NORRIS: Correct.

4 EHRlichman: Okay. And is the Applicant proposing to widen Grip Road in the
5 entire 0.7 miles between the mine and Prairie Road?

6 NORRIS: No.

7 EHRlichman: Okay. Do you know how many locations they're proposing to widen
8 the shoulder?

9 NORRIS: It's through the, uh, Grip Road curves and through the Prairie
10 Road curves.

11 EHRlichman: Oh, okay. We're just talking about Grip Road here right now,
12 okay? So, the Applicant is not proposing to widen all of Grip Road between
13 the mine and Prairie Road, correct?

14 NORRIS: Is not intending to widen the road between Grip and Prairie?

15 EHRlichman: No, between the mine entrance and Prairie Road, the Applicant is
16 not proposing to widen the entirety of Grip Road, is it?

17 NORRIS: No.

18 EHRlichman: Okay.

19 NORRIS: No, they're not.

20 EHRlichman: So, can you identify for us exactly where the Applicant is
21 proposing to widen Grip Road?

22 NORRIS: It's at the, uh, Grip Road curves there, um, west of the mine
23 site.

24 EHRlichman: And how many curves is that?

25 NORRIS: Uh, hang on a second, I have to check that out.

1 EHRlichman: Or, let me ask it this way, is it, are they going to widen Grip
2 Road at all curves between the mine entrance and Prairie Road, that segment?
3 NORRIS: We're going to go backwards here because the, uh, determination
4 of where to widen the road was based on the auto-turn analysis.
5 EHRlichman: Okay.
6 NORRIS: So, wherever auto-turn dictated that the trucks had the potential
7 of...
8 EHRlichman: Okay.
9 NORRIS: Uh, crossover or going into the shoulder, that's where the road
10 is going to be widened.
11 EHRlichman: Fair enough. We'll, we'll come back to that, then. Thank you for
12 identifying that as, um, but you don't know, uh, without getting into that
13 discussion, how many curves are going to be widened?
14 NORRIS: [Inaudible] the exact, the exact spots I don't have, uh,
15 specifically...
16 REEVES: Mr. Norris, I apologize to cut you off. Hopefully it wasn't just
17 me, but I missed about three seconds, five seconds of what you were just
18 saying, can you try that one more time?
19 NORRIS: Uh, the question was, uh, where was the Applicant intending to
20 widen Grip Road. And it's basically where the go-, or where the auto-turn
21 analysis indicated that the trucks would encroach either on the center line
22 or on the shoulder of the road.
23 EHRlichman: Right. And then my follow-up question was, without getting into
24 the auto-turn discussion, you don't know how many curves will be widened on
25 Grip Road?

1 NORRIS: Uh, hang on a second.

2 EHRLICHMAN: Just, if you know the number?

3 NORRIS: I don't have the exact number in front of me, no.

4 EHRLICHMAN: Okay. That's fine. Thank you. I just wanted to try to get the
5 quick picture and then ask some questions about this. So, um, the, the
6 question of risk on Grip Road, risk as injury to another drive on Grip Road,
7 is one that I want to, um, focus in on here with you. Again, the segment, not
8 the intersections. And the MDNS has a condition that limits the number of,
9 uh, daily trips related to the mine, correct?

10 NORRIS: Correct.

11 EHRLICHMAN: And it, uh, Condition 13, Sub 7, do you have MDNS in front of
12 you?

13 NORRIS: I, I don't, no.

14 EHRLICHMAN: Okay. Let me read Condition 13, Subsection vii, and Mr. Lynn can,
15 um, object if, if I have somehow read it, but it, uh, says, Development shall
16 comply with all requirements from both Skagit County Planning and Development
17 Services and Skagit County Public Works, including, but not limited to: and
18 then it has several listed, um, requirements and number vii, small roman
19 numeral vii, says, quote, The maximum daily truck traffic that is allowed
20 associated with the subject gravel mine quarry is limited to an average of 46
21 daily trips during mining operations, not to exceed 30 trucks per hour under
22 extended hours operation. And it goes on from there. So, the phrase I want to
23 ask you about is the one that says, the maximum daily truck traffic is
24 limited to an average of 46 daily trips, not to exceed 30 trucks per hour.

25

1 Under that condition, isn't it possible that the truck traffic on Grip Road,
2 on any given day, could go up to 30 trucks per hour?

3 NORRIS: On any given day, yeah, it can go up to 30 trips an hour. But
4 it's still limited to daily total, as I read it.

5 EHRLICHMAN: And what do you mean by that?

6 NORRIS: Well, I think the statement you read was the, uh, Applicant is
7 limited to 46 trips per day, and not to exceed 30 trips per hour. So you
8 could have 30 trips in an hour, which mean you'd only be allowed another 16
9 trips during the day.

10 EHRLICHMAN: Okay.

11 LYNN: Well, can I, can I ask that the actual MDNS language be put up,
12 uh, and displayed so that we don't have a reading followed by a mem-, you
13 know, a memory test. So, I'd like Mr. Norris to be able to see the language
14 he's being asked about.

15 REEVES: Right. So, I believe in terms of the SUP Exhibits, this is, would
16 be Number 27 would be the, uh, MDNS and, yes, I would also prefer that we
17 don't spend significant time reading to each other. Um...

18 LYNN: Thank you.

19 REEVES: And I don't know if Jason is stuck doing this again or someone
20 else wants to volunteer, but...

21 D'AVIGNON: I can put this up, I have it opened on my computer already.

22 REEVES: Gold star.

23 D'AVIGNON: Maybe.

24 REEVES: Silver star.

25

1 LYNN: And, Mr. Norris, when it comes up, if you could just take a
2 moment and read Condition 13, sub vii.

3 NORRIS: Thirteen, sub vii?

4 EHRLICHMAN: Yes.

5 NORRIS: Says the maximum daily truck traffic that is allowed associated
6 with the subject gravel mine quarry limit to an average of 46 daily trips,
7 uh, not to exceed 30 an hour under extended hours of operation. So, uh, a
8 clarification of that, it does say, an average, so, uh, this would, to me,
9 tend to say you could have, uh, 30 trips per hour, which for the extended
10 hour operation could, could be more than the 46 trips a day.

11 REEVES: And I'll, I'm going to break in and ask you a question, as the
12 person who will ultimately need to understand the math, uh, so, Mr. Norris,
13 that average you just discussed, would that be the year, essentially during
14 an emergency, you might have 30 trucks per hour for ten hours, but
15 ultimately, you would take 46 daily trips times 365 days in a non-leap year,
16 that gives you the number and ultimately, you can't exceed that number, I
17 guess, I'm asking what the base unit is for the average?

18 EHRLICHMAN: Well, the base unit was 260 working days a year, with, uh, ten
19 hours per day for a five day week.

20 REEVES: Okay. Thank you, so...

21 NORRIS: I'm getting a lot, a lot of static on my end, like, the wind is
22 blowing through somewhere.

23 REEVES: I don't, I don't think it's me.

24 LYNN: Can you hear okay now?

25

1 REEVES: Yeah. That seemed to be better. But, just, sorry, to clarify, Mr.
2 Norris, I was wrong in terms of 365 days, but it's the year is the base, even
3 if it's 260 is how many in a year, but if we're calculating whether the
4 Applicant is complying with the MDNS conditions, we look at it from January
5 1st to December 31st, is that an accurate statement on my part?

6 NORRIS: I believe so, yes.

7 REEVES: Okay. Thank you. Go ahead, Mr. Ehrlichman.

8 EHRLICHMAN: No, thank you, Mr. Examiner, that, that's exactly the kind of
9 clarification I'm seeking. So, Mr. Norris, if the year is the base, the
10 calendar year, 365 days...

11 REEVES: No, he just clarified that somewhat not accurate, but go ahead.

12 EHRLICHMAN: That, that's what I'm trying to get to, so the, the calendar year
13 is the unit of time within which we measure the average, correct?

14 NORRIS: Correct.

15 EHRLICHMAN: Okay. And the maximum number of trips that can occur under this
16 condition, in that one year period, is what?

17 NORRIS: What they're saying is the average of 46 daily trips.

18 EHRLICHMAN: And what is that maximum number?

19 NORRIS: The maximum number would be the 30 trucks per hour, under
20 extended hours of operation.

21 EHRLICHMAN: I'm sorry, I'm talking about within that one year base time
22 period?

23 NORRIS: During one year, the average if 46 daily trips.

24 REEVES: So, it would be 260 times 46?

25 NORRIS: Yes.

1 REEVES: So, my rough math says 11,960. I may be wrong, but about 12,000
2 trips total.

3 NORRIS: That's approximately correct, yes.

4 REEVES: Okay. Approximately correct. So maybe I screwed up somewhere, but
5 I would prefer we don't have all the lawyers learn math while we're going
6 through here. You can confirm about 12,000, I think that's helpful. Okay.

7 EHRLICHMAN: Yeah. And Mr. Norris, don't your, um, traffic...

8 NORRIS: Well, to be exact, I'll go right to the June 6th, 2019, uh, memo
9 and it says 11,765 vehicular trips per year.

10 EHRLICHMAN: Okay. Thank you. Now, I'm going to ask you a question about this
11 MDNS condition and what the maximum number of trips per year allowed is under
12 that condition. Is it your testimony that with this condition in place, the
13 maximum number of ve-, of truck trips that can occur during that one year
14 time period is 11,765 ve-, um, truck trips?

15 NORRIS: That's what the average is, yeah. What the, the annual trip
16 generation would be.

17 EHRLICHMAN: So, my question wasn't about the average, it wasn't about, um, a
18 trip generation model, modeling, it was about a number.

19 REEVES: He, he just...

20 EHRLICHMAN: Does this, go ahead, Mr. Examiner, sorry.

21 REEVES: Well, I'm saying, he just gave you the maximum number, the, the
22 number for the whole year is 11,765. Which I'm...

23 EHRLICHMAN: Okay. Yep. That's how I understood it, too, but I wanted to make
24 sure Mr. Norris confirmed that.

25 REEVES: Okay. Go ahead. Sorry.

1 EHRlichman: Mr. Norris, can you confirm that?
2 NORRIS: I thought I already did.
3 REEVES: He did.
4 EHRlichman: Okay. So, we now have, in, in, in my small brain, for the first
5 time in this proceeding, a clear maximum number of truck trips that will
6 travel on Grip Road, in any given year, for the life of this mine. And the
7 question I want to ask you is what happens if the Applicant reaches that
8 200,000 tons per year, but they want to mine more than that? They want to
9 exceed the 11,765 trips, does this MDNS prohibit that for this mine in a, in
10 a given year?
11 NORRIS: Well, the, uh, you have to go back to Condition vii of what's
12 allowed under the MDNS.
13 REEVES: Well, I'm confused to the, Mr. Ehrlichman, I'm confused to the
14 extent that I didn't think Mr. Norris was the one that issued the MDNS.
15 EHRlichman: Okay. Uh, I'll withdraw it.
16 REEVES: Well, am I wrong about that? I...
17 EHRlichman: He doesn't look like the guy that issued the MDNS.
18 REEVES: Who I think we're going to hear from, so I, I...
19 EHRlichman: Yeah.
20 REEVES: Okay.
21 EHRlichman: So, I withdraw that question. Um, let's, let's move ahead here
22 now. The, uh, 30 trucks per hour, under extended hours of operations that
23 allowed by this condition, with permission of the County, is subject to that
24 maximum number of trips per year ceiling, correct?
25

1 NORRIS: Um, I, I think, again, I'm going to go back in the Hearing
2 Examiner's decision, somebody else put this condition together. I would say
3 that the, uh, the max number of trips under any one hour is 30 trips under
4 extended hour of operation, which the Applicant has to receive permission
5 from the County for. And it's, uh, attempt to recognize that, uh, you, you
6 have to understand that this operation is a public benefit operation that
7 they supply, uh, gravel and sand and other materials to Public Works
8 functions throughout the County and throughout the area. And if we have an
9 extreme, uh, situation that occurs, uh, we need to have them be able to
10 respond to that by, uh, additional, um, provision of these materials and, uh,
11 to totally constrain it and not allow it to do that is staling our public
12 purpose and the public benefit. So, I think this is an attempt in the
13 condition to get some kind of upper limit of what, uh, would be possible
14 under these extreme conditions. It's not the average condition, these are
15 extreme conditions. So, I think that needs to be kept in mind, uh, in this,
16 uh, consideration.

17 EHRLICHMAN: Right. I understand. And, and we have a ceiling now clearly
18 established so we'll move on. Um, and is that 30 trips per hour, is that 15
19 loaded and 15 empty?

20 NORRIS: Correct.

21 EHRLICHMAN: Okay. Um, thank you for those clarifications. Those are, uh, of
22 key importance to everyone involved in this proceeding. And I can tell you
23 that I'm not the only one who was confused here. Let me ask you about the
24 statement that the County made in their opening presentation. Uh, where they
25

1 said the maximum operation limit may not exceed 30 full trucks, parenthesis,
2 60 trips per hour.

3 LYNN: Uh, is this a question? It sounded like...

4 EHRLICHMAN: Yes.

5 NORRIS: More like a commentary.

6 REEVES: Yeah.

7 EHRLICHMAN: Yes, it's a question.

8 REEVES: Let's move forward and I, to be clear, what I'm struggling with
9 is this clarification is really only useful, in my mind, if [inaudible] or
10 Kevin Cricchio agree. Because Gary Norris is not the one that issued the
11 MDNS. I mean, if you have some document he himself created that led to these
12 numbers, I could see that. But I'm struggling with, I mean, I guess the
13 question I would add, Mr. Norris, is the 30 trucks per hour for extended
14 operations is, was that derived from your, your studies that you produced?
15 And is it your understanding that that's 15 loaded and 15 not or...

16 NORRIS: Um, we did, uh, different scenario comparisons of this, uh, and,
17 again, I'm going to refer back to, uh, the, uh, June 6th, 2019 memo that was
18 produced. And it says, uh, assume withstanding a pit operation of ten hours a
19 day, the average hourly truck volume would be 29.4, uh, trips per hour under
20 the extreme example of 5,000 tons per day. Uh, this volume of 29.4 trucks per
21 hour is substantially less than the capacity of Grip Road, which is estimated
22 to be 110 trips per hour and significantly less than the 72 truck per hours
23 estimated by Skagit County. The County estimate was based on 700 truck trips
24 per day. So, the, the maximum that we were looking at with the pip operation,

25

1 and, again, this would have to be clarified more by Miles than me, was, uh,
2 essentially 30 truck trips per hour.

3 REEVES: All right. Was that...

4 NORRIS: So, that's...

5 REEVES: Uh, can you give me an Exhibit Number, Mr. Norris?

6 NORRIS: For the, uh, memo?

7 REEVES: Well, yeah, is the 2016 memo, the later memo? I'm just trying to
8 keep track for, for everybody following, following along.

9 NORRIS: This is, go ahead.

10 D'AVIGNON: I was going to say County 14, I believe.

11 REEVES: Okay. So, this was the, the 2019, June 6th, 2019 memorandum?

12 NORRIS: Yeah.

13 REEVES: Okay. Thank you. Sorry to interrupt.

14 EHRLICHMAN: Shall I proceed?

15 REEVES: Yeah. Please.

16 EHRLICHMAN: Yeah. But, again, Mr. Norris, there have been many numbers used
17 in this proceeding, including in your Exhibit 13, correct? Uh, which is your
18 memo dated November 30th, 2016, at the very last paragraph, you say therefore
19 the suggested maximum limited, based on the availability of 30 dump trucks
20 was determined to be 60 trucks per hour or 720 truck trips per day. Correct?

21 NORRIS: Correct.

22 EHRLICHMAN: So, now we are at 30, under the MDNS conditions, we are at 30, a
23 maximum of 30 trucks per hour, uh, that's 15 loaded and 15 empty, correct?

24 NORRIS: That's the way I would read it, yes.

25

1 EHRlichman: Okay. So, we're no longer talking about the levels that you, uh,
2 mentioned in Exhibit 13, that I just sited, correct, not the 60?

3 NORRIS: Correct.

4 EHRlichman: Okay. Thank you. And we're not talking about the 30 loaded
5 trucks, um, that was mentioned in the, in the, uh, Staff opening
6 presentation, are we?

7 NORRIS: I, I'm not sure of the question.

8 EHRlichman: Uh, strike that. Let's, let's move along here. Thank you for
9 those, uh, clarifications. Um, now, let's talk about w-, what you studied in
10 terms of the safety impacts for the 30, uh, trucks per hour. Am I correct in,
11 uh, saying that your testimony so far has been that you focused on trip
12 generation at the 46 trips per day, rather than the 30 trips per hour?

13 NORRIS: That's correct.

14 EHRlichman: Okay. And you agreed in earlier testimony, I believe, correct,
15 that the analysis of 47 or 46 trips per day does not cover the impact, or
16 doesn't give us insight into the impacts of, uh, 30 trips per hour, correct?

17 NORRIS: No, it, uh, the analysis didn't address the 30 trips per hour.

18 EHRlichman: Okay.

19 NORRIS: Well, except, I, I got to correct that, because, in fact, the
20 evaluation was looking at different scenarios and we bounded the scenario,
21 uh, in this case it was determined that the, uh, critical intersection of
22 Prairie and Grip Road and, uh, Highway 99 could receive 110 additional truck
23 trips per hour. And we were nowhere near, uh, that volume of trips in any of
24 the analysis or any of the considerations that were done. So, it, it was not
25 a critical factor in our evaluation.

1 EHRlichman: So, when you were analyzing the 30 trips per hour, um, y-, and
2 you just responded to that question focusing on intersections, did you do any
3 analysis of safety on Grip Road segments at 30 trips per hour?

4 NORRIS: The, the bearing had, uh, not impact on the actual volume of, uh,
5 truck traffic in regards to safety.

6 EHRlichman: Okay. Um, Mr. Norris, I'm going to ask you to answer the specific
7 question. Did you do any safety analysis on the Grip Road segment at the rate
8 of 30 trucks per hour?

9 NORRIS: We did a safety analysis on Grip Road for the impact of the mine
10 operation.

11 EHRlichman: Mr. Examiner, I don't want to waste time here, but...

12 REEVES: Sure. Well...

13 EHRlichman: I would like...

14 REEVES: Mr. Norris, I'm going to ask you a clarifying question. I think a
15 minute ago you essentially said that the information was such that the road
16 itself could handle an additional 110 trips per hour, ergo, even at a maximum
17 of 30 trips per, the road could still handle 80 more trips per h-, per hour,
18 such that no further analysis was necessary. Is that an accurate assessment?

19 NORRIS: That's an accurate assessment.

20 REEVES: There we go. Okay.

21 EHRlichman: Excellent. So, now, doesn't that analysis focus on intersections?

22 NORRIS: The capacity, I mean, if you want to talk about the capacity of
23 the road, the capacity of Grip Road, for example, uh, is dictated by the
24 headway between vehicle that would arrive, uh, use the road. And, uh, uh, we
25 generally work with a rule of thumb of two seconds vehicle headway. And so,

1 if you take 3600 seconds in, uh, an hour and you divide that by two seconds,
2 you get, essentially the capacity of the roadway is 1800 vehicles per hour in
3 each lane. So the capacity of Grip Road in a two-lane roadway would be 3600
4 vehicles per hour. The constraint in a roadway capacity analysis is obviously
5 the intersection where the, uh, demand for the roadway is shared by multiple
6 directions. And so, in this case, in order to determine what the capacity of
7 the roadway was, the limiting factor, not the capacity on Grip Road, it's the
8 capacity at the intersections. And the intersection we determined we could
9 receive 110 more truck trips and still not trip the, uh, Level of Service
10 threshold. I hope that provides and understanding to what we're dealing with.

11 EHRLICHMAN: Well, go ahead.

12 REEVES: I mean, I, I get it and I'm the one that has to make the
13 decision, I think, so, you know...

14 EHRLICHMAN: Is there a distinction between capacity analysis and safety
15 analysis in your mind, Mr. Norris?

16 NORRIS: Yes.

17 EHRLICHMAN: What is that distinction?

18 NORRIS: Uh, capacity is, uh, as I shared with the vehicle, or the ability
19 of the roadway, uh, to handle vehicular traffic...

20 EHRLICHMAN: Okay.

21 NORRIS: Without creating, uh, undo congestion.

22 EHRLICHMAN: So, when I asked you did you do any safety analysis on the Grip
23 Road segment of 30 trucks per hour, your answer related to the capacity
24 calculus, correct, not the safety...

25 NORRIS: No. No.

1 EHRlichman: Analysis?

2 NORRIS: No. That's incorrect. We did a safety analysis of the roadway.

3 EHRlichman: That's my question. Can you tell us what that was?

4 NORRIS: Well, I think it's been, go ahead.

5 REEVES: I guess what I want, again, if we're working on how the math

6 works, my understanding, I didn't cut in earlier, but Mr. Norris, was Mr.

7 Ehrlichman asked you more trucks, sort of common sensically [sic] mean more

8 accidents was what he was sort of trying to put on the table. My

9 understanding of your answer is the math is a little more nuanced, which

10 would be if I flip a coin, it's a 50/50 probability of heads every single

11 time, but if I flip the coin, you know, 30 times in an hour, versus 60 times

12 in an hour, I'm going to end up with quantitatively more heads because, you

13 know, I'm doing it twice as fast. So, any given moment, the potential

14 accident for me, as the driver, right, is the same, but quantitatively over

15 time, when you have more vehicles, you're going to have more accidents. Or am

16 I misunderstanding the math?

17 NORRIS: Um, I don't think you can just jump to that conclusions

18 necessarily because it depends upon the roadway conditions that are pre-,

19 prevalent and, uh, the exposure to certain constraints in the roadway could

20 lead to, uh, more crashes increased volume. So, uh...

21 REEVES: Well...

22 EHRlichman: Right.

23 REEVES: I understand. But you testified earlier that in this

24 circumstance, increased volume would not have an increased potential for

25

1 accidents, I thought, at any given moment. Or did I misunderstand your
2 testimony?

3 NORRIS: No, you're absolutely correct in that assessment. And the reason
4 I said that was because the Applicant has offered mitigation to address the
5 critical safety issues in the corridor. So, uh, the, the potential for
6 crashes in that corridor is probably going to be reduced as a result of the
7 safety improvements that Miles is making to the road.

8 EHRLICHMAN: Mr. Examiner?

9 REEVES: Go ahead, Mr. Ehrlichman.

10 EHRLICHMAN: If I may speak to you with, uh, again, you asked me to, you know,
11 sort of let you know where we were going on questioning.

12 REEVES: Yeah. Go ahead.

13 EHRLICHMAN: I'd like, I'd like to describe where we are and where we're
14 going. We can see the problem here where the analysis presented in the
15 records so far doesn't contain, in my view, the safety analysis at the 30
16 trips per hour on the Grip Road segment. Uh, we're looking for, where is that
17 at in the record. And I believe Mr. Norris's testimony is telling us that
18 it's not yet in the record, the Applicant is offering the solution now. So,
19 that's, that's where I'm going with this is, you know, my next question to
20 Mr. Norris is, okay, where in the record do we find this safety analysis that
21 he did where he just described how road conditions and exposure can lead to
22 more crashes. Well, okay. Where is that? We don't see that in his report in
23 Exhibit 18, which is the most comprehensive traffic analysis. So, that's
24 where I'm at in my questioning and I'll take guidance as to...

25 REEVES: Sure.

1 EHRlichman: How to shorten this.

2 REEVES: I guess, my challenge is having r-, you know, read the whole
3 record, you know, I think there's a certain amount of, you know, kind of
4 math, mental math you have to do to figure it out to the extent that, I
5 don't, I be-, I agree with you that there isn't a, you know, a chart that
6 says, you know, at 30, this is how many accidents. I think it's, as he
7 testified, you look at that 110 as the capacity. And this is, at least in,
8 you know, I'm not trying to testify here, but for LOS purposes or, or
9 concurrency purposes, kind of standard, but, but I get what you're saying.
10 And I, I thought, ultimately your goal was to get an agreement from the
11 Applicant that they're going to widen the road and I think they've said
12 they're going to. So, I'm kind of curious as to what we're doing at this
13 point.

14 EHRlichman: Thank you. Yes, what, what we're doing is trying to find the, the
15 it, you know, in writing where we can look at that safety analysis, whether
16 it's they're presenting it today for the first time or whether they did it
17 before, let us look at what the analysis was. Because, it, the safety
18 analysis is different from the capacity analysis.

19 REEVES: Sure.

20 EHRlichman: In our view that the one-, the 110 figure relates to
21 intersection, uh, capacity and the crashes and, and injuries all relate to
22 that intersection. All of the crash analysis that you see in these studies is
23 intersection-based. What we're concerned about is the segment where the
24 shoulders don't go anywhere near the 6' wide.

25

1 REEVES: I got to say, my recollection of Mr., I think it was Mr. Norris's
2 testimony the other day, was that when they reviewed previous, uh, crashes,
3 they also reviewed segments, not just intersections. So I do want to clarify
4 that point.

5 EHRLICHMAN: Yes.

6 REEVES: Uh, but in terms of your role today, unless I'm missing it,
7 you're here representing your clients on the SUP and..

8 EHRLICHMAN: Uh-huh.

9 REEVES: So, this additional, any agreement, any initial information, you
10 know, is a big win, but the fact that if it doesn't already exist in the
11 record, he-, maybe helps Mr. Loring, but, but I don't know..

12 EHRLICHMAN: It, it only helps me to the ex-, thank you for that. It only
13 helps me because I don't see it in the record. I want to see it. So, I want
14 to be clear that we don't yet have it because there was some comment from,
15 uh, Mr. Lynn earlier today, oh, that it's just techno speak and it's not
16 really, you know, doesn't tell us anything. Well, it does because we've seen
17 lots..

18 REEVES: Well..

19 EHRLICHMAN: We've seen lots of intersection analysis. May I speak to one
20 other point quickly?

21 REEVES: Okay. I mean, I'm, I'm, I'm going to have us move on soon as
22 terms of..

23 EHRLICHMAN: Sure.

24 REEVES: The difference between intersections and segments, you're not
25 selling me on that. So, but go ahead.

1 EHRlichman: No, no problem. No problem. So, we're, we're very much
2 appreciative that they're offering mitigation on Grip Road now. We want to
3 see the analysis so that we can assure ourselves that they've caught the, the
4 danger points. And Neil McCloud will testify to some of that in a moment.

5 REEVES: Okay.

6 EHRlichman: So, that, that's what we want to see. And, um, we're not
7 questioning, you know, the Applicant's, uh, diligence on that, except that
8 they haven't looked at it in all this time. They haven't analyzed it in all
9 this time, it's not in the record. That's what I wanted to ask Mr. Norris
10 right now, if you would permit me another question. About the, uh, crash
11 segment testimony he gave on Monday.

12 REEVES: I'll, I'll let you question him on it very briefly, but I feel
13 like we're spinning wheels and part of this is just who is good at math and
14 who isn't. And I don't think we want to spend hours of everybody's time
15 figuring out who, who understands math, so...

16 EHRlichman: Yeah. And I, I sure don't because Mr. Norris I a lot better at it
17 than I am. So, Mr. Norris...

18 NORRIS: Yes, sir.

19 EHRlichman: When I asked, when I asked you whether you had done crash
20 analysis on the segment, as opposed to the intersections on Grip Road, you
21 answered, um, no, at first and then you dug into the crash data and I believe
22 you testified that there were six accidents on the segment, correct?

23 NORRIS: On the, um, correct, from Prairie Road, uh, to, um, as it's
24 defined, to Lillian Lane.

25

1 EHRlichman: Thank you. And my question is, where in the record can I look at
2 that data? Because you didn't attach it to your Exhibit 18, did you?

3 NORRIS: No, I did not.

4 EHRlichman: So, I would ask Mr. Hearing Examiner, uh, whether Mr. Lynn would
5 perhaps provide that into the record, uh, if Mr. Norris has it. That is
6 typically attached to traffic studies that I've seen on gravel mines in
7 Skagit County.

8 REEVES: Your thoughts, Mr. Lynn?

9 LYNN: Well, the record is the record. Uh, he said he considered, he
10 looked at it and considered it. It's in his report, it's not in his report.
11 Somebody else wants to put it in the record, they can.

12 EHRlichman: Well, Mr. Lynn, with all due respect, your witness testified to
13 specific numbers from that document that no one else could see. That's what
14 we'd like to see.

15 REEVES: Well, I, let me ask one question of Mr. Norris, out of curiosity,
16 is that data easily attainable or not, is it, you know, is it somehow
17 protected? I'm just curious, I'm not making a decision here, Mr. Lynn, I'm
18 just trying to think through if this is even worth everybody fighting about.
19 I mean, I, I have no reason to believe Mr. Norris is lying to us. So, I, I'm
20 going to say that, but...

21 EHRlichman: That's not my allegation at all, Mr. Examiner.

22 REEVES: No, I, that's not what I was saying. I, you know, but I, this
23 process, the Hearing Examiner process is very different than Superior Court,
24 like, it's meant to be more efficient such that every photograph doesn't then
25 need to have nine questions about the camera and the person who bought the

1 film from and the store you bought the film from. 'Cause we'll be here for
2 months. So, quickly, Mr. Norris, do you have an answer to my questions about,
3 is that easily obtainable data?

4 NORRIS: Yes, it is.

5 REEVES: Okay. Based on that, Mr. Lynn, do you have any problem with just
6 adding it to the re-, I get your objection, obviously, but I...

7 LYNN: No.

8 REEVES: No objection? Okay.

9 LYNN: No.

10 REEVES: We'll add it. Okay. There we go.

11 EHRLICHMAN: And, thank you, Mr. Examiner, and...

12 REEVES: To be clear, sorry, I need to be clear about what I'm saying
13 because this is the same problem Mr. Loring had earlier, which is when I say...

14 LORING: Thank you.

15 REEVES: We would add it to the record, it's, I'm not confusing the fact
16 that this, well, this was, actually, would have been part of the SEPA review,
17 I believe. But, Mr. Loring, I'll give you a sec here, go ahead.

18 LORING: Well, I, I do see it as the same issue. Uh, presumably it would
19 have been part of the SEPA review, but it sounds like it actually wasn't part
20 of the SEPA review, at least this specific information wasn't available to be
21 reviewed through the SPEA process.

22 REEVES: I get what you're saying. So...

23 LORING: Yeah.

24 REEVES: The, the person that produced the MDNS, who I believe...

25 LORING: Right.

1 REEVES: Who I believe is [inaudible] I'm missing this data, uh, okay. So,
2 I...

3 LORING: Right. Or, or I will say, too, or have the opportunity to share
4 it with their Traffic Engineers at the County level. Because, let's not
5 forget, right, the MDNS is, is the culmination of the entire County review,
6 presumably.

7 REEVES: Sure.

8 LORING: Yeah.

9 REEVES: Well, we hope, right? Uh, well, at that point, earlier in the
10 process, right? There's...

11 LORING: Yes.

12 REEVES: Further review of the SUP, I, I just got to be really...

13 LORING: Right.

14 REEVES: Clear about that, if we're doing things right. But, so I, I would
15 let it in at, you know, and I'll limit it to the SEPA because that's what Mr.
16 Ehrlichman seemed, seemed to be concerned about.

17 EHRLICHMAN: Limit it to the SEPA?

18 REEVES: Sorry, uh...

19 EHRLICHMAN: From, from the SEPA?

20 REEVES: Yeah. There we go.

21 EHRLICHMAN: Okay.

22 REEVES: Excluded from my, any decision I make on SEPA and I'm now going
23 to get lost in terms of Exhibits. Do we have any idea where that would put
24 us, at this point, in terms of, uh, the Applicant's Exhibits? And I'm, again,
25 noting Mr. Lynn's objection that I'm forcing him to include this, you know...

1 EHRlichman: If I may speak to that, uh, Mr. Lynn, this is not, um,
2 intersection trip generation crash history, this is Grip Road segment safety..
3 REEVES: Yeah.
4 EHRlichman: Past history. And that isn't, that isn't in the report, but it
5 was in Mr. Norris's testimony, live testimony.
6 LYNN: His testimony was he considered it.
7 EHRlichman: No, his testimony, excuse me, his testimony was, wait a minute,
8 let me look and into the data and give you an answer. And then he gave me the
9 answer of the six crashes on the segment.
10 REEVES: So, this would ultimately, sort of prove up the, the statement
11 that Mr. Norris made. So, back to my questions because Mr. Lynn agreed we
12 could, we can include it, uh, over his objection, which I fully acknowledge,
13 um, but in terms of Applicant Exhibits, can anyone give me what number we
14 would be at, at this point? Sorry. By Day 3, I sometimes get a little, little
15 lost in terms of, uh, Exhibit Numbers and..
16 LORING: Uh, is it, it's the 96th document, I think, if we're going by the
17 B numbering system. There's some challenge, of course, uh..
18 REEVES: Oh, wait.
19 LORING: Should we do it through the County system, which is the..
20 LYNN: Yes.
21 EHRlichman: Yes.
22 REEVES: I messed up, we should do it through the County system, so what
23 number would be at, uh, with what I call the, the Cricchio file, as it were,
24 the master file?
25 CRICCHIO: My notes indicate...

1 LORING: Fifty-two.

2 CRICCHIO: Fifty-two, yes.

3 REEVES: Fifty-two. All right. Thank you. So, 52 is, uh, crash data Grip
4 Road segment.

5 EHRLICHMAN: Thank you, Mr. Examiner.

6 REEVES: Okay.

7 EHRLICHMAN: May I ask quickly about auto-turn data, which is a related
8 evidentiary request?

9 REEVES: I'll, I'll give you, like, five minutes on that.

10 EHRLICHMAN: Thank you. Mr. Norris, uh, how are you holding up there?

11 NORRIS: I'm, I'm holding up great. Uh, I...

12 EHRLICHMAN: I want to ask you, sorry, go ahead.

13 NORRIS: Just a little clarification, I just passed the information to Mr.
14 Lynn, but the fact was this information was reviewed. The Grip Road segment
15 is about a mile and a half long segment that was being considered and there's
16 six, uh, accidents over five years on this, uh, segment. Some involved
17 hitting a deer, some involved over-turned vehicles, some involved, uh,
18 utility poles. The only place where there was any, uh, significant, and I'm
19 saying, too, which is not really significant in five years, if you look at
20 it, was at Lillian Lane. Uh, and that wasn't really within our, our segment
21 of consideration. So, we did consider that information, did not believe that
22 it had a bearing on our safety considerations for this deal. In addition to
23 that, we did, uh, an intersection analysis which I summarized for you before,
24 which also indicated the, the rates of crashes at the location were below,
25 uh, normal rates. So, it wasn't this, uh, deemed a hazardous condition. So,

1 that was the, the basis for our estimation. The most significant thing is
2 I've said all along, has been the, uh, the truck encroachment where we
3 specifically addressed. So, that's kind of, uh, is the background on the
4 safety.

5 REEVES: Thank you, Mr. Norris. So, Mr. Ehrlichman, I was going to give
6 you a few minutes to ask about the curve.

7 EHRLICHMAN: Thank you. And, and, Mr. Norris, that, we agree the biggest issue
8 is the truck encroachment, um, in your Exhibit 18, um, most extensive traffic
9 analysis you attached Exhibit B6, correct, which was the County road, uh,
10 design standard for, uh, rural, um, collectors, like Grip Road, correct?

11 NORRIS: Correct.

12 EHRLICHMAN: And that shows that, uh, the road standard is for a 6' wide
13 shoulder, is that correct?

14 NORRIS: I believe so, yes.

15 EHRLICHMAN: Okay. When you do, when the auto-turn, who did the auto-turn
16 analysis for Grip Road?

17 NORRIS: Uh, I did.

18 EHRLICHMAN: Okay. And, Mr. Lynn, uh, will you be introducing that today in
19 the Special Use Permit proceeding?

20 LYNN: Can I, uh, stop you right there because you're asking these
21 questions about it and quite frankly the, uh, results of the, of the, or the
22 auto-turn analysis are included in the Appendix of that, uh, September 2020
23 document.

24 REEVES: Sorry, what, can, can I get an Exhibit Number one more time using
25 the...

1 NORRIS: It's the, uh, Exhibit 14, the 201-, excuse me, no, the
2 final TIA, which is September 10th of 201-, 2020, I believe.
3 EHRLICHMAN: Exhibit eig-, uh, 18, I believe.
4 NORRIS: Eighteen, yeah, Exhibit 18.
5 EHRLICHMAN: But this, wasn't the auto-turn that was included there, uh,
6 Prairie Road?
7 NORRIS: Yes. But...
8 EHRLICHMAN: Okay. But...
9 NORRIS: This...
10 EHRLICHMAN: But you...
11 LYNN: This gives you example...
12 EHRLICHMAN: But you did not, but you did not include Grip Road, correct?
13 NORRIS: No, did not.
14 EHRLICHMAN: Okay. Mr. Lynn, would you, uh, be willing to produce the Grip
15 Road auto-turn analysis, uh, today?
16 LYNN: Let me get back to you. I don't know what its availability is. I
17 assume it's available, but I don't know as we sit here today. As we sit here..
18 EHRLICHMAN: Mr. Examiner...
19 LYNN: At 10:0-, 10:16, I don't know.
20 EHRLICHMAN: Mr. Examiner, per my, uh, filing on Monday or Tuesday, I guess it
21 was, uh, may I have leave to recall the witness after we look at the Grip
22 Road auto-turn analysis?
23 REEVES: Well, I'm going to ask Mr. Norris, so, first off, you said just
24 now that in the Appendixes, there's data for Prairie Road, is that right?
25 NORRIS: That's correct.

1 REEVES: And was the thought that, you know, there's analya [sic]
2 situation or did you independently also look at Grip Road?
3 NORRIS: We, we independently looked at, well, actually, we looked along
4 the whole corridor of Grip Road to see where these conditions might exit. And
5 that all came out for the auto-turn evaluation. The reason why I was pointing
6 this figure out in the Appendix of that, uh, September, uh, 2020 because you
7 wanted to know what the output looked like, this is what the output looks
8 like. It shows you essentially where the vehicle would encroach, uh, on the
9 roadway based upon existing roadway width.
10 EHRLICHMAN: My request, Mr..
11 REEVES: As you request, hold on one sec. Can you give me some way to
12 identify a page or, or so I'm now digging through the Appendixes trying to
13 figure it out.
14 NORRIS: In my, in my page number, as I'm looking at right now, it's Page
15 68 of 71.
16 LYNN: All the way at the end. That's the graphic.
17 NORRIS: The PDF.
18 LYNN: The graphic with the roadway in color.
19 EHRLICHMAN: And my request to, while you're looking, Mr. Examiner, my request
20 to Mr. Lynn was for the whole Grip Road analysis that Mr. Norris just
21 referred to. Not just the, the result, the..
22 REEVES: I understand. I, I, myself, just asked him this question. He's
23 dealing with my question and..
24 EHRLICHMAN: Okay. Sorry.

25

1 REEVES: I do have that prerogative as, as the Hearing Examiner to the
2 extent to, you know, in a normal Land Use Application hearing [inaudible] um,
3 okay. So, it was 68, is that right?

4 NORRIS: Yeah. Sixty-eight, 69, uh...

5 REEVES: Is that PDF or as opposed to

6 NORRIS: Yeah. That's a PDF.

7 REEVES: Okay. Well, I guess my question is, earlier the way I described
8 how to get this data, and I think this is what Mr. Lynn may have been eluding
9 to, was is it ones and zeros, is it, like, typing something into a calculator
10 or a program or will it spit out data in a way that is quickly and easily
11 analyzed?

12 NORRIS: It's giving you a graphical representation of what the vehicle,
13 um, path is through the roadway.

14 REEVES: Okay. I'm leery of having to recall witnesses for this type of
15 thing, I, so, I guess what I'm asking is, if we look at these specific, you
16 know, graphs that's already there for Prairie, is there something about that
17 graph, Mr. Ehrlichman that you need clarification on? I get it's not for
18 Grip, but I'm saying if he can later produce the same table for Grip Road, do
19 we need his expertise to, to interpret it? Because it just feels...

20 EHRLICHMAN: It, it's possible, Mr. Examiner, that if they give us only a
21 small segment, like they did here for Prairie Road, that we will ask you to,
22 um, have Mr. Norris come back. We want to see how they selected the two
23 locations that they say will completely mitigate the risk of crossovers on
24 Grip.

25

1 REEVES: All right. So, I guess, first, uh, Mr. Norris, how long, or is it
2 possible or how would it work to produce the table that would be specific to
3 Grip Road? I haven't made a ruling, I'm just...

4 NORRIS: Table, it's not a table, it's a graphic representation just like
5 you see similar to this. And it's just a simple computer output of a, a
6 graphic that would illustrate and, uh, I'm, I'm not sure, uh, you know, we
7 Engineers went to school to be Engineers so we could do this kind of stuff
8 and understand it and for, to assume that any lay person can understand the
9 work from it is, uh...

10 REEVES: Is...

11 NORRIS: And what the benefit is to it I'm not sure either because we've
12 already committed to make the improvements to the road.

13 REEVES: Well, you're touching on a complex issue that we call it the
14 Chevron doctrine and it used to, we all used to defer and then Justice Scalia
15 tried to eliminate it. It's very complicated for us lawyers, but, uh, in
16 terms of, again, I, I am not making any re-, any ruling yet. I'm just asking,
17 I'm recognizing you're, you're the expert, how quickly can you input the data
18 and output what you need to output?

19 NORRIS: Uh, we've already done it. I think we already have the graphics
20 of it so I, I don't think it's going to be any problem to produce it. Whether
21 or not the other side really understands what's being said is another issue,
22 but if they want, if they want to look at it, I don't have a problem with
23 that.

24 EHRLICHMAN: All right. So, uh, Bill Lynn, my, my idea is I am not going to
25 have Mr. Norris recalled to explain the details of this. But I, I would be

1 fine with including it in the record, out of an abundance of caution. And
2 then if Mr. Ehrlichman has an expert that wants to, you know, produce a short
3 memo or something, I'd be fine with that. But I'm sure you wouldn't be. But
4 I, I'm just trying to think how do we get through to the end of this. Uh, any
5 thoughts you have?

6 LYNN: Uh, I guess I'll talk to Mr. Norris and my client during a break.
7 I mean, if it's readily available, it's readily available. We've, it's, it's
8 probably going to be disappointingly boring, but, uh, I, my suspicion is we'll
9 p-, produce it, I just would like to be able to talk [inaudible].

10 REEVES: Sorry, I missed the very end there.

11 LYNN: I, I would just like to be able to talk to Mr. Norris and, and
12 understand it as little, much as I can before we make a commitment. REEVES:

13 Okay.

14 LYNN: But if, I'm guessing it's just going to look like this. Like that
15 part, Page 68.

16 REEVES: And, go ahead, Mr. Ehrlichman?

17 EHRLICHMAN: We're requesting the output from, for the segment between the
18 mine entrance and Prairie Road.

19 REEVES: Or as close as possible, I assume, so...

20 EHRLICHMAN: Whatever they analyzed.

21 REEVES: Right.

22 EHRLICHMAN: But not just their conclusions.

23 REEVES: You want all the meta data, is that what you're saying?

24 EHRLICHMAN: Let's, let's see what they produce. Uh, they produced..

25 REEVES: Okay.

1 EHRlichman: And Exhibit, they produced an Exhibit in 18 that we didn't have a
2 problem understanding. Um, I, I think let's, we can cross this bridge when we
3 come to it, perhaps?

4 REEVES: Well, I'm just worried that we're not going to cross the bridge
5 for another seven or eight hours. Where are we at in the process, at this
6 point, in terms of questioning this witness?

7 EHRlichman: Uh, I am just about done. I had a couple of quick questions about
8 the auto-turn method, um, and then let's see the document and, you know, if...

9 REEVES: Well, we'll do that on a break.

10 EHRlichman: Right.

11 REEVES: Meaning the, Mr. Lynn needs to consult with his client, we'll
12 come back and discuss it on the break, but, uh, I'll give you two questions
13 about auto-turn analysis at this point and then we're moving on. Because as
14 the Hearing Examiner, I do have the authority to sort of limit and control
15 things and I do appreciate, you know, that you are representing clients that
16 have serious concerns, but at the same time, this is, uh, you know, this is
17 not the Superior Court and, and you did come late to the game, as well. So,
18 with that, go ahead, Mr. Ehrlichman.

19 EHRlichman: And it's been a long game, hasn't it? So...

20 REEVES: Way more for some of the others than me, but go ahead.

21 EHRlichman: Yes. Absolutely. And thank you so much for the opportunity. Mr.
22 Norris, when running the auto-turn model on the Grip Road segment, um, did
23 you anticipate, did you, did you include a scenario where two trucks were on
24 the road at the same time coming in opposite directions? This is under that
25 30 per hour frequency rate scenario.

1 NORRIS: No, that, that's not the way the analysis is done.

2 EHRLICHMAN: Okay. And what was the width and length of the truck-trailer
3 combinations used when you ran the model?

4 NORRIS: Oh, hang on a second, I have to pull that up.

5 REEVES: And that will be the last question, I think.

6 EHRLICHMAN: My, my math was tracking that exactly.

7 REEVES: Thanks.

8 EHRLICHMAN: My, my, my limited math skills. [Pause] if, if you want to answer
9 that question, you know, in writing, um, Mr. Lynn, that's fine with me.

10 NORRIS: Uh, we can send you, uh, a picture that, uh, this was a, um, a,
11 the, uh, auto-turn analysis, uh, has several imbedded files of common vehicle
12 types. And, um, the combination that was in play for the Miles Sand and
13 Gravel was not one of the imbedded, uh, vehicles. So, uh, we had to create,
14 uh, the vehicle and the overall length is in the neighborhood of, uh, let's
15 see, [pause] probably about 45 feet long. I'm guessing.

16 EHRLICHMAN: And the width was eight feet?

17 NORRIS: Um, was 8.5 feet.

18 EHRLICHMAN: Thank you.

19 REEVES: Great. Perfect. Okay. So, we're going to move on. Thank you, uh,
20 Mr. Ehrlichman. Uh, Mr. Lynn, any redirect, at this point? Oh, you're muted,
21 though.

22 LYNN: In, in that case, it would be even fewer questions. Um, um, Mr.
23 Norris, um, I think I'm going back a ways here, but I think you testified on
24 Friday that if there was no, even in the absence of crash data, you would
25

1 look at conflicts, um, did you look at potential conflicts here and propose,
2 um, any actions by the Applicant?

3 NORRIS: Uh, well, yes, that's essentially what we were doing with the,
4 uh, the conflict with site distance at the Prairie Road, Grip Road
5 intersection, the, uh, potential site distance issues at the site access and
6 in both of those cases, we proposed active warning signs that will alert the
7 drivers, uh, both the truck drivers and the approaching vehicles to the
8 presence of turning trucks. Uh, this has proven to be a very effective, uh,
9 technique to, uh, notify approaching vehicles and warn of a, a potential
10 hazard. The other things was that we looked at was the encro- [inaudible] off
11 the roadway, uh, that would, or over the center line, uh, and that's what the
12 background is on the development of the mitigation that was defined by, uh,
13 Mr. Barton in regards to, uh, mitigation for the project.

14 LYNN: Okay. You had concluded, though, in your traffic impact analysis
15 that even without the Grip Road improvements there were not safety concerns,
16 isn't that correct?

17 NORRIS: That's correct.

18 LYNN: Okay. So, let, let me just, at the risk of getting into the math,
19 uh, business here, let me just ask a question about this morning's testimony.
20 You said that, uh, that the risk for each truck was the same and, um, so,
21 does that mean that if you did have 30 trucks per hour in one day, because of
22 the averaging, the overall risk would remain the same?

23 NORRIS: Yeah. The, well, the, the Examiner pointed out the math of the,
24 uh, flipping the coin percentages, which is, you know, certainly a, a part of
25 statistics, but the potential for a crash on any given vehicle is the, uh,

1 the same. And so whether you have 30 or 15 or four or whatever, the potential
2 for the vehicle to crossover, uh, is the same.

3 LYNN: Just let me go through my notes real quickly here. We've covered
4 a lot of ground that I was thinking I might have to address in redirect. Uh,
5 just with reference to emergency vehicles, uh, do you know whether or not
6 the, uh, SEPA documentation would have been circulated to, uh, fire
7 departments and police agencies?

8 NORRIS: I, I don't know for a fact, but normally that's the case that,
9 uh, all public services get to review SEPA, or requested to review it,
10 whether they do or not is sometimes their choice.

11 LYNN: Okay. Is it standard practice in your field to, uh, separately
12 analyze, uh, pedestrian, uh, traffic or bicycle traffic, other than to note
13 that there are potential conflicts?

14 NORRIS: Uh, depends on the scenario in which you're evaluating. I mean,
15 this is not a high pedestrian or bicycle corridor. If you're in downtown
16 Seattle and you're looking at pedestrian crossing activity, then, yes, we do
17 do that. But this, uh, it wasn't deemed to be appropriate in this, uh,
18 evaluation.

19 LYNN: Okay. That's all I have. Thank you.

20 REEVES: And I, I suppose I would give, under the SEPA, I would give Mr.
21 Loring an opportunity to see if he just has one or two question re-, redirect
22 or, uh...

23 LORING: Re-cross?

24 REEVES: Re-, thank you. We're not going to go all the way around the
25 table, but, go ahead, Mr. Loring?

1 LORING: Uh, thank you, Mr. Examiner, I, I do have a few questions. Um, on
2 that last point, uh, Mr. Norris, you didn't take any surveys for pedestrian
3 or bicycle use along Prairie Road or Grip Road, did you, as part of your
4 analysis?

5 NORRIS: Yes, we did.

6 LORING: And where would I find that in the record?

7 NORRIS: That was in the, um, the traffic, uh, counts that we did for
8 those intersections, uh, recorded pedestrian volumes.

9 LORING: Okay. And that was at the time of year when you were doing those
10 traffic counts?

11 NORRIS: Correct.

12 LORING: Okay. Was that in the winter?

13 NORRIS: Uh, some of them were in the winter, I think some of them were,
14 uh, in the Spring, I don't, I don't remember correctly, it's been quite
15 awhile since we did a lot of that.

16 LORING: Okay. Thanks for that. Uh, you were asked just a moment ago
17 about, uh, the safety of encountering vehicles and you used the coin flip
18 analogy the, the Hearing Examiner had mentioned earlier. And so, my question
19 for you is just this, uh, the more times you flip the coin, the more likely
20 it's going to come up heads, is that right?

21 NORRIS: No. The probability of coming up heads is 50/50 every time you
22 flip the coin.

23 LORING: But if I flip a coin ten times, I've got a five in ten chance of
24 getting heads, if I flip it once, I've got a 0.5 percent chance, right?

25 NORRIS: You got a 50%...

1 LORING: I mean, not 0.5%, but...

2 NORRIS: You have 50% chance every time you flip the coin of it coming up
3 heads.

4 LORING: I, I see the Examiner going frustrated, I, I...

5 REEVES: Well...

6 LORING: I'm trying to, my, my, my point is this, if I pass ten vehicles
7 and I've got a 50% chance of having an encounter with any one of those, that
8 gives me five of those that I'm likely going to have an encounter with, but
9 if I pass just one, then I've got fewer opportunities for that [inaudible]...

10 REEVES: Oh...

11 LORING: To occur, more opportunities for risk if there are more vehicles
12 on the road, in this instance, is that right?

13 REEVES: Uh, we kind of lost you, I thin, at least I did, did others lose
14 Mr. Loring at the end?

15 LORING: Thank you.

16 REEVES: So, I think you were trying to sort of bring up what I was
17 bringing up earlier which is if you flip the coin faster, you get heads, not
18 more often, but more heads, 'case you flipped it more, but go ahead and
19 rephrase your question in terms of travel.

20 LORING: That really was it, though, yeah, thank you. If, if you are
21 passing, you know, more trucks, even if each individual interaction has
22 certain chance of having an accident, you have more opportunities for those
23 accidents to happen, if you're passing more trucks, is that right?

24 NORRIS: Uh, now, we're getting into finding statistical analysis terms
25 and the, the potential is the same for every vehicle. The number, uh,

1 depending on the potential, would be, uh, result in the actual volume of
2 crashes that would occur. But the potential for a crash is the same every,
3 every, every time. And, and..

4 LORING: That, and that's fine. I, that, that's okay. I'm just going to
5 consider it essentially a non-answer to my question and move on. Thank you,
6 Mr. Norris, I've got a few more questions for you here.

7 LYNN: Can I ask that the commentary be eliminated about non-answers. If
8 it's a non-answer the record will show that. You don't need to make a
9 commentary about it, I don't think it's helpful.

10 REEVES: All right. Noted. And, you know, ultimately if you all recall,
11 I'm the one that needs to produce the decision and so, I was the one with
12 came up with the coin idea and if my statistical analysis is horribly off, I
13 apologize. But I think Mr. Norris agreed that I kind of was in the right
14 ballpark, so, but, go ahead.

15 LORING: Um, Mr., thank you, Mr. Examiner. Mr. Norris, you mentioned, you
16 repeatedly mentioned that the Applicant here has agreed to, uh, address the
17 issues on Grip Road, essentially, is that correct?

18 NORRIS: Address the issue regarding truck crossover encroachment.

19 LORING: Thank you for that clarification. Yes. Uh, do you have that, uh,
20 that promise in writing?

21 NORRIS: I believe Mr. Barton, the manager for Miles made that statement
22 when he, uh, testified.

23 LORING: Okay. So, you don't have anything in writing to identify the
24 parameters of whatever that potential promise might be?

25 NORRIS: No, I don't believe that's within my scope.

1 LORING: Okay. Thank you. Uh, just a couple more here.

2 REEVES: I'll give you two.

3 LORING: Two and a half?

4 REEVES: Two and a half.

5 LORING: Uh, there has been a lot of talk about the, the type of traffic
6 impact analysis that has occurred or, or would need to occur, I just wanted
7 to circle back and clarify that in this instance, a, a Level 1 Traffic Impact
8 Analysis would have been required, uh, for this, or, and I know one occurred,
9 but it was suggested that it was, uh, voluntarily provided, but the Road
10 Standards for Skagit County actually required a Level 1 Traffic Impact
11 Analysis here, right?

12 NORRIS: Uh, not under our, uh, initial volume, no.

13 LORING: It, well, volume is not the only Standard for that, right?

14 NORRIS: It pretty much is a volume standard.

15 LORING: Okay. So, are you familiar with the Road Standards?

16 NORRIS: Yes, I am.

17 LORING: Okay. Are you familiar with the language that states that a Level
18 1 TIA is required, uh, either if it meets a certain volume or if it, the
19 project is not categorically exempt from SEPA?

20 NORRIS: Yeah. I, I, uh, yeah, I didn't see that as being a, a, uh,
21 prominent condition of a, uh, Level 1 Traffic Study.

22 LORING: Okay. But, just to clarify, you're not testifying that this
23 Project is exempt from SEPA?

24 NORRIS: No, it's not exempt from SEPA.

25 LORING: Okay. Okay. Thanks.

1 REEVES: And you get your half and then we're done, Mr. Loring.

2 LORING: Yeah.

3 REEVES: You already...

4 LORING: This...

5 REEVES: Passed it, I, I'm feeling real generous today, so go ahead.

6 LORING: Well, I, these are questions that have come up, I, I'm just
7 trying to follow up on things. I'm not outside the scope, I'm, it's, I'm
8 within my rights. Um, I, the last question I have for you, though, uh, Mr.
9 Norris is this, you haven't investigated whether the Grip Road curves, and
10 the underlying land, can actually accommodate, uh, the expansion that now
11 we're hearing has been promised, have you? And by that, I mean, for example,
12 uh, slope stability along those curves, I mean, any other elements that might
13 impact whether the road could actually be expanded in a way that would
14 accommodate this gravel hauling along them?

15 NORRIS: I, I don't believe in our, uh, auto-turn analysis that the
16 results indicated that the widening would be, uh, so significant that would
17 impact, uh, other environmental concerns along the roadway.

18 LORING: Does your auto-turn analysis incorporate, well, this is
19 important.

20 REEVES: I know.

21 LORING: Does it incorporate those environmental concerns? Does it, does
22 it have an element for slope instability?

23 NORRIS: No.

24 LORING: Okay. And does it incorporate any other environmental concerns
25 into its calculation?

1 NORRIS: Okay. I guess we have to back up and do a little more explanation
2 about what exactly auto-turn does. Because you're moving into an area that's
3 totally out of the realm...

4 REEVES: Hold on. I, I'm going to cut into the extent that Mr. Norris, are
5 you a geotechnical engineer? And in producing this analysis, do you look at
6 things like slope stability?

7 NORRIS: In producing what analysis?

8 REEVES: You...

9 LORING: The auto-turn analysis of the

10 REEVES: Auto-turn...

11 LORING: [Inaudible] needed.

12 REEVES: Yeah.

13 NORRIS: Okay. As, as I said before, the auto-turn analysis takes the
14 roadway configuration, that being of the travel way and existence of the
15 shoulders, whatever may exist, and it operates this, uh, design vehicle
16 through the curve to show where the vehicle, in its standard pathway, would
17 encroach outside the lane configuration or the shoulder configuration. From
18 that, uh, a knowledgeable engineer looks at the surrounding conditions on
19 the, uh, within the right-of-way, along the road, and determines what impacts
20 this widening of the, um, paved surface would be on these other features. So,
21 the auto-turn analysis does not address anything about the, um, natural or
22 topographic features of the roadway.

23 REEVES: So, the answer was...

24 LORING: Thank you, Mr. Norris. Uh, that, that was my question. Thank you.
25 I appreciate it. And I have no further questions.

1 REEVES: Thank you. Mr. Lynn, any, any final [inaudible].

2 LYNN: [Inaudible.]

3 REEVES: Okay. So, my thinking is it's 10:45, we're an hour and 45 minutes
4 in. I think it would be appropriate to just take, you know, ten minutes, use
5 the restroom, et cetera. Mr. Lynn can also figure out the other issue we had
6 in terms of getting that data or did you already sort it out, Mr. Lynn? Oh,
7 you're muted again. Muted.

8 LYNN: Yeah. Sorry. Um, I have not been able to talk to anybody. I have
9 sent around the dimensions of the truck, uh, used in the analysis.

10 REEVES: Okay. But, we'll, we'll, so, let's come back in about ten minutes
11 and then if you have an answer or something we can, we can start there, we'll
12 just start with you on that. But, then, after that, I think Mr. Ehrlichman
13 was hoping to call his witness out of order, uh, because his witness can only
14 participate today. Does that make sense?

15 LYNN: Uh, yes. One, one quick question about that, uh, Tom, how long
16 will your witness be, do you know? I'm trying to figure out 'cause I've got a
17 witness on standby and I don't know, I don't want to keep her around if she's
18 not going to get heard this morning.

19 EHRLICHMAN: I don't think very long. Uh, in fact, we, we tried to put most of
20 the testimony into letter form so we can just hit the highlights, uh, we've
21 submitted the letter this morning.

22 LYNN: Okay.

23 EHRLICHMAN: Uh, so whatever questions you all have.

24 REEVES: Just to be clear, uh, there could potentially be objections from
25 Mr. Loring in terms of that letter would obviously not have been part of the

1 SEPA analysis, but can we agree that I will, I'm smart enough to, to figure
2 that out? Well, it's not really, I mean, I don't think there's any objection
3 to the letter from this witness. If there is, please, somebody tell me that?
4 EHRLICHMAN: And it helps, Mr. Examiner, on that score, rather than have our
5 witnesses testify during the public portion of the Special Use Permit
6 proceeding, I think we all agreed we would have them testify as part of this
7 grouping of our presentation, although this one would be out of order.

8 REEVES: Okay. It's out of order, but I also think the plan was to sort of
9 hear from everybody as part of the public and then the SEPA specific, as it
10 were, portion is just, you know, super brilliant legal argument.

11 EHRLICHMAN: Right.

12 REEVES: Uh, of expert witnesses.

13 EHRLICHMAN: Uh-huh.

14 REEVES: Okay. So, why don't we take a quick break. I think everybody
15 could use one. I certainly can. And we'll come back, uh, how about, about,
16 how about five til, it's 10:45 now, does that work for everybody?

17 EHRLICHMAN: Sound great.

18 REEVES: All right.

19 LORING: Sounds good. Thank you.

20 REEVES: That's what we're going to do regardless. Thanks, everybody.

21 EHRLICHMAN: Thank you.

22 [The tape ends.]

23 **The undersigned being first duly sworn on oath, deposes and says:**

24 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
25 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party

1 to this action. That on April 22nd, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves,
2 that took place on 9/2/22 at 9:00 a.m., regarding the above-captioned matter.

3 I certify and declare under penalty of perjury under the laws of the State of Washington that the
4 aforementioned transcript is true and correct to the best of my abilities.

5 Signed at Mount Vernon, Washington, this 22nd, April of 2024.

6 Janet Williamson
7 Janet Williamson

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**IN SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT**

State of Washington,)	
	)	Cause No.: PL16-0097, PL16-0098,
Plaintiff,	)	PL22-0142
)	
vs.	)	PERMIT HEARING 9-2-22 11:00 AM
)	
Name,)	
)	
Defendant)	

Transcription Date: April 23rd, 2024

Present: Andrew Reeves, Bill Lynn, Tom Ehrlichman, Neil Mcleod, Jason D'Avignon, Kyle Loring, Kristen Wallace, Mona Kellogg, John Semrau

REEVES: Uh, so we were going to check real quick with Mr. Lynn to see if he was able to sort anything out. I know it wasn't a long period of time, but and muted still.

LYNN: Uh, it wasn't quite enough time so I think I'll have to report back afternoon.

REEVES: No problem at all. So, with that, um, well, first question is, is, if need be, uh, is Mr. Norris around today? I have no intent of bringing in back later, you know, but, is he around through the lunch break?

1 LYNN: Yeah. I, I didn't, I checked to find out exactly what his
2 schedule is, but, uh, I'll, I'll be in touch with him. And I'll as-, I'll
3 send him an email right now.

4 REEVES: Thank you. I guess if worse comes to worse, we can probably get
5 something in writing, if need be. But, with that, I think we can move to, uh,
6 Mr. Ehrlichman, who has a witness we're going to take out of order. Tom,
7 you're muted at the moment.

8 EHRLICHMAN: Thank you, Mr. Examiner, are we ready to proceed?

9 REEVES: I believe we are, so...

10 EHRLICHMAN: Great. Um, I'd like...

11 REEVES: Go ahead.

12 REEVES: Thank you. On behalf of Cougar Peak, appreciate the opportunity
13 to present, uh, testimony from Neil Mcleod, he's not available next week.
14 And, uh, if we could swear him in, Mr. Examiner?

15 REEVES: Okay. Uh, Neil Mcleod, do you swear or affirm to tell the truth
16 in the testimony you give here today?

17 MCLEOD: Yes.

18 REEVES: And could you just state and spell your name for the audio
19 recording?

20 MCLEOD: My name is Neil Mcleod spelled N-e-i-l M-c-l-e-o-d.

21 REEVES: Thank you, go right ahead, Mr. Ehrlichman.

22 EHRLICHMAN: Um, Mr. Examiner, as a, uh, housekeeping matter, um, we would
23 like to submit into the record a letter from Mr. Mcleod that I sent in this
24 morning to everyone. And may I suggest that we include it as part of Exhibit
25

1 47, which is already our, uh, packet of Exhibits, uh, designated by the
2 Hearing Examiner's Office?

3 REEVES: No issue from me. Uh, if any of the Attorneys have an issue,
4 raise your hand. No hands raised. Go right ahead. It's included as S-,
5 wherever we're at in the numbering.

6 EHRLICHMAN: Thank you, Mr. Examiner. Um, let's, uh, quickly hit some of the
7 high points, um, and then the letter summarizes in, or, uh, states in more
8 detail, uh, Mr. Mcleod's testimony. Um, but Neil, would you tell us quickly a
9 little of your background, how long you've lived, uh, where, where your
10 residence is located, how long you've lived there and, um, a little bit about
11 your family and what you do there?

12 MCLEOD: I live at 21454 Grip Road. Um, I'm the caretaker for Cougar Peaks
13 LLC, which, um, pertains to keeping up the roads, uh, some forestry work,
14 keeping the view corridors opened and taking care of a, um, a cabin. Um, we
15 have, uh, trades people coming in, probably at least once a week someone will
16 be here to work on either the cabin or the caretaker's house. We have, uh,
17 friends of the owner come and stay at the cabin, uh, if, but it's
18 recreational mostly and forestry.

19 EHRLICHMAN: And how long have you lived there?

20 MCLEOD: I've lived there for approximately 11 years and I've worked at
21 the place probably for about 15 years.

22 EHRLICHMAN: And you and your family, uh, built your residence there?

23 MCLEOD: Uh, the owner built the residence that we live in, um, I'm just
24 the caretaker.

1 EHRlichman: Okay. And you live there with your wife and, uh, previously with
2 your, uh, you had two children, right?

3 MCLEOD: I did. Uh, we live here now, it's just my wife and I. My one
4 daughter lived with us up here for about a year before she, um, moved out.
5 Now, it's...

6 EHRlichman: And...

7 MCLEOD: Delight [phonetic] and I and two dogs.

8 EHRlichman: Thank you. And, uh, your, uh, children and grandchildren, I
9 understand, come and visit you regularly up there?

10 MCLEOD: Absolutely. We, um, watch our two grandchildren, three and five
11 years old, every Thursday.

12 EHRlichman: Great.

13 REEVES: And I'm going to suggest, it's lovely, but let's move to the more
14 specific, uh, portions of the testimony if we could, Mr. Ehrlichman.

15 EHRlichman: And, Mr., um, Mcleod, I, I had said in our, um, discussions here
16 in this proceeding 400 acres, but it's closer to 800 acres of ownership,
17 isn't it, for Cougar Peak?

18 MCLEOD: Yes. It, it's, uh, roughly 800 acres.

19 EHRlichman: And, um, tell us about the proximity of the driveway to the
20 proposed mine?

21 MCLEOD: Um, we're probably, uh, 500 feet, something like that, north of
22 the entrance to the mine.

23 EHRlichman: And describe what it...

24 MCLEOD: Right at the top of the S-curves.

25 EHRlichman: I'm sorry?

1 MCLEOD: Right at the top of the S-curves.

2 EHRLICHMAN: Your driveway is at the top of the S-curves?

3 MCLEOD: Yes.

4 EHRLICHMAN: Okay.

5 REEVES: My apologies, just so I don't get confused, when you say the
6 entrance to the mine, do you mean the access road lead ultimately to the mine
7 or are you actually 500 feet from...

8 MCLEOD: The access road, the access road to the mine and we're on the
9 other side of the road.

10 REEVES: Sorry. Thank you. Go ahead.

11 EHRLICHMAN: And you, uh, prepared the map, uh, with, with my suggestions that
12 you attached to your letter, correct, that's Exhibit 47 S1A?

13 MCLEOD: Correct.

14 EHRLICHMAN: Okay. So, that map will, um, provide the context here. Now, when
15 you and your family or employees, um, travel on Grip Road, tell us what your
16 concerns are that got you involved here?

17 MCLEOD: Um, the safety of the, the safety of the road is the only thing
18 I'm interested in. I have no problem with the gravel mine, um, but I want to
19 see safe roads. Um, many times, you know, somebody will cross the line, it's
20 a narrow road, no shoulders. I think if you live on this road, you've had at
21 least one narrow, you know, where somebody is over the line and you have to
22 get out of the way. I've seen one car that has, uh, gone over the side of the
23 road. But there's been, over the years, there's numerous accidents, um, where
24 you see the debris left over, I guess you'd say.

25

1 EHRlichman: And does your map show the location of where that car went, uh,
2 off the road?

3 MCLEOD: Yes, it does.

4 EHRlichman: Have you personally experienced the problem with the crossovers
5 you just mentioned?

6 MCLEOD: Uh, yes, I have. Uh, people go too fast and so they're crossing
7 the line going down the hill, usually, and if you're coming up. So, I have
8 seen people come over the line and you have to hug the side of the road as
9 best you can.

10 EHRlichman: And if there was a truck eight and a half feet wide, uh, coming
11 at you as you're traveling on Grip Road, would you be concerned about that
12 crossover?

13 MCLEOD: Yes, I would.

14 EHRlichman: Tell us where, uh, if you can, using that map, your concern would
15 be the greatest?

16 MCLEOD: Um, well, on the S-curves, that would be, uh, on the two S-
17 curves, that would be my greatest concern. On a straightaway, um, the truck
18 can stay in his lane.

19 REEVES: Okay. Sorry, out of curiosity, Jason, are you able to maybe pull
20 that up? Do you have that available? Sorry, we're referencing a map multiple
21 times. Uh, you're muted, Mr. D'Avignon.

22 D'AVIGNON: Yes, I, I can do that, Your Honor.

23 REEVES: Thank you.

24 EHRlichman: Thank you, Mr. Examiner. I wish I had the sharp point acuity that
25 would assist here.

1 REEVES: No, you don't, you don't want that. You never want to be the
2 person that gets saddled with, uh, the, the task of acuity document, that's
3 the word I'm looking for.

4 D'AVIGNON: Thank you, Mr. Examiner.

5 EHRLICHMAN: So, um, Neil, um, on this map, you've also indicated where
6 there's some school bus stops, um, and you told me at one point, I believe,
7 that the school bus traffic was a major concerns of yours. Could you talk a
8 little bit about that?

9 MCLEOD: Yes. Okay. The, uh, bus stops twice going, uh, once going down
10 the hill, at the top of the S-curves and then it turns around at the bottom
11 of the hill, um, just passed all the curves. Um, a heavy truck went down the
12 road, um, there's always a possibility of running into that bus, uh, when
13 you're going down the hill and it's turning around.

14 EHRLICHMAN: Thank you. And are those buses picking up children and then
15 heading towards Sedro Woolley, generally?

16 MCLEOD: Yes.

17 EHRLICHMAN: On Grip Road?

18 MCLEOD: Yes.

19 EHRLICHMAN: Okay. And as far as you know, are there designated bus stops or
20 do those change over time, depending on, uh, what types of families and
21 children are living on Grip Road?

22 MCLEOD: Um, the one, the turnaround is, uh, designated. I think it always
23 stays there on the, where they pick them up, up further on the hill. I would
24 imagine once those kids are out of school, they will no longer be stopping
25 there.

1 EHRlichman: Thank you. And are the buses appearing both morning and
2 afternoon?
3 MCLEOD: Yes.
4 EHRlichman: And w-, are they all ages of children that you know of?
5 MCLEOD: I suppose, you know, I don't really eyeball the kids, so, um, I'm
6 just guessing.
7 EHRlichman: Okay.
8 MCLEOD: I would imagine all ages.
9 EHRlichman: Okay. Um, and have you, uh, heard some of the testimony during
10 this proceeding from the Applicant and their traffic expert?
11 MCLEOD: Yes, I have.
12 EHRlichman: Is there anything that you are, uh, hearing that you're concerned
13 about or would like to have answered by any of them?
14 MCLEOD: Um, you know, I'd really like to see what h-, you know, what
15 they're going to do to fix the road. I'd like to see that. If they're going
16 to do a good job at it, I probably wouldn't even need to be here. But I also
17 would like, um, say five and a half days a week, uh, not seven days a week,
18 uh, of use. And I want it kept to a reasonable amount of trucks. When they
19 tell me there's 60 trucks an hour, I don't know how reasonable that is. Am I
20 going to be ab to get out of my driveway with any real safety when you add
21 the rest of the traffic of Grip Road? That's, um, that's, I think that's
22 probably planned.
23 EHRlichman: Thank you, Neil. And what would make your, the point on Grip Road
24 at your driveway safer with respect to those concerns.

25

1 MCLEOD: Oh, that's easy, if you widen the roads, uh, um, and put a
2 shoulder on it and you keep the amount of trucks that are, um, per hour at a
3 reasonable amount, I have no objections, then.

4 EHRLICHMAN: Do you think, uh, also a reduction in the speed limit at that
5 straightaway would be helpful?

6 MCLEOD: I think that they probably should, uh, people already go too
7 fast. You should try to keep the speed down. I think a lot of the neighbors,
8 one thing I've always heard is are they going to be using Jake Brakes going
9 down that hill? That, you know, that's going to be rather noisy for the
10 neighbors.

11 EHRLICHMAN: Uh-huh. Um, but there's a straightaway there of almost 500 feet
12 between the proposed mine entrance and your driveway?

13 MCLEOD: Yes.

14 EHRLICHMAN: Um, and I don't know what speed the trucks would get up to, at
15 that point of your driveway, but I guess my question was, do you think that
16 some type of speed limit, until they get through your driveway and the S-
17 curves would be appropriate?

18 MCLEOD: Possibly. I would think that by the time they're getting close to
19 my driveway, they're going to be slowing down to go down that hill. That's,
20 this is my, my concern is trucks going up the hill are going slower. Trucks
21 going down the hill with that heavy load will probably be slowing down at my
22 driveway, so if you have too many truck, I'm going to, to get out of my
23 driveway, I'm going to have to take a chance and be quick, try and get...

24 EHRLICHMAN: Uh-huh.

25 MCLEOD: In front of it.

1 EHRlichman: Uh-huh.

2 MCLEOD: Whatever.

3 EHRlichman: And it, and when you say you, you mean also your, your wife...

4 MCLEOD: Everybody, everybody that either comes to visit or my wife, my

5 grand, my grand, um, you know, my daughter, whoever comes up, it will be...

6 EHRlichman: Okay.

7 MCLEOD: The same thing.

8 EHRlichman: Okay. Great. Um, unless you have something else to add, I think

9 that concludes, um, our testimony right now, Mr. Examiner.

10 REEVES: Great. Um, I think we can probably take the map off, unless

11 someone else needs it. But I, I figured I'd go to Mr. Loring next, to see if

12 he had questions of this witness?

13 LORING: Uh, I don't have any questions. Thank you, Mr. Examiner.

14 REEVES: Okay. Uh, Mr., uh, D'Avignon, any questions on behalf of the

15 County?

16 D'AVIGNON: Uh, no, Mr. Examiner.

17 REEVES: Okay. Uh, cross-exam, uh, from Bill Lynn?

18 LYNN: None.

19 REEVES: Okay. Well, no redirect necessary. Uh, so, Mr. Mcleod, thank you

20 so much for being here today. I think we can release you to, uh, go back to

21 the job I'm jealous of. I, I want to be a caretaker on a property, uh...

22 MCLEOD: You should be. It's a great job. Okay. Thank you.

23 REEVES: Thank you.

24 EHRlichman: Thank you, Neil.

25

1 REEVES: Okay. And so, Mr. Ehrlichman, that takes care of the witness you
2 needed out of order, correct?

3 EHRLICHMAN: Thank you so much.

4 REEVES: Okay. Then, we'll go back to Mr. Lynn. Bill, you're muted again.

5 LYNN: One of these days, I'm going to get that right. Uh, I'd like..

6 REEVES: It's becoming shtick. I mean, it's the same joke every time, I
7 love it. But right ahead.

8 LYNN: Uh, and, i-, ironically, I'll be calling our noise expert,
9 Kristen Wallace.

10 REEVES: That was, that was low hanging fruit. All right.

11 LYNN: Sorry.

12 REEVES: No, that was great. I'll get her sworn in. Do you swear or affirm
13 to tell the truth in the testimony you give here today?

14 WALLACE: I do.

15 REEVES: And if you could state and spell your name for the record?

16 WALLACE: Kristen Wallace, uh, K-r-i-s-t-e-n, last name is W-a-l-l-a-c-e.

17 REEVES: Thank you so much. Go head.

18 LYNN: And could, uh, thank you. Kristen, could you tell us, briefly,
19 what your area of expertise is?

20 WALLACE: Yes. My specialty is Environmental Noise, which would be noise
21 from traffic, industry, et cetera.

22 LYNN: Okay. And how long have you been analyzing that?

23 WALLACE: Approximately 29 years.

24 LYNN: Okay. And have you, in that period of time, done other surface
25 mines?

1 WALLACE: I've done multiple surface mines.

2 LYNN: Okay.

3 WALLACE: Numerous.

4 LYNN: Uh, have you done, uh, very many surface mines in which all that
5 was proposed is excavation without, uh, other associated activities like
6 crushing and asphalt batching and those sorts of things?

7 WALLACE: Yes, I have.

8 LYNN: Okay. Is that a common occurrence?

9 WALLACE: Um, not as common as the full, the full processing, but it's, it
10 varies.

11 LYNN: Okay. And, uh, could you describe the work that you did, uh, on
12 the Grip Road mine?

13 WALLACE: Sure. So, to conduct a noise analysis, and we took the same steps
14 here, we, um, review the mine plan, we look at, uh, aerial maps to identify
15 nearby sensitive receive, generally residences, uh, schools, if there's
16 nearby schools, that type of thing. Um, look at the mining plan, um, identify
17 the equipment that might be used for the mine and the, the, the direction of
18 the mine, the mine phasing. Um, and then we also characterize the background
19 sound levels in the surrounding communities or at the surrounding residences
20 with sound level measurements. Um, then, we will use a noise model called
21 Can-A [phonetic], in which we put in the topography, it's a 3-D map,
22 basically, that includes topography, includes the location and sound levels
23 of the noise sources. In this case, that would be dozer, a loader, an
24 excavator and trucks. Um, identifies the location of nearby, what we call
25 receptors, model receptors, which are often, uh, the nearest sensitive

1 receivers. Um, we, and then we use this model to estimate sound levels from,
2 from the mine at the nearest receivers, the, the model receptors. The next,
3 oh, go ahead.

4 LYNN: Uh, well, so, are you, in, in the course of doing this, are you
5 aiming at a particular standard or measure that is, uh, the subject of your
6 measurements?

7 WALLACE: We typically do two things, the first is to, uh, identify the
8 applicable noise limits. Uh, in Skagit County, that would be, uh, they would
9 apply the, the Washington State, what I refer to as the WACK [phonetic] noise
10 limits. Um, and then we, and that would be based on the characterization of
11 the, the lands surrounding the property, or the mine site. And we will also
12 often, um, look at, at, at sensitive receivers at residences, we will compare
13 the mining sound levels to the background sound levels that were measured.

14 LYNN: Okay. Um, and just so that we have this for the record, you, you
15 completed a report, uh, dated November 21st, 2018, characterized as an updated
16 noise and vibration study, is that, um, that your work?

17 WALLACE: Correct.

18 LYNN: Okay. That's...

19 WALLACE: It was done when I was with, uh, a different firm, but it was
20 work that I did.

21 LYNN: Okay. And you're currently with what firm?

22 WALLACE: Landau...

23 LYNN: Okay. And...

24 WALLACE: Associates.

25 LYNN: And, and at the time, you were with Ramboll and Associates?

1 WALLACE: Correct. Correct. Ramboll Consulting.

2 LYNN: Okay. Um, let me just get the, the Exhibit Number for the, uh,
3 that's Exhibit 24 on the Special Use Permit list of Exhibits. Um, so what
4 assumptions do you make about the operation? You mentioned several different
5 pieces of equipment, uh, I think a loader and excavator and trucks and maybe
6 even, uh, something else, uh...

7 WALLACE: A dozer, as well.

8 LYNN: Okay. So, uh, what assumptions do you make about them operating
9 at the same time?

10 WALLACE: We assume that they're operation, um, not at the exact same
11 location because they do tend to be spread during the mining activity, but in
12 a general same region of the mine, um, concurrently and constantly over at
13 least the course of an hour because the noise limits are based on an hour.

14 LYNN: Okay. Is that...

15 WALLACE: And...

16 LYNN: I'm sorry, is that intended to reflect likely conditions or
17 conservative conditions?

18 WALLACE: It's worst-case.

19 LYNN: Okay.

20 WALLACE: It is, it would be unusual for all of these, uh, all of the
21 equipment to operate consistently over, over that time period.

22 LYNN: Um, so over the course of the mine they'll be excavating, how
23 does that get taken into account in the noise modeling?

24 WALLACE: You would look at, um, the various, well, the, the equipment
25 would operate in different portions of the site. And so we would consider the

1 noise levels when they're operating in, in both the northern half, let's say,
2 and the southern half, also while you mine, you'll be mining, you know, phase
3 one first and then you'll create a little bit of a, a little bit of a, a
4 berm. It will be a depression and then you'll continue into the second phase
5 and then the third and the fourth.

6 LYNN: Okay. And, and so what assumptions does the noise, uh, do you, do
7 you consider it, uh, the noise as if it were all generated from the top of
8 the pile or does that change, uh, as you excavate into a depression?

9 WALLACE: In, in this case we looked at it, um, we chose a more
10 conservative assumption where we were assuming basically that the overburden
11 had been removed and so we're still near the top of the, the existing
12 elevation, not exactly at the top of the elevation, but near it. So, we
13 hadn't actually built into this particular model, um, that more realistic
14 scenario where most of the equipment would generally be operating at a lower
15 elevation.

16 LYNN: And, and what happens then when you operate at a lower level? How
17 does that effect noise?

18 WALLACE: You have more intervening terrain that would reduce levels at..

19 LYNN: Okay.

20 WALLACE: Distant locations.

21 LYNN: So, again, that assumption would be a conservative one, then, uh,
22 by measuring at the top of the pile, rather than the bottom of the
23 depression?

24 WALLACE: Correct.

25

1 LYNN: Okay. And what were your, uh, conclusions about the impacts here?
2 Where would we find those in your report?

3 WALLACE: The con-, uh, the conclusions were that the, the sound levels
4 during the mining, both, uh, we looked at a southern scenario and a, and a
5 northern scenario, so where we put the equipment. Um, at all of the nearby
6 residential receiving location, the receptors, which are displayed in, let's
7 see, Figure 1 on Page 6. I'm reviewing, um, uh, a report of October 7th. So
8 I'm not sure that I'm re-, looking at the most current.

9 LYNN: Uh...

10 WALLACE: But it should still be Figure 1.

11 LYNN: Okay.

12 WALLACE: And it shows the, the model receptor locations. And at all of
13 these locations representing the nearest sensitive receivers. We find that
14 the, the noise limits, um, the modeled sound levels are all quite low.
15 They're all well below 50 decibels, which would be the noise limit applied to
16 a residential receiver from a mining operation like this, um, at night and,
17 and very much below the 60 decibels that would be applicable during daytime
18 hours. And daytime hours as defined as 7:00 a.m. to 10:00 p.m.

19 LYNN: In, in fact, your report actually says it would expect it to, it
20 would be expected to easily comply with the standards, is that the term you
21 used?

22 WALLACE: Correct.

23 LYNN: Okay.

24 REEVES: Sorry, break in one second just to make sure I understand. When
25 you talk about these receptor locations, at least my understanding WACK, it's

1 not the home itself, it's the, the outer limit of the property, is that
2 accurate?

3 WALLACE: That is accurate.

4 REEVES: Okay.

5 WALLACE: And, and Bill and I were, he asked me this question yesterday and
6 so I looked into it. The, the properties directly adjacent to the mine site,
7 um, to the west, north and east are, are either, um, rural resource with
8 mineral overlay or agricultural properties. And, and for those, one, there's
9 no sensitive receivers right on the boundary, and two, those types of, of
10 land uses, uh, forestry and agricultural are considered, uh, a different
11 class of, of property when you apply the WACK noise limits, they're actually
12 considered Class C EDNAs and the, the noise limit 24 hours per day, at those
13 properties is 70 decibels. And I did not...

14 REEVES: So, sorry...

15 WALLACE: I did, I did not consider those in the original analysis.

16 LYNN: But they're subject to a higher standard. And would the proposal
17 with your modeling, meet that higher, the, the higher noise level at the
18 property line?

19 WALLACE: Yeah. And after your, your questioning of, of that, I did review
20 the model and look at that particular scenario and those property boundaries
21 and they will, I, I would expect the mining to comply with the 70 decibel
22 limit at those particular locations.

23 LYNN: Okay. And then, it will comply with an even lower standard, a
24 less noise standard at the actual receivers?

25

1 WALLACE: At the actual receivers, yes. At the actual residences. I, I will
2 note that, uh, it might be more information that is needed, for parcels that
3 are agricultural or forestry or mineral overlay, that are considered Class C,
4 uh, ENDA receivers under WACK, even the residences on those, um, parcels
5 would be subject to a noise limit of 70 and not the stricter 60 during the
6 day and 50 at night. But for those residential receivers, I applied the, the
7 stricter, um, Class A EDNA noise limits. That, at, at those particular
8 locations.

9 LYNN: And, and what did you find, uh, about whether they met that even
10 stricter, no applicable standard?

11 WALLACE: Oh, as we, we just discussed, they easily met that stricter
12 standard.

13 LYNN: Okay. And then you also completed a vibration impact analysis, is
14 that something that you, uh, normally do in association with a mine?

15 WALLACE: It's, it's not typical, no.

16 LYNN: Okay. And do you know why it was done in this case or why you
17 were asked to do it here?

18 WALLACE: Because of, uh, there were comments on that, there was, uh, a
19 request to look at it.

20 LYNN: Okay. Um, and so, uh, what were your conclusions about vibration
21 impacts?

22 WALLACE: We've, um, the conclusions was that there were not be, expected
23 to be vibration impacts, even with, um, even if there were, uh, a large
24 number of, of pass bys, um, I think it was over 70, um, pass bys would, would
25 result, using the FTA tr-, uh, Traffic Impact, Vibration Impact, sorry,

1 Transit Vibration Impact Criteria, they look at vibration, um, impacts based
2 on the number of events that might occur during, uh, a day or an hour and,
3 and our review, uh, assumed that there would be very frequent events. And
4 even with very frequent events, which would be, uh, as the entire traffic
5 discussion was going earlier, there would be less than, um, very frequent
6 events. But it would even not identify as a, as it's going to impact as a
7 vibration impact.

8 LYNN: So, I'm sorry, you kind of broke up a little bit, so there would
9 not be significant impact, even with, uh, uh, a higher number of pass bys?

10 WALLACE: Correct.

11 LYNN: Okay. That's, that's all I have for the witness. Thank you.

12 REEVES: Okay. Um, I will go to, Mr., uh, D'Avignon next to see if he has
13 any questions. If I keep butchering your name, I apologize. I just can't seem
14 to get it right.

15 D'AVIGNON: I think you just got it right. But I do not have any questions
16 for Ms. Wallace.

17 REEVES: Then, I'll go to Mr. Loring next.

18 LORING: Thank you, Mr. Examiner. I've got a few questions for you, Ms.
19 Wallace. Uh, I, I just want to dive in, I want to briefly talk about what I
20 believe was not studied here and then I'll talk about your study, just a few
21 questions on that, too. So, uh, you didn't study the noise impact of the
22 truck and trailer hauling the gravel material from the site, did you?

23 WALLACE: Not off the site. I, I, I included it on the onsite, uh, roadway.

24 LORING: Okay. The private haul road, but not once you get to the public
25 road?

1 WALLACE: Correct.

2 LORING: Okay. That actually takes care of a few of these and your study
3 doesn't actually identify the impacts at the property lines themselves, does
4 it? I heard you talking a moment ago on your direct testimony about, um,
5 noise and vibration or noise, I believe, at property lines. But the study
6 doesn't actually evaluate that, does it?

7 WALLACE: Correct. We, we looked at that, I actually looked at that just
8 yesterday, um, in response to a request. Um, we typically focus on, like,
9 sensitive receivers and the surrounding, the property surrounding our, you
10 know, forestry with mineral overlay or agriculture. So we did not consider
11 those.

12 LORING: Okay.

13 WALLACE: In, in the original report.

14 LORING: Okay. And then the residential receptor, that's the houses, is
15 that what you're considering a residential receptor?

16 WALLACE: Correct.

17 LORING: Okay. Um, your report, just, uh, briefly, we're moving right
18 along, but your report did identify sound levels above 70 at a distance of
19 100 feet, right, for several of the different items that would operating
20 there? Or made that assumption? Here, I'll, I'll, rephrase that, uh, just to
21 make sure we're not confused.

22 WALLACE: Thank you.

23 LORING: You were talking about your repor-, your report a moment ago and
24 I think I'm also looking at that November 21st, updated version of it. Um, but
25 at page, I, I don't think they are dramatically different. At Page 8 here...

1 WALLACE: Okay.

2 LORING: It mentions that the loader, excavator and dozer were assumed to
3 have, uh, 75, 75 and 76 DBA noise levels at a distance of 100 feet. Does that
4 sound familiar, familiar?

5 WALLACE: It does. That's correct.

6 LORING: Okay. And so if those were operation 100 feet from a property
7 line, the assumption is that there would be, uh, noise levels of 75, 75 and
8 76 for those, those, that equipment?

9 WALLACE: If they were operating, um, yes, consistently, concurrently and
10 at a 100 feet, with no intervening terrain, um, you know...

11 LORING: Okay.

12 WALLACE: Yes. That would be correct.

13 LORING: And you said concurrently, but I read this as individual noise
14 levels coming from each of those pieces of equipment, is that right?

15 WALLACE: Individual, correct. That's correct.

16 LORING: Okay. Uh, just a second here, just checking, uh, those are, uh,
17 do I, let me, no, those are all questions. Thank you very much.

18 WALLACE: Thank you.

19 REEVES: Okay. Um, this is not a traffic specific matter, but Mr.
20 Ehrlichman, just to be clear, am I correct in thinking [inaudible] is not
21 what this witness is testifying about.

22 EHRlichMAN: Appreciate the curtesy, uh, uh, standing, uh, disclaimer not to
23 participate in other expert witnesses, unless they're traffic. Thank you.

24

25

1 REEVES: And I appreciate how straight forward that was. I know how
2 difficult it can be, we all want to hop in. Thank you. So, Mr. Lynn, do you
3 have any, uh, redirect?

4 LYNN: Uh, one, one question, um, Ms. Wallace, you, um, we, we talked
5 about the WACKS, that's Chapter 173-60, correct?

6 WALLACE: Uh-huh. Correct.

7 LYNN: And, and Mr. Loring asked you about trucks, uh, on the public
8 roads, how does that, uh, regulatory scheme address trucks on public roads?

9 WALLACE: Uh, noise from trucks traveling on public roads or any traffic
10 traveling on public roads is exempt from these noise limits.

11 LYNN: Okay. That's all I have. Thank you.

12 REEVES: Okay. I think we are done with, uh, Ms. Wallace, thank you so
13 much for being, uh, sorry, Mr. Loring did you have something? I'm trying to
14 be as...

15 LORING: Just one quick question on that, um, Ms. Wallace, you're not
16 testifying about whether noise impacts of, uh, tr-, these trucks traveling on
17 roads are except from SEPA are you? The State Environmental Policy Act?

18 WALLACE: No.

19 LORING: Okay. Thank you.

20 REEVES: And my question, to clarify that, you specifically meant those
21 standards that are in the WACK?

22 WALLACE: Correct.

23 REEVES: Thank you.

24 WALLACE: Exactly. Thank you.

25

1 REEVES: Okay. Um, all right. Looking here, I think that was Mr. Lynn's
2 fifth witness, if I numbered correctly. Uh, and who would you be calling
3 next?

4 LYNN: Well, the n-, the next one I was planning to call was, uh, Ms.
5 Potter at, uh, quarter at, at 1:00. But I can, our, my final witness is going
6 to be longer, that's John Semrau and so if we want to get started with him,
7 that's fine. Or if, of if we're going to take a break now, I know it's way
8 early, but, uh, it's up to you.

9 REEVES: Well, well, let me clarify, was it Monday I essentially said, I'd
10 be okay to go to 5:00. Did folks agree on that? If we're going to 5:00, I
11 don't think I think it would be quite early for our lunch break. But I also
12 want to verify that folks are able...

13 LORING: Uh, Mr. Examiner, uh, you mentioned going longer than 4 o'clock
14 and, and I can do that, but I've got a hard stop at 4:30 p.m.

15 REEVES: Okay. Can everyone go to 4:30? And let me ask Mona Kellogg first,
16 'cause, you know, if staff can't accommodate us, then it's a moot point.

17 KELLOGG: Yes. We can go as long as you like.

18 REEVES: Well, 4:30 was the hard top, thank you, Mr. Loring. Friday before
19 a holiday, I don't want to go too long, but thank you, we appreciate it.
20 Okay.

21 [Inaudible section.]

22 REEVES: I think something is [inaudible].

23 LORING: Bill, I think that's you. Maybe not.
24
25

1 REEVES: Was it Bill? Okay. Is, is that the big, uh, reveal he's actually
2 been on Grip Road the entire hearing and he's, like [inaudible] no, I'm
3 kidding, but, uh, Mr. Lynn, 4:30 okay with you?
4 LYNN: Yes. I was trying to nod.
5 REEVES: There you go. Jason D'Avignon, is that okay?
6 D'AVIGNON: That will work for me.
7 REEVES: And Mr. Ehrlichman?
8 EHRLICHMAN: That's just fine, thank you.
9 REEVES: Okay. And we don't have to. I just, I wanted to put it on the
10 table, um, but, okay. So, the thought is you have two witnesses left, is that
11 right, Mr. Lynn?
12 LYNN: Yes.
13 REEVES: Okay. So you certainly had identified the potential for more.
14 LYNN: I can find more if..
15 REEVES: No, no. I'm not asking for more, but I, I suspect there might be
16 other Attorneys in the Zoom universe with us that, you know, were hoping to
17 hear potentially from some of the others. So, which is always sort of a
18 tricky thing, but..
19 LYNN: Yeah. I've, I've not heard that. Uh, the only thing I heard about
20 was traffic, which we've completed, so..
21 REEVES: Okay. Okay. So, you're..
22 LORING: I'll, I'll follow up in response and say that, uh, CSVN is not
23 anticipating needing to hear from other witnesses that were identified by Mr.
24 Lynn.

25

1 REEVES: Thank you. That is super helpful. Mr. D'Avignon, any thought
2 there?
3 D'AVIGNON: Uh, there's nobody that I would, I'm dying to hear from.
4 REEVES: And Mr. Ehrlichman?
5 EHRLICHMAN: Um, uh, I'd be in favor in bringing back the, uh, traffic
6 witnesses and, and, uh, the Applicant so I can ask them more questions. But I
7 don't think that's what you're asking me, so, no.
8 REEVES: No. That's not what I'm asking. Was, was there anyone identified
9 on the list...
10 EHRLICHMAN: No, I'm sorry, no.
11 REEVES: Okay. That was, thank you. Um, great. So, I think, then, I would
12 prefer to kind of put, put another hour in and, and then we'll take our lunch
13 break. And then hopefully that times out pretty well for your 1 o'clock
14 witness.
15 LYNN: Great.
16 REEVES: Excellent. Okay. So, your next witness is?
17 LYNN: John Semrau.
18 REEVES: Okay. And Mr. Semrau. Hi, I'll swear you in. Do you swear or
19 affirm to tell the truth in the testimony you give here today?
20 SEMRAU: I do.
21 REEVES: If you could state and spell your name for the audio recording?
22 SEMRAU: It's John, middle initial B. Semrau, J-o-h-n Semrau, and S-e-m-r-
23 a-u.
24 REEVES: Thank you. Go right ahead, Mr. Lynn.

25

1 LYNN: So, uh, Mr. Semrau, could you tell the Hearing Examiner how you,
2 uh, have been involved in this project and over what time period?

3 SEMRAU: Well, I began, I was contacted by then Concrete Nor'West, uh,
4 back in May of 2013, uh, to begin, uh, work on this project. I've worked on
5 several other mines for them.

6 LYNN: Okay.

7 SEMRAU: Uh...

8 LYNN: And Mr. Semrau, I kind of skipped over the, your professional
9 qualifications. Could you tell the Hearing Examiner what your profession is?

10 SEMRAU: I'm a Licensed Professional Civil Engineer and Licensed
11 Professional Land Surveyor. Um, I have my own firm, Semrau Engineering and
12 Surveying. I've been here for 36 years. Um, our firm was started in 1979.
13 I've worked on, uh, seven mining Special Use Permits in Skagit, Snohomish
14 County and 14 different mine and three landfills in Skagit, Snohomish and
15 Whatcom Counties.

16 LYNN: Uh, do you do work for, uh, public, uh, agencies as well?

17 SEMRAU: Yes, I do.

18 LYNN: Can you tell us briefly what that comprises?

19 SEMRAU: So, uh, a lot of my work is I'm District Engineer for Dike
20 District 12, uh, I also perform those duties for other dike and drain
21 districts. I've worked for most of the dike and drain districts in the
22 Skagit. Uh, I also have, since the start of my career, done a lot of peer
23 review. Um, I continue to do peer review, uh, for City of Anacortes and City
24 of Oak Harbor. I've been the City of Oak Harbor, uh, City Engineer, uh, three
25 different times in the last six years, um, as a consultant and I continue to

1 do most of the project plan review for them as well as surveying and other,
2 um, technical work for them.

3 LYNN: Okay.

4 SEMRAU: My firm has represented Mount Vernon and Burlington as City
5 Engineers, also.

6 LYNN: And, and could you tell the Hearing Examiner just broadly what
7 your role was in this project?

8 SEMRAU: So, my role has been preparing the mining Special Use Permit
9 Application, preparing the surveying work, um, the maps of the, uh, the map
10 exhibits for the Application. Um, and as well as helping with coordinating
11 the sub-consultants on the project.

12 LYNN: Okay. Um, just, uh, off, off the bat here, there was some, uh, I, I
13 think this may have clear from the Staff, uh, Report, but there was some
14 different numbers used for the size of the mining parcels, could you confirm
15 the clarification that the three parcels are 68 acres in size and the actual
16 cleared area is 51 acres in size? Is that accurate?

17 SEMRAU: That is accurate. Yes. The, the three parcels, uh, that encompass
18 the mine, uh, measure to the center line of the river from the 2011 aerial
19 survey or SID file that we get from the County. Uh, we measure that as 68
20 acres. And then the, the mine itself and the clearing area for the forest
21 practices, as well as the mine is 51 of those acres.

22 LYNN: Okay. Um, so, uh, I understand you've been to the site, could you
23 tell your, uh, the Examiner when you started visiting the site?

24 SEMRAU: When I first visited the site on May 15th, 2013, was the first day
25 that I visited the site.

1 LYNN: Okay. And did you have, uh, observations about the haul road at
2 the time?

3 SEMRAU: I did. Yeah. That was one of the first things that I pointed out.
4 I, I made that visit with Dan Cox with Miles Sand and Gravel, uh, and my
5 first observation was that the road was quite a bit larger than I
6 anticipated. Uh, it had about a 28 to 30 foot bed with ditches laid outside
7 of that. It was, um, and so I specifically requested of him, you know, what,
8 asked him why th-, it was a much larger roadway than just a forest road. And
9 he later produced, um, plans for me, development plans from the previous
10 owner, Trillium, for, for the property.

11 LYNN: And did you find that to be unusual, uh, for the forest practice
12 use? Different from what you had seen in your experience?

13 SEMRAU: Um, for forest practices, yes. But once I realized who had been
14 the former owner, no, it didn't surprise me at all.

15 LYNN: Okay. And, and what about that led you to that conclusion?

16 SEMRAU: Well, that, that company was well-known for doing, um, logging
17 and then developing properties into housing developments.

18 LYNN: Okay. Um, and are you familiar with the work that has been
19 discussed in this proceeding, uh, that Miles, uh, completed during its
20 ownership, the work on the haul roads?

21 SEMRAU: Could, could you...

22 LYNN: Are you familiar, are you familiar with the work that Miles has
23 done on the haul road since it acquired the property?

24 SEMRAU: Yes, I am.

25 LYNN: Okay. And how would you describe the work that was completed?

1 SEMRAU: Uh, they, they basically just resurfaced or removed the grass and
2 brush, um, they didn't, uh, clear any new areas. Uh, they just basically
3 cleaned up the road bed that was there. They didn't move any of the ditches.
4 The ditches remained where they had been originally established. Uh, they
5 removed a few trees from the north end. Uh, I wasn't aware between, I got
6 that from Brad's testimony. Um, I wasn't aware of that. I, I didn't realize
7 they had done any tree removal at all in the work that they did in, in
8 resurfacing the, um, the all-weather road surface there.

9 LYNN: Okay. And did you complete a, uh, an as-built of the road, uh, as
10 it presently stands?

11 SEMRAU: Yes. We did. And my surveyors performed that work. And..

12 LYNN: Uh, and..

13 SEMRAU: [Inaudible.]

14 LYNN: And do you know, uh, that's, there's an Exhibit 9 that says
15 private internal road as built. Is that, would that be descriptive of the
16 work you did?

17 SEMRAU: Yeah. In the County Exhibits, it's Exhibit Number 19.

18 LYNN: Okay. Uh, are you aware of any alteration of the drainage that
19 occurred as part of that work, uh, that Miles did?

20 SEMRAU: I wasn't aware that they had altered any drainage with that work.
21 Um, but I also wasn't aware of where they maybe changed culverts and things
22 because I hadn't studied the road until, we did the as-built, we really
23 didn't look in detail at that roadway. It was more than sufficient for what
24 was proposed for the mine.

25

1 LYNN: Okay. Were you involved in identifying the ordinary high water
2 mark, uh, that Mr. Graham testified about?

3 SEMRAU: Yes, I was. I was, I was present that day when he identified the
4 wetlands in that area.

5 LYNN: Okay. And did, was the, uh, ordinary high, or the, the tow of the
6 slope, uh, marked in any fashion during your site visit?

7 SEMRAU: We, I took some GPS measurements on it. We had previously
8 identified the tow of the slope with our LiDAR work. Um, he'd marked some
9 places there, the wetland edge, I took some GPS measurements on that, um, and
10 later compared that in the office. And then we, we plotted those lines at the
11 tow of the slope on the maps.

12 LYNN: So, uh, is it fair to say that the plotting that was done as part
13 of the record here was based on GPS and LiDAR information?

14 SEMRAU: That is correct.

15 LYNN: Okay. And is that noted on the drawings that you submitted to the
16 County?

17 SEMRAU: It is noted on the drawings.

18 LYNN: Okay. Uh, I'm going to turn to the drawings in a minute, but did
19 you do anything to, um, check the validity of the, uh, the LiDAR and GPS
20 coordinates so that you could, uh, uh, have, um, believe that you were
21 relying on solid information?

22 SEMRAU: Well, the, the GPS coordinates that we used, uh, further west on
23 the site, some of those were verified with field survey. So, with, um,
24 traverse data. But, uh, most of our work was based on GPS observations. Uh,

25

1 we did traverse two property corners and we do have a ground survey network,
2 as well as the entire haul road now, so...

3 LYNN: Okay. But, but the actual tow of slope is not surveyed, you've
4 just checked it with some, some points of actual survey?

5 SEMRAU: The, the survey work for the tow of the slope was based on the
6 GPS coordinates that I took, uh, my observation and then the LiDAR data.

7 LYNN: Okay. Can you identify, uh, in the record, where we would find a,
8 a good depiction of your, uh, identification of the, the or-, the tow of the
9 slope?

10 SEMRAU: Yes. So, that's County Exhibit Number 40 and that's found on Page
11 11. Is the, is the most current version of that map.

12 LYNN: Okay.

13 SEMRAU: And would you like me to share that or just...

14 LYNN: Uh, that would be nice if we could give Jason a rest here, so,
15 yeah.

16 SEMRAU: Yeah. Let me pull that up.

17 LYNN: Well, that way you could point to it as well, so...

18 SEMRAU: Okay. Let's see, oh. All right. Are you able to see that?

19 LYNN: Yes. It's a little small, um, so I don't know whether you can
20 enlarge that, uh, or direct us more specifically to...

21 SEMRAU: I'll, I'll make it a little bit larger here. Okay. So, can you
22 use my curser and, uh, just above the bar scale on the map?

23 LYNN: Uh, I can, yes.

24 LORING: I can as well.

25

1 SEMRAU: So, right there it says wetland at tow of slope from LiDAR data
2 and field observation on 3/26/15.

3 LYNN: Okay.

4 SEMRAU: So, that, this line here is, uh, a depiction of the wetland or
5 mean high water mark and, and showing the 200 foot from that, uh, associated
6 wetland, this also being, um, a wetland edge, showing the 200 foot. There's
7 actually an upland island right here. Um, and...

8 LYNN: So, you're...

9 SEMRAU: An upland peninsula down here. But, uh...

10 LYNN: Okay. So, so, you're, you're, um, you're showing the, the
11 boundary of the wetlands and then you're showing islands or upland islands
12 waterward or towards the river from those two locations where, where the
13 wetland boundary is noted?

14 SEMRAU: Uh-huh. Yeah. It's not, it's not a continuous wetland edge there.

15 LYNN: Okay.

16 SEMRAU: We treat it...

17 LYNN: So, there...

18 SEMRAU: We treated it as it was, but, um, it's not, it's not 100% wetland
19 down there.

20 LYNN: Okay. So, it, from your observations, was the wetland either
21 marked by the edge of the two of the slope or riverward of that point?

22 SEMRAU: All of the wetland was riverward of the tow of the slope.

23 LYNN: Okay.

24

25

1 SEMRAU: And we very specifically, on each one of these areas, went to the
2 tow of the slope and walked those tows of the slope to verify that that was
3 the case and, and we all, all three of us participated in that.

4 LYNN: Okay. Is the, uh, the top of the ridge, uh, marked either on this
5 drawing or another drawing?

6 SEMRAU: No, it's not marked on the top of the ridge. It was, uh,
7 identified, uh, by a Licensed Professional Geologist or a Licensed, uh,
8 Engineering Geologist. It was, the location was identified by GPS as well as
9 verified by survey. But it not showing on these, on this set of maps because
10 the, uh, it, in the final versions, it didn't play into the location of the
11 mine.

12 LYNN: Okay. So, uh, so why was the, the ridge top identified by an
13 Engineering Geologist?

14 SEMRAU: Because that's the proper way to do it, according to the WACK
15 RCWs, as well as the County Code. So, that is the person that is qualified to
16 do that. I'm not able to do that myself. Uh, I can survey that location and,
17 and map it and that's my role. So, it was something we had done early on, um,
18 and I had it written down on the day that we did it, uh..

19 LYNN: I'm not, I'm not sure the day he did it matters. I guess the, my
20 question is, uh, was the, was the top of the ridge identified and will the
21 mining occur, uh, on the non-river side of that ridgeline? That is within
22 the, within the ridge, if you will, or inside of that property?

23 SEMRAU: All of the, all of the mine area is landward of the top of the
24 slope. Um, if you look on this drawing, this is the top of the, the mine. The
25 top of the..

1 LYNN: Okay.

2 SEMRAU: Slope is out, is towards the river.

3 LYNN: Oh, okay. And so which drawing are you looking at? It's still
4 part of Exhibit 40, but are we on Page 12?

5 SEMRAU: We're on Page 12.

6 LYNN: Okay. And so, does that depict the, the ridgetop?

7 SEMRAU: It does depict the ridgetop.

8 LYNN: Okay. But your testimony is that all of the mine activities are
9 landward of the ridgetop?

10 SEMRAU: Yes.

11 LYNN: Okay. Uh, there was some testimony, uh, earlier about the
12 issuance by the County of a forest practices conversion permit. Uh, was that
13 conversion permit, if you know, based on a 200 foot, uh, setback from the
14 wetlands and the river?

15 SEMRAU: It was on this same setback line that's showing on this map in
16 front of us here. The 200 foot setback from the associated wetlands.

17 LYNN: Okay. So, with that permit in hand, the Applicant could have
18 taken trees up to the 200 foot setback?

19 SEMRAU: The mining, the Forest Practices Conversion Permit was approved.
20 The Applicant went ahead and made that Application of the DNR, received the
21 permit, but then they chose not to remove the trees and the permit expired.
22 Uh, and they did receive their permit to do the work, they just chose to wait
23 until this process was complete.

24
25

1 LYNN: Okay. Um, have you seen, um, written comments or testimony about the
2 need to increase the buffer, uh, by 25 feet in certain locations based on
3 topography?

4 SEMRAU: Yes.

5 LYNN: And are you familiar with the provisions of the County Code that
6 address that subject?

7 SEMRAU: Yes.

8 LYNN: Okay. Could you tell us, generally, what the requirement is,
9 those, where we would have, uh, locations where, uh, the established buffer
10 would have to be enlarged, under that provision?

11 SEMRAU: Sure. Can I, can I show a different exhibit?

12 LYNN: Uh, why, why, why don't you tell us what it is and then we can
13 look at an exhibit and then we can discuss whether or not it's, uh, admitted.
14 But I'd like your words first to sort of..

15 SEMRAU: Sure.

16 LYNN: Describe the scenario.

17 SEMRAU: Oh, I, I, I, I, based on that, those comments, I looked at our
18 survey, um, and flagged location of the top of the bank and I looked at the
19 effect of that additional 25 feet and I did find where there was 1873 square
20 feet of the proposed mine area that is within that, within that buffer and
21 it's right by this, uh, B2, uh, oracle, this cul-de-sac here.

22 LYNN: So, let's, let's just stop there. So you're looking at Exhibit
23 40, Page 12 now?

24 SEMRAU: I'm looking at, yes, Exhibit 40, Page 12.

25 LYNN: Okay.

1 REEVES: I'm sorry, real quick. Sorry.

2 LYNN: Yeah.

3 REEVES: Just because it can get confusing with numbers, can you give me
4 the sheet number, instead of a page, because I don't see a page number on
5 here.

6 SEMRAU: Okay. So it's Sheet...

7 REEVES: B4 of 7.

8 SEMRAU: It's B4 of 7, but it's important that it's the May 2nd, 2019
9 version.

10 REEVES: Yeah.

11 SEMRAU: Every County Exhibit includes the old, original versions, not the
12 final vers-, the final versions are always at the end of the PDF. So, this is
13 the, this is the final version of this sheet.

14 REEVES: Thank you.

15 LYNN: And you've identified a location near Point B2, uh, I see kind of
16 going north and south there, uh, hard lines that present the topography, is
17 that accurate, or the, the finished topography? Proposed topography?

18 SEMRAU: This line right here?

19 LYNN: No, I was talking about the, the, the lines that are run parallel
20 to one another.

21 SEMRAU: These, these are the mi-, these are the reclamation contours
22 right here. So these, these are the areas where it's cut.

23 LYNN: Okay. And then underneath that, there's a dash line, I'm trying
24 to get clarification as to what you call the cul-de-sac. There's a dashed
25 line that runs up into the middle of that cut slope...

1 SEMRAU: Yeah.

2 LYNN: And I'm, that, that's my question, what is that?

3 SEMRAU: Well, this is, uh, a turnaround or a landing that they used when
4 they originally logged this property. It's also where we set up the bore rig
5 to drill the holes for the soil investigation.

6 LYNN: Okay. So, that's an existing road and an existing cul-de-sac and
7 it's in that location where you think there's this 1800 feet that would
8 require an expanded buffer?

9 SEMRAU: Yes.

10 LYNN: Okay. And have you prepared an Exhibit that depicts that 1800
11 square feet?

12 SEMRAU: I have.

13 LYNN: Okay. And could you put that up and I'm going to offer it as, uh,
14 an Exhibit, it's really, I guess, it's anticipate, it's a rebuttal, it's,
15 it's a rebuttal, uh, document and, uh, anticipating testimony that you
16 haven't, we're rebutting testimony you haven't heard yet, but...

17 REEVES: Uh, and let's just stop for one sec. If we can stop sharing so I
18 can see Attorneys.

19 LYNN: Okay.

20 REEVES: So, you're proposing this as what exhibit, at this point?

21 LYNN: Uh, our, our next number, I guess it would be C97, I've kind of
22 lost track, I think..

23 REEVES: Me, too.

24

25

1 LYNN: I'm not, it's not C, it would be B. Okay. Do I have any of the
2 other Attorneys that would like to make an objection to the allowing this
3 Exhibit into the record. If so, please raise your hand.

4 LORING: I don't have an objection to this.

5 REEVES: Oh, okay. I'm not seeing hands raised, so, I, I'll, I'll admit
6 it, uh, into the record. B97 we think. We'll sort out numbers later, but it's
7 admitted, you can continue to share.

8 SEMRAU: Okay.

9 LYNN: Okay. So, um, Mr. Semrau, could you just describe what the
10 characteristics are of this 1873 square feet that, that, um, are pertinent
11 here to this discussion?

12 SEMRAU: Uh, is it still shared?

13 LYNN: Yes.

14 SEMRAU: Oh, okay. I, I thought maybe it, the shared stopped. Okay. Um,
15 so, it's, it's outlined in green on the map here. Is that, is that area, this
16 shows the actual point data where we, the top was identified, uh, and this
17 line here identifies the additional 25 feet along here. So, and I did, I did
18 sign this version of the map.

19 LYNN: So, how did you differentiate this 1800 square feet from other
20 areas? Why, why did you determine that this was an area where an expanded
21 buffer would be required?

22 SEMRAU: Well, this would be an expanded buffer if we were expecting an
23 expanded buffer from the top of the bank. Uh, when we're working on mines, we
24 don't always hold to the top of the bank, we many times modify that bank. So,
25 uh, it's not uncommon for us to reduce the height of the bank. So, um, if, if

1 we went to this definition of the, of the boundary of the, of the mine, with
2 this additional 25 feet, this is all that's, that's effected by this
3 particular proposal. Um, but it's not uncommon for us to alter, uh,
4 geological hazard areas or slopes in mining.

5 LYNN: Okay. Um, did you prepare other documents, uh, relating to the
6 mine besides the, the, uh, reclamation plan and the perimeter surveying?
7 Yourself, your firm?

8 SEMRAU: Yes. Uh, well, we prepared the Vicinity Map Exhibit, which the,
9 uh, the most current version of that that the County made us revise is not
10 included in the, in the County's Exhibits. So, I will, I will mention that,
11 um, our exhibit, my, my exhibit, um, B83 includes only the final maps, uh, C0
12 through C6, um, but the, that Exhibit C0, which was the Vicinity Map Exhibit
13 was not included in the County's final exhibit. Our earlier version of the
14 map was included. There was one correction, which I don't recall what that
15 was, and then the additional of the haul road on that map exhibit.

16 LYNN: So, it's just your suggestion that if you want to make sure
17 you're looking at the most recent maps, you would look at those that are in
18 B83?

19 SEMRAU: Yeah. I, I, I assembled B83 of the original full-size, scans of
20 the full-size documents of the maps. And so it's a much higher resolution,
21 uh, you're not missing information that's on that map. And you can see line
22 work that you can't see, County scanned 11x17 versions of the maps and
23 they're not as clear as that Exhibit B83. But that is the, those are the
24 final versions of each map that we've submitted to the County. And each, each
25 map was modified just as the County had requested.

1 LYNN: Okay. Did you do any analysis of the storm drainage within the
2 mine site?

3 SEMRAU: I observed the storm drainage and, and there's very, very little
4 surface run off from this area. Almost, almost 100% of the runoff in this
5 area infiltrates today, uh, which is going to be the case, uh, once they
6 start mining, as well as in the future after reclamation.

7 REEVES: I'm sorry, real, real quick, Mr. Lynn, do we want to stop sharing
8 or share a different.

9 SEMRAU: Oh.

10 REEVES: I'm, I'm still seeing...

11 SEMRAU: Yeah.

12 REEVES: 1873 square feet.

13 LYNN: Yeah. I think we're done with that, I think, thank you.

14 SEMRAU: Okay. Unless you want an overall map of the...

15 LYNN: I, I think, actually, a, a different exhibit, part of Exhibit 40,
16 maybe that, uh, I think what I was calling Page 12, probably was, I think,
17 uh, four of nine or...

18 LORING: And...

19 REEVES: Mr. Loring, you had a thought?

20 LORING: Oh, sorry, I just wanted to ask for that exhibit, it hasn't
21 actually been circulated to the other parties, so, needless to say, we'd like
22 to see it before we have our cross-examination.

23 REEVES: Oh, you said, what just happened? The one we discussing?

24 LORING: The B97, I...

25 REEVES: Yeah.

1 LORING: What might be B97. Yeah. The one that was just taken down.

2 LYNN: Yeah. I'll try to get that circulated. So, yeah, so you're going
3 to share that exhibit, John?

4 SEMRAU: I can, I can email.

5 LYNN: I have it, so I can email it, uh, while you're putting up
6 another...

7 SEMRAU: I'll put up...

8 REEVES: I think there's two different things happening right now. So, I
9 think someone's sending around an exhibit and then, uh, Mr. Semrau was going
10 to put up a different map, perhaps, out of Exhibit 40, is that right?

11 SEMRAU: Right.

12 LYNN: Yep. I'm going to circulate the other Exhibit, uh, as best my
13 multitasking will allow.

14 SEMRAU: I, Mr. Reeves, I actually, uh, opened up Exhibit B83.

15 REEVES: I, Mr. Lynn, what would you like your witness to, to put...

16 LYNN: Uh, John, uh, whichever, whatever drawing, uh, would show the
17 perimeter or the parameters of the mine. It's going to look a lot like the
18 exhibit we had up, but it's the one that Mr. Semrau tells us is a little
19 better resolution so will be easier to follow.

20 SEMRAU: And, Mr. Examiner, would you like me to do just a reader's digest
21 explanation of what's on Sheet C4 and C5 of the, the maps so that you don't
22 miss some of the detail on here?

23 REEVES: Meaning like what are the topo lines, what are the roads, what
24 are the critical areas features, is that what you're suggesting?

25

1 SEMRAU: Uh, description of the buffers, the setbacks where the topsoil
2 stockpiled.

3 REEVES: Sure, let's, real quick.

4 SEMRAU: Okay. So DC4 is the reclamation sequence map and reclamation
5 sequence maps are in the order that it's reclaimed. So, um, sequence, this
6 is one, this is two, this is three and then the final, final would be the,
7 uh, section 4. You see here the 50 foot, that's the map the County has, we
8 also have an additional 50 feet where we're allowed to store the, stockpile
9 the, uh, topsoil so that's shown on this sheet. This sheet also shows the 200
10 foot buffer on the adjoining properties that they're, they're supposed to,
11 uh, they're regulated under the County Code for their actions. So, that's,
12 um, kind of what this sheet shows. Um, C5 is the actual final reclamation
13 plan. And so, the existing contours, um, do not show on the final reclamation
14 plan, um, you don't see the stockpile areas. Uh, the difference between this
15 and what the final product would be is they would put some topographic, um,
16 changes in the slope. It wouldn't be just a linear. But, this is, this is the
17 maximum steepness, um, of the reclamation that they can do. Um, this mine,
18 they're just mining to the reclamation contour, these being these cross
19 sections. Uh, when you, oh, so, when you...

20 LYNN: Could you, Gary, could you give us, uh, I'm sorry, John, could
21 you give us page numbers so that the record is showing what you're talking
22 about here?

23 SEMRAU: Uh, would, yes, I can do that. Should I go back a page?

24 LYNN: No, I think we're...

25

1 REEVES: Following with B83, Page C4 of 7, then C5 and then I think you
2 moved to this?

3 SEMRAU: We're on Sheet C6 of 7. So this is the permit boundary or the
4 property boundary, uh, the 50 feet and then this is the area where they don't
5 mine the materials here, they store their, their topsoil about here. But then
6 when they reclamate they're able to knock this corner off, uh, onto the
7 slope. They, they would do a, a vertical wall right here. Uh, some mines
8 would do vertical walls all the way down and that's not proposed here. So,
9 this shows where they're proposing to mine the feet above the water table.
10 Oh, my exhibit changed pages. So, is there any other questions regarding...

11 LYNN: The, the Examiner may have some. I was just going to ask you about the,
12 what's going to happen to, uh, drainage as a result of the mine? Was there
13 any, was there any alteration of the drainage outside of the mine parameter,
14 for starters?

15 SEMRAU: [Inaudible.]

16 LYNN: Okay. And, and, and what happens to this rainfall within in the
17 mine site?

18 SEMRAU: The rainfall into the mine site would continue to infiltrate.

19 LYNN: Okay. There was, um, some testimony about, uh, or in some of the
20 comments about an incised channel that's, uh, a geographic or a geologic
21 feature, I guess, or a topographic feature, uh, below the east/west portion
22 of the haul road. Are, are you familiar with that?

23 SEMRAU: Uh, from the testimony, yes. As, yes, I'm...

24 LYNN: Okay.

25 SEMRAU: I am aware of where it is.

1 LYNN: And are you aware of what the road, uh, topography is at that
2 point and what the drainage looks like?

3 SEMRAU: Yes.

4 LYNN: Okay. So, the, the condition that was described as an, uh, is an
5 existing condition, do you have any opinion was to whether or not that
6 condition would get worse as a result of the proposal?

7 SEMRAU: Well, it wouldn't change from the proposal because there isn't
8 any proposed revisions to the roadway there. But there's most likely the
9 ability to alter, um, the culverts that are there to direct some of that run
10 off away from there and improve the conditions.

11 LYNN: Okay. And is that something that could be done through the normal
12 maintenance process of the haul road?

13 SEMRAU: Well, normally, it would be done just through the forest
14 practices part of the process. But, um, it, you know, now that we're to the
15 point where we may have, um, the mining Special Use Permit, once there's a
16 mining Special use permit, it would be, um, you know, it, it would be under
17 the County review potentially, but, I mean...

18 LYNN: Okay.

19 SEMRAU: That all depends on how, how long it takes through this process.
20 But now that they're aware of the issue, they would normally go out there and
21 they would, they would improve the situation. Uh...

22 LYNN: And...

23 SEMRAU: Just under...

24 LYNN: Did you just, can you give some examples of how you could, uh,
25 address storm water in a way that, uh, addressed that existing problem?

1 SEMRAU: Well, storm water, under the Forest Practices, is more placing a
2 cul-, culvert at intervals along the roadway. And normally, you know, in this
3 case, if the culvert that's contributing to that is removed, then the water
4 would be forced to move down the hill to the east. And in this situation, we
5 could run that water to the east and bypass these steep slopes. So..

6 LYNN: Okay. So, uh, you familiar with the entrance to the mine site,
7 the existing entrance off of Grip, Grip Road?

8 SEMRAU: Yes, I am.

9 LYNN: Could you tell the Hearing Examiner what's proposed, uh, and/or
10 required by way of improvements at that location?

11 SEMRAU: So, we, we had a commercial access permit approved for that
12 entrance. And that has a paved apron. Now, since that time, we've, we've, uh,
13 Gary Norris, the Traffic Engineer designed a beacon system there and that is,
14 um, Exhibit, um, Exhibit 43, Exhibit 43, Page, Page 3.

15 LYNN: Uh, are you talking about the, the Applicant's Exhibit, so it
16 would be a B43?

17 SEMRAU: Uh, no, it's, that's the County, the, the Applicant's, County
18 Exhibit is 43, Applicant's Exhibit is B64.

19 LYNN: Okay.

20 SEMRAU: And I can share, I've got the County's Exhibit 43 on my screen I
21 can share. So, this is a picture of the, um, of the, the entrance from the
22 mine, the mine goes to the north here. Cougar Peak driveway is right here.

23 LYNN: You're pointing out, just a second, uh, just so the record is
24 clear, you're pointing to the let just as the road begins to curve to the,
25 uh, west?

1 SEMRAU: Uh-huh. About Station 15 plus 00...

2 LYNN: Okay.

3 SEMRAU: On the map is the, is about the location of the Cougar Peak
4 driveway. So, on this map, what it's showing are, are proposed beacon
5 improvements. Uh, so there's warning strips here, so actually, the asphalt,
6 the amount of asphalt that would be required for this apron is about three
7 times the length that the commercial access permit that's been approved for
8 this site would require. So, there would be sensors in the asphalt here, that
9 would detect any truck, uh, that's at the entrance here. And there's sensors
10 to the, both the east, or excuse me, the west, and the east, the match line
11 at 21 here. So, there's sensors for, to warn, there's a beacon on opposite,
12 on the south side of the road that warns the trucks when there's automobiles
13 or other vehicles coming. So, those are, there's a sensor here and there's a
14 sensor down here. So, when there's an automobile coming, either from the east
15 or the west, the truck driver's notified of that. There's also, when these
16 sensors here, that are activated by the truck, there's a flashing beacon,
17 both to the west and to the east, and those warn the traffic coming from the
18 east and the west that there's a truck at this entrance. So, there's, there's
19 war-, warnings for both the automobiles as well as the traffic.

20 LYNN: Okay. And why is there more pavement proposed at the entrance
21 than is currently required by the Commercial Access Permit?

22 SEMRAU: Uh, just to facilitate the, uh, the loops in the pavement, that's
23 the most reliable method for that in, in that type of situation.

24 LYNN: Okay. Was any analysis done of the ability of a truck to, to, um,
25 turn out of that driveway?

1 SEMRAU: There was. So, uh, there was an auto-turn that was prepared for
2 the, uh, Commercial Access Permit. And that was submitted to the County. Uh,
3 we have since sent this, there's also this hatched area here, noted by Number
4 6, that's some additional paving that's been recommended, uh, for that
5 entrance. The geometry here of this asphalt is the geometry of the Commercial
6 Access Permit. It's just the Commercial Access Permit only, only requires
7 paving back to about this site of Number 4, but in order to this, we'd be
8 paving all the way back. So, all of the Commercial Assess Permit area, it's a
9 combination of gravel and asphalt is all the County requires. In this
10 depiction, it would be all asphalt.

11 LYNN: Okay. And is that to facilitate, then, the turning movements in
12 and out of the driveway?

13 SEMRAU: Facilitate the turning movements, preventing, um, spill of gravel
14 from the gravel road onto the road surface, uh, many of the concerns that
15 people have raised would be addressed by this.

16 LYNN: Okay. Um, could you also describe for the Hearing Examiner the
17 proposed beacon, uh, installation at Grip and Prairie?

18 SEMRAU: I can. Go to Page 1 of this Exhibit..

19 LYNN: Again, would you remind us of the Exhibit, uh, that you're
20 looking at?

21 SEMRAU: I am using the County's Exhibit 43.

22 LYNN: Okay.

23 SEMRAU: So, we had a similar, we have a similar, um, beacon light
24 arrangement here. We've got three beacons, we have one beacon located to the
25 north of the Grip Road intersection to Prairie Road. And then we have beacons

1 both to the, to kind of the north or northeast and to the, um, the, the west.
2 Um, the, there's detection for the truck and it's not, it's located back
3 from, so if a single car comes up to this, or if a truck comes to this
4 intersection and stops, it's going to activate the, the beacons to the north
5 and the west. And they will be flashing to warn the traffic, um, is, is
6 coming. If, uh, a single automobile comes to this intersection, it's not
7 likely to trip the, the magnetic field because they're not as long a vehicle,
8 um, larger vehicles would trip it or if there's multiple cars there. Um,
9 there's also detection here for, um, both to the north and the west that
10 would activate this beacon that's on the, uh, directly from the intersection
11 there. So, the, when a truck is there, they would be warned that a car is
12 coming from the north or the west.

13 LYNN: Okay.

14 REEVES: Bill, if you're getting ready to move off beacons, I would
15 suggest we're in a probably good point to take our lunch break and then come
16 back and we'll sort out where we go when we come back, but does that make
17 sense?

18 LYNN: Okay. Yes. It does to me.

19 REEVES: Were, were you done with beacons? I...

20 LYNN: Yeah. I, I, I'm beacons out.

21 REEVES: Excellent. Okay. So, uh, currently I have just after 12:20. Why
22 don't shoot to be back at, at 1 o'clock. Uh, and at that point, uh, we'll,
23 we'll check in with, uh, the parties and, uh, see where we go after that.

24 LYNN: Great. Thank you.

25 REEVES: All right. Thank you, everybody.

1 LORING: Thank you.

2 [The tape ends.]

3 **The undersigned being first duly sworn on oath, deposes and says:**

4 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
5 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party
6 to this action. That on April 23rd, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves, that
7 took place on 9/2/22 at 11:00 a.m., regarding the above-captioned matter.

8 I certify and declare under penalty of perjury under the laws of the State of Washington that the
9 aforementioned transcript is true and correct to the best of my abilities.

10 Signed at Mount Vernon, Washington, this 23rd, April of 2024.

11 Janet Williamson

12 Janet Williamson

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**IN SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT**

State of Washington,	)	Cause No.: PL16-0097, PL16-0098,
	)	PL22-0142
Plaintiff,)	
)	
vs.	)	PERMIT HEARING 9-8-22 1:30 PM
)	
Name,)	
)	
Defendant)	

Transcription Date: May 3rd, 2024

Present: Andrew Reeves, Kyle Loring, John Day, Bill Lynn, Tom Ehrlichman,
Unidentified Female 1, Jason D'Avignon, Brian Bowser

REEVES: Okay. We're back on the record and it is September 8th, uh, 2022.
And, uh, we just concluded with Mr. Mahaffie. And I believe Mr. Loring is
ready to call his next witness.

LORING: I am. We call John Day.

REEVES: Okay. Um, John Day. Do you swear or affirm to tell the truth in
the testimony you give here today?

DAY: Yes, I do.

1 REEVES: Thank you. And can you just state and spell your name for the
2 audio, please?

3 DAY: My name is John W. Day, J-o-h-n, initial W, D-a-y.

4 REEVES: Thank you. Go ahead, Mr. Loring.

5 LORING: Thank you, Mr. Examiner. Hello, Mr. Day.

6 DAY: Good afternoon, Mr. Loring.

7 LORING: We're going to spend, uh, this aft-, well, a portion of this
8 afternoon discussing, uh, some concerns that you have about the mine and then
9 some, uh, the transportation route aspects that you've looked into. So, I'm
10 going to jump, uh, sorry, jump right in. Uh, where do you live?

11 DAY: I live at 6368 Erwin Lane, uh, Sedro Woolley, about, uh, two
12 miles from the mine site.

13 LORING: Okay. How long have you lived there?

14 DAY: Since 2005.

15 LORING: All right. And, uh, you're a part of the group known as the
16 Central Samish Valley Neighbors?

17 DAY: That's correct.

18 LORING: Okay. Are you familiar with the Miles Sand and Gravel mining
19 proposal that, uh, we've been discussing in this hearing?

20 DAY: Yes, I am.

21 LORING: And how did you learn about the proposal?

22 DAY: Uh, my wife, Martha Bray, and I saw the, um, public notice in the
23 Skagit Valley Herald of the first MDNS in, uh, 2016.

24

25

1 LORING: Okay. And, uh, are you familiar with the current mitigated
2 determination of non-significance that Skagit County issued in February of
3 2022?

4 DAY: Yes.

5 LORING: And, uh, have you reviewed that MDNS?

6 DAY: Yes, I have. Extensively.

7 LORING: Okay. Have you reviewed other application materials for this
8 project?

9 DAY: Yes. I, I think I can safely say that I've received practically
10 all of the documents, including a large number that we obtained through the
11 public records, uh, request process.

12 LORING: Okay. Well, we'll ask you about a few of those along the way. Uh,
13 but also, just, again your understanding of the route as well. So, do you
14 know where the mine would operate?

15 DAY: Yes. Uh, it would operate about, uh, two and a half miles north
16 of Grip Road, next to the, very close to the Samish River, again it's about
17 two miles as the crow flies from, from where I live.

18 LORING: Okay. And, uh, I understand that you have some concerns about the
19 mine, can you list them at a high level, summary level?

20 DAY: You bet. Uh, traffic safety, with the addition of, uh, the large
21 number of combination dump truck trailer trips. The impacts to our County
22 roads from those trucks, uh, impacts to critical resources like the Samish
23 River and Swede Creek, the wetlands, uh, both on and off the property, as
24 well as to wildlife, that, uh, that use this area. I'm concerned about the
25 noise impacts on the neighbors of the property, uh, from both mine operations

1 and hauling, uh, trucks operating on County Roads. And I'm concerned about
2 the air pollution that will be, uh, that will result from the hauling, uh,
3 and operations, in particular the amount of CO2, as well as the diesel
4 particulates and other pollution that will be, that effects people's hauling.

5 LORING: Okay. With regard to transportation impacts from the mine, from
6 the mine, sorry, can you summarize some of the concerns that you have about
7 those?

8 DAY: Sure. Yeah. The, as it's already been extensively reviewed, the
9 mine entrance is accessed by, uh, Prairie Road and Grip Road. Which are very
10 narrow twisting roads with no shoulders and in key locations with, uh, very
11 little, uh, sight distance for drivers to be able to take evasive action in
12 case of an oncoming vehicle or, or approaching, uh, a cyclist from behind,
13 for example. Um, it, and I don't believe that this proposal has addressed the
14 costs that, that would be borne by the taxpayers from damage to the roads by
15 this additional heavy traffic. Uh, and it doesn't, uh, adequately ev-,
16 evaluate the risk to public safety, uh, from, as well as the environmental
17 risks from the transportation. It doesn't provide for adequate mitigation of
18 those impacts and it doesn't require the Applicant to pay its share of the
19 costs for all of the needed improvements.

20 LORING: Okay. And, uh, thank you, Mr. Lynn, there's some feedback
21 sometimes in joining. Uh, you, have you heard any testimony about proposals
22 for more, uh, more roadwork or roadwork to address some of the impacts of the
23 travel?

24 DAY: Uh, yes.
25

1 LYNN: Mr. Examiner, I want to, sorry, this is Bill Lynn, I just, this
2 is the first time I've been able to enter the meeting, I haven't been on...

3 REEVES: Oh.

4 LYNN: Until this point, so I don't know if I missed anything exciting.

5 REEVES: Sorry, okay. I was actually just wondering a minute ago if, uh,
6 you were here to the extent that I'm like, I can see you. Excuse me. And...

7 LYNN: And now my, now my computer screen just went blank completely, so
8 if you'll...

9 LORING: And you're frozen on ours, or mine anyway.

10 LYNN: Let me just, I'm going to, uh, turn off the computer and turn it
11 back on and then I'll try to join you as soon as I can. Sorry.

12 REEVES: Yeah. We'll, we'll pause while that's happening.

13 LYNN: Okay. Thank you.

14 LORING: And, Mr. Examiner, I think Tom Ehrlichman had been on the screen
15 at the same time as Bill Lynn, when they both seemed to pop off. He may still
16 be able to participate. I do see a, a little circle with his name. I just
17 wanted to make sure, okay, that somehow it hadn't kicked off people.

18 EHRLICHMAN: Thank you. Thank you.

19 REEVES: [Inaudible] are you there? That sounds like it, but sounds like...

20 LYNN: Well, uh, yeah, I'm back on. Thank you.

21 REEVES: Okay. Your screen is still frozen. I don't know.

22 LYNN: [Pause] well, I can hear, so I guess, uh, we should probably keep
23 going and maybe I'll unfreeze.

24 REEVES: Sure. And so just to clarify, you did miss the first few minutes
25 of Mr. Day's testimony?

1 LYNN: Yes, I did. Sorry.

2 REEVES: No, no. Uh, I guess, my apologies for not, normally I do try to
3 make sure we have everybody. I don't know if I saw you and I thought we had
4 you there. But, uh, is there anything in particular, Mr. Loring, in your
5 mind, that would be helpful to, to have Mr. Day repeat?

6 LORING: I could provide a brief summary. He, he was identifying his
7 concerns, his overall, over-arching concerns with the mine. He did go through
8 a list of that and then was talking about, uh, transportation impact concerns
9 that he had. And I can summarize those, too. And, and that's roughly what we
10 had done, uh, in addition to his background and the fact that he lives about
11 two miles from the site.

12 LYNN: Okay. I...

13 LORING: As the crow flies.

14 LYNN: I'll, I can always refresh myself later, if need be.

15 REEVES: There we are. Okay. You're moving again.

16 LYNN: Well, that's good.

17 REEVES: And I don't know if it would helpful, now it seems okay. Okay. I
18 think we're okay. Uh, we'll, we'll give this a try. And now, um, now I'm
19 worried Mr. Day is...

20 DAY: I'm not frozen up, I don't think.

21 REEVES: Okay. Okay. Uh...

22 DAY: I may look that way, but I'm just old.

23 REEVES: Uh, I think, I think we're hopefully okay, tech-wise, at this
24 point. It's, uh, you know, it's always a little, little bit of a challenge.
25 But, Mr. Loring, are you ready to keep going?

1 LORING: I am. I'm, I'm happy to resume. Thank you, Mr. Examiner.

2 REEVES: Go right ahead.

3 LORING: Okay. Uh, Mr. Day, I, I believe you were wrapping up by stating
4 that you were concerned about, uh, the, the, that the Application didn't
5 provide adequate mitigation and cost sharing. And I had asked you a question
6 about whether you had heard any testimony from the Applicant's witnesses
7 about proposed improvements to the Grip Road curves we've been calling them,
8 I believe?

9 DAY: Yes.

10 LORING: Have you heard that?

11 DAY: I believe we first heard mention of that from Mr. Barton and then
12 we fol-, there was follow up on that with Mr. Norris from DN Traffic.

13 LORING: Okay.

14 DAY: Um, my understanding was that they, uh, were willing to analyze
15 the potential, uh, crossover of com-, combination gravel truck and trailer,
16 uh, rigs on those curves and conduct, uh, appropriate mitigation of that
17 issue.

18 LORING: And have you seen any documentation of that, uh, proposal?

19 DAY: Uh, nothing other than, uh, the basic geometry of the vehicle
20 that was used in their auto-turn, um, analysis.

21 LORING: Okay. And, and so you, uh, you aren't familiar with any aspect of
22 that proposal being in an application document that was reviewed as part of
23 the, um, mitigated determination of non-significance issuance?

24 DAY: That's correct.

25

1 LORING: Okay. Uh, let's talk briefly about, uh, the, where the, uh,
2 material will be hauled along the route here. And, uh, I'm going to pull up
3 an Exhibit here, just so that we're on the same page, share my screen of what
4 is Ex-, Exhibit A10. Are you seeing that, at this point?

5 DAY: Yes, I am.

6 LORING: Okay. And, uh, this is, uh, you put this together, right, just to
7 show what was, uh, likely to haul, the preferred haul route that we've heard
8 about for the mine?

9 DAY: That's correct.

10 LORING: Okay. Um, does the Application discuss other routes that might be
11 used?

12 DAY: It does. Uh, it mentions that some of the traffic could, uh, or a
13 large portion of the traffic could continue to the east on Bow Hill Road then
14 travel south on Interstate 5 to the Cook Road intersection, that's north on
15 Old Highway 99 to the Applicant's Bellville Pit. It also mentioned that an
16 estimated 5% of the traffic could go east from the mine entrance, on Grip
17 Road, and, uh, another 5% could go west on Bow Hill, uh, passed Interstate 5.

18 LORING: Okay. I, I think you initially said east on Bow Hill Road, uh,
19 and maybe you were thinking about, uh, F and S Grade, is that right?

20 DAY: Um, my, my mistake...

21 LORING: West and south?

22 DAY: Uh, I don't, I haven't seen any mention, I believe, of F and S
23 Grade Road as a possible route.

24 LORING: Okay.

25 FEMALE 1: Rest on Bow...

1 LORING: So...

2 DAY: Yeah. So we can rest on Bow Hill Road, I'm sorry.

3 LORING: Okay. Thank you. That's great. Um, and does the mine application
4 identify, um, maximum daily truck or trip limit on these roads?

5 DAY: Not that I can understand.

6 LORING: Okay. I, I know that there has been a bit of testimony about
7 that, uh, to date and I know you have independently, throughout this process,
8 uh, investigated that. Um, let me just ask, is there, uh, is there a maximum
9 number of hourly trips based on your review of the Application materials?

10 DAY: Uh, my understanding is that it, the hourly trips are limited,
11 yes.

12 LORING: Uh, limited for, uh, under what scenario would they be limited?

13 DAY: Un-, only und-, well, it's only specific under what's referred
14 to, I think, as the extended hours scenario. Uh...

15 LORING: Okay.

16 DAY: Where by, yeah, production could go on over a long period of
17 time, more days, more hours and more quantity.

18 LORING: Okay. And I know you reviewed the MDNS closely, uh, did you find
19 that there was some confusion about the number of trips that could occur
20 under that extended hour scenario?

21 DAY: I did. Uh, I inquired about that of, uh, Mr. Cricchio, by email,
22 uh, he then forwarded my questions to Mr. Forest Jones [phonetic] of, uh, the
23 Public Works Department. Um, and I asked Mr. Jones specifically what the
24 meaning of the word trucks was in the MDNS and how, what the actual limit on
25 the, uh, number of hourly trips was and the, he was unable to answer my

1 question. Uh, or at least the answer that he provided did not make any sense
2 to me in, in relation to anything that I had read before. He actually stated,
3 I believe, if you want to bring up that Exhibit A9, um...

4 LORING: Uh, yes, I'm showing Exhibit A9, and is this when you were
5 talking about corresponding with, uh, Forest Jones, is this the document you
6 were thinking of?

7 DAY: That's correct. Yeah. The whole exchange would start from the
8 bottom. But, uh...

9 LORING: Okay.

10 DAY: I, I was about to refer to that last statement by Mr. Jones at
11 the top, if you wanted to, I mean, um, I might as well, um, well, he's saying
12 that it has to be verified. I think in his previous statement to that, he
13 said that there would be 30, 30 trips per day.

14 LORING: Okay.

15 DAY: Would be the maximum, in his understanding.

16 LORING: And, uh, so, was it your understanding and initially c-, uh,
17 reaching out Kevin Cricchio, that he wasn't clear on the number of trips, uh,
18 that was referred to with this 30 trips and 30 trucks language.

19 DAY: Uh, well, if we could scroll down to his answer, I, I, I don't
20 believe he said anything in his email response to me to indicate that he, uh,
21 understood that. He k-, he passed it onto Mr. Jones at Public Works.

22 LORING: Okay. Um, so, I'm trying to, to find this here, I, I don't know
23 that it's helpful for us to go through all of this exactly right now. But I
24 think...

25 DAY: Sure.

1 LORING: We have seen, uh, Forest Jones at Public Works and his response
2 up at the top. Um, so, we have that in the record. And, uh, and I see what
3 you mean, yes, about the 15 and then the 30. So, let's move on from that. Um,
4 and I'll stop sharing that one. But we have the email showing this. And would
5 you say there was confusion about the number of trips, uh, on behalf of the
6 County, that the County was confused about the number of trips that it was
7 referring to in the MDNS?

8 DAY: Yes.

9 LORING: Okay. Speaking of, uh, communications with Mr. Cricchio and, uh,
10 with, uh, Forest Jones review of transportation documents, do you know
11 whether the County had any internal conversations about whether they should
12 obtain third-party review of the traffic impact analysis?

13 DAY: Yes, I do recall, uh, from our public records requests, uh,
14 seeing an email chain, uh, between Mr. Cricchio and, um, hmm, Mr. Black,
15 Brandon Black and, uh, uh, perhaps other personnel at Public Works, per-
16 perhaps Forest Jones or, and/or others at Public Works.

17 LORING: And is it your understanding that staff were making that
18 recommendation to obtain thirty p-, third party review of the TIA?

19 DAY: Um, it was my understanding that, that they were asking Mr. Black
20 if that, suggesting that that should happen. But, uh, Mr. Black indicated
21 that it would not.

22 LORING: Okay. You mentioned, uh, a moment ago that the Application, uh,
23 contemplates hauling gravel east of the mine, is that right?

24 DAY: That's correct.

25

1 LORING: And, uh, I'm going to pull up Exhibit A26 to briefly discuss this
2 with you here. Uh, here we go. Let me see about sharing that with you. Are
3 you familiar with, uh, the document that I'm sharing right now?

4 DAY: Yes, I am. I created at that Exhibit.

5 LORING: Okay. Uh, why did you create this Exhibit?

6 DAY: I created it to illustrate the, uh, some of the problems
7 associated with traffic, particularly heavy truck traffic, uh, traveling east
8 from the mine entrance on Grip Road, uh, assuming it would then go by, via
9 Mosier Road to Highway 9 north or south and, uh, that there are on the order
10 of five corners of 90 degrees or less that the trucks would have to navigate.
11 And we are well aware that the trucks are unable to navigate those corners
12 without blocking the opposite lane of traffic almost completely. Um, there's
13 just no room for other vehicles to navigate when the truck is going through
14 there. Uh, I'm also concerned about the, the potential numbers of trucks that
15 could be going that route, despite the statement of an estimate of 5% going
16 that way.

17 LORING: Okay. Did, uh, is there any actual limitations on the number of
18 trips that can travel this way based on your review of Application materials
19 or the MDNS?

20 DAY: No, there's not.

21 LORING: Okay. And your review of all of the transportation documents, uh,
22 did they analyze the potential impacts, including crossover, lane crossover
23 of using this route?

24 DAY: Not at all.

25

1 LORING: Okay. And have you heard testimony that the mine will supply
2 demand for its material during...

3 DAY: Yes.

4 LORING: During this hearing? Yeah.

5 DAY: Yes.

6 LORING: Okay. Does, uh, do you believe that would have any impact on
7 where the material would be shipped?

8 DAY: I certainly believe it could. The main point that I took away
9 from Mr. Barton's testimony, um, was that, uh, Miles Sand and Gravel finds
10 direct sales to be advantageous. And I assume that that would mean material
11 being transported, uh, from the pit by Miles Sand and Gravel trucks to
12 customers as well as private sales, where customers come to the pit and pick
13 up the material themselves. That that amount of traffic could, very
14 significantly, could be up to, I think he used the figure of 80% of trips
15 could be, uh, for direct sales, uh, from the pit. And that there was no, no
16 limits on the direction that those trips could take, uh, in this proposal.

17 LORING: Okay. And in your review of the Application materials, or the
18 MDNS, uh, is it clear whether the numbers that have been used for trips
19 include, uh, the private access and, and private, uh, hauling of material
20 away from the, the mine? Non-Miles trucks?

21 DAY: It is not.

22 LORING: Okay. Are you familiar the intersection of Prairie and Old
23 Highway 99?

24 DAY: Yes, I am.

25

1 LORING: All right. Sorry, I was looking, I thought I had pulled up that,
2 uh, that Exhibit. I want to pull up Exhibit, an Exhibit briefly here. Okay.
3 Uh, I'm now sharing that screen. Do you see that, uh, is that an image
4 showing that intersection?

5 DAY: Yes, it is.

6 LORING: Okay. Uh, did you put this together?

7 DAY: Yes, I did. As you can see, it came from the County's iMap
8 application.

9 LORING: Okay. Uh, do you have concerns about this intersection?

10 DAY: I do. Um, the traffic on Old 99 tends to be fairly high speed,
11 the speed limit there is 50 miles an hour, but people are often traveling
12 quite a bit faster than that. And, um, there's quite a bit of traffic, uh,
13 going from Interstate 5 to Old 99, as well as across Old 99 onto Prairie
14 Road, that the Applicant's own traffic impact analysis identifies this as a,
15 uh, a high risk intersection. Uh, but does not, there's no, um, mitigation
16 provided in the document for this, uh, or real evaluation of the risk with,
17 uh, the addition of mine traffic. Or mitigation of same.

18 LORING: Okay. I want to turn your attention now to another intersection.
19 I know we've had a couple here and, uh, the Grip Road and the Prairie Road
20 intersection, are you familiar with that intersection?

21 DAY: Yes. I pass through it, oh, practically daily.

22 LORING: Okay. And, and do you have any concerns about the mine hauling in
23 that intersection?

24 DAY: I do. Uh, the main concern is the lack of site distance to the
25 north on Prairie Road, from the stop line on the intersection, for someone

1 who is going to be turning left from Grip Road onto Prairie Road, westbound.
2 Uh, this has already been spoken about to some extent, the, uh, the Applicant
3 has identified a mitigation measure for that, in the form of a flashing
4 yellow beacon system, traffic, flashing yellow beacon system and the County
5 recently cut back the bank, to some extent, to, which slightly improved the
6 site distance issue there, but was a long way from really, um, fixing it. And
7 it's a place where we regularly feel like our, we're taking our lives in, in
8 our steering wheel hands as we turn onto Prairie Road from Grip Road. Things,
9 people come around that corner. The corner shown in, in this Exhibit.

10 LORING: Yeah. I've pulled up Exhibit A18.

11 DAY: Yeah.

12 LORING: And this is a, is this a photo you took of that intersection and
13 looking towards the area where the bank was cut?

14 DAY: That's correct. Yeah, that was to show that, how, what you can
15 see from the intersection now that the bank has been cut back to some extent.

16 LORING: Okay. And did you hear any testimony from others about, or, I,
17 strike that, did you hear testimony from any witnesses from Miles, uh,
18 discussing exploring expanding that bank cut further?

19 DAY: Uh, no, I did not.

20 LORING: Okay.

21 DAY: Could I correct that slightly?

22 LORING: If you have a correction, uh, you may, yes.

23 DAY: Sorry. Well, in the original, uh, traffic information memo, I
24 don't remember the date, from DN traffic, it was the document that was
25 submitted as a part of the original application package, um, the author, Mr.

1 Norris, states that the issue could be mitigated by cutting back the bank,
2 but he states that it's impractical or too expensive to do that.

3 LORING: Okay. Uh, does he explain, is your, do you have an understanding
4 for why that is?

5 DAY: Uh, no, I, I don't.

6 LORING: Okay. And have, have you looked into whether there, well, let me
7 ask you another question first, I apologize, uh, has Central Samish Valley
8 Neighbors position been that this bank should be cut back further to improve
9 the sight lines there?

10 DAY: Yes. I feel that that should happen regardless of whether this
11 mine proposal goes ahead.

12 LORING: Okay. And do you know if there is adequate public right-of-way at
13 that intersection to do within existing public right-of-way?

14 DAY: I am not certain of that, but I know that there is a
15 significantly larger right-of-way on the inside radius of that curve and the
16 rest of the, of the highway on the, practically double the usual right-of-way
17 and by, I believe you have an Exhibit that, uh, I, where I show that? That's,
18 it's...

19 LORING: Yes. I, I'm...

20 DAY: A little bit hard to see, but if the, the blue line in the middle
21 represents us-, the use of the built in measuring tool in iMap and it shows
22 that the distance between the edge of the, uh, south or westbound lane of
23 Prairie Road is approximately 51 feet from the outside edge of the County's,
24 uh, road easement in that location. Um, and in looking at that, in terms of
25 the potential line of site, it appeared to me, from my rough, um, you know,

1 using, using the line tool to, to see how far north one might be able to
2 view, uh, Prairie Road from the Grip Road intersection, it appeared that it
3 would, uh, provide enough, I, I forget what the standard is, uh, it would, it
4 would meet the County's, uh, Code requirements for, um, sight distance, uh,
5 stopping and intersection sight distance for that location. But, I, I can't,
6 that's just my opinion from looking at the, uh, the aerial photos and the
7 map.

8 LORING: Okay. Thank you for that. I'm going to stop sharing that
9 document. And I'd like to ask you a little bit about, uh, cycling. Have you
10 ever cycled along Grip and Prairie Roads?

11 DAY: Yes. I do so frequently.

12 LORING: Okay. And, and what is your experience in doing so, uh, today?

13 DAY: Um, well, we certainly enjoy it, uh, it can be, because there
14 are, uh, often no shoulders or very little in the way of shoulders, and, uh,
15 the narrow lanes and w-, as well as the, the, uh, sight distance issues that
16 we've already mentioned, uh, it can be a little, um, a little scary
17 sometimes, especially if you have a large, uh, truck coming up behind you and
18 passing you, and especially if there's traffic coming the opposite direction
19 at the same time. Uh, there's just no place to go, uh, as a cyclist, except
20 in some cases, there are some, some, uh, narrow gravel shoulders. But going
21 onto a gravel shoulder with a ditch on the other side, is, uh, no place to
22 go. And there are places where there..

23 LORING: Okay.

24 DAY: There are guardrails, oh, I, okay. I'll stop there for now, thank
25 you.

1 LORING: I, I'm going to show you an Exhibit, uh, this is Exhibit A21.

2 And, uh, this is a document that you prepared, right?

3 DAY: Yes.

4 LORING: Okay.

5 DAY: Yeah. I...

6 LORING: And what are you showing with this, yeah, what are you showing
7 with this map here?

8 DAY: I'm showing the location of the guardrails along the portion of
9 Prairie Road, uh, to the west, or excuse me, to the east of the second, um,
10 corner on Prairie, east of Old 99. Um, in g-, this is using Google Earth. I
11 was able to, to zoom in on Google Earth where I could clearly see the
12 guardrail in the aerial photo. And then I used the mark, uh, the road marking
13 took in Google to mark the, uh, entire location of the, uh, guardrail as well
14 as measure it. Um, and I have little red marks there to indicate where
15 there's a couple of farm access breaks, narrow breaks in the, uh, yeah, thank
16 you.

17 LORING: Okay. And as a cyclist, uh, d-, how do guardrails effect you?

18 DAY: Well, in this case, uh, the guardrails for much of that length
19 are within inches of the, the fog line. Or the edge of the paved road. So,
20 they're, is, is no place, whatsoever, to go, uh, if, uh, for example, there
21 were a, uh, a vehicle coming up from behind that wasn't paying attention and,
22 well, or vehicle coming the opposite direction that force someone over,
23 further over towards the, the shoulder, there's just no room for a cyclist
24 there or pedestrian, either, for that matter.

25

1 LORING: Okay. And is that a concern for you as you cycle through that
2 area?

3 DAY: Yes, it is. It's already a, it's already a concern, much less
4 without the amount of additional traffic that this mine proposal would
5 unleash on the roads.

6 LORING: Would, would adding that, uh, the transportation to haul the
7 gravel impact, uh, the concern you have already?

8 DAY: Absolutely. Yeah. I mean, I find it, the thought of having a, uh,
9 dump truck with trailer passing me, uh, once every two minutes, if you read
10 it one way, or tw-, uh, tw-, once every minute, if you read it another way, I
11 find that, uh, terrifying. It...

12 LORING: Okay. And, and you're talking about the extended hours scenario,
13 uh, trips?

14 DAY: That's correct. That's correct.

15 LORING: Yeah. Uh, and do, did the mine Application evaluate the impacts,
16 uh, to cyclist?

17 DAY: It did not.

18 LORING: Okay. I want to talk just a little bit about that internal haul
19 road. Uh, are you, are you familiar with the internal haul road that would
20 transport...

21 DAY: Yes.

22 LORING: Material? Yeah.

23 DAY: Yes.

24

25

1 LORING: Mine property. Okay. And have you looked into that haul road
2 itself and tried to done an examination of any changes that might have
3 occurred as part of the 2018 roadwork that we've discussed in this hearing?

4 DAY: Yes, I have.

5 LORING: Okay. I'm going to pull up an Exhibit, this one is Exhibit A32.
6 And I've already started scrolling. Is this, uh, an Exhibit you prepared?

7 DAY: Yes, it is, yeah. As you can see, it was using the County's iMap
8 application.

9 LORING: Okay. And what is that little, uh, red square there in the middle
10 of...

11 DAY: The red square shows the, uh, uh, approximate location of, uh,
12 images that follow that image, where I zoom in on the, uh, the road corridor
13 to...

14 LORING: Okay.

15 DAY: Uh, look at the, some of the dimensions.

16 LORING: Okay. And so I've scrolled down, it has three pages, we're on the
17 second page there, uh, what is this page, what does this map show and have
18 you, what are you portraying on this?

19 DAY: In this map, I, as you can see from the left, uh, layer list, I
20 selected the 2017 aerial coverage, which was prior to the road work being
21 done on the internal haul road. And, uh, I used the measuring tool in iMap to
22 estimate the width of the, the apparent width of the roadway, which, as you
23 can see, is 20 feet in this view.

24 LORING: Okay. And I'm going to scroll down to the next one. And what does
25 this, uh, map purport to show that you've prepared?

1 DAY: In this map, I left the extent of the view the same, so it's
2 showing exactly the same area, um, and scale of the previous, uh, view. All
3 did was turn off the 2017 coverage and turn on the 2019 coverage. Um, and
4 both of these are, uh, geo-referenced, um, uh, aerial images, you know, that
5 have basically been conformed to the underlying map coordinates. Uh, this one
6 shows, with the measuring tool, that the, since the road work was done, um,
7 it is now at that same location. I did not change anything about the
8 measuring tool, I left it or, right where it had been on the previous one and
9 the width is now 29 feet.

10 LORING: Okay. So you concluded that b-, from 2017 to 2019 the width of
11 the road was different?

12 DAY: Uh, from, from the aerial photos, I...

13 LORING: Sure.

14 DAY: I'm not able to access it on the ground to determine that, but
15 that's what I see.

16 LORING: Okay. And let's see, we don't have a lot more to go through with.
17 I do want to discuss a few other items here. Actually, just related to this
18 wrap up question, are you familiar with any review that Skagit County
19 conducted for any road activity and road development that occurred in that
20 2018 time period?

21 DAY: No, I, no, I am not.

22 LORING: Okay. Uh, do you think you would be aware if the County had
23 reviewed that work?

24 DAY: Yes. I'm, I'm sure I would be.

25 LORING: Why is that?

1 DAY: Well, in, in the first place, when we learned that, uh, Miles was
2 conducting work on the road, we heard from a number of, of neighbors, people
3 in the neighborhood who were seeing, uh, Miles trucks and heavy equipment
4 going in and out of the entrance. And, uh, we contacted Mr. Cooper, who was
5 the Lead, uh, Planner for this project at the time, at the County, uh, to ask
6 him whether the County had, had any knowledge of this or had conducted any
7 review. And, uh, he, uh, indicated he didn't really know anything about it.
8 And, uh, then later, he, well, I also would say that we noted, at that time,
9 that Miles had stated in its, uh, previous application materials that it had,
10 it didn't need to conduct any work on the, their existing network of forest
11 roads in order to be able to use them for hauling gravel from the mine. And
12 that this appeared to contradict that statement. Uh, right.

13 LORING: So...

14 DAY: Okay. I think...

15 LORING: So, uh, you were, you were told that this work was being done in
16 conjunction with forest practices?

17 DAY: That's correct. Yes. Mr. Cooper forwarded a letter from Mr. Lynn,
18 um, where he stated that, uh, the work was being done a-, as a requirement
19 of, uh, the Department of Natural Resources under a Forest Practices
20 Application.

21 LORING: Okay. Uh, had, but the Application materials you had reviewed
22 indicated there's no need to do that work for the mining, to use it for
23 mining?

24 DAY: Um, to that, up to that date, that was my understanding, yes.

25

1 LORING: Okay. Okay. Uh, two other quick topics here for you. Uh, you
2 mentioned that you've reviewed all of the Application materials to date, and
3 did you find any evidence in those materials that the Applicant had studied
4 impacts of increased operations at the Bellville facility from processing the
5 material that would be excavated at the Grip Road site?

6 DAY: No, I did not.

7 LORING: Okay. And are you familiar with any other, uh, Miles Sand and
8 Gravel operations?

9 DAY: Well, I know where some are located, I, I purchased materials
10 from, um, some of their locations, including their, uh, pit off of, uh,
11 Kelleher Road.

12 LORING: Okay. Are you familiar with any other operations where there are,
13 say, um, hauling limitations on the number of trips that can be made to and
14 from other Miles Sand and Gravel mines?

15 DAY: I'm aware that there, there is a, uh, I think it's a daily trip
16 limit on the, um, their private access road to, from, uh, Old Highway 99 to
17 the Bellville pit.

18 LORING: Okay. Okay. Well, I don't have any further questions for you here
19 today. Do you have anything else you'd like to share with us?

20 DAY: I would just like to share that from my review of the, uh,
21 Application materials and the MDNS, uh, the Applicant and the County have
22 failed to, uh, evaluate and provide mitigation requirements for a range of
23 critical impacts, both to public safety, uh, to road infrastructure and to
24 environmental, uh, resources, uh, and thus, it, this, uh, MDNS should be
25 reversed and the, uh, Permit Application denied.

1 LORING: Thank you, Mr. Day. Uh, at this point, you'll be hearing from the
2 Hearing Examiner and other lawyers. And I may speak with you again for a few
3 moments before you go. Thank you very much.

4 DAY: You're welcome.

5 REEVES: Okay. Um, just to clarify, Mr. Day, uh, you were not testifying
6 as a, as an expert witness today, is that right?

7 DAY: That's correct.

8 REEVES: Okay. So, Mr. Ehrlichman, I just want to clarify, the Hearing
9 Examiner rules sort of explicitly state that members of the public are not
10 subject to cross examination through this process. But did you have a
11 question you wanted to ask this witness?

12 EHRLICHMAN: Thank you, Mr. Examiner. As, as I've stated in my, my recent
13 communica [sic] to you, we're putting on our record in this case by calling
14 various witnesses and by agreement or our understanding with the Hearing
15 Examiner and the other Attorneys, rather than schedule those witnesses again,
16 separately, as part of our presentation, we're being allowed to ask questions
17 of those witnesses as they appear in the other parties' presentations. So,
18 the nature of my questions are not cross-examination, uh, so I appreciate the
19 opportunity to ask, uh, the witness just...

20 REEVES: I, I just want to clarify that point, so, the, the point you're
21 making is you believe that I agreed, well, I'm confused. I, my understanding,
22 and I did re-review, uh, sort of my, you know, previous orders and everything
23 when, was that Cougar Creek was seeking to, you know, question and cross-
24 examine, uh, witnesses that were specified identified as experts by other
25 parties in terms of traffic. And then, obviously, you wouldn't be able to

1 call your witnesses. Are you essentially saying this is a witness you,
2 yourself would have called, and so this is just part of the case you're
3 putting on, is that...

4 EHRLICHMAN: That, that's correct, Mr. Examiner. And that was true with the,
5 um, the, uh, woman that appeared this morning, as I was asking her questions
6 about, uh, conflicts with bus traffic. I, I realized after that, well, maybe
7 I should have just waited and called her during that presentation. That would
8 have avoided, um...

9 REEVES: Well...

10 EHRLICHMAN: Any, any kind of disruption. And I apologize...

11 REEVES: Sure.

12 EHRLICHMAN: For that. Um...

13 REEVES: I'm just confused. I didn't realize you were affiliated or knew
14 these witnesses and, and had intended on calling them.

15 EHRLICHMAN: Well, we, we have a right to call witnesses during our
16 presentation, as I understand the law, and, uh, as the, as the hearing
17 evolved...

18 REEVES: We'll just move on. I'll let you ask your questions.

19 EHRLICHMAN: I'm sorry, Mr. Examiner, I was in the middle of a sentence I'd
20 like to complete, if that's okay.

21 REEVES: Go ahead, Mr. Ehrlichman.

22 EHRLICHMAN: Thank you. Um, it, it's my understanding we have a right to, uh,
23 present witnesses to create our record in this case. And as the hearing
24 evolves on the Special Use Permit, um, I may be calling a witness that I
25 didn't know at the beginning was necessary to the presentation of our record.

1 And, so, uh, I would like some leeway, uh, from you on that, if what you're
2 asking me is to produce a witness list, I'll work on that and distribute. I
3 have tried to be...

4 REEVES: [Inaudible.]

5 EHRLICHMAN: Fairly transparent with the, uh, the other Attorneys and with the
6 Examiner on, on what we're doing in this case. And I, I sense that...

7 REEVES: I...

8 EHRLICHMAN: We, we have somehow muddled the, muddled the water more than I
9 thought we would. So, thank you for your, your curtesy. Um, I, I just have a
10 very brief, um, question for, uh, this witness. And that is, um, based on
11 your years of review of this record, and based on the public records, uh,
12 request, documents that you reviewed, um, Mr. Day, is it your opinion that
13 the addition of the project traffic is likely to increase the number of
14 vehicle accidents on Grip Road?

15 DAY: Yes, it is.

16 EHRLICHMAN: Thank you. Uh, I'll stop there.

17 REEVES: Okay. Mr., uh, D'Avignon, do you have questions of this witness?

18 D'AVIGNON: I do not, Mr. Examiner, thank you.

19 REEVES: Okay. Mr. Lynn?

20 LYNN: Uh, yes. Thank you. Just one question. Um, you were asked a
21 question about changes, whether or not changes were analyzed to the Bellville
22 operation, are you under the impression that somehow the conditions of the
23 Bellville operation are going to change or would you assume that the
24 conditions that currently limit the Bellville operation would remain in
25 place?

1 DAY: Um, my understanding of the question that I answered previously
2 was not that it pertained to changes in the Bellville operation, but that it
3 pertained to, as you stated, uh, conditions currently in place.

4 LYNN: Okay. That's all I have. Thank you.

5 REEVES: Mr. Loring, anything based on, on that?

6 LORING: No, I, I have no redirect. Thank you, Mr. Examiner.

7 REEVES: Great. Thank you. And, thank you, uh, for your, your testimony
8 today, Mr. Day. Okay. Mr. Loring, you ready for your next witness?

9 LORING: I am, thank you, Mr. Examiner. Uh, Central Samish Valley
10 Neighbors call Brian Bowser.

11 BOWSER: I'm here.

12 REEVES: All right. Thank you. I'll get you sworn in. Mr. Bowser, do you
13 swear or affirm to the truth in the testimony you give here today?

14 BOWSER: Yes, I do.

15 REEVES: And can you just state and spell your name for the recording?

16 BOWSER: It's Brian Bowser and it's B-r-i-a-n B-o-w-s-e-r.

17 REEVES: Okay. Thank you. Go ahead, Mr. Loring.

18 LORING: Thank you, Mr. Examiner. Uh, hello, Mr. Bowser, how are you
19 today?

20 BOWSER: Good.

21 LORING: Good. Uh, as you know, I want to ask you some questions, again,
22 about the haul route that would occur as part of this mine and, uh, get a
23 better understanding so that we can get a feel for it here. Uh, we do have,
24 uh, some videos, uh, that I'm going to ask you to, they're brief videos I'm
25 going to ask you to go through. Uh...

1 BOWSER: Okay.

2 LORING: I'm hoping that you can, you can share those because I, I may
3 have a little more challenge with my bandwidth here. Uh...

4 BOWSER: Okay.

5 LORING: And so we'll just jump right in. Uh, where do you live?

6 BOWSER: Um, currently I'm living in Burlington, 886-, or, uh, 884 South
7 Pine Street. Um, I'm in the process of, of moving from, uh, Parson Creek
8 Road.

9 LORING: Okay. And Parson Creek Road, is that out in the vicinity of the,
10 uh, Grip Road gravel mine...

11 BOWSER: Yeah. Um...

12 LORING: That's proposed?

13 BOWSER: Half to three-quarter of a mile away the cross files, pretty
14 close.

15 LORING: Okay. Uh, did you grow up near the mine site?

16 BOWSER: Yeah. I've been in that area basically since 1972. Very familiar
17 with the whole entire area, including the property.

18 LORING: Okay. Very good. Uh, where do you work?

19 BOWSER: Um, uh, ACM is the name of the company. I'm a, a, uh, Senior
20 Consultant for them, uh, mostly handling, right now, industrial, uh,
21 manufacturing facilities.

22 LORING: Okay. And, uh, do you have experience managing construction
23 projects?

24

25

1 BOWSER: Yes. It's mostly been my, my whole career on the industrial size,
2 lot of oil refinery work, managing turnarounds, larger projects, um,
3 consulting with various different clients, Navy base, other people.
4 LORING: Okay. And are road projects part of that experience that you
5 have?
6 BOWSER: Uh, limited. Some.
7 LORING: Okay. And you're also part of the group known as Central Samish
8 Valley Neighbors, right?
9 BOWSER: Yes.
10 LORING: Okay. Great. Uh, you, and you are familiar with Miles Sand and
11 Gravel mining proposal?
12 BOWSER: Yes.
13 LORING: How did you inform yourself about that Proposal?
14 BOWSER: Uh, first found out about it, was attending a, a meeting at the,
15 uh, Fruitdale, uh, Community Center. And then from there, reading their
16 documents, a lot of the public request information that came through, reading
17 through that. Reading County specs and standards, um, just continuous review.
18 LORING: Okay. And are you familiar with the mitigated determination of
19 non-significance that Skagit County issued in 2022 for the mine proposal?
20 BOWSER: Yes.
21 LORING: All right. Have you reviewed it, uh, reviewed the whole MDNS?
22 BOWSER: Uh, yes.
23 LORING: Okay. Great.
24 BOWSER: Not in the last week, but, yes.
25 LORING: Yeah. Sure. This, this has been going on a little bit.

1 BOWSER: Yes.

2 LORING: I understand. Uh, I'd like to ask you a little about your
3 concerns about the mine, uh, do you know where it would operate?

4 BOWSER: Yes.

5 LORING: I believe you have essentially answered that. Um, uh, do you know
6 what kind of vehicles would haul gravel from the mine?

7 BOWSER: Uh, basically, they've, uh, stated, uh, uh, dump truck with a pup
8 configuration, um, with them hauling to and from was the initial, um, never
9 mention of other options of, uh, your belly dumps, your side dumps or any of
10 those other configurations you might see in and out of there.

11 LORING: Okay. Have you seen any schematics for the trucks that would, uh,
12 any schematics or drawings that show the trucks and the configurations that
13 would be used for hauling gravel?

14 BOWSER: Uh, the only one came up through, I think, this, uh, testimony
15 here. Um, and it showed, uh, the truck and pup configuration dimensions
16 around 63 foot or so. If I...

17 LORING: Okay.

18 BOWSER: Interpreted the drawing correctly.

19 LORING: Okay. When you say the drawing, uh, which drawing do you have in
20 mind when you say that?

21 BOWSER: Uh, it was one sent to me in an email the other day.

22 LORING: Okay.

23 BOWSER: I can find it.

24 LORING: That was, that was my question, whether it was that or, or a
25 different drawing, uh...

1 BOWSER: No. It's the one that was in the email that was sent to me.

2 LORING: Okay. Let me see if I can, uh, pull that up. So, you mentioned
3 that was, that was the document that had come up during the, the testimony
4 here?

5 BOWSER: Yeah.

6 LORING: And it was circulated to you? Okay.

7 BOWSER: Yes.

8 LORING: All right. Okay. I'm going to share the screen, uh, and see if
9 we're looking at the, the same one here. I'm having a little trouble getting
10 this to rotate.

11 BOWSER: Yep.

12 LORING: Okay.

13 BOWSER: That's it.

14 LORING: Okay. This is the one. Uh, there you go.

15 BOWSER: Yep.

16 LORING: Okay. So this is the document. Is, is this the first time that
17 you or was that email and that attachment the first time you had seen a
18 schematic for the truck and pup?

19 BOWSER: Yes, it was.

20 LORING: Okay. And, uh, I think you mentioned 63 feet, uh, is that what
21 you're seeing with this, uh, this truck and pup here?

22 BOWSER: Sixty-three, 63.5 something in, drawing doesn't have the overall
23 dimension of the combination. You have to do some math in between and, uh,
24 but, yeah.

25 LORING: Okay.

1 LYNN: Excuse me, Kyle, could we get an...

2 LORING: Yeah.

3 LYNN: Exhibit number?

4 LORING: I, uh, do we, I'm sorry, you know, this wasn't marked with an

5 Exhibit number and I can't recall the number that we ended up giving this

6 one. I believe we did enter this as an Exhibit, right, when it was

7 circulated?

8 REEVES: So, Mr. Lynn, I...

9 LORING: This is from Miles.

10 REEVES: Yeah. I thought you sent this out, at some point, I'm trying to

11 remember when.

12 LYNN: Uh, why don't, uh, so we don't take time, why don't I look for

13 the exact time so we can, uh, keep moving and then we'll, I'll tie it in in a

14 few minutes.

15 LORING: Sure.

16 REEVES: Okay.

17 LORING: Great. Thank you. Okay. Uh, thank you, Mr., Mr. Bowser, for

18 explaining the, the length on that.

19 BOWSER: Yeah.

20 LORING: Um, I want to ask you, okay. I don't know that I need to spend a

21 lot more time on this, um, but does this look consistent with the turn

22 documents that you had seen for this Application before seeing this specific

23 schematic?

24 BOWSER: Um, all I've seen was just some, some drawings that show how

25 trucks can navigate the, the, uh, the turns and, and like this truck here is

1 not like what I've seen typically from Miles and other, other contractors
2 that have dump truck, uh, you know, truck and pup. A lot of them are a three-
3 axle configuration that don't have a steer dolly up front there. Um, and, and
4 so, like, that, that truck and trailer combination would handle through a
5 turn much different. And I don't know if that's just symbolizing the length
6 that you would typically see or, I mean, it's, the other style that I'm used
7 to seeing is going to, going to travel through a corner a lot differently
8 than, than that combination. Plus, they are extended out when they're loaded.
9 Um, and I think once they're out, they stay out most of the time, unless
10 they're going to be running around unloaded for a bit. But, they're, uh, out
11 another seven feet. So you're going to be closer to 70 feet and that's going
12 to tract through your corners a lot differently than that configuration right
13 there.

14 LORING: Okay. So, it's your understanding this may not be the
15 configuration that they're running with all of the trucks, uh, just based on
16 what you've observed from Miles' trucks before?

17 BOWSER: I've never seen a dump truck combination look like that here
18 locally. That doesn't mean it doesn't exist, but they're going to be three
19 and four axle pups, depending, um, and a little bit different style truck
20 which doesn't probably make a whole difference with the, depends on the axles
21 and where they are and that kind of thing. But, the, the trailer definitely
22 makes a difference in how far away it is from the truck.

23 LORING: Okay. Scrolling through my, my questions, you've been answering a
24 few, uh, all at one time. So, thank you for, for that. Um, so, you have some
25 concerns about the mine and its transportation impacts, why?

1 BOWSER: Because the, the haul system, the, the trucks, the, the road
2 system has never been designed to, to carry that kind of traffic, that kind
3 of weight, uh, that configuration of vehicles. Um, it, it's, I mean, the site
4 distance at your intersections is a problem, the quality of your road and
5 being able to stay in your lane is a problem. Um, it's, it wasn't designed
6 for that.

7 LORING: Okay. And do you travel on roads near the proposed mine site?

8 BOWSER: I have all my life. And I still am because I still have my house
9 there and I'm out there daily.

10 LORING: Okay. Uh, uh, we're going to use now the next opportunity to go
11 through a few of these, uh, videos, just to show us portions of the travel
12 route that the, that the tr-, trucks, sorry, would take from the mine
13 entrance out to Highway 99. Um..

14 BOWSER: Okay.

15 LORING: I'm going to ask you, can you pull up Exhibit A11?

16 BOWSER: Yes, I will do that and then I'll start sharing in just a second
17 here.

18 LORING: Great.

19 BOWSER: Go back over. All right. Here's the 11th. So, we have a, uh, uh, a
20 truck and trailer combination, um, in, coming down Grip Road, uh, down the
21 hill, um, this has the steer dolly on the front. So, when you see it go out
22 of the lane a couple, three times, um, and then also off to the side of the
23 road on the right-hand side, uh, into the grave, this truck is handling it
24 better than a typical truck would handle it coming down there. So, there he's
25 over the, over the yellow line.

1 LORING: And, Brian, can you pause this for a quick second? I just want to
2 make sure we're clear on, on where we are, uh, with this, so, can, can you
3 tell us where we are, roughly, from the entrance of the mine onto Grip Road?

4 BOWSER: So, I don't know, a few hundred feet. Uh, it's not very far down
5 from the, the entrance to the mine. So, you would have, uh, loaded the truck,
6 come to the mine, at the mine haul route to Grip Road, taken a right and, uh,
7 um, the, you ju-, we just went passed the driveway of, uh, the Voyle's house
8 that's on the right and we're approaching the S-curves coming down the hill
9 on Grip Road, towards Prairie Road.

10 LORING: Okay. So this is near the, the top of that hill there, that
11 we've, that has been discussed and the S-curves there may be some pledge to
12 do some work on?

13 BOWSER: Yes. Yes. And I...

14 LORING: Okay.

15 BOWSER: I think the, I can't verify in this, but it feels like the pup
16 distance on this truck combination, which would tie to how the extra axle is
17 up front and stuff, but it feels, it feels a little shorter, um, and maybe
18 it's unloaded, too, I don't, I don't know. I can't tell form, from the video.

19 LORING: Sure. Okay. Okay. If you can continue and, and then just, uh,
20 yeah, give us a little more information as you watch it?

21 BOWSER: Okay. So, they're out over the line there, coming back in,
22 cutting the corner, tires in the gravel, back out over the line, little dip
23 in the road there and now they're going to cut the, over the line again,
24 making that next corner. So, it doesn't fit and that's a good configuration
25 for that.

1 LORING: When you say it's a good configuration for that, what, what do
2 you mean by that?

3 BOWSER: Out of the truck and trailer combinations, that, that combination
4 is going to handle that route better than a typical truck and trailer with a
5 three-axle, um, set up and no, no steer dolly up front.

6 LORING: Okay. Uh, and that, that means it's a shorter configuration?

7 BOWSER: It's going to stay in its lane. One, I think it's shorter, but
8 mostly it's going to stay in its lane better because the front axle actually
9 pivots on that trailer as it's going through corners, gives it a little bit
10 of steering so that it, that it handles the corners at a tighter radius.

11 LORING: Okay. Uh, did you see anything else in that video that you'd like
12 to point out about the conditions there, uh, on those hills, on that hill?

13 BOWSER: They're just narrow lanes, no fog line, limited site distance as
14 you're, as you're coming down around all the corners, you don't have a lot of
15 site distance for people cutting corners and, and, and you don't have a lot
16 of options coming down with that kind of weight.

17 LORING: Okay. Great. Uh, can you pull up Exhibit A12 for us now and, and
18 show us that, too. There's another video...

19 BOWSER: Yeah.

20 LORING: In roughly that same area.

21 BOWSER: Let me, uh, hit pause, yep, so, they start right away. So, it's
22 coming down the hill in the exact same area, um, couple of bi-, bicycles
23 coming down the hill, um, and shows how difficult it is. There's no, no
24 shoulder there, there's a ditch right off the edge, some broken, uh,

25

1 pavement, no place to go. So, encountering something coming down is not, not
2 what you want to do.

3 LORING: Uh-huh. Okay. And then we get down to the flat area there, headed
4 towards Prairie?

5 BOWSER: Yep.

6 LORING: Okay.

7 BOWSER: There you run into flood issues a lot.

8 LORING: Okay. And we'll, we've got a photo, we'll, we'll talk about that
9 briefly here in a moment. Um, can you al-, can you now pull up Exhibit A13?
10 This is a video...

11 BOWSER: Yeah.

12 LORING: And, uh, if you could tell us what this one is, too?

13 BOWSER: So, this is not a professional driver, it's someone who has a
14 horse trailer and I assume they're trying to smooth out their ride for their
15 horses. But, if you sit and watch vehicles go up and down there, you'll see
16 people drive similar to this. And some of it pertains to it, it's a narrow
17 road, um, it's not wide enough and this is a smaller configuration and
18 there's some difficulty there. So, as it's going up the hill, they swing wide
19 to be able to cut the corner here. Um, you're going to notice some bouncing
20 on the inside tire there, right there, where they got off the road, into the,
21 into the grave there. Now, they cut the lane again, they're over in the other
22 lane coming up the hill, staying there. Now, there's no, notice the sight
23 distance, also, if, if something was coming down there, they didn't have, for
24 a good chunk of that, I mean, it would be a surprise and they'd have to get
25 over in their lane in a hurry. Um, so, they're going to also cut the, cut the

1 lane here again. As they're going around the corner, cut this corner also.
2 So, that's, Neil's driveway right there and then you're going to see the
3 entrance to the gravel mine up here on the left.

4 LORING: Okay. And when you say, uh, Neil's driveway, uh...

5 BOWSER: Yep.

6 LORING: Who is that again?

7 BOWSER: Um, blank on last name, testified the other day. Um...

8 LORING: Is it, is it Mcleod?

9 BOWSER: Yes.

10 LORING: I, I'm not sure, yeah, I think that's how you say his last name,
11 yeah. And testified here. Okay.

12 BOWSER: Yes.

13 LORING: Okay. Let's take a look at a, a couple of photos now and, and I'm
14 going, I can pull these up here on...

15 BOWSER: Okay.

16 LORING: One mine. Thank you for sharing those with us and showing us how
17 those curves function and, and, uh, with those types of vehicles on them. Uh,
18 I'm going to share a photo with you here. This is, uh, Exhibit A14, we've got
19 an A and a B...

20 BOWSER: Yeah.

21 LORING: Of the different photos there. We'll go over A. Do you know where
22 this is, are you familiar with this location?

23 BOWSER: Yes, this is right across from the Voyle's. Their driveway is,
24 uh, just right there. It's the house that's on that hill at the S-curves.

25

1 LORING: Okay. And, uh, this is the S-curves at the top of the, that Grip
2 Road hill?
3 BOWSER: Yeah. Yep.
4 LORING: And, uh, do you, what's going on in this photo?
5 BOWSER: Uh, ground is cracked and sluffing and starting to slide off down
6 the hill, off to the side.
7 LORING: Okay. Do you, uh, do you know why this happened?
8 BOWSER: Uh, no.
9 LORING: Okay.
10 BOWSER: No, I do know, uh, from being a kid and being in the area, that
11 that hill has had some of that, uh, through history, that's not, that's not a
12 surprise to see that.
13 LORING: Okay. And I'm going to scroll down to that, uh, Exhibit A14B. Um,
14 so it looks like it also j-, it's a different angle on that area?
15 BOWSER: Yeah. It's a, a bigger slide, bigger area and I think the, the
16 County put a bunch of, dug some stuff out and put a bunch of rock in there to
17 try and stabilize that.
18 LORING: Okay. And, and this is not how it looks today, is that right?
19 BOWSER: No, no.
20 LORING: Okay. Um, but you have seen it, these conditions occur over the
21 course of your lifetime living in that vicinity on that stretch of road?
22 BOWSER: Yeah. And I think if you went there right now, further down, you
23 can find a small crack in the, in the pavement where there's, there's some
24 movement also.
25 LORING: Did you observe that recently?

1 BOWSER: Uh, within the last few months, yeah.

2 LORING: Okay. Okay. I'm going to turn now to, uh, a different photograph.

3 Um, and this refers to, uh, sorry, I've got to pull that up really quickly

4 here. Uh, you were mentioning that there are sometimes flooding on the road.

5 And, uh...

6 BOWSER: Yes.

7 LORING: I believe that we have a photograph of that that I'd like to pull

8 up here really quickly. Okay. I'm going to share the screen here. And you

9 should be able to see Exhibit A15...

10 BOWSER: Yeah.

11 LORING: Here. Uh, do you know where this is?

12 BOWSER: Yes. So, that's, uh, the flat area between the bottom of the S-

13 curves and the Samish River bridge.

14 LORING: Okay. Uh, which way am I looking if I'm, you know, if I were to

15 keep driving, where would I, what would I encounter next around that curve?

16 BOWSER: You'd go across the Samish River and come to the intersection

17 with Prairie Road.

18 LORING: Prairie Road. Okay.

19 BOWSER: If you're heading west.

20 LORING: Okay. Heading west, behind me...

21 BOWSER: Yep.

22 LORING: Is up towards the, uh, the mine entrance there?

23 BOWSER: Yes.

24 LORING: Yeah. Okay. Um, are you familiar with, uh, flooding along the

25 Grip Road area down there?

1 BOWSER: Yes.

2 LORING: In your experience, living in that area, and traveling along
3 those roads regularly. Uh, for decades, how frequently would you say that
4 occurs?

5 BOWSER: Uh, um, boy, I don't, I don't know if I have a number for it, but
6 seeing something like that, that wouldn't shock me to have that on a monthly
7 basis. I mean, that, have the ditches full and be lapping up and in this
8 case, it looks like it actually came over the roadway, it does go over the
9 roadway several times a winter, just depends on what kind of winter we have
10 and how much r-, rain we receive. But, but that's, that's common and it'll
11 eat out at the edge of the road and have to get repaired by the County,
12 sometimes more than once in, in a calendar year. And notice the telephone
13 pole in the ditch, because that's where there's room for it.

14 LORING: Okay. And when you said it looked like it was out in the road,
15 are, are you thinking about this area along the side here or is there
16 something else you were thinking...

17 BOWSER: There's the, there's a, looks like a wave of water at the bottom
18 of the picture that was being pushed forward.

19 LORING: Okay.

20 BOWSER: By driving through it, that's what it looks like.

21 LORING: Uh-huh.

22 BOWSER: I can't verify, but it looks like that.

23 LORING: Sure. I just wanted to understand what, yeah, what your basis was
24 for saying that. Uh, have you ever traveled this road and had the flooding
25 completely cover the road?

1 BOWSER: Oh, yeah. Yeah. It will get closed.

2 LORING: Okay. Closed?

3 BOWSER: It, it has, yes. So will F and S Grade Road.

4 LORING: And what happens when that happens?

5 BOWSER: Uh, I mean, they, they put signs up at either end and, and it's

6 closed and you're not traveling through there.

7 LORING: Okay. Uh, in your experience, how long does something like that

8 last?

9 BOWSER: Um, usually, it's a, the water being that high over the roadway,

10 um, because it's, its, it's rain-driven so you're going to have a few days

11 and then it's going to, it's going to recede. It's not going to stay over the

12 roadway for an extended period of time. It will for, for a day or two and

13 then typically it's going to go down. But it's, it's rain-driven so you're

14 going to have to have multiple days of, of rain to get it up there high

15 enough.

16 LORING: Uh-huh. Okay. Uh, are you familiar with, uh, well, let me ask

17 again, you have received the Application materials that relate to, uh,

18 transportation issues for the proposed mine, right?

19 BOWSER: Yes.

20 LORING: Yeah. And you've reviewed all of them that are in the record, as

21 far as you know?

22 BOWSER: As far as I know, I've reviewed a lot.

23 LORING: Yeah. And are you aware of any Application materials that address

24 this flooding issue?

25 BOWSER: No. None.

1 LORING: Okay. And are you aware of anything in the MDNS that addresses
2 this flooding issue?

3 BOWSER: No.

4 LORING: Okay. Okay. And, uh, that's good. Uh, let me ask you a little bit
5 now about the Grip Road intersection with Prairie Road. We spent a few
6 minutes on this with John Day earlier.

7 BOWSER: Yep.

8 LORING: And, and, uh, if you can pull up Exhibit A16, this is another
9 video of that stretch of road, I'll stop sharing here.

10 BOWSER: Okay. [Inaudible] here. Here we go. Check. All right. So, dump
11 truck is coming up to the intersection, uh, at, uh, Grip and Prairie Road.

12 LORING: Okay. This is heading westbound?

13 BOWSER: Yes. So, right there is the driver's best, well, right there is
14 probably their best review of around the corner, with sight distance. And as
15 you get up closer to the intersection, you lose, you lose sight distance
16 between of the hillside and..

17 LORING: Uh-huh.

18 BOWSER: In this scenario, it's a, a, uh, single dump truck, doesn't have
19 a pup and truck, it's not loaded. Uh, it's my understanding it's going to
20 take around 22 seconds for a truck and trailer combination to clear that
21 intersection and be fully out into the, the, uh, westbound lane there.

22 LORING: Okay. Have you ever observed, uh, evidence of traffic problems in
23 this intersection?

24 BOWSER: Yes. I've observed, uh, stop signs gone. I've observed, uh,
25 broken, uh, glass and car parts, uh, marks in the ditch. Um, I observed my

1 grandma's car on the other side of the road as she went in the snow, crossed
2 the intersection. Uh, so, yes, multiple times.

3 LORING: Okay.

4 BOWSER: There's guardrail up on the corner because a girl died there
5 going off the edge. My dad was a, a fire fighter and then a fire, uh,
6 district chief and then they, um, uh, fire commissioner for Fire District 8
7 so I'm fairly familiar with a lot of issues that have happened.

8 LORING: Okay. So, you've actually responded as a, as a fire fighter to
9 that area or...

10 BOWSER: I didn't.

11 LORING: Volunteer?

12 BOWSER: My dad did.

13 LORING: Okay.

14 BOWSER: My dad did. Yeah.

15 LORING: That's what you said? Okay.

16 BOWSER: Yep.

17 LORING: Okay. And, uh, are you familiar with the Applicant's
18 determination that there is inadequate sight distance at that intersection?

19 BOWSER: Yes.

20 LORING: And what are they proposing to do to address that sight distance
21 issue?

22 BOWSER: Uh, flashing beacon light, is my understanding, to warn, uh,
23 oncoming traffic on Prairie Road that there's a truck at the intersection.

24 LORING: Okay. And do you believe that will adequately address the issues
25 that you observed?

1 BOWSER: No. No, I do not.

2 LORING: Um, what should be done instead?

3 BOWSER: Um, my opinion is they should cut the hillside back and eliminate
4 the problem of the site distance issue. Um, I know it was brought up earlier,
5 but the, the DNN, uh, traffic consultants had, uh, indicated that it was too
6 costly. And I look at that and I, I mean, that's what I do for a living is
7 industrial type projects and I, and I see it's not a big job to take out the
8 hillside, they own most of the right-of-way already. Um, right-of-way isn't
9 terribly expensive based on what I saw on Parson Creek Road, where I live.
10 Puget Sound Energy just went through and upgraded a bunch of power poles
11 there and bought right-of-way from a number of people all up and down Parson
12 Creek Road and it's not cost-prohibitive. Um, from the industrial side that I
13 come from, your first goal is it eliminate, uh, whatever a hazard is. And
14 then, if, if it's not feasible or if it's cost-prohibitive or some other
15 issues, then you go to an engineered-solution. And to me, this is not cost-
16 prohibitive to eliminate this and not need a flashing light.

17 LORING: Okay. When you say not cost-prohibitive, uh, you're referring
18 both to the work and to the possibility of purchasing additional right-of-way
19 if needed?

20 BOWSER: Yes.

21 LORING: And, uh, when you talk about the right-of-way, do you have any
22 understanding of how much that would cost to purchase additional right-of-way
23 along that area?

24 BOWSER: Um, like, my neighbor, I think he, he got \$2200 for a small piece
25 of land. The person across the street that gave us some trees and a bigger

1 chunk of land and ended up with three large power poles and transformers, so
2 a chunk of land, I think total was, like, \$8,000. So, I can't imagine it
3 being, you know, maybe \$30,000. I mean, I...

4 LORING: Well, and I, and I w-, yeah, I won't ask you to speculate about...

5 BOWSER: Yeah.

6 LORING: How much it would be.

7 BOWSER: Yeah. It's...

8 LORING: But I, I, I know you had, you've done some work into
9 investigating how much other...

10 BOWSER: Yeah.

11 LORING: Other right-of-way purchases have been, so, okay.

12 BOWSER: Yeah. It just doesn't seem like a lot of money compared to fixing
13 the problem, having it go away and not be an issue.

14 LORING: Okay. And, and you said that in your experience, in your work,
15 you fix the problem first, mechanically if you can, and then if not, then you
16 have and engineered-solution?

17 BOWSER: Yeah. That's always your second line of defense if the
18 engineered-solution. The goal is to eliminate it. And I, I haven't, from oil
19 refineries to manufacturing facilities to wherever I've been, that's, you,
20 you get rid of the problem first and then if you can't do that, then, then
21 you go to engineered-solution. Because those can fail. Where if you get rid
22 of the problem, it doesn't fail.

23 LORING: Okay. And that's not what you've seen proposed here?

24 BOWSER: Correct. There's, there was no investigation done to, it was just
25 a hand wave, it's too expensive. And...

1 LORING: Okay.

2 BOWSER: That's not what [inaudible] do.

3 LORING: Sorry, I almost cut you off. Thanks. And when you say that you,
4 you, so you haven't seen any dollar figures assigned to, uh, fixing the
5 problem?

6 BOWSER: No. Nope.

7 LORING: Okay. Okay. Uh, let's, actually, I've, I've got another Exhibit
8 I'd like to show you. You're familiar with the intersection of Prairie Road
9 and F and S Grade Road, right?

10 BOWSER: Uh, yes.

11 LORING: Okay. I'm going to show you, uh, a photo of that intersection,
12 uh, here. Let's see. Okay. And, uh, just want to know, yeah, do you recognize
13 this image here?

14 BOWSER: Yep.

15 LORING: Okay. And this is that intersection, uh, where are we, uh, which
16 way are we headed and what are we encountering with this intersection?

17 BOWSER: We are headed for Old Highway 99, so we're westbound. Um, we've
18 just gotten, if, if we're coming from the gravel pit, um, we would have just
19 gotten onto Prairie Road, crested a hill, we're, we're moving downhill. F and
20 S Grade Road is on your left, um, school bus sign is now not there, which is
21 good because it does further impede our, our sight distance as you come
22 around the corner.

23 LORING: Okay. And, uh, and so trucks could go F and S Grade Road to get
24 to the Bellville pit, is that right?

25 BOWSER: They could.

1 LORING: Okay. The preferred..

2 BOWSER: Or [inaudible] to market route or something like that, they could
3 go that way also.

4 LORING: Okay. The preferred route is to go generally straight ahead?

5 BOWSER: Yeah.

6 LORING: Okay. I think I have, uh, I think we have a video that picks up
7 roughly from this photo and shows traveling a little bit, uh, west of here.
8 And that's Exhibit A22. If I can have you pull that up.

9 BOWSER: Okay. Oh, A-, A22, you said?

10 LORING: Sorry, A20. I got a little ahead of myself, thanks.

11 BOWSER: Let me, there we go. Get that rewind and go back to sharing. All
12 right. So, it's the same truck we saw earlier with the, uh, dolly wheel on
13 the front. Um, they've just come around the corner and they're headed towards
14 F and S Grade Road here.

15 LORING: I...

16 BOWSER: See here...

17 LORING: I'm not seeing, I'm not seeing it right now, Mr. Bowser. Are
18 other people seeing it?

19 REEVES: No.

20 LORING: Okay.

21 REEVES: No.

22 LORING: I think maybe it didn't take on the share screen.

23 BOWSER: Okay. No, it didn't. So, I guess that makes a difference, that's
24 a lesson for today. Don't share, you don't see it.

25 LORING: That's great.

1 BOWSER: Are you seeing it now?

2 LORING: We are, yes.

3 BOWSER: Okay.

4 LORING: And where is this in relation to that photo we were just looking
5 at?

6 BOWSER: Uh, we have not got to that exact location, we're just, um, we're
7 to the east of that.

8 LORING: Okay.

9 BOWSER: So, we're in between Grip and F and S. So, they, notice how they
10 swing wide, get onto the yellow line there to cut the corner to keep their,
11 keep their trailer in the, in the lane without it going over the, into the
12 gravel. And right there, you have traffic coming, so, and, and you can't see
13 that until you're right there.

14 LORING: Uh-huh. Okay. Uh, anything else that we should observe, uh, from
15 that video as we're coming around that corner there?

16 BOWSER: Um, at, at times, there, this is a school bus stop right here
17 where the garage can is. And then the next house down can be another school
18 bus stop. And, uh, it's a little bit further down the road here, uh, not f-,
19 much further, that dump truck and pup should be up to, uh, full speed from
20 after getting on, after pulling onto Prairie Road.

21 LORING: Okay. And, uh, you mentioned those could be, uh, school bus
22 stops. Is it your understanding that, uh, the driveways in that vicinity,
23 generally each one can be a school bus stop?

24 BOWSER: Yes. And they have been through time.

25

1 LORING: Okay. So, wherever you see a house with a driveway, that is a, a
2 potential bus stop for the school?

3 BOWSER: Yes.

4 LORING: Okay.

5 BOWSER: Part of my concern with this intersection, uh, kind of going back
6 to the last picture, if those trucks want to make a left-hand turn there, you
7 literally have a 50 foot, uh, 50 feet before you get to where you need to
8 turn is where you can see whether it's okay to make the left-hand turn or
9 not. And the, the entrance to F and S Grade Road is not set up correctly. The
10 truck can't make that corner and stay in its lane. And it's also sloped, uh,
11 down to the right, towards the...

12 LORING: Okay.

13 BOWSER: The farmer's field there. And, uh, that's going to be a problem
14 if, if trucks are actually going to navigate the way on any kind of a regular
15 basis.

16 LORING: Okay. Okay. So, it's sloped in the way you're actually turning,
17 in the same direction kind of?

18 BOWSER: Yeah. It, it pulls you towards the field.

19 LORING: Okay.

20 BOWSER: Trying to, in your lane there.

21 LORING: All right. Let's pull up Exhibit A22 and I think we're almost
22 through, yeah, the videos that we've put together here. Uh, and this is going
23 to be farther down the road, I believe. Actually, I think it's headed the
24 other way. Uh, do you, are you familiar with this one?

25 BOWSER: Yes. Yes.

1 LORING: And what is this showing here?

2 BOWSER: So, in this scenario, we're, we're coming from the, uh, Bellville
3 pit, going up to Grip Road. Um, we've just gone through the S-curves on, on
4 Prairie Road, um, and entered the area where we have the guardrail that's
5 been recently installed.

6 LORING: Okay.

7 BOWSER: So, a couple of things this is going to illustrate. So, we're
8 coming up, there's no space, uh, now, the truck is going to go around, notice
9 it's a double yellow line there. Uh, there's a car coming, so we waited,
10 double yellow line and it's going to go around. They can see, but, um, the
11 problem is, you've got the road on the left, a bunch of people live up there.

12 LORING: Uh-huh.

13 BOWSER: And you're going to end up in a scenario where you have people
14 that don't want to be behind a dump truck and trailer. Um, and they're going
15 to try to pass as soon as they can to get around it. Um, one other thing that
16 I'd like to illustrate, I don't know if you'll be able to see if I go back
17 here, um, you, the truck is going to dip down on the right-hand side here.
18 Um, right, I think it was right there, oh, right there. It dips to the right..

19 LORING: Yeah.

20 BOWSER: The road basically between here and F and S Grade Road, both
21 directions has that same properties where there's those kind of, uh, changes
22 in the contour of the road that just make it a little bit more challenging
23 when you're, you're driving a truck like that that's fully loaded, it tends
24 to move you around on the road itself because it's not, it's not smooth and
25 set up for that kind of traffic.

1 LORING: Okay. Uh, and then you were saying that the guardrails are there
2 as well in that same location?

3 BOWSER: Yes. It makes it very uncomfortable. I've ridden my bike there. I
4 won't ride that direction anymore. It's not, I'm not comfortable with it.

5 LORING: Okay. All right. Um, thank you for sharing that one as well,
6 coming back from the other direction. Uh, I'd like to pull up a photo for you
7 now, I think we have one photo and one video that I'd like to go through
8 here. And so this is going to be, uh, let me see, okay. Let me share this
9 screen here. I'm showing this is Exhibit, uh, A23.

10 BOWSER: Yes.

11 LORING: And there we go. Uh, do you know what this, uh, depicts here in
12 this photo?

13 BOWSER: Yeah. You've got basically from Old 99 through the two S-curves
14 at, at the beginning of Prairie Road there.

15 LORING: Okay. And, uh, have you ever experienced vehicles having
16 difficulty negotiating the curves in this area?

17 BOWSER: Yeah. I've, I've followed the Skagit County truck and pup that
18 they were testing the route, uh, to see if they fit. And they don't.

19 LORING: Okay. Was, was it close?

20 BOWSER: Um, the, the upper corner, they, they can do better, the, the one
21 that's closest to the mine, but the lower one there's no way you can get
22 through that in either direction and stay in your lane. The, they, uh, the
23 pup trailer splashed mud out into the guy's yard, um, and then on the, uh, if
24 you're going the other direction, there's a, uh, a pot hole that you can
25

1 observe today because vehicles swing wide there to get through that corner
2 and they're into the gravel.

3 LORING: Okay. And have you heard, uh, that the Applicant is proposing to
4 address those curves and traffic issues related to those curves and the, the,
5 uh, trucks, gravel trucks?

6 BOWSER: It's my understanding they're going to do something. I don't know
7 what they're doing, but there, there, there is some sort of improvements
8 that's supposed to mitigate those issues.

9 LORING: Okay. And the MDNS, does that reference some of those, or does
10 that reference that same thing?

11 BOWSER: I believe it does.

12 LORING: Okay. But have you seen a written document that shows how it
13 would occur?

14 BOWSER: No, I haven't seen anything. I've just seen some words that
15 indicate that there is acknowledgement there's an issue.

16 LORING: Okay. If there were, uh, a written document to describe what was
17 going to happen and, and how this was going to be addressed, and it were in
18 the record, do you feel you would have seen it, given your review?

19 BOWSER: Yes.

20 LORING: Okay. Um, and do you, uh, did you hear any of the public comment
21 that was provided as part of the, this hearing the first day?

22 BOWSER: No, I did not.

23 LORING: Okay. Okay. And I believe I've already asked you and you've
24 confirmed that, well, I'll just ask it again, the Application, uh, no, strike
25 that, the MDNS doesn't require a limited route, or one route for the...

1 BOWSER: No.

2 LORING: Hauling, right?

3 BOWSER: There is no limitations anywhere, that I can see. And we don't
4 address any other routes. We only address that haul route for an average
5 number of vehicles, not, not any peaks or anything else, just an average.

6 LORING: Okay. Let's pull up the last video I want to discuss with you.
7 Now, this is a, and this is Exhibit A2-, A27.

8 BOWSER: Okay. Oh, that one. Um, let me get to the sharing part. Can you
9 see it?

10 LORING: Yes.

11 BOWSER: Okay.

12 LORING: I can see it here. And, uh, can you just preview what this video
13 is going to show us?

14 BOWSER: Yeah. So, this...

15 LORING: What, what we're looking at?

16 BOWSER: Uh, in this scenario, uh, a truck and trailer would have went,
17 um, uh, east from the gravel pit. So they've gone up, further up Grip Road,
18 up the hill. And, again, this has a steerable wheel up front, in this
19 configuration. Uh, so it's going to do better than, than a lot of other
20 trucks will with this route. So, it's going to go through the first two, uh,
21 90 degree corners, uh, railroad tracks and then the last 90 degree corner.

22 LORING: Okay. And just before you start it, actually, or if you can pause
23 it just for a second. I just want to make sure we're really clear. When you
24 talk about a steerable wheel or axle, you're talking about the front axle of
25 the pup, the trailer, is that right?

1 BOWSER: Yes. Yes. You'll notice, in, if, in the detail, you can see the
2 wheels are turned slightly through the corners. That helps with the steering,
3 it's going to track better through the corner.

4 LORING: Okay. And, and a lot of trucks have a fixed front axle that
5 doesn't steer at all and so that handles a little bit more, with more
6 challenge around corners?

7 BOWSER: So, they'll have three axles in the back of the trailer, uh,
8 nothing up front.

9 LORING: Uh, okay. I got it.

10 BOWSER: Yep.

11 LORING: Okay.

12 BOWSER: And then that, that wheel up front also allows for a little bit
13 more capacity.

14 LORING: Right. Okay. Thanks. Let's take a look.

15 BOWSER: So, we're going to cut the corner here, big time. Several feet
16 over. And it is a tight corner. Now, here they're going to swing out and cut
17 the corner. Taking up both lanes all the way through. And then here's the
18 railroad tracks. These are very difficult to maneuver. And, you know, when
19 he's going slow and he's all the way over into the other lane, 100% with the,
20 with the truck itself. And then cuts, cuts inside again. So you can't see
21 through that whole intersection. And you just got to go for it. And it
22 doesn't show the next 90-degree corner coming up. But there's another 90-
23 degree corner that, that's, that's pretty nasty.

24 LORING: Okay. Uh, and so the, uh, the Application anticipates some level
25 of traffic, uh, hauling heading that direction, right?

1 BOWSER: Yes, it does.

2 LORING: Does it provide any study whatsoever of, uh, crossing over that
3 center line, in that direction?

4 BOWSER: I've seen nothing to address traffic anywhere else.

5 LORING: Okay. And so, that video illustrates potentially the type of
6 crossing that would occur with a truck and trailer, gravel truck and trailer?

7 BOWSER: Yes.

8 LORING: Okay. Well, thank you for that, Mr. Bowser. I don't have any
9 other questions for you. Do you have anything else you'd like to share with
10 us today?

11 BOWSER: Um, the only thing, I mentioned the whole process has just been
12 frustrating and what's been addressed and, and not addressed through this,
13 this process. The, the whole road system is, has not been, been looked at,
14 it's just a few bits and pieces here and there. And then being able to go off
15 of average traffic. I've never been in a situation where I got to use the
16 average to calculate anything. The, the peaks matter. And, and for how long
17 that duration. And that's not anything that's been addressed in this process.
18 I also don't feel the Old 99 intersection has been addressed adequately. Um,
19 part of the challenge there is, uh, people that stop at, at 99 and, or at,
20 uh, Prairie Road and on the other side of Bow Hill Road, if they sit there
21 very long, they're usually not very good anyway, but they sit there very long
22 and then they don't remember who's going first and creates more problems with
23 the intersection with, with, with turning. And when you have dump truck and
24 pup going to take 22 seconds to clear the intersection, it's going to be a
25 challenge. So, it's just, uh, what we have right now. That's it.

1 LORING: Okay. Well, thank you for that. I appreciate that. Uh, and thank
2 you for your time testifying. Well, uh, gasoontite, uh, by the way.

3 REEVES: Sorry.

4 LORING: And these things happen.

5 REEVES: [Inaudible.]

6 LORING: I know. Uh, it happens. Uh, so, as with others, you're going to
7 hear from, uh, the Hearing Examiner and then, uh, other Attorneys and then
8 I'll probably have a chance to follow up with you at the end of that.

9 BOWSER: Okay.

10 LORING: Thanks.

11 REEVES: I'm going to suggest a five-minute bathroom break because...

12 LORING: This would be good timing.

13 REEVES: I need a minute to deal with my sinus infection and then we'll
14 come back to conclude the day. Thanks, everybody.

15 LORING: All right.

16 LYNN: Thank you.

17 [The tape ends.]

18 **The undersigned being first duly sworn on oath, deposes and says:**

19 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
20 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party
21 to this action. That on May 3rd, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves, that
22 took place on 9/8/22 at 1:30 p.m., regarding the above-captioned matter.

23 I certify and declare under penalty of perjury under the laws of the State of Washington that the
24 aforementioned transcript is true and correct to the best of my abilities.

25 Signed at Mount Vernon, Washington, this 3rd, May of 2024.

Janet Williamson
Janet Williamson

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**IN SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT**

State of Washington,)	
	)	Cause No.: PL16-0097, PL16-0098,
Plaintiff,	)	PL22-0142
)	
vs.	)	PERMIT HEARING 9-8-22 3:00 PM
)	
Name,)	
)	
Defendant)	

Transcription Date: May 4th, 2024

Present: Andrew Reeves, Tom Ehrlichman, Brian Bowser, Kyle Loring, Bill Lynn, Jason D'Avignon, Mona Kellogg, Phil Mcloud

REEVES: There's Mr. Loring. Okay. And Mr. Bowser. Okay. Um, so, we'll go to Mr. Ehrlichman next.

EHRlichman: Thank you, Mr. Examiner. Afternoon, Mr. Bowser.

BOWSER: Hi, there.

EHRlichman: Um, my name is Tom Ehrlichman and I represent one of your neighbors, uh, Cougar Peak and Neil Mcleod's family on Grip Road.

BOWSER: Okay.

EHRlichman: Uh, have you and I ever met or spoken?

1 BOWSER: I do not believe so.

2 EHRLICHMAN: I don't believe so either. Um, and if necessary, would you be
3 willing to return to this proceeding during my presentation of the case, uh,
4 as a witness?

5 BOWSER: Yeah. As long as, uh, it works where I'm not flying as part of my
6 job.

7 EHRLICHMAN: Okay. Thank you.

8 BOWSER: Uh-huh.

9 EHRLICHMAN: Um, I, I think your testimony, uh, let me put it this way, some
10 people will find your testimony and videos and photos compelling, other
11 people will not. Um, one of the folks that will not find it compelling might
12 likely say that you are not an expert. Um, are you an expert when it comes
13 to, uh, the terrain that you showed us in those photos and videos?

14 BOWSER: You mean, like, do I know the area like the back of my hand and
15 can tell you how to drive every corner faster, slower, if I'm on a bicycle,
16 where I need to be, any detail about the road? Yeah. I've been there my whole
17 life. I've been all over everywhere, gravel pits, the property of this
18 proposed, uh, dig the pit, I mean...

19 EHRLICHMAN: Thank you.

20 BOWSER: I grew up here.

21 EHRLICHMAN: And have you been watching these, uh, proceedings, including the
22 testimony of the traffic expert for the Applicant?

23 BOWSER: I've been able to catch a little bit, but I also have to work,
24 so...

25

1 EHRlichman: And you testified that, um, you have examined the traffic reports
2 that are in the record?

3 BOWSER: Yes.

4 EHRlichman: Um, you mentioned, uh, Fire District Number 8, uh...

5 BOWSER: Yes.

6 EHRlichman: I wasn't sure, could you clarify that for us? Are you a volunteer
7 there, uh, is one your family, uh, part of it?

8 BOWSER: My, my dad was when we first moved here in '72, he joined the,
9 the local fire department and was involved with it until probably around
10 2012ish, somewhere in that range. He started as a, as a, uh, just a member,
11 became a Fire Chief, uh, later, after he retired, became Fire District
12 Commissioner and I think he was there for 12 to 16 years as a, as a
13 Commissioner. So, um...

14 EHRlichman: Is it safe to...

15 BOWSER: [Inaudible.]

16 EHRlichman: Sorry.

17 BOWSER: Is it safe to say that, uh, you have an intimate knowledge as to
18 the, um, history of what Fire District 8 is about in this specific area?

19 EHRlichman: Oh, yeah. Yeah.

20 BOWSER: And in that period of time, uh, do you recall, uh, Fire District
21 8 or your father talking about, uh, accidents along Grip Road or Prairie Road
22 near the intersection of Grip Road?

23 LYNN: I'm going to object. Um, I'm sorry, excuse me, but, you know,
24 we're asking the witness if he remembers hearing about something from his

25

1 father, a Fire District Commissioner, if, certainly not very probative
2 evidence. And it's hearsay.

3 REEVES: Uh, sustained, I guess you can rephrase the question. I, Mr.
4 Ehrlichman.

5 EHRLICHMAN: Thank you. Um, Mr. Bowser, uh, are, are you aware that the
6 traffic engineer for the Applicant testified here that he looked at the, uh,
7 crash history on Grip Road, the segment in between the intersections...

8 BOWSER: Uh-huh.

9 EHRLICHMAN: And he found that there were only six crashes in five years?

10 BOWSER: I find that hard to believe. Part of it, I see debris. So, maybe,
11 uh, people do stuff and don't call cops and able to drive their car away. So,
12 that may be part of it, but, uh, um, that doesn't seem accurate based on what
13 I'm used to seeing through there.

14 EHRLICHMAN: What, what, if you were told that the evidence that you submitted
15 in your testimony, um, isn't compelling, that you shouldn't worry because
16 there had only been six crashes in five years on Grip Road, what would your
17 response to that be?

18 BOWSER: Uh, um, well, I'm willing to be an expert witness when somebody
19 dies. Because that is not a safe, safe route to travel with truck and pup.
20 And I've seen many, many near misses on that system, um, I've, I've witnessed
21 all sorts of stuff, I've been involved in near misses. Um, and it's, there
22 are going to be problems down the road. And we can pretend that, you know, if
23 an expert said that it's great and we've had experts through this entire
24 planning process that say stuff is fine. And then we go back and we look and
25

1 we find out it's not. I think we just had a derailment of some trains, uh,
2 down south that experts said was great and a bunch of people died, so...

3 EHRLICHMAN: Okay.

4 BOWSER: I get a little frustrated at that.

5 EHRLICHMAN: Thank you for that. Um, it, we heard testimony, uh, from the
6 Applicant's, um, Chief Officer, Vice President, that the, the driver track
7 record of this company is excellent. It does not include ser-, any serious
8 accidents. Doesn't, isn't that reassuring enough to you that the mine would
9 operate safely on Grip Road?

10 BOWSER: No. I appreciate if they, if they have a, uh, if they're
11 concerned about safety and, I mean, because it effects their insurance and
12 everything else, that's great. But they're not the only people going to pit,
13 I have no control over who goes to that pit. It could be anybody. And just
14 because you're, you have a good track record and you have, in general, good
15 employees, that doesn't mean accidents aren't going to happen. And when you
16 put them in risky situations, I mean, you're just, you're asking for
17 difficulties.

18 EHRLICHMAN: And when, uh, he also testified that the conflicts with school
19 buses were not a problem because there were only three buses, isn't that
20 reassuring to you?

21 BOWSER: No. Not if the bus is coming to go down the hill when they're
22 trying to go up the hill or vice versa.

23 EHRLICHMAN: What do you mean by that?

24 BOWSER: Well, if you're on Grip Road and you're trying to traverse the S-
25 curves and the bus is coming down and the truck is going up, um, that doesn't

1 reassure me that it's a professional driver or whether that, that there's
2 only three buses.

3 EHRLICHMAN: Well, couldn't, wouldn't the driver be able to be aware that
4 school buses might be on the road and, and safely navigate his side of the
5 road?

6 BOWSER: No. You can't fit and stay on your side of the road and navigate
7 those corners. You're going to have to stop some place, if you know the bus
8 is coming.

9 EHRLICHMAN: When you looked at the Applicant's graphic showing that the, uh,
10 truck/pup trailer combination was only 63 feet long, uh, your testimony was
11 that actually, uh, trucks hauling gravel w-, would likely be longer than
12 that? I think you said 70 feet?

13 BOWSER: Yeah. There will be a good chunk of them that will be, not all of
14 them.

15 EHRLICHMAN: W-, and was that graphic that you looked at, and I can find the
16 Exhibit number if we need it, it was at the beginning of your testimony, did
17 that graphic appear to be at scale, drawn to scale?

18 BOWSER: No.

19 EHRLICHMAN: Uh...

20 BOWSER: That is...

21 EHRLICHMAN: Oh, we don't have an Exhibit number yet. Mr. Lynn, did you, Mr.
22 Lynn, did you want to propose an Exhibit number of that?

23 LYNN: Well, I don't want to propose an Exhibit number, I don't have the
24 list at the moment. But, what I said I would find was when it was sent. And
25 it was sent on September 2nd at 10:37. So, that would tell us, that would give

1 us a way to identify the document. And then we can verify that we have the
2 same number and I suggest we spend some time doing that at some point.

3 EHRLICHMAN: Mr. Examiner, if I may, uh, we've had testimony now about the
4 Exhibit, it was circulated to all parties, there's no reason not to give it
5 an Exhibit number that I can see, every-, everyone has it.

6 REEVES: There's no objection to having an Exhibit number, we just don't
7 know what number to give it, so, it's coming into the record, we just...

8 EHRLICHMAN: Oh, okay. All right. So, it's not an issue of it coming into the
9 record, it's just...

10 REEVES: No.

11 EHRLICHMAN: You don't know what number? Okay. All right. Very good. Uh, but
12 Mr. Bowser, you remember reviewing that graphic?

13 BOWSER: Yes.

14 EHRLICHMAN: And it was not drawn to scale?

15 BOWSER: No.

16 EHRLICHMAN: Um, so it didn't really give us a good depiction of the length of
17 those trucks, per-, and is that correct?

18 BOWSER: That's correct.

19 EHRLICHMAN: Did it give us a picture of the length of those trucks in
20 relation to a car or a school bus?

21 BOWSER: No.

22 EHRLICHMAN: And are you aware that that graphic was intended to depict the
23 truck/trailer combination that was used in the Applicant's auto-turn
24 analysis?

25

1 BOWSER: Um, I didn't, I didn't know what it, other than distance, I
2 didn't know. If that's the configuration, it's going to handle a corner way
3 differently than a triple axel trailer with no steer dolly up front.

4 EHRLICHMAN: I believe the Applicant, um, again, uh, the Applicant's, uh, Vice
5 President testified that they are offering to improve two curves on Grip Road
6 based on an auto-turn analysis that used that truck/trailer combination, uh,
7 in the modeling for that. Is that a concern from your perspective?

8 BOWSER: I appreciate that there's acknowledgement that there's a problem
9 in those curves, but I'd like to model the correct vehicle and turn radius,
10 um, for that to make sure that we're actually adequately, adequately
11 addressing the issues there.

12 EHRLICHMAN: And you said that you have familiarity in the, uh, region here
13 with, uh, construction, construction management, um, and, uh, those projects
14 have included oil refineries?

15 BOWSER: Yeah.

16 EHRLICHMAN: And what other large facilities have you, uh, done construction
17 management for?

18 BOWSER: Uh, so I, I've dealt with issues at, uh, Navy Base on Whidbey
19 Island. Um, three of the four local refineries, like build a new waste water
20 treatment plant, managing 100 plus million dollar turnarounds from cradle to
21 grave. I'm currently, uh, working with a, a large manufacturer in five
22 different large capital projects that are from Greenfield, uh, 200 square,
23 uh, thousand square foot building, roads, parking, everything, uh, plus the
24 equipment inside to manufacturer to just upgrades to be making a fiberglass
25 rebar, um...

1 EHRlichman: Okay.

2 BOWSER: Lots of stuff.

3 EHRlichman: Thank you. And did you have an opinion as to whether this mine is
4 vital to continued, uh, supply of sand and gravel in the, uh, Skagit County,
5 um...

6 BOWSER: Um...

7 EHRlichman: Market.

8 BOWSER: I don't know the actual market in Skagit County on whether we're
9 running out or not running out. I know it's got gravel in the ground, it's
10 zoned, uh, I don't agree necessarily with how they zoned it when they did it,
11 but that's water under the bridge. Um, it's zoned, uh, to, to mine there. But
12 if we're going to mine it and we think it's vital, which the County does want
13 gravel, people here do, and we need to handle the infrastructure. The, the
14 infrastructure was never designed for this use whatsoever, anywhere along the
15 way.

16 EHRlichman: Thank you. And when you did your, uh, examination and
17 investigation on whether, uh, truck trailer combinations at 70 feet could
18 handle, uh, Grip Road without crossing over, um, were you aware that the
19 County has a requirement that the Applicant provide improvements to, uh,
20 prevent that?

21 BOWSER: I know there's language in their documents that say that.

22 LYNN: I'm going to...

23 EHRlichman: Were you aware of a...

24 LYNN: Object, um, essentially what is happening here is that Mr.
25 Ehrlichman is quoting things and then asking the witness, which he's calling

1 as his witness, will agree to him. It's leading, he's asking him for legal
2 conclusions now, and it's well outside the scope of appropriate testimony.

3 EHRLICHMAN: If I may speak to that Mr. Examiner?

4 REEVES: I'll sustain the objection. Move on, please.

5 EHRLICHMAN: If I may speak to the objection?

6 REEVES: The objection was sustained, Mr. Ehrlichman. Go ahead.

7 EHRLICHMAN: Without allowing me to speak to it?

8 REEVES: Go ahead, Mr. Ehrlichman, speak to it, then?

9 EHRLICHMAN: Thank you, Mr. Examiner. Uh, Mr. Lynn's objection, it is out of
10 order. It is, he objects when testimony is coming in that is directly germane
11 to the flaws in the Application. What I object to in Mr. Lynn's interruption
12 is that the nature of the objection has nothing to do with the Hearing
13 Examiner proceeding. The rules allow broad latitude in witness testimony.

14 REEVES: I...

15 EHRLICHMAN: So, I...

16 REEVES: [Inaudible] by me, the Hearing Examiner, ultimately to try to
17 control the proceeding. Clearly, I've been failing miserably. But, you know,
18 this is different than a court proceeding, you know, the particular role that
19 you yourself identified you yourself as having was, uh, going to be limited
20 and specific. Uh, you know, I've now reread everything submitted multiple
21 times and I'm still at a loss as to all of this. But, you know, I, I'm just
22 trying to get through, trying to get us all through. So, I, do you have a,
23 sorry, I'm trying to figure out, there were multiple reasons you dislike the
24 objection. I recognize I interrupted you. Um, but go ahead and try to finish,
25 Mr. Ehrlichman.

1 EHRlichman: Mr. Bowser, let me rephrase that question. Are you aware of
2 Comprehensive Plan Policy 4D 5.3, which says cost sharing for the
3 improvements of roads and bridges shall be negotiated between the permitting
4 authorities and the Applicant?

5 REEVES: And..

6 EHRlichman: I have a follow up question, let me lay that foundation, if I
7 may.

8 BOWSER: Yes, I am and I've read through that and, uh, the traffic study
9 requirements and volumes and counts, yes.

10 EHRlichman: And is that not reassuring to you in terms of the concerns you
11 expressed in your testimony?

12 BOWSER: I don't think a lot of that was done. Uh, uh, again, it comes
13 back to having a, a true traffic analysis done and looking at the, the road
14 system as a whole with the actual volumes of traffic that are going to be
15 there.

16 EHRlichman: And, and, again, you've looked at all of the traffic studies that
17 were presented by the Applicant?

18 BOWSER: Yes.

19 EHRlichman: And you didn't find any negotiation between the County and the
20 Applicant on that?

21 BOWSER: Uh, there's been, early on there was the offering up of doing the
22 lighting system, um, and there's been some discussion of that. That's 100% on
23 Concrete Nor'West, um, and later on, as, as far I know, it's 100% on Concrete
24 Nor'West to take care of the S-curves on, on Prairie Road and I don't know
25

1 who's paying for what, or what the conclusion is on Grip Road. I just know
2 there's been acknowledgement that there's issues there.

3 EHRLICHMAN: Very good. Thank you so much. Mr. Examiner, that concludes my
4 questioning.

5 REEVES: Thank you. Mr. D'Avignon, do you have questions of this witness?

6 D'AVIGNON: I do not. Thank you, Mr. Examiner.

7 REEVES: Okay. Mr. Lynn?

8 LYNN: Um, yeah. Thank you, Mr. Bowser. Um, you're not able to offer
9 testimony about auto-turn or the analysis that goes into it or whether one
10 truck tracks the same or differently than another in that computer program,
11 are you?

12 BOWSER: Not within the computer program, no.

13 LYNN: Okay. Um, you identified, uh, through your videos a number, uh,
14 of situations involving trucks crossing over the road, those are current
15 conditions, correct? Those are, those are trucks that are currently on the
16 road?

17 BOWSER: Yep.

18 LYNN: And, and none of them were Miles trucks, were they?

19 BOWSER: Not, I don't know.

20 LYNN: Okay. Did you see any Miles logo on any of the trucks?

21 BOWSER: You couldn't see a logo on the one that, the main truck that we
22 were following, no.

23 LYNN: Okay. Was that you following, by the way?

24 BOWSER: No.

25 LYNN: You were driving the car?

1 BOWSER: No.

2 LYNN: Okay. Were you riding in the car?

3 BOWSER: In the, where the, where there was a dump truck with a pup, no, I
4 do not believe so.

5 LYNN: Okay. So, I, I'm asking because I noticed that when the truck
6 passed bicycle, crossing over the center turn lanes, the car following it did
7 exactly the same thing. I just wondered if you were in that truck, or that
8 car?

9 BOWSER: I was in that car.

10 LYNN: Okay. Um, you pointed to the, uh, driveway in one of your
11 photographs or videos, that's the driveway you understand will be improved
12 both physically and then also with beacons, uh, all three directions, that is
13 both directions on Grip and in the mine itself?

14 BOWSER: Uh, you're up at the mine entrance way where you're leaving Grip
15 Road going into your mine?

16 LYNN: Yes.

17 BOWSER: Yes.

18 LYNN: Okay. Um, so I think maybe you answered this question, but I
19 noticed that when you pointed out some sluffing on the pavement, there was
20 painting there, uh, did that indicate that the County was about to make a
21 repair and did they subsequently make that repair?

22 BOWSER: The County, where, you're talking about where the two pictures of
23 the, it sluffed off they made the repair? Yeah.

24 LYNN: Yeah. Okay. And isn't that common throughout the County that
25 problems emerge and the County does maintenance?

1 BOWSER: Yeah.

2 LYNN: Okay. And...

3 BOWSER: There's some places that tend to have more maintenance than
4 others.

5 LYNN: Yeah. And, and isn't it true that there are flooding problems
6 throughout the County and the County closes road sometimes and then reopens
7 them after the flooding, uh, disperses?

8 BOWSER: That is also true. Depending on the use, they choose to fix it or
9 not fix it.

10 LYNN: Okay. And wouldn't there, wouldn't the fact that there's more
11 truck traffic give the County more incentive to make quicker and better
12 repairs?

13 BOWSER: [Laughs] I can't answer that. I wish I could. That was funny,
14 though.

15 LYNN: Well, this, this isn't the only road in the County with sub-,
16 substandard shoulders, is it?

17 BOWSER: Oh, no. No. It doesn't...

18 LYNN: That's...

19 BOWSER: Meet, the whole system doesn't meet their current requirements,
20 nor would I expect it would from when it was...

21 LYNN: But that, uh, okay. And isn't that characteristic, then, of all
22 the areas where a mine might be located, that you'd have similar roads?

23 BOWSER: Uh, not necessarily. But, um, whenever you change the use, I
24 mean, I look at Costco, they got all different roads there because the use
25 changed in that area. It was not like that. Burlington Boulevard was not like

1 that whenever I moved here. It was two lanes, uh, one each direction. The use
2 changed, the road changed.

3 LYNN: And isn't that, uh, and maybe you don't know the answer, if so,
4 just say so, isn't that based on the, uh, operation of the road, the levels
5 of service and that type of analysis that, uh, determines the capacity of the
6 roads?

7 BOWSER: Uh, it's interpreted by the County and their rules, yes. And I
8 can't, after this process, I can't follow what that really is.

9 LYNN: Okay. Um, you, I think this was at Grip and Prairie, you l-,
10 talked about the view, but you were, the, the truck actually had a different
11 view than you and the car behind it, didn't it? Wasn't the truck both closer
12 to the intersection and the driver at a higher viewpoint so his viewpoint,
13 his or her viewpoint might be different than yours?

14 BOWSER: Uh...

15 EHRLICHMAN: Objection, Mr. Examiner. Objection. That's a leading question.
16 Could you rephrase it, please?

17 LYNN: Well, I am cross-examining and I think I'm allowed to pr-, to,
18 uh, lead, but go ahead. Let the Examiner speak.

19 REEVES: Again, yes, go, I'm going to allow it, again, to the extent we're
20 not strictly bound by the rules of evidence. If we were, very few of the
21 questions I've heard would, would be allowed, uh, throughout much of the day.
22 So, go ahead, Mr. Lynn, with your question.

23 BOWSER: All right. So, I would agree the elevation is different from the
24 truck, uh, but that doesn't gain you anything on that corner. We have another
25 Exhibit of a photograph from that intersection where that person would be

1 seated and they actually, you're increasing your angle, your distance to the
2 hill, you're getting closer, so your angle around that corner, you don't see
3 as far. That isn't going to change with the elevation of the, whether you're
4 in a truck or a car. That's a fixed, fixed point.

5 LYNN: Um, you had some testimony about what you thought the cost might
6 be for the, for the, um, bank removal at Prairie and Grip. And just to be
7 clear, even though you're a construction expert, you didn't undertake any
8 engineering analysis or any analysis of the actual configuration that would
9 have to go in, the availability of the right-of-way or the cost of the work,
10 did you?

11 BOWSER: All I made comment to cost was tied back to the right-of-way
12 based on what I saw up and down Parson Creek Road that Puget, uh, Sound
13 Energy paid. I did not speculate to any price on removal. But, I've done
14 civil work and, uh, you're not going to be putting piles in the ground,
15 you're not going to be doing anything wild and crazy there. It's mostly
16 vegetation removal, dirt removal. You may have to do some, some retaining
17 wall work, but it's, and then slope the bank back. It's not rocket science
18 there.

19 LYNN: Okay. But you haven't undertaken that analysis, that's just
20 based...

21 BOWSER: No.

22 LYNN: On your experience?

23 BOWSER: Yes.

24

25

1 LYNN: Okay. And you describe what the Applicant did as a hand wave, but
2 you haven't seen whatever the Applicant did, other than what was in the
3 traffic report?

4 BOWSER: Right. Because they just mentioned it was too expensive, they did
5 not supply any information. There was nothing to review, nothing to validate
6 or to have a discussion about what's too expensive.

7 LYNN: Okay. Um, so, you, you made the statement that the traffic
8 analysis only examined average traffic. Wasn't there also analysis of the
9 road capacity at 30 trucks per hour?

10 BOWSER: My understanding of all of those capacities are at intersections
11 themselves.

12 LYNN: Okay. And...

13 BOWSER: Not the road system.

14 LYNN: Okay. And so, what you found missing was some analysis of the
15 road system at particular, uh, numbers of trucks?

16 BOWSER: Yes. They didn't evaluate the whole system. And, and the, the
17 evaluation criteria that drove the, the traffic analysis was based off the
18 average truck numbers, not on, on real life, hey, we're going to have a
19 hundred trucks today or we're going to have 200 trucks today. Um, and what
20 those peaks are.

21 LYNN: Did, but you didn't hear Mr. Norris' testimony, I guess what, uh...

22 BOWSER: No.

23 LYNN: Earlier? Okay.

24 BOWSER: No.

25

1 LYNN: Um, so, the problems that you identified in, um, the various
2 videos and photographs are existing problems, uh, does it, uh, appease you
3 even a little bit that the Applicant proposes to improve those S-curves, both
4 on Prairie and Grip?

5 BOWSER: I, it's, it's a step in the right direction. And I, I appreciate
6 that. Um, I just don't think that there's been enough done or, or being
7 enough done to that, that system.

8 REEVES: Okay. Thank you very much. That's all I have.

9 REEVES: Mr. Loring?

10 LORING: Yes. Thank you, Mr. Examiner. Uh, Mr. Bowser, just a few follow-
11 up questions on the questions you were asked just now. Uh, you were, you
12 were, uh, asked about the existing problems that had been identified and the
13 promise to address them. Uh, have you seen any proposal in writing from Miles
14 Sand and Gravel to address the Grip Road, uh, curves?

15 BOWSER: No.

16 LORING: Uh, would you have expected that before the County issued a MDNS
17 for the project?

18 BOWSER: There's a lot of things I would have expected before that, that
19 happened. And y-, so, yes, I guess, yes.

20 LORING: Sure. And, so...

21 BOWSER: Details matter.

22 LORING: Yeah. And, and you would have expected that sometime during the
23 first six years of the Application process?

24 BOWSER: Yes.

25

1 LORING: Okay. Uh, okay. Uh, you were also asked a moment ago whether you
2 had seen what the Applicant's Consultant did when they, uh, allegedly
3 studied, I guess the cost associated with the bank removal. Uh, and you said
4 that you, you had not, you'd only reviewed what was in the report? Uh...

5 BOWSER: Right.

6 LORING: Is that accurate? Okay.

7 BOWSER: Right. In the initial memo, it was mentioned it was too expensive
8 and that's all there was.

9 LORING: Okay. Um, wouldn't you have expected to see that information in
10 the report, if they had...

11 BOWSER: Yeah. It would...

12 LORING: Done a full analysis?

13 BOWSER: The volumes of materials, it's with the cost of right-of-way,
14 whether retaining wall was needed, some basic stuff that I'm used to doing an
15 order of magnitude estimates, I would have expected that.

16 LORING: Okay. And, uh, I believe you were also asked, uh, whether you
17 conducted an actual study of those costs yourself? Uh, and you said, no, you
18 hadn't done so. Again, you would have expected to see that in the
19 Application, um...

20 BOWSER: Yeah.

21 LORING: Yeah. Okay.

22 BOWSER: That's...

23 LORING: Do you have some, do you have some sort of burden to perform that
24 study?

25

1 BOWSER: Uh, I, you mean, am I required to? I certainly hope not. I
2 wouldn't think...

3 LORING: Okay.

4 BOWSER: That I'm the guy responsible for it. I'm capable to do it, but I
5 don't think I'm the right guy to do it.

6 LORING: Okay. Uh, you were, there was, uh, Mr. Lynn just spoke with you
7 about the County making a repair where the road had sluffed off.

8 BOWSER: Uh-huh.

9 LORING: And, uh, so, I just had a follow-up question on that. If, the
10 additional truck traffic from Miles, uh, causes sluffing in the future...

11 BOWSER: Uh-huh.

12 LORING: Do you believe that the County should also pay to repair that?

13 BOWSER: Uh, again, it's an use change and, and there should be cost
14 sharing for the whole system. We're changing what we're doing, and everyone
15 should pay for that. So that combination.

16 LORING: Yeah. Uh, and then I think I have one or two more, uh, you were
17 asked a question about the flooding and whether that should be addressed. Uh,
18 what do you anticipate would happen if trucks encounter the area that is
19 flooded?

20 BOWSER: I expect the road to deteriorate a lot faster. You're going to
21 have all of that weight and a saturated base and you're going to be going
22 across there. It's not going to, not going to be good.

23 LORING: And, and if the road is closed off, uh, would shipments still go
24 there?

25 BOWSER: I would certainly not think so, would hope not.

1 LORING: Okay. And then, last, are there any other water issues along the,
2 uh, preferred haul route that we've been discussing here today that you're
3 aware of?

4 BOWSER: Yeah. There is at, uh, Park Ridge Lane, there's permanent signs
5 installed so they can just drop them down that say water over roadway.
6 There's a, a creek that comes out at the base there goes over the road on a
7 regular basis. The County has made improvements and it's better than it used
8 to be, but multiple times a year, there will be water across the roadway and
9 it carries on quite a ways across the road because it's a downhill section.

10 LORING: Okay. And just roughly, where is that, uh, Park Ridge Lane?

11 BOWSER: Um, that is, um, um, in the, the dump truck video we were looking
12 at, where the double yellow line is and, and the dump truck went around the,
13 the, uh, bikers.

14 LORING: Okay. So, west on Prairie Road, not too far from the, uh, 90
15 degree turns, roughly 90 degree turns on Prairie Road?

16 BOWSER: Yeah. And I'd like to go back to the, the, the damage on Grip
17 Hill and whether it's going to sluff or, we haven't done any investigation,
18 we, meaning, uh, Miles, the County, anyone, I haven't seen any documentation
19 about soil types on that hill or anything else to address whether it is going
20 to sluff or not. I know in my lifetime it sluffed multiple times. So, I
21 expect it to happen again, but until you actually do some work and know what
22 you're dealing with, it's all of us with an opinion.

23 LORING: Okay. Okay. I don't have anything further. Thank you very much.

24 REEVES: Okay. Thank you, uh, Mr. Bowser. So, uh, Mr. Ehrlichman is using
25 the raised hand feature.

1 EHRlichman: Thank you. I do have some re-direct, Mr. Examiner.

2 REEVES: I, re-, re-something?

3 EHRlichman: I'm sorry?

4 REEVES: Re-direct? Is this the...

5 EHRlichman: Yeah. After...

6 REEVES: Theory that this is also your witness, is this that same concept?

7 EHRlichman: Uh, again, I was trying to accommodate the understanding we all

8 had that rather than segment witnesses away, that I ask them the questions

9 while they're here. If you would like to do it a different way, I'm happy to

10 do...

11 REEVES: No, let's just get through.

12 EHRlichman: Thank you. Um, Mr. Bowser, you, you just testified, again, that

13 you had seen anything in the record that provided analysis of some of these

14 key improvements that you think are needed for safety, correct?

15 BOWSER: Correct.

16 EHRlichman: And Mr. Lynn, uh, asked questions related, uh, that, asked you to

17 confirm that these are existing conditions, correct?

18 BOWSER: Yes.

19 EHRlichman: Is it your understanding that a Special Use Permit approval would

20 require analysis of not only the existing conditions, but the conditions that

21 are expected when you add the trips from the proposed project?

22 BOWSER: Yeah. And I would expect it to, to look at peak numbers in

23 addition to average numbers and not just be an average. I...

24 EHRlichman: Well, that's...

25 BOWSER: We've seen...

1 EHRlichman: That's a, that's a nuisance or a different aspect of it, but
2 instead of, uh, asking about levels of, levels of service and peak hour trip
3 math, um, I'm asking you, now, about the safety analysis that you said you
4 had not seen. And if the, if the code requires the Applicant has the burden
5 of proof under the code to present that delta analysis, the change between
6 existing conditions and the conditions with the number of trucks that they're
7 proposing, wouldn't you expect to see analysis in writing, from the
8 Applicant, about that relative change in risk?

9 BOWSER: Yes. There's, there's been nothing to address any of that.

10 EHRlichman: Would you also, uh, expect that that analysis would delve into
11 the number of times per day, for example, that vehicles cross over the center
12 line on Grip Road?

13 BOWSER: Yes.

14 EHRlichman: And did you see any of that analysis?

15 BOWSER: No.

16 EHRlichman: Did you see where, in Exhibit 18, the Applicant's traffic expert
17 acknowledged that crossovers would occur?

18 BOWSER: Um, I don't know if I saw that or not.

19 EHRlichman: Okay. And the Applicant proposed, uh, cro-, uh, to address or
20 mitigate the crossovers on Prairie Road, correct?

21 BOWSER: Right.

22 EHRlichman: But they did not, in their written materials, propose it for, uh,
23 Grip Road, as we just heard, correct?

24

25

1 BOWSER: Correct. And the County also knows, because I followed the County
2 truck and pup making test runs on the whole route, and they are very well
3 aware, also.

4 EHRLICHMAN: And when was that?

5 BOWSER: Oh, man, that was early in the process, '18-ish or something like
6 that.

7 EHRLICHMAN: In the year 2018?

8 BOWSER: 2018, 2017, somewhere in that timeframe.

9 EHRLICHMAN: So, based on that observation, is it fair to say that the County
10 was aware that there were risks associated with heavy truck traffic and
11 crossovers?

12 BOWSER: Yeah. They have to.

13 EHRLICHMAN: And did the County, uh, from what you've seen in the record, did
14 the County require the Applicant to analyze and mitigate that on Grip Road?

15 BOWSER: No.

16 EHRLICHMAN: You didn't see that anywhere in the, in the County's...

17 BOWSER: No.

18 EHRLICHMAN: Review?

19 BOWSER: No. They know about it, and it's been written to them by multiple
20 people and they've ignored it.

21 EHRLICHMAN: How do you, let me think about how to phrase this so that Mr.
22 Lynn doesn't object based on the rules of evidence. How do you, uh, account
23 for the fact that this project has been reviewed for, now, six years, the
24 County knew about the crossover problem on Grip Road, and there's nothing in
25 the record from the County, uh, critiquing that or requiring mitigation?

1 BOWSER: Uh, County's had a lot of turnover. They have not been in-depth
2 in my opinion, in their review and questioning of the whole Application
3 process. They've made some mistakes along the way. And they just kind of keep
4 blundering forward. And I, I don't know, there's a lot of things that were
5 never addressed and you get waved off, oh, you don't know anything. There's
6 been snide comments in, in documents that we received, uh, through requests
7 and, uh, things like that, in this whole process. So, there's, uh, been a
8 lack of respect at times and it's just...

9 EHRLICHMAN: Well, if, if the County didn't do that analysis and didn't
10 present it into the record, and here we are and the Hearing Examiner is being
11 asked to make a decision, doesn't he need that information to make his
12 decision under the Code?

13 REEVES: I, hold on. I'm, I am going to stay explicitly that I am
14 confident I have the competence as the Hearing Examiner to determine what I
15 need to do know to make my decision. So, let's move to another question.

16 EHRLICHMAN: Well, I apologize, uh, withdraw that question and thank you. W-,
17 when you arrive at this point in the Hearing process, as a witness, and with
18 the experience that you have, in your professional opinion, is this Permit
19 Application ready for decision or should it go back for further study?

20 LYNN: I, I'm going to object to the p-, to, to the statement that he
21 has a professional opinion, unless it's narrowed to what is profession, and
22 it's not a traffic engineer.

23 EHRLICHMAN: Let me, let me, uh, comment on that. He testif--

24 REEVES: Let's not. Let's not. Let's stop for a second. Essentially,
25 you're asking for, uh, you know, a legal conclusion or a conclusion of a

1 professional. I certainly have heard the testimony, I understand Mr. Bowser's
2 background. I have a pretty strong and good sense of how he feels about the
3 project. Uh, I don't know if it's beneficial for us to ask if he, you know,
4 for these types of conclusions. So, let's ask a different question and, and
5 move on. Mr. Ehrlichman, ask a...

6 EHRLICHMAN: Yeah. I'm, uh, I'm trying to think of the, the question that
7 would survive the scrutiny that we get asking questions in an informal
8 Hearing Examiner proceeding. But, let me think for a minute. This is a, uh, a
9 witness who testified that he has extensive experience in the industry and
10 managing projects. I assume you have, uh, been involved in Permitting for
11 some of these projects? Is that correct, Mr. Bowser?

12 BOWSER: Oh, me? Um, in the refineries and that, indirectly, yes, but I've
13 never met with the agencies in the refineries and dealing with those things,
14 but, but a lot of the supporting documents, estimates, order of magnitude,
15 that kind of stuff, calculations, yes.

16 EHRLICHMAN: Then, then, let me strike the question. I, I was misinformed, Mr.
17 Examiner, I, I had a different assumption in mind, I apologize. Uh, just one
18 last, uh, question here. In your, um, Exhibit A20, you had a video that
19 showed, uh, two bus stops and a, and a, the video was showing the truck
20 traveling at a rate of speed passed those bus stops, correct?

21 BOWSER: Yeah.

22 EHRLICHMAN: Based on the research you've done and your knowledge of the
23 record here, do you have a concern about adding up to 30 truck trips per hour
24 and the impact that could have on the safety of school children on school
25 buses?

1 BOWSER: Absolutely. I wouldn't want my kid waiting by, they couldn't wait
2 there, they need to stand back quite a ways. Uh, it would be a concern.
3 EHRLICHMAN: Thank you. Nothing further.
4 REEVES: And procedurally, I'm now a little confused as to where we are.
5 But are, are we concluded with this witness, I think? Mr. Loring?
6 LORING: I believe so. Sorry, I wasn't sure quite where that was directed.
7 I am done. Thank you.
8 REEVES: Okay.
9 EHRLICHMAN: Y-...
10 REEVES: Mr. Lynn? Are you...
11 LYNN: Well, I, I, I think...
12 REEVES: No?
13 LYNN: I think if Mr. Ehrlichman ask, got to ask questions, I do. But I
14 have no questions.
15 REEVES: Yeah. Let's, okay. So, Mr. Bowser, thank you for your time. Uh...
16 BOWSER: Right.
17 REEVES: That concludes this witness. Uh, I think we're only scheduled til
18 4:00 today and it's almost 3:50. So, uh, let's check in with the Attorneys
19 real quick. Mr. Loring, your sort of plan of attack?
20 LORING: Well, I, I have a witness, uh, who was, who was hoping to get on
21 this afternoon, isn't available tomorrow and I'm checking to see if he can go
22 out of order on Tuesday, if needed. He's Phil Mcloud, he's going to provide a
23 cycling perspective. I don't see it being a lengthy time period, but I also
24 know that we didn't discuss going beyond 4:00, yet, today, either. So, I, I
25 just want to put that out there. I, I think we could be done by, by 4:30, uh...

1 REEVES: I...

2 LORING: With him at the latest.

3 MCLOUD: Can I speak up, please, as the witness?

4 LORING: Hold on, Mr. Mcloud, let's, let's just hear from, uh, the others

5 briefly, unless the Hearing Examiner would like to hear from you.

6 REEVES: Yeah. Mr. Mcloud, what, what, what did you want to say? I

7 apologize, what's...

8 MCLOUD: I am on the east coast, it is, um, going on 7 o'clock here. I'm

9 on vacation. And I've taken time out of my vacation to participate in this

10 Hearing and I would really appreciate it if you could get my testimony taken

11 care of this afternoon. I know that you're, a long day for you, but it's been

12 a very long day for me as well.

13 REEVES: Uh...

14 MCLOUD: I cannot participate tomorrow. Uh, it would be difficult for me

15 to participate next Tuesday.

16 REEVES: I, I understand. It's been a long day for everybody, not just me.

17 I, I would be fine with this. I want to clarify the very limited scope, this

18 is a cycling perspective, if that right, Mr. Loring?

19 LORING: Yes, that's right, Mr. Examiner. Mr. Mcloud is, uh, an

20 experienced cyclist and affiliated with the Skagit Bicycle Club and would

21 provide that perspective, uh...

22 REEVES: Okay. So, quick, quickly, let me ask, uh, uh, Mona Kellogg, if,

23 as the Clerk, you know, she's able to stay passed 4:00, wherever she is.

24 KELLOGG: I am able to stay passed 4:00.

25 REEVES: Okay.

1 KELLOGG: Yes.

2 REEVES: And, Mr. Lynn, are you able to participate slightly longer today?

3 LYNN: Was that me? Uh, you kind of broke up.

4 REEVES: Okay.

5 LYNN: If it was me, yes. I'm, I'm enthusiastic.

6 REEVES: He's enthusiastic about it. Excellent. Okay. I don't expect,

7 again, well, um, Mr. Ehrlichman, I assume this is a witness that you intended

8 on calling also, at some point, probably?

9 EHRLICHMAN: Uh, Mr. Examiner, I have one question of this witness and it

10 depends on really Mr., where Mr. Lynn takes the questioning as to whether I

11 have more than that. But, currently, I have one simple question.

12 REEVES: All right. Let's just go. Let's do it. That's dive in. Uh, I

13 appreciate Mr. Mcloud making himself available, especially on vacation. So,

14 let's, let's dive right in. I'll swear him in. Do you swear or affirm to tell

15 the truth in the testimony you give here today?

16 MCLOUD: I do.

17 REEVES: And could you state and spell your name for the record?

18 MCLOUD: My name is Phillip [phonetic], I go by Phil, P-h-i-l, Mcloud, M-

19 c-l-o-u-d.

20 REEVES: Go ahead, Mr. Loring.

21 LORING: Thank you, Mr. Examiner. And, uh, thank you for joining us today,

22 Mr. Mcloud. Uh, I'm going to assume that's not your usual cycling kit, uh,

23 but I understand you're a cyclist?

24 MCLOUD: I am.

25 LORING: And do you cycle often?

1 MCLLOUD: I do. Uh, I, I cycle with the Skagit Bicycle Club, which is a
2 bicycle club in Skagit County. And we have, um, a minimum of three rides a
3 week. And I normally participate in at least two of those now and I've
4 participated more in the past.

5 LORING: Okay. Do you ever cycle on Prairie Road?

6 MCLLOUD: Yes. Quite frequently, it's a, um, a favorite cy-, cycling area,
7 uh, for our club.

8 LORING: How about Grip Road?

9 MCLLOUD: Uh, yes, we, uh, we cycle, uh, generally uphill on Grip Road, uh,
10 because we find it a challenging r-, um, hill to ride up and, uh, it's a
11 beautiful scenic area and we consequently ride it frequently.

12 LORING: Okay. And what is your current experience when you're cycling
13 those roads?

14 MCLLOUD: Um, they, we consider, uh, the Prairie Road and Grip Road areas
15 for road cycling to be relatively safe. Um, all road cycling in, uh, is
16 inherently a little dangerous because you're dealing with, um, you know, uh,
17 uh, moving vehicles. But we consider those roads relatively safe because they
18 have fairly low traffic volume as it, as it sits right now. And, uh, we can
19 deal with that, despite some of the other limitations of the road.

20 LORING: Okay. We'll talk briefly in just a moment about some of those
21 other limitations. Um, you mentioned that you're part of the Skagit, um,
22 bicycle club. Do you have a role with that organization, an official role?

23 MCLLOUD: Uh, right now, I am a member of the Board of Directors. Uh, in
24 the past, uh, in 2017 and 2018, I was President of the club.

25

1 LORING: Okay. And do you ever organize some of the rides that you were
2 talking about that travel on Prairie and Grip Roads?

3 MCLOUD: Yes, I do. I'm currently involved in, uh, organizing at least one
4 ride a week. Um, not all of them are on Prairie Road, but, uh, we, we, uh, we
5 traverse Prair-, Prairie Road and Grip Road, uh, fairly frequently.

6 LORING: Okay. How many riders would you say usually join those trips,
7 those rides?

8 MCLOUD: Somewhere in the order of, um, you know, or probably average
9 around 15, um, so, you know, it's a good group of riders.

10 LORING: Okay.

11 MCLOUD: Sometimes it's more, sometimes it's a little less.

12 LORING: Okay. And you've submitted, uh, a statement in this matter, I, I
13 believe. And we have, uh, we've identified that as Exhibit A30, uh, I'm not
14 going to have you go through that, I'm just stating that for the record so
15 that the Hearing Examiner will have something that he can review later, uh,
16 if he's reflecting on the testimony we'll give today.

17 MCLOUD: Okay.

18 LORING: Okay. And, uh, are you familiar with the Grip Road Gravel Mine
19 Proposal?

20 MCLOUD: Yes, I am.

21 LORING: How did you learn about it?

22 MCLOUD: Um, I learned about it, uh, quite a number of years ago when it
23 was first proposed and, and, um, the, uh, the, the Samish Valley group, uh,
24 held a, held a, kind of a public meeting, um, and I attended that as a
25

1 representative of the, uh, Skagit Bicycle Club. I think at that time I was
2 Vice President and attended in that, in that capacity.

3 LORING: Okay. And, uh, are you familiar with the transportation, the haul
4 route, for the travel that is proposed?

5 MCLLOUD: Uh, my understanding of that it was primarily going to be Prairie
6 Road. Uh, in listening to, um, Prairie Road down to, uh, Old 99, and
7 listening to various testimonies, I understand that there are considerations
8 of other, other roads in the area, uh, that, that could be affected as well.

9 LORING: Okay. And you say Prairie Road, uh, do you know where the gri-,
10 where the gravel mine entrance comes onto the public road system?

11 MCLLOUD: Yes.

12 LORING: Uh, where is that, what road is that on?

13 MCLLOUD: Uh, where the, where the gravel mine will come onto the, the
14 public roads?

15 LORING: Yeah.

16 MCLLOUD: That, that's on Grip Road.

17 LORING: I just wanted to make sure we were clear, uh, and, yeah, and your
18 understanding of it there, so..

19 MCLLOUD: Yep.

20 LORING: Okay. So, you, you understand it would go Grip and then Prairie
21 out to Old 99, you were saying?

22 MCLLOUD: Yes. Yes.

23 LORING: Okay.

24 MCLLOUD: That's correct.

25

1 LORING: Okay. Great. Uh, and do you have any concerns about that hauling
2 and, uh, impacts on cyclists from it?

3 MCLLOUD: I think it would have a, uh, a very significant and dangerous
4 impact on, on bicyclists on, um, either of those roads, Grip Road, Prairie
5 Road or, um, F and S Grade Road, any of those. Main, the main problem that I
6 see in, um, and I'll address Prairie road first, is the, the total lack of a
7 shoulder that is rideable by a bicyclist, uh, in, in both the east and
8 westbound directions, there's, uh, there's really no place you can get off of
9 the travel way to avoid traffic and so you're, you're stuck with dealing with
10 that. And it was, uh, testified ear-, to earlier today about the, uh, about
11 the, um, guardrail on Prairie Road makes that, uh, even, even more hazardous
12 in a couple, in one place. And so, the, the lack of a, uh, of a rideable
13 shoulder, uh, is, is certain, is one of my main concerns. The other concerns
14 that I have are, um, lack of sight distance, particularly on Grip Road, and,
15 uh, and on Prairie Road, as you're coming up to Grip Road, uh, the ability to
16 see, for traffic to see and react safely to bicyclists is limited, uh, by
17 site distance.

18 LORING: Okay. And, uh, did you hear a testimony by, uh, Gary Norris that
19 there were shoulders on Prairie Road? Did you hear that...

20 MCLLOUD: Yes, I did. And I, and I saw on the traffic r-, in, the, the
21 traffic consultant's report where he said there were shoulders that were two
22 to four feet wide. And I think...

23 LORING: And you, sorry.
24
25

1 MCLLOUD: There needs to be a distinction made between, uh, a shoulder that
2 might be talked about in, in the parlance of a, of a highway and a shoulder
3 that is rideable by somebody on a road bicycle.

4 LORING: What's the distinction you would make there?

5 MCLLOUD: Well, you might, uh, uh, a person that's, that's designing a
6 highway or, or involved in highway maybe consider a gravel shoulder a
7 suitable shoulder. But it is not a suitable shoulder for, uh, a bicyclist
8 who's trying to get out of traffic when that bicyclist is riding maybe 15,
9 uh, 17 miles an hour. You simply can't do it, um, you'll crash and, and
10 perhaps, you know, end up in a very bad way.

11 LORING: Yeah. Okay. Are you familiar with the Skagit Bike Map?

12 MCLLOUD: Yes, I am.

13 LORING: All right. I'm going to try to share my screen. I've got this up,
14 it's Exhibit A29. And I just want to share this, for this conversation about
15 the shoulders. Are you able to see that on your screen?

16 MCLLOUD: Uh, yes.

17 LORING: Okay. And do you see, uh, I'm hovering over, here's the Grip Road
18 area, I'm trying to hover over that, uh, and then here's Prairie Road over
19 here. Do you see how this map, uh, the Skagit County Bicycle Map
20 characterizes shoulders for those roads?

21 MCLLOUD: Um, I, I, I can't see it that well, no.

22 LORING: It might be too, it might be a little small. I'm, I'm over at the
23 legend now, hovering around there, there's a legend for a four foot plus, a
24 two to four foot shoulder and a no shoulder. And do you see how the no
25 shoulder is, uh, just a colored line?

1 MCLLOUD: Yes. That's...

2 LORING: Without any, yeah, without any black lines, either, either
3 straight lines or, or hash next to it?

4 MCLLOUD: Right.

5 LORING: And, and when you look at Grip Road and Prairie Road, what do you
6 see on those? Which, which does that match up with there?

7 MCLLOUD: It would appear it matches up with no shoulder.

8 LORING: Okay. Um, and, and so, also, and I'm, also, uh, not the two to
9 four foot shoulder?

10 MCLLOUD: That's correct.

11 LORING: I'm just going to scroll, or, actually, I did it already right
12 there. So these stretches, there we go. Okay. Uh, and, and now I'm going to,
13 uh, stop sharing this, uh, but what did you conclude, by the way, when you
14 look at this on the map here, from the shoulders, based on the Skagit County
15 Bicycle Map?

16 MCLLOUD: That there's no shoulders that are rideable by a bicyclist.

17 LORING: Okay. And have you, uh, taken any direct observations of
18 shoulders along those roads?

19 MCLLOUD: Yes. As a matter of fact, uh, we did a, a ride along Prairie
20 Road, um, uh, this past September 1st, uh, a week ago. And, um, I didn't
21 schedule that ride because we were holding this Hearing. But I took it as an
22 opportunity to, uh, observe the shoulders of Prairie Road very closely that
23 day.

24 LORING: Okay. And you sent me some photos of that, right?

25 MCLLOUD: That is correct.

1 LORING: I'm going to share those, just very quickly, we can go through
2 these, uh, you're seeing, um, can, can you see that photo there?

3 MCLOUD: Yes.

4 LORING: Okay. And, uh, what does this show us here?

5 MCLOUD: Well, this shows that, um, the edge of the road, uh, the, the
6 white line, uh, heard it referred to as the fog line, it, you know, it, it,
7 um, that is, everything to the left of that is the travel way for, uh,
8 automobiles and, um, so the only section of this that is pav-, the shoulder
9 that is paved is six to eight inches, uh, to the right of that line. And then
10 the sho-, then the, the paved shoulder drops off very quickly into a sloping,
11 uh, gravel shoulder that if a bicyclist were to, um, try to ride on that,
12 they would, uh, not be able to, to stay upright.

13 LORING: Is, is that a gentle way of saying they would crash?

14 MCLOUD: They would crash, yes.

15 LORING: Okay. And I just, uh, just want to go through some more of these.
16 You said that was along Prairie Road there, that photo?

17 MCLOUD: Yes. Yes.

18 LORING: Okay. Let's move to the next one. Uh, is this also along Prairie?

19 MCLOUD: Yes, it is. And you can see it, it, it, it, the, the shoulder is
20 not sloping so dramatically here, but, um, you can still see it, there's no paved
21 shoulder to speak of, uh, to the right side of the white line?

22 LORING: Okay. Is this near, uh, Old Highway 99, one of those curves?

23 MCLOUD: Yes. This is, uh, I'm not sure, I, I can't for sure exactly which
24 one of the curves it's headed into, but, yes, it's, it's, uh, it's the curves
25 just to the east of, uh, Old 99.

1 LORING: Okay. I'm going to click on another one here. Uh, you know where
2 this portion is?

3 MCLOUD: Yes. This is farther along east and it's, it's the area that was,
4 uh, eluded to earlier today, where the, um, where the guardrail has been
5 installed, um, along the, the side of the, uh, of the road there. And this
6 essentially prevents, uh, a bicy-, bicyclist, uh, moving any further to the
7 right than, and the white line. I mean, even though you've got another six
8 inches of pavement, your, you're so close to the, um, guardrail there that it
9 would be very easy to lose control at that point.

10 LORING: Okay. Is that loose gravel in the shoulder there, too?

11 MCLOUD: It is. Yes.

12 LORING: Can that cause troubles, uh, for bicycles moving at a normal
13 speed on a road like this?

14 MCLOUD: Certainly. Uh, and what we're talking about here is road
15 bicyclist, road bicycles that have, uh, relatively narrow tires. And so...

16 LORING: Okay.

17 MCLOUD: They would not do well in that gravel.

18 LORING: Okay. Pulling up another one, uh, I, this looked like it
19 reflects, uh, uh, two photos ago, roughly those same conditions?

20 MCLOUD: Yes.

21 LORING: Uh, is there anything else you want to share with us about this
22 one?

23 MCLOUD: I, I'm not sure that it shows anything dramatically different.
24 Uh, these conditions are similar all along Prairie Road, uh, to Grip Road.
25 And, um, you know, they're, what I'm showing here is there is no rideable

1 shoulder anywhere along this road. And that, that is really in both, that's
2 true in both directions.

3 LORING: Okay. Okay. These, uh, these photos haven't been Exhibits in this
4 matter, uh, we ask that they be entered as Exhibits, uh, from Mr. Mcloud,
5 photos of this, and I, I believe that would be up to A60.

6 REEVES: Mr. Lynn, any concern about that?

7 LYNN: No objection. I'd like the bike map to be an Exhibit, too, uh, if
8 we could...

9 LORING: That, that is, that is Exhibit A29.

10 LYNN: I'm sorry.

11 REEVES: Okay. So A29 was the bike map for those following along and, uh,
12 Mr. Loring, you thought this would end up being A60?

13 LORING: I believe so.

14 REEVES: Okay. Uh, yeah. That's fine.

15 LORING: Okay. Okay. And Mr. Mcloud, thank you for that, uh, lengthy
16 description of road shoulders on, on Prairie Road. I, I have a couple of
17 follow-up questions on that. And, and that is just that, um, would increase
18 gravel truck and trailer traffic cause you concerns giving the lack of
19 shoulders you've been describing? Lack of rideable shoulders that you've been
20 describing on Prairie Road?

21 MCLOUD: My primary concern would be that there's no place for a bicyclist
22 to get out of the travel way. Uh, that means that if the, if the truck, a
23 large truck is going to, uh, pass the bicyclist, they're going to have to go
24 significantly over into the other lane. Uh, if there's a lot of truck, truck
25 traffic the proposed, uh, 30 trucks per hour that I've heard, um, that would

1 present a lot of opportunities for accidents involving, um, bicyclists, um,
2 accidents involving the, uh, a truck in oncoming traffic in my, in my
3 opinion.

4 LORING: Okay. Uh...

5 MCLOUD: There's no place for a bicyclist to get out of the travel way on
6 those, on those roads.

7 LORING: Right. Thank you. Are you familiar with the auto-turn program?

8 MCLOUD: I am not intimately familiar with it. Um, I listened to the
9 testimony of the traffic expert, um, some days ago and did a little bit of
10 research, uh, on the, uh, on the program and familiarized myself. I'm
11 familiar with AutoCAD and I understand that it's, from my research, that it's
12 a, an add-on to the AutoCAD, uh, program. And, uh, allows the designer to
13 configure roads based on different, um, um, vehicle, uh, requirements.

14 LORING: Okay. And in your listening to the, uh, traffic consultants
15 testify the other day from Miles, did you hear evidence, any evidence that
16 bicycle impacts were studied as part of any auto-turn analysis of the Grip
17 Road hill?

18 MCLOUD: Uh, no. In fact, he specific, as, as my recollection is, he
19 specifically said that bicyclists were not considered.

20 LORING: Okay. Uh, do, would, would the Grip Road hill, uh, you mentioned
21 that cyclists like to cycle up that because it's seen as a challenging hill,
22 that Grip Road hill...

23 MCLOUD: Yes.

24 LORING: Heading, heading east?

25 MCLOUD: Yes, that's correct.

1 LORING: Okay. Uh, would, would cycling up that hill cause any additional
2 challenging if cycling next to, uh, increased gravel truck and trailer tariff
3 on that hill?

4 MCLLOUD: It would make it almost impossible to do with, um, um, an
5 increased or frequent usage of that road by large trucks. Because bicycles
6 are going to be going to be going up fairly slow. Uh, trucks are going to be
7 trying to pass them. There's going to be trucks that are coming down the
8 hill. Um, it, it would just make an untenable situation with, as long as
9 there's no place where the, uh, where a bicyclist can safely get out of the
10 travel way. And while I don't have pictures of that, you know, we've seen
11 other pictures of, of Grip Road and there's, there's no shoulders there in
12 most places either.

13 LORING: Okay. And, uh, do you, uh, in your review of the Application
14 materials, have you seen any analysis of the impact of these gravel trucks
15 on, uh, cyclists?

16 MCLLOUD: No, I haven't.

17 LORING: Okay. Have you had experiences where you have cycled safely along
18 with gravel truck traffic?

19 MCLLOUD: Uh, my, my most, um, the one that I can think of most clearly is,
20 uh, there's a, a quarry on Beaver Lake Road, uh, outside of Clearlake and I
21 don't know whether that's a Miles quarry or, or not, but, uh, it's, there's
22 gravel trucks that come in and out of there. Uh, there, that road has, uh,
23 is, is flat. It has long site distances, uh, it doesn't have a lot of other
24 traffic on it. Um, and my experience on riding on that road is that, uh,
25 while gravel trucks do pass us occasionally, because they have long sight

1 distances, because in several places on the road there are shoulders that
2 bicyclists can get out of the travel way, I feel fairly safe in riding that
3 road, um, with the large trucks that go by us there occasionally.

4 LORING: Okay.

5 MCLOUD: And in my experience, at least, I have never encountered a large
6 number of gravel trucks on that road. They on-, they only go by very
7 occasionally.

8 LORING: Okay. And do those conditions you ere describing for that road
9 exist on the Grip Road or Prairie Road?

10 MCLOUD: Not in my opinion, no.

11 LORING: Okay. Uh, last topic I want to cover with you very briefly here,
12 is traffic counts. Um, did you hear testimony from Gary Norris, I believe he
13 was a traffic consultant you were referring to a moment ago, that Miles had
14 surveyed bicycle use of Prairie and Grip Roads?

15 MCLOUD: Yes, I did.

16 LORING: And have you seen evidence of that in the Application materials?

17 MCLOUD: Yes, I reviewed the, uh, the report that was put together and
18 they appeared to do their traffic count in the middle of August of 2020.

19 LORING: Okay. And did that traffic count involve bicycles?

20 MCLOUD: Uh, they did not note any bicyclists.

21 LORING: And, and when you say they did not note bicyclists, did they have
22 bicycles as a category of those traffic counts? Do...

23 MCLOUD: I honestly can't remember, Mr. Loring.

24 LORING: And that's fine. I'm going to share my screen with you. This is
25 the last talk, I just want to touch on this briefly here. I'm going to show

1 you, uh, a document. This is from C18, Exhibit C18, it's, it is the, uh,
2 traffic impact analysis. And I'm down into the traffic count section, one of
3 them, there, there are a couple of different ones. Uh, and the one you were
4 talking about, that August, uh, timeframe, and I'm starting with the page
5 that shows the vehicle classification standard groupings. And do you see any
6 bicycles, uh, in, in any of these groupings?

7 MCLOUD: No, I do not.

8 LORING: Okay. Now, I'm scrolling down to the next page, I'm sorry, I
9 forgot to tell everybody where I am. I'm on Page 57 of the PDF itself, in
10 case you're pulling it up, uh, independently. And then I'm scrolling down to
11 Page 58. And, uh, is this that August, uh, 2020 traffic count that you were
12 discussing a momenta go?

13 MCLOUD: Yes, it is.

14 LORING: And do you see how it has different columns, uh, for different
15 types of vehicles?

16 MCLOUD: That's correct.

17 LORING: Do you see any columns there for, uh, bicycles?

18 MCLOUD: No.

19 LORING: Okay. How about pedestrians?

20 MCLOUD: No.

21 LORING: Okay. Um, so, so what would you conclude, looking at this, about
22 whether the Applicant had studied, uh, bicycle traffic counts?

23 MCLOUD: It does not appear, it does not appear that they considered
24 bicyclists or studies bicyclists or pedestrians, uh, when they did that
25 traffic count.

1 LORING: Okay. Thanks for that. And I, and I stopped sharing. Uh, if they
2 had studied bicycle counts in August 2020, would they have found many Skagit
3 Bicycle Club rides?

4 MCLOUD: They would not have found any, as a matter of fact, because if
5 you recall, August of 2020, was during the height of the COVID crisis and,
6 uh, the bi-, Skagit Bicycle Club, in fact, canceled all group rides for the,
7 virtually the en-, well, from March of 2020 through the remainder of the
8 year. So, we...

9 LORING: Okay.

10 MCLOUD: We were not holding any group rides, uh, in, at that time of
11 year.

12 LORING: Okay. Okay. Thank you for that, Mr. Mcloud. I don't have any
13 further questions for you. Do you have anything else you'd like to share with
14 us today?

15 MCLOUD: I'll just say that, you know, uh, the thought of, of trying to
16 ride, uh, a bicycle on, uh, Prairie and Grip Roads with, uh, large gravel
17 trucks frequently, frequenting those roads with the current level of
18 infrastructure, uh, is a very frightening prospect and not one that I would
19 undertake.

20 LORING: Thank you for that. I appreciate that. And Mr. Examiner, uh, I
21 hand over the witness.

22 REEVES: Okay. Uh, I'll go to Mr. Ehrlichman, who had originally said a
23 question, but...

24 EHRLICHMAN: Thank you, Mr. Examiner. Uh, Mr. Mcloud, good afternoon. Um, can
25 you hear me?

1 MCLLOUD: Yes, I can.

2 EHRLICHMAN: Great. Uh, you may not know, but, and these may not be related to
3 your club, but my question is, do you know if any of these, uh, popular
4 fundraisers that involve, um, runners, cyclists, RAGNAR is one of them, uh,
5 utilized Grip Road pre-COVID?

6 MCLLOUD: I, I don't know about RAGNAR. Uh, our club, uh, the Skagit
7 Bicycle Club, in fact, does hold a, a fundraising ride, uh, each year, uh,
8 in, and we did one, we missed two years because of COVID, but this past
9 spring we held a ride that we've done for 30-some years that's called the
10 Skagit Spring Classic. And that, uh, one of the, 100-mile route for the
11 Skagit Spring Classic, in fact, did include, uh, Prairie and Grip Roads.

12 EHRLICHMAN: Thank you for that. Nothing further.

13 REEVES: Okay. Uh, Mr. D'Avignon, any questions of this witness?

14 D'AVIGNON: I just have one question, Mr. Examiner.

15 REEVES: Okay.

16 D'AVIGNON: Uh, Mr. Mcloud, um, you had looked at the bicycle map, um, Mr.
17 Loring put up just a moment ago, when it speaks of shoulders, do you believe
18 those are shoulders that are suitable for bicycling as opposed to shoulders
19 as maybe a technical term used by someone such as a traffic engineer?

20 MCLLOUD: Uh, well, obviously, they, since they show Prairie and Grip Roads
21 as having no shoulder, their, uh, considering that for bicyclists.

22 D'AVIGNON: Thank you. Uh, no other questions, Mr. Examiner.

23 REEVES: Okay. Thank you. Mr. Lynn?

24 LYNN: Yeah. Thank you. Um, so, uh, Mr. Mcloud, I take it that the
25 current level of, current volume of traffic, the current absence of shoulders

1 and the current location of guardrails and the current truck traffic is not,
2 uh, sufficiently alarming that you're unwilling to use them for rides, is
3 that fair to say?

4 MCLOUD: That is correct.

5 LYNN: And how often do you use Prairie and Grip in your, uh, organized
6 rides?

7 MCLOUD: Uh, Prairie Road gets ridden much more frequently than Grip Road
8 does because Prair-, Prairie Road connects with a lot of other, um, areas,
9 uh, Parsons Creek Road, um, Old 99, Bow Hill Road, uh, so it gets ridden more
10 frequently. And my estimate would be that, uh, we have a club ride that it
11 goes along Prairie Road probably two to two and a half times a month, on
12 average. Uh, Grip Road, probably, more like, uh, once a month, on average.
13 And that's through the, um, that's through the summer months, uh, the winter
14 months, it's going to be, uh, less frequent. Um, and as I said, the, um, the
15 Skagit Spring Classic uses, uh, Prairie and Grip Roads and that, in a normal
16 year, uh, would have about, uh, 50 or more riders, uh, going, uh, along that
17 route.

18 LYNN: Okay. Thank you. Um, is it fair to say that a number of, uh,
19 rural roads in Skagit County do not have rideable shoulders?

20 MCLOUD: That's probably true. Um, but I can tell you that as a bicyclist
21 that's very concerned about safety, uh, we would not ride on those roads if
22 they had high traffic volume that made it unsafe to, uh, ride on them with no
23 shoulder.

24 LYNN: So, you adjust your routes depending on your safety, your view of
25 the safety considerations?

1 MCLLOUD: Yes. I, I often say that, you know, I choose my, my routes
2 primarily based on safety in terms of, you know, how the traffic and, and
3 other conditions of the road will effect that safety.

4 LYNN: Okay. Um, and the, the map that we have Exhibited, uh, I think
5 it's, is it A29, I'm not sure, um, I guess that was A-, uh, 46, can you help
6 me with that, Kyle?

7 LORING: The map is A20.

8 LYNN: Okay. Thank you. Uh, Exhibit A29 has on it some designated bike
9 routes, correct?

10 MCLLOUD: That's correct.

11 LYNN: And, uh, neither Prairie nor Grip is a designated bike route?

12 MCLLOUD: Um, I, I don't have that map in front of me, I'm not intimately
13 familiar with every bike route that, that's shown on there.

14 LYNN: Okay. That's all right. If you don't know, that's fine. Um, are
15 you aware that that, um, in terms of dividing roads up in terms of road, uh,
16 traffic volume, it has only three categories, uh, more than 7,000 trips a
17 day, between three and 7,000 trips and then zero to 3,000 trips. Um, are you
18 aware of the amount of traffic on this road and whether it, this would kick
19 it into, uh, one of those categories or another or would it remain with in
20 the low traffic category?

21 MCLLOUD: I'm, I'm not qualified to say. I, I don't know that the traffic
22 numbers for, for those roads. I, I can tell you that from personal
23 experience, um, we, our club, club members find that road, as it currently
24 exists, relatively safe to ride on.

25 LYNN: Okay.

1 MCLLOUD: Primarily from a volume standpoint.

2 LYNN: Okay. And you're concerned that the additional volume would take
3 it from the safe category to the unsafe category?

4 MCLLOUD: Yes, I am.

5 LYNN: Okay. Would you, uh, there's been testimony, I'm not sure if you
6 heard it or not, that Miles has regular drivers meetings where they talk
7 about, uh, uh, potential safety issues like school buses. Uh, would your club
8 be willing to provide notice in advance of your organized rides to Miles so
9 that Miles could advise its drivers as to the potential for, uh, increased
10 number of bicycles on either of these roads?

11 MCLLOUD: All of our, all of our rides, uh, are shown on a, uh, on our, our
12 event calendar map and is available to the public at any time.

13 LYNN: Okay. I take it that a yes, then?

14 MCLLOUD: Yes, I, I would say, yes, in that standpoint. I, I'm, I cannot
15 speak for the entire club to say that we're going to send a notice to Miles
16 every time that we have a, that we can, you're talking about volunteers here
17 and that it can, we can definitively say that Miles will be, uh, notified on
18 every single situation.

19 LYNN: Well, I guess, given the concern, wouldn't it be a relatively
20 easy step to include Miles on a mailing list that would notify people of
21 rides? I mean, isn't that just basically a push of the button?

22 MCLLOUD: It is, but not every, what I'm, what I'm trying to tell you is
23 that the rides are, uh, shown on a, an event calendar that is viewable by the
24 public. And, um, the, the routes are not always sent out by an email to
25 everyone that, in the club.

1 LYNN: Okay.

2 MCLOUD: And so there's not an email that's generated with every ride.

3 LYNN: All, all right. Thank you very much. I'll let you get back to
4 your vacation, at least from my perspective.

5 REEVES: Okay. Uh, Mr. Ehrlichman, I guess if there's any redirect?

6 EHRLICHMAN: No. Thank you, Mr. Examiner.

7 REEVES: And Mr. Loring, any re-direct?

8 LORING: Uh, just a couple of questions. Uh, thank you, Mr. Examiner. Uh,
9 Mr. Mcloud, you were asked a moment ago about traffic counts, and whether an
10 increase in traffic on the road would cause concern. Uh, are you concerned
11 just about the volume of vehicles on the road?

12 MCLOUD: Well, certainly, that is, that is a concern, but I'm, my primary
13 concern is the volume of vehicles and the size of the vehicles that we're
14 talking about. We're talking about gravel trucks with trailers. And that
15 increases the, the potential for hazard for bicyclists.

16 LORING: Okay.

17 MCLOUD: Both the volume and the size of vehicles that will be there.

18 LORING: Okay. Uh, you were also, I, I think there was a comment about
19 whether you adjust your routes based on the conditions along those routes,
20 um, and at some point do you run out of routes to adjust to if roads become,
21 um, unsafe to ride?

22 MCLOUD: Well, certainly. And, um, you know, the, the thing that's kind of
23 unique, to me, about Prairie and Grip Roads is one, that they're very, the
24 area is very scenic and the roads allow us to connect with other parts of the
25 County. And, uh, so that we can ride more, more into Skagit Valley and

1 connect to the area more through Sedro Woolley and vice versa. So they're
2 kind of unique roads in that they, uh, are not just nice roads to ride on,
3 but they're also connectors to other areas. And that's why, particularly
4 Prairie Road, gets ridden very frequently.

5 LORING: Okay. Uh, and just the last, you were asked whether the Skagit
6 Bicycle Map maybe was showing shoulders from say a bicyclist point of view,
7 uh, rather than a traffic engineer point of view, is it your understanding
8 that traffic engineers should include an understanding of bicycle use of
9 roads when they're examining their use for all users of those roads?

10 MCLLOUD: I would certainly hope so, yes. And I think this is evident in
11 various parts of the County that they, that they do.

12 LORING: Okay. I, I don't have anything else, then. And I thank you,
13 again. And, and really, I do thank you for spending some of your vacation
14 time with us this afternoon.

15 MCLLOUD: You're welcome. I'm glad to, glad to participate.

16 REEVES: Okay. Thank you, Mr. Mcloud, very much. And, uh, please enjoy
17 your vacation.

18 MCLLOUD: Thank you.

19 REEVES: Okay. I think then, uh, that will end it for the day. Uh, we'll
20 be back, uh, tomorrow at 9:00 a.m., I believe.

21 KELLOGG: Yes.

22 REEVES: And, uh, just real quick, just want to make sure I didn't miss
23 anything before we stop, uh, Mr. Loring [inaudible] morning?

24 LORING: Uh, we're all set. I'll sett you at 9:00 a.m.

25 REEVES: Okay. Mr. Ehrlichman?

1 EHRlichman: Uh, that's good, Mr. Examiner. I understand that after the
2 Appellant, then the County would have witnesses, so our witness, uh, Mr., uh,
3 Grado, is not likely to be needed until next week, I just want to inform him
4 of that.

5 REEVES: Okay. Uh, Mr. Lynn, I'm sorry, Mr. D'Avignon, I haven't asked you
6 yet?

7 D'AVIGNON: Uh, nothing, Your Honor, I hope you have a good evening.

8 REEVES: Thank you. Mr. Lynn, anything before we stop?

9 LYNN: Nothing.

10 REEVES: Okay. See everybody at 9:00. Uh, thank you, everybody.

11 D'AVIGNON: Thank you.

12 EHRlichman: Thank you. Good night.

13 LORING: Thank you.

14 [The tape ends.]

15 **The undersigned being first duly sworn on oath, deposes and says:**

16 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
17 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party
18 to this action. That on May 4th, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves, that
19 took place on 9/8/22 at 3:00 p.m., regarding the above-captioned matter.

20 I certify and declare under penalty of perjury under the laws of the State of Washington that the
21 aforementioned transcript is true and correct to the best of my abilities.

22 Signed at Mount Vernon, Washington, this 4th, May of 2024.

23 Janet Williamson

24 Janet Williamson

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**IN SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT**

State of Washington,)	
	)	Cause No.: PL16-0097, PL16-0098,
Plaintiff,	)	PL22-0142
)	
vs.	)	PERMIT HEARING 9-8-22 9:00 AM
)	
Name,)	
)	
Defendant)	

Transcription Date: April 30th, 2024

Present: Andrew Reeves, Tom Ehrlichman, Bill Lynn, Jason D'Avignon, Kyle Loring, Linda Walsh, Matthew Mahaffie

REEVES: Great. Thank you. All right. Get my gavel out, make it official. And, good morning. I'm going to go ahead and call this session of the Skagit County Hearing Examiner to order. For the record, today is now September 8th, 2022 at 9:00 a.m. We are here on, I believe, day number four, uh, of numbers PL16-0097 and PL16-0098, uh, these involving a, uh, request for approval of a Special Use Permit, uh, by Concrete Nor'West, uh, Miles Sand and Gravel and an associated Appeal of our State's Environmental Policy Act. And the parties are represented by Counsel. Again, we're on day four, I'm getting quite a bit

1 of noise feedback. I don't know where that might be from, but that seemed to
2 be better. Okay. Uh, we're on, uh, day four, uh, and the parties are
3 represented by Counsel. So, I'm, no need, I believe, for my remarks to drag
4 on. But, uh, for the record, this is Andrew Reeves, I'm Hearing Examiner, uh,
5 from Sound Law Center, uh, serving as the Hearing Examiner here in Skagit
6 County for this matter. And, uh, before we went on the record, quickly just
7 checked on our audio with the parties and I think we are now ready to begin.
8 Uh, and I think right at the outset, let's just do a quick round robin of the
9 Attorneys and, uh, check if there's anything, uh, that ultimately needs to be
10 addressed before we dive in with witnesses. So, I know Mr. Ehrlichman had
11 sent something, uh, over the weekend. Um, let me start with that. Mr.
12 Ehrlichman, was there a particular ruling you were hoping I would make? I
13 note, in terms of, uh, hearing from Brandon Black, I think I sort of said
14 before, we concluded the other day that, uh, we thought he would be here on
15 Friday and, uh, we can sort of cross, cross that bridge as it comes. But, uh,
16 if you wanted to quickly speak to, to that communication, Mr. Ehrlichman? And
17 you're currently muted. You took Bill's, uh, joke already. Okay.

18 EHRLICHMAN: Thank you, Mr. Examiner. Um, I, I think my filing was more along
19 the nature of trying to just kind of capsulize the conversation at that
20 point, uh, given the flurry of the hearing, so, thank you.

21 REEVES: Sure. But noth-, nothing specific you need me to rule on at this
22 moment, is that accurate?

23 EHRLICHMAN: Correct. Thank you, sir.

24 REEVES: You're welcome. Okay. Uh, Bill Lynn, anything, uh, behalf of the
25 Applicant you wanted to address before we drive in today?

1 LYNN: No, thank you.

2 REEVES: And Jason, uh, D'Avignon, on behalf of the County?

3 D'AVIGNON: Uh, nothing at this time, Mr. Examiner.

4 REEVES: Okay. And Kyle Loring, on behalf of the Appellant?

5 LORING: I have no issues to raise, either. Thank you, Mr. Examiner.

6 REEVES: You're welcome. Okay. So, with that, uh, let me get my witness
7 list out. I believe we concluded last time, I think that was, I mean, guess,
8 Monday, at this point, they're blending together a little in my mind, but
9 don't worry, I've got five pages or five, uh, legal pads of notes. Uh, I
10 think we were concluded with Martha Bray, if I recall, is that right, Mr.
11 Loring?

12 LORING: That is right. We had finished her testimony.

13 REEVES: And that was, I think, the first of your witnesses, is that
14 accurate?

15 LORING: That's correct. Yes.

16 REEVES: Okay. Uh, so are you, do you have, uh, your next witness ready to
17 go?

18 LORING: I do. We'd like to call Linda Walsh to the stand.

19 REEVES: Okay. And I see Linda Walsh. If we can unmute her. And you might
20 need to then unmute yourself on your screen there, Ms. Walsh. Hi, can you
21 hear me okay?

22 WALSH: Yes.

23 REEVES: Okay. I'm going to swear you in. Do you swear or affirm to tell
24 the truth in the testimony you give here today?

25 WALSH: Yes, I do.

1 REEVES: And if you could just clearly state and spell your name for the
2 audio?
3 WALSH: Linda L. Walsh, L-i-n-d-a L. W-a-l-s-h.
4 REEVES: Thank you for being here. Go right ahead, Mr. Loring.
5 LORING: Thank you, Mr. Examiner. Ms. Walsh, uh, let's just dive right in.
6 Where do you live?
7 WALSH: I live at 21710 Prairie Road in Sedro Woolley.
8 LORING: When did you move there?
9 WALSH: Uh, we moved here in about 1991, but we bought our property in,
10 uh, 1989, on a homeowner contract.
11 LORING: Okay. And, uh, let's talk a little bit about g-, you're familiar
12 with gravel mining, are, are you familiar with gravel mining?
13 WALSH: Yes, I am.
14 LORING: Uh, how did you become familiar with it?
15 WALSH: Uh, my husband worked for, uh, a couple of the gravel pits in,
16 uh, gravel mines in Skagit County for 16 years. And so, um, I would
17 frequently visit him at lunchtime and, and see what the activities were. We,
18 you know, obviously off to the, in the parking lot, but you could still see
19 the activities going on.
20 LORING: Okay.
21 WALSH: And my, my father also was a miner and, uh, lived on a property
22 at a gravel mine for about 15 years in Cle Elum.
23 LORING: Okay. Are you familiar with the noise created by mining?
24 WALSH: Yes.

25

1 LORING: Okay. And are you familiar with the noise created by ex-, the
2 excavation portion of mining?

3 WALSH: Yes, I am.

4 LORING: Okay.

5 WALSH: Yeah. It's...

6 LORING: And, uh, yeah, go ahead.

7 WALSH: It, uh, when you're working on a harder surface, it, it can be
8 extremely loud as you scrape across gravel and...

9 LORING: Okay. Uh, and, let's see, are you familiar with the noise created
10 by hauling, um, material from a mine?

11 WALSH: Yes.

12 LORING: Okay. How about, uh, vibrations from mining?

13 WALSH: Uh, yes, I have the, I have felt those as the big equipment is
14 operating, yeah. It, it travels through the ground.

15 LORING: Okay. And we're going to talk a moment about where you live and
16 its proximity to the mine. But just wanted to get a little bit more
17 background information.

18 WALSH: Okay.

19 LORING: Um, in, in general, are you opposed to gravel mines?

20 WALSH: You know, I, I'm not opposed to gravel mines, we all need gravel,
21 you know, but, um, it has to be mined responsibly and safely and, uh, you
22 know, the SUP said, says the burden of proof is on the Applicant to prove
23 that these, these adverse impacts that are known to be, uh, caused from
24 mining can be satisfactorily mitigated. Um, I don't see that being done here.
25 It's, it's quite a, um, I, I, there's hardly any way to avoid, avoid the

1 noise when your home is only 45 to 50 feet off the road and you may have 50
2 to 100 or more trucks a day going by it. It's a little hard to avoid.

3 LORING: Okay. Let's talk a little bit about where you live in proximity
4 to the mine. Um, do you know where the mine would operate?

5 WALSH: Yes. The actual mining excavation is...

6 LORING: Yeah.

7 WALSH: Uh, adjacent to our, our property boundaries on, on two of our
8 parcels of property.

9 LORING: Okay. So, your property directly abuts the property where the
10 mining would occur? Okay. I'm going to, I'm going to pull up and see if I can
11 share my screen, had a little trouble with that, uh, last Friday, I believe
12 when I was trying with [inaudible], but I do want to pull up a map that was
13 created by the Applicants here, it's part of the record. And, uh, just take a
14 quick look and have you show us exactly on this map where your, where your
15 property is in relation to the, uh, the mine site.

16 REEVES: Mr. Loring, while you do that, is there an Exhibit for folks...

17 LORING: Yes. Thank you. It's Exhibit C36.

18 REEVES: Okay.

19 LORING: And I'm on the fourth page of that. Ha-, has that come up on the
20 screen there, Ms. Walsh?

21 REEVES: It showed up well for me, I know, but...

22 LORING: Okay.

23 REEVES: Ms. Walsh is muted, I'm not sure what happened there.

24 WALSH: I guess they muted me. I've got nothing else to say. So, um, yes,
25 that's on, if you hear a noise in the background, we have a noisy parrot, so

1 I can't, I covered him up, but excuse the noise, so sorry. Uh, we, uh, I
2 don't know how to highlight on the map...

3 LORING: How, I will, if you can show us, is there a nu-, or a letter for
4 the parcel or parcels that you own on this map?

5 WALSH: Yes. Uh...

6 LORING: I'll zoom in one time to...

7 WALSH: Okay.

8 LORING: See if that helps. Apparently the zooming is causing blinking.
9 Again, let me...

10 WALSH: Yeah.

11 LORING: I'll go back to the original size. There we go. So, so is there a
12 letter that shows your property here?

13 WALSH: Yes. If you look at the letter F and is it I next to it? Those
14 are...

15 LORING: To the right?

16 WALSH: Our parcels.

17 LORING: Okay.

18 WALSH: And then we have one north on the road side, it's a third parcel
19 that's up by the road, it's separated off.

20 LORING: Okay. And so, the, the mine site is the, is this area directly
21 south of your parcels, right, that's outlined by that hatch line?

22 WALSH: Correct.

23 LORING: Okay. Okay.

24 WALSH: I would assume the hatch marks are the 300 foot buffer, or the
25 300 foot, uh, notification area or something.

1 LORING: I, I believe that's right. I think, uh, this map was the map that
2 was used, I think, for that notification as you mentioned, yeah, that's
3 right. Okay. Uh, we'll leave that up just for a second and then I'll pull
4 that down. Um, where's your home on that, on that parcel F and I?
5 WALSH: If you look at the number F and go, um, northwest, you'll see
6 some squiggles on the map.
7 LORING: Uh-huh.
8 WALSH: That's our home.
9 LORING: Okay.
10 WALSH: Area.
11 LORING: Okay. So, your home is, is, uh, on the opposite side of your
12 property from where the mine is proposed?
13 WALSH: Correct.
14 LORING: Okay.
15 WALSH: It's probably about 12, thir-, 1200 feet, a thousand, when I
16 measured on iMap, it says it's 1,000 feet from the boarder of the mine.
17 LORING: Okay. So, let's talk, uh, well, let me ask you this, do you think
18 that the mine would impact you and your family?
19 WALSH: Yes.
20 LORING: And why do you believe that?
21 WALSH: We frequently use the back of our property, where the river is,
22 to have family gatherings, uh, throughout the year, we have done that for
23 years. Um, the, the weekends, if, if they're allowed, I mean, we're used to a
24 certain kind of quietness around here. And, um, I, I believe that it will be
25 quite a bit of a disturbance.

1 LORING: Okay. And you mentioned the river, is, is the river, does that
2 look like that line that goes through the property, those two lines? Is that
3 roughly where you'd say the, the river is there?

4 WALSH: Yes.

5 LORING: Okay. And do you, does your family ever go to the other side of
6 the river, uh, near the mine site?

7 WALSH: Yes. My, uh, grandsons and, and kids will hike through there,
8 it's pretty brushy so it's not an easy hike.

9 LORING: The kind of think youngsters might do?

10 WALSH: Right.

11 LORING: Okay.

12 REEVES: And just, just to help clarify for audio and, and I guess, uh,
13 the future, this is the, the Samish River that we're talking about here?

14 WALSH: Yes.

15 REEVES: Okay. Thank you, sorry to break in there.

16 LORING: No, thank you for that. Sure. Okay. Uh, do you, uh, do you
17 believe that a berm along the mine would emirate the noise impacts to you,
18 would mitigate those?

19 WALSH: You know, I'm not familiar, uh, with that, but, you know, I, I
20 suppose it's possible. I don't know, I mean, I, how many years down the road
21 would that be even effective, you know, I mean, ten, 15, five? I don't know.

22 LORING: Does, does the Application say when the mine, does, does the
23 Applicant, the Application materials, you read the Application materials,
24 right?

25 WALSH: Yes. Yes.

1 LORING: Okay. And so, you're familiar with, uh, how they describe their
2 mine operations there?

3 WALSH: Yes.

4 LORING: Okay. And they don't explain at what rate the mining will go
5 below the surface, do they?

6 WALSH: Not in detail, no.

7 LORING: Okay. A couple of other background questions that we may have
8 skipped over a little bit, just to clarify, you're, you're part of the group
9 known as the Central Samish Valley Neighbors, right?

10 WALSH: Yes, I am.

11 LORING: And, uh, sorry. I did want to ask briefly about the zoning for
12 the property, are you familiar with the zoning for the mine site?

13 WALSH: Yes.

14 LORING: You know it has that mineral resource overlay?

15 WALSH: Yes. It has, uh, it's national resource land with a mineral
16 resource overlay.

17 LORING: Okay. Do you know when it was zoned that way?

18 WALSH: You know, I'm not sure of the exact date. I know it was somewhere
19 close to the mid-2000's. Um, being that we're so close to the MRO, it seems
20 like we should have received a notification, I don't recall receiving,
21 receiving any kind of notification when the comp plan applied that. Um, but,
22 uh, I know from research and stuff, it looks like it's mid-2000's.

23 LORING: Okay. And you referred, oh, go ahead.

24 WALSH: No, that's fine.

25

1 LORING: You, you referred to the Comp Plan, you mean when that zoning,
2 when the County adopted a different zoning for that property? That
3 designation?

4 WALSH: Right. Correct. It was not, to my knowledge, it was not
5 designated MRO when we purchased our property.

6 LORING: Okay. If you had receive a notice, would that have caught your
7 attention, a notice to change that, add that overlay?

8 WALSH: Um, I'm sure I would have read it. I, I, back in, uh, then, I,
9 until I was, uh, involved in this project, uh, or researching this project,
10 I, I didn't know all of the different types of land uses. But, I mean, I
11 certainly would have probably looked into it for sure.

12 LORING: Okay. Let, let's talk a little bit about the noise study. I'm
13 going to stop sharing that screen so we're not, uh, looking at that the whole
14 time. And let's talk briefly about the noise studies that have occurred here.
15 Are you familiar with the noise study that was prepared for the mine?

16 WALSH: Yes.

17 LORING: Okay. And, uh, have you reviewed it?

18 WALSH: I have. I've reviewed the, the versions of it that seems, uh,
19 seems like they just update the date and then change a few things. The
20 original version was incorrect, the mapping was incorrect. They had the
21 mapping, uh, the mapping points mapped out incorrect-, labeled incorrectly.

22 LORING: Uh, what do you mean by that, with the mapping points?

23 WALSH: Uh, so, uh, the SML point one, two and three were not in the, not
24 on, not in a c-, like SML one was desi-, not designated, or it was, excuse
25 me, SML one, on the map, was not what it was described as in the description.

1 LORING: And SML, when you say SML one, what are you referring to as that?
2 WALSH: Their table, their labels of their mapping.
3 LORING: Is that where some of the, uh, noises were modeled to have been
4 received?
5 WALSH: Yes. Correct. Where they took their noise things. When they had
6 it originally labeled, um, let's say, uh, the SML one w-, it is supposed to
7 be the, um, towards Prairie Road, by our property, but it, but they didn't
8 have them all labeled correctly, like, the SML two was supposed to be
9 wildlife acres and it was actually the entrance of the mine. So, it, in their
10 subsequent update, they did correct the map.
11 LORING: Okay. And, and with those receptors spots, uh, do you know where
12 the, where the report modeled the noise on your property?
13 WALSH: The, since there's not exact, uh, locations, um, on the map, it
14 appears to be up at the top of Prairie, up at the top of our property at
15 Prairie Road, which is probably about 200 feet from our home. And then it
16 would put these, um, 13, 12, 1300 feet from the mine.
17 LORING: Okay. And, and you said your property stretches right up to the
18 mine site, right? The..
19 WALSH: Correct.
20 LORING: Mine property?
21 WALSH: Yes.
22 LORING: So, so, it's your understanding that they didn't actually, uh,
23 the authors of that report didn't assess the noise impacts at your property
24 boundary?
25 WALSH: Absolutely they did not.

1 REEVES: And...

2 LORING: Okay.

3 REEVES: Sorry, one sec. Just, just to, again, try to track things,
4 another, maybe multiple versions, but I think the most current one, I
5 believe, would be Exhibit 24 or C24, is this the, the ramble noise vibration
6 study that we're discussing?

7 WALSH: Here.

8 REEVES: Mr. Loring, just want to track for...

9 LORING: It is, yes. Thank you. That is the...

10 REEVES: Okay.

11 LORING: The, the study that we're, uh, discussing here.

12 REEVES: Okay. So, C24 and then all the references to SMLs, I believe were
13 the sound, sound level measurements and, uh, there's, uh, some tables, uh,
14 imbedded in, in that Exhibit that identify these sound level measurements or
15 SMLs, I think is what we were chatting about, is that right?

16 LORING: Uh, that's correct. Yes.

17 REEVES: Okay. Great.

18 LORING: SLMs, yeah. That's right.

19 REEVES: Go on.

20 LORING: That's right. Thank you. So, uh, so, Ms. Walsh, what did that
21 noise report conclude about, uh, noise on your property?

22 WALSH: Well, it concluded that it would be, um, there, it would be
23 within the allowable EDN-, EDNA limits, um, however, that was the, the WAC
24 codes say it, that the noise level should be measured at the property
25

1 boundary, it doesn't say it should be measured at the farthest point from the
2 noise source. And our pro...

3 LORING: And...

4 WALSH: Our property goes from their boundary all the way to Prairie
5 Road. And so, they measured all the way across our property at Prairie Road
6 to get their noise levels.

7 LORING: Okay. And, uh, so, they, so, your understanding is that the
8 measurements did not occur at your property line?

9 WALSH: It did not occur at our property line.

10 LORING: Abutting, abutting the mine?

11 WALSH: Abutting the mine.

12 LORING: Do you know if there is a buffer that would be applied between
13 the excavation and your property?

14 WALSH: As far as I can tell, it's 100 feet.

15 LORING: Okay. So, uh, okay. And, and so, again, your understanding is
16 that they did not study that 100 foot distance, but, instead, something
17 closer to a 1200 foot, feet away from the mine?

18 WALSH: Yes, that's correct.

19 LORING: Okay. And given that, do you feel like they accurately studied
20 how the noise will impact you and your family?

21 WALSH: No, I don't.

22 LORING: Okay. And how do you think the noise, uh, do you think the noise
23 will be louder, uh, where your family spends time on your property than where
24 they measured it?

25

1 WALSH: Yes, I do. Um, because they, at 100 feet, they're saying their
2 motors, excavators and, uh, dozers will be, like, 75 DBA at 100 feet. Well,
3 our property line is at 100 feet. Um, that's quite a bit different, that
4 would be a different measurement at 1200 feet.

5 LORING: Uh-huh.

6 WALSH: A different DBA at 1200 feet.

7 LORING: Okay. So, so, your understanding is they, they under-calculated
8 the amount of noise that you're going to experience and the impacts that
9 you're going to have on your property?

10 WALSH: Yes.

11 LORING: Okay. I want to shift from the noise, uh, study there, and just
12 briefly touch on the Samish River that you mentioned a few minutes ago. Uh,
13 you mentioned that it flows through your property, right?

14 WALSH: Correct.

15 LORING: Have you, uh, have you experienced any changes in the location of
16 that river over, uh, since you've owned the property?

17 WALSH: Uh, as far as erosion, yes, you can, it's evident all along
18 Samish River, um, any given year, a foot or five feet of bank can disappear
19 on a, on a corner downstream from the river. Like, a, a lot of the corners
20 are very sharp so, of course, water is going to hit those corners the hardest
21 and, and remove soil.

22 LORING: Okay. So, you seen the river, its banks move over the years that
23 you've lived there?

24 WALSH: Yes.

25

1 LORING: Okay. And, uh, the Samish River, that's, are, are you, uh, is
2 that the same river that flows along the eastern side of the mine site?
3 WALSH: It is the same river, yes.
4 LORING: When you reviewed the Application documents, have you seen any
5 evaluation of the likelihood of the river to, and the associated wetlands, to
6 also move along the mine site itself?
7 WALSH: I haven't.
8 LORING: Okay.
9 WALSH: There's also dry creek that runs on the west side of our
10 property, uh, which is a, um, it flows into the Samish.
11 LORING: Okay.
12 WALSH: And it also has, it also changes its course through the, back and
13 forth through the years.
14 LORING: Okay. Do you know if that flows either to or from the mine site?
15 WALSH: No. It flows from, uh, it flows, it ends, it flows into Samish
16 River on our side of the river.
17 LORING: Okay. Okay. Uh, I don't have any other questions for you. Is, is
18 there anything else you would like to share with us today?
19 WALSH: I would, I would just like to say that, you know, uh, I
20 understand the technical information has to be, uh, presented, uh, with, you
21 know, meters and, and stuff, I do want to, to say when we average or model
22 real, uh, when you av-, when you try to average or model, um, noise, traffic
23 and whatnot, that is not a real measurement, in my opinion, that is not a
24 real measurement of the impacts that we will be enduring. Um, you know, for
25 example, an average of 46 truck trips a day is quite different than even 300

1 truck trips a day. The noise levels and the volumes of traffic on our roads,
2 that are, those are quite different impacts. I don't, this isn't, this isn't,
3 uh, you, you can't get real numbers by averaging. And doing sound models.
4 Because they've averaged them over longer period of time than are actually
5 going to be happening.

6 LORING: That, that does actually lead me to one more question for you.
7 And, and that is, uh, just to wrap up, earlier you mentioned that you were
8 familiar with the noise created by, uh, surface mining excavation. And so do
9 you believe that the surface mining excavation, and the noises that would be
10 caused that, are going to be disruptive on your property, especially up to
11 that, within 100 feet or 200 or 300 feet there, based on your understanding
12 of the noises that are created by that type of activity?

13 WALSH: Yes, I do. And not only on our property, but wildlife acres, I
14 believe, is even as close or close, you know, I mean, there's properties
15 there within a real short, I mean, there, there's a lot of close properties
16 that will be, will definitely be having an increase in noise.

17 LORING: And when you say wildlife acres, are those the properties to the
18 west of the mine?

19 WALSH: Yes. They are already under-sized parcels, most of them are five
20 acres instead of the ten. Um, yeah.

21 LORING: Okay. Thank you, Ms. Walsh. Uh, I don't have any other questions,
22 but you may hear from other Attorneys who have questions..

23 WALSH: Okay.

24 LORING: For you.

25 WALSH: Thank you.

1 REEVES: Okay. Uh, Mr. Ehrlichman, am I correct in thinking no questions
2 to the extent this is not a traffic person, traffic witness?

3 EHRLICHMAN: Well, I, do have, uh, very brief questions, uh, related to her
4 comments on traffic.

5 REEVES: I, I suppose I'll allow it, as long as they're brief. I am, I
6 know that your email had to do with sort of your level of participation, et
7 cetera. I am still struggling to the extent that I, I thought everyone sort
8 of agreed you would question witnesses with, with, that were specifically
9 addressing traffic. But I'll, I'll go ahead and allow it, as long as it's
10 quick.

11 EHRLICHMAN: Thank you, Mr. Examiner. Uh, good morning, Ms. Walsh.

12 WALSH: Good morning.

13 EHRLICHMAN: I'd like to focus my questions exclusively on your, uh, testimony
14 on traffic. Based on your familiarity with the roads, uh, in and around Grip
15 Road, and based on your 30 years of residency there, do you believe that the
16 risk of, or the probability of accidents will increase on Grip Road with the
17 addition of the project traffic?

18 WALSH: Yes.

19 EHRLICHMAN: Do you have any concerns, based on your experience in that area,
20 with, uh, the probability of increased accidents related to school buses?

21 WALSH: Yes. There's s-, several sc-, there's two schools that ha-, run
22 bus routes out here, morning and night.

23 EHRLICHMAN: What are those two schools?

24 WALSH: Sedro Woolley School District and Burlington School District.
25

1 EHRlichman: And could you please describe, uh, your concern about increased
2 risk related to school buses?

3 WALSH: So, there is no shoulder for a bus to pull off. Most of the time
4 they pick up a child in their driveway, which is mostly on the road, but kind
5 of, you know, really, it's in the middle of the road. Um, since we haven't
6 evaluated F and S Grade, uh, intersection, we haven't evaluated going, uh,
7 left outside, left down Grip Road, which these buses all travel both of those
8 routes, um, there's a left-hand turn on F and S that the bus will make to go
9 into Sedro Woolley. And with a lot of, with large amounts of truck and
10 trailer traffic coming from Grip Road, which is just several hundred feet
11 from F and S, those, that traffic going to have to stop as this person makes
12 a left-hand turn. I can, I can definitely see a dangerous scenario with that.
13 Um, also, going out the other end of Grip Road, to the left, there's five or
14 six 90 degree turns that have been un-, un-, completely unevaluated and
15 there's no route, um, restrictions, but travel there to pick up those kids on
16 the other end of Grip Road. Miles Sand and Gravel has a, has bought a
17 property on Brookings Road of 80 acres that is an old mining pit. It doesn't
18 have a MRO, but it's an old mining pit, so are there going to be increased
19 trucks from there? I mean, I, I have a lot of concerns on all site traffic,
20 yes.

21 EHRlichman: So, your conclusion, then, is that the addition of the projects
22 trucks onto Grip Road and other local roads would increase the risk of
23 collisions with school buses?

24 LYNN: These, these are leading questions...

25 REEVES: Yeah.

1 LYNN: And they're beyond the scope of anything that was asked.

2 REEVES: I, I totally agree.

3 EHRLICHMAN: I'm trying to summarize.

4 REEVES: Hold on. I fully agree they're beyond the scope. I, again, I,
5 the, I was hoping this wasn't going to become a recurring problem today. But,
6 uh, I just believe this is not the type of witness that Mr. Ehrlichman, you,
7 you said you were going to, uh, participate extensively on questioning. I,
8 so, I think we need to move on to the extent that this witness was not
9 specifically called by Mr. Loring to, you know, give detailed testimony about
10 school bus traffic. I, you know, they're an adjacent property owner and, uh,
11 you know, they just testified extensively about noise vibration, et cetera.
12 So, this is...

13 WALSH: [Inaudible.]

14 REEVES: Well, beyond, sorry, one sec, uh, Ms. Walsh. So, Mr. Ehrlichman,
15 I'm, I'm at a lot as to where we're headed here.

16 EHRLICHMAN: Thank you, Mr. Examiner. And just about to wrap up if you'll
17 permit me to ask my final two questions?

18 REEVES: I mean, I understand Mr. Lynn's objection, I, I suppose I
19 sustained it to the extent that, you know, uh, try, try reframing whatever
20 your next question is, I guess.

21 EHRLICHMAN: And just to be clear, for the record, Mr. Lynn's objection was
22 that the questions are beyond the scope?

23 REEVES: Well, it was leading and beyond the scope and I essentially
24 sustained it as to both, so...

25 EHRLICHMAN: Okay. Let me rephrase that, uh, question.

1 REEVES: Well, that was beyond the scope. So, let's move on to a different
2 question.

3 EHRLICHMAN: Uh...

4 REEVES: Rephrase is not going to fix the problem.

5 EHRLICHMAN: Uh, I will, uh, certainly abide by the ruling, Mr. Examiner, but
6 for the record, I want to note that our scope is creating our record with
7 respect to the Special Use Permit. And, uh, this is our opportunity to create
8 that record. So, I'll move along. Uh, Ms. Walsh, thank you for your, uh,
9 testimony. Do you have any, uh, final, uh, comments about concerns related to
10 an increase in the probability of collisions with school buses?

11 WALSH: Um, I had, I raised six kids out here on Prairie Road, so, uh,
12 there were many times the kids have, you know, came home and said there's
13 been some pretty scary incidences on the bus, bus routes, uh, so, that's the
14 extent of what I have.

15 EHRLICHMAN: Thank you, nothing further.

16 REEVES: Okay. Thank you. Mr. D'Avignon, do you have anything for this
17 witness?

18 D'AVIGNON: I do not, Mr. Examiner.

19 REEVES: Okay. And Mr. Lynn?

20 LYNN: Uh, good morning, Ms. Walsh, um...

21 WALSH: Good...

22 REEVES: Before we begin, I just circulated a title notification recorded
23 against the property under number 201504280103. And I'm wondering, I'd like
24 to make that an exhibit. I'd also like to have it shared, if we can do that.

25

1 REEVES: Let's just, one thing at a time, so, I, I'm guessing Mr. Loring
2 may have an objection. Uh, can you clarify the, the function or purpose of
3 this exhibit you're proposing, Mr. Lynn?

4 LYNN: It's a title notification recorded in 2015 that appears to bear
5 the witness' signature and it regards the use of the, the MRO property for
6 mineral purposes. Pretty directly relates to questions Mr. Loring asked about
7 her familiarity with the MRO requirements.

8 REEVES: So, uh, let me a-, Mr. Loring, your, any objection to including
9 this as an exhibit?

10 LORING: Well, I, I do object to it being a, you know, late file exhibit.
11 I understand Mr. Lynn, um, arguing that this arose as part of the testimony.
12 It, it's also not relevant to my questions about, um, Ms. Walsh having lived
13 on the property well before there was any designation change and not having
14 received any notification of a designation change. But I can also follow up
15 on a redirect to make that clear for the, this, uh...

16 REEVES: Sure. I may not, I would, personally, I mean, sorry, not
17 personally, I'm not going to, I, I wouldn't classify this as a late filing to
18 the extent that, uh, you know, I think this is directly a rebuttal exhibit,
19 uh, or proposed as such. Uh, so I have no issue with allowing it in and the
20 parties can, as necessary, uh, [inaudible] scope, so, uh, can give me an
21 Exhibit number to this? What, I'm trying to think how we should do that.

22 LYNN: Uh, I would assume it would be a B Exhibit, which would be one of
23 ours and I think we're on B98 or some, something.

24 REEVES: Okay. Yeah. That's fine. Why don't we make it a B Exhibit as
25 meaning an Applicant Exhibit. Um, and we'll, we'll have to sort it out, but

1 whatever that number will be, but it will sort of be rebuttal Exhibit B-
2 whatever.

3 LYNN: Well, J-, Ja-, Jason, do you have the highest number or does
4 Mona? Is somebody, is there an official Exhibit list that we...

5 D'AVIGNON: My very unofficial list, uh, suggests that it is, in fact, 98.

6 REEVES: Okay. Yeah. We'll tentatively say B98 and, uh, it certainly was
7 my intent at some point, hopefully this weekend, to go through and update the
8 numbers. But, uh, we, we will make sure before the end of this all to insure
9 that we all are on the same page as to Exhibit numbers. Um, so, I'm going to
10 allow it in and, and Mr. Walsh, uh, sorry, Mr. Lynn, uh, go ahead with your
11 cross examination?

12 LYNN: Um, so, Ms., Ms. Walsh, is that your signature on the Exhibit? I
13 guess you haven't seen it yet, the lawyers...

14 WALSH: Uh, uh, oh, no, I have it right in front of me.

15 LYNN: Okay. Okay.

16 WALSH: Um, the Exhibit, the Exhibit is my signature. And if you note it,
17 you will see that it's checked as agricultural. No, no MRO designation is
18 checked on that title notification. I was not aware of a MRO overlay on this
19 property.

20 LYNN: I see. I see. So, you were aware that it, it does specifically
21 refer to mining activities, but, but that wasn't checked so you didn't think
22 the property would be used for mining?

23 WALSH: No. I had no idea that it would be used for mining at that time.

24 LYNN: At what point did you become aware that the property did have a
25 MRO designation?

1 WALSH: December 7th, 2016, when I r-, uh, when I, oh, excuse me, March of
2 2016 when I saw the Application for the mining.

3 LYNN: Okay. So short, the year after you signed this document?

4 WALSH: Correct.

5 LYNN: Okay. So, were you, uh, present during, uh, Ms. Wallace's test-,
6 testimony, she was the noise expert who prepared C24?

7 WALSH: Yes, I was.

8 LYNN: Okay. And did you hear her testify that, uh, at the location she
9 had modeled previously, the mine easily, easily met the noise limitations
10 imposed by the County?

11 WALSH: Yes.

12 LYNN: Okay. And did you hear her say that, in fact, it actually would
13 easily meet the noise limits for nighttime activity, which are more
14 restrictive than the daytime limits?

15 WALSH: I believe I did hear her say that. However, that was 1300...

16 LYNN: I...

17 WALSH: Feet from the noise source.

18 LYNN: That was going to be my next question. Did you hear her testify
19 that she had reviewed the model and that the mine met the noise limits even
20 at the property line? Did you hear her testimony?

21 WALSH: No, I did not hear her say that.

22 LYNN: Did you under-, did, did you hear her testimony that all of her
23 calculations and modeling, um, were very conservative and that she actually
24 assumed the operation of, um, multiple pieces of equipment at the same time,
25 even though that would not realistically ever occur?

1 WALSH: Yes, I did hear her say that.

2 LYNN: Okay. That's all I have. Thank you.

3 REEVES: Thank you. And Mr. Loring, any redirect?

4 LORING: I do have just a little bit, Mr. Examiner, thank you. Um, Ms.

5 Walsh, I, I think you've clarified this, but I do just want to ask two

6 questions on that title notification. Uh, it doesn't, it doesn't indicate

7 that there's a mineral resource overlay on the adjacent property anywhere on

8 this document, does it?

9 WALSH: No, it does not.

10 LORING: Okay. And it's your understanding that that overlay is different

11 than an agricultural NRL designation, is that right?

12 WALSH: Yes, it, yes.

13 LORING: Okay. And that a NR...

14 WALSH: This would already have the...

15 LORING: Yeah.

16 WALSH: SUP permit.

17 LORING: Okay. And, uh, and so you actually didn't get notification, even

18 in 2015, of a MRO on, on the property that's being discussed here, right?

19 WALSH: No.

20 LORING: Okay. And...

21 WALSH: I was asked to sign this when we built a shop. Uh, that's the

22 only reason this came to be is we had been there for, what, 15, 16 years and

23 we built a shop and, uh, they presented this as part of the Application to

24 have to sign.

25

1 LORING: I see. And to your understanding, you didn't receive even this
2 type of notification, uh, when you bought the property, did you?

3 WALSH: No, we did not.

4 LORING: Okay. Uh, you were also asked, uh, some questions about whether
5 you heard testimony, uh, about the, uh, noise reports. And I just wanted to
6 follow up, I think with one question on that. Uh, you were asked if you heard
7 testimony that the, uh, that the noise would meet the limits at the property
8 boundary and I believe you said, no, you did not hear that testimony, is that
9 right?

10 WALSH: Yeah. That's correct.

11 LORING: And did you actually hear testimony that the sound volumes had
12 not been studied at the property boundary?

13 WALSH: Yes. I did.

14 LORING: Okay. Thank you. I have no further questions and I appreciate
15 your time today.

16 WALSH: Thank you very much.

17 REEVES: Okay. Thank you, Ms. Walsh..

18 WALSH: Thank you.

19 REEVES: For your testimony today. Okay. Uh, I think we're able, then, to
20 move on...

21 WALSH: Would, could I make one more statement?

22 REEVES: Precisely how it works, but I'll give you a little bit leeway, if
23 it's, if it's brief.

24 WALSH: Excuse me. So, I did look at properties surrounding this mine for
25 other title notifications, and I don't, I don't find other title

1 notifications signed in on, uh, other, several other properties in this are-,
2 surrounding the mine as well. That's all I wanted to say.

3 REEVES: Okay. Thank you. Okay. And, Mr. Loring, uh, your next witness you
4 intend to call today?

5 LORING: Yes. We are calling Matt Mahaffie [phonetic] to the stand.

6 REEVES: Okay. Hi, Mr. Mahaffie, can you hear me okay?

7 MAHAFFIE: Yes, I can.

8 REEVES: Great. I'm going to swear you in. Do you swear or affirm to tell
9 the truth in the testimony you give here today?

10 MAHAFFIE: Yes, I do.

11 REEVES: And if you could state and spell your name for the record?

12 MAHAFFIE: Matthew Mahaffie, M-a-t-t-h-e-w M-a-h-a-f-f-i-e.

13 REEVES: Thank you. And, uh, Mr. Lynn, I think you're unmuted, if I'm
14 [inaudible] mute. Thank, thank you. I just want to make sure we're not
15 getting feedback noise. So, Mr. Loring, go right ahead.

16 LORING: Thank you, Mr. Examiner. And, uh, good morning, Mr. Mahaffie.

17 MAHAFFIE: Good morning.

18 LORING: Thank you for joining us, today. Uh, we're going to explore, uh,
19 the critical area issues associated with this application over the course of,
20 uh, your testimony here today. So, I'm going to dive in, we'll talk a little
21 bit about your background, uh, and then get into that. So, uh, I'd like to
22 ask where you work?

23 MAHAFFIE: Uh, kind of a dual position, uh, I'm a Planner for Whatcom County
24 Planning and Development Services. I still have a consultant company for
25 critical areas, uh, outside of Whatcom County.

1 LORING: Okay. You say you still have a consulting business. Did you have
2 that business before you started working as a Planner for Whatcom County?
3 MAHAFFIE: Yes. Many years before that.
4 LORING: When did that start?
5 MAHAFFIE: Uh, on my own in 2006.
6 LORING: Okay. Uh, and, uh, how long have you worked as a Planner?
7 MAHAFFIE: Since 2015 with Whatcom County.
8 LORING: Okay. And just to be clear, you're not here in any capacity
9 related to your work as a Planner with Whatcom County?
10 MAHAFFIE: No.
11 LORING: Yeah. Okay. Uh, do you have a, uh, any particular educational
12 requirements for your work as a, as, uh, a consultant on critical areas?
13 MAHAFFIE: Uh, yes. Uh, different jurisdictions have slightly different, uh,
14 requirements for it. But most of them, you know, five years' experience, uh,
15 working in the field, authoring reports with educational requirements and
16 applicable degrees.
17 LORING: Okay. And, uh, you have any certifications as part of your work
18 as a, doing that consulting in critical areas?
19 MAHAFFIE: No. Codes typically require educational and experience
20 requirements so I've never found the need to get a private certification with
21 a private club.
22 LORING: Okay. And does your work require you to interpret regulations?
23 MAHAFFIE: Every day.
24 LORING: Okay. Do you have experience identifying and delineating streams?
25 MAHAFFIE: Yes, I do.

1 LORING: How about wetlands?

2 MAHAFFIE: Yes, I do.

3 LORING: Okay. Uh, do you have experience preparing mitigation plans?

4 MAHAFFIE: Yes, I do.

5 LORING: All right. And do you have experience preparing reports that

6 satisfy State Environmental Policy Act requirements?

7 MAHAFFIE: Yes, I do.

8 LORING: Do you also have experience reviewing reports, uh, for SEPA

9 compliance?

10 MAHAFFIE: Yes, I do.

11 LORING: Okay. Have you conducted, uh, site assessments in Skagit County?

12 MAHAFFIE: Uh, many times.

13 LORING: And I probably should have clarified, uh, critical areas site

14 assessments?

15 MAHAFFIE: Yes.

16 LORING: Any idea how many times you've conducted that type of site

17 assessment in Skagit County?

18 MAHAFFIE: Hundreds. If not pushing in the upper hundreds.

19 LORING: Okay. And you've submitted those reports to, uh, Skagit County?

20 MAHAFFIE: Yes, I have.

21 LORING: How many has the County, uh, rejected?

22 MAHAFFIE: None.

23 LORING: Okay. So, never found inadequacies in the reports you've created?

24 MAHAFFIE: Infrequent comments or questions, but nothing has never, uh, not

25 been approved, so...

1 LORING: Okay. And I won't belabor your, uh, your resume here, but we do
2 have it in the record as Exhibit A56, uh, just for the Hearing Examiner.

3 REEVES: Right.

4 LORING: And understand your background there.

5 REEVES: Sure. And I note for all expert witnesses, I do note if they have
6 a resume in the record, feel free to, you know, we can be very brief about
7 their backgrounds, so.

8 LORING: Okay. Let's talk about the ecological importance of the mine
9 site. Uh, so, you're familiar with the Miles Sand and Gravel proposal to mine
10 a site off of Grip Road?

11 MAHAFFIE: Yes, I am.

12 LORING: How did you become familiar with that proposal?

13 MAHAFFIE: Uh, live in the area, essentially my entire life. I live not far
14 away now. Uh, previously to Miles and Concrete Nor'West, uh, ownership, it
15 was open for public access under Trillium ownership. Uh, common in past years
16 to hunt and hike on the property.

17 LORING: Okay. And, uh, in addition to having a direct experience on the
18 land, have you reviewed any of the information about the project, any
19 reports, uh, about the project?

20 MAHAFFIE: Yes, I have.

21 LORING: Okay. So, you've reviewed and I'll just, you know, quickly go
22 through these, but you've reviewed that May 18th, 2015 document by Graham
23 Bunting that relates to the ordinary high water mark?

24 MAHAFFIE: Yes, I have.

25

1 LORING: Okay. And that's Exhibit C4 and, and we may explore that here in
2 a few minutes. Um, also, Exhibit C5 is a Graham Bunting, August 20th, 2015
3 document titled Fish and Wildlife Site Assessment. Are you familiar with
4 that?

5 MAHAFFIE: Yes, I am.

6 LORING: Okay. And then, Exhibit C6 is a Graham Bunting April 18th, 2017
7 Addendum to Fish and Wildlife Site Assessment. Are you familiar with that
8 document, too?

9 MAHAFFIE: Yes, I am.

10 LORING: Okay. And then, uh, last C8 is a, uh, Northwest Ecological
11 Services Critical Areas Assessment from December 2021. Uh, are you familiar
12 with that as well?

13 MAHAFFIE: Yes.

14 LORING: Okay. And you mentioned that you had visited the site, uh, are
15 you, can you tell us about the ecological setting in which the mine would be
16 developed?

17 MAHAFFIE: It's in a very large tract of undeveloped forest land. Not sure
18 if I'd be positive, but in my recollection, probably the largest undeveloped
19 tract in the area, in the lower Samish area.

20 LORING: Okay. And, uh, uh, are there any water features along that
21 property? And...

22 MAHAFFIE: Many.

23 LORING: Can you describe some?
24
25

1 MAHAFFIE: There are many streams, uh, the Samish River on the north, Swede
2 Creek through the lower end, uh, several perineal streams, uh, many, uh,
3 seasons or femoral streams in there as well.

4 LORING: Okay. Uh, and, and then wetlands associated with some of those
5 rivers and streams and not associated as well?

6 MAHAFFIE: Yes. Uh, there's extensive wetland areas as well as, uh, a good
7 number of beaver pond type wetlands as, you know, dam streams, things like
8 that, with integrated different types of habitats.

9 LORING: Okay. Are there any specifically protected species that you're
10 aware of, uh, on the property there?

11 MAHAFFIE: Uh, it's mapped or known to potentially provide habitat to the
12 Oregon Spotted Frog in areas.

13 LORING: Okay. And we have an Exhibit A35, which has a critical habitat
14 map for the Oregon Spotted Frog. I'm going to try to share this with you just
15 for a second to confirm that, uh, this is your understanding of the area
16 where the Oregon Spotted Frog would be. Uh, so, let me just briefly click on
17 this. Are you seeing an Exhibit A35 on the screen?

18 MAHAFFIE: Yes.

19 LORING: And you see that circle area down there on the bottom of this?

20 MAHAFFIE: Yes.

21 LORING: Does that look like roughly where the mine would be?

22 MAHAFFIE: Yes.

23 LORING: Okay. And this, this is the area where the S-, this is the Samish
24 River marked in yellow along there?

25 MAHAFFIE: Samish River and associated wetlands is my understanding, yes.

1 LORING: Okay. And so this shows that critical habitat in the vicinity of
2 the mine?
3 MAHAFFIE: Yes. What is mapped, yes.
4 LORING: Yeah. What is mapped, yeah. Okay. Thanks for that. I'll stop
5 sharing. Get a little bandwidth back. Okay. Uh, are there other species that
6 you would expect to, um, either, either reside on the property or use the
7 property as habitat?
8 MAHAFFIE: Uh, numerous species, yes. Uh, amphibians, avian, as well as
9 small and large mammals.
10 LORING: Okay. Can you just give us a, a listing of ones you'd expect to
11 see there?
12 MAHAFFIE: Uh, in common name, deer, bear, uh, elk have been known to be in
13 the area, bobcats, uh, cougars, uh, smaller, opossum, rabbits, you know,
14 common song birds, hawks, you know, typical raptures, turkey vultures.
15 REEVES: I'll break in, so, essentially, the kinds of animals one would
16 expect to exist in the wild exist in the wild in these circumstances, is that
17 right?
18 MAHAFFIE: That would be a good way to state it, yes.
19 REEVES: Okay. Go ahead, Mr. Loring, maybe we can try to drill down a
20 little more quickly.
21 LORING: Okay. Uh, and I, I believe you mentioned that it, this property
22 would function as a wildlife corridor, is that right?
23 MAHAFFIE: Yes.
24 LORING: Okay. Uh, what do you mean by that?
25

1 MAHAFFIE: Uh, many species would use it from transitioning to, uh, one
2 habitat type to another.

3 LORING: Where would those habitats be in relation this property?

4 MAHAFFIE: So, for example, uh, amphibians might trans-, transition from one
5 aquatic habitat to another, using upland areas of the property. Uh, elk might
6 use it for migration from lower feeding areas to wintering grounds, you know,
7 far away. It, it's a very broad scope, uh, saying wildlife corridor.

8 LORING: Okay. Uh, let's talk a little bit about the critical areas and
9 SEPA review that occurred here. Uh, are you familiar with SEPA review
10 criteria for projects like the mine?

11 MAHAFFIE: Yes.

12 LORING: What would typically be required for SEPA review for projects
13 like the mine?

14 MAHAFFIE: Would assume that the critical area ordinates, uh, and those
15 regulations are going to capture a good portion of the review, the, the, the
16 things that are easily identifiable like wetlands, uh, streams, those
17 associated buffers. So, SEPA, in this scenario, to me in the, the Skagit
18 County environment, would be capturing those impacts not directly associated
19 with what is captured by the critical areas ordinance. So, for example, the
20 wide, wider habitat usage and, like, wildlife, you know, not directly
21 associated with a wetland or a buffer. Uh, what does the scope of the bigger
22 picture mean for something like this. That's, that's what should be captured
23 by the SEPA portion of the review. The way critical area ordinances are
24 implemented in different jurisdictions might, uh, change up a little, as far
25 as how codes are set up. But it, it's kind of the catchall for what's not

1 caught by the rest of the code. It's related to habitat and, uh, wildlife and
2 things like that.

3 LORING: Okay. And do you feel that, or in your opinion, did the
4 Application here meet that, or have that SEPA review?

5 MAHAFFIE: Uh, not in my opinion, no.

6 LORING: Uh, why not?

7 MAHAFFIE: There, there seemed to have been a heavy focus, and I'm gathering
8 a little bit of context from this hearing, that the focus was, uh, directed
9 to the consultants, at least in the later part, just to identify the critical
10 areas and buffers and those impacts, not the greater impacts. Nobody has
11 really addressed the greater impacts of the project to the local environment.
12 They've just focused on the critical area alone.

13 LORING: Okay. And we'll talk in a moment about the critical areas and,
14 and that, those assessments. But just, uh, you mentioned the greater impacts
15 on the area, uh, what would some of those be that were not reviewed through
16 the SEPA process here?

17 MAHAFFIE: What is, what were the impact of the haul road and, and more
18 frequent traffic on the local wildlife population. Uh, Northwest Ecological,
19 while, uh, wetland consultants, they're not, uh, wildlife biologists, true
20 wildlife biologists. You know, did they have the qualifications to make those
21 statements? And it did not seem like they did in their assessment. Somebody
22 needed to have made those, addressed those issues, uh, in my opinion.

23 LORING: Okay. And..

24 MAHAFFIE: That would be one example.

25

1 LORING: Yeah. And we'll just touch on that example. Uh, skip ahead a
2 little bit and then we'll get back to, uh, some other questions. But in, in
3 that example, did you hear, uh, the Northwest Ecological Services witness
4 testify that the use of the road, the amount of use of the road was not
5 material to impacts, uh, in that vicinity?

6 MAHAFFIE: Yes, I did.

7 LORING: Do you agree with that assertion?

8 MAHAFFIE: It's not that I agree or disagree, I don't feel that it was
9 substantiated scientifically.

10 LORING: What do you mean by that?

11 MAHAFFIE: Uh, there was no literature cited regarding that in the
12 assessment. There was no discussion truly regarding that in the assessment.
13 It was simply a statement. Not an assessment, not an investigation using
14 common methods for such.

15 LORING: Okay. And would you expect, uh, the level of traffic to have some
16 impact on the ec-, that ecological setting along the haul road?

17 MAHAFFIE: That would be my expectation, yes.

18 LORING: And what do you base that on?

19 MAHAFFIE: Uh, personal knowledge, years of review, years of research and,
20 you know, I, I would qualify that as I would be wearing a reviewer hat for
21 this. What I would expect in review. As a consultant, I, I would defer to
22 someone else. I, I know my limitations, I'm not a true wildlife biologist.
23 They're, it's a separate profession.

24 LORING: Okay. But you would have expected to see some analysis that would
25 incorporate the type of traffic that would occur, the volumes of traffic and

1 then the species in that vicinity and, and try to figure out whether there
2 would be a, an impact?

3 MAHAFFIE: That is correct.

4 LORING: And...

5 MAHAFFIE: There's extensive literature out there to address that, uh, on
6 all those individual species, yes.

7 LORING: Okay. And you haven't seen that as part of the application
8 materials here, right?

9 MAHAFFIE: No, I have not.

10 LORING: Okay. And do you believe that that is a SEPA deficiency in this
11 process?

12 MAHAFFIE: Yes, I do.

13 LORING: Okay. Okay. Uh, let's talk a little bit more about, well, let's
14 briefly touch, I just want to mention that you did prepare a report, uh, for
15 this hearing and that's been marked as Exhibit A33, in this matter. Um, I,
16 I'm going to talk with you and not have you read through the report. So, I've
17 got questions for you to help supplement that report. Um, but I wanted, I
18 just wanted that, to make sure that was in the record, that we knew where
19 that was, uh, for the Examiner here.

20 REEVES: Thank you.

21 LORING: And we've already talked about the materials that you reviewed in
22 drafting, uh, the report or in your review here. Uh, were there any other
23 materials that I, that we didn't discuss yet, that you referred to or relied
24 upon in creating that report?

25 MAHAFFIE: Uh, consultation with Department of Ecology.

1 LORING: Okay.

2 MAHAFFIE: Uh, the Northwest Ecological Reports, uh, should be noted, there
3 were two separate reports. There was an assessment with the delineation
4 document in it. And then an impact assessment separate.

5 LORING: Okay. Why do you make that distinction here?

6 MAHAFFIE: Uh, I make that distinction as the first of the two reports were
7 not publically available until well after the MDNS was issued.

8 LORING: Okay.

9 MAHAFFIE: And I was not able to see that as far as the public comment
10 period as well, so...

11 LORING: Okay. Does, does that matter?

12 MAHAFFIE: In the grand scheme of things, probably not, but it matters to me
13 in process.

14 LORING: And it matters to you in process, uh, why does it matter to you
15 in process for this, this specific application?

16 MAHAFFIE: I'm just, I think, one of those people that likes to see things
17 done the right way. If something like this, a project like this should be
18 crossing the T's and dotting the I's is just kind of my humble opinion.

19 LORING: And, and that, that second, uh, part of the materials that was
20 not available to the public, uh, do you believe that was required to be
21 submitted by the Skagit County Critical Areas Ordinate?

22 MAHAFFIE: Yes. And, and I, I guess I could go back a little bit as far as
23 my concern, uh...

24 LORING: Sure.

25

1 MAHAFFIE: My other concern with that would be that Skagit County Staff did
2 not actually review that document prior to issuing the MDNS.

3 LORING: Let's just briefly talk about what was the document, can you
4 summarize that document that you believe they didn't review?

5 MAHAFFIE: The wetland delineation document. So that would have had the
6 delineations for all wetlands along the haul route, as well as the ratings
7 for all of those wetlands.

8 LORING: Okay. And why do you believe that Skagit County didn't have that
9 delineation document and the wetlands ratings when they issued the MDNS?

10 MAHAFFIE: Honestly, because I asked for it and they didn't know what I was
11 talking about.

12 LORING: Okay. When did you ask for it?

13 MAHAFFIE: Uh, I'd have to look at my notes, but, uh, into May and into the
14 first part of June.

15 LORING: Okay. And, uh, do you know when the MDNS issued, roughly?

16 MAHAFFIE: Uh, I believe end of February.

17 LORING: Okay.

18 REEVES: Sorry, just, just to ver-, just to clarify because this is 2016
19 til now, we're talking about this year, this MDNS, et cetera, all of those
20 dates are in 2022, is that right?

21 MAHAFFIE: Correct.

22 REEVES: Okay. Thank you.

23 LORING: Okay. Uh, let's talk a little bit more about wetlands, uh, at the
24 mining excavation site and also along the haul road. Um, are there generally
25 accepted methods for identifying the present and location of wetlands?

1 MAHAFFIE: Yes.

2 LORING: And you, are you familiar with them?

3 MAHAFFIE: Yes.

4 LORING: Does, uh, well, what are they?

5 MAHAFFIE: Uh, it would be the 1987 United States Army Corp of Engineers
6 Wetland Delineation Manual with the, uh, later supplemental, Western Valleys
7 and Mountain Supplement by the Army Corp of Engineers.

8 LORING: Okay. Does the Skagit County Code incorporate these standards
9 into its wetlands, uh, review?

10 MAHAFFIE: Yes, it does.

11 LORING: Okay. And what does the Army Corp of Engineers document, uh,
12 describe as the process for delineating a wetland?

13 MAHAFFIE: Uh, there's several different routes you could take. This would
14 be more of a routine, uh, determination, delineation, uh, the basics are you
15 have to have, uh, positive criteria met for hydrology soils and vegetation.
16 Those are documented, uh, through a wetland delineation report, supplemented
17 by wetland data points. Taken at points on the wetland boundary to, uh, show
18 where, how and why a wetland was determined to be there.

19 LORING: When you say wetland data points, what do you mean by that term?

20 MAHAFFIE: Uh, data points are, uh, kind of a vernacular for the form that
21 the Corp of Engineers has provided for, uh, assessing and documenting the
22 three criteria being met for soils, hydrology and vegetation. And tabularizes
23 it for, uh, making that determination.

24 LORING: Okay. So, there, there's a place, physically, on the ground where
25 you would investigate soils, hydrology and vegetation?

1 MAHAFFIE: Correct. Uh, typically you're going to be digging a, uh, a hole
2 in the ground, 16 to 24 inches deep, depending on the soils. You're going to
3 be looking at the soils, uh, you're going to be making a, uh, visual, uh,
4 analysis of the vegetation, percent cover of different species within, uh, a
5 radius, as well as observing hydrology features at that point.

6 LORING: And then you would do that along multiple points to i-, identify
7 the edge of the wetland itself?

8 MAHAFFIE: Correct. So, you know, small wetland might just have two data
9 points, you know, one in and one out. A larger wetland would have many.

10 LORING: With, uh, are you familiar with the wetland along the Samish
11 River at the mine excavation site?

12 MAHAFFIE: Yes.

13 LORING: Would that be the sort of larger wetland that would have many
14 data points?

15 MAHAFFIE: I would expect as a reviewer, yes, to see many. As a consultant,
16 yes, there would be numerous.

17 LORING: Okay. And can you use a, a soils' map to identify the, the soils
18 and where the wetland edge is?

19 MAHAFFIE: Uh, soils map is a good, uh, preliminary indicator doing
20 research. Uh, at a reconnaissance level it can be very, uh, helpful. A soils
21 map is typically something done by the NRCS at, like, a five-acre polygon
22 type accuracy. They're not accurate to two feet. They're not accurate to ten
23 feet. Uh, they've, they can be off by many hundreds of feet, personally
24 observed.

25

1 LORING: Oh, okay. So, it, it's a good starting point, but you want to
2 verify in the field the types of soils that you have?

3 MAHAFFIE: Correct. And just because, you know, you really get down into it,
4 just because a soil is mapped somewhere doesn't mean there's not inclusions
5 of other soils that might have hydric or wetland properties within them. So,
6 it's, it's definitely not something that can be relied upon 100%.

7 LORING: Okay. Um, earlier in this hearing, uh, Oscar Graham testified
8 that he used those soils maps for the soil portion of the wetland
9 delineation. Is that consistent with the Army Corp of Engineers process for
10 delineating a wetland?

11 MAHAFFIE: Uh, I would say at this point in time, no.

12 LORING: Okay. And, and that's because of an actual site investigation of
13 the soils on the site is required?

14 MAHAFFIE: Yes.

15 LORING: Okay. And, again, dig, digging into the soils to figure out what
16 they actually are and their properties?

17 MAHAFFIE: Correct.

18 LORING: Okay. Uh, just to follow-up briefly on that, too. Mr. Graham
19 mentioned that identifying the ordinary high water mark was a way to, uh,
20 identify the wetland edge, is that your understanding of how wetland edges
21 are delineated?

22 MAHAFFIE: No. Sometimes they..

23 LORING: Why not? Sorry.

24 MAHAFFIE: Sometimes they coin-, coincide, most of the time, they don't. You
25 might have a wetland waterward of the ordinary high water mark, you might

1 have an associated wetland upland of the ordinary high water mark, sometimes
2 they coincide. The, the definition is similar, but it's not necessarily the
3 same.

4 LORING: Okay. And you use the word coincide there. Do-, are you referring
5 to the fact that the ordinary high water mark applies to different types of
6 water than to wetlands and to finding out where those, the edge of those
7 waters are?

8 MAHAFFIE: Yes. If I'm understanding you correctly.

9 LORING: Uh...

10 MAHAFFIE: The...

11 LORING: For example, a marine shoreline, you would want to figure out
12 where the marine, edge of the marine waters are, where they meet the land?

13 MAHAFFIE: Uh, yes and no. A, a marine shoreline ordinary high water mark is
14 not typically going to coincide with a wetland edge in a marine environment.
15 You might have estuarine wetlands farther out, you often have wetlands landward
16 in a marine environment as well. In a riparian environment, as is this, I, I
17 think the argument would be stronger that they might coincide with
18 topography.

19 LORING: Okay. Um, so, just to wrap up, though, again, identifying the
20 ordinary high water mark is not the same thing as conducting a wetland
21 delineation, right?

22 MAHAFFIE: No, it is not.

23 LORING: Okay. So, they, they might coincide, but if, to delineated
24 wetland, you wouldn't use the ordinary high water mark as a proxy?

25 MAHAFFIE: No.

1 LORING: Okay. And we've, we've covered, uh, going through my questions,
2 of course, and we've covered some of these, uh, already, we've talked about
3 the delineation and, and the data points and how to perform a delineation, so
4 I'm skipping over those. Um, just to ask a question, were there, uh, in your
5 review of the Graham Bunting Associates materials, did you find data points
6 provided for the edge of the wetland along the Samish River?

7 MAHAFFIE: No, I did not.

8 LORING: Okay. Is it possible that would have skipped your review?

9 MAHAFFIE: Uh, I'm sorry, can you rephrase that?

10 LORING: Yes. And I should. Uh, is, is it possible that your review would
11 have just missed data points that were provided as part of those documents?

12 MAHAFFIE: Uh, no.

13 LORING: Because you were looking for them as you reviewed it?

14 MAHAFFIE: Yes. They're particularly a pretty, as far as typical wetland
15 delineation report, they're typically with them in the rating forms are the
16 most voluminous portion of the report, yes.

17 LORING: Okay. And, yes. Okay. Let's see, so, did you, do you, sorry.
18 Strike that. Did any of the Graham Bunting Associates materials that you
19 reviewed qualify as a wetland assessment under the Skagit County Code?

20 MAHAFFIE: No.

21 LORING: And just to make sure that I ask this, but you are familiar with
22 the requirements of a wetland assessment under the Skagit County Code?

23 MAHAFFIE: Yes.

24

25

1 LORING: Okay. And, uh, the items that were missing were things, like, the
2 wetland delineation with data points, is that the sort of material that fell
3 short of the requirements of the code?
4 MAHAFFIE: Correct. In terminology, I would have co-, considered it more of
5 a reconnaissance rather than a delineation.
6 LORING: Okay.
7 MAHAFFIE: Bit of a nuance, but...
8 LORING: And does that nuance matter when establishing a buffer next to a
9 surface mine?
10 MAHAFFIE: Yes.
11 LORING: Why is that?
12 MAHAFFIE: The delineation dictates the exact line it would be at. When
13 you're measuring a buffer off it, by code, one foot matters and a
14 generalization does not get to that accuracy.
15 LORING: Okay. And in your expert opinion here, the documents were a
16 generalization and did not identify the edge of the wetland with specificity
17 required?
18 MAHAFFIE: Correct.
19 LORING: Okay. Do you know if the Department of Ecology has reviewed the
20 Application materials for the proposed gravel mine?
21 MAHAFFIE: Yes.
22 LORING: And..
23 MAHAFFIE: [Inaudible] ecology question, no.
24 LORING: Okay. Who were those reviewers?
25

1 MAHAFFIE: Chris Lurkens [phonetic] with the Department of Ecology and Doug
2 Gresham [phonetic] with the Department of Ecology. Both, uh, the wetlands
3 specialists that have, uh, been tasked with this area over the course of this
4 permit.

5 LORING: Okay. And, uh, were their opinions relatively consistent with
6 each other?

7 MAHAFFIE: Yes.

8 LORING: Okay. Did they identify the need to delineate the wetland edge?

9 MAHAFFIE: Yes.

10 LYNN: I'm going to ob-, I'm going to object to what's clearly hearsay
11 testimony. Uh, if they want to call the wet-, the Department of Ecology
12 witnesses, they can certainly do so. They have commented on the intensity and
13 we can certainly discuss that. But I don't think, uh, it's appropriate to be
14 asking Mr. Mahaffie what he heard from somebody else.

15 REEVES: And I, hold on one sec. I do note that, you know, the Hearing
16 Examiner is not strictly bound by the rules of evidence, hearsay can come in.
17 But, I am weary of let's illicit, you know, multiple detailed answers from
18 Mr. Mahaffie about other people's communications. Do we have M-, I, know Mr.
19 Gresham, I remember him by name, I've probably seen thousands of emails over
20 the last decade from him. I didn't know the other name. But are these all
21 Exhibits in the record and if so, you know, they've been identified or, or
22 can you just speak to...

23 LORING: Yes and yes. I, my next question was to pull up, uh, Exhibits A36
24 and A39, which are in the record, uh, they're Exhibits, they're Exhibits from
25 Central Samish Valley Neighbors, but they're actually documents that are in

1 the record, too. They were, and one is an email and one is a letter, uh,
2 from, each of these individuals.

3 REEVES: Sure. So, these are in the, I mean, they're in the record,
4 they've been accepted as Exhibits. I, I guess I don't, is there a specific
5 function of having Mr. Mahaffie reiterate everything that is already in the
6 record or...

7 LORING: Well, the function would be to show that his opinion is
8 consistent with that of the State Agency with the authority to review wetland
9 issues, uh, and, and that it conflicts, uh, with the action that occurred
10 here. So, I wasn't going to have him read through it, I was going to have him
11 reference that and then make sure that we knew where it was in the record,
12 for the record.

13 REEVES: Okay.

14 LORING: Uh, so that's available later on.

15 REEVES: Okay. So, one more time. A36 through what, just for those that
16 are trying to follow along?

17 LORING: It's A36 through A39 are the Department of Ecology documents. And
18 it's, uh, A36 and A39 are the, the documents I was going to use as the
19 examples from each of those Ecology Officials, uh, for the need to delineate
20 the wetland edge at this site.

21 REEVES: Okay. I mean, I, I, I mean, I'm not going to disallow all
22 hearsay, that would be problematic. I certainly note Mr. Lynn's objection, I
23 just, you know, I don't think this is likely, I'm, I'm trying to determine,
24 uh, so you're essentially, well, I guess I'm lost. I, I understand Mr.
25 Mahaffie has expertise. I think we've covered that in-depth. I think you've

1 covered his, you know, he's discussed his views on how delineation should
2 work. I think all the written materials speak for themselves. I, I, I'm just
3 trying to get a sense of where you're headed next there, Mr. Loring?

4 LORING: Well, and, and I'll say, I think, I think we would have been done
5 with where I was headed by now. But I also wanted to show that, that their
6 opinion was consistent throughout the course of this project. Uh, and it was
7 the Ecology opinion that a delineation should have occurred. Uh, it was their
8 opinion in 2016 and it was their opinion, uh, as recently as...

9 REEVES: I don't need you to sort of explain all of that. I think it's in
10 the record. Uh, you know, um, let's just move forward and go ahead and ask a
11 question, but I, I concur that I'd rather not have Mr. Mahaffie testify at
12 length about what other folks opinions are themselves.

13 LORING: And, again, this wasn't going to be at length, I want to be
14 really clear about that. But his opinion is consistent with the state agency
15 opinion. I just wanted to get that into...

16 REEVES: Yeah.

17 LORING: Into the record here. Yeah. So, I'll ask, let me ju-, I have two
18 or three questions just to, uh, summarize this point.

19 REEVES: And one sec, Mr. Ehrlichman has a hand up. I'm curious.

20 EHRLICHMAN: Thank you, Mr. Examiner. Uh, I'd like to, at this point, just
21 request that we be afforded maybe a ten minute discussion with you, whether
22 it's off the record, and, and we don't need to do it now, but at some point,
23 uh, I would like to have a discussion with you about the interruptions of the
24 questioning and presentation of, of our record, uh, in this hearing. Mr.
25 Lynn's objection was about hearsay, not about the extent of the questioning

1 or the delay in the hearing. You have strong views, which I respect, about
2 managing the hearing, but I am finding that there, there seems to be a
3 pattern of jumping in at critical testimony and asking the Attorneys to not
4 ask questions that are important, at least for my case, in establishing my
5 record. I think there's a time and a place to have that discussion with you,
6 uh, just would request that we have that opportunity with the Attorneys.
7 Thank you.

8 REEVES: Okay. Mr. Ehrlichman, I note for the record you would like a
9 discussion on why I'm incompetent as a Hearing Examiner, we'll figure that
10 out, uh, some other time. But, uh, Mr. Loring, go right ahead, uh, continuing
11 with your questioning.

12 LORING: I, thank you, Mr. Examiner, I, I don't think that was a fair
13 characterization, by the way..

14 REEVES: I'm..

15 LORING: But, but I, I will..

16 REEVES: Sorry, I, I apologize everybody. Go ahead.

17 LORING: Okay.

18 REEVES: Mr. Loring.

19 LORING: Uh, Mr. Mahaffie, hello, again. Um, thank you for bearing with
20 us. Uh, may take a few more questions. I'm trying to figure out kind of where
21 I was, I, I think when we were interrupted there. And I was asking you to
22 refer to, uh, information that you had reviewed from the Department of
23 Ecology, uh, relation to this project. So, let me just ask a couple of
24 questions to summarize that. Uh, again, did, is it your understanding that
25

1 the Department of Ecology identified the need to delineate the wetland edge
2 fort his, uh, wetland associated with the Samish River at the site?

3 MAHAFFIE: Yes.

4 LORING: Did, uh, did Ecology change their opinion at any time, to your
5 knowledge, in this matter?

6 MAHAFFIE: No.

7 LORING: Okay. So, uh, and Exhibit A39, uh, is a letter, uh, March 11th,
8 2022 letter from Chris Lurkens to Kevin Cricchio at the County, are you
9 familiar with that letter?

10 MAHAFFIE: Not per say, I know I've heard them all, which one is specific, I
11 would have to have it in front of me.

12 LORING: Okay. Well, let me just pull this up really quickly here. And
13 share the screen on this one. Do you see what I'm looking at there as Exhibit
14 A39?

15 MAHAFFIE: Yes.

16 LORING: Sorry, scrolled up. Okay. And, uh, this is that March 11th, 2022
17 letter. And, and does this letter indicate the need to accurately delineate
18 the wetland edge, still as of March 11th, 2022?

19 MAHAFFIE: Yes.

20 LORING: Okay.

21 MAHAFFIE: That's what I'm reading.

22 LORING: Yeah. Okay. And, again, this is consistent with your
23 understanding of the need under the Code as well?

24 MAHAFFIE: Yes.

25

1 LORING: Okay. Stop sharing screen there. Okay. Let's, uh, let me ask you
2 this, are you familiar with the Department of Ecology's wetlands rating
3 system?

4 MAHAFFIE: Yes.

5 LORING: And, uh, is it your understanding that the Applicant applied that
6 system to the Samish River wetland?

7 MAHAFFIE: Yes.

8 LORING: Okay. Did they...

9 MAHAFFIE: [Inaudible.]

10 LORING: Uh, did they apply the current system?

11 MAHAFFIE: Uh, the current system has not been applied by Graham Bunting,
12 that I have seen.

13 LORING: Thank you for that clarification. And so Graham Bunting is the,
14 uh, the Applicant's Consultant who reviewed the wetland at the mine site
15 itself and distinguishing between that and the Northwest Ecological Services
16 Group that conducted wetland and stream reviews along the internal haul road
17 that connects to that site?

18 MAHAFFIE: Yes.

19 LORING: Okay. And when you say Graham Bunting, well, first, let me ask
20 you, though, about the wetland rating system, what is the wetland rating
21 system that Ecology uses?

22 MAHAFFIE: The wetland rating system is an evolving document provided by the
23 Department of Ecology, uh, to provide local jurisdictions with a fast and
24 accurate way to provide a functional analysis to equate to buffers and
25 applied in the code.

1 LORING: When you say a functional analysis, it's, it's a way to determine
2 kind of sensitivity of a wetland and its importance?

3 MAHAFFIE: Correct. Uh, applying, uh, water quality, hydrologic functions,
4 habitat functions, coming up with a numerical score, uh, a way for reviewers
5 and professionals to come to a consistency with, uh, different wetlands to
6 provide adequate protections. I think would be, that would how I summarize
7 it.

8 LORING: Okay. And you mentioned that, uh, the Graham Bunting Associates
9 documents don't indicate that that system was applied to the Samish River
10 wetland?

11 MAHAFFIE: They'd used an older version, so it is an evolving document.
12 They've updated it multiple times over the year. They did not use the one,
13 uh, currently in effect.

14 LORING: Okay.

15 MAHAFFIE: In the scope of things, they, it, it was said in the hearing
16 previously that it was updated and the rating was the same, so...

17 LORING: Did you see any evidence that, uh, an analysis was conducted
18 against the current version? And by current version, I'm assuming you're
19 referring to one that was in effect in February of this year, at the time the
20 MDNS issued?

21 MAHAFFIE: No, not at the, not at the time of the MDNS issuance, yes.

22 LORING: That was a compound question that led to some confusion. Uh, did,
23 uh, did you see any evidence that the analysis using a wetland system was
24 updated with the version that existed as of the MDNS in February 2022?

25 MAHAFFIE: No.

1 LORING: Okay. Would that have made a difference?

2 MAHAFFIE: Maybe. Maybe not. Uh, uh...

3 LORING: Is it important to find out?

4 MAHAFFIE: It's important to find out. It might have no effect, it might
5 have an effect. It's, it's part of the review process, yes.

6 LORING: Okay. And, in your opinion, reviewing the materials, that was not
7 conducted for that Samish River wetland?

8 MAHAFFIE: Not at the time of the MDNS issuance, no.

9 LORING: Okay. Let's talk a little bit about land use intensity, that's
10 been an issue in this Appeal. Are you familiar with the component of wetland
11 buffer sizing that relies on, on the neighboring developments land use
12 intensity?

13 MAHAFFIE: Yes. Uh...

14 LORING: Can, can you briefly describe the different land use intensities
15 that typically apply for sizing the buffers?

16 MAHAFFIE: Sure. Uh, low medium and high. Low would be trails, uh, forestry,
17 things like that. Moderate land use intensity, uh, different jurisdictions
18 are a little different, but Skagit County reflects residential at five, uh,
19 acres or greater, one unit per five acres or greater. Uh, grazing
20 agriculture, lower intensity agriculture like orchards or haying. In high
21 intensity land use would be commercial, industrial, high intensity
22 agriculture, row crop, things like that. Uh, Department of Ecology has, uh,
23 several documents that list examples of that.

24 LORING: Okay.

25

1 MAHAFFIE: Also, implemented in many, many different types of different
2 jurisdictions implement it in their code as well. As does Skagit County.

3 LORING: Okay. And what land use intensity do you believe applies to the
4 proposal to mine, uh, to excavate sand and gravel at the site?

5 MAHAFFIE: Uh, high intensity.

6 LORING: Why do you say that?

7 MAHAFFIE: The amount of impact and guidance from the Department of Ecology.
8 It's kind of a two-part thing there. Uh, ecology being kind of the holders of
9 best available science, uh, assigned to them by the State Legislature, has
10 been pretty consistent on industrial and commercial uses. Uh...

11 LORING: Okay.

12 MAHAFFIE: Mining is typically, uh, in zoning code and just the vernacular
13 of people as a high intensity land use, it's creating a pretty sizeable
14 impact on the land, uh, the human usage on a day to day basis is high, uh,
15 machinery, noise, it's, just a generalization, a high impact land use.

16 LORING: Okay. And is part of that for the excavation site because it
17 would remove the vegetation and the soils, uh, and leave bare earth and then
18 even dig some of that out?

19 MAHAFFIE: Uh, that would be part of it, yes.

20 LORING: Okay. And what would be another part or the remaining part?

21 MAHAFFIE: Uh, the noise, the light, you know, if you're running at night,
22 um, dust, the human usage of traffic, you know, it's pretty well documented
23 human usage directly effects wildlife. Uh, things like that.

24

25

1 LORING: Okay. And, uh, does the Department of Ecology have any guidance
2 on roads and transportation systems that are used to connect to industrial
3 uses and how those should be characterized for their land use intensity?

4 MAHAFFIE: Uh, yes, they have recently clarified that. That access roads to
5 high intensity land uses should be classified as high as well. Uh, roads
6 themselves are also identified by Department of Ecology as a high intensity
7 land use.

8 LORING: Okay. So, in, in your expert opinion, would, you would
9 characterize the land use or how would you characterize the land use
10 intensity at the excavation portion of the site here?

11 MAHAFFIE: High intensity land use.

12 LORING: And how would you characterize the land use intensity of the haul
13 road use, in your expert opinion?

14 MAHAFFIE: High intensity land use.

15 LORING: Okay. Have you heard, uh, the Applicants jus-, well, do you know
16 how the Applicant characterized the land use intensity of the mine and the
17 haul road?

18 MAHAFFIE: Moderate intensity land use.

19 LORING: Okay. And you disagree with that characterization?

20 MAHAFFIE: Yes, I do.

21 LORING: Okay. Uh, do you know why the Applicant characterized it or how
22 they justified their characterization as a moderate intensity?

23 MAHAFFIE: Placement of a berm, if I recall, as well as it being a temporary
24 land use. And I believe there was some testimony about how the mine was going
25

1 to start at the closest point and retreat away, making it more temporary
2 associated with the buffer.

3 LORING: Uh-huh. I, I want to pull up just a few of these so that we can
4 take a look, uh, as, as we're going to through it. So, I'm, I'm going to
5 share my screen once I get to the page and it was in that, uh, C5, we're
6 looking at Exhibit C5, this is the August 20th document from Graham Bunting.
7 And I will pull up, I'll pull up the page where there's this discussion about
8 the land use intensity. And I just want to go through these briefly with you.
9 And, and see if, in your expert opinion, these would justify a medium or
10 moderate land use intensity for the sites. I'll do a quick share screen now.
11 Are you seeing a Page 7 from the Graham Bunting Associates, August 20th, 2015
12 document here?

13 MAHAFFIE: Yes.

14 LORING: Okay. And the bulleted points are the, uh, uh, have you reviewed
15 this before?

16 MAHAFFIE: Yes.

17 LORING: Okay. And is it your understanding that these bulleted points are
18 the justification for that moderate intensity characterization?

19 MAHAFFIE: Yes.

20 LORING: Okay. And so going through them, does having a mine located 200
21 horizontal feet landward of an ordinary high water mark, is that a rationale
22 for moderate intensity?

23 MAHAFFIE: I don't believe so, no.

24 LORING: Uh, why not?

25 MAHAFFIE: There's no documentation provided for that.

1 LORING: Okay. So, without a proper delineation, we don't actually know
2 it's 200 feet from the ordinary high water mark?

3 MAHAFFIE: That would be part of it, yes.

4 LORING: Okay. What, let me ask you this just so we can get at this, uh, a
5 little bit of a different way, do you know what the buffer size would be for
6 a high intensity land use under Skagit County's Critical Areas Ordinance for
7 a wetland?

8 MAHAFFIE: For this wetland, uh, as it's preliminary rated, a 300 foot
9 buffer.

10 LORING: Okay. And thank you for clarifying that it depends on the wetland
11 rating itself, too. Uh, so, would a 200 horizontal separation be a
12 justification when the standard, uh, high intensity land use buffer would be
13 300 feet?

14 MAHAFFIE: I don't believe so, no.

15 LORING: Okay. Uh, the fact that the mine site is 90 feet, uh, above the
16 ordinary high water mark, does that effect the, uh, high, the intensity of
17 the land use?

18 MAHAFFIE: I don't believe so, no.

19 LORING: Okay. Uh, what about having a berm around the mining activities
20 at some point in the future?

21 MAHAFFIE: Possibly.

22 LORING: Okay. Uh, uh, how about, uh, having only a ten foot separation
23 between the floor of the mine and the underlying water table?

24 MAHAFFIE: I don't think that's germane to the conscious of the buffer in
25 this situation, so, no.

1 LORING: Okay. And, and I won't go through all of the rest of those, but
2 I, based on your review of this document, were there any bullets that would
3 justify characterizing the intensity of the use as a moderate intensity use?
4 MAHAFFIE: No.
5 LORING: Okay.
6 MAHAFFIE: I would, could I clarify that a little bit, though?
7 LORING: Please.
8 MAHAFFIE: Uh, as mitigating conditions, you know, providing a berm might be
9 considered for lessening the buffer. Uh, I would feel that would be a good
10 starting point for a discussion like that. But not for the assignment of the
11 buffer.
12 LORING: Okay. And, and by that, you mean that you'd have a certain buffer
13 size and then you might have a conversation about reducing it based on the
14 other factors. But the land use intensity is a set intensity?
15 MAHAFFIE: Correct.
16 LORING: Okay. So, I stopped sharing. I do, uh, are you familiar with the
17 County's justification for provi-, for identifying it as a moderate intensity
18 land use or accepting that characterization?
19 MAHAFFIE: Well, so, that's kind of a hard question to answer when the
20 County's provided two different answers.
21 LORING: What do you mean by that?
22 MAHAFFIE: Uh, previously, the 200 foot, uh, buffer was accepted, uh, later,
23 John Cooper [phonetic], as the Project Lead, required a 300 foot buffer after
24 public input. Then, the County, I don't know what happened after that, now
25

1 it's back to 200 feet. So, the County has said 200 feet is acceptable, the
2 County has also said 300 feet is required.

3 LORING: And, and you're saying that you didn't hear any justification
4 after the 300 foot, uh, determination to roll it back to 200 feet?

5 MAHAFFIE: Correct.

6 LORING: Okay. I'm going to share my screen and that letter is in Exhibit,
7 I just want to make sure we're all clear on, on w-, the justification, uh,
8 the basis for that statement that you made. Uh, I'm sharing the screen for
9 Exhibit A34. Does this look like the letter that you're thinking of that
10 spoke of a 300 foot, uh, or, sorry, that high intensity land use and the 300
11 foot buffer? And I can scroll down, too.

12 MAHAFFIE: I believe so, but you would have to scroll down to verify that.

13 LORING: Okay. I'll go right down to the signature page so we can see
14 that. Um, are, see, and see, so this is a letter by John Cooper. And are you
15 seeing, uh, the break between page three and four there, shows at the end of
16 page three and the top of page four?

17 MAHAFFIE: Yes.

18 LORING: Okay. And, and this is where he asks the Applicant to, uh, change
19 their plans to show a 300 foot buffer?

20 MAHAFFIE: Correct. Under Item 6.

21 LORING: Okay. Based on a high impact land use, as he interprets the
22 Code's definition there?

23 MAHAFFIE: Yes.

24 LORING: Okay. And that definition includes, at the end, things like
25 commercial and industrial land uses, uh, right?

1 MAHAFFIE: Yeah. Yes.

2 LORING: You were talking about that earlier. Yeah. Okay. And, and in your
3 opinion, interpreting critical areas ordinances, and, uh, the Department of
4 Wa-, or Washington, uh, State Department of Ecology's wetland guidance, a
5 mine would be an industrial land use for the purposes of characterizing the
6 land use intensity?

7 MAHAFFIE: Correct.

8 LORING: Okay. I'll stop that share on that Exhibit there. And, just to,
9 uh, just to wrap this up, I think we've covered this pretty well, but we have
10 not specifically looked at that Appendix 8C from the Department of Ecology.
11 And I'm going to pull that up on the screen and I'm going, and, uh, CSVN is
12 going to ask that this be entered as an Exhibit, and I believe that would be
13 Exhibit, uh, let's see, where we are here on, on our A Exhibits. I think it
14 would be Exhibit A59. But I may be, somebody else can let me know if my
15 recordkeeping is off on that.

16 REEVES: Sorry, just to be clear on where we're at, you're saying this
17 would be a new Exhibit, is that right?

18 LORING: It would be a new Exhibit, it's an official Ecology document, um,
19 but one that we have touched on, both on, um, the Applicant's case and now in
20 our case and so it would be helpful to have this in the record.

21 REEVES: Got it. So, it's something...

22 LORING: As a...

23 REEVES: That is publically available, this is Appendix 8C of Department
24 of Ecology's, uh, sort of, I guess, newest, uh, or applicable wetland rating
25 manual, is that accurate?

1 LORING: That's right. This is the guidance on, uh, buffer widths for, and
2 compensatory mitigation ratios for wetlands in Western Washington.

3 REEVES: Sure. Mr. Lynn, any objection? I...

4 LYNN: No.

5 REEVES: I have no concern to the extent certainly that it's a public
6 available, you know, readily available...

7 LORING: Yeah.

8 REEVES: Document, so go ahead. And what number did you think this was
9 going to be?

10 LORING: I think it's A59.

11 REEVES: Yeah. We'll, tentatively A59.

12 LORING: Sounds good. Um, Mr. Mahaffie, are, are you familiar with this
13 guidance document from Ecology?

14 MAHAFFIE: Yes.

15 LORING: Okay. And is this the sort of document, uh, that would apply to
16 wetland buffers, uh, for an industrial site, like the mine that's proposed
17 here?

18 MAHAFFIE: Uh, yes and no.

19 LORING: What do you mean, yeah, why do you say the no part?

20 MAHAFFIE: Uh, you can use it, uh, in Skagit County's Code for standard
21 buffers, not having to refer to this in full, and then they also have an
22 alternative buffer section that can be applied, that refers to this more.

23 LORING: Okay.

24 MAHAFFIE: So...

25 LORING: And for alternative buffers...

1 MAHAFFIE: Uh, alternative buffers are available, uh, typically in our code
2 for, uh, a habitat score difference. So, it might, you might be able to have
3 a smaller buffer if the habitat score is smaller. So, it's advantageous in
4 some situations to use the alternative buffers.

5 LORING: Okay.

6 MAHAFFIE: It would typically be more of a residential situation, in my
7 experience, in Skagit County.

8 LORING: Okay. And, uh, is it your understanding that the habitat score is
9 a high score for that Samish River wetland?

10 MAHAFFIE: That's my understanding, yes.

11 LORING: Okay. Okay. Uh, at this point, I don't think we need to go
12 through this buffer guidance. Um, I want to make sure that was in the record,
13 we can discuss that, uh, a little bit later on, as needed. Scrolling through,
14 uh, my notes here. Okay. Just, uh, briefly, I don't think we touched on this,
15 but are you familiar with how the Applicant characterized the land use
16 intensity of the haul road, at the site?

17 MAHAFFIE: Yes.

18 LORING: How did they characterize it?

19 MAHAFFIE: Uh, based on what they perceived as the approved findings on the
20 previous Graham Bunting documentation.

21 LORING: Okay. Uh, did they do their own independent assessment of the
22 proper, um, intensity, land use intensity for that road?

23 MAHAFFIE: That was not my impression, no.
24
25

1 LORING: Okay. Have you seen other instances where that, uh, consultant
2 has identified a haul road a high use intensity or roads as high use
3 intensity?

4 MAHAFFIE: Uh, as, yes, the, the land use and roads as high intensity, yes.

5 LORING: Okay. Were you surprised they didn't do so here?

6 MAHAFFIE: Yes.

7 LORING: Why is that?

8 MAHAFFIE: If you're putting your name to an authored report, I would expect
9 folks to do their own analysis. I, I think that would be an ethical standard
10 of mine. But it, it surprised me when I don't see it.

11 LORING: Okay. And would that be a standard practice when a wetland
12 consultant reviews the proper buffer size for wetlands to independently
13 verify the land use intensity of the proposed use?

14 MAHAFFIE: Yes.

15 LORING: Okay. Let's talk a little, we danced around the wetland buffer
16 size adjustment, uh, question, but I, I'd like to talk a little bit about
17 that and factors that might affect the size of a buffer. Once you start with
18 the standard buffer size, and, uh, just confirm for us, I believe you said
19 that the standard buffer size would be 300 feet based on a high land use
20 intensity. Both, uh, at the excavation site and along the haul road. Is, is
21 that what you were testifying earlier?

22 MAHAFFIE: Three hundred feet at the mine site, the applicable high
23 intensity land use for the category of wetland for each wetland along the
24 haul route. So, they would very likely not be 300 feet. They would more than
25 likely still be much smaller.

1 LORING: Thank you for that clarification, yes. So, still the high
2 intensity number, but depending on the wetland rating could be a different
3 number than the 300 feet at the excavation site?

4 MAHAFFIE: Correct. A 300 foot buffer is, uh, they're, they're rather
5 uncommon.

6 LORING: They apply to the, the, um, most sensitive wetlands?

7 MAHAFFIE: The most sensitive wetlands and then typically with a high
8 intensity land use, yes. They're, they're the most sensitive wetlands are
9 also typically the rarest of wetlands, so...

10 LORING: Okay.

11 MAHAFFIE: We don't see them common, though.

12 LORING: Okay. So, the Samish River wetland we've been discussing, you'd
13 characterize that as a rare wetland?

14 MAHAFFIE: As a Category 2 wetland, I don't remember the percentages off the
15 top of my head, but it was somewhere between 10 and 20% of all wetlands would
16 come in as a Category 2.

17 LORING: Okay.

18 MAHAFFIE: Roughly.

19 LORING: Okay.

20 MAHAFFIE: With that high habitat score, so...

21 LORING: Yeah. Yeah. Right. Thank you for that. Uh, r-, so, with the
22 buffer at the, uh, let's call it in the excavation area, as I've been
23 referring to it, are there any factors that would effect the buffer size
24 there, in addition to the factors we've discussed so far today?

25 MAHAFFIE: The standard buffer width, no.

1 LORING: Are there any adjustments to buffer sizing that might arise based
2 on the slope of the buffer itself?

3 MAHAFFIE: Yes.

4 LORING: Okay.

5 MAHAFFIE: The Skagit County Co-, Code requires a buffer that falls on a
6 slope 25% or greater to extend 25 feet past the top of slope.

7 LORING: Okay. And, uh, it's, do you remember the section you're thinking
8 of there with the, uh, Skagit County Code?

9 MAHAFFIE: Not off the top of my head, I'm sorry.

10 LORING: Understandable. I just thought I would ask. Uh, I, I believe, I
11 believe you're referring to Section, uh, 14.24.232. I guess that's a
12 subsection for those keeping track of that. Uh, and in your expert opinion,
13 does that buffer or adjustment apply to the, uh, Samish River wetland at the
14 site that we've been discussing?

15 MAHAFFIE: It could.

16 LORING: Okay. And when would it apply, if it could?

17 MAHAFFIE: If, if the buffer is falling on a slope 25% or greater, which it
18 appears to in certain areas.

19 LORING: Okay.

20 MAHAFFIE: That would be a mapping exercise that should be shown as part of
21 the application, in my opinion.

22 LORING: And, and when you say it appears to in some areas, what, uh,
23 information do you have for that statement?

24 MAHAFFIE: Uh, LiDAR information, which I don't have the buffer alignment
25 for, for my own mapping purposes. Uh, so, there is some assumption there, as

1 well as the topographic survey, which I don't know the accuracy of provided
2 by Semrau and Associates.

3 LORING: Okay. And that, uh, survey, uh, topographic survey as we've been
4 discussing that with, uh, Mr. Semrau, in this matter before, and, uh, looking
5 at that slope, so, in that area. All right. Uh, let's see where we are here.
6 In your, in your opinion, in reviewing the materials that Graham Bunting
7 Associates compiled, do you believe that they studied the impacts of a 200
8 foot buffer along the Samish River wetland?

9 MAHAFFIE: I believe it was rather cursory. Uh, yes, it was address, do I
10 feel that it was addressed fully and appropriately, no.

11 LORING: Uh, and what do you mean by that?

12 MAHAFFIE: The minimum statements required in code were, I would say largely
13 there. But, no true analysis made.

14 LORING: Okay. What are some of the likely impacts of having a 200 foot
15 buffer along that wetland?

16 MAHAFFIE: Oh, removal of vegetation, which could effect, um, the thermal
17 protection properties of the river and the wetland. Weather protection at the
18 wetland edge was going to be afforded, if you're mining to that edge, what's
19 going to happen to, you know, the roots and trees that are on that edge?
20 Evasive species infiltration into the buffer area by opening up, uh, that
21 aspect in the south. Um, which is typical in these kind of sites. Uh,
22 wildlife usage through that, uh, riparian corridor. Riparian corridors are
23 known to be, you know, very highly used and frequented corridors by wildlife,
24 uh, water dependent species, you're cutting into that aspect, water quality,
25 uh, hydrologic functions. Uh, it seemed Ms. Semrau had addressed that in some

1 fashion. Whether he would be the qualified person to address that, I
2 question. Truly, that's a longer answer and a more involved answer than you
3 can give verbally in a situation like that. That's why you have an
4 assessment.

5 LORING: And, uh, and I wasn't, I wasn't expecting an exhaustive response,
6 but it sounds like you provided some examples. And is it your understanding
7 that the documents did not study those examples, well, studied those
8 examples?

9 MAHAFFIE: No.

10 LORING: Okay. And it, and it didn't do a comprehensive study of the full
11 impacts of that, uh, that 200 foot buffer than for here?

12 MAHAFFIE: I did not feel so, no.

13 LORING: Okay. Are you, have you reviewed the, uh, documents to see
14 whether a 200 foot buffer would allow the mining to remove the top of the
15 high point, uh, along the stream and the wetland there?

16 MAHAFFIE: It appeared so by the cross sections, yes.

17 LORING: Okay. And I'm going to just very briefly pull up a cross section
18 and we looked at this with Mr., uh, Mr. Semrau as well. I believe I have a
19 version that will actually be viewable when I share the screen, so let me
20 just do this here quickly. Are you seeing this, uh, section A and you can see
21 the top of that, uh, Exhibit C36 Site Plan and Reclamation Maps?

22 MAHAFFIE: Yes.

23 LORING: Okay. And is this what you're thinking of you say that it appears
24 that the mining would go below that top of the slope?

25 MAHAFFIE: It appears to, uh, look that way, yes.

1 LORING: Okay. And when you look at this site plan, does this appear to
2 have a greater than a 25%, uh, grade, uh, between that wetland edge, well,
3 let's say between the 200 feet to river, mean high water mark and the top of
4 the slope there?

5 MAHAFFIE: It doesn't look like it, uh, excuse me. It does not appear so at
6 this point, no.

7 LORING: Okay. Uh, let's, uh, uh, let me stop sharing that and we'll move
8 on to some of the testimony that we've heard today and your opinion on that
9 testimony. Uh, if, well, actually, just to wrap that one up, if the top of
10 the slope were removed and the mining went to the other side of the top of
11 the slope, could that redirect water that might otherwise flow down towards
12 the wetland from the top of the slope and now redirect it towards the mine
13 pit?

14 MAHAFFIE: Yes. And there, you, to me, you'd also have to consider the
15 future reclamation plans as well in that kind of scenario.

16 LORING: Okay. Okay. And, uh, Mr. Semrau, speaking of this run off, Mr.
17 Semrau testified that, uh, he did not believe there would be any run off, uh,
18 on the hill, on the slope there, that the water would infiltrate immediately
19 upon landing there. Is that your understanding of how, uh, the wetland hydro-
20 , or the hydrology above the wetland would function?

21 MAHAFFIE: Uh, I would not rely on personal observations on a day of rain to
22 make that assumption, no.

23 LORING: You would want to conduct a full evaluation of the run off and
24 how it was functioning?

25 MAHAFFIE: Correct.

1 LORING: Okay. And, uh, it, it sounds like you heard that testimony. Um,
2 your understanding is that, uh, Mr. Semrau made, um, anecdotal observation
3 during some rain at the site?

4 MAHAFFIE: Correct.

5 LORING: Okay. Another, and Mr. Semrau also testified that there's a, uh,
6 a state law, it's a state regulation, he identified it as WACK 365-190-120,
7 it's under the Growth Management Act, are you, actually, are you familiar
8 with that regulation?

9 MAHAFFIE: No, I'm not.

10 LORING: Okay. Well, he testified that that regulation allows...

11 LYNN: I'm going to object, if he, if the witness isn't familiar with
12 it, Mr. Loring can talk about it in closing argument, but it's not
13 appropriate for questioning.

14 LORING: I'll rephrase. I'll rephrase the question on this.

15 REEVES: Go ahead and rephrase, I...

16 LORING: Okay. All right. Mr. Mahaffie, are you aware of any state
17 regulations that allow a slope to be cut into a wetland buffer?

18 MAHAFFIE: N-, [pause] no.

19 LORING: Okay.

20 MAHAFFIE: I, I would clarify that a little, could I clarify that answer a
21 little bit?

22 LORING: Yes.

23 MAHAFFIE: Uh, state law, no, it would still, in my opinion, need to be
24 complaint with, uh, the local jurisdictions, uh, regulations in effect. So,

25

1 there, there's still an ability to do that, but still would need to be
2 compliant with the Critical Areas Ordinance in effect.

3 LORING: So, to look at adjusting a buffer, you would look at the Critical
4 Areas Ordinance itself, is that right?

5 MAHAFFIE: Yes.

6 LORING: Okay. And there's no state law that over rides a local critical...

7 LYNN: I'm...

8 LORING: Buffer to your knowledge?

9 LYNN: Going to object. I'm going to object again. We're, we're really
10 well outside the limits of Mr. Mahaffie's stated expertise.

11 LORING: I, I didn't...

12 LYNN: The question has been asked and answered several times.

13 REEVES: Sustained. Let's move on.

14 LORING: Okay. Uh, Mr. Mahaffie, just to clarify, because I, I just want
15 to follow up on that objection briefly with you, do you have expertise in
16 applying local critical areas codes to, uh, applications for development
17 around wetlands and streams?

18 MAHAFFIE: Yes, I do.

19 LORING: Okay. And does that expertise require you to have some knowledge
20 of state laws that might allow overriding the terms of those local Critical
21 Areas Ordinances?

22 MAHAFFIE: Yes, I do.

23 LORING: Okay. Let's talk a little bit about the Northwest Ecological
24 Services Report. We've touched on this to some extent already. Uh, are you
25

1 familiar with the Department of Natural Resources Stream Typing for streams
2 on the mine property?

3 MAHAFFIE: Yes.

4 LORING: Let me ask, first, what is stream typing?

5 MAHAFFIE: Stream typing is applica-, application of the applicable WACKs to
6 physical characteristics of a waterway in, in the State of Washington, to
7 generalize.

8 LORING: To generalize. Is, is, is it a way to characterize streams and
9 their functions?

10 MAHAFFIE: Functions, no. It, it's, it's solely, it's solely a tool to
11 identify the regulated feature and how it's regulated.

12 LORING: And when you say regulated feature, what are you referring to
13 there?

14 MAHAFFIE: The State has identified a water typing system, uh, to qualify,
15 uh, it would be under WACK 222.16.030., a type S stream for a shoreline, type
16 F for a fish bearing, type N with a S for seasonal or just non-fish bearing
17 perineal. And 030 would break it out a little farther and that's where the
18 actual physic-, physical characteristics come from, it's a 1-5 system.

19 LORING: Okay. And what are the ramifications of the different typing for
20 streams?

21 MAHAFFIE: In, uh, outside of shoreline jurisdiction, it's fish bearing
22 versus non-fish bearing. And that doesn't mean whether there's actually fish
23 in the stream or not, it's whether it provides suitable habitat for aquatic
24 life or not.

25

1 LORING: Okay. And does stream typing dictate, uh, buffers, for example,
2 adjacent to these streams?

3 MAHAFFIE: Yes, it does.

4 LORING: Okay. And are you familiar with any Department of Natural
5 Resources Stream Typing for streams on the, uh, the property to which the
6 haul road is going to be, uh, running?

7 MAHAFFIE: Uh, yes. Two, two different, I would say, data sets are available
8 from the Department of Natural Resources.

9 LORING: What are those two data sets?

10 MAHAFFIE: Uh, their main data set is the Forest Practices Mapping, uh, in
11 general, which includes, uh, mapped streams and mapped stream types. The
12 second data set would be individual Forest Practice Application, which is the
13 boots on the ground type mapping that occurs when a Forest Practice activity
14 occurs.

15 LORING: Okay. And based on your understanding, did, uh, is there, there's
16 DNR stream typing for the site here, is that right?

17 MAHAFFIE: Yes.

18 LORING: Okay. And was, uh, the Northwest Ecological, excuse me, Services
19 document, did I, did it identify stream typing consistent with all of the DNR
20 stream typing for the site?

21 MAHAFFIE: I did not such documentation, no.

22 LORING: Okay. Were there any discrepancies between the stream typing in
23 that, uh, Northwest Ec-, Ecological Services document and the DNR stream
24 typing that you saw for the site?

25 MAHAFFIE: Yes.

1 LYNN: Could, could I just ask that the question be clarified as to
2 which of the two, uh, so called DNR stream typing data he's referring to?

3 LORING: Yes. Yes. Mr. Mahaffie, when you're referring to the DNR stream
4 typing data, are you talking about, which of the two that you just discussed
5 are you talking about now?

6 MAHAFFIE: I would say both. Can you clarify the first question, then,
7 sorry?

8 LORING: I, I guess what DNR stream typing information did you use when
9 you looked at the site?

10 MAHAFFIE: Both.

11 LORING: Okay. And when I asked you about discrepancies between DNR stream
12 typing and the stream typing that was put forth in that, uh, Northwest
13 Ecological Services document, what stream, DNR stream typing source were you
14 using when you said that there discrepancies?

15 MAHAFFIE: Both.

16 LORING: Okay.

17 MAHAFFIE: As well as statements and photographs within the assessment.

18 LORING: Okay. And, and when you say statements and photographs within the
19 assessment, are you saying that you saw in those statements and photographs a
20 different typing than was actually applied to the streams when you read the
21 type that was associated with them?

22 MAHAFFIE: Correct.

23 LORING: And, and when I say read the type that was associated with them,
24 I mean, where the report identifies a certain type and puts that right next
25 to the additional, the stream itself, that didn't match up with the photos?

1 MAHAFFIE: Uh, and statements, yes.

2 LORING: And other statements? Okay.

3 MAHAFFIE: So, and, yeah, the report char-, characterized the streams, uh,
4 with individual physical characteristics di-, that did not appear to meet the
5 standards of the typing put forth.

6 LORING: Okay. Uh, what do you mean by that? How would you explain that to
7 a lay person?

8 MAHAFFIE: Uh, the State, uh, has the ability, as put forth worksheets and
9 within the WACK itself, uh, having physical characteristics, such as bank
10 full width. If your bank full width is greater than two feet and has less
11 than a 16% grade in it, it's typically dictated as a fish bearing stream by
12 its physical characteristics. Barring some natural barriers downstream. So,
13 uh...

14 LORING: Okay.

15 MAHAFFIE: When you have descriptions that conflict with that, that, that's
16 a red flag. That's what I would mean by statements.

17 LORING: Okay. And so there were some statements for specific streams, uh,
18 that, that describe the stream in a way that was different from that typing?

19 MAHAFFIE: Correct.

20 LORING: Okay.

21 MAHAFFIE: That doesn't mean it was inaccurate, but it was not
22 substantiated.

23 LORING: Okay. And speaking about substantiation, did, uh, Northwest
24 Ecological Services provide the methodology and documentation for their
25 stream typing determinations?

1 MAHAFFIE: Uh, based on what I saw, no.

2 LORING: Okay. Would that be a standard practice to provide that
3 information?

4 MAHAFFIE: Yes.

5 LORING: Okay. And why does accurate stream typing matter for this site?

6 MAHAFFIE: It would be two-part, uh, you know, the, the easy part is just
7 the buffer analysis, it's either a 50 foot buffer or a 100 or 150 foot
8 buffer, depending on the stream width and the fish bearing stream. The more,
9 uh, harder, uh, part to nail down, that would be the functional analysis of
10 what that buffer function that might be impacted provides.

11 LORING: Okay.

12 MAHAFFIE: And so you're looking at the potential life cycles of the stream.

13 LORING: Okay. And in your review, did the stream typing that was given to
14 the streams, uh, was it a higher level or lower level stream typing that was
15 applied to the streams and you believe should have been applied based on your
16 opinion and the information you had about it?

17 MAHAFFIE: Lower.

18 LORING: So, the more accurate stream typing would have been a higher
19 level?

20 MAHAFFIE: Yes.

21 LORING: And, and what would the effect of that have been here at this
22 site?

23 MAHAFFIE: Uh, larger buffers.

24 LORING: Okay.

25

1 MAHAFFIE: Larger buffer by a magnitude of either 50 feet or possibly even
2 an additional 100 foot buffers on top of the 50 foot buffers already
3 assigned.

4 LORING: Okay. And in your opinion, would that larger buffer, or the more
5 accurate stream typing, have affected the potential impacts that should have
6 been analyzed of the truck hauling of the gravel on the site?

7 MAHAFFIE: Yes.

8 LORING: Okay. And that, that did not occur here based on your opinion?

9 MAHAFFIE: No.

10 LORING: Okay. Okay. Uh, are there wetlands along the haul route that are
11 fish-bearing waters?

12 MAHAFFIE: It appears so, yes.

13 LORING: How do you know that?

14 MAHAFFIE: Uh, streams with, uh, typed waters of a fish-bearing status
15 appear to be impounded, most likely by beavers in those areas.

16 LORING: Okay. And were these, uh, were these wetlands identified in the
17 report as fish-bearing?

18 MAHAFFIE: Not that I saw, no.

19 LORING: Okay. Would that have effected an analysis of the impacts of
20 those wetlands or to those wetlands?

21 MAHAFFIE: I believe so, yes.

22 LORING: And, and those impacts were not analyzed accurately as a result
23 of the lack of identification as fish bearing?

24 MAHAFFIE: I'd say that's correct, yes.

25

1 LORING: Okay. Uh, what might those impacts be, uh, that should have been
2 studied, as an example?

3 MAHAFFIE: Treating them as fish and wildlife habitat conservation areas as
4 well as wetlands. Uh, the code and [inaudible] science dictates, uh,
5 additional functions and values for riparian areas, in addition to wetland
6 buffer functions and values.

7 LORING: Okay.

8 MAHAFFIE: A lot of it overlaps, but there are additional things to note in
9 that regard.

10 LORING: Okay. And, and those, those were not studied here as a result of
11 this inaccurate, uh, type, or, um, failure to identify as fish bearing?

12 MAHAFFIE: It, it makes the assessment substandard, I would say.

13 LORING: Okay. Are you familiar with the historic use of the internal haul
14 road at this site?

15 MAHAFFIE: Yes.

16 LORING: And based on the Application materials that you reviewed and the
17 hauling that would occur for the gravel there, would you expect the use of
18 the road for that gravel hauling to be the same as the historic use?

19 MAHAFFIE: No.

20 LORING: Uh, how would it differ?

21 MAHAFFIE: Much greater traffic.

22 LORING: Okay. And do you know whether the vehicles would be roughly the
23 same as the previous vehicles?

24 MAHAFFIE: No, they would not.

25

1 LORING: Okay. And when you say much greater traffic, what do you mean by
2 that?

3 MAHAFFIE: This gets back to more, uh, personal observations over numerous
4 decades, but you would have very infrequent periods of harvest, which would
5 have some higher traffic use, and then long periods of only very infrequent,
6 uh, forestry monitoring and maintenance, you know, maybe a yearly mowing, you
7 know, things like that. It was very common to walk or hike all those internal
8 roads prior to Miles ownership and not see any traffic for months on end.

9 LORING: Okay.

10 MAHAFFIE: So, it's, I wouldn't say it's 100% greater traffic proposed, but
11 it, it's very close.

12 LORING: Okay. So, and what would the impacts of that greater traffic be
13 along the road there and the wetlands and the streams that it crosses?

14 MAHAFFIE: This gets to be a little bit of a gray area between the wider,
15 uh, wildlife and geological impacts versus the direct impacts to the
16 identified critical areas. But impacts to, uh, species dependent upon those
17 critical areas for any or all parts of their lifecycle, migrating amphibians,
18 fish in the waters, wildlife dependent upon the waters for their lifecycle,
19 uh, light, noise, traffic. It's pretty well documented that frequent traffic
20 effects wildlife, uh, patterns, whether it's their sleep and usage and forage
21 patterns or ability to safely cross, it's well documented impact.

22 LORING: Okay. And you testified earlier that that NES report did not
23 identi-, did not discuss in the larger SEPA impacts that it should have for
24 this, uh, road use, uh, are you also now testifying that it didn't evaluate
25

1 all of the critical areas, uh, stream and wetland impacts associated with
2 that haul road use, too?

3 MAHAFFIE: I feel that it addressed spatial impacts, which is commonly how,
4 uh, such consultants try and identify, uh, these kind of impacts, spatial,
5 because that's kind of how the Code refers to things, uh, without doing the
6 actual analysis of those impacts. And I, I would like to clarify that it did
7 not appear that the NES report, uh, made the claim that they were looking at
8 the larger SEPA impacts. They, they pretty well titled it and identified
9 within that they were only looking at the critical areas within the haul
10 route area.

11 LORING: And thank you for that clarification, too. And, and when you say
12 the spatial impacts, can you clarify what you meant by that?

13 MAHAFFIE: It's very common to easily identify impacts with a proposal by
14 assigning a spatial number. We are impacting a thousand square feet to build
15 a house here, in the buffer. And then you can mitigate, easily, by a number
16 when the code says replace it at one to one, well, we impacted thousand, now
17 here's a thousand square feet of impact. It's an easy way to do it, and it
18 works in many common scenarios. It does not work, in my opinion, with a
19 change of use, we have an existing road for one person, now, one purpose, and
20 now we're changing the use to another. It's, it's not a, a good way to
21 analyze such impacts.

22 LORING: Okay. And, uh, the report, the NES report didn't, uh, purport to
23 evaluate that impact of the change of use, did it?

24 MAHAFFIE: It did.

25 LORING: Okay.

1 MAHAFFIE: In, uh...

2 LORING: How did, uh, did you hear the testimony from Molly Porter, uh,
3 last Friday where she testified that she was not examining that change in use
4 from, uh, forestry to mining traffic along there?

5 MAHAFFIE: Yes. Uh, I would consider that more an interpretation of her
6 findings, I guess. If I have to clarify that a little bit.

7 LORING: Okay. Um, and so her, her findings were that, um, strike that.
8 Uh, let me ask you a little bit about the, the spatial issues that you were
9 talking about a moment ago and ask, would converting the road to a gravel
10 road have had impacts...

11 MAHAFFIE: Yes.

12 LORING: At the site?

13 MAHAFFIE: Yes.

14 LORING: What would some of those impacts have been?

15 MAHAFFIE: Those are a little more easily identified, identifiable impacts.
16 You're, you're removing forest canopy to create a hardened surface. So,
17 you're, if you're in a stream buffer, you're removing shading and erosion
18 control features in the ground and contribution of woody debris to streams,
19 things like that.

20 LORING: Okay. And are you thinking of vegetation cutting along the edge
21 of the road when you talk about that, uh, sort of impact?

22 MAHAFFIE: I'm sorry, I, my understanding of your question was creating the
23 road to begin with. So...

24

25

1 LORING: Sorry, I was thinking, uh, sorry about that confusion. No, I was
2 asking about converting the road from a, uh, from a forestry road to a gravel
3 road and the impacts of that type of conversion?

4 LYNN: Uh, I'm, I'm going to object to the question on the basis that
5 it's just not relevant to the proceedings. The road was there before, it was
6 a gravel road before, there's been testimony that it was not widened. I don't
7 know what this had to do with the Proposal that's before the Hearing
8 Examiner.

9 LORING: And if might respond to that, one of the issu-, yeah, one of the
10 primary issues is what has happened with that road, given the roadwork in
11 2018. There actually has not been testimony that it was graveled prior to
12 that time. Uh, we did hear testimony from Mr. Semrau that, in his opinion, it
13 wasn't widened, but we, that's a disputed issue in this matter. In terms of
14 the extent of the impacts that were created by that 2018 work.

15 REEVES: Uh, I'm sorry. I'm trying to wrap my head around it. So,
16 essentially, uh, the testimony is intended to determine what further
17 ecological impacts would occur by changing the nature of the road prior to
18 when the SEPA determination was issued, is that right, Mr. Loring? Just to
19 get a, try to understand what...

20 LORING: That's essentially it. Yes. That is essentially it.

21 REEVES: Uh, while I understand the objection, I'll go ahead and allow it,
22 allow further testimony, but, but we'll just leave it at that for now.

23 LORING: Um, and Mr. Examiner, I know we've been going on a little while
24 at this point, I don't have a lot more, but I've got, you know, another
25 probably ten minutes, maybe 15, would now be a good time to take a, a brief

1 break? I know it's kind of in the middle of some of the questioning, but a
2 brief break between, um, now and lunchtime?

3 REEVES: Yeah. Why don't we do that? So, we'll, we'll take a, a break now
4 and then we'll come back, uh, come back in about ten minutes with this
5 witness.

6 LORING: Thank you, Mr. Examiner. See you at 11:24.

7 [The tape ends.]

8 **The undersigned being first duly sworn on oath, deposes and says:**

9 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
10 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party
11 to this action. That on April 30th, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves, that
12 took place on 9/8/22 at 9:00 a.m., regarding the above-captioned matter.

13 I certify and declare under penalty of perjury under the laws of the State of Washington that the
14 aforementioned transcript is true and correct to the best of my abilities.

15 Signed at Mount Vernon, Washington, this 30th, April of 2024.

16 Janet Williamson

17 Janet Williamson

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**IN SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT**

State of Washington,	)	Cause No.: PL16-0097, PL16-0098,
	)	PL22-0142
Plaintiff,)	
)	
vs.	)	PERMIT HEARING 9-8-22 11:00 AM
)	
Name,)	
)	
Defendant)	

Transcription Date: May 1st, 2024

Present: Mona Kellogg, Andrew Reeves, Tom Ehrlichman, Bill Lynn, Jason D'Avignon, Kyle Loring, Matthew Mahaffie

KELLOGG: Recording started.

REEVES: Thank you, Ms. Kellogg. Uh, Mr. Loring, go ahead.

LORING: Okay. Thank you, Mr. Examiner. And, hello, ag-, again, Mr.

Mahaffie. We'll resume. I don't have a lot more for you, but, uh, I want to fi-, I want to finish this line about the haul road and the impacts that might be anticipated for that. Um, and, so, before we left, there was a little bit of confusion about my question about the haul road being converted from a forestry road to a, a gravel road. And let me ask you, would that have

1 had any impacts, uh, if it had been converted from a forestry road to a
2 graveled road, uh, to, in your opinion?

3 MAHAFFIE: Yes.

4 LORING: What would those have been?

5 MAHAFFIE: Uh, gravel is typically going to be a compacted and hardened
6 surface with more, uh, opportunity for run off and segmentation, uh, to leave
7 the road, roadbed area.

8 LORING: Okay.

9 MAHAFFIE: Additionally, you know, uh, you know, an infrequently used forest
10 road becomes vegetated in and of itself, even if graveled, you know, grasses
11 and other foliage will grow through and still provide some level of buffer
12 function, even if it's frequently graded. Uh, that's a lot different than a
13 commonly used year-around road, even if gravel.

14 LORING: Okay. And, and so cutting that type of vegetation would have an
15 impact as well?

16 MAHAFFIE: Yeah. Yes.

17 LORING: Okay. Uh, based on your experience, both preparing critical areas
18 assessments and preparing mitigation plans, would you have expected the
19 impacts, uh, to have been identified and mitigated for that work?

20 MAHAFFIE: Yes.

21 LORING: Okay. In your, in your review of the applications materials, did
22 you see any assessment of the impacts of using the haul road across Swede
23 Creek?

24 MAHAFFIE: Nothing comprehensive, no.

25

1 LORING: Okay. And when you say nothing comprehensive, what do you mean by
2 that?

3 MAHAFFIE: I would consider the analysis more of passing statements, rather
4 than analysis.

5 LORING: Okay. What would, uh, some likely impacts have been that should
6 have been analyzed?

7 MAHAFFIE: Potential for sedimentation, uh, dust infiltration, uh,
8 vegetation maintenance in a wider corridor than previous. Uh, possibility of
9 road or slope failure, things like that.

10 LORING: Okay. And, again, based on your review of the documents, those
11 impacts were not evaluated at this site?

12 MAHAFFIE: I would say not evaluated adequately.

13 LORING: Okay. So, reference to impacts, but not a discussion of what that
14 means for the site?

15 MAHAFFIE: Correct.

16 LORING: Okay. And were there any other areas where the proposal does not
17 satisfy the Skagit County Critical Areas Ordinance criteria in a way that is
18 likely to cause impact? Based on your understanding of that CAL.

19 MAHAFFIE: My understanding, my interpretation, uh, would have assumed an
20 impact from the change of use in and of itself.

21 LORING: Okay. And when you say assumed a change of use, is, do you mean
22 that that's based on your understanding of, uh, impacts from changing a use
23 on critical areas?

24 MAHAFFIE: Correct.

25 LORING: Okay. Uh...

1 MAHAFFIE: It's...

2 LORING: Go ahead.

3 MAHAFFIE: No, I'm sorry.

4 LORING: And then when I say based on your experience and understanding
5 the change of use can cause those impacts?

6 MAHAFFIE: Yes.

7 LORING: Okay. Uh, did you see any, uh, proposal for a, a maintenance
8 corridor between the mine and the buffer? And now I'm zooming back out to the
9 whole site and not just talking about the haul road.

10 MAHAFFIE: No. And that would probably be one of my larger concerns that
11 wasn't addressed.

12 LORING: Why do you say that?

13 MAHAFFIE: Uh, the, the plan seemed to show excavating, essentially to the
14 buffer edge and, and then the question would be, what happens to the
15 vegetation on the buffer edge that's going to fall into the mine site or be
16 removed prior to because then it becomes a safety hazard to the mine
17 operations. So, but...

18 REEVES: Sorry to break in one sec, uh, Mr. Lynn, maybe if you could mute,
19 I'm getting some feedback from, from flipping papers. Thank you. Go ahead,
20 Mr. Loring.

21 LORING: Uh, thank you, Mr. Examiner. And, and, Mr. Mahaffie, you were
22 saying that the lack of a maintenance corridor was one of your bigger
23 concerns because things tend to happen in that zone along the edge of a
24 buffer?

25

1 MAHAFFIE: Correct. Whether it be intruding into the root zones of the, the
2 trees that are supposed to be, uh, left within the buffer, or, you know,
3 failure of the slope bringing them down and additionally, uh, I think I
4 touched on this a little before, uh, it's very, very common in this kind of
5 scenario, especially with the southern aspect, for that buffer edge to then
6 become, you know, infested with what are known as noxious air and racist
7 species. You know, typically in a site like this, it would be, you know,
8 Himalayan blackberry or scots berm, things like that, would infiltrate the
9 buffer, which is very counter intuitive to, uh, the Critical Areas Ordinance
10 and noxious weed control laws. So, you would assume and hope for a
11 maintenance corridor between the buffer and mine operations to account for
12 that. So...

13 LORING: Okay. And is your understanding of the Critical Area Ordinance,
14 uh, requires some level of a maintenance corridor between the mine and the
15 buffer?

16 MAHAFFIE: Yes. Sort of. It's, uh, identified, if my recollection is
17 accurate, more of a building setback for the maintenance corridor. But I, the
18 intent is clearly there, to account for such things.

19 LORING: Okay. And, uh, and the absence of that maintenance corridor, will
20 that exacerbate the impacts of a substandard buffer itself?

21 MAHAFFIE: Yes.

22 LORING: Substandard width?

23 MAHAFFIE: I feel that, yes, that would, that would cause, even if you had
24 the minimum buffer held to, it would still cause damage to the buffer by
25 those indirect impacts, yes.

1 LORING: Okay. And in your review of Application materials and reports,
2 did you find any analysis of the impacts of that lack of a maintenance
3 corridor?

4 MAHAFFIE: No, I did not.

5 LORING: Okay. All right. Let's talk briefly about the MDNS, uh, I believe
6 you've already stated that you're familiar with it?

7 MAHAFFIE: Yes.

8 LORING: Okay. And, uh, and just to summarize, once again, in, in your
9 expert opinion, as someone who conducts SEPA review and also prepares reports
10 to satisfy SEPA criteria, did that MDNS fully address the proposed impacts,
11 or the, the impacts of the proposed mine?

12 MAHAFFIE: I do not feel so, no.

13 LORING: Okay. And what's the likely outcome of that failure to analyze
14 the impacts fully?

15 MAHAFFIE: Uh, the impacts will occur and be unmitigated for.

16 LORING: Okay. There was a little bit of testimony earlier by an Applicant
17 witness or two about the mine impacts being, uh, temporary, was the word that
18 they used, in your expert opinion, does that word characterize the impacts
19 that would occur as a result of this mine?

20 MAHAFFIE: Not in my experience, no.

21 LORING: And why do you say that?

22 MAHAFFIE: You have a multi-decades long mining operation with an
23 undetermined, uh, as far as I can tell, reclamation, uh, timeline. I, I don't
24 know of anybody that would consider that temporary.

25 LORING: Okay.

1 MAHAFFIE: Every...

2 LORING: Okay. Uh, and, um, what is, my last question for you, I believe
3 at the moment, uh, in your expert opinion, given all of the information in
4 the Application, uh, all of which you have reviewed with regard to critical
5 areas and, uh, other environmental impacts, did Skagit County conduct a full
6 review of the mine proposals, environmental impacts before issuing the MDNS?

7 MAHAFFIE: No, I do not.

8 LORING: Okay. Thank you very much. I don't have any additional questions
9 at this time. But, as you know, we're going to hear from other Attorneys and,
10 and go around the room and they will have questions for you, too. So, thank
11 you.

12 MAHAFFIE: Okay.

13 REEVES: Okay. Um, Mr. D'Avignon, any questions of this witness?

14 D'AVIGNON: I, I do have a couple of questions, Mr. Examiner.

15 REEVES: Okay.

16 D'AVIGNON: Um, morning, I guess we're still morning, Mr. Mahaffie.

17 MAHAFFIE: Good morning.

18 D'AVIGNON: In preparing your report, did you review the County Code and, I
19 guess, specifically the Critical Areas Ordinance?

20 MAHAFFIE: Yes.

21 D'AVIGNON: Uh, did you just review the current version of the Critical Areas
22 Ordinance?

23 MAHAFFIE: I would say that's kind of a loaded question. As regards to the
24 MDNS, yes. The latest issued MDNS, yes.

25

1 D'AVIGNON: Okay. Then, are you aware of the code allowing reductions to
2 buffers, basically to consider a high, in a high intensity use, to use a
3 buffer for, um, moderate or medium use?
4 MAHAFFIE: Yes.
5 D'AVIGNON: Uh, what, what is normally required to, to get that?
6 MAHAFFIE: Would I be allowed here to look at the code specifically? Because
7 I can't remember that off the top of my head.
8 REEVES: Sorry, I, I'm, as the Hearing Examiner, I have no issue with
9 directing the witness toward what provision you were...
10 D'AVIGNON: I...
11 REEVES: Need looking at...
12 D'AVIGNON: Yes. Um, I'm trying to pull it up right now so I can share my
13 screen.
14 REEVES: They're not required Planners in Whatcom County to memorize the
15 codes of every other County?
16 MAHAFFIE: I have enough trouble with my own code.
17 REEVES: Right. Understood.
18 D'AVIGNON: All right. Can you see that? So, I think we're in 243A. So, the,
19 I guess is your understanding of this Code section that even if a land use
20 intensity is classified as high impact, the moderate intensity buffers could
21 be implemented?
22 MAHAFFIE: Correct.
23 D'AVIGNON: Um, in your opinion, what would be some of the measures that we
24 would, you know, based on the document we were looking at earlier, need to be
25 implemented to do so?

1 MAHAFFIE: You would need to look at the table found in Appendix 8C.

2 D'AVIGNON: Well, let's see if we can pull that up. All right. Do you know
3 where in here we would look?

4 MAHAFFIE: Not off the top of my head, no.

5 D'AVIGNON: Samples of measures to minimize impacts to wetlands from
6 different types of activities, that wouldn't be it. This looks like it might
7 be it. Do you think this is it, you're the one who maybe works with this a
8 little bit more than I do. Reduction in buffer width based on reducing the
9 intensity of impacts from proposed land uses.

10 MAHAFFIE: Correct.

11 D'AVIGNON: All right. So, can you describe what these, what the r-, what
12 Ecology is saying here?

13 MAHAFFIE: It's very difficult to describe that without a display or a map,
14 but, uh, showing a permanently protected vegetative corridor 100 feet wide,
15 uh, between any other pri-, priority habitats. So, WFW is identified what
16 priority habitats are.

17 D'AVIGNON: Okay.

18 MAHAFFIE: So, on this site, you know, the Samish River would be one,
19 wetlands, streams, all could be considered priority habitats.

20 D'AVIGNON: And are you, and it looks like the second one is measures to
21 minimized impacts, um, in your opinion, does the MDNS contain any, any
22 conditions that would be minimizing impacts on the wetlands?

23 MAHAFFIE: Well, the statement that the Critical Areas Ordinance shall be
24 followed would be one.

25

1 D'AVIGNON: Okay. Um, I'm going to stop sharing as I get the emails. Uh, and
2 lastly, I want to, I guess, go over kind of towards the end of your
3 testimony, you had talked about, um, maintenance corridors [inaudible] one
4 more time. Um, are you, do you know if those are limited to structures?
5 MAHAFFIE: Honestly, I can't remember the exact code section off the top of
6 my head, could you re-, forward me to that?
7 D'AVIGNON: Hold up here. I believe this is the section, this would be
8 14.24.80.4C Roman et ix. Can you read this first sentence?
9 MAHAFFIE: If necessary, designated maintenance corridor to provide an area
10 for construction and maintenance ability and other structures.
11 D'AVIGNON: Um, in your, in your review of the proposed mine, are there any
12 proposed buildings or other structures?
13 MAHAFFIE: Well, I might refer you to the definition of the word structure
14 in the Skagit County Code.
15 D'AVIGNON: Look at that. In your opinion, are anything being built or
16 constructed, an edifice or a building of any kind or any piece of work
17 artificially built up or composed of parts joined together in some definite
18 manner, not including fences?
19 MAHAFFIE: I think it's a bit of a stretch, but I think I could find the
20 intent in the part that says a piece of work artificially built upon.
21 D'AVIGNON: And I, I suppose you're referring to maybe a, a berm?
22 MAHAFFIE: Yep. And I would also defer to the intent of what this section of
23 14.24 intends to do. And it's to provide protection from the buffer by the
24 activity occurring. I mean, it's, it's pretty common knowledge, you can't
25 build a house six inches away from a 36" diameter cedar tree. There has, that

1 would be protected by the buffer. There still has to be some separation. And
2 that separation can still allow human usage and activities, but still
3 separate the activity from the buffer itself to protect the buffer.

4 D'AVIGNON: Okay.

5 MAHAFFIE: That, that's the intent, in my understanding of what the
6 maintenance corridor is for.

7 D'AVIGNON: Okay. Uh, no other questions, Mr. Examiner.

8 REEVES: Okay. Mr. Ehrlichman?

9 EHRLICHMAN: I, I didn't hear any testimony on traffic on Grip Road, so we
10 don't have any questions. Thank you.

11 REEVES: Thank, thank you. Mr. Lynn?

12 LYNN: Good morning, Mr. Mahaffie.

13 MAHAFFIE: Good morning.

14 LYNN: Keeping muting myself. Um, you kind of quickly went over your
15 address, isn't your home very close to the mine site?

16 MAHAFFIE: Yes, it is.

17 LYNN: And, in fact, aren't you one of the people who received notice of
18 this Application?

19 MAHAFFIE: The second time around, yes.

20 LYNN: Okay. And, uh, you didn't think that that was important to note,
21 in terms of your reporting?

22 MAHAFFIE: I do believe my comments are in the record.

23 LYNN: Okay. Have you, uh, voiced opposition to the mine in any other
24 context, emails, phone calls, meetings with neighbors or otherwise?

25

1 MAHAFFIE: I would not say I have voiced my opposition to the mine, I have
2 voiced my oppositions to components.

3 LYNN: Components of the mine proposal?

4 MAHAFFIE: Components of the process and components of mitigating
5 conditions. Whether it be environmental or other.

6 REEVES: Mr. Lynn.

7 LYNN: I swear my hands were here.

8 REEVES: You made it, you made it, uh, two, almost three hours, so, but I
9 think we missed the entirety of whatever your next question was.

10 LYNN: Okay. Um, and you're, you're employed by Whatcom County as a, uh,
11 as a Planner?

12 MAHAFFIE: Correct.

13 LYNN: And in that work, are you called upon to make, uh, interpretation
14 of the Whatcom County Code?

15 MAHAFFIE: Yes.

16 LYNN: Okay. And would you, you described your, your recent
17 interpretation of the, the mine edge as a building or as a structure as being
18 a bit of a stretch. Um, when you're interpreting the Whatcom County Code, are
19 you allowed to make a bit of a stretch to get at the intent, even though
20 that's not what the language says?

21 MAHAFFIE: I would not have offered any document in that way, but I would
22 refer to that as my, uh, if something is not clear, we're still looking for
23 intent.

24 LYNN: Okay. Um, and you think the term structure is defined as not
25 clear under the Skagit County Code?

1 MAHAFFIE: I, I don't think I said that.

2 LYNN: Well, you, you, you were willing to stretch its meaning, you just
3 said you only do that if there's an ambiguity. Are you saying that there's an
4 ambiguity in the definition...

5 MAHAFFIE: I...

6 LYNN: Of structure that was just put up on the screen?

7 MAHAFFIE: In, in this situation, yes.

8 LYNN: Okay. Um, when it comes to interpreting Skagit County Code, and I
9 gather you do a lot of work in Skagit County, who makes the call, is it you
10 or is it a Skagit County Official?

11 MAHAFFIE: It's a Skagit County Official.

12 LYNN: Okay. Um, are, are you a professional wetland scientist?

13 MAHAFFIE: No, I am not.

14 LYNN: Is that the club you, you were, is that the thing you referred to
15 as being a club in the very beginning of your testimony?

16 MAHAFFIE: Yes. It is a privately run association.

17 LYNN: It's an international associations that certifies wetland
18 scientist, isn't it, isn't the most well-known, uh, organization that does
19 that?

20 MAHAFFIE: Possibly, yes.

21 LYNN: It, it's certainly not a club where you just sign up and pay dues
22 and go to a meeting once in awhile, it's a, it's an organization that
23 certifies wetland scientists, isn't that accurate?

24 MAHAFFIE: Yes.

25

1 LYNN: And, and Pat Bunting is a member and Molly Porter is a member and
2 you do not have that certification, accurate?

3 MAHAFFIE: Correct.

4 LYNN: Okay. Have, have you any recent personal experience with the
5 site, have you been on the site since this Application was filed?

6 MAHAFFIE: No, I have not.

7 LYNN: Okay. So all of the observations that you've made in the
8 testimony you've given are based on your review of papers and your knowledge
9 of the site as it existed seven or eight years ago?

10 MAHAFFIE: Correct.

11 LYNN: Um, in terms of the condition of the road, um, did you hear the
12 testimony earlier on that that gravel pit that exists on the north portion of
13 the site was actually excavated in order to place gravel on the logging
14 roads?

15 MAHAFFIE: I did not hear that testimony, no.

16 LYNN: Okay. In, uh, you've characterized the County's review of this
17 Application as cursory, in your, uh, experience does the County give cursory
18 review to your work?

19 MAHAFFIE: I could not say.

20 LYNN: Well, what's been your experience? Don't they, don't they
21 professionally review and comment on your submittals?

22 MAHAFFIE: I could not speak to the level of review.

23 LYNN: Okay. So, in these hundreds of, maybe thousands of reviews you've
24 done, you don't have an opinion as to whether or not the County's review is
25 cursory?

1 MAHAFFIE: I know the comments I've received and the approvals my Applicants
2 have received.

3 LYNN: Okay. You made a comment about maybe the County not reviewing,
4 um, certain portions of the NES report, you don't know, personally, whether
5 or not the County received that information, do you, or reviewed it?

6 MAHAFFIE: Uh...

7 LYNN: Well, let me withdraw that. Would it surprise you to learn that
8 Miles submitted a thumb drive, a digital version and a paper copy to the
9 County, uh, at the same time the report was completed?

10 MAHAFFIE: That would not surprise me, no.

11 LYNN: Okay. Um, I'm going to talk about the, uh, the Graham Bunting,
12 um, work that was done. Did you hear Mr. Graham's testimony that the wetland
13 did not extend upland of the tow of the strope, slope and that none of the
14 wetland indicators, let alone all three, were present above the tow of the
15 slope?

16 MAHAFFIE: That is not the answer I heard, no.

17 LYNN: Okay. You didn't hear him say that he concluded that one of the
18 wetland indicators were present above the tow of the slope?

19 MAHAFFIE: I heard him say that he did not dig any test kits to identify
20 whether hydric soils extended beyond the tow of the slope or not.

21 LYNN: That's not my question. My question is, did you hear him say that
22 he found no wetland indicators, hydrology, plants or soils above the tow of
23 the slope?

24 MAHAFFIE: I heard him say he did not look for all indicators, physically
25 at, beyond the tow of the slope.

1 LYNN: Okay. Well, maybe, maybe we'll just go back to his testimony and
2 listen to it, then. Did you hear him testim-, testify that all wetlands were
3 riverward of the tow of the slow?

4 MAHAFFIE: I do not recall.

5 LYNN: Okay. Uh, did you find any fault, uh, well, you, in your comment
6 letter, A33, uh, testified that Mr., uh, Graham was using some kind of, uh,
7 plain language interpretation of ordinary high water, didn't he actually
8 quote the definition from the Skagit County Code?

9 MAHAFFIE: I don't recall.

10 LYNN: Okay. And do you recall, uh, do you have any personal knowledge
11 that the ordinary high water is not where it was indicated to be on his
12 document?

13 MAHAFFIE: No, I do not.

14 LYNN: Do you have any evidence, personally, that any wetland is in the,
15 is located on the property closer to the road than the tow of the slope? To
16 the, I should say, I'm sorry, to the road or to the mine, than, than, uh,
17 than was indicated in Mr. Graham's report?

18 MAHAFFIE: No. Since data wasn't provided, I wouldn't be able to answer that
19 statement.

20 LYNN: Okay. But you're personally not aware of any, are you?

21 MAHAFFIE: No.

22 LYNN: So, I want to talk about intensity of use. Um, well, so, I'm
23 sorry, one more question about Mr., uh, Bunting, or Mr. Graham's work, uh,
24 did you hear his testimony that he had reviewed the newer rating forward,
25

1 reviewed the data and came to the same conclusions as reflected in his report
2 using the older, uh, rating forms that were in effect at the time?

3 MAHAFFIE: Yes, I heard that testimony.

4 LYNN: Okay. So, there isn't nothing in the record to support that.
5 You've heard his sworn testimony, uh, under oath, to that effect, haven't
6 you?

7 MAHAFFIE: I've heard his testimony, yes.

8 LYNN: And, and, and it was under oath, let's, let's, give me something
9 here, Mr., Mr. Mahaffie. I know, I know you don't like it, but wasn't his
10 testimony sworn as a professional testimony under oath?

11 MAHAFFIE: Yes, it was.

12 LYNN: So, let's talk about intensity of use. Uh, would you agree that a
13 mine is not listed as either, as in any one of the cat-, categories, low,
14 medium or high in either the ecology, uh, Appendix or in the County's Code?

15 MAHAFFIE: Yes.

16 LYNN: Okay. So, does not that, I mean, and that's not a comprehensive
17 list of every use there is, isn't it, is it?

18 MAHAFFIE: No, it is not.

19 LYNN: Okay. Does...

20 MAHAFFIE: Which is why we refer to ecology.

21 LYNN: Well, well, that's, we'll, we'll get there. Ecology is not the
22 author of the Skagit County Code, are they?

23 MAHAFFIE: They are the author of the documents that are referred to in
24 Skagit County Code for such determinations.

25

1 LYNN: Okay. And the s-, ultimately it's up to the Skagit County
2 officials, isn't it, to determine who to determine its code, even if it
3 incorporates, uh, documents from Ecology?

4 MAHAFFIE: Yes, it is.

5 LYNN: Okay. Did you see any detailed analysis by Ecology as to the
6 particular characteristics of this, uh, this mine?

7 MAHAFFIE: I would not consider them detailed, but I saw the comments from
8 Ecology regarding this mine.

9 LYNN: And didn't Ecology assume that it would be necessary to make, uh,
10 significant im-, improvements or, uh, alternations to the haul road in order
11 to accommodate the mine? Wasn't that part of their analysis?

12 MAHAFFIE: I don't believe so, but I cannot speak for Ecology.

13 LYNN: Okay. So, if there is judgement to be exercised, we have a
14 difference of opinion, don't we? We have Oscar Graham saying he thinks it's a
15 moderate intensity land use. Uh, and with a, with an articulation of why. We
16 have the County having made different judgement. And we have Ecology having,
17 uh, made a judgment as well. Isn't it ultimately up to, up to the County to
18 determine what the appropriate, um, intensity designation is for a land use?

19 MAHAFFIE: Yes.

20 LYNN: Okay. In, in analyzing the intensity of the land use, is it
21 significant to you, in any way, that most of the mining activities, if not
22 all, would take place behind the hill, in other words, separated from the
23 wetland and river by a, a hill?

24 MAHAFFIE: I would consider it [inaudible] significant.

25

1 LYNN: Okay. Uh, would you, uh, it, you're obviously familiar with
2 different mine sites, uh, in your practice, is that accurate?

3 MAHAFFIE: Familiar, yes.

4 LYNN: Okay. And, and don't they have highly different levels of
5 activity, depending upon the specific operation? Crushing, blasting,
6 processing, uh, asphalt batching, dredging and so forth, aren't, aren't those
7 activities that take place at some mine sites?

8 MAHAFFIE: Uh, I would, I would say you're lumping quarries and gravel pits
9 and mines, uh, into one. But, so, yes, a quarry is going to have much
10 different impacts than a, than a gravel mine.

11 LYNN: So, what is your definition of what's a gravel mine? Isn't this a
12 gravel mine under the County Code? And isn't the Goodwin Pit, to the Goodwin
13 Pit that you referred to in your testimony also a surface mine?

14 MAHAFFIE: Yes.

15 LYNN: Okay. And, and...

16 MAHAFFIE: I was referring to your questions regarding blasting, which would
17 typically occur with a quarry, you know, hard rock mining, which would be a
18 different...

19 LYNN: Oh...

20 MAHAFFIE: In my...

21 LYNN: Okay.

22 MAHAFFIE: View than a gravel pit, so...

23 LYNN: Okay. So, you differ-, you differentiate that, but wouldn't you
24 agree that otherwise, uh, uh, a significance wash plant, a crushing plant, an
25

1 asphalt batch plant, various sorting activities and all those types of things
2 are parts of certain mine sites?

3 MAHAFFIE: I would say, yes.

4 LYNN: Okay. And, in fact, you were critical of, uh, NES for having, uh,
5 called this mine site a moderate level, but, but, uh, not doing so on the
6 Goodwin mine site, isn't that accurate? Wasn't that in your letter, you're
7 A33?

8 MAHAFFIE: Yes.

9 LYNN: And, and, in fact, aren't those activities that I mentioned here,
10 or at least some of them, crushing, processing, and even blasting in that
11 case, part of that mine operation?

12 MAHAFFIE: I, neither my comment, their review nor my knowledge would
13 reflect those activities.

14 LYNN: Okay. You were, uh, [inaudible] with the temporary nature of the
15 activity, uh, whe-, whether that was appropriately considered, uh, temporary.
16 If the area between 300 feet from the ordinary high water and 200 feet from
17 the ordinary high water would be mined quickly, at the beginning of the
18 operation, in say two or three years, and then that area reclaimed to its
19 ultimate use, with topsoil and tree planting, wouldn't that limit the level
20 of activity, uh, that could conceivably impact the wetland, uh, buffers or
21 the wetland operation?

22 MAHAFFIE: That most certainly could.

23 LYNN: Okay. And turning to the NES report, it's fair to say you have
24 not made a personal visit to any of those wet-, wetlands or streams since at
25 least 2016, when this Application was filed?

1 MAHAFFIE: Correct.

2 LYNN: Okay. And you were critical of the use of DNR, uh, storm typing,
3 and here, I think this is kind of a key point, the stream typing that I'm
4 referring to is the type that's available on any DNR website and shows the
5 stream typing of every stream. Is that, that's accurate?

6 MAHAFFIE: No. The, the stream typing for small streams is highly inaccurate
7 and shows...

8 LYNN: Not...

9 MAHAFFIE: Misses many, many streams.

10 LYNN: Okay. I, I'm sorry, that was not the point of the question, so I
11 asked it improperly. Isn't there a publicly available DNR mapping that shows
12 the designation of, uh, various streams?

13 MAHAFFIE: Yes, there is.

14 LYNN: And isn't that the primary source of information used by bio-, by
15 biologists and others in, in d-, in describing streams and their functions?

16 MAHAFFIE: At this point in time, that would not be a true statement.

17 LYNN: Okay. You, in your experience, if we were to look at all of your
18 assessments of streams that you've prepared, they'd all have some other
19 information in them, other than the DNR information?

20 MAHAFFIE: Uh, site specific, but, yes.

21 LYNN: Okay. Would they have this, you, the other source you identified
22 was DNR, uh, permit specific information. That's not commonly part of your
23 analysis, is it?

24 MAHAFFIE: Yes, it is.

25

1 LYNN: It's a routine part that we would expect to find in all of your
2 reports and all of the other reports that you review on behalf of Whatcom
3 County?

4 MAHAFFIE: If I'm doing a site review as a consultant or a reviewing
5 Planner, I am going to be a literature review of WVV Priority Habitat and
6 Species Mapping, Salmonscape from WFW, DNR Stream Typing, uh, DNR Forest
7 Practice Applications, if it's in the forestry designated area, which is
8 pretty easy to see, aerial photos. I'm going to be looking at LiDAR. And if
9 all of that comes out with no information provided, it's going to be based
10 upon physical characteristics, by applying the applicable WACK.

11 LYNN: So, what's...

12 MAHAFFIE: [Inaudible] by using these stream typing worksheet as provided by
13 Washington State Department of Natural Resources.

14 LYNN: Did you hear Ms. Porter testify that she had to file a Public
15 Records Act Request to obtain the individual Forest Practices Permits?

16 MAHAFFIE: No, I surely did not.

17 LYNN: You didn't hear her testimony?

18 MAHAFFIE: I didn't hear her say that she had to do a Public Requests
19 Request. They're publicly available online. I found them under five minutes.

20 LYNN: Okay. And your contention is that that's a routine part of this
21 analysis?

22 MAHAFFIE: By my standards, yes.

23 LYNN: Okay. I was really just talking about just general standards, not
24 your own. So, was that likewise, uh, is that a standard practice in the
25 consulting business?

1 MAHAFFIE: I would say so, yes. From a consultants I've reviewed the work
2 of, yes.

3 LYNN: Okay. Uh, [inaudible] there, uh, anything that we could, you
4 could point to in the Skagit County Code that would tell the Hearing Examiner
5 what the management, uh, uh, direction are regarding increased traffic on an
6 existing road? Can you point to something in the County Code that addresses
7 that?

8 MAHAFFIE: Not off the top of my head. It would be referring to those Forest
9 Practice roads created under a Forest Practice Application.

10 LYNN: Um, can you think of, can you tell the Hearing Examiner what the
11 magic cut off is? What, what level of traffic becomes a significant change?
12 Something in the, the County Code or in the WACKs that would give the Hearing
13 Examiner something to get a toe hold on here?

14 MAHAFFIE: Uh, it's not a traffic increase, it's a change of use.

15 LYNN: And, and, well, okay, call it what you like, it's more trucks on
16 the car, on the road, isn't that the, the jest of it?

17 MAHAFFIE: As, as an easy way to say it, yes.

18 LYNN: Okay. So, where do we find the more trucks on the road standard?
19 How much, at what point do we get from just almost too much, but now we're
20 over the top? Uh, where's that magic line?

21 MAHAFFIE: It's a change of use from a forestry use to a non-forestry use
22 and accounting for that in the SEPA process.

23 LYNN: Okay. And so where do we find that in any guidance in the
24 County's Code or in any WACK?

25 MAHAFFIE: It's not a number.

1 LYNN: Okay. And what's the, what's the standard? How do we decide? How
2 is the Examiner supposed to know when we've had suddenly too much truck, to
3 many trucks?

4 MAHAFFIE: By reviewing an analysis that accounts for that accurately.

5 LYNN: Okay. Well, we have an analysis, you say that there aren't very
6 many logging trucks now, we have now a proposal for which there's an, an
7 annual average of 46 trips a day, where between the current number and the 46
8 trips per day, on average, is the breaking point? Where, where, what do we
9 dive into here? Where do we find this analysis?

10 MAHAFFIE: It's having a professional experienced in those kind of impacts,
11 analyzing those impacts.

12 LYNN: Okay. And who, who would such an app-, uh, we have a traffic
13 engineer, we have a civil engineer, we have people in the mining business, we
14 have two biologists with a professional certification. Where do we find
15 someone who has that level of, uh, expertise that you, as a neighbor, thing
16 is important?

17 MAHAFFIE: I, I don't, I don't really consider me being a neighbor part of
18 that question. But...

19 LYNN: I'll withdraw that part of it. Just you, as a wetland scientist?

20 MAHAFFIE: Uh, it, it's a wetland question and I, I think I touched on that
21 a little earlier. It's not a specifically a wetland ecology question. It's
22 having a, uh, multi-disciplinary approach to it. Which would include, in my
23 opinion, you know, a strong sweep of wildlife biologist, not just wetland
24 ecologists looking solely at wetland ecology.

25 LYNN: Uh, is NES in your experience just a wetland firm?

1 MAHAFFIE: Yes.

2 LYNN: Okay. And are you just a wetland expert?

3 MAHAFFIE: Yes, I am.

4 LYNN: So...

5 MAHAFFIE: I'm answering wetland..

6 LYNN: So, is it fair to say that you lack the professional

7 qualifications to make a determination as to what level of traffic is too

8 much? Or when we have too many trucks on the road?

9 MAHAFFIE: Again, it's not a number.

10 LYNN: Okay. It's just a feeling that we get, like, pornography, we know

11 it when we see it?

12 LORING: Objection. Asked and answered. Mr. Mahaffie doesn't need me to,

13 but this badgering, it's gone way beyond the original question.

14 REEVES: Even, even for me, that might have gone a little far. So, I, I

15 will, uh, sustain the objection there. Uh...

16 LYNN: Okay. Uh, uh, I'll, I'll, I'll be corrected, so, um, Mr. Mahaffie, you

17 testified that under new ecology guidance, uh, a road has the same intensity

18 as the use it serves. Uh, isn't that guidance referring to new roads?

19 MAHAFFIE: Nope.

20 LYNN: There's, is there something you can point to, an ecology guidance

21 that says the use of a road for, uh, a, a change in use of a road

22 constitutes, uh, something along the lines of a level of intensity?

23 MAHAFFIE: Oh, I don't think I have it right in front of me. It would be

24 Department of Ecology's most local guidance document to local jurisdictions.

25

1 LYNN: Are you talking about wetland mitigation in Washington State
2 Publication 21.06.003, is that it?
3 MAHAFFIE: No. Department of Ecology Publication May 2022, Publication
4 Number 22-06-005.
5 LYNN: Okay. And so 005?
6 MAHAFFIE: Correct.
7 LYNN: Okay. Could you read us what it says?
8 MAHAFFIE: One moment.
9 LYNN: So this isn't anything we'd find cited in your letter, is it?
10 MAHAFFIE: No.
11 LYNN: Uh...
12 REEVES: Just to, just to clarify, are we asking Mr. Mahaffie to read the
13 entire document or does Mr. Lynn have a specific portion he's thinking of?
14 LYNN: Uh, well, I'm, I'm hearing for the first time about this document
15 that he says sheds light on the, the intensity of a changing use of a road.
16 So, he...
17 MAHAFFIE: I guess it would be...
18 REEVES: And one sec, so, first off, I just want to clarify, this is not
19 an Exhibit that's in the record, correct, this is something, obviously, it
20 would be a, you know, EOE document that's publicly available. But I just want
21 to clarify, I don't have an Exhibit number I can tell people to go look at,
22 yet, is that accurate, Mr. Lynn?
23 LYNN: Uh, uh, I'm as-, I'm assuming. I don't know what it is. I, this,
24 like I said, I'm hearing about it for the first time. So, I would like a, is
25 it DOE, what's the number on it, again, Mr. Mahaffie?

1 MAHAFFIE: Publication 22-06-005.

2 LYNN: Okay.

3 LORING: And my understanding is the answer is yes, to your question, Mr.
4 Examiner. That it is not currently in the record as an Exhibit. Or, no, it's
5 not an Exhibit.

6 REEVES: I think I got that, which is no, it does not have an Exhibit
7 number, okay.

8 LYNN: Well, you know, I just, to move this along, I'm happy to look at
9 it separately and we can each argue about what it means. I don't really,
10 we're just sort of, I guess, exploring a new area that we didn't know about,
11 so, I'll move on.

12 REEVES: Okay.

13 LYNN: And I, and I am, actually, winding down, I think. Um, so, just in
14 terms of numbers, it's a numbers thing, you think, uh, the, the use of the
15 road, uh, by a residential low density use, which is characterized as less
16 than one unit per five acres, is, is a low, low intensity use, is that
17 accurate?

18 MAHAFFIE: It would be moderate.

19 LYNN: Okay. So, uh, if we were to take this 735 acres and divide it
20 into five acre homes, uh, 147 was what I calculated, each one, uh, having ten
21 trips a day as the standard, that's 1470 trips a day, that would be, uh,
22 clearly a medium intensity use, uh, of this road, is that, you would agree
23 with that?

24 MAHAFFIE: I can't answer that since it's not zoned for such a use.
25

1 LYNN: Okay. Well, I'm just trying to get at the intensity of the use. I
2 mean, it, it's actually zoned for less, but according to the wetland rules,
3 even with substantially more density, it would still be a low intensity use,
4 correct?

5 MAHAFFIE: Uh, I think I'd still consider roads as a high intensity land
6 use.

7 LYNN: Okay.

8 REEVES: Sorry, that, that cut out. One sec. One sec. I don't know if it's
9 a bandwidth issue, perhaps, Mr. Mahaffie, but there was quite a bit of
10 cutting out, uh, for your answer to that question. Could you repeat your
11 answer there?

12 MAHAFFIE: Uh, I'm sorry, I, Department of Ecology specifically states roads
13 as a high intensity land use, yes.

14 LYNN: And..

15 MAHAFFIE: In the most recent guidance.

16 LYNN: Okay. And that's the one that we, you mentioned that we don't see
17 here?

18 MAHAFFIE: Correct.

19 LYNN: We, we haven't, yet, looked at..

20 MAHAFFIE: Well, that's, that's the one that's in front of me at this time,
21 yes.

22 LYNN: And, and, again, that's DOE 22-06-005?

23 MAHAFFIE: Yes.

24 LYNN: Okay. Um, so, just a, a last topic, uh, your letter cites, uh,
25 uh, some criticisms of the, of this process because, uh, there's nothing that

1 requires the marking of the buffer, uh, or PCAs, uh, and some things about
2 the, you know, the, the exact measurement of a buffer in terms of, of
3 specific location. Aren't those all code requirements?

4 MAHAFFIE: Yes, they are.

5 LYNN: And, and don't those codes apply regardless of the outcome here?
6 The, the code is the code, isn't it?

7 MAHAFFIE: Yes.

8 LYNN: Okay. That's all I have, then, thank you for your time.

9 REEVES: Okay. Um, I'd just like to get your thought or clarification on a
10 question before I go back to, hand you back to Mr. Loring. I think earlier
11 this morning, Mr. Mahaffie, you had sort of discussed SEPA versus the
12 Critical Areas Ordinances, uh, sort of as a general, general rule. And you
13 had essentially said in your, your view, uh, the SEPA review process can
14 serve as a, I think you used the phrase gap filler, was that right?

15 MAHAFFIE: I think that would be a, a way to say it, yes.

16 REEVES: I thought you said it, but if you didn't, I apologize. It's okay.
17 I, I just, the gist of my question is...

18 MAHAFFIE: Yes.

19 REEVES: You seemed to be saying that the SEPA review process can sort of
20 serve as a gap filler, or something comparable, uh, for what is not
21 explicitly covered by the Critical Areas Ordinances, was that an accurate
22 assessment, what I just said, of what you were testifying to?

23 MAHAFFIE: Yes.

24 REEVES: Okay. So, uh, what I'm asking, based on your expertise, uh, you
25 know, is that essentially, in your view, then, ultimately, sort of, is it a

1 better, better proposed mitigation conditions should have, should have been
2 involved or a full blown EIS, do you have any specific thoughts on that?

3 MAHAFFIE: I, I don't think I want to answer that specifically, uh, whether
4 an EIS versus better MDNS conditions, which would be better, I, I don't think
5 that would really be my purview here.

6 REEVES: Well, I, I guess I'm asking, based on what you testified to sort
7 of, if you were in Whatcom County and this came before you, you know, I'm
8 just trying to get a basic sense of, of your, your thought. But you don't
9 need to get too specific.

10 MAHAFFIE: I, I, I feel I've tried to tailor my testimony to be specific to
11 the Critical Area questions, and some deficiencies. And some deficiencies in
12 the SEPA process related to the habitat and ecology questions.

13 REEVES: Got it.

14 MAHAFFIE: Not the greater scope of the proposal.

15 REEVES: Okay.

16 MAHAFFIE: I think that blurs the line between myself professionally and as
17 a concerned citizen.

18 REEVES: Got it. Okay. We, we can move on. I was just trying to get a, get
19 a, get a sense of things. But, uh, Mr. Loring, I'm going to hand the witness
20 back to you.

21 LORING: Thank you, Mr. Examiner. Uh, and just to follow up on that, Mr.
22 Mahaffie, uh, I, I hear you saying that you don't want to try to identify,
23 uh, exactly where this should go. But, when you talked a moment ago about
24 having testified to deficiencies, you're saying that there deficiencies in
25

1 the analysis with regard to streams, wetlands and other environmental impacts
2 and that those deficiencies need to be, uh, rectified, is that right?

3 MAHAFFIE: That is correct.

4 LORING: So, more impact analysis needs to occur and that analysis you've
5 already testified to today?

6 MAHAFFIE: Uh, impacts and I, I would stretch to say mitigation for the
7 impacts.

8 LORING: Okay. Okay. Uh, let me go through, now, there was some questions
9 from Mr. Lynn, I might go backwards through his questions, just because it's
10 easier to flip my notebook that way. Um, he asked you about, uh, the PCAs,
11 uh, being a code requirement and you answered that, yes, there are code
12 requirements. Haven't you testified today to numerous code requirements not
13 being followed as part of this SEPA review, uh, for the gravel pit here?

14 MAHAFFIE: Yes.

15 LORING: Okay. So, the fact that something is a code requirement does not
16 necessarily mean that that code requirement will be implemented, is that
17 correct?

18 MAHAFFIE: Correct.

19 LORING: Okay. And you were asked if you were just a wetland expert and,
20 uh, I believe the questions were coming fast and furious and you said, yes.
21 But then I also heard you say something after that, what were you saying
22 after that?

23 MAHAFFIE: Uh, as, as far as the Skagit County Code Standards, I would be
24 qualified as a wetland, as well as a fish and wildlife habitat conservation
25 author.

1 LORING: Okay. And you do have, sorry.

2 MAHAFFIE: I'm sorry, I just, in this case streams, so...

3 LORING: Thank you. And you do have expertise interpreting and applying,
4 uh, SEPA criteria to Applications?

5 MAHAFFIE: Yes.

6 LORING: Okay. You were asked, uh, numerous questions about the amount of
7 traffic that would occur and what proper threshold level is and whether
8 there's some sort of standard for the traffic on the haul road, um, your
9 testimony, though, was not about a certain amount of traffic on that road,
10 uh, but instead, you were testifying that the impacts of the traffic on the
11 road had not been analyzed, right?

12 MAHAFFIE: Correct.

13 LORING: Okay. And your testimony is that SEPA requires that analysis?

14 LYNN: I, I'm just, I'd, I'd like to interpose an objection here. This
15 is, sounds like Mr. Loring's testimony more than the...

16 LORING: That was leading. That was leading. I'll rephrase.

17 LYNN: Okay.

18 LORING: Okay. Uh, sorry, looking at you over here, Mr. Examiner. Um, let
19 me just go back to that and say that, uh, well, I actually am going to skip
20 over that. I do want to ask you, though, is it, is it your understanding that
21 the Special Use Permit criteria require an evaluation of the use and impacts
22 of use of the haul road?

23 MAHAFFIE: That would be my understanding of the permit process, yes.

24 LORING: Okay. You were asked about information about, uh, site
25 characteristics and how a person, a consultant might go about getting

1 information. And it was in the context of stream typing. Uh, are there, would
2 you ever ask, uh, a property owner for their information about stream typing
3 on the property?

4 MAHAFFIE: A large land owner, it might make it easier, yes. But I would say
5 infrequent. All of that information is publicly available, so...

6 LORING: Okay. If you...

7 MAHAFFIE: [Inaudible.]

8 LORING: Sorry.

9 MAHAFFIE: I, sorry, I would be more interested in if there was any, you
10 know, un-submitted work or, you know, reports by others or things like that.
11 That's typically what I, what I would ask a land lower for.

12 LORING: Okay. All right. Uh, if you were consulting for the landowner,
13 would you ask for them information they had about a property?

14 MAHAFFIE: Yeah.

15 LORING: Okay. Uh, you were asked if the property were mined quickly,
16 would that impact, uh, the wetland functions, uh, roughly, I may not have
17 captured that exactly, uh, do you recall that question?

18 MAHAFFIE: Yes.

19 LORING: Okay.

20 MAHAFFIE: Whether, can I clarify that a little bit for you?

21 LORING: Yes, please.

22 MAHAFFIE: Uh, I, I would consider it under the context of mitigation
23 sequencing. Mitigation sequencing getting required by the code. You know,
24 that could be a component of such, a mitigating condition for some impacts.

25

1 LORING: Okay. And, and, uh, have you seen any documentation for that sort
2 of mitigation sequencing, uh, in this Application for the Grip Road gravel
3 mine?

4 MAHAFFIE: I have not. No.

5 LORING: Okay. You were also asked about Skagit County and whether they're
6 ultimately the entity responsible for determining land use intensity. Uh, do
7 you remember that question?

8 MAHAFFIE: Yes.

9 LORING: And I think you responded that ultimately they were, uh, that
10 entity?

11 MAHAFFIE: Yes.

12 LORING: Is that right? Isn't, uh, well, let me ask you this, in the Code
13 that refers to land use intensity, who, what, what agency do they refer to
14 for finding the guidance that is implemented when determining what a int-,
15 land use intensity?

16 MAHAFFIE: Washington State Department of Ecology.

17 LORING: Okay. And, in fact, uh, have we been discussing a document that
18 provides that guidance for land use intensity, have been discussing that
19 today?

20 MAHAFFIE: Yea.

21 LORING: Who would you say is the authority in our State over a land use
22 intensity for a development project?

23 MAHAFFIE: The authority, I would say is different than the guidance. The
24 authority, a signature still comes from the local jurisdiction. The best
25

1 available science that the local jurisdiction is tasked with following comes
2 from the Department of Ecology.

3 LORING: Okay. And while it's ultimately up to the County to put their
4 signature on a document, uh, they can't just arbitrarily decide what an
5 impact land use intensity, what they want it to be based on criteria that
6 aren't associated with any of the BAS, can they?

7 MAHAFFIE: I would hope not.

8 LORING: Okay. You were asked also if mining was on the list of land use
9 intensities, uh, for Skagit County, I believe. And I think you testified that
10 it was not, actually, mining was not expressly called out as one of the
11 activities when looking at the definition for low, moderate and high impact
12 land use, is that, does, is that right?

13 MAHAFFIE: That is what is in the table referred to by Critical Areas
14 Ordinance, yes. It is not specifically called out. Whether it is somewhere
15 else in Skagit Valley's Development Code, I cannot speak to.

16 LORING: Okay. Well, I just want to share my screen really quickly here so
17 we can get at the definition in the Code. And I just want you to tell me know
18 if there are analogous activities under the code definition for the different
19 types of land use impacts. So, I'm going to do that here really quickly. I
20 think this should, this should be it here. Are you seeing, uh, a screen that
21 shows the Skagit County Code and some L definitions there?

22 MAHAFFIE: Yes.

23 LORING: And of the low impact land uses, moderate impact land uses and
24 high impact land uses, I'm just going to highlight that for ease of
25

1 reference. Where, where would you say the mining is most likely to land,
2 based on this definition?

3 MAHAFFIE: High, under commercial and industrial land uses.

4 LORING: Okay. All right. I'm going to stop that sharing. There. About the
5 wetland along the Samish River and I believe, uh, you were asked some
6 questions about Oscar Graham's testimony. And you were asked also whether
7 there was, uh, whether you had evidence that the wetland exists closer to the
8 mine than the location I believe where, uh, Oscar Graham had identified it,
9 uh, and I believe you said, uh, there was no data provided to show that it
10 was closer to the, uh, to the mine. Is that accurate?

11 MAHAFFIE: More data has been provided, correct.

12 LORING: Okay. And has any data been provided to show that the wetland is
13 not closer to the mine? Or has adequate data been provided to show that the
14 wetland is not closer to the mine, uh, than as, uh, described by Mr. Graham?

15 MAHAFFIE: No.

16 LORING: Okay. Is the term tow of slope a wetland edge characteristic or
17 a, or a common term of the edge of a wetland?

18 MAHAFFIE: No, it is not.

19 LORING: Okay. Uh, and you were asked whether you knew personally whether
20 the County reviewed the NES report documents, that you had testified earlier,
21 were not available to the public, um, prior to the MDNS. Uh, do you know
22 personally whether the County reviewed those documents?

23 MAHAFFIE: No, I do not know personally.

24 LORING: Okay. Did you have any communications with anybody at Skagit
25 County that suggested that they had not been reviewed?

1 MAHAFFIE: Yes. That was my impression, that they had not been reviewed.

2 LORING: Okay. What was that impression based on?

3 MAHAFFIE: That upon request of the document referred to in, so back up a
4 little bit, the impact assessment was available publicly online, uh,
5 throughout the process, since, uh, roughly the first of the year. Uh, it
6 referred to a wetland delineation document that had been prepared and that
7 was not online with the rest of the supplied documents. Uh, I asked for it,
8 uh, multiple times. The Planner, uh, Project Planner, uh, did not seem to
9 know what I was talking about and could not produce it. And it took several
10 days before he found said document.

11 LORING: Okay.

12 MAHAFFIE: Not knowing he, he did not even know what I was speaking of.

13 LORING: Okay.

14 MAHAFFIE: To be frank.

15 LORING: Okay. You were also asked about your review of, of the site, and
16 I believe the question was whether all of your review was based on papers and
17 then the conditions when you were last on the site, which was some time ago.
18 And, and you agreed, yes, that that was the case. Uh, do you believe that you
19 need to physically visit the site to determine whether the critical areas,
20 and other environmental reviews, had adequately analyzed the impacts of the
21 proposed mine?

22 MAHAFFIE: With adequate documentation, it should not be necessary, no.

23 LORING: Okay. In, in fact, doesn't, SEPA requires adequate documentation,
24 right?

25 MAHAFFIE: Yes.

1 LORING: Okay. You, uh, you were asked about how close you live to the
2 mine site, and just to, just to quickly clarify, do you believe that, uh, the
3 proximity of your residence to the mine site has effected the accuracy of
4 your, uh, expert testimony today?

5 MAHAFFIE: No.

6 LORING: Okay. Or any of your past, uh, comment letters on the project?

7 MAHAFFIE: No.

8 LORING: Okay. And then I just have a couple of questions about questions
9 that you heard from Mr. D'Avignon, uh, not too long ago here. You were asked
10 questions about that maintenance corridor and you were talking about the
11 intent of the proposal and there was a discussion about structures and, and
12 buildings. Um, based on your understanding of that maintenance corridor
13 language and the definitions, would you say that the intent was to cover
14 something like a mine that would completely alter the landscape, uh, and
15 would that be equivalent to constructing something there?

16 MAHAFFIE: I think the intent would be to provide separation between any
17 activity that might disturb the functions and values of the buffer. While
18 still affording, uh, whatever an Applicant proposed to proceed. And, and
19 function appropriately.

20 LORING: Okay. And, and a maintenance corridor doesn't mean a, a
21 completely no action zone, right, it's not a buffer?

22 MAHAFFIE: No. Typically, you know, if it's a building, you're clearing all
23 of the vegetation within that maintenance corridor. If it's a house, you
24 know, walkways, you know, decks, things of that would still be allowed, but
25 it still allows people to maintain their structures and things like that,

1 while still not disturbing the buffer vegetation. In this scenario, I, I
2 would foresee the mine activities being able to be allowed, while not
3 disturbing, uh, the functioning buffer. So you still have an area you can
4 clear the vegetation, cut down the trees for safety and things like that.

5 LORING: Okay. Uh, you discussed with Mr. D'Avignon, uh, the Appendix 8C,
6 the Department of Ecology Wetlands in Washington guidance for buffers and
7 some language about, uh, instances in which it would be appropriate to reduce
8 the high impact or high intensity buffer to a medium intensity buffer, one of
9 those, uh, I, I believe you were discussing that one of those actions would
10 be a 100 foot wide dedicated corridor to connect habitats, uh, is that right?

11 MAHAFFIE: That's one of the items listed in Appendix 8C, yes.

12 LORING: Okay. And have you seen any discussion of such a corridor as part
13 of this proposal?

14 MAHAFFIE: No discussion or display showing such, no.

15 LORING: Okay. And you haven't seen a conservation easement for such a
16 corridor as part of this proposal?

17 MAHAFFIE: No. That would, in Skagit County terms, though, that would be a
18 protected critical area or PCA easement, not necessarily a conservation
19 easement.

20 LORING: Okay. And then, last, uh, there are some examples of measures
21 that can attempt to decrease impacts to wetlands and that, those are the
22 measures that are applied, in addition to have something like a corridor, to
23 reduce from a high intensity to a medium intensity, under that, uh, Exhibit,
24 sorry, Appendix 8C. Uh, is that right, are you familiar with that table,
25 generally?

1 MAHAFFIE: Yes. Uh, there's a table with, uh, numerous items an Applicant
2 undertake to lessen buffer or critical area impacts.

3 LORING: Okay. And does that table refer to industrial activities?

4 MAHAFFIE: I mean, I think it could, in theory.

5 LORING: Okay. But most of the actions refer to, uh, potential impacts
6 from things like residences, um...

7 MAHAFFIE: I would say, I only applied it to residential scenarios.

8 LORING: Okay.

9 MAHAFFIE: Both as a viewer and a consultant, so...

10 LORING: And there may be other scenarios, uh, but, uh, not the industrial
11 there?

12 MAHAFFIE: No.

13 LORING: Okay. Uh, just, uh, to, to wrap up, did you hear any questions on
14 cross-examination that would make you change your opinion that the impacts,
15 environmental impacts of this Application for a Grip Road gravel mine have
16 not been fully evaluated to date?

17 MAHAFFIE: No, I have not.

18 LORING: Okay. Thank you, again. I appreciate.

19 REEVES: I guess, let me just check with Mr. D'Avignon, he had a sort of
20 re-, re-cross as it were, I usually allow, I've allowed Mr. Loring a few
21 times, I just want to be fair, uh, Mr. D'Avignon, did you have any question
22 or two on this?

23 D'AVIGNON: I do not, Mr. Examiner, thank you.

24 REEVES: O-, okay. Uh, I'll come around to Mr. Ehrlichman in a moment, uh,
25 Mr. Lynn, same, same question?

1 LYNN: No questions.

2 REEVES: Okay. Mr. Ehrlichman, you had your hand up?

3 EHRLICHMAN: Uh, I just wanted to comment on the record that I have no
4 questions for this witness. My understanding is his testimony related to the
5 internal road, when they spoke of roadways, thank you.

6 REEVES: Thank you. Okay. So, Mr. Loring, I believe, then, that concludes
7 this witness, is that right?

8 LORING: Yes, that's correct.

9 REEVES: Okay. Thank you, uh, for being here and, uh, for your testimony,
10 Mr. Mahaffie. Okay. Uh, based on time, I'm guessing probably now is a good
11 time for lunch, rather than diving into the next witness. But maybe, can we
12 just telegraph where we're heading, Mr. Loring, in terms of who you plan on
13 calling when we come back?

14 LORING: Yes, we can. I'm, I'm planning to call John Day [phonetic] next.
15 He's going to talk, uh, a bit more about the, um, the context and the setting
16 in which this mine would be, uh, proposed, including the transportation
17 corridors there. Uh, and then follow-up with, uh, Brian Bowser [phonetic]
18 after him and continue along this traffic conversation. Uh, and then Phil
19 McCloud [phonetic] will provide, uh, information primarily about, uh,
20 cycling, uh, potential cycling impacts along the road. Uh, did I say Phil
21 McCloud? Uh, I'm sorry. And, uh, and then we will see what that means for,
22 uh, where we are at after those three.

23 REEVES: Okay. Uh, I think, then, with that, we'll go ahead and break for
24 lunch. Why don't we shoot to be back, let's see, oh, why don't we say, one,
25 is 1:15 enough time? Maybe not. I can go with 1:30, 1:15, any thoughts?

1 LYNN: I eat fast.
2 REEVES: Bill eat fast. Okay. I'm fine with 1:15, but, uh, Tom, did you
3 have a...
4 EHRLICHMAN: Uh, one, 1:30 would be preferable so that I can go out and get
5 something to eat, I don't have my lunch in a paper bag here unfortunately.
6 REEVES: We'll shoot for 1:25.
7 EHRLICHMAN: Sounds good. Thank you.
8 REEVES: Thanks everybody. See you in a bit.
9 LORING: Thank you.

10 [The tape ends.]

11 **The undersigned being first duly sworn on oath, deposes and says:**

12 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
13 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party
14 to this action. That on May 1st, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves, that
15 took place on 9/8/22 at 11:00 a.m., regarding the above-captioned matter.

16 I certify and declare under penalty of perjury under the laws of the State of Washington that the
17 aforementioned transcript is true and correct to the best of my abilities.

18 Signed at Mount Vernon, Washington, this 1st, May of 2024.

19 Janet Williamson
20 Janet Williamson

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**IN SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT**

State of Washington,)	
	)	Cause No.: PL16-0097, PL16-0098,
Plaintiff,	)	PL22-0142
)	
vs.	)	PERMIT HEARING 9-9-22 1:00 PM
)	
Name,)	
)	
Defendant)	

Transcription Date: May 6th, 2024

Present: Andrew Reeves, Kyle Loring, Jason D'Avignon, Bill Lynn, Tom Ehrlichman, Dan McShane, Mona Kellogg

LORING: Thank you, Mr. Examiner.

REEVES: Okay. And I see him there. Hi, Mr. McShane, can you hear me okay?

LORING: We're not getting any sound there.

REEVES: No, no sound yet.

LORING: Okay. Uh, I'm still not hearing anything. Now, you're showing as officially muted, but...

REEVES: So, now, maybe try to turn of-, there we go, now it's at, no, that didn't do it, did it?

1 LORING: No. Mic not picking it up.

2 REEVES: Mr. McShane, maybe, I would suggest as we've done before, maybe
3 unjoin and rejoin and see if that will solve the problem. Apologies. Thank
4 you everybody for your patience while we're trying to sort this out. I just,
5 for those following along at home. We had the work, uh, cyclicity come up
6 earlier. I wanted to verify that it is a work, uh, cyclicity is apparently an
7 acceptable alternative, although in my mind, that would be a different word,
8 but that's a debate for a different day.

9 LYNN: I confess, I looked it up also after I used it, so, uh...

10 LORING: I wanted to say cycliability [sic], but I'm not sure that is a
11 word.

12 REEVES: I'm not going to give that one to you, Mr. Loring.

13 LYNN: I think that's the capacity to be used by bicycles.

14 REEVES: There, that's a different...

15 LORING: How appropriate.

16 REEVES: Man, you really missed the boat on that one. Maybe in closing
17 arguments, Mr. Loring.

18 LORING: Certainly make note of that.

19 REEVES: Okay. And then does anyone disagree with my assessment of the tie
20 today? Uh, I think Jason wins.

21 LORING: It's a matter of taste.

22 LYNN: Yeah. I think, I think he's a clear winner in my book, but...

23 ERLICHMAN: I have to concede, although, uh, Mr. Examiner, I think in the, in
24 the interest of impartiality, perhaps you could award, uh, Kyle and me next
25 week, uh, an award. Even if it's runner up or something.

1 REEVES: For ties? Well, it depends on what tie you wear. I, you know, you
2 got to, you go to come strong on your tie game. Uh, but...

3 ERLICHMAN: I came very close to putting on my Hawaiian shirt today and I
4 thought, no, that...

5 REEVES: You, you would have...

6 ERHLICHMAN: You would have been the big time winner, uh, if that was the
7 case, so...

8 LYNN: Well, I have a monkey tie that I used to wear to City Council
9 meetings just to make myself feel better and then I found out that a City
10 Council member was aware of it and actually noticed that I was wearing it on
11 a day of a meeting, so I had to bring that practice to an end.

12 REEVES: Oh, man.

13 EHRlichman: Mr. Examiner, since we're in, in limbo here, can I raise a, a
14 question about how to keep, uh, testimony confidential about school bus runs
15 on Grip Road? Um, we've, we've been, uh, contact, um, or one of my witnesses
16 have been in contact with the school district to see if they would share
17 information on the, the bus schedules and so forth on Grip Road and not
18 surprisingly, they're saying absolutely not. You know, we'll, we'll tell a
19 parent what time we'll be at their driveway, but we're not going to put into
20 the public domain anything about bus schedules. So, do you ever had to work
21 out a procedure where you look at something in camera or we have closed
22 testimony that isn't a live feed out there? I mean, is there a solution to
23 this problem to get that evidence in front of you?

24 REEVES: Um, it would be highly rare. Uh, I certainly would not be opposed
25 to, you know, some kind of in camera to the extent that the information is

1 solely provided to, to the Attorneys, um, but I'd be happy to hear from the
2 other Attorneys if they have thoughts on it. I, I, I think we don't need
3 great detail on why they don't want the specificity of the information, but...
4 D'AVIGNON: Uh, I would note that Hearing Examiner Rule 1.12, Subsection B,
5 um, provides that the Examiner may order that an Exhibit may be kept
6 confidential. Any such Exhibit shall not be subject to examination except as
7 the Examiner may permit.

8 REEVES: So, it sounds like that procedure would be okay.

9 EHRLICHMAN: Great. Thank you. Will pass that along and see if we can, uh...

10 REEVES: Sure.

11 EHRLICHMAN: Find something helpful. Thank you for that.

12 REEVES: Yeah. And so, it looks like Mr. McShane, hopefully, is, is able
13 to participate. Let's see if his audio...

14 LORING: [Pause] Dan, are you trying to talk over there?

15 REEVES: I guess the other option is maybe try the, just the straight
16 call-in number, recognizing, obviously, less preferable, but better than...

17 LORING: Yeah. We may be getting to that point here, yeah.

18 REEVES: So...

19 LORING: Dan, I'm, I'm going to send you the call-in number, just to make
20 sure you have it at your fingertips if you don't. And let's try that option.

21 REEVES: All right. So, for those patiently waiting, our apologies, just
22 trying to sort out tech issues. We're suggesting, Mr. McShane, if you just
23 try to use your telephone to call into the meeting as opposed to the computer
24 Teams function.

25 REEVES: We can see that Mr. McShane is on a phone, trying to call in.

1 LORING: I'm not seeing new number showing up.

2 D'AVIGNON: Did you give the new phone number? Remember that we, we timed out
3 on the original phone number and had to set up a separate meeting that first
4 day.

5 LORING: Uh, thanks, Jason. I just sent the one that's on the website, so
6 I figured that was the most recent. Yeah. Dan, is it not letting you on when
7 you try to call?

8 REEVES: Uh, Mr. Loring...

9 LORING: There's a small, tiny amount of volume.

10 REEVES: What I, what I would suggest, Mr. Loring, maybe you just try to
11 call your witness, just off real quick and try to tell him, figure out what's
12 going on. We'll...

13 LORING: Thank you.

14 REEVES: Wait here.

15 LORING: Uh, my apologies. I'll do that. Thank you.

16 REEVES: All right. That's okay. These things. We'll get there. We're so
17 close.

18 D'AVIGNON: We're just having so much fun we don't want these Hearings to
19 end.

20 REEVES: Yeah. You all can't, you can't get enough of me, clearly, is what
21 is, is the problem, so. While they're waiting, I'll point out a, a funny tie
22 story. There was a gentleman that regularly appeared in front of Division 2
23 of the Court of Appeals while I was there, uh, over the years, that matched
24 his tie to the crime that his clients, uh, was accused of. So, if he had a
25 marijuana tie, he had a mushroom tie, he had a psychedelic tie, he, you know,

1 and, and it was always, when we knew that he would be appearing, it was
2 always, like, okay, like, let's, let's go check out the tie game, it's going
3 to be amazing. So, that was, that was always entertaining.

4 LYNN: My only tie, uh, is the money tie, which I can now never wear
5 again, so...

6 REEVES: Actually, I expect we'll see the monkey tie next time, but, uh,
7 let's see.

8 LYNN: That's possible.

9 REEVES: I expect Mr. Ehrlichman to be wearing a Hawaiian shirt and, uh,
10 Bill Lynn to be wearing a monkey tie. Uh, Kyle, any, any luck?

11 LORING: He's going to try a different computer.

12 REEVES: Um, should be, should be back with us shortly and hopefully that
13 will work. And, and I'm going to recommend, actually, a tie with a Hawaiian
14 shirt. If that doesn't set a new bar.

15 EHRLICHMAN: I'm going to, um, file a motion, probably, asking that the, after
16 the very last break of the Hearing, or during that break, we're allowed to
17 change into whatever apparel we all think appropriate and, uh...

18 REEVES: Uh...

19 LORING: Maybe some bounds on that, uh, that ruling. I, I think Mr. Loring
20 generally has his cyclic ability gear ready to go underneath so that at the
21 end of the Hearing, he can just go jump on his, on his bike and, yes, I did
22 already use the word.

23 LORING: After just our second hearing together, you already know me
24 pretty well, it appears.

25

1 REEVES: All right. Um, one of the more amazing feats I've seen, I saw a
2 guy ride across the little Key Peninsula bridge, park, get out in a full suit
3 and in under, I want to say under a minute and a half, he was full on, uh,
4 full on in a wetsuit with his, uh, with his, uh, what was he doing,
5 windsurfing, like, already in the water. It was, like, two minutes. I was,
6 like, that, it was, I almost caused a car accident because it was just, you
7 know, impressive to see happen, but...

8 EHRLICHMAN: Wasn't there an attorney in Seattle that used to waterski to
9 work, across Lake Washington? Strip...

10 LYNN: Bill Lynn doesn't like to talk about those days.

11 EHRLICHMAN: The olden days.

12 LYNN: No, it's not my...

13 REEVES: Probably Ted Hunter, to be honest, but [inaudible] to me, so...

14 LYNN: Yeah.

15 REEVES: Well, I, I don't want to belabor this. If, if Mr. McShane can't
16 appear today, do we have any idea if he can come back, Mr. Loring? I, I don't
17 want to waste folks' time, obviously.

18 LORING: I know. I, I'm not sure. And, and I was going to ask that same
19 thing when I had the next chance. Do, do we want to spend a little time on
20 scheduling now? Well, here he comes.

21 REEVES: Maybe even if we can't get the video, I see the...

22 LORING: Yeah.

23 REEVES: If he can try to unmute, Mr. McShane.

24 MCSHANE: I'm, I'm unmuted.

25 REEVES: Hey. There we go. I think that will work, then.

1 MCSHANE: Yeah. I, just that's the computer I use all the time and it's got
2 an older version of Microsoft and I think it messes with Teams or Teams
3 messes with it, so...

4 REEVES: Excellent. All right. Well, I think we're ready. So I'm, we're
5 envisioning your hand is up, uh, and do you swear or affirm to tell the truth
6 in the testimony you give here today?

7 MCSHANE: I do.

8 REEVES: And could you just state and spell your name for the audio
9 recording?

10 MCSHANE: It's Dan McShane [phonetic], D-a-n and McShane, M-c-S-h-a-n-e.

11 REEVES: Okay. And is the S capitalized?

12 MCSHANE: Yes. Thank you.

13 REEVES: Okay. Go ahead, Mr. Loring.

14 LORING: Thank you, Mr. Examiner. Hello, Mr. McShane, uh...

15 MCSHANE: Hi.

16 LORING: Thank you for joining us. And we'll launch right in. Uh, where do
17 you work?

18 MCSHANE: I work at Stratum Group [phonetic], uh, which is, uh,
19 headquartered in Bellingham.

20 LORING: What do you do there?

21 MCSHANE: I'm an engineering geologist. So, about 80% of the work I do
22 there is, uh, geologic hazard work. Uh, primarily, uh, landslides, channel
23 movement, earthquake hazards.

24 LORING: And as an engineering geologist, do you have training as an
25 engineer?

1 MCSHANE: No. Not specifically as an engineer. So, I don't do engineering
2 design, but I have a background that can support engineer designs, what they
3 need for either technical design or structural design.

4 LORING: Okay.

5 MCSHANE: But I don't do the design itself.

6 LORING: Okay. And you, you combine that with your, with geological, uh,
7 understanding?

8 MCSHANE: Yes.

9 LORING: Okay. How long have you worked at Stratum Group?

10 MCSHANE: Uh, Stratum Group, I, I started Stratum Group in 1997, so since
11 1997.

12 LORING: All right. Do you ever conduct reviews of slope stability in your
13 work with Stratum Group?

14 MCSHANE: Y-, very frequently, yes.

15 LORING: And, uh, have you evaluated riverbank stability?

16 MCSHANE: Yes, I have.

17 LORING: Have you done that in conjunction with any bridges along the
18 river and the bank?

19 MCSHANE: I have done some evaluation for bridges, uh, oh, probably six or
20 seven, uh, riverbank bridge abutments.

21 LORING: Okay. And, uh, just for the record, I'm going to note that your
22 resume is Exhibit A57, uh, for the Hearing Examiner and the parties if they'd
23 like to review that. But we, we aren't going to belabor that and go through
24 it. Uh, I do note, though, that you submitted a report in this matter and
25 that is Exhibit A50. Um, and so we'll be talking about some of the substance

1 of that report. I'll ask you just to confirm that you submitted your report
2 for this Hearing?

3 MCSHANE: Y-, yes, I did.

4 LORING: Okay. Let's talk about the geology of the Swede Creek, uh,
5 crossing area and as well as some foundational questions. Are you familiar
6 with, uh, Miles Sand and Gravel Proposal to mine off of Grip Road in Skagit
7 County?

8 MCSHANE: Yes. Somewhat familiar with it.

9 LORING: Okay. Have you reviewed any information about the project?

10 MCSHANE: Yeah. I, yes, I have. I, I looked at, uh, primarily, uh, the
11 geology report that was done, uh, for the proposed, uh, well, for the
12 existing road that, uh, used to be used as the haul road. And that was the
13 focus of the work I did, looked at and reviewed. I also looked at the, um, I
14 think it was the wetland report as well because it showed, uh, the road
15 layout and noted somewhere, locations of culverts and cross-culverts were
16 located.

17 LORING: Okay. And when you're referring to the report, uh, for the haul
18 road, that's a December 16th, 2021 report by Associated Earth Sciences, is
19 that right?

20 MCSHANE: Yeah. I don't remember the exact date, but, yeah, it was
21 Associated Earth Sciences, yeah.

22 LORING: Okay. And, uh, and for others tracking, that's Exhibit C10, or
23 10, that's what I've got there. Okay. Uh, so, uh, have you evaluated the
24 slope stability of the haul road in the vicinity of Swede Creek?

25

1 MCSHANE: I did a remote evaluation of it. So I, you know, I didn't do any
2 on the ground, uh, it was primarily, uh, done based on, uh, review of the
3 LiDAR imagery, bare earth imagery of the area where the road is located. As
4 well as, uh, the geologic map of the area that was Dragavich [phonetic] and
5 others, um, was published in maybe 1989, that notes the geology of the area.
6 Uh, it's, I've worked in that area on those terraces above Samish, the Samish
7 River, not specifically on that particular location, but I'm familiar with
8 the, the makeup of those terraces, why the terraces are there. And the
9 geologic process that form them, um..

10 LORING: Okay.

11 MCSHANE: During the late stages of the last Ice Age, so...

12 LORING: Okay.

13 MCSHANE: And so I applied that to my evaluation, uh, uh, combined with the
14 review of the geology report that was done or the geotech report.

15 LORING: Okay. I'm going to take you into your, uh, Exhibit, share that
16 screen with all of us, and I, I'm not sure right now, are you, you're showing
17 up without a camera. Can you see on your screen what I'm sharing?

18 MCSHANE: Yes, I can. Yeah.

19 LORING: Okay.

20 MCSHANE: I'm not sure why my camera is not showing up, but it's not.

21 LORING: Uh, that's all right. I wasn't sure if it was intentional or not
22 and at this point, we're ready just to keep moving so, so we did that.

23 MCSHANE: Yeah.

24 LORING: Uh, so I have, I, do you recognize the image that I have on the
25 screen here?

1 MCSHANE: Yes, that's the LiDAR bare earth imagery that I put in the report
2 that I wrote.

3 LORING: Okay. Uh, this is the LiDAR you mentioned just a, a moment ago
4 having reviewed for the site?

5 MCSHANE: Correct.

6 LORING: Okay. And, uh, there are some notes on here, can you just take us
7 through this image and tell us what you're identifying with your arrows and
8 your notes, uh, connected to those arrows?

9 MCSHANE: Yes. So, uh, one thing I pointed out in the arrows is, uh, areas
10 that are convergent topography, uh, that's not consistent with the
11 description of the slope being planar, uh, in convergent to par for your
12 locations where, you know, ground water might get concentrated or their old
13 landslides starts that, uh, were from past landslides that have eaten back
14 into the, into the slope. I also noted, uh...

15 LORING: Mr. McShane, let me just follow up really quickly on that.

16 MCSHANE: Yeah.

17 LORING: Used another word, you, you mentioned that that convergent
18 topography is inconsistent with a description of this site, or that area
19 being planar. And when you say, what does planar mean?

20 MCSHANE: Well, planar means that if you take, well, think of a tabletop
21 and, uh, that's a, a plane and you can have a tilted plane as well, which
22 would be a, a slope that would be even, you know, a very even slope, the same
23 slope across, you know, laterally across the slope and then up and down the
24 slope as well. So, think of tilting a table would be a planar slope.

25 LORING: Okay. Flat, would that be another word for it?

1 MCSHANE: Yeah. Flat, except it's titled, so..

2 LORING: Yeah.

3 MCSHANE: Yeah.

4 LORING: Okay.

5 MCSHANE: So, very even..

6 LORING: Even.

7 MCSHANE: Percent slope, you know, it doesn't have much change, uh, to the
8 angle of the slope over, as you walk up and down the slope or across it,
9 sideways across the slope.

10 LORING: Okay. And why were you pointing out that that convergent
11 topography was inconsistent with the description of the site as a planar?

12 MCSHANE: That was, the planar description was from the AES Geotech Report,
13 um, and I just observed that it's clear in the LiDAR imagery that there are
14 non-planar features at multiple locations in the vicinity and along the, uh,
15 haul road. Well, some of them are quite large, you know, the ones sort of on
16 the left, that there's some smaller subtle, it's a little hard to see, but in
17 the, uh, you know, right above the road and right below the road as it goes
18 up the side of a Swede Creek valley.

19 LORING: Okay. And is, are there any other, thank you for that, are there
20 any other features that you're showing in this image that we're looking at
21 here?

22 MCSHANE: Yeah. There are two others that I pointed out, um, one was the,
23 or actually three, one was the, uh, there's a dark area below the road, kind
24 of where the road curves as it goes up the valley side, down by the creek.
25 And that's pretty indicative of, uh, eroding bank, you know, where the creek

1 is eroding into the base of the slope and it's created a steep, uh, section
2 so it's a, kind of a cut back where the creek is cutting back into the slope.
3 Uh, the other features off on the left, there's an indication of a, an old
4 landslide deposit that came down from the slope above and is resting down
5 below that's in all probability a slide deposit. And then, uh, below the
6 east/west section of the road, where it's up on top of the plateau, there's
7 an incised creek, uh, and that just means that, uh, that the creek is cutting
8 downward into the ground and so it's active erosion taking place at that
9 location.

10 LORING: Okay. And do these features have any significance for you in
11 looking at them and seeing those at this site?

12 MCSHANE: Yeah. They would, you know, if, if I had gone out to the site,
13 uh, and part of that, they, they would be features that I would want to look
14 at specifically to one, ground truth them, but also secondly to, you know,
15 get a better idea as to exactly why they're there, if they're active or not,
16 uh, how that relates to the, the road stability over the long haul, over the
17 long period of time versus, you know, you know, short-term.

18 LORING: And you mentioned the road stability, is there the possibility
19 that these features could undermine road stability in this location?

20 MCSHANE: Well, certainly the eroding, uh, stream bank below the, uh, uh,
21 road is an area where if that erosion continues, that's going to over-steepen
22 the slope and destabilize it. And so you might start to see erosion and
23 slumping and shallow landslides working their way up toward the road itself.

24 LORING: Okay.

25

1 MCSHANE: Um, and then there's some, um, you know, subtle, uh, what looks
2 like small-scale, non-planar features, that I'd want to look at as well as
3 how are they related to the stability of the road? Looks like there might be
4 some potential slumping above the road, you know, in the ditch area.

5 LORING: When you say above the road in the ditch area, wh-, which part of
6 the road are you thinking of? I, I, and by the road, are we talking about the
7 areas that look like they've been carved out a little bit? Some of those
8 flatter areas?

9 MCSHANE: Yeah. So, it's, uh, where the road is kind of cut into the slope.

10 LORING: Okay.

11 MCSHANE: And so it's created these over-steepened sections. And you can
12 sort of see that in the shading, uh, you know, if you're, I don't know how
13 good people are at reading LiDAR. Some people are really good at it and
14 others maybe not so good. But, uh, that, the, the dark shading there, in the,
15 you know, right next to the road, indicates that those areas were somewhat
16 steeper than the slope otherwise would be. So, you see the bright line of the
17 road and, but, then, just to the upslope of the road is, you know, initially
18 quite dark and that's where the road has probably been cut into the slope.
19 You see these cut banks and they're going to be susceptible to sluffing and,
20 uh, small scale, uh, slope failures.

21 LORING: Okay. Is there the pos-, excuse me [coughs] excuse me. Is there
22 the possibility that using this road could exacerbate some of these features?

23 MCSHANE: Well, the, the, the presence of the road itself has the potential
24 to exacerbate the stability of the slopes, uh, depending on how drainage is
25 being managed on the road. So, water flowing off the road in the wrong spot

1 could trigger a slide. Um, the one other factor that might play a role, you
2 know, in terms of the types of traffic on the road would be if you're in the
3 upper part of the road, that area has been mapped and it's been pretty
4 consistent from my observations of these terrace areas. So it's called
5 glacier marine drift. Which is a formation that has fractures, they're called
6 desecration fractures, the drift, it's when it consolidated from wetting and
7 drying after the last Ice Age, it's got cracks in it. And those fractures are
8 weak zone that are potential failure locations. And that might be why there's
9 this bowl like shape, uh, areas, uh, to the west. Uh, heavy truck traffic
10 does cause vibrations that might speed up the weakening of those joints and
11 fractures in the glacier marine drift.

12 LORING: Okay. And you, you said you have reviewed that, uh, the geotech
13 report from the haul road. Did it examine those types of impacts here?

14 MCSHANE: Nowhere nearly enough, in my mind. In fact, many of the, the, the
15 items that are pointed out in this imagine, and it was certainly written in
16 my report, were never addressed. So, there was never a discussion or
17 observations made or, or description of the erosion that might be taking up
18 place along, uh, Swede Creek itself below the road. Uh, the incise creek was
19 never described. Uh, and, you know, that's from some sort of stream flowing
20 upstream of the road and possibly and there's a culvert I know mapped, uh,
21 there that, uh, the water is passing through in that area. Uh...

22 LORING: Okay.

23 MCSHANE: There was some mention of sluffing along the ditch line, uh, on
24 the upside of the road, but, uh, it was pretty minimal description as to how

25

1 frequent that might be and what the results might be if that, if any of the
2 cross culverts were plugged.

3 LORING: Okay. And I want to turn now to that report a little bit and
4 delve just a little deeper into the statements that were made there and, and
5 concerns that you had about them, that you wrote about in your report. So,
6 back over there, uh, and I'm still sharing that screen, um, intentionally,
7 this time. Um, and let me ask you, do you, uh, know if the authors of these
8 doc-, of this document were geologists?

9 MCSHANE: If I recall, they were, uh, it was stamped by an engineer, but,
10 uh, not a licensed geologist. There's no licensed geology stamp on the
11 report.

12 LORING: Okay. And I'll scroll down, uh, quickly to that while we're
13 looking here. Okay. So an engineer there. Uh, is that the same thing as an
14 engineering geologist?

15 MCSHANE: Uh, no. So, it, you know, if you're a PE, uh, it means you're an
16 engineer. And, uh, there is some with, I don't get into the engineering, but
17 for engineer, you're PE, you could be a structural engineer, you could be an
18 electrical engineer, you could be a hydraulic engineer, uh, and you're still
19 going to be a PE in Washington State. So, it's sometimes hard to tell what
20 your expertise might be in. Uh, uh, but, the, the, you're not a geologist,
21 so...

22 LORING: Okay. And so that's a distinction between the author here and
23 your expertise?

24 MCSHANE: Uh, correct. Yes.

25

1 LORING: Okay. I want to talk about a few conclusions from this report.
2 I'm going to scroll, I may not, uh, zone in on those exactly while we're
3 talking. Um, and, and just where those are, but one of the conclusions that
4 you addressed in your report was one where AES concluded that the area of
5 slope identified by the County as a geohazard exhibits relatively planar
6 features indicative of generally good overall stability. Uh, was that
7 consistent with your findings remotely using LiDAR to review that area of the
8 site?

9 MCSHANE: No. Because that's, that, that planar slope that I think they
10 were describing and limited their assessment of, if you were to go down that
11 planar slope to Swede Creek, it's clearly not planar anymore, it's being cut
12 into by the, the creek. Uh, and then on that slope, there were, at least in
13 the LiDAR, it appears that there are some small scale non-planar features.
14 So, yeah, it might be you can get away with saying it's relatively planar,
15 but there some non-planar features on the slope, just above the road and just
16 below the road as well.

17 LORING: Okay. Uh, and so did this document identify or recognize the non-
18 planar features you identified?

19 MCSHANE: No.

20 LORING: Okay. There was some testimony from Mr. Miller, the Principal
21 Engineer of this document, the other day and I, I would, um, I'm sure I'll be
22 corrected if I misstate this, but I interpreted his testimony to state that
23 he may not have been reviewing the area that you reviewed as part of your,
24 uh, geographically and physically, the area that you reviewed. And so I'm
25 going to scroll down and represent to you what I believe he studied and then

1 ask you if that may have been the reason for him reaching the conclusions he
2 did. So, here we go. I'm on, uh, an image that they put tog-, that is part of
3 this report, we're on page 11 of 13, in that C10 or that report. And there's
4 an area that is marked by, uh, a, it's encircled by a line, kind of a hatch
5 line.

6 MCSHANE: Correct.

7 LORING: Um, are you looking at that there?

8 MCSHANE: Yeah. I can see.

9 LORING: Yeah, you can see it here. Yeah. Okay.

10 MCSHANE: Yeah.

11 LORING: If, if they were focused just on that specific area, would that
12 support the conclusion that they reached, that there are relatively planar
13 features at the site?

14 MCSHANE: I think they could say that with one exception.

15 LORING: Okay.

16 MCSHANE: And that is, uh, down at the bottom of that slope, on the lower
17 right-hand side of it, uh, Swede Creek is def-, definitely appears to be
18 cutting into that slope. And that portion would not be planar and it did not
19 sound like they ever walked down there and took a look at it because it was
20 not described ever.

21 LORING: Okay.

22 MCSHANE: And, and then the other caveat being is that there's some hints
23 that there's some slightly non-planar features. So, you might get away with
24 saying, yeah, it's relatively planar, but I, I'd want to look at those, just
25 the small scales one, just because of the proximity to the road.

1 LORING: Okay. And if you did look at those, would you indicate that in
2 your report, if you had looked those on the ground?

3 MCSHANE: Oh, yeah. I definitely would have.

4 LORING: Okay. And just to follow up on that question, too. If you were to
5 look at this site, would you sider the area around the haul road that you've
6 identified in your mapping as part of the geohazard at the site?

7 MCSHANE: I might not necessarily include, you know, all of those areas as
8 geohazard, but one, one of the things you want to do if you're doing an
9 assessment of a stability of a slope is look at slopes in the immediate
10 vicinity and see how they've been behaving. You know, what do they look like
11 and so you can make a pre-, at least a projection, an empirical comparison of
12 a geologically similar slope and say, okay, there's, uh, these concave
13 features, those are on the left-hand side of the map that, uh, is before us
14 right now.

15 LORING: Uh-huh.

16 MCSHANE: Why are they there and could the same type of thing happen at
17 this location?

18 LORING: Uh-huh.

19 MCSHANE: In the future, so you have to think about the future, you can't
20 just instantaneously what it is right now. And so why are those slopes
21 concave and shape the way they are and could that potentially happen at this
22 location as well, why or why not?

23 LORING: Would, uh, would an analysis of the, of the stability of this
24 haul road and the potential impacts of using this haul road to transport
25 gravel be complete without analyzing features like that along this slope?

1 MCSHANE: I don't think so. I don't think you could reach the, I would not
2 be comfortable reaching those conclusions without reviewing the overall
3 geology and the processes that are going on, uh, in Swede Creek and on the
4 slopes in the vicinity and what, what might be the potential issues here.

5 LORING: Okay. And you'd mentioned Swede Creek a few times and the review,
6 uh, you were testifying that they, that this report here does not evaluate
7 Swede Creek, uh, and impacts on stability, slope stability?

8 MCSHANE: Correct. And, I mean, the reason the slope is there or any of
9 these slope that we're talking about is because of Swede Creek. That's been
10 the driving process that's formed this pretty steep-sided, uh, valley.

11 LORING: And would it be important to address that driving force to
12 understand what will happen in the future here?

13 MCSHANE: Absolutely. Yes.

14 LORING: Okay. I'm going to stop sharing the screen at this point, I think
15 we've, we've seen this, uh, we've seen yours as well. I just have a few more
16 questions for you as we go through. I do want to briefly touch on that report
17 a little bit more. Um, you've already talked about the convergent topography
18 and did this report, uh, identify any of the convergent topography that
19 you've identified and evaluate that?

20 MCSHANE: Not that I remember at all in the report.

21 LORING: Okay. And did they address the area that you've identified as
22 incise stream?

23 MCSHANE: That was never discussed.

24 LORING: Okay. And, uh, do you agree with their statement that the site
25 involved mapped presence of high-stream glacially consolidated sediments?

1 MCSHANE: No, I disagree with that. Um, the lower part of the slope has
2 been mapped as glacial til, which is high strength consolidated glacial
3 sediments. But the geological mapping that they reference and, uh, mention
4 was that the upper part of the slope was underlined by glacial marine drift.
5 Glacial marine drift was never consolidated by glacial ice. Um, if you, I,
6 the description is that the end, toward the end of the last Ice Age, as the
7 ice was thinning, this area was actually below sea level. And you had ice
8 floating on the water, melting and the sediment from that ice fell onto the
9 sea floor, as mostly silken clay, occasionally a bolder would drop out. And
10 it never had the massive ice pressing down on it to compact it. So, it was
11 never compacted by glacial ice sitting on it. And it's subsequently been
12 uplifted so you have this glacial marine deposit that was never consolidated
13 by glacial ice.

14 LORING: And, again, how do you know that that area has that glacial
15 marine drift?

16 MCSHANE: Uh, one, it's on the Dragavich map. Uh, which is Dragavich and
17 others, I would say, I want to say it was 1989 or 1990, somewhere in there.
18 Uh, and then my own, uh, experience looking at the terraces in that area and
19 the elevation of those terraces, I've observed the glacial marine drift on
20 the upper parts of the terraces at that elevation in that area.

21 LORING: Okay. Uh, and given your opinion that, uh, they were not all
22 consolidated sediments there, does that matter?

23 MCSHANE: Yes. Because the way glacial marine drift can behave on a steep
24 slope, it has the potential to have somewhat larger scale landslides. Where,
25 you know, break back further and the reason being is that glacial marine

1 drift has these, call it desecration fractures. Think about, you know, a mud
2 lake, as it dries up, it gets cracks in it. And the same with the glacial
3 marine drift, it has these little fracture, hairline fractures. And over
4 time, they weaken and get weaker and weaker as water slowly percolates
5 through them. And they're the potential for larger scale landslides.

6 LORING: Okay. And, and a short one, again, I think you may have answered
7 this, but would you have evaluated that at the site?

8 MCSHANE: Yes. I would have. And particularly given the concave slopes in
9 the immediate vicinity.

10 LORING: Okay. Uh, did you review the storm water mitigation language that
11 was used by the AES Report?

12 MCSHANE: I did see their language, yes.

13 LORING: W-, what was that language and what did it indicate to you?

14 MCSHANE: It was pretty general. Uh, but one, it did indicate that there is
15 a potential for sluffing of the road into the ditch. Which could potentially
16 plug the ditch. Uh, and so they recommended, you know, the ditch be cleaned
17 out, you know, culverts kept opened. Uh, you know, pretty standard stuff that
18 should typically be done. But I, I guess I generally think one should
19 consider, well, what happens when things don't go right and a culvert gets
20 plugged, what would the result be? Um, and, you know, it could happen in a,
21 just a very short order of a single storm. What's the result of that? What's
22 the consequences? Is there an impact to other properties? It's not just the
23 haul road, but and then in this case, a public resource being Swede Creek and
24 the fisheries associated with that.

25 LORING: And, in your opinion, what should have been done to address that?

1 MCSHANE: Well, one area was, um, there was no discussion about the cross-
2 culverts and where that water was being discharged. So, is that going to
3 cause any stability problems? And if a culvert plugs, what does that, is, is
4 there a, you know, a failsafe or secondary way to address that so it doesn't
5 become a, a problem for elsewhere along the road.

6 LORING: Okay. And if, if the Applicant, as part of this proceeding, were
7 to propose addressing that cross culvert, uh, would that have been something
8 that could have been reviewed as part of the MDNS issuance by Skagit County?

9 MCSHANE: I think it should have. Um, I do wonder, you know, I, I did look
10 through the files to see was there a storm water plan? Storm water drainage
11 plan? And, you know, I didn't see one and there was never one really eluded
12 to that, uh, in ref-, that I could see referenced.

13 LORING: Okay.

14 MCSHANE: Uh, given the idea a storm water plan is to protect streams or,
15 you know, water bodies, that's a pretty important missing piece.

16 LORING: Okay. If there were a storm water plan that addressed the mine
17 site itself, where the excavation is going to occur, uh, would that be useful
18 as a storm water plan for the road down here in this part of the property?

19 MCSHANE: I think it's pretty separate, very separate.

20 LORING: Okay. Uh, in your opinion, have you been able to conclude from
21 the review that you did remotely of this site, uh, using the materials that
22 you had at hand, were you able to conclude that the slope is stable?

23 MCSHANE: No, I couldn't make that conclusion. There, there wasn't enough
24 rational presented for me to be comfortable saying, yeah, I could agree with
25 that based on the information provided.

1 LORING: Okay. In evaluating whether the slopes along the haul road could
2 accommodate the gravel truck and trailer hauling, would it be important to
3 know how much traffic would occur?

4 MCSHANE: Um, I don't think it would be real important in my assessment,
5 no.

6 LORING: Okay. For your purposes?

7 MCSHANE: Yeah.

8 LORING: Okay. Okay. Uh, just a few last questions here. So, based on your
9 professional opinion, is there a significant likelihood that the haul road
10 traverses unstable slopes?

11 MCSHANE: I think there's a significant likelihood that that slope is not
12 long-term, it doesn't have long-term stability.

13 LORING: Okay. And based on your review of the Application materials, was
14 that risk fully evaluated?

15 MCSHANE: No.

16 LORING: Okay. Uh, I don't have any further questions, Mr. McShane and I
17 appreciate you spending this afternoon with us.

18 MCSHANE: Yeah. Thanks for accommodating my computer issues.

19 REEVES: Uh, Mr. Ehrlichman, am I correct in thinking nothing on this
20 particular topic?

21 ERHLICHMAN: No questions, Mr. Examiner, thank you.

22 REEVES: Thank you. Mr., uh, D'Avignon?

23 D'AVIGNON: Uh, no questions from me, Mr. Examiner.

24 REEVES: All right. And Mr. Lynn?

25

1 LYNN: Yes. Thank you. Um, good afternoon, Mr. McShane. Uh, you're
2 familiar with, uh, AES, aren't you, the firm that conducted by the original
3 geotechnical analysis and then the analysis of the haul road?
4 MCSHANE: I'm familiar with them a little bit, yeah. I've seen...
5 LYNN: Well...
6 MCSHANE: Occasional reports by them.
7 LYNN: Aren't they a pretty, uh, large, uh, firm that's been around for
8 some time?
9 MCSHANE: I think so.
10 LYNN: Okay. You just don't encounter them much in your practice?
11 MCSHANE: Uh, probably, I would say maybe seen ten reports over the years.
12 LYNN: Okay. So, uh, are you familiar with Matt Miller [phonetic], who,
13 uh, prepared the, the, uh, report regarding the haul road?
14 MCSHANE: No, I don't know Matt.
15 LYNN: Okay. So, you haven't looked at his, uh, resume, which is
16 Exhibit, uh, B84?
17 MCSHANE: No.
18 LYNN: So, uh, just to, uh, I just need to ask you if this would change
19 any of your testimony. He is a licensed engineering, uh, uh, geological
20 engineer in Oregon and has been preparing, um, uh, I'll read the description,
21 um, geotechnical investigations, uh, since 1987. Would that, uh, change any
22 of your testimony about whether or not he's qualified, uh, to submit this
23 report?
24 MCSHANE: I don't think I ever questioned his qualifications to submit the
25 report, so...

1 LYNN: Uh, you, you, uh, and maybe I'm just, maybe I misunderstood. I
2 thought you were, uh, suggesting that the, the stamp did not, uh, support
3 the, the report because it didn't involve geology.

4 MCSHANE: I was clarifying that he's not a geologist.

5 LYNN: Okay. All right. Um, so, uh, you're aware that, uh, that AES
6 representatives have been to the site and, uh, where you have conducted your
7 report based on review of the paper, is that accurate?

8 MCSHANE: Correct.

9 LYNN: Okay. Um, and you said you would want to look at these, uh,
10 features that you noted, uh, do you know whether AES actually looked at them
11 or do you just know they didn't discuss some of them in their report?

12 MCSHANE: They were never mentioned in the report, so I have no idea
13 whether they looked at them or not.

14 LYNN: Okay. Um, the hatched area that Mr., uh, Loring pointed out to
15 you, do you know whether that corresponds with the area to which AES was
16 directed by the County and the County's, uh, Critical Areas consultant?

17 MCSHANE: I don't know.

18 LYNN: Okay. Um, I want to talk about that inc-, would you agree that
19 the incised channel that you described, or the incised stream, is the most
20 potentially significant feature, uh, that you discussed in your letter?

21 MCSHANE: No. I wouldn't say that.

22 LYNN: Okay. Would you agree that that is, uh, the, the formation of
23 that is likely attributed to the flow of water that may have been directed by
24 a culvert, I think you indicated that the mapping suggested there was a
25 culvert, right, at that location?

1 MCSHANE: There's a culvert in the road, uh, above that, that at least as
2 far I know, based on the, uh, wetland map that was in the, or the wetland
3 report.

4 LYNN: Would you suspect that there's a causal relationship between that
5 culvert and the incised channel?

6 MCSHANE: It would be something I would look at to see if it, if that
7 culvert is playing a role and it's not just the culvert, but how the road
8 might be altering drainage. So, for example, if the road is blocking surface
9 water flow on a seasonal basis and directing it all to that culvert, versus
10 it being over a wider area, uh, then one could say, yeah, the culvert is
11 playing a role.

12 LYNN: Okay. If, if that was the case, uh, wouldn't it be fairly easy to
13 rectify that by redirecting the water or dividing it into more pipes or
14 involving energy dissipation features of some kind?

15 MCSHANE: I don't know if it's, that would be, I'm not sure it's easy,
16 having not been out on the ground there, but, that's certainly an approach
17 that could be taken to address the concentration discharge of water on that
18 slope.

19 LYNN: And, and aren't those best management practices?

20 MCSHANE: Uh, yes. I would..

21 LYNN: And if those...

22 MCSHANE: They would fit in that category, yes.

23 LYNN: Okay. And if those practices were undertaken here, could they,
24 uh, remedy what's an existing condition?

25 MCSHANE: Um, yes, it could be done.

1 LYNN: Okay. Um, are you familiar with the fact that there's a segment
2 of, uh, the haul road that is to be paved, uh, under the terms of the
3 proposal?

4 MCSHANE: Yes. My understanding that paved part would be, uh, the steeper
5 section there, but from, you know, just above the bridge across Swede Creek,
6 up to roughly where the sharp turn is at the top of the hill.

7 LYNN: And, and isn't that an area where you've expressed some concern
8 about erosion?

9 MCSHANE: Um, erosion or sluffing along the ditch, uh, would be one area
10 and then the erosion of the, from Swede Creek, at the base of the slope below
11 that area.

12 LYNN: Okay. Uh, would paving and associated storm water management
13 provide an opportunity to, uh, better control the drainage in that area?

14 MCSHANE: The drainage could be better controlled, yes.

15 LYNN: And, and wouldn't paving be an element of, uh, that would better
16 enable one to accomplish that?

17 MCSHANE: Um, I don't think paving would play a lot of role, other than if
18 it's paved, the risk of water flowing down wheel ruts on the road would be
19 reduced. And so you, that would be a positive aspect of the paving.

20 LYNN: Okay.

21 MCSHANE: But, uh, outside of that, it, it's, you still have the erosion
22 issues along the ditch and at Swede Creek. And in any culvert discharge
23 locations.

24

25

1 LYNN: R-, right. Um, so, if, if improvements had been made to the road
2 so it had a newer graded surface and the drainage facilities had been
3 maintained, would that help address some of the concerns you have expressed?
4 MCSHANE: I would like to, it, it, it could. It would depend on what would
5 actually be proposed for those drainages.
6 LYNN: Okay.
7 MCSHANE: You know, for the cross...
8 LYNN: So...
9 MCSHANE: Culverts, what are you going to do with the cross culvert water?
10 LYNN: Okay. So, uh, if the County, if the MDNS here requires
11 maintaining maintenance of the drainage in accordance with best management
12 practices, would that be a step in the right direction, in your view?
13 MCSHANE: I think they kind of said that already and it was a lack of
14 clarity in that statement. So, I, didn't mean anything to me.
15 LYNN: Because you don't...
16 MCSHANE: In terms of whether...
17 LYNN: You don't...
18 MCSHANE: They actually addressed it. Yeah.
19 LYNN: Yeah. You don't have a specific plan that you've seen, is that
20 the concern, then?
21 MCSHANE: Yeah. They, well, the only plan I've seen was the cul-, cross
22 culverts in the wetland report of where those are located. But there's, and
23 then other than the reference that they would keep the check dams clean and
24 the cul-, or the ditch dug out.
25 LYNN: So, uh...

1 MCSHANE: That's the only thing I've seen.

2 LYNN: Okay. So, if this were a new road, you'd certainly expect to see
3 a storm main-, drainage plan, wouldn't, wouldn't you?

4 MCSHANE: Yes.

5 LYNN: And, and you understand that this is an existing road conduc-,
6 uh, constructed some years ago and that the use is going to change, but the
7 basic prism of the road, the basic shape and, and drainage is not proposed to
8 be altered, except as in specific locations?

9 MCSHANE: Well, that's my understanding of what's being proposed.

10 LYNN: Right. So, this is not like a new road, is it? I mean, it's a,
11 you wouldn't expect to see the kind of storm drainage plan that one would be
12 required to submit if one were constructing a brand new road of this type?

13 MCSHANE: It gets into a policy and probably a legal determination that you
14 may be more familiar with than me. I would say that road was built as a
15 forest road and the requirements for forest roads are not the same as the
16 requirements for, uh, non-forest roads.

17 LYNN: And what if these roads were not originally constructed in the,
18 the typical forest practices sense, but were actually constructed to serve a
19 future development of the property, would that alter your conclusions at all?

20 MCSHANE: If they were org-, uh, I, I, you might have to repeat that, I
21 couldn't quite...

22 LYNN: Well, you were, uh, attempting to make a distinction between
23 forest practices roads and other roads and I'm just asking would that
24 conclusion be different if you knew that these roads were originally
25 considered, constructed to be wider than, uh, typical forest practices road

1 and were actually built to support the eventual redevelopment of the property
2 into a residential subdivision?

3 MCSHANE: I, yeah, I, I, I guess, I guess I would look at it as if that
4 were the case, I would suspect that that road has been there long enough that
5 it was built well before current storm water manual recommendations and best
6 management practices were laid out.

7 LYNN: Yeah.

8 MCSHANE: And it would not be consistent with what we would consider now
9 currently appropriate best management building of a road and drainage system.

10 LYNN: Okay. So, there's an opportunity here, isn't there, to, uh, in
11 the same manner as the, uh, as we've discussed, uh, altering the drainage by
12 the incised channel, we have that same opportunity along the road to use best
13 management practices in the maintenance of the road?

14 MCSHANE: There certainly is an opportunity.

15 LYNN: Okay. That's all I have.

16 MCSHANE: If it's, if it's proposed, yeah.

17 LYNN: Okay. All, all right. Thank you.

18 MCSHANE: You're welcome.

19 LYNN: No further questions.

20 REEVES: Okay. Uh, Mr. Loring?

21 LORING: Thank you, Mr. Examiner. I do have a few, uh, questions to follow
22 up. Uh, Mr. McShane, you were asked a moment ago if your review was just
23 based on the paper, uh, I think was how it was phrased, uh, and you answered
24 yes. Did you review anything other than, uh, paper to determine whether there
25 were slope stability issues at the site here?

1 MCSHANE: Well, I consider my own background and experience working in that
2 same geologic settings along those terraces.

3 LORING: Okay. And, uh...

4 MCSHANE: Which I mentioned before, yeah.

5 LORING: Uh, okay.

6 REEVES: And, for me, you, you did testify you reviewed LiDAR and other,
7 other data, is that maybe what you were trying to ensure I didn't get
8 confused about?

9 MCSHANE: Yeah. That, well, the fact that I only used paper kind of slipped
10 by me and I probably answered that question incorrectly. I definitely used
11 LiDAR, definitely used my experienced, I used maps, I, that falls into paper,
12 I guess, computer screens, so...

13 REEVES: What paper means these days, yeah, that's a good point. But, go
14 ahead, uh, Mr. Loring.

15 LORING: I, I wasn't, I just wanted to make sure we were clear, it wasn't
16 just the report you reviewed, but independently, remote investigation. Thank
17 you.

18 MCSHANE: Yeah.

19 LORING: Uh, you were also asked whether you didn't, uh, or you were also
20 asked whether you didn't know if AES had looked at the issues, but just
21 didn't discuss them in your report. And I believe you said you didn't know,
22 is that right?

23 MCSHANE: Got put in a position where I would be having to speculate what
24 they actually looked at.

25

1 LORING: Yeah. If you conducted a geological hazard review at a site,
2 investigated that, would you note everything that you had investigated in
3 your report?

4 MCSHANE: Yeah. I typically put in what, you know, an observation or site-
5 specific observations. And, you know, sometimes can be pretty brief, but, you
6 know, I would mention, like, what's Swede Creek doing and describe what was
7 seen and whether that was a problem area or not. Uh, you know, what the ditch
8 looked like and specifics, any slumps that I saw, how big the slumps might be
9 in the future. So...

10 LORING: And in preparing a geologic hazard report, would you note any
11 potential instability that you observed at the site?

12 MCSHANE: Yeah. Anything that was potentially unstable or, or maybe the,
13 for example, and that's where the LiDAR, it's a, it's a really powerful tool,
14 I can't emp-, you know, any geologist will tell you that that works in the
15 slope stability field is it really causes one before you go out in the field
16 where to focus your attention. And so I would have, probably have a map very
17 similar to this and then just go point by point. I went and looked at this
18 and this is what it looks like and, and then you could reach conclusions
19 based on what, what's the underlying soil, what's the geology of that
20 location?

21 LORING: And would that be a standard practice for, uh, an engineering
22 geologist visiting a site and conducting such an investigation?

23 MCSHANE: I think it should be. Yeah.

24

25

1 LORING: And does, does that lack of, uh, reference to those types of, uh,
2 uh, potential instabilities at the site indicate to you that they weren't
3 reviewed? In the report, I should say that lack of reference.

4 MCSHANE: Yeah. I would, it, it, I certainly would be doubtful it was
5 reviewed, so...

6 LORING: Okay. And you were, uh, there was also the mention, uh, or a
7 question about whether you knew where the County had directed, uh, the review
8 into this geological hazard review into a very specific area along the slope.
9 Uh, if you were, if you were investigating a site, uh, for a client and the
10 County directed you to one area, would you limit your review to that area if
11 you noticed potential instabilities in the vicinity?

12 MCSHANE: Definitely not. And I, and that's happened in Skagit County where
13 I've looked at sites and said, well, you know, you really maybe should be
14 more worried about this instead.

15 LORING: Okay. Looking at just a few other, a few other questions you were
16 asked, I think you were asked about whether it would be easy to redirect the,
17 uh, storm water energy with some pipes. And this was in conjunction with
18 questions about the incised stream. And so my question for you about that is,
19 uh, and, well, I'll say, I'll say that I believe you answered that you
20 weren't sure if it would be easy, but it could be addressed.

21 REEVES: Hold on.

22 LORING: Let me as-...

23 REEVES: Just to...

24 LORING: Sorry.

25

1 REEVES: Clarify, the way you characterized it, Mr. Loring, you just said
2 sort of direct it with some pipes, my understanding was it was directing it
3 with additional storm water features, maybe you were short handing, but...

4 LORING: Uh, that's right. I think I was short handing and, and you're
5 right, that I heard pipes and other storm water features, yes.

6 REEVES: Oh, okay. Just want to be sure.

7 LORING: Yeah. Thank you.

8 REEVES: We're not limiting. Go ahead.

9 LORING: No, thank you. I want to be accurate. And, uh, so, if, the
10 question was posed to you whether, uh, that would be easy to do. And if it
11 were easy to do, would you have expected that to be part of the Application?

12 MCSHANE: Yes. I, I would. That's part of having a storm water plan.

13 LORING: Okay.

14 MCSHANE: Especially in a sensitive environment like this where you've got
15 surface water creek with fish in it and a steep...

16 LORING: Uh-huh.

17 MCSHANE: Slopes in the area.

18 LORING: And, so, would you have expected that information to come out
19 before the County issued a MDNS for the project?

20 MCSHANE: Yes, I would.

21 LORING: Okay. And I'll ask this same question and I'll ask it in summary
22 form, uh, because you were asked about other potential actions that could
23 occur at some point in the future about, uh, paving along the area and
24 whether that would address erosion, et cetera. Along with that discussion
25 about potential efforts that could happen in the future, um, with regard to

1 all of those potential actions, that haven't been identified in the record so
2 far, wouldn't you have expected those to have been part of the Application,
3 uh, before now?

4 MCSHANE: It certainly, when I looked at the report and then went through
5 the documents that were available, I didn't see those plans.

6 LORING: Okay. And you were asked about a MDNS, uh, provision about
7 maintaining drainage and whether that would address your concerns about
8 erosion, I believe that's accurate, uh, and, and I believe you responded
9 there was some ambiguity in just with the MDNS said that way. Uh, let me ask
10 you this, were there specific MDNS provisions about specific steps that would
11 be taken to address any erosion or potential instability along the haul road,
12 to your knowledge?

13 MCSHANE: I didn't see any, other than I think there was maintenance of the
14 ditch. Uh...

15 LORING: Okay.

16 MCSHANE: And then that, that was the limit of, basically, about the limit
17 of what was provided in the MDS [sic] that I saw.

18 LORING: Okay. And...

19 MCSHANE: And there were no, and I think it was mentioned, I would say
20 that, you know, best management practices, but none of the best management
21 practices have been specified. And they're very specific in the storm water
22 manual.

23 LORING: Okay. And would you characterize upgrades to the storm water
24 system or I'll leave it at that, upgrades to the storm water system, would
25 you characterize those as maintenance?

1 MCSHANE: Maintenance would be one of the best management practices. It
2 would be separate from the actual structures or items that would be put on
3 the ground.

4 LORING: Okay. So things like cleaning out, uh, cul-, uh, ditches?

5 MCSHANE: Yeah. Cleaning out cu-, ditches, uh, if you've got a culvert, uh,
6 with a catch basin, you know, making sure that's maintained.

7 LORING: Uh-huh. Okay. And then my last question for you re-, relates to
8 the question that was posted to you about whether you knew if the haul road
9 was originally created for a subdivision. Uh, and here's my question just
10 generally, do you know if the haul road has had any review, uh, by Skagit
11 County, to date?

12 MCSHANE: I'm not aware of any, no.

13 LORING: Okay. I have no further questions. And I thank you very much for
14 your time, Mr. McShane.

15 MCSHANE: You're welcome.

16 REEVES: Okay. I believe we're done with this witness? I'm getting nods.

17 MCSHANE: Okay.

18 REEVES: Look at that. Excellent. Mr. McShane, thank you. I'm glad we were
19 able to sort out, uh, getting your participation concluded. So, thank you
20 very much.

21 MCSHANE: Yeah. Well, you guys have a good rest of your day and evening.

22 REEVES: And you as well.

23 LORING: You, too.

24 REEVES: Okay.

25 MCSHANE: Goodbye.

1 REEVES: So, that, then, I believe concludes, uh, Mr. Loring's
2 presentation of witnesses.

3 LORING: It does. Yes. Central Samish Valley Neighbors rests. Or rest, I
4 guess.

5 REEVES: Sure. I, well, we're going to have some argument, I think, later,
6 is the plan. Um, at least that was my initial plan.

7 LORING: Yes.

8 REEVES: So, but, yes, in terms of witnesses, I think that's accurate. So,
9 uh, the thing I wanted to sort of move to real quick next, was just the
10 timing, uh, matter. So know that we have potentially, I think it was five
11 potential witnesses, Mr. D'Av-, D'Avignon, on behalf of the County? I know
12 the numbers have altered, but if we could just quickly touch on this?

13 D'AVIGNON: I did have that many on my witness list. I would imagine no more
14 than four, um, I think the traffic, um, can be handled with one witness. Um,
15 and, and it's possible that's not the case and we would need the five, but my
16 expectation would be that. Um, I also have Brandon Black on the witness list.
17 I was not planning on calling him. I know Mr. Ehrlichman really would like to
18 talk to him. I'm not sure if the witnesses, um, prior to the possibility of
19 Mr. Black testifying will satisfy, um, whatever information Mr. Ehrlichman is
20 looking for. But that is, uh, a possibility as well.

21 REEVES: Sure. And...

22 D'AVIGNON: I am expecting it not to take more than a day. And hopefully...

23 REEVES: Sure.

24 D'AVIGNON: Less.

25

1 REEVES: And, I guess, even if Mr. Black participated, my, I would assume
2 it would be a fairly brief would be my thinking, that would be the way to
3 think about that.

4 D'AVIGNON: That is correct. And I think, you know, the most time is going to
5 be devoted, um, on the critical areas stuff with, uh, Ms. Forbes [phonetic]
6 and the traffic stuff probably with, um, um, Forrest [phonetic].

7 REEVES: Forest Jones [phonetic]? Okay. Uh, and then, again, it's an
8 unusual sort of process, but, and, Mr. Ehrlichman, I certainly did not
9 require you to produce a witness list because you're not an Appellant and
10 you're not an intervener, uh, you know, you're, you're just, uh, sort of here
11 representing citizens at large, but do you have an idea, Mr. Ehrlichman, of
12 how many witnesses you were hoping to call?

13 EHRLICHMAN: Thank you, Mr. Examiner. Um, I anticipate right now that, at
14 most, I would call three witnesses. I would like to see how the questioning
15 goes with the County staff as to whether, uh, I would want to recall Mr.
16 Tilghman as my witness. Uh, that remains to be seen. Um, and, and I agree
17 with Mr. D'Avignon, it may not be necessary to call Mr. Black, uh, as part of
18 that. So, I anticipate right now three witnesses. And I do want to just
19 correct the record on one point. Um, and I know you didn't mean anything by
20 this, but the, I represent, um, a specific land owner and his, the caretaker
21 family on that land, uh, as opposed citizens at large. It's a small point,
22 but I, I just wanted to mention that.

23 REEVES: Apologies. Sorry.

24 EHRLICHMAN: No, no. No problem.

25 REEVES: Not specifically a SEPA Appellant was, was...

1 EHRlichman: Correct. Yeah. That's right.

2 REEVES: Um, sorry. Did you...

3 EHRlichman: So...

4 REEVES: Reference potentially recalling Mr. Tilghman, who was Mr.

5 Loring's expert, did I mishear that?

6 EHRlichman: That's correct. That's correct. Um, I want to see what the, uh,

7 Public Works staff have to say. I don't anticipate the need to, uh, bring Mr.

8 Tilghman back on, uh, but that is a possibility.

9 REEVES: If, I mean, if you were interested in doing that, I assume you

10 sorted that out with Mr. Tilghman, not, okay, so, we don't need to get into

11 who is paying who and how, who, how...

12 EHRlichman: Right.

13 REEVES: I just, I want to verify we're talking about the right person,

14 this isn't a County employee we're talking about, so...

15 EHRlichman: Right. Right.

16 REEVES: Okay.

17 LYNN: I, I just want to note, this is Bill Lynn, uh, I thought that the

18 reason we agreed to an expanded opportunity for Mr. Ehrlichman to examine the

19 witnesses was to avoid this very thing so that he, and he didn't have any

20 traffic experts. And he was only going to ask other people's witnesses and

21 now he's calling somebody else's witness. So, I, I think is a departure from

22 the process we agreed to. Uh, I guess we'll wait until the time it happens.

23 But I just want to note now my potential objection.

24 REEVES: Certainly understood. Um, okay. I'm just, again, trying to get a

25 sense of timing and all that. And then, Mr. Lynn, uh, any, any idea or sense,

1 uh, from you, of, of anything additional that would happen, uh, in terms of,
2 of rebuttals?

3 LYNN: Uh, I, I'm anticipating that there will be rebuttal. A lot of
4 issues have been raised, uh, I'm going to try to be as efficient as I can
5 about it and I'll try to keep everybody posted. But it's going, we're going
6 to have to recall some people.

7 REEVES: I meant witnesses, are we on the, are we talking about the same
8 thing here?

9 LYNN: Oh, yeah, I am. Yeah.

10 REEVES: Okay.

11 EHRLICHMAN: Mr. Examiner?

12 REEVES: Go head, Mr. Ehrlichman.

13 EHRLICHMAN: Thank you. Uh, I don't know if now is the appropriate time, but I
14 wanted to talk at some point here about the, um, Exhibits that are hanging
15 out there, a possible stipulation that's hanging out there and, um, I can
16 continue to, to talk to Mr. Lynn, uh, one-on-one about that, but w-, we need
17 to do some housekeeping on some of that.

18 REEVES: Yeah. I agree. So, so, just, we'll get to it in one sec. So, just
19 to be, and Jason, I'll let you, before I dive in, Jason D'Avignon?

20 D'AVIGNON: I just had some comments on timing.

21 REEVES: Yes. That's where I was going to go next, so, but go ahead.

22 D'AVIGNON: I guess, it appears to me that that Friday you mentioned, as much
23 as I dread saying it...

24 REEVES: [Inaudible.]

25

1 D'AVIGNON: Um, we're, it seems like we're going to need that. I don't know
2 how we're going to get through the County witnesses, Mr. Ehrlichman's
3 possible witnesses and any rebuttal witnesses, um, given our current track
4 record in a single day.

5 REEVES: Right. That...

6 D'AVIGNON: I...

7 REEVES: I think as well.

8 D'AVIGNON: One thought I do have is, um, you know, we do have a, on the
9 presentation plan arguments is moving those arguments to written arguments.

10 REEVES: Well, I certainly...

11 D'AVIGNON: And allowing kind of written closing arguments as opposed to
12 spending some time on Teams, arguing in front of our computers.

13 REEVES: No, no, and I certainly am going to, uh, want written briefs so I
14 just, I thought I made that clear a long time ago. But I, partially, in terms
15 of the arguments, I have some questions as, you know, legal, I, that I would
16 like to just, I don't plan on it taking more than maybe an hour, hour and a
17 half. Um, but I wanted to take an opportunity, with a legal team like this
18 to, to grill folks on some thoughts prior to them, then, putting their briefs
19 together. So that was the idea there. But, first, let's just...

20 D'AVIGNON: Okay.

21 REEVES: Have Mona, let's start with Mona Kellogg, uh, 'cause she will be
22 a linchpin member here.

23 LYNN: Well, I, yeah, I, I just want to comment on next Friday, I'm at
24 out of town from Wednesday of next week to I think Tuesday of the following
25 week, so...

1 REEVES: So, that...

2 LYNN: Regrettably, I would, I would, I would not be able to join you if
3 you were, which might be desirable.

4 REEVES: That is where we were going. So, that wipes out, uh, the sort of
5 two days, I guess that I had potentially set aside. So, I, what I'm hoping
6 to, what I can tell you is that moving forward, as of next week, generally
7 speaking, uh, my Wednesdays tend to be opened, uh, and so, and I, as you all
8 know, Fridays tend to be open. But it sounds like, okay. So we know we're
9 coming back next Tuesday, that's been set aside.

10 LYNN: Uh-huh.

11 REEVES: And we want to find at least one additional day, um, and so, I
12 think September 21st is a Wednesday or September 23rd, which is a Friday.

13 LYNN: The 23rd would work for me. I'm not going to get back until late
14 on the 21st and, or I mean, the 20th and I don't think I'd be in a position to
15 see you all the next morning. Nothing personal.

16 EHRLICHMAN: We wouldn't, um, we'll wave any objection to Mr. Lynn not being
17 here. But, um, I'm available on the 23rd.

18 REEVES: Good joke, but you're okay on the 23rd is what you're saying, Mr.
19 Ehrlichman? Ehrlichman is fine with the Applicant not participating any
20 further, I love it. Uh, I'll deny the request, uh, but, uh, um, thank you. So
21 you're available the 23rd. And you do get a gold star for best joke of the
22 day. Uh, Jason, 23rd?

23 D'AVIGNON: Twenty-third will work.

24 REEVES: And Kyle Loring?

25 LORING: I, I can make that work.

1 REEVES: And most importantly, our Clerk, uh, Mona Kellogg, would the 23rd,
2 again, for remote, be available?

3 KELLOGG: For remote, yes.

4 REEVES: For remote, excellent. Okay. So, I'm booking it on my schedule,
5 let's, let's make sure everybody gets it booked. And why don't we day, uh,
6 you know, essentially 9:00 to 5:00, and we'll get it done, is the plan.

7 KELLOGG: Perfect.

8 REEVES: Well, perfect is a stretch. But, uh, accomplishing is the word
9 we're looking for, I think, but thank you. So...

10 LORING: Mr...

11 REEVES: We've got...

12 LORING: Mr. Examiner, just a, a slight twist on that, if we can wrap that
13 up by 4:45, at the very latest, uh...

14 REEVES: That's fine.

15 LORING: That will be helpful. I, I coach tennis and I'm already moving
16 those practices later on these days that have popped up. Um, but I can only
17 go so late.

18 REEVES: It's okay. I'm also very fit, busy and important, 4:45 is, is
19 fine. I have, you know, a modeling session I forgot about 5:00. Uh...

20 LORING: Hey, this was an obligation, I was ready in July. I just want to
21 be clear, this was an obligation I set up and I do it for the children.

22 REEVES: There you go. Uh, no, that's perfectly fine. I just wanted to go
23 a little later, than 4:00, but I think that's totally reasonable. Okay. So,
24 moving forward, um, I would also suggest Tuesday, I think we're booked 9:00
25 to 4:00, but folks are able to go a little further on Tuesday than 4:00, I'm

1 certainly able to keep it opened a little longer. Uh, start with Mona
2 Kellogg?

3 KELLOGG: I'm, I'm available.

4 REEVES: Excellent. I never make the staff go beyond 5:00 unless they
5 really desperately want me to. But what about everybody else?

6 LYNN: Yes.

7 D'AVIGNON: That should be fine.

8 LORING: Same comment. Same comment here.

9 REEVES: 4:45?

10 LORING: Yeah.

11 REEVES: Okay. Uh, excellent. So we've got those and then in terms of
12 Exhibits, what I would suggest is, uh, you know, if someone really thinks
13 they have the best notes for the Exhibit list, fine. Otherwise, I'm going to
14 put it on each individual party, uh, and suggest that you send out, you know,
15 this is what I think my Exhibit list now looks like. And then we can, uh,
16 kind of all compare when we come back, uh, first thing on Tuesday would be my
17 suggestion. I, I think it's reasonable to expect those that have suggested
18 including Exhibits know what, what those are. So, that would be my
19 suggestion. Any objection to that as a, as a ruling there? Thumbs up, thumbs
20 up. Okay.

21 D'AVIGNON: No objection.

22 REEVES: Excellent. Okay. Um..

23 D'AVIGNON: And I just, I just want to double, I think I missed the second
24 date.

25 REEVES: Oh, sorry.

1 D'AVIGNON: I probably agreed to without noticing.

2 REEVES: The second date, and, again, I'm guessing no problem is the
3 County is not there, but the thought was the 23rd, which is a Friday.

4 D'AVIGNON: What was the, I, okay, 23rd is fine. I thought there was a second
5 day?

6 REEVES: We didn't, do, do you think we need, so right now we come back
7 the 13th, next Tuesday, and you think one more day after?

8 D'AVIGNON: I would move for a ruling that we cannot have any more days.

9 REEVES: Fine with me.

10 D'AVIGNON: I, I, I'm really hoping we can get it done. I just want to make
11 sure I didn't miss anything.

12 REEVES: Okay. Yeah. No, so, the, the hope, according to you, is we get
13 through, essentially, the County's presentation next week. Uh...

14 D'AVIGNON: Yeah.

15 REEVES: And, and that last day, well, okay. I don't want to pre-emptively
16 rule, especially 'cause this thing has been going on as lo-, I mean, not
17 going on with me, I'm saying, I, you know, if, if, let's, let's come back
18 around on Tuesday and see where we're at, would be my suggestion.

19 D'AVIGNON: I agree.

20 REEVES: Mr. Ehrlichman.

21 EHRLICHMAN: Thank you. And in, in regards to that timing, I think we all want
22 to finish, but I, I do foresee a problem that perhaps we could talk about for
23 a minute, which is that the Applicant, as I understand it, Mr. Lynn, is going
24 to bring forward new testimony and evidence concerning the auto-turn analysis
25 on Grip Road. It appears to be coming in at the tail end of this Hearing

1 where there may or may not be an opportunity for other parties to the
2 proceeding to review it and comment on it or have witness testimony regarding
3 it. And I, I don't yet understand the implications of that. But I'm a little
4 concerned that we could end up spinning our wheels, time-wise, around that.
5 So, I'd love to hear other people's thoughts on that?

6 REEVES: Bill Lynn?

7 LYNN: I can clarify, uh, if you want, it's in the nature of an offer of
8 proof, I guess, what the testimony will be that while the truck that was the
9 drawing that was submitted doesn't look like a Miles truck, we have another
10 drawing of the Miles' truck and the configuration is the same for purposes of
11 auto-turn. So, it will just be Gary Norris clarifying that he, in fact, used
12 a vehicle that corresponds with what Miles proposes. So, it could be pretty
13 quick. I can send you the drawing in the meantime, uh, if you've got some
14 other way to verify it. Um, but, that's, that's, it will be that limited. And
15 I'm happy to give you the drawing in advance.

16 EHRLICHMAN: Well, I, I, I certainly appreciate that's one issue, but we
17 haven't seen the analysis to even get into the question of whether you used
18 the right truck or not. Our issue is whether the auto-turn analysis of Grip
19 Road identified improvements that are needed, other than the two that your
20 client has mentioned. And if not, why not? And that line of questioning could
21 go on if we, uh, don't have some understanding about what's being presented
22 and what it means. And I'm just in the dark a bit.

23 LYNN: Well, uh, uh, I'm sorry. I mean, Mr. Norris has offered his
24 testimony that there is an auto-turn analysis that shows how a truck tracts
25 through the curves and that the Applicant intends to make the, uh,

1 improvements to, uh, assure that it has the opportunity to stay within its
2 lane.

3 REEVES: Is this back to the Meta data that Mr. Ehrlichman wants the Meta
4 data? I'm, I'm trying...

5 EHRLICHMAN: No.

6 REEVES: To understand what the problem is?

7 EHRLICHMAN: It's, it's...

8 LYNN: Go ahead.

9 EHRLICHMAN: My, are you asking me?

10 REEVES: Yeah. Well, yes.

11 EHRLICHMAN: Yeah.

12 REEVES: I...

13 EHRLICHMAN: No, my, my concern is not at all about getting in and examining
14 the AutoCAD file, my concern is that, number one, Public Works hasn't had an
15 opportunity to assess, in light of all the testimony here, whether that's an
16 adequate mitigation proposal. My second concern is whether my clients feel
17 that it's adequate and presents all the mitigation that's needed. And I
18 guess, the third would be whether other experts, Mr. Tilghman, uh, view the
19 auto-turn, uh, conclusion as a sound conclusion. I, I appreciate that they're
20 offering, you know, additional mitigation, so that's great. But the, but I
21 think it's being presented as Mr. Norris' expert opinion that that's all
22 that's required. And that's a different issue.

23 REEVES: Well, I mean...

24 D'AVIGNON: Can I make a, a point?

25

1 REEVES: I was going, yes. At first, I was going to say, I think we'll
2 hear from Public Works and one can, we'll be able to ask Public Works. But go
3 ahead, Mr. D'Avignon?

4 D'AVIGNON: I mean, it, it strikes me that if this evidence is not provided,
5 that's Mr. Lynn's decision, you know, he has the burden on the Special Use
6 Permit, um, establishing and, you know, that it should be issued. And I guess
7 the, the absence of the evidence would play into that analysis and Mr.
8 Ehrlichman can certainly make an argument that it's unnecessary, uh, any
9 other party can make that argument. But, uh, I don't know that it needs to be
10 required. But it seems very, like a very technical bit of information that...

11 REEVES: Sure. I...

12 D'AVIGNON: Making a lot out of nothing.

13 EHRLICHMAN: Well, I, I don't know what more to say. I, I think there is the,
14 um, the purpose of the Hearing is to question the experts on their
15 conclusions. And certainly the Applicant's prerogative as to what mitigation
16 to propose and I agree, we can argue it's, it's not enough. But the, as I
17 said, I, I believe Mr. Norris is going to testify that it is enough, that
18 they did the analysis on the rest of Grip Road and I, you know, would want to
19 ask him what that analysis was and how it was, what conclusions they reached
20 and why they reached those conclusions.

21 REEVES: But then you, wait, you're saying you want to cross examine Mr.
22 Norris about, we did this already, did we not?

23 EHRLICHMAN: Not after he did his auto-turn analysis, that I'm aware of,
24 because we haven't, we haven't seen it.

25

1 LYNN: Yeah. He, I think, to clarify, he has, he had completed it, he
2 just...

3 REEVES: Right.

4 LYNN: Hadn't finalized it in a form that you could see.

5 REEVES: Right. He testified about it and we had cross-examination, we
6 just didn't have the, the, the AutoCAD files and the Meta data.

7 EHRLICHMAN: We didn't, we didn't have an opportunity to question him about
8 the analysis he did under auto-turn because Mr. Lynn objected that it wasn't
9 in front of us. And the Examiner, I believe, ruled that the, we would deal
10 with that later, once it was produced.

11 LYNN: I, I don't think I objected to the...

12 REEVES: I, my recollection is different. But, Mr. Loring, you have any,
13 you got...

14 LORING: I, I was just going to say that we, uh, we objected, uh, on the,
15 on the grounds that this was new material and new material after the fact.
16 Uh, then, Mr., uh, Norris was still allowed to testify to it. It is true that
17 at this point we haven't, basically haven't been able to check the work, I
18 think is, that's what I'm hearing Mr. Ehrlichman say. And he...

19 REEVES: And...

20 LORING: Did request the document. Our objection has been on the table
21 because this is again, you know, late SEPA documentation.

22 REEVES: Well, I, I guess, in my mind, if, again, if this comes down to
23 whether the work, someone should be able to check the work, I would, I would
24 ultimately, you know, be comfortable with, you know, the data being provided
25 if a party has an expert that wants to look at it and then they can produce

1 something. But I, I, I'm not comfortable with a bunch of Attorneys, uh,
2 wanting to question engineering data. I, I don't want to go back to a deep
3 analysis on how, how do statistics work in the world. I'd rather...

4 EHRLICHMAN: Right.

5 REEVES: Do that, so...

6 EHRLICHMAN: May I make a suggestion, Mr. Examiner?

7 REEVES: Please.

8 EHRLICHMAN: I, I, I hear what, what you're saying. Uh, it, it's really hard
9 to really even know what position to take until we see it. I guess I'd like
10 to hear Mr. Norris' testimony and reserve, uh, you know, a request to bring
11 on a witness after that. Um...

12 REEVES: You can always request to do something, obviously.

13 EHRLICHMAN: Yeah. I, I just don't know what it is and what he's going to
14 testify to and it hasn't been disclosed. So, you know, it's tough to tell you
15 exactly what it is I'm going to ask him and what we're going to do in terms
16 of rebuttal. So, why don't we see what he presents? I was hoping Mr. Lynn
17 might have something sooner than now, but my concern is it comes in at the
18 tail end and we don't have any input or review of County staff. But that's my
19 argument in the case, so we'll go, go with that.

20 LYNN: Uh, uh, and I, apologize, I'm not trying to hide anything. We've
21 been kind of pre-occupied, uh, and I think it's going to look like those
22 pages in the TIA where the auto-turn output for the Prairie turns was, it's
23 two sheets of paper that show, uh, lines of travel. I don't think it's, I
24 don't think it's more than that, so...

25

1 REEVES: Well, let's, let's come back on Tuesday and see where we're at,
2 is my suggestion on that particular issue.

3 EHRLICHMAN: One final, uh, point if I could, on a...

4 REEVES: Yeah.

5 EHRLICHMAN: Different topic? Uh, we, we heard some testimony in, again,
6 today, about the traffic numbers, we're going to have the County staff on
7 where the numbers are important to their testimony, uh, I prepared a
8 stipulation and circulated it to the parties, I signed it after getting
9 comments. I, I would just like to know yes or no, it doesn't matter, but are
10 the County and, and the Applicant, um, and the Appellant wanting to enter
11 into a stipulation and if so, are we in the ballpark or are we, are we not
12 going to get there? I think it would be helpful to the proceeding if we can.

13 LYNN: Uh, the answer from the Applicant's standpoint is only that I
14 have not, I have looked at it, I have not had a chance to talk to the Miles'
15 people about it. I will, uh, maybe even this evening and I'll try to get back
16 to you as soon as I can, even if it's over the weekend. I have, I'm certainly
17 love to stipulate to anything that would, um, you know, reduce the number of
18 matters in dispute.

19 EHRLICHMAN: I think the extent that you could do that before the County
20 Public Work staff come on, um, that would be very, very helpful.

21 LYNN: Yes, I, I agree. I'm, I'm sure we can either do that or respond.
22 I think there's a tiny, there's a small issue about the calculation that Mr.
23 D'-, D'Avignon has brought up and, um, that's, I think, the focus, but...

24 EHRLICHMAN: Okay.

25 LYNN: I'll get back to you.

1 EHRlichman: Thank you.

2 REEVES: And I think that was for everybody. So, Jason D'Avignon?

3 D'AVIGNON: Yeah. There is, I think, one issue that I, I have concerns about
4 that Bill referenced, but I, as to whether or not the 30, I forget if it was
5 trucks to trips was the term used and whether that includes the loaded and
6 unloaded. I'm would stipulate right this very moment, that that is truck
7 trips, that included loaded and unloaded, thus 15 loaded, 15 unloaded per
8 hour, at the worst case, maximum.

9 EHRlichman: Uh-huh.

10 D'AVIGNON: That is the proper understanding of what is written in the MDNS.

11 EHRlichman: Uh-huh. And I think the document I signed and sent to you says
12 that explicitly.

13 D'AVIGNON: It, it does say that, it says some other things that I, I think
14 maybe are unnecessary, but I think we can work that out, um..

15 EHRlichman: All right.

16 D'AVIGNON: At another time.

17 EHRlichman: Thank you.

18 REEVES: Mr. Loring?

19 LORING: Uh, I'll, I'll say that, on this one, I'm looking at others who
20 might have more objection, initially, um, but I, I don't necessarily have an
21 objection to it, uh, well, I don't, I don't have an objection to the
22 stipulation as written.

23 REEVES: Okay. So, I'll, again, I haven't seen this, you know, I can tell
24 you, I have no objection to the concept of a stipulation that somehow makes
25 my life easier in the long run. So, you know, uh, that sounds good to me. Um,

1 all right. So, with that, uh, were there oth-, so, we've got a little extra
2 time next week, we've set aside a whole other day, uh, on the 23rd. I just
3 want to, are there other things we should address or deal with? I, I don't
4 think we're going to get another witness in here. So, I, I, I don't want to
5 waste time either, but, uh, was there anything else, um, I'll start, I guess,
6 Mr. Loring, anything you wanted me to deal with?

7 LORING: Uh, no, I don't have anything before we resume next Tuesday.
8 Thank you.

9 REEVES: Okay. Mr., uh, D'Avignon?

10 D'AVIGNON: I have nothing, Mr. Examiner. Thank you. I hope you have a great
11 weekend.

12 REEVES: Thank you. Mr. Ehrlichman?

13 EHRLICHMAN: Same here. Have a great weekend, everybody.

14 REEVES: Mr. Lynn?

15 LYNN: Nothing from me. Thank you.

16 REEVES: Excellent. So, the plan, 9:00 a.m. Tuesday. Uh, and then if,
17 again, the County wants to update or provide notice to the public at large
18 somehow, uh, the other day we have set aside would be the 23rd, uh, which is
19 also a Friday because the joy of all getting together Friday, uh, there's,
20 uh, let's see, Bill Lynn agreed to wear a monkey tie, I believe Tuesday, Tom
21 Ehrlichman, a Hawaiian shirt, uh, Jason D'Avignon wins, uh, on the tie today.
22 Uh, Ehrlichman got a gold star on his jokes. And, uh, I think that covers
23 everything. So...

24 EHRLICHMAN: Thank you.

25

1 REEVES: I know it's quite a long proceeding, I know, I, myself can get a
2 little, uh, uh, snarky at times, and I apologize. It's, it's, uh, it is what
3 it is. But I appreciate everyone, uh, truly being, uh, professional and
4 patient, uh, with all of ourselves. And we'll be back Tuesday and I hope
5 everyone enjoys our first, uh, full weekend of football, so...

6 EHRLICHMAN: All right.

7 REEVES: With, with that, we'll conclude our meeting today. Thank you
8 everybody.

9 LORING: Thanks.

10 D'AVIGNON: Have a good one.

11 LORING: Take care.

12 REEVES: That monkey tie.

13 [The tape ends.]

14 **The undersigned being first duly sworn on oath, deposes and says:**

15 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
16 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party
17 to this action. That on May 6th, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves, that
18 took place on 9/9/22 at 1:00 p.m., regarding the above-captioned matter.

19 I certify and declare under penalty of perjury under the laws of the State of Washington that the
20 aforementioned transcript is true and correct to the best of my abilities.

21 Signed at Mount Vernon, Washington, this 6th, May of 2024.

22 Janet Williamson

23 Janet Williamson

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**IN SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT**

State of Washington,)	
	)	Cause No.: PL16-0097, PL16-0098,
Plaintiff,	)	PL22-0142
)	
vs.	)	PERMIT HEARING 9-9-22 9:00 AM
)	
Name,)	
)	
Defendant)	

Transcription Date: May 5th, 2024

Present: Andrew Reeves, Kyle Loring, Jason D'Avignon, Bill Lynn, Tom Ehrlichman, Ross Tilghman

REEVES: Okay. I'm told we're recording. So, get my gavel out and make it official. And, good morning. I'm going to go ahead and call this session of the Skagit County Hearing Examiner to order. For the record, today is September 9th, 2022 at 9:00 a.m. This is number PL16-0097 and PL16-0098, long with the Appeal number PL22-0142, involving a request for a Special Use Permit. Uh, excuse me, along with an Appeal of a SEPA determination that was made. And we're here on, I believe day 5, so the parties, uh, certainly know what's going on. But for the record, this is Andrew Reeves, on behalf of

1 Sound Law Center, serving as the County Exam-, Hearing Examiner. And, uh,
2 we'll go ahead and dive right in. So, before diving in with witnesses, let's
3 just do a quick round robin. Uh, technically, we, we are, uh, in the portion
4 of the Hearing, hearing from the Appellant's, uh, witnesses, but I know with
5 scheduling, et cetera, sometimes things need to go out of order, so I just
6 wanted to check on that particular issue. So, Mr. Loring, do you have any,
7 anything thin you wanted to quickly address or would like to have addressed,
8 uh, before we get started?

9 LORING: No, I don't think so, Mr. Examiner. And it looks like we should
10 be able to finish with our three witnesses in, in the order that we had
11 anticipated today.

12 REEVES: Okay. And, uh, Mr. D'Avignon?

13 D'AVIGNON: I have nothing to raise this morning, Mr. Examiner.

14 REEVES: Okay. Mr. Lynn?

15 LYNN: Nothing from me.

16 REEVES: Okay. And Mr. Ehrlichman?

17 EHRLICHMAN: Um, nothing from us. Thank you.

18 REEVES: Okay. Uh, Mr. Loring, I believe at the end of the day, yesterday,
19 we had, uh, concluded with Phil Mcloud. Uh, so, at this point, if you'd like
20 to call your next witness, go right ahead.

21 LORING: Thank you, Mr. Examiner. Uh, we'd like to call Ross Tilghman,
22 please.

23 REEVES: Okay. Hi, thank you for being here. Can you hear me okay?

24 TILGHMAN: Yes, I can. Thank you.

25

1 REEVES: Okay. I'm going to swear you in. Do you swear or affirm to tell
2 the truth in the testimony you give here today? Hello? We jumped the gun.
3 Ross Tilghman, are you there?
4 LORING: Ross, you froze for a second.
5 TILGHMAN: The sound is breaking up at the, yes.
6 REEVES: And it's early in the process. Just to be safe, Ross Tilghman,
7 I'm going to suggest, why don't you try to, uh, sign off the meeting and just
8 come back while we wait a minute. I'd rather try to get this right at the
9 beginning than have it interrupt us in the middle.
10 TILGHMAN: I appreciate that. Will do it.
11 REEVES: Okay.
12 TILGHMAN: Just a moment.
13 LORING: Thank you.
14 REEVES: All right. While we're waiting, I'm going to put my vote in for
15 favorite tie with Jason today. We can all independently vote. I'm just,
16 that's the one I'm personally going with. We'll check in whenever we have
17 tech problems, so, uh, all right. Mr. Tilghman, it seems a little better. Uh,
18 we'll try this one more time, okay? Uh, do you swear or affirm to tell the
19 truth in the testimony you give here today?
20 TILGHMAN: I do.
21 REEVES: Okay. So, if you could state and spell your name for the record?
22 TILGHMAN: It's Ross Tilghman [phonetic], and that's T as in Tom, i-l-g-h-m-
23 a-n.
24 REEVES: Great. Thank you. Go ahead, Mr. Loring.

25

1 LORING: Thank you, Mr. Examiner. And, uh, good morning, Mr. Tilghman, how
2 are you doing today?

3 TILGHMAN: Good morning. I'm well, thank you.

4 LORING: Thank you. Thank you for joining us. As you know, I want to ask
5 you questions about the, uh, transportation review, uh, review of
6 transportation impacts for the proposed Grip Road gravel mine. And so we'll
7 go a little bit through your background and then discuss the analysis that
8 you've put together for us today. Uh, so, I'll start right off and ask you
9 where you work?

10 TILGHMAN: Um, I work, uh, for myself, uh, sole proprietor of The Tilghman
11 Group, the Transportation Planning Consultancy.

12 LORING: And how long have you worked there?

13 TILGHMAN: Um, I have been, um, running Tilghman Group, um, for about, um,
14 17 years, since, uh, 200-, um, five.

15 LORING: Okay. And, uh, what do you do with your, uh, with Tilghman Group?

16 TILGHMAN: I do, uh, transportation plans. Um, traffic and parking studies.
17 I do master planning, um, I do specific parking plans, including, uh,
18 financial, uh, projections [inaudible] funds, um, it's a wide variety of, uh,
19 transportation projects, um, both here in the Puget Sound area and, uh,
20 elsewhere around the county on a project-by-project basis.

21 REEVES: And...

22 LORING: Okay.

23 REEVES: Did anyone else have kind of a weird cut in, cut out on that?

24 LORING: Little bit, I did a little.

25

1 REEVES: Okay. So, I mean, one suggestion, obviously, it's always better
2 to be able to see our witnesses, but, uh, you know, one suggestion is we can
3 turn the video feed off, that tends to free up a little bandwidth. Um, we
4 already tried the log off/log on...

5 TILGHMAN: Yeah.

6 REEVES: And beyond that level of expertise, not sure how much more I
7 could offer, but...

8 TILGHMAN: Yeah. Well, let me give it a try. Okay. Video is off, hope the
9 sound is smoother.

10 LORING: It is smooth, at this point.

11 REEVES: And I apologize in advance, uh, you know, I will jump in if
12 needed, if it seems that there is an issue with, with the, uh, quality of, of
13 the recording. I just want to make sure that that is not, uh, ultimately an
14 issue for us, so, with that, go ahead, Mr. Loring.

15 LORING: Okay. And Mr. Tilghman, we were exploring your background and,
16 uh, the work that you do with your consulting business and, and you were
17 describing some of the projects that you worked on or, or the areas in which
18 you work. Uh, do you have any educational requirements for the work that you
19 do?

20 TILGHMAN: Um, my background is an undergraduate degree in History and a,
21 um, Master's, uh, Geography, with emphasis on transportation. And I have been
22 working in the transportation planning business since I was in graduate
23 school, um, in the early '80's.

24 LORING: Okay. That anticipated my next question exactly. Uh, and, uh,
25 you, you said you have experience preparing transportation master plans?

1 TILGHMAN: Um, yes. Master plans and a variety of, uh, transportation
2 traffic and parking studies, yes.

3 LORING: And generally, what do those types of studies entail?

4 TILGHMAN: Well, first and foremost, it's about anticipating travel demands.
5 Um, how people or goods, um, get places, um, what their patterns are by time
6 of day, day of week, um, month of the year, um, where they would be coming
7 from and going to, how they would get there, so the, uh, the mode of travel,
8 whether driving, walking, biking, um, and if it's freight, how much, uh, how
9 many truck trips it would be and the nature of those trips be. So, it's
10 anticipating demands and then it is determining, um, how much access needs to
11 be provided to a, if it's a site specific project to determine how much
12 access capacity is required, where those access points should be, how well
13 they would operate, um, once the project is built and occupied. It's an-,
14 basically anticipating what are the transportation demands and needs of a
15 given land use.

16 LORING: Okay. And as part of making that determination, do you evaluate
17 safety risks associated with the type of travel demand that would be
18 anticipated for those facilities?

19 TILGHMAN: Well, um, yes. One, obviously, one safe operations, so the
20 geometry of intersections, the, um, adequate width and capacities of the
21 roadways is essential to, um, providing a safe travel environment. The
22 interaction of different modes where pedestrians and vehicles, um, must cross
23 paths. Um, same thing for bicycles. Understanding how those can be provided
24 in a safe way is essential to the task.

25

1 LORING: Okay. And have you conducted s traffic impact analysis, that
2 formal type of review in conjunction with, uh, transportation planning that
3 you've done?
4 TILGHMAN: Uh, yes. That, that's, uh, one of the most typical types of
5 products produced.
6 LORING: Okay. And you're familiar with different levels of traffic impact
7 analysis?
8 TILGHMAN: Yes. They vary by jurisdiction, but many jurisdictions have, um,
9 one or more levels of analysis.
10 LORING: Okay. Uh, do you have experience analysis carbon emission volumes
11 associated with, uh, your traffic analysis?
12 TILGHMAN: Yes, I have done that.
13 LORING: Okay. And how many times have you testified about traffic issues
14 before?
15 TILGHMAN: Well, there have been a few dozen hearings over the last, um, 15
16 to 20 years. So, it's, uh, something that I do, um, a few times each year.
17 LORING: Okay. And I'm going to point out that your resume is in the
18 record as Exhibit A55 and my understanding is that those materials have been
19 admitted and, uh, we don't need to belabor that, but I'm pointing that out
20 for the record and for the Hearing Examiner, in the event he wants to review
21 that.
22 REEVES: Thank you.
23 LORING: So, let's talk about traffic, uh, impact analysis concerns, uh,
24 associated with the current project. Uh, you're familiar with the Miles Sand
25 and Gravel Proposal to mine, uh, that site off of Grip Road?

1 TILGHMAN: Uh, yes, yes, I am.

2 LORING: Okay. Uh, what information have you reviewed about the project?

3 TILGHMAN: Well, I reviewed the, um, the SEPA Checklist, um, I reviewed the,
4 uh, the project's Traffic Impact Analysis, um, I believe I reviewed the, um,
5 the Staff, uh, Recommendation, the Decision. Um, I have visited the site. Um,
6 I have talked with, uh, residents and users of the area. Um, and have, uh,
7 reviewed County Road Standards Applicable, um, to County Roads.

8 LORING: Okay. And, uh, you, you mentioned you visited the site, uh, s-
9 have you visited the full, uh, proposed haul route?

10 TILGHMAN: Um, yes. From, uh, the site to the, uh, the processing location
11 down on Old Highway 99. Yes. So, I've driven, uh, Grip Road, Prairie Road,
12 Highway 99, Prairie Road up to I-5, I-5 between the two interchanges, um,
13 Prairie and, um, I believe Bow.

14 LORING: Okay. And, uh, did you, uh, have you visited, uh, all of the
15 routes are identified in the traffic impact analysis and I'm, uh, there's a
16 preferred route and then there are some other roads that have been, uh,
17 anticipated to be used some of the time.

18 TILGHMAN: Um, well, I believe so. Um, additionally, I traveled Grip Road
19 east of the, uh, of the mine site. Um, I've traveled F and S Grade Road, um,
20 as well. So, I believe I've covered all the roads that have been identified
21 as, um, haul, haul roads.

22 LORING: Great. And you mentioned that you are familiar with the Skagit
23 County road standards?

24 TILGHMAN: Yes. I have reviewed them.

25

1 LORING: Okay. And you prepared a report that summarized your analysis of
2 the Application's Traffic Impact Analysis, I believe, is that right?

3 TILGHMAN: That's right.

4 LORING: Okay. And, uh, that's Exhibit A28 in the record. Uh, I'm not
5 going to take us line by line through your, through that Exhibit. Uh, we're
6 going to discuss it in your oral testimony here, but I did want to make sure
7 that was, uh, in front of me people as well as if the other lawyers wanted to
8 pull that up or the Hearing Examiner here. Uh, let's go back to the
9 Application, um, does it, does it specific a single haul route that would be
10 used?

11 TILGHMAN: Um, no. It doesn't identify a, a specific haul, haul route, um,
12 it talks about a, um, a route between the, um, the mine and the, uh, the
13 processing location. It talks about an alternative, um, path should, um,
14 trucks not meet the weight limits of the bridge on Hi-, Old Highway 99. Um,
15 so it, it describes a route that it anticipates being used, um, there I did
16 not see reference to a, um, a dedicated or precise haul route.

17 LORING: Okay.

18 TILGHMAN: Identified roads that would likely be used.

19 LORING: And you said you had reviewed the mitigated determination of non-
20 significance from Skagit County?

21 TILGHMAN: Yes, that's right.

22 LORING: Uh, and, uh, did you, did that MDNS specific a single route, uh,
23 to your understanding?

24 TILGHMAN: No. It simply, uh, I think, uh, pretty much reiterated what was
25 in the, uh, traffic impact analysis and it had con-, condition that, um,

1 again, addressed the weight limits on the, uh, the Highway 99 bridge. But did
2 not, uh, I, I did not see line reads that specified a haul route.

3 LORING: Okay. And I'm going to share with you, uh, just a map that shows
4 the preferred haul route that we've been discussing and that is in the
5 Application, uh, just so that we can run through this a little bit and I can
6 capture your understanding of, of that route. Let me just see here. Uh, are
7 you seeing that on your screen, Exhibit A10 and...

8 TILGHMAN: Yes.

9 LORING: The route here. Okay. Great.

10 REEVES: Sorry, real, real quick, just to clarify, uh, Mr. Loring, you had
11 said this is part of the Application, but...

12 LORING: I'm sorry. I...

13 REEVES: This is, there's sort of reference in that Application in words,
14 but this is an Exhibit that was prepared by one of your witnesses earlier, is
15 that an accurate clarification?

16 LORING: Yes.

17 REEVES: Okay.

18 LORING: It is, I was referring, yes, to the route that has been, uh,
19 discussed in the Application, the preferred route. But this visual
20 representation is from John Day, who...

21 REEVES: There you go.

22 LORING: Prepared this map, yeah.

23 REEVES: Go ahead.

24

25

1 LORING: Okay. Thanks. Uh, have you, uh, Mr., uh, Mr. Tilghman, have you
2 reviewed whether the roads that composed this preferred route, uh, are
3 consisted with, or meet current Skagit County Road Standards?

4 TILGHMAN: Well, Grip Road and Prairie Road do not meet current standards
5 if, um, if they were, if a new road were to be built, it would be built with
6 wider lanes and shoulders than exist on Grip and Prairie Roads.

7 LORING: Okay. Uh, how much wider would those lanes and shoulders be,
8 based on current road standards for those roads?

9 TILGHMAN: Well, Grip and Prairie are generally 20 to 22 feet in width and
10 basically with essentially no shoulders. Um, new roads would be, um, 22 to 24
11 feet of travel lane, plus another, uh, six to eight feet of shoulder on each
12 side. So, the road, um, would be, um, 34 to, um, 40 feet wide, that, that
13 would be the total width of pavement. So, could be almost twice as wide as,
14 um, the existing sections at Grip and Prairie Road.

15 LORING: Okay. And what's your understanding of the, well, I was just
16 going, let me strike that. Um, you're familiar with the vehicles that will be
17 used to haul the gravel based on the Application?

18 TILGHMAN: Um, well, they indicate it as dump trucks with pup trailers.

19 LORING: Okay. And the Application materials that you reviewed that were,
20 uh, I guess, in the, in the County's record, before the issuance of the MDNS,
21 did they specify any dimensions for those vehicles?

22 TILGHMAN: Um, I don't recall a di-, a specific dimension being specified.
23 What I do recall is that the TIA noted, um, they could be right up to the,
24 um, maximum legal, uh, gross vehicle weight, uh, it's approximately 105,000
25 pounds in the State of Washington.

1 LORING: Okay.

2 TILGHMAN: Uh, so, it would be essentially the largest available, um,
3 vehicles and trailers, uh, for that type of use. Smaller vehicle wouldn't,
4 um, if those weight limits are achieved, a smaller vehicle wouldn't do it. It
5 would be the larger vehicle.

6 LORING: Okay. And in your opinion, does the Application's Traffic Impact
7 Analysis evaluate the impact associated with shipping gravel trucks and
8 trailer loaded to that legal, uh, maximum legal weight on these substandard
9 roads?

10 TILGHMAN: Um, the analysis did not, um, provide any, um, insight into the
11 effect, say, on, on pavement or the, uh, structural adequacy of the roads. It
12 was really about, um, capacity, um, the traffic capacity analysis, it wasn't,
13 um, a structural analysis of the pavement.

14 LORING: Okay. And, uh, based on your understanding of these fully loaded
15 trucks on these substandard roads, what are some of the impacts that would be
16 likely to be caused on them?

17 TILGHMAN: Um, well, one of the problems here with the narrowness of the
18 roads is the ability of the truck and trailer to stay within the travel way.
19 Um, there are a number of, um, slopes and tight curves here, to the extent
20 that the truck would track off the edge of the pavement, um, there could
21 obviously be damage to the edge of the pavement. And, in fact, um, given the
22 fact that there's little to no shoulder, uh, truck tracking off, even a
23 little bit off the road, um, risks, I think a greater chance of some sort of,
24 um, collision or accident with a roadside object or truck just going off the
25 road. Um, and the number of axles is what, um, really de-, determines the,

1 um, the load that, um, the impact to the, uh, the road surface. Um, so we
2 haven't seen any information about, um, how, how the trucks would be
3 configured to minimize, uh, damage to the roads. And then obviously, there is
4 the consideration of the, uh, weight limit on Old Highway 99 and then it's
5 unclear how many trucks, um, would satisfy the reduced weight limit and how
6 many would have to, uh, take another route to avoid that, uh, weight limited
7 bridge.

8 LORING: Okay. And do you think that some of these impacts are likely to
9 the road beds based on your understand of the substandard roads and also of
10 the vehicle traffic that would, that the mine would generate on them?

11 TILGHMAN: Well, I, um, yeah, there's a good chance there could be
12 additional damage to the roads. Um, the other part that was only partly
13 evaluated in the TIA, um, was the path of travel on the tight curves.
14 Improvements have been identified for such on Prairie Road, just east of Old
15 Highway 99, um, but there are similarly tight curves on Grip Road, um, there
16 are two sections, one immediately west of the site, which is, um, S and,
17 curves on a steep slope and there was no analysis of the, um, ability of the
18 truck to track within its lane, um, on that section of the road. And to the
19 exit of the site, there are, again, a series of 90 degree curves, very sharp,
20 um, where truck traffic is expected to travel. And there was no analysis of
21 the truck's ability to track through those corners. I would expect that, um,
22 those corners being very similar to the ones, uh, further west on Prairie
23 Road, would also require improvements for the truck to be able to track
24 within the lane.

1 LORING: Okay. One of the things that you may not have heard, uh, during
2 this Hearing, because I, I know you haven't been, uh, able to participate the
3 whole time, is that there's a, we heard from, um, one of the Applicant's
4 representatives here, that there's a new proposal to do something about the
5 Grip Road curves. Have you seen anything in writing about addressing the
6 concerns that you just mentioned on the Grip Road curves along the hill west
7 of the mine site?

8 TILGHMAN: No, I have not, to date, no.

9 LORING: Okay. And if, well, I, I don't need to follow up with that. Um,
10 okay. Sounds good. Well, let's talk a little bit about some of the other
11 roads and, and you've already touched on, on one of these just now when you
12 were talking about, uh, Grip Road east of the mine. Um, you, I'll start
13 there. You were mentioning that the transportation impacts analysis did not
14 evaluate the impacts of hauling east of the mine entrance on Grip Road. And
15 are there any tra-, particular traffic concerns that, in your opinion, should
16 have been evaluated there?

17 TILGHMAN: Well, yes, there are. And as I, um, mentioned, there are, um, 90
18 degree curves that, uh, again, not far east of the, uh, the mine site. Um..

19 LORING: And I, I should, uh, hold on just a quick se-, I'm sorry, I did
20 switch to Exhibit A26, which is a map that, uh, another map that John Day
21 prepared, uh, as you're discussing this. This is the map that he testified is
22 the route, uh, going generally east from the site. That is anticipated,
23 although we don't know exactly what that route would be. Sorry. Uh, sorry
24 about, Mr. Tilghman, uh, please carry on.

25

1 TILGHMAN: Right. So, again, and the map illustrates, um, uh, two 90 degree
2 curves, um, just east of the site and, again, additional 90 degree curves,
3 uh, further on, uh, depending on the route that the trucks would take. Um, so
4 no analysis, the, um, the truck's ability to track, uh, thorough those
5 corners and what it would mean for either the, um, the edge of the road, the
6 physical edge, or for oncoming traffic in the opposing lane. Additionally,
7 there is rail crossing, um, that also involves, um, another tight corner and
8 there's, um, no identification in the TIA of the rail crossing or of the, uh,
9 the impact of, uh, trucks turning, um, that tight corner across the tracks.

10 LORING: Okay. And in your opinion, should the Application have reviewed
11 those, uh, the potential impacts of turning, their trucks turning on those
12 corners?

13 TILGHMAN: Well, if trucks are assigned or assumed to use that, yes, they
14 should because it's obvious from, um, similar conditions wets on Prairie Road
15 that road improvements are required so the trucks, um, still track on
16 pavement. Um, the, the concern here would be about the truck encroaching on
17 lanes for opposing traffic. Um, and with the 90 degree corners, uh, site
18 distance is quite limited, um, drivers could well be surprised by, um, a
19 heavy vehicle coming at them in their own lane around the corner.

20 LORING: And in your opinion, does the Application, in the absence of any
21 information about those potential impacts, does that Application demonstrated
22 that it has reviewed, uh, safety impacts along that stretch of road?

23 TILGHMAN: Well, the Application simply didn't review any impacts along
24 that. It, the TIA simply noted a certain share, I think 5% of truck trips,
25 um, expected to go there. But that, that's the end of the story. There was no

1 additional assessment of what that, um, that 5% of trips would mean to, um,
2 the physical status of the road or to traffic, um, traffic safety.

3 LORING: Okay. And, uh, and, yes, you mentioned that 5%. Does the
4 Application limit the amount of truck traffic that would travel in that
5 direction to 5%?

6 TILGHMAN: Uh, no, I think that was simply an expectation. It's not a
7 limitation as I understand it.

8 LORING: Yeah. I, thank you. And, and I know I've asked these a little bit
9 different, I'm just trying to confirm some of these items. And, and the
10 mitigated determination of non-significance, uh, that also didn't include
11 such a limitation?

12 TILGHMAN: Uh, no. No limitations that I recall.

13 LORING: Okay. I'm going to go back to that Exhibit A10 on the screen
14 here. And, uh, we touched on this briefly, but I, I just want to follow up.
15 You mentioned the F and S Grade Road, um, is it your understanding that the
16 Application contemplates using this road as a potential route for hauling,
17 um, hauling gravel?

18 TILGHMAN: I do not believe it anticipates doing that, no. But the question
19 I had was if, um, if trucks are too heavy to cross the bridge on Old 99, and
20 if they opt not to stop at the weigh station on I-5 between the, um, Bow Hill
21 Road interchange and the next one that would allow them to get to the, um,
22 the gravel pit, the processing site, the only other choice would then be to
23 use F and S Grade Road. So, my concern was that it could be, even though it
24 wasn't anticipated to be used in the study, that it, um, it could be used by
25 default, um, if drivers opt not to use the other routes.

1 LORING: Okay. And you mentioned that it wasn't anticipated to be used by
2 the study, do you mean that the study didn't, uh, that, that Traffic Impact
3 Analysis did not actually study the, uh, impacts of using that route?
4 TILGHMAN: Uh, no, it did not.
5 LORING: Okay. Uh, there was some indication that some amount of shipping
6 might actually travel on that route, though, right, in, in the TIA, it just
7 didn't study the impacts?
8 TILGHMAN: Yeah. I don't, I don't recall that it identified them, no.
9 LORING: Okay. And would there be any traffic concerns for using, sorry,
10 I, I switched to, uh, I apologize for that, I forgot I was sharing the screen
11 and I pulled up Exhibit C18 and started to scroll, my apologies, Mr.
12 Examiner.
13 REEVES: I was going to ask if, uh...
14 LORING: Yes. Sorry about that.
15 REEVES: Sure.
16 LORING: Um, let me go back. This is what I had intended. I, okay. Uh,
17 I'll wrap up with this and then stop sharing screen so that I don't do that
18 sort of thing again. Um, Mr., Mr. Tilghman, we're looking at Exhibit A10
19 again. And are there any potential, uh, impacts of using that F and S Grade
20 Road, um, based on your travel along that and your understanding of the
21 Application's Proposal to haul, uh, potentially haul gravel along it?
22 TILGHMAN: Well, if that road were to be used, uh, one concern would be for
23 the, uh, trucks leaving the site. Um, they'll go down Grip Road, turn left
24 onto Prairie Road and then make a left turn onto F and S Grade Road. And
25 that's the, um, that left turn, uh, would be a concern, um, given having to

1 yield to opposing traffic. Um, the trucks are large and somewhat slow moving
2 and, and it's a relatively tight turn. That's one concern. Similarly, trucks
3 headed the other way, turning from F and S Grade onto Prairie, um, may well
4 need to swing wide onto Prairie into the opposing lane to complete the turn.
5 That's a concern. Um, and then at the other end, at the south end of F and S
6 Grade Road, um, trucks would then need to make a, um, an acute right turn
7 onto Kelleher Road, um, and that would require very, um, very wide path that
8 they would have to travel, and most likely, um, encroaching into opposing
9 lane to complete the turn. Um, it's not a geometry that's well suited to, um,
10 the movement of such large vehicles.

11 LORING: Thank you. Okay. I, I will stop screen sharing so that when I'm
12 opening up other documents they don't automatically pop up on your screen.
13 And, uh, I'd like to talk a little bit about daily truck volume. Does the
14 Application, uh, specify a set daily truck volume for the, uh, for the Grip
15 Road travel mine?

16 TILGHMAN: Well, the, um, the Application derives an average daily volume
17 based on an anticipated annual total number of trips. Um, basically, the
18 process was, there's an expected amount of material to be extracted in a year
19 and then that tonnage was simply divided by the capacity of trucks and you
20 come up with an annual number of truck trips to haul that amount of material.
21 And then divide that annual total by 260 operating days to get an average
22 daily total.

23 LORING: Okay. And so your understanding of the, of the Application
24 materials is that they're looking at that average daily total?

25 TILGHMAN: Yes.

1 LORING: And, uh, and that's 46 trips?

2 TILGHMAN: Yes, it is.

3 LORING: Okay. Sorry, I just put that, we, this has come up a bit, uh, in
4 this Hearing, so far to date, so, uh, I'm just trying to put that out there.
5 And do you, uh, aside from that average daily volume, do you know if there's
6 a daily limit on the amount of truck traffic that would be generated by this
7 site?

8 TILGHMAN: No, I've not read of any prescribed limit, um, either volunteered
9 or, um, administered, um, in the MDNS.

10 LORING: Okay. And do you, have you read, um, an hourly limit?

11 TILGHMAN: Um, there was talk, again, um, it was mention of periods that
12 would be busier, when greater amounts of material would be extracted from the
13 mine and hauled off-site. Um, the so-called extended hours of operation. Um,
14 and that was used in the TIA, um, to come up with, um, a maximum hourly
15 volume of 30 truck trips in what, in an hour.

16 LORING: Okay.

17 TILGHMAN: So that, that number has been referenced.

18 LORING: Okay. Yeah. And does the MDNS reference that number as well?

19 TILGHMAN: Uh, I believe it does.

20 LORING: Okay. Uh, does it reference it as truck trips or trucks in the
21 MDNS, to your knowledge?

22 TILGHMAN: Um, I, I'd have to go back and look exactly, I believe it is
23 truck trips.

24 LORING: Okay. Why don't, uh...

25 TILGHMAN: Yeah. We...

1 LORING: Let me see if I can, um, find the most recent MDNS, I was a
2 little bit, there were a few in this one, and see if we can just briefly, uh,
3 pull that up here.

4 REEVES: This Exhibit 27, you're hoping...

5 LORING: Yes. Thank you. Yes. Thank you. It is Exhibit 27, uh, that we're
6 pulling up. And I am, uh, just taking a look at this here. Okay. Uh, let me
7 share my screen here, Mr. Tilghman. And we are, we should be looking at
8 Exhibit C27. I've scrolled down a little bit, just to show you where I am,
9 I'm on Page, uh, unnumbered page, but, uh, they don't have numbers. But I'm
10 at that Section 13. I'm looking at that Roman et vii on there and, uh, this
11 has, this is talking, I believe, about the daily truck traffic, um, under the
12 extended hours operations. I'm moving the curser under there, as well as the
13 average that it identifies there.

14 REEVES: Sorry, are we, are we likely down in the mitigation conditions
15 that were imposed?

16 LORING: We are. Yeah. This is...

17 REEVES: Okay.

18 LORING: This is there. Yes, I'll, I'll, yes. Uh, and, uh, Mr. Tilghman,
19 do you see how it describes the amount of truck traffic for, uh, extended
20 hours of operations?

21 TILGHMAN: Yes. It simply says, um, not to exceed 30 trucks per hour during
22 extended hours operations.

23 LORING: Okay. Um, is, is it your understanding that that could be a
24 different number than the number of trips per hour?

25

1 TILGHMAN: Um, well, it, it depends on how it's interpreted. It could be,
2 um, 30, 30 trips or 30 vehicles and then it's not clear how any trips those
3 vehicles are making.

4 LORING: Okay. Uh, if it's truck and trucks make a, you know, headed out
5 and back, uh, would you say it could be double that number for trips?

6 TILGHMAN: Well, if it's 30 trucks, making two trips each, yes, that would
7 be, uh, 60 truck trips in the hour. Um, if it means to say it's 30 truck
8 trips per hour, um, presumably that would be, um, 15 one way, 15 the other
9 way. So, it could be otherwise.

10 LORING: Okay. I'll stop sharing that for now. And, uh, return to the
11 questions about that truck traffic there. Um, is it possible to adequately
12 evaluate the traffic impacts generated by the mine based on that 46 average
13 trips per day?

14 TILGHMAN: Well, as I, um, argue in my report, that, um, that average and
15 driving an average and the way that has been done, um, probably masked, um,
16 the true impacts of the mine. Um, it's, I...

17 LORING: And what do you, yeah, what do you mean by that?

18 TILGHMAN: Well, you could, um, you could get to that av-, mathematically,
19 you can get to that average many, many different ways. Um, and the likelihood
20 that the mine would operate at exactly the same level every day of the, of
21 the working year, um, seems highly unlikely. There are very few land uses,
22 um, that are so precisely consistent in their, their operations. Um, so,
23 there would be some maximum number of trips, there would be some minimum
24 number of trips and that could be, um, a very wide range around that average.
25 So, there could be days that have many, many more trips, uh, there could be

1 days that have many fewer trips. All of which could average, over some
2 period, 46 trips per day. But that average does not give the public, or even
3 decision-makers, a particularly clear view about the range of impact that had
4 occurred. Um, if you had a day where you had three times as many trucks, that
5 would be a very different experience than a day when you had, um, you know, a
6 total of five trucks or even no trucks. So the average masks the, um, the
7 actual experience, um, that is likely to occur as we go through, um, through
8 the year.

9 LORING: Okay. And, uh, you mentioned three times and is there any limit
10 on, uh, the number of truck trips per day on, uh, during regular operations,
11 any limit at all?

12 TILGHMAN: Um, there's no limit. I mean, there's this reference to not
13 exceeding 30, 30 trips or 30 trucks in an hour. Um, but the TDIA considered
14 this extended hours of operations to have essentially just a tick under 300
15 daily, daily truck trips, um, but it also asserted it's simply ten hours of
16 operations, so that's, that's basically 30 trips an hour throughout the
17 working day. Um, but I didn't see that, what's so unclear about this extended
18 hours of operation is whether the hours and s-, there are actually more
19 operating hours in the day, um, or does it just mean more intense use during,
20 during those ten hours?

21 LORING: Uh-huh. And, and even with that extended, or I should mentioned
22 even that 30 trucks per hour limitation, uh, that, that only applies in the
23 extended hours scenario, right?

24 TILGHMAN: That's my understanding.
25

1 LORING: Okay. Yeah. Uh, and, okay. Let's talk a little bit about peak
2 hour, uh, traffic. Is it, uh, to your knowledge, does the TIA make any
3 assumptions about the amount of daily truck traffic that would occur during
4 the peak hour?

5 TILGHMAN: Well, basically, it's 10% is assumed to occur in the peak hour.

6 LORING: And what is that assumption based on?

7 TILGHMAN: Um, well, it is often the case for many land uses and traffic in
8 general, that about 10% of daily trips occur in the afternoon peak hour. Um,
9 that's a, that's a pretty good rule of thumb, um, for traffic in general.
10 But, um, the case here is, um, with ten hours of operation asserted each day
11 for, uh, for the haul trucks, um, the daily total is simply divided by ten.
12 So, every hour is essentially the same as peak hour. So, the TDIA does not
13 actually indicate any peaking tendency whatsoever. It just takes whatever the
14 daily total will be and divides it by ten. Uh, so, every hour has the same
15 volume. Um, that seems to me highly unlikely.

16 LORING: Okay. I, I think you're still there, I can't tell if you were
17 done or it cut out a little bit. Um, why do you say that's highly unlikely
18 here?

19 TILGHMAN: Well, again, um, it's hard to imagine that it's going to b-, that
20 the operation would be so regular as to have exactly the same number of truck
21 trips each hour of the day, um, every day it operates. Uh, there are just
22 very few land uses that, that work that day. Um, and it tends to be a, an ebb
23 and flow. Um, there will be busier hours, there will be slower hours. You may
24 get to this average, but my point is averages can be achieved many different
25 ways. The question is what is the distribution of, um, the trips by hour of

1 the day across the day. And then across the days of the week. Um, and it's
2 understanding the, the busier periods, um, to be able to understand what the,
3 uh, the real impacts are.

4 LORING: And did the traffic impact analysis understand those busier
5 periods or represent busier periods?

6 TILGHMAN: Uh, no. As I say, it, it, um, it assumed 10% in the peak hour,
7 um, it didn't identify patterns in any other hour, it basically appears
8 they're taking the daily total and divided by ten hours a day. So, every,
9 every hour is a 10% based on the way the TIA looks at it.

10 LORING: And, uh, similarly, did the TIA discuss seasonal variation for
11 hauling frequency?

12 TILGHMAN: Uh, no, it did not.

13 LORING: Would you have expected to see that?

14 TILGHMAN: I generally would. Um, particularly, uh, these are essentially
15 materials that will be used in construction, um, you know, roads and common
16 creek, um, and there are certainly strong seasonal swings and construction
17 volume. Um, I would not expect, um, to see as much activity in the winter
18 months. I would expect to see more activity in the, uh, summer and fair
19 weather months.

20 LORING: Uh, okay. And, uh, would you have expected the TIA to, to discuss
21 that? No, I already asked you that. Sorry about that. So, thank you for that
22 answer. Um, let's talk a little bit about traffic impact analysis generally.
23 Is it your understanding that there are different types of traffic impact
24 analysis that can be conducted?

25 TILGHMAN: Uh, yes. Depending on the jurisdiction.

1 LORING: Sure. And in Skagit County, do they have, uh, different levels of
2 TIAs?

3 TILGHMAN: Yes. Yeah. They've got a Level 1 and, uh, a Level 2.

4 LORING: Okay. And what level did, uh, TIA did the Applicant conduct here?

5 TILGHMAN: Um, essentially a Level 1.

6 LORING: And, in your opinion, was that the appropriate level of TIA?

7 TILGHMAN: No. Uh, I, as I indicated in my report, I think a Level 2 would
8 have been appropriate, given the particular nature of, um, the mine traffic,
9 so many heavy vehicles.

10 LORING: Okay. And, okay. So, the, the vehicles, uh, do the trip numbers,
11 uh, would those also make a Level 2 TIA more appropriate, in your opinion?

12 TILGHMAN: Well, the, um, the County has a threshold of, um, 50 peak hour
13 vehicle trips, uh, to trigger a Level 2 TIA, um, that's, that's one criteria.
14 Um, and the TIA, again, um, looking at what it assumed the busiest period
15 would be, would be, um, essentially a tick under 30, I think at a 29.4, uh,
16 truck trips, um, in one hour, in the peak hour. Um, that, at face value,
17 would not trigger a Level 2 TIA, but the County's concern, the way those
18 numbers are set up seems to reflect a concern about, um, use of road
19 capacity. And heavy vehicles, such as the dump truck with pup trailer, um,
20 would generally be considered, um, the equivalent of about two, uh, passenger
21 cars for, uh, road capacity purposes. When you do capacity calculations,
22 there's a factor for heavy vehicles. If you have a high proportion of heavy
23 vehicles, they count as, um, you know, approximately two passenger car
24 equivalents. So, from a capacity perspective, um, yeah, the, um, the pr-, the
25 29.4 hourly truck trips, I think would exceed the threshold for Level 2 TIA.

1 LORING: Okay. And, and if the, uh, the extended hours language in the
2 MDNS referring to 30 trucks, if that refers to 60 trips, uh, then are we
3 talking about 120 for capacity purposes, based on that same, uh, logic?

4 TILGHMAN: Um, 60, uh, yes, it would be, yeah, times two.

5 LORING: Okay. So, uh, what other factors for this site and the haul route
6 that would be used, uh, the preferred one or any of the other ones, uh, that
7 could be used that have been identified, uh, would satisfy, uh, other
8 criteria for a Level 2 TIA?

9 TILGHMAN: It really has to do with safety considerations. And I think the
10 nar-, the, the heavy duty vehicles, that are basically the only type of
11 traffic generated by the mine, um, what are narrow roads, roads that do not
12 meet current standards, um, is one concern. And the mix of traffic, um,
13 trucks are not the only vehicles out there in the future. Um, there are
14 other, other traffic out there which includes in the school year, school
15 buses stopping, um, on Grip and Prairie Roads, both the morning and the
16 afternoon. Um, they're there for relatively brief times, but there are a
17 number of different routes serving the different school district that overlap
18 this area. They actually stop in the road, so dump trucks coming up behind
19 them would have to stop. These are two-lane roads, when the bus stops,
20 vehicles have to stop in the op-, in, in the opposite direction as well. Um,
21 so that's many more stops and starts that would otherwise occur because of
22 the presence of school buses. And then the fact that cyclists, um, use these
23 roads. I understand these are popular riding routes, uh, throughout a good
24 part of the year with cyclists in the area. The fact that there is no
25 shoulder, um, there is no, no refuge for a cyclist when a large vehicle comes

1 by. Um, I think these factors, um, point to safety considerations. The volume
2 of trucks involved here, I think, merits a, um, a much closer analysis. A
3 Level 2 TIA actually specifies a safety analysis. It would be able to take a
4 close look at all of those factors. And I think that's the compelling reason
5 why a Level 2 TIA should have been conducted.

6 LORING: You mentioned that safety analysis just now in your testimony and
7 I believe you were already identifying some of the potential impacts that
8 would have evaluated from a safety, any safety analysis through a Level 2,
9 uh, TIA, is that right? Is that what you were discussing there?

10 TILGHMAN: Yes.

11 LORING: Okay. Uh, are there other impacts that, and let me ask you
12 another question, is another word for that a conflict analysis?

13 TILGHMAN: Yes.

14 LORING: Okay. And are there other types of impacts that a conflict or
15 safety analysis would have uncovered for this potential route on the haul
16 road here?

17 TILGHMAN: You know, um, sight distance, intersection conflicts, um, would
18 be part of that, um, as well as the basic safety with the mix of traffic
19 involved.

20 LORING: Uh-huh. In your opinion, did an adequate analysis of traffic
21 impacts occur in here the absence of a Level 2 Traffic Impact Analysis?

22 TILGHMAN: Well, we have no assessment of the conflict between trucks and
23 pedestrians and bicycles.

24 LORING: Uh-huh.

25

1 TILGHMAN: We know people walk along the road, we know cyclists ride along
2 these roads. Um, the TIA correctly identified that there are no, uh,
3 separated dedicated pedestrian or bike facilities on these roads. Um, it
4 didn't, um, offer information about the level of use by, um, people walking
5 and cycling. So, that's a key thing. Um, nor did it, um, identify the, um,
6 the number and frequency of school buses, um, serving the area and the, uh,
7 probability or potential for, um, the haul trucks to be, um, in conflict with
8 school bus operations.

9 LORING: Okay. And have you informed yourself about the, uh, Sedro Woolley
10 School District bus schedule?

11 TILGHMAN: Um, yes, I've seen some information about, um, number, I think
12 approximately five different routes operating on Prairie and Grip Roads, um,
13 different times of the morning and, um, mid-afternoon.

14 LORING: Is it, yeah, is it your understanding that those, uh, routes
15 occur at the same time that the, uh, gravel would be hauled along those
16 roads?

17 TILGHMAN: Um, some of, um, as I recall, I believe the, um, the haul
18 operations expected to start around, um, between 7:00 and 8:00 a.m. Um, there
19 are a couple of routes that are operated a little earlier, but many of the
20 routes operate, um, from approximately 7:30 to nearly 9:00 a.m. And then, um,
21 those in the afternoon would all overlap the, um, the hauling operations
22 because they're generally between about 2:30 and 4:00 p.m.

23 LORING: Okay. So if the, if the haul operations run 7:00 to 5:00 on a
24 regular basis weekdays, uh, that would overlap completely with those school
25 buses?

1 TILGHMAN: Virtually all of them, yes.

2 LORING: Okay. And, well, what, what types of impacts would anticipate for
3 school buses encountering gravel trucks on Grip Road or Prairie Road?

4 TILGHMAN: Well, again, we're dealing with, um, vehicles that do not stop
5 quickly. Um, the school buses, um, stop in the road, um, where, uh, their
6 students need to be, um, picked up or, uh, dropped off. Um, and that
7 frequency will vary from year to year depending on where students live. Um,
8 but it would require the, um, the haul trucks perhaps to make numerous stops
9 on one trip. And that's whether they're following a school bus or going in
10 the opposite direction. And, and sometimes children need to cross the road.
11 So, stopping reliably, every time, is critical. And, again, there is no extra
12 width, there is no leeway for any driver error. Um, the, uh, the, the,
13 there's no shoulder to pull over on, uh, if you go a little wide. Um, so,
14 it's tight, it's tight confines, uh, for a bus and the, um, a dump truck with
15 pup trailer and the frequent stops are a concern.

16 LORING: Okay. And you mentioned frequent stops, do you know where the
17 school bus stops are located along the haul route?

18 TILGHMAN: Um, no, I don't know specific locations. Again, um, those tend,
19 my understanding is, they tend to vary depending on where their students live
20 at that time and that change from year to year. But the point is, uh,
21 frequent, there, there are numerous stops...

22 LORING: Uh-huh.

23 TILGHMAN: Along those roads.

24

25

1 LORING: Okay. And, and we heard testimony yesterday that they can be at
2 the driveway where students live, is, is that what you were mentioning a
3 moment ago, when you said depends on...

4 TILGHMAN: [Inaudible.]

5 LORING: Yeah.

6 TILGHMAN: Yeah. Again, there are no sidewalks or pedestrian facilities, so
7 it's unreasonable for the school district to expect children to walk along
8 the highway, so, yes, they, uh, my understanding is they try to drop kids off
9 and pick them up as close to their homes as possible.

10 LORING: Uh-huh. And in addition to the school buses, were there conflicts
11 analysis or a safety analysis also have evaluated, uh, any risks of
12 encountering other vehicles. You mentioned, uh, pedestrians or bicycles, but
13 other vehicles as well, like, emergency vehicles?

14 TILGHMAN: Um, possibly. Um, all depends upon, um, circumstances frequency
15 of use, um, and the extent to which you might have, um, over, you know,
16 extra-large vehicles present is that a, um, a regular feature.

17 LORING: Uh-huh. And did, uh, as a Level 1 Traffic Impact Analysis, did
18 the TIA that the Applicants prepared here look into that and provide any
19 assessment?

20 TILGHMAN: Um, no. There was no assessment about the mix of traffic or the
21 potential of encountering, um, pedestrians, cyclists or other types of
22 vehicles.

23 LORING: Okay. And have you calculated the probability of cyclists
24 encountering gravel trucks and trailers on Prairie Road?

25 TILGHMAN: I did look at that, yes.

1 LORING: Okay. That's, uh, that's in your report, is that right?

2 TILGHMAN: It is, yes.

3 LORING: Exhibit A28. I'm going to see if I can take us to that in a size
4 that, uh, we can see here. I'm going to share the screen. I have, um, I've
5 gotten to, it's Page 16 of that Exhibit A28. This is a table that, or a chart
6 that you prepared as part of your report, is that right?

7 TILGHMAN: It's a chart I had prepared, yes, I had a, um, professional
8 statistician, um, prepare this.

9 LORING: And, and how did, uh, how did they prepare it? What, what
10 information were they using?

11 TILGHMAN: Well, I, um, I provided the, um, this is for, um, Prairie Road,
12 between Old Highway 99 and its intersection with Grip Road. So, we have the
13 length, we have the speed limits, uh, section. Um, and the, um, the working
14 assumption was that cyclists would be traveling an average of 15 miles per
15 hour, um, randomly distributed. And that, um, when we have a scenario of how
16 many trucks per hour, so this is simply a calculation of the number of times
17 that, um, a truck would encounter, um, a cyclist, uh, depending on the number
18 of cyclists and the number of trucks operating, uh, within any one hour.

19 LORING: Okay. So, can you just help us identify exactly what some of
20 these numbers are so we're really clear? Let, let's say we go to that, uh,
21 top, left corner, I'll put the curser kind of by there where it says .07, is
22 that, does that mean that one, one cyclist, uh, on the road and one truck on
23 the road per h-, are those per hour numbers, one truck on the road per hour
24 or is, or do those numbers mean something else?

25

1 TILGHMAN: Um, no, that is, um, one truck within in the hour and one
2 cyclists within the hour. And, um, since that is actually the number of
3 incidents, um, one cyclist and one truck are extremely unlikely to encounter
4 one another. Um, in this case, uh, you could read it as a probability. That's
5 basically a 7% chance that they would mean. It would only be 0-, 0.07
6 incidents of a truck and a cyclist meeting in one hour. Now, these are
7 vehicles going in the same direction. Um, and, again, because the lanes are
8 so narrow and there are no shoulders, um, it is that encounter that is the
9 most concerning, the vehicles going, but a cyclist and a truck traveling in
10 the same direction.

11 LORING: Okay. And it looks like your, your highest number for trucks per
12 hour is 20, uh, is that right, about 20 there?

13 TILGHMAN: Uh, yes, for this example, yes. The highest number is 20 cyclists
14 in one hour and 20 trucks in one hour.

15 LORING: Okay. Uh, so potentially a group ride might get to that point
16 and, uh, under extended hours, or any day without a limit on them.

17 TILGHMAN: Well, this is, um, this is actually independent cyclists, um, if
18 they were 20 random distributed through the hour. Um, a group ride would,
19 yeah, change this somewhat, um, because the group, the group was obviously,
20 it depends on the size of the group, because they obviously, um, stretch out
21 a bit. They're not riding as, uh, as a pack, necessarily. Um, I think it's
22 reasonable to expect it would be, um, single fine riding at this point, so
23 they could stretch out over some distance if there were any number of riders.

24

25

1 LORING: Uh-huh. So how would you characterize the probability of cyclists
2 encountering gravel trucks under, uh, the conditions that were, are
3 anticipated for the Grip Road gravel mine?

4 TILGHMAN: Well, I'd say it's pretty high. Um, let's take the instance of,
5 um, well, the average the TIA keeps working with is about 4.6, let's call
6 five trucks in one hour, um, and let's say there were five cyclists in one
7 hour. So where the five and the five intersect, um, there will be 2.19
8 incidents of trucks and cyclists, um, overlapping. So, it's basically saying
9 almost half, basically 2, 2 out of those five cyclists, um, will be, will
10 encounter a truck. They'll be passed by a truck in that hour. Um...

11 LORING: Okay. And that's at the average, uh...

12 TILGHMAN: That's getting close to...

13 LORING: Every hour?

14 TILGHMAN: This probability. And if you add more trucks and more cyclists,
15 it, it obviously, the chances increase.

16 LORING: Okay.

17 TILGHMAN: Yeah.

18 LORING: And this chart doesn't take into consideration whether there will
19 be vehicle traffic heading the opposite direction at the same time?

20 TILGHMAN: Correct. This is, uh, single, single direction assessment.

21 LORING: Okay. Uh, and, uh, we discussed the, the roads and, uh, trying to
22 recall, do the roads have shoulders, uh, Grip and Prairie Road, or we'll
23 stick with Prairie here since we're talking about this. Uh, do you have an
24 understanding about whether the roads have shoulders along Prairie Road?

25

1 TILGHMAN: Most of it has no shoulder, in fact, um, there were some sections
2 where basically you're just up against the guardrail. Um, there literally is
3 for cyclists, if the cyclist needed to avoid a vehicle of some sort, there's
4 literally no place for the cyclist to go. It's very narrow.

5 LORING: In your opinion, does that exacerbate the potential impacts from
6 gravel trucks passing bicyclists or encountering...

7 TILGHMAN: Yeah. That is, yeah, that is my gravest concern, um, about this
8 proposal. Um, these are heavy, heavy trucks. Um, they're full width, about
9 8.5 feet. Um, they're, um, yeah. It's, uh, it is a gravel concern. Um, that
10 trucks and cyclists on this narrow road, and as you pointed out, um, should
11 opposing traffic be coming, um, this sets up a number of, um, concerns an
12 conflicts.

13 LORING: Okay. I want to ask a little bit more about the TIA, uh, did it
14 evaluate any slopes or grades along the traffic or the transportation route?

15 TILGHMAN: Um, no, I don't recall.

16 REEVES: Mr. Loring.

17 LORING: Yes.

18 REEVES: My apologies. Uh, it looks like Jason D'Avignon may...

19 LORING: Yeah.

20 REEVES: Have frozen, I just want to make sure we haven't lost one of our...

21 D'AVIGNON: I'm here.

22 REEVES: Oh, okay.

23 D'AVIGNON: Yeah. I, I, I'm, I'm listening along.

24 REEVES: Okay. I'm not sure, yeah, your screen seems to be frozen, or that
25 is a very excellent yoga pose you're in. But I wanted to make sure that, uh,

1 everyone was still here. So, my apologies for interrupting, Mr. Tilghman. I'm
2 just...

3 LORING: Uh, thank, thank you, Mr. Examiner. And I believe that's his
4 active lawyer photo that he puts up on his video conferences.

5 REEVES: Excellent. Oh, my...

6 D'AVIGNON: It allows me to dip out for a moment.

7 LORING: Uh, Mr. Tilghman, uh, we were talking a moment ago about the
8 grade and whether the TIA evaluates any of the grades along the haul route.
9 Uh, I believe you were saying it doesn't?

10 TILGHMAN: Uh, yes, that's, uh, my recollection, it doesn't address grades.

11 LORING: Okay. Is that important?

12 TILGHMAN: Well, Grip Road immediately west of the, um, the mine site, um,
13 slopes down steeply, uh, to the west. Uh, I think it's an average grade of,
14 uh, around 8%, um, which is not trivial, um, particularly for, um, trucks
15 operating at the, um, legal gross vehicle weight limits. And that slope, um,
16 occurs, um, there are a couple of curves there, it's not a straight slope,
17 um, there, there are two, two curves. So, it's, um, and, again, the
18 narrowness of the road, um, makes that a, um, a concern in my eyes, a safety
19 concern, uh, for this type of vehicle.

20 LORING: Okay. And you me-, you testified there that it's a concern in
21 your opinion, uh, that slope there as well. Do, do the roads standards from,
22 do the Skagit County Road Standards require some sort of, uh, understanding
23 of grades and road geometries?

24 TILGHMAN: Um, well, let's see, in terms of the, um, TIA analysis or...

25 LORING: Uh, either one, to your knowledge. Does...

1 TILGHMAN: I mean...

2 LORING: Does a TIA analysis require that?

3 TILGHMAN: It helps to identify, um, both horizontal and vertical curvature.
4 So, yeah, grades would be a part of that, yes.

5 LORING: Okay. Uh, and you mentioned there's a pretty significant grade.
6 Do you have any information about, uh, this, the road bed itself along that
7 grade and, uh, whether it's had any difficulties over the years?

8 TILGHMAN: Well, I recall from my site visit you can see where recent
9 patching, um, has occurred and work at the road side all of the sloping, uh,
10 road side to shore up what, uh, appears to be a, well, some part of the
11 roadway fell away, um, not long ago and it was clear it had to have been, um,
12 filled and patched. Um, and it's my understanding from, um, some past news
13 reports and, um, recollections of neighbors, um, that there had been
14 occasional, um, subsidences and, um, collapses of sections of the road, uh,
15 on that slope.

16 LORING: And did you see anything in any of the Application materials that
17 evaluated that, uh, either that history of the slope failures there or the
18 risk of that occurring based on the traffic generated by the mine?

19 TILGHMAN: No. I recall no mention of that.

20 LORING: Okay. And were there any other potential impacts that were no
21 addressed as a result of, uh, not discussing that grade on the Grip Road
22 hills?

23 TILGHMAN: Well, again, um, the building, the grade presents a couple of
24 problems, one, the trucks can, will they be able to control their speeds
25 adequately with a full load. Um, brakes can fail. You know, no mention of,

1 um, what happens in the scenario like that. Um, and then there could be a
2 noise impact, um, depending on if these trucks are actually using engine
3 compression brakes, uh, to manage their speed down the hill, which is a
4 perfectly reasonable thing to, uh, to do. Um, that noise, there has been no
5 evaluation of noise, um, off-site, off the mine site. And that slope, with
6 the frequent truck trips, I think would be a concerns, concern for, um, noise
7 impacts as well as, um, tracking and safety impacts.

8 REEVES: And, sorry, just real quick question from me. The engine
9 compression brakes, was that, is that one often colloquially, years ago, were
10 called jake brakes or, or something to that effect?

11 TILGHMAN: Yes, that's correct, sir.

12 REEVES: Great. Sorry. Thank you. Go ahead.

13 LORING: Sure. Okay. So, in, in the absence of studying, uh, or in the
14 absence of acknowledging these types of impacts and then studying them, in
15 your expert opinion, did the TIA analyze the full traffic impacts of the
16 mine?

17 TILGHMAN: No, it did not analyze the full traffic impacts.

18 LORING: Okay. And are you familiar with Skagit County's Special Use
19 Permit approval criteria?

20 TILGHMAN: I just lost you.

21 LORING: I'm sorry. Are you familiar with [beeping noise] did we lose him?
22 Mr. Tilghman, are you still there?

23 REEVES: I'm getting like a...

24 LORING: A pinging.

25 REEVES: Submarine, yeah.

1 LORING: And I'm seeing Mr. Lynn is frozen at the moment, as well.
2 REEVES: Okay.
3 LORING: Mr. Examiner, I, I wouldn't mind taking a brief...
4 LYNN: Just so you know, I'm here and not frozen.
5 LORING: Okay.
6 LYNN: I was just being very still.
7 LORING: Not as still as Mr. D'Avignon, whose held that pose now...
8 REEVES: I'm worried, okay. Hold on...
9 LORING: Yeah.
10 REEVES: One sec. yeah. The pinging seems to be gone.
11 LORING: Are you back, Mr. Tilghman?
12 TILGHMAN: Uh, yes, I am. I, I, I lost you there, uh, the, the last, um,
13 statement or question.
14 REEVES: I, the quality seems to have dropped. Were you...
15 LORING: The overall system...
16 REEVES: The whole system...
17 LORING: Seems to be having trouble.
18 REEVES: Seems to be collapsing.
19 LORING: Should we all, uh, log off and log back in?
20 REEVES: I'm, yeah.
21 LORING: Adjust that, but, at least two people are frozen on the screen,
22 there's a lot of feedback.
23 REEVES: I'm going to, yeah, let's take a short break, you know, it's
24 10:12, let's shoot to be back in seven or eight minutes. Uh, and why don't,
25 I'm going to suggest folks try to log off and log back on and hopefully that

1 fixes it. I think we're overwhelming the system, maybe. So, we'll, we'll
2 start back here in, in, uh, in a few minutes.

3 LORING: Sounds good.

4 REEVES: So, shoot for 10:20 everybody.

5 LORING: Thank you.

6 REEVES: Thanks.

7 [The tape ends.]

8 **The undersigned being first duly sworn on oath, deposes and says:**

9 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
10 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party
11 to this action. That on May 5th, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves, that
12 took place on 9/9/22 at 9:00 a.m., regarding the above-captioned matter.

13 I certify and declare under penalty of perjury under the laws of the State of Washington that the
14 aforementioned transcript is true and correct to the best of my abilities.

15 Signed at Mount Vernon, Washington, this 5th, May of 2024.

16 Janet Williamson
17 Janet Williamson

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**IN SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT**

State of Washington,)
Cause No.: PL16-0097, PL16-0098,
Plaintiff,) PL22-0142
vs.)
Name,) PERMIT HEARING 9-13-22 1:00 PM
Defendant)

Transcription Date: May 9th, 2024

Present: Andrew Reeves, Tom Ehrlichman, Jason D'Avignon, Forrest Jones, Bill Lynn, Kyle Loring

REEVES: Ready for Mr. D'Avignon to call his final witness.

EHRlichman: Mr. Examiner, I'm sorry to interrupt.

REEVES: Oh.

EHRlichman: During the break...

REEVES: Go ahead.

EHRlichman: Uh, during the break, you'd asked me to contact my witnesses and see if anyone would be available. Um, after checking in with you all this morning, I had let them know that they wouldn't be needed until Friday the

1 23rd, so I, the one person I hoped I could get said he's already booked his
2 afternoon. So, I apologize, but we would not be able to bring our witnesses
3 on this afternoon.

4 REEVES: Okay. Well, we'll just cross that bridge, uh, thank you for
5 informing us, I think, you know, I was being real hopeful regardless, but,
6 uh, if we do conclude, uh, with this witness early, uh, we can check in with
7 others and sort of see where we're at. And, uh, make sure we use our time
8 efficiently, so...

9 EHRLICHMAN: Thank you.

10 REEVES: You're welcome. So, uh, Mr. D'Avignon, you're ready with, uh,
11 Forrest Jones?

12 D'AVIGNON: I am, Mr. Examiner, he just popped up.

13 REEVES: Okay. I see him Mr. Jones there. So, I'll get you sworn in. Do
14 you swear or affirm to tell the truth in the testimony you give here today?

15 JONES: I do.

16 REEVES: Thank you. And if you could just state and spell your name for
17 the audio?

18 JONES: My name is Forrest Jones, F-o-r-r-e-s-t J-o-n-e-s.

19 REEVES: Okay. Thank you for being here, sir. Go ahead.

20 D'AVIGNON: All right. Afternoon, Mr. Jones.

21 JONES: Hello.

22 D'AVIGNON: Can, can we just start with, uh, where you work and what your
23 title is?

24 JONES: Um, I work for Skagit County, um, Skagit County Public, Public
25 Works. My title is the Transportation Programs Section Manager.

1 D'AVIGNON: All right. And, and what does your work entail?

2 JONES: Uh, my work entails many different things from traffic safety,
3 uh, public concerns with traffic, uh, crash responses, planning and scoping
4 projects, grant writing, right-of-way issues, franchise agreements. I'm also
5 the lead bridge inspector. And I recently took over the management duties of
6 Development Review.

7 D'AVIGNON: All right. And are you familiar with the proposed gravel mine off
8 of Grip Road that we've been...

9 JONES: I am.

10 D'AVIGNON: Okay. And when did you first get involved in this, reviewing this
11 Application?

12 JONES: Um, I think I remember emails going back into 2016, 2017.

13 D'AVIGNON: So, you, you've been with this for the long haul?

14 JONES: Yes. Kind of in and out of it. Um, I believe actually the County
15 Engineer at the time, who is no longer with the County, had taken the lead on
16 this, but, but, yes, I was involved with it and worked, worked hand-in-hand
17 with the County Engineer at the time.

18 D'AVIGNON: Okay. Um, so, you're familiar with the various traffic studies?

19 JONES: Yes.

20 D'AVIGNON: And would you be able to just kind of walk us through kind of the
21 history of the traffic studies in this matter?

22 JONES: Uh, yeah. I believe we got the original traffic, uh, traffic
23 study, the TIA from, uh, I believe it's Dion Consulting [phonetic]. They
24 submitted that, uh, myself and the County Engineer and another traffic guy in
25 our group, we did a, uh, review of that traffic, traffic study. Then, uh, we

1 actually decided to have it go out and get a third-party review. Got that
2 third-party review by Gibson Traffic Consultants [phonetic]. So, they did
3 their review, uh, gave us a summary of their findings and, um, and I believe,
4 again, we started to go out a second time with HDR and have them review it.
5 Based on those two...

6 D'AVIGNON: Do you recall why we, I'm sorry...

7 JONES: Just, I think it was, it was such a hot, hot topic, um, we just
8 wanted to make sure we did our due diligence. And, uh, it just wasn't as
9 doing the review, wanted to put it out there, uh, other professionals, get
10 their take on it and make sure we weren't missing anything. Uh, so we did
11 that. And they gave their summaries and findings of that and then, uh, I
12 believe Di-, Dion Consulting, they did their final TIA assessment and, or
13 report and submitted it.

14 D'AVIGNON: And, and that was the one that was submitted in, I believe,
15 September of 2020?

16 JONES: Yes.

17 D'AVIGNON: I'm taking a couple of steps back. Can you explain what the, the
18 County Road Standards are and, and how they might relate to a Traffic Impact
19 Assessment like the one that was submitted in September 2020?

20 JONES: Um, are you talking about level of service or are you just
21 talking road standards?

22 D'AVIGNON: Um, uh, let's start with level of service, um, I guess, what is a
23 level of service?

24 JONES: So, yeah, left of, level of service, there's, um, two different
25 types of level of service, there's intersection level of service and that's

1 based off of, uh, delay at the intersection. So, A) being you, pull up, pull
2 up to an intersection, um, you have to wait ten seconds or less, uh, that's
3 Level Service A, as, as you wait, as you wait, it gets worse and worse all
4 the way to a F. So, there's a second type of level, type of level service
5 called, um, like road sapient level of service. So if you're just driving
6 down a road side and, again, it's A, you know, A through F and that's based
7 on percent time following. So, say you're following a dump truck on Prairie
8 Road, if that per-, if that percent time following is forty-, 40% or less on
9 that road then that's an A and so on and so forth til you get to an F.

10 D'AVIGNON: Okay. And do you know what, and then does the County Road
11 Standards define what a Traffic Impact Assessment ought to look like in,
12 well, what you would expect to see when one is provided?

13 JONES: Yeah. Basically, um, we have a, in the County Road Standards,
14 that calls that a Level 1 and a level 2. A Level 1 is, uh, based on if the
15 project, uh, generates 25, 25 or more peak hour trips. Um, and Level, Level 2
16 is, Level 2, I have to get it right here, so, Level 2 is if it creates 50 or
17 more peak hour trips. And it goes, goes into some other criteria, so, but I
18 think you're all aware of it so I won't read it off verbatim.

19 D'AVIGNON: Okay. And what is the different between a Level 1 and a Level 2,
20 in terms of the content of that assessment?

21 JONES: Um, a Level 2 gets, basically, a Level 1 is just pretty much
22 looking at the level of service, at the, at the intersection, during the peak
23 hour. So, Level 2 gets, uh, gets more into, uh, you know, looking, looking at
24 properties and said crash history and things like that.

1 D'AVIGNON: And for this project, the Grip Road mine, what level of a traffic
2 impact analysis was required?

3 JONES: Um, it was a Level 1. Uh...

4 D'AVIGNON: And...

5 JONES: That's because it gen-, it generated less than 25 peak hour
6 trips.

7 D'AVIGNON: If, if it generated less than 25 peak hour trips, why would there
8 be a Level 1?

9 JONES: Uh, well, that's a good question, um, part of the Road Standard,
10 they didn't need to have one, but just based on it being a gravel mine and
11 trucks and stuff like that, we thought it best to have a Level, minimum a
12 Level 1 of analysis, so...

13 D'AVIGNON: And was the, the Traffic Impact Analysis that was provided in
14 September 2020, which for the record, one more time, is Exhibit C18, um, was
15 that a Level 1 analysis or did it go above and beyond a Level 1?

16 JONES: Um, it was a Level 1, but it did exceed, exceed the Level 1
17 criteria.

18 D'AVIGNON: Okay. And how is that?

19 JONES: Um, it, it took a look at, uh, not only the Level of Service,
20 but, uh, crash data, uh, other, I think, bicycles, bicycle and, while it
21 didn't capture that much, it, it just, uh, it, it had more things, um...

22 REEVES: Mr. Jones?

23 JONES: Yes.

24 REEVES: I'm sorry to break in. I think when you turn your head away, it's
25 cutting out a little bit. I don't think I've missed too much, but could you

1 maybe just reiterate that answer? Uh, you were essentially, you know, you
2 didn't use the term, but sort of Level 1 plus, as it were. And I think you
3 were trying to explain how this particular TI-, TIA went beyond what would
4 normally be in a Level 1, if I understood the line of questioning right.

5 JONES: Yeah. The, typically, a Level 1, Level 1 just basically looks at
6 the Level of Service, does it meet Level of Service Standards, um, per the
7 Comp Plan, Comprehensive Plan? Um, this went a little bit above that. It
8 looked at intersections, site distance, um, different routes and how those
9 routes broke, broke up. Uh, and some, some of the crash, uh, crash history
10 there, too, so...

11 D'AVIGNON: So, back to, I guess, Level of Service, what did the traffic
12 impact assessment find in terms of the anticipated impact to the Level of
13 Service at the various intersections?

14 JONES: Yeah. Basically, it found there would be, uh, virtually no
15 impact. I think it went, went out a few years and, uh, it might have dropped
16 it, uh, I'm trying to, trying to remember what, what exactly it was. I have
17 it here so I was just trying to look it up here, um...

18 D'AVIGNON: Okay. And if you've looking up, um, at the Traffic Impact
19 Assessment, would you just let us know what page you're, you're looking at so
20 we can follow along?

21 JONES: Yeah. I'm, uh, right now on Page 17...

22 REEVES: And this is C, C18, right, Mr. D'Avignon?

23 D'AVIGNON: Uh, yes.

24 REEVES: Okay. Just want to make sure.

25

1 D'AVIGNON: So, looking at this Table there on Page 17, the, you know, it has
2 two columns, one says Without Project LOS, Level of Service, Delay and then
3 with Project Level Service or Delay, by comparing those two numbers, we can
4 see the impact that this project would have at those intersections?

5 JONES: Yes, that is correct.

6 D'AVIGNON: And the, the Delay is in seconds?

7 JONES: Yeah. You'll see, um, so, um, let's look at Prairie Road at Grip
8 Road, so without the project, uh, that has, uh, two turn moments, you got
9 southbound left and westbound approach. So, uh, first one is 7.7 and 9.6.
10 With the project, the 7.7 stays the same and A goes up slightly.

11 D'AVIGNON: So, what that's telling us is for the southbound left turn,
12 there's not going to be any impact for the Level of Service. But there's
13 going to be a .9 second extra delay on the westbound?

14 JONES: Correct.

15 D'AVIGNON: And these were, this analysis was done based on an average daily
16 trucks, correct?

17 JONES: Um, kind of, um, it, it, this is based on the, the peak hour
18 movement. So, what they did in the traffic analysis, they basically, you
19 have, uh, 46 trips, um, well, and they used 10%, call that, what they call
20 the K factor. So, basically, that's the K factor is a percentage of, of the
21 daily trips. And convert that into a peak hour trips, so 10% of 46 would be
22 four-, uh, 4.6 trips in the peak hour. I believe I read, so...

23 D'AVIGNON: But because it's an average, it's, you know, possible and maybe
24 on certain days likely that the peak hour traffic would be above 4.6, right?

25 JONES: That is correct.

1 D'AVIGNON: Uh, didn't they also do a, I believe they used the term, worst
2 case scenario of 30 trucks per hour, um..

3 JONES: Yes.

4 D'AVIGNON: And is your understanding that that number was reached by
5 assuming that every available truck in Skagit County would be working this
6 mine?

7 JONES: Yes, that's, that's what I, that's what I read in the report, um,
8 the email, I can't remember if it was in a report or an email, but, yes.
9 Basically, that, that is throwing all, all of the Concrete Nor'West or Miles
10 Sand and Gravel trucks available at, at the site, which would be 30 trucks.

11 D'AVIGNON: And even at that level, worst case scenario, did that impact the
12 Level of Service?

13 JONES: No. It would still stay under the, the Standard of C, Level
14 Service of C.

15 D'AVIGNON: Okay. Given that, in this worst case scenario, in the off chance
16 that were to occur, um, why wouldn't that trigger a Level 2 Traffic Impact
17 Analysis?

18 JONES: Um, if you had 50 peak hour trips or more.

19 D'AVIGNON: Shouldn't, uh, I mean, I guess, we, we heard testimony earlier, I
20 don't, I don't know if you heard it, that a large sand and gravel truck with
21 a pup should count for more than one vehicle?

22 JONES: Yes, I did hear that testimony.

23 D'AVIGNON: Is that normally how the County deals with that situation?

24 JONES: Um, it, it's not really called out in the Road Standards, uh,
25 just says peak hour trips. It doesn't, doesn't ring out, uh, truck counts for

1 two or three or whatever, it just says peak hour trips, so, um, by letter of,
2 by letter of the Road Standards, uh, we can't take that into consideration.

3 D'AVIGNON: So, I, maybe another way to think about this is, is the traffic,
4 excuse me, the traffic impact analysis met to evaluate what actually might
5 occur and not some far off hypothetical?

6 JONES: Yeah. I mean, you, to look at, what the trip, trip generation
7 manual and, uh, basically it goes off those numbers, they pull those numbers
8 out of there. Now, in this case, the trip generation manual is more for kind
9 of a, is kind of for an unknown, um, based on studies throughout the country.
10 But in this case, it's, uh, Concrete Sand, um, Miles and Gravel really have
11 their trip, they know their operation so they're able to provide relatively
12 hard numbers of what they're going to be operating out of there.

13 D'AVIGNON: Okay. And, in terms of the chip, trip generation and I'm now
14 looking at Page 13 of C18, the Traffic Impact Analysis, is it your
15 understanding that these averages were derived over an anticipated year's
16 production?

17 JONES: Yes. That is correct. That's my understanding.

18 D'AVIGNON: So, you know, moving forward and thinking about what, what 46
19 average trucks per day means, we would be thinking about that over a 12-month
20 period?

21 JONES: Yes.

22 D'AVIGNON: Okay. Um, as to, I'm going to, move onto maybe the safety
23 considerations, what did the Traffic Impact Analysis find as for, I guess,
24 the safety concerns that were present in, in this proposed project?

25

1 JONES: Well, I believe the main concerns were the site distance that,
2 the intersection of, uh, Grip Road and Prairie Road and, uh, the haul road
3 coming into Grip Road, the curve, site distance on those also.

4 D'AVIGNON: And, uh, are there any conditions, um, that would seek to address
5 that, those concerns?

6 JONES: Yes. The, um, the conditions were to, uh, install, uh, flashing
7 beacons that were triggered by, uh, traffic loops in the, in the pavement.
8 So, if a truck was, came up to the intersection of Grip and Prairie Road, it
9 would trigger that flashing beacon with a warning sign that's saying, hey,
10 there's a truck here, be a little more cautious, he maybe pulling out. And
11 same thing if they were making a left turn, uh, same thing would apply.

12 D'AVIGNON: And does the County...

13 JONES: [Inaudible.]

14 D'AVIGNON: Oh, go ahead.

15 JONES: No, I'm sorry. And the same thing would happen there at the haul
16 road at, uh, Grip Road.

17 D'AVIGNON: Okay. And there at the intersection of Grip and Prairie Road, um,
18 has the County taken any other safety precautions there recently?

19 JONES: Yeah. We actually, uh, cut the bank back on Prairie Road, uh,
20 there's a, there's a big embankment there, um, we could that back as far as
21 we could to our right-of-way lane and also with respect to the, that Samish
22 River there, we didn't want to get too close to the Samish River and get, uh,
23 dirt or materials into that, so, but we cut that back, yeah.

24 D'AVIGNON: Was the bank cut, um, in way related to this proposal?
25

1 JONES: No, that's a project we've actually been talking about for years.
2 Um, oh, uh, yeah, I mean, I've been here for twenty-, going on 24 years and,
3 uh, I remember discussing that with the Operations Manager, uh, oh, probably
4 as far back as 15 years ago. Uh, and we also had another project that we're
5 doing out there, kind of a, uh, highway safety improvement projects where we
6 were installing additional signing and, uh, striping. We actually received a
7 federal grant for this and so, uh, we did the bank cutting back in
8 conjunction with that project also.

9 D'AVIGNON: Okay. And I don't, I don't recall if this has actually been
10 testified to, but it certainly maybe, uh, asserted by an Attorney, but is
11 there a relationship between a nominal increase in traffic and accident
12 rates?

13 JONES: Um, I mean, you, obviously, you put more traffic on the road, you
14 increase the exposure for such accidents. Um, but that doesn't necessarily
15 mean the accident rate will go up. Put 100 more cars on there, if there's no
16 more, no accidents, then that rate is actually going to go down. But, yeah,
17 there is a, an increased exposure. But that doesn't necessarily mean crashes
18 will occur more frequently. It's kind of, it's hypothetically, little bit
19 hypothetical, um, and I like to try to deal in, in facts and not, not
20 hypothetical stuff like that.

21 D'AVIGNON: Okay.

22 JONES: I know you can, you can make argument if the truck, you got
23 trucks on there so now they're going slower so you can say, well, traffic is
24 going to be, accidents may be less because you've got slower traffic, so it
25 just, it can go both ways.

1 D'AVIGNON: So, I mean, I guess one way to maybe think about this is, as a
2 hypothetical, you have a road that now has a bunch of gravel trucks on it
3 that didn't used to be there, um, so now the teenagers can't use it as a drag
4 strip?

5 JONES: Correct.

6 D'AVIGNON: And that can have an effect on safety?

7 JONES: Yep.

8 D'AVIGNON: Um, you know, one of the criticisms that's been made about the, I
9 think the traffic impact analysis and the County's, um, MDNS, is that it does
10 not specifically prescribe a route. Uh, can you speak on why a particular
11 route wasn't prescribed?

12 JONES: Um, I, well, I think in the TIA they, they, they indicate their
13 main haul route which would be obviously Grip Road, Prairie to Old 99, um, to
14 their other pit off Old 99. Um, so, but, uh, I know F and S has been brought
15 up, uh, I know Grip Road to the east has been brought up. Um, I, I guess my
16 opinion why it wasn't put that or why we didn't think it rel-, relevant is,
17 um, Grip Road to the east, they say 5% of the traffic, um, 5% of the traffic
18 of 23 trucks a day of 46, I think it's, uh, a truck and a half, so, um, would
19 be going that route.

20 D'AVIGNON: Just, so, I guess that would be significantly under the limit for
21 requiring a Level 1 Traffic Analysis?

22 JONES: Correct.

23 D'AVIGNON: Um, as to the route, too, I, I believe it's the Bellevue Pit, um,
24 the MDNS says, you know, seems to acknowledge, uh, a primary route, um, down
25 Old Highway 99. But then says, if the truck is too heavy for the bridge on

1 Old Highway 99, to take I-5. Is it your understanding that that condition is
2 a requirement, you're either taking Old Highway 99 or you're taking I-5 and
3 it's not a, a mere suggestion?

4 JONES: Um, that would be my opinion of the MDS, yes. So, um, Old, Old
5 99, we have the, uh, Samish River bridge as being, being the Bridge Inspector
6 for the County, um, we have load restrictions on the Samish River Bridge on
7 Old 99 and, uh, we have actually had discussion, not necessarily for this,
8 uh, for this project, but just in general with, uh, Miles Sand and Gravel
9 about, you know, what trucks are allowed over that bridge and what weight
10 they can be, so...

11 D'AVIGNON: Um, and then also, the MDNS imposed, you know, anticipates
12 imposing, uh, a normal working time hours. And then leaves open the option of
13 extended hours. Is that something that your Department has dealt with before?
14 I just wanted..

15 JONES: Um, not, not necessarily in this type of scenario. But, uh, there
16 were instances, um, the Tulip Festival for instance, so we, on a daily basis,
17 all those roads out there are fine, they all operate decently, um, operate
18 with a Level of Service. But the Tulip Fes-, Tulip Festival comes to town and
19 you have a month of people coming into town to come to look at all the
20 tulips, go to all fields, uh, you know, uh, generally it's going to inundate
21 the system. To help alleviate that, uh, we put increase in Sheriff's Deputies
22 out there, we put multiple signing out there. Um, the Sheriff's, uh, flat the
23 intersections, uh, just general stuff like that, so...

24 D'AVIGNON: So, I guess using that example, um, Beaver Marsh Road which
25 appears to go right in front of RoozenGaarde, that road is, I guess, designed

1 and maintained for normal traffic and not for the one month out of the year
2 when it is heavily traveled?

3 JONES: That is correct.

4 D'AVIGNON: And we would do the same thing here, we're, we're concerned about
5 what regular operations look like and we would address increased traffic at
6 the time, given the circumstances?

7 JONES: Yeah. Yeah. Exactly.

8 D'AVIGNON: So...

9 JONES: If they're, if they're going to increase, increase above that 30,
10 30 trips an hour, then we, I believe the MDNS says they are to contact Public
11 Works and we would get that the data from them, what are they going to run,
12 what are they going haul, we would like a look at their routes and all that
13 and, uh, decide what needs to be done, if anything. Um, uh, maybe put
14 flaggers up the, up the intersections. Uh, or you put up temporary signals,
15 it just depends, depends on what they're doing and where they're hauling
16 material.

17 D'AVIGNON: Just, just for clarification, is it your understanding that the
18 normal operations are 46 truck, trucks per day, or trips per day..

19 JONES: Correct.

20 D'AVIGNON: But the, the maximum under extended hours is 30 trucks per hour?

21 JONES: Yes.

22 D'AVIGNON: So, the, the extended operations would be triggered if the
23 operation went above the forty-, average of 46 per day?

24 JONES: Correct.

25

1 D'AVIGNON: Okay. Perfect. So, I want to talk a little bit about shoulders.
2 What is a shoulder on a road?

3 JONES: Um, a shoulder can be anything from a paved shoulder to a gravel
4 shoulder to an earth shoulder, um, basically from our standpoint, we, we have
5 what we call a road log, um, the road log says, okay, on this section of
6 road, we have, uh, 11 foot lanes and four foot shoulder, on one side, maybe
7 you have four foot on the other side. So, that's your cross, cross section,
8 um, like, I, like I said, it could be gravel paved, whatever. Basically, it's
9 an area to recover for a vehicle. I heard them bring up, uh, bicycles and
10 earlier testimony is a, is a gravel shoulder good for a bicycle, um, I would
11 say, no. From a car's standpoint, it's considered a shoulder.

12 D'AVIGNON: Okay. So, in general, when the County is dealing with shoulders,
13 we're, we're looking at their use in certain circumstances by vehicles and,
14 and not by bicycles or other maybe pedestrians?

15 JONES: Yeah. It could be used, I guess, a gravel shoulder can be used by
16 pedestrians, too, so, um, and depending on the bike, too. If it's a mountain
17 type bike, yeah, they could use the gravel shoulder, but a road bike, no. I
18 wouldn't, uh, I wouldn't consider that a useable shoulder for a road bicycle.

19 D'AVIGNON: Okay. And does Grip Road have shoulders?

20 JONES: Uh, yeah. It has, uh, depending on, depending on where you look,
21 but they vary anywhere from four to two feet. Um...

22 D'AVIGNON: And, um, you know, it's been, it's been asserted that, that Grip
23 Road does not, and I believe Prairie Road as well, do not meet County Road
24 Standards, is that true?

25

1 JONES: Yes, that's true, um, but that's, that's true for probably 90% of
2 the roads within Skagit County. So, um, so...

3 D'AVIGNON: And is it the case that, you know, maybe 90% of the roads in
4 Skagit County don't meet Skagit County Road Standards?

5 JONES: Well, you know, as, as time goes on, most likely, when a lot of
6 the roads were built 100 years ago or, or so, they maybe met that, that Road
7 Standard for that time, but as time goes on, the Road Standard safety stuff
8 increases, so, um, like, for Prairie or Grip Road, depending on the traffic,
9 uh, it would depend on the Road Standard for today if we were to build that
10 road today on Prairie Road or would most likely have 11 foot lane and six
11 foot shoulders.

12 D'AVIGNON: So, I mean, I guess, maybe to put this in another way, an
13 analogy, is it similar to, like, the building code? That a house built in
14 1970 probably does not meet the 2022 building code?

15 JONES: Correct.

16 D'AVIGNON: Okay. And I, I think I'm almost done, Mr. Examiner, let me just
17 indulge me while I double check my notes, make sure I didn't miss anything.

18 REEVES: Sure. I had a couple, I guess, questions while you're looking,
19 but I don't want to throw your flow off.

20 D'AVIGNON: Oh, you're fine. No worries.

21 REEVES: Okay. So, I, I, question going back, uh, you were talking about
22 cutting back the, the and, apologies, I think I missed it, was that on
23 Prairie or Grip we were talking about?

24 JONES: Um, it was at Prairie Road at, at the, on Prairie Road, just,
25 just east of the intersection of Prairie and Grip Road.

1 REEVES: Just east. And then, uh, when, when did that happen, Mr. Jones?

2 JONES: Um, I believe it happened in 2021.

3 REEVES: Okay. And then you had testified that that was a sort of long-
4 term plan? Do you happen to know if that was on, I assume the County has a
5 tip or a, a transportation improvement plan where certain projects are
6 identified and that gets updated. We usually refer to a 6-year tip. Was that
7 something identified on one of those long-term plans?

8 JONES: Yeah. Um, actually, it was not identified on our six-year trip.
9 Uh, we did it as a maintenance project. So, as a maintenance project, that
10 typically would not go on the 6-year tip.

11 REEVES: Got it. But just so I don't confuse your testimony, you were
12 saying that whether it was identified on the trip or not, which obviously we
13 don't need to get into the funding and all that, uh, the, it was something
14 identified unrelated to the mine proposal?

15 JONES: Yeah.

16 REEVES: Is that your, your testimony?

17 JONES: Yes. We had, we had been discussing this for years, you know, uh,
18 how [inaudible] is, you know, probably 15 years ago, um, we've talked about
19 this. Um, but we never really have acted on it, um, just 'cause to, to be
20 honest with you, there has been very few crashes at that intersection. Um,
21 whether because of the lack of site distance or the, uh, the curve is a 20,
22 20-mile an hour curve, um..

23 REEVES: Lack of teenagers.

24 JONES: Yeah. It's kind of, I kind of liken it to an intersection, you
25 come up to an intersection where it's wide opened, you can see if anything is

1 coming so you just drive right through it, you don't stop. But if you have
2 trees or something else, or some obstruction, um, on either side, most people
3 say, well, I can't see so I'm going to slow down.

4 REEVES: Per the natural traffic calming measures?

5 JONES: Yeah. Yeah.

6 REEVES: Great. Uh, I do have another one, but if you wanted to wrap up,
7 Mr. D'Avignon?

8 D'AVIGNON: Uh, thank you, Mr. Examiner. I think I just really have one thing
9 to go over. Um, so, Mr. Jones, uh, do you recall any discussions, um,
10 regarding a, a third-party review of the September 2020 traffic impact
11 assessment?

12 JONES: Yeah. I, I actually, um, you guys were discussing it early, I
13 actually brought up the email. Um, like Brandon said, he did not CC me on his
14 email. But I found the one that I sent Kevin. Um, and basically, we didn't,
15 at that time, we didn't realize that MD-, MDNS had already went out.
16 Basically, the review would have been just to verify that the final TIA
17 incorporated the, the things that were found in the previous third-party
18 reviews.

19 D'AVIGNON: Was it your understanding, though, that the Traffic Impact
20 Assessment that, the most current one, did, in fact, incorporate the, the
21 concerns found in the previous third-party reviews?

22 JONES: Yes. That's my understanding.

23 D'AVIGNON: Um, so, do you think that a third-party review would have been
24 necessary?

25

1 JONES: Oh, probably not. I think my, my thought process on that was, you
2 know, just kind of close the loop on it.

3 D'AVIGNON: Okay. But you had no reason to believe that the, the current
4 traffic assessment, the one that we're talking about, was deficient or
5 inadequate in any way?

6 JONES: No.

7 D'AVIGNON: Okay. Um, I have no more questions at this time, Mr. Examiner,
8 thank you, Mr. Jones.

9 REEVES: Thank you. I'm going to ask my next one and then I'll, I'll, uh,
10 send you to Bill Lynn after that. But, Mr. Jones, earlier you were talking
11 about, um, this sort of calculating trips and, and that portion earlier in
12 your testimony and Mr. D'Avignon asked you a few questions about that. And I
13 think part of the function was determining Level 1 versus Level 2, are you
14 tracking what we're, is that a yes? Okay. So, essentially, so I understand
15 and I think you were saying normally you look at a truck generation manual,
16 is that typically the ITE that we're talking about there, the Institute of
17 Transportation Engineers Manual?

18 JONES: Yeah. Exactly. So...

19 REEVES: Sure. So just trying to walk through in my head, uh, you know, so,
20 often with the TIA, you know, let's say it's a new fast food restaurant, you
21 could look at the ITE and, and it's got data that says a new fast food
22 restaurant is likely to produce this many trips.

23 JONES: Yes.

24 REEVES: Is that accurate?

25

1 JONES: Yeah. That's, uh, for example, we're, uh, up, up at the Port of
2 Skagit, uh, which some, we're building some warehouses up there, so,
3 basically, they don't know what's even going in these warehouse at that time,
4 so, basically, we tell them to look at the worst case scenario, what could,
5 you know, what's going to go in there, what do you think is going in, is it
6 storage, is it, you know, whatever that will, that trip generation manual say
7 okay, we'll actually give you different, different ways it will tell you the
8 PM peak, if this, if this warehouse has this many spare keys, it's going to
9 generate this many peak hour trips or it's going to generate this many a.m.
10 peak hour trips. It's going..

11 REEVES: Sure.

12 JONES: To do this much traffic through work week or this much traffic on
13 the weekend.

14 REEVES: But these, in this case, under these circumstances, uh, a gravel
15 mine, or, uh, you know, maybe a mine in general is not the type of use common
16 enough that the ITE Trip Generation Manual has, sort of prepackaged data, is
17 that an accurate assessment in your..

18 JONES: Um, yeah, I, I don't know that for a fact. I would say it has
19 something in the Trip Manual, but in this case, uh, I understand it at Miles
20 Sand and Gravel, they, they know how big it is, they know what their
21 operation is and they can provide that data themselves without having to go
22 to the Trip Generation Manual.

23 REEVES: Sure. Okay. So, I guess just a final clarifying question from me,
24 Miles Sand and Gravel essentially said, you know, based on our analysis, we
25 think it will be 46 average trips, 46 daily trips, on average, so we've

1 talked about, I think it ends up being 23 in, 24 out, the course of the day
2 and then based on hours of operation, I think it's ten hours, essentially 4.6
3 ends up being the, the p.m. peak, uh, that often is used for calculating, you
4 know, things like LOS?

5 JONES: Yeah.

6 REEVES: Am I correct thus far?

7 JONES: Yes. That's correct.

8 REEVES: Okay. Uh, I, I guess my question is, you know, you reviewed that
9 and, and it appears you, you agreed. I guess my question is, they also did
10 say, though, there is the possibility that at certain times we will have up
11 to 30 trips in an hour, I'm, my, I guess my question is, why does that not
12 trigger that Level 2 requirement? Is it because it's, it's not the average
13 p.m. peak? I, I guess I'm trying to determine what triggers Level 1, Level 2,
14 no TIA, is it always based on what the average p.m., verses some other, I, I
15 just want to...

16 JONES: Yeah. The, the Level 2 would trigger at 50 trips. So even at 30
17 trips, it would still be under Level 1.

18 REEVES: Sorry, and that's, that's peak, peak hour tips?

19 JONES: Peak hour trips.

20 REEVES: Oh, got it. Okay. So, I don't know why I have 25 in my head. So,
21 the, really, Level 2 is triggered at 50, so even...

22 JONES: Yeah.

23 REEVES: Here under the, uh, max operating scenario, 30, it wouldn't
24 trigger Level based, based on that?

25

1 JONES: Yeah. It wouldn't, it wouldn't trigger Level 2 until, um, 50
2 trips, peak hour trips.

3 REEVES: Got it. Thank you for clarifying that for me. And, uh, Mr.
4 D'Avignon, you have any follow-up based on that before I pass the witness?

5 D'AVIGNON: I, I guess just maybe a quick one of clarification, um, is it
6 your understanding, Mr. Jones, that the, the 30 hours per hour, 30 trucks per
7 hour, was something that was anticipated or was simply the, the worst case
8 scenario?

9 JONES: Well, I think it was the worst case scenario, based on the number
10 of, uh, trucks they had available.

11 D'AVIGNON: That's the only question I have, Mr. Examiner, thank you.

12 REEVES: Okay. Thank you. Uh, I'm going to pass you next to Bill Lynn.

13 LYNN: Good afternoon, Mr. Jones. Uh, and I'm just going to have a
14 couple of questions. Um, you were asked if you had other situations in the
15 County where you were, uh, uh, have the authority to approve, uh, extended
16 hours. Are you familiar with the Miles Bellville site and if so, do...

17 JONES: Uh...

18 LYNN: Oh, sorry, go ahead.

19 JONES: Yes, I am familiar with it.

20 LYNN: And do you know whether or not they have a similar provision
21 there that allows for extended hours?

22 JONES: Um, I am not aware of it. Uh...

23 LYNN: Okay.

24 JONES: That doesn't mean they don't, I'm just not aware of it.

25

1 LYNN: Okay. Is it, um, is it fair to say that a request for extended
2 hours could vary considerably, you could have a request, for example, that,
3 uh, where Miles says, we want to continue traffic at our average rate, but we
4 want to go until 10 o'clock tonight because of a Public Works project, in
5 which case, you might not have any additional mitigation, would that be how
6 you would view that?

7 JONES: Uh, yeah. Pos-, possibly. You know, like I said, it would just
8 depend on the number of trucks and what's running. Um, if they're going above
9 and beyond that, we would, at the very minimum, maybe put out a public notice
10 that, that they're going to be operating, uh, longer hours, a few more
11 trucks.

12 LYNN: So, okay. So, is it because of, uh, there's been some criticism
13 of the fact that the mitigation measures aren't spelled out. Is the reason
14 for that that there's so much variability in the level of requests that they
15 might make, the length of time, the number of trucks and, uh, the time of
16 operation?

17 JONES: Yeah. It would, it just depends on what's, you know, what's going
18 on. How, how is it going to impact the network, uh..

19 LYNN: Okay.

20 JONES: Maybe, maybe we, uh, something else going on and maybe we're
21 doing construction work in the area, so it just depends.

22 LYNN: Okay. That's all I have. Thank you.

23 REEVES: Okay. Uh, Mr. Ehrlichman?

24 EHRLICHMAN: Thank you, Mr. Examiner. Mr. Jones, good afternoon. Uh, thank you
25 for appearing today, uh, to answer questions in my case. Uh, we are

1 presenting a case here, uh, that the Hearing Examiner has authority to impose
2 safety conditions to protect, um, our clients, who reside on Grip Road, near
3 the mine, they're within 470 feet of the mine. I, uh, understood that you
4 said, um, a Level 1 Traffic Analysis was not needed, but that you, uh, went
5 ahead and asked them to do that because the nature of the, the operation,
6 that there were heavy trucks, uh, is that the case?

7 JONES: Yeah. I, um, I wouldn't say I, I was the one that made that
8 decision, that was the County Engineer at the time that made that decision.

9 EHRLICHMAN: Oh, okay. But how about in your testimony today, you said that a
10 Level 1 analysis wasn't needed, but you went ahead and, the County went ahead
11 and asked them to do it. Isn't that what I heard?

12 JONES: Yes. That's correct.

13 EHRLICHMAN: And do, do you agree with that determination by the prior
14 engineer?

15 JONES: Yeah. Based, based on the operation and, uh, truck traffic, I
16 thought it was, uh, prudent to look at the Level of Service.

17 EHRLICHMAN: Okay. Do you agree, uh, with the prior determination of the, uh,
18 prior engineer that a Level 1 study was not required?

19 JONES: Uh, based on our Road Standards, that is correct, it was not
20 required.

21 EHRLICHMAN: Okay. And you are, I mean, it's your job to administer the Road
22 Standards, correct?

23 JONES: Correct.

1 EHRlichman: Doesn't the requirement for the Level 1 Traffic Analysis the Road
2 Standards say it's required if you have so many trips or if the project is
3 not exempt from SEPA?

4 JONES: It does.

5 EHRlichman: So, is a Level 1 Analysis required in this case, since it wasn't
6 exempt from SEPA?

7 JONES: Um...

8 D'AVIGNON: Mr. Examiner, I'm going to object. I think this is immaterial
9 since we did, in fact, do the Level 1 analysis.

10 REEVES: And I will sustain the objection. I, they did the analysis. I
11 don't understand, Mr. Ehrlichman, maybe clarify the thought process here?

12 EHRlichman: The thought process is the witness testified a Level 1 analysis
13 isn't required, the question is, doesn't, don't the Road Standards require
14 it?

15 REEVES: But they did a Level 1, I'm, I...

16 EHRlichman: I'm not asking whether the County did a Level 1 or the Applicant...

17 REEVES: Right.

18 EHRlichman: I'm asking whether...

19 REEVES: Right. I'll sustain the objection as it, as this is an immaterial
20 line of questioning. So we can move on.

21 EHRlichman: Well, Your Honor, the, the expertise of the witness and the
22 credibility of the witness is material.

23 EHRlichman: Okay. I sustained the objection, we'll move on. The objection has
24 been noted.

25

1 EHRlichman: Very good. Mr. Jones, uh, you don't believe a Level 1 analysis is
2 required under the Road Standards, um, and then I thought I heard you also
3 say that a Level 2 analysis wasn't required. But wasn't the Applicant trying
4 to meet the Level 2 Standards in that Exhibit 18? Did they go through the
5 different steps of a Level 2 analysis?

6 JONES: Um, yeah. I would say Level 2 wasn't required and I was basing
7 that on peak hour trips, but there's obviously other, other things that come
8 into play with that. So, um...

9 EHRlichman: So Exhibit 18, the TIA, as we call it, did contain the elements
10 of a Level 2 analysis, didn't it?

11 JONES: Yes. Some of them.

12 EHRlichman: Can you tell us which ones weren't included? Let me ask it this
13 way, let's go through what wasn't in the Level 2, what from the Level 2
14 analysis wasn't in, strike that. Let me ask you some specific questions about
15 the analysis they did and whether the following items are included. Did they
16 identify schools in the study area?

17 JONES: No, they did not.

18 EHRlichman: And there are two school districts involved here, aren't there,
19 on Grip Road?

20 JONES: I believe so, yes.

21 EHRlichman: Do you know what they are?

22 JONES: Um, I believe Sedro Woolley and, um, Bayview, Burlington.

23 EHRlichman: Okay. Thank you. Did Exhibit 18, their TIA, identify local bus
24 stops on Grip Road?

25 JONES: Not to my knowledge.

1 EHRlichman: Did they i-, did they describe the bus service on Grip Road?
2 JONES: Not to my knowledge.
3 EHRlichman: Or the usage of Grip Road?
4 JONES: Uh, you broke up a little it, can you repeat that one?
5 EHRlichman: Yeah. No problem. Let's, let's move forward, uh, did they
6 identify, um, hospitals in the vicinity?
7 JONES: No.
8 EHRlichman: Okay. Did they do an analysis of the probability that accidents
9 will increase with the addition of the project traffic?
10 JONES: Not to my knowledge, no.
11 EHRlichman: Okay. So, those three things were not included in their Exhibit
12 18 TIA, correct?
13 JONES: Correct.
14 EHRlichman: Okay. And did you hear the testimony of Gray Norris when he said
15 that his safety analysis did not, was not performed at the rate of 30 trucks
16 per hour?
17 JONES: Uh, yes, vaguely.
18 EHRlichman: Okay. Thank you. Were you, um, uh, were you the supervisor in
19 charge of sending over the proposed MDNS Condition #13 related to traffic?
20 Over to, I'm sorry, over to, uh, Kevin Cricchio when he set, uh, proposed
21 conditions on traffic safety?
22 JONES: Um, that would have been the responsibility of the County
23 Engineer at the time. Um, that being said, I was involved with that decision.
24 EHRlichman: And that was in February of this year, wasn't it?
25 JONES: Yes.

1 EHRlichman: Didn't you say you are the Manager for Development Review and
2 Land Use Permits in Public Works?

3 JONES: At that time, I was not the Manager for Development Review, that,
4 uh, laid underneath the County Engineer. Uh, today I am the manager for them.

5 EHRlichman: At the time the MDNS is issued, who in Public Works signed off on
6 the condition that was sent over to Kevin Cricchio for inclusion in the MDNS?

7 JONES: That would be Paul Randall Grueder [phonetic], he was the County
8 Eng-, Engineer at the time. He is no longer with the County.

9 EHRlichman: And did you advise him on that language?

10 JONES: Um, yeah, I knew we had meeting between, uh, Public Works and
11 Planning and discussed it.

12 EHRlichman: Okay. Did you hear the testimony of Kevin Cricchio and Brandon
13 Black this morning saying that they did not author that condition on traffic
14 safety?

15 JONES: Yes, that's correct. They, they had the meeting, we discussed,
16 they discussed with us what we wanted to say and..

17 EHRlichman: Okay.

18 JONES: Provided that language.

19 EHRlichman: So, is it fair to say that Condition as written in the MDNS was
20 approved by your section in Public Works?

21 JONES: Uh, yes, I would..

22 EHRlichman: Okay. Thank you.

23 JONES: That's fair to say.

24 EHRlichman: Yeah. And I don't want to, you know, belabor this or drill down
25 too much further here, but, um, so far everyone has said, uh, gee, you have

1 to ask the County what the MDNS means. And when we asked the Planning
2 Department what the MDNS Condition 13 means, they said that you would be the
3 one who know what it means. They also said that you have to reference the,
4 the TIA, that section that Mr., um, D'Avignon asked you about, where the
5 Applicant calculated through to get to the 46 trips. Did you review, uh, as
6 you were writing that condition, did you review that section of the TIA where
7 the Applicant described their operation, proposed operations and arrived at
8 the 46 average per day?

9 JONES: Yes.

10 EHRLICHMAN: Okay. And you testified just a moment ago that that was based on
11 a calendar year, correct?

12 JONES: Correct.

13 EHRLICHMAN: Okay. Can you tell us what their calculation was for the total
14 number of trips per year to get to that average? By looking at that TIA
15 Exhibit 18?

16 JONES: I, I don't see a total number of trips per year, but I think if
17 you calculate it, it's 11,000 and something.

18 EHRLICHMAN: Well, let's take a look, I think it's there. It certainly was in
19 the earlier reports that you reviewed. Let's look at Page 13 of Exhibit 18.
20 The same section that Mr. D'Avignon showed you, where they describe the, uh,
21 trip generation as occurring between, for ten hours, 7:00 to 5:00 p.m.,
22 correct?

23 JONES: Correct.

24

25

1 EHRlichman: And they go through a calculus there. And they arrived at an
2 average of 46 daily trips. Now, that's based on their t-, operating 260 days
3 a year, correct?

4 JONES: Correct.

5 EHRlichman: And if you look at their earlier studies that were peer-reviewed,
6 don't they have that total annual number there?

7 JONES: Uh, I don't recall. I'd have to look at the previous studies.

8 EHRlichman: Okay. Would it surprise you, you said that it was 11,000-
9 something. Is that your testimony?

10 JONES: I believe so. I, well, I just calculated it.

11 EHRlichman: And what did you come up with when you calculated that?

12 JONES: Um, I, 11,046 or 460, something like that.

13 EHRlichman: So, when you calculate 46 trips per day, on average, and multiple
14 it by 260, what do you get?

15 JONES: Let me tell you here, 11,960.

16 EHRlichman: Okay. Thank you. Now, as the Public Works official involved in
17 recommending this condition to the Planning Department, did you have in your
18 mind that the 46 trips per day average would work out to approximately 11,960
19 trips per year?

20 JONES: Um, did I do that calculation in my head? No, I did not, sir.

21 EHRlichman: No, that wasn't my question. Apologize. I'll, I'll rephrase the
22 question. When you recommended that condition to the Planning Department, on
23 behalf of Public Works, did you have a sense that the total number of annual
24 trips would be as high as in the 11,000s, somewhere in that range?

25 JONES: Oh, I, I, did I make a point of that, recognizing that?

1 EHRlichman: No.

2 JONES: My question would be, no, I did not.

3 EHRlichman: No, my, my question is whether you had an understanding in your
4 mind, at the time you were reviewing that condition, as to what the extent of
5 the total annual trips would be, whether it was a range of 200 to 300 trips a
6 year, 11,000 a year or 25,000? Did you have a sense as to what the, the
7 gravity of the total number might be per year?

8 JONES: Uh, no.

9 EHRlichman: Okay. Fair enough.

10 JONES: Six, there's 600 cars a day on the road, so what's 600 times, you
11 know, it's...

12 EHRlichman: No, I didn't ask, I didn't ask.

13 JONES: We don't, we don't, we don't really relate traffic, um...

14 EHRlichman: That's okay. I'm not asking that. I'm...

15 LYNN: I would, I would, I would like to ask that witness be allowed to answer
16 the question you asked.

17 EHRlichman: I would like to have him answer the question I asked and not go
18 off on an explanation that doesn't relate to the question.

19 LYNN: You, he was explaining that traffic is a matter of context, not annual
20 numbers.

21 EHRlichman: Mr. Lynn, that's your testimony.

22 REEVES: And let's just take a deep breath, everybody. Uh, Mr. Ehrlichman,
23 uh, I believe the witness was trying to, well, that's a good question, I'll
24 break in. Mr., uh, Jones, do you want to clarify the, an answer you just gave
25

1 to the extent that you had a number, right, 46 daily trips. You're saying you
2 didn't do any mental math on what that might be in a year?

3 REEVES: No.

4 JONES: Okay.

5 REEVES: [Inaudible.]

6 JONES: Basically, we look, we look at the annual average daily traffic,
7 so. We don't typically look at how much traffic is on a road for a year.

8 REEVES: Got it.

9 EHRLICHMAN: So, when it comes time to determine whether the Applicant has
10 complied with the MDNS Condition, can you walk us through how you would
11 calculate whether they've complied with the 46 trips on average?

12 JONES: Um, as a, um, compliance issue, that's something we do not really
13 do. With that being said, we do, uh, part of my group or section, we do
14 counts, um, traffic counts. Prairie Road is not a road we typically would
15 count. Um...

16 EHRLICHMAN: Is that laid down by, uh, those wires you set across the road?

17 JONES: Yeah. Yeah. We typically do, uh, they're call, they're called two
18 counts.

19 EHRLICHMAN: Two counts.

20 JONES: Two counts, they catch, uh, speed, they also catch, uh, vehicle
21 classification, so, uh, it will tell me whether or not a dump truck or any
22 other kind of truck or car or...

23 EHRLICHMAN: Okay. And if the Hearing Examiner, in this case, wanted to add a
24 condition that would allow monitoring of compliance with that average, would

25

1 it, could he specify that two counts be installed there at the driveway
2 entrance?

3 JONES: Um, typically, we would not, uh, put a count at the driveway
4 entrance, um, on the haul road. Um, we could, yeah, we could put one on Grip
5 Road and..

6 EHRLICHMAN: Yeah. You could put one on Grip Road and you'd have to have one
7 on the east side of the entrance and one on the west side, uh, but the
8 Hearing Examiner could impose a condition that required regular counting of
9 what, of the trips, regardless of how you do it or where you do it? There's a
10 way to do that, correct?

11 JONES: I'd, I'd leave that up to the Hearing Examiner, I can't answer
12 for him.

13 EHRLICHMAN: Well, no, I'm not asking you to answer whether the Hearing
14 Examiner should do that, I'm asking whether, from a technical standpoint,
15 your Department has a way of counting and you answered yes, you do, didn't
16 you?

17 JONES: Yes. We do.

18 EHRLICHMAN: Okay. So, you..

19 JONES: That is correct.

20 EHRLICHMAN: So, the Hearing Examiner could, uh, ask that that be done,
21 couldn't he?

22 D'AVIGNON: I'm, I'm going to object, I think the Hearing Examiner's
23 authority is well beyond Mr. Jones', um, expertise.

24 Q; Yeah. That wasn't the question, but thank you.

25

1 REEVES: Yeah. Let's, let's move on. I'm confident I, you know, I know
2 what my authority is, but...

3 EHRLICHMAN: Yes. And now we know there's a technical answer to the monitoring
4 question. And I'd like to ask the App-, or the, um, witness whether there
5 also is a way to increase the safety of school bus activity on Grip Road.
6 Would it lead to fewer encounters with buses on Grip Road when this mine is
7 in operation, if there was a condition that limited the truck traffic during
8 the school bus hours?

9 JONES: I'd ask to ask the question again?

10 EHRLICHMAN: Yeah. Do you agree that a condition that keeps the trucks off of
11 the road when the school buses are on the road would reduce the likelihood of
12 accidents with school buses?

13 JONES: Uh, I guess you would reduce the exposure. But, again, it's
14 hypothetical, um, school, school bus is big and yellow, it has big flashing
15 lights on it, so, uh, I would hope not only a truck, but any vehicle would be
16 able to see flashing lights and a stop sign on a school bus.

17 EHRLICHMAN: Did you just say that it would reduce the likelihood of an
18 encounter?

19 JONES: I said it would reduce the exposure.

20 EHRLICHMAN: And, and what do you mean by that when you say exposure, is that
21 the same thing as the number of encounters?

22 JONES: Uh, uh, I'll agree with that, yeah.

23 EHRLICHMAN: Okay. I'd like to have you look at our Exhibit 47S 1B, I believe
24 it is, or 1C, excuse me, a photograph that Neil Mcleod introduced, Mr.

25

1 Examiner, of the shoulder at the Grip Road curve. And I'd ask Mr. Loring
2 whether he'd might, uh, be able to share that...

3 REEVES: Well...

4 EHRLICHMAN: On the screen since I'm unable to.

5 REEVES: Let's see if Mr. D'Avignon can do it, just because I, A) Mr.
6 Loring's had some internet issues. Mr. D'Avignon, are you able to share that?
7 Uh, you're pulling a Bill Lynn there, you're muted. Are you able to, to
8 share, to share, uh, S47, I'm sorry, 74S, was it 13, Mr. Ehrlichman?
9 D'AVIGNON: I, I believe I have it. I got, um...

10 EHRLICHMAN: It's the shoulder

11 D'AVIGNON: S-, S1C?

12 EHRLICHMAN: Yeah. It's a picture of the shoulder on Grip Road.

13 D'AVIGNON: Um, well, S1C I have road width Grip Road.

14 EHRLICHMAN: No, it would be the, the photographs and there's a photograph...

15 D'AVIGNON: 1B.

16 EHRLICHMAN: Of a shoulder. 1B, thank you. So, this is Exhibit 47S1, Sub B.

17 D'AVIGNON: All right. I'm just getting it maybe a little bit bigger.

18 EHRLICHMAN: Thank you.

19 REEVES: I do note, while he's doing this, I referenced pulling a Bill
20 Lynn, in terms of talking when your microphone is not working. But I will
21 note, he has not done that once as far as we know today, so...

22 D'AVIGNON: I guess it's been transferred to me.

23 REEVES: There we go. Uh, so it's pulled up, but it's not very big.

24 EHRLICHMAN: Thank you. Mr. Jones, is this one of the shoulders on Grip Road
25 that you testified is between two and four feet in width?

1 JONES: I, I don't know where this on Grip Road, but I'll say, yes.

2 EHRLICHMAN: Strike that question, then. You testified that, that the
3 shoulders on Grip Road were between two and four feet. Looking at this
4 Exhibit, are you willing to, will you agree that Grip Road does not uniformly
5 have shoulders that are at least two feet in width?

6 JONES: I, I believe my testimony was they vary. Uh, you could have
7 sections that have one foot, you could have sections that have four foot, you
8 could have sections that have three foot. In this case right here, I would, I
9 would guess that's a foot and a half.

10 EHRLICHMAN: Okay. So, is it your testimony that Grip Road has shoulders, but
11 they aren't between two and four feet, they're between 1.5 feet and four
12 feet? Would you like to modify that answer, earlier answer?

13 JONES: Uh, yes. I agree.

14 EHRLICHMAN: Okay. And can I draw your attention to Exhibit 18 again, uh, the
15 bottom of Page 5, there's a section entitled Grip Road. Do you disagree when
16 the Applicant's TIA says, in the project vicinity and study area, Grip Road
17 is approximately 20 to 22 foot wide with one lane in each direction. There
18 are virtually no shoulders along the roadway. Do you disagree with that
19 statement?

20 JONES: Um, without, I haven't gone out there and putting a tape measure
21 on that. I can't agree or disagree.

22 EHRLICHMAN: But wasn't it your testimony earlier that you had reviewed this
23 TIA and found it to be adequate and no mistakes in it?

24 JONES: That is correct.

25 EHRLICHMAN: So, is, do you take this statement as a correct statement?

1 JONES: I do.

2 EHRLICHMAN: Because they went out and, and looked at, didn't they?

3 JONES: Who went out and looked at it?

4 EHRLICHMAN: The person who wrote this report. This is based on their

5 observations. So, you agree with the statement that there are virtually no

6 shoulders along Grip Road, correct?

7 JONES: That there are no shoulders?

8 EHRLICHMAN: There are virtually no shoulders along the roadway, Grip Road.

9 Let's move on.

10 REEVES: Are, are we done sharing the screen, as well?

11 EHRLICHMAN: Yes. Thank you, Ex-, Mr. Examiner.

12 REEVES: Okay.

13 EHRLICHMAN: Um, Mr. Jones, when asked by Mr. D'Avignon, um, why you had

14 suggested a third-party review for this same Exhibit 18, I believe you

15 explained that it was only to determine that the Applicant had provided the

16 information requested in the two prior peer-reviews, correct?

17 JONES: Correct.

18 EHRLICHMAN: Wouldn't there have been another reason to have had a third-party

19 peer review as well, if you had not gone out and reviewed the statements like

20 this one in the TIA on Grip Road?

21 JONES: I don't understand the question.

22 EHRLICHMAN: Was, would a third-party review examine this, Exhibit 18, beyond

23 the questions asked in the two prior peer-reviews? Wouldn't they have looked

24 at the things in this report that weren't included in the prior reports? Like

25 an assessment of Grip Road shoulders?

1 JONES: Possibly, yes.

2 EHRLICHMAN: Okay. Would, would they also have examined the statements, or the
3 lack of statements, uh, identifying school districts and school buses?

4 JONES: Uh, based on a Level 1 TIA, I don't think they would address
5 that, on a Level 2, yes, they would.

6 EHRLICHMAN: Sir, my question isn't whether they would analysis compliance
7 with Level 1 or 2 TIA requirements. My question is, if you had conducted a
8 peer-review, if the County had conducted a peer-review of this report,
9 wouldn't they have noted that it did not include the things that you and I
10 agreed were not included, like an identification of school buses, a location
11 of bus stops...

12 REEVES: Well...

13 EHRLICHMAN: And...

14 REEVES: Sorry. I need to, I need to hop in to make sure I haven't totally
15 misunderstood. Because Mr. Jones, I understood from your testimony much
16 earlier, I think, uh, talking to Mr. D'Avignon, you had said this was a Level
17 1 TIA and they sort of did a, a Level 1 plus. And, and then you clarified and
18 said in addition to the normal Level 1 things, they did, they looked at these
19 three or four additional things. But I don't recall you ever saying a Level 2
20 TIA occurred here, w-, did I misunderstand, Mr. Jones?

21 JONES: No. Uh, you are correct on what I said. Level 2 was not
22 performed.

23 REEVES: Okay. So, I guess I'm confused because I think you were trying
24 to, I think you testified to, you told Mr. Ehrlichman that, yes, none of
25 these other Level 2 things were analyzed and then you just said, you know,

1 that, that you wouldn't look at things like that without a Level 2 being
2 required. Is that not what you just testified to?

3 JONES: Yes.

4 REEVES: Okay. Go ahead, Mr. Ehrlichman. I think I'm now on track.

5 EHRLICHMAN: Um, Mr. Examiner, I, I have to object to the interjection into my
6 case here with a topic that I did not even ask the witness about. I didn't
7 ask the witness whether he, he thought that the peer-review would look at the
8 Level 2 requirements, I never mentioned Level 2. My question to this witness
9 is whether or not a peer-review would have called out the fact that the final
10 TIA for the project never mentioned conflicts with school buses.

11 REEVES: Okay. And I note your objection. Although, I need to stress that
12 as the Hearing Examiner, I have the prerogative of asking questions and I
13 ultimately am the one that needs to make a decision. And so, I closely guard,
14 uh, you know, the, my ability to ask clarifying questions. But go ahead, Mr.
15 Ehrlichman.

16 EHRLICHMAN: Mr. Jones, why did the County never require the Applicant to
17 study the impact of this project on school bus activity on Grip Road?

18 JONES: Because it was a Level 1 TIA assessment, not a Level 2.

19 EHRLICHMAN: Well, earlier you testified that a Level 1 wasn't even required.
20 And yet, you asked them to do things, uh, because you were concerned about
21 heavy trucks, the nature of the vehicles being added to the road, correct?

22 JONES: Correct.

23 EHRLICHMAN: Okay. So, here a Level 2 isn't required, but the concern about
24 the heavy truck traffic at 30 trips per hour, wouldn't that lead the County
25

1 Public Works Department to have some concerns about potential conflicts with
2 school buses?

3 JONES: Um, I had no concern about that.

4 EHRLICHMAN: Okay. Thank you. At 30 trips per hour, how many trucks would be
5 on Grip Road, uh, how, how frequent, in terms of minutes?

6 JONES: Thirty trips an hour? How many, how many trips would be, how many
7 b-, how many trucks would be on the road?

8 EHRLICHMAN: Wouldn't that be one truck every two minutes, on average?

9 JONES: Could, yes.

10 EHRLICHMAN: Okay. I mean, that's just the math of it, isn't it?

11 JONES: Yeah.

12 EHRLICHMAN: Okay. And isn't it possible that there would be two trucks on
13 Grip Road at the same time at that rate?

14 JONES: It's possible, yeah.

15 EHRLICHMAN: Okay. Now, given the curve shown in that photo I just showed you,
16 and the lack of shoulders, let's imagine a school bus coming down and
17 delivering kids after school and two trucks are coming in the opposite
18 direction. Is your testimony that that is of no concern to the Planning
19 Depart-, or the Public Works Department?

20 JONES: Uh, can you restate the scenario?

21 EHRLICHMAN: Yeah. At the rate of, uh, one truck every two minutes on Grip
22 Road, isn't it possible that you're going to have two trucks on the road at
23 the same time? I believe your answer was yes. Now, if you had two trucks
24 coming to that place in the photograph I showed you, and a school bus
25

1 operating in the same area. Are you, is it your testimony that Public Works
2 has no concerns about the safety of school children on Grip Road?

3 JONES: I, we always have, uh, concerns of safety for any type of
4 vehicle, pedestrians, school children alike. Uh...

5 EHRLICHMAN: And yet none of the traffic studies for this project discuss
6 school buses, do they?

7 JONES: No, they do not.

8 EHRLICHMAN: And you didn't require it, did you?

9 JONES: No, we did not.

10 EHRLICHMAN: And you proposed a condition for the Special Use Permit, in the
11 recommendation, that didn't mention school buses, correct?

12 JONES: Correct.

13 EHRLICHMAN: And you also recommended that bus, that truck travel be allowed
14 between the hours of 7:00 a.m. and 5:00 p.m., correct?

15 JONES: Correct.

16 EHRLICHMAN: And that's the time that school buses are on Grip Road, aren't
17 they?

18 JONES: Um, I'm not aware of the time they gravel on Grip Road, but
19 probably in that timeframe, yes.

20 EHRLICHMAN: Probably? Is it unlikely?

21 JONES: Is it unlikely?

22 REEVES: I think it's been...

23 JONES: I don't know the school bus schedule, so I can't, I can't tell
24 you what time...

25

1 EHRlichman: Okay. Okay. Very good. Would it reduce the chance of an accident
2 with a school bus if the, if there was a condition that precluded truck
3 traffic during the window when school bus conceivably travel on Grip Road?
4 JONES: Would it reduce the what?
5 EHRlichman: Would it reduce the possibility of an encounter between a, a
6 gravel truck and a school bus if there was a condition that kept those trucks
7 off the road at Grip Road during school bus travel times?
8 JONES: Um, it wouldn't reduce the, reduce it, it would take it away.
9 EHRlichman: Very good. Thank you. Nothing further, Mr. Examiner.
10 REEVES: Okay. Uh, let's see, it's 2:40. I think Mr. Loring's probably
11 going to have several questions. I'm thinking maybe we take our, uh, short
12 afternoon break, come back and, and hear from Mr. Loring. That makes sense to
13 everybody?
14 LORING: Does to me, Mr. Examiner.
15 REEVES: Yes, it does. If that's...
16 LORING: Yes, it does.
17 REEVES: I don't know why I asked. I'm just trying to pretend like I'm
18 nice. But let's, uh, we'll come back...
19 EHRlichman: Mr. Examiner, I apologize. I thought it might be nice to end on a
20 positive note. We have a stipulation...
21 REEVES: Oh, good.
22 EHRlichman: Signed by the parties.
23 REEVES: Great. And...
24 EHRlichman: And I...
25

1 REEVES: That can be sent to around to that group email, uh, I'll have,
2 I'll give that a look. But let's come back in 11 minutes, let's say 2:50.
3 And, uh, Mr. Loring, uh, will then have an opportunity to cross-examine Mr.
4 Jones.

5 EHRLICHMAN: Thank you, Mr. Examiner.

6 LORING: Sounds good.

7 REEVES: Okay.

8 LORING: Thank you, Mr. Examiner.

9 REEVES: Thank you.

10 [The tape ends.]

11 **The undersigned being first duly sworn on oath, deposes and says:**

12 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
13 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party
14 to this action. That on May 9th, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves, that
15 took place on 9/13/22 at 1:00 p.m., regarding the above-captioned matter.

16 I certify and declare under penalty of perjury under the laws of the State of Washington that the
17 aforementioned transcript is true and correct to the best of my abilities.

18 Signed at Mount Vernon, Washington, this 9th, May of 2024.

19 Janet Williamson
20 Janet Williamson

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**IN SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT**

State of Washington,)	
	)	Cause No.: PL16-0097, PL16-0098,
Plaintiff,	)	PL22-0142
)	
vs.	)	PERMIT HEARING 9-13-22 3:00 PM
)	
Name,)	
)	
Defendant)	

Transcription Date: May 10th, 2024

Present: Andrew Reeves, Mona Kellogg, Kyle Loring, Forrest Jones, Tom Ehrlichman, Jason D'Avignon, Bill Lynn, Kevin Cricchio

REEVES: Okay. Mona Kellogg, are we ready to go?

KELLOGG: Yes.

REEVES: Great. Thank you very much. Okay. And I see Forrest Jones. So, Mr. Loring, are you ready to proceed with cross-examination?

LORING: I am, Mr. Reeves, uh, Mr. Examiner. Thank you.

REEVES: And, sorry, actually, I'm, I was going to ask a question or two before sending it back to you, before I forgot. So, I'm going to do that.

LORING: All yours.

1 REEVES: Thank you. Mr. Jones, um, for my own sake, Mr. D'Avignon earlier
2 asked you sort of what is a shoulder and I just wanted clarification in terms
3 of shoulder defined in the law, we sort of use the word term of art or is it
4 a defined term, either in the, the Skagit County Code or in the Road Manual
5 or you, when you say what is a shoulder, is your answer more that, just that
6 is what it is, sort of in common understanding? Can you just clarify that for
7 me?

8 JONES: Um, yeah. I don't know if it's defined in State law or anything
9 like that. I know, uh, when dealing with the County Road Administration
10 Board, um, so, we get, uh, gas tax money, uh, based off of a width of a cross
11 section being, being the pavement width and shoulder width and what type,
12 type of shoulder it is and what type of pavement it is. So, basically as
13 defined by the County Road Administration Board when we enter that data into
14 our road log.

15 REEVES: And...

16 JONES: We have the option of saying, okay, it's a gravel shoulder, uh,
17 earthen shoulder or a paved shoulder, so...

18 REEVES: Got it. And, and, I guess, just to further clarify, often you all
19 have, you know, easements or, or just general right-of-way that is owned by
20 the jurisdiction, you know, to be clear, when you're talking about a
21 shoulder, it's not as simple as we know the road itself is 18 feet, the
22 right-of-way is, is, you know, let's say 40, you're not saying 40 minus 18
23 means that the shoulder is what's left on each side, that's not what you
24 mean, am I...

25 JONES: No, no.

1 REEVES: I'm not trying to put words in your mouth, I just..

2 JONES: Yeah.

3 REEVES: Can you clarify?

4 JONES: Yeah. No, we, uh, right, right-of-way, uh, I would call it a

5 cross road cross section. So, the road cross section is a travel lane and the

6 shoulder. Anything beyond that is, like you said, just right-of-way. We do

7 not...

8 REEVES: Sure.

9 JONES: Count that as a shoulder.

10 REEVES: Okay. So, when you're using the term shoulder, you mean it's

11 something I, even as a non-expert, you know, I could go out there and go,

12 okay, there's the white stripe where the road ends and whatever that section

13 is over here, that's gravel or, or paved, you know, it's, it's a clearly..

14 JONES: Yeah.

15 REEVES: Maybe not clearly, but somewhat identified sort of transition

16 between the road and, uh, whatever, you know, the, the forest, somewhere

17 else, or whatever the feature is somewhere else, is that kind of an accurate

18 understanding?

19 JONES: Yes. That is correct.

20 REEVES: Okay. And then, just one other question because I think it

21 happened, you were talking about it right when we were having some audio

22 issues, in terms of the, uh, what the TIA addressed, beyond what often would

23 be addressed with a Level 1, I swear I heard the term bicycle, but the things

24 cut off. And I'm sure Mr. Loring will have questions, but, do, in your

25 understanding, did the TIA address bicycles at all?

1 JONES: It didn't per se, address bicycle traffic other, other than to
2 say that there, there are know, there were no known bicycle routes,
3 pedestrian uses, I believe, was the term.

4 REEVES: Sorry, okay. To, just to be clear on that, you're saying the TIA<
5 the analysis related to bicycles was limited to the extent of determining
6 there's no specific or specified bicycle group. Is that an accurate
7 assessment?

8 JONES: Yes.

9 REEVES: Okay. Great. Thank you for clarifying. And with that, I'm now
10 going to hand you to Mr. Loring for cross-exam.

11 LORING: Thank you, Mr. Examiner. And, uh, good afternoon, Mr. Jones.

12 JONES: Good afternoon.

13 LORING: I've got a few questions. I'm going to start by following up on
14 the topics you just discussed with the, uh, Examiner, Hearing Examiner here
15 and then I'll go back through my, uh, notes and pit it up from the top.

16 JONES: Okay.

17 LORING: So, I want to, yeah, sorry. Yeah. Thanks. Uh, I want to start by
18 discussing that shoulder again and I don't know that we need to delve into
19 this too much, but the County does have a definition for a shoulder, right?

20 JONES: Yeah. Pretty much what I just said, so...

21 LORING: Okay. Okay. Actually, let's pull up the Road Standards. And this
22 is one, I'm not sure if we've actually had this, I, I know we discussed it
23 being an Exhibit, I don't know if we assigned a number to it, at this point.

24 D'AVIGNON: If I, if I may jump in, I thought we just took Official Note of
25 them...

1 LORING: Okay.

2 D'AVIGNON: As County Standards.

3 LYNN: And the Table of Contents appears in my Exhibit 47.

4 LORING: Right. Okay. Mr. Jones, do you have, do you have access to those
5 Roads Standards that you can pull up in front of you there?

6 JONES: I do.

7 LORING: Okay. I, I thought you might. Can you, uh, scroll to Page 8 in
8 the County Road Standards? And I'm looking at that May 26th, 2000 version. Is
9 that the version that you use?

10 JONES: Yes.

11 LORING: Okay. And just let me know when you're on Page 8.

12 REEVES: And just...

13 JONES: All right. I am on.

14 LORING: Okay. In the document, not the PDF.

15 REEVES: And maybe to make life easier in the future, can we maybe just
16 make this an Exhibit, I know it's something I took Official Notice of, but
17 can we maybe make this A62?

18 LORING: Uh, A61 would be great, unless we, do you have an A61 already,
19 you're right, A62.

20 REEVES: Okay.

21 LORING: We did just add, yeah.

22 REEVES: Any objection? If so, please raise your hand, any of the
23 Attorneys, but I think we're good. Okay. Sorry, go ahead. So, A62 is going to
24 be...

25 LORING: Great.

1 REEVES: Road Standards.

2 LORING: Thank you for that. And Mr. Jones, do you see where it, uh,
3 actually has a definition of shoulder there?

4 JONES: Yes, I do.

5 LORING: And what, can you explain to us what it, what that definition is?

6 JONES: Uh, that portion of a roadway continuous with the travel way for
7 accommodating stopped vehicle for emergency use and for lateral support of
8 base and surface courses.

9 LORING: Okay. And in discussing a shoulder, actually, we'll get back to
10 that in just a second. I know, I, I think this is a quick follow-up on the
11 bicycle question, I understood your answer to the Hearing Examiner just now
12 to say that the TIA did not address bicycle use, per se, along the haul
13 route, uh, other than to state that there were no known bike routes?

14 JONES: That is my recollection, yes.

15 LORING: Okay. And you're not saying the bicycles don't use Grip Road or
16 Prairie Road, right?

17 JONES: No, not at all.

18 LORING: Okay. And you haven't independently confirmed whether the, there
19 are bicycle routes on any portion of the, uh, potential haul route?

20 JONES: I have not.

21 LORING: Okay. All right. I'm heading back to the beginning of your
22 testimony, take us back here a little ways and we will, uh, take it from the
23 top with your conversation with Mr. D'Avignon. Uh, I just want to clar-,
24 there was a lot of conversation about the amount of trips per hour, uh, that
25 could be associated with this mine. Um, you're aware that the MDNS allows up

1 to, at least 30 trips per h-, or, no, up to 30 trips per hour in that
2 extended use scenario, right?

3 JONES: Correct.

4 LORING: Okay. And so when you were talking about delays in the Level of
5 Service in your conversation with Mr. D'Avignon, you weren't talking about
6 Level of Service delays based on 30 trips per hour, were you?

7 JONES: Uh, no.

8 LORING: All right. That was based on that 46 trips per day average?

9 JONES: Correct.

10 LORING: Okay. There was also discussion about that 30 trips per hour
11 being called a worst case scenario. Does the tr-, the Traffic Impact Analysis
12 doesn't identify it as a worst case scenario, does it?

13 JONES: Uh, I don't recollect what it says, but...

14 LORING: Okay.

15 JONES: To be honest with you. Yeah.

16 LORING: That's, that's fine. It, it references it more as an extended
17 hours scenario number as it's discussing the truck traffic that could occur
18 here?

19 JONES: Okay.

20 LORING: Okay. You talked a little bit about the Level 2 Traffic Impact
21 Analysis and that it, in your opinion, it wasn't triggered because, uh, there
22 were not 50 peak hour trips?

23 JONES: Correct.

24

25

1 LORING: Um, okay. And is it, it's, you're not suggesting that a truck and
2 pup doesn't function like two vehicles as it passed through an intersection,
3 though, are you?

4 JONES: No.

5 LORING: Okay. And, in fact, that's, it, did you hear Mr. Tilghman's
6 discussion about the truck and pup functioning like two vehicles and that's
7 why he said that there were other Standards that are used as guidance that do
8 treat them as two vehicles.

9 JONES: I did hear that testimony.

10 LORING: And is that your, uh, consistent with your understanding of one
11 way to evaluate the impacts of a truck and pup, uh, going through an
12 intersection?

13 JONES: Yes. It could be evaluated that way.

14 LORING: Okay. Uh, there was also a conversation about, uh, whether the
15 County was required to evaluate, uh, you know, far off hypotheticals, for
16 example, um, the, the use of a pup and truck, I'm assuming, wouldn't be
17 considered a far off hypothetical in this instance, right?

18 JONES: Yes.

19 LORING: Okay. And the possibility of a truck and pup encountering
20 bicycles wouldn't be considered a far off hypothetical, along Prairie and
21 Grip Roads?

22 JONES: No, it would not.

23 LORING: Okay. Um, or school buses, as we heard from Mr. Ehrlichman,
24 that's not a far off hypothetical that truck and pup could encounter those
25 vehicles on the route?

1 JONES: Correct.

2 LORING: Okay. You testified a little bit about the, uh, the bank cutting
3 that occurred at that intersection with Prairie and Grip Roads and I believe
4 that you mentioned that the County had cut up to the right-of-way, um...

5 JONES: Yeah. They...

6 LORING: Is that ac-, yeah, go ahead.

7 JONES: Yeah. I wouldn't say right at the right-of-way line, um, I mean,
8 anywhere from two to three feet up to the right-of-way line.

9 LORING: And is that, that's based on a survey of the right-of-way there?

10 JONES: Yes, it was.

11 LORING: Okay.

12 REEVES: Sorry...

13 LORING: And did...

14 REEVES: Sorry, Mr. Loring. Just so I don't get lost again on that issue,
15 when you say the right-of-way line, am I correct in thinking you're saying
16 the right-of-way to...

17 LORING: Towards the bank.

18 REEVES: The edge, the edge of the right-of-way off the road, is that an
19 accurate assessment?

20 JONES: Yes.

21 LORING: Okay. Thank you. Sorry. Just want to make sure I didn't miss it.

22 JONES: No problem.

23 LORING: Okay. Uh, the County purchases right-of-way on occasion, doesn't
24 it?

25 JONES: Uh, yes, when needed for a road project. We often...

1 LORING: Okay.

2 JONES: Purchase right-of-way.

3 LORING: Okay. There was, uh, I believe a statement about, this may have
4 actually been from your lawyer, but I just want to clarify, a statement about
5 teenagers using Prairie and Grip Roads as, uh, drag strips. There's no
6 evidence that that's occurring on those roads, right?

7 JONES: Not to my knowledge.

8 LORING: Okay. I'm not suggesting you're spending your Friday nights at,
9 uh, Prairie and Grip Roads.

10 JONES: Okay.

11 LORING: Just want, want to make sure we're on the same page. Uh, you
12 just, you also talked about why haul route was not prescribed here. Uh, and
13 you talked about different eventualities and different ways that the gravel
14 could be hauled from the site. Uh, you mentioned that you looked at the
15 numbers and they were numbers like 5% heading east on, uh, Grip Road and 5%
16 potentially going down F and S Grade Road. There's no limitation on the
17 travel, uh, on the gravel hauling to a 5% limitation on those routes, is
18 there?

19 JONES: No, there's not.

20 LORING: Okay. And, at this point, there's no limitation, uh, in the MDNS,
21 I should say, on where that gravel gets hauled from the site, is there?

22 JONES: Uh, not to my knowledge.

23 LORING: Okay. And you are familiar with all of the travel conditions in
24 the MDNS?

25 JONES: Yes.

1 LORING: Okay. Also, there was a conversation about whether the trucks
2 would need to travel to the Bellville Pit via I-5 if they were overweight,
3 uh, and so couldn't travel on the bridge on Old Highway 99.

4 JONES: Yes.

5 LORING: Uh, and I believe you...

6 JONES: Yes.

7 LORING: Oh, okay. Thank you. And, and I believe you said that was a
8 condition, uh, and that that was a requirement of the MDNS?

9 JONES: Yes.

10 LORING: Okay. Sorry, sometimes it's not clear if I'm asking a question or
11 of I'm at the end of a question. I, I appreciate you bearing with me on that,
12 I, I acknowledge that. Um, but, uh, the trucks could travel via F and S Grade
13 Road and still avoid Old Highway 99 and the bridge there, couldn't they?

14 JONES: Uh, yes, there is the potential for that.

15 LORING: Okay. And, again, there's on limitation that would prevent a
16 certain number of trucks, up to 30 per hour, traveling that route to get to
17 the Bellville pit?

18 JONES: Correct.

19 LORING: Okay. Uh, you talked quite a bit about potential extended hours
20 operations. And you compared to, uh, say the Tulip Festival and using that as
21 sort of an event type, uh, activity that is reviewed for, for, uh, traffic
22 issues. Um, you, you're not suggesting that the extended hours, hours
23 scenario in the MDNS would function like the Tulip Festival, are you?

24

25

1 JONES: No. I just used that as an ex-, as, uh, an extreme just to say,
2 hey, you know, this doesn't happen every day. When it does, we look at it
3 and...

4 LORING: Okay.

5 JONES: Take the appropriate, uh, things like signing, traffic control,
6 whatever, whatever is needed.

7 LORING: Uh-huh. And you p-, do you have a suite of options that you can
8 apply based on, uh, different circumstances that arise like that?

9 JONES: I'm not quite sure what you're asking, so...

10 LORING: Sure. In something like, uh, well, when an event arises and the
11 County needs to try to manage traffic associated with that, do you have a
12 different suite of options, different tools that you would apply?

13 JONES: Yeah.

14 LORING: To try to decrease potential impacts of that action?

15 JONES: Yes.

16 LORING: Okay. Um, do you have policies that apply as well?

17 JONES: Um, I do not know of any policies.

18 LORING: Okay.

19 JONES: For that, no.

20 LORING: Okay. And as part of the process of reviewing the Grip Road
21 gravel mine, the County hasn't identified any of the potential tools that it
22 would apply in the extent of an extended hours scenario, has it?

23 JONES: No, we have not.
24
25

1 LORING: Okay. And hasn't provided any sort of decision making tree or
2 mechanism that could be reviewed by the public, uh, for understanding what
3 would happen in the event of an extended hours scenario?

4 JONES: No. Other, other than that, uh, if they were to go to that
5 operation, they would have to contact Public Works and we would review that
6 and make that decision.

7 LORING: Okay. But there's no Standard for the public to review when
8 trying to determine whether Public Works would approve it or in what
9 circumstances Public Works would approve it, right?

10 JONES: Correct.

11 LORING: Okay. Um, back just briefly on that shoulder issue, uh, your,
12 you're familiar with what happens with cars when they're traveling at speeds,
13 uh, say speeds up to the speed limits on Grip and Prairie Road and they get
14 caught up in the gravel on the side of the road, right?

15 JONES: Yes.

16 LORING: It, it's not a good situation for the vehicle, is it?

17 JONES: Uh, it depends on the situation and if the gravel, if the
18 shoulder, is it loose rock, is it compacted, is it, it just depends, I guess.
19 But, yeah, there's potential.

20 LORING: That's fair.

21 JONES: Yeah.

22 LORING: Uh, I want to show you, uh, oh, sorry, go ahead. I, I want to
23 show you a picture of a road, I, I'm going to, uh, actually, I'm going to
24 turn off my camera as I do this, as we've discussed, little bit of bandwidth
25 issue, issues. But I want to show you a couple of pictures. And these are in

1 the Record, they're, this is Exhibit A60, uh, I've marked it A60E. I don't
2 think we had done that exactly in the Record, but there were five photos, uh,
3 that were provided into the Record. Is, when you're looking at a picture like
4 this, are you considering the shoulder basically that portion of the area
5 outside of the road from the, uh, fog line? And I'm referring to that white
6 line as a fog line. Is that your understanding of the name for that line?

7 JONES: Yeah. So, that would be, we would call it edge line, but fog line
8 is an appropriate term also.

9 LORING: Okay. And so, when you were talking about a shoulder, uh, and
10 I'll just p-, I'll tell you this was, uh, since we've had testimony on this,
11 this is along Prairie Road. Uh, this is the sort of shoulder you mentioned
12 might not or wouldn't be travelable, travelable, uh, by bicycles, um, once
13 you get into that gravel, right?

14 JONES: Correct.

15 LORING: Okay. And this is a kind of shoulder with unconsolidated gravel
16 that would be a challenge for cars to, to also travel on if they got a wheel
17 on that going, uh, 40 miles per hour for example, right?

18 JONES: Uh, without being out there and, uh, looking at the compaction
19 and all that stuff, it would be hard to say, but there is, appears to be
20 loose gravel there, yes.

21 LORING: Okay. Could be problematic?

22 JONES: Yeah.

23 LORING: Okay. I'm going to show you one more, just one more picture of a,
24 a shoulder area, uh, this one is along Prairie Road here. Now, this isn't the

25

1 sort of area that qualifies as a shoulder based on a definition from the, uh,
2 Road Standards, does it?

3 JONES: Uh, there, there appears to be some shoulder, but not a whole
4 lot, yes.

5 LORING: Yeah. And, and by that, I'm thinking, uh, when you see this
6 shoulder, is this, or when you use this space, I should say, would this be
7 the type of area where, that would accommodate a stopped vehicle?

8 JONES: Um, I guess it would get them off a foot or so, maybe, but, yeah.

9 LORING: Okay. And, and when you say a foot or so, you mean not getting
10 the entire vehicle off the road, but a foot of the vehicle or so could get
11 off, out of the travel lane...

12 JONES: Yes.

13 LORING: With the rest of the vehicle remaining in the travel lane?

14 JONES: Correct.

15 LORING: Okay. Um, also, not, not particularly suitable for emergency use?

16 JONES: Uh, to get them out, to get them a little bit off the road,
17 maybe, but, yeah. You're not going to get your whole vehicle off the road,
18 no.

19 LORING: And ambulance isn't going to be off the road, uh, along that
20 stretch of road there, right?

21 JONES: No.

22 LORING: Okay. And then, I want to share with you just one other photo,
23 I'll stop this share, I believe the other one is, uh, is a PDF here, just a
24 moment, please. And this, this one is going to be over on Grip Road.

25 REEVES: Al-, also A60?

1 LORING: Uh, actually, this one is A14.

2 REEVES: Okay. Just wondering.

3 LORING: Thank you, Mr. Examiner. Yes, I'm taking us to A14. Uh, let me do
4 a quick share here. Okay. Okay. Here we are, are you seeing that there, uh,
5 Mr. Jones?

6 JONES: Yes, I am.

7 LORING: Okay. And this is along an area where you were saying, I believe,
8 that there were, you know, one and a half to four foot shoulders? You're,
9 you're to testifying that those shoulders are, say, rideable by a bicycle, are
10 you?

11 JONES: No, I am not.

12 LORING: Okay. Um, all right. Now, I'm going to move to, here's Exhibit
13 A15. This is another photo in the record. Uh, in, in this instance, are you
14 seeing any shoulder, uh, that's usable by any vehicle really on the side of
15 this photos of Grip Road with the water there?

16 JONES: Uh, maybe a boat.

17 LORING: Okay. Fair enough. Uh, I'm moving on. I can tell from the Hearing
18 Examiner's, uh, face, that he thinks we are in the realm of, uh, absurdity.
19 Just bordering, I will say, verging upon it late on a Tuesday afternoon. Uh...

20 REEVES: Well, I thought the boat answer...

21 LORING: We, we, we've covered shoulders.

22 REEVES: I thought the boat answer...

23 LORING: All right.

24 REEVES: The boat answer wins the day thus far, so, uh, gold start o Mr.
25 Jones.

1 LORING: It does.

2 REEVES: Go, go ahead, Mr. Loring.

3 LORING: Mr. Jones, on your direct testimony, too, you were discussing the
4 fact that Grip and Prairie Roads don't meet County Road Standards, uh, you
5 acknowledged that's the case here, right?

6 JONES: Correct.

7 LORING: Um, and I believe you said that other County Roads, also a
8 significant number of other County Roads also do not meet Road Standards?

9 JONES: Yes.

10 LORING: Okay. Uh, and then your lawyer analogized to a house. And the
11 fact that a house built in, uh, I don't have the date, was it the '70's, uh,
12 might not be current, up to current building standards, is that right?

13 JONES: That is correct.

14 LORING: When a house has a major remodel, it's required to come up to
15 Code, right, as they're doing that?

16 JONES: Yes.

17 LORING: Uh, and wouldn't now be an excellent opportunity to bring gravel,
18 or, uh, Grip Road and Prairie Road up to Code, at least in some areas, such
19 as the photos we just saw where there was flooding and shoulder challenges,
20 uh, now that we know we're adding a significant amount of large traffic?

21 JONES: If, if it were a County, uh, rehabilitation project, yes, we
22 would bring that road up to Code.

23 LORING: Okay. And you testified earlier that, uh, now you're not so sure
24 third-party review, uh, was necessary for that Traffic Impacts Analysis. Uh,
25

1 prior to the SEPA Appeal, though, you did, you did send an email that said it
2 wouldn't be a bad idea to have that review, right?

3 JONES: Correct. I did send that email.

4 LORING: Okay. Getting very, uh, very close here to the 1-, end of my
5 questions. In fact, I think I, I think I have just one more question for you.
6 And that is, uh, it's related to trying to figure out compliance with the
7 amount of traffic that would occur as a result of this mine. And, and to
8 having, uh, an average number, uh, for example to do with that, let me just
9 take a step back from that and say, there's no mechanism that has been
10 proposed as part of the County's Review for determining whether there would
11 be compliance, uh, with, with whatever traffic limitations have been imposed,
12 is that right?

13 JONES: That is correct.

14 LORING: Okay. That's my last question. I, I appreciate your time today.

15 REEVES: Great. Thank you. Uh, I think, first, I'll quickly go to Mr. Lynn
16 to see if he had any clarifying question and I'll go back to Mr. D'Avignon.

17 LYNN: I think, I think I will, uh, take the opportunity to ask a couple
18 of, um, about the shoulders, anyway. Um, so, uh, well, one of them is not a
19 shoulder question, it's back to the racing question. Uh, would it surprise
20 you that the neighbors in the area have testified that people along Grip and
21 Prairie speed?

22 JONES: Uh, no, it would not surprise me.

23 LYNN: Wouldn't you...

24 JONES: [Inaudible.]

25 LYNN: Go ahead, I'm sorry?

1 JONES: I said, I can't, I don't know whether it's the neighbors, um, I'm
2 guessing some of them are, but, uh, whoever travels the road, yes, there's
3 speeding on the road.

4 LYNN: Is it common in, uh, Traffic Impact Analysis that you've reviewed
5 to, uh, base the distribution of expected traffic on the, the owner's
6 assessment as to whether their customers are or where their goods would be
7 shipped?

8 JONES: Yes.

9 LYNN: So, uh, if, for example, Miles says, all we're going to do with
10 travel east of, on Grip is to serve local deliveries and that doesn't amount
11 to much, would that be, uh, would you expect that that would be taken into
12 account in the Traffic Impact Analysis?

13 JONES: Uh, not really.

14 LYNN: Okay. Um, so, one of those photos that you were asked about and
15 I, I think testified that it would not be rideable but a bike had tractor
16 treads, uh, imprinted in the gravel, would that be one use of even a
17 challenging, uh, shoulder to get slow moving vehicles like tractors off the
18 road?

19 JONES: Yes. That would be a good use.

20 LYNN: Uh, and you were, finally, you were asked about whether or not,
21 um, uh, the, a narrow shoulder adjacent to a guardrail I one picture was, uh,
22 would be sufficient for an ambulance. If people pulled over on both sides,
23 uh, of the road as required by law in the event of an ambulance or other
24 emergency vehicle, would you expect that there would be sufficient room for
25 that emergency vehicle to pass between them?

1 JONES: Yes, I would, I would think there would be enough room to go
2 between it.

3 LYNN: That's all I have. Thank you.

4 REEVES: Okay. Thank you. Uh, Mr. D'Avignon?

5 D'AVIGNON: Uh, yes, I have a couple of questions. I'm going to start with
6 sharing my screen to C18, which is the Traffic Impact Statement, in case
7 we've forgotten, Analysis, not statement. Uh, Mr. Jones, I'll call your
8 attention back to trip, project trip generation to this third, uh, paragraph.
9 Um, you don't need to read it out loud, but does that appear to be where we
10 get the calculations for the 30 trips, 30 truck trips per hour?

11 JONES: Yes, it is.

12 D'AVIGNON: Okay. And would you read this sentence right here? This last
13 sentence I highlighted?

14 JONES: Uh, the TIA analysis is based on the worst case trip generation
15 for the mine of 30 truck, truck trips during the p.m. peak hour.

16 D'AVIGNON: Okay. Thank you. And I'm going to stop sharing my screen for the
17 moment. So, you were asked, um, some questions about in that worse, uh, case
18 scenario, um, you know, how, what would be the odds, I guess, of a truck, uh,
19 meeting a school bus or something like that. If that was the proposed chip,
20 trip generation under normal operating conditions, would your concerns for
21 safety and what maybe needs to be in the TIA be different than what's
22 actually being proposed of 46 truck trips per day?

23 JONES: Uh, the 30 trips still would not trigger a Level of Service
24 issue. Um...

25 EHRLICHMAN: I have an objection for the question.

1 REEVES: Sorry, what was the objection, Mr. Ehrlichman?

2 EHRLICHMAN: It's a compound question, uh, very confusing to the listener.

3 What, what is the point of the question?

4 REEVES: Well, I was confused, too. Mr., Mr. D'Avignon, maybe you could

5 break that out a little bit? I, I agree with Mr. Ehrlichman, I got a little

6 lost on the question.

7 D'AVIGNON: Yes. Where, where I was trying to get at is, you know, there had

8 been some testimony about why was this, uh, more than a Level 1 analysis, you

9 know, the Level 1 plus as you put it, Mr. Examiner, um, Mr. Ehrlichman had a

10 line of questioning about what about at 30 trucks per hour, um, I guess my

11 question is, is A)...

12 REEVES: Well, let's just do an A question, start there and then you can

13 next do a B question.

14 D'AVIGNON: Okay. A) The, the current traffic impact analysis was based on

15 what's being proposed, the average of 46 trucks per hour or per day, correct?

16 JONES: Correct.

17 D'AVIGNON: And it may have been different if the proposal was for 30 truck

18 trips per hour?

19 JONES: Correct.

20 D'AVIGNON: Okay. If Miles Sand and Gravel comes to the County and says we

21 want to run some extended operations, we're going to be at the max 30 hours,

22 30 truck trips per hour, you would be considering some of the issues that

23 have been brought up today in possible conditions for allowing that, would

24 that be a fair assessment?

25 JONES: Yes, it would.

1 D'AVIGNON: Okay. Um..

2 REEVES: Sorry. Just, uh, so I don't get lost, just two clarifying
3 questions from the Hearing Examiner. One, uh, that issue of the 30 trips per
4 hour, just to clarify, I think you testified in response from a question to
5 me earlier, Mr. Jones, that even if 30 trucks, even if 30 trips per hour
6 were, were proposed, that would still not trigger Level 2 requirements under
7 the TIA< was I correct in my understanding?

8 JONES: Yes.

9 REEVES: Okay. So that was question one, question two, when Mr. D'Avignon
10 references conditions just now, it's not related to the SUP, I think, is your
11 understand, sorry, Mr. D'Avignon, I think what the question related to is
12 some kind of administrative approval that would be sought. And when we talk
13 about the analysis and the conditions, that's the sort of admin approval that
14 we're talking about? Or did, did I understand that right?

15 D'AVIGNON: I think so, Mr. Examiner. I, I was referring, and I apologize for
16 not citing it, uh, the MDNS says extended operations may be allowed, as for
17 permission, additional conditions may be imposed.

18 REEVES: But to be clear, Mr. Jones, is it your understanding that that
19 language in the MDNS, about additional conditions, doesn't produce additional
20 SUP or SEPA conditions, those would be conditions on whatever administrative
21 approval would occur should the County allow Miles to operate under those
22 extended conditions, or shouldn't have reused that word, under those, uh,
23 circumstances? Is that what you're testifying to? I just want to make sure I
24 didn't misunderstand.

25 JONES: Yes. That would be correct.

1 REEVES: Okay. Sorry to interrupt, Mr. D'Avignon. Go ahead.

2 D'AVIGNON: Oh, now I've lost my train of thought.

3 REEVES: I totally threw him off, I apologize. I...

4 D'AVIGNON: Oh, I, I, I just had one other question, um, I do want to share

5 my screen one more time. Um, let me find the right, okay. I apologize, I

6 somehow ended up with 50 sheets of paper and 50 windows on my computer.

7 REEVES: That's about right for Day 6.

8 D'AVIGNON: I was very organized on Day 1, I will say that.

9 REEVES: I plead the fifth.

10 D'AVIGNON: All right. I, I, I'm sharing, uh, the MDNS. Um, this is 13,

11 Condition 13, Roman et vi. Uh, Mr. Jones, if you read this, it says if the

12 dump truck/pus trailer combination exceed the load restrictions, the

13 Applicant will use Interstate 5 for southbound access to the Bellville pit.

14 Uh, do you read that sentence as permitting, uh, the use of F and S Road to

15 avoid Interstate 5?

16 JONES: I do not.

17 D'AVIGNON: Okay. I have no other questions, Mr. Examiner.

18 REEVES: Okay. Thank you. We can stop sharing. Okay. Uh, Mr. Ehrlichman,

19 I'll, I'll give you a, a, a brief re-re-direct, as it were?

20 EHRLICHMAN: Thank you, Mr. Examiner. Um, Mr. Jones, uh, you have a heck of a

21 job and, uh, this is a, a, a long, arduous process, I know. But you are one

22 of the few people at the County still who has been there during the life of

23 this Application. And you may or may to realize that through the testimony,

24 you're the one person who, um, everybody looks to to understand what the MDNS

25 condition, um, on, um, traffic safety means. Um, I, I've asked Mr. D'Avignon

1 to put up on the screen, um, our Exhibit 47, uh, S2. And I'd like you to just
2 take a minute and, and read the Comprehensive Plan Policies that I'm going to
3 ask you about that relate to the road improvements that you've testified
4 about here today. These are the Comprehensive Plan Policies that relate
5 specifically to mining and, um..

6 REEVES: Oh, there we go.

7 EHRLICHMAN: Thank you. And we start with the Goal 4D5 there at the top.

8 Which, um, the Goal is ensure safety, including from truck traffic, and then
9 if you would scroll down to 4D5.3 and just take a moment and read that
10 through and then I want to ask you a question about it. Just let me know when
11 you're ready.

12 JONES: Okay.

13 REEVES: Oh, sorry. Just to clarify, uh, this was obviously, it's the
14 [inaudible] but, uh, 47S2 is, is what the, the Exhibit is, is that right?

15 EHRLICHMAN: That's correct. That's our Exhibit 47 packet, thank you.

16 REEVES: Great.

17 EHRLICHMAN: Mr. Jones, have you had a chance to look at that?

18 JONES: I have.

19 EHRLICHMAN: Okay. Now, separate and apart from the County's traffic
20 concurrency requirements, where you collect road mitigation and apply that to
21 your 6 year TIP as the Hearing Examiner referenced it. We have here a policy
22 that requires that existing roads be improved as needed as each new
23 extraction operation is developed, correct?

24 JONES: Correct.

25

1 EHRlichman: Okay. My question is, can you please describe for us any, all
2 cost sharing discussions Public Works had with the Applicant about creating
3 bus turn out lanes or school bus stops on Grip Road prior to allowing the
4 operation to go forward?

5 JONES: Uh, to my knowledge, there have been no discussions for turn out
6 lanes for buses.

7 EHRlichman: And how about for bus stops?

8 JONES: No.

9 EHRlichman: Okay. That's all I had, Mr. Examiner. Thank you, Mr. Jones.

10 REEVES: Okay. And if we can stop sharing. Mr. Loring, do you have a re-
11 re-direct? I'll, I'll make it limited, but I'll allow it.

12 LORING: It's limited, thank you. Uh, Mr. Jones, you were talking a moment
13 ago about that administrative approval for the extended hours. Uh, there's no
14 public process that has been proposed for that, right?

15 JONES: No, there has not.

16 LORING: Okay. It would be an internal County review and decision?

17 JONES: Yes.

18 LORING: Okay. Uh, you were asked about tractor, uh, the TIA didn't
19 [inaudible] impacts associated with tractors...

20 REEVES: Mr. Mr. Loring, you cut out significantly right in the middle.

21 LORING: I had a feeling.

22 REEVES: I think you were about to bring tractors into play.

23 LORING: I was. Keep checking my internet speed, it tells me it's good.

24 Okay. I'm, uh, thank you, Mr. Examiner. I'm back. And so this question is
25 about tractors, you were asked a question about that, uh, to your knowledge,

1 did the TIA discuss, uh, safety impacts associated with gravel trucks and
2 tractors?

3 JONES: Yes.

4 LORING: It did? Can you, can you point us to that section of the TIA
5 where it did that?

6 JONES: Uh, can you repeat the question? You're still kind of broke up
7 there.

8 LORING: Sorry about that. Thanks. Uh, the, can you direct us to the
9 portion of the TIA that addresses, uh, safety impacts of gravel trucks and
10 tractors?

11 JONES: Um, I don't know that there is one.

12 LORING: Okay. I think I broke up with the first question. Okay. Thank
13 you. Uh, just one or two more. You, uh, you were asked about the TIA and I
14 believe you were, actually, you were asked if it would surprise you if people
15 speed on Grip Road and Prairie Roads and, and you said, no. Uh, is it, uh, to
16 your knowledge, does the traffic impact analysis assess actual speeds
17 traveled along those roads?

18 JONES: Um, I do not believe so. I think it just addressed, uh, speed
19 limits.

20 LORING: Okay. Posted speeds were the modeled assumption?

21 JONES: Yes.

22 LORING: Okay. And then you, uh, you had speculated that it was maybe
23 neighbors who were speeding in that area. Do you have any basis for that
24 speculation?

25

1 JONES: Well, I believe I, uh, chose my answer to say that it is most
2 likely some neighbors, but I don't know that for a fact. It could be anybody
3 driving the road, so...

4 LORING: Okay. When you say it's most likely, do you have any basis for
5 making that statement?

6 JONES: Other than they live on the road? And they travel it the most.

7 LORING: Uh, no further questions, Mr. Examiner.

8 REEVES: I was like, I don't know how far we need to go down that rabbit
9 hole, but, uh, excellent, uh, anything final, uh, Mr. Lynn, on this one,
10 before we move on? I'm trying to be...

11 LYNN: No.

12 REEVES: Okay. Mr. D'Avignon, last, your witness, anything, anything
13 finale here?

14 D'AVIGNON: Uh, no, Mr. Examiner.

15 REEVES: Okay. Uh, Mr. Jones, thank you very much, uh, for your time and
16 testimony. And I believe that then concludes the witnesses that the County
17 intended to call, is that right, Mr. D'Avignon?

18 D'AVIGNON: That is correct, Mr. Examiner.

19 REEVES: Okay. I do need to note for the record that, uh, during Mr.
20 Loring's questioning, he missed the opportunity to very easily use the word
21 bicyclability, uh, he was set up for that and then it didn't happen, but I
22 did note that. Uh, that said, uh, so the County has no further witnesses. Uh,
23 Mr. Ehrlichman earlier testified, or not testified, sorry, explained that,
24 uh, he does not have witnesses available, uh, not, again, not, no blame here,
25

1 just trying to clarify things. Mr. Lynn, can I get a sense from you as the
2 potential, uh, recall rebuttal, as it were?

3 LYNN: Uh, yes. You can certainly ask about that. I, in part, it will,
4 uh, await the conclusion of Mr. Ehrlichman's test-, uh, witnesses. Uh...

5 REEVES: Sorry, Bill. Before we go there, Mr. Ehrlichman, I don't recall
6 if we actually got a, a, maybe you told the other Attorneys, but do we have a
7 number, do we have specific witnesses identified you intend on calling?

8 EHRLICHMAN: Uh, I have three witnesses identified and a fourth, uh, is a
9 possible. I'm trying to work out schedules, people are working and so forth.
10 Now that I have Friday, the 23rd as a date, I can nail that down more
11 precisely. I will definitely have three witnesses. And one of them will be,
12 um, Mr. Tilghman returning as my witness.

13 REEVES: Okay. So, just so, one is Mr. Tilghman, that's some more traffic
14 info, yeah.

15 EHRLICHMAN: Yes. Um, with, if you'd like, I can run through them, um...

16 REEVES: Yeah. Thank you.

17 EHRLICHMAN: Yeah. Um, the next witness will be, uh, Wally Grado [phonetic]
18 who also lives on Grip Road, I think he's the next farm down from the
19 Mcleod's.

20 REEVES: Okay.

21 EHRLICHMAN: Um, sorry, let me not misspeak here, I want to get the names
22 correct.

23 REEVES: I find even if I have them written down, I sometimes misspeak
24 them.

25

1 EHRlichman: I know. Okay. Yeah. There's been a lot going on here. Um, we, we,
2 we are calling back, uh, a witness that was in the, uh, Appellant's case,
3 Linda, I'm going to mistake her last name, perhaps, Kyle, you would help on
4 that.

5 LORING: Walsh.

6 EHRlichman: Thank you. I, I was going to say Jones, but we just heard from
7 Mr. Jones. Linda Walsh. And then the, um, final witness, the fourth witness,
8 I can't seem to put my finger on the name, but it is the caretaker family on,
9 um, Mr. Grado's farm.

10 REEVES: Okay. So...

11 EHRlichman: And then, Mr. Tilghman, as I said.

12 REEVES: Sure. So, just to clarify, the, uh, Mr. Grado, Ms. Walsh, and the
13 caretaker whose name I don't think we identified yet, but those are,
14 essentially three local area residents, is that correct?

15 EHRlichman: Correct. All on Grip Road there, with experience along Grip Road.

16 REEVES: Sure. And then, Mr. Tilghman, uh, the traffic, uh, expert we
17 heard from earlier, uh, that Mr. Loring had called, is that right?

18 EHRlichman: That's correct. Uh, um, different topic, different angle, I
19 think.

20 REEVES: Sure. Okay. So, in terms of timing, do you think it would be
21 accurate to, for me to conclude that can probably get done in half a day,
22 those four?

23 EHRlichman: I, I think that's right. Especially if Mr. Lynn's mute button is
24 working, um...

25 REEVES: And mine, right?

1 EHRlichman: And your, I wasn't going to say that.

2 REEVES: He wanted Mr. Lynn, let's be honest, but, okay.

3 EHRlichman: No, a, a half day should be more than enough, I would think.

4 REEVES: Excellent. Thank you for clarifying. So, Mr. Lynn, I'll back to
5 you, in terms of what your thought process there is?

6 LYNN: Um, again, won't totally know until I hear what, uh, what Mr.
7 Ehrlichman has in mind. Uh, we will be calling Mr. Norris, uh, to talk about,
8 uh, the, the auto-turn video and some other, uh, issues. We will be calling
9 Mr. Semrau to address a couple of things that came up and we will be calling
10 Dan Cox from Miles Sand and Gravel. Uh, I sus-, I think that's probably it,
11 but I'm not, uh, please don't hold me to that. Uh, just, just what I'm
12 thinking so far.

13 REEVES: Uh, yes. We're all good Attorneys, you reserve the right to
14 change your mind at any given time, I get it. So, just to be clear, Gary
15 Norris is our traffic engineer, not ours, your traffic engineer. Uh, John
16 Semrau, I believe, uh, was the geologist?

17 LYNN: No, civil, civil engineer.

18 REEVES: Okay. But, again, can you clarify the sort of what he will be
19 addressing?

20 LYNN: Uh...

21 REEVES: You know, it's a broad topic.

22 LYNN: Yeah. It's, uh, briefly on the haul road, a little more testimony
23 about that one cross section that Mr. Loring asked him about, uh, as to the
24 mine, uh, shape. Uh, pretty, all, all of these should be pretty brief.

25 REEVES: Sure.

1 LYNN: I think, uh, uh, so far, my outlines for two of them are, uh, one
2 page, so...

3 REEVES: Great. I'll hold you to that. But, so...

4 LYNN: Yeah.

5 REEVES: To be clear, the technical aspects, uh, specifically the haul
6 road is what you're thinking and, and potentially a couple other things, is
7 that accurate...

8 LYNN: Yeah.

9 REEVES: On that?

10 LYNN: Yeah.

11 REEVES: And, sorry, the third was, was the Applicant or...

12 LYNN: Uh, Dan, Dan Cox, who's, he, he was the original person planned
13 to testify instead of Mr. Barton, he's now back from his, uh, trip and would
14 just testify a couple of, uh, about a couple of things related to the Miles
15 operation.

16 REEVES: Okay. We haven't heard from Mr. Cox?

17 LYNN: No, no.

18 REEVES: Okay.

19 LYNN: It's, yeah.

20 REEVES: Got it. Okay. But, uh, one of the Miles, uh, sort of operation,
21 you know, one of the, I don't know, higher up kahunas, someone that, that
22 knows what's going on at Miles, is that, uh...

23 LYNN: Yes. Yes. He know, he's the, he's the manager for the division of
24 North.

25

1 REEVES: Got it. Okay. All right. I'm really hoping all of that can be
2 done in a day. Uh, that is certainly the hope. Um, in terms of, well, I
3 guess, A), I mean, would it premature for you to call any of those witnesses
4 now or are they even available, Mr. Lynn, I...

5 LYNN: Uh...

6 REEVES: Just a thought, I'm just trying to be efficient in our time here.

7 LYNN: Yeah. I appreciate that. I don't, I don't, I, I assume they're
8 available, but we haven't talked about their testimony and I'm not sure there
9 won't be more of it. So I think it might be less efficient instead of more.

10 REEVES: Sure. And we are striving for efficiency. Excellent. Okay. Um,
11 process-wise, does anyone disagree with my process in thinking I am going to
12 have Mr. Ehrlichman call his witnesses and then I was going to allow, uh, Mr.
13 Lynn to bring rebuttal witnesses. I am very wary of a sort of serial
14 rebuttal, you know, I, I, I just, but I'm happy to hear if Attorneys want to
15 make an argument otherwise. We'll start with Mr. Loring.

16 LORING: Thanks, Mr...

17 REEVES: Well...

18 LORING: Examiner. Uh, [inaudible] rebuttal, uh, I'll take off the video.
19 Um, at, at this point, we aren't needing to provide, uh, rebuttal. And it
20 would rebuttal in the SEPA case since we're the Appellants in that, you know,
21 rather than [inaudible] just to be clear. Uh, but...

22 REEVES: Yeah.

23 LORING: But, again, it's one of those situations where it's not always
24 clear until we have seen some of the other parties. We've now heard from the
25 County. Uh, I will be circling back to try to understand, my guess if there

1 were any rebuttal in our case, it would be very brief, uh, and we've had
2 plenty of testimony at this point from our witnesses.

3 REEVES: Thank you. Uh, Mr. D'Avignon, I, the County has sort of been a, I
4 don't want to say directly with, with the Applicant, obviously, but, you
5 know, is there a thought to sort of bringing anyone back, I guess is my
6 question?

7 D'AVIGNON: You know, I never say never. Um, but I have absolutely no
8 intension of, of doing that.

9 REEVES: All right. It's like herding cats. But, yes, absolutely. Um, and,
10 and, again, just to clarify for those that are following along, there's a lot
11 of going on process-wise here. Uh, the Applicant, I just need to stress this,
12 the Applicant, Miles Sand and Gravel, who is represented by, uh, Attorney
13 Bill Lynn, has the burden of proof in terms of the Special Use Permit. Uh,
14 that Permit has not been issued. Uh, the Staff, as we heard today, has made
15 a, made a recommendation in their Staff Report, uh, but ultimately, the
16 burden, in terms of the SUP, falls on them, not the County, not anyone else.
17 Uh, and so that is sort of, process-wise, uh, for culpable reasons, uh, the
18 idea of, sort of rebuttal witnesses is being entertained. That's one. And
19 then, two, we independently have a SEPA Appeal that Mr. Loring brought. Uh,
20 and so, that is separate and in terms of the SEPA Appeal of the MDNS, in
21 fact, is the Appellant burden on SEPA Appeal to convince the Hearing, uh,
22 that an error has occurred, not just an error, but Standard in, under SEPA is
23 higher than that. But, and my intent was to have the sort of SEPA specific
24 argument with the Attorneys at the very end of our last day. Um, but I just
25 wanted to make sure all the witnesses were called. And then, Mr. Ehrlichman

1 has, has called witness-, well, not called them, yet, will be calling
2 witnesses and his role is, uh, more specific to the, the SUP portion, uh,
3 and, in a way, he's appearing sort of as other members of the public are able
4 to appear, but, but because he's an Attorney, the rules allow, uh, a little
5 more and, and I've been trying my best to, you know, walk a fine there. He,
6 we've disagreed at times, but, uh, to be clear, he's, he's not an intervener
7 on the SEPA Appeal, that was something that was addressed in advance. Um, and
8 so that's kind of where we stand. And I just want to make sure folks, whether
9 they ultimately agree with me or not, at least feel that I've made, you know,
10 a good faith effort to have a process that, that gives, gives folks a chance.
11 So, I just want to make sure. So, it sounds like the plan is, is so far good,
12 to the extent that when we come back, is it next, next Friday, is that right?

13 LORING: Yes.

14 REEVES: Yeah. Next Friday, uh, to conclude, that, uh, first, we'll hear
15 from, uh, from, uh, the four witnesses identified by Mr. Ehrlichman and for
16 your own witnesses, Mr. Ehrlichman, I, I would maybe suggest have the three,
17 uh, the three non-Mr. Tilghman witnesses go first, maybe. Uh, then we'll hear
18 from Mr. Tilghman and then we'll go to Mr. Lynn's, uh, sort of rebuttal. And
19 then check in with the lawyers, if they think other things are needed. And
20 then the plan was a brief sort of me grilling Attorneys on, on their thoughts
21 on a few legal aspects. But, Mr. Ehrlichman, you had a, a hand raise there?

22 EHRLICHMAN: Uh, my calendar is confused. You said next Friday, is that
23 September 16th? Because I had us down for Friday, the 23rd. I thought Bill was...

24 LORING: The 23rd.

25 REEVES: That's next Friday.

1 EHRlichman: Okay. Gotcha.

2 REEVES: Sorry, not this Friday, next Friday.

3 EHRlichman: Thank you.

4 REEVES: Excellent. I propose this Friday and it wasn't going to work...

5 LORING: Mr. Examiner? Um...

6 REEVES: [Inaudible] Mr. Lynn didn't participate, but it's next Friday,

7 the 23rd. And Kyle Loring, you had something?

8 LORING: I do. I hesitate to broach the topic. But I wonder if we

9 shouldn't schedule another day just in case and/or have the opportunity to

10 have our closing briefs, SEPA briefs respond to specific questions that you

11 identify for us that we can respond to in writing. I'm just putting that out

12 there as the argument side of things.

13 REEVES: Sorry, that was a compound suggestion. I, okay. So, one, was, uh,

14 well, A) I plan on us getting through on Friday, for one. But, two, you're

15 saying put a date on the calendar just in case. And I want to be clear, when

16 you say that, are you saying put it far enough out so that theoretically, I

17 can read your closing briefs and grill you on those briefs, is that the

18 thought, like...

19 LORING: No, sorry. I...

20 REEVES: Did I understand the...

21 LORING: I was suggesting the arg-, I was suggesting the argument side of

22 things. You had mentioned you thought you had a couple of hours, uh, that you

23 wanted to hear from us and you had specific questions that you wanted us to

24 answer. So, I was thinking if we have a couple of hours, we might need to

25 schedule another date. But I was saying in the alternative, you could put

1 those questions to us in written form and then we could incorporate those
2 into our briefing afterward and not schedule another date, if we think we can
3 get through the testimony. Which I, it sounds to me like we should be able to
4 next Friday.

5 REEVES: Thank you and..

6 LORING: But I don't know about the questioning.

7 REEVES: Thank you, Mr. Loring. And I'll be, I'll be honest, I actually
8 had the thought that I hate to force it on myself just in case something
9 happens, but I sort of intended on maybe circulating, uh, questions, uh, you
10 know, in advance of next Friday. Uh, and I agree that rather than, you know,
11 schedule more time, uh, if I can get the questions out, if we don't get to
12 that portion, if we don't have time next Friday, at least the Attorneys will
13 kind of know what I was hoping to get some analysis on and that can be
14 included in, in briefing, rather than, uh, uh, Day 8. Because, uh, I, I think
15 that makes sense. Did I get you right, Mr. Loring, I, I..

16 LORING: Yes.

17 REEVES: Don't, okay.

18 LORING: That's exactly right. Thank you. Yeah. Thank you, Mr. Examiner.

19 REEVES: Okay. For a minute, I thought you were suggesting as sort of
20 Appellant approach where, you know, you guys would produce briefs and then I,
21 you know, look at them and grill you as if I was a Court of Appeals or, or
22 Supreme Court judge, which sounds awesome, but I also think that at this
23 stage in the, in the proceedings, uh, I don't think it would be, uh,
24 appropriate to have a, a Day 8 if we can get done at least with the testimony
25 on Day 7. So, I will assign myself the task of trying to send around by,

1 let's give me til Monday, uh, I'll try to send, sort of, these are the
2 questions or thoughts the Hearing Examiner is hoping to, you know, get, get
3 lawyers' thoughts on and I'm not req-, by the way, just to be clear, I'm not
4 asking you all produce briefs for me by next Friday. I just want to go this
5 is sort of what I...

6 LORING: Understood.

7 REEVES: What I, what I'm hoping to, to ask you all about, uh, you know,
8 uh, some of it will be more SEPA specific, some less, uh, you know, but I
9 figure if I've got four sharp Attorneys, might as well, you know, get some,
10 some questions asked while I can. Understanding that Mr. Ehrlichman, you
11 certainly don't need to participate on the SEPA side of things. But with your
12 knowledge and experience, I expect you would, you would have valuable, uh,
13 contributions there, so...

14 EHRLICHMAN: Thank you, sir.

15 REEVES: Okay.

16 EHRLICHMAN: Uh, looking, looking forward to just a short, uh, opportunity for
17 argument on the SUP. I realize it's not part of the SEPA Appeal.

18 REEVES: Certainly. Absolutely. Okay. So, with that, I think we have a
19 plan. Uh, Mr. Lynn?

20 LYNN: Uh, I, I, I notice that Mr. Grota, who was one of the witnesses
21 that Mr. Ehrlichman was going to call, is, is present. I'm wondering if we
22 could hear him and shorten our next Friday briefly?

23 REEVES: Oh.

24 EHRLICHMAN: Unfortunately, I'm not prepared, uh, to bring him on. Uh, it
25 would be a good idea. But I, I really need to confer with him and understand,

1 uh, what his thoughts are on some of the issues. I apologize, but we just,
2 when we checked in this morning, I, we rescheduled that discussion for a
3 little later this week.

4 REEVES: The process is, is what it is. Good suggestion. And you're, you
5 still have the hand raised feature up.

6 EHRLICHMAN: Oh, I'm sorry.

7 REEVES: I just want to make sure it's, maybe just waving. Uh...

8 EHRLICHMAN: There we go.

9 REEVES: Um, okay. So, then I think that probably will, I guess,
10 ultimately conclude today. Just to be clear, I don't believe I got a
11 stipulation, did that come around my way? Why don't we, we can talk about
12 that, okay?

13 EHRLICHMAN: Kyle, uh, I think you were the last signer, is that something you
14 could circulate? Kyle?

15 LORING: It is. You all should have it.

16 EHRLICHMAN: Oh.

17 LORING: The, the lawyers should have it at this point.

18 REEVES: Well, the Hearing Examiner...

19 LORING: Yes. I, no, I understand, Mr. Examiner. I was saying I had, I had
20 circulated it to the lawyers in response to that question. But, yes, I can,
21 uh, add it now to the Hearing Examiner.

22 EHRLICHMAN: Thank you.

23 REEVES: And, and I believe, uh, Mr. Lynn, you, you sort of clarified what
24 the limited day trip scope was, is that right?

25

1 LYNN: Yeah. Uh, yeah, it, it, it's fairly brief. It won't take you long
2 to read at all.

3 REEVES: But just for my understanding of what this is and how it fits,
4 and, and I guess here's an initial question I could ask is, uh, we all set a
5 little bit more time aside, in terms of, well, A) does the stipulation relate
6 specifically to the MDNS? The, the Condition in the MDNS about the trips, is
7 that right?

8 LYNN: Yes.

9 REEVES: Okay.

10 LYNN: The, the 46 number and the 30 number.

11 REEVES: Okay. So, I guess my, my question is, in terms of, and I'll start
12 with Mr. Loring as the Appellant, uh, so, Mr. Loring, in terms of SEPA and me
13 as the Hearing Examiner, what options would I have, ultimately, in relation
14 to your Appeal? Can I add conditions to SEPA? And I'm asking, let me, I
15 guess, let me walk through my thought process. If I grant the Appeal, you
16 know, and say, okay, there's been, you know, I'm convinced there's, there's,
17 that an error has occurred, you know, I can remand it for further review. I
18 guess, what, my first question, Mr. Loring, is do I have the option of
19 amending the County's issued MDNS as part of my authority? And that would be
20 question one, Mr. Loring.

21 LORING: Yeah. Thank you for that question, Mr. Examiner. And I was
22 assuming that was maybe question one for next Friday, as well, or, uh...

23 REEVES: It was going to be. It was...

24 LORING: It's on my list.

25 REEVES: [Inaudible.]

1 LORING: Yeah. It's on my list.

2 REEVES: If you're unprepared, that's fine, but I, I do know that you, you
3 think about SEPA a lot and I was just curious...

4 LORING: I do. I, I do. And I will tell you that I, I, uh, don't have, you
5 know, a case at my fingertips, as we talk right now. My understanding of
6 SEPA, though, is that the threshold determination itself, uh, is based on the
7 conditions. And that any new conditions that were to be added, would still
8 need to have gone through that public review. Uh, that the MDNS was required
9 to have. And, and so that's to have that opportunity to ensure that members
10 of the public can, can bring their consulting and expertise to bear, as well.

11 REEVES: Okay. So to clarify your point, I, I guess this is what I'm
12 asking. I, I've run into this in the past and I, I will admit in my mind,
13 this is a, sort of a weird, gray area, despite SEPA being around as long as
14 it has. Uh, I guess, I think it's very clear under the Law that I can, you
15 know, grant the Appeal and send it back, I think that's very clear. I think I
16 have the authority to deny the Appeal. I, I think that's clear. Uh, I think I
17 certainly have the authority, were I to approve the SUP, were I to do so,
18 which obviously is contingent upon me saying that SEPA didn't need to be
19 overturned, that I could add any conditions I want, uh, you know, um, but I
20 guess the, where I get hung up is can I, myself, go in and add additional
21 condition that is SEPA-specific, in the MDNS? And it sounds like your answer
22 was no? Did I understand you right, Mr. Loring?

23 LORING: You did.

24

25

1 REEVES: Okay. Good. And so, with that, I'll go around the horn and see if
2 others have any thoughts. Mr. D'Avignon, do you have any thoughts on that
3 strange, very specific issue?

4 D'AVIGNON: I do. I, I do want to, you know, do my normal disclaimer that
5 this has not fully been researched..

6 REEVES: Yeah.

7 D'AVIGNON: And..

8 REEVES: Yeah.

9 D'AVIGNON: Maybe briefing it would be better. Um, but, my, my understanding
10 is, is pretty much in line with Mr. Loring. Um, I don't, I'm pretty sure you
11 can't add conditions that are not already there. I am aware of at least one
12 case that found that the Hearing Examiner could clarify an already existing
13 condition. So, I think as that might apply here, this provision that we just
14 entered the stipulation on. I think you could possibly say, you could clarify
15 and say, truck trips for both of those instead of trips and trucks, where
16 that's not changing the condition itself, it's just providing some
17 clarification. I think it could be, you know, you could maybe go as far as
18 saying the average was calculated over 12 months. I think the end of there is
19 where I think maybe briefing may be helpful. I do think it's probably not a
20 good idea to be saying, and, you need to plant 50 trees.

21 REEVES: Got it.

22 D'AVIGNON: You know, something that's not there, I think, would, would be
23 problematic and I would be worried on Appeal that it would be overturned.

24 REEVES: Sure. So, just to clarify, I guess, so, Mr. Loring made the point
25 that their SEPA more than, you know, I don't want to say more than anything,

1 but, but a huge aspect to SEPA is the public process. And I think Mr. Loring,
2 uh, not to put words in his mouth, but I think he was essentially saying the
3 problem is with me as the Hearing Examiner, adding additional conditions to
4 SEPA would be that that flies in the face of the public review process that
5 occurs. And so, I think, then, your point there, Mr. D'Avignon, is you're
6 aware of a case that potentially would allow sort of a very simple
7 clarification, like, uh, in the margin, I could add something, but I
8 shouldn't be adding wholesale conditions that, that weren't previously
9 addressed. Is that kind of a good, good breakdown?

10 D'AVIGNON: Um, yeah. And I would note the, the single case is from 2022,
11 it's from February, it's Phillip 66 versus Whatcom County. It's unpublished
12 so I can, um, imagine the arguments that, um, Mr. Loring might make about
13 that. Um...

14 REEVES: Hold on. Sorry. Real quick, one more time, sorry, that's a real
15 new case. Can you give that to me? I don't know if I've read that yet.

16 D'AVIGNON: It's Phillip 66 Company.

17 REEVES: Okay.

18 D'AVIGNON: Versus Whatcom County and, and Friends of the San Juan's.

19 REEVES: And it's unpublished so we don't have a number for it, right?

20 D'AVIGNON: No, I can give you the Appeal Number, is 82599-2-i, Roman, Roman
21 i.

22 REEVES: 8259-...

23 D'AVIGNON: [Inaudible.]

24 REEVES: Dash 2, so Division 2, got it. Okay.

25

1 D'AVIGNON: Dash, and it very, it's very, there's not a lot of meat there,
2 but it...

3 REEVES: Sure.

4 D'AVIGNON: It does suggest that a clarification is okay.

5 REEVES: Sure. And, and we can come back to it and we don't need to
6 belabor and get into unpublished versus published. The rules have even
7 changed on that in the last few years and I'm well aware of, uh, what those
8 are, I just, thank you, for, for, I didn't know the case. So that's, that's
9 helpful to know. Uh, the c-, I can't remember the case I was thinking of, but
10 I think Sound Law Center, my own, my own firm got in trouble years ago for
11 trying to amend the, uh, M-, and MDHS in, I think, Kitsap County. I, I wasn't
12 the Hearing Examiner, but, uh, you know, it's sort of fresh in my mind, uh,
13 that, that, uh, Hearing Examiners can get in trouble for, you know, trying to
14 add additional conditions to a MDNS and I don't remember the case, but I
15 will, if I look it up, uh, I'll let you guys know what it was. But, but thank
16 you for the clarification. And just to be clear, Mr. Loring, I didn't
17 mischaracterize what you were saying, is that right?

18 LORING: No, that's right, Mr. Examiner. Uh, you put words in my mouth and
19 I think they were the right words.

20 REEVES: All right. I take that. And, uh, we'll be able to reuse that in
21 the future. Mr. Ehrlichman, oh, no, sorry, he just, of course, when I, when
22 he goes to drink water, but I wanted to give you, uh, just a chance to weigh
23 in on the, on the facts on this there.

24 EHRLICHMAN: Thank you, Mr. Examiner. I have to stay out of the SEPA argument
25 in this case. But I do have a comment that relates to it and I can see the

1 implications of this, in terms of your authority under the Special Use
2 Permit. Uh, since the SEPA conditions are being brought in as, as conditions
3 for that Permit.

4 REEVES: I, I...

5 EHRLICHMAN: GO ahead.

6 REEVES: I apologize. Um, I, I'm not trying to be rude. I do want to
7 clarify, because I, I think you've said it and I think, it might have been
8 Mr. Loring said, to be clear, the conditions, sorry, I call them mitigation
9 measures under SEPA.

10 EHRLICHMAN: Uh-huh.

11 REEVES: To try to not confuse them with conditions. Uh, to be clear, the
12 Staff, I, I thought, my review of the Staff Report would indicate to me there
13 are additional conditions beyond those identified as mitigation measures in
14 SEPA. Or have I missed that? I, I, because only ask because I think it's come
15 up several times and, and I just want to make sure I'm not missing the boat.
16 Pages 30 and 31 of the Staff Report includes several recommended conditions
17 related to the SUP and the very last one essentially says, incorporate the
18 MDNS measures, which is, uh, sort of a kind of standard way of doing it. But
19 can you clarify, am I right in thinking the other recommended conditions are
20 independent of the SUP? I just wanted to make sure I didn't miss that.

21 EHRLICHMAN: Independent of the MDNS. Yes.

22 REEVES: [Inaudible.]

23 EHRLICHMAN: Yes.

24 REEVES: Okay.

25

1 EHRlichman: Now, that's, that is our argument here. And, and we can brief
2 some of that. But, absolutely, you have authority under the County Code. Um,
3 and it, and it actually kind of goes beyond, I think, what we're thinking
4 about here. Let me explain. Just as SEPA is often referred to as a Gap
5 Filler, when the code doesn't have a specific standard, but there is an
6 impact, you know, a County has SEPA authority to condition a project. Well,
7 here, my argument under the Special Use Permit Code is that it actually is
8 structured as a gap filler. Because there's a provision about treating these,
9 um, the Code as minimum standards and giving the Hearing Examiner authority
10 to compose conditions beyond what he sees in Code. So, the S-, the mining SUP
11 is a gap filler. And that vehicle is one where I will argue, you have
12 authority to go beyond the SEPA conditions, even add to the ones that are
13 brought over under SEPA. I hope that's helpful.

14 REEVES: Okay. Just to, so two things, thing one, I just, this is a simple
15 factual matter, uh, Mr. Ehrlichman. I'm looking at Page 30 and 31 of the
16 Staff Report. And the way I read these two pages is that there are thir-, 14
17 total Conditions that have been recommended by County Staff. And the first 13
18 are not repeats of the mitigation measure of the MDNS, Condition 14 then
19 says, comply with the MDNS. Is that, do you agree with that assessment, to
20 start?

21 EHRlichman: Can you give me just a second?

22 REEVES: Sure.

23 EHRlichman: I want to get, get to that page.

24 REEVES: Absolutely. It's, uh, 30 and 31 of the Staff Report.

25 EHRlichman: There we go.

1 REEVES: And, and there's certainly some overlap, I'm, I'm just trying to
2 clarify in my, to make sure I didn't miss something. Because it came up and
3 so I pulled up both the MDNS and the Staff Report to make sure I hadn't
4 misunderstood something.

5 EHRLICHMAN: So, I'm looking at the Staff Report. And you're referring to what
6 page?

7 REEVES: Uh, 30, so starting on Page 30, there's a Staff Recommendation.
8 And, and I think it's Mr. Cricchio that signed off, ultimately, or maybe it's
9 Mr. Black, but it, it says the Application that we recommend approval subject
10 to conformance with the following Conditions. And then there are, uh, 14
11 identified Conditions. And the last one says, incorporate the MDNS and the
12 MDNS had, uh, I think it was 19 required mitigation measures. I, the thin I'm
13 trying to miss is that the, the first thir-, 13 Conditions in the Staff
14 Report are not sort of cut and paste from the earlier MDNS, right?

15 EHRLICHMAN: So, I, I'm hung up here for a second because I have a Staff
16 Report that's only nine pages long. So, I'm, I'm at, in the wrong document,
17 so, I'm sorry.

18 REEVES: That's okay. Jason D'Avignon, you were, you, you made a head
19 shake, was I right in my assessment there? The...

20 EHRLICHMAN: This isn't C1, I guess?

21 D'AVIGNON: Uh, the, I guess, two things, one, I think you are right, Mr.
22 Hearing Examiner. I have not double checked that the Special Use Permit Staff
23 Report, those are not, the first 13 are not in the MDNS, I, my brief looking
24 at it now is there may be some overlap, but those are separate and apart from
25 the MDNS and I think well within your authority to modify, agree with,

1 disagree with, whatever. Um, and then to Tom's question, this is, um, the
2 Special Use Permit Staff Report, and part of the reason we had to do the
3 renumbering, was this Staff Report is, number one, um, and it's on the
4 website, um, if you go to the Concrete Nor'West, hit proposal website, on the
5 right side it says Exhibits.

6 EHRLICHMAN: I gotcha.

7 D'AVIGNON: And that's, that's where you'll find this.

8 EHRLICHMAN: Gotcha.

9 REEVES: And it's also the first several pages of what I call the Cricchio
10 file. And Mr. Mr. Cricchio has his hand up. So, I'll see if he wanted to...

11 EHRLICHMAN: I gotcha.

12 REEVES: He might know this better than anyone. Mr. Cricchio, you want to
13 weigh in real quick?

14 CRICCHIO: Yeah. I just wanted to answer your question, uh, so...

15 REEVES: Thank you.

16 CRICCHIO: On Page 30 and 31 are the suggested Conditions of Approval. Uh,
17 Conditions 1-13 are, uh, specific to the Special Use Permit. Condition 14 is
18 in reference to the SERPA MDNS, with all the mitigation measures therein. Uh,
19 Conditions 1-13, although there may be some redundancy, they are not the same
20 as, as the mitigation measures.

21 REEVES: Thank you.

22 EHRLICHMAN: I'm with you, Mr. Examiner. I, could you ask me the question
23 again?

24 REEVES: Well, I, I, I, I mean, I, I think Mr. Cricchio answered. I just
25 wanted to be clear that I didn't miss something. And, to the extent that it

1 does get complicated in terms of my authority, what already happened. And so
2 the question originally I had asked you, Mr. Ehrlichman, was the sort of my
3 authority question. And I think we're on the same page to some extent, which
4 is I think we both agree I have the power, um, I have the power to, to, uh,
5 you know, were to approve this, were I to approve it, I certainly have not
6 made a decision yet. And also, were this to have survived Mr. Loring's SEPA
7 Appeal, which I have also not made a decision on. Because I think we can all
8 agree that were I to grant Mr. Loring's SEPA Appeal...

9 EHRLICHMAN: Uh-huh.

10 REEVES: Unfortunately, that would undo, uh, you know, the SUP portion of
11 our Hearing and that's just...

12 EHRLICHMAN: Right. Right.

13 REEVES: The way this gets all dated, uh, requirement of the law works,
14 but were I, were I to get to that point, I, as the Hearing Examiner, have the
15 authority to condition the SUP as I see fit.

16 EHRLICHMAN: Yeah.

17 REEVES: Uh, certainly, the County, Mr. Loring, anyone, not Mr. Loring,
18 Mr., maybe Mr. Loring, Mr. Lynn, more likely, could challenge those
19 conditions to the extent that they could say, Mr. Hearing Examiner, you're
20 nuts, the...

21 EHRLICHMAN: Uh-huh.

22 REEVES: [Inaudible] test, this condition is inappropriate. We don't need
23 to get into the, the...

24 EHRLICHMAN: Right.

25

1 REEVES: Weeds on that. Uh, but do you think I have the authority to add
2 conditions on the SEPA MDNS itself, was part of it? That was the original
3 question, but...

4 EHRLICHMAN: Okay. So, setting Condition 14 aside for a moment, yes,
5 Conditions 1-13 in the Staff Report relate to the SUP, and you have the
6 authority to add additional conditions or to modify any of those
7 recommendations as you see fit.

8 REEVES: Uh...

9 EHRLICHMAN: Could you...

10 REEVES: Sorry. The Conditions on the SUP, correct?

11 EHRLICHMAN: On the SUP. Those are SUP Conditions, I agree with Mr. Cricchio.

12 REEVES: Okay.

13 EHRLICHMAN: And, and so then the next question is, uh, Number 14, what's the
14 extent of your authority, and that's where, while I would love to opine on
15 that, uh, uh, co-author of the Bar's SEPA book, I'd love to go there, but I
16 think I'm excluded from...

17 REEVES: I, well, I was going...

18 EHRLICHMAN: From commenting on that.

19 REEVES: To let you weigh in. I, I was given you leeway to make a, make a,
20 to give me your thought. But, uh, if you don't want to go there, you don't
21 need to.

22 EHRLICHMAN: I would like to. But I, I think I should stick to the SUP for
23 clarity's sake on all of this and, um, wish you all well in sorting that out.

24 I do want to, uh, provide, you know, applaud you and the rest of this, um,
25 Attorney group, for navigating the difficulties in the law of the overlap

1 between the two. And so, this is, this is an important issue. My position is
2 that we have, um, a SEPA set of conditions that are, are being recommended to
3 carry over and I, and if the Appeal is upheld, then we're done, we go back to
4 the drawing...

5 REEVES: Yeah.

6 EHRLICHMAN: Board. But if, if you deny the Appeal, then I think we do have to
7 cross the bridge of, uh, what do you do with that set of Conditions. I think
8 you have the authority under the SUP Code to, uh, craft conditions that are
9 similar to those conditions, but shed light, that would be the way would
10 approach it.

11 REEVES: Okay. Thank you. I like that terminology. And I'm sorry, I still
12 haven't, I don't know if it went to David Ortman [phonetic] or, or somewhere
13 else, I have not yet seen the stipulation. And I only ask because part of
14 what led me down this path was having not seen the language of the
15 stipulation, you know, the only thing I could think is the stipulation, well...

16 EHRLICHMAN: Well, I...

17 REEVES: Seen the language of the stipulation, I don't want to, I don't
18 want to...

19 EHRLICHMAN: I don't think there's any mystery, Mr. Examiner, I'm just going
20 to describe it for you and the other parties can correct me if, if they have
21 a different understanding, but...

22 REEVES: Okay.

23 EHRLICHMAN: Uh, we agreed to define the 46 trips as 23 in and 23 out. We
24 agreed, now, when I say we agreed to define it, I mean, we agreed that that's
25 what the MDNS is saying, without commenting on the adequacy of that. Then, we

1 also agreed that the MENDS is saying 30 per hour means 15 in, 15 out, again
2 without commenting. We were not able to reach agreement, on a, an annual
3 number. Um, and that's why this took a little bit longer.

4 REEVES: No problem. Okay. So, I'm going to move, then, to Bill Lynn, uh,
5 to see if he has any specific thoughts on this quandary, as it were?

6 LYNN: Uh, I, I do. Thank you. Oddly enough. Uh...

7 REEVES: Thought you might.

8 LYNN: So, uh, I saw the Phillip's case, too, and, uh, interesting, uh,
9 it clearly upholds the Examiner's authority to impose conditions and, in
10 fact, in that case, it was a condition imposed over the, uh, Applicant's
11 objection, uh, uh, and, uh, the Court held that the Examiner acted within his
12 authority. Uh, I think it's an even clearer case when, as here, some of the
13 conditions, anyway, have been proposed by the parties, uh, to solve problems
14 that have been identified in the process.

15 REEVES: Bill Lynn...

16 LYNN: Yeah.

17 REEVES: Apologies. When you use the term, condition, I just want to be
18 clear, are we talking about the, what I like to call Required Mitigation
19 Measures and maybe you're starting to understand, everybody, why I use that
20 term versus Condition. Because when we have consolidated Appeals, it, it does
21 make things less confusing. So, when you, I, I...

22 LYNN: Yeah.

23 REEVES: Okay. So, if you can clarify...

24 LYNN: Yeah. Uh...

25 REEVES: What you...

1 LYNN: It, it was an added mitigation measure, uh, to the..

2 REEVES: Okay.

3 LYNN: M-, MDNS that was under Appeal. So it was a mitigation measure.

4 I'll try to be precise about that. I should know better. Uh, uh, so, uh,

5 that's, that's what that case says. It's, it is unpublished, I don't know why

6 because it is kind of, uh, interesting. Uh, just kind of stepping back a

7 ways, it, there's no question about your authority to impose Conditions on

8 the Special Use Permit. It would be the height of, uh, elevating procedure

9 above substance to say, well, you can add conditions to mitigate impacts, but

10 then when you review the SEPA Appeal, you have to ignore those conditions and

11 pretend they didn't exist. Um, take for example, the proposal to widen the S-

12 curves in, on Grip Road, you could impose that as a, as a mitigation measure

13 under the Special Use Permit, but then are you suggesting, or is Mr. Loring

14 suggesting, that you then have to ignore it for purposes of the SEPA Appeal?

15 That's, that's the..

16 REEVES: Well, Mr. Lynn, I, one of the things I'm going to ask the

17 Attorneys, a big one in my mind, has to do with exactly the point I think

18 you're bringing up. Uh, I think, Mr. Loring, early in the proceedings had

19 objected to, I think it had to do with the, the, in fact, the, uh, curve,

20 what do we call it?

21 LYNN: Auto-turn...

22 REEVES: Analysis, auto-turn analysis to the extent that his point was, at

23 the time the MDNS issued, the County didn't have this information and so, you

24 know, I, as the Hearing Examiner, need to sort of do my analysis on the SEPA

25 Appeal, keeping in mind the date of when the MDNS came out. And that is

1 certainly a, a, a reasonable, uh, way to think about things. And I, I've
2 heard that argument, uh, I think it's a very common one. But there is a line
3 of thought in the Law, and this is something I was going to ask everyone to
4 think about, which is that if, through the process of the SEPA Appeal itself,
5 you know, additional information and analysis, et cetera, has occurred, that
6 almost cures whatever the problem may have been, or potentially could. And
7 I'm certain Mr. Loring will have thoughts on this. And I'm, Mr. Loring, I, I
8 suspect you're of the sort of opinion that, you know, uh, what's the ultimate
9 goal of the SEPA Appeal, but it's the, to solve the problem, get the
10 information. And if we've done that, you know, then there's sort of no harm
11 at the end of the day, if we've now done that as part of the SP, but I'm not
12 trying to put words in your mouth, Mr. Lynn, but am I correct in my...

13 LYNN: I like Mr. Loring earlier, you put the right words in my mouth,
14 probably made them sound better than I would have. But, yeah, I mean, the,
15 the purpose is to identify impacts and to the extent possible and lawful,
16 mitigate them. So, again, why, why would you say that an Applicant can
17 volunteer conditions up to the date of the MDNS, but then not after? Uh, and
18 it's, uh, it, it just sort of defies, it, it's inconsistent with the purpose
19 and it seems to elevate the process, uh, uh, above the substance. The other
20 thing I would just say, briefly, is that if this was just a r-, an
21 opportunity to consider whether the County did a good job, why would, why do
22 we have an opened record hearing? Why did hear from anybody other than the
23 County witnesses. It's, it's, it's intentionally set up as an opened record
24 public hearing and you have authority to approve, deny or impose conditions,
25 I, I believe, under the County Code. So, uh, it seems to me like the whole

1 idea of narrowing the scope to what the County, you know, had in front of its
2 blinders when it reviewed this seems like a, uh, an un-, an unnecessary, uh,
3 way to look at it. And unhelpful.

4 REEVES: Well, okay. But to be clear, when you say opened record hearing,
5 the SUP is clearly an opened record hearing where I illicit testimony from
6 the public, et cetera. The SEPA portion is consolidated, uh, you know, maybe
7 Mr. Ehrlichman knows the history, uh, better than I do, uh, but, essentially,
8 the SEPA portion is not, I mean, certainly it's open to the public, and it is
9 where they can watch and it's open record to the extent that the parties were
10 able to provide Exhibits. But it's, it's different, I guess, than, than the
11 meeting, the opened public hearing aspect, I mean, you acknowledge that,
12 right?

13 LYNN: Yeah. It's a, it's an opened record hearing as opposed to a
14 public meeting.

15 REEVES: And not a closed record hearing, either, which would be, you
16 know, the next stage of review, uh, whoever thinks I messed up, that will be
17 closed record to the extent that they'll use this record to then review and
18 they won't have additional evidence. Uh, and Mr. D'Avignon has a thought
19 there.

20 D'AVIGNON: I, I think it maybe is helpful to look at, you know, kind of how
21 the rules in the Code describe these in the sense that the Special Use Permit
22 is a pre-decision hearing. Um, and then that necessarily comes with the
23 public comment portion of it. The SEPA Appeal is a, an Appeal, it's
24 necessarily post-decision, that decision being the threshold determination.
25 Um, and it is opened record, but it does not include the public comments,

1 which, which occurred in writing, as part of the MDNS process. But I think
2 the pre-decision hearing is the proper way to describe it.

3 REEVES: Sure. Okay. Okay. Well, I think, well, it was helpful to me, this
4 discussion. And I'm happy, uh, to, and that other issue I just brought up,
5 Mr. Loring, you know, that was one of the big things, whatever I send out
6 Monday, I, I intended on saying, hey, give me some thoughts on this. If, if
7 you want to take a minute and weigh in, feel free, I fully recognizing, that
8 you haven't, you weren't prepared and I expect you'll have killer arguments
9 prepared next Friday, but...

10 LORING: Uh, naturally, uh, yes, we will. I, no, I just want to touch
11 briefly on this topic. It won't surprise you that, um, I have a different
12 opinion of SEPA and its application than Mr. Lynn. Uh, that's part of the
13 reason we're here.

14 REEVES: Yeah.

15 LORING: That's part of this Appeal because our clients have different
16 views on the law and how it applies here. And, uh, I will say that the fact
17 that it's an opened record hearing has no bearing on whether the County was
18 required to get a decision right because, of course, as an Appellant, there
19 are instances where it's important to bring forth evidence that helps
20 demonstrate that it was incorrectly done. And while sometimes showing the
21 absence of a proper evaluation is enough, as we know, practically speaking,
22 sometimes it requires a little bit more. And showing that impacts would
23 actually occur. So, that's, that's where we're at is that part. Uh, and then
24 on, you know, with regard to the Phillip 66 and whether Conditions can be
25 added and whether, uh, new proposals can be added through the SEPA Hearing

1 itself, I would, I, there's got to be some focus on the distinction between a
2 threshold determination, like we have here, with this MDNS and say a process
3 that goes through a full environmental impact statement that assesses at
4 least some specific potential impacts to a greater degree. And, uh, and in
5 this instance, that public process will have been circumvented if there's not
6 that opportunity to review, uh, even new proposals, although again, we
7 haven't heard much in the way of specificity or really anything in the way of
8 specificity about this. We have heard that there are pledges, but we don't
9 know if they really are. Um, and, and so I have, but to get back to that
10 Phillip 66, too, I encourage you to pull that up. And, and I do agree with
11 Mr. D'Avignon's view of it, in that there was a question about a revision of
12 a, of a Condition. And, uh, I believe that the Condition, and we'd need to
13 look at this deeper, but I do believe the Condition was about a future SEPA
14 review in the event that there were potential impacts that could arise as
15 part of the project. I believe it was something like that. So, that's not a
16 clear validation of a Hearing Examiner authority to add conditions through
17 this process. And with that...

18 REEVES: Okay.

19 LORING: I'll, uh, I'll defer til next week...

20 REEVES: Okay.

21 LORING: For further...

22 REEVES: Great. Well, thank you. I, uh, I think, at this point, we can, I
23 just want to round robin, but thank you, that was helpful to sort of, A) I
24 wanted to telegraph some of the thoughts that, that I plan on, again, I'll
25 try to produce a, a document that will be included in the record, obviously,

1 no, you know, nothing that won't be totally transparent. I just, I, part of
2 the challenge of this process is my particular role, you know, is two-fold. I
3 have to address the, the SEPA Appeal that Mr. Loring brought. And that does,
4 in my mind, you know, I mean, there's some very specific, sort of legal
5 analysis I'm hoping to get clarification on. And then, in terms of the SUP,
6 my role is, is, uh, a little different in terms of sort of calling balls and
7 strike and ensuring the public had their opportunity to participate and, and
8 getting all the information Exhibits into the record. And then ultimately,
9 you know, even though Staff has made a recommendation, uh, you know, it's
10 the, the, the buck stops with me in terms of the ultimate decision and any
11 conditions. And, and so we've, we've been trying to sort of deal with and
12 address that, so trying to get clarification on that. Um, and so this is
13 helpful. And so I think, I think we have a good plan for next Friday, uh, and
14 we'll, you know, I think we know exactly where we're going to go, but again,
15 I'll try to produce something, uh, here this week and send it out that we
16 can, uh, you know, maybe include somehow in the record, officially, saying,
17 hey, these are the kind of legal questions I'm hoping we can, you know, I'd
18 like the parties to, to give additional though to themselves. So, this
19 initial discussion was very helpful. So, thank you. Um, I, again, not enough
20 time to bring a witness. Uh, so I think we can conclude for the day. But I
21 will round robin and just make sure. So, I'll start with Mr., uh, D'Avignon
22 because have him as the lead today, in terms of his witnesses. Was there
23 anything else you, you wanted me to address before we conclude for the day?
24 D'AVIGNON: Uh, no, Mr. Examiner, thank you.

25 REEVES: Great. Uh, Mr. Ehrlichman?

1 EHRlichman: May I schedule Ms. Walsh for 9:30 on Friday the 23rd? She has to
2 take time off work, I'd like to give her a definite time if that's agreeable?
3 REEVES: Well, is she your first witness?
4 EHRlichman: I can make her my first witness, sure.
5 REEVES: Well, if so, let's schedule her for, like, 9:05.
6 EHRlichman: Okay.
7 REEVES: Uh, 9 o'clock, let's just say 9 o'clock. But yeah, that would be
8 fine.
9 EHRlichman: Okay. Very good. Thank you.
10 REEVES: Okay. And anything else before..
11 EHRlichman: Nothing else. Appreciate the, the conduct of the Hearing today.
12 Thank you.
13 REEVES: Great. Uh, Mr. Lynn?
14 LYNN: Uh, nothing, uh, concluding an error-free muting day, though.
15 Just..
16 REEVES: Uh, and you do get gold stars, uh, for that, absolutely. And Mr.
17 Loring, you actually lost a gold star for failure to use bicyclability, but,
18 but, uh, but, uh, any, anything you wanted to touch on before we end the day?
19 LORING: No, I've got nothing, nothing and I hope to regain that gold star
20 next week.
21 REEVES: Uh, and, uh, for those following along, this is an independent
22 system that has nothing to do with, uh, you know, what I ultimately decide.
23 It's just me being a joker and trying to bring a little levity. But I do
24 certainly take this seriously and I understand how important this is, uh, in
25 terms of the Applicant, the Appellant, all of those in the community, I, I,

1 you know, I know I'm a bit of a, a prankster, but, uh, I, I take it very
2 seriously. I just, these long eight-hour days, you know, you need something
3 here or there. So, I think we can conclude the day. Uh, ultimately, uh, I
4 think, I have to say Bill Lynn wins in terms of a tie because he wore the
5 monkey tie. And that's a hard one to beat. Uh, Mr. Ehrlichman looks upset
6 that he didn't win on the tie, but I can't see closely...

7 EHRlichman: I can't see any monkeys is my problem.

8 REEVES: All right.

9 EHRlichman: Can you bring that closer to the camera?

10 REEVES: Bring the tie a little closer.

11 EHRlichman: Oh, okay. There we go. Thank you. That's my only upset. Thank
12 you.

13 REEVES: Excellent. All right. So I think we'll be back next Friday, uh,
14 which, again, I think was the 23rd? And..

15 LORING: Yeah.

16 REEVES: We're going to start promptly at 9:00. Uh, we already, Mr.
17 Ehrlichman acknowledged who his witnesses are, who his first witness will be.
18 Uh, and I think we have a plan to get through everything. Uh, the parties
19 will send me the, the stipulation. I, again, I still don't think I got it,
20 which is fine. Um, and then further homework for the parties, I, I think we
21 know we're up to A62 for the Appellant, but if I can just get verification on
22 Exhibit numbers, uh, from, from the other Attorneys, uh, before, uh, next
23 Friday, that would be great. And, uh, I will, again, try to sort of produce
24 a, these are the legal questions I was hoping for some, some thoughts on. Uh,
25 we'll do that and then, of course, because it's a Friday next Friday, uh,

1 pursuant to Brandon Black's policies at Skagit County, uh, I think, uh, uh,
2 Hawaiian shirts are, are acceptable. So, I think, with that, we can conclude
3 our Hear-, I get a, we get a thumbs up from Brandon Black. I think with that,
4 we can conclude the day. I, uh, appreciate, uh, everyone, uh, participating,
5 taking the time to watch, uh, to answer questions, those that testified, I
6 appreciate, uh, the Attorneys, uh, taking time to, to, uh, get through all of
7 this. And, uh, we'll wrap it up next week. Uh, I've seen you all more than
8 I've seen my own family, uh, the last few months, probably the same for all
9 of us, uh, but, uh, uh, next Friday will, will be the day and I think with
10 that, we'll end things. And thank you, also to Mona Kellogg and, uh, and, uh,
11 County Staff that has coordinated things. So, we'll, we'll all be back next
12 Friday. Thanks, everybody.

13 LORING: Thank you.

14 EHRLICHMAN: Thank you.

15 D'AVIGNON: Thank you.

16 [The tape ends.]

17 **The undersigned being first duly sworn on oath, deposes and says:**

18 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
19 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party
20 to this action. That on May 10th, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves, that
21 took place on 9/13/22 at 3:00 p.m., regarding the above-captioned matter.

22 I certify and declare under penalty of perjury under the laws of the State of Washington that the
23 aforementioned transcript is true and correct to the best of my abilities.

24 Signed at Mount Vernon, Washington, this 10th, May of 2024.

25

Janet Williamson

Janet Williamson

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**IN SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT**

State of Washington,)
Cause No.: PL16-0097, PL16-0098,
Plaintiff,) PL22-0142
vs.)
Name,) PERMIT HEARING 9-13-22 9:00 AM
Defendant)

Transcription Date: May 7th, 2024

Present: Andrew Reeves, Mona Kellogg, Bill Lynn, Tom Ehrlichman, Kyle Loring, Jason D'Avignon, Kevin Cricchio, Brandon Black

REEVES: Was that a yes, we are recording, I...

KELLOGG: Yes.

REEVES: Oh, okay. Excellent. I'll get my gavel out and make it official.

And good morning. I'm going to go ahead and call this session of the Skagit County Hearing Examiner to order. For the record, today is September 13th, 2022. Just after 9:00 a.m. We have one item on the agenda today. This is numbers PL16-0097 and PL16-0098, involving a request for a Special Use Permit from Concrete Nor'West, Miles Sand and Gravel. As well as an affiliated

1 Appeal under our State's Environmental Policy Act, uh, from the Samish Valley
2 Neighbors. So, we are on, I believe day 6, at this point. So, I think we're
3 all familiar with what's going on and we can dive right in. Uh, procedurally,
4 I know I had assigned all of our Attorneys the job of trying to make sure we
5 knew where we stood in terms of Exhibits. Maybe we can just cover that real
6 quick, at the outset. Um, let me start with you, Bill Lynn, do you have a, a
7 number, uh, that you believe is the correct number for the Applicant?

8 LYNN: Uh, I believe we're, the next Exhibit would be, uh, B99. I do not
9 have a list, uh, prepared to send to the parties, as of this moment.

10 REEVES: Okay. Well, we'll at least, so we think we're up to B98, is that
11 right?

12 LYNN: Yeah. We're, we've, the last one was B98.

13 REEVES: Okay. And Mr. Ehrlichman, you've got kind of a supplemental, uh,
14 uh, situation, but and you're muted at the moment.

15 EHRLICHMAN: Thank you, Mr. Examiner. Yes, we are, uh, continuing on with our,
16 using our Exhibit 47 as a catchall for our Exhibits. And I believe we are at
17 sub-exhibit S10, um, I want to confirm that as we go along and, and get back
18 to you if that's incorrect.

19 REEVES: Sure. Okay. So, again, I agree, that's the sensible way to do it,
20 keep them all as part of Exhibit 47, related to the SUP, but then it's going
21 to be S1-S10, currently, unless we're told otherwise. Does that work?

22 EHRLICHMAN: Yeah.

23 REEVES: Okay. And, uh...

24 EHRLICHMAN: Thank you. Thank you.

25 REEVES: Mr. Loring, on behalf of the Appellant?

1 LORING: Yes. I believe that we're up to Exhibit A, A61, if there is
2 another Exhibit. Uh, A59 was the Department of Ecology's, uh, Appendix 8C to
3 their Wetlands in Washington buffer guidance or it was a buffer guidance. And
4 then Exhibit A60 was a series of five photographs from Mr. Mcleod of, uh,
5 road conditions, road shoulder conditions, primarily.

6 REEVES: Okay. So, through A60, at the moment. Okay. And then finally, uh,
7 on behalf of the County, Mr., uh, D'Avignon?

8 D'AVIGNON: I don't believe I'm in a position to provide any new additional
9 information that's already been provided, other than to say that it all
10 sounds correct to me and with my notes. I was unable to get a list on
11 yesterday as well.

12 REEVES: Okay. That's fine. We will...

13 D'AVIGNON: I do have B98 being title notification, but I, I did not be able
14 to fi-, figure out what B96 and B97 were.

15 REEVES: All right. So mental note for, uh, those playing along, we're
16 still trying to make sure we have a correct, uh, set of Exhibits, but, uh, no
17 need to further that, uh, at the moment. And is there anything else, uh, we
18 should address before we dive in with the County's witnesses? Mr. D'Avignon,
19 you have anything?

20 D'AVIGNON: I don't, Mr. Examiner.

21 REEVES: Okay. Mr. Loring, any on behalf of the Appellant?

22 LORING: No, I don't have anything, Mr. Examiner.

23 REEVES: Mr. Ehrlichman?

24 EHRLICHMAN: Mr. Examiner, uh, two quick items, first, uh, it appears that the
25 parties have reached a stipulation, uh, that's a little more narrow than, uh,

1 we started out. But, uh, we can describe that for you. I think Mr. Lynn is
2 circulating it for signatures as the Hearing goes on today.

3 REEVES: Sure. Would it, should we just wait to, til it's finalized or
4 does it impact what we're about to do?

5 EHRLICHMAN: Uh, I think it's helpful for what we're about to do. Mr. Lynn, do
6 you want to describe, do you want to go ahead since you drafted it?

7 REEVES: Well, is there, you said two things. Is, can we do the second
8 one, first, and then we'll move...

9 EHRLICHMAN: Yes. Uh, the second one is, uh, I'd like to, at some point today,
10 get a, or hopefully this morning, get a clear picture of when you think our
11 presentation in chief would be so I can alert my witnesses to get ready?
12 Tentatively I've told them Friday, the 23rd.

13 REEVES: Which is, that was the day we set aside last week, right?

14 EHRLICHMAN: Yes. I believe so.

15 REEVES: Sure. I believe that's right. Maybe when Mr. D'Avignon gets
16 started, he can give us a sense, but I think that would make sense. And so,
17 with that, we'll go to Bill Lynn to describe, uh, the parties' work on a
18 stipulation of some kind.

19 LYNN: Uh, thank you. The stipulation, uh, simply notes our consensus
20 agreement that the 46 trips, uh, referenced in MDNS Condition 13 represent,
21 uh, trip ends as the ITE Manual describes them. So, that means 23 loaded
22 trucks and 23 unloaded trucks. That's part of it. The other part of it is
23 that the 30 trip count or 30 truck count, as it's worded in the MDNS means
24 the same thing, that is a total of 15 loaded and 15 unloaded trucks.

25 REEVES: Okay.

1 LYNN: And that's the, that's the extent of the stipulation.

2 REEVES: Great. Thank you for clarifying that. Okay.

3 EHRLICHMAN: I would like to add, add one point of clarification, it probably
4 goes without saying, but, uh, the stipulation was simply as to what the MDNS
5 itself states, no party waived any position with respect to the adequacy of
6 the conditions and so forth, obviously.

7 REEVES: Okay. Yes, uh, very lawyerly of you. I, I, I did not expect the
8 stipulation met that, uh, you no longer wish to participate in the Appeal or
9 have [inaudible] uh, though with that, I'll think we'll move, uh, then to Mr.
10 D'Avignon and maybe if he can give us just a brief overview of his plan of
11 attack here today. And we'll dive in with witnesses after that.

12 D'AVIGNON: Uh, plan of attack is, uh, going to start with calling Kevin
13 Cricchio, followed by Leah Forbes and then Forest Jones. Um, I'm, I'm ever
14 hopeful, um, we'll be able to get through them, uh, prior to the end of the
15 day.

16 REEVES: Excellent. All right. Well, why don't we dive in, then, with Mr.
17 Cricchio and, and go from there. And I see him on the screen. We'll get him
18 sworn in. Hi, do you swear or affirm to the truth in the testimony you give
19 here today?

20 CRICCHIO: I do.

21 REEVES: And if you could just state and spell your name for the
22 recording?

23 CRICCHIO: It's Kevin Cricchio, K-e-v-i-n, Cricchio, C-r-i-c-c-h-i-o.

24

25

1 REEVES: Thank you. And we heard from you on day 1, I think way back when.
2 But, uh, thank you again for being here. I'll let, uh, Mr. D'Avignon, uh, go
3 ahead with his questions.

4 D'AVIGNON: Thank you, Mr. Examiner. Uh, Mr. Cricchio, um, what do you do or
5 I guess, where do you work?

6 CRICCHIO: Um, well, presently, I work for Skagit County, Planning and
7 Development Services Department as a Senior Planner in the Current Planning
8 Division.

9 D'AVIGNON: All right. And what does that, uh, job entail?

10 CRICCHIO: Uh, partly it entails reviewing Land Use Permits. Um, and
11 processing those Land Use Permits. Included with that is, uh, SEPA and
12 [inaudible] review, if those respective Lane Use Permits requires SEPA.

13 D'AVIGNON: Okay. And how long have you been a Planner?

14 CRICCHIO: Uh, approximately 15 years for a number of Cities and Counties in
15 the State of Washington.

16 D'AVIGNON: Um, when did you become involved in the proposed Grip Road Mine?

17 CRICCHIO: Um, so I've worked for Skagit County, in my current capacity, for
18 almost two years, uh, a tad short of two years. Um, I was handed the project
19 at the 11th hour, um, approximately July/August of 2021. Um, there had been
20 several other Project Managers that had worked on the project in the past.
21 And, um, so, yeah.

22 D'AVIGNON: And so, once this project was handed to you, uh, I mean, I guess,
23 can you walk us through the review that you, you did? I mean, I guess,
24 starting with where did you start?

25

1 CRICCHIO: So, sure. So, looking at the large file, um, I wanted to look
2 what's been done in the past, where we are today and where we still need to
3 go. Um, looked at all the records, um, electronic as well as paper. Um, did
4 tons of organizing of, uh, the project, making sure that the electronic
5 folder reflects the paper folder and vice versa. And, um, yeah.

6 D'AVIGNON: You mentioned you had, you know, you looked at where, where the
7 project had been and where it needed to go and, I mean, what was the result
8 of kind of that inquiry?

9 CRICCHIO: So, um, um, the Hearing Examiner required that the haul road, the
10 previous Hearing Examiner required that the haul road, uh, critical area, uh,
11 reports be written for that. And so, that came in, um, sometime December of
12 2021. And, um, once that came in, um, we started, um, looking at that,
13 internally. Um, what were the recommendations, what were the recommendations
14 of the previous, uh, critical area reports, uh, the traffic impact analysis.
15 All of the other, uh, Application material that the Applicant submitted way
16 back from 2016, as well as, you know, to current. All the addendums, all the,
17 um, everything that the Applicant submitted, the SEPA Environmental
18 checklist, the narrative, all that. And so we started drafting a SEPA
19 Mitigated Determination of Non-Significance.

20 D'AVIGNON: And when you say you, uh, started drafting that, uh, Mit-,
21 Mitigated Determination of Non-Significance, who is we?

22 CRICCHIO: Uh, the Current Planning Division, but not just the Current
23 Planning Division, we, uh, internally, um, re-, reached out to the Natural
24 Resource Division of the Planning Department. Natural Resource Division is
25 the, uh, division that deals with Shoreline Permitting, deals with Forest

1 Practices and deals with Critical Area Regulations. In addition to reaching
2 out to the Natural Resource Division, we also reached out to the Public Works
3 Department. They are the department that is tasked with reviewing the
4 Application for conformance with county standards, um, with regard to roads,
5 um, in unincorporated Skagit County, um, adopted levels of service for the
6 respective roads and whether or not they agree with the recommendations or
7 improvements that were as part of the traffic impact analysis. So, all of
8 that comes together and is reflected in the issued SEPA MDNS, um, as well as...

9 D'AVIGNON: And...

10 CRICCHIO: Other, as well as other agencies and departments of jurisdiction.
11 Um, we incorporated that, um, into, reviewed that and incorporated that into
12 the SEPA MDNS.

13 D'AVIGNON: So, yeah, I guess, to maybe back up on the last thing you said,
14 the other agencies, is that through comments?

15 CRICCHIO: That's correct. So, way back in 2016, um, there was a Notice of
16 Application and this matter went before the Hearing Examiner. And then there
17 was some, uh, if I recall correctly, uh, some noticing errors. And so, then,
18 um, a new Notice of Application, uh, and SEPA was issued. And so, we've been
19 accepting comments on this project from way back in 2016, up until today. Um,
20 and, um, so, all of those comments, whether its agencies and departments, as
21 well as public, we've been accepting.

22 D'AVIGNON: And how would you describe the volume of those comments?

23 CRICCHIO: Um, so from agencies and the public, um, I'm really not getting
24 anything more coming in. Um, and I really haven't even been getting too much
25 public...

1 D'AVIGNON: Well, I guess, not, not if they're continuing to come in, but, I
2 don't know I guess, do you have any idea of how many pages of comments you've
3 received?

4 CRICCHIO: Oh...

5 D'AVIGNON: Since 2016?

6 CRICCHIO: Sure. Uh, so, I've done my best to provide, uh, a complete record
7 to the Hearing Examiner, uh, for his review, uh, on everything. Um, from the
8 Application material to the public comments, um, you name it. Um, and that be
9 reflected in the Cricchio files, as Mr. Reeves, uh, refers to it, as, um, and
10 so, from 2016, we've received hundreds, um, if not more than hundreds. Some
11 of those comments may be redundant, um, but I've done my best to get the full
12 record to Mr. Reeves, uh, for consideration.

13 D'AVIGNON: Um, so you had mentioned that there were numerous studies and
14 documents as part of the record. Um, were these documents shared with the
15 Natural Resources Division as well as the Public Works Department?

16 CRICCHIO: Um, everyone has had, had access to those.

17 D'AVIGNON: And how do you, I guess, how is, how is that information shared?

18 CRICCHIO: Um, well, it can be shared by many ways. It can be shared by
19 emails, um, it can be shared on the County website, there is a County website
20 that is a portion of the County website that's dedicated to the Concrete
21 Nor'West project. Um, and then we also have, internally, a, uh, Permit
22 tracking database, where, um, it's very common for Application material,
23 public comments, that type of stuff, to be attached to the, to the Permit
24 tracking database, for the respective permit.

25

1 D'AVIGNON: Okay. Um, so, do you see a, a, a clear distinction between the,
2 you know, your role as it comes to the SEPA, um, as opposed to your role when
3 it comes to reviewing the underlying permit? Or the Application for Permit?

4 CRICCHIO: Do I see a clear distinction?

5 D'AVIGNON: Like, is there a different review, like, do you review things in
6 a different way, one or the other? Or are they...

7 CRICCHIO: Well...

8 D'AVIGNON: Kind of the same, I guess, my question.

9 CRICCHIO: It's, well, when we review the Special Use Permit Application,
10 the SEPA Environmental checklist, or the SEPA review aspect of it, there's
11 consolidated review going on. And so, my, my view of it is it's one in the
12 same, it requires SEPA, all Special Use Permit Applications, uh, especially
13 for commercial, um, require SEPA environmental review. Um, and then there's
14 other thresholds that also require SEPA environmental review. Uh, for this
15 project, specifically the amount of, or quantity of, uh, material that
16 they're looking to excavate.

17 D'AVIGNON: Okay. And with, uh, you had mentioned that you had come in on the
18 11th hour, um, just about a year ago, but yet, this has been going on since
19 2016...

20 CRICCHIO: Sure.

21 D'AVIGNON: Did you rely on the work of your predecessors in your review?

22 CRICCHIO: Sure. Definitely. There's, uh, I've, I've looked at past, uh,
23 threshold determinations and, uh, that's definitely helped. But, uh, I
24 definitely feel that the current SEPA MDNS is, uh, much, uh, greater in, um,
25 the, uh, proposed mitigation measure than past, uh, SEPA MDNSs.

1 D'AVIGNON: And you just mentioned that there were past, uh, SEPA threshold
2 determinations, how many previous, in this project, how many previous
3 threshold determinations have been issued?

4 CRICCHIO: Um, if I recall, if I, if I recall, recall correctly, there were
5 two that were re-, that were rescinded.

6 D'AVIGNON: Um, do you know why they were rescinded or withdrawn?

7 CRICCHIO: Um, if I recall correctly, uh, that had to do with noticing.

8 D'AVIGNON: Okay. Um, and did I hear you say that you think, you know,
9 they've gotten better as they've, as we've tried again and again?

10 CRICCHIO: Yes. I think it's much more thorough of a review and, uh,
11 proposed mitigation measures to, uh, mitigate likely environmental impacts of
12 the project.

13 D'AVIGNON: Okay. Just, I'm just looking at my notes, give me, indulge me for
14 one moment, uh, Mr. Examiner.

15 REEVES: Not a problem. I often...

16 D'AVIGNON: Um, Mr. Cric...

17 REEVES: Go right ahead.

18 D'AVIGNON: Oh, go ahead, sorry.

19 REEVES: No, I'm good. Go right ahead.

20 D'AVIGNON: All right. Uh, Mr. Cricchio, did you hear the conversation, um,
21 before you were called as a witness regarding the stipulation regarding the
22 number of trucks?

23 CRICCHIO: Today or in past, past, uh, portions of the Hearing?

24 D'AVIGNON: Uh, just this morning. That the parties agreed on what 46 trucks,
25 trucks, uh, a day means or 30 an hour...

1 CRICCHIO: Uh, I wasn't, I wasn't 100% tracking it, but I did hear some
2 discussion about it.

3 D'AVIGNON: Okay. Um, and does that reflect your understanding of, of what
4 MDNS Condition 13.7 means?

5 CRICCHIO: Yes. So, I'm, I'm not a traffic, uh, expert, um, I'm not a
6 critical area expert, but, uh, it is my understanding that the traffic impact
7 analysis, um, as well as, obviously, the SEPA for the project, um, and the
8 scope of the project, um, would entail, on average 46, 46 truck trips per
9 day. Um, that's an average. And that equates to 23 empty trucks in and 23
10 full trucks out.

11 D'AVIGNON: Okay. And, and so to the extent of your understanding of these
12 truck trips today doesn't, I guess, the issue is is on your PowerPoint, um,
13 you had said 60, correct?

14 CRICCHIO: Yeah. My, my apologies, I did my best, I'm not an engineer and,
15 uh, some of the TIA, uh, is written toward an engineer or, or in engineerese
16 [sic] for a lack of a better word. Uh, so that's, uh, that, part of the TIA,
17 um, the 60 is incorrect. Um, it's my understanding that, um, the maximum, per
18 hour, would be 30 truck trips, um, associated with this, associated with this
19 project, per day, that would be 15 in empty and 15 out full.

20 D'AVIGNON: Per day or per hour?

21 CRICCHIO: Um, I believe...

22 D'AVIGNON: [Inaudible.]

23 CRICCHIO: I believe that, I believe that's per, per h-, per day.

24 D'AVIGNON: All right. I'm going to pull up the...

25 CRICCHIO: Did I say that correct-, no, excuse me...

1 D'AVIGNON: No, we're going to find out.

2 CRICCHIO: Per, per hour. I'm sorry, it's confusing. Per hour.

3 D'AVIGNON: Um, so, back to the MDNS and, you know, kind of the creation of
4 this decision, um, so you, you take the primary role in drafting that
5 document?

6 CRICCHIO: So, my role in this project is to get this matter before the
7 Hearing Examiner. This came back in in 2016, the County is obligated by
8 Skagit County Code, as well as State Law, to get this to the Hearing Examiner
9 for a decision within 120 days. We are far passed 120 days. But, yes, you're
10 correct. Um, uh, my role is to, to, uh, essentially manage the process and,
11 um, so that includes SEPA Environmental Review, the drafting of SEPA
12 Environmental Review. The final SEPA, however, does not reflect just my
13 draft, it reflects the Department as a whole.

14 D'AVIGNON: Yeah. And that was going to be my next question. You, you take
15 the lead in drafting and then that gets circulated among relevant staff for
16 comment and revision?

17 CRICCHIO: That's correct. So, it is, it is, uh, I drafted it, initially,
18 but then it's modified, internally, by, uh, other persons in other
19 departments.

20 D'AVIGNON: And so, you know, you had mentioned that you're not, uh, a
21 traffic engineer or, you know, you don't work in Public Works and deal with
22 road standards...

23 CRICCHIO: That's correct. Yeah.

24

25

1 D'AVIGNON: So, do, do you rely on, you know, the comments and the revisions
2 from those, those elements of County staff in the drafting of this document
3 or any document?
4 CRICCHIO: That's correct. So, yes. I, I rely on the traffic, um, experts in
5 the Public Works Department to make sure that, uh..
6 D'AVIGNON: And that..
7 CRICCHIO: To make sure that they, that, make sure that the County Standards
8 are complied with and they're going to condition it accordingly. Um, if they
9 wanted improvements, we would condition impro-, uh, uh, accordingly as well.
10 D'AVIGNON: And I imagine the same or am I just missed you say this, the same
11 for Natural Resources?
12 CRICCHIO: That's correct. So, the Natural Resource Division, uh, the
13 Planning and Development Services Department is going to review the proposed
14 Special Use Permit Application, as well as the SEPA, um, that's associated
15 with the Application for conformance with critical area as well as shoreline
16 reg-, critical area regulations, shoreline rules and regulations per the
17 Shoreline Master Program, um, and for-, forest practice permit.
18 D'AVIGNON: Okay. I have no other questions, Mr. Examiner.
19 REEVES: Okay. I think it would probably make most sense to turn next to
20 Bill Lynn.
21 LYNN: Uh, I have no questions.
22 REEVES: Okay. Uh, Mr. Ehrlichman?
23 EHRLICHMAN: Thank you, Mr. Examiner. Uh, good morning, Mr. Cricchio.
24 CRICCHIO: Good morning.
25

1 EHRlichman: I represent Cougar Peak LLC and the Neil Mcleod family, uh, live
2 on Grip Road, a short distance from the mine entrance. Thank you for your
3 testimony this morning. Um, I was jotting down a couple of notes. Um, I think
4 one of the most important things I heard was that you were making a
5 correction to the PowerPoint slide you presented at the outset, is that
6 correct?

7 CRICCHIO: That's correct.

8 EHRlichman: Um, w-, can you be more specific about, uh, what is being
9 corrected for us, for the record?

10 CRICCHIO: So, I think there is reference to 60, uh, truck trips per hour on
11 there, um, maximum, um, and that's going to be 30, 15 in, 15 out. So, if I
12 could go back to make, to clear up the presentation a little bit more with
13 regards to, to traffic, um, I would strike pretty much the entirety of my
14 traffic discussion and simply li-, list that on average, this proposed
15 project, per the Traffic Impact Analysis, would result in, uh, 46 truck
16 trips, um, per day, um, and that would be 23 empty in and 23 full out.

17 EHRlichman: Great. Thank you very much for that, uh, correction. And, uh, uh,
18 I think the, the record is now clear that that, um, slide, that incorrect
19 slide is stricken and replaced with this testimony.

20 CRICCHIO: Thank you.

21 EHRlichman: Thank you for that. Um, now, when you said that, um, well, I want
22 to ask you a couple of questions about the SEPA determination. And also,
23 your, um, consolidated permit review.

24 CRICCHIO: Uh-huh.

25

1 EHRlichman: Um, on the consolidated permit review, um, aren't, I mean, of
2 course, there are separate code requirements for approval of a Special, a
3 mining Special Use Permit, correct?

4 CRICCHIO: Um, yeah. There's criteria of approval for a Special Use Permit,
5 there's criteria of approval, uh, if I recall correctly, uh, for, uh, a
6 gravel mine, um, per Skagit County Code.

7 EHRlichman: Exactly. Thank you. And, so, um, and then under the Code, the
8 Hearing Examiner is the decision-maker here, correct? A PDS didn't make a
9 decision on the permit, the Special Use Permit, correct?

10 CRICCHIO: So, yeah. The, the Skagit County Planning Department, we, we're
11 the ones who issued the SEPA MDNS, but you're correct, Mr. Ehrlichman, uh,
12 the Hearing Examiner is the, the decision-maker on this, on the Special Use
13 Permit Application.

14 EHRlichman: Thank you. And, and..

15 CRICCHIO: And the Appeal.

16 EHRlichman: I'm sorry?

17 CRICCHIO: And the SEPA Appeal.

18 EHRlichman: Thank you, sir. And under your procedures in Section 14.06, the
19 Planning Department is in the position of making a recommendation to the
20 Hearing Examiner on the Special Use Permit decision, correct?

21 CRICCHIO: That's correct.

22 EHRlichman: Thank you. And your Staff Report, um, listed those specific
23 requirements for a Special Use Permit, separate and apart from any SEPA
24 requirements, correct?

25

1 CRICCHIO: Um, if I recall correctly, yes, in the Findings of Fact, um, or
2 the Staff Report, um, AKA Staff Report, um, there are, uh, criteria
3 probalisted [sic] within.

4 EHRLICHMAN: Thank you. And in your Staff Report, I believe you recommended
5 that the SEPA MDNS conditions also become conditions for the Special Use
6 Permit, is that correct?

7 CRICCHIO: Yeah. So, having done this for many years, with different
8 jurisdictions, that's very common. So, SEPA mitigation measures typically
9 become, uh, a condition of the Special Use Permit.

10 EHRLICHMAN: Right. Thank you. To your knowledge, are there any, in the Staff
11 Report, are there any Special Use Permit conditions that are different or go
12 beyond the MDNS conditions? Is there a separate group of S-, of Special Use
13 Permit conditions, separate and apart from the set of SEPA conditions or are
14 the, the Special Use Permit conditions that you, that the Department is
15 recommending, are they identical with the, the SEPA conditions?

16 CRICCHIO: Um, if I'm understanding you correctly, Mr. Ehrlichman, so, one
17 of the conditions in the Special Use Permit that is before the Hearing
18 Examiner today, um, in the Findings of, Fi-, Findings of Facts or Staff
19 Report, that is the mitigation measures that, uh, was included in the SEPA
20 MDNS. Um, that is the proposed mitigation measures, uh, to mitigate likely
21 impacts to the environment. Um, and then everything else is outside of the
22 SEPA Mitigation Measures and that's for the Special Use Permit itself.

23 EHRLICHMAN: Exactly. Thank you. And so, what are the Special Use Permit
24 Conditions that the Department is recommending, that are, that are different
25 from the MDNS conditions?

1 CRICCHIO: Uh, I'm, I'm not looking at the Findings of Fact, but you'd have
2 to look at the, the, the, uh, Staff Report and look at all the, uh,
3 Conditions of Approval and then, um, the, one of those conditions, like I
4 just said, is going to be specific to the issued SEPA MDNS and then
5 everything else has to do with the Special Use Permit Application.

6 EHRLICHMAN: Yes. Yes. I understood that answer. I'm, I'm trying to now ask
7 you about what everything else is. Now, we're talking specifically here about
8 recommended conditions. And I'll explain where I'm going with this, Mr.
9 Examiner, if I may?

10 REEVES: O-, okay. Something, this is something other than the recommended
11 conditions on Page, Pages 30 and 31 of the Staff Report?

12 EHRLICHMAN: My, my question is, where in the Staff Report do we find Special
13 Use Permit conditions that are separate and apart, different than MDNS
14 conditions? My understanding is that there aren't any. But I had an exchange
15 with Counsel where it was suggested that perhaps there were some. And, again,
16 my questions are very limited to Grip Road's, um, safety conditions, traffic
17 safety conditions. So, I guess...

18 REEVES: So...

19 EHRLICHMAN: Let me rephrase the question, then, to see if I can clear it up.
20 Uh, to your knowledge, are there any, um, Special Use Permit conditions
21 related to safety on Grip Road, other than the MDNS conditions?

22 CRICCHIO: Other than the MDNS conditions? So, when Public Works reviewed
23 the Application and, um, any proposed improvements, whether it's on-site or
24 off-site, that would typically be within an issued SEPA MDNS. So, if they

25

1 wanted something, that's where we would typically hold it at, or, or put it
2 in with, put it in that document.

3 EHRLICHMAN: Oh, okay. Thank you very much for that. Now, in this particular
4 case, is that what happened?

5 CRICCHIO: Um, I believe so, yes.

6 EHRLICHMAN: Okay. So, I think what, what I, if I was asked to summarize,
7 well, let me put it this way, is it fair to summarize your testimony, then,
8 to say that any conditions on safety, traffic safety on Grip Road, we can
9 find those in the MDNS conditions?

10 CRICCHIO: That sounds correct to me, yes.

11 EHRLICHMAN: Okay. Thank you very much. Just a couple more quick questions.

12 REEVES: Just so I'm not now confused, I was less confused a few minutes
13 ago, but am I correct in thinking there are only two places wherein
14 conditions, well, what I would call conditions, there would only be one
15 place, the Recommended Conditions in the Staff Report, Page 30 and 31,
16 clearly identified as such and then, separately, there's the Mitigation
17 Requirements under SEPA, which are specifically identified in the MDNS and
18 cross-referenced in the, I believe, last condition of the Staff Report. Those
19 are the two places. Am I, there's not, Skagit doesn't use some system I've
20 never seen anywhere else, is that right, Mr. Cricchio?

21 CRICCHIO: That's right, Mr. Reeves. So, typically, typically, I would, uh,
22 uh, essentially copy/paste the MDNS conditions within the Staff Report, but
23 you're correct, it was just referenced there. Um, but, yeah.

24 REEVES: Got it. Okay. Sorry, Mr. Ehrlichman, go ahead.

25

1 EHRlichman: That, that was actually very helpful, I, I think that asked the
2 question more clearly than I was able to. Um, now, you, you testified that in
3 preparing those conditions for recommendation to the Hearing Examiner, you
4 sought the input of Public Works, correct?

5 CRICCHIO: Uh, partly, that's correct.

6 EHRlichman: Right. Partly. But with respect to traffic safety on Grip Road,
7 specifically, you sought, you asked Public Works what conditions they wanted
8 to have in the recommendation, is that correct?

9 CRICCHIO: Yes. So, I saw the recommendations of the Traffic Impact
10 Analysis, I looked at that, I looked at the memos, uh, that had been done,
11 uh, prior to that. Um, but that's correct. So, I reached out, uh, to Public
12 Works Department Staff, um, to, to, essentially, asking them what do you,
13 what, what do you need for this project to mitigate on-site, off-site traffic
14 impacts.

15 EHRlichman: Very good. Thank you for that. And, I assume, but I want to ask
16 you, there wasn't any disagreement between the Planning Department and Public
17 Works as to what conditions to put in the recommendation to the Hearing
18 Examiner, as far as that goes, the safety recommendations, is that correct?

19 CRICCHIO: Specific to traffic?

20 EHRlichman: Specific traffic safety on Grip Road?

21 CRICCHIO: So, I can't, uh, speak for other past employees that no longer
22 work for Skagit County, um, and I can't speak to anyone that, um, you know, I
23 don't have a, uh, interaction with, um, or that, you know, I don't work with
24 on a daily basis. But, as far as I'm aware of, I don't believe there's been
25

1 any disagreement with, uh, Planning Department Staff and Public Works
2 Department Staff.

3 EHRlichman: Thank you. My question was exactly that, limited to what you did
4 and, and what you talked about with Public Works or what you knew about.

5 CRICCHIO: Sure.

6 EHRlichman: So, I'll just ask the question again and maybe you can answer yes
7 or no. Uh, are you aware of any disagreement between the Planning Department
8 and Public Works about the traffic safety recommendation to the Hearing
9 Examiner, as it relates to Grip Road?

10 CRICCHIO: I'm not aware of anything, so that would be a no.

11 EHRlichman: Okay. Thank you for that. So, is it fair to say that the Public
12 Works recommendation on traffic safety on Grip Road was accepted by the
13 Planning Department and included in the Staff Report?

14 CRICCHIO: Absolutely.

15 EHRlichman: Okay. Just want to look at my notes real quick here. Um, when you
16 reviewed all of the documents prior to, uh, drafting the SEPA MDNS and you
17 looked at the reports and studies and documents related to traffic safety,
18 uh, do you recall seeing two peer reviews that the County conditioned?

19 CRICCHIO: Um, so that pre-dates my employment with Skagit County, but, yes,
20 you're correct, there was, uh, a couple of, uh, third-party review, or peer
21 review, if you want to call it that. Um, one, I think was HDR and the other
22 one was, like, GTC or something like that. That's correct.

23 EHRlichman: Okay. Very good. And, uh, those came in before the Applicant's
24 final traffic impact analysis dated September 10th, 2020, correct?

25

1 CRICCHIO: So, the documents in the Staff Report, Findings of Fact that
2 you're referencing right now, I believe those were before the final TIA.
3 EHRLICHMAN: Can you clarify that for us a little bit?
4 CRICCHIO: So, when the Application was submitted way back in 2016, uh,
5 there's, you know, like I said, there's been numerous documents that the
6 Applicant has submitted over the years, um, addendums, new reports, but
7 initially some, some traffic memos were submitted. Um, and then, eventually a
8 Traffic Impact Analysis was submitted. Um, and I think somewhere in between
9 those two, um, was third-party review.
10 EHRLICHMAN: Right. So, there wasn't a, another rev-, uh, third-party review
11 after the last traffic submittal, correct?
12 CRICCHIO: So, I don't know if that's correct. Um, I, I, I believe it, it
13 has been done, but I'm not 100%. Um, you would have to chat with the Public
14 Works Department staff regarding that question. Part of my due diligence is,
15 is reaching out and, and trying to determine whether things or done or not
16 done. Um, but, uh, I'm not 100% on that, Mr. Ehrlichman.
17 EHRLICHMAN: Yeah. Yeah. No, that's, that's fine. Thank you. I, I only wanted
18 to know what your knowledge was and your testimony. And, and I believe, uh,
19 you said you came in in July or August of 2021, which would have been...
20 CRICCHIO: That's when I was...
21 EHRLICHMAN: Yeah. Would have been after...
22 CRICCHIO: That's when I was handed the project, yep.
23 EHRLICHMAN: Right. Right. So, uh, you weren't aware of, uh, the question of
24 whether there was a peer review done on that last traffic report?

25

1 CRICCHIO: Um, I, I wasn't aware of it. Um, I have reached out, um, and, but
2 I'm, I don't know. You, like I said, you'd have to talk to the transportation
3 people. Um, and I know that they're going to be testifying, um, and that
4 would be probably a question for them.

5 EHRLICHMAN: Right. But, I can't ask them about what you were aware of, so I'm
6 just asking...

7 CRICCHIO: Sure.

8 EHRLICHMAN: Were you aware, when you came into the project, were you aware of
9 the question of whether there was a peer review or not on the last traffic
10 submittal?

11 CRICCHIO: Was I aware of it? Uh, so, having done this for many years, uh,
12 in previous, uh, places where I've worked, we have used third-party review on
13 numerous occasions, especially very controversial projects, um, or projects
14 that could potentially have environmental impacts or traffic impacts, it's
15 very common for a city or a county to do third-party review or peer review of
16 Applicant's submittals, um, especially critical area reports or traffic
17 impact analysis. Um, I was not aware, however, that whether that's been done
18 or not. Um, I believe it has been. I've, I've reached out to staff, um, and,
19 uh, that's to the, to the, the extent that I know now.

20 EHRLICHMAN: Uh, I'm sorry, you weren't aware of whether what was done?

21 CRICCHIO: I, I'm not 100% aware of whether the final TIA underwent peer
22 review.

23 EHRLICHMAN: Thank you. We'll ask the Public Works guy, thank you for that.
24 Now, who, at the County, uh, in the Planning Department, made the ultimate
25 decision to, um, finalize the draft MDNS?

1 CRICCHIO: So, who, with the County, was the person that made the decision
2 to finalize the SEPA MDNS?

3 EHRLICHMAN: Yes. You...

4 CRICCHIO: Is that correct?

5 EHRLICHMAN: Yeah. You testified that you prepared a draft, you circulated..

6 CRICCHIO: Sure.

7 EHRLICHMAN: It, there were edits to the draft, who made the final...

8 CRICCHIO: Correct.

9 EHRLICHMAN: Decision on the, go to print on the, the final MDNS as we see it
10 today?

11 CRICCHIO: Sure. So, that's my supervisor, Brandon Black.

12 EHRLICHMAN: Okay. Great. So, even though you signed the MDNS, you did so, uh,
13 only after hearing from Brandon Black, that it was, it was time to issue..

14 CRICCHIO: Ye-...

15 EHRLICHMAN: That...

16 CRICCHIO: The, so, like I said, I solicit for comments, internally, I look
17 at past comments from different agencies, as well as different departments. I
18 condition the SEPA MDNS, um, accordingly. Um, but, uh, um, and then,
19 obviously, there's a QA/QC component of the SEPA MDNS that, uh, as a team, we
20 look at. Um, but ultimately, my supervisor looks at it and once he or she, in
21 this case a he, uh, decides that it is, uh, good to go, um, then it's good to
22 go.

23 EHRLICHMAN: Very good, Mr. Cricchio. Thank you so much for answering my
24 questions and, um, Mr. Examiner, I am done. Uh, Mr. Examiner, I just want to
25 note for the record that we would like to call Brandon Black as a witness in

1 our presentation if the County elects not to call him. But we can deal with
2 that another time, I'm sure. Thank you, Mr. Cricchio.

3 D'AVIGNON: On that note, I would preemptively note that the County would be
4 objecting to him calling Brandon Black as a witness.

5 REEVES: Well, okay. Let's cross that bridge later and get through this
6 witness first. Um, Mr. Loring, I'm going to hand Mr. Cricchio over to you.

7 LORING: Thank you, Mr. Examiner. And, uh, good morning, Mr. Cricchio.

8 CRICCHIO: Good morning.

9 LORING: I have a few questions for you, thanks, uh, to follow up on the
10 conversations that you've had so far this morning...

11 CRICCHIO: Sure.

12 LORING: Uh, with Mr. D'Avignon and Mr. Ehrlichman. Uh, do you, uh...

13 REEVES: Mr. Loring, sorry to interrupt.

14 LORING: Yes.

15 REEVES: I think you're having some bandwidth issues, maybe if you give us
16 a break on video...

17 D'AVIGNON: You're breaking up a lot.

18 REEVES: For a few minutes, it will, it will catch up.

19 LORING: Okay. Thanks for letting me know. Here we go, I'll turn off the
20 video. And feel free to pipe up if I'm having trouble coming through clearly
21 and now that I've shut down the video.

22 REEVES: You know I will, go ahead.

23 LORING: Thank you. Um, Mr. Cricchio, you mentioned at the beginning of
24 your testimony with Mr. D'Avignon, that you had, uh, there was internal
25

1 review associated with this project application, as well as other agency
2 review, uh, were you referring to State agency review of the Application?
3 CRICCHIO: So, we didn't solicit comments to state agencies, that's not what
4 I meant. What I meant is we looked at, uh, the, the totality of the agencies
5 and department comments that have been received. In addition to that, we
6 reached out, um, as a Planning Department internally, um, to the Public Works
7 Department. Um, to, uh, the Natural Resource Division, um, if there was more
8 comment or, or there was confusion or, or a need for, for comment that was
9 not received from, from, internally from other departments, whether that's
10 Public Health or whoever, yeah, I, I reached out, uh, internally, um, to
11 other departments to help...

12 LORING: Okay.

13 CRICCHIO: Write, to help write the SEPA MDNS.

14 LORING: Great. Thank you for that clarification. Uh, although you didn't
15 reach out to state agencies, there are numerous, uh, communications from the
16 Department of Ecology in the record, aren't there?

17 CRICCHIO: Um, I think there was one back in 2016 by a Doug Gresham
18 [phonetic] and then I think there was one, uh, I think it was earlier this
19 year, possibly.

20 LORING: Okay. Uh, actually, multiple communications from, uh, Gresham in
21 2016.

22 CRICCHIO: Okay.

23 LORING: Uh, is that right?

24 CRICCHIO: I don't recall, I'm not looking at everything.

25

1 LORING: Okay. Okay. Uh, and there was, uh, communication this year, March
2 11th, 2022 from, uh, a Department of Ecology representative named Chris
3 Lerkins [phonetic]...

4 CRICCHIO: Yes.

5 LORING: Are you familiar with that one?

6 CRICCHIO: Uh, I'm, I'm relatively familiar with Chris Lerkins and his
7 comments.

8 LORING: Okay. And so you're, you're familiar with comments that the
9 wetland edge for the Samish River wetland needed to be delineated, uh, that
10 the Applicant needed to use the updated wetland rating system and
11 recommending a 300 foot buffer for that Samish River wetland?

12 CRICCHIO: I did see Chris Lerkins' comments. Um, I, I do recall what you're
13 talking about. But I defer to the, uh, Natural Resource Division in
14 implementing Skagit County Code with regard to the Critical Area Regulations.

15 LORING: Okay. So, it's your position that your internal, uh, Natural
16 Resource Division rejected those recommendations from the Department of
17 Ecology?

18 CRICCHIO: Um, I wouldn't say they rejected it. That's, that's, that's a
19 mouthful right there. Um, I would say that, uh, this, this, this Application
20 came back in 2016, it is a vested Application, per the Critical Area
21 Regulations that were in effect at that time.

22 LORING: Okay. And do the Critical Area Regulations at that time allow for
23 a 200 foot buffer, rather than a 300 foot buffer for the wetland along the
24 Samish River?

25

1 CRICCHIO: I can't speak to that, Mr. Loring. Uh, again, that's, that's
2 Natural Resources.

3 LORING: Okay. And did the Department of Ecology, starting in 2016, raise
4 the same concerns and objections to a 200 foot buffer in lack of delineation,
5 uh, at that time based on the current Critical Areas Ordinance, uh, that
6 Skagit County had in 2016?

7 CRICCHIO: They raised some, uh, Doug Gresham, I do believe, raised some
8 questions, um, but, you know, I wasn't working for the County back then. Um,
9 and, again, I'd have to defer to the Natural Resource Division on that.

10 LORING: Okay. So, you mentioned vesting a moment ago, I just want to be
11 clear, you're not saying that the Critical Areas Ordinance was different in
12 2016 than it is in 2022 in a way that effects this Application, are you?

13 CRICCHIO: I'm not 100%, no.

14 LORING: Okay. When you say you're not 100%, you don't know, do you?

15 CRICCHIO: I don't know if it, I, I believe there was changes between, uh,
16 the 2016 and, and the present, but how that impacts this project, I can't
17 tell you.

18 LORING: What were those changes?

19 CRICCHIO: I can't tell you. I don't work in Skagit County with Critical
20 Area Regulations. Other employers, I have, but not with Skagit County.

21 LORING: Okay. I'm just try-, you mentioned, you testified you believe
22 there were changes, I'm just trying to explore your understanding of those
23 changes. Um, sounds like you, you don't know...

24 CRICCHIO: Well, I, I...

25 LORING: Those changes?

1 CRICCHIO: I don't recall exactly. If I had to guess, there was buffer
2 changes between previous, uh, iterations or previous, previous Critical Area
3 Regulations, which adopted State, uh, State Law. Um, co-, when, when compared
4 to current, um, but I'm not 100% on that. You'd have to talk to Leah on that.

5 REEVES: And by Leah, just breaking in, this is Leah Forbes who we expect
6 to hear from shortly, correct?

7 CRICCHIO: That's correct.

8 REEVES: Okay. Go ahead.

9 LORING: Okay. So, it's your position that there were changes in the
10 Skagit County Critical Areas Ordinance for wetlands that changed the buffer
11 sizing for the Samish River wetland, is that right, Mr. Cricchio?

12 CRICCHIO: Um, so, typically, when, uh, whether you're talking about
13 Critical Area Regulations or zoning, land use, when new code becomes new
14 code, it's typically stricter than past renditions of it, if that makes
15 sense.

16 LORING: It does and so you're claiming that the CAO has become stricter
17 during the pendency of this Application?

18 CRICCHIO: Um, when you're comparing older editions of the Code, 2016 to
19 current, that's very common for, for Code to become stricter than less
20 strict.

21 LORING: And your position is that that occurred here?

22 CRICCHIO: Uh, that's not po-, that's not my, my position here. You're going
23 to have to talk to Leah on that.

24

25

1 LORING: Okay. So, you testified a moment ago that you believe that the
2 buffers became larger due to a change in the Critical Areas Ordinance between
3 2016 and 2022?

4 CRICCHIO: I, I'm speaking in general terms, Mr. Loring.

5 LORING: What basis do you have for making that statement? You don't know
6 whether the buffer sizes changed in the CAO...

7 CRICCHIO: I don't know.

8 LORING: During that time period?

9 D'AVIGNON: I'm going to object. I think we're getting to unduly repetitious
10 questioning.

11 REEVES: And...

12 D'AVIGNON: Mr. Cricchio has indicated he's not a wetland expert, that
13 Natural Resources, particularly Ms. Forbes would be able to answer these
14 questions.

15 REEVES: Sure. My, my...

16 LORING: Mr. Examiner, may I, may I briefly...

17 REEVES: Hold on.

18 LORING: Respond to that, that...

19 REEVES: Mr. Loring, let me...

20 LORING: Objection?

21 REEVES: Let me, Mr. Loring, I'm going to break in for one sec to make my
22 point, which is, in terms of what Mr. Cricchio testified to, I think he sort
23 of speculated and then he said, wait, probably talk to Leah Forbes, she's the
24 expert. Uh, I don't, ultimately, uh, well, go ahead, Mr. Loring, I, I...

25 LORING: Mr...

1 REVES: Before I make a ruling.

2 LORING: Sure. What I would say to that is that Mr. Cricchio was the, was
3 the staff person who here signed the MDNS. He's the person who reviewed this
4 project, ultimately, for, uh, for consistence or inconsistency with the
5 County's Special Use Permit Criteria. So, his understanding of the applicable
6 regulations is important here. And the fact that he, if he does not
7 understand what those regulations are or what they were in 2016, that's also
8 important. He, he made a claim that the project had vested due to Critical
9 Areas Ordinance conditions or a criteria in 2016. And, so, of course, I'm
10 going to follow up on that and try to understand the basis for his argument
11 that way. This is the first time we've seen this argument. Again, he is the
12 staff member at Skagit County responsible for this project and interpreting
13 their regulations and applying them to this Application. So, these are...

14 REEVES: Well...

15 LORING: Important details.

16 REEVES: I, I understand the devil is in the details. I will note he also
17 just testified in response to Mr. Ehrlichman, that, you know, it's an
18 accumulative process with multiple staff members and he solicits the advice
19 of others with expertise. I feel like the question has been answered, but,
20 but I'll let you ask it directly one final time and we'll try to get, rather
21 than a speculative response from Mr. Cricchio, maybe just a direct response
22 about the Code, not how process works, generally. So, Mr. Loring, if you want
23 to make a direct question on this, go ahead and then we'll, we'll, we'll keep
24 going.

25

1 LORING: Thank you, Mr. Examiner. And, and I have been trying to, to do
2 that. So, Mr. Cricchio, uh, just to try to put a final point on this, you
3 don't, uh, do you know whether the Critical Areas Ordinance for Skagit County
4 was changed in a way, from 2016 to 2022, that would have effected applicable
5 buffers for the Samish River wetland for this project?

6 CRICCHIO: I do not.

7 LORING: Okay. Thank you. So, you were asked earlier about your
8 understanding of the number of trips that would occur associated with this
9 project, I'm talking about the gravel hauling trips. And you mentioned that
10 your, your PowerPoint said that 60 truck trips could occur per hour under the
11 extended hours scenario, is that right?

12 CRICCHIO: I'm not looking at it, Mr. Loring, but like I said, uh, whatever
13 was in there, uh, if I could redo it, I would strike that entire slide and
14 simply state, per the TIA, on average, truck trips are 46 per day, 23 in, 23
15 out, maximum in one hour, um, is 30 in, uh, 15 in, 15 out.

16 LORING: Okay. And you're referring to the, the TIA, that Traffic Impact
17 Analysis from 2020?

18 CRICCHIO: That's correct.

19 LORING: Okay. W-, how many truck, uh, trips, sorry, how many trips are
20 allowed by the MDNS for extended hours?

21 CRICCHIO: Um, I believe it's the same.

22 LORING: Okay. So, your position is that that would be the same as the
23 TIA?

24 CRICCHIO: It should, it should be consistent with the TIA.
25

1 LORING: Okay. What is your understanding of the maximum number of truck
2 trips that can occur during, uh, regular conditions at the site?

3 CRICCHIO: I, you're going to have to talk to the Public Works people. I'm
4 not a traffic engineer, I'm not a traffic professional.

5 LORING: Okay. Well, let me ask you, what is, what do you believe the MDNS
6 sets as a limit for truck traffic trips during regular conditions at the
7 site?

8 CRICCHIO: Um, so, again, it's going to go back to the on average, per day,
9 46 truck trips, 23 in, 23 out. And then it's further limited..

10 LORING: Okay.

11 CRICCHIO: Based on the hours of operation that we limited the project to.

12 LORING: Okay.

13 CRICCHIO: Monday through Friday, 7:00 to 5:00, if I recall correctly.

14 LORING: Okay. So, you're, uh, the average number, that's not an actual
15 limit is it?

16 CRICCHIO: Um, it's not a cap, it's an average, some days can be less, some
17 days can be more, but there's an average.

18 LORING: Okay. So, is it your understanding of the MDNS that you authored
19 does not set any daily limit for the truck trips?

20 CRICCHIO: Say that again?

21 LORING: Is it your understanding that the MDNS that you authored does not
22 set a daily limit for truck trips under regular conditions?

23 CRICCHIO: Yeah. There's no daily limit, it's based on an average.

24 LORING: Okay. And there, is it your understanding as well that the MDNS
25 does not set an hourly limit, uh, ba-, during regular conditions?

1 CRICCHIO: Um, it needs to be consistent with the..

2 LORING: Truck trips?

3 CRICCHIO: It needs to be consistent with the TIA and needs to be consistent
4 with, uh, the, uh, uh, requirements of the Public Works Department.

5 LORING: Okay. Does the MDNS have language in any of its conditions that
6 say that truck traffic must be consistent with the Traffic Impact Analysis
7 and with the Department of Public Works?

8 CRICCHIO: Um, I think the recommendations are, are, are, uh, of the, uh,
9 TIA, of the TIA, are reflected in the SEPA MDNS.

10 LORING: Okay. And those recommendations are an average of 46 daily trips?

11 CRICCHIO: If I recall correctly, yes.

12 LORING: Okay. All right. Uh, there was some conversation a moment ago
13 about the traffic impact analysis and whether it received third-party review.
14 I believe you testified that you weren't aware whether it received third-
15 party review, is that accurate?

16 CRICCHIO: Um, I testified, uh, that I am not 100% aware of whether it, it
17 underwent final third-party review or not, that's correct.

18 LORING: Okay. Um, you, you also testified that you thought it probably
19 had?

20 CRICCHIO: I felt, I feel that it had, but, again, I'm not 100%. You'd have
21 to talk to the, the traffic people to see if that, uh, uh, ever occurred.
22 They're the ones who manage, uh, the, the traffic for, for the County. And
23 they're the ones who, uh, managed the contracts for the third-party review in
24 the past.

25

1 LORING: Okay. And did you have an email exchange with the Public Works
2 Department about whether they had conducted third-party review of the, uh,
3 that traffic impact analysis? That final transportation document?

4 CRICCHIO: Did I have an email exchange? I don't recall if I had an email
5 exchange or not. I believe I had an email exchange with my supervisor, I
6 don't know if that was Public Works or not, if they were copied in on that or
7 not.

8 LORING: Okay. So, you don't, you don't recall your April 20th email to
9 Forest Jones stating that, uh, you agreed that you should get a final TIA to
10 HDR for one final look?

11 CRICCHIO: I don't recall if, if I received an email from Forest Jones or
12 not with regard to that, what you're, what you're talking about, I don't.

13 LORING: Okay.

14 CRICCHIO: This project has been going on for a long time and there's a lot
15 of moving parts to it.

16 LORING: Sure. And do you recall, uh, Forest Jones emailing you in
17 response and saying that it would be a good idea to get HDR review of a final
18 DNTIA?

19 CRICCHIO: I don't recall that.

20 LORING: Okay. And each DR...

21 CRICCHIO: I...

22 LORING: In this instance, HDR review would be third-party review, is that
23 right?

24 CRICCHIO: So, yeah, HDR in the past, I think and then, uh, another
25 consultant, GTC or something was used in the past.

1 LORING: Okay.

2 CRICCHIO: For third-party review, that's correct.

3 LORING: And do you recall, uh, what your supervisor said about whether
4 third-party review should occur here? And I should say a third-party review
5 of that TIA?

6 CRICCHIO: I don't recall, no.

7 LORING: Okay. So you don't recall Brandon Black stating should not, there
8 won't be any third-party review because it was way past third-party review
9 time?

10 CRICCHIO: You'd have to have that conversation with him, I don't recall.

11 LORING: Okay. You, you don't recall the email he sent you to that effect?

12 CRICCHIO: I don't recall, again.

13 LORING: Okay.

14 EHRLICHMAN: Mr. Examiner.

15 REEVES: We'll cross that bridge when we get there, Mr. Ehrlichman.

16 EHRLICHMAN: I'd just like to note this point in the record when we have that
17 discussion, thank you.

18 REEVES: I'm, I took notes myself. Uh...

19 EHRLICHMAN: Thank you so much. Okay.

20 LORING: Um, Mr. Cricchio, I've got a few more questions for you. I'd like
21 to turn now, uh, to your Staff Report.

22 CRICCHIO: Sure.

23 LORING: And discuss that. You, um, and, and I can pull it up if we need
24 to. But I'm also going to refer to different pages and statements from it
25 there. Uh, and I'll start on, on page 5 of your Staff Report, and this is

1 Exhibit 1, uh, in this matter, I've got it as C1, I believe it's 1 overall.
2 Uh, you mentioned that the Shoreline Associated Riparian Wetlands had been
3 delineated. Uh, I believe you're referring to the Samish River wetlands, is
4 that right?

5 CRICCHIO: Um, I think that's how it's listed in there. J-, but, uh, based
6 on, on testimony, uh, it doesn't sound like it ever was done, um, delineated.

7 LORING: Okay.

8 CRICCHIO: Lis-, listening to Oscar, uh, um, Bunting and Associates give his
9 testimony.

10 LORING: Okay. And in, in the, uh, in the Staff Report, pages 7-9, you
11 discuss the intensity of the lane use. And I just wanted to briefly touch on
12 that as well there.

13 CRICCHIO: Sure.

14 LORING: You, are you familiar with the different, uh, definitions for
15 land uses from the Skagit County Code? And, I'm sorry, the intensity, yeah.

16 CRICCHIO: I'm not, that's Critical Areas.

17 LORING: Okay. So you don't, uh, you didn't review the project to
18 determine whether the, uh, what the appropriate land use impact intensity
19 should have been for it?

20 CRICCHIO: So, are you talking about the 200 foot versus the 300 foot
21 buffer? If that's the question, that's Critical Areas.

22 LORING: Okay. It, it does relate to that. It's a question more about
23 interpreting the Application itself to understand how the impact and its
24 intensity would be characterized under the Skagit County Code. But you're

25

1 right that it relates to the, the buffer sizing. So, is that, is, is that not
2 something that you reviewed in this Application?

3 CRICCHIO: That's not, that's not something that I reviewed in this
4 Application.

5 LORING: Okay. And, okay. Just scrolling through, I've got a couple of
6 questions about noise from the project. Uh, your Staff Report states at page
7 24 that the Applicant has indicated that the proposal would not result in
8 noise or vibration impact beyond site boundaries. Does that sound right to
9 you?

10 CRICCHIO: Um, I believe that's consistent with the noise report.

11 LORING: Okay. In that instance, uh, well, how are you defining site
12 boundaries? Or how are you, how do you interpret the word site boundaries in
13 your Staff Report there?

14 CRICCHIO: So, I'm relying on the noise report, that's where that verbiage
15 is coming from.

16 LORING: Okay. So, you're not...

17 CRICCHIO: I'm not def-, I'm not...

18 LORING: You're not defining it?

19 CRICCHIO: Yeah. I'm not...

20 LORING: Okay.

21 CRICCHIO: Getting in, into nuances on that.

22 LORING: Okay. So, you don't know if gravel trucks and trailers on the
23 public roads would have been considered site boundaries or beyond the site
24 boundaries in that report?

25

1 CRICCHIO: So, I'm not a noise expert, I rely on the noise, the noise
2 professional to determine that.

3 LORING: To determine where the site boundaries are?

4 CRICCHIO: To determine how much noise this potential project would generate
5 and whether or not that complies with the County Standards and/or State Law.

6 LORING: Okay. So, you didn't independently review whether, uh, the
7 project would result in noise vibration impact beyond the site boundaries?

8 CRICCHIO: Did I review? Again, I, I rely on the report. That's, that's it.

9 LORING: Okay. So, you didn't independently assess whether that report
10 accurately made that statement?

11 CRICCHIO: Um, well, how would I accurately determine if that statement is
12 correct? It didn't undergo third-party review. I'm not a noise expert.

13 LORING: Okay. And, okay. And you, you testified a moment ago that you
14 don't know where the site boundaries are for this [inaudible].

15 CRICCHIO: I don't, I'm not sure I understand the question. I don't, I don't
16 know the site boundaries. There's three parcels where the gravel mine is
17 proposed. And then there's haul road, which consists of a number of other
18 parcels.

19 LORING: Okay. Are you familiar with the fact that this project would send
20 gravel trucks on public roads?

21 CRICCHIO: Sure.

22 LORING: Okay. And is it your understanding that those public roads lie
23 within site boundaries?

24 CRICCHIO: Say that again?

25

1 LORING: Is, is it your understanding in reviewing this project that the
2 public roads on which the gravel would be hauled fall within the site
3 boundaries?
4 CRICCHIO: I'm not sure I have an answer for that question.
5 LORING: Okay. Do you know where the site boundaries are for this project?
6 CRICCHIO: Site boundaries, again, there's three parcels that make up the
7 proposed gravel mine and then plus the haul road. That's the site. Anything
8 else is off-site.
9 LORING: Okay. And so, gravel, uh, truck noise and vibration that occurs
10 on the public roads would be off-site, then, right?
11 CRICCHIO: I mean, it's on a public road, it's not on site, so it would be
12 off-site.
13 LORING: Okay. And you didn't evaluate any noise impacts, then, from, uh,
14 that gravel truck hauling, did you here?
15 CRICCHIO: Um, so, I rely, again, on the, the noise, noise report that was
16 submitted by the Applicant.
17 LORING: Okay. The Staff report, uh, there's a Condition of Approval,
18 Number 5 on Page 30 of the Staff Report that states that the maximum
19 allowable noise level to be emitted from the property is 60 decibels. Does
20 that sound right to you as one of the Conditions of Approval?
21 CRICCHIO: Um, so, I'm not looking at it, but, yeah, there is a, uh, se-,
22 there is a Condition of Approval, within the Staff Report, which has to do
23 with noise level and conformance with the County Standards, as well as the
24 respective WACKs.
25

1 LORING: Okay. I'm, I'm going to try to share my screen, just to pull up
2 that Condition of Approval so that you can see it while we're talking about
3 it. Hopefully my bandwidth will, will, uh, be strong enough for this without
4 me being on the screen. Are you seeing a, are you seeing a conditions of
5 Approval, Page 3 of 31, in this document? Did it show up?

6 REEVES: I, I am.

7 LORING: Okay.

8 CRICCHIO: I'm seeing Number 5, is that what your question is?

9 LORING: Yes. I just wanted to make sure you could, you could even see the
10 screen since I was having a little bandwidth trouble.

11 CRICCHIO: Sure.

12 LORING: Yeah. Are you seeing Number 5 there?

13 CRICCHIO: I am.

14 LORING: Do you see that it says, uh, the maximum allowable noise level,
15 uh, per Chapter 1.73-60 allowed to be emitted from property is 60 decibels? I
16 was cutting out a little there.

17 CRICCHIO: Um, it's hard for me to see on this tiny little laptop. But,
18 yeah, uh, that sounds, sounds about right.

19 LORING: Okay. And is it, uh, you're familiar with the noise report
20 itself, is that right? In this matter?

21 CRICCHIO: I, I'm, I don't have it memorized, no, I don't.

22 LORING: Okay. Are you familiar with the fact that the noise report states
23 that sounds at 100 feet from the equipment to be used would be, uh, 75 to 76
24 decibels, depending on which equipment would be used?

25 CRICCHIO: Again, I'm not familiar with it, I don't have it memorized.

1 LORING: Okay. Are you familiar or are you aware that this mine, uh,
2 excavation would occur within 100 feet of property lines?

3 CRICCHIO: Uh, I believe in some instances, yes.

4 LORING: Okay. And so if the noise report states that sound equipment, the
5 sound from equipment would be approximately 75 to 76 decibels at 100 feet and
6 if were mining were to occur at 100 feet from property line, uh, this, the,
7 uh, mine is not going to be ab to meet that 60 decibel limit, is it?

8 CRICCHIO: Well, the mine would have to meet that, that respective condition
9 of approval.

10 LORING: Okay.

11 CRICCHIO: That, that, uh, that Condition of Approval, I believe, I think
12 there was some question in the earlier testimony whether or not, uh, I think
13 someone had, uh, some, uh, comments that the MDNS, which was just a boiler
14 plate, uh, conditions. Well, having done this for a long time, up and down
15 the I-5 corridor, SEPA MDNS are project specific, but you also have, uh,
16 boiler plate conditions and that is one of them, if I recall correctly.

17 LORING: When you say that is one of them, you mean the 60 decibel
18 condition here, uh, Conditional of Approval Number 5?

19 CRICCHIO: If I remember correctly, yes.

20 LORING: Okay. The County isn't also conditioning the project on observing
21 a larger buffer than 100 feet from residential properties is it?

22 CRICCHIO: Um, I don't believe that's required in Code.

23 LORING: Okay.

24 REEVES: And clarifying question for me, Mr. Cricchio, just to make sure I
25 didn't, haven't fully misunderstood my own job, am I correct in thinking

1 that, you know, the mitigation requirements, although Mr. Loring has appealed
2 the MDNS, uh, you know, the mitigation requirements are what they are at the
3 moment. But, in terms of these conditions, the County isn't technically,
4 itself, conditioning anything, ultimately it's the Hearing Examiner that
5 needs to determine what the appropriate conditions are, is that accurate?

6 CRICCHIO: That's correct. You're the decider.

7 REEVES: Okay. Go ahead, Mr. Loring, just want to make sure I didn't miss
8 something.

9 LORING: Mr. Cricchio, did you consult with the Hearing Examiner about the
10 conditions of the MDNS before you signed it?

11 CRICCHIO: Did I consult with the, say that again, Mr. Loring?

12 LORING: Did you consult with the Hearing Examiner about the conditions of
13 the MDNS before you signed it?

14 CRICCHIO: Uh, I don't recall ever doing such a thing.

15 REEVES: No.

16 LORING: Okay.

17 CRICCHIO: That sounds a little ex-parte to me.

18 LORING: And if the, the conditions in the MDNS, if those had not been
19 appealed, uh, would those be deemed final, uh, upon the expiration of the
20 Appeal period?

21 CRICCHIO: That sounds correct.

22 LORING: Just from your understanding? Okay.

23 CRICCHIO: That sounds correct.

24

25

1 LORING: Thank you. Uh, let's talk a little bit about air emissions, uh,
2 the, uh, to your knowledge, does the Applicant evaluate the project's carbon
3 emissions?

4 CRICCHIO: Uh, carbon emissions, we don't have any type of climate change or
5 carbon requirement, requirement per Skagit County Code. Um, as far as
6 emissions from the equipment itself, they would have to comply with the
7 Northwest Clean Air Agency and there is a condition in the Staff Report that
8 has to deal with that, as well as fugitive dust.

9 LORING: Okay. Uh, so, the answer to my question, whether the Application
10 evaluated the project's carbon emissions, do you know if it did evaluate the
11 carbon emissions?

12 CRICCHIO: Carbon emissions with regard to climate change?

13 LORING: Sure.

14 CRICCHIO: Again, I don't think we have anything in Skagit County Code that
15 I could regulate carbon emissions.

16 LORING: And I'm not necessarily speaking to the direct provisions of the
17 Skagit County Code here, but to, to your knowledge, did the Application
18 evaluate the project's carbon emissions?

19 CRICCHIO: I don't know, but, you know, I go, I work for Skagit County Code,
20 I implement Skagit County Code.

21 LORING: Okay. To your knowledge, does the Skagit County Code incorporate
22 the State Environmental Policy Act?

23 CRICCHIO: It sure does.

24 LORING: Okay. And to your knowledge, does the State Environmental Policy
25 Act require analysis of impacts to, uh, air quality and pollution?

1 CRICCHIO: Sure.

2 LORING: Okay. Let's talk a little bit about traffic, we may have actually
3 covered this, at this point. I know we already discussed most of the items, I
4 just want to check my outline to see if there's anything that we missed here.
5 Okay. Uh, the Staff Report states the internal haul road will have similar
6 function and will be subject to similar truck loads compared to its past use,
7 is that right?

8 CRICCHIO: That sound correct.

9 LORING: Okay. And what was the past use?

10 CRICCHIO: If I remember correctly, it was forest.

11 LORING: Okay. How many trucks were being, uh, driven along that internal
12 haul road, uh, in the, for that forestry?

13 CRICCHIO: That I can't tell you, I don't know.

14 LORING: Okay. And what were the weight loads for those logging trucks?

15 CRICCHIO: Again, I don't know.

16 LORING: Okay. So, you don't have information that would support that
17 statement that the internal haul road will have similar function and be
18 subject to similar truck loads compared to past use, right?

19 CRICCHIO: Well, it's, it's being used as, the, the road is existing. It's
20 not expanding, the prism is, is what it is and so, it, so, it would be used
21 for a gravel mine versus a forest use.

22 LORING: And what evidence do you have to, uh, support your statement that
23 the road is not expanding?

24 CRICCHIO: What evidence?

25 LORING: Yes.

1 CRICCHIO: Because that's what's, that's what proposed today. So, it's not
2 expanding...

3 LORING: Okay.

4 CRICCHIO: Today.

5 LORING: Okay. You're not discussing, you're not making an assertion about
6 whether it expanded in 2018, are you?

7 CRICCHIO: I can't make that comment. I don't know anything about that, that
8 predates me.

9 LORING: Okay. All right. Uh, I have no further questions. Thank you for
10 your time.

11 REEVES: Great. Before I pass you back, just, again, clarification for
12 myself, Mr. Cricchio. I...

13 CRICCHIO: Sure.

14 LORING: Mr. Loring asked you a couple of ways, I just want to make sure I
15 understood. My understanding of your answer about the carbon emissions issue,
16 essentially, was no, there was no direct or specific analysis of, you know,
17 of the proposal on that ground? Or did I misunderstand? I, I recognized you
18 said there's no regulations in the Skagit Code, et cetera. But just as a yes
19 or no answer, was it that, no, it wasn't directly, that wasn't, uh, something
20 that was looked at explicitly?

21 CRICCHIO: So, in, so, exhaust emissions, there is a Condition of Approval
22 in, in the Staff Report that deals with that. As well as the dust control and
23 they both have to comply with the, with the Northwest Clean Air Agency, uh,
24 requirements. Um, but as far as carbon, I'm not aware of any analysis or
25 anything that was submitted by the Applicant with regard to that.

1 REEVES: Right. So, you didn't have a number or a formula...

2 CRICCHIO: No.

3 REEVES: You we relooking at...

4 CRICCHIO: No.

5 REEVES: That said, thou shalt not use X amount of things and you didn't

6 check it against a formula, that, that's my question.

7 CRICCHIO: No, no.

8 REEVES: Okay. That's all, thank you for clarifying that for me.

9 CRICCHIO: Thank you.

10 REEVES: Okay. Uh...

11 EHRLICHMAN: Mr. Examiner?

12 REEVES: Uh, Mr. Ehrlichman?

13 EHRLICHMAN: I'm sorry to interrupt you, I, I, I do want to ask the witness

14 about the basis for determining the average, that singular question following

15 Mr. Loring's questions and the answers. If I may?

16 REEVES: Uh, well, you already did, basically, so let's just roll with it.

17 EHRLICHMAN: Thank you, sir. Uh, Mr. Cricchio, um, just following up on the

18 clarification you made about what the MDNS means, you stated that it

19 references 46 trips per day as an average, correct?

20 CRICCHIO: That's correct.

21 EHRLICHMAN: Do you know what the basis is for determining compliance with

22 that limitation? How do you calculate the average?

23 CRICCHIO: I'm not sure I'm understanding your...

24 EHRLICHMAN: Okay. Let me...

25 CRICCHIO: Question, the, the average...

1 EHRlichman: Fair, fair enough.

2 CRICCHIO: Came from the TIA.

3 REEVES: Well, Mr. Ehrlichman, if I, I'm going to cut in because I
4 actually had a similar though, so...

5 EHRlichman: Please do.

6 REEVES: Maybe I'll try.

7 EHRlichman: I'll, I'll recede here. Thank you.

8 REEVES: The, well, what I, what I, I guess is, if I'm a Code Enforcement
9 Officer or something, Mr. Cricchio, and I, you know, I'm worried there's just
10 too many trips, is there a, a date range where I would want to go, you know,
11 there were 50 trucks today, there were 20 tomorrow, is there a point at which
12 one would determine whether that average is being met to the extent that,
13 right, if, if you're looking at a week, you know, you could use that as your
14 date range, you could use a month, you could use a year, is, is there
15 anything either explicit in your mind that is, sort of in the TIA or the
16 materials or the MDNS, as to how one would calculate, uh, uh, I guess
17 complying with what that average is intended to be?

18 CRICCHIO: So, no, there is no suggested Condition of Approval for, uh,
19 enforcement purposes, to make sure that they're complying with that average.
20 Um, the onus would definitely be on the Applicant, or the landowner to comply
21 with that average. Um, the County does not have the resources to put a
22 sheriff deputy out there and monitor, um, you know, whether they're complying
23 with the average of not. So, the onus would be on the Applicant. Um, and Code
24 Enforcement would get involved if, if we were starting to get, uh, complaints
25 about that.

1 REEVES: Got it. Mr. Ehrlichman, did that address what you were hoping to
2 get clarification on?

3 EHRLICHMAN: Uh, I'd like to follow up with one clarifying question, if I may.

4 REEVES: Try.

5 EHRLICHMAN: Uh, Mr. Cricchio, understanding that the County doesn't have
6 resources to put a, post a sheriff deputy out there, let's assume there was a
7 way to calculate the number of trucks going in and out of the mine, you know,
8 a, a traffic strip or a rumble strip or whatever you call those, how would
9 you, how would you calculate whether or not there were 46 trips a day on
10 average? What, let's, let's take an example where you have, um, in a year,
11 you, you, I tell my son, you can only smoke five cigarettes per year. He can
12 figure out when during the year he's going sneak off and smoke five
13 cigarettes. Um, but I can calculate whether he's complied with that or not,
14 right, because I divide 365 by the number of times he smokes and I can tell
15 whether it was five or ten. How do you know whether they have reached that
16 average or not if you don't know what time period you're supposed to measure
17 compliance in? Isn't that, isn't that a problem?

18 CRICCHIO: Yeah. That's a good question. Uh, not touching on the smoking
19 analogy, but, uh, um, um, but whether or not they were complying with that, I
20 mean, the, the Hearing Examiner certainly has, uh, the ability to add
21 Conditions of Approval to the Special Use Permit, where the Applicant would
22 have to self-report, um, that's definitely within his, his ability.

23 EHRLICHMAN: Thank you, sir.
24
25

1 REEVES: All right. Let's move on before we learn even more about
2 Ehrlichman's family life than we want to know. Um, uh, Mr. D'Avignon, did you
3 have, um, uh, a redirect after that?
4 D'AVIGNON: I, I do have a little bit, Mr. Examiner. Uh, to being with, Mr.
5 Cricchio, are you still there?
6 REEVES: Oh...
7 CRICCHIO: Yes.
8 REEVES: Oh, okay.
9 D'AVIGNON: Okay. Um, we want to turn your cam-, there you go.
10 REEVES: Oh, different background.
11 D'AVIGNON: You are not, you're, you're a Planner, not a biologist, not an
12 engineer...
13 CRICCHIO: That's correct.
14 D'AVIGNON: So you, as I understand the process, you're relying on the
15 information that's provided to you, whether through, um, consultants or other
16 Staff in the County that maybe have more knowledge about a particular subject
17 than you do?
18 CRICCHIO: Yes.
19 D'AVIGNON: Do you, you know, we brought up the noise analysis, do you look
20 at those reports?
21 CRICCHIO: Yeah. I look at them.
22 D'AVIGNON: So, you, you do an initial, do these pass the Kevin Cricchio
23 smell test?
24 CRICCHIO: Sure.
25

1 D'AVIGNON: Okay. So, if, if there was reason that you saw that it appeared
2 to be bad information, um, you would pursue that?

3 CRICCHIO: Yes. And, and these reports were submitted years ago, long before
4 I came on board taking on, taking the helm of this.

5 D'AVIGNON: Okay. But ultimately, this is a team effort and requires some
6 trust in experts?

7 CRICCHIO: Exactly.

8 D'AVIGNON: And, and, I guess, maybe let me ask if you, if you follow the,
9 maybe the Ronald Regan model of trust but verify?

10 CRICCHIO: [Inaudible.]

11 D'AVIGNON: Sure. Think the name of that. There was a name for that years
12 ago.

13 CRICCHIO: There, there should be, but I, I don't know it.

14 D'AVIGNON: Uh...

15 REEVES: It's, uh, intellectual, uh, trickle down intellectualism or
16 something? Anyway, keep going.

17 D'AVIGNON: Um, I want to get, I guess, then, just, lastly, touch on this,
18 um, average and how math works.

19 REEVES: Oh, great. Okay.

20 D'AVIGNON: I'm going to share my screen and pull up the Traffic Impact
21 Analysis.

22 REEVES: And this is Exhibit what, for those following along, Mr.
23 D'Avignon?

24 D'AVIGNON: This is C18.

25 REEVES: Okay.

1 D'AVIGNON: Okay. Right here, I believe it shows how that average was
2 derived, if I'm not mistaken.
3 CRICCHIO: I can't see that.
4 REEVES: Quite small.
5 CRICCHIO: That's, like, really small.
6 D'AVIGNON: Let me, let me switch screens. Is that better?
7 CRICCHIO: Sure.
8 REEVES: That's better.
9 D'AVIGNON: All right. You, you see here how they derived it?
10 CRICCHIO: Um, you need to zoom out a little bit or at least on my screen.
11 D'AVIGNON: This 260 days, do you know where that's from?
12 CRICCHIO: Um..
13 D'AVIGNON: I, I guess maybe my question is, in, in looking at this, does it
14 appear they used a, a year as the, the base number to derive the average?
15 CRICCHIO: That's correct.
16 D'AVIGNON: Um, so do you think moving forward and thinking about whether or
17 not they're complying with the daily average, we would, as the TIA did, look
18 at a yearly base number?
19 CRICCHIO: Uh-huh. Yep.
20 REEVES: Okay. I have no other questions, Mr. Examiner.
21 REEVES: Okay. Um, I hadn't checked with Mr. Lynn, we got a little off-
22 track. Mr. Lynn, was there any sort of re-direct of your own, I guess? I know
23 it's not your witness, but..
24 LYNN: No.

25

1 REEVES: Okay. I believe, then, I sometimes Mr. Loring, I'll give you the
2 opportunity, do you have one or are you good?

3 LORING: I'm good. No re-, no re-cross on this. Thank you.

4 REEVES: All right. Excellent. Uh, I think that we are done with this
5 witness, so thank you, uh, Mr. Cricchio, for your testimony. And..

6 CRICCHIO: Uh-huh.

7 REEVES: And, okay. So, just to, uh, in terms of where we're headed, uh, I
8 know you have two additional witnesses you were definitely going to call,
9 correct, Mr. D'Avignon?

10 D'AVIGNON: That is correct.

11 REEVES: And those, those would be Leah Forbes and Forest Jones, yes?

12 D'AVIGNON: That is correct.

13 REEVES: Okay. In terms of Mr. Black, I, I know the argument that will be
14 made. I, I guess what I would suggest is I think it would probably be best to
15 hear from these other two first because they also, if I understand the way
16 that the department is set up, they are, well, are they, do they report to
17 Mr. Black, these next two witnesses? Can you just clarify that one thing for
18 me?

19 D'AVIGNON: Uh, I, I don't believe they do.

20 REEVES: Well, actually, if that...

21 D'AVIGNON: I believe...

22 REEVES: If that's the case, I would maybe suggest we can hear from
23 Brandon Black just very quickly. I fully understand your objection, Mr.
24 D'Avignon. He, he did get brought up a couple of times and I think it would
25

1 probably be quicker to just, if he was available, hear from him briefly, in a
2 limited scope, and then move on at that point.

3 D'AVIGNON: Okay. I, I mean, I, I'm okay with that. I would request a sense,
4 uh, Mr. Loring was speaking to a very specific email, that that email be
5 shared with the rest of the parties so we, we know what we're looking at and
6 what the extent of that is.

7 REEVES: Sure.

8 D'AVIGNON: Um, and there's Mr. Black right there.

9 BLACK: Hi.

10 D'AVIGNON: I would have no objection to, to an inquiry based on that email
11 and, um, the questions that got brought up regarding third-party review of a
12 TIA.

13 REEVES: Sure. And I, I will be making my best effort to limit the scope.
14 Mr. Loring, did you have questions of this witness, specifically? I know Mr.
15 Ehrlichman did, but...

16 LORING: I, I don't know if I would have specific questions of him. Uh...

17 REEVES: Okay.

18 LORING: I certainly would of Forest Jones. And that was a fair request
19 for the email, I just want to say, I'm trying to find it in its native format
20 so that we can provide that.

21 REEVES: All right.

22 D'AVIGNON: Right. Thank you.

23 REEVES: So what I'll, what I plan on doing, how about this, I'll swear
24 Mr. Black in, uh, we'll see what Mr. Ehrlichman's questions are, object if
25 need be, uh, Mr. D'Avignon and, and, and then if there's a follow up from Mr.

1 Loring, uh, 'cause he was, he sort of did bring up Mr. Black. I think that
2 would be the quickest, most straight forward way. Or did you have any
3 foundational questions you wanted to ask Mr. Black, uh, Mr. D'Avignon?

4 D'AVIGNON: Oh, well, Mr. Examiner, I guess I would request to do direct
5 first, uh, you know...

6 REEVES: Sure.

7 D'AVIGNON: My objection was no so much in Mr. Ehrlichman being able to cross
8 examine, but I think his ability to call Mr. Black as a witness is beyond the
9 scope of the order, um, that you had provided, which is...

10 REEVES: I...

11 D'AVIGNON: A technical argument that I think we can get by pretty quickly.

12 REEVES: Let's...

13 EHRLICHMAN: May I speak to that?

14 REEVES: I, hold on, no, we're not going to do this because it's going to
15 take 45 minutes. I'm just going to let this happen and we'll move passed it.
16 I think rather than argue on what everyone agreed to, I have an
17 understanding, Mr. D'Avignon has an understanding, I think Mr. Ehrlichman's
18 understanding is very different. Rather than waste time, let's just have Mr.
19 Black, he's here, he's cheerful. I think this is the best way forward.

20 EHRLICHMAN: Mr. Examiner, if I may.

21 REEVES: Oh, geez. Okay. Quickly, please. I'm allowing him. I, I, go
22 ahead, Mr. Ehrlichman. I'm allowing him as a witness. So, I, what is the
23 argument?

24 EHRLICHMAN: No, I, I don't have any argument. I, I want to clarify my scope
25 is different than Mr. D'Avignon's scope, he's representing his case in chief,

1 I'm presenting my case in chief. I'm calling Brandon Black as a witness in my
2 case. That's, and I don't, we can...

3 REEVES: [Inaudible.]

4 EHRLICHMAN: I just wanted to make that for the record. Thank you.

5 REEVES: Okay. We're just, let's move on. So, Mr. D'Avignon, I'm going to
6 ahead, I'll swear Mr. Black in. Mr. Loring is still looking for the email.

7 Mr. Black, thank you for being here. Do you swear or affirm to tell the truth
8 in the testimony you give here today?

9 BLACK: Yes, I do.

10 REEVES: And if you could just state and spell your name for the record?

11 BLACK: Brandon Black, B-r-a-n-d-o-n B-l-a-c-k.

12 REEVES: Thank you, sir. Go ahead, Mr. D'Avignon?

13 D'AVIGNON: Uh, what is, Mr. Black, what is your current position with the
14 County?

15 BLACK: I'm a, uh, Senior Planning, the Current Planning Manager.

16 D'AVIGNON: Okay. And what does that role entail, particularly in relation to
17 a, say a Special Use Permit for a gravel mine?

18 BLACK: Uh, I supervise the Current Planning Division, which deals with
19 Special Use Permit Applications. And, uh, uh, as well as various other Land
20 Use relevant applications.

21 D'AVIGNON: Okay. Um, when it comes to, uh, a SEPA MDNS, you review that
22 before it's published?

23 BLACK: Not in every case, but, yes, with, uh, uh, the ones that I
24 complete and the ones that my staff complete, I typically do review those. In
25 this case, definitely. Wanted to make sure the conditions were, um,

1 represent-, reflective of what, uh, the other Staff, uh, Public Works,
2 Critical Areas, uh, reviews reflected.

3 D'AVIGNON: Okay. Um, but it's not a, a substantive review where you're
4 necessarily adding in significant new provisions?

5 BLACK: No. It, it, it's more for grammar and process, make sure the
6 dates are okay, the conditions are as we had received from other disciplines.

7 D'AVIGNON: Okay. Um, do you recall a discussion about whether or not the
8 third-party review, um, should occur following the September 2020, I believe,
9 Traffic Impact Assessment?

10 BLACK: I do, yes. Um, I recall the email string and, um, communication
11 back on, I believe, it was April 20th. We had a discussion. Um, that was, uh,
12 pre-date, that was after we had had the April 11th pre-hearing conference
13 already setting the schedule and also a month or so passed when the SEPA
14 threshold determination had been issued. And, uh, the Appeal period had, had
15 passed. So, I believe my comment was we're a little late in the game to be
16 doing a third third-party review. It was time to package up what we'd had,
17 we'd already had an Appeal, and bring this entire matter forth to the Hearing
18 Examiner, who has the authority to either remand or condition if he feels
19 another third-party review or any other additional information needed to be
20 provided.

21 D'AVIGNON: Okay. Uh, no other questions, Mr. Examiner. Thank you, Mr. Black.

22 BLACK: Yep.

23 REEVES: Okay. So, I quickly want to check with Mr. Loring who was going
24 to try to bring that up, I, did we ever fine it? Mr. Loring, are you there?

25

1 LORING: I am. Sorry, I was just checking. Uh, yes, it should have
2 circulated to you, uh, just a few moments ago.

3 REEVES: Oh, okay. Sorry. I thought you were going to, I mi-, I thought
4 you were going to put it on the screen. But...

5 LORING: I can do that as well. If that's helpful.

6 REEVES: Um, just to be clear, this is an Exhibit, correct?

7 LORING: It is one, it's a document that hasn't been identified, yet, as
8 an Exhibit, uh, to date. But we've been discussing it now and we'd be happy
9 to add it as Exhibit A61 to our Exhibits.

10 REEVES: Okay. See, I, and, thank you for clarifying. I did not realize we
11 were talking about something that was not an Exhibit. Uh, first off, any
12 objection, well, now we've been talking about it. But, Mr. D'Avignon, any
13 objection to this being included as A61?

14 D'AVIGNON: Uh, no objection.

15 REEVES: Mr. Lynn?

16 LYNN: No.

17 REEVES: Okay. And I'm going to assume no on behalf of Mr. Ehrlichman and
18 Mr. Loring. So, A61 will be trafficking, okay. That said, Mr. Loring, did you
19 have any, any follow-up before I go to Mr. Ehrlichman on this particular
20 email?

21 LORING: I, uh, w-, uh, with your permission, Mr. Examiner, I'd allow Mr.
22 Ehrlichman to go first and then see if I have any follow up after he's done.
23 It wouldn't be much if I did.

24 REEVES: Okay. If we're doing that, let me start with Bill Lynn to see if,
25 you know, we're treating this as a sort of direct kind of a situation. Mr.

1 Lynn, do you, do you have anything before we move to the sort of cross, as it
2 were.

3 LYNN: No.

4 REEVES: Okay. So, Mr. Ehrlichman, go ahead.

5 EHRLICHMAN: Thank you, Mr. Examiner. Uh, good afternoon, Mr. Black. I guess,
6 good morning still, feels like afternoon already. Thank you very much for
7 your clarification of that email, that makes a lot of sense to me that the
8 MDNS had been issued and so forth. Um, you heard Mr. Cricchio testify,
9 correct?

10 BLACK: I did.

11 EHRLICHMAN: And you heard him say that he wasn't sure if a third-party review
12 had been done or not. I just want to clarify, uh, you're not saying that a
13 third-party review was done, correct?

14 BLACK: I am aware that there were, if I'm understanding correctly, two
15 third-party reviews completed previously for this project.

16 EHRLICHMAN: Right. And when you answered the, uh, question about the email,
17 you weren't saying that there, that the third-party review had been done, uh,
18 well, let me ask it this way. Was a third-party review done of that, uh,
19 September 2020 Traffic Impact Analysis, to your knowledge?

20 BLACK: I do not know that.

21 EHRLICHMAN: Wouldn't you have seen it, if it had been done?

22 BLACK: No. Not necessarily.

23 EHRLICHMAN: You just testified about the other two.

24 BLACK: As I said, I'm, I'm understanding that there were two third-party
25 reviews, based on the record, that were completed. I do not know the dates on

1 those and, uh, based on what I've been hearing, I do not believe the, a third
2 third-party review was completed based on the timing and the fact that we'd
3 already been scheduled for a Hearing based on the 4/11 Pre-Hearing
4 Conference.

5 EHRLICHMAN: Okay. Great. So, the answer is you do not believe a third-party
6 review was done on that third, there was no third-party review...

7 REEVES: Third.

8 EHRLICHMAN: That you're aware of?

9 BLACK: Not to be the best of my knowledge. Now...

10 EHRLICHMAN: Okay.

11 BLACK: Whether or not...

12 EHRLICHMAN: That's all right.

13 BLACK: Public Works had completed that, I do not know. I do not believe
14 it was.

15 EHRLICHMAN: Okay. We'll ask them. Thank you very much. Just wanted to get
16 clear on that. Would you agree that the MDNS Condition 13 would have been
17 clear if it had, uh, explained the word average by referencing the base year
18 that we just heard about?

19 BLACK: My personal opinion is that it probably could have been a little
20 more clear based on all the discussions we've had thus far with this traffic
21 and this condition, yes.

22 EHRLICHMAN: And, and what would have made it clearer, that just mentioning
23 that it's calculated over a year?

24 BLACK: That may have made it clearer, yes.

25 EHRLICHMAN: I mean, don't we need a time-period in which you measure it?

1 BLACK: Can condition was directly from our Public Works Department. Um..

2 EHRLICHMAN: Okay.

3 BLACK: I didn't write it.

4 EHRLICHMAN: I, I know. And we, I'm not trying to put you on the spot. I know

5 we'll have a chance to talk to them. But you did review the final MDNS and

6 you testified..

7 BLACK: Yes.

8 EHRLICHMAN: That you were the one that gave it the green light for signature.

9 And as you read that and you saw that they put an average there, now that we

10 know what we know, wouldn't it be clearer if some wording was added to that,

11 that referenced the calendar year as the basis for determining that average?

12 BLACK: That is nothing that I'm in the position to answer, but my train

13 of thought back then was that with the language in there, I was hoping that

14 that condition was something that all traffic engineers fully understood

15 based on their, uh, professional expertise. Again, I'm not a traffic

16 engineer.

17 REEVES: So, I have a, uh, question, Mr. Black. I guess, as the Hearing

18 Examiner, would I have the authority to impose a condition, were I to approve

19 the SUP, that would clarify this issue, if I thought necessary?

20 BLACK: You most certainly do, that is in your purview.

21 REEVES: Great. Mr. Ehrlichman, you have other questions?

22 EHRLICHMAN: Uh, yeah. That, thank you, that was the, that was where I was

23 going with that. Um, with respect to the, um, calculus in the, the TIA, as

24 it's called, uh, that Mr. D'Avignon put up on the screen for Mr. Cricchio,

25 where the, uh, calculation of the number of trips, Monday through Friday,

1 7:00 a.m. to 5:00 p.m. was contained, they had a total number of trips per
2 year calculated. Isn't that where they got the 46 tips per day from?

3 BLACK: Again, you're asking me to dissect and interpret a Traffic Impact
4 Analysis that, um, that's not my area of expertise.

5 EHRLICHMAN: I'm not, uh, I'm not asking your, your professional opinion as a
6 traffic engineer, I'm just asking whether that was the source of the
7 information as Mr. Cricchio testified for the MDNS?

8 D'AVIGNON: I'm going to object as unduly repetitious. I think we've covered
9 where this...

10 EHRLICHMAN: Let me rephrase.

11 D'AVIGNON: These requirements...

12 REEVES: And also...

13 D'AVIGNON: Have come from. I think it's abundantly clear...

14 EHRLICHMAN: Let me rephrase.

15 D'AVIGNON: And we can move beyond it.

16 EHRLICHMAN: Mr. Examiner, if I may?

17 REEVES: Well, Mr. Ehrlichman, here's my problem, you're not an intervener
18 to the SEPA, uh, Appeal, these are questions directly of the SEPA MDNS...

19 D'AVIGNON: Thank you.

20 REEVES: I think is beyond the scope even of what I've agreed to allow. I,
21 and I think we've got the answer already. So, do you have a different line of
22 reasoning or question for this witness? Because I am going to sustain Mr.
23 D'Avignon's objection, Mr. Ehrlichman.

24 EHRLICHMAN: I do have another question, but I, for the record, I again would
25 like to clarify, that when we asked the traffic engineer who wrote the TIA...

1 REEVES: You...

2 EHRLICHMAN: About whether that was the basis for the MDNS, the objection was,
3 well, he's not the one that wrote the MDNS. So, when we had Kevin Cricchio
4 testify...

5 REEVES: [Inaudible.]

6 EHRLICHMAN: The gentleman that signed the, let me make my record, if I may.
7 When we had Mr. Cricchio testify, who was the gentleman who signed the MDNS,
8 and we asked him the question, he said that the final approval of the MDNS
9 was by Mr. Black. Apparently Mr. Black is the only one at the County who
10 knows what the MDNS intended. When I ask the, the engineer at Public Works,
11 he will tell me he didn't write the MDNS.

12 REEVES: I, I'm going to stop you.

13 EHRLICHMAN: Let me, let me ask my question, if I may.

14 REEVES: Mr. Ehrlichman, you've made your record for Appeal, I guess you
15 ultimately have made the record where you can point out something wrong with
16 how I allowed your participation in questioning SEPA. But what non-SEPA
17 related question do you have for this witness?

18 EHRLICHMAN: Mr. Examiner, again, for my record, that is a false distinction
19 in my view because the MDNS conditions are the conditions for the Special Use
20 Permit and...

21 REEVES: They are...

22 EHRLICHMAN: Special Use Per-, Mr. Examiner, if I may finish my sentence,
23 please. The Special Use Permit preceding, of which we are a party, has
24 specific criteria and authorizes you to take the Standards and the Code as
25 minimum standards and impose conditions to protect public safety. Now, as the

1 conditions for public safety are examined under the Special Use Permit,
2 you're bringing in the MDNS conditions, that's fine. And we have asked what
3 they mean. That is the purpose of this inquiry of Mr. Black, who apparently
4 is the only witness available on earth who knows what the MDNS means.

5 REEVES: Okay. Great. You've made your record. You had a question?

6 EHRLICHMAN: Yes. Uh, Mr. Black, is the intent of the MDNS, as Mr. Cricchio
7 testified to refer to the calculus in the TIA, Exhibit 18, specifically is
8 the intent that the MDNS trips conformed to the annual calculation of total
9 trips, 11,900, let's call it, whatever the number is, is that the intent of
10 the MDNS?

11 BLACK: The intent of the MDNS question was to condition the, uh,
12 appropriate language as provided to us by the Department of Public Works
13 Traffic Division.

14 EHRLICHMAN: Do you...

15 BLACK: I, again, am not a traffic engineer, did not review the TIA.

16 EHRLICHMAN: Well, you're not hearing my question. Do you agree with Mr.
17 Cricchio's statement that the intent of the MDNS is to conform to the
18 calculus in the TIA?

19 BLACK: It is to conform to the condition that Public Works provided to
20 us based on their review of the TIA. I do not recall Mr. Cricchio's exact
21 language in his testimony.

22 EHRLICHMAN: You're, you're not answering my question. Is the...

23 BLACK: Well, here, let me answer it a different way.

24 EHRLICHMAN: Okay.

25

1 BLACK: Um, we do not review the Traffic Impact Analysis, our Public
2 Works Traffic Division does. We rely on them to provide us the accurate, uh,
3 conditions to put in our MDNS to mitigate any perceived adverse environmental
4 impacts. That is what we've done.

5 EHRLICHMAN: So, as the deputy for the Planning Director, who has
6 responsibility to make the recommendation to the Hearing Examiner, your
7 position is that you, you have no way of knowing whether the TIA calculation
8 of 11,900 trips is an annual limit from which we derive the 46 per day?

9 BLACK: Yeah. Not to sound ignorant, but I did not do the math. Um, and,
10 again, I'm not a traffic engineer. I rely on our traffic engineers to review
11 the tr-, Traffic Impact Analysis and provide us with the appropriate
12 conditions to go into the MDNS to mitigate any possible environmental
13 impacts.

14 EHRLICHMAN: So, my final question..

15 REEVES: I'm going to raise a question myself. Mr. Black, would it be fair
16 to say in these circumstances, Forest Jones, who we are going to hear from
17 shortly, essentially said, Mr. Black, I've reviewed the TIA, this is the
18 condition or mitigation, uh, we believe would be appropriate to incorporate
19 into the MDNS. Would that be a fair assessment?

20 BLACK: That would be a fair assessment.

21 REEVES: And then you looked at it and you said, okay. I don't, based on
22 your expertise, Mr. Jones, based on this doesn't look terribly written in my
23 mind and it doesn't, you know, uh, nothing jumps out at me, I'm going to
24 accept what Mr. Jones recommended. Is that your recollection of what happened
25 here?

1 BLACK: That is correct. Yes.

2 REEVES: Okay. Great. Mr. Ehrlichman, other questions?

3 EHRLICHMAN: Yeah. My final question is the same as to Mr. Cricchio, the MDNS
4 conditions, and the recommended conditions on the Special Use Permit are
5 derived, unchanged, from Public Works? The Planning Department did not have
6 input or change any of the conditions related to traffic safety that it
7 received from Public Works, correct?

8 BLACK: Not that I recall.

9 REEVES: Okay. Very good. We now know who knows what that condition means,
10 it's Forest Jones. Thank you, Mr. Examiner.

11 REEVES: No comment. And we'll move on. Um, did we have M-, uh, Mr.
12 Loring, did you, was there follow up based on that? I think we've
13 determinatively just established Forest Jones will have answers on this
14 issue. But, go ahead.

15 LORING: Uh, we certainly, uh, hope so. I do have one or two, uh, maybe
16 three or four questions just to follow up on this. And, and the first one
17 comes from your last question, Mr. Examiner. So, Mr. Black, hello, uh, Kyle
18 Loring, I know you've seen me on screen, I've seen you.

19 BLACK: Morning.

20 LORING: Uh, so I do have a couple of questions. Um, the, the last
21 question from the Hearing Examiner was something to the effect, he was asking
22 you, is it fair to say that Forest Jones reviewed the Traffic Impact Analysis
23 and then essentially signed off on the conditions in the MDNS, told you those
24 would be good enough. Is that an accurate summary of the question that we had
25 from the Examiner just now?

1 BLACK: Yeah. That's accurate. But, let me clarify, uh...

2 LORING: Sure.

3 BLACK: Uh, one of his, uh, Development Review staff, Joey Emaro
4 [phonetic], is probably the person that I had clarify that with Forest Jones.
5 So, there may have been, you know, a little bit more involvement from some of
6 the other staff.

7 REEVES: Well...

8 LORING: Okay.

9 REEVES: Sorry, sorry, Mr. Loring, my understanding of my question and his
10 answer was different than what you just posed. My understanding was that
11 essentially Mr. Black, you compile conditions prepared by those, you know,
12 from other departments with expertise in those topics and then you do a sort
13 of editorial, is the comma in the right place, function as opposed to Mr.
14 Loring's question, at least the way I heard that, made it sound as if you
15 yourself prepared conditions and then go ask those folks if those look right.
16 What is the way that, that the sausage gets made, I guess?

17 BLACK: Yeah. No, we, we, uh, uh, uh, take their comments and put them in
18 the MDNS and we do have, and, you know, look at the grammar, make sure the
19 comma was in the right place, and then we'll send them back to Public Works
20 to make sure that those, uh, conditions are worded as they, they want them
21 reflected.

22 REEVES: Right. But it's, so I understood correctly, you, yourself aren't
23 crafting the conditions then seeking someone's sort of, yeah, that looks
24 right? It's, it's more they proposed what they think is appropriate, you do
25

1 an edit and then they do a sort of final, yeah, that, that all looks good. Is
2 that an accurate assessment?

3 BLACK: That, that's accurate. Yes.

4 REEVES: Oh, okay. Sorry, Mr. Loring. Go ahead.

5 LORING: Sure. And, and that was my understanding, too. Uh, suggested that
6 the conditions were generated in a different place than they actually are.

7 Um, so, so, you relied on Forest Jones to provide his, his review of the TIA
8 and then, uh, conditions for the MDNS related to the transportation issues,
9 Mr. Black?

10 BLACK: Uh, yes.

11 LORING: Okay. Uh, are you familiar with Mr. Jones statement that it would
12 not be a bad idea to get a third-party review of that traffic impact
13 analysis?

14 BLACK: I am aware of that.

15 LORING: Okay. And so Mr. Jones' opinion, in his, from the, that we know
16 it was that a third-party should occur of the TIA, is that right?

17 BLACK: Uh, yes.

18 LORING: Okay. But that did not occur here, right?

19 BLACK: Not to the best of my understanding, it did not occur.

20 LORING: Okay. And, uh, and you say to the best of your understanding, you
21 would know since you were in the email chain where, uh, Mr., Mr. Jones
22 recommended that review?

23 BLACK: Yes.

24 LORING: Okay. And you were the one who, who stated that we're, it was too
25 late to have that third-party review at this point?

1 BLACK: That was a statement I made directly to Kevin Cricchio in that
2 email chain, Forest Jones was not included in that email exchange.

3 LORING: Okay. But you saw Forest Jones' emails below the Kevin Cricchio
4 email?

5 BLACK: I did.

6 LORING: Okay. And you mentioned earlier, I think you talked about a third
7 third-party review, uh, there has, with, there has been no first third-party
8 review of that Traffic Impact Analysis to your knowledge, right?

9 BLACK: I don't know which one you're talking about. It's my
10 understanding there's been several, uh, TIAs and two, two, two third-party
11 review occurrences.

12 LORING: Okay. So, you believe there have been multiple Traffic Impact
13 Analysis?

14 BLACK: Uh, yes, that's my understanding.

15 LORING: Okay. And that's a Traffic Impact Analysis as defined by the
16 Skagit County Road Standards?

17 BLACK: Uh, yes, that's also my understanding.

18 LORING: Okay. Got just a couple of other questions, uh, for you based on
19 the questions we heard a moment ago. Um, you were, you were talking about not
20 being a traffic engineer and so not necessarily being, uh, having expertise
21 to interpret those average numbers of tr-, of trips, is that right?

22 BLACK: That is correct.

23 LORING: Okay. Who enforces MDNS conditions at Skagit County?

24 BLACK: The department?

25 LORING: Yeah. What department I should have asked.

1 BLACK: Well, it, it's the Planning Department, the Director of the
2 Planning...

3 LORING: Okay.

4 BLACK: Department is the administrative official.

5 LORING: Okay. And you work for the Planning Department, right?

6 BLACK: That's correct.

7 LORING: Okay. Uh, ultimately, you're the one who's signed off on the MDNS
8 that was issued here, even if it's not your signature directly on that
9 document?

10 BLACK: I wouldn't say ultimately, others had a chance to look at that,
11 including legal, and, um, our Director.

12 LORING: Okay. You do work for the Planning Department?

13 BLACK: Yes, that's what I had indicated.

14 LORING: Okay. And you did, you also signed off on the MDNS?

15 BLACK: I did.

16 LORING: Okay. So, to the extent that conditions in the MDNS need to be
17 known by somebody, to be enforced by somebody in the County, that somebody
18 would be your department?

19 BLACK: Initially, yes.

20 LORING: Okay. Just a couple, I'm just taking a quick look here. I think
21 we've covered it. Uh, oh, yes. Uh, you were asked a moment, uh, a moment ago
22 by the Hearing Examiner whether the Hearing Examiner has authority to impose,
23 uh, conditions on, uh, I believe add conditions to the MDNS...

24 REEVES: No.

25 LORING: Does that sound accurate?

1 BLACK: No.

2 REEVES: That...

3 BLACK: That's not accurate.

4 LORING: Okay. Is your understanding that he was asking about the Special
5 Use Permit conditions?

6 BLACK: Yes.

7 LORING: Okay. So, you weren't providing a legal opinion on whether he can
8 add conditions to the MDNS conditions in this instance?

9 BLACK: That, that's, yeah. That's correct.

10 LORING: Okay. Sorry about that. There was a lot of conversation about,
11 uh, this, all the questions being related to the MDNS and so...

12 REEVES: Excuse...

13 LORING: That was...

14 REEVES: I'll make a ruling...

15 LORING: The confusion.

16 REEVES: I appreciate Mr. Black, but I also didn't intend on calling on
17 Mr. Black to make, you know, legal determinations either, so...

18 BLACK: Thank you.

19 LORING: Okay. That, uh, that's all my questions for you. Again, thank you
20 for your time.

21 REEVES: Great. Mr. Lynn...

22 BLACK: Thank you.

23 REEVES: Anything of this witness?

24 LYNN: No.

25 REEVES: Okay. Mr. D'Avignon, anything final before we move?

1 D'AVIGNON: Against my better judgement, I do have a question or two. Um, um,
2 Mr. Black, you were asked a bunch of questions about your knowledge of
3 particular things, very specific things that may or may not have occurred in
4 this particular Application. Has your role and involvement in this been such
5 that you would know very specific things about what, what's been produced or
6 not produced?

7 BLACK: It, it, it is not. I, I do not know all of the ins and outs, um,
8 again, as Mr. Cricchio indicated, we were given this file late in the, in the
9 game and, uh, we needed to, um, dot the I's and cross the T's with the final
10 steps to get this through to the Hearing Examiner for a decision. Um..

11 D'AVIGNON: So...

12 BLACK: Our involvement came in, we were, they were at the point of doing
13 that, uh, uh, Critical Areas Analysis on the haul road and that's where we
14 picked it up.

15 D'AVIGNON: So, so, you have never been the, like, Lead Planner on this
16 particular Application?

17 BLACK: I have never been the Lead Planner.

18 D'AVIGNON: But you are currently the supervisor of the Lead Planner?

19 BLACK: That's correct.

20 D'AVIGNON: And as such, you have been a supervisor when documents have been
21 produced and whatnot and provided supervisory overview?

22 BLACK: That's correct.

23 D'AVIGNON: No other questions.

24 REEVES: Great. Uh, thank you, Mr. Black. Uh...

25 BLACK: Thank you.

1 EHRlichman: Mr. Examiner.

2 REEVES: Sorry?

3 EHRlichman: Mr. Examiner?

4 REEVES: Uh, you had something, Mr. Ehrlichman? I'm, we're not going to do
5 re-re-re-direct, but what was, you, we're done with Mr. Black. Mr.
6 Ehrlichman, what was your...

7 EHRlichman: Well, I wanted to speak to that, Mr. Examiner?

8 REEVES: You can speak to it, but briefly, you can speak to me on why you
9 think additional questions are necessary, at this point.

10 EHRlichman: Thank you. I, I want to highlight Mr. Cricchio's answer where he
11 said you'd have to ask Brandon Black about the meaning of what the average...

12 REEVES: Right.

13 EHRlichman: Meant and...

14 REEVES: And then you asked Mr. Black questions.

15 EHRlichman: Right. And then we just heard on re-direct Mr. D'Avignon elicit
16 testimony that Mr. Black really was, was merely a supervisor in an editorial
17 capacity. There's something not...

18 REEVES: Well, Mr...

19 EHRlichman: Lining up there and, and I'd like to ask a question. But I know
20 that's not your desire. So, I'll leave it at that thank you.

21 REEVES: Okay. Great. Thank you. I think we heard Forest Jones, uh, who
22 we're going to hear from is, is the person with expertise on this topic. And,
23 uh, we'll, we'll move on. So, I think, uh, we have two other witnesses we
24 expect to hear from the County. And, uh, I think now is probably a good time
25 for a morning, uh, facilities break. Does that make sense to everybody?

1 LORING: Yes.

2 D'AVIGNON: Yes, it does.

3 REEVES: And when we come back, is it Leah Forbes that we expect to hear
4 from, Mr. D'Avignon, is your next witness?

5 D'AVIGNON: That, that is correct, Mr. Examiner.

6 REEVES: Okay. Leah Forbes, not just one of our tech experts. But, uh, we
7 will be back with Leah Forbes, let's say 11:10, everybody.

8 LORING: Thank you.

9 [The tape ends.]

10 **The undersigned being first duly sworn on oath, deposes and says:**

11 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
12 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party
13 to this action. That on May 7th, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves, that
14 took place on 9/13/22 at 9:00 a.m., regarding the above-captioned matter.

15 I certify and declare under penalty of perjury under the laws of the State of Washington that the
16 aforementioned transcript is true and correct to the best of my abilities.

17 Signed at Mount Vernon, Washington, this 7th, May of 2024.

18 Janet Williamson
19 Janet Williamson

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**IN SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT**

State of Washington,	)	Cause No.: PL16-0097, PL16-0098,
	)	PL22-0142
Plaintiff,)	
)	
vs.	)	PERMIT HEARING 9-13-22 11:00 AM
)	
Name,)	
)	
Defendant)	

Transcription Date: May 8th, 2024

Present: Andrew Reeves, Jason D'Avignon, Leah Forbes, Bill Lynn, Tom Ehrlichman, Kyle Loring

REEVES: Excellent. Okay. We're back on the record, I think, at this point, uh, Mr. D'Avignon was going to continue, uh, with his witnesses, with Leah Forbes, is that right?

D'AVIGNON: That is correct, Mr. Examiner.

REEVES: Okay. Uh, Leah Forbes, I'll get you sworn in. Do you swear or affirm to tell the truth in the testimony you give here today?

FORBES: Yes, I do.

REEVES: Uh, if you could state and spell your name for the recording?

1 FORBES: Leah Forbes, L-e-a-h F-o-r-b-e-s.

2 REEVES: Great. Thank you very much. And, uh, thank you for being here and
3 for your tech help earlier, uh, several days ago, but I think we're hearing
4 from you for different reasons at this point and I'll let Mr. D'Avignon begin
5 his questioning.

6 D'AVIGNON: Thank you, Mr. Examiner. Uh, Ms. Forbes, what's your job and
7 title?

8 FORBES: I'm a Senior Planner with, uh, Natural Resources in, uh, Skagit
9 County Planning and Development Services. I review Applications for
10 compliance with crucial areas, [inaudible] regulation.

11 D'AVIGNON: Okay. And so you...

12 REEVES: And, sorry. It's a little quiet, I'm just making sure everyone
13 can hear Ms. Forbes okay? I don't know if that was just me. It was just a
14 little quiet on the volume. Can you just say one...

15 FORBES: I'm, uh, yeah, I'm stuck with hearing buds here at my desk, so
16 hopefully you can hear me okay?

17 REEVES: I, I think that was a little better. Sorry to interrupt.

18 FORBES: Okay.

19 REEVES: Go ahead.

20 D'AVIGNON: Um, did you participate in the, the review of the Application for
21 the Grip Mine, Grip Road mine?

22 FORBES: Um, my review of the direct Application materials didn't begin
23 until December of 2021. Uh, my review was limited to the site assessments
24 prepared for the haul road.

25 D'AVIGNON: Okay. Did you, um, comment on the MDNS?

1 FORBES: Uh, only to provide conditions related to the haul road.

2 D'AVIGNON: Okay. And you said you started in December 2021?

3 FORBES: Correct.

4 D'AVIGNON: And as to the haul road, uh, what, what documents did you review?

5 FORBES: I reviewed the site assessment prepared by Northwest Ecological
6 Services, as well as the field report, I believe it was Associated Earth
7 Sciences.

8 D'AVIGNON: Would you say that ag-, one more time? I think I, I encountered
9 the same issue Mr. Reeves had, uh, raised.

10 FORBES: Okay. Uh, I reviewed the report prepared by Northwest Ecological
11 Services related to wetland and streams and the geological hazard assessment
12 performed by, um, North-, uh, Associated Earth Sciences.

13 D'AVIGNON: Okay. And what was your impression of those reports?

14 FORBES: I, they appeared complete, they met the requirement of the
15 Critical Areas Ordinance for review of, um, it's just an access road.

16 D'AVIGNON: Okay. And based on those reports, did you see any significant
17 impacts to any wetlands?

18 FORBES: No. There were no new direct impacts to wetlands associated with
19 the road.

20 D'AVIGNON: Okay. And you've heard, you've been listening in on the testimony
21 in this Hearing for the last, I guess, few days, but over a few weeks?

22 FORBES: Yes. Yes, I have.

23 D'AVIGNON: Um, so you, you're familiar with the, um, I, excuse me, Mr.
24 Examiner, there's some noise outside of my office that's a little
25 distracting. I'm going to go kick them out in front and be right back.

1 REEVES: Yeah. Go, go ahead. Takes a village. And while he's doing that,
2 Leah Forbes, I'm just trying to make sure we get the audio sorted. I, it is...
3 FORBES: Okay.
4 REEVES: Sort of a little quieter than one would hope, but...
5 FORBES: I don't know if me holding the mic up in front of my face is
6 making any difference or not.
7 REEVES: I don't, I didn't get the sense that it did and that's...
8 FORBES: Okay.
9 REEVES: Going to be uncomfortable in the long run for you, I suspect.
10 FORBES: You can just ask me fewer questions, then.
11 D'AVIGNON: We'll do our best.
12 REEVES: Well, maybe try, try to let the mic down because...
13 FORBES: Okay.
14 REEVES: I recognize...
15 FORBES: Does that...
16 REEVES: I know Mr. Loring will have several questions and I...
17 FORBES: Yeah.
18 REEVES: Don't want you to feel like your arm is going to fall off.
19 FORBES: Um, somebody, somebody offered me some different earbuds so let
20 me try those.
21 REEVES: Yeah. Let's, we, we want to make sure everybody is comfortable
22 and, uh, you know, especially your dual duty, uh, making sure our tech
23 doesn't, uh, implode. That is not her job, at all, I just want to be clear
24 for the record. Uh, let's see if...
25 FORBES: Okay. Are these any better?

1 REEVES: I think it's more the pickup on the computer, but, but maybe just
2 say a couple of words.

3 FORBES: I don't know if that's going to make any difference or not, I'm
4 checking my settings here.

5 REEVES: It occurs to me if Leah Forbes can't solve this problem, we're
6 really in trouble.

7 FORBES: This is, this is the challenge, I don't have a laptop so I can't
8 go sit in a conference room and, and use that instead, so...

9 REEVES: I, I think you're okay. I just, if you can, I, I hate to force
10 you to yell at all of us, but try to speak a little more loudly than you
11 might normally...

12 FORBES: Okay.

13 REEVES: I think, I think we're going to be okay.

14 FORBES: All right. Let's give it a shot.

15 REEVES: Okay. Go ahead, Mr. D'Avignon.

16 D'AVIGNON: I believe where I was at was you heard the, uh, testimony
17 regarding the resurfacing of the mine haul road?

18 FORBES: Yes, I had.

19 D'AVIGNON: Uh, do you believe that that in and of itself was a significant
20 impact on any of the wetlands, um, along the haul road?

21 FORBES: No, I do not.

22 D'AVIGNON: And you had mentioned that you had reviewed the Northwest...

23 FORBES: Ecological Services.

24 D'AVIGNON: Ecological Services, sorry, I got confused on what the E stood
25 for, whether it was Environmental or not. Um, and it, there's two reports,

1 there's, uh, an assessment, impact assessment and mitigation plan, um, and
2 then also, uh...

3 FORBES: A delineation...

4 D'AVIGNON: Critical Areas Assessment.

5 FORBES: Yeah. Yeah.

6 D'AVIGNON: Uh, did you review both of those?

7 FORBES: I have now reviewed both of those, yeah.

8 D'AVIGNON: But at the time the MDNS was issued, had you reviewed both of
9 those?

10 FORBES: I had only reviewed the Impact Assessment and Mitigation Plan for
11 the MDNS.

12 D'AVIGNON: Um, but you've, you're reviewed both of them since then?

13 FORBES: Yes, I have.

14 D'AVIGNON: And would your analysis change now that you've read both of them?

15 FORBES: No, it would not.

16 D'AVIGNON: Um, and in reviewing the Critical Areas Assessment, um, did it
17 provide any additional information that would have helpful to your review?

18 FORBES: Nothing significant.

19 D'AVIGNON: Okay. In your, in your job, are you, you work with buffers for
20 wetlands and rivers?

21 FORBES: Yes, I do.

22 D'AVIGNON: And other water bodies?

23 FORBES: Yes.

24 D'AVIGNON: And so, you're familiar with the testimony about the buffer from
25 the Samish River in this particular case?

1 FORBES: Yes.

2 D'AVIGNON: And what it, I guess, cut to the chase, that it says 200 feet in
3 the, the MDNS?

4 FORBES: Yes.

5 D'AVIGNON: Um, is that a, I'm going to take a step back. Is it your
6 understanding that the l-, impact, the Land Use Impact is high or moderate in
7 this particular situation?

8 FORBES: I did not directly review that information to determine the
9 language impact, the level of land use impact. Uh, I had since reviewed it a
10 bit of the argument on both sides, um, but I did not make the determination
11 for the setback from, from the ordinary high water mark to the mine.

12 D'AVIGNON: Okay. Do you know who did?

13 FORBES: I believe that was John Cooper [phonetic].

14 D'AVIGNON: Okay. Is John Cooper with the County at this time?

15 FORBES: No, he has since retired.

16 D'AVIGNON: Okay. So, but, I guess, from your perspective, at this point, do
17 you consider this to be a high impact use?

18 FORBES: I have not reviewed enough of the materials to make a
19 determination if it is a high or moderate intensity land use impact.

20 D'AVIGNON: Okay. Um, have you reviewed the, uh, wildlife assessment for, um,
21 2016?

22 FORBES: Is that the Graham Bunting?

23 D'AVIGNON: Yes. This is where they scored the wildlife.

24 FORBES: I, I had reviewed, I believe at some point, I had reviewed all of
25 the, uh, wildlife assessments prepared by Graham Bunting.

1 D'AVIGNON: Okay. Um, do you know what the wildlife four was?
2 FORBES: Oh, for the, the wetland associated with the river?
3 D'AVIGNON: Yes, thank you.
4 FORBES: I, I believe, uh, at the time, the, the hab-, the habitat score
5 for that wetland was a 30.
6 D'AVIGNON: Okay. And, and just for the record, um, Mr. Examiner, feeling
7 extra just discombobulated at the moment, my apologies. Uh, that is Exhibit
8 C-, probably is I wrote it down, but I got about 50 pieces of paper of at
9 this point in time.
10 REEVES: That's okay. Is this the, the 20-, well, there's been quite a
11 few, is this Exhibit 8, the Critical Areas Assessment that was from December
12 2021 or is this Graham Buntings 2015 assessment? I, I guess I'm just trying
13 to figure out...
14 D'AVIGNON: Yeah. No, it is, it's from 20-, that stamp marked, yeah, August
15 20th, 2015, Graham Bunting, Wildlife, Fish and Wildlife Assessment, uh, for
16 the three parcels of the mine site.
17 REEVES: Okay. So, that's C5, the 2015 Graham Bunting Assessment and
18 specifically the reference was to a habitat score as opposed to a wildlife
19 score, which I don't think is a thing, but I, I think Ms., uh, Forbes
20 clarified that, is that right?
21 D'AVIGNON: That is correct, thank you very much, Mr. Examiner. Are you
22 familiar with what, uh, the buffer requirements were at the time of the
23 Application being submitted?
24 FORBES: Yes, I am.
25 D'AVIGNON: Um, are they the same as they are today?

1 FORBES: No, they are not.

2 D'AVIGNON: Do you know how they've changed in that time?

3 FORBES: Uh, in, uh, about 2016 ecology made sev-, well, we adopted some
4 recommended change within the Department of Ecology on wet-, the wetland
5 rating system, that changed the scores. That could be achieved when rating a
6 wetland and so our buffer width requirements were changes to reflect the
7 change in score. And, at the time, the wetlands with a habitat score of 30
8 can have a buffer of 200 feet or 270 feet, depending on the land use impact.

9 D'AVIGNON: Okay. And Mr. Examiner, I would ask that you take official notice
10 of Ordinance 0-, or O20080014. Uh, this is the Ordinance that came, uh, about
11 in 2008, uh, as part of the Annual Comprehensive Plan update, it's, um, that
12 enacted the, the Critical Area Ordinance as it was in 2016, prior to
13 amendments that year.

14 REEVES: S-, okay, sorry. Now, I'm taking notice of, A) can you read the
15 ordinance one more time for me, Mr. D'Avignon?

16 D'AVIGNON: Yes. This would be O20080014.

17 REEVES: And that was, the date on that, if you have that?

18 D'AVIGNON: This was enacted on December 23rd, 2008.

19 REEVES: Okay. So, uh, just to clarify my understanding of the back and
20 forth with Ms. Forbes just now, essentially, Ms. Forbes, when you were
21 testifying about a habitat score of 30 for a wetland would result in a 200 or
22 270 foot buffer, depending on, on other factors, that is in reference to the
23 Critical Areas Ordinance prior to then the change of adopted, uh, when DOE
24 changed its ratings system sometime in, af-, after the Application initially
25 came in. Am I understanding that right?

1 FORBES: Yeah. The ordinance with a 2008 adoption date was in effect when
2 this Application was submitted. Um, we don't automatically adopt Ecology's
3 recommended changes, we reviewed and incorporate them into our Code
4 [inaudible] in, uh, 2016.

5 REEVES: Right. But in terms of, uh, and I can let the lawyers argue about
6 vesting later, but in terms of my understanding and your understanding, make
7 sure I understand your understanding is that the, the wetlands were reviewed
8 under the previous, uh, you know, earlier version which is the version
9 captured in 2008? Is that...

10 FORBES: Yeah.

11 REEVES: An accurate assessment?

12 FORBES: Yes, that is correct.

13 REEVES: Okay. I think I, I think I get it now. Mr. D'Avignon, go ahead.

14 D'AVIGNON: Yes. So, you know, if we look at the current Code, and it's
15 confusing because they don't have a habitat scores that go up to 30, the
16 reason is is because the law changed.

17 FORBES: Correct.

18 D'AVIGNON: Okay. And, uh, one of the changes was also buffer sizes?

19 FORBES: Correct.

20 D'AVIGNON: And it was 200 feet for, in the 20-, in the 2008 code I'm going
21 to use, um, 200 feet was the size of a buffer for a moderate impact use?

22 FORBES: Uh, 200 foot buffer, moderate impact land use, I believe they
23 called it intensity at the time, for a Category 2 wetland.

24 D'AVIGNON: Okay. And there's been a lot of discussion in this case about
25 whether it's, in fact, a high impact use, if it is a high impact use, can you

1 still apply, uh, a moderate or a medium, I forget what the term is already,
2 uh, buffer to it?

3 FORBES: Yes, you can.

4 D'AVIGNON: Um, and under what circumstances is that feasible?

5 FORBES: Um, under a number of conditions our Code does reference
6 Department of Ecology, um, document that's already been presented here, um,
7 in Table 8C8, I do not have the Ecology document. I believe it's a five,
8 well, you've had, you've had this document before, but [inaudible] table has
9 been referenced previously.

10 D'AVIGNON: And, and just for the record, that document is Exhibit A59. So,
11 in, in this particular matter, do you think there are circumstances that
12 warrant, uh, a moderate, uh, buffer?

13 FORBES: Uh, based on the information I have reviewed, I, I see the logic
14 behind the request for a moderate intensity land use, yeah.

15 D'AVIGNON: Okay. And if, do you think it would, that there is, that without
16 a larger buffer, uh, there would be a significant impact to the wetlands?

17 FORBES: Since my direct review is limited to the haul road, I don't feel
18 I have enough information to determine whether or not a 200 or 300 foot
19 buffer from the wetland associated with the Samish River, if, if that would
20 make a difference in the impact.

21 D'AVIGNON: Okay. Um, do you recall, uh, testimony [sic], testimony [sic],
22 testimony by Matt Mahaffie, uh, regarding how to classify the use intensity
23 of the haul road?

24 FORBES: I, I did listen to his testimony, I'm not sure I recall that
25 specifically.

1 D'AVIGNON: All right. Um, do you recall him referencing a specific ecology
2 guidance document? Um, he noted it was publication 22-06-005?
3 FORBES: Yes, I do recall that.
4 D'AVIGNON: Okay. Are you familiar with that document?
5 FORBES: I have, I have begun review of that document, it is draft
6 guidance provided for local jurisdictions from the Department of Ecology.
7 D'AVIGNON: Uh, so, it is not currently actual guidance?
8 FORBES: Correct. It is draft guidance and guidance to local
9 jurisdictions. They're, those are recommendations from Ecology for local
10 jurisdictions to consider when updating their, their code.
11 D'AVIGNON: Okay. And I, I want to touch on the ordinary high water mark. Um,
12 have you been able to look at the delineation, um, of the wetlands on the
13 Samish River?
14 FORBES: Yes, I have.
15 D'AVIGNON: And do you find them to be adequately delineated for purposes of
16 establishing the buffer?
17 FORBES: Yes, I do.
18 D'AVIGNON: Okay. And indulge me for one second as I, I double check my
19 notes.
20 REEVES: Sure. I'll hop in with a question while you're checking your
21 notes. Uh, Ms. Forbes, earlier, you had testified, I believe, about, uh, Mr.
22 Cooper, who is no longer with the County, and he was the one that, that sort
23 of made the determination as to whether the land use in question constituted
24 high or moderate intensity. Um, I guess my question is, if he's no longer
25 there, who would be the, if one were to re-review or, you know, if, if there

1 was a question as to what the intensity ought to be characterized as, who
2 would ultimately make that determination these days?

3 FORBES: My team would make that, that determination.

4 REEVES: Your, your team and can you clarify sort of what that means?

5 FORBES: Oh, yes. Sorry. Um, my direct supervisor, uh, and I would work
6 with, um, the rest of our team, there are now, I believe four of us, four and
7 a half of us that work on the team Natural Resources. For a project like
8 this, we would discuss the, uh, the information provided and make those
9 recommendations and make a determination at that point.

10 REEVES: Okay. So, the Natural Resources Team at the County, of which
11 you're a member, and there, uh, you said three or four other members, would,
12 would, uh, analyze that, uh, and then produce a determination, uh, would it
13 be if, if that were to be reassessed at this point. That, that was what I was
14 seeking clarification on.

15 FORBES: Yep. Correct.

16 REEVES: Great. Thank you. Uh, Mr. D'Avignon, go ahead.

17 D'AVIGNON: Uh, I think there's a couple more things. Uh, the Code requires
18 that extra 25 feet be added to a buffer that does not extend to the top of
19 the slope. Um, in this particular case, is, that was not specifically
20 mentioned in the MDNS, is that correct?

21 FORBES: I do not recall seeing it in the MDNS, no.

22 D'AVIGNON: Um, but it would..

23 REEVES: Sorry, when you say the Code, I want to be clear, are you
24 referencing the 2008 version? Just, just so there's no confusion?

25 D'AVIGNON: Uh, yes.

1 REEVES: Okay. Sorry to interrupt.

2 FORBES: That, that, that particular section of the Code is the same now
3 as it was in 2008.

4 D'AVIGNON: Uh, but that wouldn't, I guess the MDNS does generally require
5 compliance with the Critical Areas Ordinance?

6 FORBES: Correct.

7 D'AVIGNON: So, even though it doesn't specifically say an extra 25 feet, if
8 it's not to the top of the slope, it, in fact, would require that?

9 FORBES: Yes, it does require that.

10 D'AVIGNON: Okay. Um, would there need to be a, I guess, one way to describe
11 it is a buffer on the buffer, I don't know if you recall Mr. Mahaffie, uh,
12 talking about a maintenance corridor?

13 FORBES: Uh, yes, I am familiar with, with that, um, when that particular
14 section of Code was written, it was specific to, uh, development that
15 included structures, uh, such as homesteads, things like that. It's, it, it's
16 very, it seemed, to me it's very clear in that section of Code 1424080, that
17 it would, it is specific to structures. Talked about maintenance of
18 structures.

19 D'AVIGNON: Okay. So you wouldn't apply that to a berm that surrounded the
20 mine?

21 FORBES: No, I would not.

22 REEVES: Sorry, I'm going to dive in again just to make sure I understood.
23 So, uh, rather than the term buffer on a buffer, I guess, in my mind, I
24 would, the way I would normally think about such things is you have a buffer,
25 but then often you have what I think of as the required structural set back,

1 uh, often because the IFC fire code or something, is that what we're talking
2 about here, that maintenance corridor is a structural set back so that you
3 can't build a structure within ten, 15, whatever that setback is, is that
4 what we're talking about?

5 FORBES: Yeah. But the Code calls it a maintenance corridor. And does
6 specifically list things that can be within that maintenance corridor and it
7 does not include structures.

8 REEVES: Got it. Okay. Thank you for clarifying.

9 D'AVIGNON: As the MDNS is currently written as it relates to the areas in
10 which you work, uh, do you think it adequately mitigates against significant
11 impacts to the environment?

12 FORBES: Yes, I do.

13 D'AVIGNON: Uh, no further questions at this time, Mr. Examiner.

14 REEVES: Great. I think next I'll go to Bill Lynn?

15 LYNN: Thank you. Um, I do think it should be noted that my skills in
16 the muting and unmuting area have improved since the beginning of the
17 Hearing.

18 REEVES: Well, it's early in the day, Bill. But, uh, I'll give you a half
19 star for the moment.

20 LYNN: Yeah. I realize I might be jinxing it. Uh...

21 EHRLICHMAN: Mr. Examiner, I, I think it's improved as well because it's been
22 very quiet over there.

23 REEVES: Oh, man, all right.

24 LYNN: Fair enough.

25

1 REEVES: Go ahead, Mr. Lynn. We got the monkey corridor, the peanut
2 gallery, we've got everything going on.

3 LYNN: Thank you. Um, Ms. Forbes, um, have you ever, uh, has the County,
4 to your knowledge, ever required an assessment of critical areas that, where
5 the impacts would result only from a change in the volume or type of traffic
6 on a road?

7 FORBES: No, I'm not.

8 LYNN: Are you aware of any management recommendations for such a change
9 of use, if you want to characterize it as such?

10 FORBES: Uh, only, uh, those, for this specific project, those that were
11 recommended, um, in the reports prepared for the haul road.

12 LYNN: Um, so you're talking about the NES Report and the mitigations
13 measures that were incorporated into the MDN-, MDNS?

14 FORBES: Correct.

15 LYNN: Uh, you also, I think, indicated that you reviewed, or your
16 department reviewed the, um, the geotechnical portion of the critical areas,
17 uh, evaluation, the one submitted by AES?

18 FORBES: For the haul road specifically, yes.

19 LYNN: And, uh, in the case of something like that prepared by, uh, or,
20 or stamped by an engineer, does the department rely more heavily on the
21 report and the certification by the engineer that, uh, he or she is willing
22 to stamp it?

23 FORBES: Yes, yes, we do.

24 LYNN: Um, uh, I, I know you haven't, uh, had the chance you would like
25 to fully evaluate the intensity of the activity, but is it fair to say you

1 would agree that there is no specific listing for surface mines and that the
2 exercise of judgement would be required in order to make an assessment of the
3 appropriate intensity for a particular proposal?

4 FORBES: Yes, I would agree with that.

5 LYNN: And then one final question about the delineation, uh, is it
6 correct that in order for a wetland, um, to be found or, or delineated, I
7 guess, determined, that all three parameters have to be found that is
8 appropriate soils, appropriate plants and appropriate hydrology and without,
9 uh, all three of those being present, there's no wetland under the standard
10 procedures?

11 FORBES: That is correct.

12 LYNN: Okay. So, uh, that's all I have. Thank you.

13 REEVES: Okay. Uh, Mr. Ehrlichman, I, I think this probably isn't a
14 witness you had questions for in terms of Grip Road, but let me check with
15 you real quick?

16 EHRLICHMAN: Correct. Thank you.

17 REEVES: Okay. Mr. Loring, move to you?

18 LORING: Thank you, Mr. Examiner. Scrolling through my notes, uh, we went
19 through a little bit here. Uh, hello, Ms. Forbes, good morning.

20 FORBES: Good morning.

21 LORING: Uh, you covered quite a bit of ground, I, I hope to cover all of
22 it, but in a little bit more summary form, uh, with you here today. I, I
23 understand my bandwidth has been a little off today, if you find that you're
24 not hearing my question, please just let me know. Um...

25 FORBES: Okay.

1 LORING: And I'll shut off the video to help that out. Uh, so, we heard
2 some testimony from you. At the beginning of your testimony, I believe you
3 stated that you were not familiar, or that you, you were brought into this
4 matter in December 2021, is that right, or your review of the Application
5 materials?

6 FORBES: My review of the assessment compared for the haul road which
7 began in 2021. I did not...

8 LORING: There we go.

9 FORBES: I did not review anything before that.

10 LORING: Okay. Thanks. Sorry, I think my camera slowed down. I, I hope you
11 don't mind, I am going to shut it off, um...

12 FORBES: That's fine.

13 LORING: [Inaudible] sound, thanks. Okay. Uh, but later on, you mentioned
14 that you had reviewed all of the materials related to critical areas impacts
15 for the project, is that right?

16 FORBES: I have reviewed the reports prepared by Graham Bunting Associates
17 that were provided, uh, in the record, as well as the one for the haul road.

18 LORING: Okay. And you mentioned early on that you did not review, uh, one
19 of the reports from, uh, Northwest Ecological Services by the time of the
20 MDNS, is that right?

21 FORBES: That is correct.

22 LORING: Okay. Is that a standard procedure there, uh, uh, for you at
23 Skagit County to not review materials like that prior to the issuance of a
24 MDNS?

25 FORBES: No, it's not.

1 LORING: All right. Is it your understanding that the Skagit County Code
2 actually requires information like that provided in that second report prior
3 to an issuance of a MDNS?

4 FORBES: Yes.

5 LORING: Okay. Okay. And you dis-, I, I believe some of your testimony you
6 talked about reports appearing complete, uh, sorry, this is back to those NES
7 Reports. I believe you testified that they appeared complete and there were
8 no new direct impacts to the wetlands, is that, is that accurate?

9 FORBES: Yes.

10 LORING: Okay. You weren't testifying about whether the roadwork in 2018
11 had had any impacts, were you?

12 FORBES: No, I was not. It was just the use of the road.

13 LORING: Okay. So, at, at this point, you, uh, you, do you have an opinion
14 on whether that roadwork in 2018 had any impacts on the wetlands or the
15 streams along the internal haul road?

16 FORBES: The roadwork that was completed in 2018 would have been allowed
17 without Standard Critical Areas Review pursuant to 14.24.070 Number 3 of
18 routine maintenance of an existing private road.

19 LORING: Would it be...

20 FORBES: So...

21 LORING: Considered an existing private road for Skagit County given that
22 the County had never actually reviewed the road installation itself?

23 FORBES: Yes.

24

25

1 LORING: Okay. Okay. So, your position is that roads can be constructed
2 and maintained in Skagit County without any review of Critical Areas Impacts,
3 is that correct?

4 FORBES: That is not a, no, that is not a complete question. Forest
5 practice roads that are constructed under Forest Practice Regulations are
6 reviewed by DNR. And those can be, once constructed, can be considered
7 existing private road under the Critical Areas Ordinance.

8 LORING: And is it your understanding that DNR reviews, reviews forest
9 road construction for compliance with local Critical Areas Ordinances?

10 FORBES: No.

11 LORING: In fact, they don't review them for local Critical Areas
12 Ordinance compliance, do they?

13 FORBES: No.

14 LORING: Okay. So, given that the road that we're talking about here,
15 well, let me ask you this, do you have any knowledge that the private haul
16 road here was reviewed for impacts to critical areas, uh, at any time prior
17 to 2021?

18 FORBES: No.

19 LORING: Okay. Have you seen any information to that effect, that it would
20 have been reviewed for critical areas impacts when it was installed?

21 FORBES: No.

22 LORING: Uh, have you seen any information about it being reviewed for
23 impacts, uh, associated with the roadwork in 2018?

24 FORBES: No.

25

1 LORING: Okay. So, do you, uh, do you know the difference in volume
2 between the vehicles that would have been, uh, used on the site in the
3 private haul road for forestry and those that would be used for hauling
4 gravel?

5 FORBES: No.

6 LORING: Okay. Do you know the difference in weights in those vehicles?

7 FORBES: No.

8 LORING: Okay. Uh, no, that's fine. Uh, you, I believe you did testify
9 that you believe the roadwork that had occurred in 2018 would not have had a
10 significant impact, is that accurate?

11 FORBES: Yes.

12 LORING: And the r-, the vegetation that was removed as part of that work,
13 you believe the vegetation, that would not have had a significant impact?

14 FORBES: Correct.

15 LORING: Including on the wetlands that are adjacent to the road?

16 FORBES: The information that I have seen, including looking at historic,
17 not historic, but older aerial photos, any vegetation that was removed, would
18 have been done as part of maintenance of the existing access of the road, of
19 the opening through the trees appears to be [inaudible] similar now as to
20 what it was prior.

21 LORING: And so, uh, removing, and when you say prior, um...

22 FORBES: Prior, prior to the...

23 LORING: Did you review aerial photos of, yeah, did you review aerial
24 photos of the site in 2018?

25

1 FORBES: Uh, I have, I have odd years, so I have 2017, I have 2019. I also
2 have them significantly order than that.

3 LORING: Okay. Have you reviewed the amount of vegetation removal that
4 occurred between 27 and 20-, uh, 2017 and 2019?

5 FORBES: Only on aerial photos.

6 LORING: Okay. Have you tried to quantify the amount of vegetation removal
7 that occurred?

8 FORBES: No.

9 LORING: Okay. Have you compared the widths of the road from 2017 to 2019?

10 FORBES: Yes.

11 LORING: Okay. Do you have an evidence of that?

12 FORBES: I'm looking at an aerial photo right now.

13 LORING: Okay. What Exhibit number is that?

14 FORBES: Uh, I don't know that it is an Exhibit number.

15 LORING: Okay. Are you looking at other materials that aren't Exhibits in
16 this matter?

17 FORBES: Uh, I'm looking at the County's, uh, aerial photos that are
18 available on iMap.

19 LORING: Okay. And you, have you conducted a, a side-by-side analysis of
20 photos prior to the 2018 work and after the 2018 work?

21 FORBES: Yes.

22 LORING: And did you hear testimony from Appellant's witnesses that the
23 road had been widened?

24 FORBES: No. Well, I may have heard that testimony, but I don't recall. I,
25 I don't recall...

1 LORING: Okay.

2 FORBES: If I heard the testimony.

3 LORING: Okay. Let's talk a little bit more about...

4 REEVES: Sorry.

5 LORING: The vege...

6 REEVES: Uh, apologies, Mr. Loring, can you clarify, I'm trying to
7 remember the gentleman's name that sort of explicitly testified about this, I
8 don't know if that will spark anyone's memory. Can you just...

9 LORING: Well, John, John Day did testify to it directly. Uh, and...

10 REEVES: Okay.

11 LORING: Also, Nora Cammer [phonetic] testified to having done so, too.
12 John Day provided the maps.

13 REEVES: That, that's what I was, thank you for clarifying. That's what I
14 was thinking of. John Day and he had also prepared those Exhibits that, that
15 use the mapping tools, et cetera, is that right?

16 LORING: That's right. Yeah.

17 REEVES: Sorry. Okay. Thank you. I just wanted to make sure I was
18 following along.

19 LORING: Okay. Thanks. Uh, let's see here, Ms. Forbes, um, you were aware
20 that there are streams that cross this haul road?

21 FORBES: Yes.

22 LORING: Okay. And, uh, your testimony is vegetation along those streams
23 as part of the roadwork in 2018 would not have had an impact on the streams?

24 FORBES: Can you repeat that...

25 REEVES: Hold on.

1 FORBES: You cut out a little bit?

2 REEVES: Yeah. Mr...

3 LORING: Okay. Thanks.

4 REEVES: Loring, it cut out entirely. I'm wondering, do you want to hop
5 off and hop back on real quick and see if that helps?

6 LORING: I'll do that and, and if that doesn't work, I can always just add
7 the mute function, too, and then that should help, too. That's a joke about
8 shutting on the camera and the voice. All right. Just a second, I'll be right
9 back, thank you for your patience.

10 REEVES: I think he was, he was, uh, implying that on me on the mu-, he'll
11 mute me and that will fix the problem. Uh, it's my jumping in that throws
12 everything off, I'm well aware.

13 D'AVIGNON: I don't think that's how I took it.

14 REEVES: No, certainly not.

15 D'AVIGNON: I think he was going to mute himself.

16 REEVES: I, I took it that way as well. There's Mr. Loring, let's see if
17 that helped at all.

18 LORING: Thank you. Yes. Hello again. And let's hope for a little bit
19 better. I did notice it has been off a little today.

20 REEVES: Sure. Why don't you...

21 LORING: Yeah.

22 REEVES: Repeat your last question, Mr. Loring?

23 LORING: Thank you. Yes, uh, my question was, I believe, about the
24 vegetation cutting along streams that passed through the road, this internal
25 haul road, the vegetation cutting that occurred along there in 2018. I was

1 just, uh, getting confirmation from Ms. Forbes that she believes that didn't
2 have an impact on the stream functions?

3 FORBES: Correct.

4 LORING: Okay. There was a lot of conversation about the, uh, land use
5 impact of the project here, the, the proposed surface mine, as well as the
6 road, uh, and I believe you testified that with regard to the surface mine,
7 you were not involved in making that initial determination about the impact
8 level, is that right?

9 FORBES: That's correct.

10 LORING: Okay. But I believe you testified later on that you agreed with
11 [inaudible] intensity, uh, impact along that Samish River, uh, wetland for
12 the mine, is that correct?

13 FORBES: I said I understood the logic behind the request.

14 LORING: Okay. Do you agree that, uh, that a mine, surface mine is a
15 medium impact land use?

16 FORBES: Uh, I am, do not have enough information to make that
17 determination. There are too many, too many ifs, ands or buts, too many
18 questions that could be raised, too many possible [inaudible] it would be
19 very project and site specific.

20 LORING: Okay. What information would you need?

21 FORBES: I couldn't answer that question, at this point.

22 LORING: Okay. Your, your job entails the review of projects for Critical
23 Areas Impacts, right?

24 FORBES: Yes.

25

1 LORING: And in reviewing those projects for Critical Areas Impacts, you
2 used the information about a project to determine whether it will have an
3 impact on a critical area?

4 FORBES: I use all of the Application materials submitted, the site
5 assessments, the mitigation recommendations, code recommendations or code
6 requirements, agency recommendations, things like that.

7 LORING: Okay. And you've testified that you're familiar with the code
8 requirements in Skagit County related to wetlands, for example, is that
9 right?

10 FORBES: Correct. Yes.

11 LORING: And, and you've testified that you reviewed all of the
12 Application materials from Graham Bunting and Associates and also Northwest
13 Ecological Services, right?

14 FORBES: [Inaudible.]

15 LORING: So, what information, other than all of the project description
16 related to potential wetland impacts, and the Code itself, would you need to
17 determine the intensity of this land use?

18 FORBES: I don't have all of the project details, so I don't know.

19 LORING: Okay. Would you need to know how much vegetation would be
20 reviewed as part of the project?

21 FORBES: Yes.

22 LORING: Okay. Would you need to know whether soils would be disturbed?

23 FORBES: Yes.

24

25

1 LORING: Okay. Are you, are you fam-, so, let me ask you this, are you
2 familiar with the fact that the project we've been discussing today is a
3 surface mine?
4 FORBES: Yes.
5 LORING: Are you aware that it contemplates the removal of all vegetation
6 outside of the Samish River wetland buffer, up to that buffer?
7 FORBES: Yes.
8 LORING: Are you aware that it entails the removal of all of the soils up
9 to the edge of the buffer?
10 FORBES: I don't have that information.
11 LORING: Okay. Uh, is it an acceptable assumption that a gravel mine that
12 mines for gravel would probably remove the soils?
13 FORBES: Yes. But to what extent, I don't know.
14 LORING: Okay. So, would a gravel mine that removes all of the vegetation,
15 all of the soils and then removes a significant amount of sand and gravel, up
16 to the edge of a buffer, be deemed a, uh, high impact land use according to
17 your understanding of the Skagit County Code?
18 FORBES: That would depend on the mitigation as it was proposed.
19 LORING: And what mitigation measures would make that not a high impact
20 land use?
21 FORBES: [Inaudible] described in the Graham Bunting, uh, assessment.
22 LORING: And what are those?
23 FORBES: Give me an Exhibit Number. I don't have all of the Exhibit
24 numbers, don't give me that. Let me see if I can find it here. Is that in the
25 2015 assessment?

1 LORING: Yeah. Thinking about Exhibit C5, that August 20th, 2015 document.
2 FORBES: Okay. Do you need me to read them?
3 LORING: Yes. Uh, well, let me ask you, I'll, I'll ask you this. Are you
4 on Page 7 in the document, 10 in the PDF when you're looking at Exhibit C5
5 there?
6 FORBES: Yes.
7 LORING: Okay. These are the bullets related to the land use intensity?
8 FORBES: Yes.
9 LORING: Okay. Well, let me ask you this, would mining up to 200 feet of a
10 wetland, uh, would that mitigate the impacts of mining up to 200 feet from
11 the wetland?
12 FORBES: I'm sorry?
13 LORING: So, potentially applying a smaller buffer would mitigate for the
14 impacts of having that smaller buffer?
15 FORBES: Not on its own. That's why they provided a, a...
16 LORING: Okay.
17 FORBES: A long list of recommendations.
18 LORING: Yeah. We'll get into those. Uh, let me ask you, because this
19 brings up a question, right, we, we have this first bullet refers to the
20 ordinary water mark, uh, are you familiar with how wetlands are delineated?
21 FORBES: Yes.
22 LORING: Okay. And is your understanding that wetlands are delineated in
23 relation to an ordinary high water mark?
24 FORBES: Where they are present, yes. If you're still talking and we're
25 not hearing you.

1 LORING: No, I wasn't, sorry.

2 FORBES: Okay.

3 LORING: I wasn't actually talking, I was...

4 FORBES: Okay.

5 LORING: Maybe frowning, I don't know.

6 FORBES: Okay.

7 LORING: Smiling, it could be anything.

8 FORBES: Okay.

9 LORING: Uh, so your position is the edge of the wetland is delineated
10 with an ordinary high water mark?

11 FORBES: Where a wetland is present adjacent to an ordinary high water
12 mark, it is part of the, the determination. The delineation of the wetland is
13 part of the ordinary high water mark determination.

14 LORING: Okay. Are you, let me ask you this, is it your position that a
15 delineation has occurred for the Samish River wetland that is along the site
16 that would be excavated at the mine?

17 FORBES: Yes.

18 LORING: Okay. And you, you said that you are familiar with the steps
19 required of a delineation?

20 FORBES: Yes.

21 LORING: Okay. Are you familiar with the fact that, well, do those steps
22 come from the 1987 Corp Manual, right?

23 FORBES: Yes.

24 LORING: And are you familiar with the language in the Corp manual that
25 requires an actual soil investigation at a site to do a delineation?

1 FORBES: Uh, a soil analysis is one portion of the delineation.

2 LORING: And that soil analysis requires an actual physical review of the
3 soils themselves, right, visual analysis of them?

4 FORBES: If you're going to do that, yes.

5 LORING: I'm sorry, I, I missed the first part of that, I'm sorry?

6 FORBES: Yes. If, if you're doing test kits, then you look at the, y udo a
7 physical examination of the soil.

8 LORING: Okay. And in this case, were there any test kits of the soils
9 along the, um, Samish River wetland?

10 FORBES: They were not provided, no.

11 LORING: When you say they weren't provided, there's no evidence that
12 those were actually conducted, right?

13 FORBES: Correct.

14 LORING: Okay. In fact, there's evidence that they weren't conducted here,
15 right?

16 FORBES: Correct. Correct.

17 LORING: Okay. So, delineation didn't occur here in the absence of, uh,
18 soil test kits, right?

19 FORBES: Since the consultant determined that there was not a prevalence
20 of wetland [inaudible] also, a requirement, they did not then test it.

21 LORING: So, it's your position that, well, let me ask you this, are, were
22 there any test kits stated by the, uh, Applicant's consultant in the vicinity
23 of the areas where plants allegedly did or did not occur, that were wetland,
24 hydrophilic plants?

25 FORBES: No.

1 LORING: I'm going to turn off my video again because there has been a
2 little back and forth, so, my apologies for that. Okay. Uh, okay. So, let's
3 go back to those conditions in C5, that's Page 7 within the document.
4 Actually, before we do that, I want to turn back to the, uh, definitions for
5 a high impact or low impact land use. And if you don't mind, I'm going to
6 share my screen, we'll see if that works, uh, with, with the, uh, Skagit
7 County Code Conditions here. I think I've got the right one, but let me know
8 if not. Start with those definitions. Do you see, uh, on your screen right
9 now, definitions related to land use impact?

10 FORBES: Yes. That is the current set of Land Use Impact Definitions of
11 1404.

12 LORING: Okay. And can you tell me what the high impact land use, what
13 those involve?

14 FORBES: It does say, which are associated with high levels of human
15 disturbance or substantial habitat impact, including but not limited to
16 medium and high intensity residential, more than one home per five acres,
17 multi-family residential and either agricultural practices and commercial and
18 industrial land uses.

19 LORING: Okay. And you were asked, uh, that doesn't, it doesn't state
20 mines in there, right?

21 FORBES: Correct.

22 LORING: Uh, does it identify airports in there?

23 FORBES: No.

24 LORING: Sky scrapers? Okay. So you were asked a moment ago, uh, if
25 professional judgement needed to be applied to determine a cert-, whether a

1 certain activity actually qualifies as a high impact land use and then you
2 testified yes, right?

3 FORBES: Yes.

4 LORING: Okay. Uh, can you tell us what moderate impact land uses would
5 involve, according to the Skagit County code?

6 FORBES: Land Use such as [inaudible] which are associated with moderate
7 levels of human disturbance or substantial habitat impacts, including but not
8 limited to the low density residential, no more than one home per five acres,
9 active recreation or moderate agricultural land users.

10 LORING: Okay.

11 LYNN: Um, this is, um, Bill Lynn. Just can, can I, um, suggest that we
12 identify where in the Code, um, the witnesses testifying from so that we, if
13 ever do end up in a situation where we're transcribing this, can...

14 REEVES: Sure.

15 LYNN: Give the reporter some guidance.

16 REEVES: Uh, this is, uh, go ahead, go ahead, Mr. Loring. This is Section
17 14...

18 LORING: I, I...

19 FORBES: .04.

20 LORING: Sorry, what?

21 FORBES: It's 14.04.

22 LORING: Yes. And I believe it's 020 within that, uh, that chapter.

23 REEVES: 1404020 definitions, uh, and this is the definitions, the sub-
24 definitions under land use impact and, uh, Mr. Loring had the witness read
25 two of three definitions into the record. I think we can take judicial note

1 of what low impact land use, it says what the code says and I think we
2 probably don't need witnesses to, to read these things into the record. So,
3 we'll, we'll move on, but thank you.

4 LORING: Thank you, Ms. Forbes. So, you're not testifying that in your
5 judgement a mine that removes all of the vegetation, all of the soils and a
6 fair amount of the ground beneath them would be considered more like active
7 recreation or even moderate agricultural uses or...

8 FORBES: [Inaudible.]

9 LORING: One home, okay. In fact, it's, it's much closer to something like
10 an industrial land use, identified in the high impact land use, right?

11 FORBES: [Inaudible.]

12 LORING: Okay. And, in fact, it's even, uh, more intense than things like,
13 uh, one home per five acres?

14 FORBES: Yes.

15 LORING: Uh, and more intense than multi-family residential?

16 FORBES: Potentially.

17 LORING: Do you know much multi-family residential development that
18 removes, uh, the vegetation, the soils and up to 90 feet of the sub surface?

19 FORBES: [Inaudible.]

20 LORING: Okay. I'm going to stop sharing the screen on that one. So, given
21 this, would you say that the, uh, the proposed gravel mine here, sand and
22 gravel mine, would qualify as a high impact land use under those definitions?

23 FORBES: Likely.

24

25

1 LORING: Okay. Stop sharing there. Uh, let me, uh, I want to get back here
2 to my notes, sorry, we've been, uh, bouncing around a little bit, we've had
3 some different testimony here.

4 REEVES: Sure. Sorry, Mr. Loring, so I don't forget my question, I'm going
5 to break in because I...

6 LORING: Feel free, please.

7 REEVES: I've been wanting to ask on this same topic, which was, I guess
8 it's a process question, Ms. Forbes. So, essentially, earlier and you
9 clarified for me, uh, there was a Mr. Cooper that sort of made the assessment
10 on this intensity and my understanding is that was in review of the 2015
11 Graham Bunting Report, is that accurate?

12 FORBES: Yes.

13 REEVES: And, so, I guess my question is, so, whoever Mr. Cooper, whenever
14 this occurred, is, is that documented somewhere in the County's, like, is
15 there a determination he made that said, I concur with Mr., with the Graham
16 Bunting Report, that this ought to be treated as such that or is it just that
17 was sort of, there was agreement with the Graham Bunting Report and the
18 County's sort of stance on how this should be classified has, has not been
19 reassessed since then? I'm just trying to get a sense of, of what the process
20 was?

21 FORBES: I don't have all of the, the, the information in the records to
22 know if he put in writing that he concurred with that recommendation to use
23 moderate intensity land use buffers. Um, I just saw that throughout the
24 review process, that, that it, that Staff determined you could apply those

25

1 moderate land use intensity buffers with the recommendations, um, of that
2 Graham Bunting report.

3 REEVES: So, okay. Sorry.

4 FORBES: I think it was, I think it was in, I don't know if it was in a
5 Staff report or what. But, but, yeah, I don't know that there was any sort of
6 written determination from Mr. Cooper saying that he agreed with it. But it
7 does appear that he, he agreed enough to put it in a Staff Report.

8 REEVES: Got it. And when you, sorry, and just to clarify that, you said,
9 you used the term assessment, Staff made an assessment, do you have any sense
10 of whether anyone on County Staff, other than Mr. Cooper, reassessed or
11 independently made an assessment after his initial assessment, um, of the
12 moderate intensity use?

13 FORBES: No, I don't believe any other Staff reviewed that again.

14 REEVES: Okay. Great. Thank you for clarifying. Um, Mr. Loring, go, go
15 ahead, sir.

16 LORING: Yes. Thank you, Mr. Examiner. Uh, and I'm actually, uh, so, Ms.
17 Forbes, are you aware of Mr. Cooper's ultimate determination on the
18 appropriate width or buffer for the wetland along the Samish River?

19 FORBES: Uh, no, I'm not.

20 LORING: Okay. Since we've been talking about this, uh, I want to share
21 with you what I believe to be the County's final determination. So, I'm going to
22 share my screen again. This is Exhibit A34 for everyone. And this is John
23 Cooper's letter, uh, directing the Applicant to apply a 300 foot buffer based
24 on the high impact land use intensity. I'm going to scroll to the top just so
25 you can see that this is a letter, July 6th, 2017. Uh, sent to the Applicant,

1 uh, and Applicant's representatives there. And then I'm going to scroll down
2 to the bottom just so you can see the signature and I'll ask you, uh, does
3 this look like a letter that was written by John Cooper, based on what you're
4 seeing on the screen?

5 FORBES: Yes.

6 LORING: Zoom in. Was, I'm sorry, was that a yes?

7 FORBES: Yes.

8 LORING: Okay. And then I'm scrolling up, I'm towards the bottom of Page
9 3, do you see the bold, uh, text at the bottom of Page 3 there?

10 FORBES: Yes.

11 LORING: Does that bold text indicate for Mr. Cooper, that the Applicant
12 needed to amend the Application and Plans to indicate a 300 foot buffer from
13 the edge...

14 FORBES: [Inaudible.]

15 LORING: Of the wetlands?

16 FORBES: Yes.

17 LORING: Okay. And do you see the previous sentence there?

18 FORBES: Where does it start?

19 LORING: The, sorry got my little hand covering it there. This starts with
20 since your proposal...

21 FORBES: Since your proposal is both a commercial and industrial land use
22 that involves [inaudible] 4.2 million feet of [inaudible] material over 20
23 years, the proposed operation are a high impact land use.

24

25

1 LORING: Okay. So, this indicates that the County's, uh, uh, most recent
2 written determination that you've seen, anyway, was that it, that the project
3 is a high impact land use, right?

4 FORBES: If this is the most recent, then, yeah.

5 LORING: Okay. Sure. Uh, this does postdate the Graham Bunting and
6 Associates documents, right?

7 FORBES: Yes.

8 LORING: Okay. I'm going to stop sharing my screen here to cover a little
9 bandwidth. And are you aware of any Department of Ecology communications that
10 confirmed an agreed with Mr. Cooper's position that this was a high impact
11 land use?

12 FORBES: I did not review the ecology, uh, comment letters.

13 LORING: Okay. So, you're not, you're not familiar with those?

14 FORBES: No.

15 LORING: Okay. Uh, Mr. Cricchio didn't send those to you as part of your
16 wetland review?

17 FORBES: No.

18 LORING: Okay. You testified a little bit earlier about, uh, some changes
19 in, in local regulations. And I, the Hearing Examiner probably will smirk at
20 least when I say this, but I do just want to clarify, you, you weren't
21 testifying at all about [inaudible] the Application vested to any different,
22 uh, land use regulations, right?

23 FORBES: No, I was not making a determination on vesting.
24
25

1 LORING: Okay. Uh, I believe you also mentioned that under the 2008
2 regulations that you were discussing, uh, a medium intensity land use would
3 have a 200 buf-, foot buffer, is that right?

4 FORBES: That was an option, yes.

5 LORING: Okay. Um, so w-, as we've been discussing now, is it your
6 understanding that this is not a moderate intensity land use based on the
7 County's official position to date?

8 FORBES: Based on that letter that you just read me from John Cooper, it
9 appears they determined a high, it was a high impact land use.

10 LORING: Okay. And high impact land use based on the sensitivity of the
11 Samish River wetland would require a 300 foot buffer, right?

12 FORBES: Under current regulations, yes.

13 LORING: Okay. Is your position that those regulations would have changed
14 the high impact land use buffer, um, at some point before 2016?

15 FORBES: Uh, I believe prior to the 2016, uh, Code amendment, you could
16 have a 270 foot buffer.

17 LORING: 270, it would have, you believe it would have been a 270 foot
18 buffer prior to that change?

19 FORBES: I believe so.

20 LORING: Okay. You know that the, uh, do you know the buffer size that has
21 been conditioned by the MDNS here?

22 FORBES: Uh, uh, you guys keep going back and forth between two and three,
23 I'm not sure where it landed.

24

25

1 LORING: Uh, okay. I'm still going through a few other items here. Um,
2 thank you for your patience, especially as you also can't tell that I'm
3 looking down at notes, et cetera, since I had to turn off my video there.
4 REEVES: We just thought you were making funny faces, but that's fine.
5 LORING: Uh, that does seem to happen sometimes. Not always within my
6 control, you would think so.
7 REEVES: I'm guilty of the same.
8 LORING: You were asked, uh, Ms. Forbes, whether the MDNS generally
9 requires compliance with the Critical Areas Ordinance and, and you mentioned
10 that it does, right?
11 FORBES: Yes.
12 LORING: Okay. I believe that was in relation to the potential 25 foot
13 extension on a buffer for a wetland, is that right?
14 FORBES: Correct.
15 LORING: Okay. Is it your understanding that the slopes at the project
16 site would require an extension of that, uh, 25 feet, beyond the top of the
17 slope along the Samish River wetland buffer?
18 FORBES: I don't, I don't know the exact slope of the wetlands along the
19 entire stretch there.
20 LORING: Okay. Uh, have you reviewed any materials that identify that
21 slope?
22 FORBES: No.
23 LORING: Okay. And if a 25 foot extension, uh, were required, would you
24 typically expect to see that in conditions on an MDNS?
25 FORBES: I'm sorry?

1 LORING: Uh, an Applicant would need to know exactly what is expected of
2 them as a result of a MDNS, right?

3 FORBES: Uh, MDNS conditions are often general and the conditions in the
4 SEPA determination are more sp-, or the, uh, uh, Special Use decision are
5 more specific.

6 LORING: Okay. Uh, you're familiar with the fact that here the Special Use
7 Permit conditions that have been proposed are verbatim the conditions
8 inserted in the MDNS?

9 FORBES: Uh, I've not read them all, but that doesn't, that seems typical.

10 LORING: I thought you just said it was typical that sub-conditions would
11 be more specific than MDNS conditions?

12 FORBES: They can be more specific.

13 LORING: Okay. Okay. Uh, you were talking about a maintenance corridor and
14 I think you were relating it to things like homes, uh, that that's your
15 understanding that applies to things like home. You, you weren't testifying
16 about whether a berm qualifies as a legal matter as a structure, were you?

17 FORBES: No.

18 LORING: Okay. And this may be a little bit repetitive, just one question
19 here. You were questioned by Mr. Lynn about whether the County has ever
20 required an impacts assessment from a change in use in a road. Uh, I believe
21 your testimony was that, no, to your understanding, the County had not
22 required, uh, [inaudible] impacts assessment, is that accurate?

23 FORBES: Your question cut out.
24
25

1 LORING: Sorry about that. I believe that you testified, uh, to Mr. Lynn
2 that you were not aware of the County requiring, um, an Impacts Assessment
3 from a change in use of a road, is that right?
4 FORBES: I believe that was the question, yeah.
5 LORING: Okay.
6 REEVES: And, and, sorry, to clarify, was that in, in any, I think Mr.
7 Lynn was asking in any other situation than this one, have you seen that. But
8 I apologize if I misunderstood. Was that your understanding of Mr. Lynn's
9 question, Ms. Forbes?
10 FORBES: Yes. That was my understanding.
11 REEVES: Oh, okay. Sorry, Mr. Loring.
12 LORING: Oh, not a problem. Uh, and, again, Ms. Forbes, uh, there's no
13 indication that the Critical Areas Impacts of the haul road have ever been
14 evaluated?
15 FORBES: Only the indirect impact...
16 LORING: Is that right?
17 FORBES: Only the indirect impacts as described in the, uh, Northwest
18 Ecological Services Report.
19 LORING: Thank you for that clarification. So, going forward from 2021,
20 uh, they asserted that they did evaluate indirect impacts?
21 FORBES: Their, their report did discuss indirect impacts.
22 LORING: Okay. Okay. But not indirect or direct impacts looking backward,
23 uh, including those associated with the roadwork in 2018?
24 FORBES: Correct.

25

1 LORING: Okay. I've got a few more things for you here. Looking through a
2 different outline and we have, uh, discussed a lot of these questions.
3 Actually, here's a question for you, back to the land use intensity, are you
4 familiar with the Department of Ecology's Appendix 8C, for its wetland in
5 Washington documents?

6 FORBES: I am aware of it.

7 LORING: Okay. Do you know the parameters that it would apply for reducing
8 the buffer based on a, um, medium intensity impact, rather than a high
9 intensity impact?

10 FORBES: They do have recommendations that are not a complete list, but,
11 yes, they do provide recommendations for reducing from high impact, moderate
12 intensity land use.

13 LORING: Okay. And at least one of those, uh, recommendations, that is
14 more than a recommendation, but would actually be necessary to reduce from a
15 high to a medium impact, is a corridor set aside with a conservation
16 easement, right?

17 FORBES: It could be, I don't know all of the specifics.

18 LORING: Okay. Uh, but you agree that that Appendix 8C and those buffer
19 reduction guidelines are incorporated into the Skagit County Code?

20 FORBES: Oh, only by reference and they, they're very, Ecology's documents
21 are incorporated for guidance.

22 LORING: Okay. And what section incorporates them by reference, for a
23 wetland buffer reductions? [Pause] that's okay, I...

24 FORBES: 14-...

25 LORING: We don't...

1 FORBES: 14.24.240 3A.

2 LORING: Okay. Yes. Thank you. And that's specifically refers to the
3 measures found in that Department of Ecology document, the Appendix 8C?

4 FORBES: Yes.

5 LORING: Okay. Okay. Well, let's see here, I think we have, we've covered
6 quite a bit. Okay. I don't have any further questions and I thank you for
7 your time, Ms. Forbes.

8 REEVES: Great. Thank you. Um, I think I'll circle back, I'll go to Mr.
9 Lynn first and then over to Mr. D'Avignon.

10 LYNN: I have no questions.

11 REEVES: Okay. Uh, Mr. D'Avignon?

12 D'AVIGNON: I just have one question, Mr. Examiner. Um, Ms. Forbes, uh, MDNS
13 Condition 17B, I don't know if you have MDNS document available?

14 FORBES: Um, I can find it, I think.

15 D'AVIGNON: Anyways, I don't, I can probably just tell you what it says and...

16 FORBES: Okay.

17 D'AVIGNON: We can all know we can look at the document and determine if I am
18 right. Um, it says a 200 foot buffer in associated wetlands shall be
19 designated as a Protected Critical Area, PCA, to ensure identification and
20 long-term protection. Uh, what is a Protected Critical Area under Skagit
21 County's Critical Area Ordinance?

22 FORBES: So, a Protected Critical Area is a document or designation that
23 we do documents, either through easement or title notice that locates or, or
24 describes our regulated critical areas and their associated buffer on site.

25 D'AVIGNON: Uh, would you consider that, uh, a type of legal protection?

1 FORBES: Yes.

2 D'AVIGNON: Okay. No other questions.

3 REEVES: Okay. I believe, then, that concludes this witness. Um...

4 LORING: Mr. Examiner, uh, well, it does, I don't have a re-cross, I did
5 have a question and that was whether we could, uh, have Mr. D'Avignon
6 circulate the ordinances at play here? He mentioned one from 2008, uh,
7 presumably updated in 2016, as part of the conversation we've had. And I'm
8 sure he knows how notoriously challenging ordinances are to find on the
9 Skagit County websites. So, he, he requested official notice, uh, but we'd
10 ask to him either just send a link or that, those two ordinances, circulate
11 those.

12 D'AVIGNON: That is totally fair. I will send that, um, I, I may disagree
13 with how hard it is to find ordinances, but I, I acknowledge that sometimes
14 they can be difficult. Uh, but I will send that link at this very moment,
15 including to you, Mr. Examiner.

16 REEVES: Thank you. And I think timing-wise, uh, you have one additional
17 witness, Forest Jones on traffic, correct?

18 D'AVIGNON: Uh, that is correct, Mr. Examiner.

19 REEVES: I would suggest, rather than start/stop, start/stop, now might be
20 a good lunchbreak. And we'll come back, uh, with Forest Jones. Um, it is
21 traffic, so I think one might take awhile. I'm just trying to think if Mr.
22 Ehrlichman needs to inform his witnesses of availability toward the end of
23 the day if we have time. Any thoughts on this, Mr. Ehrlichman?

24 EHRLICHMAN: Mr. Examiner, I can make a call to Wally Grado [phonetic] and see
25 if he's available, uh, toward the end of today, I'd be happy to do that.

1 REEVES: Sure. I would suggest maybe if you have someone available that
2 would be a quicker, uh, uh, you know, more succinct witness, um, that might
3 be, be beneficial, just in case. I, who knows if we'll get there, but I think
4 it's worth at least getting ready.

5 EHRLICHMAN: Very good.

6 REEVES: Okay. So, I think, then, why don't we go to lunch. It's 12:20.
7 Uh, let's shoot to be back, oh, you know, ten after, five after 1:00, 10
8 after 1:00. And, uh, I think we have a hard stop at 4:45. Mr. Loring has
9 tennis, I have a modeling shoot, if I recall. I think...

10 LORING: To be clear, that was tennis coaching for a high school boys'
11 team.

12 REEVES: Tennis...

13 LORING: That, that's not my personal tennis, uh, just want to make sure
14 that's on the record.

15 REEVES: [Inaudible.]

16 LORING: They do expect me to show up. Yeah.

17 REEVES: [Inaudible.]

18 LORING: I've, I've been told, yeah.

19 REEVES: All right. We'll be back after lunch. Thanks, everybody.

20 [The tape ends.]

21 **The undersigned being first duly sworn on oath, deposes and says:**

22 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
23 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party
24 to this action. That on May 8th, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves, that
25 took place on 9/13/22 at 11:00 a.m., regarding the above-captioned matter.

1 I certify and declare under penalty of perjury under the laws of the State of Washington that the
2 aforementioned transcript is true and correct to the best of my abilities.

3 Signed at Mount Vernon, Washington, this 8th, May of 2024.

4 Janet Williamson
5 Janet Williamson

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**IN SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT**

State of Washington,)
Cause No.: PL16-0097, PL16-0098,
Plaintiff,) PL22-0142
vs.)
Name,) PERMIT HEARING 9-23-22 1:00 PM
Defendant)

Transcription Date: May 11th, 2024

Present: Andrew Reeves, Bill Lynn, Brad Barton, Jason D'Avignon, Kyle Loring, Tom Ehrlichman

REEVES: Okay. Thank you. And I believe, at this point, uh, we're moving onto Mr. Lynn's, uh, final rebuttal witness, is that correct?

LYNN: Yes. Thank you. Uh, Mr. Barton was previously sworn the very first day of Miles' testimony. Uh, so I just ask him to introduce himself again and then remind [inaudible] uh, how he fits into the Miles' picture here.

REEVES: Sure. And I'm getting quite a bit of feedback. Mr. Ehrlichman, would you mind muting for the moment? Great. Thank you.

1 BARTON: Good afternoon. Happy Friday. My name is Brad Barton. I'm with
2 Miles Sand and Gravel Company. I'm a Vice President General Manager of the
3 aggregate operations for the entire company.

4 LYNN: Okay. And when you were here before, you testified orally about
5 a, a, uh, pol-, snow and ice in climate weather policy and you were asked, I
6 can't remember by whom, whether or not that was a written policy or just a
7 verbal one. And you, uh, went to check and then, uh, I wanted you to tell the
8 Hearing Examiner what you found?

9 BARTON: Yes. We, we have Mr. Reeves, we have a written policy that, that
10 follows our in climate weather planning procedures. Um, of course you know in
11 the Northwest it's not common practice. But, uh, uh, when the snow hits the
12 ground, we're very proactive, both just from a, probably an easy way to say
13 it would be an in-, industry as well as a written policy specific to our
14 company. And, again, I think I stated this before, as a part of that
15 procedure, we send supervisors or managers out, uh, um, prior to releasing
16 any trucks on the road, uh, from the pure safety standpoint. So, uh, good,
17 good practice to have, uh, in our business for sure.

18 LYNN: And so you found there was, in fact, a written policy that
19 reflected what your oral testimony was?

20 BARTON: Yes. We do have that.

21 LYNN: And, Mr. Examiner, I've circulated that, uh, I think on the 2nd of
22 September. I'd just like to offer it as a, as an Exhibit, I think on my list
23 it would, well, I, I guess it would, uh, be B99, since I think we took the
24 truck and pup diagrams and made them County Exhibits.

25

1 REEVES: So, the one identified in Jason D'Avignon's table as Miles'
2 Weather Policy, you're suggesting B99, is that right?

3 LYNN: Yes. That's my suggestion.

4 REEVES: Any objections from any of the other Attorneys to this being
5 included? Okay. Great. I submit it. Thank you. Okay.

6 LYNN: And then, uh, I wanted to ask you, Mr., uh, Barton, whether the
7 truck diagram that was introduced and discussed by Mr. Norris as the one he
8 used, uh, for the auto-turn analysis, that's Truck and Pup Diagram Number 2,
9 which was Exhibit C54, does that reflect the, uh, a truck that you would
10 expect to use at this mine, were it to be permitted?

11 BARTON: Uh, yes, it is.

12 LYNN: Okay. And, and are there other configurations that might have
13 more impacts or different impacts than the truck of those dimensions?

14 BARTON: We, we do have other configurations, um, but this is the one
15 configuration with the tongue lengths and the specific rural base that, uh,
16 would, would have, if it's going to have an impact, uh, this one would have
17 the most and that's why we used it to understand, uh, the corners both at
18 Prairie Road and, and Grip Road.

19 LYNN: Okay. So, this is sort of the worst case of the expected trucks
20 from a tracking standpoint?

21 BARTON: Yes. Other ones have, uh, A-trains, B-trains, we've heard in
22 other testimony that some of them have trailer with turn dollies and they do
23 track differently, uh, than this would. And this, again, is the worst case
24 scenario.

25

1 LYNN: Okay. And then the only other topic I wanted to discuss with you
2 is that there was some testimony, um, expressing concern about the edge of
3 the buffer, uh, the wetland and, and, um, river buffer and how that might be,
4 uh, treated during your mine operations, how you mark the edge and, and what
5 potential there is for storm water to exit outside the, the boundary of the
6 mine and into the buffer. And I'd just like you to describe for the Hearing
7 Examiner the operational process that you would go through in working at the
8 edge of a buffer such as that?

9 BARTON: Okay. Yeah. I think the, from the drawing aspect, it's difficult
10 to, to, uh, with the cross-sections, they are exaggerated to orchestrate
11 operation on how, uh, uh, we deal with this. So, from an operation
12 standpoint, of course, we would, per the, per the setback, whether it's a
13 buffer or a property line, what have you, in relationship to the mining plan,
14 we would flag, uh, through survey, uh, that line. And one of the things that
15 was stated on the record, uh, earlier, uh, by others is that we would clear
16 the complete site. We do not do that. And in specific to approaching a
17 buffer, again, we would segmentally clear and, uh, then remembering that that
18 includes removal of topsoil, trees and so on, um, and we're also working in a
19 gravel pit, which by implementing sound best management practices, we're
20 working on the inside of the active mine towards the sensitive areas. After
21 the segments have been placed and probably the best way to explain it in this
22 particular situation, the active mine site is going to be on, in this case,
23 on the west side of that buffer line. And we would approach that, again,
24 carefully and with good planning. We do this on a regular basis. And the, any
25 storm waters, uh, that may be, uh, um, happen from, obviously from a rain,

1 rain storm and/or in conjunction with the clearing process would be directed
2 inside the mine. And in this case, the, the cross-section shows, uh, uh, what
3 we would call a false top. So we would be working on the mine site, below
4 that false top and then work towards the buffer line in a very, very
5 controlled manner. And, again, as I said earlier, we do this on a regular
6 basis with all of our mine sites.

7 LYNN: You said towards the buffer line, did you mean away from the
8 buffer line and toward the mine site?

9 BARTON: No. From, from, we would work from the mine site towards..

10 LYNN: Okay. I see.

11 BARTON: The buffer line in a controlled manner, thus keeping the water in
12 the active side of the site. And, and in this case, allowing it, uh, not to
13 go [inaudible] in part as the cross-section depicts. Towards the..

14 LYNN: Okay. So, so, basically, you're creating a low spot on the mine
15 side of the buffer line?

16 BARTON: Correct. Correct. And in this particular case, um, that, uh,
17 would be done in, in, in, uh, again, a phased manner and quite quickly, uh,
18 in those areas that are more sensitive than others, uh, based on the
19 topographical features, uh, again, controlling thus any, any potential storm
20 water and erosion.

21 LYNN: Okay. And is that part of the, the idea of sequentially clearing
22 and, um, mining the property, is that part of your, uh, reclamation permit
23 that the DNR has to approve, typically?

24 BARTON: Yes. It is part of it and it's part of good mining practices as
25 well.

1 LYNN: Okay. And then what happens with reclamation? At what point do
2 you rec-, reclaim, uh, slopes within the mine?

3 BARTON: Once, once, in that segment, of course, we've removed the minable
4 materials, um, and in this case, I think, I believe there's four of them, in
5 fact, there is four sections, uh, we would start in the first segment, and it
6 does a couple of things, uh, of course, we control our entry as we approach
7 any, any buffers, address the active site and then, in that particular
8 segment, uh, in, in, I guess in response to the slopes that are created,
9 they're, other than any safety berms, they're, they're sloped to grade and,
10 uh, the topsoil is placed and then, depending on, again, on the underlying
11 use, this would be forestry, the trees are, after any hydro-seeding, the
12 trees are placed, uh, per the DNR approved plan and thus the, the slopes are
13 stable, uh, moving forward, uh, again, working in, into each additional
14 segment.

15 LYNN: Good. So, I think, uh, you said, you kind of broke up a little
16 bit when you said the topsoil was, did you say replaced because do you move
17 that at the beginning and then store it for, uh, reclamation purposes?

18 BARTON: Yes. By, by DNR regulations, we have to maintain, uh, a topsoil
19 bank of soil, uh, and that's calculated as a part of our planning and we'll
20 submit it to the DNR, um, and that material that's stored, uh, in appropriate
21 areas, the, the, again, the topsoil was removed from the active mine site,
22 again, stored, and then it's replaced on, in this case, my description the,
23 the, the, the, the slope. Um, and, again, reseeded, replanted with timber
24 and, and then we move into the next section.

25

1 LYNN: Okay. So, how much of the mine site would actually be opened at
2 one time, just in rough terms, anyway?

3 BARTON: Uh, in this case, probably, depending on the nature of the
4 material within that segment, um, I would venture to say maybe ten acres. Um,
5 but, uh, remembering that that, uh, a portion of that may be cleared, uh, and
6 the parameters, uh, where we have to store the topsoil would be included in
7 that calculation. And that, obviously, that footprint would grow. But at the
8 same time, as we move into the mine, at the same time, we're reclaiming as
9 well. Personally.

10 LYNN: Okay. So, it's, it's sort of ebb and flow. You clear, remove
11 topsoil, mine and then reclaim and then move onto another area that's, uh,
12 newly opened?

13 BARTON: Yes. Yes. And, and obviously by looking at the plan that's,
14 that's on record, you know, the, the, our approach in this is, is adjusting
15 and reclaiming, you know, in the mining process the slopes where you'll see
16 typically more activity in the floors, uh, um, but it's a progressive, um,
17 situation and, and this one, it's a gravel site, um, we move the material and
18 it's all contained within, uh, the excavation area when, when it comes to
19 erosion control, any storm water issues. And maintaining that footprint,
20 segmentally, in our approach helps us control that. And, again, it's part of
21 a best management practice. Both by mining and encouraged by DNR. As well as
22 our company.

23 LYNN: Brad, you...

24 BARTON: Sir.

25

1 LYNN: You stuck, you froze up there, you said it's the best management
2 practice both and then you froze, so...

3 BARTON: Oh, sorry. It's the best management practice by the DNR
4 Reclamation Standards, uh, it's good mining practices, uh, as well as, you
5 know, what our, our company, uh, desires to do, uh, being proactive in, in
6 that overall mining practice.

7 LYNN: And, uh, and I don't want to too deeply back into the DOE
8 regulation, but is the management of the storm water something that they
9 monitor and regulate as part of their permitting process?

10 BARTON: Yes. We're, we have an onsite, uh, plan that, that they can
11 review specific to that type of operation. And we, in this case, uh, would
12 be, there's no process waters associated so it would be storm water and, and
13 we're required to report, um, monthly and quarterly, uh, to the Department of
14 Ecology.

15 LYNN: Okay.

16 BARTON: Per the...

17 LYNN: That's all I have.

18 BARTON: Okay.

19 LYNN: That's all I have. Thank you.

20 REEVES: Uh, excuse me. Thank you. Uh, Mr. D'Avignon, any questions for
21 this witness?

22 D'AVIGNON: Uh, no questions, Mr. Examiner. Thank you.

23 REEVES: Okay. Uh, Mr. Ehrlichman, any questions? I think there was a
24 question or two at the very beginning about a road, but...

25 ERHLICHMAN: Yes. Thank you. Um, afternoon, Mr. Barton.

1 BARTON: Good afternoon.

2 EHRLICHMAN: I'm going to just ask you a little bit about the, uh, truck
3 traffic that you mentioned. Um, this has been a long Hearing for everybody
4 and, um, as you know, our, our job has to be to try to present some facts
5 that would suggest a need to condition the project to minimize the heavy
6 truck impacts. And I'm wanting to ask you, um, w-, in light of the fact that
7 your, your traffic engineer didn't study traffic impacts to the east of the
8 mine on Grip Road, um, does it makes sense or would the Applicant be willing
9 to clarify and, and agree on the record, voluntarily, uh, not to run gravel
10 trucks out to the east there?

11 BARTON: Well...

12 LYNN: I'm going to direct to the question in that it goes beyond the
13 scope of the examination.

14 REEVES: Okay. I concur if it's beyond the scope of the examination of
15 this witness. That said, Mr. Barton, if you feel like answering, go right
16 ahead.

17 BARTON: Well, I think, again, I don't want to get in the back and forth
18 that Mr. Norris went through. But I, I think it was studied, I think we're on
19 record saying the local deliveries and the primary focus of, uh, the gravel
20 deliveries are going west. And that's, that's shown in, in the traffic study.

21 EHRLICHMAN: So, it's your position that, uh, the, the traffic safety issues
22 were studied going to the east of the mine?

23 BARTON: I think what I, I said, Mr. Ehrlichman was per the traffic study,
24 per Mr. Norris's study, we did look at traffic flows overall, both west,
25 east, north, south, and we included in that study 5% going to the east. And

1 in the conversations with Mr. Norris, it was based on local deliveries. So, I
2 think that's enough said.

3 EHRLICHMAN: Okay. Um, yeah, because you heard him testify that it was, he
4 used, uh, the Applicant's information to use that 5% trip assignment,
5 correct?

6 BARTON: Which is common practice in any traffic study, yes.

7 EHRLICHMAN: Okay. So, is it reasonable for the Hearing Examiner, the public
8 to expect that gravel trucks will not be going to the east, um, Mr. Norris
9 talked about there being employee trucks and that sort of thing?

10 BARTON: He's the expert and I think you heard his testimony. I, as I
11 said, it's a, I'm repeating what he told you, uh, whether it's an employee
12 trip or a local market delivery. Again, the majority of the trips are going
13 to go west. And I think, as he said, and I would concur, it is up to Mr., uh,
14 Reeves, the Hearing Examiner to, to look at that and condition the site
15 associated with the science and the studies that we've brought forth.

16 EHRLICHMAN: Okay. And, uh, what, what, what is a market delivery? When you
17 say...

18 BARTON: Well, I think the best way to understand that would be if, if
19 somebody living east of the site called and said they want a load of gravel
20 and that particular truck, uh, was going from, in this case the, the Grip
21 Road site, to whatever area east of our entrance, uh, that would be a local
22 delivery. Uh, and I think it's safe to say in this particular situation, that
23 is a rural area, so, again, we're supported by our 5%, uh, estimate. Um, the
24 majority of the traffic, again, is going to go west, uh, towards the active,
25 uh, the, I guess the more rural or, excuse me, urban area feeding, feeding,

1 um, the construction activities again in, uh, the more urban areas of Skagit
2 County, back towards Burlington and Mount Vernon or, and/or one of our sites.

3 EHRLICHMAN: Okay. Thank you. Um, so, as the Hearing Examiner ta-, does that
4 evaluation that you just mentioned, um, in your mind, would it be reasonable
5 for the Examiner to, uh, impose a condition that says no more than the, uh,
6 than 5% of the gravel deliveries can go to the east?

7 BARTON: Well, that's, that's his choice and, uh, but I think we have many
8 decisions, uh, under our umbrella that speak, uh, in that arena to local
9 deliveries.

10 EHRLICHMAN: Can, can you, I'm not sure I understand that answer.

11 BARTON: Rather than based on 5%, based on a local, local delivery. From a
12 condition standpoint, but that's really up to him, not, I mean, I can make a
13 suggestion, but, but he's going to make the decision.

14 EHRLICHMAN: Uh-huh. Thank you.

15 BARTON: You bet.

16 EHRLICHMAN: Um, if, if there was a call for gravel in Sedro Woolley, would
17 the trucks, uh, be likely to make that local delivery going east or west?

18 BARTON: Depends on where the project is. Um, as well as we do this on a
19 regular basis and, and we know what sites, uh, and what routes are most
20 productive for us as well. Uh, and quite frankly as safe. So, that all goes
21 into the methodology when answering your question.

22 EHRLICHMAN: Just from a distance standpoint, would it be, I don't know the
23 roads and system like you do, would it be shorter to go west or east if you
24 were delivering to downtown Sedro Woolley?

25

1 BARTON: Well, the, by distance, if, if we had direct access, uh, to
2 answer your question, it would be shorter to go east, but from a practical
3 approach standpoint, that one, may not be the site we use, and two, we may,
4 because of, uh, our route, then choose to go to the west, uh, instead of
5 going east. Depending on the volume, the nature of the materials. So, um, I
6 think maybe another, I know I'm saying local deliveries, but that 5% as
7 stated in the, in the Hearing, or in Gary's study kind of speaks to our
8 expectation of what will go that way.

9 EHRLICHMAN: Understood. And, and I'm just trying to see, you know, obviously,
10 how much willingness there is on the Applicant's part to voluntarily, uh,
11 accept some proposed conditions that might address some of the concerns that
12 you've heard, you know, here today and, and in the other days of the Hearing.
13 So, let's move onto another...

14 BARTON: Okay.

15 EHRLICHMAN: Question. I appreciate your responses to that. Did you have
16 something to add, I'm sorry?

17 BARTON: No, no.

18 EHRLICHMAN: Okay.

19 BARTON: Thank you. Sorry.

20 EHRLICHMAN: Yeah. Thank you. Um, similarly, uh, or along a similar vein, um,
21 you talked about the, um, typical length of the trucks and that there are
22 truck rigs that are maybe less than the 74 feet, correct? Truck/pup trailer
23 combinations that are less than the 74 feet long?

24 BARTON: They may or may not be, but their axle configurations can be
25 subtly different.

1 EHRlichman: Okay. When it comes to the, what we've heard, or we heard you,
2 you offer to widen two curves on Grip Road, if you were able to obtain the
3 right-of-way, would that offer include, um, widening the road to the, the
4 County Road standard of 34 feet surface total?

5 BARTON: Well, I don't know if I can speak to that. I think what I can
6 speak to is we've offered to widen lanes, as Gary stated, to avoid any
7 encroachments off the pavement edge and/or center line.

8 EHRlichman: Uh-huh.

9 BARTON: Um, and we, I think I stated this earlier, but just to restate
10 it, we believe we can accomplish that, uh, based on the information that we
11 have in front of us. Uh, through the auto-turn analysis working in with that
12 right-of-way prism. Um, but I will say that, as you know, um, and most
13 everybody here knows, that, uh, this is a rural county and whether those,
14 those shoulders can be accomplished in that, I guess speaking from a County-
15 wide perspective, um, that's, that's a, a whole different topic in my mind.

16 EHRlichman: Right. I know.

17 BARTON: Yeah.

18 EHRlichman: I, I think we appreciate, my client appreciates that, you know,
19 you've got a lot more sites and a lot more rural roads you're dealing with,
20 um, than just this one.

21 BARTON: Well, you, as you know, he deals with the same problem as his
22 agricultural business.

23 EHRlichman: Yeah. Yeah. Anybody in business does, uh, in Skagit County. Um,
24 but I guess, you know, what I'm trying to understand or, or see how far your
25 offer goes is, um, you know, is it a, is it a minimum offer or is it more

1 than that? I mean, the minimum being what you, what you just said, which was
2 well, we'll widen it, you know, so that the trucks aren't crossing the center
3 line or going off the pavement. But as, as we've sort of gone back and forth
4 today, you know, the trucks have mirrors and they're wider in some tru-, you
5 know, there's variations and so forth in the way people drive. You know, so,
6 is there, is there some flexibility there in your, your offer to do more than
7 sort of the minimum to, to, on paper, you know, address that crossover and
8 edge of pavement issue?

9 BARTON: Well, I think, I think the, the right answer, in my mind, is, is,
10 uh, we're trying to be very proactive here and this is, again, as I said in
11 my original testimony, this is the first time that we've been able to talk
12 about Grip Road outside of the Prairie S-turns. And I think the, from an
13 engineering standpoint, and, again, not to get back into the weeds, but, but
14 we would propose the lane widening, working with the County, and their, their
15 Public Works Staff and Engineers to see how, how that would over, overall
16 look. And I, I don't, I'm not trying to sidestep your question. And once we
17 understand the safety component of that, and how that, in conjunction with
18 the auto-turn, would we look at areas beyond that, I guess that's, that's up
19 for discussion and in part, Mr. Reeves is going to play into some of that
20 decision making process as well, I would assume.

21 EHRLICHMAN: Fair enough. Thank you.

22 BARTON: Uh-huh.

23 EHRLICHMAN: Um, also related to this question of operating that type of truck
24 and rig on Grip Road safely, um, it's come up many times during this Hearing
25 that the traffic analysis, all along, appeared to be based on an annual, um,

1 truck trip count of, I think it was 11,7-, 750, is what Mr. Norris testified
2 to. And...

3 LYNN: I'm, I'm sorry, but I do have to note an objection. We're just,
4 we're just completely, I asked him one question...

5 REEVES: I know.

6 LYNN: About trucks, which is whether or not this the right truck. And
7 now we're back to annual averages and everything else.

8 EHRLICHMAN: I can put it in terms...

9 REEVES: I...

10 EHRLICHMAN: The different trucks, I mean...

11 REEVES: Well, you, I mean...

12 EHRLICHMAN: Rephrasing.

13 REEVES: Just by saying the word truck doesn't then give leeway to go well
14 beyond the scope of the one very simple question that this witness was asked.
15 So, I'm going to...

16 EHRLICHMAN: May I...

17 REEVES: Sustain the objection.

18 EHRLICHMAN: May I explain the, the relevancy to his original testimony here
19 just now, Mr. Examiner?

20 REEVES: Uh, no, you can include it in any final brief on, on why I made a
21 mistake. We'll move on.

22 EHRLICHMAN: But I, I can't get the answer from the witness through my brief.

23 REEVES: There is no answer because I sustained the objection. There is no
24 question that's being asked.

25

1 EHRlichman: Well, uh, since the traffic analysis was done based on the truck
2 shown in Exhibit, I guess it was 5-, uh, I'll get the numbers right here, if
3 someone knows, jump in, but...

4 REEVES: Well, I'm guessing you're just asking the same thing in a
5 different way.

6 EHRlichman: Well, Mr. Examiner, with all due respect, if I could, first, get
7 the question out before you limit it?

8 REEVES: Okay. Go ahead and, uh...

9 EHRlichman: Thank you.

10 REEVES: The respect is questionable.

11 EHRlichman: No, I, I, I'm sincere.

12 REEVES: I'm saying, ignoring, ignoring my rulings and then just doing
13 whatever you want to do does not display respect, but, but go ahead with your
14 question.

15 EHRlichman: Yeah. Thank you. Um, Mr. Barton, uh, Exhibit C53 is the new, uh,
16 truck, uh, depiction and you testified that that was the one that was used in
17 the auto-turn analysis, correct?

18 BARTON: I did. Yes.

19 EHRlichman: Okay. And that's approximately 74 feet in length, 74 feet, 11
20 inches, correct?

21 BARTON: Uh, in that, in that depiction, yes.

22 EHRlichman: Okay. If the Hearing Examiner, uh, was concerned and wanted to
23 condition the truck traffic from this project on Grip Road, would one way to
24 do that be to specify a shorter length of truck trailer that's in your
25 repertoire? Is there such a thing that's less than the 74 feet 11 inches?

1 BARTON: Well, if we're going to mitigate, uh, for any cross-overs, on
2 whether it's Prairie, which we've already agreed to do in this case
3 volunteering on Grip Road, as long as we're staying within the lane widths,
4 uh, as we're telling we can, per the auto-turn, this is, this particular
5 truck, as I stated earlier, is, and as Bill shared, is the worst case
6 scenario. So, anything else that we would have would, would, would in some
7 cases probably not even require, uh, as wide as lane modification. Um, I
8 don't know if that answers your question or not. But, but...

9 EHRLICHMAN: Kind of. Uh, I, my question is, what other lengths, uh, within
10 your suite of trucks that you described..

11 BARTON: Oh, well, I think other lengths are going to be close to, uh,
12 overall bumper to tail in this 75 foot range. And in some cases, we have
13 trucks that exceed that length and are permitted to do so, but their, their
14 wheel-base configuration, their turn dollies allow them to navigate roads
15 differently. And that is, again, why we used this particular truck
16 configuration to make sure that, uh, those crossover [inaudible] um, were
17 dealt with.

18 EHRLICHMAN: Right. Uh, uh, thank you. But I'm, I'm wondering if you have, in
19 the, the suite of trucks that you mentioned, aren't, weren't you suggesting
20 that there are trucks that are shorter and therefore the auto-turn analysis
21 is conservative?

22 BARTON: I didn't say shorter. I said that, that navigate, uh, because of
23 their axle configurations..

24 EHRLICHMAN: Okay.

25

1 BARTON: Windy roads. And, and in our industry, this is, this is a
2 standard, very common truck configuration that, in this case, is a five, what
3 we call a five and a three, as noted on the drawing.

4 EHRLICHMAN: So, what we see is what we get here? I mean, what we see in that
5 Exhibit 53 is, is what you're proposing, uh, out there?

6 BARTON: Well, let me, if I may, I think what we're...

7 EHRLICHMAN: Yeah.

8 BARTON: Trying to do, Tom, is take a worst case scenario from a truck
9 configuration standpoint and use science and engineering to say this is what
10 will happen, per the auto-turn analysis, and we're going to address it,
11 knowing that it's, it's kind of like the station wagon and a pickup and a
12 Volkswagen. The Volkswagen versus a pickup is going to navigate something a
13 little bit differently, to your point. But, this is, this is what we use for
14 a transportation vehicle. And this particular, these type of units are in
15 greater number than, than the other type of units. So, again, I don't know if
16 I'm answering your question. But, but I would say, if you're asking me, do we
17 want to...

18 EHRLICHMAN: I think you've answered it.

19 BARTON: No, no, let me finish, please. Do we want to limit ourselves to a
20 different type of configuration, uh, because you want it shorter? Uh, no,
21 because we're showing you by science that we can make this work.

22 EHRLICHMAN: Yeah. I, I don't have a preference. I was just trying to find
23 out, clarify your, your statement. I thought you were indicating that there
24 was some shorter lengths that you use in your repertoire, you've answered
25 that, but there, there really aren't, correct?

1 BARTON: Correct.

2 EHRLICHMAN: Okay.

3 BARTON: In that configuration, yes.

4 EHRLICHMAN: Great. No, that's, that's all I wanted to...

5 BARTON: Okay.

6 EHRLICHMAN: Clarify. Thank you.

7 REEVES: Does that conclude, then?

8 EHRLICHMAN: I'm looking at my notes here. So, um, terms of reducing impacts,
9 which is what you've been talking about, mitigating the impacts of these 74
10 foot trucks, are there any other conditions that haven't been, uh, presented
11 by you, you or your company in this proceeding that you can think of that
12 you'd like to offer that would help, uh, on, on the safety issue we've, we've
13 been talking about?

14 BARTON: Well, I [inaudible] say and that's a big question. I think we
15 have looked at this and studied this particular site for, I think, over six
16 years and tried, uh, to address, uh, questions along the way that have grown
17 in nature, um, that, some that were asked repetitively and so on. And I think
18 our science and our studies and working with the County Staff and we've made,
19 uh, a lot of, um, large steps here, to answer, I guess, your question. And
20 so, I'm satisfied with what the record is demonstrating that we can mitigate
21 any, any impacts through our studies and what's been proposed safely. Uh,
22 we're good operators and, again, I, I could go on and on. And we're proud of
23 that fact. And, uh, this, I think it gets back into what I stated earlier.
24 So, um, hopefully that answers, in part, your question.

25 REEVES: And...

1 EHRlichman: I, I take the answer is no, there are no other additional
2 conditions we haven't heard of that you wanted to offer, correct?
3 BARTON: Well, I think, yes, that, correct. I'll just leave it at that.
4 EHRlichman: Okay. Yeah. Thank you. I'm done. Thank you very much.
5 REEVES: Okay. Thank you. Uh, Mr. Loring?
6 LORING: Yes. Thank you, Mr. Examiner, I do have a few questions. Uh,
7 hello, Mr. Barton, good afternoon.
8 BARTON: Hi, Mr. Loring, thank you. And you.
9 LORING: Thank you. Uh, you mentioned earlier the policy for in climate
10 weather. And I'm looking at what has now been marked as B99, I'm, I'm
11 assuming you have that in front of you?
12 BARTON: I do.
13 LORING: That, I just want to ask you a question or two about it.
14 BARTON: Yeah.
15 LORING: That policy, or it's, it's an in climate weather planning
16 document, right, that's what it says across the top?
17 BARTON: Yes.
18 LORING: Okay. And it doesn't actually identify any criteria for figuring
19 out when or where trucks would be prevented from driving anywhere or
20 rerouted, right?
21 BARTON: Not specifically, no. It's just...
22 LORING: Uh...
23 BARTON: Talks in general, in general terms how we assess any of the
24 sites, yes.

25

1 LORING: Sure. It speaks more about, uh, not having maybe, uh, employees
2 come in if in climate, if weather is in climate, that sort of thing, right?
3 BARTON: It does. Yes.
4 LORING: Okay.
5 REEVES: And I know, I promise to read it closely. Just...
6 LORING: Don't worry, Mr. Examiner, I know we're all, we're all the end
7 here, I know. Racing to the barn. Uh, but I just wanted to put it out there
8 and make sure it was clear on what it actually says. I, Mr. Barton, you spoke
9 about that, uh, you called that truck diagram your worst case scenario, is
10 that your largest capacity vehicle that you were showing? Uh, that's Exhibit
11 C54.
12 BARTON: In capacity, yes. That, that truck is legal, uh, by, by wheel
13 base and axle configuration to 105.5 in that, in configuration to answer your
14 question, yes.
15 LORING: Uh, 105.5 meaning it can carry 105...
16 BARTON: Total 105,500 pounds in total, the next payload and you remember
17 this, sorry, Tom, remember this back...
18 LORING: Yes.
19 BARTON: And forth may vary depending on truck configuration, whether it's
20 34 or 33, 32 and so on.
21 LORING: Okay. Understood. Thank you. Uh, and you're not pro-, you're not
22 proposing to limit hauling just to this vehicle or any other vehicles, right?
23 BARTON: Uh, no, we are not.
24 LORING: Okay. You talked a little bit about how you would, uh, conduct
25 the mining and so I want to ask just a few questions about that. Um, first, I

1 want to ask, are you aware that based on the cross-section, the only one that
2 is in the record, uh, that the top, the high point would actually be cut into
3 and so it would lower the top of the hill adjacent to the Samish River
4 wetland?

5 BARTON: Yes. And I think I termed that, uh, Mr. Loring, a, a false top
6 based on defined brim of the hill, uh, by the experts.

7 LORING: Okay. But we don't have those experts saying that that cross-
8 section is incorrect, right?

9 BARTON: Uh, sorry, say that again?

10 LORING: No expert is saying that the cross-sections are incorrect, right?

11 BARTON: No.

12 LORING: That, okay. And it was just the one cross-section?

13 BARTON: Yes.

14 LORING: Okay. You also talked about a DNR Reclamation Permit. Do you have
15 that Permit at this point?

16 BARTON: Uh, no, we do not. The only thing we have is conceptual plans.
17 Uh, once we would, of course, as you know, we would, uh, get through the Land
18 Use Hearing and providing it's approved, then we would propose the final set,
19 uh, um, to the DNR and then wait for their acknowledgment that that's, meets
20 their requirements and they'd issue the mining permit. So it follows...

21 LORING: Okay.

22 BARTON: The SM6, uh, sign off from the County back to the DNR.

23 LORING: Understood.

24 BARTON: Uh-huh.

25

1 LORING: Uh, you talked about the reclamation occurring with four
2 segments, is that familiar, is that right?

3 BARTON: Yeah. And I think, uh, excuse me, but, but, yes, that, the plan
4 that we have, the draft plan that we have, uh, shows four different segments.
5 I don't have it right in front of me. But, but, but it's shown in one, two,
6 three, four and that was the draft proposed mining plan.

7 LORING: And those segments are roughly 25% of the site for each one?

8 BARTON: Situation, yes.

9 LORING: Yeah.

10 BARTON: Yes.

11 LORING: And you would, you would finish one and then start on the next,
12 is that how it would work?

13 BARTON: Uh, in a, in a perfect world, yes. Sometimes it, we, and, and DNR
14 obviously inspects us annually and works with us and sees by aerial
15 photography exactly what we're doing. But, uh, in generally, that's our plan.
16 Sometimes we do based on market and deposits, it, it, it's sub, you know,
17 subtly can be, uh, uh, outside maybe one or two segments, uh, just, again, it
18 varies a bit.

19 LORING: Okay. So, it could be times when you're working on mostly one,
20 but also some of another segment?

21 BARTON: Uh-huh. Yes.

22 LORING: Okay. And as part of the, that reclamation process, how long does
23 it take for trees that are replanted to grow to maturity?

24 BARTON: That's a great question. So, in, in, in the reprod [sic] side of
25 things, uh, those, uh, typically you thin at 18 years on a fir tree and, uh,

1 selectively thin or harvest at 30 years, uh, cycle time for fir in this
2 plantation, uh, is roughly 45 years, uh, to, to maximum your overall harvest
3 and, and return on your timber.

4 LORING: Okay. So we're talking, uh, in the forestry setting roughly 45
5 years before the tree matures enough to be harvested again?

6 BARTON: Uh, in a, I'm sorry, and I'm not the forestry, but, yes, in a
7 perfect world to maximize your return, but, but what we call pre-merch, we,
8 we do do that, depending on what the market is doing. It can be as early as
9 30 years.

10 LORING: Okay.

11 BARTON: And I'm speaking specifically to fir.

12 LORING: Uh, okay. Douglas Fir in particular?

13 BARTON: Yes. Yes.

14 LORING: Okay. And, uh, Douglas Fir are the, are those the dominate trees
15 at the site?

16 BARTON: Uh, that, this plantation, to answer your question, across the
17 entire 720 plus acres is mixed, it's Doug Fir, Hardwoods, Maple, Alder and so
18 on.

19 LORING: Okay. Uh, okay. But either way, we're talking three decades
20 before a tree that is cut now is going to be roughly back to the shape that
21 it was in before it was cut, does that sound right?

22 BARTON: That, well, yeah. This particular plantation is here is about 20,
23 I believe 22 years, in the mining area.

24 LORING: Okay.

25 BARTON: Yeah.

1 LORING: Okay. Uh, let's see, you, you testified just a few moments ago, I
2 don't have much more, this is it. Uh, that, that, uh, Miles is trying to be
3 very proactive in this manner. And I believe you were talking about proposed
4 improvements at Grip Road and Prairie Road with some of the turns. Is that
5 what you were talking about there, about being proactive?

6 BARTON: Well, I think in general, yes. And which would include that,
7 those two locations, as well as others, uh...

8 LORING: Okay.

9 BARTON: Our entrance, the Grip Road, the intersection at Prairie and, and
10 Grip, uh, the S-turns, um, and even, you know, back to our entrance, some
11 additional paving that we, we spoke to earlier.

12 LORING: Okay.

13 BARTON: I think it's all inclusive.

14 LORING: Okay. And you've testified to some of that during this Hearing.
15 Uh, a lot of that is new, since this Hearing began, right? Hasn't been part
16 of the public record?

17 BARTON: I don't know if a lot of it's new, I think that when you say
18 public record, I, I believe the S-corners have been address on Prairie Road.
19 I think our entrance, uh, was improved, approved originally by the County
20 and, and, yes, some of that has been expanded on. I think the newest item
21 here is, is that, that, and, again, as I said earlier, this is our first time
22 we've had the ability to, to share it, has been the auto-turn analysis and
23 the Grip Road, uh, widening, per se, that we're saying we're willing to do.

24

25

1 LORING: Okay. Let me just follow up, then, have you, uh, strike that, did
2 Miles propose any work on Grip Road or the curves there prior to the County's
3 issuance of the Mitigation Determination of Non-Significance?

4 BARTON: Uh, I don't believe so, no.

5 LORING: Okay. And the work that you were just discussing at the
6 intersection of, uh, the private haul road and Grip Road that, the most
7 recent plans for that, were those in front of the County before it issues its
8 MDNS?

9 BARTON: Yes. I believe so, they were.

10 LORING: Okay. And are there plans for the Gr-, or the Prairie Road S-
11 curves, are there plans that were reviewed by the County prior to issuing the
12 MDNS?

13 BARTON: Not detailed engineered plans, uh, but the requirement, as I
14 understand it, through the auto-turn analysis, that it would be widened was
15 in, before the MDNS.

16 LORING: Okay. So, no plans those, that anybody could review specifically
17 to see what would happen there?

18 BARTON: Outside, well, engineered plans for construction purposes, which
19 the Public Works would have to ultimately approve, have not been submitted
20 yet.

21 LORING: Okay. And, and you referred to Public Works, is it your position
22 that only Public Works or the County should have the opportunity to review
23 materials about the different development that will occur prior to the County
24 issuing a Mitigated Determination of Non-Significance?

25

1 BARTON: Well, I thing from a road construction, Mr. Loring, if I'm
2 understanding your question correctly, they are the officials that review
3 those construction plans, uh, to meet their particular, uh, requirements for
4 the road work.

5 LORING: And I understand that. I think maybe you didn't quite un-,
6 understand the question. It was whether you believe there they're the only
7 ones who should have access to that information and that members of the
8 public should not, do not need to have access to that information as part of
9 the SEPA review process?

10 BARTON: Well, I think that's, I think that's a better question for them.
11 If they, they being the governing authority, in my mind, approve that plan to
12 meet that criteria, yeah, how the public plays into that, I, I guess I don't,
13 I don't understand the process well enough, uh, uh, to answer that cor-, you
14 know, whether correctly or incorrectly.

15 LORING: Fair enough.

16 BARTON: Yeah.

17 LORING: I don't have any other questions. Thanks for your time.

18 BARTON: You bet. Thank you.

19 REEVES: Mr. Lynn, any follow-up?

20 LYNN: No. No.

21 REEVES: Okay. So, I believe that would then conclude the presentation of
22 witnesses. The, uh, Mr. Barton, thank you for your time.

23 BARTON: Thank you, Mr. Reeves.

24 REEVES: Okay. Uh, housekeeping, quickly. I'm looking at, I printed off
25 Mr., uh, D'Avignon's, uh, uh, helpful little spreadsheet. And it looks like

1 going down the list, he had suggested that Ordinance 20080014 be proposed as
2 C52. Uh, which I think makes sense. Especially given, no, wait, no, Mr.
3 D'Avignon?
4 D'AVIGNON: I, I think after today, we've, um, C52, I think is actually the,
5 an Excel Spreadsheet, um, that Mr. Lynn had presented. C53 would be the Auto-
6 turn Analysis and C54 would be the 2nd Truck and Pup or the 1st Truck and, I
7 forget how these went. I maybe don't have the greatest notes. But I think the
8 Ordinance would end up be C56.
9 REEVES: Okay. Sorry, what was the Excel Spreadsheet, Mr. Lynn?
10 LYNN: Uh, that was some crash data that was submitted, sorry, by Mr.,
11 uh, Norris during his original testimony. Again, I think it was sent on the
12 2nd...
13 REEVES: Okay.
14 LYNN: Of September. I can recirculate it. Um, it's a, it's an, it's an
15 Excel Spreadsheet.
16 REEVES: Oh, okay. Just want to make sure I want to get everything right.
17 So, we're saying C52 is Crash Data Excel Spreadsheet. C53 was Auto-turn
18 Analysis, recognizing that's two pages. Uh, C54 was, was identified as Truck
19 and Pup Diagram 2. C55 was Truck and Pup Diagram 1, but to not get confused,
20 it would be helpful to think of that as the earlier truck and pup diagram.
21 Uh, Miles' Weather Policy was B99. So, then, let's see, so, C55, then, would
22 be the Ordinance, is that what you suggested, Jason?
23 D'AVIGNON: Um, yeah, just whatever, I guess C56.
24 REEVES: Sorry. Oh, oh, man, now I'm, what was C55, what did I do wrong
25 just now?

1 D'AVIGNON: Truck and Pup, Truck and Pup..

2 REEVES: Okay.

3 D'AVIGNON: Pup 1.

4 REEVES: All right. I got it. Diagram 1, earlier truck and pup, C55. So,

5 we'll make the Ordinance C56. I mean, it's publicly available, but someone

6 pointed out sometimes those things are hard to find. So, I think it is

7 helpful. Okay. So, the only other one on here was that 61721 RE Critical

8 Areas, I wasn't sure what that specifically was referencing, maybe Mr. Lynn?

9 LYNN: Yes. Uh, that's a letter that the County issued requiring the

10 Critical Areas, uh, Assessment on the haul road and, and identifying critical

11 areas and I think that should be part of the record. It's, you can access it

12 on the County's website, but it's not a, it's not, it's not linked and it's

13 not Exhibit here, so I think it should be.

14 REEVES: Any objection to making that C57?

15 D'AVIGNON: No objection.

16 REEVES: Okay. And then in terms of the Appellant Exhibits, uh, A59-A62

17 tracks Mr. Loring as per Jason D'Avignon's chart here?

18 LORING: That looks right to me, yes, Mr. Examiner.

19 REEVES: Okay. And then, uh, let's see, Mr. Ehrlichman, you had, well,

20 there was some minor discrepancies, right, that you wanted to clarify in

21 terms of your Exhibit C49 S, maybe just walk me through what the, in your

22 mind correct number is? Is it, is anything changed since the email that you

23 sent to clarify Mr. D'Avignon?

24 EHRLICHMAN: No, I think Mr. D'Avignon and I are in agreement that our

25 Exhibits are C49 and then we have a subset or index of that, starting with

1 S1, which is the Neil Mcleod le-, letter. And it had three attachments, 1A,
2 1B, 1C, and then we went on in the numbering from there. And, uh, picked up
3 exhibits today. If you want me to go through those, I can.

4 REEVES: Uh, just rem-, I mean, you don't need to detail them, but I did
5 take notes, but where you end..

6 EHRLICHMAN: Yeah.

7 REEVES: I guess.

8 EHRLICHMAN: Sure. So we started today with S9, the Bus Schedule.

9 REEVES: Yep.

10 EHRLICHMAN: S10, uh, was the, uh, Citizen Letter pulled out of the earlier
11 giant packet of written submittals.

12 REEVES: Yep.

13 EHRLICHMAN: 11, uh, S11 is the, uh, Code, illustrative exhibit. S12 was the
14 Excerpt of Road Standards. S13 was our Markup of the Applicant's truck
15 graphic. Uh, which is that C55, I believe.

16 REEVES: Yep.

17 EHRLICHMAN: And then we had, um, S14 was Table B6, the Road Stan-, Dimensions
18 Standard. And, uh, I circulated an email this afternoon requesting entry of
19 Exhibit S15, which is the truck width with mirrors.

20 REEVES: And I'm guessing I got it, but anyone have an objection to that?
21 Good. Proposed S15 truck with mirrors. I'm not hearing any, I'll allow it.
22 Okay. Does that, then, do we have your exhibits right? I'm just trying to
23 make sure.

24

25

1 EHRlichman: We, we do. And I'd, I'd like to suggest that we might want to
2 carve out, um, S16 as the forthcoming, uh, Wallace Grato, uh, written
3 submittal. I don't know how you want to handle that.

4 REEVES: Actually, that's a great idea. Yeah. Why don't we say, we'll call
5 it the Declaration of Wallace Grato.

6 EHRlichman: And finally, thank you. Um, I would like to, uh, leave to submit
7 as S17, uh, the parcel information on that, uh, adjacent mine that I talked
8 about, the, uh, Prospect mine, also on Grip Road.

9 REEVES: I believe there was an objection to this, at one point, Mr. Lynn,
10 but any, your thoughts, Mr. Lynn?

11 LYNN: Uh, I guess I'd like to see it. Uh, Mr. Barton's already
12 testified about the Miles' plans for that facility and that there are limited
13 resources there, so I, I don't think it's relevant. I guess if, if we're, if
14 we had seen that ahead of time, I'd probably have a question or two from Mr.
15 Barton about it.

16 REEVES: All right.

17 EHRlichman: Well...

18 REEVES: I'll suggest, let me just say, let's allow, I'm going to allow
19 it. I'm not let's, I'll, I'll just allow it in and, uh, after, we'll work on
20 timing in a minute. But essentially, uh, Mr. Lynn, anyone else that may have,
21 you know, concerns can, can produce, uh, supplemental short, you know, what
22 their concerns are. And that would be true for what has now been identified
23 as forthcoming 16 Declaration of Grato. And forthcoming as 17, which is
24 parcel data for adjacent parcel. And, again, once those, what I, well, here,

25

1 timing-wise, uh, Mr. Ehrlichman, let's start there, do you think by next
2 Friday, you can have Mr. Grato's declaration ready?

3 EHRLICHMAN: We can.

4 REEVES: Okay. So...

5 EHRLICHMAN: Yes, we can. Thank you.

6 REEVES: So, why don't we say September 30th. And I assume the parcel data
7 you can have immediately, but let's just do it altogether, so September...

8 EHRLICHMAN: Okay.

9 REEVES: 30th and then any, any party that wants to produce a response or
10 has any concerns can do so. I'll treat those as pleadings as o-, as opposed
11 to initial exhibits or else we're going to get real lost on exhibits. But,
12 uh, and so, let's see, if it's September 30th, any response or concerns,
13 again, which I would expect would be fairly limited, um, but why don't we
14 just say the 7th, which is a week later. And that's very limited to any, any
15 sort of objection or, or, you know, response to S16 or S17, which are now a
16 part of, uh, C49. Does that make sense to the Attorneys?

17 EHRLICHMAN: Yes. It does to us, thank you.

18 REEVES: Okay. And then, uh, we'll talk about briefing in a minute. But,
19 um, the briefing won't be, uh, exhibits. That, those will be pleadings. So,
20 we're good, then, on your exhibits, to be clear, just to, okay.

21 EHRLICHMAN: Yes, we are.

22 REEVES: And then, uh, as to the Applicant Exhibits, I know things got
23 moved somewhat. I think that we ended up with B99 as the last one, which was
24 the Miles' Weather Policy. And there's one question mark about a B96. Did we,
25 was that, do we have any, anyone have an idea and if not, I'm happy rather

1 than mess anything up, just say, you know, nothing submitted or, or I don't
2 want to renumber anything.

3 D'AVIGNON: I think that's fine.

4 REEVES: Sorry?

5 D'AVIGNON: I think it would..

6 REEVES: Let's start with Jason. Jason D'Avignon, go ahead.

7 D'AVIGNON: That sounds good to me. I think it was just an exhibit where we
8 miscounted in the middle of a Hearing.

9 REEVES: Yeah. It happens. Uh, okay. And, uh, Mr. Lynn, that makes sense
10 to you? You're not worried that there's some magic exhibit that won your case
11 that is not..

12 LYNN: No.

13 REEVES: Now part of the record?

14 LYNN: I, I do not think my case raises and falls on the missing Exhibit
15 96, at least I hope not.

16 REEVES: Okay. Excellent. Um, so I think, then, all of the exhibits have
17 been finished up. And that is my understanding. And please weigh in
18 otherwise. But, okay. So, here's my thought. I, I know I'm sure there's a
19 hard and fast end of the day because Mr. Loring probably has important tennis
20 or athletic activities. I'm giving him a hard time. We appreciate the, the
21 public service of, of him, uh, working with students. But, uh..

22 LORING: I'll tell my team, I'll team it came straight from you, thanks.

23 REEVES: There you go. So, what was our end, is it 4:30? I'm not going,
24 I'm not trying to belabor anyone or keep anyone long. I was going to suggest
25 a quick break. Um, but I was going to throw out a question for those to think

1 about on the break that then I want to come back and talk about. But is there
2 anything, and I'll do a quick round robin, anything we need to address when
3 we come back from the break, before I ask, you know, sort of questions of the
4 Attorneys, other than obviously timing. Mr. Ehrlichman?

5 EHRlichman: Nothing.

6 REEVES: Okay. Mr. D'Avignon?

7 D'AVIGNON: I have, uh, nothing special, Mr. Examiner.

8 REEVES: Okay. Mr. Lynn?

9 LYNN: Um, I, I do, um, want to submit conditions at some point. There's
10 a clarification of one condition that's in the Special Use Permit. I don't
11 know whether that's done as part of briefing, but I want to do it, uh, in
12 such a manner that people have an opportunity to respond to that. So, I'm
13 going to suggest that maybe we do that in the seam timeframe as Mr.
14 Ehrlichman's submittals by next Friday. There's just going to be a few of
15 them. But I think it would be best if everybody had them in writing before
16 they were, uh, asked to respond.

17 REEVES: Well, okay. Hold that though, Mr. Lynn. Because that is...

18 LYNN: Yeah.

19 REEVES: Something I want to talk about after the break. Um...

20 LYNN: Okay.

21 REEVES: In terms of conditions and I'll, I'll tip my hat. One of the
22 things I would suggest of the other parties, and obviously for Mr. Loring,
23 this is going to be a different question than say, for Mr. Ehrlichman,
24 because, one involves the MDNS and the other involves the SUP, um, but one
25 suggestion I was going to make would be, uh, that, you know, the other par-,

1 you know, those two in particular, uh, were I to do the thing you hope I
2 don't do, and, and either deny the SEPA Appeal, for Mr. Loring, uh, well, I
3 guess that, yeah, deny the SEPA Appeal, I guess, go there, uh, and, and ran
4 the SUP, are there conditions you all believe would be appropriate for me to
5 include as, sorry, I guess the way to think about it theoretically is, in
6 your minds, are there specific conditions you would like to see included were
7 I to, uh, a-, approve the SUP? Granting, I understand the position of the
8 parties. I'm just trying to, sometimes it can be helpful to have things for
9 me to consider in those circumstances. That and I don't need your answer
10 right now. I'm just saying, that was one thing I was going to suggest, Bill
11 Lynn has suggested, uh, there might be some alterations or clarification on,
12 uh, the conditions that have been recommended by County Staff that the
13 Applicant would like to make. But, so that was thing one. And, uh, Mr.
14 Loring, sorry, I didn't get to ask you about when we come back from the
15 break, but...

16 LORING: I don't, I don't have anything at the moment. Thank you.

17 REEVES: Okay. So, we'll, we'll, we'll get into that, um, and then the
18 other, the question I want to leave the parties with before we take a short
19 break is it has to do with, with remedy. And essentially, you know, we're,
20 here's the thought I want to talk about and get your guy's, uh, thoughts on,
21 you know, is what, what is the remedy? So, for Mr. Loring, if we start there,
22 when we get there when we get back, you know, if I do, uh, grant your Appeal,
23 uh, what does that ultimately potentially mean? Uh, if I deny potentially,
24 what does that mean? Uh, I think that will be the big one, in terms of SEPA.
25 Obviously, if I were to deny the SUP, it is what it is. Uh, but, but because

1 of the way this consolidated process works, that particular issue becomes a
2 challenging one as it were, in terms of if something happens with SEPA,
3 what's the impact on everything else? So, that was the question I'm hoping to
4 get some thoughts on, uh, to start when we get back. So, what I would suggest
5 is why don't we come back at 3:00? Um, you know, I'll, I'll sort of do a
6 round robin on, on, uh, questions for the Attorneys, uh, and, and we're, our
7 hard and fast is 4:30, is that right? Excellent.

8 LORING: Yes.

9 REEVES: Okay. So, we'll come, we'll come back at 3:00. I note that if,
10 uh, Mr. Ehrlichman or others has a Hawaiian shirt just sitting around they
11 were hoping to show, uh, the final 90 minutes would be the time, uh, to
12 display your best Hawaiian shirts. So, with that, we'll come back, uh, in ten
13 minutes. Oh, Brandon is upset because he didn't wear what he thought was his
14 best Hawaiian shirt. But it's beautifully muted. And with that, we'll be back
15 at 3 o'clock. Thanks, everybody.

16 [The tape ends.]

17 **The undersigned being first duly sworn on oath, deposes and says:**

18 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
19 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party
20 to this action. That on May 11th, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves, that
21 took place on 9/23/22 at 1:00 p.m., regarding the above-captioned matter.

22 I certify and declare under penalty of perjury under the laws of the State of Washington that the
23 aforementioned transcript is true and correct to the best of my abilities.

24 Signed at Mount Vernon, Washington, this 11th, May of 2024.

25 Janet Williamson

Janet Williamson

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**IN SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT**

State of Washington,)	
	)	Cause No.: PL16-0097, PL16-0098,
Plaintiff,	)	PL22-0142
)	
vs.	)	PERMIT HEARING 9-23-22 3:00 PM
)	
Name,)	
)	
Defendant)	

Transcription Date: May 12th, 2024

Present: Andrew Reeves, Bill Lynn, Jason D'Avignon, Kyle Loring, Tom Ehrlichman, Mona Kellogg

REEVES: Okay. Uh, so we are back and essentially, uh, what we wanted to conclude with, we've solved. I believe the exhibits and how that's going to work, uh, in terms of the final exhibits and any responses to that exhibits. Um, we'll make sure to stop at the end with enough time to sort out three things. But, uh, I did, as the Hearing Examiner, want to ask some questions, uh, of the Attorneys because I have four, uh, experts on Lane Use, SEPA, et cetera all in the room. Uh, so, uh, you know, seems like a, a perfect moment to get their thoughts on, on some of these, uh, interesting and tricky

1 issues. So, I'm going to start with Mr. Loring, uh, to the extent that
2 obviously your role has been somewhat different, uh, than others. Uh, and I
3 think it's fair to, uh, you know, I'm not wrong in thinking that, that the
4 work you've done for this Hearing is, relates, relates both to the SEPA
5 Appeal and the SUP, is that accurate to begin with?

6 LORING: Yes, it is, Mr. Examiner.

7 REEVES: Okay.

8 LORING: Yes.

9 REEVES: So, my, my, my big first question had to do with, uh, has to do
10 with remedy, as it were, which is, first off, were, were I to grant your
11 Appeal, what, what would you hope would happen, ultimately? Is, is, sort of
12 in broad terms.

13 LORING: Sure. Uh, if the Appeal were granted, this, the MDNS would need
14 to be vacated or reversed. And the questions that have been raised through
15 this Appeal, and the omissions in the environmental review, would need to be
16 address. Uh, I think that, at this point, I'm guessing that some of it might
17 be addressed through new conditions in a MDNS, or, actually, maybe even a lot
18 of it could be addressed through conditions in a MDNS, uh, after it went back
19 to the County, they had the chance to start that process, and then members of
20 the public, of course, again, would have the opportunity to weigh in on that.
21 Um, there still may be some issues that require or warrant greater
22 examination, uh, as a result of all of this. And I, I, we've heard a lot
23 about traffic issues that have not been evaluated. Uh, we heard about, you
24 know, one that comes right to mind is bank stability. I don't think anybody
25 has even argued was, was ever fully evaluated at this point. I, I should take

1 that back, I know Mr. Lynn h-, I'm sure he has a different opinion. But, uh,
2 there was definitely a lot of discussion about areas, geographical even, that
3 were not evaluated. So, there may be some areas that would require some
4 additional review. Um, but there might be some others where additional
5 conditions would be ab to address it. Through that MDNS..

6 REEVES: Sure.

7 LORING: Process. I, I will say, you know, in our briefly, of occurs, we
8 touched on an EIS, Environmental Impact Statement because that's what you do,
9 that doesn't mean the full broad suite of all potential impacts. Uh, it might
10 make sense to do a deeper dive into some of the impacts to ensure that they
11 were addressed through conditions in a MDNS, even still shy of an EIS.
12 Because my client does acknowledge that an MDNS can substitute for an EIS if
13 the potential impacts have been addressed.

14 REEVES: Okay.

15 LORING: Impacts that they've identified through the process. Yeah. You go
16 ahead, you have questions that are popping up.

17 REEVES: I, well, I wanted..

18 LORING: Please.

19 REEVES: To parse that out, I wanted to parse that out, Mr. Loring. So,
20 uh, if the, if the answer is I would need to think more or I can't answer it,
21 fine, but you touched on, you brought EIS up, which would be a full blown
22 Environmental Impact Statement. Uh, you know, one often, well, not often, but
23 at least decades ago, sort of with SEPA, what, sometimes would happens with
24 Appeals is if an Appeal is granted on a DNS, that meant do an EIS, uh, is it
25 your position that an EIS is appropriate in these circumstances?

1 LORING: It's, yes. I, I will say, it's not my position that it is a
2 necessary requirement of reversing the MDNS. But it would be a, you know,
3 reversing the MDNS means going back and taking a closer look at some of the
4 issues and impacts that were not evaluated, per, and, again, of course, I'm
5 speaking from my client's perspective, just be clear about all of that. Um,
6 so, that would, that would need to occur before a new threshold determination
7 were issued. But I don't know that a determination of significance would have
8 to issue, it certainly could. And we do believe that we've identified some
9 significant impacts, as the project is currently defined, and based on the
10 details and information that we have at this time.

11 REEVES: Got it. So, there, it's not a de facto sort of position that were
12 I to...

13 LORING: It's not.

14 REEVES: Uh, grant the Appeal, uh, you know, clearly were I to grant the
15 Appeal, I would be, you know, uh, remanding, uh, for more work, which in my
16 mind, would involve vacating the, the current, uh, SEPA determination. It's
17 not necessarily your position that that automatically means an EIS is
18 required. It's more work is done and if that work means a different MDNS with
19 more conditions that potentially could solve the concerns that, that you
20 have, your clients have? Is that sort of an accurate assessment?

21 LORING: Yes.

22 REEVES: Okay.

23 LORING: That is accurate. And, and I will say, you know, our Pre-Hearing
24 brief identified some of those concer-, those concerns or, or did identify

25

1 the world of concerns. Our Post-Hearing brief may do an even tighter job
2 identifying those now that we've had a Hearing, as well.

3 REEVES: Sure. And so, I just want to go a little further with you and
4 then we'll hear from the other parties. To the extent of...

5 LORING: Sure.

6 REEVES: This, this issue, which these consolidated Hearings, uh, you
7 know, they're not uncommon, I guess, but, uh, they can be tricky and, and so
8 I was thinking this through, and one thought I had, uh, over the weekend last
9 weekend was, were I to grant the SEPA Appeal and essentially say, we're going
10 to send, you know, we're going to vacate the MDNS and require that to be
11 redone, in your mind, would there be a problem with me essentially continuing
12 the SUP Hearing as opposed to just throwing the baby out with the bath water?
13 And I ask because one thought I had, and, again, I have not decided anything.
14 I was just working my way through all of the possibilities, we don't want to
15 have to redo seven days of work, in my mind. So, one thought I had, but I'm
16 curious about your thoughts on the legal, sort of aspects here would be, were
17 I to essentially, you know, there were, you've convinced me, uh, you know,
18 with the h-, fairly high burden we know exists for, for winning in terms of
19 SEPA, uh, that, uh, I'm left with the sort of firm and definite conviction
20 that, that an error occurred. And, and I, the County essentially needs to
21 start the SEPA process again, would it be possible for that to occur,
22 including the comment period, and then if, you know, there's no Appeals of
23 that new MDNS, or even if there was an Appeal, could we, then, just reopen
24 this consolidated Hearing as needed, on, on the limited basis of not having

25

1 to redo all of the, the, the work that was done in terms of everything we've
2 already heard? Is my question.

3 LORING: Procedurally, I will say I'm not, I don't completely know. Uh,
4 but what I will say is it would make sense that you would say we're dealing
5 with the SEPA now and we're holding off on that SUP decision until later. I
6 don't know if that's continuing the Hearing and then just having an
7 opportunity for people to address changes, to the next there are any in the
8 Application, at that next stage. I think that would make sense. But I don't
9 know that that satis-, I, I don't know if that would satisfy the full
10 Application process that Skagit County contemplates for a, for a Special Use
11 Permit Hearing. Or Special Use Permit.

12 REEVES: Oh, yeah. And, again, I, I'm not sure I know the answer either,
13 which was partially why I was asking it. But, uh, I think we'll move around
14 and, and see what others thing. Uh, Mr. Lynn, I'll go to you next on, on that
15 particular issue, if you have any thoughts. A-, apart from obviously you
16 believe on behalf of your clients that there's no need to grant the SEPA
17 Appeal, et cetera. But...

18 LYNN: Right. Yeah. I mean, I guess, uh, number one, and we talked about
19 this earlier a little bit, and maybe it requires further briefing. If the
20 Hearing Examiner were to think that an additional condition were required, I
21 think the Examiner has the authority to add that. Again, we don't think that
22 would be necessary, but we think the Examiner would have that authority
23 without the necessity for further back and forth with the County. And, by the
24 way, I think that that condition could potenti-, uh, it would depend on the
25 information that you thought might be missing. But if there was something in

1 particular that you thought would be missing, a condition requiring that
2 prior to some further step could, could address that issue. In other words,
3 you could impose a condition that says that prior to operation, this would be
4 completed or that. You know, and, again, it's really hard to argue this in
5 the abstract.

6 REEVES: Sure. Sorry. And, and, Bill, just to clarify your point there,
7 you're saying you, legally speaking, you don't see a reason why I, as the
8 Hearing Examiner, can't add additional conditions to the MNDS, versus any
9 improved SUP?

10 LYNN: Uh, yeah, exactly. I mean, and that's what...

11 REEVES: Okay.

12 LYNN: That Phillips 66 says, at least as I read it. Um, and I think
13 there's even less question about a proposed change that the Applicant would
14 make to its Proposal, uh, during the scope of the Hearing. And I'm
15 specifically thinking about the Grip Road S-curves, uh, you know, the County
16 did not identify that as an impact that needed mitigation, uh, nonetheless,
17 we have purposed mitigation for that as an element of the project. And I
18 certainly think that not only can the Applicant do that, the Applicant should
19 be encouraged to do that since the whole SEPA process, of which this Hearing
20 is a part, is intended to identify and mitigate impact. So, I, again, I think
21 I pointed this out in argument a couple of, or a week ago, whenever that was,
22 that it would seem odd that you would have the ability to impose a condition
23 to approve a Special Use Permit, but not be able to consider that same
24 condition in evaluating the, the SEPA process for the project. And so, so, I,
25 I, I think the Examiner could, if the Examiner thought additional conditions

1 were necessary, you could impose them, uh, through this process, without the
2 necessity to go back, uh, through, um, through a, a, a different SEPA process
3 with the County. I think, in other words, I don't think it, I don't think
4 we're obligated to pretend that none of this happened. Uh, that the, that,
5 you know, we didn't have this seven-day Hearing, largely on SEPA issues, uh,
6 and, and a lot of public comment on all of these different aspects of, of the
7 project. I don't think we have to go back to the County as if we're at square
8 one.

9 REEVES: Well, so, I guess those are two, two slightly different, I guess,
10 the one is the, you know, do I evaluate the MNDS based on a time cut off,
11 right, on what was known when and I certainly understand Mr. Loring's
12 position. I think your position is, is different to the extent that you, you,
13 you're essentially saying, you know, yes, the MDNS was issued on a date
14 certain. Now that we have more information, it's possible for me as the
15 Hearing Examiner to sort of, uh, you know, either augment the MDNS or any,
16 any sort of error is, is harmless to the extent that it's now been fixed. Is,
17 is that sort of the idea?

18 LYNN: Yeah. I mean, I think that's why this is an opened record
19 process. This is why the Examiner has the authority to, uh, grant Appeals,
20 deny Appeals or condition, um, and I think that applies here as well.

21 REEVES: Sure. But, but if I were to ultimately say, you know, I really
22 have a major concern, you know, with the 200 versus 300 foot, or something to
23 that effect, such that I [inaudible] grant the Appeal, do you see any reason,
24 legally, for it to be problematic to me, for me to continue the SUP portion
25

1 while another SEPA determination is addressed? Such that later on we don't
2 have to redo...

3 LYNN: Yeah. Well, yeah. Trust, trust me, the last thing I would want to
4 do is relive any part of the last seven days. Uh, and, and I think, and I
5 think it would be a waste of, uh, public, private and your resources...

6 REEVES: Okay.

7 LYNN: To, uh, have to do that. So, yeah, I think you absolutely could.
8 If you thought it was necessary to have some further evaluation of that, um,
9 uh, then, I think the...

10 REEVES: I, I've never had this happen. So, I'm...

11 LYNN: Yeah. And, and I just, one thing I, you know, you, you probably
12 just mentioned this as an example, but the 200 versus 300 foot, um, buffer
13 issue, when this came up, the Applicant had, there are two documents in the,
14 there are two site plans in the record that show a 200 and 300 foot buffer,
15 so...

16 REEVES: I shouldn't have picked the example.

17 LYNN: Okay.

18 REEVES: I, I just...

19 LYNN: Okay.

20 REEVES: That was just a number, you know, just popped in my head. I'm,
21 like I said, I haven't decided anything. Sorry.

22 LYNN: Yeah.

23 REEVES: I don't want to get into the weeds.

24 LYNN: I just, I just bit the bait.

25

1 REEVES: It's okay. So, I'll, I'll, next I'll ask Mr. D'Avignon if he had
2 any thoughts on, on those questions that we've been asking and answering, uh,
3 just now?

4 D'AVIGNON: Uh, yes. So, as I've looked at this a little bit more, I think I
5 would, I would tend to say I agree with Mr. Lynn on the Hearing Examiner's
6 authority to, to modify, um, MDNS conditions. I, I think in looking at
7 Phillips 66, I, I think their reason, and which particular looked at the
8 County Code and what the County Code provides, and I think common sense
9 approach of why would there be an open record Hearing if you're not going to
10 actually consider and be able to do anything with that information? I do
11 think it's something that maybe would require more briefing. I also found it
12 interesting in going back and looking at the briefing in that case, that one
13 of the parties identified any limitation within SEPA itself, or its
14 regulations, limiting a Hearing Examiner's authority in the Administrative
15 Appeal process.

16 REEVES: Okay.

17 D'AVIGNON: Which I think suggests that we're, we're primarily guided by what
18 the County Code and the Hearing Examiner's rules provide. So, I think maybe
19 the cut off line on that would be if there's facts in the record that such a
20 decision could be made upon, the Hearing Examiner could. So, to take your
21 terrible example, if it was determined that, you know, the evidence is that a
22 300 foot buffer is necessary to mitigate against, um, significant likely
23 impacts, I think you could do so. If the determination is, I don't know,
24 there, there needs to be further study to know, then I think it would be
25 improper to, to make a decision not based on the facts and the, the record, I

1 guess. And that would require the remand back to the administrative official
2 to, to obtain that information and ma-, reissue a MDNS. I think as to the
3 Special Use Permit, I, I cannot see any reason why we couldn't continue that
4 portion, um, in the event that the Appeal was granted. Um, particularly since
5 I, I, I really take Bill's point to that would be a, it would be a waste of
6 public resources to, um, and everyone's resources, to have another day of
7 we're going to listen to the traffic experts say the same thing they said
8 before or maybe something slightly different, but substantially the same.

9 REEVES: I appreciate the idea it would be one other day. But, uh, thank
10 you for your thoughts. Uh, I, I recognize, Mr. Ehrlichman, that in terms of
11 process, you know, you're, you're not specifically involved in the SEPA. With
12 no obj-, if there's no objection from the other Attorneys, uh, I think Mr.
13 Ehrlichman is a, has expertise on SEPA, uh, that I certainly acknowledge and
14 I would appreciate if he has any thoughts that he would like to share on, on,
15 on this topic?

16 EHRLICHMAN: Thank you, Mr. Examiner. Uh, I am going to stay far field from
17 the SEPA case. Uh, we, we can't be put in that position of, of now being
18 asked or invited to participate in some aspect of it when we were denied
19 intervention. Having said that, I, I very much do want to comment on the
20 questions you've raised because they effect the Special Use Permit
21 proceeding. Um, and I would encourage you and each of the Attorneys to make a
22 very clear distinct between your pain and suffering from my interview style
23 of witnesses and the, uh, the heartache of the objections and all of that so
24 forth, from the, the procedural questions that, in my mind, are very clear-,
25 easy to answer. Uh, as much as none of us would like to go through again, I

1 don't see how you avoid the problem of the Single Open Record Hearing Command
2 under 3670B. And, you know, this has been the, the, the much debated, if not
3 subliminal debated issue throughout this case. And I, you know, digress to
4 applaud you for, um, how you have, you know, struggled through that. But, I
5 think what became clear very early in our discussions, all of us, was that
6 there was no practical way to bifurcate the evidentiary proceeding into two
7 parts. And so, we, we all masterfully came up with a solution that the SEPA,
8 um, testimony and SEPA Exhibits would all be part of the SUP, um, record and
9 proceeding. And then legal argument on the SEPA would be separate. That was
10 the right answer, the way I read the statute. There's no, I don't see any
11 other way. So that goes to your question of if you were to remand the SEPA,
12 could you put the SUP aside, you know, hold it on ice, and then bring it back
13 alive again when the SEPA Appeal or the, there's no Appeal, um, and, and
14 proceed ahead. It, it wouldn't work because during that remand, there's going
15 to be new evidence generated and you would then be put in the position of
16 having to bifurcate that part of the record from the frozen SUP record. So, I
17 hate to be the, once again the spoiler..

18 REEVES: Well...

19 EHRLICHMAN: But that's how I see it.

20 REEVES: Well, I'm trying to understand that. So, Mr. Ehrlichman, any, any
21 new SEPA determination that would occur, would then become part of the SUP
22 record that had been on hold, uh, you know, well, I guess, let me ask it a
23 different way, in your mind, if I grant Mr. Loring's Appeal, does that then
24 mean whatever happens, there's going to be, have to be a whole new SUP?

25

1 EHRlichman: Well, I mean, my reading of the case law is that if you find that
2 the MDNS is, um, deficient, it's void, there is no permit application. It
3 doesn't get processed to the Hearing Examiner without a SEPA determination.
4 What it, the other route you can go is as Mr. Lynn, Mr. D'Avignon advocate,
5 you know, uh, cure the flaw in the MDNS and Mr. Loring is making, um, good
6 argument against that as a, as a lawful remedy. But those seem to me to be
7 the paths available to you. Uh, and if you were to, to grant the Appeal, as I
8 said, the MDNS is gone. And so I don't see how you somehow keep the, the
9 permit application alive at the Hearing Examiner level. Um, and so that's,
10 it's, it's a terrible outcome, but I don't, under the law, I just don't see
11 another way to go. And, again, I encourage Mr. Lynn and Mr. D'Avignon
12 particular to set aside whatever sting and pain you're still feeling from
13 today's, uh, cross-examination...

14 REEVES: No, it...

15 EHRlichman: And really look at that because it, you know, it doesn't do
16 anybody any service to...

17 REEVES: Well...

18 EHRlichman: To get it wrong, so...

19 REEVES: I, I agree. And I, I mean, I bring this up because, in fact, you
20 know, I, this was our sort of remedy that, uh, one of my, you know,
21 colleagues at Sound Law sort of said, what about this and I said, well, I've
22 never seen that happen, I've never done it. I mean, you know, so I just said,
23 I don't know. I don't know what the answer is. Let me, let me see what folks
24 think. And I have not had the time to look closely at, you know, new WACK,
25 newer WACKs and, and anything, you know, um, so, so I was just trying to walk

1 it through. And, again, I haven't made up my mind on anything. But, but I
2 appreciate your stance and if, you know, I, I certainly, uh, again, recognize
3 the, what the roles are. Uh, if you happen to know a provision of, uh, uh, or
4 a case that, that sort of backs up what you just said and want to share it,
5 that would be appreciated. So, um, okay. So, I think that was the first
6 question and I think I get a good sense of things. Uh, my next question,
7 well, Mr. Loring, you have a serious face, which is great, I don't mind that
8 at all. But did you have follow up you wanted to do on that? This effects the
9 Appellant, obviously, so I just wanted to...

10 LORING: I, uh, I guess it's my 3-, almost 3:30 serious face, yeah.

11 REEVES: Okay.

12 LORING: So, it was, I was not indicating anything in particular, but I
13 would like the opportunity to address the Hearing Examiner's authority if
14 were moving on from that. If I might just take...

15 REEVES: Yeah.

16 LORING: A, but...

17 REEVES: Go ahead...

18 LORING: Okay.

19 REEVES: And do that before then I ask my next...

20 LORING: Okay.

21 REEVES: Question.

22 LORING: And, and I will start by saying that I'd like to look into this a
23 little bit further. But I did review the Phillips 66 case. And, uh, and I'm
24 going to take the, uh, I guess unappealing position of saying, of suggesting
25 that your authority is more limited than two of the other lawyers wanted to

1 grant you there. And I say that in that there isn't language in SEPA that
2 does authorize a Hearing Examiner in the County or City systems to condition,
3 uh, a MDNS, to add conditions to a MDNS. And as my review of that Phillips 66
4 case, first is that the Court did not hold that a Hearing Examiner could
5 condition, uh, a MNDS. There was really strict holding of that Court. It was
6 a Court of Appeals case, uh, Appelwick, I believe was the judge on that. He,
7 he...

8 REEVES: Correct. Unpublished, but...

9 LORING: Yes. Unpublished, still Court of Appeals, you know, can be
10 granted for, yeah, cited for, yeah. Anyway, his, his holding was very narrow
11 and said, in this instance, the Hearing Examiner did not error in clarifying
12 a condition. And so you probably read that, too, and you noticed that as
13 well. There is language in that decision that suggests that adding or
14 deleting a condition would be appropriate or allowable. But that was not the
15 really strict holding there. Uh, the fact that it's an open record hearing,
16 to me is neither here nor there. There are a lot of open record hearings in
17 which a decision doesn't get to be conditioned or changed, or, or a local,
18 you know, permit decision. I'm thinking of everything in front of the Growth
19 Management Hearings Board, [inaudible] the Police Control Hearings Board, uh,
20 the Court system will sometimes have opened record trials on things, but not
21 be able to condition something. So, I, I don't think that that, I know that
22 the Court would have deferred to that, too. But, uh, that doesn't apply. And
23 also, even just the level of permit review, Whatcom County has, I believe, a
24 similar system to Skagit County. And they were discussing an instance where
25 the, uh, the permit, or the decision from the local, uh, decision maker was

1 being Appealed to the Hearing Examiner, in addition to the environmental
2 threshold determination. This is one where you, you have very different
3 authority under the Skagit County Code to condition however you want, this
4 SUP.

5 REEVES: Right.

6 LORING: Moving forward.

7 REEVES: So rather than an admin, an Appeal, an admin decision coupled
8 with SEPA, this is a Land Use, you know, primary decision wherein nobody is
9 made a decision on the SUP.

10 LORING: That's right.

11 REEVES: I mean, I, I have a recommendation, right? But the only...

12 LORING: Yeah.

13 REEVES: Decision so far made is the County's MDNS. I, I certainly grant,
14 grant and understand your point, Mr. Loring.

15 LORING: That's right. And so Appellant capacity differs from decision
16 making capacity and...

17 REEVES: Got...

18 LORING: I'll, I'll end there.

19 REEVES: Okay.

20 LORING: Thank you.

21 REEVES: Uh, again, more, a little more specific, this question, and
22 specific for you, Mr. Loring, and you may have an answer just ready in the,
23 in, in, you know, ready at your hip. Uh, for, for this one, which is the
24 question of climate change is, is a tricky one to the extent that unless it's
25 changed recently, and I'll be honestly, I haven't looked. But, last I

1 checked, the actual WACK that has the, uh, the preform, uh, SEPA checklist,
2 the DOE, DOE sort of prepared, which obviously jurisdictions can augment,
3 change, et cetera, uh, doesn't specifically, uh, you know, mention or
4 require, uh, climate change. I, I recognize air quality or air is one of the
5 categories that needs to be addressed. But, uh, A) is that your
6 understanding, too? And I apologize I don't know the WACK right off the top
7 of my head these days, but...

8 LORING: You're talking about, sorry, the WACK with the SEPA checklist?

9 REEVES: Yes.

10 LORING: I also...

11 REEVES: I, I don't...

12 LORING: The 960, is it 960? I, that may be wrong.

13 REEVES: I think it's, okay. Uh, so I guess my question is...

14 LORING: I know which one you mean, the one that sets forth the SEPA
15 checklist. It, it does speak to air pollution. And...

16 REEVES: Yes.

17 LORING: And our position is that carbon emissions are an air pollution
18 issue and that climate change is related to that air pollution issue. The
19 climate change is the result of that air pollution.

20 REEVES: Okay.

21 LORING: It would be, like, and so our position is that, you know,
22 something like asthma, for example, you know, is, you don't necessarily study
23 exactly, you know, what the effects of the asthma are, but you study the
24 inputs that would cause that sort of condition. Um, uh, and pollution inputs

25

1 that would cause that sort of condition. Yeah. If this were a traffic, uh,
2 transportation center, running on diesel gas, for example.

3 REEVES: Got it. I, I guess, my, just to clarify your position, it is not
4 the Appellant's position that the MDNS is flawed to the extent that it didn't
5 explicitly include an analysis on carbon emissions, it's more that as the
6 MDNS was looking at air quality, it, it didn't seem to even consider it?
7 Would that be an accurate assessment? I'm not trying to put words in your
8 mouth. I'm, I'm just hoping for some clarification.

9 LORING: I would say that has been our position, yes. But the MDNS didn't,
10 and, and the environmental review that the County conducted and based on the
11 documents in front of them, did not indicate that carbon emissions were
12 evaluated at all in this instance. And, uh...

13 REEVES: But...

14 LORING: And so to determine whether there would be a way to address those
15 through the process. And I do note there was a somewhat recent case of the
16 Washington Court of Appeals, where ecology had not considered climate change
17 when drafting waste water discharge permits. That was...

18 REEVES: [Inaudible.]

19 LORING: You may be familiar with that. Yeah. Yes, exactly. So...

20 REEVES: [Inaudible] for those following along, that's the Washington
21 State Dairy case versus ecology and, uh, sorry, I actually had it pulled up
22 at one point. I can give you the guys the site, I don't even think it has a
23 win app site, but 490 P3rd 290 is the case from 2021.

24 LORING: Okay.

25

1 REEVES: Uh, okay. Well, we don't need to dive too deep. I just was, I,
2 this is a very ob.-, very obviously an area of the law that is very quickly
3 changing. But, uh, Bill Lynn, any thoughts on that particular issue you
4 wanted to bring up or share?

5 LYNN: Yeah. I, I don't think it's required, I'd have to go back and
6 look at the WACK. I was fumbling around trying to find it, um, uh, and I
7 would also note that this would seem to fall into the category of impacts of
8 any mining project, I mean, trucks are trucks, trucks carry gravel, the
9 shorter they carry them, the gravel, the better. But I haven't, I haven't
10 looked at the issue. My recollection was that it's an optional element, it's
11 not required.

12 REEVES: Okay. Mr. D'Avignon, any thoughts on this particular issue?

13 D'AVIGNON: I don't think I have anything of import to note at this time.

14 REEVES: Okay. And, uh, Mr. Ehrlichman?

15 EHRLICHMAN: Pass.

16 REEVES: Pass. Exc-, okay. We had a pass there. Okay. Um, that said,
17 moving, moving on, um, Mr., again, I'll, well, I think it's easier to just do
18 the round robin this way. So, I'll, I'll go with Mr. Loring, again. Uh, were
19 I to deny your SEPA Appeal, um, you know, well, uh, that's not a, that's a
20 terrible way to phrase this, Mr. Reeves. Okay. Let me think that one through.
21 Strike my own question. Grant my striking. Okay. Um, well, I guess, more
22 generally speaking, if I deny your SEPA Appeal, I assume you would agree that
23 it would be appropriate then for me to add additional conditions through the
24 SUP that hopefully address the concerns that you've raised. Is that an
25 accurate assessment?

1 LORING: It is.

2 REEVES: Okay.

3 LORING: I, I will say, I'm not sure how you get to the point where you're
4 adding conditions that would address the environmental impacts. If, uh, if
5 somehow those environmental impacts were not significant in the first
6 instance.

7 REEVES: Well, to the extent that there's, uh, the County has a Critical
8 Areas Ordinance, does it not?

9 LORING: It does in the requirements of the CIA are incorporated into that
10 MDNS. Uh, if it, or through SE-...

11 REEVES: Uh...

12 LORING: Or I should say should SEPA are required to be addressed.

13 REEVES: Right. Okay.

14 LORING: But if they weren't already and they needed to be, they would had
15 to have been through the SEPA process.

16 REEVES: Well, I think that's a different argument than one might, some
17 other [inaudible] but I, I grant, I understand.

18 LORING: I believe it.

19 REEVES: Okay. Um, I think, um, specifically, uh, on the legal issue of,
20 of sort of remedy, unless you have any additional thoughts you wanted to
21 share on remedy that, before we move on, Mr. Loring?

22 LORING: Uh, I don't on that specific point. I just want to add the briefs
23 that we submitted in advance, I, I think, actually, we did identify things in
24 that Special Use Permit on that letter that we submitted. So, again, the
25 [inaudible] in terms of our [inaudible] seven days of hearing. Um, I

1 [inaudible] place where we tried to identify conditions that we thought would
2 bring this project into, uh, compliance with the local rules there.

3 REEVES: Okay. Okay. Um, and then, uh, I, I guess moving, uh, to Mr. Lynn,
4 uh, and just in terms of, uh, well, I guess more generally speaking, you've
5 already sort of touched on answering my questions for Mr. Loring about
6 remedy, but, you know, do you have any, any additional thoughts related to
7 process or remedy from a legal standpoint you wanted to share?

8 LYNN: Well, just to follow up on what Mr. Loring said, I guess I could,
9 I could envision conditions that you found necessary in order to meet the SUP
10 Standards that did not arise to the level of significance under SEPA.

11 REEVES: Sure. Yeah. I think I was pre-, sort of thinking that an Attorney
12 could make that argument when I said that to Mr. Loring and now you are the
13 Attorney that has made the argument. I, so I think I understand it. Um, was,
14 was that the only thought there, uh, Mr. Lynn?

15 LYNN: Yes.

16 REEVES: Okay. Uh, same question, Mr. D'Avignon?

17 D'AVIGNON: I have, uh, nothing additional to add.

18 REEVES: Okay. And is this a pass again, Mr. Ehrlichman? It doesn't have
19 to be.

20 EHRLICHMAN: No, I, I don't think it is a pass. Um, I'm trying to
21 conceptualize a scenario that Bill just described in sort of general, where,
22 uh, you add conditions to meet the SUP criteria, uh, that don't rise to the
23 level of overturning the SEPA MDNS or, or, uh, rise to the level of changes
24 to the SEPA conditions. I guess, what I could conceive of would be a SUP
25 condition that is harmonious with a SPEA condition, even if it goes further

1 in clarifying, uh, the subject matter of a SEPA condition. And my favorite,
2 uh, topic comes to mind of the 11,760 trips or whatever it is, you know, the
3 ceiling, in other words. I can conceive of how you impose a SUP condition
4 that says, okay, there's a ceiling on a number of trips per year and you deny
5 the SEPA Appeal. Well, that wouldn't necessarily conflict with anything in
6 the SEPA conditions because they talk about an average and we've all talked
7 about how that's based on the year and so forth. I get that would maybe, uh,
8 meet that, that, um, formula that Bill just described, even if it's not
9 substantively what he would agree with. And so, I guess I would, I would
10 agree with Bill.

11 REEVES: All right. Let the record note Mr. Ehrlichman agreed with Mr.
12 Lynn. Uh, we are now in the last hour of our seven-day Hearing, but I'm glad
13 we got there. And I do note the term significant is clearly defined in the
14 WACK and WACK, uh, 197, 117.94. And, and so it is a term of art and the
15 Hearing Examiner is well aware of that. Uh, okay. So, moving on. Uh, in fact,
16 I, the remedy thing threw me off, I guess, in my analysis as I was thinking
17 things through and I'll, I'll certainly want to think more on it. I guess
18 what I'm going to suggest, at this point, would be, uh, starting with Mr.
19 Loring and, again, I don't need a full closing here. But are, is there any
20 sort of legal point you would like to stress or make to me, uh, you know,
21 while we have an opportunity to hear from your colleagues? Uh, and this is
22 sort of, you know, something separate from the briefing, closing brief.
23 Because, to be clear, I don't intend on having multiple levels of briefing.
24 The plan, in however briefing occurs, which we'll talk about here
25 momentarily. But the plan is, is sort of simultaneous submission of briefs.

1 Mr. Loring, if you have an objection, I recognize you might, but, but go
2 ahead.

3 LORING: Uh, yeah, I don't have an objection.

4 REEVES: Okay.

5 LORING: We submitted Pre-Hearing briefs, we'll submit Post-Hearing
6 briefs. I, I am confident that the Hearing Examiner can review all of the
7 material we put in front of him at the same time. I am, I'm sure you can
8 handle that. We don't need the back and forth. I, I will say my answer to
9 your invitation just now depends somewhat on that briefing. Because I, I am
10 comfortable submitting written briefing and having it address essentially
11 your closing because I, it would be a challenge, I think, to address bite-
12 size pieces now without...

13 REEVES: Okay.

14 LORING: Taking on the whole issue. SEPA is large, it's broad, it, the
15 issue of significance was one I would touch on, right? Intensity in contact,
16 clearly applicable here. Um, so, so, I, I've got a lot that I would say about
17 it. I'd like to hear a little bit more about the next steps, I think, before
18 I answer...

19 REEVES: Okay.

20 LORING: The invitation.

21 REEVES: Okay. Mr. Lynn, any...

22 EHRLICHMAN: Que-...

23 REEVES: Oh, go ahead, Mr...

24 EHRLICHMAN: No, no, go ahead. I'll, I'll get my round here, thank you.

25

1 REEVES: All right. Mr. Lynn, same, same question and if, you know, I,
2 it's the end of the day, it's a Friday, perhaps nobody really wants to sua
3 sponte bring up their own legal thoughts independent of a closing, but...

4 LYNN: No, I think I would, I, anything I would say would probably
5 result in everybody wanting to respond. So, I think I'll, I'd be better
6 saying nothing than something else.

7 REEVES: Often, often a wise position for all of us, uh, as humans. Uh,
8 uh, Mr. D'Avignon?

9 D'AVIGNON: I, too, am going to follow the wise example of Mr. Loring and Mr.
10 Lynn.

11 REEVES: And Mr. Ehrlichman?

12 EHRLICHMAN: And I have never learned that lesson, as you all can tell. Um, I,
13 I guess I have two questions, uh, one, would it make sense, Mr. Examiner, to
14 set a deadline for the submittal of, uh, any evidence, uh, or sort of new
15 substantive submittals? I think Mr. Lynn suggested he submit his proposed
16 conditions by the 30th. My...

17 REEVES: Sorry, one sec. Bill Lynn, we're getting some noise.

18 LYNN: Uh, yeah, I'm having a computer issue. My, I'm working off of a
19 laptop, uh, and let me, let me see if I can at least...

20 REEVES: Okay.

21 LYNN: Shut off my microphone.

22 REEVES: Actually, just, I need..

23 EHRLICHMAN: There we go.
24
25

1 REEVES: I need to blow my nose, just take a minute to sign off, I, and
2 sign back on. I'm going to go off camera, deal with that, uh, and, and, but
3 let's make sure everyone's audio works here at the end.

4 EHRLICHMAN: Okay.

5 KELLOGG: Probably should mute you.

6 EHRLICHMAN: Okay.

7 REEVES: [Pause] I will make sure that we get Bill back. All right.
8 Hold on. I'll be right back, one sec. We're going to make sure Bill Lynn
9 comes back. [Pause] Bill Lynn, you there? [Pause] am I correct, Mr.
10 Ehrlichman, in assuming you would have no objection to continuing regardless?

11 EHRLICHMAN: Um, without Bill, you mean? I...

12 LYNN: Uh...

13 EHRLICHMAN: I hesitate to do anything these days in this case without Bill
14 present.

15 LYNN: Uh, yeah, I'm here.

16 REEVES: Excellent.

17 LYNN: And, Tom, I'm glad to know you missed me.

18 REEVES: Okay. So, Mr. Ehrlichman...

19 EHRLICHMAN: Yep.

20 REEVES: Was mid-, mid-conversation...

21 EHRLICHMAN: Oh, nice shirt, sorry. You guys are amazing.

22 REEVES: Following Mr. Loring's lead. But, go ahead, Mr. Ehrlichman?

23 EHRLICHMAN: Uh, it's funny. Well, I just thought if, if we're going to set up
24 a briefing schedule, should we precede that with a deadline, uh, after which
25 parties can't be submitting new substantive...

1 REEVES: Well...

2 EHRLICHMAN: Information?

3 REEVES: Now, to be clear, when you use the substantive, my understanding
4 is there's only two additional substantive information documents. This would
5 be S-, uh, C49 S16, the...

6 EHRLICHMAN: Uh-huh.

7 REEVES: Declaration of your witness, uh, uh, Wallace Grato. Uh, S17 would
8 the parcel data.

9 EHRLICHMAN: Uh-huh.

10 REEVES: Now, that is going to come in by next Friday, the 30th. We'll...

11 EHRLICHMAN: Uh-huh.

12 REEVES: Just to make life easier for everyone. Uh, and then if there are
13 any, uh, sort of responses folks would like to make, uh, I would suggest they
14 do so, uh, by October 7th. And, again, those are limited in responding to just
15 those two. Uh, I was going to suggest, uh, that, uh, you know, Mr. Lynn has
16 stated there's, you know, the, the, uh, Applicant intends on submitting, you
17 know, sort of proposed, revised conditions, uh, either to clarify or based on
18 what we've heard. Um, and so, let me get a timing though on that. And I don't
19 consider that substantive, on some level. I mean, it's not new evidence,
20 it's...

21 EHRLICHMAN: Well...

22 REEVES: Hold on, let me just...

23 LYNN: Sure.

24 REEVES: One sec, let me get Bill Lynn's thoughts on timing on, on that
25 particular...

1 LYNN: I can easily do that.

2 REEVES: Bill pulled a Bill Lynn right at the very end.

3 LYNN: I, I know.

4 REEVES: Bill Lynn, go ahead.

5 LYNN: Uh, I'll, I'll tell you my excuse later. Uh, yeah. I can do that

6 certainly by next Friday. And I can probably do it earlier, I'm just trying

7 to keep the schedule simpler.

8 REEVES: Sure.

9 LYNN: So there aren't too many different deadlines.

10 REEVES: Okay. So, Mr. Ehrlichman, if, so, my suggestion would be anyone

11 that wants to submit proposed conditions, uh, whether that's a revised set or

12 redlining those have been suggested, either on the MDNS itself or, or the

13 SUP, anyone do that by next Friday. But your thoughts...

14 EHRLICHMAN: Okay.

15 REEVES: Mr. Ehrlichman?

16 EHRLICHMAN: I, I think, let me put it this way, if, if a party proposes

17 conditions for your consideration as part of their legal argument based on

18 the record that is there today, I have no problem with that. My concern is if

19 the Applicant is changing their Proposal, uh, as, as part of briefing, where

20 we don't have a chance to review that new, uh, offer by the Applicant, or

21 respond to it, it, it could change the legal analysis. So, I think Mr. Lynn

22 has handled the problem for us and once again he and I are in harmony. Uh,

23 if, if his, if the Applicant is given until September 30th to, you know,

24 modify anything on the record that relates to their Proposal then we have a

25 set record. And I'm borrowed after that date also on my two exhibits.

1 REEVES: Sorry.

2 EHRLICHMAN: Do you see what I'm saying, it, we can't be...

3 REEVES: Just...

4 EHRLICHMAN: We've got to have a fixed record by a date certain in order to
5 brief the case.

6 REEVES: That I agree with. And when you say modify the record. In my
7 mind, modifying or proposing revisions to the conditions, you know, doesn't
8 magically change the record or the facts, it's, uh, you know, uh, I think
9 that's clear. I just, you know, the way we're describing it, um, I would...

10 EHRLICHMAN: Well...

11 REEVES: Well, hold on.

12 EHRLICHMAN: Sorry. Yeah.

13 REEVES: Let me think it through, just give me a sec. One thought I have
14 would be the Applicant has already identified, it has given though to or
15 would like to submit any new conditions, uh, by, we can by September 30th. I
16 would be willing to make that a proposed exhibit and then give the other
17 parties an opportunity, you know, a week to submit their own, uh, you know,
18 proposed revisions. You know, I don't want to have multiple layers of this.
19 It, it would be done by the 7th, which is...

20 EHRLICHMAN: Uh-huh.

21 REEVES: The sort of date certain on any objection to yours, so that there
22 would be all of the stuff would come in by the 7th.

23 EHRLICHMAN: Uh-huh.

24 REEVES: And, and then briefing would happen after that. Does, does that
25 makes sense, in your mind? And I'll ask the others as well.

1 EHRlichman: That does. Thank you.

2 REEVES: Okay. So, just to be clear on a, and, and if there's an
3 objection, uh, Mr. Lynn, let me know, but what I would suggest, oh, what a
4 good number would be, B100, lucky B100 would be, uh, the Applicant's, uh,
5 proposed, uh, revised and I assume SUP conditions, still?

6 LYNN: Yes.

7 REEVES: Okay.

8 LYNN: Well, I mean, I guess that kind of gets back to the issue of the
9 can you, can we amend the SEPA conditions, so...

10 REEVES: Well...

11 LYNN: Um, I, I think I am just going to propose them as a...

12 REEVES: Propose, sorry, I'll finish. Sorry. You, I'm saying if you'd
13 like, you can propose a set of alterations to the, the MDNS conditions, I,
14 you know, if, if you think that's appropriate, I'll leave it up to you. It
15 doesn't mean I've made my legal determination on whether that's appropriate.
16 I, I may end up ignoring it. But, but I...

17 LYNN: And that's fine.

18 REEVES: Okay. So, that would be B100. And then the other parties, any
19 other party, in my mind, would, would be able to submit their own sort of set
20 of revised, what they think would be appropriate conditions, um, by the week
21 after. And I would add, if so, let's say it's Mr. Loring that does it, which
22 I'll get with him next, that would end up being A63, I think.

23 LORING: That sounds right to me. Yeah. Thanks.

24
25

1 REEVES: Okay. So that would then, the substantive portion of the record
2 is closed, uh, on October 7th. And then we, we go into briefing after that.
3 Does that track?
4 EHRLICHMAN: Uh-huh.
5 REEVES: Okay. But you had, you said two questions or have they now both
6 been answered, uh, Mr. Ehrlichman?
7 EHRLICHMAN: Yeah. I think they have. Would you like our proposed conditions
8 to be Exhibit 49 S18?
9 REEVES: If you're doing them, yes. Uh, it would be the last...
10 EHRLICHMAN: Yeah.
11 REEVES: I'm not, I'm not going to assume you're doing them, but, but...
12 EHRLICHMAN: Right.
13 REEVES: If you...
14 EHRLICHMAN: If we do.
15 REEVES: So, go sequential.
16 EHRLICHMAN: Okay. Thank you.
17 REEVES: Okay.
18 EHRLICHMAN: That's it. Yeah.
19 REEVES: Okay. So, in terms of briefing, uh, my thought would be, so we
20 have ultimately, then, mentally, we're saying the record for very, very
21 specific, limited reasons, uh, you know, is closing technically on the 7th.
22 Um, and then the parties, obviously, will need to sort of think through what
23 has been proposed as conditions from the other parties, et cetera. Um, and,
24 and anything that comes up with the other two, uh, exhibits, uh, from, from
25 Mr. Ehrlichman. But, we have sort of a couple of things happening. And I'll

1 start with you, Mr. Ehrlichman, uh, you know, I, I'm perfectly happy to allow
2 for you to submit a closing brief, uh, related to the SUP. Uh, if the other
3 parties object, now would be the time, but, but I really would have no issue
4 with it. Uh, any objection from Mr. Lynn or...

5 LYNN: No.

6 REEVES: [Inaudible] no, okay. So, with that, Mr. Ehrlichman, can you
7 propose to me, a sort of when you think, you know, closing brief, uh, related
8 to SUP?

9 EHRLICHMAN: Let me pull up my calendar here.

10 REEVES: Uh-huh.

11 EHRLICHMAN: I've got a commitment the fifth, sixth and seventh. And, uh, I'm
12 moving on the 11th and the 12th. So, I would love to have, you know, at least
13 three weeks, if I could get more, I would take it, but I don't know that
14 you're willing to go that long.

15 REEVES: Well, really, it would be more if Mr. Lynn, the Applicant or the
16 County had any specific thoughts, but are you essentially suggesting October
17 28th? Did I understand that right?

18 EHRLICHMAN: That would be ideal.

19 REEVES: No problem on my end. But, Mr. Lynn, on October 28th, in terms of
20 the SUP brief?

21 LYNN: Uh, that, that's fine.

22 REEVES: Okay. And, and also, just to be clear, I, my thought would be
23 there's the potential for, I would prefer not to have or force Mr. D'Avignon
24 and Mr. Lynn to produce multiple briefs. But if they find it easier to have,
25 you know, a County brief responding to the SUP and a County brief responding

1 to the SEPA, that's fine. Or they can do it altogether. But let me start with
2 Jason, uh, Jason D'Avignon, your thoughts one or two, you know?

3 D'AVIGNON: Um, I would just appreciate the opportunity to possibly be two.
4 I, without having starting to write it, I can see how maybe it would be more
5 efficient to do one. I can also see how it can maybe become confusing and
6 harder to follow trying to put them together. Um, so, I would, I would want
7 to wait until I'm a little bit farther in the writing process to, to submit
8 or have a, a, a strong preference.

9 REEVES: All right. Heck of a lawyer answer. What I would say was you're
10 essentially say, you know, two, allow two, but one if I end up deciding one,
11 would that be a, a fair characterization?

12 D'AVIGNON: Yes.

13 REEVES: Okay. Your thoughts, Mr. Lynn?

14 LYNN: Uh, I'm going to follow the lawyerly answer from my colleague
15 from the County. And I, I think that's probably true, likewise, I mean, I
16 just don't really, until you start...

17 REEVES: Yeah.

18 LYNN: Writing it, you don't really know.

19 REEVES: Well, and, uh, clarification from Mr. Loring would be helpful.
20 Mr. Loring, uh, do you intend on diving into the SUP aspects as part of this,
21 versus, uh, you know, focusing more specifically on SEPA?

22 LORING: I, I was wondering if it would come back around to that. Uh,
23 yeah, SEPA has been our focus as part of this Appeal, but there is a SUP on
24 the table. Um, you know, my thought is that it might make sense to the extent
25 there is any information to have some sort of addendum to this comment letter

1 that we submitted that just addressed very specifically some of the
2 testimony, uh, that we've heard now.

3 REEVES: Sorry. You lost me there. Addendum...

4 LORING: Well, to the SEPA or the, sorry, the SUP comments that, uh, that
5 we submitted, Central Samish Valley Neighbors did submit that..

6 REEVES: Oh.

7 LORING: Comment letter. It's already in the record. I, I don't, we don't
8 need to recite the Critical Areas Ordinance sections again. But it, it might
9 make sense to do a little bit of follow up, just in terms of the testimony
10 we've heard.

11 REEVES: What I would suggest is, this is my, here, here's what I'm
12 thinking and then I'll ask everybody. My thought would be, uh, you know, in
13 terms of page limits, we haven't even talked about that, you know, I'd say
14 maybe 15, unless someone wants to argue for more. But Mr. Ehrlichman would be
15 allowed 15 pages for his, uh, brief specific to the SUP. I would, uh, you
16 know, have Mr. Loring, uh, get 15 pages for his SEPA, but if he wants to use
17 a few of those pages to touch on the SUP, I'd allow it. And then I think it
18 actually technically would be appropriate to let both the County and the
19 Applicant sort of respond separately to those. Meaning however they want to
20 do that. And I would, that does mean they get more pages, but I, I don't want
21 everyone to be upset that I'm being unfair. But I, I think we do really have
22 separate issues in terms of SEPA versus the SUP. But, let me get your
23 thoughts to start, Mr. Loring?

24 LORING: I, I, to be honest, I'm not seeing the distinction, there is not
25 typically a lot of Post-Hearing SUP briefing. But to the extent there is,

1 everybody who has participated to date, including the public, typically would
2 have some sort of opportunity to submit some documentation. So, I, I'm not
3 seeing a distinction that would cut Central Samish Valley Neighbors, uh,
4 opportunity to brief whatever has occurred, including their own Appeal, in
5 half, uh, in terms of what the County and the Applicant would do. I know
6 you're creating this, you know, this is your world and, and you get to design
7 what comes out. No, but to some extent, right, it's a Post-Hearing system and
8 you get to design that. Um, but, but, uh, on behalf of my client, I'd have to
9 request the same amount of briefing as the other parties who are briefing the
10 exact same thing.

11 REEVES: Okay. Uh...

12 LORING: I don't want to brief a lot, by the way. I, I do want to put that
13 out there. I, there is a lot of paperwork that has been submitted Pre-
14 Hearing.

15 REEVES: Sure. Yeah. We're, we're in the several thousand pages, uh, of,
16 of materials and now seven days of testimony and argument. But, uh, so, there
17 is significant information. I, you know, fine, I'll, I'll say, you know, I'll
18 do it this way, just to be fair, I'll put a 30, 30-page page limit for Mr.
19 Ehrlichman and Mr. Loring on their two different, you know, their one brief
20 that they're producing and then Mr. D'Avignon and Mr. Loring, or, sorry, Mr.
21 Lynn, you have 30 pages to produce your briefs. And if you decide it's easier
22 to have, devote X-amount of pages specifically to the SUP, X amount to SEPA
23 and break it into two briefs, fine with me. But these are, my intent is these
24 are all being done simultaneously. So, it's not that we're having multiple
25

1 rounds in multiple stages. But that's my initial though. You, your thoughts
2 on that, MR. Loring, and then I'll round robin?

3 LORING: That, that's fine, that's ample. I'm assuming double spaced,
4 still ample. Um...

5 REEVES: Yes.

6 LORING: Thank you for that.

7 REEVES: Double spaced, normal margins. No adding at-, attachments,
8 exhibits, et cetera. I didn't think I would need to tell this crowd all of
9 this, but okay.

10 LORING: You shouldn't. I just wanted to make sure we're clear, things,
11 you never know what comes across the desk, sometimes.

12 REEVES: I feel like I'm leading a college graduate seminar right now, you
13 know, but, uh, anyway, so, uh, Mr...

14 D'AVIGNON: I appreciate the question because I was going to ask it next.

15 REEVES: Okay. Mr., uh, fine, Mr. D'Avignon, your thoughts?

16 D'AVIGNON: Uh, that, that works for me.

17 REEVES: Uh, Mr. Ehrlichman?

18 EHRLICHMAN: That works for me. And after we hear from Bill, I'd like to ask
19 you a question about what you find helpful in briefing Post-Hearing.

20 REEVES: Absolutely. Thank you. That's great. I would love that question.
21 Bill Lynn?

22 LYNN: Yeah. That's fine, 30 pages is fine.

23 REEVES: Okay. And so, just to be clear on what I just ruled on, in the
24 universe I've created as Mr., uh, Loring has, has pointed out, uh, it's so,
25 so interesting to me sometimes because at various points, I have the

1 authority to do everything and, and then most of the time, I, I am very
2 limited in my authority. So, it's a, it's a challenge ego-wise, uh, whether I
3 have, you know, fluttery power or little to none. But, uh, what, what I
4 ultimately just decided was, uh, by, by the 28th, uh, so first off, the, the
5 substantive record, as it were, would close the 7th, and then by October 28th,
6 uh, uh, each of the various, uh, Attorneys here, uh, would have 30 pages, uh,
7 to produce their closing briefs. Um, and caveat, or, or, uh, further
8 clarification, in terms of the County and the Applicant, if they feel like,
9 you know, breaking their pages into two, you know, separate ones, that's
10 fine. You know, so that's, that ruling. Um, and then, uh, Mr. Ehrlichman
11 wanted to ask, uh, a question of me, I'm going to allow it.

12 EHRLICHMAN: Um, this is the first time I've been in front of you, if nobody
13 can tell that. But, um, I would like to, uh, get some insight to, you know,
14 what you find helpful, Post-Hearing, there are different, different styles
15 and different focus by different Hearing Examiners, so...

16 REEVES: Sure. Uh, yeah. I mean, I, you know, my background is, is the
17 Appellant world, if that wasn't clear yet. Which is obviously very different
18 than the trial world. So, I'm used to, you know, you've got 30 minutes
19 period, for the entire case that you're making, uh, but, uh, so, in my mind,
20 I, I can't stress enough, I really, you know, have reviewed, maybe not stuff
21 that was submitted today or yesterday, uh, but I have reviewed the whole
22 record, uh, you know, at least, you know, in a cursory fashion. I will
23 further review it, uh, you know, in my mind, uh, what has occurred a little
24 in seven days of Hearing is, I think, helped, hopefully, kind of focus my
25 attention to put the various parties, uh, you know, feel is important in the

1 record. Um, in terms of, you know, rehashing all the testimony, I don't find
2 particularly helpful. Uh, you know, uh, I will say if any one of the parties
3 intends on having a transcript made sooner rather than later, as a curtesy, I
4 would ask that that be sent around. You know, all of these, uh, recordings,
5 you know, are, have been provided, you know, pretty quickly after each
6 Hearing by Mona, uh, Kellogg. Uh, but personally, I do read much, much more
7 quickly than I'm able to listen to testimony. But, uh, you know, so, in terms
8 of what to focus on, I guess, uh, you know, uh, the more you focus on the
9 legal, you know, why you think you should win from a legal standpoint, versus
10 rehashing what's in the record, to me, that is the most helpful.

11 EHRlichMAN: Uh-huh.

12 REEVES: If that, does that clarify or help make sense of anything, Mr.
13 Ehrlichman?

14 EHRlichMAN: Uh-huh. Yeah. Uh, some, some Examiners, you know, like you to
15 point to what you think is important in the record and attach the exhibit and
16 all that, and it sounds like that is absolutely not what, what you're looking
17 for.

18 REEVES: Definitely not. Again, I'm, I'm not trying to fully, you know,
19 I'm not trying to preclude you from doing things how you'd like to do them.
20 But in terms of what I find most useful, I feel like I can confidently say
21 that I, I will have known the, know the record pretty well and will have
22 thoroughly reviewed it such that if the concern is, you know, you need to
23 direct my attention so I don't miss something, uh, hopefully that is, you
24 know, not going to be a problem. And so, I find the sort of focusing on why
25 the criteria has not been met or the, you know, legal sort of justification

1 or reasons for why an error occurred, depending on who's brief it is, et
2 cetera, I, I would find most helpful.

3 EHRLICHMAN: Thank you.

4 REEVES: And definitely no attachments, no additional information, et
5 cetera, et cetera.

6 EHRLICHMAN: Uh-huh.

7 REEVES: Uh, that, that I'm, I would like to be abundantly clear about.

8 EHRLICHMAN: Excellent.

9 REEVES: And I'll allow any other, any questions of me while we're doing
10 this. I did allow Mr. Ehrlichman a question. This is abnormal, but why not?
11 We're, we're right at the end here.

12 LYNN: This is, this is one witness I certainly want to badger so I'm
13 going to with [inaudible].

14 LORING: I've got no questions, Mr. Examiner, at this point. Thank you.

15 REEVES: Mr. D'Avignon, you got anything?

16 D'AVIGNON: Uh, no, Mr. Examiner. Thank you.

17 REEVES: Okay. Then, round robin back, staying with you, Mr. D'Avignon,
18 before we conclude the matter, did you have anything you wanted to make sure,
19 you know, we touch on or that I missed or that you feel like we need to
20 address before concluding today?

21 D'AVIGNON: I don't believe so. Thank you.

22 REEVES: Okay. Mr. Ehrlichman? Oh, no, you, you're muted.

23 EHRLICHMAN: Nothing procedural. I, I do want to thank the parties for the,
24 the special consideration, this was an unique, uh, situation.

25

1 REEVES: I, it truly was. And, and, you know, I'll, I'll get to that in
2 just a sec. So, I acknowledge, uh, you thanking the parties, Mr. Ehrlichman.
3 Uh, Mr., uh, Mr. Loring, anything? Just want to make sure...

4 LORING: Nothing further. Thank you.

5 REEVES: And, Bill Lynn, anything?

6 LYNN: No. Thank you.

7 REEVES: Okay. So, I get to make a, just a couple of final remarks. Just
8 to start, I really can't stress enough how unique this is to the extent that,
9 you know, in say a Superior Court, you might have two sides and you've got
10 Attorney, Attorney 1 and Attorney 2, through this Hearing, we've had four
11 Attorneys, plus myself. And that does create, you know, uh, some challenges
12 and, but I, I recognize at various points, uh, there, you know, frustrations
13 have occurred, uh, between myself, uh, the Attorneys, others, who knows, uh,
14 but I think, uh, all-in-all, we managed to get through it. Uh, I, I, I
15 recognize I'm now wearing a Hawaiian shirt, which is abnormal, I, but Day 7,
16 uh, you know, a little levity. I, I want to stress, it does not in any way
17 shape or form mean I don't recognize the importance of, of what we've heard
18 and what's going on. Uh, but for these very, uh, intense, long, uh, matters,
19 I, I do think it's good to, to have a laugh here or there, uh, so, just
20 wanted to point out, though, that that does not in any way, shape or form
21 mean that I don't take the process seriously. I, I very much do. Uh, and I, I
22 think, based on the passion that we've seen from the Attorneys involved, they
23 certainly take the process seriously. And I heard a lot of passion from
24 members of the public in the first few days. So, I, I acknowledge all of
25 that. Uh, I want to certainly thank Mona Kellogg, uh, and other members of

1 staff, uh, for on the procedural side. Uh, Mona is the third Clerk, I think,
2 since we started this process and that's just since I was involved. Uh, you
3 know, who knows over however, six years, how many folks have been involved.
4 So, a, a big thank you, uh, to, to staff in terms of the procedural, uh, end
5 of things. Uh, thank you, as well, again to the public, uh, those that, that
6 took the time to testify or provide written, written, uh, testimo-, written
7 comments, uh, testimony, uh, and watched through this whole process. Uh, you
8 know, regardless of the outcome, uh, you know, it is, it is wonderful to, to
9 work in communities like this, uh, where there's so much, you know, passion,
10 uh, for, uh, what happens, uh, in, in the community. Uh, and finally, just a,
11 a thank you to all of these Attorneys. Uh, Mr. Ehrlichman has sort of been
12 involved in, I think, one other matter with me, but has not appeared,
13 technically, before me before, uh, but I, I appreciate it. Uh, Mr. Lynn,
14 based on his job, does appear before me a lot. Uh, win or lose, I, you know,
15 uh, I appreciate his professionalism. Mr. Loring, I think has only appeared
16 once, uh, before and did lose, I note for the record, but I don't think has
17 held that against me. And I also appreciate, uh, his approach and
18 professionalism. And Mr. D'Avignon sometimes appears as, as the County's
19 Attorney. Uh, it is, again, a long, challenging process, uh, and, and, but I
20 do appreciate, uh, how well-prepared and articulate everybody is. So, I,
21 think, I need to give out awards, this will only take a second and then we'll
22 conclude. Uh, uh, Jason D'Avignon, has the most gold starts, uh, when it
23 comes to helping others, uh, with putting up their exhibits. So, he has the
24 gold star award. I think Mr. Lynn won on the tie award for the monkey tie,
25 although I was proud of my tie today. Uh, Mr. Loring gets bonus, uh, points

1 for putting on a Hawaiian shirt, uh, here at the end. I note, uh, my Hawaiian
2 shirt does have the, uh, skulls on it, so I did have a theme today. Uh, so
3 hopefully, Brandon Black gives me a little credit on that. And Tom Ehrlichman
4 had the best joke, uh, which was last week, when he was, uh, told us all he'd
5 be happy to move on, uh, without Bill Lynn, uh, that was great. Uh, and, and
6 also wanted to acknowledge, uh, that, uh, uh, we had other members of Staff,
7 uh, that, that helped with tech issues, that are not, uh, the tech issues
8 and, and they should be acknowledged as well. So, I think, with that, we can
9 conclude everything. We have the timeline, uh, moving forward. So, uh, once
10 again, thank you, everybody. And, uh, we will end the matter. Enjoy the fall
11 and, uh, safety and good health to everybody. Thanks.

12 EHRLICHMAN: Thank you.

13 D'AVIGNON: Thank you.

14 LORING: Thank you all.

15 [The tape ends.]

16 **The undersigned being first duly sworn on oath, deposes and says:**

17 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
18 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party
19 to this action. That on May 12th, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves, that
20 took place on 9/23/22 at 3:00 p.m., regarding the above-captioned matter.

21 I certify and declare under penalty of perjury under the laws of the State of Washington that the
22 aforementioned transcript is true and correct to the best of my abilities.

23 Signed at Mount Vernon, Washington, this 12th, May of 2024.

24 Janet Williamson

25 Janet Williamson

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**IN SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT**

State of Washington,)
Cause No.: PL16-0097, PL16-0098,
Plaintiff,) PL22-0142
vs.)
Name,) PERMIT HEARING 9-23-22 9:00 AM
Defendant)

Transcription Date: May 10th, 2024

Present: Andrew Reeves, Mona Kellogg, Kyle Loring, Jason D'Avignon, Tom Ehrlichman, Bill Lynn, Jessica Hoyer, Jennifer Aven, Ross Tilghman

REEVES: Was that done, did I hear that...

KELLOGG: Yes.

REEVES: We're recording?

KELLOGG: Yes.

REEVES: Okay. Uh, yep. There it says we're going. Okay. Get my gavel out, make it official. And, good morning. I'm going to call this session of the Skagit County Hearing Examiner back to order. For the record, today is Friday, September 23rd, 2022, at 9:00 a.m. We are on, I believe, Day 7 now of,

1 uh, this matter, which is involving a request by Miles Sand and Gravel for a
2 Special Use Permit. As well as an Appeal by the Central Samish Valley
3 Neighbors of the mitigated determination of non-significance that was issued
4 for this Proposal. And these are Application Numbers PL16-0097 and PL16-0098.
5 Uh, my name is Andrew Reeves. I'm the Hearing Examiner with Sound Law Center,
6 the County has selected to hold certain hearings like this one. And I will be
7 collecting evidence in the form of exhibits and testimony and ultimately
8 issuing a decision. Uh, again, we're on Day 7 so I think the parties are well
9 aware, hopefully, of, uh, what is happening at this point. And when we
10 concluded, when we concluded on Day 6, I believe we were, uh, the next step
11 was going to be to turn to Tom Ehrlichman, uh, who has, uh, who is an
12 attorney representing a group of adjacent property owners. And he had, uh, a
13 few witnesses he was going to, uh, bring to testify. But, before we do that,
14 why don't we do a quick round robin and check in with our Attorneys. I had
15 given them some homework, which I believe they accomplished. Uh, I,
16 ultimately opted, uh, not to further muddy the waters by sending additional
17 information myself. But, uh, why don't I start with Kyle Loring and see, uh,
18 if he feels like he had a handle on his Exhibits and also if he has anything
19 further he wanted to discuss before we get moving.

20 LORING: Thank you, Mr. Examiner. Uh, I do feel like I have a handle on
21 the Exhibits and, uh, my records were consistent with what I've seen from
22 others. So, thank you for that. Uh, when you mentioned homework, uh, I became
23 anxious a little bit. Uh, I don't think we saw an email with the questions, I
24 know you had talked last time about having some questions. Yeah. So, so, I

1 don't think we've discussed that, but I'm sure we'll touch on that later on
2 today.

3 REEVES: That, that was the homework I gave myself, that I ultimately
4 decided not to over-complicate things. I, I will have a few questions, but
5 having done some research and thought things through myself, I, I think I
6 was, I think I ultimately decided rather than send a list of questions or
7 cases, it would be better to just have a chat at the end with the Attorneys
8 and, and get their thoughts on a few things. So, uh, you guys I know were
9 busy enough as is. So, with that, I'll go next to Jason, uh, D'Avignon on
10 behalf of the County, uh, same, same set of questions there, Mr. D'Avignon.

11 D'AVIGNON: Um, I don't have really anything new. I think the only
12 outstanding as to the Exhibits, um, was Mr. Lynn had a few that I remember we
13 discussed. Uh, they, we saw pictures and they don't appear to have numbers.
14 Um, I guess, while I have a moment, my proposal would we just number them
15 starting at the end, going through, I think that would work.

16 REEVES: Sure. And, and I, you know, there's, uh, a, uh, sort of email
17 exchange between all the Attorneys and the Hearing Examiner's Office and I
18 believe you had produced a sort of table, uh, and, and I would be fine using
19 that table and just adding onto the numbers, um, if everyone is okay with
20 that, ultimately. Um, does that make sense to you, at least?

21 D'AVIGNON: Uh, that makes sense to me. My only note on the table that I made
22 is, um, Mr. Ehrlichman, he filed kind of a, his understanding today and mine
23 doesn't quite match up perfectly. So, I would, for that section, defer to his
24 filing.

25

1 REEVES: Okay. Great. And speaking of Mr. Ehrlichman, why don't we turn to
2 Attorney Tom Ehrlichman next?

3 EHRLICHMAN: Thank you, Mr. Examiner. Uh, nothing new on our end. I guess, um,
4 we filed a corrected Exhibit List that I think does bring out list into
5 conformity with what Jason had. Our set of Exhibits, I believe are Exhibit
6 49, with sub exhibit numbers, thank you.

7 REEVES: Okay. Great. Thank you. And we'll come back to you in just a sec.
8 And, finally, uh, Bill Lynn on behalf of the Applicant?

9 LYNN: Uh, I don't have anything to add. I think we're, uh, in accord on
10 the Exhibits that were admitted so far. It's just a matter of re-, or of
11 numbering those that we have not yet assigned a number.

12 REEVES: Okay. Um, so I guess, sorry, and Mr. Ehrlichman, let me, let's
13 see, I have a couple, I'm sorry, I'm looking to see if I have a different
14 table than the one from Mr. D'Avignon. Did you send that separately, Mr.
15 Ehrlichman?

16 EHRLICHMAN: Sorry. Uh, this morning I sent a corrected table, uh, that just
17 describes our Exhibits. And they do much up, I believe, with Mr. D'Avignon's,
18 but, uh, we can get into that more later. Um, it is our, our set is Exhibit
19 49 and we'll add to that, um, during our presentation today.

20 REEVES: Okay.

21 D'AVIGNON: I would add the only difference is mine is missing, my table is
22 missing just S1, which is the Mcleod letter. That, at least that's what Mr.
23 Ehrlichman says. And then, his table also includes numbered versions of the
24 one he intends to introduce today.

25

1 REEVES: Got it. Okay. Um, I don't believe I've seen that yet, there's a,
2 oh, wait, now, it's in my email. I do have it, I haven't looked at it yet,
3 so, I will look at that during the break and, uh, we can circle back, at that
4 point, uh, and before we conclude, make sure we've got numbers for everything
5 would be my plan. And so, Mr. Lynn, did that, just wanted to make sure I
6 didn't interrupt you there, was that in accordance...

7 LYNN: No.

8 REEVES: And we're ready to go otherwise?

9 LYNN: Yes.

10 REEVES: Okay. Uh, with that, then, Mr. Ehrlichman, I believe the floor
11 will be yours. And do you have, can you just give us a quick sense of your,
12 your plan of attack for the day?

13 EHRLICHMAN: Certainly. Thank you, Mr. Examiner. Um, our client is Cougar Peak
14 LLC and the Mcleod family, the caretakers on that property. And, uh, today,
15 uh, we will be presenting out case through witnesses. We will have four
16 witnesses today. Um, we did have an early witness that you permitted, uh, due
17 to scheduling. Our first witness was Neil Mcleod, so he's already testified.
18 And our four witnesses today will be, uh, Jessica Hoyer, uh, a Grip Road
19 resident. And we also have, uh, Jennifer Avon, a Grip Road resident, uh, Ross
20 Tilghman, who will be an Expert witness of transportation planner and
21 finally, uh, Wallace Grato, who is also a, a Grip Road, uh, landowner.

22 REEVES: Okay. And who would you like to start with today?

23 EHRLICHMAN: Well, I'd like to start with, um, Jessica Hoyer. But I would
24 first like to introduce our, what we were proposing as Exhibit 49 S9, which
25 is an email from the Sedro Woolley School District containing the bus

1 schedule, um, that does encompass Grip Road. I'd like to introduce that
2 Exhibit, I, uh, provided to that the parties by email, uh, yesterday.

3 REEVES: Okay. Um, any objection, uh, to including this by other parties?
4 If so, hit the raise hand feature, I suppose. Okay. No objections it looks
5 like, so I'll go ahead and admit that.

6 EHRLICHMAN: Thank you. So, I'd like to call Jessica Hoyer, please.

7 REEVES: And hopefully there, Jessica Hoyer, are you there?

8 EHRLICHMAN: I see her present, but, uh, maybe the mute button needs to be
9 toggled there.

10 REEVES: Yeah. You might unmute yourself, Jessica Hoyer, on the [pause]
11 Jessica Hoyer, we're hoping to hear from you. You might need to hit the
12 unmute on the bottom, uh, bottom of the Teams App.

13 HOYER: Thank you.

14 EHRLICHMAN: Mr. Examiner, I just called Ms. Hoyer. She's, uh, a Special Ed
15 teacher at a public school. She's dealing with a couple of emergencies and
16 asked to testify in a few moments. So, if...

17 REEVES: Okay. Why don't we start with someone else, then, or...

18 EHRLICHMAN: Thank you. Yes, if we could call Jennifer Aven.

19 REEVES: Okay. And Jennifer Aven. There we are. And I'll swear you in. Do
20 you swear or affirm to tell the truth in the testimony you give here today?

21 AVEN: I do.

22 REEVES: And if you could state and spell your name for the record, the
23 audio?

24 AVEN: Jennifer Aven, J-e-n-n-i-f-e-r, Aven, A-v-e-n.

25 REEVES: Great. Thank you. Go ahead, um, Mr. Ehrlichman.

1 EHRlichman: Good morning, Ms. Aven.

2 AVEN: Hello.

3 EHRlichman: Um, could you give us your address on Grip Road?

4 AVEN: Uh, I'm actually on 6478 Lillian Lane, it's kind of a private
5 road that's right off of Grip.

6 EHRlichman: Thank you. And, um, what is your profession?

7 AVEN: Uh, we have a family-owned construc- [inaudible] the office work,
8 the billing, the payroll and everything from our home office here on Lillian.

9 EHRlichman: Did, did you say that you have a family-owned construction
10 company and you do, um, bookkeeping and accounting for them?

11 AVEN: Yes.

12 EHRlichman: Okay. Thank you. And, um, do you have school-aged children?

13 AVEN: Sorry, see my cameras. I [inaudible] sorry, he just turned 14
14 last week, 14 year old son.

15 EHRlichman: Okay. You were breaking up a little bit there. Uh, so you have a
16 14 year old son that attends school?

17 AVEN: Yes, I do.

18 EHRlichman: Okay. And then, uh, you had also a daughter, I believe, that went
19 through the school system from that, uh, residence, is that correct?

20 AVEN: I did, yes. She is an adult now and serves in the Navy.

21 EHRlichman: Okay. Thank you. Um, tell us a little bit about your son's
22 transport to and from school in the mornings, in the afternoons, if you
23 would?

24 AVEN: Uh, yes, he takes the school bus in the mornings, uh, the bus
25 comes around 6:50 a.m. So, he stands right on that 90 degree corner on Grip

1 Road. And, um, most afternoons I end up picking him up because he does a lot
2 of after-school activities like cross-country and, and that sort of thing.

3 EHRLICHMAN: Oh, okay. Thank you. And how long have you lived at this
4 residence?

5 AVEN: Uh, over 15 years now.

6 EHRLICHMAN: Okay. Um, are you familiar with the transport of school-aged
7 school on Grip Road generally...

8 AVEN: Um...

9 EHRLICHMAN: Involving other families?

10 AVEN: Yes. As a parent, we've having kids on buses or driving them back
11 and forth since 2007.

12 EHRLICHMAN: Okay. And so, uh, the typical hours for school buses are, uh, a
13 morning bus, correct, for the high school and middle school students?

14 AVEN: Uh, yes, there's the morning bus that comes by our corner at
15 6:50. And then about two hours later, there's an elementary school bus. And
16 then I the afternoon, there's also two buses for each, each group.

17 EHRLICHMAN: Okay. Uh, do you happen to know what time the elementary school
18 bus comes by in the morning?

19 AVEN: In the morning, it's about two hours after, so probably about
20 8:00, 8:50.

21 EHRLICHMAN: 8:50? Okay. Great.

22 AVEN: Yes.

23 EHRLICHMAN: And then the afternoon buses, can you, uh, just gives us a rough
24 guesstimate of the timeframes on those?

25

1 AVEN: Yeah. That is about 3:00 and my, my bus hasn't ridden the bus this year
2 for the afternoon, but usually around 3:00 and the elementary school gets out
3 at 3:30 so it probably hits here about 4:00 or 4:45.

4 EHRLICHMAN: Okay. Great. Thank you for that. Um, as I understand it, the
5 school bus comes down from the direction of Sedro Woolley in the morning and
6 goes down Grip Road, passed your, uh, stop, is that correct?

7 AVEN: Yes. It goes passed Lillian Lane, down that S-curve we've talking
8 about, turns around at the bottom of that S-curve and then comes back up the
9 hill, and that's where he, they pick up, like, my son and the other kids at
10 that stop, and then returns into town.

11 EHRLICHMAN: So, let me make sure I understand it. So, the bus goes down the
12 hill on Grip Road, beyond your house, heading towards Prairie Road, correct?

13 AVEN: Correct.

14 EHRLICHMAN: And it goes down through the S-curves?

15 AVEN: Yes.

16 EHRLICHMAN: And those are located to the west of the proposed mine entrance,
17 is that correct?

18 AVEN: Yes.

19 EHRLICHMAN: Okay. So the bus is going downhill, uh, through those S-curves to
20 a turnaround you said?

21 AVEN: Yes. They usually use one of the, the houses has kind of a bigger
22 driveway area and so it turns around in their driveway.

23 EHRLICHMAN: Okay. Thank you. And, um, is the, uh, when the bus, well, let me
24 ask it this way, what, what is the, approximating, what is the highest number
25 of students on the bus that you've seen when it comes to your location,

1 either morning or afternoon? So, get a picture of the, sort of how populated
2 is the bus at its maximum?

3 AVEN: Um, by the time it's at our house, it's, it's probably mostly
4 full. I mean, there's, there's a kid in just about every window that I can
5 see, so, um, and once it hits our, our stop, it continues into town and gets
6 to the middle school within, like, 15 minutes. So, we're, we're towards the
7 end of the route.

8 EHRLICHMAN: So, is the, would you say the bus is a third full, a half full,
9 three-quarters full?

10 AVEN: Probably about three-quarters.

11 EHRLICHMAN: Okay. Thank you. So, you said that when you've observed that,
12 it's the bus coming from the west and the Prairie Road direction, on Grip
13 Road, to your stop, is that correct?

14 AVEN: Yes.

15 EHRLICHMAN: Okay. So, the, that means that the bus has picked up children to
16 the west of you, along, uh, Grip Road, also Prairie Road?

17 AVEN: Uh, my-, our bus doesn't go onto Prairie, ours turns around on
18 Grip.

19 EHRLICHMAN: Okay. So, that full, three-quarters full bus is, you've observed,
20 is, uh, children that are, um, traveling to school, to and from school on
21 Grip Road?

22 AVEN: Correct.

23 EHRLICHMAN: Okay. Thank you for that. Um, you had an incident, correct,
24 involving, uh, an encounter with a gravel truck on Grip Road?

25 AVEN: Yes, I did. Last September.

1 EHRlichman: I'm going to ask you some questions about that. But, first, Mr.
2 Examiner, I want to, for the record, state that Ms. Aven, uh, testified
3 earlier in the public hearing portion of the Hearing, but the testimony
4 you're about to hear was not part of that testimony.

5 REEVES: And this is challenging to the effect that ultimately, if Ms.
6 Aven had testified earlier in the public hearing, it normally would not, we
7 would not hear again, uh, but I also don't want to spend an hour debating on
8 the scope of what you've been allowed to do through the course of the
9 Hearing. So if we can just move through and, uh, we can get objections from
10 other Attorneys as necessarily. Why don't we do that?

11 EHRlichman: Thank you, Mr. Examiner. Ms. Aven, do you want to describe for us
12 the encounter you had with the gravel truck, uh, last September?

13 AVEN: Sure. So, I was coming home from Woolley in town, headed west, I
14 was getting my east and west mixed up, headed west on Grip, uh, with my son.
15 And we were at the, the 90 degree corner that turns into Lillian Lane. So,
16 it's a really hard corner to see around because of all of the brush and
17 everything that's on the inside of that corner, so you kind of have to pull,
18 like, halfway around and look and see. And a gravel truck was coming up the
19 hill and he crossed into my lane, which I sort of expected because they
20 always struggle with those corners. But he came very far into my lane. And I
21 had to kind of punch the gas and pull hard off to the right and go out into
22 the bushes behind the bank of mailboxes to get out of his way.

23 EHRlichman: You said you were transporting your son home from school when
24 that happened?

25 AVEN: Yes. It was after cross-country practice.

1 EHRlichman: Okay. And what was your reaction, what was your son's reaction
2 when you took that evasive maneuver?

3 AVEN: Well, obviously, we were shocked and scared and surprised and it
4 was, you know, we thought we were going to get smashed by a truck, so, yeah,
5 it was, it was pretty scary.

6 EHRlichman: And, uh, did you file a police report at that time?

7 AVEN: I did not. Um, because there was no actual damage and we were
8 safe. I wasn't able to get a license plate number or anything like that. I
9 asked around on social media because I had seen the truck around a lot that
10 week, to see if anybody knew who the driver was. Um, but we couldn't get any
11 answers on, on it, so...

12 EHRlichman: You say you saw the truck a lot that week, what, what do you mean
13 by that?

14 AVEN: Uh, it had been, because I, I, since it's a home office, I'm on
15 these roads probably four to six times a day, running kids and stuff back and
16 forth. And I had just crossed it many times on many of the corners, back and
17 forth, back and forth. It was hauling, the whole length put together, it was
18 hauling a bunch of gravel out of the Proctor Pit on Brookings Road. And, uh,
19 yeah, so, I just had been, it had been around a lot that week.

20 EHRlichman: Okay. Um, that was in September and since September, uh, do you
21 know whether Miles Sand and Gravel has purchased the Proc-, Proctor Pit?

22 AVEN: Uh, that's my understanding, I don't, I haven't actually seen,
23 like, a written thing about it, but that's, that's what I hear.

24 EHRlichman: And does the Proctor pit, uh, uh...

25

1 LYNN: Examiner, I'm going to object, this, she's already said she can't
2 identify the truck or the driver and now we're just getting into speculation
3 about whose truck it might have been. I think is...

4 REEVES: I...

5 LYNN: Well outside bounds...

6 REEVES: I'll sustain the objection to the extent that A) we heard from
7 this witness once already earlier in the Hearing and, B) my understanding was
8 we were going to focus specifically on Grip Road, so, let's, let's move
9 forward, thank you, uh, Mr. Ehrlichman.

10 EHRLICHMAN: Thank you, Mr. Examiner. That, that, actually, was the question I
11 was just asking was, um, does the Proctor pit access Grip Road, is that how
12 gravel goes in and out of the Proctor pit, to your knowledge?

13 AVEN: Yes, it is.

14 EHRLICHMAN: Okay. Um, now, you had an encounter with a gravel truck where it
15 crossed over the line and you had to take evasive action. H-, are you aware
16 of any other, uh, families on Grip Road that have, uh, had encounters of that
17 kind where they've had to maneuver in response to, uh, vehicle crossovers?

18 AVEN: Uh, yeah. I...

19 LYNN: I'm going to object again. This is really fair field. We're
20 asking about her experience with other neighbors. If the other neighbors want
21 to testify, they can. But I don't, I mean, this is, it's hearsay and it's
22 just not relevant.

23 REEVES: I'm going to sustain on both the hearsay grounds and the
24 relevancy grounds and further, there was an opportunity for testimony, uh, we

25

1 had two days of it at the offset of this Hearing. So, uh, I'll sustain that
2 objection. Go ahead and move on, Mr. Ehrlichman.

3 EHRLICHMAN: At this time, Mr. Examiner, I guess I'd like to introduce our
4 Exhibit 49 S10, copies been provided. Uh, it's a letter that is in the public
5 record submitted by, uh, folks on Grip Road. I think it's important to, uh,
6 pull that out of the mass Exhibit number, uh, because it's germane to, uh,
7 the subject matter of our presentation here.

8 REEVES: S-, sorry, you just are asking that the Exhibit already accepted
9 earlier with a different exhibit number be sort of taken out and given a
10 specific number right now?

11 EHRLICHMAN: Yes. We've, we've done that in other cases...

12 REEVES: Sure.

13 EHRLICHMAN: During this proceeding.

14 REEVES: S10, that's fine. But, to be clear, I, you know, I, I don't think
15 we need to spend time eliciting testimony about the experience of others. But
16 go ahead, Mr. Ehrlichman.

17 EHRLICHMAN: Yeah. One of the things, Mr. Examiner, we've been trying to do
18 here out of respect for the Applicant, uh, and the County is to present you a
19 picture here and we certainly could have lined up, you know, asked to have
20 ten different witnesses testifying to basically the same thing. We thought it
21 was efficient, but you've sustained the object-, objection, uh, based on
22 hearsay. So, we'll move forward. Sufficient to say that the record is full
23 of, of comments from other residents on Grip Road.

24 REEVES: Okay.

25

1 EHRlichman: Um, let me take a quick look at my notes here, see if there's any
2 other, uh, questions I had for Ms. Aven. So, Ms. Aven, uh, are you concerned
3 about the safety of school children generally on Grip Road traveling to and
4 from school?

5 AVEN: Yes. Very much. I mean, there's the buses, there's lots of
6 families, there's stops at the end of a lot of driveways that the kids stand
7 right on the edge. It's, it's really concerning.

8 EHRlichman: And in addition to school buses, uh, children to and from school,
9 as you've testified, by private car as well?

10 AVEN: Yes. Many do.

11 EHRlichman: And some of those children actually are driving themselves once
12 they become of age, whether a learner's permit or a driver's license,
13 correct?

14 AVEN: Yes.

15 EHRlichman: And do you anticipate that your child will, at some point, be
16 driving himself on that road?

17 AVEN: Yeah. In about 18 months he'll have is learner's permit so we'll
18 be back and forth many times on this road.

19 EHRlichman: Okay. Now, if you heard that there was only one, um, accident
20 reported per year on Grip Road for the past five years, would that surprise
21 you?

22 AVEN: It, it's surprising that that's all that's reported because
23 people have a lot of accidents out here, like my incident where it doesn't
24 get reported, if there's no actual injuries. It takes, the Sheriff told us it
25 takes about 45 minutes for them to get here, depending on where they are in

1 the County. So, a lot of times, if nobody gets hurt, we just don't call. A
2 teenager actually ran into a bunch of our mailboxes last year, but came,
3 knocked on our door, he and his dad apologized and fixed them and we went
4 about our way because it's just the country and that's what we do, so, I
5 mean, I know there's incidents that don't get reported.

6 EHRLICHMAN: And at the 90-degree turn that you've described, there are
7 actually two 90-degree turns in that portion of the Grip Road, uh, segment,
8 isn't that correct? It's, there's one at, um, Lillian Lane and then further
9 to the north and east?

10 AVEN: Yes.

11 EHRLICHMAN: And then as you travel further east on Grip Road, um, don't you
12 also encounter a, a sharp turn at the railroad tracks?

13 AVEN: Yes. It's kind of another S-curve around through it.

14 EHRLICHMAN: Do you have concerns about a 74-foot long, uh, truck and pup
15 trailer being able to make those turns without encroaching on the opposite
16 lane?

17 AVEN: Yes, I do. I drive through that, again, like, four to six times a
18 day. And if I'm following anything that's large, whether it's a trailer or a
19 truck or a farm equipment, they don't, they don't make the turn, they all go
20 over the line.

21 EHRLICHMAN: And you've listened to portions of this public hearing where you,
22 where the traffic expert for the Applicant, uh, has testified?

23 AVEN: Yes. I've listened to the whole thing.

24 EHRLICHMAN: Can you put this in real terms for the Hearing Examiner, uh,
25 there's the sort of technical traffic analysis that's been done, that is in

1 the traffic studies, but what does, what does this mean to you in, in real
2 terms as a family living on Grip Road with children?

3 AVEN: I don't understand how they can come to the conclusion that
4 they're saying. Um, all of my experiences, anything that's not just your
5 typical size car crosses the line on these 90-degree turns and over the
6 railroad tracks. I just, I, I can't gather how they can say that it doesn't.

7 EHRLICHMAN: Can, can you, uh, say that again, um, you, you've heard the
8 testimony and you, you're having trouble understanding what?

9 AVEN: How they can say that trucks that large are not going to come
10 into our lane or have room to, to not hit us, ultimately.

11 EHRLICHMAN: Uh-huh.

12 AVEN: Uh, I can only see us having to be evasive around the trucks.

13 EHRLICHMAN: Uh-huh. And is there room, uh, on Grip Road to, to do that, if
14 it's necessary to, to protect yourselves?

15 AVEN: Not everywhere. In some places, but not all of them.

16 EHRLICHMAN: Uh-huh. And are you concerned about your, let, let me back up,
17 again, w-, what does this mean to you as a mother and a parent?

18 REEVES: I, I feel like she's asked and answered that and, and I think I
19 understand that Ms. Aven has concerns. I think she's testified earlier. I
20 think that there's a certain level of, you know, it's clear, I think. I'm not
21 trying, you know, I've got to try to move us forward in an efficient manner
22 and we're hoping to finish today, Mr. Ehrlichman. Is, how many more questions
23 specific to this topic do you expect with this witness?

24 EHRLICHMAN: I'd like to, I'd like to see if you would allow the witness to
25 answer that question.

1 REEVES: Please answer the question, Ms. Aven.
2 AVEN: I am very, very concerned about having all of these trucks on the
3 road.
4 REEVES: Okay. Thank you.
5 REEVES: I have nothing further. Thank you.
6 REEVES: Okay. Mr. Loring, any questions of this witness?
7 LORING: No, Mr. Examiner, I don't have any questions. Thank you.
8 REEVES: Okay. Mr. D'Avignon?
9 D'AVIGNON: Uh, no questions, Mr. Examiner.
10 REEVES: And Mr. Lynn?
11 LYNN: No questions.
12 REEVES: Great. Thank you, Ms. Aven.
13 AVEN: Thank you.
14 REEVES: Okay. Mr. Ehrlichman, your next witness?
15 EHRLICHMAN: I'd like to see if Jessica Hoyer might be on now and available to
16 testify.
17 REEVES: I saw her pop up a minute ago.
18 EHRLICHMAN: Okay. Jessica, if you're there, uh, can you unmute and let us
19 know that you're ready?
20 HOYER: I'm trying.
21 EHRLICHMAN: You, there you are.
22 HOYER: You hear me?
23 EHRLICHMAN: Yes.
24 HOYER: Okay.
25

1 REEVES: Hi, Ms. Hoyer, I'll swear you in. Do you swear or affirm to tell
2 the truth in the testimony you give here today?
3 HOYER: I do.
4 REEVES: And could you state and spell your name?
5 HOYER: Uh, my name is Jessica Hoyer. And did you say you want me to
6 spell it?
7 REEVES: Yes, please.
8 HOYER: Okay. Uh, it's J-e-s-s-i-c-a H-o-y-e-r.
9 REEVES: Great. Thank you. Go ahead.
10 EHRLICHMAN: Good morning. Thank you. Good morning, Jessica. You're at work,
11 aren't you?
12 HOYER: I am.
13 EHRLICHMAN: Okay. What do you do?
14 HOYER: Um, I am a behavior case manager for middle school students.
15 EHRLICHMAN: In the Sedro Woolley School District?
16 HOYER: Uh, in Mount Vernon school district.
17 EHRLICHMAN: Mount Vernon. Thank you. And, uh, you and your family reside on
18 Grip Road, is that correct?
19 HOYER: That is correct.
20 EHRLICHMAN: Okay. Um, you have had, uh, you've raised, uh, fi-, you are
21 raising five children, is that correct?
22 HOYER: That would be correct, yes.
23 EHRLICHMAN: And three of them still ride the school bus?
24 HOYER: Yes.

25

1 EHRlichman: So, they're riding, uh, the school bus on Grip Road, both the
2 mornings and the afternoons?

3 HOYER: Yes, they, I've got three that ride the school bus two separate
4 times.

5 EHRlichman: Okay. And, again, can you tell us roughly what, uh, what times of
6 day that is? You don't have to be specific, but just generally?

7 HOYER: Um, so the morning bus would be anywhere between 6:30 and, um,
8 9:40, depending on the school schedule.

9 EHRlichman: Okay. And in the afternoon?

10 HOYER: And then the afternoon would be anywhere between 2:30 and 4:15,
11 again, depending on the school schedule.

12 EHRlichman: Great. Thank you. Um, when, when your children are, um, dropped
13 off, coming from the direction of Sedro Woolley in the afternoon, do they
14 have to cross Grip Road to get home?

15 HOYER: They do.

16 EHRlichman: And, uh, you've expressed a concern, uh, can you share that with
17 the Hearing Examiner about having large trucks, uh, traveling through that
18 portion of the road when your kids are getting off the bus and crossing?

19 HOYER: Yes. So, um, I have had to call the bus garage several times to
20 ask them to move the location of the stop, by, like, inches. So that the bus
21 can see the oncoming traffic. Because oncoming traffic for the buses come
22 barreling up the hill and cannot see a transportation is letting off my
23 children, who then have to cross Grip Road. Um, and at times, it's been a
24 close call when my children are crossing the road.

25

1 EHRlichman: Thank you. Um, and is the problem that there's not a clear line
2 of sight at these sharp turns on Grip Road?

3 HOYER: Um, the problem is that there's no a clear line of sight, um, and
4 the problem is just because of it's just very close to a 90-degree angle that
5 even driving it for the last 11 years, I'm not sure how there could be a line
6 of sight, even when the County does take care of the, uh, bushes and stuff.

7 EHRlichman: Uh-huh.

8 REEVES: And, I'm going to hop in one sec, Ms. Hoyer, were you able to
9 listen to Ms. Aven's testimony just now?

10 HOYER: Uh, off and on, but not a whole bunch because I've been...

11 REEVES: Just was seeing if you agreed with her testimony. But go ahead,
12 uh, Mr. Ehrlichman.

13 EHRlichman: Thank you. Um, Ms. Hoyer, are you aware of any incidents, um,
14 involving, uh, trucks or cars coming in opposite directions through that
15 corner?

16 HOYER: Oh, yeah. I mean, not necessarily specifically with school buses,
17 but, yeah, we've, um, actually had several come slamming into the power pole
18 that is right there on that corner. I believe the County has had to replace
19 that power pole, I want to say, four or five times in the last ten years.

20 EHRlichman: Uh-huh. Um, uh, and have you, um, heard that the Applicant is
21 going to put flashing lights down at the gravel mine entrance road?

22 HOYER: No, that's news to me.

23 EHRlichman: Okay. If they did put flashing lights down at their entrance
24 road, would that solve the line of sight problem that you're describing up at
25 the bus stop?

1 HOYER: I'm not sure how flashing lights would correct the fact that that
2 road right there is 90 degrees and it, no, I'm not sure how it would correct
3 that situation.

4 EHRLICHMAN: Okay. And are there several driveways that join, uh, at that
5 corner where Grip Road and Lillian Lane come together?

6 HOYER: Yes. There are two driveways and Lillian Lane that kind of all
7 meet with Grip Road all at the same time.

8 EHRLICHMAN: Okay. And I, I believe you told me that you had stood there on,
9 on your drive and watched vehicles, uh, screeching to a halt, uh, trying not
10 to, to, uh, engage your kids at that bus stop, is that correct?

11 HOYER: That would be correct. I've seen, uh, vehicles of all shapes and
12 sizes, from motorcycles to large trucks, uh, screeching to a halt, um, to try
13 to avoid either hitting somebody or something, also to slow down because they
14 don't realize how sharp of a turn that is.

15 EHRLICHMAN: Uh-huh.

16 HOYER: Um, I also have had a double dump truck go through where it shook
17 it my house because they were going so fast. Um, yeah.

18 EHRLICHMAN: And, um, sorry. Just one moment here. And when the school buses,
19 um, come in the morning to pick up your children, would you, would you say
20 that, uh, they, at times, are full, three-quarters full, half full? How many
21 kids do you see populating that bus?

22 HOYER: Um, from where me and my husband stand and look, it looks fairly
23 full and from reports of my, from my children, they say it's fairly full, the
24 criteria is two students per seat and sometimes they have to do three.

25

1 EHRlichman: Okay. And that, when you see that, they're, they're coming up
2 from Grip Road to the west, like the Prairie Road direction, correct?

3 HOYER: When they pick up in the morning? Yes.

4 EHRlichman: Okay. And as you testified there, there are multiple buses in the
5 morning, is that correct?

6 HOYER: Yes. There are two routes. Depending on which school.

7 EHRlichman: When the afternoon buses come, uh, to, to bring kids home, is
8 Grip Road busier than at other times of the day, generally?

9 HOYER: Uh, the, the last bus of the afternoon, it is definitely busier.
10 Um, it's about the same time that a lot of people are coming home from work
11 or whatever they're coming home for.

12 EHRlichman: Uh-huh.

13 HOYER: Uh, but we have noticed an increase.

14 EHRlichman: Okay. Is there, um, anything that you would like to say to the
15 Hearing Examiner about your, uh, concern about safety if the mining trucks
16 are permitted to travel Grip Road during school bus hours?

17 HOYER: My biggest concern is honestly that corner is absolutely
18 horrendous and I worry about the safety of my children. I worry about the
19 safety of other students that are on that bus. Um, you know, I work for a
20 school system and so one of our key things is keeping students safe and I
21 really believe in this case, that needs to be the issue that's at hand is how
22 do we keep those students on those school buses safe. So, I do worry about
23 the increase amount of traffic that would come through Grip Road.

24 EHRlichman: Well, thank you for your testimony today, I appreciate it.

25 HOYER: Yeah.

1 REEVES: Okay. Uh, Mr. Loring, any questions of this witness?
2 LORING: No, Mr. Examiner, I don't have any questions, thank you.
3 REEVES: Okay. Mr. D'Avignon?
4 D'AVIGNON: Uh, no questions, Mr. Examiner.
5 REEVES: And Mr. Lynn?
6 LYNN: No questions.
7 REEVES: Ms. Hoyer, thank you for taking the time. And, uh, we'll let you
8 get back to work on a Friday.
9 HOYER: Thank you.
10 REEVES: Okay. And you had one other witness, uh, before Mr. Tilghman, Mr.
11 Ehrlichman? Uh...
12 REEVES: No. Uh, I'd like to call Mr. Tilghman, if he's on the lien there
13 and ready to go?
14 LYNN: Mr. Examiner, I, this is Bill Lynn...
15 REEVES: Yeah.
16 LYNN: I would like to note an objection. Uh, it was very clear, I wish
17 we had transcripts, from Mr. Ehrlichman, that he did, had no intention of
18 calling his own traffic witnesses. And for that reason, he was granted
19 considerable leeway in his questioning of the witnesses that he proposed to,
20 to be able both cross examine and treat as his own witnesses so he could go
21 beyond that. So, I just want to object to recalling this witness as when Mr.,
22 um, Ehrlichman committed not to do that as part of the rules of procedure for
23 this, uh, Hearing.
24 EHRLICHMAN: May I speak to that, Mr. Examiner?

25

1 REEVES: I'm going to no-, hold on, I'm going to note the objection. Uh,
2 you know, I'm, I'm going to, rather than have us spend an hour going back and
3 forth right now, I'm just going to allow it. Can you give me some sense of
4 the scope of what you intend on, uh, asking this witness about and, and the
5 timing, Mr. Ehrlichman?

6 EHRLICHMAN: Absolutely, Mr. Examiner. I had intended to start out the, uh,
7 questions with a brief preamble of doing just that, so thank you for that
8 opportunity. Uh, Ross Tilghman is being called in our case in chief as an
9 expert witness...

10 REEVES: There's no case in chief. I just need to make that clear. But go
11 ahead. I mean, your participation in this Hearing is essentially as if you
12 were any other member of the public. I recognize you do represent specific
13 members of the public. But, I, I don't want to belabor the point, but go
14 ahead, Mr. Ehrlichman.

15 EHRLICHMAN: Thank you, Mr. Examiner. I, I know we've had this conversation
16 several times and I have submitted in writing, uh, my position on that.

17 REEVES: Yeah.

18 EHRLICHMAN: Um, if I may continue.

19 REEVES: Go ahead. You can raise it in a different form later, if need be.

20 EHRLICHMAN: Thank you. Um, we are presenting our case through witnesses,
21 we're calling Mr. Tilghman as an expert witness. We're calling him as a
22 traffic planner. We'll talk about his credentials and qualifications for
23 that. We are not...

24 REEVES: We don't need, we've already heard that. We are not going into
25 his qualifications. But go ahead. I mean, they're already in the record, Mr.

1 Ehrlichman. Am, am I missing som-, is there a reason we need 20 minutes of
2 questions on who this witness is we already heard from for a day earlier in
3 the Hearing? Mr. Ehrlichman.

4 EHRLICHMAN: What, what is the question?

5 REEVES: Uh, I'm saying, is, is there some reason we need to hear again
6 who this witness is in terms of their qualifications and background? Mr.
7 Loring went into detail about this earlier in the Hearing. I, I, we're going
8 to not do that. But unless you have a reason you think we need to, you know,
9 reinvent the wheel in terms of re-, you know, more discussion on who this
10 person is. We, we know who this expert is.

11 EHRLICHMAN: Mr. Examiner, I'm happy to answer any question that you have in
12 this proceeding.

13 REEVES: Okay. Never mind.

14 EHRLICHMAN: But I...

15 REEVES: [Inaudible.]

16 EHRLICHMAN: I do want to note that as I'm speaking and I'm trying to lay the
17 foundation, you ask a question often that is exactly what I'm about to say.
18 And it just seems like this would go quicker if I was given a little leeway
19 and trust, if you will, that I'm going to explain why I think it's important
20 to talk about his credentials, briefly. Um, he...

21 REEVES: [Inaudible.]

22 EHRLICHMAN: Mr. Tilghman did appear in the SEPA Appeal case, um, for a
23 different party. We are not calling him here for the same purposes. We don't
24 have the same, uh, status, we don't have the same position in the case. Mr.
25 Tilghman's testimony is going to go directly to our position in the case with

1 respect of the Special Use Permit. His qualifications were questioned by Mr.
2 Lynn in a manner that I objected to, even though he wasn't my witness. And I
3 wanted to start out with a little bit about his credentials as a
4 transportation planner so we're clear about the very limited scope of the
5 testimony that we're going to elicit from this expert. Which is the question
6 of whether the transportation study, relied upon by the County here, contains
7 the elements of a safety analysis that is typically included in a
8 transportation study. He's not testifying as an engineer on geometrics, he's
9 not testifying as a crash expert, but we're going to go...

10 REEVES: [Inaudible.]

11 EHRLICHMAN: Into the question of what has he seen after reviewing all of the
12 reports and what is he not seeing. And then we're going to...

13 REEVES: [Inaudible.]

14 EHRLICHMAN: Talk about what a safety analysis is because, Mr. Examiner, your
15 inquiry and decision in this case for the Special Use permit is fundamentally
16 different than the decision you're making in the SEPA Appeal, as you know
17 better than anyone. It's...

18 REEVES: Well...

19 EHRLICHMAN: Based on, on the Special Use Permit criteria and policies the
20 County has adopted which require safety analysis.

21 REEVES: Okay. So, with that, I'm happy to, you know, I understand Mr.
22 Lynn's objection very well. Uh, I take judicial notice of knowing who Ross
23 Tilghman is, uh, in terms of we've already, I think we may have even got a CV
24 in the record, at this point. I don't think we need any questions about his
25 knowledge and scope. I think it's been fully covered. Uh, so we'll dive right

1 in on the actual questions. But, uh, Mr. Tilghman, I'll get you sworn in. Do
2 you swear or affirm to tell the truth in your second set of testimony in
3 these Hearings?

4 TILGHMAN: I do.

5 REEVES: Okay. And we know how to spell your name. And so, with that, Mr.
6 Ehrlichman, I think with no preamble, no outset, let's just dive right into
7 the questions.

8 EHRLICHMAN: That sounds good. And I just want to say, Mr. Examiner, that,
9 that the reason I think that preface was important is because we're going to
10 hear objections from Mr. Lynn on this very topic. So, thank you for
11 acknowledging that he's qualified as an expert here already. Um, Mr.
12 Tilghman, in the cases you've testified in front of Hearing Examiners, have
13 you ever been disqualified as an expert?

14 TILGHMAN: No, I have not.

15 EHRLICHMAN: Roughly, just a rough number, how many cases have you appeared in
16 before Hearing Examiners?

17 TILGHMAN: Um, I think we're four to five dozen.

18 EHRLICHMAN: Okay. And are you, in your line of work, do you typically review
19 traffic studies, uh, to determine what their contents have and don't have in
20 terms of safety analysis?

21 TILGHMAN: Um, I frequently review traffic studies and I note, uh, the
22 extent of which they have addressed or not addressed, um, safety matters.

23 EHRLICHMAN: And are you familiar with the, um, standard in the, uh, the Road
24 Standards, the question that's asked there, as to, uh, traffic safety? You

25

1 had those Road Standards in front of you and, and can you refer to the
2 preamble sentence in Section 4.09?

3 TILGHMAN: Of the, uh, Skagit County Road Standards? Yes. The, um, the first
4 paragraph reads, uh, for Type 2 Traffic Analysis, intersections and roadway
5 segments within the influenced area shall be evaluated to determine if the
6 probability of accidents will increase with the addition of project traffic.

7 EHRLICHMAN: And have you participated with a team of, uh, traffic experts in
8 the analysis of, uh, other, uh, traffic studies, uh, to make exactly that
9 kind of determination?

10 TILGHMAN: Well, I, I note whether, um, accident history is addressed at
11 all. Um, sur-, I'm often surprised how often it has been omitted and to make
12 that point. And I'll also often find that, um, the extent to which accident
13 history is reported, the reporting was limited only to crashes at
14 intersection. Um, not on roadway segments and particularly in rural areas,
15 um, areas where intersections are, um, further apart than in standard urban
16 conditions on a block by block basis. Um, what happens, um, on the roadway
17 segment can be as important as what happens at intersections. I dealt with a
18 case in Jefferson County just a year ago where, in fact, in a rural area with
19 narrow roads, where the majority of crashes occurred between intersections,
20 unrelated to intersections. So...

21 EHRLICHMAN: Uh-huh.

22 TILGHMAN: Yes.

23 EHRLICHMAN: We'll get into, and we'll get into that in a, a moment, thank you
24 for that. Mr. Examiner, at this time, I'd like to introduce our, uh, Exhibits
25 S11, 49 S11 and 49 S12, uh, S11 is the excerpts of the Skagit County Code,

1 um, portions of it that have those Special Use Permit criteria I referred to.

2 S12 is the excerpt of the Road Standards that, uh, Mr. Tilghman just read.

3 REEVES: Yeah. These are publicly available, so I assume no objection from
4 the other parties?

5 EHRLICHMAN: Very good. Thank you. Um, Mr. Tilghman, um, in our, uh, case
6 here, uh, have you reviewed all of the traffic studies, uh, which are here,
7 uh, presented as Exhibits 12-18?

8 TILGHMAN: Um, yes, I have.

9 EHRLICHMAN: Okay. And have you listened to, uh, the testimony of Gary Norris
10 in this proceeding?

11 TILGHMAN: Yes, I did hear the, um, audio, uh, recording of his testimony.

12 EHRLICHMAN: Okay. And have you heard the testimony of Forrest Jones, the
13 County's, uh, primary road, uh, engineer on this?

14 TILGHMAN: I listened to that audio recording as well.

15 EHRLICHMAN: Okay. Let me ask you, in any of those reports, um, beyond, other
16 than the discussion on Level of Service, other than the discussion on road
17 capacity, and other than the discussion on sight distance, do those studies
18 contain any kind of safety analysis that would relate to, uh, school bus
19 traffic on Grip Road?

20 TILGHMAN: There's none related to school bus traffic.

21 EHRLICHMAN: So, you didn't see any discussion or analysis concerning the
22 school buses' use of Grip Road?

23 TILGHMAN: None.

24 EHRLICHMAN: Okay. Even if a Level 2 Analysis was no strictly required under
25 the Road Standards, is it your opinion that a safety analysis discussing

1 potential conflicts with school buses is required otherwise by the County
2 Code or Policy?

3 TILGHMAN: Well, um, the location of schools should have been identified,
4 um, and that would naturally imply that, um, there must be school buses
5 serving those schools. Um, and I believe, it's, it's within the Road
6 Standards, um, that a traffic, um, analysis should identify the location of
7 major public facilities, including schools.

8 EHRLICHMAN: Okay. So, let me unpack the question, I realize it was a, a
9 compound question, I'm sorry for that. Let me back up. The County, um, didn't
10 require a Level 2 Traffic Impact Analysis, did they?

11 TILGHMAN: They did not.

12 EHRLICHMAN: Okay. And the Applicant submitted in Exhibit 18, a more detailed
13 traffic analysis, its last submittal in Exhibit 18, a more detailed traffic
14 analysis that includes some, included some discussion of Grip Road, correct?

15 TILGHMAN: Yes, it identified certain characteristics of Grip Road.

16 EHRLICHMAN: Okay. And in the analysis in Exhibit 18, did the Applicant's
17 traffic engineer provide, um, an identification of the potential conflicts,
18 uh, between the, the new heavy trucks and the different types of vehicles
19 using Grip Road?

20 TILGHMAN: No, it did not.

21 EHRLICHMAN: And why is it important in your professional opinion, to do that
22 kind of analysis in this situation?

23 TILGHMAN: Well, not all vehicles have the same operating characteristics or
24 travel behavior. Um, large heavily loaded trucks such as these gravel trucks,
25 the dump truck with a pup trailer, um, for one, they're about three times

1 longer than an average passenger vehicle, um, they're immensely heavier, uh,
2 fully loaded up to, uh, the State's legal limit of 105,000 pounds versus the,
3 uh, maybe 4,000 or 5,000 pounds of a passenger vehicle. Um, they accelerate
4 more slowly, they stop more slowly than a passenger vehicle. Um, they behave
5 altogether differently. They can't negotiate corners as tightly as, um,
6 passenger or even light-duty, uh, vehicles. So they're fundamentally
7 different. So understanding the mix of traffic, um, factors into the accuracy
8 of capacity calculations, as well as to safety considerations.

9 EHRlichman: Well, when you work on traffic studies with a traffic team, a
10 team of traffic professionals, um, are you at times, uh, asked to identify
11 those kinds of potential conflicts when you're, uh, with the project, the
12 addition of the proposed project?

13 TILGHMAN: Um, sure. If you're, um, if you have, um, a study area that has a
14 lot of topography, that is, uh, the roads have steep grades and, um, you have
15 information that there are or will be a higher proportion of heavy vehicles,
16 you've got to take that into account, um, to see if the road is adequate to
17 that volume and mix of traffic. So, yes.

18 EHRlichman: So, when you work on, uh, traffic studies and you're asked to
19 identify potential conflicts between, uh, existing traffic and the traffic
20 when you add the project, those are the kinds of elements that you look for,
21 you mentioned, um, the topography, steep grades, the proportion of heavy
22 vehicles, those are the kinds of things that you identify or look for, uh, in
23 trying to identify potential conflicts?

1 TILGHMAN: Yes. Absolutely. And especially if they're going to have to be
2 pulling out of, um, driveways, um, they take more time, traffic behaves
3 differently, you've got to factor that in.

4 EHRLICHMAN: Okay. And had you worked on that type of traffic analysis, um,
5 more than, uh, more than ten times?

6 TILGHMAN: Well, that would be a feature of virtually all analysis. They may
7 or may not include large proportions of heavy vehicles. But, um, many of the
8 traffic counts that are commissioned, that I commission, um, would then have
9 vehicle classifications as part of that data that is proportioned so you know
10 the proportion of trucks. Um, I was, uh, working for a Seattle Parks, um, on
11 a project this past year and used classification data to understand, um,
12 traffic performance and safety considerations where pedestrians would have to
13 cross the street to the new park. Um, it was an area that was, um, provided
14 truck access to, uh, warehouse, um, loading yards. So, it was obvious trucks
15 were a factor, that was, um, a key element in, in the analysis of, uh, how to
16 treat the street.

17 EHRLICHMAN: So, in this case, if you had been asked to, um, identify
18 potential conflicts as part of a safety analysis on Grip Road, would you have
19 tried to identify places where pedestrians have to cross the street?

20 TILGHMAN: Uh, yes. One wants to know where are there pedestrian facilities.
21 Um, if not, are there pedestrians walking along the street? Um, what, what
22 fea-, what characteristics, um, did they exhibit? And, yes, are there places
23 where they are known to cross the road and does that raise questions of
24 whether it's an adequate and safe place to do that.

25 EHRLICHMAN: And, for example, children getting off school buses?

1 TILGHMAN: Yes. That is a, um, a very good instance of, um, understanding
2 pedestrian needs.

3 EHRLICHMAN: So, you testified that none of the studies and none of the
4 testimony by Mr. Norris or Mr. Jones, uh, mentioned school buses. Did they
5 mention, uh, school bus stops?

6 TILGHMAN: There's no mention of school buses, school bus routes, school bus
7 stops, number of buses, there's simply no mention of school buses on Grip
8 Road.

9 EHRLICHMAN: And when they did their traffic count analysis in 2020, attached
10 to Exhibit 18, what time of year, uh, did they, were those counts taken in?
11 Was it during the school year?

12 TILGHMAN: Well, some of the counts were from August, um, would have been
13 just prior to the school year.

14 EHRLICHMAN: But it wouldn't, that isn't a time when you expect to see the
15 full, uh, the full school bus traffic that is, that we've heard about this
16 morning, is it?

17 TILGHMAN: Uh, no, it is not.

18 EHRLICHMAN: Okay. So, let's go back to where we started here. Um, don't the
19 Comprehensive Plan Policies and the Standards for Mining Special Use Permits
20 require the Applicant to demonstrate, uh, protection of public safety?

21 LYNN: I, I would just want to note that we're getting more and more
22 into leading questions and I think the wi-, the Attorneys can ask questions
23 that they know are framed properly.

24 REEVES: It really wasn't an objection, I think it was just noting
25 something. I, I don't disagree, but go ahead, Mr. Ehrlichman. And further, I

1 think the Attorneys can make the legal arguments in closing briefs about
2 what's required by what. But I certainly understand this is a, a, an expert
3 witness. But go ahead, Mr. Ehrlichman with your question.

4 EHRLICHMAN: Mr. Tilghman, you're familiar with the County's adopted policies
5 and code requiring the Applicant to demonstrate protection of public safety,
6 are you not?

7 TILGHMAN: Yes, I am.

8 EHRLICHMAN: Okay. And whether or not a Level 2 Traffic Analysis was required,
9 wouldn't you expect to see analysis of traffic impacts that includes not only
10 identification of potential conflicts, but also analysis of how those
11 conflicts might increase with the project?

12 TILGHMAN: Um, yes. The first thing is, it's, it's hard to evaluate, um, an
13 issue if the issue hasn't been identified. So, one, it has to be identified.
14 And then it can be analyzed and evaluated. And, yes, there are County
15 policies that talk about insuring safety, um, of, uh, truck traffic and, um,
16 evaluating potential effects of truck traffic.

17 EHRLICHMAN: Is there anything in the Road Standards that says if you have
18 fewer than 50 peak hour trips, you don't have to, uh, do a safety analysis?

19 TILGHMAN: Um, yeah, it doesn't read that way. There's no prohibition on
20 doing the safety analysis at any level.

21 EHRLICHMAN: So, in order to meet, uh, the mining standards, is it your
22 professional opinion that a safety analysis was required in this case, even
23 though no Level 2 Analysis was strictly required?

1 TILGHMAN: Well, according to the Comprehensive Plan Policy, um, to ensure
2 safety, some analysis would have been necessary to determine whether safety
3 is, in fact, being ensured.

4 EHRLICHMAN: Was it enough that the Applicant's traffic engineer identified
5 the crash history for the past five years on Grip Road?

6 TILGHMAN: That is but a first step and, again, as, as he noted, and as his
7 report says and as I noted earlier, the crash history, um, pertained only to
8 reported crashes at intersections. Um, it did not include any experience on
9 any other segment of the road. And there was no subsequent evaluation of any
10 other aspect of safety based on roadway width, lack of shoulders, vehicle
11 mix, school buses, any other aspect of traffic operations.

12 EHRLICHMAN: But in other cases, I mean, just sort of generally, when a
13 traffic study finds a low crash history, um, oftentimes they don't include a,
14 a detailed conflicts analysis, correct?

15 TILGHMAN: That is frequently the case, yes.

16 EHRLICHMAN: So, in this case, where we had a low crash history, uh, why would
17 we have needed, uh, a, a conflicts analysis, a saf-, a safety analysis?

18 TILGHMAN: Well, it's important to understand that the crash history is a
19 historical record, it is not a predictive record. And in this particular
20 instance, when the mix of vehicles is going to change so dramatically because
21 of the introduction of these heavy, uh, gravel hauling trucks, um, the crash
22 history, which would appear not to include, um, many, if any, uh, gravel
23 trucks, would not be an useful predictor of future, um, crash potential. So,
24 it's this context, at I testified previously, the context of adding so many
25 long, heavily laden vehicles, and even unladen these vehicle vastly larger

1 and heavier than other, um, cars and light trucks on the road. It's that
2 context of introducing dramatically different vehicle type on a winding,
3 narrow substandard road, that raises the question of what will future crash
4 potential be? And past crash history we, um, is not an adequate indicator of
5 future experience in this situation.

6 EHRLICHMAN: So, if I understand your testimony, in this case, the, the
7 Applicant's engineer found adequate, um, capacity, in terms of the level of
8 service, found a low crash history over a five-year period, but you are
9 saying to meet the safety standard, you have to look further than that?

10 TILGHMAN: Um, yes. Um, particularly in the context of substandard roads,
11 roads where there are sight distance problems, roads where long vehicles
12 cannot stay within their lanes without encroaching on the opposite lane or
13 tracking off of the paved area. Um, but, yeah, that's sufficient grounds to
14 do additional analysis of safety concerns.

15 EHRLICHMAN: Uh-huh. And what about the presence of, um, school buses with 20
16 to 30 kids? Is that a factor that also, uh, is grounds to go further?

17 TILGHMAN: The fact that the school buses stop on Grip Road, make multiple
18 stops and in fact turn around and then travel the other way, making
19 additional stops, yes, in my opinion, that is ample ground for evaluating,
20 um, the potential conflict between the heavily laden gravel trucks and
21 school buses with ch-, loaded with kids.

22 EHRLICHMAN: Let me check my notes for a moment, if I may pause for a moment.
23 Have you seen the Applicant's, um, recent submittal which is a depiction of
24 the truck/trailer combination? I'm going to refer you to, uh, the mark up
25 Exhibit that I sent you, which, Mr. Examiner, we'd like to introduce as

1 Exhibit 49 S13. It is the same exact Exhibit provided to us by Mr. Lynn, uh,
2 yesterday and I have added notes about the, uh, lengths that are missing from
3 that, uh, you do the math and come up with a, a truck length and a trailer
4 length. I'd like to introduce that at this time.

5 REEVES: Okay. And I have no objection. I certainly will not rely on your
6 math, I'll check the math myself, but any, any objection from others?

7 LYNN: No.

8 REEVES: Okay. Uh, S13 is admitted.

9 EHRLICHMAN: Uh, so, Mr. Tilghman, if you can take a look at that Exhibit,
10 when you talk about the length of the truck/trailer combinations that's being
11 proposed here as being, being one of those elements that's grounds for
12 additional safety study, uh, what is the length of the, the total
13 truck/trailer combination? Is it 74, close to 75 feet long?

14 TILGHMAN: Yes, it's one inch shy of 75 feet at 74 feet, 11 inches, end to
15 end.

16 EHRLICHMAN: Okay. And looking at my notation and others will check the math,
17 uh, what would the length of just the truck itself be?

18 TILGHMAN: Well, just, um..

19 EHRLICHMAN: You see the note below the truck?

20 TILGHMAN: Yeah. Um, yeah. Um, at the moment, I'm not seeing the overall
21 dimension of just the truck, but that is, um..

22 EHRLICHMAN: I wonder if it didn't show up in my, uh..

23 TILGHMAN: Yeah. I, I mean, I..

24 EHRLICHMAN: Exhibit. So, let's, let's, uh..

25 TILGHMAN: Feet and inches here, um, it is..

1 EHRlichman: That's all right.

2 TILGHMAN: Well, over 20, well over 20 feet, uh, just the bed, the dump bed
3 alone is 18.5 feet. Um, and then there's the, um, basically the length of the
4 cab in front of that. Um, that dimension is not separately shown in this
5 Exhibit.

6 EHRlichman: That's okay. I, apparently, my Exhibit that I transmitted did not
7 have my notations on it. And I'll...

8 TILGHMAN: Sir, I see on a second page, um, the cab is, is noted separately
9 at 122.5 inches, uh, then there's a little gap to the bed and then the bed is
10 18.5 feet, so it's, um, it's roughly, um, twenty-, 28 to 29 feet long.

11 EHRlichman: Okay. Very good. And do you happen to recall, um, Mr. Norris'
12 testimony of the, uh, dimensions of the truck that he used for his auto-turn
13 analysis? I've got that if you don't recall.

14 TILGHMAN: I don't remember the specific, uh, dimension, no.

15 EHRlichman: Let's, uh, see if I can pull that up here. I believe he testified
16 that the width of the truck was eight and a half feet. Um, Mr. Examiner, I'd
17 like to introduce our, uh, Exhibit, sorry, wheels are falling off here
18 momentarily. Well, strike that. I'll come back to that. Let's talk for a
19 moment about the, um, the roadway on Grip Road. Uh, are you familiar with the
20 table, B6, that is, uh, attached to Exhibit 18? We've offered it here as
21 Exhibit 49 S14.

22 TILGHMAN: Um...

23 EHRlichman: Is the, the, uh, rural major and minor collector roadway cross-
24 section, uh, from the Rural Area Roadway Design Standards. It's Figure B6.

25 TILGHMAN: Okay. Unfortunately, I don't have that one right in front of me.

1 EHRlichman: Okay.

2 TILGHMAN: Um, but if you give me a moment, I may be able to get to it.

3 EHRlichman: No, that's all right. Let's, let's move on. We want to keep, keep
4 going here. So, I don't want to stall on that, we can come back to that in
5 another, uh, portion here. Let's, uh, let's try to wrap this up with a
6 summary here of, of what I've heard you say. Um, you have experience working
7 on traffic impact analysis, you, uh, have been asked in different, uh,
8 projects to, uh, help with the safety analysis. You know how to identify
9 potential conflicts, what elements to look for, correct?

10 TILGHMAN: Yes, that's true.

11 EHRlichman: Okay. And in this case, even if a Level 2 Analysis wasn't
12 required, do you find the, uh, safety analysis method that's described in
13 that section 4.09, uh, to be similar to what you have described as your
14 method?

15 TILGHMAN: Well, yeah. Looking at identifying conflict points.

16 EHRlichman: Okay.

17 TILGHMAN: As a key, um, key matter. Um, and, um, yes. Uh, conflict points,
18 frequently, frequency of conflicts, excuse me and severity of conflicts. Um,
19 and considering the, uh, both the volume and the, uh, mix of vehicles present
20 is, um, very, um, I think adequate way to, uh, to begin that analysis, yes.

21 EHRlichman: Okay. And just taking the case of the school buses alone, um,
22 your, you have, in your testimony, identified the conflict points, correct?
23 The places where the buses stop and turn around?

24 TILGHMAN: Well, those are key conflict points, uh, relative to the school
25 buses, yes.

1 EHRlichman: And then also just travel on the road around the sharp turns,
2 correct?

3 TILGHMAN: Yes.

4 EHRlichman: So, you've identified the conflict points and now in your
5 testimony you have said that you've reviewed all of the traffic studies, so
6 you understand the frequency and severity of conflicts based on expected
7 traffic volumes, correct?

8 TILGHMAN: Well, not based on the, um, the traffic study because there
9 wasn't any information about school buses in the traffic studies so we
10 couldn't evaluate that, um, frequency of...

11 EHRlichman: Well, but the, that's...

12 TILGHMAN: On the truck volumes, but you have to make your own, draw your
13 own conclusions because they weren't available from the, uh, Traffic
14 Analysis.

15 EHRlichman: Right. I understand. And my point was that you've looked at the
16 traffic volumes that they're projecting based on those, their studies,
17 correct?

18 TILGHMAN: Yes.

19 EHRlichman: So, I'm walking through this formula that they have, it says a
20 conflict analysis should determine the number of conflict points, we just
21 covered that, the frequency of conflicts and severity of conflicts based on
22 expected traffic volumes. Well, you seen the bus schedule, correct?

23 TILGHMAN: Yes.

24 EHRlichman: Is the potential for frequent conflicts there?
25

1 TILGHMAN: Um, yes. And, and the additional knowledge that, um, we got, you
2 know, four, four different bus routes each day that currently use Grip Road.

3 EHRLICHMAN: Uh-huh.

4 TILGHMAN: Important extra bit of information that we've heard from your
5 earlier witnesses was, was at least two of those buses turn around and come
6 back, travel the length of Grip Road again. So it's as if there were two
7 extra routes. Um, so there's plenty of opportunity for, um, buses and gravel
8 trucks to encounter one another on Grip Road, both in the morning...

9 EHRLICHMAN: Uh-huh.

10 TILGHMAN: And the afternoon.

11 EHRLICHMAN: Okay. And would you consider that if a conflict occurred between
12 a gravel truck trailer and a school bus, due to a crossover, failed brakes,
13 some other driver error, would you consider that conflict to be a severe,
14 highly severe conflict, moderate or low in severity?

15 TILGHMAN: Well, if a 105,000 pound, uh, truck, um, were to collide in some
16 fashion with the school bus, yes, I would think the, uh, the severity of the
17 degree of collision would be quite severe and the risk of injury, uh, quite
18 high to passengers in the bus.

19 EHRLICHMAN: And is the severity of that potential conflict higher when the
20 bus is loaded with school children as opposed to three or four school
21 children?

22 TILGHMAN: Well, um, the severity in terms of the number of people who could
23 potentially be injured, yes, that would go up as there are more passengers in
24 the bus. The severity of the individual injuries may not be different, but
25 you've to more people who could be injured.

1 EHRlichman: And that's a factor in, in determining severity?

2 TILGHMAN: Yes.

3 EHRlichman: You heard the testimony this morning about, uh, the school buses
4 having, being three-quarters full in the morning?

5 TILGHMAN: I heard that.

6 EHRlichman: Okay. So, again, would you consider the potential, if, if a
7 conflict occurred with a school bus and a gravel truck from this project,
8 would you consider the potential severity high, medium or low?

9 TILGHMAN: Well, I would say high.

10 EHRlichman: Okay. And have you reviewed the expected traffic volumes from
11 this project?

12 TILGHMAN: Yes.

13 EHRlichman: Okay. And do those traffic volumes include up to 30 truck trailer
14 combinations per hour? That would be 15 loaded, 15 unloaded?

15 TILGHMAN: Uh, they do.

16 EHRlichman: Okay. And have you, uh, reviewed the mix of traffic that will be
17 on Grip Road when those gravel trucks are operating based on the testimony
18 you've heard in this case?

19 TILGHMAN: Well, the testimony indicates that the mix of traffic includes
20 school buses, as well as, um, other users on Grip Road. So, to that extent,
21 yes.

22 EHRlichman: And did you hear the testimony that said in addition to school
23 buses, there are school children traveling by private car frequently on Grip
24 Road?

25 TILGHMAN: Yes, I heard that, too.

1 EHRlichman: Okay. So, we've just gone through the sentence of 4.09 that says
2 Conflict Analysis should determine the number of conflict points, frequency
3 of conflicts and severity of conflicts based on expected traffic volumes and
4 mix of traffic. Now, your point earlier to me was that, well, there wasn't
5 anything in the traffic reports that did that, is that correct?

6 TILGHMAN: That's correct. Yes.

7 EHRlichman: And so, it's hard to evaluate, uh, whether the Applicant has met
8 their burden of, of showing, protecting public safety, uh, without that type
9 of analysis in print?

10 LYNN: Uh, I'm going to object.

11 EHRlichman: Let me rephrase it.

12 REEVES: Bill, Bill Lynn, you're muted. Mr. Ehrlichman is going to
13 withdraw and rephrase the question.

14 EHRlichman: So, um, your point was that, uh, it isn't, there isn't that type
15 of analysis in the traffic studies Exhibits 12 through 18, correct?

16 TILGHMAN: That's right.

17 EHRlichman: Okay. Finally, in that paragraph it says similar to the manner in
18 which accidents are grouped by type of collision, traffic conflicts are
19 arranged by type of maneuver. So, if there had been a traffic analysis or you
20 were performing one, um, uh, a conflict analysis, excuse me, um, what would
21 that add to the equations to look at arranging the traffic conflicts by type
22 of maneuver?

23 TILGHMAN: Well, conflict points arise at intersections, whether it's a
24 driveway or a regular, uh, two public streets meeting one another. Um, where
25 each different traffic movement straight through, turns, left turns, right

1 turns, um, you identify how many potential points of interference or
2 collision there could be, um, and then particularly in the case, say of
3 school buses, where they have to stop in the road and that is, um, a frequent
4 and regular occurrence, those are additional conflict points. And then in
5 this case, where, where the bus turns around, it, it slows, it turns into a
6 driveway then re-enters the road heading in the other direction. That's
7 another set of conflict points with, um, traffic on the road. Um, so, yes,
8 it's the, it's the vehicle maneuver that often determine, um, what type of
9 conflict points there are and where they're located.

10 EHRlichman: Very good. And the whole point of that, doing that type of
11 analysis, which does, well, let me ask you this, so in that last sentence we
12 just read and you commented on just now, the, the conflicts analysis should
13 include a discussion specific to the school bus man-, type of maneuver, is
14 that correct?

15 TILGHMAN: Yes. That's why the school buses are an issue in the first place.
16 They have to stop in the road, um, multiple times. And then in this case, it
17 actually turns off the road and then back on in the other direction. Yes.

18 EHRlichman: Okay. And so we have no discussion of that in the traffic
19 studies, correct?

20 TILGHMAN: That's correct.

21 EHRlichman: We have traffic counts that were performed in August, uh, not
22 during the main school year, bus traffic period, correct?

23 TILGHMAN: Correct. I clarify, some intersection counts were done in
24 December, but other roadway counts were done in August and, yeah, would have
25 missed the school year and school bus traffic.

1 EHRlichman: Okay. And then as well continue down here in this example as a
2 type of safety study described in 4.09, it says a field study should be
3 completed and the revo-, results evaluated to identify the types of
4 conflicts, roadway intersection, characteristics that contribute to the
5 conflicts and what alternative treatments should be considered to correct the
6 problem. I'm going to assume, but I'll ask the question, if the, the studies
7 and the testimony, uh, didn't include the conflicts analysis, they certainly
8 didn't include a discussion of what alternative treatments should be
9 considered to correct identified problems, correct?

10 TILGHMAN: That's right. As I said earlier, um, it's hard to evaluate and
11 resolve a problem that hasn't been identified in the first place.

12 EHRlichman: That makes perfect sense. I think the Examiner coined a term
13 common sense, common senseality [sic] or something like that, the other day.
14 Um, and you've identified, uh, the types of problems that may arise from
15 this, uh, proposal in our discussion this morning, haven't you?

16 TILGHMAN: Yes, I believe so.

17 EHRlichman: Okay. You're not trying to perform an, an alternatives analysis
18 or, or describe the mitigation, uh, here as a, as a traffic expert, are you?

19 TILGHMAN: Um, no, I'm not. I'm here, I'm simply identifying what I believe
20 there are, um, problems that have been, um, unidentified so far and
21 unaddressed.

22 EHRlichman: Okay. We have the testimony of Forrest Jones, who is a traffic
23 engineer, uh, did you listen to his testimony where he agreed that the
24 problem of conflicts with school buses would be eliminated if the trucks were
25

1 not, uh, allowed to operate during the times the school buses were on the
2 road?

3 TILGHMAN: Yes, I heard that.

4 EHRLICHMAN: Do you agree with him?

5 TILGHMAN: Well, yes. By definition, if the trucks aren't there, there's no
6 conflict between gravel trucks and school buses.

7 EHRLICHMAN: Do you recall in the early traffic memoranda submitted by the
8 Applicant that they actually proposed operations that would not put trucks on
9 the road during those school bus hours?

10 TILGHMAN: Uh, yes, I do.

11 EHRLICHMAN: Didn't they propose operating only between 9:00 a.m. and 3:00
12 p.m.?

13 TILGHMAN: Yes, that's right.

14 EHRLICHMAN: So, the Applicant actually proposed, uh, without even doing,
15 presenting a conflicts analysis, they actually proposed something, whether it
16 was unwitting or, or not, that Forrest Jones testified would eliminate the
17 conflict you've identified today, is that correct?

18 TILGHMAN: Um, yes, that's the, uh, the logic of that, right.

19 EHRLICHMAN: Uh-huh. Is there anything further that you would like to add in
20 your testimony today that I have not covered?

21 TILGHMAN: Um, well, I would note in terms of, um, we've talked a lot about
22 the school buses, um, in particularly Grip Road west of the mine site, but we
23 heard earlier testimony on, I heard your earlier witnesses who live, um, who
24 talked about the school bus stops near the 90 degree curves to the east of
25 the mine site. Um, and the site distance, um, is one of their concerns. It's

1 too limited for oncoming traffic to see kids crossing the street after
2 getting off the bus. Um, that, um, is an issue that I recall, the traffic
3 study did not discuss conditions east of Grip Road, not its, not its
4 alignment, not the sight distance issues, not the use of traffic, not the
5 railroad crossing, just no discussion about that. Um..

6 EHRlichman: When you say east of Grip Road, you mean east of the mine
7 entrance?

8 TILGHMAN: East on Grip Road, east of the mine entrance, yes.

9 EHRlichman: Okay. Thank you. Sorry to interrupt, go ahead.

10 TILGHMAN: And I would note that, uh, one of the peer reviews, I believe by
11 HDR, um, noted that, um, there was similar sight distance deficiencies on
12 that section of Grip Road as there were on the mine entrance and at the
13 Grip/Prairie intersection. And that those, um, deficiencies on east side,
14 east end of Grip Road, should be mitigated as well. Um, but I've not seen any
15 follow up to, uh, to that recommendation. And since that, that's a, a general
16 safety concern for all traffic, but, um, from what we've heard, it's, uh,
17 it's a specific concern, uh, for the operation of school buses.

18 EHRlichman: Was there any explanation in any of the traffic memoranda, in
19 Exhibits 12 through 18, as to why they didn't analyze sight distance problems
20 identified by HDR east of the mine entrance?

21 TILGHMAN: Um, no explanation that I saw.

22 EHRlichman: But didn't the trip distribution shown in Exhibit 18, assign at
23 least some of the truck trips to go east of the mine entrance on Grip Road?

24 TILGHMAN: Uh, yes. I believe it, uh, assigned 5% of trips, uh, to and from
25 the east on Grip Road.

1 EHRlichman: So, from that we can conclude that the Applicant knew that some
2 of the gravel trucks would travel in that direction?

3 TILGHMAN: Uh, yes, it's part of their proposal, evidently.

4 EHRlichman: Do you know whether any of their, um, well, let me rephrase that.
5 Do you happen to recall in Gary Norris' testimony on September 2nd, that he
6 said that the segment of Grip Road, segments of Grip Road to the east were
7 not part of the site area that was the subject of their traffic analysis?

8 TILGHMAN: Um, I don't know that I recall that specifically. Um, like I
9 said, they didn't do any analysis in that area, whether it was, for whatever
10 reason, I'm unclear about the reason.

11 EHRlichman: Um, okay. Isn't this question we've discussing this morning, one
12 of the most important reasons to do a traffic study?

13 TILGHMAN: Um, well, absolutely. And I think the, um, I think the
14 introductory line of the, um, uh, the road standards, the government studies
15 is all about safety, um, yes, ultimately, it's the sufficiency of
16 infrastructure from a capacity point, but, yes, the primary concern is and
17 has to be safety.

18 EHRlichman: Isn't it enough to do the trip capacity analysis, um, to
19 determine safety?

20 TILGHMAN: Um, I...

21 EHRlichman: Let me repara-, let me strike that and rephrase that question.

22 REEVES: Didn't we have a half hour of testimony on him thinking it wasn't
23 enough. I, I'm just wondering where we're going here.

24 EHRlichman: Oh, did you catch that? I, I probably don't even...

25 REEVES: Well, I've been listening.

1 EHRlichman: This whole time, Mr. Ehrlichman. I, I, this is the second time
2 I've listened closely to Mr. Tilghman. So...

3 EHRlichman: Yeah. I hope that's helpful.

4 REEVES: Well, go ahead with the, uh, question, a specific question.

5 EHRlichman: We, we've heard the, um, traffic engineer for the Applicant
6 testify that the trip capacity analysis is a safety analysis and therefore he
7 conducted a safety analysis on Grip Road, do you agree or disagree with that
8 statement?

9 TILGHMAN: Um, I generally disagree. It is true to the extent that, um,
10 capacity is, or use of capacity is perhaps one factor, um, in the safety
11 analysis. Um, but that alone is, um, not a full comprehensive safety
12 analysis.

13 EHRlichman: All right. And, and you also know that they did look at some
14 sight distance safety issues, correct?

15 TILGHMAN: That's right.

16 EHRlichman: But is it your testimony that they missed the other elements of a
17 safety analysis? Isn't that the jest of it?

18 TILGHMAN: Yes.

19 EHRlichman: And, again, I want to close by asking the question, isn't the
20 safety of the school children on Grip Road, shouldn't that be foremost in the
21 decision-maker's mind when applying the County's Policies and Standards for
22 Mining Special Use Permit?

23 TILGHMAN: Um, well, yes. Safety is paramount. Again, the, um, the first
24 purpose listed for the, uh, purpose of the TIA is to determine safety impacts
25 a particular development will have. Um, so, yeah, safety is paramount.

1 EHRlichman: And if, even if the, uh, trip count isn't high, the severity of
2 the conflicts could still be considered high?

3 TILGHMAN: Yes. Yes. The potential for injuries should there be any kind of
4 collision between a loaded gravel truck and a school bus, or other vehicle,
5 um, is very high.

6 EHRlichman: So, the significance of the possible, uh, impact is high in your
7 opinion?

8 TILGHMAN: Yes. One wants to do a proper analysis of it, but, um, again,
9 that difference between heavily loaded, long, large vehicles and vehicles
10 loaded with children and, um, other vehicles, um, raises grave concerns.

11 EHRlichman: Let me ask you a hypothetical, if the Hearing Examiner were to
12 approve this project as currently conditioned, and Miles Sand and Gravel were
13 to open up another gravel mine within, within a couple of miles here that
14 also utilized Grip Road, would there be a different type of safety analysis
15 for this proposal or would you expect there would be, um, something else than
16 what you've seen?

17 TILGHMAN: Um, well, given that we haven't seen a safety analysis, I would
18 love to see a proper safety analysis, uh, whether it's one, two or more, uh,
19 mining operations. There simply needs to be a safety analysis.

20 EHRlichman: Okay. Um, I asked the wrong question, sorry. Let's assume they
21 did a safety analysis or the Hearing Examiner finds that the analysis they
22 did is adequate to meet the safety test for this project. That's the
23 hypothetical. If the second mine began operating using Grip Road, would the
24 impacts, the accumulative impacts of both projects be different than the
25 impacts of this project alone?

1 REEVES: And...

2 EHRLICHMAN: It's a hypothetical.

3 LYNN: I'm just going to object. There's already been evidence that
4 that's not the case. It's completely hypothetical and therefore not probative
5 of anything.

6 REEVES: I'll sustain the objection. Let's move on, Mr. Ehrlichman, you
7 have other questions?

8 EHRLICHMAN: Mr. Examiner, I'm going to, uh, ask you to reserve, um, a slide
9 in the, uh, presentation of Exhibits here for me to present you with the
10 parcel ownership that I was not able to, uh, pull together in time for this
11 morning. I can get it to you by this afternoon, that shows that Miles owns,
12 uh, a gravel mine that is serviced by Grip Road, within a couple of miles of
13 this mine. I want that evidence in the record. My question to this witness is
14 the obvious, which is...

15 REEVES: Right.

16 EHRLICHMAN: Wouldn't the traffic analysis, looking at two mines here, uh,
17 result in a, in a more, uh, uh, a higher severity of, of safety concern than
18 just looking at this one proposal standing alone. That's my question...

19 REEVES: Sure.

20 EHRLICHMAN: To this witness.

21 REEVES: And I, and I understand the objection. I sustained it. We're
22 going to move forward. If you get that evidence, we can move on. I do stress
23 I'm not a complete idiot. I, I understand that if you have more things
24 there's greater impacts. So, I, I, you know, let's, let's move forward with
25 specifics rather than hypotheticals.

1 EHRlichman: Okay. Um, Mr. Tilghman, are you aware that Miles owns the gravel
2 mine, uh, off of Grip Road in addition to this one?

3 TILGHMAN: Um, so I have heard.

4 EHRlichman: Okay. Uh, would a safety analysis for this mine, uh, reasonably
5 include accumulative impacts analysis?

6 TILGHMAN: Um, if there's a, um, known proposal, um, for, um, any other
7 operation, um, accu-, accumulative analysis should take into account all
8 known and expected, um, additions to traffic. Um, and one would then have to
9 understand the vehicle mix, the conditions impose and that should be, um,
10 considered in, uh, the safety analysis.

11 EHRlichman: Mr. Examiner, this is not, uh, now a hypothetical question. Uh,
12 this is a fact that Miles owns the second gravel mine and has the mineral
13 resource overlay and in this preceding has argued they have a right to, uh,
14 operate a mine any time there's a mineral resource overlay..

15 REEVES: [Inaudible.]

16 EHRlichman: Uh, with a, let me, let me finish, please, with a, with a type of
17 traffic analysis we've seen in this case. My argument to you in, uh, briefing
18 would be obviously, uh, that with that evidence, um, there, there is a need
19 to remand this back for additional study that includes an accumulative
20 impacts analysis. Thank you. I have nothing further for Mr. Tilghman.

21 REEVES: Okay. Uh, it's almost 10:45. I'd suggest a short restroom break.
22 And then we'll come back and do cross-examination and I'll start with Mr.
23 Loring, if he has questions and then, uh, Mr. D'Avignon and Mr. Lynn. So,
24 we'll come back, why don't we say shortly after 10:50, just to, you know,
25

1 10:53, give us ten minutes for the restroom. We'll be back shortly. Thank
2 you, everybody.

3 EHRLICHMAN: Thank you.

4 LORING: Thank you.

5 EHRLICHMAN: Thank you, Mr. Tilghman.

6 [The tape ends.]

7 **The undersigned being first duly sworn on oath, deposes and says:**

8 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
9 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party
10 to this action. That on May 10th, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves, that
11 took place on 9/23/22 at 9:00 a.m., regarding the above-captioned matter.

12 I certify and declare under penalty of perjury under the laws of the State of Washington that the
13 aforementioned transcript is true and correct to the best of my abilities.

14 Signed at Mount Vernon, Washington, this 10th, May of 2024.

15 Janet Williamson

16 Janet Williamson

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**IN SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT**

State of Washington,	)	Cause No.: PL16-0097, PL16-0098,
	)	PL22-0142
Plaintiff,)	
)	
vs.	)	PERMIT HEARING 9-23-22 11:00 AM
)	
Name,)	
)	
Defendant)	

Transcription Date: May 11th, 2024

Present: Andrew Reeves, Kyle Loring, Jason D'Avignon, Bill Lynn, Ross
Tilghman, Tom Ehrlichman, Mona Kellogg, Brandon Black, Gary Norris

REEVES: Back with, uh, Mr. Tilghman, for the second time. And Mr. Loring,
do you have any questions for this witness?

LORING: Uh, no, I don't, Mr. Examiner, thank you.

REEVES: Oh, thank you. Mr. D'Avignon?

D'AVIGNON: Uh, no questions.

REEVES: Okay. Uh, Mr. Lynn?

LYNN: Uh, thank you. Good morning, Mr. Tilghman.

TILGHMAN: Morning.

1 LYNN: [Cough] uh, you mentioned, um, sorry, I've got a little thing
2 going on here. Um, you mentioned that you, uh, the work that you described
3 was done as part of a team, is that correct?

4 TILGHMAN: Um, number of projects I do as part of a team, some I do, uh,
5 independently.

6 LYNN: Well, most of Mr., um, Ehrlichman's questions were phrased in
7 terms of teams so I want to ask you about those teams. Were those teams
8 include a traffic engineer?

9 TILGHMAN: Um, many times, yes.

10 LYNN: Okay. It that typically who would, who, who you would team up
11 with in any kind of traffic analysis?

12 TILGHMAN: Uh, it depends on the, um, the nature of it, but, I frequently
13 team with traffic engineers to do, uh, specific tasks in the analysis, yes.

14 LYNN: Okay. And would the specific tasks in the analysis that would be
15 performed by a traffic engineer included things like conflict analysis and
16 the evaluation of crash data?

17 TILGHMAN: Um, they may well part of it. Um, not necessarily the only ones
18 doing that.

19 LYNN: [Inaudible] doing that?

20 REEVES: Sorry...

21 LYNN: Others on the team?

22 REEVES: Mr. Lynn, you cut out significantly there.

23 LYNN: Okay. Uh, I'll, I'll withdraw the question. Um, so, you mentioned
24 that, uh, you, you used the term several times, we're introducing truck
25 traffic on this road. Aren't there already trucks on this road, on Grip Road?

1 TILGHMAN: Uh, there are some trucks, yes.

2 LYNN: And that percentage is identified in the traffic analysis?

3 TILGHMAN: I believe it was mentioned, yes.

4 LYNN: Well, it wasn't mentioned, it's part of the analysis, isn't it?

5 TILGHMAN: Yes, it's there.

6 LYNN: Yeah. There's a breakdown...

7 TILGHMAN: Gen-...

8 EHRLICHMAN: Between all the different, I'm going to object here, when he

9 answer a question, Mr. Lynn doesn't need to badger him about his use of

10 terminology. He can just ask the question.

11 REEVES: All right. Mr. Ehrlichman, Mr. Lynn, we're just, we're going to

12 get through this. I acknowledge the objection, I didn't see it particularly

13 anything wrong with it, but we'll move forward.

14 LYNN: Well, if the purpose of the objection was interrupt my train of

15 thought, it did because now I've lost my place. Um, the traffic information

16 con-, contains a specific breakdown in the counts as to the type of vehicles

17 that were present, does it not?

18 TILGHMAN: That's correct.

19 LYNN: And there are worksheets, uh, numerous worksheets attached to the

20 traffic study that breaks that down as to every one of the counts that were

21 performed, correct?

22 TILGHMAN: That's right.

23 LYNN: Okay. So, it's pretty clear what the percentage of trucks is

24 versus other vehicles, is it not?

25 TILGHMAN: That's right.

1 LYNN: Okay. Uh, you, uh, first of all, you would acknowledge that crash
2 history is safety information, correct?

3 TILGHMAN: It's historical information, yes.

4 LYNN: And, and isn't historical crash data commonly used in the traffic
5 field to, uh, not only look at what's happened in the past, but to identify
6 places of notes where accidents might happen in the future, isn't that its
7 purpose?

8 TILGHMAN: Um, yes, that's right.

9 LYNN: Okay. And in addition to looking at intersection crash data,
10 didn't Mr. Norris testify that he also looked at crash data for segments of
11 roads?

12 TILGHMAN: Um, I don't recall, I don't recall specific testimony on that
13 point, but I know the TIA stated specifically that the crash data was
14 reported for intersections and not for road segments. I did..

15 LYNN: Did you hear his testimony about inter-, the segment crash data?

16 TILGHMAN: Um, if I did, I don't recall that part of it, sir.

17 LYNN: Okay. You were asked questions about hours, uh, and some, uh,
18 supposed proposal by the Applicant, uh, to limit hours, wasn't that just a
19 way of presenting information by Mr., uh, Norris to, um, more, uh, closely
20 compress the traffic impacts for evaluation? It wasn't a specific proposal by
21 the Applicant, was it, to limit traffic to those hours?

22 EHRLICHMAN: I'm going to object to the question, Your Honor, on the basis
23 [inaudible] testify about what Mr. Norris thought or what the Applicant
24 prosed. What the testimony was, what appeared in the specific memorandum.

25 LYNN: Uh, and..

1 REEVES: I'm confused at this point, but, so...

2 EHRLICHMAN: He doesn't know...

3 REEVES: Should...

4 EHRLICHMAN: He doesn't know what Mr. Norris was thinking any more than, uh,
5 Bill Lynn thought I could tell, ask Mr. Norris what the County Staff were
6 thinking when they issued the MDNS. The question, just ask the question about
7 what was in the document, Bill, and he can answer that.

8 LYNN: Well, the reason I'm as-, the reason I was asking it is you
9 presented it as if it was a Miles proposal, which it was not. But we can make
10 that point a different way. So, to get this moving, I will move on. Um,
11 reference to pedestrian crossings, uh, tell us, in your experience, what
12 happens school buses stop on a two-lane rural road?

13 TILGHMAN: When a school bus stops, um, they generally have flashing lights
14 and a stop sign that then, uh, is projected on the, uh, left side of the bus.
15 On a two-lane road, then traffic in both directions is supposed to stop, um,
16 until the bus retracts its sign.

17 LYNN: And where pedestrians from the school bus are crossing, the bus
18 doesn't leave until the children have crossed, does it?

19 TILGHMAN: Uh, that's generally correct, yes.

20 LYNN: Well, it's, it's, it's the way it works, isn't it? Isn't that the
21 rule, isn't that the way it operates?

22 TILGHMAN: That's the way it's supposed to work, yes.

23 LYNN: Okay. And with reference to turnarounds, doesn't the school
24 district select the locations where buses turn around and wouldn't you expect
25 them to select locations that are safe for their children?

1 EHRlichman: Same objection, he's asking him to tell us what the school
2 district things.

3 REEVES: And I'm going to overrule the objection to the extent that my
4 understanding of the question was essentially based on this witness'
5 experience, you know, have, have you not, you know, what is your experience
6 with how school districts pick bus stops. Trying to get through this.

7 EHRlichman: That wasn't what Mr. Lynn said, but that is a question that he
8 could answer. Thank you.

9 REEVES: Thank you, Mr. Ehrlichman. Can you answer my questions, Mr.
10 Tilghman?

11 TILGHMAN: Um, I would expect that they would choose safe places. Um, but
12 obviously [inaudible] may not prove to be a good, good location should other
13 conditions change.

14 LYNN: Uh, is auto-turn something that you, uh, would use, is that a
15 program that you would use in your work?

16 TILGHMAN: Um, yes, I commission its use.

17 LYNN: And who would actually perform the work?

18 TILGHMAN: Um, entities that, um, own and operate auto-turn.

19 LYNN: And aren't those typically traffic engineering firms?

20 TILGHMAN: That's right.

21 LYNN: Okay. Uh, well, let me just go back, uh, before we finish with
22 auto-turns. You test-, when asked about, uh, studies that you performed as a
23 team...

24 REEVES: Mr. Lynn, I don't know where your microphone is, but as you're
25 flipping your papers, it is quite loud.

1 LYNN: Okay. I'll, I'll stop..

2 REEVES: So, it's hard hearing you ask, ask questions while you're
3 flipping is all I'm saying, so...

4 LYNN: Uh, okay. I'll stop flipping. Uh, when you were asked questions
5 about, uh, safety analysis in teams, you answered with, uh, a discussion
6 about traffic studies that you had found inadequately discussed safety. Is it
7 fair to say that a substantial part of your work on a day-to-day basis is a
8 review and commentary on traffic analysis performed by others?

9 TILGHMAN: Well, that is one thing that I do, it is not the only thing that
10 I do.

11 LYNN: Okay. Isn't it a substantial part of what you do in cases where
12 you give testimony?

13 TILGHMAN: Yeah. In cases where I give testimony, I've been asked to review
14 transportation documents for the project they invariably included traffic
15 impact analysis, so, yes.

16 LYNN: And more often than not, aren't you on the side of challenging or
17 criticizing or however you want to characterize it, the work done by other..

18 EHRLICHMAN: Objection.

19 LYNN: In traffic analysis?

20 EHRLICHMAN: What is the, what is this, where are we going with this? Is, is
21 the point that Ross Tilghman is a professional opponent of gravel mines?

22 REEVES: Uh, Mr. Ehrlichman, A), uh, the, the nature of the objection and
23 the frequency of these objections is making it difficult to get through this.
24 Uh, you know, we tried to give you a little leeway, uh, while you were asking
25 your questions. But, ultimately, I'll sustain the objection to the point that

1 I, I don't find it ultimately helpful for me, the Hearing Examiner, that
2 needs to ultimately make the decisions. So, Mr. Lynn, why don't we move on
3 with a different question?

4 LYNN: I will be happy to move on to something that's, isn't, uh, an
5 auto-turn analysis a form of safety evaluation in that it looks to see where
6 vehicles of a particular type might cross over, uh, a center line?

7 TILGHMAN: Um, yes. It, it identifies, um, potential conflicts between
8 vehicles based on the geometry of the roadway they're traversing.

9 LYNN: So, uh, and didn't the Applicant perform, uh, auto-turn analysis
10 in two most likely pa-, places where a conflict might arise?

11 TILGHMAN: Well, in the, uh, the TIA, it identified, um, conflicts on
12 Prairie Road, um, much closer to Old Highway 99. The TIA, um, didn't report
13 use of auto-turn at any other location. We've subsequently seen this, um,
14 this newest, um, auto-turn, um, for, um, the S-curve on Grip Road, but that
15 wasn't part of the TIA or a factor in the original, uh, County decision.

16 LYNN: That wasn't my question. My question was, didn't the Applicant
17 perform auto-turn analysis, which are essentially forms of conflict analysis
18 at S-curves on both Grip and Prairie?

19 TILGHMAN: They have done now, yes.

20 LYNN: Okay. And, uh, haven't they proposed mitigation at both of those
21 locations to reduce conflicts?

22 TILGHMAN: Um, I'm aware of the, uh, mitigation proposed on the Prairie Road
23 section. I, I have not seen in writing or testimony specifics about Grip Road
24 so I'm, I, I'm unaware of what may have, may or may not have been proposed.

1 LYNN: Would you agree that, um, widening to be consistent with the
2 auto-turn analysis would be a useful safety mitigation measure on Grip Road
3 S-curves and Prairie Road S-curves?
4 TILGHMAN: Uh, that would be a very good step, yes.
5 LYNN: Okay. That's all I have. Thank you.
6 REEVES: Okay. Any, any redirect based on that, Mr. Ehrlichman?
7 EHRLICHMAN: Y-, yes, I, I have a quick question, uh, for Mr. Tilghman. Uh,
8 did you see the Applicant, or Mr. Lynn's submittal the other day of the, what
9 they call the auto-turn analysis for Grip Road? I think he just referred to
10 it, the two drawings?
11 TILGHMAN: Yes.
12 EHRLICHMAN: And when you reviewed that, did you notice the scale, uh, legend
13 that was in the upper right-hand corner?
14 TILGHMAN: Yeah. There's a scale legend there.
15 EHRLICHMAN: Does that scale appear to correspond to any of the dimensions for
16 the truck/trailer combination shown in the graphic? Uh, for example, we know
17 that the truck/trailer combination they're proposing is 74 feet 11 inches you
18 testified, does the scale, uh, for that rough dimensions shown in their
19 legend map match up to what they're showing on the, the graphic?
20 TILGHMAN: No. The legend appears to be at odds with the, uh, dimensions
21 noted in the graphic.
22 EHRLICHMAN: So, in other words, the leg-, the distances shown on the legend,
23 uh, don't appear to be accurate compared to the distances shown in the
24 graphic?
25 TILGHMAN: That's how it appears, yes.

1 EHRlichman: Can you tell from that graphic at all, what dimension they used
2 to show the width of Grip Road lanes?

3 TILGHMAN: Um, no, from the graphic as presented, um, and given the
4 inconsistency of the scale to the, the graphic, um, cannot tell directly. One
5 might be able to work it out, but, um, but it, it's not obvious.

6 EHRlichman: In terms of a professional traffic analysis, is the graphic
7 presented for Grip Road, uh, capable of being analyzed? Let me, let me...

8 LYNN: He's already testified he does not...

9 EHRlichman: Let me rephrase the question.

10 LYNN: Form such analysis.

11 EHRlichman: Sorry, let me...

12 REEVES: And I acknowledge Mr. Lynn's objection and...

13 EHRlichman: Rephrase that.

14 REEVES: That Mr. Tilghman just testified a few minutes ago that he...

15 EHRlichman: Withdrawn.

16 REEVES: Himself did not analyze the auto-turn analysis.

17 EHRlichman: That's why I'm withdrawing the question and...

18 REEVES: Oh, okay.

19 EHRlichman: Rephrasing.

20 REEVES: I'm...

21 EHRlichman: Thank you. Um, Mr. Tilghman, can you tell from the graphic, uh,
22 if you can't tell from the graphic what the widths of the lanes are, is the
23 graphic meaningful, a meaningful portrayal or representation of the crossover
24 conclusion?

25

1 TILGHMAN: Um, well, I think it, one, one would want additional
2 clarification on the actual dimensions. Um, the graphic does illustrate that
3 the vehicles would encroach both over the edge of the road, the so called fog
4 line, and they'd encroach, um, over the center line. And you can see, at
5 least the relative degree of encroachment, if you can't work out the exact
6 dimensions. Um, and I think that shows the, while the details may need, um,
7 verif-, verifying, um, I think the graphic shows the value of this kind of
8 analysis that it, it actually illustrates a problem that, um, residents and I
9 had, uh, suggested was the case previously. That, yeah, the trucks are too
10 large to, uh, negotiate the S-curves and stay in their lane. So, again, more
11 detail is wanted to, uh, confirm things, but at root, it, um, it shows the
12 inherent conflict, um, due to the, um, the narrowness of the road and the
13 size of the trucks.

14 EHRLICHMAN: So, that is one of the elements that we talked about in your
15 testimony of a conflicts analysis, right? To identify a potential problem.

16 TILGHMAN: Yes.

17 EHRLICHMAN: Okay. And do you know whether the Applicant submitted any other
18 segments on Grip Road, for the auto-turn analysis or was it just these two
19 curves?

20 TILGHMAN: I'm not aware of any other, just these are the only ones I have
21 seen.

22 EHRLICHMAN: And since the, you have seen nothing in writing as to what
23 mitigation is proposed as a result of identifying these problems, can you
24 tell...

25

1 REEVES: Sorry, Mr. Lynn, would you mind muting for a minute there? Yeah,
2 we're getting some feedback. Sorry to interrupt, Mr. Ehrlichman.
3 EHRLICHMAN: Thank you. Since we, uh, you testified that you have not seen
4 anything in writing from the Applicant, uh, proposing mitigation for these
5 two curves shown in the auto-turn analysis, correct?
6 TILGHMAN: Yeah. That's correct.
7 EHRLICHMAN: So, we don't know where the pro-, purported or proposed
8 mitigation is to improve the road to the County Standard?
9 TILGHMAN: Um, no, we don't know. At least, I don't know.
10 EHRLICHMAN: And do you have any reason to believe that the County Standard
11 applicable here, is for a 34 width surface?
12 TILGHMAN: Um, I believe, yeah, 34 feet of pavement would be the, um, the
13 standard for, um, Grip Road's classification.
14 EHRLICHMAN: And you, and you are looking at the Standard in that, uh, figure
15 B6, is that where you got that?
16 TILGHMAN: Uh, yes. And, yeah, it's out of the, the County Road Standards.
17 EHRLICHMAN: And it's also attached to Exhibit 18 toward the end, isn't it?
18 TILGHMAN: That's right.
19 EHRLICHMAN: Okay. And Mr. Examiner, the excerpt of that is at our Exhibit 49
20 S14.i have nothing further. Thank you.
21 REEVES: Okay. I tend to give a little leeway, but, uh, Mr. Lynn, are we
22 done with this witness?
23 LYNN: Yes.
24 LORING: M-...
25 REEVES: Uh, Mr. Loring might have a question. Uh, Mr. Loring...

1 LORING: I...

2 REEVES: I'll give a little leeway. What, what do you have here?

3 LORING: I just have a, a, a couple of questions about the amount of
4 traffic that would be introduced by the mine. Sorry, I, uh, I was hoping to
5 follow-up on Mr. Lynn's question, my internet was a little fuzzy right
6 between that and Ehrlichman. Be pretty quick here.

7 REEVES: I'll allow it. Uh...

8 LORING: Okay. Uh, Mr. Tilghman, you testified earlier that this Grip Road
9 mine would introduce, um, fair amount of truck traffic onto the road. Uh, and
10 then Mr. Lynn asked you whether there was already truck traffic. Uh, do you
11 recall that part of your testimony?

12 TILGHMAN: Yes, I do.

13 LORING: Okay. Have you reviewed the amount of truck traffic similar to
14 that proposed that, uh, is already on the road according to the Applicant's
15 traffic counts?

16 TILGHMAN: Um, yes.

17 LORING: And is it your understanding that their, their traffic counts did
18 not find vehicles like the ones proposed and used for the auto-turn analysis
19 on the road?

20 TILGHMAN: Um, that's, I believe that's correct. Um, there may have been one
21 or two, um, vehicles that had say more than five axles, um, but certainly
22 didn't, um, didn't reflect any, um, repeated or continual use by anything
23 like a dump truck with pup trailer.

24 LORING: Okay. And it's your understanding that the trucks and trailers
25 that would be used, and this is based on the auto-turn diagram for the trucks

1 that would be used, it's your understanding that those would have more than
2 five axles?

3 TILGHMAN: Uh, yeah. What's shown has at least, um, six axles contacting the
4 road and depending on conditions, uh, could deploy up to two others.

5 LORING: Okay. And I just want to share my screen and ask you just one
6 more question as I scroll through some of those traffic counts. And I said
7 the roads, I should have said Grip Road, uh, as we're discussing this. So,
8 I'm going to, hopefully this will work. I just want, I'm looking at Exhibit
9 C18. Are you seeing that there on your screen?

10 TILGHMAN: Yes, I do.

11 LORING: And this is, uh, I'll show you, I'm, I'm scrolling up, this is at
12 the end of that traffic impact analysis. And you can see here is the page
13 where it identifies a vehicle classification. Now, I'm on page 58 in the PDF,
14 do you see how many, um, multi-vehicle trucks, uh, have greater than five
15 axles, based on this survey that they did on, uh, August 17th, 2020?

16 TILGHMAN: Yeah. This is for the westbound, uh, lane on Grip Road, um, east
17 of Prair-, about a quarter mile east of Prairie. And there are, um, no
18 vehicles were recorded that day, uh, that had five axles or more.

19 LORING: Okay. And so, when you say that, do you understand that to mean
20 that there were no vehicles, uh, similar to the vehicle that Miles is
21 proposing to put on the road there?

22 TILGHMAN: On this particular count day, that's correct.

23 LORING: Okay. Just as couple more questions. I just want to scroll down.
24 Do you see now we're looking at the Tuesday, 8/18/2020, uh, vehicle traffic
25 counts?

1 TILGHMAN: Yes.

2 LORING: How many vehicle did they, uh, survey on that day that showed up
3 with a vehicle the size of the Miles' truck proposal?

4 TILGHMAN: Uh, there were none on that day.

5 LORING: Okay. Uh, how about Wednesday, I just scrolled down to Wednesday,
6 August 19th, how many that day?

7 TILGHMAN: There were two vehicles that had six or more axles.

8 LORING: Okay. I won't go through every data sheet, I think we can stop
9 there. Uh, what's your understanding of the maximum amount of vehicle traffic
10 that would be allowed, according to the, uh, Mitigated Determination of Non-
11 Significance Conditions, along this stretch of Grip Road, for the mine, I
12 should say.

13 TILGHMAN: Uh, the maximum in a, well, there was an hourly maximum discussed
14 and then based on the number of operation hours, there's an implied daily,
15 uh, maximum. Um, and it was 30, well, it's a, the MDNS talks about a maximum
16 of 30, uh, trucks in an hour. And they talk about a ten-hour day, so it's
17 basically 300, I think it was 296 trucks or something like that, but
18 essentially 300 daily trucks.

19 LORING: Okay. And is that more than we just saw now based on the traffic
20 counts for the site, according to Miles?

21 TILGHMAN: Yes, it is.

22 LORING: Would you call it quite a bit more?

23 TILGHMAN: Yeah. I mean, it's, um, there's basically less than 1,000 trips,
24 daily trips on Grip Road in total now, so adding 300 that are exclusively
25 heavy trucks, would be a very significant increase both in terms of

1 proportion and then obviously in terms of heavy trucks. Go from effectively
2 zero to 300 a day.

3 LORING: Thank you for that. I don't have any further questions. I
4 appreciate your time.

5 REEVES: Okay. So, I think we can move on from this witness, at this
6 point. Great. Thank you, uh, for coming back a second time, Mr. Tilghman. And
7 I think, Mr. Ehrlichman, you have one final witness, is that right?

8 EHRLICHMAN: We do. Uh, I'd like to call, uh, Wallace Grato.

9 REEVES: I see a Wallace G. Might need to hit unmute on your own device.

10 EHRLICHMAN: Wally, if you're there, we aren't hearing you yet.

11 REEVES: Okay. They've raised their hand. I, we certainly would like to
12 hear from you Wallace Grato. I think you need to hit the unmute button as
13 opposed to the raised hand. Maybe the microphone, hit the microphone. I'm not
14 sure how else to, I don't think I have the power to unmute you. No, I don't.
15 Mona Kellogg has, Ms. Kellogg is there.

16 KELLOGG: Doesn't look like I can unmute him.

17 REEVES: Right. I think it's on his end he needs to unmute himself, is
18 that your understanding?

19 KELLOGG: It is.

20 REEVES: So, at the bottom of your screen, Mr. Grato, there should be a
21 microphone, I think you have to hit that.

22 EHRLICHMAN: Mr. Examiner, I just called him, uh, he's been hitting the mute
23 button, nothing happened. I suggested he log out and log back in.

24

25

1 REEVES: Okay. And while, while we try to get Mr. Grato back, uh, Mr.
2 Lynn, question for you, do you have a sense of, uh, if you're bringing any
3 initial witnesses in rebuttal?

4 LYNN: Uh, I think we will have just two witnesses and they'll be
5 relatively brief.

6 REEVES: Okay. Great. Thank you.

7 EHRLICHMAN: Can we know who those are, per chance?

8 LYNN: Uh, I expect to call Mr. Norris and Mr. Barton.

9 EHRLICHMAN: Mr. Cox is staying away today?

10 LYNN: He's, he's present, but he's not planning to testify. I, this is
11 follow up to Mr. Barton's earlier testimony.

12 EHRLICHAMN: Okay. Thank you.

13 LYNN: I, and I, I don't know what you mean by staying away, but I think
14 it's kind of, uh...

15 REEVES: I...

16 LYNN: Im-, implying something.

17 REEVES: I...

18 LYNN: And I didn't...

19 EHRLICHMAN: Didn't mean anything by it.

20 REEVES: I'm trying to keep, I'm trying to keep control of the sandbox as
21 well as I can. I promise, I'm not going to give any weight to the way any of
22 these Attorneys characterize any of these witnesses, so...

23 EHRLICHMAN: No, I apologize, I, that sounded loaded, I didn't mean it that
24 way, so apologies.

25

1 REEVES: All right. Do we have Mr. Grato yet?
2 KELLOGG: No, he hasn't tried to log back in yet.
3 REEVES: And..
4 EHRLICHMAN: So, Jason, how does the future look for Zoom and Skagit County?
5 D'AVIGNON: I don't, I don't really know, it's a little above my paygrade, I
6 think there's, you know, we do have some sort of license, that's what the
7 commissioners use, but getting to part of it is not a decision I get to make.
8 REEVES: Well, and Jason, there's no expectation of any further Appeals
9 after this one in Skagit County, right? We're just, this was the last and,
10 uh..
11 D'AVIGNON: I have every hope that this is the last seven-day Hearing in
12 Skagit County, at least during my tenor.
13 REEVES: Excellent. All right.
14 EHRLICHMAN: Mr. Examiner, I'm going to suggest that maybe if I could get Mr.
15 Grato on my phone, that you all might be able to hear him. Would that be..
16 REEVES: Well..
17 EHRLICHMAN: Acceptable?
18 REEVES: I think there's a way he can call in if you can..
19 EHRLICHMAN: Oh, okay.
20 REEVES: Why don't you mute and call him and tell him the call-in number.
21 EHRLICHMAN: Okay.
22 REEVES: Mona, is that right? There is a call-in number?
23 KELLOGG: Yes. Yes.
24 REEVES: And Tom, where can Tom Ehrlichman find that number?
25 EHRLICHMAN: Or can you give it to me or is it a long..

1 REEVES: Yeah. Perfect.

2 KELLOGG: Let me go back here and I will get it for you. It's, um, posted
3 on our website. So, tell me when you're ready.

4 EHRLICHMAN: All ready.

5 KELLOGG: Okay. He needs to dial the 1 first, 323-553-1010.

6 EHRLICHMAN: Okay. And then are there prompts or something or?

7 KELLOGG: Yes. And so, how it's listed and then it has two commas after
8 that, 1, 1, 6, 8, 7, 1, 6, 0, 4 and then the pound sign.

9 EHRLICHMAN: Okay. I will email and call him. Thank you for your patience.

10 REEVES: And I see Brandon Black, we don't need him as a witness, I'm
11 assuming he's wearing a Hawaiian shirt. I just, if so, I'm curious which
12 Hawaiian shirt Brandon Black is wearing on a lovely Friday. There we go. I,
13 I, we, we know. We know. And I note for the record, Brandon, go ahead if you
14 wanted to tell us about your Hawaiian shirt. This is obviously, we're just
15 waiting to get witnesses. Uh, you're muted. And this is...

16 BLACK: I didn't want to disappoint, so I made a point of making sure I
17 had the Hawaiian shirt today.

18 REEVES: Excellent. Very sharp.

19 D'AVIGNON: Speaking of muted, though, it, it is a little quieter as Hawaiian
20 shirts go.

21 REEVES: It is, uh, hey, well played. It is a muted Hawaiian shirt and,
22 uh, that was an excellent pun, or maybe not a pun, but an excellent use of,
23 uh, a homonym, homonym, I think is the right word I'm looking for there in
24 terms of, uh, same, same word two different meanings. Uh, I note that I did
25 order and apparently there's a company that now makes long-sleeve Hawaiian

1 dress shirts. I ordered one, sadly, it did not arrive in time of our Hearing
2 today. But, maybe, uh, of, of course, no more Appeals are expected, at least
3 seven-day ones, but in the future, on a Friday, if necessary, perhaps I will
4 wear a long-sleeve Hawaiian shirt. Uh, but...

5 D'AVIGNON: We look forward to that.

6 REEVES: There you go. And, and Mona, did you have any further, let's see...

7 KELLOGG: Nothing is happening.

8 REEVES: Oh, okay. Just wanted to make sure.

9 KELLOGG: Okay.

10 REEVES: All right. And then, further while we're waiting on the, the
11 vote, of course, can occur later, I went a little, little brighter than
12 normal, but on my tie, I just want to note, this is a Jerry Garcia tie that
13 was given to me by Phil Lesh, bassist of the Grateful Dead. So, I was trying
14 to really bring it in terms of winning the tie competition. I guess we never
15 established if I myself am allowed to win, but, uh, I have given the
16 background on my tie.

17 EHRLCIHMAN: I, I don't think you can just drop that on us without telling us
18 the back story.

19 REEVES: Well, so, while we're waiting, Phil Lesh, uh, every now and again
20 we would ski, uh, together because I had a ski lesson that seemed to line up
21 right after his, uh, when I was a kid at what used to be called Squah Valley
22 [phonetic] in Northern California. And being a local nerd sort of lover of
23 the Grateful dead, I, I asked him about, uh, Jerry Garcia and he said, you
24 know, happened to know he was going to see me and brought me this, uh, Jerry
25 Garcia tie. So, that's, that's the background there. Uh, you know, I, uh,

1 that's, that's all I got, but, uh, it's not a monkey tie. I couldn't find any
2 animal ties, but I thought at least I had a tie with a good story.

3 REEVES: Well, Bill Lynn, you pulled a Bill Lynn, you're talking, but
4 you're muted.

5 LYNN: I, I, I know, I'm, uh, I, I said it's a great story. And then I
6 decided it wasn't worth unmuting.

7 REEVES: All right. All right. And Tom, if you can give us an update any
8 point on where we are with this witness?

9 EHRLICHMAN: We have spoken and he has the call-in number and that's all I
10 know. I'm hopeful.

11 REEVES: Okay.

12 EHRLICHMAN: I can tell you what our, uh, presentation entails with Mr. Grato
13 as a preamble if you'd like?

14 REEVES: Uh, sure, it says guest waiting to join, I'm hoping maybe that
15 might be him, but wait one sec.

16 EHRLICHMAN: Okay.

17 KELLOGG: That's not him.

18 REEVES: Okay. Very, very briefly, this was another area resident, right,
19 Mr. Ehrlichman?

20 EHRLICHMAN: It is. He's calling me, hold on a sec. we may have to submit his
21 testimony in writing, hold on one sec. He still can't get it. I was going to
22 qualify him as a witness who's capable of using a tape measure, but I forgot
23 to ask him if he can use Microsoft Teams or a phone. Um, I, I would suggest,
24 Mr. Examiner, that to save time here, we offer his testimony in writing. Um,

25

1 it could be subject to objection by Mr. Lynn or the County, um, but I think
2 that we could do it in writing.

3 REEVES: I'd be fine. So, just a declaration and, and if there's any sort
4 of objections from others, they can bring them up. I, I certainly think
5 that's probably the sensible move at this point. But, Mr. Lynn, do you have
6 any problem with that, as a procedure. Just to clarify, and, again, this is
7 not an expert witness, other than you noted he can use a tape measure. Um,
8 but...

9 EHRLICHMAN: Okay.

10 REEVES: Your thoughts, Mr. Lynn?

11 LYNN: No objection to that. I mean, I'd like to see it first, but I,
12 just conceptually, I don't have a problem with it.

13 REEVES: There you go. Okay. And, uh, same question to, uh, Mr. D'Avignon
14 and Mr. Loring just any, one at a time.

15 D'AVIGNON: No objection.

16 REEVES: Okay. Mr. Loring?

17 LORING: That's all right. No objection, either, to it being submitted.

18 REEVES: Okay. Okay. So, Mr. Ehrlichman, then, uh, let's just plan on you
19 producing that declaration, uh, in a reasonable period of time, uh, you know,
20 next week or so. Uh, and, and if there are objections, obviously the parties,
21 I'm confident, will bring them up to me after they've read, uh, whatever is
22 produced there. Okay.

23 EHRLICHMAN: Thank you for that. Um, I'd like to close out here just by, uh,
24 reminding the Examiner, again, that we had already heard the testimony of
25 Neil Mcleod and also while I realize not everyone sees the world the way I

1 do, um, we endeavor to present our case through, uh, questions to hostile
2 witnesses, if you will. We folded that into the cross-examination part of the
3 Hearing so we wouldn't have to call folks, uh, at this segment. But I just
4 wanted to, uh, share that as well. So, our, our, uh, we're, we're resting, if
5 you want to look at it that way, based on, uh, Mr. Mcleod's testimony and the
6 testimony you heard today, our written testimony of Wallace Grato and the
7 questioning that I did of the other, uh, witnesses. And, of course, we'd like
8 to participate in any post, uh, Hearing briefing.

9 Q; Great. Thank you, Mr. Ehrlichman.

10 EHRLICHMAN: Thank you.

11 REEVES: Okay. Uh, then, moving on, uh, with that, uh, Mr. Lynn, are you
12 prepared at this point to call any other, any rebuttal witnesses you intended
13 on calling?

14 LYNN: I can call Gary Norris and that's the next witness, so, yes.

15 REEVES: Okay.

16 LYNN: Assuming he's, assuming he's on, I think he is.

17 REEVES: Gary Norris, are you available?

18 NORRIS: Yes, I'm, I'm available. I have to apologize, I didn't think I
19 had to wear my tie until after lunch, but since we, I didn't have a
20 competition tie, either, so I apologize for that.

21 REEVES: Uh, you, no need to apologize. And, uh, certainly, we'll leave it
22 at that. I'm going to swear you in, Mr. Norris. Do you swear or affirm to
23 tell the truth in the testimony you give here today?

24 NORRIS: I do.

1 REEVES: And you've explained, you've spelled your name, et cetera
2 earlier, so we don't need to get into that. And Mr. Lynn, if you can very
3 briefly remind us, have Mr. Norris remind us who he is. I don't think we need
4 to dive too deeply into his background at this point.

5 LYNN: Uh, Mr. Norris, could you just, uh, remind us of what your role
6 has been in this project to date?

7 NORRIS: My role has been working with, uh, uh, Concrete Nor'West to
8 evaluate the possible ramifications and the, uh, traffic related impacts of
9 the gravel hauling operation on the County's road network serving the site.

10 LYNN: Okay. And, uh, you are a professional engineer?

11 NORRIS: Yes, I am.

12 LYNN: And just a related question to that, when you submit a report or
13 drawing, does it bear your professional stamp?

14 NORRIS: Yes, it does. And I would like to add also, I am certified as a
15 Road Safety Professional by the Institute of Transportation Engineers, also,
16 which is a, a more extensive, um, training and certification for, uh, traffic
17 safety analysis.

18 LYNN: And just a, a question about the stamp, when you stamp something
19 as an engineer, what does that entail? What does it obligate you to do?

20 NORRIS: It means that you're bearing responsibility for the accuracy and
21 the integrity of the analysis and the work that's being done.

22 LYNN: Okay. So, you testified previously about some auto-turn analysis
23 that, uh, you had completed. And then you, uh, subsequently submitted to me
24 and I submitted to the parties, uh, a two-page, um, document that reflects,
25 uh, auto-turn information. I don't think we have assigned that a number, Mr.

1 Examiner, but, uh, if we could, at this point, on the chart that Jason
2 prepared, it, uh, it just following the numbers, it would seem to be, um,
3 sorry, I got to go through this myself, um, Exhibit 1A, or I'm sorry, B102,
4 um, and so I'd like to, if Jason, would you mind putting that up, that's the
5 auto-turn analysis that I sent out on, I think, Tuesday of this week? Thank
6 you.

7 REEVES: Sorry...

8 LORING: Mr...

9 REEVES: Oh, Mr. Loring, you have...

10 LORING: I was going to, this is Mr. Loring, uh, Mr. Examiner, uh, Central
11 Samish Valley Neighbors continue to object to the entry of this document for
12 the purposes of the SEPA Appeal. And therefore, we recommend that, at least
13 at this point, it be given a number within the County's numbering system
14 which applies to the Application.

15 REEVES: Oh. Got it. Um, A) I understand the objection, B) I think that
16 makes sense. Uh, in terms of a number, then, Mr. D'Avignon, if we use your
17 chart with the understanding that there was an update and we will, after the
18 lunch break, hopefully we can really nail down the numbers. But, uh, if we
19 give this the sort of C number, uh, and add it to the Cricchio main file,
20 where would that put us?

21 D'AVIGNON: I believe that would put us at C53.

22 REEVES: Okay. Got it.

23 LYNN: Okay.

24 D'AVIGNON: And then, and Bill, which, which one was it? The, uh...

25

1 LYNN: Uh, sorry, it was, it's the auto-turn analysis, there are two
2 pages. I sent it on Tuesday.

3 D'AVIGNON: Okay.

4 LYNN: Uh...

5 D'AVIGNON: What are looking for, oh, it's foot, though, of course.

6 LYNN: Yes. That's fine. I think it's sufficient for these purposes,
7 although I would like to have the scale, um, shown if we can. So, um, Mr.
8 Lorris [sic], Mr. Norris, is this the auto-turn analysis you prepared for
9 Grip Road S-curves?

10 NORRIS: That is the, one of the pages of it. There are actually two pages
11 to it. This one had, um, from, uh, let's see, I got the, there's one section
12 for Station, get the number here, 24 plus 00 to, um, 30 plus 00. And then I
13 believe there's a, another page, although I'm not seeing it here right away
14 either. This might be a compilation of both, um, but we essentially evaluated
15 the Grip Road, uh, through the, the turns that...

16 LYNN: Okay.

17 NORRIS: Were in question.

18 LYNN: And, um, so, does this, does this, uh, Exhibit C53 depict your
19 auto-turn conclusions about that?

20 NORRIS: Yes.

21 LYNN: And, and what, does it show that there is sufficient room that
22 you can, uh, widen the paved surface such that a, uh, pup and truck, truck
23 and pup can get through without crossing over the center line?

24 NORRIS: Yeah. The, the, um, diagram depicts the right-of-way line along
25 the corridor in that skipped line that's on the boundary of the, uh, travel

1 path of the vehicle. So it does illustrate, uh, and the, um, drawing
2 identifies the length of the encroachment on the center line and the length
3 of the encroachment over the fog line for both directions of travel.

4 LYNN: So, from this can you determine whether it's possible to widen
5 the lanes or the, the paved surface such that a truck of the type proposed
6 can be, um, can travel the segment without encroaching over the center line?

7 NORRIS: Yes.

8 LYNN: Okay. And, uh, so, I'd like to have, uh, Jason, if you don't
9 mind, sorry, but, uh, the, the, uh, drawing that accompan-, accompanied that
10 was a dimensioned drawing of, uh, the Miles's truck and pup, uh, the clean
11 version of the document that Mr., uh, Ehrlichman put up this morning. So,
12 that and I think can we make that Exhibit, uh, C54?

13 REEVES: Yeah.

14 LYNN: And I'd like to offer that as a, as, as an Exhibit with that
15 designation.

16 NORRIS: Uh, yeah. I think that would make sense.

17 LYNN: Okay. Um, Mr. Norris, is the truck that you used as an input to
18 the, uh, auto-turn analysis?

19 NORRIS: Yes, it is.

20 LYNN: Okay. And w-, was that information presented to you by, uh, Miles
21 Sand and Gravel?

22 NORRIS: Yes, it was.

23 LYNN: Okay. So, there's been some testimony that this longer than the
24 truck that was depicted in an earlier, uh, exhibit. Can you explain, uh, that
25 earlier exhibit? And I, maybe we should assign that a number, I'm not sure

1 it's been given one. On the list that Jason put out, it was right after
2 [coughs] I'm sorry, B98. So, I would have assigned it B99, but I guess if
3 we're using the County's letters, it might be C55. And..

4 REEVES: Sor-, okay. I got lost a little bit there. So..

5 LYNN: Okay.

6 REEVES: There was, I, so on the, what Mr. D'Avignon helpfully put
7 together, there's something identified as truck and pup diagram, there's a
8 second item identified as truck and pup diagram two. Is it, are we trying to
9 talk about a difference between these two things, Mr. Lynn, or are you trying
10 to suggest a difference between one of these truck and pup diagrams and some
11 other potential item that was, that was included at some point over the..

12 LYNN: Yes. Yeah. I, I think I created some confusion by sending out on
13 September 2nd a drawing that looks different than this one. And I think Mr.
14 Norris may have given some testimony about it previously. He's just testified
15 now that this is, in fact, the truck he has used, but I'd like to go back
16 and, and just have him explain why, why that other document was presented and
17 how its, how it relates to his analysis.

18 REEVES: Sure. But just so that I'm not confused, Mr. Ehrlichman, can you
19 clarify again, there's identified as other applicant exhibits, in what Mr.
20 D'Avignon sent out, his, his sort of list. There are two items identified as
21 Truck and Pup Diagram. We just..

22 LYNN: Yes. And..

23 REEVES: So, please..

24 LYNN: Sorry.

25

1 REEVES: What, what exhibit number, we gave an exhibit number to this, is
2 this in your mind the Truck and Pup Diagram or Truck and Pup Diagram 2?
3 NORRIS: Uh, this, this would be Diagram 2, which is the one I sent out on
4 Tuesday. The other one might be properly labeled Diagram 1 and it's the one
5 that was sent on September 2nd and discussed in his earlier testimony.
6 REEVES: Okay. So that I think clarifies it. And just to be clear, Mr.
7 D'Avignon, if you're there, did that, when he sent this out, is that what you
8 were thinking there's, uh, one diagram, another diagram, is that what you
9 were trying to do there on the..
10 D'AVIGNON: Um, that is correct. There was the diagram that was sent out in
11 earlier this month and then just the one from yesterday got tacked onto the
12 end. That's the Auto-Turn Analysis two pages and the Truck and Pup Diagram 2.
13 REEVES: Okay.
14 D'AVIGNON: Just how I was thinking about it when I put that together.
15 REEVES: Excellent. Okay. So, and that one we have not, we don't think,
16 given an exhibit number to, but it would helpful to give it an exhibit number
17 so it can, just to make things even more confusing, we'll call this slide
18 truck and pup Diagram 2 as C54, the auto-turn analysis was C53 and now the
19 other earlier truck and pup diagram, Mr. Lynn, you wanted to have and discuss
20 would be C55?
21 LYNN: That's correct.
22 REEVES: Make sure that everybody is tracking, so..
23 LYNN: That would be helpful. And if we could put that up just so we can
24 briefly look at it and have Mr. Norris explain its role in the analysis.
25

1 REEVES: And I think it goes without saying, Mr. D'Avignon has accrued
2 gold stars for, uh, taking on, uh, this task of putting up others' exhibits.

3 LYNN: I, I'm trying to think of ways to repay him, but probably ending
4 the Hearing early is the best I can do. Uh, so, uh, Mr., uh, Mr. Norris, this
5 diagram, Dump Truck with Pup Number 1, uh, which is Exhibit C55, was
6 presented before. Uh, could you tell the Hearing Examiner what the origin of
7 this is and how it played into the analysis?

8 NORRIS: Yes. It's, um, as I was explaining my original testimony, the
9 auto-turn, uh, program presents alternative, uh, vehicle configurations and,
10 uh, they did not have a configuration that, uh, met the r-, um, the
11 consistency of what Miles is proposing with their designs. We had to create a
12 vehicle that would reflect what, uh, Miles was going to use for this
13 operation. And this was the original attempt of doing that, subsequently
14 modified by the more detail, uh, Kenworth drawing that was, uh, presented
15 here this last week.

16 REEVES: And I'm going to cut in for one sec, Mr. Norris, when you say you
17 had to create a vehicle, I assume you mean you had to create or sort of
18 impose dimensions into the computer program, uh, that would reflect what the
19 thought of what Miles would be using is, is that right? I mean, there wasn't
20 a pre-input, that's what you mean by create a vehicle, right?

21 NORRIS: That, that's correct.

22 REEVES: Okay. Sorry to interrupt, go ahead, Mr. Lynn.

23 LYNN: So, um, Mr. Norris, so vehicle, the Diagram Number 2, the one we
24 looked at, uh, earlier, uh, Exhibit C54, is the one that was used to, uh,
25 create the auto-turn analysis that you've submitted here as Exhibit C53?

1 NORRIS: That's correct.

2 LYNN: Okay. So, basically, this diagram, uh, the, the number one
3 diagram, it really is not material to any of your conclusions?

4 NORRIS: That's correct.

5 LYNN: Did, you heard Mr., um, Tilghman ask some questions about the
6 scale on your auto-turn analysis. Could you tell the Hearing Examiner whether
7 you stand by the outcome or the output of your auto-turn analysis despite
8 whatever Mr. Tilghman said about scale?

9 NORRIS: Well, I think the, the pertinent thing is, uh, the values that
10 are important here are the ones that are dimensioned on the drawing itself.
11 So, that is what is displayed as being the encroachments and so, uh, I can't
12 really speak to any issues with what might be erroneous about the scale,
13 other than if it was, uh, a, uh, a width view as opposed to a, a length view.

14 REEVES: And, sorry, one sec. uh, Jason, would you mind going back to C53?
15 Which, which is the auto-turn, at least a page of it, so that, can you, sorry
16 to, I'm going to dive in just 'cause I probably should under-, understand
17 this testimony. Can you clarify sort of based on pointing out things here on
18 this diagram, Mr. Norris, if you could clarify what you were just explaining?

19 NORRIS: Okay. So, the question was about the scale of the drawing and,
20 and when I said I wasn't really terribly concerned about what the scale of
21 drawing was because of the, uh, dimension lines illustrate where, though the
22 auto-turn analysis, where the vehicle was, uh, going over the, uh, edge of
23 the pavement. And so we were talking also about, uh, whether or not, uh,
24 there was adequate room within the right-of-way to accommodate widening, uh,
25 of the roadway to provide, uh, adequate width. And as I was saying that the

1 dip lines along the, the side of the right-of-way delineations, the, uh,
2 dimension lines, it says 214 feet brings us encroachment over center line.
3 So, that's where the vehicles encroaching over the center line and then it's
4 225 feet encroachment over the fog line. So, those are the, uh, two pertinent
5 d-, dimensions that would be used in the, uh, roadway design to address the,
6 uh, deficiency of the, of the road and the impact of the truck and pup.

7 REEVES: Okay. Thank you for clarifying. Mr. Lynn, go ahead.

8 LYNN: Thank you. Um, Mr. Norris, in your, uh, opinion, or experience,
9 is, is an auto-turn analysis a component of safety analysis and the review of
10 potential conflicts?

11 NORRIS: I believe it's used to determine the impact of the, the vehicle
12 path that's obviously a safety, safety issue in the, uh, in the conversation.
13 So, yeah, I would say, yes.

14 LYNN: Okay. Uh, how else was safety analyzed in your, uh, work?

15 NORRIS: Uh, we, uh, first off, we looked at the site distance at the
16 intersections and that's what resulted in the, the signing that we were
17 proposing and the flashing beacons to notify, uh, the roadway users of the
18 existence of truck traffic. Uh, we looked at the crash history for the
19 intersections and the segments and we did a, uh, crash analysis of the
20 intersections that determined that the, uh, rates of crash were not
21 significant, uh, that would warrant concern, uh, over the standard crashes
22 that occur normally on a roadway network. Um, so, and then obviously the
23 Level of Service Analysis also plays into the safety component, uh, from the
24 standpoint of congestion that creates, uh, issues with rear-end crashes and
25

1 those kinds of things. So, we did those elements to determine the, uh, safety
2 of the, um, site impact on the roadway network.

3 LYNN: Okay. Uh, a question came up, uh, during somebody's testimony, I
4 can't even recall wh-, uh, who, about bus pull outs and maybe bus pull outs
5 would be appropriate, do you have, uh, uh, an opinion about bus pull outs and
6 whether those would actually help safety or have another, um, impact?

7 NORRIS: My experience with bus pull outs, and this relates to my time as
8 a City Traffic Engineer, where the buses did not want to leave the, the
9 roadway or pull out or, uh, even prefer to have pull outs designed for them
10 to do that because of the impacts on safety about, uh, reentering the roadway
11 and the traffic stream. So, in general, uh, buses do not want to have to pull
12 out.

13 LYNN: Okay. Uh, are there other, um, and I don't want to really get
14 into the traffic engineer qualifications, but could you just tell us what
15 elements of your work, um, fall into the engineering, uh, arena versus some
16 other field of, uh, expertise?

17 NORRIS: Um...

18 REEVES: And I think...

19 NORRIS: I, I have a, uh, have a, uh, undergraduate degree in Traffic
20 Engineering and a Master's degree in Transportation Planning...

21 EHRLICHMAN: Mr. Examiner, excuse me, Mr. Norris. Mr...

22 REEVES: Mr. Norris is mid-answer, Tom Ehrlichman.

23 EHRLICHMAN: Yeah. I have an objection to the question, I'm late in filing,
24 I'm sorry. My objection is the same objection I got from Mr. Lynn and from

25

1 you when I tried to present testimony of Mr. Tilghman's qualifications, you
2 said you already knew what they were.

3 REEVES: [Inaudible.]

4 EHRLICHMAN: I'm assuming we already know what Mr. Norris' qualifications re.

5 REEVES: Mr. Ehrlichman, I, I acknowledge your objection, uh, but the
6 question was specifically asking this witness to explain the work he's doing
7 that is, you know, different than other types of work. I'm going to allow the
8 answer. We were mid-answer when the objection came in. Mr. Norris, if you
9 could just give a quick response. We don't need to go into your undergraduate
10 degree history, just explain, as an engineer, what you're doing that is
11 different than what a non-engineer would do.

12 NORRIS: All the technical analysis of Level of Service, uh, crash
13 analysis, uh, accident rates, exploring the impacts of different crash types,
14 what are the issues associated with them? What mitigation measures are
15 available to address them? What are the crash, uh, modification factors that
16 can be introduced to, uh, eliminate those, uh, impacts? So, a lot more
17 technical, uh, evaluation and analysis.

18 LYNN: Uh, and since we haven't had a chance to talk since, uh, Mr.
19 Tilghman's testimony concluded, is there anything you feel compelled to add
20 as a response to any of his testimony?

21 NORRIS: Uh...

22 LYNN: And I'm not looking for you to add something just to add
23 something, I just, uh, want, want to make sure that I haven't missed
24 something important.

25

1 NORRIS: Well, I, I want to make sure that the clarification is, is clear
2 that we complied with the Road Standards for the safety analysis that was
3 performed. The County gave two options to do that, it was either through a
4 records analysis or through a conflicts analysis. Based upon the availability
5 of the crash data, a conflict analysis was not required, under the, uh,
6 Accident Standards and wasn't necessarily a typical thing that's done anyway.
7 So, we really rely heavily on crash data to formulate opinions about safety
8 and what issues need to be addressed.

9 LYNN: And, um, one last question about crash data, why is crash data
10 used not just to look at what used to happen but what may well happen in the
11 future. Why is it predictive?

12 NORRIS: Uh, there's a certain randomness to crashes, but there's also a
13 very special [inaudible] to crashes where you have, uh, for instance, if you
14 have, um, a number of rear end crashes at an intersection, it's pretty well
15 predictable, unless something is done, that those rear end crashes will
16 continue to increase as volumes increase. So, it's, and then also the
17 conditions of the roadway are all predictive of, um, to crash potentials. So,
18 all those things are, are, come out of the crash history and the data that's,
19 we collect.

20 LYNN: Sorry, I, I muted because there was some background noise here.
21 Uh, that's all I have for Mr. Norris. Thank you.

22 REEVES: Okay. I'll go to Mr. D'Avignon next. Any questions here?

23 D'AVIGNON: Uh, no, Mr. Examiner.

24 REEVES: Okay. Uh, Mr. Loring?

25

1 LORING: Thank you, Mr. Examiner. Uh, before I start, do just want to
2 clarify that we maintain an objection to Exhibits, uh, C-, C55 and 55, as
3 well, those are those, and I'm talking about the SEPA Hearing, I understand
4 there may be different exhibits based on the aspect of the Hearing we've been
5 discussing, so, I just wanted to put that out there. Those are the drawings
6 about the truck and trailer.

7 REEVES: Yep.

8 LORING: Thank you.

9 REEVES: Noted.

10 LORING: Okay. Um, um, Mr. Norris, I want to talk with you briefly, uh,
11 uh, still nonetheless about some of the information you have been, uh,
12 discussing just a moment ago and so that does relate to your, uh, auto-turn
13 conclusions. So, you're, you're now not claiming that the dimensions on that
14 auto-, those auto-turn documents that are at C53, you're not claiming the
15 dimensions would be accurate now if we applied the scale that's on that
16 document, right?

17 NORRIS: I, I don't know what your specific Exhibit you're referencing
18 right now.

19 LORING: Okay. Let me pull it up here, that may, always makes it easier.
20 So I'm going to share my screen right now and I've got Exhibit C53 up on the
21 screen. And I'm looking at the first page, I've combined these into one, I
22 know they were two separate pages when I received them. Uh, but here's a
23 picture of Grip Road. So, my question was you're not now claiming that the
24 scale on this picture actually matches up with the widths of the road that
25 are on here, right?

1 NORRIS: No. I'm not claiming that.

2 LORING: Okay.

3 NORRIS: I'm claiming that...

4 LORING: Why...

5 NORRIS: The pertinent fact is what's delineated by the arrow diagram.

6 LORING: Okay. Now, when I look at the arrow diagram, that would be much
7 longer than 225 feet if I applied the scale to that portion, too, right?

8 NORRIS: Uh, could be. I, I don't know, I didn't check it.

9 LORING: Okay. Is that common for you to not check your measurements on
10 here, on exhibits that you put together?

11 NORRIS: Uh, I'm not checking it against the scale, I'm checking it
12 against the, uh, output from the model.

13 LORING: Okay. And, uh, the output from the model also doesn't get the
14 scale correct either?

15 NORRIS: Well, that could be, I, I haven't confirmed it one way or the
16 other, so, I wouldn't know.

17 LORING: Okay. Uh, these, you mentioned fog lines, and I believe it's even
18 written on here, there's a word fog line, there are no fog lines on this
19 stretch of Grip Road, right?

20 NORRIS: Um, I don't believe so, no.

21 LORING: Okay. So, we don't know what that reference is when it refers to
22 fog line here?

23 NORRIS: It would be the edge of the pavement.

24

25

1 LORING: Okay. You mentioned that, uh, well, you don't know where the edge
2 of the pavement is or the width of the road based on this drawing here,
3 right?

4 NORRIS: Uh, I believe it's, uh, traced out in the drawing, yeah.

5 LORING: So, if I were to apply the scale to the, the actual image of the
6 road, I'd be able to get the width of the road and each lane?

7 NORRIS: I believe so, yes.

8 LORING: Okay. So, I did that just a momenta go with my ruler. And I get
9 50 feet, is your contention that Grip Road in this stretch is about 50 feet
10 wide?

11 NORRIS: Um, okay. So, the, what I'm going to tell you is probably the
12 correction there, is that you're dealing with half-scale drawing. So, the
13 scales, the scales are not always corrected on the, uh, when you shrink a
14 drawing down. You go to half-scale on it, this would be printed out at a much
15 longer scale, which would then the scale would be measured correctly. But if
16 you, uh, shrink it down to put it in a document like this or something, it
17 would not come out the same scale.

18 LORING: Okay. And you testified you didn't check that when you created
19 this document?

20 NORRIS: Correct.

21 LORING: Okay. Now, you've talked about two different, uh, truck images,
22 I'll say diagrams and, and now we've got them called, uh, I believe C55 and
23 C54, I'll stop sharing. When you spoke with us last time, you didn't have the
24 correct diagram for the truck, is that right?

25 NORRIS: That's correct.

1 LORING: Uh, and yet you shared a diagram with the parties as an exhibit
2 in this matter that wasn't correct?

3 NORRIS: Apparently so.

4 LORING: Okay. So, do you believe, um, sorry, you, in this auto-turn
5 analysis that you've conducted, you didn't evaluate the bicycle impacts are
6 part of that auto-turn analysis, right?

7 NORRIS: No. At the time we were doing our analysis, there was no bicycle
8 traffic, uh, that was being observed on the corridor.

9 LORING: Okay. And is part of the auto-turn encroachment, I'm bouncing
10 around a little bit, sorry for that, but you, you identify encroaching over
11 different lines as part of this auto-turn, uh, at what speed did you model
12 that encroachment?

13 NORRIS: It would be the posted speed limit.

14 LORING: Okay. So, you didn't model that at traveled speeds on the road?

15 NORRIS: What's your definition of travel speed? The, what the, uh, what
16 the passenger cars are traveling at?

17 LORING: Well, that, that's a good question, let me take it a second back,
18 because that's what we discussed last time during your testimony, I know. Let
19 me ask you this, uh, what speeds to gravel truck and pup travel along this
20 stretch of Grip Road?

21 NORRIS: Uh, I haven't measured it, I couldn't tell you.

22 LORING: Okay. That, I don't have much more, just a little bit here. Uh,
23 you were talking about crash data a moment ago and have you asked community
24 members about crashes in that area?

25 NORRIS: No, I have not. Why would I do that?

1 LORING: Do you have any knowledge about the amount of crashes or the
2 number of crashes that occur that are not reported somewhere?

3 NORRIS: I know for a matter of fact there's a lot of unreported crashes,
4 uh, consistently throughout our transportation network that are never
5 reported, don't meet the damage thresholds and therefore do not show up in
6 the data records.

7 LORING: Okay. Uh, but you limited your review to just the crash data that
8 show up in the records, right?

9 NORRIS: That's the typical approach to evaluating crash history, yes.

10 LORING: Okay. Thank you for your time. I have no further questions.

11 REEVES: Thank you. Mr. Ehrlichman?

12 EHRLICHMAN: Thank you, Mr. Examiner. Uh, good afternoon, Mr. Norris. It's
13 12:07.

14 NORRIS: Good afternoon.

15 EHRLICHMAN: Couple of questions following up on what Mr. Lynn asked you
16 about. He, uh, asked you, uh, what the elements were of your safety analysis.
17 And I believe you testified, uh, that you analyze sight distance, crashes at
18 intersections and segments and rates of crash and also Level of Safety to the
19 extent it plays into a safety component concerning congestion and rear end
20 crashes, correct?

21 NORRIS: Level of Service, not Level of Safety.

22 EHRLICHMAN: Uh, I meant Level of Service, thank you, a Freudian slip there.
23 Um, so, your, your expertise in, and it is considerable, in, uh, traffic
24 engineering that you talked about, didn't lead you to look further, uh, at,

25

1 at a safety analysis that would include, uh, the types of maneuvers by school
2 buses, correct?

3 NORRIS: That's correct.

4 EHRLICHMAN: And yet you also testified that one of the, um, types of, of
5 problems, you testified just now that one of the types of problems is when
6 school buses, um, are re-entering the roadway, uh, in a turnaround, isn't
7 that correct?

8 NORRIS: No, I don't believe that characterizes my testimony.

9 EHRLICHMAN: Well, let's go back and, and look at it.

10 REEVES: You, the testimony, if I recall correctly had to do with a pull
11 off, right, Mr. Norris?

12 NORRIS: Correct.

13 EHRLICHMAN: Yes.

14 NORRIS: That, that's correct, it was, did not deal with a turnaround.

15 REEVES: There we go.

16 EHRLICHMAN: Okay. I used the wrong word. So, your safety analysis didn't
17 include school bus maneuvers, correct?

18 NORRIS: That's correct.

19 EHRLICHMAN: Okay. And yet you testified that bus pull outs pose safety
20 concerns, uh, related to buses re-entering the roadway, did you not? Just
21 now?

22 NORRIS: I, I think you're mischaracterizing my testimony. My testimony
23 was that, uh, typical, uh, bus operators do not want to pull off the roadway
24 because of the safety issues of re-entering the roadway.

25

1 EHRlichman: Thank you. That's exactly right. And yet, you didn't analysis
2 that safety issue as part of your safety analysis. Next question...

3 NORRIS: Because, because that isn't known to be a safety issue here of
4 concern. There's no, uh...

5 EHRlichman: One...

6 NORRIS: Information that the buses pull off to...

7 EHRlichman: It's one that you didn't identify or analyze?

8 REEVES: Right.

9 NORRIS: It was, no.

10 EHRlichman: In your r-, in your traffic report in Exhibit 18, did you
11 identify...

12 REEVES: It's been...

13 EHRlichman: That as a safety...

14 REEVES: Asked and answered.

15 EHRlichman: Issue? In Exhibit 18, go ahead, Mr. Examiner.

16 REEVES: Um, I believe, unless I totally missed it, Mr. Norris testified
17 multiple times now that, uh, this was an issue that wasn't addressed, uh,
18 there was no analysis specifically of school bus pull outs, partially because
19 as far as we know, there are no pull outs. Is that, Mr. Norris?

20 NORRIS: That's my understanding.

21 REEVES: Okay. Go ahead, Mr. Ehrlichman.

22 EHRlichman: Mr. Examiner, I just want to note for the record that during my
23 questioning of Mr. Norris, I tend to get a high level of interruptions or
24 questions from the Hearing Examiner that dissuade me from asking the question

25

1 I'm trying to ask. Here's the question, your Exhibit 18 didn't even mention
2 school buses, did it?

3 NORRIS: No, it didn't.

4 EHRLICHMAN: And, yet, you had a section on there concerning Grip Road, didn't
5 you?

6 NORRIS: I don't understand your question.

7 EHRLICHMAN: In Exhibit 18, did you, did you have a segment or a section and a
8 heading in Exhibit 18 called Grip Road?

9 NORRIS: Yes, I did.

10 EHRLICHMAN: Okay. And you identified there that Grip Road didn't have
11 shoulders, correct?

12 NORRIS: That's correct.

13 EHRLICHMAN: Okay. So, you identified one safety issue there. That the road
14 was substandard yet you didn't identify another safety issue which has to do
15 with school bus use of Grip Road, correct?

16 NORRIS: Well, first off, I want to clarify, just by the...

17 EHRLICHMAN: That's a yes or no question?

18 NORRIS: I want to clarify your question, by virtually...

19 EHRLICHMAN: I don't, I don't...

20 REEVES: Mr. Ehrlichman. Mr., Mr. Ehrlichman, we're not in Superior Court,
21 we're not strictly bound by the rules of evidence. I'm going to allow the
22 witness to try to clarify his answer and we're not going to limit to yes or
23 no after a blah, blah, blah, isn't that right type question. We're trying to
24 get through this. This is frustrating.

25 EHRLICHMAN: The question...

1 REEVES: To me, obviously, but Mr. Norris, if you want to try to clarify
2 whatever understanding, I'm going to allow you to do it. Go ahead, Mr.
3 Norris.
4 EHRLICHMAN: Could we...
5 REEVES: Hold on Mr. Ehrlichman.
6 EHRLICHMAN: Could we repeat the question?
7 REEVES: Mr. Norris, please say what you want to say and then Mr.
8 Ehrlichman, you can follow up as needed. Go ahead, Mr. Norris.
9 NORRIS: I want to clarify for Mr. Ehrlichman and the Appellants that just
10 because a road doesn't meet the current Road Standards does not mean it's
11 unsafe.
12 EHRLICHMAN: Mr. Norris, my question is, in the Grip Road section of Exhibit
13 18, you didn't even mention school buses, did you?
14 NORRIS: I think I answered this many, many times.
15 REEVES: Thank you. I, you testified school buses...
16 EHRLICHMAN: It's a yes or not.
17 REEVES: Are not mentioned anywhere in your report, correct, Mr. Norris?
18 EHRLICHMAN: And I wanted, I wanted the witness to confirm that.
19 REEVES: He has multiple times.
20 EHRLICHMAN: Why can't he answer it this time?
21 REEVES: Well, because we don't need to ask the same question seven times.
22 Mr. Norris, you have confirmed buses are not mentioned in your report,
23 correct?
24 NORRIS: That's correct.
25 EHRLICHMAN: Thank you.

1 REEVES: And by report...

2 EHRLICHMAN: Thank you.

3 REEVES: That means every section internal to the report, correct?

4 NORRIS: Correct.

5 REEVES: There we go. Okay. Go ahead, Mr. Ehrlichman.

6 EHRLICHMAN: That's exactly what we were looking for and appreciate that. Mr.

7 Norris, so with your expertise on the technical matters that you talked

8 about, uh, Level of Service, crash analysis, accident rates, impacts from

9 different crash types, mitigation to address, uh, uh, potential crashes, with

10 that expertise, you never thought it important to identify or analyze the

11 conflicts of these gravel trucks with school buses on Grip Road, correct?

12 NORRIS: Uh, as a specific analysis, no, there was nothing in the record

13 that indicated that there was a safety issue with buses, or school buses, on

14 these roads. The volumes of buses and trucks was recorded as part of our

15 traffic counts. But we did note that. Uh, we've seen that here, it's been

16 presented in this testimony. There was no indication that there was a safety

17 issue related to bus, school buses or bicycles for that matter, as well.

18 EHRLICHMAN: Other than the fact that there are school buses uses Grip Road,

19 uh, four times a day?

20 NORRIS: That doesn't mean there's a safety issue with them.

21 EHRLICHMAN: That didn't indicate to you a possible safety issue?

22 NORRIS: No, it did not.

23 EHRLICHMAN: Okay. Thank you. Did the study area for your traffic analysis

24 include the Grip Road segment east of the mine entrance?

25

1 NORRIS: Uh, explain your question, I'm, I'm not sure I understand what
2 you're asking exactly.

3 EHRLICHMAN: Didn't you testify on September 2nd in this proceeding that your,
4 uh, traffic study did not include the geographic area east of the mine
5 entrance on Grip Road?

6 NORRIS: In what, in what way?

7 EHRLICHMAN: Any way.

8 NORRIS: Well, we identified a, a potential for 5% of the traffic in the,
9 uh, extreme hourly analysis, the high end, with 30 trips, we identified a 5%
10 impact of traffic on the east, uh, east of the Grip Road mine access. And
11 this could take the form of, uh, uh, employees working on the site or other
12 trips coming to the site.

13 EHRLICHMAN: Right. But my question was whether you testified on September 2nd,
14 that your study area did not include the road segment east of the mine
15 entrance.

16 NORRIS: I disagree with your, uh, representation that our study area did
17 not include that. Because we did identify a percentage of our trips going
18 that direction.

19 EHRLICHMAN: So, it's not my representation, I'm asking whether you testified
20 to that effect or not. If you, if your position today is that you didn't,
21 we'll just pull the tape and compare it. It's a yes or no question. You don't
22 recall...

23 NORRIS: Well...

24 EHRLICHMAN: That's fine.

25 NORRIS: Restate your question.

1 EHRlichman: On September 2nd, in this proceeding, did you not testify that
2 your traffic study area did not include any part of Grip Road east of the
3 mine entrance?

4 NORRIS: I don't like the clarification that it's our study area. Our
5 study area did consider that. In terms of the actual conditions of the road
6 and, and physical features of it, it did not consider that.

7 EHRlichman: Say that again?

8 NORRIS: In terms of the physical features of the road, uh, the
9 constraints or things like that, we did not consider that. It did, it was
10 included in our study area because we defined the trips for that area.

11 EHRlichman: Okay. So, it's within your study area. Did you do auto-turn
12 analysis on it?

13 NORRIS: No.

14 EHRlichman: Then it wasn't within your study area.

15 NORRIS: Yes, it was within our study area. I don't do every, uh,
16 particular point of the analysis throughout the study area. So, it's limited
17 to the issues that are present.

18 EHRlichman: The issues that are of concern?

19 NORRIS: And are present, yes.

20 EHRlichman: Okay. Is a 90 degree turn at, uh, with, with, uh, sight distance
21 problems, is that an area of concern?

22 NORRIS: Uh, with the volume of traffic that's expected to use that road,
23 no, it was not an area of concern.

24 EHRlichman: Okay. And with a 74 foot, 11 inch vehicle set up, it's not an
25 area of concern?

1 NORRIS: Uh, with the volume of traffic that was going to use that segment
2 of the roadway, it was not a concern.

3 EHRLICHMAN: No, with one truck at 74 feet, 11 inches on a 90 degree turn,
4 that's not an area of concern that would be subject to auto-turn analysis?

5 NORRIS: You're, you're assuming, though, that it was a truck. The 5% is
6 trucks. There's other trips that are coming to the mine site beyond the truck
7 trips. We've got employees that are coming there, uh, who else might be
8 coming there, overall analysis assessed 5%.

9 EHRLICHMAN: Okay. But...

10 NORRIS: So, it could be, it could be a truck trip, but it may not
11 necessarily be.

12 EHRLICHMAN: Let's, let's not talk in hypotheticals. You assigned trip
13 distribution through that 90 degree turn, but you did not perform auto-turn
14 analysis even though it's a 74 foot truck, would go in that direction,
15 correct?

16 NORRIS: I told you it may not be a truck that's going there. It's trips
17 that are generated by the site.

18 EHRLICHMAN: Not...

19 NORRIS: In which case...

20 REEVES: Mr. Norris, you did...

21 EHRLICHMAN: Not me.

22 REEVES: Mr., hold on, Mr. Norris, I'm asking a question now. Did you
23 perform auto-turn analysis of that particular road, yes or no, please?

24 NORRIS: No.

25 REEVES: There no. It wasn't performed, Mr. Ehrlichman. Go ahead.

1 EHRlichman: Well, then, Mr. Examiner, we're asking a question about why he
2 performed it everywhere else on Grip Road, but not east of the mine. He said
3 it wasn't of concern. I'm asking him why. That's a legitimate question with a
4 74 foot long truck trip pup trailer rig that can't make a 90 degree turn.

5 REEVES: Mr. Norris, can you please try to just answer with, I understand
6 you object yourself to the way the question is being characterized. Let me
7 ask the hypothetical, then, which is let's assume a 74 foot or whatnot needs
8 to make that turn. Is that a problem in your mind that would necessitate an
9 auto, uh, turn analysis?

10 NORRIS: That, as a, uh, situation itself, would necessarily, uh, want to
11 consider an auto-turn, but by virtue of the expected traffic and, uh, the
12 type of traffic, it was not deemed to be a significant issue because most of
13 the traffic from the site is going to the west, to the Bellville pit and to
14 destinations to the north. So, it was not a major consideration.

15 REEVES: Thank you.

16 EHRlichman: You testified that, uh, you distributed the trips the way that
17 you did solely based on what the Applicant told you, right?

18 NORRIS: Basically, with some, uh, adjustments for existing counts in the
19 area.

20 EHRlichman: So, the Applicant must have told you they're not going to take
21 their truck pup trailer rigs to the east, is that correct?

22 NORRIS: In general, that was the statement, yes.

23 EHRlichman: The statement to you by the Applicant was that they would not be
24 taking truck, pup trailer rigs to the east, what, except on rare occasion,
25 except once a day?

1 NORRIS: Rare, rare occasions. We tried to nail down what, what would be
2 the level of intensity of truck traffic that direction and I was told it was
3 very small. So we assigned 5% to it.

4 EHRLICHMAN: Okay. Thank you. So, we didn't have a, a, an auto-turn analysis
5 performed there. If you did perform an auto-turn analysis there, what would
6 you expect the result would be if you plugged in the truck pup trailer, uh,
7 dimensions?

8 NORRIS: Uh, on tight turns, I expect we would see encroachment.

9 EHRLICHMAN: Okay. Now...

10 NORRIS: I have, I have...

11 EHRLICHMAN: [Inaudible.]

12 NORRIS: I want to, I want to tell you something else as a point of
13 clarification here.

14 EHRLICHMAN: Mr. Norris...

15 NORRIS: No, no, no, no, no, you can't get away with that.

16 EHRLICHMAN: I'm asking you questions.

17 REEVES: Hold on. Hey. Everybody stop. Okay. Mr. Norris, Mr. Norris, I
18 understand that you would like to clarify and that you are getting frustrated
19 by the questions, but ultimately, you know, I have to make a decision one
20 this. And I also, you know, grasp the idea of the math involved in the 5% and
21 where it all came from. So, I, you know, I don't think it's going to
22 ultimately be helpful to just have you and Ehrlichman fighting with each
23 other. Let's just move on. Uh, Mr. Ehrlichman, do you have another question?

24 Q; I was delivering my other question. That, there's a 90-degree turn at
25 that, uh, first corner there that we talked about this morning with the bus

1 stop and then there's another 90-degree corner to the north of there, isn't
2 there?

3 NORRIS: I don't know, I don't look, I didn't look at it.

4 EHRLICHMAN: You're not familiar with, uh, the Grip Road geography east of the
5 mine?

6 NORRIS: I, I'm going to back to my point that I wanted to make before.

7 EHRLICHMAN: No.

8 NORRIS: We do not, we do not design our roads...

9 EHRLICHMAN: Is there not a second 90-degree turn?

10 NORRIS: I, I don't know.

11 EHRLICHMAN: Okay. Thank you. Beyond that second 90-degree turn you're not
12 aware of, is there not a railroad crossing on a very sharp curve?

13 NORRIS: I, I don't know.

14 EHRLICHMAN: Okay. So, even though you content in response to my questions
15 that there area east of the mine entrance was part of your study area, you
16 really don't know the geography there, correct?

17 NORRIS: Correct.

18 EHRLICHMAN: Okay. And you didn't do auto-turn analysis there, correct?

19 NORRIS: Correct.

20 EHRLICHMAN: And you didn't do site distance analysis there, correct?

21 NORRIS: Correct.

22 EHRLICHMAN: Okay. So, clearly, that area to the east of the mine entrance
23 didn't receive the same kind of traffic analysis that you provided, uh, in
24 response to Mr. Lynn's questions, to the west of the entrance?

25 NORRIS: I think I stated that, yes.

1 EHRlichMAN: Okay. Thank you. This is important because we've got heavy bus
2 traffic on those areas, as you heard and...

3 REEVES: You can make the arguments later in the proceeding, Mr.
4 Ehrlichman.

5 EHRlichMAN: Okay. All right. But this is, this is the prime traffic expert
6 engineer qualified, uh, I think a little leeway is, is...

7 REEVES: I've given a ton of leeway. Just ask the questions you need to
8 ask. I don't need...

9 EHRlichMAN: I, I...

10 REEVES: [Inaudible.]

11 EHRlichMAN: Mr. Examiner...

12 REEVES: Move on, Mr...

13 EHRlichMAN: I, I am trying to ask these questions and I keep getting
14 interrupted. If I could just ask the witness the questions and get his
15 testimony yes or no we would be done by now.

16 REEVES: How many more questions do you think you have, Mr. Ehrlichman?

17 EHRlichMAN: Approximately 20.

18 REEVES: Are, really?

19 EHRlichMAN: He, he doesn't answer the question directly. I got to keep
20 asking.

21 REEVES: All right. I need, I need a five minute break. We'll come back in
22 five. I just...

23 EHRlichMAN: Thank you.

24 REEVES: I'm going to catch my breath.

25 NORRIS: [Pause] not yet. No. Yeah.

1 KELLOGG: Hey, Gary, hi, it's Mona, the Clerk, can you hear me?

2 REEVES: [Pause] and I'm back. Okay. It's shortly after 12:30. Uh, it is
3 part of my prerogative to try to, uh, you know, control, uh, how these
4 proceedings happen. Uh, Mr. Ehrlichman, I think 15 minutes, uh, further is
5 the most that I'll be able to grant in terms of additional questions of this
6 witness. So, please go right ahead.

7 EHRLICHMAN: Thank you, Mr. Examiner. Mr. Norris, this is a yes or no
8 question. Do you work for Miles Sand and Gravel on any of their other mining
9 projects?

10 NORRIS: I think historically I have worked on another one, yes.

11 EHRLICHMAN: Do you know what mine that was?

12 NORRIS: Uh, I think it was Butler.

13 EHRLICHMAN: Okay. That's in the past. Currently, are you working for Miles
14 Sand and Gravel, Concrete Nor'West on any other, um, mining proposal, on any
15 other, on traffic analysis for any other mines?

16 NORRIS: No, I'm not.

17 EHRLICHMAN: Okay. Did anyone at, um, did anyone of your client, did anyone
18 from your, uh, clients at Miles, Concrete Nor'West, Lisa Inc, did any of them
19 ever ask you not to include school buses in your reports?

20 NORRIS: No, they did not.

21 EHRLICHMAN: Okay. And did you ever discuss school bus safety with them?

22 NORRIS: No, I did not.

23 EHRLICHMAN: Okay. Other than assigning 5% of the trips to the roadway, Grip
24 Road roadway east of the mine entrance, other than assigning 5% of the trips
25

1 in your distribution, did you perform any traffic analysis east of the mining
2 entrance, Grip Road?

3 NORRIS: Not any specific analysis other than just, um, driving the route.

4 EHRLICHMAN: Okay. Let's talk about the, uh, auto-turn graphic that, uh, was
5 just admitted into the record as Exhibit, uh, C54, I believe. No, strike
6 that...

7 REEVES: 53.

8 EHRLICHMAN: C53, thank you. You prepared this for submittal into the record
9 in this proceeding, correct?

10 NORRIS: Yes.

11 EHRLICHMAN: Okay. And yet the document you prepared for this proceeding does
12 not label the right-of-way width at all, does it?

13 NORRIS: No.

14 EHRLICHMAN: Okay. Does it label the fog line location?

15 NORRIS: It does, does not label them, no.

16 EHRLICHMAN: Okay. Does it provide a dimension for the existing roadway width?

17 NORRIS: Not on the graphic, no.

18 EHRLICHMAN: Okay. Does it provide a, a width for the existing right-of-way?

19 NORRIS: No, it does not.

20 EHRLICHMAN: Okay. And you have already confirmed that there is nothing in
21 writing from the Applicant describing their offer to make improvements at
22 those two locations, correct?

23 NORRIS: I, I don't know about that.

24 EHRLICHMAN: Have you seen anything in writing from the Applicant ever, at any
25 time, describing their offer to widen Grip Road in those two locations?

1 NORRIS: No, I have not.

2 EHRLICHMAN: All right. So, you don't know what width the Applicant is
3 proposing for the widening of those two curves, correct?

4 NORRIS: I know that they're proposing to widen the road to incorporate
5 the truck path within the pavement.

6 EHRLICHMAN: Has the Applicant communicated to you a commitment to widen Grip
7 Road to a certain dimension at those two curves?

8 NORRIS: Not to a certain dimension. I think those details are being
9 worked out. I don't think there's been an iron determination yet.

10 EHRLICHMAN: Okay. Thank you. So, as of this proceeding, we don't yet know
11 what the proposed mitigation is. You've just identified the problem. Is that
12 correct?

13 NORRIS: That's correct.

14 EHRLICHMAN: All right. Mr. Tilghman testified, um, identifying the problem is
15 the first step, that's an important, um, finding, if you will, of yours, uh,
16 that there would be truck crossovers and also trucks, uh, edging over the
17 edge of the roadway, correct?

18 NORRIS: Correct.

19 EHRLICHMAN: Okay. So, why didn't you label the right-of-way and the
20 dimensions?

21 NORRIS: Um, because that was not deemed to be a pertinent, uh, point of
22 the matter at this point in time. This is an engineering design decision, not
23 a Hearing Examiner, uh, mitigation issue.

24 EHRLICHMAN: And how do you know that?

25

1 NORRIS: Because we've already been in, uh, contact with the County Staff
2 in the design of the Prairie Road curves and have been working on that
3 process and, uh, expect to have a proposed solution to that, just as we will
4 for Grip Road. So, it was not anticipated that that would be a major issue in
5 this Hearing.

6 EHRLICHMAN: You made that judgement call or someone told you that?

7 NORRIS: Uh, with my experience dealing with Hearing Examiners, that's
8 been my experience.

9 EHRLICHMAN: Okay. So, in your experience, you didn't need to label the right-
10 of-way or the dimensions for the Hearing Examiner?

11 NORRIS: Yeah. That's right.

12 EHRLICHMAN: Okay. Because you didn't think the solution to the problem you
13 identified was a major issue in this proceeding, correct?

14 NORRIS: I didn't think the design of the solution was a major, uh,
15 consideration in this Hearing. The requirement that that mitigation measure
16 be implemented would be a requirement of this Hearing, not the actual, uh,
17 design.

18 EHRLICHMAN: How do you know that?

19 NORRIS: Um, my experience in dealing with these issues.

20 EHRLICHMAN: You assumed that?

21 NORRIS: My experienced in dealing with these issues.

22 EHRLICHMAN: Okay. So, as you can now tell, the dimensions are important.
23 Correct?

24 LYNN: Is that...

25 EHRLICHMAN: They matter.

1 REEVES: I...

2 LYNN: Is that a question and...

3 REEVES: Uh...

4 EHRLICHMAN: It is a, it's a serious question. Do you still maintain that it's
5 not a major issue to show the dimensions?

6 NORRIS: The, uh, illustration of the dimensions for this Hearing is not a
7 major issue. In regards to the, uh, construction and, or design and
8 construction of this mitigation measure, the design dimensions will be a
9 major issue.

10 EHRLICHMAN: Sure. So, you've offered this only to indicate that you're going
11 to design something. You didn't offer it to show the Hearing Examiner the
12 nature of the problem?

13 NORRIS: I don't, I disagree with that characterization, in fact we did
14 show what the nature of the problem was. I've given you a, a drawing that
15 shows the, um, dimensions of the encroachment, both the center line and fog
16 line or edge of pavement, that we will be working to resolve with the County
17 as we go forward. It's fine tuning of the design is what we're talking about.
18 It's not normally a process of the Hearing Examiner.

19 EHRLICHMAN: But to show the nature of the problem, don't you have to at least
20 show the width and show where the fog line is? You just, you just testified
21 that you showed the fog line, you didn't. It is important in this proceeding
22 to the public, the Hearing Examiner, the County to be able to look at your
23 identification of the problem and determine whether the identification of the
24 problem is correct. Isn't that a major part of this proceeding?

25

1 REEVES: I, I, just Mr. Norris, is your answer to that question, the one
2 you've repeated multiple times, which was that you did not, in your mind,
3 think this would be an issue that, that would need to be resolved or
4 thoroughly reviewed by the Hearing Examiner in this stage and it would be
5 addressed during, uh, design review were to this approved as a condition. Is
6 that your, your answer I've understood multiple times?

7 NORRIS: That, that's basically my answer. But Mr. Ehrlichman's question
8 is did I label the fog line or did I label the right-of-way line and for, in
9 terms of the drawing, those are not labeled on there, but the legend or the
10 I, I explained to the Hearing that the right-of-way is the dashed line along
11 the side and you can see where the vehicles approaches it. You can also see
12 where the edge of the pavement is in the design and the center line. I didn't
13 purposely go through and mark every one of those lines so everybody could
14 understand what they were because I thought we gave a, an example of where
15 these issues were occurring and where they needed to be address.

16 REEVES: Okay.

17 EHRLICHMAN: But isn't one of the, the questions...

18 REEVES: You only have two minutes, Mr. Ehrlichman, so be judicious here.

19 EHRLICHMAN: Well, I hopefully get credit for, um, time that wasn't
20 efficiently provided on...

21 REEVES: [Inaudible.]

22 EHRLICHMAN: [Inaudible] side. Mr. Norris, wasn't it important for the Hearing
23 Examiner, the public, my clients to be able to evaluate the accuracy of the
24 drawing that you submitted?

25 NORRIS: Are your clients, uh, engineers and able to do that?

1 EHRlichman: Well, you have a scale there, we certainly can measure whether
2 you have accurately portrayed the 8.5 feet truck width.

3 REEVES: I'm j-, Mr. Ehrlichman, you only have a question or two more. I...

4 EHRlichman: I'm answering...

5 REEVES: If this is how you want to spend your time, go ahead, but...

6 EHRlichman: Answering Mr. Norris' question, now, unfortunately.

7 REEVES: Well...

8 EHRlichman: Mr. Norris, Mr. Norris, would you be willing to submit, resubmit
9 that exhibits with the dimensions shown?

10 NORRIS: Yes, we can do that.

11 EHRlichman: Okay. Would you also admit that a gravel truck, uh, with its
12 mirrors is greater than the eight or eight and a half feet dimension width
13 that you used?

14 NORRIS: I, I haven't specifically measured it.

15 EHRlichman: Mr. Examiner, I'd like to off an exhibit that I emailed around
16 and, uh, that is a depiction of a typical gravel truck, uh, actually, smaller
17 than this, with mirrors, where the dimension is 9.5 feet width. And would
18 that, uh, 9.5 foot width been, have been more appropriate to use in the auto-
19 turn analysis?

20 NORRIS: No. The, uh, wheel path is the critical factor in the auto-turn
21 analysis.

22 EHRlichman: So, a collision couldn't be caused when the mirrors extend over
23 the center line?

24 NORRIS: Of course.

25

1 EHRlichman: Okay. So, it would be appropriate, in terms of the auto-turn
2 analysis to use the larger dimension, wouldn't it?

3 NORRIS: We, we use the dimension of the truck, there's assumptions in
4 that for mirrors and all that stuff, so, uh...

5 EHRlichman: Okay. Well, it's not a conservative, uh, estimate of what is
6 going to happen I real life out there, is it?

7 NORRIS: Auto-turn is a very conservative estimate of truck paths.

8 EHRlichman: But not when you use the wrong dimension, is it?

9 REEVES: Okay. And we're moving forward. This is the conclusion of those
10 questions, Mr. Ehrlichman, uh...

11 EHRlichman: I'd like to ask one final follow-up question, if I may?

12 REEVES: Finale question.

13 EHRlichman: Mr. Norris, do you anticipate the need to perform traffic impact
14 analysis east of the mine entrance, beyond the trip distribution that you
15 did? Will be a condition of approval as well, based on your experience?

16 NORRIS: That's really the determination of the Hearing Examiner. In my
17 estimation, I don't believe that's necessary, no.

18 EHRlichman: Yeah. Very good. Thank you.

19 REEVES: Uh, Mr. Lynn, based on that?

20 LYNN: I, I think this has been cleared up, but just to be sure, um, so,
21 Mr. Norris, is it your testimony that although certain things aren't depicted
22 on the actual graphics, that they were taken into account in the auto-turn
23 analysis? And by that, I mean, things like the right-of-way width, the
24 pavement width and so forth, those are all part of the auto-turn analysis, is
25 that correct?

1 NORRIS: They are, actually are depicted on the drawing, they're not
2 labeled which was...

3 LYNN: Okay.

4 NORRIS: Mr. Ehrlichman's question. They're not labeled, but they are
5 depicted.

6 LYNN: Okay. And you indicated that there, uh, is a problem in scaling
7 drawings that have been reduced in size to become transferable through the,
8 the email process. Would the full-size drawings that would ultimately end up
9 being reviewed by County engineers, uh, be properly scaled?

10 NORRIS: Yes. They'd be original drawings, which would accurately present
11 the scale and the, uh, features of the plan.

12 LYNN: Um, uh, in est-, or, in answering questions about the area to the
13 east, sorry, some other noise here. Uh, in answering questions about the
14 traffic to the east, what assumptions did you make about that traffic, other
15 than that it's 5%? Is there any reason for a gravel truck to head east,
16 unless it's making a local delivery?

17 NORRIS: Not that I'm aware of. The whole emphasis of the, uh, mine
18 operation from the truck hauling perspective, that the trips were going to go
19 to the west.

20 LYNN: Okay. And I, I, I would normally hesitate to ask this, but I
21 think Mr. Ehrlichman raised the question about your, uh, loyalty, uh, to
22 Miles, uh, uh, interfering with your credibility. Would you jeopardize your
23 30-year career and all of your credentials and, and your reputation and your
24 engineer stamp, uh, at the behest of any client?

25 NORRIS: No, I would not.

1 LYNN: Okay. And Mr. Examiner, I know you sort of get frustrated by this
2 stuff, but I don't think Mr. Ehrlichman should be allowed to pollute the air
3 with those kinds of questions without us having an opportunity to restore Mr.
4 Norris' reputation.

5 REEVES: I understand and I apologize that I have done a miserable job of
6 controlling things.

7 LYNN: Uh, I, I didn't mean to suggest that. I'm just...

8 REEVES: That's my characterization, Mr. Lynn, not yours. But go ahead.
9 Are we done with this witness?

10 LYNN: Uh, those are, that was my very last question. Thank you. Okay.
11 Moving on.

12 EHRLICHMAN: If we could have, uh, Mr. Examiner.

13 REEVES: No, we're not going to do re-re-re-re-direct on this witness.
14 We're going to move on, thank you, Mr. Norris.

15 EHRLICHMAN: I'm not, I'm not asking...

16 LORING: Mr. Examiner, just, I'd, I'd just like to make an offer of proof
17 that I would have asked a couple of questions about the timeframe in which
18 these type of materials should be put in front of the public related to SEPA.
19 We didn't hear much about that on the questioning. Um, and I, I think we're
20 clear on which way the traffic is going. But there has actually been a lot of
21 [inaudible] when the documents appeared very clear, initially. So, I, I will
22 leave it. I don't, we don't need...

23 REEVES: Okay.

24 LORING: To explore that, we can follow up in argument, but I, I would
25 have enjoyed...

1 REEVES: Noted.

2 LORING: The opportunity to ask those questions.

3 REEVES: Thank you. Noted offer of proof. And we're still moving on. So,
4 uh, with that, let's see, we have one additional witness from Mr. Lynn and
5 then, I think questions for the Hearing Examiner at the end is the plan,
6 correct, gentleman?

7 EHRLICMAN: Don't we also have Mr. Grato here now?

8 REEVES: Uh, well, we do.

9 EHRLICHMAN: Are we, uh, planning to, um, eat anything today?

10 REEVES: Well, yeah, but my point, my, I know we have Mr. Grato here now.
11 I have no problem with keeping with the original plan or, sorry, the, the fix
12 it plan which was just get a declaration from Mr. Grato. I think that could
13 certainly safe time. I think the plan would be let's do lunch, come back, do
14 the final witness of Mr. Lynn and then move on, move to my questions. But...

15 EHRLICHMAN: Mr. Examiner, I, I thought we banked a lot of good will and
16 credit by offering to cut one of our witnesses and put it in writing and here
17 we got, we got, uh, shortened on time on, uh, talking to Mr. Norris. But, no,
18 we can, we can submit that in writing, that, that's just fine.

19 REEVES: Okay. So, to be clear, the plan is let's take our lunch break
20 now. Uh, we'll come back at one, let's say 1:40, at the latest and, uh, then
21 we'll hear from, uh, the other, this final witness for Mr. Lynn and then, uh,
22 if there's time, uh, brief questions from me. I was hoping to ask questions
23 because I, my understanding of my role as the Hearing Examiner is it's
24 important that I understand what's happening in the parties' arguments. I
25 know there's sort of, you know, that gets thrown by the wayside sometimes.

1 But I do strongly believe it's important that, you know, I have a sense of
2 what's happening. So, let's come back at 1:40 and that will be the plan.
3 Thank you everybody.

4 LORING: Mr. Examiner, could I ask, I'm sorry to ask, I do have a
5 question, I'm not trying to delay things.

6 REEVES: [Inaudible.]

7 LORING: I know you want to move to eat, we're all cranky a bit. Um,
8 that's normally at 12:50 without lunch. Uh, just for this afternoon, I had
9 prepared a potential closing. I wasn't sure if we were doing the full SEPA
10 argument or not. Are you saying now that you want to ask questions, we'll
11 field those questions, you'll hear from the lawyers and then there will be a
12 written closing, uh, after the close of the Hearing itself. Is that the plan?

13 REEVES: Sorry, yeah. I, I thought I was hopefully clear days and days
14 ago. I am definitely going to want closing in terms of briefs, uh, written
15 briefs as opposed to, I think, by the late stage of it, we would all prefer
16 not to hear closing from all the Attorneys in, you know, oral fashion. Uh,
17 you know, so...

18 LORING: That's great.

19 REEVES: Certainly.

20 LORING: I think that answer, yeah, that answers my questions. I wasn't
21 clear if we were somehow trying to do a little bit each. So, thank you.

22 REEVES: Okay. So, uh, 1:45 at the latest, uh, we'll, we'll all be back
23 then. Thanks, everybody.

24 [The tape ends.]

25 **The undersigned being first duly sworn on oath, deposes and says:**

1 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
2 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party
3 to this action. That on May 11th, 2024 I transcribed a Permit Hearing, conducted by Andrew Reeves, that
4 took place on 9/23/22 at 11:00 a.m., regarding the above-captioned matter.

5 I certify and declare under penalty of perjury under the laws of the State of Washington that the
6 aforementioned transcript is true and correct to the best of my abilities.

7 Signed at Mount Vernon, Washington, this 11th, May of 2024.

8 Janet Williamson

9 Janet Williamson