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6 **OFFICE OF THE HEARING EXAMINER**
SKAGIT COUNTY

7 *In re:*)
8 Application for Mining Special Use) Cause Nos.: PL16-0097, PL16-
Permit and Forest Practices Permit by) 0098, PL22-0142
9 Concrete Nor'West/Miles Sand and)
Gravel,)
10 and) PERMIT HEARING 8-29-22 9:00 AM
11 Appeal of Mitigated Determination of)
Significance by Central Samish Valley)
12 Neighbors)

13 Transcription Date: April 21st, 2024

14 Present: Andrew Reeves, Brandon Black, Bill Lynn, Jason D'Avignon, Kyle
15 Loring, Tom Ehrlichman, Mona Kellogg, Bill Chambers, Laura Leigh Brakke,
16 Donald Levell, Beverly Faxon, Brad Barton, Mona Green, Nichole Peterson,
17 Automated Voice, Oscar Graham, Matt Miller, Gary Norris, Unidentified Female
18 1-2, Unidentified Male 1-2

19 BLACK: Okay. I just started the recording.

20 KELLOGG: Thank you.

21 [Background chatter.]

22 FEMALE 1: Hello. Just one is all we need, yeah.

23 [Background chatter.]

24 REEVES: Here we go. Can you hear me? Hello? Okay. I don't know what
25 changed between Friday and today, but my computer won't let me log in. So I'm

1 logged in on my other device. My apologies for the delay. And have we tested
2 the audio of our attorneys yet?

3 KELLOGG: Not yet.

4 REEVES: Okay. Why don't we check, uh, Kyle Loring, I see you nodding
5 your...

6 LORING: Good morning. Hello.

7 REEVES: Good morning. Are you okay, Bill Lynn?

8 LYNN: Yes, thank you.

9 REEVES: Jason D'Avignon?

10 D'AVIGNON: Good morning, Mr. Examiner.

11 REEVES: Okay. And Tom Ehrlichman?

12 EHRLICHMAN: Good morning.

13 REEVES: Okay. And then, is Brandon in the room today?

14 KELLOGG: He is.

15 REEVES: Brandon Black in the hearing room or someone there in the hearing
16 room?

17 KELLOGG: He is here. He is here. Brandon is here. Can you not hear me?

18 REEVES: I can hear you fine, Mona. Thank you.

19 KELLOGG: Okay. Thank you.

20 CHAMBERS: Just make sure that anyone in the room, uh, this is Bill Chambers
21 [phonetic]. Just want to give a technical, um, uh, reminder, anyone who is in
22 the room speaking will need to be next to a, a microphone that's unmuted.
23 [Background chatter.]

24

25

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 a while, 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 LORING: 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.

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 quinones 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 strongly recommend
19 the 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 son
12 live 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 implicated 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 avoid
16 excess carbon dioxide. So all these air pollution effects really have to be
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 involved, well, I'm dating myself here,
19 but over 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 mines 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 are 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 blast
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.

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 my time with the company, uh, back
22 into the '60s and '70s, uh, similar setting to Bellville. It was, we dredged
23 at that particular site and the ground water created a, a lake and there is
24 some remaining reserve, dry reserves, um, we have a, our ready mix facility,
25 uh, central mix of concrete batch plants, where we park our dump trucks and

1 ready mix trucks. We also have an approved DNR fill site to the north, uh, in
2 the old Peterson pit that was mined, uh, and then completed and now it is,
3 uh, permitted fill site to the, on the north end of the site. Adjacent to F
4 and S Grade 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, Fredonia uh, with, with infrastructure projects and, and
10 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?

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 design-, 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.

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 mineral
15 mining and reclamation 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 support 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 employee 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, drain rocks, uh,
12 concrete products, asphalt support products 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 tenure
3 here, uh, of over 20 years, under CNW, 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 slow, 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 cognizant 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 inclement 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 accustomed to snow and ice on the road. So,

1 as an example, our drivers, when we know that an inclement 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 an 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, factors 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 firm, 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 not.

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 Miles', 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 relocat,
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 steel, 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 plantation.

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.

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 rectilinear, um, they're curvy and they're at an approved two and a half, two
8 to one, three to one setting. And then that top soil is placed over that, uh,
9 and then ultimately, uh, per a design plan, in this case, it's commercial
10 forestry, uh, the trees would be replanted, uh, uh, symmetrically, um, on
11 those slopes to allow them to, of course, sign off in the reclamation. Uh,
12 the floors of these sites are cross-ripped, re-ripped. The soils are placed
13 on, uh, the floor of the mine and then they're seeded accordingly to whatever
14 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 I'll, I'll, 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 latter 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 resource 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 see 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 processing 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 CRICCIO: Hey, Mona, your mic is on.

18 KELLOGG: It shouldn't be. Let me just...

19 CRICCIO: 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 MRO overlay. And I just wanted
21 to 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 our 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.

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 sight 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 inclement weather and actions that would occur where there's
4 inclement 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 inclement
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 drivers 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.

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 reclaim 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.

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.

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

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

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: Nine-yard 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.

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 guestimate, 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.

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 an 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.

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 internal 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 for 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 event 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.

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.

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 overburden 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 Attorneys,
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?

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.

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.

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

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.

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 toe of slope, that toe 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 toe of
16 slope, you would find a mix of vegetation communities dominated by, uh, what
17 is called hydrophytic 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 Slough Sedge 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 toe 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?

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 toe 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?

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 toe 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 Hoogdal silt loam excuse me, I think a gravelly
21 lome 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 logging 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 critiques is that you used the wrong rating
6 form, 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.

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.

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?

1 GRAHAM: We did not dig soil test pits 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, riverine 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 LIDAR
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 LIDAR, 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.

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 question 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 down the I-5
20 corridor.

21 LYNN: Okay. And have you worked on, uh, surface mines before?

22 MILLER: Uh, I've worked with, uh, Concrete Nor'West on this mine and
23 another mine, yes.

24 LYNN: Okay. Um, your firm prepared two reports here, I'm not going to
25 ask you to talk about the first one, I just want to establish for the record

1 that you did that, uh, the first was a h-, uh, that your firm 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 play and we
20 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 it 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 curbs, um, swales, 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 in a fill 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 are
22 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 cause 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, maintain your roadside swales and check dams,
5 clean out the materials that's been swept into the swales 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, fill or
10 anything that we, that would be side-cast over the edge, uh, minimize that
11 and, and don't place, 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 BMPs?

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 is 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.

1 LORING: Okay. Um, what is the volume of the, or how does the volume
2 proposed for hauling this gravel 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 46 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. McShane 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 swales and
15 check dams, clean out material that has swept into the swale that could
16 potentially block surface wa-, water, avoid concentrating surface water
17 discharge into, onto the steep slopes. Would the last sentence encompass the
18 work 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 gist 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.

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 sight 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, analyze 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 of 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 sight distance, can you tell the Hearing
13 Examiner a little bit more about sight 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 sight distance is composed of two, uh, specific elements. One is the, uh,
20 stopping sight 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 sight 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 sight 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 sight
18 distance deficiency. So, the intent was to be able to notify, uh, traffic on
19 the road, the existence 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 sight 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 sight distance?

7 NORRIS: Well, we looked at the possibility of, uh, cutting back the, um,
8 the hillside that created the deficient sight 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 with that idea, 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 be 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 existing 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 of service
25 threshold from Level of 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 peer 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 prepared a 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.

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, sight distance issues at the entrance of
8 the 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 sight 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?

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 sight 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 sight 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.

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.

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?

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...

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 that 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.

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. As 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.

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.

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 gravel 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 a
11 TIA like this, uh, I think I heard testimony earlier that these, you know,
12 the trucks with the, the pup as it were, uh, you know, 75 feet maximum length
13 or something, is the length of a vehicle something that is concerned in a
14 TIA? Is there a standard car length that is used? I just, I never thought of
15 it before. But in my mind, I can see how much larger, longer vehicles moving
16 through intersections, sorry, uh, longer, large vehicles moving through
17 intersections are somewhat different than, you know, uh, uh, my Subaru, uh,
18 am I wrong? I mean, I'm not a traffic expert, so that's why I'm asking.

19 NORRIS: No, you're, you're correct. And from a capacity standpoint, uh,
20 those, uh, issues are evaluated in the, uh, computer software that's used to
21 evaluate, uh, capacity.

22 REEVES: Okay. So, when preparing the TIA for this project and we have the
23 46, on average 46 a day, I think was the number, um, when you're inputting
24 that number into the computer program, you're not just inputting a number,
25 you're also inputting, potentially adding, you know, another layer in the

1 computer program that says it's a specific type of bigger truck? Is, is that
2 accurate? I, I've never gone this deep before.

3 NORRIS: The, um, the analysis software evaluates the impact of heavy
4 trucks in the traffic composition and that's generally expressed as a
5 percentage of the overall traffic.

6 REEVES: Right. So, but you're, when you're adding your trips, you're
7 adding them as heavy trucks, is what I'm asking, I...

8 NORRIS: Correct. Correct.

9 REEVES: Okay. Great. Thank you for clarifying that. Okay. Uh, next, uh,
10 we are going to go to Mr. Ehrlichman?

11 EHRLICHMAN: Mr. Examiner, I have a question for you.

12 REEVES: Okay.

13 EHRLICHMAN: Um, uh, from the beginning of this proceeding, we have made clear
14 that our record would be created by calling witnesses who are experts on
15 traffic, who are actually witnesses for the Applicant and the County and if
16 we want to consider it in the sort of hostile witness category, it's of that
17 nature, um, I noted earlier today, uh, you were concerned that my examination
18 was going beyond the limits of cross-examination. And it was. And so, I would
19 propose, uh, if it would be acceptable to the Applicant that I not interrupt
20 the flow of the Applicant's, uh, presentation here, but call Mr. Norris back
21 in whatever time you designated for me to present my case and then ask him
22 the questions that I have, uh, at that time?

23 REEVES: I, I mean, I'm, I is the one that needs to sort of manage this in
24 a judicial economic manner, uh, would prefer not to do that. Maybe I misspoke
25 in terms of the scope. I was putting the kibosh on that line of questioning

1 because I, as the person that needs to make the decision, it didn't seem
2 germane to, to what I was trying to, to understand. So, maybe I misspoke, uh,
3 you certainly can bring that up on any further Appeals, were you to bring
4 them. I just, I was lost where you were headed. But, Mr. Lynn, do you have
5 any thoughts on this? You're...

6 LYNN: Seems like it's a lot easier and for all of us if we just
7 continue now and we're on traffic, we got the witness here, let's just go. If
8 it's beyond the scope, it's beyond the scope. But I'd like to be able to
9 respond to it and it doesn't make sense to divide up my response into first,
10 Mr. Loring's and then Mr. Ehrlichman's.

11 REEVES: So, we'll, we'll just move forward as was planned and, and, uh,
12 I'll try to be more clear on why I, you know, in making the decisions that I
13 make. I apologize.

14 EHRLICHMAN: No, Mr. Examiner, I, I take responsibility because I don't think
15 I was clear in some of my line of questions. I was going somewhere on that
16 particular line of questions to try to clarify the MDNS condition and we can
17 get into that later. But for, if it's, it doesn't disrupt the Applicant to
18 proceed now with my, uh, series of questions, I'm happy to do that.

19 REEVES: Sure. And it might be helpful to say, you know, this is where I'm
20 heading and now here are the questions I'd like to ask related to that.

21 EHRLICHMAN: Yeah.

22 REEVES: And then if Mr. Lynn objects to where you are saying you want to
23 head, I can deal with it. But, I, I...

24 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 McCleod. 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 moot 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 sight distance analysis. But they didn't do
5 Grip Road shoulder analysis. They didn't Grip Road crossing analysis. Those
6 are safety analyses that I'll get to here if you allow 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 record you know, what led
24 you to your conclusion that they messed up somehow. Does that make 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.

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 axle 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 per hour were going to
13 significantly 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

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 intersections and road segments in Skagit County between, uh, January 1st,
8 2015 and available data in 2020. And there are a total of, um, I think, uh,
9 56 crashes over that total, total period. Um, so, it does include road
10 segments 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 have seen, oh, okay. Here, there are,
18 let's see, shows me there are, have been four, four, four crashes in that
19 five-year period of Grip Road, excuse me, six crashes. And, uh, none of them
20 involved an injury.

21 EHRLICHMAN: Okay. Go ahead.

22 REEVES: My, my understanding, 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?

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 and 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?

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 for 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.

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's 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 not 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.

9
10 Janet Williamson

Janet Williamson