

1
2
3
4
5
6 **OFFICE OF THE HEARING EXAMINER**
7 **SKAGIT COUNTY**

8 *In re:*)
9 Application for Mining Special Use) Cause Nos.: PL16-0097, PL16-
10 Permit and Forest Practices Permit by) 0098, PL22-0142
11 Concrete Nor'West/Miles Sand and)
12 Gravel,)
13 and) PERMIT HEARING 9-2-22 1:00 PM
14 Appeal of Mitigated Determination of)
15 Significance by Central Samish Valley)
16 Neighbors

17 Transcription Date: April 29th, 2024

18 Present: Molly Porter, Andrew Reeves, Bill Lynn, Mona Kellogg, Jason
19 D'Avignon, Kyle Loring, Tom Ehrlichman, Martha Bray

20 PORTER: Hello. Can you hear me now?

21 REEVES: That's...

22 REEVES: Better, there's a big of an echo, but I think we'll...

23 PORTER: That was just because my office is empty. Um, that's all the tech
24 skills I have too, so, if this doesn't work, I can call in.

25 LYNN: Uh, I think it helps if you do stay a little closer to the, uh,
microphone so if you can do that, that would be great. Are we ready to
continue?

1 REEVES: I, I was going to say, I believe, uh, we are recording, uh, Mona
2 Kellogg, is that right?

3 KELLOGG: Yeah. We are, yes.

4 REEVES: Excellent. And just, timing-wise, I just, I know Kyle Loring has
5 a hard stop at 4:30, which is perfectly respectable. My plan is, uh, 4:15 to
6 sort of stop and, and talk procedure with, with the Attorneys. So, if we can
7 all keep that in mind, I suspect there's going to be lots of questions about
8 wetlands and critical areas, as that was one of the two, uh, sort of big
9 topics. So, with that I will let you, uh, continue with your questioning, uh,
10 Mr. Lynn.

11 LYNN: Okay. Um, thank you. Ms. Porter, I want to focus on the second
12 part of the report, the, uh, impact assessment and mitigation plan. Um, can I
13 ask, first of all, what were your conclusions about whether or not the, uh,
14 well, well, first of all, let me, let me just talk about the, uh, the impacts
15 that you were assessing. What were the impacts that you were looking at?
16 What, what was the aspect of the project that your evaluation focused on?

17 PORTER: So, we focused on the haul road itself, and the impacts, uh, of
18 using the haul road to transport material from the mine out. We did not look
19 at any of the area that any of the actions involved directly with mining.

20 LYNN: Okay. So, so your analysis was limited to the haul, haul road and
21 the, and the uses associated with that?

22 PORTER: Correct.

23 LYNN: Okay. And did you, uh, conclude that there were any direct
24 impacts to wetlands as a result of the proposed activities?

1 PORTER: We did not. Um, the, the part of the project that we looked at
2 only involves using additional traffic on the road, is not expanding the road
3 footprint, to my knowledge we're not doing, doing anything to change drainage
4 patterns, to increasing impervious surfaces, there's no vegetation removal or
5 nothing that would be a direct impact to the wetland buffers.

6 LYNN: Okay. Uh, you know that there is a proposed, uh, paving of a
7 short stretch of the road near the Swede Creek Bridge. Did you consider that
8 in your analysis?

9 PORTER: We did.

10 LYNN: And is that, does that constitute a direct impact to wetlands or
11 buffers?

12 PORTER: It does not. It, the pavement would replace gravel, the gravel
13 road base is functionally not providing any meaningful buffer function
14 therefore it is not changing that surface material would not be an impact.

15 LYNN: So, because it's already a gravel road and you're just changing
16 the surface of it, there's no alteration in the function of the buffer. It's,
17 it's gravel before and it's paving after, is that a fair summary?

18 PORTER: Yep. That was exactly our conclusion, yes.

19 LYNN: Are there any, uh, impacts that result from that paving that, uh,
20 uh, should be noted? Does that have any benefits or detriments?

21 PORTER: Um, no, I mean no, I don't think so. I mean, essentially compact
22 gravel is functionally impervious and acts much like pavement.

23 LYNN: Okay. Does the pavement, uh, allow any better control of the
24 drainage than the gravel?

1 PORTER: Not, I'm unaware of, of why it would or if there's any, no, I
2 don't think so.

3 LYNN: Okay. So, I want to talk about indirect impacts, which was the
4 focus of most of your analysis. Uh, first of all, have you ever...

5 REEVES: Mr. Lynn.

6 LYNN: Yeah.

7 REEVES: I apologize. Just to be clear, we have some audio issues right
8 before we came back. We are in Exhibit 8 or C8 of the December 2021 report,
9 does everybody agree that that's what we're talking about?

10 LYNN: Correct.

11 REEVES: Okay. Sorry, just being overly cautious to make sure we were all
12 on the same page. Please proceed.

13 LYNN: No, that's, appreciate it. So, we're talking about indirect
14 impacts now. Have you ever, in your, uh, years of experience, been called
15 upon to, uh, assess the change in impacts resulting from more travel on an
16 already existing road?

17 PORTER: I have not.

18 LYNN: Okay. Is there anything that, uh, in the County Code that gives
19 you guidance as to, uh, such an analysis?

20 PORTER: Not specifically, no.

21 LYNN: Is there any discussion of indirect impacts in the County Code
22 that you're aware of?

23 PORTER: Not that I'm aware of.

24 LYNN: Okay. Is there any basis to distinguish between, uh, ten trips a
25 day and 20 trips a day in, in evaluating indirect impacts?

1 PORTER: Not that I'm aware of.

2 LYNN: Okay. So, what were your conclusions about indirect impacts from
3 increased traffic on the haul road?

4 PORTER: So, in our analysis, we broke them down sort of into different
5 functional components and I can look through those without maybe restating
6 everything that we said, but just a little summary, if that would be helpful?

7 LYNN: Yeah. It would be and if you can take each one in turn and then
8 just sort of describe the subject matter and what your conclusions were and
9 that will give us time to, uh, follow along and, and catch up.

10 PORTER: Okay. So the first thing of concern was the water quality and run
11 off filtration function as the wetland and buffers and if the increased trips
12 would indirectly impact those in some way. Um, in our, no, we decided that it
13 would not because generally speaking, the project, again, is not, impacts to
14 with respect to water quality happened when the road was initially installed
15 some time ago. The road...

16 LYNN: So, just to, can I get you to stop there because you are, I think
17 we'll try to do this maybe in shorter bursts, but, uh, what I understood you
18 to say was that there were no water quality impacts, uh, indirect because
19 whatever impact happened, happened when the road was already, was constructed
20 in the past, is that...

21 PORTER: Correct.

22 LYNN: Okay.

23 REEVES: And, I apologize. Is, is there a, a page number in the, the, the
24 exhibit we can kind of track? I...

25 PORTER: Yes. I, that...

1 REEVES: [Inaudible.]
2 PORTER: Page 13.
3 LYNN: Okay.
4 D'AVIGNON: And in Exhibit C8, that would be page 441 of the PDF.
5 PORTER: Okay.
6 REEVES: That, thank you, that's super, okay, so in the, what I like to
7 call the, uh, master Cricchio document, it was what again, uh, Jason? Four
8 hundred something? I apologize, I missed it.
9 D'AVIGNON: I, I don't know what it would be in the, in Kevin's very large
10 document, but in the individual C8 PDF, or whatever it was previously
11 numbered, it's 441.
12 REEVES: Got it. Okay. I think I'm there, but go, go right ahead.
13 LYNN: Um, so that's the first w-, what you just testified to, that the
14 impacts occurred when the road was built is the first sentence under
15 potential impact on that Page 13?
16 PORTER: Correct.
17 LYNN: And then the, the next paragraph, the second sentence is most
18 wetlands in the review area do not receive runoff from ditches adjacent to
19 the road. Uh, could you elaborate on that a little bit and how that's
20 significant?
21 PORTER: So, I want to make sure we're on the same spot and I don't see
22 that it's a second paragraph, what page are you on?
23 LYNN: And it's the second sentence of the second paragraph on Page 13.
24 Under Potential Impact.

25

1 PORTER: Oh, okay. Okay. Got it. Correct. Many, uh, many of the wetlands
2 in the review area did not receive runoff from the roadway and we listed out
3 those that do and those that don't.

4 LYNN: Okay. And your conclusion is why, your, your conclusion is that
5 there isn't an impact. Could you elaborate about why that's the case, in your
6 opinion?

7 PORTER: Because the change in use does not do anything that, it doesn't
8 do anything that would normally be considered an indirect impact. There's not
9 increased impervious surfaces, we're not removing any vegetation that
10 currently has any ability to perform water quality functions such as
11 filtration, the additional driving on the roadways, I mean, the road was
12 installed for driving on it and impacts to [inaudible] that should have been
13 considered when it was installed.

14 LYNN: Okay. And then, on Page 14, you list mitigation recommendations,
15 um, and, uh, do you know whether those were incorporated in the County's
16 decision or you just know that you recommended them?

17 PORTER: I believe that they were copied into the SEPA decision.

18 LYNN: Okay.

19 PORTER: [Inaudible] condition.

20 LYNN: Okay. The next topic begins on Page 15 and is Hydrology. Could
21 you tell the Examiner what your general conclusions were about in-, indirect
22 impacts on Hydrology?

23 PORTER: Yeah. My understanding was that the existing drainage pathways
24 would be maintained, that there would be no additional culverts or diversion
25

1 of water that would change the runoff in any way, therefore, there would be
2 no change to downstream wetlands or surface waters.

3 LYNN: Okay. And then you didn't feel it necessary to recommend any
4 mitigation for that indirect impact?

5 PORTER: Correct.

6 LYNN: Uh, and the next topic that starts on the bottom of Page 15 and
7 goes onto 16, is Thermal Protection. Could you tell us what your conclusions
8 were there?

9 PORTER: Yeah. So, Thermal Protection would be vegetation that has the
10 ability to essentially protect and shade to this water we're not removing any
11 vegetation, so that function would not be affected.

12 LYNN: So, that function would not be affected, is that the last
13 statement?

14 PORTER: Correct.

15 LYNN: Okay. And then you go on, on the, uh, top of Page 16, to talk
16 about Fish and Wildlife Habitat. Uh, could you elaborate on that a little
17 bit, tell the Examiner what your conclusions were?

18 PORTER: Yeah. So, the, I mean, I feel like I'm repeating myself a little
19 bit, but the same reasoning, we're not encroaching upon the wetlands and
20 buffers in any way, there's no vegetation removal or altering, physical
21 altering the habitat in any way. The driving on the roadway does, we
22 concluded, would have some potential to have indirect impact, but more in
23 relation to, it could change how the species utilize the site, the noise and
24 the traffic and additional trucks present would cause them to avoid that
25 area, occasionally. But does not, it doesn't do anything that indirectly

1 impacts the wetland or the buffer functions themselves and it won't alter how
2 the habitat is being used. And I feel like I maybe had a hard time
3 articulating that in the document.

4 LYNN: Um, so, is, is, so, let me just see if I can try to understand
5 the, so, right now, there's, this, this, uh, road is some, is a barrier of
6 some sort, I guess, for, for wildlife using the site, right? They have to
7 cross the road, uh, uh, to get from one side to the other currently?

8 PORTER: Correct.

9 LYNN: And, and that will continue to be the case, but there'll be more
10 trucks so more, more necessity to avoid crossing?

11 PORTER: Correct.

12 LYNN: Okay. And, and is that the impact that you can identify that with
13 more trucks, there will be more interference with a, a, an animal's desire to
14 get from one side to the other?

15 PORTER: They'd be more likely to avoid crossing the roadway.

16 LYNN: Okay. So, they might avoid it, they might av-, they might cross
17 at off hours, they might use it more, uh, during the evening or morning hours
18 before or after trucks are on the roads?

19 PORTER: Yes.

20 LYNN: Um, did you find species on the property that are subject to
21 protection or have management recommendations, uh, in the County Code?

22 PORTER: Um, other than the Oregon Spotted Frog that are potentially
23 present and the fish that are present in the streams, which we can talk about
24 separately, there are likely to be, or just based on the rural nature of the
25 site, a number of species that utilize the site. But there are not, to my

1 knowledge, any species that are listed protected or any particularly, any
2 species that are particularly [inaudible] the site. So, as far as
3 recommendations to mitigate the impacts to animals that may use the site,
4 there were no specific, um, habitat, there were no specific recommendations
5 on how to maintain that habitat. So, we sort of tried to think about what
6 would make more sense to present as mitigation options to offset those
7 impacts, which are stated clearly in the conclusions on the next page that
8 feel like if, if some level of vegetation is maintained around the edge of
9 the roadway and the wetlands and buffers, that would be what would be most
10 beneficial because it would be providing additional screening cover
11 protection for wildlife that are around these edges and provide that
12 screening for the ability for them to be less likely to be deterred from
13 those areas and be protected so they could use the rest of the site.

14 LYNN: Uh, just so I make sure I got that less likely to be deterred from
15 using the areas, was that what you said?

16 PORTER: They'd be more, I mean, just provide some screening so it would
17 be less likely to affect the way they're using the majority of the site.

18 LYNN: Okay. And that's a...

19 PORTER: Because there would be a buffer, dense vegetation around, between
20 them and the trucks.

21 LYNN: Okay. And that's, that recommendation is on Page 18?

22 PORTER: Correct.

23 LYNN: Uh, are you aware that the, that the traffic here has been
24 expressed as an average and that there will be days that there are more
25

1 trucks on the road and other days when there are fewer trucks on the road?

2 And, and if so, does that effect any of your conclusions?

3 PORTER: Yeah. I'm aware of that and it does not.

4 LYNN: Okay. Um, uh, a document has been submitted, I think it's Exhibit
5 A33, a s-, a report by Mr., um, Mahaffie. Do, do you know Mr. Mahaffie,
6 another wetland scientist?

7 PORTER: I do.

8 LYNN: Okay. And, uh, how do you know him professionally?

9 PORTER: He worked as a [inaudible] for Whatcom County and we, we
10 frequently worked with him when he reviews our work for Permit Applications
11 in Whatcom County.

12 LYNN: So, I'm sorry, you said he, he's a, he's an employee of Whatcom
13 County who reviews your work up in that area?

14 PORTER: Correct.

15 LYNN: Okay. Uh, he commented that the County's review of your work was
16 cursory, is, is it your experience that the County does cursory work in
17 reviewing the materials you submit to them?

18 PORTER: That has not been my experience.

19 LYNN: Okay. He also, uh, was critical of your use of agency mapping to
20 determine the, the nature of the streams that you analyzed. Is that a
21 standard practice to use, uh, documents from DNR or the Department of Fish
22 and Wildlife as to, as to fish use of streams?

23 PORTER: That, those are the standard, they report fish use by using Fish
24 and Wildlife or DNR mapping.

25 LYNN: Okay.

1 PORTER: And they were doing that on [inaudible]. Yeah.

2 LYNN: Okay. And so, that would work whether they are, however they're

3 rating it, you would use their documentation as the basis for your review?

4 PORTER: Correct.

5 LYNN: Okay. Uh, have you investigated some of the sources he cited, uh,

6 with reference to potential fish use of any of the streams that were

7 identified as not non-fish bearing streams in your analysis?

8 PORTER: I have. He made reference to, uh, to two Forest Practice

9 Applications, um, with DNR that we requested and in there was some additional

10 information on fish on site that was not on the online DNR maps, um, portions

11 of what we mapped, the lower portion of Stream 13 and another portion of

12 Stream 20 were identified in those Forest Practice Application as fish-

13 bearing so that, those streams and a couple of others associated with it that

14 also meet the habitat criteria should be, that should be revised, they should

15 be considered fish-bearing and the buffers should be increased accordingly.

16 LYNN: Okay. So one of those was Stream 13 or a segment of 13, what was

17 the other?

18 PORTER: Segment of 20.

19 LYNN: Okay.

20 PORTER: And due to the connectivity, 15, 21 and 22, I believe should also

21 be considered fish-bearing.

22 LYNN: Okay. So if you, if you depart from the normal process and look

23 to these permits, you get additional information and that tells you that you

24 might want, that you should re-categorize these five streams?

25 PORTER: Correct.

1 LYNN: Okay. Does that change any of the conclusions you reached?

2 PORTER: It did not.

3 LYNN: That, that, okay. And, and could you explain why that's the case?

4 PORTER: Because we were already considering the fish downstream to be

5 present in Swede Creek. So, the same rationale conclusions would apply.

6 LYNN: Okay. So, so everything you said about indirect impacts,

7 hydrology, um, thermal protection and so forth are, are, are not changed by

8 the fact that the, that some of these streams might have fish in them?

9 PORTER: They do not change. The only thing that would change would be the

10 buffer. And if vegetation is maintained within that buffer, those should be

11 increased, that area...

12 LYNN: And...

13 PORTER: [Inaudible.]

14 LYNN: And if the buffers aren't present currently, the proposal isn't

15 altering those buffers?

16 PORTER: Correct.

17 LYNN: Okay. Uh, that's all I have for Ms. Porter, thank you.

18 REEVES: Great. Um, I just have one question I wanted to clarify before I

19 move, at the very beginning, Ms. Porter, you had said, you looked at the

20 whole site, not just the, the 300 feet for wetlands or 200 feet for streams

21 that the County sort of asked or requested that you look at. Can you clarify

22 what you meant by full site? Because the mine itself is 60-something acres,

23 but then this is the haul road, could you just give me some basic detail on

24 what you meant by that?

25

1 PORTER: Sure. We didn't look at that. We only looked at the areas around
2 the haul road. We did not look at any of the areas associated with the mine
3 site. It was a portion of the northern extent, where the haul road is, that
4 300 feet extends into the mine site and we did not look at that, assuming
5 that was already covered by Graham and Bunting.

6 REEVES: Okay.

7 PORTER: And then...

8 REEVES: But, again...

9 PORTER: This...

10 REEVES: When you say whole site, I...

11 PORTER: That can be...

12 REEVES: So, if the road is two, two miles...

13 PORTER: The entirety of the property that's owned by the Miles Sand and
14 Gravel. There was additional property beyond the 300 feet and by the
15 Applicant that we did not review.

16 LYNN: So, Mr. Examiner, can I try to clarify this? I, I, my question
17 was meant to ask, did you limit yourselves to those features that were on the
18 County's list of things you should look at or did you look at the whole area,
19 meaning the whole area within 300 feet of the road. So, the County's, uh,
20 direction came with a map that identified specific features and I just was
21 asking her if she just looked at those or if they also looked at other, uh,
22 features in the same area.

23 REEVES: Okay. I think that clarifies, but if there's confusion, I'll let
24 Mr. Loring or someone else, uh, ask for further clarity, but I guess the way
25 I was thinking about it, Ms. Porter, was, you know, here's the haul road,

1 there's wetlands and then there's the 300 feet, did you go 500 feet, 800 feet
2 or, or not, but Mr. Lynn seems to be indicating that mostly within the 300
3 feet that you were looking at features beyond what was specifically requested
4 by the County, I...

5 PORTER: I think that's a good summary, yes. We looked through the entire
6 300 feet and we looked at features beyond what was in the map provided by the
7 County.

8 REEVES: Got it. Okay. Thank you. And with that, uh, uh, I'll go to, uh,
9 Jason, uh, D'Avignon first.

10 D'AVIGNON: I don't have any questions for Ms. Porter.

11 REEVES: Okay. And then next to Mr. Loring?

12 LORING: Thank you, Mr. Examiner. Uh, good afternoon, Ms. Porter. My name
13 is Kyle Loring, I represent, uh, the SEPA Appellants. And so I have some
14 questions for you about the review that you conducted at the site here today.

15 PORTER: Yes.

16 LORING: Um, you conducted at the site. Questions today. Um, the first
17 question I have for you is whether you are familiar with the road work that
18 occurred in 2018 on this private haul road that we've been discussing?

19 PORTER: I, not, not in detail.

20 LORING: Okay.

21 PORTER: I, I understand there's some resurfacing occurred, but I do not
22 know the details of that.

23 LORING: Okay. And, uh, you wouldn't know whether culverts were swapped
24 out?

25 PORTER: I don't, I did not review the site before 2021.

1 LORING: Okay. And you wouldn't know the extent of any resurfacing that
2 did occur?

3 PORTER: No.

4 LORING: Okay. Okay. That cuts down on a few questions so I'm, I'm
5 skimming through my notes and then I'll have a, another document where I just
6 have a brief outline of questions I want to check, too. Uh, you've talked a
7 little bit about the different types of traffic that would occur on the site,
8 on this haul road, connecting the mine to, uh, Grip Road, I believe you
9 report indicated that you did not study the differences in that traffic, from
10 the logging trucks, to the mine and trailers, I mean, the gravel truck and
11 trailers, sorry, is that right?

12 PORTER: Not totally sure what you're asking. As far as...

13 LORING: I'll rephrase it. I'm, I'm thinking of the report and I believe
14 from your report it indicated that you did not evaluate whether there would
15 be a difference based on the volume of traffic that occurred at the site. And
16 a difference meaning a different impact on the streams or the wetlands or
17 their inhabitants, is that right?

18 PORTER: I think so, but, again, I'm not [inaudible] if we're looking at
19 the difference in traffic or the difference in the impact? We di...

20 LORING: Whether you evaluated whether there would be a difference in
21 traffic and then applied that to determine whether there would be a
22 difference in impacts?

23 PORTER: I'm assuming there's a difference in traffic, in that the haul
24 road will have an additional trips per day under the gravel mining than it
25

1 did with forestry practices. I don't have an accurate accounting of what that
2 difference is. I'm assuming it's greater, will be greater.

3 LORING: Okay.

4 PORTER: Does that answer your question?

5 LORING: Yeah. It, it starts to, yes. Thanks. If, do you know how much
6 logging traffic is occurring right now on the property? And I should say on
7 the haul road.

8 PORTER: I do not.

9 LORING: Okay. And if there were zero logging trucks traveling along that
10 road on a regular basis, or a daily basis, is it still your position that now
11 having mine traffic, uh, I think I made an assumption there, let me take a
12 step back. Uh, your testimony was that any, the, the change in traffic would
13 not impact the wetlands, the streams or their inhabitants, is that right?

14 PORTER: There, not directly, no. And I, I'm assuming the traffic count as
15 not nothing.

16 LORING: Okay. What is your assumption, then, about the traffic count?

17 PORTER: I, I, I don't have a specific count per day in mind, but I'm
18 assuming there is some traffic. Every day we were there, there was some
19 traffic on the site.

20 LORING: Okay. So your assumption going forward is that there is always
21 logging traffic at that site, on a daily basis?

22 PORTER: Not necessarily.

23 LORING: What is your assumption, then, about daily logging traffic going
24 forward?

1 PORTER: Um, I would normally assume the logging traffic is sporadic. But
2 sometimes it could be something closer to what is happening on the daily
3 average with the mine site and some days it would be very minimal.

4 LORING: Okay. When you say sporadic, do you mean seasonally sporadic?

5 PORTER: Or occasionally when there's a harvest.

6 LORING: Okay.

7 PORTER: Obviously, there's be more traffic some point.

8 LORING: Okay. How many trucks would you imagine to be on site when there
9 isn't a harvest?

10 PORTER: The days we were there, there was not logging trucks, but one or
11 two trips per day.

12 LORING: Okay. So, did you observe any logging trucks on the site?

13 PORTER: No.

14 LORING: Do you know if the traffic you observed was related to the mining
15 activity or preparing for it?

16 PORTER: I do not know what, who it was. We were in the woods, they were
17 on the road.

18 LORING: Okay. So, just to conclude on that point, you did not see any
19 logging trucks while you were there for those nine days?

20 PORTER: No.

21 LORING: Okay. And replacing that zero traffic activity for a logging with
22 up to 46 trucks trips per day does not change your conclusion about the lack
23 of impacts to wetlands, streams and their inhabitants?

24 PORTER: Correct.

25 LORING: Okay. So, traffic doesn't matter for impacts at the site?

1 PORTER: Traffic does matter, but for the reason stated in the report, I
2 believe the, when driving on an existing road that the function of the road
3 is to drive upon it so, there's no, no road expansion, no vegetation, nothing
4 that would have a direct, physical impact to reduce the wetlands and the
5 stream.

6 LORING: Okay. So, just to clarify that, your position is that traffic on
7 this road, uh, won't have a direct impact on streams, wetlands or their
8 inhabitants?

9 PORTER: Correct.

10 LORING: Okay. We've covered some of these as I look through here. Uh, you
11 mentioned that presumably when the road was, um, when the roadwork occurred,
12 the impacts would have been reviewed, is that an accurate, uh, recitation of
13 your testimony a few minutes ago?

14 PORTER: That's my assumption.

15 LORING: Okay. Would it surprise you to learn that they had not been
16 reviewed, those impacts?

17 PORTER: Generally speaking, you have to meet a Permit to put in the road,
18 so I, I'm, I'm assuming that that was reviewed at the time.

19 LORING: Okay. So you don't know whether or not it was actually reviewed
20 at that time?

21 PORTER: I don't. I was not involved in that part of the project.

22 LORING: Okay. You talked about, uh, and your report talks about,
23 retaining vegetation and that that being important for the functions and
24 values of these streams and the wetlands and their inhabitants, is that
25 right?

1 PORTER: Correct.

2 LORING: Okay. So, if vegetation were removed as part of the roadwork that
3 occurred, um, would that have had a negative impact on the, uh, wetland,
4 streams and their inhabitants?

5 PORTER: Yeah. Generally speaking of trees and shrubs, removing that
6 impacts the habitat.

7 LORING: Okay. Okay. Um, let's see, you were asked a, a moment ago about,
8 uh, about a report by, uh, Matt Mahaffie, who was critical, somewhat critical
9 of your report that you put together on this d-, on this, uh, work. And I
10 believe the question was whether he was critical of you using agency maps.
11 Uh, is it your position that he was critical of you using agency maps?

12 PORTER: I don't know that I would say he was critical, I think he had
13 additional information that we weren't aware of.

14 LORING: Okay. And it was actually additional Agency information about,
15 uh, maps at that site and the sensitivity of the streams that are on that
16 site, isn't that right?

17 PORTER: It was additional agency maps that weren't publicly available,
18 you had to request them. Through the DNR Forest Practice Application portal.

19 LORING: Okay. W-, these were Forest Practice Applications for this
20 particular property, though, right?

21 PORTER: They were.

22 LORING: And your client didn't provide you with those maps before you
23 conducted your study?

24 PORTER: No.

1 LORING: So, but you say not publicly available, but those maps could have
2 been available to you as part of your review of the site, right?

3 PORTER: If I w-, I, to request them you have to have the forest practice
4 application number and I, I mean, I'm assuming this has been in forestry for
5 a hundred years and I'm sure there's dozens of forest practice applications
6 from this site.

7 LORING: Okay. I, I...

8 PORTER: I just...

9 LORING: Sure.

10 PORTER: I assume that DNR would update their online mapping to reflect
11 the information they had so we look up all available information.

12 LORING: Okay. But you could have asked your client for FPA information at
13 this site, right?

14 PORTER: Yes.

15 LORING: Okay. Uh, let me just check my outline here. Uh, I think we're,
16 we're making our way through a lot of this. Uh, just a couple more questions
17 and this is about the, that land use intensity question that I know you're
18 aware of as part of this. Um, have you conducted critical areas work for
19 other mining operations?

20 PORTER: Um, I have not, but we, my firm has.

21 LORING: Okay. And how often does your firm characterize a mine as a
22 medium intensity use?

23 PORTER: I was, that determination was based, I mean, clearly, you're
24 going to ask if we have put them as high intensity in the past and, yes,
25 generally, I would [inaudible] with from what I'm reading, system review that

1 we have done in the past, and I generally would, would say a mine is a high
2 intensity. Uh, but it's also not called out in the Code specifically as the
3 use, whether they were medium or high. So, when that happens, I generally
4 would recommend to my client that the, the Land Use Proposal does not
5 specifically call out, I would contact the County to have a conversation
6 about what, how they would regulate that. Generally, it's best for people to
7 make some sort of argument, provide it to the County for them to agree or
8 disagree. And it appeared to me that occurred, they had made an argument for
9 it to be moderate intensity. In the past, the County had approved that, so I
10 was using that, assuming that conversation had already happened and using
11 that information on my end as required for this assessment.

12 LORING: Okay. So, you didn't independently reach a conclusion that this
13 should be considered a medium or moderate intensity land use?

14 PORTER: I was under the impression that had already been discussed with
15 the County.

16 LORING: So, you didn't reach your own independent conclusion?

17 PORTER: I did not reach my own conclusion.

18 LORING: Would you have concluded that it was a high intensity land use if
19 you had been asked directly to do that as part of your review?

20 PORTER: I have not put enough thought into it. Generally speaking, I
21 think the record showed that I would, but I, for this particular purpose, I
22 mean, every site is subject to specific requirements, but, in the past, I
23 generally would have said high intensity.

1 LORING: Okay. And would that be based on the fact that it's going to
2 review, uh, you know, 60 plus acres of vegetation and soils and actually turn
3 a forest into a gravel pit?

4 PORTER: Correct.

5 LORING: Okay. And a gravel pit doesn't provide much in the way of
6 functions for critical areas in, uh, well, functions and values for critical
7 areas, does it?

8 PORTER: It does not.

9 LORING: Okay. Are you familiar with the Department of Ecology's position
10 that a 300 foot buffer is required based on land use intensity for the site?

11 PORTER: I believe Mr. Mahaffie mentioned talking about...

12 LYNN: I'm going to, just a, just a minute, just a minute, Molly. I'm
13 going to object. I mean, I've, I've let this go on. She's not the person who
14 made the determination. She's testified she didn't have enough information,
15 she didn't make the thoughtful analysis she normally would. And now we're
16 getting into another level of, uh, complexity by asking about a Department of
17 Ecology document. And it's...

18 REEVES: Well...

19 LYNN: Go ahead.

20 REEVES: I, where, where I'm confused is my understanding of this witness
21 is that the report she prepared relates to the haul road. Are you, Mr.
22 Loring, are you contending that the, the haul road requires a 300 foot
23 buffer? I, I just want to make sure I understand the argument.

24 LORING: I was going to get to that point, yes. But, I'm also, I would
25 also contend that you're segmenting a project is inappropriate. And so, I

1 would, although the Applicant has done that here, and they did that for five
2 years effectively, uh, convinced the County not to review haul road impacts,
3 eventually they did acknowledge that the haul road is part of this project,
4 presumably the gravel has to get to market somehow, and so would use this
5 haul road. Uh, in addition...

6 REEVES: Well...

7 LORING: Well, Ms. Porter, she may not have reached this high intensity,
8 or medium intensity land use determination, but she relied upon it for the
9 buffers that she has included in her report. And so that's a, you know,
10 significant amount of acreage that has been impacted by her determination, or
11 her use of somebody's determination.

12 REEVES: And so, I just, I just want to be clear on what the questions
13 relate to, to the extent that if your argument, Mr. Loring, is that, that 300
14 foot buffer is applicable to the haul road, then I, I'll let Mr. Lynn talk
15 here in a sec, then, then in my mind, okay, you know, I get what you're
16 saying, in terms of asking these questions. But, a minute ago, it sounded
17 like you were asking the witness about the determination of the mine itself,
18 on the 66 acres or whatever it. Which I, you know, I, then, I understand Mr.
19 Lynn's objection. But, Mr. Lynn, can you speak, give me a though on that?

20 LYNN: Well, I, I think that's exactly what he was asking. Uh, he was
21 asking about, uh, the intensity...

22 LORING: It is.

23 LYNN: Of a mine, well, can I finish? Uh, he was asking about a mine in
24 general. And that's what I think is objectionable.

1 REEVES: So, my question for you, Mr. Lynn, is, is the argument is that
2 the, that 300 foot base is also applicable to the haul road, do you still
3 have the same objection?

4 LYNN: If he wants to ask her about the haul road, I think that's
5 different. Although, I think buffers are immaterial, since the road already
6 exists.

7 REEVES: Well, that's your, an argument, I certainly understand that. But,
8 you know, uh, I'll give a tiny bit of leeway in terms of if you're asking
9 about the haul road, Mr. Loring, repeat the question and just be very
10 explicit if you could?

11 LORING: Thanks, Mr. Examiner. And, Mr. Lynn, I, I know you may need to
12 object, but I think there's a lot of feedback coming when you're, um, unmuted
13 there.

14 REEVES: Oh.

15 LORING: No, wasn't you, sorry.

16 REEVES: Might be Porter.

17 LORING: My f-, okay. So, I, just to clarify, I was asking about the mine.
18 I'm moving on from that. And so, Ms. Porter, are you aware of the Department
19 of Ecology's latest, uh, guidance on roads and the intensity of land use,
20 that they should be, uh, categorized as?

21 PORTER: What are you referring to? Maybe not.

22 LORING: Uh, I, I don't need to go further, if you're not familiar with
23 it, that's fine. And, and I don't need to dive any, any further into that for
24 this question. So, uh, let me see if I have anything left there. Oh, one last
25 question, do you know whether County staff had reviewed the data sheets from

1 your work, uh, when they issued the mitigated determination of non-
2 significance in this matter?

3 PORTER: I've not had any conversation with County staff, I do not know.

4 LORING: Okay. Thank you. I, I have no further questions. Thank you for
5 your time.

6 REEVES: Okay. Um, and, um, just going to assume, again, Mr. Ehrlichman,
7 this is not specifically the scope of what you were going to address, but I'm
8 trying to be fair and whatnot.

9 EHRLICHMAN: Correct. We have no questions. Thank you.

10 REEVES: Very good. Fair and whatnot. So, I'll go back to Mr. Lynn, uh, to
11 see if he has redirect.

12 LYNN: Uh, thank you. Um, Ms. Porter, you were asked a number of
13 questions about exactly how many trucks there are today and exactly how many
14 trucks there will be in the future, does that matter to your conclusion? Is
15 there a, is there an exact number that would trigger a different conclusion
16 on your part or, or, or is that contemplated by the County Code and its
17 requirements?

18 PORTER: Um, uh, no. No. Knowing the exact difference does not change my
19 opinion. I tried to base my opinion on what my understanding was of there's
20 very little traffic now, this is going to be the average in the future and
21 what that future average may mean [inaudible].

22 LYNN: Okay. Uh, tell us about the, your conclusions and how they're
23 affected by the County required buffers, whether it's from streams or
24 wetlands? Does, how does that play into your analysis of an existing
25 improvement?

1 PORTER: I don't understand the question.

2 LYNN: Well, you, you've been asked questions about the, the fish
3 qualities of certain streams and about the intensity of the, of the use in
4 relation to the buffer requirement. And my question is, do your conclusions
5 about there being very little impact and only indirect impact depend on the
6 County required buffers for either the ha-, for the streams of the wetlands?

7 PORTER: I don't know if I totally understand what you're asking. I'm
8 sorry.

9 LYNN: Uh, uh, I'm just going to withdraw the question, then, it's
10 probably better, it must mean it's an argument question, then, not a real
11 question. So, I'll stop there. Thank you.

12 REEVES: Sorry, and by stop there, do you mean you, you've concluded with
13 this witness?

14 LYNN: I have.

15 REEVES: Excellent. Okay.

16 LYNN: Yes.

17 REEVES: Uh, do you have a question or so, Mr. Loring?

18 LORING: No, I have no questions in response, thank you.

19 REEVES: Okay. Thank you very much, Ms. Porter. All right. So, in terms of
20 where we are, is there another witness you recall?

21 LYNN: I, I had considered that, Mr. Examiner, and then I realized it's
22 really a rebuttal point, it's really from the Graham Bunting Firm and I'll
23 just wait for my opportunity to rebut when the time comes. So, that concludes
24 our case.

1 REEVES: Oh, okay. This throws me off. Okay. So, there was [inaudible] I
2 mean, just make sure I have this right, I think seven of the 15 witnesses
3 that you listed ended up being called, is that right?

4 LYNN: Yes. And if you, I, I should, I should have noted this morning,
5 if you think that any of the other witnesses would be important to your
6 review, we're happy to present them. We were trying to just be, uh, focused
7 on the issues that we thought were of most importance and, uh, on which there
8 had been testimony. So...

9 REEVES: Yeah. I, I myself, so, tend to drill down a little further on the
10 exhibits, the written word, uh, because I just end up confusing myself when I
11 start talking and asking questions. Uh, so, I don't think I have any, any,
12 uh, other of these witnesses that I was hoping specifically to hear from. Um,
13 so, okay. Sorry. Where were we in terms of the handy folder that I believe
14 Mr. D'Avignon put together? I think next would be the Appellant's witnesses,
15 Mr. Loring's witnesses?

16 LORING: That's what I've got, uh, Mr. Examiner.

17 REEVES: Yeah.

18 LORING: And, and you can imagine the excitement with which I approach
19 starting, uh, our case at 3:00 p.m. on a Friday afternoon...

20 REEVES: Well...

21 LORING: For a holiday weekend.

22 REEVES: I, I, guys, I mean, we set aside six days. I, literally, this is
23 the longest I've, I've never had a hearing go beyond three days in the seven
24 years I've been doing this. I don't want to, you know, just assume, but can
25

1 we do a quick run through of how many further witnesses we, we expect to hear
2 from? So, I'll start with, with you, Mr. Loring.

3 LORING: Yes. I, and I'm just pulling up our list. We do anticipate asking
4 questions of all of the, all of the witnesses that we identified on our list.
5 Some of them are going to be quite a bit shorter and then, you know, two of
6 them I would anticipate being a little bit longer. Or, or a bit longer,
7 right, obviously, on Matt Mahaffie...

8 REEVES: Sure.

9 LORING: We anticipate speaking to critical area issues and then also Ross
10 Tilghman on traffic issues. And those I would anticipate taking a bit longer.
11 Um, and...

12 REEVES: And I have too many printed out pages at the moment. You had
13 ultimately how many witnesses identified?

14 LORING: I'm sorry. I should have mentioned that. We had, uh, nine listed
15 there. And that's...

16 REEVES: Okay.

17 LORING: That's what I still see. I, I see three of those being pretty
18 quick, uh, and then a few in the middle and then a couple longer.

19 REEVES: So my rule of thumb is, you know, you tell me you expect it will
20 take this long and then I triple or double it. So how long do you think it
21 will likely take?

22 LORING: Well, now, of course, I'm adjusting, but, no, I, I, I hope a day
23 and a half of testimony is, is what I'm hoping. It's always hard to tell with
24 cross examination, of course, just as it was for Mr. Lynn.

1 REEVES: Certainly. Okay. So, uh, about a day and a half. And then in
2 terms of, uh, we'll go to, uh, the County next, uh, Mr., uh, D'Avignon, and I
3 think you had about five or so, is that right?

4 D'AVIGNON: Um, yes, I had five. I would, um, Mr. Black will not be
5 testifying, um, I don't think he'll be needed and he's actually out of town,
6 at the moment. Um, of the remaining four, uh, certainly three of them I would
7 imagine that Mr., the traffic, we have two people on there. I may not need
8 both. I'm hoping that one will be sufficient to cover all of the bases. Um,
9 but I am expecting, uh, particularly Ms. Forbes coming related to critical
10 areas and then the traffic guys, um, I think particularly with cross
11 examination are going to be quite lengthy.

12 REEVES: So, one, isn't, wasn't Kevin Cricchio the MDNS signer?

13 D'AVIGNON: Yes. And, and, and Kevin. And Kevin will probably be decently
14 lengthy as well, but, um, he doesn't necessarily have the technical expertise
15 that Ms. Forbes and, um, a Public Works gentleman would be providing.

16 REEVES: Okay. So three or four is likely is what you're saying?

17 D'AVIGNON: Yes.

18 EHRLICHMAN: Mr. Examiner?

19 REEVES: Okay. Yeah. I was going to go to you next, Mr. Ehrlichman.

20 EHRLICHMAN: Oh, thank you. I, I was going to comment on the County's
21 announcement that Brandon Black would not be a witness. Um, we would like to
22 call Brandon Black, uh, since he was the senior supervisor over a number of
23 the, um, judgement calls. But, also, um, it's our understanding that he was
24 the ultimate staff member approving the presentation in the power point,
25

1 which we now see is at odds with the traffic information we heard from Mr.
2 Norris. So, I'd like to ask...

3 REEVES: Well...

4 EHRLICHMAN: Mr. Black, uh...

5 REEVES: Well...

6 EHRLICHMAN: Twenty minutes worth of questions.

7 REEVES: But to clarify, the function of this is, is what? To determine
8 that there's been a lack of oversight or supervision? I mean, how does this
9 relate to traffic safety? What am I missing?

10 EHRLICHMAN: What I would like to do, Mr. Examiner, is to get the testimony of
11 the lead County planner under oath as to what the County believes the limits
12 are, uh, based on the MDNS and the PowerPoint. If, if they agree with the
13 testimony we heard today, then I don't have a whole lot to ask them. But, we,
14 we need to understand whether the County has a position that's different than
15 what we heard today.

16 REEVES: Well...

17 D'AVIGNON: I guess I'm unsure why...

18 REEVES: I'm still confused myself. I, to me, this sounds like you're
19 setting up some kind of, I don't know, Section 1983 argument down the road, I
20 don't know. I just don't understand what, what the purpose or function of
21 this is and as I'm sure you're well aware, I struggle with the concept of the
22 Hearing Examiner system being used, uh, you know, as a, uh, preserve every
23 issue. And I just have to sit and listen for hours for issues that I don't
24 have authority to address. So, I, I'm struggling to understand, again, uh,
25 uh, is the expectation that Brandon Black is going to say, even though I

1 reviewed Kevin Cricchio's PowerPoint, I now disagree. Is that what you're
2 trying to elicit, in terms of testimony? I'm, I'm not getting it.

3 EHRLICHMAN: Uh, well, you covered quite a lot of ground in that one question.

4 REEVES: Sorry.

5 EHRLICHMAN: Let me address exactly...

6 REEVES: It was a compound question, I apologize. Clearly I'm not a trial
7 attorney.

8 EHRLICHMAN: Let me, let me describe our case, briefly, and answer the
9 question. Our case is that the Comprehensive Plan and County Regulations
10 adopted by the Commissioners require set standards and require the Hearing
11 Examiner to impose mitigation to protect public safety on Grip Road.
12 Obviously, there are questions as to what they've proposed is adequate,
13 that's your judgement. But, to make that decision, we need to hear from the
14 County planners who wrote the MDNS and approved it and who wrote the
15 PowerPoint explaining it, to provide us with a baseline of what the County's
16 position is under the Comp Plan and the Regs. They made a recommendation to
17 you, I have a right to ask them to explain it. I have never brought a 1983
18 claim. That is not where I go in a Land Use Permit proceeding.

19 REEVES: All right. I...

20 EHRLICHMAN: And this is...

21 REEVES: Got it...

22 EHRLICHMAN: This is exactly germane to the criteria of the, of the Special
23 Use Permit.

24 LYNN: Can I...

25 REEVES: So...

1 LYNN: Can I offer a suggestion even though it may not be welcome, uh...

2 REEVES: Go ahead.

3 LYNN: I have heard a number of questions by Mr., um, Mr. Ehrlichman
4 that's, that talk about, uh, loads verses trips and, and that sort of thing.
5 It think if he were to put together, uh, a, uh, uh, just a request that we
6 stipulate to certain facts, I think we could. I mean, I, we're not proposing
7 more trips than are proposed. We're not proposing more loads than are
8 envisions by the MDNS as we read it. So if Mr. Ehrlichman, I think, would,
9 would just give us a chance to stipulate, I think we could just do that in a
10 short period of time and eliminate the need for some of this examination.
11 Just, just a thought.

12 REEVES: I mean, I, I love the idea of stipulating to some things. I, I
13 think the argument he's making about why we need to hear from Brandon Black
14 is more of a sort of big picture meta issue, which I'm, I'm still conf-, sort
15 of struggling or confused with, to the extent that, you know, the
16 Commissioners were the ones that adopted the, the Comprehensive Plan. It says
17 what it says. The Report is written and says what it says [inaudible] Kevin
18 Cricchio signed the Report that the expert on critical area is Leah Forbes.
19 The other one or two are the traffic experts. So, I'm just, I still don't
20 fully...

21 EHRLICHMAN: Another, if I may.

22 REEVES: Yeah. Go ahead.

23 EHRLICHMAN: And it's, I know it's the end of a long week, so thank you for
24 your patience. You know, this is pretty simple. Um, the County Staff have
25 recommended conditions to you that are not clearly worded, in our view. And

1 we have a right to get them to either clarify that or say they won't. That's
2 the question. And Mr. Lynn's suggestion is a good one if Mr. D'Avignon thinks
3 the County might enter into a stipulation. The second part to that, I would
4 add, though, is that perhaps the County Staff come back and during your
5 presentation, you make some corrections to the PowerPoint that are consistent
6 with, uh, the, the traffic engineer's testimony. Uh, because it is at odds
7 with those. And I'm not trying to hang anybody up, I just think that
8 PowerPoint is a, is a little problematic in terms of the record.

9 D'AVIGNON: Well, I guess I have...

10 REEVES: I, I, I want to say one thing, which is, uh, you know, the Staff
11 Report was prepared by Mr. Cricchio, it says it right in the Staff Report.
12 The PowerPoint was quite long. I, I wonder if maybe you, Mr. Ehrlichman,
13 could put together sort of what you think ought to be, you know, altered in
14 terms of that PowerPoint for posterity and then Mr. Cricchio can, can tell
15 you if he agrees or not. And if he doesn't agree, I guess we can revisit
16 going higher up the ladder to his, his manager, as it were. But, I, I, am I
17 understanding kind of what the hope and thought is? I, I'm still confused,
18 but I'm trying.

19 EHRLICHMAN: I, I think that's fine. I, the, the question of having Mr. Black
20 testify or not testify, he was listed as a witness. Uh, we understood he
21 would be brought to the hearing and we were planning questions for him. Uh, I
22 have a right to call witnesses to present my case. And he is a witness in my
23 case.

24 REEVES: Well...

1 EHRlichman: And, and the question of why, Mr. Examiner, I'm listening and
2 learning, just as we all are, the evolution of the, the Traffic Impact
3 Analysis. The key issue here is whether or not the safety analysis on Grip
4 Road is adequate. And w-, we have heard an offer of mitigation by the
5 Applicant, we haven't seen anything yet, but I guess we will. But, the key
6 issue of what did the County require and what does it require in a safety
7 analysis is, is foremost in my mind. I could give you an example.

8 REEVES: Well...

9 EHRlichman: But if I may, this will help illustrate...

10 REEVES: Go ahead.

11 EHRlichman: Why I want Mr. Black to testify.

12 REEVES: I, I was going to say we'll have legal argument later, but go
13 ahead.

14 EHRlichman: It's my understanding that there's a document where, um, some of
15 the County staff ask whether or not there ought to be a third-party review of
16 the Exhibit 18 in-depth traffic analysis that the Applicant finally
17 submitted. It's further my understanding that Mr. Black, um, declined to
18 Staff to have third-party review of that document. That was the only safety
19 analysis ever considered by the County. And we either need a response from
20 the County Public Works folks that it's adequate or we need them to say it
21 wasn't adequate. And Mr. Black is the one who made those decisions. If you
22 need...

23 REEVES: Okay. So...

24 EHRlichman: Proof of that...

1 REEVES: This is not, this is not something in the record, this is not
2 something that we're aware is in the record, this is potentially something
3 that could have been discovered through a PRA request in the last six months
4 or so, but the idea is you want to question him about a decision to not have
5 third-party review about something. And the other folks involved, like,
6 Forest Jones, who's Public Works, wouldn't be able to testify to it and they
7 couldn't s-, I mean, I, because I allow hearsay. Uh, if they say, you know,
8 uh, Brandon Black said, no need. You know, I, but I also think we can cross
9 this bridge later, too, to see what comes out and where we end up. But, um,
10 before you respond, I know Jason D'Avignon had a thought and I keep not
11 letting him talk and this is a County issue, so please go right ahead.

12 D'AVIGNON: Uh, I guess, two, maybe three things. The first is Mr. Lynn's
13 suggestion about, um, a stipulation. I think a stipulation, particularly as
14 to what is the County's understanding of the difference between a trip and a
15 truck in the Traffic Impact Assessment, I think there's been a lot of
16 confusion, um, in how those terms are used. And so, whether 46 means 23 or
17 something different, I think that is something we would easily be able to
18 come to an agreement on what that means.

19 EHRLICHMAN: Uh-huh.

20 D'AVIGNON: I think to the extent that the PowerPoint contains a mistake in
21 the County's understanding, it is a very long document, there are a lot of
22 words, I'm assuming there is some mistake somewhere, uh, we would gladly
23 correct that. I don't know if we need to make a big show out of correcting
24 that, but if, for example, the PowerPoint misstates the number of suggested
25 trips and what those conditions would be, um, we would gladly fix that. I

1 think Kevin, or Mr. Cricchio is the, the gentleman who drafted the
2 PowerPoint, he drafted the Staff Reports. Um, he's the person who's going to
3 be in the best position to answer questions about those documents. Um, Mr.
4 Black might have reviewed them, um, you know, I'm not positive and to what
5 level he dove down into the details of those documents, but he's a busy
6 gentleman, so I can't imagine it was as deeply as Mr. Cricchio. Um, I believe
7 he would be back for the 13th, so Day 6, if he was absolutely necessary.
8 Although, I, I, I tend to fail to see how his testimony is ultimately going
9 to be, uh, useful to you, Mr. Examiner, in, in a determination as to the
10 Special Use Permit or as to the, the County's SEPA review.

11 REEVES: So, I, I guess my suggestion of if Mr. Ehrlichman thinks there's
12 a, some things in the PowerPoint that ought to be fixed for posterity. To be
13 clear, I don't know, maybe it doesn't seem this way, I have been actively
14 listening and following along for three days now and I'm aware of the exact
15 issues, Mr. Ehrlichman, that you are concerned about, in terms of getting the
16 numbers right. And, and I'm the one that makes the decision, but, but I
17 certainly have no problem with, you know, fixing things, I, [inaudible] wrong
18 decisions and sometimes there's mistakes and in a perfect world, I'd like to
19 fix them when possible, but, um, so, I, I would think that...

20 EHRLICHMAN: Mr. Examiner?

21 REEVES: [Inaudible] Brandon Black, he sounds like he'll be back by the
22 13th. Based on this last half hour, I'm confident we will at least need Day 6.
23 Um, so, I think we can table it, although I would suggest, and appreciate,
24 that if the attorneys can get together and stipulate or agree as to anything,
25 I'm happy to have that become part of the record. I mean, if, if you all can

1 sort out some of the issues, independently, clearly I, you know, it still
2 would need to be an exhibit and all that, and we would need to talk about it,
3 but, uh, obviously, I think that would helpful. So, I encourage that to
4 happen.

5 EHRLICHMAN: Mr. Examiner?

6 REEVES: Yeah. Go ahead.

7 EHRLICHMAN: That's, that's, uh, something that we'll do, we'll work on the
8 stipulation. I'll provide Mr. D'Avignon with, uh, a specific slide that I
9 think they may want to take a look at for possible correction. Um, all of
10 that is good. Mr. Black is a witness I want to call. Uh, as to the question
11 of where is the Public Works review of Exhibit 18. I don't see County review
12 of that document.

13 REEVES: Sure.

14 EHRLICHMAN: And the Application requirement includes, I said earlier in the
15 case, require the Applicant to bring forward the Public Works Review of their
16 traffic analysis. We don't have that. And I'd like to ask Mr. Black where is
17 it, why don't we have it?

18 REEVES: I totally understand..

19 D'AVIGNON: Wouldn't our Public Works people be able to testify to that
20 adequately?

21 REEVES: I, I fully understand the argument. What I'm going to suggest is,
22 again, we will table it for the moment, um, because I don't believe, a) I
23 mean, we're first, you know, I, I doubt Mr. Loring is going to wrap up in a
24 half a day and all of the sudden we'll be ready to, to hear from any of the
25 explicitly identified County witnesses. So, I'm suggesting we can cross this

1 bridge, uh, when we get there. So, that's, that's going to be my ruling, you
2 know, um...

3 EHRLICHMAN: Thank you.

4 REEVES: And, and at a minimum, I would like to hear from the other County
5 witnesses prior to getting to that point. But, we'll, we'll cross that bridge
6 when we get there. So, and was he identified explicitly on your witness list,
7 uh, Mr. Ehrlichman? I just want to be clear whether I missed that.

8 EHRLICHMAN: Well, we're, we're not in the SEPA Appeal, so we didn't have the
9 same kind of exchange of Exhibit and Witness Lists in the Special Use Permit
10 proceeding. I'm happy to provide that, but, no, I, I had discussions...

11 REEVES: Well...

12 EHRLICHMAN: With Mr. D'Avignon, uh, about the witnesses that I wanted to talk
13 to from the County and our understanding was that Mr. Black would be produced
14 as a witness.

15 REEVES: I, I guess the challenge is I have is were this not a
16 consolidated hearing, were, were we just here today on a very simple, you
17 know, variance request or something and you came in as an Attorney and said,
18 hey, I want to talk to, you know, these other staff members, would I have to
19 allow that? I'm just trying to understand how that process would work in a
20 different world.

21 EHRLICHMAN: Well, I, I, I would be happy to brief that issue, I just, you
22 know, I've never...

23 REEVES: Let's not do that.

24 EHRLICHMAN: No, I, I agree. Let's, let's see how far we can get with the
25 Public Works staff, maybe Jason is right.

1 REEVES: Okay.

2 EHRLICHMAN: Uh, my suspicion is that Mr. Black supervised them. And so, we,
3 we may need to call him, but let's see.

4 REEVES: Sure. Okay. So, I got off-track here. So I think we were at three
5 or four County witnesses, uh, a day and a half, two days, I guess, day and a
6 half maybe, I don't know. I mean, now we're running out of time today. But,
7 in terms of your witnesses, Mr. Ehrlichman, your thoughts on how long that
8 will take?

9 EHRLICHMAN: Um, I just have one witness, other than the County staff, um,
10 questions and that is, uh, Wally Groda [phonetic]. And I think that will take
11 the same time as Mr. Mcleod, not very, not very long, 15 minutes.

12 REEVES: Okay. All right. So, I suppose we, we then would be on track,
13 just to clarify so that we're on the same page, timing-wise, uh, my notes
14 show Thursday, September 8th as the next day, uh, that we all get together and
15 then also the ninth, is that right?

16 LORING: That's right.

17 REEVES: Okay. And, uh, same offer as before, either day, I, I am able to
18 go a little bit longer if folks, uh, are as well. Uh, we don't have to sort
19 that out this second. But, uh, throwing it out there. Um, in terms of where
20 we go right now, first off, any procedural issues anyone wants to address?
21 And then, out of curiosity, Mr. Loring, do you have a witness you think you
22 can get started on for half an hour? I mean, I, I, you know, I, I'm trying to
23 be...

24 LORING: I do.

25 REEVES: Realistic. I know we're all...

1 LORING: I...

2 REEVES: Tired, it's a three-day weekend...

3 LORING: Yeah.

4 REEVES: And I don't want to, I forgot that when I offered for everyone to

5 stay late and I truly appreciate you, uh, giving us the hard stops. I, I, you

6 know, I don't want to be frivolous with our time, but I also, you know...

7 LORING: Yes.

8 REEVES: So...

9 LORING: I, I do, I, I have a witness who could, who is, uh, a background

10 witness on, uh, Central Samish Valley and, um, basically their reasons for

11 being in this case and, and some information they want to share about the

12 process that has occurred to date. And, uh, my thought is that that might be

13 a, a good witness to, uh, to wrap up the day with. You know, my guess is we

14 could do that by 4 o'clock.

15 REEVES: Excellent. Uh, that works for me. Uh, real quick, just checking

16 on procedural matters, uh, Mr. Lynn, any, anything you wanted to address?

17 LYNN: No.

18 REEVES: And, Mr. D'Avignon?

19 D'AVIGNON: Uh, n-, none for me, Mr. Examiner.

20 REEVES: And, Mr. Ehrlichman?

21 EHRLICHMAN: No, I think we're good. Thank you.

22 REEVES: Okay. So, Mr. Loring, if you want to call, uh, your, your sort of

23 background witness, as it were?

24 LORING: Thank you, Mr. Examiner. Central Samish Valley Neighbors call

25 Martha Bray.

1 REEVES: Okay. And thank you for being here. I'll swear you in. Do you
2 swear or affirm to tell the truth in the testimony you give here today?
3 BRAY: Yeah. Can you, you can see me and hear me okay?
4 REEVES: Yes.
5 BRAY: Hi. I, yes, I swear to tell the truth.
6 REEVES: Thank you. And can you just, uh, spell your name, uh, state and
7 spell your name for the audio?
8 BRAY: Martha Bray, uh, Martha A. Bray, M-a-r-t-h-a, middle init-,
9 initial A, B-r-a-y.
10 REEVES: Great. Thank you. Go ahead, Mr. Loring.
11 LORING: Thank you, Mr. Examiner. And, uh, thank you, Ms. Bray for
12 joining, uh, midafternoon this Friday. Um...
13 BRAY: Yeah.
14 LORING: Let's jump right in. Uh, where do you live?
15 BRAY: I live at 6368 Irwin Lane, that's about, uh, two miles as a crow
16 flies to the mine site, and quite a bit less to the entrance to Grip Road.
17 I've lived here for 17 years.
18 LORING: Okay. Uh, do you have any educational or professional background
19 you'd like to share with us that you bring to bear in this matter?
20 BRAY: Yeah. I have a Master's degree, an MS, from the University of
21 Washington in Environmental Planning and, um, worked in that field for most
22 of my career, including the last 20 years as conservation, before I retired,
23 I should say, about six years ago, I was the Conservation Director for Skagit
24 Land Trust for the, for 20 years.

1 LORING: Okay. You're part of a group known as the Central Samish Valley
2 Neighbors?

3 BRAY: I am.

4 LORING: And how long have you been part of that grip?

5 BRAY: Since its inception in 2017.

6 LORING: How did they get started?

7 BRAY: Um, we, uh, met neighbors who, and friends, uh, people in this
8 vicinity who were also concerned with the gravel mine and one thing led to
9 another and we formed a little group.

10 LORING: Okay. So you're familiar with the, uh, Miles Sand Gravel mining
11 proposal that we've been discussing?

12 BRAY: I am.

13 LORING: Okay. Uh, have you been observing the, uh, the hearing to date?

14 BRAY: I have. Probably, almost every minute of it.

15 LORING: Okay. How did you initially inform yourself about the proposed
16 mine?

17 BRAY: Uh, we've, uh, requested all of the documents that have been
18 submitted by the Applicant. We also have cons-, consistently submitted public
19 records requests through this whole process. So, uh, and my husband and I
20 have, uh, reviewed just about every document and some in great length and
21 over and over again.

22 LORING: Okay. Why did you submit public records requests?

23 BRAY: Because it was hard to get answers out of the County and there
24 were big gaps in, um, you know, in information and we actually learned a lot
25 that wasn't being shared with us by doing that.

1 LORING: Okay. Um, it, it sounds like you've been following this process
2 since about 2016 yourself and, and 2017 with the group, is that right?

3 BRAY: Yeah. I, um, I actually happened to notice the, um, the legal
4 announcement in the Skagit Valley Herald in mid-2016 and, um, you know, so I
5 was, I guess I was an early adopter, you'd say.

6 LORING: And as you followed the Application process, has it given you any
7 concerns?

8 BRAY: It's given me lots of concerns, yes.

9 LORING: Can you share a few of those with us here today?

10 BRAY: Uh, well, I guess the first things that, you know, jumped out,
11 were the huge numbers of trucks on, on, like, these roads. We all, everyone
12 that lives in this area knows how dangerous these roads are, as they are,
13 with the existing levels of traffic with it, not, you know, without adding
14 dozens, dozens of trucks a day. Um, and, um, in addition, my husband and I
15 are cyclists, so we love to ride these roads and, um, being passed by gravel
16 trucks is, is a really terrifying experience, even when it's just one or two,
17 let alone, many trucks. It would just take the joy out of it and, and be too
18 dangerous to continue to do. Um, we also, as we learned more about the
19 project, had a lot of concerns about environmental impacts as well, you know...

20 LORING: What were some of those?

21 BRAY: Yeah. And I don't want to go into, you know, we, we it's the end
22 of a long day and we've heard a lot about those, but, you know, obviously,
23 the, uh, adjacency to the Samish River and, um, the d-, the impacts to, um,
24 Swede Creek and the fisheries resources in Swede Creek. And that larger, uh,
25 landscape owned by the Applicant that haul road crosses over, um, there's

1 just a lot of environmental impacts associated with that that were not
2 revealed at the beginning of the process.

3 LORING: Uh-huh. And...

4 BRAY: Oh, and, you know, yeah, I, um...

5 LORING: Go ahead.

6 BRAY: Thanks, Kyle. I, I also wanted to mention, I didn't mention at
7 the beginning, that I did work as a, um, Natural Resources Planner for Skagit
8 County for a couple of years in the 1990's. And my job was to develop a, a
9 watershed plan for the Samish River. And, um, that, you know, to this day,
10 there, there's still efforts being made, you know, 30 years later, to restore
11 and protect the Sam-, the resources in the Samish River that our own Public
12 Works Department is vigorously doing in helping landowners with livestock
13 fencing and, uh, tree planting, riparian restoration and implement-,
14 implementation of the BMPs on, um, individuals farms. And, um, you know, I
15 just find it pretty frustrating that, you know, one hand invests these public
16 resources to restore and at the same time, the County doesn't apply the Code
17 to, uh, impose the, what the, what should be a, um, decent buffer on the
18 Samish River. So, um, that, that's jumped out at us from the beginning.

19 LORING: Uh-huh. And when you say a decent buffer, are you referring to a
20 300 foot buffer for high intensity use?

21 BRAY: I am, yeah.

22 LORING: Okay. Have you communicated these concerns, uh, to the, to Skagit
23 County?

24 BRAY: We have. We've written many letters, at every juncture, every
25 opportunity.

1 LORING: And h-, has the County addressed your concerns?

2 BRAY: You know, I, I think the County has made some efforts to address
3 our concerns. But I think they fall short.

4 LORING: Okay. And, and we'll discuss how they're falling short in a
5 moment, in your perspective there, um, but, in the meantime, I'd like to ask
6 whether you feel the County has provided a reasonable explanation for not
7 addressing those concerns?

8 BRAY: No. I, um, we, on many, on many occasions, we, um, have requested
9 meetings with pl-, County Planning staff and, um, sent inquiries in and very
10 rarely gotten very good answers back. The posture with the Planning staff
11 increasingly, over time, especially, has become we're here to listen, not to
12 answer questions. And so I, you know, this is the first time that we've had a
13 chance to really hear some of the technical explanations about this project.

14 LORING: Uh-huh.

15 BRAY: Um, yeah.

16 LORING: Yeah. Well, I'd briefly like to, uh, just point you to Exhibit A8
17 and I can share my screen to pull this up, this is not something that I
18 intend for us to go through. Um, let's see, why don't I just do that briefly,
19 we'll, we'll test out whether small PDF, my computer can handle that at this
20 stage. I, I appear to have a lot of windows opened, trying to find the right
21 one here. Not showing up. Just a moment. I think that is it there. Okay. So,
22 we will, we will see how this works. Uh, are you seeing that on your screen
23 there?

24 BRAY: I am.

25 LORING: Okay. And, uh, are you familiar with this document?

1 BRAY: Yes, I am.

2 LORING: What, what does it say?

3 BRAY: I, it's an abbreviated, uh, chronology of the permit process that
4 I've kept since the beginning. I, it was, it, the original one is quite more
5 de-, much, much more detailed than this one.

6 LORING: Okay. Why did you put this together?

7 BRAY: Well, it's, this, um, permit process has been dragged out and,
8 um, convoluted and confusing and I felt like I needed to keep track of what
9 was happening so I could explain it to, to community members and to identify
10 mistakes that were made. And sort of, you know, keep track of all of that.

11 LORING: Okay. And, uh, like I said, I won't, I won't take us through it,
12 I think you've summarized it there and, and we have it as an Exhibit in the
13 record. So we'll let it, uh, speak for itself, uh, to a large extent. Um, but
14 if you can summarize whether you, uh, experienced any issues with the SEPA
15 review process that the County has conducted during this review, that would
16 be excellent.

17 BRAY: Yeah. Um, where do I begin? So, I, I think I, I just want to say
18 that, you know, this, this permit process has, um, you know, just been
19 plagued with all sorts of, um, issues from the beginning. And I, you know, I,
20 and I don't want to go into that in great detail, but I think it's worth
21 saying that, um, in 2016, the County received the Application materials,
22 deemed it complete when there were a lot of gaps in the information, go, went
23 ahead and issued a, um, Special Determination, a MDNS, um, and then, you
24 know, revealed that they'd made an error in notification to adjacent
25 landowners. So, you know, the hearing was continued at that time, but they

1 didn't withdraw the, that initial MDNS until five years later. And so I think
2 that created an incredible amount of ambiguity in the permit, in the permit
3 process and in the public process, too. Because, because it was really hard
4 to figure out what was going on. Is there still a SEPA process? Is there not?
5 We argued that they should, they should have withdrawn it at the beginning,
6 but th-, but, so, you know, that's, that sort of was the set up for, um, you
7 know, a lot of, um, just really confusing process, I'd say. And then, you
8 know, then, when, uh, after that, they invited pub-, more public comment,
9 hundreds of comments started to come in about very legitimate concerns that
10 the community had. The County recognized that, but, and they asked for more
11 information from the Applicant. The Applicant resisted providing more
12 information, arguing that SEPA was complete and the Application was complete.
13 And that, and that resulted in, you know, a lot of, um, just back and forth
14 between the Applicant and the County arguing about that and, and resulted in,
15 uh, and the first Appeal to the former of Hearing, um, Examiner, um, after
16 the County actually denied the permit for, um, untimely submittal of r-, of
17 material, um, or, you know, not lack of submitting it in time and incomplete
18 application. So, um, you know, that's just part of the roadmap of this permit
19 process.

20 LORING: Uh-huh.

21 BRAY: It, it's just, um, it's been pretty confusing to follow.

22 LORING: Okay. And were there any periods where it appeared that the
23 Application process had paused altogether or stopped altogether?

24 BRAY: Yeah. You know, we, we, yes. There were, um, I think, I'm looking
25 at my version of the timeline here. Uh, in, uh, oh, let's see, I, it, for at

1 least eight months in, um, 2018, when, uh, they were, after that first
2 Appeal, uh, we were told that the Applicant and the County were in settlement
3 discussions. And there was just no information. And, you know, it was just
4 kind of a blackout, you know, I think, even, we even go-, started getting,
5 um, emails from Hellen Hart [phonetic] that said the Attorneys, Attorneys
6 have instructed me not to say anything, essentially. I'm paraphrasing, but
7 that was essentially what we were told. So, that went on and for a long time,
8 but there was never any settlement. Um, and then there was another big blank
9 period in, uh, 2019 for, from July, that extended into the spring of 2020,
10 when there was just no information. And the typic-, when we would send an
11 email inquiries to the County, they would say, no new developments at this
12 time. But, at the, simultaneously, during some of those periods, when we were
13 told there were no new developments, our public records requests would
14 actually show that they had hired a third-party, uh, traffic consultant to
15 review some of the information. So, you know, it was kind of, um, these two
16 parallel universes that we were trying to occupy at the time.

17 LORING: And you felt like the County wasn't completely candid with you as
18 they were conducting their process?

19 BRAY: No.

20 LORING: Okay. Uh, do you, are you aware of any factors that may have
21 contributed to the delays or this process taking the period of time that it
22 did?

23 BRAY: Yeah. I, it, it's clear that staff turnover, um, caused some of
24 that, uh, some of the, the, um, missteps and, um, delays. The, we've had,
25 we're on our third Lead Planner now when we, when this project started, John

1 Cooper [phonetic], was the Lead. He retired in, um, I don't know, 2019, I
2 believe. And then, uh, Michael Surbon [phonetic], a new Planner, I think he
3 was pretty new to the County at the time, too. He was assigned to it, but he
4 didn't last for the year. And now, Kevin Cricchio has been assigned to it,
5 um, so, and that, I don't think he was assigned to it until last year, maybe,
6 so, um, it's pretty clear that staff has had to do a lot of catch up to
7 understand this very complicated project.

8 LORING: And does it appear to you that has affected some of the quality
9 of the review?

10 BRAY: Absolutely. You know, and I, I did mention earlier that, that,
11 you know, the Staff Report that we're currently using, um, really shows that,
12 um, lack of understanding of the project. And lack of probably, you know,
13 understandably lack of, um, time, um, to, to, to do a, a better job of it.
14 But, um, you know, I, it, it appears to me, in that Staff Report, that the
15 Ap-, the County Planner is relying very heavily on the claims made by the
16 Applicant. In fact, quoting them verbatim and, you know, in, even in the
17 Staff Analysis sections, there's, um, narrative that just basically repeats
18 the, um, the Applicant's Application materials, the Special Use narrative, et
19 cetera. So, even when it's not quoted, it's just laid out there as fact or
20 as, as, you know, independent, uh, determination without making any, um,
21 clear, uh, and without them actually independently analyzing or assessing the
22 claims made by the Applicant.

23 LORING: Uh-huh. And, as part of that, do you feel like the County has
24 given the same level of weight to a similar experts in their fields who have
25

1 submitted, uh, comments and reports to the County identifying concerns with
2 the project?

3 BRAY: I'm sorry, can you, um, repeat that question?

4 LORING: Yeah. I was saying, are, do you feel that the County has given a
5 similar level of weight or deference to well-informed experts in the field
6 who have submitted comments, but who have, uh, expressed concerns, instead of
7 support...

8 BRAY: No, I...

9 LORING: For the project?

10 BRAY: I really don't. It, it, it's, it, no, I don't think they've taken
11 those into consideration. I think they're in a hurry to get this project
12 done.

13 LORING: Okay. A hurry, at this point?

14 BRAY: A hurry at this point. Yeah.

15 LORING: Okay. Uh, did Skagit County and the Applicant acknowledge all of
16 the aspects of the project from the start?

17 BRAY: No.

18 LORING: Did...

19 BRAY: Um...

20 LORING: Do you think that has helped cause some of the delays that have
21 taken the six years, uh, to get us to where we are today?

22 BRAY: Absolutely. Yeah. You know, if, if they, this project, you know,
23 if they had made the Applicant prepare a thorough Application from the
24 beginning or required the Applicant to do so, I think it would have been a
25 really different, uh, process now.

1 LORING: Okay. And were some, was some of that related to traffic impacts?

2 BRAY: Yeah. You know, and if, for instance, at the beginning, we had
3 this, uh, three printed page preliminary traffic memo from DM Consultants,
4 you know, that's, that was, the document was labeled, I don't remember exact
5 name or title of it, but it was preliminary and we, from our public records
6 request and from the fact that the County had already issued their letter of
7 complete, completeness on the Application, it was clear that, uh, Public
8 Works was ready to sign off on that without requiring any, uh, really
9 thorough traffic, uh, investigation.

10 LORING: Uh-huh.

11 BRAY: We didn't get the, um, TIA that we're now looking at until, um, I
12 think it was 2020. Yeah.

13 LORING: Okay. Yeah. And, uh, when, at what stage did the County
14 acknowledge that the internal haul road, a 2.2 mile private road, was part of
15 the project?

16 BRAY: That would be 2021.

17 LORING: Okay.

18 BRAY: So, six ye-...

19 LORING: And then...

20 BRAY: Yeah. Six years...

21 LORING: Right.

22 BRAY: After the Application.

23 LORING: Yeah.

24 BRAY: And we...

25 LORING: About five, yeah.

1 BRAY: Five. Thanks. Yeah.

2 LORING: Yeah.

3 BRAY: Um, we've argued from the very beginning that the haul road

4 should be part of the, well, uh, is obviously a part of the footprint of the

5 mine. It's, you know, it's the infrastructure of the mine to, they're going

6 to be hauling, uh, 4.2, uh, cubic yards of material out of that hole, you

7 know, over a 25 year period and they've got to get it out of there somehow.

8 So, this road is a critical piece of the project.

9 LORING: 4.2, uh, .28 million, right?

10 BRAY: 4.-, uh, I don't, 4.2 million cubic yards, I believe is the...

11 LORING: Sure.

12 BRAY: Figure. Yeah.

13 LORING: Yeah.

14 BRAY: Um...

15 LORING: Uh...

16 BRAY: Which, but incidentally, I mean, this is a little aside, but,

17 yeah, um, I guess I'll just go for it now, you know, uh, there, there's been

18 this, um, characterization of this as a small project and there's lang-,

19 language in the Application materials that, you know, say a relatively low

20 level of extraction. My husband did a calculation of the volume of material

21 that's coming out of that mine and it, and it's 26% more than The Great

22 Pyramid of Giza, so, uh, that's just a nice little reference point for, um,

23 what the Applicant claims is a relatively low level of extraction.

24 LORING: Uh-huh. And you attended the, uh, in-person portions of the

25 hearing, uh, last Friday and then Monday, right?

1 BRAY: I did.

2 LORING: And did, did the neighbors express to you, other neighbors
3 express to you that they agreed with the sentiment that it was a small mine,
4 small operation?

5 BRAY: No. No. N-, they did not. They're, yeah.

6 LORING: Okay. I'm going to skip over a couple of things. We'll keep
7 moving along. Just for, so people know, I think we're, we're actually over
8 halfway here, so this is, we're, we're still right on track, uh, for
9 completing this. Uh, has, uh, we talked a little bit about this, but, uh, the
10 Central Samish Valley Neighbors, they've submitted comment letters about the
11 mine to Skagit County, right?

12 BRAY: Yes.

13 LORING: Okay. And, uh, we don't need to go into all of those, obviously
14 we've had some briefing that has, I think, summarized a lot of that, but I,
15 for the record, those are Exhibits A2-A7, um, for the SEPA Appeal. And my
16 understanding is that the Exhibits that we're referred to are, uh, and
17 others, actually, are all considered part of the record, at this point, for
18 this Appeal.

19 REEVES: Yes.

20 LORING: Uh, okay. Thank you, Mr. Examiner. Uh, and so, why did you submit
21 those comment letters over that time period?

22 BRAY: Well, we're trying to get the County to, um, a-, apply the
23 Regulations and the Code appropriately to protect, uh, public safety and the
24 environment and our community from the impacts from this mine. And we don't
25 feel like they've been doing that so far.

1 LORING: And you're familiar with the County's mitigated determination of
2 non-significance that they issued in February of this year?

3 BRAY: I am.

4 LORING: Okay. And do you believe that the County conducted a thorough
5 environmental review before issuing that MDNS?

6 BRAY: I don't. I, I don't believe they did that. Um, I think they've made
7 some efforts to address some of our concerns, you know, in this piecemeal
8 fashion of continuing to, you know, ask for more information over the years.
9 But, um, ultimately, this is pretty much the same Proposal that it was six
10 years ago.

11 LORING: Okay. You know, I'd like to touch on that. Y-, have you heard
12 testimony by, uh, Applicant's witnesses about potential changes to the
13 project over the la-, testimony over the last few days?

14 BRAY: Yeah. I, this is really, um, we've had six years, uh, to address
15 these issues and nothing is new. You know, and now, at, at the 12th hour,
16 we're getting these, you know, little bits of sort of hints at what they
17 might be able to do, but, you know, there was plenty of time to address these
18 issues in the past. And, you know, by doing it this way, we, we don't know,
19 um, what impacts have been studied and what impacts are being addressed by
20 whatever additional offers they're making. And so, you know, it's, there's no
21 way to evaluate it, the public hasn't had a chance to look at any of that.
22 And, you know, and arguably, you know, we have our own experts that we'd like
23 to have look at those things. And so, you know, it, it, it doesn't seem like
24 a, a good way to, um, figure out a way to additionally condition the permit
25 to me. It seems very, um, piecemeal and Helter Skelter.

1 LORING: Okay. Let's assume it weren't piecemeal, do you feel like those
2 Proposals are sufficiently concrete to be able to guide activity going
3 forward regardless?

4 BRAY: No. No, we haven't even seen them. I mean, you know, they, it's
5 just, it's just these vague offers.

6 LORING: Okay. So, what are some of the examples of other, uh,
7 environmental issues that you believe the MDNS, um, I guess, was not reviewed
8 by the County before the MDNS was issued?

9 BRAY: Well, you know, Kyle, we've, um, we, we've, um, presented the
10 County with a, a Hearing Examiner with a detailed list of the issues that we
11 feel have not been adequately addressed. I mean, just to touch on a couple of
12 them, though, um, compression brakes on the Grip Road hill, you know,
13 basically no real off-site studies of noise impacts, um, diesel exhaust along
14 the haul route, I mean, this is a lot of really intensive, um, hauling. There
15 are, despite, you know, the claims, there's a lot of homes along that route.
16 Um, there's, there's been no acknowledgment of air quality impacts
17 whatsoever. You know, and that includes carbon emissions as well. Um, and
18 then, you know, of course, the big one that we've heard a lot about already
19 is that they haven't fully evaluated the conditions of the County road system
20 and, and identified the inadequacies, you know, again, not just a segment
21 here and a segment there, but the full haul route and, um, identified that,
22 what needs to happen to bring the Cou-, bring it up to County Road Standards
23 so that we're protected.

24 LORING: Okay. And you've, you've heard the testimony over the last few
25 days, you heard from Miles' witnesses and as they have explained what they

1 did and how they went about doing that. Has that not answered your questions
2 or addressed your concerns?

3 BRAY: No. It, it hasn't, I mean, I, uh, you know, I, I think, um, you
4 know, in, in my work at the land trust, we, we had to order appraisals pretty
5 regularly, real estate appraisals and, you know, one of the things that, that
6 you learn when you work with somebody that you hire to do a study for you, is
7 that the assumptions are what guides the outcome, right. And I, you know, I
8 feel like these are very carefully, um, designed, uh, uh, cri-, studies that
9 help, um, inform the outcome of the, that the Applicant is looking for.

10 That's, I guess I'm just, you know, that's my opinion, and I guess I maybe
11 strained beyond my area, but I, I do think that the assumptions have played a
12 pretty big role in, um, the fin-, the conclusions that the consultants have
13 come to.

14 LORING: We, we heard a little bit about conditions in the MDNS and, uh,
15 I, do you believe that the conditions that have been created or inserted as
16 part of the MDNS would address the mine's likely impact?

17 BRAY: No. I, I don't. I, I think the County, um, makes an effort to
18 address our concerns with some of those mitigating conditions, but, you know,
19 when you look through that list, I think, you, you, one thing I keep hearing
20 is that the, that 19 mitigating conditions have been imposed on this, um, on
21 this project through that MDNS, but if, when you read through, through those
22 mitigating conditions, at least 12 of them are essentially the Applicant
23 shall comply with existing rules and regulations and laws. There's only a few
24 that are actually applying any kind of site specific conditions. And then,
25 those, you know, we heard a lot this morning about some of those, um, where

1 they're, they're not very tight conditions, I'll say that. Specifically, you
2 know, um, I, I think it's, I'm not going to, like, read the mitigation, the,
3 the condition about truck minutes again, but, I think it's pretty clear this
4 morning that, you know, the, that, that there's a lot of room for
5 interpretation there and it's really hard to create a hard limit by stating
6 an average. You know, so, it, it, and then there's these qualifiers with that
7 one and the hours of operation, that, you know, have this, you know, except
8 for extended hours, you know, at the, to the point where those, um,
9 conditions to us appear to be fairly meaningless, really, as any kind of hard
10 limit.

11 LORING: Well, and as someone with a planning background, when you look at
12 the extended hours conditions, are you clear on the process that would apply
13 if, uh, for those to be triggered and, and for the...

14 BRAY: Yes.

15 LORING: Applicant to be allowed to, to, uh, drive up to, it's hard to
16 tell, 30 or 60 trips per hour?

17 BRAY: Yeah. No, there, and there's no, there's no clear monitoring plan
18 for, um, I, you know, I, I, listening this morning going well, okay, even if
19 it's lim-, only, it's limited to, you know, this 43 average over a year,
20 who's counting, who's minding the shop. And I, that brings me to one of my
21 biggest concerns about the, what's absent from the, from this MDNS is any
22 kind of real compliance and monitoring plan, um, you know, I, I think, and I
23 think it's fairly common, I, I, that, um, a, a project of this magnitude
24 should have a, um, renewal, permit renewal process and a clear compliance and
25 enforcement, uh, process for, and, you know, we're talking about the Special

1 Use Permit conditions. You know, and I think it, there needs to be some kind
2 of a boding provision and I did hear earlier that Mr. Barton's and Mr. Lynn
3 mentioned that there's, um, you know, that they, they post bonds for, uh,
4 with a DNR, but that, for, for a certain permit conditions, but that is
5 related, as I understand it, to the reclamation plan and DNR. It has nothing
6 to do with the Special Use Permit conditions.

7 REEVES: And...

8 BRAY: So, they, this is a...

9 REEVES: I'm going to hop in.

10 LORING: Hold, hold on a second.

11 REEVES: I apologize. Uh, what I wanted to clarify, I think Ms. Bray,
12 you've done an excellent job of clarifying mitigation measures versus
13 conditions, but I think the language...

14 BRAY: Oh, yeah.

15 REEVES: Can get confusing. My understanding is up until the last minute,
16 you, you, everything you were sort of testifying about was specific to SEPA,
17 I, to avoid confusion, I, myself, had to do what I think you've been doing,
18 which is to refer to them as sort of required mitigation measures. And when
19 we talk about conditions, those would be what would ultimately be related to
20 the SUP. I, I just would like to keep those separate to the extent that it
21 gets confusing, at least for me, otherwise. So, was I correct in you have
22 generally...

23 BRAY: Okay.

24 REEVES: Been specifically addressing the mitigation measures in the MDNS?
25

1 BRAY: Yes. I, I guess I, I would just say that, um, we, we have
2 submitted a list of conditions that we believe would, um, be sufficient to
3 protect the, um, the environment and public safety. So, I guess I was sort of
4 addressing that. That, you know, because, uh, Mr. Loring is asking me whether
5 I feel, like, whether I believe that the, um, MNDS is adequate. So, I don't.

6 REEVES: Right.

7 BRAY: So I was trying to talk about some of the things that I believe
8 are missing.

9 REEVES: Okay. Sorry to confuse things, Mr. Loring.

10 BRAY: No, that's...

11 REEVES: I just, I...

12 LORING: No, not at all. The, I, I don't think you confused it. Uh, but
13 Ms. Bray, when you mentioned conditions a moment ago, you're thinking of
14 conditions that could apply in that Special Use Permit context and also the
15 SEPA context to some extent, uh, or at least those are the sorts of things
16 that would, I guess, before the MDNS, have helped cure it, to some extent, if
17 that had been applied before it was issued?

18 BRAY: Yeah. Yes. Absolutely.

19 LORING: Okay. So, we've gone through, you've identified, uh, a list of
20 some different issues and, and some examples of conditions that would be
21 helpful for something like this. Uh, at, at this point, you have filed the
22 SEPA appeal, right, your group has filed the SEPA Appeal to the County?

23 BRAY: We sure have.

24 LORING: Yeah.

25 BRAY: Um...

1 LORING: And can you summarize just, uh, in a sentence of two why you've
2 done that?

3 BRAY: Because we don't feel like the impacts have been fully evaluated.
4 And, um, it has pretty significant con-, consequences for us, um...

5 LORING: And what, uh, what is the outcome that you'd like to see from
6 this Appeal?

7 BRAY: Well, I, we, we need to see the County road along the entire haul
8 route studied and, um, you know, all the deficiencies identified and a cost
9 share plan developed with the Applicant to bring it up to County Standard
10 sufficient to protect the, for community. Um, and, you know, we need to see
11 far more vigorous mitigation applied to, um, the truck traffic and to the
12 numerous other environmental, um, impacts that, uh, that have been
13 identified. You know, and if the C-, I, we just, we feel that if the County
14 and the Applicant can't step, step up and, and do that appropriately, then
15 the Permit should be denied. Um, yeah. I...

16 LORING: Okay. And, and we've heard just a couple of other things I want
17 to touch on as we wrap up here. Uh, one is that this, that this mine has been
18 characterized as a temporary activity. Uh, do you feel that it's going to be
19 a temporary activity?

20 BRAY: No. And, uh, I don't at all. And I, you know, I just, I have to
21 say that, I just need to comment on that language, it, I, and it, if people
22 would, um, you know, uh, allow me, I, I, I want to read something out of the,
23 um, uh, Staff Report on Page 27. Um, because I, I, I just think this, this is
24 real-, this is really, um, illustrative of a lot of the way that language has
25

1 been used to minimize the impacts and, and it, um, it, I think it's, it will
2 speak for itself a little bit. So, this is...

3 LORING: And that's Exhibit, Exhibit C47, the Staff Report?

4 BRAY: I actually don't know what the Exhibit number is.

5 LORING: Okay.

6 BRAY: But, yeah, uh...

7 LORING: It's C47.

8 BRAY: Okay. So, this is on Page 27 of 31. And it says...

9 D'AVIGNON: I believe this would be Exhibit 1, the Special Use Permit...

10 REEVES: [Inaudible.]

11 D'AVIGNON: Staff report.

12 LORING: Okay.

13 BRAY: Yes, that's right.

14 LORING: Thank you.

15 BRAY: Thank, yeah. It's not the, um, yeah. It says, uh, as there are no
16 ongoing mining activities in the area, it is anticipated that the Proposed
17 Land Use may temporarily disrupt exist-, the existing character and landscape
18 of this rural area. Noise from mining operation and truck traffic may
19 slightly, slightly alter the quiet lifestyle of this rural area. And then,
20 uh, I'm going to skip ahead a little bit. It says, after completion of the
21 mining operations, it is anticipated that the character landscape and
22 lifestyle will return to its previous functions. Um, you know, first of all,
23 there's, there's a paragraph in the Special Use narrative that essentially
24 says the same thing. But this, this is under Staff Analysis in the
25 Application materials. And I, you know, I have to say, that that, along with

1 this character-, characterizing our neighborhood as remote, when we are, um,
2 20 minutes from town, we've, uh, one of our, um, group members did a g-, a
3 simple GIS analysis a couple of years ago and identified, determined that
4 there's over 100 homes within one mile of the radius of the mine and 750
5 homes within three miles of the radius of the mine. I don't think that this
6 is, is a remote site. And, uh, you know, to characterize it as typical of the
7 other places that are mined, this seems to be, um, disrespectful, using that
8 kind of language just seems disrespectful to the community. And, um, I, you
9 know, really unacceptable. You know, and if you, if you use that kind of
10 vague language, you know, it implies that not very many people live here and
11 you don't have to, you know, take care of the impacts. I, so I, I just, I
12 think that it's, um, you know, it's misle-, it's absol-, it's misleading at
13 best.

14 LORING: Thank you, Ms. Bray.

15 BRAY: Yeah.

16 LORING: Is, is there anything else you'd like to share with us today?

17 BRAY: Well, I, you know, I just have to comment on how, um, incredibly
18 hard it has been, how hard for the community to follow this and it, it has
19 taken literally hundreds and hundreds of volunteer hours and tens of
20 thousands of dollars for us to, um, get the County to, uh, pay attention to
21 our legitimate concerns. And I, I feel that is not the way this kind of
22 permit process is supposed to be run. And, so and I really appreciate people
23 hearing me out and thank you.

24 LORING: Thank you. Thank you for your testimony. I have no further
25 questions on direct.

1 REEVES: And I'm wondering, in terms of, uh, cross, the thought process.
2 I'm assuming Mr. Ehrlichman didn't have anything specific is, this is not a
3 traffic safety expert and he had identified he would limit his...

4 BRAY: I, I'd say a lot of community members consider ourselves safet-,
5 com-, traffic safety experts. I bet every time I talk to somebody this issue
6 they say that to us.

7 REEVES: I...

8 BRAY: You know, we're the ones who drive...

9 REEVES: Yeah. I should have been more clear about my language. It had
10 more to do with...

11 BRAY: Yeah. No, I'm just, that's just my...

12 EHRLICHMAN: I do have one question.

13 REEVES: I'll let you...

14 BRAY: Okay.

15 REEVES: I'll let you ask one question.

16 EHRLICHMAN: Thank you, Mr. Examiner. Um, Ms. Bray...

17 REEVES: Ask it.

18 BRAY: I think something just happened.

19 EHRLICHMAN: No, I'm here.

20 BRAY: Oh, okay.

21 EHRLICHMAN: I'm digesting that last comment. Ms. Bray, your, uh, o-, on the
22 outset of your testimony you mentioned public records requests. Um, did you
23 receive replies to those from the County?

24 BRAY: Replies in terms of, um, s-, uh, what do, installments?

25 EHRLICHMAN: Did they provide you with the documents you requested?

1 BRAY: Well, yeah, you never really know exactly, you, you know, I'm sure
2 you're familiar with public records requests, you get these giant PDFs that
3 with, um, numerous emails and, you, you know, you have to just kind of sort
4 through that. Uh, we, our requests were fairly broad.

5 EHRLICHMAN: My, my question wasn't did you get everything you asked for, my
6 question was, did they ever respond, that's all.

7 BRAY: Yes.

8 EHRLICHMAN: Okay. Thank you.

9 REEVES: Thank you. Uh, just out of cur-, timing-wise, uh, Mr., Mr. Lynn,
10 do you have a sense of how long your cross might take?

11 LYNN: Uh, no more than five minutes.

12 REEVES: Uh, I'll have you go.

13 LYNN: Um, good afternoon. Um, Ms. Bray, I'm sure you're tired of
14 hearing from me, too, since you've been at a lot of different proceedings
15 where I've been, uh, talking. Let me ask you a few questions, though, as an
16 environmental planner, have you ever encountered the County's obligation to
17 plan for the public's demand for mineral resources? Are you familiar with the
18 requirement?

19 BRAY: Yeah. I know you're with, uh, uh, GMA and the Comprehensive Plan
20 process.

21 LYNN: And, and so, uh, that's based on the public's demand, isn't it?

22 BRAY: Well...

23 LYNN: I mean, the size of the pyramids is sort of irrelevant if the
24 pub-, if an urbanizing County demands more mineral resources than that, isn't
25 it?

1 BRAY: I, I, that doesn't, I don't think that's relevant to one specific
2 mine site. I, I don't, I don't agree that, you know, this, this particular
3 mine site is essential to, uh, the pub-, public benefit.

4 LYNN: Uh, uh, okay. Fair enough. So, you were critical of the County's
5 process and, and, uh, you felt, uh, unheard and thwarted by the County and I
6 will, on behalf of Miles, be able to represent that Miles has not enjoyed
7 this process any more than you have, uh, but, but isn't some part of that
8 delay attributed to the fact that your group requested and got things from
9 the County that it wouldn't ordinarily do, such as a third-party review by
10 two different, uh, traffic consultants. Isn't, didn't, isn't that something
11 you got from this process that delayed it and didn't, and wasn't asked for by
12 Miles?

13 BRAY: Well, I, I would argue that, that if, if the County had, uh,
14 requested the appropriate amount of information at the beginning, that we
15 wouldn't have had to keep pushing for that.

16 LYNN: But, but you ended up getting something that the County does not
17 ordinarily give citizens, that, the review by an independent, in fact, two
18 different consultants. Wouldn't you acknowledge that that's something you got
19 that's outside the, the normal process?

20 BRAY: Uh, well, I guess I can't really speak to every, you know, time
21 that, that, I, I'm aware of many times when third-party desktop reviews are
22 ordered for various pur-, for various reasons. You know, when you bring in
23 the, you know, if you question the quality or the thoroughness of a, of a
24 study, that, that's pretty standard...

1 LYNN: Well, well, let's talk about something that isn't very standard
2 there. You heard, um, um, Kristin Wallace's testimony, testimony that she
3 almost never prepares a vibration analysis and never, uh, in circumstances
4 where there's just an increase in traffic on an existing road. And, yet, your
5 group asked for and got that, causing a significant expense and delay in the
6 process. Didn't, weren't you successful there?

7 BRAY: Uh, I, yeah, sure, we were successful there. Uh, there, we, there
8 are, there are houses adjacent to Grip Road, within 20 to 30 feet of that
9 road that they tell us now every time a truck goes by, they feel it in their
10 living room. But I, we didn't specifically request a vibration study. We
11 pointed out that concern and that issue. The County responded at, at the way
12 the County responded to that.

13 LYNN: And, Mr. Examiner, I saw you had...

14 REEVES: Sorry. I was just...

15 LYNN: A comment, are you asking me to...

16 REEVES: Well, I was just curious if there's some criteria related to the
17 SUP or the SEPA that, not liking the process would be something I would have
18 the authority to address, that's all.

19 LYNN: Yeah. Um, and although you were critical, uh, of the County's
20 issuance of the MDNS, in fact, you got them to redraw two previous MDNSs...

21 BRAY: Oh, I didn't know I had so much power.

22 LYNN: Well, it certainly wasn't our suggestion. Uh, uh, just a, I'm not
23 here to belabor this. Let, let me just ask one other question, though.
24 You're, you're critical of the fact that Miles has continued to, uh, uh,
25 offer mitigation measures. Um, or that they're not precise enough. I mean,

1 you're certainly entitled to weigh in and offer, uh, edits or suggestions,
2 but, but isn't that, in fact, the purpose of the SE-, the SEPA process and
3 the Land Use Process to have projects evolve in response to new, uh,
4 information about environmental impacts. Isn't that the goal of this whole
5 process to end up at the end of the day with a process that, uh, with a
6 project that has mitigated its environmental impacts? Just procedurally,
7 isn't that the purpose?

8 BRAY: Well, except that the MDNS was issued in, uh, you know, over, let's,
9 let's see, when was the last one, uh, six months ago, so, it's at, it's out
10 of order. I mean, there's no way to determine the, um, whether there's, you
11 know, those impacts have been thoroughly addressed.

12 LYNN: Uh, but, but aren't you still suggesting mitigation measures?
13 Didn't you, in testimony with Mr. Loring, talk about a list of conditions
14 that you've produced that you think would help mitigate? And isn't, isn't the
15 exchange of those mitigation measures exactly the purpose of this process?

16 BRAY: I, I think we are trying to sort of patch this up by offering
17 that. Because the, the cart, the horse is out of the barn already. So, you
18 know, here we are, you know, at this point in time, this is, you know, we
19 still need to see some things done appropriately so this is the way we were
20 able to do it. You know, is, is to suggest mitigating conditions. We would
21 preferred that it was done really differently and that the County had stepped
22 up earlier.

23 LYNN: Okay. That's all I have. Thank you.

24 REEVES: Okay. Uh, Mr. D'Avignon, any questions for this witness?
25

1 D'AVIGNON: I, I just have one, I think kind of clarifying question. As, as I
2 understand your testimony, you are not inherently opposed to the existence of
3 the mine, but do not believe that there's been sufficient review or
4 consideration and articulation of mitigating measures to allow a mine to go
5 forward?

6 BRAY: I think I probably, I think this is a really difficult place to
7 develop a mine. I don't think it's a typical location. You know, I, I think I
8 would characterize it more as our community kind of feels like we, if we have
9 to live with it, we have to live with it, but it's not, it hasn't been, uh,
10 it's not acceptable the way it is now.

11 D'AVIGNON: Have you taken any steps to, um, have it declassified as a
12 mineral resource overlay?

13 BRAY: We actually looked into that and, uh, it, you know, that, my
14 understanding of that process is that it's, uh, pretty much landowner driven,
15 that the community wouldn't really have the, and wouldn't be, uh, wouldn't
16 prevail in that effort without, you know, I, I think there, it's arguably,
17 arguable that it should have been classified at the beginning when you look
18 at the Comp Plan criteria. Um, some of them hadn't been met. But, you know,
19 that, that, um, that's water under the bridge at this point. And to undo it
20 didn't look feasible.

21 D'AVIGNON: I have no other questions, Mr. Examiner, thank you.

22 REEVES: Mr. Loring, any redirect?

23 LORING: Uh, just a couple of questions. Um, Ms. Bray, you were accused a
24 moment ago by Mr. Lynn of having caused some of the delays in this process,
25 uh, if the County had requested a full review of the environmental impacts

1 and if the Applicant had come forward with that type of analysis at the
2 beginning, would you have felt it necessary to participate?

3 BRAY: No, we would have been, I, I, to part-, well, we would have
4 participated, but I don't, uh, you know, I believe that the delays have
5 mostly to do with the Applicant, um, resisting supplying additional
6 information and then Appealing things in two different times when they were
7 asked to do so. You know, and, again, I, we mentioned earlier that there were
8 these huge dead zones when nothing seemed to be going on. You know, which had
9 to do mostly with staffing levels at the County, I believe. I, you know, I,
10 you know, if you, if you proportioned out delays, uh, I think the issue
11 really has to do with how really the Permit process was managed from the
12 beginning.

13 LORING: Just one more. Um, would it seem abnormal to you to view a 2.2
14 mile long haul road as part of a project environmental review?

15 BRAY: Would it seem normal? Um...

16 LORING: Abnormal. I'm, I'm trying...

17 BRAY: Oh.

18 LORING: To give you some examples, apparently this was an abnormal, uh,
19 process to add in that review. So, I'm asking you, does that seem abnormal to
20 you that you'd study a haul road impact?

21 BRAY: No. You know, I, as I said before, I, they, it seems like
22 critical infrastructure for the mine. And, and we said from the very
23 beginning that it was part of the footprint of the mine. And the County never
24 answered that question for us. They just ignored it. You know, at some point,
25 they responded by, um, you know, telling the Applicant that they needed to

1 bring the road up to current road standards. But that was after the Applicant
2 started, um, uh, you know, improving the road, uh, under their Forest
3 Practices Permit.

4 LORING: Okay. Thank you very much for your time.

5 REEVES: Uh, I believe we are done with this witness, unless, raise a hand
6 if I've missed something. Is that you raising a hand, Mr. Lynn, or was that
7 you scratching your forehead?

8 LYNN: That was me scratching my forehead at an inopportune time.

9 REEVES: Excellent. All right. Well, Ms. Bray, thank you very much for
10 your testimony today.

11 BRAY: Thank you.

12 REEVES: And I think that is a, a great spot to conclude. Uh, just to, uh,
13 speak to a couple of things, so just to clarify and get on the record, our
14 next, excuse me, hearing date would be September 8th, uh, so next Thursday.
15 That will be the 8th and the 9th and, uh, we will be proceeding with Mr.
16 Loring's, uh, witnesses. And at some point, we need to sort out and make sure
17 we're all on the same page about the Exhibits. Uh, I will try to do that.
18 But, uh, if someone has what they feel like is a really good Exhibit list,
19 uh, please send it around, uh, so that that can all be verified. Um, but I
20 think that's all I actually have. I wanted to do our quick round robin and
21 make sure, uh, there isn't anything else. So I'll start with, uh, Tom
22 Ehrlichman?

23 EHRLICHMAN: Thank you, Mr. Examiner. Uh, I guess I'm just, um, thinking about
24 a possible stipulation to facts. If we're able to achieve that in the next
25

1 couple of days, uh, what form would you prefer that that comes into this
2 proceeding?

3 REEVES: Uh, I'd make it an Exhibit, I guess for the SUP, which would then
4 be, I think, applicable for both. But if everyone agrees to the facts, uh,
5 sorry, I don't want to use the word everyone, that's challenging, uh,
6 preferably, but, uh, if the County and your clients agree, I suppose, and,
7 uh, Mr., uh, well, I don't know, I guess it has to be everyone, I haven't
8 thought this through. Preferably everyone agrees to the facts and if that is
9 the case, if you can just either bring something Thursday that everyone sort
10 of electronically signed off on, you know, I don't, I hope that's clear
11 enough. I, I don't expect...

12 EHRLICHMAN: Yes.

13 REEVES: This is going to be...

14 EHRLICHMAN: We can, we can...

15 REEVES: Are you volunteering to put that together, Mr. Ehrlichman?

16 EHRLICHMAN: I, I think I got volunteered by several people here today. But
17 I'm happy to try to take that on.

18 REEVES: Excellent. I, I apologize, I do, uh, often, uh, sort of hoodwink
19 people into volunteering whether they want to or not, but, uh, we appreciate
20 that. So, any, anything further? I know you were thinking about maybe
21 preparing, as it were, sort of errata sheet that related to the Staff Report,
22 is that different from what you just discussed? And if that's the case, I
23 would suggest if you do prepare that, uh, we can talk about it when we get
24 back and whether I admit it or not, we can figure out, but, you know, if that
25 was something for us to do, I wanted to make sure.

1 EHRlichman: Yeah. I, I think, uh, maybe the way to proceed on that is for me
2 to work with the County, um, see, see how the County would want to proceed on
3 that. It, it's, it's limited to that PowerPoint, I think, that one slide. So,
4 I think we can get through that pretty quickly and, and you'll know where we
5 came out on that.

6 REEVES: Yeah. Let's check back in on it next time, okay? Um, Jason,
7 D'Avignon, anything you wanted to touch on before we conclude?

8 D'AVIGNON: Uh, nothing other than to hope everybody has a good holiday
9 weekend.

10 REEVES: You stole my thunder, but excellent. And, uh, Bill Lynn, anything
11 you wanted to touch on before we conclude?

12 LYNN: I was just, if, if Kyle could just let us know, not today,
13 necessarily, but what the order of witnesses, uh, he proposes, just so we can
14 have the right people not listening, but not burning up a bunch of excess
15 time. Would help, that would be helpful.

16 LORING: I'd be happy to do that, lay that out for Thursday and let you
17 know, uh, what it looks like for us. I'll do that tomorrow, probably.

18 LYNN: Great. Thank you.

19 REEVES: Okay. And before we go to Kyle Loring, who I'm going to sort of
20 let conclude, I mean, I, of course, get the last word, but, uh, I do want to
21 note I have not yet received those final Appellant Exhibits. I, I have been
22 digging through the County website, I, I just don't know what happened.
23 They're in a black hole somewhere, I think it had to do again, with different
24 quirks and, and so I'm missing just those last however many. And I would
25 certainly like to review them. I've read everything else, so, um, if, I don't

1 know who the right person to talk to is, if, to avoid ex parte, Mr. Loring,
2 if you're able to just, you know, provide them in an email to all of us. I
3 don't know everybody has it or if there was a link you all had that somehow I
4 didn't, you know, my staff didn't get, that would be great, but I would
5 certainly appreciate the opportunity before Thursday to, to make sure I
6 reviewed the Exhibits, especially now that we're onto your case, so.

7 LORING: Yeah. Uh, yeah, email is going to be a little trouble just
8 because some of them are a little larger. Um, Jason, can we reopen, uh, the
9 site or I don't know if things are still there. I, I don't think I was able
10 to look there last time.

11 D'AVIGNON: You know, I...

12 LORING: Finding them.

13 D'AVIGNON: I did try, when this first became an issue to send, uh, the
14 Examiner, share the link with him so he could access that.

15 REEVES: Yeah.

16 D'AVIGNON: I did, I do apologize because I, I didn't think about it when I
17 shared the link that that was technically an ex parte contact. I did send an
18 email, I think with everybody on afterwards indicating that's what I had
19 done. Um, and I don't know if, Mr. Examiner, if you've been able to check
20 that link? Um...

21 REEVES: Sorry. This was last week or earlier this, I guess, it would have
22 been last week. I, I do not recall receiving that, so, I, I apologize. Um, I
23 will look again and let, let everybody know. We can put it on me, if it
24 already worked, it worked. Um, and I, I would not consider, you know, I would
25 not consider a procedural matter like hearing the link for the Exhibits that

1 I get to review, especially opposing counsel's exhibits [inaudible] ex parte
2 contact with him, one on one. Uh...

3 D'AVIGNON: Um, um, you want to check, like, uh, junk mail because I think it
4 generates it from Microsoft and, very like...

5 REEVES: Got it.

6 D'AVIGNON: End up in a junk email.

7 REEVES: Okay. I will send stuff out if I can't find it and, uh, we will
8 make sure I, we get this sorted before, uh, as long as I can get them by
9 Wednesday, I'll, I'll say something before Thursday, but I will look again. I
10 apologize. I didn't realize that happened. So, uh, with that, Mr. Loring, as,
11 go to you last, uh, any final thoughts?

12 LORING: Yes. Uh, and by, just a quick note, it looks like you probably
13 would have gotten that email last, uh, Friday, the 26th of August, um, around,
14 between 8:53 and 9:05, just to let you know, just kind of trying to parse
15 through other correspondence. Um, to try to help out and, yeah, please let us
16 know.

17 REEVES: I appreciate that.

18 LORING: Anyway, I, nothing else, uh, thank you, uh, enjoy your weekend,
19 everyone.

20 REEVES: Oh, and Mr. Ehrlichman, you had another thought?

21 EHRLICHMAN: Uh, just flipped through my notes here, I realized one thread
22 still out there is Mr. Lynn, will you be sending all of us the auto-turn
23 Exhibit? You're muted, Bill.

24 REEVES: One last time.

1 LYNN: I will be figuring out in the next couple of days what we have
2 and how we can get it to you, so, um, as soon as I can, as soon as I have
3 something that's, that's, uh, stamped and ready to go, I will get it to you.

4 EHRLICHMAN: Thank you much.

5 LYNN: All right.

6 REEVES: Okay. Well, I will be, uh, very brief. Thank you, everybody. Uh,
7 as always, we appreciate everyone taking the time to participate, even if
8 it's just to watch. And thank you to our witnesses who have participated
9 today. And thank you to, uh, County staff, uh, as well as, uh, everyone else
10 participating, our Attorneys for, uh, laughing at my jokes. And with that,
11 please enjoy the three-day weekend and I will, uh, see everybody back at 9:00
12 a.m. on September 8th. And with that...

13 LORING: Yes.

14 REEVES: We can end our, uh, hearing for the day. Thanks, everybody.

15 LYNN: Thank you.

16 LORING: Thank you.

17 EHRLICHMAN: Thank you.

18 D'AVIGNON: Thank you.

19 [The tape ends.]

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

21 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
22 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party
23 to this action. That on April 29th, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves, that
24 took place on 9/2/22 at 1:00 p.m., regarding the above-captioned matter.

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

3 Signed at Mount Vernon, Washington, this 29th, April of 2024.

4 Janet Williamson
5 Janet Williamson
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25