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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 9-8-22 11:00 AM
14 Appeal of Mitigated Determination of)
15 Significance by Central Samish Valley)
16 Neighbors

17 Transcription Date: May 1st, 2024

18 Present: Mona Kellogg, Andrew Reeves, Tom Ehrlichman, Bill Lynn, Jason
19 D'Avignon, Kyle Loring, Matthew Mahaffie

20 KELLOGG: Recording started.

21 REEVES: Thank you, Ms. Kellogg. Uh, Mr. Loring, go ahead.

22 LORING: Okay. Thank you, Mr. Examiner. And, hello, ag-, again, Mr.

23 Mahaffie. We'll resume. I don't have a lot more for you, but, uh, I want to
24 fi-, I want to finish this line about the haul road and the impacts that
25 might be anticipated for that. Um, and, so, before we left, there was a
little bit of confusion about my question about the haul road being converted
from a forestry road to a, a gravel road. And let me ask you, would that have

1 had any impacts, uh, if it had been converted from a forestry road to a
2 graveled road, uh, to, in your opinion?

3 MAHAFFIE: Yes.

4 LORING: What would those have been?

5 MAHAFFIE: Uh, gravel is typically going to be a compacted and hardened
6 surface with more, uh, opportunity for run off and sedimentation, uh, to
7 leave the road, roadbed area.

8 LORING: Okay.

9 MAHAFFIE: Additionally, you know, uh, you know, an infrequently used forest
10 road becomes vegetated in and of itself, even if graveled, you know, grasses
11 and other foliage will grow through and still provide some level of buffer
12 function, even if it's frequently graded. Uh, that's a lot different than a
13 commonly used year-around road, even if gravel.

14 LORING: Okay. And, and so cutting that type of vegetation would have an
15 impact as well?

16 MAHAFFIE: Yeah. Yes.

17 LORING: Okay. Uh, based on your experience, both preparing critical areas
18 assessments and preparing mitigation plans, would you have expected the
19 impacts, uh, to have been identified and mitigated for that work?

20 MAHAFFIE: Yes.

21 LORING: Okay. In your, in your review of the applications materials, did
22 you see any assessment of the impacts of using the haul road across Swede
23 Creek?

24 MAHAFFIE: Nothing comprehensive, no.
25

1 LORING: Okay. And when you say nothing comprehensive, what do you mean by
2 that?

3 MAHAFFIE: I would consider the analysis more of passing statements, rather
4 than analysis.

5 LORING: Okay. What would, uh, some likely impacts have been that should
6 have been analyzed?

7 MAHAFFIE: Potential for sedimentation, uh, dust infiltration, uh,
8 vegetation maintenance in a wider corridor than previous. Uh, possibility of
9 road or slope failure, things like that.

10 LORING: Okay. And, again, based on your review of the documents, those
11 impacts were not evaluated at this site?

12 MAHAFFIE: I would say not evaluated adequately.

13 LORING: Okay. So, reference to impacts, but not a discussion of what that
14 means for the site?

15 MAHAFFIE: Correct.

16 LORING: Okay. And were there any other areas where the proposal does not
17 satisfy the Skagit County Critical Areas Ordinance criteria in a way that is
18 likely to cause impact? Based on your understanding of that CAO.

19 MAHAFFIE: My understanding, my interpretation, uh, would have assumed an
20 impact from the change of use in and of itself.

21 LORING: Okay. And when you say assumed a change of use, is, do you mean
22 that that's based on your understanding of, uh, impacts from changing a use
23 on critical areas?

24 MAHAFFIE: Correct.

25 LORING: Okay. Uh...

1 MAHAFFIE: It's...

2 LORING: Go ahead.

3 MAHAFFIE: No, I'm sorry.

4 LORING: And then when I say based on your experience and understanding

5 the change of use can cause those impacts?

6 MAHAFFIE: Yes.

7 LORING: Okay. Uh, did you see any, uh, proposal for a, a maintenance

8 corridor between the mine and the buffer? And now I'm zooming back out to the

9 whole site and not just talking about the haul road.

10 MAHAFFIE: No. And that would probably be one of my larger concerns that

11 wasn't addressed.

12 LORING: Why do you say that?

13 MAHAFFIE: Uh, the, the plan seemed to show excavating, essentially to the

14 buffer edge and, and then the question would be, what happens to the

15 vegetation on the buffer edge that's going to fall into the mine site or be

16 removed prior to because then it becomes a safety hazard to the mine

17 operations. So, but...

18 REEVES: Sorry to break in one sec, uh, Mr. Lynn, maybe if you could mute,

19 I'm getting some feedback from, from flipping papers. Thank you. Go ahead,

20 Mr. Loring.

21 LORING: Uh, thank you, Mr. Examiner. And, and, Mr. Mahaffie, you were

22 saying that the lack of a maintenance corridor was one of your bigger

23 concerns because things tend to happen in that zone along the edge of a

24 buffer?

25

1 MAHAFFIE: Correct. Whether it be intruding into the root zones of the, the
2 trees that are supposed to be, uh, left within the buffer, or, you know,
3 failure of the slope bringing them down and additionally, uh, I think I
4 touched on this a little before, uh, it's very, very common in this kind of
5 scenario, especially with the southern aspect, for that buffer edge to then
6 become, you know, infested with what are known as noxious or invasive
7 species. You know, typically in a site like this, it would be, you know,
8 Himalayan blackberry or Scots broom, things like that, would infiltrate the
9 buffer, which is very counter intuitive to, uh, the Critical Areas Ordinance
10 and noxious weed control laws. So, you would assume and hope for a
11 maintenance corridor between the buffer and mine operations to account for
12 that. So...

13 LORING: Okay. And is your understanding of the Critical Area Ordinance,
14 uh, requires some level of a maintenance corridor between the mine and the
15 buffer?

16 MAHAFFIE: Yes. Sort of. It's, uh, identified, if my recollection is
17 accurate, more of a building setback for the maintenance corridor. But I, the
18 intent is clearly there, to account for such things.

19 LORING: Okay. And, uh, and the absence of that maintenance corridor, will
20 that exacerbate the impacts of a substandard buffer itself?

21 MAHAFFIE: Yes.

22 LORING: Substandard width?

23 MAHAFFIE: I feel that, yes, that would, that would cause, even if you had
24 the minimum buffer held to, it would still cause damage to the buffer by
25 those indirect impacts, yes.

1 LORING: Okay. And in your review of Application materials and reports,
2 did you find any analysis of the impacts of that lack of a maintenance
3 corridor?

4 MAHAFFIE: No, I did not.

5 LORING: Okay. All right. Let's talk briefly about the MDNS, uh, I believe
6 you've already stated that you're familiar with it?

7 MAHAFFIE: Yes.

8 LORING: Okay. And, uh, and just to summarize, once again, in, in your
9 expert opinion, as someone who conducts SEPA review and also prepares reports
10 to satisfy SEPA criteria, did that MDNS fully address the proposed impacts,
11 or the, the impacts of the proposed mine?

12 MAHAFFIE: I do not feel so, no.

13 LORING: Okay. And what's the likely outcome of that failure to analyze
14 the impacts fully?

15 MAHAFFIE: Uh, the impacts will occur and be unmitigated for.

16 LORING: Okay. There was a little bit of testimony earlier by an Applicant
17 witness or two about the mine impacts being, uh, temporary, was the word that
18 they used, in your expert opinion, does that word characterize the impacts
19 that would occur as a result of this mine?

20 MAHAFFIE: Not in my experience, no.

21 LORING: And why do you say that?

22 MAHAFFIE: You have a multi-decades long mining operation with an
23 undetermined, uh, as far as I can tell, reclamation, uh, timeline. I, I don't
24 know of anybody that would consider that temporary.

25 LORING: Okay.

1 MAHAFFIE: Every...

2 LORING: Okay. Uh, and, um, what is, my last question for you, I believe
3 at the moment, uh, in your expert opinion, given all of the information in
4 the Application, uh, all of which you have reviewed with regard to critical
5 areas and, uh, other environmental impacts, did Skagit County conduct a full
6 review of the mine proposals, environmental impacts before issuing the MDNS?

7 MAHAFFIE: No, I do not.

8 LORING: Okay. Thank you very much. I don't have any additional questions
9 at this time. But, as you know, we're going to hear from other Attorneys and,
10 and go around the room and they will have questions for you, too. So, thank
11 you.

12 MAHAFFIE: Okay.

13 REEVES: Okay. Um, Mr. D'Avignon, any questions of this witness?

14 D'AVIGNON: I, I do have a couple of questions, Mr. Examiner.

15 REEVES: Okay.

16 D'AVIGNON: Um, morning, I guess we're still morning, Mr. Mahaffie.

17 MAHAFFIE: Good morning.

18 D'AVIGNON: In preparing your report, did you review the County Code and, I
19 guess, specifically the Critical Areas Ordinance?

20 MAHAFFIE: Yes.

21 D'AVIGNON: Uh, did you just review the current version of the Critical Areas
22 Ordinance?

23 MAHAFFIE: I would say that's kind of a loaded question. As regards to the
24 MDNS, yes. The latest issued MDNS, yes.

1 D'AVIGNON: Okay. Then, are you aware of the code allowing reductions to
2 buffers, basically to consider a high, in a high intensity use, to use a
3 buffer for, um, moderate or medium use?

4 MAHAFFIE: Yes.

5 D'AVIGNON: Uh, what, what is normally required to, to get that?

6 MAHAFFIE: Would I be allowed here to look at the code specifically? Because
7 I can't remember that off the top of my head.

8 REEVES: Sorry, I, I'm, as the Hearing Examiner, I have no issue with
9 directing the witness toward what provision you were...

10 D'AVIGNON: I...

11 REEVES: Need looking at...

12 D'AVIGNON: Yes. Um, I'm trying to pull it up right now so I can share my
13 screen.

14 REEVES: They don't require Planners in Whatcom County to memorize the
15 codes of every other County?

16 MAHAFFIE: I have enough trouble with my own code.

17 REEVES: Right. Understood.

18 D'AVIGNON: All right. Can you see that? So, I think we're in 243A. So, the,
19 I guess is your understanding of this Code section that even if a land use
20 intensity is classified as high impact, the moderate intensity buffers could
21 be implemented?

22 MAHAFFIE: Correct.

23 D'AVIGNON: Um, in your opinion, what would be some of the measures that we
24 would, you know, based on the document we were looking at earlier, need to be
25 implemented to do so?

1 MAHAFFIE: You would need to look at the table found in Appendix 8C.

2 D'AVIGNON: Well, let's see if we can pull that up. All right. Do you know

3 where in here we would look?

4 MAHAFFIE: Not off the top of my head, no.

5 D'AVIGNON: Samples of measures to minimize impacts to wetlands from

6 different types of activities, that wouldn't be it. This looks like it might

7 be it. Do you think this is it, you're the one who maybe works with this a

8 little bit more than I do. Reduction in buffer width based on reducing the

9 intensity of impacts from proposed land uses.

10 MAHAFFIE: Correct.

11 D'AVIGNON: All right. So, can you describe what these, what the r-, what

12 Ecology is saying here?

13 MAHAFFIE: It's very difficult to describe that without a display or a map,

14 but, uh, showing a permanently protected vegetative corridor 100 feet wide,

15 uh, between any other pri-, priority habitats. So, WFW is identified what

16 priority habitats are.

17 D'AVIGNON: Okay.

18 MAHAFFIE: So, on this site, you know, the Samish River would be one,

19 wetlands, streams, all could be considered priority habitats.

20 D'AVIGNON: And are you, and it looks like the second one is measures to

21 minimize impacts, um, in your opinion, does the MDNS contain any, any

22 conditions that would be minimizing impacts on the wetlands?

23 MAHAFFIE: Well, the statement that the Critical Areas Ordinance shall be

24 followed would be one.

25

1 D'AVIGNON: Okay. Um, I'm going to stop sharing as I get the emails. Uh, and
2 lastly, I want to, I guess, go over kind of towards the end of your
3 testimony, you had talked about, um, maintenance corridors [inaudible] one
4 more time. Um, are you, do you know if those are limited to structures?

5 MAHAFFIE: Honestly, I can't remember the exact code section off the top of
6 my head, could you re-, forward me to that?

7 D'AVIGNON: Hold up here. I believe this is the section, this would be
8 14.24.80.4C Roman et ix. Can you read this first sentence?

9 MAHAFFIE: If necessary, designated maintenance corridor to provide an area
10 for construction and maintenance ability and other structures.

11 D'AVIGNON: Um, in your, in your review of the proposed mine, are there any
12 proposed buildings or other structures?

13 MAHAFFIE: Well, I might refer you to the definition of the word structure
14 in the Skagit County Code.

15 D'AVIGNON: Look at that. In your opinion, are anything being built or
16 constructed, an edifice or a building of any kind or any piece of work
17 artificially built up or composed of parts joined together in some definite
18 manner, not including fences?

19 MAHAFFIE: I think it's a bit of a stretch, but I think I could find the
20 intent in the part that says a piece of work artificially built upon.

21 D'AVIGNON: And I, I suppose you're referring to maybe a, a berm?

22 MAHAFFIE: Yep. And I would also defer to the intent of what this section of
23 14.24 intends to do. And it's to provide protection from the buffer by the
24 activity occurring. I mean, it's, it's pretty common knowledge, you can't
25 build a house six inches away from a 36" diameter cedar tree. There has, that

1 would be protected by the buffer. There still has to be some separation. And
2 that separation can still allow human usage and activities, but still
3 separate the activity from the buffer itself to protect the buffer.

4 D'AVIGNON: Okay.

5 MAHAFFIE: That, that's the intent, in my understanding of what the
6 maintenance corridor is for.

7 D'AVIGNON: Okay. Uh, no other questions, Mr. Examiner.

8 REEVES: Okay. Mr. Ehrlichman?

9 EHRLICHMAN: I, I didn't hear any testimony on traffic on Grip Road, so we
10 don't have any questions. Thank you.

11 REEVES: Thank, thank you. Mr. Lynn?

12 LYNN: Good morning, Mr. Mahaffie.

13 MAHAFFIE: Good morning.

14 LYNN: Keep muting myself. Um, you kind of quickly went over your
15 address, isn't your home very close to the mine site?

16 MAHAFFIE: Yes, it is.

17 LYNN: And, in fact, aren't you one of the people who received notice of
18 this Application?

19 MAHAFFIE: The second time around, yes.

20 LYNN: Okay. And, uh, you didn't think that that was important to note,
21 in terms of your reporting?

22 MAHAFFIE: I do believe my comments are in the record.

23 LYNN: Okay. Have you, uh, voiced opposition to the mine in any other
24 context, emails, phone calls, meetings with neighbors or otherwise?

1 MAHAFFIE: I would not say I have voiced my opposition to the mine, I have
2 voiced my oppositions to components.

3 LYNN: Components of the mine proposal?

4 MAHAFFIE: Components of the process and components of mitigating
5 conditions. Whether it be environmental or other.

6 REEVES: Mr. Lynn.

7 LYNN: I swear my hands were here.

8 REEVES: You made it, you made it, uh, two, almost three hours, so, but I
9 think we missed the entirety of whatever your next question was.

10 LYNN: Okay. Um, and you're, you're employed by Whatcom County as a, uh,
11 as a Planner?

12 MAHAFFIE: Correct.

13 LYNN: And in that work, are you called upon to make, uh, interpretation
14 of the Whatcom County Code?

15 MAHAFFIE: Yes.

16 LYNN: Okay. And would you, you described your, your recent
17 interpretation of the, the mine edge as a building or as a structure as being
18 a bit of a stretch. Um, when you're interpreting the Whatcom County Code, are
19 you allowed to make a bit of a stretch to get at the intent, even though
20 that's not what the language says?

21 MAHAFFIE: I would not have offered any document in that way, but I would
22 refer to that as my, uh, if something is not clear, we're still looking for
23 intent.

24 LYNN: Okay. Um, and you think the term structure is defined as not
25 clear under the Skagit County Code?

1 MAHAFFIE: I, I don't think I said that.

2 LYNN: Well, you, you, you were willing to stretch its meaning, you just
3 said you only do that if there's an ambiguity. Are you saying that there's an
4 ambiguity in the definition...

5 MAHAFFIE: I...

6 LYNN: Of structure that was just put up on the screen?

7 MAHAFFIE: In, in this situation, yes.

8 LYNN: Okay. Um, when it comes to interpreting Skagit County Code, and I
9 gather you do a lot of work in Skagit County, who makes the call, is it you
10 or is it a Skagit County Official?

11 MAHAFFIE: It's a Skagit County Official.

12 LYNN: Okay. Um, are, are you a professional wetland scientist?

13 MAHAFFIE: No, I am not.

14 LYNN: Is that the club you, you were, is that the thing you referred to
15 as being a club in the very beginning of your testimony?

16 MAHAFFIE: Yes. It is a privately run association.

17 LYNN: It's an international associations that certifies wetland
18 scientists, isn't it, isn't the most well-known, uh, organization that does
19 that?

20 MAHAFFIE: Possibly, yes.

21 LYNN: It, it's certainly not a club where you just sign up and pay dues
22 and go to a meeting once in awhile, it's a, it's an organization that
23 certifies wetland scientists, isn't that accurate?

24 MAHAFFIE: Yes.

1 LYNN: And, and Pat Bunting is a member and Molly Porter is a member and
2 you do not have that certification, accurate?

3 MAHAFFIE: Correct.

4 LYNN: Okay. Have, have you any recent personal experience with the
5 site, have you been on the site since this Application was filed?

6 MAHAFFIE: No, I have not.

7 LYNN: Okay. So all of the observations that you've made in the
8 testimony you've given are based on your review of papers and your knowledge
9 of the site as it existed seven or eight years ago?

10 MAHAFFIE: Correct.

11 LYNN: Um, in terms of the condition of the road, um, did you hear the
12 testimony earlier on that that gravel pit that exists on the north portion of
13 the site was actually excavated in order to place gravel on the logging
14 roads?

15 MAHAFFIE: I did not hear that testimony, no.

16 LYNN: Okay. In, uh, you've characterized the County's review of this
17 Application as cursory, in your, uh, experience does the County give cursory
18 review to your work?

19 MAHAFFIE: I could not say.

20 LYNN: Well, what's been your experience? Don't they, don't they
21 professionally review and comment on your submittals?

22 MAHAFFIE: I could not speak to the level of review.

23 LYNN: Okay. So, in these hundreds of, maybe thousands of reviews you've
24 done, you don't have an opinion as to whether or not the County's review is
25 cursory?

1 MAHAFFIE: I know the comments I've received and the approvals my Applicants
2 have received.

3 LYNN: Okay. You made a comment about maybe the County not reviewing,
4 um, certain portions of the NES report, you don't know, personally, whether
5 or not the County received that information, do you, or reviewed it?

6 MAHAFFIE: Uh...

7 LYNN: Well, let me withdraw that. Would it surprise you to learn that
8 Miles submitted a thumb drive, a digital version and a paper copy to the
9 County, uh, at the same time the report was completed?

10 MAHAFFIE: That would not surprise me, no.

11 LYNN: Okay. Um, I'm going to talk about the, uh, the Graham Bunting,
12 um, work that was done. Did you hear Mr. Graham's testimony that the wetland
13 did not extend upland of the toe of the slope, slope and that none of the
14 wetland indicators, let alone all three, were present above the toe of the
15 slope?

16 MAHAFFIE: That is not the answer I heard, no.

17 LYNN: Okay. You didn't hear him say that he concluded that none of the
18 wetland indicators were present above the toe of the slope?

19 MAHAFFIE: I heard him say that he did not dig any test pits to identify
20 whether hydric soils extended beyond the toe of the slope or not.

21 LYNN: That's not my question. My question is, did you hear him say that
22 he found no wetland indicators, hydrology, plants or soils above the toe of
23 the slope?

24 MAHAFFIE: I heard him say he did not look for all indicators, physically
25 at, beyond the toe of the slope.

1 LYNN: Okay. Well, maybe, maybe we'll just go back to his testimony and
2 listen to it, then. Did you hear him testim-, testify that all wetlands were
3 riverward of the tow of the slow?

4 MAHAFFIE: I do not recall.

5 LYNN: Okay. Uh, did you find any fault, uh, well, you, in your comment
6 letter, A33, uh, testified that Mr., uh, Graham was using some kind of, uh,
7 plain language interpretation of ordinary high water, didn't he actually
8 quote the definition from the Skagit County Code?

9 MAHAFFIE: I don't recall.

10 LYNN: Okay. And do you recall, uh, do you have any personal knowledge
11 that the ordinary high water is not where it was indicated to be on his
12 document?

13 MAHAFFIE: No, I do not.

14 LYNN: Do you have any evidence, personally, that any wetland is in the,
15 is located on the property closer to the road than the tow of the slope? To
16 the, I should say, I'm sorry, to the road or to the mine, than, than, uh,
17 than was indicated in Mr. Graham's report?

18 MAHAFFIE: No. Since data wasn't provided, I wouldn't be able to answer that
19 statement.

20 LYNN: Okay. But you're personally not aware of any, are you?

21 MAHAFFIE: No.

22 LYNN: So, I want to talk about intensity of use. Um, well, so, I'm
23 sorry, one more question about Mr., uh, Bunting, or Mr. Graham's work, uh,
24 did you hear his testimony that he had reviewed the newer rating form,
25

1 reviewed the data and came to the same conclusions as reflected in his report
2 using the older, uh, rating forms that were in effect at the time?

3 MAHAFFIE: Yes, I heard that testimony.

4 LYNN: Okay. So, there isn't nothing in the record to support that.
5 You've heard his sworn testimony, uh, under oath, to that effect, haven't
6 you?

7 MAHAFFIE: I've heard his testimony, yes.

8 LYNN: And, and, and it was under oath, let's, let's, give me something
9 here, Mr., Mr. Mahaffie. I know, I know you don't like it, but wasn't his
10 testimony sworn as a professional testimony under oath?

11 MAHAFFIE: Yes, it was.

12 LYNN: So, let's talk about intensity of use. Uh, would you agree that a
13 mine is not listed as either, as in any one of the cat-, categories, low,
14 medium or high in either the ecology, uh, Appendix or in the County's Code?

15 MAHAFFIE: Yes.

16 LYNN: Okay. So, does not that, I mean, and that's not a comprehensive
17 list of every use there is, isn't it, is it?

18 MAHAFFIE: No, it is not.

19 LYNN: Okay. Does...

20 MAHAFFIE: Which is why we refer to ecology.

21 LYNN: Well, well, that's, we'll, we'll get there. Ecology is not the
22 author of the Skagit County Code, are they?

23 MAHAFFIE: They are the author of the documents that are referred to in
24 Skagit County Code for such determinations.

1 LYNN: Okay. And the s-, ultimately it's up to the Skagit County
2 officials, isn't it, to determine how to interpret its code, even if it
3 incorporates, uh, documents from Ecology?

4 MAHAFFIE: Yes, it is.

5 LYNN: Okay. Did you see any detailed analysis by Ecology as to the
6 particular characteristics of this, uh, this mine?

7 MAHAFFIE: I would not consider them detailed, but I saw the comments from
8 Ecology regarding this mine.

9 LYNN: And didn't Ecology assume that it would be necessary to make, uh,
10 significant im-, improvements or, uh, alternations to the haul road in order
11 to accommodate the mine? Wasn't that part of their analysis?

12 MAHAFFIE: I don't believe so, but I cannot speak for Ecology.

13 LYNN: Okay. So, if there is judgement to be exercised, we have a
14 difference of opinion, don't we? We have Oscar Graham saying he thinks it's a
15 moderate intensity land use. Uh, and with a, with an articulation of why. We
16 have the County having made different judgment. And we have Ecology having,
17 uh, made a judgment as well. Isn't it ultimately up to, up to the County to
18 determine what the appropriate, um, intensity designation is for a land use?

19 MAHAFFIE: Yes.

20 LYNN: Okay. In, in analyzing the intensity of the land use, is it
21 significant to you, in any way, that most of the mining activities, if not
22 all, would take place behind the hill, in other words, separated from the
23 wetland and river by a, a hill?

24 MAHAFFIE: I would consider it [inaudible] significant.
25

1 LYNN: Okay. Uh, would you, uh, it, you're obviously familiar with
2 different mine sites, uh, in your practice, is that accurate?

3 MAHAFFIE: Familiar, yes.

4 LYNN: Okay. And, and don't they have highly different levels of
5 activity, depending upon the specific operation? Crushing, blasting,
6 processing, uh, asphalt batching, dredging and so forth, aren't, aren't those
7 activities that take place at some mine sites?

8 MAHAFFIE: Uh, I would, I would say you're lumping quarries and gravel pits
9 and mines, uh, into one. But, so, yes, a quarry is going to have much
10 different impacts than a, than a gravel mine.

11 LYNN: So, what is your definition of what's a gravel mine? Isn't this a
12 gravel mine under the County Code? And isn't the Goodwin Pit, to the Goodwin
13 Pit that you referred to in your testimony also a surface mine?

14 MAHAFFIE: Yes.

15 LYNN: Okay. And, and...

16 MAHAFFIE: I was referring to your questions regarding blasting, which would
17 typically occur with a quarry, you know, hard rock mining, which would be a
18 different...

19 LYNN: Oh...

20 MAHAFFIE: In my...

21 LYNN: Okay.

22 MAHAFFIE: View than a gravel pit, so...

23 LYNN: Okay. So, you differ-, you differentiate that, but wouldn't you
24 agree that otherwise, uh, uh, a significant wash plant, a crushing plant, an
25

1 asphalt batch plant, various sorting activities and all those types of things
2 are parts of certain mine sites?

3 MAHAFFIE: I would say, yes.

4 LYNN: Okay. And, in fact, you were critical of, uh, NES for having, uh,
5 called this mine site a moderate level, but, but, uh, not doing so on the
6 Goodwin mine site, isn't that accurate? Wasn't that in your letter, you're
7 A33?

8 MAHAFFIE: Yes.

9 LYNN: And, and, in fact, aren't those activities that I mentioned here,
10 or at least some of them, crushing, processing, and even blasting in that
11 case, part of that mine operation?

12 MAHAFFIE: I, neither my comment, their review nor my knowledge would
13 reflect those activities.

14 LYNN: Okay. You were, uh, quarrelling with the temporary nature of the
15 activity, uh, whe-, whether that was appropriately considered, uh, temporary.
16 If the area between 300 feet from the ordinary high water and 200 feet from
17 the ordinary high water would be mined quickly, at the beginning of the
18 operation, in say two or three years, and then that area reclaimed to its
19 ultimate use, with topsoil and tree planting, wouldn't that limit the level
20 of activity, uh, that could conceivably impact the wetland, uh, buffers or
21 the wetland operation?

22 MAHAFFIE: That most certainly could.

23 LYNN: Okay. And turning to the NES report, it's fair to say you have
24 not made a personal visit to any of those wet-, wetlands or streams since at
25 least 2016, when this Application was filed?

1 MAHAFFIE: Correct.

2 LYNN: Okay. And you were critical of the use of DNR, uh, storm typing,
3 and here, I think this is kind of a key point, the stream typing that I'm
4 referring to is the type that's available on any DNR website and shows the
5 stream typing for every stream. Is that, that's accurate?

6 MAHAFFIE: No. The, the stream typing for small streams is highly inaccurate
7 and shows...

8 LYNN: Not...

9 MAHAFFIE: Misses many, many streams.

10 LYNN: Okay. I, I'm sorry, that was not the point of the question, so I
11 asked it improperly. Isn't there a publicly available DNR mapping that shows
12 the designation of, uh, various streams?

13 MAHAFFIE: Yes, there is.

14 LYNN: And isn't that the primary source of information used by bio-, by
15 biologists and others in, in d-, in describing streams and their functions?

16 MAHAFFIE: At this point in time, that would not be a true statement.

17 LYNN: Okay. You, in your experience, if we were to look at all of your
18 assessments of streams that you've prepared, they'd all have some other
19 information in them, other than the DNR information?

20 MAHAFFIE: Uh, site specific, but, yes.

21 LYNN: Okay. Would they have this, you, the other source you identified
22 was DNR, uh, permit specific information. That's not commonly part of your
23 analysis, is it?

24 MAHAFFIE: Yes, it is.

1 LYNN: It's a routine part that we would expect to find in all of your
2 reports and all of the other reports that you review on behalf of Whatcom
3 County?

4 MAHAFFIE: If I'm doing a site review as a consultant or a reviewing
5 Planner, I am going to be a literature review of WDFW Priority Habitat and
6 Species Mapping, Salmonscape from WFW, DNR Stream Typing, uh, DNR Forest
7 Practice Applications, if it's in the forestry designated area, which is
8 pretty easy to see, aerial photos. I'm going to be looking at LiDAR. And if
9 all of that comes out with no information provided, it's going to be based
10 upon physical characteristics, by applying the applicable WAC.

11 LYNN: So, what's...

12 MAHAFFIE: [Inaudible] by using these stream typing worksheets as provided
13 by Washington State Department of Natural Resources.

14 LYNN: Did you hear Ms. Porter testify that she had to file a Public
15 Records Act Request to obtain the individual Forest Practices Permits?

16 MAHAFFIE: No, I surely did not.

17 LYNN: You didn't hear her testimony?

18 MAHAFFIE: I didn't hear her say that she had to do a Public Records
19 Request. They're publicly available online. I found them under five minutes.

20 LYNN: Okay. And your contention is that that's a routine part of this
21 analysis?

22 MAHAFFIE: By my standards, yes.

23 LYNN: Okay. I was really just talking about just general standards, not
24 your own. So, was that likewise, uh, is that a standard practice in the
25 consulting business?

1 MAHAFFIE: I would say so, yes. From the consultants I've reviewed the work
2 of, yes.

3 LYNN: Okay. Uh, [inaudible] there, uh, anything that we could, you
4 could point to in the Skagit County Code that would tell the Hearing Examiner
5 what the management, uh, uh, directions are regarding increased traffic on an
6 existing road? Can you point to something in the County Code that addresses
7 that?

8 MAHAFFIE: Not off the top of my head. It would be referring to those Forest
9 Practice roads created under a Forest Practice Application.

10 LYNN: Um, can you think of, can you tell the Hearing Examiner what the
11 magic cut off is? What, what level of traffic becomes a significant change?
12 Something in the, the County Code or in the WACs that would give the Hearing
13 Examiner something to get a toe hold on here?

14 MAHAFFIE: Uh, it's not a traffic increase, it's a change of use.

15 LYNN: And, and, well, okay, call it what you like, it's more trucks on
16 the car, on the road, isn't that the, the gist of it?

17 MAHAFFIE: As, as an easy way to say it, yes.

18 LYNN: Okay. So, where do we find the more trucks on the road standard?
19 How much, at what point do we get from just almost too much, but now we're
20 over the top? Uh, where's that magic line?

21 MAHAFFIE: It's a change of use from a forestry use to a non-forestry use
22 and accounting for that in the SEPA process.

23 LYNN: Okay. And so where do we find that in any guidance in the
24 County's Code or in any WAC?

25 MAHAFFIE: It's not a number.

1 LYNN: Okay. And what's the, what's the standard? How do we decide? How
2 is the Examiner supposed to know when we've had suddenly too much truck, to
3 many trucks?

4 MAHAFFIE: By reviewing an analysis that accounts for that accurately.

5 LYNN: Okay. Well, we have an analysis, you say that there aren't very
6 many logging trucks now, we have now a proposal for which there's an, an
7 annual average of 46 trips a day, where between the current number and the 46
8 trips per day, on average, is the breaking point? Where, where, what do we
9 dive into here? Where do we find this analysis?

10 MAHAFFIE: It's having a professional experience in those kind of impacts,
11 analyzing those impacts.

12 LYNN: Okay. And who, who would such an app-, uh, we have a traffic
13 engineer, we have a civil engineer, we have people in the mining business, we
14 have two biologists with a professional certification. Where do we find
15 someone who has that level of, uh, expertise that you, as a neighbor, thing
16 is important?

17 MAHAFFIE: I, I don't, I don't really consider me being a neighbor part of
18 that question. But...

19 LYNN: I'll withdraw that part of it. Just you, as a wetland scientist?

20 MAHAFFIE: Uh, it, it's a wetland question and I, I think I touched on that
21 a little earlier. It's not a specifically a wetland ecology question. It's
22 having a, uh, multi-disciplinary approach to it. Which would include, in my
23 opinion, you know, a strong sweep of wildlife biologist, not just wetland
24 ecologists looking solely at wetland ecology.

25 LYNN: Uh, is NES in your experience just a wetland firm?

1 MAHAFFIE: Yes.

2 LYNN: Okay. And are you just a wetland expert?

3 MAHAFFIE: Yes, I am.

4 LYNN: So...

5 MAHAFFIE: I'm answering wetland..

6 LYNN: So, is it fair to say that you lack the professional

7 qualifications to make a determination as to what level of traffic is too

8 much? Or when we have too many trucks on the road?

9 MAHAFFIE: Again, it's not a number.

10 LYNN: Okay. It's just a feeling that we get, like, pornography, we know

11 it when we see it?

12 LORING: Objection. Asked and answered. Mr. Mahaffie doesn't need me to,

13 but this badgering, it's gone way beyond the original question.

14 REEVES: Even, even for me, that might have gone a little far. So, I, I

15 will, uh, sustain the objection there. Uh...

16 LYNN: Okay. Uh, uh, I'll, I'll, I'll be corrected, so, um, Mr. Mahaffie, you

17 testified that under new ecology guidance, uh, a road has the same intensity

18 as the use it serves. Uh, isn't that guidance referring to new roads?

19 MAHAFFIE: Nope.

20 LYNN: There's, is there something you can point to, an ecology guidance

21 that says the use of a road for, uh, a, a change in use of a road

22 constitutes, uh, something along the lines of a level of intensity?

23 MAHAFFIE: Oh, I don't think I have it right in front of me. It would be

24 Department of Ecology's most local guidance document to local jurisdictions.

25

1 LYNN: Are you talking about wetland mitigation in Washington State
2 Publication 21.06.003, is that it?

3 MAHAFFIE: No. Department of Ecology Publication May 2022, Publication
4 Number 22-06-005.

5 LYNN: Okay. And so 005?

6 MAHAFFIE: Correct.

7 LYNN: Okay. Could you read us what it says?

8 MAHAFFIE: One moment.

9 LYNN: So this isn't anything we'd find cited in your letter, is it?

10 MAHAFFIE: No.

11 LYNN: Uh...

12 LORING: Just to, just to clarify, are we asking Mr. Mahaffie to read the
13 entire document or does Mr. Lynn have a specific portion he's thinking of?

14 LYNN: Uh, well, I'm, I'm hearing for the first time about this document
15 that he says sheds light on the, the intensity of a change in use of a road.

16 So, he...

17 MAHAFFIE: I guess it would be...

18 REEVES: And one sec, so, first off, I just want to clarify, this is not
19 an Exhibit that's in the record, correct, this is something, obviously, it
20 would be a, you know, DOE document that's publicly available. But I just want
21 to clarify, I don't have an Exhibit number I can tell people to go look at,
22 yet, is that accurate, Mr. Lynn?

23 LYNN: Uh, uh, I'm as-, I'm assuming. I don't know what it is. I, this,
24 like I said, I'm hearing about it for the first time. So, I would like a, is
25 it DOE, what's the number on it, again, Mr. Mahaffie?

1 MAHAFFIE: Publication 22-06-005.

2 LYNN: Okay.

3 LORING: And my understanding is the answer is yes, to your question, Mr.
4 Examiner. That it is not currently in the record as an Exhibit. Or, no, it's
5 not an Exhibit.

6 REEVES: I think I got that, which is no, it does not have an Exhibit
7 number, okay.

8 LYNN: Well, you know, I just, to move this along, I'm happy to look at
9 it separately and we can each argue about what it means. I don't really,
10 we're just sort of, I guess, exploring a new area that we didn't know about,
11 so, I'll move on.

12 REEVES: Okay.

13 LYNN: And I, and I am, actually, winding down, I think. Um, so, just in
14 terms of numbers, it's a numbers thing, you think, uh, the, the use of the
15 road, uh, by a residential low density use, which is characterized as less
16 than one unit per five acres, is, is a low, low intensity use, is that
17 accurate?

18 MAHAFFIE: It would be moderate.

19 LYNN: Okay. So, uh, if we were to take this 735 acres and divide it
20 into five acre homes, uh, 147 was what I calculated, each one, uh, having ten
21 trips a day as the standard, that's 1470 trips a day, that would be, uh,
22 clearly a medium intensity use, uh, of this road, is that, you would agree
23 with that?

24 MAHAFFIE: I can't answer that since it's not zoned for such a use.
25

1 LYNN: Okay. Well, I'm just trying to get at the intensity of the use. I
2 mean, it, it's actually zoned for less, but according to the wetland rules,
3 even with substantially more density, it would still be a low intensity use,
4 correct?

5 MAHAFFIE: Uh, I think I'd still consider roads as a high intensity land
6 use.

7 LYNN: Okay.

8 REEVES: Sorry, that, that cut out. One sec. One sec. I don't know if it's
9 a bandwidth issue, perhaps, Mr. Mahaffie, but there was quite a bit of
10 cutting out, uh, for your answer to that question. Could you repeat your
11 answer there?

12 MAHAFFIE: Uh, I'm sorry, I, Department of Ecology specifically states roads
13 as a high intensity land use, yes.

14 LYNN: And...

15 MAHAFFIE: In the most recent guidance.

16 LYNN: Okay. And that's the one that we, you mentioned that we don't see
17 here?

18 MAHAFFIE: Correct.

19 LYNN: We, we haven't, yet, looked at...

20 MAHAFFIE: Well, that's, that's the one that's in front of me at this time,
21 yes.

22 LYNN: And, and, again, that's DOE 22-06-005?

23 MAHAFFIE: Yes.

24 LYNN: Okay. Um, so, just a, a last topic, uh, your letter cites, uh,
25 uh, some criticisms of the, of this process because, uh, there's nothing that

1 requires the marking of the buffer, uh, or PCAs, uh, and some things about
2 the, you know, the, the exact measurement of a buffer in terms of, of
3 specific location. Aren't those all code requirements?

4 MAHAFFIE: Yes, they are.

5 LYNN: And, and don't those codes apply regardless of the outcome here?
6 The, the code is the code, isn't it?

7 MAHAFFIE: Yes.

8 LYNN: Okay. That's all I have, then, thank you for your time.

9 REEVES: Okay. Um, I'd just like to get your thought or clarification on a
10 question before I go back to, hand you back to Mr. Loring. I think earlier
11 this morning, Mr. Mahaffie, you had sort of discussed SEPA versus the
12 Critical Areas Ordinances, uh, sort of as a general, general rule. And you
13 had essentially said in your, your view, uh, the SEPA review process can
14 serve as a, I think you used the phrase gap filler, was that right?

15 MAHAFFIE: I think that would be a, a way to say it, yes.

16 REEVES: I thought you said it, but if you didn't, I apologize. It's okay.
17 I, I just, the gist of my question is...

18 MAHAFFIE: Yes.

19 REEVES: You seemed to be saying that the SEPA review process can sort of
20 serve as a gap filler, or something comparable, uh, for what is not
21 explicitly covered by the Critical Areas Ordinances, was that an accurate
22 assessment, what I just said, of what you were testifying to?

23 MAHAFFIE: Yes.

24 REEVES: Okay. So, uh, what I'm asking, based on your expertise, uh, you
25 know, is that essentially, in your view, then, ultimately, sort of, is it a

1 better, better proposed mitigation conditions should have, should have been
2 involved or a full blown EIS, do you have any specific thoughts on that?

3 MAHAFFIE: I, I don't think I want to answer that specifically, uh, whether
4 an EIS versus better MDNS conditions, which would be better, I, I don't think
5 that would really be my purview here.

6 REEVES: Well, I, I guess I'm asking, based on what you testified to sort
7 of, if you were in Whatcom County and this came before you, you know, I'm
8 just trying to get a basic sense of, of your, your thought. But you don't
9 need to get too specific.

10 MAHAFFIE: I, I, I feel I've tried to tailor my testimony to be specific to
11 the Critical Area questions, and some deficiencies. And some deficiencies in
12 the SEPA process related to the habitat and ecology questions.

13 REEVES: Got it.

14 MAHAFFIE: Not the greater scope of the proposal.

15 REEVES: Okay.

16 MAHAFFIE: I think that blurs the line between myself professionally and as
17 a concerned citizen.

18 REEVES: Got it. Okay. We, we can move on. I was just trying to get a, get
19 a, get a sense of things. But, uh, Mr. Loring, I'm going to hand the witness
20 back to you.

21 LORING: Thank you, Mr. Examiner. Uh, and just to follow up on that, Mr.
22 Mahaffie, uh, I, I hear you saying that you don't want to try to identify,
23 uh, exactly where this should go. But, when you talked a moment ago about
24 having testified to deficiencies, you're saying that there are deficiencies
25

1 in the analysis with regard to streams, wetlands and other environmental
2 impacts and that those deficiencies need to be, uh, rectified, is that right?

3 MAHAFFIE: That is correct.

4 LORING: So, more impact analysis needs to occur and that analysis you've
5 already testified to today?

6 MAHAFFIE: Uh, impacts and I, I would stretch to say mitigation for the
7 impacts.

8 LORING: Okay. Okay. Uh, let me go through, now, there was some questions
9 from Mr. Lynn, I might go backwards through his questions, just because it's
10 easier to flip my notebook that way. Um, he asked you about, uh, the PCAs,
11 uh, being a code requirement and you answered that, yes, there are code
12 requirements. Haven't you testified today to numerous code requirements not
13 being followed as part of this SEPA review, uh, for the gravel pit here?

14 MAHAFFIE: Yes.

15 LORING: Okay. So, the fact that something is a code requirement does not
16 necessarily mean that that code requirement will be implemented, is that
17 correct?

18 MAHAFFIE: Correct.

19 LORING: Okay. And you were asked if you were just a wetland expert and,
20 uh, I believe the questions were coming fast and furious and you said, yes.
21 But then I also heard you say something after that, what were you saying
22 after that?

23 MAHAFFIE: Uh, as, as far as the Skagit County Code Standards, I would be
24 qualified as a wetland, as well as a fish and wildlife habitat conservation
25 area author.

1 LORING: Okay. And you do have, sorry.

2 MAHAFFIE: I'm sorry, I just, in this case streams, so...

3 LORING: Thank you. And you do have expertise interpreting and applying,
4 uh, SEPA criteria to Applications?

5 MAHAFFIE: Yes.

6 LORING: Okay. You were asked, uh, numerous questions about the amount of
7 traffic that would occur and what proper threshold level is and whether
8 there's some sort of standard for the traffic on the haul road, um, your
9 testimony, though, was not about a certain amount of traffic on that road,
10 uh, but instead, you were testifying that the impacts of the traffic on the
11 road had not been analyzed, right?

12 MAHAFFIE: Correct.

13 LORING: Okay. And your testimony is that SEPA requires that analysis?

14 LYNN: I, I'm just, I'd, I'd like to interpose an objection here. This
15 is, sounds like Mr. Loring's testimony more than the...

16 LORING: That was leading. That was leading. I'll rephrase.

17 LYNN: Okay.

18 LORING: Okay. Uh, sorry, looking at you over here, Mr. Examiner. Um, let
19 me just go back to that and say that, uh, well, I actually am going to skip
20 over that. I do want to ask you, though, is it, is it your understanding that
21 the Special Use Permit criteria require an evaluation of the use and impacts
22 of use of the haul road?

23 MAHAFFIE: That would be my understanding of the permit process, yes.

24 LORING: Okay. You were asked about information about, uh, site
25 characteristics and how a person, a consultant might go about getting

1 information. And it was in the context of stream typing. Uh, are there, would
2 you ever ask, uh, a property owner for their information about stream typing
3 on the property?

4 MAHAFFIE: A large land owner, it might make it easier, yes. But I would say
5 infrequent. All of that information is publicly available, so...

6 LORING: Okay. If you...

7 MAHAFFIE: [Inaudible.]

8 LORING: Sorry.

9 MAHAFFIE: I, sorry, I would be more interested in if there was any, you
10 know, un-submitted work or, you know, reports by others or things like that.
11 That's typically what I, what I would ask a land owner for.

12 LORING: Okay. All right. Uh, if you were consulting for the landowner,
13 would you ask for them information they had about a property?

14 MAHAFFIE: Yeah.

15 LORING: Okay. Uh, you were asked if the property were mined quickly,
16 would that impact, uh, the wetland functions, uh, roughly, I may not have
17 captured that exactly, uh, do you recall that question?

18 MAHAFFIE: Yes.

19 LORING: Okay.

20 MAHAFFIE: Whether, can I clarify that a little bit for you?

21 LORING: Yes, please.

22 MAHAFFIE: Uh, I, I would consider it under the context of mitigation
23 sequencing. Mitigation sequencing getting required by the code. You know,
24 that could be a component of such, a mitigating condition for some impacts.

1 LORING: Okay. And, and, uh, have you seen any documentation for that sort
2 of mitigation sequencing, uh, in this Application for the Grip Road gravel
3 mine?

4 MAHAFFIE: I have not. No.

5 LORING: Okay. You were also asked about Skagit County and whether they're
6 ultimately the entity responsible for determining land use intensity. Uh, do
7 you remember that question?

8 MAHAFFIE: Yes.

9 LORING: And I think you responded that ultimately they were, uh, that
10 entity?

11 MAHAFFIE: Yes.

12 LORING: Is that right? Isn't, uh, well, let me ask you this, in the Code
13 that refers to land use intensity, who, what, what agency do they refer to
14 for finding the guidance that is implemented when determining what a int-,
15 land use intensity?

16 MAHAFFIE: Washington State Department of Ecology.

17 LORING: Okay. And, in fact, uh, have we been discussing a document that
18 provides that guidance for land use intensity, have been discussing that
19 today?

20 MAHAFFIE: Yeah.

21 LORING: Who would you say is the authority in our State over a land use
22 intensity for a development project?

23 MAHAFFIE: The authority, I would say is different than the guidance. The
24 authority, a signature still comes from the local jurisdiction. The best
25

1 available science that the local jurisdiction is tasked with following comes
2 from the Department of Ecology.

3 LORING: Okay. And while it's ultimately up to the County to put their
4 signature on a document, uh, they can't just arbitrarily decide what an
5 impact land use intensity, what they want it to be based on criteria that
6 aren't associated with any of the BAS, can they?

7 MAHAFFIE: I would hope not.

8 LORING: Okay. You were asked also if mining was on the list of land use
9 intensities, uh, for Skagit County, I believe. And I think you testified that
10 it was not, actually, mining was not expressly called out as one of the
11 activities when looking at the definition for low, moderate and high impact
12 land use, is that, does, is that right?

13 MAHAFFIE: That is what is in the table referred to by Critical Areas
14 Ordinance, yes. It is not specifically called out. Whether it is somewhere
15 else in Skagit Valley's Development Code, I cannot speak to.

16 LORING: Okay. Well, I just want to share my screen really quickly here so
17 we can get at the definition in the Code. And I just want you to let me know
18 if there are analogous activities under the code definition for the different
19 types of land use impacts. So, I'm going to do that here really quickly. I
20 think this should, this should be it here. Are you seeing, uh, a screen that
21 shows the Skagit County Code and some L definitions there?

22 MAHAFFIE: Yes.

23 LORING: And of the low impact land uses, moderate impact land uses and
24 high impact land uses, I'm just going to highlight that for ease of
25

1 reference. Where, where would you say the mining is most likely to land,
2 based on this definition?

3 MAHAFFIE: High, under commercial and industrial land uses.

4 LORING: Okay. All right. I'm going to stop that sharing. There. About the
5 wetland along the Samish River and I believe, uh, you were asked some
6 questions about Oscar Graham's testimony. And you were asked also whether
7 there was, uh, whether you had evidence that the wetland exists closer to the
8 mine than the location I believe where, uh, Oscar Graham had identified it,
9 uh, and I believe you said, uh, there was no data provided to show that it
10 was closer to the, uh, to the mine. Is that accurate?

11 MAHAFFIE: No data has been provided, correct.

12 LORING: Okay. And has any data been provided to show that the wetland is
13 not closer to the mine? Or has adequate data been provided to show that the
14 wetland is not closer to the mine, uh, than as, uh, described by Mr. Graham?

15 MAHAFFIE: No.

16 LORING: Okay. Is the term toe of slope a wetland edge characteristic or
17 a, or a common term of the edge of a wetland?

18 MAHAFFIE: No, it is not.

19 LORING: Okay. Uh, and you were asked whether you knew personally whether
20 the County reviewed the NES report documents, that you had testified earlier,
21 were not available to the public, um, prior to the MDNS. Uh, do you know
22 personally whether the County reviewed those documents?

23 MAHAFFIE: No, I do not know personally.

24 LORING: Okay. Did you have any communications with anybody at Skagit
25 County that suggested that they had not been reviewed?

1 MAHAFFIE: Yes. That was my impression, that they had not been reviewed.

2 LORING: Okay. What was that impression based on?

3 MAHAFFIE: That upon request of the document referred to in, so back up a
4 little bit, the impact assessment was available publicly online, uh,
5 throughout the process, since, uh, roughly the first of the year. Uh, it
6 referred to a wetland delineation document that had been prepared and that
7 was not online with the rest of the supplied documents. Uh, I asked for it,
8 uh, multiple times. The Planner, uh, Project Planner, uh, did not seem to
9 know what I was talking about and could not produce it. And it took several
10 days before he found said document.

11 LORING: Okay.

12 MAHAFFIE: Not knowing he, he did not even know what I was speaking of.

13 LORING: Okay.

14 MAHAFFIE: To be frank.

15 LORING: Okay. You were also asked about your review of, of the site, and
16 I believe the question was whether all of your review was based on papers and
17 then the conditions when you were last on the site, which was some time ago.
18 And, and you agreed, yes, that that was the case. Uh, do you believe that you
19 need to physically visit the site to determine whether the critical areas,
20 and other environmental reviews, had adequately analyzed the impacts of the
21 proposed mine?

22 MAHAFFIE: With adequate documentation, it should not be necessary, no.

23 LORING: Okay. In, in fact, doesn't, SEPA requires adequate documentation,
24 right?

25 MAHAFFIE: Yes.

1 LORING: Okay. You, uh, you were asked about how close you live to the
2 mine site, and just to, just to quickly clarify, do you believe that, uh, the
3 proximity of your residence to the mine site has affected the accuracy of
4 your, uh, expert testimony today?

5 MAHAFFIE: No.

6 LORING: Okay. Or any of your past, uh, comment letters on the project?

7 MAHAFFIE: No.

8 LORING: Okay. And then I just have a couple of questions about questions
9 that you heard from Mr. D'Avignon, uh, not too long ago here. You were asked
10 questions about that maintenance corridor and you were talking about the
11 intent of the proposal and there was a discussion about structures and, and
12 buildings. Um, based on your understanding of that maintenance corridor
13 language and the definitions, would you say that the intent was to cover
14 something like a mine that would completely alter the landscape, uh, and
15 would that be equivalent to constructing something there?

16 MAHAFFIE: I think the intent would be to provide separation between any
17 activity that might disturb the functions and values of the buffer. While
18 still affording, uh, whatever an Applicant proposed to proceed. And, and
19 function appropriately.

20 LORING: Okay. And, and a maintenance corridor doesn't mean a, a
21 completely no action zone, right, it's not a buffer?

22 MAHAFFIE: No. Typically, you know, if it's a building, you're clearing all
23 of the vegetation within that maintenance corridor. If it's a house, you
24 know, walkways, you know, decks, things of that would still be allowed, but
25 it still allows people to maintain their structures and things like that,

1 while still not disturbing the buffer vegetation. In this scenario, I, I
2 would foresee the mine activities being able to be allowed, while not
3 disturbing, uh, the functioning buffer. So you still have an area you can
4 clear the vegetation, cut down the trees for safety and things like that.

5 LORING: Okay. Uh, you discussed with Mr. D'Avignon, uh, the Appendix 8C,
6 the Department of Ecology Wetlands in Washington guidance for buffers and
7 some language about, uh, instances in which it would be appropriate to reduce
8 the high impact or high intensity buffer to a medium intensity buffer, one of
9 those, uh, I, I believe you were discussing that one of those actions would
10 be a 100 foot wide dedicated corridor to connect habitats, uh, is that right?

11 MAHAFFIE: That's one of the items listed in Appendix 8C, yes.

12 LORING: Okay. And have you seen any discussion of such a corridor as part
13 of this proposal?

14 MAHAFFIE: No discussion or display showing such, no.

15 LORING: Okay. And you haven't seen a conservation easement for such a
16 corridor as part of this proposal?

17 MAHAFFIE: No. That would, in Skagit County terms, though, that would be a
18 protected critical area or PCA easement, not necessarily a conservation
19 easement.

20 LORING: Okay. And then, last, uh, there are some examples of measures
21 that can attempt to decrease impacts to wetlands and that, those are the
22 measures that are applied, in addition to have something like a corridor, to
23 reduce from a high intensity to a medium intensity, under that, uh, Exhibit,
24 sorry, Appendix 8C. Uh, is that right, are you familiar with that table,
25 generally?

1 MAHAFFIE: Yes. Uh, there's a table with, uh, numerous items an Applicant
2 can undertake to lessen buffer or critical area impacts.

3 LORING: Okay. And does that table refer to industrial activities?

4 MAHAFFIE: I mean, I think it could, in theory.

5 LORING: Okay. But most of the actions refer to, uh, potential impacts
6 from things like residences, um...

7 MAHAFFIE: I would say, I only applied it to residential scenarios.

8 LORING: Okay.

9 MAHAFFIE: Both as a viewer and a consultant, so...

10 LORING: And there may be other scenarios, uh, but, uh, not the industrial
11 there?

12 MAHAFFIE: No.

13 LORING: Okay. Uh, just, uh, to, to wrap up, did you hear any questions on
14 cross-examination that would make you change your opinion that the impacts,
15 environmental impacts of this Application for a Grip Road gravel mine have
16 not been fully evaluated to date?

17 MAHAFFIE: No, I have not.

18 LORING: Okay. Thank you, again. I appreciate.

19 REEVES: I guess, let me just check with Mr. D'Avignon, he had a sort of
20 re-, re-cross as it were, I usually allow, I've allowed Mr. Loring a few
21 times, I just want to be fair, uh, Mr. D'Avignon, did you have any question
22 or two on this?

23 D'AVIGNON: I do not, Mr. Examiner, thank you.

24 REEVES: O-, okay. Uh, I'll come around to Mr. Ehrlichman in a moment, uh,
25 Mr. Lynn, same, same question?

1 LYNN: No questions.

2 REEVES: Okay. Mr. Ehrlichman, you had your hand up?

3 EHRLICHMAN: Uh, I just wanted to comment on the record that I have no
4 questions for this witness. My understanding is his testimony related to the
5 internal road, when they spoke of roadways, thank you.

6 REEVES: Thank you. Okay. So, Mr. Loring, I believe, then, that concludes
7 this witness, is that right?

8 LORING: Yes, that's correct.

9 REEVES: Okay. Thank you, uh, for being here and, uh, for your testimony,
10 Mr. Mahaffie. Okay. Uh, based on time, I'm guessing probably now is a good
11 time for lunch, rather than diving into the next witness. But maybe, can we
12 just telegraph where we're heading, Mr. Loring, in terms of who you plan on
13 calling when we come back?

14 LORING: Yes, we can. I'm, I'm planning to call John Day [phonetic] next.
15 He's going to talk, uh, a bit more about the, um, the context and the setting
16 in which this mine would be, uh, proposed, including the transportation
17 corridors there. Uh, and then follow-up with, uh, Brian Bowser [phonetic]
18 after him and continue along this traffic conversation. Uh, and then Phil
19 McCloud [phonetic] will provide, uh, information primarily about, uh,
20 cycling, uh, potential cycling impacts along the road. Uh, did I say Phil
21 McCloud? Uh, I'm sorry. And, uh, and then we will see what that means for,
22 uh, where we are at after those three.

23 REEVES: Okay. Uh, I think, then, with that, we'll go ahead and break for
24 lunch. Why don't we shoot to be back, let's see, oh, why don't we say, one,
25 is 1:15 enough time? Maybe not. I can go with 1:30, 1:15, any thoughts?

1 LYNN: I eat fast.

2 REEVES: Bill eats fast. Okay. I'm fine with 1:15, but, uh, Tom, did you
3 have a...

4 EHRLICHMAN: Uh, one, 1:30 would be preferable so that I can go out and get
5 something to eat, I don't have my lunch in a paper bag here unfortunately.

6 REEVES: We'll shoot for 1:25.

7 EHRLICHMAN: Sounds good. Thank you.

8 REEVES: Thanks everybody. See you in a bit.

9 LORING: Thank you.

10 [The tape ends.]

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

12 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
13 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party
14 to this action. That on May 1st, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves, that
15 took place on 9/8/22 at 11:00 a.m., regarding the above-captioned matter.

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

18 Signed at Mount Vernon, Washington, this 1st, May of 2024.

19 Janet Williamson

20 Janet Williamson