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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 9-9-22 3:00 PM
14 Appeal of Mitigated Determination of)
15 Significance by Central Samish Valley)
16 Neighbors

17 Transcription Date: May 6th, 2024

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

20 LORING: Thank you, Mr. Examiner.

21 REEVES: Okay. And I see him there. Hi, Mr. McShane, can you hear me okay?

22 LORING: We're not getting any sound there.

23 REEVES: No, no sound yet.

24 LORING: Okay. Uh, I'm still not hearing anything. Now, you're showing as
25 officially muted, but...

REEVES: So, now, maybe try to turn of-, there we go, now try it, no, that
didn't do it, did it?

LORING: No. Mic not picking it up.

1 REEVES: Mr. McShane, maybe, I would suggest as we've done before, maybe
2 unjoin and rejoin and see if that will solve the problem. Apologies. Thank
3 you everybody for your patience while we're trying to sort this out. I just,
4 for those following along at home. We had the word, uh, cyclicalality come up
5 earlier. I wanted to verify that it is a work, uh, cyclicity is apparently an
6 acceptable alternative, although in my mind, that would be a different word,
7 but that's a debate for a different day.

8 LYNN: I confess, I looked it up also after I used it, so, uh...

9 LORING: I wanted to say cyccliability [sic], but I'm not sure that is a
10 word.

11 REEVES: I'm not going to give that one to you, Mr. Loring.

12 LYNN: I think that's the capacity to be used by bicycles.

13 REEVES: There, that's a different...

14 LORING: How appropriate.

15 REEVES: Man, you really missed the boat on that one. Maybe in closing
16 arguments, Mr. Loring.

17 LORING: Certainly make note of that.

18 REEVES: Okay. And then does anyone disagree with my assessment of the tie
19 today? Uh, I think Jason wins.

20 LORING: It's a matter of taste.

21 LYNN: Yeah. I think, I think he's a clear winner in my book, but...

22 ERLICHMAN: I have to concede, although, uh, Mr. Examiner, I think in the, in
23 the interest of impartiality, perhaps you could award, uh, Kyle and me next
24 week, uh, an award. Even if it's runner up or something.

1 REEVES: For ties? Well, it depends on what tie you wear. I, you know, you
2 got to, you go to come strong on your tie game. Uh, but...

3 ERLICHMAN: I came very close to putting on my Hawaiian shirt today and I
4 thought, no, that...

5 REEVES: You, you would have...

6 ERHLICHMAN: You would have been the big time winner, uh, if that was the
7 case, so...

8 LYNN: Well, I have a monkey tie that I used to wear to City Council
9 meetings just to make myself feel better and then I found out that a City
10 Council member was aware of it and actually noticed that I was wearing it on
11 a day of a meeting, so I had to bring that practice to an end.

12 REEVES: Oh, man.

13 EHRLICHMAN: Mr. Examiner, since we're in, in limbo here, can I raise a, a
14 question about how to keep, uh, testimony confidential about school bus runs
15 on Grip Road? Um, we've, we've been, uh, in contact, um, or one of my
16 witnesses have been in contact with the school district to see if they would
17 share information on the, the bus schedules and so forth on Grip Road and not
18 surprisingly, they're saying absolutely not. You know, we'll, we'll tell a
19 parent what time we'll be at their driveway, but we're not going to put into
20 the public domain anything about our bus schedules. So, do you ever had to
21 work out a procedure where you look at something in camera or we have closed
22 testimony that isn't a live feed out there? I mean, is there a solution to
23 this problem to get that evidence in front of you?

24 REEVES: Um, it would be highly rare. Uh, I certainly would not be opposed
25 to, you know, some kind of in camera to the extent that the information is

1 solely provided to, to the Attorneys, um, but I'd be happy to hear from the
2 other Attorneys if they have thoughts on it. I, I, I think we don't need
3 great detail on why they don't want the specificity of the information, but...
4 D'AVIGNON: Uh, I would note that Hearing Examiner Rule 1.12, Subsection B,
5 um, provides that the Examiner may order that an Exhibit may be kept
6 confidential. Any such Exhibit shall not be subject to examination except as
7 the Examiner may permit.

8 REEVES: So, it sounds like that procedure would be okay.

9 EHRLICHMAN: Great. Thank you. Will pass that along and see if we can, uh...

10 REEVES: Sure.

11 EHRLICHMAN: Find something helpful. Thank you for that.

12 REEVES: Yeah. And so, it looks like Mr. McShane, hopefully, is, is able
13 to participate. Let's see if his audio...

14 LORING: [Pause] Dan, are you trying to talk over there?

15 REEVES: I guess the other option is maybe try the, just the straight
16 call-in number, recognizing, obviously, less preferable, but better than...

17 LORING: Yeah. We may be getting to that point here, yeah.

18 REEVES: So...

19 LORING: Dan, I'm, I'm going to send you the call-in number, just to make
20 sure you have it at your fingertips if you don't. And let's try that option.

21 REEVES: All right. So, for those patiently waiting, our apologies, just
22 trying to sort out tech issues. We're suggesting, Mr. McShane, if you just
23 try to use your telephone to call into the meeting as opposed to the computer
24 Teams function.

25 REEVES: We can see that Mr. McShane is on a phone, trying to call in.

1 LORING: I'm not seeing new number showing up.

2 D'AVIGNON: Did you give the new phone number? Remember that we, we timed out

3 on the original phone number and had to set up a separate meeting that first

4 day.

5 LORING: Uh, thanks, Jason. I just sent the one that's on the website, so

6 I figured that was the most recent. Yeah. Dan, is it not letting you on when

7 you try to call?

8 REEVES: Uh, Mr. Loring...

9 LORING: There's a small, tiny amount of volume.

10 REEVES: What I, what I would suggest, Mr. Loring, maybe you just try to

11 call your witness, just off real quick and try to tell him, figure out what's

12 going on. We'll...

13 LORING: Thank you.

14 REEVES: Wait here.

15 LORING: Uh, my apologies. I'll do that. Thank you.

16 REEVES: All right. That's okay. These things. We'll get there. We're so

17 close.

18 D'AVIGNON: We're just having so much fun we don't want these Hearings to

19 end.

20 REEVES: Yeah. You all can't, you can't get enough of me, clearly, is what

21 is, is the problem, so. While they're waiting, I'll point out a, a funny tie

22 story. There was a gentleman that regularly appeared in front of Division 2

23 of the Court of Appeals while I was there, uh, over the years, that matched

24 his tie to the crime that his clients, uh, was accused of. So, if he had a

25 marijuana tie, he had a mushroom tie, he had a psychedelic tie, he, you know,

1 and, and it was always, when we knew that he would be appearing, it was
2 always, like, okay, like, let's, let's go check out the tie game, it's going
3 to be amazing. So, that was, that was always entertaining.

4 LYNN: My only tie, uh, is the monkey tie, which I can now never wear
5 again, so...

6 REEVES: Actually, I expect we'll see the monkey tie next time, but, uh,
7 let's see.

8 LYNN: That's possible.

9 REEVES: I expect Mr. Ehrlichman to be wearing a Hawaiian shirt and, uh,
10 Bill Lynn to be wearing a monkey tie. Uh, Kyle, any, any luck?

11 LORING: He's going to try a different computer.

12 LORING: Um, should be, should be back with us shortly and hopefully that
13 will work. And, and I'm going to recommend, actually, a tie with a Hawaiian
14 shirt. If that doesn't set a new bar.

15 EHRLICHMAN: I'm going to, um, file a motion, probably, asking that the, after
16 the very last break of the Hearing, or during that break, we're allowed to
17 change into whatever apparel we all think appropriate and, uh...

18 REEVES: Uh...

19 LORING: Maybe some bounds on that, uh, that ruling.

20 REEVES: I, I think Mr. Loring generally has his cyclicability gear ready
21 to go underneath so that at the end of the Hearing, he can just go jump on
22 his, on his bike and, yes, I did already use the word.

23 LORING: After just our second hearing together, you already know me
24 pretty well, it appears.

1 REEVES: All right. Um, one of the more amazing feats I've seen, I saw a
2 guy ride across the little Key Peninsula bridge, park, get out in a full suit
3 and in under, I want to say under a minute and a half, he was full on, uh,
4 full on in a wetsuit with his, uh, with his, uh, what was he doing,
5 windsurfing, like, already in the water. It was, like, two minutes. I was,
6 like, that, it was, I almost caused a car accident because it was just, you
7 know, impressive to see happen, but...

8 EHRLICHMAN: Wasn't there an attorney in Seattle that used to waterski to
9 work, across Lake Washington? Strip...

10 REEVES: Bill Lynn doesn't like to talk about those days.

11 EHRLICHMAN: The olden days.

12 LYNN: No, it's not my...

13 REEVES: Probably Ted Hunter, to be honest, but [inaudible] to me, so...

14 LYNN: Yeah.

15 REEVES: Well, I, I don't want to belabor this. If, if Mr. McShane can't
16 appear today, do we have any idea if he can come back, Mr. Loring? I, I don't
17 want to waste folks' time, obviously.

18 LORING: I know. I, I'm not sure. And, and I was going to ask that same
19 thing when I had the next chance. Do, do we want to spend a little time on
20 scheduling now? Well, here he comes.

21 REEVES: Maybe even if we can't get the video, I see the...

22 LORING: Yeah.

23 REEVES: If he can try to unmute, Mr. McShane.

24 MCSHANE: I'm, I'm unmuted.

25 REEVES: Hey. There we go. I think that will work, then.

1 MCSHANE: Yeah. I, just that's the computer I use all the time and it's got
2 an older version of Microsoft and I think it messes with Teams or Teams
3 messes with it, so...

4 REEVES: Excellent. All right. Well, I think we're ready. So I'm, we're
5 envisioning your hand is up, uh, and do you swear or affirm to tell the truth
6 in the testimony you give here today?

7 MCSHANE: I do.

8 REEVES: And could you just state and spell your name for the audio
9 recording?

10 MCSHANE: It's Dan McShane [phonetic], D-a-n and McShane, M-c-S-h-a-n-e.

11 REEVES: Okay. And is the S capitalized?

12 MCSHANE: Yes. Thank you.

13 REEVES: Okay. Go ahead, Mr. Loring.

14 LORING: Thank you, Mr. Examiner. Hello, Mr. McShane, uh...

15 MCSHANE: Hi.

16 LORING: Thank you for joining us. And we'll launch right in. Uh, where do
17 you work?

18 MCSHANE: I work at Stratum Group [phonetic], uh, which is, uh,
19 headquartered in Bellingham.

20 LORING: What do you do there?

21 MCSHANE: I'm an engineering geologist. So, about 80% of the work I do
22 there is, uh, geologic hazard work. Uh, primarily, uh, landslides, channel
23 movement, earthquake hazards.

24 LORING: And as an engineering geologist, do you have training as an
25 engineer?

1 MCSHANE: No. Not specifically as an engineer. So, I don't do engineering
2 design, but I have a background that can support engineer designs, what they
3 need for either technical design or structural design.

4 LORING: Okay.

5 MCSHANE: But I don't do the design itself.

6 LORING: Okay. And you, you combine that with your, with geological, uh,
7 understanding?

8 MCSHANE: Yes.

9 LORING: Okay. How long have you worked at Stratum Group?

10 MCSHANE: Uh, Stratum Group, I, I started Stratum Group in 1997, so since
11 1997.

12 LORING: All right. Do you ever conduct reviews of slope stability in your
13 work with Stratum Group?

14 MCSHANE: Y-, very frequently, yes.

15 LORING: And, uh, have you evaluated riverbank stability?

16 MCSHANE: Yes, I have.

17 LORING: Have you done that in conjunction with any bridges along the
18 river and the bank?

19 MCSHANE: I have done some evaluation for bridges, uh, oh, probably six or
20 seven, uh, riverbank bridge abutments.

21 LORING: Okay. And, uh, just for the record, I'm going to note that your
22 resume is Exhibit A57, uh, for the Hearing Examiner and the parties if they'd
23 like to review that. But we, we aren't going to belabor that and go through
24 it. Uh, I do note, though, that you submitted a report in this matter and
25 that is Exhibit A50. Um, and so we'll be talking about some of the substance

1 of that report. I'll ask you just to confirm that you submitted your report
2 for this Hearing?

3 MCSHANE: Y-, yes, I did.

4 LORING: Okay. Let's talk about the geology of the Swede Creek, uh,
5 crossing area and as well as some foundational questions. Are you familiar
6 with, uh, Miles Sand and Gravel Proposal to mine off of Grip Road in Skagit
7 County?

8 MCSHANE: Yes. Somewhat familiar with it.

9 LORING: Okay. Have you reviewed any information about the project?

10 MCSHANE: Yeah. I, yes, I have. I, I looked at, uh, primarily, uh, the
11 geology report that was done, uh, for the proposed, uh, well, for the
12 existing road that, uh, used to be used as the haul road. And that was the
13 focus of the work I did, looked at and reviewed. I also looked at the, um, I
14 think it was the wetland report as well because it showed, uh, the road
15 layout and noted somewhere, locations of culverts and cross-culverts were
16 located.

17 LORING: Okay. And when you're referring to the report, uh, for the haul
18 road, that's a December 16th, 2021 report by Associated Earth Sciences, is
19 that right?

20 MCSHANE: Yeah. I don't remember the exact date, but, yeah, it was
21 Associated Earth Sciences, yeah.

22 LORING: Okay. And, uh, and for others tracking, that's Exhibit C10, or
23 10, that's what I've got there. Okay. Uh, so, uh, have you evaluated the
24 slope stability of the haul road in the vicinity of Swede Creek?

1 MCSHANE: I did a remote evaluation of it. So I, you know, I didn't do any
2 on the ground, uh, it was primarily, uh, done based on, uh, review of the
3 LiDAR imagery, bare earth imagery of the area where the road is located. As
4 well as, uh, the geologic map of the area that was Dragavich [phonetic] and
5 others, um, was published in maybe 1998, that notes the geology of the area.
6 Uh, it's, I've worked in that area on those terraces above Samish, the Samish
7 River, not specifically on that particular location, but I'm familiar with
8 the, the makeup of those terraces, why the terraces are there. And the
9 geologic processes that form them, um...

10 LORING: Okay.

11 MCSHANE: During the late stages of the last Ice Age, so...

12 LORING: Okay.

13 MCSHANE: And so I applied that to my evaluation, uh, uh, combined with the
14 review of the geology report that was done or the geotech report.

15 LORING: Okay. I'm going to take you into your, uh, Exhibit, share that
16 screen with all of us, and I, I'm not sure right now, are you, you're showing
17 up without a camera. Can you see on your screen what I'm sharing?

18 MCSHANE: Yes, I can. Yeah.

19 LORING: Okay.

20 MCSHANE: I'm not sure why my camera is not showing up, but it's not.

21 LORING: Uh, that's all right. I wasn't sure if it was intentional or not
22 and at this point, we're ready just to keep moving so, so we did that.

23 MCSHANE: Yeah.

24 LORING: Uh, so I have, I, do you recognize the image that I have on the
25 screen here?

1 MCSHANE: Yes, that's the LiDAR bare earth imagery that I put in the report
2 that I wrote.

3 LORING: Okay. Uh, this is the LiDAR you mentioned just a, a moment ago
4 having reviewed for the site?

5 MCSHANE: Correct.

6 LORING: Okay. And, uh, there are some notes on here, can you just take us
7 through this image and tell us what you're identifying with your arrows and
8 your notes, uh, connected to those arrows?

9 MCSHANE: Yes. So, uh, one thing I pointed out in the arrows is, uh, areas
10 that are convergent topography, uh, that's not consistent with the
11 description of the slope being planar, uh, in convergent to par for your
12 locations where, you know, ground water might get concentrated or their old
13 landslides scarps that, uh, were from past landslides that have eaten back
14 into the, into the slope. I also noted, uh...

15 LORING: Mr. McShane, let me just follow up really quickly on that.

16 MCSHANE: Yeah.

17 LORING: Used another word, you, you mentioned that that convergent
18 topography is inconsistent with a description of this site, or that area
19 being planar. And when you say, what does planar mean?

20 MCSHANE: Well, planar means that if you take, well, think of a tabletop
21 and, uh, that's a, a plane and you can have a tilted plane as well, which
22 would be a, a slope that would be even, you know, a very even slope, the same
23 slope across, you know, laterally across the slope and then up and down the
24 slope as well. So, think of tilting a table would be a planar slope.

25 LORING: Okay. Flat, would that be another word for it?

1 MCSHANE: Yeah. Flat, except it's titled, so...

2 LORING: Yeah.

3 MCSHANE: Yeah.

4 LORING: Okay.

5 MCSHANE: So, very even...

6 LORING: Even.

7 MCSHANE: Percent slope, you know, it doesn't have much change, uh, to the
8 angle of the slope over, as you walk up and down the slope or across it,
9 sideways across the slope.

10 LORING: Okay. And why were you pointing out that that convergent
11 topography was inconsistent with the description of the site as a planar?

12 MCSHANE: That was, the planar description was from the AES Geotech Report,
13 um, and I just observed that it's clear in the LiDAR imagery that there are
14 non-planar features at multiple locations in the vicinity and along the, uh,
15 haul road. Well, some of them are quite large, you know, the ones sort of on
16 the left, that there's some smaller subtle, it's a little hard to see, but in
17 the, uh, you know, right above the road and right below the road as it goes
18 up the side of a Swede Creek valley.

19 LORING: Okay. And is, are there any other, thank you for that, are there
20 any other features that you're showing in this image that we're looking at
21 here?

22 MCSHANE: Yeah. There are two others that I pointed out, um, one was the,
23 or actually three, one was the, uh, there's a dark area below the road, kind
24 of where the road curves as it goes up the valley side, down by the creek.
25 And that's pretty indicative of, uh, eroding bank, you know, where the creek

1 is eroding into the base of the slope and it's created a steep, uh, section
2 so it's a, kind of a cut back where the creek is cutting back into the slope.
3 Uh, the other features is off on the left, there's an indication of a, an old
4 landslide deposit that came down from the slope above and is resting down
5 below that's in all probability a slide deposit. And then, uh, below the
6 east/west section of the road, where it's up on top of the plateau, there's
7 an incised creek, uh, and that just means that, uh, that the creek is cutting
8 downward into the ground and so it's active erosion taking place at that
9 location.

10 LORING: Okay. And do these features have any significance for you in
11 looking at them and seeing those at this site?

12 MCSHANE: Yeah. They would, you know, if, if I had gone out to the site,
13 uh, and part of that, they, they would be features that I would want to look
14 at specifically to one, ground truth them, but also secondly to, you know,
15 get a better idea as to exactly why they're there, if they're active or not,
16 uh, how that relates to the, the road stability over the long haul, over the
17 long period of time versus, you know, you know, short-term.

18 LORING: And you mentioned the road stability, is there the possibility
19 that these features could undermine road stability in this location?

20 MCSHANE: Well, certainly the eroding, uh, stream bank below the, uh, uh,
21 road is an area where if that erosion continues, that's going to over-steepen
22 the slope and destabilize it. And so you might start to see erosion and
23 slumping and shallow landslides working their way up toward the road itself.

24 LORING: Okay.
25

1 MCSHANE: Um, and then there's some, um, you know, subtle, uh, what looks
2 like small-scale, non-planar features, that I'd want to look at as well as
3 how are they related to the stability of the road? Looks like there might be
4 some potential slumping above the road, you know, in the ditch area.

5 LORING: When you say above the road in the ditch area, wh-, which part of
6 the road are you thinking of? I, I, and by the road, are we talking about the
7 areas that look like they've been carved out a little bit? Some of those
8 flatter areas?

9 MCSHANE: Yeah. So, it's, uh, where the road is kind of cut into the slope.

10 LORING: Okay.

11 MCSHANE: And so it's created these over-steepened sections. And you can
12 sort of see that in the shading, uh, you know, if you're, I don't know how
13 good people are at reading LiDAR. Some people are really good at it and
14 others maybe not so good. But, uh, that, the, the darker shading there, in
15 the, you know, right next to the road, indicates that those areas were
16 somewhat steeper than the slope otherwise would be. So, you see the bright
17 line of the road and, but, then, just to the upslope of the road is, you
18 know, initially quite dark and that's where the road has probably been cut
19 into the slope. You see these cut banks and they're going to be susceptible
20 to sluffing and, uh, small scale, uh, slope failures.

21 LORING: Okay. Is there the pos-, excuse me [coughs] excuse me. Is there
22 the possibility that using this road could exacerbate some of these features?

23 MCSHANE: Well, the, the, the presence of the road itself has the potential
24 to exacerbate the stability of the slopes, uh, depending on how drainage is
25 being managed on the road. So, water flowing off the road in the wrong spot

1 could trigger a slide. Um, the one other factor that might play a role, you
2 know, in terms of the types of traffic on the road would be if you're in the
3 upper part of the road, that area has been mapped and it's been pretty
4 consistent from my observations of these terrace areas. So it's called
5 glacial marine drift. Which is a formation that has fractures, they're called
6 desiccation fractures, the drift, it's when it consolidated from wetting and
7 drying after the last Ice Age, it's got cracks in it. And those fractures are
8 weak zone that are potential failure locations. And that might be why there's
9 this bowl like shape, uh, areas, uh, to the west. Uh, heavy truck traffic
10 does cause vibrations that might speed up the weakening of those joints and
11 fractures in the glacier marine drift.

12 LORING: Okay. And you, you said you have reviewed that, uh, the geotech
13 report from the haul road. Did it examine those types of impacts here?

14 MCSHANE: Nowhere nearly enough, in my mind. In fact, many of the, the, the
15 items that are pointed out in this image, and it was certainly written in my
16 report, were never addressed. So, there was never a discussion or
17 observations made or, or description of the erosion that might be taking up
18 place along, uh, Swede Creek itself below the road. Uh, the incised creek was
19 never described. Uh, and, you know, that's from some sort of stream flowing
20 upstream of the road and possibly and there's a culvert I know mapped, uh,
21 there that, uh, the water is passing through in that area. Uh...

22 LORING: Okay.

23 MCSHANE: There was some mention of sluffing along the ditch line, uh, on
24 the upside of the road, but, uh, it was pretty minimal description as to how
25

1 frequent that might be and what the results might be if that, if any of the
2 cross culverts were plugged.

3 LORING: Okay. And I want to turn now to that report a little bit and
4 delve just a little deeper into the statements that were made there and, and
5 concerns that you had about them, that you wrote about in your report. So,
6 back over there, uh, and I'm still sharing that screen, um, intentionally,
7 this time. Um, and let me ask you, do you, uh, know if the authors of these
8 doc-, of this document were geologists?

9 MCSHANE: If I recall, they were, uh, it was stamped by an engineer, but,
10 uh, not a licensed geologist. There's no licensed geology stamp on the
11 report.

12 LORING: Okay. And I'll scroll down, uh, quickly to that while we're
13 looking here. Okay. So an engineer there. Uh, is that the same thing as an
14 engineering geologist?

15 MCSHANE: Uh, no. So, it, you know, if you're a PE, uh, it means you're an
16 engineer. And, uh, there is some with, I don't get into the engineering, but
17 for engineer, you're PE, you could be a structural engineer, you could be an
18 electrical engineer, you could be a hydraulic engineer, uh, and you're still
19 going to be a PE in Washington State. So, it's sometimes hard to tell what
20 your expertise might be in. Uh, uh, but, the, the, you're not a geologist,
21 so...

22 LORING: Okay. And so that's a distinction between the author here and
23 your expertise?

24 MCSHANE: Uh, correct. Yes.

1 LORING: Okay. I want to talk about a few conclusions from this report.
2 I'm going to scroll, I may not, uh, zone in on those exactly while we're
3 talking. Um, and, and just where those are, but one of the conclusions that
4 you addressed in your report was one where AES concluded that the area of
5 slope identified by the County as a geohazard exhibits relatively planar
6 features indicative of generally good overall stability. Uh, was that
7 consistent with your findings remotely using LiDAR to review that area of the
8 site?

9 MCSHANE: No. Because that's, that, that planar slope that I think they
10 were describing and limited their assessment of, if you were to go down that
11 planar slope to Swede Creek, it's clearly not planar anymore, it's being cut
12 into by the, the creek. Uh, and then on that slope, there were, at least in
13 the LiDAR, it appears that there are some small scale non-planar features.
14 So, yeah, it might be you can get away with saying it's relatively planar,
15 but there some non-planar features on the slope, just above the road and just
16 below the road as well.

17 LORING: Okay. Uh, and so did this document identify or recognize the non-
18 planar features you identified?

19 MCSHANE: No.

20 LORING: Okay. There was some testimony from Mr. Miller, the Principal
21 Engineer of this document, the other day and I, I would, um, I'm sure I'll be
22 corrected if I misstate this, but I interpreted his testimony to state that
23 he may not have been reviewing the area that you reviewed as part of your,
24 uh, geographically and physically, the area that you reviewed. And so I'm
25 going to scroll down and represent to you what I believe he studied and then

1 ask you if that may have been the reason for him reaching the conclusions he
2 did. So, here we go. I'm on, uh, an image that they put tog-, that is part of
3 this report, we're on page 11 of 13, in that C10 or that report. And there's
4 an area that is marked by, uh, a, it's encircled by a line, kind of a hatch
5 line.

6 MCSHANE: Correct.

7 LORING: Um, are you looking at that there?

8 MCSHANE: Yeah. I can see.

9 LORING: Yeah, you can see it here. Yeah. Okay.

10 MCSHANE: Yeah.

11 LORING: If, if they were focused just on that specific area, would that
12 support the conclusion that they reached, that there are relatively planar
13 features at the site?

14 MCSHANE: I think they could say that with one exception.

15 LORING: Okay.

16 MCSHANE: And that is, uh, down at the bottom of that slope, on the lower
17 right-hand side of it, uh, Swede Creek is def-, definitely appears to be
18 cutting into that slope. And that portion would not be planar and it did not
19 sound like they ever walked down there and took a look at it because it was
20 not described ever.

21 LORING: Okay.

22 MCSHANE: And, and then the other caveat being is that there's some hints
23 that there's some slightly non-planar features. So, you might get away with
24 saying, yeah, it's relatively planar, but I, I'd want to look at those, just
25 the small scale one, just because of the proximity to the road.

1 LORING: Okay. And if you did look at those, would you indicate that in
2 your report, if you had looked those on the ground?

3 MCSHANE: Oh, yeah. I definitely would have.

4 LORING: Okay. And just to follow up on that question, too. If you were to
5 look at this site, would you consider the area around the haul road that
6 you've identified in your mapping as part of the geohazard at the site?

7 MCSHANE: I might not necessarily include, you know, all of those areas as
8 geohazard, but one, one of the things you want to do if you're doing an
9 assessment of a stability of a slope is look at slopes in the immediate
10 vicinity and see how they've been behaving. You know, what do they look like
11 and so you can make a pre-, at least a projection, an empirical comparison of
12 a geologically similar slope and say, okay, there's, uh, these concave
13 features, those are on the left-hand side of the map that, uh, is before us
14 right now.

15 LORING: Uh-huh.

16 MCSHANE: Why are they there and could the same type of thing happen at
17 this location?

18 LORING: Uh-huh.

19 MCSHANE: In the future, so you have to think about the future, you can't
20 just instantaneously what it is right now. And so why are those slopes
21 concave and shaped the way they are and could that potentially happen at this
22 location as well, why or why not?

23 LORING: Would, uh, would an analysis of the, of the stability of this
24 haul road and the potential impacts of using this haul road to transport
25 gravel be complete without analyzing features like that along this slope?

1 MCSHANE: I don't think so. I don't think you could reach the, I would not
2 be comfortable reaching those conclusions without reviewing the overall
3 geology and the processes that are going on, uh, in Swede Creek and on the
4 slopes in the vicinity and what, what might be the potential issues here.

5 LORING: Okay. And you'd mentioned Swede Creek a few times and the review,
6 uh, you were testifying that they, that this report here does not evaluate
7 Swede Creek, uh, and impacts on stability, slope stability?

8 MCSHANE: Correct. And, I mean, the reason the slope is there or any of
9 these slopes that we're talking about is because of Swede Creek. That's been
10 the driving process that's formed this pretty steep-sided, uh, valley.

11 LORING: And would it be important to address that driving force to
12 understand what will happen in the future here?

13 MCSHANE: Absolutely. Yes.

14 LORING: Okay. I'm going to stop sharing the screen at this point, I think
15 we've, we've seen this, uh, we've seen yours as well. I just have a few more
16 questions for you as we go through. I do want to briefly touch on that report
17 a little bit more. Um, you've already talked about the convergent topography
18 and did this report, uh, identify any of the convergent topography that
19 you've identified and evaluate that?

20 MCSHANE: Not that I remember at all in the report.

21 LORING: Okay. And did they address the area that you've identified as
22 incised stream?

23 MCSHANE: That was never discussed.

24 LORING: Okay. And, uh, do you agree with their statement that the site
25 involves mapped presence of high-strength glacially consolidated sediments?

1 MCSHANE: No, I disagree with that. Um, the lower part of the slope has
2 been mapped as glacial til, which is high strength consolidated glacial
3 sediments. But the geological mapping that they reference and, uh, mention
4 was that the upper part of the slope was underlined by glacial marine drift.
5 Glacial marine drift was never consolidated by glacial ice. Um, if you, I,
6 the description is that the end, toward the end of the last Ice Age, as the
7 ice was thinning, this area was actually below sea level. And you had ice
8 floating on the water, melting and the sediment from that ice fell onto the
9 sea floor, as mostly silt and clay, occasionally a boulder would drop out.
10 And it never had the massive ice pressing down on it to compact it. So, it
11 was never compacted by glacial ice sitting on it. And it's subsequently been
12 uplifted so you have this glacial marine deposit that was never consolidated
13 by glacial ice.

14 LORING: And, again, how do you know that that area has that glacial
15 marine drift?

16 MCSHANE: Uh, one, it's on the Dragavich map. Uh, which is Dragavich and
17 others, I would say, I want to say it was 1989 or 1990, somewhere in there.
18 Uh, and then my own, uh, experience looking at the terraces in that area and
19 the elevation of those terraces, I've observed the glacial marine drift on
20 the upper parts of the terraces at that elevation in that area.

21 LORING: Okay. Uh, and given your opinion that, uh, they were not all
22 consolidated sediments there, does that matter?

23 MCSHANE: Yes. Because the way glacial marine drift can behave on a steep
24 slope, it has the potential to have somewhat larger scale landslides. Where,
25 you know, break back further and the reason being is that glacial marine

1 drift has these, call it desiccation fractures. Think about, you know, a mud
2 lake, as it dries up, it gets cracks in it. And the same with the glacial
3 marine drift, it has these little fracture, hairline fractures. And over
4 time, they weaken and get weaker and weaker as water slowly percolates
5 through them. And they're the potential for larger scale landslides.

6 LORING: Okay. And, and a short one, again, I think you may have answered
7 this, but would you have evaluated that at the site?

8 MCSHANE: Yes. I would have. And particularly given the concave slopes in
9 the immediate vicinity.

10 LORING: Okay. Uh, did you review the storm water mitigation language that
11 was used by the AES Report?

12 MCSHANE: I did see their language, yes.

13 LORING: W-, what was that language and what did it indicate to you?

14 MCSHANE: It was pretty general. Uh, but one, it did indicate that there is
15 a potential for sluffing of the road into the ditch. Which could potentially
16 plug the ditch. Uh, and so they recommended, you know, the ditch be cleaned
17 out, you know, culverts kept opened. Uh, you know, pretty standard stuff that
18 should typically be done. But I, I guess I generally think one should
19 consider, well, what happens when things don't go right and a culvert gets
20 plugged, what would the result be? Um, and, you know, it could happen in a,
21 just a very short order of a single storm. What's the result of that? What's
22 the consequences? Is there an impact to other properties? It's not just the
23 haul road, but and then in this case, a public resource being Swede Creek and
24 the fisheries associated with that.

25 LORING: And, in your opinion, what should have been done to address that?

1 MCSHANE: Well, one area was, um, there was no discussion about the cross-
2 culverts and where that water was being discharged. So, is that going to
3 cause any stability problems? And if a culvert plugs, what does that, is, is
4 there a, you know, a failsafe or secondary way to address that so it doesn't
5 become a, a problem for elsewhere along the road.

6 LORING: Okay. And if, if the Applicant, as part of this proceeding, were
7 to propose addressing that cross culvert, uh, would that have been something
8 that could have been reviewed as part of the MDNS issuance by Skagit County?

9 MCSHANE: I think it should have. Um, I do wonder, you know, I, I did look
10 through the files to see was there a storm water plan? Storm water drainage
11 plan? And, you know, I didn't see one and there was never one really alluded
12 to that, uh, in ref-, that I could see referenced.

13 LORING: Okay.

14 MCSHANE: Uh, given the idea a storm water plan is to protect streams or,
15 you know, water bodies, that's a pretty important missing piece.

16 LORING: Okay. If there were a storm water plan that addressed the mine
17 site itself, where the excavation is going to occur, uh, would that be useful
18 as a storm water plan for the road down here in this part of the property?

19 MCSHANE: I think it's pretty separate, very separate.

20 LORING: Okay. Uh, in your opinion, have you been able to conclude from
21 the review that you did remotely of this site, uh, using the materials that
22 you had at hand, were you able to conclude that the slope is stable?

23 MCSHANE: No, I couldn't make that conclusion. There, there wasn't enough
24 rational presented for me to be comfortable saying, yeah, I could agree with
25 that based on the information provided.

1 LORING: Okay. In evaluating whether the slopes along the haul road could
2 accommodate the gravel truck and trailer hauling, would it be important to
3 know how much traffic would occur?

4 MCSHANE: Um, I don't think it would be real important in my assessment,
5 no.

6 LORING: Okay. For your purposes?

7 MCSHANE: Yeah.

8 LORING: Okay. Okay. Uh, just a few last questions here. So, based on your
9 professional opinion, is there a significant likelihood that the haul road
10 traverses unstable slopes?

11 MCSHANE: I think there's a significant likelihood that that slope is not
12 long-term, it doesn't have long-term stability.

13 LORING: Okay. And based on your review of the Application materials, was
14 that risk fully evaluated?

15 MCSHANE: No.

16 LORING: Okay. Uh, I don't have any further questions, Mr. McShane and I
17 appreciate you spending this afternoon with us.

18 MCSHANE: Yeah. Thanks for accommodating my computer issues.

19 REEVES: Uh, Mr. Ehrlichman, am I correct in thinking nothing on this
20 particular topic?

21 ERHLICHMAN: No questions, Mr. Examiner, thank you.

22 REEVES: Thank you. Mr., uh, D'Avignon?

23 D'AVIGNON: Uh, no questions from me, Mr. Examiner.

24 REEVES: All right. And Mr. Lynn?
25

1 LYNN: Yes. Thank you. Um, good afternoon, Mr. McShane. Uh, you're
2 familiar with, uh, AES, aren't you, the firm that conducted both the original
3 geotechnical analysis and then the analysis of the haul road?
4 MCSHANE: I'm familiar with them a little bit, yeah. I've seen...
5 LYNN: Well...
6 MCSHANE: Occasional reports by them.
7 LYNN: Aren't they a pretty, uh, large, uh, firm that's been around for
8 some time?
9 MCSHANE: I think so.
10 LYNN: Okay. You just don't encounter them much in your practice?
11 MCSHANE: Uh, probably, I would say maybe seen ten reports over the years.
12 LYNN: Okay. So, uh, are you familiar with Matt Miller [phonetic], who,
13 uh, prepared the, the, uh, report regarding the haul road?
14 MCSHANE: No, I don't know Matt.
15 LYNN: Okay. So, you haven't looked at his, uh, resume, which is
16 Exhibit, uh, B84?
17 MCSHANE: No.
18 LYNN: So, uh, just to, uh, I just need to ask you if this would change
19 any of your testimony. He is a licensed engineering, uh, uh, geological
20 engineer in Oregon and has been preparing, um, uh, I'll read the description,
21 um, geotechnical investigations, uh, since 1987. Would that, uh, change any
22 of your testimony about whether or not he's qualified, uh, to submit this
23 report?
24 MCSHANE: I don't think I ever questioned his qualifications to submit the
25 report, so...

1 LYNN: Uh, you, you, uh, and maybe I'm just, maybe I misunderstood. I
2 thought you were, uh, suggesting that the, the stamp did not, uh, support
3 the, the report because it didn't involve geology.

4 MCSHANE: I was clarifying that he's not a geologist.

5 LYNN: Okay. All right. Um, so, uh, you're aware that, uh, that AES
6 representatives have been to the site and, uh, where you have conducted your
7 report based on review of the paper, is that accurate?

8 MCSHANE: Correct.

9 LYNN: Okay. Um, and you said you would want to look at these, uh,
10 features that you noted, uh, do you know whether or not AES actually looked
11 at them or do you just know they didn't discuss some of them in their report?

12 MCSHANE: They were never mentioned in the report, so I have no idea
13 whether they looked at them or not.

14 LYNN: Okay. Um, the hatched area that Mr., uh, Loring pointed out to
15 you, do you know whether that corresponds with the area to which AES was
16 directed by the County and the County's, uh, Critical Areas consultant?

17 MCSHANE: I don't know.

18 LYNN: Okay. Um, I want to talk about that inc-, would you agree that
19 the incised channel that you described, or the incised stream, is the most
20 potentially significant feature, uh, that you discussed in your letter?

21 MCSHANE: No. I wouldn't say that.

22 LYNN: Okay. Would you agree that that is, uh, the, the formation of
23 that is likely attributed to the flow of water that may have been directed by
24 a culvert, I think you indicated that the mapping suggested there was a
25 culvert, right, at that location?

1 MCSHANE: There's a culvert in the road, uh, above that, that at least as
2 far I know, based on the, uh, wetland map that was in the, or the wetland
3 report.

4 LYNN: Would you suspect that there's a causal relationship between that
5 culvert and the incised channel?

6 MCSHANE: It would be something I would look at to see if it, if that
7 culvert is playing a role and it's not just the culvert, but how the road
8 might be altering drainage. So, for example, if the road is blocking surface
9 water flow on a seasonal basis and directing it all to that culvert, versus
10 it being over a wider area, uh, then one could say, yeah, the culvert is
11 playing a role.

12 LYNN: Okay. If, if that was the case, uh, wouldn't it be fairly easy to
13 rectify that by redirecting the water or dividing it into more pipes or
14 involving energy dissipation features of some kind?

15 MCSHANE: I don't know if it's, that would be, I'm not sure it's easy,
16 having not been out on the ground there, but, that's certainly an approach
17 that could be taken to address the concentration discharge of water on that
18 slope.

19 LYNN: And, and aren't those best management practices?

20 MCSHANE: Uh, yes. I would...

21 LYNN: And if those...

22 MCSHANE: They would fit in that category, yes.

23 LYNN: Okay. And if those practices were undertaken here, could they,
24 uh, remedy what's an existing condition?

25 MCSHANE: Um, yes, it could be done.

1 LYNN: Okay. Um, are you familiar with the fact that there's a segment
2 of, uh, the haul road that is to be paved, uh, under the terms of the
3 proposal?

4 MCSHANE: Yes. My understanding that paved part would be, uh, the steeper
5 section there, but from, you know, just above the bridge across Swede Creek,
6 up to roughly where the sharp turn is at the top of the hill.

7 LYNN: And, and isn't that an area where you've expressed some concern
8 about erosion?

9 MCSHANE: Um, erosion or sluffing along the ditch, uh, would be one area
10 and then the erosion of the, from Swede Creek, at the base of the slope below
11 that area.

12 LYNN: Okay. Uh, would paving and associated storm water management
13 provide an opportunity to, uh, better control the drainage in that area?

14 MCSHANE: The drainage could be better controlled, yes.

15 LYNN: And, and wouldn't paving be an element of, uh, that would better
16 enable one to accomplish that?

17 MCSHANE: Um, I don't think paving would play a lot of role, other than if
18 it's paved, the risk of water flowing down wheel ruts on the road would be
19 reduced. And so you, that would be a positive aspect of the paving.

20 LYNN: Okay.

21 MCSHANE: But, uh, outside of that, it, it's, you still have the erosion
22 issues along the ditch and at Swede Creek. And in any culvert discharge
23 locations.

1 LYNN: R-, right. Um, so, if, if improvements had been made to the road
2 so it had a newer graded surface and the drainage facilities had been
3 maintained, would that help address some of the concerns you have expressed?

4 MCSHANE: I would like to, it, it, it could. It would depend on what would
5 actually be proposed for those drainages.

6 LYNN: Okay.

7 MCSHANE: You know, for the cross...

8 LYNN: So...

9 MCSHANE: Culverts, what are you going to do with the cross culvert water?

10 LYNN: Okay. So, uh, if the County, if the MDNS here requires
11 maintaining maintenance of the drainage in accordance with best management
12 practices, would that be a step in the right direction, in your view?

13 MCSHANE: I think they kind of said that already and it was a lack of
14 clarity in that statement. So, I, didn't mean anything to me.

15 LYNN: Because you don't...

16 MCSHANE: In terms of whether...

17 LYNN: You don't...

18 MCSHANE: They actually addressed it. Yeah.

19 LYNN: Yeah. You don't have a specific plan that you've seen, is that
20 the concern, then?

21 MCSHANE: Yeah. They, well, the only plan I've seen was the cul-, cross
22 culverts in the wetland report of where those are located. But there's, and
23 then other than the reference that they would keep the check dams clean and
24 the cul-, or the ditch dug out.

25 LYNN: So, uh...

1 MCSHANE: That's the only thing I've seen.

2 LYNN: Okay. So, if this were a new road, you'd certainly expect to see
3 a storm main-, drainage plan, wouldn't, wouldn't you?

4 MCSHANE: Yes.

5 LYNN: And, and you understand that this is an existing road conduc-,
6 uh, constructed some years ago and that the use is going to change, but the
7 basic prism of the road, the basic shape and, and drainage is not proposed to
8 be altered, except as in specific locations?

9 MCSHANE: Well, that's my understanding of what's being proposed.

10 LYNN: Right. So, this is not like a new road, is it? I mean, it's a,
11 you wouldn't expect to see the kind of storm drainage plan that one would be
12 required to submit if one were constructing a brand new road of this type?

13 MCSHANE: It gets into a policy and probably a legal determination that you
14 may be more familiar with than me. I would say that road was built as a
15 forest road and the requirements for forest roads are not the same as the
16 requirements for, uh, non-forest roads.

17 LYNN: And what if these roads were not originally constructed in the,
18 the typical forest practices sense, but were actually constructed to serve a
19 future development of the property, would that alter your conclusions at all?

20 MCSHANE: If they were org-, uh, I, I, you might have to repeat that, I
21 couldn't quite...

22 LYNN: Well, you were, uh, attempting to make a distinction between
23 forest practices roads and other roads and I'm just asking would that
24 conclusion be different if you knew that these roads were originally
25 considered, constructed to be wider than, uh, typical forest practices road

1 and were actually built to support the eventual redevelopment of the property
2 into a residential subdivision?

3 MCSHANE: I, yeah, I, I, I guess, I guess I would look at it as if that
4 were the case, I would suspect that that road has been there long enough that
5 it was built well before current storm water manual recommendations and best
6 management practices were laid out.

7 LYNN: Yeah.

8 MCSHANE: And it would not be consistent with what we would consider now
9 currently appropriate best management building of a road and drainage system.

10 LYNN: Okay. So, there's an opportunity here, isn't there, to, uh, in
11 the same manner as the, uh, as we've discussed, uh, altering the drainage by
12 the incised channel, we have that same opportunity along the road to use best
13 management practices in the maintenance of the road?

14 MCSHANE: There certainly is an opportunity.

15 LYNN: Okay. That's all I have.

16 MCSHANE: If it's, if it's proposed, yeah.

17 LYNN: Okay. All, all right. Thank you.

18 MCSHANE: You're welcome.

19 LYNN: No further questions.

20 REEVES: Okay. Uh, Mr. Loring?

21 LORING: Thank you, Mr. Examiner. I do have a few, uh, questions to follow
22 up. Uh, Mr. McShane, you were asked a moment ago if your review was just
23 based on the paper, uh, I think was how it was phrased, uh, and you answered
24 yes. Did you review anything other than, uh, paper to determine whether there
25 were slope stability issues at the site here?

1 MCSHANE: Well, I consider my own background and experience working in that
2 same geologic settings along those terraces.

3 LORING: Okay. And, uh...

4 MCSHANE: Which I mentioned before, yeah.

5 LORING: Uh, okay.

6 REEVES: And, for me, you, you did testify you reviewed LiDAR and other,
7 other data, is that maybe what you were trying to ensure I didn't get
8 confused about?

9 MCSHANE: Yeah. That, well, the fact that I only used paper kind of slipped
10 by me and I probably answered that question incorrectly. I definitely used
11 LiDAR, definitely used my experience, I used maps, I, that falls into paper,
12 I guess, computer screens, so...

13 REEVES: What paper means these days, yeah, that's a good point. But, go
14 ahead, uh, Mr. Loring.

15 LORING: I, I wasn't, I just wanted to make sure we were clear, it wasn't
16 just the report you reviewed, but independently, remote investigation. Thank
17 you.

18 MCSHANE: Yeah.

19 LORING: Uh, you were also asked whether you didn't, uh, or you were also
20 asked whether you didn't know if AES had looked at the issues, but just
21 didn't discuss them in your report. And I believe you said you didn't know,
22 is that right?

23 MCSHANE: Got put in a position where I would be having to speculate what
24 they actually looked at.

1 LORING: Yeah. If you conducted a geological hazard review at a site,
2 investigated that, would you note everything that you had investigated in
3 your report?

4 MCSHANE: Yeah. I typically put in what, you know, an observation or site-
5 specific observations. And, you know, sometimes can be pretty brief, but, you
6 know, I would mention, like, what's Swede Creek doing and describe what was
7 seen and whether that was a problem area or not. Uh, you know, what the ditch
8 looked like and specifics, any slumps that I saw, how big the slumps might be
9 in the future. So...

10 LORING: And in preparing a geologic hazard report, would you note any
11 potential instability that you observed at the site?

12 MCSHANE: Yeah. Anything that was potentially unstable or, or maybe the,
13 for example, and that's where the LiDAR, it's a, it's a really powerful tool,
14 I can't emp-, you know, any geologist will tell you that that works in the
15 slope stability field is it really causes one before you go out in the field
16 where to focus your attention. And so I would have, probably have a map very
17 similar to this and then just go point by point. I went and looked at this
18 and this is what it looks like and, and then you could reach conclusions
19 based on what, what's the underlying soil, what's the geology of that
20 location?

21 LORING: And would that be a standard practice for, uh, an engineering
22 geologist visiting a site and conducting such an investigation?

23 MCSHANE: I think it should be. Yeah.
24
25

1 LORING: And does, does that lack of, uh, reference to those types of, uh,
2 uh, potential instabilities at the site indicate to you that they weren't
3 reviewed? In the report, I should say that lack of reference.

4 MCSHANE: Yeah. I would, it, it, I certainly would be doubtful it was
5 reviewed, so...

6 LORING: Okay. And you were, uh, there was also the mention, uh, or a
7 question about whether you knew where the County had directed, uh, the review
8 into this geological hazard review into a very specific area along the slope.
9 Uh, if you were, if you were investigating a site, uh, for a client and the
10 County directed you to one area, would you limit your review to that area if
11 you noticed potential instabilities in the vicinity?

12 MCSHANE: Definitely not. And I, and that's happened in Skagit County where
13 I've looked at sites and said, well, you know, you really maybe should be
14 more worried about this instead.

15 LORING: Okay. Looking at just a few other, a few other questions you were
16 asked, I think you were asked about whether it would be easy to redirect the,
17 uh, storm water energy with some pipes. And this was in conjunction with
18 questions about the incised stream. And so my question for you about that is,
19 uh, and, well, I'll say, I'll say that I believe you answered that you
20 weren't sure if it would be easy, but it could be addressed.

21 REEVES: Hold on.

22 LORING: Let me as-...

23 REEVES: Just to...

24 LORING: Sorry.

1 REEVES: Clarify, the way you characterized it, Mr. Loring, you just said
2 sort of direct it with some pipes, my understanding was it was directing it
3 with additional storm water features, maybe you were short handing, but...

4 LORING: Uh, that's right. I think I was short handing and, and you're
5 right, that I heard pipes and other storm water features, yes.

6 REEVES: Oh, okay. Just want to be sure.

7 LORING: Yeah. Thank you.

8 REEVES: We're not limiting. Go ahead.

9 LORING: No, thank you. I want to be accurate. And, uh, so, if, the
10 question was posed to you whether, uh, that would be easy to do. And if it
11 were easy to do, would you have expected that to be part of the Application?

12 MCSHANE: Yes. I, I would. That's part of having a storm water plan.

13 LORING: Okay.

14 MCSHANE: Especially in a sensitive environment like this where you've got
15 surface water creek with fish in it and a steep...

16 LORING: Uh-huh.

17 MCSHANE: Slopes in the area.

18 LORING: And, so, would you have expected that information to come out
19 before the County issued a MDNS for the project?

20 MCSHANE: Yes, I would.

21 LORING: Okay. And I'll ask this same question and I'll ask it in summary
22 form, uh, because you were asked about other potential actions that could
23 occur at some point in the future about, uh, paving along the area and
24 whether that would address erosion, et cetera. Along with that discussion
25 about potential efforts that could happen in the future, um, with regard to

1 all of those potential actions, that haven't been identified in the record so
2 far, wouldn't you have expected those to have been part of the Application,
3 uh, before now?

4 MCSHANE: It certainly, when I looked at the report and then went through
5 the documents that were available, I didn't see those plans.

6 LORING: Okay. And you were asked about a MDNS, uh, provision about
7 maintaining drainage and whether that would address your concerns about
8 erosion, I believe that's accurate, uh, and, and I believe you responded
9 there was some ambiguity in just with the MDNS said that way. Uh, let me ask
10 you this, were there specific MDNS provisions about specific steps that would
11 be taken to address any erosion or potential instability along the haul road,
12 to your knowledge?

13 MCSHANE: I didn't see any, other than I think there was maintenance of the
14 ditch. Uh...

15 LORING: Okay.

16 MCSHANE: And then that, that was the limit of, basically, about the limit
17 of what was provided in the MDS [sic] that I saw.

18 LORING: Okay. And...

19 MCSHANE: And there were no, and I think it was mentioned, I would say
20 that, you know, best management practices, but none of the best management
21 practices have been specified. And they're very specific in the storm water
22 manual.

23 LORING: Okay. And would you characterize upgrades to the storm water
24 system or I'll leave it at that, upgrades to the storm water system, would
25 you characterize those as maintenance?

1 MCSHANE: Maintenance would be one of the best management practices. It
2 would be separate from the actual structures or items that would be put on
3 the ground.

4 LORING: Okay. So things like cleaning out, uh, cul-, uh, ditches?

5 MCSHANE: Yeah. Cleaning out cu-, ditches, uh, if you've got a culvert, uh,
6 with a catch basin, you know, making sure that's maintained.

7 LORING: Uh-huh. Okay. And then my last question for you re-, relates to
8 the question that was posed to you about whether you knew if the haul road
9 was originally created for a subdivision. Uh, and here's my question just
10 generally, do you know if the haul road has had any review, uh, by Skagit
11 County, to date?

12 MCSHANE: I'm not aware of any, no.

13 LORING: Okay. I have no further questions. And I thank you very much for
14 your time, Mr. McShane.

15 MCSHANE: You're welcome.

16 REEVES: Okay. I believe we're done with this witness? I'm getting nods.

17 MCSHANE: Okay.

18 REEVES: Look at that. Excellent. Mr. McShane, thank you. I'm glad we were
19 able to sort out, uh, getting your participation concluded. So, thank you
20 very much.

21 MCSHANE: Yeah. Well, you guys have a good rest of your day and evening.

22 REEVES: And you as well.

23 LORING: You, too.

24 REEVES: Okay.

25 MCSHANE: Goodbye.

1 REEVES: So, that, then, I believe concludes, uh, Mr. Loring's
2 presentation of witnesses.

3 LORING: It does. Yes. Central Samish Valley Neighbors rests. Or rest, I
4 guess.

5 REEVES: Sure. I, well, we're going to have some argument, I think, later,
6 is the plan. Um, at least that was my initial plan.

7 LORING: Yes.

8 REEVES: So, but, yes, in terms of witnesses, I think that's accurate. So,
9 uh, the thing I wanted to sort of move to real quick next, was just the
10 timing, uh, matter. So know that we have potentially, I think it was five
11 potential witnesses, Mr. D'Av-, D'Avignon, on behalf of the County? I know
12 the numbers have altered, but if we could just quickly touch on this?

13 D'AVIGNON: I did have that many on my witness list. I would imagine no more
14 than four, um, I think the traffic, um, can be handled with one witness. Um,
15 and, and it's possible that's not the case and we would need the five, but my
16 expectation would be that. Um, I also have Brandon Black on the witness list.
17 I was not planning on calling him. I know Mr. Ehrlichman really would like to
18 talk to him. I'm not sure if the witnesses, um, prior to the possibility of
19 Mr. Black testifying will satisfy, um, whatever information Mr. Ehrlichman is
20 looking for. But that is, uh, a possibility as well.

21 REEVES: Sure. And...

22 D'AVIGNON: I am expecting it not to take more than a day. And hopefully...

23 REEVES: Sure.

24 D'AVIGNON: Less.

1 REEVES: And, I guess, even if Mr. Black participated, my, I would assume
2 it would be a fairly brief would be my thinking, that would be the way to
3 think about that.

4 D'AVIGNON: That is correct. And I think, you know, the most time is going to
5 be devoted, um, on the critical areas stuff with, uh, Ms. Forbes [phonetic]
6 and the traffic stuff probably with, um, um, Forrest [phonetic].

7 REEVES: Forest Jones [phonetic]? Okay. Uh, and then, again, it's an
8 unusual sort of process, but, and, Mr. Ehrlichman, I certainly did not
9 require you to produce a witness list because you're not an Appellant and
10 you're not an intervener, uh, you know, you're, you're just, uh, sort of here
11 representing citizens at large, but do you have an idea, Mr. Ehrlichman, of
12 how many witnesses you were hoping to call?

13 EHRLICHMAN: Thank you, Mr. Examiner. Um, I anticipate right now that, at
14 most, I would call three witnesses. I would like to see how the questioning
15 goes with the County staff as to whether, uh, I would want to recall Mr.
16 Tilghman as my witness. Uh, that remains to be seen. Um, and, and I agree
17 with Mr. D'Avignon, it may not be necessary to call Mr. Black, uh, as part of
18 that. So, I anticipate right now three witnesses. And I do want to just
19 correct the record on one point. Um, and I know you didn't mean anything by
20 this, but the, I represent, um, a specific land owner and his, the caretaker
21 family on that land, uh, as opposed citizens at large. It's a small point,
22 but I, I just wanted to mention that.

23 REEVES: Apologies. Sorry.

24 EHRLICHMAN: No, no. No problem.

25 REEVES: Not specifically a SEPA Appellant was, was...

1 EHRlichman: Correct. Yeah. That's right.

2 REEVES: Um, sorry. Did you...

3 EHRlichman: So...

4 REEVES: Reference potentially recalling Mr. Tilghman, who was Mr.
5 Loring's expert, did I mishear that?

6 EHRlichman: That's correct. That's correct. Um, I want to see what the, uh,
7 Public Works staff have to say. I don't anticipate the need to, uh, bring Mr.
8 Tilghman back on, uh, but that is a possibility.

9 REEVES: If, I mean, if you were interested in doing that, I assume you
10 sorted that out with Mr. Tilghman, not, okay, so, we don't need to get into
11 who is paying who and how, who, how...

12 EHRlichman: Right.

13 REEVES: I just, I want to verify we're talking about the right person,
14 this isn't a County employee we're talking about, so...

15 EHRlichman: Right. Right.

16 REEVES: Okay.

17 LYNN: I, I just want to note, this is Bill Lynn, uh, I thought that the
18 reason we agreed to an expanded opportunity for Mr. Ehrlichman to examine the
19 witnesses was to avoid this very thing so that he, and he didn't have any
20 traffic experts. And he was only going to ask other people's witnesses and
21 now he's calling somebody else's witness. So, I, I think is a departure from
22 the process we agreed to. Uh, I guess we'll wait until the time it happens.
23 But I just want to note now my potential objection.

24 REEVES: Certainly understood. Um, okay. I'm just, again, trying to get a
25 sense of timing and all that. And then, Mr. Lynn, uh, any, any idea or sense,

1 uh, from you, of, of anything additional that would happen, uh, in terms of,
2 of rebuttals?

3 LYNN: Uh, I, I'm anticipating that there will be rebuttal. A lot of
4 issues have been raised, uh, I'm going to try to be as efficient as I can
5 about it and I'll try to keep everybody posted. But it's going, we're going
6 to have to recall some people.

7 REEVES: I meant witnesses, are we on the, are we talking about the same
8 thing here?

9 LYNN: Oh, yeah, I am. Yeah.

10 REEVES: Okay.

11 EHRLICHMAN: Mr. Examiner?

12 REEVES: Go head, Mr. Ehrlichman.

13 EHRLICHMAN: Thank you. Uh, I don't know if now is the appropriate time, but I
14 wanted to talk at some point here about the, um, Exhibits that are hanging
15 out there, a possible stipulation that's hanging out there and, um, I can
16 continue to, to talk to Mr. Lynn, uh, one-on-one about that, but w-, we need
17 to do some housekeeping on some of that.

18 REEVES: Yeah. I agree. So, so, just, we'll get to it in one sec. So, just
19 to be, and Jason, I'll let you, before I dive in, Jason D'Avignon?

20 D'AVIGNON: I just had some comments on timing.

21 REEVES: Yes. That's where I was going to go next, so, but go ahead.

22 D'AVIGNON: I guess, it appears to me that that Friday you mentioned, as much
23 as I dread saying it...

24 REEVES: [Inaudible.]

1 D'AVIGNON: Um, we're, it seems like we're going to need that. I don't know
2 how we're going to get through the County witnesses, Mr. Ehrlichman's
3 possible witnesses and any rebuttal witnesses, um, given our current track
4 record in a single day.

5 REEVES: Right. That...

6 D'AVIGNON: I...

7 REEVES: I think as well.

8 D'AVIGNON: One thought I do have is, um, you know, we do have a, on the
9 presentation plan arguments is moving those arguments to written arguments.

10 REEVES: Well, I certainly...

11 D'AVIGNON: And allowing kind of written closing arguments as opposed to
12 spending some time on Teams, arguing in front of our computers.

13 REEVES: No, no, and I certainly am going to, uh, want written briefs so I
14 just, I thought I made that clear a long time ago. But I, partially, in terms
15 of the arguments, I have some questions as, you know, legal, I, that I would
16 like to just, I don't plan on it taking more than maybe an hour, hour and a
17 half. Um, but I wanted to take an opportunity, with a legal team like this
18 to, to grill folks on some thoughts prior to them, then, putting their briefs
19 together. So that was the idea there. But, first, let's just...

20 D'AVIGNON: Okay.

21 REEVES: Have Mona, let's start with Mona Kellogg, uh, 'cause she will be
22 a linchpin member here.

23 LYNN: Well, I, yeah, I, I just want to comment on next Friday, I'm at
24 out of town from Wednesday of next week to I think Tuesday of the following
25 week, so...

1 REEVES: So, that...

2 LYNN: Regrettably, I would, I would, I would not be able to join you if
3 you were, which might be desirable.

4 REEVES: That is where we were going. So, that wipes out, uh, the sort of
5 two days, I guess that I had potentially set aside. So, I, what I'm hoping
6 to, what I can tell you is that moving forward, as of next week, generally
7 speaking, uh, my Wednesdays tend to be open, uh, and so, and I, as you all
8 know, Fridays tend to be open. But it sounds like, okay. So we know we're
9 coming back next Tuesday, that's been set aside.

10 LYNN: Uh-huh.

11 REEVES: And we want to find at least one additional day, um, and so, I
12 think September 21st is a Wednesday or September 23rd, which is a Friday.

13 LYNN: The 23rd would work for me. I'm not going to get back until late
14 on the 21st and, or I mean, the 20th and I don't think I'd be in a position to
15 see you all the next morning. Nothing personal.

16 EHRLICHMAN: We wouldn't, um, we'll waive any objection to Mr. Lynn not being
17 here. But, um, I'm available on the 23rd.

18 REEVES: Good joke, but you're okay on the 23rd is what you're saying, Mr.
19 Ehrlichman? Ehrlichman is fine with the Applicant not participating any
20 further, I love it. Uh, I'll deny the request, uh, but, uh, um, thank you. So
21 you're available the 23rd. And you do get a gold star for best joke of the
22 day. Uh, Jason, 23rd?

23 D'AVIGNON: Twenty-third will work.

24 REEVES: And Kyle Loring?

25 LORING: I, I can make that work.

1 REEVES: And most importantly, our Clerk, uh, Mona Kellogg, would the 23rd,
2 again, for remote, be available?

3 KELLOGG: For remote, yes.

4 REEVES: For remote, excellent. Okay. So, I'm booking it on my schedule,
5 let's, let's make sure everybody gets it booked. And why don't we say, uh,
6 you know, essentially 9:00 to 5:00, and we'll get it done, is the plan.

7 KELLOGG: Perfect.

8 REEVES: Well, perfect is a stretch. But, uh, accomplishing is the word
9 we're looking for, I think, but thank you. So...

10 LORING: Mr...

11 REEVES: We've got...

12 LORING: Mr. Examiner, just a, a slight twist on that, if we can wrap that
13 up by 4:45, at the very latest, uh...

14 REEVES: That's fine.

15 LORING: That will be helpful. I, I coach tennis and I'm already moving
16 those practices later on these days that have popped up. Um, but I can only
17 go so late.

18 REEVES: It's okay. I'm also very fit, busy and important, 4:45 is, is
19 fine. I have, you know, a modeling session I forgot about 5:00. Uh...

20 LORING: Hey, this was an obligation, I was ready in July. I just want to
21 be clear, this was an obligation I set up and I do it for the children.

22 REEVES: There you go. Uh, no, that's perfectly fine. I just wanted to go
23 a little later, than 4:00, but I think that's totally reasonable. Okay. So,
24 moving forward, um, I would also suggest Tuesday, I think we're booked 9:00
25 to 4:00, but folks are able to go a little further on Tuesday than 4:00, I'm

1 certainly able to keep it opened a little longer. Uh, start with Mona
2 Kellogg?

3 KELLOGG: I'm, I'm available.

4 REEVES: Excellent. I never make the staff go beyond 5:00 unless they
5 really desperately want me to. But what about everybody else?

6 LYNN: Yes.

7 D'AVIGNON: That should be fine.

8 LORING: Same comment. Same comment here.

9 REEVES: 4:45?

10 LORING: Yeah.

11 REEVES: Okay. Uh, excellent. So we've got those and then in terms of
12 Exhibits, what I would suggest is, uh, you know, if someone really thinks
13 they have the best notes for the Exhibit list, fine. Otherwise, I'm going to
14 put it on each individual party, uh, and suggest that you send out, you know,
15 this is what I think my Exhibit list now looks like. And then we can, uh,
16 kind of all compare when we come back, uh, first thing on Tuesday would be my
17 suggestion. I, I think it's reasonable to expect those that have suggested
18 including Exhibits know what, what those are. So, that would be my
19 suggestion. Any objection to that as a, as a ruling there? Thumbs up, thumbs
20 up. Okay.

21 D'AVIGNON: No objection.

22 REEVES: Excellent. Okay. Um..

23 D'AVIGNON: And I just, I just want to double, I think I missed the second
24 date.

25 REEVES: Oh, sorry.

1 D'AVIGNON: I probably agreed to without noticing.

2 REEVES: The second date, and, again, I'm guessing no problem if the
3 County is not there, but the thought was the 23rd, which is a Friday.

4 D'AVIGNON: What was the, I, okay, 23rd is fine. I thought there was a second
5 day?

6 REEVES: We didn't, do, do you think we need, so right now we come back
7 the 13th, next Tuesday, and you think one more day after?

8 D'AVIGNON: I would move for a ruling that we cannot have any more days.

9 REEVES: Fine with me.

10 D'AVIGNON: I, I, I'm really hoping we can get it done. I just want to make
11 sure I didn't miss anything.

12 REEVES: Okay. Yeah. No, so, the, the hope, according to you, is we get
13 through, essentially, the County's presentation next week. Uh...

14 D'AVIGNON: Yeah.

15 REEVES: And, and that last day, well, okay. I don't want to pre-emptively
16 rule, especially 'cause this thing has been going on as lo-, I mean, not
17 going on with me, I'm saying, I, you know, if, if, let's, let's come back
18 around on Tuesday and see where we're at, would be my suggestion.

19 D'AVIGNON: I agree.

20 REEVES: Mr. Ehrlichman.

21 EHRLICHMAN: Thank you. And in, in regards to that timing, I think we all want
22 to finish, but I, I do foresee a problem that perhaps we could talk about for
23 a minute, which is that the Applicant, as I understand it, Mr. Lynn, is going
24 to bring forward new testimony and evidence concerning the auto-turn analysis
25 on Grip Road. It appears to be coming in at the tail end of this Hearing

1 where there may or may not be an opportunity for other parties to the
2 proceeding to review it and comment on it or have witness testimony regarding
3 it. And I, I don't yet understand the implications of that. But I'm a little
4 concerned that we could end up spinning our wheels, time-wise, around that.
5 So, I'd love to hear other people's thoughts on that?

6 REEVES: Bill Lynn?

7 LYNN: I can clarify, uh, if you want, it's in the nature of an offer of
8 proof, I guess, what the testimony will be that while the truck that was the
9 drawing that was submitted doesn't look like a Miles truck, we have another
10 drawing of the Miles' truck and the configuration is the same for purposes of
11 auto-turn. So, it will just be Gary Norris clarifying that he, in fact, used
12 a vehicle that corresponds with what Miles proposes. So, it could be pretty
13 quick. I can send you the drawing in the meantime, uh, if you've got some
14 other way to verify it. Um, but, that's, that's, it will be that limited. And
15 I'm happy to give you the drawing in advance.

16 EHRLICHMAN: Well, I, I, I certainly appreciate that's one issue, but we
17 haven't seen the analysis to even get into the question of whether you used
18 the right truck or not. Our issue is whether the auto-turn analysis of Grip
19 Road identified improvements that are needed, other than the two that your
20 client has mentioned. And if not, why not? And that line of questioning could
21 go on if we, uh, don't have some understanding about what's being presented
22 and what it means. And I'm just in the dark a bit.

23 LYNN: Well, uh, uh, I'm sorry. I mean, Mr. Norris has offered his
24 testimony that there is an auto-turn analysis that shows how a truck tracks
25 through the curves and that the Applicant intends to make the, uh,

1 improvements to, uh, assure that it has the opportunity to stay within its
2 lane.

3 REEVES: Is this back to the Meta data that Mr. Ehrlichman wants the Meta
4 data? I'm, I'm trying...

5 EHRLICHMAN: No.

6 REEVES: To understand what the problem is?

7 EHRLICHMAN: It's, it's...

8 LYNN: Go ahead.

9 EHRLICHMAN: My, are you asking me?

10 REEVES: Yeah. Well, yes.

11 EHRLICHMAN: Yeah.

12 REEVES: I...

13 EHRLICHMAN: No, my, my concern is not at all about getting in and examining
14 the AutoCAD file, my concern is that, number one, Public Works hasn't had an
15 opportunity to assess, in light of all the testimony here, whether that's an
16 adequate mitigation proposal. My second concern is whether my clients feel
17 that it's adequate and presents all the mitigation that's needed. And I
18 guess, the third would be whether other experts, Mr. Tilghman, uh, view the
19 auto-turn, uh, conclusion as a sound conclusion. I, I appreciate that they're
20 offering, you know, additional mitigation, so that's great. But the, but I
21 think it's being presented as Mr. Norris' expert opinion that that's all
22 that's required. And that's a different issue.

23 REEVES: Well, I mean...

24 D'AVIGNON: Can I make a, a point?
25

1 REEVES: I was going, yes. At first, I was going to say, I think we'll
2 hear from Public Works and one can, we'll be able to ask Public Works. But go
3 ahead, Mr. D'Avignon?

4 D'AVIGNON: I mean, it, it strikes me that if this evidence is not provided,
5 that's Mr. Lynn's decision, you know, he has the burden on the Special Use
6 Permit, um, establishing and, you know, that it should be issued. And I guess
7 the, the absence of the evidence would play into that analysis and Mr.
8 Ehrlichman can certainly make an argument that it's unnecessary, uh, any
9 other party can make that argument. But, uh, I don't know that it needs to be
10 required. But it seems very, like a very technical bit of information that...

11 REEVES: Sure. I...

12 D'AVIGNON: Making a lot out of nothing.

13 EHRLICHMAN: Well, I, I don't know what more to say. I, I think there is the,
14 um, the purpose of the Hearing is to question the experts on their
15 conclusions. And certainly the Applicant's prerogative as to what mitigation
16 to propose and I agree, we can argue it's, it's not enough. But the, as I
17 said, I, I believe Mr. Norris is going to testify that it is enough, that
18 they did the analysis on the rest of Grip Road and I, you know, would want to
19 ask him what that analysis was and how it was, what conclusions they reached
20 and why they reached those conclusions.

21 REEVES: But then you, wait, you're saying you want to cross examine Mr.
22 Norris about, we did this already, did we not?

23 EHRLICHMAN: Not after he did his auto-turn analysis, that I'm aware of,
24 because we haven't, we haven't seen it.

1 LYNN: Yeah. He, I think, to clarify, he has, he had completed it, he
2 just...

3 REEVES: Right.

4 LYNN: Hadn't finalized it in a form that you could see.

5 REEVES: Right. He testified about it and we had cross-examination, we
6 just didn't have the, the, the AutoCAD files and the Meta data.

7 EHRLICHMAN: We didn't, we didn't have an opportunity to question him about
8 the analysis he did under auto-turn because Mr. Lynn objected that it wasn't
9 in front of us. And the Examiner, I believe, ruled that the, we would deal
10 with that later, once it was produced.

11 LYNN: I, I don't think I objected to the...

12 REEVES: I, my recollection is different. But, Mr. Loring, you have any,
13 you got...

14 LORING: I, I was just going to say that we, uh, we objected, uh, on the,
15 on the grounds that this was new material and new material after the fact.
16 Uh, then, Mr., uh, Norris was still allowed to testify to it. It is true that
17 at this point we haven't, basically haven't been able to check the work, I
18 think is, that's what I'm hearing Mr. Ehrlichman say. And he...

19 REEVES: And...

20 LORING: Did request the document. Our objection has been on the table
21 because this is again, you know, late SEPA documentation.

22 REEVES: Well, I, I guess, in my mind, if, again, if this comes down to
23 whether the work, someone should be able to check the work, I would, I would
24 ultimately, you know, be comfortable with, you know, the data being provided
25 if a party has an expert that wants to look at it and then they can produce

1 something. But I, I, I'm not comfortable with a bunch of Attorneys, uh,
2 wanting to question engineering data. I, I don't want to go back to a deep
3 analysis on how, how do statistics work in the world. I'd rather...

4 EHRLICHMAN: Right.

5 REEVES: Do that, so...

6 EHRLICHMAN: May I make a suggestion, Mr. Examiner?

7 REEVES: Please.

8 EHRLICHMAN: I, I, I hear what, what you're saying. Uh, it, it's really hard
9 to really even know what position to take until we see it. I guess I'd like
10 to hear Mr. Norris' testimony and reserve, uh, you know, a request to bring
11 on a witness after that. Um...

12 REEVES: You can always request to do something, obviously.

13 EHRLICHMAN: Yeah. I, I just don't know what it is and what he's going to
14 testify to and it hasn't been disclosed. So, you know, it's tough to tell you
15 exactly what it is I'm going to ask him and what we're going to do in terms
16 of rebuttal. So, why don't we see what he presents? I was hoping Mr. Lynn
17 might have something sooner than now, but my concern is it comes in at the
18 tail end and we don't have any input or review of County staff. But that's my
19 argument in the case, so we'll go, go with that.

20 LYNN: Uh, uh, and I, apologize, I'm not trying to hide anything. We've
21 been kind of pre-occupied, uh, and I think it's going to look like those
22 pages in the TIA where the auto-turn output for the Prairie turns was, it's
23 two sheets of paper that show, uh, lines of travel. I don't think it's, I
24 don't think it's more than that, so...

1 REEVES: Well, let's, let's come back on Tuesday and see where we're at,
2 is my suggestion on that particular issue.

3 EHRLICHMAN: One final, uh, point if I could, on a...

4 REEVES: Yeah.

5 EHRLICHMAN: Different topic? Uh, we, we heard some testimony in, again,
6 today, about the traffic numbers, we're going to have the County staff on
7 where the numbers are important to their testimony, uh, I prepared a
8 stipulation and circulated it to the parties, I signed it after getting
9 comments. I, I would just like to know yes or no, it doesn't matter, but are
10 the County and, and the Applicant, um, and the Appellant wanting to enter
11 into a stipulation and if so, are we in the ballpark or are we, are we not
12 going to get there? I think it would be helpful to the proceeding if we can.

13 LYNN: Uh, the answer from the Applicant's standpoint is only that I
14 have not, I have looked at it, I have not had a chance to talk to the Miles'
15 people about it. I will, uh, maybe even this evening and I'll try to get back
16 to you as soon as I can, even if it's over the weekend. I have, I'm certainly
17 love to stipulate to anything that would, um, you know, reduce the number of
18 matters in dispute.

19 EHRLICHMAN: I think the extent that you could do that before the County
20 Public Work staff come on, um, that would be very, very helpful.

21 LYNN: Yes, I, I agree. I'm, I'm sure we can either do that or respond.
22 I think there's a tiny, there's a small issue about the calculation that Mr.
23 D'-, D'Avignon has brought up and, um, that's, I think, the focus, but...

24 EHRLICHMAN: Okay.

25 LYNN: I'll get back to you.

1 EHRlichman: Thank you.

2 REEVES: And I think that was for everybody. So, Jason D'Avignon?

3 D'AVIGNON: Yeah. There is, I think, one issue that I, I have concerns about
4 that Bill referenced, but I, as to whether or not the 30, I forget if it was
5 trucks to trips was the term used and whether that includes the loaded and
6 unloaded. I'm would stipulate right this very moment, that that is truck
7 trips, that included loaded and unloaded, thus 15 loaded, 15 unloaded per
8 hour, at the worst case, maximum.

9 EHRlichman: Uh-huh.

10 D'AVIGNON: That is the proper understanding of what is written in the MDNS.

11 EHRlichman: Uh-huh. And I think the document I signed and sent to you says
12 that explicitly.

13 D'AVIGNON: It, it does say that, it says some other things that I, I think
14 maybe are unnecessary, but I think we can work that out, um..

15 EHRlichman: All right.

16 D'AVIGNON: At another time.

17 EHRlichman: Thank you.

18 REEVES: Mr. Loring?

19 LORING: Uh, I'll, I'll say that, on this one, I'm looking at others who
20 might have more objection, initially, um, but I, I don't necessarily have an
21 objection to it, uh, well, I don't, I don't have an objection to the
22 stipulation as written.

23 REEVES: Okay. So, I'll, again, I haven't seen this, you know, I can tell
24 you, I have no objection to the concept of a stipulation that somehow makes
25 my life easier in the long run. So, you know, uh, that sounds good to me. Um,

1 all right. So, with that, uh, were there oth-, so, we've got a little extra
2 time next week, we've set aside a whole other day, uh, on the 23rd. I just
3 want to, are there other things we should address or deal with? I, I don't
4 think we're going to get another witness in here. So, I, I, I don't want to
5 waste time either, but, uh, was there anything else, um, I'll start, I guess,
6 Mr. Loring, anything you wanted me to deal with?

7 LORING: Uh, no, I don't have anything before we resume next Tuesday.
8 Thank you.

9 REEVES: Okay. Mr., uh, D'Avignon?

10 D'AVIGNON: I have nothing, Mr. Examiner. Thank you. I hope you have a great
11 weekend.

12 REEVES: Thank you. Mr. Ehrlichman?

13 EHRLICHMAN: Same here. Have a great weekend, everybody.

14 REEVES: Mr. Lynn?

15 LYNN: Nothing from me. Thank you.

16 REEVES: Excellent. So, the plan, 9:00 a.m. Tuesday. Uh, and then if,
17 again, the County wants to update or provide notice to the public at large
18 somehow, uh, the other day we have set aside would be the 23rd, uh, which is
19 also a Friday because the joy of all getting together Friday, uh, there's,
20 uh, let's see, Bill Lynn agreed to wear a monkey tie, I believe Tuesday, Tom
21 Ehrlichman, a Hawaiian shirt, uh, Jason D'Avignon wins, uh, on the tie today.
22 Uh, Ehrlichman got a gold star on his jokes. And, uh, I think that covers
23 everything. So...

24 EHRLICHMAN: Thank you.

1 REEVES: I know it's quite a long proceeding, I know, I, myself can get a
2 little, uh, uh, snarky at times, and I apologize. It's, it's, uh, it is what
3 it is. But I appreciate everyone, uh, truly being, uh, professional and
4 patient, uh, with all of ourselves. And we'll be back Tuesday and I hope
5 everyone enjoys our first, uh, full weekend of football, so...

6 EHRLICHMAN: All right.

7 REEVES: With, with that, we'll conclude our meeting today. Thank you
8 everybody.

9 LORING: Thanks.

10 D'AVIGNON: Have a good one.

11 LORING: Take care.

12 REEVES: That monkey tie.

13 [The tape ends.]

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

15 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
16 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party
17 to this action. That on May 6th, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves, that
18 took place on 9/9/22 at 1:00 p.m., regarding the above-captioned matter.

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

21 Signed at Mount Vernon, Washington, this 6th, May of 2024.

22 Janet Williamson

23 Janet Williamson