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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
Concrete Nor'West/Miles Sand and)
Gravel,)
11 and) PERMIT HEARING 9-13-22 3:00 PM
Appeal of Mitigated Determination of)
12 Significance by Central Samish Valley)
Neighbors)
13

14 Transcription Date: May 10th, 2024

15 Present: Andrew Reeves, Mona Kellogg, Kyle Loring, Forrest Jones, Tom
16 Ehrlichman, Jason D'Avignon, Bill Lynn, Kevin Cricchio

17 REEVES: Okay. Mona Kellogg, are we ready to go?

18 KELLOGG: Yes.

19 REEVES: Great. Thank you very much. Okay. And I see Forrest Jones. So,
20 Mr. Loring, are you ready to proceed with cross-examination?

21 LORING: I am, Mr. Reeves, uh, Mr. Examiner. Thank you.

22 REEVES: And, sorry, actually, I'm, I was going to ask a question or two
23 before sending it back to you, before I forgot. So, I'm going to do that.

24 LORING: All yours.
25

1 REEVES: Thank you. Mr. Jones, um, for my own sake, Mr. D'Avignon earlier
2 asked you sort of what is a shoulder and I just wanted clarification in terms
3 of shoulder defined in the law, we sort of use the word term of art or is it
4 a defined term, either in the, the Skagit County Code or in the Road Manual
5 or you, when you say what is a shoulder, is your answer more that, just that
6 is what it is, sort of in common understanding? Can you just clarify that for
7 me?

8 JONES: Um, yeah. I don't know if it's defined in State law or anything
9 like that. I know, uh, when dealing with the County Road Administration
10 Board, um, so, we get, uh, gas tax money, uh, based off of a width of a cross
11 section being, being the pavement width and shoulder width and what type,
12 type of shoulder it is and what type of pavement it is. So, basically as
13 defined by the County Road Administration Board when we enter that data into
14 our road log.

15 REEVES: And...

16 JONES: We have the option of saying, okay, it's a gravel shoulder, uh,
17 earthen shoulder or a paved shoulder, so...

18 REEVES: Got it. And, and, I guess, just to further clarify, often you all
19 have, you know, easements or, or just general right-of-way that is owned by
20 the jurisdiction, you know, to be clear, when you're talking about a
21 shoulder, it's not as simple as we know the road itself is 18 feet, the
22 right-of-way is, is, you know, let's say 40, you're not saying 40 minus 18
23 means that the shoulder is what's left on each side, that's not what you
24 mean, am I...

25 JONES: No, no.

1 REEVES: I'm not trying to put words in your mouth, I just...

2 JONES: Yeah.

3 REEVES: Can you clarify?

4 JONES: Yeah. No, we, uh, right, right-of-way, uh, I would call it a

5 cross road cross section. So, the road cross section is a travel lane and the

6 shoulder. Anything beyond that is, like you said, just right-of-way. We do

7 not...

8 REEVES: Sure.

9 JONES: Count that as a shoulder.

10 REEVES: Okay. So, when you're using the term shoulder, you mean it's

11 something I, even as a non-expert, you know, I could go out there and go,

12 okay, there's the white stripe where the road ends and whatever that section

13 is over here, that's gravel or, or paved, you know, it's, it's a clearly...

14 JONES: Yeah.

15 REEVES: Maybe not clearly, but somewhat identified sort of transition

16 between the road and, uh, whatever, you know, the, the forest, somewhere

17 else, or whatever the feature is somewhere else, is that kind of an accurate

18 understanding?

19 JONES: Yes. That is correct.

20 REEVES: Okay. And then, just one other question because I think it

21 happened, you were talking about it right when we were having some audio

22 issues, in terms of the, uh, what the TIA addressed, beyond what often would

23 be addressed with a Level 1, I swear I heard the term bicycle, but the things

24 cut off. And I'm sure Mr. Loring will have questions, but, do, in your

25 understanding, did the TIA address bicycles at all?

1 JONES: It didn't per se, address bicycle traffic other, other than to
2 say that there, there are no, there were no known bicycle routes, pedestrian
3 uses, I believe, was the term.

4 REEVES: Sorry, okay. To, just to be clear on that, so you're saying the
5 TIA the analysis related to bicycles was limited to the extent of determining
6 there's no specific or specified bicycle route. Is that an accurate
7 assessment?

8 JONES: Yes.

9 REEVES: Okay. Great. Thank you for clarifying. And with that, I'm now
10 going to hand you to Mr. Loring for cross-exam.

11 LORING: Thank you, Mr. Examiner. And, uh, good afternoon, Mr. Jones.

12 JONES: Good afternoon.

13 LORING: I've got a few questions. I'm going to start by following up on
14 the topics you just discussed with the, uh, Examiner, Hearing Examiner here
15 and then I'll go back through my, uh, notes and pit it up from the top.

16 JONES: Okay.

17 LORING: So, I want to, yeah, sorry. Yeah. Thanks. Uh, I want to start by
18 discussing that shoulder again and I don't know that we need to delve into
19 this too much, but the County does have a definition for a shoulder, right?

20 JONES: Yeah. Pretty much what I just said, so...

21 LORING: Okay. Okay. Actually, let's pull up the Road Standards. And this
22 is one, I'm not sure if we've actually had this, I, I know we discussed it
23 being an Exhibit, I don't know if we assigned a number to it, at this point.

24 D'AVIGNON: If I, if I may jump in, I thought we just took Official Note of
25 them...

1 LORING: Okay.

2 D'AVIGNON: As County Standards.

3 LYNN: And the Table of Contents appears in my Exhibit 47.

4 LORING: Right. Okay. Mr. Jones, do you have, do you have access to those

5 Roads Standards that you can pull up in front of you there?

6 JONES: I do.

7 LORING: Okay. I, I thought you might. Can you, uh, scroll to Page 8 in

8 the County Road Standards? And I'm looking at that May 26th, 2000 version. Is

9 that the version that you use?

10 JONES: Yes.

11 LORING: Okay. And just let me know when you're on Page 8.

12 REEVES: And just...

13 JONES: All right. I am on.

14 LORING: Okay. In the document, not the PDF.

15 REEVES: And maybe to make life easier in the future, can we maybe just

16 make this an Exhibit, I know it's something I took Official Notice of, but

17 can we maybe make this A62?

18 LORING: Uh, A61 would be great, unless we, do you have an A61 already,

19 you're right, A62.

20 REEVES: Okay.

21 LORING: We did just add, yeah.

22 REEVES: Any objection? If so, please raise your hand, any of the

23 Attorneys, but I think we're good. Okay. Sorry, go ahead. So, A62 is going to

24 be...

25 LORING: Great.

1 REEVES: Road Standards.

2 LORING: Thank you for that. And Mr. Jones, do you see where it, uh,
3 actually has a definition of shoulder there?

4 JONES: Yes, I do.

5 LORING: And what, can you explain to us what it, what that definition is?

6 JONES: Uh, that portion of a roadway contiguous with the travel way for
7 accommodating stopped vehicle for emergency use and for lateral support of
8 base and surface courses.

9 LORING: Okay. And in discussing a shoulder, actually, we'll get back to
10 that in just a second. I know, I, I think this is a quick follow-up on the
11 bicycle question, I understood your answer to the Hearing Examiner just now
12 to say that the TIA did not address bicycle use, per se, along the haul
13 route, uh, other than to state that there were no known bike routes?

14 JONES: That is my recollection, yes.

15 LORING: Okay. And you're not saying the bicycles don't use Grip Road or
16 Prairie Road, right?

17 JONES: No, not at all.

18 LORING: Okay. And you haven't independently confirmed whether the, there
19 are bicycle routes on any portion of the, uh, potential haul route?

20 JONES: I have not.

21 LORING: Okay. All right. I'm heading back to the beginning of your
22 testimony, take us back here a little ways and we will, uh, take it from the
23 top with your conversation with Mr. D'Avignon. Uh, I just want to clar-,
24 there was a lot of conversation about the amount of trips per hour, uh, that
25 could be associated with this mine. Um, you're aware that the MDNS allows up

1 to, at least 30 trips per h-, or, no, up to 30 trips per hour in that
2 extended use scenario, right?

3 JONES: Correct.

4 LORING: Okay. And so when you were talking about delays in the Level of
5 Service in your conversation with Mr. D'Avignon, you weren't talking about
6 Level of Service delays based on 30 trips per hour, were you?

7 JONES: Uh, no.

8 LORING: All right. That was based on that 46 trips per day average?

9 JONES: Correct.

10 LORING: Okay. There was also discussion about that 30 trips per hour
11 being called a worst case scenario. Does the tr-, the Traffic Impact Analysis
12 doesn't identify it as a worst case scenario, does it?

13 JONES: Uh, I don't recollect what it says, but...

14 LORING: Okay.

15 JONES: To be honest with you. Yeah.

16 LORING: That's, that's fine. It, it references it more as an extended
17 hours scenario number as it's discussing the truck traffic that could occur
18 here?

19 JONES: Okay.

20 LORING: Okay. You talked a little bit about the Level 2 Traffic Impact
21 Analysis and that it, in your opinion, it wasn't triggered because, uh, there
22 were not 50 peak hour trips?

23 JONES: Correct.

1 LORING: Um, okay. And is it, it's, you're not suggesting that a truck and
2 pup doesn't function like two vehicles as it passed through an intersection,
3 though, are you?

4 JONES: No.

5 LORING: Okay. And, in fact, that's, it, did you hear Mr. Tilghman's
6 discussion about the truck and pup functioning like two vehicles and that's
7 why he said that there were other Standards that are used as guidance that do
8 treat them as two vehicles.

9 JONES: I did hear that testimony.

10 LORING: And is that your, uh, consistent with your understanding of one
11 way to evaluate the impacts of a truck and pup, uh, going through an
12 intersection?

13 JONES: Yes. It could be evaluated that way.

14 LORING: Okay. Uh, there was also a conversation about, uh, whether the
15 County was required to evaluate, uh, you know, far off hypotheticals, for
16 example, um, the, the use of a pup and truck, I'm assuming, wouldn't be
17 considered a far off hypothetical in this instance, right?

18 JONES: Yes.

19 LORING: Okay. And the possibility of a truck and pup encountering
20 bicycles wouldn't be considered a far off hypothetical, along Prairie and
21 Grip Roads?

22 JONES: No, it would not.

23 LORING: Okay. Um, or school buses, as we heard from Mr. Ehrlichman,
24 that's not a far off hypothetical that truck and pup could encounter those
25 vehicles on the route?

1 JONES: Correct.

2 LORING: Okay. You testified a little bit about the, uh, the bank cutting
3 that occurred at that intersection with Prairie and Grip Roads and I believe
4 that you mentioned that the County had cut up to the right-of-way, um...

5 JONES: Yeah. They...

6 LORING: Is that ac-, yeah, go ahead.

7 JONES: Yeah. I wouldn't say right at the right-of-way line, um, I mean,
8 anywhere from two to three feet up to the right-of-way line.

9 LORING: And is that, that's based on a survey of the right-of-way there?

10 JONES: Yes, it was.

11 LORING: Okay.

12 REEVES: Sorry...

13 LORING: And did...

14 REEVES: Sorry, Mr. Loring. Just so I don't get lost again on that issue,
15 when you say the right-of-way line, am I correct in thinking you're saying
16 the right-of-way to...

17 LORING: Towards the bank.

18 REEVES: The edge, the edge of the right-of-way off the road, is that an
19 accurate assessment?

20 JONES: Yes.

21 LORING: Okay. Thank you. Sorry. Just want to make sure I didn't miss it.

22 JONES: No problem.

23 LORING: Okay. Uh, the County purchases right-of-way on occasion, doesn't
24 it?

25 JONES: Uh, yes, when needed for a road project. We often...

1 LORING: Okay.

2 JONES: Purchase right-of-way.

3 LORING: Okay. There was, uh, I believe a statement about, this may have

4 actually been from your lawyer, but I just want to clarify, a statement about

5 teenagers using Prairie and Grip Roads as, uh, drag strips. There's no

6 evidence that that's occurring on those roads, right?

7 JONES: Not to my knowledge.

8 LORING: Okay. I'm not suggesting you're spending your Friday nights at,

9 uh, Prairie and Grip Roads.

10 JONES: Okay.

11 LORING: Just want, want to make sure we're on the same page. Uh, you

12 just, you also talked about why haul route was not prescribed here. Uh, and

13 you talked about different eventualities and different ways that the gravel

14 could be hauled from the site. Uh, you mentioned that you looked at the

15 numbers and they were numbers like 5% heading east on, uh, Grip Road and 5%

16 potentially going down F and S Grade Road. There's no limitation on the

17 travel, uh, on the gravel hauling to a 5% limitation on those routes, is

18 there?

19 JONES: No, there's not.

20 LORING: Okay. And, at this point, there's no limitation, uh, in the MDNS,

21 I should say, on where that gravel gets hauled from the site, is there?

22 JONES: Uh, not to my knowledge.

23 LORING: Okay. And you are familiar with all of the travel conditions in

24 the MDNS?

25 JONES: Yes.

1 LORING: Okay. Also, there was a conversation about whether the trucks
2 would need to travel to the Bellville Pit via I-5 if they were overweight,
3 uh, and so couldn't travel on the bridge on Old Highway 99.

4 JONES: Yes.

5 LORING: Uh, and I believe you...

6 JONES: Yes.

7 LORING: Oh, okay. Thank you. And, and I believe you said that was a
8 condition, uh, and that that was a requirement of the MDNS?

9 JONES: Yes.

10 LORING: Okay. Sorry, sometimes it's not clear if I'm asking a question or
11 of I'm at the end of a question. I, I appreciate you bearing with me on that,
12 I, I acknowledge that. Um, but, uh, the trucks could travel via F and S Grade
13 Road and still avoid Old Highway 99 and the bridge there, couldn't they?

14 JONES: Uh, yes, there is the potential for that.

15 LORING: Okay. And, again, there's on limitation that would prevent a
16 certain number of trucks, up to 30 per hour, traveling that route to get to
17 the Bellville pit?

18 JONES: Correct.

19 LORING: Okay. Uh, you talked quite a bit about potential extended hours
20 operations. And you compared to, uh, say the Tulip Festival and using that as
21 sort of an event type, uh, activity that is reviewed for, for, uh, traffic
22 issues. Um, you, you're not suggesting that the extended hours, hours
23 scenario in the MDNS would function like the Tulip Festival, are you?

1 JONES: No. I just used that as an ex-, as, uh, an extreme just to say,
2 hey, you know, this doesn't happen every day. When it does, we look at it
3 and...

4 LORING: Okay.

5 JONES: Take the appropriate, uh, things like adding signing, traffic
6 control, whatever, whatever is needed.

7 LORING: Uh-huh. And you p-, do you have a suite of options that you can
8 apply based on, uh, different circumstances that arise like that?

9 JONES: I'm not quite sure what you're asking, so...

10 LORING: Sure. In something like, uh, well, when an event arises and the
11 County needs to try to manage traffic associated with that, do you have a
12 different suite of options, different tools that you would apply?

13 JONES: Yeah.

14 LORING: To try to decrease potential impacts of that action?

15 JONES: Yes.

16 LORING: Okay. Um, do you have policies that apply as well?

17 JONES: Um, I do not know of any policies.

18 LORING: Okay.

19 JONES: For that, no.

20 LORING: Okay. And as part of the process of reviewing the Grip Road
21 gravel mine, the County hasn't identified any of the potential tools that it
22 would apply in the extent of an extended hours scenario, has it?

23 JONES: No, we have not.
24
25

1 LORING: Okay. And hasn't provided any sort of decision making tree or
2 mechanism that could be reviewed by the public, uh, for understanding what
3 would happen in the event of an extended hours scenario?

4 JONES: No. Other, other than that, uh, if they were to go to that
5 operation, they would have to contact Public Works and we would review that
6 and make that decision.

7 LORING: Okay. But there's no Standard for the public to review when
8 trying to determine whether Public Works would approve it or in what
9 circumstances Public Works would approve it, right?

10 JONES: Correct.

11 LORING: Okay. Um, back just briefly on that shoulder issue, uh, your,
12 you're familiar with what happens with cars when they're traveling at speeds,
13 uh, say speeds up to the speed limits on Grip and Prairie Road and they get
14 caught up in the gravel on the side of the road, right?

15 JONES: Yes.

16 LORING: It, it's not a good situation for the vehicle, is it?

17 JONES: Uh, it depends on the situation and if the gravel, if the
18 shoulder, is it loose rock, is it compacted, is it, it just depends, I guess.
19 But, yeah, there's potential.

20 LORING: That's fair.

21 JONES: Yeah.

22 LORING: Uh, I want to show you, uh, oh, sorry, go ahead. I, I want to
23 show you a picture of a road, I, I'm going to, uh, actually, I'm going to
24 turn off my camera as I do this, as we've discussed, little bit of bandwidth
25 issue, issues. But I want to show you a couple of pictures. And these are in

1 the Record, they're, this is Exhibit A60, uh, I've marked it A60E. I don't
2 think we had done that exactly in the Record, but there were five photos, uh,
3 that were provided into the Record. Is, when you're looking at a picture like
4 this, are you considering the shoulder basically that portion of the area
5 outside of the road from the, uh, fog line? And I'm referring to that white
6 line as a fog line. Is that your understanding of the name for that line?

7 JONES: Yeah. So, that would be, we would call it edge line, but fog line
8 is an appropriate term also.

9 LORING: Okay. And so, when you were talking about a shoulder, uh, and
10 I'll just p-, I'll tell you this was, uh, since we've had testimony on this,
11 this is along Prairie Road. Uh, this is the sort of shoulder you mentioned
12 might not or wouldn't be travelable, travelable, uh, by bicycles, um, once
13 you get into that gravel, right?

14 JONES: Correct.

15 LORING: Okay. And this is a kind of shoulder with unconsolidated gravel
16 that would be a challenge for cars to, to also travel on if they got a wheel
17 on that going, uh, 40 miles per hour for example, right?

18 JONES: Uh, without being out there and, uh, looking at the compaction
19 and all that stuff, it would be hard to say, but there is, appears to be
20 loose gravel there, yes.

21 LORING: Okay. Could be problematic?

22 JONES: Yeah.

23 LORING: Okay. I'm going to show you one more, just one more picture of a,
24 a shoulder area, uh, this one is along Prairie Road here. Now, this isn't the
25

1 sort of area that qualifies as a shoulder based on a definition from the, uh,
2 Road Standards, does it?

3 JONES: Uh, there, there appears to be some shoulder, but not a whole
4 lot, yes.

5 LORING: Yeah. And, and by that, I'm thinking, uh, when you see this
6 shoulder, is this, or when you use this space, I should say, would this be
7 the type of area where, that would accommodate a stopped vehicle?

8 JONES: Um, I guess it would get them off a foot or so, maybe, but, yeah.

9 LORING: Okay. And, and when you say a foot or so, you mean not getting
10 the entire vehicle off the road, but a foot of the vehicle or so could get
11 off, out of the travel lane...

12 JONES: Yes.

13 LORING: With the rest of the vehicle remaining in the travel lane?

14 JONES: Correct.

15 LORING: Okay. Um, also, not, not particularly suitable for emergency use?

16 JONES: Uh, to get them out, to get them a little bit off the road,
17 maybe, but, yeah. You're not going to get your whole vehicle off the road,
18 no.

19 LORING: And ambulance isn't going to be off the road, uh, along that
20 stretch of road there, right?

21 JONES: No.

22 LORING: Okay. And then, I want to share with you just one other photo,
23 I'll stop this share, I believe the other one is, uh, is a PDF here, just a
24 moment, please. And this, this one is going to be over on Grip Road.

25 REEVES: Al-, also A60?

1 LORING: Uh, actually, this one is A14.

2 REEVES: Okay. Just wondering.

3 LORING: Thank you, Mr. Examiner. Yes, I'm taking us to A14. Uh, let me do

4 a quick share here. Okay. Okay. Here we are, are you seeing that there, uh,

5 Mr. Jones?

6 JONES: Yes, I am.

7 LORING: Okay. And this is along an area where you were saying, I believe,

8 that there were, you know, one and a half to four foot shoulders? You're,

9 you're to testifying that those shoulders are, say, rideable by a bicycle, are

10 you?

11 JONES: No, I am not.

12 LORING: Okay. Um, all right. Now, I'm going to move to, here's Exhibit

13 A15. This is another photo in the record. Uh, in, in this instance, are you

14 seeing any shoulder, uh, that's usable by any vehicle really on the side of

15 this photos of Grip Road with the water there?

16 JONES: Uh, maybe a boat.

17 LORING: Okay. Fair enough. Uh, I'm moving on. I can tell from the Hearing

18 Examiner's, uh, face, that he thinks we are in the realm of, uh, absurdity.

19 Just bordering, I will say, verging upon it late on a Tuesday afternoon. Uh...

20 REEVES: Well, I thought the boat answer...

21 LORING: We, we, we've covered shoulders.

22 REEVES: I thought the boat answer...

23 LORING: All right.

24 REEVES: The boat answer wins the day thus far, so, uh, good start o Mr.

25 Jones.

1 LORING: It does.

2 REEVES: Go, go ahead, Mr. Loring.

3 LORING: Mr. Jones, on your direct testimony, too, you were discussing the
4 fact that Grip and Prairie Roads don't meet County Road Standards, uh, you
5 acknowledged that's the case here, right?

6 JONES: Correct.

7 LORING: Um, and I believe you said that other County Roads, also a
8 significant number of other County Roads also do not meet Road Standards?

9 JONES: Yes.

10 LORING: Okay. Uh, and then your lawyer analogized to a house. And the
11 fact that a house built in, uh, I don't have the date, was it the '70's, uh,
12 might not be current, up to current building standards, is that right?

13 JONES: That is correct.

14 LORING: When a house has a major remodel, it's required to come up to
15 Code, right, as they're doing that?

16 JONES: Yes.

17 LORING: Uh, and wouldn't now be an excellent opportunity to bring gravel,
18 or, uh, Grip Road and Prairie Road up to Code, at least in some areas, such
19 as the photos we just saw where there was flooding and shoulder challenges,
20 uh, now that we know we're adding a significant amount of large traffic?

21 JONES: If, if it were a County, uh, rehabilitation project, yes, we
22 would bring that road up to Code.

23 LORING: Okay. And you testified earlier that, uh, now you're not so sure
24 third-party review, uh, was necessary for that Traffic Impacts Analysis. Uh,

1 prior to the SEPA Appeal, though, you did, you did send an email that said it
2 wouldn't be a bad idea to have that review, right?

3 JONES: Correct. I did send that email.

4 LORING: Okay. Getting very, uh, very close here to the 1-, end of my
5 questions. In fact, I think I, I think I have just one more question for you.
6 And that is, uh, it's related to trying to figure out compliance with the
7 amount of traffic that would occur as a result of this mine. And, and to
8 having, uh, an average number, uh, for example to do with that, let me just
9 take a step back from that and say, there's no mechanism that has been
10 proposed as part of the County's Review for determining whether there would
11 be compliance, uh, with, with whatever traffic limitations have been imposed,
12 is that right?

13 JONES: That is correct.

14 LORING: Okay. That's my last question. I, I appreciate your time today.

15 REEVES: Great. Thank you. Uh, I think, first, I'll quickly go to Mr. Lynn
16 to see if he had any clarifying question and I'll go back to Mr. D'Avignon.

17 LYNN: I think, I think I will, uh, take the opportunity to ask a couple
18 of, um, about the shoulders, anyway. Um, so, uh, well, one of them is not a
19 shoulder question, it's back to the racing question. Uh, would it surprise
20 you that the neighbors in the area have testified that people along Grip and
21 Prairie speed?

22 JONES: Uh, no, it would not surprise me.

23 LYNN: Wouldn't you...

24 JONES: [Inaudible.]

25 LYNN: Go ahead, I'm sorry?

1 JONES: I said, I can't, I don't know whether it's the neighbors, um, I'm
2 guessing some of them are, but, uh, whoever travels the road, yes, there's
3 speeding on the road.

4 LYNN: Is it common in, uh, Traffic Impact Analysis that you've reviewed
5 to, uh, base the distribution of expected traffic on the, the owner's
6 assessment as to whether their customers are or where their goods would be
7 shipped?

8 JONES: Yes.

9 LYNN: So, uh, if, for example, Miles says, all we're going to do with
10 travel east of, on Grip is to serve local deliveries and that doesn't amount
11 to much, would that be, uh, would you expect that that would be taken into
12 account in the Traffic Impact Analysis?

13 JONES: Uh, not really.

14 LYNN: Okay. Um, so, one of those photos that you were asked about and
15 I, I think testified that it would not be rideable but a bike had tractor
16 treads, uh, imprinted in the gravel, would that be one use of even a
17 challenging, uh, shoulder to get slow moving vehicles like tractors off the
18 road?

19 JONES: Yes. That would be a good use.

20 LYNN: Uh, and you were, finally, you were asked about whether or not,
21 um, uh, the, a narrow shoulder adjacent to a guardrail I one picture was, uh,
22 would be sufficient for an ambulance. If people pulled over on both sides,
23 uh, of the road as required by law in the event of an ambulance or other
24 emergency vehicle, would you expect that there would be sufficient room for
25 that emergency vehicle to pass between them?

1 JONES: Yes, I would, I would think there would be enough room to go
2 between it.

3 LYNN: That's all I have. Thank you.

4 REEVES: Okay. Thank you. Uh, Mr. D'Avignon?

5 D'AVIGNON: Uh, yes, I have a couple of questions. I'm going to start with
6 sharing my screen to C18, which is the Traffic Impact Statement, in case
7 we've forgotten, Analysis, not statement. Uh, Mr. Jones, I'll call your
8 attention back to trip, project trip generation to this third, uh, paragraph.
9 Um, you don't need to read it out loud, but does that appear to be where we
10 get the calculations for the 30 trips, 30 truck trips per hour?

11 JONES: Yes, it is.

12 D'AVIGNON: Okay. And would you read this sentence right here? This last
13 sentence I highlighted?

14 JONES: Uh, the TIA analysis is based on the worst case trip generation
15 for the mine of 30 truck, truck trips during the p.m. peak hour.

16 D'AVIGNON: Okay. Thank you. And I'm going to stop sharing my screen for the
17 moment. So, you were asked, um, some questions about in that worse, uh, case
18 scenario, um, you know, how, what would be the odds, I guess, of a truck, uh,
19 meeting a school bus or something like that. If that was the proposed chip,
20 trip generation under normal operating conditions, would your concerns for
21 safety and what maybe needs to be in the TIA be different than what's
22 actually being proposed of 46 truck trips per day?

23 JONES: Uh, the 30 trips still would not trigger a Level of Service
24 issue. Um...

25 EHRLICHMAN: I have an objection for the question.

1 REEVES: Sorry, what was the objection, Mr. Ehrlichman?

2 EHRLICHMAN: It's a compound question, uh, very confusing to the listener.

3 What, what is the point of the question?

4 REEVES: Well, I was confused, too. Mr., Mr. D'Avignon, maybe you could
5 break that out a little bit? I, I agree with Mr. Ehrlichman, I got a little
6 lost on the question.

7 D'AVIGNON: Yes. Where, where I was trying to get at is, you know, there had
8 been some testimony about why was this, uh, more than a Level 1 analysis, you
9 know, the Level 1 plus as you put it, Mr. Examiner, um, Mr. Ehrlichman had a
10 line of questioning about what about at 30 trucks per hour, um, I guess my
11 question is, is A)...

12 REEVES: Well, let's just do an A question, start there and then you can
13 next do a B question.

14 D'AVIGNON: Okay. A) The, the current traffic impact analysis was based on
15 what's being proposed, the average of 46 trucks per hour or per day, correct?

16 JONES: Correct.

17 D'AVIGNON: And it may have been different if the proposal was for 30 truck
18 trips per hour?

19 JONES: Correct.

20 D'AVIGNON: Okay. If Miles Sand and Gravel comes to the County and says we
21 want to run some extended operations, we're going to be at the max 30 hours,
22 30 truck trips per hour, you would be considering some of the issues that
23 have been brought up today in possible conditions for allowing that, would
24 that be a fair assessment?

25 JONES: Yes, it would.

1 D'AVIGNON: Okay. Um..

2 REEVES: Sorry. Just, uh, so I don't get lost, just two clarifying
3 questions from the Hearing Examiner. One, uh, that issue of the 30 trips per
4 hour, just to clarify, I think you testified in response from a question from
5 me earlier, Mr. Jones, that even if 30 trucks, even if 30 trips per hour
6 were, were proposed, that would still not trigger Level 2 requirements under
7 the TIA< was I correct in my understanding?

8 JONES: Yes.

9 REEVES: Okay. So that was question one, question two, when Mr. D'Avignon
10 references conditions just now, it's not related to the SUP, I think, is your
11 understanding, sorry, Mr. D'Avignon, I think what the question related to is
12 some kind of administrative approval that would be sought. And when we talk
13 about the analysis and the conditions, that's the sort of admin approval that
14 we're talking about? Or did, did I understand that right?

15 D'AVIGNON: I think so, Mr. Examiner. I, I was referring, and I apologize for
16 not citing it, uh, the MDNS says extended operations may be allowed, as for
17 permission, additional conditions may be imposed.

18 REEVES: But to be clear, Mr. Jones, is it your understanding that that
19 language in the MDNS, about additional conditions, doesn't produce additional
20 SUP or SEPA conditions, those would be conditions on whatever administrative
21 approval would occur should the County allow Miles to operate under those
22 extended conditions, or shouldn't have reused that word, under those, uh,
23 circumstances? Is that what you're testifying to? I just want to make sure I
24 didn't misunderstand.

25 JONES: Yes. That would be correct.

1 REEVES: Okay. Sorry to interrupt, Mr. D'Avignon. Go ahead.

2 D'AVIGNON: Oh, now I've lost my train of thought.

3 REEVES: I totally threw him off, I apologize. I...

4 D'AVIGNON: Oh, I, I, I just had one other question, um, I do want to share
5 my screen one more time. Um, let me find the right, okay. I apologize, I
6 somehow ended up with 50 sheets of paper and 50 windows on my computer.

7 REEVES: That's about right for Day 6.

8 D'AVIGNON: I was very organized on Day 1, I will say that.

9 REEVES: I plead the fifth.

10 D'AVIGNON: All right. I, I, I'm sharing, uh, the MDNS. Um, this is 13,
11 Condition 13, Roman et vi. Uh, Mr. Jones, if you read this, it says if the
12 dump truck/pus trailer combination exceed the load restrictions, the
13 Applicant will use Interstate 5 for southbound access to the Bellville pit.
14 Uh, do you read that sentence as permitting, uh, the use of F and S Road to
15 avoid Interstate 5?

16 JONES: I do not.

17 D'AVIGNON: Okay. I have no other questions, Mr. Examiner.

18 REEVES: Okay. Thank you. We can stop sharing. Okay. Uh, Mr. Ehrlichman,
19 I'll, I'll give you a, a, a brief re-re-direct, as it were?

20 EHRLICHMAN: Thank you, Mr. Examiner. Um, Mr. Jones, uh, you have a heck of a
21 job and, uh, this is a, a, a long, arduous process, I know. But you are one
22 of the few people at the County still who has been there during the life of
23 this Application. And you may or may not realize that through the testimony,
24 you're the one person who, um, everybody looks to to understand what the MDNS
25 condition, um, on, um, traffic safety means. Um, I, I've asked Mr. D'Avignon

1 to put up on the screen, um, our Exhibit 47, uh, S2. And I'd like you to just
2 take a minute and, and read the Comprehensive Plan Policies that I'm going to
3 ask you about that relate to the road improvements that you've testified
4 about here today. These are the Comprehensive Plan Policies that relate
5 specifically to mining and, um..

6 REEVES: Oh, there we go.

7 EHRLICHMAN: Thank you. And we start with the Goal 4D5 there at the top.

8 Which, um, the Goal is ensure safety, including from truck traffic, and then
9 if you would scroll down to 4D5.3 and just take a moment and read that
10 through and then I want to ask you a question about it. Just let me know when
11 you're ready.

12 JONES: Okay.

13 REEVES: Oh, sorry. Just to clarify, uh, this was obviously, it's the Comp
14 Plan but, uh, 47S2 is, is what the, the Exhibit is, is that right?

15 EHRLICHMAN: That's correct. That's our Exhibit 47 packet, thank you.

16 REEVES: Great.

17 EHRLICHMAN: Mr. Jones, have you had a chance to look at that?

18 JONES: I have.

19 EHRLICHMAN: Okay. Now, separate and apart from the County's traffic
20 concurrency requirements, where you collect road mitigation and apply that to
21 your 6 year TIP as the Hearing Examiner referenced it. We have here a policy
22 that requires that existing roads be improved as needed as each new
23 extraction operation is developed, correct?

24 JONES: Correct.

1 EHRlichman: Okay. My question is, can you please describe for us any, all
2 cost sharing discussions Public Works had with the Applicant about creating
3 bus turn out lanes or school bus stops on Grip Road prior to allowing the
4 operation to go forward?

5 JONES: Uh, to my knowledge, there have been no discussions for turn out
6 lanes for buses.

7 EHRlichman: And how about for bus stops?

8 JONES: No.

9 EHRlichman: Okay. That's all I had, Mr. Examiner. Thank you, Mr. Jones.

10 REEVES: Okay. And if we can stop sharing. Mr. Loring, do you have a re-
11 re-direct? I'll, I'll make it limited, but I'll allow it.

12 LORING: It's limited, thank you. Uh, Mr. Jones, you were talking a moment
13 ago about that administrative approval for the extended hours. Uh, there's no
14 public process that has been proposed for that, right?

15 JONES: No, there has not.

16 LORING: Okay. It would be an internal County review and decision?

17 JONES: Yes.

18 LORING: Okay. Uh, you were asked about a tractor, uh, the TIA didn't
19 [inaudible] impacts associated with tractors...

20 REEVES: Mr. Mr. Loring, you cut out significantly right in the middle.

21 LORING: I had a feeling.

22 REEVES: I think you were about to bring tractors into play.

23 LORING: I was. Keep checking my internet speed, it tells me it's good.

24 Okay. I'm, uh, thank you, Mr. Examiner. I'm back. And so this question is
25 about tractors, you were asked a question about that, uh, to your knowledge,

1 did the TIA discuss, uh, safety impacts associated with gravel trucks and
2 tractors?

3 JONES: Yes.

4 LORING: It did? Can you, can you point us to that section of the TIA
5 where it did that?

6 JONES: Uh, can you repeat the question? You're still kind of broke up
7 there.

8 LORING: Sorry about that. Thanks. Uh, the, can you direct us to the
9 portion of the TIA that addresses, uh, safety impacts of gravel trucks and
10 tractors?

11 JONES: Um, I don't know that there is one.

12 LORING: Okay. I think I broke up with the first question. Okay. Thank
13 you. Uh, just one or two more. You, uh, you were asked about the TIA and I
14 believe you were, actually, you were asked if it would surprise you if people
15 speed on Grip Road and Prairie Roads and, and you said, no. Uh, is it, uh, to
16 your knowledge, does the traffic impact analysis assess actual speeds
17 traveled along those roads?

18 JONES: Um, I do not believe so. I think it just addressed, uh, speed
19 limits.

20 LORING: Okay. Posted speeds were the modeled assumption?

21 JONES: Yes.

22 LORING: Okay. And then you, uh, you had speculated that it was maybe
23 neighbors who were speeding in that area. Do you have any basis for that
24 speculation?

1 JONES: Well, I believe I, uh, chose my answer to say that it is most
2 likely some neighbors, but I don't know that for a fact. It could be anybody
3 driving the road, so...

4 LORING: Okay. When you say it's most likely, do you have any basis for
5 making that statement?

6 JONES: Other than they live on the road? And they travel it the most.

7 LORING: Uh, no further questions, Mr. Examiner.

8 REEVES: I was like, I don't know how far we need to go down that rabbit
9 hole, but, uh, excellent, uh, anything final, uh, Mr. Lynn, on this one,
10 before we move on? I'm trying to be...

11 LYNN: No.

12 REEVES: Okay. Mr. D'Avignon, last, your witness, anything, anything
13 finale here?

14 D'AVIGNON: Uh, no, Mr. Examiner.

15 REEVES: Okay. Uh, Mr. Jones, thank you very much, uh, for your time and
16 testimony. And I believe that then concludes the witnesses that the County
17 intended to call, is that right, Mr. D'Avignon?

18 D'AVIGNON: That is correct, Mr. Examiner.

19 REEVES: Okay. I do need to note for the record that, uh, during Mr.
20 Loring's questioning, he missed the opportunity to very easily use the word
21 bicyclability, uh, he was set up for that and then it didn't happen, but I
22 did note that. Uh, that said, uh, so the County has no further witnesses. Uh,
23 Mr. Ehrlichman earlier testified, or not testified, sorry, explained that,
24 uh, he does not have witnesses available, uh, not, again, not, no blame here,
25

1 just trying to clarify things. Mr. Lynn, can I get a sense from you as the
2 potential, uh, recall rebuttal, as it were?

3 LYNN: Uh, yes. You can certainly ask about that. I, in part, it will,
4 uh, await the conclusion of Mr. Ehrlichman's test-, uh, witnesses. Uh...

5 REEVES: Sorry, Bill. Before we go there, Mr. Ehrlichman, I don't recall
6 if we actually got a, a, maybe you told the other Attorneys, but do we have a
7 number, do we have specific witnesses identified you intend on calling?

8 EHRLICHMAN: Uh, I have three witnesses identified and a fourth, uh, is a
9 possible. I'm trying to work out schedules, people are working and so forth.
10 Now that I have Friday, the 23rd as a date, I can nail that down more
11 precisely. I will definitely have three witnesses. And one of them will be,
12 um, Mr. Tilghman returning as my witness.

13 REEVES: Okay. So, just so, one is Mr. Tilghman, that's some more traffic
14 info, yeah.

15 EHRLICHMAN: Yes. Um, with, if you'd like, I can run through them, um...

16 REEVES: Yeah. Thank you.

17 EHRLICHMAN: Yeah. Um, the next witness will be, uh, Wally Groda [phonetic]
18 who also lives on Grip Road, I think he's the next farm down from the
19 Mcleod's.

20 REEVES: Okay.

21 EHRLICHMAN: Um, sorry, let me not misspeak here, I want to get the names
22 correct.

23 REEVES: I find even if I have them written down, I sometimes misspeak
24 them.

1 EHRlichman: I know. Okay. Yeah. There's been a lot going on here. Um, we, we,
2 we are calling back, uh, a witness that was in the, uh, Appellant's case,
3 Linda, I'm going to mistake her last name, perhaps, Kyle, you would help on
4 that.

5 LORING: Walsh.

6 EHRlichman: Thank you. I, I was going to say Jones, but we just heard from
7 Mr. Jones. Linda Walsh. And then the, um, final witness, the fourth witness,
8 I can't seem to put my finger on the name, but it is the caretaker family on,
9 um, Mr. Grado's farm.

10 REEVES: Okay. So...

11 EHRlichman: And then, Mr. Tilghman, as I said.

12 REEVES: Sure. So, just to clarify, the, uh, Mr. Groda, Ms. Walsh, and the
13 caretaker whose name I don't think we identified yet, but those are,
14 essentially three local area residents, is that correct?

15 EHRlichman: Correct. All on Grip Road there, with experience along Grip Road.

16 REEVES: Sure. And then, Mr. Tilghman, uh, the traffic, uh, expert we
17 heard from earlier, uh, that Mr. Loring had called, is that right?

18 EHRlichman: That's correct. Uh, um, different topic, different angle, I
19 think.

20 REEVES: Sure. Okay. So, in terms of timing, do you think it would be
21 accurate to, for me to conclude that can probably get done in half a day,
22 those four?

23 EHRlichman: I, I think that's right. Especially if Mr. Lynn's mute button is
24 working, um...

25 REEVES: And mine, right?

1 EHRlichman: And your, I wasn't going to say that.

2 REEVES: He wanted Mr. Lynn, let's be honest, but, okay.

3 EHRlichman: No, a, a half day should be more than enough, I would think.

4 REEVES: Excellent. Thank you for clarifying. So, Mr. Lynn, I'll back to
5 you, in terms of what your thought process there is?

6 LYNN: Um, again, won't totally know until I hear what, uh, what Mr.
7 Ehrlichman has in mind. Uh, we will be calling Mr. Norris, uh, to talk about,
8 uh, the, the auto-turn vehicle and some other, uh, issues. We will be calling
9 Mr. Semrau to address a couple of things that came up and we will be calling
10 Dan Cox from Miles Sand and Gravel. Uh, I sus-, I think that's probably it,
11 but I'm not, uh, please don't hold me to that. Uh, just, just what I'm
12 thinking so far.

13 REEVES: Uh, yes. We're all good Attorneys, you reserve the right to
14 change your mind at any given time, I get it. So, just to be clear, Gary
15 Norris is our traffic engineer, not ours, your traffic engineer. Uh, John
16 Semrau, I believe, uh, was the geologist?

17 LYNN: No, civil, civil engineer.

18 REEVES: Okay. But, again, can you clarify the sort of what he will be
19 addressing?

20 LYNN: Uh...

21 REEVES: You know, it's a broad topic.

22 LYNN: Yeah. It's, uh, briefly on the haul road, a little more testimony
23 about that one cross section that Mr. Loring asked him about, uh, as to the
24 mine, uh, shape. Uh, pretty, all, all of these should be pretty brief.

25 REEVES: Sure.

1 LYNN: I think, uh, uh, so far, my outlines for two of them are, uh, one
2 page, so...

3 REEVES: Great. I'll hold you to that. But, so...

4 LYNN: Yeah.

5 REEVES: To be clear, the technical aspects, uh, specifically the haul
6 road is what you're thinking and, and potentially a couple other things, is
7 that accurate...

8 LYNN: Yeah.

9 REEVES: On that?

10 LYNN: Yeah.

11 REEVES: And, sorry, the third was, was the Applicant or...

12 LYNN: Uh, Dan, Dan Cox, who's, he, he was the original person planned
13 to testify instead of Mr. Barton, he's now back from his, uh, trip and would
14 just testify a couple of, uh, about a couple of things related to the Miles
15 operation.

16 REEVES: Okay. We haven't heard from Mr. Cox?

17 LYNN: No, no.

18 REEVES: Okay.

19 LYNN: It's, yeah.

20 REEVES: Got it. Okay. But, uh, one of the Miles, uh, sort of operation,
21 you know, one of the, I don't know, higher up kahunas, someone that, that
22 knows what's going on at Miles, is that, uh...

23 LYNN: Yes. Yes. He know, he's the, he's the manager for the division up
24 North.

1 REEVES: Got it. Okay. All right. I'm really hoping all of that can be
2 done in a day. Uh, that is certainly the hope. Um, in terms of, well, I
3 guess, A), I mean, would it premature for you to call any of those witnesses
4 now or are they even available, Mr. Lynn, I...

5 LYNN: Uh...

6 REEVES: Just a thought, I'm just trying to be efficient in our time here.

7 LYNN: Yeah. I appreciate that. I don't, I don't, I, I assume they're
8 available, but we haven't talked about their testimony and I'm not sure there
9 won't be more of it. So I think it might be less efficient instead of more.

10 REEVES: Sure. And we are striving for efficiency. Excellent. Okay. Um,
11 process-wise, does anyone disagree with my process in thinking I am going to
12 have Mr. Ehrlichman call his witnesses and then I was going to allow, uh, Mr.
13 Lynn to bring rebuttal witnesses. I am very wary of a sort of serial
14 rebuttal, you know, I, I, I just, but I'm happy to hear if Attorneys want to
15 make an argument otherwise. We'll start with Mr. Loring.

16 LORING: Thanks, Mr...

17 REEVES: Well...

18 LORING: Examiner. Uh, [inaudible] rebuttal, uh, I'll take off the video.
19 Um, at, at this point, we aren't anticipating needing to provide, uh,
20 rebuttal. And it would rebuttal in the SEPA case since we're the Appellants
21 in that, you know, rather than [inaudible] just to be clear. Uh, but...

22 REEVES: Yeah.

23 LORING: But, again, it's one of those situations where it's not always
24 clear until we have seen some of the other parties. We've now heard from the
25 County. Uh, I will be circling back to try to understand, my guess if there

1 were any rebuttal in our case, it would be very brief, uh, and we've had
2 plenty of testimony at this point from our witnesses.

3 REEVES: Thank you. Uh, Mr. D'Avignon, I, the County has sort of been a, I
4 don't want to say directly with, with the Applicant, obviously, but, you
5 know, is there a thought to sort of bringing anyone back, I guess is my
6 question?

7 D'AVIGNON: You know, I never say never. Um, but I have absolutely no
8 intension of, of doing that.

9 REEVES: All right. It's like herding cats. But, yes, absolutely. Um, and,
10 and, again, just to clarify for those that are following along, there's a lot
11 of going on process-wise here. Uh, the Applicant, I just need to stress this,
12 the Applicant, Miles Sand and Gravel, who is represented by, uh, Attorney
13 Bill Lynn, has the burden of proof in terms of the Special Use Permit. Uh,
14 that Permit has not been issued. Uh, the Staff, as we heard today, has made
15 a, made a recommendation in their Staff Report, uh, but ultimately, the
16 burden, in terms of the SUP, falls on them, not the County, not anyone else.
17 Uh, and so that is sort of, process-wise, uh, for multiple reasons, uh, the
18 idea of, sort of rebuttal witnesses is being entertained. That's one. And
19 then, two, we independently have a SEPA Appeal that Mr. Loring brought. Uh,
20 and so, that is separate and in terms of the SEPA Appeal of the MDNS, in
21 fact, is the Appellant burden on SEPA Appeal to convince the Hearing, uh,
22 that an error has occurred, not just an error, but Standard in, under SEPA is
23 higher than that. But, and my intent was to have the sort of SEPA specific
24 argument with the Attorneys at the very end of our last day. Um, but I just
25 wanted to make sure all the witnesses were called. And then, Mr. Ehrlichman

1 has, has called witness-, well, not called them, yet, will be calling
2 witnesses and his role is, uh, more specific to the, the SUP portion, uh,
3 and, in a way, he's appearing sort of as other members of the public are able
4 to appear, but, but because he's an Attorney, the rules allow, uh, a little
5 more and, and I've been trying my best to, you know, walk a fine line there.
6 He, we've disagreed at times, but, uh, to be clear, he's, he's not an
7 intervener on the SEPA Appeal, that was something that was addressed in
8 advance. Um, and so that's kind of where we stand. And I just want to make
9 sure folks, whether they ultimately agree with me or not, at least feel that
10 I've made, you know, a good faith effort to have a process that, that gives,
11 gives folks a chance. So, I just want to make sure. So, it sounds like the
12 plan is, is so far good, to the extent that when we come back, is it next,
13 next Friday, is that right?

14 LORING: Yes.

15 REEVES: Yeah. Next Friday, uh, to conclude, that, uh, first, we'll hear
16 from, uh, from, uh, the four witnesses identified by Mr. Ehrlichman and for
17 your own witnesses, Mr. Ehrlichman, I, I would maybe suggest have the three,
18 uh, the three non-Mr. Tilghman witnesses go first, maybe. Uh, then we'll hear
19 from Mr. Tilghman and then we'll go to Mr. Lynn's, uh, sort of rebuttal. And
20 then check in with the lawyers, if they think other things are needed. And
21 then the plan was a brief sort of me grilling Attorneys on, on their thoughts
22 on a few legal aspects. But, Mr. Ehrlichman, you had a, a hand raise there?

23 EHRLICHMAN: Uh, my calendar is confused. You said next Friday, is that
24 September 16th? Because I had us down for Friday, the 23rd. I thought Bill was...

25 LORING: The 23rd.

1 REEVES: That's next Friday.

2 EHRLICHMAN: Okay. Gotcha.

3 REEVES: Sorry, not this Friday, next Friday.

4 EHRLICHMAN: Thank you.

5 REEVES: Excellent. I proposed this Friday and it wasn't going to work...

6 LORING: Mr. Examiner? Um...

7 REEVES: [Inaudible] Mr. Lynn didn't participate, but it's next Friday,
8 the 23rd. And Kyle Loring, you had something?

9 LORING: I do. I hesitate to broach the topic. But I wonder if we
10 shouldn't schedule another day just in case and/or have the opportunity to
11 have our closing briefs, SEPA briefs respond to specific questions that you
12 identify for us that we can respond to in writing. I'm just putting that out
13 there as the argument side of things.

14 REEVES: Sorry, that was a compound suggestion. I, okay. So, one, was, uh,
15 well, A) I plan on us getting through on Friday, for one. But, two, you're
16 saying put a date on the calendar just in case. And I want to be clear, when
17 you say that, are you saying put it far enough out so that theoretically, I
18 can read your closing briefs and grill you on those briefs, is that the
19 thought, like...

20 LORING: No, sorry. I...

21 REEVES: Did I understand the...

22 LORING: I was suggesting the arg-, I was suggesting the argument side of
23 things. You had mentioned you thought you had a couple of hours, uh, that you
24 wanted to hear from us and you had specific questions that you wanted us to
25 answer. So, I was thinking if we have a couple of hours, we might need to

1 schedule another date. But I was saying in the alternative, you could put
2 those questions to us in written form and then we could incorporate those
3 into our briefing afterward and not schedule another date, if we think we can
4 get through the testimony. Which I, it sounds to me like we should be able to
5 next Friday.

6 REEVES: Thank you and...

7 LORING: But I don't know about the questioning.

8 REEVES: Thank you, Mr. Loring. And I'll be, I'll be honest, I actually
9 had the thought that I hate to force it on myself just in case something
10 happens, but I sort of intended on maybe circulating, uh, questions, uh, you
11 know, in advance of next Friday. Uh, and I agree that rather than, you know,
12 schedule more time, uh, if I can get the questions out, if we don't get to
13 that portion, if we don't have time next Friday, at least the Attorneys will
14 kind of know what I was hoping to get some analysis on and that can be
15 included in, in briefing, rather than, uh, uh, Day 8. Because, uh, I, I think
16 that makes sense. Did I get you right, Mr. Loring, I, I...

17 LORING: Yes.

18 REEVES: Don't, okay.

19 LORING: That's exactly right. Thank you. Yeah. Thank you, Mr. Examiner.

20 REEVES: Okay. For a minute, I thought you were suggesting as sort of
21 Appellate approach where, you know, you guys would produce briefs and then I,
22 you know, look at them and grill you as if I was a Court of Appeals or, or
23 Supreme Court judge, which sounds awesome, but I also think that at this
24 stage in the, in the proceedings, uh, I don't think it would be, uh,
25 appropriate to have a, a Day 8 if we can get done at least with the testimony

1 on Day 7. So, I will assign myself the task of trying to send around by,
2 let's give me til Monday, uh, I'll try to send, sort of, these are the
3 questions or thoughts the Hearing Examiner is hoping to, you know, get, get
4 lawyers' thoughts on and I'm not req-, by the way, just to be clear, I'm not
5 asking you all produce briefs for me by next Friday. I just want to go this
6 is sort of what I...

7 LORING: Understood.

8 REEVES: What I, what I'm hoping to, to ask you all about, uh, you know,
9 uh, some of it will be more SEPA specific, some less, uh, you know, but I
10 figure if I've got four sharp Attorneys, might as well, you know, get some,
11 some questions asked while I can. Understanding that Mr. Ehrlichman, you
12 certainly don't need to participate on the SEPA side of things. But with your
13 knowledge and experience, I expect you would, you would have valuable, uh,
14 contributions there, so...

15 EHRLICHMAN: Thank you, sir.

16 REEVES: Okay.

17 EHRLICHMAN: Uh, looking, looking forward to just a short, uh, opportunity for
18 argument on the SUP. I realize it's not part of the SEPA Appeal.

19 REEVES: Certainly. Absolutely. Okay. So, with that, I think we have a
20 plan. Uh, Mr. Lynn?

21 LYNN: Uh, I, I, I notice that Mr. Groda, who was one of the witnesses
22 that Mr. Ehrlichman was going to call, is, is present. I'm wondering if we
23 could hear him and shorten our next Friday briefly?

24 REEVES: Oh.

1 EHRlichman: Unfortunately, I'm not prepared, uh, to bring him on. Uh, it
2 would be a good idea. But I, I really need to confer with him and understand,
3 uh, what his thoughts are on some of the issues. I apologize, but we just,
4 when we checked in this morning, I, we rescheduled that discussion for a
5 little later this week.

6 REEVES: The process is, is what it is. Good suggestion. And you're, you
7 still have the hand raised feature up.

8 EHRlichman: Oh, I'm sorry.

9 REEVES: I just want to make sure it's, maybe just waving. Uh...

10 EHRlichman: There we go.

11 REEVES: Um, okay. So, then I think that probably will, I guess,
12 ultimately conclude today. Just to be clear, I don't believe I got a
13 stipulation, did that come around my way? Why don't we, we can talk about
14 that, okay?

15 EHRlichman: Kyle, uh, I think you were the last signer, is that something you
16 could circulate? Kyle?

17 LORING: It is. You all should have it.

18 EHRlichman: Oh.

19 LORING: The, the lawyers should have it at this point.

20 REEVES: Well, the Hearing Examiner...

21 LORING: Yes. I, no, I understand, Mr. Examiner. I was saying I had, I had
22 circulated it to the lawyers in response to that question. But, yes, I can,
23 uh, add it now to the Hearing Examiner.

24 EHRlichman: Thank you.

1 REEVES: And, and I believe, uh, Mr. Lynn, you, you sort of clarified what
2 the limited day trip scope was, is that right?

3 LYNN: Yeah. Uh, yeah, it, it, it's fairly brief. It won't take you long
4 to read at all.

5 REEVES: But just for my understanding of what this is and how it fits,
6 and, and I guess here's an initial question I could ask is, uh, we all set a
7 little bit more time aside, in terms of, well, A) does the stipulation relate
8 specifically to the MDNS? The, the Condition in the MDNS about the trips, is
9 that right?

10 LYNN: Yes.

11 REEVES: Okay.

12 LYNN: The, the 46 number and the 30 number.

13 REEVES: Okay. So, I guess my, my question is, in terms of, and I'll start
14 with Mr. Loring as the Appellant, uh, so, Mr. Loring, in terms of SEPA and me
15 as the Hearing Examiner, what options would I have, ultimately, in relation
16 to your Appeal? Can I add conditions to SEPA? And I'm asking, let me, I
17 guess, let me walk through my thought process. If I grant the Appeal, you
18 know, and say, okay, there's been, you know, I'm convinced there's, there's,
19 that an error has occurred, you know, I can remand it for further review. I
20 guess, what, my first question, Mr. Loring, is do I have the option of
21 amending the County's issued MDNS as part of my authority? And that would be
22 question one, Mr. Loring.

23 LORING: Yeah. Thank you for that question, Mr. Examiner. And I was
24 assuming that was maybe question one for next Friday, as well, or, uh...

25 REEVES: It was going to be. It was...

1 LORING: It's on my list.

2 REEVES: [Inaudible.]

3 LORING: Yeah. It's on my list.

4 REEVES: If you're unprepared, that's fine, but I, I do know that you, you
5 think about SEPA a lot and I was just curious...

6 LORING: I do. I, I do. And I will tell you that I, I, uh, don't have, you
7 know, a case at my fingertips, as we talk right now. My understanding of
8 SEPA, though, is that the threshold determination itself, uh, is based on the
9 conditions. And that any new conditions that were to be added, would still
10 need to have gone through that public review. Uh, that the initial MDNS was
11 required to have. And, and so that's to have that opportunity to ensure that
12 members of the public can, can bring their consulting and expertise to bear,
13 as well.

14 REEVES: Okay. So to clarify your point, I, I guess this is what I'm
15 asking. I, I've run into this in the past and I, I will admit in my mind,
16 this is a, sort of a weird, gray area, despite SEPA being around as long as
17 it has. Uh, I guess, I think it's very clear under the Law that I can, you
18 know, grant the Appeal and send it back, I think that's very clear. I think I
19 have the authority to deny the Appeal. I, I think that's clear. Uh, I think I
20 certainly have the authority, were I to approve the SUP, were I to do so,
21 which obviously is contingent upon me saying that SEPA didn't need to be
22 overturned, that I could add any conditions I want, uh, you know, um, but I
23 guess the, where I get hung up is can I, myself, go in and add additional
24 condition that is SEPA-specific, in the MDNS? And it sounds like your answer
25 was no? Did I understand you right, Mr. Loring?

1 LORING: You did.

2 REEVES: Okay. Good. And so, with that, I'll go around the horn and see if
3 others have any thoughts. Mr. D'Avignon, do you have any thoughts on that
4 strange, very specific issue?

5 D'AVIGNON: I do. I, I do want to, you know, do my normal disclaimer that
6 this has not fully been researched..

7 REEVES: Yeah.

8 D'AVIGNON: And...

9 REEVES: Yeah.

10 D'AVIGNON: Maybe briefing it would be better. Um, but, my, my understanding
11 is, is pretty much in line with Mr. Loring. Um, I don't, I'm pretty sure you
12 can't add conditions that are not already there. I am aware of at least one
13 case that found that the Hearing Examiner could clarify an already existing
14 condition. So, I think as that might apply here, this provision that we just
15 entered the stipulation on. I think you could possibly say, you could clarify
16 and say, truck trips for both of those instead of trips and trucks, where
17 that's not changing the condition itself, it's just providing some
18 clarification. I think it could be, you know, you could maybe go as far as
19 saying the average was calculated over 12 months. I think the end of there is
20 where I think maybe briefing may be helpful. I do think it's probably not a
21 good idea to be saying, and, you need to plant 50 trees.

22 REEVES: Got it.

23 D'AVIGNON: You know, something that's not there, I think, would, would be
24 problematic and I would be worried on Appeal that it would be overturned.

1 REEVES: Sure. So, just to clarify, I guess, so, Mr. Loring made the point
2 that their SEPA more than, you know, I don't want to say more than anything,
3 but, but a huge aspect to SEPA is the public process. And I think Mr. Loring,
4 uh, not to put words in his mouth, but I think he was essentially saying the
5 problem is with me as the Hearing Examiner, adding additional conditions to
6 SEPA would be that that flies in the face of the public review process that
7 occurs. And so, I think, then, your point there, Mr. D'Avignon, is you're
8 aware of a case that potentially would allow sort of a very simple
9 clarification, like, uh, in the margin, I could add something, but I
10 shouldn't be adding wholesale conditions that, that weren't previously
11 addressed. Is that kind of a good, good breakdown?

12 D'AVIGNON: Um, yeah. And I would note the, the single case is from 2022,
13 it's from February, it's Phillips 66 versus Whatcom County. It's unpublished
14 so I can, um, imagine the arguments that, um, Mr. Loring might make about
15 that. Um...

16 REEVES: Hold on. Sorry. Real quick, one more time, sorry, that's a real
17 new case. Can you give that to me? I don't know if I've read that yet.

18 D'AVIGNON: It's Phillips 66 Company.

19 REEVES: Okay.

20 D'AVIGNON: Versus Whatcom County and, and Friends of the San Juans.

21 REEVES: And it's unpublished so we don't have a number for it, right?

22 D'AVIGNON: No, I can give you the Appeal Number, is 82599-2-i, Roman, Roman
23 i.

24 REEVES: 8259-...

25 D'AVIGNON: [Inaudible.]

1 REEVES: Dash 2, so Division 2, got it. Okay.

2 D'AVIGNON: Dash, and it very, it's very, there's not a lot of meat there,
3 but it...

4 REEVES: Sure.

5 D'AVIGNON: It does suggest that a clarification is okay.

6 REEVES: Sure. And, and we can come back to it and we don't need to
7 belabor and get into unpublished versus published. The rules have even
8 changed on that in the last few years and I'm well aware of, uh, what those
9 are, I just, thank you, for, for, I didn't know the case. So that's, that's
10 helpful to know. Uh, the c-, I can't remember the case I was thinking of, but
11 I think Sound Law Center, my own, my own firm got in trouble years ago for
12 trying to amend the, uh, M-, and MDNS in, I think, Kitsap County. I, I wasn't
13 the Hearing Examiner, but, uh, you know, it's sort of fresh in my mind, uh,
14 that, that, uh, Hearing Examiners can get in trouble for, you know, trying to
15 add additional conditions to a MDNS and I don't remember the case, but I
16 will, if I look it up, uh, I'll let you guys know what it was. But, but thank
17 you for the clarification. And just to be clear, Mr. Loring, I didn't
18 mischaracterize what you were saying, is that right?

19 LORING: No, that's right, Mr. Examiner. Uh, you put words in my mouth and
20 I think they were the right words.

21 REEVES: All right. I take that. And, uh, we'll be able to reuse that in
22 the future. Mr. Ehrlichman, oh, no, sorry, he just, of course, when I, when
23 he goes to drink water, but I wanted to give you, uh, just a chance to weigh
24 in on the, on the facts on this there.

1 EHRlichman: Thank you, Mr. Examiner. I have to stay out of the SEPA argument
2 in this case. But I do have a comment that relates to it and I can see the
3 implications of this, in terms of your authority under the Special Use
4 Permit. Uh, since the SEPA conditions are being brought in as, as conditions
5 for that Permit.

6 REEVES: I, I...

7 EHRlichman: GO ahead.

8 REEVES: I apologize. Um, I, I'm not trying to be rude. I do want to
9 clarify, because I, I think you've said it and I think, it might have been
10 Mr. Loring said, to be clear, the conditions, sorry, I call them mitigation
11 measures under SEPA.

12 EHRlichman: Uh-huh.

13 REEVES: To try to not confuse them with conditions. Uh, to be clear, the
14 Staff, I, I thought, my review of the Staff Report would indicate to me there
15 are additional conditions beyond those identified as mitigation measures in
16 SEPA. Or have I missed that? I, I, because only ask because I think it's come
17 up several times and, and I just want to make sure I'm not missing the boat.
18 Pages 30 and 31 of the Staff Report includes several recommended conditions
19 related to the SUP and the very last one essentially says, incorporate the
20 MDNS measures, which is, uh, sort of a kind of standard way of doing it. But
21 can you clarify, am I right in thinking the other recommended conditions are
22 independent of the SUP? I just wanted to make sure I didn't miss that.

23 EHRlichman: Independent of the MDNS. Yes.

24 REEVES: [Inaudible.]

25 EHRlichman: Yes.

1 REEVES: Okay.

2 EHRLICHMAN: Now, that's, that is our argument here. And, and we can brief
3 some of that. But, absolutely, you have authority under the County Code. Um,
4 and it, and it actually kind of goes beyond, I think, what we're thinking
5 about here. Let me explain. Just as SEPA is often referred to as a Gap
6 Filler, when the code doesn't have a specific standard, but there is an
7 impact, you know, a County has SEPA authority to condition a project. Well,
8 here, my argument under the Special Use Permit Code is that it actually is
9 structured as a gap filler. Because there's a provision about treating these,
10 um, the Code as minimum standards and giving the Hearing Examiner authority
11 to impose conditions beyond what he sees in Code. So, the S-, the mining SUP
12 is a gap filler. And that vehicle is one where I will argue, you have
13 authority to go beyond the SEPA conditions, even add to the ones that are
14 brought over under SEPA. I hope that's helpful.

15 REEVES: Okay. Just to, so two things, thing one, I just, this is a simple
16 factual matter, uh, Mr. Ehrlichman. I'm looking at Page 30 and 31 of the
17 Staff Report. And the way I read these two pages is that there are thir-, 14
18 total Conditions that have been recommended by County Staff. And the first 13
19 are not repeats of the mitigation measures of the MDNS, Condition 14 then
20 says, comply with the MDNS. Is that, do you agree with that assessment, to
21 start?

22 EHRLICHMAN: Can you give me just a second?

23 REEVES: Sure.

24 EHRLICHMAN: I want to get, get to that page.

25 REEVES: Absolutely. It's, uh, 30 and 31 of the Staff Report.

1 EHRlichman: There we go.

2 REEVES: And, and there's certainly some overlap, I'm, I'm just trying to
3 clarify in my, to make sure I didn't miss something. Because it came up and
4 so I pulled up both the MDNS and the Staff Report to make sure I hadn't
5 misunderstood something.

6 EHRlichman: So, I'm looking at the Staff Report. And you're referring to what
7 page?

8 REEVES: Uh, 30, so starting on Page 30, there's a Staff Recommendation.
9 And, and I think it's Mr. Cricchio that signed off, ultimately, or maybe it's
10 Mr. Black, but it, it says the Application that we recommend approval subject
11 to conformance with the following Conditions. And then there are, uh, 14
12 identified Conditions. And the last one says, incorporate the MDNS and the
13 MDNS had, uh, I think it was 19 required mitigation measures. I, the thing
14 I'm trying to make sure I didn't miss is that the, the first thir-, 13
15 Conditions in the Staff Report are not sort of cut and paste from the earlier
16 MDNS, right?

17 EHRlichman: So, I, I'm hung up here for a second because I have a Staff
18 Report that's only nine pages long. So, I'm, I'm at, in the wrong document,
19 so, I'm sorry.

20 REEVES: That's okay. Jason D'Avignon, you were, you, you made a head
21 shake, was I right in my assessment there? The...

22 EHRlichman: This isn't C1, I guess?

23 D'AVIGNON: Uh, the, I guess, two things, one, I think you are right, Mr.
24 Hearing Examiner. I have not double checked that the Special Use Permit Staff
25 Report, those are not, the first 13 are not in the MDNS, I, my brief looking

1 at it now is there may be some overlap, but those are separate and apart from
2 the MDNS and I think well within your authority to modify, agree with,
3 disagree with, whatever. Um, and then to Tom's question, this is, um, the
4 Special Use Permit Staff Report, and part of the reason we had to do the
5 renumbering, was this Staff Report is, number one, um, and it's on the
6 website, um, if you go to the Concrete Nor'West, pit proposal website, on the
7 right side it says Exhibits.

8 EHRLICHMAN: I gotcha.

9 D'AVIGNON: And that's, that's where you'll find this.

10 EHRLICHMAN: Gotcha.

11 REEVES: And it's also the first several pages of what I call the Cricchio
12 file. And Mr. Mr. Cricchio has his hand up. So, I'll see if he wanted to...

13 EHRLICHMAN: I gotcha.

14 REEVES: He might know this better than anyone. Mr. Cricchio, you want to
15 weigh in real quick?

16 CRICCHIO: Yeah. I just wanted to answer your question, uh, so...

17 REEVES: Thank you.

18 CRICCHIO: On Page 30 and 31 are the suggested Conditions of Approval. Uh,
19 Conditions 1-13 are, uh, specific to the Special Use Permit. Condition 14 is
20 in reference to the SEPA MDNS, with all the mitigation measures therein. Uh,
21 Conditions 1-13, although there may be some redundancy, they are not the same
22 as, as the mitigation measures.

23 REEVES: Thank you.

24 EHRLICHMAN: I'm with you, Mr. Examiner. I, could you ask me the question
25 again?

1 REEVES: Well, I, I, I, I mean, I, I think Mr. Cricchio answered. I just
2 wanted to be clear that I didn't miss something. And, to the extent that it
3 does get complicated in terms of my authority, what already happened. And so
4 the question originally I had asked you, Mr. Ehrlichman, was the sort of my
5 authority question. And I think we're on the same page to some extent, which
6 is I think we both agree I have the power, um, I have the power to, to, uh,
7 you know, were I to approve this, were I to approve it, I certainly have not
8 made a decision yet. And also, were this to have survived Mr. Loring's SEPA
9 Appeal, which I have also not made a decision on. Because I think we can all
10 agree that were I to grant Mr. Loring's SEPA Appeal...

11 EHRLICHMAN: Uh-huh.

12 REEVES: Unfortunately, that would undo, uh, you know, the SUP portion of
13 our Hearing and that's just...

14 EHRLICHMAN: Right. Right.

15 REEVES: The way this gets consolidated, uh, requirement of the law works,
16 but were I, were I to get to that point, I, as the Hearing Examiner, have the
17 authority to condition the SUP as I see fit.

18 EHRLICHMAN: Yeah.

19 REEVES: Uh, certainly, the County, Mr. Loring, anyone, not Mr. Loring,
20 Mr., maybe Mr. Loring, Mr. Lynn, more likely, could challenge those
21 conditions to the extent that they could say, Mr. Hearing Examiner, you're
22 nuts, the...

23 EHRLICHMAN: Uh-huh.

24 REEVES: Under so and so on test, this condition is inappropriate. We
25 don't need to get into the, the...

1 EHRlichman: Right.

2 REEVES: Weeds on that. Uh, but do you think I have the authority to add
3 conditions on the SEPA MDNS itself, was part of it? That was the original
4 question, but...

5 EHRlichman: Okay. So, setting Condition 14 aside for a moment, yes,
6 Conditions 1-13 in the Staff Report relate to the SUP, and you have the
7 authority to add additional conditions or to modify any of those
8 recommendations as you see fit.

9 REEVES: Uh...

10 EHRlichman: Could you...

11 REEVES: Sorry. The Conditions on the SUP, correct?

12 EHRlichman: On the SUP. Those are SUP Conditions, I agree with Mr. Cricchio.

13 REEVES: Okay.

14 EHRlichman: And, and so then the next question is, uh, Number 14, what's the
15 extent of your authority, and that's where, while I would love to opine on
16 that, uh, uh, co-author of the Bar's SEPA desk book, I'd love to go there,
17 but I think I'm excluded from...

18 REEVES: I, well, I was going...

19 EHRlichman: From commenting on that.

20 REEVES: To let you weigh in. I, I was given you leeway to make a, make a,
21 to give me your thought. But, uh, if you don't want to go there, you don't
22 need to.

23 EHRlichman: I would like to. But I, I think I should stick to the SUP for
24 clarity's sake on all of this and, um, wish you all well in sorting that out.

25 I do want to, uh, provide, you know, applaud you and the rest of this, um,

1 Attorney group, for navigating the difficulties in the law of the overlap
2 between the two. And so, this is, this is an important issue. My position is
3 that we have, um, a SEPA set of conditions that are, are being recommended to
4 carry over and I, and if the Appeal is upheld, then we're done, we go back to
5 the drawing...

6 REEVES: Yeah.

7 EHRLICHMAN: Board. But if, if you deny the Appeal, then I think we do have to
8 cross the bridge of, uh, what do you do with that set of Conditions. I think
9 you have the authority under the SUP Code to, uh, craft conditions that are
10 similar to those conditions, but shed light, that would be the way would
11 approach it.

12 REEVES: Okay. Thank you. I like that terminology. And I'm sorry, I still
13 haven't, I don't know if it went to David Ortman [phonetic] or, or somewhere
14 else, I have not yet seen the stipulation. And I only ask because part of
15 what led me down this path was having not seen the language of the
16 stipulation, you know, the only thing I could think is the stipulation, well...

17 EHRLICHMAN: Well, I...

18 REEVES: Seen the language of the stipulation, I don't want to, I don't
19 want to...

20 EHRLICHMAN: I don't think there's any mystery, Mr. Examiner, I'm just going
21 to describe it for you and the other parties can correct me if, if they have
22 a different understanding, but...

23 REEVES: Okay.

24 EHRLICHMAN: Uh, we agreed to define the 46 trips as 23 in and 23 out. We
25 agreed, now, when I say we agreed to define it, I mean, we agreed that that's

1 what the MDNS is saying, without commenting on the adequacy of that. Then, we
2 also agreed that the MENDS is saying 30 per hour means 15 in, 15 out, again
3 without commenting. We were not able to reach agreement, on a, an annual
4 number. Um, and that's why this took a little bit longer.

5 REEVES: No problem. Okay. So, I'm going to move, then, to Bill Lynn, uh,
6 to see if he has any specific thoughts on this quandary, as it were?

7 LYNN: Uh, I, I do. Thank you. Oddly enough. Uh...

8 REEVES: Thought you might.

9 LYNN: So, uh, I saw the Phillip's case, too, and, uh, interesting, uh,
10 it clearly upholds the Examiner's authority to impose conditions and, in
11 fact, in that case, it was a condition imposed over the, uh, Applicant's
12 objection, uh, uh, and, uh, the Court held that the Examiner acted within his
13 authority. Uh, I think it's an even clearer case when, as here, some of the
14 conditions, anyway, have been proposed by the parties, uh, to solve problems
15 that have been identified in the process.

16 REEVES: Bill Lynn...

17 LYNN: Yeah.

18 REEVES: Apologies. When you use the term, condition, I just want to be
19 clear, are we talking about the, what I like to call Required Mitigation
20 Measures and maybe you're starting to understand, everybody, why I use that
21 term versus Condition. Because when we have consolidated Appeals, it, it does
22 make things less confusing. So, when you, I, I...

23 LYNN: Yeah.

24 REEVES: Okay. So, if you can clarify...

25 LYNN: Yeah. Uh...

1 REEVES: What you...

2 LYNN: It, it was an added mitigation measure, uh, to the...

3 REEVES: Okay.

4 LYNN: M-, MDNS that was under Appeal. So it was a mitigation measure.

5 I'll try to be precise about that. I should know better. Uh, uh, so, uh,

6 that's, that's what that case says. It's, it is unpublished, I don't know why

7 because it is kind of, uh, interesting. Uh, just kind of stepping back a

8 ways, it, there's no question about your authority to impose Conditions on

9 the Special Use Permit. It would be the height of, uh, elevating procedure

10 above substance to say, well, you can add conditions to mitigate impacts, but

11 then when you review the SEPA Appeal, you have to ignore those conditions and

12 pretend they didn't exist. Um, take for example, the proposal to widen the S-

13 curves in, on Grip Road, you could impose that as a, as a mitigation measure

14 under the Special Use Permit, but then are you suggesting, or is Mr. Loring

15 suggesting, that you then have to ignore it for purposes of the SEPA Appeal?

16 That's, that's the...

17 REEVES: Well, Mr. Lynn, I, one of the things I'm going to ask the

18 Attorneys, a big one in my mind, has to do with exactly the point I think

19 you're bringing up. Uh, I think, Mr. Loring, early in the proceedings had

20 objected to, I think it had to do with the, the, in fact, the, uh, curve,

21 what do we call it?

22 LYNN: Auto-turn...

23 REEVES: Analysis, auto-turn analysis to the extent that his point was, at

24 the time the MDNS issued, the County didn't have this information and so, you

25 know, I, as the Hearing Examiner, need to sort of do my analysis on the SEPA

1 Appeal, keeping in mind the date of when the MDNS came out. And that is
2 certainly a, a, a reasonable, uh, way to think about things. And I, I've
3 heard that argument, uh, I think it's a very common one. But there is a line
4 of thought in the Law, and this is something I was going to ask everyone to
5 think about, which is that if, through the process of the SEPA Appeal itself,
6 you know, additional information and analysis, et cetera, has occurred, that
7 almost cures whatever the problem may have been, or potentially could. And
8 I'm certain Mr. Loring will have thoughts on this. And I'm, Mr. Loring, I, I
9 suspect you're of the sort of opinion that, you know, uh, what's the ultimate
10 goal of the SEPA Appeal, but it's the, to solve the problem, get the
11 information. And if we've done that, you know, then there's sort of no harm
12 at the end of the day, if we've now done that as part of the SUP, but I'm not
13 trying to put words in your mouth, Mr. Lynn, but am I correct in my...

14 LYNN: I like Mr. Loring earlier, you put the right words in my mouth,
15 probably made them sound better than I would have. But, yeah, I mean, the,
16 the purpose is to identify impacts and to the extent possible and lawful,
17 mitigate them. So, again, why, why would you say that an Applicant can
18 volunteer conditions up to the date of the MDNS, but then not after? Uh, and
19 it's, uh, it, it just sort of defies, it, it's inconsistent with the purpose
20 and it seems to elevate the process, uh, uh, above the substance. The other
21 thing I would just say, briefly, is that if this was just a r-, an
22 opportunity to consider whether the County did a good job, why would, why do
23 we have an opened record hearing? Why did hear from anybody other than the
24 County witnesses. It's, it's, it's intentionally set up as an open record
25 public hearing and you have authority to approve, deny or impose conditions,

1 I, I believe, under the County Code. So, uh, it seems to me like the whole
2 idea of narrowing the scope to what the County, you know, had in front of its
3 blinders when it reviewed this seems like a, uh, an un-, an unnecessary, uh,
4 way to look at it. And unhelpful.

5 REEVES: Well, okay. But to be clear, when you say open record hearing,
6 the SUP is clearly an open record hearing where I illicit testimony from the
7 public, et cetera. The SEPA portion is consolidated, uh, you know, maybe Mr.
8 Ehrlichman knows the history, uh, better than I do, uh, but, essentially, the
9 SEPA portion is not, I mean, certainly it's open to the public, and it is
10 where they can watch and it's open record to the extent that the parties were
11 able to provide Exhibits. But it's, it's different, I guess, than, than the
12 meeting, the opened public hearing aspect, I mean, you acknowledge that,
13 right?

14 LYNN: Yeah. It's a, it's an opened record hearing as opposed to a
15 public meeting.

16 REEVES: And not a closed record hearing, either, which would be, you
17 know, the next stage of review, uh, whoever thinks I messed up, that will be
18 closed record to the extent that they'll use this record to then review and
19 they won't have additional evidence. Uh, and Mr. D'Avignon has a thought
20 there.

21 D'AVIGNON: I, I think it maybe is helpful to look at, you know, kind of how
22 the rules in the Code describe these in the sense that the Special Use Permit
23 is a pre-decision hearing. Um, and then that necessarily comes with the
24 public comment portion of it. The SEPA Appeal is a, an Appeal, it's
25 necessarily post-decision, that decision being the threshold determination.

1 Um, and it is open record, but it does not include the public comments,
2 which, which occurred in writing, as part of the MDNS process. But I think
3 the pre-decision hearing is the proper way to describe it.

4 REEVES: Sure. Okay. Okay. Well, I think, well, it was helpful to me, this
5 discussion. And I'm happy, uh, to, and that other issue I just brought up,
6 Mr. Loring, you know, that was one of the big things, whatever I send out
7 Monday, I, I intended on saying, hey, give me some thoughts on this. If, if
8 you want to take a minute and weigh in, feel free, I'm fully recognizing,
9 that you haven't, you weren't prepared and I expect you'll have killer
10 arguments prepared next Friday, but...

11 LORING: Uh, naturally, uh, yes, we will. I, no, I just want to touch
12 briefly on this topic. It won't surprise you that, um, I have a different
13 opinion of SEPA and its application than Mr. Lynn. Uh, that's part of the
14 reason we're here.

15 REEVES: Yeah.

16 LORING: That's part of this Appeal because our clients have different
17 views on the law and how it applies here. And, uh, I will say that the fact
18 that it's an open record hearing has no bearing on whether the County was
19 required to get a decision right because, of course, as an Appellant, there
20 are instances where it's important to bring forth evidence that helps
21 demonstrate that it was incorrectly done. And while sometimes showing the
22 absence of a proper evaluation is enough, as we know, practically speaking,
23 sometimes it requires a little bit more. And showing that impacts would
24 actually occur. So, that's, that's where we're at is that part. Uh, and then
25 on, you know, with regard to the Phillip 66 and whether Conditions can be

1 added and whether, uh, new proposals can be added through the SEPA Hearing
2 itself, I would, I, there's got to be some focus on the distinction between a
3 threshold determination, like we have here, with this MDNS and say a process
4 that goes through a full environmental impact statement that assesses at
5 least some specific potential impacts to a greater degree. And, uh, and in
6 this instance, that public process will have been circumvented if there's not
7 that opportunity to review, uh, even new proposals, although again, we
8 haven't heard much in the way of specificity or really anything in the way of
9 specificity about this. We have heard that there are pledges, but we don't
10 know if they really are. Um, and, and so I have, but to get back to that
11 Phillip 66, too, I encourage you to pull that up. And, and I do agree with
12 Mr. D'Avignon's view of it, in that there was a question about a revision of
13 a, of a Condition. And, uh, I believe that the Condition, and we'd need to
14 look at this deeper, but I do believe the Condition was about a future SEPA
15 review in the event that there were potential impacts that could arise as
16 part of the project. I believe it was something like that. So, that's not a
17 clear validation of a Hearing Examiner authority to add conditions through
18 this process. And with that...

19 REEVES: Okay.

20 LORING: I'll, uh, I'll defer til next week...

21 REEVES: Okay.

22 LORING: For further...

23 REEVES: Great. Well, thank you. I, uh, I think, at this point, we can, I
24 just want to round robin, but thank you, that was helpful to sort of, A) I
25 wanted to telegraph some of the thoughts that, that I plan on, again, I'll

1 try to produce a, a document that will be included in the record, obviously,
2 no, you know, nothing that won't be totally transparent. I just, I, part of
3 the challenge of this process is my particular role, you know, is two-fold. I
4 have to address the, the SEPA Appeal that Mr. Loring brought. And that does,
5 in my mind, you know, I mean, there's some very specific, sort of legal
6 analysis I'm hoping to get clarification on. And then, in terms of the SUP,
7 my role is, is, uh, a little different in terms of sort of calling balls and
8 strikes and ensuring the public had their opportunity to participate and, and
9 getting all the information Exhibits into the record. And then ultimately,
10 you know, even though Staff has made a recommendation, uh, you know, it's
11 the, the, the buck stops with me in terms of the ultimate decision and any
12 conditions. And, and so we've, we've been trying to sort of deal with and
13 address that, so trying to get clarification on that. Um, and so this is
14 helpful. And so I think, I think we have a good plan for next Friday, uh, and
15 we'll, you know, I think we know exactly where we're going to go, but again,
16 I'll try to produce something, uh, here this week and send it out that we
17 can, uh, you know, maybe include somehow in the record, officially, saying,
18 hey, these are the kind of legal questions I'm hoping we can, you know, I'd
19 like the parties to, to give additional thought to themselves. So, this
20 initial discussion was very helpful. So, thank you. Um, I, again, not enough
21 time to bring a witness. Uh, so I think we can conclude for the day. But I
22 will round robin and just make sure. So, I'll start with Mr., uh, D'Avignon
23 because have him as the lead today, in terms of his witnesses. Was there
24 anything else you, you wanted me to address before we conclude for the day?
25 D'AVIGNON: Uh, no, Mr. Examiner, thank you.

1 REEVES: Great. Uh, Mr. Ehrlichman?

2 EHRLICHMAN: May I schedule Ms. Walsh for 9:30 on Friday the 23rd? She has to
3 take time off work, I'd like to give her a definite time if that's agreeable?

4 REEVES: Well, is she your first witness?

5 EHRLICHMAN: I can make her my first witness, sure.

6 REEVES: Well, if so, let's schedule her for, like, 9:05.

7 EHRLICHMAN: Okay.

8 REEVES: Uh, 9 o'clock, let's just say 9 o'clock. But yeah, that would be
9 fine.

10 EHRLICHMAN: Okay. Very good. Thank you.

11 REEVES: Okay. And anything else before...

12 EHRLICHMAN: Nothing else. Appreciate the, the conduct of the Hearing today.
13 Thank you.

14 REEVES: Great. Uh, Mr. Lynn?

15 LYNN: Uh, nothing, uh, concluding an error-free muting day, though.
16 Just...

17 REEVES: Uh, and you do get gold stars, uh, for that, absolutely. And Mr.
18 Loring, you actually lost a gold star for failure to use bicyclability, but,
19 but, uh, but, uh, any, anything you wanted to touch on before we end the day?

20 LORING: No, I've got nothing, nothing and I hope to regain that gold star
21 next week.

22 REEVES: Uh, and, uh, for those following along, this is an independent
23 system that has nothing to do with, uh, you know, what I ultimately decide.

24 It's just me being a joker and trying to bring a little levity. But I do
25 certainly take this seriously and I understand how important this is, uh, in

1 terms of the Applicant, the Appellant, all of those in the community, I, I,
2 you know, I know I'm a bit of a, a prankster, but, uh, I, I take it very
3 seriously. I just, these long eight-hour days, you know, you need something
4 here or there. So, I think we can conclude the day. Uh, ultimately, uh, I
5 think, I have to say Bill Lynn wins in terms of a tie because he wore the
6 monkey tie. And that's a hard one to beat. Uh, Mr. Ehrlichman looks upset
7 that he didn't win on the tie, but I can't see closely...

8 EHRLICHMAN: I can't see any monkeys is my problem.

9 REEVES: All right.

10 EHRLICHMAN: Can you bring that closer to the camera?

11 REEVES: Bring the tie a little closer.

12 EHRLICHMAN: Oh, okay. There we go. Thank you. That's my only upset. Thank
13 you.

14 REEVES: Excellent. All right. So I think we'll be back next Friday, uh,
15 which, again, I think was the 23rd? And..

16 LORING: Yeah.

17 REEVES: We're going to start promptly at 9:00. Uh, we already, Mr.
18 Ehrlichman acknowledged who his witnesses are, who his first witness will be.
19 Uh, and I think we have a plan to get through everything. Uh, the parties
20 will send me the, the stipulation. I, again, I still don't think I got it,
21 which is fine. Um, and then further homework for the parties, I, I think we
22 know we're up to A62 for the Appellant, but if I can just get verification on
23 Exhibit numbers, uh, from, from the other Attorneys, uh, before, uh, next
24 Friday, that would be great. And, uh, I will, again, try to sort of produce
25 a, these are the legal questions I was hoping for some, some thoughts on. Uh,

1 we'll do that and then, of course, because it's a Friday next Friday, uh,
2 pursuant to Brandon Black's policies at Skagit County, uh, I think, uh, uh,
3 Hawaiian shirts are, are acceptable. So, I think, with that, we can conclude
4 our Hear-, I get a, we get a thumbs up from Brandon Black. I think with that,
5 we can conclude the day. I, uh, appreciate, uh, everyone, uh, participating,
6 taking the time to watch, uh, to answer questions, those that testified, I
7 appreciate, uh, the Attorneys, uh, taking time to, to, uh, get through all of
8 this. And, uh, we'll wrap it up next week. Uh, I've seen you all more than
9 I've seen my own family, uh, the last few months, probably the same for all
10 of us, uh, but, uh, uh, next Friday will, will be the day and I think with
11 that, we'll end things. And thank you, also to Mona Kellogg and, uh, and, uh,
12 County Staff that has coordinated things. So, we'll, we'll all be back next
13 Friday. Thanks, everybody.

14 LORING: Thank you.

15 EHRLICHMAN: Thank you.

16 D'AVIGNON: Thank you.

17 [The tape ends.]

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

19 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
20 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party
21 to this action. That on May 10th, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves, that
22 took place on 9/13/22 at 3:00 p.m., regarding the above-captioned matter.

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

25 Signed at Mount Vernon, Washington, this 10th, May of 2024.

Janet Williamson

Janet Williamson

Janet Williamson

janetwilliamson78@gmail.com

Mount Vernon, WA 98273

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PERMIT HEARING 9-13-22 3:00 PM

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