

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

8 *In re:*)
9 Application for Mining Special Use) Cause Nos.: PL16-0097, PL16-
10 Permit and Forest Practices Permit by) 0098, PL22-0142
11 Concrete Nor'West/Miles Sand and)
12 Gravel,)
13 and) PERMIT HEARING 9-23-22 3:00 PM
14 Appeal of Mitigated Determination of)
15 Significance by Central Samish Valley)
16 Neighbors)

17 Transcription Date: May 12th, 2024

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

20 REEVES: Okay. Uh, so we are back and essentially, uh, what we wanted to
21 conclude with, we've solved. I believe the exhibits and how that's going to
22 work, uh, in terms of the final exhibits and any responses to those exhibits.
23 Um, we'll make sure to stop at the end with enough time to sort out three
24 things. But, uh, I did, as the Hearing Examiner, want to ask some questions,
25 uh, of the Attorneys because I have four, uh, experts on Land Use, SEPA, et
cetera all in the room. Uh, so, uh, you know, seems like a, a perfect moment
to get their thoughts on, on some of these, uh, interesting and tricky
issues. So, I'm going to start with Mr. Loring, uh, to the extent that

1 obviously your role has been somewhat different, uh, than others. Uh, and I
2 think it's fair to, uh, you know, I'm not wrong in thinking that, that the
3 work you've done for this Hearing is, relates, relates both to the SEPA
4 Appeal and the SUP, is that accurate to begin with?

5 LORING: Yes, it is, Mr. Examiner.

6 REEVES: Okay.

7 LORING: Yes.

8 REEVES: So, my, my, my big first question had to do with, uh, has to do
9 with remedy, as it were, which is, first off, were, were I to grant your
10 Appeal, what, what would you hope would happen, ultimately? Is, is, sort of
11 in broad terms.

12 LORING: Sure. Uh, if the Appeal were granted, this, the MDNS would need
13 to be vacated or reversed. And the questions that have been raised through
14 this Appeal, and the omissions in the environmental review, would need to be
15 addressed. Uh, I think that, at this point, I'm guessing that some of it
16 might be addressed through new conditions in a MDNS, or, actually, maybe even
17 a lot of it could be addressed through conditions in a MDNS, uh, after it
18 went back to the County, they had the chance to start that process, and then
19 members of the public, of course, again, would have the opportunity to weigh
20 in on that. Um, there still may be some issues that require or warrant
21 greater examination, uh, as a result of all of this. And I, I, we've heard a
22 lot about traffic issues that have not been evaluated. Uh, we heard about,
23 you know, one that comes right to mind is bank stability. I don't think
24 anybody has even argued was, was ever fully evaluated at this point. I, I
25 should take that back, I know Mr. Lynn h-, I'm sure he has a different

1 opinion. But, uh, there was definitely a lot of discussion about areas,
2 geographical even, that were not evaluated. So, there may be some areas that
3 would require some additional review. Um, but there might be some others
4 where additional conditions would be able to address it. Through that MDNS...

5 REEVES: Sure.

6 LORING: Process. I, I will say, you know, in our briefing, of occurs, we
7 touched on an EIS, Environmental Impact Statement because that's what you do,
8 that doesn't mean the full broad suite of all potential impacts. Uh, it might
9 make sense to do a deeper dive into some of the impacts to ensure that they
10 were addressed through conditions in a MDNS, even still shy of an EIS.
11 Because my client does acknowledge that an MDNS can substitute for an EIS if
12 the potential impacts have been addressed.

13 REEVES: Okay.

14 LORING: Impacts that they've identified through the process. Yeah. You go
15 ahead, you have questions that are popping up.

16 REEVES: I, well, I wanted...

17 LORING: Please.

18 REEVES: To parse that out, I wanted to parse that out, Mr. Loring. So,
19 uh, if the, if the answer is I would need to think more or I can't answer it,
20 fine, but you touched on, you brought EIS up, which would be a full blown
21 Environmental Impact Statement. Uh, you know, one often, well, not often, but
22 at least decades ago, sort of with SEPA, what, sometimes would happens with
23 Appeals is if an Appeal is granted on a DNS, that meant do an EIS, uh, is it
24 your position that an EIS is appropriate in these circumstances?

1 LORING: It's, yes. I, I will say, it's not my position that it is a
2 necessary requirement of reversing the MDNS. But it would be a, you know,
3 reversing the MDNS means going back and taking a closer look at some of the
4 issues and impacts that were not evaluated, per, and, again, of course, I'm
5 speaking from my client's perspective, just be clear about all of that. Um,
6 so, that would, that would need to occur before a new threshold determination
7 were issued. But I don't know that a determination of significance would have
8 to issue, it certainly could. And we do believe that we've identified some
9 significant impacts, as the project is currently defined, and based on the
10 details and information that we have at this time.

11 REEVES: Got it. So, there, it's not a de facto sort of position that were
12 I to...

13 LORING: It's not.

14 REEVES: Uh, grant the Appeal, uh, you know, clearly were I to grant the
15 Appeal, I would be, you know, uh, remanding, uh, for more work, which in my
16 mind, would involve vacating the, the current, uh, SEPA determination. It's
17 not necessarily your position that that automatically means an EIS is
18 required. It's more work is done and if that work means a different MDNS with
19 more conditions that potentially could solve the concerns that, that you
20 have, your clients have? Is that sort of an accurate assessment?

21 LORING: Yes.

22 REEVES: Okay.

23 LORING: That is accurate. And, and I will say, you know, our Pre-Hearing
24 brief identified some of those concer-, those concerns or, or did identify
25

1 the world of concerns. Our Post-Hearing brief may do an even tighter job
2 identifying those now that we've had a Hearing, as well.

3 REEVES: Sure. And so, I just want to go a little further with you and
4 then we'll hear from the other parties. To the extent of...

5 LORING: Sure.

6 REEVES: This, this issue, which these consolidated Hearings, uh, you
7 know, they're not uncommon, I guess, but, uh, they can be tricky and, and so
8 I was thinking this through, and one thought I had, uh, over the weekend last
9 weekend was, were I to grant the SEPA Appeal and essentially say, we're going
10 to send, you know, we're going to vacate the MDNS and require that to be
11 redone, in your mind, would there be a problem with me essentially continuing
12 the SUP Hearing as opposed to just throwing the baby out with the bath water?
13 And I ask because one thought I had, and, again, I have not decided anything.
14 I was just working my way through all of the possibilities, we don't want to
15 have to redo seven days of work, in my mind. So, one thought I had, but I'm
16 curious about your thoughts on the legal, sort of aspects here would be, were
17 I to essentially, you know, there were, you've convinced me, uh, you know,
18 with the h-, fairly high burden we know exists for, for winning in terms of
19 SEPA, uh, that, uh, I'm left with the sort of firm and definite conviction
20 that, that an error occurred. And, and I, the County essentially needs to
21 start the SEPA process again, would it be possible for that to occur,
22 including the comment period, and then if, you know, there's no Appeals of
23 that new MDNS, or even if there was an Appeal, could we, then, just reopen
24 this consolidated Hearing as needed, on, on the limited basis of not having

1 to redo all of the, the, the work that was done in terms of everything we've
2 already heard? Is my question.

3 LORING: Procedurally, I will say I'm not, I don't completely know. Uh,
4 but what I will say is it would make sense that you would say we're dealing
5 with the SEPA now and we're holding off on that SUP decision until later. I
6 don't know if that's continuing the Hearing and then just having an
7 opportunity for people to address changes, to the next there are any in the
8 Application, at that next stage. I think that would make sense. But I don't
9 know that that satis-, I, I don't know if that would satisfy the full
10 Application process that Skagit County contemplates for a, for a Special Use
11 Permit Hearing. Or Special Use Permit.

12 REEVES: Oh, yeah. And, again, I, I'm not sure I know the answer either,
13 which was partially why I was asking it. But, uh, I think we'll move around
14 and, and see what others thing. Uh, Mr. Lynn, I'll go to you next on, on that
15 particular issue, if you have any thoughts. A-, apart from obviously you
16 believe on behalf of your clients that there's no need to grant the SEPA
17 Appeal, et cetera. But...

18 LYNN: Right. Yeah. I mean, I guess, uh, number one, and we talked about
19 this earlier a little bit, and maybe it requires further briefing. If the
20 Hearing Examiner were to think that an additional condition were required, I
21 think the Examiner has the authority to add that. Again, we don't think that
22 would be necessary, but we think the Examiner would have that authority
23 without the necessity for further back and forth with the County. And, by the
24 way, I think that that condition could potenti-, uh, it would depend on the
25 information that you thought might be missing. But if there was something in

1 particular that you thought would be missing, a condition requiring that
2 prior to some further step could, could address that issue. In other words,
3 you could impose a condition that says that prior to operation, this would be
4 completed or that. You know, and, again, it's really hard to argue this in
5 the abstract.

6 REEVES: Sure. Sorry. And, and, Bill, just to clarify your point there,
7 you're saying you, legally speaking, you don't see a reason why I, as the
8 Hearing Examiner, can't add additional conditions to the MNDS, versus any
9 improved SUP?

10 LYNN: Uh, yeah, exactly. I mean, and that's what...

11 REEVES: Okay.

12 LYNN: That Phillips 66 says, at least as I read it. Um, and I think
13 there's even less question about a proposed change that the Applicant would
14 make to its Proposal, uh, during the scope of the Hearing. And I'm
15 specifically thinking about the Grip Road S-curves, uh, you know, the County
16 did not identify that as an impact that needed mitigation, uh, nonetheless,
17 we have proposed mitigation for that as an element of the project. And I
18 certainly think that not only can the Applicant do that, the Applicant should
19 be encouraged to do that since the whole SEPA process, of which this Hearing
20 is a part, is intended to identify and mitigate impact. So, I, again, I think
21 I pointed this out in our argument a couple of, or a week ago, whenever that
22 was, that it would seem odd that you would have the ability to impose a
23 condition to approve a Special Use Permit, but not be able to consider that
24 same condition in evaluating the, the SEPA process for the project. And so,
25 so, I, I, I think the Examiner could, if the Examiner thought additional

1 conditions were necessary, you could impose them, uh, through this process,
2 without the necessity to go back, uh, through, um, through a, a, a different
3 SEPA process with the County. I think, in other words, I don't think it, I
4 don't think we're obligated to pretend that none of this happened. Uh, that
5 the, that, you know, we didn't have this seven-day Hearing, largely on SEPA
6 issues, uh, and, and a lot of public comment on all of these different
7 aspects of, of the project. I don't think we have to go back to the County as
8 if we're at square one.

9 REEVES: Well, so, I guess those are two, two slightly different, I guess,
10 the one is the, you know, do I evaluate the MDNS based on a time cut off,
11 right, on what was known when and I certainly understand Mr. Loring's
12 position. I think your position is, is different to the extent that you, you,
13 you're essentially saying, you know, yes, the MDNS was issued on a date
14 certain. Now that we have more information, it's possible for me as the
15 Hearing Examiner to sort of, uh, you know, either augment the MDNS or any,
16 any sort of error is, is harmless to the extent that it's now been fixed. Is,
17 is that sort of the idea?

18 LYNN: Yeah. I mean, I think that's why this is an open record process.
19 This is why the Examiner has the authority to, uh, grant Appeals, deny
20 Appeals or condition, um, and I think that applies here as well.

21 REEVES: Sure. But, but if I were to ultimately say, you know, I really
22 have a major concern, you know, with the 200 versus 300 foot, or something to
23 that effect, such that I am not going to grant the Appeal, do you see any
24 reason, legally, for it to be problematic to me, for me to continue the SUP
25

1 portion while another SEPA determination is addressed? Such that later on we
2 don't have to redo...

3 LYNN: Yeah. Well, yeah. Trust, trust me, the last thing I would want to
4 do is relive any part of the last seven days. Uh, and, and I think, and I
5 think it would be a waste of, uh, public, private and your resources...

6 REEVES: Okay.

7 LYNN: To, uh, have to do that. So, yeah, I think you absolutely could.
8 If you thought it was necessary to have some further evaluation of that, um,
9 uh, then, I think the...

10 REEVES: I, I've never had this happen. So, I'm...

11 LYNN: Yeah. And, and I just, one thing I, you know, you, you probably
12 just mentioned this as an example, but the 200 versus 300 foot, um, buffer
13 issue, when this came up, the Applicant had, there are two documents in the,
14 there are two site plans in the record that show a 200 and 300 foot buffer,
15 so...

16 REEVES: I shouldn't have picked the example.

17 LYNN: Okay.

18 REEVES: I, I just...

19 LYNN: Okay.

20 REEVES: That was just a number, you know, just popped in my head. I'm,
21 like I said, I haven't decided anything. Sorry.

22 LYNN: Yeah.

23 REEVES: I don't want to get into the weeds.

24 LYNN: I just, I just bit the bait.

1 REEVES: It's okay. So, I'll, I'll, next I'll ask Mr. D'Avignon if he had
2 any thoughts on, on those questions that we've been asking and answering, uh,
3 just now?

4 D'AVIGNON: Uh, yes. So, as I've looked at this a little bit more, I think I
5 would, I would tend to say I agree with Mr. Lynn on the Hearing Examiner's
6 authority to, to modify, um, MDNS conditions. I, I think in looking at
7 Phillips 66, I, I think their reason, and which particularly looked at the
8 County Code and what the County Code provides, and I think common sense
9 approach of why would there be an open record Hearing if you're not going to
10 actually consider and be able to do anything with that information? I do
11 think it's something that maybe would require more briefing. I also found it
12 interesting in going back and looking at the briefing in that case, that none
13 of the parties identified any limitation within SEPA itself, or its
14 regulations, limiting a Hearing Examiner's authority in the Administrative
15 Appeal process.

16 REEVES: Okay.

17 D'AVIGNON: Which I think suggests that we're, we're primarily guided by what
18 the County Code and the Hearing Examiner's rules provide. So, I think maybe
19 the cut off line on that would be if there's facts in the record that such a
20 decision could be made upon, the Hearing Examiner could. So, to take your
21 terrible example, if it was determined that, you know, the evidence is that a
22 300 foot buffer is necessary to mitigate against, um, significant likely
23 impacts, I think you could do so. If the determination is, I don't know,
24 there, there needs to be further study to know, then I think it would be
25 improper to, to make a decision not based on the facts and the, the record, I

1 guess. And that would require the remand back to the administrative official
2 to, to obtain that information and ma-, reissue a MDNS. I think as to the
3 Special Use Permit, I, I cannot see any reason why we couldn't continue that
4 portion, um, in the event that the Appeal was granted. Um, particularly since
5 I, I, I really take Bill's point to that would be a, it would be a waste of
6 public resources to, um, and everyone else's resources, to have another day
7 of we're going to listen to the traffic experts say the same thing they said
8 before or maybe something slightly different, but substantially the same.

9 REEVES: I appreciate the idea it would be one other day. But, uh, thank
10 you for your thoughts. Uh, I, I recognize, Mr. Ehrlichman, that in terms of
11 process, you know, you're, you're not specifically involved in the SEPA. With
12 no obj-, if there's no objection from the other Attorneys, uh, I think Mr.
13 Ehrlichman is a, has expertise on SEPA, uh, that I certainly acknowledge and
14 I would appreciate if he has any thoughts that he would like to share on, on,
15 on this topic?

16 EHRLICHMAN: Thank you, Mr. Examiner. Uh, I am going to stay farafield from
17 the SEPA case. Uh, we, we can't be put in that position of, of now being
18 asked or invited to participate in some aspect of it when we were denied
19 intervention. Having said that, I, I very much do want to comment on the
20 questions you've raised because they effect the Special Use Permit
21 proceeding. Um, and I would encourage you and each of the Attorneys to make a
22 very clear distinction between your pain and suffering from my interview
23 style of witnesses and the, uh, the heartache of the objections and all of
24 that so forth, from the, the procedural questions that, in my mind, are very
25 clear-, easy to answer. Uh, as much as none of us would like to go through

1 this again, I don't see how you avoid the problem of the Single Open Record
2 Hearing Command under 3670B. And, you know, this has been the, the, the much
3 debated, if not subliminally debated issue throughout this case. And I, you
4 know, digress to applaud you for, um, how you have, you know, struggled
5 through that. But, I think what became clear very early in our discussions,
6 all of us, was that there was no practical way to bifurcate the evidentiary
7 proceeding into two parts. And so, we, we all masterfully came up with a
8 solution that the SEPA, um, testimony and SEPA Exhibits would all be part of
9 the SUP, um, record and proceeding. And then legal argument on the SEPA would
10 be separate. That was the right answer, the way I read the statute. There's
11 no, I don't see any other way. So that goes to your question of if you were
12 to remand the SEPA, could you put the SUP aside, you know, hold it on ice,
13 and then bring it back alive again when the SEPA Appeal or the, there's no
14 Appeal, um, and, and proceed ahead. It, it wouldn't work because during that
15 remand, there's going to be new evidence generated and you would then be put
16 in the position of having to bifurcate that part of the record from the
17 frozen SUP record. So, I hate to be the, once again the spoiler...

18 REEVES: Well...

19 EHRLICHMAN: But that's how I see it.

20 REEVES: Well, I'm trying to understand that. So, Mr. Ehrlichman, any, any
21 new SEPA determination that would occur, would then become part of the SUP
22 record that had been on hold, uh, you know, well, I guess, let me ask it a
23 different way, in your mind, if I grant Mr. Loring's Appeal, does that then
24 mean whatever happens, there's going to be, have to be a whole new SUP?

1 EHRlichman: Well, I mean, my reading of the case law is that if you find that
2 the MDNS is, um, deficient, it's void, there is no permit application. It
3 doesn't get processed to the Hearing Examiner without a SEPA determination.
4 What it, the other route you can go is as Mr. Lynn, Mr. D'Avignon advocate,
5 you know, uh, cure the flaw in the MDNS and Mr. Loring is making, um, good
6 argument against that as a, as a lawful remedy. But those seem to me to be
7 the paths available to you. Uh, and if you were to, to grant the Appeal, as I
8 said, the MDNS is gone. And so I don't see how you somehow keep the, the
9 permit application alive at the Hearing Examiner level. Um, and so that's,
10 it's, it's a terrible outcome, but I don't, under the law, I just don't see
11 another way to go. And, again, I encourage Mr. Lynn and Mr. D'Avignon in
12 particular to set aside whatever sting and pain you're still feeling from
13 today's, uh, cross-examination...

14 REEVES: No, it...

15 EHRlichman: And really look at that because it, you know, it doesn't do
16 anybody any service to...

17 REEVES: Well...

18 EHRlichman: To get it wrong, so...

19 REEVES: I, I agree. And I, I mean, I bring this up because, in fact, you
20 know, I, this was our sort of remedy that, uh, one of my, you know,
21 colleagues at Sound Law sort of said, what about this and I said, well, I've
22 never seen that happen, I've never done it. I mean, you know, so I just said,
23 I don't know. I don't know what the answer is. Let me, let me see what folks
24 think. And I have not had the time to look closely at, you know, new WAC,
25 newer WACs and, and anything, you know, um, so, so I was just trying to walk

1 it through. And, again, I haven't made up my mind on anything. But, but I
2 appreciate your stance and if, you know, I, I certainly, uh, again, recognize
3 the, what the roles are. Uh, if you happen to know a provision of, uh, uh, or
4 a case that, that sort of backs up what you just said and want to share it,
5 that would be appreciated. So, um, okay. So, I think that was the first
6 question and I think I get a good sense of things. Uh, my next question,
7 well, Mr. Loring, you have a serious face, which is great, I don't mind that
8 at all. But did you have follow up you wanted to do on that? This effects the
9 Appellant, obviously, so I just wanted to...

10 LORING: I, uh, I guess it's my 3-, almost 3:30 serious face, yeah.

11 REEVES: Okay.

12 LORING: So, it was, I was not indicating anything in particular, but I
13 would like the opportunity to address the Hearing Examiner's authority if
14 were moving on from that. If I might just take...

15 REEVES: Yeah.

16 LORING: A, but...

17 REEVES: Go ahead...

18 LORING: Okay.

19 REEVES: And do that before then I ask my next...

20 LORING: Okay.

21 REEVES: Question.

22 LORING: And, and I will start by saying that I'd like to look into this a
23 little bit further. But I did review the Phillips 66 case. And, uh, and I'm
24 going to take the, uh, I guess unappealing position of saying, of suggesting
25 that your authority is more limited than two of the other lawyers wanted to

1 grant you there. And I say that in that there isn't language in SEPA that
2 does authorize a Hearing Examiner in the County or City systems to condition,
3 uh, a MDNS, to add conditions to a MDNS. And as my review of that Phillips 66
4 case, first is that the Court did not hold that a Hearing Examiner could
5 condition, uh, a MNDS. There was really strict holding of that Court. It was
6 a Court of Appeals case, uh, Appelwick, I believe was the judge on that. He,
7 he...

8 REEVES: Correct. Unpublished, but...

9 LORING: Yes. Unpublished, still Court of Appeals, you know, can be
10 granted for, yeah, cited for, yeah. Anyway, his, his holding was very narrow
11 and said, in this instance, the Hearing Examiner did not err in clarifying a
12 condition. And so you probably read that, too, and you noticed that as well.
13 There is language in that decision that suggests that adding or deleting a
14 condition would be appropriate or allowable. But that was not the really
15 strict holding there. Uh, the fact that it's an open record hearing, to me is
16 neither here nor there. There are a lot of open record hearings in which a
17 decision doesn't get to be conditioned or changed, or, or a local, you know,
18 permit decision. I'm thinking of everything in front of the Growth Management
19 Hearings Board, the Shorelines Hearings Board, the Police Control Hearings
20 Board, uh, the Court system will sometimes have opened record trials on
21 things, but not be able to condition something. So, I, I don't think that
22 that, I know that the Court would have deferred to that, too. But, uh, that
23 doesn't apply. And also, even just the level of permit review, Whatcom County
24 has, I believe, a similar system to Skagit County. And they were discussing
25 an instance where the, uh, the permit, or the decision from the local, uh,

1 decision maker was being Appealed to the Hearing Examiner, in addition to the
2 environmental threshold determination. This is one where you, you have very
3 different authority under the Skagit County Code to condition however you
4 want, this SUP.

5 REEVES: Right.

6 LORING: Moving forward.

7 REEVES: So rather than an admin, an Appeal, an admin decision coupled
8 with SEPA, this is a Land Use, you know, primary decision wherein nobody has
9 made a decision on the SUP.

10 LORING: That's right.

11 REEVES: I mean, I, I have a recommendation, right? But the only...

12 LORING: Yeah.

13 REEVES: Decision so far made is the County's MDNS. I, I certainly grant,
14 grant and understand your point, Mr. Loring.

15 LORING: That's right. And so Appellant capacity differs from decision
16 making capacity and...

17 REEVES: Got...

18 LORING: I'll, I'll end there.

19 REEVES: Okay.

20 LORING: Thank you.

21 REEVES: Uh, again, more, a little more specific, on this question, and
22 specific for you, Mr. Loring, and you may have an answer just ready in the,
23 in, in, you know, ready at your hip. Uh, for, for this one, which is the
24 question of climate change is, is a tricky one to the extent that unless it's
25 changed recently, and I'll be honest, I haven't looked. But, last I checked,

1 the actual WAC that has the, uh, the pro forma, uh, SEPA checklist, the DOE,
2 DOE sort of prepared, which obviously jurisdictions can augment, change, et
3 cetera, uh, doesn't specifically, uh, you know, mention or require, uh,
4 climate change. I, I recognize air quality or air is one of the categories
5 that needs to be addressed. But, uh, A) is that your understanding, too? And
6 I apologize I don't know the WAC right off the top of my head these days,
7 but...

8 LORING: You're talking about, sorry, the WAC with the SEPA checklist?

9 REEVES: Yes.

10 LORING: I also...

11 REEVES: I, I don't...

12 LORING: The 960, is it 960? I, that may be wrong.

13 REEVES: I think it's, okay. Uh, so I guess my question is...

14 LORING: I know which one you mean, the one that sets forth the SEPA
15 checklist. It, it does speak to air pollution. And...

16 REEVES: Yes.

17 LORING: And our position is that carbon emissions are an air pollution
18 issue and that climate change is related to that air pollution issue. The
19 climate change is the result of that air pollution.

20 REEVES: Okay.

21 LORING: It would be, like, and so our position is that, you know,
22 something like asthma, for example, you know, is, you don't necessarily study
23 exactly, you know, what the effects of the asthma are, but you study the
24 inputs that would cause that sort of condition. Um, uh, and pollution inputs

1 that would cause that sort of condition. Yeah. If this were a traffic, uh,
2 transportation center, running on diesel gas, for example.

3 REEVES: Got it. I, I guess, my, just to clarify your position, it is not
4 the Appellant's position that the MDNS is flawed to the extent that it didn't
5 explicitly include an analysis on carbon emissions, it's more that as the
6 MDNS was looking at air quality, it, it didn't seem to even consider it?
7 Would that be an accurate assessment? I'm not trying to put words in your
8 mouth. I'm, I'm just hoping for some clarification.

9 LORING: I would say that has been our position, yes. That the MDNS
10 didn't, and, and the environmental review that the County conducted and based
11 on the documents in front of them, did not indicate that carbon emissions
12 were evaluated at all in this instance. And, uh...

13 REEVES: But...

14 LORING: And so to determine whether there would be a way to address those
15 through the process. And I do note there was a somewhat recent case of the
16 Washington Court of Appeals, where ecology had not considered climate change
17 when drafting waste water discharge permits. That was...

18 REEVES: [Inaudible.]

19 LORING: You may be familiar with that. Yeah. Yes, exactly. So...

20 REEVES: [Inaudible] for those following along, that's the Washington
21 State Dairy case versus ecology and, uh, sorry, I actually had it pulled up
22 at one point. I can give you the guys the cite, I don't even think it has a
23 win app cite, but 490 P3rd 290 is the case from 2021.

24 LORING: Okay.

1 REEVES: Uh, okay. Well, we don't need to dive too deep. I just was, I,
2 this is a very ob.-, very obviously an area of the law that is very quickly
3 changing. But, uh, Bill Lynn, any thoughts on that particular issue you
4 wanted to bring up or share?

5 LYNN: Yeah. I, I don't think it's required, I'd have to go back and
6 look at the WAC. I was fumbling around trying to find it, um, uh, and I would
7 also note that this would seem to fall into the category of impacts of any
8 mining project, I mean, trucks are trucks, trucks carry gravel, the shorter
9 they carry them, the gravel, the better. But I haven't, I haven't looked at
10 the issue. My recollection was that it's an optional element, it's not
11 required.

12 REEVES: Okay. Mr. D'Avignon, any thoughts on this particular issue?

13 D'AVIGNON: I don't think I have anything of import to note at this time.

14 REEVES: Okay. And, uh, Mr. Ehrlichman?

15 EHRLICHMAN: Pass.

16 REEVES: Pass. Exc-, okay. We had a pass there. Okay. Um, that said,
17 moving, moving on, um, Mr., again, I'll, well, I think it's easier to just do
18 the round robin this way. So, I'll, I'll go with Mr. Loring, again. Uh, were
19 I to deny your SEPA Appeal, um, you know, well, uh, that's not a, that's a
20 terrible way to phrase this, Mr. Reeves. Okay. Let me think that one through.
21 Strike my own question. Grant my striking. Okay. Um, well, I guess, more
22 generally speaking, if I deny your SEPA Appeal, I assume you would agree that
23 it would be appropriate then for me to add additional conditions through the
24 SUP that hopefully address the concerns that you've raised. Is that an
25 accurate assessment?

1 LORING: It is.

2 REEVES: Okay.

3 LORING: I, I will say, I'm not sure how you get to the point where you're
4 adding conditions that would address the environmental impacts. If, uh, if
5 somehow those environmental impacts were not considered significant in the
6 first instance.

7 REEVES: Well, to the extent that there's, uh, the County has a Critical
8 Areas Ordinance, does it not?

9 LORING: It does in the requirements of the CAO are incorporated into that
10 MDNS. Uh, if it, or through SE-...

11 REEVES: Uh...

12 LORING: Or I should say should SEPA are required to be addressed.

13 REEVES: Right. Okay.

14 LORING: But if they weren't already and they needed to be, they would
15 have had to have been through the SEPA process.

16 REEVES: Well, I think that's a different argument than one might, some
17 other [inaudible] but I, I grant, I understand.

18 LORING: I believe it.

19 REEVES: Okay. Um, I think, um, specifically, uh, on the legal issue of,
20 of sort of remedy, unless you have any additional thoughts you wanted to
21 share on remedy that, before we move on, Mr. Loring?

22 LORING: Uh, I don't on that specific point. I do just want to add the
23 briefs that we submitted in advance, I, I think, actually, we did identify
24 conditions in that Special Use Permit on that letter that we submitted. So,
25 again, the [inaudible] in terms of our [inaudible] seven days of hearing. Um,

1 I [inaudible] place where we tried to identify conditions that we thought
2 would bring this project into, uh, compliance with the local rules there.

3 REEVES: Okay. Okay. Um, and then, uh, I, I guess moving, uh, to Mr. Lynn,
4 uh, and just in terms of, uh, well, I guess more generally speaking, you've
5 already sort of touched on answering my questions for Mr. Loring about
6 remedy, but, you know, do you have any, any additional thoughts related to
7 process or remedy from a legal standpoint you wanted to share?

8 LYNN: Well, just to follow up on what Mr. Loring said, I guess I could,
9 I could envision conditions that you found necessary in order to meet the SUP
10 Standards that did not arise to the level of significance under SEPA.

11 REEVES: Sure. Yeah. I think I was pre-, sort of thinking that an Attorney
12 could make that argument when I said that to Mr. Loring and now you are the
13 Attorney that has made the argument. I, so I think I understand it. Um, was,
14 was that the only thought there, uh, Mr. Lynn?

15 LYNN: Yes.

16 REEVES: Okay. Uh, same question, Mr. D'Avignon?

17 D'AVIGNON: I have, uh, nothing additional to add.

18 REEVES: Okay. And is this a pass again, Mr. Ehrlichman? It doesn't have
19 to be.

20 EHRLICHMAN: No, I, I don't think it is a pass. Um, I'm trying to
21 conceptualize a scenario that Bill just described in sort of general, where,
22 uh, you add conditions to meet the SUP criteria, uh, that don't rise to the
23 level of overturning the SEPA MDNS or, or, uh, rise to the level of changes
24 to the SEPA conditions. I guess, what I could conceive of would be a SUP
25 condition that is harmonious with a SPEA condition, even if it goes further

1 in clarifying, uh, the subject matter of a SEPA condition. And my favorite,
2 uh, topic comes to mind of the 11,760 trips or whatever it is, you know, the
3 ceiling, in other words. I can conceive of how you impose a SUP condition
4 that says, okay, there's a ceiling on a number of trips per year and you deny
5 the SEPA Appeal. Well, that wouldn't necessarily conflict with anything in
6 the SEPA conditions because they talk about an average and we've all talked
7 about how that's based on the year and so forth. I get that would maybe, uh,
8 meet that, that, um, formula that Bill just described, even if it's not
9 substantively what he would agree with. And so, I guess I would, I would
10 agree with Bill.

11 REEVES: All right. Let the record note Mr. Ehrlichman agreed with Mr.
12 Lynn. Uh, we are now in the last hour of our seven-day Hearing, but I'm glad
13 we got there. And I do note the term significant is clearly defined in the
14 WAC and WAC, uh, 197, 117.94. And, and so it is a term of art and the Hearing
15 Examiner is well aware of that. Uh, okay. So, moving on. Uh, in fact, I, the
16 remedy thing threw me off, I guess, in my analysis as I was thinking things
17 through and I'll, I'll certainly want to think more on it. I guess what I'm
18 going to suggest, at this point, would be, uh, starting with Mr. Loring and,
19 again, I don't need a full closing here. But are, is there any sort of legal
20 point you would like to stress or make to me, uh, you know, while we have an
21 opportunity to hear from your colleagues? Uh, and this is sort of, you know,
22 something separate from the briefing, closing brief. Because, to be clear, I
23 don't intend on having multiple levels of briefing. The plan, in however
24 briefing occurs, which we'll talk about here momentarily. But the plan is, is

1 sort of simultaneous submission of briefs. Mr. Loring, if you have an
2 objection, I recognize you might, but, but go ahead.

3 LORING: Uh, yeah, I don't have an objection.

4 REEVES: Okay.

5 LORING: We submitted Pre-Hearing briefs, we'll submit Post-Hearing
6 briefs. I, I am confident that the Hearing Examiner can review all of the
7 material we put in front of him at the same time. I am, I'm sure you can
8 handle that. We don't need the back and forth. I, I will say my answer to
9 your invitation just now depends somewhat on that briefing. Because I, I am
10 comfortable submitting written briefing and having it address essentially our
11 closing because I, it would be a challenge, I think, to address bite-size
12 pieces now without...

13 REEVES: Okay.

14 LORING: Taking on the whole issue. SEPA is large, it's broad, it, the
15 issue of significance was one I would touch on, right? Intensity in context,
16 clearly applicable here. Um, so, so, I, I've got a lot that I would say about
17 it. I'd like to hear a little bit more about the next steps, I think, before
18 I answer...

19 REEVES: Okay.

20 LORING: The invitation.

21 REEVES: Okay. Mr. Lynn, any...

22 EHRLICHMAN: Que-...

23 REEVES: Oh, go ahead, Mr...

24 EHRLICHMAN: No, no, go ahead. I'll, I'll get my round here, thank you.

25

1 REEVES: All right. Mr. Lynn, same, same question and if, you know, I,
2 it's the end of the day, it's a Friday, perhaps nobody really wants to sua
3 sponte bring up their own legal thoughts independent of a closing, but...

4 LYNN: No, I think I would, I, anything I would say would probably
5 result in everybody wanting to respond. So, I think I'll, I'd be better off
6 saying nothing than something else.

7 REEVES: Often, often a wise position for all of us, uh, as humans. Uh,
8 uh, Mr. D'Avignon?

9 D'AVIGNON: I, too, am going to follow the wise example of Mr. Loring and Mr.
10 Lynn.

11 REEVES: And Mr. Ehrlichman?

12 EHRLICHMAN: And I have never learned that lesson, as you all can tell. Um, I,
13 I guess I have two questions, uh, one, would it make sense, Mr. Examiner, to
14 set a deadline for the submittal of, uh, any evidence, uh, or sort of new
15 substantive submittals? I think Mr. Lynn suggested he submit his proposed
16 conditions by the 30th. My...

17 REEVES: Sorry, one sec. Bill Lynn, we're getting some noise.

18 LYNN: Uh, yeah, I'm having a computer issue. My, I'm working off of a
19 laptop, uh, and let me, let me see if I can at least...

20 REEVES: Okay.

21 LYNN: Shut off my microphone.

22 REEVES: Actually, just, I need...

23 EHRLICHMAN: There we go.
24
25

1 REEVES: I need to blow my nose, just take a minute to sign off, I, and
2 sign back on. I'm going to go off camera, deal with that, uh, and, and, but
3 let's make sure everyone's audio works here at the end.
4 EHRLICHMAN: Okay.
5 KELLOGG: Probably should mute you.
6 EHRLICHMAN: Okay.
7 REEVES: [Pause] I will make sure that we get Bill back. All right.
8 Hold on. I'll be right back, one sec. We're going to make sure Bill Lynn
9 comes back. [Pause] Bill Lynn, you there? [Pause] am I correct, Mr.
10 Ehrlichman, in assuming you would have no objection to continuing regardless?
11 EHRLICHMAN: Um, without Bill, you mean? I...
12 LYNN: Uh...
13 EHRLICHMAN: I hesitate to do anything these days in this case without Bill
14 present.
15 LYNN: Uh, yeah, I'm here.
16 REEVES: Excellent.
17 LYNN: And, Tom, I'm glad to know you missed me.
18 REEVES: Okay. So, Mr. Ehrlichman..
19 EHRLICHMAN: Yep.
20 REEVES: Was mid-, mid-conversation..
21 EHRLICHMAN: Oh, nice shirt, sorry. You guys are amazing.
22 REEVES: Following Mr. Loring's lead. But, go ahead, Mr. Ehrlichman?
23 EHRLICHMAN: Uh, it's funny. Well, I just thought if, if we're going to set up
24 a briefing schedule, should we precede that with a deadline, uh, after which
25 parties can't be submitting new substantive...

1 REEVES: Well...

2 EHRLICHMAN: Information?

3 REEVES: Now, to be clear, when you use the substantive, my understanding
4 is there's only two additional substantive information documents. This would
5 be S-, uh, C49 S16, the...

6 EHRLICHMAN: Uh-huh.

7 REEVES: Declaration of your witness, uh, uh, Wallace Groda. Uh, S17 would
8 the parcel data.

9 EHRLICHMAN: Uh-huh.

10 REEVES: Now, that is going to come in by next Friday, the 30th. We'll...

11 EHRLICHMAN: Uh-huh.

12 REEVES: Just to make life easier for everyone. Uh, and then if there are
13 any, uh, sort of responses folks would like to make, uh, I would suggest they
14 do so, uh, by October 7th. And, again, those are limited in responding to just
15 those two. Uh, I was going to suggest, uh, that, uh, you know, Mr. Lynn has
16 stated there's, you know, the, the, uh, Applicant intends on submitting, you
17 know, sort of proposed, revised conditions, uh, either to clarify or based on
18 what we've heard. Um, and so, let me get a timing thought on that. And I
19 don't consider that substantive, on some level. I mean, it's not new
20 evidence, it's...

21 EHRLICHMAN: Well...

22 REEVES: Hold on, let me just...

23 LYNN: Sure.

24 REEVES: One sec, let me get Bill Lynn's thoughts on timing on, on that
25 particular...

1 LYNN: I can easily do that.

2 REEVES: Bill pulled a Bill Lynn right at the very end.

3 LYNN: I, I know.

4 REEVES: Bill Lynn, go ahead.

5 LYNN: Uh, I'll, I'll tell you my excuse later. Uh, yeah. I can do that

6 certainly by next Friday. And I can probably do it earlier, I'm just trying

7 to keep the schedule simpler.

8 REEVES: Sure.

9 LYNN: So there aren't too many different deadlines.

10 REEVES: Okay. So, Mr. Ehrlichman, if, so, my suggestion would be anyone

11 that wants to submit proposed conditions, uh, whether that's a revised set or

12 redlining those have been suggested, either on the MDNS itself or, or the

13 SUP, anyone do that by next Friday. But your thoughts...

14 EHRLICHMAN: Okay.

15 REEVES: Mr. Ehrlichman?

16 EHRLICHMAN: I, I think, let me put it this way, if, if a party proposes

17 conditions for your consideration as part of their legal argument based on

18 the record that is there today, I have no problem with that. My concern is if

19 the Applicant is changing their Proposal, uh, as, as part of briefing, where

20 we don't have a chance to review that new, uh, offer by the Applicant, or

21 respond to it, it, it could change the legal analysis. So, I think Mr. Lynn

22 has handled the problem for us and once again he and I are in harmony. Uh,

23 if, if his, if the Applicant is given until September 30th to, you know,

24 modify anything on the record that relates to their Proposal then we have a

25 set record. And I'm barred after that date also on my two exhibits.

1 REEVES: Sorry.

2 EHRLICHMAN: Do you see what I'm saying, it, we can't be...

3 REEVES: Just...

4 EHRLICHMAN: We've got to have a fixed record by a date certain in order to

5 brief the case.

6 REEVES: That I agree with. And when you say modify the record. In my

7 mind, modifying or proposing revisions to the conditions, you know, doesn't

8 magically change the record or the facts, it's, uh, you know, uh, I think

9 that's clear. I just, you know, the way we're describing it, um, I would...

10 EHRLICHMAN: Well...

11 REEVES: Well, hold on.

12 EHRLICHMAN: Sorry. Yeah.

13 REEVES: Let me think it through, just give me a sec. One thought I have

14 would be the Applicant has already identified, it has given thought to or

15 would like to submit any new conditions, uh, by, we can by September 30th. I

16 would be willing to make that a proposed exhibit and then give the other

17 parties an opportunity, you know, a week to submit their own, uh, you know,

18 proposed revisions. You know, I don't want to have multiple layers of this.

19 It, it would be done by the 7th, which is...

20 EHRLICHMAN: Uh-huh.

21 REEVES: The sort of date certain on any objection to yours, so that there

22 would be all of the stuff would come in by the 7th.

23 EHRLICHMAN: Uh-huh.

24 REEVES: And, and then briefing would happen after that. Does, does that

25 makes sense, in your mind? And I'll ask the others as well.

1 EHRlichman: That does. Thank you.

2 REEVES: Okay. So, just to be clear on a, and, and if there's an
3 objection, uh, Mr. Lynn, let me know, but what I would suggest, oh, what a
4 good number would be, B100, lucky B100 would be, uh, the Applicant's, uh,
5 proposed, uh, revised and I assume SUP conditions, still?

6 LYNN: Yes.

7 REEVES: Okay.

8 LYNN: Well, I mean, I guess that kind of gets back to the issue of the
9 can you, can we amend the SEPA conditions, so...

10 REEVES: Well...

11 LYNN: Um, I, I think I am just going to propose them as a...

12 REEVES: Propose, sorry, I'll finish. Sorry. You, I'm saying if you'd
13 like, you can propose a set of alterations to the, the MDNS conditions, I,
14 you know, if, if you think that's appropriate, I'll leave it up to you. It
15 doesn't mean I've made my legal determination on whether that's appropriate.
16 I, I may end up ignoring it. But, but I...

17 LYNN: And that's fine.

18 REEVES: Okay. So, that would be B100. And then the other parties, any
19 other party, in my mind, would, would be able to submit their own sort of set
20 of revised, what they think would be appropriate conditions, um, by the week
21 after. And I would add, if so, let's say it's Mr. Loring that does it, which
22 I'll get with him next, that would end up being A63, I think.

23 LORING: That sounds right to me. Yeah. Thanks.
24
25

1 REEVES: Okay. So that would then, the substantive portion of the record
2 is closed, uh, on October 7th. And then we, we go into briefing after that.
3 Does that track?

4 EHRLICHMAN: Uh-huh.

5 REEVES: Okay. But you had, you said two questions or have they now both
6 been answered, uh, Mr. Ehrlichman?

7 EHRLICHMAN: Yeah. I think they have. Would you like our proposed conditions
8 to be Exhibit 49 S18?

9 REEVES: If you're doing them, yes. Uh, it would be the last...

10 EHRLICHMAN: Yeah.

11 REEVES: I'm not, I'm not going to assume you're doing them, but, but...

12 EHRLICHMAN: Right.

13 REEVES: If you...

14 EHRLICHMAN: If we do.

15 REEVES: So, go sequential.

16 EHRLICHMAN: Okay. Thank you.

17 REEVES: Okay.

18 EHRLICHMAN: That's it. Yeah.

19 REEVES: Okay. So, in terms of briefing, uh, my thought would be, so we
20 have ultimately, then, mentally, we're saying the record for very, very
21 specific, limited reasons, uh, you know, is closing technically on the 7th.
22 Um, and then the parties, obviously, will need to sort of think through what
23 has been proposed as conditions from the other parties, et cetera. Um, and,
24 and anything that comes up with the other two, uh, exhibits, uh, from, from
25 Mr. Ehrlichman. But, we have sort of a couple of things happening. And I'll

1 start with you, Mr. Ehrlichman, uh, you know, I, I'm perfectly happy to allow
2 for you to submit a closing brief, uh, related to the SUP. Uh, if the other
3 parties object, now would be the time, but, but I really would have no issue
4 with it. Uh, any objection from Mr. Lynn or...

5 LYNN: No.

6 REEVES: [Inaudible] no, okay. So, with that, Mr. Ehrlichman, can you
7 propose to me, a sort of when you think, you know, closing brief, uh, related
8 to SUP?

9 EHRLICHMAN: Let me pull up my calendar here.

10 REEVES: Uh-huh.

11 EHRLICHMAN: I've got a commitment the fifth, sixth and seventh. And, uh, I'm
12 moving on the 11th and the 12th. So, I would love to have, you know, at least
13 three weeks, if I could get more, I would take it, but I don't know that
14 you're willing to go that long.

15 REEVES: Well, really, it would be more if Mr. Lynn, the Applicant or the
16 County had any specific thoughts, but are you essentially suggesting October
17 28th? Did I understand that right?

18 EHRLICHMAN: That would be ideal.

19 REEVES: No problem on my end. But, Mr. Lynn, on October 28th, in terms of
20 the SUP brief?

21 LYNN: Uh, that, that's fine.

22 REEVES: Okay. And, and also, just to be clear, I, my thought would be
23 there's the potential for, I would prefer not to have or force Mr. D'Avignon
24 and Mr. Lynn to produce multiple briefs. But if they find it easier to have,
25 you know, a County brief responding to the SUP and a County brief responding

1 to the SEPA, that's fine. Or they can do it altogether. But let me start with
2 Jason, uh, Jason D'Avignon, your thoughts one or two, you know?

3 D'AVIGNON: Um, I would just appreciate the opportunity to possibly be two.
4 I, without having starting to write it, I can see how maybe it would be more
5 efficient to do one. I can also see how it can maybe become confusing and
6 harder to follow trying to put them together. Um, so, I would, I would want
7 to wait until I'm a little bit farther in the writing process to, to submit
8 or have a, a, a strong preference.

9 REEVES: All right. Heck of a lawyer answer. What I would say was you're
10 essentially saying, you know, two, allow two, but one if I end up deciding
11 one, would that be a, a fair characterization?

12 D'AVIGNON: Yes.

13 REEVES: Okay. Your thoughts, Mr. Lynn?

14 LYNN: Uh, I'm going to follow the lawyerly answer of my colleague from
15 the County. And I, I think that's probably true, likewise, I mean, I just
16 don't really, until you start...

17 REEVES: Yeah.

18 LYNN: Writing it, you don't really know.

19 REEVES: Well, and, uh, clarification from Mr. Loring would be helpful.
20 Mr. Loring, uh, do you intend on diving into the SUP aspects as part of this,
21 versus, uh, you know, focusing more specifically on SEPA?

22 LORING: I, I was wondering if it would come back around to that. Uh,
23 yeah, SEPA has been our focus as part of this Appeal, but there is a SUP on
24 the table. Um, you know, my thought is that it might make sense to the extent
25 there is any information to have some sort of addendum to this comment letter

1 that we submitted that just addressed very specifically some of the
2 testimony, uh, that we've heard now.

3 REEVES: Sorry. You lost me there. Addendum...

4 LORING: Well, to the SEPA or the, sorry, the SUP comments that, uh, that
5 we submitted, Central Samish Valley Neighbors did submit that...

6 REEVES: Oh.

7 LORING: Comment letter. It's already in the record. I, I don't, we don't
8 need to recite the Critical Areas Ordinance sections again. But it, it might
9 make sense to do a little bit of follow up, just in terms of the testimony
10 we've heard.

11 REEVES: What I would suggest is, this is my, here, here's what I'm
12 thinking and then I'll ask everybody. My thought would be, uh, you know, in
13 terms of page limits, we haven't even talked about that, you know, I'd say
14 maybe 15, unless someone wants to argue for more. But Mr. Ehrlichman would be
15 allowed 15 pages for his, uh, brief specific to the SUP. I would, uh, you
16 know, have Mr. Loring, uh, get 15 pages for his SEPA, but if he wants to use
17 a few of those pages to touch on the SUP, I'd allow it. And then I think it
18 actually technically would be appropriate to let both the County and the
19 Applicant sort of respond separately to those. Meaning however they want to
20 do that. And I would, that does mean they get more pages, but I, I don't want
21 everyone to be upset that I'm being unfair. But I, I think we do really have
22 separate issues in terms of SEPA versus the SUP. But, let me get your
23 thoughts to start, Mr. Loring?

24 LORING: I, I, to be honest, I'm not seeing the distinction, there is not
25 typically a lot of Post-Hearing SUP briefing. But to the extent there is,

1 everybody who has participated to date, including the public, typically would
2 have some sort of opportunity to submit some documentation. So, I, I'm not
3 seeing a distinction that would cut Central Samish Valley Neighbors, uh,
4 opportunity to brief whatever has occurred, including their own Appeal, in
5 half, uh, in terms of what the County and the Applicant would do. I know
6 you're creating this, you know, this is your world and, and you get to design
7 what comes out. No, but to some extent, right, it's a Post-Hearing system and
8 you get to design that. Um, but, but, uh, on behalf of my client, I'd have to
9 request the same amount of briefing as the other parties who are briefing the
10 exact same thing.

11 REEVES: Okay. Uh...

12 LORING: I don't want to brief a lot, by the way. I, I do want to put that
13 out there. I, there is a lot of paperwork that has been submitted Pre-
14 Hearing.

15 REEVES: Sure. Yeah. We're, we're in the several thousand pages, uh, of,
16 of materials and now seven days of testimony and argument. But, uh, so, there
17 is significant information. I, you know, fine, I'll, I'll say, you know, I'll
18 do it this way, just to be fair, I'll put a 30, 30-page page limit for Mr.
19 Ehrlichman and Mr. Loring on their two different, you know, their one brief
20 that they're producing and then Mr. D'Avignon and Mr. Loring, or, sorry, Mr.
21 Lynn, you have 30 pages to produce your briefs. And if you decide it's easier
22 to have, devote X-amount of pages specifically to the SUP, X amount to SEPA
23 and break it into two briefs, fine with me. But these are, my intent is these
24 are all being done simultaneously. So, it's not that we're having multiple
25

1 rounds in multiple stages. But that's my initial thought. You, your thoughts
2 on that, MR. Loring, and then I'll round robin?

3 LORING: That, that's fine, that's ample. I'm assuming double spaced,
4 still ample. Um...

5 REEVES: Yes.

6 LORING: Thank you for that.

7 REEVES: Double spaced, normal margins. No adding at-, attachments,
8 exhibits, et cetera. I didn't think I would need to tell this crowd all of
9 this, but okay.

10 LORING: You shouldn't. I just wanted to make sure we're clear, things,
11 you never know what comes across the desk, sometimes.

12 REEVES: I feel like I'm leading a college graduate seminar right now, you
13 know, but, uh, anyway, so, uh, Mr...

14 D'AVIGNON: I appreciate the question because I was going to ask it next.

15 REEVES: Okay. Mr., uh, fine, Mr. D'Avignon, your thoughts?

16 D'AVIGNON: Uh, that, that works for me.

17 REEVES: Uh, Mr. Ehrlichman?

18 EHRLICHMAN: That works for me. And after we hear from Bill, I'd like to ask
19 you a question about what you find helpful in briefing Post-Hearing.

20 REEVES: Absolutely. Thank you. That's great. I would love that question.
21 Bill Lynn?

22 LYNN: Yeah. That's fine, 30 pages is fine.

23 REEVES: Okay. And so, just to be clear on what I just ruled on, in the
24 universe I've created as Mr., uh, Loring has, has pointed out, uh, it's so,
25 so interesting to me sometimes because at various points, I have the

1 authority to do everything and, and then most of the time, I, I am very
2 limited in my authority. So, it's a, it's a challenge ego-wise, uh, whether I
3 have, you know, plenary power or little to none. But, uh, what, what I
4 ultimately just decided was, uh, by, by the 28th, uh, so first off, the, the
5 substantive record, as it were, would close the 7th, and then by October 28th,
6 uh, uh, each of the various, uh, Attorneys here, uh, would have 30 pages, uh,
7 to produce their closing briefs. Um, and caveat, or, or, uh, further
8 clarification, in terms of the County and the Applicant, if they feel like,
9 you know, breaking their pages into two, you know, separate ones, that's
10 fine. You know, so that's, that ruling. Um, and then, uh, Mr. Ehrlichman
11 wanted to ask, uh, a question of me, I'm going to allow it.

12 EHRLICHMAN: Um, this is the first time I've been in front of you, if nobody
13 can tell that. But, um, I would like to, uh, get some insight into, you know,
14 what you find helpful, Post-Hearing, there are different, different styles
15 and different focus by different Hearing Examiners, so...

16 REEVES: Sure. Uh, yeah. I mean, I, you know, my background is, is the
17 Appellate world, if that wasn't clear yet. Which is obviously very different
18 than the trial world. So, I'm used to, you know, you've got 30 minutes
19 period, for the entire case that you're making, uh, but, uh, so, in my mind,
20 I, I can't stress enough, I really, you know, have reviewed, maybe not stuff
21 that was submitted today or yesterday, uh, but I have reviewed the whole
22 record, uh, you know, at least, you know, in a cursory fashion. I will
23 further review it, uh, you know, in my mind, uh, what has occurred a little
24 in seven days of Hearing is, I think, helped, hopefully, kind of focus my
25 attention to what the various parties, uh, you know, feel is important in the

1 record. Um, in terms of, you know, rehashing all the testimony, I don't find
2 particularly helpful. Uh, you know, uh, I will say if any one of the parties
3 intends on having a transcript made sooner rather than later, as a curtesy, I
4 would ask that that be sent around. You know, all of these, uh, recordings,
5 you know, are, have been provided, you know, pretty quickly after each
6 Hearing by Mona, uh, Kellogg. Uh, but personally, I do read much, much more
7 quickly than I'm able to listen to testimony. But, uh, you know, so, in terms
8 of what to focus on, I guess, uh, you know, uh, the more you focus on the
9 legal, you know, why you think you should win from a legal standpoint, versus
10 rehashing what's in the record, to me, that is the most helpful.

11 EHRLICHMAN: Uh-huh.

12 REEVES: If that, does that clarify or help make sense of anything, Mr.
13 Ehrlichman?

14 EHRLICHMAN: Uh-huh. Yeah. Uh, some, some Examiners, you know, like you to
15 point to what you think is important in the record and attach the exhibit and
16 all that, and it sounds like that is absolutely not what, what you're looking
17 for.

18 REEVES: Definitely not. Again, I'm, I'm not trying to fully, you know,
19 I'm not trying to preclude you from doing things how you'd like to do them.
20 But in terms of what I find most useful, I feel like I can confidently say
21 that I, I will have known the, know the record pretty well and will have
22 thoroughly reviewed it such that if the concern is, you know, you need to
23 direct my attention so I don't miss something, uh, hopefully that is, you
24 know, not going to be a problem. And so, I find the sort of focusing on why
25 the criteria has not been met or the, you know, legal sort of justification

1 or reasons for why an error occurred, depending on who's brief it is, et
2 cetera, I, I would find most helpful.

3 EHRLICHMAN: Thank you.

4 REEVES: And definitely no attachments, no additional information, et
5 cetera, et cetera.

6 EHRLICHMAN: Uh-huh.

7 REEVES: Uh, that, that I'm, I would like to be abundantly clear about.

8 EHRLICHMAN: Excellent.

9 REEVES: And I'll allow any other, any questions of me while we're doing
10 this. I did allow Mr. Ehrlichman a question. This is abnormal, but why not?
11 We're, we're right at the end here.

12 LYNN: This is, this is one witness I certainly don't want to badger so
13 I'm going to with [inaudible].

14 LORING: I've got no questions, Mr. Examiner, at this point. Thank you.

15 REEVES: Mr. D'Avignon, you got anything?

16 D'AVIGNON: Uh, no, Mr. Examiner. Thank you.

17 REEVES: Okay. Then, round robin back, staying with you, Mr. D'Avignon,
18 before we conclude the matter, did you have anything you wanted to make sure,
19 you know, we touch on or that I missed or that you feel like we need to
20 address before concluding today?

21 D'AVGINON: I don't believe so. Thank you.

22 REEVES: Okay. Mr. Ehrlichman? Oh, no, you, you're muted.

23 EHRLICHMAN: Nothing procedural. I, I do want to thank the parties for the,
24 the special consideration, this was an unique, uh, situation.

1 REEVES: I, it truly was. And, and, you know, I'll, I'll get to that in
2 just a sec. So, I acknowledge, uh, you thanking the parties, Mr. Ehrlichman.
3 Uh, Mr., uh, Mr. Loring, anything? Just want to make sure...

4 LORING: Nothing further. Thank you.

5 REEVES: And, Bill Lynn, anything?

6 LYNN: No. Thank you.

7 REEVES: Okay. So, I get to make a, just a couple of final remarks. Just
8 to start, I really can't stress enough how unique this is to the extent that,
9 you know, in say a Superior Court, you might have two sides and you've got
10 Attorney, Attorney 1 and Attorney 2, through this Hearing, we've had four
11 Attorneys, plus myself. And that does create, you know, uh, some challenges
12 and, but I, I recognize at various points, uh, there, you know, frustrations
13 have occurred, uh, between myself, uh, the Attorneys, others, who knows, uh,
14 but I think, uh, all-in-all, we managed to get through it. Uh, I, I, I
15 recognize I'm now wearing a Hawaiian shirt, which is abnormal, I, but Day 7,
16 uh, you know, a little levity. I, I want to stress, it does not in any way
17 shape or form mean I don't recognize the importance of, of what we've heard
18 and what's going on. Uh, but for these very, uh, intense, long, uh, matters,
19 I, I do think it's good to, to have a laugh here or there, uh, so, just
20 wanted to point out, though, that that does not in any way, shape or form
21 mean that I don't take the process seriously. I, I very much do. Uh, and I, I
22 think, based on the passion that we've seen from the Attorneys involved, they
23 certainly take the process seriously. And I heard a lot of passion from
24 members of the public in the first few days. So, I, I acknowledge all of
25 that. Uh, I want to certainly thank Mona Kellogg, uh, and other members of

1 staff, uh, for on the procedural side. Uh, Mona is the third Clerk, I think,
2 since we started this process and that's just since I was involved. Uh, you
3 know, who knows over however, six years, how many folks have been involved.
4 So, a, a big thank you, uh, to, to staff in terms of the procedural, uh, end
5 of things. Uh, thank you, as well, again to the public, uh, those that, that
6 took the time to testify or provide written, written, uh, testimo-, written
7 comments, uh, testimony, uh, and watched through this whole process. Uh, you
8 know, regardless of the outcome, uh, you know, it is, it is wonderful to, to
9 work in communities like this, uh, where there's so much, you know, passion,
10 uh, for, uh, what happens, uh, in, in the community. Uh, and finally, just a,
11 a thank you to all of these Attorneys. Uh, Mr. Ehrlichman has sort of been
12 involved in, I think, one other matter with me, but has not appeared,
13 technically, before me before, uh, but I, I appreciate it. Uh, Mr. Lynn,
14 based on his job, does appear before me a lot. Uh, win or lose, I, you know,
15 uh, I appreciate his professionalism. Mr. Loring, I think has only appeared
16 once, uh, before and did lose, I note for the record, but I don't think has
17 held that against me. And I also appreciate, uh, his approach and
18 professionalism. And Mr. D'Avignon sometimes appears as, as the County's
19 Attorney. Uh, it is, again, a long, challenging process, uh, and, and, but I
20 do appreciate, uh, how well-prepared and articulate everybody is. So, I,
21 think, I need to give out awards, this will only take a second and then we'll
22 conclude. Uh, uh, Jason D'Avignon, has the most gold stars, uh, when it comes
23 to helping others, uh, with putting up their exhibits. So, he has the gold
24 star award. I think Mr. Lynn won on the tie award for the monkey tie,
25 although I was proud of my tie today. Uh, Mr. Loring gets bonus, uh, points

1 for putting on a Hawaiian shirt, uh, here at the end. I note, uh, my Hawaiian
2 shirt does have the, uh, skulls on it, so I did have a theme today. Uh, so
3 hopefully, Brandon Black gives me a little credit on that. And Tom Ehrlichman
4 had the best joke, uh, which was last week, when he was, uh, told us all he'd
5 be happy to move on, uh, without Bill Lynn, uh, that was great. Uh, and, and
6 also wanted to acknowledge, uh, that, uh, uh, we had other members of Staff,
7 uh, that, that helped with tech issues, that are not, uh, the tech issues
8 and, and they should be acknowledged as well. So, I think, with that, we can
9 conclude everything. We have the timeline, uh, moving forward. So, uh, once
10 again, thank you, everybody. And, uh, we will end the matter. Enjoy the fall
11 and, uh, safety and good health to everybody. Thanks.

12 EHRLICHMAN: Thank you.

13 D'AVIGNON: Thank you.

14 LORING: Thank you all.

15 [The tape ends.]

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

17 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
18 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party
19 to this action. That on May 12th, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves, that
20 took place on 9/23/22 at 3:00 p.m., regarding the above-captioned matter.

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

23 Signed at Mount Vernon, Washington, this 12th, May of 2024.

24 Janet Williamson

25 Janet Williamson