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6 **OFFICE OF THE HEARING EXAMINER**
SKAGIT COUNTY

7 *In re:*)
8 Application for Mining Special Use) Cause Nos.: PL16-0097, PL16-
Permit and Forest Practices Permit by) 0098, PL22-0142
9 Concrete Nor'West/Miles Sand and)
Gravel,)
10 and) PERMIT HEARING 8-26-22 9:00 AM
11 Appeal of Mitigated Determination of)
Significance by Central Samish Valley)
12 Neighbors)

13 Transcription Date: April 5th, 2024

14 Present: Andrew Reeves, Unidentified Male, Brandon Black, Bill Lynn, Russ,
15 Keith Luna, Damion Koontz, Jason D'Avignon, Kyle Loring, Tom Ehrlichman, Leah
16 Forbes, Mona Kellogg, Unidentified Male 1-3, Unidentified Female 1

17 REEVES: All right. Uh, and the recording is started on Teams. Is there a
18 separate recording in the room or am I good to go?

19 BLACK: Uh, you're, you're good to go.

20 REEVES: O-, okay. Well, then we'll get my gavel out and make it official.

21 [Gavel pounds twice.] And good morning, I'm going to go ahead and call this
22 session of the Skagit County Hearing Examiner to order. For the record, today
23 is August 26th of 2022, just after 9:00 a.m. We have one item on the agenda.
24 This is numbers PL16-0097 and PL16-0098. And, uh, as well as the appeal,
25 which is number PL22-0142. And these involve a request for approval of a

1 Special Use Permit or SUP and Associated Forest Practice Conversion
2 Application to allow the development of a proposed gravel mine and quarry on
3 three properties totaling approximately 77 acres, in terms of the size of the
4 properties. Uh, approximately 1.5 miles north of Grip Road and south, uh,
5 southwest of the, uh, Samish River. My name is Andrew Reeves. I'm a Hearing
6 Examiner with Sound Law Center, who the County has selected to hold certain
7 hearings like this one. And today, it will be my role to collect evidence in
8 the form of exhibits and testimony to determine, with the SUP portion of the
9 hearing, uh, whether the proposal complies with the County's Comprehensive
10 Plan, Zoning Ordinances, Critical Areas Ordinances and then the specific
11 requirements for an approval of a Special Use Permit, uh, under the Municipal
12 Code. And those criteria are located in Section 146900 of the Municipal Code.
13 And then recognizing, as well, that this does involve a min-, mineral
14 resources overlay, or MRO, uh, there's additional, uh, requirements, uh,
15 there that, uh, we look at. Um, so, that's the basics, uh, sort of in terms
16 of what we'll be analyzing and with the, uh, Special Use Permit. Uh, but I
17 note, as well, uh, that, and also, that the permit itself was, I think
18 originally deemed complete all the way back in 2016. Uh, and there, so this
19 process has been, uh, quite involved. And, uh, there have been several, uh,
20 sort of changes in staff, including myself, in terms of, uh, serving as the
21 hearing examiner. Uh, but ultimately, we have arrived here today. And the
22 County had issued a Mitigated Determination of Non-significance, under the
23 State Environmental Policy Act, or SEPA, and that MDNS was appealed. Uh, and
24 under Washington Administrative Code, uh, 19711683, um, Sub 5, essentially,
25 uh, such appeals are consolidated with the underlying permit, uh, and so, we

1 have two things that are happening today. So, ultimately, um, these are
2 separate to the extent that I will produce two decisions and theoretically,
3 uh, were the appeal to end up being successful, all the hard work, uh, that
4 folks have put in, in terms of, uh, taking the time to testify for the SUP
5 portion of the hearing, uh, would sort of be for naught, to the extent that,
6 uh, if the SEPA appeal were to be granted, uh, that kind of invalidates, uh,
7 the rest of the process, uh, an additional environmental review would occur.
8 But this is the process we have under State Law, um, and so because there is
9 an appeal, uh, there are several, again, attorneys that are involved. And
10 that we have had, I think, three pre-hearing conferences, uh, just to address
11 procedural matters, nothing of substance, um, but through the course of doing
12 that, uh, we've made every effort to try to insure that the process of the
13 hearing, uh, for both the, uh, Special Use Permit and for the SEPA appeal is,
14 uh, is sensible and, and economic, uh, streamlined as, as can be. Uh, so to
15 that end, we've sort of set up the order that we're going to do things in.
16 And so following my remarks, I think the plan, then, is that County staff has
17 a PowerPoint presentation, uh, that will give an overview of the proposal,
18 uh, for the Special Use Permits. Uh, and then the Applicant, uh, has their
19 own summary and opening statement. Then, we'll hear from, uh, the Appellant
20 to give a brief overview themselves on, uh, the appeal issues they hope to
21 address later in the hearing. Uh, then, we have an additional attorney
22 involved, uh, with Cougar Peak, uh, which is another group, uh, they, there
23 was an attempt to intervene in the SEPA appeal, that was denied, uh, but
24 ultimately, it was determined that, of course, as part of the SUP hearing,
25 they would be able to participate. And so we were going to give them that

1 opportunity. Following that, then, we are going to take comments, uh, from
2 members of the public. And then, after that, uh, expert testimony, that will
3 sort of wrap up the SUP portion of things. And then, uh, the idea is then the
4 sort of legal nitty gritty on the SEPA aspects would occur later. And at the
5 end, I, and I note that, in terms of public testimony, um, again, two
6 portions of this, so with the SUP hearing, anyone that wishes to testify,
7 members of the public, will have that opportunity. Um, in terms of the SEPA
8 portion, uh, folks are certainly welcome to watch, but, uh, with that, and
9 any appeal, uh, ultimately, only those witnesses that have been identified,
10 or called upon, uh, by the parties to the appeal are able to actively
11 participate. Um, so, those are the basics. And then, just in terms of how
12 things will work procedurally, again, once I am done, uh, we'll turn to
13 County staff. Uh, and I, we'll hear from them. And then when we do get to
14 the, the public comment portion, we try to limit public comments to
15 approximately three minutes, uh, as often occurs at a Council Meeting. Um,
16 and I note there's not going to be an opportunity for a sort of question and
17 answer session, unlike a Council Meeting. Uh, so if folks sort of have
18 questions, I ask that they phrase it as, you know, my name is so and so and
19 I'm hoping someone can provide additional information on whatever their topic
20 is. Uh, we'll be taking notes and then after we've heard from all members of
21 the public interested in participating, uh, we'll try to get answers, uh,
22 from the, uh, Applicant team and County staff in relation to those questions.
23 Uh, there's only going to be sort of one opportunity for each person that's
24 interested in testifying to do so, in terms of members of the public. Um, and
25 also, let's see, all testimony will be under oath or affirmation, I point

1 that out because, uh, any decision I ultimately make, uh, were it appealed
2 under our State's Land Use Petition Act, or LUPA, the recording of the
3 hearing, as well as the admitted exhibits and, uh, the recording, the
4 admitted exhibits and my decision would serve as the foundation for any such
5 appeal. There were several exhibits that the County had sent and identified
6 in advance of the hearing. And the number we started with, I believe, was 43,
7 in terms of the Special Use Permit, or SUP hearing. There have been a few
8 additional exhibits that have come in just in the, sort of, last few days and
9 we'll get numbers for those. Uh, but we're keeping a separate sort of,
10 separate track of exhibits, in terms of the SUP versus SEPA. And so, the, for
11 folks that are following along at home, from the County's website, there's a
12 3913 page PDF that has those initial 43 exhibits, for folks that would like
13 to review those. And then when we get the Appeal portion, I can, uh, verify,
14 but I did ask the attorneys involved in the appeal, in advance, about the
15 documents they were hoping I would review and the Appellant submitted 58
16 exhibits, the Applicant submitted 92, uh, and the County staff submitted what
17 is numbered as 47, but there is some overlap. Uh, so, uh, ultimately, it's
18 slightly less than that. But those were the Appeal exhibits that will
19 ultimately be under review in terms of SEPA. Uh, finally, I note, obviously,
20 there's, uh, strong feeling about a project, uh, of, of this type, uh, no
21 matter where it occurs. But I ask that everyone treat everyone else involved
22 in the proceeding with, uh, respect and dignity and I'm confident folks can
23 do that. And, uh, if not, though, uh, we will figure out, uh, how best to
24 move forward. But, uh, I thank everyone, I know obviously this was originally
25 scheduled previously and I do apologize for those that took time out of their

1 busy schedules to try to participate on July 11th. I ended up quite ill, uh,
2 so we had to, uh, reschedule to today. And ultimately, we do have six days,
3 uh, potentially set aside related to this matter, uh, just in case. As it
4 were, uh, I believe the next day after today would be Monday, uh, and the
5 thought process is, uh, for those members of the public, that are testifying
6 and want to testify, uh, if there are folks that, that for access reasons or,
7 uh, other reasons, uh, really need to have that physical space to testify
8 from, uh, we would ask that those folks identify themselves to County staff
9 that are in the room today, uh, because would like to hear from them first,
10 when we get to the, uh, testimony portion of the hearing. Because we only
11 have a physical space, uh, for folks to participate from for the first two
12 days of the hearing. And I just see Brandon Black [phonetic] walking into the
13 picture. Was there something related to that, Mr. Black?

14 BLACK: Yeah. I was just not, not related to that, I was just notified
15 that the call-in feature function is not working. So there may be some
16 technical issues with that.

17 REEVES: Sorry, the call-in feature, meaning rather than joining Teams,
18 itself, the call, um, okay. Um, well, let me ask, let me start with, I guess
19 Bill Lynn [phonetic], uh, on behalf of the Applicant, uh, uh, any thoughts on
20 what you would like to do? I know that [inaudible] and you're muted.

21 LYNN: Yeah. Um, I, I thought there were some people on earlier, by
22 phone, uh, at least according to my list of participants, there were, it
23 looked like there were some that were only there by phone. But I, I may be
24 wrong. As, uh, so you're asking me whether we want to wait or, I mean, I

1 guess I don't know what the problem is with the County so it's a little hard
2 to assess what we should do about it.

3 REEVES: Ult-, ultimately, what I was asking, because, uh, you know, I am
4 fully aware of how none
5 us want to have to do a redo or, or move things, um, but Mr. Black, do we
6 have any further information on what the issue might be?

7 BLACK: I am currently asking for that advice.

8 REEVES: Okay.

9 RUSS: This is, uh, Russ [phonetic], the, uh, conference number that is
10 posted on the, um, or that was published is incorrect. So that, that's the,
11 the problem.

12 REEVES: Sorry, that was published in the newspaper?

13 RUSS: Uh, correct.

14 REEVES: What about on the County's website?

15 RUSS: On, on the County website, sorry.

16 REEVES: Okay.

17 BLACK: Since we published one [inaudible] is that one okay?

18 RUSS: I don't have that with me.

19 BLACK: Okay. I have, whether I can look.

20 LYNN: So, I, could I just ask if there are several people who have
21 called in to comment on that, do you have a list of the people who have
22 called in and expressed, uh, difficulty?

23 REEVES: I think that was for you, Mr. Black. Uh, how did we, how was it
24 determined that this was a problem and has, uh, folks identified this as an
25 issue somehow?

1 BLACK: I was just notified, I'm, I'm asking for advice right now.

2 REEVES: Sure. Okay.

3 BLACK: Yeah. How did we find that out?

4 LUNA: Yeah. Andrew, is this is Keith Luna [phonetic], um, we had

5 several people call the Records Management Office saying that they could, the

6 phone number was working, but the conference ID number is that is on our

7 website, and it's the same number that we've had for a long time, um, isn't

8 being accepted.

9 BLACK: Uh, oftentimes with that, it's been my experience you have to try

10 again, um, re-log in, so that might be part of the issue as well. Not us,

11 them. They need to call back in. If you could try it from the...

12 KOONTZ: I, this is Damion Koontz [phonetic], I did try it from the

13 website, that's how I'm here, 'cause I was sent the wrong one via email. But

14 I went to their website, found this one and it is working, best I can tell.

15 REEVES: But that, I think that's the link to participate in Teams, versus

16 those that are using, uh, a rotary phone to dial in or whatnot.

17 LYNN: Well, uh, this is Bill Lynn again, I guess my suggestion is that

18 we go ahead and proceed. Uh, people have, will have a chance to participate

19 one way or the other and I'm sure we can guarantee that to the extent that

20 they need to see the staff presentation, it's exhaustively set forth in the

21 PowerPoint, so it should be, I don't think we're doing anything that will

22 impair people's ability to participate fully.

23 REEVES: Okay. Uh, so, Mr. Black...

24 Loring: Mr. Examiner, I, if, if people aren't actually allowed to

25 provide public comment, though, that does seem to impair their ability to

1 participate. So, I, I do just want to make sure everybody has a chance to
2 weigh in.

3 REEVES: That I agree with. I think that, my hope that this issue can be
4 resolved, you know, in the next few hours. I, you know, I don't think we're
5 going to be at the point, I mean, the way we all as, as, during the pre-
6 haring conferences, the sort of thought or intent was that we would have
7 almost two days set aside in which folks would be able to participate, in
8 terms of providing public comment. Um, and in terms of, you know, if they're
9 not able to, you know, use the computer or come down to where the meeting is,
10 you know, hopefully, they can sort it out quickly, but [inaudible] the room
11 there, Mr. Black?

12 BLACK: Uh, you, you just, we just lost your audio and now you just cut
13 in and out. So whatever you just said, we did not hear.

14 REEVES: Okay. The joy...

15 BLACK: There you...

16 REEVES: You can hear me now? Okay.

17 BLACK: Yes. Yes.

18 REEVES: What I was trying to point out is that ultimately, I do concur,
19 uh, I think with Mr. Lynn to the extent that I think we can get started. Uh,
20 I will ask, you know, maybe after the staff PowerPoint presentation, uh, if
21 there's an update on where things stand. And then, you know, if, I'm assuming
22 if folks can't get through there's someone they're calling at the County and,
23 and maybe the County can advise them to try calling back, use the, the
24 computer rather than just the phone, um, you know, but also, if, if, let
25 folks know that they will certainly have ample, uh, you know, opportunity.

1 We're, we're not going to be at the point of folks participating with public
2 testimony for, uh, another probably hour and a half to two hours before we,
3 we start on the public testimony. So the hope is we can solve that problem,
4 uh, prior to that. So, that, that would be, uh, my thought. Mr. Loring, you,
5 you look like you wanted to say something?

6 Loring: Uh, no, thank you for that thought. I wanted to make sure
7 that it was being worked on in the background at least, if we're moving
8 forward with the rest. So I was, I was making sure we were confirming that so
9 we can make sure people can gain access and provide them the right codes, et
10 cetera.

11 REEVES: Absolutely. So, uh, we've got a crack team working on it there,
12 Mr. Black, is that right?

13 BLACK: That's my understanding.

14 REEVES: All right. Nothing instills confidence like a Hawaiian shirt. So,
15 I think with that, we, we, can move forward. Uh, so, sorry, I, where was I in
16 my thoughts? I, sorry if I'm rambling. I, I was trying to point out,
17 ultimately, that, again, there are two processes involved, ultimately. We've
18 got a hearing on the Special Use Permits, uh, which is the one subject to,
19 you know, the open, uh, public meeting where we will take, uh, testimony from
20 the public. Uh, but then there is, as well, the, uh, SEPA appeal. Um, so
21 before we, we dive right in, I guess, with, with, uh, Mr. Cricchio, I would
22 just quickly ask to have our team of attorneys, uh, just introduce
23 themselves. 'Cause, uh, folks are going to be hearing from them. I believe I
24 introduced myself, Andrew Reeves, uh, but next, I'll go quickly to, uh, Bill
25 Lynn on behalf of the Applicant, if you could say hi.

1 LYNN: Thank you, uh, William Lynn here on behalf of the Applicant,
2 Miles Sand & Gravel.

3 REEVES: Thank you. And then for the County?

4 D'AVIGNON: Uh, Jason D'Avignon, Civil Deputy Prosecutor, uh, for Planning
5 and Development Services.

6 REEVES: Thank you, Mr. D'Avignon. And then for the Appellant?

7 LORING: Yes, good morning, uh, Mr. Hearing Examiner, my name is Kyle
8 Loring and I'm here representing Central Samish Valley Neighbors.

9 REEVES: Great. And then, uh, on behalf of, uh, the additional group,
10 Cougar Peak?

11 EHRLICHMAN: Good morning, Mr. Examiner, Tom Ehrlichman, from the Dykes
12 Ehrlichman Law Firm, representing Cougar Peak LLC and the Neil McLeod
13 [phonetic] family.

14 REEVES: All right. Thank you. And, uh, before we move on, sorry, I got
15 feedback there, again. Before we move to Mr. Cricchio, uh, those four
16 attorneys, does anyone have something they feel like we need to address
17 before we, we start with, uh, the presentation on behalf of the County? If
18 so, please wave your hand at me. Okay. I think, then, we are ready. Um, I, I
19 would ask, whoever is in charge of our Team Meeting, we have folks, when they
20 call in sometimes, are not immediately muted, so there is someone on here
21 that I'm definitely getting feedback from, if we can mute Terry Wild
22 [phonetic], I believe. Okay. There we go. Thank you. Okay. So, Kevin
23 Cricchio, thank you, uh, for being here. I'm going to get you sworn in. And
24 do you swear or affirm to tell the truth of the testimony you give here
25 today?

1 CRICCHIO: I do.

2 REEVES: And can you just clearly state and spell your name for the audio
3 and explain your role here at the County?

4 CRICCHIO: Sure. Uh, Mr. Examiner, uh, my name is Kevin Cricchio, K-e-v-i-n,
5 Cricchio is spelled C-r-i-c-c-h-i-o. And for the record, I work as a Senior
6 Planner with Skagit County's Planning and Development Services Department.

7 REEVES: Great. Thank you, Mr. Cricchio. So, we have informally referred
8 to the 3913 page PDF that you, you compiled as the Cricchio file. But that
9 includes Exhibits 1-43, uh, and then in addition to that, I know we've had
10 some additional things come in. Uh, could we assign some of those exhibit
11 numbers, uh, what would make mo-, the most sense to you, uh, we can do 44 as
12 the additional public comments? Uh...

13 CRICCHIO: Sure.

14 REEVES: If that makes sense?

15 CRICCHIO: Were, were you accepting those two comments that came in late,
16 that I forwarded to you about 8:30ish?

17 REEVES: I, I have no issue with comments that come in prior to the start
18 of the hearing, so...

19 CRICCHIO: Okay. Then we can...

20 REEVES: I, I...

21 CRICCHIO: Include that as 44, if that's what you wanted to do.

22 D'AVIGNON: Mr. Hearing Examiner?

23 REEVES: [Inaudible.]

24

25

1 D'AVIGNON: I would just sug-, suggest since we've, um, made an effort to,
2 uh, have some consistency between the SEPA Exhibit numbering and the Special
3 Use Permit numbering, that the numbers actually start, I think, on 48.

4 REEVES: Right.

5 CRICCHIO: I think I have 43, don't I?

6 REEVES: I just really downloaded what I call the Cricchio file and it was
7 still up to 43.

8 D'AVIGNON: That is correct. And when I amended the, the SEPA Exhibits, I
9 changed them to match the Cricchio file. There were additional documents in
10 the SEPA Exhibit list that were then 44, 45, 46, 47. So if we want to
11 continue to avoid having the same County Exhibit be, have two different
12 documents.

13 REEVES: But these are not County Exhibits, these are the SUP Exhibits.

14 D'AVIGNON: I, I understand that.

15 REEVES: Okay. Help me, should we have omitted Exhibit 44-something and
16 then move forward from there? I, I'm confused.

17 D'AVIGNON: That, that would be my suggestion. I, I...

18 REEVES: Okay. So, Mr., okay, so, okay. So the Amended Exhibit List, again
19 for the SEPA appeal runs C1-C47 with several omissions. Your suggestion is I
20 immediately do 44-47 on the SUP Exhibits as omitted and then these, these new
21 documents go from 48 on and they automatically become part of the County's
22 SEPA appeal documents?

23 D'AVIGNON: No, not, not part of the SEPA, but just to avoid any confusion
24 with the documents, um, which is why we amended the SEPA Exhibits so that the
25 same documents that are part of the SEPA have the same number for the Special

1 Use Permit. I omitted in the SEPA where there, there wasn't the same and then
2 added on the back end. So this would just ensure that any document from the
3 County, whether Special Units Permit or SEPA, uh, there's no confusion as to
4 what document we're referring to.

5 REEVES: Okay. Mr. Ehrlichman, you have a thought? We're off to a, a
6 cracking start here. Uh...

7 EHRLICHMAN: Uh, Mr. Examiner, uh, as it was discussed at length between the
8 parties, uh, Counsel and some at the pre-hearing conference, I think the
9 intent of everyone was that we have one set of exhibits for both proceedings
10 with the same exhibit numbers. In other words, any document that is in the
11 SEPA appeal is part of the SUP exhibit record. We weren't going to bifurcate
12 the record in the two portions.

13 REEVES: Do you mean to say the, the County's exhibits for SEPA should be
14 the same as the SUP exhibits? Because I never thought the intent was the 90
15 something exhibits that Mr. Lynn submitted on behalf of the Applicant
16 automatically relate to both and that all of Mr. Loring's exhibits
17 automatically relate to both. Did I completely misunderstand what the parties
18 were, were intending?

19 EHRLICHMAN: Um, if I may...

20 REEVES: I know there as a joint motion to allow, sort of overlap, but
21 let's not get in the weeds. I, I'm fully willing, uh, uh, to sort of allow
22 reference to those, I just, I don't want to renumber all of the exhibits that
23 everyone has already submitted at this point. But go ahead, Mr. Ehrlichman.

24 EHRLICHMAN: I think this effort to keep the two segments of a, uh, single
25 proceedings separate has led to this confusion. And our wish would be that

1 the Examiner have one exhibit list and then it gets used in both proceedings.
2 However you manage that, that's the, the intent.

3 REEVES: Happen, but thank you. Uh, Mr. Loring, your thoughts?

4 LORING: I, I just wanted to say that I do support having, um, only one
5 set of numbers throughout both proceedings so that we're not confused about
6 which C44 applies in the SEPA appeal and which C44 is in the SUP.

7 REEVES: There's, there's only one C44. The SUP exhibits are 1 through
8 whatever. They, they're not C something through C something. They're 1, 2, 3,
9 4, et cetera. That has been what we, has been the entire time, at least
10 that's how it was intended to be. And then there are three sets of Appellant
11 exhibits. The A Exhibits are the Appellant, the B are the Applicant, uh, and
12 C are the County Exhibits specific to SEPA. But now I'm worried that the four
13 attorneys, plus myself, did not actually ultimately agree on this in the last
14 several months. Bill Lynn, do you have any thoughts?

15 LYNN: Well, uh, I guess one thought I have is that we need to have a
16 clearer record. And I do think that the, the, if anything, we should err on
17 the side of including more exhibits in both proceedings. I mean, that's just,
18 uh, a basic, and really from that on, it becomes more of an administrative
19 issue, what's the easiest way to administer it. Seems like we can agree that
20 they all ought to have the same numbers. Um, you know, there should be a
21 document that's referred to by only one number, not a separate number in the
22 administrative, or the CU, SUP process from the number that it has the SEPA
23 process. Um...

24 REEVES: Here's a thought, I mean, I asked the parties, if everyone
25 remembers, to submit document list. I want to keep those numbers as they are.

1 In terms of the SUP, which is separate, my thought is we can add these
2 exhibits in, they'll go, you know, at this point, I guess, 44-47 is omitted.
3 We'll go 48 on as needed. But in terms of my decisions, you know, uh, as they
4 were, you know, because it's likely that there will ultimately be sort of two
5 decisions. But the idea being that the documents will relate to all of it,
6 just as the intent is that, you know, uh, any testimony heard for the SUP
7 portion, uh, does not, need not be repeated, uh, in the SEPA portion. I think
8 we all agreed the intent was to have sort of all the expert witnesses, all
9 the public testimony, all of that is the SUP and then really, once we get to
10 SEPA, you know, we're not really looking to have expert witnesses that are
11 SEPA specific, I don't think. But it would be more legal argument at that
12 point. But what I would end up doing, especially with this much information,
13 is I do an, uh, an attachment at the end of these and I'll just say, you
14 know, exhibits 1 through 50-whatever, you know, on the SUP and then here is
15 what the, uh, Appellant's provided, here's what the Applicant provided,
16 here's what the County provided for the appeal and all of that relates to
17 everything. That, that's my thought, but, because, otherwise, are we saying
18 we're going to now re-number everything from, and just have one master
19 exhibit list? Because I wish we had thought of that a month ago.

20 LYNN: My understanding would be that, um, Mr. Loring's exhibits would
21 continue to have his A numbers, uh, our exhibits would consider, continue to
22 have the B numbers and the County's would continue to have the C numbers and
23 then basically just make the County's exhibits, um, in-, incorporate the SUP
24 numbers, too. And I think what, I think what Mr., I think, I think what Jason
25

1 may have done is just try to make them all C numbers and correspond with the
2 numbers they were previously assigned, if I'm correct.

3 REEVES: And I...

4 LORING: And, and that's my understanding from his August the 3rd list,
5 yes.

6 REEVES: Okay. So, with that, I think, hopefully, so the thought is we'll
7 do 44-47, we'll call those currently omitted, and then what we're about to do
8 is include Mr. Cricchio's PowerPoint and those, uh, you know, public comments
9 that came in later, we're going to give them exhibit numbers that go 48
10 onward. Is that what your intent was, Mr. D'Avignon?

11 D'AVIGNON: Yes, Mr. Hearing Examiner. It was simply just so, when referring
12 to a document from the County, we wouldn't have to say, this is SUP Document
13 A and this is SEPA Document C, they would just have the same number, whether
14 there's a C or not a C in front of it. Uh, just to avoid any confusion to
15 have that consistency.

16 REEVES: Okay. I think we're good. Mr. Ehrlichman, you still have your ha-
17 , oh, there we go. Are you done with your hand raised feature? Were, were you
18 good to move on? Okay. So I think we're good to move on. So back to Mr.
19 Cricchio, before I confused everyone apparently. Um, so the additional public
20 comments, why don't we make those, uh, 48? Mr. Cricchio, are you there? There
21 you are. Okay. So Exhibit 48 will be those additional comments that were
22 received. Um, and then, Cougar Peaks additional, sort of S1-S8, that, that
23 exhibit group we can make 49?

24 D'AVIGNON?: Mr. Reeves, did you want to include the presentation as well as
25 49?

1 REEVES: I was going to make that 50.

2 D'AVIGNON?: Okay. Whatever works.

3 REEVES: So 49 we'll do Cougar Peak pleading with exhibits, and I think
4 that came in yesterday. And then, uh, Exhibit 50 will be, uh, Staff
5 PowerPoint Presentation. And I believe then we're up-to-date on exhibits,
6 hopefully.

7 LORING: Mr. Examiner, Mr. Ehrlichman mentioned earlier, he suggested
8 excerpting out the Central Samish Valley SUP comments and we'd request that
9 that be 51 and that be pulled out. Just because it is a, a sizeable document,
10 we'd like it all in one place and easy to access.

11 REEVES: No issue for me. Uh, so Exhibit 51, we'll call it the CSVN July
12 memo with attachments.

13 LORING: Thank you.

14 REEVES: Okay. With that, I believe we are ready, uh, for the PowerPoint
15 and just a tech, tech things, uh, I'd point out that if you're having
16 trouble, anyone, uh, you can always turn your video off, uh, and that usually
17 will solve most of the problems in terms of bandwidth. Uh, and if my video or
18 audio goes off at any point, uh, I haven't gone anywhere, it's a bandwidth or
19 I'm blowing my nose or I'm just trying not to distract while others are, uh,
20 have the floor. Uh, so with that, Mr. Cricchio, I'm going to, I know you've
21 got a PowerPoint and I'll let you get started.

22 CRICCHIO: All right. Let me try to share my screen. And can you see me now?
23 Can you see my screen now?

24 REEVES: Uh, we can. It's not launched, oh, there it is.

25 CRICCHIO: Okay. Is that good?

1 REEVES: We'll, we'll see on the second slide, but so far, it looks good.
2 CRICCHIO: Okay. Let me see if I can, um, how do I stop sharing, can I stop
3 sharing my camera, but still share, if that makes sense?
4 REEVES: Uh...
5 CRICCHIO: Can you see my, can you see my screen?
6 REEVES: I would stop sharing screen to start, period.
7 CRICCHIO: Okay.
8 REEVES: To start and then what I think you're going to want to do is
9 you're going to want to, um, launch the PowerPoint, then hit share screen.
10 CRICCHIO: Okay. Can you see that now?
11 REEVES: I can, yep.
12 CRICCHIO: Okay. All right. Are we ready?
13 REEVES: Uh, as ready as we're going to be, I think.
14 A: All right. Sounds great. All right. Mr. Examiner, um, members of the
15 public, County staff, good morning. For the record, my name is Kevin
16 Cricchio, I work as a Senior Planner in the Current Planning Division of
17 Skagit County Planning and Developmental Services Department. So, uh, I will
18 proceed. I, I'm going to go ahead and, uh, start, uh, going through my
19 presentation. I have 55 slides. I am not going to read everything. So I'm
20 going to be skipping around and reading portions of, of, of my presentation.
21 So, what's before you, uh, is a Special Use Permit to permit a proposed
22 gravel mine or quarry on the subject property. Proposed gravel mine would
23 remove approximately, approximately 4,280,000 cubic yards of gravel from
24 three parcels over a period of 25 years. Three parcels total approximately 77
25 acres, of which 68 will be cleared, however the mining will occur on

1 approximately 51 of the 68 acres. Gravel would be removed from the site by
2 truck and trailer, generating an average of 46 trips per day. And the
3 material would be transported to market or to one of Concrete Nor'West's
4 nearby facilities for processing. The site is accessed off of Grip Road on an
5 existing private gravel haul road located approximately 0.7 miles east of the
6 Prairie Road/Grip Road intersection. Again, operations is limited to
7 excavation only. In addition to the Special Use Permit application, the
8 Applicant also has applied for a Forest Pra-, Practice Conversion application
9 to facilitate the proposed mining or quarry operation onsite, the applicant
10 proposes to harvest approximately 50,000 board feet of timber on 68 acres,
11 removing the stumps and converting the parcels to a gr-, a gravel mining
12 operation. Both applications, um, so this, this, the two applications came
13 back in, um, 2016, uh, they were submitted to the County. Uh, they were
14 determined to be complete on March 22nd of 2016. The proposed, uh, gravel
15 mine, uh, the three parcels involved in that, that where the gravel mine
16 would be, if, if approved, are located approximately 1.5 miles north of Grip
17 Road. Uh, this slide right here, uh, details the parcels involved. So where
18 the proposed gravel mine quarry would be includes these three parcels. Uh,
19 there is a private road, otherwise called a haul road, um, which is graveled.
20 Uh, which would be used, uh, to gain ingress and egress to the proposed mine.
21 And so, these, all these three, all these parcels within this category
22 include the haul road and then contiguous parcels owned by the same owner
23 would include all of these parcels. And so for noticing purposes, we use all
24 of these parcels, whether it's the, the parcels involved in the mine itself,
25 the haul road or the contig-, contiguous subject parcels that are not part of

1 the mine or not part of the haul road. The Applicant is Concrete Nor'West,
2 otherwise known as Miles Sand & Gravel located in Mount Vernon, Washington.
3 Land owner is Li-, Lisa Incorporated. And they are addressed out of Puyallup,
4 Washington. The land surveyor for the Applicant or the land owner is John
5 Semrau of Semrau Engineering and Surveying out of Mount Vernon, Washington.
6 The Applicant's attorney is William T. Lynn, Reuben Schutz of Gordon Thomas
7 Honeywell out of Seattle, Washington. Give me one sec as I move forward with
8 my paper copy as well. Okay. I'm going to slip over this slide, skip over
9 that slide. All right. Uh, the underlying zoning district, uh, where the
10 three parcels involved in the proposed gravel mine would be, uh, is located
11 in the Rural Resource-Natural Resource Land Zoning District & Comprehensive
12 Plan Land Use Designation of Skagit County. And these three parcels also
13 happen to lie within what's called a Mineral Resource Overlay. Surrounding
14 zoning and land uses, to the north, the zoning is Rural Resource Natural
15 Resource Lands, along with Agricultural Natural Resource Lands. To the south,
16 the zoning is Rural Resource Natural Resource Lands. To the east, uh, the,
17 the surrounding zoning is Rural Resource Natural Resource Lands, along with
18 the Agricultural Natural Resource Lands and Rural Reserve. And to the west,
19 the surrounding zoning is Rural Resource Natural Resource Lands, Rural
20 Reserve and Agricultural and Natural Resource Lands zoning districts. Present
21 land uses, uh, surrounding the, uh, subject property. To the north, uh,
22 predominately forestry, sporadic single-family residences, as well as
23 agriculture. To the south, present land uses are forestry and sporadic
24 single-family residences. To the east, present land use, forestry, sporadic
25 single-family residences, along with farms and agriculture. And then to the

1 west, uh, the present land use is forestry, sporadic single-family residences
2 and farms/agriculture. So some graphics, taken from, uh, Skagit County's
3 iMap, uh, showing the three subject parcels where the, uh, proposed gravel
4 mine would be located at. Um, this shows the mineral resource overlay, as
5 well as the underlying zoning district. An aerial, um, you can see the three
6 parcels here highlighted in yellow. Um, and moving onto acreage. Okay. So
7 according to Skagit County Assessor's records, the three, uh, subject parcels
8 where the mining is proposed, uh, consists of, uh, 37 acres, 20 acres and 20
9 acres respectively, or accumulatively, 77 acres. According to the Applicant's
10 submitted narrative and SEPA environmental checklist, is 68 acres sand and
11 gravel mine is proposed within the three subject parcels. The SEPA
12 environmental checklist, on page 4, further states that mining will be within
13 a 51 acre portion of that. Consistent with both the Assessor's records and
14 the Applicant's application materials submitted, the issued SEPA MDNS, in
15 2022, stated that the three parcels total approximately 77 acres, of which 68
16 acres will be cleared, however, the mining will occur on approximately 51
17 acres of the 68 cleared. And then on March 11th of this year, uh, we received
18 a letter from the Applicant, which should be in Exhibit 3, um, the Applicant
19 stated that the acreage that was listed in the issued 2022 SEPA MDNS,
20 consisting of 77 acres of the subject mine is incorrect. Instead of the 37
21 acres, acres, uh, which, uh, includes, um, Parcel P50155, it's more
22 accurately 29.6 acres in size.

23 REEVES: Mr. Cricchio?

24 CRICCHIO: Yes.

1 REEVES: Sorry to interrupt, I normally would not do this, but Mona
2 Kellogg [phonetic], as the Clerk, uh, does have her hand raised, I just want...
3 CRICCHIO: Oh...
4 REEVES: To see...
5 CRICCHIO: Sure.
6 REEVES: If there's an issue. Ms. Kellogg, is there an issue that needs to
7 be addressed or? [Pause] I just was pointing out Mona Kellogg, who serves as
8 our Clerk, h-, has used the hand-raised feature, and I just want to verify
9 that there isn't a technical issue. So I, I don't know if she, where she is
10 at this point, but if Mona Kellogg or Brandon Black, someone knows what's
11 going on in the room there, can tell me what the hand raised might be about?
12 [Pause] Well, I hope we didn't lose the room entirely. Is there a member of
13 County staff that can tell me what's happening?
14 CRICCHIO: I can attempt to call.
15 REEVES: And maybe stop sharing your screen for a minute. I just saw
16 someone in the room there. I think...
17 CRICCHIO: There she is.
18 REEVES: We're, we're just trying to verify what's going on. I, uh,
19 [pause]...
20 CRICCHIO: Mona, can you hear us? Mona?
21 REEVES: I don't know if they've lost...
22 CRICCHIO: They're muted.
23 REEVES: The audio. They're muted. I just...
24 CRICCHIO: I mean, we can see her, so you think that they haven't lost the
25 audio.

1 REEVES: Yeah. Uh, we sort of stopped doing what we were doing because
2 there's a hand raise up, uh, from a member of staff who, did the audio
3 equipment in the room stop working entirely?
4 CRICCHIO: Let me try to call Brandon Black on his cell.
5 REEVES: Sure. And can you maybe stop sharing your screen just for a
6 minute, there, Mr. Cricchio? If possible. I can't tell who's in charge
7 anymore, but [pause] uh, I see a staff member.
8 FORBES: Okay. We're back up.
9 REEVES: Okay. But, okay. So there was a hand raised, uh, by Mona Kellogg.
10 But I was trying to verify, did someone happen?
11 FORBES: Sorry about that.
12 REEVES: No, no. But did something happen? Have you heard...
13 FORBES: Yes. The, the public computer that is being shown on the
14 television screens in here shut down for some reason.
15 REEVES: So did folks not hear Kevin Cricchio's presentation?
16 FORBES: Yeah.
17 REEVES: Sorry, yeah, they did not hear it or yeah, they did hear it?
18 KELLOGG: They did not, the, the computer here stopped at 9:56.
19 REEVES: Okay.
20 FORBES: So we missed six minutes.
21 REEVES: Do you have an idea of what the last slide you saw was?
22 FEMALE 1: [Inaudible.]
23 MALE 1: The graphic.
24 FEMALE 1: Development...
25 MALE 1: It was the graphic.

1 FORBES: It was a graphic.

2 REEVES: Okay. And, and...

3 FORBES: A map.

4 REEVES: And who is, who is in charge of, I mean, who is running the Teams
5 meeting?

6 A: Uh, Mona, Mona Kellogg has, Mona Kellogg has the initial log-in, but
7 the, it wa-, so her work station stayed up and running, it was the one that
8 the folks in the room were watching was what shut down.

9 REEVES: Okay. And h-, for whatever reason, it's still got the raised hand
10 up. If we can, I, in a way, I'm glad I interrupted, because, uh, you know, we
11 want to make sure folks can see everything.

12 FORBES: Yeah.

13 REEVES: So what I would ask is, you know, whoever is in the room, you
14 know, if someone is able to monitor and, and do some-, hit the raised hand or
15 whatnot, if there's an issue. Uh...

16 FORBES: That would be Mona.

17 REEVES: All right. So, what we'll do is we'll have Mr. Cricchio go
18 back to sort of where the visuals started. And if you can just stay on for
19 one sec to make sure this is going to work. Yeah. The thing about the tech,
20 if everyone is using it, it usually works, it's the hybrid stuff where
21 everything falls apart, in my experience. It was...

22 CRICCHIO: All right. Are we ready again?

23 REEVES: We think. So did you hear all that, Kevin? So...

24 CRICCHIO: Yes.

1 REEVES: Essentially, when, when you brought up your hi-def photographs or
2 something, it crashed the computer in Burlington or where, wherever,
3 whichever room they're in today.

4 CRICCHIO: Okay. So I'll go back to, uh, my first, uh, picture of zoning or,
5 or of the subject property, I should say.

6 REEVES: And...

7 CRICCHIO: Okay. Hopefully, you can see my screen?

8 REEVES: We can't, again, you might want to launch the pow-, there you go.

9 CRICCHIO: Okay. And you see that and hear me...

10 REEVES: [Inaudible.]

11 CRICCHIO: Hear me okay, now?

12 FORBES: Yes, we can see your screen.

13 CRICCHIO: Okay. Awesome. All right. So going back, uh, a few pag-, a few, a
14 few pages from my presentation. So the yellow is the highlight...

15 FORBES: Kevin, can you make it full, Kevin, can you make it full-screen,
16 go to presentation mode?

17 CRICCHIO: I am not sure how to go about doing that. I am not sure how to do
18 that, Leah. Are, are you...

19 LORING: Just to when, I think, I think the version you're using is a PDF,
20 just...

21 CRICCHIO: Yes.

22 LORING: A PDF doesn't do a presentation. It would need to have been made
23 in PowerPoint.

24 D'AVIGNON: Kevin, if, if you go under view, it goes file, edit, view, there
25 should be a full screen mode, not in Teams, in Acrobat.

1 CRICCHIO: File, edit, what now?

2 D'AVIGNON: Go over to view, a few over...

3 CRICCHIO: Okay.

4 D'AVIGNON: And it has full screen mode.

5 CRICCHIO: Okay. Is that better?

6 D'AVIGNON: Yes.

7 FORBES: All right. Much better. Thank you.

8 CRICCHIO: Okay. I lost my pane view, though, so, but whatever works. Uh,

9 okay. So this is the three subject parcels involved, where the gravel mine

10 would be if approved. Underlying zoning, uh, Rural Resource, Natural

11 Resource, uh, Land Zoning District, uh, along with the Mineral Resource

12 Overlay. Uh, please interrupt me if there's any further issues. Um, aerial

13 photograph, um, showing the three subject parcels and then going back to

14 acreage. So according to Skagit County records, uh, Skagit County Assessor's

15 records, uh, specifically, the three subject parcels are 37 acres, 20 acres

16 and 20 acres respectively, which total 77 acres. Um, and, but, according to

17 the Applicant's submitted narrative and SEPA environmental checklist, uh, 68

18 acres sand and gravel mine is proposed within the three subject parcels, uh,

19 identified above. SEPA environmental checklist, specifically page 4, further

20 states that the mining will be within a 51 acre portion of the site. Um, and,

21 uh, consistent with, uh, the, uh, the Assessor's records, uh, we used, that

22 information, stating that the three parcels total 77 acres, of which 68 acres

23 will be cleared, however, the mining will only occur within 51 acres of the

24 68. And then we received, on March 11th, 2022, um, that the acreage that we

25 put in our noticing was incorrect, consistent, uh, uh, that the acreage that

1 was listed in the issued 2022 SEPA MDNS, consisting of 77 acres of the
2 subject mine is incorrect. Instead of the 37 acreage, acres, which the
3 Assessor's records indicates for Parcel P5011-, excuse me 155, it's more
4 accurately 29.6 acres. And then, additionally, Parcel P125644 and P125645 are
5 said to be more accurately 19.6 acres in size, for a total, accumulatively,
6 or which is 39.2 acres. Instead of what was 20 acres, uh, in the Assessor's
7 records. And, uh, these, uh, corrected acreages are based on a land survey
8 that the Applicant had done. So, the Applicant further states that the
9 Project Description more accurately should state that the acreage of the mine
10 is approximately 60 acres, 68 acres, with an area to be cleared, mined and
11 reclaimed at 51. So, staff analysis, um, we used, uh, the, uh, uh, Assessor's
12 records acreage, um, and we also based, we also, uh, used what was submitted,
13 um, in the narrative, as well as the SEPA environmental checklist, et cetera.
14 And if anything, we over-estimated the acreage, not under-estimated it.
15 Which, as far as noticing purposes, is a good thing, over-estimating versus
16 under-estimating. Shoreline jurisdiction, the Samish River flows along the
17 eastern border of the project site. Um, there are shoreline associated
18 riparian wetlands that have been delineated. Shoreline environment
19 designation for this portion of the Samish River is rural. All proposed
20 mining ac-, activities will be located outside of shoreline jurisdiction and
21 thus no shoreline permit is required. Critical areas, so over the years, uh,
22 like I said, this, this Application came back in in 2016, there have been
23 numerous, uh, environmental reports, uh, with regard to critical areas. And
24 so I'm not going to go through all of it, but, um, just touch on, uh,
25 essentially what has been submitted. In all of the reports that have been

1 submitted, uh, from 2016 to date, um, we have, uh, used the recommendations,
2 uh, for the respective reports in the SEPA MDNS that was, um, issued in 20-,
3 2022. So, um, in 2015, August 21st of 2015, a hydro-, hydrogeologic site
4 assessment and map was submitted that was prepared by Earth Sciences. Let me
5 move forward a little bit. Okay. And then December 20-, uh, December 16th of
6 2021, uh, the Applicant submitted, uh, a geologic hazard, they submitted
7 response to Skagit County Geologic, Geologic Hazard requirement, uh,
8 regarding geologic hazards to the haul road, that was prepared by Associated
9 Earth Sciences. And again, that was dated December 16th of 2021. That, that
10 had to do, uh, mostly with, with the haul road. Wetlands and Fish and
11 Wildlife Habitat Assessment, um, as part of the submittal, the Applicant
12 included what's called a Samish River Ordinary High Water Mark/Wetland Edge
13 Determination, that should be found in Exhibit 4 of your staff report, Mr.
14 Examiner. That was prepared by Graham-Bunting and Associate, Associates,
15 dated May 18th of 2015. R-, um, the report concluded that it is our opinion
16 that the area of shoreline management jurisdiction extends 200 feet landward
17 of the ordinary high water mark as identified in the field and depicted on
18 the site plan prepared by Semrau Engineering and Surveying. The Applicant
19 also submitted, um, August 20th of 2015, a Fish and Wildlife site assessment
20 that was also prepared by Graham-Bunting and Associates. Page 7, 7 of that
21 report, uh, it provide reasoning for allowing, uh, the use of the moderate
22 land intensity buffer, rather than the high land use intensity buffer,
23 pursuant to Skagit County Code 14.24.240(3)(A). And then it lists some, um,
24 some, some of the criteria there. April 18th of 2017, the Applicant submitted
25 an addendum to the Fish and Wildlife Site Assessment, that also was prepared

1 by Graham-Bunting and Associates. That looked at, uh, some critical, uh,
2 habitat, uh, endangered, threatened or sensitive species. And then December
3 of 2021, the Applicant submitted, um, both a Critical Area Assessment, um,
4 Wetland Delineation and Fish and Wildlife Habitat Conservation Area. And an
5 Impact Assessment and Mitigation Plan. That can be found in Exhibit 8 of your
6 Staff Report, Mr. Examiner. Uh, that was prepared by Northwest Ecological
7 Services, and that also is specific to the haul road. Floodplain, uh, there,
8 there is no floodplain here. Moving on from Critical Areas, uh, employees of
9 the Applicant has stated that they anticipate one to two employees would be
10 working on site. No offices are proposed and potable water would be brought
11 in, um, for drinking purposes by the employees. Restrooms, uh, it is
12 anticipated that, uh, there be a port-a-potty on site. And then moving on to
13 Proposed Hours, uh, of, of and Days of the Operation. So the Applicant
14 proposes, or proposed, that the days and hours of operation generally limited
15 to Monday through Saturday from dawn to dusk. And that the Applicant further
16 states that the hours of operation potentially be expanded based on market
17 conditions and seasonal demands. Skagit County Code 14.16.440 (10) (i)
18 requires that hours of operation vary according to the zoning district
19 designation of the site, but may be shortened by the hearing examiner based
20 on site-specific circumstances. Uh, proposed mine is located, again, in the
21 Rural Resource Natural Resource Land Zoning District, mining operations, uh,
22 on the Rural Resource Natural Resource Land Zoning District designate,
23 designated land may be granted unlimited hours of operation. However, the
24 Hearing Examiner may limit hours of operation to daylight hours or to such
25 other reasonable limitation deemed necessary to address potential significant

1 adverse impacts to existing adjacent land uses on any portion of the mining
2 site where mining activity is proposed or occur less than one quarter mile
3 from the existing, from existing rural intermediate, rural village or urban
4 growth area designated lands. Proposed mine site is located greater than one,
5 uh, quarter acre from the rural intermediate, rural village and urban growth
6 desi-, designated, uh, lands, however. Okay. So, moving onto, uh, uh,
7 planning and development services limitation of hours and days of operation.
8 So in order to mitigate potential impacts of the quarry on the neighborhood,
9 the hours of operation were limited by Planning and Development Services
10 Department in, in the issued SEPA MDNS, issued in 2022, hours were limited to
11 Monday through Friday, from 7 o'clock a.m. to 5 o'clock p.m. No mining
12 operations, uh, are permitted outside of these times, including holidays. If
13 seasonal/temporary demand indicates a need for extended hours, or Saturdays
14 or Sundays, Applicants shall submit a request for a temporary deviation to
15 these permitted hours to the Planning and Development Services, Services
16 Department. If permitted by PDS, such, such operations may be subject to
17 additional conditions. Project access, uh, so, again, uh, the three parcels
18 involved in the mining site, uh, approximately 1.5 miles north, along, uh,
19 north of Grip Road on haul road, that can be found in your Plan Stat Exhibits
20 19 and 40, Grip Road is an existing private, graveled forestry road, which
21 extends north from Grip Road. There is an internal bridge, uh, that, uh, haul
22 road crosses and so in order to access the three parcels where mining would
23 occur, you would have to go across this internal bridge. This internal bridge
24 crosses, is, uh, crossed over an approximately 14 foot by 40 foot bridge,
25 which spans Swede Creek. Uh, the bridge has been evaluated, uh, for, um,

1 weights. So the, the dump trucks going over it, it has been evaluated for it,
2 um, as far as it being able to handle the weights. That can be found in
3 Exhibits 20 and 21. Traffic, so, since this project came in in 2016, there
4 was a number of memos that were, uh, were provided by the Applicant, from,
5 uh, the Applicant's Consultants. Um, these memos addressed, uh, possible
6 traffic impacts, and then, uh, eventually, the Applicant did submit a Traffic
7 Impact Analysis, although I don't believe that Skagit County, uh, uh, Public
8 Works Department triggered it, uh, based on, on Standards. So according to
9 this Traffic Impact Analysis, uh, Skagit County Road Standard Level of
10 Service, otherwise known as LOS, requirements are met for each intersection
11 impacted by the traffic generated by Grip, by the proposed mine. No
12 mitigation level of service measures were required based on the TIA. However,
13 to mitigate traffic related sight distance issues, a flashing, a flashing
14 beacon and signing system were proposed and agreed upon for traf-, traffic
15 generated by the Grip Road Mine. Um, these recommendations, uh, uh, in the
16 TIA were incorporated as mitigation measures in the 2022 SEPA MDNS, which can
17 be found in Exhibit 27. Let me proceed with my papers, please. So, uh, this
18 slide, just wanted to point out again, according to the TIA, uh, it's
19 anticipated, uh, that there be 23 full truck loads or 46 trips per day.
20 Third-party review of the traffic impact analysis.

21 REEVES: Hold on one sec. Uh, we're getting quite a bit of noise from the,
22 uh, room there.

23 CRICCHIO: Sure.

24 FORBES: Uh, will you guys go back...

25 MALE 1: Go back one slide.

1 MALE 2: Go back one slide.

2 FEMALE 3: Page 38.

3 CRICCHIO: Sure. Are, are you ready?

4 FEMALE: Yeah.

5 MALE: All right. Hold on.

6 CRICCHIO: All right. I can, I can go ahead and read this. Uh, this is in

7 the traffic impact analysis. In order to maintain the level of service, uh,

8 which is a C, maximum operation limit may not exceed 30 full trucks, 60

9 trips, per hour, with a maximum operation limit of 720 full truck trips per

10 day.

11 REEVES: [Background noise] okay. Hold on one sec.

12 CRICCHIO: Sure.

13 REEVES: Mona Kellogg, is there a technical issue that we need to address?

14 Who...

15 KELLOGG: No. Everyone just wanted, um, Kevin to go back a page.

16 REEVES: Okay. I, I'm worried that this is not going to ultimately, uh, be

17 an effective way to move forward. I, I, these, the PowerPoint, I believe is,

18 is, now, is, is this available, ultimately, on the, on the City's web-, I'm

19 sorry, on the County Website, Mr. Cricchio?

20 CRICCHIO: That's correct, Mr. Reeves. It's on the, uh, portion of the

21 Skagit County's website, uh, dedicated to, uh, the Concrete Nor'West Gravel

22 Mine.

23 REEVES: So what I would suggest, folks, I, I, if you feel like you would

24 like more information about something, A) you know, uh, later today or if you

25 have a device you, you can use to download this PowerPoint, you can look at

1 it, uh, at leisure, uh, but B) if you feel like, you know, something was
2 missed, when we get to the point, uh, when you are able to provide public
3 comment, uh, we will, uh, you, you can mention it and, and we can, uh,
4 address it at that time. I'm just worried that if we have Mona Kellogg raise
5 her hand every time, uh, someone says something or something comes on the
6 screen, uh, we'll, we'll have problems. So, uh, we're going to limit the
7 raised hand feature to technical issues, uh, and maybe Mr. Cricchio, just try
8 to be, you know, wary of moving too quickly, uh, through, through your
9 slides, I know you have another 100 or so in this deck. But, uh, we'll, we'll
10 get through them. So, with that, if, uh, we can turn the raised hand off on
11 the Mona Kellogg computer, uh, again, I'm trying not to interrupt unless
12 there's a major technical issue.

13 CRICCHIO: Okay.

14 REEVES: I think we're okay. If would ask, at some point, if someone
15 could, there we go, there's the raised hand feature off. Go ahead, Mr.
16 Cricchio.

17 CRICCHIO: All right. Thank you, Mr. Reeves. So, the section, uh, on, on my
18 slides, uh, specific to, uh, reports are taken right out of the reports. So
19 it's essentially copy/paste from the report, for the most part. Um, and if
20 there's any questions about, uh, environmental impacts that are perceived,
21 that can be directed to the Natural Resource Staff. Um, that, um, is also
22 representing Skagit County. And, additionally, if there's any, uh, questions
23 or concerns about traffic and, and perceived traffic impacts, that can be
24 addressed by the Public Works Department that's also, also is representing
25 the County here.

1 REEVES: And, Mr. Cricchio, I just want to note for everybody, uh, that is
2 here, that, uh, traffic is one of the major concerns that was raised, I
3 believe, the Appellant has traffic experts that, that they're going to bring
4 on later, I believe, uh, we're going to hear from, uh, uh, Mr. Ehrlichman's
5 experts on that. And I think the Applicant has experts on that. So for those
6 that are trying to keep track of what's happening, uh, the, sort of the two
7 very big issues, environment impacts and traffic, if we treat those...

8 CRICCHIO: Sure.

9 REEVES: As separate, there are going to be expert witnesses, uh, that are
10 going to testify, uh, potentially for days on, uh, several days on these
11 specific issues. Uh, so, so just know, for folks there in the room, that, uh,
12 we're all aware of, of the worries and concerns that members of the public
13 have raised, in terms of traffic, and environmental, uh, concerns and the,
14 the hearing has, has certainly been designed to have a more thorough review
15 than the one deck of slides on the PowerPoint that Mr. Cricchio is, is
16 presenting right now. So with that, Mr. Cricchio, please continue.

17 CRICCHIO: All right. Thank you, Mr. Reeves. So moving onto third-party re-,
18 review of the traffic impact analysis, as well as the memos, um, Skagit
19 County, uh, Planning and Development Services, as well as the Public Works
20 Department, uh, did hire, uh, third-party review, um, specifically, uh, GTC,
21 as well as HDR, performed third-party review. That can be found in Exhibits
22 15 and 16 of your staff report, Mr. Reeves. And third-party review, uh,
23 looked at, uh, the Applicant's traffic information, their memorandums, as
24 well as their analysis. And third-party review essentially resulted in
25 revisions to the Applicant's traffic memos and analysis. And, uh, ultimately,

1 those recommendations, um, um, were incorporated, uh, from the traffic impact
2 analysis into the SEPA MDNS. And then during the 2022 issued SEPA MDNS, um,
3 during the comment period associated with that, one comment was received by
4 Kyle Loring, uh, representing the Central Samish Valley Neighborhood, um,
5 and, um, appealing the County's issued SEPA MDNS. Parking, um, I don't think
6 I've gone over that, I think I'm progressing in the correct way. Uh, parking,
7 essentially, all parking would be on-site. Noise and emissions, I don't have
8 too much more, uh, it's on 55 slides. Uh, and so essentially, any, any, the
9 mining operation, uh, the Applicant has indicated that the mining operation
10 is anticipated to be in compliance with both, both day and night, uh, noise
11 regulations. Um, not to, not expected to generate excessive emissions or
12 odors, with the exception of dust generation. Um, the Applicant, as part of
13 the application submittal, did submit a Fugitive Dust Control Plan, Plan,
14 which can be found in Exhibit 22, uh, 22 of your Staff Report. Which includes
15 the spraying of water on roads and equipment to control fugitive dust. That
16 also has been compliance with the fugitive dust control has been, uh, made a
17 condition of approval or a mitigation measure. So moving on from that. Oops.
18 Okay. So findings of fact, uh, property is located in Rural Resource Natural
19 Resource Land Zoning District, uh, and Comprehensive Plan Designation subject
20 property is located in the mineral, Mineral Resource Overlay, gravel mines
21 are allowed in the Rural Resource Natural Resource Land Zoning District
22 Mineral Resource Overlay with a Hearing Examiner Special Use Permit. March 7th
23 of 2016, uh, the Planning Department received both an application for a
24 Special Use Permit and a Forest Practice Conversion Permit. Applications were
25 deemed complete on March 22nd of 2016. A Notice of Development Application was

1 published in the Skagit Valley Herald on March 31st of 2016. This notice was
2 posted on site and mailed to neighboring land owners within 300 feet of the
3 subject property. There was a comment period with it, with that, uh, Notice
4 of Development Application, which ended on the 15th of April of 2016. A SEPA
5 mitigated determination of non-significance was issued on May 26th of 2016.

6 REEVES: [Background noise] hold on. Uh, um...

7 CRICCHIO: Is there a way to mute that?

8 REEVES: Yeah. Can we mute Sarah Day [phonetic], anyone that is not the
9 podium or Cricchio should be muted. Identified as Sarah Day having a
10 conversation. Great. Okay. Okay.

11 CRICCHIO: Okay.

12 REEVES: All right. Go ahead, Mr. Cricchio.

13 CRICCHIO: Sure. Thank you. Uh, so a SEPA, uh, mitigated, a SEPA MDNS was
14 issued on May 26th of 20-, 20-, 2016, uh, Notice of Public Hearing was issued
15 on, on November 16th of 2016. Um, however, uh, the Planning Department
16 determined that the proper notice of the subject application was not given.
17 Um, uh, this did go before a public hearing and, on 20-, November 16th of
18 2016. But the Planning Department, uh, realized that not proper notice was
19 given. So according, accordingly, the Hearing Examiner opened the hearing,
20 but decided to continue it, uh, to a future date, which is where we are
21 today. Uh, the Planning Department issued a second Notice of Development
22 Application, which was published in the Skagit Valley Herald on December, uh,
23 15th of 2016. Uh, neighbors within 300 feet were notified and then there was a
24 new public comment period associated with that. Which was December 30th of
25 2016. Um, okay. G. So, during the public comment periods, um, there has

1 actually been two, um, uh, so far, um, we've re-, the County received
2 numerous public comments. And then subsequently, or consequently, the
3 Planning Department requested additional information from the Applicant on
4 March 14th of 2017. The Applicant provided this information, but the Planning
5 Department did not believe it was sufficient or complete, so the Planning
6 Department, uh, made an administrative decision on April 5th of 2018 to deny
7 the subject applications for failure to timely submit the requested
8 information. The Applicant appealed this administrative decision, PL18-0200
9 on April 16th of 2016. And then on April, October 17th of 2019, Hearing
10 Examiner denied the County's motion for summary judgement, reversing the
11 Planning Department's denial and ordering the Application, Application to go,
12 uh, to the Hearing Examiner for a decision on merits. Following the appeal,
13 the Applicant submitted, uh, continued to provide additional information. On
14 April 15th of 2021, the Planning Department, however, withdrew the SEPA MDNS
15 and issued a new more substantial MDNS, addressing the concerns raised about
16 this particular project. But then, again, on May 11th of 2021, the County
17 withdrew the SEPA MDNS. This action was not appealed. On June 17th of 2021,
18 Sk-, uh, the Planning Department for Skagit County informed that the
19 Applicant that they were required to obtain critical areas review for the
20 entire private haul road that would be used for ingress and egress to the
21 proposed quarry. On June 24th of 2021, an appeal from the application, from
22 the Applicant, excuse me, was received, requesting the Hearing Examiner
23 reverse this decision, um, requiring critical area review on the h-, on, on,
24 on, on the haul road. Uh, a SEPA mitigated determination of non-signif-,
25 significance was issued on February 2-, 22nd of this year. The SEPA MDNS was

published in the Skagit Valley Herald newspaper, posted on site and, uh, uh, mailed to neighbors, as well as parties of record. During the appeal, again, one, one appeal was received on March 25th of 2022.

REEVES: Sorry, Mr. Cricchio?

CRICCHIO: Sure.

REEVES: Just for those that are trying to follow along at home, or in the room, can we go back to Slide I?

CRICCHIO: Yes.

REEVES: Uh, so here at the bottom, you say on June 24th there was an appeal that was received, it requested the former Hearing Examiner something.

CRICCHIO: Sure.

REEVES: What happened? What was the outcome? That was not included in the slide here.

CRICCHIO: Sure. My, my fault. So...

REEVES: That's okay.

CRICCHIO: Uh, as a result of, of, of that appeal, the, uh, Hearing Examiner ruled in favor of the County. So, um, essentially, the appeal was, was reversed and, uh, the County, uh, the decision was, was in favor of the County and Critical Area Review of the haul road was required. And that is what resulted in the Critical Area Reports that were submitted in December of 2021.

REEVES: Sure. So that was the 2.1 miles or so of haul road..

CRICCHIO: Yes.

REEVES: Right there and then, uh, now, I think we're up-to-date on J, so...

CRICCHIO: Sorry about that.

1 REEVES: No problem at all.

2 CRICCHIO: My apology. So, moving onto J, uh, SEPA MDNS was issued on
3 February 22nd of 2022, it was published in the Skagit Valley Herald, posted on
4 site, uh, as well, as well as emailed and mailed to the parties of record and
5 to, uh, uh, neighbors within 300 feet. That resulted in appeal, um, uh, of
6 the SEPA NDMS, um, and that was filed by the Appellant on March 25th, 2022.
7 And then, moving forward to a Notice of Public Hearing. The Notice of Public
8 Hearing was published in the Skagit Valley Herald, posted on site, mailed,
9 emailed to the parties of record, uh, as well as mailed to neighbors within
10 300 feet. So, uh, as, as you know, Mr. Examiner, um, we've received a lot of
11 public comment on the subject proposal before you, um, going back to 2016.
12 And I think it would be fair to categorize the majority of the, uh, public
13 comments we've received, um, falling into the, um, category of perceived
14 impacts to County roadways or, or traffic, as well as, um, potential
15 environmental impacts that the quarry may have.

16 REEVES: Sure. And I agree with that.

17 CRICCHIO: Um...

18 REEVES: I think the number I sort of guestimated was approximately 2,000
19 pages of, of, uh, of public comment related materials, is the number I, my
20 math might be a little off, but...

21 CRICCHIO: It, it's a lot. I, I've done my best to put all of the pieces
22 together, uh, to get this, uh, project, uh, to you. Um, and to provide a, uh,
23 complete record. There's a possibility there could be some redundancy in this
24 public comments, um, but I wanted to make sure that all public comments, um,
25 are, are represented and get before you.

1 REEVES: Thank you. I'd rather have, uh, redundancy than miss anything,
2 so...

3 CRICCHIO: Thank you. So routing, as part of any project, um, uh, whether
4 it's a Special use Permit or any other type of, uh, land use permit, uh, some
5 types of land use permits, uh, require public noticing, whereas other don't.
6 Um, this is a Hearing Examiner Special Use Permit, um, so this, uh, does
7 require noticing. So, and then, in addition to noticing, we have both
8 internal and external routing. And so we solicit comments to departments of
9 jurisdiction as well as agencies of jurisdiction, um, so whether it be, uh,
10 the Natural Resource people, uh, in, in Skagit County's Planning Department,
11 Public Health, Public Works, Fire Marshall, um, and there's many others, we
12 solicit for comment. And any comment that we have received, um, has been
13 incorporated as, um, uh, conditions of approval if, if they're requesting
14 something. And as you know, the Applicant is requesting a Special Use Permit,
15 um, and a Forest Practice Conversion Permit. Uh, it's being consolidated
16 review and so that's what's before you today. It's a Level type, Level 2 type
17 of review process. Hearing Examiner, uh, is the decision maker on this.
18 Special Use Criteria, that can be found in your Staff Report, Page 19-27.
19 Mining Operations Criteria of Approval, that can be found in, in your Staff
20 Report, pages 27-28. And then Hearing Examiner Review Criteria, pages 28-20
21 of your Staff Report. And so, based on the applications materials submitted,
22 um, all the reports, uh, the Traffic Impact Analysis, the SEPA MD-, MDNS, the
23 Findings of Fact, um, and, um, the Planning Department would recommend
24 approval to you, Mr. Examiner, that the subject, uh, Special Use Permit and
25 Forest Practice Conversion Permit be approved, subject to Staff's, uh,

1 conditions of approval that is listed in your Staff Report, including the
2 SEPA MD-, MDNS. So, if I can get out of this, um, I don't know if I can do
3 that. I think I can. Okay. I'm going to fast forward to, just want to give
4 you some visuals, uh, or pretty much done as far as my portion. Okay. Okay.
5 Jason, are you there?

6 D'AVIGNON: It's under View.

7 CRICCHIO: It's under View. Thank you. Okay. Thank you. Okay. So, um, this,
8 uh, was a site visit that, uh, myself, as well as, uh, John Semrau and Dan
9 Cox, uh, with, uh, Miles Sand and Gravel, met, on site, uh, in recent months.
10 And so I've taken a number of pictures, uh, just to give you a visual of what
11 it looks like out there. Um, so as you can see, uh, we've done lots of
12 noticing over the years. Um, currently, there is, um, a locked gate here, um,
13 keeping people out, um, obviously, we're, we're there, so it's opened. And
14 so, when you, so this is Haul Road, um, and then Grip Road is up here. Um,
15 when you, um, look to the left, as you're looking towards the gate, from the
16 inside looking out, this is the, uh, view that you're looking at. So, uh,
17 there is a curve up here a little ways. Um, it's...

18 REEVES: Sorry.

19 CRICCHIO: And then...

20 REEVES: To clarify what you were trying to get us to visualize, I'm in my
21 car, where, where is my car and did I just leave the haul road and turn a
22 certain direction?

23 CRICCHIO: So, if you are looking, if, if, if you're facing the street, Grip
24 Road right here.

25 REEVES: Yep.

1 CRICCHIO: You either look left or your look right. Okay. And then so then
2 as we proceed, this is looking left, so you're looking up the hill. And then
3 there's a curve up here. And this is facing, from the inside facing Grip
4 Road. So, when you look left, you're, you're looking this way. When you look
5 right, you're looking down this way. This is in-, internal to the, uh, so
6 you're looking at Haul Road, um, it's, it's, it's having been on this, it's,
7 it's pretty extensive, um, so Haul Road is quite a ways. Um, there is a,
8 there is a part where you cross over Swede Creek, um, on the bridge that I
9 talked about. Here is the bridge and, again, um, the Applicant has submitted,
10 uh, memos, uh, from qualified professionals that have evaluated the capacity
11 to hold, um, hold, um, trucks crossing this that have gravel in them. And so
12 there is, the predominate, uh, landscape that you're looking at, on Haul
13 Road, is forested. It's graveled, pretty remote, there is a few areas where
14 you see this, it has been logged in the past, um, but, again, graveled, very
15 remote. Um, y-, the neighbors are quite a ways away. And, um, at the terminus
16 of Haul Road, that's where they're proposing to, uh, that's where the three
17 parcels are and that's where the proposed, uh, gravel mine would be. Um, and
18 that, Mr. Examiner, is all I have.

19 REEVES: Sure. Um, in terms of just getting us up-to-date in the timeline,
20 Mr. Cricchio, can you speak to what happened after, you know, I was
21 hospitalized and we had to move the hearing, uh, did the, did the County make
22 any effort or how, how is, how is this sort of re-notice so folks knew to
23 show up places or participate or do things? Do you happen to know the answer
24 to that?

1 CRICCHIO: Yes, we did re-notice. And so, uh, re-noticing did occur of the
2 Notice of Public Hearing. So, originally, it was scheduled for July, if I
3 recall correctly, Jul-, July 11th, 12th and 13th, I think...

4 REEVES: Yep.

5 CRICCHIO: I'm correct.

6 REEVES: Yep.

7 CRICCHIO: Um, so we did re-notice, uh, to all parties of record, via email
8 and snail mail. And we did, uh, mail out the notices to all the neighbors
9 within 300 feet of all those subject parcels. Uh, we posted the, the, the
10 revised notice, as well, as well as on site and, uh, that revised notice was
11 also published in the Skagit Valley Herald.

12 REEVES: And I assume it was also updated on the website? Did you say that
13 already, I apologize if you...

14 CRICCHIO: That's, that's correct. We did up-, we did update, uh, working
15 with IT, IT did update that, per my request.

16 REEVES: Excellent. Thank you. And, and I know that we're going to hear,
17 in-depth, from, from experts later, um, but just again for sort of the
18 purposes of the bigger picture overview, can, I think you would probably be
19 able to do this, but, can you just very quickly touch on the SEPA sort of
20 process to the extent that while watching your slide show, if I'm not an
21 expert, I might get a little confused to the extent that it seems as if SEPA
22 has occurred, like, three times already? So can you just quickly touch on,
23 uh, uh, you know, what the process looks like and is there some other outcome
24 that, that's possible than say an MDNS, just, and, again, I know we'll get
25 into it in much greater detail later, I'm just trying to...

1 CRICCHIO: Sure.

2 REEVES: Where if I wasn't an expert and I'm trying to follow along at
3 home, kind of, that was something I was wanting to have clarification on.

4 CRICCHIO: Sure. I, I, hopefully I can answer your question, Mr. Reeves. So,
5 SEPA, that stands for State Environmental Policy Act, and SEPA, uh, uh,
6 sometimes, depending upon what an application, applicant is submitting, to
7 whether it's City or County, may require SEPA Environmental Review. Um,
8 whether it's a project action, um, i.e. the Applicant is proposing something
9 or whether it's a project non-action, such as a comprehensive plan, um,
10 amendment or a code amendment. Um, so SEPA can be triggered or, or it can be
11 exempt from being triggered, uh, depending upon what is before a City or
12 County. Um, there's different thresholds that, uh, a City or County could
13 issue when, uh, reviewing, uh, an application for SEPA. One of the threshold
14 determinations can be a Determination of Non-Significance or otherwise known
15 as a DNS, another threshold determination can be what's called a Mitigated
16 Determination of Non-Significance, otherwise known as a MDNS. And then,
17 finally, the last threshold that could be potentially triggered is what's
18 called a Determination of Significance or a DS. A DS would require an
19 Environmental Impact Assessment, whether the two former, DNS and MDNS does
20 not require an Impact Assessment. Uh, so SEPA review has occurred on this in
21 the past. There has been some errors on, on behalf of the County, um, so we
22 have, uh, done our best to cross our Ts and dot our Is and make sure, um, uh,
23 Skagit County Code, as well as State Law is followed. And that this appl-,
24 that this particular, uh, proposed gravel mine is adequately mitigated for.

1 REEVES: Thank you. I think that was helpful to the extent that the
2 levels, uh, and so, uh, you know, one of, we'll hear from Mr. Loring here in
3 just a little bit, but one idea under SEPA is, you know, what, what level or,
4 or what, what is triggered and what is required. In this instance, the County
5 determined a Mitigated Determination of Non-Significance was appropriate such
6 that, uh, the County's determination again was that with mitigation measures,
7 required mitigation, this proposal could move forward, such that there would
8 not be significant environmental impacts. Is that right, Mr. Cricchio?

9 CRICCHIO: That's correct, Mr. Reeves.

10 REEVES: Okay. And so, just also to clarify one final thing there, at the
11 other earlier SEPA determinations, are sort of no longer applicable, we've
12 just got the one MDNS that was appealed, uh, by, uh, uh, I'm sorry, I
13 shouldn't just say Mr. Loring, it was not him, it was the Central Samish
14 Valley Neighbors, uh, that appeal, uh, was the one, that's the one MDNS on
15 the table, uh, the other, the other, the others sort of SEPA stuff, if, as it
16 were, has been withdrawn or, uh, overturned, et cetera, is that an accurate
17 way to think about that?

18 CRICCHIO: That's correct. So the previous SEPA's are no longer. This is the
19 SEPA MDNS, um, there has not, no other, uh, threshold determinations are
20 applicable before the July 22nd, uh, 2022, uh, MDNS. So this is the threshold
21 determination.

22 REEVES: Excellent. And then, just in terms of your PowerPoint, Mr.
23 Cricchio, I had said something about a 100-something in the deck, I, I think
24 there was, if you go download this...

25 CRICCHIO: Yes.

1 REEVES: Uh, off of the County's website, there are more slides, but, but
2 quite a few of them are just, you know, property tax information, uh, you
3 know, um, there weren't sort these substantive, uh, slide decks that you
4 wrote out yourself, that you, you bypassed. Is that a fairly accurate
5 assessment?

6 CRICCHIO: Yes. Thank you, Mr. Reeves. That's entirely correct. So, uh,
7 there's a lot of information in there that I included in my, uh, combined PDF
8 presentation. I like to come prepared, uh, uh, instead of not.

9 REEVES: Okay. So, my, and, again, my understanding of, of the intent of
10 everybody is that that sort of is our big picture overview, uh, Staff
11 presentation. Uh, then we were going to hear from, in order, uh, Bill Lynn,
12 then Kyle Loring, uh, then Mr. Ehrlichman, uh, as, again, bigger picture, not
13 a question and answer sort of thing. And then members of the public after
14 that. There will be a break at some point. Uh, but did I, I just want to make
15 sure none of the attorneys had a different understanding and, and I, I didn't
16 believe we were going to be having cross examination of Mr. Cricchio just on
17 his, his basic overview. I hope that was everybody's understanding. That
18 seems to be the case. Okay. Good. So with that, uh, Mr. Lynn, are you ready
19 to move forward? We're about two hours in. I'd be fine, you know, if we, you
20 know, want to push, push through or if folks need a short break, that's fine.
21 Just someone...

22 LYNN: Uh, I'm, I'm ready to move through, but I'm happy to accommodate
23 anybody else if they've got a different idea.

24 REEVES: The longer I do this, the, I try to be a little better about it.
25 But, uh, I'm, I'm fine, I think. So why don't we at least get through, the

1 intent is that Mr. Lynn is, I think he promised 15 minutes or so, I'm not
2 going to limit him, uh, but we'll at least get through Mr. Lynn, uh, so thank
3 you if, and I don't swear him in because he's an attorney. Uh, it's a stayed
4 joke I've overused in this forum and I others, I sometimes swear at
5 attorneys, but I don't swear them in. Uh, but, so, Mr. Lynn, uh, you are just
6 going to give a sort of basic, sort of overview on behalf of the Applicant,
7 is that accurate?

8 LYNN: Yes, thank you.

9 REEVES: Please.

10 LYNN: Uh, happy to represent Miles Sand and Gravel, uh, on this matter.
11 I've represented them on a number of, uh, permit actions, although I think is
12 probably the smallest, although perhaps one of the more controversial. Uh, I
13 think our position could be summarized very quickly, uh, this is property
14 that is, has been designated by the County as appropriate for this use, in
15 fact, it's a priority use for this area. Uh, the second point is that this is
16 a very large site with very small mine. Uh, you can see from the pictures
17 that this is a remote, uh, location, not in anybody's, uh, regular view
18 scape, it's, it's a small area on a big site. The third thing is that this is
19 a very limited operation, uh, basically one or two people with a couple of
20 pieces of equipment, not the full scale, uh, mine that you might otherwise
21 think about. And then, finally, uh, this process has been long and the site,
22 uh, at the end of it is extraordinarily well, uh, mitigated, both by the
23 actions of Miles, in limiting the scope of what's proposed, but also by the
24 regulations imposed by the County and other agencies, and then finally by the
25 conditions of the MDNS that are tailored to this site. I'm going to expand on

1 each of those things, uh, uh, a little bit. I want to start, though, from the
2 proposition that what we're dealing with here is an unique commodity. Uh,
3 some of us might not choose to go to bars, some of us might not choose to go
4 to a particular convenience store or Costco or a particular medical office,
5 but everyone on this call, uh, uses gravel on an ongoing basis. Everybody
6 who's sitting in a house that sits on a foundation, everyone who drives a car
7 or a bicycle, uh, everyone who received tap water, uh, through utilities that
8 are in trenches, uh, each of us uses gravel. And there will be a little bit
9 more about that later. But this an unusual product, in that sense. Uh, gravel
10 can't be mined everywhere, you can locate a medical office whether you want,
11 but gravel mines can only occur where gravel exists. And it's not just any
12 gravel, it has to be gravel of a, of the necessary quality to serve the needs
13 of the community. It has to be in a quantity that is marketable and can be
14 obtained, um, in a, in a feasible manner. It can't be located under
15 development that has already occurred. And this is an important one because
16 there's lots of gravel in our state, some of it, though, is located under
17 cities, like, Lakewood and University Place, down where I come from. It's,
18 it's already developed, it can't be, uh, obtained. Uh, the gravel to be mined
19 has to be, uh, away from critical areas, you can't have areas crossed by
20 creeks and, and streams, it has to be separated from those. And it has to be
21 separated from, uh, ground water and, and surface water. And, uh, it can't be
22 under other unsuitable material that makes it, uh, difficult to obtain. And
23 then, finally, it has to be located in proximity, in proximity to the areas
24 where it will be used. And even the County's policy notes that it must be in
25 close and economic proximity to the market. So, that, uh, dramatically limits

1 where we could even think about proposing this activity. And that, those
2 factors, the combinations of the extraordinary public demand and the
3 limitations that I've just described, are why the Growth Management Act told
4 us all, as a matter of State Policy, that one of the first things we Cities
5 and Counties have to do, in planning their futures, is to identify where
6 natural resources are that are necessary for our society. They did that for
7 agriculture, uh, for timber and for mineral resources. And they said, you
8 have to define those first and protect them and not just provide them, but
9 protect them from encroaching uses. So, the, the normal order of things is
10 reversed as to, uh, mineral resources because they are essential and their
11 preservation and, and excavation, in the case of, of mineral resources, is
12 essential. So, the County has implemented that by, uh, designating mineral
13 resource lands, this is one of them. Actually, you'll see on Maps later that
14 this actual entire site is actually a designated mineral resource land, all
15 700 plus acres, um, but this only concerns the 51 acres that, uh, that we're
16 addressing in this application. Uh...

17 REEVES: Sorry to interrupt, Mr. Lynn.

18 LYNN: Yeah.

19 REEVES: Just, again, try to help folks that might not be experts, when,
20 when you're talking about the order and the designations, is this when
21 implementing the comprehensive plan as required, uh, under the Growth
22 Management Act, or GMA, is that what you mean, what you're talking about when
23 you talk about these designations and things?

24 LYNN: Yes, that was one of the first steps that the County was required
25 to take was to designate these protected areas. And then they had to develop

1 the other allowed uses, kind of working around that. Just in the same manner
2 that the County was required to designate critical areas and make it's
3 planning around that. So it's a primitive or foundational stage in the
4 development of a comprehensive plan.

5 REEVES: Right. I, I hadn't heard the word comprehensive plan, I was just
6 wanted to make sure folks were trying to follow, that they knew where you
7 were in your explanation.

8 LYNN: I appreciate, appreciate the clarification. So, um, so the County
9 has designated this land and has said that this is a priority use, uh, as
10 Special Use Permit is required, but you have to start from the proposition
11 that some level of, of impacts are necessarily are going to result from the,
12 from the use of these mineral resources that are protected. And, and this
13 area is one where that is a, a priority use. So, what is proposed here, um,
14 first of all, physically, it's small in scale, 51 acres very small for a
15 surface mine, and that is the area that's proposed to be cleared and mined.
16 And that's on a 735 acre site. So it represents about 7% of the overall site
17 that's actually going to be used. And it's very well screened and, and
18 buffered as, as you have seen from the pictures. Really, the most noticeable
19 part about that, though, is that the very, uh, the very, the activities that
20 are proposed are very limited. Uh, surface mines can include all manner of
21 processing, uh, not just excavation, but washing and sorting and crushing and
22 asphalt batching, concrete batching, uh, dredging, recycling, this is the
23 other end of the spectrum, what's proposed is that the material will be
24 excavated by a crew of one or two people, using two or three pieces of
25 equipment. No building is proposed, uh, there's nothing of permanence here.

1 This is an interim use, where a couple of people will excavate this mine to
2 be processed, uh, with the gravel to be processed elsewhere. Uh, it's
3 interesting that people characterize this as an industrial use. The things
4 that have industrial, uh, quall-, qualities, potentially, like, crushing, uh,
5 or processing equipment or, uh, sorting and, and this big, uh, bees nest of
6 activities, that's going to occur someplace else. All that's going to happen
7 here is the excavation and transportation of material. It is literally the
8 least you can do in a mineral resource area. This is the low end of the
9 spectrum, not the high one. And the level of, uh, transportation here, again,
10 is very small, 23 loads a day on average is a very small number. Uh, uh, you
11 know, there will be times when that's exceeded, but those will lead to an
12 annual average of 46 trips a day. And I think the, the other thing that's
13 very much worth noting here is that this site is closed in. So while there
14 will be use of rural roads, as there are with every...

15 REEVES: [Background noise] hold on one sec.

16 MALE 3: Hi, how, how are you all doing?

17 REEVES: Good. Uh, we're going to go ahead and mute anyone, anyone that
18 joins us, uh, there will be an opportunity to testify later. But, uh, folks
19 that, that join the meeting are muted until...

20 MALE 3: Hi, glad to meet you.

21 REEVES: Sorry?

22 LYNN: Uh...

23 BLACK: I think you're hearing a phone conversation, Mr. Reeves.

24 REEVES: Oh, if, if, uh, there we go. Thank you. Sorry, sorry to interrupt
25 there, Mr. Lynn.

1 LYNN: Uh, as I was, uh, saying, the, the type of roads here are not
2 uncommon in rural areas. What is a little bit uncommon is the relative
3 proximity of the site. It's a short haul, uh, by gravel, uh, context, and
4 alternative sources of this same material, which is in demand, uh, might well
5 be located farther away and involve a longer haul on similar roads. So, um,
6 for all of those reasons, this is a small scale operation on a big site,
7 well-buffered from, uh, other activities. And then, finally, I want to talk
8 about the process and what it has led to in this case. Uh, you know, there's,
9 there's criticism as you review, review the comments as to the, the changing,
10 uh, context and the, and the length of time. Certainly, we've complained
11 about the length of time that this has taken. Really, a lot of the, the
12 difficulty here has arisen from the fact that the County started off by
13 applying its normal standard to this project. And then, as the public volume
14 has increased, the, the, the level of comments, the extent of comments, the
15 County has, uh, done more and more to try to address those things. And, and
16 I'll give you just a few examples of that. Uh, we started off with a level of
17 traffic analysis that the County thought was commensurate with this type of
18 facility. Uh, by the time we were done, we had submitted a number of
19 different reports, the County had engaged, uh, two different experts to
20 review the material and provide additional input and we had responded to
21 that. Now, that's not the ordinary pro-, uh, process. But because the County
22 was hearing from the public that they didn't trust the County experts to
23 review, the County responded and went out and it got others to parties to
24 participate. So, that's a level of scrutiny not normally applied, but what
25 was here. Um, normally, with a mining operation where all you're doing is

1 excavating, you wouldn't do a noise analysis. But because of the public
2 comments, the County required it here. And then the County went a step beyond
3 that and actually required a vibration analysis where the, the Applicant was
4 required to hire a consultant to look at the vibration from trucks on the
5 homes that they passed. Uh, uh, an extraordinary step that, uh, again
6 reflecting the, the County's effort to be responsive to the public. And then
7 several years into this process, when we thought we were nearing the finish
8 line, the County said, uh, we want you to analyze the haul road as to
9 critical areas. We know you're not proposing to do anything there, uh,
10 physically, you're not alternating it, and, uh, but we want you to analyze
11 the impacts. And then the County went out and hired another reviewer,
12 Watershed Company from Kirkland, their expert walked both sides of the haul
13 road, from beginning to end, and came out with a list of specific, uh,
14 critical areas that it wanted analyzed. And those, that work was done, their
15 recommendations were incorporated into this. So the project has been under an
16 extraordinary spotlight from the beginning. Uh, uh, it's been a long process.
17 But literally, everything has been, uh, reviewed and, and considered. And on
18 top of those requirements that are incorporated in the MDNS, I just want to
19 note that the County has pretty extensive requirements of its own for any
20 surface mine, all of which are met. And I also finally want to indicate that
21 there, this is not the only source of, of regulation of surface mines. Uh,
22 the, the, uh, mines are extensively, uh, monitored and reviewed by the
23 Department of Natural Resources, the Department of Ecology as a Special
24 Permit, uh, for surface mines. Uh, their requirements have to met, be met,
25 including the, uh, monitoring and, and regulation of water quality. Uh,

1 there's the northwest clean air agency that addresses dust impacts and then
2 finally the, uh, MSHA, the ag-, federal agency that regulates mine safety.
3 So, this is a, an extremely well-regulated project, it's extraordinarily
4 small and it's on the site that is to be devoted to this use. So we think by
5 the end of the hearing you will, uh, have been presented a strong case for
6 approval of the Special Use Permit.

7 REEVES: And, again, just to help, for those trying to follow along that
8 aren't experts, that, just on that, what you were stating at the end there,
9 Mr. Lynn, you know, I know we've got the, you know, Surface Mining Act, which
10 is in Chapter 78.44 of the Revised Code of Washington, for instance. I think
11 you were referencing the County has its own regulations, I don't, did you
12 mean it, Critical Areas Code or, or the Mineral Overlay or...

13 LYNN: Yeah. I, I was talking about the Mineral Resource Overlay or, or
14 the surface mining regulations in general are pretty specific here, unlike
15 some jurisdictions that leave it all to the Hearing Examiner. There are a
16 variety of ways, and we'll talk about those in, in more detail, but, uh, and
17 then let me just make a final point, kind of tying that in with the
18 environmental review, uh, when the County makes its environmental
19 determination as to what level of, uh, further scrutiny is appropriate, they
20 have to take into account not only their own regulations, but the regulations
21 of others. And it's only in those areas that are not regulated by specific
22 codes and regulations that the County has some discretion. And through the,
23 those regulations, plus the additional mitigation, uh, we believe that there
24 are no, uh, even potentially significant environment impacts left and that's
25 why we think the County's MDNS was appropriate.

1 REEVES: Great. And just, just sorry, one final clarification, uh, were
2 this to be approved, again, haven't made up my mind, uh, or anything to that
3 effect, but, uh, based on what you just said, are there other permits that
4 then the Applicant would need to go get from other agencies with jurisdiction
5 to the, I'm asking because I think you were eluding to the fact that in some
6 places, the Hearing Examiner is sort of, you know, this is the end of the
7 process, in some other instances, it's more in the middle of the process, you
8 know, some permits, you know, I have lots of authority, some I, you know, I'm
9 just one of many, usually the lowest on the totem pole. Uh, can you just very
10 quickly touch on that? I, I'm sure we'll get into more detail later, but I
11 think up front it would be helpful.

12 LYNN: Uh, yeah, from the, the work that is done on the site will
13 require permitting from the County, everything from the road entrance, if it
14 hasn't already been approved, to, to the storm water, uh, management and, and
15 certainly any proposed changes to the road in the future, and I don't think
16 there will be any, would require that. The County will be, uh, permitting the
17 improvements that are required through the SEPA process. And, uh, the, all
18 the other agencies I mentioned have their own permit process. We need a
19 permit from the Department of Natural Resources to, uh, operate the mine, we
20 need a, to bring the property within the, the Department of Ecology storm
21 water plan. But I think the, the primary discretionary approval by the County
22 would come through this process.

23 REEVES: Right. Okay. So I, I guess what I was trying to understand is,
24 uh, were this a, were this approved with a SUP later, then DNR would have a
25 separate permit where it reviews other aspects of the project? I, I'm just...

1 LYNN: Yes.

2 REEVES: Trying, by analogy because people don't run into surface mining

3 as often as they run into other things. You know, say under the, with the

4 shoreline, you know, and someone is doing work, you know, with a shoreline

5 permit, often Department of Ecology is involved, and they have a Special

6 Permit and, and, uh, Fish and Wildlife has a Special Permit, sometimes Army

7 Corp, so there's that multiple levels of review. Some of it overlaps

8 significantly. I guess I was just trying to understand that in your mind,

9 they're, DNR, but there are other agencies that have further review to do or

10 they have already done that? I'm, I'm trying to get a sense of where we are.

11 LYNN: None of that can be done until this permit is issued. So in that sense,

12 this is a, this is an early permit, despite the fact that we've been at it so

13 long. So, yeah, there are a series of other permits that will be required

14 that, that will...

15 REEVES: Oh, no. All right. I see other people moving.

16 BLACK: Yeah. It looks like he's frozen.

17 REEVES: All right. I'd like the record to note, I, I got, uh, William

18 Lynn to freeze up and, uh, mid-sentence. It's never happened before. It was a

19 tech issue, I think. You were just concluding, uh, Mr. Lynn, that, uh,

20 essentially, this is one of the earlier permits, ultimately in the process

21 and then you froze up for just a sec.

22 LYNN: Yeah. I, I think that's, if I droned on after that, I was

23 probably wasting everybody's time anyway, so...

24 REEVES: Excellent. Okay. Well, thank you. I know you've got witnesses and

25 experts, uh, you intend on calling later in the process. Uh, but I think,

1 well, first off, I want to go quickly and see if we can go to the room and
2 get Brandon Black back in front of us to see if we have any update, uh, on
3 tech issues. And then while we're waiting on Mr. Black, I think Kyle Loring
4 and, uh, Tom Ehrlichman were each going to speak for, for about as long as
5 Mr. Lynn did, as sort of opening. But, uh, Mr. Black, you're muted there.
6 Muted. No. Can't hear you, Mr. Black. Someone is going to have unmute the,
7 the podium.

8 BLACK: Apologies.

9 REEVES: Hey.

10 BLACK: Here we go.

11 REEVES: Yeah. We can hear you.

12 BLACK: Uh, yes, we do have some updates I was going to give you, but I
13 have Russ who's, uh, stepped up here with me. I think I'll let him speak.

14 REEVES: Okay.

15 RUSS: So, uh, currently, we have someone trying to, uh, set up, uh, a
16 new meeting, essentially, is what we would have to do. The problem is that
17 the phone, uh, number, um, we cannot get one created with a new ID number.
18 Uh, so until I get that update, I really can't add in a phone number right
19 now.

20 REEVES: Okay.

21 BLACK: So, uh, just to follow up on that, what I was instructed, and
22 I'm, I'm hoping this is still the case, is that during the break, we would
23 shut down, re-log in a new number, apparently the number expires if it's not
24 used within 60 days. And I think that, that's what I've been told, that hap-,

1 has happened. Uh, but we can fix that, it will show up on the Hearing
2 Examiner's website again and folks can go to the same website and link in.

3 REEVES: Wait, wait, wait. Just to be clear, you're saying my intent is we
4 hear from, uh, Kyle Loring, Tom Ehrlichman, then we'll take a, a break, would
5 be my plan, that would be right about lunchtime, I think. And you're saying,
6 then, when we come back, everyone that is participating, I think there's 30
7 of us on Teams right now, we need to go back to the website and, and re-, re-
8 hop on and it will be, however we do that, it should be correct that time?

9 BLACK: I, I am definitely not, uh, technologically advanced, uh, and
10 that's not part of my deal, but that is, uh, potentially what we are working
11 on trying to do. So hopefully we'll have some more updates on that. I'm just,
12 uh, transferring information I've been given.

13 REEVES: Okay. I mean, we, we don't mean to throw you under the bus, but
14 someone's got to get thrown and you're wearing the Hawaiian shirt, so it just
15 seemed, you know...

16 BLACK: Doing my best. Uh...

17 REEVES: No, thank you, Mr. Black, we appreciate it. I, so...

18 BLACK: I did see Leah pop up there for a second, I don't know if she can
19 further clarify, she's more...

20 REEVES: You're going to try to pawn this off on the, the...

21 FORBES: He's totally trying to pawn this off on me right now because I'm
22 the one that gave him the information. Our, our understanding is that because
23 that conference ID number expired for not being used for 60 days, um, it's
24 just that nobody called into our meetings that we've had in the past couple
25 of months, that we need to create a new one. We do have somebody on standby

1 with our, um, our IT department to get that updated, project, um, logging
2 information on the County website, as well as on the Hearing Examiner page.
3 We would put it on the County Home page, as well as the Hearing Examiner page
4 for today.

5 REEVES: But, Ms. Forbes [phonetic], does that impact, so, we all would
6 need to log off during the break and then re-sign, you know, re-click...

7 FORBES: Click on the, yeah, that's my understanding. And that...

8 REEVES: Okay.

9 FORBES: That is kind of a precautionary thing. I'm not sure you
10 absolutely have to, but as a precaution, during the lunch break, it makes the
11 most sense to do it then. Have everybody log off at once. We'll get that new
12 log-in information created and posted online, get folks to both log back into
13 the Teams Meeting as well as have the option of calling in to provide
14 testimony.

15 REEVES: Okay. And, uh, Leah Forbes, because you clearly are more
16 competent than the rest of us on these matters, probably several other
17 things, too, can you, are you able to sort of just cut and paste the list of
18 who is currently on Teams? I ask because if we do move forward with this
19 process, uh, when we come back after the break, I would love to go, okay. I'm
20 a little nervous because we had 30 and we're down to nine or something, you
21 know, just to try to keep track? I, I'm afraid, if it was Zoom I'd be a
22 little bit more bold, but Teams and I, as you well know, we, we, we don't get
23 along well, me and Microsoft products. So if you, are you able to do that?

24 FORBES: Yes, I just captured screen shots of the list of folks in the
25 meeting.

1 REEVES: Okay. And, and it should be around 30, that's what I show, so...

2 FORBES: Yeah.

3 REEVES: Okay. So here's the intent, uh, we are going to now move next to
4 Kyle Loring, uh, who's going to give his sort of brief overview on behalf of
5 his clients, uh, then we'll, we'll, uh, same thing with Tom Ehrlichman, uh,
6 and then we'll check in with Leah one more time before we take our break,
7 just to make sure that we all, you know, that she's confident that we should
8 all log off. Uh, but, uh, that is the plan, uh, so thank you everybody. And
9 with that, Mr. Loring, if you can introduce yourself and the group that you
10 represent and then give us your, your overview of where things stand in terms
11 of, uh, the appeal ultimately?

12 LORING: Thank you, Mr. Examiner, I'd be happy to do that. Uh, my name is
13 Kyle Loring and I represent the Appellant in the SEPA Appeal, Central Samish
14 Valley Neighbors, uh, and the individuals who compose that group at the same
15 time. So I, I should mention on the onset that I'm styling this more as an
16 opening and so I'll refer to the evidence that, uh, CSVN intends to adduce
17 per the Hearing Examiner, uh, rather than my own opinions, as part of that.
18 But, uh, I will start by saying that my clients certainly view this
19 industrial mining operation very differently from the extraordinary small
20 characterization, uh, that you just heard from the Applicant here. Um, so,
21 uh, I, I also am not planning to provide legal opinions, but I will recite
22 the issues that are in front of you, in the SEPA Appeal, the two issues that
23 we've set forth in our brief, just as a reminder as we get started, uh,
24 through that process. But I'll focus more on the evidence that you'll hear,
25 uh, from everybody there. Um, and also, you had a question a moment ago about

1 DNR authority, just through I'd start in on that and say they're focusing, of
2 course, on the reclamation, the back end of the mine opera-, or the mine
3 itself and what happens when it's turned back into some other use or
4 converted to another use, not the operations as much here, although there can
5 be small overlap. All right. With that, uh, with that aside, let's jump right
6 in and say that, uh, this, this process has been going for awhile. That is
7 true. And for the past six years plus, uh, the community members, those many
8 community members, including my client, have diligently monitored the two
9 applications for the Special Use Permit and the Forest Practice Conversion.
10 And, uh, and the shifting and incomplete environmental review for a sizeable
11 gravel, uh, mine in their neighborhood. It is a 51 acre mine, 68 acres would
12 be cleared, uh, in addition to those 51 acres that would be cleared and then
13 also excavated into the ground. Uh, they've spent countless hours reviewing
14 applications documents, familiarizing themselves with land use rules,
15 spending their personal resources, uh, for expert analysis of application
16 materials and for legal representation. And when they've learned of factual,
17 procedural deficiencies, which has happened regularly, they've communicated
18 those to Skagit County staff and informed the public about them, playing that
19 role, as well, to try keep the public informed of this process. Which, again,
20 has been lengthy. So, they now appreciate the opportunity to present this
21 information to you, during this consolidated hearing. And, uh, and I'll just
22 start with what they request, and that is, uh, that they respectfully request
23 that that Mitigated Determination of Non-Significance be vacated so that
24 Skagit County can correct the failure to fully evaluate and address the
25 environmental impacts of the mine operations. Including the impacts that have

1 already been caused by converting the private haul road, uh, from forestry to
2 gravel hauling. And, uh, and the incompletely reviewed traffic, geological
3 instability, wetlands, stream, noise and climate impacts. Uh, that as the
4 application states, would occur over approximately the next quarter century.
5 So, this is not, this is not a short-term activity. Uh, it is a, it's been
6 estimated to go 25 years. So, the brief legal segment that I'll add is that
7 the State Environmental Policy Act, we'll call it SEPA, going forward, uh,
8 requires the agencies carefully consider the range of probable impacts,
9 including short-term and long-term effects and a Mitigated Determination of
10 Non-Significance, or MDNS, is only appropriate where there has been a review
11 of the project's full impacts and that review indicates that, with
12 mitigation, the project will result, uh, will not result in probable
13 significant adverse impacts. So, the questions in the SEPA portion of this,
14 uh, the SEPA Appeal that you'll be hearing about, excuse me, are 1) did the
15 County err when it issued an MDNS? And their bear the burden of proving, with
16 that threshold determination, that it was appropriate. Uh, did they err in
17 doing so without examining impacts that you'll hear about during this
18 hearing? Uh, and further, did they err when they declined to issue a
19 Determination of Significance that would lead, then, to an Environmental
20 Impact Statement on some of these specific, uh, targeted impacts? Uh, that as
21 you'll hear from the testimony are likely to cause more than a moderate
22 adverse impact. Again, we're talking about the excavating and hauling of 4.28
23 million cubic yards over 25 years. So, during this hearing, you'll hear
24 formal testimony from four members of Central Samish Valley Neighbors, or
25 CSVN, uh, they won't be dur-, they won't be speaking during the public

1 comment, we'll be taking testimony more directly with them as witnesses. And
2 you'll also hear five subject matter experts. So you'll hear testimony from
3 CSVN's Martha Bray [phonetic], about the public's experience during the
4 permit review process. The challenges in obtaining information. She'll
5 testify to many frustrating delays in the process. Our continuing
6 inconsistencies between application materials and the County's position and
7 its own rules and to be forced to file the SEPA Apple when the MDNS still did
8 not address project impacts, in the end. And this was the third MDNS, uh,
9 these nonetheless, did not address the impacts and did not significantly
10 change, uh, throughout the course of this process either. There were some
11 additional environmental reviews in between those MDNS issuances. But you'll
12 hear testimony that the MDNS also did not significantly change in terms of
13 the conditions, uh, that were applied. You'll hear that it took four years
14 before the Applicant grudgingly conducted a Level 1 Traffic Impact Analysis.
15 Uh, you'll hear that that was still deficient and that a Level 2 Impact
16 Analysis was required for traffic. Uh, you'll hear that nearly six years
17 passed before any reports about the gravel hauling road, uh, occurred. And
18 that was the road that you'll hear was, uh, installed into, not installed,
19 but where the surface was changed to gravel and where it was expanded in
20 2018, during the pendency of these applications and without any County review
21 of the potential impacts of that development there. Along with 2.2 m-, uh,
22 mile long road. You'll hear from Linda Walsh [phonetic], another CSVN member
23 and someone whose family lives next to the proposed mine site. Uh, Ms. Walsh
24 will testify that she and her neighbors do not consider this a remote
25 location. Uh, you'll hear testimony that, uh, about the mine's impacts on her

1 family, uh, including noise impacts, that weren't studied for the property,
2 but instead apparently studied where they might impact the house, which is
3 farther away than areas in the woods where her family spends ample time, uh,
4 recreating and enjoying themselves there. You'll hear from Matt Mahathy
5 [phonetic], an expert in critical areas like wetlands and streams and
6 somebody who has conducted hundreds of site assessments and is intimately
7 familiar with both critical area reviews and SEPA reviews, uh, to the nu-,
8 he'll testify to the numerous omissions in the application's Review of
9 Impacts to the areas, both at the excavation site and along that private haul
10 road. He'll testify that industrial mine that removes all vegetation and all
11 soils and excavates down to within ten feet of ground water qualifies as a
12 high-impact land use, uh, that requires the largest buffers. Uh, and he'll
13 testify that the Department of Ecology reached that same conclusion. Uh, we
14 didn't hear that in the Staff Presentation, but they submitted ongoing
15 comments to that effect and the 300 foot buffers are required for the
16 development that is proposed here, this mining of the full site. Uh, he'll
17 testify that, uh, well, in fact, the County reached that conclusion in 2017,
18 too, with a letter from John Cooper [phonetic]. Uh, he'll testify about steep
19 slopes and the fact that buffers actually need to be increased in areas with
20 steep slopes and he'll testify that based on the surveys that have occurred
21 for this site, and the site plans that show those steep slopes that the
22 buffers should be a little bit larger than that 300 foot, uh, distance as
23 well. He'll also testify to the lack of delineation of wetlands associated
24 with the Samish River. And we heard a moment ago, uh, from Mr. Cricchio, the
25 County's position that they had been delineated. Uh, we'll hear from, again,

1 this expert, Mr. Mahathy, that actually the, the formal delineation process
2 did not occur along that area, and that there isn't evidence that it did
3 along the Samish River wetlands. Um, he'll also testify that the Applicant
4 did not accurately, uh, characterize the streams that are on the site,
5 primarily the streams along the haul road, uh, and, uh, per the Department of
6 Natural Resources and that those streams actually have higher value than has
7 been acknowledged and reported to date, and thus warrant greater protection.
8 And, ultimately, he'll provide his opinion, as an expert, that all of these
9 areas led to the application under-representing the impact that the mine
10 would cause. And that those impacts are significant and require a
11 determination of significance in this, in this instance. You'll hear from
12 Nora Cammer [phonetic]. She'll testify, based on her expertise in Natural
13 Resource Protection Restoration and Management about the ecological
14 importance of the Samish River and Swede Creek and about unexamined mine
15 hauling impacts on them. Uh, she has a history and background in forestry.
16 And so she'll testify that the 2018 expansion and graveling of the private
17 haul road, which has been characterized as a gravel, uh, gravel gravel haul
18 road, essentially, uh, occurred without an permit and isn't necessary for
19 forestry use. And so must have occurred for this project, again, un-reviewed,
20 uh, by the County. Uh, she'll also testify that while the overall site is
21 over 700 acres, uh, there's no indication that the logging of the non-mining
22 areas will be discontinued in those areas. Uh, you'll hear from Dan McSheen
23 [phonetic], who's an expert engineering geologist. He'll testify that the
24 private haul road actually bears numerous [inaudible] slope instability. This
25 is one of the issues about where that haul road, uh, approaches Swede Creek

1 and then crossed over bridge, it comes down a bit of a slope there. And he'll
2 say that those, uh, slope instability issues were apparent through a review
3 of lightdar [sic], uh, notwithstanding the Applicant's consulting the
4 contrary. And he'll testify that no responsible geologist could have reached
5 the, the, sorry, the conclusion put forth by the Applicant's, uh, consultant,
6 that there's no risk of landslide along Swede Creek as a result of traveling
7 with that, uh, heavy gravel truck and pup down those steep slopes. You'll
8 hear from several, uh, witnesses about traffic issues. You'll hear from John
9 Day [phonetic], a member of Central Samish Valley Neighbors, and a local
10 cyclist, who has pored over the applications transportation documents. He'll
11 describe his perspective as a frequent user of Grip and Prairie, Prairie
12 Roads. He'll discuss the limitations of those roads. Uh, he'll discuss the
13 lack of limitation in the MDNS conditions for hauling gravel. Simple things
14 like the lack of an identified haul route, a specified haul route, I should
15 say. Or a lack of, uh, maximum daily trips along these areas. The only number
16 we've seen, primarily, is this 46 per day. That's an average number and he'll
17 testify that the Applicant has acknowledged that an average, average number
18 and that they are unwilling to be limited, uh, to a maximum number for haul
19 trips. You'll be oriented to this corridor, uh, the narrow, windy portions of
20 Grip Road and Prairie Road by Brian Bowser [phonetic], uh, who will use
21 photos and videos to help guide us along the route that those trucks would
22 take in both directions. Uh, in addition to the trip that would travel east
23 of the mine, you saw, that was one of your first questions about the photos,
24 uh, from Mr. Cricchio, which direction you were facing. There was a photo
25 facing left out of the, uh, haul road, that direction has not been evaluated

1 for impact. And so Mr. Bowser will show some of those steep turns and angles
2 and nonetheless higher speeds and what it would look like to travel along
3 those with a truck and trailer. Uh, you'll hear from Phil McCloud [phonetic],
4 who is an experienced cyclist and board member of the Skagit Bicycle Club,
5 about the anticipated impacts of having their trips and there, uh, their
6 bicycling and then their group rides, uh, impacted by gravel trucks, again,
7 along these routes with virtually no shoulder. Um, although the applications
8 materials identified shoulders on Prairie Road and, and, uh, F&S Grade Road,
9 there are virtually no shoulders, uh, as can be seen by photographs and, and
10 other maps of those areas. And last, you'll hear from Ross Tillman
11 [phonetic], who's an expert in transportation planning. And he'll testify to
12 his experience, both in preparing traffic impact analysis and transportation
13 master plans that the application failed to fully evaluate transportation
14 impacts. Including the use of all the haul roads, routes anticipated for
15 operation, uh, impacts the cyclists, impacts related to school bus use and
16 others on the substandard Grip and Prairie Roads that have no shoulders. Uh,
17 impacts to Grip Road from heavy truck and trailer use of its potentially
18 unstable slope, uh, noise impacts of compression brakes on those roads and
19 that steep downhill, uh, on Grip Road. And the lack of a Conflict Analysis
20 that could have illuminated and then led to those concerns being addressed.
21 So, ultimately, uh, and notwithstanding the suggestions by, uh, Miles pre-
22 hearing filings, um, you'll hear that this is not an appeal about whether
23 mining can occur on Mineral Resource Overlay Lands. That's not the appeal
24 here today in front of you. Uh, instead, the appeal is really about whether a
25 mining applicant must fully examine the impacts that are going to be caused

1 by a mine, both on the site and during the ha-, along the full haul route,
2 uh, through that area. And you'll hear that this appeal is about how we
3 balance the potential impacts that are going to be caused by a new use like
4 this, with the community's, uh, with their rights as a community as well and
5 with the burden to bur-, uh, born, burden to be borne by a subset of that
6 community. Uh, and you'll hear that even after six years, this mine hasn't
7 received that full environmental accounting. And the overly modest conditions
8 that would apply to the mine do not address many of those impacts. So it's
9 not about, you know, a certain number of conditions, it's not about a certain
10 weight of paper that has been filed or electronic data, megabytes that have
11 been submitted, it's about whether some of these basic questions about the
12 impacts have been fully evaluated. Consequently, uh, after you hear this
13 evidence, CSVN will ask you, that you grant the appeal, you vacate the MDNS,
14 and you require that full environmental review before revisiting the mine's
15 permit compliance under the Special Use Permit. As you indicated earlier, the
16 SEPA review needs to happen first and it needs to provide all of the
17 information necessary, both for SEPA and for determining compliance with
18 those Special Use Permit criteria. So, I thank you for your time and, uh, we
19 look forward to presenting you with this evidence over the course of the next
20 few days of hearing.

21 REEVES: Great. Thank you, Mr. Loring. Uh, so next, uh, before our break,
22 we're going to hear from one more, uh, party, this is, uh, Tom Ehrlichman,
23 who does represent, uh, another, uh, group of folks there in the area. So, go
24 ahead, Mr. Ehrlichman.

25 EHRLICHMAN: Thank you, Mr. Examiner, can you hear me okay?

1 REEVES: I can hear you fine.

2 EHRLICHMAN: Thank you. Tom Ehrlichman, from the Dykes Ehrlichman Law Firm,
3 representing Cougar Peak LLC. And the caretaker of its 400 acre property, uh,
4 Neil McCloud [phonetic] and his family who reside on that property. Theirs is
5 the first driveway you get to when you turn right, exiting the mining road
6 onto Grip Road. Um, and their driveway entrance out onto Grip Road is, is
7 very close to the mine and it's in a precarious location, as we'll describe
8 during our presentation. Uh, first off, I'd like to thank the, the County
9 staff, actually, for the great job they have done organizing this hearing and
10 making it possible for us to make this presentation. There's been a lot of
11 cataloging of, of exhibits and coordinating of the parties and the
12 conferences and so forth. Uh, that's much appreciated. Um, and Mr. Examiner,
13 we also wanted to thank you for the opportunity to present our argument in
14 this case. Um, we are here to address the Special Use Permit as you pointed
15 out earlier. We're not here as SEPA Appellants or interveners. Um, but we
16 note that the criteria in the Code for approval of a Special Use Permit is
17 actually quite rigorous. And those criteria, uh, do focus on, uh, the traffic
18 impacts that we're concerned about. Um, and, you know, SEPA is a, is a good
19 gap-filler when, uh, the policies or the Code don't address, uh, important
20 impact issues. But fortunately, here in our Special Use Permit proceeding,
21 uh, and our presentation, we do have the tools to present you with the
22 reasons why you should condition this project, um, in a way that's different
23 than the recommendation you see in front of you, with respect to traffic
24 impacts. Uh, our sole focus in this case, as you know, Mr. Examiner, from
25 our, uh, submittals to you, is the traffic impacts on Grip Road that effect

1 the McCloud family, uh, the employees of Cougar Peak, the folks making
2 deliveries there, um, contractors, uh, employees and so forth. Um, honestly,
3 without, um, trying to sound dramatic, literally, their lives, and those of
4 their families, are at risk from this proposal, unless it's conditioned to do
5 something about the high intensity risk from the gravel truck traffic. You
6 know, now, as much as you will hear throughout this proceeding how much work
7 has been done on the project, um, how, how small scale or, um, priority
8 mining uses are in the County, n-, none of those arguments can avoid the
9 plain truth of this application. Which is that it will substantially increase
10 the risk of death or injury to the McCloud family, Cougar Peak, um, folks
11 serving Cougar Peak LLC. We, we can't ignore that in this proceeding. And
12 while your decisions can be appealed, you are the County's decision maker,
13 you are, uh, sorry to say it, you are at the top of the, of the pole, as far
14 as the only, uh, decision maker who can do something to condition the level
15 of heavy truck traffic that will result from this proposal. Um, I, I, I don't
16 mean to be contentious with my colleague, Bill Lynn, but I was astounded to
17 hear the adjective, uh, extraordinarily small, uh, when talking about the
18 impacts of this project. The risk to our clients is not extraordinarily
19 small, it's extraordinarily high. The potential for one truck on Grip Road,
20 where they're traveling every, um, I did the math here, every 6.5 minutes, is
21 not extraordinarily small. These are large gravel trucks, eight feet wide,
22 with a pup trailer. And whether they're loaded or not loaded, they present a
23 risk of harm. Uh, we'll present evidence as to the width of Grip Road at the
24 curves, uh, both Neil McCloud and, uh, Wally Grado [phonetic], will testify
25 on the measurements they took of some of the key curves there, the Applicant

1 can go out and check those measurements, as can the County. But we think
2 you'll find they are experts when it comes to using a tape measure. And, uh,
3 we also, the other experts that we're going to present are actually the
4 experts that the County and the Applicant are going to present on traffic
5 impacts. They will be our witnesses. Um, and we will, in the sense that we
6 will ask them, um, how they did their analysis and why, uh, additional
7 mitigation isn't required under the code. I want to, uh, wrap it up here by
8 saying plainly that you have the authority, under the Comprehensive Plan,
9 under the Skagit County Code, to impose limitations on hours of operation, on
10 the number of truck trips per hour on Grip Road, on the hours that those
11 trucks can travel, for example, when, uh, there's school activity on the
12 road. And nothing in the Mineral Resource Overlay policies limits that
13 authority. In fact, it's the opposite, those policies are implemented in
14 regulations that say you should take the Standards and the Code as minimum
15 Standards and you have the authority to not only limit hours, but also to
16 impose conditions, uh, that protect public safety. And that is not a vague
17 concept here. The increase in heavy truck traffic on Grip Road is your
18 measure. And we ask that during the discussion about studies, traffic
19 studies, you focus acutely on whether the experts are talking about the
20 relative increase in risk. Have they characterized the existing level of
21 risk? Have they accurately characterized the maximum number of truck trips
22 that might be possible under the conditions proposed by staff? And have they
23 weighed the difference, the Delta? I'm not seeing that in the traffic
24 analysis. And I look forward to hearing from the experts if I missed it. But
25 I think you will find, Mr. Examiner, after, uh, our presentation, that you

1 have the facts, you have the evidence, you have the testimony and you have
2 the authority to take care of those who are currently traveling on Grip Road
3 and making sure that their safety is protected as the Mineral Lands policies
4 require. They specifically talk about protecting public safety. They
5 specifically talk about traffic safety and they specifically talk about the
6 County requiring agreements from the Applicant to make road improvements to
7 meet that Standard. So, thank you for the opportunity to, um, make a
8 presentation during these proceedings and, um, we will look forward to it.
9 Thank you.

10 REEVES: Thank you, Mr. Ehrlichman. Uh, so, the plan now, quickly, we are
11 going to go back to Leah Forbes, who I will note is, uh, not the County's
12 tech person. I believe her official title is County Senior Natural Resources
13 Planner. Uh, but we all wear many hats, uh, and I just want to see if she has
14 an update on, uh, how we should move forward in terms of our lunch break.

15 FORBES: So we do have it confirmed, we have new meeting log-in
16 information that includes a, uh, a functioning conference ID number for those
17 folks who want to call in. During the lunch break, if everybody kind of
18 clears out of this meeting, we're going to post the new log-in information on
19 the County's home page, skagitcounty.net, as well as on the Hearing
20 Examiner's page within the County's site.

21 REEVES: So, I'm curious, is it possible, let's say I'm a skeptical human,
22 is it possible I leave this up for, for a minute, then later go hit the log-
23 in that shows up on the Skagit, uh, net and I'd essentially be in two
24 different Teams meetings, but that would be a way I could ensure that, okay,
25

1 it did work and I, you know, do you happen to know? I really apologize, you,
2 you're getting roped in to this, Leah Forbes, but...

3 FORBES: It's all right. Um, like you said, we all wear many hats. Um, I
4 don't know if it's possible to log into two Teams Meetings at once, at least
5 from the same device. It may be that you leave your computer logged into this
6 one and sign in on your phone to log into the new one. Um, but we have had
7 folks outside the meeting, test the log-in information, test the call in
8 conference ID Number confirmed that it does work.

9 REEVES: Okay. So someone has tested, I, I guess it wasn't the very few
10 people usually use that call-in number. I, I wanted to verify someone tested
11 the, the link, as it were...

12 FORBES: Yes.

13 REEVES: Um, so you, County staff is confident the link will work?

14 FORBES: Yes.

15 REEVES: So for those that are on and have, you know, been watching,
16 essentially, uh, the plan is, we're going to, we're going to take our lunch
17 break, uh, here shortly, uh, then we need to log out and then if you go back
18 to, uh, the, the County's website, and let me see if I can just, I think I
19 had it pulled up earlier, I know I just always type in Skagit County Hearing
20 Examiner on Google and, you know, it's the first thing I pop onto. But,
21 essentially, there's a link to, that says Click Here to Join Meeting. So you
22 would want to sort of redo that process, uh, because, uh, we needed to employ
23 a new, uh, new link, uh, for when we come back from lunch. Did I accurately
24 describe what we hope that process is going to be, Leah Forbes?

1 FORBES: Yes. Yes, you did. We will have that link in two places. In fact,
2 our, our wonderful IT folks have posted it on the homepage at skagitcounty,
3 all one word, county spelled out, .net is the County's homepage and we will
4 also have it on the Skagit County Hearing Examiner page, it will say Click
5 Here to Log In or alternately you could call the number and put in a new
6 conference ID number to listen and, and participate by telephone.

7 REEVES: Excellent. Thank you so much, uh, Leah Forbes clearly should get
8 a raise, uh, wearing both the tech hat and Senior Natural Resources Planner
9 hat. Uh, but with that, um, I think it's 11:45. I was thinking 12:30, is,
10 does that seem reasonable, is that enough time for a lunch break, uh, for
11 folks? I'm getting some nods. Okay. Okay. I'm, I don't want to go too long, I
12 know we have a lot of people that want to participate. But I also know, you
13 know, if folks are, especially folks in the room there might need to run out,
14 uh, but so that's the plan. So we're going to log off. When we come back at
15 12:30, I will try to be very brief when we come back on and then, uh, the
16 plan will be, uh, to, to dive in with hearing from members of the public. Uh,
17 quick favor for Mr. Black, if, if someone, if there's a way to, uh, copy the
18 sign-in sheet there in the room, if someone could just forward that to my
19 email, uh, while we're, uh, on our break, then I'll have names. That, that
20 will make things easier in terms of, uh, calling folks, um, when we come
21 back. So that's the plan. Thank you, everybody. We'll be back, uh, the plan
22 will be 12:30. And if you are struggling to get back on for whatever reason,
23 uh, just, uh, you know, start emailing County staff, calling County staff.
24 We'll make sure everybody is able to participate. And so we'll see everybody
25 back at 12:30. Thanks, folks.

1 [The tape ends.]

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

3 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
4 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party
5 to this action. That on April 5th, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves, that
6 took place on 8/226/22 at 9:00 a.m., regarding the above-captioned matter.

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

9 Signed at Mount Vernon, Washington, this 5th, April of 2024.

10 Janet Williamson

11 Janet Williamson