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

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

17 Transcription Date: April 30th, 2024

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

20 REEVES: Great. Thank you. All right. Get my gavel out, make it official.
21 And, good morning. I'm going to go ahead and call this session of the Skagit
22 County Hearing Examiner to order. For the record, today is now September 8th,
23 2022 at 9:00 a.m. We are here on, I believe, day number four, uh, of numbers
24 PL16-0097 and PL16-0098, uh, these involving a, uh, request for approval of a
25 Special Use Permit, uh, by Concrete Nor'West, uh, Miles Sand and Gravel and
an associated Appeal of our State's Environmental Policy Act. And the parties
are represented by Counsel. Again, we're on day four, I'm getting quite a bit
of noise feedback. I don't know where that might be from, but that seemed to

1 be better. Okay. Uh, we're on, uh, day four, uh, and the parties are
2 represented by Counsel. So, I'm, no need, I believe, for my remarks to drag
3 on. But, uh, for the record, this is Andrew Reeves, I'm Hearing Examiner, uh,
4 from Sound Law Center, uh, serving as the Hearing Examiner here in Skagit
5 County for this matter. And, uh, before we went on the record, quickly just
6 checked on our audio with the parties and I think we are now ready to begin.
7 Uh, and I think right at the outset, let's just do a quick round robin of the
8 Attorneys and, uh, check if there's anything, uh, that ultimately needs to be
9 addressed before we dive in with witnesses. So, I know Mr. Ehrlichman had
10 sent something, uh, over the weekend. Um, let me start with that. Mr.
11 Ehrlichman, was there a particular ruling you were hoping I would make? I
12 note, in terms of, uh, hearing from Brandon Black, I think I sort of said
13 before, we concluded the other day that, uh, we thought he would be here on
14 Friday and, uh, we can sort of cross, cross that bridge as it comes. But, uh,
15 if you wanted to quickly speak to, to that communication, Mr. Ehrlichman? And
16 you're currently muted. You took Bill's, uh, joke already. Okay.
17 EHRLICHMAN: Thank you, Mr. Examiner. Um, I, I think my filing was more along
18 the nature of trying to just kind of capsulize the conversation at that
19 point, uh, given the flurry of the hearing, so, thank you.
20 REEVES: Sure. But noth-, nothing specific you need me to rule on at this
21 moment, is that accurate?
22 EHRLICHMAN: Correct. Thank you, sir.
23 REEVES: You're welcome. Okay. Uh, Bill Lynn, anything, uh, behalf of the
24 Applicant you wanted to address before we dive in today?
25 LYNN: No, thank you.

1 REEVES: And Jason, uh, D'Avignon, on behalf of the County?

2 D'AVIGNON: Uh, nothing at this time, Mr. Examiner.

3 REEVES: Okay. And Kyle Loring, on behalf of the Appellant?

4 LORING: I have no issues to raise, either. Thank you, Mr. Examiner.

5 REEVES: You're welcome. Okay. So, with that, uh, let me get my witness

6 list out. I believe we concluded last time, I think that was, I mean, I

7 guess, Monday, at this point, they're blending together a little in my mind,

8 but don't worry, I've got five pages or five, uh, legal pads of notes. Uh, I

9 think we were concluded with Martha Bray, if I recall, is that right, Mr.

10 Loring?

11 LORING: That is right. We had finished her testimony.

12 REEVES: And that was, I think, the first of your witnesses, is that

13 accurate?

14 LORING: That's correct. Yes.

15 REEVES: Okay. Uh, so are you, do you have, uh, your next witness ready to

16 go?

17 LORING: I do. We'd like to call Linda Walsh to the stand.

18 REEVES: Okay. And I see Linda Walsh. If we can unmute her. And you might

19 need to then unmute yourself on your screen there, Ms. Walsh. Hi, can you

20 hear me okay?

21 WALSH: Yes.

22 REEVES: Okay. I'm going to swear you in. Do you swear or affirm to tell

23 the truth in the testimony you give here today?

24 WALSH: Yes, I do.

25

1 REEVES: And if you could just clearly state and spell your name for the
2 audio?

3 WALSH: Linda L. Walsh, L-i-n-d-a L. W-a-l-s-h.

4 REEVES: Thank you for being here. Go right ahead, Mr. Loring.

5 LORING: Thank you, Mr. Examiner. Ms. Walsh, uh, let's just dive right in.
6 Where do you live?

7 WALSH: I live at 21710 Prairie Road in Sedro Woolley.

8 LORING: When did you move there?

9 WALSH: Uh, we moved here in about 1991, but we bought our property in,
10 uh, 1989, on a homeowner contract.

11 LORING: Okay. And, uh, let's talk a little bit about g-, you're familiar
12 with gravel mining, are, are you familiar with gravel mining?

13 WALSH: Yes, I am.

14 LORING: Uh, how did you become familiar with it?

15 WALSH: Uh, my husband worked for, uh, a couple of the gravel pits in,
16 uh, gravel mines in Skagit County for 16 years. And so, um, I would
17 frequently visit him at lunchtime and, and see what the activities were. We,
18 you know, obviously off to the, in the parking lot, but you could still see
19 the activities going on.

20 LORING: Okay.

21 WALSH: And my, my father also was a miner and, uh, lived on a property
22 at a gravel mine for about 15 years in Cle Elum.

23 LORING: Okay. Are you familiar with the noise created by mining?

24 WALSH: Yes.

1 LORING: Okay. And are you familiar with the noise created by ex-, the
2 excavation portion of mining?
3 WALSH: Yes, I am.
4 LORING: Okay.
5 WALSH: Yeah. It's...
6 LORING: And, uh, yeah, go ahead.
7 WALSH: It, uh, when you're working on a harder surface, it, it can be
8 extremely loud as you scrape across gravel and...
9 LORING: Okay. Uh, and, let's see, are you familiar with the noise created
10 by hauling, um, material from a mine?
11 WALSH: Yes.
12 LORING: Okay. How about, uh, vibrations from mining?
13 WALSH: Uh, yes, I have the, I have felt those as the big equipment is
14 operating, yeah. It, it travels through the ground.
15 LORING: Okay. And we're going to talk a moment about where you live and
16 its proximity to the mine. But just wanted to get a little bit more
17 background information.
18 WALSH: Okay.
19 LORING: Um, in, in general, are you opposed to gravel mines?
20 WALSH: You know, I, I'm not opposed to gravel mines, we all need gravel,
21 you know, but, um, it has to be mined responsibly and safely and, uh, you
22 know, the SUP said, says the burden of proof is on the Applicant to prove
23 that these, these adverse impacts that are known to be, uh, caused from
24 mining can be satisfactorily mitigated. Um, I don't see that being done here.
25 It's, it's quite a, um, I, I, there's hardly any way to avoid, avoid the

1 noise when your home is only 45 to 50 feet off the road and you may have 50
2 to 100 or more trucks a day going by it. It's a little hard to avoid.

3 LORING: Okay. Let's talk a little bit about where you live in proximity
4 to the mine. Um, do you know where the mine would operate?

5 WALSH: Yes. The actual mining excavation is...

6 LORING: Yeah.

7 WALSH: Uh, adjacent to our, our property boundaries on, on two of our
8 parcels of property.

9 LORING: Okay. So, your property directly abuts the property where the
10 mining would occur? Okay. I'm going to, I'm going to pull up and see if I can
11 share my screen, had a little trouble with that, uh, last Friday, I believe
12 when I was trying with [inaudible], but I do want to pull up a map that was
13 created by the Applicants here, it's part of the record. And, uh, just take a
14 quick look and have you show us exactly on this map where your, where your
15 property is in relation to the, uh, the mine site.

16 REEVES: Mr. Loring, while you do that, is there an Exhibit for folks...

17 LORING: Yes. Thank you. It's Exhibit C36.

18 REEVES: Okay.

19 LORING: And I'm on the fourth page of that. Ha-, has that come up on the
20 screen there, Ms. Walsh?

21 REEVES: It showed up well for me, I know, but...

22 LORING: Okay.

23 REEVES: Ms. Walsh is muted, I'm not sure what happened there.

24 WALSH: I guess they muted me. I've got nothing else to say. So, um, yes,
25 that's on, if you hear a noise in the background, we have a noisy parrot, so

1 I can't, I covered him up, but excuse the noise, so sorry. Uh, we, uh, I
2 don't know how to highlight on the map...

3 LORING: How, I will, if you can show us, is there a nu-, or a letter for
4 the parcel or parcels that you own on this map?

5 WALSH: Yes. Uh...

6 LORING: I'll zoom in one time to...

7 WALSH: Okay.

8 LORING: See if that helps. Apparently the zooming is causing blinking.
9 Again, let me...

10 WALSH: Yeah.

11 LORING: I'll go back to the original size. There we go. So, so is there a
12 letter that shows your property here?

13 WALSH: Yes. If you look at the letter F and is it I next to it? Those
14 are...

15 LORING: To the right?

16 WALSH: Our parcels.

17 LORING: Okay.

18 WALSH: And then we have one north on the road side, it's a third parcel
19 that's up by the road, it's separated off.

20 LORING: Okay. And so, the, the mine site is the, is this area directly
21 south of your parcels, right, that's outlined by that hatch line?

22 WALSH: Correct.

23 LORING: Okay. Okay.

24 WALSH: I would assume the hatch marks are the 300 foot buffer, or the
25 300 foot, uh, notification area or something.

1 LORING: I, I believe that's right. I think, uh, this map was the map that
2 was used, I think, for that notification as you mentioned, yeah, that's
3 right. Okay. Uh, we'll leave that up just for a second and then I'll pull
4 that down. Um, where's your home on that, on that parcel F and I?

5 WALSH: If you look at the number F and go, um, northwest, you'll see
6 some squiggles on the map.

7 LORING: Uh-huh.

8 WALSH: That's our home.

9 LORING: Okay.

10 WALSH: Area.

11 LORING: Okay. So, your home is, is, uh, on the opposite side of your
12 property from where the mine is proposed?

13 WALSH: Correct.

14 LORING: Okay.

15 WALSH: It's probably about 12, thir-, 1200 feet, a thousand, when I
16 measured on iMap, it says it's 1,000 feet from the border of the mine.

17 LORING: Okay. So, let's talk, uh, well, let me ask you this, do you think
18 that the mine would impact you and your family?

19 WALSH: Yes.

20 LORING: And why do you believe that?

21 WALSH: We frequently use the back of our property, where the river is,
22 to have family gatherings, uh, throughout the year, we have done that for
23 years. Um, the, the weekends, if, if they're allowed, I mean, we're used to a
24 certain kind of quietness around here. And, um, I, I believe that it will be
25 quite a bit of a disturbance.

1 LORING: Okay. And you mentioned the river, is, is the river, does that
2 look like that line that goes through the property, those two lines? Is that
3 roughly where you'd say the, the river is there?

4 WALSH: Yes.

5 LORING: Okay. And do you, does your family ever go to the other side of
6 the river, uh, near the mine site?

7 WALSH: Yes. My, uh, grandsons and, and kids will hike through there,
8 it's pretty brushy so it's not an easy hike.

9 LORING: The kind of think youngsters might do?

10 WALSH: Right.

11 LORING: Okay.

12 REEVES: And just, just to help clarify for audio and, and I guess, uh,
13 the future, this is the, the Samish River that we're talking about here?

14 WALSH: Yes.

15 REEVES: Okay. Thank you, sorry to break in there.

16 LORING: No, thank you for that. Sure. Okay. Uh, do you, uh, do you
17 believe that a berm along the mine would ameliorate the noise impacts to you,
18 would mitigate those?

19 WALSH: You know, I'm not familiar, uh, with that, but, you know, I, I
20 suppose it's possible. I don't know, I mean, I, how many years down the road
21 would that be even effective, you know, I mean, ten, 15, five? I don't know.

22 LORING: Does, does the Application say when the mine, does, does the
23 Applicant, the Application materials, you read the Application materials,
24 right?

25 WALSH: Yes. Yes.

1 LORING: Okay. And so, you're familiar with, uh, how they describe their
2 mine operations there?

3 WALSH: Yes.

4 LORING: Okay. And they don't explain at what rate the mining will go
5 below the surface, do they?

6 WALSH: Not in detail, no.

7 LORING: Okay. A couple of other background questions that we may have
8 skipped over a little bit, just to clarify, you're, you're part of the group
9 known as the Central Samish Valley Neighbors, right?

10 WALSH: Yes, I am.

11 LORING: And, uh, sorry. I did want to ask briefly about the zoning for
12 the property, are you familiar with the zoning for the mine site?

13 WALSH: Yes.

14 LORING: You know it has that mineral resource overlay?

15 WALSH: Yes. It has, uh, it's natural resource land with a mineral
16 resource overlay.

17 LORING: Okay. Do you know when it was zoned that way?

18 WALSH: You know, I'm not sure of the exact date. I know it was somewhere
19 close to the mid-2000's. Um, being that we're so close to the MRO, it seems
20 like we should have received a notification, I don't recall receiving,
21 receiving any kind of notification when the comp plan applied that. Um, but,
22 uh, I know from research and stuff, it looks like it's mid-2000's.

23 LORING: Okay. And you referred, oh, go ahead.

24 WALSH: No, that's fine.
25

1 LORING: You, you referred to the Comp Plan, you mean when that zoning,
2 when the County adopted a different zoning for that property? That
3 designation?

4 WALSH: Right. Correct. It was not, to my knowledge, it was not
5 designated MRO when we purchased our property.

6 LORING: Okay. If you had received a notice, would that have caught your
7 attention, a notice to change that, add that overlay?

8 WALSH: Um, I'm sure I would have read it. I, I, back in, uh, then, I,
9 until I was, uh, involved in this project, uh, or researching this project,
10 I, I didn't know all of the different types of land uses. But, I mean, I
11 certainly would have probably looked into it for sure.

12 LORING: Okay. Let, let's talk a little bit about the noise study. I'm
13 going to stop sharing that screen so we're not, uh, looking at that the whole
14 time. And let's talk briefly about the noise studies that have occurred here.
15 Are you familiar with the noise study that was prepared for the mine?

16 WALSH: Yes.

17 LORING: Okay. And, uh, have you reviewed it?

18 WALSH: I have. I've reviewed the, the versions of it that seems, uh,
19 seems like they just update the date and then change a few things. The
20 original version was incorrect, the mapping was incorrect. They had the
21 mapping, uh, the mapping points mapped out incorrect-, labeled incorrectly.

22 LORING: Uh, what do you mean by that, with the mapping points?

23 WALSH: Uh, so, uh, the SML point one, two and three were not in the, not
24 on, not in a c-, like SML one was desi-, not designated, or it was, excuse
25 me, SML one, on the map, was not what it was described as in the description.

1 LORING: And SML, when you say SML one, what are you referring to as that?

2 WALSH: Their table, their labels of their mapping.

3 LORING: Is that where some of the, uh, noises were modeled to have been
4 received?

5 WALSH: Yes. Correct. Where they took their noise things. When they had
6 it originally labeled, um, let's say, uh, the SML one w-, it is supposed to
7 be the, um, towards Prairie Road, by our property, but it, but they didn't
8 have them all labeled correctly, like, the SML two was supposed to be
9 wildlife acres and it was actually the entrance of the mine. So, it, in their
10 subsequent update, they did correct the map.

11 LORING: Okay. And, and with those receptor spots, uh, do you know where
12 the, where the report modeled the noise on your property?

13 WALSH: The, since there's not exact, uh, locations, um, on the map, it
14 appears to be up at the top of Prairie, up at the top of our property at
15 Prairie Road, which is probably about 200 feet from our home. And then it
16 would put these, um, 13, 12, 1300 feet from the mine.

17 LORING: Okay. And, and you said your property stretches right up to the
18 mine site, right? The...

19 WALSH: Correct.

20 LORING: Mine property?

21 WALSH: Yes.

22 LORING: So, so, it's your understanding that they didn't actually, uh,
23 the authors of that report didn't assess the noise impacts at your property
24 boundary?

25 WALSH: Absolutely they did not.

1 REEVES: And...

2 LORING: Okay.

3 REEVES: Sorry, one sec. Just, just to, again, try to track things,
4 another, maybe multiple versions, but I think the most current one, I
5 believe, would be Exhibit 24 or C24, is this the, the Ramboll noise vibration
6 study that we're discussing?

7 WALSH: Here.

8 REEVES: Mr. Loring, just want to track for...

9 LORING: It is, yes. Thank you. That is the...

10 REEVES: Okay.

11 LORING: The, the study that we're, uh, discussing here.

12 REEVES: Okay. So, C24 and then all the references to SMLs, I believe were
13 the sound, sound level measurements and, uh, there's, uh, some tables, uh,
14 imbedded in, in that Exhibit that identify these sound level measurements or
15 SMLs, I think is what we were chatting about, is that right?

16 LORING: Uh, that's correct. Yes.

17 REEVES: Okay. Great.

18 LORING: SLMs, yeah. That's right.

19 REEVES: Go on.

20 LORING: That's right. Thank you. So, uh, so, Ms. Walsh, what did that
21 noise report conclude about, uh, noise on your property?

22 WALSH: Well, it concluded that it would be, um, there, it would be
23 within the allowable EDN-, EDNA limits, um, however, that was the, the WAC
24 codes say it, that the noise level should be measured at the property
25

1 boundary, it doesn't say it should be measured at the farthest point from the
2 noise source. And our pro...

3 LORING: And...

4 WALSH: Our property goes from their boundary all the way to Prairie
5 Road. And so, they measured all the way across our property at Prairie Road
6 to get their noise levels.

7 LORING: Okay. And, uh, so, they, so, your understanding is that the
8 measurements did not occur at your property line?

9 WALSH: It did not occur at our property line.

10 LORING: Abutting, abutting the mine?

11 WALSH: Abutting the mine.

12 LORING: Do you know if there is a buffer that would be applied between
13 the excavation and your property?

14 WALSH: As far as I can tell, it's 100 feet.

15 LORING: Okay. So, uh, okay. And, and so, again, your understanding is
16 that they did not study that 100 foot distance, but, instead, something
17 closer to a 1200 foot, feet away from the mine?

18 WALSH: Yes, that's correct.

19 LORING: Okay. And given that, do you feel like they accurately studied
20 how the noise will impact you and your family?

21 WALSH: No, I don't.

22 LORING: Okay. And how do you think the noise, uh, do you think the noise
23 will be louder, uh, where your family spends time on your property than where
24 they measured it?

1 WALSH: Yes, I do. Um, because they, at 100 feet, they're saying their
2 motors, excavators and, uh, dozers will be, like, 75 DBA at 100 feet. Well,
3 our property line is at 100 feet. Um, that's quite a bit different, that
4 would be a different measurement at 1200 feet.

5 LORING: Uh-huh.

6 WALSH: A different DBA at 1200 feet.

7 LORING: Okay. So, so, your understanding is they, they under-calculated
8 the amount of noise that you're going to experience and the impacts that
9 you're going to have on your property?

10 WALSH: Yes.

11 LORING: Okay. I want to shift from the noise, uh, study there, and just
12 briefly touch on the Samish River that you mentioned a few minutes ago. Uh,
13 you mentioned that it flows through your property, right?

14 WALSH: Correct.

15 LORING: Have you, uh, have you experienced any changes in the location of
16 that river over, uh, since you've owned the property?

17 WALSH: Uh, as far as erosion, yes, you can, it's evident all along
18 Samish River, um, any given year, a foot or five feet of bank can disappear
19 on a, on a corner downstream from the river. Like, a, a lot of the corners
20 are very sharp so, of course, water is going to hit those corners the hardest
21 and, and remove soil.

22 LORING: Okay. So, you've seen the river, its banks move over the years
23 that you've lived there?

24 WALSH: Yes.

1 LORING: Okay. And, uh, the Samish River, that's, are, are you, uh, is
2 that the same river that flows along the eastern side of the mine site?
3 WALSH: It is the same river, yes.
4 LORING: When you reviewed the Application documents, have you seen any
5 evaluation of the likelihood of the river to, and the associated wetlands, to
6 also move along the mine site itself?
7 WALSH: I haven't.
8 LORING: Okay.
9 WALSH: There's also Dry Creek that runs on the west side of our
10 property, uh, which is a, um, it flows into the Samish.
11 LORING: Okay.
12 WALSH: And it also has, it also changes its course through the, back and
13 forth through the years.
14 LORING: Okay. Do you know if that flows either to or from the mine site?
15 WALSH: No. It flows from, uh, it flows, it ends, it flows into Samish
16 River on our side of the river.
17 LORING: Okay. Okay. Uh, I don't have any other questions for you. Is, is
18 there anything else you would like to share with us today?
19 WALSH: I would, I would just like to say that, you know, uh, I
20 understand the technical information has to be, uh, presented, uh, with, you
21 know, meters and, and stuff, I do want to, to say when we average or model
22 real, uh, when you av-, when you try to average or model, um, noise, traffic
23 and whatnot, that is not a real measurement, in my opinion, that is not a
24 real measurement of the impacts that we will be enduring. Um, you know, for
25 example, an average of 46 truck trips a day is quite different than even 300

1 truck trips a day. The noise levels and the volumes of traffic on our roads,
2 that are, those are quite different impacts. I don't, this isn't, this isn't,
3 uh, you, you can't get real numbers by averaging. And doing sound models.
4 Because they've averaged them over longer period of time than are actually
5 going to be happening.

6 LORING: That, that does actually lead me to one more question for you.
7 And, and that is, uh, just to wrap up, earlier you mentioned that you were
8 familiar with the noise created by, uh, surface mining excavation. And so do
9 you believe that the surface mining excavation, and the noises that would be
10 caused by that, are going to be disruptive on your property, especially up to
11 that, within 100 feet or 200 or 300 feet there, based on your understanding
12 of the noises that are created by that type of activity?

13 WALSH: Yes, I do. And not only on our property, but Wildlife Acres, I
14 believe, is even as close or close, you know, I mean, there's properties
15 there within a real short, I mean, there, there's a lot of close properties
16 that will be, will definitely be having an increase in noise.

17 LORING: And when you say Wildlife Acres, are those the properties to the
18 west of the mine?

19 WALSH: Yes. They are already under-sized parcels, most of them are five
20 acres instead of the ten. Um, yeah.

21 LORING: Okay. Thank you, Ms. Walsh. Uh, I don't have any other questions,
22 but you may hear from other Attorneys who have questions..

23 WALSH: Okay.

24 LORING: For you.

25 WALSH: Thank you.

1 REEVES: Okay. Uh, Mr. Ehrlichman, am I correct in thinking no questions
2 to the extent this is not a traffic person, traffic witness?

3 EHRLICHMAN: Well, I, do have, uh, very brief questions, uh, related to her
4 comments on traffic.

5 REEVES: I, I suppose I'll allow it, as long as they're brief. I am, I
6 know that your email had to do with sort of your level of participation, et
7 cetera. I am still struggling to the extent that I, I thought everyone sort
8 of agreed you would question witnesses with, with, that were specifically
9 addressing traffic. But I'll, I'll go ahead and allow it, as long as it's
10 quick.

11 EHRLICHMAN: Thank you, Mr. Examiner. Uh, good morning, Ms. Walsh.

12 WALSH: Good morning.

13 EHRLICHMAN: I'd like to focus my questions exclusively on your, uh, testimony
14 on traffic. Based on your familiarity with the roads, uh, in and around Grip
15 Road, and based on your 30 years of residency there, do you believe that the
16 risk of, or the probability of accidents will increase on Grip Road with the
17 addition of the project traffic?

18 WALSH: Yes.

19 EHRLICHMAN: Do you have any concerns, based on your experience in that area,
20 with, uh, the probability of increased accidents related to school buses?

21 WALSH: Yes. There's s-, several sc-, there's two schools that ha-, run
22 bus routes out here, morning and night.

23 EHRLICHMAN: What are those two schools?

24 WALSH: Sedro Woolley School District and Burlington School District.
25

1 EHRlichman: And could you please describe, uh, your concern about increased
2 risk related to school buses?

3 WALSH: So, there is no shoulder for a bus to pull off. Most of the time
4 they pick up a child in their driveway, which is mostly on the road, but kind
5 of, you know, really, it's in the middle of the road. Um, since we haven't
6 evaluated F and S Grade, uh, intersection, we haven't evaluated going, uh,
7 left outside, left down Grip Road, which these buses all travel both of those
8 routes, um, there's a left-hand turn on F and S that the bus will make to go
9 into Sedro Woolley. And with a lot of, with large amounts of truck and
10 trailer traffic coming from Grip Road, which is just several hundred feet
11 from F and S, those, that traffic going to have to stop as this person makes
12 a left-hand turn. I can, I can definitely see a dangerous scenario with that.
13 Um, also, going out the other end of Grip Road, to the left, there's five or
14 six 90 degree turns that have been un-, un-, completely unevaluated and
15 there's no route, um, restrictions, buses travel there to pick up those kids
16 on the other end of Grip Road. Miles Sand and Gravel has a, has bought a
17 property on Brookings Road of 80 acres that is an old mining pit. It doesn't
18 have a MRO, but it's an old mining pit, so are there going to be increased
19 trucks from there? I mean, I, I have a lot of concerns on off site traffic,
20 yes.

21 EHRlichman: So, your conclusion, then, is that the addition of the projects
22 trucks onto Grip Road and other local roads would increase the risk of
23 collisions with school buses?

24 LYNN: These, these are leading questions...

25 REEVES: Yeah.

1 LYNN: And they're beyond the scope of anything that was asked.

2 REEVES: I, I totally agree.

3 EHRLICHMAN: I'm trying to summarize.

4 REEVES: Hold on. I fully agree they're beyond the scope. I, again, I,

5 the, I was hoping this wasn't going to become a recurring problem today. But,

6 uh, I just believe this is not the type of witness that Mr. Ehrlichman, you,

7 you said you were going to, uh, participate extensively on questioning. I,

8 so, I think we need to move on to the extent that this witness was not

9 specifically called by Mr. Loring to, you know, give detailed testimony about

10 school bus traffic. I, you know, they're an adjacent property owner and, uh,

11 you know, they just testified extensively about noise vibration, et cetera.

12 So, this is...

13 WALSH: [Inaudible.]

14 REEVES: Well, beyond, sorry, one sec, uh, Ms. Walsh. So, Mr. Ehrlichman,

15 I'm, I'm at a lot as to where we're headed here.

16 EHRLICHMAN: Thank you, Mr. Examiner. And just about to wrap up if you'll

17 permit me to ask my final two questions?

18 REEVES: I mean, I understand Mr. Lynn's objection, I, I suppose I

19 sustained it to the extent that, you know, uh, try, try reframing whatever

20 your next question is, I guess.

21 EHRLICHMAN: And just to be clear, for the record, Mr. Lynn's objection was

22 that the questions are beyond the scope?

23 REEVES: Well, it was leading and beyond the scope and I essentially

24 sustained it as to both, so...

25 EHRLICHMAN: Okay. Let me rephrase that, uh, question.

1 REEVES: Well, that was beyond the scope. So, let's move on to a different
2 question.

3 EHRLICHMAN: Uh...

4 REEVES: Rephrase is not going to fix the problem.

5 EHRLICHMAN: Uh, I will, uh, certainly abide by the ruling, Mr. Examiner, but
6 for the record, I want to note that our scope is creating our record with
7 respect to the Special Use Permit. And, uh, this is our opportunity to create
8 that record. So, I'll move along. Uh, Ms. Walsh, thank you for your, uh,
9 testimony. Do you have any, uh, final, uh, comments about concerns related to
10 an increase in the probability of collisions with school buses?

11 WALSH: Um, I had, I raised six kids out here on Prairie Road, so, uh,
12 there were many times the kids have, you know, came home and said there's
13 been some pretty scary incidences on the bus, bus routes, uh, so, that's the
14 extent of what I have.

15 EHRLICHMAN: Thank you, nothing further.

16 REEVES: Okay. Thank you. Mr. D'Avignon, do you have anything for this
17 witness?

18 D'AVIGNON: I do not, Mr. Examiner.

19 REEVES: Okay. And Mr. Lynn?

20 LYNN: Uh, good morning, Ms. Walsh, um...

21 WALSH: Good...

22 REEVES: Before we begin, I just circulated a title notification recorded
23 against the property under number 201504280103. And I'm wondering, I'd like
24 to make that an exhibit. I'd also like to have it shared, if we can do that.

1 REEVES: Let's just, one thing at a time, so, I, I'm guessing Mr. Loring
2 may have an objection. Uh, can you clarify the, the function or purpose of
3 this exhibit you're proposing, Mr. Lynn?

4 LYNN: It's a title notification recorded in 2015 that appears to bear
5 the witness' signature and it regards the use of the, the MRO property for
6 mineral purposes. Pretty directly relates to questions Mr. Loring asked about
7 her familiarity with the MRO requirements.

8 REEVES: So, uh, let me a-, Mr. Loring, your, any objection to including
9 this as an exhibit?

10 LORING: Well, I, I do object to it being a, you know, late file exhibit.
11 I understand Mr. Lynn, um, arguing that this arose as part of the testimony.
12 It, it's also not relevant to my questions about, um, Ms. Walsh having lived
13 on the property well before there was any designation change and not having
14 received any notification of a designation change. But I can also follow up
15 on a redirect to make that clear for the, this, uh...

16 REEVES: Sure. I may not, I would, personally, I mean, sorry, not
17 personally, I'm not going to, I, I wouldn't classify this as a late filing to
18 the extent that, uh, you know, I think this is directly a rebuttal exhibit,
19 uh, or proposed as such. Uh, so I have no issue with allowing it in and the
20 parties can, as necessary, uh, [inaudible] scope, so, uh, can give me an
21 Exhibit number to this? What, I'm trying to think how we should do that.

22 LYNN: Uh, I would assume it would be a B Exhibit, which would be one of
23 ours and I think we're on B98 or some, something.

24 REEVES: Okay. Yeah. That's fine. Why don't we make it a B Exhibit as
25 meaning an Applicant Exhibit. Um, and we'll, we'll have to sort it out, but

1 whatever that number will be, but it will sort of be rebuttal Exhibit B-
2 whatever.

3 LYNN: Well, J-, Ja-, Jason, do you have the highest number or does
4 Mona? Is somebody, is there an official Exhibit list that we...

5 D'AVIGNON: My very unofficial list, uh, suggests that it is, in fact, 98.

6 REEVES: Okay. Yeah. We'll tentatively say B98 and, uh, it certainly was
7 my intent at some point, hopefully this weekend, to go through and update the
8 numbers. But, uh, we, we will make sure before the end of this all to insure
9 that we all are on the same page as to Exhibit numbers. Um, so, I'm going to
10 allow it in and, and Mr. Walsh, uh, sorry, Mr. Lynn, uh, go ahead with your
11 cross examination?

12 LYNN: Um, so, Ms., Ms. Walsh, is that your signature on the Exhibit? I
13 guess you haven't seen it yet, the lawyers...

14 WALSH: Uh, uh, oh, no, I have it right in front of me.

15 LYNN: Okay. Okay.

16 WALSH: Um, the Exhibit, the Exhibit is my signature. And if you note it,
17 you will see that it's checked as agricultural. No, no MRO designation is
18 checked on that title notification. I was not aware of a MRO overlay on this
19 property.

20 LYNN: I see. I see. So, you were aware that it, it does specifically
21 refer to mining activities, but, but that wasn't checked so you didn't think
22 the property would be used for mining?

23 WALSH: No. I had no idea that it would be used for mining at that time.

24 LYNN: At what point did you become aware that the property did have a
25 MRO designation?

1 WALSH: December 7th, 2016, when I r-, uh, when I, oh, excuse me, March of
2 2016 when I saw the Application for the mining.

3 LYNN: Okay. So short, the year after you signed this document?

4 WALSH: Correct.

5 LYNN: Okay. So, were you, uh, present during, uh, Ms. Wallace's test-,
6 testimony, she was the noise expert who prepared C24?

7 WALSH: Yes, I was.

8 LYNN: Okay. And did you hear her testify that, uh, at the location she
9 had modeled previously, the mine easily, easily met the noise limitations
10 imposed by the County?

11 WALSH: Yes.

12 LYNN: Okay. And did you hear her say that, in fact, it actually would
13 easily meet the noise limits for nighttime activity, which are more
14 restrictive than the daytime limits?

15 WALSH: I believe I did hear her say that. However, that was 1300...

16 LYNN: I...

17 WALSH: Feet from the noise source.

18 LYNN: That was going to be my next question. Did you hear her testify
19 that she had reviewed the model and that the mine met the noise limits even
20 at the property line? Did you hear her testimony?

21 WALSH: No, I did not hear her say that.

22 LYNN: Did you under-, did, did you hear her testimony that all of her
23 calculations and modeling, um, were very conservative and that she actually
24 assumed the operation of, um, multiple pieces of equipment at the same time,
25 even though that would not realistically ever occur?

1 WALSH: Yes, I did hear her say that.
2 LYNN: Okay. That's all I have. Thank you.
3 REEVES: Thank you. And Mr. Loring, any redirect?
4 LORING: I do have just a little bit, Mr. Examiner, thank you. Um, Ms.
5 Walsh, I, I think you've clarified this, but I do just want to ask two
6 questions on that title notification. Uh, it doesn't, it doesn't indicate
7 that there's a mineral resource overlay on the adjacent property anywhere on
8 this document, does it?
9 WALSH: No, it does not.
10 LORING: Okay. And it's your understanding that that overlay is different
11 than an agricultural NRL designation, is that right?
12 WALSH: Yes, it, yes.
13 LORING: Okay. And that a NR-...
14 WALSH: This would already have the..
15 LORING: Yeah.
16 WALSH: SUP permit.
17 LORING: Okay. And, uh, and so you actually didn't get notification, even
18 in 2015, of a MRO on, on the property that's being discussed here, right?
19 WALSH: No.
20 LORING: Okay. And..
21 WALSH: I was asked to sign this when we built a shop. Uh, that's the
22 only reason this came to be is we had been there for, what, 15, 16 years and
23 we built a shop and, uh, they presented this as part of the Application to
24 have to sign.

25

1 LORING: I see. And to your understanding, you didn't receive even this
2 type of notification, uh, when you bought the property, did you?

3 WALSH: No, we did not.

4 LORING: Okay. Uh, you were also asked, uh, some questions about whether
5 you heard testimony, uh, about the, uh, noise reports. And I just wanted to
6 follow up, I think with one question on that. Uh, you were asked if you heard
7 testimony that the, uh, that the noise would meet the limits at the property
8 boundary and I believe you said, no, you did not hear that testimony, is that
9 right?

10 WALSH: Yeah. That's correct.

11 LORING: And did you actually hear testimony that the sound volumes had
12 not been studied at the property boundary?

13 WALSH: Yes. I did.

14 LORING: Okay. Thank you. I have no further questions and I appreciate
15 your time today.

16 WALSH: Thank you very much.

17 REEVES: Okay. Thank you, Ms. Walsh...

18 WALSH: Thank you.

19 REEVES: For your testimony today. Okay. Uh, I think we're able, then, to
20 move on...

21 WALSH: Would, could I make one more statement?

22 REEVES: Precisely how it works, but I'll give you a little bit leeway, if
23 it's, if it's brief.

24 WALSH: Excuse me. So, I did look at properties surrounding this mine for
25 other title notifications, and I don't, I don't find other title

1 notifications signed in on, uh, other, several other properties in this are-,
2 surrounding the mine as well. That's all I wanted to say.

3 REEVES: Okay. Thank you. Okay. And, Mr. Loring, uh, your next witness you
4 intend to call today?

5 LORING: Yes. We are calling Matt Mahaffie [phonetic] to the stand.

6 REEVES: Okay. Hi, Mr. Mahaffie, can you hear me okay?

7 MAHAFFIE: Yes, I can.

8 REEVES: Great. I'm going to swear you in. Do you swear or affirm to tell
9 the truth in the testimony you give here today?

10 MAHAFFIE: Yes, I do.

11 REEVES: And if you could state and spell your name for the record?

12 MAHAFFIE: Matthew Mahaffie, M-a-t-t-h-e-w M-a-h-a-f-f-i-e.

13 REEVES: Thank you. And, uh, Mr. Lynn, I think you're unmuted, if I'm
14 [inaudible] mute. Thank, thank you. I just want to make sure we're not
15 getting feedback noise. So, Mr. Loring, go right ahead.

16 LORING: Thank you, Mr. Examiner. And, uh, good morning, Mr. Mahaffie.

17 MAHAFFIE: Good morning.

18 LORING: Thank you for joining us, today. Uh, we're going to explore, uh,
19 the critical area issues associated with this application over the course of,
20 uh, your testimony here today. So, I'm going to dive in, we'll talk a little
21 bit about your background, uh, and then get into that. So, uh, I'd like to
22 ask where you work?

23 MAHAFFIE: Uh, kind of a dual position, uh, I'm a Planner for Whatcom County
24 Planning and Development Services. I still have a consultant company for
25 critical areas, uh, outside of Whatcom County.

1 LORING: Okay. You say you still have a consulting business. Did you have
2 that business before you started working as a Planner for Whatcom County?
3 MAHAFFIE: Yes. Many years before that.
4 LORING: When did that start?
5 MAHAFFIE: Uh, on my own in 2006.
6 LORING: Okay. Uh, and, uh, how long have you worked as a Planner?
7 MAHAFFIE: Since 2015 with Whatcom County.
8 LORING: Okay. And just to be clear, you're not here in any capacity
9 related to your work as a Planner with Whatcom County?
10 MAHAFFIE: No.
11 LORING: Yeah. Okay. Uh, do you have a, uh, any particular educational
12 requirements for your work as a, as, uh, a consultant on critical areas?
13 MAHAFFIE: Uh, yes. Uh, different jurisdictions have slightly different, uh,
14 requirements for it. But most of them, you know, five years' experience, uh,
15 working in the field, authoring reports with educational requirements and
16 applicable degrees.
17 LORING: Okay. And, uh, you have any certifications as part of your work
18 as a, doing that consulting in critical areas?
19 MAHAFFIE: No. Codes typically require educational and experience
20 requirements so I've never found the need to get a private certification with
21 a private club.
22 LORING: Okay. And does your work require you to interpret regulations?
23 MAHAFFIE: Every day.
24 LORING: Okay. Do you have experience identifying and delineating streams?
25 MAHAFFIE: Yes, I do.

1 LORING: How about wetlands?

2 MAHAFFIE: Yes, I do.

3 LORING: Okay. Uh, do you have experience preparing mitigation plans?

4 MAHAFFIE: Yes, I do.

5 LORING: All right. And do you have experience preparing reports that

6 satisfy State Environmental Policy Act requirements?

7 MAHAFFIE: Yes, I do.

8 LORING: Do you also have experience reviewing reports, uh, for SEPA

9 compliance?

10 MAHAFFIE: Yes, I do.

11 LORING: Okay. Have you conducted, uh, site assessments in Skagit County?

12 MAHAFFIE: Uh, many times.

13 LORING: And I probably should have clarified, uh, critical areas site

14 assessments?

15 MAHAFFIE: Yes.

16 LORING: Any idea how many times you've conducted that type of site

17 assessment in Skagit County?

18 MAHAFFIE: Hundreds. If not pushing in the upper hundreds.

19 LORING: Okay. And you've submitted those reports to, uh, Skagit County?

20 MAHAFFIE: Yes, I have.

21 LORING: How many has the County, uh, rejected?

22 MAHAFFIE: None.

23 LORING: Okay. So, never found inadequacies in the reports you've created?

24 MAHAFFIE: Infrequent comments or questions, but nothing has never, uh, not

25 been approved, so...

1 LORING: Okay. And I won't belabor your, uh, your resume here, but we do
2 have it in the record as Exhibit A56, uh, just for the Hearing Examiner.
3 REEVES: Right.
4 LORING: And understand your background there.
5 REEVES: Sure. And I note for all expert witnesses, I do note if they have
6 a resume in the record, feel free to, you know, we can be very brief about
7 their backgrounds, so.
8 LORING: Okay. Let's talk about the ecological importance of the mine
9 site. Uh, so, you're familiar with the Miles Sand and Gravel proposal to mine
10 a site off of Grip Road?
11 MAHAFFIE: Yes, I am.
12 LORING: How did you become familiar with that proposal?
13 MAHAFFIE: Uh, live in the area, essentially my entire life. I live not far
14 away now. Uh, previously to Miles and Concrete Nor'West, uh, ownership, it
15 was open for public access under Trillium ownership. Uh, common in past years
16 to hunt and hike on the property.
17 LORING: Okay. And, uh, in addition to having a direct experience on the
18 land, have you reviewed any of the information about the project, any
19 reports, uh, about the project?
20 MAHAFFIE: Yes, I have.
21 LORING: Okay. So, you've reviewed and I'll just, you know, quickly go
22 through these, but you've reviewed that May 18th, 2015 document by Graham
23 Bunting that relates to the ordinary high water mark?
24 MAHAFFIE: Yes, I have.
25

1 LORING: Okay. And that's Exhibit C4 and, and we may explore that here in
2 a few minutes. Um, also, Exhibit C5 is a Graham Bunting, August 20th, 2015
3 document titled Fish and Wildlife Site Assessment. Are you familiar with
4 that?

5 MAHAFFIE: Yes, I am.

6 LORING: Okay. And then, Exhibit C6 is a Graham Bunting April 18th, 2017
7 Addendum to Fish and Wildlife Site Assessment. Are you familiar with that
8 document, too?

9 MAHAFFIE: Yes, I am.

10 LORING: Okay. And then, uh, last C8 is a, uh, Northwest Ecological
11 Services Critical Areas Assessment from December 2021. Uh, are you familiar
12 with that as well?

13 MAHAFFIE: Yes.

14 LORING: Okay. And you mentioned that you had visited the site, uh, are
15 you, can you tell us about the ecological setting in which the mine would be
16 developed?

17 MAHAFFIE: It's in a very large tract of undeveloped forest land. Not sure
18 if I'd be positive, but in my recollection, probably the largest undeveloped
19 tract in the area, in the lower Samish area.

20 LORING: Okay. And, uh, uh, are there any water features along that
21 property? And...

22 MAHAFFIE: Many.

23 LORING: Can you describe some?
24
25

1 MAHAFFIE: There are many streams, uh, the Samish River on the north, Swede
2 Creek through the lower end, uh, several perennial streams, uh, many, uh,
3 seasonal or ephemeral streams in there as well.

4 LORING: Okay. Uh, and, and then wetlands associated with some of those
5 rivers and streams and not associated as well?

6 MAHAFFIE: Yes. Uh, there's extensive wetland areas as well as, uh, a good
7 number of beaver pond type wetlands as, you know, dam streams, things like
8 that, with integrated different types of habitats.

9 LORING: Okay. Are there any specifically protected species that you're
10 aware of, uh, on the property there?

11 MAHAFFIE: Uh, it's mapped or known to potentially provide habitat to the
12 Oregon Spotted Frog in areas.

13 LORING: Okay. And we have an Exhibit A35, which has a critical habitat
14 map for the Oregon Spotted Frog. I'm going to try to share this with you just
15 for a second to confirm that, uh, this is your understanding of the area
16 where the Oregon Spotted Frog would be. Uh, so, let me just briefly click on
17 this. Are you seeing an Exhibit A35 on the screen?

18 MAHAFFIE: Yes.

19 LORING: And you see that circle area down there on the bottom of this?

20 MAHAFFIE: Yes.

21 LORING: Does that look like roughly where the mine would be?

22 MAHAFFIE: Yes.

23 LORING: Okay. And this, this is the area where the S-, this is the Samish
24 River marked in yellow along there?

25 MAHAFFIE: Samish River and associated wetlands is my understanding, yes.

1 LORING: Okay. And so this shows that critical habitat in the vicinity of
2 the mine?

3 MAHAFFIE: Yes. What is mapped, yes.

4 LORING: Yeah. What is mapped, yeah. Okay. Thanks for that. I'll stop
5 sharing. Get a little bandwidth back. Okay. Uh, are there other species that
6 you would expect to, um, either, either reside on the property or use the
7 property as habitat?

8 MAHAFFIE: Uh, numerous species, yes. Uh, amphibians, avian, as well as
9 small and large mammals.

10 LORING: Okay. Can you just give us a, a listing of ones you'd expect to
11 see there?

12 MAHAFFIE: Uh, in common name, deer, bear, uh, elk have been known to be in
13 the area, bobcats, uh, cougars, uh, smaller, opossum, rabbits, you know,
14 common song birds, hawks, you know, typical raptors, turkey vultures.

15 REEVES: I'll break in, so, essentially, the kinds of animals one would
16 expect to exist in the wild exist in the wild in these circumstances, is that
17 right?

18 MAHAFFIE: That would be a good way to state it, yes.

19 REEVES: Okay. Go ahead, Mr. Loring, maybe we can try to drill down a
20 little more quickly.

21 LORING: Okay. Uh, and I, I believe you mentioned that it, this property
22 would function as a wildlife corridor, is that right?

23 MAHAFFIE: Yes.

24 LORING: Okay. Uh, what do you mean by that?

1 MAHAFFIE: Uh, many species would use it from transitioning to, uh, one
2 habitat type to another.

3 LORING: Where would those habitats be in relation this property?

4 MAHAFFIE: So, for example, uh, amphibians might trans-, transition from one
5 aquatic habitat to another, using upland areas of the property. Uh, elk might
6 use it for migration from lower feeding areas to wintering grounds, you know,
7 far away. It, it's a very broad scope, uh, saying wildlife corridor.

8 LORING: Okay. Uh, let's talk a little bit about the critical areas and
9 SEPA review that occurred here. Uh, are you familiar with SEPA review
10 criteria for projects like the mine?

11 MAHAFFIE: Yes.

12 LORING: What would typically be required for SEPA review for projects
13 like the mine?

14 MAHAFFIE: Would assume that the critical area ordinance, uh, and those
15 regulations are going to capture a good portion of the review, the, the, the
16 things that are easily identifiable like wetlands, uh, streams, those
17 associated buffers. So, SEPA, in this scenario, to me in the, the Skagit
18 County environment, would be capturing those impacts not directly associated
19 with what is captured by the critical areas ordinance. So, for example, the
20 wide, wider habitat usage and, like, wildlife, you know, not directly
21 associated with a wetland or a buffer. Uh, what does the scope of the bigger
22 picture mean for something like this. That's, that's what should be captured
23 by the SEPA portion of the review. The way critical area ordinances are
24 implemented in different jurisdictions might, uh, change up a little, as far
25 as how codes are set up. But it, it's kind of the catchall for what's not

1 caught by the rest of the code. It's related to habitat and, uh, wildlife and
2 things like that.

3 LORING: Okay. And do you feel that, or in your opinion, did the
4 Application here meet that, or have that SEPA review?

5 MAHAFFIE: Uh, not in my opinion, no.

6 LORING: Uh, why not?

7 MAHAFFIE: There, there seemed to have been a heavy focus, and I'm gathering
8 a little bit of context from this hearing, that the focus was, uh, directed
9 to the consultants, at least in the later part, just to identify the critical
10 areas and buffers and those impacts, not the greater impacts. Nobody has
11 really addressed the greater impacts of the project to the local environment.
12 They've just focused on the critical areas alone.

13 LORING: Okay. And we'll talk in a moment about the critical areas and,
14 and that, those assessments. But just, uh, you mentioned the greater impacts
15 on the area, uh, what would some of those be that were not reviewed through
16 the SEPA process here?

17 MAHAFFIE: What is, what were the impact of the haul road and, and more
18 frequent traffic on the local wildlife population. Uh, Northwest Ecological,
19 while, uh, wetland consultants, they're not, uh, wildlife biologists, true
20 wildlife biologists. You know, did they have the qualifications to make those
21 statements? And it did not seem like they did in their assessment. Somebody
22 needed to have made those, addressed those issues, uh, in my opinion.

23 LORING: Okay. And...

24 MAHAFFIE: That would be one example.

1 LORING: Yeah. And we'll just touch on that example. Uh, skip ahead a
2 little bit and then we'll get back to, uh, some other questions. But in, in
3 that example, did you hear, uh, the Northwest Ecological Services witness
4 testify that the use of the road, the amount of use of the road was not
5 material to impacts, uh, in that vicinity?

6 MAHAFFIE: Yes, I did.

7 LORING: Do you agree with that assertion?

8 MAHAFFIE: It's not that I agree or disagree, I don't feel that it was
9 substantiated scientifically.

10 LORING: What do you mean by that?

11 MAHAFFIE: Uh, there was no literature cited regarding that in the
12 assessment. There was no discussion truly regarding that in the assessment.
13 It was simply a statement. Not an assessment, not an investigation using
14 common methods for such.

15 LORING: Okay. And would you expect, uh, the level of traffic to have some
16 impact on the ec-, that ecological setting along the haul road?

17 MAHAFFIE: That would be my expectation, yes.

18 LORING: And what do you base that on?

19 MAHAFFIE: Uh, personal knowledge, years of review, years of research and,
20 you know, I, I would qualify that as I would be wearing a reviewer hat for
21 this. What I would expect in review. As a consultant, I, I would defer to
22 someone else. I, I know my limitations, I'm not a true wildlife biologist.
23 They're, it's a separate profession.

24 LORING: Okay. But you would have expected to see some analysis that would
25 incorporate the type of traffic that would occur, the volumes of traffic and

1 then the species in that vicinity and, and try to figure out whether there
2 would be a, an impact?

3 MAHAFFIE: That is correct.

4 LORING: And...

5 MAHAFFIE: There's extensive literature out there to address that, uh, on
6 all those individual species, yes.

7 LORING: Okay. And you haven't seen that as part of the application
8 materials here, right?

9 MAHAFFIE: No, I have not.

10 LORING: Okay. And do you believe that that is a SEPA deficiency in this
11 process?

12 MAHAFFIE: Yes, I do.

13 LORING: Okay. Okay. Uh, let's talk a little bit more about, well, let's
14 briefly touch, I just want to mention that you did prepare a report, uh, for
15 this hearing and that's been marked as Exhibit A33, in this matter. Um, I,
16 I'm going to talk with you and not have you read through the report. So, I've
17 got questions for you to help supplement that report. Um, but I wanted, I
18 just wanted that, to make sure that was in the record, that we knew where
19 that was, uh, for the Examiner here.

20 REEVES: Thank you.

21 LORING: And we've already talked about the materials that you reviewed in
22 drafting, uh, the report or in your review here. Uh, were there any other
23 materials that I, that we didn't discuss yet, that you referred to or relied
24 upon in creating that report?

25 MAHAFFIE: Uh, consultation with Department of Ecology.

1 LORING: Okay.

2 MAHAFFIE: Uh, the Northwest Ecological Reports, uh, should be noted, there
3 were two separate reports. There was an assessment with the delineation
4 document in it. And then an impact assessment separate.

5 LORING: Okay. Why do you make that distinction here?

6 MAHAFFIE: Uh, I make that distinction as the first of the two reports were
7 not publically available until well after the MDNS was issued.

8 LORING: Okay.

9 MAHAFFIE: And I was not able to see that as far as the public comment
10 period as well, so...

11 LORING: Okay. Does, does that matter?

12 MAHAFFIE: In the grand scheme of things, probably not, but it matters to me
13 in process.

14 LORING: And it matters to you in process, uh, why does it matter to you
15 in process for this, this specific application?

16 MAHAFFIE: I'm just, I think, one of those people that likes to see things
17 done the right way. If something like this, a project like this should be
18 crossing the T's and dotting the I's is just kind of my humble opinion.

19 LORING: And, and that, that second, uh, part of the materials that was
20 not available to the public, uh, do you believe that was required to be
21 submitted by the Skagit County Critical Areas Ordinance?

22 MAHAFFIE: Yes. And, and I, I guess I could go back a little bit as far as
23 my concern, uh...

24 LORING: Sure.

1 MAHAFFIE: My other concern with that would be that Skagit County Staff did
2 not actually review that document prior to issuing the MDNS.

3 LORING: Let's just briefly talk about what was the document, can you
4 summarize that document that you believe they didn't review?

5 MAHAFFIE: The wetland delineation document. So that would have had the
6 delineations for all wetlands along the haul route, as well as the ratings
7 for all of those wetlands.

8 LORING: Okay. And why do you believe that Skagit County didn't have that
9 delineation document and the wetlands ratings when they issued the MDNS?

10 MAHAFFIE: Honestly, because I asked for it and they didn't know what I was
11 talking about.

12 LORING: Okay. When did you ask for it?

13 MAHAFFIE: Uh, I'd have to look at my notes, but, uh, into May and into the
14 first part of June.

15 LORING: Okay. And, uh, do you know when the MDNS issued, roughly?

16 MAHAFFIE: Uh, I believe end of February.

17 LORING: Okay.

18 REEVES: Sorry, just, just to ver-, just to clarify because this is 2016
19 til now, we're talking about this year, this MDNS, et cetera, all of those
20 dates are in 2022, is that right?

21 MAHAFFIE: Correct.

22 REEVES: Okay. Thank you.

23 LORING: Okay. Uh, let's talk a little bit more about wetlands, uh, at the
24 mining excavation site and also along the haul road. Um, are there generally
25 accepted methods for identifying the presence and location of wetlands?

1 MAHAFFIE: Yes.

2 LORING: And you, are you familiar with them?

3 MAHAFFIE: Yes.

4 LORING: Does, uh, well, what are they?

5 MAHAFFIE: Uh, it would be the 1987 United States Army Corp of Engineers
6 Wetland Delineation Manual with the, uh, later supplement, Western Valleys
7 and Mountain Supplement by the Army Corp of Engineers.

8 LORING: Okay. Does the Skagit County Code incorporate these standards
9 into its wetlands, uh, review?

10 MAHAFFIE: Yes, it does.

11 LORING: Okay. And what does the Army Corp of Engineers document, uh,
12 describe as the process for delineating a wetland?

13 MAHAFFIE: Uh, there's several different routes you could take. This would
14 be more of a routine, uh, determination, delineation, uh, the basics are you
15 have to have, uh, positive criteria met for hydrology, soils, and vegetation.
16 Those are documented, uh, through a wetland delineation report, supplemented
17 by wetland data points. Taken at points on the wetland boundary to, uh, show
18 where, how and why a wetland was determined to be there.

19 LORING: When you say wetland data points, what do you mean by that term?

20 MAHAFFIE: Uh, data points are, uh, kind of a vernacular for the form that
21 the Corp of Engineers has provided for, uh, assessing and documenting the
22 three criteria being met for soils, hydrology and vegetation. And tabularizes
23 it for, uh, making that determination.

24 LORING: Okay. So, there, there's a place, physically, on the ground where
25 you would investigate soils, hydrology and vegetation?

1 MAHAFFIE: Correct. Uh, typically you're going to be digging a, uh, a hole
2 in the ground, 16 to 24 inches deep, depending on the soils. You're going to
3 be looking at the soils, uh, you're going to be making a, uh, visual, uh,
4 analysis of the vegetation, percent cover of different species within, uh, a
5 radius, as well as observing hydrology features at that point.

6 LORING: And then you would do that along multiple points to i-, identify
7 the edge of the wetland itself?

8 MAHAFFIE: Correct. So, you know, small wetland might just have two data
9 points, you know, one in and one out. A larger wetland would have many.

10 LORING: With, uh, are you familiar with the wetland along the Samish
11 River at the mine excavation site?

12 MAHAFFIE: Yes.

13 LORING: Would that be the sort of larger wetland that would have many
14 data points?

15 MAHAFFIE: I would expect as a reviewer, yes, to see many. As a consultant,
16 yes, there would be numerous.

17 LORING: Okay. And can you use a, a soils' map to identify the, the soils
18 and where the wetland edge is?

19 MAHAFFIE: Uh, soils map is a good, uh, preliminary indicator doing
20 research. Uh, at a reconnaissance level it can be very, uh, helpful. A soils
21 map is typically something done by the NRCS at, like, a five-acre polygon
22 type accuracy. They're not accurate to two feet. They're not accurate to ten
23 feet. Uh, they've, they can be off by many hundreds of feet, personally
24 observed.

1 LORING: Oh, okay. So, it, it's a good starting point, but you want to
2 verify in the field the types of soils that you have?

3 MAHAFFIE: Correct. And just because, you know, you really get down into it,
4 just because a soil is mapped somewhere doesn't mean there's not inclusions
5 of other soils that might have hydric or wetland properties within them. So,
6 it's, it's definitely not something that can be relied upon 100%.

7 LORING: Okay. Um, earlier in this hearing, uh, Oscar Graham testified
8 that he used those soils maps for the soil portion of the wetland
9 delineation. Is that consistent with the Army Corp of Engineers process for
10 delineating a wetland?

11 MAHAFFIE: Uh, I would say at this point in time, no.

12 LORING: Okay. And, and that's because of an actual site investigation of
13 the soils on the site is required?

14 MAHAFFIE: Yes.

15 LORING: Okay. And, again, dig, digging into the soils to figure out what
16 they actually are and their properties?

17 MAHAFFIE: Correct.

18 LORING: Okay. Uh, just to follow-up briefly on that, too. Mr. Graham
19 mentioned that identifying the ordinary high water mark was a way to, uh,
20 identify the wetland edge, is that your understanding of how wetland edges
21 are delineated?

22 MAHAFFIE: No. Sometimes they...

23 LORING: Why not? Sorry.

24 MAHAFFIE: Sometimes they coin-, coincide, most of the time, they don't. You
25 might have a wetland waterward of the ordinary high water mark, you might

1 have an associated wetland upland of the ordinary high water mark, sometimes
2 they coincide. The, the definition is similar, but it's not necessarily the
3 same.

4 LORING: Okay. And you use the word coincide there. Do-, are you referring
5 to the fact that the ordinary high water mark applies to different types of
6 water than to wetlands and to finding out where those, the edge of those
7 waters are?

8 MAHAFFIE: Yes. If I'm understanding you correctly.

9 LORING: Uh...

10 MAHAFFIE: The...

11 LORING: For example, a marine shoreline, you would want to figure out
12 where the marine, edge of the marine waters are, where they meet the land?

13 MAHAFFIE: Uh, yes and no. A, a marine shoreline ordinary high water mark is
14 not typically going to coincide with a wetland edge in a marine environment.
15 You might have estuarine wetlands farther out, you often have wetlands
16 landward in a marine environment as well. In a riparian environment, as is
17 this, I, I think the argument would be stronger that they might coincide with
18 topography.

19 LORING: Okay. Um, so, just to wrap up, though, again, identifying the
20 ordinary high water mark is not the same thing as conducting a wetland
21 delineation, right?

22 MAHAFFIE: No, it is not.

23 LORING: Okay. So, they, they might coincide, but if, to delineate
24 wetland, you wouldn't use the ordinary high water mark as a proxy?

25 MAHAFFIE: No.

1 LORING: Okay. And we've, we've covered, uh, going through my questions,
2 of course, and we've covered some of these, uh, already, we've talked about
3 the delineation and, and the data points and how to perform a delineation, so
4 I'm skipping over those. Um, just to ask a question, were there, uh, in your
5 review of the Graham Bunting Associates materials, did you find data points
6 provided for the edge of the wetland along the Samish River?

7 MAHAFFIE: No, I did not.

8 LORING: Okay. Is it possible that would have skipped your review?

9 MAHAFFIE: Uh, I'm sorry, can you rephrase that?

10 LORING: Yes. And I should. Uh, is, is it possible that your review would
11 have just missed data points that were provided as part of those documents?

12 MAHAFFIE: Uh, no.

13 LORING: Because you were looking for them as you reviewed it?

14 MAHAFFIE: Yes. They're particularly a pretty, as far as typical wetland
15 delineation report, they're typically with them in the rating forms are the
16 most voluminous portion of the report, yes.

17 LORING: Okay. And, yes. Okay. Let's see, so, did you, do you, sorry.
18 Strike that. Did any of the Graham Bunting Associates materials that you
19 reviewed qualify as a wetland assessment under the Skagit County Code?

20 MAHAFFIE: No.

21 LORING: And just to make sure that I ask this, but you are familiar with
22 the requirements of a wetland assessment under the Skagit County Code?

23 MAHAFFIE: Yes.
24
25

1 LORING: Okay. And, uh, the items that were missing were things, like, the
2 wetland delineation with data points, is that the sort of material that fell
3 short of the requirements of the code?

4 MAHAFFIE: Correct. In terminology, I would have co-, considered it more of
5 a reconnaissance rather than a delineation.

6 LORING: Okay.

7 MAHAFFIE: Bit of a nuance, but...

8 LORING: And does that nuance matter when establishing a buffer next to a
9 surface mine?

10 MAHAFFIE: Yes.

11 LORING: Why is that?

12 MAHAFFIE: The delineation dictates the exact line it would be at. When
13 you're measuring a buffer off it, by code, one foot matters and a
14 generalization does not get to that accuracy.

15 LORING: Okay. And in your expert opinion here, the documents were a
16 generalization and did not identify the edge of the wetland with specificity
17 required?

18 MAHAFFIE: Correct.

19 LORING: Okay. Do you know if the Department of Ecology has reviewed the
20 Application materials for the proposed gravel mine?

21 MAHAFFIE: Yes.

22 LORING: And...

23 MAHAFFIE: [Inaudible] ecology question, no.

24 LORING: Okay. Who were those reviewers?

1 MAHAFFIE: Chris Lurkens [phonetic] with the Department of Ecology and Doug
2 Gresham [phonetic] with the Department of Ecology. Both, uh, the wetlands
3 specialists that have, uh, been tasked with this area over the course of this
4 permit.

5 LORING: Okay. And, uh, were their opinions relatively consistent with
6 each other?

7 MAHAFFIE: Yes.

8 LORING: Okay. Did they identify the need to delineate the wetland edge?

9 MAHAFFIE: Yes.

10 LYNN: I'm going to ob-, I'm going to object to what's clearly hearsay
11 testimony. Uh, if they want to call the wet-, the Department of Ecology
12 witnesses, they can certainly do so. They have commented on the intensity and
13 we can certainly discuss that. But I don't think, uh, it's appropriate to be
14 asking Mr. Mahaffie what he heard from somebody else.

15 REEVES: And I, hold on one sec. I do note that, you know, the Hearing
16 Examiner is not strictly bound by the rules of evidence, hearsay can come in.
17 But, I am weary of let's elicit, you know, multiple detailed answers from Mr.
18 Mahaffie about other people's communications. Do we have M-, I, know Mr.
19 Gresham, I remember him by name, I've probably seen thousands of emails over
20 the last decade from him. I didn't know the other name. But are these all
21 Exhibits in the record and if so, you know, they've been identified or, or
22 can you just speak to...

23 LORING: Yes and yes. I, my next question was to pull up, uh, Exhibits A36
24 and A39, which are in the record, uh, they're Exhibits, they're Exhibits from
25 Central Samish Valley Neighbors, but they're actually documents that are in

1 the record, too. They were, and one is an email and one is a letter, uh,
2 from, each of these individuals.

3 REEVES: Sure. So, these are in the, I mean, they're in the record,
4 they've been accepted as Exhibits. I, I guess I don't, is there a specific
5 function of having Mr. Mahaffie reiterate everything that is already in the
6 record or...

7 LORING: Well, the function would be to show that his opinion is
8 consistent with that of the State Agency with the authority to review wetland
9 issues, uh, and, and that it conflicts, uh, with the action that occurred
10 here. So, I wasn't going to have him read through it, I was going to have him
11 reference that and then make sure that we knew where it was in the record,
12 for the record.

13 REEVES: Okay.

14 LORING: Uh, so that's available later on.

15 REEVES: Okay. So, one more time. A36 through what, just for those that
16 are trying to follow along?

17 LORING: It's A36 through A39 are the Department of Ecology documents. And
18 it's, uh, A36 and A39 are the, the documents I was going to use as the
19 examples from each of those Ecology Officials, uh, for the need to delineate
20 the wetland edge at this site.

21 REEVES: Okay. I mean, I, I, I mean, I'm not going to disallow all
22 hearsay, that would be problematic. I certainly note Mr. Lynn's objection, I
23 just, you know, I don't think this is likely, I'm, I'm trying to determine,
24 uh, so you're essentially, well, I guess I'm lost. I, I understand Mr.
25 Mahaffie has expertise. I think we've covered that in-depth. I think you've

1 covered his, you know, he's discussed his views on how delineation should
2 work. I think all the written materials speak for themselves. I, I, I'm just
3 trying to get a sense of where you're headed next there, Mr. Loring?

4 LORING: Well, and, and I'll say, I think, I think we would have been done
5 with where I was headed by now. But I also wanted to show that, that their
6 opinion was consistent throughout the course of this project. Uh, and it was
7 the Ecology opinion that a delineation should have occurred. Uh, it was their
8 opinion in 2016 and it was their opinion, uh, as recently as...

9 REEVES: I don't need you to sort of explain all of that. I think it's in
10 the record. Uh, you know, um, let's just move forward and go ahead and ask a
11 question, but I, I concur that I'd rather not have Mr. Mahaffie testify at
12 length about what other folks opinions are themselves.

13 LORING: And, again, this wasn't going to be at length, I want to be
14 really clear about that. But his opinion is consistent with the state agency
15 opinion. I just wanted to get that into...

16 REEVES: Yeah.

17 LORING: Into the record here. Yeah. So, I'll ask, let me ju-, I have two
18 or three questions just to, uh, summarize this point.

19 REEVES: And one sec, Mr. Ehrlichman has a hand up. I'm curious.

20 EHRLICHMAN: Thank you, Mr. Examiner. Uh, I'd like to, at this point, just
21 request that we be afforded maybe a ten minute discussion with you, whether
22 it's off the record, and, and we don't need to do it now, but at some point,
23 uh, I would like to have a discussion with you about the interruptions of the
24 questioning and presentation of, of our record, uh, in this hearing. Mr.
25 Lynn's objection was about hearsay, not about the extent of the questioning

1 or the delay in the hearing. You have strong views, which I respect, about
2 managing the hearing, but I am finding that there, there seems to be a
3 pattern of jumping in at critical testimony and asking the Attorneys to not
4 ask questions that are important, at least for my case, in establishing my
5 record. I think there's a time and a place to have that discussion with you,
6 uh, just would request that we have that opportunity with the Attorneys.
7 Thank you.

8 REEVES: Okay. Mr. Ehrlichman, I note for the record you would like a
9 discussion on why I'm incompetent as a Hearing Examiner, we'll figure that
10 out, uh, some other time. But, uh, Mr. Loring, go right ahead, uh, continuing
11 with your questioning.

12 LORING: I, thank you, Mr. Examiner, I, I don't think that was a fair
13 characterization, by the way...

14 REEVES: I'm...

15 LORING: But, but I, I will...

16 REEVES: Sorry, I, I apologize everybody. Go ahead.

17 LORING: Okay.

18 REEVES: Mr. Loring.

19 LORING: Uh, Mr. Mahaffie, hello, again. Um, thank you for bearing with
20 us. Uh, may take a few more questions. I'm trying to figure out kind of where
21 I was, I, I think when we were interrupted there. And I was asking you to
22 refer to, uh, information that you had reviewed from the Department of
23 Ecology, uh, in relation to this project. So, let me just ask a couple of
24 questions to summarize that. Uh, again, did, is it your understanding that
25

1 the Department of Ecology identified the need to delineate the wetland edge
2 for this, uh, wetland associated with the Samish River at the site?

3 MAHAFFIE: Yes.

4 LORING: Did, uh, did Ecology change their opinion at any time, to your
5 knowledge, in this matter?

6 MAHAFFIE: No.

7 LORING: Okay. So, uh, and Exhibit A39, uh, is a letter, uh, March 11th,
8 2022 letter from Chris Lurkens to Kevin Cricchio at the County, are you
9 familiar with that letter?

10 MAHAFFIE: Not per say, I know I've heard them all, which one is specific, I
11 would have to have it in front of me.

12 LORING: Okay. Well, let me just pull this up really quickly here. And
13 share the screen on this one. Do you see what I'm looking at there as Exhibit
14 A39?

15 MAHAFFIE: Yes.

16 LORING: Sorry, scrolled up. Okay. And, uh, this is that March 11th, 2022
17 letter. And, and does this letter indicate the need to accurately delineate
18 the wetland edge, still as of March 11th, 2022?

19 MAHAFFIE: Yes.

20 LORING: Okay.

21 MAHAFFIE: That's what I'm reading.

22 LORING: Yeah. Okay. And, again, this is consistent with your
23 understanding of the need under the Code as well?

24 MAHAFFIE: Yes.

1 LORING: Okay. Stop sharing screen there. Okay. Let's, uh, let me ask you
2 this, are you familiar with the Department of Ecology's wetlands rating
3 system?

4 MAHAFFIE: Yes.

5 LORING: And, uh, is it your understanding that the Applicant applied that
6 system to the Samish River wetland?

7 MAHAFFIE: Yes.

8 LORING: Okay. Did they...

9 MAHAFFIE: [Inaudible.]

10 LORING: Uh, did they apply the current system?

11 MAHAFFIE: Uh, the current system has not been applied by Graham Bunting,
12 that I have seen.

13 LORING: Thank you for that clarification. And so Graham Bunting is the,
14 uh, the Applicant's Consultant who reviewed the wetland at the mine site
15 itself and distinguishing between that and the Northwest Ecological Services
16 Group that conducted wetland and stream reviews along the internal haul road
17 that connects to that site?

18 MAHAFFIE: Yes.

19 LORING: Okay. And when you say Graham Bunting, well, first, let me ask
20 you, though, about the wetland rating system, what is the wetland rating
21 system that Ecology uses?

22 MAHAFFIE: The wetland rating system is an evolving document provided by the
23 Department of Ecology, uh, to provide local jurisdictions with a fast and
24 accurate way to provide a functional analysis to equate to buffers and
25 applied in the code.

1 LORING: When you say a functional analysis, it's, it's a way to determine
2 kind of sensitivity of a wetland and its importance?

3 MAHAFFIE: Correct. Uh, applying, uh, water quality, hydrologic functions,
4 habitat functions, coming up with a numerical score, uh, a way for reviewers
5 and professionals to come to a consistency with, uh, different wetlands to
6 provide adequate protections. I think would be, that would how I summarize
7 it.

8 LORING: Okay. And you mentioned that, uh, the Graham Bunting Associates
9 documents don't indicate that that system was applied to the Samish River
10 wetland?

11 MAHAFFIE: They'd used an older version, so it is an evolving document.
12 They've updated it multiple times over the year. They did not use the one,
13 uh, currently in effect.

14 LORING: Okay.

15 MAHAFFIE: In the scope of things, they, it, it was said in the hearing
16 previously that it was updated and the rating was the same, so...

17 LORING: Did you see any evidence that, uh, an analysis was conducted
18 against the current version? And by current version, I'm assuming you're
19 referring to one that was in effect in February of this year, at the time the
20 MDNS issued?

21 MAHAFFIE: No, not at the, not at the time of the MDNS issuance, yes.

22 LORING: That was a compound question that led to some confusion. Uh, did,
23 uh, did you see any evidence that the analysis using a wetland system was
24 updated with the version that existed as of the MDNS in February 2022?

25 MAHAFFIE: No.

1 LORING: Okay. Would that have made a difference?

2 MAHAFFIE: Maybe. Maybe not. Uh, uh...

3 LORING: Is it important to find out?

4 MAHAFFIE: It's important to find out. It might have no effect, it might

5 have an effect. It's, it's part of the review process, yes.

6 LORING: Okay. And, in your opinion, reviewing the materials, that was not

7 conducted for that Samish River wetland?

8 MAHAFFIE: Not at the time of the MDNS issuance, no.

9 LORING: Okay. Let's talk a little bit about land use intensity, that's

10 been an issue in this Appeal. Are you familiar with the component of wetland

11 buffer sizing that relies on, on the neighboring developments land use

12 intensity?

13 MAHAFFIE: Yes. Uh...

14 LORING: Can, can you briefly describe the different land use intensities

15 that typically apply for sizing the buffers?

16 MAHAFFIE: Sure. Uh, low medium and high. Low would be trails, uh, forestry,

17 things like that. Moderate land use intensity, uh, different jurisdictions

18 are a little different, but Skagit County reflects residential at five, uh,

19 acres or greater, one unit per five acres or greater. Uh, grazing

20 agriculture, lower intensity agriculture like orchards or haying. In high

21 intensity land use would be commercial, industrial, high intensity

22 agriculture, row crop, things like that. Uh, Department of Ecology has, uh,

23 several documents that list examples of that.

24 LORING: Okay.

25

1 MAHAFFIE: Also, implemented in many, many different types of different
2 jurisdictions implement it in their code as well. As does Skagit County.

3 LORING: Okay. And what land use intensity do you believe applies to the
4 proposal to mine, uh, to excavate sand and gravel at the site?

5 MAHAFFIE: Uh, high intensity.

6 LORING: Why do you say that?

7 MAHAFFIE: The amount of impact and guidance from the Department of Ecology.
8 It's kind of a two-part thing there. Uh, ecology being kind of the holders of
9 best available science, uh, assigned to them by the State Legislature, has
10 been pretty consistent on industrial and commercial uses. Uh...

11 LORING: Okay.

12 MAHAFFIE: Mining is typically, uh, in zoning code and just the vernacular
13 of people as a high intensity land use, it's creating a pretty sizeable
14 impact on the land, uh, the human usage on a day to day basis is high, uh,
15 machinery, noise, it's, just as a generalization, a high impact land use.

16 LORING: Okay. And is part of that for the excavation site because it
17 would remove the vegetation and the soils, uh, and leave bare earth and then
18 even dig some of that out?

19 MAHAFFIE: Uh, that would be part of it, yes.

20 LORING: Okay. And what would be another part or the remaining part?

21 MAHAFFIE: Uh, the noise, the light, you know, if you're running at night,
22 um, dust, the human usage of traffic, you know, it's pretty well documented
23 human usage directly effects wildlife. Uh, things like that.

1 LORING: Okay. And, uh, does the Department of Ecology have any guidance
2 on roads and transportation systems that are used to connect to industrial
3 uses and how those should be characterized for their land use intensity?

4 MAHAFFIE: Uh, yes, they have recently clarified that. That access roads to
5 high intensity land uses should be classified as high as well. Uh, roads
6 themselves are also identified by Department of Ecology as a high intensity
7 land use.

8 LORING: Okay. So, in, in your expert opinion, would, you would
9 characterize the land use or how would you characterize the land use
10 intensity at the excavation portion of the site here?

11 MAHAFFIE: High intensity land use.

12 LORING: And how would you characterize the land use intensity of the haul
13 road use, in your expert opinion?

14 MAHAFFIE: High intensity land use.

15 LORING: Okay. Have you heard, uh, the Applicants jus-, well, do you know
16 how the Applicant characterized the land use intensity of the mine and the
17 haul road?

18 MAHAFFIE: Moderate intensity land use.

19 LORING: Okay. And you disagree with that characterization?

20 MAHAFFIE: Yes, I do.

21 LORING: Okay. Uh, do you know why the Applicant characterized it or how
22 they justified their characterization as a moderate intensity?

23 MAHAFFIE: Placement of a berm, if I recall, as well as it being a temporary
24 land use. And I believe there was some testimony about how the mine was going
25

1 to start at the closest point and retreat away, making it more temporary
2 associated with the buffer.

3 LORING: Uh-huh. I, I want to pull up just a few of these so that we can
4 take a look, uh, as, as we're going to through it. So, I'm, I'm going to
5 share my screen once I get to the page and it was in that, uh, C5, we're
6 looking at Exhibit C5, this is the August 20th document from Graham Bunting.
7 And I will pull up, I'll pull up the page where there's this discussion about
8 the land use intensity. And I just want to go through these briefly with you.
9 And, and see if, in your expert opinion, these would justify a medium or
10 moderate land use intensity for the sites. I'll do a quick share screen now.
11 Are you seeing a Page 7 from the Graham Bunting Associates, August 20th, 2015
12 document here?

13 MAHAFFIE: Yes.

14 LORING: Okay. And the bulleted points are the, uh, uh, have you reviewed
15 this before?

16 MAHAFFIE: Yes.

17 LORING: Okay. And is it your understanding that these bulleted points are
18 the justification for that moderate intensity characterization?

19 MAHAFFIE: Yes.

20 LORING: Okay. And so going through them, does having a mine located 200
21 horizontal feet landward of an ordinary high water mark, is that a rationale
22 for moderate intensity?

23 MAHAFFIE: I don't believe so, no.

24 LORING: Uh, why not?

25 MAHAFFIE: There's no documentation provided for that.

1 LORING: Okay. So, without a proper delineation, we don't actually know
2 it's 200 feet from the ordinary high water mark?

3 MAHAFFIE: That would be part of it, yes.

4 LORING: Okay. What, let me ask you this just so we can get at this, uh, a
5 little bit of a different way, do you know what the buffer size would be for
6 a high intensity land use under Skagit County's Critical Areas Ordinance for
7 a wetland?

8 MAHAFFIE: For this wetland, uh, as it's preliminary rated, a 300 foot
9 buffer.

10 LORING: Okay. And thank you for clarifying that it depends on the wetland
11 rating itself, too. Uh, so, would a 200 horizontal separation be a
12 justification when the standard, uh, high intensity land use buffer would be
13 300 feet?

14 MAHAFFIE: I don't believe so, no.

15 LORING: Okay. Uh, the fact that the mine site is 90 feet, uh, above the
16 ordinary high water mark, does that effect the, uh, high, the intensity of
17 the land use?

18 MAHAFFIE: I don't believe so, no.

19 LORING: Okay. Uh, what about having a berm around the mining activities
20 at some point in the future?

21 MAHAFFIE: Possibly.

22 LORING: Okay. Uh, uh, how about, uh, having only a ten foot separation
23 between the floor of the mine and the underlying water table?

24 MAHAFFIE: I don't think that's germane to the function of the buffer in
25 this situation, so, no.

1 LORING: Okay. And, and I won't go through all of the rest of those, but
2 I, based on your review of this document, were there any bullets that would
3 justify characterizing the intensity of the use as a moderate intensity use?

4 MAHAFFIE: No.

5 LORING: Okay.

6 MAHAFFIE: I would, could I clarify that a little bit, though?

7 LORING: Please.

8 MAHAFFIE: Uh, as mitigating conditions, you know, providing a berm might be
9 considered for lessening the buffer. Uh, I would feel that would be a good
10 starting point for a discussion like that. But not for the assignment of the
11 buffer.

12 LORING: Okay. And, and by that, you mean that you'd have a certain buffer
13 size and then you might have a conversation about reducing it based on the
14 other factors. But the land use intensity is a set intensity?

15 MAHAFFIE: Correct.

16 LORING: Okay. So, I stopped sharing. I do, uh, are you familiar with the
17 County's justification for provi-, for identifying it as a moderate intensity
18 land use or accepting that characterization?

19 MAHAFFIE: Well, so, that's kind of a hard question to answer when the
20 County's provided two different answers.

21 LORING: What do you mean by that?

22 MAHAFFIE: Uh, previously, the 200 foot, uh, buffer was accepted, uh, later,
23 John Cooper [phonetic], as the Project Lead, required a 300 foot buffer after
24 public input. Then, the County, I don't know what happened after that, now
25

1 it's back to 200 feet. So, the County has said 200 feet is acceptable, the
2 County has also said 300 feet is required.

3 LORING: And, and you're saying that you didn't hear any justification
4 after the 300 foot, uh, determination to roll it back to 200 feet?

5 MAHAFFIE: Correct.

6 LORING: Okay. I'm going to share my screen and that letter is in Exhibit,
7 I just want to make sure we're all clear on, on w-, the justification, uh,
8 the basis for that statement that you made. Uh, I'm sharing the screen for
9 Exhibit A34. Does this look like the letter that you're thinking of that
10 spoke of a 300 foot, uh, or, sorry, that high intensity land use and the 300
11 foot buffer? And I can scroll down, too.

12 MAHAFFIE: I believe so, but you would have to scroll down to verify that.

13 LORING: Okay. I'll go right down to the signature page so we can see
14 that. Um, are, see, and see, so this is a letter by John Cooper. And are you
15 seeing, uh, the break between page three and four there, shows at the end of
16 page three and the top of page four?

17 MAHAFFIE: Yes.

18 LORING: Okay. And, and this is where he asks the Applicant to, uh, change
19 their plans to show a 300 foot buffer?

20 MAHAFFIE: Correct. Under Item 6.

21 LORING: Okay. Based on a high impact land use, as he interprets the
22 Code's definition there?

23 MAHAFFIE: Yes.

24 LORING: Okay. And that definition includes, at the end, things like
25 commercial and industrial land uses, uh, right?

1 MAHAFFIE: Yeah. Yes.

2 LORING: You were talking about that earlier. Yeah. Okay. And, and in your
3 opinion, interpreting critical areas ordinances, and, uh, the Department of
4 Wa-, or Washington, uh, State Department of Ecology's wetland guidance, a
5 mine would be an industrial land use for the purposes of characterizing the
6 land use intensity?

7 MAHAFFIE: Correct.

8 LORING: Okay. I'll stop that share on that Exhibit there. And, just to,
9 uh, just to wrap this up, I think we've covered this pretty well, but we have
10 not specifically looked at that Appendix 8C from the Department of Ecology.
11 And I'm going to pull that up on the screen and I'm going, and, uh, CSVN is
12 going to ask that this be entered as an Exhibit, and I believe that would be
13 Exhibit, uh, let's see, where we are here on, on our A Exhibits. I think it
14 would be Exhibit A59. But I may be, somebody else can let me know if my
15 recordkeeping is off on that.

16 REEVES: Sorry, just to be clear on where we're at, you're saying this
17 would be a new Exhibit, is that right?

18 LORING: It would be a new Exhibit, it's an official Ecology document, um,
19 but one that we have touched on, both on, um, the Applicant's case and now in
20 our case and so it would be helpful to have this in the record.

21 REEVES: Got it. So, it's something...

22 LORING: As a...

23 REEVES: That is publically available, this is Appendix 8C of Department
24 of Ecology's, uh, sort of, I guess, newest, uh, or applicable wetland rating
25 manual, is that accurate?

1 LORING: That's right. This is the guidance on, uh, buffer widths for, and
2 compensatory mitigation ratios for wetlands in Western Washington.

3 REEVES: Sure. Mr. Lynn, any objection? I...

4 LYNN: No.

5 REEVES: I have no concern to the extent certainly that it's a public
6 available, you know, readily available...

7 LORING: Yeah.

8 REEVES: Document, so go ahead. And what number did you think this was
9 going to be?

10 LORING: I think it's A59.

11 REEVES: Yeah. We'll, tentatively A59.

12 LORING: Sounds good. Um, Mr. Mahaffie, are, are you familiar with this
13 guidance document from Ecology?

14 MAHAFFIE: Yes.

15 LORING: Okay. And is this the sort of document, uh, that would apply to
16 wetland buffers, uh, for an industrial site, like the mine that's proposed
17 here?

18 MAHAFFIE: Uh, yes and no.

19 LORING: What do you mean, yeah, why do you say the no part?

20 MAHAFFIE: Uh, you can use it, uh, in Skagit County's Code for standard
21 buffers, not having to refer to this in full, and then they also have an
22 alternative buffer section that can be applied, that refers to this more.

23 LORING: Okay.

24 MAHAFFIE: So...

25 LORING: And for alternative buffers...

1 MAHAFFIE: Uh, alternative buffers are available, uh, typically in our code
2 for, uh, a habitat score difference. So, it might, you might be able to have
3 a smaller buffer if the habitat score is smaller. So, it's advantageous in
4 some situations to use the alternative buffers.

5 LORING: Okay.

6 MAHAFFIE: It would typically be more of a residential situation, in my
7 experience, in Skagit County.

8 LORING: Okay. And, uh, is it your understanding that the habitat score is
9 a high score for that Samish River wetland?

10 MAHAFFIE: That's my understanding, yes.

11 LORING: Okay. Okay. Uh, at this point, I don't think we need to go
12 through this buffer guidance. Um, I want to make sure that was in the record,
13 we can discuss that, uh, a little bit later on, as needed. Scrolling through,
14 uh, my notes here. Okay. Just, uh, briefly, I don't think we touched on this,
15 but are you familiar with how the Applicant characterized the land use
16 intensity of the haul road, at the site?

17 MAHAFFIE: Yes.

18 LORING: How did they characterize it?

19 MAHAFFIE: Uh, based on what they perceived as the approved findings on the
20 previous Graham Bunting documentation.

21 LORING: Okay. Uh, did they do their own independent assessment of the
22 proper, um, intensity, land use intensity for that road?

23 MAHAFFIE: That was not my impression, no.
24
25

1 LORING: Okay. Have you seen other instances where that, uh, consultant
2 has identified a haul road as a high use intensity or roads as high use
3 intensity?

4 MAHAFFIE: Uh, as, yes, the, the land use and roads as high intensity, yes.

5 LORING: Okay. Were you surprised they didn't do so here?

6 MAHAFFIE: Yes.

7 LORING: Why is that?

8 MAHAFFIE: If you're putting your name to an authored report, I would expect
9 folks to do their own analysis. I, I think that would be an ethical standard
10 of mine. But it, it surprises me when I don't see it.

11 LORING: Okay. And would that be a standard practice when a wetland
12 consultant reviews the proper buffer size for wetlands to independently
13 verify the land use intensity of the proposed use?

14 MAHAFFIE: Yes.

15 LORING: Okay. Let's talk a little, we danced around the wetland buffer
16 size adjustment, uh, question, but I, I'd like to talk a little bit about
17 that and factors that might affect the size of a buffer. Once you start with
18 the standard buffer size, and, uh, just confirm for us, I believe you said
19 that the standard buffer size would be 300 feet based on a high land use
20 intensity. Both, uh, at the excavation site and along the haul road. Is, is
21 that what you were testifying earlier?

22 MAHAFFIE: Three hundred feet at the mine site, the applicable high
23 intensity land use for the category of wetland for each wetland along the
24 haul route. So, they would very likely not be 300 feet. They would more than
25 likely still be much smaller.

1 LORING: Thank you for that clarification, yes. So, still the high
2 intensity number, but depending on the wetland rating could be a different
3 number than the 300 feet at the excavation site?

4 MAHAFFIE: Correct. A 300 foot buffer is, uh, they're, they're rather
5 uncommon.

6 LORING: They apply to the, the, um, most sensitive wetlands?

7 MAHAFFIE: The most sensitive wetlands and then typically with a high
8 intensity land use, yes. They're, they're the most sensitive wetlands are
9 also typically the rarest of wetlands, so...

10 LORING: Okay.

11 MAHAFFIE: We don't see them common, though.

12 LORING: Okay. So, the Samish River wetland we've been discussing, you'd
13 characterize that as a rare wetland?

14 MAHAFFIE: As a Category 2 wetland, I don't remember the percentages off the
15 top of my head, but it was somewhere between 10 and 20% of all wetlands would
16 come in as a Category 2.

17 LORING: Okay.

18 MAHAFFIE: Roughly.

19 LORING: Okay.

20 MAHAFFIE: With that high habitat score, so...

21 LORING: Yeah. Yeah. Right. Thank you for that. Uh, r-, so, with the
22 buffer at the, uh, let's call it in the excavation area, as I've been
23 referring to it, are there any factors that would affect the buffer size
24 there, in addition to the factors we've discussed so far today?

25 MAHAFFIE: The standard buffer width, no.

1 LORING: Are there any adjustments to buffer sizing that might arise based
2 on the slope of the buffer itself?

3 MAHAFFIE: Yes.

4 LORING: Okay.

5 MAHAFFIE: The Skagit County Co-, Code requires a buffer that falls on a
6 slope 25% or greater to extend 25 feet past the top of slope.

7 LORING: Okay. And, uh, it's, do you remember the section you're thinking
8 of there with the, uh, Skagit County Code?

9 MAHAFFIE: Not off the top of my head, I'm sorry.

10 LORING: Understandable. I just thought I would ask. Uh, I, I believe, I
11 believe you're referring to Section, uh, 14.24.232. I guess that's a
12 subsection for those keeping track of that. Uh, and in your expert opinion,
13 does that buffer or adjustment apply to the, uh, Samish River wetland at the
14 site that we've been discussing?

15 MAHAFFIE: It could.

16 LORING: Okay. And when would it apply, if it could?

17 MAHAFFIE: If, if the buffer is falling on a slope 25% or greater, which it
18 appears to in certain areas.

19 LORING: Okay.

20 MAHAFFIE: That would be a mapping exercise that should be shown as part of
21 the application, in my opinion.

22 LORING: And, and when you say it appears to in some areas, what, uh,
23 information do you have for that statement?

24 MAHAFFIE: Uh, LiDAR information, which I don't have the buffer alignment
25 for, for my own mapping purposes. Uh, so, there is some assumption there, as

1 well as the topographic survey, which I don't know the accuracy of provided
2 by Semrau and Associates.

3 LORING: Okay. And that, uh, survey, uh, topographic survey as we've been
4 discussing that with, uh, Mr. Semrau, in this matter before, and, uh, looking
5 at that slope, so, in that area. All right. Uh, let's see where we are here.
6 In your, in your opinion, in reviewing the materials that Graham Bunting
7 Associates compiled, do you believe that they studied the impacts of a 200
8 foot buffer along the Samish River wetland?

9 MAHAFFIE: I believe it was rather cursory. Uh, yes, it was addressed, do I
10 feel that it was addressed fully and appropriately, no.

11 LORING: Uh, and what do you mean by that?

12 MAHAFFIE: The minimum statements required in code were, I would say largely
13 there. But, no true analysis made.

14 LORING: Okay. What are some of the likely impacts of having a 200 foot
15 buffer along that wetland?

16 MAHAFFIE: Oh, removal of vegetation, which could affect, um, the thermal
17 protection properties of the river and the wetland. Weather protection at the
18 wetland edge was going to be afforded, if you're mining to that edge, what's
19 going to happen to, you know, the roots and trees that are on that edge?
20 Evasive species infiltration into the buffer area by opening up, uh, that
21 aspect in the south. Um, which is typical in these kind of sites. Uh,
22 wildlife usage through that, uh, riparian corridor. Riparian corridors are
23 known to be, you know, very highly used and frequented corridors by wildlife,
24 uh, water dependent species, you're cutting into that aspect, water quality,
25 uh, hydrologic functions. Uh, it seemed Ms. Semrau had addressed that in some

1 fashion. Whether he would be the qualified person to address that, I
2 question. Truly, that's a longer answer and a more involved answer than you
3 can give verbally in a situation like that. That's why you have an
4 assessment.

5 LORING: And, uh, and I wasn't, I wasn't expecting an exhaustive response,
6 but it sounds like you provided some examples. And is it your understanding
7 that the documents did not study those examples, well, studied those
8 examples?

9 MAHAFFIE: No.

10 LORING: Okay. And it, and it didn't do a comprehensive study of the full
11 impacts of that, uh, that 200 foot buffer than for here?

12 MAHAFFIE: I did not feel so, no.

13 LORING: Okay. Are you, have you reviewed the, uh, documents to see
14 whether a 200 foot buffer would allow the mining to remove the top of the
15 high point, uh, along the stream and the wetland there?

16 MAHAFFIE: It appeared so by the cross sections, yes.

17 LORING: Okay. And I'm going to just very briefly pull up a cross section
18 and we looked at this with Mr., uh, Mr. Semrau as well. I believe I have a
19 version that will actually be viewable when I share the screen, so let me
20 just do this here quickly. Are you seeing this, uh, section A and you can see
21 the top of that, uh, Exhibit C36 Site Plan and Reclamation Maps?

22 MAHAFFIE: Yes.

23 LORING: Okay. And is this what you're thinking of when you say that it
24 appears that the mining would go below that top of the slope?

25 MAHAFFIE: It appears to, uh, look that way, yes.

1 LORING: Okay. And when you look at this site plan, does this appear to
2 have a greater than a 25%, uh, grade, uh, between that wetland edge, well,
3 let's say between the 200 feet to river, mean high water mark and the top of
4 the slope there?

5 MAHAFFIE: It doesn't look like it, uh, excuse me. It does not appear so at
6 this point, no.

7 LORING: Okay. Uh, let's, uh, uh, let me stop sharing that and we'll move
8 on to some of the testimony that we've heard today and your opinion on that
9 testimony. Uh, if, well, actually, just to wrap that one up, if the top of
10 the slope were removed and the mining went to the other side of the top of
11 the slope, could that redirect water that might otherwise flow down towards
12 the wetland from the top of the slope and now redirect it towards the mine
13 pit?

14 MAHAFFIE: Yes. And there, you, to me, you'd also have to consider the
15 future reclamation plans as well in that kind of scenario.

16 LORING: Okay. Okay. And, uh, Mr. Semrau, speaking of this run off, Mr.
17 Semrau testified that, uh, he did not believe there would be any run off, uh,
18 on the hill, on the slope there, that the water would infiltrate immediately
19 upon landing there. Is that your understanding of how, uh, the wetland hydro-
20 , or the hydrology above the wetland would function?

21 MAHAFFIE: Uh, I would not rely on personal observations on a day of rain to
22 make that assumption, no.

23 LORING: You would want to conduct a full evaluation of the run off and
24 how it was functioning?

25 MAHAFFIE: Correct.

1 LORING: Okay. And, uh, it, it sounds like you heard that testimony. Um,
2 your understanding is that, uh, Mr. Semrau made, um, anecdotal observation
3 during some rain at the site?

4 MAHAFFIE: Correct.

5 LORING: Okay. Another, and Mr. Semrau also testified that there's a, uh,
6 a state law, it's a state regulation, he identified it as WAC 365-190-120,
7 it's under the Growth Management Act, are you, actually, are you familiar
8 with that regulation?

9 MAHAFFIE: No, I'm not.

10 LORING: Okay. Well, he testified that that regulation allows...

11 LYNN: I'm going to object, if he, if the witness isn't familiar with
12 it, Mr. Loring can talk about it in closing argument, but it's not
13 appropriate for questioning.

14 LORING: I'll rephrase. I'll rephrase the question on this.

15 REEVES: Go ahead and rephrase, I...

16 LORING: Okay. All right. Mr. Mahaffie, are you aware of any state
17 regulations that allow a slope to be cut into a wetland buffer?

18 MAHAFFIE: N-, [pause] no.

19 LORING: Okay.

20 MAHAFFIE: I, I would clarify that a little, could I clarify that answer a
21 little bit?

22 LORING: Yes.

23 MAHAFFIE: Uh, state law, no, it would still, in my opinion, need to be
24 compliant with, uh, the local jurisdictions, uh, regulations in effect. So,
25

1 there, there's still an ability to do that, but still would need to be
2 compliant with the Critical Areas Ordinance in effect.

3 LORING: So, to look at adjusting a buffer, you would look at the Critical
4 Areas Ordinance itself, is that right?

5 MAHAFFIE: Yes.

6 LORING: Okay. And there's no state law that overrides a local critical...

7 LYNN: I'm...

8 LORING: Buffer to your knowledge?

9 LYNN: Going to object. I'm going to object again. We're, we're really
10 well outside the limits of Mr. Mahaffie's stated expertise.

11 LORING: I, I didn't...

12 LYNN: The question has been asked and answered several times.

13 REEVES: Sustained. Let's move on.

14 LORING: Okay. Uh, Mr. Mahaffie, just to clarify, because I, I just want
15 to follow up on that objection briefly with you, do you have expertise in
16 applying local critical areas codes to, uh, applications for development
17 around wetlands and streams?

18 MAHAFFIE: Yes, I do.

19 LORING: Okay. And does that expertise require you to have some knowledge
20 of state laws that might allow overriding the terms of those local Critical
21 Areas Ordinances?

22 MAHAFFIE: Yes, I do.

23 LORING: Okay. Let's talk a little bit about the Northwest Ecological
24 Services Report. We've touched on this to some extent already. Uh, are you
25

1 familiar with the Department of Natural Resources Stream Typing for streams
2 on the mine property?

3 MAHAFFIE: Yes.

4 LORING: Let me ask, first, what is stream typing?

5 MAHAFFIE: Stream typing is applica-, application of the applicable WACs to
6 physical characteristics of a waterway in, in the State of Washington, to
7 generalize.

8 LORING: To generalize. Is, is, is it a way to characterize streams and
9 their functions?

10 MAHAFFIE: Functions, no. It, it's, it's solely, it's solely a tool to
11 identify the regulated feature and how it's regulated.

12 LORING: And when you say regulated feature, what are you referring to
13 there?

14 MAHAFFIE: The State has identified a water typing system, uh, to qualify,
15 uh, it would be under WAC 222.16.030., a type S stream for a shoreline, type
16 F for a fish bearing, type N with NS for seasonal or just non-fish bearing
17 perennial. And 031 would break it out a little farther and that's where the
18 actual physic-, physical characteristics come from, it's a 1-5 system.

19 LORING: Okay. And what are the ramifications of the different typing for
20 streams?

21 MAHAFFIE: In, uh, outside of shoreline jurisdiction, it's fish bearing
22 versus non-fish bearing. And that doesn't mean whether there's actually fish
23 in the stream or not, it's whether it provides suitable habitat for aquatic
24 life or not.

1 LORING: Okay. And does stream typing dictate, uh, buffers, for example,
2 adjacent to these streams?

3 MAHAFFIE: Yes, it does.

4 LORING: Okay. And are you familiar with any Department of Natural
5 Resources Stream Typing for streams on the, uh, the property to which the
6 haul road is going to be, uh, running?

7 MAHAFFIE: Uh, yes. Two, two different, I would say, data sets are available
8 from the Department of Natural Resources.

9 LORING: What are those two data sets?

10 MAHAFFIE: Uh, their main data set is the Forest Practices Mapping, uh, in
11 general, which includes, uh, mapped streams and mapped stream types. The
12 second data set would be individual Forest Practice Application, which is the
13 boots on the ground type mapping that occurs when a Forest Practice activity
14 occurs.

15 LORING: Okay. And based on your understanding, did, uh, is there, there's
16 DNR stream typing for the site here, is that right?

17 MAHAFFIE: Yes.

18 LORING: Okay. And was, uh, the Northwest Ecological, excuse me, Services
19 document, did I, did it identify stream typing consistent with all of the DNR
20 stream typing for the site?

21 MAHAFFIE: I did not see such documentation, no.

22 LORING: Okay. Were there any discrepancies between the stream typing in
23 that, uh, Northwest Ec-, Ecological Services document and the DNR stream
24 typing that you saw for the site?

25 MAHAFFIE: Yes.

1 LYNN: Could, could I just ask that the question be clarified as to
2 which of the two, uh, so called DNR stream typing data he's referring to?

3 LORING: Yes. Yes. Mr. Mahaffie, when you're referring to the DNR stream
4 typing data, are you talking about, which of the two that you just discussed
5 are you talking about now?

6 MAHAFFIE: I would say both. Can you clarify the first question, then,
7 sorry?

8 LORING: I, I guess what DNR stream typing information did you use when
9 you looked at the site?

10 MAHAFFIE: Both.

11 LORING: Okay. And when I asked you about discrepancies between DNR stream
12 typing and the stream typing that was put forth in that, uh, Northwest
13 Ecological Services document, what stream, DNR stream typing source were you
14 using when you said that there were discrepancies?

15 MAHAFFIE: Both.

16 LORING: Okay.

17 MAHAFFIE: As well as statements and photographs within the assessment.

18 LORING: Okay. And, and when you say statements and photographs within the
19 assessment, are you saying that you saw in those statements and photographs a
20 different typing than was actually applied to the streams when you read the
21 type that was associated with them?

22 MAHAFFIE: Correct.

23 LORING: And, and when I say read the type that was associated with them,
24 I mean, where the report identifies a specific type and puts that right next
25 to the additional, the stream itself, that didn't match up with the photos?

1 MAHAFFIE: Uh, and statements, yes.

2 LORING: And other statements? Okay.

3 MAHAFFIE: So, and, yeah, the report char-, characterized the streams, uh,
4 with individual physical characteristics di-, that did not appear to meet the
5 standards of the typing put forth.

6 LORING: Okay. Uh, what do you mean by that? How would you explain that to
7 a lay person?

8 MAHAFFIE: Uh, the State, uh, has the ability, has put forth worksheets and
9 within the WAC itself, uh, having physical characteristics, such as bank full
10 width. If your bank full width is greater than two feet and has less than a
11 16% gradient, it's typically dictated as a fish bearing stream by its
12 physical characteristics. Barring some natural barriers downstream. So, uh...

13 LORING: Okay.

14 MAHAFFIE: When you have descriptions that conflict with that, that, that's
15 a red flag. That's what I would mean by statements.

16 LORING: Okay. And so there were some statements for specific streams, uh,
17 that, that describe the stream in a way that was different from that typing?

18 MAHAFFIE: Correct.

19 LORING: Okay.

20 MAHAFFIE: That doesn't mean it was inaccurate, but it was not
21 substantiated.

22 LORING: Okay. And speaking about substantiation, did, uh, Northwest
23 Ecological Services provide the methodology and documentation for their
24 stream typing determinations?

25 MAHAFFIE: Uh, based on what I saw, no.

1 LORING: Okay. Would that be a standard practice to provide that
2 information?

3 MAHAFFIE: Yes.

4 LORING: Okay. And why does accurate stream typing matter for this site?

5 MAHAFFIE: It would be two-part, uh, you know, the, the easy part is just
6 the buffer analysis, it's either a 50 foot buffer or a 100 or 150 foot
7 buffer, depending on the stream width and the fish bearing stream. The more,
8 uh, harder, uh, part to nail down, that would be the functional analysis of
9 what that buffer function that might be impacted provides.

10 LORING: Okay.

11 MAHAFFIE: And so you're looking at the potential life cycles of the stream.

12 LORING: Okay. And in your review, did the stream typing that was given to
13 the streams, uh, was it a higher level or lower level stream typing that was
14 applied to the streams than you believe should have been applied based on
15 your opinion and the information you had about it?

16 MAHAFFIE: Lower.

17 LORING: So, the more accurate stream typing would have been a higher
18 level?

19 MAHAFFIE: Yes.

20 LORING: And, and what would the effect of that have been here at this
21 site?

22 MAHAFFIE: Uh, larger buffers.

23 LORING: Okay.

1 MAHAFFIE: Larger buffer by a magnitude of either 50 feet or possibly even
2 an additional 100 foot buffers on top of the 50 foot buffers already
3 assigned.

4 LORING: Okay. And in your opinion, would that larger buffer, or the more
5 accurate stream typing, have affected the potential impacts that should have
6 been analyzed of the truck hauling of the gravel on the site?

7 MAHAFFIE: Yes.

8 LORING: Okay. And that, that did not occur here based on your opinion?

9 MAHAFFIE: No.

10 LORING: Okay. Okay. Uh, are there wetlands along the haul route that are
11 fish-bearing waters?

12 MAHAFFIE: It appears so, yes.

13 LORING: How do you know that?

14 MAHAFFIE: Uh, streams with, uh, typed waters of a fish-bearing status
15 appear to be impounded, most likely by beavers in those areas.

16 LORING: Okay. And were these, uh, were these wetlands identified in the
17 report as fish-bearing?

18 MAHAFFIE: Not that I saw, no.

19 LORING: Okay. Would that have affected an analysis of the impacts of
20 those wetlands or to those wetlands?

21 MAHAFFIE: I believe so, yes.

22 LORING: And, and those impacts were not analyzed accurately as a result
23 of the lack of identification as fish bearing?

24 MAHAFFIE: I'd say that's correct, yes.
25

1 LORING: Okay. Uh, what might those impacts be, uh, that should have been
2 studied, as an example?

3 MAHAFFIE: Treating them as fish and wildlife habitat conservation areas as
4 well as wetlands. Uh, the code and best available science dictates, uh,
5 additional functions and values for riparian areas, in addition to wetland
6 buffer functions and values.

7 LORING: Okay.

8 MAHAFFIE: A lot of it overlaps, but there are additional things to note in
9 that regard.

10 LORING: Okay. And, and those, those were not studied here as a result of
11 this inaccurate, uh, type, or, um, failure to identify as fish bearing?

12 MAHAFFIE: It, it makes the assessment substandard, I would say.

13 LORING: Okay. Are you familiar with the historic use of the internal haul
14 road at this site?

15 MAHAFFIE: Yes.

16 LORING: And based on the Application materials that you reviewed and the
17 hauling that would occur for the gravel there, would you expect the use of
18 the road for that gravel hauling to be the same as the historic use?

19 MAHAFFIE: No.

20 LORING: Uh, how would it differ?

21 MAHAFFIE: Much greater traffic.

22 LORING: Okay. And do you know whether the vehicles would be roughly the
23 same as the previous vehicles?

24 MAHAFFIE: No, they would not.

1 LORING: Okay. And when you say much greater traffic, what do you mean by
2 that?

3 MAHAFFIE: This gets back to more, uh, personal observations over numerous
4 decades, but you would have very infrequent periods of harvest, which would
5 have some higher traffic use, and then long periods of only very infrequent,
6 uh, forestry monitoring and maintenance, you know, maybe a yearly mowing, you
7 know, things like that. It was very common to walk or hike all those internal
8 roads prior to Miles ownership and not see any traffic for months on end.

9 LORING: Okay.

10 MAHAFFIE: So, it's, I wouldn't say it's 100% greater traffic proposed, but
11 it, it's very close.

12 LORING: Okay. So, and what would the impacts of that greater traffic be
13 along the road there and the wetlands and the streams that it crosses?

14 MAHAFFIE: This gets to be a little bit of a gray area between the wider,
15 uh, wildlife and ecological impacts versus the direct impacts to the
16 identified critical areas. But impacts to, uh, species dependent upon those
17 critical areas for any or all parts of their lifecycle, migrating amphibians,
18 fish in the waters, wildlife dependent upon the waters for their lifecycle,
19 uh, light, noise, traffic. It's pretty well documented that frequent traffic
20 affects wildlife, uh, patterns, whether it's their sleep and usage and forage
21 patterns or ability to safely cross, it's well documented impact.

22 LORING: Okay. And you testified earlier that that NES report did not
23 identi-, did not discuss in the larger SEPA impacts that it should have for
24 this, uh, road use, uh, are you also now testifying that it didn't evaluate
25

1 all of the critical areas, uh, stream and wetland impacts associated with
2 that haul road use, too?

3 MAHAFFIE: I feel that it addressed spatial impacts, which is commonly how,
4 uh, such consultants try and identify, uh, these kind of impacts, spatial,
5 because that's kind of how the Code refers to things, uh, without doing the
6 actual analysis of those impacts. And I, I would like to clarify that it did
7 not appear that the NES report, uh, made the claim that they were looking at
8 the larger SEPA impacts. They, they pretty well titled it and identified
9 within that they were only looking at the critical areas within the haul
10 route area.

11 LORING: And thank you for that clarification, too. And, and when you say
12 the spatial impacts, can you clarify what you meant by that?

13 MAHAFFIE: It's very common to easily identify impacts with a proposal by
14 assigning a spatial number. We are impacting a thousand square feet to build
15 a house here, in the buffer. And then you can mitigate, easily, by a number
16 when the code says replace it at one to one, well, we impacted a thousand,
17 now here's a thousand square feet of impact. It's an easy way to do it, and
18 it works in many common scenarios. It does not work, in my opinion, with a
19 change of use, we have an existing road for one person, now, one purpose, and
20 now we're changing the use to another. It's, it's not a, a good way to
21 analyze such impacts.

22 LORING: Okay. And, uh, the report, the NES report didn't, uh, purport to
23 evaluate that impact of the change of use, did it?

24 MAHAFFIE: It did.

25 LORING: Okay.

1 MAHAFFIE: In, uh...

2 LORING: How did, uh, did you hear the testimony from Molly Porter, uh,
3 last Friday where she testified that she was not examining that change in use
4 from, uh, forestry to mining traffic along there?

5 MAHAFFIE: Yes. Uh, I would consider that more an interpretation of her
6 findings, I guess. If I could clarify that a little bit.

7 LORING: Okay. Um, and so her, her findings were that, um, strike that.
8 Uh, let me ask you a little bit about the, the spatial issues that you were
9 talking about a moment ago and ask, would converting the road to a gravel
10 road have had impacts...

11 MAHAFFIE: Yes.

12 LORING: At the site?

13 MAHAFFIE: Yes.

14 LORING: What would some of those impacts have been?

15 MAHAFFIE: Those are a little more easily identified, identifiable impacts.
16 You're, you're removing forest canopy to create a hardened surface. So,
17 you're, if you're in a stream buffer, you're removing shading and erosion
18 control features in the ground and contribution of woody debris to streams,
19 things like that.

20 LORING: Okay. And are you thinking of vegetation cutting along the edge
21 of the road when you talk about that, uh, sort of impact?

22 MAHAFFIE: I'm sorry, I, my understanding of your question was creating the
23 road to begin with. So...

1 LORING: Sorry, I was thinking, uh, sorry about that confusion. No, I was
2 asking about converting the road from a, uh, from a forestry road to a gravel
3 road and the impacts of that type of conversion?

4 LYNN: Uh, I'm, I'm going to object to the question on the basis that
5 it's just not relevant to the proceedings. The road was there before, it was
6 a gravel road before, there's been testimony that it was not widened. I don't
7 know what this had to do with the Proposal that's before the Hearing
8 Examiner.

9 LORING: And if might respond to that, one of the issu-, yeah, one of the
10 primary issues is what has happened with that road, given the roadwork in
11 2018. There actually has not been testimony that it was graveled prior to
12 that time. Uh, we did hear testimony from Mr. Semrau that, in his opinion, it
13 wasn't widened, but we, that's a disputed issue in this matter. In terms of
14 the extent of the impacts that were created by that 2018 work.

15 REEVES: Uh, I'm sorry. I'm trying to wrap my head around it. So,
16 essentially, uh, the testimony is intended to determine what further
17 ecological impacts would occur by changing the nature of the road prior to
18 when the SEPA determination was issued, is that right, Mr. Loring? Just to
19 get a, try to understand what...

20 LORING: That's essentially it. Yes. That is essentially it.

21 REEVES: Uh, while I understand the objection, I'll go ahead and allow it,
22 allow further testimony, but, but we'll just leave it at that for now.

23 LORING: Um, and Mr. Examiner, I know we've been going on a little while
24 at this point, I don't have a lot more, but I've got, you know, another
25 probably ten minutes, maybe 15, would now be a good time to take a, a brief

1 break? I know it's kind of in the middle of some of the questioning, but a
2 brief break between, um, now and lunchtime?

3 REEVES: Yeah. Why don't we do that? So, we'll, we'll take a, a break now
4 and then we'll come back, uh, come back in about ten minutes with this
5 witness.

6 LORING: Thank you, Mr. Examiner. See you at 11:24.

7 [The tape ends.]

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

9 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
10 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party
11 to this action. That on April 30th, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves, that
12 took place on 9/8/22 at 9:00 a.m., regarding the above-captioned matter.

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

15 Signed at Mount Vernon, Washington, this 30th, April of 2024.

16 Janet Williamson

17 Janet Williamson