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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 9-13-22 11:00 AM  
14 Appeal of Mitigated Determination of )  
15 Significance by Central Samish Valley )  
16 Neighbors

17 Transcription Date: May 8<sup>th</sup>, 2024

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

20 REEVES: Excellent. Okay. We're back on the record, I think, at this  
21 point, uh, Mr. D'Avignon was going to continue, uh, with his witnesses, with  
22 Leah Forbes, is that right?

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

24 REEVES: Okay. Uh, Leah Forbes, I'll get you sworn in. Do you swear or  
25 affirm to tell the truth in the testimony you give here today?

FORBES: Yes, I do.

REEVES: Uh, if you could state and spell your name for the recording?

FORBES: Leah Forbes, L-e-a-h F-o-r-b-e-s.

1 REEVES: Great. Thank you very much. And, uh, thank you for being here and  
2 for your tech help earlier, uh, several days ago, but I think we're hearing  
3 from you for different reasons at this point and I'll let Mr. D'Avignon begin  
4 his questioning.

5 D'AVIGNON: Thank you, Mr. Examiner. Uh, Ms. Forbes, what's your job and  
6 title?

7 FORBES: I'm a Senior Planner with, uh, Natural Resources in, uh, Skagit  
8 County Planning and Development Services. I review Applications for  
9 compliance with crucial areas, [inaudible] regulation.

10 D'AVIGNON: Okay. And so you...

11 REEVES: And, sorry. It's a little quiet, I'm just making sure everyone  
12 can hear Ms. Forbes okay? I don't know if that was just me. It was just a  
13 little quiet on the volume. Can you just say one...

14 FORBES: I'm, uh, yeah, I'm stuck with hearing buds here at my desk, so  
15 hopefully you can hear me okay?

16 REEVES: I, I think that was a little better. Sorry to interrupt.

17 FORBES: Okay.

18 REEVES: Go ahead.

19 D'AVIGNON: Um, did you participate in the, the review of the Application for  
20 the Grip Mine, Grip Road mine?

21 FORBES: Um, my review of the direct Application materials didn't begin  
22 until December of 2021. Uh, my review was limited to the site assessments  
23 prepared for the haul road.

24 D'AVIGNON: Okay. Did you, um, comment on the MDNS?

25 FORBES: Uh, only to provide conditions related to the haul road.

1 D'AVIGNON: Okay. And you said you started in December 2021?

2 FORBES: Correct.

3 D'AVIGNON: And as to the haul road, uh, what, what documents did you review?

4 FORBES: I reviewed the site assessment prepared by Northwest Ecological  
5 Services, as well as the field report, I believe it was Associated Earth  
6 Sciences.

7 D'AVIGNON: Would you say that ag-, one more time? I think I, I encountered  
8 the same issue Mr. Reeves had, uh, raised.

9 FORBES: Okay. Uh, I reviewed the report prepared by Northwest Ecological  
10 Services related to wetland and streams and the geological hazard assessment  
11 performed by, um, North-, uh, Associated Earth Sciences.

12 D'AVIGNON: Okay. And what was your impression of those reports?

13 FORBES: I, they appeared complete, they met the requirement of the  
14 Critical Areas Ordinance for review of, um, it's just an access road.

15 D'AVIGNON: Okay. And based on those reports, did you see any significant  
16 impacts to any wetlands?

17 FORBES: No. There were no new direct impacts to wetlands associated with  
18 the road.

19 D'AVIGNON: Okay. And you've heard, you've been listening in on the testimony  
20 in this Hearing for the last, I guess, few days, but over a few weeks?

21 FORBES: Yes. Yes, I have.

22 D'AVIGNON: Um, so you, you're familiar with the, um, I, excuse me, Mr.  
23 Examiner, there's some noise outside of my office that's a little  
24 distracting. I'm going to go kick them out in front and be right back.

1 REEVES: Yeah. Go, go ahead. Takes a village. And while he's doing that,  
2 Leah Forbes, I'm just trying to make sure we get the audio sorted. I, it is...  
3 FORBES: Okay.  
4 REEVES: Sort of a little quieter than one would hope, but...  
5 FORBES: I don't know if me holding the mic up in front of my face is  
6 making any difference or not.  
7 REEVES: I don't, I didn't get the sense that it did and that's...  
8 FORBES: Okay.  
9 REEVES: Going to be uncomfortable in the long run for you, I suspect.  
10 FORBES: You can just ask me fewer questions, then.  
11 D'AVIGNON: We'll do our best.  
12 REEVES: Well, maybe try, try to let the mic down because...  
13 FORBES: Okay.  
14 REEVES: I recognize...  
15 FORBES: Does that...  
16 REEVES: I know Mr. Loring will have several questions and I...  
17 FORBES: Yeah.  
18 REEVES: Don't want you to feel like your arm is going to fall off.  
19 FORBES: Um, somebody, somebody offered me some different earbuds so let  
20 me try those.  
21 REEVES: Yeah. Let's, we, we want to make sure everybody is comfortable  
22 and, uh, you know, especially your dual duty, uh, making sure our tech  
23 doesn't, uh, implode. That is not her job, at all, I just want to be clear  
24 for the record. Uh, let's see if...  
25 FORBES: Okay. Are these any better?

1 REEVES: I think it's more the pickup on the computer, but, but maybe just  
2 say a couple of words.

3 FORBES: I don't know if that's going to make any difference or not, I'm  
4 checking my settings here.

5 REEVES: It occurs to me if Leah Forbes can't solve this problem, we're  
6 really in trouble.

7 FORBES: This is, this is the challenge, I don't have a laptop so I can't  
8 go sit in a conference room and, and use that instead, so...

9 REEVES: I, I think you're okay. I just, if you can, I, I hate to force  
10 you to yell at all of us, but try to speak a little more loudly than you  
11 might normally...

12 FORBES: Okay.

13 REEVES: I think, I think we're going to be okay.

14 FORBES: All right. Let's give it a shot.

15 REEVES: Okay. Go ahead, Mr. D'Avignon.

16 D'AVIGNON: I believe where I was at was you heard the, uh, testimony  
17 regarding the resurfacing of the mine haul road?

18 FORBES: Yes, I had.

19 D'AVIGNON: Uh, do you believe that that in and of itself was a significant  
20 impact on any of the wetlands, um, along the haul road?

21 FORBES: No, I do not.

22 D'AVIGNON: And you had mentioned that you had reviewed the Northwest...

23 FORBES: Ecological Services.

24 D'AVIGNON: Ecological Services, sorry, I got confused on what the E stood  
25 for, whether it was Environmental or not. Um, and it, there's two reports,

1 there's, uh, an assessment, impact assessment and mitigation plan, um, and  
2 then also, uh...

3 FORBES: A delineation...

4 D'AVIGNON: Critical Areas Assessment.

5 FORBES: Yeah. Yeah.

6 D'AVIGNON: Uh, did you review both of those?

7 FORBES: I have now reviewed both of those, yeah.

8 D'AVIGNON: But at the time the MDNS was issued, had you reviewed both of  
9 those?

10 FORBES: I had only reviewed the Impact Assessment and Mitigation Plan for  
11 the MDNS.

12 D'AVIGNON: Um, but you've, you're reviewed both of them since then?

13 FORBES: Yes, I have.

14 D'AVIGNON: And would your analysis change now that you've read both of them?

15 FORBES: No, it would not.

16 D'AVIGNON: Um, and in reviewing the Critical Areas Assessment, um, did it  
17 provide any additional information that would have been helpful to your  
18 review?

19 FORBES: Nothing significant.

20 D'AVIGNON: Okay. In your, in your job, are you, you work with buffers for  
21 wetlands and rivers?

22 FORBES: Yes, I do.

23 D'AVIGNON: And other water bodies?

24 FORBES: Yes.

1 D'AVIGNON: And so, you're familiar with the testimony about the buffer from  
2 the Samish River in this particular case?

3 FORBES: Yes.

4 D'AVIGNON: And what it, I guess, cut to the chase, that it says 200 feet in  
5 the, the MDNS?

6 FORBES: Yes.

7 D'AVIGNON: Um, is that a, I'm going to take a step back. Is it your  
8 understanding that the l-, impact, the Land Use Impact is high or moderate in  
9 this particular situation?

10 FORBES: I did not directly review that information to determine the land  
11 use impact, the level of land use impact. Uh, I had since reviewed it a bit  
12 of the argument on both sides, um, but I did not make the determination for  
13 the setback from, from the ordinary high water mark to the mine.

14 D'AVIGNON: Okay. Do you know who did?

15 FORBES: I believe that was John Cooper [phonetic].

16 D'AVIGNON: Okay. Is John Cooper with the County at this time?

17 FORBES: No, he has since retired.

18 D'AVIGNON: Okay. So, but, I guess, from your perspective, at this point, do  
19 you consider this to be a high impact use?

20 FORBES: I have not reviewed enough of the materials to make a  
21 determination if it is a high or moderate intensity land use impact.

22 D'AVIGNON: Okay. Um, have you reviewed the, uh, wildlife assessment for, um,  
23 2016?

24 FORBES: Is that the Graham Bunting?

25 D'AVIGNON: Yes. This is where they scored the wildlife.

1 FORBES: I, I had reviewed, I believe at some point, I had reviewed all of  
2 the, uh, wildlife assessments prepared by Graham Bunting.

3 D'AVIGNON: Okay. Um, do you know what the wildlife four was?

4 FORBES: Oh, for the, the wetland associated with the river?

5 D'AVIGNON: Yes, thank you.

6 FORBES: I, I believe, uh, at the time, the, the hab-, the habitat score  
7 for that wetland was a 30.

8 D'AVIGNON: Okay. And, and just for the record, um, Mr. Examiner, feeling  
9 extra just discombobulated at the moment, my apologies. Uh, that is Exhibit  
10 C-, probably as I wrote it down, but I got about 50 pieces of paper of at  
11 this point in time.

12 REEVES: That's okay. Is this the, the 20-, well, there's been quite a  
13 few, is this Exhibit 8, the Critical Areas Assessment that was from December  
14 2021 or is this Graham Buntings 2015 assessment? I, I guess I'm just trying  
15 to figure out...

16 D'AVIGNON: Yeah. No, it is, it's from 20-, that stamp marked, yeah, August  
17 20<sup>th</sup>, 2015, Graham Bunting, Wildlife, Fish and Wildlife Assessment, uh, for  
18 the three parcels of the mine site.

19 REEVES: Okay. So, that's C5, the 2015 Graham Bunting Assessment and  
20 specifically the reference was to a habitat score as opposed to a wildlife  
21 score, which I don't think is a thing, but I, I think Ms., uh, Forbes  
22 clarified that, is that right?

23 D'AVIGNON: That is correct, thank you very much, Mr. Examiner. Are you  
24 familiar with what, uh, the buffer requirements were at the time of the  
25 Application being submitted?

1 FORBES: Yes, I am.

2 D'AVIGNON: Um, are they the same as they are today?

3 FORBES: No, they are not.

4 D'AVIGNON: Do you know how they've changed in that time?

5 FORBES: Uh, in, uh, about 2016 ecology made sev-, well, we adopted some  
6 recommended change within the Department of Ecology on wet-, the wetland  
7 rating system, that changed the scores. That could be achieved when rating a  
8 wetland and so our buffer width requirements were changed to reflect the  
9 change in score. And, at the time, the wetlands with a habitat score of 30  
10 can have a buffer of 200 feet or 270 feet, depending on the land use impact.

11 D'AVIGNON: Okay. And Mr. Examiner, I would ask that you take official notice  
12 of Ordinance 0-, or O20080014. Uh, this is the Ordinance that came, uh, about  
13 in 2008, uh, as part of the Annual Comprehensive Plan update, it's, um, that  
14 enacted the, the Critical Area Ordinance as it was in 2016, prior to  
15 amendments that year.

16 REEVES: S-, okay, sorry. Now, I'm taking notice of, A) can you read the  
17 ordinance one more time for me, Mr. D'Avignon?

18 D'AVIGNON: Yes. This would be O20080014.

19 REEVES: And that was, the date on that, if you have that?

20 D'AVIGNON: This was enacted on December 23<sup>rd</sup>, 2008.

21 REEVES: Okay. So, uh, just to clarify my understanding of the back and  
22 forth with Ms. Forbes just now, essentially, Ms. Forbes, when you were  
23 testifying about a habitat score of 30 for a wetland would result in a 200 or  
24 270 foot buffer, depending on, on other factors, that is in reference to the  
25 Critical Areas Ordinance prior to then the change of adopted, uh, when DOE

1 changed its ratings system sometime in, af-, after the Application initially  
2 came in. Am I understanding that right?

3 FORBES: Yeah. The ordinance with a 2008 adoption date was in effect when  
4 this Application was submitted. Um, we don't automatically adopt Ecology's  
5 recommended changes, we reviewed and incorporate them into our Code  
6 [inaudible] in, uh, 2016.

7 REEVES: Right. But in terms of, uh, and I can let the lawyers argue about  
8 vesting later, but in terms of my understanding and your understanding, make  
9 sure I understand your understanding is that the, the wetlands were reviewed  
10 under the previous, uh, you know, earlier version which is the version  
11 captured in 2008? Is that...

12 FORBES: Yeah.

13 REEVES: An accurate assessment?

14 FORBES: Yes, that is correct.

15 REEVES: Okay. I think I, I think I get it now. Mr. D'Avignon, go ahead.

16 D'AVIGNON: Yes. So, you know, if we look at the current Code, and it's  
17 confusing because they don't have a habitat scores that go up to 30, the  
18 reason is is because the law changed.

19 FORBES: Correct.

20 D'AVIGNON: Okay. And, uh, one of the changes was also buffer sizes?

21 FORBES: Correct.

22 D'AVIGNON: And it was 200 feet for, in the 20-, in the 2008 code I'm going  
23 to use, um, 200 feet was the size of a buffer for a moderate impact use?

24 FORBES: Uh, 200 foot buffer, moderate impact land use, I believe they  
25 called it intensity at the time, for a Category 2 wetland.

1 D'AVIGNON: Okay. And there's been a lot of discussion in this case about  
2 whether it's, in fact, a high impact use, if it is a high impact use, can you  
3 still apply, uh, a moderate or a medium, I forget what the term is already,  
4 uh, buffer to it?

5 FORBES: Yes, you can.

6 D'AVIGNON: Um, and under what circumstances is that feasible?

7 FORBES: Um, under a number of conditions our Code does reference  
8 Department of Ecology, um, document that's already been presented here, um,  
9 in Table 8C8, I do not have the Ecology document. I believe it's a five,  
10 well, you've had, you've had this document before, but [inaudible] table has  
11 been referenced previously.

12 D'AVIGNON: And, and just for the record, that document is Exhibit A59. So,  
13 in, in this particular matter, do you think there are circumstances that  
14 warrant, uh, a moderate, uh, buffer?

15 FORBES: Uh, based on the information I have reviewed, I, I see the logic  
16 behind the request for a moderate intensity land use, yeah.

17 D'AVIGNON: Okay. And if, do you think it would, that there is, that without  
18 a larger buffer, uh, there would be a significant impact to the wetlands?

19 FORBES: Since my direct review is limited to the haul road, I don't feel  
20 I have enough information to determine whether or not a 200 or 300 foot  
21 buffer from the wetland associated with the Samish River, if, if that would  
22 make a difference in the impact.

23 D'AVIGNON: Okay. Um, do you recall, uh, testimony [sic], testimony [sic],  
24 testimony by Matt Mahaffie, uh, regarding how to classify the use intensity  
25 of the haul road?

1 FORBES: I, I did listen to his testimony, I'm not sure I recall that  
2 specifically.

3 D'AVIGNON: All right. Um, do you recall him referencing a specific ecology  
4 guidance document? Um, he noted it was publication 22-06-005?

5 FORBES: Yes, I do recall that.

6 D'AVIGNON: Okay. Are you familiar with that document?

7 FORBES: I have, I have begun review of that document, it is draft  
8 guidance provided for local jurisdictions from the Department of Ecology.

9 D'AVIGNON: Uh, so, it is not currently actual guidance?

10 FORBES: Correct. It is draft guidance and guidance to local  
11 jurisdictions. They're, those are recommendations from Ecology for local  
12 jurisdictions to consider when updating their, their code.

13 D'AVIGNON: Okay. And I, I want to touch on the ordinary high water mark. Um,  
14 have you been able to look at the delineation, um, of the wetlands on the  
15 Samish River?

16 FORBES: Yes, I have.

17 D'AVIGNON: And do you find them to be adequately delineated for purposes of  
18 establishing the buffer?

19 FORBES: Yes, I do.

20 D'AVIGNON: Okay. And indulge me for one second as I, I double check my  
21 notes.

22 REEVES: Sure. I'll hop in with a question while you're checking your  
23 notes. Uh, Ms. Forbes, earlier, you had testified, I believe, about, uh, Mr.  
24 Cooper, who is no longer with the County, and he was the one that, that sort  
25 of made the determination as to whether the land use in question constituted

1 high or moderate intensity. Um, I guess my question is, if he's no longer  
2 there, who would be the, if one were to re-review or, you know, if, if there  
3 was a question as to what the intensity ought to be characterized as, who  
4 would ultimately make that determination these days?

5 FORBES: My team would make that, that determination.

6 REEVES: Your, your team and can you clarify sort of what that means?

7 FORBES: Oh, yes. Sorry. Um, my direct supervisor, uh, and I would work  
8 with, um, the rest of our team, there are now, I believe four of us, four and  
9 a half of us that work on the team Natural Resources. For a project like  
10 this, we would discuss the, uh, the information provided and make those  
11 recommendations and make a determination at that point.

12 REEVES: Okay. So, the Natural Resources Team at the County, of which  
13 you're a member, and there are, uh, you said three or four other members,  
14 would, would, uh, analyze that, uh, and then produce a determination, uh,  
15 would it be if, if that were to be reassessed at this point. That, that was  
16 what I was seeking clarification on.

17 FORBES: Yep. Correct.

18 REEVES: Great. Thank you. Uh, Mr. D'Avignon, go ahead.

19 D'AVIGNON: Uh, I think there's a couple more things. Uh, the Code requires  
20 that extra 25 feet be added to a buffer that does not extend to the top of  
21 the slope. Um, in this particular case, is, that was not specifically  
22 mentioned in the MDNS, is that correct?

23 FORBES: I do not recall seeing it in the MDNS, no.

24 D'AVIGNON: Um, but it would...

1 REEVES: Sorry, when you say the Code, I want to be clear, are you  
2 referencing the 2008 version? Just, just so there's no confusion?  
3 D'AVIGNON: Uh, yes.  
4 REEVES: Okay. Sorry to interrupt.  
5 FORBES: That, that, that particular section of the Code is the same now  
6 as it was in 2008.  
7 D'AVIGNON: Uh, but that wouldn't, I guess the MDNS does generally require  
8 compliance with the Critical Areas Ordinance?  
9 FORBES: Correct.  
10 D'AVIGNON: So, even though it doesn't specifically say an extra 25 feet, if  
11 it's not to the top of the slope, it, in fact, would require that?  
12 FORBES: Yes, it does require that.  
13 D'AVIGNON: Okay. Um, would there need to be a, I guess, one way to describe  
14 it is a buffer on the buffer, I don't know if you recall Mr. Mahaffie, uh,  
15 talking about a maintenance corridor?  
16 FORBES: Uh, yes, I am familiar with, with that, um, when that particular  
17 section of Code was written, it was specific to, uh, development that  
18 included structures, uh, such as homesteads, things like that. It's, it, it's  
19 very, it seemed, to me it's very clear in that section of Code 1424080, that  
20 it would, it is specific to structures. Talked about maintenance of  
21 structures.  
22 D'AVIGNON: Okay. So you wouldn't apply that to a berm that surrounded the  
23 mine?  
24 FORBES: No, I would not.

1 REEVES: Sorry, I'm going to dive in again just to make sure I understood.  
2 So, uh, rather than the term buffer on a buffer, I guess, in my mind, I  
3 would, the way I would normally think about such things is you have a buffer,  
4 but then often you have what I think of as the required structural set back,  
5 uh, often because the IFC fire code or something, is that what we're talking  
6 about here, that maintenance corridor is a structural set back so that you  
7 can't build a structure within ten, 15, whatever that setback is, is that  
8 what we're talking about?

9 FORBES: Yeah. But the Code calls it a maintenance corridor. And does  
10 specifically list things that can be within that maintenance corridor and it  
11 does not include structures.

12 REEVES: Got it. Okay. Thank you for clarifying.

13 D'AVIGNON: As the MDNS is currently written as it relates to the areas in  
14 which you work, uh, do you think it adequately mitigates against significant  
15 impacts to the environment?

16 FORBES: Yes, I do.

17 D'AVIGNON: Uh, no further questions at this time, Mr. Examiner.

18 REEVES: Great. I think next I'll go to Bill Lynn?

19 LYNN: Thank you. Um, I do think it should be noted that my skills in  
20 the muting and unmuting area have improved since the beginning of the  
21 Hearing.

22 REEVES: Well, it's early in the day, Bill. But, uh, I'll give you a half  
23 star for the moment.

24 LYNN: Yeah. I realize I might be jinxing it. Uh...

1 EHRlichman: Mr. Examiner, I, I think it's improved as well because it's been  
2 very quiet over there.

3 REEVES: Oh, man, all right.

4 LYNN: Fair enough.

5 REEVES: Go ahead, Mr. Lynn. We got the monkey corridor, the peanut  
6 gallery, we've got everything going on.

7 LYNN: Thank you. Um, Ms. Forbes, um, have you ever, uh, has the County,  
8 to your knowledge, ever required an assessment of critical areas that, where  
9 the impacts would result only from a change in the volume or type of traffic  
10 on a road?

11 FORBES: No, I'm not.

12 LYNN: Are you aware of any management recommendations for such a change  
13 of use, if you want to characterize it as such?

14 FORBES: Uh, only, uh, those, for this specific project, those that were  
15 recommended, um, in the reports prepared for the haul road.

16 LYNN: Um, so you're talking about the NES Report and the mitigations  
17 measures that were incorporated into the MDN-, MDNS?

18 FORBES: Correct.

19 LYNN: Uh, you also, I think, indicated that you reviewed, or your  
20 department reviewed the, um, the geotechnical portion of the critical areas,  
21 uh, evaluation, the one submitted by AES?

22 FORBES: For the haul road specifically, yes.

23 LYNN: And, uh, in the case of something like that prepared by, uh, or,  
24 or stamped by an engineer, does the department rely more heavily on the  
25

1 report and the certification by the engineer that, uh, he or she is willing  
2 to stamp it?

3 FORBES: Yes, yes, we do.

4 LYNN: Um, uh, I, I know you haven't, uh, had the chance you would like  
5 to fully evaluate the intensity of the activity, but is it fair to say you  
6 would agree that there is no specific listing for surface mines and that the  
7 exercise of judgement would be required in order to make an assessment of the  
8 appropriate intensity for a particular proposal?

9 FORBES: Yes, I would agree with that.

10 LYNN: And then one final question about the delineation, uh, is it  
11 correct that in order for a wetland, um, to be found or, or delineated, I  
12 guess, determined, that all three parameters have to be found that is  
13 appropriate soils, appropriate plants and appropriate hydrology and without,  
14 uh, all three of those being present, there's no wetland under the standard  
15 procedures?

16 FORBES: That is correct.

17 LYNN: Okay. So, uh, that's all I have. Thank you.

18 REEVES: Okay. Uh, Mr. Ehrlichman, I, I think this probably isn't a  
19 witness you had questions for in terms of Grip Road, but let me check with  
20 you real quick?

21 EHRLICHMAN: Correct. Thank you.

22 REEVES: Okay. Mr. Loring, move to you?

23 LORING: Thank you, Mr. Examiner. Scrolling through my notes, uh, we went  
24 through a little bit here. Uh, hello, Ms. Forbes, good morning.

25 FORBES: Good morning.

1 LORING: Uh, you covered quite a bit of ground, I, I hope to cover all of  
2 it, but in a little bit more summary form, uh, with you here today. I, I  
3 understand my bandwidth has been a little off today, if you find that you're  
4 not hearing my question, please just let me know. Um...

5 FORBES: Okay.

6 LORING: And I'll shut off the video to help that out. Uh, so, we heard  
7 some testimony from you. At the beginning of your testimony, I believe you  
8 stated that you were not familiar, or that you, you were brought into this  
9 matter in December 2021, is that right, or your review of the Application  
10 materials?

11 FORBES: My review of the assessment compared for the haul road which  
12 began in 2021. I did not...

13 LORING: There we go.

14 FORBES: I did not review anything before that.

15 LORING: Okay. Thanks. Sorry, I think my camera slowed down. I, I hope you  
16 don't mind, I am going to shut it off, um...

17 FORBES: That's fine.

18 LORING: [Inaudible] sound, thanks. Okay. Uh, but later on, you mentioned  
19 that you had reviewed all of the materials related to critical areas impacts  
20 for the project, is that right?

21 FORBES: I have reviewed the reports prepared by Graham Bunting Associates  
22 that were provided, uh, in the record, as well as the one for the haul road.

23 LORING: Okay. And you mentioned early on that you did not review, uh, one  
24 of the reports from, uh, Northwest Ecological Services by the time of the  
25 MDNS, is that right?

1 FORBES: That is correct.

2 LORING: Okay. Is that a standard procedure there, uh, uh, for you at  
3 Skagit County to not review materials like that prior to the issuance of a  
4 MDNS?

5 FORBES: No, it's not.

6 LORING: All right. Is it your understanding that the Skagit County Code  
7 actually requires information like that provided in that second report prior  
8 to an issuance of a MDNS?

9 FORBES: Yes.

10 LORING: Okay. Okay. And you dis-, I, I believe some of your testimony you  
11 talked about reports appearing complete, uh, sorry, this is back to those NES  
12 Reports. I believe you testified that they appeared complete and there were  
13 no new direct impacts to the wetlands, is that, is that accurate?

14 FORBES: Yes.

15 LORING: Okay. You weren't testifying about whether the roadwork in 2018  
16 had had any impacts, were you?

17 FORBES: No, I was not. It was just the use of the road.

18 LORING: Okay. So, at, at this point, you, uh, you, do you have an opinion  
19 on whether that roadwork in 2018 had any impacts on the wetlands or the  
20 streams along the internal haul road?

21 FORBES: The roadwork that was completed in 2018 would have been allowed  
22 without Standard Critical Areas Review pursuant to 14.24.070 Number 3 of  
23 routine maintenance of an existing private road.

24 LORING: Would it be...

25 FORBES: So...

1 LORING: Considered an existing private road for Skagit County given that  
2 the County had never actually reviewed the road installation itself?

3 FORBES: Yes.

4 LORING: Okay. Okay. So, your position is that roads can be constructed  
5 and maintained in Skagit County without any review of Critical Areas Impacts,  
6 is that correct?

7 FORBES: That is not a, no, that is not a complete question. Forest  
8 practice roads that are constructed under Forest Practice Regulations are  
9 reviewed by DNR. And those can be, once constructed, can be considered  
10 existing private road under the Critical Areas Ordinance.

11 LORING: And is it your understanding that DNR reviews, reviews forest  
12 road construction for compliance with local Critical Areas Ordinances?

13 FORBES: No.

14 LORING: In fact, they don't review them for local Critical Areas  
15 Ordinance compliance, do they?

16 FORBES: No.

17 LORING: Okay. So, given that the road that we're talking about here,  
18 well, let me ask you this, do you have any knowledge that the private haul  
19 road here was reviewed for impacts to critical areas, uh, at any time prior  
20 to 2021?

21 FORBES: No.

22 LORING: Okay. Have you seen any information to that effect, that it would  
23 have been reviewed for critical areas impacts when it was installed?

24 FORBES: No.

1 LORING: Uh, have you seen any information about it being reviewed for  
2 impacts, uh, associated with the roadwork in 2018?

3 FORBES: No.

4 LORING: Okay. So, do you, uh, do you know the difference in volume  
5 between the vehicles that would have been, uh, used on the site in the  
6 private haul road for forestry and those that would be used for hauling  
7 gravel?

8 FORBES: No.

9 LORING: Okay. Do you know the difference in weights in those vehicles?

10 FORBES: No.

11 LORING: Okay. Uh, no, that's fine. Uh, you, I believe you did testify  
12 that you believe the roadwork that had occurred in 2018 would not have had a  
13 significant impact, is that accurate?

14 FORBES: Yes.

15 LORING: And the r-, the vegetation that was removed as part of that work,  
16 you believe the vegetation, that would not have had a significant impact?

17 FORBES: Correct.

18 LORING: Including on the wetlands that are adjacent to the road?

19 FORBES: The information that I have seen, including looking at historic,  
20 not historic, but older aerial photos, any vegetation that was removed, would  
21 have been done as part of maintenance of the existing access of the road, of  
22 the opening through the trees appears to be [inaudible] similar now as to  
23 what it was prior.

24 LORING: And so, uh, removing, and when you say prior, um...

25 FORBES: Prior, prior to the...

1 LORING: Did you review aerial photos of, yeah, did you review aerial  
2 photos of the site in 2018?

3 FORBES: Uh, I have, I have odd years, so I have 2017, I have 2019. I also  
4 have them significantly older than that.

5 LORING: Okay. Have you reviewed the amount of vegetation removal that  
6 occurred between 27 and 20-, uh, 2017 and 2019?

7 FORBES: Only on aerial photos.

8 LORING: Okay. Have you tried to quantify the amount of vegetation removal  
9 that occurred?

10 FORBES: No.

11 LORING: Okay. Have you compared the widths of the road from 2017 to 2019?

12 FORBES: Yes.

13 LORING: Okay. Do you have an evidence of that?

14 FORBES: I'm looking at an aerial photo right now.

15 LORING: Okay. What Exhibit number is that?

16 FORBES: Uh, I don't know that it is an Exhibit number.

17 LORING: Okay. Are you looking at other materials that aren't Exhibits in  
18 this matter?

19 FORBES: Uh, I'm looking at the County's, uh, aerial photos that are  
20 available on iMap.

21 LORING: Okay. And you, have you conducted a, a side-by-side analysis of  
22 photos prior to the 2018 work and after the 2018 work?

23 FORBES: Yes.

24 LORING: And did you hear testimony from Appellant's witnesses that the  
25 road had been widened?

1 FORBES: No. Well, I may have heard that testimony, but I don't recall. I,  
2 I don't recall...

3 LORING: Okay.

4 FORBES: If I heard the testimony.

5 LORING: Okay. Let's talk a little bit more about...

6 REEVES: Sorry.

7 LORING: The vege...

8 REEVES: Uh, apologies, Mr. Loring, can you clarify, I'm trying to  
9 remember the gentleman's name that sort of explicitly testified about this, I  
10 don't know if that will spark anyone's memory. Can you just...

11 LORING: Well, John, John Day did testify to it directly. Uh, and...

12 REEVES: Okay.

13 LORING: Also, Nora Cammer [phonetic] testified to having done so, too.  
14 John Day provided the maps.

15 REEVES: That, that's what I was, thank you for clarifying. That's what I  
16 was thinking of. John Day and he had also prepared those Exhibits that, that  
17 use the mapping tools, et cetera, is that right?

18 LORING: That's right. Yeah.

19 REEVES: Sorry. Okay. Thank you. I just wanted to make sure I was  
20 following along.

21 LORING: Okay. Thanks. Uh, let's see here, Ms. Forbes, um, you were aware  
22 that there are streams that cross this haul road?

23 FORBES: Yes.

24 LORING: Okay. And, uh, your testimony is vegetation along those streams  
25 as part of the roadwork in 2018 would not have had an impact on the streams?

1 FORBES: Can you repeat that...

2 REEVES: Hold on.

3 FORBES: You cut out a little bit?

4 REEVES: Yeah. Mr...

5 LORING: Okay. Thanks.

6 REEVES: Loring, it cut out entirely. I'm wondering, do you want to hop

7 off and hop back on real quick and see if that helps?

8 LORING: I'll do that and, and if that doesn't work, I can always just add

9 the mute function, too, and then that should help, too. That's a joke about

10 shutting on the camera and the voice. All right. Just a second, I'll be right

11 back, thank you for your patience.

12 REEVES: I think he was, he was, uh, implying that on me on the mu-, he'll

13 mute me and that will fix the problem. Uh, it's my jumping in that throws

14 everything off, I'm well aware.

15 D'AVIGNON: I don't think that's how I took it.

16 REEVES: No, certainly not.

17 D'AVIGNON: I think he was going to mute himself.

18 REEVES: I, I took it that way as well. There's Mr. Loring, let's see if

19 that helped at all.

20 LORING: Thank you. Yes. Hello again. And let's hope for a little bit

21 better. I did notice it has been off a little today.

22 REEVES: Sure. Why don't you...

23 LORING: Yeah.

24 REEVES: Repeat your last question, Mr. Loring?

25

1 LORING: Thank you. Yes, uh, my question was, I believe, about the  
2 vegetation cutting along streams that passed through the road, this internal  
3 haul road, the vegetation cutting that occurred along there in 2018. I was  
4 just, uh, getting confirmation from Ms. Forbes that she believes that didn't  
5 have an impact on the stream functions?

6 FORBES: Correct.

7 LORING: Okay. There was a lot of conversation about the, uh, land use  
8 impact of the project here, the, the proposed surface mine, as well as the  
9 road, uh, and I believe you testified that with regard to the surface mine,  
10 you were not involved in making that initial determination about the impact  
11 level, is that right?

12 FORBES: That's correct.

13 LORING: Okay. But I believe you testified later on that you agreed with  
14 medium intensity, uh, impact along that Samish River, uh, wetland for the  
15 mine, is that correct?

16 FORBES: I said I understood the logic behind the request.

17 LORING: Okay. Do you agree that, uh, that a mine, surface mine is a  
18 medium impact land use?

19 FORBES: Uh, I am, do not have enough information to make that  
20 determination. There are too many, too many ifs, ands or buts, too many  
21 questions that could be raised, too many possible [inaudible] it would be  
22 very project and site specific.

23 LORING: Okay. What information would you need?

24 FORBES: I couldn't answer that question, at this point.

1 LORING: Okay. Your, your job entails the review of projects for Critical  
2 Areas Impacts, right?

3 FORBES: Yes.

4 LORING: And in reviewing those projects for Critical Areas Impacts, you  
5 used the information about a project to determine whether it will have an  
6 impact on a critical area?

7 FORBES: I use all of the Application materials submitted, the site  
8 assessments, the mitigation recommendations, code recommendations or code  
9 requirements, agency recommendations, things like that.

10 LORING: Okay. And you've testified that you're familiar with the code  
11 requirements in Skagit County related to wetlands, for example, is that  
12 right?

13 FORBES: Correct. Yes.

14 LORING: And, and you've testified that you reviewed all of the  
15 Application materials from Graham Bunting and Associates and also Northwest  
16 Ecological Services, right?

17 FORBES: Yes.

18 LORING: So, what information, other than all of the project description  
19 related to potential wetland impacts, and the Code itself, would you need to  
20 determine the intensity of this land use?

21 FORBES: I don't have all of the project details, so I don't know.

22 LORING: Okay. Would you need to know how much vegetation would be removed  
23 as part of the project?

24 FORBES: Yes.

25 LORING: Okay. Would you need to know whether soils would be disturbed?

1 FORBES: Yes.

2 LORING: Okay. Are you, are you fam-, so, let me ask you this, are you  
3 familiar with the fact that the project we've been discussing today is a  
4 surface mine?

5 FORBES: Yes.

6 LORING: Are you aware that it contemplates the removal of all vegetation  
7 outside of the Samish River wetland buffer, up to that buffer?

8 FORBES: Yes.

9 LORING: Are you aware that it entails the removal of all of the soils up  
10 to the edge of the buffer?

11 FORBES: I don't have that information.

12 LORING: Okay. Uh, is it an acceptable assumption that a gravel mine that  
13 mines for gravel would probably remove the soils?

14 FORBES: Yes. But to what extent, I don't know.

15 LORING: Okay. So, would a gravel mine that removes all of the vegetation,  
16 all of the soils and then removes a significant amount of sand and gravel, up  
17 to the edge of a buffer, be deemed a, uh, high impact land use according to  
18 your understanding of the Skagit County Code?

19 FORBES: That would depend on the mitigation as it was proposed.

20 LORING: And what mitigation measures would make that not a high impact  
21 land use?

22 FORBES: [Inaudible] described in the Graham Bunting, uh, assessment.

23 LORING: And what are those?

24

25

1 FORBES: Give me an Exhibit Number. I don't have all of the Exhibit  
2 numbers, don't give me that. Let me see if I can find it here. Is that in the  
3 2015 assessment?

4 LORING: Yeah. Thinking about Exhibit C5, that August 20<sup>th</sup>, 2015 document.

5 FORBES: Okay. Do you need me to read them?

6 LORING: Yes. Uh, well, let me ask you, I'll, I'll ask you this. Are you  
7 on Page 7 in the document, 10 in the PDF when you're looking at Exhibit C5  
8 there?

9 FORBES: Yes.

10 LORING: Okay. These are the bullets related to the land use intensity?

11 FORBES: Yes.

12 LORING: Okay. Well, let me ask you this, would mining up to 200 feet of a  
13 wetland, uh, would that mitigate the impacts of mining up to 200 feet from  
14 the wetland?

15 FORBES: I'm sorry?

16 LORING: So, potentially applying a smaller buffer would mitigate for the  
17 impacts of having that smaller buffer?

18 FORBES: Not on its own. That's why they provided a, a...

19 LORING: Okay.

20 FORBES: A long list of recommendations.

21 LORING: Yeah. We'll get into those. Uh, let me ask you, because this  
22 brings up a question, right, we, we have this first bullet refers to the  
23 ordinary water mark, uh, are you familiar with how wetlands are delineated?

24 FORBES: Yes.

1 LORING: Okay. And is your understanding that wetlands are delineated in  
2 relation to an ordinary high water mark?  
3 FORBES: Where they are present, yes. If you're still talking and we're  
4 not hearing you.  
5 LORING: No, I wasn't, sorry.  
6 FORBES: Okay.  
7 LORING: I wasn't actually talking, I was...  
8 FORBES: Okay.  
9 LORING: Maybe frowning, I don't know.  
10 FORBES: Okay.  
11 LORING: Smiling, it could be anything.  
12 FORBES: Okay.  
13 LORING: Uh, so your position is the edge of the wetland is delineated  
14 with an ordinary high water mark?  
15 FORBES: Where a wetland is present adjacent to an ordinary high water  
16 mark, it is part of the, the determination. The delineation of the wetland is  
17 part of the ordinary high water mark determination.  
18 LORING: Okay. Are you, let me ask you this, is it your position that a  
19 delineation has occurred for the Samish River wetland that is along the site  
20 that would be excavated at the mine?  
21 FORBES: Yes.  
22 LORING: Okay. And you, you said that you are familiar with the steps  
23 required of a delineation?  
24 FORBES: Yes.

1 LORING: Okay. Are you familiar with the fact that, well, do those steps  
2 come from the 1987 Corps Manual, right?

3 FORBES: Yes.

4 LORING: And are you familiar with the language in the Corps manual that  
5 requires an actual soil investigation at a site to do a delineation?

6 FORBES: Uh, a soil analysis is one portion of the delineation.

7 LORING: And that soil analysis requires an actual physical review of the  
8 soils themselves, right, visual analysis of them?

9 FORBES: If you're going to do that, yes.

10 LORING: I'm sorry, I, I missed the first part of that, I'm sorry?

11 FORBES: Yes. If, if you're doing test pits, then you look at the, y udo a  
12 physical examination of the soil.

13 LORING: Okay. And in this case, were there any test pits of the soils  
14 along the, um, Samish River wetland?

15 FORBES: They were not provided, no.

16 LORING: When you say they weren't provided, there's no evidence that  
17 those were actually conducted, right?

18 FORBES: Correct.

19 LORING: Okay. In fact, there's evidence that they weren't conducted here,  
20 right?

21 FORBES: Correct. Correct.

22 LORING: Okay. So, delineation didn't occur here in the absence of, uh,  
23 soil test pits, right?

24

25

1 FORBES: Since the consultant determined that there was not a prevalence  
2 of wetland vegetation, which is also a requirement, they did not dig test  
3 pits.

4 LORING: So, it's your position that, well, let me ask you this, are, were  
5 there any test pits stated by the, uh, Applicant's consultant in the vicinity  
6 of the areas where plants allegedly did or did not occur, that were wetland,  
7 hydrophytic plants?

8 FORBES: No.

9 LORING: I'm going to turn off my video again because there has been a  
10 little back and forth, so, my apologies for that. Okay. Uh, okay. So, let's  
11 go back to those conditions in C5, that's Page 7 within the document.  
12 Actually, before we do that, I want to turn back to the, uh, definitions for  
13 a high impact or low impact land use. And if you don't mind, I'm going to  
14 share my screen, we'll see if that works, uh, with, with the, uh, Skagit  
15 County Code Conditions here. I think I've got the right one, but let me know  
16 if not. Start with those definitions. Do you see, uh, on your screen right  
17 now, definitions related to land use impact?

18 FORBES: Yes. That is the current set of Land Use Impact Definitions of  
19 1404.

20 LORING: Okay. And can you tell me what the high impact land use, what  
21 those involve?

22 FORBES: It does say, which are associated with high levels of human  
23 disturbance or substantial habitat impact, including but not limited to  
24 medium and high intensity residential, more than one home per five acres,  
25

1 multi-family residential and either agricultural practices and commercial and  
2 industrial land uses.

3 LORING: Okay. And you were asked, uh, that doesn't, it doesn't state  
4 mines in there, right?

5 FORBES: Correct.

6 LORING: Uh, does it identify airports in there?

7 FORBES: No.

8 LORING: Sky scrapers? Okay. So you were asked a moment ago, uh, if  
9 professional judgement needed to be applied to determine a cert-, whether a  
10 certain activity actually qualifies as a high impact land use and then you  
11 testified yes, right?

12 FORBES: Yes.

13 LORING: Okay. Uh, can you tell us what moderate impact land uses would  
14 involve, according to the Skagit County code?

15 FORBES: Land Use such as [inaudible] which are associated with moderate  
16 levels of human disturbance or substantial habitat impacts, including but not  
17 limited to the low density residential, no more than one home per five acres,  
18 active recreation or moderate agricultural land users.

19 LORING: Okay.

20 LYNN: Um, this is, um, Bill Lynn. Just can, can I, um, suggest that we  
21 identify where in the Code, um, the witnesses testifying from so that we, if  
22 ever do end up in a situation where we're transcribing this, can...

23 REEVES: Sure.

24 LYNN: Give the reporter some guidance.

1 REEVES: Uh, this is, uh, go ahead, go ahead, Mr. Loring. This is Section  
2 14...

3 LORING: I, I...

4 FORBES: .04.

5 LORING: Sorry, what?

6 FORBES: It's 14.04.

7 LORING: Yes. And I believe it's 020 within that, uh, that chapter.

8 REEVES: 1404020 definitions, uh, and this is the definitions, the sub-  
9 definitions under land use impact and, uh, Mr. Loring had the witness read  
10 two of three definitions into the record. I think we can take judicial note  
11 of what low impact land use, it says what the code says and I think we  
12 probably don't need witnesses to, to read these things into the record. So,  
13 we'll, we'll move on, but thank you.

14 LORING: Thank you, Ms. Forbes. So, you're not testifying that in your  
15 judgement a mine that removes all of the vegetation, all of the soils and a  
16 fair amount of the ground beneath them would be considered more like active  
17 recreation or even moderate agricultural uses or...

18 FORBES: No.

19 LORING: One home, okay. In fact, it's, it's much closer to something like  
20 an industrial land use, identified in the high impact land use, right?

21 FORBES: Yes.

22 LORING: Okay. And, in fact, it's even, uh, more intense than things like,  
23 uh, one home per five acres?

24 FORBES: Yes.

25 LORING: Uh, and more intense than multi-family residential?

1 FORBES: Potentially.

2 LORING: Do you know much multi-family residential development that  
3 removes, uh, the vegetation, the soils and up to 90 feet of the sub surface?

4 FORBES: No.

5 LORING: Okay. I'm going to stop sharing the screen on that one. So, given  
6 this, would you say that the, uh, the proposed gravel mine here, sand and  
7 gravel mine, would qualify as a high impact land use under those definitions?

8 FORBES: Likely.

9 LORING: Okay. Stop sharing there. Uh, let me, uh, I want to get back here  
10 to my notes, sorry, we've been, uh, bouncing around a little bit, we've had  
11 some different testimony here.

12 REEVES: Sure. Sorry, Mr. Loring, so I don't forget my question, I'm going  
13 to break in because I...

14 LORING: Feel free, please.

15 REEVES: I've been wanting to ask on this same topic, which was, I guess  
16 it's a process question, Ms. Forbes. So, essentially, earlier and you  
17 clarified for me, uh, there was a Mr. Cooper that sort of made the assessment  
18 on this intensity and my understanding is that was in review of the 2015  
19 Graham Bunting Report, is that accurate?

20 FORBES: Yes.

21 REEVES: And, so, I guess my question is, so, whoever Mr. Cooper, whenever  
22 this occurred, is, is that documented somewhere in the County's, like, is  
23 there a determination he made that said, I concur with Mr., with the Graham  
24 Bunting Report, that this ought to be treated as such that or is it just that  
25 was sort of, there was agreement with the Graham Bunting Report and the

1 County's sort of stance on how this should be classified has, has not been  
2 reassessed since then? I'm just trying to get a sense of, of what the process  
3 was?

4 FORBES: I don't have all of the, the, the information in the records to  
5 know if he put in writing that he concurred with that recommendation to use  
6 moderate intensity land use buffers. Um, I just saw that throughout the  
7 review process, that, that it, that Staff determined you could apply those  
8 moderate land use intensity buffers with the recommendations, um, of that  
9 Graham Bunting report.

10 REEVES: So, okay. Sorry.

11 FORBES: I think it was, I think it was in, I don't know if it was in a  
12 Staff report or what. But, but, yeah, I don't know that there was any sort of  
13 written determination from Mr. Cooper saying that he agreed with it. But it  
14 does appear that he, he agreed enough to put it in a Staff Report.

15 REEVES: Got it. And when you, sorry, and just to clarify that, you said,  
16 you used the term assessment, Staff made an assessment, do you have any sense  
17 of whether anyone on County Staff, other than Mr. Cooper, reassessed or  
18 independently made an assessment after his initial assessment, um, of the  
19 moderate intensity use?

20 FORBES: No, I don't believe any other Staff reviewed that again.

21 REEVES: Okay. Great. Thank you for clarifying. Um, Mr. Loring, go, go  
22 ahead, sir.

23 LORING: Yes. Thank you, Mr. Examiner. Uh, and I'm actually, uh, so, Ms.  
24 Forbes, are you aware of Mr. Cooper's ultimate determination on the  
25 appropriate width or buffer for the wetland along the Samish River?

1 FORBES: Uh, no, I'm not.

2 LORING: Okay. Since we've been talking about this, uh, I want to share  
3 with you what I believe to be the County's final determination. So, I'm going  
4 to share my screen again. This is Exhibit A34 for everyone. And this is John  
5 Cooper's letter, uh, directing the Applicant to apply a 300 foot buffer based  
6 on the high impact land use intensity. I'm going to scroll to the top just so  
7 you can see that this is a letter, July 6<sup>th</sup>, 2017. Uh, sent to the Applicant,  
8 uh, and Applicant's representatives there. And then I'm going to scroll down  
9 to the bottom just so you can see the signature and I'll ask you, uh, does  
10 this look like a letter that was written by John Cooper, based on what you're  
11 seeing on the screen?

12 FORBES: Yes.

13 LORING: Zoom in. Was, I'm sorry, was that a yes?

14 FORBES: Yes.

15 LORING: Okay. And then I'm scrolling up, I'm towards the bottom of Page  
16 3, do you see the bold, uh, text at the bottom of Page 3 there?

17 FORBES: Yes.

18 LORING: Does that bold text indicate for Mr. Cooper, that the Applicant  
19 needed to amend the Application and Plans to indicate a 300 foot buffer from  
20 the edge...

21 FORBES: Yes.

22 LORING: Of the wetlands?

23 FORBES: Yes.

24 LORING: Okay. And do you see the previous sentence there?

25 FORBES: Where does it start?

1 LORING: The, sorry got my little hand covering it there. This starts with  
2 since your proposal...

3 FORBES: Since your proposal is both a commercial and industrial land use  
4 that involves [inaudible] 4.2 million feet of [inaudible] material over 20  
5 years, the proposed operations are a high impact land use.

6 LORING: Okay. So, this indicates that the County's, uh, uh, most recent  
7 written determination that you've seen, anyway, was that it, that the project  
8 is a high impact land use, right?

9 FORBES: If this is the most recent, then, yeah.

10 LORING: Okay. Sure. Uh, this does postdate the Graham Bunting and  
11 Associates documents, right?

12 FORBES: Yes.

13 LORING: Okay. I'm going to stop sharing my screen here to cover a little  
14 bandwidth. And are you aware of any Department of Ecology communications that  
15 confirmed an agreed with Mr. Cooper's position that this was a high impact  
16 land use?

17 FORBES: I did not review the ecology, uh, comment letters.

18 LORING: Okay. So, you're not, you're not familiar with those?

19 FORBES: No.

20 LORING: Okay. Uh, Mr. Cricchio didn't send those to you as part of your  
21 wetland review?

22 FORBES: No.

23 LORING: Okay. You testified a little bit earlier about, uh, some changes  
24 in, in local regulations. And I, the Hearing Examiner probably will smirk at  
25 least when I say this, but I do just want to clarify, you, you weren't

1 testifying at all about [inaudible] the Application vested to any different,  
2 uh, land use regulations, right?

3 FORBES: No, I was not making a determination on vesting.

4 LORING: Okay. Uh, I believe you also mentioned that under the 2008  
5 regulations that you were discussing, uh, a medium intensity land use would  
6 have a 200 buf-, foot buffer, is that right?

7 FORBES: That was an option, yes.

8 LORING: Okay. Um, so w-, as we've been discussing now, is it your  
9 understanding that this is not a moderate intensity land use based on the  
10 County's official position to date?

11 FORBES: Based on that letter that you just read me from John Cooper, it  
12 appears they determined a high, it was a high impact land use.

13 LORING: Okay. And high impact land use based on the sensitivity of the  
14 Samish River wetland would require a 300 foot buffer, right?

15 FORBES: Under current regulations, yes.

16 LORING: Okay. Is your position that those regulations would have changed  
17 the high impact land use buffer, um, at some point before 2016?

18 FORBES: Uh, I believe prior to the 2016, uh, Code amendment, you could  
19 have a 270 foot buffer.

20 LORING: 270, it would have, you believe it would have been a 270 foot  
21 buffer prior to that change?

22 FORBES: I believe so.

23 LORING: Okay. You know that the, uh, do you know the buffer size that has  
24 been conditioned by the MDNS here?

1 FORBES: Uh, uh, you guys keep going back and forth between two and three,  
2 I'm not sure where it landed.

3 LORING: Uh, okay. I'm still going through a few other items here. Um,  
4 thank you for your patience, especially as you also can't tell that I'm  
5 looking down at notes, et cetera, since I had to turn off my video there.

6 REEVES: We just thought you were making funny faces, but that's fine.

7 LORING: Uh, that does seem to happen sometimes. Not always within my  
8 control, you would think so.

9 REEVES: I'm guilty of the same.

10 LORING: You were asked, uh, Ms. Forbes, whether the MDNS generally  
11 requires compliance with the Critical Areas Ordinance and, and you mentioned  
12 that it does, right?

13 FORBES: Yes.

14 LORING: Okay. I believe that was in relation to the potential 25 foot  
15 extension on a buffer for a wetland, is that right?

16 FORBES: Correct.

17 LORING: Okay. Is it your understanding that the slopes at the project  
18 site would require an extension of that, uh, 25 feet, beyond the top of the  
19 slope along the Samish River wetland buffer?

20 FORBES: I don't, I don't know the exact slope of the wetlands along the  
21 entire stretch there.

22 LORING: Okay. Uh, have you reviewed any materials that identify that  
23 slope?

24 FORBES: No.

1 LORING: Okay. And if a 25 foot extension, uh, were required, would you  
2 typically expect to see that in conditions on an MDNS?

3 FORBES: I'm sorry?

4 LORING: Uh, an Applicant would need to know exactly what is expected of  
5 them as a result of a MDNS, right?

6 FORBES: Uh, MDNS conditions are often general and the conditions in the  
7 SEPA determination are more sp-, or the, uh, uh, Special Use decision are  
8 more specific.

9 LORING: Okay. Uh, you're familiar with the fact that here the Special Use  
10 Permit conditions that have been proposed are verbatim the conditions  
11 inserted in the MDNS?

12 FORBES: Uh, I've not read them all, but that doesn't, that seems typical.

13 LORING: I thought you just said it was typical that sub-conditions would  
14 be more specific than MDNS conditions?

15 FORBES: They can be more specific.

16 LORING: Okay. Okay. Uh, you were talking about a maintenance corridor and  
17 I think you were relating it to things like homes, uh, that that's your  
18 understanding that applies to things like homes. You, you weren't testifying  
19 about whether a berm qualifies as a legal matter as a structure, were you?

20 FORBES: No.

21 LORING: Okay. And this may be a little bit repetitive, just one question  
22 here. You were questioned by Mr. Lynn about whether the County has ever  
23 required an impacts assessment from a change in use in a road. Uh, I believe  
24 your testimony was that, no, to your understanding, the County had not  
25 required, uh, [inaudible] impacts assessment, is that accurate?

1 FORBES: Your question cut out.

2 LORING: Sorry about that. I believe that you testified, uh, to Mr. Lynn  
3 that you were not aware of the County requiring, um, an Impacts Assessment  
4 from a change in use of a road, is that right?

5 FORBES: I believe that was the question, yeah.

6 LORING: Okay.

7 REEVES: And, and, sorry, to clarify, was that in, in any, I think Mr.  
8 Lynn was asking in any other situation than this one, have you seen that. But  
9 I apologize if I misunderstood. Was that your understanding of Mr. Lynn's  
10 question, Ms. Forbes?

11 FORBES: Yes. That was my understanding.

12 REEVES: Oh, okay. Sorry, Mr. Loring.

13 LORING: Oh, not a problem. Uh, and, again, Ms. Forbes, uh, there's no  
14 indication that the Critical Areas Impacts of the haul road have ever been  
15 evaluated?

16 FORBES: Only the indirect impact...

17 LORING: Is that right?

18 FORBES: Only the indirect impacts as described in the, uh, Northwest  
19 Ecological Services Report.

20 LORING: Thank you for that clarification. So, going forward from 2021,  
21 uh, they asserted that they did evaluate indirect impacts?

22 FORBES: Their, their report did discuss indirect impacts.

23 LORING: Okay. Okay. But not indirect or direct impacts looking backward,  
24 uh, including those associated with the roadwork in 2018?

25 FORBES: Correct.

1 LORING: Okay. I've got a few more things for you here. Looking through a  
2 different outline and we have, uh, discussed a lot of these questions.

3 Actually, here's a question for you, back to the land use intensity, are you  
4 familiar with the Department of Ecology's Appendix 8C, for its Wetlands in  
5 Washington documents?

6 FORBES: I am aware of it.

7 LORING: Okay. Do you know the parameters that it would apply for reducing  
8 the buffer based on a, um, medium intensity impact, rather than a high  
9 intensity impact?

10 FORBES: They do have recommendations that are not a complete list, but,  
11 yes, they do provide recommendations for reducing from high impact, moderate  
12 intensity land use.

13 LORING: Okay. And at least one of those, uh, recommendations, that is  
14 more than a recommendation, but would actually be necessary to reduce from a  
15 high to a medium impact, is a corridor set aside with a conservation  
16 easement, right?

17 FORBES: It could be, I don't know all of the specifics.

18 LORING: Okay. Uh, but you agree that that Appendix 8C and those buffer  
19 reduction guidelines are incorporated into the Skagit County Code?

20 FORBES: Oh, only by reference and they, they're very, Ecology's documents  
21 are incorporated for guidance.

22 LORING: Okay. And what section incorporates them by reference, for a  
23 wetland buffer reductions? [Pause] that's okay, I...

24 FORBES: 14-...

25 LORING: We don't...

1 FORBES: 14.24.240 3A.

2 LORING: Okay. Yes. Thank you. And that's specifically refers to the  
3 measures found in that Department of Ecology document, the Appendix 8C?

4 FORBES: Yes.

5 LORING: Okay. Okay. Well, let's see here, I think we have, we've covered  
6 quite a bit. Okay. I don't have any further questions and I thank you for  
7 your time, Ms. Forbes.

8 REEVES: Great. Thank you. Um, I think I'll circle back, I'll go to Mr.  
9 Lynn first and then over to Mr. D'Avignon.

10 LYNN: I have no questions.

11 REEVES: Okay. Uh, Mr. D'Avignon?

12 D'AVIGNON: I just have one question, Mr. Examiner. Um, Ms. Forbes, uh, MDNS  
13 Condition 17B, I don't know if you have MDNS document available?

14 FORBES: Um, I can find it, I think.

15 D'AVIGNON: Anyways, I don't, I can probably just tell you what it says and...

16 FORBES: Okay.

17 D'AVIGNON: We can all know we can look at the document and determine if I am  
18 right. Um, it says a 200 foot buffer and associated wetlands shall be  
19 designated as a Protected Critical Area, PCA, to ensure identification and  
20 long-term protection. Uh, what is a Protected Critical Area under Skagit  
21 County's Critical Area Ordinance?

22 FORBES: So, a Protected Critical Area is a document or designation that  
23 we do document, either through easement or title notice that locates or, or  
24 describes our regulated critical areas and their associated buffers on site.

25 D'AVIGNON: Uh, would you consider that, uh, a type of legal protection?

1 FORBES: Yes.

2 D'AVIGNON: Okay. No other questions.

3 REEVES: Okay. I believe, then, that concludes this witness. Um...

4 LORING: Mr. Examiner, uh, well, it does, I don't have a re-cross, I did  
5 have a question and that was whether we could, uh, have Mr. D'Avignon  
6 circulate the ordinances at play here? He mentioned one from 2008, uh,  
7 presumably updated in 2016, as part of the conversation we've had. And I'm  
8 sure he knows how notoriously challenging ordinances are to find on the  
9 Skagit County websites. So, he, he requested official notice, uh, but we'd  
10 ask to him either just send a link or that, those two ordinances, circulate  
11 those.

12 D'AVIGNON: That is totally fair. I will send that, um, I, I may disagree  
13 with how hard it is to find ordinances, but I, I acknowledge that sometimes  
14 they can be difficult. Uh, but I will send that link at this very moment,  
15 including to you, Mr. Examiner.

16 REEVES: Thank you. And I think timing-wise, uh, you have one additional  
17 witness, Forest Jones on traffic, correct?

18 D'AVIGNON: Uh, that is correct, Mr. Examiner.

19 REEVES: I would suggest, rather than start/stop, start/stop, now might be  
20 a good lunchbreak. And we'll come back, uh, with Forest Jones. Um, it is  
21 traffic, so I think that one might take awhile. I'm just trying to think if  
22 Mr. Ehrlichman needs to inform his witnesses of availability toward the end  
23 of the day if we have time. Any thoughts on this, Mr. Ehrlichman?

24 EHRLICHMAN: Mr. Examiner, I can make a call to Wally Groda [phonetic] and see  
25 if he's available, uh, toward the end of today, I'd be happy to do that.

1 REEVES: Sure. I would suggest maybe if you have someone available that  
2 would be a quicker, uh, uh, you know, more succinct witness, um, that might  
3 be, be beneficial, just in case. I, who knows if we'll get there, but I think  
4 it's worth at least getting ready.

5 EHRLICHMAN: Very good.

6 REEVES: Okay. So, I think, then, why don't we go to lunch. It's 12:20.  
7 Uh, let's shoot to be back, oh, you know, ten after, five after 1:00, 10  
8 after 1:00. And, uh, I think we have a hard stop at 4:45. Mr. Loring has  
9 tennis, I have a modeling shoot, if I recall. I think...

10 LORING: To be clear, that was tennis coaching for a high school boys'  
11 team.

12 REEVES: Tennis...

13 LORING: That, that's not my personal tennis, uh, just want to make sure  
14 that's on the record.

15 REEVES: [Inaudible.]

16 LORING: They do expect me to show up. Yeah.

17 REEVES: [Inaudible.]

18 LORING: I've, I've been told, yeah.

19 REEVES: All right. We'll be back after lunch. Thanks, everybody.

20 [The tape ends.]

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

22 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington  
23 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party  
24 to this action. That on May 8<sup>th</sup>, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves, that  
25 took place on 9/13/22 at 11:00 a.m., regarding the above-captioned matter.

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

3 Signed at Mount Vernon, Washington, this 8<sup>th</sup>, May of 2024.

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5 Janet Williamson  
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