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

17 Transcription Date: May 7th, 2024

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

20 REEVES: Was that a yes, we are recording, I...

21 KELLOGG: Yes.

22 REEVES: Oh, okay. Excellent. I'll get my gavel out and make it official.

23 And good morning. I'm going to go ahead and call this session of the Skagit
24 County Hearing Examiner to order. For the record, today is September 13th,
25 2022. Just after 9:00 a.m. We have one item on the agenda today. This is
numbers PL16-0097 and PL16-0098, involving a request for a Special Use Permit
from Concrete Nor'West, Miles Sand and Gravel. As well as an affiliated
Appeal under our State's Environmental Policy Act, uh, from the Samish Valley

1 Neighbors. So, we are on, I believe day 6, at this point. So, I think we're
2 all familiar with what's going on and we can dive right in. Uh, procedurally,
3 I know I had assigned all of our Attorneys the job of trying to make sure we
4 knew where we stood in terms of Exhibits. Maybe we can just cover that real
5 quick, at the outset. Um, let me start with you, Bill Lynn, do you have a, a
6 number, uh, that you believe is the correct number for the Applicant?

7 LYNN: Uh, I believe we're, the next Exhibit would be, uh, B99. I do not
8 have a list, uh, prepared to send to the parties, as of this moment.

9 REEVES: Okay. Well, we'll at least, so we think we're up to B98, is that
10 right?

11 LYNN: Yeah. We're, we've, the last one was B98.

12 REEVES: Okay. And Mr. Ehrlichman, you've got kind of a supplemental, uh,
13 uh, situation, but and you're muted at the moment.

14 EHRLICHMAN: Thank you, Mr. Examiner. Yes, we are, uh, continuing on with our,
15 using our Exhibit 47 as a catchall for our Exhibits. And I believe we are at
16 sub-exhibit S10, um, I want to confirm that as we go along and, and get back
17 to you if that's incorrect.

18 REEVES: Sure. Okay. So, again, I agree, that's the sensible way to do it,
19 keep them all as part of Exhibit 47, related to the SUP, but then it's going
20 to be S1-S10, currently, unless we're told otherwise. Does that work?

21 EHRLICHMAN: Yeah.

22 REEVES: Okay. And, uh...

23 EHRLICHMAN: Thank you. Thank you.

24 REEVES: Mr. Loring, on behalf of the Appellant?

1 LORING: Yes. I believe that we're up to Exhibit A, A61, if there is
2 another Exhibit. Uh, A59 was the Department of Ecology's, uh, Appendix 8C to
3 their Wetlands in Washington buffer guidance or it was a buffer guidance. And
4 then Exhibit A60 was a series of five photographs from Mr. Mcleod of, uh,
5 road conditions, road shoulder conditions, primarily.

6 REEVES: Okay. So, through A60, at the moment. Okay. And then finally, uh,
7 on behalf of the County, Mr., uh, D'Avignon?

8 D'AVIGNON: I don't believe I'm in a position to provide any new additional
9 information that's already been provided, other than to say that it all
10 sounds correct to me and with my notes. I was unable to get a list done
11 yesterday as well.

12 REEVES: Okay. That's fine. We will...

13 D'AVIGNON: I do have B98 being title notification, but I, I did not be able
14 to fi-, figure out what B96 and B97 were.

15 REEVES: All right. So mental note for, uh, those playing along, we're
16 still trying to make sure we have a correct, uh, set of Exhibits, but, uh, no
17 need to further that, uh, at the moment. And is there anything else, uh, we
18 should address before we dive in with the County's witnesses? Mr. D'Avignon,
19 you have anything?

20 D'AVIGNON: I don't, Mr. Examiner.

21 REEVES: Okay. Mr. Loring, any on behalf of the Appellant?

22 LORING: No, I don't have anything, Mr. Examiner.

23 REEVES: Mr. Ehrlichman?

24 EHRLICHMAN: Mr. Examiner, uh, two quick items, first, uh, it appears that the
25 parties have reached a stipulation, uh, that's a little more narrow than, uh,

1 we started out. But, uh, we can describe that for you. I think Mr. Lynn is
2 circulating it for signatures as the Hearing goes on today.

3 REEVES: Sure. Would it, should we just wait to, til it's finalized or
4 does it impact what we're about to do?

5 EHRLICHMAN: Uh, I think it's helpful for what we're about to do. Mr. Lynn, do
6 you want to describe, do you want to go ahead since you drafted it?

7 REEVES: Well, is there, you said two things. Is, can we do the second
8 one, first, and then we'll move...

9 EHRLICHMAN: Yes. Uh, the second one is, uh, I'd like to, at some point today,
10 get a, or hopefully this morning, get a clear picture of when you think our
11 presentation in chief would be so I can alert my witnesses to get ready?
12 Tentatively I've told them Friday, the 23rd.

13 REEVES: Which is, that was the day we set aside last week, right?

14 EHRLICHMAN: Yes. I believe so.

15 REEVES: Sure. I believe that's right. Maybe when Mr. D'Avignon gets
16 started, he can give us a sense, but I think that would make sense. And so,
17 with that, we'll go to Bill Lynn to describe, uh, the parties' work on a
18 stipulation of some kind.

19 LYNN: Uh, thank you. The stipulation, uh, simply notes our consensus
20 agreement that the 46 trips, uh, referenced in MDNS Condition 13 represent,
21 uh, trip ends as the ITE Manual describes them. So, that means 23 loaded
22 trucks and 23 unloaded trucks. That's part of it. The other part of it is
23 that the 30 trip count or 30 truck count, as it's worded in the MDNS means
24 the same thing, that is a total of 15 loaded and 15 unloaded trucks.

25 REEVES: Okay.

1 LYNN: And that's the, that's the extent of the stipulation.

2 REEVES: Great. Thank you for clarifying that. Okay.

3 EHRLICHMAN: I would like to add, add one point of clarification, it probably
4 goes without saying, but, uh, the stipulation was simply as to what the MDNS
5 itself states, no party waived any position with respect to the adequacy of
6 the conditions and so forth, obviously.

7 REEVES: Okay. Yes, uh, very lawyerly of you. I, I, I did not expect the
8 stipulation meant that, uh, you no longer wish to participate in the Appeal
9 or have [inaudible] uh, though with that, I'll think we'll move, uh, then to
10 Mr. D'Avignon and maybe if he can give us just a brief overview of his plan
11 of attack here today. And we'll dive in with witnesses after that.

12 D'AVIGNON: Uh, plan of attack is, uh, going to start with calling Kevin
13 Cricchio, followed by Leah Forbes and then Forest Jones. Um, I'm, I'm ever
14 hopeful, um, we'll be able to get through them, uh, prior to the end of the
15 day.

16 REEVES: Excellent. All right. Well, why don't we dive in, then, with Mr.
17 Cricchio and, and go from there. And I see him on the screen. We'll get him
18 sworn in. Hi, do you swear or affirm to the truth in the testimony you give
19 here today?

20 CRICCHIO: I do.

21 REEVES: And if you could just state and spell your name for the
22 recording?

23 CRICCHIO: It's Kevin Cricchio, K-e-v-i-n, Cricchio, C-r-i-c-c-h-i-o.
24
25

1 REEVES: Thank you. And we heard from you on day 1, I think way back when.
2 But, uh, thank you again for being here. I'll let, uh, Mr. D'Avignon, uh, go
3 ahead with his questions.

4 D'AVIGNON: Thank you, Mr. Examiner. Uh, Mr. Cricchio, um, what do you do or
5 I guess, where do you work?

6 CRICCHIO: Um, well, presently, I work for Skagit County, Planning and
7 Development Services Department as a Senior Planner in the Current Planning
8 Division.

9 D'AVIGNON: All right. And what does that, uh, job entail?

10 CRICCHIO: Uh, partly it entails reviewing Land Use Permits. Um, and
11 processing those Land Use Permits. Included with that is, uh, SEPA and
12 [inaudible] review, if those respective Lane Use Permits requires SEPA.

13 D'AVIGNON: Okay. And how long have you been a Planner?

14 CRICCHIO: Uh, approximately 15 years for a number of Cities and Counties in
15 the State of Washington.

16 D'AVIGNON: Um, when did you become involved in the proposed Grip Road Mine?

17 CRICCHIO: Um, so I've worked for Skagit County, in my current capacity, for
18 almost two years, uh, a tad short of two years. Um, I was handed the project
19 at the 11th hour, um, approximately July/August of 2021. Um, there had been
20 several other Project Managers that had worked on the project in the past.
21 And, um, so, yeah.

22 D'AVIGNON: And so, once this project was handed to you, uh, I mean, I guess,
23 can you walk us through the review that you, you did? I mean, I guess,
24 starting with where did you start?

1 CRICCHIO: So, sure. So, looking at the large file, um, I wanted to look
2 what's been done in the past, where we are today and where we still need to
3 go. Um, looked at all the records, um, electronic as well as paper. Um, did
4 tons of organizing of, uh, the project, making sure that the electronic
5 folder reflects the paper folder and vice versa. And, um, yeah.

6 D'AVIGNON: You mentioned you had, you know, you looked at where, where the
7 project had been and where it needed to go and, I mean, what was the result
8 of kind of that inquiry?

9 CRICCHIO: So, um, um, the Hearing Examiner required that the haul road, the
10 previous Hearing Examiner required that the haul road, uh, critical area, uh,
11 reports be written for that. And so, that came in, um, sometime December of
12 2021. And, um, once that came in, um, we started, um, looking at that,
13 internally. Um, what were the recommendations, what were the recommendations
14 of the previous, uh, critical area reports, uh, the traffic impact analysis.
15 All of the other, uh, Application material that the Applicant submitted way
16 back from 2016, as well as, you know, to current. All the addendums, all the,
17 um, everything that the Applicant submitted, the SEPA Environmental
18 checklist, the narrative, all that. And so we started drafting a SEPA
19 Mitigated Determination of Non-Significance.

20 D'AVIGNON: And when you say you, uh, started drafting that, uh, Mit-,
21 Mitigated Determination of Non-Significance, who is we?

22 CRICCHIO: Uh, the Current Planning Division, but not just the Current
23 Planning Division, we, uh, internally, um, re-, reached out to the Natural
24 Resource Division of the Planning Department. Natural Resource Division is
25 the, uh, division that deals with Shoreline Permitting, deals with Forest

1 Practices and deals with Critical Area Regulations. In addition to reaching
2 out to the Natural Resource Division, we also reached out to the Public Works
3 Department. They are the department that is tasked with reviewing the
4 Application for conformance with county standards, um, with regard to roads,
5 um, in unincorporated Skagit County, um, adopted levels of service for the
6 respective roads and whether or not they agree with the recommendations or
7 improvements that were as part of the traffic impact analysis. So, all of
8 that comes together and is reflected in the issued SEPA MDNS, um, as well as...

9 D'AVIGNON: And...

10 CRICCHIO: Other, as well as other agencies and departments of jurisdiction.
11 Um, we incorporated that, um, into, reviewed that and incorporated that into
12 the SEPA MDNS.

13 D'AVIGNON: So, yeah, I guess, to maybe back up on the last thing you said,
14 the other agencies, is that through comments?

15 CRICCHIO: That's correct. So, way back in 2016, um, there was a Notice of
16 Application and this matter went before the Hearing Examiner. And then there
17 was some, uh, if I recall correctly, uh, some noticing errors. And so, then,
18 um, a new Notice of Application, uh, and SEPA was issued. And so, we've been
19 accepting comments on this project from way back in 2016, up until today. Um,
20 and, um, so, all of those comments, whether its agencies and departments, as
21 well as public, we've been accepting.

22 D'AVIGNON: And how would you describe the volume of those comments?

23 CRICCHIO: Um, so from agencies and the public, um, I'm really not getting
24 anything more coming in. Um, and I really haven't even been getting too much
25 public...

1 D'AVIGNON: Well, I guess, not, not if they're continuing to come in, but, I
2 don't know I guess, do you have any idea of how many pages of comments you've
3 received?

4 CRICCHIO: Oh...

5 D'AVIGNON: Since 2016?

6 CRICCHIO: Sure. Uh, so, I've done my best to provide, uh, a complete record
7 to the Hearing Examiner, uh, for his review, uh, on everything. Um, from the
8 Application material to the public comments, um, you name it. Um, and that be
9 reflected in the Cricchio files, as Mr. Reeves, uh, refers to it, as, um, and
10 so, from 2016, we've received hundreds, um, if not more than hundreds. Some
11 of those comments may be redundant, um, but I've done my best to get the full
12 record to Mr. Reeves, uh, for consideration.

13 D'AVIGNON: Um, so you had mentioned that there were numerous studies and
14 documents as part of the record. Um, were these documents shared with the
15 Natural Resources Division as well as the Public Works Department?

16 CRICCHIO: Um, everyone has had, had access to those.

17 D'AVIGNON: And how do you, I guess, how is, how is that information shared?

18 CRICCHIO: Um, well, it can be shared by many ways. It can be shared by
19 emails, um, it can be shared on the County website, there is a County website
20 that is a portion of the County website that's dedicated to the Concrete
21 Nor'West project. Um, and then we also have, internally, a, uh, Permit
22 tracking database, where, um, it's very common for Application material,
23 public comments, that type of stuff, to be attached to the, to the Permit
24 tracking database, for the respective permit.

1 D'AVIGNON: Okay. Um, so, do you see a, a, a clear distinction between the,
2 you know, your role as it comes to the SEPA, um, as opposed to your role when
3 it comes to reviewing the underlying permit? Or the Application for Permit?

4 CRICCHIO: Do I see a clear distinction?

5 D'AVIGNON: Like, is there a different review, like, do you review things in
6 a different way, one or the other? Or are they...

7 CRICCHIO: Well...

8 D'AVIGNON: Kind of the same, I guess, my question.

9 CRICCHIO: It's, well, when we review the Special Use Permit Application,
10 the SEPA Environmental checklist, or the SEPA review aspect of it, there's
11 consolidated review going on. And so, my, my view of it is it's one in the
12 same, it requires SEPA, all Special Use Permit Applications, uh, especially
13 for commercial, um, require SEPA environmental review. Um, and then there's
14 other thresholds that also require SEPA environmental review. Uh, for this
15 project, specifically the amount of, or quantity of, uh, material that
16 they're looking to excavate.

17 D'AVIGNON: Okay. And with, uh, you had mentioned that you had come in on the
18 11th hour, um, just about a year ago, but yet, this has been going on since
19 2016...

20 CRICCHIO: Sure.

21 D'AVIGNON: Did you rely on the work of your predecessors in your review?

22 CRICCHIO: Sure. Definitely. There's, uh, I've, I've looked at past, uh,
23 threshold determinations and, uh, that's definitely helped. But, uh, I
24 definitely feel that the current SEPA MDNS is, uh, much, uh, greater in, um,
25 the, uh, proposed mitigation measure than past, uh, SEPA MDNSs.

1 D'AVIGNON: And you just mentioned that there were past, uh, SEPA threshold
2 determinations, how many previous, in this project, how many previous
3 threshold determinations have been issued?

4 CRICCHIO: Um, if I recall, if I, if I recall, recall correctly, there were
5 two that were re-, that were rescinded.

6 D'AVIGNON: Um, do you know why they were rescinded or withdrawn?

7 CRICCHIO: Um, if I recall correctly, uh, that had to do with noticing.

8 D'AVIGNON: Okay. Um, and did I hear you say that you think, you know,
9 they've gotten better as they've, as we've tried again and again?

10 CRICCHIO: Yes. I think it's much more thorough of a review and, uh,
11 proposed mitigation measures to, uh, mitigate likely environmental impacts of
12 the project.

13 D'AVIGNON: Okay. Just, I'm just looking at my notes, give me, indulge me for
14 one moment, uh, Mr. Examiner.

15 REEVES: Not a problem. I often...

16 D'AVIGNON: Um, Mr. Cric-...

17 REEVES: Go right ahead.

18 D'AVIGNON: Oh, go ahead, sorry.

19 REEVES: No, I'm good. Go right ahead.

20 D'AVIGNON: All right. Uh, Mr. Cricchio, did you hear the conversation, um,
21 before you were called as a witness regarding the stipulation regarding the
22 number of trucks?

23 CRICCHIO: Today or in past, past, uh, portions of the Hearing?

24 D'AVIGNON: Uh, just this morning. That the parties agreed on what 46 trucks,
25 trucks, uh, a day means or 30 an hour...

1 CRICCHIO: Uh, I wasn't, I wasn't 100% tracking it, but I did hear some
2 discussion about it.

3 D'AVIGNON: Okay. Um, and does that reflect your understanding of, of what
4 MDNS Condition 13.7 means?

5 CRICCHIO: Yes. So, I'm, I'm not a traffic, uh, expert, um, I'm not a
6 critical area expert, but, uh, it is my understanding that the traffic impact
7 analysis, um, as well as, obviously, the SEPA for the project, um, and the
8 scope of the project, um, would entail, on average 46, 46 truck trips per
9 day. Um, that's an average. And that equates to 23 empty trucks in and 23
10 full trucks out.

11 D'AVIGNON: Okay. And, and so to the extent of your understanding of these
12 truck trips today doesn't, I guess, the issue is is on your PowerPoint, um,
13 you had said 60, correct?

14 CRICCHIO: Yeah. My, my apologies, I did my best, I'm not an engineer and,
15 uh, some of the TIA, uh, is written toward an engineer or, or in engineerese
16 [sic] for a lack of a better word. Uh, so that's, uh, that, part of the TIA,
17 um, the 60 is incorrect. Um, it's my understanding that, um, the maximum, per
18 hour, would be 30 truck trips, um, associated with this, associated with this
19 project, per day, that would be 15 in empty and 15 out full.

20 D'AVIGNON: Per day or per hour?

21 CRICCHIO: Um, I believe...

22 D'AVIGNON: [Inaudible.]

23 CRICCHIO: I believe that, I believe that's per, per h-, per day.

24 D'AVIGNON: All right. I'm going to pull up the...

25 CRICCHIO: Did I say that correct-, no, excuse me...

1 D'AVIGNON: No, we're going to find out.

2 CRICCHIO: Per, per hour. I'm sorry, it's confusing. Per hour.

3 D'AVIGNON: Um, so, back to the MDNS and, you know, kind of the creation of
4 this decision, um, so you, you take the primary role in drafting that
5 document?

6 CRICCHIO: So, my role in this project is to get this matter before the
7 Hearing Examiner. This came back in in 2016, the County is obligated by
8 Skagit County Code, as well as State Law, to get this to the Hearing Examiner
9 for a decision within 120 days. We are far passed 120 days. But, yes, you're
10 correct. Um, uh, my role is to, to, uh, essentially manage the process and,
11 um, so that includes SEPA Environmental Review, the drafting of SEPA
12 Environmental Review. The final SEPA, however, does not reflect just my
13 draft, it reflects the Department as a whole.

14 D'AVIGNON: Yeah. And that was going to be my next question. You, you take
15 the lead in drafting and then that gets circulated among relevant staff for
16 comment and revision?

17 CRICCHIO: That's correct. So, it is, it is, uh, I drafted it, initially,
18 but then it's modified, internally, by, uh, other persons in other
19 departments.

20 D'AVIGNON: And so, you know, you had mentioned that you're not, uh, a
21 traffic engineer or, you know, you don't work in Public Works and deal with
22 road standards...

23 CRICCHIO: That's correct. Yeah.
24
25

1 D'AVIGNON: So, do, do you rely on, you know, the comments and the revisions
2 from those, those elements of County staff in the drafting of this document
3 or any document?

4 CRICCHIO: That's correct. So, yes. I, I rely on the traffic, um, experts in
5 the Public Works Department to make sure that, uh...

6 D'AVIGNON: And that...

7 CRICCHIO: To make sure that they, that, make sure that the County Standards
8 are complied with and they're going to condition it accordingly. Um, if they
9 wanted improvements, we would condition impro-, uh, uh, accordingly as well.

10 D'AVIGNON: And I imagine the same or am I just missed you say this, the same
11 for Natural Resources?

12 CRICCHIO: That's correct. So, the Natural Resource Division, uh, the
13 Planning and Development Services Department is going to review the proposed
14 Special Use Permit Application, as well as the SEPA, um, that's associated
15 with the Application for conformance with critical area as well as shoreline
16 reg-, critical area regulations, shoreline rules and regulations per the
17 Shoreline Master Program, um, and for-, forest practice permit.

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

19 REEVES: Okay. I think it would probably make most sense to turn next to
20 Bill Lynn.

21 LYNN: Uh, I have no questions.

22 REEVES: Okay. Uh, Mr. Ehrlichman?

23 EHRLICHMAN: Thank you, Mr. Examiner. Uh, good morning, Mr. Cricchio.

24 CRICCHIO: Good morning.
25

1 EHRlichman: I represent Cougar Peak LLC and the Neil Mcleod family, uh, who
2 live on Grip Road, a short distance from the mine entrance. Thank you for
3 your testimony this morning. Um, I was jotting down a couple of notes. Um, I
4 think one of the most important things I heard was that you were making a
5 correction to the PowerPoint slide you presented at the outset, is that
6 correct?

7 CRICCHIO: That's correct.

8 EHRlichman: Um, w-, can you be more specific about, uh, what is being
9 corrected for us, for the record?

10 CRICCHIO: So, I think there is reference to 60, uh, truck trips per hour on
11 there, um, maximum, um, and that's going to be 30, 15 in, 15 out. So, if I
12 could go back to make, to clear up the presentation a little bit more with
13 regards to, to traffic, um, I would strike pretty much the entirety of my
14 traffic discussion and simply li-, list that on average, this proposed
15 project, per the Traffic Impact Analysis, would result in, uh, 46 truck
16 trips, um, per day, um, and that would be 23 empty in and 23 full out.

17 EHRlichman: Great. Thank you very much for that, uh, correction. And, uh, uh,
18 I think the, the record is now clear that that, um, slide, that incorrect
19 slide is stricken and replaced with this testimony.

20 CRICCHIO: Thank you.

21 EHRlichman: Thank you for that. Um, now, when you said that, um, well, I want
22 to ask you a couple of questions about the SEPA determination. And also,
23 your, um, consolidated permit review.

24 CRICCHIO: Uh-huh.
25

1 EHRlichman: Um, on the consolidated permit review, um, aren't, I mean, of
2 course, there are separate code requirements for approval of a Special, a
3 mining Special Use Permit, correct?

4 CRICCHIO: Um, yeah. There's criteria of approval for a Special Use Permit,
5 there's criteria of approval, uh, if I recall correctly, uh, for, uh, a
6 gravel mine, um, per Skagit County Code.

7 EHRlichman: Exactly. Thank you. And, so, um, and then under the Code, the
8 Hearing Examiner is the decision-maker here, correct? A PDS didn't make a
9 decision on the permit, the Special Use Permit, correct?

10 CRICCHIO: So, yeah. The, the Skagit County Planning Department, we, we're
11 the ones who issued the SEPA MDNS, but you're correct, Mr. Ehrlichman, uh,
12 the Hearing Examiner is the, the decision-maker on this, on the Special Use
13 Permit Application.

14 EHRlichman: Thank you. And, and...

15 CRICCHIO: And the Appeal.

16 EHRlichman: I'm sorry?

17 CRICCHIO: And the SEPA Appeal.

18 EHRlichman: Thank you, sir. And under your procedures in Section 14.06, the
19 Planning Department is in the position of making a recommendation to the
20 Hearing Examiner on the Special Use Permit decision, correct?

21 CRICCHIO: That's correct.

22 EHRlichman: Thank you. And your Staff Report, um, listed those specific
23 requirements for a Special Use Permit, separate and apart from any SEPA
24 requirements, correct?

1 CRICCHIO: Um, if I recall correctly, yes, in the Findings of Fact, um, or
2 the Staff Report, um, AKA Staff Report, um, there are, uh, criteria
3 probalisted [sic] within.

4 EHRLICHMAN: Thank you. And in your Staff Report, I believe you recommended
5 that the SEPA MDNS conditions also become conditions for the Special Use
6 Permit, is that correct?

7 CRICCHIO: Yeah. So, having done this for many years, with different
8 jurisdictions, that's very common. So, SEPA mitigation measures typically
9 become, uh, a condition of the Special Use Permit.

10 EHRLICHMAN: Right. Thank you. To your knowledge, are there any, in the Staff
11 Report, are there any Special Use Permit conditions that are different or go
12 beyond the MDNS conditions? Is there a separate group of S-, of Special Use
13 Permit conditions, separate and apart from the set of SEPA conditions or are
14 the, the Special Use Permit conditions that you, that the Department is
15 recommending, are they identical with the, the SEPA conditions?

16 CRICCHIO: Um, if I'm understanding you correctly, Mr. Ehrlichman, so, one
17 of the conditions in the Special Use Permit that is before the Hearing
18 Examiner today, um, in the Findings of, Fi-, Findings of Facts or Staff
19 Report, that is the mitigation measures that, uh, was included in the SEPA
20 MDNS. Um, that is the proposed mitigation measures, uh, to mitigate likely
21 impacts to the environment. Um, and then everything else is outside of the
22 SEPA Mitigation Measures and that's for the Special Use Permit itself.

23 EHRLICHMAN: Exactly. Thank you. And so, what are the Special Use Permit
24 Conditions that the Department is recommending, that are, that are different
25 from the MDNS conditions?

1 CRICCHIO: Uh, I'm, I'm not looking at the Findings of Fact, but you'd have
2 to look at the, the, the, uh, Staff Report and look at all the, uh,
3 Conditions of Approval and then, um, the, one of those conditions, like I
4 just said, is going to be specific to the issued SEPA MDNS and then
5 everything else has to do with the Special Use Permit Application.

6 EHRLICHMAN: Yes. Yes. I understood that answer. I'm, I'm trying to now ask
7 you about what everything else is. Now, we're talking specifically here about
8 recommended conditions. And I'll explain where I'm going with this, Mr.
9 Examiner, if I may?

10 REEVES: O-, okay. Something, this is something other than the recommended
11 conditions on Page, Pages 30 and 31 of the Staff Report?

12 EHRLICHMAN: My, my question is, where in the Staff Report do we find Special
13 Use Permit conditions that are separate and apart, different than MDNS
14 conditions? My understanding is that there aren't any. But I had an exchange
15 with Counsel where it was suggested that perhaps there were some. And, again,
16 my questions are very limited to Grip Road's, um, safety conditions, traffic
17 safety conditions. So, I guess...

18 REEVES: So...

19 EHRLICHMAN: Let me rephrase the question, then, to see if I can clear it up.
20 Uh, to your knowledge, are there any, um, Special Use Permit conditions
21 related to safety on Grip Road, other than the MDNS conditions?

22 CRICCHIO: Other than the MDNS conditions? So, when Public Works reviewed
23 the Application and, um, any proposed improvements, whether it's on-site or
24 off-site, that would typically be within an issued SEPA MDNS. So, if they
25

1 wanted something, that's where we would typically hold it at, or, or put it
2 in with, put it in that document.

3 EHRLICHMAN: Oh, okay. Thank you very much for that. Now, in this particular
4 case, is that what happened?

5 CRICCHIO: Um, I believe so, yes.

6 EHRLICHMAN: Okay. So, I think what, what I, if I was asked to summarize,
7 well, let me put it this way, is it fair to summarize your testimony, then,
8 to say that any conditions on safety, traffic safety on Grip Road, we can
9 find those in the MDNS conditions?

10 CRICCHIO: That sounds correct to me, yes.

11 EHRLICHMAN: Okay. Thank you very much. Just a couple more quick questions.

12 REEVES: Just so I'm not now confused, I was less confused a few minutes
13 ago, but am I correct in thinking there are only two places wherein
14 conditions, well, what I would call conditions, there would only be one
15 place, the Recommended Conditions in the Staff Report, Page 30 and 31,
16 clearly identified as such and then, separately, there's the Mitigation
17 Requirements under SEPA, which are specifically identified in the MDNS and
18 cross-referenced in the, I believe, last condition of the Staff Report. Those
19 are the two places. Am I, there's not, Skagit doesn't use some system I've
20 never seen anywhere else, is that right, Mr. Cricchio?

21 CRICCHIO: That's right, Mr. Reeves. So, typically, typically, I would, uh,
22 uh, essentially copy/paste the MDNS conditions within the Staff Report, but
23 you're correct, it was just referenced there. Um, but, yeah.

24 REEVES: Got it. Okay. Sorry, Mr. Ehrlichman, go ahead.
25

1 EHRlichman: That, that was actually very helpful, I, I think that asked the
2 question more clearly than I was able to. Um, now, you, you testified that in
3 preparing those conditions for recommendation to the Hearing Examiner, you
4 sought the input of Public Works, correct?

5 CRICCHIO: Uh, partly, that's correct.

6 EHRlichman: Right. Partly. But with respect to traffic safety on Grip Road,
7 specifically, you sought, you asked Public Works what conditions they wanted
8 to have in the recommendation, is that correct?

9 CRICCHIO: Yes. So, I saw the recommendations of the Traffic Impact
10 Analysis, I looked at that, I looked at the memos, uh, that had been done,
11 uh, prior to that. Um, but that's correct. So, I reached out, uh, to Public
12 Works Department Staff, um, to, to, essentially, asking them what do you,
13 what, what do you need for this project to mitigate on-site, off-site traffic
14 impacts.

15 EHRlichman: Very good. Thank you for that. And, I assume, but I want to ask
16 you, there wasn't any disagreement between the Planning Department and Public
17 Works as to what conditions to put in the recommendation to the Hearing
18 Examiner, as far as that goes, the safety recommendations, is that correct?

19 CRICCHIO: Specific to traffic?

20 EHRlichman: Specific to traffic safety on Grip Road?

21 CRICCHIO: So, I can't, uh, speak for other past employees that no longer
22 work for Skagit County, um, and I can't speak to anyone that, um, you know, I
23 don't have a, uh, interaction with, um, or that, you know, I don't work with
24 on a daily basis. But, as far as I'm aware of, I don't believe there's been
25

1 any disagreement with, uh, Planning Department Staff and Public Works
2 Department Staff.

3 EHRLICHMAN: Thank you. My question was exactly that, limited to what you did
4 and, and what you talked about with Public Works or what you knew about.

5 CRICCHIO: Sure.

6 EHRLICHMAN: So, I'll just ask the question again and maybe you can answer yes
7 or no. Uh, are you aware of any disagreement between the Planning Department
8 and Public Works about the traffic safety recommendation to the Hearing
9 Examiner, as it relates to Grip Road?

10 CRICCHIO: I'm not aware of anything, so that would be a no.

11 EHRLICHMAN: Okay. Thank you for that. So, is it fair to say that the Public
12 Works recommendation on traffic safety on Grip Road was accepted by the
13 Planning Department and included in the Staff Report?

14 CRICCHIO: Absolutely.

15 EHRLICHMAN: Okay. Just want to look at my notes real quick here. Um, when you
16 reviewed all of the documents prior to, uh, drafting the SEPA MDNS and you
17 looked at the reports and studies and documents related to traffic safety,
18 uh, do you recall seeing two peer reviews that the County commissioned?

19 CRICCHIO: Um, so that pre-dates my employment with Skagit County, but, yes,
20 you're correct, there was, uh, a couple of, uh, third-party review, or peer
21 review, if you want to call it that. Um, one, I think was HDR and the other
22 one was, like, GTC or something like that. That's correct.

23 EHRLICHMAN: Okay. Very good. And, uh, those came in before the Applicant's
24 final traffic impact analysis dated September 10th, 2020, correct?

1 CRICCHIO: So, the documents in the Staff Report, Findings of Fact that
2 you're referencing right now, I believe those were before the final TIA.

3 EHRLICHMAN: Can you clarify that for us a little bit?

4 CRICCHIO: So, when the Application was submitted way back in 2016, uh,
5 there's, you know, like I said, there's been numerous documents that the
6 Applicant has submitted over the years, um, addendums, new reports, but
7 initially some, some traffic memos were submitted. Um, and then, eventually a
8 Traffic Impact Analysis was submitted. Um, and I think somewhere in between
9 those two, um, was third-party review.

10 EHRLICHMAN: Right. So, there wasn't a, another rev-, uh, third-party review
11 after the last traffic submittal, correct?

12 CRICCHIO: So, I don't know if that's correct. Um, I, I, I believe it, it
13 has been done, but I'm not 100%. Um, you would have to chat with the Public
14 Works Department staff regarding that question. Part of my due diligence is,
15 is reaching out and, and trying to determine whether things or done or not
16 done. Um, but, uh, I'm not 100% on that, Mr. Ehrlichman.

17 EHRLICHMAN: Yeah. Yeah. No, that's, that's fine. Thank you. I, I only wanted
18 to know what your knowledge was and your testimony. And, and I believe, uh,
19 you said you came in in July or August of 2021, which would have been...

20 CRICCHIO: That's when I was...

21 EHRLICHMAN: Yeah. Would have been after...

22 CRICCHIO: That's when I was handed the project, yep.

23 EHRLICHMAN: Right. Right. So, uh, you weren't aware of, uh, the question of
24 whether there was a peer review done on that last traffic report?

1 CRICCHIO: Um, I, I wasn't aware of it. Um, I have reached out, um, and, but
2 I'm, I don't know. You, like I said, you'd have to talk to the transportation
3 people. Um, and I know that they're going to be testifying, um, and that
4 would be probably a question for them.

5 EHRLICHMAN: Right. But, I can't ask them about what you were aware of, so I'm
6 just asking...

7 CRICCHIO: Sure.

8 EHRLICHMAN: Were you aware, when you came into the project, were you aware of
9 the question of whether there was a peer review or not on the last traffic
10 submittal?

11 CRICCHIO: Was I aware of it? Uh, so, having done this for many years, uh,
12 in previous, uh, places where I've worked, we have used third-party review on
13 numerous occasions, especially very controversial projects, um, or projects
14 that could potentially have environmental impacts or traffic impacts, it's
15 very common for a city or a county to do third-party review or peer review of
16 Applicant's submittals, um, especially critical area reports or traffic
17 impact analysis. Um, I was not aware, however, that whether that's been done
18 or not. Um, I believe it has been. I've, I've reached out to staff, um, and,
19 uh, that's to the, to the, the extent that I know now.

20 EHRLICHMAN: Uh, I'm sorry, you weren't aware of whether what was done?

21 CRICCHIO: I, I'm not 100% aware of whether the final TIA underwent peer
22 review.

23 EHRLICHMAN: Thank you. We'll ask the Public Works guy, thank you for that.
24 Now, who, at the County, uh, in the Planning Department, made the ultimate
25 decision to, um, finalize the draft MDNS?

1 CRICCHIO: So, who, with the County, was the person that made the decision
2 to finalize the SEPA MDNS?

3 EHRLICHMAN: Yes. You...

4 CRICCHIO: Is that correct?

5 EHRLICHMAN: Yeah. You testified that you prepared a draft, you circulated...

6 CRICCHIO: Sure.

7 EHRLICHMAN: It, there were edits to the draft, who made the final...

8 CRICCHIO: Correct.

9 EHRLICHMAN: Decision on the, go to print on the, the final MDNS as we see it
10 today?

11 CRICCHIO: Sure. So, that's my supervisor, Brandon Black.

12 EHRLICHMAN: Okay. Great. So, even though you signed the MDNS, you did so, uh,
13 only after hearing from Brandon Black, that it was, it was time to issue...

14 CRICCHIO: Ye-...

15 EHRLICHMAN: That...

16 CRICCHIO: The, so, like I said, I solicit for comments, internally, I look
17 at past comments from different agencies, as well as different departments. I
18 condition the SEPA MDNS, um, accordingly. Um, but, uh, um, and then,
19 obviously, there's a QA/QC component of the SEPA MDNS that, uh, as a team, we
20 look at. Um, but ultimately, my supervisor looks at it and once he or she, in
21 this case a he, uh, decides that it is, uh, good to go, um, then it's good to
22 go.

23 EHRLICHMAN: Very good, Mr. Cricchio. Thank you so much for answering my
24 questions and, um, Mr. Examiner, I am done. Uh, Mr. Examiner, I just want to
25 note for the record that we would like to call Brandon Black as a witness in

1 our presentation if the County elects not to call him. But we can deal with
2 that another time, I'm sure. Thank you, Mr. Cricchio.

3 D'AVIGNON: On that note, I would preemptively note that the County would be
4 objecting to him calling Brandon Black as a witness.

5 REEVES: Well, okay. Let's cross that bridge later and get through this
6 witness first. Um, Mr. Loring, I'm going to hand Mr. Cricchio over to you.

7 LORING: Thank you, Mr. Examiner. And, uh, good morning, Mr. Cricchio.

8 CRICCHIO: Good morning.

9 LORING: I have a few questions for you, thanks, uh, to follow up on the
10 conversations that you've had so far this morning...

11 CRICCHIO: Sure.

12 LORING: Uh, with Mr. D'Avignon and Mr. Ehrlichman. Uh, do you, uh...

13 REEVES: Mr. Loring, sorry to interrupt.

14 LORING: Yes.

15 REEVES: I think you're having some bandwidth issues, maybe if you give us
16 a break on video...

17 D'AVIGNON: You're breaking up a lot.

18 REEVES: For a few minutes, it will, it will catch up.

19 LORING: Okay. Thanks for letting me know. Here we go, I'll turn off the
20 video. And feel free to pipe up if I'm having trouble coming through clearly
21 and now that I've shut down the video.

22 REEVES: You know I will, go ahead.

23 LORING: Thank you. Um, Mr. Cricchio, you mentioned at the beginning of
24 your testimony with Mr. D'Avignon, that you had, uh, there was internal
25

1 review associated with this project application, as well as other agency
2 review, uh, were you referring to State agency review of the Application?
3 CRICCHIO: So, we didn't solicit comments to state agencies, that's not what
4 I meant. What I meant is we looked at, uh, the, the totality of the agencies
5 and department comments that have been received. In addition to that, we
6 reached out, um, as a Planning Department internally, um, to the Public Works
7 Department. Um, to, uh, the Natural Resource Division, um, if there was more
8 comment or, or there was confusion or, or a need for, for comment that was
9 not received from, from, internally from other departments, whether that's
10 Public Health or whoever, yeah, I, I reached out, uh, internally, um, to
11 other departments to help...

12 LORING: Okay.

13 CRICCHIO: Write, to help write the SEPA MDNS.

14 LORING: Great. Thank you for that clarification. Uh, although you didn't
15 reach out to state agencies, there are numerous, uh, communications from the
16 Department of Ecology in the record, aren't there?

17 CRICCHIO: Um, I think there was one back in 2016 by a Doug Gresham
18 [phonetic] and then I think there was one, uh, I think it was earlier this
19 year, possibly.

20 LORING: Okay. Uh, actually, multiple communications from, uh, Gresham in
21 2016.

22 CRICCHIO: Okay.

23 LORING: Uh, is that right?

24 CRICCHIO: I don't recall, I'm not looking at everything.

1 LORING: Okay. Okay. Uh, and there was, uh, communication this year, March
2 11th, 2022 from, uh, a Department of Ecology representative named Chris
3 Lerkins [phonetic]...

4 CRICCHIO: Yes.

5 LORING: Are you familiar with that one?

6 CRICCHIO: Uh, I'm, I'm relatively familiar with Chris Lerkins and his
7 comments.

8 LORING: Okay. And so you're, you're familiar with comments that the
9 wetland edge for the Samish River wetland needed to be delineated, uh, that
10 the Applicant needed to use the updated wetland rating system and
11 recommending a 300 foot buffer for that Samish River wetland?

12 CRICCHIO: I did see Chris Lerkins' comments. Um, I, I do recall what you're
13 talking about. But I defer to the, uh, Natural Resource Division in
14 implementing Skagit County Code with regard to the Critical Area Regulations.

15 LORING: Okay. So, it's your position that your internal, uh, Natural
16 Resource Division rejected those recommendations from the Department of
17 Ecology?

18 CRICCHIO: Um, I wouldn't say they rejected it. That's, that's, that's a
19 mouthful right there. Um, I would say that, uh, this, this, this Application
20 came back in 2016, it is a vested Application, per the Critical Area
21 Regulations that were in effect at that time.

22 LORING: Okay. And do the Critical Area Regulations at that time allow for
23 a 200 foot buffer, rather than a 300 foot buffer for the wetland along the
24 Samish River?

1 CRICCHIO: I can't speak to that, Mr. Loring. Uh, again, that's, that's
2 Natural Resources.

3 LORING: Okay. And did the Department of Ecology, starting in 2016, raise
4 the same concerns and objections to a 200 foot buffer in lack of delineation,
5 uh, at that time based on the current Critical Areas Ordinance, uh, that
6 Skagit County had in 2016?

7 CRICCHIO: They raised some, uh, Doug Gresham, I do believe, raised some
8 questions, um, but, you know, I wasn't working for the County back then. Um,
9 and, again, I'd have to defer to the Natural Resource Division on that.

10 LORING: Okay. So, you mentioned vesting a moment ago, I just want to be
11 clear, you're not saying that the Critical Areas Ordinance was different in
12 2016 than it is in 2022 in a way that effects this Application, are you?

13 CRICCHIO: I'm not 100%, no.

14 LORING: Okay. When you say you're not 100%, you don't know, do you?

15 CRICCHIO: I don't know if it, I, I believe there was changes between, uh,
16 the 2016 and, and the present, but how that impacts this project, I can't
17 tell you.

18 LORING: What were those changes?

19 CRICCHIO: I can't tell you. I don't work in Skagit County with Critical
20 Area Regulations. Other employers, I have, but not with Skagit County.

21 LORING: Okay. I'm just try-, you mentioned, you testified you believe
22 there were changes, I'm just trying to explore your understanding of those
23 changes. Um, sounds like you, you don't know...

24 CRICCHIO: Well, I, I...

25 LORING: Those changes?

1 CRICCHIO: I don't recall exactly. If I had to guess, there was buffer
2 changes between previous, uh, iterations or previous, previous Critical Area
3 Regulations, which adopted State, uh, State Law. Um, co-, when, when compared
4 to current, um, but I'm not 100% on that. You'd have to talk to Leah on that.

5 REEVES: And by Leah, just breaking in, this is Leah Forbes who we expect
6 to hear from shortly, correct?

7 CRICCHIO: That's correct.

8 REEVES: Okay. Go ahead.

9 LORING: Okay. So, it's your position that there were changes in the
10 Skagit County Critical Areas Ordinance for wetlands that changed the buffer
11 sizing for the Samish River wetland, is that right, Mr. Cricchio?

12 CRICCHIO: Um, so, typically, when, uh, whether you're talking about
13 Critical Area Regulations or zoning, land use, when new code becomes new
14 code, it's typically stricter than past renditions of it, if that makes
15 sense.

16 LORING: It does and so you're claiming that the CAO has become stricter
17 during the pendency of this Application?

18 CRICCHIO: Um, when you're comparing older editions of the Code, 2016 to
19 current, that's very common for, for Code to become stricter than less
20 strict.

21 LORING: And your position is that that occurred here?

22 CRICCHIO: Uh, that's not po-, that's not my, my position here. You're going
23 to have to talk to Leah on that.

1 LORING: Okay. So, you testified a moment ago that you believe that the
2 buffers became larger due to a change in the Critical Areas Ordinance between
3 2016 and 2022?

4 CRICCHIO: I, I'm speaking in general terms, Mr. Loring.

5 LORING: What basis do you have for making that statement? You don't know
6 whether the buffer sizes changed in the CAO...

7 CRICCHIO: I don't know.

8 LORING: During that time period?

9 D'AVIGNON: I'm going to object. I think we're getting to unduly repetitious
10 questioning.

11 REEVES: And...

12 D'AVIGNON: Mr. Cricchio has indicated he's not a wetland expert, that
13 Natural Resources, particularly Ms. Forbes would be able to answer these
14 questions.

15 REEVES: Sure. My, my...

16 LORING: Mr. Examiner, may I, may I briefly...

17 REEVES: Hold on.

18 LORING: Respond to that, that...

19 REEVES: Mr. Loring, let me...

20 LORING: Objection?

21 REEVES: Let me, Mr. Loring, I'm going to break in for one sec to make my
22 point, which is, in terms of what Mr. Cricchio testified to, I think he sort
23 of speculated and then he said, wait, probably talk to Leah Forbes, she's the
24 expert. Uh, I don't, ultimately, uh, well, go ahead, Mr. Loring, I, I...

25 LORING: Mr...

1 REVES: Before I make a ruling.

2 LORING: Sure. What I would say to that is that Mr. Cricchio was the, was
3 the staff person who here signed the MDNS. He's the person who reviewed this
4 project, ultimately, for, uh, for consistency or inconsistency with the
5 County's Special Use Permit Criteria. So, his understanding of the applicable
6 regulations is important here. And the fact that he, if he does not
7 understand what those regulations are or what they were in 2016, that's also
8 important. He, he made a claim that the project had vested due to Critical
9 Areas Ordinance conditions or a criteria in 2016. And, so, of course, I'm
10 going to follow up on that and try to understand the basis for his argument
11 that way. This is the first time we've seen this argument. Again, he is the
12 staff member at Skagit County responsible for this project and interpreting
13 their regulations and applying them to this Application. So, these are...

14 REEVES: Well...

15 LORING: Important details.

16 REEVES: I, I understand the devil is in the details. I will note he also
17 just testified in response to Mr. Ehrlichman, that, you know, it's an
18 accumulative process with multiple staff members and he solicits the advice
19 of others with expertise. I feel like the question has been answered, but,
20 but I'll let you ask it directly one final time and we'll try to get, rather
21 than a speculative response from Mr. Cricchio, maybe just a direct response
22 about the Code, not how process works, generally. So, Mr. Loring, if you want
23 to make a direct question on this, go ahead and then we'll, we'll, we'll keep
24 going.

1 LORING: Thank you, Mr. Examiner. And, and I have been trying to, to do
2 that. So, Mr. Cricchio, uh, just to try to put a final point on this, you
3 don't, uh, do you know whether the Critical Areas Ordinance for Skagit County
4 was changed in a way, from 2016 to 2022, that would have affected applicable
5 buffers for the Samish River wetland for this project?

6 CRICCHIO: I do not.

7 LORING: Okay. Thank you. So, you were asked earlier about your
8 understanding of the number of trips that would occur associated with this
9 project, I'm talking about the gravel hauling trips. And you mentioned that
10 your, your PowerPoint said that 60 truck trips could occur per hour under the
11 extended hours scenario, is that right?

12 CRICCHIO: I'm not looking at it, Mr. Loring, but like I said, uh, whatever
13 was in there, uh, if I could redo it, I would strike that entire slide and
14 simply state, per the TIA, on average, truck trips are 46 per day, 23 in, 23
15 out, maximum in one hour, um, is 30 in, uh, 15 in, 15 out.

16 LORING: Okay. And you're referring to the, the TIA, that Traffic Impact
17 Analysis from 2020?

18 CRICCHIO: That's correct.

19 LORING: Okay. W-, how many trick, uh, trips, sorry, how many trips are
20 allowed by the MDNS for extended hours?

21 CRICCHIO: Um, I believe it's the same.

22 LORING: Okay. So, your position is that that would be the same as the
23 TIA?

24 CRICCHIO: It should, it should be consistent with the TIA.
25

1 LORING: Okay. What is your understanding of the maximum number of truck
2 trips that can occur during, uh, regular conditions at the site?
3 CRICCHIO: I, you're going to have to talk to the Public Works people. I'm
4 not a traffic engineer, I'm not a traffic professional.
5 LORING: Okay. Well, let me ask you, what is, what do you believe the MDNS
6 sets as a limit for truck traffic trips during regular conditions at the
7 site?
8 CRICCHIO: Um, so, again, it's going to go back to the on average, per day,
9 46 truck trips, 23 in, 23 out. And then it's further limited..
10 LORING: Okay.
11 CRICCHIO: Based on the hours of operation that we limited the project to.
12 LORING: Okay.
13 CRICCHIO: Monday through Friday, 7:00 to 5:00, if I recall correctly.
14 LORING: Okay. So, you're, uh, the average number, that's not an actual
15 limit is it?
16 CRICCHIO: Um, it's not a cap, it's an average, some days can be less, some
17 days can be more, but there's an average.
18 LORING: Okay. So, is it your understanding of the MDNS that you authored
19 does not set any daily limit for the truck trips?
20 CRICCHIO: Say that again?
21 LORING: Is it your understanding that the MDNS that you authored does not
22 set a daily limit for truck trips under regular conditions?
23 CRICCHIO: Yeah. There's no daily limit, it's based on an average.
24 LORING: Okay. And there, is it your understanding as well that the MDNS
25 does not set an hourly limit, uh, ba-, during regular conditions?

1 CRICCHIO: Um, it needs to be consistent with the..

2 LORING: Truck trips?

3 CRICCHIO: It needs to be consistent with the TIA and needs to be consistent

4 with, uh, the, uh, uh, requirements of the Public Works Department.

5 LORING: Okay. Does the MDNS have language in any of its conditions that

6 say that truck traffic must be consistent with the Traffic Impact Analysis

7 and with the Department of Public Works?

8 CRICCHIO: Um, I think the recommendations are, are, are, uh, of the, uh,

9 TIA, of the TIA, are reflected in the SEPA MDNS.

10 LORING: Okay. And those recommendations are an average of 46 daily trips?

11 CRICCHIO: If I recall correctly, yes.

12 LORING: Okay. All right. Uh, there was some conversation a moment ago

13 about the traffic impact analysis and whether it received third-party review.

14 I believe you testified that you weren't aware whether it received third-

15 party review, is that accurate?

16 CRICCHIO: Um, I testified, uh, that I am not 100% aware of whether it, it

17 underwent final third-party review or not, that's correct.

18 LORING: Okay. Um, you, you also testified that you thought it probably

19 had?

20 CRICCHIO: I felt, I feel that it had, but, again, I'm not 100%. You'd have

21 to talk to the, the traffic people to see if that, uh, uh, ever occurred.

22 They're the ones who manage, uh, the, the traffic for, for the County. And

23 they're the ones who, uh, managed the contracts for the third-party review in

24 the past.

25

1 LORING: Okay. And did you have an email exchange with the Public Works
2 Department about whether they had conducted third-party review of the, uh,
3 that traffic impact analysis? That final transportation document?

4 CRICCHIO: Did I have an email exchange? I don't recall if I had an email
5 exchange or not. I believe I had an email exchange with my supervisor, I
6 don't know if that was Public Works or not, if they were copied in on that or
7 not.

8 LORING: Okay. So, you don't, you don't recall your April 20th email to
9 Forest Jones stating that, uh, you agreed that you should get a final TIA to
10 HDR for one final look?

11 CRICCHIO: I don't recall if, if I received an email from Forest Jones or
12 not with regard to that, what you're, what you're talking about, I don't.

13 LORING: Okay.

14 CRICCHIO: This project has been going on for a long time and there's a lot
15 of moving parts to it.

16 LORING: Sure. And do you recall, uh, Forest Jones emailing you in
17 response and saying that it would be a good idea to get HDR review of a final
18 DN TIA?

19 CRICCHIO: I don't recall that.

20 LORING: Okay. And each DR-...

21 CRICCHIO: I...

22 LORING: In this instance, HDR review would be third-party review, is that
23 right?

24 CRICCHIO: So, yeah, HDR in the past, I think and then, uh, another
25 consultant, GTC or something was used in the past.

1 LORING: Okay.

2 CRICCHIO: For third-party review, that's correct.

3 LORING: And do you recall, uh, what your supervisor said about whether

4 third-party review should occur here? And I should say a third-party review

5 of that TIA?

6 CRICCHIO: I don't recall, no.

7 LORING: Okay. So you don't recall Brandon Black stating should not, there

8 won't be any third-party review because it was way past third-party review

9 time?

10 CRICCHIO: You'd have to have that conversation with him, I don't recall.

11 LORING: Okay. You, you don't recall the email he sent you to that effect?

12 CRICCHIO: I don't recall, again.

13 LORING: Okay.

14 EHRLICHMAN: Mr. Examiner.

15 REEVES: We'll cross that bridge when we get there, Mr. Ehrlichman.

16 EHRLICHMAN: I'd just like to note this point in the record when we have that

17 discussion, thank you.

18 REEVES: I'm, I took notes myself. Uh...

19 EHRLICHMAN: Thank you so much. Okay.

20 LORING: Um, Mr. Cricchio, I've got a few more questions for you. I'd like

21 to turn now, uh, to your Staff Report.

22 CRICCHIO: Sure.

23 LORING: And discuss that. You, um, and, and I can pull it up if we need

24 to. But I'm also going to refer to different pages and statements from it

25 there. Uh, and I'll start on, on page 5 of your Staff Report, and this is

1 Exhibit 1, uh, in this matter, I've got it as C1, I believe it's 1 overall.

2 Uh, you mentioned that the Shoreline Associated Riparian Wetlands had been
3 delineated. Uh, I believe you're referring to the Samish River wetlands, is
4 that right?

5 CRICCHIO: Um, I think that's how it's listed in there. J-, but, uh, based
6 on, on testimony, uh, it doesn't sound like it ever was done, um, delineated.

7 LORING: Okay.

8 CRICCHIO: Lis-, listening to Oscar, uh, um, Bunting and Associates give his
9 testimony.

10 LORING: Okay. And in, in the, uh, in the Staff Report, pages 7-9, you
11 discuss the intensity of the land use. And I just wanted to briefly touch on
12 that as well there.

13 CRICCHIO: Sure.

14 LORING: You, are you familiar with the different, uh, definitions for
15 land uses from the Skagit County Code? And, I'm sorry, the intensity, yeah.

16 CRICCHIO: I'm not, that's Critical Areas.

17 LORING: Okay. So you don't, uh, you didn't review the project to
18 determine whether the, uh, what the appropriate land use impact intensity
19 should have been for it?

20 CRICCHIO: So, are you talking about the 200 foot versus the 300 foot
21 buffer? If that's the question, that's Critical Areas.

22 LORING: Okay. It, it does relate to that. It's a question more about
23 interpreting the Application itself to understand how the impact and its
24 intensity would be characterized under the Skagit County Code. But you're

1 right that it relates to the, the buffer sizing. So, is that, is, is that not
2 something that you reviewed in this Application?

3 CRICCHIO: That's not, that's not something that I reviewed in this
4 Application.

5 LORING: Okay. And, okay. Just scrolling through, I've got a couple of
6 questions about noise from the project. Uh, your Staff Report states at page
7 24 that the Applicant has indicated that the proposal would not result in
8 noise or vibration impact beyond site boundaries. Does that sound right to
9 you?

10 CRICCHIO: Um, I believe that's consistent with the noise report.

11 LORING: Okay. In that instance, uh, well, how are you defining site
12 boundaries? Or how are you, how do you interpret the word site boundaries in
13 your Staff Report there?

14 CRICCHIO: So, I'm relying on the noise report, that's where that verbiage
15 is coming from.

16 LORING: Okay. So, you're not...

17 CRICCHIO: I'm not def-, I'm not...

18 LORING: You're not defining it?

19 CRICCHIO: Yeah. I'm not...

20 LORING: Okay.

21 CRICCHIO: Getting in, into nuances on that.

22 LORING: Okay. So, you don't know if gravel trucks and trailers on the
23 public roads would have been considered site boundaries or beyond the site
24 boundaries in that report?

1 CRICCHIO: So, I'm not a noise expert, I rely on the noise, the noise
2 professional to determine that.

3 LORING: To determine where the site boundaries are?

4 CRICCHIO: To determine how much noise this potential project would generate
5 and whether or not that complies with the County Standards and/or State Law.

6 LORING: Okay. So, you didn't independently review whether, uh, the
7 project would result in noise vibration impact beyond the site boundaries?

8 CRICCHIO: Did I review? Again, I, I rely on the report. That's, that's it.

9 LORING: Okay. So, you didn't independently assess whether that report
10 accurately made that statement?

11 CRICCHIO: Um, well, how would I accurately determine if that statement is
12 correct? It didn't undergo third-party review. I'm not a noise expert.

13 LORING: Okay. And, okay. And you, you testified a moment ago that you
14 don't know where the site boundaries are for this [inaudible].

15 CRICCHIO: I don't, I'm not sure I understand the question. I don't, I don't
16 know the site boundaries. There's three parcels where the gravel mine is
17 proposed. And then there's haul road, which consists of a number of other
18 parcels.

19 LORING: Okay. Are you familiar with the fact that this project would send
20 gravel trucks on public roads?

21 CRICCHIO: Sure.

22 LORING: Okay. And is it your understanding that those public roads lie
23 within site boundaries?

24 CRICCHIO: Say that again?
25

1 LORING: Is, is it your understanding in reviewing this project that the
2 public roads on which the gravel would be hauled fall within the site
3 boundaries?

4 CRICCHIO: I'm not sure I have an answer for that question.

5 LORING: Okay. Do you know where the site boundaries are for this project?

6 CRICCHIO: Site boundaries, again, there's three parcels that make up the
7 proposed gravel mine and then plus the haul road. That's the site. Anything
8 else is off-site.

9 LORING: Okay. And so, gravel, uh, truck noise and vibration that occurs
10 on the public roads would be off-site, then, right?

11 CRICCHIO: I mean, it's on a public road, it's not on site, so it would be
12 off-site.

13 LORING: Okay. And you didn't evaluate any noise impacts, then, from, uh,
14 that gravel truck hauling, did you here?

15 CRICCHIO: Um, so, I rely, again, on the, the noise, noise report that was
16 submitted by the Applicant.

17 LORING: Okay. The Staff report, uh, there's a Condition of Approval,
18 Number 5 on Page 30 of the Staff Report that states that the maximum
19 allowable noise level to be emitted from the property is 60 decibels. Does
20 that sound right to you as one of the Conditions of Approval?

21 CRICCHIO: Um, so, I'm not looking at it, but, yeah, there is a, uh, se-,
22 there is a Condition of Approval, within the Staff Report, which has to do
23 with noise level and conformance with the County Standards, as well as the
24 respective WACs.

1 LORING: Okay. I'm, I'm going to try to share my screen, just to pull up
2 that Condition of Approval so that you can see it while we're talking about
3 it. Hopefully my bandwidth will, will, uh, be strong enough for this without
4 me being on the screen. Are you seeing a, are you seeing a conditions of
5 Approval, Page 3 of 31, in this document? Did it show up?

6 REEVES: I, I am.

7 LORING: Okay.

8 CRICCHIO: I'm seeing Number 5, is that what your question is?

9 LORING: Yes. I just wanted to make sure you could, you could even see the
10 screen since I was having a little bandwidth trouble.

11 CRICCHIO: Sure.

12 LORING: Yeah. Are you seeing Number 5 there?

13 CRICCHIO: I am.

14 LORING: Do you see that it says, uh, the maximum allowable noise level,
15 uh, per Chapter 1.73-60 allowed to be emitted from this property is 60
16 decibels? I was cutting out a little there.

17 CRICCHIO: Um, it's hard for me to see on this tiny little laptop. But,
18 yeah, uh, that sounds, sounds about right.

19 LORING: Okay. And is it, uh, you're familiar with the noise report
20 itself, is that right? In this matter?

21 CRICCHIO: I, I'm, I don't have it memorized, no, I don't.

22 LORING: Okay. Are you familiar with the fact that the noise report states
23 that sounds at 100 feet from the equipment to be used would be, uh, 75 to 76
24 decibels, depending on which equipment would be used?

25 CRICCHIO: Again, I'm not familiar with it, I don't have it memorized.

1 LORING: Okay. Are you familiar or are you aware that this mine, uh,
2 excavation would occur within 100 feet of property lines?

3 CRICCHIO: Uh, I believe in some instances, yes.

4 LORING: Okay. And so if the noise report states that sound equipment, the
5 sound from equipment would be approximately 75 to 76 decibels at 100 feet and
6 if were mining were to occur at 100 feet from property line, uh, this, the,
7 uh, mine is not going to be able to meet that 60 decibel limit, is it?

8 CRICCHIO: Well, the mine would have to meet that, that respective condition
9 of approval.

10 LORING: Okay.

11 CRICCHIO: That, that, uh, that Condition of Approval, I believe, I think
12 there was some question in the earlier testimony whether or not, uh, I think
13 someone had, uh, some, uh, comments that the MDNS, which was just a boiler
14 plate, uh, conditions. Well, having done this for a long time, up and down
15 the I-5 corridor, SEPA MDNS are project specific, but you also have, uh,
16 boiler plate conditions and that is one of them, if I recall correctly.

17 LORING: When you say that is one of them, you mean the 60 decibel
18 condition here, uh, Conditional of Approval Number 5?

19 CRICCHIO: If I remember correctly, yes.

20 LORING: Okay. The County isn't also conditioning the project on observing
21 a larger buffer than 100 feet from residential properties is it?

22 CRICCHIO: Um, I don't believe that's required in Code.

23 LORING: Okay.

24 REEVES: And clarifying question for me, Mr. Cricchio, just to make sure I
25 didn't, haven't fully misunderstood my own job, am I correct in thinking

1 that, you know, the mitigation requirements, although Mr. Loring has appealed
2 the MDNS, uh, you know, the mitigation requirements are what they are at the
3 moment. But, in terms of these conditions, the County isn't technically,
4 itself, conditioning anything, ultimately it's the Hearing Examiner that
5 needs to determine what the appropriate conditions are, is that accurate?

6 CRICCHIO: That's correct. You're the decider.

7 REEVES: Okay. Go ahead, Mr. Loring, just want to make sure I didn't miss
8 something.

9 LORING: Mr. Cricchio, did you consult with the Hearing Examiner about the
10 conditions of the MDNS before you signed it?

11 CRICCHIO: Did I consult with the, say that again, Mr. Loring?

12 LORING: Did you consult with the Hearing Examiner about the conditions of
13 the MDNS before you signed it?

14 CRICCHIO: Uh, I don't recall ever doing such a thing.

15 REEVES: No.

16 LORING: Okay.

17 CRICCHIO: That sounds a little ex-parte to me.

18 LORING: And if the, the conditions in the MDNS, if those had not been
19 appealed, uh, would those be deemed final, uh, upon the expiration of the
20 Appeal period?

21 CRICCHIO: That sounds correct.

22 LORING: Just from your understanding? Okay.

23 CRICCHIO: That sounds correct.

1 LORING: Thank you. Uh, let's talk a little bit about air emissions, uh,
2 the, uh, to your knowledge, does the Applicant evaluate the project's carbon
3 emissions?

4 CRICCHIO: Uh, carbon emissions, we don't have any type of climate change or
5 carbon requirement, requirement per Skagit County Code. Um, as far as
6 emissions from the equipment itself, they would have to comply with the
7 Northwest Clean Air Agency and there is a condition in the Staff Report that
8 has to deal with that, as well as fugitive dust.

9 LORING: Okay. Uh, so, the answer to my question, whether the Application
10 evaluated the project's carbon emissions, do you know if it did evaluate the
11 carbon emissions?

12 CRICCHIO: Carbon emissions with regard to climate change?

13 LORING: Sure.

14 CRICCHIO: Again, I don't think we have anything in Skagit County Code that
15 I could regulate carbon emissions.

16 LORING: And I'm not necessarily speaking to the direct provisions of the
17 Skagit County Code here, but to, to your knowledge, did the Application
18 evaluate the project's carbon emissions?

19 CRICCHIO: I don't know, but, you know, I go, I work for Skagit County Code,
20 I implement Skagit County Code.

21 LORING: Okay. To your knowledge, does the Skagit County Code incorporate
22 the State Environmental Policy Act?

23 CRICCHIO: It sure does.

24 LORING: Okay. And to your knowledge, does the State Environmental Policy
25 Act require analysis of impacts to, uh, air quality and pollution?

1 CRICCHIO: Sure.

2 LORING: Okay. Let's talk a little bit about traffic, we may have actually

3 covered this, at this point. I know we already discussed most of the items, I

4 just want to check my outline to see if there's anything that we missed here.

5 Okay. Uh, the Staff Report states the internal haul road will have similar

6 function and will be subject to similar truck loads compared to its past use,

7 is that right?

8 CRICCHIO: That sounds correct.

9 LORING: Okay. And what was the past use?

10 CRICCHIO: If I remember correctly, it was forest.

11 LORING: Okay. How many trucks were being, uh, driven along that internal

12 haul road, uh, in the, for that forestry?

13 CRICCHIO: That I can't tell you, I don't know.

14 LORING: Okay. And what were the weight loads for those logging trucks?

15 CRICCHIO: Again, I don't know.

16 LORING: Okay. So, you don't have information that would support that

17 statement that the internal haul road will have similar function and be

18 subject to similar truck loads compared to past use, right?

19 CRICCHIO: Well, it's, it's being used as, the, the road is existing. It's

20 not expanding, the prism is, is what it is and so, it, so, it would be used

21 for a gravel mine versus a forest use.

22 LORING: And what evidence do you have to, uh, support your statement that

23 the road is not expanding?

24 CRICCHIO: What evidence?

25 LORING: Yes.

1 CRICCHIO: Because that's what's, that's what proposed today. So, it's not
2 expanding...

3 LORING: Okay.

4 CRICCHIO: Today.

5 LORING: Okay. You're not discussing, you're not making an assertion about
6 whether it expanded in 2018, are you?

7 CRICCHIO: I can't make that comment. I don't know anything about that, that
8 predates me.

9 LORING: Okay. All right. Uh, I have no further questions. Thank you for
10 your time.

11 REEVES: Great. Before I pass you back, just, again, clarification for
12 myself, Mr. Cricchio. I...

13 CRICCHIO: Sure.

14 LORING: Mr. Loring asked you a couple of ways, I just want to make sure I
15 understood. My understanding of your answer about the carbon emissions issue,
16 essentially, was no, there was no direct or specific analysis of, you know,
17 of the proposal on that ground? Or did I misunderstand? I, I recognized you
18 said there's no regulations in the Skagit Code, et cetera. But just as a yes
19 or no answer, was it that, no, it wasn't directly, that wasn't, uh, something
20 that was looked at explicitly?

21 CRICCHIO: So, in, so, exhaust emissions, there is a Condition of Approval
22 in, in the Staff Report that deals with that. As well as the dust control and
23 they both have to comply with the, with the Northwest Clean Air Agency, uh,
24 requirements. Um, but as far as carbon, I'm not aware of any analysis or
25 anything that was submitted by the Applicant with regard to that.

1 REEVES: Right. So, you didn't have a number or a formula..
2 CRICCHIO: No.
3 REEVES: You were looking at..
4 CRICCHIO: No.
5 REEVES: That said, thou shalt not use X amount of things and you didn't
6 check it against a formula, that, that's my question.
7 CRICCHIO: No, no.
8 REEVES: Okay. That's all, thank you for clarifying that for me.
9 CRICCHIO: Thank you.
10 REEVES: Okay. Uh..
11 EHRLICHMAN: Mr. Examiner?
12 REEVES: Uh, Mr. Ehrlichman?
13 EHRLICHMAN: I'm sorry to interrupt you, I, I, I do want to ask the witness
14 about the basis for determining the average, that singular question following
15 Mr. Loring's questions and the answers. If I may?
16 REEVES: Uh, well, you already did, basically, so let's just roll with it.
17 EHRLICHMAN: Thank you, sir. Uh, Mr. Cricchio, um, just following up on the
18 clarification you made about what the MDNS means, you stated that it
19 references 46 trips per day as an average, correct?
20 CRICCHIO: That's correct.
21 EHRLICHMAN: Do you know what the basis is for determining compliance with
22 that limitation? How do you calculate the average?
23 CRICCHIO: I'm not sure I'm understanding your..
24 EHRLICHMAN: Okay. Let me..
25 CRICCHIO: Question, the, the average...

1 EHRlichman: Fair, fair enough.

2 CRicchio: Came from the TIA.

3 REEVES: Well, Mr. Ehrlichman, if I, I'm going to cut in because I
4 actually had a similar though, so...

5 EHRlichman: Please do.

6 REEVES: Maybe I'll try.

7 EHRlichman: I'll, I'll recede here. Thank you.

8 REEVES: The, well, what I, what I, I guess is, if I'm a Code Enforcement
9 Officer or something, Mr. Cricchio, and I, you know, I'm worried there's just
10 too many trips, is there a, a date range where I would want to go, you know,
11 there were 50 trucks today, there were 20 tomorrow, is there a point at which
12 one would determine whether that average is being met to the extent that,
13 right, if, if you're looking at a week, you know, you could use that as your
14 date range, you could use a month, you could use a year, is, is there
15 anything either explicit in your mind that is, sort of in the TIA or the
16 materials or the MDNS, as to how one would calculate, uh, uh, I guess
17 complying with what that average is intended to be?

18 CRicchio: So, no, there is no suggested Condition of Approval for, uh,
19 enforcement purposes, to make sure that they're complying with that average.
20 Um, the onus would definitely be on the Applicant, or the landowner to comply
21 with that average. Um, the County does not have the resources to put a
22 sheriff deputy out there and monitor, um, you know, whether they're complying
23 with the average or not. So, the onus would be on the Applicant. Um, and Code
24 Enforcement would get involved if, if we were starting to get, uh, complaints
25 about that.

1 REEVES: Got it. Mr. Ehrlichman, did that address what you were hoping to
2 get clarification on?

3 EHRLICHMAN: Uh, I'd like to follow up with one clarifying question, if I may.

4 REEVES: Try.

5 EHRLICHMAN: Uh, Mr. Cricchio, understanding that the County doesn't have
6 resources to put a, post a sheriff deputy out there, let's assume there was a
7 way to calculate the number of trucks going in and out of the mine, you know,
8 a, a traffic strip or a rumble strip or whatever you call those, how would
9 you, how would you calculate whether or not there were 46 trips a day on
10 average? What, let's, let's take an example where you have, um, in a year,
11 you, you, I tell my son, you can only smoke five cigarettes per year. He can
12 figure out when during the year he's going sneak off and smoke five
13 cigarettes. Um, but I can calculate whether he's complied with that or not,
14 right, because I divide 365 by the number of times he smokes and I can tell
15 whether it was five or ten. How do you know whether they have reached that
16 average or not if you don't know what time period you're supposed to measure
17 compliance in? Isn't that, isn't that a problem?

18 CRICCHIO: Yeah. That's a good question. Uh, not touching on the smoking
19 analogy, but, uh, um, um, but whether or not they were complying with that, I
20 mean, the, the Hearing Examiner certainly has, uh, the ability to add
21 Conditions of Approval to the Special Use Permit, where the Applicant would
22 have to self-report, um, that's definitely within his, his ability.

23 EHRLICHMAN: Thank you, sir.
24
25

1 REEVES: All right. Let's move on before we learn even more about
2 Ehrlichman's family life than we want to know. Um, uh, Mr. D'Avignon, did you
3 have, um, uh, a redirect after that?
4 D'AVIGNON: I, I do have a little bit, Mr. Examiner. Uh, to begin with, Mr.
5 Cricchio, are you still there?
6 REEVES: Oh...
7 CRICCHIO: Yes.
8 REEVES: Oh, okay.
9 D'AVIGNON: Okay. Um, we want to turn your cam-, there you go.
10 REEVES: Oh, different background.
11 D'AVIGNON: You are not, you're, you're a Planner, not a biologist, not an
12 engineer...
13 CRICCHIO: That's correct.
14 D'AVIGNON: So you, as I understand the process, you're relying on the
15 information that's provided to you, whether through, um, consultants or other
16 Staff in the County that maybe have more knowledge about a particular subject
17 than you do?
18 CRICCHIO: Yes.
19 D'AVIGNON: Do you, you know, we brought up the noise analysis, do you look
20 at those reports?
21 CRICCHIO: Yeah. I look at them.
22 D'AVIGNON: So, you, you do an initial, do these pass the Kevin Cricchio
23 smell test?
24 CRICCHIO: Sure.

1 D'AVIGNON: Okay. So, if, if there was reason that you saw that it appeared
2 to be bad information, um, you would pursue that?
3 CRICCHIO: Yes. And, and these reports were submitted years ago, long before
4 I came on board taking on, taking the helm of this.
5 D'AVIGNON: Okay. But ultimately, this is a team effort and requires some
6 trust in experts?
7 CRICCHIO: Exactly.
8 D'AVIGNON: And, and, I guess, maybe let me ask if you, if you follow the,
9 maybe the Ronald Regan model of trust but verify?
10 CRICCHIO: [Inaudible.]
11 D'AVIGNON: Sure. Think the name of that. There was a name for that years
12 ago.
13 CRICCHIO: There, there should be, but I, I don't know it.
14 D'AVIGNON: Uh...
15 REEVES: It's, uh, intellectual, uh, trickle down intellectualism or
16 something? Anyway, keep going.
17 D'AVIGNON: Um, I want to get, I guess, then, just, lastly, touch on this,
18 um, average and how math works.
19 REEVES: Oh, great. Okay.
20 D'AVIGNON: I'm going to share my screen and pull up the Traffic Impact
21 Analysis.
22 REEVES: And this is Exhibit what, for those following along, Mr.
23 D'Avignon?
24 D'AVIGNON: This is C18.
25 REEVES: Okay.

1 D'AVIGNON: Okay. Right here, I believe it shows how that average was
2 derived, if I'm not mistaken.
3 CRICCHIO: I can't see that.
4 REEVES: Quite small.
5 CRICCHIO: That's, like, really small.
6 D'AVIGNON: Let me, let me switch screens. Is that better?
7 CRICCHIO: Sure.
8 REEVES: That's better.
9 D'AVIGNON: All right. You, you see here how they derived it?
10 CRICCHIO: Um, you need to zoom out a little bit or at least on my screen.
11 D'AVIGNON: This 260 days, do you know where that's from?
12 CRICCHIO: Um...
13 D'AVIGNON: I, I guess maybe my question is, in, in looking at this, does it
14 appear they used a, a year as the, the base number to derive the average?
15 CRICCHIO: That's correct.
16 D'AVIGNON: Um, so do you think moving forward and thinking about whether or
17 not they're complying with the daily average, we would, as the TIA did, look
18 at a yearly base number?
19 CRICCHIO: Uh-huh. Yep.
20 REEVES: Okay. I have no other questions, Mr. Examiner.
21 REEVES: Okay. Um, I hadn't checked with Mr. Lynn, we got a little off-
22 track. Mr. Lynn, was there any sort of re-direct of your own, I guess? I know
23 it's not your witness, but...
24 LYNN: No.

1 REEVES: Okay. I believe, then, I sometimes Mr. Loring, I'll give you the
2 opportunity, do you have one or are you good?

3 LORING: I'm good. No re-, no re-cross on this. Thank you.

4 REEVES: All right. Excellent. Uh, I think that we are done with this
5 witness, so thank you, uh, Mr. Cricchio, for your testimony. And..

6 CRICCHIO: Uh-huh.

7 REEVES: And, okay. So, just to, uh, in terms of where we're headed, uh, I
8 know you have two additional witnesses you were definitely going to call,
9 correct, Mr. D'Avignon?

10 D'AVIGNON: That is correct.

11 REEVES: And those, those would be Leah Forbes and Forest Jones, yes?

12 D'AVIGNON: That is correct.

13 REEVES: Okay. In terms of Mr. Black, I, I know the argument that will be
14 made. I, I guess what I would suggest is I think it would probably be best to
15 hear from these other two first because they also, if I understand the way
16 that the department is set up, they are, well, are they, do they report to
17 Mr. Black, these next two witnesses? Can you just clarify that one thing for
18 me?

19 D'AVIGNON: Uh, I, I don't believe they do.

20 REEVES: Well, actually, if that...

21 D'AVIGNON: I believe...

22 REEVES: If that's the case, I would maybe suggest we can hear from
23 Brandon Black just very quickly. I fully understand your objection, Mr.
24 D'Avignon. He, he did get brought up a couple of times and I think it would
25

1 probably be quicker to just, if he was available, hear from him briefly, in a
2 limited scope, and then move on at that point.

3 D'AVIGNON: Okay. I, I mean, I, I'm okay with that. I would request a sense,
4 uh, Mr. Loring was speaking to a very specific email, that that email be
5 shared with the rest of the parties so we, we know what we're looking at and
6 what the extent of that is.

7 REEVES: Sure.

8 D'AVIGNON: Um, and there's Mr. Black right there.

9 BLACK: Hi.

10 D'AVIGNON: I would have no objection to, to an inquiry based on that email
11 and, um, the questions that got brought up regarding third-party review of a
12 TIA.

13 REEVES: Sure. And I, I will be making my best effort to limit the scope.
14 Mr. Loring, did you have questions of this witness, specifically? I know Mr.
15 Ehrlichman did, but...

16 LORING: I, I don't know if I would have specific questions of him. Uh...

17 REEVES: Okay.

18 LORING: I certainly would of Forest Jones. And that was a fair request
19 for the email, I just want to say, I'm trying to find it in its native format
20 so that we can provide that.

21 REEVES: All right.

22 D'AVIGNON: Right. Thank you.

23 REEVES: So what I'll, what I plan on doing, how about this, I'll swear
24 Mr. Black in, uh, we'll see what Mr. Ehrlichman's questions are, object if
25 need be, uh, Mr. D'Avignon and, and, and then if there's a follow up from Mr.

1 Loring, uh, 'cause he was, he sort of did bring up Mr. Black. I think that
2 would be the quickest, most straight forward way. Or did you have any
3 foundational questions you wanted to ask Mr. Black, uh, Mr. D'Avignon?

4 D'AVIGNON: Oh, well, Mr. Examiner, I guess I would request to do direct
5 first, uh, you know...

6 REEVES: Sure.

7 D'AVIGNON: My objection was no so much in Mr. Ehrlichman being able to cross
8 examine, but I think his ability to call Mr. Black as a witness is beyond the
9 scope of the order, um, that you had provided, which is...

10 REEVES: I...

11 D'AVIGNON: A technical argument that I think we can get by pretty quickly.

12 REEVES: Let's...

13 EHRLICHMAN: May I speak to that?

14 REEVES: I, hold on, no, we're not going to do this because it's going to
15 take 45 minutes. I'm just going to let this happen and we'll move past it. I
16 think rather than argue on what everyone agreed to, I have an understanding,
17 Mr. D'Avignon has an understanding, I think Mr. Ehrlichman's understanding is
18 very different. Rather than waste time, let's just have Mr. Black, he's here,
19 he's cheerful. I think this is the best way forward.

20 EHRLICHMAN: Mr. Examiner, if I may.

21 REEVES: Oh, geez. Okay. Quickly, please. I'm allowing him. I, I, go
22 ahead, Mr. Ehrlichman. I'm allowing him as a witness. So, I, what is the
23 argument?

24 EHRLICHMAN: No, I, I don't have any argument. I, I want to clarify my scope
25 is different than Mr. D'Avignon's scope, he's representing his case in chief,

1 I'm presenting my case in chief. I'm calling Brandon Black as a witness in my
2 case. That's, and I don't, we can...

3 REEVES: [Inaudible.]

4 EHRLICHMAN: I just wanted to make that for the record. Thank you.

5 REEVES: Okay. We're just, let's move on. So, Mr. D'Avignon, I'm going to
6 ahead, I'll swear Mr. Black in. Mr. Loring is still looking for the email.

7 Mr. Black, thank you for being here. Do you swear or affirm to tell the truth
8 in the testimony you give here today?

9 BLACK: Yes, I do.

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

11 BLACK: Brandon Black, B-r-a-n-d-o-n B-l-a-c-k.

12 REEVES: Thank you, sir. Go ahead, Mr. D'Avignon?

13 D'AVIGNON: Uh, what is, Mr. Black, what is your current position with the
14 County?

15 BLACK: I'm a, uh, Senior Planning, the Current Planning Manager.

16 D'AVIGNON: Okay. And what does that role entail, particularly in relation to
17 a, say a Special Use Permit for a gravel mine?

18 BLACK: Uh, I supervise the Current Planning Division, which deals with
19 Special Use Permit Applications. And, uh, uh, as well as various other Land
20 Use relevant applications.

21 D'AVIGNON: Okay. Um, when it comes to, uh, a SEPA MDNS, you review that
22 before it's published?

23 BLACK: Not in every case, but, yes, with, uh, uh, the ones that I
24 complete and the ones that my staff complete, I typically do review those. In
25 this case, definitely. Wanted to make sure the conditions were, um,

1 represent-, reflective of what, uh, the other Staff, uh, Public Works,
2 Critical Areas, uh, reviews reflected.

3 D'AVIGNON: Okay. Um, but it's not a, a substantive review where you're
4 necessarily adding in significant new provisions?

5 BLACK: No. It, it, it's more for grammar and process, make sure the
6 dates are okay, the conditions are as we had received from other disciplines.

7 D'AVIGNON: Okay. Um, do you recall a discussion about whether or not the
8 third-party review, um, should occur following the September 2020, I believe,
9 Traffic Impact Assessment?

10 BLACK: I do, yes. Um, I recall the email string and, um, communication
11 back on, I believe, it was April 20th. We had a discussion. Um, that was, uh,
12 pre-date, that was after we had had the April 11th pre-hearing conference
13 already setting the schedule and also a month or so passed when the SEPA
14 threshold determination had been issued. And, uh, the Appeal period had, had
15 passed. So, I believe my comment was we're a little late in the game to be
16 doing a third third-party review. It was time to package up what we'd had,
17 we'd already had an Appeal, and bring this entire matter forth to the Hearing
18 Examiner, who has the authority to either remand or condition if he feels
19 another third-party review or any other additional information needed to be
20 provided.

21 D'AVIGNON: Okay. Uh, no other questions, Mr. Examiner. Thank you, Mr. Black.

22 BLACK: Yep.

23 REEVES: Okay. So, I quickly want to check with Mr. Loring who was going
24 to try to bring that up, I, did we ever find it? Mr. Loring, are you there?

1 LORING: I am. Sorry, I was just checking. Uh, yes, it should have
2 circulated to you, uh, just a few moments ago.

3 REEVES: Oh, okay. Sorry. I thought you were going to, I mi-, I thought
4 you were going to put it on the screen. But...

5 LORING: I can do that as well. If that's helpful.

6 REEVES: Um, just to be clear, this is an Exhibit, correct?

7 LORING: It is one, it's a document that hasn't been identified, yet, as
8 an Exhibit, uh, to date. But we've been discussing it now and we'd be happy
9 to add it as Exhibit A61 to our Exhibits.

10 REEVES: Okay. See, I, and, thank you for clarifying. I did not realize we
11 were talking about something that was not an Exhibit. Uh, first off, any
12 objection, well, now we've been talking about it. But, Mr. D'Avignon, any
13 objection to this being included as A61?

14 D'AVIGNON: Uh, no objection.

15 REEVES: Mr. Lynn?

16 LYNN: No.

17 REEVES: Okay. And I'm going to assume no on behalf of Mr. Ehrlichman and
18 Mr. Loring. So, A61 will be trafficking, okay. That said, Mr. Loring, did you
19 have any, any follow-up before I go to Mr. Ehrlichman on this particular
20 email?

21 LORING: I, uh, w-, uh, with your permission, Mr. Examiner, I'd allow Mr.
22 Ehrlichman to go first and then see if I have any follow up after he's done.
23 It wouldn't be much if I did.

24 REEVES: Okay. If we're doing that, let me start with Bill Lynn to see if,
25 you know, we're treating this as a sort of direct kind of a situation. Mr.

1 Lynn, do you, do you have anything before we move to the sort of cross, as it
2 were.

3 LYNN: No.

4 REEVES: Okay. So, Mr. Ehrlichman, go ahead.

5 EHRLICHMAN: Thank you, Mr. Examiner. Uh, good afternoon, Mr. Black. I guess,
6 good morning still, feels like afternoon already. Thank you very much for
7 your clarification of that email, that makes a lot of sense to me that the
8 MDNS had been issued and so forth. Um, you heard Mr. Cricchio testify,
9 correct?

10 BLACK: I did.

11 EHRLICHMAN: And you heard him say that he wasn't sure if a third-party review
12 had been done or not. I just want to clarify, uh, you're not saying that a
13 third-party review was done, correct?

14 BLACK: I am aware that there were, if I'm understanding correctly, two
15 third-party reviews completed previously for this project.

16 EHRLICHMAN: Right. And when you answered the, uh, question about the email,
17 you weren't saying that there, that the third-party review had been done, uh,
18 well, let me ask it this way. Was a third-party review done of that, uh,
19 September 2020 Traffic Impact Analysis, to your knowledge?

20 BLACK: I do not know that.

21 EHRLICHMAN: Wouldn't you have seen it, if it had been done?

22 BLACK: No. Not necessarily.

23 EHRLICHMAN: You just testified about the other two.

24 BLACK: As I said, I'm, I'm understanding that there were two third-party
25 reviews, based on the record, that were completed. I do not know the dates on

1 those and, uh, based on what I've been hearing, I do not believe the, a third
2 third-party review was completed based on the timing and the fact that we'd
3 already been scheduled for a Hearing based on the 4/11 Pre-Hearing
4 Conference.

5 EHRLICHMAN: Okay. Great. So, the answer is you do not believe a third-party
6 review was done on that third, there was no third-party review...

7 REEVES: Third.

8 EHRLICHMAN: That you're aware of?

9 BLACK: Not to be the best of my knowledge. Now...

10 EHRLICHMAN: Okay.

11 BLACK: Whether or not...

12 EHRLICHMAN: That's all right.

13 BLACK: Public Works had completed that, I do not know. I do not believe
14 it was.

15 EHRLICHMAN: Okay. We'll ask them. Thank you very much. Just wanted to get
16 clear on that. Would you agree that the MDNS Condition 13 would have been
17 clear if it had, uh, explained the word average by referencing the base year
18 that we just heard about?

19 BLACK: My personal opinion is that it probably could have been a little
20 more clear based on all the discussions we've had thus far with this traffic
21 and this condition, yes.

22 EHRLICHMAN: And, and what would have made it clearer, that just mentioning
23 that it's calculated over a year?

24 BLACK: That may have made it clearer, yes.

25 EHRLICHMAN: I mean, don't we need a time-period in which you measure it?

1 BLACK: That condition was directly from our Public Works Department. Um..

2 EHRLICHMAN: Okay.

3 BLACK: I didn't write it.

4 EHRLICHMAN: I, I know. And we, I'm not trying to put you on the spot. I know
5 we'll have a chance to talk to them. But you did review the final MDNS and
6 you testified..

7 BLACK: Yes.

8 EHRLICHMAN: That you were the one that gave it the green light for signature.
9 And as you read that and you saw that they put an average there, now that we
10 know what we know, wouldn't it be clearer if some wording was added to that,
11 that referenced the calendar year as the basis for determining that average?

12 BLACK: That is nothing that I'm in the position to answer, but my train
13 of thought back then was that with the language in there, I was hoping that
14 that condition was something that all traffic engineers fully understood
15 based on their, uh, professional expertise. Again, I'm not a traffic
16 engineer.

17 REEVES: So, I have a, uh, question, Mr. Black. I guess, as the Hearing
18 Examiner, would I have the authority to impose a condition, were I to approve
19 the SUP, that would clarify this issue, if I thought necessary?

20 BLACK: You most certainly do, that is in your purview.

21 REEVES: Great. Mr. Ehrlichman, you have other questions?

22 EHRLICHMAN: Uh, yeah. That, thank you, that was the, that was where I was
23 going with that. Um, with respect to the, um, calculus in the, the TIA, as
24 it's called, uh, that Mr. D'Avignon put up on the screen for Mr. Cricchio,
25 where the, uh, calculation of the number of trips, Monday through Friday,

1 7:00 a.m. to 5:00 p.m. was contained, they had a total number of trips per
2 year calculated. Isn't that where they got the 46 tips per day from?

3 BLACK: Again, you're asking me to dissect and interpret a Traffic Impact
4 Analysis that, um, that's not my area of expertise.

5 EHRLICHMAN: I'm not, uh, I'm not asking your, your professional opinion as a
6 traffic engineer, I'm just asking whether that was the source of the
7 information as Mr. Cricchio testified for the MDNS?

8 D'AVIGNON: I'm going to object as unduly repetitious. I think we've covered
9 where this...

10 EHRLICHMAN: Let me rephrase.

11 D'AVIGNON: These requirements...

12 REEVES: And also...

13 D'AVIGNON: Have come from. I think it's abundantly clear...

14 EHRLICHMAN: Let me rephrase.

15 D'AVIGNON: And we can move beyond it.

16 EHRLICHMAN: Mr. Examiner, if I may?

17 REEVES: Well, Mr. Ehrlichman, here's my problem, you're not an intervener
18 to the SEPA, uh, Appeal, these are questions directly of the SEPA MDNS...

19 D'AVIGNON: Thank you.

20 REEVES: I think is beyond the scope even of what I've agreed to allow. I,
21 and I think we've got the answer already. So, do you have a different line of
22 reasoning or question for this witness? Because I am going to sustain Mr.
23 D'Avignon's objection, Mr. Ehrlichman.

24 EHRLICHMAN: I do have another question, but I, for the record, I again would
25 like to clarify, that when we asked the traffic engineer who wrote the TIA...

1 REEVES: You...

2 EHRLICHMAN: About whether that was the basis for the MDNS, the objection was,
3 well, he's not the one that wrote the MDNS. So, when we had Kevin Cricchio
4 testify...

5 REEVES: [Inaudible.]

6 EHRLICHMAN: The gentleman that signed the, let me make my record, if I may.
7 When we had Mr. Cricchio testify, who was the gentleman who signed the MDNS,
8 and we asked him the question, he said that the final approval of the MDNS
9 was by Mr. Black. Apparently Mr. Black is the only one at the County who
10 knows what the MDNS intended. When I ask the, the engineer at Public Works,
11 he will tell me he didn't write the MDNS.

12 REEVES: I, I'm going to stop you.

13 EHRLICHMAN: Let me, let me ask my question, if I may.

14 REEVES: Mr. Ehrlichman, you've made your record for Appeal, I guess you
15 ultimately have made the record where you can point out something wrong with
16 how I allowed your participation in questioning SEPA. But what non-SEPA
17 related question do you have for this witness?

18 EHRLICHMAN: Mr. Examiner, again, for my record, that is a false distinction
19 in my view because the MDNS conditions are the conditions for the Special Use
20 Permit and...

21 REEVES: They are...

22 EHRLICHMAN: Special Use Per-, Mr. Examiner, if I may finish my sentence,
23 please. The Special Use Permit preceding, of which we are a party, has
24 specific criteria and authorizes you to take the Standards and the Code as
25 minimum standards and impose conditions to protect public safety. Now, as the

1 conditions for public safety are examined under the Special Use Permit,
2 you're brining in the MDNS conditions, that's fine. And we have asked what
3 they mean. That is the purpose of this inquiry of Mr. Black, who apparently
4 is the only witness available on earth who knows what the MDNS means.

5 REEVES: Okay. Great. You've made your record. You had a question?

6 EHRLICHMAN: Yes. Uh, Mr. Black, is the intent of the MDNS, as Mr. Cricchio
7 testified to refer to the calculus in the TIA, Exhibit 18, specifically is
8 the intent that the MDNS trips conformed to the annual calculation of total
9 trips, 11,900, let's call it, whatever the number is, is that the intent of
10 the MDNS?

11 BLACK: The intent of the MDNS question was to condition the, uh,
12 appropriate language as provided to us by the Department of Public Works
13 Traffic Division.

14 EHRLICHMAN: Do you...

15 BLACK: I, again, am not a traffic engineer, did not review the TIA.

16 EHRLICHMAN: Well, you're not hearing my question. Do you agree with Mr.
17 Cricchio's statement that the intent of the MDNS is to conform to the
18 calculus in the TIA?

19 BLACK: It is to conform to the condition that Public Works provided to
20 us based on their review of the TIA. I do not recall Mr. Cricchio's exact
21 language in his testimony.

22 EHRLICHMAN: You're, you're not answering my question. Is the...

23 BLACK: Well, here, let me answer it a different way.

24 EHRLICHMAN: Okay.

1 BLACK: Um, we do not review the Traffic Impact Analysis, our Public
2 Works Traffic Division does. We rely on them to provide us the accurate, uh,
3 conditions to put in our MDNS to mitigate any perceived adverse environmental
4 impacts. That is what we've done.

5 EHRLICHMAN: So, as the deputy for the Planning Director, who has
6 responsibility to make the recommendation to the Hearing Examiner, your
7 position is that you, you have no way of knowing whether the TIA calculation
8 of 11,900 trips is an annual limit from which we derive the 46 per day?

9 BLACK: Yeah. Not to sound ignorant, but I did not do the math. Um, and,
10 again, I'm not a traffic engineer. I rely on our traffic engineers to review
11 the tr-, Traffic Impact Analysis and provide us with the appropriate
12 conditions to go into the MDNS to mitigate any possible environmental
13 impacts.

14 EHRLICHMAN: So, my final question...

15 REEVES: I'm going to raise a question myself. Mr. Black, would it be fair
16 to say in these circumstances, Forest Jones, who we are going to hear from
17 shortly, essentially said, Mr. Black, I've reviewed the TIA, this is the
18 condition or mitigation, uh, we believe would be appropriate to incorporate
19 into the MDNS. Would that be a fair assessment?

20 BLACK: That would be a fair assessment.

21 REEVES: And then you looked at it and you said, okay. I don't, based on
22 your expertise, Mr. Jones, based on this doesn't look terribly written in my
23 mind and it doesn't, you know, uh, nothing jumps out at me, I'm going to
24 accept what Mr. Jones recommended. Is that your recollection of what happened
25 here?

1 BLACK: That is correct. Yes.

2 REEVES: Okay. Great. Mr. Ehrlichman, other questions?

3 EHRLICHMAN: Yeah. My final question is the same as to Mr. Cricchio, the MDNS
4 conditions, and the recommended conditions on the Special Use Permit are
5 derived, unchanged, from Public Works. The Planning Department did not have
6 input or change any of the conditions related to traffic safety that it
7 received from Public Works, correct?

8 BLACK: Not that I recall.

9 REEVES: Okay. Very good. We now know who knows what that condition means,
10 it's Forest Jones. Thank you, Mr. Examiner.

11 REEVES: No comment. And we'll move on. Um, did we have M-, uh, Mr.
12 Loring, did you, was there follow up based on that? I think we've
13 determinatively just established Forest Jones will have answers on this
14 issue. But, go ahead.

15 LORING: Uh, we certainly, uh, hope so. I do have one or two, uh, maybe
16 three or four questions just to follow up on this. And, and the first one
17 comes from your last question, Mr. Examiner. So, Mr. Black, hello, uh, Kyle
18 Loring, I know you've seen me on screen, I've seen you.

19 BLACK: Morning.

20 LORING: Uh, so I do have a couple of questions. Um, the, the last
21 question from the Hearing Examiner was something to the effect, he was asking
22 you, is it fair to say that Forest Jones reviewed the Traffic Impact Analysis
23 and then essentially signed off on the conditions in the MDNS, told you those
24 would be good enough. Is that an accurate summary of the question that we had
25 from the Examiner just now?

1 BLACK: Yeah. That's accurate. But, let me clarify, uh...

2 LORING: Sure.

3 BLACK: Uh, one of his, uh, Development Review staff, Joey Emaro

4 [phonetic], is probably the person that I had clarify that with Forest Jones.

5 So, there may have been, you know, a little bit more involvement from some of

6 the other staff.

7 REEVES: Well...

8 LORING: Okay.

9 REEVES: Sorry, sorry, Mr. Loring, my understanding of my question and his

10 answer was different than what you just posed. My understanding was that

11 essentially Mr. Black, you compile conditions prepared by those, you know,

12 from other departments with expertise in those topics and then you do a sort

13 of editorial, is the comma in the right place, function as opposed to Mr.

14 Loring's question, at least the way I heard that, made it sound as if you

15 yourself prepared conditions and then go ask those folks if those look right.

16 What is the way that, that the sausage gets made, I guess?

17 BLACK: Yeah. No, we, we, uh, uh, uh, take their comments and put them in

18 the MDNS and we do have, and, you know, look at the grammar, make sure the

19 comma was in the right place, and then we'll send them back to Public Works

20 to make sure that those, uh, conditions are worded as they, they want them

21 reflected.

22 REEVES: Right. But it's, so I understood correctly, you, yourself aren't

23 crafting the conditions then seeking someone's sort of, yeah, that looks

24 right? It's, it's more they proposed what they think is appropriate, you do

25

1 an edit and then they do a sort of final, yeah, that, that all looks good. Is
2 that an accurate assessment?

3 BLACK: That, that's accurate. Yes.

4 REEVES: Oh, okay. Sorry, Mr. Loring. Go ahead.

5 LORING: Sure. And, and that was my understanding, too. Uh, suggested that
6 the conditions were generated in a different place than they actually are.

7 Um, so, so, you relied on Forest Jones to provide his, his review of the TIA
8 and then, uh, conditions for the MDNS related to the transportation issues,
9 Mr. Black?

10 BLACK: Uh, yes.

11 LORING: Okay. Uh, are you familiar with Mr. Jones statement that it would
12 not be a bad idea to get a third-party review of that traffic impact
13 analysis?

14 BLACK: I am aware of that.

15 LORING: Okay. And so Mr. Jones' opinion, in his, from the, that we know
16 it was that a third-party should occur of the TIA, is that right?

17 BLACK: Uh, yes.

18 LORING: Okay. But that did not occur here, right?

19 BLACK: Not to the best of my understanding, it did not occur.

20 LORING: Okay. And, uh, and you say to the best of your understanding, you
21 would know since you were in the email chain where, uh, Mr., Mr. Jones
22 recommended that review?

23 BLACK: Yes.

24 LORING: Okay. And you were the one who, who stated that we're, it was too
25 late to have that third-party review at this point?

1 BLACK: That was a statement I made directly to Kevin Cricchio in that
2 email chain, Forest Jones was not included in that email exchange.

3 LORING: Okay. But you saw Forest Jones' emails below the Kevin Cricchio
4 email?

5 BLACK: I did.

6 LORING: Okay. And you mentioned earlier, I think you talked about a third
7 third-party review, uh, there has, with, there has been no first third-party
8 review of that Traffic Impact Analysis to your knowledge, right?

9 BLACK: I don't know which one you're talking about. It's my
10 understanding there's been several, uh, TIAs and two, two, two third-party
11 review occurrences.

12 LORING: Okay. So, you believe there have been multiple Traffic Impact
13 Analysis?

14 BLACK: Uh, yes, that's my understanding.

15 LORING: Okay. And that's a Traffic Impact Analysis as defined by the
16 Skagit County Road Standards?

17 BLACK: Uh, yes, that's also my understanding.

18 LORING: Okay. Got just a couple of other questions, uh, for you based on
19 the questions we heard a moment ago. Um, you were, you were talking about not
20 being a traffic engineer and so not necessarily being, uh, having expertise
21 to interpret those average numbers of tr-, of trips, is that right?

22 BLACK: That is correct.

23 LORING: Okay. Who enforces MDNS conditions at Skagit County?

24 BLACK: The department?

25 LORING: Yeah. What department I should have asked.

1 BLACK: Well, it, it's the Planning Department, the Director of the
2 Planning...

3 LORING: Okay.

4 BLACK: Department is the administrative official.

5 LORING: Okay. And you work for the Planning Department, right?

6 BLACK: That's correct.

7 LORING: Okay. Uh, ultimately, you're the one who's signed off on the MDNS
8 that was issued here, even if it's not your signature directly on that
9 document?

10 BLACK: I wouldn't say ultimately, others had a chance to look at that,
11 including legal, and, um, our Director.

12 LORING: Okay. You do work for the Planning Department?

13 BLACK: Yes, that's what I had indicated.

14 LORING: Okay. And you did, you also signed off on the MDNS?

15 BLACK: I did.

16 LORING: Okay. So, to the extent that conditions in the MDNS need to be
17 known by somebody, to be enforced by somebody in the County, that somebody
18 would be your department?

19 BLACK: Initially, yes.

20 LORING: Okay. Just a couple, I'm just taking a quick look here. I think
21 we've covered it. Uh, oh, yes. Uh, you were asked a moment, uh, a moment ago
22 by the Hearing Examiner whether the Hearing Examiner has authority to impose,
23 uh, conditions on, uh, I believe add conditions to the MDNS...

24 REEVES: No.

25 LORING: Does that sound accurate?

1 BLACK: No.

2 REEVES: That...

3 BLACK: That's not accurate.

4 LORING: Okay. Is your understanding that he was asking about the Special

5 Use Permit conditions?

6 BLACK: Yes.

7 LORING: Okay. So, you weren't providing a legal opinion on whether he can

8 add conditions to the MDNS conditions in this instance?

9 BLACK: That, that's, yeah. That's correct.

10 LORING: Okay. Sorry about that. There was a lot of conversation about,

11 uh, this, all the questions being related to the MDNS and so...

12 REEVES: Excuse...

13 LORING: That was...

14 REEVES: I'll make a ruling...

15 LORING: The confusion.

16 REEVES: I appreciate Mr. Black, but I also didn't intend on calling on

17 Mr. Black to make, you know, legal determinations either, so...

18 BLACK: Thank you.

19 LORING: Okay. That, uh, that's all my questions for you. Again, thank you

20 for your time.

21 REEVES: Great. Mr. Lynn...

22 BLACK: Thank you.

23 REEVES: Anything of this witness?

24 LYNN: No.

25 REEVES: Okay. Mr. D'Avignon, anything final before we move?

1 D'AVIGNON: Against my better judgement, I do have a question or two. Um, um,
2 Mr. Black, you were asked a bunch of questions about your knowledge of
3 particular things, very specific things that may or may not have occurred in
4 this particular Application. Has your role and involvement in this been such
5 that you would know very specific things about what, what's been produced or
6 not produced?

7 BLACK: It, it, it is not. I, I do not know all of the ins and outs, um,
8 again, as Mr. Cricchio indicated, we were given this file late in the, in the
9 game and, uh, we needed to, um, dot the I's and cross the T's with the final
10 steps to get this through to the Hearing Examiner for a decision. Um...

11 D'AVIGNON: So...

12 BLACK: Our involvement came in, we were, they were at the point of doing
13 that, uh, uh, Critical Areas Analysis on the haul road and that's where we
14 picked it up.

15 D'AVIGNON: So, so, you have never been the, like, Lead Planner on this
16 particular Application?

17 BLACK: I have never been the Lead Planner.

18 D'AVIGNON: But you are currently the supervisor of the Lead Planner?

19 BLACK: That's correct.

20 D'AVIGNON: And as such, you have been a supervisor when documents have been
21 produced and whatnot and provided supervisory overview?

22 BLACK: That's correct.

23 D'AVIGNON: No other questions.

24 REEVES: Great. Uh, thank you, Mr. Black. Uh...

25 BLACK: Thank you.

1 EHRlichman: Mr. Examiner.

2 REEVES: Sorry?

3 EHRlichman: Mr. Examiner?

4 REEVES: Uh, you had something, Mr. Ehrlichman? I'm, we're not going to do
5 re-re-re-direct, but what was, you, we're done with Mr. Black. Mr.
6 Ehrlichman, what was your...

7 EHRlichman: Well, I wanted to speak to that, Mr. Examiner?

8 REEVES: You can speak to it, but briefly, you can speak to me on why you
9 think additional questions are necessary, at this point.

10 EHRlichman: Thank you. I, I want to highlight Mr. Cricchio's answer where he
11 said you'd have to ask Brandon Black about the meaning of what the average...

12 REEVES: Right.

13 EHRlichman: Meant and...

14 REEVES: And then you asked Mr. Black questions.

15 EHRlichman: Right. And then we just heard on re-direct Mr. D'Avignon elicit
16 testimony that Mr. Black really was, was merely a supervisor in an editorial
17 capacity. There's something not...

18 REEVES: Well, Mr...

19 EHRlichman: Lining up there and, and I'd like to ask a question. But I know
20 that's not your desire. So, I'll leave it at that thank you.

21 REEVES: Okay. Great. Thank you. I think we heard Forest Jones, uh, who
22 we're going to hear from is, is the person with expertise on this topic. And,
23 uh, we'll, we'll move on. So, I think, uh, we have two other witnesses we
24 expect to hear from the County. And, uh, I think now is probably a good time
25 for a morning, uh, facilities break. Does that make sense to everybody?

1 LORING: Yes.

2 D'AVIGNON: Yes, it does.

3 REEVES: And when we come back, is it Leah Forbes that we expect to hear
4 from, Mr. D'Avignon, is your next witness?

5 D'AVIGNON: That, that is correct, Mr. Examiner.

6 REEVES: Okay. Leah Forbes, not just one of our tech experts. But, uh, we
7 will be back with Leah Forbes, let's say 11:10, everybody.

8 LORING: Thank you.

9 [The tape ends.]

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

11 I, Janet Williamson, declare under penalty of perjury, under the laws of the State of Washington
12 that the following statements are true and correct: I am over the age of eighteen (18) years and not a party
13 to this action. That on May 7th, 2024, I transcribed a Permit Hearing, conducted by Andrew Reeves, that
14 took place on 9/13/22 at 9:00 a.m., regarding the above-captioned matter.

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

17 Signed at Mount Vernon, Washington, this 7th, May of 2024.

18 Janet Williamson

19 Janet Williamson