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WASHINGTON STATE  
ENERGY FACILITY SITE EVALUATION COUNCIL  
Richard Hemstad Building  
1300 South Evergreen Park Drive Southwest, Conference Room 206  
Olympia, Washington  
Wednesday, November 6, 2013  
2:00 P.M.

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SPECIAL COUNCIL MEETING  
Verbatim Transcript of Proceeding

REPORTED BY: SHELBY KAY K. FUKUSHIMA, CCR #2028  
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A P P E A R A N C E S

Councilmembers Present:

Bill Lynch, Chair  
Liz Green-Taylor, Department of Commerce  
Cullen Stephenson, Department of Ecology  
Andrew Hayes, Department of Natural Resources  
Dennis Moss, Utilities and Transportation Commission

Local Government and Optional State Agencies:

Christina Martinez, Department of Transportation  
Bryan Snodgrass, City of Vancouver, via telephone  
Jeff Swanson, Clark County, via telephone  
Larry Paulson, Port of Vancouver, via telephone

Assistant Attorney General:

Ann Essko, Assistant Attorney General

Staff in Attendance:

Stephen Posner, Interim EFSEC Manager, Compliance Manager  
Jim La Spina, Siting Specialist  
Tammy Talburt, Commerce Specialist  
Sonia Bumpus, Siting Specialist  
Kali Wraspir, Administrative Assistant

Guests in Attendance:

Mark Anderson, Department of Commerce  
Timothy L. McMahan, Stoel Rives  
Adam Torem, Utilities and Transportation Commission  
Irina Makarow, BergerABAM  
Matt Kernutt, Council for the Environment  
Patty Boyden, Port of Vancouver  
Curtis Shuck, Port of Vancouver  
Chris, Savage  
Mark, Department of Health  
Mary, Department of Health

1 OLYMPIA, WASHINGTON, NOVEMBER 6, 2013

2 2:00 P.M.

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5 P R O C E E D I N G S

6  
7 CHAIR LYNCH: Good afternoon. This is the special  
8 meeting, Wednesday, November 6, 2013, two p.m., of the Energy  
9 Facility Site Evaluation Council.

10 And I'm Bill Lynch. This is my inaugural hearing as  
11 the new chair of EFSEC.

12 And what I want to do before we take a roll call of  
13 the members and begin the discussion is I want to really thank  
14 Dennis Moss for serving as the interim EFSEC chair. He's done a  
15 wonderful job, and he couldn't have been more gracious and  
16 helpful to me. And I assume that will continue. I'll certainly  
17 look to Dennis for guidance along the way because of his  
18 renowned expertise in this area and his service to the Council.

19 So, Dennis, thank you so much for your warm welcome  
20 to the Council.

21 MR. MOSS: Thank you, Bill.

22 CHAIR LYNCH: And we can clap for Dennis.

23 (Applause.)

24 CHAIR LYNCH: And at this time, let's go ahead and  
25 take a roll call of the members.

1 THE CLERK: Department of Commerce?

2 MS. GREEN-TAYLOR: Liz Green-Taylor here.

3 THE CLERK: Department of Ecology?

4 MR. STEPHENSON: Cullen Stephenson here.

5 THE CLERK: Department of Fish and Wildlife?

6 Department of Natural Resources?

7 MR. HAYES: Andy Hayes is here.

8 THE CLERK: Utilities and Transportation Commission?

9 MR. MOSS: Dennis Moss for the Utilities and  
10 Transportation Commission.

11 THE CLERK: Department of Transportation?

12 MS. MARTINEZ: Christina Martinez here.

13 THE CLERK: The City of Vancouver?

14 Clark County?

15 MR. SWANSON: Jeff Swanson here.

16 THE CLERK: Port of Vancouver?

17 MR. PAULSON: Larry Paulson on the phone.

18 THE CLERK: Chair?

19 CHAIR LYNCH: And Bill Lynch here.

20 THE CLERK: There is a quorum.

21 CHAIR LYNCH: Thank you. And if there are people  
22 listening on the phone who choose to identify themselves, they  
23 are certainly welcome to do so, but it's not required.

24 Okay. Let's go ahead and move on, then.

25 And we're going to have an update on the SEPA scoping

1 for the Vancouver Energy Distribution Terminal now.

2 Mr. Posner?

3 MR. POSNER: Yes. Good afternoon, Chair Lynch.  
4 Councilmembers. I just wanted to give you a quick update and  
5 share some information with you concerning where we're at in the  
6 SEPA process.

7 As you know, last week we had our first SEPA scoping  
8 meeting that was on the 29th. The evening before on the 28th,  
9 we had the public informational meeting. On the 28th, we had  
10 130 attendees. We received 23 comments that night. On the  
11 29th, we had approximately 300 attendees, and we received over a  
12 hundred comments. And so far we have received approximately 400  
13 SEPA scoping comments from various sources, and we're still  
14 receiving comments at this time.

15 Currently, the scoping comment period ends -- is set  
16 to end on November 18th, and we have received requests from the  
17 public, and from at least one agency, to extend the public  
18 comment period. And we have also received numerous requests to  
19 hold other meetings. In particular, the requests generally have  
20 mentioned the Spokane area for a scoping public meeting.

21 So I wanted to share that information with you and  
22 ask the Councilmembers if they have any thoughts or information  
23 that they would like to share with me as the SEPA responsible  
24 official concerning the possibility of extending the scoping  
25 comment period and also having another meeting.

1 CHAIR LYNCH: Thank you, Mr. Posner. Well, I'll just  
2 go first because I'm talking.

3 In my mind, it's appropriate to extend the SEPA  
4 comment period, and because this is a large project, we have had  
5 requests for that very thing by other members.

6 I also would agree that it seems appropriate if we  
7 are going to consider impacts beyond the project site at all,  
8 which we have not, which we're not deciding today, but it may be  
9 appropriate to have another meeting. And I think Spokane seems  
10 like a good place to have that. It's in Eastern Washington.  
11 It's within easy driving distance of people who would wish to  
12 comment on the proposed project.

13 So those are my thoughts, that it seems appropriate  
14 for this particular proposed project to have an extended comment  
15 period and another meeting in Eastern Washington.

16 And Councilmembers can jump in whatever order, but I  
17 think I would like to hear from Dennis next because of his  
18 expertise on being on the Board for so long.

19 MR. MOSS: Thank you, Bill.

20 I had a couple of questions for you, Stephen, just in  
21 terms of maybe drilling down a little bit on what's happened so  
22 far.

23 You mentioned that we had 23 comments on the first  
24 night, which was not SEPA scoping. I might add that was our  
25 public information meeting.

1           The second night we had a significantly larger  
2 attendance, and I'm not sure -- you mentioned a hundred  
3 comments -- I'm not sure how many we actually received. I know  
4 there were over a hundred requesting to comment, and that we did  
5 not, in fact, receive all of those comments, so those folks  
6 certainly need an opportunity to file something in writing if  
7 they wish, or perhaps have another opportunity to speak.

8           Of the 400 written comments we have received  
9 approximately so far, are these largely individual comments  
10 tailored to the person making them, or are they largely  
11 form-type comments? We sometimes get these preprinted  
12 postcards --

13           MR. POSNER: Right.

14           MR. MOSS: -- that come in by the dozens.

15           MR. POSNER: Right.

16           MR. MOSS: So I'm just wondering what sort of  
17 relative volume we have here.

18           MR. POSNER: Well, my understanding is that a large  
19 percentage -- I'm not sure how many -- are coming in as form  
20 letters, if you will.

21           MR. MOSS: Okay.

22           MR. POSNER: The ones I have looked at -- and we  
23 haven't looked at all of them. We're really in the process of  
24 processing them. And, by the way, we are making those available  
25 as they're coming in. They're on our website and the UTC

1 website if the public or Councilmembers are interested in  
2 looking at them.

3 But I would say that there are -- quite a few are  
4 coming in as form letters, although I have noticed that many of  
5 them are personalized, if you will.

6 MR. MOSS: Okay. Yeah. And I don't think that  
7 suggests, certainly, any lack of interest. In fact, if  
8 anything, it perhaps suggests to me that there are people out  
9 there who may wish to or may be actively in the process of  
10 formulating comments that they would wish to submit to us in  
11 somewhat of a more personalized fashion.

12 Based on what we saw in Vancouver and general public  
13 interest in this matter and other matters that have similar  
14 characteristics throughout the state, it seems to me that  
15 extending the comment period for a reasonable period of time  
16 would be in order. I would support that.

17 As far as a second meeting in Spokane, well, you  
18 know, we're not deciding scoping, and, indeed, that ultimately,  
19 I suppose, falls to you rather than us.

20 But, certainly, there's an interest in people.  
21 People expressed to us the other night in looking beyond the  
22 boundaries of the project area itself, and I think we should in  
23 fairness give those potentially affected by some of the  
24 aspects -- the train travel, particularly train travel, train  
25 transport -- at least an opportunity to be heard on their



1 questions, and I would support another meeting in Spokane as  
2 well.

3 MR. HAYES: Thanks, Chair Lynch. I think I would  
4 echo the comments of my fellow Councilmembers. I think that  
5 extending the comment period seems very appropriate given the  
6 level of interest in this project.

7 In addition, I think, you know, until we have made a  
8 determination of the study area, I think it makes sense that we  
9 continue to think about taking comments and maybe hold a public  
10 meeting in another location than Vancouver and maybe at that  
11 point if we decide the scoping analysis is more narrow than the  
12 entire state, then it may be that future meetings may not be  
13 held so widely.

14 But I think at this point, until we've made a  
15 decision, it seems to me to make sense that we be as inclusive  
16 as possible.

17 CHAIR LYNCH: Thank you.

18 MR. STEPHENSON: Nothing to add.

19 MS. GREEN-TAYLOR: None from me.

20 CHAIR LYNCH: Anything else to add? Any  
21 Councilmembers?

22 I'll just ask: Mr. Stephenson, are you in agreement  
23 that the Council extend this SEPA comment period and have  
24 another hearing in Spokane?

25 MR. STEPHENSON: Yes, Chair.

1 CHAIR LYNCH: Okay.

2 MR. STEPHENSON: Within reason. I don't think we  
3 don't want to extend it a year, but -- I mean, we -- I think  
4 there needs to be some time to get the comments out that want to  
5 be heard. And we did hear a lot of the same comments over and  
6 over, but yet there were still those gems that we heard. And it  
7 came throughout all the testimony, and so we want to make sure  
8 that we hear those as they come forward.

9 So, yeah, I think we do -- I think it does make sense  
10 to have a little extra time, and I think it does make sense  
11 geographically to expand.

12 CHAIR LYNCH: And then after I hear the comments from  
13 the other two Councilmembers -- and then we have a Councilmember  
14 on the phone -- after we get their thoughts, Mr. Posner, you  
15 might have a suggestion about when the SEPA comment period could  
16 be extended to.

17 Ms. Green-Taylor?

18 MS. GREEN-TAYLOR: Thank you, Chair. I agree that it  
19 makes sense to extend the comment period, especially given how  
20 many comments we've had so far and how much interest has been  
21 expressed.

22 And having another meeting in another location giving  
23 some folks in other locations an opportunity to comment, I  
24 think, seems appropriate as well.

25 CHAIR LYNCH: And, Ms. Martinez?

1 MS. MARTINEZ: I don't have anything more to add  
2 other than what the other members have said.

3 I do have a question about why Spokane and not  
4 elsewhere. There was one commenter that I think was calling for  
5 a meeting closer to the Warm Springs tribe area, and I'm just  
6 kind of wondering why Spokane.

7 MR. POSNER: Well, we have received general requests  
8 for other meetings. The majority of those requests have focused  
9 on --

10 MS. MARTINEZ: On Spokane.

11 MR. POSNER: -- the Spokane area.

12 MS. MARTINEZ: Okay. That makes sense.

13 MR. POSNER: So that essentially answers your  
14 question. That's our thinking.

15 MS. MARTINEZ: Okay.

16 MR. POSNER: And it is one of the largest population  
17 areas --

18 MS. MARTINEZ: Population area. Okay.

19 MR. POSNER: -- in the eastern part of the state, so  
20 we thought that that would be a location if we were to have a  
21 meeting there that could attract people within two or three  
22 hours' drive such as the Tri-Cities area, for instance.

23 MS. MARTINEZ: Okay. Nothing more to add for me. I  
24 do support extending the comment period and another meeting.

25 CHAIR LYNCH: Thank you.

1           And we do have a Councilmember on the phone. I  
2 believe it's Mr. Snodgrass or Mr. Swanson.

3           MR. SWANSON: Yes. Chair, I also agree that it would  
4 be a good idea to extend the comment period. I've got a couple  
5 of notes here, and Ms. Martinez brings up a good point about  
6 tribal consultations. And I don't have an answer there, but I  
7 guess that's an open question as how we engage with tribal  
8 constituents.

9           CHAIR LYNCH: Well, Mr. Posner, go ahead.

10          MR. POSNER: Well, what I'll say to that is SEPA  
11 requires us to inform affected tribes near or around the project  
12 area. In our SEPA scoping notice, we sent out notices to, I  
13 believe, eight different tribes.

14          Based on what we heard at the meeting, Staff has  
15 discussed about if we were to extend the SEPA scoping comment  
16 period, we'll be sending out another notice doing that. We will  
17 broaden our outreach to the tribes, including all tribes in the  
18 state, and perhaps even including those on the Oregon side along  
19 the Columbia River.

20          MR. SWANSON: Okay. Additionally, we had talked  
21 previously about having a site tour, Chair Lynch?

22          CHAIR LYNCH: Yes.

23          Where are we on that, Mr. Posner?

24          MR. POSNER: We had discussed that several weeks ago  
25 before Chair Lynch had been appointed, and a decision was made

1 to hold off on having that site tour until the new chair was on  
2 board.

3 And what I would suggest is that -- we have our  
4 Council meeting in two weeks, about two weeks, that we could put  
5 that on the agenda. If the Councilmembers would like to have  
6 that discussion, we can put that on the agenda for discussion.

7 CHAIR LYNCH: Yeah. Let's please add that to the  
8 agenda, Mr. Posner.

9 MR. POSNER: Okay.

10 CHAIR LYNCH: And, Mr. Paulson, I called you  
11 Mr. Swanson earlier, and I'm sure I insulted one of the two of  
12 you. I'm not sure who, so I apologize.

13 MALE SPEAKER: I'll take it as a compliment.

14 MALE SPEAKER: I would take it as a compliment if you  
15 referred to me as Mr. Paulson, so...

16 CHAIR LYNCH: Thank you.

17 MR. PAULSON: For what it's worth, my comments  
18 related to extending the time and the additional meeting, I  
19 would defer to the others on the Board on that particular issue.

20 CHAIR LYNCH: If we could, since we do have people  
21 providing comments on the phone, it would be helpful for the  
22 court reporter if you would identify yourself right before  
23 giving your comments, and so please keep that in mind.

24 And the last person speaking, again, just for the  
25 court reporter.

1 MR. PAULSON: That was Larry Paulson.

2 CHAIR LYNCH: Right. Thank you.

3 MR. SNODGRASS: This is Bryan Snodgrass in Vancouver  
4 also on the phone, and I would just briefly concur with what  
5 seems like the (inaudible)...

6 CHAIR LYNCH: Excuse me. Mr. Snodgrass, I just want  
7 to make sure that you're being heard.

8 Can you move a little bit closer to your telephone or  
9 whatever and --

10 MR. SNODGRASS: Okay. I will speak up.

11 This is Bryan Snodgrass of the City of Vancouver. I  
12 just wanted to briefly concur with other Board members'  
13 sentiments regarding extending the comment time frame and  
14 possibly having a meeting elsewhere, be it Spokane or in the  
15 area.

16 CHAIR LYNCH: Thank you. And I'll just ask  
17 Mr. Posner: Is there anything else regarded to the SEPA scoping  
18 update that you would like to bring to the Council's attention?

19 MR. POSNER: Only that we will propose to the Council  
20 some dates for a meeting. It's not necessary that all  
21 Councilmembers be -- if we have the meeting in Spokane that you  
22 be there. It's probably a good idea. I would encourage you to  
23 try to be present at the meeting.

24 And right now we'd probably be looking at the first  
25 or second week in December. And what I would propose is that we

1 extend the comment period for 30 days until December 18th, and  
2 then we would have the meeting at least a week before the end of  
3 the comment period.

4 So at this point, I have asked Councilmembers to  
5 think about the 11th of December. And we don't need a final  
6 decision. I believe what we can do is send you out an e-mail  
7 after the meeting so you have time to check your calendars.

8 And we have some flexibility, but Staff has discussed  
9 the possibility of having the meeting and giving us enough time  
10 to find a location, get the notices out, and do the logistics  
11 part of it. We figured it might be really difficult to get it  
12 done in November with the last week being Thanksgiving week. So  
13 perhaps as early as the first week in December, but maybe as  
14 late as the week of the 9th.

15 So let's just kind of plant that seed now, and we'll  
16 follow up with an e-mail after the meeting to find out  
17 Councilmember availability.

18 CHAIR LYNCH: Okay. Very good. And anything else  
19 that Councilmembers or Staff would like to bring up regarding  
20 the SEPA scoping update at this time?

21 MR. STEPHENSON: Do we need a motion, or can we just  
22 do this with Staff action?

23 CHAIR LYNCH: That's a good question.

24 The question was asked: Do we need an actual motion  
25 and vote by the Board?

1 MR. POSNER: No, I don't believe so. You know, as  
2 the EFSEC manager, I'm designated as the SEPA responsible  
3 official. And I have the authority under that designation to  
4 basically initiate and coordinate scoping, so I definitely  
5 wanted to get your input, so...

6 CHAIR LYNCH: Judge Torem?

7 MR. TOREM: Chair Lynch, I just wanted to beg your  
8 indulgence and make sure we're making a decision on the location  
9 for another meeting where there's actual potential impacts. And  
10 I know that Mr. Posner and I had talked about this.

11 In the Kittitas Valley project, we did hold a meeting  
12 on this side of the state, although the wind farm was in  
13 Ellensburg, because there were people on this side of the state  
14 who owned property. So there was a nexus to the alleged impacts  
15 that we should be scoping or thinking about or taking public  
16 comment on during the course of that adjudication. I can't  
17 remember if the hearing was an adjudication-related one or a  
18 SEPA-related one. Either way, we made sure there was a nexus  
19 for why we were holding the hearing in a particular location.

20 I hesitate to have the Council take the number of  
21 comments that came in by public vote as a reason to say, I want  
22 it in Spokane, because they could have easily picked Hawaii,  
23 then we'd go that way. I would be in favor of that one, per se,  
24 but I want to make sure that the actual nexus is for a linkage  
25 to an actual impact. I'm not certain that the application



1 designates the rail corridors other than the Columbia Gorge as  
2 predicted by -- that it was mentioned by comments, but it may be  
3 worth, Mr. Posner, looking into it as the SEPA responsible  
4 official, to find out where impacts may be. And if there is an  
5 identified rail terminal or path, maybe Tri-Cities is smarter.  
6 Maybe Spokane is the right answer. But do we have a real  
7 reason.

8           Similarly, if we consider there hasn't been a lot of  
9 popular comment on it yet, but the water route through the  
10 Columbia River has a lot of potential impacts that are analyzed  
11 and may have other communities there that may be equally  
12 deserving of it instead of rail, perhaps.

13           But I just want to make sure the Council's thought  
14 through the potential impacts and locations before we just pick  
15 Spokane because it's been suggested by the general public.

16           CHAIR LYNCH: Thank you, Mr. Torem. Having served in  
17 my prior job with the Pollution Control Hearings Board -- and we  
18 traveled the state for hearings, and it was my experience that  
19 people -- if you would schedule a hearing in Spokane, that was  
20 convenient for people generally in Eastern Washington to attend.  
21 We tried to have a hearing that's close to the project site as  
22 possible, but when it was more generalized, we would have a  
23 hearing wherever it seemed to fit the best.

24           And, you know, we're not trying to decide today  
25 whether there is -- in fact, what the scope of the DEIS is going

1 to be, but it has been certainly -- a number of concerns have  
2 been suggested about Eastern Washington being affected. And I  
3 wanted to make sure that we did have a hearing in Eastern  
4 Washington, and that seems to be the general sense of the  
5 Board -- or the Council. I keep saying "Board."

6 And so in my mind, because we're still gathering  
7 comments in the SEPA process, we're not trying to make a  
8 decision at this point in time where the impacts are or are not.  
9 We're just gathering comments about the SEPA scoping itself, so  
10 I think it is appropriate to have the hearing in Spokane.

11 People can certainly, I believe, get there. I mean,  
12 it's certainly not just limited to Spokane residents. And  
13 oftentimes there are facilities there which are -- people who  
14 have physical disabilities are more likely to have access in one  
15 of those facilities as opposed to you going to a real small town  
16 where options are often more limited.

17 So at this point in time. I would like to keep our  
18 hearing in Spokane, but I do appreciate you raising the question  
19 for us to think about.

20 MR. TOREM: No worries. I just wanted to make sure.

21 MR. PAULSON: Chair Lynch, Larry Paulson again.

22 If I may, one comment where the Tri-Cities might be  
23 more centrally than in Spokane in terms of concern for the river  
24 side of things, as well as Eastern Washington. I would just add  
25 that as a comment.

1 CHAIR LYNCH: And you're thinking, Mr. Paulson, that  
2 the Tri-Cities are better than Spokane, or are you asking  
3 whether a hearing in Tri-Cities in addition to Spokane?

4 MR. PAULSON: No. It would be instead of. And what  
5 I'm thinking is if you want to be more central to where the rail  
6 is passing through, to cover the Gorge, as well as Eastern  
7 Washington, the Tri-Cities might be more amenable to that in  
8 terms of a site or a central location in Eastern Washington.

9 CHAIR LYNCH: Well, at this point in time, the  
10 Council has agreed to extend the comment period and to have an  
11 additional meeting. And I'll leave it to Mr. Posner to make  
12 that determination as to whether it's more appropriate for the  
13 Tri-Cities or Spokane. My leaning is still for Spokane, but it  
14 certainly can be flexible for what makes the most sense.

15 MR. POSNER: Okay. Well, I would agree that I  
16 believe Spokane is, at this point, the most appropriate place to  
17 have a second meeting.

18 I think some of the comments, including Judge Torem's  
19 comments, bring up maybe questions about should there be more  
20 meetings and should there be other communities, perhaps, that  
21 are engaged in this process. I don't have an answer to that at  
22 this point in time, but I do know that, you know, SEPA --  
23 there's broad latitude in SEPA about looking at impacts. And  
24 we're talking about direct, indirect, and cumulative impacts, so  
25 I think that one could come to the conclusion that at least at

1 this point, there may be impacts to other areas in the state  
2 besides just where the project is located.

3 And where the Council wants to focus their efforts, I  
4 think this is a process that I think is unfolding. We started  
5 in Vancouver, the obvious place to start, and Spokane seems like  
6 a reasonable second stopping point.

7 And, again, we'll come back to the Council, and then  
8 I think the information that we gather through the process will  
9 inform us about, you know, at some point making decisions about  
10 ending scoping and moving forward with the SEPA process, which I  
11 think that, you know, we want to -- we want to move this process  
12 along as efficiently as possible. We want to make sure that we  
13 give the public, you know, broad opportunities to participate.

14 So I would say that I would go forward with  
15 scheduling a meeting for Spokane, if you're asking for, you  
16 know, what's my position on the matter.

17 CHAIR LYNCH: Thank you. And let's move to the next  
18 item on our agenda, which is the timing of the adjudicative  
19 proceedings.

20 And, Mr. Posner, can you give us a briefing on that,  
21 and anything that you think -- and any information that you have  
22 that you think would inform the Council.

23 MR. POSNER: Okay. Let me just see if I can find my  
24 notes here. Just a second.

25 (Pause in the proceedings.)

1 MR. POSNER: I'm sorry for the confusion. I got too  
2 many papers here.

3 Well, let me start. And I'll keep looking as I'm  
4 talking, but, basically, the issue for the Council to consider  
5 is whether or not the Council wants to begin the adjudicative  
6 process by issuing a notice for a prehearing conference to begin  
7 adjudication, which would be basically putting out a notice to  
8 potential intervenors to submit requests for intervenor status.

9 And the Council rules allow the Council to begin  
10 adjudication before the DEIS is issued. In the past, we have  
11 waited until the DEIS is issued before we actually have our  
12 adjudicative hearing. However, the Council could start  
13 adjudication sooner by issuing a notice for a prehearing  
14 conference, which would begin the adjudicative process where the  
15 Council could start, perhaps, first of all, identifying  
16 potential parties who have an interest in the project, and also  
17 trying to work through some of the prehearing -- or the issues  
18 that need to be addressed before the hearing begins.

19 So the question to the Council is: Does the Council  
20 want to issue a notice commencing the adjudicative process?

21 CHAIR LYNCH: Mr. Posner, I'll ask you first: Is  
22 there any advantage to waiting until the other SEPA scoping  
23 hearing is held, or does that have any impact at all as to when  
24 the adjudicatory process should begin?

25 MR. POSNER: Well, I think that, obviously, SEPA --

1 you know, the way our process works, we have the adjudicative  
2 process, and we have the SEPA process that runs on a separate  
3 track.

4 The SEPA process, I believe, informs the adjudicative  
5 process so that you wouldn't want to ask for like prefiled  
6 testimony too soon. Information that's contained in the DEIS  
7 often informs the parties about their prefiled testimony, but  
8 that doesn't preclude the Council from beginning adjudication  
9 now, which gives the Council and others an opportunity to  
10 identify who the parties are and who has an interest in this  
11 project.

12 And then in past projects, I think it's been  
13 beneficial so that issues can be identified early and perhaps  
14 can be worked through so that the hearing goes very smoothly and  
15 efficiently.

16 So I'm not sure. To answer your question, I'm not  
17 sure how much information will be gained by waiting until after  
18 the next scoping meeting to begin, open, or start adjudication.

19 CHAIR LYNCH: Recognizing that it takes a while for  
20 the parties to identify the issues, you have prehearing  
21 conferences. There's just a lot that goes on before the hearing  
22 ever begins.

23 I guess my own preference would be to get going, to  
24 start the adjudicatory process and move this process forward.

25 But I would like to hear from -- again, I'm relying

1 upon Mr. Moss and his experience, what his thoughts are.

2 MR. MOSS: Well, I think there are a number of good  
3 reasons to go ahead and commence the adjudication in a formal  
4 way, not the least of which, and perhaps the important of which  
5 is it provides an opportunity for us to engage in a dialogue  
6 with the applicant and with others who may be interested in this  
7 matter so that we can better plan how we're going to go forward.

8 And we don't have to -- you know, I don't see  
9 anything prejudicial about initiating the process. Certainly,  
10 we will hear early on from some who wish to participate, and  
11 that, perhaps, will be very useful information. Whether they  
12 are ultimately allowed to intervene and participate as parties  
13 is something we don't have to decide immediately. There is no  
14 time guide. There are no requirements on these things under the  
15 statute or otherwise, but at least we'll note who we need to be  
16 talking with and about what. So I think that's an important  
17 piece of it.

18 There are aspects of the adjudicative process that  
19 can be commenced, and, indeed, completed early on. For example,  
20 I'm thinking of the land use piece of it, which is often taken  
21 up early in the whole process and can be dismissed with by an  
22 order put to one side and laid to rest until the final order  
23 when it will be considered again in one fashion or another.

24 So I think there are good reasons to go ahead and get  
25 started with it, without necessarily implying that we need to

1 move forward in an aggressive way with the adjudication until we  
2 know more in terms of the scope of what we, as a Council, do  
3 wish to consider both in SEPA and separately in the  
4 adjudication.

5 CHAIR LYNCH: And, Mr. Posner, when is the land use  
6 consistency hearing usually set? Fairly early in the process;  
7 is that correct?

8 MR. POSNER: Typically, yes. Right now we're waiting  
9 to -- my understanding is the applicant is working with the City  
10 of Vancouver on getting some documentation concerning land use.  
11 Typically, what applicants do is at the land use hearing, they  
12 will present that information to the Council, whether it be some  
13 sort of certificate addressing land use consistency.

14 CHAIR LYNCH: And so I assume that once the  
15 appropriate documents are shared, they'll notify you, and then  
16 you can notify us as to when --

17 MR. POSNER: Right.

18 CHAIR LYNCH: -- we can schedule the hearing?

19 MR. POSNER: Yeah. We're required to have a  
20 hearing --

21 CHAIR LYNCH: Right.

22 MR. POSNER: -- a land use hearing, yes.

23 CHAIR LYNCH: Okay. Any other Councilmembers have  
24 thoughts about starting the adjudicatory process?

25 MR. STEPHENSON: Nothing to add.



1 MR. HAYES: Chair, I guess my only thought is being  
2 mindful of the time frame of the entire process and making sure  
3 we don't get any bottlenecks, so I think, you know, the idea of  
4 getting going sooner than later, you know, will reduce the  
5 possibility of that occurring, so it seems like a good idea to  
6 me.

7 CHAIR LYNCH: Thank you, Mr. Hayes.

8 Any of the Councilmembers on the phone wish to add  
9 anything?

10 MR. PAULSON: Larry Paulson, no objection.

11 MR. SWANSON: Jeff Swanson, no objection.

12 MR. SNODGRASS: Bryan Snodgrass, no objection.

13 CHAIR LYNCH: Very good. Thank you.

14 MR. POSNER: So, Chair Lynch?

15 CHAIR LYNCH: Yes, Mr. Posner?

16 MR. POSNER: I found my notes. So, basically --

17 CHAIR LYNCH: Excellent.

18 MR. POSNER: I did pretty good actually.

19 CHAIR LYNCH: Usually, it doesn't happen to me till I  
20 get back in my office.

21 MR. POSNER: I think I got all my key points, but,  
22 basically, what -- so what we would do is we would issue a  
23 formal notice of a hearing, which would basically indicate a  
24 time for a prehearing conference, which would start the  
25 adjudication. And in that notice there would be information

1 about intervenors or becoming a party to the process.

2 CHAIR LYNCH: Thank you.

3 MS. ESSKO: Chair Lynch, I have a quick question.

4 CHAIR LYNCH: Yes.

5 MS. ESSKO: And that question is whether the Council  
6 wants to take up the question of whether the completeness  
7 determination would be made, how that would fit in with starting  
8 the adjudicative process.

9 Does the Council wish to have the completeness  
10 determination done before that occurs or have that occur  
11 afterwards?

12 And, Mr. Posner, I don't know if that's even  
13 possible. I don't know what the schedule is for the  
14 completeness determination.

15 MR. POSNER: Right. Well, we're still -- I don't  
16 think we reached the decision point on that yet. We are still  
17 working reviewing the application, and we're working with our  
18 consultants and our state agency contractors to put together a  
19 draft adequacy report of the application and then at some point  
20 we would probably present information to the Council on the  
21 adequacy of the application.

22 CHAIR LYNCH: Do you anticipate that would be ready  
23 for our next Council meeting in November or sometime after that?

24 MR. POSNER: I don't believe it would be ready in  
25 November, no.

1 CHAIR LYNCH: Okay. Thank you.

2 MR. MOSS: I think there may be something in the  
3 statute that provides a link between the completeness  
4 determination and the initiation of adjudication. If memory  
5 serves, I don't know that it's a firm link, but in terms of the  
6 timing, my recollection is the statute contemplates that  
7 completeness determination being sort of a prerequisite; am I  
8 right about that, Counselor?

9 Right, wrong, or indifferent, it makes sense to me.

10 MS. ESSKO: That may answer the question.

11 MR. MOSS: Well, that's only me.

12 MS. ESSKO: I don't recall that, but that's not to  
13 say that you're not correct.

14 MR. MOSS: We should probably look into that as well.

15 MS. ESSKO: All right.

16 MR. MOSS: It probably certainly would be premature  
17 to try to do something today until we have the answer to that  
18 question and also perhaps have a firmer idea about when the  
19 completeness determination might be made.

20 MS. ESSKO: Why don't I take a look at a question and  
21 get back to Stephen.

22 Is that acceptable to the Council?

23 CHAIR LYNCH: That works for me, and I think that  
24 makes the most sense.

25 MR. MOSS: Yeah, that makes a lot sense.

1 MS. ESSKO: Stephen, is that all right with you?

2 MR. POSNER: Yes, that's fine, Ann.

3 And we have our regularly scheduled Council meeting  
4 in about two weeks, and it might be that that would be the time  
5 we bring this subject back up for discussion. And we can have  
6 answers to those questions so the Council is better informed  
7 about timing and process, so we can do that.

8 CHAIR LYNCH: Okay.

9 MR. POSNER: So we will hold off. We will not issue  
10 anything at this time. We'll wait until after the November  
11 regular Council meeting.

12 CHAIR LYNCH: Thank you, Mr. Moss.

13 Is there anything else regarding the adjudicatory  
14 proceedings that need to be brought up today?

15 MR. POSNER: No, I don't believe so.

16 CHAIR LYNCH: So is there anything else that  
17 Councilmembers or Staff have for us today, or do you have all  
18 the direction that you need for the moment?

19 MR. POSNER: I believe we have all the direction.  
20 Thank you.

21 CHAIR LYNCH: Well, I would like to thank all the  
22 Councilmembers for their rapt attention and the help of Staff  
23 today and we are adjourned.

24 (Whereupon, the meeting was adjourned at 2:40 p.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF KING )

I, SHELBY KAY K. FUKUSHIMA, a Certified Shorthand Reporter and Notary Public in and for the State of Washington, do hereby certify that the foregoing transcript is true and accurate to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 22nd day of November, 2013.

\_\_\_\_\_  
SHELBY KAY K. FUKUSHIMA, CCR

My commission expires:  
June 29, 2017